

Appeal No. 25-1485

United States Court of Appeals
for the
Federal Circuit

In re: Blaze Mobile, Inc.
Appellant

Appeal From The United States Patent and Trademark Office in
Ex Parte Reexamination Control No. 90/019,135

REPLY BRIEF OF APPELLANT BLAZE MOBILE, INC.

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Certificate Of Interest

Pursuant to Federal Circuit Rule 47.4, counsel for Appellant BLAZE MOBILE, INC. certifies as follows:

1. The full name of every party represented by me is:

BLAZE MOBILE, INC.

2. The name of the real party in interest represented by me is:

Not applicable

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party represented by me are:

Not applicable

4. The names of all law firms and the partners or associates that appeared for the party now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

Carmichael IP, PLLC:

Stephen T. Schreiner

Glazer Weil, LLP:

Stephen Underwood

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal are:

In re: Blaze Mobile Inc., Appeal From The United States Patent and Trademark Office in Ex Parte Reexamination Control No. 90/019,134 for U.S. Pat. No. 10,827,007.

Samsung Electronics Co., Ltd. v. Blaze Mobile, Inc. et al., N.D. Cal. Case No. 21-cv-02989.

Respectfully submitted,

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Parties

Appellant, Patent Owner, Blaze	Blaze Mobile, Inc.
Appellee, US PTO	United States Patent & Trademark Office

Citations

Appx _____	Joint Appendix at page(s) _____
MPEP	Manual of Patent Examining Procedure

Terms

'259 Patent	United States Patent No. 10,699,259
'234 Pub	U.S. Pat. Pub. No. 2009/0124234
'192 Pub	U.S. Pat. Pub. No. 2008/0052192
AIA	America Invents Act
APA	Administrative Procedure Act
Khedouri	U.S. Pat. Pub. No. 2006/0008256
Coward	U.S. Pat. Pub. No. 2005/0202385
Dua	U.S. Pat. Pub. No. 2006/02558289
Goldthwaite	U.S. Pat. Pub. No. 2004/0230489
Harrison	U.S. Pat. Pub. No. 2006/0229998
Board, PTAB	Patent Trial and Appeal Board
POSITA	person of ordinary skill in the art

Blue Br.	Opening Brief For Appellant Blaze Mobile, Inc.
Red Br.	Brief for Appellee United States Patent & Trademark Office
Amicus Br.	Brief For Amicus Curiae Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.
Samsung	Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.

ARGUMENT

Reversal in this appeal of the Board's decision that claims 1-35 would have been obvious is justified because the Board's decision is based on erroneous claim constructions of three groups of claim limitations, as explained in Blaze's opening brief. Blue Br. 10-21. In response, the USPTO does not dispute that the claims would not have been obvious under Blaze's claim construction. Red Br. 32 (asserting that substantial evidence supports the Board's decision only under the Board's "construction of the claims"). Accordingly, if the Court agrees with any one of Blaze's three claim constructions, the Board's decision should be reversed.

In its opening brief, Blaze showed that the Court erred in its construction of the user input login information/authentication claim limitations by conflating "user authentication" with "transaction authorization." Blue Br. §§ V.A.2 and V.A.3. Blaze supported its claim construction by emphasizing the difference between these distinct and separate processes with support from the claim language, dictionary definitions, numerous citations to the specification and expert testimony of how a POSITA would have understood the difference between user authentication and transaction authorization. *Ibid.* In its responsive brief, the USPTO does not even mention the expert testimony or several of Blaze's citations to the specification, let alone explain how the Board's construction could possibly be correct in light of this evidence. Red Br. 23-27.

Notably, the prior art (*i.e.*, Khedouri) does not authenticate the user with information input by the user, as required by the claims. ***Rather, in Khedouri, (i) the user is required to enter a PIN to authorize a purchase first and then (ii) the device is authenticated with a device ID stored in the device's memory.***

Appx2756-2766, ¶¶ 44-45, 56, 78-80, 103-104, 137, 0139. Furthermore, Khedouri's PIN is not equivalent to the claimed "identification code associated with the user" because the Specification repeatedly and consistently describes the "identification code associated with the user" as separate from a "PIN."

Blaze also demonstrated that the proper construction of the claim limitations relating to "identification of one or more products" and "the transaction purchase request" requires "sending to the remote management server both (i) 'the identification of one or more products' having prices that are purchased and (ii) 'the transaction purchase request' of the identified products." Blue Br. 42. In response, the USPTO argues that the claims do not require a link between the identified products and the "transaction purchase request" and that the claimed "products" need not have prices and need not be purchased. Red Br. 29-31. But the specification consistently discloses that the transaction purchase request sent to the remote management server is for products that are identified by the user. *In re Smith Int'l, Inc.*, 871 F.3d 1375, 1382-83 (Fed. Cir. 2017). (The "correct inquiry in giving a claim term its broadest reasonable interpretation in light of the

specification is not whether the specification proscribes or precludes some broad reading of the claim term . . . It is an interpretation that corresponds with what and how the inventor describes his invention in the specification, *i.e.*, an interpretation that is consistent with the specification.”). The USPTO fails to identify a single embodiment anywhere in the specification in which the products in a transaction purchase request are unrelated to the products identified by the user. *See* Red Br. 29-31. Indeed, such an interpretation in which the products that are actually purchased by a user are unrelated to the products selected by the user is nonsensical. Moreover, independent claim 7 explicitly recites that “the transaction purchase request includes information relating to the identification of the one or more products” (Appx74, 9:52-54), thereby establishing a link between the “transaction purchase request” and the “identification of the one or more products,” as Blaze noted in its opening brief. Blue Br. 44. The USPTO fails to address this recitation in claim 7. *See* Red Br. 29-31.

