

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,
Petitioner,

v.

SITNET LLC,
Patent Owner

U.S. Patent No. 9,877,345

IPR Case No.: 2024-00530

**SITNET LLC'S PRELIMINARY RESPONSE TO PETITION FOR *INTER PARTES*
REVIEW OF U.S. PATENT NO. 9,877,345**

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EXHIBIT LIST

No.	Exhibit Description
2001	Joint Claim Construction Brief in <i>SitNet LLC v. Meta Platforms, Inc.</i> , No. 1:23-cv-06389-AS (Dkt. 57).
2002	Amended Joint Claim Construction Brief in <i>SitNet LLC v. Meta Platforms, Inc.</i> , No. 1:23-cv-06389-AS (Dkt. 58).
2003	Order regarding Trial Schedule in <i>SitNet LLC v. Meta Platforms, Inc.</i> , No. 1:23-cv-06389-AS (Dkt. 32).
2004	Statistics for Southern District of New York Judges
2005	Expert Report of Dr. Aviel D. Rubin

I. INTRODUCTION

Pursuant to 35 U.S.C. § 313 and 37 C.F.R. § 42.107, Patent Owner SitNet LLC (“SitNet”) submits the following Preliminary Response to the Petition for *Inter Partes* Review of claims 1-16 of U.S. Patent No. 9,877,345 B2 (“the 345 Patent”) filed by Petitioner, Meta Platforms, Inc. (“Petitioner” or “Meta”).

The patent at issue is currently being asserted against Petitioner in *SitNet LLC v. Meta Platforms, Inc.*, No. 1:23-cv-06389-AS (S.D.N.Y July 24, 2024). Petitioner and Patent Owner have exchanged *Markman* briefs. In those proceedings, the Petitioner has requested the District Court construe the challenged claims contrary to the specific grounds asserted in the Petition. Accordingly, it is unlikely that Petitioner could credibly pursue the asserted. *Inter partes* review, consequently, should not be instituted.

II. CLAIM CONSTRUCTION

A. 37 C.F.R. § 42.100(b) Statement

A *Markman* hearing regarding the challenged claims is currently pending in *SitNet LLC v. Meta Platforms, Inc.*, No. 1:23-cv-06389-AS (S.D.N.Y July 24, 2024). The Parties filed a Joint Claim Construction Brief on February 26, 2024, a copy of which is attached as Exhibit 2001. On May 1, 2024, the Parties filed an Amended Joint Claim Construction Brief, a copy of which is attached hereto as Exhibit 2002. A *Markman* hearing is scheduled for July 1, 2024. When the District Court issues its claim construction, Patent Owner will file a request asking the Board to consider and adopt the District Court’s construction.

B. Situational Network

The term “situational network” appears in claims 1, 5, 8, 12, 13 and 16 of the 345 Patent.

Though Petitioner and Patent Owner have proposed different constructions of “situational network” in *SitNet LLC v. Meta Platforms, Inc.*, there are certain points of agreement. Both

agree that a “situational network” is created in response to the occurrence of an event or situation. Petitioner’s proposed construction of the term is:

“a network *created when an occurrence or expected occurrence of an event or situation* causes connections to be established between, within or among a set of participants”

Exhibit 2001, at 6-12 (emphasis added). Petitioner has thus proposed a construction requiring a situational network to be created in response to the occurrence of an event or situation. Patent Owner, likewise, proposed such a construction. Specifically, Patent Owner’s proposed construction of the term is:

“a network that is a subset of a larger network, comprising member nodes, *formed in response to an event or situation*”

Id. (emphasis added). Accordingly, neither party disputes that a “situational network” is created in response to the occurrence of an event or situation.

The parties also agree that a “situational network” is a network, which finds support in the specification, which describes: Referring generally to FIG. 1, a situational network 3000 is created when an occurrence or expected occurrence of an event or situation 3005 causes connections, also referred to as links, to be established between, within or among a set of participants 250, 207... Some or all of the participants included in the situational network (SitNet) 3000 may have no prior knowledge of or connection or contact with each other or other participants of the situational network through *any other type of social network* or personal interactions.

345 Patent, 4:3-15 (emphasis added). In recognizing “*any other type* of social network” as alternatives to a situational network, the 345 Patent classifies a “situational network” as a type of social network. Accordingly, a “situational network” is a social network created in response to the occurrence of an event or situation.

As the Petitioner acknowledges in its proposed construction, a situational network is formed by “caus[ing] connections, also referred to as links, to be established between, within or among a set of participants 250, 207.” 345 Patent, 4:5-7. The specification further states:

...individual users, members, entities, communities, or other aggregations of entities within the NDSN [(N - dimensional social network)] are associated with the nodes... Each node is capable of communicating in a peer-to-peer fashion with other nodes in the NDSN, and thus is a user’s point of connection to the NDSN, providing a user with access to information that can be obtained from other users of the NDSN with whom the user has a relationship.

345 Patent, 15:18-30. Nodes thus represent the participants in a “situational network.”

Accordingly, a situational network is a social network formed in response to the occurrence of an event or situation by forming connections between a subset of nodes representing participants of the social network.

As a “situational network” is a social network, connections formed in creating a “situational network” define a social network (e.g. friend request, connection request, follows, etc.). “Traditionally, a social network is a network that consists of individuals who are interconnected by various personal information and social metrics such as interests, location, demographics, community, and more.” Exhibit 2005 ¶ 35. The use of social networks to interconnect individuals based upon personal information and social metrics has become ubiquitous in society. For instance, people follow influencers, and others, posting on topics of interests on “X” (formerly Twitter), TikTok, Facebook, and Instagram. Accordingly, the common activity of following someone interconnects a user to an influencer based on the social metric of an interest. *Id.* Social networks such as LinkedIn and Facebook permit users to interconnect based upon community. For instance, a user on LinkedIn might send an invitation to connect with a former classmate or work colleague. Likewise, a user on Facebook might send

a friend request to their neighbor. Accordingly, via invitations to connect and friendship requests, social networks interconnect individuals based on community. The connections creating and defining a social network are thus links representing the personal information and social metrics that interconnect users of the social networking service. The specification makes clear the same holds true for the connections used to form a “situational network” social network.

