UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

ZILKR CLOUD TECHNOLOGIES, LLC,
Patent Owner.

Case IPR2023-00553
Patent 9,210,254

PATENT OWNER SUR REPLY

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Exhibit List

Ex. No.	Description
2001	Declaration of Theresa M. Dawson, Esq. For Pro Hac Vice Admission
2002	Declaration of Robert Akl, D.Sc.
2003	Ex. A-19 Invalidity Chart (Bodart for '254) (Cisco's Invalidity Contentions in *Zilkr v Cisco Systems, Inc*., No. 2:22-cv-00166-JRG-RSP (E.D. Tex.)
2004	Ex. A-1 Invalidity Chart (de Castro 932 for '254) (Cisco's Invalidity Contentions in *Zilkr v Cisco Systems, Inc*., No. 2:22-cv-00166-JRG-RSP (E.D. Tex.)
2005	Corrected Declaration of Theresa M. Dawson, Esq. For Pro Hac Vice Admission
2006	Declaration of Vijay K. Madisetti, Ph.D
2007	Claim Construction Order, *Zilkr v. Cisco Systems, Inc.*, No. 2:22-cv-00166-JRG-RSP, Dkt. No. 121 (E.D. Tex. Aug. 3, 2023)
2008	Deposition of Dr. Henry Houh (Dec. 12, 2023)
2009	Deposition of Dr. Henry Houh (Apr. 17, 2024)

I. Introduction

In further support of Patent Owner's Response ("POR"), Patent Owner ("Zilkr") responds to Petitioner's Reply challenging Claims 1, 2, 6-8, and 12-14 of the '254 Patent ("Challenged Claims").

Among other defects discussed below, Petitioner's Reply applies incorrect claim construction standards, misconstrues Zilkr's arguments, and presents new arguments that could have been presented in its Petition and should not be considered at this stage.

II. Dr. Houh's Testimony Deserves No Weight

During cross-examination on his supplemental declaration (Ex. 1030), Dr. Houh answered an entire line of questioning about the meaning of the term "activate" as used in the '254 Patent with variations of a lengthy, canned response about Bodart's virtual assistant providing access to a service. *See, e.g.*, Ex. 2008, 16:3-17:16, 17:17-19:15, 19:16-21:13, 21:14-23:18, 23:19-24:20, 24:21-26:12, 26:13-27:16, 27:17-29:17, 29:18-30:18, 32:4-34:10, 34:11-35:18. Dr. Houh essentially refused to answer whether he agreed that a user's setting up a service with a provider would fall within his understanding of the term "activate" because he believed the disagreement in the case is whether what he pointed to in Bodart is within the scope of "activate." *See id.*, 34:11-37:2 (answering, e.g., that "the disagreement is really over whether what I've pointed to that meets activating the second service with a

second provider falls within the scope of activate, not whether other things are within the scope of activate," "that wasn't the example that I used in my initial analysis and … discussed in my supplemental declaration about -- about the situation of activating within Bodart"). Dr. Houh's stonewalling prevented Zilkr from fully exercising its right to cross-examination to understand the basis for the opinions expressed in his supplemental declaration. Accordingly, his supplemental declaration and any deposition testimony that Petitioner may want to rely on should not be considered and is entitled to no weight.

III. Claim Construction

Petitioner's arguments regarding the scope of the claims are fallacious and do not follow the standards required by *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). Following Petitioner's arguments and logic would require interpreting the claims more broadly than even the broadest reasonable interpretation.

"Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Phillips*, 415 F.3d at 1313. "[T]he specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Id.* at 1315 (quoting *Vitronics Corp. v. Conceptronic,*

Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Even under the broadest reasonable interpretation standard, "[t]he correct inquiry … is not whether the specification proscribes or precludes some broad reading of the claim term." *In re Smith Int'l, Inc.*, 871 F.3d 1375, 1382-83 (Fed. Cir. 2017). "And it is not simply an interpretation that is not inconsistent with the specification. It is an interpretation that corresponds with what and how the inventor describes his invention in the specification, i.e., an interpretation that is 'consistent with the specification.'" *Id.* at 1383. Claim terms interpreted under *Phillips*, as in this proceeding, cannot be interpreted more broadly than they would be applying the broadest reasonable interpretation.

