

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OXYLABS LT, UAB

Petitioner

v.

BRIGHT DATA LTD.,

Patent Owner

Case IPR2024-00126

Patent No. 11,616,826

PATENT OWNER PRELIMINARY RESPONSE

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
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<u>PATENT OWNER’S EXHIBIT LIST</u>	
EX. 2001	Preliminary Amendment, dated March 12, 2024 in Reissue Application No. 18/603,037
EX. 2002	Office Action, dated 6/21/2022 in Reexamination Control No. 90/014,827
EX. 2003	Remarks, dated Aug. 6, 2019 in Application No. 16/278,105 which issued as U.S. Patent No. 10,469,628
EX. 2004	Remarks dated Aug. 23, 2018 in Application No. 15/957,950 which issued as U.S. Patent No. 10,225,374
EX. 2005	U.S. Pub. No. 2006/0212584 (“Yu”)
EX. 2006	Deposition Transcript of Dr. James Olivier, dated December 29, 2022 in IPR2022-00687
EX. 2007	U.S. Patent No. 6,434,618 (“Cohen II”)
EX. 2008	U.S. Patent No. 11,044,341 (“the ‘341 Patent”)
EX. 2009	U.S. Patent No. 10,469,628 (“the ‘628 Patent”)
EX. 2010	U.S. Patent No. 10,225,374 (“the ‘374 Patent”)
EX. 2011	Definition of “Operating System”, Merriam-Webster Dictionary, accessed at https://www.merriam-webster.com/dictionary/operating%20system on March 13, 2024
EX. 2012	Definition of “Operating System”, Cambridge English Dictionary, accessed at https://dictionary.cambridge.org/us/dictionary/english/operating-system on March 13, 2024

I. INTRODUCTION

This paper preliminarily responds to the petition (“Petition”, Paper 1) regarding U.S. Patent No. 11,616,826 (“the ‘826 Patent,” EX. 1001). Patent Owner respectfully submits that the Board should deny institution in this IPR for at least 5 reasons.

First, in an effort to conserve resources, Patent Owner has filed an application for reissue of the ‘826 Patent.¹ The reissue application is currently pending and substantially narrows the scope of the claims challenged in this IPR. Patent Owner expressly requested the examiner consider the art and arguments in this IPR during the reissue proceeding. Additionally, Patent Owner provides herein a broad stipulation that mitigates any public interest concerns. Thus, Patent Owner asks the Board to exercise its discretion to deny institution. 35 U.S.C. § 325(d) (“...the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.”).

¹ This paper should not be construed as a request for adverse judgment. This paper discusses the reissue proceeding as well as other reasons why the Board should deny institution.

Second, the claim construction issues regarding the terms “client device” and “server” are currently on appeal before the Federal Circuit in Lead Case No. 23-2144 involving four related patents. These claim construction issues will not be decided by the Federal Circuit prior to an institution decision in this IPR. It would not be an efficient use of resources for the Board to institute this IPR without clarity from the Federal Circuit. For example, it would not be efficient for the parties to rehash the same claim construction arguments. Also, as explained herein, the amendments in the reissue application moot the claim construction issues. Denying institution of this IPR and continuing the reissue proceeding is most appropriate. *See* 37 C.F.R. § 42.1(b) (the rules should be construed to “secure the just, speedy, and inexpensive resolution of every proceeding”).

Third, the same art was already reviewed during original prosecution of the ‘826 Patent. Thus, step 1 of *Advanced Bionics* is satisfied. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 7-8 (PTAB Feb. 13, 2020)(precedential). Regarding step 2 of *Advanced Bionics*, Petitioner has not demonstrated that the Office erred in a manner material to the patentability of the challenged claims. For example, as explained below, the arguments considered during prosecution of parent patents (with which a terminal disclaimer was filed) are substantially similar to the arguments herein regarding Kocherlakota, specifically with respect to which component performs the

“selecting” step of claim 1. Moreover, the same art and arguments are going to be re-reviewed during the reissue proceeding. As such, instituting this IPR would not be a good use of the Board’s resources.