Claim construction during IPR follows the *Phillips* standard, under which a claim term may be defined without any explicit definitional format. To the extent Petitioner cites *Thorner v. Sony Computer Entertainment America, LLC*, 669 F.3d 1362 (Fed. Cir. 2012) for the proposition that there is a heavy presumption that claim terms carry their accustomed meaning in the relevant community at the relevant time, which presumption can only be overcome in only two specific circumstances (*i.e.*, redefinition or disavowal), this is a common misapplication of *Phillips*. See *Trustees of Columbia Univ. v. Symantec*, 811 F.3d 1359, 1363 (Fed. Cir. 2016) (holding that the “case law does not require explicit redefinition or disavowal” and quoting *Aventis Pharma S.A. v. Hospira, Inc.*, 675 F.3d 1324, 1330 (Fed. Cir. 2012) (“This clear expression need not be *in haec verba* but may be inferred from clear limiting descriptions of the invention in the specification or prosecution history.”); further holding that the “en banc Phillips opinion rejected this very approach.”)

Even when a claim term’s meaning in the specification differs from its meaning in the relevant community at the relevant time, “*Phillips* made clear, a claim term may be clearly redefined without an explicit statement of redefinition and even when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents.” *Symantec*, 811

F.3d at 1364 (Fed. Cir. 2016); *see also Trustees of Columbia Univ.*, 811 F.3d 1363 (Fed. Cir. 2016).

One manner of defining a claim term by implication is by consistent usage in the specification. “[W]hen a patentee uses a claim term throughout the entire patent specification, in a manner consistent with only a single meaning, he has defined that term ‘by implication.’” *Bell Atlantic Network Serv. v. Covad Communications*, 262 F.3d 1258, 1271 (Fed. Cir. 2001). Moreover, “[w]hether a claim must, in any particular case, be limited to the specific embodiment presented in the specification, depends in each case on the specificity of the description of the invention and on the prosecution history.” *Liebel-Flarsheim Company v. Medrad, Inc.*, 358 F.3d 898, 907 (Fed. Cir. 2004). Accordingly, *Liebel-Flarsheim* forecloses construing a claim term consistent with its usage in all disclosed embodiments, when “[t]he prosecution history [] affirmatively preclude[s] a narrow reading of the claim language.” *Irdeto Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1302 (Fed. Cir. 2004). Absent such disclaimer, a consistent usage throughout the embodiments in the specification defines a claim term by implication.

When the specification does not contemplate an alternative, even permissive language does not negate an implied definition. *See Irdeto Access*, 383 F.3d at 1301 (“All examples in the specification, *Irdeto* argues, are permissive rather than mandatory, illustrative rather than exhaustive, and do not necessarily or explicitly exclude a group made up of all subscribers... Yet *Irdeto* cannot explain every example in the specification, all of which consistently point to an implicit definition of group as a subset of all subscribers in the system.).

The connections forming and connecting a “situational network” social network are consistently described as being the standard links representing the personal information and

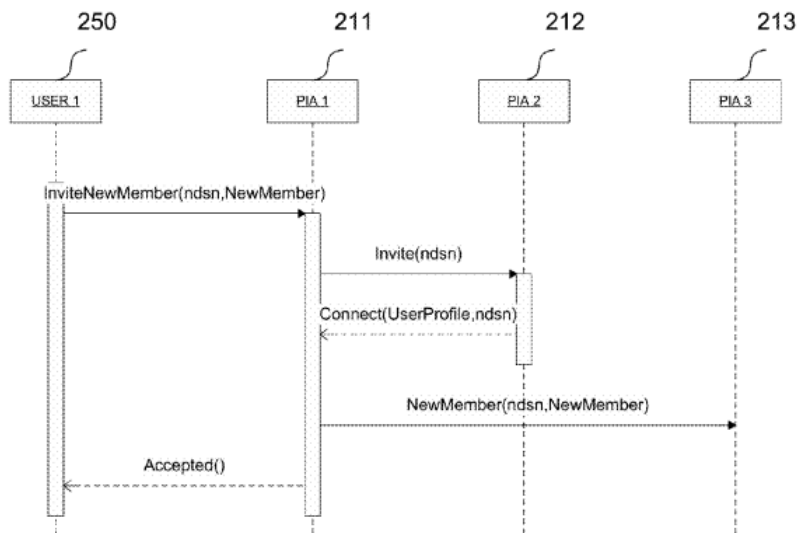
social metrics that interconnect users within well recognized traditional social networks, and no other alternatives are presented. For example, users are connected to the “situational network” in one of three specified ways:

Users 250 are connected via the situational network 3000 using devices 402...

The device 402 may be connected into the situational network automatically, by requesting a connection, or by receiving an invitation to connect, each of which is described in greater detail below.

345 Patent, 4:33-47.

The case in which a user is invited to join is shown in FIG. 16 of the 345 Patent (reproduced below).



“[T]he user asks PIA1 211 to **invite** User2 252 to connect to the members of the NDSN by sending an InviteNewMember message to PIA1 211 with an argument ndsn identifying the NDSN, and an argument identifying the potential new user (User2 252). PIA1 211 sends an Invite message to PIA2 212 with an argument ndsn identifying the NDSN... To accept the invitation, PIA2 212 responds by sending a Connect message to PIA1 211 with arguments that contain User2’s user profile (UserProfile) and identify the NDSN (ndsn).” 345 Patent, 19:43-55.

An identical scenario is shown in FIG. 34 (reproduced below) in which an “event node” invites a user to join a situational network.

