

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

ZILKR CLOUD TECHNOLOGIES, LLC,
Appellant

v.

CISCO SYSTEMS, INC.,
Appellee

2025-1207

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2023-
00553.

Decided: August 26, 2026

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MCCOMBS, Dallas, TX; ANGELA M. OLIVER, Washington, DC.

Before MOORE, *Chief Judge*, STOLL, *Circuit Judge*, and
MOORE, *District Judge*.¹

MOORE, *Chief Judge*.

Zilkr Cloud Technologies, LLC (Zilkr) appeals a Patent Trial and Appeal Board (Board) final written decision (FWD) holding claims 1, 2, 6–8, and 12–14 of U.S. Patent No. 9,210,254 unpatentable as obvious. For the following reasons, we *vacate-in-part*, *affirm-in-part*, and *remand* for further proceedings.

BACKGROUND

Zilkr owns the '254 patent, relating to a unified services platform that integrates various communication services for a user and uses the user's telephone number as a common subscriber identifier. '254 patent at Abstract, 1:15–19, 1:40–56. Claim 1 of the '254 patent is representative:

1. [1.0] A telephone system comprising:
 - [1.1] a database; and
 - [1.2] a server coupled to the database,
 - [1.3] wherein the server is *utilized by* a first provider to provide a first service to a first user, wherein the first service is telephone service, and wherein the telephone service is associated with a first telephone number;
 - [1.4] wherein the server is configured to:

¹ Honorable K. Michael Moore, District Judge, United States District Court for the Southern District of Florida, sitting by designation.

receive a *request to provision* a second service for the first user,

[1.5] wherein the second service is provided by a second provider, and wherein the second provider is different than the first provider;

[1.6] responsive to receiving the request:

create a mapping from the first telephone number to a second identifier (ID), wherein the second ID is utilized by the second provider to identify the first user;

[1.7] *activate* the second service with the second provider utilizing the second ID as a user ID for the first user; and

[1.8] associate the second service with the first telephone number, wherein the first telephone number is associated with routing and interworking data necessary to utilize the second service.

Id. at 15:42–65 (emphases added).²

Cisco petitioned for *inter partes* review (IPR) of claims 1, 2, 6–8, and 12–14 of the '254 patent, asserting two obviousness grounds. The Board instituted IPR and held all the challenged claims unpatentable as obvious over U.S. Patent Application Publication No. 2007/0043687A1 (Bodart), U.S. Patent No. 6,621,892 (Banister), and U.S. Patent No. 7,089,585 (Dharmarajan).³ Zilkr appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A).

² The limitation numbering used herein reflects that used by the Board and the parties.

³ Because the Board held all challenged claims unpatentable over the Bodart-Banister-Dharmarajan ground, it did not reach Cisco's second ground. J.A. 70 n.4.

DISCUSSION

On appeal, Zilkr argues (1) the Board erred in construing the “request to provision” and “activate” terms of limitations [1.4] and [1.7], (2) the Board’s finding that the prior art satisfied limitation [1.3] is unsupported by substantial evidence, and (3) the FWD violates the Administrative Procedure Act (APA) for being insufficiently reasoned. We address each issue in turn.

I. Claim construction

Zilkr first argues the Board erred in construing “request to provision” and “activate” as not being limited to adding a new service. Appellant’s Br. 25–38. In Zilkr’s view, the Board construed these terms too broadly by concluding that both terms include “a request to add new applications and services, *or* manage existing applications and services to which a client has already subscribed.” *Id.*; *see also* J.A. 20, 25. We agree with Zilkr that claim 1 requires the addition of a new service.

We review the Board’s claim constructions *de novo*. *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 990 (Fed. Cir. 2017). While the parties did not initially propose claim constructions for the terms at issue, *see* J.A. 108; J.A. 380, the Board construed “request to provision” and “activate” to resolve disagreements between the parties about each term’s scope. J.A. 15–25. The intrinsic evidence does not support the Board’s conclusion that “request to provision” and “activate” are so broad as to encompass the management of existing applications and services to which a client has already subscribed.

Claim 1 recites a “server . . . configured to[] receive a request to provision a second service” and “responsive to receiving the request . . . activate the second service.” ’254 patent at 15:49–59. Although this language, by itself, is not dispositive of the scope of the disputed terms, it does identify the activation of a service as a direct response to the request to provision and thus requires us to consider

how the terms jointly operate to define the scope of the claim.

Looking to the rest of the patent, and considering the disputed terms jointly, it is evident that claim 1’s recitation of “activat[ing]” a service “responsive to receiving the request [to provision]” is limited to adding a new service. The specification uniformly and repeatedly refers to “activat-ing” a service solely in the context of adding new services. *See, e.g.*, ’254 patent at 6:49–7:21 (describing Fig. 4 embodiment), 7:22–8:11 (describing Fig. 5 embodiment), 10:4–11:24 (describing Fig. 8 embodiment). Moreover, though the specification discloses “managing” existing services in addition to adding new services, there is no indication that the term “activating” is ever used to encompass such management functions. *See id.* at 4:52–55, 9:16–20. Nor can “activating” be interpreted to encompass merely “access-ing” an existing service because the specification specifically distinguishes between these concepts. *See id.* at 14:13–37 (discussing “utilizing a third-party service” by logging into and accessing a functionality of an application only “[a]fter activation” of the application); 9:41–67 (discussing initiating a service session using a user identifier only after the service “has already been activated”).

