

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION AND AFFIRMED NETWORKS, INC.,
Petitioners,

v.

LEMKO CORPORATION,
Patent Owner.

Case No. IPR2023-00570
U.S. Patent No. 9,191,980

**PETITION FOR *INTER PARTES* REVIEW
OF U.S. PATENT NO. 9,191,980**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. REQUIREMENTS FOR <i>INTER PARTES</i> REVIEW	2
A. Certification	2
B. Identification of Challenges	2
III. THE '980 PATENT	3
A. Effective Filing Date	3
B. Level of Ordinary Skill in the Art	3
C. Overview of the Challenged '980 Patent	3
D. Relevant Prosecution History	5
IV. CLAIM CONSTRUCTION	5
V. DETAILED DISCUSSION OF THE GROUNDS FOR UNPATENTABILITY	6
A. Overview of the Principal Prior Art	6
1. Waylett (Ex. 1005)	6
B. Ground 1: Claims 1-4, 6 and 8 Are Obvious in view of Waylett (Ex. 1005) and knowledge of POSITA	9
1. Claim 1	9
a. Element 1.1 Preamble	9
b. Element 1.2	9
c. Element 1.3	11
d. Element 1.4	16
e. Element 1.5	18
f. Element 1.6	20
C. No Secondary Considerations Exist	21
VI. THE PARALLEL DISTRICT COURT PROCEEDING DOES NOT WARRANT A DISCRETIONARY DENIAL	21
VII. MANDATORY NOTICES	22
A. Real Parties-in-Interest	22

B. Related Proceedings	22
C. Lead and Backup Counsel	22
D. Electronic Service	23
VIII. FEES.....	23
IX. CONCLUSION.....	23

PETITIONER'S EXHIBIT LIST

Ex. No.	Brief Description
1001	U.S. Patent No. 9,191,980
1002	File History of U.S. Patent No. 9,191,980
1003	Declaration of Mr. James Proctor
1004	<i>Curriculum Vitae</i> of Mr. James Proctor
1005	U.S. Patent No. 8,184,603 to Waylett et al. ("Waylett")
1006	U.S. Patent No. 7,969,931 to Bachmann et al. ("Bachmann")
1007	Service of Complaint for Patent Infringement served on Microsoft Corp., <i>Lemko Corp. v. Microsoft Corp. and Affirmed Networks Inc.</i> , 3:22-CV-00363-L (N.D. Texas)
1008	Service of Complaint for Patent Infringement served on Affirmed Networks Inc., <i>Lemko Corp. v. Microsoft Corp. and Affirmed Networks Inc.</i> , 3:22-CV-00363-L (N.D. Texas)
1009	"Digital cellular telecommunications system (Phase 2+); Voice Broadcast Service (VBS) - Stage 1," 3GPP TS 43.069 version 4.1.0 Release 4, January 2001
1010	"Packet-switched conversational multimedia applications; Performance characterisation of default codecs," 3GPP TR 26.935 V7.2.0, December 2007
1011	interWAVE to provide wireless GSM network on cruise ship," Wireless Networks Online, December 2000

I. Introduction

Petitioners request *inter partes* review (“IPR”) of claim 1 (“Challenged Claim”) of U.S. Patent No 9,191,980 (“’980 Patent”).

The supposed inventive feature of the Challenged Claim involves a method of using a receiving a mobile device call at a base station interface of a distributed mobile architecture (“DMA”) server, determining that a DMA gateway (“DMAG”) supports communication with the destination device based on registration information stored at the DMA server, wherein the DMA gateway is connected to a plurality of DMA servers, converting voice information to packet data, and routing the call to the destination device. But Waylett—which was never considered by the Examiner—disclosed a system for the claimed method years earlier. Specifically, Waylett discloses a Network-In-a-Box (NIB) (the claimed DMA), with a base station interface and an Identity Module, where the Identity Module includes registration information that indicates that a WLAN (the claimed DMAG) supports communication with the destination device being called, and the WLAN includes voice-over-IP programs that converts voice information to packet data and routes the incoming call to the destination device. Waylett further discloses using multiple NIBs to distribute registration and authentication loads, rendering a configuration with multiple DMA servers obvious.

The Challenged Claim should be found unpatentable given the strength of the

prior art as shown herein.

II. Requirements for *Inter Partes* Review

This Petition complies with all statutory requirements, as well as 37 C.F.R. §§ 42.104, 42.105, and 42.15, and should be accorded a filing date pursuant to 37 C.F.R. § 42.106. The required fee is being paid electronically through P-TACTS.

A. Certification

As required by 37 C.F.R. § 42.104(a), Petitioners certify that the '980 patent “is available for *inter partes* review and that the Petitioners are not barred or estopped from requesting an *inter partes* review challenging the patent claims on the grounds identified in the petition.” Petitioners certify that this Petition is filed within one year of the date of service of the complaint—February 16, 2022. Exs. 1007, 1008. Neither Petitioners, nor any party in privity with Petitioners, have filed a civil action challenging the validity of any claim of this patent. Petitioners therefore certify that the '980 patent is available for *inter partes* review.

