

Claim Constructions

“a forced message alert software application / a forced message alert software application program” ('970 Patent, Claims 1, 2, 10, 11, 12)

AGIS's Proposed Construction

“application software that allows an operator to create and transmit message alerts”

Defendants' Proposed Construction

“software application requiring a manual response from the recipient of a forced message alert sent by an operator before the recipient's display is cleared and/or the voice message stops repeating”

Issues:

- Both parties agree “a forced message alert software application [program]” requires construction.
- The claims, the specification, and the file history define “forced message alert software application” to require “a manual response.”

Clearing the Forced Message Alert Requires a Manual Response



AGIS's Focus on the *Huawei* Decision Is Misplaced

Huawei's proposed construction is ***not*** Defendants' proposed construction

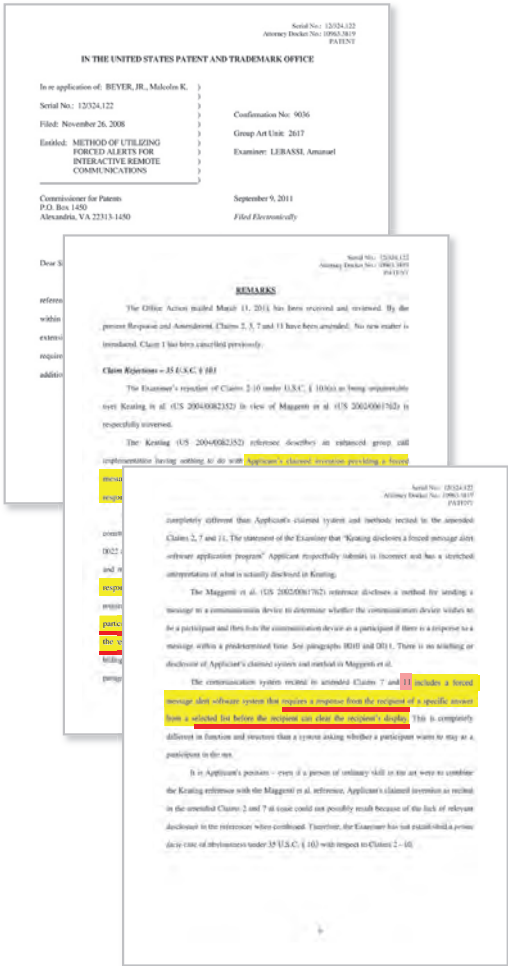
Huawei's Construction

"application software that allows an operator to create and transmit forced message alerts, automatically transmit an acknowledgement of receiving them, periodically resend them when no acknowledgement is received, indicate on a display which recipient devices have acknowledged the forced message alert, provide a manual response list on the display of the recipient device, and provide an indication of the status and content of the manual response selected by the recipient devices"

The prosecution history identified by Defendants was ***not*** provided by Huawei

Here, however, Defendants **have not identified any definition or disclaimer** in this regard or otherwise shown that the patentee limited the disputed term to require all the cited details of how the claimed invention may be "embodied."

The Prosecution History Compels a “Manual Response”

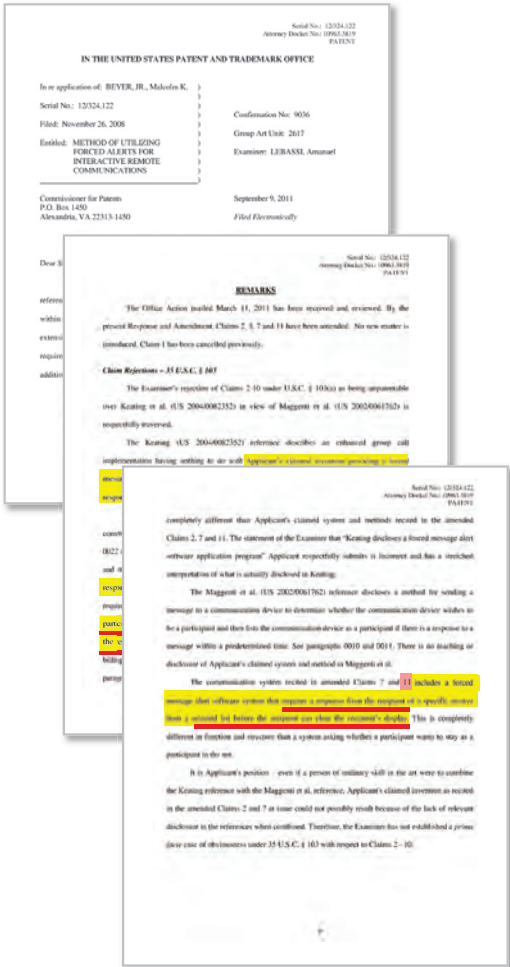


The Keating (US 2004/0082352) reference describes an enhanced group call implementation having nothing to do with Applicant's claimed invention providing a forced message alert and requiring a specific response from a recipient selected from the prepared list of responses prior to the recipients display being cleared of the message and required response.

Figures 2 and 4 of Keating show flowcharts delineating the essence of the communication system disclosed in Keating. The flowcharts are described in detail in paragraphs 0022 and 0031 of Keating. There is no discussion or disclosure that would suggest the system and method recited in amended Claims 2, 7 and 11 concerning the initiation of a required response from a recipient which is automatically transmitted by the recipient's device and the requirement in response to the forced message alert that the recipient must respond with a particular answer selected from previously provided list of potential answers especially before the recipient's display screen can be cleared. In fact, Keating is concerned with the accurate:

Application Claim 11 Issued as Claim 10

The Prosecution History Compels a “Manual Response”



The communication system recited in amended Claims 7 and 11 includes a forced message alert software system that requires a response from the recipient of a specific answer from a selected list before the recipient can clear the recipient's display. This is completely different in function and structure than a system asking whether a participant wants to stay as a participant in the net.

Application Claim 11 Issued as Claim 10

The Claims Compel a “Manual Response”

2. The system as in claim 1, wherein the forced message alert software application program on the recipient PDA/cell phone includes:

means for transmitting the acknowledgment of receipt to said sender PDA/cell phone immediately upon receiving a forced message alert from the sender PDA/cell phone;

means for controlling of the recipient PDA/cell phone upon transmitting said automatic acknowledgment and causing, in cases where the force message alert is a text message, the text message and a response list to be shown on the display of the recipient PDA/cell phone or causes, in cases where the forced message alert is a voice message, the voice message being periodically repeated by the speakers of the recipient PDA/cell phone while said response list is shown on the display;

means for allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone; and

means for clearing the text message and a response list from the display of the recipient PDA/cell phone or stopping the repeating voice message and clearing the response list from the display of the recipient PDA/cell phone once the manual response is transmitted.

'970 Patent, Claim 2

6. A method of sending a forced message alert to one or more recipient PDA/cell phones within a predetermined communication network, wherein the receipt and response to said forced message alert by each intended recipient PDA/cell phone is tracked, said method comprising the steps of:

...

clearing the recipient's display screen or causing the repeating voice alert to cease upon recipient selecting a response from the response list required that can only be cleared by manually selecting and transmitting a response to the manual response list.

'970 Patent, Claim 6

“Other claims of the patent in question, both asserted and unasserted, can also be valuable sources of enlightenment as to the meaning of a claim term. Because claim terms are normally used consistently throughout the patent, the usage of a term in one claim can often illuminate the meaning of the same term in other claims.”

Phillips v. AWH Corp., 415 F.3d 1303, 1315 (Fed. Cir. 2005) (en banc)

The Specification Compels a “Manual Response”

All embodiments require a “manual response.”

(57) **ABSTRACT**

edged the forced message alert; (e) provide a manual response list on the display of the recipient PC and PDA/cell phone’s display that can only be cleared by manually transmitting a response; and (f) provide an indication on the sender PDA/

’970 Patent at Abstract

1. Field of the Invention

A communications system and method that uses a plurality of PCs and PDA/cell phones for the coordination of two or more people through the use of a communications network. The system and method provide each user with a PC or PDA/cell phone that has forced message alert software that enables a user to create and send a voice or text message alert that forces an automatic acknowledgement upon receipt and a manual response from the recipient.

’970 Patent at 1:20- 22

messages do not provide each of those functions. As a result, what is needed is a method in which a sender of a text or voice message can force an automatic acknowledgement upon receipt from a recipient’s cell phone or PC and a manual response from the recipient via the recipient’s cell phone or PC when sending the text or voice message.

’970 Patent at 1:62–67

edged the forced message alert; (e) provide a manual response list on the display of the recipient PC and PDA/cell phone’s display that can only be cleared by manually selecting and transmitting a response from the list or recording and transmitting a voice response after sending said automatic acknowledgment; and (f) provide an indication on the sender

’970 Patent at 2:26–31

After the acknowledgement of receipt is transmitted, the forced voice alert software application program effectively takes control of the recipient PC or PDA/cell phone. If a text message was received, the forced voice alert software application program causes the text message and the response list to be shown on the display of the recipient PC or PDA/cell phone until a manual response is selected from the response list. Upon selection of the desired response, the forced alert text data is cleared from the recipient PC or PDA/cell phone display.

’970 Patent at 8:37–45

The Specification Compels a “Manual Response”

- The sole “object of this invention” requires a manual response.

It is **the object of this invention** provide to a method in which by sending a forced text or voice message to a recipient or a group of recipients, a sender can compel an automatic acknowledgement of receipt from each recipient’s PC or PDA/cell phone and **require a manual response from the recipient via the recipient’s cell phone before the message can be cleared.**

’970 Patent at 2:49–55

“a data transmission means that facilitates the transmission of electronic files between said PDA/cell phone in different locations”

'970 Patent, Claim 1

Exemplary Claim

1. A communication system for transmitting, receiving, confirming receipt, and responding to an electronic message, comprising:

a predetermined network of participants, wherein each participant has a similarly equipped PDA/cell phone that includes a CPU and a touch screen display a CPU and memory;

a data transmission means that facilitates the transmission of electronic files between said PDA/cell phones in different locations;

a sender PDA/cell phone and at least one recipient PDA/cell phone for each electronic message;

a forced message alert software application program including a list of required possible responses to be selected by a participant recipient of a forced message response loaded on each participating PDA/cell phone;

...