Fourth, for at least the reasons discussed below, Kocherlakota does not disclose or teach each and every element of the challenged claims. For example, Kocherlakota does not disclose or teach that proxy server 17 performs the “selecting” step recited in claim 1. As another example, Kocherlakota does not disclose or teach the “second client device” recited in certain dependent claims because proxy servers 19 and 21 are servers, not client devices.

Fifth, for at least the reasons discussed below, Cohen does not disclose or teach each and every element of the challenged claims. As one example, Cohen does not disclose or teach the claimed “first server”. The proxy redirector 104 of Cohen is a switch, not a server. As explained below, Petitioner’s expert’s testimony in a related IPR contradicts Petitioner’s own arguments in the petition.

In view of the reasons explained herein, Patent Owner respectfully requests the Board deny institution. *See Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (explaining that under 35 U.S.C. § 314(a), “the PTO is permitted, but never compelled, to institute an IPR proceeding”).

II. THE BOARD SHOULD DENY INSTITUTION IN VIEW OF THE CO-PENDING REISSUE APPLICATION

As reflected in Patent Owner's Updated Mandatory Notices, Patent Owner filed Reissue Application No. 18/603,037 (pending), which included a Preliminary Amendment to the claims of the '826 Patent. Paper 6 at 1; EX. 2001. Although the reissue proceeding is in its early stages, Patent Owner hereby stipulates that if the Board exercises its discretion to deny institution in this IPR based on the co-pending reissue proceeding, then (1) Patent Owner will not withdraw the reissue application before issuance of a reissued patent and (2) Patent Owner will not assert the '826 Patent in any litigation during the pendency of the reissue proceeding. It is understood that the '826 Patent remains in effect even after the filing of a reissue application; however, Patent Owner would be required to surrender the '826 Patent upon issuance of a reissued patent. *See* 37 C.F.R. § 1.178.

In the Preliminary Amendment for the reissue application, Patent Owner amended claims 1, 3-6, 12, 18-20, and 24; and canceled claim 2 of the '826 Patent. EX. 2001 at 11. Patent Owner incorporated the subject matter of claim 2 of the '826 Patent into amended claim 1 and further clarified that the "first and second client devices are consumer computer hardware devices" and that the "first server is a server hardware device that is not a consumer computer." EX. 2001 at 4.

The amendments narrow the scope of the only independent claim, i.e., claim 1, and further distinguish the prior art references at issue in this IPR by clarifying the scope of the disputed claim terms. The clarifying amendments are consistent with Patent Owner's claim construction arguments for the terms "client device" and "server" in other IPRs involving related patents.² It is clear to Patent Owner that the scope of the claim terms "client device" and "server" is being interpreted by Petitioner more broadly than intended. Although Patent Owner disagrees with Petitioner's interpretation, the claim construction issues are moot in view of the amended claims in the reissue proceeding.

Moreover, the amendments in the reissue proceeding have changed the challenged, original claims of the '826 Patent. Any potential, additional amendments will further change and potentially even cancel some of the challenged, original claims of the '826 Patent. Instituting this IPR based on the original claims of the '826 Patent would frustrate the Board's objectives regarding efficiency.

As noted by Petitioner, the Office already reviewed the same references at issue in this IPR during original prosecution of the '826 Patent. Petition at 7. The

² See, e.g., IPR2022-00135, IPR2022-00138, IPR2022-00103, IPR2022-00353, IPR2022-00915, IPR2022-00916, IPR2021-01492, IPR2021-01493.

examiner in the reissue proceeding will re-review the same references and arguments presented in this IPR. Indeed, Patent Owner expressly requested the examiner to do so. EX. 2001 at 12. Patent Owner submitted the petition, expert declaration, and references from this IPR in an IDS in the reissue proceeding.

