UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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LG ELECTRONICS, INC., TOSHIBA CORP.,
VIZIO, INC., and HULU, LLC,
Petitioner,

v.

STRAIGHT PATH IP GROUP, INC.,
Patent Owner.
_____

Case IPR2015-00196
Patent 6,131,121 C1
_____

Before KALYAN K. DESHPANDE, TRENTON A. WARD, and
BART A. GERSTENBLITH, *Administrative Patent Judges*.

DESHPANDE, *Administrative Patent Judge*.

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

I.   INTRODUCTION

LG Electronics, Inc. ("LG"), Toshiba Corp.("Toshiba"), VIZIO, Inc. ("VIZIO"), and Hulu, LLC ("Hulu") (collectively, "Petitioner") filed a Petition requesting an *inter partes* review of claims 3, 4, and 6–14 of U.S. Patent No. 6,131,121 C1[1] (Ex. 1001, "the '121 patent"). Paper 1 ("Pet."). Straight Path IP Group, Inc. ("Patent Owner") timely filed a Preliminary Response. Paper 15 ("Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." After considering the Petition, the Preliminary Response, and associated evidence, we conclude that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing unpatentability of all the challenged claims. Thus, we authorize institution of an *inter partes* review of claims 3, 4, and 6–14 of the '121 patent.

A. Related Proceedings

Petitioner indicates that the '121 patent is the subject of *Straight Path IP Group, Inc. v. Toshiba Corp.*, No. 1:13-cv-01070 (E.D. Va.), and *Straight Path IP Group, Inc. v. VIZIO, Inc.*, No. 1:13-cv-00934 (E.D. Va.), and Hulu, LLC has intervened in *Straight Path IP Group, Inc. v. VIZIO, Inc.*, No. 1:13-cv-00934 (E.D. Va.). Pet. 3–4. Petitioner also indicates that the '121 patent is the subject of *Certain Point-to-Point Network Commc'n. Devices and*

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[1] The '121 patent was reexamined resulting in an *ex parte* reexamination certificate issued under 35 U.S.C. § 307. Of the challenged claims, claims 6–11 were amended during reexamination. Thus, our citations to those claims refer to U.S. Patent No. 6,131,121 C1.

Products Containing Same, Inv. No. 337-TA-892 (USITC), and *Samsung Elecs., Co. v. Straight Path IP Group, Inc.*, IPR2014-01368. *Id.* at 3–5.

Petitioner further indicates that the '121 patent is related to U.S. Patent No. 6,108,704 ("the '704 patent") and U.S. Patent No. 6,009,469 ("the '469 patent"). *Id.* at 3–4. The '704 patent was the subject of *Sipnet EU S.R.O. v. Straight Path IP Group, Inc.*, IPR2013-00246 (PTAB) ("*Sipnet*"). *Id.* at 2. The '704 patent and the '469 patent are the subject of *Samsung Elecs., Co. v. Straight Path IP Group, Inc.*, IPR2014-01366 (PTAB), and *Samsung Elecs., Co. v. Straight Path IP Group, Inc.*, IPR2014-01367 (PTAB), respectively. *Id.* at 4–5. The '704 patent and '469 patent are also the subject of *LG Elecs., Inc. v. Straight Path IP Group, Inc.*, IPR2015-00198 (PTAB), and *LG Elecs., Inc. v. Straight Path IP Group, Inc.*, IPR2015-00209 (PTAB), respectively. *Id.* at 4–5.

B. The '121 Patent

The '121 patent (Ex. 1001) is titled "Point-to-Point Computer Network Communication Utility Utilizing Dynamically Assigned Network Protocol Addresses" and generally relates to facilitating audio communications over computer networks. Ex. 1001, 1:55–58. The patent explains that a first processing unit automatically transmits its associated e-mail address, and its IP address, to a connection server. *Id.* at 6:60–7:3. The connection server stores the addresses in a database and, thus, the first processing unit is established as an active on-line party available for communication. *Id.* The first processing unit sends a query to the connection server, which searches the database to determine whether a second processing unit is active and on-line. *Id.* at 7:25–30. If the callee is active and on-line, the connection server sends the IP address of the callee

