UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC
Petitioner

v.

JENAM TECH, LLC
Patent Owner

Case IPR2023-00932
Patent No. 11,064,058

PATENT OWNER'S PRELIMINARY RESPONSE

Under 37 C.F.R. § 42.107

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Patent Trial and Appeal Board
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Submitted Electronically via PTAB E2E

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 3

A. Concurrent Proceedings 3

B. Person of Ordinary Skill in the Art ("POSITA") 5

C. Overview of the '058 Patent 6

III. ARGUMENT 8

A. The Petition Presents a Challenge Under 35 U.S.C. § 112 and Should be Denied 8

B. Morris Is Not Prior Art to the Challenged Patent Because The Challenged Patent's Priority Chain Is Complete and Unbroken 9

C. Petitioner's First Challenge (regarding the so-called "non-TCP" term) .9

1. Petitioner is Mis-Interpreting the Claims (and their Breadth) to Advance its Arguments 12

2. The Alleged Full Breadth of Scope of the Challenged Claims is Clearly Supported 15

3. The Challenged Claims Clearly Fall within an Important Exception of *Gentry Gallery* and its Progeny 20

D. Petitioner's Second Challenge (regarding the connection "set up" phrase) 29

E. Petitioner's Third Challenge (combination of previous elements) 40

IV. CONCLUSION 41

TABLE OF AUTHORITIES

Page(s)

Cases

Amgen Inc. v. Hoechst Marion Roussel,
314 F.3d 1313 (Fed. Cir. 2003) 20

Cywee Grp. v. Huawei Device Co.,
No. 2:17-cv-00495 WCB-RSP,
2018 U.S. Dist. LEXIS 206369 (E.D. Tex. Dec. 6, 2018) 17

Gentry Gallery, Inc. v. Berkline Corp.,
134 F.3d 1473,
45 U.S.P.Q.2D (BNA) 1498 (Fed. Cir. Jan. 27, 1998)..... passim

In re Peters,
723 F.2d 891 (Fed. Cir. 1983) 20

Innovative Display Techs. LLC v. Acer Inc.,
No. 2:13-CV-522-JRG,
2014 U.S. Dist. LEXIS 118422 (E.D. Tex. Aug. 26, 2014).....16

LizardTech, Inc. v. Earth Res. Mapping, Inc.,
424 F.3d 1336 (Fed Cir. 2005) 12, 21, 22

Moba v. Diamond Automation,
325 F.3d 1306 (Fed. Cir. 2003) 20

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) (en banc) 34

Starhome GmbH v. AT&T Mobility LLC,
743 F.3d 849,
109 USPQ2d 1885 (Fed. Cir. 2014) 34

Straight Path IP Grp., Inc. v. Sipnet EU S.R.O.,
806 F.3d 1356 (Fed. Cir. 2015) 8

Statutes

35 U.S.C. § 103 2

35 U.S.C. § 112 ..... 1, 22

35 U.S.C. §311 8

37 C.F.R. § 1.53 9

37 C.F.R. § 42.107(a) 1

37 C.F.R. § 42.107(b) 1

TABLE OF EXHIBITS

Exhibit	Description
2001	Affidavit of Derek Dahlgren
2002	Declaration of Dr. Michael Smith
2003	Lin Declaration, EX1002, PGR2021-00082
2004	Institution Decision, IPR2020-00845
2005	Termination Decision, IPR2021-00869

Through the undersigned Counsel, Patent Owner, Jenam Tech, LLC submits the following Patent Owner Preliminary Response pursuant to 37 C.F.R. § 42.107(a). *See also* 37 C.F.R. § 42.107(b).

I. INTRODUCTION

Jenam Tech, LLC ("Patent Owner") enters this Patent Owner Preliminary Response ("POPR") in this IPR2023-00932 inter-partes review ("IPR"), in response to a petition ("Petition") filed by petitioner Google, LLC ("Petitioner") which challenges U.S. Pat. No.: 11,064,058 (the "Challenged Patent"). By way of background, the family of the Challenged Patent has, to date, been the subject of ***nineteen (19)*** post-grant challenges launched ***by Petitioner***. For each of the previous post-grant challenges, Patent Owner has, via continuation practice: 1) disclosed, to the U.S. Patent Office ("USPTO"), prior art relied upon by Petitioner, 2) identified, for the USPTO, the post-grant challenges themselves, and 3) entered claims purposed to bolster validity against such prior art. Still yet, Patent Owner has carefully monitored Petitioner's non-prior art challenges (e.g. under 35 U.S.C. 112) regarding various claim terms (e.g. "TCP-variant," etc.) in post-grant review ("PGR") challenges (e.g. PGR2021-00082, PGR2022-00013), as well as the Board's previous decisions for all post-grant challenges. Based on this information, Patent Owner has been careful to craft claims that take all of the above into account, with the goal of earning the right to survive PTAB review.

Now, after multiple rounds of continuation practice resulting in the grant of over a dozen patents[1] by the USPTO, Petitioner attacks the Challenged Patent by arguing that its priority applications do not provide written description support for a certain claim term, among others, of the Challenged Patent, that Petitioner refers to as the so-called "non-TCP" term. Specifically, ***without*** presenting any actual prior art (that does not rely on a written description challenge), Petitioner now relies solely and exclusively on a written description challenge, in an effort to cancel the challenged claims of the Challenged Patent.

Patent Owner respectfully requests that USPTO deny institution of this Petition, and put an end to this never-ending string of challenges launched by Petitioner against the family of the Challenged Patent.

Specifically, in its Petition, Petitioner advances "Ground 1," where 'Claims 54, 56, 62-64, and 68 are unpatentable under AIA 35 U.S.C. § 103 over U.S. Publication No. 2011/0213820 to Morris ("Morris") (EX1005) in view of IETF RFC 3261 "SIP: Session Initial Protocol" ("SIP") (EX1006).' Petitioner also acknowledges that the above Morris reference resides in the priority chain of the Challenged Patent, but then argues that the challenged claims of the Challenged

[1] USPN11677862, USPN11064058, USPN11050856, USPN11223707, USPN11050855, USPN10986217, USPN10951742, USPN10742774, USPN10375215, USPN10306026, USPN10069945, USPN10075565, USPN10075564, USPN9923996, USPN9923995, USPN8219606

Patent are "not entitled to an effective filing date prior to March 18, 2021." For the reasons below, this is ***not*** the case (i.e. there ***is*** written description support in the priority applications of the Challenged Patent), and the above Ground 1 should be dismissed because it relies on a reference that is ***not*** prior art.

II. BACKGROUND

A. Concurrent Proceedings

The following IPR and PGR petitions have been filed challenging patents related to the Challenged Patent:

- IPR2020-00845 (challenging clams of U.S. Patent No. 9,923,995, "the '995 patent") (Final Written Decision issued with all challenged claims canceled; Final Written Decision affirmed on appeal; see Jenam Tech, LLC v. Google LLC, No. 2022-1085, slip op. at 2 (Fed. Cir. Apr. 11, 2023));
- IPR2020-00742 (challenging clams of the '995 patent) ("Unified - 742 IPR") (Terminated);
- IPR2021-00627 (challenging clams of U.S. Patent No. 10,375,215, "the '215 patent") (Final Written Decision issued with all challenged claims canceled; Final Written Decision on appeal);
- IPR2021-00628 (challenging clams of U.S. Patent No. 10,075,564, "the '564 patent") (Final Written Decision issued with all challenged claims canceled or disclaimed pre-institution; Final Written Decision on appeal);

- IPR2021-00629 (challenging clams of the ’564 patent) (Judgment Granting Request for Adverse Judgment issued after all challenged claims disclaimed post-institution);

- IPR2021-00630 (challenging claims of U.S. Patent No. 10,075,565, “the ’565 patent”) (Final Written Decision issued with all challenged claims canceled or disclaimed pre-institution; Final Written Decision on appeal);

