UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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FACEBOOK, INC. and WHATSAPP INC.,
Petitioner,

v.

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

_____

Case IPR2017-01428
Patent 8,995,433 B2

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Before MIRIAM L. QUINN, KERRY BEGLEY, and
CHARLES J. BOUDREAU, *Administrative Patent Judges.*

QUINN, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I.   INTRODUCTION

The above-captioned Petitioner (Facebook, Inc. and WhatsApp Inc.) filed a Petition requesting *inter partes* review of claims 9–12, 14–17, 25, and 26 of U.S. Patent No. 8,995,433 B2 (Ex. 1101, "the '433 patent"). Paper 2 ("Pet."). Uniloc USA, Inc. and Uniloc Luxembourg S.A. ("Patent Owner") filed a Preliminary Response. Paper 7 ("Prelim. Resp.").

We have jurisdiction under 35 U.S.C. § 314. Upon considering the record developed thus far, for reasons discussed below, we institute *inter partes* review of claims 9–12, 14–17, 25, and 26 of the '433 patent.

A. Related Matters

The parties indicate that the '433 patent is involved in *Uniloc USA, Inc. v. Facebook, Inc.* and *Uniloc USA, Inc. v. WhatsApp Inc.*, Case Nos. 2-16-cv-00728-JRG (E.D. Tex.) and 2:16-cv-00645-JRG (E.D. Tex.). Pet. 1–2. The '433 patent also is the subject of Case IPR2017-00225 (filed by Apple Inc.), in which we instituted *inter partes* review on May 25, 2016. Pet. 75–77; Paper 6. In addition, Petitioner filed a Petition and Motion seeking joinder with IPR2017-00225, both which were granted, and Petitioner has been joined with Apple in IPR2017-00225. *See* Case IPR2017-01634, Paper 10 (PTAB Oct. 3, 2017).

B. The '433 Patent

The '433 patent relates to Internet telephony, and more particularly, to instant voice over IP ("VoIP") messaging over an IP network, such as the Internet. Ex. 1101, 1:19–23. The '433 patent acknowledges that "instant