'970 Patent, Claim 1

Claim Constructions

“a data transmission means that facilitates the transmission of electronic files between said PDA/cell phone in different locations” ('970 Patent, Claim 1)

AGIS's Proposed Construction

Governed by § 112,16.

Function: “facilitating the transmission of electronic files between said PDA/cell phones in different locations”

Structure: “communications network server; and equivalents thereof”

Defendants' Proposed Construction

Governed by § 112,16.

Function: facilitating the transmission of electronic files between said PDA/cell phones in different locations

Structure/Algorithm: a PDA/cell phone programmed to implement transmission of a forced message alert using TCP/IP or another communications protocol, and equivalents thereof

Issue(s):

- Whether the corresponding structure is a “communications network server” (as AGIS proposes) or a “PDA/cell phone programmed to implement transmission of a forced message alert using TCP/IP or another communications protocol” (as Defendants propose).

Use of a Server Is Optional

- The '970 Patent ties the “transmission means” to a PDA or cell phone that uses TCP/IP or another communications protocol, and expressly **excludes** a communications server as a necessary component to achieve that function.
- To define the disputed structure as always requiring a server, conflicts with the specification’s statement that use of a server is optional.

Referring now to FIG. 3A and FIG. 3B, the process of sending a forced message alert from a PC or PDA/cell phone begins with a sender selecting the forced message alert software application program on a sender PC or PDA/cell phone. The sender can then select by said sender PC or PDA/cell phone to type a text message or record a voice message or select the text alert or voice alert from a list. Once the sender types a text message or records a voice message or selects a voice or text message on said PC or PDA/cell phone, the sender can then use a soft switch or selection from a list to send the forced alert to: a.) Another network participant, b.) The current PC or PDA/cell phone network participants or c.) A user or administrator predefined list of network participants. The response list from which the message receiver must select can either be included in the forced alert message or be preloaded in each phone. The forced alert message is then transmitted via TCP/IP or other digital transmission means to every PC or PDA/cell phone designated to receive the forced message alert either directly or through a server whose function is to retransmit the messages to the correct users in the communications network.

'970 Patent at 7:43–63

Use of a Server Is Optional



Phone-to-Phone



Phone-to-Server-to-Phone

“means for allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone”

'970 Patent, Claim 2

Exemplary Claim

2. The system as in claim 1, wherein the forced message alert software application program on the recipient PDA/cell phone includes:

means for transmitting the acknowledgment of receipt to said sender PDA/cell phone immediately upon receiving a forced message alert from the sender PDA/cell phone;

means for controlling of the recipient PDA/cell phone upon transmitting said automatic acknowledgment and causing, in cases where the force message alert is a text message, the text message and a response list to be shown on the display of the recipient PDA/cell phone or causes, in cases where the forced message alert is a voice message, the voice message being periodically repeated by the speakers of the recipient PDA/cell phone while said response list is shown on the display;

means for allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone; and

means for clearing the text message and a response list from the display of the recipient PDA/cell phone or stopping the repeating voice message and clearing the response list from the display of the recipient PDA/cell phone once the manual response is transmitted.

'970 Patent, Claim 2

Claim Constructions

“means for allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone”
(’970 Patent, Claim 2)

AGIS’s Proposed Construction

Governed by § 112, ¶ 6

Function: “allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone”

Structure: “PDA/cell phone configured to implement the algorithm disclosed in the ’970 Patent at 7:43-63, 8:9-57; and equivalents thereof”

Defendants’ Proposed Construction

Governed by § 112, ¶ 6

Function: allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone

Structure/Algorithm: Indefinite (no structure/algorithm disclosed)

Issue(s):

- Does this term use purely functional language without reciting sufficient structure/algorithm to perform the function?

AGIS' Picks and Chooses from Court's Prior Construction

“means for allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone”
(’970 Patent, Claim 2)

AGIS's Proposed Construction

Governed by § 112, ¶ 6

Function: “allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone”

Structure: “PDA/cell phone configured to implement the algorithm disclosed in the ’970 Patent at 7:43-63, 8:9-57; and equivalents thereof”

Court's Prior Construction in *Google*

Governed by § 112, ¶ 6

Function: “allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone”

Structure/Algorithm: “a PC or PDA/cell phone configured to implement the algorithm disclosed in the ’970 Patent at 8:39–44 & 8:52–57; and equivalents thereof”

A “PDA / cell phone” Is a General-Purpose Computer

- The portions of the '970 Patent cited in the Court's previous construction merely repeat the language and recite “a PDA / cell phone,” *i.e.*, a general-purpose computer.

After the acknowledgement of receipt is transmitted, the forced voice alert software application program effectively takes control of the recipient PC or PDA/cell phone. If a text message was received, the forced voice alert software application program causes the text message and the response list to be shown on the display of the recipient PC or PDA/cell phone until a manual response is selected from the response list. Upon selection of the desired response, the forced alert

'970 Patent at 8:38–44

Once a response is selected or recorded and transmitted to the sender PC or PDA/cell phone, the forced message alert software application program releases effective control of the recipient PC or PDA/cell phone, clears the display, and or stops repeating the voice message and transmits the response to the force alert sender.

'970 Patent at 8:52–57

The Specification Cites Do Not Disclose Requisite Algorithm

- Neither passage explains **how** a manual response is manually selected and transmitted.

After the acknowledgement of receipt is transmitted, the forced voice alert software application program effectively takes control of the recipient PC or PDA/cell phone. If a text message was received, the forced voice alert software application program causes the text message and the response list to be shown on the display of the recipient PC or PDA/cell phone until a manual response is selected from the response list. Upon selection of the desired response, the forced alert

'970 Patent at 8:38–44

Once a response is selected or recorded and transmitted to the sender PC or PDA/cell phone, the forced message alert software application program releases effective control of the recipient PC or PDA/cell phone, clears the display, and or stops repeating the voice message and transmits the response to the force alert sender.

'970 Patent at 8:52–57

The Spec Cites Are Not Clearly Linked to the Claim Language

- AGIS does not dispute this; proposes much broader passages.

Referring now to FIG. 3A and FIG. 3B, the process of sending a forced message alert from a PC or PDA/cell phone begins with a sender selecting the forced message alert software application program on a sender PC or PDA/cell phone. The sender can then select by said sender PC or PDA/cell phone to type a text message or record a voice message or select the text alert or voice alert from a list. Once the sender types a text message or records a voice message or selects a voice or text message on said PC or PDA/cell phone, the sender can then use a soft switch or selection from a list to send the forced alert to: a.) Another network participant, b.) The current PC or PDA/cell phone network participants or c.) A user or administrator predefined list of network participants. The response list from which the message receiver must select can either be included in the forced alert message or be preloaded in each phone. The forced alert message is then transmitted via TCP/IP or other digital transmission means to every PC or PDA/cell phone designated to receive the forced message alert either directly or through a server whose function is to retransmit the messages to the correct users in the communications network.

'970 Patent at 7:43-63

The sender PC or PDA/cell phone also monitors for and receives electronic transmissions with manual responses to the forced message alert from the PC or PDA/cell phone that received the message. As these electronic transmissions with manual responses are received, the sender PC or PDA/cell phone displays an indication of the response from each recipient cell phone, integrated PDA/cell phone and PC.

Referring now to FIG. 4, the process of receiving, acknowledging and responding to a forced message alert from the sender PC or PDA/cell phone begins when an electronic transmission is received by a recipient PC or PDA/cell phone. When the electronic transmission is received by the recipient PC or PDA/cell phone, the recipient PC or PDA/cell phone identifies the transmission as a forced message alert and the forced message alert software application program on the recipient PC or PDA/cell phone separates the text or voice message and the forced message alert software packet. Immediately following the detection of the forced message alert, the forced message alert software application program on the recipient PC or PDA/cell phone prepares and electronically transmits an automatic acknowledgement of receipt to the sender PC or PDA/cell phone. However, if the recipient PC or PDA/cell phone is powered off or is not able to receive electronic transmissions, the forced message alert is not received by the recipient PC or PDA/cell phone and no acknowledgment is transmitted. If no acknowledgement is received, the sender PC or PDA/cell phone continues to transmit the forced alert at a predefined rate until acknowledged.

After the acknowledgement of receipt is transmitted, the forced voice alert software application program effectively takes control of the recipient PC or PDA/cell phone. If a text message was received, the forced voice alert software application program causes the text message and the response list to be shown on the display of the recipient PC or PDA/cell phone until a manual response is selected from the response list. Upon selection of the desired response, the forced alert text data is cleared from the recipient PC or PDA/cell phone display. If a voice message was received, the forced voice alert software application program causes the voice message to be periodically repeated using the speakers of the recipient PC or PDA/cell phone while the response list is shown on the display. This voice message cannot be stopped from repeating until one of the entries on the response list is selected.

Once a response is selected or recorded and transmitted to the sender PC or PDA/cell phone, the forced message alert software application program releases effective control of the recipient PC or PDA/cell phone, clears the display, and or stops repeating the voice message and transmits the response to the force alert sender.

'970 Patent at 8:9-57

Claim Constructions

“means for allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone” (’970 Patent, Claim 2)

AGIS’s Proposed Construction

Governed by § 112, ¶ 6

Function: “allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone”

Structure: “PDA/cell phone configured to implement the algorithm disclosed in the ’970 Patent at 7:43-63, 8:9-57; and equivalents thereof”

Defendants’ Proposed Construction

Governed by § 112, ¶ 6

Function: allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone

Structure/Algorithm: Indefinite (no structure/algorithm disclosed)

Issue:

- The term is indefinite because it uses purely functional language without reciting sufficient structure / algorithm to perform the function.

