

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.
Petitioner

v.

ZILKR CLOUD TECHNOLOGIES, LLC.
Patent Owner.

IPR2023-00553
Patent 9,210,254 B2

Record of Oral Hearing
Held: June 14, 2024

Before KRISTEN L. DROESCH, KEVIN C. TROCK, and MICHAEL T.
CYGAN, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

THEODORE FOSTER, ESQUIRE
EUGENE GORYUNOV, ESQUIRE
Haynes and Boone, LLP

ON BEHALF OF THE PATENT OWNER:

JEFFREY STEPHENS, ESQUIRE
Carter Arnett PLLC

The above-entitled matter came on for hearing on Friday, June 14, 2024, commencing at 12:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

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JUDGE TROCK: Good morning, everyone. This is Judge Trock. With me today on the Panel are Judges Driesch and Cygan. We're here in the matter of IPR 2023-00553, *Cisco Systems, Inc. v. Zilkr Cloud Technologies, LLC*, concerning U.S. Patent Number 9,210,254.

Why don't we start with appearances for Petitioner?

MR. FOSTER: Thank you, Judge Trock. This is Theo Foster with the law firm of Haynes and Boone, representing Petitioner Cisco Systems. With me also is my co-counsel, Eugene Goryunov. I'll be presenting on behalf of Petitioner today.

JUDGE TROCK: Good morning, Mr. Foster. For Patent Owner who do we have speaking today?

MR. STEPHENS: Good afternoon, Your Honors. This is Jeffrey Stephens with the law firm of Carter Arnett Bennett & Perez. I represent Zilkr Cloud Technologies, LLC. And joining the public feed today, we have Mr. David Walsh, CEO of Zilkr, and Mr. Evan Hunt, the inventor on the '254 patent.

JUDGE TROCK: Okay, good. Good day, gentlemen. So, before we begin, I just like to cover a few things so that we're all on the same page.

So first, our primary concern here today is your right to be heard. If at any time during the proceeding you encounter technical or other difficulties that may undermine your ability to represent your client, let us know immediately. You can contact the team members who gave you the connection information. They can assist you.

Second, when you're not speaking, please mute your microphone.

1 Third, every time you do speak, please identify yourself so that the
2 court reporter can prepare an accurate transcript.

3 And finally, we have the entire record. We have all your
4 demonstratives. We have the exhibits, the papers, and so forth. When you
5 speak to them or use them as a reference, please give us a citation to it. Tell
6 us what the exhibit number is or what the slide number is or the page
7 number that you're referring to. Give us a few seconds to find it. We have
8 all these things, but as you know, there's a lot of material. It does take a bit
9 of time for us to get to it. We want to follow along with you as you provide
10 your presentation today.

11 And finally, please remember that this is an open hearing and
12 members of the public may be listening online.

13 So with that, let me ask Petitioner's counsel, Mr. Foster, would you
14 like to reserve any -- we have 45 minutes per side today. Would you like to
15 reserve any of that time for rebuttal?

16 MR. FOSTER: Yes, Your Honor, I'd like to reserve 15 minutes,
17 please.

18 JUDGE TROCK: Mr. Stephens, I can ask you the same question.
19 You have 45 minutes today. Would you like to reserve any of your time for
20 rebuttal?

21 MR. STEPHENS: Yes, please. Ten minutes for surrebuttal.

22 JUDGE TROCK: All right. So Petitioner will have 30 minutes in
23 their main argument and Patent Owner will have 35 minutes for their main
24 argument.

25 So with that, Mr. Foster, the floor is yours. You may begin.

1 MR. FOSTER: Thank you, Judge Trock. Theo Foster representing
2 Petitioner.

3 I'd like to begin our discussion today looking at Petitioner's slide 4
4 and opening the discussion regarding claim construction. The Patent Owner
5 has argued that the "request to provision" must be a request to provision a
6 new service, and similarly that the "activate" step must create a new
7 subscription or a new account. There are several problems with these
8 arguments from Patent Owner, including, first, that Patent Owner argues for
9 these interpretations based on the alleged consistency of the specification in
10 its description. That legally would be insufficient on its face.

11 We have on slide 4 a small quotation from a Federal Circuit case
12 reminding us all that it is not enough that all of the embodiments in the
13 specification have some feature in order to import that limitation into the
14 claims. That case law has not substantially changed in the 12 years since the
15 Federal Circuit issued the decision we've quoted here.

16 And it would be even more problematic because the specification is
17 not consistent with its description, because the specification is written almost
18 entirely using permissive language. And we've highlighted also on slide 4
19 the many quotations that Patent Owner is relying on from the specification,
20 that all are phrased using permissive language. There's not a consistent
21 requirement in the specification for a new service, a new account, a new
22 subscription. All of those examples are written using permissive language.
23 So for that basis as well, it would be improper to read a newness requirement
24 into the claims.

25 Moving on to slide 5, we would encourage this Panel to follow the
26 example of the Panel that was affirmed in a Federal Circuit case last year in

1 the *Sisvel v. Sierra Wireless* case quoted on slide 5, where the Federal
2 Circuit quoted the Panel, the Board Panel in that case, which emphasized
3 that portions of the specification the Patent Owner was relying on were
4 clearly permissive and they merely recited what the system can be and not
5 what the system must be. We have the same situation in this instance.

6 I would also note that understanding that the many references and
7 use of the word "may" in the specification of the '254 patent, the
8 understanding that that language is permissive is expressly referenced in the
9 patent itself. Looking at column 2 beginning at line 48, it references and
10 explains that it means for the word "may" to be used and understood in the
11 permissive sense.

12 JUDGE CYGAN: Counsel, this is Judge Cygan. I'm hoping you can
13 explain part of your argument to me. The claim language, for example, has
14 "activate" and you seem to be pointing to language that says something may
15 be activated. That doesn't seem to get to what the term "activate" may mean.
16 Can you shed some light on that?

17 MR. FOSTER: Yes, Judge Cygan. And just to make sure that I
18 understand your question correctly, are you referring to the prior arts
19 showing of the activate limitation or are you talking about the interpretation
20 of what the word "activate" means for claim construction purposes?

21 JUDGE CYGAN: The latter.

22 MR. FOSTER: Okay. So, Your Honor, I believe your question is in
23 reference then to our Petitioner's reply at page 9, where we were discussing
24 the meaning of the word "activate". And as a potential construction, we
25 were identifying a portion of the specification that says that after the service
26 is activated, the provider will deliver a requested service. And so we were

1 proposing that "activate" means performing an action that causes the
2 provider to deliver or to provide a requested service. I think your question is
3 in reference then to the fact that that portion of the specification that we're
4 pointing to also uses the word "may". Do I understand the issue correctly
5 there?

6 JUDGE CYGAN: I guess my question was on your previous slide.
7 You're pointing to the "may" language as things being permissive, but you
8 didn't point to any language saying that activating a service may be this or
9 activating may not be this. It seems like you're relying on something
10 different in your Petitioner's reply. Is that correct?

11 MR. FOSTER: So our principal position regarding "activate" is that
12 construction -- formal construction is not necessary. We offer the
13 construction to the extent that the Board believes that a construction would
14 be helpful or useful in this instance. Maybe I'm still not quite understanding
15 exactly what the question is.

16 JUDGE CYGAN: That's okay, Counsel. You may proceed.

17 MR. FOSTER: Okay. Moving on then to Petitioner's slide 6. As an
18 additional reason that we would encourage the Board to reject Patent
19 Owner's constructions regarding a new subscription and new service
20 requirements is the doctrine of claim differentiation. And if we look at
21 dependent claim 4, it references subscribing to a new service. So under
22 doctrine of claim differentiation, we think it would be improper to read
23 claim 1 as requiring a step of subscribing to a new service; that claim 1 is
24 therefore properly understood to simply refer to first and second services as
25 recited without a newness requirement.