The ‘826 Patent is not currently asserted in any litigation.³ It would not be an efficient use of resources to institute this IPR, including potential motion to amend practice, as opposed to completing the reissue proceeding. It is not efficient to burden three judges in this IPR as opposed to one examiner in the reissue proceeding. It is not efficient to burden both parties with the expense associated with this IPR.⁴

For at least these reasons, Patent Owner respectfully submits that the Board should exercise its discretion and deny institution of this IPR in view of the co-pending reissue application.

³ None of the patents identified in the terminal disclaimer filed during original prosecution of the ‘826 Patent are currently asserted in any litigation.

⁴ There is no prejudice to Petitioner because there is no time-bar and there is no reason that Petitioner could not file a challenge to a reissued patent.

III. THE BOARD SHOULD DENY INSTITUTION IN VIEW OF THE CO-PENDING FEDERAL CIRCUIT APPEAL

Petitioner argues that the terms “client device” and “server” refer to the role the device plays, not any hardware characteristics or label. Petition at 17-19.⁵

Patent Owner disagrees with Petitioner’s arguments for many reasons, including the fact that Petitioner’s arguments contradict the express claim language.⁶ These same claim constructions issues are currently on appeal before the Federal Circuit. It would not be efficient to institute this IPR based on the wrong claim constructions. Unfortunately, a decision from the Federal Circuit is not expected prior to the institution decision and potentially even the final written decision in

⁵ Petitioner additionally argues that the term “server operating system” means “an operating system capable of operating in the role of a server”. Petition at 19. Patent Owner disagrees. *See infra*, section V.B.2. Petitioner additionally argues that the limitation of claim 19 should be construed as “sending the IP address selected in claim 1”. Petition at 20. Patent Owner does not disagree with Petitioner’s interpretation of claim 19 and this typographical error in claim 19 is addressed in the reissue proceeding. EX. 2001 at 9.

⁶ Patent Owner expressly reserves the right to address any and all claim construction issues in any future response if this IPR is instituted.

this IPR. However, as noted above, the amendments in the reissue application moot the claim construction issues and expressly refer to hardware.

Consistent with the amendments in the reissue proceeding, and consistent with the intrinsic evidence, Patent Owner submits that a person of ordinary skill in the art would understand the correct constructions for a “client device” is a “consumer computer” and a “server” is a “server that is not a client device”. These claim terms refer to different types of components, i.e., different hardware.

Petitioner’s role-based constructions are wrong at least because they contradict the express claim language, including for example limitation 1[e] which recites the first server “receiving... the first content from the web server”. Under Petitioner’s role-based constructions, the “first server” would be a client device and not a server because in limitation 1[e], the “first server” is operating in the role of a client by receiving a response from the web server.

A simple baseball analogy exposes the error in the Petitioner’s analysis. Consider the baseball players, pitcher and catcher. If “pitcher” is construed as “a player who throws a ball” and “catcher” is construed as “a player who catches a ball”, then when the catcher returns the ball to the pitcher, the act of “throwing” would mean the catcher now meets the role-based construction for “pitcher”. Similarly, when the pitcher is catching the ball, the pitcher would meet the role-based construction for “catcher”. This cannot be correct. The catcher remains a

“catcher” regardless of whether the catcher is throwing or catching a ball.

Similarly, the pitcher remains a “pitcher” regardless of whether the pitcher is throwing or catching a ball. The pitcher and the catcher are different types of baseball players. In the context of the ‘826 Patent, a “client device” and a “server” are different types of components, i.e., different hardware.

Because the same claim constructions issues are on appeal before the Federal Circuit, it would not be efficient to institute this IPR as opposed to the reissue proceeding. The claim construction issues are moot in view of the amendments in the reissue proceeding.

IV. THE BOARD SHOULD DENY INSTITUTION IN VIEW OF THE PRECEDENTIAL ADVANCED BIONICS DECISION

As noted by Petitioner, the Office already reviewed the prior art references – Kocherlakota, Cohen, and RFC 1122 - during original prosecution of the ‘826 Patent. Petition at 7. Step 1 of *Advanced Bionics* is thus satisfied.

