

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT TRIAL AND APPEAL BOARD

MOTOROLA SOLUTIONS, INC.

Petitioner

v.

STA GROUP LLC

Patent Owner

CASE: IPR2024-00511
U.S. PATENT NO. 9,319,852

PATENT OWNER'S RESPONSE

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Exhibit List

Exhibit No.	Exhibit Name
2001	<i>STA Group LLC v. Motorola Solutions, Inc.</i> , Case No. 2:23-cv-00030 (E.D. Tex.), Dkt No. 290 (Jul. 10, 2024)
2002	Declaration of Robert Akl, D.Sc.
2003	CV of Robert Akl, D.Sc.
2004	Deposition Transcript of Sayfe Kiaei, Ph.D. dated Oct. 11, 2024
2005	JEFFERY G. ANDREWS ET AL., FUNDAMENTALS OF WiMAX (Theodore S. Rappaport ed., 2007)

Patent Owner, STA Group LLC (“Patent Owner”), submits this Patent Owner Response (“POR”) pursuant to 37 C.F.R. § 42.120 to the *Inter Partes* Review (“IPR”) petition (“Petition”) filed by Petitioner Motorola Solutions, Inc. (“Motorola” or “Petitioner”) for claims 1-5 and 7-16 (“Challenged Claims”) of U.S. Patent 9,319,852 (“’852 Patent”, Ex. 1001).

I. INTRODUCTION

The Challenged Claims are each patentable over Petitioner’s Grounds 2-4.¹

First, the ’852 Patent properly claims priority to its parent application, the reference at the heart of Petitioner’s Ground 2 (Shaffer²). Thus, as a matter of law, Ground 2 cannot succeed in rendering any Challenged Claim unpatentable.

Second, even if Shaffer is considered, the Petition fails to set forth any motivation to combine Shaffer with Keller³. The only purported motivation is nothing more than a conclusory suggestion that Keller provides “an example” of a system that would have been compatible with Shaffer. This generic motivation is plainly untethered to any specific reason why a POSITA would be motivated to

¹ Ground 1 is the purportedly “reserved” ground that was presented in IPR2024-00479. Ex. 2002, ¶ 43.

² U.S. Patent Application Publication No. 2009/0298525 (“Shaffer”).

³ U.S. Patent Application Publication No. 2004/0133683 (“Keller”).

make the proposed modification. The Federal Circuit has routinely rejected this sort of alleged motivation to combine prior art references, and the Board should do the same here.

Lastly, the Board found Petitioner’s analysis for Grounds 3 and 4 was insufficient for failing to address “all three capabilities recited in limitation [1c], including ‘quality of service, rules of transmission and trusted endpoint identity.’” Paper 10, 17. Therefore, these Grounds similarly fail to render any Challenged Claim unpatentable.

Thus, Petitioner has not established that any Challenged Claim is unpatentable over the prior art. Patent Owner respectfully requests that the Board find the Challenged Claims unpatentable over Petitioner’s Challenge.

II. FACTUAL BACKGROUND

A. The ’852 Patent

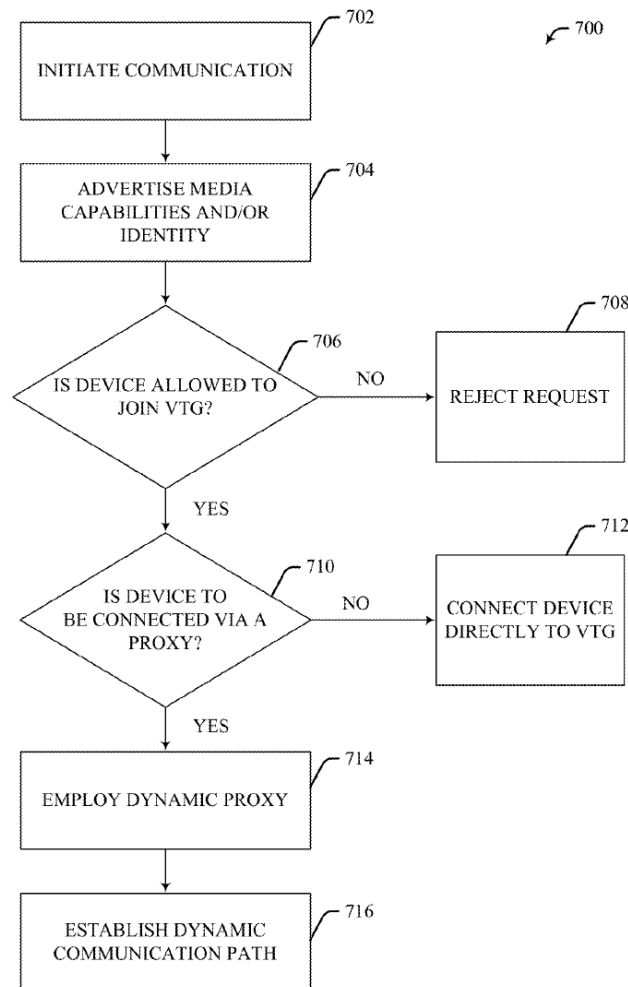
The ’852 Patent issued on April 19, 2016, as a divisional of an application filed May 27, 2008. Ex. 1001, Cover. The invention of the ’852 Patent is directed to a system and method to facilitate communication between non-compatible communication devices by using a dynamic media proxy in a virtual talk group. *Id.*, Abstract. Independent claims 1, 8, 12, and 17 recite identifying information related to an endpoint, negotiating a communication session with an interoperability server (IS), receiving a determination that the endpoint is not in adherence with the

capabilities of a predefined floor control mechanism, and receiving a determination that a proxy is to be dynamically inserted to connect the endpoint to a virtual talk group. *Id.* cl. 1, 8, 12, 17.

The '852 Patent describes ISs and endpoints that can “determine media capabilities of the endpoint and/or the identity of the endpoint.” *Id.*, 2:43-46, 2:52-57. A negotiation component is configured to advertise the determined capability and identity information “and negotiate a session with an interoperability server (IS) over a private channel.” *Id.*, 2:46-51. “[B]ased on the capability negotiation,” the IS “can dynamically insert a media proxy.” *Id.*, Abstract, 4:27-30, 6:27-32. In this way, the system “can dynamically facilitate communication between two or more non-compatible communication devices.” *Id.*, 2:33-42. The insertion of a proxy can be based, in part, on the system’s floor control policy. *Id.*, 6:27-32. The dynamic proxy also has the benefit of allowing for rogue endpoints to be screened from the virtual talk group. *Id.*, 3:10-20, 7:48-57.

