

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GENERAL ACCESS SOLUTIONS, LTD.,

Plaintiff,

v.

CELLCO PARTNERSHIP D/B/A VERIZON
WIRELESS, VERIZON SERVICES CORP.,
VERIZON BUSINESS GLOBAL LLC,
VERIZON BUSINESS NETWORK SERVICES
LLC, VERIZON CORPORATE SERVICES
GROUP INC., VERIZON DATA SERVICES
LLC, and VERIZON ONLINE LLC,

Defendants,

ERICSSON, INC.,

Intervenor-Defendant.

Case No. 2:22-cv-00394 JRG

JURY TRIAL DEMANDED



**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY
JUDGMENT OF INVALIDITY OF U.S. PATENT NO. 9,426,794 FOR LACK OF
WRITTEN DESCRIPTION**

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INTRODUCTION

Verizon's motion for summary judgment of invalidity of the '794 Patent for lack of written description of the "routing" limitation is without merit and should be denied. The specification contains extensive discussion of the routing limitation that fully supports the claims as construed.

Although Verizon acknowledges that the patent contains significant discussion of the routing function, it contends that there is no disclosure specifically of the WLAN transceiver's role in routing information based on the theory that the base station alone selects the network path. But Verizon's motion is predicated on an interpretation of the "routing" limitation that the Court rejected during claim construction. Specifically, Verizon argued for a construction that would limit "routing" to only *network* routing. Its proposed construction was: "selects a *network path* over which the information is to be transmitted to the first mobile station." Dkt. 66 at 35 (emphasis added). Verizon tried to limit the claims of the '794 Patent to certain "handover" scenarios discussed in the specification, arguing that the WLAN transceiver plays no role in "routing" in these scenarios. But the Court rejected Verizon's construction and construed "routing" more broadly to mean: "directs information through a *specified path* to the first mobile station and the second mobile station, respectively." Dkt. 86 at 21 (emphasis added).

Verizon's motion does not grapple with the Court's construction and fails to apply the written description standard to "routing" as construed. Verizon's motion also fails because it simply ignores important parts of the specification discussing the routing by the WLAN, both within the network and to the mobile stations.

RESPONSE TO STATEMENT OF ISSUES TO BE DECIDED BY THE COURT

Whether the Court should deny Verizon's motion for summary judgment because the '794 Patent provides adequate written description support for the "routing" limitation as construed.

RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS

General Access provides the following responses to Defendants' statement of facts, in corresponding numbered paragraphs. General Access does not materially dispute the paragraphs not specifically addressed here.

2-6: General Access disputes Verizon's attempt to reframe or generalize the specification and the Asserted Claims in paragraphs 2-6. The claims and specification speak for themselves.

7: Disputed. The Second Transceiver, or WLAN transceiver, "routes" information in the '794 specification as explained in the citations to the specification contained herein. As explained more fully below, the specification squarely addresses how communications take place within the local area network, how the routing map maintains a listing of the location of the mobile stations that communicate with the WLAN transceiver, and ultimately how the routing map allows for information to be efficiently routed—by the WLAN transceivers—to the mobile stations.

8: General Access disputes Verizon's attempt to reframe claim 1 of the '794 Patent.

9: General Access disputes Verizon's attempt to characterize the prosecution history.

10-11: As set forth more fully below, General Access disputes Verizon's misleading account of the prosecution history.

12: As set forth more fully below, General Access disputes Verizon's contention, which renders the claims a nullity under the Court's claim construction.

13-16: As set forth more fully below, General Access disputes Verizon's misleading characterization of counsel's arguments. Counsel's arguments were directed at Verizon's proposed construction of routing as "selecting" in the context of network handovers. In any event, as explained below, judicial estoppel does not attach to those arguments.

17-20: As set forth more fully below, General Access disputes Verizon's misleading and selective account of Mr. Struhsaker's testimony. Mr. Struhsaker was addressing only a portion of the specification and his testimony is not germane to the question at issue here.

ARGUMENT

I. The '794 Specification Clearly Discloses "Routing"

The '794 specification includes ample written description support for the WLAN transceiver "routing" information to the mobile stations in the local area network. Indeed, the '794 specification has a rather robust discussion of how the WLAN transceiver communicates information between the base station and the mobile stations from column 5, line 44 through column 6, line 13.

