

# EXHIBIT D

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**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]

United States District Court  
Northern District of California

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

1       **I. BACKGROUND**

2       **A. Procedural Background**

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

11      **B. Accused Technology**

12           **1. Find My Device (FMD)**

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

21           **2. Google Maps Mobile (GMM)**

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

28      back to the sender (Person A). *Id.* ¶ 89. Instead, if the recipient wants to share his device’s

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

### 6 **3. Waze App**

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

### 16 **4. Waze Carpool**

17 Waze Carpool is a now discontinued software application that matched a driver with one or  
18 more riders (i.e., passengers). Wolfe Rebuttal ¶ 135. To set up a carpool, drivers used Waze App,  
19 while riders used a separate Waze Carpool application. *Id.* ¶ 137. For safety reasons, only the  
20 driver in Waze Carpool was able to see the pick-up and drop-off locations of the riders. ECF No.  
21 435-18. The riders had no visibility into the locations of other riders in a carpool. *Id.*; Wolfe  
22 Rebuttal ¶ 738. Beginning as early as November 28, 2020, Waze carpools were limited to two  
23 people (a rider and a driver) in response to the COVID-19 pandemic. ECF No. 435-18; Wolfe  
24 Rebuttal ¶¶ 740-741. Waze discontinued Waze Carpool on October 31, 2022. ECF No. 435-17;  
25 Wolfe Rebuttal ¶ 134.

### 26 **C. Asserted Patents**

27 The Asserted Patents share the same title, “Method to provide ad hoc and password  
28 protected digital voice networks” inventor, Malcolm K. Brown, Jr. and Christopher P. Rice

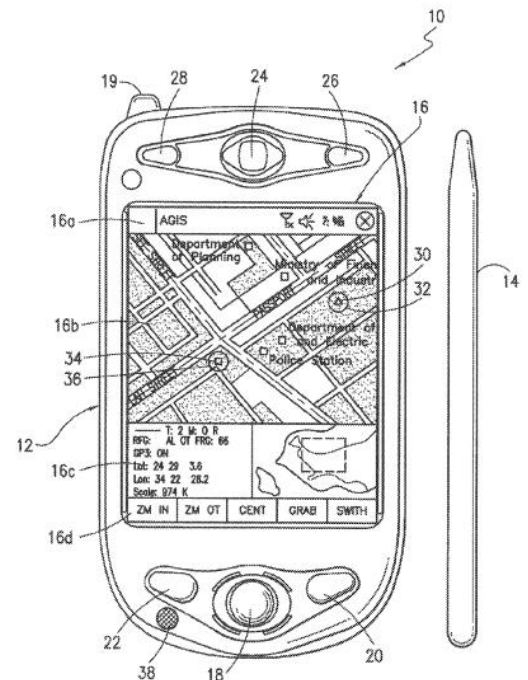
United States District Court  
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1 figures, and specification. *See, e.g.*, '829 Patent. The Asserted Patents “relate to the use of  
2 interactive mapping on a device to share locations with the members of a group.” *Opp.* at 6;  
3 McAlexander Report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

12 **1. Preferred Embodiment**

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

20 The preferred embodiment also discusses  
21 forming and joining groups. For example, firefighters  
22 could form an emergency group with the name “Katrina  
23 Fire” to coordinate their locations and activities in  
24 response to a fire. *Id.* at 12:15-41. To join the group,  
25 the user “enters the ad hoc event network name” and a  
26 password. *Id.* at 10:46-60. Within a group, “each of the  
27 cell phone participants reports its identity, location and  
28 status to the other participant devices.” *Id.* at 9:14-26



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