- IPR2021-00867 (challenging claims of U.S. Patent No. 10,306,026, “the ’026 patent”) (Final Written Decision issued with all challenged claims canceled; Final Written Decision on appeal);

- IPR2021-00868 (challenging claims of the ’026 patent) (Final Written Decision issued with all challenged claims canceled or disclaimed pre-institution; Final Written Decision on appeal);

- IPR2021-00869 (challenging claims of U.S. Patent No. 10,069,945, “the ’945 patent”) (Final Written Decision issued with all challenged claims canceled; Final Written Decision on appeal);

- IPR2021-00870 (challenging claims of the ’945 patent) (Final Written Decision issued with all challenged claims canceled; Final Written Decision on appeal);

- PGR2021-00082 (challenging claims of U.S. Patent No. 10,742,774, the ’774 patent) (challenged claim disclaimed by PO and institution denied in view of disclaimer);

- PGR2022-00013 (challenging claims of U.S. Patent No. 10,951,742, "the '742 patent") (challenged claims disclaimed by PO and institution denied in view of disclaimer);
- IPR2023-00925 (challenging claim of U.S. Patent No. 11,050,855, "the '855 patent") (filed 5/18/2023);
- IPR2023-00926 (challenging claim of U.S. Patent No. 11,050,855, "the '855 patent") (filed 5/18/2023);
- IPR2023-00927 (challenging claim of U.S. Patent No. 10,986,217, "the '217 patent") (filed 5/18/2023);
- IPR2023-00928 (challenging claim of U.S. Patent No. 10,986,217, "the '217 patent") (filed 5/18/2023);
- IPR2023-00929 (challenging claim of U.S. Patent No. 11,050,856, "the '856 patent") (filed 5/18/2023);
- IPR2023-00930 (challenging claim of U.S. Patent No. 11,050,856, "the '856 patent") (filed 5/18/2023);
- IPR2023-00931 (challenging claim of U.S. Patent No. 11,064,058, "the '058 patent") (filed 5/18/2023); and
- IPR2023-00932 (challenging claim of U.S. Patent No. 11,064,058, "the '058 patent") (filed 5/18/2023).

B. Person of Ordinary Skill in the Art ("POSITA")

For the purposes of this proceeding, Jenam does not contest Petitioner's description of a POSITA.

C. Overview of the '058 Patent

The Challenged Patent describes both explicitly and via an incorporation by reference of its priority applications, including the initially-filed ’454 application (published as US20110213820A1 - “original ’454 application”), an apparatus and method for detecting a time period in a connection, for the purpose of deactivating/closing such connection. This technique has, among other advantages, one possible advantage of deactivating/closing such connection when the connection is idle.

In one embodiment, the aforementioned technique is built on Transmission Control Protocol (TCP). For example, such TCP embodiment involves a packet “header” of a “TCP packet.” However, one or more other embodiments are indeed ***also*** disclosed where the aforementioned technique is built on a protocol that is ***not*** TCP. In such ***alternate*** embodiment and unlike the TCP embodiment that involves a packet “header,” such non-TCP embodiment utilizes a “footer” of a “protocol packet, where such “protocol” is a “variant of … TCP” [“[a]n equivalent or analog of an ITP header may be included in a ***footer*** of a ***protocol*** packet in an extension and/or ***variant*** of the current ***TCP***” - paragraph [0080] of the original ’454 application-emphasis added]. Further, the specification includes an absolute myriad of other examples of features that vary from TCP, where such non-TCP

features are ***not*** part of RFC 793 (TCP). See, for example, the combination of paragraphs [0002-6], [007-11], [0049], [0054], [0055], [0057], [0069], [0070], [0076], [0080], [0087-88], [0094], [0108], [0123] et al. of the original '454 application. These disclosures are all consistent with a general theme, throughout the specification, that ***non***-TCP embodiments were contemplated [["identify portions of the packet according to the ***TCP specification*** and/***or*** according to a ***particular implementation***" paragraph [0115] of the original '454 application-emphasis added].

Even still, the Challenged Patent discloses that the connection (in which the time period is detected) includes communications ***before*** the connection is established/set up ['[t]he specified "three-way handshake" and other patterns of message exchange ***for setting up a*** TCP ***connection*** include ***packets*** that are considered ***to be in the*** TCP ***connection for purposes of this disclosure***" (paragraph [0076] of the original '454 application-emphasis added)]. In fact, the original '454 application discloses a very specific example of a "***time period***" being detected during processing of a received "***packet***" that is specifically disclosed to be "***included*** in ***setting up***" a "***connection***" ["a potential ***idle time period*** may ***begin*** at some specified point ***during*** and/or after processing a ***received*** TCP ***packet***" (paragraph [0101] of the original '454 application-emphasis added) / "[the] ***received*** TCP ***packet*** may be a packet included in ***setting up*** the TCP

connection as described above" (paragraph [0112] of the original '454 application-emphasis added)]. Even still, the challenged Patent explicitly provides examples of such "deactivat[ion]" that are unique to (i.e. ***would only apply to***) "connection" "set up"/"establishment" ["***[d]eactivating the TCP connection*** may include… ***releasing a resource*** allocated for … ***activating*** the TCP connection." (paragraph [0108] of the original '454 application-emphasis added)]. *See* EX2002 at ¶¶[00013-15].

III. ARGUMENT

A. The Petition Presents a Challenge Under 35 U.S.C. § 112 and Should be Denied

The Petition asks the Board to break the Challenged Patent's priority by finding that its parent application's "substantially the same" specification lacks written support for certain claim elements. Patent Owner will address each of these alleged lack of support claims below.

Section 311 limits IPRs to "ground[s] that could be raised under section 102 or 103." 35 U.S.C. §311. *See also Straight Path IP Grp., Inc. v. Sipnet EU S.R.O.*, 806 F.3d 1356, 1363 (Fed. Cir. 2015) ("written-description and enablement challenges were not, and could not have been, part of the inter partes review that is now before us."). However, rather than comparing the claims of the Challenged Patent to prior art, Petitioner asks the Board to compare the claims to the Challenged Patent's own specification, a quintessential §112 analysis.

Petitioner does not cite any cases where the Board has undertaken the written description analysis Petitioner requests and the Board should decline to do so here.

B. Morris Is Not Prior Art to the Challenged Patent Because The Challenged Patent's Priority Chain Is Complete and Unbroken

During prosecution, the applicant properly claimed priority under 37 C.F.R. § 1.53(d). Each prior-filed application names the same inventor, Robert Paul Morris. (Exs. 1038, 1039, 1043-1047). The Challenged Patent listed each and every application in the chain as part of the application data sheet. (Ex. 1004 at 279-286.) Similarly, each of the applications in the priority chain listed each and every earlier application in its own data sheet and in the first paragraph of its specification. (Ex. 1038, 1039, 1043-1047). And each claim was made within the proper time period. (*Id*.) Petitioner does not suggest or argue otherwise. Accordingly, the Challenged Patent properly claimed priority.

C. Petitioner's First Challenge (regarding the so-called "non-TCP" term)

Petitioner Google challenges the Challenged Patent by arguing that its priority applications, including the initially-filed U.S. Patent Application No. 12/714,454 application, published as US2011/0213820-A1 ("original '454 application"-EX1038), do not provide written description support for certain claim

language of the Challenged Patent that includes the so-called "non-TCP" term[2] ["the first packet for use in a protocol that is separate from a transmission control protocol (TCP)"]. Turning to the actual claim language at the center of this dispute, the Challenged Patent requires a "protocol that is separate from a transmission control protocol (TCP)" (the "disputed TCP phrase"). Notably, Petitioner does not take issue with support for the remaining claim limitations, and even admits support therefor[3].

