

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner,

v.

HEADWATER RESEARCH LLC,

Patent Owner

IPR2026-00137

Patent No. 9,647,918

PATENT OWNER'S PRELIMINARY RESPONSE

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Cases

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PATENT OWNER'S EXHIBIT LIST

No.	Description
2001	Confidential License Agreement
2002	December 29, 2023 Complaint in <i>Headwater Research, LLC v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:23-cv-00641 (E.D. Tex.)
2003	Exhibit 8 to Headwater' December 29, 2023 Complaint in <i>Headwater Research, LLC v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:23-cv-00641 (E.D. Tex.)
2004	Excerpt of the January 23, 2024 deposition transcript of Jeff Sharkey in <i>Headwater Research, LLC v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:22-CV-00422-JRG-RSP (E.D. Tex.) (redacted to remove any potential confidential information)
2005	Ben Schoon, <i>Google Pixel development reportedly moving almost entirely out of China</i> , 9TO5GOOGLE.COM, https://9to5google.com/2026/01/13/google-pixel-development-china-report/ , Jan. 13, 2026
2006	<i>TRUMP EFFECT: A Running List of New U.S. Investment in President Trump's Second Term</i> , THE WHITE HOUSE, https://www.whitehouse.gov/articles/2026/03/trump-effect-a-running-list-of-new-u-s-investment-in-president-trumps-second-term/ (Mar. 10, 2026)
2007	Matthew Gardner, <i>Four Big Tech Companies Avoid \$51 Billion in Taxes in Wake of One Big Beautiful Bill Act</i> , INSTITUTE OF TAXATION AND ECONOMIC POLICY, https://itep.org/trump-meta-tesla-alphabet-amazon-obbba-taxes/# (Feb. 6, 2026)
2008	<i>Investing in America 2025</i> , GOOGLE, available at https://blog.google/company-news/inside-google/company-announcements/investing-in-america-2025/ (last visited Mar. 23, 2026)
2009	<i>Apple and Corning Partner to Manufacture 100 Percent of iPhone and Apple Watch Cover Glass in Kentucky</i> , APPLE,

	https://www.apple.com/newsroom/2025/08/apple-corning-to-manufacture-all-iphone-apple-watch-cover-glass-in-kentucky/ (Aug. 6, 2025)
2010	Scheduling Order in <i>Headwater Research LLC v. Google LLC</i> , No. 7:25-CV-00374-DC-DTG (W.D. Tex.)
2011	<i>What is an Android Phone?</i> , SAMSUNG, available at https://www.samsung.com/uk/mobile-phone-buying-guide/why-android/ (last visited Mar. 23, 2026)
2012	Notice of Appearance for Lance Yang as counsel for Samsung in <i>Headwater Research, LLC v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:22-CV-00422-JRG-RSP (E.D. Tex.)
2013	Headwater’s December 17, 2025 Preliminary Infringement Contentions in <i>Headwater Research LLC v. Google LLC</i> , No. 7:25-CV-00374-DC-DTG (W.D. Tex.)
2014	Google’s March 4, 2026 Preliminary Invalidity Contentions in <i>Headwater Research LLC v. Google LLC</i> , No. 7:25-CV-00374-DC-DTG (W.D. Tex.)
2015	Declaration of Erik de la Iglesia in Support of Patent Owner’s Preliminary Response
2016	<i>Curriculum Vitae</i> of Erik de la Iglesia
2017	Headwater’s Preliminary Response in <i>Samsung Electronics Co. Ltd. v. Headwater Research LLC</i> , IPR2024-01396 (January 9, 2025)
2018	Headwater’s Preliminary Sur-Reply in <i>Samsung Electronics Co. Ltd. v. Headwater Research LLC</i> , IPR2024-01396 (February 13, 2025)
2019	Headwater’s Request for Director Review in <i>Samsung Electronics Co. Ltd. v. Headwater Research LLC</i> , IPR2024-01396 (April 15, 2025)

I. Introduction

Google’s IPR theory relies on an understanding of claim scope (and in fact, the exact prior art mapping) that Headwater ***explicitly disclaimed*** in a prior IPR. This gives rise to binding, case-dispositive disclaimer. *CUPP Computing AS v. Trend Micro Inc.*, 53 F.4th 1376, 1383 (Fed. Cir. 2022) (“[A] disclaimer in an IPR proceeding ***is*** binding in later proceedings, whether before the PTO or in court.”).

Google acknowledges that Headwater already proposed a construction of the term that excludes the exact prior art and claim scope that Google now relies upon. *See* Pet. 7 (“In IPR2024-01396, Patent Owner asserted that the prior art does not teach claim 1’s ‘first call accessible to each of a plurality of device applications,’ and ‘API callable by each of the plurality of device applications’ because intermediaries are interposed between the APIs and applications.”); *id.* (asserting that Headwater’s IPR statements were a “construction” of the claim language that excludes the prior art). Google incorrectly alleges that because the Board disagreed with Headwater’s position in the previous IPR, the same result should apply here. *Id.* at 7–8.

The prior IPR, far from ***favoring*** institution as Google incorrectly argues (*see* Pet. 38), actually ***precludes*** institution. While it is true that Headwater’s disclaimer of the prior art configuration from the scope of the claims was not “binding on the PTO in the very IPR proceeding in which it [was] made,” such that the Board was

not required to accept Headwater’s representations regarding claim scope in *that* proceeding, “a disclaimer in an IPR proceeding *is* binding in later proceedings, whether before the PTO or in court.” *CUPP*, 53 F.4th at 1383 (Fed. Cir. 2022)¹; *see also Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1362 (Fed. Cir. 2017) (“[W]e hold that statements made by a patent owner during an IPR proceeding, whether before or after an institution decision, can be considered for claim construction and relied upon to support a finding of prosecution disclaimer.”).

And here, there can be no dispute that Headwater clearly and unmistakably disclaimed the exact prior art configuration that Google relies upon in this Petition through its pre-institution statements in IPR2024-01396. *See* Pet. 1, 7, 38 (acknowledging that Headwater previously disclaimed the claim scope that Google relies on in this proceeding).

