UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,
Petitioner,

v.

VOIP-PAL.COM, INC.,
Patent Owner.

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IPR2019-01006
Patent 9,813,330 B2

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Before KEVIN F. TURNER, JONI Y. CHANG, and
CHRISTOPHER L. OGDEN, *Administrative Patent Judges.*

OGDEN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Apple Inc. ("Petitioner")[1] filed a Petition for *inter partes* review (Paper 1, "Pet.") of claims 1–40 of U.S. Patent No. 9,813,330 B2 (Ex. 1001, "the '330 patent"). Voip-Pal.com, Inc. ("Patent Owner")[2] filed a Preliminary Response ("Prelim. Resp."). Paper 6.

Under 35 U.S.C. § 314(a), we may not institute an *inter partes* review unless "the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." Applying that standard, we do not institute an *inter partes* review, for the reasons explained below.

II. BACKGROUND

A. RELATED PROCEEDINGS

The parties identify the following as related *inter partes* reviews: IPR2016-01198 (final written decision entered Nov. 20, 2017), IPR2016-01201 (final written decision entered Nov. 20, 2017), IPR2017-01398 (institution denied Nov. 20, 2017), IPR2017-01399 (institution denied Nov. 20, 2017), IPR2019-01003 (petition filed May 13, 2019), IPR2019-01008 (petition filed May 13, 2019), and IPR2019-01009 (petition filed May 13, 2019). Pet. 58–60; Paper 4, 1.

[1] Petitioner identifies itself as the real party in interest. Pet. 58.

[2] Patent Owner identifies itself and Digifonica (International) Limited as the real parties in interest. Paper 4, 1.

The parties also identify the following as civil proceedings involving the '330 patent: *Voip-Pal.com, Inc. v. Apple, Inc.*, 5:18-cv-06216-LHK (N.D. Cal.); *Voip-Pal.com, Inc. v. Amazon.com, Inc.*, 5:18-cv-07020-LHK (N.D. Cal.). Pet. 58; Paper 4, 1.

B.   THE '330 PATENT (EX. 1001)

The '330 patent relates to a voice-over-IP ("VoIP") system. *See* Ex. 1001, 1:18–19. A VoIP system uses telephones that communicate using the Internet Protocol (IP) over the public Internet or in a private network of a large organization. *See id.* at 1:21–27. The '330 patent discloses a system in which "[c]all classification criteria associated with the caller identifier are used to classify the call as a public network call or a private network call." *Id.* at code (57). Then the system produces routing messages based on that classification. *See id.* If it is a public network call, the routing message identifies a gateway to the public network. *Id*. If it is a private network call, the routing message identifies an address on the private network associated with the callee. *Id*.

The disclosed system includes a routing controller (RC) that "executes a process to facilitate communication between callers and callees." *Id.* at 14:65–66. The '330 patent depicts the RC in Figure 7, reproduced below:
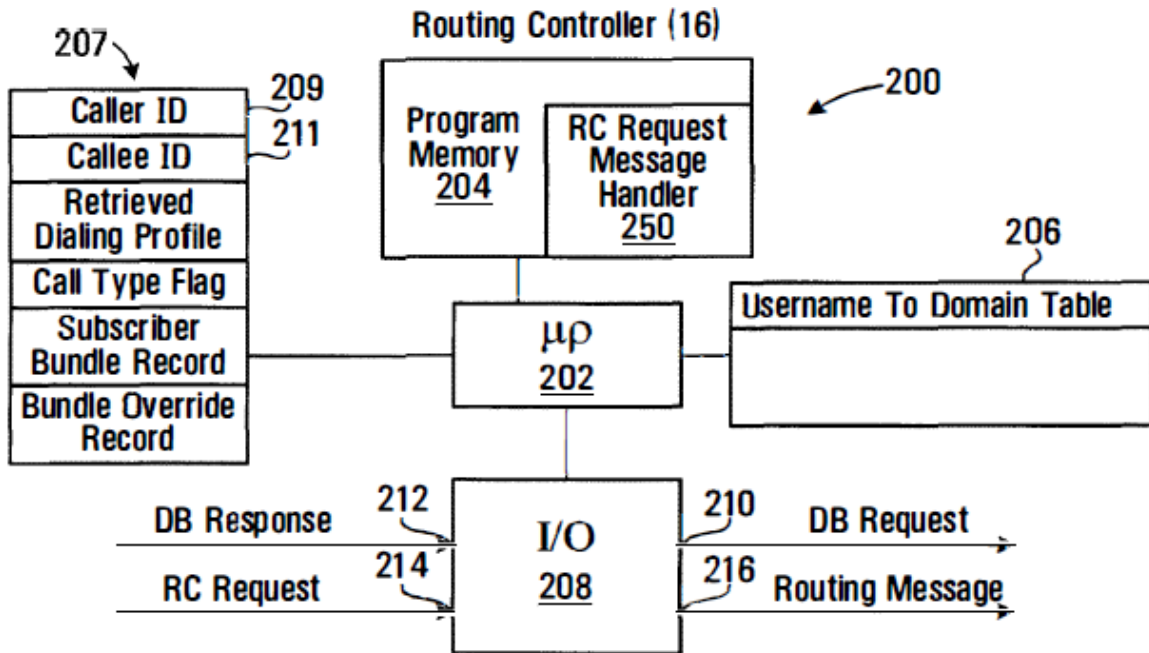
FIG. 7