Petitioner's arguments fail to follow these claim construction principles, as detailed below. As one pervasive example, Petitioner and its declarant discard as irrelevant any passage of the '254 Patent cited by Zilkr that includes the term "may," without considering what is being described or how the terms of the patent are being used. *See, e.g.*, POR 7; Ex. 1030 ¶ 8. Whether or not a particular step or feature of certain embodiments is optional, the usage of the patent's terms are highly relevant to the meaning of those terms. Zilkr's arguments do not attempt to import any particular limitations from embodiments of the claims, but rather illustrate the context of the claim terms and how the terms are used consistently throughout the Specification. Petitioner's failure to meaningfully engage with the passages of the

’254 Patent cited by Zilkr ignores the applicable claim construction standard and undermines Petitioner’s superficial arguments.

A. “activate the second service with the second provider”

Petitioner’s Reply does not rebut Zilkr’s showing that, as used throughout the ’254 Patent, to “activate” a service involves creating a new subscription or account for the service, and the term “activate” is not used to refer to logging into or accessing an existing service through a particular platform. *See* POR 40-44.

Zilkr’s POR supports its position on the scope of “activate the second service with the second provider” with analysis of several passages of the ’254 Patent. POR 40-44. Petitioner does not address these arguments.

Petitioner’s Reply asserts an inconsistency in Zilkr’s positions that (1) “access” and “activate” do not mean the same thing, and (2) provisioning includes activating. Reply 9. There is no inconsistency. Zilkr’s POR stated that “[p]rovisioning includes activating,” POR 40, which means it may also include other things. Zilkr did not assert that provisioning and activating “mean the same thing” as asserted by Petitioner’s Reply. Claim 1 of the ’254 Patent supports Zilkr’s position because, in the claim, “activate” is one of three things that the server is configured to do responsive to receiving the request to provision a second service. As to the passage of the ’254 Patent using both the terms “access” and “activate,” Petitioner fails to provide any reason to interpret these terms to mean the same thing. Its

argument about an alleged inconsistency in Zilkr's position is incorrect and is merely an attempt to distract from the real issue, which Petitioner does not address: the description in the '254 Patent is not consistent with Petitioner's position that "activate" merely means to access.

Petitioner chooses to address only two other passages of the '254 Patent among the many relied on in Zilkr's POR. *See* Reply 9. Neither of Petitioner's arguments on these passages rebut Zilkr's construction of "activate." First, Petitioner notes that for the embodiment illustrated in Figure 8 of the '254 Patent, the patent states that certain elements may be omitted or added. Ex. 1001, 10:7-11. Petitioner appears to improperly read this as an excuse not to consider how the term "activate" is used throughout the specification, including in other embodiments. Second, Petitioner arbitrarily chooses one described *result* of activation to be the *definition* of activation, essentially arguing that because one passage says a provider delivers a service after activation, then activation must mean anything that causes a provider to deliver or provide a requested service. *See* Reply 9 (citing Ex. 1001, 4:28-31). Petitioner does not explain how it decided this is "[t]he only potentially informative disclosure." Reply 9. Petitioner's position is also plainly fallacious: the fact that *B* follows *A* in one instance is not sufficient to show that anything resulting in *B* is caused by *A* in all instances. Rather, it is evident that Petitioner disingenuously

cherry picks and misinterprets this passage in an attempt to stretch the meaning of "activate" to fit what it believes it can show in its proposed combination.

Petitioner's avoidance of comment on passages of the patent relied on by Zilkr is perhaps explained by the content of those passages, which are not favorable to Petitioner's position on the term "activate." For example, Zilkr's POR discussed the '254 Patent's description of the embodiment of Figure 11. POR 40-41. In this embodiment, "activation data may be sent to the third party provider ***so that an account is created for the customer by the third party provider*** to use the SMS messaging application." Ex. 1001, 13:53-55. This passage directly links sending activation data to the provider with an account being created for the customer by the third party provider. Petitioner's Reply does not address this passage, which supports Zilkr's position.