“transmitting a selected required response from the response list in order to allow the message required response list to be cleared from the recipient’s cell phone display”

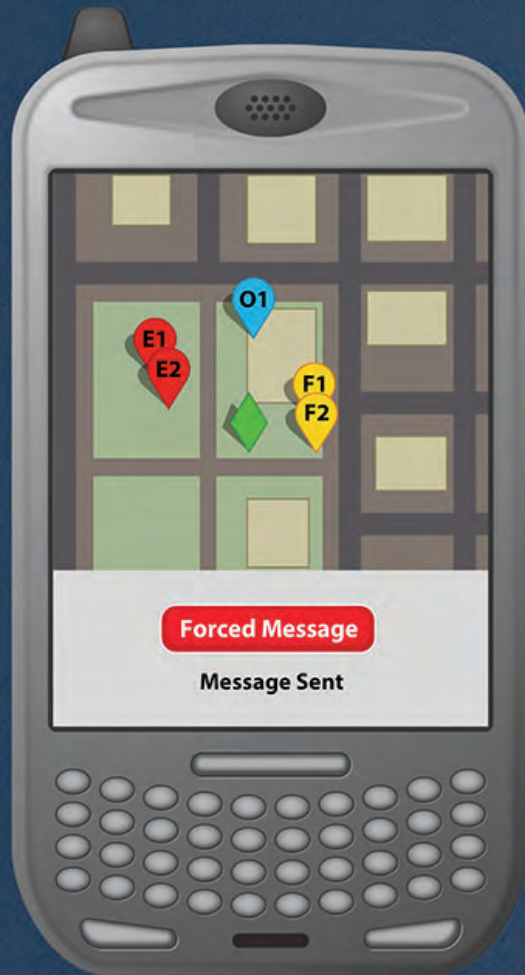
“required response list”

'970 Patent, Claim 10

The '970 Patent in Action



The '970 Patent in Action

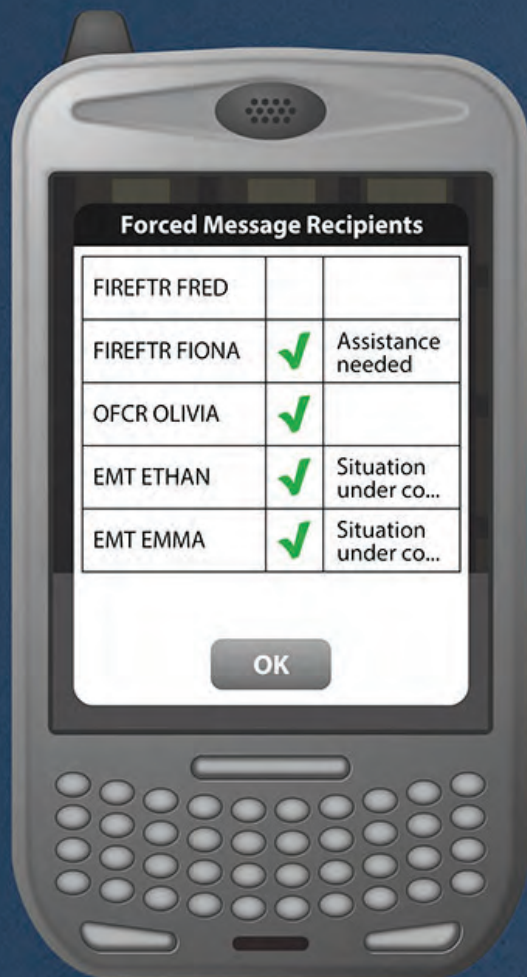


Chief Charlie



Officer Olivia

The '970 Patent in Action



Chief Charlie



Officer Olivia

Asserted Claim 10

10. A method of receiving, acknowledging and responding to a forced message alert from a sender PDA/cell phone to a recipient PDA/cell phone, wherein the receipt, acknowledgment, and response to said forced message alert is forced by a forced message alert software application program, said method comprising the steps of:

transmitting an automatic acknowledgment of receipt to the sender PDA/cell phone, which triggers the forced message alert software application program to take control of the recipient PDA/cell phone and show the content of the text message and a required response list on the display recipient PDA/cell phone or to repeat audibly the content of the voice message on the speakers of the recipient PDA/cell phone and show the required response list on the display recipient PDA/cell phone;

and
transmitting a selected required response from the response list in order to allow the message required response list to be cleared from the recipient's cell phone display, whether said selected response is a chosen option from the response list, causing the forced message alert software to release control of the recipient PDA/cell phone and stop showing the content of the text message and a response list on the display recipient PDA/cell phone and or stop repeating the content of the voice message on the speakers of the recipient PDA/cell phone;

'970 Patent, Claim 10

Claim Constructions

Terms	AGIS's Proposed Construction	Defendants' Proposed Construction
<p>“transmitting a selected required response from the response list in order to allow the message required response list to be cleared from the recipient’s cell phone display” ('970 Patent, Claim 10)</p>	<p>Plain and ordinary meaning.</p>	<p>“transmitting a selected manual response from the response list that is required to clear the required response list from the recipient's cell phone display”</p>
<p>“required response list” ('970 Patent, Claim 10)</p>		<p>“list requiring a manual response from a recipient before the message and recipient's display can be cleared and/or the voice message stops repeating”</p>

Issues:

- There are two overlapping disputes related to these terms: (1) whether the transmitted “response” is a manual response and (2) whether that response is required to clear the response list from the recipient's display.

The Specification Repeatedly and Consistently Discloses the Response as Being Manual

The system and method having a specialized software application on a personal computer or a PDA/cell phone that that enables a participant to force an automatic acknowledgement and a **manual response** to a text or voice message from other participants within the same network. Each participant's PDA/cell phone includes a force message alert software application program for both creating and processing these forced message alerts. The system and method enabled by the force message alert software application program provides the ability to (a) allow an operator to create and transmit a forced message alert from a sender PDA/cell phone to one or more recipient PCs and PDA/cell phones within the communication network; (b) automatically transmit an acknowledgement of receipt to the sender PDA cell phone upon the receipt of the forced message alert; (c) periodically resend the message to the recipient PCs and PDA/cell phones that have not sent an acknowledgement; (d) provide an indication of which recipient PCs and PDA/cell phones have acknowledged the forced message alert; (e) provide a **manual response** list on the display of the recipient PC and PDA/cell phone's display that can only be cleared by **manually transmitting a response**; and (f) provide an indication on the sender PDA/cell phone of the status and content the **manual responses**.

'970 Patent, Abstract

The Specification Repeatedly and Consistently Discloses the Response as Being Manual

1. Field of the Invention

A communications system and method that uses a plurality of PCs and PDA/cell phones for the coordination of two or more people through the use of a communications network. The system and method provide each user with a PC or PDA/cell phone that has forced message alert software that enables a user to create and send a voice or text message alert that forces an automatic acknowledgement upon receipt and a **manual response** from the recipient.

'970 Patent at 1:4-23

The Specification Repeatedly and Consistently Discloses the Response as Being Manual

SUMMARY OF THE INVENTION

Applicant's communication system and method described herein is embodied in the forced alert software developed by applicant and installed in the PCs and PDA/cell phones used herein.

A plurality of PCs and PDA/cell phones each having forced alert software installed providing a communication network of PCs and PDA/cell phones with the ability to: a) allow an operator to create and transmit (via TCP/IP or another digital transmission means) a forced voice alert, wherein said forced voice alert is comprised of a text or voice message file and a forced alert software packet, from a sender PC or PDA/cell phone to one or more recipient PCs and PDA/cell phones within said communication network; (b) automatically transmit an acknowledgement of receipt from said recipient PCs and PDA/cell phones to the sender PCs or PDA/cell phones upon receipt of the forced message alert by the recipient PCs and PDA/cell phones; (c) periodically resend the message to the recipient PCs and PDA/cell phones that have not sent an acknowledgement until an acknowledgement is received from every recipient PC and PDA/cell phone; (d) provide an indication on the display of the sender PC or PDA/cell phone of which recipient PCs and PDA/cell phones have acknowledged the forced message alert; (e) provide a **manual response** list on the display of the recipient PC and PDA/cell phone's display that can only be cleared by **manually selecting and transmitting a response** from the list or recording and transmitting a voice response after sending said automatic

acknowledgment; and (f) provide an indication on the sender PC or PDA/cell phone of the status the **manual response** and the content of the **manual response** from each recipient PCs and PDA/cell phones.

A communication network server can act as a forwarder for TCP/IP communications between any combination of PC users or PDA/cell phone users. The server can also act as a forwarder of data addressed from one participant to one or more addressed participants, thus permitting the transmission of forced text or voice messages, other messages, photographs, video, E-mail and URL data from one network participant to other selected network participants.

The above functions can also be accomplished using WiFi, WiMax or other peer to peer communications. However, for use with cellular communications and to assure the level of security that cell phone companies require, a centralized static IP routable server is used.

It is the object of this invention provide to a method in which by sending a forced text or voice message to a recipient or a group of recipients, a sender can compel an automatic acknowledgement of receipt from each recipient's PC or PDA/cell phone and require a **manual response** from the recipient via the recipient's cell phone before the message can be cleared.

In accordance with these and other objects which will become apparent hereinafter, the instant invention will now be described with particular reference to the accompanying drawings.

A Manual Response Required to Clear the Display Is Identified as the “Invention”

area network. However, in some situations it is additionally desirable to know: (a) which people received the message on their cell phone or PC, (b) which people did not receive the message on their cell phone or PC, and (c) the response of each person receiving the message. Digital SMS and TCP/IP messages do not provide each of those functions. As a result, what is needed is a method in which a sender of a text or voice message can force an automatic acknowledgement upon receipt from a recipient's cell phone or PC and a manual response from the recipient via the recipient's cell phone or PC when sending the text or voice message.

'970 Patent at 1:57-67

A Manual Response Required to Clear the Display Is Identified as the “Invention”

It is the object of this invention provide to a method in which by sending a forced text or voice message to a recipient or a group of recipients, a sender can compel an automatic acknowledgement of receipt from each recipient's PC or PDA/cell phone and require a manual response from the recipient via the recipient's cell phone before the message can be cleared.

'970 Patent at 2:49–55

The Specification Discloses No Other Way to Clear the Display Than a Manual Response

- AGIS does not and cannot point to a single embodiment that clears the display a different way.
- Attempting to show another embodiment, AGIS cites a portion of the '970.