B. Identification of Challenges

Under 37 C.F.R. §§ 42.104(b) and 42.22, Petitioners request that the Board institute this IPR on the Challenged Claim of the '980 Patent and cancel that claim as unpatentable on the following grounds:

Ground	Claim	Basis for Unpatentability
1	1	Obvious in view of Waylett and knowledge of POSITA

III. The '980 Patent

A. Effective Filing Date

The '980 Patent resulted from Application No. 13/235,021 (“’021 Application”), filed September 16, 2011. The '980 Patent claims priority to an earlier continuation patent filed April 23, 2008. For the purposes of this Petition, Petitioners assume that the Challenged Claim is entitled to a priority date no earlier than April 23, 2008.

B. Level of Ordinary Skill in the Art

As of 2008 a person of ordinary skill in the art (“POSITA”) in the field of the '980 Patent’s field would have had a bachelor’s degree in electrical engineering, computer engineering or an equivalent, as well as two years of relevant experience including, for example, work related to telecommunications networks. Ex. 1003, ¶ 55. Additional graduate education could substitute for professional experience, or significant experience in the field could substitute for formal education. Ex. 1003, Proctor Decl., ¶¶ 55. As shown by his CV (Ex. 1004) and as described in his expert declaration (Ex. 1003, ¶¶ 3–23), Mr. Proctor was qualified as a POSITA at the relevant time.

C. Overview of the Challenged '980 Patent

The '980 Patent states that rural areas often have limited or no telephony services. Ex. 1001, 1:23-24. The '980 patent further states that “[c]urrent telephone

systems are expensive to deploy” with “a typical cellular system requires a mobile switching center (MSC), a base station controller (BSC), and a home location register/visitor location register (HLR/VLR), collectively costing over two million dollars.” *Id.* at 1:30-34.

The '980 Patent is related to routing a call received at a distributed mobile architecture (DMA) server through a DMA gateway (DMAG) that is connected to a plurality of DMA servers. Ex. 1001, Abstract. Challenged Claim 1 recites:

1. A method comprising:

receiving a first call from a first mobile device at a first base transceiver station (BTS) interface of a first distributed mobile architecture (DMA) server, wherein the first call is associated with a destination device;

determining that a first distributed mobile architecture gateway (DMAG) supports communication with the destination device based on registration data stored at the first DMA server, wherein the registration data indicates that the destination device is not within a wireless coverage area associated with the first DMA server, and wherein the first DMAG is communicatively coupled to a plurality of DMA servers including the first DMA server;

converting first voice information associated with the first call to first packet data; and routing the first packet data to the destination device via the first DMAG.

D. Relevant Prosecution History

During prosecution, the claims were rejected as anticipated by U.S. Patent Publication No. 2004/0203677 (“Brown”). Ex. 1002, 125. In response, the patent applicant narrowed the claims to include a limitation that the “first DMAG is communicatively coupled to a plurality of DMA servers including the first DMA server.” *Id.*, 173. Following the examiner’s final rejections based on the claims as rendered obvious by Brown in view of U.S. Patent Publication No. 2012/0020293 (“Nix”), Applicant responded by narrowing the claims to include a “*first*” limitation: adding “*first*” in front of the claim elements “call,” “base transceiver interface,” “packet data,” “voice information,” which led to allowance. Ex. 1002, 270. The Examiner allowed the claims in a Notice of Allowance dated July 31, 2015 without specifying the reasons for allowance. Ex. 1002, 391-395.

IV. Claim Construction

The Board construes claims under the same standard used in civil actions in federal district court. Petitioners submit that for the purposes of this Petition the Board does not need to explicitly construe any claim term and there are no known

claim construction disputes that affect the outcome of this Petition.¹

V. Detailed Discussion of the Grounds for Unpatentability

The Challenged Claim is unpatentable based on one ground. Ground 1 establishes that claim 1 is Obvious in view of Waylett (Ex. 1005) and knowledge of POSITA.

A. Overview of the Principal Prior Art

1. Waylett (Ex. 1005)

Waylett was filed on July 15, 2004 and published as U.S. Patent Publication No. 2005/0088999 on April 28, 2005. Therefore, it qualifies as prior art under at least pre-AIA 35 U.S.C. § 102(b).

Waylett discloses that the “expense” associated with existing wireless networks is “unacceptable in certain rural or impoverished areas and communities” and there is a “need for an inexpensive communication system and method of operating the same, that are capable of providing voice and high speed data communication to users in communities hitherto un-served or underserved by conventional communication systems.” Ex. 1005, 1:64-2:7.

Waylett discloses the solution to this problem as a communication system that

¹ This claim-construction analysis is not a concession as to the scope of any claim term in litigation, or a waiver of any argument in any proceeding that claim terms are indefinite, invalid, or unpatentable.

includes at least “a private cellular network coupled to [a] WLAN [wireless local area network] to facilitate communications between the UEs [user equipment] and mobile stations associated with the private cellular network.” Ex. 1005, 4:24-27; Ex. 1003, ¶¶ 73 and 82.

