EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 22-cv-04826-BLF

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

[Re: ECF No. 434]

Plaintiff AGIS Software Development LLC ("AGIS") brought the instant patent infringement action against Defendants Google LLC ("Google") and Waze Mobile Ltd. ("Waze"). At issue are four patents: U.S. Patent No. 9,445,251 (the "'251 Patent"), U.S. Patent No. 9,467,838 (the "'838 Patent"), U.S. Patent No. 9,749,829 (the "'829 Patent"), and U.S. Patent No. 9,820,123 (the "'123 Patent") (collectively the "Asserted Patents.") AGIS accuses two Google applications, Find My Device ("FMD") and Google Maps Mobile ("GMM"), of infringing the Asserted Patents. AGIS further accuses two Waze applications, Waze App and Waze Carpool, of infringing the '829 Patent and the '123 Patent.

Before the Court is Defendants' Motion for Summary Judgment. The motion covers four matters. First, Defendants seek summary judgment that FMD and GMM do not infringe the Asserted Patents. ECF No. 434 ("Mot.") at 2. Second, Defendants seeks summary judgment that Waze App and Waze Carpool do not infringe the '829 Patent and the '123 Patent. *Id.* Third, Defendants seek summary judgment that the Asserted Patents are invalid. *Id.* Finally, Defendants seek summary judgment that any infringement by Waze was not willful. *Id.* After careful consideration, Defendants' Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

A. Procedural Background

The instant action is a consolidation of two cases brought by AGIS against Google and Waze. ECF No. 1 ("Google Compl."); *AGIS Software Development LLC v. Waze Mobile Limited*, 5:22-cv-04827-BLF, ECF No. 1 ("Waze Compl."). AGIS, the owner of the Asserted Patents, alleges that two Google products, FMD and GMM, infringe the four Asserted Patents. Google Compl. ¶¶ 45-53. AGIS further alleges that two Waze products, Waze App and Waze Carpool, infringe the '829 Patent and the '123 Patent. Waze Compl. ¶¶ 14-35. Both actions were originally filed in the Eastern District of Texas and subsequently transferred to the Northern District of California and consolidated. ECF Nos. 393, 421.

B. Accused Technology

1. Find My Device (FMD)

Find My Device is a smartphone application that allows a user to locate linked devices. ECF No. 435-7 ("Wolfe Rebuttal") ¶¶ 74-75. The application displays a map on the device screen and, above the map, symbols corresponding to the linked devices. When the user selects a symbol corresponding to a linked device, a green symbol appears on the map showing the location of the selected device, and FMD presents a menu of options below the map that allows the user to interact with the selected device. *Id.* ¶ 599. If the user selects the green symbol positioned on the map, the device displays the linked device's remaining battery capacity and wireless signal strength. ECF No. 435-14 at AGIS-GOOGLE00001445.

2. Google Maps Mobile (GMM)

Google Maps Mobile is a smartphone application that provides mapping and navigation. Wolfe Rebuttal ¶ 80. GMM also allows a user to share his location with another user, which is the feature accused by AGIS. There are two ways a user can share location: (1) selecting another user's Google Account ID on the application, or (2) sending a URL link via a messaging application. *Id.* ¶¶ 88-92. Importantly, the location share is one-way: if Person A is sharing his location with Person B, the receiving device (Person B) does not automatically share his location back to the sender (Person A). *Id.* ¶ 89. Instead, if the recipient wants to share his device's

location with the sender, the recipient must initiate and create a separate location-share. *Id.* Once a user shares his location, the recipient can see a symbol showing the location of the sharing user on a map on his device. *Id.* ¶¶ 604-606. The user can select that symbol on the map, then choose from a menu of four options: "Refresh," "Add to Home screen," "Hide [user] from map," or "Block." *Id.*

3. Waze App

Waze App is a navigation software application. *Id.* ¶¶ 111-112. Aside from its primary navigation features, Waze App has other features relevant to Defendants' Motion. Like GMM, a Waze App user can share his location with another user by sending a URL link in a text message, email, or other messaging application. *Id.* ¶¶ 118-120, 122-125. After a sender chooses a messaging application to share his device's location, a URL link is sent to the recipient. Like the accused functionality in GMM, individualized location sharing through Waze App is one-way. *Id.* ¶ 127. But Waze App also allows for other forms of location sharing. For example, when opening the app, users "are able to see other device's locations" in the area. ECF 451-11 ("McAlexander Report Att. A") at A-a31.