Read in light of the specification, claim 1’s “request to provision” and “activate” limitations jointly require the addition of new services and are not so broad as to include management of existing applications and services to which a client has already subscribed. We therefore vacate the FWD’s contrary claim constructions and remand for further proceedings consistent with this opinion.⁴

⁴ We note that Cisco presents an alternative theory that, even under the construction we adopt today, the challenged claims remain unpatentable. J.A. 451–52. The

II. Bodart's disclosure

Zilkr next argues the FWD cannot stand because the Board's finding that the prior art satisfied limitation [1.3] is unsupported by substantial evidence. Appellant's Br. 40–47. We do not agree.

We review the Board's ultimate determination of obviousness de novo and its underlying factual determinations for substantial evidence. *Pers. Web Techs.*, 848 F.3d at 991. The Board found that Bodart satisfied limitation [1.3] because it discloses a virtual assistant utilized by a telephone service provider to provide telephone service to a user (e.g., by receiving and directing telephone calls to the user). J.A. 48–52 (citing J.A. 943–47, ¶¶ 25–26, 44, 57). The Board's finding was based in part on its determination that a skilled artisan would understand the ordinary and customary meaning of “utilize” is “use” or “to use,” and that such “use” is not limited to “a knowing and intentional use.” J.A. 14–15, 52.

Zilkr argues the Board's finding is unsupported by substantial evidence because Bodart's virtual assistant merely “play[s] a role” in providing telephone service to a user and is not “utilized by” the telephone service provider to provide that service. *See, e.g.*, Appellant's Br. 43 (alteration in original). Zilkr, however, never disputes the Board's construction of “utilize” as “use” or “to use” without being limited to “a knowing and intentional use.” J.A. 52. And, under this construction, there is substantial evidence in the form of expert testimony relied upon by the Board that (1) Bodart's virtual assistant is a server utilized to provide a first (telephone) service to a first user, and (2) it would have been obvious to a skilled artisan that a telephone service provider would have been the first provider using the virtual

Board, however, has yet to consider this argument and is free to do so on remand.

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assistant. *See, e.g.*, J.A. 38–41 (crediting the testimony of Cisco’s expert, Dr. Houh, about Bodart), 50–52 (same).

We conclude substantial evidence supports the Board’s fact finding that the prior art satisfied limitation [1.3] and therefore decline to disturb the FWD on this ground.

III. APA Compliance

Invoking the APA, Zilkr challenges the sufficiency of the Board’s analysis of claim limitations [1.3], [1.4], and [1.7], which respectively involve the “utilized by,” “request to provision,” and “activate” limitations disputed in this appeal. Appellant’s Br. 47–51. Given our constructions of “request to provision” and “activate,” we do not address the Board’s analysis of limitations [1.4] and [1.7]. *See supra* DISCUSSION § I. We do, however, consider the Board’s analysis of limitation [1.3] and conclude this portion of the FWD is sufficiently reasoned to permit judicial review.

We review the Board’s compliance with the APA *de novo*. *Google LLC v. EcoFactor, Inc.*, 92 F.4th 1049, 1054 (Fed. Cir. 2024). Under the APA, the Board must “make the necessary findings and have an adequate ‘evidentiary basis for its findings.’” *In re Nuvasive, Inc.*, 842 F.3d 1376, 1382 (Fed. Cir. 2016). The Board must also “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Id.*

We see no APA violation in the Board’s treatment of limitation [1.3]. The Board fully explained why it construed “utilized by” as not being limited to “a knowing and intentional use,” and pointed to the evidentiary basis for this determination, including the ’254 patent’s claim language, detailed description, and prosecution history. J.A. 14–15. Contrary to Zilkr’s assertions, the Board also sufficiently explained why it found limitation [1.3] satisfied by the prior art under this construction. *See* J.A. 48–52 (detailing the evidence of record and “[b]ased on the complete record, . . . determin[ing] that [Cisco] . . . established

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that the combined teachings of the asserted prior art as described in the Petition with respect to [1.3] satisfy the limitation”). Moreover, the Board adequately addressed why a skilled artisan would have been motivated to combine Bodart with Banister and Dharmarajan with a reasonable expectation of success, including with respect to limitation [1.3]. *See* J.A. 37–41 (noting that the Board “disagree[d]” with Zilkr’s arguments concerning limitation [1.3] in view of Dr. Houh’s testimony, and stating it was “persuaded that [Cisco] . . . demonstrated by a preponderance of the evidence that a [skilled artisan] would have had a reasoned basis for combining the teachings of Bodart, Banister, and Dharmarajan in the manner proffered and would have had a reasonable expectation of success in that endeavor”).

We conclude the Board’s analysis of limitation [1.3] in the FWD complies with the APA and leave this portion of its decision undisturbed.

CONCLUSION

We have considered the parties’ remaining arguments and find them unpersuasive. For the foregoing reasons, we (1) *vacate-in-part* the FWD for incorrectly construing the “request to provision” and “activate” terms of limitations [1.4] and [1.7], (2) *affirm-in-part* the FWD with respect to limitation [1.3], and (3) *remand* for further proceedings consistent with this opinion.

VACATED-IN-PART, AFFIRMED-IN-PART, AND REMANDED

COSTS

No costs.