1 As the Patent Owner has argued, the next term, looking at
2 Petitioner's slide 7, the next term is "utilized by" where Patent Owner has
3 argued that "utilized by" requires knowing and intentional use. But as with
4 the previous terms, the examples that Patent Owner is pointing to are written
5 using permissive language, discussing what can or may happen and not what
6 must be true.

7 There's also the issue that the examples that Patent Owner is pointing
8 to where the specification is using the verb "utilize" or the phrase "utilized
9 by," those examples involve an individual human being, a user or a customer
10 doing something, and in that context, certainly it would be a little bit more
11 understandable what it means for knowing or intentional use. In the context
12 of claim 1, however, what we have is utilization by the second provider.
13 The second ID is utilized by the second provider. And interpreting the
14 "utilized by," in this instance, to import a knowing or an intentional use
15 concept when the specification itself doesn't talk about knowledge or intent,
16 it would just introduce ambiguity and the lack of clarity and invite further
17 questions about what it means for the service provider to know or to intend
18 to use the second ID.

19 There's also the issue that "utilized" appears a second time in the
20 claim. At the end of claim 1, it refers to routing and interworking data
21 necessary to utilize the second service. And requiring knowledge and intent
22 there, again, would create all kinds of questions about what it means to be
23 aware of and intending to use routing and interworking data. Certainly when
24 I surf the Internet, I'm not aware of the routing tables or the switching tables
25 in machines that are helping to facilitate delivery of the Internet traffic to my
26 phone or to my computer. And so, you know, importing these ideas of

1 knowledge and intent, we think is just not supported, not appropriate in this
2 instance.

3 The final term that's been disputed regarding claim construction is
4 "associated with". And addressing that, looking at Petitioner's slide 8, Patent
5 Owner has argued that in order to be associated with, the claim requires an
6 extra unrecited step of establishing that association and that that
7 establishment has to be an affirmative act that the association needs to be
8 created for some ongoing period of time. There are quite a number of
9 problems with this.

10 First, of course, the claim does not recite the step of establishing the
11 association, and so we don't think it would be appropriate to import and read
12 a new step limitation into the claim. There's also the issue, as with
13 essentially all of the other terms, that the specification is written, again,
14 using permissive language, and the language that the Patent Owner has
15 highlighted and relies upon, again, references the association in a permissive
16 way, talking about how the "unified services enabler platform may
17 associate" services to the telephone number.

18 And then there's also, similar to what we saw before, there are
19 dependent claims that expressly call out more details regarding the
20 association, such as claim 2, which recites as a limitation that there's a
21 configured to associate limitation, so that, again, in our view reinforces that
22 claim 1 does not require performing an affirmative act to establish the
23 association. And so we would encourage, again, simply plain and ordinary
24 meaning of "associated with" would be the appropriate interpretation here.

25 Moving on to the merits of the prior art and looking at Petitioner's
26 slide 10, the petition explained how *Bodart's* virtual assistant would provide

1 telephone services, including things such as receiving and directing
2 telephone calls, and how it would have been obvious for those telephone
3 services to be provided by a telephone service provider. Those arguments
4 were supported by the testimony of Dr. Houh, which is cited in part on slide
5 10.

6 In their Sur-reply, Patent Owner has argued for the first time that
7 *Bodart's* virtual assistant has to be located at the user's premises. We don't
8 believe there's any merit to this argument for a first reason that the claim
9 doesn't recite any limitations regarding the location of any of the claimed
10 components, and so where the virtual assistant would be located simply isn't
11 an issue one way or the other. It's also inconsistent with *Bodart's* disclosure.
12 Looking, for example, at the end of paragraph 74, *Bodart* gives an example
13 in which the virtual assistant 101 is remotely located. So while the location
14 of the virtual assistant isn't relevant to the claim language, because the claim
15 language doesn't have any location limitations, we think it would have been
16 obvious from *Bodart's* disclosure that, again, the virtual assistant would be
17 within the telephone service provider's network. And certainly that kind of
18 understanding makes sense in the context of other parts of *Bodart*, such as
19 the fact that the virtual assistant has communication links into a cellular
20 telephone network so that it can provide services via cellular telephone, as
21 we identified in the petition.

22 That overall understanding that the virtual assistant of *Bodart* would
23 be part of the telephone service provider's network and would be utilized by
24 the telephone service provider is also supported now by additional evidence
25 that's come in during the trial. Looking at Petitioner's slide 11, we have an
26 additional evidentiary reference, the *Buford* reference, that describes and

1 shows how it was known for servers that are part of a telephone service
2 provider's network to be used and capable of providing call-related services,
3 such as call-blocking. Call-blocking is related to the examples discussed in
4 *Bodart*. For example, *Bodart* at paragraph 25, where it discusses how calls
5 may be selectively routed to a user, and certainly a decision not to route a
6 call to the user would be an example of blocking the call from reaching the
7 user. That, again, reinforces the idea that these are telephone services
8 provided by a service provider using equipment in the service provider's
9 network.

10 Looking at slide 12, we have another example along the same lines,
11 the *Chemin* reference, which describes a service server to be used by a
12 telephone service provider in order to provide new services. And some of
13 the new services that *Chemin* describes providing through its server are,
14 again, very similar to or the same as the services contemplated by the *Bodart*
15 server, such as call forwarding, selective call forwarding, and call filtering.
16 And those are very similar to some of the ideas expressed in *Bodart*
17 paragraph 25 regarding selectively routing calls. *Bodart* also discloses and
18 describes selective call forwarding in paragraph 57.

19 And so we believe that these additional references further support the
20 testimony of Dr. Houh. For example, his supplemental declaration,
21 paragraph 11, where he discusses how it was known for telecommunication
22 service providers to use network equipment, including a wide variety of
23 routers, switches, servers, and other things, in providing communication
24 services to their customers. This sort of information would have been
25 background knowledge to someone of skill in the art.

1 If there are no questions about the utilization limitations, moving on
2 to the next limitation, looking at Petitioner's slide 13, the claim requires "a
3 request to provision a second service." Again, Patent Owner's arguments
4 regarding this limitation largely focus on reading new limitations into the
5 request to provision, including that the request to provision be for a new
6 service, including a new subscription with a new account. And as we stated
7 in the petition and we've reiterated in our reply, those additional limitations
8 are not warranted. That's the improper claim interpretation here.

9 And then regarding the mapping, the way that we've applied the art
10 to show this limitation, we've clarified that we view the process of
11 configuring *Bodart's* virtual assistant as corresponding to the request to
12 provision. So when the user provides their configuration information in
13 order to set up a virtual assistant for it to provide their desired services, that
14 would be the request to provision. We don't believe that the Patent Owner
15 has responded to the mapping and has not disputed that mapping when the
16 claim language is given its plain and ordinary meaning.

17 Moving on to Petitioner's slide 14, even under Patent Owner's
18 construction, which, again, we don't believe that new services are required
19 here, even under that interpretation, we explained in the reply, and supported
20 by the testimony of Dr. Houh, that the new features provided by *Bodart's*
21 virtual assistant that integrate aspects of both telephone service and email or
22 IM services, that the integration of all of those to facilitate get new services,
23 such as notifying user by instant message when they receive a phone call,
24 those would be new services separate and apart from both the original
25 telephone service and the original instant messaging service. Similarly,
26 having the user be able to have their email read to them via a phone call or

1 over a phone call, that is a new service which is different from both
2 telephone service and it's different from what we might ordinarily think of
3 email service where you get email on your computer and you can read it on
4 the screen. Having it read to you by telephone would be a new service. So
5 even if a new service limitation were read into the claim, as Patent Owner
6 argues, we believe that *Bodart* would render that obvious.

7 Moving on to slide 15. Regarding the limitation to activate the
8 second service, we've explained that it would have been obvious for the
9 virtual assistant to confirm the configuration information provided by the
10 user, for example, by logging into the instant message or email account to
11 make sure that the login credentials are correct, that they're working, that the
12 virtual assistant can access those accounts, and that that would correspond to
13 activating because, you know, it's part of making the services available
14 through the virtual assistant, making those services available to the user.