For step 2 of *Advanced Bionics*, Petitioner argues that “the [e]xaminer erred by allowing the claims over the Grounds in this Petition, and the lack of analysis during prosecution weighs against discretionary denial.” Petition at 7. Patent Owner disagrees. Petitioner mentions that the CRU determined that Cohen raises a SNQ in reexamination of the related ‘511 Patent (Petition at 8), but Petitioner fails to mention that the examiner in that reexamination proceeding ultimately withdrew

rejections based on Cohen because proxy redirector 104 (the alleged first server) does not receive and send the same “first content identifier”. EX. 2002 at 84 (exhibit page number, not internal page number).⁷ This finding relates to limitations 1[b] and 1[d] of the ‘826 Patent. Cohen discloses that the proxy redirector 104 only receives a logical URL or a complete URL; and that the proxy redirector 104 only sends an absolute URL. EX. 1004 at Abstract, 2:15-25, 3:37-40.⁸ This is significant because the complete URL “in itself provides insufficient information for the proxy cache to determine whether it has the requested object and, if not, to forward it to the origin server, [sic] which does.” EX. 1004 at 9:24-

⁷ In the institution decision in IPR2022-00687, the Board distinguished the recitation of a “URL” in the ‘622 Patent versus a “first content identifier” in the ‘511 Patent. *See* IPR2022-00687, Paper 11 at 34 (PTAB Oct. 7, 2022). However, unlike the ‘622 Patent, both the ‘511 and ‘826 Patents recite the receiving and sending of the same “first content identifier”.

⁸ Cohen discloses the client 101 first sends a logical URL to determine the IP address for an origin server. EX. 2002 at 83-84. The client 101 then sends a GET request comprising the complete URL for the requested content. *Id.* The GET request is intercepted and manipulated by the proxy redirector to convert the complete URL to an absolute URL. *Id.*

28; *see also id.* at 10:8-9 and 11:19-21. The withdrawal of rejections based on Cohen in the reexamination proceeding of the related ‘511 Patent confirms that the original examiner who reviewed and allowed the claims of the ‘826 Patent over Cohen did not err.

Petitioner also fails to mention that reexamination proceeding is currently on appeal before the PTAB and Patent Owner has proffered many arguments as to why Kocherlakota does not disclose or teach the claims of the related ‘511 Patent. *See generally* Reexamination Control No. 90/014,624 and merged Reexamination Control No. 90/014,827. Overall, instituting this IPR would not be an efficient use of the Board’s resources and risks conflicting decisions on the same prior art reference.

Also, for step 2 of *Advanced Bionics*, Petitioner argues that the grounds in this IPR are not cumulative of the examination of the parent patents. Petition at 7-8. Patent Owner disagrees. The arguments made by the applicant (and accepted by the examiner) during prosecution of the parent patents are directly relevant to the arguments made herein over the Kocherlakota reference. It is noted that the same examiner, Minh Chau Nguyen, reviewed and allowed the patents discussed herein.

During prosecution of the parent ‘341 Patent (with which a terminal disclaimer was filed), the examiner relied on a combination of the Yu and Barth references. The applicant explained that Yu discloses a peer-to-peer system using

intermediary client devices, while Barth is fetching information from additional servers. EX. 1008 at 124. Applicant clearly distinguished client devices and servers as different types of hardware components, and further distinguished the different architectures of the Yu and Barth references. *See id.*; *see also id.* at 125 (Yu is focused on “reducing a load of a server by accessing client peer devices...”).