Waylett’s Figure 5 is exemplary:

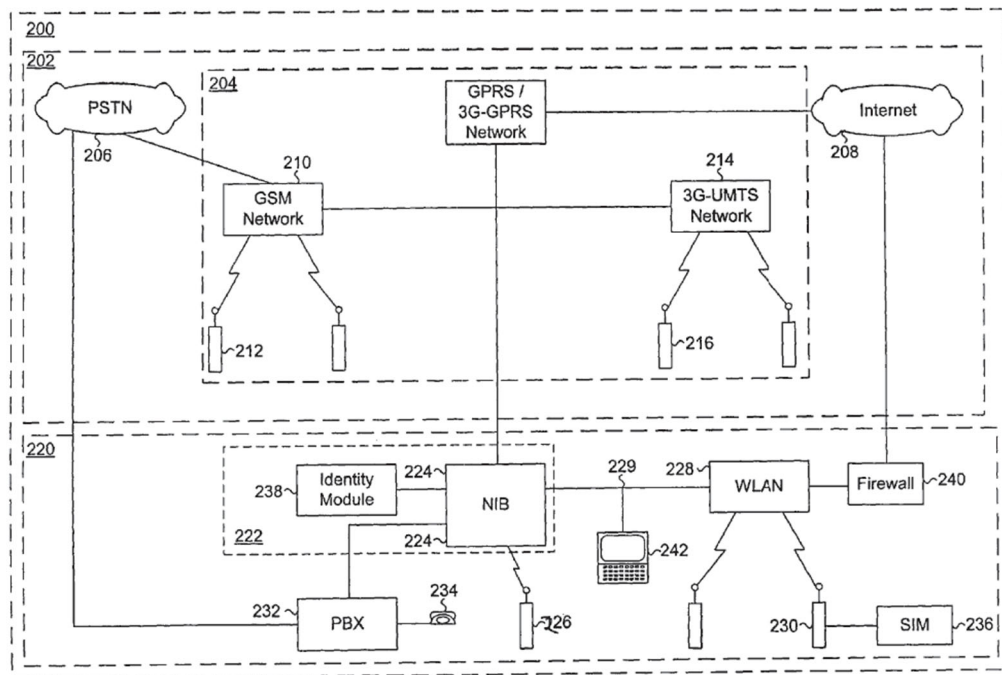


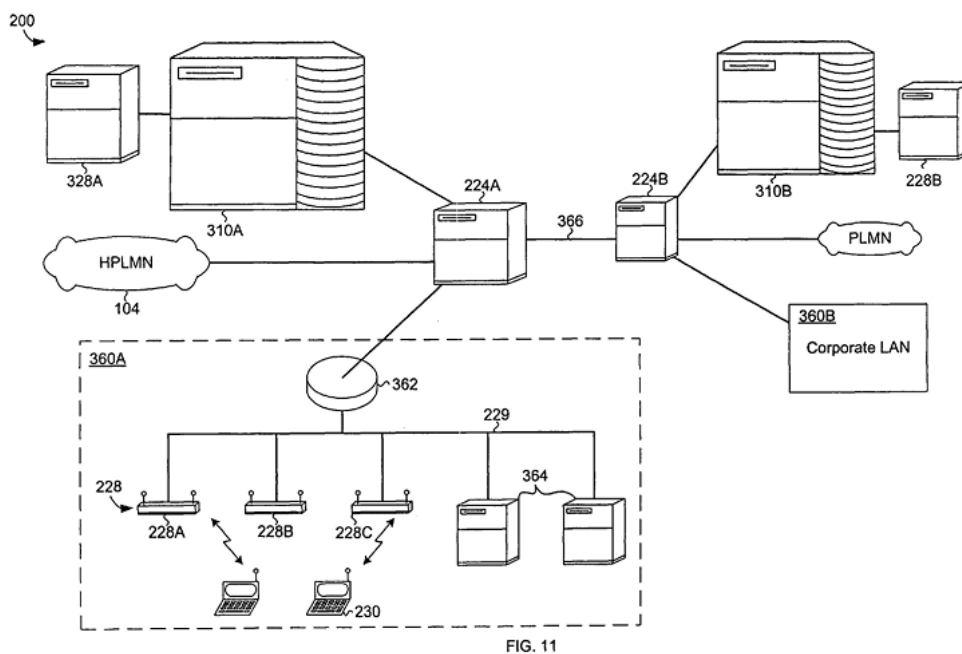
FIG. 5

Ex. 1005, FIG. 5; Ex. 1003, ¶ 73. Waylett’s Figure 5 depicts “private cellular network” 222, that includes an “Identity Module 238” and a “NIB 224.” *Id.*, 9:33-53 and Figure 5. The NIB 224 is described as a “Network-In-A-Box” that was “commercially available from interWAVE Communications Inc.” *Id.*, 9:36-40. The NIB “includes a MSC [mobile switching center], a BSC [base station controller] and a BTS [base transceiver station] in a single enclosure.” Ex. 1005, 9:41-42.

Waylett's "Identity Module 238" is described as a memory system coupled to the NIB that stores identifiers "that can be permanently or temporarily associated with one or more private UEs 230, to enable the private UE to communicate with . . . the private cellular networks 222 via the WLAN 228." Ex. 1005, 10:34-48.

Waylett's Figure 5 depicts "private MS [mobile stations] 226" in wireless communication with UEs 230 via NIB 224 and WLAN 228. Ex. 1005, FIG. 5; Ex. 1003, ¶ 73. Waylett discloses that voice to data conversion technology (a "VoIP [voice over IP] program") exists at the WLAN 228. Ex. 1005, 12:15-20; Ex. 1003, ¶¶ 76, 82.

Waylett also describes that a WLAN may connect to multiple NIBs. Ex. 1003, ¶ 84. Figure 11 is exemplary:



Ex. 1005, FIG 11; Ex. 1003, ¶ 84. Waylett explains that such systems, shown above, are “particularly suitable for enterprises operating a number of different WLANs 228 or corporate LANS 360A, 360B, at a number of different sites.” Ex. 1005, 17:7–16.