text messaging is [] known" in the VoIP and public switched telephone
network ("PSTN") environments, with its server presenting the user a "list
of persons who are currently 'online' and ready to receive text messages on
their own client terminals." *Id.* at 2:35–42. In one embodiment, such as
depicted in Figure 2 (reproduced below), the system of the '433 patent
involves an instant voice message ("IVM") server and IVM clients. *Id.* at
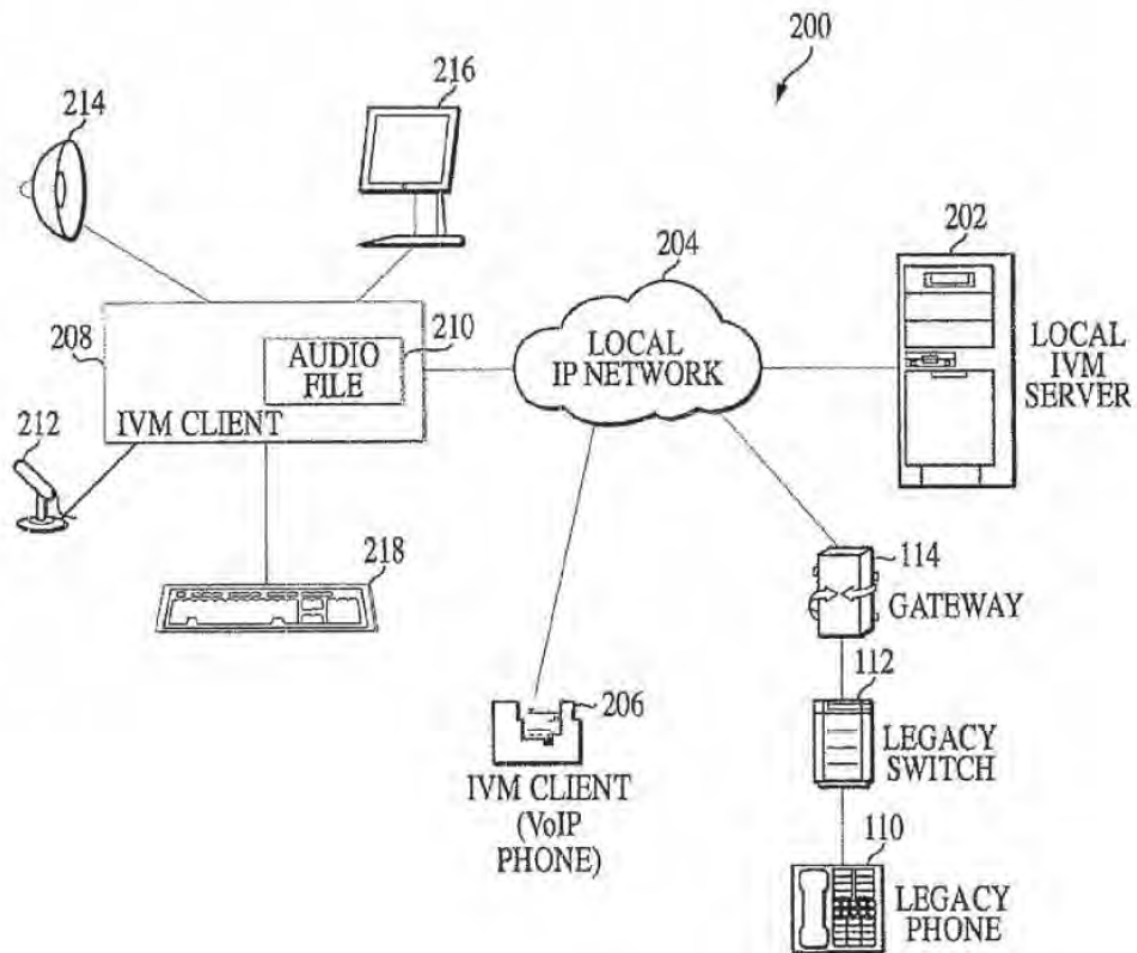7:21–22.

FIG. 2

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Figure 2 illustrates IVM client 206 interconnected via network 204 to local IVM server 202, where IVM client 206 is a VoIP telephone, and where legacy telephone 110 is connected to legacy switch 112 and further to media gateway 114. *Id.* at 7:27–49. The media gateway converts the PSTN audio signal to packets for transmission over a packet-switched IP network, such as local network 204. *Id.* at 7:49–53. In one embodiment, when in "record mode," the user of an IVM client selects one or more IVM recipients from a list. *Id.* at 8:2–5. The IVM client listens to the input audio device and records the user's speech into a digitized audio file at the IVM client. *Id.* at 8:12–15. "Once the recording of the user's speech is finalized, IVM client 208 generates a send signal indicating that the digitized audio file 210 (instant voice message) is ready to be sent to the selected recipients." *Id.* at 8:19–22. The IVM client transmits the digitized audio file to the local IVM server, which, thereafter, delivers that transmitted instant voice message to the selected recipients via the local IP network. *Id.* at 8:25–26. Only the available IVM recipients, currently connected to the IVM server, will receive the instant voice message. *Id.* at 8:36–38. If a recipient "is not currently connected to the local IVM server 202," the IVM server temporarily saves the instant voice message and delivers it to the IVM client when the IVM client connects to the local IVM server (i.e., is available). *Id.* at 8:38–43.

The '433 patent also describes an "intercom mode" of voice messaging. *Id.* at 11:34–37. The specification states that the "intercom mode" represents real-time instant voice messaging. *Id.* at 11:37–38. In this

mode, instead of creating an audio file, one or more buffers of a predetermined size are generated in the IVM clients or local IVM servers. *Id.* at 11:38−41. Successive portions of the instant voice message are written to the one or more buffers, which, as they fill, automatically transmit their content to the IVM server for transmission to the one or more IVM recipients. *Id.* at 11:41−46. Buffering is repeated until the entire instant voice message has been transmitted to the IVM server. *Id.* at 11:46−59.