The applicant also explained that neither reference teaches a server performs the “selecting” step. *See id.* at 128 (“BOTH the Yu and Barth references are silent regarding any selecting by any server in general”); *id.* (“In fact, the Yu reference teaches away from any selecting by any server... **the selecting is made in the requesting client device** (see step 514 in Figure 5)”) (emphasis in original); *see also* EX. 2005 at [0035]. The examiner subsequently issued a Notice of Allowance on 3/2/2021.⁹

Similar arguments were made over the combination of the Yu and Barth references during prosecution of the grandparent ‘628 Patent (with which a terminal disclaimer was filed). *See e.g.*, EX. 2003 at 6. The examiner subsequently issued a Notice of Allowance on 9/16/2019.

⁹ It is noted that amendments were made to correct typographical errors on 3/9/2021, which were initialed and allowed by the examiner on 3/29/2021.

Similar arguments were also made as to Yu over the combination of the Yu and Kageyama references during prosecution of the great-grandparent ‘374 Patent (with which a terminal disclaimer was filed). *See, e.g.*, EX. 2004 at 7. The examiner relied only on Yu as allegedly teaching the “selecting” limitation of the ‘374 Patent. In response to the applicant’s arguments over Yu, the examiner subsequently issued a Notice of Allowance on 1/15/2019.

As explained below, the same arguments as to which component performs the “selecting” step were already evaluated and considered by the examiner during prosecution of the parent patents. The prosecution histories of the parent patents show that the original examiner who reviewed and allowed the claims of the ‘826 Patent over Kocherlakota did not err.

Like the Yu reference, the Kocherlakota reference at issue in this IPR does not disclose the “selecting” is made in the alleged first server as required by claim 1. In Yu, the requesting client device receives a list of peer client devices and selects one of the peers to retrieve the requested content therefrom. *See* EX. 2005 at [0035]. In Kocherlakota, the requesting client computer 11 will store session and permission information associated with each proxy server and the user of client computer 11 will enter the information into an applet that identifies which proxy servers and which features of the proxy servers are to be used for a particular URL. EX. 1003 at 3:10-33 and Fig. 2; *see also* EX. 1003 at 3:66-4:4 and 4:9-11. In

another IPR involving a related patent and the Kocherlakota reference, Petitioner's own expert agreed that Kocherlakota teaches the selection of which features of which proxies are to be used for a particular URL is indicated in the applet, before any request is received by proxy server 17. EX. 2006 at 68:5-69:22. As such, proxy server 17 of Kocherlakota does not perform the "selecting" step of claim 1 of the '826 Patent. *See also infra*, section V.A.1.

Moreover, as discussed above, the Office will re-review the same art and arguments at issue in this IPR during the reissue proceeding.

For at least these reasons, institution would not be an efficient use of the Board's resources.

V. **THE BOARD SHOULD DENY INSTITUTION IN VIEW OF THE LACK OF MERIT IN THE GROUNDS**¹⁰

Petitioner relies on the same art and substantially similar arguments in this IPR as compared to IPR2022-00687 involving a related patent.¹¹ Rehashing similar arguments as to Kocherlakota is not a good use of resources, particularly when the disputes are moot in view of the amended claims of the co-pending reissue application. Most notably, the Board did not reach the arguments as to Cohen, which based on Petitioner's own expert testimony, does not disclose or teach the challenged claims of the '826 Patent.

¹⁰ Patent Owner reserves all rights regarding the correct definition of a person of ordinary skill in the art ("POSA"). Patent Owner does not dispute Petitioner's proposed definition of a POSA for purposes of institution. *See* Petition at 10.

¹¹ The same asserted references (Kocherlakota, Cohen, and RFC 1122) and the same expert (Dr. Olivier) were relied on by the same petitioner in IPR2022-00687. The Board found that the challenged claims of U.S. Patent No. 11,190,622 were invalid based on the Kocherlakota-based grounds. IPR2022-00687, Paper 38 at 59 (PTAB Oct. 4, 2023). The Board did not determine the merits of the Cohen-based grounds. *See id.* at 58.