Figure 7 shows an example procedure that dynamically facilitates communication between non-compatible communication devices. At Step 704, the IS determines media capabilities or an identity of an endpoint device to determine communication compatibility. *Id.*, 11:43-48. Step 710 specifies that the IS makes a determination as to whether an endpoint device is to be connected to a virtual talk group via a proxy based on communication compatibility. *Id.*, 11:48-52. When there

is no communication compatibility between the endpoint device and the virtual talk group, as shown in Step 714, the IS dynamically inserts a proxy to allow the endpoint device to be connected to the virtual talk group. *Id.*, 11:63-12:3.



Id., Fig. 7, 2:1-4; Ex. 2002, ¶¶ 31-42.

B. Summary of the Alleged Prior Art

1. U.S. Pat. Pub. No. 2009/0298525 (“Shaffer”)

Shaffer is the publication of U.S. Patent Application No. 12/127,397 (the “’397 Application”). Ex. 1016, cover. The ’852 Patent is a divisional patent that

claims priority to the '397 Application. Ex, 1001, cover. As discussed in Section V.A.1, the priority claim is proper. Thus, Shaffer does not qualify as prior art. Ex. 2002, ¶¶ 47-49.

2. U.S. Pat. Pub. No. 2004/0133683 (“Keller”)

Keller was filed on December 31, 2002, and published July 8, 2004. Ex. 1024, cover. Keller describes “a communications system having a plurality of endpoints each including a logical entity and its physical counterpart, [and] a system for controlling and managing session [sic] between at least two endpoints.” *Id.*, Abstract.

Keller broadly describes an architecture for enabling group communication between at least two endpoints. *Id.*, ¶ 25. Keller’s architecture “provides flexibility to accommodate systems that use different [Radio Access Networks] or different session signaling protocols.” *Id.*, ¶ 30. This may require use of an “individual proxy” that “must insert itself into the SIP route set of an individual directed session” in a way that “to the endpoints, the SIP signaling looks like it is being sent end to end even though the individual proxy may change the SDP or indicate that a session cannot proceed.” *Id.*, ¶ 41.

In multi-endpoint group communications, “[t]he group entity might also detect that the terminal is unable to communicate with the floor controller 230. In this case, the group entity would preferably generate signaling to the non-dispatch

endpoint to cause the endpoint to direct its media to the media manager....” *Id.*, ¶ 122. Keller does not state or otherwise suggest that the inability to communicate with the floor controller 230 is based on adherence to the capabilities of the floor controller. *See, e.g.*, Ex. 1024, ¶¶ 121 (“the group entity might detect that the endpoint is incapable of affiliating with a group”), 122 (“[t]he group entity might also detect that the terminal is unable to communicate with the floor controller 230”), 123 (“[t]he group entity might also detect that the terminal is unable to exchange media via IP multicast.”); Ex. 2002, ¶¶ 50-53.

3. U.S. Patent No. 7,774,012 (“Chowdhury”)

Chowdhury was filed on January 30, 2007, and issued on August 10, 2010. Ex. 1035, cover. Chowdhury provides a “method and apparatus...for a gateway which interconnects public safety wireless networks and commercial wireless networks that support push-to-talk group calls.” *Id.*, Abstract.

Chowdhury’s gateway includes an Interoperability Module 240 and an ISSI Protocol Module 260. *Id.*, 5:41-44, Figs. 2, 3, 9. “ISSI Protocol Module 260 manages communications received from RFSSs, e.g., RFSS 50 and RFSS 60, of a public safety wireless network....” *Id.*, 6:40-42. In each of the “illustrative flow chart[s]” depicted in Figs. 4-8, ISSI Protocol Module 260 is utilized in the flow of communication described for that figure. *Id.*, 2:47-3:3, 9:26-29 (Fig. 4), 10:15-18

(Fig. 5), 11:4-12 (Fig. 6), 11:59-61, 12:1-3 (Fig. 7), 12:65-67 (Fig. 8); Ex. 2002, ¶ 54-56.

4. PoC Documents

Poc Interworking Service (Ex. 1032), PoC System Description (Ex. 1031), and PoC Architecture (Ex. 1029) each lists October 2, 2007, on the face of the respective document. Ex. 1032, 1; Ex. 1031, 1; Ex. 1029, 1. Petitioner's employee opines that these documents would have been published to the OMA website "within 3-4 days" of October 2, 2007. Ex. 1061, ¶ 9.

The PoC documents are each "Candidate Version 2.0" of different aspects of the Push to talk over Cellular standard published by the Open Mobile Alliance Ltd. Ex. 1032, 1; Ex. 1031, 1; Ex. 1029, 1. The PoC Documents "define the system concepts and high level procedures for the PoC service enabler V2.0." *See* Ex. 1031, 10; *see also* Ex. 1029, 5; Ex. 2002, ¶ 57.

5. 3GPP Specifications (TR23.979, TR23.060)

TR23.979 (Ex. 1033) and TR23.060 (Ex. 1034) purport to list June 2007 and March 2008 on the face of the respective documents. Ex. 1033, 1; Ex. 1034, 1. Like the PoC Documents, Petitioner's employee opines that these documents would have been published to the OMA website "within 3-4 days" of the respective release dates. Ex. 1061, ¶ 9. Neither of the 3GPP specifications list a release day, instead listing only the months in which the documents were allegedly released.

TR23.979 “studies the architectural requirements in order to enable services like PoC over 3GPP systems.” Ex. 1033, 6. TR23.060 “defines the stage-2 service description for the General Packet Radio Service (GPRS) which is a packet bearer service and a main part of the packet domain.” Ex. 1034, 11; Ex. 2002, ¶¶ 58-59.

6. U.S. Pat. Pub. No. 2006/0003781 (“Jin”)

Jin was filed on June 30, 2004, and published on January 5, 2006. Ex. 1036, cover. Jin is titled “Methods and apparatus for the immediate acceptance and queuing of voice data for PTT communications.” *Id.*

Jin teaches a mobile station that works with a first-in-first-out (FIFO) buffer memory. *Id.*, Abstract. Once a user activates the PTT switch on the mobile station, the processor “save[s] digital voice data corresponding to voice input signals in the FIFO buffer memory” and after confirming the floor has been granted, “cause[s] the digital voice data from the FIFO buffer to be retrieved and transmitted to the wireless network for the PTT voice communication.” *Id.*; Ex. 2002, ¶ 60.