from the database to the first processing unit, i.e., performs a point-to-point

Internet protocol communication. *Id.* at 7:30–34. The first processing unit

then directly establishes the point-to-point Internet communications with the

callee using the retrieved IP address. *Id.* at 7:34–37.
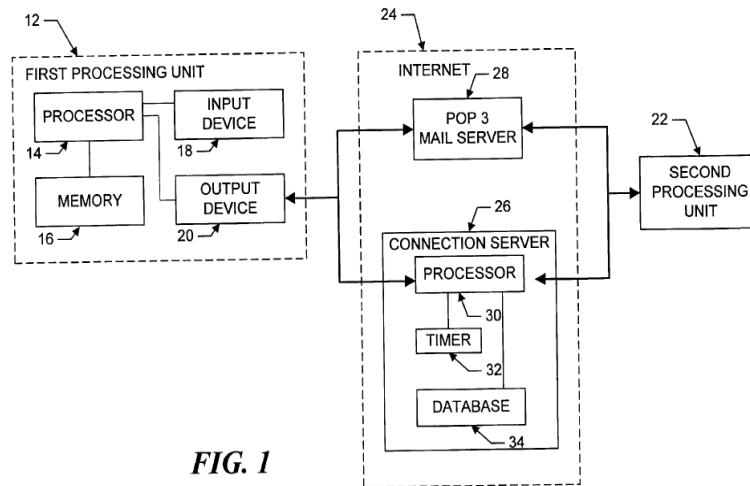
Figure 1 of the '121 patent is reproduced below:

FIG. 1

Figure 1 above illustrates the architecture between first processing unit 12,

second processing unit 22, and connection server 26. *Id.* at 6:50–64.

C. Illustrative Claim

Petitioner challenges claims 3, 4, and 6–14 of the '121 patent.

Pet. 30–58. Claim 6 is illustrative of the claims at issue and is reproduced

below:

> 6. A computer program product for use with a computer system
> capable of executing a first process and connecting to other
> processes and a server process over a computer network, the
> computer program product comprising a computer usable
> medium having computer readable code means embodied in the
> medium comprising:
>> A. program code configured to, following connection of the
>> first process to the computer network, forward to the
>> server process a *dynamically assigned* network protocol

     address at which the first process is connected to the
     computer network;
    B. program code configured to query the address server as to
     whether the second process is connected to the computer
     network;
    C. program code configured to receive a *dynamically
     assigned* network protocol address of the second process
     from the address server, when the second process is
     connected to the computer network; and
    D. program code configured to respond to the network
     protocol address of the second process, establish a point-
     to-point communication link with the second process
     over the computer network.

D. The Alleged Grounds of Unpatentability

The information presented in the Petition sets forth proposed grounds
of unpatentability of claims 3, 4, and 6–14 of the '121 patent under
35 U.S.C. § 103(a) as follows (*see* Pet. 29–59):[2]

References	Claims Challenged
WINS[3] and NetBIOS[4]	3, 4, and 6–14

II. ANALYSIS

A. 35 U.S.C. § 315 Statutory Bar

Patent Owner argues that the Petition is barred under both 35 U.S.C
§ 315(a)(1) and 35 U.S.C. § 315(b). Prelim. Resp. 3–14. The Board held a
conference call with Petitioner and Patent Owner on March 4, 2015, and
authorized Petitioner to file a Reply (Paper 17, "Pet. Reply") to these issues

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[2] Petitioner supports its challenge with the Declaration of Dr. Bruce M.
Maggs. Ex. 1002.
[3] MICROSOFT WINDOWS NT 3.5, TCP/IP USER GUIDE (1994) (Ex. 1003,
"WINS").
[4] THE OPEN GROUP, TECHNICAL STANDARD, PROTOCOLS FOR X/OPEN PC
INTERWORKING: SMB, VERSION 2.0 (1992) (Ex. 1004, "NetBIOS").

raised by Patent Owner and authorized Patent Owner to file a Sur-Reply (Paper 19, "PO Sur-Reply"). *See* Paper 16.

