

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:10cv023580-Civ-UU

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

JURY TRIAL DEMANDED

APPLE INC.,

Counterclaim Plaintiff,

v.

MOTOROLA, INC. and
MOTOROLA MOBILITY, INC.,

Counterclaim Defendants.

MOTOROLA'S OPENING BRIEF ON CLAIM CONSTRUCTION

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Pursuant to the Court's June 1, 2011 Scheduling Order (DE 88), Plaintiff Motorola Mobility, Inc. and counterclaim defendant Motorola Solutions, Inc. (f/k/a Motorola, Inc.) (collectively, "Motorola") respectfully submit this brief in support of their proposed claim constructions. This brief addresses the proper construction of certain disputed terms in the patents asserted by Motorola and by Defendant Apple Inc. ("Apple").

I. INTRODUCTION

The modern wireless communications industry owes its existence in large part to decades of research and development efforts undertaken by Motorola. Founded in Chicago in 1928, Motorola has been, and remains, a global leader in radio communications. It was a Motorola radio that Neil Armstrong used in 1969 to transmit from the Moon the famous words: "That's one small step for man, one giant leap for mankind." Subsequently, in 1973, Motorola demonstrated the first-ever prototype of a radiotelephone cellular handset, and 10 years and more than \$100 million in research and development later, Motorola introduced the world's first portable cellular phone, the Motorola DynaTAC, in 1983.

Motorola's wireless communications innovation continues to this day. In 1999, Motorola introduced the first cellular phone featuring an Internet browser, email, and two-way messaging. In 2002, Motorola deployed its first 3G nationwide network in Japan. In 2006, it introduced the MING smartphone to the Asian market – a touch screen phone capable of recognizing more than 10,000 handwritten Chinese characters. And, in 2007, Motorola demonstrated in Chicago the world's first WiMAX mobile network, which enabled mobile devices to have high-speed Internet access even as they move through a city, seamlessly switching connections from one cellular tower to another. Later that year, Motorola became a founding member of the Open Handset Alliance, sponsor of the Android open source mobile phone platform.

In June, 2007 – more than 30 years after Motorola introduced the world's first cellular handset – Apple released its first cellular phone product, the iPhone. Apple's cellular phone products have been successful and profitable. Nonetheless, those products would not exist without technology developed and patented by Motorola; technology which Apple has yet to license.

In this case, both Motorola and Apple assert patents against the other's portable communications products. To the extent they are found valid, Apple's patents in this field generally cover a method of unlocking an electronic device or a process by which multiple monitors can share a display space. In order to assert those patents against Motorola's smartphones, however, Apple seeks contorted claim construction positions divorced from the plain meaning of the claims, the disclosure and teachings of the patents, and the statements made by Apple during prosecution. As demonstrated below, each of Apple's attempts to retroactively rewrite its claims to target Motorola's products are unsupported by the intrinsic and extrinsic record and should be rejected.

In addition, Apple asserts three patents against certain of Motorola's set-top box terminals. To the extent they are found valid, Apple's set-top box patents generally cover terminals containing hardware and software that together create a user interface to be displayed on a audio-video device. The disclosed user interface includes program listing of available content. Despite the plain scope of its set-top box patents, Apple asserted these patents against Motorola's set-top boxes that – as manufactured and sold by Motorola – contain absolutely no user interface software. Indeed, the program listing software that Apple accuses of infringing is in fact designed and installed by the cable providers, not Motorola. As a result, Apple now

proposes constructions that seek to exclude the requirement of the software necessary to create the program listing

In contrast, Motorola asserts straightforward patent claims covering software and hardware that Apple undeniably utilizes. In order to manufacture non-infringement positions, Apple brazenly proposes constructions that, rather than construe the disputed terms, simply change their plain meaning. In some instances, Apple simply introduces new elements to the claims; in others, Apple simply replaces the original claim terms with terms more preferable to Apple. Indeed, most of the terms identified by Apple simply do not require construction.

II. LEGAL STANDARDS

Patent claims are construed from the perspective of a person of ordinary skill in the art. Accordingly, "the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. . . ." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005).

The patent specification and prosecution history provide "intrinsic" evidence of the meaning of disputed claim terms. The specification is considered "the single best guide to the meaning of a disputed term." *Id.* at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Intrinsic evidence is particularly important because "the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* at 1313. Accordingly, "[t]he construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction." *Id.* at 1316 (quoting *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)). For example, the specification may reveal that

the patentee defined a claim term, in which case that definition governs. *See Phillips*, 415 F.3d at 1316; *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002).

Further, a claim term may be redefined by implication and "the written description of the preferred embodiments 'can provide guidance as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, even if the guidance is not provided in explicit definitional format.'" *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1268 (Fed. Cir. 2001) (quoting *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1344 (Fed. Cir. 2001)).

Similarly, claims are to be construed in light of the prosecution history –the public record of the patentee's application to the United States Patent and Trademark Office ("USPTO") for the patent. *See Computer Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1374-75 (Fed. Cir. 2008). Specifically, "a patentee may limit the meaning of a claim term by making a clear and unmistakable disavowal of scope during prosecution." *Purdue Pharma L.P. v. Endo Pharms., Inc.*, 438 F.3d 1123, 1136 (Fed. Cir. 2006). A patentee could do so, for example, by clearly characterizing the invention in a way to try to overcome rejections based on prior art. *See, e.g., Microsoft Corp. v. Multi-Tech Sys., Inc.*, 357 F.3d 1340, 1349 (Fed. Cir. 2004) (limiting the term "transmitting" to require direct transmission over telephone line because the patentee stated during prosecution that the invention transmits over a standard telephone line, thus disclaiming transmission over a packet-switched network); *Alloc v. Int'l Trade Comm'n*, 342 F.3d 1361, 1372 (Fed. Cir. 2003) (finding the patentee expressly disavowed floor paneling systems without "play" because the applicant cited the feature during prosecution to overcome prior art); *Bell Atl. Network Servs. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1273 (Fed.

Cir. 2001) (limiting operation of the “transceiver” to the three stated modes because of clearly limiting statements made by the patentee to try to overcome a prior art rejection).

The doctrine of prosecution disclaimer “protects the public's reliance on definitive statements made during prosecution” by “precluding patentees from recapturing through claim interpretation specific meanings [clearly and unmistakably] disclaimed during prosecution.” *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323-24 (Fed. Cir. 2003). Claims should not be construed “one way in order to obtain their allowance and in a different way against accused infringers.” It has long been a basic tenet of claim construction that the patentee cannot treat the claims as “a nose of wax,” by disavowing claim scope when seeking the patent grant and then asserting a broader scope in litigation. *See Senmed, Inc. v. Richard-Allan Medical Industries, Inc.*, 888 F.2d 815, 819 n. 8 (Fed. Cir. 1989) (citing *White v. Dunbar*, 119 U.S. 47, 51-52 (1886)).

In addition to the aforementioned intrinsic evidence, the Court may also consider certain extrinsic evidence, such as dictionaries or expert testimony, to provide background on the technology at issue, to explain how an invention works, or to explain the meaning of a term as it would be understood by a person of ordinary skill in the art at the time of the invention. *See Phillips*, 415 F.3d at 1317-18. However, such extrinsic evidence cannot be used to contradict the intrinsic evidence. *See Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1328 (Fed. Cir. 2008). “[C]onclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court.” *Phillips*, 415 F.3d at 1318. “Similarly, a court should discount any expert testimony ‘that is clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the

patent." *Id.* at 1318 (quoting *Key Pharms. v. Hercon Labs. Corp.*, 161 F.3d 709, 716 (Fed. Cir. 1998)).

The construction of claim limitations using "means for" language is slightly different. Claim terms that contain the "means for" language are presumed to be means-plus-function claims within the scope of 35 U.S.C. 112, ¶ 6. The construction of such means-plus-function claim terms must include both the structure and the function of the claim element. *See Baran v. Medical Device Technologies, Inc.*, 616 F.3d 1309, 1316 (Fed. Cir. 2010) ("[i]n construing a means-plus-function claim, the district court must first determine the claimed function and then identify the corresponding structure in the written description of the patent that performs that function."). The structure is to include only the corresponding structure described in the specification and equivalents thereof. *See* 35 U.S.C. § 112, ¶ 6; *see also B. Braun Med. Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed. Cir. 1997). Accordingly, when faced with means-plus-function limitations, courts "must turn to the written description of the patent to find the structure that corresponds to the means recited in the ... limitation." *Id.* at 1424. "[S]tructure disclosed in the specification is 'corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim." *Id.* Moreover, the focus of the "corresponding structure" inquiry is not merely whether a structure is capable of performing the recited function, but rather whether the corresponding structure is "clearly link[ed] or associat[ed] . . . to the function recited in the claims." *Id.* "If one fails to set forth an adequate disclosure with respect to the corresponding structure of a means-plus-function limitation, then one has failed to 'particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention,' as required by § 112, P2." *Freeman v.*

Gerber Prods. Co., 120 F. App'x 322, 325 (Fed. Cir. 2005) (quoting *In re Donaldson Co.*, 16 F.3d 1189, 1195 (Fed. Cir. 1994) (en banc)).

III. CONSTRUCTION OF TERMS IN APPLE'S PATENTS

A. United States Patent No. 7,657,849

1. Description Of The '849 Patent

U.S. Patent No. 7,657,849 (the "'849 patent") purportedly addresses the problem of enabling a user-friendly procedure for unlocking devices containing a touch-screen display. (*See generally* Ex. 1 at 1:20-62). The '849 patent states that other unlocking procedures, such as pressing a predefined set of buttons or entering a code / password, have certain drawbacks. The '849 patent attempts to deal with the stated problem by creating a method that provides sensory feedback to the user during the process used in unlocking the electronic device. (*See id.* at 1:52-62). One aspect of the disclosed sensory feedback is the movement of an graphical object from one part of a touch-sensitive display to another. Another aspect of the sensory feedback is having this movement proceed along a predefined displayed path. A third aspect of the sensory feedback is the requirement that the detected user contact correspond to a predefined gesture. (*See generally id.* at 1:66-2:29).

