

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC
Petitioner

v.

FLYPSI, INC.
Patent Owner

IPR2023-00361
Patent No. 10,051,105

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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LIST OF EXHIBITS

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Ex. 1001	U.S. Patent No. 10,051,105 to Zhidov et al. (“the ’105 patent”)	X
Ex. 1002	Declaration of Bill Lin, Ph.D.	X
Ex. 1003	Curriculum Vitae of Bill Lin, Ph.D.	X
Ex. 1004	Prosecution History of U.S. Patent No. 10,051,105	X
Ex. 1005	U.S. Patent Publication No. 2013/0295892 to Backhaus et al.	X
Ex. 1006	U.S. Pat. App. No. 61/660772 Backhaus Provisional	X
Ex. 1007	U.S. Patent Publication No. 2009/0052437A1 to Taylor	X
Ex. 1008	U.S. Patent Publication No. 2006/0077956A1 to Saksena	X
Ex. 1009	Flyp Responsive Claim Construction Brief (2022-01-07)	X
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Ex. 1013	Amended Scheduling Order (dated Nov. 17, 2022)	X
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Ex. 1015	U.S. Patent Publication No. 2010/0128857 to Logan	X

Ex. 1016	District Court Claim Construction Order (12-08-2022)	X
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Ex. 1021	European Pat. No. EP1119168A2 to Burg	X
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I. INTRODUCTION

Petitioner Google LLC (“Google”) replies to Patent Owner’s Response (Paper No. 22, “POR”) filed by Flypsi, Inc (“Flyp”). As discussed below, Flyp’s response advances arguments that are inconsistent with the record evidence. All of the challenged claims should be found unpatentable and canceled.

II. CLAIM CONSTRUCTION

A. “Channel”

Flyp construes “channel” not for what it is, but for what it is not: “[a] channel does not have to be fully connected on both ends or actually transmitting a particular type of information to qualify as a channel.” (POR, 6-7.) Flyp does not clarify what it means for something to be “fully connected on both ends or actually transmitting a particular type of information to qualify as a channel.” (POR, 6-7.) However, what *is* clear is that the ’105 patent explicitly states that communication channels, when carrying voice, are referred to as voice channels, and when carrying data, are referred to as data channels. (Pet., 34-35; Ex. 1001, 4:35-40 (data channel), 4:40-46 (voice channel); Ex. 2009, 52:18-53:13, 55:4-12.) Dr. Lin’s testimony identified by Flyp—that “a channel, when carrying voice, is a voice channel” and “when...carrying non-voice data, it would be a data channel,” (POR, 7-8 (quoting Ex. 2009, 75:10-18))—is consistent with these statements in the patent. To the extent Flyp’s construction requires otherwise, the construction is wrong.

When Flyp’s expert, Dr. Akl, was asked whether, “[w]hen any of the [cellular] protocols...are used to transport data, are those protocols qualified as data channel,” he did not deny that they qualify as data channels (Ex. 1102, 35:1-5), and agreed that the cellular protocol “does qualify as a voice channel when...sending voice traffic” (*id.*, 41:23-42:4). Dr. Akl otherwise refused to answer questions throughout his deposition on this issue, even questions about the patent itself. (*See, e.g.*, Ex. 1102, 30:2-31:4, 34:4-8, 34:14-35:5, 42:5-43:4, 49:3-8, 50:9-18.)

Flyp’s construction is also problematic because it appears to be based on a mischaracterization of the Petition, and more particularly the Petition’s “first way” of addressing limitation [1.g]. (POR, 6-13; Pet., 30-34.) Flyp asserts the “[t]he Petition is based on the false dichotomy that a channel must actively be carrying voice data to qualify as a voice channel, or else it is a data channel.” (POR, 7.) This is incorrect. Rather, the Petition explained that, where there is no voice path connected yet, and only non-voice data is being transmitted (i.e., a combination of relationship number and third party number), a data channel such as an IP channel would be used to transmit the non-voice data. (Pet., 32-34.)

Additionally, Flyp does not allege that its construction is relevant to the “second way” the Petition addresses limitation [1.g]. Yet the “second way” was the focus of the Board’s institution decision. (*See* Institution Decision (Paper 9) (Inst. Dec.), 21.) As such, the Board need not even reach Flyp’s proposed construction.

B. “transmitting pre-call information...” (limitation [1.g])/
“transmitting ... pre-call information...” (limitation [2.b])

Flyp construes limitation [1.g] to include two additional requirements: (1) “[t]he transmission [of pre-call information] must occur after the indication of an incoming call is received in step [1.d]” and (2) “[t]he ‘pre-call information’ must be information relating to the specific call received in step [1.d].” (POR, 14.) Flyp also construes limitation [2.b] to include two additional similar requirements: (1) “[t]he transmission [of pre-call information] must occur after the incoming call is received in step [2.a]” and (2) “[t]he ‘pre-call information’ must be information relating to the specific call received in step [2.a].” (*Id.*)

Flyp’s construction is not supported by the intrinsic evidence and violates the “general rule [that], ‘[u]nless the steps of a method [claim] actually recite an order, the steps are not ordinarily construed to require one.’” *Mformation Techs., Inc. v. Research In Motion Ltd.*, 764 F.3d 1392, 1398 (Fed. Cir. 2014).