In its opening brief, Blaze explained that the proper construction of the limitations relating to the “remote management server” requires it to receive, send, and store particular types of information, and the limitations relating to the “transaction server” requires it to perform particular functions. Blue Br. 52-53. In support of its construction, Blaze relied on, *inter alia*, the claim language itself and 11 different portions of the specification. Blue Br. 52-56. In its responsive brief,

the USPTO failed to discuss a single one of the 11 portions of the specification cited by Blaze, let alone explain how they do not support Blaze's construction. *See* Red Br. 31-32. The USPTO also failed to show that the combination of the Khedouri and Goldthwaite would have taught all the functions required to be performed by the "remote management server" and the "transaction server" by Blaze's construction. *See* Red Br. 37.

The Board, in its motivation to combine analysis, failed to consider that combining Goldthwaite's dual payment transaction and digital goods fulfillment system requiring payment confirmation before sending content would change the principal of operation of Khedouri's closed system. Blue Br. 60-63. In its responsive brief, the USPTO fails to excuse the Board's failure to address Blaze's showing. *See* Red. Br. 37-38. The USPTO—like the Board below—fails to grapple with the evidence that "Goldthwaite and Khedouri are fundamentally different because Goldthwaite an authentication server receives a '*payment confirmation*' before content is sent while in Khedouri, there isn't a requirement for the upload manager to receive a 'payment confirmation' before sending content, let alone a separate transaction processing system, a separate fulfillment system, and network to bridge the gap between the two systems, as in Goldthwaite." Blue Br. 62-63; Appx4330-4337; Appx3937-3940. This evidence was presented to the Board, and its failure to consider it is clear error. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v.*

State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (an agency commits error by “entirely fail[ing] to consider an important aspect of the problem”).

Samsung’s arguments in its Amicus Brief do not compensate for the deficiencies in the USPTO’s responsive brief. For both the user login information/user authentication and the identification of one or more products/transaction purchase request limitations, Samsung presents new obviousness theories that differ from the grounds on which the Board relied. This Court cannot accept such ““post hoc rationalizations for agency action”” or “supply a reasoned justification for an agency action that the agency itself has not given.” *Power Integrations, Inc. v. Lee*, 797 F.3d 1318, 1326 (Fed. Cir. 2015) (*quoting Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962) and citing *State Farm*, 463 U.S. at 43). Rather, this Court’s “review of [the Board’s] patentability determination is confined to the grounds on upon which the Board actually relied.” *Power Integrations*, 797 F.3d at 1326. Samsung’s arguments for the remote management and transaction server claim limitations, and the motivation to combine issue are essentially the same as the USPTO’s arguments and therefore, are insufficient for the same reasons to show that the Board’s obviousness holding is supported by substantial evidence under the proper claim construction.

For these reasons and the additional reasons set forth below, the Board’s decision should be reversed.

I. The USPTO Fails To Show That The Board’s Obviousness Ruling For The User Login Information/User Authentication Claim Limitations Is Supported By Substantial Evidence.

The USPTO’s claim construction arguments are inconsistent with this Court’s precedent, the language of the claims, the specification and file history. As set forth in Blaze’s opening brief, the proper construction of the user login information/user authentication claim limitations requires receiving at the mobile device (i) user input login information including an identification code for the user *from a non-browser based application*, and (ii) information *authenticating the user* (*i.e.*, information sufficient to confirm that the user is permitted access to a previously-established account). Blue Br. 32-36. The “identification code for the user” of this claim limitation is not the same as the “PIN” recited elsewhere in dependent claim 4. *Ibid.* The USPTO fails to show that the Board’s ruling that the prior art would have taught these claim limitations is supported by substantial evidence under the proper claim construction.

A. The USPTO Fails To Show That The Board Did Not Conflate The User Login Information/User Authentication Claim Limitations With A PIN To Authorize Charges.

As explained in Blaze’s opening brief, the Board construed the user login information/user authentication claim limitations so broadly as to encompass information used for the entirely different purpose in Khedouri of entering a PIN to “authorize charges” on a credit card. Blue Br. 26, *citing* Appx33-39, *quoting* Appx2763, ¶ [0094]. That is wrong because a POSITA would have understood that

the claim limitation requiring information ***authenticating*** a user is different than information authorizing a charge. Blue Br. 26, *citing* Appx3562, ¶ 12.