In Figure 7 above, RC 16 includes RC processor circuit 200, which includes processor 202 in communication with program memory 204, table memory 206, buffer memory 207, and I/O port 208. *Id.* at 17:65–18:3. When a caller initiates a call, I/O port 208 receives an RC request message (214), which includes a callee identifier. *Id.* at 18:7–18. Using classification criteria associated with the caller, the RC then classifies the call as to being on a private or public network. *Id.* at 14:65–15:9. Based on that classification, RC request message handler 250 directs the RC to produce an appropriate routing message (216). *Id.*; *see also id.* at 18:21–24.

Figure 8B is a flowchart that shows, in more detail, the steps performed by RC request message handler 250:

FIG. 8B
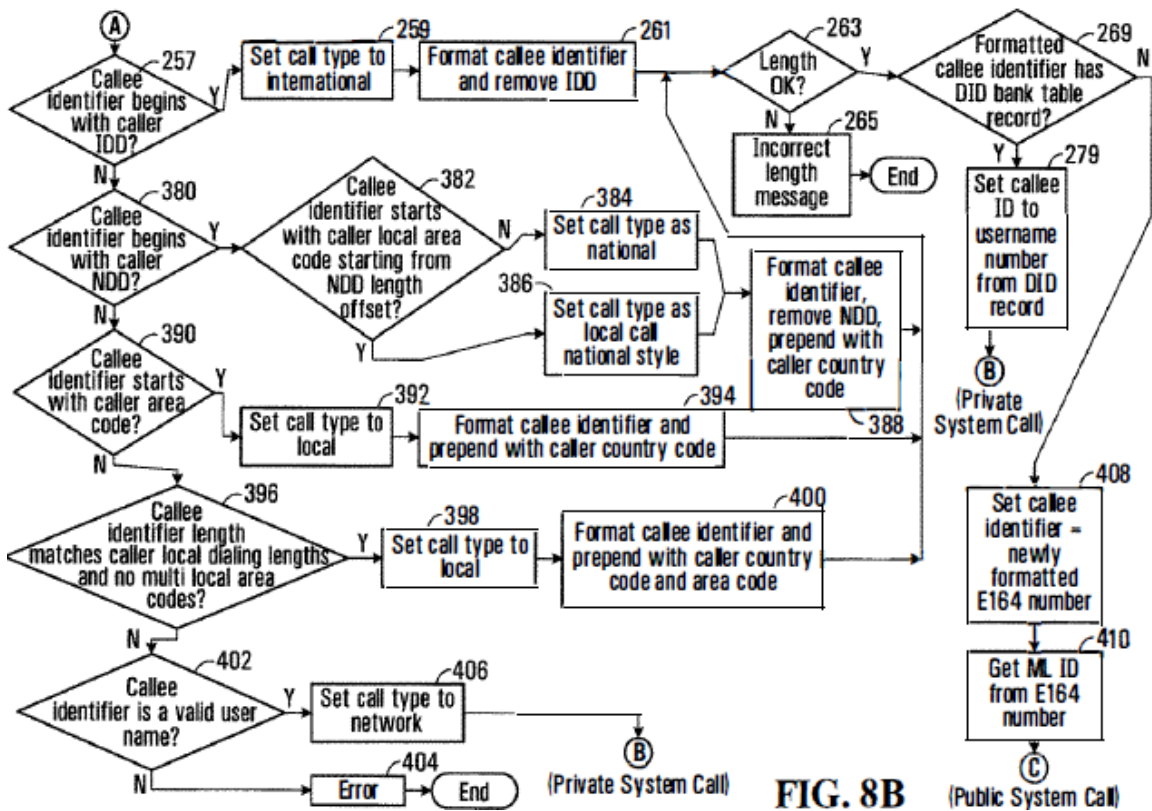
Ex. 1001, 18:24–25. Blocks 257, 380, 390, 396, 402 in Figure 8B "establish call classification criteria for classifying the call as a public network call or a private network call." *Id.* at 23:38–40. For example, block 402 "directs the processor 202 of FIG. 7 to classify the call as a private network call when the callee identifier complies with a pre-defined format, i.e. is a valid user name and identifies a subscriber to the private network." *Id.* at 23:44–47. Block 269 also classifies the call as private or public: it is a private call if the callee identifier has an entry in a direct-in-dial (DID) bank table, which indicates that the callee is a subscriber. *See id.* at 20:60–21:10, 23:51–56.