> 1. *§ 315(a)(1)*

Under 35 U.S.C. § 315(a)(1), "[a]n inter partes review may not be instituted if, before the date on which the petition for such a review is filed, the petitioner or real party in interested filed a civil action challenging the validity of a claim of the patent."

Patent Owner argues that Hulu filed a civil declaratory judgment action challenging the validity of the '121 patent claims. Prelim. Resp. 3–5. Specifically, Patent Owner argues that Hulu sought to intervene in a civil action between Patent Owner and LG, Toshiba, and VIZIO, and in doing so Hulu challenged the validity of the '121 patent claims. *Id.* at 4. Patent Owner argues by challenging both "invalidity and non-infringement" in a civil action prior to filing its Petition for *inter partes* review, Hulu is barred under 35 U.S.C. § 315(a)(1) from filing its Petition. *Id.* at 4–5 (citing Ex. 2002, 1, 4, 6; Ex. 2001, 9–10).

Hulu argues that its Complaint in Intervention only alleges a cause of action for non-infringement. Pet. Reply 1. Specifically, Hulu argues that Patent Owner selectively quotes Hulu's Motion to Intervene, but Hulu's Complaint does not include the terms "invalid" or "invalidity." *Id.* at 1–2. Hulu further argues that the Board has held that a "civil action for a declaratory judgment of non-infringement is not a civil action challenging the validity of a patent." *Id.* at 1 (quoting *Ariosa Diagnostics v. Isis Innovation Ltd.*, IPR2012-00022, slip op. at 14 (PTAB Sept. 2, 2014) (Paper 166) (emphasis omitted)). In *Ariosa*, the Board determined that Ariosa, a party that had previously filed a declaratory judgment action of

non-infringement of a patent, was permitted to file an *inter partes* review petition against the same patent, and the Board stated that "allowing a party to file both a declaratory judgment of noninfringment and an inter partes review does not constitute harassment of a patent owner." *Ariosa*, Paper 166, slip op. at 15.

Patent Owner points to Hulu's statement that "Hulu does not infringe . . . a valid claim, if any, of the '121 Patent," and asserts that Hulu has challenged explicitly the '121 patent claims because the district court cannot resolve Hulu's allegation without first determining the validity of the '121 patent claims. PO Sur-Reply 1 (quoting Ex. 2003 ¶ 19 (emphasis omitted)).

We agree with Petitioner. Hulu's Complaint only alleges a cause of action for non-infringement, not invalidity, and, therefore, is not considered a filing of a civil action for invalidity under 35 U.S.C. § 315(a)(1). Although *Ariosa* is not precedential, we find it instructive and on point to the facts of this case. *See Ariosa*, Paper 166, slip op at 14. Furthermore, Patent Owner does not direct us to any evidence, on this record, to demonstrate that Hulu challenged a specific claim of the '121 patent. Accordingly, we are not persuaded by Patent Owner that Hulu is barred from filing its Petition under 35 U.S.C. § 315(a)(1).

2. *§ 315(b)*

Under 35 U.S.C. § 315(b), "[a]n inter partes review may not be instituted if the petition requesting the proceedings is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent."

Patent Owner argues that Petitioner filed its Petition more than one year after Petitioner was served a complaint filed with the United States International Trade Commission ("ITC"). Prelim. Resp. 7–14. Petitioner responds that § 315(b) only applies to service of a complaint in a civil action and not to administrative proceedings such as an ITC investigation. Pet. Reply 3 (citing *Alcon Research, Ltd. v. Dr. Joseph Neev*, IPR2014-00217, Paper 21, 9 (PTAB May 9, 2014); *Amkor Tech., Inc. v. Tessera, Inc.*, IPR2013-00242, Paper 98, 10–12 (PTAB Jan. 31, 2014)). Petitioner specifically argues that the Board has rejected similar arguments as those raised by Patent Owner and held that § 315(b) only covers civil actions brought in federal district court. *Id.* at 3 (citing *Amkor*, Paper 98, 7–8). Patent Owner counters that *Amkor* is directed to administrative proceedings such as arbitration, and any discussion in *Amkor* towards an ITC investigation is not relevant. PO Sur-Reply 2–3.

