IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

Neo Wireless LLC, Plaintiff, v. Dell Technologies Inc. and Dell Inc., Defendants.	C.A. NO. 6:21-cv-0024-ADA JURY TRIAL DEMANDED

PLAINTIFF NEO WIRELESS LLC'S CLAIM CONSTRUCTION SUR REPLY BRIEF

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I. ARGUMENT IN SURREPLY

A. "the ranging signal is formed from a ranging sequence selected from a set of ranging sequences [associated with the cell] for identifying the mobile station" ('366 Patent)

Dell	The ranging signal is formed from a ranging sequence selected by the mobile station from a set of ranging sequences [associated with the cell] for identifying the mobile station
Neo Wireless	Plain and ordinary meaning, and no construction necessary.

In its Reply, Dell has again failed to provide any justification for adding a limitation to the plain and ordinary meaning of the claim language as written. First, Dell still self-servingly assumes that a POSITA would "naturally interpret" the claim to require the mobile station to do the selecting. Reply at 2. But Dell has now failed twice to provide *any expert testimony* from such a POSITA to that effect, despite having submitted both an original and supplemental declaration from an expert witness in the course of briefing. Only Neo has provided evidence of an actual POSITA's interpretation of the claim term: that the ranging sequence may be selected by the mobile device, a serving base station, or another component of the wireless communication system in which the mobile device operates. Alberth Decl. at ¶¶ 23–24.

Further, Dell has again failed to demonstrate any disclaimer or disavowal limiting the selection to one made by the mobile device. Neo agrees that the claims are read in the context of the entire patent by a person of ordinary skill in the art. *See* Reply at 3 (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005)). But Dell does not contend that a POSITA would obtain a different understanding of the plain English words "selected from" upon reading the patent. Instead, Dell implicitly acknowledges that a POSITA would understand the words "selected from" to *not* limit the selector to a particular entity. Reply at 1 ("[T]he passive voice 'selected from' limitation is *ambiguous as to what performs the selecting.*"). Dell thus contends

that despite that open-ended plain and ordinary meaning, the POSITA would *read an additional limitation* from the specification into the otherwise ordinary meaning of those words. That is (alleged) disclaimer, and Dell makes no effort to meet the exacting standard required and could not do so based on one embodiment. *See Thorner v. Sony Comp. Ent. Am. LLC*, 669 F.3d 1362, 1366–67 (Fed. Cir. 2012) ("It is likewise not enough that the only embodiments, or all of the embodiments, contain a particular limitation. We do not read limitations from the specification into claims; we do not redefine words. Only the patentee can do that. To constitute disclaimer, there must be a clear and unmistakable disclaimer.").

Nor does Dell's specter of section 112 troubles justify the adoption of an unsupported and unhelpful construction. To start, *Rembrandt* does not hold that "if an undisclosed element performs an action in a system claim, the claim is indefinite," contrary to Dell's characterization. Reply at 3 (citing *Rembrandt Data Techs., LP v. AOL, LLC*, 641 F.3d 1331, 1339 (Fed. Cir. 2011)). Instead, *Rembrandt* merely affirmed the line of cases holding that apparatus claims *reciting a method step* are indefinite under section 112. 641 F.3d at 1339. In particular, the claim found indefinite in *Rembrandt* was an apparatus claim that included four apparatus components (for example, "trellis encoding means for trellis encoding the frames"), followed by the *method step* of "transmitting the trellis encoded frames." *Id.* Here, Dell does not even allege mixed claim types, and instead attempts to manufacture a new rule that anything implicating an action must be specifically performed by the claimed apparatus. But the disputed claim term merely describes a feature of the claimed "ranging sequence," as is common in wherein clauses. And there is nothing unusual about describing an element of an apparatus by reference to its origins. *See Roy-G-Biv Corp. v. Fanuc Ltd.*, 2009 WL 2971097, at *23 (E.D. Tex. Aug. 25, 2009) (declining to import limitation requiring a "user" do the selecting for term "selected from a

plurality of software drivers"); *Days Corp. v. Lippert Components, Inc.*, No. 3:17-cv-208-PPS/MGG, 2019 WL 3072306, at *8 (N.D. Ind. July 15, 2019) (declining to construe "pre-selected value" to identify a particular selector, since "Days fail[ed] to establish why that must be further defined within the claim.").