C. CHALLENGED CLAIMS AND ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner challenges the patentability of claims 1–40 of the '330 patent under 35 U.S.C. § 103(a) (2006).[3] Pet. 5. Independent claim 1, which is illustrative of the other claims, is as follows:

> 1. A method for routing a communication in a communication system between an Internet-connected first participant device associated with a first participant and a second participant device associated with a second participant, the method comprising:
>> in response to initiation of the communication by the first participant device, receiving, by a controller comprising at least one processor, over an Internet protocol (IP) network a first participant identifier and a second participant identifier;
>> causing the at least one processor to access at least one database comprising user profiles *using the first participant identifier*, each user profile comprising a respective plurality of attributes for a respective user, *to locate a user profile for the first participant* including a plurality of first participant attributes;
>> comparing at least a portion of the second participant identifier, using the at least one processor, with at least one of the plurality of first participant attributes obtained from the user profile for the first participant;
>> causing the at least one processor to access the at least one database to search for a user profile for the second participant;
>> classifying the communication, based on the comparing, as a system communication or an external network communication, using the at least one processor;

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[3] For the purpose of its Petition, Petitioner assumes that all challenged claims are entitled to a filing date of November 2, 2006. *See* Pet. 4. Because this is before March 16, 2013, we apply the version of 35 U.S.C. § 103 that was in force prior to the Leahy–Smith America Invents Act. *See* Pub. L. No. 112-29, sec. 3(n)(1), 125 Stat. 284, 293 (2011).

> when the communication is classified as a system
> communication, producing a system routing message
> identifying an Internet address of a communication
> system node associated with the second participant
> device based on the user profile for the second
> participant, using the at least one processor, wherein the
> system routing message causes the communication to be
> established to the second participant device; and
>
> when the communication is classified as an external network
> communication, producing an external network routing
> message identifying an Internet address associated with a
> gateway to an external network, using the at least one
> processor, wherein the external network routing message
> causes the communication to the second participant
> device to be established using the gateway to the external
> network.

Ex. 1001, 37:30–38:4 (emphases added).

The table below is a summary of the grounds in the Petition:

Claims Challenged	35 U.S.C. §	References
1–4, 6–13, 15, 16, 20, 28–33, 35–40	103(a)	Chu,[4] Scott[5]
5, 14, 17–19, 21–27, 34	103(a)	Chu, Scott, Hinchey[6]

Petitioner supports its Petition with the Declaration of Tal Lavian,
Ph.D., Apr. 17, 2019. Ex. 1005. Patent Owner submits the Declaration of
William Henry Mangione-Smith, Ph.D., Feb. 10, 2017. Ex. 2004.[7]

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[4] Chu et al., US 7,486,684 B2 (issued Feb. 3, 2009) ("Chu"). Ex. 1003.

[5] Scott et al., US 6,760,324 B1 (issued Jul. 6, 2004) ("Scott"). Ex. 1004.

[6] Hinchey et al., US 2002/0122547 A1 (published Sept. 5, 2002)
("Hinchey") (Ex. 1006).

[7] This is the same declaration that Patent Owner submitted in *Apple Inc. v.
Voip-Pal.com, Inc.*, IPR2016-01198, Ex. 2016 (PTAB Feb. 10, 2017).

III.   ANALYSIS

A.   LEVEL OF ORDINARY SKILL IN THE ART

As an aspect of evaluating whether or not the challenged claims are unpatentable for obviousness, we consider what the level of ordinary skill in the pertinent art was at the time of the invention. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The level of ordinary skill is also relevant to how we construe the patent claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). The "person of ordinary skill in the art" is a hypothetical construct, from whose vantage point we assess obviousness. *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998).

Petitioner's declarant, Dr. Lavian, opines that a person of ordinary skill in the relevant art would have had "at least" a bachelor's degree in electrical engineering or in a related field. The person would have also had "at least" 2–4 years of industry experience in designing or developing packet-based and circuit-switched telecommunication systems. Ex. 1005 ¶ 60.[8] However, Dr. Lavian only proposes the *minimum* level of education and experience that he would consider to be ordinary within this art. Because Dr. Lavian does not propose an upper limit to this range, we have no basis on this record to adopt a higher level of ordinary skill. Therefore, solely for this decision, we adopt Petitioner's articulation as the level of ordinary skill in the art.

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[8] Patent Owner does not address the level of ordinary skill in its Preliminary Response.

B.   CLAIM CONSTRUCTION

In an *inter partes* review based on a petition filed on or after
November 13, 2018, a patent claim is construed using the same claim
construction standard that would be used to construe the claim in a civil
action under 35 U.S.C. § 282(b). 37 C.F.R. § 42.100(b) (as amended Oct. 11,
2018).[9] Under this standard, words of a claim are generally given their
"ordinary and customary meaning," which is the meaning the term would
have to a person of ordinary skill at the time of the invention, in the context
of the entire patent including the specification. *See Phillips*, 415 F.3d at
1312–13.