Institution would not be an efficient use of resources at least because the parties would be forced to address all challenged claims and all grounds in this IPR. For at least the reasons discussed below, neither Kocherlakota nor Cohen disclose or teach each and every limitation of the challenged claims. Moreover, the challenged claims have already been changed in the reissue proceeding. Furthermore, the claim construction issues will be decided by the Federal Circuit in the co-pending appeal.

Office guidance explains that the Board may consider the number of claims and grounds that meet the reasonable likelihood standard when deciding whether to institute *inter partes* review under 35 U.S.C. § 314(a). SAS Q&A's, Part D, Effect of SAS on Future Challenges that Could Be Denied for Statutory Reasons (June 5, 2018), available at

https://www.uspto.gov/sites/default/files/documents/sas_qas_20180605.pdf

(“[T]he panel will evaluate the challenges and determine whether, in the interests of efficient administration of the Office and integrity of the patent system (see 35 USC § 316(b)), the entire petition should be denied under 35 USC § 314(a).”).

The Board has also designated informative decisions which provide guidance on whether institution would be an efficient use of the Board's time and resources. *See, e.g., Chevron Oronite Co. v. Infineum USA L.P.*, IPR2018-00923, Paper 9 at 10–11 (PTAB Nov. 7, 2018) (informative); *see also Deeper, UAB v.*

Vexilar, Inc., IPR2018-01310, Paper 7 at 41–43 (PTAB Jan. 24, 2019)

(informative). Both of these decisions explain that the Board may consider the number of claims and grounds that meet the reasonable likelihood standard when deciding whether to institute *inter partes* review under 35 U.S.C. § 314(a).

As explained below, institution would not be an efficient use of the Board’s time and resources.

A. KOCHERLAKOTA-BASED GROUNDS 1 AND 2 FAIL

1. Kocherlakota does not disclose or teach the “selecting” step as recited in limitation 1[c] of challenged independent claim 1

Kocherlakota does not disclose or teach proxy server 17 performing the “selecting step” of claim 1 in the ‘826 Patent. Instead, the selection of which proxies and proxy features are to be used for a particular URL occurs when the user of client computer 11 enters information in the applet. There is no decision made by proxy 17 as to which proxy or proxy features are to be used. The selection is predefined in an applet and the applet is sent to proxy server 17. Because the selection is predefined (i.e., already made), the selection is not made by the proxy server 17. As discussed above, this was the same argument the applicant used to distinguish the claims of the predecessor patents over the primary reference, Yu.

It is noted that the Board was not persuaded by Patent Owner’s arguments with respect to the “selecting” step in the related ‘622 Patent in IPR2022-00687.

See IPR2022-00687, Paper 38 at 34-36 and 41 (PTAB Oct. 4, 2023). Nevertheless, this issue is moot in view of the amendments to claim 1 in the reissue proceeding.

2. Petitioner does not consistently apply its claim constructions to the components of Kocherlakota

Petitioner does not consistently apply its role-based claim constructions to the components of Kocherlakota, which relates to the same claim construction issue on appeal before the Federal Circuit.

During at least the “receiving” step recited in limitation 1[e], the proxy server 17 does not meet the Petitioner’s role-based construction for “first server” because proxy server 17 is not a device that is operating in the role of a server. Petition at 18. Instead, proxy server 17 meets the Petitioner’s role-based construction for “client device” because it is a communication device that is operating in the role of a client. Petition at 18; *see also* Petition at 27 (explaining client computer 11 is a “client device” because “it is a device that communicates over the Internet and is operating in the role of a client”). However, Petitioner deems proxy server 17 a server. This is not consistent.

Rehashing the same claim construction arguments is not an efficient use of resources. As mentioned above, the same claim construction issue is on appeal before the Federal Circuit. Also, this dispute is moot in view of the amendments to claim 1 in the reissue proceeding.