Neither of Flyp’s first requirements are supported by the intrinsic evidence. Claims 1 and 2 do not recite any order regarding how the steps should be performed and Flyp does not assert otherwise. (POR, 14-17.) Neither the claim language, “as a matter of logic or grammar,” requires an order, nor “the specification directly or implicitly requires’ an order of steps.” *Mformation*, 764 F.3d at 1398.

Flyp contends that the claim language “clearly indicates that the transmitting

step must occur after receiving the call by using antecedent basis to refer to the already-received call.” (POR, 14-15.) It does not. The alleged antecedent basis relates to the processes of “receiving...**an incoming call**” in limitation [1.d] and “connecting...**the incoming call**” of limitation [1.g] (Ex. 1001, 10:9-12, 10:21-25) as well as “in response to **an incoming call**..., retrieving...a first bridge telephone number to be used for completion of **the incoming call**...” in limitation [2.a] and “accept[ing] **the incoming call**...connect[ing] **the incoming call**” in limitation [2.b] (*id.*, 10:39-46, 10:47-54). (POR, 14-15.) The alleged antecedent basis is not directed to “transmitting” pre-call information and thus not requiring it to occur after “receiving an incoming call” of limitation [1.d] or “in response to an incoming call” of limitation [2.a].

To support the construction, Flyp relies on Dr. Akl’s declaration, which refers to how the claim “recite[s] that the pre-call information include[s] information relating to the ‘incoming call.’” (Ex. 2010, ¶51.) But Dr. Akl was unable to explain what *information* the pre-call information allegedly includes that relates to the incoming call, conceding in deposition that he did not even provide an opinion. (Ex. 1102, 96:6-11.)

The *Hytera* case cited by Flyp does not support its position. (POR, 15-16.) *Hytera* found the “preparing” step precedes the “determining” step because, in part, the claim at issue “includes *a timeslot* in the preparing step, which grammatically

provides antecedent basis for **the timeslot** in the determining step.” *Hytera Commc’ns Co. v. Motorola Sols., Inc.*, 841 F. App’x 210, 218 (Fed. Cir. 2021) (emphasis added). Here, in claims 1 and 2 of the ’105 patent, the alleged antecedent basis is not directed to “transmitting” pre-call information.

The specification also does not support Flyp’s first requirement as it does not “directly or implicitly require[] an order of steps.” *Mformation*, 764 F.3d at 1398. Flyp points to Figure 4 (POR, 16), but the specification is clear that the disclosed figures are merely examples. (Ex. 1001, 3:41-43; *see also id.*, 9:55-63.) Additionally, the specification states that “[t]he incoming pre-call information may be received at the handset 340 **before** or during the call ringing on the handset,” which Flyp neglects to address. (Ex. 1001, 6:43-44.) Dr. Akl essentially admitted that he cherry picked the portions of the specification to support his opinion without considering those inconsistent with his construction. (Ex. 1102, 113:11-117:7; *see also id.*, 114:7-115:2.)

As to the second requirement, Flyp relies on the same position discussed above, asserting that “the use of ‘the’ to refer to the incoming call confirms that the pre-call information must relate to that specific call....” (POR, 15.) The “**the**” that Flyp refers to is directed to the process of accepting “**the** incoming call,” not “transmitting” pre-call information. The descriptions of the specification that Flyp relied upon (POR, 16-17), being merely “illustrative rather than restrictive” (Ex.

1001, 9:55-63), do not support adding second requirement to the claims. Dr. Akl was unable to explain what information the pre-call information allegedly includes that is relating to the incoming call. (*Supra.*)

The specification does not support that the “pre-call information,” which, as recited in claims 1 and 2, includes a “bridge telephone number,” must be **call specific**. The Figure 4 embodiment in the specification states that “***calls to the bridge telephone number***” may be made (Ex. 1001, 6:2-4), indicating that the claimed “bridge telephone number” may be associated with multiple calls and not call specific. Flyp also does not explain to what degree the “pre-call information” must be “**relating to**” the specific call received in steps [1.d] and [2.a], rendering the scope of pre-call information indefinite.

