

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOURSQUARE LABS, INC.,
Petitioner

v.

BOARDACTIVE CORPORATION,
Patent Owner.

IPR2023-00918
Patent 10,621,620 B2

Record of Oral Hearing
Held: September 4, 2024

Before JAMES A. TARTAL, MICHAEL L. WOODS, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

IPR2023-00918
Patent 10,621,620 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

STEVEN SHIPE, ESQUIRE
MICHAEL CARRILLO, ESQUIRE
Barnes & Thornburg, LLP
One N. Wacker Drive
Suite 4400
Chicago, Illinois 60606-2833

ON BEHALF OF THE PATENT OWNER:

GREGORY GULLIVER, ESQUIRE
AddyHart, P.C.
401 N. Michigan Avenue
Suite 1200-1
Chicago, Illinois 60611

The above-entitled matter came on for hearing on Wednesday, September 4, 2024, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE SILVERMAN: Okay. Let's go on the record. I am Judge Silverman and I'm joined today on the panel by Judge Woods and Judge Tartal. We are here for the oral arguments in both IPR2023-00918 and IPR2023-00919. Both matter matters are titled Foursquare Labs, Inc. on the Petitioner v. BoardActive Corporation, the Patent Owner.

And let's start with the parties' appearances. Who is here for Petitioner?

MR. SHIPE: Thank you, Your Honor. Steven Shipe on behalf of Foursquare. Also we have Michael Carrillo, lead counsel for Foursquare.

JUDGE SILVERMAN: Very good. Is anyone else with you today?

MR. SHIPE: No, that's it.

JUDGE SILVERMAN: Very good. And Patent Owner, who is here for Patent Owner?

MR. GULLIVER: Gregory Gulliver. I'm with AddyHart. I am representing the Patent Owner BoardActive. I'm the only one on right now. Everyone else is on the public line.

JUDGE SILVERMAN: Okay, very good. By the parties' agreement, we will begin with the 918 case after which we'll take a short break and then we will hear the 919 case.

As counsel just mentioned, the video presentation of this hearing is available to the public. I do not expect any confidential information to be discussed but if anything is going to come up please let us know first and then we will decide how best to proceed.

1 I want to remind everyone recording of any PTAB hearing is
2 prohibited. The court reporter will provide a transcript of the hearing that
3 will become part of the record in the proceeding at a later date .

4 To ensure that the transcript of this hearing is clear we ask that when
5 speaking you identify yourself, speak directly into the microphone and also
6 identify whatever slide numbers and figures or any other pertinent
7 information for identification when you're flowing through demonstratives
8 or any portion of the record. And please mute yourself when not speaking.

9 If you encounter any technical difficulties, please let us know
10 immediately.

11 The Judges before you today take our role very seriously in deciding
12 this dispute. To prepare for the oral arguments we have familiarized
13 ourselves with the record and with the issues in each case. We have the
14 briefs and the evidence available to us on our computers, and we have also
15 received both parties demonstrative exhibits, which we also have available
16 to us. And I believe that we have a set of demonstratives from each party in
17 each of the two cases.

18 Our role as Judges on the panel is to assess your arguments and
19 evidence and weigh those in accordance with the burdens established by our
20 rules of procedure and our precedential authority. We remind the parties
21 that the Petitioner has the ultimate burden of establishing unpatentability by
22 a preponderance of the evidence.

23 I apologize in advance if we interrupt your presentations with
24 questions. Please bear in mind that we do so only to assist our resolution of
25 the issues and then possibly to remind you of the clock. For each proceeding
26 we will follow the procedure that's set forth in our oral argument order.

1 The Petitioner will have 60 minutes total time to present arguments.
2 Patent Owner will also have 60 minutes total. Petitioner will present first
3 and may reserve time for rebuttal. Then Patent Owner will then have the
4 opportunity to present its response in then may also, may reserve time for
5 surrebuttal. By then we will have any rebuttal arguments from Petitioner
6 followed by any surrebuttal arguments for Patent Owner.

7 The panel will maintain a clock and endeavor to give each party
8 warnings as you near the end of the allotted time, but it would be helpful if
9 the parties were to monitor their own clocks as well.

10 Let's set times for rebuttal and surrebuttal if there is any. Petitioner,
11 do you want to reserve any time for rebuttal? This is in the 918 case that
12 we'll begin with first.

13 MR. SHIPE: Yes, Your Honor. I'd like to reserve 20 minutes.

14 JUDGE SILVERMAN: Okay.

15 MR. GULLIVER: Your Honor, I'd like to reserve 10 minutes for
16 surrebuttal.

17 JUDGE SILVERMAN: Can you say that again? You broke off for a
18 second.

19 MR. GULLIVER: I'd like to reserve 10 minutes for surrebuttal.

20 JUDGE SILVERMAN: Ten minutes for surrebuttal.

21 Are there any questions before we begin? Petitioner, any questions?

22 MR. SHIPE: No questions.

23 JUDGE SILVERMAN: Patent Owner, do you have any questions
24 before we get started?

25 MR. GULLIVER: No questions, Your Honor.

1 JUDGE SILVERMAN: Then Petitioner will have 40 minutes and
2 reserving 20 minutes for rebuttal, and you may begin whenever you are
3 ready.

4 MR. SHIPE: Thank you, Your Honor and good afternoon to the
5 panel. Again, my name is Steven Shipe on behalf of Foursquare, the
6 Petitioner. I'd like to refer to my demonstratives today. I think you all have
7 a copy, as mentioned earlier. I believe it is being shared with the screen as
8 well here.

9 And I will refer to the slide number in the lower right-hand side while
10 I discuss and go through.

11 So I'd like to begin by doing an overview of the grounds. I realize the
12 panel is aware, but there is a unique, I think, ordering to the way that the
13 claims were presented because of the anticipation challenges so we'll look a
14 little bit at that.

15 And then just to review the thrust of how the art is applied, what
16 features are being added at times to some of the obviousness arguments, and
17 then some of the major overviews of the two primary pieces of art. And that
18 is the Cellco reference which was referred to as Verizon in the petition and
19 then the Adharapurapu reference, which was referred to as Alcatel in the
20 petition.

21 So we see, now moving to slide 3, we see the chart of the grounds that
22 were -- of challenge. I'm going to begin with on the left-hand side Grounds
23 1 through 6, which refers to the Cellco reference. I'm going to call it the
24 primary reference. And then the later ground will come afterwards.

1 If you see from Grounds 1 and 2, we're addressing first Claims 28 and
2 29, which are independent claims and then moving to Claim 1. And it's
3 dependent claims thereafter, just a little bit of the ordering of the petition.

4 So with respect to the Ground 1, we have anticipation by the Cellco
5 reference, specifically with respect to Claims 28 and 29. So this is including
6 all aspects of these claims, including these two features listed below. They
7 are registering asset data, including registering a first geolocation and
8 tracking the location associated with a recipient in response to a matching
9 comparison.

10 Those two (inaudible) we have as an alternative ground, so we have
11 addressed them with additional art, each of Kerr and Geer, respectively,
12 disclosing registering or more information about registering and further
13 bolstering the response to tracking, which refers to the claim language
14 tracking in response to within each of the Claims 28 and 29.

15 Moving to slide 5, Ground 3 would be obviousness over Felt with
16 respect to Claim 1 and the additional features, which we do believe are
17 disclosed in Felt but may have been, may need additional knowledge from
18 the artisan, including content interaction layer and the consumer tracking
19 layer.

20 And additionally, as we move on to Grounds 4 and 5 we have
21 alternatively adding Kerr and/or Geer for this -- or I'm sorry, Kerr and/or
22 Muhire for certain features. Kerr specifically, again with respect to
23 registering the term registering and then Muhire with respect to the layers,
24 the content interaction layer and the consumer tracking layer.

25 So moving to slide 6, we see the cover of the Cellco reference.
26 (Inaudible) is generally directly to targeted advertising and specifically by its

1 title to real time display and distribution of advertisements. And that real
2 time access is important to the case at issue here because Felt is an ongoing
3 process. It's delivering advertisements and other communications to
4 different devices and it's doing it on an ongoing basis, not as a stagnant
5 message but continuing the change to the environment that the user finds
6 himself in or whatever device that is relevant to this particular architecture.

7 On the right-hand side we have, of course, kind of, a generic
8 illustration that a network is involved in the distribution of those
9 advertisements or those communications to the different devices.

10 Moving to slide 7, so in Figure 2B we see some of the architectures
11 that Felt discloses, and ad server, which has a variety of functionality in the
12 center is listed as 107, which can receive some of the advertisements from
13 banks and from the agencies that provide them.

14 But then moving to the different devices that Felt mentioned,
15 including a mobile device like a mobile phone, a fixed display, a stationary
16 display, whether it's a billboard or a display at a business location, and then
17 also a vehicle.

18 And this vehicle is referred to as a mobile unit, specifically number
19 124. And the notion is that this vehicle might have a display, a fixed
20 display, attached to the vehicle and the vehicle can now drive around and
21 displays can be seen on the vehicle.

22 As I'll mention later, this mobile unit is also involved in other
23 architecture that Felt describes where it can perform some of the same
24 functionality that the ad server does in terms of selecting and looking at
25 criteria of when to display certain advertisements.

1 So moving to slide 8, with respect to Ground 1, one of the -- the
2 primary one or the first limitations that's addressed there is registering asset
3 data and registering a first geolocation as a part of that asset data. As this
4 panel found during the institution decision, Felt discloses databases that
5 correlate particular geographic locations with particular marketing content
6 and businesses. We think that's actually a pretty apt description of what Felt
7 is after in trying to correlate geographic locations with a specific marketing
8 content, the businesses themselves, and also tailor them to the user,
9 primarily based on location and also based on other things like time and
10 demographics of the user, age, income, things like that.

11 On the right-hand side we also notice the panel's understanding that
12 some of Patent Owner's arguments target at the differences between the
13 word registering and other words like categorization or adding within the
14 description of Felt. Words were merely word differences and that the
15 overall disclosure of Felt was very much representing registering this sort of
16 data, including geolocation data, in order to perform its targeted advertising.

