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

AGIS SOFTWARE DEVELOPMENT LLC, Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS AMERICA, INC., Defendants.	Civil Action No. 2:22-cv-00263-JRG-RSP JURY TRIAL DEMANDED

DEFENDANTS' OBJECTIONS PURSUANT TO RULE 72(A) OF THE MAGISTRATE JUDGE'S CLAIM CONSTRUCTION OPINION AND ORDER (DKT. 156)

Pursuant to Fed. R. Civ. P. Rule 72(a), Defendants respectfully object to the Magistrate Judge's Claim Construction Order (Dkt. 156, "Order") with respect to the terms addressed below.

A. "status data" ('970 Patent - Claim 10)

The term "status data" is indefinite because the intrinsic record fails to place any boundaries on what the term means. The only limitation provided by the claim language is that "status data" is "associated with a recipient PDA/cell phone." But simply being associated with a device fails to provide reasonable certainty as to what data is included or excluded in the term. *See, e.g., Infinity Computer Prod., Inc. v. Oki Data Americas, Inc.*, 987 F.3d 1053, 1060 (Fed. Cir. 2021).

The specification fails to resolve this uncertainty as it mentions "status data" only twice in passing. First, the specification at col. 4 lines 14-18 refers to "telephone," "GPS," and "other" data as being "status data," but it fails to identify the bounds on the "other data" that comprise "status data." And while "telephone" and "GPS" are offered as examples, such "open-ended" examples suggesting that a term "might or might not possess certain traits" "cannot provide reasonably certain bounds on the scope" of the term. *IQASR LLC v. Wendt Corp.*, 825 F. App'x 900, 906 (Fed. Cir. 2020). Second, Figure 1B calls out "identity" and "location" data as being different from "status data" but provides no other guidance on what is excluded from "status data."

The specification not only fails to clarify the bounds of "status data," it actually adds to the confusion by providing a conflicting description of "status data" as information regarding actions taken by the ***user*** of the "recipient PDA/cellphone" (e.g., whether the user has manually responded to a particular message). Dkt. 97 at 1-2. But attributing "status data" to information associated with a "user" contravenes the claim language, which recites that "status data" is associated with a device. It is unclear, for example, whether "status data" could include battery level, which is information associated with a device but not a user. Thus, "status data" is indefinite as it can mean several different things and there is no "informed and confident choice available among the

contending definitions." *Media Rights Techs., Inc. v. Capital One Fin. Corp.*, 800 F.3d 1366, 1371 (Fed. Cir. 2015); *see also TvnGO Ltd. (BVI) v. LG Elecs. Inc*., 861 F. App'x 453, 459 (Fed. Cir. 2021) (finding indefiniteness when patent suggested "two different results" with no "reasonable certainty as to which reading is correct").

The prosecution history further confirms the ambiguity as it relies on a specification passage that describes "status data" as being "of interest to all the network participants." Dkt. 97 at 5. Whether or not data is "of interest" is an inherently subjective assessment that depends on a person's opinion, which provides no reasonable certainty as to the meaning of the term. *Dow Chem. Co. v. Nova Chemicals Corp. (Canada)*, 803 F.3d 620, 635 (Fed. Cir. 2015).

B. "means for presenting a recipient symbol on the geographical map corresponding to a correct geographical location of the recipient PDA/cell phone" ('970 Patent - Claim 2)[1]

This means-plus-function term is indefinite because the specification fails to disclose any supporting algorithm. The Order incorrectly finds an algorithm tied to the claimed function at col. 5 lines 37-44, col. 6 lines 25-27, and col. 6 lines 33-37. Dkt. 156 at 17. But the cited passages simply restate the function of determining the "correct geographical location" and state that an undefined "mathematical correlation algorithm" relates a device's latitude and longitude to its screen position. '970 Patent at 5:37-44, 6:25-37. While the specification acknowledges that an algorithm is needed, it gives no detail about what the algorithm is. The specification thus falls far short of disclosing any sequence of steps needed to achieve the claimed function as required under § 112, ¶ 2, and instead, simply refers to the "algorithm" as a black box, which is improper under

[1] The Order incorrectly states that "Defendant had no objection to proceeding with claim construction as to this term." Dkt. 156 at 14. At the *Markman* hearing, Defendants agreed to argue the term because it is relevant to Defendants' inequitable conduct defense. However, as Defendants also stated, a construction of the term is not required because the term appears only in '970 Patent, Claim 2, which is no longer asserted by AGIS. *See* Dkt. 154 at 5, 49.