III. CLAIM CONSTRUCTION

The Petition was filed after November 13, 2018, and, as such, the proper claim construction standard to be applied is articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (*en banc*), in accordance with its regulation, 37 C.F.R. § 42.100(b). *Apple Inc. v. Firstface Co.*, No. 2021-1001, 2021 WL 4156323, at *1 (Fed. Cir. Sept. 13, 2021). Therefore, these claims should be “given their ordinary

and customary meaning [and] that the ordinary and customary meaning of a claim term is the meaning that the term would have to a [POSA] in question at the time of the invention, *i.e.*, as of the effective filing date of the patent application.” *Phillips*, 415 F.3d at 1312-13; *see also* Ex. 1032.

Petitioner proposes a construction for limitation [1c]. Petition, 16-18. The Eastern District of Texas construed limitation [1c] to have its “plain and ordinary meaning. Ex. 2001, 28-30. Petitioner’s claim construction argument in its Petition largely mirrors that presented to and rejected by the District Court. Specifically, Petitioner’s construction requires two determinations be made and sent, one of a lack of adherence, and another of the dynamic insertion of a proxy. *Compare* Petition, 16 (“The plain meaning of this claim limitation requires receiving a determination from the IS: (a) ‘that the endpoint is not in adherence...’ and (b) ‘that a proxy is to be dynamically inserted....’”) *with* Ex. 2001, 28-29 (“Defendant argues that the construction should require receiving two things: (1) ‘that the [endpoint/ initiating device] is not in adherence with capabilities of the predefined floor control mechanism,’ and (2) ‘that a proxy is to be dynamically inserted to connect the [endpoint/initiating device] to a virtual talk group.’”). As the E.D. Tex. found, the claim language is unambiguous and easily understandable. Ex. 2001, 29. Thus, the plain and ordinary meaning should apply.

Under the plain and ordinary meaning of limitation [1c], the prior art fails to render any Challenged Claim unpatentable. Even if Petitioner’s affirmative construction is applied, this outcome is unchanged. Under either construction, Petitioner has failed to show why any Challenged Claim is unpatentable. Ex. 2002, ¶¶ 44-46.

IV. LEGAL STANDARDS

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity...the evidence that supports the grounds for the challenge to each claim”)). The burden of persuasion in an IPR “never shifts to the patentee.” *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). Moreover, a petitioner should not “place the burden on [the Board] to sift through information presented by the Petitioners, determine where each element [of the challenged claims] is found in [the cited references], and identify any differences between the claimed subject matter and the teachings of [the cited references.]” *Google Inc. v. EveryMD.com LLC*, Case No. IPR2014-00347, Paper 9 at 25 (P.T.A.B. May 22, 2014).

A. Obviousness

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved based on underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations). *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

“To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016). A petition seeking to establish obviousness based on more than one reference, as is the case here, “must articulate sufficient reasoning with rational underpinnings to combine the teachings.” *Wilson Elec., LLC. v. Cellphone-Mate, Inc.*, IPR2018-01778, Paper 10 at 15 (P.T.A.B. Apr. 23, 2019) (citing *KSR Int’l*, 550 U.S. at 418).

B. Level of Ordinary Skill in the Art

Patent Owner does not dispute the proposal provided by Petitioner on who would qualify as a POSA: an individual who “would have had at least a bachelor’s degree in electrical engineering, computer science, or a similar field, plus approximately three years of industry in networking or communication systems, in particular address interoperability between different types of networks and satellite communications.” Petition, 4-5.

V. THE PETITION FAILS TO ESTABLISH A REASONABLE LIKELIHOOD OF SUCCESS ON ANY CHALLENGED CLAIMS

The Petition challenges twenty claims—the Challenged Claims—under four total grounds, Ground 1-4, as detailed below:

Ground	Basis for Challenge
1	Purportedly “reserved” ⁴
2	Claims 1-5 and 7-16 are <u>obvious</u> over Shaffer and Keller
3	Claims 1-2 and 9-13 are <u>obvious</u> over Chowdhury, PoC Interworking Service, PoC System Description, TR23.979, and Jin

⁴ This Ground was the subject of IPR2024-00479 where institution was denied. *Motorola Solutions Inc. v. STA Group LLC*, IPR2024-00479, Paper 10 at 12 (P.T.A.B. Aug. 6, 2024).

Ground	Basis for Challenge
4	Claims 4, 5, 14, and 16 are <u>obvious</u> over Chowdhury, PoC Interworking Service, PoC System Description, PoC Architecture, TR23.979, Jin and TS23.060

This Patent Owner response is supported by the Declaration of Robert Akl, D.Sc. Ex. 2002, ¶¶ 1-111. He opines that the Challenged Claims are not obvious over the proposed combinations of references. *Id.*, ¶¶ 61, 97, 110.

A. Ground 2: The Petition Does Not Establish That Claims 1-5 and 7-16 are Obvious Over Shaffer in view of Keller

The Petition fails to show that Shaffer is prior art and further fails to show that the combination with Keller discloses all the elements of independent claims 1, 8, and 12. As such, the Petition fails to demonstrate that the Challenged Claims are unpatentable. *Id.*, ¶ 61.

1. The '852 Patent is entitled to the May 2008 priority date

Petitioner's challenge to the '852 Patent's priority claim concerns whether the "receiving" limitation, [1c], is supported by the specification in Shaffer, which is the publication of the parent application. Petition, 5-14. Petitioner recognizes "Shaffer's specification is identical to the disclosure of the '852 patent." Petition, 33. Petitioner, however, argues that the specification of Shaffer does not provide support for an endpoint receiving a first determination from an interoperability server (IS). Petition,

7. The claimed first determination provides an indication that the endpoint is not in adherence with capabilities of a predefined floor control mechanism and that a proxy is to be dynamically inserted to connect the endpoint to a virtual talk group. Ex. 1001, 16:55-60, 17:36-42, 18:4-10. For the reasons below, the claims and specification from Shaffer provide support for limitation [1c]. Ex. 2002, ¶¶ 62-63.