17 Moving on to slide 9, Felt specifically highlights the need for or the
18 application of location and geographic locations, for example, businesses.
19 They also mentioned public points of interest like parks and institutions.
20 They emphasized the proximity to particular business locations and even
21 fixed displays whenever those are relevant to businesses in particular.

22 And then lastly, that the distribution of the content with respect to
23 those locations can be done directly to wireless devices, mobile devices like
24 mobile phones 120.

25 Moving to slide 10, we see that these geolocations are associated with
26 physical assets and virtual assets, specifically the correlation between the

1 geographic location of the business itself as a physical asset, the displays
2 themselves as a physical assets, and the manifestation of an ad being
3 presented on a screen as a virtual asset because it's a time-dependent display
4 of content.

5 We also note that Felt actually use the term in its paragraph 28 and it
6 actually mentioned businesses associated with the marketing content
7 showing that there is an association there and a relationship between the
8 content, the asset, and the particular business that we're concerned with.

9 Moving to slide 11, Felt also discloses tracking in response to a
10 matching comparison. Specifically, Felt discloses tracking its recipients, the
11 recipients of the content. In paragraph 41 Felt mentions that user settings
12 have a "do not track" option that they also call an opt-in option where the
13 user can set their device, whether or not the device is going to be tracked by
14 the system. So specifically when that "do not track" option is turned on or
15 rather when the opt-in portion has not been elected, the data relating to the
16 location or proximity of the mobile device is not going to be collected. It's
17 not going to be maintained by the system.

18 Additionally, Felt discloses another use or another, kind of, instance
19 of tracking where it wants to track the related content actions that the user
20 would take, so whether or not the content was acted upon by the user. And
21 that could take a variety of forms like clicking links that are included within
22 the content mapping location to the businesses which are associated with the
23 content or even physically traveling to the location of the business.

24 Each of these is a type of tracking but both includes content
25 interactivity tracking and also physical tracking that is constant -- that

1 constitutes a meaningful reaction to the content and physically moving to
2 (inaudible) of a business.

3 Moving to slide 12, I wanted to address the alternative use of first
4 Kerr to bolster the use of registering asset data. Kerr specifically provides a
5 user interface that allows the user to go in and define geographic portions
6 and locations of businesses and other points of interest with respect to
7 targeted advertising, specifically targeting content delivery. So once a user
8 is entering within this proximity of the point of interest that causes the
9 triggering of content or messaging as other types of communications to be
10 sent to the user's device.

11 Moving to slide 13 we see Dr. Goldberg testified as to Kerr that
12 (inaudible) would have implemented these types of registration aspects that
13 Kerr brought into Felt to promote the ease of implementing and adjusting
14 those requirements, for example, the geographic requirements or the
15 proximity requirements.

16 The ease of understanding distribution of locations schemes of various
17 sorts, so understanding the plan of how the layout works and which points of
18 interest are actually activated and then generally in improving human
19 machine interfacing because ultimately in registering you're trying to
20 implement something into a system. And by providing a machine interface
21 now the human can interact with it, understand it, read it, modify it in a
22 simpler manner or a more effective manner.

23 So moving on to the other aspect that we highlighted, tracking in
24 response to a matching comparison. In the alternative Ground 2, Geer
25 provides an additional aspect of tracking recipients' location information in
26 response to a matching comparison. In this instance of matching

1 comparison, Geer discloses that it monitors the state of the fan. The state of
2 the fan in this instance on the left-hand side of the slide 14, the state of the
3 fan relative to the event. So in Geer's example, one of the examples they
4 provide is a baseball game and a user is walking in the proximity of a
5 baseball stadium and determining whether the fan is a fan of the home team
6 or not is defined as the state of the fan.

7 And as we look on the right, this is paragraph 74 of Geer, if the user is
8 determined not to be a home team fan then they're not going to send an
9 advertisement to them that uses the home team's colors or other things that
10 are affiliated with the home team. So by determining the state of the fan,
11 whether or not there is a matching comparison to the fan's state with respect
12 to that team, they're going to activate either a -- they're going to activate a
13 high resolution tracking, which Geer refers to as HIRES, H-I-R-E-S.

14 So this high resolution tracking allows more precise tracking, more
15 powerful tracking, more consistent or more confidence in the actual
16 locations that are known from the person's mobile device. And by turning
17 on that HIRES tracking additional resources are consumed, including power.

18 So while Geer itself in that same paragraph 57 mentions that
19 conserving battery life can be seen by only using HIRES tracking when they
20 entered, either they found that a fan is actually a -- consistent with the state
21 of the fan the fan is actually a fan of the home team and they are marketing
22 them with respect to that event properly. When that is not the case and
23 there's not a matching comparison, they can turn the HIRES tracking off.

24 Dr. Goldberg mentioned that prompting this HIRES tracking when the
25 user profile data, including affiliation categories or interest match in
26 comparison to content rules, these are observations of Geer's teaching with

1 respect to this HIRES tracking implementation. And that this tracking in
2 response to the user location would also improve resolution of the tracking,
3 conserve energy, otherwise reduce data loading, and reduce processing and
4 all of the associated advantages with targeted advertising by improving
5 communications, efficiency of communications, reducing noise in those
6 communications as a result.

7 Moving to slide 16, so moving to another claim element affecting
8 delivery rules associated with a second geolocation at which the recipient is
9 tracked, we see some similar notions throughout a number of these claims
10 with respect to Grounds 1 and 2. We really feel that Felt's entire disclosure
11 is conducive to this second delivery rule, second geolocation, because it is
12 doing it ongoing, real-time ads. Felt's entire disclosure is based around this
13 idea of geography and motion and time affecting the ads. There's a number
14 of serial examples of ads coming up in different ones of the architecture, and
15 we think that they're equally applied to any of the architectures with respect
16 to the locations and the varying of locations.

17 But we know within this paragraph alone from the reply of the
18 marketing content being updated based on geography and real-time location
19 of individuals in the temporal nature of marketing content and then
20 mentioning marketing content that's updated as the user travels all
21 exemplifies that Felt is directed to ongoing as it happened in real-time as the
22 user is moving.

23 Moving to slide 17, we note that the idea that there would only be one
24 stationary it doesn't really fit into this logic, so the idea of having real-time
25 ads is naturally part of the motion that's happening in a lot of Felt's of
26 moving throughout the city or moving between major points, like airport and

1 downtown and things like that. So we think that the idea that there's not
2 going to be a second location merely because it's a mobile phone that's the
3 subject of the majority of the descriptions in the petition, we just don't think
4 that fits with the nature of all of Felt's descriptions.

5 Moving on to slide 18, we can see a little bit of the differences in
6 these architectures. On the left-hand side we have an instance where, as I
7 mentioned before, the van or the vehicle, the mobile unit has some of the
8 functionalities of the ad server and may perform some of the analysis of
9 which ads could be distributed. And those ads eventually are also -- can also
10 be distributed to the mobile device 120 that you see on the right-hand side of
11 Figure 2A there.

12 By comparison, another architecture that's shown in Figure 2(b) that
13 we looked at before, the ad server does perform the determination
14 functionalities and the assessment of paths and decisions on distribution, but
15 it can go through other devices, the mobile devices, the displays, and even
16 the mobile unit itself.

17 In fact, there's a lot of suggestion within Felt that both the mobile unit
18 and the ad server can function together. There's no indication that one or the
19 other has to be applied. In fact, you could have a system that's operating
20 with both of these architectures simultaneously.

21 Moving to slide 19, just to remove all doubt, there's specific
22 disclosure in Felt that the ad server 107 can distribute marketing content
23 directly to the mobile devices. So although there are architectures where the
24 ad server might provide ads to the mobile units first and the mobile unit on
25 to mobile devices, mobile phones specifically, there is undoubtedly a
26 disclosure that the ad server can directly distribute to the mobile devices.

1 Moving to slide 20 shows that there is disclosure that the ads are
2 working -- distributed directly to mobile phones. There's also disclosure that
3 profile data is applicable to when the mobile units are involved in the
4 distribution. It's although the mobile units themselves are vehicles don't
5 necessarily represent an individual profile, as we see here in Figure 4.
6 Windows proximity or other location determinations made at box 430. The
7 progress of the process proceeds to display mobile content at 440 on the
8 mobile unit itself.

9 And then moving to slide 21, we see that the marketing content is also
10 matched by the user profile comparator in box 450. So that matching is
11 happening directly during one of the architectures of the -- that employed the
12 van. So even when the vans are involved in distribution or other triggering
13 of ad activity, there's still profile data that's applied whenever the content is
14 just distributed to the mobile devices themselves that we can see in box 460.

15 JUDGE SILVERMAN: Counsel, what -- this is Judge Silverman.
16 What disclosure of Felt do you think corresponds to the profile data or the
17 profile information, vis-à-vis the van described in the Felt reference?

18 MR. SHIPE: So I think all of the, all of the same profile data is available to
19 this fan architecture, you know, the user's age and income and all of the
20 same demographic data that is described generically with respect to any
21 individual user applicable to a mobile phone is still available to the fan
22 architecture, if you will. And so we know that because it's when it's
23 described it's always described in terms of the generic module for each
24 architecture.

25 So if I can direct you back to the Figures 4A and 4B, the user profile, I
26 can return our slides there just for the sake of discussion. So the user profile

1 comparator you see within the management module, which in each instance
2 is 210 and 230 I believe in the Figure 2B, but they're comparative numbers,
3 that stuff, but each of them used the user profile comparator, which is the
4 generic module that is applying all of the demographic information for each
5 individual mobile device.

6 And so what I would add, I suppose, to that is while in describing an
7 individual mobile device as receiving ads independently through the ad
8 server or elsewhere, we're talking about one user and one profile, the mobile
9 unit, the vehicle itself would be able to apply multiple profiles to different
10 people's devices because it can become a point of distribution as well.

11 But again, this is an issue of the architecture of distribution and it
12 doesn't really affect the application of profile data to individual ads as they're
13 distributed to local devices, mobile phones.

14 JUDGE SILVERMAN: Is there a portion of the Felt disclosure that
15 you would direct us to as far as indicating that there is something that
16 corresponds to profile data that's used by the mobile unit 124 in Felt?