Petitioner's arguments do not involve a typical written description support challenge, where there is dispute whether a claim phrase has ***any*** written description support ***whatsoever***. Indeed, as admitted by Petitioner at page 68 of its Petition, the original ''454 application discusses that "[a]n equivalent or analog of an ITP header may be included in a footer of a protocol packet in an extension and/or ***variant*** of the current ***TCP***' (emphasis added). Further, as acknowledged by Petitioner on pages 33-35 of its Petition, the "protocol that is separate from…TCP" of the disputed TCP phrase is clearly established, in the dependent

[2] For the remaining portions of the body of this briefing, Patent Owner *itself* will not reference the terms (e.g. "non-TCP," "TCP-based," etc.) that Petitioner used to describe the claim language and specification support, since nowhere in the challenged claims of the Challenged Patent is there any mention of such phraseology.

[3] "Morris discloses and/or suggests the features recited elements 54.a-b, 54.d-f, and 54.h-i." (page 12 of Petition), and 'Morris discloses carrying a method (e.g., the features set forth in
elements 54.c-i), "at an apparatus," as claimed.' (page 18 of Petition).

claims of the Challenged Patent, ***to be inclusive of*** the "TCP"-"variant" protocol explicitly present in ***both*** the claims ***and*** the original '454 application. See Table 1 below that summarizes this:

Table 1

Disputed TCP Phrase (emphasis added)	**Dependent Claims in Challenged Patent that Tie Disputed TCP Phrase to Specification Support (emphasis added)**	**Excerpts of Original '454 Application that Support Disputed TCP Phrase & Dependent Claims (emphasis added)**
"***protocol that is separate from*** Transmission Control Protocol (***TCP***)"	53. The apparatus of claim 1, wherein at least one of: ... the ***protocol*** includes a ***TCP-variant protocol***; ... the ***protocol*** includes ***one or more features of TCP***, and ***one or more features not of TCP***;	"[a]n equivalent or analog of an ITP header may be included in a footer of a ***protocol*** packet in an extension and/or ***variant*** of the current ***TCP***" - Paragraph [0080]

Thus, the notion that there is ***at least some support*** for the claimed "protocol that is separate from…TCP" is ***not*** disputed. This is clear because, as acknowledged by Petitioner, the original '454 application explicitly discloses a "variant" of "TCP" (which is separate from TCP) and, in fact, the original '454 application goes to great lengths to explicitly distinguish RFC 793 (TCP) and further discloses features (which are claimed in the Challenged Patent) that are ***not*** part of RFC 793 (TCP). In fact, the USPTO confirmed that such disclosed features

(in the claims) are separate from TCP, when it considered RFC 793 (TCP) as prior art, and granted the Challenged Patent. Again, there is ***no dispute*** that there is ***at least some support*** for the claimed "protocol that is separate from…TCP."

Instead, in its Petition, Petitioner takes aim at the alleged ***breadth of scope*** of the disputed TCP phrase, and argues that such ***breadth of scope*** is not supported by the original '454 application, under *Gentry Gallery* (*Gentry Gallery, Inc. v. Berkline Corp*., 134 F.3d 1473, 45 U.S.P.Q.2D (BNA) 1498 (Fed. Cir. Jan. 27, 1998)) and its progeny (e.g. *LizardTech, Inc. v. Earth Res. Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed Cir. 2005), etc.). To set the stage for its arguments, Petitioner contends, at page 64 of the Petition, that "the claims encompass scenarios where the first packet is used in a protocol that ***does not utilize*** TCP ***AT ALL***" (emphasis added)[4]. *See* EX2002 at ¶¶[00028-31].

1. Petitioner is Mis-Interpreting the Claims (and their Breadth) to Advance its Arguments

First and foremost, Patent Owner vehemently disputes Petitioner's underlying assumption that "the claims encompass scenarios where the first packet is used in a protocol that ***does not utilize*** TCP ***at all***" (emphasis added). To the

[4]Indeed, in concurrently-pending, related proceedings (e.g. page 64 of IPR2023-00926 & page 70 of IPR2023-00927), Petitioner makes arguments similar to those in this Petition based on a ***lack of*** certain claim limitations, such as a negative claim limitation including the term "TCP" [the claim "broadly recites setting up a first connection (e.g., between the first and second node) ***without specifying the type of connection***"-emphasis added].

contrary, the claims ***themselves*** prove otherwise, by including ***other*** claim elements that ***indeed*** encompass, broadly at a high-level, at least ***one or more*** features of TCP[5]. For example, the excerpt below from the original '454 application (and the Challenged Patent) acknowledges that prior art RFC 793 (TCP) requires an exchange of at least one "packet" to "establish" a "connection":

> "In an aspect, an ITP header may be included in a ***packet*** exchanged during setup of TCP connection. RFC 793 describes a "three-way handshake" for ***establishing*** a TCP ***connection***. The synchronization requires each side to send it's own initial sequence number and to receive a confirmation of it in acknowledgment from the other side. Each side must also receive the other side's initial sequence number and send a confirming acknowledgment." (paragraph [0076] of the original '454 application)

Further, Claim 54 (for example) encompasses (using broad claim elements) an apparatus for "setting up the first connection, by sending, from the apparatus to a node, the first packet." Thus, the claims include claim elements that do ***indeed*** encompass (albeit broadly) at least ***one or more*** features of TCP. Specifically, the claimed "packet" for "setting up the…connection" are articulated broad enough to cover one or more features of the aforementioned "handshake" for "establishing a

[5] It is important to note that, while the cited claim elements are broad enough to indeed encompass at least one or more features of TCP, such claim elements are also broad enough to cover other non-TCP protocols that use features similar, but not necessarily identical, to those of TCP.

TCP connection" required by RFC 793 (TCP). In other words, even if the disputed TCP phrase alone, in a vacuum, has a breadth that encompasses "a protocol that ***does not utilize*** TCP ***AT ALL***" (emphasis added), Claim 54, in its entirety and inclusive of the ***other*** claim elements noted above, does ***not*** encompass "a protocol that ***does not utilize*** TCP ***AT ALL***" (emphasis added). Again, this is because such ***other*** claim elements ***indeed*** encompass, broadly at a high-level, at least ***one or more*** features of TCP.

The above alone establishes that Petitioner's underlying assumption that "***the claims encompass scenarios*** where the first packet is used in a protocol that ***does not utilize*** TCP ***AT ALL***" (emphasis added) is simply ***not*** true. Obviously, Petitioner is ***misinterpreting*** the claims with the sole purpose to advance its lack-of-support arguments[6].

[6] Notably, when addressing the ***breadth of scope*** of the disputed TCP phrase, Petitioner does not apply the ***actual*** disputed TCP phrase. Instead, Petitioner, under the guise of "no…construction", imports additional limitations when characterizing the "scope" of the disputed TCP phrase (i.e. "protocol that [[is not]]does not utilize Transmission Control Protocol (TCP) at all"), for the purpose-driven goal of creating a "straw man" written description argument to "shoehorn" the facts of this case into those of the Federal Circuit's *Gentry Gallery* (and its progeny) missing "essential or critical feature" decision. Importantly, any contention of Petitioner that advancing an alleged "scope" of a claim is somehow different than arguing over the "meaning" of such claim (i.e. claim construction) should be rejected, as the "scope" of a claim is in-separately coupled to its "meaning."

Clearly, Petitioner is advancing its gross misinterpretation of the claims and their breadth (that is contradicted by the claims ***themselves***) with the purpose-driven goal of creating a "straw man" written description argument to "shoehorn" the facts of this case into those of the Federal Circuit's *Gentry Gallery* (and its progeny). At least for the reasons above, the Board should reject such gross misinterpretation, and dismiss the instant Petition. *See* EX2002 at ¶¶[00032-34].

