

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

FLYPSI, INC. (D/B/A FLYP),
Patent Owner.

Case No. IPR2023-00360
U.S. Patent No. 9,667,770

**PATENT OWNER FLYPSI, INC.'S
SUR-REPLY**

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PATENT OWNER'S EXHIBIT LIST

Ex. No.	Brief Description
2001	Order Denying Petition for Writ of Mandamus, No. 6:22-cv-00031-ADA, <i>Flypsi, Inc. v. Google LLC</i> , Case: 23-112, Federal Circuit, Document 19, March 6, 2023
2002	Order Denying Motion to Stay, Case Number: 6:22-cv-00031-ADA, <i>Flypsi, Inc. v. Google, LLC</i> , Western District of Texas, March 30, 2023
2003	Amended Scheduling Order, Case Number 6:22-cv-00031-ADA, <i>Flypsi, Inc. v. Google, LLC</i> , Western District of Texas, Document 112, April 21, 2023
2004	Lex Machina statistics Judge Alan D Albright of the U.S. District Court for the Western District of Texas. https://law.lexmachina.com/federal-court/district/judge/5198506/cases?pending-
2005	Declaration of Michael A. Bittner in Support of Motion for <i>Pro Hac Vice</i> Admission
2006	Declaration of William M. Logan in Support of Motion for <i>Pro Hac Vice</i> Admission
2007	Declaration of Matthew R. McCullough in Support of Motion for <i>Pro Hac Vice</i> Admission
2008	Demonstrative Exhibit Used at Deposition of Bill Lin, Ph.D.
2009	Deposition Transcript of Bill Lin, Ph.D.
2010	Declaration of Robert Akl, D.Sc.
2011	Curriculum Vitae of Robert Akl, D.Sc.

I. Introduction

The Reply fails to remedy the deficiencies identified in the POR, and thus the Petition has failed to prove that any claim of the '770 patent is invalid under any ground.

First, the Reply fails to show that it would be obvious for *the handset* to accept the call using the bridge number. After originally pointing to actions by *the server* in the Petition, the Reply makes a new argument about displaying caller ID that still fails because it is not accepting the call, as claimed.

Second, the Reply confirms that the Petition's argument depends on an improper construction of "channel" that is inconsistent with the specification's teachings. Both of the Petition's "first way" and "second way" theories fail to show transmission of a bridge telephone number via a data channel. Further, the Petition takes internally inconsistent positions as to what constitutes a data channel, failing to prove invalidity and undermining the credibility of Petitioner's expert (whose declaration is conclusory and should be disregarded by the Board).

Third, the Reply fails to show that the "second way" theory meets the timing requirement of the claim that the pre-call information is transmitted after the call is received by the switch.

Finally, the Reply fails to show it would be obvious to include a handset associated number in the pre-call information. There is unrebutted expert testimony that it would be unnecessary to include this additional testimony.

For all the reasons described in this Sur-Reply and in the POR, Petitioner has failed to show invalidity of any claim.

II. Claim Construction

A. “channel” (all claims)

The Reply doubles down on the Petition’s erroneous construction, again arguing that “*where there is no voice path connected yet*, and only non-voice data is being transmitted (i.e., a combination of the relationship number and the third party number), a data channel such as an IP channel would be used to transmit the non-voice data.” Reply at 2 (emphasis added). But this directly contradicts the specification, which expressly teaches that a call leg is made “over a voice channel” before it is bridged with a second call leg (and thus, before, in the words of Petitioner, the “voice path” is connected). Ex. 1001, 6:62-7:6; Ex. 2010, ¶¶ 43-44. Despite the POR identifying this contradiction (POR, 9-10), Petitioner offers

no response, which confirms that Petitioner’s argument cannot be reconciled with the specification’s teachings, and thus must be rejected.¹

The Reply repeats the temporal argument of the Petition, focusing on the “when” language in the specification. Reply at 1-2. But the Reply offers no rebuttal to Dr. Akl’s opinion that this statement, in the context of the entire specification, does not impose a temporal limit but instead would be understood by a POSITA to refer to using multiple protocols on top of one another and that a POSITA would look to the protocol set to be used to transmit information, not any underlying protocols used for bare transmission. Ex. 2010, ¶ 45. Dr. Akl’s testimony about the understanding of a POSITA is thus unrebutted and confirms that Patent Owner’s construction should be adopted.

