

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FOURSQUARE LABS, INC.,  
Petitioner

v.

BOARDACTIVE CORPORATION,  
Patent Owner.

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IPR2023-00919  
Patent 10,692,108 B1

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Record of Oral Hearing  
Held: September 4, 2024

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

IPR2023-00919  
Patent 10,692,108 B1

APPEARANCES:

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The above-entitled matter came on for hearing on Wednesday, September 4, 2024, commencing at 3:10 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: I'm Judge Silverman and I'm joined today on the panel by Judge Woods and Judge Tartal. We are here for the oral arguments in the second of two related cases, this case being IPR2023-00919, which is captioned Foursquare Labs, Inc., Petitioner v. BoardActive Corporation, Patent Owner.

And although we've had an argument in a corresponding related case, IPR2023-00918, we will make note of the appearances.

So let's start with the Petitioner. Who's here for Petitioner?

MR. SHIPE: Yes, Your Honor, Steven Shipe on behalf of Foursquare, Petitioner. Also with me is Michael Carrillo, the lead counsel.

JUDGE SILVERMAN: Thank you. And is anyone else joining you today?

MR. SHIPE: I have nobody else, Judge.

JUDGE SILVERMAN: Very good.

And for Patent Owner, let's have the appearance for Patent Owner, Counsel.

MR. GULLIVER: I'm Gregory Gulliver, part of the law firm AddyHart, P.C. representing BoardActive, the Patent Owner in this matter.

JUDGE SILVERMAN: And is anyone joining you today?

MR. GULLIVER: No.

JUDGE SILVERMAN: Very good. So we've -- all of the -- as I mentioned, we began the day with a hearing in a case with a related patent, the 918 case, and now we are arguing on the 919 case. I won't go through all of the procedural matters, but for the purpose of the transcript all of those

1 matters will be referenced in the 918 transcript. All of those matters still  
2 apply here but I just won't go through the detail.

3 We're having the same order of argument. Petitioner will have 60  
4 total time to present argument. Patent Owner will also have 60 minutes  
5 total. Each of Petitioner and Patent Owner may reserve time for rebuttal and  
6 surrebuttal, respectively.

7 Petitioner, you'll be arguing first. Would you like to reserve time for  
8 rebuttal?

9 MR. SHIPE: Yes, Your Honor. I would like to reserve 30 minutes.

10 JUDGE SILVERMAN: Okay.

11 Patent Owner, did you wish to reserve time for surrebuttal?

12 MR. GULLIVER: Yes. I'd like to reserve 10 minutes, please .

13 JUDGE SILVERMAN: Are there any questions before we begin?  
14 Petitioner, any questions?

15 MR. SHIPE: No questions, Your Honor.

16 JUDGE SILVERMAN: Patent Owner, Mr. Gulliver, any questions?

17 MR. GULLIVER: No questions, Your Honor.

18 JUDGE SILVERMAN: Very good.

19 Petitioner, you may begin your argument whenever you're ready.

20 MR. SHIPE: Thank you, Your Honor. Again, Steven Shipe for the  
21 Petitioner. I'm going to refer to our demonstratives, which I will share on  
22 screen. Let me (inaudible). Okay.

23 I'd like to begin with an overview of the grounds. I will, in view of  
24 our earlier proceeding, although these proceedings are different I will move  
25 more quickly through the time in reviewing those.

1 But I'd like to look at the (inaudible), the grounds and just the outline  
2 of what the not only the petition has laid out, the grounds that are  
3 challenged. Grounds 1 through 5 applying Verizon, also referred to as Felt  
4 throughout the proceedings as a primary feasible or an initial piece of art.  
5 And then in Grounds 6 and 7 and applying the Alcatel reference also  
6 referred to as Adharapurapu.

7 So Grounds 1 through 5 pertain to all claims are having different  
8 variants on all claims 1 through 23. So Ground 1 is anticipated by all of the  
9 claims, focusing specifically on the Independent Claims 1, 13 and 20. We  
10 believe that Felt discloses all aspects of these claims, including the,  
11 quote/unquote, "corporate travel" that are in Claims 1 and 20.

12 In the alternative Grounds 2 and 4 we had additionally added Creemer  
13 and Scofield references, respectively. Each of these references teaches very  
14 explicit first and second locations in comparison between those locations in  
15 determining a course of travel, path of travel, a variety of phrases that we  
16 believe disclose the course of travel from the claims.

17 I've jumped a little bit ahead because of the references themselves, but  
18 also based on the Felt reference itself, the notion of course of travel as an  
19 analysis, the first and second location we do think is a routine  
20 implementation by the person of ordinary skill in the art based on the  
21 descriptions therein, including determining direction and speed of travel  
22 that's in there, as a comparison between two points in particular.

23 Moving on to Grounds 3 and 5, in the alternative of applying Felt with  
24 Geer with respect to Claim 13 specifically, Claim 13, unlike the other two  
25 Independent Claims recites that tracking is in response to something and  
26 adding that response to tracking as we've recited or rather, as we call it there.

1 Geer responds in the same way by providing something that is more  
2 responsive and is deliberately tracking in response to it, some sort of  
3 stimulus.

4       So again referring to some of our earlier discussions, I think we know  
5 in general what the Felt reference is disclosing, but to give an overview, I  
6 think the title is, "Very fast method and system for real-time display of  
7 distribution," or the distribution of advertisements the network is providing  
8 distribution from advertisements and other communications to a variety of  
9 devices, mobile devices, fixed displays, and also an instance of a vehicle  
10 with a display affixed there, too. We have an embodiment here on slide 7,  
11 each illustrating that a single ad server can distribute to multiple different  
12 devices.

13       So with respect to a number of claims and then in turn specifying a  
14 content distribution campaign, we know that this panel felt that realized --  
15 recognized that Felt did disclose this by a method of advertising through a  
16 mobile device, that the advertising is based on geographical location.

17       So specifying that content is going to be distributed according to  
18 certain rules, certain guidelines, including geographical locations we feel  
19 aptly lead to content a distribution campaign.

20       Moving on to slide 9, Felt also discloses time and profile rules in a  
21 number of different ways. Profile pertaining to, on the right-hand side, on  
22 slide 8, ethnicity, employment status, (inaudible) education, common  
23 demographic information. And then on the left-hand side corresponding to a  
24 period of time, things like certain times of day, store operation hours,  
25 breakfast and lunch times, a variety of ways to describe time rules.

1           Moving to slide 10, specifying rules in general, we know that this  
2 panel found in the institution decision that regarding the course of travel that  
3 we looked at in Felt, location data and proximity data as a result of that  
4 disclosed also the corporate travel of the associated consumer.

5           JUDGE TARTAL: Counsel, this is Judge Tartal, just as a pet peeve  
6 but sorry to interrupt you. The institution decision didn't make findings.  
7 The institution decision determining whether to go forward, so you said that  
8 you, kind of, made implications that we made some kind of determination at  
9 the outset. That is inaccurate.

