

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. 19, 2006.**

Allison H. Goddard, Jaczko Goddard, San Diego, CA, Eric Mersmann, F. Christopher Laney, Kara L. Szpondowski, Raymond P. Niro, Jr., William W. FLachsbart, Nicholas M. Dudziak, Niro Scavone Haller and Niro, Chicago, IL, for Plaintiff.

Robert J. Benson, Hogan and Hartson, Los Angeles, CA, Steven J. Routh, Susan Cook, Hogan and Hartson, Washington, DC, for Defendants.

**CLAIM CONSTRUCTION ORDER FOR UNITED STATES PATENT NUMBER 5,640,444**

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

Pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), on October 17, 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 5,640,444 ("the '444 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 '444 patent. Additionally, the Court prepared a case glossary for terms found in the claims and the specification for the '444 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 '444 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 5,640,444

<b>VERBATIM CLAIM LANGUAGE</b>	<b>COURT'S CONSTRUCTION</b>
<b>Claim 36</b>	
A method of connecting a portable personal data processing device to one of a plurality of public communications networks, including at least one public radio network, to achieve transfer of data with a remote station, comprising the steps of:	A method of connecting a <b>portable personal data processing device</b> [ <i>portable personal computer</i> ] to one of a <b>plurality</b> [ <i>two or more</i> ] of <b>public communications networks</b> [ <i>a system accessible by the public for communication, for example, landline and cellular</i> ] including at least one public radio network, to achieve transfer of data with a remote station, <b>comprising</b> [ <i>including, but not limited to</i> ] the steps of:
providing a portable public communications network interface circuit which provides connections to a plurality of public communications networks, the network interface including a radio transceiving device, which selectively transmits and receives data on a plurality of radio channels using one of a plurality of standardized operating protocols;	providing a portable <b>public communications network</b> interface circuit which provides connections to a plurality of <b>public communications networks</b> , the network interface including a radio transceiving device, which selectively transmits and receives data on a <b>plurality</b> of radio channels using one of a <b>plurality</b> of standardized <b>operating protocols</b> [ <i>a set of procedures for starting, maintaining, and stopping data communications commands understood by the transceiver contacted</i> ];
storing in the interface circuit a plurality of possible program data sets, each data set defining a different operating protocol for establishing data transfer communications with one of the plurality of public communications networks according to a standard communications protocol of that network;	<b>storing in the interface circuit a plurality of possible program data sets, each data set defining a different operating protocol</b> [ <i>storing in the interface circuit two or more collections of instructions, each collection defining a different operating protocol</i> ] for establishing data transfer communications with one of the <b>plurality</b> of <b>public communications networks</b> according to a standard [ <i>accepted, approved or established generally in the network</i> ] <b>communications protocol</b> [ <i>a set of procedures for starting, maintaining and stopping data communications over a particular network</i> ] of that network
connecting the interface circuit to the portable personal data processing device;	<b>connecting</b> [ <i>separably joining</i> ] the interface circuit to the <b>portable personal data processing device</b> ;
transmitting operational commands from the portable personal data processing device to the interface circuit specifying which one of the public communications networks should be used for data transmission;	transmitting operational commands from the <b>portable personal data processing device</b> to the interface circuit specifying which one of the <b>public communications networks</b> should be used for data transmission;
using the interface circuit, automatically retrieving a program data set compatible with the selected public communications network, activating the protocol corresponding to the selected network, and generating address signals to initiate data transfer with the remote station	using the interface circuit, automatically retrieving a program data set compatible with the selected <b>public communications network</b> , activating the <b>protocol</b> [ <i>a set of procedures</i> ] corresponding to the selected network, and generating address signals to initiate data transfer with the remote station using the selected <b>public communications network</b> and <b>protocol</b> , and transferring data between the data processing device and the

using the selected public communications network and protocol, and transferring data between the data processing device and the remote station.

## ***EXHIBIT B***

### ***UNITED STATES PATENT NUMBER 5,640,444-GLOSSARY OF TERMS***

<b><i>TERM</i></b>	<b><i>DEFINITION</i></b>
<b>communications protocol</b>	a set of procedures for starting, maintaining and stopping data communications over a particular network
<b>connecting</b>	separably joining
<b>comprising</b>	including, but not limited to
<b>operating protocol</b>	a set of procedures for starting, maintaining, and stopping data communications commands understood by the transceiver contacted
<b>plurality</b>	two or more
<b>portable personal data processing device public communications networks</b>	portable personal computer a system accessible by the public for communication, for example, landline and cellular
<b>standard</b>	accepted, approved or established generally in the network
<b>storing in the interface circuit a plurality of possible program data sets, each data set defining a different operating protocol</b>	storing in the interface circuit two or more collections of instructions, each collection defining a different operating protocol

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