¹ Contrary to the Reply’s suggestion, the construction of “channel” is relevant to both the Petition’s “first way” and “second way” theories because it goes to whether the Petition states a coherent theory and is at the heart of the Petition’s inconsistent positions (*infra* Section IV) and the Petitioner’s expert’s conclusory testimony (*infra* Section V), which impact the credibility of the Petition’s argument and are certainly relevant to weighing the evidence to determine if the Petitioner has met its burden of proving invalidity.

Next, the Reply attempts to criticize Dr. Akl for not offering opinions on various irrelevant hypotheticals. Reply at 2. But neither Dr. Akl nor Patent Owner bear any affirmative burden in an IPR, only the Petitioner does. Further, Dr. Akl's testimony is consistent with the law that claims only need to be construed "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) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

The Board should therefore adopt Patent Owner's construction.

B. "transmitting pre-call information ..." (limitation [1.g])

The Reply confirms that the Patent Owner's proposed construction of this limitation is correct by acknowledging the antecedent basis relationship between "an incoming call" in limitation [1.f] and "the incoming call" in limitation [1.g]. Reply at 3-4. The Reply argues that this relationship "is not directed to the process of 'transmitting pre-call information'" (Reply at 4), but that argument ignores where the phrase "the incoming call" appears in limitation [1.g]. The phrase "the incoming call" describes the content of the pre-call information: "transmitting pre-call information ... including the bridge telephone number ... such that the handset is capable of ... accepting the incoming call by connecting with the switch." '770 patent, limitation [1.g]. Thus, the antecedent basis is directed to the pre-call information, and Patent Owner's proposed construction is correct.

The Reply alleges that Dr. Akl could not explain what information in the pre-call information relates to the incoming call, but this is incorrect. Dr. Akl clearly stated that the bridge-telephone number is “relating to an incoming call.” Ex. 1102, 108:18-109:8.²

The Reply next argues that the construction is incorrect because it refers to the “indication” of an incoming call. This was a minor typographical error, caused by inadvertently copying the language of claim 1 of related U.S. Patent 10,051,105, which is the subject of IPR2023-00360. The first sentence of the construction should state: “The transmission must occur after the incoming call is received in step [1.f].” Patent Owner’s argument was clear, Petitioner substantively responded to it, and, further, Dr. Akl’s declaration did not contain this typographical error (Ex. 2010, ¶¶ 49-54), confirming that this typographical error was ultimately inconsequential.

Next, the Reply argues that the specification does not support the order of steps merely because it states that the figures are examples. Reply at 5. But the

² Although this testimony refers to claim 1 of related U.S. Patent 10,051,105, which is the subject of IPR2023-00361, that claim contains substantially the same requirement for the “pre-call information” and Patent Owner has proposed substantially the same construction, so the testimony is equally relevant here.

Reply does not identify any examples in the specification that do not follow this order, and there are none. The Reply argues that the pre-call information “may be received at the handset 340 before or during the call ringing on the handset.” *Id.* (quoting Ex. 1001, 6:43-44). But this is a different comparison from the claim, and is thus irrelevant. Patent Owner’s proposed construction is that the pre-call information in limitation [1.g] is transmitted after the incoming call is received **at the switch** in limitation [1.f]. The specification, on the other hand, is comparing when the pre-call information is received with when the call rings **on the handset**. These are two different comparisons, as Dr. Akl confirmed at his deposition. Ex. 1102, 129:9-132:10 (the specification sentence is not relevant to the construction “[b]ecause the specification specifically is looking at the call being received at the handset, while this claim language is looking at the call being received at a switch.”). Thus, the sentence that the Reply focuses on is irrelevant to the construction at issue because the only order Patent Owner is proposing is that the pre-call information is transmitted after the call is received **at the switch** in limitation [1.f].