C. Independent Claim

Of the challenged claims, claim 9 is independent and is reproduced below. Each of claims 10−12, 14−17, 25, and 26 depends directly or indirectly from claim 9.

9. A system comprising:

an instant voice messaging application comprising:

a client platform system for generating an instant voice message;

a messaging system for transmitting the instant voice message over a packet-switched network, and

wherein the instant voice message application attaches one or more files to the instant voice message.

Ex. 1101, 24:60−67.

D. Asserted Prior Art and Grounds of Unpatentability

This proceeding relies on the following prior art references:

a) *Zydney*: PCT App. Pub. No. WO 01/11824 A2, published Feb. 15, 2001, filed in the record as Exhibit 1103 (with line numbers added by Petitioner);

b) *Greenlaw*: RAYMOND GREENLAW & ELLEN HEPP, INTRODUCTION TO THE INTERNET FOR ENGINEERS 1–25 (1999), filed in the record as Exhibit 1110; and

c) *Newton*: HARRY NEWTON, NEWTON'S TELECOM DICTIONARY (18th ed. 2002), filed in the record as Exhibit 1106.

Petitioner asserts three grounds of unpatentability (Pet. 4):

Challenged Claim(s)	Basis	Reference(s)
9, 12, 14, 17, 25, and 26	§ 103(a)	Zydney
11, 15, and 16	§ 103(a)	Zydney and Greenlaw
10	§ 103(a)	Zydney and Newton

Petitioner also relies on a Declaration of Tal Lavian, Ph.D., filed as Exhibit 1102.

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs.,*

LLC v. Lee, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard as the claim interpretation standard to be applied in *inter partes* reviews). Under the broadest reasonable interpretation standard, claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). We note that only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017); *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Petitioner proposes constructions for the terms "instant voice messaging application" and "client platform system." Pet. 9–15. Patent Owner points out alleged deficiencies in Petitioner's proposed constructions, but argues that "neither term requires any contrived construction." Prelim. Resp. 6–12. Patent Owner further argues that we should construe "receiving the instant voice message and an indication of one or more intended recipients" as "receiving the instant voice message and separately receiving an indication of one or more recipients." *Id.* at 12–17.

Based on our review of the record, we determine that "instant voice messaging application" and "client platform system" do not require an express construction at this stage of the proceeding. We consider below whether to adopt Patent Owner's construction for "receiving the instant voice message and an indication of one or more intended recipients."

Claim 17 recites that the system of claim 9 further comprises "an instant voice messaging server receiving the instant voice message and an indication of one or more intended recipients of the instant voice message." Ex. 1101, 25:25−28. Patent Owner argues that the '433 patent Specification provides the context necessary for construing this limitation of claim 17. Particularly, Patent Owner relies on the '433 patent description of how the user selects the intended recipients: "The user operates the IVM client 208 by using the input device 218 to indicate a selection of one or more IVM recipients from the list [and] the user selection is transmitted to the IVM server 202." Ex. 1101, 8:5−8. After the user's speech is recorded, the IVM client generates a send signal and "transmits the digitized audio file 210 and the send signal to the local IVM server 202." *Id.* at 8:19−27. According to Patent Owner, the '433 patent Specification consistently describes the selection of one or more intended recipients to be transmitted first, separately from the transmission of the instant voice message. Prelim. Resp. 13−14.

Patent Owner also argues that some dependent claims address the transmission of the instant voice message without mention of the list of selected recipients. *Id.* at 14−15 (indicating that claims 18−21 recite buffering that does not mention the indication of one or more intended recipients). Patent Owner reasons that the omission from the dependent claims of the transmission of selected recipients indicates that the claims contemplate that the intended recipient's selection has already been communicated to the server. *Id.* at 15−16.