C. “a bridge telephone number for connecting the handset to the incoming call at the switch” (limitation [1.g])

Flyp construes the above-quoted limitation to mean “[t]he bridge telephone number must be capable of being used by the handset to connect to the specific incoming call *previously received* in [1.d].” (POR, 18.) Limitation [1.g] recites “**pre-call information including a bridge telephone number.**” Thus, this is Flyp’s disguised attempt to require the claimed “pre-call information” to be transmitted *after* “receiving an electronic indication of an incoming call,” as discussed in Section II.B.

Flyp’s construction is not supported by the intrinsic evidence. Claim 1 recites “a bridge telephone number *for* connecting the handset to the incoming call.” It does not require which mechanism/component uses the bridge number for the “connecting” process. (Ex. 1001, claim 1.)

Flyp’s construction requires the bridge number to be received and then used as a part of a particular incoming call, precluding the number from being received and then used for a future call. (POR, 18-19.) The claim language provides no support for such a carve-out. The portion of specification allegedly supporting Flyp’s construction is merely an example. (*Id.*, 19-20 (“an **exemplary** way of using the bridge telephone number”).)

Flyp further asserts that “the fact that limitation [1.i] is optional” supports its construction. (POR, 19.) The opposite is true. While limitation [1.i] (reciting in part “the handset calling the switch using the bridge telephone number”) is optional, limitation [1.g] is not. Thus, in the scenario where limitations [1.g] and [1.i] both occur, Flyp’s construction for limitation [1.g] is duplicative of the process described in [1.i].

III. ALL OF THE CHALLENGED CLAIMS ARE UNPATENTABLE

A. Ground 1: Backhaus Discloses and/or Suggests Limitation [1.g] Even under Flyp’s Improper Construction for “a Bridge Telephone Number for Connecting the Handset to the Incoming Call at the Switch”

As discussed in the “first way” of addressing limitation [1.g], an encoded

message, containing the relationship number (“bridge telephone number”) and the third party number, is transmitted to TD 110 (“handset”). (Pet., 32-33; Ex. 1005, [0055].) TD 110 stores the transmitted numbers in its database in the process of connecting to the incoming call. (Ex. 1005, [0056], [0064]-[0065] (at block 416, TD 110 updates its database to include “the newly assigned relationship number”; at block 420 the call is connected); Pet., 33.) As discussed in the Petition (Pet., 35-36), because the incoming call is routed via network 125, TD 110 necessarily connects to the incoming call at the local switch in network 125. Thus, Backhaus discloses the “handset” uses the “bridge telephone number” to connect to the incoming call at the switch.

The incoming call to TD 110 described in the “first way” is a call towards its SLS number (Pet., 30-31) and thus is “an incoming call to the secondary telephone number,” as recited in limitation [1.d], and meets limitation [1.d] for similar reasons described therein. (Pet., 21-25.) Accordingly, the “first way” for addressing limitation [1.g] discloses “a bridge telephone number for connecting the handset to the incoming call at the switch,” where “[t]he bridge telephone number must be capable of being used by the handset to connect to the specific incoming call previously received in [1.d].”

B. Ground 1: Backhaus Discloses and/or Suggests “Transmitting Pre-Call Information via a *Data Channel*” in Limitation [1.g] under the Petition’s “First Way” and “Second Way”

Similar to its claim construction argument for the claimed “channel,” Flyp begins by focusing its attention on Petition’s “first way” of addressing limitation [1.g], ignoring that the Board indicated that it instituted review primarily based on the Petition’s “second way” of addressing limitation [1.g]. (Inst. Dec., 21.) Therefore, while Flyp’s arguments regarding the “first way” are incorrect, as explained below, this reply begins by demonstrating how Flyp’s arguments regarding the “second way” are incorrect.

1. The Petition’s “Second Way” Discloses and/or Suggests Limitation [1.g]

As discussed in the Petition’s “second way” for addressing limitation [1.g], Backhaus discloses that TD 110 requests from SLS platform 115 a relationship number, along with the third party number desired to call. (Pet., 34; Ex. 1005, [0071].) Platform 115 then returns an available relationship number to TD 110. (Pet., 34-35; Ex. 1005, [0071]-[0074].) TD 110 may communicate its request with platform 115 using various protocols/mechanisms, such as IP-based interaction (“data channel”). (Pet., 35; *see also* Ex. 1005, [0071]-[0073].)

Flyp asserts the Petition’s “second way” does not disclose that the “*specific* transmission [of the relationship number] occurs ‘via a data channel.’” (POR, 30-31.) Flyp argues “Backhaus contains no teaching [of TD 110 communicating with

platform 115 via a data channel]. (*Id.*) However, Backhaus discloses “data communication” processes involving platform 115 to transmit the relationship number to TD 110 (Pet., 34-35; Ex. 1005, [0071]-[0074]), including using “an IP-based interaction” for “setting up the relationship databases” and “sharing information between” TD 110 and platform 115. (Pet., 35; Ex. 1005, [0073].) Thus, Backhaus discloses transmitting specific information, *i.e.*, the relationship number, from platform 115 to TD 110, via a data channel. (*See* Inst. Dec., 21-22.)

