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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IPR2017-01428, -1667, and -1668

U.S. Patent Nos. 8,995,433 and 8,724,622

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

I. Petitioner's citations to the intrinsic evidence undermine the Petition

Petitioner's supplemental claim construction brief grossly mischaracterizes the specification of the challenged patents as purportedly disclosing that the "instant voice message" term is directed to *data structure*, as opposed to *data content*. *See*, *e.g.*, IPR2017-01428, Paper 37 ("Br.").[1] Moreover, the passages Petitioner identifies as allegedly supporting its construction expressly refute Petitioner's theory.

Petitioner first concedes 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.

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[1] For the sake of brevity and simplification, in its supplemental briefing Ordered by the Board, Patent Owner has offered citations only to the '433 patent and the briefing addressing the same in IPR2017-01428. It should be apparent, however, that in each instance analogous citations can be made to the '622 patent (which shares a specification in common) and to analogous (if not identical) arguments raised in the briefing in related-matters IPR2017-01667 and IPR2017-01668.

Petitioner next alleges that the "intercom mode" embodiment supports Petitioner's theory ostensibly because the specification states "one or more buffers are used to automatically write successive portions of the instant voice message." Br. 2 (citing '433 patent, 21:13–15 and 21:45-47). Petitioner overlooks, however, the explicit description (in the very lines Petitioner cites) 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).[2] To the extent one or more files may be attached, therefore, they must be attached to "the content" that is transferred. *Id*. This also refutes Petitioner's 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.

Petitioner also collects an assortment of claim recitations and argues, without explanation or evidentiary support, that the quoted language supports Petitioner's theory. Br. 2–3. The Board should not be expected to piece together how the quoted language allegedly fits into Petitioner's theory, nor should the Board raise arguments on behalf of 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).

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[2] 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 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.

In any event, the newly cited claim language does not advance Petitioner in its burden of proof. 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. Petitioner's emphasis on the "buffer" claim language recited in certain dependent claims as also only helpful to Patent Owner. Br. 2–3. 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).

Petitioner next makes passing reference to the "message object" embodiment of the '433 patent. Br. 3. As detailed in Patent Owner's opening supplemental brief (*see*, *e.g.*, IPR2017-01428, Paper 36, 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).[3] 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

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[3] Petitioner appears to contrast the written description of the "message object" embodiment with what is recited in independent claim 3 of the '622 patent. Br. 3 ("The claims, *however*, ...") (emphasis added). Patent Owner 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 claims 9 and 27 of the '433 and '622 patents, respectively. *See*, *e.g.*, IPR2017-01428, Paper 36, at §III, pp. 6–7.

claimed "instant voice message" for the "attaches" and "attaching" limitations.

Finally, Petitioner argues 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. 5. Petitioner is wrong. As detailed above (and in Patent Owner's opening supplemental brief), 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 content" of the object field. Nevertheless, this scenario is distinguishable from Zydney at least because the attachment is made to the audio file itself, which the PTAB has repeatedly found Zydney does not disclose.

II. Petitioner's new attempt to equate Zydney's "voice container" with the audio file 210 of the challenged patents is untimely and unavailing

Petitioner improperly attempts to advance the new attorney argument, void of any expert testimony support or other citation to previously submitted argument and evidence, that Zydney's voice container is itself a "file" that is somehow analogous to the audio file 210 disclosed in the specification of the challenged patents (and thus file attachment to Zydney's voice container is purportedly the same as file attachment to the audio file 210 disclosed in the challenged patents). Br. 6–7.[4]

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[4] Petitioner's sole basis for its new theory is unexplained citations to "Fig. 8 (item 1.2.4), Fig. 7 (item 1.1.5).)." *Id*. The shorthand text Petitioner focuses on from those

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