When asked about this passage (Ex. 1001, 13:53-55) in deposition, Dr. Houh admitted that "this example given is for creating new accounts and setting up new -- a new account," and that the patent "does use the word 'activation' or -- or 'activation data' with respect to this." Ex. 2009, 60:20-61:1, 59:5-61:1. When asked if he could share a different example from the '254 Patent of the term "activating" being used more in line with how he was interpreting the term "activate," Dr. Houh pointed only to the '254 Patent's description of Figure 8, which Petitioner's Reply dismissed as describing optional steps. Uses of the term "activate" in these passages

(*e.g.*, Ex. 1001, column 10, lines 4-53) are at least as consistent with Zilkr's position on the meaning of the term (e.g., creating a new account or subscription for a service) as with Dr. Houh's position (i.e., configuring a particular device or platform to access a service), if not more so. Indeed, when asked multiple times what language describing Figure 8 of the '254 Patent indicates that it is an example of his interpretation of the term "activate," Dr. Houh was unable to point to anything that could be described as such. Instead, Dr. Houh pointed only to line 31 of column 10, referring to extracting the appropriate information from the request, and to the sentence referring to "other information needed to activate the service" (Ex. 1001, 10:32-34). *See* Ex. 2009, 70:1-71:2. Dr. Houh stated that this is the information needed to access your email through Bodart's virtual assistant, but he could not explain how this sentence illustrated use of the term "activate" in the sense he argues it should be interpreted. *See id.*

In fact, a different sentence describing the embodiment of Figure 8 makes clear that these passages of the '254 Patent are not using the term "activate" to mean configuring the unified service enabler platform to access an existing service. Here, the patent states that "[i]n one embodiment, traditional customers who are not connected to the unified service enabler platform may utilize a first API for interfacing to the second provider when activating the service." Ex. 1001, 10:40-43. Thus, an entirely different set of customers "who are not connected to the unified

service enabler platform" utilize a *different* API to activate service with the provider. The '254 Patent's use of the term "activate" here, consistent with other descriptions in the '254 Patent of activating a service with a provider by creating a new subscription or account with the subscriber,[1] undermines Petitioner's and Dr. Houh's position that activate can mean merely configuring a platform to access an existing service.

Petitioner's reference to its arguments regarding "request to provision" (Reply 9) are to no avail, as those arguments fail for the reasons given below and also fail to specifically address the term "activate."

Petitioner's failure to support its interpretation of the term "activate" provides sufficient basis to reject all of the proposed grounds of the Petition.

B. "request to provision"

Petitioner does not rebut Zilkr's showing that, in claim 1 of the '254 Patent, a "request to provision" "involves a user request to add a new service, including by

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[1] For example: "In one embodiment, this notification may be indicated by setting an extra configuration field bit ***during the activation process***, and in response, the corresponding application service provider may ***allow provider 406 to directly control and manage the account for the end user***." Ex. 1001, 7:5-9 (emphasis added); *see* POR 41-42.

activating a new subscription or account for the new service." POR 32. This meaning stems in part from the context of the claim, in which, responsive to receiving the request to provision, the second service is "activate[d] with the second provider." Petitioner's Reply fails to address the context of the claim or even the patent as a whole, which relates to "customers wish[ing] to add services and applications to their existing telephone service." Ex. 1001, 1:28-29.

Zilkr's POR supports its position on the scope of the claimed "request to provision" with analysis of several passages of the '254 Patent. POR 32-36. As noted above, without considering what is being described or how the terms of the patent are being used, Petitioner merely notes that passages of the patent use the term "may." *See* POR 7. Petitioner's declarant, Dr. Houh, does little more, merely asserting for one passage that "'subscrib[ing]' is optional, and far from a definition or limitation on the terms." Ex. 1030, ¶ 8 (quoting Ex. 1001, 3:35-37). Notably, this passage refers to subscribing to a standard telephone service, and is context for the "request to provision" in claim 1, which earlier recites a first provider that provides a telephone service to the user. Dr. Houh does not explain how the use of "may" here establishes that a "request to provision" is not described in the '254 Patent as a request to add a new service, including by activating a new subscription or account for the new service.