B. Ground 1: Claims 1-4, 6 and 8 Are Obvious in view of Waylett (Ex. 1005) and knowledge of POSITA

1. Claim 1

a. Element 1.1 Preamble

The preamble of claim 1 recites “*A method comprising:*”

Waylett discloses a “method of enabling a number of UEs to communicate with a ... private network via the WLAN ... includ[ing] *steps of receiving in the WLAN call information to or from one of the number of UEs*: providing subscriber identification and security information for the UE to an authentication server; and coupling the UE to the public network or private network over the WLAN.” Ex. 1005, 5:1-8 (emphasis added); Ex. 1003, ¶ 87.

Accordingly, to the extent the Board considers that the preamble is limiting, Waylett discloses this limitation. Ex. 1003, ¶ 87.

b. Element 1.2

Claim 1 also recites “*receiving a first call from a first mobile device at a first base transceiver station (BTS) interface of a first distributed mobile architecture (DMA) server, wherein the first call is associated with a destination device.*”

Waylett discloses a Network-In-A-Box (NIB) 224 (the claimed “*first DMA server*”). Ex. 1003, ¶ 80; Waylett’s Figure 5 is exemplary:

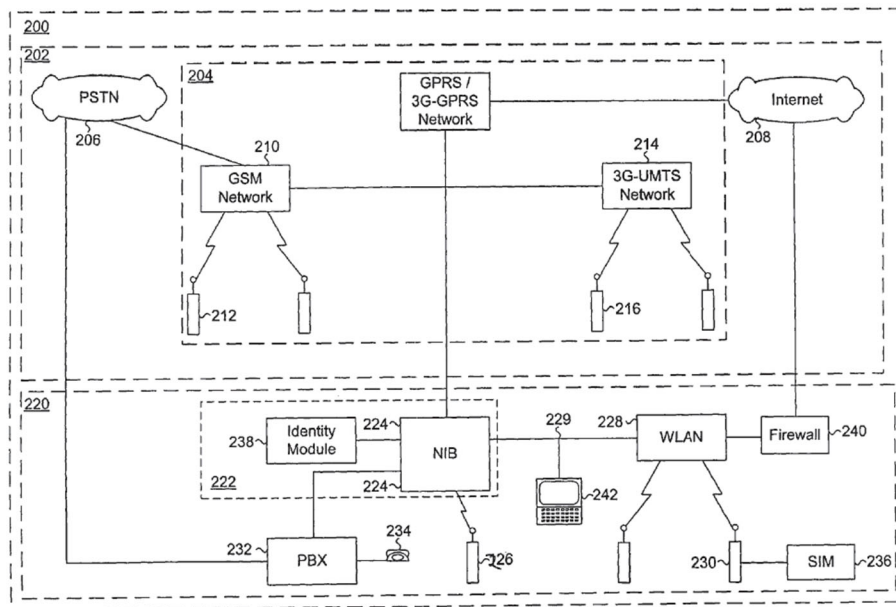


FIG. 5

Ex. 1005, FIG. 5; Ex. 1003, ¶ 80.

Waylett’s NIB includes a “*base transceiver station (BTS) interface*.” Ex. 1003, ¶ 90. The NIB “includes a includes a MSC [mobile switching center], a BSC [base station controller] **and a BTS [base transceiver station]** in a single enclosure.” Ex. 1005, 9:41-42 (emphasis added).

Waylett discloses “*receiving a first call from a first mobile device at a first base transceiver station (BTS) interface*.” Ex. 1003, ¶¶ 90–91. Waylett teaches that its NIB 224 wirelessly communicates with “private MS [mobile stations] 226” (the claimed “*first mobile device*”) via the interface for the NIB’s base transceiver station. Ex. 1005, 9:32-36. Based on this disclosure, a POSITA would understand that the

private mobile station receives calls over a cellular linkage between MS 226 and NIB 224. Ex. 1003, ¶¶ 90–91. In doing so, such a person would have understood that the MS 226 communicates with the NIB 224 via a base transceiver station interface. Ex. 1003, ¶¶ 90–91.

Waylett discloses “*the first call is associated with a destination device.*” Ex. 1003, ¶ 91. Waylett discloses a user equipment UE 230 (the claimed “*destination device*”) and phone calls occurring between MS 226 and UE 230. Ex. 1005, 9:48-50 (“enabl[ing] voice and data communications between the private UEs 230 and the private mobile stations 226”). 1003, ¶ 91.