In response, the USPTO acknowledges that “authentication and authorization are not synonymous” (Red Br. 28, *quoting* Appx36) but misses the point in arguing that “payment authorization is not wholly independent from authenticating.” *Ibid.* Claim 1 of the ’259 Patent explicitly recites two different types of information: (i) one type for ***authenticating a user*** (Appx 73 (“receiving user input login information including an identification code associated with the user from the non-browser based application generated screen” and “receiving information authenticating the user associated with the user input login information from the remote management server”)) and (ii) another type for ***authorizing a transaction***. *Ibid.* (“transaction server which processes the transaction using a payment method that corresponds to the identification code associated with the user”).

The USPTO’s reliance on the specification to support its argument that a PIN is entered “to authenticate and confirm a transaction” (Red Br. 28) is misplaced because the portion of the specification to which it cites indicates that authenticating a user and confirming a transaction are two distinct, different steps. Appx71, 4:38-42 (“After the consumer enters any necessary validation information (e.g., pin) to provide a multi-factor ***authentication*** and ***confirms the transaction***,

the online purchase is processed as normal by the merchant’s online processor.”).¹

The USPTO—like the Board—erred in construing “authenticate the user” to include “authorizing the transaction” based on an overly broad definition. *See Personalized Media Commc'ns, LLC v. Apple Inc.*, 952 F.3d 1336, 1341-1342 (Fed. Cir. 2020) (holding that the board erred by interpreting "an encrypted digital information transmission " to include analog information, based in part on a “broad definition of ‘programming’”).

Indeed, Blaze cited to many instances in the specification that distinguished information to authenticate a user from information to authorize a transaction (Blue Br. 27-32) and the USPTO failed to address a single one of them. *See* Red Br. 23-29. The USPTO—like the Board—fails to consider this Court’s authority that “[t]he correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is not whether the specification proscribes or precludes some broad reading of the claim term adopted by the examiner.” *In re Smith Int’l, Inc.*, 871 F.3d at 1382-1383. ***Therefore, the claims need not explicitly recite that authentication excludes authorization.*** *In re Power Integrations, Inc.*, 884 F.3d 1370, 1377 (Fed. Cir. 2018) (construing claims to exclude a circuit arrangement even though the “patent does not explicitly” exclude it because “such an arrangement is inconsistent with ... the specification”).

¹ *All emphasis added unless otherwise noted.*

Instead, the USPTO sets forth argument to deflect this Court from its failure to address these important portions of the specification. For example, the USPTO relies on *In re Cruciferous Sprout Litig.*, 301 F.3d 1343 (Fed. Cir. 2002) for the proposition that “limitations appearing in the specification will not be read into the claims.” Red Br. 24. According to the USPTO, Blaze’s attention to the proper construction of the user login information/user authentication claim limitations as understood by a POSITA means that Blaze seeks to import limitations from the specification into the claims. *Ibid.* But that is plainly not so. Blaze does not make the argument prohibited by this Court’s authorities. Blaze instead argues, consistent with case law, that the claims distinguish user input login information authenticating a user from information authorizing a transaction and that this distinction is supported throughout the specification. Blue Br. 26-32.

This is important because the PIN disclosed in Khedouri cannot be the claimed “user input login information including the identification code associated with the user” because (i) claim 1 expressly requires the “user input login information” to be associated with “information authenticating the user” (Appx73, 8:33-34) while Khedouri’s PIN is associated with authorizing a transaction (Blue Br. 36-41, *infra* § I.D) and (ii) the “identification code associated with the user” of claim 1 must be different than the “personal identification number (PIN)” of claim 4. Indeed, Blaze quoted from five different portions of the specification separately

referring to user authentication and transaction authorization with a PIN (Blue Br. 31-32) and the USPTO failed to address a single one of them. *See* Red Br. 23-29; *In re Smith Int'l, Inc.*, 871 F.3d at 1382-1383; *In re Power Integrations, Inc.*, 884 at 1377.

Although the USPTO states that the claims don't recite "user authentication" or "transaction authorization" (Red Br 28), ***"user authentication" nor "transaction authorization" need not be explicitly recited in the claims.*** *Novartis Pharm. Corp. v. Abbott Labs.*, 375 F.3d 1328, 1334 (Fed. Cir. 2004) ("Even when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents." (citations and internal quotation marks omitted)). *See In re Smith Int'l, Inc.*, 871 F.3d at 1382-83 (holding that the "patent specification consistently describes and refers to the body as a component distinct from others, such as the mandrel, piston, and drive ring" and the claims "essentially recite only a body and the movable cutting arms," and ***other components, such as "a mandrel," are not recited in the claims.***)

The USPTO here, like the Board below, conflates the user input login information/user authentication claim limitations with a PIN authorizing charges. The Board's claim construction is wrong.

B. The USPTO Shows No Error In Blaze’s Construction Of The User Login Information/User Authentication Claim Limitations.

In its opening brief, Blaze demonstrated that its construction of the user login information/user authentication claim limitations to require receiving at the mobile device (i) user input login information including an identification code for the user *from a non-browser based application*, and (ii) information *authenticating the user* (i.e., information sufficient to confirm that the user is permitted access to a previously-established account) is supported by the claim language, the specification, and the file history. Blue Br. 32-33.