2. Introduction Of The Disputed Phrase "Moving an Unlock Image" And The Disputed Term "Gesture"

Apple asserts claims 1-10, 12-14, and 16-18 from the '849 patent against certain of Motorola's Android-based products. Claims 1-10 of the asserted '849 patent claims a method of controlling an electronic device, and includes the step of "moving an unlock image along a predefined displayed path on the touch-sensitive display in accordance with the contact, wherein the unlock image is a graphical, interactive user-interface object with which a user interacts in

order to unlock the device."¹ (*Id.* at 19:21-25). The parties dispute the construction of the phrase "moving an unlock image" found in the '849 patent. The parties' proposed constructions for that phrase are set forth below:²

Disputed Claim Phrase	Motorola's Proposed Construction	Apple Proposed Construction
<i>moving an unlock image</i>	"Translating the unlock image from one portion of the coordinate space of the touch-sensitive display to another"	Ordinary meaning, or in the alternative, "causing an unlock image to change position over time via continuous contact with the touch screen"

The parties also dispute the construction of the term "gesture" found in the '849 patent.

The parties' proposed constructions for that term are set forth below:

Disputed Claim Phrase	Motorola's Proposed Construction	Apple Proposed Construction
<i>gesture</i>	"A motion of the object / appendage making contact with the touch screen display"	Plain and ordinary meaning applies, or in the alternative, "a motion of the object / appendage making contact with the touch-screen"

3. The Court Should Adopt Motorola's Proposed Construction of "Moving an Unlock Image"

The plain language of the '849 patent claims requires "moving" or "movement" of an unlock image. (*See, e.g., id.* at 19:21.) The '849 patent specification also repeatedly describes the required "movement" of the unlock image, such that the graphical image is actually moved from one location to another location on the touch-sensitive display. Indeed, every single Figure

¹ Claims 12-14 and 16-18 are product claims. Claim 12 contains the phrase "to move the unlock image," claim 16 contains the phrase "moving an unlock image," and claims 13, 14, 17, and 18 contains the phrase "moving the unlock image." Motorola believe that all of these phrases mean the same as the phrase "moving an unlock image" in claims 1-10, and reserves its right to seek such a construction at a later date should Apple dispute the construction of these phrases.

² For the Court's convenience, Exhibit 30 contains a list all of the disputed terms and the parties' proposed constructions.

of the '849 patent that displays "moving an unlock image" illustrates this "movement." (*See id.* at Figs. 4a-5c, 7a-7c, 10, 11a- 11c).

Likewise, the '849 patent specification consistently describes the user interaction with the unlock image in a way that exemplifies the movement – a process also called “translation” – of the unlock image: "the gesture includes ***dragging the unlock image to a location on the touch screen*** that meets one or more predefined unlock criteria. . . . For example, the location may be defined as a particular marked location, areas at each of the four corners of the touch screen, or a quadrant of the touch screen, etc." (*Id.* at 11:20-40 (emphasis added); *see also id.* at 11:41-56 ("the interaction includes dragging the unlock image to a predefined location on the touch screen"); *id.* at 11:57-12:5; 12:55-13:32). It is well-known in field of computer graphics that "dragging" is defined as "moving one or more segments on a display by translating." (Ex. 2 at 4). Indeed, translation is itself defined as "the act of moving a system to a new position ***without rotating it or changing its shape or structure.***" (Ex. 3 at 3).³ As a result, Motorola's proposed construction of "moving an unlock image" is consistent with the ordinary meaning of that phrase, the '849 patent claim language, specification, and extrinsic evidence.

In contrast, Apple's proposed construction of "moving an unlock image" fails to properly account for the actual movement of the unlock image. Instead, Apple's proposed construction only requires that the unlock image "changes position over time." Apple's proposed construction is not, however, based on the plain language of the claims or the '849 specification, but its infringement contentions. Apple has asserted that Motorola's method of distorting an image somehow meets the requirement of "moving an unlock image." (*See e.g.*, Ex. 4 at 5-6, 68-70).

³ "Translation" is thus very different from the concept of "distortion," which means "the bending or twisting of something out of its normal or natural shape." (Ex. 29 at 4).

Moreover, Apple's proposed construction seeks to include an additional claim limitation that is not in the claim language itself – a requirement that the movement of the unlock image be "via *continuous* contact with the touch-screen." Nothing in the claim language requires or even suggests, however, that the user's contact with the touch-screen needs to be "continuous." Further, the '849 patent specification explicitly states that the user's contact need not be continuous: "The contact *may include one or more taps* on the touch screen, movement of the point of contact while maintaining continuous contact, a breaking of the contact, or any combination thereof." (Ex. 1 at 9:41-45). For all of the foregoing reasons, Motorola respectfully suggests that the Court should adopt Motorola's proposed construction of this term.

4. The Court Should Adopt Motorola's Proposed Construction of "Gesture"

Here, the '849 patentees have defined "gesture" in the specification: "As used herein, a gesture is a motion of the object/appendage making contact with the touch screen." (*Id.* at 9:26-28). The term should therefore be construed to reflect this definition. *See Phillips*, 415 F.3d at 1316 ("[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. *In such cases, the inventor's lexicography governs.* (emphasis added)); *see also Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (holding that "it is always necessary to review the specification to determine whether the inventor has used any terms in a manner inconsistent with their ordinary meaning [because the specification] acts as a dictionary when it expressly defines terms ... or when it defines terms by implication").

Outside of the '849 patent, the ordinary meaning of "gesture" is a motion of the limbs or body made to express thought or to emphasize speech." (Ex. 5 at 3). This would include user motion that does not include any contact with the touch screen. Such a construction is plainly at

odds with the intrinsic evidence of the '849 patent, and should be rejected. For all of the foregoing reasons, Motorola respectfully suggests that the Court should adopt Motorola's proposed construction of this term.

B. United States Patent Nos. 6,282,646 And 7,380,116

1. Description Of The '646 And '116 Patents

United States Patent Nos. 6,282,646 (the "'646 patent") and 7,380,116 (the "'116 patent") (collectively, "the Display Space Patents") are related patents that share the same specification.⁴ The Display Space Patents purportedly disclose a system and method for providing "hot-swapping capability" for video devices – meaning that the computer system does not need to reboot or be recalibrated when a video device is added or removed. (*See generally* Ex. 6 at 1:20-62). The purported novelty of the disclosed system and method is the use of a "device manager" to handle the detection of the device and the determination that the device is a video device: "In accordance with the present invention, the foregoing objective is achieved by a device manager. . . ." (*Id.* at 2:24-26).

The Display Space Patents further disclose that the device manager will, upon determining that a video device has been added or removed, change the allotment of the display space that is available for use by the video devices. (*Id.* at 8:54-67). The Display Space Patents disclose what it calls a "well-known implementation for computer systems" – that the "display environment can generally be considered to be defined by a global coordinate space." (*Id.* at 3:65-67; *see also id.* at Fig. 2). Essentially, the device manager changes the size of the coordinate system when a video device is added or removed, thereby achieving the desired goal of "hot-swapping capability" for video devices.

⁴ The '116 patent is a continuation of U.S. Patent No. 6,928,543, which is itself a continuation of the '646 patent.

**2. Introduction Of The Disputed Phrases
"Determin[ing][es] Whether [A] Device is . . . A Video Device" And "Detect[ing][s] . . . A Display Device"**

Apple asserts claims 1, 8-10, 16, 18-20, 27, 33, 36-38, and 42 of the '116 patent and 1, 10, 13, 14, 16, and 32 of the '646 patent against certain of Motorola's Android-based products. Each of the asserted Display Space Patents claims are method claims that contains the step of "determi[ning][es] whether [a] device . . . is a video device" or the step of "detect[ing][s] . . . a display device." (Ex. 7 at 9:2-14, 9:41-52, 10:20-25, 10:32-57, 11:33-37, 12:12-24, 12:39-54, 13:6-11; Ex. 6 at 8:54-67, 9:35-52, 9:61-10:14, 10:18-30, 12:20-33). The parties dispute the construction of the phrases "determin[ing][es] whether [a] device is . . . a video device" and "detect[ing][s] . . . a display device" in the Display Space Patents. The parties' proposed constructions for those phrases are set forth below:

Disputed Claim Phrase	Motorola's Proposed Construction	Apple Proposed Constructions
Determi[ning][es] whether [a] device . . . is a video device Detect[ing][s] . . . a display device	“Having the device manager, which is an operating system component and not a device driver, specifically determine that the device is a video display device”	Apple believes that these phrases should be construed separately as follows: <u>Determin[ing][es]...</u> Plain and ordinary meaning applies or, in the alternative: “determine whether a device is or is not capable of displaying video” <u>Detect[ing][s]...</u> Plain and ordinary meaning applies or, in the alternative: “detecting a device capable of displaying”

3. The Court Should Adopt Motorola's Proposed Construction of "Determin[ing][es] Whether [A] Device is . . . A Video Device" And "Detect[ing][s] . . . A Display Device"

Motorola proposes that these two phrases be given the same construction in light of the intrinsic evidence, in particular, the Display Space Patents specification and the disavowal of

claim scope made by the applicants to the United States Patent and Trademark Office ("USPTO") during prosecution.

First, although the language in these terms varies slightly, both terms are directed towards positively identifying a video device. As disclosed in the Display Space Patents specification and the prosecution history, the detection of a video device necessarily requires a determination by the system that a device is, in fact, a video device. (*See e.g.*, Ex. 6 at 6:11-21).⁵

During prosecution of the '646 patent, the USPTO Patent Examiner originally rejected the then-pending claims as anticipated and/or obvious in light of U.S. Patent No. 5,682,529 to Hendry et al ("the Hendry Patent") and other prior art. (*See, e.g.*, Ex. 8 at 2-3 (10/28/99 Office Action). Then-pending claim 1 (which later became claim 1 of the '646 patent) contained the steps of "detecting the addition or removal of an input/output device in the computer system;" and "determining whether an input/output device . . . is a video device." (Ex. 9 at 17). The Examiner rejected then-pending claims because Hendry et al. disclosed a system that performed all of the required steps, including the step of detecting a display device and the step of determining whether the device is a video device. (*See* Ex. 8 at 2-3).

