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

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

PLAINTIFF AGIS SOFTWARE DEVELOPMENT LLC'S OBJECTIONS
TO THE CLAIM CONSTRUCTION MEMORANDUM AND ORDER (DKT. 213)

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Pursuant to Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b), Plaintiff AGIS Software Development LLC ("AGIS" or "Plaintiff") hereby objects to five claim constructions issued in the above-captioned case on November 10, 2021.

I. INTRODUCTION

The Claim Construction Memorandum and Order (the "Order" or "Dkt. 213") is clearly erroneous or contrary to law regarding five specific claim constructions: (1) "using the IP address previously;" (2) "required response list;" and (3) the "consisting of" and "based on" terms.

The Court's construction of "using the IP address previously" as indefinite is clearly erroneous because it ignores the "exchang[ed] IP addresses" disclosed in the beginning of the same limitation. The Court's concern regarding indefiniteness is undermined by Plaintiff's expert's unrebutted testimony that claim 9 of the '724 Patent recites two alternatives for IP-based transmission: (1) direct participant-to-participant IP communication; and (2) server-based IP communication, and accordingly, a POSITA would understand that "using the IP address previously" is consistent with the specification of the '724 Patent which discloses "the server receives each network identifier. . .along with its dynamic IP address . . ."

The construction of "required response list" term is clearly erroneous or contrary to law because it improperly reads in the term "manual response" with that of "required response list." By requiring the "required response list" to mean "list of responses, one of which must be selected before the list can be cleared from the display," renders other limitations redundant and reads in only a certain input method. The Order did not identify why the "required response list" must be "manual."

Finally, the Court's construction of the "consisting of" and "based on" terms is clearly erroneous or contrary to the law because it improperly holds that these claim terms are Markush claims. The Order limited the claimed "consisting of" and "based on" terms to "only" certain

options, yet the claims are not written in the alternative. Because a Markush claim "recites a list of *alternatively* usable members," (MPEP § 2117) and these claim terms are not written in the alternative, the Order improperly held that these claim terms are Markush claims.

II. LEGAL STANDARD

A non-dispositive decision must be modified or set aside if it is "clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a).

Motions for reconsideration "serve the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989). In considering a motion for reconsideration, the moving party must show "(1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice." *Jacoby v. Trek Bicycle Corp.*, No. 2:11-CV-124, 2011 WL 3240445, at *1 (E.D. Tex. July 28, 2011).

III. ARGUMENT

A. Using the IP Address Previously[1]

A person of ordinary skill in the art would understand that "using the IP address previously" refers to the previously-received IP address in the beginning of the limitation. The Order committed a clear error by rejecting Plaintiff's proposed construction and holding this claim limitation indefinite. It was erroneous to hold that "using the IP address previously" was indefinite where the '724 Patent claims and specification disclose that claim 9 of the '724 Patent recites two alternatives for IP-based transmission: (1) direct participant-to-participants IP communication; and (2) server-based IP communication. Dkt. 213 at 26. While the Court acknowledged AGIS's

[1] AGIS incorporates by reference its arguments set forth in its opening claim construction brief and reply claim construction brief. *See* Dkt. 145 at 15-16; Dkt. 166 at 5.

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