15 Moving on to slide 16 regarding the limitation to "associate the
16 second service with the first telephone number," as we explained in the
17 petition and further explain in the Petitioner reply, supported by the
18 testimony of Dr. Houh, the user, you know, creating rules so that the virtual
19 assistant would handle their phone calls and their instant messages and their
20 emails in the way that they wanted, creating those rules and providing those
21 rules shows that there would be an association created between the second
22 service, those more advanced services available through *Bodart's* virtual
23 assistant, and the user's original telephone number.

24 If there are no questions about ground 1, I'll move on to ground 2
25 and the *de Castro* reference.

1 JUDGE CYGAN: Counsel, this is Judge Cygan. Can you provide a
2 cite to the Petition for the position you're taking on slide 14?

3 MR. FOSTER: Your Honor, regarding slide 14, where we discussed
4 that the additional services available through *Bodart* would be new services,
5 that is in response to the arguments that Patent Owner raised in their Patent
6 Owner response construing the claim as requiring new services. New
7 services are not part of the claim language and we had no way to anticipate
8 that Patent Owner would have argued that new services were required, and
9 so the newness of services was not an issue that we anticipated or that we
10 addressed in the petition that is responsive to arguments that Patent Owner
11 raised in the response.

12 JUDGE CYGAN: Thank you, Counsel.

13 MR. FOSTER: Turning to slide 18, and the first argument the Patent
14 Owner raises regarding *de Castro* is they argue that *de Castro* doesn't teach
15 telephone service. I think that's pretty blatantly contrary to *de Castro*'s
16 disclosure. Highlighted here is from the early part of *de Castro*, paragraph
17 2, where *de Castro* describes providing a telephony-enabled service, a
18 position that services provided by telephone or an example of what would be
19 a telephone service.

20 Moving to slide 19, the limitation regarding "associated with the first
21 telephone number," the first service associated with the first telephone
22 number, we identified two ways that this limitation could be mapped to *de*
23 *Castro*. Basically that the first telephone number could either be the
24 telephone number that a user would dial in order to access one of the
25 telephone services available from *de Castro* server. And that is the language
26 in *de Castro* we're relying on for that is highlighted on slide 19.

1 Looking at slide 20, the second way that we mapped the association
2 is that the caller's phone number is also associated with the telephone service
3 being provided. Looking at *de Castro*, paragraph 139, *de Castro* explains
4 how the caller would call in via the public switch telephone network or via a
5 voice over IP network using the SIP protocol. Those incoming calls would
6 be associated with a Jabber ID, and then that facilitates two-way
7 communications involving both call signaling and call media, right, the
8 actual voice communications.

9 And we see in an example on slide 20, on the right, an example of an
10 incoming call message that *de Castro* provides in paragraph 141. And we
11 can see that incoming call message identifies a "from" number, right, the
12 telephone number that the user is calling from.

13 If we move forward to slide 22, we can see that when *de Castro's*
14 server provides a particular service, for example, a call forwarding service
15 via a redirect message, *de Castro* shows an example of a redirect message.
16 That's, again, in paragraph 141 shown on slide 22. We see that redirect
17 message is sent to a Jabber ID highlighted on the slide. That Jabber ID
18 begins 9f00061. And that value of the Jabber ID we can see, if we look back
19 at the original incoming call message that's shown on the right side of slide
20 22, you can see that "from" ID has been associated with the caller's phone
21 number. Right? The messages for the redirect process are being sent back
22 to the caller. So that shows that the caller's phone number is also associated
23 with the service being provided because the messages to facilitate and
24 provide that service are being sent to the Jabber ID associated with that
25 caller's phone number.

1 Moving to slide 23, Patent Owner has argued that the petition was
2 inconsistent in its analysis of limitation 1.3 and limitation 1.4, arguing that
3 the petition never presented a case for the first user accessing the first
4 service, being the first user that would also access the second service, and
5 that's simply incorrect. The petition consistently identified client 40 as being
6 the client for both those limitations. We believe that client 40 representing a
7 first user is appropriately mapped in both instances to the same entity in the
8 prior art in *de Castro*.

9 Then on slide 24, regarding the limitation of mapping from a
10 telephone number to a second identifier. Again, as I mentioned before, we
11 had two ways of looking at what the first telephone number is. And
12 regardless of whether the first telephone number is interpreted as being the
13 caller's phone number or the callee's phone number, the dialed number or the
14 calling party's number, in either event, *de Castro* shows that a Jabber ID is
15 associated with or mapped to those telephone numbers in its example in
16 paragraph 141.

17 JUDGE TROCK: This is Judge Trock. I just want to let you know
18 you have three minutes left.

19 MR. FOSTER: Thank you, Judge Trock.

20 And so we believe that the mapping is plainly shown in *de Castro's*
21 example incoming call message where it shows those Jabber IDs have been
22 associated with and are mapped to the incoming and the dialed phone
23 numbers. That establishes the mapping limitation.

24 If there are no other questions from the Panel, I'll reserve the
25 remainder of my time for rebuttal.

1 JUDGE TROCK: Thank you, Counsel. You'll get an extra two
2 minutes on your rebuttal.

3 So, Mr. Stephens, you have 35 minutes. Like to begin?

4 MR. STEPHENS: Yes, Your Honor. Thank you. May it please the
5 Board. I'd like to start by pointing to a few things that Cisco doesn't address
6 in this petition and the absence of, you know, argument on some of these
7 points is as important as arguments that it did make.

8 I'd also like to ask the Board if you could please excuse my voice
9 and perhaps an occasional cough. I seem to have a bit of a cold.
10 Fortunately, we can all do this on Zoom, and I'm not risking spreading it to
11 any of you, but I appreciate your patience.

12 So one of the things that Cisco does not argue in its Petition is
13 limitation 1.8, which is the responsive to receiving the request, associate the
14 second service with the first telephone number. In the *Bodart* ground for
15 that limitation, Your Honors, there really is no discussion about that
16 associating being responsive to receiving the request. We pointed this out in
17 our Response, and, you know, there were some arguments that Cisco came
18 back with in the Reply, but clearly having not addressed the limitation in the
19 petition. I mean, these were new arguments that came in too late as part of
20 their, you know, alleged prima facie case. So I just wanted to point out, you
21 know, in particular that limitation in terms of really a dispositive basis on
22 which at least ground 1 fails.

23 The other things that are absent from Petitioner's argument are really
24 any substantive addressing of the passages that Patent Owner relies on to
25 understand the meaning of the terms "activate" and "request to provision".

1 So I'd like to move on to the sort of the claim construction arguments
2 involving those terms.

3 And just for Your Honors' references, for example, on slide 6 of
4 Patent Owner's demonstrative exhibits, we've put here what, you know, one
5 of ordinary skill in the art going through the specification to understand the
6 ordinary meaning of the term "activate" would understand that it involves
7 creating a new subscription or account for the service. And at least for the
8 *Bodart* ground, you know, it's not referring merely to logging into or
9 accessing an existing service, which is what Petitioner's relying on in
10 pointing to *Bodart* and configuring *Bodart*. And essentially here, you know,
11 Petitioner's arguments are, well, the patent says "may". I'm not sure there's a
12 patent that doesn't say "may". It's not a question of does the term "may"
13 appear in the patent or even in a passage related to activate.

14 You know, as Judge Cygan was pointing out, pointing to a sentence
15 in the patent that says, you know, something may be activated is really
16 besides the point when the claim itself is talking about, you know, has a step
17 of activating. So Petitioner did not go the next step in their analysis in terms
18 of how that permissive term would have affected the actual meaning of the
19 terms, you know, "activate" and "request to provision".