In response to the Examiner's rejection, the applicants asserted that the pending claims were not as broad as the Examiner had thought – specifically that the claimed steps of detecting a display device and of determining whether a device is a video device are performed by the *device manager* disclosed in the specification:

“In accordance with one aspect thereof, the present invention adds to the system of the Hendry et al. patent by utilizing a device manager to provide hot-plugging capabilities. More particularly, *the device manager detects the addition or removal of any type of input/output*

⁵ The two Display Space Patents share the same disclosure. For brevity, Motorola cites to the '646 patent when discussing the specification.

device in the computer system. Upon detecting the addition or removal of a device, *the device manager then determines whether that input/output device is a video device.*" (Ex. 10 at 9 (3/28/00 Response)). By so stating, the applicants made a clear disavowal of claim scope.⁶

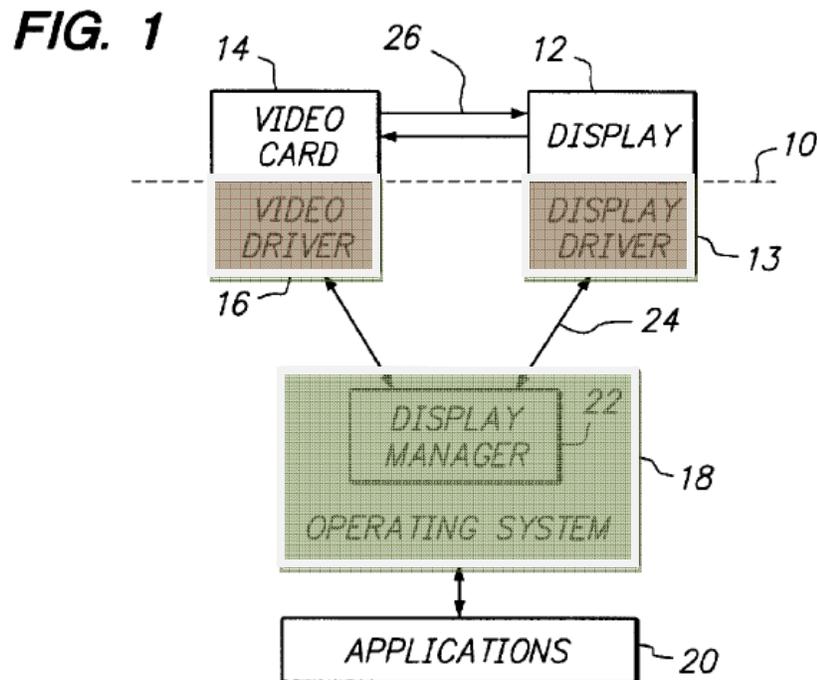
This disavowal is relevant to the construction of the claims in the '116 patent as well. *See, e.g., Ormco Corp. v. Align Technology, Inc.*, 498 F.3d 1307, 1314 (Fed. Cir. 2007) (“[w]hen the application of prosecution disclaimer involves statements from prosecution of a familial patent relating to the same subject matter as the claim language at issue in the patent being construed, those statements in the familial application are relevant in construing the claims at issue.”); *Biovail Corp. Intern. v. Andrx Pharmaceuticals, Inc.*, 239 F.3d 1297, 1301 (Fed. Cir. 2001) (“[w]hen multiple patents derive from the same initial application, the prosecution history regarding a claim limitation in any patent that has issued applies with equal force to subsequently issued patents that contain the same claim limitation.”). As a result, the claimed steps of “detecting” and “determining” found in both of the Display Space Patents must be construed as requiring that they be performed by the disclosed device manager.

The specification of the Display Space Patents is consistent with the patentee’s assertion that the device manager is responsible for the “detecting” and “determining” steps: “The detection of the presence of such devices, as well as their removal from the system, is handled by a portion of the computer’s operating system that is referred to herein as a device manager.” (Ex. 6 at 5:15-21). Moreover, , the patentees have provided a definition for “device manager” that must be adhered to. *See Phillips*, 415 F.3d at 1316 (“[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would

⁶ Moreover, the applicants made this assertion more than once during the prosecution of the ‘646 patent. On March 28, 2001, the applicants reiterated the requirement that the device manager perform the steps of “detecting” and “determining.” (*See* Ex. 10 at 3).

otherwise possess. *In such cases, the inventor's lexicography governs.* (emphasis added))

Here, this means that the “device manager” is defined to be a part of the computer’s operating system, which is separate and distinct from the individual device drivers. Figure 1 of the Display Space Patents makes the distinction between the "device manager" and the actual device drivers clear:



The intrinsic evidence of the Display Space Patents unequivocally supports Motorola’s proposed construction. The disavowal of claim scope by the applicants during prosecution of the ’646 patent means that the disputed steps of “detecting” and determining” have to be performed by the disclosed device manager – a component which is defined to be part of the computer’s operating system, separate and distinct from the individual device drivers. Thus, Motorola proposes that these terms be construed as “having the device manager, which is an operating

system component and not a device driver, specifically determine that the device is a video display device.”

In contrast, Apple’s proposed constructions completely ignore the intrinsic evidence. Whereas the applicants conceded during prosecution that the disputed steps are performed by the device manager, Apple now contends that any component – including the individual device drivers – can perform them. In doing so, Apple seeks to impermissibly reclaim the claim scope that was relinquished during prosecution. *See Southwall Technologies, Inc. v. Cardinal IG Co.*, 54 F.3d 1570 (Fed. Cir. 1995) (“[c]laims may not be construed one way in order to obtain their allowance and in a different way against accused infringers.”). Moreover, Apple’s proposed constructions are also contrary to the teaching of the specifications, including the definition of “device manager.”

Finally, Apple’s proposed constructions also include a phrase not found in the claim language: “capable of.” Specifically, Apple proposed that the “detecting” step be construed to mean “detecting a device *capable* of displaying.” By adding this phrase, Apple substantially changes the meaning and scope of the claims. There is no basis, either in the intrinsic or extrinsic evidence – for changing the claims language in this way. For all of the foregoing reasons, Motorola respectfully suggests that the Court should adopt Motorola’s proposed constructions of these terms.

4. Introduction Of The Disputed Phrases "Modifying The Allocation of Display Space" / "A Portion Of The Display Space To Be Modified"

The parties also dispute the construction of the phrases "modifying the allocation of display space" and "a portion of the display space to be modified" in the Display Space Patents.

The parties' proposed constructions are set forth below:

Disputed Claim Phrase	Motorola's Proposed Construction	Apple Proposed Constructions
"modifying the allocation of display space"	"Changing the allotment of the global coordinate space available for use by display devices"	Plain and ordinary meaning applies or, in the alternative: "allocating or deallocating display space"
"a portion of the display space to be modified"	"An allotment of the global coordinate space, available for use by display devices, to be changed"	Plain and ordinary meaning applies or, in the alternative: "a part of the display space to be allocated or deallocated"

5. The Court Should Adopt Motorola's Proposed Construction of "Modifying The Allocation of Display Space" / "A Portion Of The Display Space To Be Modified"

Again, Motorola’s proposed constructions are based on the intrinsic evidence – here, the specification provides the meaning for the term “display space” – a meaning that the patentees themselves recognized as being known in the industry. There is no plain and ordinary meaning for “display space” other than the meaning provided in the Display Space Patents specification: that display space can “generally be considered to be defined by a global coordinate space.” (Ex. 6 at 3:65-67). Indeed, the specification calls this a “known implementation for computer systems” – and provides no other definition or meaning for the term “display space.” (*Id.* at 3:65; *see generally id.* at 4:1-34).

The Display Space Patents describe the purported “hot-swapping capability” of the display devices by reference to the global coordinate space. The patents teach that the display manager changes the allotment of the global coordinate space that is available for use by display devices. “[T]he display manager assigns a portion of the global coordinate space to the frame buffer in the video card. . . . the display manager moves objects within the global space.” Motorola’s proposed constructions incorporate this definition of “display space.”

Apple, on the other hand, fails to construe “display space” at all. Apple's failure to construe this term – one likely unknown to a the finder of fact when determining the issue of

infringement – should not be accepted. For all of the foregoing reasons, Motorola respectfully suggests that the Court should adopt Motorola's proposed constructions of these terms.

C. United States Patent Nos. 5,594,509; 5,583,560; and 5,621,456

1. Description Of The '509, '560, and '456 Patents

United States Patent Nos. 5,594,509 (the "'509 patent"); 5,583,560 (the "'560 patent"); and 5,621,456 (the "'456 patent") (collectively, the "Florin Patents") generally describe a method and apparatus for the display of multiple levels of information by an audio-visual interface. In other words, the Florin Patents disclose a particular user interface for set-top boxes (*i.e.*, cable boxes). The disclosed user interface includes a program listing that contains a list of content available to be viewed.

The Florin Patents disclose that the functionality of the user interface – which includes the program listing – is achieved through a combination of hardware and software: "A/V transceiver hardware [] complemented with an operating system and software program." (Ex. 11 at Abstract).⁷ The A/V transceiver hardware includes a "main module" 62 with a variety of components and an "A/V connect module" 66. (*Id.* at Fig. 2). The main module components include: a central processing unit (CPU); a system bus; an A/V decoder; an infra-red (IR) control unit; a system memory; an A/V memory; a memory and bus controller; an A/V encoder; an A/V bus; and an A/V processor. (*Id.* at 8:50–64). The A/V connect module includes "a switcher and one or more programmable tuners/demodulators." (*Id.* at 9:7–9). The main module is operated using a remote control that communicates with its wireless control unit. (*See id.* at items 60 ("remote control") and 82 ("IR control"); *id.* at 2:54–55 ("an infrared (IR) or similar wireless control unit")).

⁷ Motorola cites to the '509 patent here for brevity. The '456 and '560 patents disclose an identical structure for the "listing means" and "listing interface means." The '560 patent is attached as Exhibit 10; the '456 patent is attached as Exhibit 12.