10          MR. SHIPE: Of course, Your Honor. Thank you for that note. We  
11 do think that there has been little of anything added to the record since the  
12 time of the institution decision on this particular issue, so if you think it's a  
13 good starting point to reflect on additions to the records, but law, I will also  
14 note and I will touch on this briefly, you know, for that, this is the  
15 anticipation grounds themselves.

16          There's also additional obviousness grounds of references that  
17 specifically credit Creemer and Scofield specifically that if a first and second  
18 locations analysis of those locations in order to determine course of travel,  
19 paths of travel, a variety of different phraseologies that that needs to be  
20 claimed.

21          Moving to slide 11, receiving a first indication of we believe Felt  
22 aptly describes it, again by the similar information that the proximity and  
23 location data used by the model to determine whether or not to send  
24 marketing content indicates that, you know, location proximity to the point  
25 of interest to the business to fixed displays, things like that discloses  
26 receiving the first indication.

1           Moving to slide 12, accepting profile data, I've touched on a number  
2 of pieces of profile data like demographics and age, income, things like that,  
3 but applying that data specifically to determine whether and what type of  
4 media to send is directly disclosed within Felt.

5           So moving on to slide 13, Felt discloses on its own the analysis of first  
6 and second location by the fact that it has ongoing, real-time progression.  
7 It's clear in paragraph 36 of Felt that the location of the mobile devices  
8 themselves is tracked and is part of how they yield the location data that's  
9 relevant.

10          And then as we see later on in that same paragraph on the right-hand  
11 side of slide 13, speed and direction of travel is specifically applied in  
12 determining proximity that's relevant to sending the ad and negotiating with  
13 that to send. So we have a connection there between speed and direction of  
14 travel and the proximity that is explicitly used all over Felt in order to  
15 determine what and when to send ads.

16          And that speed and direction of travel is naturally the result of  
17 analyzing two points of the user's travel. So in reality there's not necessarily  
18 any way to use a single point to determine speed or direction. In fact, it's  
19 mathematically, you know, determining speed and compares them to  
20 stagnant -- to stationary points. So we see that as something within the  
21 artisan's knowledge and would have been routinely applied in this case.

22          JUDGE WOODS: Mr. Shipe, if I could focus on this particular  
23 position, I would appreciate that. So is it your position that it would have  
24 been inherent in Felt's disclosure that two locations would have been used in  
25 order to determine speed and direction of travel?

1           MR. SHIPE: I think that is one way to characterize it, that Felt  
2 inherently discloses when it says speed and it must be comparing to different  
3 points of location data in order to (inaudible) the time between them in order  
4 to know what the speed is. But we don't need to know it's there and  
5 determine whether it's inherently disclosed. Dr. Goldberg testified that in  
6 knowing that Felt applied the speed and direction of travel it would be  
7 routine for the artisan to apply analysis of two locations to do so.

8           And like I mentioned, mathematically, that the mathematical  
9 definition of what Felt says in its consideration. So in terms of what the  
10 artisan would be do in applying Felt, it would apply that routing knowledge  
11 of location comparisons.

12          JUDGE WOODS: All right. Could the direction of travel also be  
13 ascertained or does he simply, for example, the system understands or knows  
14 without using two locations, is it known, for example, the speed of the  
15 vehicle and its heading?

16          MR. SHIPE: Well, there's certainly other ways that you could  
17 potentially find that but, you know, for a vehicle where you get a computer  
18 to send out the signal and tells someone what the speed actively is, it would  
19 still be a comparison of a relative position to another.

20          But in this instance, this motivation is actually talking about travel and  
21 mobile devices itself, something that Patent Owner has vigorously pointed  
22 out when Felt is talking about a mobile device versus a vehicle.

23          So we're talking specifically about a user walking or maybe even  
24 riding in a vehicle, but there is -- it's a mobile device moving from position  
25 to position. So this isn't a car communicating. This is based on the mobile

1 device information, and that information is explicitly stated as the location  
2 data.

3 JUDGE WOODS: Thank you.

4 MR. SHIPE: Moving to slide 14, we have a four-page from Dr.  
5 Goldberg on this particular issue. I think I summarized that.

6 So we'll move on to slide 15. Initially, so two references, Creemer  
7 and Scofield apply an alternative basis to -- as individual disclosures of the  
8 analysis of first and second location by determining the course of travel.

9 So Creemer first we see represented by the method or the line leading  
10 to stuff on the right-hand side in Figure 8. We see at the top in blue boxes,  
11 identify the position or the first time setting position the second time, and  
12 then thereafter the calculation of the direction, the rate, all of that based on  
13 those first two positions.

14 We even note on the left-hand side that Creemer refers to this is along  
15 the user's path or over the user's journey, the user's rate and direction of  
16 travel. I mean, all of the pertinent terminology that refers to a course of  
17 travel.

18 Moving to slide 16, we have Scofield disclosing similar language but  
19 now using traffic patterns, navigational paths, user trails, quote, "By what  
20 geographic path, trail, or avenue a mobile device user is traveling between  
21 locations."

22 So if there was any doubt as to whether or not Verizon is applying  
23 first and second locations and the analysis thereof or partly on analysis  
24 thereof to determine the course of travel, Creemer and Scofield, we think,  
25 removes all doubt there.

1 Dr. Goldberg also provided us with a statement on the motivation to  
2 combine these references, including just promoting the provision of knowing  
3 what is going on with the user, implementing Felt's teachings in a way that is  
4 cognizable and uses the information well, provides accuracy to it and then  
5 also just targeted advertising information that's reducing errant  
6 advertisements that might occur as a result of not knowing how fast or what  
7 direction or the path along which the user is traveling.

8 Okay. Switching gears to different claim terms, in Ground 1, Your  
9 Honor, we do think that Felt discloses tracking this consumer in response to  
10 the first indication of a consumer with your radius or view location of  
11 interest. So this is relevant specifically to Claim 13 that has this tracking in  
12 response to this other stimulus. And that ends up being a first indication of  
13 being within the radius.

14 So we think that Felt itself discloses this because Felt discloses that  
15 acting upon content prompts a response from the system, that one, the  
16 system wants to know what is the user's reaction to ads and  
17 communications? So in monitoring the user activity when it had or  
18 communication is received, if the user physically travels towards a business  
19 of interest then the user is responding to that ad and the tracking is what has  
20 been initiated actually as a result of wanting to know what that interest is.

21 So in line of the claims, when an advertisement is provided, in order  
22 to know whether or not the user is responding to that ad by physically  
23 traveling, the user is being tracked by Felt's systems because they want to  
24 know are they traveling towards the location that we just advertised for.  
25 With that is confirmed and the path of the user goes towards the business of

1 advertisement, it's noted within their history, within the information that Felt  
2 applies in order to determine future ads.

3         So the tracking that occurred is in response to the receipt of the first  
4 ad, which is done because of the user arrives at a proximity of the  
5 geolocation of interest. So it's that trigger of the user entering into the zone  
6 of interest that prompts the tracking of the consumer.