In response, the USPTO argues that “contrary to Blaze’s argument, the claim does not require the user input login information to be used as information authenticating the user” and that Blaze’s construction “render[s] superfluous the recited ‘associated with’ term.” Red Br. 27. But Blaze’s construction requires “receiving at the mobile device ... information authenticating the user (i.e., information sufficient to confirm that the user is permitted access to a previously established account).” Blue Br. 32-33. That is, Blaze’s construction requires “information authenticating the user” to be “receiv[ed] at the mobile device” not used (*ibid.*), as inaccurately alleged by the USPTO. Red Br. 27. Blaze’s construction is further supported by the repeated and consistent descriptions throughout the specification of the claimed requirements that a “non-browser based application receives the user input login information through user input via the

mobile device display” and “receiving information authenticating the user associated with the user input login information.” Appx73. The proper claim construction “corresponds with what and how the inventor describes his invention in the specification, *i.e.*, an interpretation that is ‘consistent with the specification.’” *In re Smith Int’l, Inc.*, 871 F.3d at 1382-1383, *quoting In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

The USPTO also argues that the dictionary definition of “login” “does not support” Blaze’s construction because the claimed “user input login information” need not be “the login name and password.” Red Br. 24. But this argument misses the mark because Blaze’s claim construction does not require a login name and password. Blue Br. 32-33. Rather, its construction requires “information authenticating the user.” *Ibid.* And the dictionary definition does, in fact, support Blaze’s construction because it defines “login” as an “authentication process.” Appx4442. Blaze’s construction is further supported by the dictionary definition of “authentication” as “the process by which the system validates a user’s login information” (Appx4444) and by the meaning that would have been understood by a POSITA as “the process by which a user gains access to a website or application by logging into it.” Appx3562, ¶12. The USPTO does not contest any of the definitions of “authentication” set forth by Blaze, let alone explain how a PIN that is used for authorizing a transaction—like Khedouri’s PIN—could possibly be

encompassed by the claimed “information authenticating the user.” *See* Red Br. 23-29.

In an attempt to support its argument that “the ’259 Patent itself discloses using a one-time code for authentication,” the USPTO quotes, but—like the Board—omits an important portion of a paragraph describing a verification process. Red Br. 29, *quoting* Appx71, 4:47-62. The omitted portions indicate that multiple factors are required to authenticate a user:

After the consumer enters any necessary validation information to provide a multi-factor authentication and confirms the transaction, the online purchase is processed as normal by the merchant’s online processor. Appx71, 4:14:4-18.

The paragraph cited by the USPTO then explains that the “unique transaction code” is used for ***device*** authentication, not ***user*** authentication because the “unique transaction code” is transmitted to a mobile device using the ***mobile phone number***, which is associated with the device. Appx71, 4:53-57 (“[T]he management server 408...verifies the consumer’s ***authenticity*** by sending a unique transaction code to the consumer mobile wallet on their cell phone.”). As would have been known by a POSITA, this type of verification prevents command spoofing, which is an attempt by an imitation device to impersonate the real mobile device and send commands to compromise the security of the real mobile device. Appx4420, ¶ [0016]. ***Thus, the USPTO—like the Board—erred in construing “authenticate the user” to include “authorizing the transaction” based in part on***

an overly broad definition of “device authentication.” See Personalized Media Commc'ns., 952 F.3d at 1341-1342. Finally, the USPTO asserts that the file history does not support Blaze’s construction distinguishing “a user input login information including an identification code” from a PIN because Blaze argued during prosecution of the ’259 patent merely that the user identity of the prior art Rackley reference “was automatically transmitted, not manually entered by the user.” Red Br. 27. But this assertion is demonstrably false because Blaze acknowledged that in Rackley, “the user manually enters only the PIN in figure 1304” but nonetheless stated that Rackley would not have taught the “user input login information including the identification code.” Appx3967-3968. That is, Blaze amended the claims to recite that the “user input login information” includes “an identification code” to distinguish them from Rackley and clearly explained that Rackley’s PIN is not the claimed “user input login information.”

Clearly, Blaze’s construction is supported by the plain meaning of the claim language, the specification, and the file history.

C. Samsung Does Not Compensate For The Deficiencies In The USPTO’s Claim Construction Arguments.

Samsung’s arguments for the construction of the user login information/user authentication claim limitations (Amicus Br., 9-13) do not compensate for the deficiencies in the USPTO’s arguments. Samsung’s assertion that “the claims do not require the ‘user input login information’ to be used for ‘authentication,’ nor do

they exclude ‘information’ that can be used to ‘authorize’ a transaction” (*id.* at 10) is inconsistent with the claim language and the intrinsic evidence, as explained *supra*.

Samsung’s statement that “Blaze’s construction appears to be primarily based on definitions taken from extrinsic dictionary definitions” (Amicus Br. 11) is a gross mischaracterization of Blaze’s claim construction argument. Blaze supports its claim construction on the claim language as understood by a POSITA as evidenced by expert testimony and dictionary definitions, the specification, and the file history. Blue Br. 25-36.