**2. Introduction of the Disputed Terms
"Listing Means" / "Listing Interface Means"**

The parties dispute the construction of the terms "listing means" / "Listing Interface Means." The "listing means" element is found in claims 15, 16, 23, 26, 28, 33, 51, 54-61, 65, and 70 of the '509 patent. The "listing interface means" element is found in claim 9 of the '456 patent. The disputed "listing means" and "listing interface means" limitations are a part of the claimed "interactive user interface and audio-visual system," where it "caus[es] said A/V display to selectively display a program listing that contains listing information related to A/V programs viewable on said A/V display." (Ex. 11 at 27:10–19 (claim 15); 27:66–28:8 (claim 23); 28:31–40 (claim 26); 29:6–15 (claim 28)); Ex. 12 at 25:38-42 (claim 1)). The parties' proposed constructions are set forth below:

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
<i>listing means / listing interface means</i>	<p><i>Corresponding Function:</i> Causing the A/V display to selectively display one level of the multiple levels of information related to an audio-visual program, that level containing a list of information (including at least channel numbers, channel names, and titles) about the viewable audio-visual programs</p> <p><i>Corresponding Structure:</i> A central processing unit (CPU), a system bus; an A/V decoder; a wireless control unit; a system memory unit; an A/V memory unit; a memory and bus controller; an A/V encoder; a highspeed digital A/V bus; an A/V processor; one or more tuners/demodulators, wherein</p>	<p>Apple believes that these phrases should be construed separately as follows: <u>'509</u> Under § 112 ¶ 6, the function is “causing an A/V display to selectively display a program listing that contains listing information related to A/V programs viewable on the A/V display.” The corresponding structure is: a combination of the CPU module 62, which receives the data stream of program listings, the system memory 65, which stores the section of the program listings most relevant to the user, A/V processor 77, which is “used to manipulate, process, render, mix, and otherwise rearrange digital data into coherent audio-visual displays,” and</p>

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
	<p>one tuner/demodulator reads and displays a current program from one of the channels received; additional tuners/demodulators (or the same tuner/demodulator, used in alternation) to read and display data from the side-band channels in picture-in-picture (pip) windows; a remote control device including a transmitter for transmitting signals to the audio-visual system; and software applications that generate picture-in-picture windows, program listing information, program recording, and other interactive functions.</p>	<p>A/V connect module 66, which “provides a graphic overlay function that superimposes an A/V signal from the video encoder 78 against another A/V signal” that allows “both signals to be simultaneously displayed on the TV.”</p> <p><u>'456</u> Under § 112 ¶ 6, the function is “causing an A/V display to selectively display a program listing.” The corresponding structure is: a combination of the CPU module 62, which receives the data stream of program listings, the system memory 65, which stores the section of the program listings most relevant to the user, A/V processor 77, which is “used to manipulate, process, render, mix, and otherwise rearrange digital data into coherent audio-visual displays,” and A/V connect module 66, which “provides a graphic overlay function that superimposes an A/V signal from the video encoder 78 against another A/V signal” that allows “both signals to be simultaneously displayed on the TV.”</p>

3. The Court Should Adopt Motorola's Proposed Function For the "Listing Means" / "Listing Interface Means" Limitations

The parties agree that the "listing means" / "listing interface means" limitations are means-plus-function limitations governed by 35 U.S.C. § 112, ¶ 6. Motorola's proposed construction captures the function as clearly set forth in the claims and the specification.

Motorola's proposed function is consistent with the list function disclosed in both the '509 patent and the '456 patent. The Florin Patents specification discloses that list function of the user interface provides "a program/service listing for the current date and time during which the user is watching television." (Ex. 11 at 15:31-33). The disclosed program listing includes "channel numbers, channel name identifiers . . . and by titles of the programs/services." (*Id.* at 15:36-39). The interface it generates must thus be both user-interactive and graphical. In both specifications, the interactive functions displayed are portrayed as graphical user interfaces on cable television. (*See* Ex. 11 at FIGS. 6–50; *see also* Ex. 12 at FIGS. 6–50). The program listing is but one part of the claimed user interface, which includes "selectively displayed multiple levels of information related to an audio-visual program." (Ex. 11 at 25:35-37). Motorola's construction of the function of "interface generation means" is therefore consistent with the Florin Patents specification.

Apple proposes one construction for "listing means" and another for "listing interface means." Neither is correct. Apple's proposed constructions ignore that the claims specifically recite that the "listing means" and "listing interface means" limitations are but one part of the "multiple levels of information" provided by the user interface. Apple's proposed constructions also ignore the function of those elements as disclosed in the specification.

For all of the foregoing reasons, the Court should adopt Motorola's proposed function for the "listing means" / "listing interface means" limitations.

4. The Court Should Adopt Motorola's Proposed Structure For the "Listing Means" / "Listing Interface Means" Limitations

The next step in construing a means-plus-function limitation is to identify structure in the specification that is clearly linked or associated with the recited function. *See B. Braun Med. Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed. Cir. 1997). Motorola's proposed construction captures the structure of the term as clearly set forth in the claims and the specification.

Apple and Motorola agree that the structure of the "interface generation means" includes the main module 62 (which is referred to in Apple's proposed construction as the "CPU module"), and the A/V connect module 66. (*See Ex. 11 at Fig. 2 items 62, 66; see also Ex. 12 at Fig. 2, items 62, 66*). Apple's proposed structure is identical for both patents. Motorola's proposed structure includes these two modules and explicitly each of the components within the modules:

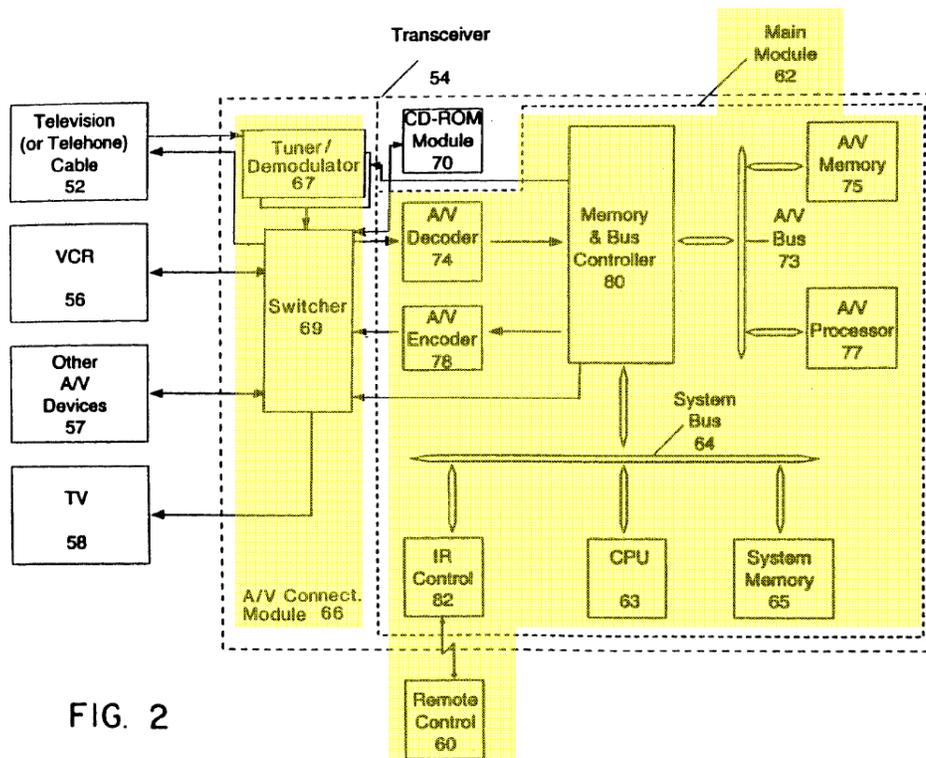


FIG. 2

(Ex. 11 at Fig. 2; *id.* at 8:50–9:9). These highlighted components, which comprise the A/V transceiver hardware, are all necessary to create the program listing disclosed and claimed in the Florin Patents.

The parties disagree on whether software should be included in the structure. Motorola's proposed construction of the structure properly includes "software applications that generate picture-in-picture windows, program listing information, program recording, and other interactive functions." Apple's construction is cleverly worded to exclude any mention of software.

The Court should construe the corresponding structure of the "listing means" / "listing interface means" to include software applications because they are expressly linked to and associated with the recited function in the claims. *See B. Braun Med.*, 124 F.3d at 1424. Both the listing means and the listing interface means elements are part of the "user interface means" – which the specification clearly states is created by use of a software program: "A/V transceiver hardware is complemented with an *operating system and software program which supports the functions provided in the present invention's audio visual user interface.*" (Ex. 11 at 2:65–3:1). This is no surprise. Common sense dictates that the hardware disclosed by the Florin Patents, by itself, is unable to create any type of user interface. The software is therefore a necessary part of the structure. As a result, the corresponding structure must include not just the disclosed hardware, but also software applications which actually create the program listing portion of the user interface.

Motorola's proposed structure further includes a remote control device. Again, this element is linked to the recited function of displaying a program listing: "the user may depress the list button on the remote control device to obtain a program / service listing. . . ." (Ex. 11 at

15:30-32); "a remote control device is provided to communicate with the A/V transceiver to interactively manage selection of program and service sources." (*Id.* at Abstract). Because the remote control is associated with the function of the program listing, it should be included in the structure of "listing means" and "listing interface means."

Apple's proposed constructions for the structure of "listing means" and "listing interface means" are grossly incomplete, for they (1) do not include all of the components of the main module and the A/V connect module, (2) do not include the required software applications, and (3) do not include the remote control device. Without these structures, the disclosed device would not be capable of creating a program listing. For all of the foregoing reasons, Motorola respectfully suggests that the Court should adopt Motorola's proposed construction of the structure of these terms.

5. Introduction of the Disputed Term "Listing Interface"

The parties also dispute the construction of the term "listing interface" This element is found in independent claims 1, 4, 8, and 11 of the '560 patent, claim 55 of the '509 patent, and claims 1, 2, and 8 of the '456 patent. The parties' proposed constructions are set forth below:

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
<i>Listing Interface</i>	A software application executing on the CPU causing the A/V display to selectively display one level of the multiple levels of information related to an audio-visual program, that level containing a list of information (including at least channel numbers, channel names, and/or titles) about the viewable audio-visual programs	Plain and ordinary meaning applies or, in the alternative: "an interactive interface for listing A/V program information"

6. The Court Should Adopt Motorola's Proposed Construction of "Listing Interface"

Like the claim elements "listing means" and "listing interface means" discussed above, the term "listing interface" is directed to the portions of the transceiver that creates the program

listing functionality of the user interface. Unlike the "listing means" and "listing interface means" terms, however, "listing interface" is not a means-plus-function claim.

As an initial matter, there is no ordinary meaning for the term "listing interface" outside of the Florin Patents. Motorola's proposed construction incorporates the fact that the generation of the program listing is performed by a software program executing on the CPU of the disclosed set-top box. "The A/V transceiver is complemented with an operating system software program which supports the functions provided in the present invention's audio-visual user interface." (Ex. 11 at 2:65-3:1). Again, common sense dictates that the "listing interface" – which the claims state "cause[s] said A/V display to selectively display a program listing" (Ex. 12 at 25:39-40) – could only be a combination of software and hardware.