"[A] claim construction analysis must begin and remain centered on the claim language itself . . . ." *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004). The language of claim 17 recites that the server receives two things: the instant voice message and the indication of one or more intended recipients. The claim's focus, thus, is on *what* the server receives, not *when* the server receives them. The claim language itself does not contain the separateness requirement featured in Patent Owner's proposed construction. Rather, Patent Owner's proposed construction repeats the claim language and adds the language "separately receiving." Notably, the patentee could have included this language and, thus, a separateness requirement in claim 17— but did not.

We cannot limit further the scope of the claim merely because embodiments in the Specification provides additional detail on the timing of the transmissions to the server. *See SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (citing *Electro Med. Sys. S.A. v. Cooper Life Sci., Inc.*, 34 F.3d 1048, 1054 (Fed. Cir. 1994) ("Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment."). The language of claim 17 is broader than the embodiments Patent Owner proffers as support for its proposed construction. Moreover, Patent Owner points to nothing in the Specification that limits the claim language to the timing of

the transmissions to the server in these embodiments. Accordingly, for purposes of this Decision, we do not adopt Patent Owner's proposed construction of claim 17 to require that the instant voice message and the indication of one or more intended recipients are received at the server *separately*.

B. Analysis of Petitioner's Contentions

Petitioner points to Zydney as teaching all the limitations of independent claim 9 and several other dependent claims. Pet. 23–50. With respect to claims 11, 15, and 16, Petitioner relies on Greenlaw for its teaching that a sender could become a recipient of her own message by "copying" herself. *Id.* at 53. Finally, Petitioner relies on Newton, as to claim 10, for its disclosure of WiFi as an IEEE 802.11b standard as "the most common wireless local area network." *Id.* at 60–61.

1. Claim 9

Petitioner asserts that Zydney's software agent running on a computer device or personal computer of the sender discloses the recited "instant voice messaging application." Pet. 23. For the "client platform system" and "messaging system," Petitioner relies on Zydney's disclosure of the software agent function of recording a voice container and transport process. *Id.* at 26–31. For the limitation of "attach[ing] one or more files to the instant voice message," Petitioner points to a passage of Zydney that states: "Another important application of the present invention system and method for voice exchange and voice distribution is attaching other media to the voice containers." *Id.* at 32 (citing Ex. 1103, 19:1–7). Petitioner also

proffers Zydney's Figures 6 and 16 as showing that after the client builds a voice container with the voice message, the user is asked "what multimedia file to associate this voice container," and the originator associates the multimedia file with the voice container. Pet. 33–34.

Patent Owner challenges Petitioner's showings regarding claim 9 with two arguments: (1) that Zydney does not attach files to the instant voice message because Zydney's voice container is not analogous to the recited "instant voice message"; and (2) that Zydney teaches away from attaching one or more files *to the voice message itself*. Prelim. Resp. 17–23. We are not persuaded by any of Patent Owner's arguments on the record developed at this stage of the proceeding. Both of these arguments are premised on an implied construction of "instant voice message" as encompassing *only* the voice message and excluding all else. Indeed, Patent Owner's expert testimony makes a distinction between Zydney's voice container and the "instant voice message" that appears to be rooted in characterizing the "instant voice message" as audio data only. *Id.* at 19 (citing Ex. 2001 ¶¶ 65–68, 73–74).

This is an argument of claim construction that is underdeveloped at this juncture and has been presented only in connection with arguments distinguishing Zydney. On the present record, we do not have sufficient evidence or argument from either party to render even a preliminary construction for the term "instant voice message." Accordingly, at this time, none of Patent Owner's arguments distinguishing the prior art with regard to the scope of the "instant voice message" are persuasive. The parties will

have an opportunity during trial to present fully claim construction briefing for the term "instant voice message."

Accordingly, we determine that on this record, Petitioner has demonstrated a reasonable likelihood of prevailing in its contention that claim 9 is unpatentable as obvious over Zydney.