Accordingly, even if the Board’s prior preliminary decision finding that the claims did not exclude the prior art relied upon was correct *in that proceeding*, the same result cannot be reached *in this proceeding* because Headwater clearly and unmistakably disclaimed the prior art configuration Google relies upon for invalidity. *See CUPP*, 53 F.4th at 1383 (noting that “disclaimer is not binding on the

¹ All emphases in quotations herein are added unless otherwise specified.

PTO in the very IPR proceeding in which it is made,” but it “*is* binding in later proceedings, whether before the PTO or in court”).

Additionally, the Board’s prior preliminary decision was incorrect even on the facts that existed at that time. Specifically, the Board based its decision on the assumption that Headwater’s claim interpretation would “impermissibly read” the embodiment of FIG. 32 out of the scope of the claims. IPR2024-01396, Paper No. 13 at 14. As explained in more detail below, nothing in Figure 32 of the ’918 is read out of the scope of the claims under Headwater’s interpretation, because Figure 32 of the ’918 patent *explicitly depicts* the network stack API being “callable” and “accessible” under Headwater’s interpretation, wherein the network stack API itself (rather than merely some proxy API) must be callable or accessible.

In sum, because Headwater already disclaimed the claim scope Google’s Petition relies upon, institution should be denied and the Board need not conduct an independent claim construction analysis. But even if plain meaning (rather than disclaimer) applied, Google’s IPR theory is additionally inconsistent with plain meaning.

II. Overview of the ’918 Patent

The challenged claims of the ’918 patent are generally directed to a wireless end-user device that allows applications to transfer data over a network either (1) via a first call to a network stack application programming interface (“API”), or (2) via

a second API call to a proxy media service manager (which can make a data transfer request on behalf of the application). Regardless of whether the application (1) transfers data by calling a first API for the network stack or (2) transfers data by proxy by calling a second API call for the proxy media service manager, the claimed device is able to associate the data transfers with the requesting device application, even though in the latter scenario the application is not calling or accessing the network stack for the data transfer. *See* Ex. 2015, ¶27.

Claim 1 is generally representative,² and recites (using the Petition's numbering of claim elements):

[1.pre] A wireless end-user device, comprising:

[1.1] a wireless modem configurable to connect to a wireless network;

[1.2] a network stack configurable to receive and transmit data via the wireless modem and the wireless network;

[1.3] *a first network stack Application Programming Interface (API), containing at least **one first call accessible to each of a plurality of device applications**, the first network stack API*

² The Petition incorporates by reference the entirety of its claim 1 analysis in alleging the obviousness of every other independent claim. *See* Pet. at 57–58 (claims 14 and 19, incorporating by reference Petition's analysis for [1.pre]-[1.6]); *id.* at 73–74 (claim 15, incorporating by reference Petition's analysis for elements [1.pre]-[1.6]).

callable by each of the plurality of device applications to open and use data packet flows via the network stack, the wireless modem, and the at least one wireless network;

[1.4] *a second API containing at least one second call accessible to each of the plurality of device applications, the second API callable by each of the plurality of device applications* to make a data transfer request for a media object associated with a network resource identifier supplied by the calling device application;

[1.5] a media service manager prompted by the second call, to manage network data transfers for the media object by interfacing with the network stack to retrieve the media object associated with the network resource identifier via the wireless modem and the wireless network; and

[1.6] one or more service classification and measurement agents to associate wireless network data usage for the media object network data transfers with the device application that requests the data transfer for the media object, to associate wireless network data usage for respective data packet flows opened and used via the first network stack API with the device application opening such respective data packet flow, and to reconcile wireless network data usage for each of the plurality of device applications to track an aggregate wireless network data usage attributable to each of the plurality of device applications via both the first network stack API and the second API.

Ex. 1001 at claim 1 (124:28-63).

Most relevant to consideration of Google’s Petition, the claim provides for two possible pathways for an application to initiate traffic—a path where the application calls the *network stack* API (i.e., “the first network stack API”), and a path where the application calls the proxy “media service manager” API (i.e., a “second API”). The application can choose to call either API to initiate a data transfer over the network, such that *either* API is independently “callable” and “accessible” to the application.

Regardless of which API the application chooses to call, the system has at least one service and classification agent to associate the corresponding traffic with the requesting application in order “to track an aggregate wireless network data usage attributable to each of the plurality of device applications.” *See* Ex. 1001, claim 1.

An example of this dual-path approach is depicted (such that either API is callable by the application), for example, in Figure 32 of the ’918 patent, reproduced below:

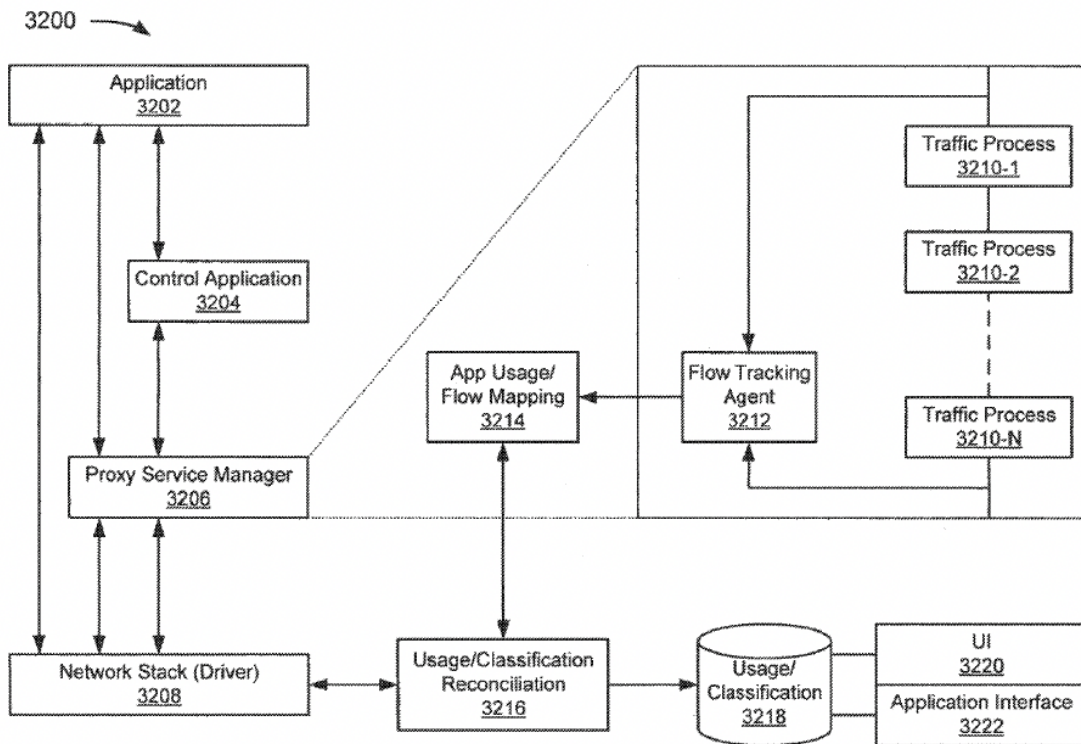


FIG. 32

Id. at Fig. 32. As shown above, Application 3202 is able to call the Network Stack 3208 via the left-most arrow from Application 3202, and is **also** able to call either the Proxy Service Manager 3206 via the second-to-left arrow, or the Control Application 3204 via the third-to-left arrow. The Network Stack API is **callable** by (and has an API call **accessible** to) the application via the left-most arrowh, even though the application can additionally call and access the other two APIs which may interface with other APIs on behalf of the application (for instance, the Proxy Service Manager itself can call, or access a call of, the Network Stack API). Ex. 2015, ¶29.

In the event that “the application 3202 does **not** use the proxy service manager

3206,” and instead calls the network stack API via the left-most arrow, “data at the socket will accurately identify the app as the initiator of the data flow” because the application issued a call to the network stack API to open the socket and to initiate the data flow. *Id.* at 116:66-117:3; Ex. 2015 ¶¶30–32. However, “[i]n an instance or embodiment where the application uses the proxy service manager 3206” rather than calling the network stack API, “data at the socket will be insufficient to identify the application 3202 as the initiator of the data flow.” Ex. 1001 at 117:3-6. To solve the socket-level data being insufficient to identify the application 3202 as the initiator of the data flow, the ’918 patent recognizes the advantage “to add a virtual tag at the proxy API,” such that the virtual tag is “sent from the flow tracking agent 3212” (which is depicted as being part of the proxy service manager) “to the app usage/flow mapping engine 3214, which communicates with the usage/classification reconciliation 3216, which in turn communicates with the network stack (driver) 3208.” *Id.* at 117:12-20; Ex. 2015, ¶32.³

³ An alternative way (i.e., an alternative to the use of a virtual tag) to track data flows that pass through the proxy is for “the proxy service manager [to] perform application identification and classification, usage monitoring, and counting,” which “allows service usage to be classified and associated with an application prior to proxy processing.” Ex. 1001 at 117:29-33; Ex. 2015, ¶33.

The purpose of these disclosures is to inform a POSITA how traffic initiated by applications can be tracked both (1) in an instance where the application directly interfaces with the network stack by calling the network stack API and (2) in an instance where the application does not call the network stack API, but instead calls a proxy API to initiate the data transfer. Ex. 2015, ¶34. Specifically, regardless of which access path is used (a call to the network stack API or a call to a different API that initiates a network transfer via a proxy), the system is able to “associate wireless network data usage” with the application initiating the data flow in order “to track an aggregate wireless network data usage attributable to each of the first plurality of device applications via both the first network stack API and the second API.” Ex. 1001 at 124:51-63.

III. Level of Ordinary Skill in the Art

The Petition proposes that a POSITA in the field of the '918 patent “would have at least a bachelor’s degree in computer science, computer engineering, electrical engineering, or a similar field, and approximately two years of industry or academic experience in wireless communication network applications and software. More related education could compensate for fewer years of work experience (and vice versa).” *See* Pet. at 7 (citing Ex. 1003 ¶¶59–60). For purposes of this Preliminary Response, Patent Owner does not challenge that definition.

IV. The Petition’s sole invalidity theory does not include a network stack API “callable” by, or a network stack API call “accessible” to, a plurality of applications.

A. Overview of the Petition’s Theory

As discussed in Section II above, claim 1 requires that a plurality of device applications have the capability of initiating data transfers over the network in two different ways. *See* Ex. 2015, ¶36–37. The first way is through a “first call accessible to each of a plurality of device applications,” which “first network stack API [is] callable by each of the plurality of device applications.” Ex. 1001 at 124:33-39 (limitation [1.3]). The second way is through “a second API containing at least one second call accessible to each of the plurality of device applications,” which “second API [is] callable by each of the plurality of device applications to make a data transfer request for a media object.” *Id.* at 124:40-45 (limitation [1.4]). The second API call will prompt “a media service manager... to manage network data transfers... by interfacing with the network stack” instead of the application interfacing with the network stack. *Id.* at 124:46-50 (limitation [1.5]).