Information flows from the base station to the mobile station, and the WLAN transceiver ("such as an access point") provides for "localized radio communications throughout a coverage area defined by the communication range

In one aspect of the present invention, a WLAN transceiver, such as an access point, is installed at a subscriber station of a fixed wireless access communication system. A WLAN transceiver provides localized radio communications throughout a coverage area defined by the communication range of the WLAN transceiver and mobile stations with which WLAN transceiver communications. More than one WLAN transceiver is positionable at the subscriber station, as appropriate. Radio communications between a mobile station and the WLAN transceiver provide for two-way communications with the mobile station.

of the WLAN transceiver" and that "[r]adio communications between a mobile station and the WLAN transceiver provide for two-way communications with the mobile station."

The specification details that the "information is forwarded to the WLAN transceiver to be transmitted therefrom by way

of the local radio link through the mobile station." Ex. 1, '794

Patent at 6:6-9. And the '794

Patent discloses that there is a "routing map" (see to the right)

that maintains a listing of the location of mobile stations to

"communicate by way of local

In another aspect of the present invention, a routing map is maintained at a location coupled to, or integrated within, the fixed wireless access communication system. The routing map maintains a listing of the location of mobile stations operable to communicate by way of local radio links with WLAN transceivers positioned at different ones of the subscriber stations of the fixed wireless access communication system. The locations at which the mobile stations are positioned are updated, as needed, as a mobile station travels between coverage areas defined by different ones of the WLAN transceivers. When information is to be communicated to a particular mobile station, the routing map is accessed to retrieve indications of the location at which the mobile station at which the information is to be terminated is positioned. Through use of the indications retrieved from the routing map, the information which is to be communicated to the mobile station is able to be most efficiently routed to the mobile station.

radio links” (these are the communication paths between the WLAN transceiver and the mobile stations), and that the routing map allows information to be “most efficiently **routed** to the mobile station.” The specification squarely addresses, therefore, how communications take place within the local area network, how the routing map maintains a listing of the location of the mobile stations that communicate with the WLAN transceiver, and ultimately how the routing map allows for information to be efficiently routed—by the WLAN transceivers—to the mobile stations. Using a handover scenario as one example, the specification describes the role of the WLAN transceiver in the “determination of when to initiate handover [] made responsive to measurements of signal characteristics of communicated signals between the WLAN transceiver and the mobile station.” *Id.* at 8:61-64.

In sum, the specification provides adequate description of “routing” and how the WLAN transceiver “directs information through a specified path” (local radio links) to the mobile stations. *See Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (“[T]he hallmark of written description is disclosure.”).

II. The Court Construed “Routing” to Include Both Internal and External Routing

The district court “must base its analysis of written description under § 112 on proper claim construction.” *Koninklijke Philips Elecs. N.V. v. Cardiac Sci. Operating Co.*, 590 F.3d 1326, 1336 (Fed. Cir. 2010). As construed by the Court, “routing” means: “directs information through a specified path to the first mobile station and the second mobile station, respectively.” Dkt. 86 at 21. Verizon argued for a construction that would limit “routing” to only *network* routing: “selects a network path over which the information is to be transmitted to the first mobile station.” *Id.* But Verizon did not get that construction and now tacitly argues again for its construction in the context of its written description argument. In other words, according to Verizon, if the claims are not limited to

“network routing” only, then the ’794 Patent lacks written description for any other form of “routing.”

But the Court’s construction includes both “routing” that takes place at the network level, in which the WLAN transceiver plays a role, as well as other “routing” the WLAN performs. Verizon never grapples with the Court’s construction. First, Verizon ignores that in “network routing” the WLAN transceiver plays a role, and that the WLAN transceiver “direct[s] information through a specified path” to satisfy the “routing” limitation. That “specified path” could be a network path “specified” by the base station, in which the WLAN transceiver directs the information. Second, Verizon wholly ignores the Court’s rejection of its construction and the possibility of other forms of “routing” that the WLAN transceiver does.

A. The ’794 Specification Discloses “Network Routing” Which Satisfies the Written Description Requirement

Verizon’s discussion of the ’794 specification demonstrates various scenarios of “routing.” Verizon Br. at 3. Indeed, Verizon’s Statement of Undisputed Material Facts (Nos. 4-6) recount “routing” in the context of “handover communications” (three different scenarios), “access process” routing and “remote modem” routing. *Id.* All of this “routing” can generally be categorized as “network routing.” Although Verizon acknowledges these parts of the specification in its argument, it contends there is never any mention of the “second transceiver (or WLAN transceiver) performing routing.” *Id.* at 10. Verizon even claims that the specification does not disclose that the WLAN transceiver does “routing” based on monitoring signal characteristics. *Id.*

Verizon is wrong on both counts, and indeed its summary judgment motion is really one of non-infringement because according to Verizon no WLAN transceiver can ever “route” information as construed by the Court.