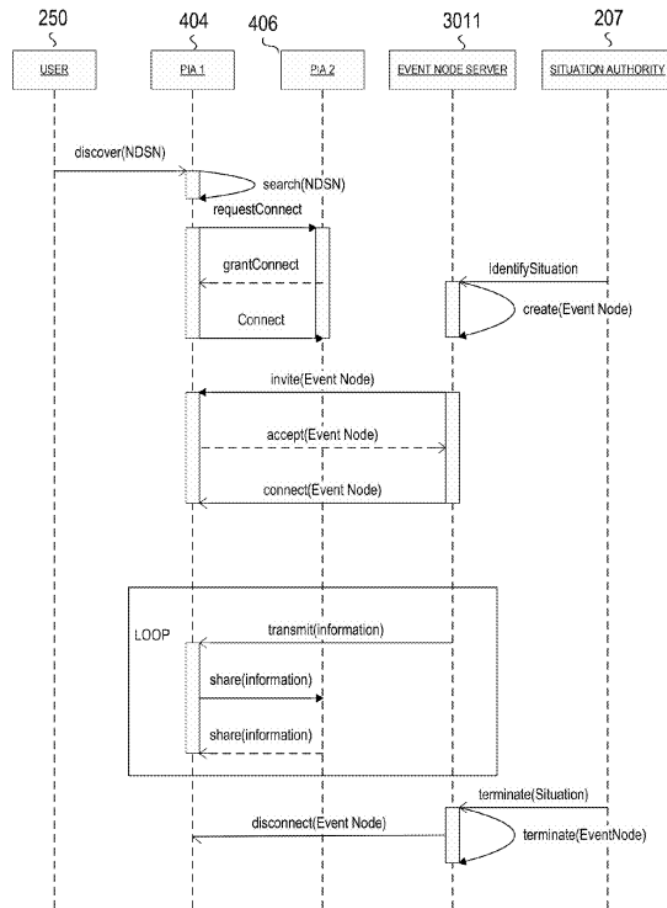


Fig. 34

Figure 34 shows a situation in which a user is invited to connect to an event node (“invite(Event Node)”) based on a likely interest in the event underlying the “situational network”.

“Alternately, users may automatically be *invited* to connect to the event node corresponding to the event as shown in FIG. 34. The automatic invitation may be based on a stored user profile accessible to a situation authority server 3011 associated with the event node may crawl the network for user PIAS 404, 406 that

would likely be interested in the information about the event. The user 250 may accept or decline the invitation based on their interest in the event or situation.”

345 Patent, 20:44-51. Accordingly, a user may be invited to join a “situational network” by in essence receiving a Facebook like “friend-request” or a LinkedIn like “invitation to connect”.

Alternatively, the user may discover and send a friend request to connect to the “event node” within the situational network corresponding to the event or situation underlying the “situational network”, as shown in Figure 35 (reproduced below).

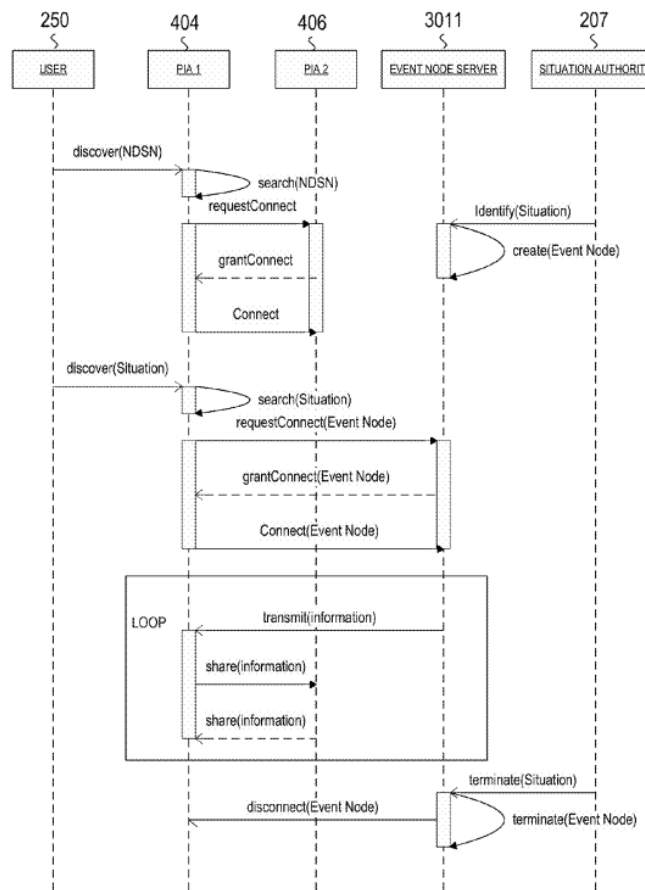


Fig. 35

“Referring to FIG. 35, the event node corresponding to an event node server 3011 may be established, or hosted, by a situation authority 207 or trusted provider, such as news source (e.g., CNN or weather.com) or a government agency. The

event node may be discovered by a user's PIA 404 corresponding to the user 250 based on the PIA 404 searching or crawling the network for information about the situation or event if the connection can not be automatically established based on the configurations of the PIA 404 and the event node server 3011. A user 250 can then ***request connection*** to the event node server 3011 through the PIA 404 in order to receive and share information about the situation with the situation authority 207.”

345 Patent, 20:24-36. Accordingly, a user may request to join a “situational network” by sending a Facebook like “friend-request” or a LinkedIn like “invitation to connect.”

These descriptions are not meant to imply the way connections are created is limited. Rather, the connections within a situational network are defined by implication through consistent usage to be the links representing the personal information and social metrics that interconnect users of a social networking service. Furthermore, though the above embodiment may use permissive language, the specification does not contemplate an alternative. Accordingly, the presence of permissive language does not negate the implied definition that connections created when forming a social network are the links representing the personal information and social metrics that interconnect users of the social networking service hosting the situational network to the underlying situation or event. *See Irdeto Access*, 383 F.3d at 1301 (“All examples in the specification, *Irdeto* argues, are permissive rather than mandatory, illustrative rather than exhaustive, and do not necessarily or explicitly exclude a group made up of all subscribers... Yet *Irdeto* cannot explain every example in the specification, all of which consistently point to an implicit definition of group as a subset of all subscribers in the system.).

A situational network, therefore, is a social network formed in response to the occurrence of an event or situation by forming connections between nodes which represent the personal

information and social metrics that interconnect participants of the social networking service hosting the “situational network” to the underlying situation or event.

C. Roll Call Query

The term “roll call query” appears in claims 1, 8, and 13 of the 345 Patent.

Neither Petitioner nor Patent Owner have proposed constructions for “roll call query” in *SitNet LLC v. Meta Platforms, Inc.* However, the specification provides a clear definition for the term. The specification’s discussion of a “roll call query” is limited to two paragraphs appearing in column 27, lines 3-61. The discussion begins by noting a “roll call query” or “check-in” is an optional feature provided by an “event node server.” Specifically:

A ‘roll-call’ or ‘check-in’ feature can be included in a situational network for a disasters or emergency event to establish a list of persons that might be missing or need assistance.

A server corresponding to the event node of the situational network may invite users determined to be physically threatened by a disaster or emergency event to check-in. 345 Patent, 27:3-9 (emphasis added). Accordingly, “roll-call queries” are an optional feature implemented by the “event node server,” *e.g.*, by sending users an invitation to check-in.