As to the second requirement of the construction (that the pre-call information relate to the specific call received at the switch), the Reply again relies on generalized arguments that the specification is illustrative, but does not identify any contrary example. Reply at 5-6. The plain claim language makes clear that

the pre-call information must relate to “the” specific call received in limitation [1.f] through the antecedent basis. Despite the Reply’s criticism of Dr. Akl, he clearly stated this at his deposition: “Because it’s in an element that is referring back to an incoming call that is received in [1.d], and it’s that same incoming call that element [1.g] is referring to.” Ex. 1102, 110:19-25.³

The Reply next argues that the specification teaches that “calls” to the bridge number may be made, which the Reply contends means the bridge number is not call specific. Reply at 6 (quoting Ex. 1001, 6:2-4). The lone sentence quoted by the Reply is: “The bridge telephone number may be associated with the switch 110, and calls to the bridge telephone number may be automatically routed to this switch.” Ex. 1001, 6:2-4. This statement is clearly indicating that *any call* to the bridge number is routed to the switch. This statement says nothing about the pre-call information, which is described later at 6:32-44. A POSITA would not understand the sentence identified in the Reply to mean that the pre-call information could be unrelated to a specific incoming call already received at the switch because that would be inconsistent with the claim language and the specification’s description of the pre-call notification.

³ As above, although describing the related ’105 patent claim 1, this testimony is equally applicable here.

Finally, the Reply argues that the proposed construction is somehow “indefinite and confusing.” Not so. All the construction requires is that the pre-call information is related to a specific call that has already been received at the switch, such that the handset is capable of connecting to that call. This is clearly described in the claim language and in the proposed construction, so there is no definiteness problem.

The Board should therefore adopt Patent Owner’s construction, which makes clear, consistent with all the intrinsic evidence, that the transmitting pre-call information limitation must meet two requirements: (1) the pre-call notification is transmitted *after* receiving a call; and (2) that the pre-call notification relates to the specific call that has been received.

III. Ground 1: The Reply fails to show that Backhaus and Logan render obvious limitation [1.g].

A. Backhaus and Logan do not render obvious that *the handset* can accept the call using the bridge telephone number.

The claim language expressly recites that *the handset* must be capable of accepting the call by using the bridge number: “*the handset* is capable of ... accepting the incoming call by connecting with the switch over the at least one voice channel using the bridge telephone number.” Ex. 1001, limitation [1.g]

(emphasis added). This is not a “narrow read” of the claim as the Reply argues. Reply at 7. To the contrary, it is based on the express language of the claim.⁴

The Reply contends that the relationship number is used because the handset “handle[s] the call and display[s] the associated third party CLID.” Reply at 7 (quoting Ex. 1005, [0067] and citing Ex. 1002, ¶ 103). This is an improper new argument because the Petition only alleged use of the relationship number by the SLS platform, a different entity. *See* Rules of Practice for Trials Before the PTAB, 77 Fed. Reg. 48,612, 48,620 (Aug. 14, 2012) (“Reply evidence, however, must be ... not merely new evidence that could have been presented earlier”); *Ariosia Diagnostics v. Verinata Health, Inc.*, 805 F.3d 1359, 1367 (Fed. Cir. 2015) (affirming Board’s rejection of new argument where the Reply identified new “specific embodiments” for the first time). Indeed, the Petition specifically excerpted out the portion of Backhaus paragraph 67 that the Reply relies on. *See*

⁴ The Reply also incorrectly suggests that this argument is the same as one from the POPR. It is not. As acknowledged in the Institution Decision, the POPR advanced a narrower argument that “requires the handset to place a call to the bridge telephone number.” ID, 30. Here, by contrast, Patent Owner only contends that *the handset* must be the device that uses the bridge telephone number to accept the call (in any fashion, whether by placing a call or otherwise).

Petition at 46. Dr. Lin likewise did not identify these actions by the handset in his declaration for this aspect of the claim. Ex. 1002, ¶ 103.

Even so, the Reply’s new argument still fails to show obviousness because it does not show any connection between using the relationship number and accepting the call, which is what the claim language requires. At most, the Reply’s new argument contends that the handset “handle[s]” and “display[s]” the caller ID. Neither of these steps is “accepting” the call, as claimed. Dr. Akl explained that a POSITA would understand that the calling party field in Backhaus is not used to connect the call (Ex. 2010, ¶ 66), and the Reply did not identify any evidence that rebuts this testimony. Dr. Lin’s declaration does not rebut it because he only identified actions by the SLS platform, and thus did not address this issue. *See* Ex. 1002, ¶ 103.