The Petition relies exclusively on the Bennett reference’s (Ex. 1041) signaling agent API—“SA API 210”—in alleging that the Petition’s combination of Bennett and Vadde discloses or renders obvious “a first network stack Application Programming Interface (API), containing at least one first call accessible to each of a plurality of device applications” as recited by limitation [1.3]. *See* Pet. at 26

(equating Bennett’s “SA API 210” with “a first network stack Application Programming Interface,” and equating Bennett’s “user application 150” with one of a “plurality of device applications”). The Petition’s annotation of Bennett’s Figure 3 with respect to this mapping is reproduced below:

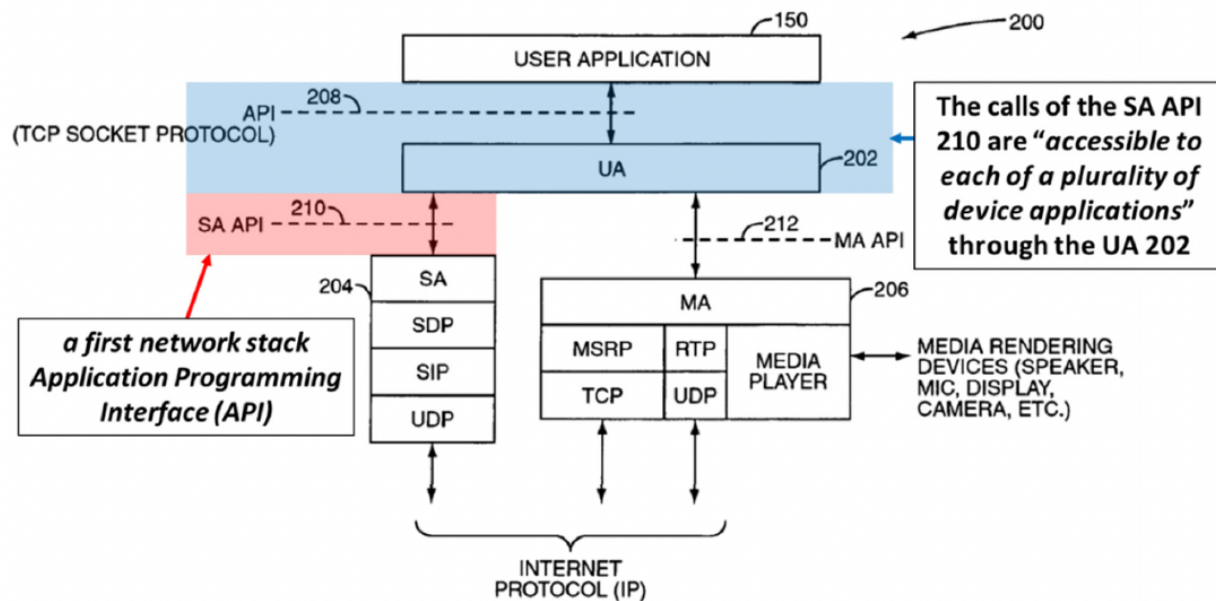


FIG. 3

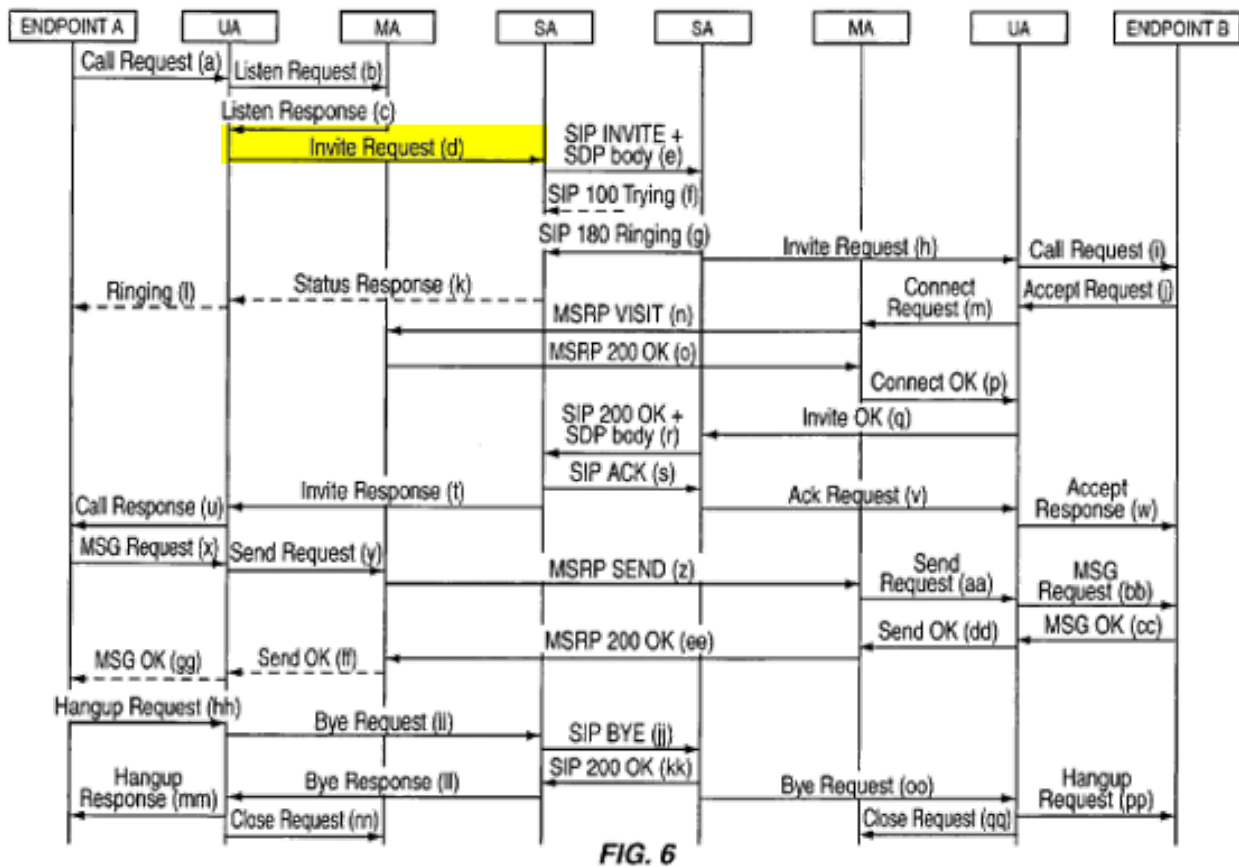
Id. at 28 (Petition’s annotation of Ex. 1041 at Fig. 3). As shown in the Petition’s annotation, **regardless** of whether the left path involving the SA 204 or MA 206 is ultimately used to communicate data, the application 150 can **only** ever initiate API calls to UA (“user agent”) 202 via API 208. The application **cannot** call the SA API 210; instead, the application 150 (i.e., one of a “plurality of device applications”)

must contact user agent (UA) 202 via API 208, which in turn contacts “SA API 210.”