The specification goes on to present two examples, of a “roll call query” both of which are hosted by an event node server:

In the example of FIG. 32, ‘Building Property Management’ has provided a list of building occupants for ‘1 Tower Place’ to the trusted provider ‘Springfield Fire Company’ which *has established an event node and provided the roll call query* to the PIA.

345 Patent, 27:25-29 (emphasis added). Accordingly, in the first example, the “roll call query” is detailed as a service provided by the event node server.:

The second example also describes the “roll call query” as a service provided by the event node server, along with a searchable message board:

A situation authority or trusted provider establishing *an event node 3010 for a server that host the roll call or check-in feature* described above may provide a searchable message board to user connected to the SitNet as well as visitors not connected to the SitNet that allows sharing of information about individuals in the SitNet 3000 with person outside the SitNet. Referring to FIG. 40, Situational Authority 207, User 1 254, and User 2 256 are connected through a situational network. Visitor 3 258 is not connected to the situational network, but can access certain information made available by the situation authority via the message board, and post comments viewable by the participants of the situational network.

345 Patent, 27:30-42 (emphasis added). Accordingly, in all examples, the “roll call query” is detailed as an optional service provided by an “event node server.”

The examples and opening description of a “roll call query” as an optional feature implemented by the “event node server” is consistent with the defined roles of the entities operating the “event node server”. A “roll call query” is identified as being provided by a “community information aggregator” (CIA), “trusted provider”, or “situation authority.” Each is defined in the specification as an entity capable of aggregating and sharing information, necessary for implementing a “roll call query.” For instance, with respect to “situation authorities”, or “trusted providers”, the specification states:

“In the context of the situational network 3000, the participants may include external entities 207, also called *situation authorities*, central authorities *or trusted providers*, that generally are *able to aggregate and provide comprehensive information related to the situation*... There is a corresponding situational authority server 3011, *also referred to as an event node server*, for each situation authority 207.”

345 Patent, 4:14-29. Accordingly, two of the three entities noted as hosting an “event node server” providing a “roll call query” are defined as being able to aggregate information.

Likewise, a CIA is also defined as being able to aggregate information:

A community information aggregator (CIA) performs functions that are similar to those of a PIA for a community of users (e.g., an association of architects or a chess club) A CIA provides a community with the ability to store, organize and control information associated with the community and personal information associated with members of the community. The CIA obtains, aggregates and organizes such information, and makes the information available to other authorized entities in a manner similar to that described herein with respect to PIAs.

345 Patent, 8:58-61. Thus, every entity listed as operating the “event node server” providing a “roll call query” are capable of aggregating information. Furthermore, “event nodes” are defined as propagating up-to-date information on a situation.

“The situation or event itself may also be associated with a node on the SitNet, known as the *event node* for the SitNet. For example, an entity such as a trusted provider of information (e.g., a news source such as CNN or weather.com), establishes *an event node* in the NDSN *that propagates up-to-date information on the situation* to PIAs or the NDSN connected to that event node.”

345 Patent, 7:59-66 (emphasis added). As the operations needed to implement a “roll call query” are attributed to the entities operating an “event node server” and the “event node” created by the “event node server,” it is consistent with the entirety of the specification to construe a “roll call query” as an optional service provided by the “event node server”.

D. Situation Authority

The term “situation authority” appears in claims 4, 8, 9, and 13 of the 345 Patent.

Petitioner and Patent Owner have proposed constructions of “situation authority” in *SitNet LLC v. Meta Platforms, Inc.*, focusing on different aspects of term. See Exhibit 2001, 12-28.

The specification provides the following description of “situational authority” (e.g. “central authority” and “trusted provider”):

In the context of the situational network 3000, the participants may include external entities 207, also called ***situation authorities***, central authorities or trusted providers, that generally are able to aggregate and provide comprehensive information related to the situation... There is a corresponding situational authority server 3011, ***also referred to as an event node server***, for each situation authority 207.

345 Patent, 4:14-29 (emphasis added). As such, the specification describes a “situation authority,” e.g., “trusted provider,” and/or “central authority” as an external entity able to aggregate and provide comprehensive information related to situation and that operates an event node server.

Of course, an “event node server” would provide “event nodes,” which the specification defines as:

The situation or event itself may also be associated with a node on the SitNet, known as the ***event node*** for the SitNet. For example, an entity such as a trusted provider of information (e.g., a news source such as CNN or weather.com), establishes ***an event node*** in the NDSN ***that propagates up-to-date information on the situation*** to PIAs or the NDSN connected to that event node.

345 Patent, 7:59-66. Accordingly, event nodes are defined as providing information concerning a situation. Operating an “event node server” would thus result in the creation of one or more “event nodes” providing information concerning the situation. As the “situation authority”

operates the “event node server,” the “situation authority” necessarily creates “event nodes” providing information concerning the situation that are hosted by the “event node server.”

A “situation authority,” e.g., “trusted provider,” and/or “central authority,” accordingly, is an external entity able to aggregate and provide comprehensive information related to situation and that operates an event node server hosting one or more event nodes that provide information concerning the situation or event.

III. RESPONSE TO GROUNDS FOR INVALIDITY RAISED

A. Ground 1: Claims 1, 3-8, 10-13, 15, and 16 Are Not Rendered Obvious by Gage

The Petition fails to demonstrate Gage (U.S. Publication No. 2008/0139165) discloses: 1) a “situational network” as recited in independent claims 1, 8, and 13; 2) a “roll call query” as recited in independent claims 1, 8, and 13; or 3) a “situation authority” as recited in independent claims 8 and 13. Gage, therefore, cannot render the challenged claims invalid and unpatentable.

1. Situational Network

Independent claims 1, 8, and 13 each recite a “situational network.” While claim 8 recites the term in its preamble, claim 12 – which is directly dependent on claim 8 – relies on the preamble of claim 8 for antecedent basis. “[D]ependence on a particular disputed preamble phrase for antecedent basis may limit claim scope because it indicates a reliance on both the preamble and claim body to define the claimed invention.” *Catalina Marketing Intern. v. Coolsavings.com*, 289 F.3d 801, 808 (Fed. Cir. 2002). Accordingly, the scope of claim 8 is defined by both its preamble and claim body. As such, the method recited in claim 8 requires the use of a “situational network.”