2. Claim 12

Claim 12 depends from claim 9 and recites "wherein the instant voice messaging application encrypts the instant voice message." Petitioner relies on Zydney's disclosure of the software agent including "codecs" used for the encryption and decryption of the voice container. Pet. 37. Patent Owner does not present arguments regarding this claim, beyond its arguments regarding claim 9, addressed above. Based on our reasoning in our analysis of claim 9 above and our review of Petitioner's assertions and evidence for the additional limitations of claim 12, we determine that Petitioner has demonstrated a reasonable likelihood of prevailing in its contention that claim 12 would have been obvious over Zydney.

3. Claim 14

Claim 14 depends from claim 9 and recites "wherein the instant voice messaging application invokes a document handler to create a link between the instant voice message and the one or more files." Petitioner argues that Zydney's disclosure of "an association between a voice container (the instant voice message) and the attached file, [] discloses creating a link between the instant voice message and the file." *Id.* at 38 (emphases omitted). According to Petitioner, Zydney's software agent is the

"document handler." *Id.* at 42. In support of this argument, Petitioner proffers the testimony of Dr. Lavian who opines that "[i]t would have been understood and obvious that the software agent is a component of the client platform that oversees the retrieving, sending, receiving and storing of one or more documents (or files) attached to instant voice messages from/to the one or more selected IVM recipients that may be communicating with the IVM client." *Id.* at 42–43 (citing Ex. 1102 ¶ 123).

Patent Owner does not dispute Petitioner's interpretation of the "document handler" but takes issue with the mapping to Zydney's voice container for the same reasons as stated with respect to claim 9. Prelim. Resp. 23–24. Specifically, Patent Owner argues that "Zydney's voice container and the inclusion of additional data in the voice containers cannot disclose, an[d] in fact teach way from, the claimed instant voice message and attaching one or more files to the instant voice message." *Id.* at 24. As stated above with respect to claim 9, however, these arguments are underdeveloped and, thus, unpersuasive on the present record.

After consideration of the information presented by both parties, we determine that, based on the current record, Petitioner has demonstrated a reasonable likelihood of prevailing in its contention that claim 14 is unpatentable as obvious over Zydney.

4. Claim 17

Claim 17 depends from claim 9 and recites "an instant voice messaging server receiving the instant voice message and an indication of one or more intended recipients of the instant voice message." Petitioner

relies on Zydney's central server as disclosing the recited server.
Pet. 44–45. Petitioner argues that Zydney's central server receives the voice container (*id.*) and that the recipient information is encoded in the instant voice message as part of the voice container (*id.* at 46). Patent Owner, relying on its proposed construction of the additional limitation of claim 17, argues that Zydney's central server receives the voice container, thereby simultaneously receiving the voice data and the recipient information. Prelim. Resp. 25. We have rejected above Patent Owner's proposed construction that this claim requires separate receipt of the instant voice message and the intended recipients. Accordingly, we determine that, based on the current record, Petitioner has demonstrated a reasonable likelihood of prevailing in its contention that claim 17 is unpatentable as obvious over Zydney.

5. Claim 25

Claim 25 depends from claim 17 and recites that the "instant voice messaging server determines availability of the one or more intended recipients for receipt of the instant voice message." Petitioner relies on Zydney's disclosure of tracking "the core states of whether the recipient is online or offline. Pet. 46 (citing Ex. 1103, 14:17–15:1). Petitioner also points out that based on "status information received from the central server, the agent then decides on whether to transport the voice containers to a central file system and/or sends it directly to another software agent." *Id.* at 47 (citing Ex. 1103, 16:1–10). Patent Owner does not present separate arguments regarding this claim. We determine that Petitioner has

demonstrated a reasonable likelihood of prevailing in its contention that claim 25 would have been obvious over Zydney.

6. Claim 26

Claim 26 depends from claim 25. Claim 26 is reproduced below.