17 MR. SHIPE: Yes. There's ample paragraphs for sure, but specifically
18 the Figure 4 is describing just that. It is describing the actual distribution of
19 ads that pertains to the mobile unit. If you look in the box 440 within Figure
20 4 you see the display of the content on the mobile unit. So we know that
21 we're within an architecture that actually does apply a mobile unit, and yet
22 box 450 additionally uses matching the content to the user and applying the
23 comparator based on the distribution to mobile devices in box 460.

24 JUDGE SILVERMAN: Right, box 460, as I understand it that's
25 referring to a mobile device like a mobile phone, whereas box 440 refers to
26 the mobile unit, which is the van 124, for example. But what I'm just not

1 seeing in that top sequence in Figure 4 is the use of user profile or something
2 corresponding to user profile information, vis-à-vis the mobile unit, the van
3 mobile unit.

4 MR. SHIPE: Yes. And I think that Figure 4 does lay out the pertinent
5 information regarding the profile data, but the display of marketing content
6 on the mobile unit I don't believe that there's a requirement that it applies
7 profile data. It is rather the display that ends up at the mobile device level,
8 which may be the same as what's on the mobile unit, the vehicle. It can be
9 the same so long as the user profile matches up and the content is relevant to
10 that user. It could be the same content. In other instances it won't be the
11 same content because the user profile filtered out what was displayed on the
12 vehicle.

13 JUDGE SILVERMAN: Aside from these figures, is there anything in
14 the textual part of Felt that you would direct us toward? This is regarding
15 something similar to profile data being used by the mobile unit.

16 MR. SHIPE: Mm-hm. The paragraph 40 I think would be the other
17 area that I would point you to that discusses user profiles and user settings
18 and how they are applied and then does liken the two architectures in
19 Figures 2A and 2B to discuss that the same modules are performing the
20 same operation.

21 And this is pretty descriptive of the way that Felt has disclosure as it
22 talked about one instance and then it says, well, this all applies similarly in
23 other instances.

24 JUDGE SILVERMAN: Thank you.

1 MR. SHIPE: So I'm just going to take one additional moment to
2 pause with respect to the Grounds 1 through 6 if anyone else has questions
3 on that before we move on to Grounds 7 through 13? Okay.

4 JUDGE SILVERMAN: I'll just mention in the second set of grounds
5 a few. You can refer to the reference by Alcatel if you wish. We're
6 comfortable with either description.

7 MR. SHIPE: Thank you kindly for that, Judge, as Adharapurapu is
8 quite a mouthful, at least. I had gone to calling it Adhara at times, but how
9 Alcatel I like. This one simple enough to say, so thank you for that.

10 So Grounds 7 through 13 is little bit more linear in terms of we're
11 going numerically through the claims. I'm at slide 22 if you're following
12 along.

13 So we'll begin with Claim 1 really. I think we've really addressed the
14 independent claims here. So Alcatel in view of Kerr specifically for Claims
15 1 through 27 and then adding some additional alternative grounds as we
16 move through and then eventually getting to anticipation of Claims 28 and
17 29. In the same manner I'll just walk through the major elements that I'd like
18 to discuss today.

19 So moving to slide 23, with respect to Ground 7 we think that Alcatel
20 discloses all aspects of Claim 1 but Kerr provides some further bolstering of
21 first a consumer interaction in general and specifically the user liking or
22 disliking, meaning interacting with the content and actually clicking
23 something or providing some kind of feedback whether it likes or dislikes
24 the content.

25 And then secondly, the term registering within Claim 1 just as it was
26 applied earlier in the Felt reference.

1 Grounds 8 through 10 add additionally Muhire and Felt, Muhire
2 specifically with respect to the tracking layers or interaction layers of
3 software and then Felt further bolstering things like mobile assets, content
4 interaction, and travel specifically.

5 Moving to slide 24, in Ground 12 we'll look at anticipation by Alcatel
6 for both 28 and 29, the same two phrases that I've drawn out in comparison
7 to the alternative grounds, registering the asset data, and then tracking a
8 location.

9 Ground 13 adding those in the same manner as it was with Felt, Kerr
10 in terms of bolstering the registering disclosure, and then Geer with respect
11 to response to tracking or tracking in response to other assets.

12 Moving to slide 25, so we see again the cover of the Alcatel reference,
13 the title being "Content Delivery Based on Direction of Mobility." We
14 know that even in the abstract Alcatel mentions, "The system keeps track of
15 the direction of travel of the mobile device through locations of predefined
16 tracker base stations passed by the mobile device."

17 The tracker base stations resemble cellular towers and cellular stations
18 that are ongoing, but also just pertain to fixed and known geolocations
19 within Alcatel's architecture. And then on the image of Figure 1 on your
20 right you can see, kind of, the generic implementation, a mobile device
21 traveling near and around these cellular base stations are, I think they're just
22 referred to as tracker bases or base stations generally.

23 So moving to slide 26, with respect to registering asset data, but let
24 me begin with what Alcatel discloses. In general, we believe that Alcatel
25 discloses this registration because it has to have foreknowledge and it
26 discusses foreknowledge of the base station geolocation. Each of these base

1 stations, as are, kind of, commonly known, are set up in fixed locations and
2 as the user travels along a route that is depicted on the right here on slide 26,
3 we see that the tracker base station can pick up the presence of the mobile
4 device in this location and a direction and a flow and a path of the user can
5 be determined.

6 So the foreknowledge of the locations of the base stations is part of
7 Alcatel's design and not just the geolocations of the base stations in there,
8 but actually the relative or associated location of the actual businesses
9 relative to the base stations because it is the location itself that is triggering
10 the relevance and triggering the ads that are being displayed to the mobile
11 device user.

12 So the -- there's two locations that are interesting there, but really I
13 think that the geolocations of the base stations are a good point of reference.
14 And this is also a schematic of how Alcatel applied for these claims is that
15 there may be even more than one way that this reference can apply to the
16 claim limitations. We highlighted this, the -- what we think is the easiest
17 and the most complete description within the briefing, but we do think
18 there's multiple ways to meet some of these very broad claim limitations,
19 including, like, associations and things that have broad language associated
20 with them.

21 We note in here that Alcatel base stations themselves are physical
22 assets and they concern the relevant geolocations of interest and other
23 physical assets like the restaurants themselves.

24 I want to move to slide 27. So in terms of the second delivery rule,
25 the second location, there are some slightly varying language within Claim 1
26 compared to Claims 28 to 29, but in general, we see that Alcatel very clearly

1 defines different paths, examples, different rule examples of where it would
2 deliver a message.

3 So in this rule one that is from paragraph 20, Alcatel describes that a
4 gift shop, an advertisement regarding the content of a gift shop G is sent to
5 the mobile device and that's done once the user traverses base stations that
6 includes A to B and C. And if we follow along in this diagram on the right
7 we see that as you curve around and follow and enter the zone that A and B
8 and C base stations are in you're getting closer and closer to the gift shop.
9 And as could be predicted, the system knows that you're approaching the gift
10 shop there is more incentives to note that the user is about to pass that or
11 might have a cause to attend and shop at the gift shop. And this all makes
12 sense in terms of targeted advertising based on location.

13 Moving to slide 28, in paragraph 18 we note that Alcatel specifically
14 says, "The location of the tracker base stations which register the mobile
15 device gives a location and direction of movement of the mobile device."
16 You know, we know that location and direction is mentioned here so it's not
17 one or the other. The fact that we know direction doesn't discount the fact
18 that location is part of the calculus here.

19 So moving on to Kerr's addition in alternative obviousness, Ground
20 13, Kerr again is providing this interface platform that allows the user to go
21 in and define geographic areas which would trigger content delivery in the
22 same way, you know, a restaurant that has a proximity to it and the user
23 entering the proximity there can now be hit with content that's relevant to the
24 location, relevant to the time, relevant to their presence within that area.

25 Moving to slide 30, similarly, we're seeing ease of implementing and
26 adjusting these proximity requirements, the ease of understanding what the

1 schemes are, what the location and distribution schemes are and then the
2 more effective (inaudible) human machine interfacing that Kerr can provide
3 in Alcatel's context.

4 JUDGE SILVERMAN: Just for reference, about 5 minutes to go in
5 the allotted or requested time, Counsel.

6 MR. SHIPE: Thank you. So moving to slide 31, we have similar
7 application of Geer with respect to tracking in response to a matching
8 comparison. By knowing the state of the particular individual here activates
9 the high resolution tracking, puts more emphasis on the user's location and
10 knowing the precise location so that better content, better, more attuned
11 content, higher confidence can be set and instilled in the locations that are
12 known. This is backed up, of course, by Dr. Goldberg's testimony.

13 So that's all the slides I had. I'd like to invite any questions with the
14 remaining time.

15 JUDGE SILVERMAN: This is Judge Silverman. I don't have any
16 further questions at this time. Others on the panel, Judge Woods, do you
17 have any questions right now?

18 JUDGE WOODS: I have no questions, thank you, Mr. Shipe.

19 JUDGE SILVERMAN: Judge Tartal, any questions at the moment?

20 JUDGE TARTAL: I have no additional questions at this time. Thank
21 you.

22 JUDGE SILVERMAN: Good.

23 MR. SHIPE: Thank you and I will reserve the rest of my time.

24 JUDGE SILVERMAN: Absolutely. So you've got a few more
25 minutes beyond the initial 20 that was reserved. We'll make note of that.

26 Counsel for Patent Owner, you can begin whenever you're ready.

1 MR. GULLIVER: Okay. Let me just set my timer here.

2 Thank you, Your Honors. Before starting into my arguments, I first
3 want to address two different issues. First, I want to discuss the claim
4 language of the '620 patent because that is what we're here for.

5 The second I want to discuss a couple of the points that were raised by
6 Petitioner. I am not going to put the slides up so I ask that you follow along
7 with the slides, and I will direct what slides. If I move too fast please stop
8 me and I will try to make sure I give time.

9 Turning to the claim language of the independent claims of the '620
10 patent, and on our slides 5 through 7, we'll be examining Claim 1. Claim 1
11 requires three different locations, a first geolocation, a second geolocation,
12 and a location. And that's in claim element 1(a)(i), 1(c)(ii) and then the
13 location is in element 1(g).

14 Binding all these locations together is the media content. Element
15 1(b) introduces the media content associated with at least one registered
16 asset and 1(a)(i) registering a first tier location associated with an asset,
17 either physical or virtual.