None of the other passages cited by Zilkr are considered by Petitioner or its declarant beyond identifying use of the term "may" for certain aspects. As one example, the '254 Patent states that "[p]rovider 406 may provide telephone service to the user and present a storefront to the user to allow the user to select and add new services and applications to their existing service." Ex. 1001, 6:49-52; *see* POR 33. Petitioner notes this passage uses the words "may provide," but Petitioner nowhere explains how the term "may" in this passage prevents it from illustrating how the claim terms are used. *See* Reply 7. Claim 1 recites that the server "is utilized by a first provider to provide a first service to a first user, wherein the first service is telephone service," making it irrelevant whether the specification in some instances states that a provider "may" provide telephone service to a user. The "storefront" aspect of this passage is also permissive, but the passage describes one way that a user can "select and add new services and applications to their existing service," following which "the selected applications may be activated via the unified services platform 404." Ex. 1001, 6:53-55. The '254 Patent repeatedly and consistently describes such a "request to add services and applications to the existing telephone service" (Ex. 1001, 3:53-54), followed by activation of the new service with the provider and association of the second service with the first telephone number (*e.g.*, Ex. 1001, 6:58-62). Adding these new services is also distinguished from "managing

existing applications and services to which client 110 has already subscribed." Ex. 1001, 4:52-55.

Ignoring all of this intrinsic evidence, Petitioner falsely claims that "PO cites solely to its declarant." Reply 7. Petitioner also mischaracterizes Dr. Madisetti's deposition testimony about the term "provisioning." Speaking generally in response to hypotheticals posed by Petitioner's counsel,[2] Dr. Madisetti explained that provisioning can include deactivating some features because "[t]hat's also a new type of subscription" (Ex. 1029, 60:18) and that, "[a]t a high level," removing a service is provisioning because "[y]ou are changing your subscription" (Ex. 1029, 61:23-24). Both of these questions were objected to as to form, at least because it was unclear whether counsel was asking about "provisioning" generally or specific to the "request to provision" used in the claims. The context of claim 1, in which the server is configured to "activate the second service with the second provider," indicates that the request to provision is a request to add a new service, not to remove a service. In any event, with these answers Dr. Madisetti consistently explained that removing a service is a form of provisioning because it requires changes to the subscription, consistent with the "request to provision" as used in claim 1 involving

[2] *See* Ex. 1029, 60:9-10 ("Again, at a very high level, based on your very high level description, … ."); 60:24 ("With your high-level example, … .").

a user request to add a new service, including by activating a new subscription or account for the new service.

Petitioner's Reply also misapplies "claim differentiation" in arguing that claim 4's use of the term "subscribe" indicates that a "request to provision" is not the same as a request to subscribe to a new service. *See* Reply 8. First, Zilkr's position is not that a "request to provision" is exactly coextensive with a request to subscribe to a new service. Rather, a "request to provision" involves a user request to add a new service, ***including by activating a new subscription or account for the new service***. Thus, Petitioner's straw man argument proves nothing. For at least this same reason, Petitioner is mistaken in its application of claim differentiation. "[T]he presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." *Phillips*, 415 F.3d at 1315 (citing *Liebel–Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004)). Claim 4 could be read to narrow claim 3 (and other claims from which it depends) in multiple ways, thus satisfying claim differentiation.[3] Finally, even if Petitioner were correct with its claim differentiation argument, which

[3] For example, claim 3 adds, among other things, a "unified storefront for managing the plurality of services," and claim 4 requires, among other things, that the storefront "enables the first user to subscribe to one or more new services."

it is not, at most this would give rise to a presumption that would be overcome here with other extrinsic evidence as discussed herein.

Oddly, Petitioner's Reply simultaneously questions the authority of a Telecommunications Industry Association glossary definition considered by Dr. Madisetti and then cites to the glossary as support for its own proposed "construction." *See* Reply 8. The glossary definition supports an understanding of provisioning as adding a new service, including activation of the service, but is not necessary to construe the term given the intrinsic evidence in the '254 Patent. Petitioner's "construction" is merely a list of verbs collected from various places that fails to consider the "request to provision" as used in claim 1 or clarify its meaning. Petitioner's proposed construction should be rejected.

C. "wherein the server is utilized by a first provider to provide a first service to a first user"

Petitioner argues that none of the uses of the term "utilize" in the '254 Patent "indicates any intent to offer an express definition," and that "[s]ince '*utlized by*' is neither a term of art nor expressly defined by the applicants-as-lexicographers, the phrase should be given its ordinary meaning (e.g., 'used by')." Reply 11. Again, however, Petitioner has not considered whether an end user's implementation of a server unknown to the provider is consistent with the term "utilized" as used in the '254 Patent or its description of the telephone service provider's relationship with the unified services platform.