B. The Petition’s “first way” fails because Backhaus’s relationship number is transmitted as part of the call, not via a data channel.

The Reply confirms that the sole basis for the Petition’s “first way” is the erroneous argument that “because a voice path is not connected,” the relationship number must be transmitted via a data protocol. Reply at 11. As explained above, this erroneous construction should be rejected by the Board.

The Reply focuses much attention on Backhaus’s disclosure that the relationship number is a “specially encoded message” and that the encoded message may contain multiple numbers. *E.g.*, Reply at 11-14. But it is not the

content of the encoded message that is in dispute, but *how* that message is *transmitted*. To show obviousness, it must be obvious to transmit this particular information via a data channel. The Reply offers no credible response to Backhaus' express teaching that this specially encoded message is included in the "calling party field of the call." Ex. 1005, [0055]. As Dr. Akl explained, the disclosure in Backhaus paragraphs 52-55 would be understood by a POSITA as confirming that the calling party field (which includes the "specially encoded message" the Reply focuses on) would be part "of the call" itself, as Backhaus expressly states. Ex. 2010, ¶ 68. The Reply's only response to this is unsupported attorney argument that Backhaus uses the term "call" more broadly than referring to a voice call. Reply at 13. But the Reply offers no explanation of how this separate embodiment is relevant to the Petition's theory, which expressly relies on a voice call only. *See, e.g.*, Petition at 40-41 (arguing about when a "voice path" is established with no mention of a video or any other type of alleged call). The Reply's newfound reliance on this separate video call embodiment is improper because the Petition could have, but chose not to, rely on the video call embodiment. *See Ariosa*, 805 F.3d at 1367.

The Reply further argues that Dr. Lin explained that the details of how caller ID is transmitted "depends on the implementation." Reply at 12-13. But to show obviousness, the Petition must show that Backhaus and Logan render obvious

transmitting caller ID via a data channel, not just that there are different, unspecified possible implementations. Thus, the Reply's criticism that Dr. Akl did not have an opinion on the purely hypothetical question of whether it is possible to transmit caller ID via a data channel (Reply at 13) is misplaced for the same reason.

The Reply next argues that Backhaus' encoded message "functions differently" than caller ID, because it can include a combination of numbers. Reply at 13. But again, the Reply's focus on the *content* of the message does not prove the claim limitation, which relates to *how* the message is *transmitted*. Furthermore, Backhaus makes clear that the purpose of the message is to enable the user's phone to display a phone number to the user, just like conventional caller ID. Ex. 1005, [0056].

The Reply next responds to Dr. Akl's opinion that voice calls use a voice channel while ringing with the confusing suggestion that there may be two channels at that time: a voice channel and a "separate data channel." Reply at 13. But this contradicts the Reply's claim construction position that the data channel exists because "there is no voice path connected yet." Reply at 2. These inconsistencies show that the Petition does not articulate a coherent theory of invalidity but instead relies on contradictory positions. *See also infra* Section IV.

The Reply next argues that Backhaus teaches using an IP communication in paragraph 73. Reply at 14. But this is an improper new argument that is inconsistent with the law. The Petition asserted that paragraph 73 showed that IP communications “may be used,” which at most establishes a mere possibility but does not specifically show that it would be obvious to transmit relationship number via a data channel. Petition at 41. Now, the Reply appears to be making a genus-species argument, alleging that Backhaus discloses using IP for two genera of ““setting up the relationship databases, sharing information between’ TD 110 and platform 115” and that the specially encoded message is an example species of a transmission in those genera, so Backhaus allegedly renders obvious. Reply at 14 (quoting Ex. 1005, [0073]). This is an entirely new invalidity theory that could have been presented earlier, and should be disregarded. *Ariosa*, 805 F.3d at 1367. Moreover, this argument is inconsistent with the law. “A prior art reference that discloses a genus still does not inherently disclose all species within that broad category.” *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1367 (Fed. Cir. 2004). Here, even if Backhaus discloses that the genera of “sharing information” or transmission related to “setting up the relationship database” is transmitted via IP, Backhaus never discloses that the species of the relationship number is transmitted via IP, and the Reply fails to identify any reason why doing that specifically would be obvious.