Samsung’s arguments are not nearly sufficient to show that the Board’s claim constructions are correct or that Blaze’s constructions are incorrect.²

D. The USPTO Makes No Attempt To Show That the Board’s Obviousness Ruling Of The User Login Information/User Authentication Claim Limitations Is Supported By Substantial Evidence Under The Proper Claim Construction.

In its opening brief, Blaze demonstrated that under its construction, Khedouri would not have taught the user login information/user authentication claim limitations because Khedouri’s PIN is not used to login and authenticate a

² Samsung’s statement that the “plain and ordinary meaning construction” applies (Amicus Br. 12) for this limitation and other limitations (Amicus Br. 21) is also wrong because the patent office applies the broadest reasonable construction standard in reexaminations of patents that have not expired, like the ’259 Patent.

user and is instead used to authorize a transaction with a credit card. Blue Br. 36-38. The USPTO does not contest Blaze's demonstration; it does not allege that the prior art would have taught these claim limitations under Blaze's construction. *See* Red Br. 36-38.

For this reason alone, the Board's decision should be reversed.

E. Samsung Fails To Show That the Board's Obviousness Ruling Of The User Login Information/User Authentication Claim Limitations Is Supported By Substantial Evidence Under The Proper Claim Construction.

Samsung does not compensate for the Board's failure to even attempt to show that the claims would have been obvious under Blaze's construction. First, Samsung's arguments differ from the grounds upon which the Board relied upon for its obviousness holding. Samsung failed to make one single citation to the Board's final written decision or the Board's decision on the rehearing request. *See* Amicus Br. 13-21. In addition, Samsung relies heavily on paragraphs [0109-0110] in Khedouri as allegedly supporting its argument that Khedouri teaches a PIN for both user authentication and purchase authorization (Amicus Br. 17-18) and that "when the PIN is entered, Khedouri's software authenticates the user by checking the PIN against the previously saved PIN." *Id.* at 17, *citing* Appx2765, ¶¶ [0109-0110]. The Board, however, did not rely on these paragraphs for its obviousness holding for the user login information/user authentication claim limitations. *See* Appx37-43. Likewise, the Board did not rely on several other paragraphs of

Khedouri (*e.g.*, ¶¶ 14, 21, 42, 43, 45, 52) upon which Samsung now relies for its obviousness argument. *Compare* Appx45-51 *with* Amicus Br. 13-21. This Court should not accept such “post hoc rationalizations for agency action.” *Power Integrations*, 797 F.3d at 1326.

Moreover, reversal of the Board’s obviousness decision would be justified even if Samsung’s post hoc rationalizations were considered because they do not show that the user login information/user authentication claim limitations would have been obvious. None of the portions of Khedouri cited by Samsung would have taught—contrary to Samsung’s assertions—that “when the PIN is entered, Khedouri’s software authenticates the user by checking the PIN against the previously secured PIN.” Amicus Br. 17. For example, the paragraphs most heavily relied upon by Samsung (*i.e.*, ¶¶ [0109-0110]) don’t even mention a PIN. Appx2765.

II. The USPTO Fails To Show That The Board’s Obviousness Ruling For The Claim Limitations Relating To Sending “the identification of one or more products” and “the transaction purchase request” To The Remote Management Server Is Supported By Substantial Evidence.

The Board’s construction of the limitations relating to sending “the identification of one or more products” and “the transaction purchase request” to the management server is inconsistent with this Court’s precedent and the intrinsic evidence.

A. The USPTO Fails To Show That The Board’s Construction Is Correct Or That Blaze’s Construction Is Incorrect.

As explained in Blaze’s opening brief, the claims require sending to the remote management server both (i) “the identification of one or more products” having prices that are purchased and (ii) “the transaction purchase request” of the identified products. Blue Br. 42.

In response, the USPTO argues that Blaze’s “citations to the ’259 Patent and various applications incorporated by reference relate to the word ‘purchase,’ not ‘products’ and that the claims do “not require that the ‘transaction purchase request’ is linked to the claimed ‘identification of one or more products.’” Red Br. 30-31 (*internal quotations and citations omitted*).

The USPTO is wrong because each of independent claims 1, 7, and 13 requires identifying a list of products and sending a transaction purchase request for the identified products to the remote management server. Indeed, claim 7 explicitly recites that “the transaction purchase request includes information relating to the identification of the one or more products” (Appx74, 9:52-54), as Blaze noted in its opening brief. Blue Br. 44.

Moreover, the Specification repeatedly describes processes in which products are first identified for purchase and then, the identified products are purchased. Appx70, 1:48-56; Appx72, 5:40-43, 46-49. Likewise, the ’192 Pub (which is incorporated by reference into the ’259 patent) discloses a method in

which one or more products (e.g., seats) are selected from a “seat inventory (what’s available and at what price)” to “automatically cause a price to be calculated” and after a “user confirms purchase, [a] reservation request is sent to the ticket inventory system.” Appx4440, ¶ [0122].

