

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**IN RE WSOU INVESTMENTS LLC, DBA BRAZOS
LICENSING AND DEVELOPMENT,**
Appellant

2025-1153

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. 90/014,994.

Decided: September 30, 2026

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gued for appellee John A. Squires. Also represented by
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Before STOLL and STARK, *Circuit Judges*, and BARKER,
District Judge.¹

STOLL, *Circuit Judge*.

WSOU Investments LLC appeals the decision of the United States Patent and Trademark Office Patent Trial and Appeal Board. The Board reversed the Examiner’s rejection of claims 1–11, 18, and 19 of U.S. Patent No. 9,357,014 and entered a new ground of rejection based on obviousness in view of the same prior art reference. WSOU filed a response seeking “reopening of prosecution” under 37 C.F.R. § 41.50(b)(2). After finding WSOU’s response deficient for reopening prosecution, the Central Reexamination Unit returned the response to the Board for consideration as a request for rehearing. The Board then denied rehearing and entered its final rejections of the claims under 35 U.S.C. § 103. For the following reasons, we affirm.

BACKGROUND

I

A

U.S. Patent No. 9,357,014 describes what it calls “service-based networking,” which uses a connected services stack with a connected services layer to establish a service connection between endpoints. *See* U.S. Patent No. 9,357,014 Abstract. The ’041 patent purports to solve a problem in traditional network connections that rely on IP addresses and port numbers, since “[w]ith the advent of mobility, and now cloud-based computing, the IP address of a host of a networking connection may change,” which

¹ Honorable J. Campbell Barker, District Judge, United States District Court for the Eastern District of Texas, sitting by designation.

causes issues when trying to maintain network connections. *See id.* at col. 1 ll. 12–14.

Rather than base network connections on IP addresses or network endpoints, the solution provided by the '014 patent bases each connection on a “service connection” that may be identifiable to applications or devices by the service name. *See id.* at col. 2 ll. 37–43 (“In general, use of a service connection between endpoints may provide various advantages over use of traditional transport layer connections between endpoints, such as obviating the need for applications or services to have knowledge of the underlying communication network, enabling applications or services to connect *by name only . . .*” (emphasis added)).

Claim 1 of the '014 patent, representative of the challenged claims in this appeal, recites:

1. An apparatus, comprising:

a processor and a memory communicatively connected to the processor, the processor configured to run a connected services stack, the connected services stack comprising a connected services layer configured to operate below an application layer and above a transport layer, wherein the connected services layer is configured to support establishment of a service connection between the connected services layer and a remote connected services layer of a remote endpoint, *wherein the connected services layer is configured to support establishment of the service connection based on a service name of the connected services layer, a service name of the remote connected services layer, and a service connection identifier for the service connection, wherein the connected services layer is configured to:*

send, toward a server, a service connection request message comprising the service name of

the connected services layer and *the service name of the remote connected services layer* of the remote endpoint; and

receive, from the server, a service connection response message comprising the service name of the remote connected services layer of the remote endpoint, an Internet Protocol (IP) address of the remote endpoint, and the service connection identifier for the service connection.

Id. at col. 14 ll. 28–53 (emphases added to highlight limitations alleged to not be disclosed or suggested in the asserted prior art).

B

The prior art reference relevant for this appeal, U.S. Patent No. 8,359,397 (“Traversat”), is entitled “Reliable peer-to-peer connections.” U.S. Patent No. 8,359,397 Title. It relates to “[e]mbodiments of a system and method for establishing reliable connections between peers in a peer-to-peer networking environment.” *Id.* at Abstract. Traversat’s peer-to-peer network involves nodes of equal status, “peers,” that communicate between each other, preferably in a decentralized environment. *See id.* at col. 14 ll. 26–28. Traversat’s “peer discovery protocol” involves a peer obtaining documents termed “advertisements” that describe network resources, such as other peers. *Id.* at col. 44 ll. 44–49.

Figure 15 of Traversat, reproduced below, depicts using messages to discover advertisements of, for example, “[n]amed peers.” *Id.* at col. 52 ll. 12–17.