- a. *The Ariad Pharms. decision supports a finding that Shaffer provides adequate written description support*

The Board stated that Patent Owner “does not address *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1349-50 (Fed. Cir. 2010) (*en banc*), which determined that in some cases, original claims themselves may lack written description support. *See id.* at 1349 (‘Although many original claims will satisfy the written description requirement, certain claims may not.’).” Paper 10, 11 n.12. Patent Owner respectfully submits that its arguments in the Preliminary Response were consistent with Federal Circuit precedent. The Federal Circuit recently reiterated that “[o]riginally filed claims have long been held to be part of the specification to be considered in any § 112 analysis.” *Allergan USA, Inc. v. MSN Labs. Private Ltd.*, 111 F.4th 1358, 1374 (Fed. Cir. 2024) (citing *In re Gardner*, 480 F.2d 879, 879 (CCPA 1973)); *see also Mentor Graphics Corporation v. EVE-USA, Inc.*, 851 F.3d 1275, 1297 (Fed. Cir. 2017) (“Original claims are part of the original specification

and in many cases will satisfy the written description requirement.” (citing *Ariad Pharms.*, 598 F.3d at 1349-50)).

This is one of those “many cases” where Shaffer’s specification, including the original claims filed with the Shaffer application, provide written description support for the later-filed claims that issued as the ’852 Patent. *Mentor Graphics*, 851 F.3d at 1297.

The *Ariad Pharms.* case additionally held “the level of detail required to satisfy the written description requirement varies depending on the nature and scope of the claims and on the complexity and predictability of the relevant technology.” *Ariad Pharms.*, 598 F.3d at 1351. The Federal Circuit enumerated factors to consider when evaluating the adequacy of the disclosure including “the existing knowledge in the particular field, the extent and content of the prior art, the maturity of the science or technology, [and] the predictability of the aspect at issue.” *Id.* (alteration in original) (quoting *Capon v. Eshhar*, 418 F.3d 1349, 1359 (Fed. Cir. 2005)). When “the field of this invention is a predictable art, [] a lower level of detail is required to satisfy the written description requirement than for unpredictable arts.” *Hologic, Inc. v. Smith & Nephew, Inc.*, 884 F.3d 1357, 1361 (Fed. Cir. 2018).

As detailed below, both experts agree that the allegedly missing limitation, receiving a first determination from an interoperability server, is in a predictable, mature art. Ex. 2002, ¶¶ 69-86; Ex. 2004, 34:19-35:9, 37:8-16, 47:9-48:13; Ex. 1016,

¶ 41. Accordingly, the level of detail required to satisfy the written description requirement is low. *Hologic*, 884 F.3d at 1361. Shaffer’s disclosure meets this threshold requirement and provides written description support for the Challenged Claims. Ex. 2002, ¶¶ 64-86.

Finally, the test for sufficient description set out in *Ariad* “requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art.” *Ariad Pharms.*, 598 F.3d at 1351. As discussed above, Petitioner proposed a construction of limitation [1c] in the District Court proceeding, which the court rejected. Ex. 2001, 28-30. That the District Court adopted the plain and ordinary meaning of limitation [1c] suggests it too believes there is sufficient disclosure that a POSITA would understand the scope of this limitation. *Phillips*, 415 F.3d at 1313 (“We have made clear, moreover, that the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. ... Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.”); *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The priority claim in the ’852 Patent should, therefore, be upheld.

b. *Shaffer's original specification provides clear written description support for the Challenged Claims*

The Board recognized the Federal Circuit's directive "that the exact terms appearing in the claim 'need not be used in *haec verba*'" to satisfy the written description requirement. Paper 10, 13 (quoting *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997)); *see also Ariad Pharms.*, 598 F.3d at 1352. Indeed, the P.T.A.B. has previously recognized the Federal Circuit's view that "[t]he written description requirement guards against the inventor's overreaching by insisting that he recount his invention in such detail that his future claims can be determined to be encompassed within his original creation" but ***does not require*** disclosure of "examples explicitly covering the full scope of the claim language." *Truist Bank v. U.S. Automobile Assoc.*, IPR2023-00144, Paper 15 at 12 (P.T.A.B. May 16, 2023) (internal quotation omitted) (collecting cases). While the specification of the '852 Patent does not verbatim use the words "receiv[e/ing] a first determination from the [IS/interoperability server] that the [endpoint/initiating device] is not in adherence with capabilities of the predefined floor control mechanism and that a proxy is to be dynamically inserted to connect the [endpoint/initiating device] to a virtual talk group", the Challenged Claims clearly fall within the scope of Shaffer's original disclosure.

For example, Claims 20 and 21 of Shaffer, as originally filed, are directed to an endpoint device. Ex. 1003, 96. Claim 20 recites an apparatus comprising “a negotiation component that negotiates a communication session with an interoperability server (IS) based in part on at least one of the identified information or a predefined floor control mechanism associated with the IS.” *Id.* Claim 21 depends from Claim 20 and adds “a capability determination component that identifies media capabilities associated with the endpoint, the media capabilities employed by the IS to dynamically determine if the endpoint should be connected to a virtual talk group (VTG) via a proxy.” *Id.*; Ex. 2002, ¶ 65. These claims are “part of the specification to be considered in any § 112 analysis” and thus relevant to whether the receiving limitation is supported by Shaffer. *Allergan*, 111 F.4th at 1374.

Contextually, claims 20 and 21 together recite how an endpoint and an IS negotiate a communication session by determining capabilities associated with the endpoint. Ex. 1003, 96; Ex. 2002, ¶¶ 65-67. A POSITA would have understood that this negotiation would have necessarily included back-and-forth communications between the endpoint and IS as they negotiated the communication session. *Id.*, ¶ 66. This back-and-forth exchange necessarily includes a determination from the IS whether the endpoint is in adherence with capabilities of a predefined floor control mechanism of the IS as well as whether to connect the endpoint to the IS via a proxy.

Ex. 1003, 96; Ex. 2002, ¶ 67. As such, the text of these claims from the parent application provides written description support for independent claims 1, 8, and 12 of the '852 Patent. Ex. 2002, ¶ 68.

In addition to the original claims, Shaffer's specification provides evidence supporting a finding that the '852 Patent is entitled to the earlier priority date. Ex. 2002, ¶ 69. For example, Shaffer explains that both endpoints and ISs can include information collection components that determine capabilities of the initiating endpoint. Ex.1016, ¶¶ 16, 17. Endpoints further include a negotiation component that advertises the endpoint's capability information and negotiates a session with an interoperability server (IS). *Id.*, ¶ 16. Shaffer notably explains that this "negotiation component 208 can be employed to exchange capability information with an interoperability server (not shown) during communication." *Id.*, ¶ 53. A POSITA would necessarily understand this "exchange" involves two-way communications between the endpoint and the IS. Ex. 2002, ¶¶ 70-71.

