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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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APPEAL BRIEF UNDER 37 C.F.R. § 41.37

This Appeal Brief is submitted pursuant to 37 CFR §41.37 in response to the Final Office Action mailed on July 27, 2023 (“Final Office Action”). Appellant appeals to the Board of Patent Appeals and Interferences (“Board”) and respectfully requests that the Board reverse the rejections of the pending claims imposed by the USPTO in the Office Action and remand this application to the Examiner for reconsideration consistent with an order that the Examiner pass this case to issuance unless a proper rejection to the claims can be made.

A Notice of Appeal was filed on October 27, 2023, and as such, the extendable deadline for filing this Brief was established as December 27, 2023. This response is accompanied by a Petition, as well as the appropriate fee, to obtain a two-month extension of the period for filing this Brief, thereby moving the deadline for response from December 27, 2023 to February 27, 2024.

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This brief contains the following parts as required by 37 C.F.R. §41.37:

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I. REAL PARTY IN INTEREST

The real party in interest is BK Technologies Inc., as the Applicant and Assignee of record.

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II. RELATED APPEALS AND INTERFERENCES

There are no related appeals, interferences, or judicial proceedings which would directly affect or be directly affected by, or which would otherwise bear on, the Board's decision in this appeal.

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III. STATUS OF CLAIMS

Claims originally filed: 1-23

Claims added: None

Claims canceled: None

Claims withdrawn from consideration: None

Claims allowed: None

Claims objected to: None

Claims rejected: 1-23

Claims on appeal: 1-23

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IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the Final Office Action mailed on July 27, 2023.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following is a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. Independent claims 1, 8, 16 are fully supported and concisely explained and map to the specification and drawings.

Independent claim 1 maps to the specification and to the drawings as follows:

Claim 1	Specification and Drawings
A method of managing access to a push-to-talk-over-cellular (POC) talkgroup, the method comprising:	<i>See, e.g.</i>, [0002], “Modern society relies on a number of different public safety agencies, such as fire departments, police departments, ambulance services, etc., to respond to emergency situations. In many situations, inter-agency coordination is critical to effectively responding and protecting the public. However, coordination may be hampered by the lack of communication interoperability between agencies. ... While steps have been made to standardize radio channels and talkgroups for public safety agencies, many times the lack of a common communications network and the unpredictable nature of public safety emergencies may still result in communication difficulties despite the efforts at standardization.” <i>See, e.g.</i>, [0005], “Accordingly, there may be a need for methods and systems to quickly and efficiently manage access to push-to-talk talkgroups, especially those that leverage the widespread availability of personal smartphones.” <i>See, e.g.</i>, [0006], “At least an exemplary embodiment of a method of managing access to a push-to-talk-over-cellular (POC) talkgroup may include providing a control device configured to manage a first talkgroup, granting a first non-subscriber device access to the first talkgroup, and transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to access the first talkgroup.” <i>See, e.g.</i>, [0032], “FIG. 4 is a flowchart illustrating an exemplary embodiment of a method for managing access to a POC talkgroup.”
providing a control device configured to: provide a POC service; and	<i>See, e.g.</i>, [0021], “... The control device 104 may be configured to perform administrative duties with respect to one or a plurality of POC talkgroups, including a first talkgroup. For example, the control device 104 may control which non-

Claim 1	Specification and Drawings
manage a first POC talkgroup;	subscriber devices have access to the talkgroups managed by the control device 104.” <i>See, e.g.</i>, [0022], “In an exemplary embodiment, the phrase “subscriber device” may refer to a device that subscribes to a service provided by an operator of the control device 104. For example, the operator of the control device 104 may provide a POC service for facilitating POC communication between various devices. In contrast, the phrase “non-subscriber device” may refer to a device that does not subscribe to the service provided by the operator of the control device 104. The non-subscriber device may subscribe to a different POC service than the service provided by the operator of the control device 104, or the non-subscriber device may not subscribe to any POC service at all and may not even have any POC software installed on the device. As explained further hereinbelow, at least an exemplary embodiment includes providing a link to download POC software compatible with the talkgroup(s) managed by the control device 104.” <i>See, e.g.</i>, [0032], “... In block 404, a control device is provided. The control device may be the control device 104 as described above.” <i>See e.g.</i>, FIG. 4.
granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service; and	<i>See, e.g.</i>, [0006], “At least an exemplary embodiment of a method of managing access to a push-to-talk-over-cellular (POC) talkgroup may include ... granting a first non-subscriber device access to the first talkgroup...” <i>See, e.g.</i>, [0021], “...For example, the control device 104 may control which non-subscriber devices have access to the talkgroups managed by the control device 104.” <i>See, e.g.</i>, [0028], “In response to the command 204, the control device 104 may grant the first non-subscriber device 202 access to the first talkgroup.” <i>See, e.g.</i>, [0034], “In block 410, the subscriber device may transmit a command to the control device. The command may include the non-subscriber contact information, a list of one or more talkgroups to which access is to be granted, and/or the predetermined time. In block 412, the control device may then

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Claim 1	Specification and Drawings
	manage the desired talkgroup(s) to grant access to the device associated with the non-subscriber contact information.” <i>See e.g.</i>, FIGS. 2-4.
transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.	<i>See, e.g.</i>, [0006], “At least an exemplary embodiment of a method of managing access to a push-to-talk-over-cellular (POC) talkgroup may include ... transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to access the first talkgroup.” <i>See, e.g.</i>, [0028], “...Further, the control device 104 may send a first communication 206 to the first non-subscriber device 202 notifying it that access has been granted to first talkgroup. The first communication 206 may be a text message, email message, or message sent via another suitable communication protocol. The first communication 206 may include first configuration information associated with the first talkgroup. ... Additionally, the first communication 206 may include a link for downloading a POC software application for POC communication. Thus, even if the first non-subscriber device 202 was not previously configured for POC communications, the first communication 206 will provide the first non-subscriber device 202 with the means for accessing the first talkgroup to which it has been granted access.” <i>See, e.g.</i>, [0035] “In block 414, the control device may transmit a communication to the non-subscriber device. The communication may include a link to download a software application that can communicate with the POC talkgroup if the non-subscriber device does not already include the software, as well as information sufficient to populate the software application with the talkgroup(s).” <i>See e.g.</i>, FIGS. 2-4.

Independent claim 8 maps to the specification and to the drawings as follows.

Claim 8	Specification and Drawings
A method of managing access to a push-to-talk-over-cellular (POC)	<i>See, e.g.</i>, [0002], “Modern society relies on a number of different public safety agencies, such as fire departments, police departments, ambulance services, etc., to respond to emergency situations. In many situations, inter-agency coordination is

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Claim 8	Specification and Drawings
talkgroup, the method comprising:	critical to effectively responding and protecting the public. However, coordination may be hampered by the lack of communication interoperability between agencies. ... While steps have been made to standardize radio channels and talkgroups for public safety agencies, many times the lack of a common communications network and the unpredictable nature of public safety emergencies may still result in communication difficulties despite the efforts at standardization.” <i>See, e.g.</i>, [0005], “Accordingly, there may be a need for methods and systems to quickly and efficiently manage access to push-to-talk talkgroups, especially those that leverage the widespread availability of personal smartphones.” <i>See, e.g.</i>, [0007], “At least an exemplary method of managing access to a push-to-talk-over-cellular (POC) talkgroup may include providing a control device configured to manage a first talkgroup, providing a first subscriber device, transmitting, from the first subscriber device to the control device, first non-subscriber contact information associated with a first non-subscriber device, and granting the first non-subscriber device access to the first talkgroup.” <i>See, e.g.</i>, [0032], “FIG. 4 is a flowchart illustrating an exemplary embodiment of a method for managing access to a POC talkgroup.”
providing a control device configured to: provide a POC service; and manage a first POC talkgroup;	<i>See, e.g.</i>, [0021], “... The control device 104 may be configured to perform administrative duties with respect to one or a plurality of POC talkgroups, including a first talkgroup. For example, the control device 104 may control which non-subscriber devices have access to the talkgroups managed by the control device 104.” <i>See, e.g.</i>, [0022], “In an exemplary embodiment, the phrase ‘subscriber device’ may refer to a device that subscribes to a service provided by an operator of the control device 104. For example, the operator of the control device 104 may provide a POC service for facilitating POC communication between various devices. In contrast, the phrase “non-subscriber device” may refer to a device that does not subscribe to the service provided by the operator of the control device 104. The non-subscriber device may subscribe to a different POC service than the service provided by the operator of the control device 104, or the non-subscriber device may not subscribe to any POC service