In the ’254 Patent, the term “utilized” is consistently used in the sense of knowing and intentional use, which is closer to Webster’s definition “to make use of” (*see* Exhibit 1037 relied on by Petitioner) than it is to Petitioner’s proffered construction of “used by.” As just a few examples, the patent describes “applications that are utilized by the corresponding user” (Ex. 1001, 1:48), a customer that can “utilize IP-enabled services and applications” (Ex. 1001, 1:54-55), and a subscriber that may “utilize telephone number 202 as the login or username” (Ex. 1001, 6:16). These instances of the term “utilize” are not consistent with taking actions that may unknowingly result in use of something. For example, a postal customer’s implementation of specialized mail processing equipment that handles mail delivered by or picked up by a postal provider does not mean the customer’s mail processing equipment is “utilized by” the postal provider. But any of the equipment that the postal provider makes use of to provide its service is “utilized by” the provider.

“Utilized by” requiring a knowing and intentional use is also consistent with the ’254 Patent’s consistent description of the first provider as either providing the unified services platform or being aware of it and cooperating in its use. *See, e.g.*, Ex. 1001, 4:22-24 (“In one embodiment, provider 120 may use a single API for generating requests that are sent to unified services enabler platform 140, … .”); 4:45-49 (“Although unified services enabler platform 140 is shown as being separate

from provider 120, in some embodiments, portions of platform 140 or the entirety of platform 140 may be integrated within provider 120."); 4:60-62 ("In this case, provider 120 would integrate their portal into the API of platform 140 to source and managed applications and services."); 5:34-39 ("Once provider 150 activates client 110 to use its conferencing application, platform 140 receives notification and a billing event may be generated and sent to a web URL configured by provider 120 in which provider 120 intercepts and translates the billing event containing all relevant data into its internal systems."); 5:55-61 ("Many other applications and services can be brought into platform 140 in the same manner, allowing interworking between both provider 120 and applications/services providers 150 and 160 and between external applications/service providers 150 and 160 directly, all working together leveraging the telephone number 105 of client 110 as the single, universal identifier.").

D. "associated with"

For the term "associated with," Petitioner again confuses the standard for claim construction, suggesting that an express definition must be provided in the patent rather than considering consistent usage of the term in the '254 Patent. Zilkr is not attempting to read optional features into the claims. Rather, Zilkr shows why Petitioner's implied interpretation of "associated" is not consistent with usage of the term in the '254 Patent. *See* POR 53-57.

IV. Ground 1: Petitioner Failed To Show That Bodart In View Of Banister And Dharmarajan Renders Obvious the Challenged Claims

For the reasons explained in Zilkr's POR, Petitioner has not established by a preponderance of the evidence that its combination renders obvious any of the Challenged Claims. POR 21-49.

A. [1.3]: "wherein the server is utilized by a first provider to provide … telephone service"

For the reasons explained above in Section III.C, Petitioner's overly expansive interpretation of "utilized by" is not consistent with usage of the term in the '254 Patent and the patent's description of the provider's knowing and intentional use of the unified services platform. Likewise, Petitioner's explanation in its Reply that because Bodart's virtual assistant may choose whether to complete a call to the user, "a POSITA would have understood that the virtual assistant is '*utilized by*' the telephone service provider (at least by means of its routing rules) in providing '*telephone service*' to the user" (Reply 13-14) is not consistent with the '254 Patent.

The Petition also failed to explain how Petitioner considered the telephone service provider to utilize Bodart's virtual assistant, to the extent this was alleged at all, as explained in Zilkr's POR. *See* POR 23-24. Petitioner argues that because it stated that Bodart's virtual assistant is utilized to provide telephone service, and that the telephone service would be provided by a telephone service provider, that this

means the telephone service provider utilizes Bodart's virtual assistant. The two are not the same. The telephone service provider merely providing signals to a user premises, where the user may or may not be using any particular piece of equipment such as Bodart's virtual assistant, is not the same as the service provider utilizing its own switches or other equipment to provide the telephone service.