Flyp asserts “this ‘second way’ relies on...Backhaus ¶ [0074], which...is impossible to reach in connection with an outgoing call.” (POR, 31.) Flyp appears to assert that the Figure 4D process (Backhaus [0071]-[0074]) is irrelevant to Backhaus’s incoming call processes (e.g., Figures 4A-4B). However, Backhaus explains, after TD 110 acquired the relationship number, Backhaus’s call routing process “start[s] over the method 400” at Figure 4A. (Ex. 1005, [0074]; Pet., 34-35; *see also* Ex. 1005, FIG. 4D excerpt below.)

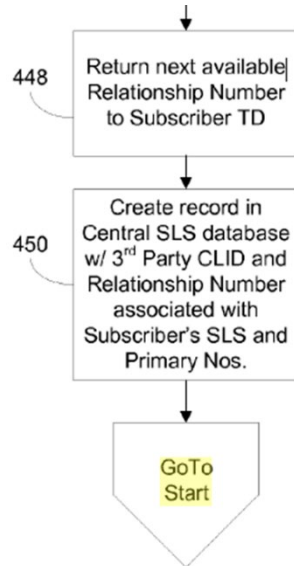


FIG. 4D

(Ex. 1005, Figure 4D (excerpt).) Figures 4A and 4B are associated with incoming call processes. (Pet., 34-35; Ex. 1005, [0067]-[0068].) Contrary to Flyp’s assertion that Figures 4A-4D are “distinct embodiments,” “FIGS. 4A-4D collectively illustrate an exemplary method for routing calls. (Ex. 1005, [0020].)

Flyp asserts the Petition’s “second way” does not meet limitation [1.g] under its construction for “transmitting pre-call information.” (POR, 31-33.) However, Backhaus discloses that **after** receiving a third party’s call at platform 115, TD 110 “may establish a **data connection**...with...platform 115” for “acquiring [the combination the third party and relationship numbers].” (Ex. 1005, [0066]; *see also* Pet., 42-43.) Thus, the disclosed “transmitting pre-call information” process may occur **after** receiving an incoming call and the transmitted “pre-call information” (including the relationship number) **relates to** the incoming call, consistent with

Flyp’s proposed construction in Section II.B.¹

2. The Petition’s “First Way” Discloses and/or Suggests Limitation [1.g]

As discussed in the Petition’s “first way” in addressing limitation [1.g], SLS platform 115 transmits to TD 110 an “encoded message,” containing a combination of the relationship and calling third party’s numbers to be stored in TD 110’s database. (Pet., 32-33; Ex. 1005, [0055]-[0056], [0064].) A POSITA would have understood the encoded message is transmitted to TD 110 via a data channel because a voice path is not connected and Backhaus discloses IP-based communications (“data channel”) may be used for establishing the relationship between various numbers and databases. (Pet., 33-34.)

Flyp asserts the Petition’s “first way” fails to disclose limitation [1.g]

¹ The above discussed disclosure also meets “a bridge telephone number for connecting the handset to the incoming call at the switch” of limitation [1.g] under Flyp’s construction discussed in Section II.C. Particularly, in Figure 4A of Backhaus, after receiving an incoming call to TD 110’s SLS number (block 404), TD 110 (“handset”) updates its database using the received relationship number (“bridge telephone number”) (block 414) in the process of connecting to the incoming call (block 420). (Ex. 1005, [0062]-[0066], FIG. 4A.)

“because the caller ID field is part of a call, and thus not a ‘data channel.’” (POR, 23.) None of Flyp’s assertions have merit, as discussed below.

Flyp asserts that the Petition does not show “[the] ‘calling party field of the call’ is a ‘data channel’ or that it is any different from the call itself (e.g., a voice channel).” (POR, 23.) However, Backhaus discloses the “encoded message” (or “calling party field of the call”) may be transmitted using IP-based communications (“data channel”) (Pet., 33-34), which is separate and different from communications over the PSTN as discussed for limitation [1.d]. (Pet., 21-25).

Flyp asserts “caller ID is delivered over the same voice channel as the call itself.” (POR, 24.) But Flyp’s assertion, unsupported by evidence, assumes Backhaus’s “encoded message” is akin to a conventional caller ID (or CLID). (POR 24; Ex. 2010, ¶¶ 76-77.) This ignores Backhaus’s teaching that the “encoded message” is transmitted for sharing the combination of the relationship and third party numbers and setting up TD 110’s database (Ex. 1005, [0055]-[0057]), and that IP-based communications may be used for “setting up the relationship databases” and “sharing information between” TD 110 and platform 115 (*id.*, [0073]). As Dr. Lin explained, how a CLID is transmitted “depend[s] on the implementation.” (Ex. 2009, 60:21-61:13.) On the other hand, Dr. Akl refused to answer questions about whether a caller ID can be transmitted using a data channel and stated he does not have an opinion on it. (Ex. 1102, 50:13-18, 50:19-53:10.)