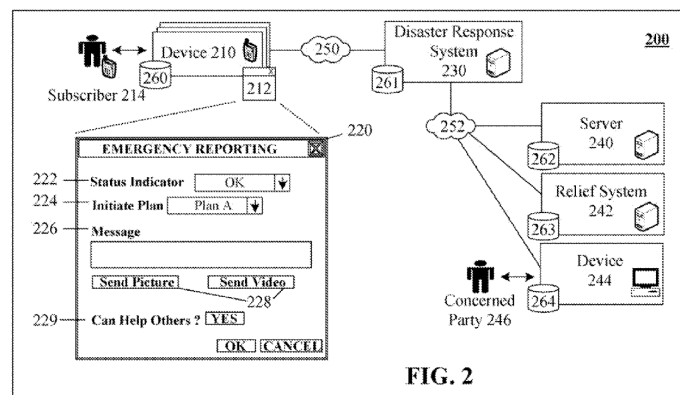
As noted *supra*, the specification states a “situational network” is a social network. Yet, nowhere does the Petition address social networks or explain how any component of the disaster

response system disclosed by Gage would be recognized as a social network by a person of ordinary skill in the art or otherwise. Rather, the Petition merely asserts that “Gage’s subscriber status reporting system comprises a situational network as claimed.” Petition, at 27. Gage, however, does not describe, claim, or present its “status reporting system 200” as including or comprising a social network as required in the 345 Patent. *See e.g.* 345 Patent, 4:3-15.

Gage describes its “status reporting system” as follows:

FIG. 2 is a schematic diagram of a subscriber status reporting system 200 configured for use during disasters. In system 200, a device 210 associated with a subscriber 214 can be linked to disaster response system 230 via **network 250**. System 230 can be linked to server 240, relief system 242, and device 244 via **network 252**. Device 244 can be a device associated with concerned party 246. The various computing devices in system 200 can be associated with data stores 260-264 as shown.

Gage, ¶[0028]



Gage, FIG. 2.

“Status reporting system 200” thus comprises two networks: “network 250” and “network 252.” Gage fails to present either network as a social network. Rather, networks 250 and 252 are described as:

Networks 250 and 252 can include any hardware/software/and firmware necessary to convey digital content encoded within carrier waves. Digital content can be contained within analog or digital signals and conveyed through data or voice channels. Networks 250-252 can include network equipment. Such as routers, data lines, hubs, and intermediary servers which together form a data or telephony network. Networks 250-252 can include mobile communication components, such as cellular communication towers, two-way radio transceiving components, and the like.

Gage, ¶ [0033].

Accordingly, networks 250 and 252 are *not* social networks, as required in the 345 Patent, but rather data and telephony telecommunication networks, which may include cellular components. Exhibit 2005 ¶ 48. The connections forming the networks, as such, would be data and/or voice channels transmitting analog and digital signals. This is completely different from, as detailed *supra*, the connections forming a *social network*, which are links representing the personal information and social metrics that interconnect users of the social networking service, such as “friendship,” “work colleague,” “classmate,” “likes,” and “follows.” While a social networking service would require the use of a telecommunications network for *access*, that sort of access network should not be confused with the social network itself, as the Petition has done. *Id.* Accordingly, Gage fails to disclose a “situational network,” as defined in the specification and claimed, because is merely discloses telecommunications networks used to access a disaster response system—and *not* a social network.

In addition to confusing the connections used to access a “situational network” with those used to form a “situational network,” Petitioner has not demonstrated that the connections are formed at the required time. *Id.* at ¶ 49. In *SitNet LLC v. Meta Platforms, Inc.*, Petitioner asserted a “situational network” is “a network *created when an occurrence or expected*

occurrence of an event or situation causes connections to be established between, within or among a set of participants.” Exhibit 2001, at 4 (emphasis added). The connections formed between Gage’s disaster response system and subscribers are formed *prior to* the occurrence or expected occurrence of an event or situation. Gage consistently labels users of the system as “subscribers.” For instance, Gage details that “when a disaster is detected, mobile devices of *subscribers* can be queried for location and wireless connectivity by a centrally located disaster response system.” Gage, ¶ [0009] (emphasis added). Gage further notes that subscribers may establish a plan in the system that can be initialized. “For example, if *subscriber* 214 is a parent unable to pick-up a child due to the disaster, a previously designated party 246 can be tasked with the child's well being, whenever Plan A is selected.” Gage, ¶ [0028] (emphasis added). Subscribing to Gage’s disaster response system and/or establishing a plan to be initiated requires establishing a connection with the disaster response system *prior to* the occurrence or expected occurrence of an event or situation. Exhibit 2005 ¶ 49. The very act of subscribing establishes a relationship with the disaster response system that interconnects the system and the subscriber. *Id.* Furthermore, establishing a plan with the system to be initiated also requires previously forming a relationship with the system that interconnects the system and the subscriber. The connections between the subscriber and Gage’s disaster response system are thus formed prior to the occurrence or expected occurrence of an event or situation. *Id.* This is completely different than “a network *created when an occurrence or expected occurrence of an event or situation causes connections to be established* between, within or among a set of participants.” *See* Exhibit 2001. Consequently, whatever Gage creates, it is not created in accordance with Petitioner’s asserted construction of a situational network. Gage, therefore, fails to disclose a situational network as Petitioner asserts that term.

As Gage fails to disclose a “situational network” as defined in the specification and in accordance with Petitioner’s own construction of the term, the Petition fails to establish Gage invalidates claims 1, 3-8, 10-13, 15, and 16.

2. Roll Call Query

Independent claims 1, 8, and 13 each recite a “roll call query”. As noted *supra*, the specification presents a “roll call query” as an optional service provided by an “event node server.” The Petition, however, fails to establish Gage discloses presenting such a query.

The Petition asserts such a query is disclosed by the statement in Paragraph [0009] of Gage that “when a disaster is detected, mobile devices of subscribers can be *queried* for location and wireless connectivity *by a centrally located disaster response system.*” Petition, at 30. For this to be true, the centrally located disaster response system providing the query must be an event node server. Gage makes no such disclosure or suggestion about an event node server.