4. Waze Carpool

Waze Carpool is a now discontinued software application that matched a driver with one or more riders (i.e., passengers). Wolfe Rebuttal ¶ 135. To set up a carpool, drivers used Waze App, while riders used a separate Waze Carpool application. *Id.* ¶ 137. For safety reasons, only the driver in Waze Carpool was able to see the pick-up and drop-off locations of the riders. ECF No. 435-18. The riders had no visibility into the locations of other riders in a carpool. *Id.*; Wolfe Rebuttal ¶ 738. Beginning as early as November 28, 2020, Waze carpools were limited to two people (a rider and a driver) in response to the COVID-19 pandemic. ECF No. 435-18; Wolfe Rebuttal ¶¶ 740-741. Waze discontinued Waze Carpool on October 31, 2022. ECF No. 435-17; Wolfe Rebuttal ¶ 134.

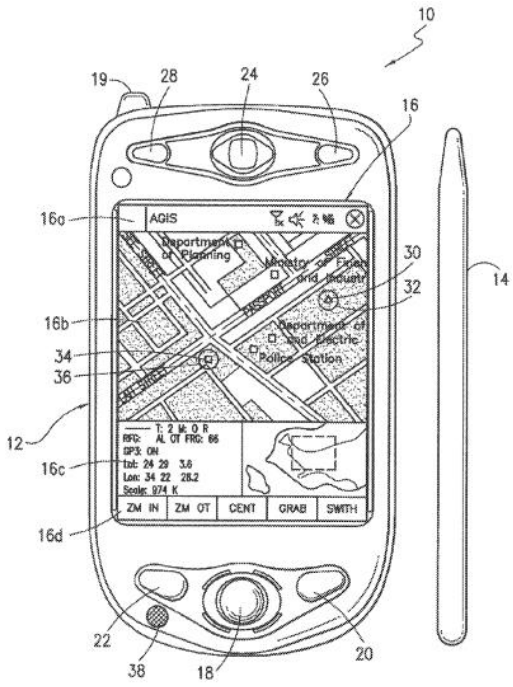
C. Asserted Patents

The Asserted Patents share the same title, "Method to provide ad hoc and password protected digital and voice networks," inventors Malcolm K. Beyer, Jr. and Christopher R. Rice

figures, and specification. *See, e.g.*, '829 Patent. The Asserted Patents "relate to the use of interactive mapping on a device to share locations with the members of a group." Opp. at 6; McAlexander Report ¶ 88. The target audience of the Asserted Patents is "police, fire fighters, military, [and] first responders" who need to coordinate with other organizations while responding to emergency situations. '829 Patent at Abstract. According to the Abstract, the Asserted Patents "include[] the ability for individuals to set up an ad hoc digital and voice network easily and rapidly to allow users to coordinate their activities" without "the need for pre-entry of data" and without "identifying others by name, phone numbers or email." *Id.* After joining a group, participants can share and view each other's locations on a map interface on their device screens and send data such as a text message or photograph to other participants by "touching his or her symbol" on the map. *Id.* at 6:14-58, 11:19-23.

1. Preferred Embodiment

The patents describe a preferred embodiment of the invention that comprises software on a GPS and touch screen-enabled cell phone. *Id.* at 5:7-12. The software displays a map on the device with locations like "restaurants, hotels, fire departments, police stations, and military barracks" that "appear as symbols on the map." *Id.* at 8:48-54. Users can place phone calls to these facilities "by touching a specific facility location on the map display . . . then touching the cellular phone call switch." *Id.* at 7:32-51.



The preferred embodiment also discusses forming and joining groups. For example, firefighters could form an emergency group with the name "Katrina Fire" to coordinate their locations and activities in response to a fire. *Id.* at 12:15-41. To join the group, the user "enters the ad hoc event network name" and a password. *Id.* at 10:46-60. Within a group, "each of the cell phone participants reports its identity, location and

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