The Florin Patents further disclose that the listing functionality of the user interface provides "a program/service listing for the current date and time during which the user is watching television." (*Id.* at 15:31-33). The disclosed program listing includes "channel numbers, channel name identifiers . . . and by titles of the programs/services." (*Id.* at 15:36-39). The interface it generates must thus be both user-interactive and graphical. In both specifications, the interactive functions displayed are portrayed as graphical user interfaces on cable television. (*See* Ex. 11 at FIGS. 6–50; *see also* Ex. 12 at FIGS. 6–50). The program listing is but one part of the claimed user interface, which includes "selectively displayed multiple levels of information related to an audio-visual program." (Ex. 11 at 25:35-37). Motorola's construction of the function of "interface generation means" is therefore consistent with the intrinsic evidence.

In contrast, Apple's proposed construction fails to identify what portion of the disclosed transceiver actually creates the program listing, which is a combination of software and

hardware. This is contrary to the disclosure of the Florin Patents, as well as common sense. For all of the foregoing reasons, Motorola respectfully suggests that the Court should adopt Motorola's proposed construction.

7. Introduction of the Disputed Terms "Controller In Communication With" / "Control Means In Communication With"

The parties also dispute the construction of the terms "controller in communication with" / "control means in communication with." One of these elements is found in every asserted claim in the '456, '560, and '509 patents. The parties' proposed constructions are set forth below:

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
<i>Controller in communication with</i>	A hand-held remote control containing a transmitter for transmitting signals wirelessly to the transceiver.	Apple believes that these phrases should be construed separately as follows: <u>'560</u> Plain and ordinary meaning applies or, in the alternative: "controller that sends commands to"
<i>Control means in communication with</i>	This element is subject to U.S.C. § 112 ¶ 6. Corresponding Structure: A hand-held remote control containing a transmitter. See, e.g., Abstract; col. 8:42-46. Corresponding Function: transmitting signals wirelessly to the transceiver	<u>'509</u> Under § 112 ¶ 6, the function is "sending commands to the transceiver to allow a user to selectively display multiple levels of information on an A/V display." The corresponding structure is: remote control 60 or equivalent structure. <u>'456</u> Under § 112 ¶ 6, the function is "sending commands to the transceiver to allow a user to display A/V programs on an A/V display." The corresponding structure is: remote control 60 or equivalent structure.

8. The Court Should Adopt Motorola's Proposed Construction of "Controller In Communication With" / "Control Means In Communication With"

(a) Structure of "Control Means In Communication With"

There is but a single type of controller disclosed in the Florin Patents: a hand-held remote control that contains a transmitter for transmitting signals wirelessly to the transceiver. (*See, e.g.*, Ex. 10 at Figs. 4a-b, 5a-b; *id.* at 2:60-3:44, 11:27-12:67). Motorola's proposed construction of the structure of the "control means . . ." element reflects this, while Apple seeks to avoid it.

For the construction of "control means" Apple acknowledges that the only disclosed structure is a "remote control." Apple's construction remains incomplete, however, as it does not contain the transmitter necessary to communicate with the transceiver. The plain language of the claim term – "a controller *in communication with*" – supports the inclusion of a transmitter in the remote control. The transmitter is how the remote control communicates with the transceiver. (Ex. 10 at 12:59-67). This is also confirmed by reference to extrinsic evidence – the definition of "communicating" as it relates to electronic signals is where two devices are separate from one another. (Ex. 28 at 3-4). In addition to the structure disclosed in the Florin Patents, Apple's construction contains the phrase "or equivalent structure." The inclusion of this phrase in the construction is incorrect as a matter of law. Motorola recognizes that means-plus-function claim elements encompass both the exact structure and all statutory equivalents. *See Baran*, 616 F.3d at 1316-1317 ("In order to prove literal infringement of a means-plus-function claim, the plaintiff must show that the accused device performs the recited function through structure that is the same as or equivalent to the corresponding structure set forth in the specification."). But the question of "whether an accused device infringes a § 112, ¶ 6 claim as an equivalent is a question of fact," *Odetics, Inc. v. Storage Technology Corp.*, 185 F.3d 1259, 1268 (Fed. Cir.

1999), to be determined after the claims have been construed. “[O]nly the exact structure is determined during the claim construction phase.” *Mallinckrodt, Inc. v. Masimo Corp.*, 254 F. Supp. 2d 1140, 1146-47 (C.D. Cal. 2003).

(b) Function of "Control Means In Communication With"

The specification of the Florin Patents plainly states the function of the “control means” – it is used to transmit signals wirelessly from the user holding the remote to the transceiver. The specification states that the “remote control device 60 communicates with the transceiver 54 preferably through a wireless transmission signal.” (Ex. 11 at 8:42-44). The signals are received by the transceiver, “which sends and receives wireless control signals to and from the remote control device 60 which sends and receives wireless control signals to and from the remote control device 60.” (*Id.* at 8:56-57).

Apple’s proposed constructions for the function of the “control means in communication with” limitation are incomplete in that they fail to identify *how* the remote control communicates with the transceiver. Again, Apple’s proposed constructions are derived not from the intrinsic evidence, but from Apple’s infringement contentions. Here, Apple contends that the “control means” element is met by controls that are part of – and not remote or communicating with – the accused Motorola set-top boxes.

For all of these reasons, Motorola respectfully requests that the Court adopt Motorola’s proposed construction of “control means in communication with.”

(c) "Controller In Communication With"

Although Motorola also proposes that the claim term “controller in communication with” – which is not a means-plus-function claim element – be construed similarly, it does so for slightly different reasons. Motorola’s construction of the “controller” claim element is based on the language of the claims – specifically the latter part of the disputed phrase, “in communication

with”. As discussed above, this language indicates that the controller is separate and distinct (*i.e.*, “remote”) from the transceiver, so that there is a path for the communication to travel. (*See supra* at Part III.C.8.(a)). Because of this modifying language, the claimed controller must be a remote control, which has a transmitter for transmitting signals wirelessly to the transceiver. Therefore, Motorola respectfully requests that the Court adopt Motorola’s proposed construction of “controller in communication with.”

IV. CONSTRUCTION OF TERMS IN MOTOROLA'S PATENTS

A. United States Patent No. 5,958,006

1. Description Of The '006 Patent

United States Patent No. 5,958,006 (the "'006 patent") is titled "Method and Apparatus For Communicating Summarized Data." Among other things, the '006 patent discloses and claims a system for communicating filtered data to a portable communication unit.

The '006 patent identified a need to reduce the amount of data that is communicated over a network. (*See* Ex. 13 at 1:15-2:14). The disclosed invention of the '006 patent addresses this problem by reducing the data communicated through a novel use of user-definable filter parameters. (*Id.* at 2:66-3:3).

According to the '006 patent specification, the invention provides for filtering data units base on one or more user-definable parameters. (*Id.*). These user-definable parameters are used to identify whether the data unit is a "qualifying" data unit or a "non-qualifying" data unit. (*Id.* at 3:23-26). For the "qualifying" data units, the system sends the information identifying the data unit and the content of the data unit. (*Id.* at 9:7-8). For the "non-qualifying" data units, the system only sends the information identifying the data unit. (*Id.* at 3:23-26).

By performing the above steps, the end user is provided with a small part of the data unit – just the part that identifies the data unit. (*Id.*). In doing so, the amount of data sent over the

network is reduced, but at the same time, the end user is still provided notice of the data unit that was filtered. (*Id.* at 9:8-18).

2. Introduction Of The Disputed Phrase “Data Units Not Being Sent From The Host To The Communications Unit”

The parties dispute whether the phrase "data units not being sent from the host to the communications unit" requires construction. The phrase is a claim limitation in asserted claim 26 of the '006 patent. The parties' proposed constructions are set forth below:

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
<i>“Data Units Not Being Sent From The Host To The Communications Unit”</i>	Ordinary meaning – the phrase requires no construction.	“data units present at the host and not sent to the communication unit”

3. The Court Need Not Construe “Data Units Not Being Sent From The Host To The Communications Unit”

The phrase "data units not being sent from the host to the communications unit" has a straightforward and plain ordinary meaning: the data units not sent from the host (*e.g.*, a server) to the communications unit (*e.g.*, a cellular phone). The '006 patent specification provides no special definition for the phrase, or any of the individual terms in the phrase. Moreover, the intrinsic evidence does not state (or even imply) that a “filtered data unit” should be given a special meaning. Thus, Motorola respectfully suggests that the Court need not construe this term. Motorola therefore submits that this term needs no construction, or in the alternative, that it be construed to mean what it says: a data unit that has been filtered. *Johnson Worldwide Associates, Inc. v. Zebco Corp.*, 175 F.3d 985, 989 (Fed. Cir. 1999) (holding that a court "must presume that the terms in the claim mean what they say and, unless otherwise compelled, give full effect to the ordinary and accustomed meaning of the claim terms").

Apple's proposed construction of this phrase is nothing short of a complete re-writing of the claimed phrase. In its construction, Apple adds the limitation that the data units must be

"present at the host." This limitation is not present in the claim in which this phrase appears – claim 26, which claims a controller of a communication unit that contains "a summary store operable for storing identifying information received from the host via the communications server about data units not being sent from the host to the communication unit and not being received at the communication unit." (Ex. 13 at 20:20-24). There is nothing in the claim that supports adding the limitation that the data units have to be "present at the host."

Likewise, the '006 patent specification and prosecution history are devoid of support for Apple's proposed construction. Motorola respectfully suggests that this phrase requires no construction other than its ordinary meaning, and that the Court reject Apple's construction.

B. United States Patent No. 6,101,531

1. Description Of The '531 Patent

U.S. Patent No. 6,101,531 (the "'531 patent") is titled "System for Communicating user-Selected Criteria Filter Prepared at Wireless Client to Communication Server for Filtering Data Transferred from Host to Said Wireless Client." The '531 patent discloses, among other things, improvements to the transfer of data between wireless devices, such as cellular phones, and wired devices, such as a communications and host servers. (Ex. 14 at 1:16-19, 2:55-4:8). Communication servers transmit data to and receive data from host servers, and also to and from wireless devices. (*Id.* at Figs. 1-2, 4:17-21, 5:49-6:62). Among other innovations, the '531 patent discloses a system that is able to filter data at multiple points in the system:

The '531 patent teaches that the data may be filtered by any device or server in the system. For instance, the filtering may occur between a "remote communication unit" (e.g., a cell phone) and a "communications server":

In a second main embodiment, a prestage filter stage is provided for applying user-definable filter parameters (e.g., reject, pass, or granularity filters) on data

being transferred between the remote communication unit and communication server.