In the handover scenario, the WLAN transceiver plays the role as described in the specification, which provides full written description support for “routing.” The specification

discusses how the “determination of when to initiate handover is made responsive to measurements of signal characteristics of communicated signals between the WLAN transceiver and the mobile station.” Ex. 1, ’794 Patent at 8:61-64. The specification goes on to discuss in column 9 that there is a “routing map” with the “locations at which mobile stations are positioned” and that when “communications are to be effectuated with a particular mobile station, such as communications originated by the correspondent node 34, the routing map is accessed and the communication signals are routed to the mobile stations at the position indicated in the routing map.” *Id.* at 9:4-19. Thus, the specification explicitly says that the WLAN transceiver plays a role in “routing,” and General Access’s expert, Dr. Vijay Madisetti, along with the inventor Paul Struhsaker, both explained how this is done.

Dr. Madisetti explained that if the signal characteristics meet a minimum threshold then the information will be routed to the mobile station, but if not the second transceiver will re-route the information back to the base station. Ex. 2, Madisetti Rept. ¶ 400. *Vasudevan Software v. MicroStrategy, Inc.*, 782 F.3d 671, 682 (Fed. Cir. 2015) (cleaned up) (“The test for the sufficiency of the written description is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.”). Mr. Struhsaker, the inventor, explained: “[The second transceiver] decides, am I retransmitting to something that is inside my local area network or am I sending it out? Out to, in this case, the [first] wide band transceiver to the cell tower.” Ex. 3, Struhsaker Dep. 290:8-12. Further, Mr. Struhsaker testified:

Q. So this is my question: In 2001, at that time, did WLAN transceivers specify a path over which they were going to send information to a mobile device to which they were connected?

A. Yes.

Q. And what -- how did they do that?

A. An access point, which is the transceiver they were talking to the -- in this diagram, let's define a couple things. The -- the transceiver that's connected to the broadband transceiver accident okay, so you have a local area transceiver, that's what you've been -- your question's about that?

Q. Yes, it is.

A. Great. That transceiver, which is creating a local area network which it very carefully describes you're creating a local area network, okay? It has the functions of, first, associating; a subscriber can associate with that, okay? When it does, you know, your SSID and your log in, right, you do it today. You have a -- a network and a log in, so you would -- you access that point. You become part of that network, okay, and then you begin just as a mobile. You send data. The access point understands you're now part of the network. The access point always has a routing function. And it decides, am I retransmitting to something that is inside my little local area network or am I sending it out? Out to, in this case, to the second wide band transceiver to the cell tower. So it -- it always has an ability of sending -- you're calling it a path, I will call it a retransmission because that's the accurate term. It is -- it always has the capability of deciding to retransmit to whichever device, secondary mobile device that you have or no, it's nothing in here, it's talking somewhere out there and it just routes to out there.

Id. at 289-1-290:20. Verizon ignores the role that the WLAN transceiver plays in the handover discussion in the specification because, according to Verizon, no WLAN transceiver can **ever** “route” information as the Court has construed the term. Ex. 4, Andrews Rebuttal Rept. ¶ 387 (“Routing as a network concept, and as construed by the Court, does not occur in Wi-Fi.”); Ex. 5, Andrews Rept. ¶ 633 (“In other words, ‘routing’—under the Court’s construction requiring more than merely forwarding packets—cannot occur at the WLAN transmitter.”). Not surprisingly, the experts disagree whether the WLAN transceiver is “routing” when it sends information back to the base station based on the monitored signal characteristics.

That issue, when the WLAN transceiver re-routes information, which is an example of “routing” that is clearly found in the specification, will be resolved at trial. Verizon’s questioning of Dr. Madisetti illustrates this fundamental disconnect between the two sides whether the WLAN transceiver ever “routes” information:

- Q. BY MR. ROSENTHAL: Do you agree that there is a routing map attached to the base station that keeps a list of all the mobile stations and which wireless access points they are connected to?
- A. That's not the only copy of the routing map. The copy of the routing map, as I explained to you, is stored at the WLAN transceivers as well, as indicated in column 9 and column 8. There is another copy of the routing map that is stored at the access process, but that's not the only copy.
- Q. Do you agree that all of the routing or the selection of the paths of communication all takes place at the level of the base station?
- A. Again, you are providing an interpretation of routing in your question. You are saying the routing means a selection of a path. Routing is routing.
- Q. Do you agree that –
- A. The court has construed routing as along the specified path. There is no requirement of a selection. It can be a specific path, so I would disagree that you are rewriting the claim construction.
- Q. Do you agree that the -- all of the specifying of the path takes place at the level of the base station in the '794 specification?
- A. I disagree. As I described, it is happening at the transceiver, which then informs the base station, which may or may not participate in doing additional routing, but the written description shows that the WLAN transceiver is doing the routing as construed by the court.