20 And along those lines, I would like to first remind the Board, as
21 you're well aware, that the *Phillips* en banc case from the Federal Circuit
22 says that the specification is always highly relevant to the claim construction
23 analysis. Usually it is dispositive. It is the single best guide to the meaning
24 of a disputed term. So when you look at the *Aventis Pharma* case that was
25 not cited in the papers by Cisco, but raised in our slides on argument here,
26 the patentee there was trying to bring in limitations beyond the ordinary

1 meaning. The Court was looking in that case for lexicography or disavowal.
2 And in that case, permissive language about the extent of stability of a
3 perfusion was not shown to be part of the meaning of the term "perfusion".

4 So, you know, there the Court had firmly in mind, you know, what
5 the ordinary meaning of "perfusion" was, and they did not accept the
6 argument that permissive language in the patent related to the stability of the
7 perfusion should be read -- somehow read into that term. And that's really
8 not what we have going on here. I mean, you have to look at the
9 specification to understand the ordinary meaning of the term "activate" or
10 "request to provision". And Cisco has not shown some other ordinary
11 meaning here.

12 The case really is not on point in terms of the particular quote about
13 permissive language. It really doesn't apply in this circumstance where what
14 we're talking about is look at the patent to see how the terms in question are
15 being used and to understand how one of ordinary skill in the art would
16 understand their meaning. So --

17 JUDGE DROESCH: Counsel? Counsel, this is Judge Droesch. I had
18 a quick question for you. Could you entertain my idea for a second as far as
19 perhaps the ordinary and customary meaning for the term "activate"? Why
20 couldn't we construe that according to its ordinary and customary meaning
21 to mean like to turn something on, to turn on the service, to activate the
22 service? Why do we need to go so far as ensuring this as having creating a
23 new subscription or account for the service other than that it is disclosed in
24 the specification in a specific way?

25 MR. STEPHENS: Well, it's really getting at the same idea. I think to
26 turn something on maybe is a more colloquial way of saying that. The idea

1 being, you know, especially in the claim where it says that it's activated with
2 the second provider, meaning you go to that second provider and you turn
3 the service on. You didn't have the service before and now it's -- you've
4 established a new subscription or account with that provider and you're now
5 able to use the service. So I don't think that would necessarily resolve the
6 issue in favor of Cisco to understand the term in that way.

7 JUDGE TROCK: Counsel, this is Judge Trock. But why does the
8 service have to be new? Why can't it just be turned on, as Judge Droesch
9 indicated? In other words, it's an existing service and you're activating it
10 now because it's being turned on. It's not like you're getting a brand new
11 one. You've had it before. It's just been turned off. Now it's turned on.
12 Isn't that activating?

13 MR. STEPHENS: Well, I guess it depends on what Your Honors
14 have in mind in terms of turn on or turn off. Certainly the way that it was
15 presented by Petitioner in terms of *Bodart* is, you know, they're talking
16 about configuring *Bodart*'s virtual assistant to access an existing service.
17 And in that sense, I don't think the service was ever turned off. I mean, it
18 was available and activated for use by, you know, the user if they were to
19 access it through, for example, that provider's own portal or however they
20 provide access to their service, so.

21 JUDGE TROCK: Well, how about the example of logging in to an
22 email service? You put in your ID, you put in your password, now you have
23 access to it, now you're able to use it. Prior to that, you can't use it. Is that
24 right?

1 MR. STEPHENS: No, I wouldn't say that you can't use it. You're
2 accessing an existing service. You know, that service provider is aware of
3 you. They have those login credentials.

4 JUDGE TROCK: If you've given it to them If you haven't given it to
5 them or if you don't allow them to store it, for example, you may be the kind
6 of person, maybe you use Gmail and you've told Gmail, I do not want you to
7 keep my password or my ID, and I want to put it in originally every single
8 time, you're not going to get access to that until you provide both of those
9 pieces of information. Is that right?

10 MR. STEPHENS: Well, the way you presented it, yes, I believe that's
11 right, Your Honor, but we have to keep on track of here, you know, who is
12 the second service provider and who are you providing the credentials to? I
13 mean, if you establish a Gmail account, Gmail is necessarily aware of, you
14 know, your credentials, and you've activated that service, you're able to
15 access it. And I think the keyword to being -- in your question, Your Honor,
16 is talking about access. And that's what Cisco's arguing for, is, oh, well, you
17 log in, now you're accessing the service. You may be accessing, but that's
18 not activating. That is separate. When you sign up for the Gmail account,
19 Google is now aware of you. You have an account with them, and they're
20 going to, you know, check your credentials when you try to access the
21 service through whatever means you may access them, but that doesn't
22 change whether or not you've already activated a service with that provider.

23 JUDGE TROCK: So in your view, then, "activate" always has to be
24 new?

1 MR. STEPHENS: In the way that it's used in the '254 patent and the
2 claims, yes, it is a new subscription or account that's created with that
3 second service provider in the way that it's claimed.

4 JUDGE TROCK: Okay, thank you, Counsel.

5 MR. STEPHENS: Thank you for your questions.

6 JUDGE CYGAN: Counsel, just one question.

7 MR. FOSTER: Yes.

8 JUDGE CYGAN: In the '254 patent, I know that Figure 8 was
9 described in the brief description, in column 2, as activating a surface.
10 Actually, I'll leave that be. You can proceed.

11 MR. STEPHENS: Okay. Well, I would like to look at a couple of
12 portions of the '254 patent just to illustrate the point about how these terms
13 are being used and that really Cisco has not responded substantively other
14 than to say, oh, well, I see the word "may". And I just don't think that does
15 anything for them, particularly in the instance where, you know, one of the
16 times that they point to the permissive "may" is in a sentence that the Patent
17 Owner cited in its response about the -- you know, that a telephone service
18 provider may provide a telephone service. And Petitioner points to the use
19 of the term "may" there in that sentence to say, oh, well, we don't -- you
20 know, we can basically ignore anything about that.

21 And related to Judge Cygan's question from earlier, the claim itself
22 says that a telephone service provider provides the first service. So really
23 pointing to the word "may" where the claim says, you know, this is done,
24 does not prove anything on Petitioner's point. And that's really the most that
25 they've done. They've said, oh, there's "may," but they have not analyzed
26 how those terms are actually being used. So when the claim calls them out

1 and says you are activating, you know, what are we to understand from that?
2 It's not enough to point to the specification and say, oh, well, something may
3 be activated. Well, okay, what does activation mean?

4 And that's why we pointed to several places in the specification that
5 help one of ordinary skill in the art understand how that term is being used
6 according to its ordinary meaning. And one of those, for example, shown on
7 slide 8 of Patent Owner's exhibits is talking about the embodiment shown in
8 Figure 11. And the '254 patent states that in this embodiment, "Activation
9 data may be sent to the third party provider so that an account is created for
10 the customer by the third party provider to use the SMS messaging
11 application." That's at column 13, lines 53 through 55.

12 This is just one example of many where, you know, the patent does
13 not foresee, let's say, this dispute in this proceeding and include express
14 definitions and things that would put this issue to rest. That would be too
15 easy, obviously. But what we have here is the way the term is being used
16 throughout the patent showing us its ordinary meaning, how it would be
17 understood by one of ordinary skill in the art. And I think that sentence
18 there on column 13, lines 53 through 55, is really just one example of that
19 linking the sending of the activation data to the provider with an account
20 being created for the customer by the third party provider. That is a new
21 subscription or account with that provider. And they were able to activate it,
22 you know, through following the method in claim 1, for example.

23 Cisco's declarant, Dr. Houh, admitted that this example from column
24 13, lines 53 through 55, is for creating new accounts and setting up a new
25 account and that the patent does use the word "activation" or "activation
26 data" with respect to this. So there we have their declarant, their expert

1 saying, well, sure, it's used there in that way. But when asked about, you
2 know, well, is there a counterexample that shows more -- something more in
3 line with how Cisco's understanding the term, the expert pointed to Figure 8
4 of the '254 patent and the description there, but was not able to show -- you
5 know, point to anything in that description that would distinguish and, you
6 know, support Cisco's interpretation of the term "activate" there.