7         In the alternative as to Grounds 3 and 5, Geer further bolsters this in  
8 response to language. Geer has a 5-day what's called a hybrid tracking, high  
9 resolution tracking to provide really high confidence and accuracy to the  
10 individual's location along the path of travel, but it does so in this instance in  
11 paragraph 64, "only when the user enters into a zone of interest," in what's  
12 described as outer zone 833. So in the context of the warning event that  
13 they're talking about at a baseball park, the user is walking nearby the  
14 stadium. HIRES tracking won't be an issue until that user crosses into the  
15 outer zone 833 and now it becomes relevant. Now their location is even  
16 more important to the system and they know that the user might be within  
17 the ballpark and now they want to very precisely track which part of the  
18 ballpark. Are they within a store at the ballpark? Are they in a certain  
19 seating section?

20         The higher precision has higher value because now they've entered  
21 within the view (inaudible) and the proximity to the geolocation. That first  
22 indication being the indication of a user's location.

23         Dr. Goldberg testified, I'm referring to slide 20 now, Dr. Goldberg  
24 testified that applying Geer's teaching with respect to crossing into a  
25 boundary and increasing the precision of the location data it proceeds to

1 reduce the phone battery consumption because when they exit that area of  
2 proximity now you're no longer using the high resolution.

3 It also adjusts the data loading by not using as much data whenever  
4 it's not as important and you're not within the zone (inaudible) save power  
5 consumption and the related data processing capacity for when you're not  
6 using that high resolution (inaudible).

7 Turning to slide 21, Grounds 1 and 4, obviousness over Felt and then  
8 with Creemer or Scofield as to Claim 20. We believe that Felt is also  
9 disclosing associating the associating sets specifically with respect to the  
10 first and second message. I wanted to point out that this user interactivity  
11 tracking is specifically a unique disclosure of associating a message with a  
12 user, initiation that it occurred.

13 So when the user receives that ad and they respond to that ad by  
14 clicking on a link or mapping the location of a business related to the ad,  
15 where they physically travel to that location of the business, the system  
16 associates the message by noting that there was interaction there. And that  
17 goes into the entire process that Felt uses in order to regulate what content  
18 and which, at what time that content should be provided to different users.

19 So in each instance that we have an interaction with an ad, there is an  
20 association that's separate necessarily from delivering the ad, but it's an  
21 association that's actually stored within Felt's disclosure. That happens for  
22 each ad and each message that would be sent out (inaudible).

23 Actually before I go on on that particular issue, I will add that we do  
24 think that delivery and actually sending the ad can constitute associating, but  
25 it also indicates the same association that we just talked about because when  
26 there's a decision in order to deliver ads or to take up a person then the

1 association is the determination to link the ad to that person, whether it's  
2 manifest in storing the association there or the fact that it's being sent out.

3 And there's also a distinction between displaying the ad to the user  
4 versus just sending it to them.

5 So moving to slide 22, again, there was the notion that whether there  
6 are additional ads that come after the fact, second ads however they come  
7 about in particular claim terms for Grounds 1 through 5, Felt uses disclosing  
8 real-time, ongoing ads that happen based on geography and time that's over  
9 the course of the user's travel.

10 I'm going to move on to slide 26 to emphasize that even in instances  
11 where Felt is applying a vehicle and using a vehicle in order to do its ad  
12 distribution, it's still not disclosed applying profile data to that particular  
13 communication. Disclosing the fact that (inaudible) that would be later  
14 communicated to a mobile device, taking into account the individual user  
15 profiles when collecting which ad gets sent downstream to that device and  
16 then we've also seen an instance in this Felt paragraph 9 where the display  
17 even on the mobile unit itself takes into account the people who are in  
18 proximity to the mobile unit.

19 I'd like to move on to slide 28, to move on to the additional Grounds 6  
20 and 7.

21 JUDGE WOODS: Mr. Shipe?

22 MR. SHIPE: Yes?

23 JUDGE WOODS: If I could interrupt to ask a question. So I'm going  
24 to admit I get a little confused when I read parts of the petition because, you  
25 know, Patent Owner argues and I agree in certain instances that, you know,

1 different embodiments disclosed within Felt are being relied upon for  
2 satisfying particular different limitations.

3 And I get a little confused, like, for example, when we're talking about  
4 Felt's mobile devices and then we jump to Felt's mobile units and they are  
5 different and they're instances where I'm not really sure, you know, what's  
6 being combined or what the, you know, what particular embodiment we're  
7 looking at.

8 The Patent Owner makes the general argument that there is a series of  
9 serial cites including distinct embodiments that are being relied upon in  
10 addressing claim limitations. And as an example, I do get a little confused  
11 when you refer to the mobile units and then also refer to the mobile devices.

12 And despite their similarities they're also different. So could you  
13 respond to that generally?

14 MR. SHIPE: Yes, thank you, Your Honor. So I think it's fair to say,  
15 first of all, we have addressed this issue on point within the reply brief. So  
16 we do think that it's important to look at that issue in light of our reply.

17 But the particular issue is not whether or not one architecture applies  
18 or the other. It's whether or not the specific disclosure applies to all of the  
19 architectures. And I think the issue, to put a finer point on it, is that Patent  
20 Owner was concerned that Kerr got 42 in particular, was stated in terms of it  
21 first added a first time, a second out of the second time, a third out of the  
22 third timing location, different locations as well and that it was stated in  
23 terms of the mobile unit driving from place to place.

24 And the accusation on their part, or allegation on their part, is that that  
25 does not describe the mobile device as a mobile -- a pertinent mobile phone  
26 going from different locations and receiving different ads. And while we

1 can agree that the literal text does not describe a person's mobile phone, that  
2 embodiment, that characterization of the architecture going from place to  
3 place is aptly and understandably applicable to the mobile device as well,  
4 which doesn't remain stagnant.

5 Kind of takes away from the fact that it's termed a mobile device  
6 when it can't travel from location to location. And, in fact, in that specific  
7 example there is nothing more specific about the mobile unit that couldn't  
8 apply to the mobile device architecture itself.

9 So what think is that the actual description of location to location it's  
10 only the mobility that's relevant in that paragraph that's being relied upon.  
11 Nothing else about the architecture that's different. And, in fact, in several  
12 instances throughout Felt when it is describing more particular architecture,  
13 for example, within the decision module, within management module, it's  
14 very -- it's quite similar. It's one for one similarity between the ad server 107  
15 and the mobile unit 124 that sometimes can do some of the processing.

16 And there's even other architectures where the mobile device itself can  
17 do some of the processing but, you know, sometimes it's not necessary to go  
18 on to that additional architecture.

19 So what we see is that when we look at what paragraph 41 has  
20 actually relied upon in terms of describing mobility, going from location to  
21 location, it's easy to understand that that is directly applicable to the mobile  
22 device and it's nothing beyond the mobile device, nothing unique to the  
23 vehicle that makes that description of multiple ads in multiple locations  
24 applicable.

