

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FACEBOOK, INC., ET AL.  
Petitioner

v.

UNILOC LUXEMBOURG S.A.,  
Patent Owner

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IPR2017-01427, -1428, -1667, and -1668  
U.S. Patent Nos. 8,995,433 and 8,724,622

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

## I. Introduction

The present dispute over the construction of “instant voice message” has relevance to those challenged claims which require attaching one or more files to the instant voice message *itself*.<sup>1</sup> Specifically, independent claim 9 of the ’433 patent (challenged in IPR2017-01428) recites “wherein the instant voice message application attaches on or more files to the instant voice message;” and independent claim 27 of the ’622 patent (challenged in IPR2017-01667) recites “wherein the instant voice messaging application includes a document handler system for attaching one or more files to the instant voice message.”

The parties essentially dispute whether the term “instant voice message” recited in these two claim sets is directed to *data content* or, instead, to *data structure*. Petitioner advances a structure-based construction to broaden the scope of “instant voice message” to encompass a separately-generated structural container, even if it is used only to transport the voice data and then is subsequently discarded. Petitioner has the burden to prove its unreasonably broad construction because it is the basis of Petitioner’s mapping of Zydney’s “voice container” onto the claimed “instant voice message.” Petitioner relies on such an overbroad construction because the Board has previously held that Zydney fails to disclose attaching one or more files to what Zydney refers to as the “voice data” or “message” that is transported within a distinct and separately-generated “voice container.”

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<sup>1</sup> Patent Owner notes it has previously identified in the record several other fatal deficiencies, for each ground raised in these four related petitions, which are independent of the particular claim construction the Board may apply here for “instant voice message.”

## II. The specification consistently defines the “instant voice message” in terms of voice data content

The intrinsic record reveals that independent claims 9 and 27 of the ’433 and ’622 patents (respectively) each require an attachment of one or more files to “***data content including a representation of an audio message***”—i.e., the only viable construction offered for “instant voice message” in this context.<sup>2</sup>

The original specification of the challenged patents is replete with defining descriptions revealing that the “instant voice message” is the voice data content *itself*, as opposed, for example, to a distinct and separately-generated data structure used only to transport that data content. In describing a preferred embodiment, for example, the specification states the “digitized instant voice message” is “*the 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).

In further emphasizing the distinction between the carrying *structure* and the separately-generated *data content* identified as the instant voice message, the same passage continues by stating that the “message object” may only require an action to be performed, without “necessarily requir[ing] any data content to be sent or received,” and thus “some of the message object’s fields may be left blank or ignored.” *Id.* at 42–48.<sup>3</sup> This further highlights the error in construing the “instant

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<sup>2</sup> Because the intrinsic record resolves the construction dispute, resort to the extrinsic evidence introduced by the Board at the Oral Hearing (EX3001) is unnecessary. *See Roxane Labs., Inc. v. Camber Pharm. Inc.*, 666 F. App’x 899, 905 (Fed. Cir. 2016).

<sup>3</sup> That a data structure need not contain any data content is the *entire* point of the argument offered at the Hearing, at TR. 64:3–66:1, against a *structure-based* construction. To clarify, that argument should not be interpreted as positing, instead,

voice message” recited in the attachment claims as being directed to *a data structure* that (only in certain instances) merely carries/includes distinct *data content*.

The specification also makes repeated use of “i.e.”—*well over a dozen times*—to consistently define the “instant voice message” as voice data content. *See TF3 Ltd. v. Tre Milano, LLC*, 894 F.3d 1366, 1371–72 (Fed. Cir. 2018) (rev’g PTAB invalidity finding as based on construing “the claims more broadly than the description in [the] specification, thereby enlarging the claims beyond their correct scope,” in part because the specification used “i.e.” to define claim language); *Edwards Lifesciences LLC v. Cook Inc.*, 582 F.3d 1322, 1334 (Fed. Cir. 2009) (“[U]se of ‘i.e.’ signals an intent to define the word to which it refers.”).

In describing the “record mode” embodiment, for example, the specification consistently and repeatedly uses “i.e.” to equate the instant voice message with voice data content generated as a “digitized audio file.” *See, e.g.*, ’433 patent, 12:42–43; 8:11–15; 8:21; 10:1; 10:42–43; 10:50; 16:24; 17:25–26; 18:8–9; 18:60; 18:66–67; 19:49; 19:54; *see also* IPR2017-01428, Paper 21 at 6–7 and EX2001 ¶32. Similarly, in describing the “intercom mode” embodiment, the specification again repeatedly uses “i.e.” to define the instant voice message as voice data content generated as “input audio of the predetermined size [that] is written to the buffer.” *See, e.g.*, ’433 patent, 11:38–60; 21:8–47. This explicit lexicography precludes construing the disputed “instant voice message” terms as being directed, instead, to a carrying *data structure*. *TF3*, 894 F.3d at 1371–72.

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that “the content cannot exit independently of the medium by which the content is transported,” as the Board inferred. *See* IPR2017-01428, Paper 35 at 3.

It is not only significant and dispositive that the specification repeatedly and consistently defines (*e.g.*, in its aforementioned descriptions addressing the “message object,” “record mode,” and “intercom mode” embodiments) the “instant voice message” as being voice data content itself, the express distinction made between those embodiments (*e.g.*, storing input speech into an audio file 210 in the “record mode” and, instead, writing successive data portions of input speech to a buffer in the “intercom mode”) further confirms that the description of the term “instant voice message” consistently refers to voice data content, regardless of the particular data structure (if any) that may be used.

The specification also includes the following description of attaching one or more files to an instant voice message in the context of the “record mode” embodiment: “[m]ore specifically, when an instant voice message is to be transmitted to the one or more IVM recipients, one or more documents may be attached *to the instant voice message.*” ’433 patent, 12:32–35 (emphasis added).<sup>4</sup> Just a few lines down that same passage reaffirms that “[a]udio file creation 312 creates an instant voice message *as audio file 210*, and is responsible for receiving input speech for the instant voice message from audio input device 212 or via network 204 and storing the input speech into audio file 210.” *Id.* 12:42–46 (emphasis added). The “record mode,” therefore, clearly involves attachment to the audio file 210 (*i.e.*, instant voice message) itself. This reaffirms that the limitations

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<sup>4</sup> This passage of the specification was cited by Applicant during prosecution as pertaining to the claim language (newly added by amendment) “a document handler system for attaching one or more files to the instant voice message.” *See* File History of the ’622 patent, Response dated Nov. 5, 2013 to Office Action dated June 5, 2013.

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