7 And indeed, there is a sentence in that same description of figure 8
8 that directly contradicts any notion that figure 8 is somehow a broader
9 meaning of the term "activate." Because you have -- if you look at slide 10
10 of Patent Owner's demonstratives we've reproduced just for convenience
11 there from the '254 patent column 10, lines 40 to 43, "In one embodiment,
12 traditional customers who are not connected to the unified service enabler
13 platform may utilize a first API for interfacing to the second provider when
14 activating the service." So you have a whole different set of customers who
15 are not connected to the unified service enabler platform of the '254 patent,
16 and they have a different path that they follow for activating the service with
17 the provider. So activating there does not have to do with, you know,
18 making it available or accessible in another platform. It is talking about the
19 ability for those customers to go follow a different route to separately
20 contact that provider and activate a service with them.

21 And just one more example, I don't want to bore Your Honors with
22 examples. We've cited many and there are others in the patent. But like, for
23 example, in slide 11 of Patent Owner's demonstratives, we have another
24 example from column 7, lines 5 through 9, of the '254 patent, talking about a
25 notification that "may be indicated by setting an extra configuration field bit
26 during the activation process, and in response, the corresponding application

1 service provider may allow provider 406 to directly control and manage the
2 account for the end user."

3 So if, for example, you have one provider that's sort of facilitating
4 the user to activate a service with a second and different provider, it's
5 possible during that process to allow the first provider to control and manage
6 the account. But the important point is there is a -- in that activation process,
7 there is going to be an account for the end user created in creating that new
8 service.

9 So, you know, throughout the patent, to activate a service involves
10 creating a new subscription or account for the service, and as expressly
11 recited in the claim that is with the second service provider. And nothing
12 that Cisco has cited to really undermines the analysis that Patent Owner has
13 presented in terms of the ordinary meaning and usage of the terms "activate"
14 and as well as "request to provision" in the '254 patent.

15 Along the lines of request to provision, I would direct Your Honors to
16 slide 15 of Patent Owner's exhibits. There we've highlighted, just for
17 convenience, some of the phrasing there relating to activating and the
18 requests. And the very first sentence there, Your Honors will notice that is
19 one example where it begins, "Provider 406." Right? "Provider 406 may
20 provide telephone service to the user," and that "may" is one of the may's that
21 Petitioner points to as well. And it's, you know, we can ignore this whole
22 thing. It's all permissive. Well, again, that "may" doesn't change how the
23 terms that are being used that we're trying to understand the meaning of.
24 You can still understand how a term is being used even if something about
25 how it's being used is permissive. And that "may" in particular, which was
26 provided -- you know, Petitioner pointed explicitly to, that's about may

1 provide a telephone service, which, again, is expressly recited in the claim.
2 There is a telephone service being provided by a first provider. So that
3 really is an illustration that having the term "may," it's not sort of the be all
4 and end all of understanding the meaning of these terms.

5 But the other phrases that we've highlighted here in this, it's coming
6 from column 6, lines 49 through 66, of the '254 patent is talking about
7 activating. And in that second paragraph in particular, "When the user
8 selects a new application to add to their existing voice service, a request may
9 be generated," and that request will then activate the new application. And
10 then the -- just moving on from there, you have, "Unified services platform
11 may then generate the necessary configuration data to activate the new
12 application in accordance with the specific API utilized by the application
13 service provider responsible for delivering the new application."

14 Again, you have these requests that are also related to the term
15 "activate". And the request to provision includes a request to activate this
16 new service, and that's exactly how it's discussed throughout the patent.

17 There are other examples. I won't belabor the point on that, but I
18 would like to just in terms of the substance of Petitioner's failure to meet its
19 burden of proof on these claim limitations relating to "request to provision"
20 and "activate" in particular, I'll touch on those before I move on to any other
21 terms that are in dispute in terms of their meaning.

22 JUDGE TROCK: Counsel, this is Judge Trock. So your last example
23 in column 6, starting line 49 through 55, how do we link up that language,
24 "Provider 406 may provide telephone services," to the claim language,
25 which is request to provision?

26 MR. STEPHENS: So --

1 JUDGE TROCK: Because unless I'm misreading this, I don't see the
2 word "provision" in there.

3 MR. STEPHENS: Right.

4 JUDGE TROCK: So how is a person of ordinary skill in the art
5 supposed to understand that the passage provides the meaning for
6 "provision," which is used in the claim?

7 MR. STEPHENS: So, I mean, first of all, this passage reflects also on
8 the meaning of the term "activate". And within the claim, the request to
9 provision is followed by, and in response to that request you have an
10 activation. And frequently, in the '254 patent, if you look, for example, in
11 the first sentence of the second paragraph on that slide 15 of Patent Owner's
12 demonstratives, when the user selects a new application to add to their
13 existing voice service, that is a part of the request. Throughout the patent it
14 talks about a request to add a new service. That is the request to provision. I
15 mean, it's in the preamble of the claim. Actually it's not in this particular
16 patent, but really anywhere you have a request to provision.

17 And there is other language in the patent, and let me pull that up, but
18 it does link that together. But the thing to recall is that when you talk about
19 selecting -- a user selecting a new application to add to their existing service,
20 whether it's that or something that's generated as part of that, you know, a
21 request may be generated is the next part of that sentence. That request is
22 the request to provision.

23 One of the ways that we know that's true, let me just pull up an
24 explanation of that in the Patent Owner's response. Okay. So if you look,
25 for example, at -- and this is exactly related to the point I was just making
26 about the user selecting a new application, the patent, the '254 patent at

1 column 4, lines 32 through 35, and this is addressed on page 34 of Patent
2 Owner's response, there the Patent Owner has explained that a request to add
3 a new service via the Unified Services enabler platform is a request to
4 provision it. And what we cite there is column 4, lines 32 through 35, which
5 states -- and I don't know if Your Honors are there, if you want me to wait a
6 moment for you to look at that.

7 JUDGE TROCK: No, I'm there. Go ahead.

8 MR. STEPHENS: Okay. "Unified services enabler platform 140 may
9 include software and/or hardware for performing the various tasks to
10 configure and provision a variety of services and applications and associate
11 them with telephone number 105." So there you have the use of the term
12 "provision," and it's linking that up with this idea in the patent of requesting
13 a new application or service to add to an existing service. That is a request
14 to provision.

15 But again, I remind Your Honors, you know, in terms of the term
16 "activate," I mean, they are closely related in that one is in response to the
17 other, but the request to provision must necessarily be interpreted as a
18 request to activate. So, you know, you also include within that a request to
19 activate.

20 JUDGE TROCK: Counsel, you're saying they're the same?

21 MR. STEPHENS: No, they're not the same. A request to provision at
22 least includes a request to activate. The activation is done in response to that
23 request along with other things. So all I'm saying is really the meaning of
24 the term "activate" does inform the meaning of the "request to provision,"
25 that they're not totally unrelated. And so the request to provision has to at

1 least include a request to activate. So you really kind of have to look at both
2 terms in conjunction with each other to understand.

3 JUDGE TROCK: I'm having a hard time following that because
4 when I look at claim 1, I see in 1.4 request to provision, and then in 1.7 I see
5 activate the second service. So I understand that logically you're arguing
6 that until the provider provisions the service, you will not be able to activate
7 it. I can understand that perhaps it follows logically as a sequence. But that
8 it contains the request to activate at the same time, that I'm having difficulty
9 with.

10 MR. STEPHENS: Well, one of the reasons it does, Your Honor, is in
11 limitation 1.6 you have the "responsive to receiving the request." That
12 limitation, "responsive to receiving the request," I don't think is disputed that
13 that applies to all the following limitations of the claim, so 1.7, 1.8. So
14 really you have to look at 1.7 as the activating is in response to receiving the
15 request. That in itself suggests when you have a request to provision, you're
16 requesting that everything that happens in response to it, that that's what
17 you're requesting to have happened. And that is consistent with the
18 description of everything in the '254 patent. You have a request to add a
19 new service and then it goes through the steps of how the system can go
20 through and activate -- you know, perform the activating and associating and
21 everything that happens responsive to that request. Meaning that is, that's
22 what you asked, you know, to have happen when you have a request to
23 provision.