Corp. v. Boston Sci. Corp., 561 F.3d 1319, 1329 (Fed. Cir. 2009). A POSITA would have understood the meaning of the term as recited in the claims and intrinsic evidence. For example, the '970 Patent discloses:

A required response list which will be either preinstalled in the phone application software or sent with the forced message alert will be presented to the user operator upon receipt of the forced message. When the forced text or voice alert is received, the user operator is presented with the required response list.

Ex. C at 7:17-20. The specification does not require that the response must be a manual response.

AGIS Opening Brief at 33

AGIS Cites to a Portion of the '970...

A required response list which will be either preinstalled in the phone application software or sent with the forced message alert will be presented to the user operator upon receipt of the forced message.

'970 Patent at 7:17–20

AGIS Cites to a Portion of the '970... Omitting the Requirement for a Response

A required response list which will be either preinstalled in the phone application software or sent with the forced message alert will be presented to the user operator upon receipt of the forced message. When the forced text or voice alert is received, the user operator is presented with the required response list. In order to clear the forced text message alert from the user operator's PC or PDA/cell phone display, the user operator is required to select a reply from this list. If the

'970 Patent at 7:17-24

The Prosecution History Confirms A Manual Response Is Required To Clear the Display

- “Applicant’s invention is about sending commands to individuals using any communications means that require a manual response from the individual to whom the command was issued.” Ex. 8 at Page 8, (Dec. 17, 2010 Applicant Amendment, ’970 Patent Prosecution, App. No. 12/324122)
- “In the Keating et al. reference if there is no response then the recipient is not added to the group. Applicant’s forced message alert forces a recipient to respond with an appropriate predetermined response.” *Id.* at Page 9
- “The communication system recited in amended Claims 7 and 11 includes a forced message alert software system that requires a response from the recipient of a specific answer from a selected list before the recipient can clear the recipient’s display.” Ex. 7 at Page 9; *id.* at Pgs. 6-7 (amending claim 11)
- The prior art has “nothing to do with Applicant’s invention [of] providing a forced message alert and requiring a specific response from a recipient selected from the prepared list of responses prior to the recipients display being cleared of the message and required response.” *Id.* at 8

AGIS's Claim Differentiation Argument Fails

1. A communication system for transmitting, receiving, confirming receipt, and responding to an electronic message, comprising:

- a predetermined network of participants, wherein each participant has a similarly equipped PDA/cell phone that includes a CPU and a touch screen display a CPU and memory;
- a data transmission means that facilitates the transmission of electronic files between said PDA/cell phones in different locations;
- a sender PDA/cell phone and at least one recipient PDA/cell phone for each electronic message;
- a forced message alert software application program including a list of required possible responses to be selected by a participant recipient of a forced message response loaded on each participating PDA/cell phone;
- means for attaching a forced message alert software packet to a voice or text message creating a forced message alert that is transmitted by said sender PDA/cell phone to the recipient PDA/cell phone, said forced message alert software packet containing a list of possible required responses and requiring the forced message alert software on said recipient PDA/cell phone to transmit an automatic acknowledgment to the sender PDA/cell phone as soon as said forced message alert is received by the recipient PDA/cell phone;
- means for requiring a required manual response from the response list by the recipient in order to clear recipient's response list from recipient's cell phone display;
- means for receiving and displaying a listing of which recipient PDA/cell phones have automatically acknowledged the forced message alert and which recipient PDA/cell phones have not automatically acknowledged the forced message alert;
- means for periodically resending said forced message alert to said recipient PDA/cell phones that have not automatically acknowledged the forced message alert; and
- means for receiving and displaying a listing of which recipient PDA/cell phones have transmitted a manual response to said forced message alert and details the response from each recipient PDA/cell phone that responded.

'970 Patent, Claim 1

2. The system as in claim 1, wherein the forced message alert software application program on the recipient PDA/cell phone includes:

- means for transmitting the acknowledgment of receipt to said sender PDA/cell phone immediately upon receiving a forced message alert from the sender PDA/cell phone;
- means for controlling of the recipient PDA/cell phone upon transmitting said automatic acknowledgment and causing, in cases where the force message alert is a text message, the text message and a response list to be shown on the display of the recipient PDA/cell phone or causes, in cases where the forced message alert is a voice message, the voice message being periodically repeated by the speakers of the recipient PDA/cell phone while said response list is shown on the display;
- means for allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone; and
- means for clearing the text message and a response list from the display of the recipient PDA/cell phone or stopping the repeating voice message and clearing the response list from the display of the recipient PDA/cell phone once the manual response is transmitted.

'970 Patent, Claim 2

6. A method of sending a forced message alert to one or more recipient PDA/cell phones within a predetermined communication network, wherein the receipt and response to said forced message alert by each intended recipient PDA/cell phone is tracked, said method comprising the steps of:

- accessing a forced message alert software application program on a sender PDA/cell phone;
- creating the forced message alert on said sender PDA/cell phone by attaching a voice or text message to a forced message alert application software packet to said voice or text message;
- designating one or more recipient PDA/cell phones in the communication network;
- electronically transmitting the forced message alert to said recipient PDA/cell phones;
- receiving automatic acknowledgements from the recipient PDA/cell phones that received the message and displaying a listing of which recipient PDA/cell phones have acknowledged receipt of the forced message alert and which recipient PDA/cell phones have not acknowledged receipt of the forced message alert;
- periodically resending the forced message alert to the recipient PDA/cell phones that have not acknowledged receipt;
- receiving responses to the forced message alert from the recipient PDA/cell phones and displaying the response from each recipient PDA/cell phone; and
- providing a manual response list on the display of the recipient PDA/cell phone that can only be cleared by the recipient providing a required response from the list;
- clearing the recipient's display screen or causing the repeating voice alert to cease upon recipient selecting a response from the response list required that can only be cleared by manually selecting and transmitting a response to the manual response list.

'970 Patent, Claim 6

10. A method of receiving, acknowledging and responding to a forced message alert from a sender PDA/cell phone to a recipient PDA/cell phone, wherein the receipt, acknowledgment, and response to said forced message alert is forced by a forced message alert software application program, said method comprising the steps of:

- receiving an electronically transmitted electronic message;
- identifying said electronic message as a forced message alert, wherein said forced message alert comprises of a voice or text message and a forced message alert application software packet, which triggers the activation of the forced message alert software application program within the recipient PDA/cell phone;

- transmitting an automatic acknowledgment of receipt to the sender PDA/cell phone, which triggers the forced message alert software application program to take control of the recipient PDA/cell phone and show the content of the text message and a required response list on the display recipient PDA/cell phone or to repeat audibly the content of the voice message on the speakers of the recipient PDA/cell phone and show the required response list on the display recipient PDA/cell phone;
- and

- transmitting a selected required response from the response list in order to allow the message required response list to be cleared from the recipient's cell phone display, whether said selected response is a chosen option from the response list, causing the forced message alert software to release control of the recipient PDA/cell phone and stop showing the content of the text message and a response list on the display recipient PDA/cell phone and or stop repeating the content of the voice message on the speakers of the recipient PDA/cell phone;

- displaying the response received from the PDA cell phone that transmitted the response on the sender of the forced alert PDA/cell phone; and

- providing a list of the recipient PDA/cell phones have automatically acknowledged receipt of a forced alert message and their response to the forced alert message.

Claim Constructions

Terms	AGIS's Proposed Construction	Defendants' Proposed Construction
<p>“transmitting a selected required response from the response list in order to allow the message required response list to be cleared from the recipient’s cell phone display” (’970 Patent, Claim 10)</p>	<p>Plain and ordinary meaning.</p>	<p>“transmitting a selected manual response from the response list that is required to clear the required response list from the recipient's cell phone display”</p>
<p>“required response list” (’970 Patent, Claim 10)</p>		<p>“list requiring a manual response from a recipient before the message and recipient's display can be cleared and/or the voice message stops repeating”</p>

Issues:

- The transmitted “response” is a manual response and that response is required to clear the response list from the recipient's display.

“each representing a different participant that has a cellular phone that includes said voice communication, free and operator selected text messages, photograph and video, a CPU, said GPS system and a touch screen display”

'728 Patent, Claim 7

Exemplary Claim

7. A method of establishing a cellular phone communication network for designated participants, each having a similarly equipped cellular phone that includes voice communication, free and operator selected text messages, photograph and video, a CPU, a GPS navigation system and a touch screen display comprising the steps of:

- a) generating one or more symbols on the touch display screen, each representing a different participant that has a cellular phone that includes said voice communication, free and operator selected text messages, photograph and video, a CPU, said GPS system and a touch screen display;
- b) providing and storing in each of the participant cellular phones one or more cellular phone telephone numbers, each cellular phone number of which relates to a different symbol of each of the participants in the communication network;
- c) providing initiating cellular phone calling software in each cellular phone that is activated by touching a symbol on the touch display that automatically initiates a cellular phone call using the stored cellular phone number to the participant represented by the symbol; and
- d) generating a geographical location chart on said display screen to show the geographical location of each of the symbols representing the participants in the communication network by latitude and longitude.

'728 Patent, Claim 7

Claim Constructions

“each representing a different participant that has a cellular phone that includes said voice communication, free and operator selected text messages, photograph and video, a CPU, said GPS system and a touch screen display” (’728 Patent, Claim 7)

AGIS’s Proposed Construction

Plain and ordinary meaning
(subject to AGIS’s proposed construction for the term “free and operator selected text messages”)

Defendants’ Proposed Construction

“each symbol representing a different participant that has a cellular phone with said CPU, said GPS system and a touch screen display and that rapidly transmits and receives, **over the communications network**, voice communication, free and operator selected text messages, photograph and video”

Issue:

- Whether the claims require voice, text, photograph, and video communications **over the claimed communications network.**

Participants Communicate Over the Established Network



This Term Should Be Construed in the Full Context of the Claim

7. A method of establishing a cellular phone communication network for designated participants, each having a similarly equipped cellular phone that includes voice communication, free and operator selected text messages, photograph and video, a CPU, a GPS navigation system and a touch screen display comprising the steps of:

- a) generating one or more symbols on the touch display screen, each representing a different participant that has a cellular phone that includes said voice communication, free and operator selected text messages, photograph and video, a CPU, said GPS system and a touch screen display;
- b) providing and storing in each of the participant cellular phones one or more cellular phone telephone numbers, each cellular phone number of which relates to a different symbol of each of the participants in the communication network;
- c) providing initiating cellular phone calling software in each cellular phone that is activated by touching a symbol on the touch display that automatically initiates a cellular phone call using the stored cellular phone number to the participant represented by the symbol; and
- d) generating a geographical location chart on said display screen to show the geographical location of each of the symbols representing the participants in the communication network by latitude and longitude.