Petitioner proposes that "the claim terms of the '330 Patent be given
their ordinary and customary meaning that the term would have to a [person
of ordinary skill in the art]," but does not suggest that we should explicitly
construe any claim terms. Pet. 6. Patent Owner, likewise, does not propose
any explicit construction of claim terms. *See generally* Prelim. Resp.

In light of the parties' arguments and evidence, we find that it is
unnecessary to construe any claim terms expressly for our determination of
whether to institute a review of the challenged claims. *See Nidec Motor
Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir.
2017) ("[W]e need only construe terms 'that are in controversy, and only to
the extent necessary to resolve the controversy.'" (quoting *Vivid Techs., Inc.
v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

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[9] *See* Changes to the Claim Construction Standard for Interpreting Claims in
Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg.
51,340 (Oct. 11, 2018).

C.   ASSERTED UNPATENTABILITY OF CLAIMS 1–4, 6–13, 15, 16, 20, 28–33, AND 35–40 AS OBVIOUS OVER CHU IN VIEW OF SCOTT

Petitioner's first ground for seeking *inter partes* review of the '330 patent is that claims 1–4, 6–13, 15, 16, 20, 28–33, and 35–40 would have been obvious over Chu in view of Scott. Pet. 5. A claim is unpatentable for obviousness under 35 U.S.C. § 103 if the differences between the claimed subject matter and the prior art are "such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). We resolve this question on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) any objective indicia of obviousness or non-obviousness (i.e., secondary considerations) that may be in evidence.[10] *See Graham*, 383 U.S. at 17–18.

We discussed the level of ordinary skill in the art in part III.A above. Here, we discuss the remaining *Graham* factors as they relate to Petitioner's allegation that claims 1–4, 6–13, 15, 16, 20, 28–33, and 35–40 would have been obvious over Chu in view of Scott.

1.   *Overview of Chu*

Chu's invention relates to "the management and control of voice-over Internet Protocol (VoIP) virtual private networks (VPNs) in an IP-based

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[10] Petitioner has not produced evidence to support any objective indicia of obviousness. Therefore, we do not address this factor in our decision.

public branch exchange (PBX) environment." Ex. 1003, 1:9–13. We reproduce Chu's Figure 2 below:
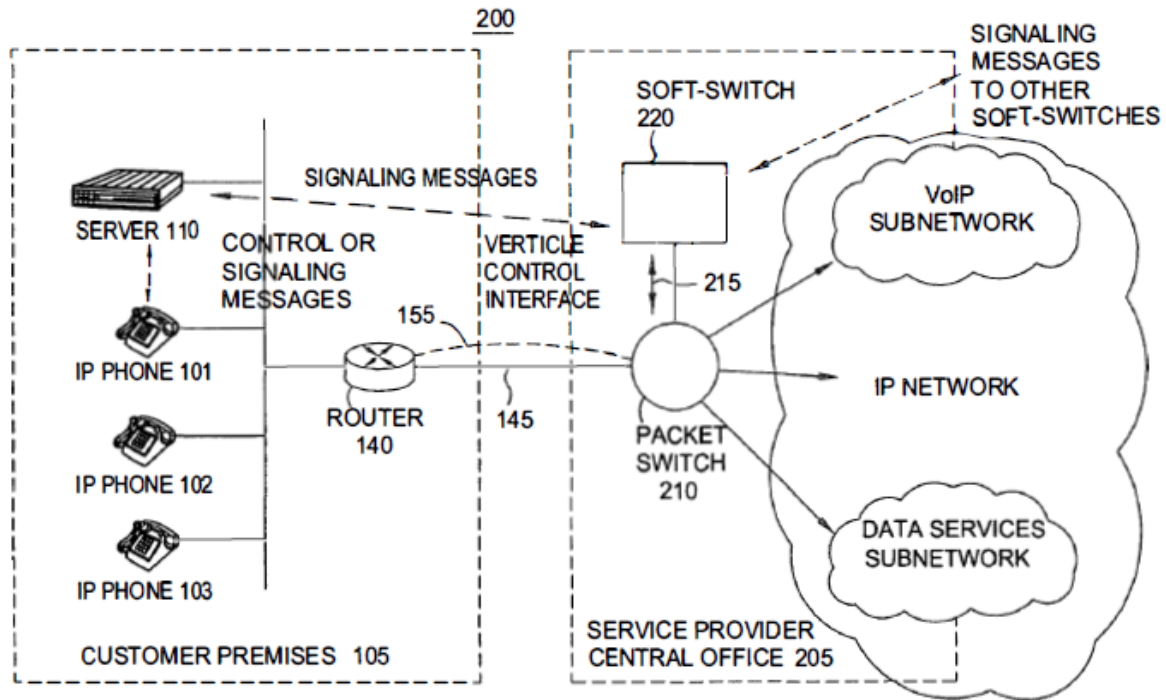