24 So it's -- it is all related both by the language of the claim in terms of
25 the "responsive to receiving," but also throughout the descriptions of the
26 '254 patent. The activation follows the request. Once a user requests a new

1 service, that service is then activated with the second service provider. So
2 that is part of what was requested to be done in a request to provision.

3 JUDGE TROCK: Right. So I can see your argument here. So you
4 got a request for a provision of a second service. You put in the word
5 "new," because I don't see the word "new" here in the claim. And then in
6 response to that, you're doing a number of things: creating a map, activating
7 the second service, associating the second service. Right? Those three
8 steps?

9 MR. STEPHENS: Yes. Yeah.

10 JUDGE TROCK: Okay. All right. Thank you. I think I understand
11 your position.

12 MR. STEPHENS: Well, and it's not a matter of, you know, reading in
13 limitations in from the specification. It's what is provisioning a service?
14 And in this claim, in this patent, provisioning involves activating a service,
15 which is a new service. There's really no other way to understand it the way
16 it's described in the patent. That is what was understood. That is its
17 ordinary meaning.

18 JUDGE TROCK: While we're at it, I have a question. 1.6 uses the
19 terminology "a second identifier". Where's the first identifier?

20 MR. STEPHENS: I don't think there's required to be a first one in
21 order --

22 JUDGE TROCK: Is there one?

23 MR. STEPHENS: Well, I couldn't say at this moment, sitting here. I
24 haven't considered that question.

25 JUDGE TROCK: And if there isn't a first one, why is there a second
26 one?

1 MR. STEPHENS: Well, I think the patentee can call that identifier
2 what they want to, and here it's called the second one. It could be, and I'm
3 just guessing here because I haven't gone back and looked in terms of how it
4 fits, but, you know, sometimes a patentee will use a term like that, "a second
5 identifier," if, for example, in the specification, there were discussions of a
6 first identifier, so as not to confuse. But in this claim, you know, you're not
7 required to bring in all identifiers that were discussed in the specification. I
8 can't say that's the case here, but I don't think it's a problem in and of itself to
9 have a second identifier recited in a claim without a first identifier. And it's
10 certainly not any issue that Cisco has raised with that.

11 JUDGE TROCK: Right. I bring that to your attention because I find
12 it confusing and difficult to follow the claim when it starts describing a
13 second identifier, when it hasn't pointed out what the first one is.

14 MR. STEPHENS: I understand. Thank you, Your Honor.

15 JUDGE CYGAN: Counselor, this is Judge Cygan.

16 JUDGE TROCK: Yes.

17 JUDGE CYGAN: In the Reply, Petitioner pointed to some statements
18 by your declarant as indicating that provisioning was not limited to
19 activating new services. It points to quotes that provisioning includes
20 deactivating some features or changing your subscription. Do you have any
21 context for those quotes from Dr. Madisetti?

22 MR. STEPHENS: Yes, we addressed these in our Sur-reply. Let me
23 make sure I point you to the right. So, for example, at Patent Owner's Sur-
24 reply, pages 11 through 12, all of the questions about those were objected to
25 as to form because they were not clear. It was not clear, at least whether
26 counsel was asking about provisional generally or specific to the request to

1 provision. But beyond that, you know, the claim itself is talking about
2 adding a service, a request to provision a service. So it's not about changing
3 a subscription. But all of those -- everything that Dr. Madisetti addressed in
4 his deposition was about changes to the service, adding or dropping a
5 service, which would change your account or subscription with that service
6 provider. So it's all consistent. But when you look at the claim itself, you're
7 talking about adding a service by requesting to provision that service.

8 JUDGE CYGAN: Counsel, you indicated that there was some
9 uncertainty because of the form of the question as to whether or not it was --
10 provisioning was being limited to how it was being used in the patent or how
11 it's being discussed generally. Is there a difference between the general
12 meaning of "provision" and how it's being used in the patent?

13 MR. STEPHENS: Well, as I said, in claim 1, I don't think there's a
14 difference in terms of how provisioning is understood to change -- it causes
15 a change in the prescription -- in the subscription or account. There's really
16 no difference there. The difference being what kind of a change are we
17 talking about? In the context of claim one that change is to be adding a
18 service. So there, the context does matter. I mean, Dr. Madisetti is talking
19 about other ways in which provisioning could be done, and those other ways
20 also involve a change to the subscription or account. But in claim 1 in
21 particular, you're talking about adding a new service. So that's the only
22 difference where that matters.

23 JUDGE CYGAN: So your position on those is that it's really beside
24 the point because he wasn't asked specifically about provisioning a service
25 in the sense of adding a service?

1 MR. STEPHENS: That's true, but it also -- you know, even if you --
2 it also supports our interpretation, his testimony there. I mean, you're still
3 talking about a change to the subscription or account. You're not talking
4 about merely, you know, configuring it in one platform or another, so you
5 can access it. So his testimony does support the Patent Owner's
6 interpretation, but, you're right, in terms of you can't use the answers there
7 and directly apply them to claim 1 because claim 1 is talking about adding a
8 service.

9 JUDGE CYGAN: And just to be clear, if he was talking about
10 changing an existing service, that would be -- if that was an understood
11 meaning of "provision," that would account for things which weren't new. If
12 you were changing an existing service or deactivating a service, that
13 wouldn't be some sort of a new service, that would be modifying an existing
14 service. But -- and your position is that that's not relevant because the claim
15 is talking about adding. Is that correct?

16 MR. STEPHENS: Well, changing or deactivating really is about
17 dropping a service. So the idea of a new service does come in when you
18 look at adding a service. But what they all have in common is that you're
19 modifying that account or subscription with the provider. It's not about the
20 platform where you're accessing it. So it's really all consistent. But you're
21 correct, Your Honor, the idea of the term "new" comes in because you're
22 adding a new service, you know, adding a service in claim 1.

23 JUDGE CYGAN: And just so I'm clear that the reason why we
24 understand claim 1 to be adding a new service and not, I suppose,
25 deactivating a service under the meaning of "provision" would be because

1 it's being associated? Is that where the add-in comes in, or can you explain
2 that a little bit?

3 MR. STEPHENS: Yes, there are multiple reasons for that. I think
4 probably one of the biggest reasons is the activating part of it. I mean,
5 activating is a new service. You're not going to activate an existing service.
6 You're not going to activate when you're, you know, dropping a feature or a
7 service. So that, I think, is probably the biggest place where that comes in.
8 But it goes back to really the context of the entire patent, which is about
9 adding a new service. And that starts from the very beginning of what it's
10 describing, and that's where it's brought into the claim, really. In terms of
11 the request to provision and to activate, you are adding a new service to your
12 existing telephone service.

13 JUDGE CYGAN: I was curious if this went back to something that
14 Judge Trock was asking earlier about the difference between provisioning
15 and activating. So it could be the "provisioning" is a more general
16 modification, but the "activating" is describing the response that has to be
17 taken in response to that provision. So if your position is that they're not
18 exactly the same thing, is that part of what the difference is?

19 MR. STEPHENS: Yes. Yes. If I'm understanding you correctly,
20 Your Honor, yes. They don't mean exactly the same thing. And
21 provisioning is -- you know, it is broader than activate, you know, at least in
22 the sense that a request to provision is a request to do things beyond activate
23 the service. But in the claim, certainly activate the service is part of that.
24 And that would be where the new service comes in, where you're activating
25 it.

26 JUDGE CYGAN: Thank you, Counsel.

1 JUDGE TROCK: Counsel, this is Judge Trock. I know we've been
2 asking you some questions. You're out of your time, but if you want to take
3 a minute to wrap up this portion.