While Gage’s disaster response system 230 “can combine data obtained from one or more devices 210 with information obtained from other sources, such as server 240, in order to create a more comprehensive situation assessment” (Gage, ¶ [0031]), more is required of the disaster response system 230 to qualify as an event node server. Specifically, the disaster response system 230 must host an “event node.” Before the District Court, Petitioner asserted an “event node” is “a node on a situational network corresponding to an event or situation.” Exhibit 2001, at 24.. Further, as noted *supra*, the specification details that an “event node” “propagates up-to-date information on the situation.” 345 Patent, 7:64-66. Accordingly, for the query provided by Gage’s disaster response system 230 to qualify as a “roll call query” Gage’s disaster response system 230 must host a node corresponding to an event or situation that propagates up-to-date information on the event or situation, which it does not. Rather, Gage fails to disclose how the

data combined to create a comprehensive situation assessment is represented within the disaster response system 230.

Additionally, Gage fails to disclose that the combined information is propagated through a node corresponding to the situation or event. Gage discloses that “a Web site containing subscriber status information can be updated with the subscriber's status indicator and location” and that “concerned parties, such as family members, can be granted access to the Web site, through which they can look-up the last known location and situational status of the subscriber.” Gage, ¶ [0037]. Presumably, though not disclosed, the website is hosted by the disaster response system 230 providing the query. The website, however, allows people to look-up the location and status of subscribers. Gage’s website is merely a web portal through which “concerned parties 136 can communicate with the disaster response system 120 to obtain the status indicator and location of queried subscribers 132-134.” Gage, ¶ [0020]. In other words, Gage’s website is a front-end used to access information. But the website is not a node within a situational network propagating information and is therefore not an event node. Consequently, Gage fails to disclose that the disaster response system 230 providing the query is hosting an event node.

Gage necessarily fails to disclose a “roll call query” as defined in the specification and claimed since it fails to disclose a query provided by a server that hosts an event node. The Petitioner, therefore, fails to establish Gage invalidates claims 1, 3-8, 10-13, 15, and 16.

3. Situation Authority

Claim 4 (dependent on claim 1) and independent claims 8, and 13 each recite a “situation authority.” As noted *supra*, the specification defines a “situation authority,” “trusted provider,” and/or “central authority,” as an external entity able to aggregate and provide comprehensive information related to the situation and that operates an event node server hosting one or more

event nodes that provide information concerning the situation or event. Accordingly, the Petition fails to establish Gage's disaster response system is a situation authority. Exhibit 2005 ¶ 48.

The Petition asserts that Gage's "disaster response system is a situation authority because the disaster response system 'detects an occurrence of a disaster affecting a region' (situation), receives and 'aggregates' information related to the disaster, and provides the information to various participants in the network, such as disaster relief agencies and rescue personnel." Petition, at 34. However, this statement ignores the fact that a "situation authority" is an "external entity."

"In the context of the situational network 3000, the participants may include *external entities* 207, also called *situation authorities*, central authorities or trusted providers, that generally are able to aggregate and provide comprehensive information related to the situation." 345 Patent, 4:14-20 (emphasis added). A "situation authority" is also referenced as an external entity. Indeed, before the District Court, the Petitioner asserted that the "patents also say what situation authorities are: 'external entities[], also called . . . central authorities or trusted providers, that generally are able to aggregate and provide comprehensive information related to the situation.'" Exhibit 2001, at 14.. Therefore, there is no dispute that a "situation authority" is an external entity.

An external entity logically would have to be an entity *outside of the service or system* providing the "situational network." Petitioner asserts, "[a] POSA would have understood that the *disaster response system forms a situational network* by connecting with subscribers 132-134 in the disaster region 110 using one or more of the above-described communication channels for querying subscribers' situation status." Petition, at 27. Accordingly, Petitioner has identified Gage's disaster response system as the "situational network." If true, then it cannot also be a

“situation authority” because such would require Gage’s disaster response system to be outside of or external *to itself*—which is nonsensical. Gage’s disaster response system, therefore, cannot be both a “situational network” and a “situation authority,” as Petitioner asserts. *See Becton, Dickinson & Co. v. Tyco Healthcare Group, LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (“Where a claim lists elements separately, ‘the clear implication of the claim language’ is that those elements are ‘distinct component[s]’ of the patented invention.”); *HTC Corp. v. Cellular Communs. Equip., LLC*, 701 Fed. Appx. 978, 982 (Fed. Cir. 2017) (“The separate naming of two structures in the claim strongly implies that the named entities are not one and the same structure.”). Presenting contradictory assertions, the Petition fails to establish Gage invalidates claims 4, 8, 10-13, 15, and 16.

B. Ground 2: Claims 2, 9, and 14 Are Not Rendered Obvious by Gage and Mitchell

For the reasons detailed *supra*, Gage fails to disclose all the elements of independent claims 1, 8, and 13 upon which claims 2, 9, and 14, respectively, depend. The Petition fails to assert Mitchell (U.S. Publication No. 2007/0194938) overcomes the deficiencies. Exhibit 2005 ¶ 51. Consequently, the Petition has not established Gage in combination with Mitchell invalidates claims 2, 9 and 14.

C. Ground 3: Claims 1, 3, 4, 6-8, 10-13, and 15 Are Not Rendered Obvious by Shida

The Petition fails to demonstrate Shida (U.S. Publication No. 2003/0162557) discloses: 1) a “situational network” as recited in independent claims 1, 8, and 13; and 2) a “roll call query” as recited in independent claims 1, 8, and 13. Shida thus cannot render the challenged claims invalid and unpatentable.

1. Situational Network

Independent claims 1, 8, and 13 each recite a “situational network.” While claim 8 recites the term in its preamble, claim 12 – which is directly dependent on claim 8 – relies on the preamble of claim 8 for antecedent basis. “[D]ependence on a particular disputed preamble phrase for antecedent basis may limit claim scope because it indicates a reliance on both the preamble and claim body to define the claimed invention.” *Catalina Marketing Intern. v. Coolsavings.com*, 289 F.3d 801, 808 (Fed. Cir. 2002). Accordingly, the scope of claim 8 is defined by both its preamble and claim body. As such, the method recited in claim 8 requires the use of a “situational network.”

As noted *supra*, the specification states a “situational network” is a social network. Yet, nowhere does the Petition address social networks at all or explain how any aspect of the method for processing information associated with a disaster disclosed by Shida would be recognized as a social network. Rather the Petition merely asserts that “Shida’s center server *forms a situational network related to the occurrence of the situation* by establishing connections for communicating with ‘the subscribers... who should be informed of the occurred disaster.’” Petition, at 52 (emphasis in original). Shida, however, does not describe, claim, or present its “center server 3” as utilizing a social network. Exhibit 2005 ¶ 53.