We are not persuaded by Patent Owner. We agree with Petitioner that 35 U.S.C. § 315(b) applies only to civil actions for patent infringement, and not to an administrative proceeding, including an ITC investigation. *See Amkor*, Paper 98, slip op. at 6–18; *Brinkman Corp. v. A&J Mfg., LLC*, IPR2015-00056, slip op. at 7–8 (PTAB Mar. 23, 2015)(Paper 10). Although *Amkor* and *Brinkman Corp.* are not precedential, we find them instructive and directly on point. In *Amkor*, the Board determined that "had Congress intended for arbitration, ITC, or other non-judicial proceedings to trigger the time bar of section 315(b), it would have used more encompassing language than 'Patent Owner's Action' and 'served with a complaint,' which are harmonious with a civil action." *IPR2013-00242*, Paper 98, slip op. at 11 (determining that the time bar is limited to being triggered by the service of

a complaint *in a civil action*). A similar decision by the Board in *Brinkman Corp.* reaches the same result and specifically is directed towards an ITC investigation. Accordingly, we are not persuaded by Patent Owner that Petitioner is barred under 35 U.S.C. § 315(b).

B. Claim Construction

The Board interprets claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). Under the broadest reasonable construction standard, claim terms 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. *In re Translogic Tech. Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Patent Owner argues that the "broadest reasonable interpretation" standard does not apply here because "the '121 patent will expire September 25, 2015, before the Board's rendering of a final written decision in this matter if the Board were to institute a trial." Prelim. Resp. 27. We are not persuaded by Patent Owner, because for the purposes of this Decision, the '121 patent is not expired and, therefore, the broadest reasonable interpretation standard is applied. However, at the time of a final written decision, if any, the '121 patent will have expired, most likely, and, in that event, we will apply the district court standard for claim construction as outlined in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). Accordingly, Petitioner and Patent Owner should address subsequently the differences, if any, between the broadest reasonable construction and the construction applied by a district court so that we can

address them when we render a final written decision. Petitioner submits that its proposed claim constructions are consistent with both standards. Pet. 26–27.

1. "connected to the computer network" / "on-line status"

Petitioner contends that the limitations "connected to the computer network" and "on-line status" mean, under the broadest reasonable interpretation, "on-line, e.g., registered with a server." Pet. 29. Petitioner further argues that under the *Phillips* standard, these limitations mean "registered with the server and not subsequently un-registered." *Id.*

Patent Owner argues that because the '121 patent expires on September 25, 2015, the claims are construed "similar to that of a district court," and there is a heavy presumption that claim terms carry their ordinary and customary meaning. Prelim. Resp. 27–31 (citing *Cisco Sys., Inc. v. AIP Acquisition, LLC*, Case IPR2014-00247, slip op. at 2 (PTAB July 10, 2014) (Paper 20)). Patent Owner asserts that "on-line" is defined as "[i]n data communications, connected with another, distant computer; for example, the successful connection with a host computer in a client-server network. On a bulletin board system (BBS), when a file or application is available to the users." *Id.* at 32 (quoting Ex. 2019, 370[5] (emphasis omitted)). Patent Owner further argues that the "presence of a computer's 'registered' name and IP address in the WINS table does not give the WINS server or users any indication of whether that computer is actually connected to the network." *Id.* at 39.

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[5] Exhibit 2019 includes page numbers indicated by the publication itself, and different page numbers provided by Petitioner. Our references are to the page numbers on the publication itself.

We agree with Petitioner that "connected to the computer network" encompasses being "on-line," which can be done by registering an address with the server. The '121 patent specification and claims do not limit the scope of "connected to the computer network." Furthermore, the '121 patent specification discloses "the second processing unit 22, upon connection to the Internet 24 through a connection service provider, is processed by the connection server 26 to be established in the database 34 as an active on-line party." Ex. 1001, 7:3–7 (emphasis omitted). Thus, the context of "connected to the computer network," as disclosed in the specification, includes storing the processing unit address by the connection server database, and storing the address establishes the processing unit as active and on-line. Although Patent Owner argues that a process being "on-line" does not encompass registering an address because the process may subsequently go off-line (Prelim. Resp. 37–40), Patent Owner has not provided any persuasive rationale or evidence to demonstrate that the limitation "connected to the computer network," or any other claim limitation, requires a specified duration of time that a processing unit is "active and on-line." Accordingly, we are not persuaded that the proper scope of the limitation "connected to the computer network" excludes a processing unit that is "active and on-line" but "may subsequently go off-line."

