UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC., WHATSAPP, INC., LG ELECTRONICS, INC. and HUAWEI DEVICE CO., LTD.,[1]
Petitioner

v.

UNILOC USA, INC. and UNILOC LUXEMBOURG S.A.,
Patent Owner.

Case IPR2017-01427
Patent 8,995,433

PETITIONERS' RESPONSIVE SUPPLEMENTAL BRIEF

[1] Pursuant to the Board's direction, the same brief is being filed in the present proceeding as in proceedings IPR2017-01428, -1667, and -1668, although the parties agree that the present dispute does not affect IPR2017-01427.

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I. CLAIM CONSTRUCTION OF "INSTANT VOICE MESSAGE"

A. PO's Narrow Proposal Is Not the Broadest Reasonable Interpretation, and Would Improperly Exclude the '622 Claims.

Patent Owner concedes that its narrow proposed construction of "instant voice message" for '622 claim 27 and '433 claim 9 is inconsistent with the meaning of "instant voice message" in '622 claims 3-23. (PO Br. at 6-7.) This point alone is dispositive. Patent Owner contends that "instant voice message" in '622 claims 3-23 has a different meaning than the same term in '622 claim 27. "It is well-established, however, that claim terms are to be construed consistently throughout a patent." *Phil-Insul v. Airlite Plastics*, 854 F.3d 1344, 1359 (Fed. Cir. 2017); *Paice v. Ford Motor*, 881 F.3d 894, 904 (Fed. Cir. 2018) ("unless otherwise compelled . . . the same claim term in the same patent or related patents carries the same construed meaning"). Patent Owner's narrow proposal that would exclude numerous '622 claims is not the BRI. Instead, the multiple "uses of the term require a meaning broad enough to apply to each," especially under the BRI standard. *Acromed v. Sofamor Danek Group*, 253 F.3d 1371, 1381-82 (Fed. Cir. 2001). Only Petitioners' construction properly encompasses all uses of "instant voice message."

Patent Owner's discussion of "claim differentiation" is a red herring. (PO Br. at 6.) The claims at issue have various different limitations other than "instant voice message." But the term "instant voice message" has the same meaning in all claims.

B. Petitioners' "Data Structure" Construction Includes Audio Data and Encompasses Structured "Data Content."

Patent Owner incorrectly asserts that Petitioners' construction would cover a "container" without voice data, misleadingly playing off the everyday meaning of a distinct physical container that could be empty and "discarded" after use. (PO Br. at 1, 3, 5.) But Petitioners' construction requires the inclusion of an audible message: a "data structure ***that includes a representation of an audible message***." Likewise, Zydney explicitly defines its "voice container" as an object that necessarily includes "voice data." (Pet. Br. at 5-6.) If an item does not include voice data, then it is not a voice container in Zydney, by definition. Thus the "container" in Zydney is akin to a TCP/IP "envelope." A "message sent through TCP/IP must be placed 'inside an envelope,'" but this only means that some data, such as a destination address, is prepended to the message data. (IPR2017-001667, Ex. 1014 at 95.)

Patent Owner also raises a false dichotomy of "data structure vs. data content." (PO Br. at 1.) But a data structure, as defined in Petitioners' construction, encompasses data content that is structured. If data content includes a representation of an audible message and is structured (*e.g.*, audio data formatted according to a certain protocol), then the data content can also disclose a data structure.

Patent Owner ignores the fact that the disclosed and claimed embodiments of an "instant voice message" are *data structures*. For example, both sides rely on the

specification's teaching that an instant voice message can be an "audio file." Patent Owner apparently assumes that the "audio file" is not a data structure. But both of Patent Owner's experts confirmed that a "file" that contains "audio data" is a "***type of data structure***." (IPR2017-01428, Ex. 2001 (diEuliis), ¶ 66 ("Zydney may temporarily store the audio data in a file, which is another type of data structure"); IPR2017-01667, Ex. 2001 (Easttom), ¶ 45 (same).) The "instant voice message" transmitted through buffered portions is also a data structure, which is structured into portions to constitute (and re-constitute) the "instant voice message."

The "instant voice message" in '622 claims 3-23 is also a data structure—a data structure that contains a digitized audio file and also can contain other fields. Patent Owner cites an embodiment stating that "[t]he content of the object field is a block of data being carried by the message object, which ***may*** be, ***for example***, a digitized instant voice message." (PO Br. at 2, '433, col. 14:39-42 (emphasis added).) It also cites uses of "i.e." in discussing example embodiments, such as "audio files, i.e., instant voice messages." (PO Br. at 2.) But those discussions of illustrative embodiments do not change the '622 claims reciting that "***the instant voice message includes*** an object field including a digitized audio file" and other fields. ('622, claims 3-23.) This "instant voice message" with fields corresponds with the "message object" in the specification, which is a data structure that can

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