Further, the Reply fails to explain why paragraph 73 of Backhaus is relevant at all given that it is only possible to get to paragraph 73 in the flow of Backhaus Figures 4A-4D if the call is *not* an incoming call. And the Reply does not deny that paragraph 73 is not part of an incoming call flow. Thus, paragraph 73 is irrelevant to the Petition's "first way," and the Reply fails to identify any reason it would be obvious to combine these distinct embodiments of Backhaus. *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1337 (Fed. Cir. 2005).

The Reply also fails to justify why a POSITA would split the relationship ID into a separate IP transmission. It argues that this argument is "based on the same unsupported assumption that Backhaus' 'encoded message' is akin to a conventional CLID." Reply at 15. But this argument contradicts Backhaus' express disclosure that the relationship number is included in the calling party field "of the call." Ex. 1005, [0055]. The Petition's obviousness theory is to use a separate channel (IP) for transmission. The Petition, therefore, must justify separating this from the call, as described in Backhaus, to show obviousness, but neither the Petition nor Reply meet this burden.

Finally, the Reply fails to justify the delay argument that allegedly provides the motivation for its obviousness argument. It simply reasserts that IP transmission minimize delays in "allocating and acquiring relationship numbers." Reply at 15. But the Reply provides no specific response to Dr. Akl's testimony

that it would not make sense to do so in the context of a pending incoming call (the context of limitation [1.g]) because the notification would either arrive before the call could be accepted (which would be bad because the user could see but not accept the call), at the same time (in which case there was no motivation to make the change) or late (which would be bad because the user would not have caller ID when having to answer the call). Ex. 2010, ¶¶ 80-81. Thus, separating the caller ID into a separate IP transmission is either bad for the user or unnecessary, and it would not be obvious to do so.

C. The Petition’s “second way” fails to render obvious the use of a data channel.

The Reply begins by repeating its improper new genus-species argument and its generic obviousness rationale based on delay, without addressing any of the deficiencies identified above in connection with the “first way.” These arguments fail for the same reasons.

The Reply relies on Backhaus paragraphs 71-74, which are impossible to reach in the flow for an outgoing call (which is the Petition’s proposed “second way,” Petition at 43-44). The Reply argues that because the final step of Figure 4D is to start over at Figure 4A, it is proper to rely on these teachings in Backhaus. But all that the final step of Figure 4D means is that the Backhaus platform goes back to the beginning to wait for a separate incoming transmission (either an incoming call from a third party to a subscriber, which is handled in Figures 4A

and 4B; an outgoing call from a subscriber to a third party, which is handled in Figure 4C; or a communication from the SLS client to the SLS platform, which is handled in Figure 4D). The fact that Backhaus' platform operates in a loop where it completes one path and goes back to the beginning to wait to see what the next incoming communication is does not mean that a POSITA would arbitrarily pick and choose aspects of different paths to combine in an arbitrary fashion to try and match the claims. The Reply fails to offer any specific rationale for why combining these distinct processing paths would be obvious, and there is none.

D. The Petition's "second way" also fails because it does not occur after a call is received at the switch and does not relate to that specific call.

The Reply does not show that the alleged pre-call information occurs after receiving a call at the switch and relates to that specific call. Instead of explaining how Backhaus paragraphs 71-74 (which are the Petition's "second way," *see* Petition at 43-44) meet this requirement, the Reply offers an entirely new argument that Backhaus paragraph 66 somehow shows this limitation is met. Backhaus paragraph 66 is describing part of the flow of Figure 4A, which relates to an incoming call from a third party to a subscriber. Ex. 1005, [0065]-[0066]. Dr. Akl explained that a POSITA would understand this to be a "distinct processing path[]," which the Reply never rebuts. Ex. 2010, ¶ 78. This new argument, relying on a distinct embodiment, is improper and should be disregarded by the Board.

