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. IPR2023-00361
U.S. Patent No. 10,051,105

PATENT OWNER FLYPSI, INC.'S SUR-REPLY

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Ex. No.	Brief Description
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2002	Order Denying Motion to Stay, Case Number: 6:22-cv-00031-ADA, *Flypsi, Inc. v. Google, LLC*, Western District of Texas, March 30, 2023
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2005	Declaration of Michael A. Bittner in Support of Motion for *Pro Hac Vice* Admission
2006	Declaration of William M. Logan in Support of Motion for *Pro Hac Vice* Admission
2007	Declaration of Matthew R. McCullough in Support of Motion for *Pro Hac Vice* 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 '105 patent is invalid under any ground.

First, the Reply fails to show that it would be obvious for the bridge number to be used by *the handset* to connect to the call. After originally pointing to actions by *the server* in the Petition, the Reply makes a new argument about updating a local database 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.

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.

Fourth, the Reply fails to show that a POSITA would be motivated to combine Backhaus and Winbladh given their very different architectures and the significant drawbacks and teaching away that Dr. Akl identified.

Fifth, the Reply fails to show that the Backhaus-Winbladh combination would use a single switch, particularly given new arguments in the Reply about

using the Internet to bridge calls, which suggests the call legs are on different switches.

Finally, the Reply fails to show that the Backhaus-Winbladh combination renders obvious accepting the call using the bridge number. The Reply continues to rely on Winbladh's reconnect step, rather than its call acceptance step, but that does not match the claim language.

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.

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

[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 the Petitioner's expert's conclusory testimony (*infra* Section VII), which impact the credibility of the Petition's argument and is certainly relevant to weighing the evidence to determine if the Petitioner has met its burden of proving invalidity.

bear any affirmative burden in an IPR. 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 is correct by acknowledging the antecedent basis relationship between "an incoming call" in limitations [1.d]/[2.a] and "the incoming call" in limitations [1.g]/[2.b]. Reply at 3-4. The Reply argues this relationship "is not directed to 'transmitting' pre-call information" (Reply at 4), but that argument ignores where the phrase "the incoming call" appears in limitations [1.g]/[2.b]. The phrase "the incoming call" describes the content of the pre-call information:

> [1.g] "said pre-call information including a bridge telephone number for connecting the handset to the incoming call at the switch"
> [2.b] "transmitting … pre-call information including the first bridge telephone number, whereby the pre-call information allows the telephone handset to accept the incoming call to the secondary telephone number by making a first bridge call using the first bridge telephone

> number to connect the incoming call to the telephone handset via the switch."

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.

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 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 limitations [1.g]/[2.b] is transmitted after the incoming call is received ***at the server/switch*** in limitations [1.d]/[2.a]. 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 server/switch*** in limitations [1.d]/[2.a].

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 limitations [1.d]/[2.a] 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.

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). 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.

Finally, the Reply argues that the proposed construction is somehow "indefinite." 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.

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

The Reply argues that the construction is not supported by the intrinsic evidence and that Patent Owner's evidence is "exemplary," but there is no contrary evidence in the intrinsic record, nor does the Reply attempt to show that there is. Reply at 7. The Reply contends the plain claim language "does not require which mechanism/component uses the bridge number." *Id.* This is precisely why the Board should construe this limitation. As described in the POR and in Dr. Akl's declaration, the intrinsic evidence is clear that it is the handset that uses the bridge number. *E.g.*, Ex. 2010, ¶¶ 58-60. This comports with common sense: the reason

for transmitting the bridge number to the handset in the pre-call information is because the handset uses it to connect.

The Reply next contends that there is no support for "precluding the number from being received and then used for a future call." Reply at 7. This attorney argument, however, is a hindsight-drive contention based on trying to contort the claims to match the prior art. The Reply does not identify anything in the intrinsic record that suggests the pre-call information relates to some future, hypothetical call rather than the currently pending call at the switch/server.

Finally, the Reply argues that Patent Owner's construction renders limitations [1.g] and [1.i] duplicative. Not so. Limitation [1.i] specifies *how* the number is used (by "the handset calling the switch using the bridge telephone number"), and thus recites additional requirements not part of Patent Owner's proposed construction. There is, accordingly, no conflict.

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 bridge number is for use by *the handset* to connect to the incoming call.

The Reply makes an entirely new argument, relying on alleged actions by the handset when the Petition's only argument relied on actions by the server. *See* Petition at 36. This is an improper new argument that should be rejected by the Board. *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"); *Ariosa 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).

Even if the Board considers this untimely argument, it fails to show that the bridge telephone number is for use by the handset to connect to the call at the switch. The Reply argues that "TD 110 stores the transmitted numbers in its database in the process of connecting to the incoming call." Reply at 8. But storing information in a database is not part of connecting to the incoming call at the switch, and Backhaus does not describe it as such. It is a separate step in addition to receiving the call from Backhaus' SLS platform. Ex. 1005, [0056] (first describing that "the SLS module 105" stores information in the database and then later stating that "the SLS platform 115 connects the two legs of the call"). Thus, Backhaus is actually consistent with Dr. Akl's testimony: it merely describes forwarding the call to an SLS number to the user's phone. Ex. 2010, ¶¶ 73-74.