> 26. The system of claim 25, wherein the instant voice messaging server:
>> delivers the instant voice message to the one or more intended recipients who are determined to be currently available;
>> stores the instant voice message for the one or more intended recipients who are not currently available; and
>> delivers the instant voice message for the one or more intended recipients who are not currently available when the instant voice messaging server determines that the not currently available one or more intended recipients becomes available.

Petitioner relies on the following Zydney disclosures, among others, for this limitation (Pet. 47–50):

a) forwarding the message to the recipient if the recipient is available (Ex. 1103, Abstract);

b) storing the voice message at the central server when the recipient is not available (*id.* at claim 1, 13:12–15); and

c) "[o]nce a software agent has been authenticated[,] all messages that have been stored on the message server will be sent to the appropriate software agent" (*id.* at 25:1–4).

Patent Owner argues that Zydney does not deliver the same instant voice message generated by the client because of transcoding. Prelim.

Resp. 26–27. According to Patent Owner, communication of voice containers through the central server only occurs when both the source and recipient clients are online and the voice container requires translation. *Id.* at 27. Patent Owner explains that "a transcoding server 'converts the voice data in the voice containers from the sender's data format to the receiver's data format.'" *Id.* at 27. We are not persuaded by Patent Owner's arguments that after translation, the recipient no longer receives "the voice data transmitted by the client." *Id.* at 29.

As Zydney explains, and Patent Owner points out, "[v]oice containers transmitted from a sending agent to a receiving agent hav[ing] different data formats are routed through the server in which a translator 42 converts the voice data in the voice containers from the sender's data format to the receiver's data format." Ex. 1103, 12:20–23. Although we can infer from this passage that the voice data is converted into a different format compatible with the receiver, we also infer that the message has not changed. To the extent the claims do not require an identical format of the sent and received instant voice message, Petitioner has reasonably relied on Zydney's disclosure of the central server delivering voice containers to available recipients. We see no basis at this juncture to read the claims as narrowly as Patent Owner argues. Indeed, contrary to Patent Owner's position, the '433 patent Specification expressly discloses the server making format changes to an audio file, such as compressing and encrypting the file, before delivering the file to the selected recipients. *See* Ex. 1101, 11:2–5, 11:24–27. Because this is an issue of claim scope, Patent Owner has the opportunity to brief the claim construction of this claim during trial.

After consideration of the information presented by both parties, we determine that, based on the current record, Petitioner has demonstrated a reasonable likelihood of prevailing in its contention that claim 26 is unpatentable as obvious over Zydney.

7. Claims 11, 15, and 16

Claims 11, 15, and 16 depend from claim 9 and all recite various "display" limitations. Petitioner relies on Zydney's software agent as disclosing all the limitations of these claims. Pet. 50–59. But because the Petitioner-identified features occur on the recipient software agent in Zydney, Petitioner relies on Greenlaw for the proposition that senders could copy themselves on a sent message in order to conclude that an originating software agent allows use of the same tools available in a recipient software agent. *See id.* at 53–54.

Patent Owner challenges Petitioner's argument and evidence separately for each these claims. Prelim. Resp. 30–35. According to Patent Owner, Petitioner's theory of obviousness "is silly and totally defeats the primary purpose" of the claim element. *Id.* at 31. For claim 11, Patent Owner contends that copying yourself on a message defeats the purpose of providing controls for playing the message *before* the message is sent. *Id.* at 33. As to claim 15, Patent Owner argues that a sender can only display the attachment after it has already been sent with a "copy" to the sender, defeating the purpose and the clear reference to claim 9, of referring to the attachment before it is sent. *Id.* at 34. Finally, with regard to claim 16, Patent Owner argues that copying yourself on a message defeats the purpose

of providing controls for reviewing, re-recording, and deleting the instant voice message *before sending* the message. *Id.* at 31.