2. The Alleged Full Breadth of Scope of the Challenged Claims is Clearly Supported

With the above said, even assuming ***arguendo*** that Petitioner's claim interpretation is correct (which it is not) such that "the claims encompass scenarios where the first packet is used in a protocol that ***does not utilize*** TCP ***AT ALL***" (emphasis added), Petitioner's arguments (as to an alleged lack of support) nevertheless fail. Specifically, as set forth above, the above-cited claim/specification citations make it clear that the disputed TCP phrase is intended to be supported by the "variant" of "TCP" disclosure ("TCP-variant disclosure") cited above. Further, the specification includes an absolute myriad of examples of features that vary from TCP, where such features are ***not*** part of RFC 793 (TCP). See, for example, the combination of paragraphs [0002-6], [007-11], [0049], [0054], [0055], [0057], [0069], [0070], [0076], [0080], [0087-88], [0094], [0108], [0123] et al. of the original '454 application. These disclosures are all consistent with a general theme, throughout the specification, that ***non***-TCP embodiments

were contemplated ("identify portions of the packet according to the ***TCP specification*** and/***or*** according to a ***particular implementation***" paragraph [0115] of the original '454 application-emphasis added).

The issue then becomes whether the TCP-variant disclosure properly supports the Petitioner's alleged ***breadth of scope*** of the disputed TCP phrase. Without further addressing whether Petitioner's alleged ***breadth of scope*** of the disputed TCP phrase is proper or not (since such issue has been addressed above), it is clear, through Petitioner's own admissions and the Board's earlier findings, that the disputed TCP phrase is indeed supported. In other words, the disputed TCP phrase is supported, even if Petitioner's alleged ***breadth of scope*** of the disputed TCP phrase is deemed proper (which it is not).

Specifically, in other patents where the TCP-variant disclosure was explicitly claimed ("TCP-variant claim limitation"), Petitioner challenged such TCP-variant claim limitation as being *indefinite*, due to having an unbounded (i.e. boundless) scope. In such previous post-grant challenges, Petitioner took aim at the "TCP-variant" claim limitation as allegedly being *indefinite* due to having no '**minimum *or*** ... ***maximum bounds*** of the word "variant" in the TCP-variant terms' (paragraph 144. of Ex. 1002, PGR2021-00082-emphasis added- Ex. 2003[7]).

[7] Notably, while Petitioner challenged the "TCP-variant" term as allegedly being *indefinite*, Petitioner did ***not*** challenge written description support for such term. Further, Patent Owner disagrees with Petitioner's *indefiniteness* challenge, as

As is established below, when Petitioner previously complained about the alleged *indefiniteness* of the ***boundless claim scope*** of the TCP-variant ***claim limitation***, Petitioner admitted that the scope of the TCP-variant ***disclosure*** is similarly ***boundless***. This admission is dispositive on the issue of whether there is sufficient support for the disputed TCP phrase, even if the disputed TCP phrase was found to encompasses scenarios where the first packet is used in a protocol that ***does not utilize*** TCP ***at all***, as purported by Petitioner. And, importantly, the Board agreed with the principle that the "TCP-variant" phraseology is ***not*** limited to any "slight" variations.

Thus, to resolve the support issue at hand, one need only look to Petitioner's own admissions, and the Board's guidance, that unequivocally establish that the original '454 application clearly evidenced that the inventor had possession of any "protocol," ***regardless as to the amount of variation from TCP***. As set forth below, this is evidenced by the fact that, in the original '454 application, Patent Owner did not put any constraints (e.g. a maximum constraint, etc.) on the amount of "varia[tion]" from "TCP" disclosed in the original '454 application. Thus, Patent Owner did not set forth a limit to the aforementioned amount of

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Petitioner is clearly confusing claim *breadth* with *indefiniteness*. *Innovative Display Techs. LLC v. Acer Inc.*, No. 2:13-CV-522-JRG, 2014 U.S. Dist. LEXIS 118422, at *83-84 (E.D. Tex. Aug. 26, 2014) & *Cywee Grp. v. Huawei Device Co.*, No. 2:17-cv-00495 WCB-RSP, 2018 U.S. Dist. LEXIS 206369, at *43 (E.D. Tex. Dec. 6, 2018)

"varia[tion]" from "TCP," and thus did not exclude large (or even complete) "varia[tions]" from "TCP." Importantly, both Petitioner and the Board agreed with this notion in previous proceedings.

Starting with Petitioner itself, Petitioner has affirmatively admitted that Patent Owner did not put any "maximum" bound on an amount of the disclosed "variance" from "TCP":

> 'the…***disclosure*** does ***not inform*** a person of ordinary skill in the art ***regarding*** the minimum or ***the maximum bounds of the word "variant"*** in the TCP-variant terms' (paragraph 144. of Ex. 1002, PGR2021-00082-emphasis added).

> 'the ***intrinsic record*** does ***not provide*** guidance to inform a person of ordinary skill in the art with reasonable certainty as to what type of (or ***how much***) ***"variance" from the "TCP" would encompass the claimed "TCP-variant***"' (paragraph 128. of Ex. 1002, PGR2021-00082-emphasis added).

Further the Board agreed with the notion that there is no ("slight") limit to the level of "variance" when it comes to the disclosed "variant" of "TCP." Specifically, at pages 17-18 of its Institution Decision in a related proceeding (IPR2020-00845- Ex. 2004), the Board summarized Petitioner's attempt to quantify the "variation" from "TCP" as being limited to "slight" and then the Board rejected such characterization, while adopting Patent Owner's notion that

the file history provides no such limit (in "variation" from "TCP") in the context of "TCP-variant" (which is encompassed by the disputed TCP phrase):

> 'Petitioner argues that "TCP-variant" encompasses ***slight*** variations from TCP. …
>
> Patent Owner argues that "TCP-variant connection" means "a protocol connection where the protocol of the connection ***varies from TCP***." …
>
> In our analysis below, we apply the plain and ordinary meaning of "TCP-variant connection," i.e., ***a connection that varies from TCP***" (emphasis added).

In conclusion, Petitioner's admissions as to the ***boundless scope*** of the TCP-variant ***disclosure*** is, in effect, a dispositive admission that such TCP-variant ***disclosure*** in the original '454 application is sufficient to support the disputed TCP phrase (which encompasses TCP-variant), even if the claims (including the disputed TCP phrase) were found to encompasses scenarios where the first packet is used in a protocol that ***does not utilize*** TCP ***at all***. And, importantly, the Board agreed, in principle, with the notion that the TCP-variant phraseology is not limited to any "slight" variations of TCP. The Petition should be dismissed based on these Petitioner admissions and Board decisions alone. *See* EX2002 at ¶¶[00035-40].

3. The Challenged Claims Clearly Fall within an Important Exception of *Gentry Gallery* and its Progeny

Even assuming (***arguendo***) that Petitioner's alleged boundless scope of the disputed TCP phrase is not supported (which is ***not*** the case), there is a very important exception to the line of cases that Petitioner relies upon to reach its ill-informed conclusion. Namely, the Federal Circuit provided clear guardrails for the application of *Gentry Gallery* and its progeny. Specifically, the Federal Circuit, in *In re Peters, 723 F.2d 891, 221 USPQ 952* (Fed. Cir. 1983), prohibited the application of *Gentry Gallery* in situations where the disputed claim term was ***not*** "essential or critical" to the operation or patentability of the claim.

The above guardrails have been cited by the Federal Circuit, multiple times, to distinguish *Gentry* from fact scenarios like this one. For example, in *Moba v. Diamond Automation*, 325 F.3d 1306, 1320 (Fed. Cir. 2003), the Federal Circuit specifically noted that, in *Gentry*, 'the inventor had clearly expressed in the written description that he considered his invention to be limited to the specific location of the controls on the console on the sofa ("***the only possible location***") and that any variation was "outside the stated purpose of the invention"' (emphasis added). This sentiment was repeated in *Amgen Inc. v. Hoechst Marion Roussel*, 314 F.3d 1313, 1333-34 (Fed. Cir. 2003), when the Federal Circuit noted that *Gentry* made 'it was clear that the patentee considered placement of the controls in the center console "to be an ***essential*** element of his invention"' and, "[***h***]***ence***, this court

limited the scope of the patentee's claims to a sofa with controls located in a center console" (emphasis added).