18 So the media content is associated with the registered asset associated
19 with a first geolocation. Element 1(c), specifically a plurality of rules for
20 selecting the media content which is associated with the first geolocation to
21 deliver to the consumer. Specifying the plurality rule comprises specifying
22 element 1(c)(i), a first rule for delivering the media content, the first one
23 being associated with at least one element of profile data for responding with
24 the consumer.

25 1(c)(ii), a second rule for updating the media content, the second rule
26 being associated with a second geolocation. So now we have two

1 geolocations. Delivering the media content to a device associated with a
2 consumer when the first rule is met, tracking a location associated with a
3 consumer further to the delivery of the media content in element 1(g).

4 Element 1(h) comparing the second rule and the location in order to
5 determine whether to update the media content, remember, the media
6 content that is associated with the first geolocation. So specifying a plurality
7 of rules for selecting the media content, 1(c) refers to the media content
8 associated with at least one registered asset, 1(b), which refers to registering
9 a first geolocation with one of a physical asset or virtual assets.

10 Updating the media content associated with the first geolocation, that's
11 a device associated with the consumer, when the second rule is met. And
12 the same is similar for Independent Claim 28 and 29. A second delivery rule
13 is consistent with the second rule of Claim 1.

14 The Petitioner has failed to establish that there is a second rule as
15 claimed in the Independent Claims of the '620 patent and failed (inaudible)
16 and thank you for letting me refer to it as Alcatel, and Alcatel references.

17 I'd like to explain the claimed invention in a hypothetical advertising
18 campaign from McDonald's. This will, kind of, clarify how all these
19 different elements work together. McDonald's decides to send a user in the
20 vicinity of its restaurants a coupon, i.e., media content to attract customers.

21 So McDonald's set up a rule for delivering media content to users
22 within two miles of a McDonald's, i.e., first tier location, but not just any
23 generic coupon, a coupon specifically tailored to each recipient. Using
24 profile data McDonald's becomes aware that a particular user likes the color
25 purple. Knowing this, the particular user receives a media content
26 containing a coupon for a dollar off a purple Grimace shake.

1 But McDonald's goes a step further. They define a second rule to set
2 up so when the user enters the parking lot of McDonald's, a second
3 geolocation, to provide the user with updated media content, including an
4 additional coupon. Knowing that the user is going for a Grimace shake, the
5 coupon is for a free small fry to dip in the shake.

6 Because the media content about the shake being sent at the first
7 location, McDonald's was able to specifically tailor the updated media
8 content to provide fries to dip into their shake at the second geolocation.
9 Because of this additional step, the consumer has a better experience and
10 becomes a returning customer.

11 This is the unique concept of the '620 patent and the detailed
12 interaction between content and geolocation data and user profile not found
13 in any of the prior art.

14 Now, I'd like to turn to a couple of the Petitioner's comments and
15 slides. I'd like to draw your attention to Petitioner's slide 16 that basically is
16 discussing Felt's entire disclosure, concerns ongoing, real-time ads. This is
17 no more than going to a geolocation, providing an ad, going to another
18 geolocation, providing an ad, going to a third geolocation, providing an ad.

19 It does not meet the requirements of Independent Claims 1, 28 and 29
20 of the '620 patent. Real-time ads updated as a user travels is not what is
21 claimed in Independent Claims of the '620 patent.

22 I'd like to draw your attention to Petitioner's slide 17. And Petitioner's
23 slide 17 is talking about Felt's entire disclosure that concerns ongoing, real-
24 time ads. Felt's receiving ads while walking with personalized profile as --
25 it's not a second rule as recited by the Independent Claims of '620.

1 Using profile data to tailor an ad is still just add a geolocation,
2 providing an ad. Yes, he tailored it with some profile data possibly, but it
3 doesn't hint the interaction of the rules as the '620 patent requires.

4 Further, Felt's client had the assertion at Patent Owner's suggestion
5 that Felt the users don't move to a second geolocation and experience
6 updated ads is illogical. It ignores Felt's ongoing time location profile
7 program. That is not what the '620 patent claims. It's the interaction of
8 these rules and the additional updated content. An update doesn't mean a
9 second ad is sent. It's related to the first ad that was sent because the media
10 content in the claims is the same media content through all the elements.

11 Felt is simply geofencing with profile time data. The '620, excuse me,
12 the '620 patent requires rules working together to determine a tailored
13 content, whereas in Felt you only have a series of independent rules and
14 locations associated with profile data.

15 I'd like to turn your attention to Petitioner's slides 27 and 28
16 discussing Alcatel.

17 JUDGE SILVERMAN: If I can, if I can interrupt you for just a
18 moment, counselor? It's Judge Silverman. Were you saying that in the
19 claimed invention there needs to be a, some sort of a relationship between
20 the first media content and the second media content? Or maybe I
21 misunderstood what you were saying.

22 MR. GULLIVER: Your Honor, if you look at the claims there is --

23 JUDGE SILVERMAN: Do you -- and if you can direct -- yes,
24 absolutely, please direct me to, sort of, a location.

25 MR. GULLIVER: Yeah. Looking at Claim 1, we have media
26 content. There is no second media content. When we get down to element

1 1(c)(i) there's a rule for updating that media content, meaning updating the
2 media content that was sent.

3 And then we have element 1(i), updating the media content at the
4 device associated with the consumer when the second rule is met. So like
5 the McDonald's example, we have the media content of the Grimace shake
6 and the only way you get that second coupon is that that first rule has been
7 met, that that media content was originally sent to you. Otherwise, you
8 wouldn't see the updated media content, which is the additional coupon.

9 So there's only one media content --

10 JUDGE SILVERMAN: Okay, where --

11 MR. GULLIVER: -- and then we have an update to that.

12 JUDGE SILVERMAN: Forgive me, counselor, Judge Silverman
13 here, for misspeaking. You're right. It is the updating the media content, but
14 to get back to the point I was trying to make, were you suggesting that there
15 is a -- must be a relationship between the updated media content and the
16 original media content vis-à-vis the claims?

17 MR. GULLIVER: Yes, because you don't get that second rule unless that
18 first rule has been met. Present location, I am trying to find exactly where
19 on the claims here. So comparing the second rule and the location, and it
20 looks like I want to keep tracking the location that started with the consumer
21 further to delivery of the media content, comparing the first rule and at least
22 one element of the profile data to determine whether to deliver the media
23 content.

24 The first rule, if you roll it up through all the claim elements, has to
25 occur delivering the initial media content. Does that make sense?

26 JUDGE SILVERMAN: And it's your position that that connection between

1 the original and the updated media content is missing from the Felt
2 reference?

3 MR. GULLIVER: Yes it is, Your Honor.

4 JUDGE SILVERMAN: Okay, thank you.

5 MR. GULLIVER: Okay. I was discussing Petitioner's slides 27 and
6 28 and in that slide, first, the mobile device has not reached the geolocation,
7 rather directions and travel history are being used. Even if one were to
8 assume the first rule is met, the content is being delivered based on
9 geolocation and time. No second rule is identified in the petition, reply,
10 declaration, and Petitioners slide.

11 Even when looking at --

12 JUDGE SILVERMAN: If I may interrupt you just for clarity,
13 Counsel, it's Judge Silverman, are you referring to the set of grounds based
14 on the Alcatel reference at the moment?

15 MR. GULLIVER: Yes.

16 JUDGE SILVERMAN: Thank you. I just wanted to make that
17 clarification. I didn't mean to interrupt you further.

18 MR. GULLIVER: Yeah. Well, now that we're talking about Alcatel,
19 I'd like to discuss how the Alcatel reference works and I'm certain in on my
20 argument. I'm addressing what was mentioned by Petitioner though.

21 The only location known gives the exact location of the tracker base
22 stations. That's clear from the very onset in the abstract.

23 When they say location is a mobile it knows the mobile is within that
24 base station, so within, in cellular terms, a cell site. It may know a gift shop
25 is within that cell site, but it does not know the location in that cell site.

1 They "track," quote/unquote, "track" the mobile as it progresses through the
2 network through cell sites.

3 And that's where you have A, B, C, D and it knows something is
4 within that cell site, but there is no other geolocation provided. They use
5 their histories of going through a network to determine or to travel, and it's a
6 projected course of travel. It's not an actual course of travel.

7 And with that --

8 JUDGE SILVERMAN: Well, granted, if I may, counselor, it's Judge
9 Silverman again, the precision of determining a vehicle traveling along that
10 path in the Alcatel reference, it might not be known to the degree of
11 certainty that, say, one of the base stations is known. But why does not the
12 information on the path of travel and the general position at different points
13 in time, why isn't that sufficient for the claims or for the meeting of the
14 claims, rather?

15 MR. GULLIVER: First, as a main embodiment of Alcatel, it just
16 knows the location of the tracker base stations and knows the mobile is
17 within that cell site. There is one paragraph, paragraph 18, that references
18 GPS location where their system would, and that's in the alternative
19 embodiment, not the main embodiment, where it receives location of a
20 mobile device, but they don't use that location for anything except loading
21 into that database.

22 And their database still is based on progression through the cell sites.
23 There's nothing that says we're using the GPS location that we stored in our
24 mobility database for that mobile. I mean, they practically teach away from
25 using GPS data for anything else, and that makes sense for Alcatel to talk
26 about motivation to combine here.

1 Alcatel is a network-centric approach. You are dependent on the
2 cellular network. You are dependent on the location of the base stations.
3 And there's no motivation to combine a system that is network-centric with
4 the other references that are network agnostic.

5 They may use a cellular network for communication but they do not
6 use it for location.

7 JUDGE WOODS: Mr. Gulliver?

8 MR. GULLIVER: Yes?

9 JUDGE WOODS: If I could interrupt, I would appreciate that. So
10 I'm referring to Alcatel --

11 MR. GULLIVER: Yes.

12 JUDGE WOODS: -- in particular, paragraph 15, and I'm going to
13 quote a sentence or a portion of a sentence from that paragraph and I'd like it
14 if you could respond to that particular disclosure.

15 So that paragraph, it's about halfway through, discloses that, "The
16 mobile service provider network 103 has a mobility manager 104 which
17 keeps track of location and direction of all mobile devices 107." So to me,
18 that appears to be a disclosure that Alcatel actually tracks the location of the
19 mobile device. Can you respond to that, please?