Backhaus’s “encoded message” also functions differently from conventional CLIDs. The “encoded message” includes a combination of numbers to be stored in TD 110’s database (Pet., 32-33; Ex. 1005, [0055]-[0057]), enabling TD 110 later call “from his/her SLS number by leveraging the [stored] relationship combination.” (Ex. 1005, [0058]-[0070].)

Flyp’s assertion that “‘calling party field *of the call*’—confirms this field is part of the call itself” (POR, 24) overlooks that Backhaus uses the term “call” more broadly than referring to a voice call. (Ex. 1005, [0030]; Pet., 6; Ex. 1002 ¶58.)

Flyp also asserts “the voice calls, while ringing..., are still using a voice channel,” suggesting that the “encoded message” is sent via a voice channel. (POR, 25.) But, regardless of whether the voice channel exists when the call is ringing, that does not impact the existence of a separate data channel. The Petition does *not* argue the same “channel” serves as a data channel before the call is connected and then as a voice channel after connection. Dr. Lin, when asked whether a POSITA “consider[s] the call to be using a voice channel when it is ringing,” explained that “the teaching that [he has] applied doesn’t bring that into question.” (Ex. 2009, 54:3-16.)

Flyp asserts that Backhaus [0073] does not describe specific transmission of information and the Petition does not explain “why it would be obvious for this particular transmission to be made on a data channel.” (POR, 25-26.) Moreover,

Flyp asserts that the “first way” relies on an incoming call while Backhaus [0073]’s process “is not an incoming call.” (*Id.*, 26.) Contrary to these assertions, Backhaus [0073] discloses using communication mechanisms, including “an IP-based interaction” for “setting up the relationship databases, sharing information between” TD 110 and platform 115. (Ex. 1005, [0073]; Pet., 33-34.) The Petition also shows that, because, for example, the “encoded message” is transmitted for performing the above-quoted processes and the IP-based communication minimizes delays, Backhaus discloses and/or suggests using IP-based communications for transmitting the disclosed “pre-call information.” (Pet., 33-34; Ex. 1005, [0010], [0054]-[0070].)²

Flyp asserts the Petition does not explain why one would “remove the relationship ID from the call itself and split it into a separate transmission that would be made over IP.” (POR, 29.) However, Flyp’s assertion is based on the same unsupported assumption that Backhaus’s “encoded message” is akin to a conventional CLID discussed above.

Flyp asserts “the Petition’s delay argument...would lead to a bad experience

² Backhaus makes clear that “FIGS. 4A-4D collectively illustrate an exemplary method for routing calls.” (Ex. 1005, [0020], [0062].)

for users.” (POR, 29-30.) However, the transmission of encoded message involves establishing relationship databases between platform 115 and TD 110 (Pet., 32-34; Ex. 1002, ¶¶105-107). Backhaus teaches IP-based communication would be beneficial as it “minimize[s] temporal delays **in allocating and acquiring relationship numbers between [TD 110] and an SLS platform 115,**” e.g., the process associated with transmitting the encoded message. (Pet., 33-34; Ex. 1005, [0073].)

C. Ground 1: The Backhaus-Logan Combination Discloses and/or Suggests Limitation [1.b]

As discussed in the Petition, Backhaus at least suggests “call processing rules for the primary telephone number” because Backhaus explains “similar features and services [e.g., voicemail/message services] associated with the subscriber’s primary number” may be provided. (Pet., 12; Ex. 1005, [0068].) The Petition shows a POSITA would have found it obvious to “automatically storing electronic information that indicates a selection of call processing rules for the primary telephone number in the computer memory” based on the Backhaus-Logan combination. (Pet., 12-19.)

Flyp asserts Backhaus [0068] does not suggest providing voicemail/messaging/automated services for the primary number. (POR, 33-34.) However, Flyp’s assertion is based on an incorrect representation of Backhaus’s

disclosure. In particular, Flyp asserts this paragraph only states that an SLS service provides features/services “‘separate from’ *any* features associated with the primary number.” (*Id.*, 34) But Backhaus [0068] actually reads: “*similar* features and services associated with the subscriber’s primary number” (Ex. 1005, [0068]), supporting the Petition’s position (Pet., 12) and consistent with Backhaus’s disclosure that SLS platform 115 may also provide telephony services for the primary number (*id.*, 18).