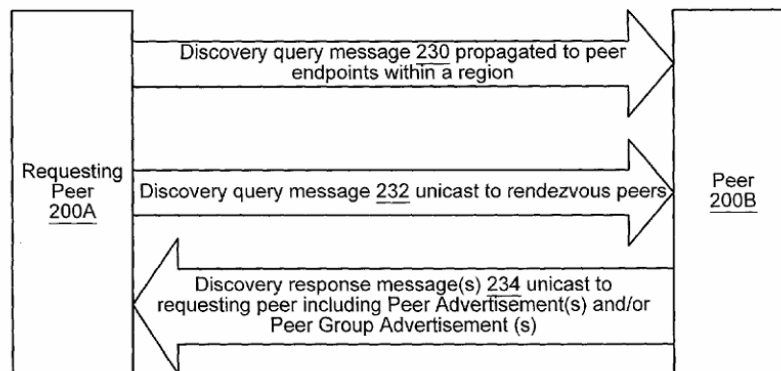


FIG. 15

Id. Figure 15. The peer discovery protocol begins with a requesting peer transmitting a discovery query message, depicted in Figure 15 as a propagate message 230 or as a unicast message 232. *Id.* at col. 52 ll. 21–22. Then response message 234 “may return one or more advertisements (e.g. peer advertisements and/or peer group advertisements) that may include ‘main’ endpoint addresses which may be converted to a string in the standard peer endpoint format (e.g. URI or URL) and also may include a network transport name.” *Id.* at col. 52 ll. 22–27. Traversat also describes “pipes” as “a mechanism for establishing communication between peers.” *Id.* at col. 20 ll. 10–11. Traversat implements these pipes through what it calls a “pipe service.” *Id.* at col. 20 ll. 16–17.

II

Cisco Systems, Inc. petitioned the Board for *inter partes* review of the '014 patent, challenging all claims as obvious over Traversat on its own or in combination with

another reference, Guo.² Relevant to this appeal, the Board construed the meaning of “a service connection request message comprising the service name of the connected services layer and the service name of the remote connected services layer of the remote endpoint” in independent claims 1, 18, and 19. J.A. 970 (citations omitted). The Board started its analysis by recognizing that claims 1, 18, and 19 recite “wherein the connected services layer is configured to support establishment of the service connection based on a service name of the connected services layer, a service name of the remote connected services layer, and a service connection identifier for the service connection.” *Id.* (citing ’014 patent col. 14 ll. 37–42, col. 16 ll. 38–43, col. 16 l. 65–col. 17 l. 3). Claims 1, 18, and 19 also recite “wherein the connected services layer is configured to: send, toward a server, a service connection request message comprising the service name of the connected services layer and the service name of the remote connected services layer of the remote endpoint.” *Id.* (citing ’014 patent col. 14 ll. 42–47, col. 16 ll. 43–48, col. 17 ll. 3–8). The Board then held, based on the claim language’s antecedent basis, that “[b]ecause the former limitation refers to ‘a service name’ and the latter limitation refers to ‘the service name,’ those limitations together require a service connection request message that includes the *same* ‘service name of the remote connected services layer’ that is used to establish the service connection.” *Id.* (citing ’014 patent col. 14 ll. 37–47, col. 16 ll. 38–48, col. 16 l. 65–col. 17 l. 8).

The Board next determined that Cisco did not meet its burden to show it had a reasonable likelihood of prevailing in its obviousness challenge. The Board acknowledged Cisco’s arguments that (1) “Traversat teaches a discovery

² U.S. Patent Application Publication No. 2005/0015427.

query message that includes the *peer name* of the endpoint peer,” and (2) “Traversat teaches establishing a service connection based on the *peer identifier* of the endpoint peer.” J.A. 973 (first citing J.A. 996–98; and then citing J.A. 505, 507–08). But because Cisco did “not identify evidence indicating that the peer name and the peer identifier of the endpoint peer are the same,” the Board determined Cisco did “not show sufficiently that Traversat teaches a service connection request message that includes the *same* service name of the remote connected services layer that is used to establish the service connection.” J.A. 973, 975. The Board, accordingly, denied Cisco’s petition.

After the denial of institution, Cisco filed a request for ex parte reexamination of the ’014 patent, challenging all claims as obvious over Traversat on its own or in view of Guo. Cisco argued that while it had relied on Traversat in its earlier petition for IPR, it was now presenting Traversat “in a new light and in a different way.” J.A. 61. In particular, Cisco sought to demonstrate “how Traversat discloses the establishment of a service connection based on a remote peer’s *peer name*” and to “present[] analysis mapping Traversat’s peer name (not its peer identifier) of the remote peer to the claimed ‘service name of the remote connected services layer.’” J.A. 62. After granting the request for ex parte reexamination based on Cisco’s new arguments, the Examiner issued a final office action rejecting claims 1–11, 18, and 19 as being anticipated under 35 U.S.C. § 102 by Traversat and claims 12–15 as being obvious under 35 U.S.C. § 103 over Traversat in view of Guo.