Shida details a system configuration, shown in FIG. 1 (reproduced below) in which “a base station 6a for a region A, base Station 6b for a region B, a carrier server 9 that carries out a processing for this embodiment, and center server 3 that carries out a main processing for this embodiment are connected with ***network 1 that is a computer network such as the public network and/or the Internet, etc.***” Shida, ¶ [0027] (emphasis added).

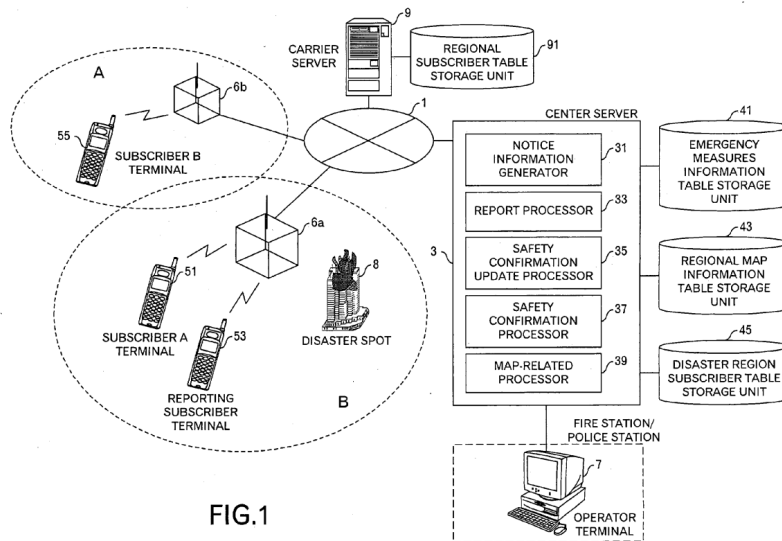


FIG.1

Subsequently, Shida states that “the system that includes the base station 6a, base station 6b, network 1, carrier server 9, and etc. [] are managed and operated by the carrier will be called a ***mobile communication network system.***” Shida thus discloses the use of computer network 1 and a mobile communication network. The connections forming the networks, as such, would be data and/or cellular channels. This is completely different from, as detailed *supra*, the connections forming a *social network*, which are links representing the personal information and social metrics that interconnect users of the social networking service, such as “friendship,” “work colleague,” “classmate,” “likes,” and “follows.” While a social networking service would require the use of a telecommunications network for *access*, that sort of access network should not be confused with the social network itself, as the Petition has done. Exhibit 2005 ¶ 48. Accordingly, Shida fails to disclose a “situational network” as defined in the specification and claimed.

In addition to confusing the connections used to access a “situational network” with those used to form a “situational network,” Petitioner has not demonstrated that the connections are formed at the required time. Exhibit 2005 ¶ 54. In *SitNet LLC v. Meta Platforms, Inc.*, Petitioner

asserted a “situational network” is “a network *created when an occurrence or expected occurrence of an event or situation causes connections to be established* between, within or among a set of participants”. Exhibit 2001, at 6-10 (emphasis added). The connections formed between Shida’s center server and subscribers are formed prior to the occurrence or expected occurrence of an event or situation. Exhibit 2005 ¶ 54. Shida consistently labels users of the system as “subscribers.”

Additionally, Shida notes there exists a “regional subscriber table stored in the regional subscriber table storage unit 91.” Shida, ¶ [0034]. Subscribing and having a corresponding entry in a pre-existing “regional subscriber table” requires establishing a connection with the system prior to the occurrence or expected occurrence of an event or situation. The very act of subscribing establishes a relationship with the system that interconnects the system and the subscriber thereby permitting the subscriber to have an entry in the “regional subscriber table.” The connections between the subscriber and Shida’s system are thus formed prior to the occurrence or expected occurrence of an event or situation. Exhibit 2005 ¶ 54. In *SitNet LLC v. Meta Platforms, Inc.*, however, Petitioner asserted a “situational network” is “a network *created when an occurrence or expected occurrence of an event or situation causes connections to be established* between, within or among a set of participants”. Exhibit 2001, at 6 (emphasis added). Consequently, whatever Shida’s system creates, it is not created in accordance with Petitioner’s asserted construction of a situational network. Shida, therefore, fails to disclose a situational network as Petitioner asserts that term to mean.

As Shida fails to disclose a “situational network” as defined in the specification and in accordance with Petitioner’s own construction of the term, the Petition fails to establish Shida invalidates claims 1, 3, 4, 6-8, 10-13, and 15.

2. Roll Call Query

Independent claims 1, 8, and 13 each recite a “roll call query”. As noted *supra*, the specification presents a “roll call query” as an optional service provided by an “event node server.” The Petition, however, fails to establish Shida discloses presenting such a query.

The Petition asserts such a query is disclosed by the statement in Paragraph [0046] of Shida that the notice generator 31 of center server 3 “generates *notice information* to be broadcast, which includes the information associated with the map as the processing result of the processing associated with the map (step S19), the emergency measures information obtained at the step S41, and the *safety confirmation necessity flag*, and *transmits it to the subscribers to be notified.*” Petition, at 55. For this to be true, the “center server 3” providing the query would have to be an “event node server”. Shida makes no such disclosure.

While Shida’s center server 3 appears to be aggregating data from various sources for distribution, more is required of center server 3 to qualify as an event node server. Specifically, center server 3 would have to host an “event node”. Before the District Court, Petitioner asserts an “event node” is “a node on a situational network corresponding to an event or situation.” Exhibit 2005, at 22. Further, as noted *supra*, the specification details that an “event node” “propagates up-to-date information on the situation.” 345 Patent, 7:64-66. Accordingly, for the query provided by Shida’s center server 3 to qualify as a “roll call query” the center server 3 would have to host a node corresponding to an event or situation that propagates up-to-date information on the event or situation. Shida makes no such disclosure.