In other words, for *Gentry Gallery* to even apply, Petitioner must prove that the existence of ***at least some*** "TCP" is "essential or critical" to the operation or patentability of the claim. As set forth below, this is simply ***not*** the case in the present Challenged Patent.

First, Patent Owner went out its way to disclose an alternative to "TCP," in the form of a "TCP"-"variant." The disclosure of such additional "TCP"-"variant" embodiment, as an alternative to "TCP," is sufficient to evidence that "TCP" is ***not*** "essential or critical" to the operation or patentability of the claim. If TCP was "essential or critical," the original '454 application would not have included such disclosure of another embodiment that deviates/varies from TCP. However, to the contrary, Patent Owner explicitly set forth, in multiple places in the specification, that alternatives to "TCP" (e.g. like the "TCP"-"variant" protocol cited earlier, etc.) were contemplated ["identify portions of the packet according to the ***TCP specification*** and/***or*** according to a ***particular implementation***" [0115] of the original '454 application-emphasis added].

This very important alternate-embodiment disclosure distinguishes Petitioner's primary cited caselaw. Specifically, at page 69 of its Petition, Petitioner cites *LizardTech* in support of its position. However, *LizardTech* merely

explained 'that a ***specification cannot always support expansive claim language*** and satisfy the requirements of 35 U.S.C. § 112 "merely by clearly describing ***one embodiment*** of the thing claimed"' (emphasis added). Thus, *LizardTech* is clearly distinguished (from the facts of this case) by virtue of the fact that the original '454 application discloses ***multiple embodiments***, including a "TCP"-"variant" embodiment that is disclosed as an alternate to "TCP[8]."

Second, in the Background of the original '454 application, Patent Owner described its invention as addressing problems with a "keep alive" option, which is specifically disclosed as being "**not**…part of the TCP specification." Clearly, improving on an "option" that is not even "part of the TCP specification," is dispositive evidence that "TCP" is not "essential or critical" to the ***operation*** or ***patentability*** of the claim. In terms of "***operation***" essentiality/criticality, the Background makes it clear that the inventor was improving an "option" that is not even "part of the TCP specification" and, thus, "TCP" is not "essential or critical" to the "***operation***" of the claim. Further, in terms of "***patentability***" essentiality/criticality, Patent Owner has, through its negative claim limitation ("protocol that is ***separate from***…***TCP***"), established that any positive

[8] *LizardTech* clearly pivoted on the fact that the specification disclosed only a single embodiment ("[t]he specification provides ***only a single way*** of creating a seamless DWT" – emphasis added).

recitation/requirement of "TCP" in the claim is not "essential or critical" to the "***patentability***" of such claim.

Third, at page 66 of the Petition, Petitioner argues that "the disclosures are limited to using the options field in a TCP header defined by RFC 793." This is simply not true. At paragraph [0080] of the original '454 application (excerpted below), Patent Owner explicitly and unequivocally stated that the disclosures in the Challenged Patent were ***not*** limited to using the options field in a TCP header defined by RFC 793. Specifically, as set forth in the paragraph below, Patent Owner says the ***exact opposite***, and even presents a specific embodiment including, ***instead*** of an "***RFC 793*** *"* *"****TCP****"* "***header***", a packet "***footer***" of a protocol that is ***separate from*** TCP, i.e. "***other*** than those specified for TCP options in RFC 793."

> "Those skilled in the art will recognize given this disclosure that an ITP header may have other suitable formats and may be included in a TCP packet in structures and locations ***other*** than those specified for ***TCP options in RFC 793***. An equivalent or ***analog*** of an ITP header may be included in a ***footer*** of a protocol packet in an extension and/or ***variant of the current TCP***." (emphasis added).

Given the above disclosure, "TCP" is not "essential or critical" to the "***operation***" of the claim, which is a prerequisite for Petitioner to succeed under *Gentry Gallery* and its progeny.

Fourth, also at page 66 of the Petition, Petitioner makes a point that the original '454 application "uses the term "TCP" nearly 400 times…[and] [n]ot once does the '454 application refer to a protocol that is different/separate from TCP (e.g., non-TCP)"[9]. This is also not true. As established earlier, the claimed "protocol that is separate from…TCP" encompasses the disclosed "variant" of "TCP", where just ***one*** disclosed variance is enough to support the disputed TCP phrase, and where the specification discloses numerous examples of variances from TCP without putting any maximum limit on the number of such variances and, therefore, supports any ***alleged full breadth*** of the disputed TCP phrase (e.g. encompassing a protocol that ***does not utilize*** TCP ***AT ALL***" -emphasis added). Thus, the admitted disclosure of a "protocol" that is a "***variant***" of "TCP" (along with the combination of previously-cited paragraphs describing a variety of variances) support the claimed "protocol that is separate from…TCP."

Petitioner attempts to skirt this fact, on page 68 of its Petition, where Petitioner argues "variants are mentioned solely within the context of a TCP

[9] Simply pointing to what the'454 application ***does*** disclose is irrelevant to the issue of what the '454 application allegedly does ***not*** disclose. Further, any allegation that any exact phrase is absent, is irrelevant. Per MPEP 2163, "[t]he subject matter of the claim need ***not*** be described ***literally*** (i.e., using the ***same terms or in haec verba***) in order for the disclosure to satisfy the description requirement" (emphasis added). See also *Purdue Pharma LP v. Faulding Inc*., 230 F.3d 1320, 1323 (Fed. Cir. 2000) (holding that the disclosure does not have to provide in haec verba support in order to satisfy the written description requirement).

packet." Again, this is ***not*** true. At paragraph [0080] of the original '454 application (excerpted below), Patent Owner explicitly and unequivocally disclosed, as an alternative to a "TCP packet," a "***protocol*** packet" in a "***variant of the current TCP***."

> "Those skilled in the art will recognize given this disclosure that an ITP header may have other suitable formats and may be included in a ***TCP packet*** in structures and locations other than those specified for TCP options in RFC 793. An equivalent or analog of an ITP header may be included in a footer of a ***protocol packet*** in an extension and/or ***variant of the current TCP***." (emphasis added).

The packet of a "protocol" that is a "variant" of "TCP" supports the claimed "protocol that is separate from…TCP" and, therefore, any "packet" in any such disclosed "TCP"-"variant" "protocol" is ***not*** "within the context of a TCP packet," as purported by Petitioner. Still yet, in the above context, Patent Owner even discloses use of a "footer" instead of a "header," which clearly undermines Petitioner's related argument.

Yet again, given the above disclosure, "TCP" is not "essential or critical" to the "***operation***" of the claim, which is a prerequisite for Petitioner to succeed under *Gentry Gallery* and its progeny.

Fifth, spanning the bottom of page 67 to page 69 of the Petition, Petitioner takes issue with the assertion of the claims of the Challenged Patent against a

protocol such as UDP. The basis for Petitioner's argument is that "a UDP-based protocol … does not utilize TCP **at all**". This argument is repeated throughout pages 67-69 of the Petition, and is simply not true. To evidence this, Patent Owner addresses the following, most detailed argument presented by Petitioner at page 67 of the Petition (emphasis added):

> "a POSITA would have understood that a ***protocol*** that does not utilize TCP ***at all*** (like the ***UDP-based*** protocol noted in PO's infringement chart) would operate in a different environment with its own set of rules regarding at least (i) the setup of a connection between two nodes in a network, (ii) how the devices would communicate with each other, (iii) the packet structure used for communication, and (iv) detection of timeouts that would cause the connection to close."