Likewise, Dell's reliance on *Halliburton* continues to be unhelpful. In *Halliburton*, a claimed composition, a "fragile gel," was found indefinite because ***the same gel*** could be determined to be fragile or not fragile due to the ambiguity of the term itself—that is, infringement "could not be determined ***at any time***." *Nevro Corp. v. Bos. Sci. Corp.*, 955 F.3d 35, 40 (Fed. Cir. 2020). Here, Dell only argues that infringement may be difficult to discern—not, like the "fragile gel," that the term itself is inherently impossible to map to an infringing product. Indeed, the transmitted ranging signal either was formed using a ranging sequence selected from a set of ranging sequences or not, regardless of how difficult that is to determine. *See Nevro*, 955 F.3d at 40 ("Definiteness does not require that a potential infringer be able to determine ex ante if a particular act infringes the claims"). Whether or not Dell's Accused Products meet these claim limitations is not a question of indefiniteness, but for infringement.

Finally, Dell also invokes enablement in a last-ditch effort to save its proposed construction. But Dell does no more than observe that the specification does not explicitly describe the selection by, for example, a serving base station. Reply at 4. Yet there is no dispute that the claim term would be sufficiently enabled to a POSITA if the selection was made by the mobile device. And Neo's expert has explained how such a selection may be made by a base station. Alberth Decl., ¶¶ 23–24. Dell provides no reason why a POSITA would not understand the selection of the ranging sequence by another component of the system just as well as it would undisputedly understand selection by the mobile station.

B. "exhibits a low peak-to-average power ratio in the time domain" ('366 Patent)

Dell	Indefinite.
Neo Wireless	Plain and ordinary meaning, and no construction necessary. To the extent construction is deemed necessary, "exhibits a low peak-to-average power ratio in the time domain" means "exhibits a peak-to-average power ratio in the time domain of 9dBs or less."

For this term of degree, Dell recognizes that Neo has identified "objective inputs," Reply at 5, which a POSITA can use to determine what constitutes a "low" PAPR in the context of this patent. Contrary to Dell's position, it is exactly these "objective inputs" that allow a POSITA to understand the "objective boundaries" of the claim term. *See Sonix Tech. Co. v. Publ'ns Int'l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017) ("Claim language employing terms of degree has long been found definite where it provided enough certainty to one of skill in the art when read in the context of the invention.").

Dell also mistakenly ignores that "[e]xtrinsic evidence can also help identify objective boundaries." *Guangdong Alison Hi-Tech Co. v. Int'l Trade Comm'n*, 936 F.3d 1353, 1360 (Fed. Cir. 2019). For example, in *Intri-Plex Technologies, Inc. v. NHK International Corp.*, the parties disputed whether the term "low profile" was indefinite. No. 17-cv-01097-EMC, 2018 WL 659017, at *8 (N.D. Cal. Feb. 1, 2018). The court denied the defendant's summary judgment motion for invalidity, ruling that the term was definite given the context supplied *by the extrinsic evidence*. *Id.* at *5–6; *see also Freeny v. Apple, Inc.*, No. 2:13-cv-00361-WCB, 2014 WL 4294505, at *5 (E.D. Tex. Aug. 28, 2014) (concluding that the term of degree "low power communication signals" was not indefinite based, in part, on the patentee's expert testimony).

Moreover, the absence of an express numerical boundary does not require a POSITA to "subjectively judge" what is a "low" PAPR, as Dell contends. Reply at 5. Dell appears to

contend that any boundary other than a precise numerical one is unduly subjective, yet "[t]he Federal Circuit has frequently addressed claim language that was imprecise and has frequently upheld claims containing similar language, based on the commonsense observation that sometimes precision is impossible to achieve, consistent with an accurate description of the full scope of the invention." *Freeny*, 2014 WL 4294505, at *4 (Bryson, J.) (holding that the term "low power communication signals" was definite).

Here, Dell asks for a "level of numerical precision beyond that required when using a term of degree." *Guangdong Alison*, 936 F.3d at 1362. Neo has not only explained how a POSITA would understand the scope of the term using the existing objective criteria in the patent, Neo also included an analysis from a POSITA using background knowledge around the time of the patent. *See e.g.,* Alberth Decl. at ¶¶ 25–33. Neo further provided an alternative construction with a numerical boundary based on those objective criteria as viewed by a POSITA. Resp. at 6–10 (citing *id.*). What Dell wants—a single, numerical boundary explicitly recited in the specification—is not what is required. "[S]ome modicum of uncertainty" is acceptable and as Neo has explained, the claims meet the requirement of providing "reasonable certainty" to a POSITA. *See Nautilus v. Biosig Instruments, Inc.*, 572 U.S. 898, 899 (2014).

