

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable Bryan F. Moore
Administrative Law Judge

In the Matter of

**CERTAIN LOCATION-SHARING
SYSTEMS, RELATED SOFTWARE,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-1347

COMMISSION INVESTIGATIVE STAFF'S OPENING *MARKMAN* BRIEF

Margaret D. Macdonald, Director
Anne Goalwin, Supervisory Attorney
Monisha Deka, Investigative Attorney

OFFICE OF UNFAIR IMPORT INVESTIGATIONS
U.S. International Trade Commission
500 E Street SW, Suite 401
Washington, DC 20436
(202) 205-3180

April 25, 2023

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. BACKGROUND 1

 A. Asserted Claims..... 1

 B. Background of the ‘970 Patent Claims at Issue in This Investigation 2

 C. Litigation History and Staff’s Deviation from the Prior Markman Orders..... 8

III. SUMMARY OF THE DISPUTES..... 13

 A. Terms to be Construed 13

 B. Disputed Term from the Location Patents 13

 C. Disputed Terms of the Forced Message Patent 14

IV. LEGAL STANDARD 17

V. DISCUSSION 20

 A. Person of Ordinary Skill in the Art..... 20

 B. “Means for Requiring...” 20

 C. “Means for Controlling...” 29

 D. “Means for Presenting...” 32

 E. “...to take control...” 39

 F. “predetermined network of participants, wherein each participant has a similarly equipped PDA/cell phone” 41

 G. “status data” 43

 H. “manual response” 46

 I. “group” 48

VI. CONCLUSION 50

Cases

<i>02 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.</i> , 521 F.3d 1351, 1362 (Fed. Cir. 2008)	17
<i>Advanced Ground Info. Sys., Inc. v. Life360, Inc.</i> , 830 F.3d 1341, 1349-50 (Fed. Cir. 2016)	5, 33, 35
<i>Ancora Techs., Inc. v. Apple, Inc.</i> , 744 F.3d 732, 734 (Fed. Cir. 2014)	44
<i>Aristocrat Techs. Austral. Pty v. Int’l Game Tech.</i> , 521 F.3d 1328, 1333 (Fed. Cir. 2008)	11
<i>Autogiro Co. of America v. U.S.</i> , 384 F.2d 391, 397 -398 (Ct. Cl. 1967).....	44
<i>Aylus</i> , 856 F.3d at 1361.....	9
<i>Bell & Howell Document Mgmt. Prods. Co. v. Altek Sys.</i> , 132 F.3d 701, 706 (Fed. Cir. 1997).....	18
<i>Brown v. 3M</i> , 265 F.3d 1349, 1352 (Fed. Cir. 2001).....	18
<i>CUPP Computing AS v. Trend Micro Inc.</i> , (Fed Cir. 2022).....	9, 26
<i>Finisar v. Directv</i> , 523 F.3d 1323, 1340 (Fed. Cir. 2008)	12, 15
<i>Halliburton Oil Well Cementing Co. v. Walker</i> , 329 U.S. 1 (1946)	27
<i>Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.</i> , 381 F.3d 1111, 1115 (Fed. Cir. 2004).17	
<i>Interactive Gift Express, Inc. v. CompuServe, Inc.</i> , 256 F.3d 1323, 1331 (Fed. Cir. 2001).....	18
<i>Media Rights Techs., Inc. v. Capital One Fin. Corp.</i> , 800 F.3d 1366, 1371 (Fed. Cir. 2015).....	46
<i>Nautilus, Inc. v. Biosig Instruments, Inc.</i> , 572 U.S. 898, 911 (2014)	44
<i>Omega Eng’g, Inc. v. Raytek Corp.</i> , 334 F.3d 1314, 1324 (Fed. Cir. 2003).....	18
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303, 1312 (Fed. Cir. 2005).....	17, 18
<i>Rain Computing v. Samsung Electronics</i> , 989 F.3d 1002, 1007-08 (Fed. Cir. 2021).....	9, 10, 25
<i>Studiengesellschaft Kohle v. Shell Oil Co.</i> , 112 F.3d 1561, 1564 (Fed. Cir. 1997).....	20
<i>Synchronoss Techs., Inc. v. Dropbox, Inc.</i> , 987 F.3d 1358, 1368 (Fed. Cir. 2021)	9, 15
<i>Typhoon Touch Technologies v. Dell, Inc.</i> , 659 F.3d 1376, 1385 (Fed. Cir. 2011).....	10, 35
<i>Vanderlande Indus. Nederland BV v.Int’l Trade Comm’n.</i> , 366 F.3d 1311,1323 (Fed. Cir. 2004).....	17
<i>Vitronics Corp. v. Conceptronic, Inc.</i> , 90 F.3d 1576, 1582 (Fed. Cir. 1996)	18
<i>Vivid Tech., Inc. v. American Sci. & Eng’g, Inc.</i> , 200 F.3d 795, 803 (Fed. Cir. 1999).....	17