Rather, Shida teaches the construction and storage of various tables by center server 3. For instance, Shida discloses the report processor 33 of the center server 3 “generates the disaster regional subscriber table from the disaster occurring region ID and list information of the subscribers in the disaster occurring region, and stores it into the disaster region subscriber table

storage unit 45”. Shida, ¶ [0039]. Another table utilized by the center server 3 to represent the situation is a “regional map information table stored in the regional map information table storage unit 43.” Shida, ¶ [0041]. “[I]nformation of the place of refuge and dangerous region is stored correspondingly to the disaster occurring region into the table as shown in FIG. 9.” Shida, ¶ [0042]. Shida thus discloses construction, storage and use of tables that collectively correspond to the situation or event. The center server 3 of Shida thus hosts tables, rather than a node, corresponding to the situation or event. Shida, therefore, discloses a query provided by a server hosting tables, rather than an event node server.

Shida necessarily fails to disclose a “roll call query” as defined in the specification and claimed because it fails to disclose a query provided by a server that hosts an event node. The Petition, therefore, fails to establish Shida invalidates claims 1, 3, 4, 6-8, 10-13, and 15.

D. Ground 4: Claims 2, 5, 9, 14, and 16 Are Not Rendered Obvious by Shida and Sinha

For the reasons detailed *supra*, Shida fails to disclose all the elements of independent claims 1, 8, and 13 upon which claims 2, 5, 9, 14 and 16 depend. The Petition fails to assert Shina (U.S. Publication No. 2008/0208605) overcomes the deficiencies. Consequently, the Petition has not established Shida in combination with Sinha invalidates claims 2, 5, 9, 14 and

IV. FINTIV FACTORS STRONGLY FAVOR DENIAL

In addition to the reasons that the Board should not institute set forth above, discretionary denial is warranted under *Fintiv* because an analysis of the *Fintiv* factors all weigh in favor of it. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential).

First, there is no evidence that the District Court in *Sitnet v. Meta* will grant a stay in the event that an IPR is instituted nor is there any likelihood of it doing so. As set forth in the Petition, Petitioner has not filed a motion to stay. Judge Arun Subramanian, who presides over the case,

received his judicial commission on April 13, 2023. His Honor has previously denied a motion to stay pending resolution of petitions for IPR, which appears to be his only decision relating to such a motion to stay. *See Nike, Inc. v. Lululemon USA Inc.*, Case No. 1:23-cv-00771-AS, Dkt. 97. Further, Judge Subramanian has locked in a “rocket docket” case schedule in the District Court proceedings, with fact discovery to be completed by July 17, 2024, all discovery to be completed by September 25, 2024, post-discovery summary judgment motion practice completed by November 20, 2024, and trial scheduled for January 20, 2025. See Exhibit 1017. A Markman hearing is currently scheduled for July 1, 2024. If IPR is ever instituted here, it will likely occur when fact discovery is almost over in the District Court, making the possibility of a stay near zero.

Second, a trial at the District Court will certainly conclude before the Board issues a Final Written Decision even if it institutes IPR here. Trial is set to begin on January 20, 2025, as Petitioner admits. The District Court action began on July 24, 2023, when Patent Owner filed its complaint. Petitioner’s median time-to-trial statistic in the Southern District of New York Texas, 47 months, would result in trial beginning on June 24, 2027—a staggering (and virtually impossible) 29-month delay from the currently scheduled January 20, 2027 trial start date. The Director’s June 21, 2022 Guidance Memorandum quoted by Petitioner also advises that “[w]here the parties rely on time-to-trial statistics, the PT AB will also consider additional supporting factors such as the number of cases before the judge in the parallel litigation and the speed and availability of other case dispositions.” Here, additional supporting factors abound. As set forth in the Court’s October 16, 2023 order, Judge Subramanian specifically discussed at the October 5, 2023 conference that “trial in this case will begin on January 20, 2025, and the final pretrial conference will be held on January 13, 2025, at 2:00p.m.” and ordered the parties to “submit a revised case-management plan, *working backward from those dates.*” Ex. 2003 (emphasis added). In this case,

the Court *explicitly ordered* a specific trial date, January 20, 2025, and has not wavered from that date—but, rather, forced the parties to conform their case management plan to the Court’s trial date. Further, the Court has expeditiously resolved all motions, including resolving a motion to dismiss in 172 days (less than half a year), granting motions for extensions of time on the same day (see Dkt. 13-14, 37-38) or at most one day (see Dkt. 30-31, 52-53), and resolving the parties’ sole discovery dispute in 3 days (see Dkt. 59-61). Additionally, Judge Subramanian, who is relatively new on the bench (he received his commission a little over one year ago), has a docket of only 235 open cases (as compared to the top six busiest judges in the district, with 400 cases each). See Exhibit 2004.

Even assuming a potential delay of half a year, that would put a potential trial date in June 2025. Meanwhile, if IPR is instituted here, a Final Written Decision may not issue until later in 2025 or early 2026. *See* 35 U.S.C. § 316(a)(11) (final determination in an IPR no later than one year after institution, or possibly one-and-a-half years if extended); 37 C.F.R. § 42.100(c) (same).

Third, there has been and will continue to be significant investment by the Court in parallel proceedings. Not only is the case proceeding through fact discovery in the pending District Court litigation with Petitioner, but the Court is already intimately familiar with the patents and technology at issue as it dealt with them in a motion to dismiss, in which one of the asserted patents was found to be invalid in view of *Alice*.

Fourth, there is undoubtedly overlap in the issues here as in the District Court proceeding. Meta has asserted obviousness of the patent at issue as a defense and will undoubtedly raise the same prior art references.

Fifth, Meta is both the Petitioner here and a defendant in the District Court proceeding.

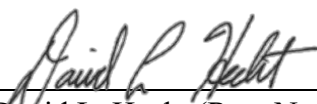
Sixth, there are no other circumstances that would disfavor denial.

V. CONCLUSION

The Petition fails to demonstrate a reasonable likelihood that the Petitioner will prevail as to any of the challenged claims. *Inter partes* review of the 345 Patent should therefore be denied.

Dated: June 13, 2024

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "David L. Hecht", is written over a horizontal line.

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that Patent Owner's Preliminary Response was served on June 13, 2024 by e-mailing copies to the following e-mail addresses as provided in Petitioner's Petition:

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Dated: June 13, 2024

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CERTIFICATE OF WORD COUNT

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that word count for the foregoing Patent Owner Response (excluding the table of contents, certificate of service, word count, or listing of exhibits) total 7,977 words, which is less than the 14,000 words allowed under 37 C.F.R. § 42.24(b)(1).

Dated: June 13, 2024

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