Using the information received from the endpoint, the IS makes a determination regarding whether the endpoint adheres to the capabilities of the floor control mechanism and whether to dynamically insert a proxy to connect that endpoint to a VTG. Ex. 1016, ¶ 34 ("Based on the information provided by the negotiation component 208, the IS 102 (FIG. 1) can determine if the endpoint 104 should be allowed to join the VTG and also determine if the endpoint should be

directly connected to the VTG or should be connected via a proxy based in part on the system's 100 (FIG. 1) floor control policy."); Ex. 2002, ¶ 72. The determination would have been specifically made based on the endpoint's capabilities, and whether those capabilities could adhere to the floor control mechanism. Ex. 1016, ¶¶ 25 ("The system disclosed herein, relates to interoperability systems that can dynamically insert a media proxy *based on capability negotiation*, according to an embodiment of the invention.")⁵, 26, 29, 34; Ex. 2002, ¶ 72.

Shaffer further describes establishing a communication path for the endpoint. Ex. 1016, ¶¶ 38, 46 ("the dynamic proxy component 308 can establish a communication path based on capability negotiation."). A POSITA would have known that this communication path would have necessarily been relayed to the endpoint so at the least the endpoint would have an address for communicating with the inserted proxy server. Ex. 2002, ¶¶ 73-74. This is especially true given Shaffer's description that "the dynamic proxy component 308 and the IS 102 can reside on the same *or on different servers*." Ex. 1016, ¶ 41 (further noting the IS and dynamic proxy can be on different networks altogether). The endpoint would have needed an address to establish communications, and would have received that address from the IS. Ex. 2002, ¶¶ 75-76 (further explaining Shaffer's teaching of concealing the VTG

⁵ All emphasis added unless otherwise noted.

from the endpoint was only necessary if the parameters of the VTG were sent to the endpoint).

The level of disclosure provided by Shaffer is consistent with the level of disclosure provided by Keller, which was cited by Petitioner to disclose this claim element. Specifically, Keller merely discloses “generate[s] signaling to the non-dispatch endpoint to cause the endpoint to direct its media to the media manager....” Ex. 1024, ¶ 122. Keller does not provide any more detail about what this signaling encompasses to cause the endpoint to direct its media to the media manager. Ex. 2002, ¶ 77. Like Keller, Shaffer includes negotiating with endpoints and providing signaling to those endpoints to enable those endpoints to direct their communications to the appropriate proxy server. Ex. 1016, ¶ 41; Ex. 2004, 34:19-35:9; Ex. 2002, ¶ 78.

Shaffer also describes a transmitter/receiver 608 specifically to enable the endpoint to communicate with and receive a determination from the IS regarding an adherence with capabilities of a predefined floor control mechanism. Ex. 1016, ¶ 54; Ex. 2002, ¶ 79.

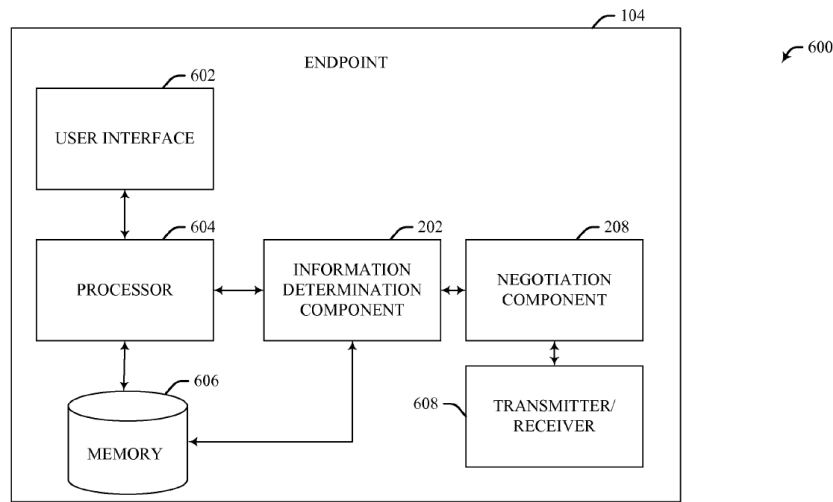


FIG. 6

Ex. 1016, Fig. 6.

Shaffer’s specification, including its original claims, makes clear that the endpoints and IS are in extensive, detailed communication such that the endpoint would be well informed regarding its capabilities and whether those capabilities adhere with the capabilities of the IS as well as whether it will be permitted to join a VTG and under which conditions it will be permitted to join. Ex. 2002, ¶¶ 65-79. Where, as here, the endpoints and IS are engaged in detailed communication regarding endpoint capabilities and access to VTGs, a POSITA would understand it was a necessary aspect of the invention that those communications included information from the IS, including determinations made by the IS. *Ariad Pharms.*, 598 F.3d at 1351 (quoting *Capon*, 418 F.3d at 1357-58) (confirming disclosure can be adequate when “the existing knowledge in the particular field” and “the

predictability of the aspect at issue” support such a finding). The receiving limitation (and First Determination Limitation, to the extent they are different) are supported by Shaffer, and thus properly claim priority to this parent patent.

The adequacy of Shaffer’s disclosure is further supported by the declarants in this case. The Federal Circuit has found “the level of detail required to satisfy the written description requirement varies depending on the nature and scope of the claims and on the complexity and predictability of the relevant technology.” *Ariad Pharms.*, 598 F.3d at 1351. Additionally, when, as here “the field of this invention is a predictable art, [] a lower level of detail is required to satisfy the written description requirement than for unpredictable arts.” *Hologic*, 884 F.3d at 1361. Both experts agree that the level of complexity of the allegedly missing limitation is low, and that this limitation is in a predictable art. Thus, the level of detail required to satisfy the written description requirement is correspondingly low. *Id.*

One factor in determining whether a low level of detail is required to satisfy the written description requirement is “the existing knowledge in the particular field.” *Ariad Pharms.*, 598 F.3d at 1351. Both Dr. Akl and Dr. Kiaei agree this form of control signaling would have been known in this particular field. Ex. 2002, ¶ 80; Ex. 2004, 34:19-35:9 (“In general, a person of skill in the art would know...we do have a control signaling as well going on in the background.”); Ex. 1016, ¶ 41.

Shaffer's disclosure is adequate in light of this existing knowledge. Ex. 2002, ¶ 81 (quoting Ex. 1016, ¶ 41).