4 MR. STEPHENS: Yes, thank you. I appreciate that.

5 I think for most everything, I mean, we can pretty much rely on our
6 briefs. You know, I do want to respond to just a couple of things, such as
7 Petitioner's Counsel's argument about Patent Owner arguing for a new step
8 of establishing or arguing that the *Bodart* server has to be on user premises.
9 I mean, those are ways of characterizing Patent Owner's arguments that are
10 just not the way that we've made the argument in our papers. I'll just note
11 that. I don't agree with the reasons for that.

12 And, you know, at the end of the day, I'll note, too, that there are no
13 reasons provided for modifying *Bodart* to have a telephone service provider.
14 I'm still -- I have to be honest, I'm not clear on what Petitioner's position is in
15 terms of a provider utilizing *Bodart's* server. There are no reasons given in
16 the petition for modifying *Bodart* in a way that, for example, a telephone
17 service provider would have, you know, given their customers access to a
18 server like that, so they're involved in that way. I mean, there was nothing in
19 the petition about that. So I think in our papers, we've covered all that.

20 Let me just confirm, Your Honors, if there's something else I really
21 wanted to get in here, I will say it's just a general framing for the *de Castro*
22 ground. I mean, *de Castro* is very far removed from what's described in the
23 patent. We've pointed to a lot of ways in which the mapping just doesn't
24 work and that you have this incidental use of telephone numbers and
25 messaging that's going back and forth, but you're not associating anything
26 with a telephone number in the same way, for example, that if, you know,

1 you have a telephone service provider that provides a telephone service
2 that's associated with a first telephone number, you can understand, as
3 described in the '254 patent, that type of association is the customer has a
4 telephone number and they're able to use that number to use the telephone
5 service provider's service. That's very different than having a number. If a
6 customer, a member of the public, calls a number that happens to be hosted,
7 you know, unbeknownst to them, by something like *de Castro*'s system, then
8 there are messages going back and forth, but there's nothing about that
9 customer's phone number that is associated with the service, you know, to
10 the extent one is provided by *de Castro* system. That's just one point.

11 And I will -- I'll leave it at that, Your Honors, and reserve the rest of
12 my time for rebuttal. Thank you.

13 JUDGE TROCK: Okay. Thank you, Counsel.

14 Okay, Mr. Foster, we're going to add a couple more minutes onto
15 your time, so we're going to give you a total of 20 minutes here to do your
16 rebuttal.

17 MR. FOSTER: Thank you, Judge Trock.

18 I'd like to first address Patent Owner's argument they made at the top
19 of their presentation regarding limitation I believe it's 1.8 and it's the
20 limitation reciting to associate the second service with the first telephone
21 number. Patent Owner argued not that the limitation was -- the substance of
22 the limitation wasn't there, but the relationship that that language has with a
23 kind of mini preamble earlier in the claim reciting that that step is performed
24 responsive to the request to provision. And Patent Owner has argued that
25 the Petition failed to show that responsiveness concept.

1 I would direct the Board to the Petition. I don't believe that Patent
2 Owner is correct in this. In the Petition, again, regarding the request to
3 provision, we explained that the request to provision is the configuration
4 process the user goes through in configuring *Bodart's* virtual assistant to
5 perform what they want it to do.

6 And regarding the associate step, we said, for example, looking at
7 petition page 41, we explained that *Bodart* teaches that, you know, its
8 features can be facilitated by storing a set of rules, and that those rules would
9 set forth the logic used by the virtual assistant to aid the user to do the things
10 that the user wants to do.

11 And so in the example of the user configuring the virtual assistant to
12 send them an instant message when the user receives a phone call, the rule in
13 the virtual assistant database would show that when a phone call comes into
14 the user's phone number, the virtual assistant should send an instant message
15 to the user at their instant message account. And that then shows that
16 association between the phone number of the user and the second service,
17 the instant messaging upon phone call service. And again, the storing step
18 of creating and storing those rules in the virtual assistant corresponds to the
19 affirmative associate step. And obviously that association is being done as
20 part of the configuration process, which, as I mentioned earlier, is the user
21 going through the request to provision and configuring the virtual assistant
22 to perform what they wanted to do. So we believe that the responsiveness
23 aspect of the claim language was shown in the petition and further
24 explained, as we explained in the Petitioner Reply.

25 JUDGE CYGAN: And Counsel, it's responsive to receiving the
26 request to provision the second service?

1 MR. FOSTER: Correct.

2 JUDGE CYGAN: Can you explain that a little bit? I think you said
3 it was responsive to the phone call coming in. Can you go back a little bit
4 further and explain that for us?

5 MR. FOSTER: Sure. Yes. And I may have been trying to address
6 too many concepts.

7 The associate step, right, the creation of the rules in the virtual
8 assistant is performed responsive to the request to provision. It's in response
9 to the user providing the configuration information to the virtual assistant
10 and setting it up how they want it to operate. So that's where the "responsive
11 to" is.

12 The fact that there is an association between the user's telephone
13 number and the user's instant messaging service is shown because it's the
14 example that *Bodart* provides that when the user receives a phone call,
15 *Bodart's* server can be configured to send them an instant message. And so
16 it's that action on a phone call that shows that the rule would have this
17 association. But the "responsive to" is at the configuration step where the
18 user would be setting up the rules so that the server would perform that
19 function.

20 JUDGE CYGAN: Could you possibly point to the passage you're
21 talking about in the Petition just so we can follow along a little bit more
22 clearly?

23 MR. FOSTER: Sure. So if we look at the petition on page 41 in the
24 instant messaging example that we provide, four lines up from the bottom of
25 page 41, we said *Bodart* teaches that these functionalities may be facilitated
26 by a stored set of rules setting forth the logic used by virtual assistant to aid

1 the user. And so that's the storing aspect that I'm talking about, where the
2 configuration information provided by the user has been encapsulated and
3 stored in the configuration of the virtual assistant. And that storage step
4 corresponds to the affirmative associate second service with the first
5 telephone number step.

6 We kind of further explain that, if we look further down on page 42,
7 at the end of the first full paragraph on page 42, we said that the name or
8 address of the IM server computer would be stored in the account
9 information with the telephone number of the virtual assistant or user, which
10 corresponds to the first telephone number, and, therefore, that IM server
11 identifier would be associated with the telephone number.

12 JUDGE CYGAN: Can you step back to your discussion of limitation
13 1.1.4 where you discuss what the actual request is and then walk us sort of
14 forward to get there?

15 MR. FOSTER: Sure. On page 32, regarding limitation 1.4, we
16 explain that *Bodart* teaches, looking again at the text we provided on page
17 32, the paragraph beginning, "IM example," we said that *Bodart* teaches that
18 the virtual assistant also "has a rules engine enabling the user to create rules
19 for handling incoming calls and instant messages."

20 And then at the bottom of page 32, we said that configuring *Bodart's*
21 virtual assistant by providing the username and password for accessing the
22 instant message service per secondary reference *Dharmarajan* that renders
23 obvious the claimed request to provision a second service for the first user.
24 So what we're saying is it's the configuration process configuring the virtual
25 assistant corresponds to -- and the user providing the configuration

1 information to the virtual assistant. That's what corresponds to the request to
2 provision.

3 JUDGE CYGAN: So it's not providing the username and password,
4 it's the configuring the assistant is the request to provision?

5 MR. FOSTER: The username and password would be examples of
6 the configuration information that the virtual assistant would need in order to
7 provide the services that *Bodart* describes.

8 JUDGE CYGAN: So the request would -- so taking a look, sorry, at
9 limitation 1.4, the server is configured to receive the request to provision the
10 second service. This is where we're looking to as a sort of initiating the
11 steps of 1.6 and then 1.8, correct? We're starting here at 1.4, is that right?

12 MR. FOSTER: Yes, because 1.4 recites that the step of receiving the
13 request to provision and then the other later limitations recite what happens
14 in response to that. That's correct.

15 JUDGE CYGAN: And can you say just one more time what the
16 request actually is in the system in your combination? It's *Dharmarajan's*
17 provision of a username or password or it's *Dharmarajan's* server
18 configuration? Which one is it?