20 MR. GULLIVER: And yes. And it's tracking the location, but that
21 location is the location of that mobility device being in that cell site of the
22 network. So yes, there is a location for that mobility device. That location
23 isn't the specific location and this is the key to Alcatel.

24 It's the location because that mobile is within that base station so it
25 does know a location. It knows it's in that geolocation of the base station

1 and that's what's being recorded there. So the mobility manager is recording
2 that.

3 JUDGE WOODS: Well, it appears to me that, you know, we're
4 discussing a degree of maybe precision, whereby what's disclosed in Alcatel
5 by using these base stations is that it knows the general radius of where the
6 mobile device is located.

7 And I understand Petitioner's position to be that that satisfies the
8 location that's recited within the claims. And it appears to me that, I guess,
9 it's not precise enough based on your argument to satisfy the claimed
10 location. Is that correct?

11 MR. GULLIVER: I'm saying it's not. We require three locations, two
12 geolocations and then a location and Alcatel does not provide those three
13 locations is the overall argument.

14 And what's being specific, the Petitioners sit here and said the
15 registered asset is the base station, the tracker base station, not the gift shop.
16 The only locations that Alcatel knows of the gift shop is that it's within a
17 geolocation of a tracker base station.

18 I mean, if Alcatel wanted to be specific about GPS tracking and GPS
19 data, they would have done more than just mention how GPS is used in
20 paragraph 18. They would have said let's use GPS locations throughout
21 their whole patent, not just to build up the mobility history. They're not
22 directly tracking the location of it. They are predicting based on mobility
23 history where you're going to go and providing content based on that, not
24 where you are.

25 JUDGE WOODS: Well, if I can point you to additional disclosure
26 within Alcatel, and I'd like it if you could respond to this in particular, so if

1 you refer to paragraph 16 of Alcatel, it provides an example in which a
2 cinema complex may send advertisements for movies showing currently
3 along with timing and location.

4 MR. GULLIVER: Yeah. The advertisement that's sent when you hit
5 that cell site. If you're driving along and you enter that cell site you get a
6 content about the movies and what the time the movies are going to be
7 played. So the content may be advertised on weather update, traffic updates.
8 So it's what's in the content you're delivering is the movie times. Are you
9 trying to see the movie times are profile data or? I want to make sure I
10 understand your question.

11 JUDGE WOODS: No. I'm saying that there is an association
12 between the advertisements and the location based under that example.

13 MR. GULLIVER: Yeah. It's because the movie theater is located in
14 that base station, tracker base station, geolocation and the mobile has entered
15 that geolocation. So yes, it is using a location, and yes, there is a
16 geolocation and you're getting the message because your car entered that.
17 But there's no indication specifically where that movie theater is. It's only
18 associated to the tracker base station's location.

19 JUDGE WOODS: All right. Thank you, Mr. Gulliver.

20 MR. GULLIVER: You're welcome, Your Honor.

21 The other problem why one wouldn't combine Alcatel with the other
22 references are it's using your path through the network to store the history.
23 In a cellular network there's no guarantee you will take the same path, even
24 if you drive down the same road.

25 If you're on boundaries of cells, such as we explained citing our
26 Exhibit 2002, it's possible you will not be on the same cell as you drive the

1 same path. Therefore, you're going to be predicted to go to different places
2 than you actually are and receive different content as you go through the
3 same path.

4 And a second failing is you have the same problem since some data
5 services require certain cells. Networks necessarily put all data services in
6 all of their cells, so depending on your services you're using you may end up
7 showing a different path through the network when compared to the historic
8 data, since that's what Alcatel is using, historic, predictive data for its course
9 of travel. It's not using the actual locations of mobile within that
10 geolocation.

11 I'd like to move on to talking about the petition's claim constructions.
12 We've asked for one term to be construed and that's consumer. We ask that
13 a consumer be construed as a person or user to whom an advertisement may
14 be sent. Petitioner did not provide a construction or otherwise construe the
15 term around --

16 JUDGE TARTAL: Counsel, Judge Tartal. Just before you move on,
17 was there an express construction of geolocation? This, kind of, goes back
18 to what you were just discussing. It seems like the questions that are being
19 raised revolve in some way potentially around what exactly was entirely
20 meant by geolocation and whether it was sufficient to be within the range of
21 a fixed asset like a cell tower or whether it requires precise, you know,
22 coordinates like GPS might provide. Is there anything you have that would
23 shed light on the meaning of that term in the context of the challenged
24 patents?

25 MR. GULLIVER: I'm going to go back to the claims. We have a first
26 geolocation associated with an asset. Then we also have media content

1 associated with the registered asset. And what we mean by that is in our
2 McDonald's example the media content, the messaging, is associated with
3 the asset, as opposed to the asset being a cell tower and your media content
4 is associated with the cell tower. And you can only -- you know what's in
5 your geolocation but you really don't know where it is or when someone is
6 close to it. Therefore, it's impossible to have a second rule for a second
7 geolocation or a geofence within that first one to update the information.

8 Does that answer your question, Your Honor?

9 JUDGE TARTAL: Yeah, I think it's helpful. Thank you.

10 MR. GULLIVER: Turning to Ground 1, Felt's anticipation of Claims
11 28 and 29, I'd like to direct you to Patent Owner's slide 23, and I'll give you
12 a moment to transition to that.

13 In all of the grounds Petitioner has the burden to show where the
14 asserted claim elements of the '620 patent are shown. For this anticipation
15 ground, all the asserted elements must be found in Felt with regards to
16 element 28(c)(ii), a second delivery rule associated with a second
17 geolocation at which the recipient is tracked.

18 The Board has previously found in the decision to institute, a mobility
19 unit that's matched to the claimed recipient of the media content having
20 corresponding profile data, and Independent Claim 28 was lacking in
21 Petitioner's petition.

22 Turning to slide 24, element 28(f), comparing the second delivery rule
23 and the location in order to determine whether the recipient is proximate to
24 the second geolocation. Claim 28's second delivery rule is similar to a
25 second delivery rule of Claim 1 if you want to see the comparison at slide 5
26 as both claims played out next to each other.

1 And no secondary delivery rule has been identified by Petitioner.
2 Therefore, as the Board has already recognized, element 28(f), second
3 location is not found in Felt.

4 In Patent Owner's slide 25, element 28(g) is addressed. Element
5 28(g), delivering upon fulfillment of the first delivery rule and the second
6 delivery rule, the media content to the recipient since the Board has already
7 recognized element 28(g) requires a second rule that the Petitioner has failed
8 to identify in Felt.

9 Turning to Patent Owner's slide 26 discussing Claim 29 and Ground
10 1. Applying similar reasoning, the Board pledged Claim 28 where the Board
11 found Petitioner failing to establish Felt teaches element 28(c)(ii) and 28(f),
12 Claim 29(c)(ii) and 29(f) are also not found in Felt. Petitioner has failed to
13 meet its burden in showing that element 29(c)(ii) and 29(f) are taught by
14 Felt. Claim 29 is not anticipated by Felt.

15 Moving on to Patent Owner's slides 29 and 33 --

16 JUDGE SILVERMAN: Counselor, if I may, it's Judge Silverman, if I
17 can interrupt you for a moment? I just want to make sure that we didn't
18 either throw you off track or if I lost the thread of your comments about the
19 construction of the term consumer. Is there a distinction that you would
20 draw with any of the prior art references based on your construction or the
21 proposed construction of the word consumer that was included in the Patent
22 Owner response?

23 MR. GULLIVER: Yes, Your Honor. As you may already have an
24 inkling, it's a difference between a personal device or a device where a
25 human user is doing it in a mobile unit where someone may be driving, they

1 may receive content but the content is not for them. The content is for
2 someone else.

3 So we're trying to make the distinction between that because the
4 claims use the term consumer for someone consuming the content.

5 Going back to my example of McDonald's, it's for the person who's
6 consuming that content that they're trying to motivate to do something. A
7 truck driving around is not a consumer. So when you start mixing and
8 matching bits and pieces from two different embodiments it gets real
9 confusing.

10 JUDGE WOODS: Mr. Gulliver --

11 MR. GULLIVER: Yes.

12 JUDGE WOODS: -- if I could interrupt you? Felt discloses that it
13 should be appreciated that mobile unit 124 may be an individual consumer
14 vehicle. So if you could address the relevancy of that particular disclosure
15 with the argument that mobile units 124 aren't consumers?

16 MR. GULLIVER: So they're not saying they're consumers. They're
17 saying it may be a consumer's vehicle. So it may be a personal vehicle. If
18 they meant for those things to be the same all through Felt, they make a
19 distinction. In the figures they make a distinction. But there's no distinction
20 why is so much time, so much effort made to make that distinction and they
21 operate differently.

22 The figures that the Board was talking about with Petitioner shows
23 there is a difference between those. I don't know if that answers --

24 JUDGE WOODS: Okay, thank you.

25 MR. GULLIVER: -- your question but --

1 JUDGE WOODS: It does, thank you. And I would like to stay on the
2 topic of the definition of consumer. So I read your proposed construction
3 for consumer, and I'll be honest. I struggle with that definition because I
4 don't see anything cited that the Federal Circuit requires a certain level of
5 clarity, deliberateness, and precision to support a lexicographic definition
6 from the specification.

7 And I understand that you cite the specification, but I don't see a
8 definition of consumer in that cited portion of the specification that would
9 rise that level of deliberateness and clarity. So if you could respond to my
10 comment, that would be appreciated.

11 MR. GULLIVER: Well, we believe that did, but we also are dealing
12 with the claim term itself. And the claim term when it's using consumer is
13 talking about -- I'm looking at the claim language at slide number 6 and 7.
14 When you're dealing with specifically a plurality of rules, delivery of rules,
15 especially over a period of time, track or we're tracking -- the recipient is
16 tracked. The recipient is the consumer receiving media content and
17 (inaudible) me to pull that in.

18 Delivering the media content to a device associated with the consumer
19 when the first rule is met, second rule associated with the second generation
20 at which a recipient is tracked. So you're tracking the personal -- you're
21 tracking the consumer device and so you're delivering the media content to a
22 device associated with the consumer. So it's not you're delivering it just to a
23 device. You're delivering it to a device associated with the consumer.