Claim 8	Specification and Drawings
	at all and may not even have any POC software installed on the device. As explained further hereinbelow, at least an exemplary embodiment includes providing a link to download POC software compatible with the talkgroup(s) managed by the control device 104.” <i>See, e.g.</i>, [0032], “... In block 404, a control device is provided. The control device may be the control device 104 as described above.” <i>See, e.g.</i>, FIG. 4.
providing a first subscriber device;	<i>See, e.g.</i>, [0007], “At least an exemplary method of managing access to a push-to-talk-over-cellular (POC) talkgroup may include ... providing a first subscriber device....” <i>See, e.g.</i>, [0032], “FIG. 4 is a flowchart illustrating an exemplary embodiment of a method for managing access to a POC talkgroup. In block 402, a subscriber device is provided. The subscriber device may be the first subscriber device 114 as described above.” <i>See, e.g.</i>, FIG. 4.
transmitting, from the first subscriber device to the control device, first non-subscriber contact information associated with a first non-subscriber device; and	<i>See, e.g.</i>, [0007], “At least an exemplary method of managing access to a push-to-talk-over-cellular (POC) talkgroup may include ... transmitting, from the first subscriber device to the control device, first non-subscriber contact information associated with a first non-subscriber device....” <i>See, e.g.</i>, [0027], “Another first responder (hereinafter referred to as a client), owning a first non-subscriber device 202, may arrive on the scene and may need to communicate with other first responders. ... The administrator may send a command 204 to the control device 104 including first non-subscriber contact information associated with the first non-subscriber device 202. The command may be entered via a software application running on the first subscriber device 114 and configured for interfacing with the control device 104. ... The first non-subscriber contact information may be a cellular telephone number, email address, or other identifying information linked to the first non-subscriber device 202 and/or the client using the first non-subscriber device 202.” <i>See, e.g.</i>, [0034], “In block 410, the subscriber device may transmit a command to the control device. The command may include the non-subscriber contact information, a list of one or

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Claim 8	Specification and Drawings
	more talkgroups to which access is to be granted, and/or the predetermined time.” <i>See, e.g.</i>, [0033], “...In an exemplary embodiment, the non-subscriber contact information may be a cellular telephone number, email address, or other information that can identify a user.” <i>See, e.g.</i>, FIGS. 2-4.
granting the first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the first POC service.	<i>See, e.g.</i>, [0007], “At least an exemplary method of managing access to a push-to-talk-over-cellular (POC) talkgroup may include ... granting the first non-subscriber device access to the first talkgroup.” <i>See, e.g.</i>, [0028], “In response to the command 204, the control device 104 may grant the first non-subscriber device 202 access to the first talkgroup. Further, the control device 104 may send a first communication 206 to the first non-subscriber device 202 notifying it that access has been granted to first talkgroup. The first communication 206 may be a text message, email message, or message sent via another suitable communication protocol. The first communication 206 may include first configuration information associated with the first talkgroup. ... Thus, even if the first non-subscriber device 202 was not previously configured for POC communications, the first communication 206 will provide the first non-subscriber device 202 with the means for accessing the first talkgroup to which it has been granted access.” <i>See, e.g.</i>, [0034], “... In block 412, the control device may then manage the desired talkgroup(s) to grant access to the device associated with the non-subscriber contact information.” <i>See, e.g.</i>, FIGS. 2-4.

Independent claim 16 maps to the specification and to the drawings as follows.

Claim 16	Specification and Drawings
A non-transitory computer-readable storage medium comprising computer-	<i>See, e.g.</i>, [0008], “At least an exemplary embodiment of a non-transitory computer-readable storage medium may include computer-executable instructions that, when executed by a computer, cause the computer to perform creating a first talkgroup for push-to-talk-over-cellular (POC) communication,

Claim 16	Specification and Drawings
executable instructions that, when executed by a computer, cause the computer to perform:	receiving, from a first subscriber device, first non-subscriber contact information associated with a first non-subscriber device, and granting the first non-subscriber device access to the first talkgroup.” <i>See, e.g.</i>, [0023], “... The control device memory 108 may be a non-transitory computer-readable medium or media that stores computer-executable instructions thereon. The computer-executable instructions stored in the control device memory 108 may be executed by the control device 104; in an exemplary embodiment, the computer-executable instructions may be executed by the control device processor 106. Once executed, the computer-executable instructions may cause the control device 104 to perform steps consistent with the processes and methods described herein below.”
provide a push-to-talk-over cellular (POC) service;	<i>See, e.g.</i>, [0022], “In an exemplary embodiment, the phrase ‘subscriber device’ may refer to a device that subscribes to a service provided by an operator of the control device 104. For example, the operator of the control device 104 may provide a POC service for facilitating POC communication between various devices. In contrast, the phrase “non-subscriber device” may refer to a device that does not subscribe to the service provided by the operator of the control device 104. The non-subscriber device may subscribe to a different POC service than the service provided by the operator of the control device 104, or the non-subscriber device may not subscribe to any POC service at all and may not even have any POC software installed on the device. As explained further hereinbelow, at least an exemplary embodiment includes providing a link to download POC software compatible with the talkgroup(s) managed by the control device 104.”
creating a first POC talkgroup for POC communication;	<i>See, e.g.</i>, [0008], “At least an exemplary embodiment of a non-transitory computer-readable storage medium may include computer-executable instructions that, when executed by a computer, cause the computer to perform creating a first talkgroup for push-to-talk-over-cellular (POC) communication” <i>See, e.g.</i>, [0026], “FIG. 2 is a schematic diagram showing an exemplary embodiment of how the system 102 may be used to manage a POC talkgroup. For example, in an emergency incident, a first responder (hereinafter referred to as an administrator) such as a senior police officer or senior firefighter may have control of the first subscriber device 114. ... The

Claim 16	Specification and Drawings
	administrator may have administrative privileges with respect to a preexisting first talkgroup or may create a new first talkgroup on an ad hoc basis.”
receiving, from a first subscriber device, first non-subscriber contact information associated with a first non-subscriber device; and	<i>See, e.g.</i>, [0008], “At least an exemplary embodiment of a non-transitory computer-readable storage medium may include computer-executable instructions that, when executed by a computer, cause the computer to perform ... receiving, from a first subscriber device, first non-subscriber contact information associated with a first non-subscriber device ...” <i>See, e.g.</i>, [0027], “Another first responder (hereinafter referred to as a client), owning a first non-subscriber device 202, may arrive on the scene and may need to communicate with other first responders. ... The administrator may send a command 204 to the control device 104 including first non-subscriber contact information associated with the first non-subscriber device 202. ... The first non-subscriber contact information may be a cellular telephone number, email address, or other identifying information linked to the first non-subscriber device 202 and/or the client using the first non-subscriber device 202.” <i>See, e.g.</i>, [0034], “In block 410, the subscriber device may transmit a command to the control device. The command may include the non-subscriber contact information, a list of one or more talkgroups to which access is to be granted, and/or the predetermined time.” <i>See, e.g.</i>, [0033], “...In an exemplary embodiment, the non-subscriber contact information may be a cellular telephone number, email address, or other information that can identify a user.” <i>See, e.g.</i>, FIGS. 2-4.
granting the first non-subscriber device access to the POC first talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC	<i>See, e.g.</i>, [0008], “At least an exemplary embodiment of a non-transitory computer-readable storage medium may include computer-executable instructions that, when executed by a computer, cause the computer to perform ... granting the first non-subscriber device access to the first talkgroup.” <i>See, e.g.</i>, [0028], “In response to the command 204, the control device 104 may grant the first non-subscriber device 202 access to the first talkgroup. Further, the control device 104 may send a first communication 206 to the first non-subscriber device 202 notifying it that access has been granted to first talkgroup. The first communication 206 may be a text message, email message,

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Claim 16	Specification and Drawings
talkgroup using the POC service.	or message sent via another suitable communication protocol. The first communication 206 may include first configuration information associated with the first talkgroup. ... Thus, even if the first non-subscriber device 202 was not previously configured for POC communications, the first communication 206 will provide the first non-subscriber device 202 with the means for accessing the first talkgroup to which it has been granted access.” <i>See, e.g.</i>, [0034], “... In block 412, the control device may then manage the desired talkgroup(s) to grant access to the device associated with the non-subscriber contact information.” <i>See, e.g.</i>, FIGS. 2-4.