19 MR. FOSTER: Well, so it's our position that obviously *Bodart's*
20 server would require a variety of types of configuration information. It
21 would need to know information about the incident messaging account. On
22 the email example that we also give in the petition as an entirely separate
23 line of analysis, you would need to know that the email account, the email
24 server information, the user's password. And then as we get later on and we
25 talk about the limitation 1.8, obviously part of what the user is configuring

1 are the rules to define how the user wants odor server to act and whether it
2 wants to receive those IM messages when they receive a phone call.

3 And so all of that would be configuration information that would
4 need to be provided. And it's, as we clarified, in the Petitioner response, the
5 provision of that configuration information, the overall configuration process
6 is what corresponds to the request to provision.

7 JUDGE CYGAN: And that's being sent by who in this combination?

8 MR. FOSTER: So it would be the end user configuring the service
9 and requesting that it be provisioned and activated and turned on and all of
10 those things for themselves.

11 JUDGE CYGAN: And so responsive to the end user sending
12 configuration information into the server, the server then associates the
13 second service with the telephone number because -- can you run that
14 through again?

15 MR. FOSTER: Yes, because some of the information that the user
16 will have provided includes what the user's telephone number is. And if the
17 user wants to receive an instant message when they receive a telephone call,
18 the user will have provided their instant messaging information and then
19 created a rule within *Bodart's* server, that basically says, when a phone call
20 comes in to my phone number, contact me, send me an instant message, and
21 here's the instant messaging information. And so that rule that's stored to
22 facilitate that service described in *Bodart*, that rule encapsulates and is
23 basically storing the association between the user's phone number and the
24 user's instant messaging ID.

1 JUDGE CYGAN: And that rule was created by the server of Bodart
2 in response to the configuration information of the user. That's your
3 position?

4 MR. FOSTER: That's correct.

5 JUDGE CYGAN: Thank you.

6 MR. FOSTER: I'd like to touch very briefly, you know, just going
7 back to the claim construction question. And if we look at Patent Owner's
8 slide 8, this is Patent Owner's slide 8, and relating to the activate step, they
9 pointed to, you know, the first bullet point they show on their slide 8, this
10 quote from the '254 patent talking about "activation data may be sent to the
11 third party provider so that an account is created." And as I understood
12 Patent Owner's argument, they think -- they were trying to emphasize the
13 language here that says an account is created. And this suggests somehow
14 that's because the word "may" is not in that portion of the sentence, that
15 that's mandatory language, and, therefore, any activation requires account
16 creation. And we believe that's simply twisting this disclosure
17 inappropriately.

18 The whole sentence, as I quoted, it begins, "Activation data may be
19 sent to the third party provider." This is providing a detailed description of
20 one way that the activate step in the claim might be performed. But to read
21 this into the claim to say that the only way that the activate step may be
22 performed is by sending a third party provider information to create an
23 account, that is plainly reading the limitation from the specification into the
24 claim and not called for here.

25 Again, the specification is replete with permissive language and
26 there's not a consistent description of anything as being absolutely required.

1 Again, as I mentioned earlier, even if the specification had only one
2 embodiment, it would not be appropriate to read details of that embodiment
3 into the claims where they're not recited.

4 If there are no other questions for me either about claim construction
5 or the merits, we'll rest on any remaining issues with the statements we have
6 in the papers.

7 JUDGE TROCK: Thank you, Counsel.

8 Mr. Stephens, you have 10 minutes.

9 MR. STEPHENS: Thank you, Your Honor. This is Jeffrey Stephens
10 again for Patent Owner Zilkr Cloud Technologies. I don't think I'll need 10
11 minutes.

12 I would like to point out I was following along with interest with
13 Judge Cygan's questions about limitation 1.8 and the responsive to
14 limitation, trying to understand, along with Judge Cygan, what Petitioner's
15 position is. Part of the reason for the difficulty in understanding is, as was
16 evident during that exercise, looking at the petition's explanation for
17 limitation 1.8, starting at page 41 and going to 43, there's simply no
18 discussion of "responsive to". Patent Owner is left to wonder how Petitioner
19 believes that what's discussed there is responsive to the request and -- or
20 whether Petitioner may have forgotten altogether to address that despite
21 including in brackets in the heading, you know, recognizing that all of that
22 does have to be responsive to receiving the request, there's no discussion of
23 how that is.

24 And in terms of creating a rule in Bodart, which it sounds like from
25 the discussion here today is what Petitioner considers to be related to the
26 "responsive to" limitation, there's no explanation of why, you know,

1 connecting that to "configuring by," as you go back to 1.4 and what was
2 identified as configuring, you have on page 32 of the petition, the very last
3 sentence on that page, "Configuring Bodart's virtual assistant by providing
4 the username and password for accessing the IM service, renders, obviously
5 request to provision." Based on that sentence, our understanding is
6 configuring by providing the username and password is what the request to
7 provision is. Excuse me.

8 And so, you know, to the extent then you're going into creating rules
9 for 1.8, it's unclear what the connection is. And even if you were to perform
10 at the same time, there's no explanation for how one would be in response to
11 the other. It's just a limitation that was not addressed in the petition. Even
12 today, I'm having trouble understanding what Petitioner's position on that is.

13 And given -- excuse me just a moment, Your Honor. Given
14 Petitioner's burden of proof on this limitation and on all the limitations, not
15 addressing such a limitation in the Petition plainly fails to meet that burden.
16 Anything, to the extent there is anything, in the Reply attempting to fill in
17 that gap certainly is a new argument, a new theory that, that could have been
18 presented sooner.

19 If there are no other questions from the Panel, I will certainly -- we'll
20 rest on those statements in our papers.

21 JUDGE TROCK: Okay, thank you, Counsel.

22 MR. STEPHENS: Thank you.

23 JUDGE TROCK: Mr. Foster, this is Judge Trock. I have a question
24 for you because this issue of the sequencing of 1.4 through 1.8 seems to be
25 creating a dispute here between the parties with respect to understanding the

1 position of the Petitioner. So I want to ask you this question and give you an
2 opportunity to respond to it.

3 So correct me if I'm mistaken, but is it your position that when the
4 user sits down with Bodart for the first time to set Bodart up, to get it to
5 operate, in other words, to configure it, that when the user goes through and
6 provides Bodart with all of the information Bodart's software needs to
7 operate, such as the user's name, the user's telephone account, the user's
8 telephone number, the user's IM account, the user's IM ID, IM password,
9 that process of setting up Bodart so that it will operate and be able to do all
10 the things that Bodart describes it being able to do, in addition to bringing in
11 the secondary references which provide the user ID and password, is it your
12 position that that process is the one that satisfies limitations 1.4 through 1.8,
13 including receiving a request to provision as well as in response to receiving
14 that request to provision?

15 MR. FOSTER: Judge Tock, this is Theo Foster. I believe at a high
16 level the answer is yes. That is our position, is that the overall configuration
17 process correspond -- the configuration process for Bodart's virtual assistant
18 would correspond to and cover, again, with the secondary references as we
19 relied on them, would cover all of those steps. Obviously, by the claim
20 language, some of those steps would be things that the user's performing and
21 some of those aspects, essentially all the things that are done in response to
22 users providing all of that information, Bodart's server, you know, receiving
23 that, verifying the instant message and email account information, making
24 sure that it can access those, creating the rules and the mappings, and all
25 that. Those would be steps more performed by the virtual assistant. But yes,

1 that overall process is what corresponds to largely the second whole half of
2 the claim, of claim 1.

3 JUDGE TROCK: Okay, thank you, Counsel. I just want to ask my
4 Panel members if they have any other questions.

5 Hearing none, Counsel, thank you for your time. This has been very
6 helpful. Please stay on the line in case the court reporter has any questions
7 for you with regard to any spellings. And with that we are off the record and
8 you can consider the case submitted and we'll issue a final decision in due
9 course. Thank you very much for your time today.

10 MR. STEPHENS: Thank you, Your Honors.

11 (Whereupon, the proceedings at 1:37 p.m. were concluded.)

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