3. Kocherlakota does not disclose or teach the “client device(s)” of challenged dependent claims 2-9, 12, and 18

Kocherlakota does not disclose or teach proxy servers 19 or 21 correspond to the “client device(s)” recited in dependent claims 2-9, 12, and 18. The proxy server 19 and 21 are servers, not client devices. It is wrong for Petitioner to deem one proxy server a server (i.e., proxy server 17) and another proxy server a client device (i.e., proxy servers 19 or 21).

Petitioner does not consistently analyze the proxy servers of Kocherlakota. These proxy servers are all the same type of hardware components, not different types of hardware components. All of proxy servers 17, 19, and 21 are servers, not client devices. All of proxy servers 17, 19, and 21 are intermediaries and toggle client/server roles when sending requests/receiving responses (i.e., client role) and receiving requests/sending responses (i.e., server role). Consistent application of the logic the petitioner applied to proxy server 17 would mean that proxy servers 19 and 21 are both servers. Petition at 28 (explaining that proxy server 17 is a “server” because it is a device operating in the role of a server and it is not the same physical device as client computer 11). However, Petitioner argued that proxy servers 19 and 21 are client devices. This is not consistent.

As mentioned above, the same claim construction issue is on appeal before the Federal Circuit. Also, this dispute is moot in view of the amendments to claim 1 in the reissue proceeding.

B. COHEN-BASED GROUNDS 3 AND 4 FAIL¹²

1. Cohen does not disclose or teach the “first server” of challenged independent claim 1

Cohen does not disclose or teach the claimed “first server”. Cohen expressly states that proxy redirector 104 is an “L4 switch”. EX. 1004 at 5:12-14; 6:26-28.¹³ Thus, the proxy redirector 104 of Cohen is a switch, not a server. Cohen also discloses the proxy redirector 104 may be combined into the same unit as a router. EX. 1004 at 6:23-31. A POSA would have understood that neither a switch nor a router is a server in the context of the ‘826 Patent.

Petitioner’s expert’s testimony in another IPR contradicts Petitioner’s own arguments in the petition. Petitioner’s expert testified that a server “couldn’t be a wire... connecting, receiving a request and sending back a response – or a router that was receiving a request and sending back a response”. EX. 2006 at 49:21-

¹² As noted above, the Board did not determine the merits of the Cohen-based grounds in IPR2022-00687.

¹³ Cohen incorporates by reference U.S. Application No. 09/190,355 (not published), which issued as U.S. Patent No. 6,434,618 and describes “Layer 4 switches, for example, are available that can make decisions about packet forwarding based on TCP/UDP headers as well as IP headers.” EX. 2007 at 1:20-22.

50:11; *see also id.* at 51:11-52:9 (distinguishing a server from a wire/router).

Accordingly, proxy redirector 104 cannot correspond to the claimed “first server”.

2. Cohen does not disclose or teach that proxy redirector 104 stores, operates, or uses a “server operating system” as recited in limitation 1[a] of challenged independent claim 1

Petitioner argues “server operating system” should be construed as “an operating system capable of operating in the role of a server”. Petition at 19.

Petitioner additionally states that the Board need not reach this dispute. Petition at 20.

Patent Owner disagrees with Petitioner’s proposed construction. Patent Owner submits that a POSA would have understood that the term “server operating system” has its plain and ordinary meaning. A POSA would have understood that a server operating system runs on a server, a type of hardware. An operating system is the software that manages the hardware and controls the operation of programs.¹⁴

¹⁴ The ‘826 Patent describes “[t]he operating system 230 essentially controls the execution of computer programs and provides scheduling, input-output control, file and data management, memory management, and communication control and related services.”. EX. 1001 at 6:33-37. This explanation is consistent with dictionary definitions. The Merriam-Webster Dictionary defines “operating system” as “software that controls the operation of a computer and directs the

Cohen does not disclose or teach that proxy redirector 104 stores, operates, or uses a “server operating system”. Petitioner alleges that proxy redirector 104 uses a server operating system because the preferred embodiment runs on a Linux machine which “a POSITA would understand []to intrinsically disclose a server operating system.” Petition at 59 (citing EX. 1002 at ¶70). Petitioner relies only on conclusory expert testimony for this argument.