Ex. 6, Madisetti Dep. at 236:23-238:3 (emphasis added).

Regardless, even if Verizon wants to argue that the WLAN transceiver cannot “route” information, there is written description support for the “routing” limitation as construed.

B. The '794 Specification Also Discloses “Routing” Within the LAN

Verizon also relies on the specification’s discussion of handover, “access process routing,” and “remote modem routing,” again in the context of “routing” in the broader wide area network as support for its contention that the WLAN transceiver never describes “routing” outside of any “network routing.” Verizon Br. at 3-4. But even if the '794 Patent does not discuss “embodiments” that describe in detail “routing” in the LAN, that is not the test for written description support. The Federal Circuit has held that the absence of “examples explicitly covering the full scope of the claim language” does *not* render the written description inadequate. *Falkner v. Inglis*, 448 F.3d 1357, 1366 (Fed. Cir. 2006) (quoting *LizardTech, Inc. v. Earth Res. Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed. Cir.

2005)). The rule is that “all the *limitations* must appear in the specification,” *not that all embodiments* within the scope of the claim must be explicitly disclosed and discussed. *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1306 (Fed. Cir. 2008) (emphasis added) (quoting *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997)). The inquiry, therefore, is not whether an *embodiment* discusses “routing” at the local area network level, but rather whether there is written description support for “routing” as the limitation appears in the claims.

At a threshold level, an interpretation that no “routing” occurs within the LAN would make no sense to the person of ordinary skill. Claim 1 states that the WLAN transceiver “routes information” to the mobile stations. The specification also discloses that “information is forwarded to the WLAN transceiver to be transmitted therefrom by way of the local radio link through the mobile station.” Ex. 1, ’794 Patent at 6:7-9. The person of ordinary skill would understand based on the disclosure that: a) information is ultimately transmitted to the mobile stations, and b) the information follows a “specified path” (local radio link) from the WLAN transceiver to the mobile stations. The Court’s Claim Construction Order requires that the WLAN transceiver “direct information through a specified path,” and the disclosure says that the WLAN transceivers do direct information to the mobile stations over a specified path. More specifically, the ’794 specification discusses how the WLAN transceiver communicates with the mobile stations via “radio links,” how it maintains a “routing map” that includes where the mobile stations are positioned, and how that helps the information “to be most efficiently routed to the mobile station.” (see to the right and Ex. 7, Madisetti Rebuttal Rept. ¶ 722).

In another aspect of the present invention, a routing map is maintained at a location coupled to, or integrated within, the fixed wireless access communication system. The routing map maintains a listing of the location of mobile stations operable to communicate by way of local radio links with WLAN transceivers positioned at different ones of the subscriber stations of the fixed wireless access communication system. The locations at which the mobile stations are positioned are updated, as needed, as a mobile station travels between coverage areas defined by different ones of the WLAN transceivers. When information is to be communicated to a particular mobile station, the routing map is accessed to retrieve indications of the location at which the mobile station at which the information is to be terminated is positioned. Through use of the indications retrieved from the routing map, the information which is to be communicated to the mobile station is able to be most efficiently routed to the mobile station.

Dr. Madisetti detailed those sections of the specification, discussed above, in his expert report, and offered his opinion that “the foregoing sections of the specification provide ample written description support for the term ‘routing’ information as construed by the Court. The WLAN transceiver ‘directs information through a specified path’ (local radio links) to the mobile stations.” Ex. 7, Madisetti Rebuttal Report ¶ 723; *Ariad Pharm., Inc.*, 598 F.3d at 1351 (“[T]he test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art. Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.”).

Indeed, Dr. Madisetti offered a number of detailed examples how Verizon’s Accused Products do “routing” as the Court has construed the term (*see* Ex. 2, Madisetti Rept. ¶¶ 400-408) and while Verizon’s expert contends that “routing” can never occur in Wi-Fi at all, as the Court has construed the term, again that is an issue for trial.

