

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.,
Petitioner,

v.

ZILKR CLOUD TECHNOLOGIES, LLC,
Patent Owner.

IPR2023-00663
Patent 9,998,607 B1

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

CYGAN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background and Summary*

Cisco Systems, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–3 and 5–6 of U.S. Patent No. 9,998,607 B1 (Ex. 1001, “the ’607 patent”). Paper 2 (“Pet.”). Zilkr Cloud Technologies, LLC. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 6 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2016); 37 C.F.R. § 42.4(a) (2019). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons explained below, we decline to institute an *inter partes* review of the ’607 patent.

B. *Related Matters*

Patent Owner states that the ’607 Patent is involved in *Zilkr Cloud Technologies, LLC v. Cisco Systems, Inc.*, 2:22-cv-00166-JRG-RSP (E.D. Tex.) (“Texas Litigation”), and was also involved in *Zilkr Cloud Technologies, LLC v. RingCentral, Inc.*, 3:21-cv-02807-S (N.D. Tex.), which was terminated on April 12, 2022.

C. *The ’607 Patent*

The ’607 patent sets forth “a particular way of integrating two separate technological systems—a telephony network, such [as] a PSTN [(Public Switched Telephone Network)], and a network of third-party

applications connected via the internet.” Prelim. Resp. 4. Customers having traditional analog telephone service may wish to add services and applications to their telephone systems. Ex. 1001, 1:23–33. However, many new services and applications are supplied by other providers, and will often use different rules, interfaces, and policies. *Id.* at 1:33–38, 5:47–49.

The ’607 patent provides a unified services platform that establishes service accounts for different application service provider systems, and integrates the different application programming interface (API) interfaces of each system therein. *Id.* at 5:31–49. The unified system further provides a description of the services, and permits users to trigger actions by a policy and rules engine that operates neutrally across network providers and application developers. *Id.* at 7:45–57.

Claim 1, reproduced below¹, is illustrative of the invention:

1. [1.0] A method of provisioning a plurality of applications from different application developer systems to a network provider system through a unified services platform, the method comprising:

[1.1] establishing a plurality of service accounts for a corresponding plurality of application service provider systems,

[1.2] wherein the plurality of application service provider systems provide services for use in association with a telephone number of a subscriber of telecommunication services;

[1.3] receiving, by a processor system, a plurality of API interfaces from the plurality of application service provider systems, wherein at least two of the API interfaces are different;

¹ We use the bracketed lettering added by Petitioner to differentiate among the claim limitations.

- [1.4] integrating, by the processor system, each of the plurality of API interfaces with a unified services platform API interface:
- [1.5] receiving a provider API interface for a network provider system;
- [1.6] integrating the provider API interface with the unified services platform API interface, wherein at least one of the plurality of API interfaces from the plurality of application service provider systems is not compatible with the provider API interface
- [1.7] receiving a definition of a service and a plan for each of the plurality of application service provider systems;
- [1.8] receiving one or more definitions of actions for the service, wherein the actions comprise responses to triggering events occurring with a telephone number; and
- [1.9] publishing, after integrating each of the plurality of API interfaces with the unified services platform, the definition of the service, the definition of the plan, and the one or more definitions of actions for each application service provider in a provisioning catalog.

D. Evidence

Petitioner relies on the references listed below.

Reference		Date	Exhibit No.
De Castro	U.S. 2012/0016932	Jan. 19, 2012	1005
Robb	US 8,126,722	Feb. 28, 2012	1006

Petitioner also relies on the Declaration of Dr. Henry Houh (Ex. 1003).

E. The Asserted Ground of Unpatentability

Petitioner contends that claims 1–3, 5, and 6 are unpatentable under the following ground. Pet. 3–4.

Claims Challenged	35 U.S.C. §	References
1–3, 5–6	103 ²	De Castro, Robb

II. ANALYSIS

A. Level of Skill in the Art

Petitioner asserts that a person of ordinary skill in the art would have had a working knowledge of the telecommunications and networking art that is pertinent to the ’607 patent. A POSITA would have had a bachelor’s degree in electrical engineering, computer science, computer engineering, or an equivalent, and two years of relevant experience in telecommunications and networking. Lack of professional experience can be remedied by additional education, and vice versa.

Pet. 11–12 (citing Ex. 1003 ¶ 22). Patent Owner acknowledges this assertion, and takes no position. Prelim. Resp. 19–20.

For purposes of this Decision, we adopt Petitioner’s proposal, which we find consistent with the level of skill reflected by the prior art, and which is supported by expert testimony. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103. Because the ’607 patent does not claim a filing date before March 16, 2013, the effective date of the relevant amendment, the AIA version of § 103 applies.

B. Claim Construction

We construe a claim

using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.

37 C.F.R. § 42.100(b) (2019); *see also Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

Both Petitioner and Patent Owner assert that no constructions are necessary for purposes of this proceeding. Pet. 12; Prelim. Resp. 18. “[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Matal*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). We agree that no constructions are required at this preliminary stage for the above-disputed terms.

C. Pertinent Law

A claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed subject matter and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” We resolve the question of obviousness on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of

nonobviousness, i.e., secondary considerations.³ *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

D. Obviousness over de Castro and Robb

Petitioner contends that claims 1–3, 5, and 6 would have been obvious over de Castro and Robb. Pet. 15. For the reasons below, Petitioner has not shown that it is reasonably likely to prevail on this ground.