Flyp challenges Logan’s disclosure, asserting Logan does not describe a server acquiring or storing rules for processing calls to a primary number. (POR, 34-36.) Flyp is incorrect. As discussed in the Petition, Logan discloses **base** and **virtual** numbers associated with multi-number cellphone (MNC) 140, similar to the Backhaus’s **primary** and **SLS** numbers. (Pet., 13-14.) The user’s preference “can control the forwarding of calls...to...**virtual numbers** [and]...‘**base**’...**number**....,” based on, e.g., time of the day, where “the call is routed to a voicemail database **by the system server**.” (Ex. 1015, [0011], claim 9; Pet., 14-15.) Moreover, “a user, via...[MNC] 140 can **enter a set of preferences that are transmitted to the system server 130** via datastream 134,” “**notify[ing] the system server** of which calls a user desires to receive.” (Ex. 1015, [0029]; Pet., 14-15.) Thus, the user-entered preferences/configurations for the base and virtual numbers are at least temporarily stored at the server and/or a database accessible by the server for

retrievals/application. (Pet., 15-16.) Dr. Akl agrees Logan’s server routes calls based on a user’s preference “whether it’s base or virtual” number. (Ex. 1102, 104:11-18.) Thus, the Backhaus-Logan combination discloses and/or suggests limitation [1.b]. (See Pet., 12-18.)

Flyp alleges the Backhaus-Logan combination “does not render obvious the limitation of storing an indication of such rules on a memory associated with a server.” (POR, 35-36.) However, Flyp’s assertion is entirely based on the incorrect representation of the individual prior art discussed above without directly addressing the combination presented the Petition. (Pet., 12-19; Inst. Dec., 18-19.)

D. Ground 2: The Backhaus-Winbladh Combination Discloses and/or Suggests Claim 2

1. A POSITA would have been motivated to combine Backhaus with Winbladh

As discussed in the Petition, a POSITA would have been motivated to consider Winbladh when implementing Backhaus’s system/method given their similarities (Pet., 46-48), and motivated to implement a call-back feature like that of Winbladh when implementing Backhaus (*id.*, 48-52).

Flyp contends Backhaus teaches away from Winbladh. (POR, 37.) Flyp asserts Winbladh requires replacing the conventional telephone network/routing while Backhaus focuses on “providing service across conventional phone networks and...‘cross carrier’ functionality...” (*Id.*, 36-37; Ex. 2010, ¶130.) Flyp’s

assertions are internally contradictory and unsupported by the record evidence.

Other than citing to Dr. Akl’s declaration, Flyp’s assertions regarding Winbladh are not supported by any evidence. (POR, 37.) Flyp does not even once point to Winbladh’s disclosure. (*See* POR, 36-41.) Dr. Akl’s declaration does not explain why Winbladh allegedly requires replacing conventional telephone networks/routing. (Ex. 2010, ¶¶109-120.) Dr. Akl’s declaration cited to three paragraphs describing Winbladh’s call routing processes, but none includes the alleged requirement. (Ex. 2010, ¶113 (citing to Ex. 1020, [0056]-[0058]).) During deposition, Dr. Akl could not clearly identify where in these paragraphs he found the alleged requirement. (Ex. 1102, 121:10-124:6.) While Dr. Akl said implementing Winbladh would require “replac[ing] major parts of the routing system” and cannot use the existing Internet (*id.*, 121:21-122:7), that contradicts Winbladh, disclosing that using “the **Internet**...to bridge any distances between the communicating parties at a constant and low rate” (Ex. 1020, [0009], [0031]). Flyp’s assertion that Backhaus teaches away from the combination because Backhaus does not “coordinate” with service provider(s) (POR, 37) is also contradicted by Dr. Akl’s admissions during deposition. (Ex. 1102, 118:17-119:15 (acknowledging Backhaus may work with multiple service providers).)

Flyp asserts the Petitioner’s rationale to combine with Winbladh regarding cost saving “makes no sense in the context of Backhaus.” (POR, 38-39.) But Flyp’s

assertion focuses only on the second call leg without considering the entire call process. (*Id.*) Winbladh explained an incoming long-distance call (covering both first and second call legs) may be expensive, for example, where “the terminating subscriber [may] be charged a collect-call rate.” (Ex. 1020, [0055]; Pet., 50; Ex. 1020, [0037]; Pet., 47.) By reconnecting the second leg “at a local-call rate,” the terminating subscriber avoids paying an entire long-distance collect call rate. (Ex. 1020, [0056]; Pet., 50; Ex. 1020, [0055] (“allows reduction of the costs for the terminating subscriber”).)

Flyp’s assertion regarding the relationship number of the Backhaus-Winbladh combination contradicts the evidence. (POR, 39.) Flyp asserts a POSITA would not have combined the prior art because Backhaus’s “relationship numbers are fixed” and Winbladh’s “relationship numbers change based on location.” (*Id.*) But Backhaus’s relationship number may depend on the implementation. (Ex. 1005, [0042]-[0046], [0047] and [0053].) Winbladh’s designated call-back number “may either be a fixed number” or “assigned on a call-by-call basis.” (Ex. 1020, [0034]; *id.*, [0009], [0051].) Moreover, Winbladh explains that it “provide[s] a solution,” which is “user-friendly, straightforward and reliable” (Ex. 1020, [0007]) and has “an improved flexibility” (*id.*, [0013]), and is similar to Backhaus (Pet., 47-48).