As established in Table 2 below, the above arguments are belied by: 1) the ***supported*** claim elements asserted against a ***UDP-based*** protocol that are ***used by TCP*** (emphasis added below), and 2) the Board's own conclusions in related proceedings where a UDP-based protocol (USPN 6674713 to ***Berg***-EX1028) was used to invalidate claims broader (and different) versions of the claims that, importantly, ***also*** have one or more of the same or similar elements ***used by TCP*** (again, emphasis added below). As mentioned earlier, the claims include claim elements that do ***indeed*** encompass (albeit broadly) at least ***one or more*** features of TCP, namely the claimed "packet" for "setting up the… connection" that is broad

enough to cover one or more features of the "handshake" for "establishing a TCP connection" required by RFC 793 (TCP). In view of the above, it is fatally hypocritical for Petitioner to a) successfully invalidate, based on a UDP protocol (***Berg***), Patent Owner's claims including one or more elements that have ***un***-contested support and that are used by TCP (emphasis added below), and then b) argue, on the different issue of support, that "a UDP-based protocol … does not utilize TCP **at all**."

Table 2

Petitioner's Arguments (emphasis added)	**Claim Limitations WITHOUT Contested Support that are Asserted Against UDP-Based Protocol (emphasis added for elements used by TCP)**	**Claim Limitations in Claims Invalidated by PTAB in view of UDP-Based Protocol disclosed in *Berg* (emphasis added for elements used by TCP)**
"(i) the ***setup*** of a ***connection*** between two nodes in a network"	"***setting up*** the first ***connection***, by sending, from the apparatus to a node, the first packet" (Claim 54)	"***establish*** a second protocol ***connection*** with another server computer, by:… identifying… generating … sending…" (Claim 34 of USPN 10069945 invalidated in IPR2021-00869- Ex. 2005)
"(iii) the ***packet*** structure used for com-munication"	"a first ***packet*** including a first parameter field identifying first metadata for use in determining a second duration for detecting the first type of time period" (Claim 54)	"second protocol ***packet*** including an idle time period parameter field identifying metadata for the idle time period based on the idle information" (Claim 34 of USPN 10069945 invalidated in IPR2021-00869)

Still yet again, given the above, "TCP" is not "essential or critical" to the "***operation***"/ "***patentability***" of the claim, which is a prerequisite for Petitioner to succeed under *Gentry Gallery* and its progeny.

Sixth and Finally, spanning the bottom of page 69 to page 70 of the Petition, Petitioner concludes that the original '454 application only 'relates to using a TCP options field in a conventional TCP packet structure provided by RFC 793 to share idle time information between nodes...Figure 8 below, "adapted from RFC 793," illustrates this configuration.' However, as set forth above, Patent Owner clearly disclosed other embodiments (e.g. a "TCP"-"variant" "protocol packet," etc.), as an alternative to the "RFC 793" ("TCP") "packet structure" disclosure that Petitioner cites above. Further, as mentioned earlier, Patent Owner even discloses use of a "footer" (paragraph [0080] of the original '454 application) instead of the "header" (of Figure 8) which clearly undermines Petitioner's argument outlined above[10].

In conclusion, for all of the six reasons outlined above, "TCP" is not "essential or critical" to the "***operation***"/ "***patentability***" of the claim. Thus,

[10] Petitioner's arguments that span the bottom of page 70 through page 76 of its Petition have already been addressed above, and those will not be separately addressed, because Patent Owner does not rely on any "Materials Incorporated by Reference," nor any contents of "Summaries"/"Claims" of any priority applications that are not present in the Challenged Patent (which incorporates the priority applications by reference).

Petitioner has clearly not met this very important prerequisite required under *Gentry Gallery* and its progeny.

D. Petitioner's Second Challenge (regarding the connection "set up" phrase)

In Petitioner's second written description support challenge, Petitioner takes aim at the following claim language of the Challenged Patent and argues that it allegedly lacks support:

> "***at least partially closing the first connection*** by at least partially releasing the resource allocated for the first connection, based on ***detecting***, as a function of the first duration, as a function of an absence of one or more packets, and by the apparatus ***during*** at least a portion of the first connection including ***at least a portion of the first connection set up***: a ***first time period*** of the first type of time period" (emphasis added).

To supports its argument[11], Petitioner states, at Page 79 of its Petition, that the application that lead to the Challenged Patent "discloses detection of time

[11] In a footnote on page 79 of its Petition, Petitioner makes a point that "a similar challenge [was made] regarding lack of written description support for these features in a related patent, [and] Patent Owner disclaimed the challenged claims." Such fact should not prejudice Patent Owner, as Patent Owner is fielding nineteen (19) post-grant challenges launched by Petitioner. Patent Owner has limited resources and, when it makes sense (for economy purposes), Patent Owner should be able to disclaim without prejudice. It is also notable that, in multiple previous IPRs, Patent Owner's challenged claims that explicitly included the so-called "non-TCP" term at issue in this Petition. Petitioner could have raised this issue in such previous IPRs (in addition to the relied-upon art), but chose not to.

periods ***after a*** TCP connection is set up (established) for purposes of detecting idle time periods and closing such idle TCP connections." While this is true, it is ***also*** true that the application that lead to the Challenged Patent ***also*** discloses: detection of time periods ***during*** TCP connection set up, and releasing a resource to at least partially close a connection ***during*** TCP connection set up. To be clear, the Challenged Patent discloses detection of time periods both ***before*** and ***after a*** TCP connection is set up (established) for purposes of detecting idle time periods and closing such idle TCP connections.

This disclosure is afforded by a clear indication that 1) detection of a time period can occur "in" or "via" a "connection," and 2) such "connection" ***includes*** connection "set up." As for 1) above, see, for example, the excerpts below:

> "With reference to the method illustrated in FIG. 2, block 202 illustrates the method includes receiving, by a first node, first idle information for ***detecting a first idle time period*** during which no TCP packet including data in a first data stream sent ***in the TCP connection*** by a second node is received by the first node" (paragraph [0052] of the original '454 application-emphasis added).
>
> "***detecting a time period*** in the idle time period during which first node 602 has received acknowledgment for all data sent ***via the TCP connection*** in the TCP data stream by first node 602 to second node 604." (paragraph [0092] of the original '454 application-emphasis added).

> "a packet from second node 604 included ***in the TCP connection*** is an event that, in various aspects, may directly and/or indirectly ***indicate the beginning of a potential idle time period***" (paragraph [0101] of the original '454 application-emphasis added).

As for 2) above, see, for example, the excerpts below that disclose that a "connection" includes packets that are exchanged for ***setting up*** such "connection":

> "In an aspect, an ITP ***header*** may be included in a ***packet*** exchanged ***during setup*** of TCP ***connection***. … The specified "three-way handshake" and other patterns of message exchange ***for setting up a*** TCP ***connection*** include ***packets*** that are considered ***to be in the*** TCP ***connection for purposes of this disclosure***." (paragraph [0076] of the original '454 application-emphasis added).

Thus, taking 1) and 2) above together, there is clear disclosure of detecting a time period in and via a "connection," where such "connection" is explicitly set forth to include the "set up" thereof.