25 One additional corollary there is that those two architectures, the  
26 mobile devices alone and the mobile devices together with the vehicle

1 overlap and you can have both of those things happening at the same time.  
2 So there's a vehicle driving around town that has processing capacity and  
3 can distribute ads to mobile devices at the same time when there's no motion  
4 -- there's no vehicle with that capacity around, the mobile device is actively  
5 receiving ads on its own. Those architectures are not exclusive to each other  
6 is the point here. They can be used together. They operate together. There's  
7 no solution.

8 JUDGE WOODS: All right, thank you.

9 JUDGE SILVERMAN: Counselor, just a reminder, you have about  
10 four minutes left, although you did reserve a lot of time for rebuttal. So if  
11 you need to dip into that it's certainly no problem here.

12 MR. SHIPE: Thank you, Your Honor.

13 You know, I think suffice it to say that in this instance it's important to  
14 understand Felt's treatment of the user's reactivity to the ad because that is  
15 important to some of the alternative basis for Grounds 6 and 7 where Felt is  
16 applied. It's bringing in some of that. If we're relying on Felt reporting that  
17 add interactivity that is applicable there, and that's unique in those grounds  
18 to other claims.

19 But I think we've addressed all of the facts in terms of what Felt is  
20 disclosing and how it applies to the Alcatel reference, the Adharapurapu  
21 reference. So I think we're okay unless there's any particular questions on  
22 how this combination would be met and then also the same thing with  
23 respect to Geer.

24 I don't think there's anything different about the application of Geer in  
25 terms of what Geer is teaching and why it would be implemented. So let me  
26 invite any questions about that second ground.

1 Thank you. I'll reserve the rest of my time.

2 JUDGE SILVERMAN: Very good. You'll have an extra two minutes  
3 when you resume for rebuttal.

4 Now, we'll hear from Patent Owner.

5 MR. GULLIVER: Thank you, Your Honor. Let me get my clock set  
6 here.

7 I'd like to start by addressing a couple of comments that were made by  
8 Petitioner. One, I want to thank them for presenting the Patent Owner's  
9 view to the Board although I think he got it a little bit wrong. There is a  
10 difference between mobile unit and mobile device.

11 Figure 4 of the Felt patent shows there's a difference. I'll refer to our  
12 paper to go into that in more detail. But if there wasn't a difference, why  
13 switch between different embodiments and cherry pick?

14 The second issue was in discussing Felt and the course of travel,  
15 Petitioner cited to paragraph 36 and used proximate data, but he never really  
16 told the Board what is proximate data. He just said it was used all over the  
17 place.

18 I'd like to take the Board's -- or direct the Board's attention to  
19 paragraph 36 of Felt, about the third line down. Well, actually second line.

20 "A GS receiver, processor, and other components to track the location  
21 of a mobile unit and/or nearby mobile devices to yield location data. The  
22 respective location of a mobile unit and/or mobile devices may be compared  
23 to obtain proximate data."

24 You're comparing one device to another device to get proximate data.  
25 So from the patent's perspective where you're looking at one device, it's not  
26 two different locations of the one device. It's one location and then used to

1 find other locations of other things, but it's not two locations, though, so  
2 device or the mobile unit. I'd like to make that clear.

3 Moving on --

4 JUDGE SILVERMAN: Could I -- I just wanted to jump in for a  
5 second.

6 MR. GULLIVER: Yes.

7 JUDGE SILVERMAN: I wanted to make sure I was looking at the  
8 right piece of paragraph 36 of Felt, that last, if I understand it correctly that  
9 the piece you were quoting was through respective location of the mobile  
10 unit and/or mobile devices may be to obtain proximity data?

11 MR. GULLIVER: Yeah.

12 JUDGE SILVERMAN: Is that right? Okay. I couldn't quite hear the  
13 last word, if it was proximate or proximity. Proximity data is what's in the  
14 reference.

15 MR. GULLIVER: Yes.

16 JUDGE SILVERMAN: That's the only point I wanted to make.  
17 Thank you.

18 MR. GULLIVER: Thank you, Your Honor.

19 I've heard the Petitioner's arguments (inaudible) showing that the '108  
20 patent claims are not anticipated or obvious in view of Felt, Alcatel, and any  
21 of the other references. I want to discuss the claim language once again,  
22 since that's why we're here. That's important and then a couple other points  
23 on Petitioner's slides that he presented.

24 Turning to Independent Claim 1 of the '108 patent, and if you'd like to  
25 follow along, Patent Owner's slide 13 has Claim 1, the course of travel

1 elements. Please note that slides 4 through 9 are the claims of the '108  
2 patent but our slide 13 is focusing on just Claim 1.

3 Claim 1 requires element 1(b)(iii), specifying that a third rule  
4 corresponds to a course of travel associated with the consumer. It just -- if  
5 that was all we had in our '620 patent then a first and second point anywhere  
6 for getting direction, speed, or whatever it might meet the element. And I'm  
7 not saying it is but it might.

8 But that's not what we have in the '620 patent. Element 1(f),  
9 determining the course to travel based at least in part on analysis of a first  
10 location and a second location. So course of travel has to have a first  
11 location and a second location.

12 The element 1(c), receiving a first indication that the consumer is at a  
13 first location within a radius of the geolocation. So now we have the first  
14 location which is used when figuring course of travel has further limitations.  
15 It has to be within a radius of the geolocation. There has to be a first  
16 indication.

17 Element 1(a)(2), the media content is associated with the geolocation.  
18 That's the geolocation as I was talking about in element 1(c). You need  
19 content associated with the geolocation where the consumer is at a first  
20 location.

21 Element 1(e), receiving a second indication that the consumer is at a  
22 second location, and that's the location that's also used to determine the  
23 course of travel. Course of travel requires a first location and a second  
24 location, not a direction and speed and everything. There's more to it in the  
25 '620 patent.

26 And Petitioner has glossed over all of that.

1           Turning now to Petitioner's assertions about Felt in Petitioner's slide  
2 13, no first location and second location are disclosed in paragraph 36 of  
3 Felt, only a single location. There can only be speed, direction of travel and  
4 then they say, oh, everyone knows you use that but when you use direct to  
5 this claim language to fully understand what's required for course of travel.  
6 That does not meet the requirements of the '620 claim.

7           Petitioner's get no better with Petitioner's slide 14. Dr. Goldberg  
8 understood that Verizon did not disclose its tracking to include a comparison  
9 of a first and second location and simply states a POSITA would appreciate  
10 that tracking technologies commonly compare to three location points.

11           That's not the first location and second location of the '620 patent. We  
12 need to look at the claims, the claim language, that element independently of  
13 the claim. First, a simple comparison to three location points to determine if  
14 a course is not claimed.

15           Second, the first location used in determining course of travel,  
16 element 1(f) in the '108 patent has to be within a radius of the geolocation in  
17 element 1(c).

18           Third, there has to be a first indication at the first location and a  
19 second indication at the second location, element (e) of the '108 patent for  
20 the first and second locations used to determine the course of travel in 1(f).

