United States District Court,
S.D. California.

MLR, LLC,
Plaintiff.
v.
KYOCERA WIRELESS CORPORATION and Novatel Wireless,
Defendants.
And Related Cross-Action,
And Related Cross-Actions.

Civil No. 05-CV-0935-B(AJB)

Oct. 27, 2006.

CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 6,134,453

RUDI M. BREWSTER**, Senior Judge.**

Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996), on October 18-19, 2006, the Court conducted a Markman hearing in the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 6,134,453 ("the '453 patent"). Plaintiff MLR, LLC was represented by the law firms of Jaczko Goddard, LLP and Niro, Scavone, Haller and Niro, and Defendant Kyocera Wireless Corporation was represented by the law firm of Hogan & Hartson, LLP.

At the Markman hearing, the Court, with the assistance of the parties, analyzed the claim terms in order to prepare jury instructions interpreting the pertinent claims at issue in the '453 patent. Additionally, the Court prepared a case glossary for terms found in the claims and the specification for the '453 patent considered to be technical in nature which a jury of laypersons might not understand clearly without specific definition.

After careful consideration of the parties' arguments and the applicable statutes and case law, the Court **HEREBY CONSTRUES** the claims in dispute in the '453 patent and **ISSUES** the relevant jury instructions as written in Exhibit A, attached hereto. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in Exhibit B, attached hereto.

IT IS SO ORDERED.

EXHIBIT A

UNITED STATES PATENT NUMBER 6,134,453

VERBATIM CLAIM LANGUAGE	***COURT'S CONSTRUCTION***
Claim 1 of the '453 Patent	

A multi-modal device for facilitating wireless communication over any one of a plurality of wireless communication networks at least some of which may be available and operating at a given time and location using differing radio frequency modulation protocols and over differing radio frequencies, comprising:	A ***multi-modal device*** [*a device that can transfer information over at least two different radio communications networks*] for facilitating wireless communication over any one of a ***plurality*** [*two or more*] of wireless communication networks at least some of which may be available and operating at a given time and location using differing ***radio frequency modulation protocols*** [*operational procedures that control the process for varying a characteristic of a radio frequency carrier wave in accordance with a modulating signal] and over differing radio frequencies, **comprising*** [*including, but not limited to*]:
a frequency agile radio transceiver operating at any frequency of a plurality of radio frequencies appropriate for each of the plurality of wireless communication networks, said frequency selected in response to a frequency control signal;	a ***frequency agile*** [*able to switch between frequencies*] radio ***transceiver*** [*a component of a radio that receives and transmits radio signals*] operating at any frequency of a ***plurality*** of radio frequencies appropriate for each of the ***plurality*** of wireless communication networks, said frequency selected in response to a frequency control signal;
an interface circuit for interconnecting said frequency agile radio transceiver with an external signal circuit to allow signal information to be sent and received over said frequency agile radio transceiver;	an interface circuit for interconnecting said frequency agile radio transceiver with an ***external signal circuit*** [*physically and functionally separate circuit connected to the interface circuit and radio transceiver that provides signals*] to allow signal information to be sent and received over said frequency agile radio transceiver;
a protocol agile operating circuit for operating said frequency agile radio transceiver and said interface circuit in accordance with any one modulation protocol of a plurality of modulation protocols, said one modulation protocol selected in response to a protocol control signal;	a protocol agile operating circuit for operating said ***frequency agile*** radio ***transceiver*** and said interface circuit in accordance with any one ***modulation protocol*** of a ***plurality*** of ***modulation protocols,*** said one ***modulation protocol*** selected in response to a ***protocol control signal*** [*a digital command generated by the adaptive control means that controls which radio frequency modulation protocol is used by the multi-modal device*];
adaptive control circuit for determining which wireless communications networks are available at a given location and time, for accessing a selected wireless communication network, for communicating with said	***adaptive control circuit [This is a means plus function limitation.*** *The function is: 1. Determining which wireless communications networks are available at a given location and time. 2. Accessing a selected wireless communication network. 3. Communicating with said selected wireless communication network to determine on a real time basis the operating characteristics of the wireless communication network. 4. Generating the frequency control signal and the protocol control signal in response to a user defined criteria to cause the device to communicate with the selected*