FIG. 2

Figure 2, above, shows a portion of communication system 200, which includes customer premises 105 having IP phones 101–103 and server 110 connected to a VoIP–VPN Service Provider (SP) at SP central office 205. *Id.* at 4:24–28. Connection 145 between customer premise 105 and SP central office 205 is via router 140. *Id.* at 4:29–30. Server 110 communicates with soft-switch 220 with an agreed-upon signaling protocol, such as H.248 and Session Invitation Protocol (SIP). *Id.* at 4:49–52. Soft-switch 220 is the intelligence of the system. *Id.* at 4:59.

Chu's VoIP network carries both on-net (within the same VoIP VPM) and off-net (over the public switched telephone network, or PSTN) traffic. Ex. 1003, 5:17–19. Figure 6 of Chu, reproduced below, shows the sequence

of signaling and control messages to originate an on-net call. *Id.* at 3:21–22,
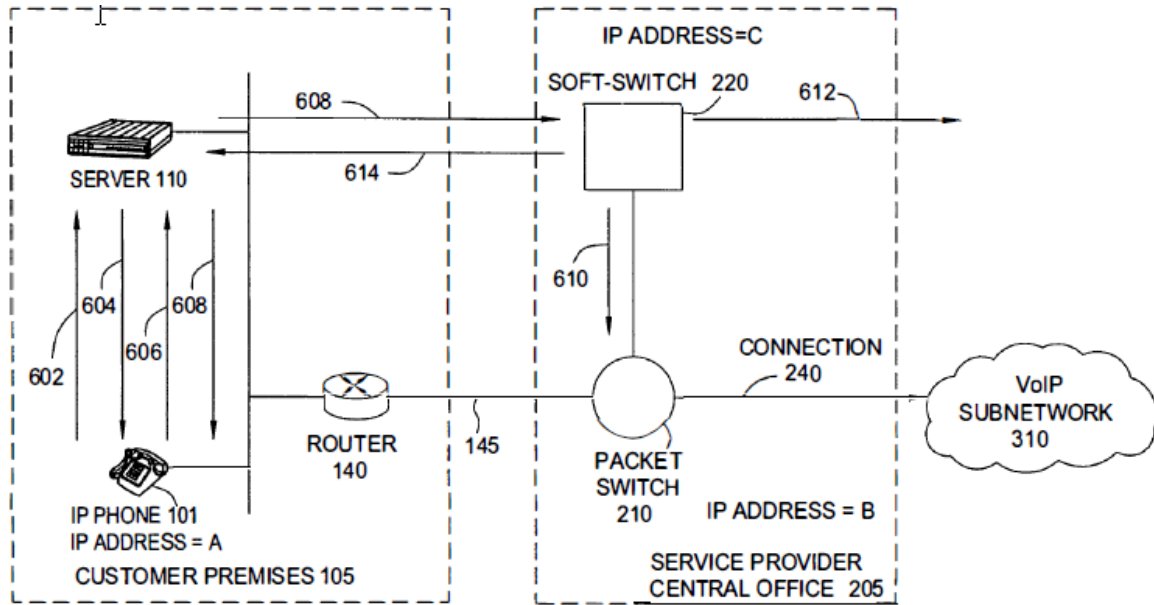8:39–40.

FIG. 6   200

As represented in Figure 6 above, the sequence begins at step 602 when the
user picks up the handset of IP phone 101. *Id.* at 8:39–40, 8:55–9:1. At step
604, server 110 sends an H.248 "signal" command to phone 101, instructing
it to generate a dial tone to the user. *Id.* at 8:57–59. Server 110 also sends a
message instructing phone 101 to begin collecting dialed digits from the
user. *Id.* at 8:59–62. At step 606, phone 101 collects dialed digits from the
user and sends them to server 110 through H.248 "event" messages. *Id.* at
8:62–64. At step 608, after receiving all the dialed digits from phone 101,
"server 110 consults *its dial plan* to determine whether the call is local, to
another on-net phone, or to a phone that is on the PSTN." *Id.* at 8:65–9:1
(emphasis added).

The sequence of signaling and control messages for an off-net call is
very similar to that described above for an on-net call. *See* Ex. 1003, 13:13–

15. In that case, soft-switch 220 determines that the call is for the public network "[f]rom the dialed digits []of a destination phone that is being called." *Id.* at 13:15–18.