Flyp asserts Ex. 1021 is “in one entirely unrelated context.” (POR, 40-41.) But, like the Backhaus-Winbladh combination that involves using a switch and a

data channel for calls (Pet., 42, 46; *id.*, 22-25, 33-34), Ex. 1021 discloses using a switch and a data packet network for call processes (Ex. 1021, [0013]-[0015]). Both Winbladh and Ex. 1021 disclose accepting an incoming call by calling a bridge number. (Ex. 1020, [0055]-[0062]; Ex. 1021, [0016].) Thus, even if this was not “well known” (Inst. Dec., 33; POR, 40), it was relevant prior art.

2. The Backhaus-Winbladh combination discloses and/or suggests receiving the call on a switch in [2.a] and connecting with a bridge number via the same switch in [2.b]

Flyp argues “the only way to actually obtain cost savings by connecting ‘at a local-call rate’ is to connect to a different switch.” (POR, 41-42.) But Flyp provides no evidence other than an unsubstantiated expert declaration (Ex. 2010, ¶¶122-124) and circular reasoning, asserting “because if the same switch is used, then there will not be cost savings” (POR, 42). Moreover, Winbladh discloses that the call legs are connected via a single host resource 110 (Ex. 1020, [0029], [0033], [0055]-[0058]), similar to Backhaus’s single SLS platform 115 that manages call connections (Ex. 1005, [0059]). (Pet., 47-50.) As discussed in the Petition, calls directed to a relationship number (“first bridge telephone number”) are routed through a single local switch (“switch”) to SLS platform 115. (Pet., 45-46; *id.*, 22-25.) Because a subscriber calls the disclosed “first bridge telephone number” in the Backhaus-Winbladh combination to connect to the incoming call (Pet., 51-52), the call is connected to the same local switch.

3. The Backhaus-Winbladh combination discloses and/or suggests limitation [2.b]’s “accept[ing] the incoming call...by making a first bridge call using the first bridge telephone number to connect the incoming call to the telephone handset via the switch”

As discussed in the Petition, Winbladh discloses accepting an incoming call by making a bridge call from a handset to host resource 110 using a predefined number to connect the incoming call (Pet., 46-50), and a POSITA would have been motivated to include a call-back feature similar to as described in Winbladh when implementing Backhaus (*id.*, 50-52).

Flyp asserts “the re-connection process in Winbladh is not ‘accept[ing] the incoming call’ because the call had already been accepted.” (POR, 43; *id.*, 42-44.) However, when the two call legs are initially set up in Winbladh, the second leg is immediately disconnected. (Ex. 1020, [0056] (“as soon as such a connection exists, the terminal B may disconnect the second leg.”).) Thus, the callee has yet to accept the call at this stage. If the callee receives/accepts the call during the initial connection, the callee would have been charged with an expensive collect call rate. (Ex. 1020, [0055] (“the terminating subscriber be charged a collect-call rate **when receiving calls via the host resource 110**”).) Rather, the call is accepted by making a bridge call from a handset to host resource 110 to connect the incoming call to the handset (Pet., 48-51), and only when the call is accepted in this manner, the callee could connect “at a local-call rate.” (Ex. 1020, [0056].)

Flyp asserts Winbladh’s disclosure relating to “a call-accept message” shows that the call is accepted during the initial connection. (POR, 43-44 (citing to Winbladh, [0011], [0014], [0054]).) However, the “call-accept message” relates to an embodiment where the callee accepts an incoming call by providing a call-accept message (Ex. 1020, [0011], [0014], [0054]), different from the embodiment that Petitioner relies upon where the callee accepts an incoming call by calling a bridge number (*id.*, [0012], [0033], [0055]-[0058]).

E. The Prior Art Discloses and/or Suggests Claims 3-4 and 6-11 under Ground 2, Claim 5 under Ground 3, and Claims 1-11 under Grounds 4-6

Flyp does not separately argue claims 3-11 are not disclosed by the prior art combinations under Grounds 2 and 3. Likewise, Flyp does not separately argue claims 1-11 are not disclosed and/or suggested by the combinations under Grounds 4-6. (*See* POR, 44-45.) Thus, for the reasons discussed above and in the Petition, claims 1-11 are disclosed and/or suggested by the prior art.