(*Id.* at 3:4-8). Alternatively, the filtering may be performed by *either* a communications server or a host server.

For downloading, e.g., email from a host post office, a communication server controller preferably *either* forwards the filter parameters in a query object or message to the post office to apply and return qualified mail, *or* the communication server receives all unprocessed mail and applies the filters locally, only acknowledging as processed that mail which is qualified. ... Thus, only desired data transfers (i.e., those meeting user defined filters) are communicated over the expense-bearing networks between the remote unit and communication server.

(*Id.* at 3:8-14, 17-20). Figure 4 illustrates that the disclosed system may filter the data while the data is at the host server (at step 412), after the unprocessed data has been forwarded to the communication server (at step 420), or even at the client / communication unit (at step 432):

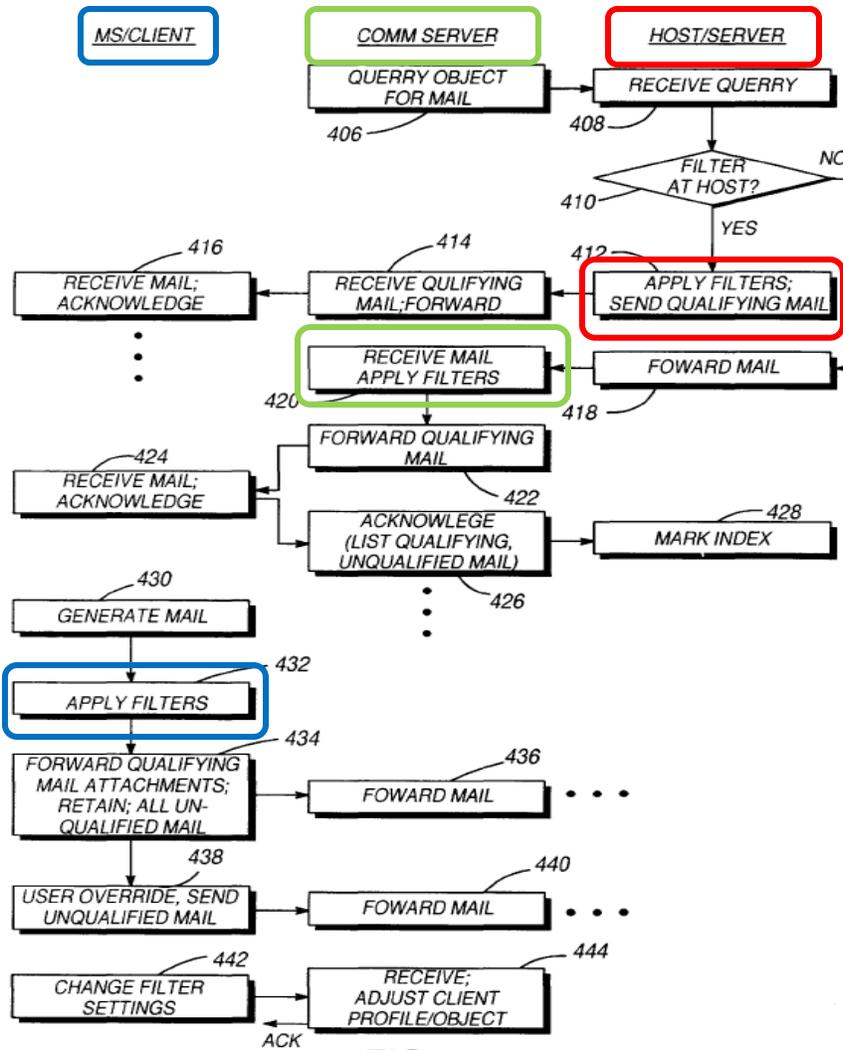


FIG. 4

(Ex. 14 at FIG. 4; *see also id.* at 9:4-16 (describing the choice of filter locations depicted in Fig. 4). As these excerpts show, there is no requirement that the data filtering disclosed in the '531 patent occur at any particular location in the system.

2. Introduction Of The Disputed Term “Filtered Data Unit”

The parties dispute whether the phrase "filtered data unit" requires construction, and if it does, how that term should be construed. The term is a claim limitation in all of the asserted claims of the '531 patent. The parties' proposed constructions are set forth below:

<i>Disputed Claim Phrase</i>	<i>Motorola's Proposed Construction</i>	<i>Apple's Proposed Construction</i>
<i>“filtered data unit”</i>	Plain meaning; or “a data unit that has been filtered”	“one of a subset of data units at the host device that are selected for download to the client communication unit based on having passed a filter”

3. The Court Should Not Construe “Filtered Data Unit,” Or Alternatively Should Accept Motorola’s Construction

The term “filtered data unit” has a straightforward ordinary meaning. The ‘531 patent specification provides no special definition for the term “filtered data unit.” Moreover, the intrinsic evidence does not state (or even imply) that a “filtered data unit” should be given a special meaning. Thus, Motorola respectfully suggests that the Court need not construe this term. Should the Court find that it should be construed, Motorola's construction is consistent with the intrinsic and extrinsic evidence: a data unit that has been filtered. *See Johnson Worldwide*, 175 F.3d at 989 (courts “must presume that the terms in the claim mean what they say and, unless otherwise compelled, give full effect to the ordinary and accustomed meaning of the claim terms”).

In contrast, Apple's proposed construction imports a series of limitations from the specification into this simple three-word phrase. It is impermissible to import such limitations, and the intrinsic evidence does not support construing “filtered data unit” so narrowly.

First, Apple maintains that the filtered data units necessarily be a “subset of data units.” This is wrong. Apple's proposed construction would exclude the filtered data units that pass / meet all of the requirements of the filter. In such a case, the filtered data unit will not be a “subset,” but would be all of the original data unit. Nowhere does the claim language or the '531 patent specification state that a filtered data unit must belong to a “subset.”

Second, Apple’s proposed construction requires that the filtered data units must be “at the host device.” This extra limitation contradicts both the claim language and the teaching of the ‘531 patent specification. Indeed, Claim 11 explicitly states that the filtering of data units occurs “at the communications server,” not at the host server:

...filtering data units, *at the communications server*, based on a first set of a plurality of user-selected criteria to produce filtered data units...

(Ex. 14 at 18:9-11).

As discussed above, (*supra* at 32), the ‘531 patent specification teaches that the filtering may occur *either* at the host server or at the communication server: “a communication server controller preferably either forwards the filter parameters in a query object or message to the post office to apply and return qualified mail, *or the communication server receives all unprocessed mail and applies the filters locally.*” (*Id.* at 3:9-14 (emphasis added)); *see also id.* at Fig. 4; 9:11-16 (“Alternatively, where the host application is not designed to permit prestage filtering, all unprocessed messages can be forwarded to the communications server, where the filters are applied via a prestage filter....”). Thus, Apple’s proposed construction impermissibly limits the claim to but one of the many disclosed embodiments. *See Intervet Inc. v. Merial Ltd.*, 617 F.3d 1282, 1287 (Fed. Cir. 2010) (“Construing the claims in light of the specification does not, however, imply that limitations discussed in the specification may be read into the claims. It is therefore important not to confuse exemplars or preferred embodiments in the specification that serve to teach and enable the invention with limitations that define the outer boundaries of claim scope.”).

For these reasons, it is unnecessary to construe “filtered data unit” to mean anything other than its ordinary meaning. However, should the Court determine that construction is necessary, the Court should adopt Motorola’s proposed construction for the “filtered data unit” limitation.

4. Introduction Of The Disputed Term “Wireless Network”

The parties also dispute the construction of the term "wireless network" limitation, which is contained in all of the asserted claims of the '531 patent. The term “wireless network” is found in the preamble of claims 1 and 11.⁸ The parties' proposed constructions are set forth below:

<i>Disputed Claim Phrase</i>	<i>Motorola's Proposed Construction</i>	<i>Apple's Proposed Construction</i>
<i>“wireless network”</i>	Ordinary meaning – this term requires no additional construction, but in the alternative; “two or more devices whose interconnection(s) is implemented, at least in part, without the use of wires”	“a network in which the communication server is connected to both the host device and the client communication unit through a completely wireless path”

5. The Court Need Not Construe “Wireless Network,” Or Alternatively Should Adopt Motorola’s Proposed Construction

As a threshold matter, "wireless network" has a plain meaning and need not be construed. Motorola's proposed alternative construction, however, is consistent with the claim language and specification, while Apple's construction imports limitations that are unnecessary and that contradict the specification.

The parties' main dispute is whether the claimed “wireless network” allows for part of the network to be interconnected with wires. Apple's proposed construction requires a "completely wireless path," which would exclude any network of devices that includes even one wired connection between devices.

The claim language provides no basis for Apple’s position that a “wireless network” requires a “completely wireless path.” The preamble of the claims – which merely introduces

⁸ The preamble is an introduction of the claim, and is presumed not to contain a limitation of the claim’s scope. *American Medical Systems, Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1358 (Fed. Cir. 2010) (“Generally...the preamble does not limit the claims.”). Thus, the Court’s construction of this term is likely to have no consequence to the issues of validity and infringement, and there is no need for the Court to construe this term. *See Id.*

the actual claim limitations recited later on – merely indicates that a wireless network exist somewhere "*between* a client communication unit and a host device via a communications server." (Ex. 14 at 16:27-30 (emphasis added)). The plain language of the claims does not require that *all* of the network interconnections between those two devices must be wireless.

The '531 patent specification, moreover, contradicts Apple's proposed construction. Figure 1 of the '531 patent depicts "a communication system 100 in accordance with a first embodiment of the invention" (*Id.* at 4:9-11):

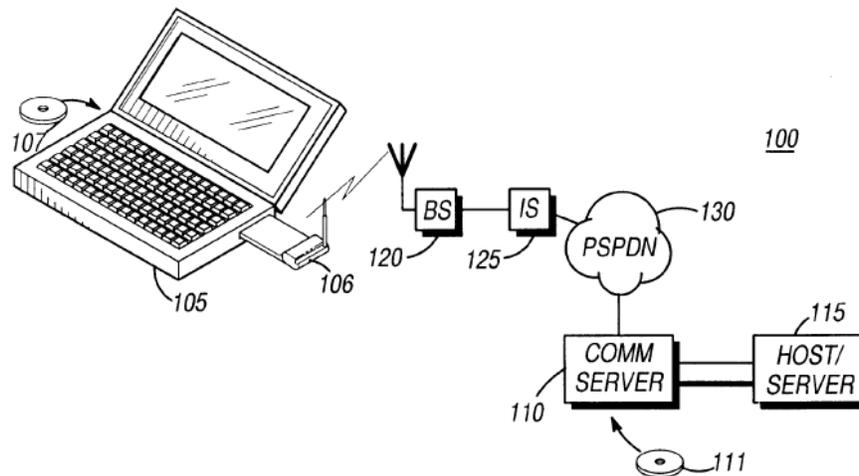


FIG. 1

In Figure 4, the client communication unit / computer (105) is interconnected wirelessly with the communication server (110), which is denoted by the lightning bolt and the cloud icons. The communication server is interconnected using wires with the host server (115), which is denoted by the solid lines. Figure 2 illustrates what is meant by "a wireless network between a client communication unit and a host server." *See also id.* at FIG. 2. The specification further states:

In order to keep connectivity costs to a minimum, the [communication] server 110 is preferably connected to the LAN/WAN on which the host 115 is also

connected, *via any standard LAN/WAN⁹ communication channel (e.g., a bus or backbone)*.