C. U.S. Patent No. 10,044,517 Preambles (claims 1 and 13)

"A method for a mobile device to receive data packets in an orthogonal frequency division multiple access (OFDMA) wireless communication system operating on multiple radio-frequency (RF) bands, the method comprising" – claim 1 "A mobile device in an orthogonal frequency division multiple access (OFDMA) wireless communication system operating on multiple radio-frequency (RF) bands, the mobile device comprising:" – claim 13	
Dell	Preamble is not limiting.
Neo Wireless	Preamble is limiting.

The preambles of claims 1 and 13 do not merely indicate an "intended use," but add a meaningful requirement that the claimed mobile device have the structure and capabilities to operate "in an [OFDMA] wireless communication system operating on multiple [RF] bands." Not all mobile devices are capable of working within a OFDMA system, even mobile devices that can operate on multiple RF bands, as recited in the body of the claims. *See* Alberth Decl. at ¶¶ 34–36 (describing the limitation to OFDMA-compatible mobile devices and methods thereof). Even though the body of the claims specify receiving signals on first and second RF bands, nowhere do the body of the claims establish the necessary structure for functioning within an OFDMA system, as required in the preambles. Indeed, the preambles do not merely require the mobile device to exist in an environment with an OFDMA wireless communication system, but to actually operate in and "receive data packets" in that system. *Cf. Georgetown Rail Equip. Co. v. Holland L.P.*, 867 F.3d 1229, 1236–37 (Fed. Cir. 2017) ("[It] is apparent that the term '[to be] mounted on a vehicle for movement along the railroad track' is meant to describe the principal intended use of the invention . . . [the] location of the system is not an essential feature of the invention."). The preambles of claims 1 and 13 of the '517 patent should therefore be found limiting, as they provide essential structure to the claimed inventions.

D. "receiving scheduling information from a serving base station, the scheduling information indicating an allocation of airlink resources in a first RF band and a second RF band" ('517 Patent)

Dell	Receiving a singular message from a singular base station that indicates an allocation of airlink resources in a first RF band and a second RF band
Neo Wireless	Plain and ordinary meaning, and no construction necessary.

E. "receive scheduling information from a serving base station, the scheduling information indicating an allocation of airlink resources for receiving a first signal… over a first RF band and a second signal … over a second RF band" ('517 Patent)

Dell	Receiving a singular message from a singular base station that indicates an allocation of airlink resources for receiving a first signal over a first RF band and for receiving a second signal over a second RF band
Neo Wireless	Plain and ordinary meaning, and no construction necessary.

For these terms, Dell is explicit about how it attempts to rewrite the claims: it requires that "the claimed scheduling information would come at once and from a single base station." Reply at 8. But neither of these additional requirements are justified by the record nor by any evidence presented by Dell. In continuing to rely on the dog analogy in *Varma*, Dell glosses over the inherent differences between the term "a dog" and "information." Unlike "a dog," the claimed "scheduling information" need not be received in a single "discrete, recognizable event." Instead, discrete pieces of "data may be aggregated into "information." In contrast, there is no way to aggregate a dog that fetches and a dog that rolls over into a single dog that performs both actions.

Likewise, Dell's pivot to the phrase "from a serving base station" does not save its interpretation. Dell's attempt to limit "scheduling information" was already a stretch of *Varma*'s holding. But Dell cannot point to *any* "dual requirements" of "a serving base station" that would implicate *Varma*'s holding at all. Thus, the default rule dictates that the "a" in front of "serving base station" should be interpreted as "one or more." *See e.g., Baldwin Graphic Systems, Inc. v. Siebert*, 512 F.3d 1338 (Fed. Cir. 2008) ("That "a" or "an" can mean "one or more" is best described as a rule, rather than merely as a presumption or even a convention"). This is consistent with the nature of the term "scheduling information," which is not limited to a single piece of data, and thus can come from multiple "serving base stations." Accordingly, the plain

and ordinary meaning of the claim language, when viewed as a whole, contradicts Dell's proposed construction.

F. "allocation of airlink resources [] for receiving a first signal with a first frame structure having first frame boundaries and a second signal with a second frame structure having second frame boundaries" ('517 Patent)

Dell	Plain and ordinary meaning, which means the first signal comprises a frame and the second signal comprises a frame.
Neo Wireless	Plain and ordinary meaning, and no construction necessary.

