MACROSOLVE, INC.	§	
	§	CIVIL ACTION NO. 6:11-cv-287-MHS-JDL
v.	§	
	§	**CONSOLIDATED LEAD CASE**
ANTENNA SOFTWARE, INC., et al.,	§	
	§	
	§	
	§	

MACROSOLVE'S OPENING *MARKMAN* BRIEF

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III. THE COURT SHOULD ADOPT MACROSOLVE'S PROPOSED CONSTRUCTIONS 4

A. "questionnaire" 4

B. "tokens" 7

C. "tokenizing" 9

D. "executing at least a portion of said plurality of tokens…" 11

IV. THE REMAINING TERMS DO NOT REQUIRE FURTHER CONSTRUCTION 13

A. "tokenizing said questionnaire…" 13

B. "after said first wireless modem or wireless LAN network connection is terminated, executing…" 14

C. "series of questions" 15

D. "terminating said first … connection / taking said handheld …communication" 16

E. "incorporating said transmitted tokens…thereby modifying said questionnaire" 17

V. NOT EVERY STEP OF THE METHOD CLAIMS MUST BE PERFORMED IN ORDER 19

VI. CONCLUSION 20

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guidance, this includes determining the scope of the patent—that is, the metes and bounds of the invention—as well as the meaning of terms used in the claims, providing guidance to a lay jury of what the claims actually mean. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). All of this is done as a matter of law, before the claims reach the fact finder to determine infringement or invalidity. *Id.*

MacroSolve has undertaken to properly determine the "scope and meaning" of the claim terms, in the context of the intrinsic evidence—the claims, specification, and patent prosecution, and the extrinsic evidence. *See id.*

In contrast, defendants repeatedly propose constructions that improperly limit the scope of the claims. For example, defendants attempt to rewrite "questionnaire" to include the limitation that it must be a complete form or program and that it must include internal branching logic, neither of which are required by the claim language, specification or file history. The Court should adopt MacroSolve's proposed constructions.

II. BACKGROUND

The patent-in-suit, U.S. Patent No. 7,822,816 (attached as Exhibit 1), entitled "System and Method for Data Management," relates generally to a method of collecting data from handheld devices. Earlier methods of collecting data from handheld devices required hard coding. In order to make a change in the questionnaire, or to create a new questionnaire, it was necessary to re-write the source code to reflect the new questions, re-compile the code, and re-install the program on the handheld devices. This was particularly burdensome if different types

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type of network connections available.

These types of problems are addressed by the 816 Patent. In the late 1990's, the founder of MacroSolve, J. David Payne, had spent many months programming an application for a specific handheld device. When the handheld device was discontinued, the software designed for the device became worthless since it would have to be re-coded for the replacement device. To overcome these problems, Mr. Payne invented a method of data collection that separated the survey program running on the device from the surveys themselves.

Mr. Payne's invention is depicted, in part, in the following figure from the 816 Patent:

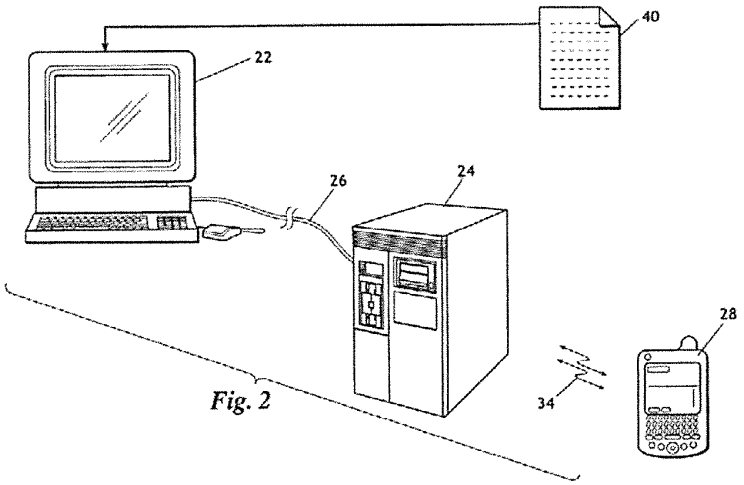

Fig. 2

As shown in this figure, a questionnaire is processed by a computer 22. Computer 22 tokenizes the questionnaire so that it can be transmitted to handheld device 28 in a format that a program running on the handheld device can understand. Using this scheme, when the questionnaire is updated, it is not necessary to edit, compile, and re-install the program running

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