WSOU appealed the final office action to the Board, which entered new grounds for rejection of claims 1–15, 18, and 19 of the ’014 patent. The Board began its analysis by adopting its earlier claim construction from the IPR proceedings: the claims “require[] that the remote connected services layer’s service name that is used as a basis to support establishment of the service connection is the *same* as the service name in the service connection request message

that is sent toward a server.” J.A. 6 (citing J.A. 970). The Board then held that the Examiner erred in rejecting claims 1–11, 18, and 19 as anticipated by Traversat, reasoning that while Traversat *suggests* sending a service connection message that comprises the same service name used for establishment of the service connection, Traversat does not *disclose* this limitation as required by anticipation. The Board then entered a new ground of rejection of claims 1–11, 18, and 19 under § 103 as obvious over Traversat. The Board “adopt[ed] the Examiner’s articulated findings from Traversat because th[o]se findings, while not anticipating [claim 1], nonetheless at least suggest[ed] every recited limitation.” J.A. 12 (citation omitted). Then, related to Traversat’s teachings, the Board found:

Although Traversat does not state *explicitly* that the discovery query message 232, i.e., the claimed “service connection request message,” includes the same peer name, or “service name,” of the remote connected services layer that is also used as basis to support establishment of the service connection as claim 1 requires, Traversat at least suggests as much.

J.A. 13. In support, the Board pointed to (1) “Traversat’s Figure 15 . . . using messages to discover ‘advertisements’ according to one embodiment,” J.A. 13 (citing J.A. 677), (2) Traversat’s teaching in connection with Figure 15 that “[n]amed peers may also be located using the peer discovery protocol,” *id.* (alteration in original) (citing J.A. 677), and (3) Traversat’s disclosure that “[i]n one embodiment, peer discovery may be done with, or alternatively without, specifying a *name* for the peer to be located,” *id.* (alteration in original) (citing J.A. 674). Considering these teachings collectively, the Board found “that specifying a name of the peer to be located in the discovery query message 232 would have been at least an obvious variation to discover that particular peer by name to ultimately establish a connection to that peer.” *Id.* The Board also stated there was

“no persuasive evidence” that “ordinarily skilled artisans would be incapable of including the name of the peer to be located in Traversat’s discovery query message or that doing so would somehow be beyond the skill level of ordinarily skilled artisans.” J.A. 13–14. The Board noted in reaching its conclusion that “using this service name as a basis to support a service connection’s establishment does not necessarily use that name to actually establish that connection: it is merely used as a *basis* to *support* that establishment.” J.A. 14–15. The Board, accordingly, entered its new ground of rejection under § 103.

After the Board entered the new ground of rejection, WSOU filed a response under 37 C.F.R. § 41.50(b)(1) for reopening of prosecution. The response did not amend any of the pending claims or set forth substitute claims to replace the pending claims. Instead, WSOU’s response (1) proposed adding new claims in addition to the rejected claims; and (2) presented arguments attempting to rebut the Board’s new ground of rejection, including that Traversat teaches away from the invention. The examiner from the USPTO’s Central Reexamination Unit (CRU) deemed the amendment not “appropriate” under 37 C.F.R. § 41.50(b)(1) and MPEP § 1214.01(I), and therefore did not enter the new claims. J.A. 283. Treating it as a request for rehearing under 37 C.F.R. § 41.50(b)(2), the CRU referred WSOU’s request to the Board. The Board denied the request for rehearing, explaining that it was not persuaded by WSOU’s arguments, including WSOU’s teaching away arguments. *See* J.A. 22–28.

WSOU appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A).

DISCUSSION

WSOU raises two issues on appeal. First, it asserts that the Board’s obviousness determination rests on an erroneous claim construction and findings that are not supported by substantial evidence, or is otherwise legally

erroneous. *See* Appellant’s Br. 7–8. Second, it argues that the CRU did not correctly apply 38 C.F.R. § 41.50(b) to its request to reopen prosecution, and in doing so denied WSOU due process. Appellant’s Br. 8. We discuss each in turn.

I

We first address the Board’s obviousness determination. “We review the Board’s obviousness determinations de novo and its factual findings underlying those determinations for substantial evidence.” *Int’l Bus. Machs. Corp. v. Zillow Grp., Inc.*, 160 F.4th 1360, 1366 (Fed. Cir. 2025) (citation omitted). “Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Arendi S.A.R.L. v. Google LLC*, 882 F.3d 1132, 1133 (Fed. Cir. 2018) (quoting *Consol. Edison Co. of N.Y., Inc. v. NLRB*, 305 U.S. 197, 229 (1938)). After review, we hold that the Board did not err in its obviousness determination.