That is, the specification consistently discloses that the transaction purchase request sent to the remote management server is for products that are identified by the user. Blue Br. 42-45. The “items” and “seats” mentioned in the specification and the ’192 Pub correspond to the claimed “products.” Indeed, because the specification repeatedly and consistently describes products having prices that are purchased, the *term “prices” need not be recited in the claims*. See *In re Smith Int’l, Inc.*, 871 F.3d at 1382-83 (holding that the “patent specification consistently describes and refers to the body as a component distinct from others, such as the mandrel, piston, and drive ring” and the claims “essentially recite only a body and the movable cutting arms,” and *other components, such as “a mandrel,” are not recited in the claims*.). Indeed, an interpretation in which the products that are actually purchased by a user are unrelated to the products selected by the user is both nonsensical and inconsistent with the claim language. Appx73, 8:5-6 (“receiving ... an identification of one or more products”); 8:43-44 (“receiving ... the one or more products from the remote management server”); see e.g., *Bicon*,

Inv. v. Straumann Co., 441 F.3d 945, 950-951 (Fed. Cir. 2006) (refusing to construe claims in a way that made other claim limitations meaningless).

Samsung does not compensate for the deficiencies in the USPTO’s claim construction argument; it instead repeats a portion of the USPTO’s argument.

Compare Amicus Br. 22-24 *with* Red Br. 29-31. Therefore, Samsung’s arguments should be rejected for the same reasons expressed above.

Clearly, the Board’s construction is inconsistent with the claim language and the specification.

B. The USPTO Makes No Attempt To Show That the Board’s Obviousness Ruling Of The Limitations Relating To Sending “the identification of one or more products” and “the transaction purchase request” To The Remote Management Server Is Supported By Substantial Evidence Under The Proper Claim Construction.

In its opening brief, Blaze demonstrated that—under the proper construction—the prior art would not have taught the limitations relating to the “identification of one or more products” and “the transaction purchase request” terms because Khedouri’s audio and video clips are free (*i.e.*, not purchased) (Blue Br. 40) and Khedouri’s full files are never identified but instead, are “downloaded without any identification of the full file in anticipation of the possibility that the user will purchase the full file.” *Id.* at 47.

The USPTO does not dispute Blaze's demonstration; it does not allege that the prior art would have taught these limitations under Blaze's claim construction. See Red Br. 34-38.

For this additional reason, the Board's decision should be reversed.

C. Samsung Fails To Show That the Board's Obviousness Ruling Of The Limitations Relating To Receiving "the identification of one or more products" and "the transaction purchase request" Is Supported By Substantial Evidence Under The Proper Claim Construction.

Samsung does not compensate for the Board's failure to even attempt to show that the claims would have been obvious under Blaze's construction. First, Samsung's arguments differ from the grounds upon which the Board relied upon for its obviousness holding (Appx51-55) and the grounds upon which the Examiner relied. Appx4072-4074. Samsung failed to make one single citation to the Board's final written decision or the Board's decision on the rehearing request. See Amicus Br. 24-29. In addition, Samsung relies heavily on a new obviousness theory wherein Khedouri's digital rights management (DRM) key is the claimed "product" and another wherein the file and DRM are "together the 'product,'" Amicus Br. 27-29) and on Khedouri's Device-Network Synchronization operation. *Id.* at 25. Neither the Board nor the Examiner made any mention of Khedouri's synchronization operation or obviousness theories in which the DRM, alone or with the file, constitute the claimed "product." Appx51-55, Appx4072-4074. This

Court should not accept such “post hoc rationalizations for agency action.” *Power Integrations*, 797 F.3d at 1326.

Moreover, reversal of the Board’s obviousness decision would be justified even if Samsung’s post hoc rationalizations were considered because they do not show that these limitations would have been obvious under the proper construction, which requires “sending to the remote management server both (i) ‘the identification of one or more products’ having prices that are purchased and (ii) ‘the transaction purchase request’ of the identified products.” Blue Br. 42.

Samsung’s reliance on the “get song now button” 1003 (Amicus Br. 25) is misplaced because this button does not meet the claim requirements of sending to the remote management server both (i) “the identification of one or more products” having prices that are purchased and (ii) “the transaction purchase request” of the identified products because there is no mention in Khedouri that a song associated with button 1003 has a price or is purchased. *See* Blue Br. 48, *citing* Appx2765, ¶¶ [0108] – [0110]. Finally, Khedouri’s “buy now” option relied upon by Samsung (Amicus Br. 25-26) does not satisfy the two distinct steps of claim 2: (i) “receives, from the non-browser based application generated screen, an identification of one or more products” and (ii) “receives a transaction purchase request including information relating to the identification of the one or more products from the non-browser based application generated screen.” Blue Br. 48-49.

For these additional reasons, the Board’s decision should be reversed.

III. The USPTO Fails To Show That The Board’s Obviousness Ruling For The Claim Limitations Relating To Remote Management and Transaction Server Claim Terms Is Supported By Substantial Evidence.