Ariososa, 805 F.3d at 1367 (affirming Board’s rejection of new argument where the Reply identified new “specific embodiments” for the first time).

Further, this new argument fails for two other reasons. First, it relates to an incoming call, which is the Petition’s “first way,” not its “second way,” so it is irrelevant. The fact that the Reply is now attempting to combine its two mutually exclusive theories shows that the Petition is driven by improper hindsight and using the claim as a guidepost to select discrete elements from the prior art to match the claims. *In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991) (“It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant’s structure as a template and selecting elements from references to fill the gaps.”); *see also ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546 (Fed. Cir. 1998) (“Determination of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.”).

Second, the Reply mischaracterizes Backhaus as disclosing that the handset may communicate with the platform “for ‘acquiring [the combination the third party and relationship numbers].’” Reply at 11 (purportedly quoting Ex. 1005, [0066]) (original alterations). But Backhaus paragraph 66 only teaches “acquiring ***the third party calling number*** associated with the new relationship number.” Ex. 1005, [0066]. Backhaus paragraph 66 does not say that this communication

involves the relationship number, and the Reply's editing of Backhaus is therefore highly misleading and inaccurate.

E. Backhaus and Logan do not render obvious that the pre-call information includes the handset-associated telephone number.

The Reply fails to show any reason why Backhaus would include the handset-associated telephone number in the pre-call information. First, the Reply argues that Backhaus can handle calls to a user's primary number when they are made from another SLS subscriber. Reply at 16-17. This is irrelevant. The Petition is expressly limited to "when a known third party calls subscriber's SLS number," i.e., when the call is directed *to an SLS number* not the user's primary number. Petition at 45. Further, the only thing provided with an outgoing call in Backhaus is "the SLS number" of *the caller* in the "'calling number' field," not the primary or secondary number of *the person being called*, which is what the Petition maps to the handset-associated telephone number. Ex. 1005, [0059]. Thus, this irrelevant scenario still does not show sending the handset-associated number (of the handset receiving the call, which is what is claimed).

Next, the Reply repeats the argument that it would be somehow beneficial to display the number being called. Reply at 16-17. But the Reply does not deny that, as Dr. Akl explained, the relationship number cannot be reused for a given subscriber and that, therefore, the relationship number alone indicates which number was dialed. Ex. 2010, ¶¶ 93-102. Further, the Reply's arguments focus on

the benefit of “display[ing] which number is being called” on the handset. But the claim limitation is not about displaying anything on the handset; it is about the information transmitted from the server to the handset. Given Dr. Akl’s unrebutted testimony that the relationship number (which Backhaus transmits, albeit not via data channel) is alone sufficient to identify the number being called, a POSITA could look up and display the number being called based on the SLS database on the handset, and there would be no reason to modify the transmission from Backhaus’ SLS platform. *E.g.*, Ex. 1005, [0010] (referencing “a local database of the subscriber TD”). Thus, the Reply fails to identify any reason why it would be obvious to modify the transmission from Backhaus to the handset to include a handset-associated telephone number.

IV. Ground 1: The Reply fails to reconcile the Petition’s inconsistent positions on the “channel” limitations.

The Reply first defends its inconsistent positions by arguing that only its “first way” argument is inconsistent. Reply at 17-18. But even if this were true, the fact that the Petition stated an internally inconsistent theory undermines all of its arguments and specifically undermines the expert’s credibility, which is something that the Board may consider in evaluating all grounds of the Petition.

Next, the Reply argues there is no inconsistency because “when a third party establishes a call leg to SLS platform 115 (as discussed for limitation [1.f]), Backhaus does not disclose transmitting such information [the calling party field].”

Reply at 18-19. But Backhaus clearly states that the call includes information about both the party being called and the calling party. Ex. 1005, [0035] (“data identifying it as a call to the second line number”), [0063] (“the calling line ID (‘CLID’), i.e. the phone number of the calling party”). Thus, it is clear that the call leg relied on in limitation [1.f] has a calling line ID and the Reply’s argument is simply wrong.⁵ The Petition thus states an inconsistent theory because it contends the same thing (a call leg with a calling party number) is a data channel for limitation [1.g] but a voice channel for limitation [1.f].