Moreover, Petitioner's new theory in its Reply that it would have been obvious for a telephone service provider to provide access to Bodart's virtual assistant as a service is a late argument that could have been presented in its Petition had it desired to make such an argument. All of Petitioner's new evidence related to this theory, including Exhibits 1028, portions of 1030, and 1031-1036, is also late and should not be considered. *See* Consolidated Trial Practice Guide 73 (Nov. 2019) ("Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability.").[4]

B. [1.4]: "wherein the server is configured to: receive a request to provision a second service for the first user,"

Petitioner has not shown that Bodart alone or in combination teaches that the server is configured to "receive a request to provision a second service for the first

[4] In addition, the Board also should give no weight to Exhibits 1028 and 1031-1034 because Petitioner makes no effort to authenticate these documents or web pages, or to provide support for any hearsay dates relied on by Petitioner.

user," both for the reasons given in Zilkr's POR and in Sections III.A-B herein. Receiving and storing login credentials is not a request to add a new service, including by activating a new subscription or account for the new service. Indeed, Petitioner's declarant, Dr. Houh, testified in deposition that it "doesn't make any sense … in the voice assistant of Bodart to be forced to set up a new account." Ex. 2009, 18:18-23.

Petitioner's Reply also presents a new theory, arguing that tasks Bodart virtual assistant may perform are "new services." Reply 18. Petitioner's new theory is late and should be disregarded. In any event, Petitioner's new theory does not explain how configuring Bodart's virtual assistant to perform additional tasks includes adding a new service by activating a new subscription or account for the new service. Petitioner also does not provide a comprehensive analysis or mapping for this new theory, further demonstrating that the theory is not only new but also incorrect. As just one example, Petitioner nowhere identifies what it alleges may be the claimed "second provider" under this new theory.

Petitioner also argues that the '254 Patent's reference to a "real email address" as the "second identifier" means the second service does not have to be a new service. Reply 19. Petitioner's argument makes no sense. The '254 Patent describes that the email address can be used to identify the subscriber in a video conferencing provider's system. *See* Ex. 1001, 7:41-48. Contrary to Petitioner's suggestion, the

’254 Patent is not describing providing an existing email address to access an existing email account or describing such a process as provisioning or activating. *See id.*

C. [1.6]: “responsive to receiving the request: create a mapping from the first telephone number to a second identifier (ID) …”

Zilkr’s showing that any alleged mapping is not “responsive to receiving the request” does not depend only on Zilkr’s interpretation of the “request to provision.” Zilkr’s POR also addressed this limitation under Petitioner’s interpretation as saving login information. POR 37.

D. [1.7]: responsive to receiving the request: “activate the second service with the second provider …”

Petitioner’s Reply arguments illustrate the fundamental disagreement over the meaning of the phrase “activate the second service with the second provider.” For the reasons given in Zilkr’s POR and in Sections III.A-B herein, to “activate” a service with a provider involves creating a new subscription or account with the provider for the service, and is not met by Bodart’s virtual assistant gaining access to an IM or email service. And Petitioner’s explanation that a provider’s involvement in authenticating access in a different platform can be considered activating the service “with the provider” further illustrates the weakness in Petitioner’s tortured reading of the claim.

E. [1.8]: responsive to receiving the request: "associate the second service with the first telephone number …"

Among other issues with this claim element as addressed in Zilkr's POR, Petitioner's Reply does not show where the Petition addressed the "responsive to the request" limitation. To the extent the Reply contains new arguments on this limitation, they are late and should not be considered, as there is no indication these arguments could not have been included in the Petition as part of Petitioner's alleged prima facie case.

F. Petitioner Has Not Shown That Bodart in View of Banister and Dharmarajan Renders Obvious the Remaining Challenged Claims

Zilkr's POR addressed all claims. *See, e.g.*, POR 47-49. Specific to claims 7 and 13, Petitioner's Reply argues that AT&T, Verizon, and Sprint all offered call forwarding as a telephone service, and at least Verizon also offered call intercept. Reply 25. Zilkr's argument was that Bodart's virtual assistant forwarding or intercepting calls is not a "telephone service." To the extent Petitioner is now arguing without saying so that it would have been obvious for a provider such as AT&T, Verizon, or Sprint to provide such services through Bodart's virtual assistant, this would be a new theory and evidence that should not be considered, as noted above.

V. Ground 2: Petitioner Has Failed To Show That de Castro Renders Obvious the Challenged Claims

For the reasons explained in Zilkr's POR, Petitioner has not established by a preponderance of the evidence that de Castro renders obvious any of the Challenged Claims. POR 49-64.