24 Even if we didn't meet the burden with the initial paragraphs we cited,
25 when you look and read the claims and the interaction of the claims we feel
26 it does. I don't know that helps you, Your Honor.

1 JUDGE WOODS: It does, but wouldn't we simply, rather than
2 prescribe a particular meaning to the term consumer standing alone, we
3 would instead just read the claim in its entirety, including any words that
4 might qualify what the consumer is. For example, I understand even if we
5 assume that one claim recites consumer with certain structure, is that to say
6 that all of the claims that recite consumer, maybe other independent claims,
7 also require the same structure?

8 MR. GULLIVER: Unless there's some indication in the specification
9 there's another meaning, I'd say yes, since we must look within the four
10 corners of the patent to determine the meaning unless there's some reason to
11 go to intrinsic evidence, which it rarely the case ,and it's not the case here.
12 So if the use of consumer hasn't changed for those other claims in the
13 specification, I'd argue you have to keep the same definition. Otherwise,
14 there would be no consistency in patent law if a term can change without
15 explicitly being changed in a patent application.

16 JUDGE WOODS: Okay. And could you recite precisely what it in
17 specification provides the definition of consumer?

18 MR. GULLIVER: It will take me a moment. May I come back to
19 that during my rebuttal and I will address that?

20 JUDGE WOODS: Yes, please. Thank you.

21 MR. GULLIVER: Yeah. I'm sorry I can't do it right at this moment,
22 but I have to look it up.

23 Okay. Moving on slides 29 to 33, Grounds 2 through 6, Felt and other
24 references. None of the other references were used to address the elements
25 lacking in Felt, all of which require a second rule or a second delivery rule.
26 So the combination with other references do not cure the fact that the

1 Petitioner has failed to meet their burden and disclose where all the elements
2 are between the references.

3 Turning to the Alcatel reference, as just discussed previously, there is
4 no motivation to combine. One skilled in the art would not look at a
5 network-centric approach and combine it with network agnostic approaches.
6 You don't want to be tied to where your invention will only work in a
7 cellular network when you go to another cellular network that didn't
8 implement it it wouldn't work.

9 You deal with servers and transmit data over a network, not caring
10 what network it is. That's what all the other references are dealing with.

11 Ground 7, Patent Owner's slides 35 and 36, Alcatel and Kerr assert
12 against Claims 1, 11 through 27. No second rule is associated with a second
13 geolocation where the rules are associated with an asset that is associated
14 with a first geolocation.

15 And this is the same problem that Felt had. It's here in Alcatel, too.
16 Element 1(c)(ii) is not found in Alcatel. There is no second rule. Excuse me
17 one second.

18 The other references were not used for elements 1(c)(iii) and 1(h).
19 Ground 8 at Patent Owner's slide 38, Alcatel, Kerr, Muhire, Claims 1, 11
20 through 27 also. Petitioner did not rely Kerr or Muhire to satisfy the missing
21 second rule elements, 1(c)(ii) and (h), (i).

22 Similarly for grounds 8, 9, 10, and 11, Patent Owner's slides 38, 40
23 and 44, Petitioner does not rely on additional references to satisfy the
24 missing claim's second rule in elements 1(c) to element 1(h) of the '620
25 patent.

1 Turning to Patent Owner's slides 46 and 48, Ground 12, anticipation
2 of Claims 28 and 29. Like Felt, Alcatel fails to teach a second delivery rule
3 with the elements 28(c)(ii) and 28(f). Similarly for Claims 29(c)(ii) and
4 29(f), a second delivery rule is not found in Alcatel.

5 Ground 13, Alcatel Kerr and/or Geer, Claim 28 and 29. As discussed
6 in Ground 12, Alcatel fails to teach the claim elements requiring the second
7 rule.

8 I'd like to briefly talk about motivation to combine with Geer.
9 Petitioner said that Geer provides power savings from its high resolution to
10 normal resolution tracking and that was the motivation. And that high
11 resolution tracking would aid the '620 patent or for Alcatel or Felt if
12 combined.

13 There is no need for high resolution tracking. You have geolocations,
14 which is basically geofencing areas, and yet you're tracking a person
15 entering and leaving those areas but nothing in the claims and nothing in the
16 '620 patent shows a need for high resolution. Therefore, Petitioner is
17 creating a problem and solving a problem with their rationale on Geer.

18 Geer should not be combined. There's no motivation. And this is
19 what the Board previously found in the decision to institute. So this
20 manufactured problem and solution doesn't resolve the issues that Geer has.

21 I'd like to reserve the rest of my time, which I think is about 10
22 minutes for rebuttal, if needed, and questions, if you have any more
23 questions.

24 JUDGE SILVERMAN: Let's just check to see if there are any
25 questions by the panel first. Judge Tartal, you're shaking your head. I take it
26 no questions? Very good.

1 Judge Woods, any further questions at this point?

2 JUDGE WOODS: No further questions. Thank you, Mr. Gulliver.

3 MR. GULLIVER: Thank you, Your Honor.

4 JUDGE SILVERMAN: And you'll have an additional 10 minutes if
5 needed for your surrebuttal.

6 MR. GULLIVER: Okay, thank you.

7 JUDGE SILVERMAN: And then so whatever Petitioner is ready,
8 Petitioner can continue with or begin the rebuttal.

9 MR. SHIPE: Thank you, Your Honor. I want to allow plenty of time
10 for questions throughout this, but a couple of points. I wanted to return to an
11 earlier question during my initial presentation regarding application of
12 profile data and specifically in the context of the vehicle.

13 I want to point to the panel that all of this is in paragraph 39, which in
14 addition to the situation where the mobile devices have filtered content sent
15 directly to the mobile phone, that filtered content that includes
16 considerations or profiles, that goes through the vehicle but perhaps the
17 vehicle itself doesn't apply a profile.

18 Paragraph 39 adds that the decision module, this is in the context
19 specifically of the vehicle or the mobile unit 109, the decision module
20 determines whether to display marketing content, whether to distribute
21 marketing content, what marketing content to play or distribute, and it does
22 so in consideration of which groups or individuals or businesses are
23 available to it in proximity to those individuals.

24 So that is a decision of what to display on the vehicle. Let's call it a
25 billboard based on a user being close by, based on who they are, based on
26 which group they belong to, which is an indication of their profile

1 consideration, just like showing, you know, an ad that's age appropriate to a
2 person that's walking by. Now, that display is done on the vehicle in
3 consideration of the user itself.

4 So I wanted to touch on a couple of points from Patent Owner's
5 presentation. In general, I'd like to direct the panel's attention to the specific
6 claim language that we see throughout in a variety of instances and
7 specifically the term "associated."

8 We feel associated with something a lot, whether it's geolocation or
9 something else, but the term associated with in a context of the first
10 geolocation, the idea that, you know, the base station in one reference or
11 some particular geolocation isn't the right geolocation in Patent Owner's
12 eyes. Doesn't look at the specific claim language.

13 All this requires is that there's association between them. And almost
14 each and any of these references really have an association between the
15 location and something else, some asset, some business, some ad that they
16 want to go out. I mean, it's a very loose relationship that needs to be defined
17 in order to meet an association with .

18 So in the context of a base station in Alcatel, you know, the fact that
19 that base station is on the track to deliver an ad with respect to the business
20 that's in proximity to it, I mean, it's understandable that the base station
21 could be directly at the same location as the business.

22 That's, of course, a coincidental, you know, resident architecture that
23 exists within Alcatel, but that's not required by the claim. It's just that it's
24 associated with it, so merely knowing that a certain base station's
25 relationship with a business is enough to satisfy the claims.

1 There was discussion about specifically Alcatel. Now, Patent Owner
2 was concerned that it was not directly tracking in somehow because it was
3 looking at past locations or it was making some, kind of, prediction.

4 You know, we don't see that it's directly tracking as recited in the
5 claim. We think that the manner of the tracking is conducted, paragraphs
6 that were cited during this discussion explicitly listing that the mobile
7 devices are tracking fully meet the claim terms here.

8 With respect to the claim construction point with regard to consumer,
9 first of all, we don't see definition within the specification of the '620 patent
10 that leads us to believe some strict construction of consumer there.
11 Nevertheless, we see in both references we have consumers attending
12 businesses, going to points of interest, receiving media that's relevant to
13 those businesses based on things like profile, things like the time, things like
14 geography. We just don't see that there's a distinction over there whether
15 that definition were adhered to or not, and yet we still can't understand the
16 distinction of a person to whom an ad may be sent. That it could be sent. I
17 don't -- we don't see that there's any materiality to that definition that's been
18 provided.

19 JUDGE TARTAL: Counsel, this is Judge Tartal. Can you address
20 what definition of geolocation Petitioner is applying?

21 MR. SHIPE: We think that geolocation and location have been used
22 synonymously here. You know, there is a distinction in the word itself, but
23 we think it's more of a marker between which location is being talked about
24 at a time.

25 When the term, for example in Claim 1, when the term location is
26 used it refers to the user's location, which can be updated, of course, but it's

1 been referred to location and a sense of it's a temporal thing in the sense that
2 there's nothing else in the claim that requires a geolocation to move about.
3 Then yes, it's something that could be fixed there. Otherwise, we don't see a
4 lot of distinction between those two terms.

5 If I could just go a little bit farther to address the notion of first
6 geolocation versus second geolocation, there's also a little bit of a disconnect
7 between those terms in the claim because the first geolocation is referring to
8 something that is data that is registered. The second geolocation, at least in
9 Claim 1, refers to whether or not the user got to that location.

10 So they're really referring to two different things with respect to
11 location, but to answer more directly we don't think that there's a distinction
12 between the word location and the word geolocation. They're simply
13 different terms used to mean different specific locations within the claim.

14 JUDGE TARTAL: Just to follow up, is it, to know a geolocation, do
15 you need to know where a person, for example, is located? Or is it sufficient
16 that they're within range of some other fixed asset that you know where it's
17 located?

18 So, I guess, trying to spell it out as an example, you have a cell tower
19 and you know an individual is located somewhere within 20 miles of the cell
20 tower. Is that a geolocation of the individual? And if so, what is the basis
21 for that?