'728 Patent, Claim 7

Specification Explains Advantage of Communication Network

- The specification emphasizes that the prior art method of using separate software to communicate with other users—which required memorizing phone numbers and entering them into a native dialer—was a “cumbersome process.”
- Under AGIS’s reading of the claims, the claims would be satisfied by the exact method of communicating that the patent denigrates as a “cumbersome process.”

from participating in the network Another drawback of the use of the current combined cellular phone PDA technology is that when using the PDA to display a map (that also may depict georeferenced businesses, homes and other facilities’ locations and phone numbers), and the operator wants to place a call, the cellular phone/PDA operator is required to obtain the phone number by touching the display screen at the correct location of that entity on the map to obtain the phone number, then the operator has to memorize the phone number, then go to a different display to enter the phone number, to make the call and then, if desired, go back to the map display. Needless to say, this is a cumbersome process. Sending a text message to a location, business, home or facility that appears on a PDA map display to another cellular phone can also be a cumbersome process as the PDA operator has to find the phone number on the map display, memorize the phone number, then go to a different display to enter a text message, enter the text message, send the text message and then shift back to the map display program.

’728 Patent at 1:49–67

The Prosecution History Compels Defendants' Proposed Construction

- In response to a prior art rejection, the applicant amended the claims to add that the cellular phone includes “said voice communication, free and operator selected text messages, photograph and video.”

a) generating one or more symbols on the touch display screen, each representing a different participant that has a cellular phone that includes said voice communication, free and operator selected text messages, photograph and video, a said CPU, a said GPS system and a touch screen display;

Ex. 3 (Applicant's Nov. 8, 2005 Amendment) at p. 5

The Prosecution History Compels Defendants' Proposed Construction

- The applicant emphasized that the cited prior art, while enabling communications among users, did not provide “rapid voice, text and video communications in a communication network.”

different than the invention recited in applicant's amended claims. Applicant's amended claims recite a communication system that provides for rapid connection to other participants in the communication network represented by symbols on a geographical screen that allows for rapid voice communication, rapid free text communication and the rapid transmission of photographs and video clips using the stylus and touch screen. There is no teaching or suggestion in any of the references cited by the Examiner to arrive at applicant's claimed invention. It is applicant's position that the problem being solved by applicant's invention for rapid voice, text and video communications in a communication network has not been addressed in the references cited by the Examiner. Even if the references were combined as suggested by the Examiner, it is believed that

Ex. 3 (Applicant's Nov. 8, 2005 Amendment) at 14

- ***AGIS ignores the prosecution history in both its opening and reply briefs.***

“receiving entity-of-interest data transmitted by the second mobile device, the entity-of-interest data comprising coordinates of a geographical location of a new entity of interest”

'1,838 Patent, Claims 1, 14

Exemplary Claim

1. A method performed by one or more servers each having one or more processors, the method comprising:

...

receiving entity-of-interest data transmitted by the second mobile device, the entity-of-interest data comprising coordinates of a geographical location of a new entity of interest, wherein the second mobile device is configured to (1) identify participant interaction with a display of the second mobile device, the participant interaction indicating selection of a position on the participant map and entry of the new entity of interest at the selected position, (2) display an entity symbol representing the new entity of interest at the selected position on the participant map, (3) determine coordinates of a geographical location of the new entity of interest based on coordinates of the selected position on the participant map, and (4) transmit the entity-of-interest data; and

'1,838 Patent, Claim 1

Claim Constructions

“receiving entity-of-interest data transmitted by the second mobile device, the entity-of-interest data comprising coordinates of a geographical location of a new entity of interest”
(’1,838 Patent, Claims 1, 14)

AGIS’s Proposed Construction

Plain and ordinary meaning.

Defendants’ Proposed Construction

“receiving from the second mobile device geographic location coordinates of a new entity of interest entered by the user, as opposed to a system-designated point of interest selected by the user”

Issues:

- Defendants’ construction adopts the applicants’ description of the alleged invention to overcome a prior art rejection.
- AGIS improperly repudiates this prosecution history disclaimer.

AGIS Disclaimed Claim Scope During Prosecution

- During prosecution, the applicants added the “new entity of interest” limitation after the examiner rejected the claims over, inter alia, the Sheha reference. (U.S. Patent No. 7,271,742)

receiving entity-of-interest data transmitted by the second mobile device, the entity-of-interest data comprising coordinates of a geographical location of a new entity of interest, wherein the second mobile device is configured to (1) identify participant interaction with a display of the second mobile device, the participant interaction indicating selection of a position on the participant map and entry of the new entity of interest at the selected position, (2) display an entity symbol representing the new entity of interest at the selected position on the participant map, (3) determine coordinates of a geographical location of the new entity of interest based on coordinates of the selected position on the participant map, and (4) transmit the entity-of-interest data; and

sending the entity-of-interest data to the first mobile device corresponding to the vehicle, wherein the first mobile device is configured to place the entity symbol representing the new entity of interest on the vehicle map at a position on the vehicle map corresponding to the geographical location of the new entity of interest.

Ex. 9 at p. 3 (Apr. 5, 2019 Applicant Amendment, '1,838 Patent Prosecution, App. No. 15/809102)

AGIS *Disclaimed* Claim Scope During Prosecution

- To distinguish Sheha, the applicants stated:

Sheha teaches system-designated POIs

New entity of interest is not a system-designated point of interest

Application No.: 15/809,102
Reply to Office Action of 10/05/2018

18

Docket No.: MOC-001C4

Pechatnikov with respect to the above-emphasized portions of amended independent claim 59. Rather, Sheha appears to describe a computerized mapping and communication system²¹ in which a user can select an icon representing a point of interest (POI) on a graphical map and either send the POI to another user²² or add the POI to the user's route.²³ Thus, Sheha appears to describe **user selection of system-designated POIs** and transmission of information relating to user-selected, system-designated POIs, but does not describe **user entry of new POIs**. In particular, Sheha does not describe a computer identifying user interaction indicating selection of a position on a map and entry of a new point of interest (POI) at the selected position, and does not describe a computer determining the coordinates of a geographical location of a new POI based on the coordinates of the selected position on the map. Likewise, Sheha does not describe the coordinates of the geographical location of such a new POI being transmitted by a computer or received by a server. Thus, Sheha does not teach or suggest at least the above-emphasized portions of amended independent claim 59.

Ex. 9 at p. 18 (Apr. 5, 2019 Applicant Amendment, '1,838 Patent Prosecution, App. No. 15/809102)

Prosecution History Disclaimer

“[W]here the patentee has unequivocally disavowed a certain meaning to obtain his patent, the doctrine of prosecution history disclaimer attaches and narrows the ordinary meaning of the claim congruent with the scope of the surrender.”

Prosecution disclaimer “preclud[es] patentees from **recapturing through claim interpretation** specific meanings disclaimed during prosecution.”

Prosecution disclaimer “promotes the public notice function of the intrinsic evidence and protects the public’s reliance on definitive statements made during prosecution.”

Omega Eng’g, Inc. v. Raytek Corp., 334 F.3d 1314, 1323–24 (Fed. Cir. 2003)

AGIS Claim Construction Arguments Are Irreconcilable With the Prosecution History

AGIS's Claim Construction Argument

"[A] 'new entity of interest' could merely include **updated** data for a 'point of interest selected by the user' that does **not** comprise geographical location coordinates." AGIS Opening Br. at 44

AGIS's Prosecution History Disclaimer

- "Sheha appears to describe a computerized mapping and communication system in which a user can select an icon representing a point of interest (POI) on a geographical map and . . . **add** the POI to the user's route."
- "Sheha does **not** describe a computer identifying user interaction indicating selection of a position on a map and entry of a new point of interest (POI) at the selected position"
- "and does **not** describe a computer determining the coordinates of a geographical location of a new POI based on the coordinates of the selected position on the map."

The Claim Distinguishes Between an “Entity-of-Interest” and a “New Entity-of-Interest”

1. A method performed by one or more servers each having one or more processors, the method comprising:

...

receiving **entity-of-interest** data transmitted by the second mobile device, the entity-of-interest data comprising coordinates of a geographical location of a **new entity of interest**, wherein the second mobile device is configured to (1) identify participant interaction with a display of the second mobile device, the participant interaction indicating selection of a position on the participant map and entry of the **new entity of interest** at the selected position, (2) display an entity symbol representing the **new entity of interest** at the selected position on the participant map, (3) determine coordinates of a geographical location of the **new entity of interest** based on coordinates of the selected position on the participant map, and (4) transmit the entity-of-interest data; and

- “New Entity-of-Interest” must be:
 - coordinates of a geographical location, and
 - a position on the map selected by the participant

The Specification Supports Defendants' Construction

- The specification distinguishes between existing “entities” and “a new entity”:

displayed. In order to hook a symbol or “track” such as another net participant which represents an entity on the geo-referenced map display, or a fixed geographical entity such as a restaurant, police station or a new entity observed by a cell phone user which is discussed below, the operator touches at or near the location of a geo-referenced symbol appearing on the cellular phone/PDA display that represents a specific track or specific participant or other entity. The

'1,838 Patent at 8:15–22

- Consistent with the prosecution history, the specification identifies existing “entities” as system-designated entities and “new entities” as those entered by the user.

AGIS Ignores “new entity” in the Claim Language and Specification

- AGIS relies on a single sentence in the specification that does not mention “entity” at all, let alone a “new” entity of interest.

The specification discloses that “[t]he operator can hook entered tracks or his own track symbol and add data or change data associated with the indicated symbol.” Ex. I at 8:27-29.