2. *Overview of Scott*

Scott discloses a method, system, and computer program product for providing VoIP communication. Ex. 1004, 2:42–43. Figure 2 of Scott, reproduced below, is a diagram of the VoIP system. *Id.* at 6:23–24.
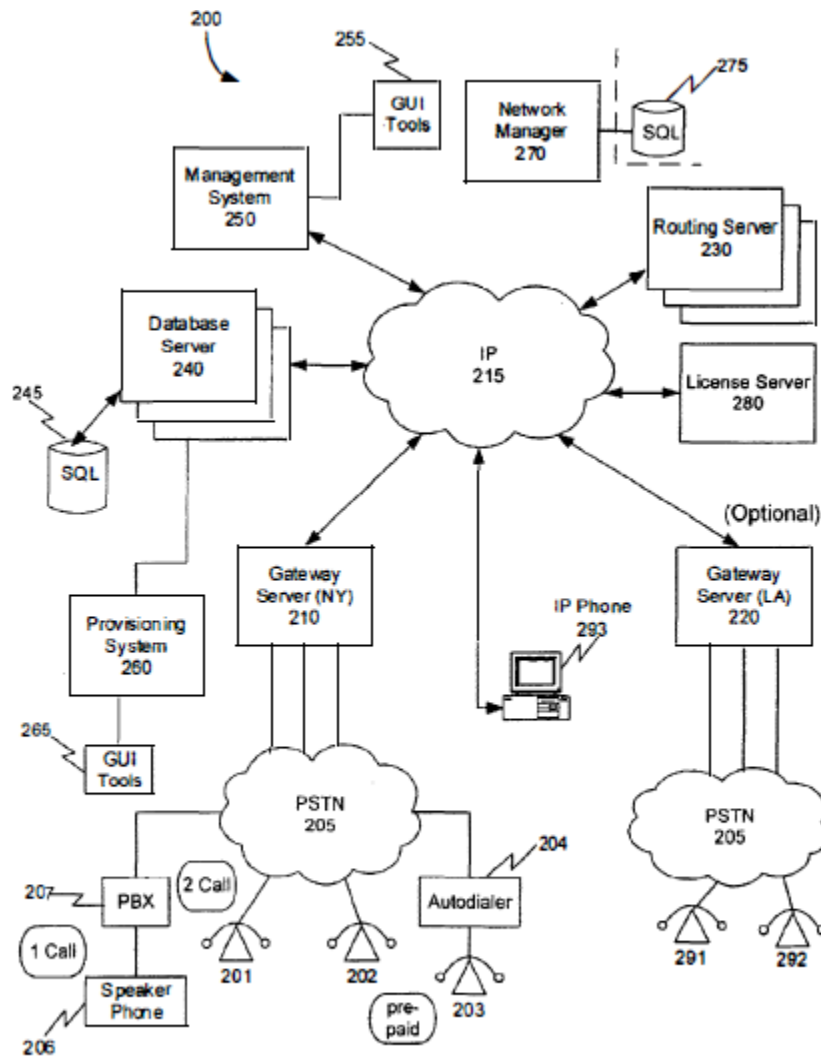

FIG. 2

In Figure 2, above, VoIP system 200 allows traffic (e.g., voice or fax data), originating on a circuit-switched network, to travel over a packet-switched network. *Id*. at 6:24–27, 6:54–55. The system also acts as a bridge between PSTN 205 and IP network 215. *Id*. at 6:27–29. System 200 includes gateway servers 210 and 220, database servers 240, routing servers 230, management system 250, provisional system 260, network manager 270, and license server 280. *Id*. at 6:43–46. Users may place calls from telephones 201–203, 206 at PSTN 205. *Id*. at 6:30–42. The system translates the number that the user dials into a standardized format using an E.164 translator. *Id*. at 65:41–43.

3. *Discussion*

Claim 1 recites "causing the at least one processor to access at least one database comprising user profiles *using the first participant identifier*, each user profile comprising a respective plurality of attributes for a respective user, *to locate a user profile for the first participant* including a plurality of first participant attributes." Ex. 1001, 37:40–45 (emphases added) (hereafter the "first participant profile" limitation). Claims 12 and 17 recite similar limitations. *See id.* at 39:24–28, 40:43–48.

To account for this claim limitation, Petitioner argues that Chu's system first processes the dialed digits in step 608 (*see* Chu Fig. 6, above), to determine whether "the call is local, to another on-net phone, or to a phone that is on the PSTN," and then generates and sends a SIP "invite" message to soft switch 220, after which further call routing occurs in step 610. Pet. 19 (citing Ex. 1003, 8:65–9:49). Petitioner acknowledges that "Chu does not teach or suggest modifying the dialed digits based on attributes of the caller." *Id.* at 9. However, according to Petitioner, "the proposed

14

combination of Chu and Scott contemplates Scott's user profile and dialed digit reformatting incorporated into the Chu infrastructure in advance of processing the called number to route the call." *Id.* at 19.

Petitioner argues that "Scott teaches that each user has a 'dialing plan' specific to that user which includes the user's home international prefix, national prefix, country code and area code." *Id.* (citing Ex. 1004, 67:1–9; Ex. 1005 ¶ 71). According to Petitioner, "[t]his dialing plan is configured by the user and is therefore user-specific." *Id.* at 19–20 (citing Ex. 1004, 67:1–9; Ex. 1005 ¶ 73).