A. [1.3]: "wherein the server is utilized by a first provider to provide … telephone service"

Petitioner's Reply misconstrues Zilkr's arguments in the POR and fails to rebut them. For example, Petitioner asserts that under Zilkr's logic a telephone call would not be a telephone service. Reply 27. But the dialing party and call recipient on a telephone call are each subscribers to a telephone service that is associated with their respective telephone numbers. In contrast, Petitioner asserts that an app script in de Castro is a telephone service associated with any phone number that happens to reach the app script. For the reasons explained in Zilkr's POR and in Section III.D herein, Petitioner's argument is not consistent with the '254 Patent's use of terms such as "associate" and "telephone service."

As to Petitioner's "dialed number" theory, Zilkr's PO explains that this theory is mentioned but not developed. POR 52-53. Zilkr cannot fairly be expected to develop this theory for Petitioner and then knock it down.

B. [1.4]: "wherein the server is configured to: receive a request to provision a second service for the first user,"

Petitioner's arguments fail based on its overly broad interpretation of a "request to provision," as explained in Zilkr's POR and in Sections III.A-B herein.

In addition, Petitioner asserts that there is no requirement for awareness or simultaneity in the claims, but it is Petitioner's strained mapping to de Castro that puts at issue these implicit requirements of the claim. For example, to add a new service, the first service (telephone service) must be active. In the context of Petitioner's de Castro theory, where a service is provided only when a call is ongoing, this would require a user to dial a second app script accessible through the same platform but a different developer while connected to a call to the first app script. And a user cannot "request to provision" the second service from a second provider as described in the '254 Patent without an awareness that the number they are dialing will connect them to another app script on de Castro's platform but created by a different developer. Not only are such circumstances not shown by Petitioner, but they illustrate how unrelated de Castro's system is from what is described in the '254 Patent and the incorrectness of Petitioner's interpretation of claim terms such as "request to provision."

C. [1.6]: "responsive to receiving the request: create a mapping from the first telephone number to a second identifier (ID) …"

Petitioner cannot deny that the Petition does not explain how the dialed number could be the "first telephone number" in limitation [1.6]. Petitioner's Reply attempts to argue this theory for the first time. The Reply is not the place to flesh out a partial theory mentioned only for a different limitation, and Petitioner's new argument should not be considered.

D. [1.7]: responsive to receiving the request: "activate the second service with the second provider …"

Petitioner's Reply asserts that Zilkr does not explain how de Castro's system would provide the services of App Script 610-k without '*activat[ing]*' the script. Reply 31. For the reasons explained in Zilkr's POR and in Sections III.A-B herein, to "activate" a service involves creating a new subscription or account for the user of the service, which is nowhere alleged to occur in de Castro.

E. [1.8]: responsive to receiving the request: "associate the second service with the first telephone number …"

Petitioner does not dispute that the Petition does not address it's "dialed number" theory. In addition, Zilkr's POR explained how ad hoc use of a telephone number in handling calls does not "associate the second service with the first telephone number," within the meaning of the claims. *See* POR 62-63.

VI. Dr. Madisetti Explains the Basis for His Opinions

Petitioner argues Dr. Madisetti's declaration is entitled to no weight because similar text is included in the POR, citing *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (Aug. 24, 2022) (precedential) and 37 C.F.R. § 42.53.[5] Under *Xerox*, however, Dr. Madisetti is only required to explain the basis for his opinions, and it does not mean the POR cannot also contain such supporting explanations.[6]

VII. Conclusion

For the reasons stated above, Patent Owner respectfully submits that Petitioner has failed to prove by a preponderance of the evidence that any challenged claim is unpatentable.

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[5] Petitioner does not explain which portion of 37 C.F.R. § 42.53 supports its contention.

[6] As to his deposition testimony, Dr. Madisetti merely explains that a service provider must be able to do things such as activate a service. That the claim recites a server performing the steps does not show that Dr. Madisetti misread the claims, let alone that he did so in such a pervasive manner as to disregard all of his testimony.

Dated: April 26, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT UNDER 37 C.F.R. § 42.24(b)(1)

I, the undersigned, do hereby certify that the foregoing Patent Owner Response, including footnotes, contains no more than 5,600 words, as measured by the Word Count function of Microsoft Word as specified by 37 C.F.R. §§ 42.24(c)(4).

/Jeffrey Stephens/

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024, a true and correct copy of the foregoing Patent Owner Sur Reply was served by electronic mail upon the following counsel of record for Petitioners:

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