For example, Petitioner's declarant testified that Shaffer need not be modified to include the receiving limitation supposedly taught by Keller. Ex. 2004, 37:8-16. If Shaffer need not be modified to adequately disclose the claims of the '852 Patent, it follows that this allegedly missing limitation is within the scope of existing knowledge in this particular field, or at least in a highly predictable art. Shaffer's disclosure detailing the extensive communication between endpoint and IS, therefore, provides adequate written description to support the priority claim. *Hologic*, 884 F.3d at 1361; Ex. 2002, ¶¶ 82-83.

Further, when asked "[h]ow does the endpoint know where to send its media," Petitioner's declarant responded "[i]n general, a person of skill in the art would know that when a [sic] endpoint is talking to another endpoint or communicating to other endpoint or is communicating via the radio network and so on, we do have a control signaling as well going on in the background...." Ex. 2004, 34:19-35:9. Shaffer describes proxies on different servers or networks from the IS, and to take advantage of these proxies, a POSITA would have known that control signaling was "going on in the background." *Id.*; Ex. 1016, ¶ 41. Shaffer itself states, "the IS 102 can facilitate the creation and maintenance of the VTG *as it is responsible for the control signals* and the dynamic proxy component 308 can deal with a media component (not

shown).” Ex. 1016, ¶ 41. Thus, Shaffer’s express confirmation that the IS was sending control signals to endpoints further confirms the adequacy of Shaffer’s written description supporting the receiving limitation. Ex. 2002, ¶¶ 80-81.

Dr. Akl further opined that this sort of control signaling would have been a necessary component of communications between endpoints and interoperability servers and not merely obvious to implement. Ex. 2002, ¶¶ 80-81. Without this sort of signaling being exchanged between endpoint and IS, the endpoint would be unable to establish any form of interoperability server-hosted communication session with another endpoint, which is the point of both Shaffer and the ’852 Patent. *Id.*, ¶ 81. Thus, a POSITA would have readily understood the control signals sent between Shaffer’s endpoint 104 and Shaffer’s IS 102 would have included detailed communications, including regarding whether the endpoint was in adherence with the capabilities of the IS’s predefined floor control mechanism and whether a proxy was to be dynamically inserted. *Id.*, ¶¶ 80-83 (citing Ex. 2004, 34:19-35:9, 37:8-21).

Finally, Keller, the very reference Petitioner relies on to show informing endpoints provides scant disclosure of this signaling to the endpoint, itself provides only a few short phrases regarding the signaling with endpoints. Ex. 1024, ¶ [0121] (noting only that signaling “directs the standard device’s media to the media manger” and “may carry session parameters that are different than those distributed to the dispatch enabled endpoints”). This disclosure does not describe how the

signaling is sent or received by the endpoint, confirming the level of detail required to describe this aspect of the claims was low. *Id.*; Ex. 2002, ¶¶ 84-85.

Considering both experts' remarks, the level of detail required to satisfy the written description requirement is low. *Ariad Pharms.*, 598 F.3d at 1351; *Hologic*, 884 F.3d at 1361. Shaffer's disclosure provides the requisite level of detail required to satisfy the written description requirement for the claims of the '852 Patent, and the priority claim should be affirmed. Ex. 2002, ¶ 86; *see also* Ex. 2004, 47:9-48:13 (noting Shaffer discloses the framework for control signaling without detailing the specifics of the communications themselves, suggesting a POSITA would have already known the communication specifics).

Because the '852 Patent's May 2008 priority claim is correct, the parent application (Shaffer) cannot be used to invalidate the '852 Patent. 35 U.S.C. § 121 ("A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application"). Therefore, Ground 2 cannot succeed in rendering any Challenged Claim unpatentable.

2. The alleged motivation to combine is nothing more than hindsight

The Petition devotes a single, clearly deficient paragraph to the alleged motivation to combine Shaffer and Keller. Petition, 33-34. In this paragraph, Petitioner asserts, without support, that Shaffer “provide[s] a way for non-compatible endpoints to work with the ‘standards-based IP technologies’ used by interoperability systems” but “does not disclose a specific standards-based signaling technology.” *Id.*, 33. Relying on its declarant, Petitioner asserts “[b]y 2008, SIP was a well-known and established ‘standards based IP technolog[y]’ used for signaling in PTT.” *Id.* (modification in original). This, according to Petitioner is the reason a POSITA would have looked to Keller, which Petitioner claims (without citation to Keller) “discloses an example of a standards-based signaling technology, SIP, in a PTT system.” *Id.*, 33-34; Ex. 2002, ¶¶ 87-88.

When asked whether an example from Shaffer’s specification contemplated the use of SIP for communications between devices, Petitioner’s declarant could not say whether the example would utilize SIP. Ex. 2004, 38:23-39:7, 39:16-40:12 (discussing Ex. 1016, ¶ 28) (“So I – I wouldn’t say that SIP may or may not be able to be needed – that the SIP may or may not be needed to be employed especially for these technologies.”). This exemplifies the conclusory nature of the sole motivation to combine Shaffer and Keller presented in the Petition. The entire motivation to

combine analysis hinges on four words, “standards-based IP technologies,” in Shaffer’s background section without regard for the rest of Shaffer’s disclosure. Petition, 33 (citing Ex. 1016, ¶ 2); Ex. 2002, ¶¶ 93-94.

The barebones conclusory assertion that “a POSITA would have found it obvious to combine” Shaffer and Keller is precisely the sort of generic motivation, untethered to any specific reason why a POSITA would be motivated to make the proposed modification, that the Federal Circuit has rejected. Petition, 34; *see Samsung Elecs. Co., Ltd. v. Red Rock Analytics, LLC*, IPR2018-00556, Paper 18, 21 (Aug. 20, 2018) (“statements of increased utility and minimal modifications are generic, and fail to provide necessary factual support—they are akin to stating in a conclusory fashion that the combination ‘would have been obvious.’”); *see also ActiveVideo Networks, Inc. v. Verizon Communs., Inc.*, 694 F.3d 1312, 1328 (Fed. Cir. 2012). Whether references are “obvious to combine” as Petitioner asserts is no substitute for a motivation to combine analysis. *Samsung Elecs.*, IPR2018-00556, Paper 18 at 21.

Further, Petitioner’s declaration that Keller “discloses *an example* of a standards-based signaling technology, SIP, in a PTT system” has no bearing on whether Keller’s specific teachings are appropriately combined with Shaffer’s interoperability system. Petition, 33; Ex. 2002, ¶¶ 89-90. Indeed, the Federal Circuit has rejected attempts to conflate technological overlap with a motivation to combine.