VI. ARGUMENT

This appeal is from the rejections made in the Final Office Action dated July 27, 2023 (hereinafter “Final Office Action”). Appellant filed a Notice of Appeal on October 27, 2023. Appellant requests entry of this Appeal Brief and requests that all grounds of rejection be reversed.

A. BACKGROUND

BK Technologies, the real party in interest, is a global technology company focused on designing and manufacturing world-class communications products.¹ They have been an American manufacturer of high specification communications equipment of unsurpassed reliability and value for over 70 years.² BK technologies has a tenacious commitment to quality and continuous improvement in communication technologies, such as for military, first responder, and public safety heroes.³ One of these communication technologies is referred to as push-to-talk-over cellular (POC). Generally, POC enables a speaker to press a button to hold the floor and near-instantaneously broadcast to the other users in the POC talkgroup.

Conventional POC techniques fail to provide the ability to quickly and efficiently manage access to push-to-talk talkgroups, especially those that leverage the widespread availability of personal smartphones.⁴ This failure to provide the ability to quickly and efficiently manage access to push-to-talk talkgroups has real and costly effects that limit the usefulness and practicality of conventional POC techniques. For example, society relies on a number of different public safety agencies, such as fire departments, police departments, ambulance services, etc., to respond to emergency situations, and coordination between these agencies is critical to effectively responding and protecting the public.⁵ Further, many emergency situations require coordinated responses from several different agencies from multiple jurisdictions, such as in response to natural

¹ See www.twitter.com/BKTechUSA.

² See www.linkedin.com/company/bktechnologiesinc/about/.

³ See www.bktechnologies.com/about-us/.

⁴ See Specification at paragraph [0005].

⁵ See *id.* at paragraph [0002].

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disasters including forest fires and hurricanes.⁶ However, conventional POC techniques are hampered by the lack of communication interoperability between agencies, such as due to different agencies using different communication devices and/or operating on different talkgroups. This lack of communication interoperability costs valuable time and resources in coordinating an effective response to emergency situations.⁷

In view of these and other challenges facing conventional POC techniques, BK Technologies has developed new and useful techniques for managing access to POC talkgroups.⁸ These new and useful techniques include, as reflected in the claims under appeal, the ability for a subscriber of a POC service to quickly and efficiently permit a non-subscriber device to join a POC talkgroup and communicate via the POC talkgroup using a POC service.⁹ Further, as reflected in the claims under appeal, these new and useful techniques can avoid the need for complicated and time-consuming administrative procedures to provide access to POC talkgroups, such as by transmitting, to non-subscriber devices, a link to download a POC software application configured to join a POC talkgroup and communicate via the POC talkgroup using the POC service.¹⁰ In the context of the challenges faced by public safety agencies, for example, these new and useful techniques can enable a senior firefighter to quickly set up ad hoc POC talkgroups in the field for communication and coordination between firefighters from multiple different jurisdictions, regardless of whether the firefighters subscribe to the POC service.¹¹ This capability saves valuable time for the firefighters, enabling more time and attention to be devoted to responding to the emergency situation.¹²

B. THE CLAIM REJECTIONS UNDER 35 U.S.C. § 103(A) ARE IN ERROR AND SHOULD BE REVERSED.

Claims 1, 2, 6, and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gobburu et al., US 2007/0117552 A1 (hereinafter “Gobburu”) in view of Patel et al.,

⁶ See *id.* at paragraph [0042].

⁷ See *id.*

⁸ See *id.* at paragraph [0006].

⁹ See *id.* at paragraph [0006].

¹⁰ See *id.* at paragraphs [0006] and [0042].

¹¹ See *id.* at [0026]-[0027].

¹² See *id.* at paragraph [0042].

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US 2017/0237600 A1 (hereinafter “Patel”) and Nurmi, US 2006/0252442 A1 (hereinafter “Nurmi”). Claims 3-5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gobburu in view of Patel, Nurmi, and Reilly et al., US 2015/0326523 A1 (hereinafter “Reilly”). Claims 8, 9, 11, 12, 14-17, 19, 20, 22, and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gobburu in view of Reilly. Claims 10 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gobburu in view of Reilly, Patel, and Nurmi. Claims 13 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gobburu in view of Reilly and Brown et al., US 2018/0278718 A1 (hereinafter “Brown”). Appellant respectfully disagrees and submits that the Office Action failed to establish a prima facie case of obviousness under 35 U.S.C. § 103.

The Final Office Action failed to establish a prima facie case of obviousness under 35 U.S.C. § 103 at least because (1) the cited references fail to teach or suggest every element of the claims and (2) the primary reference Gobburu is non-enabling for the premise for which it is cited. Accordingly, Appellant asserts the 35 U.S.C. § 103 rejections are improper and should be withdrawn.

(1) The cited references fail to teach or suggest every element of the claims

To form a prima facie case of obviousness under 35 U.S.C § 103(a) the cited references must teach or suggest every element of the claim.¹³ Further, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a prima facie case of obviousness) is more probable than not.¹⁴ A conclusion that the claim would have been obvious requires that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art.¹⁵ Additionally, when considering a reference, the reference must

¹³ See e.g., MPEP § 2143.03

¹⁴ MPEP § 2142

¹⁵ *KSR*, 550 U.S. at 416, 82 USPQ2d at 1395; *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57, 62-63, 163 USPQ 673, 675 (1969); *Great Atl. & P. Tea Co. v. Supermarket Equip. Corp.*, 340 U.S. 147, 152, 87 USPQ 303, 306 (1950).

be considered for its teachings as a whole, and it is inappropriate to pick and choose various elements from the references without regard to what the references teach as a whole.¹⁶

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.¹⁷ The Supreme Court noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit.¹⁸ Further, “either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.”¹⁹ The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”²⁰

Contrary to the requirement recited above, the Final Office Action has failed to establish that the cited references fail to teach or suggest each element, including, but not limited to, the following limitations recited in claims 1, 8, and 16: (a) “granting a first non-subscriber device access to the POC²¹ service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service”; and the following limitations recited in claims 1, 10, and 18: (b) “transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.”

a) Claims 1, 8, and 16

The cited references, taken alone or in combination, fail to teach or suggest each and every element recited in independent claims 1, 8, and 16, and thus a prima facie case

¹⁶ *In re Arkley*, 455 F.2d 586, 587-88 (C.C.P.A. 1972).

¹⁷ See MPEP § 2143

¹⁸ *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

¹⁹ *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

²⁰ *KSR*, 550 U.S. at 418, 82 USPQ2d at 1396.

²¹ As noted above in Section V and Claim 1, the abbreviation “POC” means “push-to-talk-over-cellular.”

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of obviousness under 35 U.S.C § 103(a) was not established. For example, independent claim 1 recites as follows:

A method of managing access to a push-to-talk-over-cellular (POC) talkgroup, the method comprising:

providing a control device configured to:

provide a POC service; and

manage a first POC talk group;

granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service; and

transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.

(Emphasis added)

Similar limitations are found in claims 8 and 16. Thus, independent claim 1 requires a method for managing access to a push-to-talk-over cellular (POC) talkgroup that includes granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service. It is respectfully submitted that these limitations are absent from the cited references.

Gobburu is generally directed to “improving the Push to Talk Over Cellular (“POC”) experience by the productive use of dead time and the inclusion of diverse participants.”²² Regarding the inclusion of diverse participants, Gobburu discusses sending audio clips as an attachment to an email (when using an email message) or pointers to a web location (when using SMS).²³

The Final Office Action relies on Gobburu to purportedly teach these limitations. For example, the Examiner cites an audio exchange via attachment of an audio file to an

²² See Gobburu at paragraph [0003].

²³ See *id.* at paragraph [0014].

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email message between subscriber Jack 810 and non-subscriber Matt 840 as evidence that non-subscriber Matt 840 has been granted access to the POC service and the first POC talkgroup.²⁴

Regarding the Examiner's arguments, it is important to note that non-subscriber Matt 840 is never granted access to the POC service or the first POC talkgroup and is never permitted to communicate via the first POC talkgroup using the POC service.

Claim terms are given their "broadest reasonable interpretation" consistent with the specification, and the claim language should be read in light of the specification as it would be understood by a person of ordinary skill in the art.²⁵ However, the "broadest reasonable interpretation" does not enable an Examiner to simply ignore words by giving them no patentable weight because that would violate the required rationale to support a conclusion of obviousness, namely, that all the claimed elements were known in the prior art. In other words, the Examiner must consider all the limitations of the claims in evaluating the patentability of the claims.²⁶ Here, the Examiner's reliance on Gobburu ignores several specifically claimed elements, such as "communicate via the first POC talkgroup using the POC service."

