UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC.
Petitioner

v.

UNILOC LUXEMBOURG S.A.,
Patent Owner

IPR2017-01427
U.S. Patent Nos. 8,995,433

PATENT OWNER RESPONSE TO PETITIONER'S SUPPLEMENTAL CLAIM CONSTRUCTION BRIEF PURSUANT TO BOARD'S ORDER

I. Petitioner LGE admits the claim construction arguments and evidence it newly offers has no being on any dispute in this matter

In its supplemental brief (Paper 42, hereinafter "Br."), Petitioner LGE admits, and Patent Owner Uniloc agrees, that there is no dispute over the term "instant voice message" that is ripe for resolution *in this matter* (IPR2017-01427) challenging claims 1-8 of the '433 Patent. Br. 1; *accord* Paper 43 (Uniloc's Supplemental Br.) at 1. It is well-established that claims "need only be construed to the extent necessary to resolve the controversy." *Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011). Because it is undisputed the supplemental briefing ordered *in this matter* is irrelevant to any dispute, it should be afforded no weight here.

The remainder of LGE's supplemental brief merely copies (verbatim) from the supplemental brief filed by its co-petitioners in related matters IPR2017-01428, IPR2017-01667, and IPR2017-01668, with the exception that a few lines and citations are missing (presumably to fit the brief in the eight pages allowed).

II. LGE's copying of its co-petitioner's structure-based claim construction theory offered in other matters is refuted by the intrinsic evidence

LGE first copies the argument that the shared specification of the challenged patents allegedly states the "instant voice message" term is directed to a *data structure*, as opposed to *data content*. Br. 2 ("In every embodiment, the instant voice message is a data structure . . . ."). LGE (like its co-petitioners) is dead wrong. The specification of the '433 patent consistently and explicitly identifies the "instant voice message" as being "the content." *See*, *e.g.*, '433 patent, 11:41–45; 14:39–42; 21:13–21. By way of contrast, the contrived and ambiguous couplet "data structure" appears nowhere in the specification.

LGE then adopts the concession that in the "record mode" embodiment, "the instant voice message ***is*** an 'audio file.'"" *Id*. at 1 (underlining and emphasis added). Regardless whether the disclosed "audio file 210" is more accurately characterized as "a data structure" or "data content," the record contains no proof that Zydney discloses attaching one or more files to an audio file itself. Indeed, the PTAB has repeatedly addressed this same validity challenge and rejected it: "We agreed with Patent Owner in [IPR2017-01257, Paper 8 at 18] that the portions of Zydney now relied upon by Petitioner as allegedly disclosing this limitation instead disclose attaching additional files (e.g., a multimedia file) to a voice container, *rather than to an audio file*." IPR2017-02085, Paper 11 at 19 (applying *a fortiori* the conclusion in IPR2017-01257) (emphasis added). The admitted lexicographic description of the "instant voice message" in the "record mode" embodiment, therefore, only confirms that there is no proof of obviousness here.

LGE next copies the citation to the description of the "intercom mode" embodiment. Br. 3 (citing '433 patent, 21:13–15 and 21:45-47). LGE (like its co-petitioners) overlooks, however, the explicit description (in the very lines cited) that the "instant voice message" is "*the content* of the first buffer" and that only "the content . . ." (described as "input audio") ". . . is automatically transmitted to the IVM server 202." '433 patent, 21:13–21 (emphasis added); *see also id*. 11:41–45 (same).[1] To the extent one or more files may be attached, therefore, they must be

[1] To be clear, the specification does not describe the "buffer" as a data structure that is transmitted along with the content; and, indeed, the couplet "data structure" appears nowhere in the specification. Rather, the buffer is simply a memory location

attached to "the content" that is transferred. *Id*. This also refutes any reliance on Zydney's "voice container" (which Zydney expressly distinguishes from its "voice data" or "message") for the "attaches" and "attaching" limitations recited in independent claims 9 and 27 of the '433 and '622 patents, respectively.

LGE also copies (verbatim) from its co-petitioner's brief the same collection of claim recitations followed by the same conclusory statement, void of any explanation or evidentiary support, that the quoted language supports Petitioner's theory. Br. 3–4. The Board should not be expected to piece together how the quoted language allegedly fits into such a theory, nor should the Board raise arguments on behalf of a petitioner concerning this language that Petitioner failed itself to articulate. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016).

In any event, the newly cited claim language is helpful only to Uniloc. For example, that claim 9 of the '433 recites both "transmitting the instant voice message" and "attaches one or more files to the instant voice message" does not mean that the attachment must be made to a "data structure" (a couplet that does not appear in the specification), as opposed to what the specification consistently describes as "the content" that is transmitted. The cited "buffer" feature of the dependent claims is also only helpful to Uniloc. Br. 4. Those dependent claims explicitly recite, consistent with the written description, that what is transmitted is "*the content* of a first buffer." *See*, *e.g.*, '433 patent, 26:5 (emphasis added).

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used to temporarily "write successive portions of the instant voice message" to facilitate transmitting only the "the content" (i.e., the instant voice message), a portion at a time. *Id*. Petitioner fails to prove otherwise with evidentiary support.

LGE then copies the passing reference to the "message object" embodiment of the '433 patent. Br. 4. As detailed in Uniloc's opening supplemental brief (*see*, *e.g.*, IPR2017-01427, Paper 43, at §III, pp. 6–7), that passage teaches that the instant voice message ***is*** "*[t]he content* of the object field" and is "carried" by a distinct "message object" merely to facilitate communicating with a server. '433 patent, 14:39–42 (emphasis added).[2] This explicit distinction between the "message object" and the "instant voice message" described as "[t]he content of the object field" further confirms Zydney's "voice container" is distinguishable from the claimed "instant voice message" for the "attaches" and "attaching" limitations.

LGE next repeats the argument that a content-based construction would somehow preclude attaching one or more files to the disclosed audio file 210 and therefore excludes the "record mode" embodiment. Br. 6. LGE is wrong. As detailed above (and in Uniloc's Br.), the specification teaches that the "instant voice message" may be generated at a client as an audio file and then communicated to a server as "*the content*" of an object field of a message object. This appears to be undisputed. It follows, under the explicit wording of the written description, that a content-based construction would not exclude attaching one or more files to an audio file (i.e., the instant voice message in this scenario) expressly described as being "the

[2] LGE appears to contrast the written description of the "message object" embodiment with what is recited in independent claim 3 of the '622 patent. Br. 4 ("The claims, *however*, ...") (emphasis added). Uniloc addressed in its supplemental brief why the *modifying* limitations of claim 3 should not be imputed to other independent claims, but rather it is the written description that is controlling for the "attaches" and "attaching" limitations recited in claim 9 of the '433 patent. *See*, *e.g.*, IPR2017-01427, Paper 43, at §III, pp. 6–7.

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