"Any standard LAN/WAN communication channel" would include wired *or* wireless communication. (*See* Ex. 15 at 3-6). Furthermore, a "bus" is a wired connection, and a "backbone" can be wired or wireless. (Ex. 16 at 3; Ex. 18 at 3).

In fact, the '531 patent does not disclose a single embodiment of a system that has a "completely wireless path" between the client communication unit and the host server. To the contrary, the '531 patent specification states that "any number of system configurations is possible, limited only by the network services provided and the user's preference." (Ex. 14 at 6:25-27). As a result, Apple's proposed construction would exclude not just one, but *all* of the disclosed embodiments, which is clear error. *Funai Elec. Co., Ltd. v. Daewoo Electronics Corp.*, 616 F.3d 1357, 1371 (Fed. Cir. 2010) (upholding the district court's claim construction because it was in accordance with the specification and the alternative construction would exclude an embodiment.); *see CoorsTek, Inc. v. Reiber*, 2011 WL 1638855 at *14 (D. Colo., May 2, 2011) ("[p]atent claims should generally be construed to encompass the preferred embodiments described in the specification, and it is generally error to adopt a construction that excludes them.").

Apple's proposed construction of "wireless network" is unduly narrow. It adds nonexistent limitations into the term "wireless network," runs contrary to the ordinary meaning of the term, and runs contrary to the teachings of the '531 patent itself. Thus, should the Court determine that this term requires construction, Motorola respectfully suggests that it be construed according to Motorola's proposed construction.

⁹ As used in the '531 patent, LAN and WAN stand for local area network and wide area network. (Ex. 14 at 1:36, 43-44).

C. United States Patent No. 5,754,119

1. Description Of The '119 Patent

U.S. Patent No. 5,754,119 (the "'119 patent") is titled "Multiple Pager Status Synchronization System and Method." This patent teaches a method of "synchronization," or communicating changes that a user makes to one mobile device to another mobile device.

The '119 patent recognized the problem created when a user has more than one mobile transceivers connected to a messaging infrastructure. Specifically, the multiple transceivers were unaware of a change in the status of a message. For example, a message that a user read and deleted on a first mobile transceiver would still appear as unread and undeleted on a second transceiver: "Thus, the user must again read and decide the status of each message received" on the other transceiver. (Ex. 17 at 1:41-43)

To solve this problem, the '119 patent inventors created a system and method of automatically synchronizing message status across all of a user's mobile transceivers. (*Id.* at 2:15-28). When the user changes the status of a message (such as "unread" to "read") at one transceiver, that transceiver informs the messaging infrastructure of this change. (*Id.*). The messaging structure in turn informs the user's other transceivers of the status change. (*Id.*). The other transceivers will then change the status of the first message, thus synchronizing with the first transceiver on which the user had changed the message status. (*Id.*).

2. Introduction of the Disputed Phrase "Responsive To Receiving The Second Message, Transmitting A Third Message"

The parties also dispute the construction of the phrase "responsive to receiving the second message, transmitting a third message," which is a limitation in asserted claim 1 of the '119 patent. Claim 1 claims a method of synchronizing message information among a plurality of transceivers (*e.g.*, smartphones or computers), and includes the step of:

"in the wireless messaging infrastructure, receiving the second message, and **responsive to receiving the second message, transmitting a third message** indicative of the second status; and"

Id. at 11:6-9 (emphasis added). The parties' proposed constructions are set forth below:

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
"responsive to receiving the second message, transmitting a third message"	Ordinary meaning – this phrase requires no additional construction.	"upon receiving the second message, automatically transmitting a third message"

3. The Court Need Not Construe This Phrase To Mean Anything Other Than Its Ordinary Meaning

This phrase has a plain and ordinary meaning: the system responds to the receipt of the second message, and then the wireless messaging infrastructure transmits a third message. The disputed phrase contains no terms of art (such as "display space") or terms defined by the specification. In addition, none of the terms in this phrase are without a well-understood ordinary meaning (such as "listing interface"). Further, neither the '119 patent specification nor its prosecution history contains support for construing this phrase in a manner inconsistent with its ordinary meaning. Accordingly, no construction of the phrase is necessary. *See Phillips*, 415 F.3d at 1314 (holding that "the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words."); *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008) (holding that "district courts are not (and should not be) required to construe every limitation present in a patent's asserted claims").

If the Court chooses to construe this phrase, then it should still reject Apple's proposed construction because it imports a limitation not found in the claim language. Specifically, Apple

inserts the word “automatically” into the claim language, thereby substantively narrowing the claim scope.

Apple’s proposed construction is not supported by the ‘119 patent specification. The ‘119 patent specification teaches that delays in the infrastructure's transmission of the third message are both contemplated and expected. One of the disclosed embodiments contains “[the] [i]nfrastructure 110 receives message 240 at step 245...” and “[t]he message is then submitted to a message queue of the infrastructure 110 for transmission by the infrastructure.” (Ex. 17 at 6:10-13). This embodiment – which forms a “queue” of messages – will not necessarily transmit messages “automatically.” If it did, no such “queue” would be created.

Motorola suggests that the Court not construe this phrase. However, should the Court determine that this phrase requires construction, Motorola respectfully suggests it reject Apple's proposed construction or any construction that adds a limitation not found in the claims.

4. Introduction of the Disputed Phrase “Indicative Of The Second Status”

The parties also dispute the construction of the phrase “responsive to receiving the second message, transmitting a third message,” which is a limitation in asserted claim 1 and 5 of the '119 patent. Claim 1 claims a method of synchronizing message information among a plurality of transceivers (*e.g.*, smartphones or computers), and includes the steps of:

“...changing the first status of the first message to a second status responsive to an input to the one transceiver, and transmitting a second message **indicative of the second status;**”

“...receiving the second message, and responsive to receiving the second message, transmitting a third message **indicative of the second status;**”

(*Id.* at 11:1-5 & 11:6-9 (emphasis added)). Claim 5 claims a method of synchronizing a status of a plurality of transceivers (*e.g.*, smartphones or computers), and includes the step of:

"in a first transceiver, changing the status of the first transceiver from a first status to a second status as a result of an input from a user, and transmitting a first message **indicative of the second status**"

(*Id.* at 11: 47-50 (emphasis added)). The parties' proposed constructions are set forth below:

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
<i>"indicative of the second status"</i>	Ordinary meaning – this phrase requires no additional construction, but in the alternative, "providing an indication of the second status"	"descriptive of the changed status"

5. The Court Need Not Construe This Phrase, Or Alternatively Should Adopt Motorola’s Proposed Construction

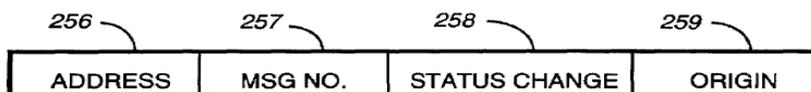
Again, Apple seeks a construction where none is needed. This phrase has a plain and ordinary meaning: providing an indication of the second status. The disputed phrase contains no terms of art (such as "display space") or terms defined by the specification. In addition, none of the terms in this phrase are without a well-understood ordinary meaning (such as "listing interface"). Further, neither the '119 patent specification nor its prosecution history contains support for construing this phrase in a manner inconsistent with its ordinary meaning.

Accordingly, no construction of the phrase is necessary. *See Phillips*, 415 F.3d at 1314.

As with the other disputed phrase of the '119 patent, Apple's proposed construction is nothing more than a complete re-write of the claim language. In this instance, Apple has simply replaced a word in the claims – "descriptive" – with a word not found in the claims – "indicative." These two terms are not synonymous. (*Compare* Ex. 19 at 3 ("descriptive) *with* Ex. 20 at 3(indicative)). A message can indicate a second status without describing it. Apple's brazen attempt to re-write the claims should be rejected. Similarly, Apple has simply replaced a word in the claims – "second" – with a word not found in the claims – "changed."

It is clear from the teaching of the '119 patent that the patentees used the word “indicative” in the claims for a reason. The specification discloses many embodiments in which the second message is "indicative," but not "descriptive" of the second status. For instance, Figure 3 contains an illustration of the content of a second message.

FIG. 3



The '119 patent specification describes what is illustrated in Figure 3:

The status change information field 243 comprises, in this embodiment, a status change control signal indicating that status change information (rather than some other type of information) follows, **and three bits of status change information: a read/unread bit, a protect bit, and a delete bit.** These three bits indicate the corresponding status of the identified message.

(Ex. 17 at 5:67-6:6 (emphasis added)). A "bit" – short for "binary digit" – is the smallest unit of data in a computer. A bit has a single binary value, either 0 or 1. (Ex. 21 at 4). The '119 patent is thus disclosing that a value of 1 or 0 can indicate the second status. *See id.* Clearly, it cannot be said that the value of a binary digit is "descriptive" of the second status.

Motorola suggests that the Court not construe this phrase. However, should the Court determine that this phrase requires construction, Motorola respectfully suggests it reject Apple's proposed construction or any construction that adds a limitation not found in the claims.

D. United States Patent No. 5,710,987

1. Description Of The '987 Patent

U.S. Patent No. 5,710,987 (the "'987 patent") addresses a problem created by when an antenna for radiotelephone devices is concealed within the housing. (*See Ex. 22 at 1:8-12*). The '987 patent states that advances in technology have led to smaller pagers and cellular telephones and created problems with antenna placement. (*See generally id. at 1:14-29*). While a device's

antenna must be remote from its circuitry to prevent interference, an antenna that protrudes too far from the device’s boundaries are inefficient and aesthetically unappealing. (*See id.* at 1:48-55).