See Personal Web Techs., LLC v. Apple, Inc., 848 F.3d 987, 993-94 (Fed. Cir. 2017) (“reasoning [that] seems to say no more than that a skilled artisan, once presented with the two references, would have understood that they *could be* combined...is not enough: it does not imply a motivation to pick out those two references and combine them to arrive at the claimed invention.” (emphasis in original)); *Securus Techs., Inc. v. Global Tel*Link Corp.*, 701 F. App’x. 971, 977 (Fed. Cir. 2017) (“a broad characterization of [prior art references] as both falling within the same alleged field...without more, is not enough for [Petitioner] to meet its burden of presenting a sufficient rationale to support an obviousness conclusion”) (non-precedential); *Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR2018-00827, Paper 9, 10-11, 16-17 (Oct. 16, 2018) (informative) (neither “mere compatibility of the references” nor a showing “that the prior art references [were] analogous art or in the same field of endeavor as the challenged patent” were sufficient “to establish that one of ordinary skill would have had reason to combine the teachings of the prior art in the manner set forth in the claim.”); *Microsoft Corp. v. Enfish, LLC*, 662 F. App’x 981, 990 (Fed. Cir. 2016) (“[T]he Board correctly concluded that [the petitioner] did not articulate a sufficient motivation to combine. With respect to...[certain challenged claims, the petitioner] gave no reason for the motivation of a person of ordinary skill to combine...[the two references] except that the references were directed to the same art or same techniques....”).

Thus, Petitioner’s characterization of Keller as “an example” of a system that could be compatible with Shaffer misses the mark. Petition, 33; *see also* Ex. 2004, 31:15-18 (“at the time of the ’852 patent, a well-known example of IP was for – was used for push-to-talk radio was session initiation protocol, SIP”). For this reason, Petitioner’s motivation to combine falls far short of the standard required to establish motivation to combine and should be rejected. *Personal Web*, 848 F.3d at 993-94; Ex. 2002, ¶¶ 89-90.

Additionally, it is well-settled that obviousness is not established merely because the “elements of the claimed invention were independently known in the prior art.” *Metalcraft of Mayville, Inc. v. Toro Co.*, 848 F.3d 1358, 1367 (Fed. Cir. 2017); *see also Virtek Vision Int’l ULC v. Assembly Guidance Sys., Inc.*, 97 F.4th 882, 887 (Fed. Cir. 2024) (“It does not suffice to meet the motivation to combine requirement to recognize that two alternative arrangements...were both known in the art.”). Rather, an *ex post facto* obviousness assessment that “break[s] an invention into its component parts, then find[s] a prior art reference corresponding to each component...would import hindsight into the obviousness determination by using the invention as a roadmap to find its prior art components” and “would discount the value of combining various existing features or principles in a new way to achieve a new result—often the essence of the invention.” *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1337 (Fed. Cir. 2005);

see also Ruiz v. A.B. Chance Co., 357 F.3d 1270, 1275 (Fed. Cir. 2004) (“This form of hindsight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way to achieve a new result – often the very definition of invention.”); Ex. 2002, ¶¶ 91-92.

Petitioner challenges that Shaffer provides written description support for the step of “informing the endpoint that it is not in adherence with the floor control mechanism,” yet Petitioner’s analysis merely breaks out this limitation and presents a reference suggesting this limitation was known somewhere in the prior art. Petition, 44; Ex. 2002, ¶¶ 90-92. Critically, what is required, and what Petitioner fails to provide, is proof that “one of skill in the art would have combined these particular references to produce the claimed invention.” *Metalcraft*, 848 F.3d at 1367. Where, as here, Petitioner fails to provide that proof, “we are left with only hindsight bias that *KSR* warns against.” *Id.* Petitioner’s treatment of Keller as an example allegedly showing where “elements of the claimed invention were independently known in the prior art” cannot establish a motivation to combine and cannot establish obviousness. *Id.*

These failures to establish why a POSITA would have been motivated to make the combination fatally condemn Petitioner’s obviousness analysis. Ex. 2002, ¶ 95. Because Petitioner has not articulated any acceptable motivation to combine Shaffer

and Keller, Petitioner has not established that any Challenged Claim is unpatentable over the prior art.

B. Grounds 3 and 4: The Petition Does Not Establish That Claims 1, 8, or 12 are Obvious Over Chowdhury, OMA-PoC Documents, TR23.979, and Jin

The Board recognized that the Petition fails to address each element of independent claims 1, 8, and 12. Paper 10, 17. Specifically, the Board aptly noted that “Petitioner appears to provide no explanation for how the proposed combination discloses all three capabilities recited in limitation [1c], including “quality of service, rules of transmission and trusted endpoint identity.” *Id.* Instead, the Petition’s analysis is limited to one conclusory statement regarding “rules of transmission of the P2T network” without addressing the other claimed capabilities, “quality of service” and “trusted endpoint identity.” Petition, 73. Therefore, Grounds 3 and 4 (which challenges only claims depending from 1 and 12) fail to invalidate any Challenged Claim. *Id.*; Ex. 2002, ¶¶ 97-110.

C. Dependent Claims 2-5, 7, 9-11, and 13-16

The Petition fails to establish the cited art renders obvious any of independent claims 1, 8, or 12. Therefore, the cited art likewise fails to render obvious dependent claims 2-5, 7, 9-11, and 13-16. Ex. 2002, ¶¶ 96, 109-110.

D. The Board’s Final Written Decision Cannot Comply with 35 U.S.C. § 318(a)

Petitioner listed four total grounds under its statement of precise relief requested with its request for cancelation of claims in accordance with 35 U.S.C. § 311. Petition, 1. The analysis of the prior art in the Petition begins with a summary of U.S. Patent Application Publication No. 2006/0058007 (“Choksi”), the art central to Petitioner’s Ground 1 and “the subject of IPR2024-00479.” Petition, 18-21, 33. As a result, unless the contents of IPR2024-00479 are incorporated into the Petition, the Board cannot “address all grounds of unpatentability raised by the petitioner,” which the Board is obligated to do. *AC Techs. S.A. v. Amazon.com, Inc.*, 912 F.3d 1358, 1364 (Fed. Cir. 2019) (citing *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1359-60 (2018)); 35 U.S.C. § 318(a).