Petitioner's arguments on these points, and Dr. Lavian's supporting opinion testimony in Exhibit 1005, are conclusory and unsupported by factual evidence other than by reference to a passage in Scott. However, nothing in the cited passage of Scott teaches or suggests using a caller identifier to access a user-specific dialing plan. *See* Ex. 1004, 67:1–9. Scott does not indicate that each user has a dialing plan *specific to that user*, or that the user configures a dialing plan. *See id.* Scott is silent as to how the system accesses the configuration parameters (international prefix, national prefix, country code, and area code), or who configures those parameters. *See id.* Moreover, those parameters are information about the calling area, not about any specific user. *See id.* In short, Scott does not teach or suggest that each user has a user-specific dial plan, much less using a user identifier to access a user-specific dialing plan, as Petitioner contends.

Furthermore, we agree with Patent Owner that Scott suggests that the dialing plan and its associated parameters are for all the users of a gateway in a particular area, not for each specific user, as Petitioner alleges. *See* Prelim. Resp. 42. According to Scott, "[t]he country/area code settings panel

allows one to provide information *about your local calling area* to the Gateway service," and "[t]his is used to provide a dialing plan that emulates the dialing plan provided by the local telephone company *in that area*." Ex. 1004, 67:1–6 (emphases added).

We also agree with Patent Owner that Scott suggests that the dialing plan is a configuration for the system's gateway application, and not for each caller. *See* Prelim. Resp. 42–43. Scott's country/area code settings panel is one of "three panels that allow the configuration *of the Gateway application*." Ex. 1004, 66:19–20 (emphasis added). We agree with Patent Owner that it is the system administrator—the person who manages and configures software components for the VoIP system—who configures the gateway dialing plan, rather than each individual caller. *See* Prelim. Resp. 42–43 (citing Ex. 1004, 4:4–5 ("The management system is used to manage and configure the other components."), 4:10–12 ("[A] network could typically include a central management server running on the administrator's PC . . . ."), 9:39–48 ("Management system 250 . . . allows all of the gateway, routing and database servers 210–240 in the network to be configured from a single point."), 17:59–63 ("[T]he Management System can be run on different machines, allowing several administrators to jointly manage the network."). Thus, Scott does not support Petitioner's argument that the dialing plan in Scott is user-specific or configured by the user.

Relying on testimony of Dr. Lavian, Petitioner also argues that a person of ordinary skill in the art "would recognize that the Scott dialing plan comprising caller attributes would both (1) be stored on a database and (2) [be] accessed using the caller identifier." *Id.* at 20 (citing Ex. 1005 ¶ 76). Dr. Lavian's testimony, however, concerns the teachings of Chu, not Scott,

and thus does not support Petitioner's argument. Dr. Lavian's testimony is that "Chu already contains the infrastructure needed to support [dialed digit] reformatting based on a user-specific profile." Ex. 1005 ¶ 76 (citing Ex. 1003, 12:60–64). However, he does not, in this passage, show that *Scott* teaches such a user-specified profile. Chu, itself, does not teach or suggest a user-specific dial plan, let alone a user identifier for accessing a user-specific dial plan.

Moreover, as Patent Owner correctly notes, Dr. Lavian's testimony improperly conflates Chu's *enterprise* dial plan with a *user-specific* dial plan and conflates "subscriber" with "user." *See* Prelim. Resp. 36–41. For example, Dr. Lavian states that "Chu expressly discloses geographically dispersed subscribers each of whom may use *subscriber-specific* dial plans," and that "[b]ecause one *subscriber* may call another, such a system would necessarily support storing a *user-specific* dial plan for the callee in the database as well." Ex. 1005 ¶ 76 (emphases added).

However, as Patent Owner correctly points out, "Chu uses the term 'subscriber' to refer to an enterprise or corporate entity that controls one or more local IP-PBX[11] systems, and not an individual person." Prelim. Resp. 33; *see also id.* at 33–37, 44–45. Notably, Chu explains that a "subscriber" may have multiple IP-PBX systems, multiple IP addresses, and multiple phones. *See* Ex. 1003, 3:55–64 ("The VoIP VPN service *connects all the IP-PBXs of a subscriber into a single logical network . . .* where subscribers can use their own internal dial plan . . . . Similarly, a subscriber can use their own IP address assignment plan in assigning IP addresses to the IP-PBX

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[11] "IP-PBX" refers to an IP-based public branch exchange. *See* Prelim. Resp. 7; Ex. 1003, 1:12–13.

server and the IP phones." (emphasis added)), 12:59–64 ("The above
description is for establishing a call between *two IP phones at two locations
of the same subscriber*. Many subscribers, *each with multiple locations*, can
be served by the same packet-switch/soft-switch network. Each subscriber
can use their . . . own IP address plan as well as their own dial plan."
(emphases added)).