Finally, the Reply attempts to rehabilitate Dr. Lin’s testimony by citing to the portion of his answer where he described his theory for the “first way.” Reply

⁵ If the Reply is arguing that a “calling line ID” is somehow distinct from a “calling party field,” it fails to identify any material difference. If the Reply is relying on the field’s *content* (e.g., being specially encoded) or the field’s *purpose* (relating to databases), that is not relevant to *how* the field is *transmitted*. Further, the call leg for limitation [1.f] is likewise used in setting up the SLS platform’s database for a call from a previously unknown third party. Ex. 1005, [0064]-[0065] (assigning new relationship number and updating database).

at 19 (citing Ex. 2009, 183:5-20).⁶ But Dr. Lin was expressly asked to compare and explain why he reached different conclusions for the channels used in different limitations, and he could not identify a single relevant difference. Ex. 2009 at 182:6-183:20 (not identifying any differences). Just like Dr. Lin, the Reply fails to identify any material difference between the inconsistent arguments of the Petition for limitations [1.f] and [1.g], and this inconsistency dooms Ground 1 for failing to show it would be obvious to use two different channels as required by the claims.

V. The Board should disregard the Petition’s conclusory expert testimony.

The Reply fails to rehabilitate Dr. Lin, whose testimony is conclusory and which he could not defend or explain at deposition, as outlined in the POR. The Reply argues that the similarity between the Petition and declaration is no problem, because the “analysis turns on whether the expert declaration ‘cite[s] to any additional supporting evidence or provide[s] any technical reasoning to support [the] statement.’” Reply at 23 (citing *Netflix, Inc. v. GoTV Streaming, LLC*, IPR2023-00758, paper 7 at 66-67 (PTAB Nov. 7, 2023)). But the Reply does not

⁶ As the Reply notes, this testimony is about U.S. Patent No. 11,218,585, which is at issue in IPR2023-00357, but the Petition and Dr. Lin advance substantially similar contradictory arguments in that case, so this testimony is relevant.

identify any additional supporting evidence or reasoning provided by Dr. Lin. A comparison of the Petition and declaration confirms that they are virtually identical without sufficient supporting evidence or analysis by Dr. Lin.

The Reply defends the absence of legal standards in Dr. Lin's declaration by arguing that he does not offer ultimate legal opinions. But that is not the problem. The problem is that there is nothing to indicate what instructions on the law Dr. Lin was applying, and the Petitioner used improper privilege cautions to obstruct discovery into that subject. Without any indication of what law Dr. Lin was given, it is impossible to understand whether Dr. Lin's opinions are consistent with the law or based on some misunderstanding that cannot be identified because Dr. Lin never identified the standards he was applying.

As to the remaining issues, the Reply largely repeats the incorrect arguments about its "first way," caller ID, and voice channels that are addressed above in the substantive grounds. But the Reply cannot deny that Dr. Lin opined that in Figure 4 of the '585 patent, "the handset begins actually using a voice channel" at step 424. Ex. 2009 at 104:12-107:1. But the patent expressly and unambiguously states that earlier step 422 is a call "over a voice channel." Ex. 1001, 6:62-6:65. Thus, Dr. Lin's opinions are not only highly conclusory, they contradict the specification of the patent and are thus entirely unreliable. The Board should disregard and strike his testimony.

VI. Conclusion

For at least the foregoing reasons, the Petition has failed to show that any claim is invalid, and the Board should issue a Final Written Decision finding that no claim has been shown invalid.

Dated: March 7, 2024

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CERTIFICATE OF COMPLIANCE

This sur-reply complies with the word count limits set forth in 37 C.F.R. § 42.24(c)(4), because this sur-reply contains 5,252 words, excluding the parts of the sur-reply exempted by 37 C.F.R. § 42.24(a)(1) and determined using the word count provided by Microsoft Word, which was used to prepare this patent owner response.

Dated: March 7, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing PATENT OWNER FLYPSI, INC.'S SUR-REPLY was served electronically via email on March 7, 2024, in its entirety on the following counsel of record:

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