21           There's a lot involved in these claims. Petitioner has not met their  
22 burden to show that.

23           Petitioner in slide 15 suffered from the same fate again. First, simply  
24 comparing discrete location points to determine course of travel is not  
25 claimed. There's a little diagram saying here's the first point, here's the

1 second point. I just explained there's a lot more required for that first  
2 location and second location. It's just that any first and second location.

3 Third, there has to be a first indication, a first location and second  
4 indication and a second location, element 1(e) for the first and second  
5 locations used to determine the course of travel in 1(f). None of these  
6 elements are found in the Petitioner's course of travel but are required in the  
7 '108 patent.

8 Turning to Petitioner's slide 16, Scofield may disclose a course of  
9 travel between locations, but that is not a course of travel as defined by the  
10 claims. First, the first location used in determining the course of travel  
11 element 1(f) has to be within the radius of the geolocation element, just not  
12 any old location.

13 Second there has to be a first indication at the first location and a  
14 second indication at the second location for element 1(e) for the first and  
15 second locations used to determine the course to travel in 1(f). None of  
16 these elements are presented by Petitioners for their course of travel.

17 Similarly, Petitioner's slide 17 fails to show the claimed course of  
18 travel. They talk about course of travel specifics in Petitioner's slide 17.  
19 Course of travel specifics doesn't even appear in our claim language of  
20 Independent Claims through the '108 patent.

21 With regards to Petitioner's assertions about Alcatel, Claim 20, we'll  
22 examine Petitioner's slide 31. Petitioner is mixing elements of this slide, a  
23 plurality of rules or set of rules and element 1(b), 13(b), 20(d) from the  
24 Independent Claim. There is no associated content with the user/consumer  
25 based on user's (c), course of travel element in any of the Independent  
26 Claims.

1           And 1(b)(iii) is specifying the third rule corresponding to course of  
2 travel associated with the consumer. The caption is associated with the  
3 geolocation in element 1(a)(ii). That is required.

4           In Independent Claim 20, element 20(d)(ii), is a second row  
5 corresponding to at least one action performed by a consumer during the  
6 course of travel related to the consumer location association once they're a  
7 registered asset. Neither of these tell us what Petitioner is asserting in  
8 Petitioner's slide 31. It's lacking. Petitioner has failed to demonstrate that  
9 element 20(d)(ii), the second rule corresponding to at least one action  
10 performed by a consumer during the course of travel related to consumer's  
11 location in association with a registered asset.

12           While I'm talking about Alcatel, once again I'd like to mention there's  
13 no motivation to combine a network-centric approach with a network  
14 agnostic approach. And I'll run through the reasons quickly here.

15           First, Alcatel is a network-centric approach where the only locations  
16 known has a predetermined tracker base station.

17           Second, Alcatel, and it's a fairly different technology, uses a totally  
18 different system to track mobility services and not the location of a  
19 consumer within a radius (inaudible) geolocation as required by the claim.  
20 You have to know the location within the geolocation.

21           Third, the other references are network agnostic and use a network  
22 only for communication, not location. A POSITA would not look to  
23 network-centric approach that only has predetermined locations of base  
24 stations and combine the teachings with a network agnostic approach. Or  
25 even if the mobile device takes the same path it's possible for them to end up  
26 with different paths through the network.

1 JUDGE TARTAL: Counsel, this is Judge Tartal. Could I just ask a  
2 question? And that is, does geolocation data include proximity data? Are  
3 they -- is it within the meaning of geolocation data or do you find some, kind  
4 of, distinction between the two? And if so, based on what?

5 MR. GULLIVER: Okay. Proximate data are you using the terms  
6 proximate data as Felt uses it? Proximity data or are you --

7 JUDGE TARTAL: Giving the location. Yeah, like, I believe so,  
8 within the -- proximity data meaning that it's a notification of something  
9 within some distance of something else, so proximate to a known location.

10 MR. GULLIVER: Well, you're using the teachings of Felt to describe  
11 proximate -- proximity data, as I previously stated, comparing the locations  
12 of mobile to other things. In the claims, since we always want to look back  
13 to the claims, if we look at Claim 1, basically for the geo -- well, to answer  
14 your question it can be data. You can figure out ranges between other  
15 things.

16 But Claim 1 requires a geolocation and media content associated with  
17 the geolocation, so that's the media content associated with the geolocation  
18 here. So in blatant terms, is it just a location? Yes. Are they the same  
19 thing? Not in the claims because in the claims we have a first location, a  
20 second location geolocation, which is associated with the media content and  
21 then we have, I believe it's with the second rule of the first location within,  
22 yeah.

23 So the consumer is at a location within the radius of the geolocation.  
24 So a geolocation is a location that usually has a little bit more involved to it,  
25 is the way the claims are using it. It's geofencing.

26 JUDGE TARTAL: Thank you, counsel.

1 MR. GULLIVER: Sorry to be so long-winded. I'm trying to pull  
2 everything back to the claims and have direct support.

3 JUDGE WOODS: Mr. Gulliver, if I could interrupt, I would  
4 appreciate that. So I understand, and we're focusing on Ground 6, and I  
5 understand that Petitioner relies primarily on Alcatel. And I understand that  
6 the Petitioner relies on Felt as a secondary reference for teaching things like,  
7 for example, associating with the profile data for data of a consumer to  
8 improve communication.

9 And so this argument about the (inaudible) and you wouldn't have  
10 combined the two references because they involve different technologies, it's  
11 all -- it sounds to me like it's a non-analogous art-type argument. Is that the  
12 argument that you're making?

13 MR. GULLIVER: I think it's even -- I wouldn't argue it's not  
14 analogous. They're both analogous, but the way they're implemented, the  
15 limitations and how they work are so different. They're both tracking -- you  
16 both have mobiles so, no. I'm not -- we haven't presented a full analogous  
17 art, I do not believe, in our response. But our argument is one skilled in the  
18 art leading Alcatel, and Alcatel looks to with that, there isn't anything really  
19 to incorporate since it's using its approach to predict for the mobile front  
20 end. It has a tracking history, not a profile but a tracking history, and it's  
21 trying to predict where you're going to go. So it's a predictive approach.

22 JUDGE WOODS: If I could focus on one particular -- if you refer to  
23 page 38 of the petition?

24 MR. GULLIVER: One moment, Your Honor. Yes, Your Honor.

25 JUDGE WOODS: Okay. At the paragraph starting with, "To the  
26 extent that Alcatel lacks elaboration on profile data as recited," --

1 MR. GULLIVER: Oh, one second. I want to make sure. Okay. Oh,  
2 I'm in the -- I'm sorry, Your Honor, I'm in the declaration. Okay, 38, "To the  
3 extent that Alcatel lacks" -- is that the paragraph?

4 JUDGE WOODS: Yes. So I read that as the Petitioner is simply  
5 relying on Verizon's teachings that you could use user profile data to  
6 customize advertisements, which makes good sense to me, and it would  
7 improve Alcatel's advertising by improving the accuracy or custom tailoring  
8 the advertisement to Alcatel's systems.