22 MR. SHIPE: Yes. I think the way that it's used in the claims, so to break it
23 down in terms of, for example, Claim 1, we have geolocation recited, a first
24 geolocation that there's associated with it. The next time when we're talking
25 about a second location, again, this is part of the reason I highlighted the

1 term associated with, because what the second rule says is the second rule
2 being associated with a second geolocation.

3 You know, it's a very loose relationship between what has to occur
4 and the fact that a second geolocation is identified in the claim. So
5 proximity to a second geolocation, we think, satisfies the claim element,
6 even if we defined a very strict longitude and latitude defining a geolocation
7 for that basis.

8 JUDGE TARTAL: Thank you, counsel.

9 JUDGE SILVERMAN: Counselor, this is Judge Silverman. You can
10 certainly address the issues you want in any order, but if at some point I'd
11 like you to comment on what I understand the Patent Owner to be arguing,
12 namely, that the Alcatel reference does not disclose the second delivery rule
13 or various ways that that concept is expressed in the claim. If -- you can
14 either do that now or if you're coming to it. I certainly don't mean to
15 interrupt your progress.

16 MR. SHIPE: No. Thank you, Judge. So I'm going to move to just
17 Claim 28 for a reference point. I'm not citing any slides in particular, but so
18 the Claim 28 we see the second delivery rule. It's in (c)(ii) as identified in
19 the letter (f). We have a second delivery rule associated with a second
20 geolocation at which the recipient is tracked and then comparing the second
21 delivery rule and the location in order to determine whether the recipient is
22 proximate to the second geolocation.

23 So we think that Alcatel plainly describes this in a number of ways by
24 a specific examples and by its overall disclosure that as the user progresses
25 along courses of travel they're going to receive different ads. They might
26 even receive multiple ads that pertain to particular locations.

1 So in the simplest sense, if a user were to, and I'll give you an
2 example that use different courses of travel or different reference points,
3 there's at least one instance where Alcatel describes that it's going to send a
4 message just because the user went into proximity of one thing, and that is
5 the example they use was a road, a road that closed.

6 The user goes in close proximity to the road and they receive a
7 message if they've agreed to be tracked, they receive a message that says,
8 "This road is closed," for informational purposes. They continue on to
9 another course of travel, whatever it is. It might be another road that's
10 closed. They might receive a second notice that that road is -- that the
11 second road is closed at a different location.

12 Likewise, if they could continue on courses of travel that are more
13 specifically spelled out, they go through one, two, three, other base station
14 blanks and they receive an ad that's relative to a gift shop or a restaurant of
15 that nature.

16 So by our reading of these claims this could be met just by the
17 continuing example of Alcatel going along the courses of the travel and
18 reaching different points, taking on different paths of travel along its way.
19 It's not mutually exclusive. You could have multiple ad deliveries or
20 communications that happen along a given course of travel. The rule is just
21 being exemplary.

22 Have I answered that sufficiently or at least it could illustrate where
23 we draw where the second delivery rule, the second geolocation is coming
24 into play.

25 JUDGE SILVERMAN: I understand your position, counsel, thank
26 you.

1 MR. SHIPE: I do want to point out that specifically Claims 28 and
2 29, I don't think we see an instance where an initial, like a first message, is
3 required versus a second message or an initial message and then an update.
4 So the fact that we don't have the first and updated messages or something of
5 that nature doesn't necessarily exclude the fact that multiple messages can be
6 provided by the claim.

7 But that leads me to I'll point out what (inaudible) about Claim 1.
8 There was discussion in Patent Owner's presentation that there was some
9 requirement for a relationship, I think, to exist between an initial message or
10 media content and then updating and whether or not updating had any
11 specific relation to the initial message that was provided. I think the
12 example was that a first coupon was to be provided to McDonald's and then
13 a follow-up coupon of some sort would be provided.

14 With respect to the Felt reference, I'd like to direct the panel to
15 paragraph 43. In that paragraph we're going to find that a continuing
16 example of a number of ads that have been provided, and this is in a pretty
17 broad context that this paragraph 43 is written, just to address this exact
18 issue. And what we're going to find in here is that when we're talking about
19 a first ad, a second ad, a third ad, this specific disclosure that a particular
20 incentive for a particular location might be provided in ad one, whereas ad
21 two may provide a different incentive or discounts. That's how they said it,
22 a particular incentive or discount or a different incentive or discount
23 distinguishing between ad one and ad two. This is about midway through
24 that paragraph.

25 But the point is that Felt characterizes it as what they call minor
26 modifications, meaning that a first ad or a first communication is shown and

1 then as more information becomes available by moving to another location,
2 by progressing through the user's journey, another message can be provided.

3 And in this instance they even provide the example that it's a different
4 discount. It's a different incentive. They've gained more information about
5 what's going on and they can incentivize the user in a different manner.

6 I'm also going to turn to paragraph 53 of Felt that talks about content
7 that was acted upon. I touched on this in my presentation, but the notion that
8 Verizon is, or Felt, rather, is monitoring whether the user physically traveled
9 to a location of business.

10 So after having arrived in proximity to a particular business, maybe a
11 particular display receiving an initial piece of content and then the action of
12 now walking towards the McDonald's that was advertising the first content,
13 that is action upon the content, basically. Felt credits that as saying, hey, my
14 ad was effective. Now you have the user actually traveling within that
15 location and you gain more information.

16 Relevant to this paragraph 53, a corollary paragraph is paragraph 15
17 where Felt elaborates on how it does that characterization. How does it take
18 into effect the fact that the user traveled there? It maintains a history of what
19 the user did with respect to that content and it updates their profile and user
20 settings on an ongoing basis, a continuous basis it's updated.

21 So as soon as the user reacts to that and the system realizes that the
22 user is approaching the business they were just advertised to, then it credits
23 their profile and now their profile knows that, hey, they did react positively
24 to it and new ads can be provided, just like an updated incentive, a new ad, a
25 new coupon to that same business.

1 So in general, I wanted to address the notion of mixing embodiments,
2 matching, you know, however that's being applied by Patent Owner or
3 argued by the Patent Owner. I think we did address this pretty directly in the
4 briefing, but we see it as the descriptions of mobility that pertain to the
5 vehicles are very much directly relevant to any mobile device that's being
6 described in Felt.

7 In general, Felt likens the two architectures and does provide a lot of
8 individual description that eventually say everything else applies or it can be
9 done similarly.

10 I'd like to invite any questions on that topic in particular. Okay. I'm
11 hearing none on that.

12 I am going to double back for sake of completeness. With respect to
13 second delivery rule and second location, I talked about how Alcatel's
14 system would define a second location, second delivery rules, those
15 additional things that are residing in various ways within the claims.

16 And I talked about it with respect to completing or going on a course
17 of travel and, kind of, distinct rules being added, but we also read that in
18 particular Claims 28 and 29, where there is no initial message required, that
19 that can that the claim can be met simply by a single course of travel that
20 pings different base stations because an initial base station defined in a first
21 location or a location of the user presently, and as the user continues to the
22 terminal or the point that's required in order to have content delivery, that
23 second point. So I'll give you an example that the base stations go A, C, D
24 and now you get a gift shop advertisement. But once the user arrives at
25 station C that is their initial location. They travel along to base station D, the

1 second geolocation that they're associated or proximate to that second
2 location, and that's where they receive the advertisement.

3 And all the while along each of the points the system is going back
4 and tracking their user profile to make sure that they're allowed to be tracked
5 along the way, that they haven't opted out of tracking. So we see that there's
6 multiple ways that the Alcatel reference can meet these claims.

7 And with that, I'm going to yield the remainder of my time unless
8 there's any other questions?

9 JUDGE SILVERMAN: This is Judge Silverman. I don't think this
10 has been raised, but in the briefing Patent Owner drew attention to what I
11 believe was a proposed correction that was offered in the reply brief. I think
12 you know what I'm talking about with regard to the identification or a
13 particular element that was, if my memory serves, it was taught by Geer or
14 alleged to be caught by the Geer. Do you recall this portion of the Patent
15 Owner response and if you have any comments about that?

16 MR. SHIPE: Yes. Thank you, Judge. So the issue being that we felt
17 that there was a typographical error in the petition where there was reference
18 to element 28(c) that might have -- let me make sure I have the right one this
19 time so I don't misquote you.

20 It referred to 28(c) and should have said 28(e). The 28(e) element
21 recites, "Tracking a location associated with a recipient in response to a
22 matching comparison." It's something that we did discuss. I discussed
23 during our initial presentation.

24 So we do think that limitation is amply met by the references in a
25 variety of ways, but with respect to Patent Owner's comments that the type

1 of the change, the type of corrections somehow constituted a new argument
2 and we just don't think that that holds water.

3 We see repeatedly that PTAB and the Federal Circuit has said that
4 when the same references are being applied in the same way and there's no
5 changes to that, that's not outside of the initial grounds of the petition, there
6 literally has been no change in the evidence that's being applied. It's the
7 same citations in the same way. The fact that, you know, we didn't have
8 quotations of the exact claim language at every part of the petition we don't
9 think holds any credibility. It's very (inaudible) as you read through that
10 limitation what's being addressed.

11 All the citations to Dr. Goldberg's declaration correspond to
12 addressing element 28(e) within that context, and there are at least some
13 instances where as we work through the petition the correct phrase is recited
14 with respect to 28(e). It is being cited word for word as it is within the claim
15 itself.

16 So in general, we don't think that there is confusion over what element
17 was being addressed within the petition, but regardless, we don't see that as a
18 new issue at all and it seems that the Federal Circuit agrees with us.

19 JUDGE SILVERMAN: Thank you for providing your position on
20 that, counselor. Unless you have any other points you want to make at this
21 time, I'll just check with the rest of the panel to see if they have any
22 questions? Judge Tartal, any further questions?

23 JUDGE TARTAL: I have no additional questions at this time. Thank
24 you.

25 JUDGE SILVERMAN: Judge Woods, do you have any questions for
26 --

1 JUDGE WOODS: I have no additional questions. Thank you, Mr.
2 Shipe.

3 MR. SHIPE: Thank you to the panel.

4 JUDGE SILVERMAN: Great. Thank you very much.

5 And I believe Patent Owner has reserved some time for surrebuttal?

6 MR. GULLIVER: Yes, Your Honor, thank you. I'd like to start by
7 first addressing the question that was posed by one of the judges dealing
8 with where is consumer covered in the specification of the '620 patent. I'll
9 start with the claims and then work into the specification since they're all
10 dealing with consumers.