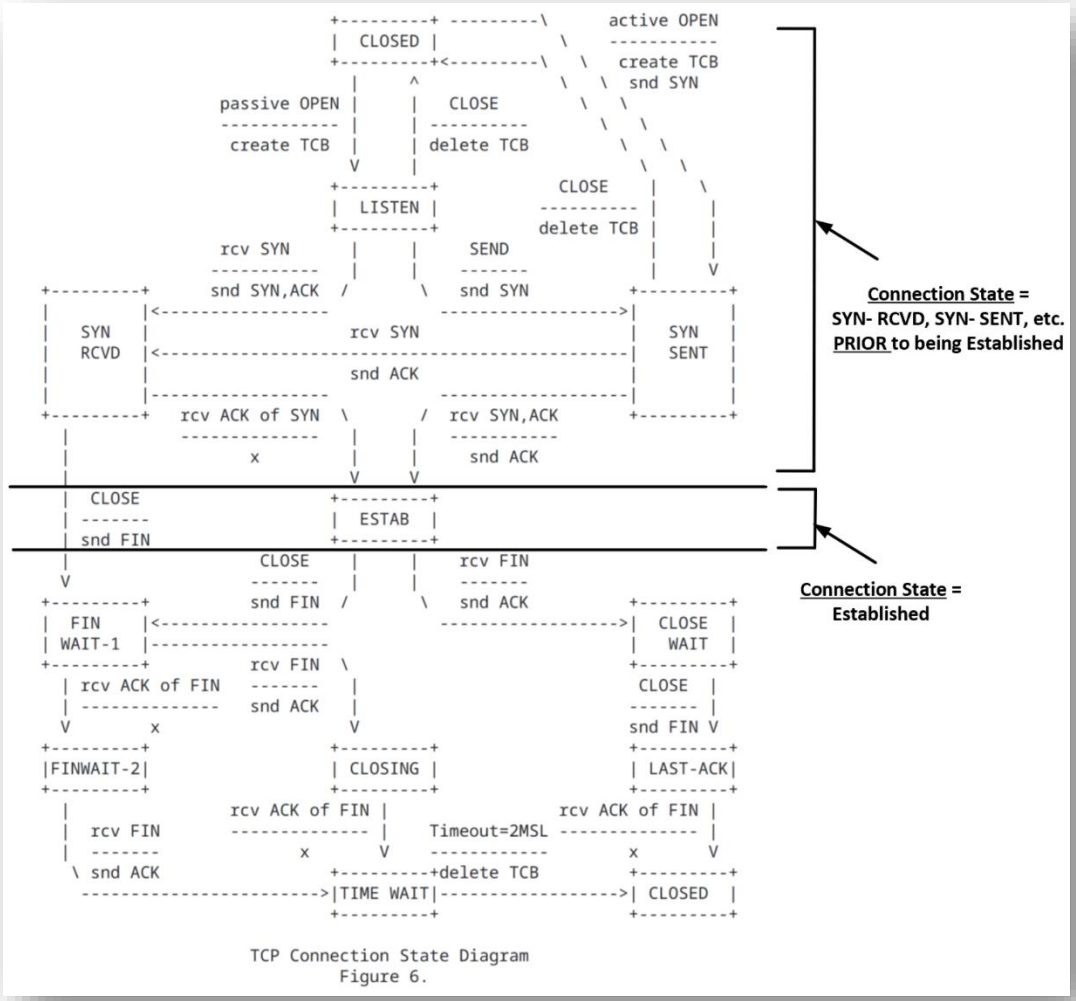
In fact, the two excerpts below from the original '454 application, when taken together, provide a very specific example of a "***time period***" being detected during processing of a received "***packet***" that is specifically disclosed to be "***included*** in ***setting up***" a "***connection***."

> "a potential ***idle time period*** may ***begin*** at some specified point ***during*** and/or after processing a ***received*** TCP ***packet***" (paragraph [0101] of the original '454 application-emphasis added)
>
> "[the] ***received*** TCP ***packet*** may be a packet included in ***setting up*** the TCP ***connection*** as described above" (paragraph [0112] of the original '454 application-emphasis added)

At Page 80 of its Petition, argues that "[a] POSITA would have understood that a "TCP connection" is ONLY established **after two nodes exchange initial messages to set up the TCP connection**" (**bold** added by Petitioner, underlined CAPS added by Patent Owner). While Petitioner is correct that a connection is only "***established***" after "set up," it is also true that such "established" state is merely one of many states of a connection. In particular, a connection also includes states that exist ***before*** the connection reaches an "established" state. For example, the connection includes "set up" states ***prior*** to being "established," which, therefore, exist for the connection ***before*** the connection is "established."

Importantly, the above notion (that connection "set up" states are part of the connection) is consistent with RFC 793 that clearly discloses a number of different connection states (e.g. LISTEN, SYN-SENT, SYN-RECEIVED, etc.) that exist ***before*** the "connection" is "established". See annotated excerpts from RFC 793 (TCP) below:

"A connection progresses through a series of states during its lifetime. The states are: ***LISTEN, SYN-SENT, SYN-RECEIVED***, ***ESTABLISHED***, FIN-WAIT-1, FIN-WAIT-2, CLOSE-WAIT, CLOSING, LAST-ACK, TIME-WAIT, and the fictional state CLOSED." Page 21 of RFC 793 (emphasis added).



Thus, as shown above, RFC 793 considers pre-establishment "states" (i.e. that exist ***before*** the connection is "established") to still be considered "states" of the "connection." Thus, Patent Owner's use of the term "connection" to be

inclusive of the "set up" thereof (i.e. before it is "established") is indeed consistent with the understanding of a POSITA.[12]

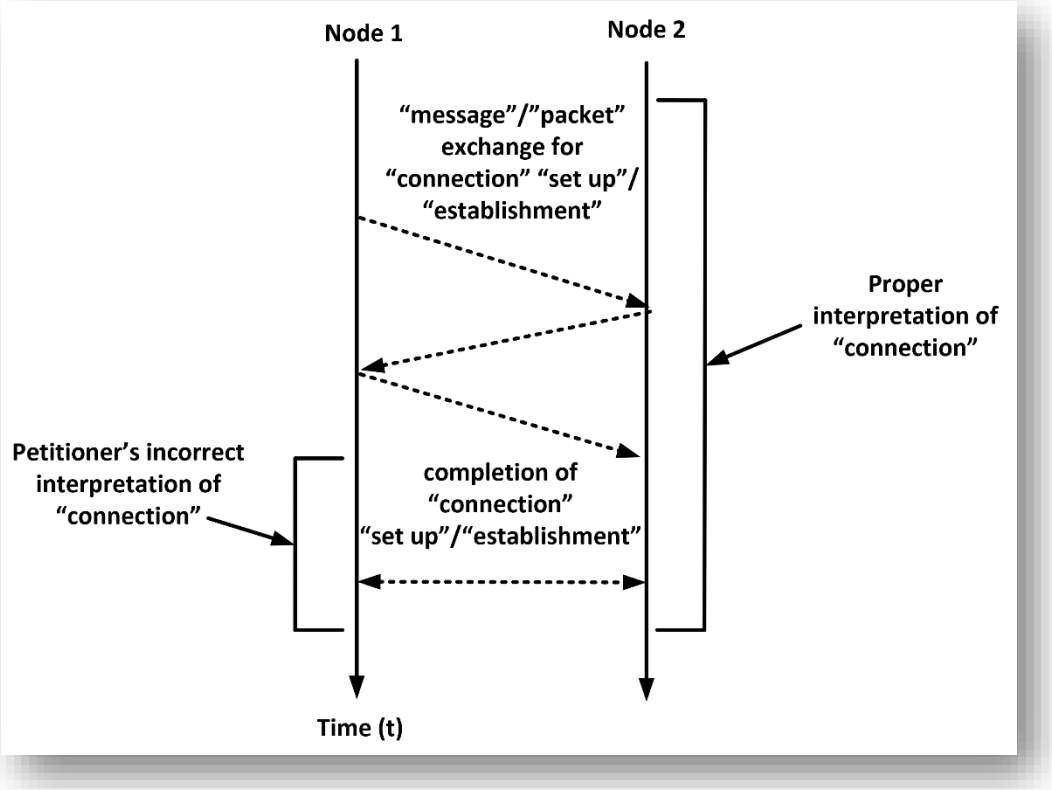
Even if Petitioner argues that Patent Owner used the term "connection" contrary to how a POSITA would (which it did not), Patent Owner is indeed permitted to act as its own lexicographer. To act as their own lexicographer, an applicant must clearly set forth a special definition of a claim term in the specification that differs from the plain and ordinary meaning it would otherwise possess. … "the inventor's intention, as expressed in the specification, is regarded as dispositive." *Phillips v. AWH Corp*., 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc). See also *Starhome GmbH v. AT&T Mobility LLC,* 743 F.3d 849, 857, 109 USPQ2d 1885, 1890-91 (Fed. Cir. 2014).