Id. at 26–30; Ex. 2015 ¶¶38, 42, 44.⁴

This understanding is confirmed by Figure 6 of Bennett, which only shows the UA (not the alleged “application[]” of the claims) calling the SA. Specifically, the Petition alleges that “SA API 210[’s]” “requests” (i.e., requests transmitted between UA 202 and SA API 210) constitute the “at least one first call accessible to each of a plurality of device applications.” Pet. at 27. These SA API “requests” are depicted, e.g., in Figure 6 of Bennett, an annotated version of which is reproduced below:

⁴ Bennett does not explicitly discuss API “calls”; instead, its discussion of a “call” is in the more traditional sense of, e.g., a telephone “call” which would initiate, e.g., “ringing” another user using a different device. *See, e.g.*, Ex. 1041 ¶¶63-64; Ex. 2015 ¶39.



Ex. 1041 at Fig. 3 (annotated); *see also* Pet. at 27 (explicitly identifying the “INVITE” request as the “at least one first call” which is allegedly “accessible to each of a plurality of device applications”).⁵

⁵ The Petition additionally relies on unspecified API calls “disclosed in Table 2” of Bennett, without elaboration. Pet. 27. Tellingly, *none* of the messages disclosed in Bennett’s Table 2 are sent from an application or (“ENDPOINT A”) to the SA. Instead, they are either “Sent by UA to SA,” “Sent by UA to SA,” or “Sent by IMS client to IMS application.” *See* Ex. 1041, [0085].

As shown above, this “invite request” is a call from the UA to the SA (and is not a call from the application to the SA). In contrast, ENDPOINT A (which is an example of Bennett’s user application 150, such as a phone application—*see, e.g.* Ex. 2015, ¶¶40–41; Ex. 1041, [0039] (showing that the “HANGUP request” depicted in Bennett’s FIG. 3 from “ENDPOINT A” to the “UA” is a request “sent by the user application 150 to the UA 202”))—is not capable of issuing an invite request to the SA; it is always the *UA* that must call the SA via the invite request (i.e., the alleged API call). Ex. 2015, ¶42.

The Petition acknowledges that this invite request API call is not “directly” accessible or “directly” callable by the application. Pet. 30. And as explained below, that is what the claims require, under both plain meaning and based on Headwater’s prior IPR disclaimer of claim scope.

B. The plain meaning of a network stack API “callable by” and an API call “accessible to” an application excludes the Petition’s theory.

Consistent with Headwater’s earlier statements regarding claim scope in IPR2024-01396, the claims cannot be satisfied if *only* APIs other than a network stack API is actually callable or accessible by the application. For instance, if the application is *only* capable of calling proxy APIs, and those proxy APIs access must access or call the network stack API on the application’s behalf, the network stack

API is not actually “callable” or “accessible” to the application itself. Ex. 2015, ¶¶42–58.

An illustration of this principle is shown in Figure 32 of the '198 patent.

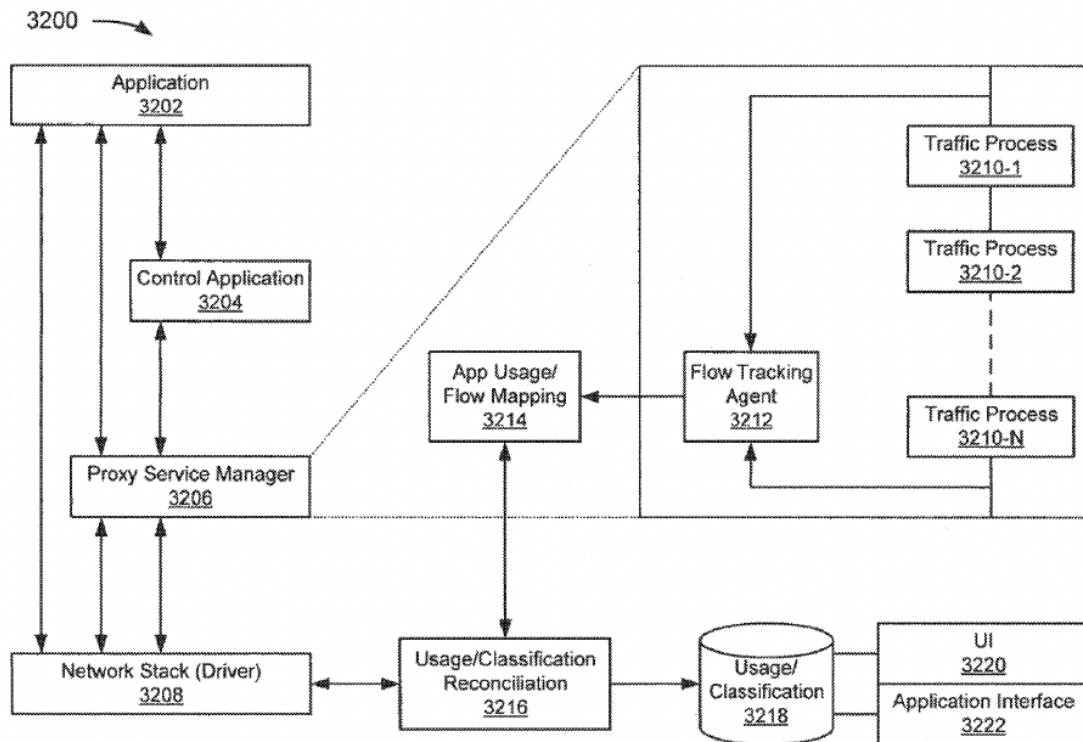


FIG. 32

Ex. 1001, FIG. 32. As shown above, the application is able to call both Network Stack (via the left-most arrow) and the Proxy Service Manager (via the top arrow second from the left). In this case, **both** the Network Stack and Proxy Service Manager APIs are “callable” by and “accessible” to the application, because the application can choose to initiate calls via either path. Ex. 2015, ¶58. However, if the ability of the application to call the Network Stack API via the left-most arrow

were removed from the system depicted in FIG. 32, then the Network Stack API would no longer be “callable” by or “accessible” to the application.