selected wireless communication network to determine on a real time basis the operating characteristics of the wireless communication network, and for generating the frequency control signal and the protocol control signal in response to a user defined criteria to cause the device to communicate with the selected wireless communication network using the frequencies and modulation protocol suitable for transmission of said signal	*wireless communication network using a frequency and modulation protocol suitable for transmission of said digital signal information over said selected wireless communications network. The corresponding structure is Circuit 1 and the algorithm described at col. 5, lines 52-65, col. 6, line 2, 11-14 and col. 16, lines 33-35 and Figure 9 of the '453 Patent*] for determining which wireless communications networks are available at a given location and time, for accessing a selected wireless communication network, for communicating with said selected wireless communication network to determine on a ***real time basis*** [*at the time the multi-modal device communicates with the available networks*] the operating characteristics of the wireless communication network, and for generating the frequency control signal and the ***protocol control signal*** in response to a user defined criteria to cause the device to communicate with the selected wireless communication network using the frequencies and ***modulation protocol*** suitable for transmission of said signal
input means for receiving said user defined criteria, said user defined criteria comprising at least one of the cost of using the wireless communication network, the quality of the wireless communication network, the potential for being dropped by the wireless communication network, and the security of the wireless communication network;	***input means [This is a means plus function limitation.*** *The function is receiving user defined criteria comprising at least one of the cost of using the wireless communication network, the quality of the wireless communication network, the potential for being dropped by the wireless communication network, and the security of the wireless communication network. The corresponding structure is key pad 602 (Fig. 6, col. 14, lines 17-18) with a keypad interface circuit (col. 11, line 9), including universal digital input/output interface 158 (col. 11 lines 1-4) of the '453 Patent*] for receiving said user defined criteria, said user defined criteria ***comprising*** at least one of the cost of using the wireless communication network, the quality of the wireless communication network, the ***potential for being dropped*** [*service disconnection due to service provider at near full capacity*] by the wireless communication network, and the security of the wireless communication network;
wherein said adaptive control means operates to generate said frequency control signal and said modulation protocol control signal by comparing said operating characteristics with said user defined criteria.	wherein said ***adaptive control means*** operates to generate said frequency control signal and said modulation protocol control signal by ***comparing said operating characteristics with said user defined criteria*** [*as a result of comparing the operating characteristics of each of a plurality of available networks with the user defined criteria*].

EXHIBIT B

UNITED STATES PATENT NUMBER 6,134,453

TERM	***DEFINITION***
adaptive control circuit	**This is a means plus function limitation.**

	The function is: 1. Determining which wireless communications networks are available at a given location and time. 2. Accessing a selected wireless communication network. 3. Communicating with said selected wireless communication network to determine on a real time basis the operating characteristics of the wireless communication network. 4. Generating the frequency control signal and the protocol control signal in response to a user defined criteria to cause the device to communicate with the selected wireless communication network using a frequency and modulation protocol suitable for transmission of said digital signal information over said selected wireless communications network. The corresponding structure is Circuit 1 and the algorithm described at col. 5, lines 52-65, col. 6, line 2, 11-14 and col. 16, lines 33-35 and Figure 9 of the '453 Patent
by comparing said operating characteristics with said user defined criteria	as a result of comparing the operating characteristics of each of a plurality available networks with the user defined criteria
comprising	including, but not limited to
external signal circuit physically and functionally separate circuit connected to the interface circuit and radio transceiver that provides signals	
frequency agile	able to switch between frequencies
multi-modal device	a device that can transfer information over at least two different radio communications networks
input means	**This is a means plus function limitation.** The function is receiving user defined criteria comprising at least one of the cost of using the wireless communication network, the quality of the wireless communication network, the potential for being dropped by the wireless communication network, and the security of the wireless communication network. The corresponding structure is key pad 602 (Fig. 6, col. 14, lines 17-18) with a keypad interface circuit, col. 11, line 9, including universal digital input/output interface 158 (col. 11 lines 1-4) of the '453 Patent..

plurality two or more

potential for being dropped service disconnection due to service provider at near full capacity

protocol control signal a digital command generated by the adaptive control means that controls which radio frequency modulation protocol is used by the multi-modal device

radio frequency modulation protocols operational procedures that control the process for varying a characteristic of a

modulation protocols radio frequency carrier wave in accordance with a modulating signal

real time basis at the time the multi-modal device communicates with the available networks

transceiver a component of a radio that receives and transmits radio signals

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