9 So can you address that and why would a skilled artisan not have  
10 made that modification?

11 MR. GULLIVER: Okay. So what the paragraph is saying, "To the  
12 extent that Alcatel lacks the collaboration profile data," so we're referring to  
13 profile data, as you said, "would incorporate rules containing at least one  
14 element of profile data associated with consumer as taught by Verizon."

15 Okay. My first question would be besides the profile data, yeah. You  
16 can really have an argument that it could be combined, but I want to know  
17 how they're using that profile data, what the predictive, where you're going  
18 to be going.

19 Like I said, it's hard because they just do these block cites and, yeah.  
20 With the little bit of information here I'm sorry, this is the best I can provide  
21 Your Honor. This is the problem we've had through the whole IPR is they  
22 throw a lot of stuff up, but what are they really saying?

23 I mean, at the level they're talking here is it possible to modify profile  
24 data to be used with Verizon sending a message? It's geofencing is all  
25 Verizon teaching? You go to a location and you get data. Felt says use  
26 profile data. You use profile data here it's the same thing. It still doesn't

1 teach what the '620 patent does. I still don't believe someone at Alcatel  
2 would be looking to network agnostic approach to combine with it. I mean,  
3 they're just diverse. Does that answer your question, Your Honor?

4 JUDGE WOODS: All right, I see that. Thank you, Mr. Gulliver.

5 MR. GULLIVER: You're welcome. Okay. Now I'd like to turn to  
6 Patent Owner's slides. I know we've discussed this previously but for claim  
7 construction Patent Owner has asked for the claim term "consumer" to be  
8 construed in this IPR as a person or user to whom an advertisement may be  
9 sent.

10 Petitioner has not provided a construction otherwise to construe the  
11 term. We'd also asked that the Board construe "course of travel" at Patent  
12 Owner's slide 19. Course of travel should be given its plain and ordinary  
13 meaning, albeit requiring at least in part an analysis of the first location and  
14 the second location because that's what the claims require. So we asked that  
15 course of travel at least be given that definition. Petitioner didn't provide  
16 any construction or construe the claim.

17 On Petitioner's Grounds 1 and 2, invalidity in view of Felt, Patent  
18 Owner's slides 21 and 22, directs us to element 1(b), 1(b) specifying a  
19 plurality of rules for content distribution where times change, wherein  
20 specifying the plurality of rules comprised, going down to element 1(b)(iii),  
21 specifying a third rule corresponding to a course of travel associated with the  
22 consumer.

23 We're determining the course of travel based at least in part on  
24 analysis of the first location and the second location, element 1(f). Element  
25 1(c) and 1(e) also require an indication, first indication when the consumer is

1 at a first location, a second indication when the consumer is at a second  
2 location.

3 However, Felt only teaches using the location of a mobile unit to  
4 determine either proximate data, things around it, not a first location and a  
5 second location as further required by element 1(f).

6 Petitioner only cited Felt's teaching of speed and/or direction of travel,  
7 which the Board noted in the decision to institute but failed to address the  
8 other requirements of a first location and a second location in determining  
9 the course of travel, element 1(f).

10 And no new arguments can be made after they filed their petition. We  
11 have not taken the deposition of their expert to provide any additional  
12 evidence. So the evidence in the petition and what they say in their reply,  
13 that's all we have.

14 At Patent Owner's slide 23, element 1(e), is the direction of that slide.  
15 In there at the time of institution, the Board had reservations as to whether  
16 Felt disclosed the steps of element 1(e), receiving a second indication that  
17 the consumer is at its second location. There is no second location then and  
18 there's still no second location now.

19 Turning to Patent Owner's slide 25, Claims 2 through 12, Petitioner  
20 relied on the same analysis when challenging Claim 1 and for the same  
21 reasons. Dependent Claims 2 through 12 are not anticipated or obvious in  
22 view of Felt.

23 Patent Owner's slide 26, claim element 13(b)(iii), of Independent  
24 Claim 13 specifying at least one action to be performed by a consumer.  
25 Claim 13 requires the consumer to act, i.e., element 13(b)(iii), specifying  
26 that at least one action is to be performed by a consumer before 13(e),

1 establishing that the consumer is eligible for the content distribution  
2 campaign when the plurality of rules is satisfied.

3 Petitioner fails to show how Felt's alleged consumer actions occurred  
4 before the content delivery to the consumer and simply responds that Patent  
5 Owner's complaints are purely argumentative in their reply on page 15.

6 Patent Owner's slides 27 through 28, element 13(d) is addressed.  
7 Tracking the consumer in response to receiving the first indication to  
8 determine whether the consumer has performed at least one action.

9 Petitioner in the petition fails to meet their burden and show that element  
10 13(d) is disclosed in Felt.

11 In Claim 13, Petitioner has failed to establish Felt's disclosing of  
12 element 13(b)(iii), 13(d) and 13(e). 13(b)(iii), specifying at least one action  
13 to be performed by the consumer, 13(d) tracking consumer in response to  
14 receiving the first indication to determine whether the consumer has  
15 performed the at least one action, and 13(e) establishing that the consumer is  
16 eligible for the content distribution campaign when the plurality of rules is  
17 satisfied.

18 Now, turning to Patent Owner's slide 29, Grounds 1 and 2, dealing  
19 with Dependent Claims 14 through 19. Claims 14 and 19 are Dependent  
20 Claims that rely on the same analysis relied on in challenging Claim 13.  
21 Nothing new was added. Petitioner's argument once again fail.

22 Patent Owner's slide 30, Independent Claim 20, element 20(g)  
23 requires receiving a second determination that the second rule has been  
24 satisfied and element 20(h) further requires associating the second message  
25 with the consumer upon the second rule being satisfied.

1 As I've stated, Petitioner failed to establish Felt's disclosure of a  
2 second message. For the same reason that Claim 20 is not anticipated or  
3 obvious in view of Felt, Dependent Claims 20 through 23 are not anticipated  
4 for obviousness in view of Felt.

5 Moving on to Patent Owner's slide 33, Ground 3, Felt and Geer in  
6 Ground 5, Felt, Creemer and Scofield and Geer, motivation to combine. The  
7 Board has previously asserted that Petitioner failed to establish how the  
8 teachings of Geer are being used to improve upon Felt's system.

9 The petition does not address how the proposed combination would  
10 satisfy the relevant claim limitations, which require tracking the consumer in  
11 response to receiving the first indication to determine whether the consumer  
12 has performed the least one action.

13 That still hasn't been established by Petitioner. There is no motivation  
14 combined Geer with any of the other references.

15 Moving Patent Owner's slide 34, Ground 5 and also 4, Dependent  
16 Claims 15 through 19 and 22 through 23. Petition and declaration do not  
17 rely on Creemer or Scofield to teach any element of Independent Claims 13  
18 and 20, nor any elements of Dependent Claims that are dependent from  
19 Independent Claims 13 and 20. And we address that in our response on page  
20 52.

21 There are irrelevant and have been addressed on other grounds. Those  
22 things have been addressed on other grounds.