Accordingly, a “new entity of interest” could merely include updated data for a “point of interest selected by the user” that does not comprise geographical location coordinates. *A POSITA*

AGIS Br. at 44

“obtaining first data provided by a first mobile device corresponding to a vehicle, the first data including a first identifier”

“obtaining second data provided by a second mobile device corresponding to a participant, the second data including a second identifier associated with the participant”

'1,838 Patent, Claims 1, 14

Exemplary Claim

1. A method performed by one or more servers each having one or more processors, the method comprising:
executing operations on the one or more processors, the operations comprising:
obtaining first data provided by a first mobile device corresponding to a vehicle, the first data including a first identifier;
permitting the first mobile device corresponding to the vehicle to join a communication network, the permitting based on a determination regarding the first data;
obtaining second data provided by a second mobile device corresponding to a participant, the second data including a second identifier associated with the participant;

...

'1,838 Patent, Claim 1

Claim Constructions

Terms	AGIS's Proposed Construction	Defendants' Proposed Construction
<p>“obtaining first data provided by a first mobile device corresponding to a vehicle, the first data including a first identifier” (’1,838 Patent, Claims 1, 14)</p>	<p>Plain and ordinary meaning.</p>	<p>“obtaining data from the first mobile device that includes at least a network identifier indicating what network the first mobile device wants to join”</p>
<p>“obtaining second data provided by a second mobile device corresponding to a participant, the second data including a second identifier associated with the participant” (’1,838 Patent, Claims 1, 14)</p>		<p>“obtaining data from the second mobile device that identifies the participant and includes at least a network identifier indicating what network the second mobile device wants to join”</p>

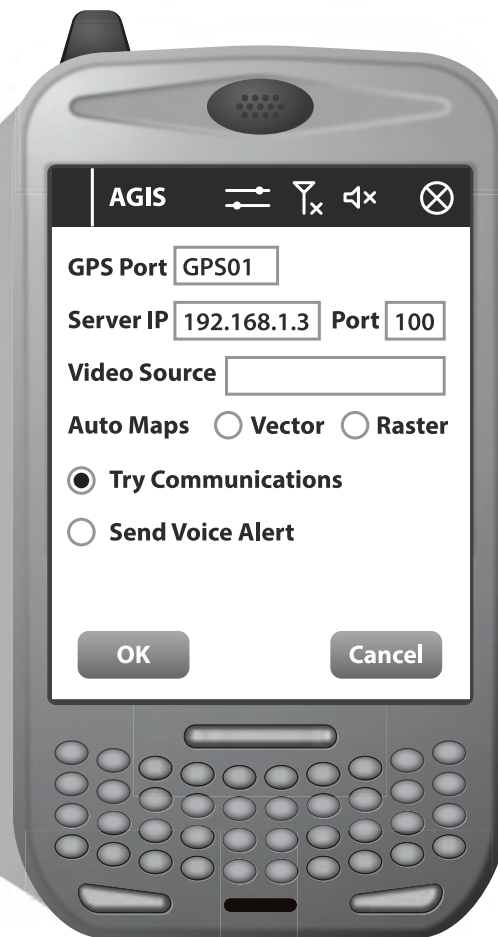
Issue:

- The “present invention” requires use of a network name/identifier.
- AGIS seeks to exclude the preferred embodiments.

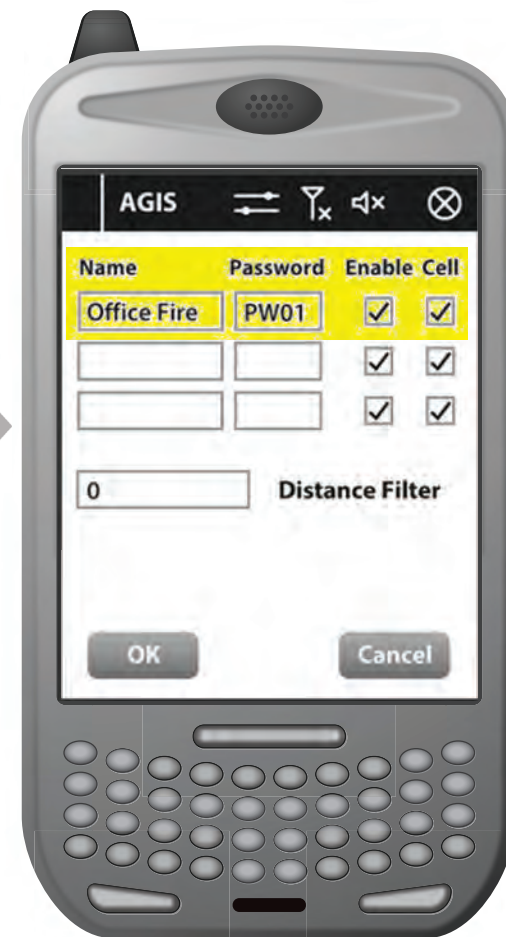
Ad Hoc and Password Protected Digital and Voice Networks



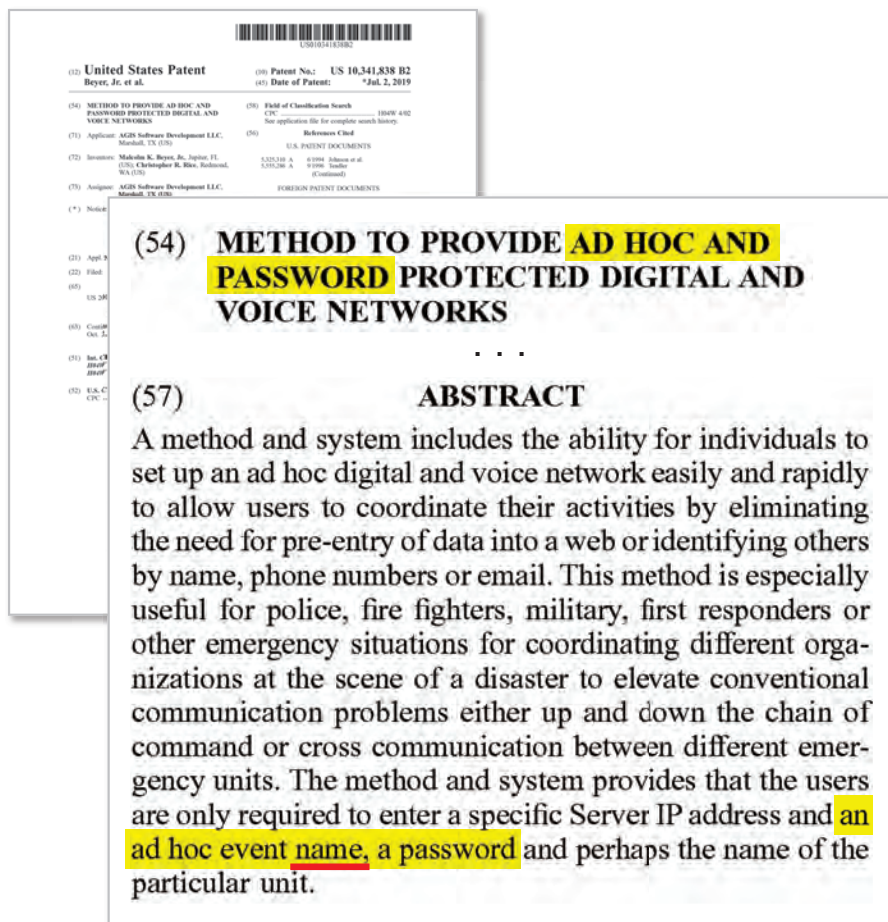
Setting Up the Ad Hoc Network



Setting up the network



The Alleged Invention Focuses on Establishing a Network



'1,838 Patent at Title & Abstract

- "[The] **present invention** described herein discloses how digital communications along with Personal Computer (PC) and PDA devices can be used to quickly establish user specific password protected private **ad hoc voice and a data networks** to enable both data and voice communications up and own their chain of command and simultaneously with different, not pre-known, organizations responding to a disaster" (2:44–52)
- "Military, first responder, and other public and private emergency groups **need to be able to set up ad hoc digital and voice networks** easily and rapidly. These private networks may be temporary or longer lasting in nature. The users need to be able to rapidly coordinate their activities eliminating the need for pre-entry of data into a web and or identifying others by name, phone numbers or email addresses so that **all intended participants that enter the agreed ad hoc network name and password** are both digitally and voice interconnected." (2:15–24)
- "each PDA/GPS phone starts by requesting access to the Server and **identifying a mutually agreed to network name and password** and once granted, reports its GPS position and status" (3:3–6)
- "When the other user's devices sign on to the Server with **the same ad hoc event name and password**, the Server software then recognizes all the users and stores their IP addresses in the Serve" (4:11–14)
- "the user now **enters the ad hoc event network name** which is shown in this example as 'Katrina' along with a password" (10:58–60)
- "provisions have been made for the PDA/PC to report on multiple networks thus allowing both digital communications up and down the chain of command and with adjacent units that have **entered a common ad hoc network name and password**" (11:42–46)
- "a network participant currently can establish a new ad hoc digital network or join an existing ad hoc digital network by **entering the ad hoc network name and password** into his PDA/PC" (12:9–12)

AGIS Would Exclude the Preferred Embodiment

“[W]hen the preferred embodiment is described in the specification as the invention itself, the claims are not necessarily entitled to a scope broader than that embodiment.”

Modine Mfg. Co., v. Int'l Trade Comm'n, 75 F.3d 1545, 1551 (Fed. Cir. 1996)

A claim construction that excludes the preferred embodiment “is rarely, if ever, correct and would require highly persuasive evidentiary support.”