Federal Circuit precedent. *E.g., Ergo Licensing, LLC v. CareFusion 303, Inc.*, 673 F.3d 1361, 1365 (Fed. Cir. 2012); *Augme Techs., Inc. v. Yahoo! Inc.*, 755 F.3d 1326, 1338 (Fed. Cir. 2014).

The Order also errs by not giving proper consideration to the Federal Circuit's holding in *Advanced Ground Info. Sys., Inc. v. Life360, Inc.*, 830 F.3d 1341 (Fed. Cir. 2016), which found the analogous means-plus-function term "symbol generator" in a related patent to be indefinite because that patent likewise failed to disclose an algorithm. In particular, the *Life360* court found that the disclosure of "software that coordinates the x and y coordinates on the LCD display screen" is fundamentally inadequate as an algorithm under § 112, ¶ 6. *Advanced Ground Info. Sys., Inc. v. Life360, Inc.*, No. 14-80651-CV, 2014 WL 12652322, at *5 (S.D. Fla. Nov. 21, 2014). Likewise, here, the "means for presenting" term is indefinite because the similar specification disclosure cited by the Order—"software [that] has an algorithm that relates the x and y coordinates to latitude and longitude"—is not an algorithm at all. The Order also distinguishes the "symbol generator" function as "generating" symbols but ignores that the "generating" function—i.e., "generat[ing] symbols representing each user in the network on the display"—is equivalent to "presenting" symbols, as recited by the term at issue here. Dkt. 156 at 18; *Life360*, 830 F.3d at 1345.

C. "which triggers the forced message alert software application program to take control of the recipient PDA/cell phone" ('970 Patent - Claim 10)

This term should be construed as "activates [the forced message alert software application program] to lock the display of the recipient PDA/cell phone until a response is selected from the response list." The parties dispute the meaning of the phrases "which triggers" and "take control," which the Court has a "duty to resolve."[2] *O2 Micro Int'l, Ltd. v. Beyond Innovation Technology Co.*, 521 F.3d 1351 (Fed. Cir. 2008). But the Court's finding that the term has its "plain meaning"

[2] In a prior proceeding, AGIS agreed that the "plain and ordinary meaning of 'take control' is 'lock.'" Complainants' Op. Claim Construction Br., EDIS 794911, 37-TA-1347 at 24.

fails to clarify what "triggers" and "take control" mean. Defendants' proposed construction resolves this dispute and is supported by the specification. For example, the specification discusses a forced software application program that effectively takes control of the phone, including the display, such that the display is controlled until a manual response is selected from the list (i.e. the display is "locked" until a manual response is selected). '970 Patent at 8:37-57. Defendants' proposal does not mean that the display cannot be used at all, as the Order suggests (Dkt. 156 at 22); rather, the display is locked and not usable until it receives a manual response.

The Order incorrectly finds that because surrounding claim language already recites "transmitting a selected required response from the response list in order to allow the messages required response list to be cleared from the recipient's cell phone display," that Defendants' construction to include "until a response is selected from the response list" is redundant. Dkt. 156 at 21. But the "transmitting a selected required response" language is absent and unclear in the claimed step in which the term at issue appears.

D. "group" ('838 Patent - Claims 1, 19, and 54; '829 Patent - Claims 1, 34, 35; '123 Patent - Claims 1, 14, 17, 23, 36)

The word "participants" within the agreed construction of the term "group"—i.e., "more than two participants associated together"—should be construed to mean "users" and cannot include "devices" separate and apart from users. The Order incorrectly finds that "participants" can encompass "devices" separate and apart from users because some claims recite "one or more respective second devices included in the group." *E.g.*, '838 Patent at Cl. 1; Dkt. 156 at 27. But the cited claim language states only that "devices" are in the "group," not that a "group" can be ***defined*** merely by including "devices." To the contrary, the claims recite "devices" in a "group" only because the group's participant users each ***possess*** or use a device. Indeed, the specification is replete with references to participants "us[ing]" or "hav[ing]" devices. *E.g.*, '838 Patent at 4:66-

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