23 Patent Owner's slide 37, Ground 4, Felt, Creemer, or Scofield dealing  
24 with Independent Claim 1. Creemer describes path of travel and that course  
25 of travel with that first location and a second location as required by Claim  
26 1, elements 1(b)(iii) and 1(f).

1 Moving on to slide 40, if I'm going too fast or there's questions, please  
2 stop me.

3 Patent Owner's slide 40, Ground 4, Felt, Creemer or Scofield, dealing  
4 with Independent Claim 1.

5 JUDGE WOODS: Mr. Gulliver?

6 MR. GULLIVER: Yes.

7 JUDGE WOODS: If I could interrupt? I apologize. So if you can  
8 refer back to slide 36, please?

9 MR. GULLIVER: Slide 36? Yes.

10 JUDGE WOODS: So in red on top of the -- at the top of this slide it  
11 says, "Incorrect based on petition." Would you please expound upon that?

12 MR. GULLIVER: Basically it deals with the, yes, give me one  
13 second here. It deals with the different grounds in what claims were going  
14 in those grounds. There was some confusion.

15 That's why I like put the notes in. If we're saying Ground 4 in  
16 Dependent Claim 1, Felt, Creemer or Scofield, but in our reply, to  
17 (inaudible) reply we addressed that confusion. I believe it was a footnote.  
18 But it doesn't change the argument here.

19 So if there's no other questions? I mean, I can get into more detail,  
20 but --

21 JUDGE WOODS: I'm sorry. What would -- I'm confused. What was  
22 the confusion? What was the --

23 MR. GULLIVER: Okay. I mean, Your Honor, as I pull this up since  
24 I don't have my notes handy, may I address this on rebuttal?

25 JUDGE WOODS: Thank you. Yes.

1 MR. GULLIVER: Thank you, Your Honor. Let me make a note of  
2 that. Okay. I think I was on slide 37, Creemer, Scofield, Independent Claim  
3 1. Creemer describes (inaudible). I've addressed that one.

4 Okay. Patent Owner's slide 40, Ground 4, Felt, Creemer or Scofield,  
5 so Independent Claim 1. The Board had previously found for their decision  
6 to institute that Scofield's periodic information indicates that at least first and  
7 second locations indicated from the mobile device. But as I explained  
8 multiple times, that's not what is claimed in the claims of the '108 patent.  
9 Course of travel involves a lot more than just two points according to the  
10 claims.

11 Moving on to the Alcatel grounds, as discussed previously, there's no  
12 motivation. We believe there's no motivation to combine the references.

13 Patent Owner's slides 41 through 43 address Ground 6, obviousness in  
14 view of Alcatel and Felt, Claims 1 through 23. Petitioner has failed to meet  
15 their burden and elements 1(e), 1(f), 13(b), and 20(g) as found in Felt or  
16 Alcatel.

17 In Grounds 1 and 2, elements 1(e) and 1(f), Petitioner failed to meet  
18 their burden that Felt taught second location.

19 In Grounds 1 and 2 Felt's method of advertising failed to satisfy the  
20 element 13(d). In Grounds 1 and 2, element 20(g), receiving a second  
21 determination that the second rule has been satisfied is not found in Felt.  
22 And Alcatel's reference is not relied on for teaching element 20(g).

23 Alcatel fails to disclose elements 1(e) and 1(f) as previously  
24 discussed, and element 13(d), where 13(d) tracking is not in response to but  
25 rather occurs prior to receiving the first indication in Alcatel. See Patent  
26 Owner's response, page 55.

1 Patent Owner's slide 25, Ground 7, Alcatel, Felt and Geer, Dependent  
2 Claims 13 through 19. No motivation to combine here with Felt or Alcatel.  
3 This is it.

4 As previously discussed, Felt and Alcatel independently fail to keep  
5 all the elements of Claim 13. The addition of Geer fails to provide the  
6 missing limitations. Similarly, Petitioner has failed to meet its burden to  
7 show Dependent Claim 15 through 19 elements are disclosed by Alcatel,  
8 Felt and Geer.

9 At this point, if there's no further questions, I'd like to reserve the rest  
10 of my time. And I will address that line 36 question when I come back.  
11 Thank you, Your Honors.

12 JUDGE SILVERMAN: Let's just check with the panel to see if there  
13 are any additional questions at this point. Judge Woods, any questions?

14 JUDGE WOODS: I have no further questions. Thank you, Mr.  
15 Gulliver.

16 JUDGE SILVERMAN: Judge Tartal, do you have any questions at  
17 this moment?

18 JUDGE TARTAL: No. I have no additional questions at this time.  
19 Thank you.

20 JUDGE SILVERMAN: Okay. We'll add, I believe, 16 minutes to the  
21 surrebuttal time.

22 And whenever Petitioner is ready Petitioner can begin the rebuttal.

23 MR. SHIPE: Thank you, Your Honor. If I may, I'm going to leave  
24 ample time for questions. I think that's really productive in this case, but I  
25 have a number of things to go through. If that's helpful I'll start now then.

1           With respect to Felt, there was discussion about first and second  
2 location and the notion that we are claiming that, well, everybody just knows  
3 this. So I think it's important to know that we have the only expert on record  
4 testifying that they believe that it would be routine to implement the  
5 technology in that manner. So in terms of a preponderance of the evidence  
6 there is no question that, you know, on one side of the picture has a credible  
7 expert with testimony and why they're backing it up, and on the other side  
8 they have (inaudible) and have no evidence on the record.

9           Similarly, I'm going to skip to a different issue, but it's the same  
10 notion that there's this allegation that combining Alcatel with Verizon that  
11 there's this problem of network-centric issues and non-network-based  
12 approaches. It's now submitted today that these are analogous pieces of art  
13 but that somehow they still can't be combined for undisclosed reasons.

14           You know, I think suffice to say that we would point that we have a  
15 testifying expert on one side providing lots of discussion about why these  
16 references would work together, what the benefits would be, and his  
17 particular opinion that this would result in the (inaudible) of the claims,  
18 balanced against not only no experts but no evidence whatsoever to back up  
19 these allegations that there's some kind of network-centric and non-  
20 network-centric and those are somehow clashing.

21           I'll just note that there was a lot of discussion about some, I'm  
22 backtracking now, to talk about Claim 1 with respect to radius and  
23 geolocations and things like that. I will note that there's only one mention of  
24 radius within that claim and it had to do with the location, the location as  
25 mentioned being within a radius of a geolocation. And then radius is no  
26 longer relevant.

1           So the second geolocation makes no mention of any radius to  
2 anything else. It's just another geolocation according to the terms of that  
3 claim.

4           With respect to Creemer and Scofield and how they would apply,  
5 there was some mention about whether or not they met the limitations of the  
6 claims that they are asserted for. I've got to point out that that would be  
7 entirely new argument.

8           The only argument that's being presented by Patent Owner throughout  
9 this proceeding with respect to Creemer and Scofield had to do with  
10 motivation to combine, which we think are fully rebutted and they're  
11 insubstantial. Their positions are not credible.