As explained in Neo's Response, the broad plain and ordinary meaning of the claim language for this term reflects the patentee's desire to cover signals sent on full frames, partial frames, or otherwise. The presence or absence of a "full" frame is simply not specified in the claims. Dell argues that reference to a "two-frame . . . system" in prosecution and use of the words "frame boundaries" in the claims, requires the signals to each comprise a full frame, and that Neo could have been more specific in the claim language if it wanted to claim something other than full frames. Reply at 9–10. But if the patentee said a "two-subframe system," as Dell suggests in Reply, Dell would say the signals each *only* comprise a subframe, and never a full frame. Similarly, under Dell's logic, the patentee describing the claims as directed to a "two-partial-frame system" would trigger an equally limiting construction. Instead, the patentee chose to describe its claims, generally, as related to a "two-frame . . . system," with non-limiting "frame boundaries," the plain and ordinary meaning of which covers all of the above.

G. "traffic characteristics" ('517 Patent)

Dell	Indefinite, or in the alternative "the type of traffic being transmitted (e.g., voice, data, video)"
Neo Wireless	Plain and ordinary meaning, and no construction necessary.

Dell's recycled "traffic characteristics" arguments ignore both the facts and firmly established caselaw. First, Dell continues to inconsistently claim that "there are no described

embodiments of 'traffic characteristics' in the '517 patent," while in the same breath arguing that the "specification confirm[s]" its own proposed alternative construction of the claim element. Reply at 10–11. Further, Dell does not dispute the relevant caselaw cited in Neo's Response, explaining that (1) there is no requirement that "traffic characteristics" be expressly recited in the specification, *see Nalpropion Pharms., Inc. v. Actavis Labs. FL, Inc.*, 934 F.3d 1344, 1350 (Fed. Cir. 2019*); Kara Tech. Inc. v. Stamps.com Inc.*, 582 F.3d 1341, 1347–48 (Fed. Cir. 2009); and (2) the use of "traffic characteristics" in an embodiment (as Dell implicitly argues) does not limit the term to that specific use without a clear and unambiguous disavowal of all other uses (which is not present here), *see Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1357 (Fed. Cir. 2004).

Moreover, Dell's alternative construction is not even consistent with the one embodiment Dell (implicitly) cites in support of it. As Dell acknowledges, the only reference to "traffic" in the specification is a description of adapting subframes in part based on "traffic patterns":

> The downlink and uplink period configuration in each subframe can be independently adapted to support *applications* ***with*** *a variety of traffic patterns*, from symmetric to highly asymmetric…. Therefore, a great variety of applications such as normal two-way data communications, voice communications, video, and data broadcasting are…supported….

'517 Patent at 5:10–17. This passage (and the accompanying figure) does reference application types (data, voice, video, etc.), but only in the sense that different application types may have, as an underlying property of the given application, a variety of different "traffic patterns." For example, broadcast video requires primarily downlink traffic, whereas two-way voice requires a mix of downlink and uplink, such that those two applications use different patterns of downlink and uplink traffic (symmetric or some degree of asymmetric).

Thus, *if* the specification places a limit on the scope of "traffic characteristics," this embodiment describes "characteristics" of the traffic not as the application type, but as the underlying downlink/uplink symmetry of the traffic. In fact, it is differences in this downlink/uplink pattern, rather than the application type, that necessitates the use of the different claimed subframe configurations. The downlink/uplink traffic pattern could be the same across different application types (for example, broadcast video and broadcast data). Similarly, the broad level of application identified by Dell could be the same while the downlink/uplink traffic pattern is different (for example, one-way versus two-way video). Therefore, even restricted to Dell's cited intrinsic record, it would make no sense to limit "traffic characteristics" solely to the type of application, since that construction would exclude the different symmetric and asymmetric uplink/downlink "patterns" that the specification actually identifies as characteristics of the traffic and the primary driver of the first and second "subframe configurations" in the claim.

This passage of the specification also helps to clarify the distinction between the frame structures and subframe configurations, on one hand, and traffic characteristics on the other, resolving Dell's worries about the lack of limits or superfluity of the term. Neo has consistently explained simply that the traffic characteristics are not limited to the "type" of traffic as Dell suggests. But that does not mean, and Neo did not propose, that the different subframe configurations called for in the claims are *themselves* "different traffic characteristics." Rather, they are distinct concepts, and indeed, two different subframe configurations may nevertheless have the same traffic characteristics. Accordingly, the subframe configuration may be "adapted to support" or "associated with," for example, different traffic patterns, but the traffic characteristics and the subframe configuration remain conceptually distinct.