Finally, the Reply only defends this limitation with respect to the Petition's "first way." Reply at 7-8. Thus, the Reply concedes that the Petition's "second way" does not invalidate at least because it does not render obvious this limitation.

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 12. 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 12-15. 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, ¶ 76. 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 14. 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 33. The Reply's newfound reliance on a separate non-voice call embodiment is improper because the Petition could have, but chose not to, rely on this other 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 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 14. 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 14. 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.

The Reply next argues that Backhaus teaches using an IP communication in paragraph 73. Reply at 14-15. 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 33-34. 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 15 (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 specifically 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 15-16. 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, ¶¶ 88-89. 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 34-35). 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 (the Petition's "second way") meet this

requirement, the Reply offers a 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, ¶ 86. This new argument, relying on a distinct embodiment, is improper and should be disregarded by the Board. *Ariosa*, 805 F.3d at 1367.

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.

IV. Ground 2: The Reply fails to show that a POSITA would combine Backhaus and Winbladh.

The Reply attempts to rebut Dr. Akl's assertion that Winbladh would require replacing conventional call routing by arguing Winbladh discloses using the Internet to bridge calls. Reply at 19. This is another improper new argument in Reply. *Ariosa*, 805 F.3d at 1367. And this new argument creates problems with other claim limitations, most particularly the term "switch," for which the Petition exclusively relies on PSTN switches. *See* Petition at 22, 42. If the proposed combination is using the Internet—something disclosed nowhere in the Petition—then it would not render obvious the use of a PSTN switch.

Moreover, this new Internet-bridging argument actually supports Dr. Akl's testimony. In this new combination, the system would not use the PSTN, but instead replace it with the Internet. That is exactly what Backhaus teaches away

from, because Backhaus teaches the importance of "cross carrier" functionality and not having to coordinate with the primary line subscriber. Ex. 1005, [0001], [0008], [0122]; Ex. 2010, ¶¶ 109-114.[2] Using the Internet to route calls to and from conventional cell phones would require coordination with carriers in order to find some way to route calls outside of the standard PSTN, but that is exactly what Backhaus teaches away from. Thus, Dr. Akl explained a POSITA would not be motivated to combine. Ex. 2010, ¶¶ 109-114.

The Reply fails to explain how the cost-saving rationale makes sense in light of Backhaus' architecture. The Reply compares collect call rates vs. local call rates to support its argument. Reply at 20. But Backhaus does not describe, and neither Petitioner nor its expert have ever contended, that Backhaus uses collect calls, so

[2] The Reply appears to misunderstand Backhaus in arguing Dr. Akl somehow contradicted himself by admitting that Backhaus works with multiple service providers. Backhaus works with multiple service providers ***because*** it ties into the typical PSTN, in contrast to something like Winbladh, which uses its own alternative routing. Dr. Akl explained this at deposition: "Because when I'm describing existing phone networks and current carriers, these are all consistent with the current PSTN standards versus Winbladh that is coming up with its own way of doing things." Ex. 1102, 120:23-121:9.

the collect calling rate is irrelevant. And the local calling rate is local only if the person and the switch are local to one another, which would be the same whether the call leg is made from the person to the receiver or vice versa, as Dr. Akl explained. Ex. 2010, ¶¶ 115, 116. The Reply does not dispute any aspect of Dr. Akl's analysis and instead relies on this irrelevant comparison to collect calls in an attempt to justify this otherwise nonsensical combination. The Reply also ignores Dr. Akl's further evidence that a POSITA concerned with costs would consider other alternatives rather than Winbladh. *Id.*, ¶ 117.

The Reply also fails to demonstrate why or how a POSITA would combine Winbladh's location-dependent call-back numbers and Backhaus' fixed relationship numbers. The Reply falsely contends Winbladh's call-back number may be a "fixed number" (Reply at 20, citing Ex. 1020, [0034]), but paragraph 34 of Winbladh states only that the phone number for the "first leg L1" may be "fixed." Ex. 1020, [0034]. Winbladh never says the call-back number is fixed, and it cannot be in order to obtain the cost-savings rationale the Petition proposes (because in order to ensure a local call rate to save costs, the call-back number must always be local and thus would change based on the location of the user). The Reply further contends Backhaus's numbers depend on implementation, and then cites to puffery in Winbladh that its system is "user-friendly" or has "improved flexibility." Reply at 20. But none of these statements offer any

explanation of ***how*** a POSITA would combine the two references' vastly different numbers. Dr. Akl has identified serious concerns about whether it would be possible to obtain a working combined Backhaus-Winbladh system, and the Reply offers no evidence to rebut these concerns. Ex. 2010, ¶ 118.

Indeed, the Reply does not even articulate ***how*** the different types of numbers would be combined together, treating the proposed combination as an amalgam that can be molded to fit whatever the claims require. This is an improper usage of hindsight bias. *In re Gorman*, 933 F.2d at 987; *see also ATD*, 159 F.3d at 546.

