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

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	
v.	§	CASE NO. 2:21-cv-00072-JRG
	§	(Lead Case)
T-MOBILE USA, INC., AND T-MOBILE US, INC.	§	
	§	

AGIS SOFTWARE DEVELOPMENT LLC,	§	
	§	CASE NO. 2:21-cv-00026-JRG
v.	§	(Member Case)
	§	
UBER TECHNOLOGIES, INC., d/b/a UBER,	§	
	§	

DEFENDANT UBER TECHNOLOGIES, INC.'S OBJECTIONS TO THE COURT'S CLAIM CONSTRUCTION ORDER

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Defendant Uber Technologies, Inc. ("Uber") respectfully submits its objections to the Court's Claim Construction Order (Dkt. 213). Uber objects to the Court's constructions of the following terms:[1]

1. ***"similarly equipped cellular phone"/"similarly equipped PDA cellular phone"/"similarly equipped PDA/cell phone"*** ('728 Patent, Claim 7, '724 Patent, Claim 16, '970 Patent, Claim 1): These subjective terms are indefinite. The intrinsic evidence fails to provide any guidance—let alone objective boundaries—for determining when two cellular phones are "similarly equipped." These claims are therefore indefinite because they "fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 899 (2014). (Dkt. 156 at 5-9).

2. ***"said database including the generation of one or more symbols associated with a particular participating user"*** ('724 Patent, Claim 9)[2]: This claim is indefinite because a POSITA would not have understood how a "database" can "include[e] the generation of one or more symbols" as the claim requires. (Dkt. 156 at 9-10).

3. ***"accessing an application program in each cell phone for generating one or more symbols representative of one or more participating users, each of whom have a similarly equipped cellular phone"*** ('724 Patent, Claim 9): Section 112, ¶ 6 governs this term because it uses purely functional language without reciting sufficient structure to perform the function. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (*en banc*). Moreover, this term is indefinite because the specification "does not contain an adequate disclosure of the structure that corresponds to the claimed function." *Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1382 (Fed. Cir. 2009). (Dkt. 156 at 10-13).

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[1] The complete bases for Uber's constructions are presented in its briefing, exhibits and argument presented at the October 21, 2021 claim construction hearing, all of which are hereby incorporated by reference.

[2] Uber acknowledges that the Court found claim 9 of the '724 Patent indefinite for other reasons and objects to the construction of other disputed terms within claim 9 of the '724 Patent only to the extent the Court's indefiniteness holding is withdrawn or overturned.

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4. ***"free and operator selected text messages"*** ('728 Patent, Claim 7): This term is unclear, indefinite and ambiguous since a POSITA cannot understand it with reasonable certainty. Neither "free" nor "operator selected," when modifying "text message," have an established meaning to a POSITA, and the intrinsic evidence of the '728 patent fails to provide any guidance. These two terms were first introduced when the applicant amended claim 7 (prosecuted as claim 6) during prosecution and did so without providing clarity for these terms. (Dkt. 156 at 16-19).

5. ***"a forced message alert software application"/"a forced message alert software application program"*** ('970 Patent, Claims 1, 2, 10, 11, 12): The claims, the specification and the file history demonstrate that the forced message alert software requires a "manual response" to clear the recipient's display, as Uber proposed in its construction. (Dkt. 156 at 25-27).

6. ***"a data transmission means that facilitates the transmission of electronic files between said PDA/cell phones in different locations"*** ('970 Patent, Claim 1)[3]: The parties agreed that this term is a means-plus-function limitation and agreed that the function is "facilitat[ing] the transmission of electronic files between said PDA/cell phones in differentlocations." The corresponding structure is a "PDA/cell phone programmed to implement transmission of aforced message alert using TCP/IP or another communications protocol." This is supported by the specification, which expressly 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 but, instead, recites a PDA/cell phone. (Dkt. 156 at 27-28).

7. ***"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): This term, which is governed by § 112, ¶ 6, is indefinite because the patent fails to disclose adequate corresponding structure. The portions of the specification relied on by AGIS do not disclose any algorithmic structure for performing the agreed function, as is required

[3] Uber objects only to the Court's construction of the "structure/algorithm."

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when the function is performed by a general-purpose computer. *TritonTech. of Tex., LLC v. Nintendo of Am., Inc.*, 753 F.3d 1375, 1378–79 (Fed. Cir. 2014). Neither do other portions of the specification disclose adequate structure. (Dkt. 156 at 28-31).

8. ***"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 cellphone display"*** ('970 Patent, Claim 10): The transmitted "response" is a manual response. This requirement is based on the sole object of the alleged invention, which AGIS has ignored. The requirement for a manual response to clear the display is identified as "the invention" in both the specification and the prosecution history, where the applicant distinguished it over the prior art and thereby disavowed a broader scope. (Dkt. 156 at 31-35).

9. ***"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 display"*** ('728 Patent, Claim 7): AGIS read this limitation isolated from the remainder of the claim language. According to AGIS, this limitation only requires a cellular phone that has voice, text, photograph, and videocommunications capabilities—even if such capabilities cannot be accessed using the "established cellular phone communication network." The intrinsic record, however, confirms that this limitation goes to the "heart of the invention"—software that enables ***rapid*** voice, text, photograph,and video communication ***over a purportedly novel communication network***. *See, e.g.*, '728 Patent at 1:11–12, 3:26–29, 7:61–62. Thus, based on the intrinsic evidence, these capabilities of the phone must work over the claimed communications network. It would be nonsensical to require the features but not require the features to work on the established network. (Dkt. 156 at 35-37).

10. ***"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): Uber's construction adopted the very language used by applicants when this limitation was added to the claims to overcome a prior art rejection. This constituted a disclaimer. The disclaimer, moreover, was supported by the claims and the specification. Under

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the plain language of the claims, for example, the "entity-of-interest data" must include a "***new*** entity of interest"—*i.e.*, an entity of interest that did not yet exist in the system or had not yet been identified by the user. (Dkt. 156 at 38-39).

11. ***"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 vehicle, the second data including a second identifier"*** ('1,838 Patent, Claims 1, 14): The claims recite, at a server, obtaining "data" from two devices and "permitting" or "allowing" the devices to join a network based upon the obtained data. For the server to allow access to the network, the device must identify the network the device wants to join. Identification of a network is necessary so that the server knows the network to which the device is allowed access. The "data" provides that identification. Indeed, the alleged invention purportedly enables the creation of ad hoc networks that first responders can join (by identifying a network name and password) so that the first responders can coordinate activities. (Dkt. 156 at 40-42).

For the reasons stated above and further explained in its briefing and at the Claim Construction Hearing, Uber respectfully objects to the Court's contrary constructions.

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