This construction is consistent with our determination in *Sipnet*, which analyzed the '704 patent that had a similar specification and similar patent claims. *Sipnet*, Paper 62, slip op. at 5–7. On this record, Patent Owner has not provided any evidence or rationale sufficient for us to disturb that claim construction. As discussed in *Sipnet*, Patent Owner and Patent Owner's

expert, Dr. Ketan Mayer-Patel, agree that a second processing unit is "active and on-line at registration." *Sipnet*, Paper 30 at 26; *Sipnet*, Ex. 2018 ¶ 22.

2. *"Point-to-Point Communication"; "Point-to-Point Communication Link"; "Point-to-Point Communication Connection"*

Petitioner contends that the Board in *Sipnet* construed "point-to-point communication link" to mean "direct communications between two processes over a computer network that are not intermediated by a server," under the broadest reasonable interpretation standard. Pet. 27; *see Sipnet*, Paper 62, slip op. at 9. Petitioner contends that under the *Phillips* standard this limitation means "'communication between two processing units or processes, established by one of the processing units or processes using the IP or network protocol address of the other processing unit or process, that is not intermediated by a connection server.'" Pet. 27–28 (quoting Ex. 1012, 13 (emphasis omitted)). Patent Owner does not propose a construction for this limitation under either standard.

Although we disagree with Petitioner's proposed construction standard, we agree with Petitioner's construction of "point-to-point communication link" under a broadest reasonable interpretation standard. The '121 patent specification and claims do not provide for a specific definition of "point-to-point communication link." The plain and ordinary meaning of "point-to-point" means a first point directly linked to a second point.[6] The plain and ordinary meaning of "communication link" includes

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[6] *See point-to-point*, DICTIONARY OF COMPUTING (2008) *available at* http://search.credoreference.com/content/entry/acbcomp/point_to_point/0 (last visited Feb. 6, 2015) ("A direct link between two devices.").

any software or hardware that allows for communication.[7] Accordingly, we construe "point-to-point communication link" to include direct communications, between two processes over a computer network, that are not intermediated by a server.

C. Claims 3, 4, and 6–14 – Obviousness over WINS and NetBIOS

Petitioner contends that claims 3, 4, and 6–14 are unpatentable under 35 U.S.C. § 103(a) as obvious over WINS and NetBIOS. Pet. 29–59.

1. WINS (Ex. 1003)

WINS discloses how to install, configure, and troubleshoot Microsoft TCP/IP on a computer running the Microsoft Windows NT Workstation or Windows NT Server operation system. Ex. 1003, xi.[8] When a computer's name is registered with the Windows Internet Name Service server, the Windows Internet Name Service server accepts the entry with a timestamp, an incremental unique version number, and other information. *Id.* at 56–58. A name query request is received by the Windows Internet Name Service server and allows a client to establish a session based on the address mapping received from the Windows Internet Name Service server. *Id.* at 56–57. For example, if a first computer wants to communicate with a second computer, the first computer queries the Windows Internet Name Service server for the address of the second computer. *Id.* at 51. When the

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[7] *See communication link*, WILEY DICTIONARY OF COMMUNICATIONS TECHNOLOGY (1998) *available at* http://search.credoreference.com/content/entry/wileycommtech/communication_link/0 (last visited Feb. 6, 2015) ("The software and hardware, to include cables, connectors, converters, etc., required for two devices such as a computer and terminal to communication.").