The result that the Network Stack API is not callable by the application in that scenario is true even though the application would, in that hypothetical, be able to call the Proxy Service Manager which could then call the Network Stack API, because the *Proxy Service Manager* calling the Network Stack API is not the same as the *application* calling the Network Stack API.

However, in FIG. 32 as disclosed, even though the application can call the Proxy Service Manager API (through the middle arrow from application 3202), the application can *also* call the Network Stack API (through the left-most arrow from application 3202). Thus, the Network Stack API is “callable by” (and has a “call” that is “accessible to”) the application in Figure 32 of the ’918 patent. Ex. 2015, ¶¶57–58.

It is also important to note that the claims require that the Network Stack API be “callable by” (and have an API call “accessible to”) the application. They do not require that *every* transmission by the application be a “call” to the Network Stack API. Thus, so long as the application itself has the capability to call *at least* the Network Stack API, that means that the network stack API is “callable” and “accessible” by the application, even if the application may *additionally* be able to call other APIs (such as a proxy API). Ex. 2015, ¶¶31, 53, 57–58. Indeed, that is a

concept underlying claim 1, which requires that there be **two** different API calls (a “first call” and a “second call”) for two different APIs “accessible to each of [the] plurality of device applications” (and similarly that the two different APIs be “callable by” each of the applications); the claims expressly recite these two different capabilities, and “track[ing] an **aggregate**” usage through both paths. Ex. 2015, ¶52. The fact that a call to the proxy service manager is accessible to the application in FIG. 32 does not negate the fact that a network stack API call is **also** accessible to the application in FIG. 32 (as shown by the left-most arrow allowing the application to issue a call to the network stack).

Thus, while the institution decision in IPR2024-01396 is correct that the claims do not “preclude” the use of an intermediary API (IPR2024-01396, Paper No. 13 at 14), the intermediary API cannot be the **only** API that is callable by the application. It is possible for two different APIs to be callable by the same application, and as noted above claim 1 requires as much when it recites “a second API containing at least one second call accessible to each of the plurality of device applications.”⁶ The prior decision misapprehended this distinction, and assumed

⁶ The claims do **not** strictly require that the second API be able to “call” the network stack API, but they do require the second API to prompt a “media service manager... to manage network data transfers... by interfacing with the network

incorrectly assumed that Headwater’s understanding of claim scope would “preclude” **any** calls to APIs that are not the network stack API. Ex. 2015, ¶57.

Accordingly, the claims as properly understood **do** require that the network stack API be callable by the application itself (e.g., through the left-most arrow of FIG. 32 of the ’918 patent), and also do not exclude the **additional** capability of the application to call an intermediary API (e.g., the second-from-left or third-from-left arrows in FIG. 32 of the ’918 patent). Under this interpretation, the embodiment of FIG. 32 is not improperly excluded from the scope of the claim language, which the Board previously overlooked. *See* IPR2024-01396, Paper No. 13 at 14 (stating that Headwater’s interpretation would “impermissibly read” FIG. 32 “out of the scope of the claims”); Ex. 2015, ¶58.⁷

stack,” such that the claims at least contemplate that the use of the claimed “media service manager” prompted by the “second [API] call” would itself issue an API call to the network stack.

⁷ No other embodiments are improperly excluded from the scope of claim 1 either. Other than Figure 32, there are no embodiments that the Petition alleges would satisfy claim 1 but for Headwater’s claim interpretation. For example, the Petition points to FIG. 30, but that embodiment does not disclose “agents to associate wireless network data usage for the media object network data transfers with the

Importantly, the claims do not merely require that *any* aspect of the API be “accessible” to the application; rather, a specific “API *call*” must be “accessible” to the application, and the API must be “*callable*” by the application. And the plain meaning of an API being “callable” by the application requires that the application must be able to issue a call for that API (rather than the application needing to call a proxy API instead). *See* Ex. 2015, ¶49.

Under the correct interpretation, where there must be a network stack API that is actually “callable by” each of the plurality of applications, the Petition’s theory of invalidity fails. In Bennett, there is only a *single* API (API 208) that is “callable by” the application, as shown below.

device application that requests the data transfer for the media object” as required by limitation [1.6] such that it is not within the scope of claim 1 under any interpretation. Likewise, the Petition does not contend that FIGs. 12–13 are embodiments of claim 1, and in any event those embodiments do not specify that the application is incapable of issuing a call to the network stack API. And FIG. 35 is a diagram of how a proxy API interfaces with a stack API; it does not depict how an application calls *either* API. *See* Ex. 2015, ¶¶45–51 & n.2.