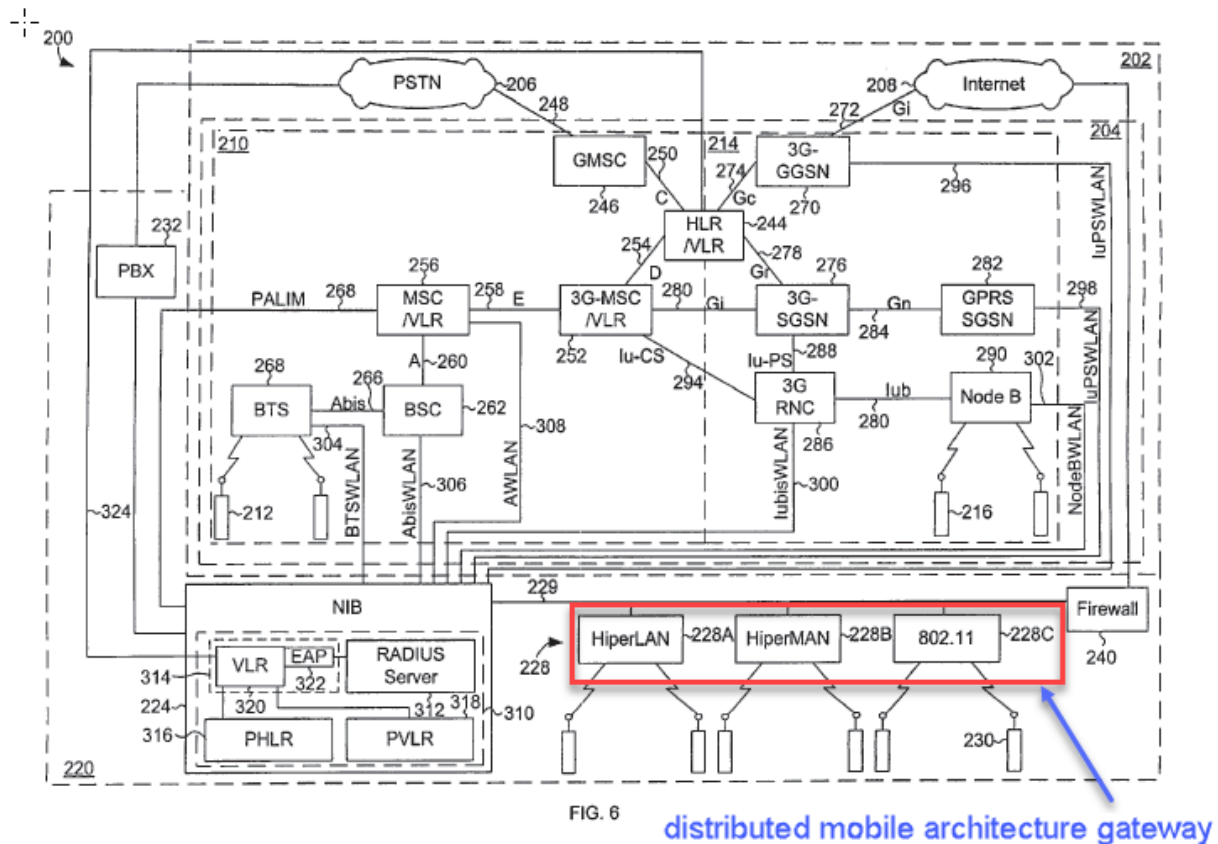
Thus, Waylett discloses and/or renders this limitation obvious.

c. Element 1.3

Claim 1 recites “*determining that a first distributed mobile architecture gateway (DMAG) supports communication with the destination device based on registration data stored at the first DMA server, wherein the registration data indicates that the destination device is not within a wireless coverage area associated with the first DMA server.*”

Waylett discloses a WLAN 228 in communication with NIB 224 (the claimed “*first distributed mobile architecture gateway (DMAG)*”) and UE 230 (the claim “*destination device*”). Ex. 1003, ¶¶ 93–99; *see, e.g.*, Ex. 1005, FIG. 5. The NIB is connected to the WLAN’s “access points” through a “wired local area network

(LAN 229), such as an Ethernet, 100Base T. Fast Ethernet or Gigabit Ethernet, or through a wireless or radio-link (not shown).” *Id.*, FIG. 5 and 9:53-57; Ex. 1003, ¶ 93. The access points are distributed, “separate and distinct,” “each using one of a number of different protocols including IEEE 802.11 standards (802.11), and ETSI standards for BRAN, such HiperLAN or HiperMAN.” *Id.*, 11:23-26; Ex. 1003, ¶ 93. Waylett’s Figure 6 illustrates an example of the distributed WLAN access points 228A, 228B, and 228C:



Ex. 1005, FIG. 6 (annotated); Ex. 1003, ¶ 93; *see also* Ex. 1005, 13:26-28. Waylett and the '980 patent both disclose a DMAG communicating with different network

protocols, including for example a GPRS network protocol. Ex. 1003, ¶ 93; *Compare* Ex. 1001, 9:10-36 and FIG 3 with Ex. 1005, 11:21-47 and 13:28-63.

Waylett discloses “*registration data*.” Waylett discloses use of an “Identity Module 238” coupled to the NIB 224 to “enable the private UE to communication with the ... private cellular network 222 via the WLAN 228.” Ex. 1005, 10:36-38. The Identity Module includes “at least one identifier or virtual identifier stored therein that can be ... associated with one or more private UEs 230.” *Id.*, 10:32-35. The Identity Module also “includes subscriber identification and security information.” Ex. 1005, 10:46-47. A POSITA would understand that the identifiers and/or the subscriber and security information is the claimed “*registration data*.” Ex. 1003, ¶ 94. For example, the ’980 patent describes “registration data” in a similar manner. *see, e.g.*, Ex. 1001, 8:10-14 (“Registration data related to a particular wireless communication device may include an identifier such as an international mobile subscriber identification (IMSI), associated with the particular wireless communication device.”); Ex. 1003, ¶ 94.