A. The USPTO Fails To Show That The Board’s Construction Is Correct Or That Blaze’s Construction Is Incorrect.

As explained in Blaze’s opening brief, the proper construction of the remote management server and transaction server claim limitations requires (1) a remote management server that (i) receives “user input login information,” (ii) sends “information authenticating the user associated with the user input login information,” and (iii) “receives a transaction verification from a transaction server,” and (2) a transaction server that (i) “processes the transaction using a payment method that corresponds to the identification code associated with the user,” and (ii) “wherein the payment method is stored at the remote management server.” Blue Br. 52.

In response, the USPTO states that Blaze’s claim construction of “remote management server” and “transaction server” “include limitations from elsewhere in the claim” and that “Blaze [Mobile] fails to explain why construction is necessary.” Red Br. 31-32. But the USPTO misses the point. Each of the independent claims requires the claimed “remote management server” to receive, send, and store particular types of information and the claimed “transaction server” to perform particular functions. Blue Br. 52-53. Blaze’s construction is important

because it includes these claim requirements (*ibid.*), and because these requirements are wholly absent from the prior art combination of Khedouri and Goldthwaite. *See infra* §III.B; Blue Br. 56-59.

Samsung does not compensate for the deficiencies in the USPTO’s claim construction argument; it instead repeats a portion of the USPTO’s argument. *Compare* Amicus Br. 29-31 *with* Red Br. 30-31. Therefore, Samsung’s arguments should be rejected for the same reasons expressed above.

B. The USPTO and Samsung Fail To Show That The Board’s Obviousness Ruling For The Claim Limitations Relating To The Remote Management and Transaction Servers Is Supported By Substantial Evidence.

The argument by the USPTO (Red Br 36-27) and Samsung that Khedouri teaches a non-browser based application is without merit. As previously explained, instead of receiving the claimed “user input login information” and performing the claimed “user authentication,” Khedouri’s non-browser based application *bypasses or navigates around* the required login:

“If the device *doesn’t have a browser*, it needs to learn how to navigate around this introduction page. The way it does so is by *creating a profile, and simulating the required communications to login and/or bypass this first page*,” (Appx2766, ¶ [0135]) and, “The device automatically selects a method of connection among multiple possible connections by testing not only whether the connection is live, but also whether it can access dedicated server’s back-end test page, verifying that the connection is live AND the *device successfully navigated any required logins*, etc.” *Id.*, ¶ [0136].

See Appx4311-4322.

The section of the USPTO's brief commencing with the heading "Blaze fails to establish error in the Board's obviousness findings" (Red Br. 36) in fact fails to address Blaze's demonstration that the prior art combination of Khedouri and Goldthwaite would not have taught the claim requirements on the remote management server to receive, send, and store particular types of information and the requirements on the transaction server to perform a particular function. Blue Br. 56-59. The heading is a canard; it does not reflect the content of the USPTO's actual argument in the body of that section. Rather, the USPTO states only that Blaze's "arguments improperly attack the references individually." Red Br. 37.

But the USPTO's statement is demonstrably false. Blaze addressed the combined teachings of both Khedouri and Goldthwaite to show that certain claim limitations were wholly absent from this prior art combination. For example, Blaze showed in its opening brief that nothing in Khedouri's system can satisfy the "remote management server" claim limitations because nothing in Khedouri's system (i) receives "user input login information," (ii) sends "information authenticating the user associated with the user input login information," or (iii) "receives a transaction verification from a transaction server." Blue Br. 56-57. . Khedouri's Network 315 cannot be the claimed remote management server because it does not *authenticate* the user, let alone receive user input login information including an identification code associated with the user. Khedouri's

PIN cannot possibly be equivalent to the claimed “identification code associated with the user” because of the repeated and consistent statements in the Specification that an identification code authenticating the user is separate and distinct from a PIN authorizing a transaction, like Khedouri’s PIN. Blue Br. 57-58.

Blaze also noted that “the Board failed to even attempt to explain how Goldthwaite’s financial institution/server 112 ‘processes the transaction using a payment method that corresponds to the [same] identification code associated with the user’ that was used to authenticate the user, as required by claim 1.” Blue Br. 57-58, *citing* Appx56. As Blaze also explained, “Goldthwaite’s financial institution server 112 cannot be the claimed ‘transaction server’ because it sends a confirmation (alleged by the Board to be the claimed ‘transaction verification’) to the payment server 106, while claim 1 requires the ‘transaction server’ to send a transaction verification to the remote management server.” Blue Br. 58-59. Goldthwaite’s payment server 106 cannot be the claimed “remote management server” because it “does not authenticate a user, let alone do so with ‘user input login information’ or send ‘information authenticating the user associated with the user input login information.’” Blue Br. 58.