Finally, regarding Dell's new argument about "channel characteristics"—putting aside the necessity of distinguishing claim terms from every similar phrase anywhere in the specification—Neo fails to understand, and Dell makes no actual showing of, *how* adopting the plain and ordinary meaning of traffic characteristics impinges on the distinct meaning of "channel characteristics" at all.

H. "the mobile station-specific transmission parameters indicate an antenna transmission scheme . . . , the antenna transmission scheme comprising a transmission diversity scheme or a multiple-input multiple output (MIMO) scheme" ('941 Patent)

Agreed Construction	the mobile-station specific transmission parameters alternatively indicate an antenna transmission scheme that comprises a MIMO scheme or an antenna transmission scheme comprising a transmission diversity scheme other than MIMO, wherein the antenna transmission scheme is capable of comprising either a MIMO scheme or a transmission diversity scheme other than MIMO. To avoid any doubt, this requires supporting both MIMO and non-MIMO transmission diversity systems.

In the course of briefing, the parties have jointly agreed to propose that this term be construed as set forth above.

I. "the mobile station-specific transmission parameters indicate […] a corresponding subchannel configuration […] the corresponding subchannel configuration characterized by distributed subcarriers or localized subcarriers in the frequency domain" ('941 Patent)

Dell	The mobile station-specific transmission parameters indicate whether the subchannels are either distributed subcarriers, or localized subcarriers in the frequency domain
Neo Wireless	Plain and ordinary meaning, and no construction necessary.

Neo does not dispute that the claim requires the "mobile station-specific transmission parameters" to indicate either a distributed or localized subcarrier configuration. But Dell's proposed construction goes farther to require an explicit parameter comprising either a "distributed" or "localized" value. *See* Reply, 14–15. This is incorrect and as described below,

any disclaimer that may have arisen from the patentee's statements during prosecution is already embodied in the plain and ordinary meaning of the claim term.

In Reply, Dell accuses Neo of attempting to "erase" certain prosecution statements because Dell has not, and cannot, show a disclaimer to justify its construction. Dell's reliance on *Omega Eng'g, Inc, v. Raytek Corp*., 334 F.3d 1314, 1327 (Fed. Cir. 2003) is informative. In *Omega*, the Court's prosecution disclaimer analysis hinged on the patentee's "deliberate surrender" of the claim scope that was "unmistakable in its effect." *Id.* To overcome rejection, the patentee distinguished its invention from three prior art references explaining:

> The advantage offered by the invention of claim 1, amended, is that it provides a laser sighting device that relies on the use of at least one laser beam ***that is able to outline the energy zone on the surface*** to be measured rather than illuminate the entire zone. The clear advantage offered by such a device is that it ***only directs energy at the edge of the energy zone to be measured to outline same*** and, as such, ***has virtually no effect on the temperature measurement to be taken***. Such a concept is neither taught nor suggested in either Everest or Darringer et al., taken alone or in combination.

Id. (emphasis added). The Court found that the plaintiff "did not clearly and unmistakably disavow a device that directs light into the interior of the energy zone" because the patentee's purpose for distinguishing the prior art was the invention's temperature effect. *Id.* In other words, the Court focused on whether the plaintiff "put the examiner and the public on notice of the invention's *crucial* feature." *Id.* (emphasis added).[1]

Here, Dell has not proven that the patentee deliberately, unmistakably, and clearly disavowed its claim scope when it stated, "applicant's system transmits subchannel configuration information, including whether the subchannels are 'distributed subcarriers or localized

[1] Note that the Court further found this passage did not alone rise to the requisite level of a disclaimer with respect to the temperature reading. *Id.* Instead, the Court looked to the patentee's focus and *repeated* insistence that the invention differed from the prior art by precluding heat from entering the energy zone affecting the temperature read. *Id.* at 1327. Here, Dell hangs its hat on a single statement providing a general description of the added claim feature.

subcarriers in the frequency domain.'" Op. Br., Ex. C at 9. Indeed, as in *Omega* where the Court looked at the patentee's purpose for distinguishing the prior art, here, the patentee explicitly stated the crucial feature of its invention as compared to Wilson was its ability to transmit subchannel configuration information, as opposed to merely pilot information. *Id.* ("Instead, as noted previously, Wilson is solely direct[ed] to the transmission of pilot information.")