Waylett renders obvious “*registration data stored at the first DMA server*.” Ex. 1003, ¶ 95. Waylett’s Identity Module 238 is described as a memory system coupled to the NIB. Ex. 1005, 10:38-48; Ex. 1003, ¶ 95. A POSITA would have found it obvious to also store the Identity Module as part of the NIB’s memory. Ex. 1003, ¶ 95. For example, Waylett discloses use of a home location registry (HLR)

that is very similar to the Identity Module in that both store identifiers and subscriber and security information. *See* Ex. 1005, 14:32-35 (HLR “stores information on UEs 230 registered or subscribing to the communication system 200, and more particularly to the WLAN 228 and/or the private cellular network 222.”); *id.*, 12:38-42 (HLR “also includes an authentication and accounting server or function (not shown) used by many service providers to authorize access to the public GSM network 210 and/or the public 3G-network 214”); Ex. 1003, ¶ 95;. Waylett teaches that the HLR may be combined with the NIB as a simple matter of design choice. Ex. 1005, 14:29-32 (HLR “can be combined with the NIB 224”); Ex. 1003, ¶ 95. Given the similarities between an HLR and an Identity Module, a POSITA would be similarly motivated to try and combine the Identity Module with a NIB and would be able to do so with predictable results. Ex. 1003, ¶ 95. A POSITA would have also been motivated to make that modification in order to reduce the cost associated with the extra connections, memory hardware, and space required in having a separate Identity Module memory system. Ex. 1003, ¶ 95. A POSITA would also be motivated to make the modification to reduce delays in accessing information and result in faster processing. Ex. 1003, ¶ 95.

Waylett renders obvious “*determining that a first distributed mobile architecture gateway (DMAG) supports communication with the destination device based on registration data.*” Ex. 1003, ¶¶ 96–97. A POSITA would understand that

the UE 230 identifiers and subscriber information stored in Waylett's Identity Module "identify" that the WLAN (the claimed "DMAG") supports communication with the UE 230s (the destination device) associated with identified WLAN. Ex. 1003, ¶¶ 96–97. Further, the process of using identifiers to "identify" the location of a WLAN communicating with a destination device was well known by the earliest priority date. *See, e.g.*, Ex. 1003, ¶ 96 (citing Ex. 1006 as an example of WLAN messages including implicit and explicit identifiers to identify that the WLAN); Ex. 1006, Abstract, 9:10-21. Thus, a POSITA would know that the identifiers in Waylett's Identity Module are used to determine that a WLAN supports communication with the destination device, such as the UEs 230 that are depicted in Waylett's Figure 5 in communication with WLAN 228. Ex. 1003, ¶¶ 96–97.

Waylett renders obvious "*wherein the registration data indicates that the destination device is not within a wireless coverage area associated with the first DMA server.*" Ex. 1003, ¶ 98. For example, Waylett discloses a WLAN with distinct and separate network access points operating with different network protocols, such as "IEEE 802.11 standards (802.11), and ETSI standards for BRAN, such HiperLAN or HiperMAN." Ex. 1005, 11:23-26. A POSITA would understand that different network protocols have different wireless coverage areas. Ex. 1003, ¶ 98. A POSITA would have found it obvious to include a WLAN with at least one different wireless coverage area than the NIB, for example as taught by Waylett "to

ensure the interoperability of wireless communications equipment operating in the same spectrum but manufactured by different manufacturers.” Ex. 1005, 11:26-29; Ex. 1003, ¶ 98.

Thus, Waylett discloses and/or renders this limitation obvious.

d. Element 1.4

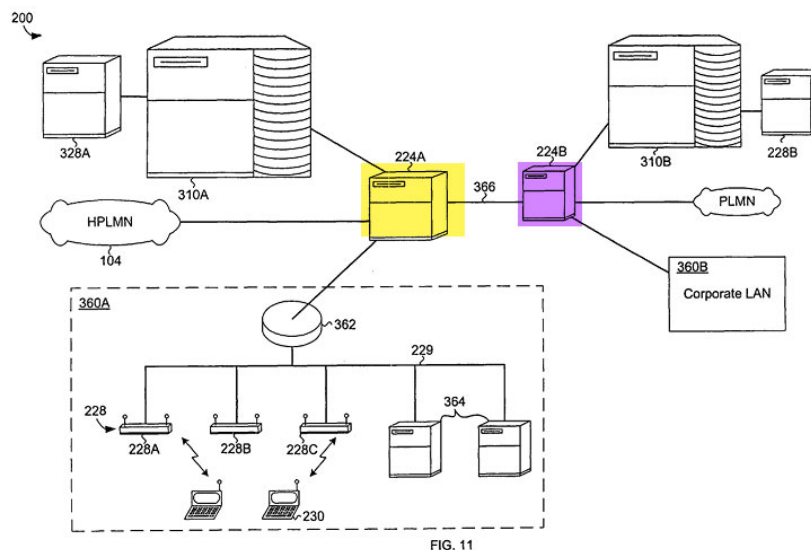
Claim 1 also recites “*wherein the first DMAG is communicatively coupled to a plurality of DMA servers including the first DMA server;*”

Waylett renders obvious “*the first DMAG is communicatively coupled to a plurality of DMA servers including the first DMA server.*” Ex. 1003, ¶¶ 100–105.