Here, the USPTO failed to address any of these showing by Blaze (*see* Red Br. 36-38), just as the Board failed to do. *See* Appx 45-60. More particularly, the USPTO makes no attempt to explain how a POSITA would have modified

Khedouri's system to include a remote management server that performs the functions recited in the claims such as sending information authenticating a user, instead of merely authorizing a transaction. *See* Red Br. 36-38. The USPTO also makes no attempt to explain how a POSITA would have modified Goldthwaite's financial institution server 112 or payment server 106 to meet the claimed requirements. *Ibid.* Moreover, the USPTO makes no attempt to explain why a POSITA would have been motivated to so modify the systems of Khedouri and Goldthwaite.

Samsung does not compensate the deficiencies in the USPTO's argument. Samsung asserts that that Khedouri's management server satisfies the "remote management server" claim limitation because Khedouri's PIN "is used to retrieve the associated credit card information for the subscriber database." Red Br. 34. Samsung even goes so far as to allege that "Blaze concedes that Khedouri's management server sends 'information authenticating the user associated with the user input login information'" (Amicus Br. 33) and that "Blaze's brief is devoid of any explanation as to why this limitation is not met." *Id.* at 34.

But Blaze made no such concession and did, in fact, provide such an explanation. *See* Blue Br. 56-57. Samsung chose to ignore it. Amicus Br. 32-34. As Blaze explained in its opening brief, the claimed "remote management server" is required to is required to (i) receive "user input login information including an

identification code associated with a user,” (ii) authenticate a “user associated with the user input login information,” and (iii) receive “a transaction verification” from a transaction server.” Blue Br. 56. Khedouri’s management server does not meet requirements (i) and (ii) listed above. Khedouri’s PIN is not the claimed “user input login information” and the processing of Khedouri’s PIN to retrieve an associated credit card does not authenticate a “user associated with the user input login information.” Blue Br. §§ V.A.1, V.A.2, V.A.3.

C. The USPTO and Samsung, Like The Board, Overlook Undisputed Evidence That Modifying Khedouri’s Closed System With Goldthwaite’s Dual Payment Transaction and Digital Goods Fulfillment System Would Have Changed Khedouri’s Principle Of Operation.

In its opening brief, Blaze noted that the Board failed to consider that combining Goldthwaite’s dual payment transaction and digital goods fulfillment system requiring payment confirmation before sending content would change the principal of operation of Khedouri’s closed system. Blue Br. 59-64. The USPTO fails in its brief to excuse the Board’s failure to do so. *See* Red. Br. 37-38. The undisputed evidence below was that “Goldthwaite and Khedouri are fundamentally different because in Goldthwaite an authentication server receives a ‘*payment confirmation*’ before content is sent while in Khedouri, there isn’t a requirement for the upload manager to receive a ‘payment confirmation’ before sending content, let alone a separate transaction processing system, a separate fulfillment

system, and network to bridge the gap between the two systems, as in Goldthwaite.” Blue Br. 62-63; Appx4330-4337; Appx3937-3940.

The USPTO’s argument incorporating Goldthwaite’s financial institution server with Khedouri’s system for purchasing digital content would be “*predictable*” (Red Br. 35) is not nearly sufficient to establish obviousness in light of this Court’s authority requiring a rational underpinning explaining why a POSITA would have arrived at the claimed invention, rather than a mere presumption. *In re Van Os*, 844 F.3d 1359, 1361 (Fed. Cir. 2017).

The USPTO and Samsung fail to grapple with this undisputed evidence. *See* Red Br. 37-38; Amicus Br. 36-39. Samsung blithely asserts that “[a]dding a ‘payment confirmation’ would help ensure products are only sent once payment has been made” (Amicus Br. 38) but both Samsung and the USPTO fail to explain why a POSITA would have so modified Khedouri in light of the undisputed evidence that Khedouri is fundamentally different than Goldthwaite (Red Br. 36-38; Amicus Br. 36-38) because it does not have “a separate transaction processing system, a separate fulfillment system, and network to bridge the gap between the two systems, as in Goldthwaite.” Blue Br. 62-63.

This evidence was presented to the Board, and its failure to consider it is clear error. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (an agency commits error by “entirely fail[ing] to

consider an important aspect of the problem”). The USPTO instead relies on *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007) for the proposition that when “there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options.” Red Br. 38, *quoting KSR*, 550 U.S. at 421. That is double wrong. First, the Board never alleged that there were a finite number of identified solutions to support its obviousness holding (*see Appx57-59*) and this Court cannot ““accept appellate counsel’s post hoc rationalizations for agency action”” or “supply a reasoned justification for an agency action that the agency itself has not given.” *Power Integrations, Inc. v. Lee*, 797 at 1326 (*quoting Burlington Truck Lines, Inc.*, 371 U.S. at 168 and *citing State Farm*, 463 U.S. at 43). Second, the USPTO fails to show that there are only a finite number of identified, predictable solutions. *See* Red Br. 38. It is little wonder why; there are virtually countless ways to assign the communication and storage tasks required by the independent claims to various arrangements of servers.

For these additional reasons, the Board’s decision should be reversed.

IV. Conclusion

For the reasons expressed above and in Blaze's opening brief, the Court should reverse the Board's Decision on Appeal that claims 1-34 of the '259 patent are unpatentable.

Respectfully submitted,

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Dated: October 5, 2025

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