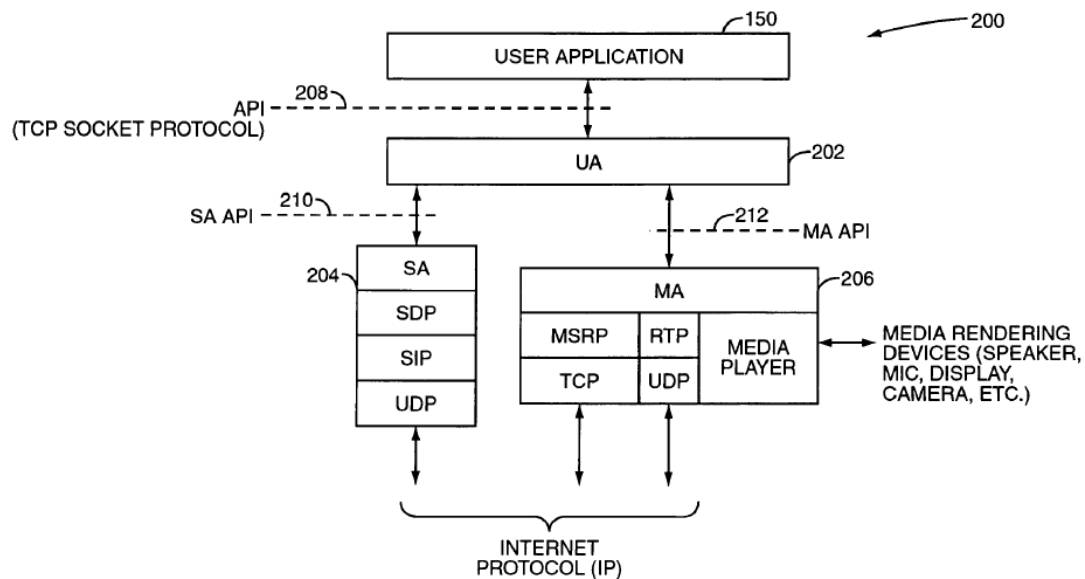


FIG. 3

Ex. 1041, FIG. 3. That is true regardless of whether the user application’s call to API 208 may prompt the user agent to call the signaling agent (SA) API 210. Even so, the SA API 210 is not callable by the application itself, but is only callable by the user agent 202 under the Petition’s theory of invalidity. Ex. 2015, ¶42.

The Petition acknowledges this when it concedes that the application cannot “directly call” the SA API 210. *See* Pet. 30. In other words, the application requires the user agent to call the SA API 210, which is not the application calling the SA API 210, it is the *user agent* calling SA API 210. While the Petition introduces the concept of an “indirect call,” such a term is found nowhere in the prior art or in the ’918 patent.

C. Prosecution history disclaimer requires Headwater’s construction.

As explained above, the plain meaning, even setting aside any relevant prosecution history, supports Headwater’s understanding of claim scope. But the Board need not even decide the term’s plain meaning, because Headwater clearly and unmistakably disclaimed (i.e., disavowed) a broader scope during earlier an earlier IPR involving the ’192 patent. *See Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1366–68 (Fed. Cir. 2012) (explaining that “disavowal” / “disclaimer” is one of two “exceptions” to the principle that “claim terms must be given their plain and ordinary meaning”)).

Clear and unmistakable statements disclaiming claim scope (including pre-institution statements) in an IPR are binding in subsequent proceedings. *See CUPP Computing AS v. Trend Micro Inc.*, 53 F.4th 1376, 1383 (Fed. Cir. 2022) (noting that “disclaimer is not binding on the PTO in the very IPR proceeding in which it is made,” but it “*is* binding in later proceedings, whether before the PTO or in court”); *see also VirnetX Inc. v. Mangrove Partners Master Fund, Ltd.*, 778 F. App’x 897, 910 (Fed. Cir. 2019) (“[T]he Board is not required to accept a patent owner’s arguments as disclaimer when deciding the merits of those arguments. *[That] does not mean the Board in an inter partes review can ignore statements made in a prior reexamination.*”).

Importantly, disclaimer applies even if the PTO *disagreed* with the original statements giving rise to disclaimer, unless the patentee itself withdraws its statements that would otherwise give rise to disclaimer. *Puradigm, LLC v. DBG Grp. Investments, LLC*, No. 2024-2299, 2026 WL 890566, at *3–*4 (Fed. Cir. Apr. 1, 2026) (finding disclaimer even though the examiner disagreed with the statements giving rise to disclaimer, because “*it is the applicant*, not the examiner, who must give up or disclaim subject matter that would otherwise fall within the scope of the claims,” and “the applicant never retracted th[e] statement” giving rise to disclaimer”).

Here, Headwater clearly, unmistakably, and repeatedly disclaimed the Bennett’s configuration, wherein *only* UA API 208 is callable by Bennett’s application 150, based on Headwater’s understanding of claim scope wherein an API being “callable” by an application (or an API call being “accessible to” an application) requires that the application have the *ability* to call the API without using a proxy API. *See, e.g.*, Ex. 2017 (Headwater’s POPR in IPR2024-01396) at 12 (“Bennett does not disclose or otherwise suggest that user application 150... is able to make either the ‘invite’ request or any other alleged call of any alleged ‘network stack API.’”); *id.* (“[T]he Petition’s invalidity theory [i.e., the same *Bennett*-based theory at issue here] is inconsistent with the requirements of limitation [1.3]” because “the Petition’s theory does not show ‘a first network stack [API] containing

at least one first call accessible to each of a plurality of device applications [and] the first network stack API callable by each of the plurality of device applications” as claim 1 requires”). *id.* at 16 (disagreeing that “ability to access a call of a **proxy** API... [is] sufficient” to satisfy the claim language); *id.* at 17 (distinguishing “calls to a proxy API to interface with the network stack on the application’s behalf” from “a network stack API [that] is **itself** callable by applications”) (emphasis original).

Headwater reiterated this position throughout the IPR, including in a pre-institution sur-reply and a request for Director Review filed after the IPR had been instituted. *See, e.g.*, Ex. 2018 (Headwater’s preliminary sur-reply in IPR2024-01396) at 2 (“[A] POSITA would understand that if an application merely calls an API which in turn causes a component to call the network stack API,” then “the application does not call the network stack API.”) (cleaned up); *id.* (“Petitioner’s allegation that a call to a **proxy** API constitutes a call to the **network stack API** is also inconsistent with common sense and the plain meaning of what constitutes a ‘call’ to a particular entity (or for an interface to be ‘callable’).”) (emphasis original); *id.* at 5 (“[I]n order for an API request to be ‘accessible’ to an application, the application must be able to actually make the API request.”) (internal quotation omitted); Ex. 2019 (Headwater’s request for Director Review in IPR2024-01396) at 10–11 (same); *id.* at 13 (“[U]nder Petitioner’s prior art theory, the user application

cannot call the SA API 210 such that it is not ‘callable.’”) (emphasis original, internal quotation omitted).