Furthermore, Dr. Lavian opines, without citing any specific support in
Chu, that "a subscriber's dial plan, in addition to an ID of the server, *must
necessarily include*" a user-specific identifier, such as an E.164 telephone
number, "because multiple subscribers can be associated with a single local
telephone control server or database server." Ex. 1005 ¶ 76 (emphasis
added). Dr. Lavian's testimony is inconsistent with Chu, which uses the
server ID, not a user identifier, to access the enterprise dial plan. Ex. 1003,
9:31–33 ("[T]he soft-switch 220 consults the dial plan for this subscriber.
The dial plan to use can be determined from *the ID of the server* 110"
(emphasis added)).

Dr. Lavian's testimony also rests on the incorrect premise that a user-
specific identifier is necessary because all subscribers (enterprises) use a
server ID that does not include "unique subscriber-specific information." *See*
Ex. 1005 ¶ 76. This ignores Chu's teaching that "a subscriber can use *their
own IP address assignment plan in assigning IP addresses to the IP-PBX
server*." Ex. 1003, 3:61–63 (emphasis added). As Chu explains, "[t]o each
subscriber, it appears that all their locations are connected by *a private
network*, although the same network is used to *serve multiple subscribers*,"
and "[t]hus, the SP network is providing VoIP *virtual private network*
service," and "[t]he VoIP VPN service connects all the IP-PBXs of a

subscriber into a *single logical network*." *Id*. at 12:64–67, 3:55–36 (emphases added). In short, the server ID in Chu is unique to each enterprise subscriber because each subscriber uses its own IP address assignment plan. Therefore, contrary to Dr. Lavian's testimony, it is not necessary to use a user identifier, in addition to the server ID, to access Chu's enterprise dial plan.

In view of the foregoing, we give little, if any, weight to Dr. Lavian's testimony (Ex. 1005 ¶¶ 71, 73, 76) relied upon by Petitioner to support its argument that the combination of Chu and Scott teaches or suggests using a user identifier to access a user-specific dialing plan. *See* 37 C.F.R. § 42.65(a) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."); *see also In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1368 (Fed. Cir. 2004) (noting that "the Board is entitled to weigh the declarations and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations"); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985) (stating that a lack of objective support for expert opinion "may render the testimony of little probative value in [a patentability] determination").

Also we are not persuaded by Petitioner's arguments that are not supported by Scott, Chu, or other factual evidence, but instead are based merely on speculation or conjecture. As the U.S. Court of Appeals for the Federal Circuit has explained, "legal determinations of obviousness . . . should be based on evidence rather than on mere speculation or conjecture." *Alza Corp. v. Mylan Labs., Inc.*, 464 F.3d 1286, 1290 (Fed. Cir. 2006); *see also Star Sci., Inc. v. R.J. Reynolds Tobacco Co.*, 655 F.3d 1364, 1375–76

(Fed. Cir. 2011) (noting that prior art's "speculative and tentative disclosure of what 'might' or 'may' [explain the cause of a desired effect] does not sufficiently direct or instruct one of skill in this art").

Based on the evidence in this record, we determine that Petitioner has not shown sufficiently that the combination of Chu and Scott teaches or suggests the aforementioned "first participant profile" limitation, as required by claims 1–4, 6–13, 15, 16, 20, 28–33, and 35–40.

4.   *Conclusion*

For the reasons discussed above, Petitioner has not demonstrated a reasonable likelihood of success in proving that claims 1–4, 6–13, 15, 16, 20, 28–33, and 35–40 of the '330 patent are unpatentable as obvious over Chu in view of Scott.

D.   ASSERTED UNPATENTABILITY OF CLAIMS 5, 14, 17–19, 21–27, AND 34 AS OBVIOUS OVER CHU IN VIEW OF SCOTT AND HINCHEY

Petitioner asserts that claims 5, 14, 17–19, 21–27, and 34 are unpatentable under § 103(a) as obvious over Chu, Scott, and Hinchey. Pet. 47–57. Each of these claims also requires the "first participant profile" limitation discussed above in our analysis for the obviousness ground based on Chu and Scott. Petitioner does not rely on Hinchey to remedy the deficiencies discussed above, but rather relies upon its arguments associated with claim 1. *See id.* at 48, 52. We already addressed those arguments, and we find them unavailing here, for the reasons stated above. Therefore, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its assertion that claims 5, 14, 17–19, 21–27, and 34 are unpatentable.

E. CONCLUSION

After considering the evidence and arguments presented in the Petition and Preliminary Response, we determine that Petitioner has not demonstrated a reasonable likelihood of success in proving that at least one challenged claim of the '330 patent is unpatentable. Therefore, we deny the Petition.

IV. ORDER

In consideration of the foregoing, it is

ORDERED that the Petition is *denied*, and no trial is instituted.

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