Accordingly, the patentee did not "distinguish[] prior art on the basis of 'whether'" as Dell suggests. The patentee's use of "whether" did not impose an additional unwritten requirement that the subchannel configuration explicitly and affirmatively include a distributed or localized indicator. If anything, the patentee's use of the word "whether" provided an example for the PTO and the public of the type of subchannel configuration information the invention transmits. *See, e.g.*, *Northern Telecom Ltd. v. Samsung Electronics Company*, 215 F.3d 1281, 1293–95, 55 USPQ2d 1065, 1074–75 (Fed.Cir.2000) (declining to apply prosecution disclaimer where the statements made by the inventors during prosecution were open to multiple interpretations). Therefore, there was no disclaimer as Dell describes.

J. "the segment having a starting time-frequency coordinate" ('450 Patent)

Dell	Information that identifies the starting time-frequency offset for the segment
Neo Wireless	Plain and ordinary meaning, and no construction necessary.

Dell's Reply makes it even more apparent that its proposed construction is unsupported and would only serve to confuse the jury. Dell argues that its construction is necessary in light of the specification's differentiation between a "starting time-frequency ***coordinate***" and a "starting time-frequency ***resource***." Reply at 14. But without needing any reference to the specification, the claim language is clear—there is a segment *of time-frequency resource*," and that segment "ha[s] a "starting time-frequency coordinate" and "compris[es] N time-frequency resource

units." Contrary to Dell's reasoning,[2] it does not follow that the recited mobile device obtains the "starting time-frequency coordinate" as a unique piece of data. The coordinate is sufficiently distinct from the resource by virtue of being a property or characteristic of the resource segment, whether or not that property is separately communicated. And when, in an entirely separate claim limitation, the mobile station must "recover the information from the received signal *using the starting time-frequency coordinate*," the claim is agnostic to whether the mobile station acquired the "starting time-frequency coordinate" directly or derived it from the resource segment itself. The claim just requires that the mobile station use it to recover the information.

K. U.S. Patent No. 10,833,908 Preambles (Claims 1, 11, 21)

"A mobile station comprising" – claims 1 and 21 "A method performed by a mobile station, the method comprising" – claim 11	
Dell	Preamble is not limiting.
Neo Wireless	Preamble is limiting.

Neo agrees with Dell that independent claim 21's preamble is limiting at least because it recites "the mobile device" in the body of that claim. With respect to claims 1 and 11, Dell tries to distinguish those independent claims from their respective dependent claims 5 and 15 by arguing that the independent claims do not "affirmatively recite 'the mobile station' in the body of those claims." Reply at 15. But the antecedent basis for "the mobile device" in claims 5 and 15 is provided exactly in the preambles of claims 1 and 11, respectively. *See Pacing Techs., LLC v. Garmin Int'l, Inc.*, 778 F.3d 1021, 1024 (Fed. Cir. 2015) (finding preamble of independent claim limiting where term in preamble provided antecedent basis for term appearing in dependent claim).

[2] *See* Reply at 14–15 (stating that "having the coordinate means that you have the identifier—not just the physical property").

Accordingly, Dell makes a distinction without a difference and each of the preambles of claims 1, 11, and 21 should be found limiting.

Moreover, Dell's analysis ignores that all of the dependent claims from claim 1 (not merely claim 5) recite "***the mobile station of claim 1***."[3] The fact that the dependent claims specify that claim 1 is limited to "a mobile station" provides an additional, independent reason claim 1 is limited to a mobile station.

Lastly, Dell does not even attempt to address the specification, which makes clear the solutions are for use in and by a mobile station. *See* Resp. at 27–28; *see also Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (whether a preamble is limiting requires a review of the entire patent). For at least these reasons, the Court should construe the claims to reflect the "inventor's intent that the preamble limit the scope of the claim[s]." *Shoes by Firebug LLC v. Stride Rite Children's Group, LLC*, 962 F.3d 1362, 1268 (Fed. Cir. 2020).

[3] A similar structure is adopted for claim 21 and its dependent claims, and provides an independent reason claim 21's preamble is also limiting. Dell agrees the preamble in claim 21 is limiting.

DATED: December 16, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel registered as Filing Users on this 16th day of December, 2021.

/s/ *Jason D. Cassady*
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