The fact that Headwater clearly and unmistakably disclaimed Google’s Bennett-based invalidity theory is evidenced by Google’s own Petition in this case, where Google recognized that Bennett had already been explicitly distinguished based on what Google characterized as a “construction” of the claim terms at issue. Pet. 7 (“In IPR2024-01396, Patent Owner asserted that the prior art does not teach claim 1’s ‘first call accessible to each of a plurality of device applications,’ and ‘API callable by each of the plurality of device applications’ because intermediaries are interposed between the APIs and applications. Headwater did not seek this narrow *construction* in the district court.”); *id.* at 7–8 (asserting that “the Board should decline to narrowly construe the claims to require direct access between the claimed applications and the APIs”).

Because Headwater clearly and unmistakably disclaimed Bennett’s configuration (wherein the application could *only* influence the alleged network stack API, not by itself calling the network stack API but issuing an API call to an intermediary, which intermediary can itself call the network stack API), and never retracted that disclaimer (and indeed *reiterated* that disclaimer throughout the proceeding), that disclaimer is binding on this proceeding. *CUPP*, 53 F.4th at 1383 (noting that “disclaimer is not binding on the PTO in the very IPR proceeding in

which it is made,” but it “*is* binding in later proceedings, whether before the PTO or in court”); *VirnetX*, 778 F. App’x at 910 (“[T]he Board is not required to accept a patent owner’s arguments as disclaimer when deciding the merits of those arguments. *[That] does not mean the Board in an inter partes review can ignore statements made in a **prior** reexamination.*”). And because the Petition presents no theory of invalidity under anything *other* than clearly and unmistakably disclaimed claim scope, this disclaimer is dispositive.

V. Conclusion

As explained herein, the plain meaning of the claim language for claim 1 is not satisfied by Google’s invalidity theory. But this case can be resolved even without resort to evaluating the plain meaning of the claim language at issue, because Headwater has clearly and unmistakably disclaimed the exact claim scope that Google relies on in the Petition. Accordingly, Google’s theory of invalidity cannot succeed *regardless* of what the claim scope *might have been* in the absence of disclaimer.

Furthermore, because the Petition does not provide any unique analysis for the other independent claims, the Petition’s theories with respect to those claims rise and fall with the Petition’s claim 1 theory. Accordingly, the Petition fails to set forth a reasonable likelihood of prevailing with respect to any challenged claim, and institution should be denied.

Date: April 22, 2026

Respectfully submitted,

/James A. Milkey/

James A. Milkey, Reg. No. 79,503
RUSS, AUGUST & KABAT
12424 Wilshire Blvd., 12th Fl.
Los Angeles, CA 90025

Counsel for Patent Owner

CERTIFICATION REGARDING WORD COUNT

Pursuant to 37 C.F.R. §42.24(d), Patent Owner certifies that there are 5,190 words in this paper excluding the portions exempted under 37 C.F.R. §42.24(a)(1).

Date: April 22, 2026

Respectfully submitted,

/James A. Milkey/

James A. Milkey, Reg. No. 79,503
RUSS, AUGUST & KABAT
12424 Wilshire Blvd., 12th Fl.
Los Angeles, CA 90025

Counsel for Patent Owner

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

The undersigned hereby certifies that the above document was served on April 22, 2026, by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) as well as delivering a copy via electronic mail upon the following attorneys of record for Petitioner:

Erika H. Arner, Reg. No. 57,540
Daniel C. Tucker, Reg. No. 62,781
Elliot Cook, Reg. No. 61,769
Michael V. Young, Reg. No. 61,180
Alexander M. Boyer, Reg. No. 66,599
Bradford C. Schulz, Reg. No. 75,006
Christopher B. Anderson, Reg. No. 77,898
Umbra Aggarwal, Reg. No. 76,098
Abhay A. Watwe, Reg. No. 59,461
Kathleen C. Galleher, Reg. No. 80,837
Finnegan, Henderson, Farabow, Garrett, & Dunner LLP
1875 Explorer Street, Suite 800
Reston, VA 20190-6023
erika.arner@finnegan.com
daniel.tucker@finnegan.com
elliott.cook@finnegan.com
michael.young@finnegan.com
alexander.boyer@finnegan.com
bradford.schulz@finnegan.com
christopher.anderson@finnegan.com
umbra.aggarwal@finnegan.com
abhay.watwe@finnegan.com
kathleen.galleher@finnegan.com

Joshua L. Goldberg, Reg. No. 59,369
Daniel F. Klodowski, Reg. No. 72,693
Pier D. DeRoo, Reg. No. 69,340
Christopher C. Johns, Reg. No. 68,664
Kassandra M. Officer, Reg. No. 74,083

William C. Neer, Reg. No. 78,874
Kai Rajan, Reg. No. 70,110
Connor M. McGregor, Reg. No. 79,634
Heather J. Ren, Reg. No. 82,089
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
901 New York Avenue NW
Washington, DC 20001-4413
joshua.goldberg@finnegan.com
daniel.klodowski@finnegan.com
pier.deroo@finnegan.com
Christopher.Johns@finnegan.com
Kassandra.Officer@finnegan.com
william.neer@finnegan.com
kai.rajan@finnegan.com
connor.mcgregor@finnegan.com
heather.ren@finnegan.com

Benjamin A. Saidman, Reg. No. 69,325
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
271 17th Street NW, Suite 1400
Atlanta, GA 30363-6209
benjamin.saidman@finnegan.com

Yi Yang, pro hac vice to be filed
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
2 Seaport Lane, 6th Floor
Boston, MA 02210
yi.yang@finnegan.com

HeadwaterIPRTeam@finnegan.com

Date: April 22, 2026
RUSS AUGUST & KABAT
12424 Wilshire Blvd., 12th Fl.
Los Angeles, CA 90025
Phone: (310) 826-7474

/James A. Milkey/
James A. Milkey
Reg. No. 79,503
Attorney for Patent Owner