In the context of the present application, communication via a POC talkgroup and POC service results in real-time, near-instantaneous communication. For example, a typical POC service is a half-duplex system in which a speaker presses a button to hold the floor and near-instantaneously broadcast to the other users in the POC talkgroup. Indeed, Gobburu supports this interpretation of "communicate via the first POC talkgroup using the POC service." For example, Gobburu defines a POC exchange as being "like a walkie talkie in that after a name is selected, a talk button is pressed and the user 'holds the floor' for as long as the talk button is pressed. When the user lets go of the button, she lets go of the floor."²⁷

²⁴ Final Office Action for U.S. Application No. 17/844,448; July 27, 2023; page 4 (hereinafter "Final Office Action").

²⁵ *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005)

²⁶ "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).

²⁷ Gobburu at paragraph [0007].

The present disclosure clearly supports this interpretation of POC talkgroups and POC service. For example, the specification describes that the claimed system “may allow users to quickly set up ad hoc talkgroups in the field for interagency communication, without required complicated administrative procedures.”²⁸ In another example, the specification describes an embodiment in which a senior police officer or senior firefighter utilizes the ability, in an emergency incident, to grant a non-subscriber device that belongs to other first responders the ability to communicate with various other first responders via a POC talkgroup.²⁹ These examples are consistent with the idea that communication via POC talkgroups and POC service refers to real-time, near-instantaneous communication, in view of the urgency associated with communications in emergency situations, especially when setting up ad hoc talkgroups in the field.

With this in mind, it is clear that Gobburu never teaches granting non-subscriber Matt 840 access to a POC talkgroup and POC service, or permitting non-subscriber Matt 840 to communicate via the POC talkgroup using the POC service. The Final Office Action asserts that paragraphs [0061] and [0056] of Gobburu purportedly teach “such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service” in the above-recited claim element.³⁰ Paragraph [0061] of Gobburu recites the following:

If desired, the user may be provided with the capability of specifying when to render attachments. In this event, Jack 810 could specify that any audio email attachments be rendered immediately, which would allow an audio exchange to occur between Jack 810 and Matt 840, albeit with pauses from Matt to Jack. Additional user control may be provided, such as specifying different times for rendering based on originator, type of attachment, size of attachment, priority designation, and so forth.

In other words, Gobburu teaches that a non-subscriber communicates with a POC subscriber by exchanging audio attachments to an email message. This email communication has inherent delays and pauses³¹ that are inconsistent with the concept of

²⁸ See Specification at paragraph [0042].

²⁹ See *id.* at paragraphs [0026]-[0027].

³⁰ See Final Office Action at page 4.

³¹ Gobburu at paragraph [0061] (“which would allow an audio exchange to occur between Jack 810 and Matt 840, albeit with pauses from Matt to Jack”)

real-time, near-instantaneous communication claimed in the present disclosure and recognized in the Gobburu reference itself. Thus, non-subscriber Matt 840 is never permitted to engage in the real-time, near-instantaneous voice communication with the entire group, nor does he press a button to hold the floor and communicate as described in Gobburu. Thus, it is clear that non-subscriber Matt 840 has not been granted access to a POC talkgroup or POC service, nor is non-subscriber Matt 840 permitted to communicate via the POC talkgroup using the POC service.

Paragraph [0056] of Gobburu further bolsters this concept reciting the following:

FIG. 8 and FIG. 9 show an example of a powerful PoC system that incorporates the use of messaging such as email and also SMS if desired to enhance PoC exchanges. Email in particular is inherently wide and big and greatly enhances the data exchange capability of PoC. As shown in FIG. 8, Jack 810 is a PoC subscriber who uses an IMS based PoC client and is online with his contact list 800. Nick 830 is also a PoC subscriber who uses an IMS based PoC client and is also online. Lina 820 is also a PoC subscriber who uses an IMS based PoC client, but Lina 820 is offline. Matt 840 is not a PoC subscriber, and uses a browser running on any suitable platform such as a standard personal computer or a personal data assistant ("PDA"). Jack 810 initiates a PoC exchange with Lina 820, Nick 830, and Matt 840, and speaks a message into his device. Since Nick 830 is a PoC subscriber and is online, he gets Jack's voice message as live talk, and can engage in a live talk exchange with Jack 810. Although Lina 820 is also a PoC subscriber, she is not online. However, advantageously Lina receives Jack's voice message as an attachment to an email delivered to her Inbox. Although Matt 840 is not even a PoC subscriber, advantageously he too receives Jack's voice message as an attachment to an email delivered to his inbox. (emphasis added)

Thus, Gobburu states that two POC subscribers that are online can receive voice messages as live talk and engage in a live talk exchange, but, notably, a non-subscriber can only receive the voice message as an email attachment delivered to his email inbox. Non-subscriber Matt 840 is only receiving an audio file and sending the file via email protocols; the multiple steps in recording/attaching an audio file to an email and then transmitting the email via email servers means that the communications of non-subscriber Matt 840 do not take place in real-time and incur significant delays, which is incompatible with joining a POC talkgroup and communicating using a POC talkgroup. Accordingly, Gobburu does not teach or suggest that a non-subscriber device is permitted

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to join a POC talkgroup and communicate via the POC talkgroup using the POC service because exchanging audio email attachments does not teach or suggest a non-subscriber communicating via the POC talkgroup and the POC service.

The Gobburu reference itself also recognizes that non-subscriber Matt 840 is not communicating via a POC talkgroup using a POC service. For example, FIG. 9 of Gobburu is described as an example of a POC system that incorporates the use of email to “*enhance*” POC exchanges;³² the use of the word “*enhance*” indicates something beyond or in addition to a POC exchange. In other words, Gobburu recognizes that non-subscriber Matt 840’s email communication is different and beyond the presently claimed communication via the POC talkgroup using the POC service. For example, Gobburu describes an email extension to “provide for mixed mode support wherein the participants may be any arbitrary mix of PoC, Email, and other types of users.”³³ (emphasis added) FIG. 9, reproduced below, illustrates Matt 840 (the non-subscriber) using a Microsoft Outlook® graphical user interface to view emails with audio attachments in an *enhanced* POC exchange, which a person having ordinary skill in the art would not consider to be the same as communicating via a POC talkgroup using a POC service.

³² *Id.* at paragraph [0056].

³³ *See id.* at paragraphs [0056] and [0014].

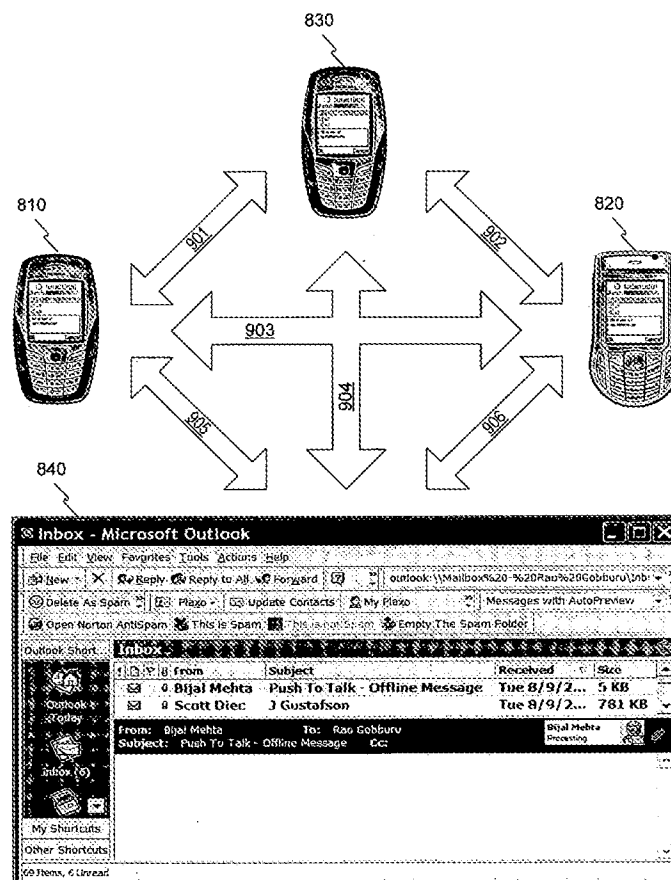


FIG. 9

Further related to FIG. 9, it is important to note that the communications between non-subscriber Matt 840 and each of the other users is illustrated by single arrows, i.e., arrows 904, 905, 906. This emphasizes that non-subscriber Matt 840 is only engaged with individual email exchanges with other users, and not broadcasting to a POC talkgroup as a whole using a POC service. If non-subscriber Matt 840 was actually communicating with a POC talkgroup using a POC service, as argued by the Examiner, then FIG. 9 would look more like the following modified version of FIG. 9, in which non-subscriber Matt 840 is broadcasting his message in real-time simultaneously to the entire talkgroup:

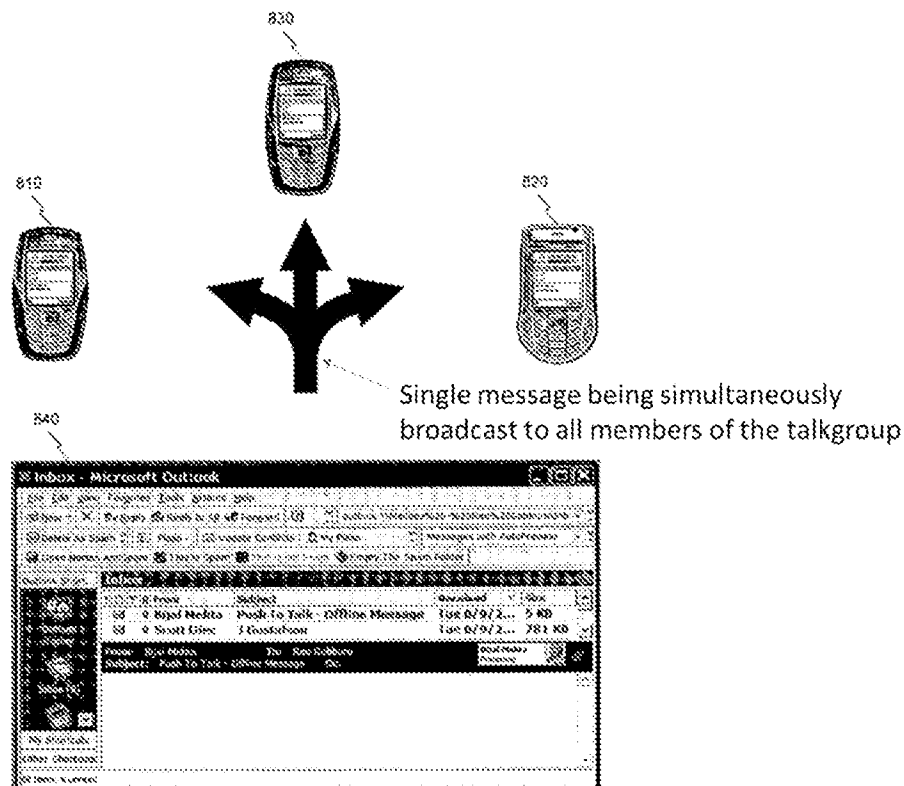


FIG. 9

The Examiner also cites to paragraphs [0015] and [0016] of Gobburu as purported evidence that Gobburu teaches permitting a non-subscriber to communicate via a POC service.³⁴ Appellant is aware that Gobburu aspirationally purports to describe allowing a non-POC subscriber to be included in a POC exchange.³⁵ However, this does not remedy the deficiencies identified above. When the teachings of Gobburu are considered as a whole, the fact remains that the only method of communication that Gobburu teaches for the non-subscriber Matt 840 is email communications. As explained in detail below in Section VI.(2) regarding non-enabling prior art references, the mere brief mention of a non-subscriber engaged in a PoC exchange, without any further explanation of how this is achieved, is insufficient for teaching or suggesting that a non-subscriber is permitted to join a POC talkgroup and communicate via the POC talkgroup using the POC service.

³⁴ Final Office Action at page 4.

³⁵ See Gobburu at paragraphs [0015]-[0016].

Overall, the Final Office Action erroneously fails to consider Gobburu for its teachings as a whole and, inappropriately, picks and chooses various elements from the references without regard to what the references teach as a whole.³⁶ For at least these reasons, Appellant respectfully submits that Gobburu does not teach or suggest “granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to ... communicate via the first POC talkgroup using the POC service.”

Patel fails to cure the deficiencies in the primary reference Gobburu. Patel is cited as purportedly teaching a link to download a POC software application (Applicant respectfully disputes this assertion, as explained in detail below in Section VI.1.b), but does not teach or suggest anything regarding the concept of permitting a non-subscriber to join a first POC talkgroup and communicate via the first POC talkgroup. For example, the Patel reference appears to assume that the PoC client 136 is in fact a subscriber device, describing the interaction between PoC client 136 and XDM server 108, which manages “subscriber document operations . . . initiated by the PoC clients 136.”³⁷ Further, even if the PoC client 136 does happen to be a non-subscriber device (which Applicant does not concede), then the Patel reference expressly notes that the system would be incapable of interacting with such device.³⁸ In other words, the system in Patel is expressly incapable of even sending a message to a non-subscriber device, let alone permitting such a non-subscriber device access to join a POC talkgroup or communicate via the POC talkgroup. Thus, Patel, taken alone or in combination, fails to teach or suggest granting a first non-subscriber device access to the POC service and the first POC talkgroup, as recited in claim 1.

Nurmi also fails to cure the deficiencies in the primary reference Gobburu. Nurmi is cited as purportedly teaching a POC software application (which Applicant does not

³⁶ “It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 353 F.2d 238 (CCPA 1965).

³⁷ Patel at paragraphs [0091]-[0094]

³⁸ *Id.* at paragraph [0201], describing that a message will fail to send if the recipient is not found on PoC system 100 or if the recipient is using a PoC client for which the service is not authorized.

concede) but does not teach or suggest anything regarding the concept of permitting a non-subscriber to join a POC talkgroup and communicate via the talkgroup. Nurmi assumes that the terminal devices communicating with each other are subscribers to the PoC service being used and is overall merely directed to a system for quickly making connections to other subscribers.³⁹ For example, Nurmi describes that the touch-screen display shows identifiers associated with terminal devices that support the PoC service.⁴⁰ In other words, it is not possible for a terminal device to use the PoC application program with a non-subscriber device in Nurmi. Thus, Nurmi, taken alone or in combination, fails to teach or suggest granting the first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup, as recited in claim 1.

Reilly also fails to cure the deficiencies in the primary reference Gobburu. Reilly purportedly describes transmitting non-subscriber contact information from a first subscriber device and setting a predetermined time for revoking access but does not teach or suggest anything regarding permitting a non-subscriber to join a POC talkgroup and communicate via the talkgroup. Reilly only generally describes social network messaging (see abstract) and does not teach or suggest anything regarding POC or POC talkgroups. Thus, Reilly, taken alone or in combination, fails to teach or suggest granting the first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup, as recited in claim 1.

Brown also fails to cure the deficiencies in the primary reference Gobburu. Brown is cited as purportedly describing a land mobile radio (LMR) gateway but does not teach or suggest anything regarding permitting a nonsubscriber to join a POC talkgroup and communicate via the POC talkgroup. Thus, Brown, taken alone or in combination, fails to teach or suggest granting the first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup, as recited in claim 1.

³⁹ Nurmi at paragraph [0022]; *see also* claim 2

⁴⁰ *Id.*

For at least the reasons provided above, the Final Office Action has failed to adequately provide the necessary rationale to support a conclusion that independent claim 1 would have been obvious in view of the cited references, taken alone or in combination, by failing to demonstrate that all the claimed elements were known in the prior art. Accordingly, the Final Office Action at least failed to establish a prima facie case of obviousness with respect to “granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service,” as claimed in claim 1. Independent claims 8 and 16 recite similar language to the language of claim 1. Accordingly, the rejection of independent claims 1, 8, and 16 under 35 U.S.C. § 103(a) is in error and should be reversed.

If an independent claim is non-obvious, then any claim depending therefrom is non-obvious.⁴¹ Consequently, claims 2-7, 9-15, and 17-23, which depend from non-obvious independent claims 1, 8, or 16, are also non-obvious. Moreover, claims 2-7, 9-15, and 17-23 contain additional features that further distinguish them from the cited references. Accordingly, Appellant respectfully submits the rejection of claims 2-7, 9-15, and 17-23 under 35 U.S.C. § 103(a) is in error and should be reversed.

b) Claims 1, 10, and 18

Appellant respectfully submits that the cited references, taken alone or in combination, fail to teach or suggest each and every element recited in claims 1, 10, and 18, thus a prima facie case of obviousness under 35 U.S.C § 103(a) was not established. For example, independent claim 1 recites as follows:

A method of managing access to a push-to-talk-over-cellular (POC) talkgroup, the method comprising:

providing a control device configured to:

provide a POC service; and

manage a first POC talk group;

⁴¹ *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1998)(“Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.”)