[8] Exhibit 1003 includes page numbers indicated by the publication itself, and different page numbers provided by Petitioner. Our references are to the page numbers indicated by the publication itself.

first computer receives the appropriate address from the Windows Internet

Name Service server, it connects directly to the second computer. *Id.*

2. *NetBIOS (Ex. 1004)*

NetBIOS ("Network Basic Input/Output System") is a software

interface that allows applications on different computers to communicate

within a computer network, such as a local area network or the Internet, and

was designed originally for IBM's PC-Network. Ex. 1004, 359.[9] NetBIOS

applications employ mechanisms to locate resources, establish connections,

send and receive data with an application peer, and terminate connections.

Id. A NetBIOS session is the exchange of messages between a pair of

NetBIOS applications. *Id.* at 361.

The NetBIOS name service is the collection of procedures through

which nodes of a network acquire, defend, and locate the holders of

NetBIOS names. *Id.* at 376. A node registers a name with the NetBIOS

Name Server, which stores the registered name in a database. *Id.* at 384–85,

394. A name query transaction can be initiated by an end-node in an attempt

to obtain the IP address associated with a NetBIOS name. *Id.* at 388–89. If

the NetBIOS Name Server has information regarding a queried node, the

NetBIOS Name Server transmits a positive response. *Id.* at 389–90. If the

NetBIOS Name Server does not have information regarding a queried node,

the NetBIOS Name Server transmits a negative response. *Id.* Once the

IP addresses have been found for a target name, a NetBIOS session service

begins. *Id.* at 397. The NetBIOS session service involves directed (point-to-

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[9] Exhibit 1004 includes page numbers indicated by the publication itself, and
different page numbers provided by Petitioner. Our references are to the
page numbers indicated by the publication itself.

point) communications. *Id.*

3. Analysis

The evidence set forth by Petitioner indicates there is a reasonable likelihood that Petitioner will prevail in showing that claims 3, 4, and 6–14 are unpatentable under 35 U.S.C. § 103(a) as obvious over WINS and NetBIOS. Pet. 29–59. For example, claim 6 recites a "computer program product for use with a computer system capable of executing a first process and connecting to other processes" and "a server process over a computer network, the computer program product comprising a computer usable medium having computer readable code means embodied in the medium." Petitioner argues that WINS discloses a computer program product comprising a computer useable medium having computer code embodied in that medium for use with a computer system. *Id.* at 31, 43 (citing Ex. 1003, 105, 139). Petitioner argues that WINS discloses a computer can execute a first process on a first computer and communicate with a second process on a second computer, a directory server, and a mail server process on a computer network. *Id.* at 32 (citing Ex. 1003, 12, 60, 102–03). Petitioner additionally contends that NetBIOS discloses a software interface to a set of services. *Id.* (citing Ex. 1004, 356, 359).

Claim 6 further recites "program code configured to, following connection of the first process to the computer network, forward to the server process a dynamically assigned network protocol address at which the first process is connected to the computer network," "program code configured to query the address server as to whether the second process is connected to the computer network," and "program code configured to receive a dynamically assigned network protocol address of the second

process from the address server, when the second process is connected to the computer network." Petitioner argues that WINS discloses that the DHCP server dynamically assigns IP addresses to processes upon connection to the network, and these dynamically assigned addresses are forwarded to the WINS/NetBIOS server. *Id.* at 39–45 (citing Ex. 1003, xii, 46, 49, 53, 56, 57, 97). Petitioner further argues that WINS discloses a dynamic database mapping computer names to IP addresses, software running on a first process requests the IP address of a second process by sending a name query request to the WINS server, and the server responds by providing the first process with the IP address of the second process if the name and IP address are registered in the database. *Id.* Petitioner further argues that the server keeps the mapping of names to IP addresses relatively current by tracking which users are still connected to the network. *Id.* (citing Ex. 1003, 56, 59). Petitioner further argues that NetBIOS discloses that the IP address of a second process is received from the directory server. *Id.* at 42–43, 45 (citing Ex. 1002 ¶ 94).

Claim 6 further recites "program code configured to respond to the network protocol address of the second process, establish a point-to-point communication link with the second process over the computer network." Petitioner argues WINS discloses that in a p-node environment, a first process queries the WINS server for the address of a second process and establishes a point-to-point session with the second process. *Id.* at 37, 45 (citing Ex. 1003, 51, 249). Petitioner further argues that NetBIOS discloses p-nodes are point-to-point nodes that establish a point-to-point connection with a remote party or second process. *Id.* at 38 (citing Ex. 1004, 365, 397–98).