Vitronics Corp. v. Conceptor Inc., 90 F.3d 1576, 1583-84 (Fed. Cir. 1996)

AGIS's Arguments Are Divorced from the '728 Patent

Case 2:21-cv-00072-JRG-RSP Document 145 Filed 09/07/21 Page 1 of 55 PageID #: 4611

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

AGIS SOFTWARE DEVELOPMENT LLC,	§	Case No. 2:21-cv-00072-JRG
Plaintiff,	§	(LEAD CASE)
	§	<u>JURY TRIAL DEMANDED</u>
v.	§	
T-MOBILE USA, INC. and T-MOBILE US,	§	
INC.,	§	
LYFT, INC.,	§	Case No. 2:21-cv-00024-JRG
	§	(MEMBER CASE)
	§	<u>JURY TRIAL DEMANDED</u>
UBER TECHNOLOGIES, INC., d/b/a	§	Case No. 2:21-cv-00026-JRG
UBER,	§	(MEMBER CASE)
	§	<u>JURY TRIAL DEMANDED</u>
WHATSAPP, INC.,	§	Case No. 2:21-cv-00029-JRG
Defendants.	§	(MEMBER CASE)
	§	<u>JURY TRIAL DEMANDED</u>

PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S
OPENING CLAIM CONSTRUCTION BRIEF

UBER TECHNOLOGIES, INC., d/b/a
UBER,
Defendants.

	§	<u>JURY TRIAL DEMANDED</u>
	§	Case No. 2:21-cv-00026-JRG
	§	(MEMBER CASE)
	§	<u>JURY TRIAL DEMANDED</u>

PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S
REPLY CLAIM CONSTRUCTION BRIEF

#: 5689

- Defendants do *not* seek to limit the first and second identifiers to a network identifier.
 - Defendants’ construction provides that the data include *at least* a network identifier.
- Defendants’ construction does not introduce ambiguity.
 - Defendants’ construction adds certainty by specifying data an “identifier” is.

“updating the map by updating at least one item selected from the group consisting of: a position of the participant symbol, positions of the one or more vehicle symbols, and a portion of the map displayed on the display of the mobile device”

'100 Patent, Claim 4

“based on at least one criterion selected from the group consisting of: (1) passage of time, and (2) movement of the first vehicle”

'100 Patent, Claim 7

“based on the participant selection data, performing one or more acts selected from the group consisting of: sending updated vehicle data to the first mobile device corresponding to the vehicle, sending updated participant data to the second mobile device corresponding to the participant, and sending a message to the first mobile device corresponding to the vehicle”

'1,838 Patent, Claims 1, 14

Exemplary Claims

1. A method performed by one or more servers each having one or more processors, the method comprising:

...

based on the participant selection data, performing one or more acts selected from the group consisting of: sending updated vehicle data to the first mobile device corresponding to the vehicle, sending updated participant data to the second mobile device corresponding to the participant, and sending a message to the first mobile device corresponding to the vehicle;

...

'1,838 Patent, Claim 1

4. The method of claim 1, further comprising updating the map by updating at least one item selected from the group consisting of: a position of the participant symbol, positions of the one or more vehicle symbols, and a portion of the map displayed on the display of the mobile device.

'100 Patent, Claim 4

7. The method of claim 1, wherein the received second information is sent by the computing device corresponding to the first vehicle based on at least one criterion selected from the group consisting of: (1) passage of time, and (2) movement of the first vehicle.

'100 Patent, Claim 7

Claim Constructions

Terms	AGIS's Proposed Construction	Lyft/Uber's Proposed Construction
<p>“updating the map by updating at least one item selected from the group consisting of: a position of the participant symbol, positions of the one or more vehicle symbols, and a portion of the map displayed on the display of the mobile device” ('100 Patent, Claim 4)</p> <p>“based on at least one criterion selected from the group consisting of: (1) passage of time, and (2) movement of the first vehicle” ('100 Patent, Claim 7)</p> <p>“based on the participant selection data, performing one or more acts selected from the group consisting of: sending updated vehicle data to the first mobile device corresponding to the vehicle, sending updated participant data to the second mobile device corresponding to the participant, and sending a message to the first mobile device corresponding to the vehicle” ('1,838 Patent, Claims 1, 14)</p>	<p>Plain and ordinary meaning.</p>	<p>Markush groups-these are closed groups, and the map cannot be updated with any item other than those listed / no other criterion can be used / no other acts may be performed</p>

Issue:

- The parties' dispute is whether AGIS has overcome the “very strong presumption” that its use of the phrase “consisting of” in these terms means that “the claim element is ‘closed’ and therefore ‘exclude[s] any elements, steps, or ingredients not specified in the claim,” known as a Markush group.

Use of “Consisting of” Creates a Strong Presumption of a Closed Markush Group

“The presumption that a claim term set off by the transitional phrase ‘consisting of’ is closed to unrecited elements is at least a century old and has been reaffirmed many times by our court and other courts.”

Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp., 831 F.3d 1350, 1358 (Fed. Cir. 2016)

“The general rule is that ‘consisting’ means a closed set of ‘the following elements and only the following elements.’”

Optimum Imaging Techs. LLC v. Canon Inc., No. 19- 246-JRG, 2020 WL 3104290, at *25-26 (E.D. Tex. June 11, 2020) (citing MPEP § 2111.03)

Federal Circuit's Affirmance of a Similar Construction

Term	Lyft/Uber's Proposed Construction
<p>“based on the participant selection data, performing one or more acts selected from the group consisting of: sending updated vehicle data to the first mobile device corresponding to the vehicle, sending updated participant data to the second mobile device corresponding to the participant, and sending a message to the first mobile device corresponding to the vehicle” (’1,838 Patent, Claims 1, 14)</p>	<p>Markush groups-this is a closed group, and no other acts may be performed</p>
Element (b) of Claim 1; Claim 28	District Court's Construction
<p>“five <i>identifiable</i> inner layers, with each layer being selected from the group consisting of linear low density polyethylene, very low density polyethylene, ultra low density polyethylene, and metallocene-catalyzed linear low density polyethylene resins”</p>	<p>“each of five identifiable inner layers must contain only one class of the following resins, and no other resin(s): linear low density polyethylene resins, very low density polyethylene resins, ultra low density polyethylene resins, or metallocene-catalyzed linear low density polyethylene resins”</p>

Federal Circuit's Affirmance of a Similar Construction

“We agree with the district court that the Markush group of element (b) [of claims 1 and 28] must be construed ***as closed to resins other than LLDPE, VLDPE, ULDPE, and mLLDPE.***”

Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp., 831 F.3d 1350, 1358 (Fed. Cir. 2016)

“Construing element (b) in this manner would render the '055 patent's Markush language—‘***each layer being selected from the group consisting of***—equivalent to the phrase ‘each layer comprising one or more of.’”

Id.

1. A method performed by one or more servers each having one or more processors, the method comprising:

...

based on the participant selection data, performing one or more acts selected from the group consisting of: sending updated vehicle data to the first mobile device corresponding to the vehicle, sending updated participant data to the second mobile device corresponding to the participant, and sending a message to the first mobile device corresponding to the vehicle;

...

'1,838 Patent, Claim 1

4. The method of claim 1, further comprising updating the map by updating at least one item selected from the group consisting of: a position of the participant symbol, positions of the one or more vehicle symbols, and a portion of the map displayed on the display of the mobile device.

'100 Patent, Claim 4

7. The method of claim 1, wherein the received second information is sent by the computing device corresponding to the first vehicle based on at least one criterion selected from the group consisting of: (1) passage of time, and (2) movement of the first vehicle.

'100 Patent, Claim 7

AGIS's Arguments Do Not Rise to Unmistakable Manifestation

“But to overcome the ***exceptionally strong presumption*** that a claim term set off with ‘consisting of’ is closed to unrecited elements, the specification and prosecution history must ***unmistakably manifest*** an alternative meaning.”

Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp., 831 F.3d 1350, 1359 (Fed. Cir. 2016)

Use of “comprising”
before “consisting of”

Specification disclosures

“Comprising” Does Not Introduce Markush Group

1. A method performed by one or more servers each having one or more processors, the method comprising: executing operations on the one or more processors, the operations comprising: obtaining first data provided by a first mobile device corresponding to a vehicle, the first data including a first identifier; permitting the first mobile device corresponding to the vehicle to join a communication network, the permitting based on a determination regarding the first data; obtaining second data provided by a second mobile device corresponding to a participant, the second data including a second identifier associated with the participant; allowing the second mobile device corresponding to the participant to join the communication network, the allowing based on a determination regarding the second data; receiving vehicle location data provided by the first mobile device corresponding to the vehicle, wherein the vehicle location data are associated with the first identifier and indicate coordinates of a geographical location of the first mobile device; receiving participant location data provided by the second mobile device corresponding to the participant, wherein the participant location data are associated with the second identifier and indicate coordinates of a geographical location of the second mobile device;

sending participant data to the second mobile device corresponding to the participant, wherein the participant data comprise the vehicle location data, wherein the second mobile device corresponding to the participant is configured to (1) determine coordinates of a position on the participant map corresponding to the coordinates of the geographical location of the second mobile device, (2) display the participant map, and (3) place a first symbol on the participant map at the determined coordinates of the position on the participant map corresponding to the coordinates of the geographical location of the second mobile device;

sending vehicle data to the first mobile device corresponding to the vehicle, wherein the vehicle data comprise the participant location data, wherein the first mobile device corresponding to the vehicle is configured to (1) determine coordinates of a position on the vehicle map corresponding to the coordinates of the geographical location of the first mobile device, (2) display the vehicle map, and (3) place a second symbol on the vehicle map at the determined coordinates of the position on the vehicle map corresponding to the coordinates of the geographical location of the first mobile device;

receiving participant selection data provided by the second mobile device corresponding to the participant, the participant selection data corresponding to user input provided via a display of the second mobile device;

based on the participant selection data, performing one or more acts selected from the group consisting of: sending updated vehicle data to the first mobile device corresponding to the vehicle, sending updated participant data to the second mobile device corresponding to the participant, and sending a message to the first mobile device corresponding to the vehicle;

receiving entity-of-interest data transmitted by the second mobile device, the entity-of-interest data comprising coordinates of a geographical location of a new entity of interest, wherein the second mobile device is configured to (1) identify participant interaction with a display of the second mobile device, the participant interaction indicating selection of a position on the participant map and entry of the new entity of interest at the selected position, (2) display an entity symbol representing the new entity of interest at the selected position on the participant map, (3) determine coordinates of a geographical location of the new entity of interest based on coordinates of the selected position on the participant map, and (4) transmit the entity-of-interest data; and

sending the entity-of-interest data to the first mobile device corresponding to the vehicle, wherein the first mobile device is configured to place the entity symbol representing the new entity of interest on the vehicle map at a position on the vehicle map corresponding to the geographical location of the new entity of interest.