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granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service; and

transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.

(Emphasis added)

Thus, independent claim 1 requires transmitting, to the first non-subscriber device, a first communication to the first non-subscriber a link to download a POC software application configured to join a first POC talkgroup and communicate via the first POC talkgroup using the POC service. Similar limitations are found in claims 10 and 18. It is respectfully submitted that this limitation is absent from the cited references.

To form a prima facie case of obviousness under 35 U.S.C. § 103(a) the cited references must teach or suggest every element of the claim.⁴² The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.⁴³ Further, “either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.”⁴⁴ However, Appellant submits the Final Office Action has failed to satisfy these requirements at least because the cited references at least fail to teach or suggest “a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service” for a first non-subscriber device.

The Final Office Action admits, and Appellant agrees, that “Gobburu does not specifically disclose transmitting, from the control device to the first subscriber device, a first communication including a link to download a POC software application.”⁴⁵

⁴² See e.g., MPEP § 2143.03

⁴³ See MPEP § 2143

⁴⁴ *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

⁴⁵ See Final Office Action at page 5.

Additionally, the Final Office Action admits, and Appellant agrees that the “combination of Gobburu and Patel does not specifically disclose transmitting, from the control device to the first subscriber device, to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.”⁴⁶ Accordingly, the Final Office Action at least additionally looks to Patel and/or Nurmi to teach or suggest “transmitting...to the first non-subscriber device ... a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.”

Patel is generally directed to “advanced messaging services in wireless communications networks.”⁴⁷ The disclosure of Patel describes sending a message notification to a POC client (not a non-client or non-subscriber) that includes an HTTP link for downloading a multimedia attachment and the POC client can utilize the link to download the multimedia attachment.⁴⁸ Further, Patel defines a POC client as “a functional entity that resides on the user equipment that supports the POC service.”⁴⁹ In other words, Patel defines a POC client as computer-code (e.g., an application) stored on user equipment (e.g., a mobile phone) that supports a POC service. The Final Office Action seemingly agrees with this interpretation by stating “the POC client 136 and handset 134 can be treated as/incorporated into one piece and it reads on Applicant’s subscriber device.”⁵⁰

Accordingly, the disclosure of Patel utilizes the POC client to download the multimedia attachment. As a preliminary matter, it is important to note that Patel only teaches downloading a multimedia attachment, not a software application.⁵¹ Importantly, a multimedia attachment is a data file that is played by a media player application, in contrast with a software application, which is an executable program. Further, Patel cannot teach or suggest “transmitting...to the first non-subscriber device ... a link to download a POC software application configured to join the first POC talkgroup and

⁴⁶ See *id.* at page 6.

⁴⁷ See Patel at paragraph [0004].

⁴⁸ See *id.* at paragraph [0248].

⁴⁹ See *id.* at paragraph [0026].

⁵⁰ See Final Office Action at page 6.

⁵¹ See Patel at paragraph [0248]

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communicate via the first POC talkgroup using the POC service” because it is a subscriber device, not a non-subscriber device, that is downloading the multimedia attachment in Patel. In fact, as noted above, Patel expressly notes that non-subscribers are incapable of receiving the link and downloading the multimedia attachment.⁵² Thus, the Examiner’s reliance on the Patel reference ignores the expressly recited limitation of “non-subscriber,” contrary to the requirement that all words in a claim be considered in evaluating patentability.⁵³ Thus, not only does Patel fail to teach or suggest “transmitting...to the first non-subscriber device ... a link to download a POC software application,” Patel is actually expressly teaching away from the Examiner’s proposed combination because Patel clearly states that messages cannot be sent to a non-subscriber. Therefore, the Examiner’s proposed combination of Patel with Gobburu in an obviousness rejection is improper, and the rejection should be withdrawn.⁵⁴

Further, the Examiner’s arguments ignore the expressly recited “non-subscriber” claim elements, as shown in the Examiner’s remarks reproduced below.⁵⁵

Patel teaches transmitting, from the control device to the **first subscriber device**, a first communication including a link to download a POC software application (see [0248], “**The message notification sent to the recipient PoC Client 136** includes the HTTP link to the multimedia attachment stored in the Cloud Storage Services 148. Using the link provided, the PoC Client 136 downloads the attachment directly from the Cloud Storage Services 148’, and see Fig.1, **where the PoC Client 136 and handset 134 can be treated as/incorporated into one piece and it reads on Applicant’s ‘subscriber device’ ...**,”

In the above reasoning, the Examiner ignores the “non-subscriber” element explicitly recited in the claims. The Examiner acknowledges the communication is sent to a POC client in Patel, and proceeds to read the POC client on “Applicant’s ‘subscriber device.’”

⁵² See *id.* at paragraph [0201]: “A failure SIP response is sent by the Push-to-X Messaging server 144 to the originating PoC client 136 if the message origination has failed for any reason and indicates the error through an appropriate SIP response code: a. A SIP 410 response is sent when the recipient (1-to-1) or group URI (pre-arranged group) is not found on PoC system 100.”

⁵³ MPEP § 2143.03: “All words in a claim must be considered in judging the patentability of that claim against the prior art.” (citing *Wilson*, 424 F.2d at 1385)

⁵⁴ See MPEP 2145.X.D.2: “It is improper to combine references where the references teach away from their combination.” (citing *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983).

⁵⁵ See Final Office Action at page 5 (emphasis added).

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In other words, the Examiner ignores that the claims require a link transmitted to a non-subscriber device to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service. The Examiner further fails to present any line of reasoning as why “transmitting...to the first non-subscriber device ... a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service” would be obvious in light of the teachings of the references, which only teach transmitting to a subscriber device as described above.

Further, Nurmi fails to remedy the deficiencies in Patel and Gobburu. Nurmi is generally directed to “advanced messaging services in wireless communications networks.”⁵⁶ The disclosure of Nurmi describes an application for establishing a POC connection and the ability to use the application to participate in group communications.⁵⁷ However, Nurmi is completely silent as to “transmitting...to the first non-subscriber device ... a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.” The Final Office Action also cites claim 21 in Nurmi, which recites the following.

21. A computer program on a storage or data transfer means for loading an application program into the memory of a terminal device with a touch-screen display for establishing a PoC connection (Push to talk over Cellular), which said application program comprises means for showing the identifiers of the targets on the touch-screen display of the terminal device, and means for opening a PoC connection to the terminal device of the receiving target when the identifier of the target is touched.

However, the phrase “data transfer means for loading an application program into the memory of a terminal” from claim 21 does not necessarily teach or suggest “a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.” Nurmi provides no explanation or examples whatsoever of what is meant by the phrase “storage or data transfer means” in claim 21. Further, it is easy to conceive of many possible types of

⁵⁶ See Nurmi at paragraph [0004].

⁵⁷ See, e.g., Nurmi at paragraphs [0005], [0018], and [0019]

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“storage or data transfer means” that are not links to download a software application, such as floppy disks, compact discs, USB drives, etc. Thus, without some specific teaching of using a link to download a software application, it is impossible to conclude that the mere phrase “storage or data means for loading an application program into the memory of a terminal device” is sufficient to teach or suggest “a link to download a POC software application,” as claimed in the present application. Instead, the Examiner’s attempt to rely on this recitation of “storage or data transfer means for loading an application program into the memory of a terminal device” in Nurmi to teach or suggest “download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service” in the present claims clearly utilizes the presently pending application as a roadmap to select features in generating a rejection, which is classic impermissible hindsight.⁵⁸

Still further, the Final Office Action has failed to provide a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the disclosures of the references, which is improper.⁵⁹

For example, the Final Office Action asserts that “it would have been obvious to one of ordinary skill in the art ... to provide the teaching of [Patel] into the system of Gobburu so that the Push-to-X messages may be sent to a single mobile unit identified by a Mobile Director Number (MDN) or a group of mobile units identified by a list of MDNs or a Uniform Resource identifier (URI).”⁶⁰ However, it is unclear how a teaching related to sending messages to single or groups of mobile units provides any line of reasoning to make “a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service” for a first non-subscriber device to be obvious in light of the teachings of the references.