In addition to crafting its Petition to incorporate the arguments from IPR2024-00479 into the present proceeding, Petitioner also submitted the identical expert declaration in both the present proceeding and IPR2024-00479. *Compare* Ex. 1002 with *Motorola Solutions, Inc. v. STA Group LLC*, IPR2024-00479, Ex. 1002 (P.T.A.B. May 13, 2024).⁶ The declaration in this proceeding, Ex. 1002, includes a

⁶ To avoid having identical exhibits, Patent Owner has not re-submitted this declaration as a new exhibit in this proceeding.

full-blown analysis of claims 1-5 and 8-11 in view of Choksi. Ex. 1002, ¶¶ 102-153. Regardless of whether this practice is used in other proceedings as the Board suggests (Paper 10, 17-18 n.16), the inclusion of “Ground 1” in the Petition cannot be ignored. Petition, 1, 33.

Despite the Board noting that it “ha[s] not considered here Petitioner’s declarant’s testimony regarding Ground 1 in IPR2024-00479,” issues are all but certain to arise during the trial, final decision, and appellate record. For example, because Choksi is included and described in the Petition, nothing prohibits from Petitioner from relying on Choksi later, including on appeal. Petitioner defined the contours of its proceeding and has made the conscious choice to make Ground 1 part of this proceeding; it must now live with the consequences.

The Supreme Court has held that the Board must institute all grounds, or none. *SAS*, 138 S. Ct. at 1359-60. Having decided to institute review, the Federal Circuit has clarified that the Board must issue a final written decision addressing all claims challenged by the petitioner and all grounds of unpatentability raised by the petitioner. *AC Techs.*, 912 F.3d at 1364. Because Petitioner has failed to include the rationale for Ground 1 in this Petition (other than via improper incorporation of IPR2024-00479), the Board is unable to address the substance of this ground in a final written decision. Because the Board would be unable to address the substance

of this ground in a final written decision, it would be unable to comply with 35 U.S.C. § 318(a).

VI. CONCLUSION

Petitioners have failed to satisfy its burden that the Challenged Claims are invalid, and the Board should confirm the patentability of the Challenged Claims.

Dated: November 22, 2024

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CLAIM APPENDIX OF THE CHALLENGED CLAIMS

- [1pre] An apparatus comprising a processor, wherein the processor is configured to:
 - [1a] identify information related to an endpoint to obtain identified information; and
 - [1b] negotiate a communication session with an interoperability server (IS) based in part on at least one of the identified information or a predefined floor control mechanism associated with the IS; and
 - [1c] receive a first determination from the IS that the endpoint is not in adherence with capabilities of the predefined floor control mechanism and that a proxy is to be dynamically inserted to connect the endpoint to a virtual talk group, wherein the capabilities comprise quality of service, rules of transmission and trusted endpoint identity.
- [2] The apparatus of claim 1, wherein the processor is further configured to identify media capabilities associated with the endpoint, the media capabilities employed by the IS to dynamically determine if the endpoint should be connected to the virtual talk group via the proxy.
- [3] The apparatus of claim 2, further comprising a transmitter, wherein the transmitter transmits data to the virtual talk group if it is determined that the proxy is not employed to connect the endpoint to the virtual talk group.

- [4] The apparatus of claim 2, further comprising a transmitter, wherein the transmitter transmits data to the proxy over a private channel if it is determined that the proxy is employed to connect the endpoint to the virtual talk group.
- [5] The apparatus of claim 1, wherein the processor is further configured to determine an identity associated with the endpoint, the identity employed by the IS to dynamically determine if the endpoint should be connected to the virtual talk group via the proxy.
- [7] The apparatus of claim 1, wherein the processor is further configured to monitor endpoints directly connected to the virtual talk group and determines that a directly connected endpoint is not conforming with a floor control policy of the virtual talk group.
- [8pre] A method comprising:
 - [8a] initiating communication with a non-compatible communication device;
 - [8b] identifying information associated with an initiating device; and
 - [8c] negotiating a communication session with an interoperability server (IS) based in part on at least one of the identified information or a predefined floor control mechanism associated with the IS; and

[8d] receiving a first determination from the IS that the initiating device is not in adherence with capabilities of the predefined floor control mechanism and that a proxy is to be dynamically inserted to connect the initiating device to a virtual talk group, wherein the capabilities comprise quality of service, rules of transmission and trusted endpoint identity.

[9] The method of claim 8, wherein the information associated with the initiating device includes at least one of media capability information associated with the initiating device or an identity of the initiating device.

[10] The method of claim 8, further comprising transmitting media to the proxy over a private network through custom messages if it is evaluated that the proxy is employed.

[11] The method of claim 8, further comprising, attaching the initiating device directly to the virtual talk group and transmitting media directly to the virtual talk group if the proxy is not employed to attach the initiating device to the virtual talk group.

[12pre] An endpoint comprising:

[12a] a transmitter and a receiver;

[12b] a user interface;

[12c] a processor coupled to the user interface, wherein the processor:

- [12d] identifies information related to the endpoint; and
 - [12e] negotiates a communication session with an interoperability server based in part on at least one of the identified information or a predefined floor control mechanism associated with the interoperability server; and
 - [12f] receive a first determination from the interoperability server that the endpoint is not in adherence with capabilities of the predefined floor control mechanism and that a proxy is to be dynamically inserted to connect the endpoint to a virtual talk group, wherein the capabilities comprise quality of service, rules of transmission and trusted endpoint identity.
- [13] The endpoint of claim 12, wherein the processor identifies media capabilities associated with the endpoint, the media capabilities employed by the interoperability server to dynamically determine if the endpoint should be connected to the virtual talk group via the proxy.
- [14] The endpoint of claim 12, wherein the processor determines an identity associated with the endpoint, the identity employed by the interoperability server to dynamically determine if the endpoint should be connected to a virtual talk group via the proxy.
- [15] The endpoint of claim 12, wherein the processor causes the transmitter to transmit data to the virtual talk group if it is determined that the proxy is not employed to connect the endpoint to the virtual talk group.

- [16] The endpoint of claim 12, wherein the processor causes the transmitter to transmit data to the proxy over a private channel if it is determined that the proxy is employed to connect the endpoint to the virtual talk group.

Certification of Service Under 37 C.F.R. §42.6(e)(4)

I hereby certify that on November 22, 2024, a true and correct copy of the foregoing was caused to be served electronically on the following counsel of record for Petitioner at the following email addresses:

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Certification of Word Count Under 37 C.F.R. §42.24(d)

The undersigned hereby certifies that the foregoing Patent Owner's Response contains **7,626** words, not including a table of contents, table of authorities, mandatory notices under §42.8, certificate of service, certificate of word count, appendix of exhibits or appendix of claim listing as specified by 37 C.F.R. §42.24, according to the word count feature of the word-processing software used to prepare the Patent Owner's Response.

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