Waylett’s Figure 5 embodiment depicts one NIB (the claimed “*DMA server*”) connected to the WLAN. Ex. 1005, Fig. 5. Waylett, however, also teaches that the communication system in Figure 5 can include multiple NIBs. Ex. 1003, ¶ 101–103. Specifically, Waylett teaches that “the communication system 200 can include a number of private cellular networks 222, each with an associated WLAN 228, and each linked by a private wide area network (PWAN) (not shown).” Ex. 1005, 9:65-10:3. Waylett further discloses that each of the multiple private cellular networks 222 will include at least one . . . Network-In-A-Box™ (NIB 224)”. *Id.*, 9:36-39. Waylett further discloses the motivation for including multiple private cellular networks 222: (i) “to provide wireless or cellular type communication via a WLAN over an extended service area” and to “to avoid tolls and maintain owner

ship and control of information transmitted between different sites of an enterprise linked by the PWAN.” *Id.*, 10:1-7.

A POSITA would find it obvious to modify Waylett’s Figure 5 embodiment to include a WLAN 228 (the claimed “*first DMAG*”) that “is communicatively coupled to a plurality of” NIBs (the claimed “*DMA servers*”). Ex. 1003, ¶¶ 100-105. For example, as stated immediately above, Waylett expressly discloses that the communication system in Figure 5 can include multiple private cellular networks 222 and therefore multiple NIBs. Ex. 1005, 9:65-66 (“It will be understood that communication system 200 can include a number of private cellular networks”), 9:37-39 (“the private cellular network 222 includes at least one . . . Network-In-A-Box (NIB 224)”). Waylett also teaches linking a WLAN to multiple NIBs in order to “distribute HLR and registration and authentication loads.” Ex. 1005, 17:10-12. Waylett’s Figure 11 (copied below) is illustrative by depicting WLAN 228 (through access points 228A-C) communicatively coupled to NIBs 224A and 224B:



Ex. 1005, Fig. 1 (annotated); Ex. 1003, ¶¶ 103-104. Such a modification would be well within a POSITA's skillset and would be implemented with predictable results. Ex. 1003, ¶ 104. Waylett teaches that this configuration "is particularly suitable for us in enterprises operating a number of different WLANs 228 or corporate LANs 360A, 360B, at a number of different sites [such as] a chain of hotels, recreational parks or business centers owned and/or operated by a single enterprise." Ex. 1005, 17:12-16. A POSITA would be motivated to make the modification to the embodiment in Waylett's Figure 5 for the same reasons. Ex. 1003, ¶ 104.

Thus Waylett, in combination with a POSITA's knowledge renders this limitation obvious.

e. Element 1.5

Claim 1 recites "*converting first voice information associated with the first*

call to first packet data.”

Waylett renders obvious “*converting first voice information associated with the first call to first packet data.*” Ex. 1003, ¶ 106. Waylett discloses that the WLAN is “adapted to **enable voice** and data communication between the private UEs 230 and the private mobile stations 226, public mobile stations 212, public Ues 216, PBX telephones 234, and telephones ... coupled to the PSTN 206 and/or the Internet 208.” Ex. 1005, 9:47-53 (emphasis added). Waylett also discloses that the WLAN can include one or more packet-based networks such as IEEE 802.11. *Id.*, 11:23-26; Ex. 1003, ¶ 106. A POSITA would have found it obvious to use the embodiment in Waylett’s Figure 5 to connect a MS 226 voice call through the NIB224/WLAN 228 to a UE 230 connected via a 802.11 network as a predictable use of the limited set of disclosed elements. Ex. 1003, ¶ 106.

Waylett discloses that the WLAN 228 includes software for converting voice to packet data, for example to be used in converting a MS 226 voice call that is directed to a UE 230 connected via a packet-based 802.11 network. Ex. 1003, ¶ 106. Waylett specifically discloses that the conversion technology may exist at the private UE 230 “or a VoIP [voice over IP] program included with computer software or programs downloaded **from the WLAN 228.**” Ex. 1005, 12:15-20 (emphasis added). A POSITA would have understood that voice data transported over IP networks would require “*converting ... voice information ... to ... packet data.*” Ex. 1003, ¶

106.

Moreover, a POSITA would have also found this limitation obvious at least because Waylett discloses that the NIB includes “at least one GSM/GPRS transceiver” and that the WLAN supports communication with GPRS. Ex. 1005, 8:7-18, 13:55-63; Ex. 1003, ¶ 106. It was well known that the GSM standard converts voice data into a packetization of speech (*e.g.*, “*converting ... voice information ... to ... packet data*”). See Ex. 1010, 133 and 147; Ex. 1003, ¶ 106. A POSITA would have understood that converting voice information to packet data would result in the benefit of high capacity for voice and data communications, which is an important consideration in Waylett. Ex. 1005, Abstract and 2:20-24; Ex. 1003, ¶ 106.

Thus Waylett, in combination with a POSITA’s knowledge renders this limitation obvious.

f. Element 1.6

Claim 1 recites “*routing the first packet data to the destination device via the first DMAG.*”

Waylett renders obvious “*routing the first packet data to the destination device via the first DMAG.*” Waylett discloses that the WLAN is “adapted to enable voice and data communication between the private UEs 230 and the private mobile stations 226, public mobile stations 212, public UEs 216, PBX telephones 234, and

telephones ... coupled to the PSTN 206 and/or the Internet 208.” Ex. 1005, 9:47-53. A POSITA, would find this claim step obvious in view of the above-mentioned passages and Waylett’s disclosure (for example as depicted in Waylett’s Figure 5) of a MS 226 wirelessly communicating with the NIB and additionally, Waylett’s description of a method involving receiving in the WLAN call information *to or from* one of the number of UEs 230. Ex. 1005, 5:1-8; Ex. 1003, ¶ 108. Such a person would have also recognized that because Waylett discloses enabling VoIP over WLAN to UE 230, VoIP would require “*routing ... packet data to the destination device*” “*routing the first packet data to the destination device*” via the WLAN (the “*first DMAG*”).” Ex. 1005, 12:11-16; Ex. 1003, ¶ 108.