This is ***exactly*** what happened in this application, when the inventor stated that "packets [for setting up a TCP connection] … are ***considered to be in the TCP connection for purposes of this disclosure***" (emphasis added). To be clear, by virtue of the above definition, the inventor is explicit in his intent that the "connection" includes connection "set up" messages/packets, as would be understood by a POSITA (in view of RFC 793 et al.). To put another way, the

[12] As is also confirmed by Figure 6 above from RFC 793, ***PRE***-connection-establishment "CLOSE" operations may be initiated to reach the top "CLOSED" state" ***before*** connection-establishment. Thus, a POSITA would have also considered the claimed "at least partially closing the first connection" to be inclusive of connection closures that occur ***before*** connection-establishment.

connection “set up”/”establishment” process is considered, for the purposes of this disclosure, to be “in” (e.g. part of) the “connection” (and thus subject to detection of time periods, as explicitly disclosed). This is illustrated in Figure 1 below.

Figure 1



This fact is not only established by the above lexicographic statements in the specification, but also in the claims themselves, when such claims reference “at least a portion of the first ***connection including*** at least a portion of the first ***connection set up*** ” (Claim 54-emphasis added).

After acknowledging the above-cited excerpt (but, ***without*** acknowledging its role in lexicography), Petitioner then argues, at page 80 of its Petition, that the application that lead to the Challenged Patent "does not describe when its disclosed timeouts are detected." This is not true. As mentioned earlier, the Challenged Patent defines a "received TCP packet" as one that may be included in setting up a connection ["[the] ***received TCP packet*** may be a packet included in ***setting up*** the TCP ***connection*** as described above" (paragraph [0112] of the original '454 application-emphasis added)]. Further, the Challenged Patent explicitly states that the "received TCP packet" starts detection of an "time period" ["a potential ***idle time period*** may ***begin*** at some specified point ***during*** and/or after processing a ***received TCP packet***" (paragraph [0101] of the original '454 application-emphasis added)]. These excerpts, in combination, make it crystal clear that the inventor had possession of time period detection during connection setup, such that time period detection is ***not*** limited to data transmission after connection "establishment"[13].

[13] The specification excerpts cited in this paragraph clearly refute Petitioner's "data"-related arguments that span the bottom of page 80 through of the top of page 81 of the Petition. Further, it is noteworthy that the original '454 application does indeed disclose the exchange of "data" (e.g. meta-data, etc.) during connection setup ["ITP ***data*** field 826 in FIG. 8 may include and/or otherwise identify ***metadata*** for the first idle time period. For example, an ITP ***data*** field in a packet may include and/or otherwise identify one or more of a duration of time for detecting an idle time period…" paragraph [0081] of the original '454 application-emphasis added].

Despite the above, Petitioner doubles-down on its misplaced argument by contending, at page 80 of its Petition, that the application that lead to the Challenged Patent "does not provide written description support for any detection of such timeouts and partial closure of the connection during the connection setup." This is also not true. The application that lead to the Challenged Patent explicitly provides examples of such closure that are unique to (i.e. ***would only apply to***) "connection" "set up"/"establishment" ["***[d]eactivating the TCP connection*** may include… ***releasing a resource*** allocated for … ***activating*** the TCP connection." (paragraph [0109] of the original '454 application-emphasis added)]. Clearly, "***activating***" a "connection" can ***only*** happen ***before*** the connection is even "set up"/"established." Thus, the disclosure of "releasing a resource" for such connection "activat[ion]" is indisputable evidence that the inventor not only had possession of time period detection during connection setup (as established in the previous paragraph), but also closure of such "connection" (in response to time period detection ***during*** the "connection" "set up" process), ***before*** the connection is even "set up"/"established."

The above clearly-established written description support is summarized in Table 3 below.

Table 3

Disputed TCP Phrase (emphasis added)	**Dependent Claims that Tie Disputed TCP Phrase to Specification Support (emphasis added)**	**Excerpts from Specification that Support Disputed TCP Phrase & Dependent Claims (emphasis added)**
"based on ***detecting***, as a function of the first duration, as a function of an absence of one or more packets, and by the apparatus ***during*** at least a portion of the first connection including ***at least a portion of the first connection set up***: a first ***time period*** of the first type of time period"	53. The apparatus of claim 1, wherein at least one of:... the first packet also includes ***data*** for use in determining the first time period;	"In an aspect, an ***ITP header*** may be included in a ***packet*** exchanged ***during setup*** of TCP ***connection***. … The specified "three-way handshake" and other patterns of message exchange ***for setting up a*** TCP ***connection*** include ***packets*** that are considered ***to be in the*** TCP ***connection for purposes of this disclosure***." (paragraph [0076] of the original '454 application-emphasis added) "[the] ***received*** TCP ***packet*** may be a packet included in ***setting up*** the TCP ***connection*** as described above" (paragraph [0112] of the original '454 application-emphasis added) "a potential ***idle time period*** may ***begin*** at some specified point ***during*** and/or after processing a ***received*** TCP ***packet***" (paragraph [0101] of the original '454 application-emphasis added)
"at least partially closing the first	53. The apparatus of claim 1, wherein at least one of:...	"[d]***eactivating*** the TCP connection may include…

connection by at least partially releasing the resource allocated for the first connection"	the at least partial ***closure*** includes only a partial ***deactivation***; the at least partial ***closure*** includes a full ***deactivation***; … the ***resource*** is allocated for ***activating*** the first connection;	***releasing a resource*** allocated for … ***activating*** the TCP ***connection***" (paragraph [0109] of the original '454 application-emphasis added)

Petitioner concludes its arguments, at page 81 of its Petition, by pointing to RFC 793 and alleging that "RFC 793 does not disclose detecting any time period during the time the TCP connection is being set up (e.g., during the time the messages in the three-way handshake are being exchanged)." This is a red-herring. While the Challenged Patent does incorporate RFC 793 by reference, what RFC 793 does ***not*** disclose is irrelevant to this written description support challenge. What ***is*** relevant is what the ***Challenged Patent does disclose***. As set forth above, there is clear written description support for the claims and, to the extent that any such disclosure is missing from RFC 793, such fact is just further evidence of the patentability of the claims in the Challenged Patent[14].

[14] Petitioner's arguments at the top of page 82 of its Petition have already been addressed above because, as admitted by Petitioner, "the disclosures of the priority applications (other than the '642 application) are substantially similar to each other."

For the reasons above, Petitioner's second written description challenge should be rejected. *See* EX2002 at ¶¶[00041-57].

E. Petitioner's Third Challenge (combination of previous elements)

Petitioner concludes by arguing, very briefly, that the Challenged Patent would "not be entitled to priority unless both these features are properly supported working together as there is no support for a time period detection during the connection setup in a non-TCP connection." To support such notion, Petitioner merely cites the "reasons stated above." In response, Patent Owner refers to the abovementioned citations (that are resident in the ***same*** disclosure), as evidence that Petitioner's "reasons stated above" fail to establish any lack of written description support. *See* EX2002 at ¶[00058].

IV. CONCLUSION

For the foregoing reasons, the Petition to institute *inter partes* review of any claim of the Challenged Patent should be denied.

Dated: October 10, 2023

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that there are 9,383 words in this paper, excluding any table of contents, table of authorities, mandatory notices under 37 C.F.R. § 42.8, certificate of word count, certificate of service, or appendix of exhibits. This certification relies on the word count of the word-processing system used to prepare this paper.

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I hereby certify that on 10/10/2023, I caused a true and correct copy of the foregoing materials to be served via the Patent Office electronic filing system, and electronic service via email to the following attorneys of record pursuant to Petitioners' consent.

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