We are not persuaded by any of Patent Owner's arguments on this record. First, claim 16 recites "the instant voice messaging application displays one or more controls for performing at least one of reviewing, re-recording or deleting the instant voice message." These controls are described in the '433 patent Specification: "Before the transmission of the instant voice message (i.e., before the send signal), the user has the option to review the instant voice message, re-record the instant voice message, delete the instant voice [message], as well as attach one or more files (i.e., documents)." Ex. 1101, 13:30–35. Thus, it appears that the claim language and the Specification support Patent Owner's argument that reviewing the instant voice message *after* it has been sent does not meet the claim limitation that addresses "controls" provided to the user in the process of sending the instant voice message. However, the Specification also describes "deleting" more generally, such as the disclosure in column 12, lines 40–41: "the file manager 308 services requests from the user to record, delete or retrieve messages to/from the message database 310." Therefore, it appears reasonable, at this juncture, that the displayed controls for "deleting" are not solely tied to pre-sending functions, as Patent Owner argues. Petitioner has relied on Zydney's disclosure of allowing "controls for saving, deleting, or resending recorded containers from the recipient's computer." Pet. 59 (citing Ex. 1103, Fig. 9). Accordingly, on the present record, we are persuaded that Petitioner's contention that claim 16 is unpatentable has merit.

With regard to claims 11 and 15, we likewise are not persuaded by Patent Owner's arguments. Claim 11 recites "the instant voice messaging application displays one or more controls for audibly playing the instant voice message." The plain language of this claim, together with the language of claim 9, does not compel us to read the claims narrowly for audibly playing the instant voice message solely as a *pre*-sending feature of the claims. *See, e.g.*, *id.* at 8:33–36, 9:18–21 ("the one or more recipients are enabled to display an indication that the instant voice message has been received and audibly play the instant voice message"). Likewise, claim 15, which recites "the instant voice messaging application displays the attachment," does not appear to be limited to *pre*-sending displays of the attachment. *See, e.g.*, *id.* at 12:32–36 ("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 to be[] stored or displayed by the one or more selected IVM recipients").

Accordingly, we determine that, on the current record, Petitioner has demonstrated a reasonable likelihood of prevailing in its contention that claims 11, 15, and 16 would have been obvious over Zydney in view of Greenlaw.

8. Claim 10

Claim 10 depends from claim 9 and recites "wherein the packet-switched network comprises a WiFi network." Petitioner relies on Zydney disclosing that its software agent "may be adapted to work on a personal computer, wireless handheld computer such [as] a personal data

assistant (PDA), digital telephone, or beeper." Pet. 60; Ex. 1103, 11:16–18. Petitioner further points out that Zydney utilizes the Internet. Pet. 60; Ex. 1103, 15:1–2. Zydney does not mention WiFi, but Newton explains that WiFi is the commercial name for wireless networking using the IEEE 802.11 standard. According to Petitioner, Newton confirms the "well-known nature of WiFi." Pet. 61. And Petitioner argues that it would have been obvious to implement the packet-switched network to include a WiFi network for connecting the computer to the Internet. *Id.*

Patent Owner does not challenge Petitioner's arguments or evidence at this time. We determine that Petitioner has demonstrated a reasonable likelihood of prevailing in its assertion that claim 10 is unpatentable over Zydney and Newton.

III. CONCLUSION

We have noted above the expectation that full briefing on claim construction issues will be forthcoming during trial concerning, at a minimum, the term "instant voice message." We have also determined that, based on the current record, Petitioner has demonstrated a reasonable likelihood of prevailing in its contention that the following claims of the '433 patent are unpatentable:

Challenged Claim(s)	Basis	Reference(s)
9, 12, 14, 17, 25, and 26	§ 103(a)	Zydney
11, 15, and 16	§ 103(a)	Zydney and Greenlaw
10	§ 103(a)	Zydney and Newton

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted for claims 9–12, 14–17, 25, and 26 of the '433 patent under the grounds identified above in the Conclusion; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '433 patent is hereby instituted with trial commencing on the entry date of this decision, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of review.

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