1. Overview of de Castro

De Castro is titled “System and Method for Telephone and Communication Services with Message-Based API.” Ex. 1005, code (54). De Castro describes a communication application server having a unified framework for call control and media control. Ex. 1006 ¶ 38. An “API server on the communication application server defining a messaging API protocol enables an application script to pass commands remotely to the communication application server to operate it.” *Id.* The communication application server provides telephony and communication services to a plurality of customers with application scripts hosted on scripting engines. *Id.* ¶ 39. A customer can “code the application script in a preferred programming language using a custom framework providing a set of customer-specific libraries,” such as through third-party scripting engines. *Id.* ¶ 41.

³ The record does not include allegations or evidence of objective indicia of nonobviousness.

2. *Overview of Robb*

Robb is titled, “Application Infrastructure Platform.” Ex. 1006, code (54). Robb describes an Application Infrastructure Platform (AIP) “providing comprehensive services including integrated Application Service Provider (ASP), Independent Service Vendor (ISV), and the like services, software, and hardware.” *Id.* at 1:15–20. The AIP provides applications, services, and content to the ASPs, and may aggregate those along with its own applications in a Product Catalog. *Id.* at 3:13–20.

3. *Analysis*

We determine that Petitioner has not shown the combination of de Castro and Robb to teach claim limitation 1.3. Claim limitation 1.3 recites, in pertinent part, “receiving, by a processor system, a plurality of API interfaces from the plurality of application service provider systems.” Ex. 1001, 58:35–37. Claim limitation 1.2 specifies that the application service provider systems “provide services for use in association with a telephone number of a subscriber of telecommunication services.” *Id.* at 58:31–34. Considering both limitations, the claim requires that a processor receives API interfaces from a plurality of systems that provide services to be associated with a telephone number.

Petitioner asserts that de Castro’s scripting engines are the plurality of the application service provider systems, because they process application scripts to provide telephone and other services, and control calls made to and from a client’s telephone number. Pet. 31 (citing Ex. 1005 ¶ 39, Fig. 14; Ex. 1003 ¶ 82). Petitioner further asserts that the scripting engines process application scripts using a computer processor. *Id.* at 35 (citing Ex. 1005, Fig. 14, ¶¶ 38, 119; Ex. 1003 ¶¶ 91–92). Petitioner also asserts that the APIs

must, “at some point,” have been received by the scripting engines because the APIs are described as being located within, and hosted by, the scripting engines. *Id.* (citing Ex. 1003 ¶¶ 91–92).

Patent Owner argues, and we agree, that Petitioner’s assertions do not match the claim limitation. Limitation [1.3] recites “receiving, by a processor system, a plurality of API interfaces from the plurality of application service provider systems.” We agree that Petitioner instead shows the application service provider receiving API interfaces from some unnamed source. Prelim. Resp. 25–26 (citing Ex. 2001 ¶¶ 61–62).

Petitioner states, “Fig. 14 . . . illustrates scripting engine 600-1 . . . processing the customer-specific framework,” and that APIs are processed “by appropriate scripting engines,” in which the scripting engines “use at least one computer processor.” Pet. 33 (quoting Ex. 1005, Fig. 14, ¶ 119), 35 (quoting Ex. 1005 ¶ 38; quoting Ex. 1003 ¶ 93). Dr. Houh’s testimony correlates the claimed “receiving” to de Castro’s act of the scripting engines receiving the APIs. *Id.* at 35 (citing Ex. 1003 ¶ 92). Thus, Petitioner does not provide a teaching of receiving API interfaces from application service provider systems, as set forth in limitation [1.3].

We do not understand Petitioner to be arguing that the application service provider is receiving the API interfaces in its processor from its scripting engine (the application service provider); i.e., from itself, as alluded to by Patent Owner. Prelim. Resp. 27 (citing Ex. 2001 ¶ 62). Such an interpretation would also be inconsistent with Petitioner’s assertions noted above, and for Petitioner’s assertions for limitation [1.4], in which Petitioner asserts that, for the same “processor system” of limitation [1.3], the API client 630 performs the processing, and points to Figure 14 that illustrates API client 630 as part of, not separate from, scripting engines 600.

The Petition provides no indication that the processor could be separated from the scripting engine such that both entities could function separately and still perform the claimed functions. Consequently, we understand Petitioner to be asserting that the scripting engine includes a processor as part of the engine itself. Thus, Petitioner does not show how the combination of de Castro and Robb would teach limitation [1.3].

For these reasons, Petitioner has not shown sufficiently that claim 1 would have been obvious over de Castro and Robb. Claims 2, 3, 5, and 6 depend from claim 1. Petitioner's argument and evidence for those claims do not remedy the above-noted deficiencies in Petitioner's allegations for claim 1. Accordingly, Petitioner has not established that there is a reasonable likelihood that it would prevail in showing that claims 1–3 and 5–6 would have been obvious over de Castro and Robb.

III. DISCRETIONARY DENIAL UNDER 35 U.S.C. §§ 314(a)

Patent Owner contends that we should deny the Petition under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), because the parallel litigation will resolve the patentability issues prior to our deadline for a final written decision. Prelim. Resp. 67. Subsequent to Patent Owner's Preliminary Response, Petitioner filed a *Sotera* stipulation. Paper 7. Because we deny the Petition on the merits, we do not reach whether we should exercise our discretion to deny the Petition under *Fintiv*.

IV. CONCLUSION

For the foregoing reasons, we decline to institute an *inter partes* review of the '607 patent.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that pursuant to 35 U.S.C. § 314(a), no *inter partes* review is instituted as to claims 1–3 and 5–6 of the '607 patent.

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