12           But any argument that there's a factual deficiency within the reliance  
13 on Creemer and Scofield disclosure would be entirely new argument in this  
14 proceeding.

15           I wanted to go back again to the Alcatel and Felt combinations. The  
16 panel had asked about the explanation, Patent Owner's explanation for the  
17 discussion on page 38 of the petition regarding the profile data being  
18 imported from Felt, the consideration of profile data being imported from  
19 Felt into Alcatel.

20           At this point, I just wanted to briefly touch on that and say that, you  
21 know, we also saw this other instance where this network-centric issue or  
22 any consistency that's being alleged just doesn't fit. I mean, the  
23 consideration of the profile data has nothing to do with a network that's  
24 being implemented.

25           We figure it's totally different issues. One, they're trying to drive an  
26 issue regarding location or the location information that's there, the other

1 being whether they're using profile data like demographics and things like  
2 that to better filter messaging to the consumer.

3 With respect to Claim element 13(e), I don't know that we ever really  
4 read what the content was there, but 13(e) had to do with establishing that  
5 the consumer is eligible for the content distribution campaign.

6 Patent Owner recited here an argument that Felt cannot provide the  
7 teaching because the core of Felt that meets this (inaudible) -- put forth in  
8 the petition to meet the requires a message to be sent first, and Patent  
9 Owner's response to that was that they're not eligible. They can't receive the  
10 message first and there's a timing issue with the way that Felt would meet  
11 the claim.

12 But Patent Owner did not address our reply that Claim 17 specifically  
13 had a separate set of providing a first aspect of the media content in response  
14 to the first indication which is of entering diverse locations.

15 So their Dependent Claims actually remove all doubt that timing is  
16 not an issue here and, in fact, they go on to define their claim exactly how  
17 they propose it is not to be read. But we don't see that as an issue. This is  
18 amply covered in the reply.

19 With that, I'll invite any questions on any of these topics, anything  
20 else that we've covered today.

21 JUDGE SILVERMAN: Let me check with the panel. Judge Woods,  
22 do you have any points, any further questions?

23 JUDGE WOODS: I have no further questions. Thank you, Mr.  
24 Shipe.

25 JUDGE SILVERMAN: Judge Tartal, any questions?

1 JUDGE TARTAL: I do not have any additional questions at this  
2 time. Thank you.

3 JUDGE SILVERMAN: Okay. Then, Mr. Shipe, unless you have any  
4 other points we will turn to Patent Owner's counsel for surrebuttal.

5 MR. SHIPE: Thank you, Your Honor.

6 MR. GULLIVER: Your Honor, with the incorrect spacing on the  
7 petition I can't find it. It was something not major. I would have taken it off  
8 the slide probably but we already changed them everything, so I'm not  
9 alleging anything and, you know, don't read anything into it, please.

10 JUDGE WOODS: Thank you, Mr. Gulliver.

11 MR. GULLIVER: I would like to stress one thing as important that  
12 Petitioner stated, because he seems to allege because we did not use an  
13 expert in this IPR, he says he meets the preponderance just because they  
14 have an expert. It's up to the Board, the three Judges here, to weigh how  
15 much credence to give an expert.

16 The expert is there to help you. Just because there's an expert doesn't  
17 mean he's right and what he says is golden. We have total faith with this  
18 technology. It's not super in-depth protocol, standard type technology where  
19 we need an expert. These patents you can understand what's happening.

20 And because you can understand what's happening you can read the  
21 claim language, and you're all experienced with reading claim language.

22 And you can tell these references do not meet the requirements of the  
23 '108 patent. An unheard of --

24 JUDGE SILVERMAN: I'm sorry counselor, if I can just interrupt for  
25 a second? I think one point on which the expert testimony was being  
26 referenced by Petitioner's counsel was a reason to combine certain

1 references and whether the existence of some references being, or at least  
2 one reference being a network-centric versus other references not being  
3 network-centric, or at least -- or not bearing upon a network, whether they  
4 can still be combined.

5         And at least part of the evidence that was provided was that a person  
6 of ordinary skill in the art would combine those and that's evidenced by  
7 statements from their expert. If the counter position on that issue were these  
8 references can't be combined and what's the -- the question would be what's  
9 the basis for that? Is there something through the references, that is,  
10 themselves, that say you can't combine this, a non-network system, for  
11 example?

12         MR. GULLIVER: Well, to answer your question, Your Honor, I'd  
13 direct you to paragraph 18 of Alcatel. And paragraph 18, this is the only  
14 place GPS location data is discussed coming from a mobile unit or a mobile  
15 device. And it is only used to be stored in the mobility history. It's not  
16 teaching to use it any other way.

17         If they wanted to use the actual mobile location they could have  
18 expanded on that because that's in an alternative embodiment. That's not  
19 even in the main embodiment. So that is kind of saying don't use GPS data  
20 for anything else except for building up that mobility history. That's our  
21 view.

22         But it's up to the Board to weigh the expert's view and give it the  
23 amount of weight and credence. It's not the fact that there's an expert,  
24 therefore, they need to provide (inaudible) evidence. So it's case law where  
25 I'm trying to -- it's not biased because they do not have an expert.

1 JUDGE SILVERMAN: I certainly didn't mean to suggest that that  
2 would be the case.

3 MR. GULLIVER: So with that, I mean, once again I'll say it's not  
4 what I said, it's not what Petitioner says, it's what the claims require that  
5 matter in this case. So when you read the claims and how their elements are  
6 all interrelated between the different claim assertions or claim elements, that  
7 has to be shown by the cited references, and they are not.

8 They have not met their burden in this case. That's all we have to say,  
9 Your Honor. Thank you. If there's no more questions?

10 JUDGE SILVERMAN: I will check with the others on this panel.  
11 Judge Woods, any additional questions?

12 JUDGE WOODS: I have no further questions. Thank you for your  
13 time today, Mr. Gulliver.

14 MR. GULLIVER: Thank you, Your Honor.

15 JUDGE SILVERMAN: Judge Tartal, any questions?

16 JUDGE TARTAL: I have no additional questions. Thank you.

17 MR. GULLIVER: Thank you, Your Honor.

18 JUDGE SILVERMAN: Counsel, thank you for appearing today and  
19 providing your arguments and answering our questions. Before we close out  
20 the day I just want to check with the court reporter to see if there are any  
21 spellings at issue?

22 Not hearing any -- oh, there we go,

23 COURT REPORTER: No questions about spellings. I just realized I  
24 did not get demonstratives for the afternoon hearing. I can -- I would --

25 JUDGE SILVERMAN: We'll make sure to get -- we'll make sure to  
26 get those to you.

1 COURT REPORTER: Okay, that would be great. Yeah.

2 JUDGE SILVERMAN: We'll take care of that separately through the  
3 correct channels. Then the 919 matter is submitted and we will take this  
4 case under advisement and provide a decision in due course.

5 And we are off the record. Thank you.

6 (Whereupon, the proceedings at 4:33 p.m. were concluded.)

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