<i>VLSI Tech. LLC v. Intel Corp.</i> , 53 F.4th 646, 653 (Fed. Cir. 2022)	32
<i>Warner-Jenkinson Co. v. Hilton Davis Chemical</i> , 520 U.S. 17, 27-28 (1997).....	27, 28
<i>Williamson v. Citrix Online, LLC</i> , 792 F.3d 1339, 1351-52 (Fed. Cir. 2015)	34, 38
<i>WMS Gaming, Inc. v. Int'l Game Tech.</i> , 184 F.3d 1339, 1349 (Fed. Cir. 1999).....	10

I. Introduction

Pursuant to Order No. 9, the Commission Investigative Staff (“Staff”) respectfully submits this initial *Markman* brief. This brief addresses the terms in the claims of asserted U.S. Patent Nos. 8,213,970 (“the ’970 Patent”); 9,467,838 (“the ’838 patent”); 9,445,251 (“the ’251 patent”); 9,749,829 (“the ’829 patent”); and 9,820,123 (“the ’123 patent”) (collectively, “the Asserted Patents”) that Complainants Advanced Ground Information Systems, Inc. and AGIS Software Development LLC (“AGIS” or “Complainants”), Respondents,¹ or the Staff have identified as in dispute. Should the private parties raise additional claim construction disputes in the future, *e.g.*, as part of their rebuttal *Markman* briefs or as part of the parties’ pre-hearing statements and briefs, the Staff may seek to address such disputes if and when appropriate.

II. Background

A. Asserted Claims

Complainants allege infringement of claims 2 and 10-13 of the ’970 patent; claims 1, 3, 5-10, 16, 19, 25, 38, 40, 54-56, 61-64, 68, 71, 72, 80 and 84 of the ’838 patent; claims 1, 2, 5, 7, 8, 23-25, 28-31, and 35 of the ’251 patent; claims 1, 8, 34, 35, 41, and 68 of the ’829 patent; and claims 14 and 36-38 of the ’123 patent. *See* Notice of Investigation, 87 Fed. Reg. 80568 (December 30, 2022). On the face of the Asserted Patents, all claim priority to the application for the non-asserted parent, U.S. Patent 7,031,728 (“the ’728 patent”), filed on September 21,

¹ Google LLC; Samsung Electronics, Co., Ltd.; Samsung Electronics America, Inc.; OnePlus Technology (Shenzhen) Co., Ltd.; TCL Technology Group; TCL Electronics Holdings Limited; TCL Communication Technology Holdings Limited; TCT Mobile (US) Inc.; Lenovo Group Ltd.; Lenovo (United States) Inc.; Motorola Mobility LLC; HMD Global; HMD Global OY; HMD America, Inc.; Sony Corporation; Sony Mobile Communications, Inc.; ASUSTek Computer Inc.; ASUS Computer International; BLU Products; Panasonic Holding Corporation; Panasonic Corporation; Kyocera Corporation; Xiaomi Corporation; Xiaomi H.K. Ltd.; Xiaomi Communications Co., Ltd.; and Xiaomi Inc.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.