11 Claim 1, interacting with the consumer of the media content in line 57
12 of the claims, which is element 1(b)(i). It wouldn't make sense to interact
13 with a van. You're interacting with the consumer.

14 Why would you want to have such interaction? You're trying to reach
15 the ultimate consumer.

16 Claim 1, element of the profile data corresponding to the consumer,
17 Column 37, lines 66 through 67. We have to track the consumer through the
18 claims and it's the same, interacting with the consumer, media content,
19 Ground 37, line 57, tracking the consumer, Ground 37, line 60, specifying of
20 (inaudible) rules for selecting to deliver the consumer, Ground 37, 62.

21 First rule for delivering content associated with the element of data
22 corresponding to the consumer, comparing the first rule of profile data of the
23 consumer to determine whether to send to the consumer, deliver media
24 content to the consumer when the rule is met.

1 The only way that works is if the consumer is a person. The patent
2 doesn't say that the driver is the consumer. It just says it could be a
3 consumer. A consumer is defined --

4 JUDGE SILVERMAN: And, Counsel, forgive me, it's Judge
5 Silverman. Is the distinction that you're making that you're arguing that the
6 consumer of the claims has to be a biological human being as opposed to
7 any, sort of, for want of a better term, technological equipment like a
8 cellphone or cellphone associated with a person?

9 MR. GULLIVER: (Inaudible) defines it associated with a human
10 being who the content is directed to. So the person in the van who has a sign
11 on the outside of the van, the media content isn't directed to him. So I'm not
12 saying it's a human being. It's a mobile device of a human being that
13 consumes the content.

14 And I'm starting with the abstract, it talks about using the profile data
15 and it has the gender, age, profile information associated with a human
16 being. That also helps bolster consumer being more than -- or being so
17 inclusive to include things that aren't associated with a human being.

18 So the media -- the mobile device or the device providing the content
19 has to be associated with a consumer because this whole patent is about
20 advertising and providing information to consumers. That's the area of art
21 we're dealing with.

22 Petitioner has previously mentioned that Felt does not require the first
23 message to get additional discounts, only additional can use a fact pattern.
24 He said as more information is gathered a larger discount could be given.
25 And then he went on and talked about paragraph 53 and then he mentioned

1 how it's the profile information that's being updated, that this person is
2 knowing more things, receiving more ads.

3 And because of that person's profile they're giving them a larger
4 discount. That's not what the '620 patent is about.

5 I believe if there's no further questions -- oh, yeah. I had one other
6 thing. I added open here on the side. Dealing with a human, Figure 1,
7 element 115, shows a little figure of a person for the consumer tracking
8 layer, application UI layer, and content interaction layer. So the figures also,
9 kind of, give an indication. Everything taken together helps bolster the
10 specific definition of consumer that we're preaching to be adopted.

11 If there's no further questions, I'll yield the rest of my time.

12 JUDGE SILVERMAN: Counselor, it's Judge Silverman, just to
13 return to the point, your second to the last point, I believe, I think you were
14 referring to in paragraph 53 of the Felt reference in regard to the updating of
15 the user profile as opposed to, if I recall correctly, sending second
16 information or a second message.

17 Is there something in the claim that would preclude the updating of
18 the profile in that portion of Felt that was being referenced?

19 MR. GULLIVER: The profile data can be changed, updated,
20 whatever. The claims only require that you use profile data in a few of the
21 claim elements. My whole point there was it's only when you're talking
22 about the additional discounts, he mentioned, you know, the more you do
23 things or go places, that's recorded in the profile and you get a bigger
24 discount.

25 That's not what the '620 patent is claiming. It's claiming you basically
26 get that first message and then -- at a first geolocation, then when you add a

1 location in the second geolocation, so there has to be a difference between
2 geolocation and location because you're at a location in the second
3 geolocation. You get another message, which is called the updated message,
4 but you only get that because you got the first message. They're related.

5 And it's because of the messages, not because of the profile data.

6 JUDGE SILVERMAN: Well, I understand that but it sounded as
7 though you were saying -- taking the update to the profile data as the
8 relevant piece of the disclosure in the reference, the Felt reference.

9 MR. GULLIVER: I'm sorry if I led you to believe that.

10 JUDGE SILVERMAN: No, no, no, no. And I wasn't sure if you
11 were saying that that updating of the profile data is not met by the claim, but
12 I think the Petitioner is referring to simply additional information or
13 messages provided, notwithstanding the updates of the profile data.

14 MR. GULLIVER: Yeah. I mean, all the references ultimately come
15 down to you're at a geolocation or a location you provide media content.
16 You go somewhere else at a new location or a new geolocation to provide
17 the content. It's not related and what is claimed in the '620 as I started my
18 whole presentation going over the claims. Ignore what Petitioner says,
19 Patent Owner says, rely on the claims. That's why we're here.

20 If there's no more questions?

21 JUDGE TARTAL: Counsel, this is Judge Tartal. I think, kind of
22 related to the point you were just making, with the understanding that there's
23 media content, and it's asked and received, and then there's updated media
24 content, but updated sounds like a very broad term to have used. Is there
25 anything that you can explain that would constrain or limit or inform a

1 person of ordinary skill in the art as to what constitutes an updated media
2 content as opposed to what isn't updated media content?

3 MR. GULLIVER: Off the top of my head I don't know, but that's not
4 the issue here. The updated media content could be a coupon. It could be
5 something else. The key to the '620 claims is that media content is updated
6 because you received the first media content and then you're updating it.

7 I mean, it is broad to the point, oh, you're receiving something, you
8 know, a new advertisement, but you wouldn't have received that
9 advertisement if you didn't receive the first media content or the first
10 advertisement.

11 The claim languages are all intertwined. The claim elements are
12 intertwined. So you have to read, oh, everything is interrelated and it's not
13 just simply you show up at a location and you get the content.

14 And throw in a little profile data to modify the content. That's not
15 what's claimed. That's why I said the claims are what matters in this IPR
16 and they will make the difference.

17 JUDGE TARTAL: Thank you, Counsel.

18 JUDGE WOODS: Mr. Gulliver, if I could follow up on that question.
19 So I believe Mr. Shipe had referred to paragraph 43 of Felt in which there's a
20 disclosure that, "At time two and location two, ad two may still advertise for
21 the same business but now contain content referring to another location of
22 that business and/or a different incentive or discount."

23 And forgive me, but I read that as being very similar to your
24 McDonald's analogy in which we're talking about the same business. So
25 wouldn't that be --

26 MR. GULLIVER: Okay, so give me one second. Paragraph 43?

1 JUDGE WOODS: Yes, about halfway through.

2 MR. GULLIVER: "Ad one may advertise for a business having
3 several distinct locations." That's the media content, ad one. "Ad one may
4 contain content referring to particular locations of such businesses in
5 particular and send out your discounts." So that's what's in the
6 advertisement. Come to our McDonald's.

7 Then at time two, location two, so you go to another location, ad two
8 may still advertise. Ad one -- ad two doesn't depend on ad one. It's just
9 saying it may still advertise for the same business but now it contains
10 content referring to another location. That's because they're looking at
11 profile data time. It's not based on you getting that first ad, ad one in one
12 geolocation. It's going to another geolocation and being detected at a
13 location in that geolocation.

14 And because of the second rule that's the key. Because of the second
15 rule you've got that first message. Now, you're doing the second one.
16 They're just saying because of time we're now advertising a different
17 restaurant because our first one closed because you're in a different location.

18 JUDGE WOODS: Well -- yeah, I apologize. I really don't want to go
19 to the negative, but why is it bad to updating ad one since it refers to the
20 same business and it might just simply refer to a different incentive or
21 discount?

22 MR. GULLIVER: This is why I started with the claim language. At a
23 different time you can send another -- you send a first ad out at noon. At 6
24 o'clock your business closes. Someone goes and you send another ad out
25 because it's 6 o'clock. It's still the same rule. Check the profile data, send
26 the ad.

1 There's nothing depending on that second ad on to the first one.
2 There's no correlation between the rules. It's the first rule still, first rule.
3 Check your profile data, send this ad out. Go to the second location, check
4 the profile data. Oh, it's this time? Send the ad out. Go to a third location,
5 check the profile. Oh, it's Monday. Send the ad out.

6 That's not what's in the '620 claims. These are not --

7 JUDGE WOODS: Thank you, Counselor.

8 MR. GULLIVER: Okay. Now, these aren't the simplest claims, but
9 when you read them that's what's going to make the difference in this IPR,
10 the claim language.

11 If there's no further questions, Your Honor, then I'll conclude. Thank
12 you. You're muted.

13 JUDGE SILVERMAN: I thought I clicked it and I just didn't click it
14 hard enough. Thank you very much.

15 Thank you, counselor.

16 I believe that concludes the argument on the 918 case. We'll take a
17 break in a moment and then we will return. Should we take 10 minutes? Is
18 that sufficient for everyone? Sound good. We'll take a 10-minute break and
19 then return.

20 I think I intend to keep my camera going or my system going. I will
21 just turn off the camera and mute in the interim. The 918 matter is
22 submitted and we will take it under advisement. And we will issue our
23 decision in due course.

24 Just before we go off the record, I'll mention that I would like to
25 check, maybe after the end of the second argument, with the court reporter
26 about any spellings or perhaps just when we come back on if the court

- 1 reporter wants to do that that's fine also. But for the time being let's take our
- 2 10-minute break and we'll meet back at 3:10. Very good. Thank you.
- 3 (Recess.)

IPR2023-00918
Patent 10,621,620 B2

PETITIONER:

Michael Carrillo
Steven Shipe
BARNES & THORNBURG, LLP
Michael.carrillo@btlaw.com
Steven.shipe@btlaw.com

PATENT OWNER:

Meredith Addy
Robert Hart
Gregory Gulliver
ADDYHART P.C.
meredith@addyhart.com
robert@goapogee.com
gbgulliver65@gmail.com