WSOU first contends that the Board erred by failing to apply the same claim construction as the IPR proceeding. Appellant’s Br. 35–40. Specifically, WSOU argues that while the Board recited its construction from the IPR, it applied a different construction in its analysis by “concluding that finding a ‘peer name’ yields *using* such a name as a ‘basis to support’ a connection with that peer in the manner claimed.” Appellant’s Br. 36 (citing J.A. 6, 14). According to WSOU, the Board effectively collapsed the “establishment” limitation into the “request” limitation. *See* Oral Arg. at 3:09–3:14, https://www.cafc.uscourts.gov/oral-arguments/25-1153_09112026.mp3; *see also* Appellant’s Br. 38–40. We are not convinced by this argument. As WSOU acknowledges, the Board expressly recited the construction from the IPR, “requir[ing] that the remote connected services layer’s service name that is used as a basis to support establishment of the service connection is the *same* as the service name in

the service connection request message that is sent toward a server.” J.A. 6. And the Board noted that the Examiner, in the rejection, “mapp[ed] all instances of the recited service name of the remote connected services layer to the same element.” J.A. 8. This mapping effectively corrected the flaw the Board identified in the IPR proceedings, because the Examiner “map[ped] *all* recited instances—not just one instance—of the recited ‘service name of the remote connected services layer’ to a peer name.” J.A. 7. And WSOU’s arguments as to the Board’s alleged misapplication or change to the claim construction are more properly viewed as challenges to the Board’s determination that Traversat meets the “used as a basis to support” language in claim 1 of the ’014 patent.

We now turn to WSOU’s contention that the Board’s obviousness determination is not supported by substantial evidence. Appellant’s Br. 30–34. WSOU argues that the Board’s “analysis rests entirely on the unsupported assertion that, based on Traversat’s teachings, it would be ‘an obvious variation to discover [a] particular peer by name to establish a connection to that peer ultimately.’” Appellant’s Br. 31 (alteration in original) (quoting J.A. 13). After review, we disagree and hold the Board’s determination is supported by substantial evidence. In its analysis, the Board cited Figure 15’s disclosure of “using messages to discover ‘advertisements’ according to one embodiment” and to its discovery query message 232. J.A. 13 (citing J.A. 677). The Board also relied on Traversat’s teaching in connection with Figure 15 that “[n]amed peers may also be located using the peer discovery protocol.” *Id.* (alteration in original) (emphasis added) (quoting J.A. 677). And it further considered Traversat’s teaching that “[i]n one embodiment, peer discovery may be done with, or alternatively without, specifying a *name* for the peer to be located.” *Id.* (alteration in original) (quoting J.A. 674). We hold that these teachings in combination constitute substantial evidence to support the Board’s finding “that specifying a

name of the peer to be located in the discovery query message 232 would have been at least an obvious variation to discover that particular peer by name to ultimately establish a connection to that peer.” *Id.*

Finally, WSOU argues that the Board “failed to explain why a [skilled artisan] would be interested in using a ‘peer name’ to support establishing a ‘pipe.’” Appellant’s Br. 32. But, as the Board explained, Traversat expressly states “[i]n one embodiment, peer discovery may be done with, or alternatively without, specifying a name for the peer to be located,” and we agree with the Board that this disclosure provides substantial evidence for why Traversat’s discovery query message 232 might “include[] the same peer name . . . of the remote connected services layer that is also used as basis to support establishment of the service connection as claim 1 requires.” J.A. 13.³

II

We next turn to the CRU’s application of 38 C.F.R. § 41.50(b) to WSOU’s request to reopen prosecution, an issue we review for an abuse of discretion. *See Parkervision*,

³ WSOU also argues that the Board “improperly disregarded Traversat’s teachings away from the claimed invention.” Appellant’s Br. 40 (capitalization normalized). The Board addressed WSOU’s arguments and evidence regarding Traversat’s alleged teachings away on rehearing, and it reasonably explained why nothing in the record rose to the level of teaching away. *See, e.g.*, J.A. 26 (explaining, for example, that while WSOU argued “Traversat’s peer-to-peer system seeks to avoid centralization” and thus “peer names cannot guarantee uniqueness,” Traversat discloses an embodiment where “a peer may be assigned a *unique* string as a *name*, and *any* naming scheme can be used”). We see no error in the Board’s finding that Traversat does not teach away.