Finally, the Reply attempts to defend its reliance on unrelated reference Exhibit 1021, but does not deny that the bridge number in Exhibit 1021 relates to switching modes in a cell phone, not using multiple numbers for a single handset. *See* Ex. 1021, [0016]; Ex. 2010, ¶ 119. Thus, Exhibit 1021 is irrelevant.

V. Ground 2: The Reply fails to show the use of the same "switch."

The Reply offers no explanation of how the Backhaus-Winbladh combination can achieve a cost savings benefit while using the same switch. In order to achieve cost savings, the call-back number must be routed to a different, local switch. If it were routed to the same switch, it would cost the same, as Dr. Akl explains and which the Reply does not rebut. Ex. 2010, ¶¶ 115-116, 122-124.

The Reply contends "calls directed to a relationship number … are routed through a single local switch." Reply at 21. But this is inconsistent with the proposed combination, which relies on routing calls ***differently*** based on the location of the second user to achieve cost savings.

Further, the Reply's improper new argument that Winbladh uses the Internet to "bridge any distances" (Reply at 19) further confirms the combination would not use the same switch. Instead, under the Reply's new argument, the switches for the two call legs would be at some "distance" away and bridged over the Internet, which is not what the claim requires.

VI. Ground 2: The Reply fails to show accepting the incoming call using the bridge telephone number.

The Reply's argument on this limitation is inconsistent with its evidence. The Reply cites Winbladh's statement that the call is disconnected "as soon as such a connection exists." Ex. 1020, [0056] (cited in Reply at 22). This statement clearly indicates that there is a connection. But the Reply later argues that "the callee has yet to accept the call." Reply at 22. This statement clearly contradicts the teachings of Winbladh: the callee does accept the call, albeit only for a very short time. There is nothing in Winbladh that supports the Reply's apparent argument that the callee never accepts the call.

Further, the evidence cited by the Reply confirms that Winbladh characterizes the call-back step as a "reconnect procedure" (Ex. 1020, [0055]) or as

"reconnect[ing] to the host resource 110 at a local-call rate" (*id.*, [0056]). Thus, as Dr. Akl explained, Winbladh clearly distinguishes this reconnect process from call acceptance by using different names for these steps. Ex. 2010, ¶¶ 127-132. The Reply continues to cite only to the reconnect step, and cannot identify a single instance in which Winbladh characterizes this as accepting the call (because there is none).

Finally, the Reply's argument that the call-accept step is "different from the embodiment that Petitioner relies upon where the callee accepts an incoming call by calling a bridge number" is simply incorrect. For example, Winbladh claims 7 and 9 confirm that the "call-accept message" (claim 7) precedes the termination request and reconnecting (claim 9) in a single call flow. These are not distinct embodiments, but steps of a single process. The Reply thus fails to show obviousness because it relies only on reconnection, but not accepting the call with a bridge number as claimed in the patent.

VII. 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 24 (citing *Netflix, Inc. v. GoTV Streaming, LLC*, IPR2023-00758, paper 7 at 66-67 (PTAB Nov. 7, 2023)). But the Reply does not 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, 6:62-65. 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.

VIII. 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

/s/ Louis L. Campbell
Louis L. Campbell (Reg. No. 59,963)
WINSTON & STRAWN LLP
255 Shoreline Dr., Ste. 520
Redwood City, CA 94065
llcampbell@winston.com
T: 650.858.6500, F: 650.858.6550

Lead Counsel for Patent Owner Flypsi, Inc. (d/b/a Flyp)

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 5,583 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

/s / Louis L. Campbell
Louis L. Campbell (Reg. No. 59,963)
WINSTON & STRAWN LLP
255 Shoreline Dr., Ste. 520
Redwood City, CA 94065
llcampbell@winston.com
T: 650.858.6500, F: 650.858.6550

Lead Counsel for Patent Owner
Flypsi, Inc. (d/b/a Flyp)

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:

Naveen Modi (Reg. # 46,224)
Joseph E. Palys (Reg. # 46,508)
Daniel Zeilberger (Reg. # 65,349)
Howard Herr (*pro hac vice approved*)
Puja Patel (*pro hac vice approved*)
PAUL HASTINGS LLP
2050 M St NW
Washington, D.C. 20036
Telephone: (202) 551-1700
Fax: (202) 551-1705
PH-Google-Flypsi-IPR@paulhastings.com
naveenmodi@paulhastings.com
josephpalys@paulhastings.com
danielzeilberger@paulhastings.com
howardherr@paulhastings.com
pujapatel@paulhastings.com

Dated: March 7, 2024

/s / Louis L. Campbell
Louis L. Campbell (Reg. No. 59,963)
WINSTON & STRAWN LLP
255 Shoreline Dr., Ste. 520
Redwood City, CA 94065
llcampbell@winston.com
T: 650.858.6500, F: 650.858.6550

Lead Counsel for Patent Owner
Flypsi, Inc. (d/b/a Flyp)