In another example, the Final Office Action further asserts that “it would have been obvious to one of ordinary skill in the art ... to provide the teaching of Nurmi into

⁵⁸ See, e.g., *W.L. Gore and Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984) (It is well settled that it is impermissible to assemble the prior art using the pending claims as a roadmap to select various features from the prior art where there is no motivation for doing so).

⁵⁹ *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

⁶⁰ See Final Office Action at page 6.

the system of Gobburu and Patel in order to provide a method for establishing a PoC connection (Push to talk over Cellular) from a terminal device with a touch-screen display to the terminal device of a receiving target and the method according to the invention is implemented by an application program loaded in the memory of the terminal device.” However, similar to the prior example, it is unclear how a teaching related to an application already loaded in memory (i.e., already stored on the device) provides any line of reasoning to make “transmitting... a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service” for a first non-subscriber device to be obvious in light of the teachings of the references.

Reilly also fails to overcome these deficiencies. Reilly is cited as purportedly describing transmitting non-subscriber contact information from a first subscriber device and setting a predetermined time for revoking access (which Applicant does not concede) but does not teach or suggest anything regarding transmitting a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service. Reilly only generally describes social network messaging (see abstract) and does not teach or suggest anything regarding POC or POC talkgroups. Thus, Reilly, taken alone or in combination, fails to teach or suggest transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service, as recited in claim 1.

Brown further fails to overcome these deficiencies in the primary reference Gobburu. Brown is cited as purportedly describing a land mobile radio (LMR) gateway but does not teach or suggest anything regarding transmitting a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service. Brown does not discuss anything related to transmitting a link to download a POC software application. Thus, Brown, taken alone or in combination, fails to teach or suggest transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC

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software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service, as recited in claim 1.

Appellant submits that, for at least the reasons provided above, the Final Office Action has failed to adequately provide the necessary rationale to support a conclusion that independent claim 1 would have been obvious in view of the cited reference, taken alone or in combination, by failing to demonstrate that all the claimed elements were known in the prior art. Accordingly, the Final Office Action at least failed to establish a prima facie case of obviousness with respect to “transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.”

The Examiner has failed to demonstrate a prima facie case of obviousness of independent claim 1 because the cited references fail to teach or suggest all of the limitations and the Examiner has failed to establish teaching, suggestion, or motivation to combine the references. Claims 10 and 18, which depend from claims 8 and 16, respectively, recite similar language to the language of claim 1. Accordingly, the rejection of claims 1, 10, and 18 under 35 U.S.C. § 103(a) is in error and should be reversed.

If an independent claim is non-obvious, then any claim depending therefrom is non-obvious. Consequently, claims 2-7, which depend from non-obvious independent claim 1, are also non-obvious. Moreover, claims 2-7 contain additional features that further distinguish them from the cited references. Accordingly, Appellant respectfully submits the rejection of claims 2-7 under 35 U.S.C. § 103(a) is in error and should be reversed.

In conclusion, Appellant respectfully submits that the Final Office Action failed to provide evidence which as a whole shows a legal determination that the reference teachings establish a prima facie case of obviousness. More specifically, the Final Office Action failed to establish a prima facie case of obviousness under 35 U.S.C. § 103 because the cited references fail to teach or suggest every element of claims 1, 10, and

18. Accordingly, Appellant asserts the 35 U.S.C. § 103 rejections are improper and should be withdrawn.

(2) The cited references fail to provide an enabling disclosure

To form a prima facie case of obviousness under 35 U.S.C § 103(a) the cited references are required to provide a general level of operability.⁶¹ Appellant submits that the Gobburu references fail to provide the required general level of operability for argued teachings because it lacks an enabling disclosure.

The Final Office Action asserts that Gobburu purportedly teaches “granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.”⁶² Applicant is respectfully aware that the text of Gobburu states: “include non-PoC subscribers . . . in a PoC exchange over a network”,⁶³ and “a PoC exchange over a network between PoC subscribers, non-PoC subscribers, and offline PoC subscribers”.⁶⁴

Nonetheless, the mere mention of the phrase “PoC exchange” in Gobburu is not enabling for teaching a non-subscriber joining a POC talkgroup and communicating via the POC talkgroup using the POC service, as claimed in claims 1, 8, and 16. MPEP 2121.01 requires that a reference “must provide an enabling disclosure of the desired subject matter; mere naming or description of the subject matter is insufficient.”⁶⁵ Despite its aspirational statements in paragraphs [0016] and [0033] that a non-subscriber can engage in a “PoC exchange,” Gobburu never fulfills this promise once one looks to the details of the specification and considers the reference in its entirety. In other words, Gobburu is “merely naming” the concept of a nonsubscriber engaging in a “PoC exchange” but does not actually teach how to accomplish this concept.

⁶¹ See MPEP § 2121.

⁶² See Final Office Action at page 4, citing paragraphs [0016], [0033], and claim 34 of Gobburu.

⁶³ Gobburu at paragraph [0016]

⁶⁴ *Id.* at paragraph [0031]

⁶⁵ See MPEP § 2121 (citing *Elan Pharm., Inc. v. Mayo Found. For Med. Educ. & Research*, 346 F.3d 1051, 1054 (Fed. Cir. 2003)).

Based on what is actually disclosed in Gobburu, it is impossible for a non-subscriber to engage in a “PoC exchange,” based on Gobburu’s own definition of this phrase in paragraph [0007] (see discussion above). As noted above, the only possible non-subscriber discussed in Gobburu is Matt 840. There is no description whatsoever in Gobburu that Matt 840 has any POC software installed on his device. Without some kind of POC software (such as the “POC software application” claimed in claim 1), it is impossible for Matt 840 to join a POC talkgroup or communicate via the POC talkgroup using a POC service. Instead, the only disclosure about Matt 840’s communication capabilities is that Matt 840 uses an email program to receive and send recorded audio files.⁶⁶ Thus, Gobburu fails to enable any way for Matt 840 to join a POC talkgroup or communicate via a first POC talkgroup using a POC service.

The Examiner further cites paragraph [0061] of Gobburu as supporting the proposition that a nonsubscriber is communicating via a POC service. However, Gobburu only states that Jack 810 can render audio email attachments in Jack 810’s software.⁶⁷ It is important to note this rendering of the emailed audio file happens on the POC client of a subscriber in Gobburu; the only action done on Matt 840’s side is attaching an audio recording to an email.⁶⁸ Moreover, even if non-subscriber Matt 840’s messages are ultimately rendered on a POC client by another user, Matt himself is not joining a talkgroup or communicating via a talkgroup using a POC service; there is no teaching or disclosure in Gobburu that the other members of the purported talk group receive or are even aware of the email communication between Matt 840 and Jack 810. FIG. 9 of Gobburu is modified below to illustrate what is happening in this context:

⁶⁶ Gobburu at paragraphs [0056]-[0057].

⁶⁷ *Id.* at paragraph [0061]. *See also* Gobburu at paragraphs [0059]-[0060], describing that a POC client (such as that installed by Jack 810) can interpret and render email messages and attachments. To the extent that Gobburu enables and/or fully describes what is meant by rendering (which Applicant does not concede), such rendering does not rise to the level of communication via a POC talkgroup using a POC service.

⁶⁸ *Id.* at paragraph [0058]: “Since Matt 840 is not a PoC subscriber, his voice responses are sent by email as attachments to be suitably rendered by Jack’s client.”

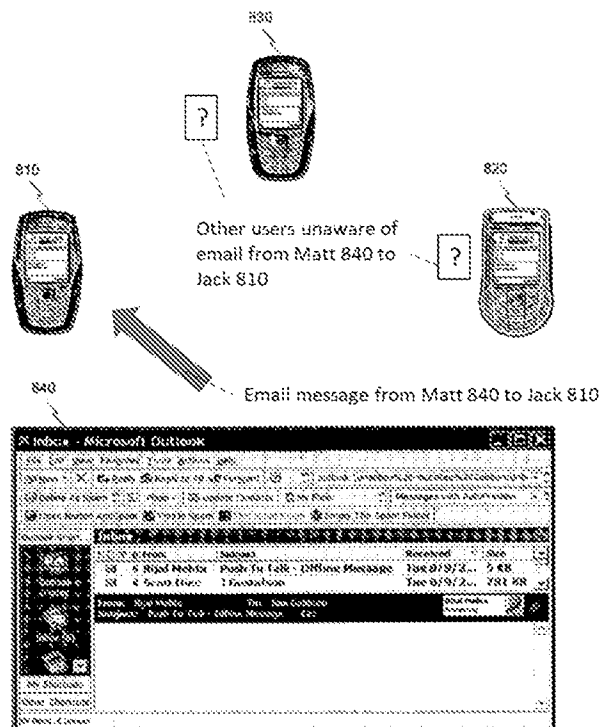


FIG. 9

The fact remains that Matt 840 has no control or visibility whatsoever over whether his messages are rendered in a POC application. All Matt 840 can do is send an audio message attached to an email, and it is up to subscriber Jack 810 and his POC client to take steps to render Matt 840's message on the POC application. In other words, Gobburu never actually enables a way for Matt 840 to join a POC talkgroup or communicate via a POC talkgroup using a POC service because Gobburu only describes the non-subscriber using email communication.