Inc. v. Vidal, 88 F.4th 969, 978–79 (Fed. Cir. 2023) (“We review for an abuse of discretion the Board’s determination that a party violated [rules promulgated by the USPTO].”); see *In re Durance*, 891 F.3d 991, 1000 (Fed. Cir. 2018) (“We review the Board’s application of its procedural rules for abuse of discretion.”). We review de novo a party’s contention that its rights of due process have been violated. *Apple Inc. v. Voip-Pal.com, Inc.*, 976 F.3d 1316, 1323 (Fed. Cir. 2020).

WSOU argues the CRU erred by refusing to reopen prosecution and enter its claim amendments. It contends its new claims are “an amendment of the claims” under 37 C.F.R. § 41.50(b) and that the amendments are “appropriate” under MPEP § 1214.01.⁴ Appellant’s Br. 44. After review, we hold the CRU did not abuse its discretion in rejecting the request to reopen prosecution and referring the request to the Board as a request for rehearing under 37 C.F.R. § 41.50(b)(2).

In its request to reopen prosecution following the Board’s new ground of rejection, WSOU asserted that the Board’s ground of rejection of the ’014 patent’s claims “should be rejected because it: (1) lacks the necessary and

⁴ We note that the MPEP is not legally binding authority on this court. See *In re Fisher*, 421 F.3d 1365, 1372 (Fed. Cir. 2005) (“The MPEP and Guidelines ‘are not binding on this court, but may be given judicial notice to the extent they do not conflict with the statute.’” (citation omitted)); *Ex Parte Murali Ramadoss and Marc Beuchat*, Appeal No. 2023-001335, 2023 WL 7163681, at *3 (PTAB Oct. 30, 2023) (“The guidelines in the MPEP are not legal requirements.” (citations omitted)); MPEP, Foreword (“The guidance in the manual does not have the force and effect of law or the force of the rules in Title 37 of the Code of Federal Regulation, and are not meant to bind the public in any way.”).

critical articulated reasoning for an obviousness rejection; (2) disregards the Board’s prior reasoning without any explanation; (3) ignores evidence that Traversat teaches away from the claimed features; and (4) contradicts Federal Circuit precedent.” J.A. 237. At the same time, WSOU’s request did not amend or cancel any of the rejected claims. J.A. 238 (“No Claims are amended or canceled.”). As the relevant regulation makes clear, in order to qualify for a reopening of prosecution, the appellant must “[s]ubmit an appropriate amendment of the claims *so rejected* or new Evidence relating to the claims *so rejected*, or both.” 37 C.F.R. § 41.50(b)(1) (emphases added). WSOU did neither.

WSOU argues that its addition of new claims falls under the understanding of an “amendment” in 37 C.F.R. § 1.530(d)(2).⁵ Appellant’s Br. 44. But, even so, WSOU’s proposed amendments did not address the *rejected* claims as required by § 41.50(b)(1). And we agree with the Director’s assertion that the requirement to address the rejected claims “reflects the practical reality that it makes little sense to return a proceeding to an examiner with the same claims on the same record that the Board has already determined to be unpatentable.” Appellee’s Br. 42. This reflects the reality that the Board reviews examiners’ final rejections, not the other way around.

WSOU’s argument that it submitted new evidence which required the USPTO to reopen prosecution also fails. WSOU contends that it submitted evidence showing that Traverstat teaches away from the claimed invention. How-

⁵ 37 C.F.R. § 1.530(d)(2) generally outlines the requirements for an amendment paper proposing new claims and changes to existing claims.

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ever, Traverstat was part of the record that the Board considered.⁶ What WSOU labels as new evidence was, in reality, little more than new argument based on the existing record. The Board properly considered these arguments as part of the request for rehearing under 37 C.F.R. § 41.50(b)(2).

For these reasons, we hold the CRU did not abuse its discretion in rejecting the request to reopen examination and referring the request to the Board as a request for rehearing, and the CRU's decision to do so did not violate WSOU's right to due process.

CONCLUSION

We have considered WSOU's remaining arguments, and we find them unpersuasive. For the foregoing reasons, we affirm.

AFFIRMED

⁶ WSOU cites *In re Sullivan*, 498 F.3d 1345, 1351 (Fed. Cir. 2007), for the proposition that evidence showing the prior art teaches away from the claimed invention is new evidence. The applicant in *Sullivan* submitted additional documents that were not before the Board when it made the initial rejection. *Id.* Thus, the case is distinguishable from the one now before this court.