

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

TracBeam, LLC,

Plaintiff,

v.

Cisco Systems, Inc.,

Defendant.

Case No. 6:17-cv-525-RWS

**Joint Claim Construction and Prehearing Statement  
[Patent Rule 4-3]**

Pursuant to Patent Rule 4-3, the parties hereby submit their Joint Claim Construction and Prehearing Statement (“Joint Statement”). This Joint Statement addresses the agreed and disputed claim terms and phrases from the asserted claims of the five asserted patents: U.S. Patent Nos. 7,298,327 (the ’327 Patent); 7,525,484 (the ’484 Patent); 7,764,231 (the ’231 Patent); 9,237,543 (the ’543 patent); and 9,277,525 (the ’525 patent) (collectively, the “patents-in-suit”).

**I. Agreed Claim Constructions [P.R. 4-3(a)]**

The parties agree to the following constructions:

- “mobile station” (’484 patent, claims 25, 49, 57; ’231 patent claims 30, 34): “mobile wireless device that is at least a transmitting device and may include a receiving device.”
- “location determiner” (’327 claim 1): the parties agree that this term is governed by 35 U.S.C. §112, ¶6 but offer differing proposals for the claimed function and corresponding structure.
- “mobile station location evaluator” (’484 claims 25, 57, ’231 claim 30): the parties agree that this term is governed by 35 U.S.C. §112, ¶6 but offer differing proposals for the

claimed function and corresponding structure.

- “mobile station location estimator” ('484 claim 49): the parties agree that this term is governed by 35 U.S.C. §112, ¶6 but offer differing proposals for the claimed function and corresponding structure.
- “location estimation determiner” ('231 claim 34): the parties agree that this term is governed by 35 U.S.C. §112, ¶6 but offer differing proposals for the claimed function and corresponding structure.

If the parties are subsequently able to reach agreement concerning additional claim terms in advance of the claim construction hearing, they will promptly supplement this Joint Statement.

## **II. Disputed Claim Constructions [P.R. 4-3(b)]**

In accordance with the Docket Control Order in this case: (a) the parties identify the following 15 disputed terms and phrases that they seek to have addressed at the August 1, 2018, hearing, and (b) the parties assert that (i) TracBeam does not presently contend that any of these disputed terms will be “case or claim dispositive,” and (ii) Cisco contends that the constructions of the disputed terms proposed below have the potential to be “case or claim dispositive.”

1. “location determiner” ('327 claim 1)
2. “mobile station location evaluator” ('484 claims 25, 57; '231 claims 30)
3. “mobile station location estimator” ('484 claim 49)
4. “location estimation determiner” ('231 claim 34)
5. “(A1)-(A3) following are accessed” ('543 claim 1)
6. “initiating a plurality of requests for information” ('484 claim 25)
7. “pattern recognizers” ('525 claim 1)
8. “multipath” ('525 claim 1)

9. “similarity determining computational machine that determines location related information for locating mobile unit M” ('543 claim 1)
10. “stochastic technique” ('327 claim 46, '231 claim 34)
11. “learning technique” ('231 claim 34)
12. “deadreckoning process” ('543 claim 44)
13. “a granularity of by which a location estimate of the mobile station represented by said resulting location information is to be provided” ('484 claim 61)
14. “location representation” ('231 claim 34)
15. “non-terrestrial communication stations above and not supported on the earth’s surface” ('231 claim 34) / “communications devices which is not supported on the earth’s surface” ('543 claim 1)

The parties will continue to work to narrow and resolve the disputes before the August 1, 2018 hearing.

Exhibit A sets forth a table that identifies each disputed claim term or phrase and each parties’ proposed construction or position as to that term or phrase.

Exhibit B sets forth Plaintiff TracBeam’s proposed constructions and positions, together with relevant sections of the specifications<sup>1</sup> and prosecution histories of the asserted patents and supporting extrinsic evidence as required by P.R. 4-3(b).

Exhibit C sets forth Defendant Cisco’s proposed constructions and positions, together

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<sup>1</sup> The parties have agreed to cite to the specification of the '327 Patent (the earliest issuing of the asserted patents) for any intrinsic evidence support from the patents-in-suit. The specification of the patents-in-suit are largely identical in substance, with the same or similar text generally differing only by column/line numbers between the patents. If there is relevant material that is found in unique text in a particular patent-in-suit that a party wishes to cite (i.e., such text is not also set forth in the '327 Patent) then that party may cite that particular patent’s unique text in lieu of (or in addition to) citing the '327 Patent.

with relevant sections of the specifications and prosecution histories of the asserted patents and supporting extrinsic evidence as required by P.R. 4-3(b).

Each party reserves the right to rely on any intrinsic and extrinsic evidence identified by the other party, and any evidence obtained, or that may be obtained, through claim construction discovery or through analysis of the other party's identification of evidence in the exhibits. The parties also reserve the right to amend, correct, or supplement their claim construction positions and supporting evidence in response to any change of position by the other party, in response to information received through claim construction discovery, including expert depositions concerning claim construction declarations, or for other good cause.

### **III. Length of Claim Construction Hearing [P.R. 4-3(c)]**

The parties anticipate that the claim construction hearing will require three hours. Each side will have equal time to argue the disputed terms.

### **IV. Witness Testimony at Claim Construction Hearing [P.R. 4-3(d)]**

Neither party has current plans to call any live witnesses at the claim construction hearing. The parties, however, may be offering expert declarations in support of their Markman briefs. For any expert declarations submitted in support of the Markman briefing, such expert will generally testify about their educational background, the subject matter of the patents in suit, their experience with the technology that is claimed in the patents in suit, and the skill level of one of ordinary skill in the art of the technology of the patents in suit. Each expert may also be asked to testify regarding the proposed constructions of certain disputed claim terms and on the issue of indefiniteness.

With respect to the timing of expert declarations and depositions regarding claim construction and indefiniteness, the parties have agreed as follows:

- Any expert declaration from Plaintiff TracBeam's expert submitted to support a proposed construction or position will be submitted with Plaintiff's Opening Markman Brief, except that Plaintiff may also submit—with its Reply Brief—an expert declaration in response to any indefiniteness contentions made by Defendant Cisco in its Responsive Markman Brief. If Plaintiff submits expert testimony for the first time in its Reply Brief on any issue, Defendant Cisco may also submit—with a Sur-Reply Brief—an expert declaration in response.
- Any expert declaration from Defendant Cisco's expert submitted to support a proposed construction or position (including any indefiniteness contentions) will be submitted with Defendants' Responsive Markman Brief.

The party providing an expert declaration must make the expert available for deposition at a reasonable time before the opposing party's next briefing deadline.

#### V. Other Issues [P.R. 4-3(e)]

No additional issues to raise at this time. The parties do not currently believe that a prehearing conference is required, but will be available for such a conference should the Court deem one necessary.

Date: April 18, 2018

Respectfully submitted,

By: /s/ Jeff Eichmann  
John Jeffrey Eichmann  
CA State Bar No. 227472  
(admitted in the Eastern District of Texas)  
Simon Carlo Franzini  
CA State Bar No. 287631  
(admitted in the Eastern District of Texas)  
Dovel & Luner, LLP  
201 Santa Monica Blvd., Suite 600  
Santa Monica, CA 90401  
Telephone: 310-656-7066  
E-mail: jeff@dovel.com

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