Petitioner contends that WINS discloses that NetBIOS is incorporated into the WINS system and expressly discloses that WINS should be combined with NetBIOS. *Id.* at 30–31 (citing Ex. 1002 ¶ 73; Ex. 1003, 49). Accordingly, Petitioner concludes that one of ordinary skill in the art would have known about and been motivated to combine the references. *Id.* We are persuaded by Petitioner that this conclusion is reasonable because WINS demonstrates that Microsoft TCP/IP has combined the elements of NetBIOS and WINS in the same manner that Petitioner proposes to combine NetBIOS and WINS. Ex. 1003, 50.

Patent Owner argues that Petitioner applies an incorrect claim construction standard in construing the claim limitations and, therefore, Petitioner has failed to demonstrate that WINS and NetBIOS disclose the claim elements "on-line," "connected to the computer network," and "process." Prelim. Resp. 27–37. Patent Owner specifically argues that Petitioner has applied a "broadest reasonable construction" standard, whereas the claims terms should be interpreted under their "ordinary and customary" meaning. *Id.* Patent Owner, accordingly, argues that WINS and NetBIOS do not disclose these claim limitations because Petitioner has not applied the correct construction for these terms. *Id.* However, as discussed above, for the purposes of this decision, we have applied the broadest reasonable interpretation of these claim limitations and, accordingly, determine that Petitioner has demonstrated a reasonable likelihood that the combination of WINS and NetBIOS teaches or suggests these claim limitations. As also discussed above, each of WINS and NetBIOS discloses that a computer registers with a server as active and on-line. Ex. 1003, 44–

52; Ex. 1004, 366. Accordingly, we are not persuaded by Patent Owner's argument.

Patent Owner additionally contends that WINS and NetBIOS fail to determine whether the first computer is actually connected to the network or on-line. Prelim. Resp. 38–40. Patent Owner argues that a computer registered with the server is not necessarily connected to the network because the registration process does not remove the computer name from the look-up table if the computer has been turned off. *Id.* We are not persuaded by this argument. As discussed above, Patent Owner has not provided any persuasive rationale or evidence to demonstrate that the limitation "connected to the computer network," or any other claim limitation, requires a specified duration of time that a processing unit is "active and on-line." *See* Section II.B.1. Accordingly, we are not persuaded that the proper scope of the limitation "connected to the computer network" precludes a processing unit that is "active and on-line" but "may subsequently go off-line."

Patent Owner further contends that WINS and NetBIOS disclose a registration system that uses a computer, but fail to disclose a process running on that computer, as required by the claims. Prelim. Resp. 40–47. We disagree with Patent Owner. WINS discloses that a computer is "running Microsoft Windows NT Workstation or Windows NT Server operating system" and "registration is the *process* used to acquire a unique name for each node." Ex. 1003, xi, 50 (emphasis added). Accordingly, WINS discloses that the computer is running an application or operating system that uses processes to perform functions.

We are persuaded that Petitioner sufficiently establishes that there is a reasonable likelihood that Petitioner will prevail in showing that claims 3, 4, and 6–14 are unpatentable under 35 U.S.C. § 103(a) as obvious over WINS and NetBIOS. We also reviewed Petitioner's arguments and evidence with respect to claims 3, 4, and 7–14, and, for the same reasons discussed above, we are persuaded that there is a reasonable likelihood that Petitioner will prevail in showing that these claims are unpatentable under 35 U.S.C. § 103(a) as obvious over WINS and NetBIOS.

III. ORDER

Accordingly, it is

ORDERED that pursuant to 35 U.S.C. § 314, an *inter partes* review hereby is instituted as to the following proposed ground: obviousness of claims 3, 4, and 6–14 over WINS and NetBIOS;

FURTHER ORDERED that the trial is limited to the grounds identified above and no other grounds are authorized; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial commences on the entry date of this Decision.

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