F. Dr. Lin’s Declaration and Testimony Are Supported by the Prior Art and State of the Art References

Flyp argues Dr. Lin’s declaration should be “disregarded” for being “conclusory.” (POR, 45-46.) Flyp’s argument is ironic given Dr. Akl’s repeated refusal to answer questions at deposition (Ex. 1102, 30:2-31:4, 34:4-8, 34:14-35:5, 42:5-43:4, 49:3-8, 50:9-18), and his conclusory declaration testimony (*see, e.g.*, Ex. 2010, ¶¶50-52, 76-77, 122-124). In any event, Flyp is wrong.

Dr. Lin’s declaration provided an evidence-based analysis, including a technical background for explaining the state of the art and POSITA’s understanding. (Ex. 1002, ¶¶17-26.) Dr. Lin’s declaration is supported by state of the art references (e.g., Exs. 1007, 1011), the prior art, and technical reasoning, “based on [Dr. Lin’s] experience and expertise,” and from a POSITA’s perspective. (Ex. 1002, ¶¶14-16; *see also id.*, ¶¶3-11 and Ex. 1003.)

Flyp’s reliance on *Xerox* is misplaced. To the extent the Petition and Dr. Lin’s declaration are similar, the Board has explained “[v]erbatim duplication between a brief and a declaration does not require giving the declarant’s testimony ‘little or no weight’ under *Xerox*.” *Netflix, Inc. v. GoTV Streaming, LLC*, IPR2023-00758, Paper 7, 66-67 (P.T.A.B. Nov. 7, 2023) Instead, 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.” (*Id.*, 67.)

Flyp complains Dr. Lin’s “declaration does not contain any statement of the legal standards the expert understood or was applying.” (POR, 46-47.) However, as Dr. Lin explained, the declaration contains his technical analysis regarding “how the prior art discloses certain teachings” and he “didn’t offer any legal opinions in [his] declarations.” (Ex. 2009, 9:1-18, 16:5-10.) Flyp’s argument appears grounded in a misunderstanding on the role of expert testimony. *See Nutrition 21 v. United States*, 930 F.2d 867, 871 n.2 (Fed. Cir. 1991) (“An expert’s opinion on the ultimate

legal conclusion is neither required nor indeed ‘evidence’ at all.”).

Flyp then launches a series of attacks against Dr. Lin’s testimony that are essentially based on the same incorrect representation of the “first way” discussed above in Sections II.A and III.B.2. (*See* POR, 47-53.) For example, Flyp asserts Dr. Lin “could not answer whether a call is using a voice channel when the phone is ringing before it is picked up,” even though Dr. Lin already explained “the teaching that [he has] applied doesn’t bring that into question.” (*Id.*, 42-43; *see also id.*, 44-46 (Flyp’s similar assertions), 48-49 (Flyp mischaracterizing the Petition and ignoring Dr. Lin’s explanation regarding the “encoded message” being transmitted in one of the legs); *supra* Section III.B.2.)

Flyp also asserts Dr. Lin refused to answer questions about conventional caller IDs “known in the art” and “[n]ot specific to Backhaus’s SLS platform.” (POR, 50-51.) However, Dr. Lin explained “the specifics depend on the implementation.” (Ex. 2009, 60:21-61:13; Section III.B.2.) Flyp alleges Dr. Lin “could not answer the question because he has ‘not performed that analysis.’” (POR, 51.) But, the question was: “[i]n conventional calls **before Backhaus**, is the calling line identification transmitted **as an analog signal**?” (Ex. 2009, 62:8-63:21.) Facing a question that is clearly irrelevant to Backhaus or the patent, Dr. Lin explained that “the caller ID may be transmitted in different ways.” (*Id.*, 62:13-17.)

Finally, Flyp asserts Dr. Lin’s testimony regarding whether certain cellular

protocols are examples of voice channels is inconsistent with the patent’s teaching. (POR, 54-55.) Flyp omits Dr. Lin’s full answer in making this assertion. (Ex. 2009, 77:10-17 (explaining, at the time, these channels were *also* sometimes being used to exchange data), 78:13-20 (explaining when such a network is “being used to carry voice, it is acting as a voice channel); *see also id.*, 77:18-79:9) Contrary to Flyp’s assertion, Dr. Lin’s testimony is entirely consistent with the patent as discussed in Section II.A. On the other hand, Dr. Akl, when asked a similar question, stated “I don’t have an opinion on that.” (Ex. 1102, 34:14-35:5, 40:1-5.)

IV. CONCLUSION

For the reasons set forth above, in the Petition, and the Board’s Institution Decision, the Board should reject Flyp’s arguments and find the challenged claims unpatentable.

Dated: January 25, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Petitioner’s Reply contains, as measured by the word-processing system used to prepare this paper, 5,599 words. This word count does not include the items excluded by 37 C.F.R. § 42.24.

Respectfully submitted,

Dated: January 25, 2024

By: /Naveen Modi/
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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2024, a copy of the foregoing Petitioner’s
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