Overall, with respect to a non-subscriber, Gobburu never describes a mechanism for the non-subscriber to join a POC talkgroup or communicate via a POC talkgroup using a POC service. Further, Gobburu only describes that the non-subscriber communicates with POC subscribers using email communication. Thus, despite aspirationally noting that "a PoC exchange over a network between PoC subscribers, non-PoC subscribers, and offline PoC subscribers," when the entire context of the reference is viewed as a whole, Gobburu is non-enabling for the limitation of "granting a first non-subscriber device access to the POC service and the first POC talkgroup such

that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.”

Thus, under the rules set forth in MPEP 2121.01, the Gobburu reference is non-enabling for the premises set forth by the Examiner, and Gobburu is therefore not applicable as prior art.⁶⁹ Gobburu does not teach or suggest the noted limitation of any of the presently presented claims, and such an argument is merely selecting individual words from the reference without context from the entirety of the reference, to understand what is actually enabled. When the details of Gobburu are viewed in their entirety, it is clear that the aspirational mentions of “POC exchange” noted above are not enabling for the limitation of “granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service,” as presently claimed.

For at least these reasons, it is respectfully asserted that the Gobburu reference is non-enabling for the premises argued by the Examiner. It is, therefore, respectfully asserted that the obviousness rejections based on Gobburu are improper and should be withdrawn.

⁶⁹ See MPEP 2121.01, citing *Elan Pharm.*, 346 F.3d at 1054: “Without a disclosure enabling one skilled in the art to produce [the claimed limitation] without undue experimentation, the reference would not be applicable as prior art.”

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Conclusion

For at least the reasons presented above, the Final Office Action has failed to establish a prima facie case of obviousness against claims 1-23. Appellant therefore requests that the obviousness rejection of claims 1-23 be reversed.

Respectfully submitted,

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VII. CLAIMS APPENDIX

TEXT OF CLAIMS PRESENTED ON APPEAL

1. (Previously Presented) A method of managing access to a push-to-talk-over-cellular (POC) talkgroup, the method comprising:
 - providing a control device configured to:
 - provide a POC service; and
 - manage a first POC talkgroup;
 - granting a first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service; and
 - transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.
2. (Previously presented) The method of claim 1, further comprising automatically revoking access of the first non-subscriber device to the first POC talkgroup after a predetermined period of time has elapsed.
3. (Original) The method of claim 1, further comprising:
 - providing a first subscriber device; and
 - transmitting, from the first subscriber device to the control device, first non-subscriber contact information associated with the first non-subscriber device.
4. (Previously presented) The method of claim 3, further comprising:
 - setting a predetermined time via the first subscriber device; and
 - automatically revoking access of the first non-subscriber device to the first POC talkgroup after the predetermined period of time has elapsed.
5. (Original) The method of claim 3, wherein:

the first non-subscriber device is a cellular device; and
the first non-subscriber contact information is a first cellular telephone number.

6. (Previously presented) The method of claim 1, wherein:

the first non-subscriber device is one of a plurality of non-subscriber devices;
the granting the first non-subscriber device access to the first POC talkgroup comprises granting the plurality of non-subscriber devices access to the first POC talkgroup; and

the transmitting the first communication comprises transmitting the first communication to each non-subscriber device of the plurality of non-subscriber devices.

7. (Previously presented) The method of claim 1, wherein:

the first POC talkgroup is one of a plurality of POC talkgroups; and
each POC talkgroup of the plurality of POC talkgroups is linked as part of a single virtual incident.

8. (Previously Presented) A method of managing access to a push-to-talk-over-cellular (POC) talkgroup, the method comprising:

providing a control device configured to:
provide a POC service; and
manage a first POC talkgroup;
providing a first subscriber device;
transmitting, from the first subscriber device to the control device, first non-subscriber contact information associated with a first non-subscriber device; and
granting the first non-subscriber device access to the POC service and the first POC talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the first POC service.

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9. (Previously presented) The method of claim 8, further comprising automatically revoking access of the first non-subscriber device to the first POC talkgroup after a predetermined period of time has elapsed.

10. (Previously Presented) The method of claim 8, further comprising transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.

11. (Previously presented) The method of claim 8, further comprising:
 setting a predetermined time via the first subscriber device; and
 automatically revoking access of the first non-subscriber device to the first POC talkgroup after the predetermined period of time has elapsed.

12. (Original) The method of claim 8, wherein:
 the first non-subscriber device is a cellular device; and
 the first non-subscriber contact information is a first cellular telephone number.

13. (Original) The method of claim 8, wherein:
 the first non-subscriber device is a land mobile radio (LMR) gateway; and
 the first non-subscriber contact information is an internet protocol address of the LMR gateway.

14. (Previously presented) The method of claim 8, wherein:
 the first non-subscriber device is one of a plurality of non-subscriber devices;
 the transmitting, from the first subscriber device to the control device, first non-subscriber contact information associated with a first non-subscriber device comprises transmitting, from the first subscriber device to the control device, non-subscriber contact information associated with each non-subscriber device of the plurality of non-subscriber devices; and

the granting the first non-subscriber device access to the first POC talkgroup comprises granting the plurality of non-subscriber devices access to the first POC talkgroup.

15. (Previously presented) The method of claim 8, wherein:

the first POC talkgroup is one of a plurality of POC talkgroups; and
each POC talkgroup of the plurality of POC talkgroups is linked as part of a single virtual incident.

16. (Previously Presented) A non-transitory computer-readable storage medium comprising computer-executable instructions that, when executed by a computer, cause the computer to perform:

provide a push-to-talk-over cellular (POC) service;
creating a first POC talkgroup for POC communication;
receiving, from a first subscriber device, first non-subscriber contact information associated with a first non-subscriber device; and
granting the first non-subscriber device access to the POC first talkgroup such that the first non-subscriber device is permitted to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.

17. (Previously presented) The non-transitory computer-readable storage medium of claim 16, wherein the computer-executable instructions further cause the computer to perform:

automatically revoking access of the first non-subscriber device to the first POC talkgroup after a predetermined period of time has elapsed.

18. (Previously Presented) The non-transitory computer-readable storage medium of claim 16, wherein the computer-executable instructions further cause the computer to perform:

transmitting, from the control device to the first non-subscriber device, a first communication including a link to download a POC software application configured

to join the first POC talkgroup and communicate via the first POC talkgroup using the POC service.

19. (Previously presented) The non-transitory computer-readable storage medium of claim 16, wherein the computer-executable instructions further cause the computer to perform:

receiving a predetermined time setting from the first subscriber device; and
automatically revoking access of the first non-subscriber device to the first POC talkgroup after the predetermined period of time has elapsed.

20. (Original) The non-transitory computer-readable storage medium of claim 16, wherein:

the first non-subscriber device is a cellular device; and
the first non-subscriber contact information is a first cellular telephone number.

21. (Original) The non-transitory computer-readable storage medium of claim 16, wherein:

the first non-subscriber device is a land mobile radio (LMR) gateway; and
the first non-subscriber contact information is an internet protocol address of the LMR gateway.

22. (Previously presented) The non-transitory computer-readable storage medium of claim 16, wherein:

the first non-subscriber device is one of a plurality of non-subscriber devices;
the receiving, from a first subscriber device, first non-subscriber contact information associated with a first non-subscriber device comprises receiving, from the first subscriber device, non-subscriber contact information associated with each non-subscriber device of the plurality of non-subscriber devices; and
the granting the first non-subscriber device access to the first POC talkgroup comprises granting the plurality of non-subscriber devices access to the first POC talkgroup.

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23. (Previously presented) The method of claim 16, wherein:
the first POC talkgroup is one of a plurality of POC talkgroups; and
each POC talkgroup of the plurality of POC talkgroups is linked as part of a
single virtual incident.