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### UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WAVEMARKET, INC. D/B/A LOCATION LABS Petitioner

v.

LOCATIONET SYSTEMS, LTD. Patent Owner

> Case No. IPR2014-00199 U.S. Patent 6,771,970

PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY

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<i>Garmin Int'l, Inc. v. Patent of Cuozzo Speed Techs. LLC</i> , Case No. IPR2012-00001, Paper No. 26 (P.T.A.B. Mar. 5, 2013)
Phelps v. Hamilton, 122 F.3d 1309 (10th Cir. 1997)
Zoll LifeCor Corp. v. Philips Electronics North America Corp. et al., IPR2013-00616, Paper 17 (March 20, 2014)
STATUTES
35 U.S.C. § 312(a)(2)
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#### **OTHER AUTHORITIES**

37 C.F.R. § 42.52(a)	1
37 C.F.R. § 42.51 (b)(2)	1
37 C.F.R. § 42.101(b)	9
Office Patent Trial Practice Guide, 77 Federal Register 157 (Aug. 14, 2012), pp. 48756-773	7, 8, 9

#### **PATENT OWNER'S EXHIBITS**

Ex. #	Description
2004	Proposed interrogatories and associated document requests
2005	Sprint's Answer to CallWave's Complaint in <i>CallWave</i> <i>Communications, LLC v. Sprint Nextel Corp. and Google, Inc.</i> , Civil Action No. 1:12-cv-01702-RGA (D. Del)
2006	T-Mobile's Answer to CallWave's Complaint in <i>CallWave</i> <i>Communications, LLC v. T-Mobile USA Inc. and Google, Inc.,</i> Civil Action No. 1:12-cv-01703-RGA (D. Del).
2007	Defendants' Motion To Stay Pending Inter Partes Review.
2008	Subpoena to Wavemarket, Inc., d/b/a Location Labs in the matter of <i>CallWave Communications, LLC v. Wavemarket, Inc. d.b.a. Location Labs,</i> Case No. MC 14-80112-JSW-LB (D. Del).
2009	April 8, 2014 letter from counsel for Petitioner with objections and responses to Petitioner's subpoena.
2010	Petitioner's Objections and Responses to CallWave's Subpoena in <i>CallWave Communications, LLC v. AT&amp;T Mobility, LLC, and Google, Inc.</i> , Civil Action No. 1:12-cv-01701-RGA (D. Del).
2011	April 9, 2014, Hearing Transcript in the matter of <i>CallWave</i> <i>Communications, LLC v. Wavemarket, Inc. d.b.a. Location Labs,</i> Case No. MC 14-80112-JSW-LB (D. Del).
2012	April 17, 2013, Copy of email from Edward M. Abbati, Vice President of Finance for Petitioner, to Richard Sanders, Chief Executive Officer ("CEO") of Callwave Communications, LLC.
2013	Proposed Protective Order submitted in <i>CallWave Communications,</i> <i>LLC v. Wavemarket, Inc. d.b.a. Location Labs,</i> Case No. MC 14- 80112-JSW-LB (D. Del.).

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