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.

<p style="text-align:center;">**CLAIM CONSTRUCTION ORDER FOR** UNITED STATES PATENT NUMBER 5,854,985</p>

RUDI M. BREWSTER**, Senior District 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 5,854,985 ("the '985 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 '985 patent. Additionally, the Court prepared a case glossary for terms found in the claims and the specification for the '985 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 '985 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

<p style="text-align:center;">*DRAFT EXHIBIT A*</p>

<p style="text-align:center;">UNITED STATES PATENT NUMBER 5,854,985</p>

VERBATIM CLAIM LANGUAGE	COURT'S CONSTRUCTION
Claim 1 of the '985 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 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 one frequency of a plurality of radio frequencies appropriate for each of the plurality of wireless communication networks, said one 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 one frequency of a plurality of radio frequencies appropriate for each of the plurality of wireless communication networks, said one frequency selected in response to a frequency control signal;
a digital interface circuit for interconnecting said frequency agile radio transceiver with external digital signal processing devices to allow digital signal information to be sent and received over said frequency agile radio transceiver;	a digital interface circuit for interconnecting said **frequency agile** radio **transceiver** with **external digital signal processing devices** [*physically and functionally separate devices connected to the interface circuit and the radio transceiver that provide digital signals*] to allow digital signal information to be sent and received over said frequency agile radio transceiver;
protocol agile operating circuit means for operating said frequency agile radio transceiver and said digital 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;	**protocol agile operating circuit means** [***This is a means plus function limitation.*** *The function is operating the frequency agile radio transceiver and digital interface circuit in accordance with any one of a plurality of modulation protocols, the one modulation protocol selected in response to a protocol control signal. The corresponding structures are the elements of omni-modal radio communication RF circuit 1 shown in Fig. 1A, including modulation selection switches 14 and 16, analog detector-demodulator 18, digital demodulator 20, analog modulator 22, digital modulator 24, along with microprocessor 110 and memory 112 shown in Fig. 1B when implementing algorithm described at Col. 5, line 52 to col. 6, lines 11, 14-15 of the '985 Patent*] for operating said frequency agile radio transceiver and said digital 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;
adaptive control means for	**adaptive control means** [***This is a means plus function limitation.*** *The*

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 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 a frequency and modulation protocol suitable for transmission of said digital signal information over said selected wireless communications network, and	*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 '985 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*** [a *digital command generated by the adaptive control means that controls which radio frequency modulation protocol is used by the multi-modal device*] ***in response to a user defined criteria*** [*as a result of comparing the operating characteristics of each of a plurality of available networks with the 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, and
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)*] 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	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*].

comparing said operating
characteristics with said
user defined criteria.

DRAFT EXHIBIT B

UNITED STATES PATENT NUMBER 5,854,985-GLOSSARY OF TERMS

TERM	*DEFINITION*
adaptive control means	*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 '985 Patent
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
comprising	including, but not limited to
external digital signal processing devices	physically and functionally separate devices connected to the interface circuit and the radio transceiver that provide digital signals
frequency agile	able to switch between frequencies
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).
in response to a user defined	as a result of comparing the operating characteristics of each of a plurality of available networks with the user defined criteria

criteria	
multi-modal device	a device that can transfer information over at least two different radio communications networks
potential for being dropped	service disconnection due to service provider at near full capacity
protocol agile operating circuit means	*This is a means plus function limitation.* The function is operating the frequency agile radio transceiver and digital interface circuit in accordance with any one of a plurality of modulation protocols, the one modulation protocol selected in response to a protocol control signal. The corresponding structures are the elements of omni-modal radio communication RF circuit 1 shown in Fig. 1A, including modulation selection switches 14 and 16, analog detector-demodulator 18, digital demodulator 20, analog modulator 22, digital modulator 24, along with microprocessor 110 and memory 112 shown in Fig. 1B when implementing algorithm described at Col. 5, line 52 to col. 6, lines 11, 14-15 of the '985 Patent.
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

S.D.Cal.,2006.
MLR, LLC v. Kyocera Wireless Corp.