“Comprising” Does Not Introduce Markush Group

1. A method performed by one or more servers each having one or more processors, the method comprising: executing operations on the one or more processors, the operations comprising: obtaining first data provided by a first mobile device corresponding to a vehicle, the first data including a first identifier; permitting the first mobile device corresponding to the vehicle to join a communication network, the permitting based on a determination regarding the first data; obtaining second data provided by a second mobile device corresponding to a participant, the second data including a second identifier associated with the participant; allowing the second mobile device corresponding to the participant to join the communication network, the allowing based on a determination regarding the second data; receiving vehicle location data provided by the first mobile device corresponding to the vehicle, wherein the vehicle location data are associated with the first identifier and indicate coordinates of a geographical location of the first mobile device; receiving participant location data provided by the second mobile device corresponding to the participant, wherein the participant location data are associated with the second identifier and indicate coordinates of a geographical location of the second mobile device;

sending participant data to the second mobile device corresponding to the participant, wherein the participant data comprise the vehicle location data, wherein the second mobile device corresponding to the participant is configured to (1) determine coordinates of a position on the participant map corresponding to the coordinates of the geographical location of the second mobile device, (2) display the participant map, and (3) place a first symbol on the participant map at the determined coordinates of the position on the participant map corresponding to the coordinates of the geographical location of the second mobile device;

sending vehicle data to the first mobile device corresponding to the vehicle, wherein the vehicle data comprise the participant location data, wherein the first mobile device corresponding to the vehicle is configured to (1) determine coordinates of a position on the vehicle map corresponding to the coordinates of the geographical location of the first mobile device, (2) display the vehicle map, and (3) place a second symbol on the vehicle map at the determined coordinates of the position on the vehicle map corresponding to the coordinates of the geographical location of the first mobile device;

receiving participant selection data provided by the second mobile device corresponding to the participant, the participant selection data corresponding to user input provided via a display of the second mobile device;

based on the participant selection data, performing one or more acts selected from the group consisting of: sending updated vehicle data to the first mobile device corresponding to the vehicle, sending updated participant data to the second mobile device corresponding to the participant, and sending a message to the first mobile device corresponding to the vehicle;

receiving entity-of-interest data transmitted by the second mobile device, the entity-of-interest data comprising coordinates of a geographical location of a new entity of interest, wherein the second mobile device is configured to (1) identify participant interaction with a display of the second mobile device, the participant interaction indicating selection of a position on the participant map and entry of the new entity of interest at the selected position, (2) display an entity symbol representing the new entity of interest at the selected position on the participant map, (3) determine coordinates of a geographical location of the new entity of interest based on coordinates of the selected position on the participant map, and (4) transmit the entity-of-interest data; and

sending the entity-of-interest data to the first mobile device corresponding to the vehicle, wherein the first mobile device is configured to place the entity symbol representing the new entity of interest on the vehicle map at a position on the vehicle map corresponding to the geographical location of the new entity of interest.

“Comprising” Does Not Introduce Markush Group

4. The method of claim 1, further comprising updating the map by updating at least one item selected from the group consisting of: a position of the participant symbol, positions of the one or more vehicle symbols, and a portion of the map displayed on the display of the mobile device.

'100 Patent, Claim 4

Listing Other Elements Is Not Enough to Overcome Presumption

For Claims 1, 14 of the '838 Patent

“In addition, the specification discloses that ‘the operator can use a similar method of hooking and selecting to activate particular soft switches to take other actions which could include: making cellular phone calls, conference calls, 800 number calls; sending a free text message, operator selected preformatted messages, photographs or videos to the hooked symbol; or to drop an entered symbol.’”

AGIS Op. Br. 43

“We do not think that the listing of these other resins in the specification is sufficient to overcome the presumption created by the ‘consisting of’ claim language.”

Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp., 831 F.3d 1350, 1359 (Fed. Cir. 2016)

Alternative Embodiments ≠ Unmistakable Manifestation

“[T]he mere fact that there is an alternative embodiment disclosed in the [asserted] patent that is not encompassed by the district court’s claim constructions does not outweigh the language of the claim.”

TIP Sys., LLC v. Phillips & Brooks/Gladwin, Inc., 529 F.3d 1364, 1373 (Fed. Cir. 2008)

The Asserted '970 Patent Claims Have Been Amended

- On October 19, 2021, in reexamination of the '970 Patent, AGIS amended all asserted claims.
- Claim 2 was amended to include limitations not previously present in the '970 Patent.

Claim 2. (amended). [The system as in claim 1] A communication system for transmitting, receiving, confirming receipt, and responding to an electronic message, comprising: a predetermined network of participants, wherein each participant has a similarly equipped PDA/cell phone that includes a CPU and a touch screen display; a CPU and memory; a data transmission means that facilitates the transmission of electronic files between said PDA/cell phones in different locations; a sender PDA/cell phone and at least one recipient PDA/cell phone for each electronic message; a forced message alert software application program including a list of required possible responses to be selected by a participant recipient of a forced message response loaded on each participating PDA/cell phone; means for attaching a forced message alert software packet to a voice or text message creating a forced message alert that is transmitted by said sender PDA/cell phone to the recipient PDA/cell phone, said forced message alert software packet containing a list of possible required responses and requiring the forced message alert software on said recipient PDA/cell phone to transmit an automatic acknowledgment to the sender PDA/cell phone as soon as said forced message alert is received by the recipient PDA/cell phone; means for requiring a required manual response from the response list by the recipient in order to clear recipient's response list from recipient's cell phone display; means for receiving and displaying a listing of which recipient PDA/cell phones have automatically acknowledged the forced message alert and which recipient PDA/cell phones have not automatically acknowledged the forced message alert; means for periodically resending said forced message alert to said recipient PDA/cell phones that have not automatically acknowledged the forced

message alert; and means for receiving and displaying a listing of which recipient PDA/cell phones have transmitted a manual response to said forced message alert and details the response from each recipient PDA/cell phone that responded; and means for displaying a geographical map with georeferenced entities on the display of the sender PDA/cell phone; means for obtaining location and status data associated with the recipient PDA/cell phone; and means for presenting a recipient symbol on the geographical map corresponding to a correct geographical location of the recipient PDA/cell phone; wherein the forced message alert software application program on the recipient PDA/cell phone includes: means for transmitting the acknowledgment of receipt to said sender PDA/cell phone immediately upon receiving a forced message alert from the sender PDA/cell phone; means for controlling of the recipient PDA/cell phone upon transmitting said automatic acknowledgment and causing, in cases where the forced message alert is a text message, the text message and a response list to be shown on the display of the recipient PDA/cell phone or causes, in cases where the forced message alert is a voice message, the voice message being periodically repeated by the speakers of the recipient PDA/cell phone while said response list is shown on the display; means for allowing a manual response to be manually selected from the response list or manually recorded and transmitting said manual response to the sender PDA/cell phone; and means for clearing the text message and a response list from the display of the recipient PDA/cell phone or stopping the repeating voice message and clearing the response list from the display of the recipient PDA/cell phone once the manual response is transmitted.

The Asserted '970 Patent Claims Have Been Amended

- Claim 10 was amended to include limitations not previously present in the '970 Patent.

Claim 10. (amended), A method of receiving, acknowledging and responding to a forced message alert from a sender PDA/cell phone to a recipient PDA/cell phone, wherein the receipt, acknowledgment, and response to said forced message alert is forced by a forced message alert software application program, said method comprising the steps of: receiving an electronically transmitted electronic message; identifying said electronic message as a forced message alert, wherein said forced message alert comprises of a voice or text message and a forced message alert application software packet, which triggers the activation of the forced message alert software application program within the recipient PDA/cell phone; transmitting an automatic acknowledgment of receipt to the sender PDA/cell phone, which triggers the forced message alert software application program to take control of the recipient PDA/cell phone and show the content of the text message and a required response list on the display recipient PDA/cell phone or to repeat audibly the content of the voice message on the speakers of the recipient PDA/cell phone and show the required response list on the display recipient PDA/cell phone; and

transmitting a selected required response from the response list in order to allow the message required response list to be cleared from the recipient's cell phone display, whether said selected response is a chosen option from the response list, causing the forced message alert software to release control of the recipient PDA/cell phone and stop showing the content of the text message and a response list on the display recipient PDA/cell phone and or stop repeating the content of the voice message on the speakers of the recipient PDA/cell phone; displaying the response received from the PDA cell phone that transmitted the response on the sender of the forced alert PDA/cell phone; and providing a list of the recipient PDA/cell phones have automatically acknowledged receipt of a forced alert message and their response to the forced alert message; and displaying a geographical map with georeferenced entities on the display of the sender PDA/cellphone; obtaining location and status data associated with the recipient PDA/cellphone; and presenting a recipient symbol on the geographical map corresponding to a correct geographical location of the recipient PDA/cellphone based on at least the location data.

The Asserted '970 Patent Claims Have Been Amended

- The amended claims incorporate limitations that the Examiner has already found to make the claims patentable.

This paper is in response to the final Office Action dated August 19, 2021. Claims 2 and 10-13 (the “Challenged Claims”) are subject to reexamination and stand rejected. Claims 14-15 were previously added in the response to the non-final Office action mailed on March 3, 2021. In this response, claims 2 and 10 are amended to include the patentable subject matter recited in claims 14 and 15, respectively. Previously added claims 14 and 15 are canceled. Therefore, Claims 2 and 10-13 are present for reexamination.

There Are No Finally Confirmed Claims AGIS Can Assert

- The case as to the '970 Patent should at a minimum be stayed, if not dismissed.
 - AGIS cannot assert the amended '970 claims against Defendants until they issue.
 - Defendants will have intervening rights for the period between the issuance of the original '970 Patent and the date of issuance of the reexamined claims.