Thus Waylett, in combination with a POSITA’s knowledge renders this limitation obvious.

C. No Secondary Considerations Exist

No secondary indicia of non-obviousness exist. Petitioners reserve the right to respond to any assertion of secondary indicia of non-obviousness advanced by Patent Owners.

VI. The Parallel District Court Proceeding Does Not Warrant a Discretionary Denial

Under the Director’s interim procedure for evaluating requests for discretionary denial under 35 U.S.C. §314(a), regardless of any factors that otherwise apply, “the PTAB will not discretionarily deny institution of an IPR or

PGR in view of parallel district court litigation where a petitioner stipulates not to pursue in a parallel district court proceeding the same grounds as in the petition or any grounds that could have reasonably been raised in the petition.” *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation*, 7 (USPTO Dir. June 21, 2022).

Petitioners stipulate that, should the Board institute review, Petitioners will not pursue in parallel district court proceedings the same grounds as in the Petition or any grounds that could have reasonably been raised in the petition. Thus, the Board should not exercise discretion to deny institution under §314(a).

VII. Mandatory Notices

A. Real Parties-in-Interest

Petitioners are the real parties-in-interest. No other party had access to or control over the present Petition, and no other party funded or participated in preparation of the present Petition.

B. Related Proceedings

No previous IPR or post-grant proceeding has been filed challenging the '980 patent. The '980 Patent has been asserted by Patent Owner in the following district court litigation: *Lemko Corporation v Microsoft Corporation*, No. 3-22-cv-00363 (N.D. Tex.).

C. Lead and Backup Counsel

Petitioner's lead and backup counsel are:

Lead Counsel for Petitioner	Backup Counsel for Petitioner
Matthew Hopkins Winston & Strawn LLP 1901 L Street NW Washington, DC 20036 mhopkins@winston.com T: 202.282.5862, F: 202.282.5100 USPTO Reg. No. 76,273	Barry K. Shelton Winston & Strawn LLP 2121 N. Pearl Street, Suite 900 Dallas, TX 75201 T: 214.453.6500, F: 214.453.6400 bshelton@winston.com USPTO Reg. No. 43,113 Michael Rueckheim Winston & Strawn LLP 255 Shoreline Dr., Suite 520 Redwood City, CA 94065 mrueckheim@winston.com T: 650.858.6500, F: 650.858.6550 (<i>pro hac vice</i> to be filed)

D. Electronic Service

Petitioners consent to electronic service at:

Winston-MSFT-Lemko-IPR@winston.com

VIII. Fees

The required fee is being paid electronically through P-TACTS.

IX. Conclusion

Petitioners respectfully request that the Board institute IPR and enter a final written decision finding the Challenged Claim unpatentable.

Dated: February 15, 2023

Respectfully submitted,

/ Matthew Hopkins /
Matthew Hopkins
Lead Counsel
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
mhopkins@winston.com
T: 202.282.5862, F: 202.282.5100
USPTO Reg. No. 76,273

Barry K. Shelton
Winston & Strawn LLP
2121 N. Pearl Street, Suite 900
Dallas, TX 75201
T: 214.453.6500, F: 214.453.6400
bshelton@winston.com
USPTO Reg. No. 43,113

Michael Rueckheim
Winston & Strawn LLP
255 Shoreline Dr., Suite 520
Redwood City, CA 94065
mrueckheim@winston.com
T: 650.858.6500, F: 650.858.6550
(*pro hac vice* to be filed)

CERTIFICATE OF COMPLIANCE

This Petition complies with the word count limits set forth in 37 C.F.R. § 42.24(a)(1)(i), because this Petition contains 4,174 words, excluding the parts of the Petition exempted by 37 C.F.R. § 42.24(a)(1), determined using the word count provided by Microsoft Word, which was used to prepare this Petition.

Dated: February 15, 2023

Respectfully submitted,

/ Matthew Hopkins /
Matthew Hopkins
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
mhopkins@winston.com
T: 202.282.5862, F: 202.282.5100
USPTO Reg. No. 76,273

Lead Counsel for Petitioners

CERTIFICATE OF SERVICE

Under 37 C.F.R. §§ 42.6(e) and 42.105(a), this is to certify that on February 15, 2023, I caused to be served a true and correct copy of the foregoing “**PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 9,191,980**” and Exhibits 1001-1011 by Federal Express on the Patent Owner at the correspondence address of record for U.S. Patent No. 9,191,980:

Lemko Corporation
c/o Cygan Law Offices, P.C.
2300 Barrington Road, Suite 400
Hoffman Estates, IL

A courtesy copy of this Petition and supporting material was also served on litigation counsel for Patent Owner via email:

Jon B Hyland
Hilgers Graben PLLC
7859 Walnut Hill Lane
Suite 335
Dallas, TX 75230
Email: jhyland@hilgersgraben.com

/ Matthew Hopkins /
Matthew Hopkins
Winston & Strawn LLP
1901 L Street NW
Washington, DC 20036
mhopkins@winston.com
T: 202.282.5862, F: 202.282.5100
USPTO Reg. No. 76,273