Patent Owner disagrees with Petitioner’s argument. It appears that Petitioner is using circular logic. Petitioner argues that because proxy redirector 104 is a server it must be using a server operating system. However, proxy redirector 104 is not a server as discussed above. Also, a POSA would have understood that as of 10/8/2009, Linux offered various types of operating systems, including for example a client operating system, a server operating system, and a router

processing of programs (as by assigning storage space in memory and controlling input and output functions)”. EX. 2011. The Cambridge English Dictionary defines “operating system” as “a set of programs that control the way a computer system works, especially how its memory is used and how different programs work together.” EX. 2012

operating system.¹⁵ The fact that proxy redirector 104 operates on a Linux machine does not intrinsically show that proxy redirector 104 uses a server operating system. Petitioner fails to meet its burden.

3. Petitioner does not consistently apply its claim constructions to the components of Cohen

Petitioner does not consistently apply its role-based claim constructions to the components of Cohen, which relates to the same claim construction issue on appeal before the Federal Circuit.

During at least the “receiving” step recited in limitation 1[e], the proxy redirector 104 does not meet the Petitioner’s role-based construction for “first server” because proxy redirector 104 is not a device that is operating in the role of a server. Petition at 18. Instead, the proxy redirector 104 meets the Petitioner’s role-based construction for “client device” because it is a communication device that is operating in the role of a client. Petition at 18; *see also* Petition at 56 (explaining client 101 is a “client device” because “it is a device that

¹⁵ Petitioner relies on EX. 1022 discussing a “general-purpose server operating system,” e.g., LINUX, but Patent Owner does not dispute that Linux offered a server operating system. Petition at 20. Patent Owner disputes that a Linux operating system, generally, is necessarily a server operating system, specifically.

communicates over a network, and it is operating in the role of a client”).

However, Petitioner deems proxy redirector 104 a server. This is not consistent.

As mentioned above, the same claim construction issue is on appeal before the Federal Circuit. Also, this dispute is moot in view of the amendments to claim 1 in the reissue proceeding.

4. Cohen does not disclose or teach the “client device(s)” of challenged dependent claims 2-9, 12, and 18

Cohen does not disclose or teach the “client device(s)” recited in dependent claims 2-9, 12, or 18 because proxy caches 110, 115, and 117 are servers, not client devices. For example, Cohen teaches that the proxy caches are commercial devices, typically owned by large Internet Service Providers (ISP). *See, e.g.*, EX. 1004 at 1:38-43.

Petitioner does not consistently apply its claim constructions to the proxy caches of Cohen. Petitioner previously argued that proxy redirector 104 meets the construction of “first server” because it is a device operating in the role of a server and it is not the same physical device as client 101. *See* Petition at 57. Applying the same logic to proxy caches 110, 115, 117 would make the proxy caches servers, not client devices. The proxy caches are operating in the role of a server with respect to proxy redirector 104 (and also client 101). However, Petitioner deems the proxy caches as client devices. This is not consistent.

As mentioned above, the same claim construction issue is on appeal before the Federal Circuit. Also, this dispute is moot in view of the amendments to claim 1 in the reissue proceeding.

VI. CONCLUSION

In view of the foregoing, Patent Owner respectfully requests the Board deny institution.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS

This Patent Owner Preliminary Response (“POPR”) consists of no more than 14,000 words, excluding table of contents, table of authorities, certificate of service, this certificate, or table of exhibits. The POPR complies with the type-volume as mandated in 37 C.F.R. § 42.24. In preparing this certificate, counsel has relied on the word count of the word-processing system used to prepare the paper (Microsoft Word).

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies the
PATENT OWNER PRELIMINARY RESPONSE and exhibits thereto were served
on the undersigned date via email, as authorized by Petitioner, at the following
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