The ‘987 patent addresses this problem by through a novel design and placement of the antenna. Specifically, an antenna that “forms a loop surrounding at least a portion of the user interface and is disposed between an outside surface of the housing and the at least a portion of the user interface.” (*Id.* at 4:61-64).

Another aspect of the invention of the ‘987 patent is the use of a “substantially planar and detachable cover” outside of the device’s housing. This cover also addresses the problem of user interference with an external antenna. (*Id.* at 6:31).

2. Introduction of the Disputed Phrase "The Antenna . . . Is Disposed Between An Outside Surface Of The Housing And The At Least A Portion Of The User Interface"

The phrase “the antenna . . . is disposed between an outside surface of the housing and the at least a portion of the user interface” appears in asserted '987 patent claim 13, which claims a receiver (e.g., a phone), in which the antenna exposed on an outside surface of the housing:

wherein the antenna forms a loop surrounding at least a portion of the user interface and is disposed between an outside surface of the housing and the at least a portion of the user interface.

(*Id.* at 6:5-8 (emphasis added)). The parties' proposed construction are set forth below:

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
<i>“the antenna . . . is disposed between an outside surface of the housing and the at least a portion of the user interface”</i>	Ordinary meaning – this phrase requires no construction, but in the alternative, "the antenna . . . is arranged between an exposed surface of the housing and at least a portion on the user interface"	“the entire antenna is placed between the outside surface of the receiver’s case and the portion of the user interface surrounded by the antenna”

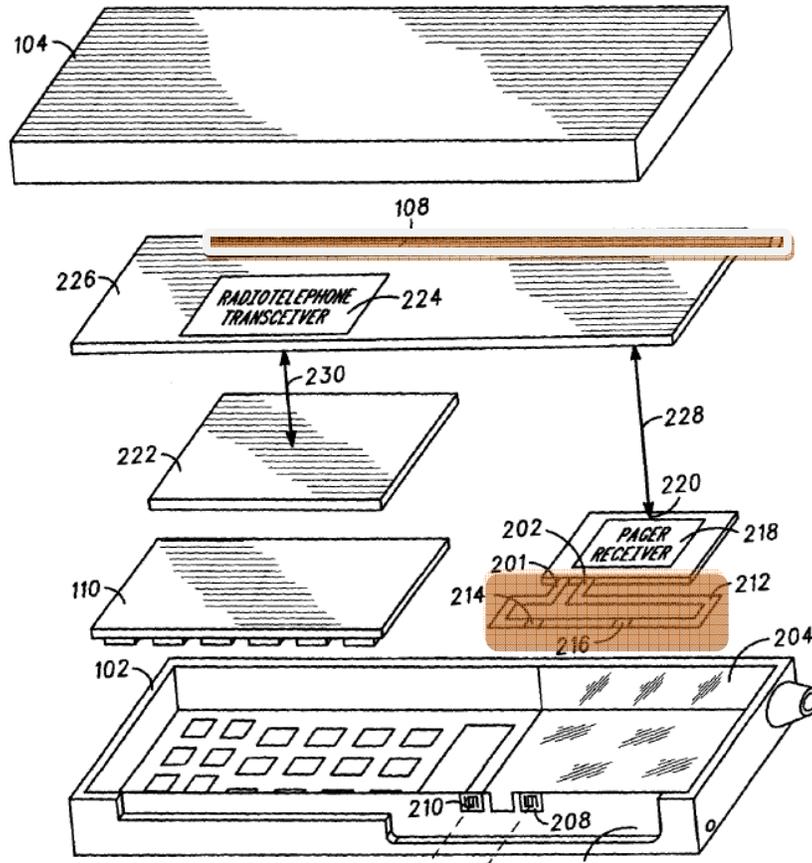
3. The Court Need Not Construe This Phrase, Or Alternatively Should Adopt Motorola's Proposed Construction

As an initial matter, this phrase requires no construction. This phrase has a plain and ordinary meaning, which is that the antenna is arranged between an exposed surface of the housing and at least a portion on the user interface. The disputed phrase contains no terms of art (such as "display space") or terms defined by the specification. In addition, none of the terms in this phrase are without a well-understood ordinary meaning (such as "listing interface"). Further, neither the '987 patent specification nor its prosecution history contains support for construing this phrase in a manner inconsistent with its ordinary meaning. Accordingly, no construction of the phrase is necessary. *See Phillips*, 415 F.3d at 1314.

Apple's proposed construction again amounts to nothing short of a re-writing of the claim language. First, Apple changes the claim language of "the antenna" to "the *entire* antenna" Second, Apple changes the claim language of "housing" to "the receiver's case." Both of Apple's proposed changes are contrary to the intrinsic evidence.

Requiring that the "entire" antenna is disposed between an outside surface of the housing and a portion of a user interface is contrary to the remainder of the language of claim 13, which also requires that the claimed receiver contains "receiver circuitry disposed in the housing" and that "the antenna is coupled to the receiver circuitry." (Ex. 22 at 6:4-5). These claim limitations indicate that at least a portion of the antenna may also be "disposed in the housing."

The '987 patent specification also does not support this change of claim scope. Figure 2 of the '987 patent illustrates an embodiment of the invention:



(*Id.* at FIG. 2 (only a portion of which is shown here)). As shown in Figure 2, neither of the illustrated antennas (either the radiotelephone antenna 108 or the pager antenna 216) are disposed "entirely" between an outside surface of the housing and a portion of the user interface. The radiotelephone antenna 108 is disposed entirely within the housing. Moreover, at least a portion of the pager antenna 216 – specifically the portion of the antenna that connects to the pager receiver circuitry 220 – is disposed within the housing.

Apple's proposal to replace the claim language of "housing" with "the receiver's case" is also without basis. Both the claims and the specification refer to the "housing" of the receiver, and make no mention of the "receiver's case." As such, Apple's construction would introduce an ambiguous term not contained in the patent itself.

Motorola suggests that the Court not construe this phrase. However, should the Court determine that this phrase requires construction, Motorola respectfully suggests it reject Apple's proposed construction or any construction that adds a limitation not found in the claims.

E. United States Patent No. 6,008,737

1. Description Of The '737 Patent

U.S. Patent No. 6,008,737 (the "'737 patent") discloses a method and apparatus for controlling the use of a process added to an electronic device. The '737 patent recognized that advances in technology was leading to mobile devices (e.g., phones) having more advanced functionality, such as email access and financial tools. (*See Ex. 23 at 1:18-38*). The '737 patent recognized that such devices would "require a means for registration and licensing to prevent unauthorized use of processes." (*Id.* at 1:30-32).

The patentees for the '737 patent solved this problem through a novel a method and system for "controlling utilization of a process added to a portable communication device" to prevent unauthorized use of these functionalities. (*Id.* at 1:39-43). The solution was to include, at the fixed portion of the communications system, a database that contains, at a minimum, a list of process records each portable communication device that is to be authorized." (*Id.* at 3:39-53). When seeking authorization to use software, a portable device accesses this database.

When a portable device in the disclosed system seeks authorization to use software, it sends an authorization request to the database at the fixed portion. The authorization request includes an some unique identifier – such as an address – of the portable communication device making the request. (*Id.* at 14:14-18). Upon receiving the authorization request, the unique identifier is used to search the database of process records to determine whether the requesting device is authorized to use the software. (*Id.* at 14:18-33). If the identifier is found in the

database, the fixed portion confirms that the sender is authorized to use the installed software, and then securely transmits this authorization to the device. (*See id.*).

2. Introduction of the Disputed Term "Address Identifying The Portable Communication Device"

The parties dispute the phrase "address identifying the portable communication device," which appears in asserted patent claim 9. Claim 9 of the '737 patent claims a "portable communication device" (e.g., a phone) with an authorization element for using software in the device. That authorization element, among other things, generates an external authorization request including an "address identifying the portable communications device." The parties' proposed constructions are set forth below:

Disputed Claim Term	Motorola's Proposed Construction	Apple's Proposed Construction
<i>“address identifying the portable communication device”</i>	“Ordinary meaning – this term requires no construction, but in the alternative, some reference uniquely identifying the portable communication device”	"a number used to direct messages that uniquely identifies a portable communication device”

3. The Court Should Adopt Motorola’s Proposed Construction Of The Disputed Term “Address Identifying The Portable Communication Device”

As an initial matter, this term requires no construction. This term has a plain and ordinary meaning, which is that the antenna is arranged between an exposed surface of the housing and at least a portion on the user interface. The disputed phrase contains no terms of art (such as the term "gesture" in Apple's '849 patent) or terms otherwise given a special meaning by the specification. In addition, none of the terms in this phrase are without a well-understood ordinary meaning (such as "listing interface"). Further, neither the '987 patent specification nor its prosecution history contains support for construing this phrase in a manner inconsistent with

its ordinary meaning. Accordingly, no construction of the phrase is necessary. *See Phillips*, 415 F.3d at 1314.

In computer science, the ordinary meaning of an "address" is any reference that uniquely identifies the portable communication device, including but not limited to numbers, letters, and other characters. (Ex. 24 at 3-4 (an address is "a character or group of characters that identifies a register, particular part of storage, or some other data source or destination."); Ex. 25 at 3 (an address is "an identification, as represented by a name, label, or number, for a register, location in storage"); Ex. 26 at 3 (an address is "a unique designation for . . . the identity of an intelligent device.")).

The '737 patent uses the term "address" in a manner consistent with this ordinary meaning. Nonetheless, Apple, in its proposed construction, would replace the claim term "address" with "a number used to direct messages." As a result, Apple's proposed construction adds two limitations not found in the claims and not supported by the intrinsic evidence: (1) Apple changes the term "address" to "number," and (2) Apple adds the limitation that this "number" be "used to direct messages."

Neither limitation is not found in the language of the claims, or is synonymous with the term "address" as it is understood in the field of computer science. Moreover, neither the '737 patent specification nor the prosecution history provides support for either of these new limitations.

Motorola therefore suggests that the Court need not construe this phrase to mean anything other than its ordinary meaning. However, should the Court determine that this phrase requires additional construction, Motorola respectfully suggests that the Court adopt Motorola's proposed construction.

Dated: July 28, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 2011, I served the foregoing document via electronic mail on all counsel of record identified on the attached Service List.

/s/ Matthew O. Korhonen

Matthew O. Korhonen

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