Verizon contends that Mr. Struhsaker conceded that the specification does not disclose the WLAN transceiver routing, while failing to mention that it focused its questioning of Mr. Struhsaker on only one part of the specification. The entirety of the question and answer demonstrate how Mr. Struhsaker makes clear that “routing” is indeed taking place in the local area network where it “could specify a path,” even though it is not spelled out in the specification’s “handover” discussion, which was the focus of Verizon counsel’s questioning.

- Q. So just to be clear, at the bottom of column 8, starting at line 61, to the -- column 9, line 19, those two passages we just read about handover, those do not describe the second transceiver, the WLAN transceiver, itself, performing routing, correct?
- A. Yeah. This is the one layer up. This is -- you’re going between two WLANs. It’s only describing -- if you’re within a WLAN, why would I write a patent about something that everybody patented and every claim would be rejected and everybody understands?

- Q. (By Mr. Rosenthal) Because everybody understands that that's a function the WLAN transceiver would have to do?
- A. Correct. Anyone skilled in the art by 2001 understood that an access point routes to things within itself.
- Q. (By Mr. Rosenthal) So that -- you did not explicitly describe that within the patent, correct?
- A. No. This is describing that layer up, right?
- Q. Okay. And so when you were -- you and the patent lawyers were drafting this, you did not describe in the '794 patent the idea that the second transceiver itself routes to different mobile devices, correct?
- A. Since it's using a wireless LAN, it is fully understood that wireless LANs have self-routing capability. There was no reason to discuss it.
- Q. (By Mr. Rosenthal) Okay. And so --
- A. Anyone at that time -- they always say the old thing. Anyone skilled in the art would have understood that.
- Q. Okay. So you didn't feel the need to write down anything in the patent about the second transceiver performing routing, right?
- A. I didn't. I felt it was implicit in the fact that -- that the second transceiver was a wireless LAN, and you don't have a LAN unless you have routing in the LAN.
- Q. (By Mr. Rosenthal) All right. Now --
- A. You have no LAN -- you have no local area network unless something can route in a local area network. Therefore, it must route.
- Q. Now, in the --
- A. Or you got --
- Q. At the time that this patent application was written and submitted in 2001, the WLAN transceiver would not specify a path to get to a mobile station, correct?
- A. Hold on a second. At the time -- well, first of all, we're building the WLAN, so we could specify the path, right?
- * * *
- Q. (By Mr. Rosenthal) Go ahead.
- A. So I -- we are talking about there's -- the wireless LAN within -- within just -- we're within, like, 42. We're within 42 sitting there. There's two transceivers, and they -- they talk to an access point. They're wireless LANs, they -- they do what's called association, right? You associate with an access point, you're routed to the routing table of that access point. That's all fully understood, right? And that sets your local routing capability, right? Then I -- we talked

about, again, if for any reason the access point identifies itself, of course, this is a wireless LAN. It has many features that we don't bother to talk about here.

* * *

Q. So in the '794 patent, you do not describe that the wireless transceiver, the second transceiver, specifies a path to transmit information to a mobile device, correct?

A. No, it does –

A. It does -- it does route, because sometimes that route is out. There's interior routing, exterior routing. So, of course, it has in its ability – we're talking about in -- the section you asked me about is about exterior routing. Outside of the domain of the wireless LAN –

Ex. 3, Struhsaker Dep. at 279:5-283:23. Mr. Struhsaker referred to the “layer up,” to “this,” and the “section you asked me about” (handover discussion in the specification at column 8:61-9:19) in the context of the entire question and answer, and not the entirety of the patent. In fact, when he was asked whether the '794 Patent describes that the WLAN transceiver “specifies a path,” he clearly says “it does” to include both “interior routing” (within the LAN) and “exterior routing” (network routing).

Huawei Techs Co. Ltd. v. T-Mobile US, Inc., No. 2:16-cv-55-JRG-RSP, ECF No. 389 (E.D. Tex. Oct. 15, 2017) is instructive. In *Huawei*, the parties disputed during claim construction whether two claim terms required an “inter-RAN handover” or could be broader and cover “*intra*-RAN handovers” as well. T-Mobile (the defendant) argued that “the specification only discloses inter-RAN handovers,” while Huawei contended that the claims should not be so limited. *Huawei Techs Co. Ltd.* at p. 25. The Court adopted a “plain and ordinary meaning,” the broader construction, and held that claim is “not limited to the inter-RAN handovers in the specification. Like Verizon, T-Mobile then argued the patent lacked written description support because “the specification never discloses an intra-RAN handover.” *Id.*

First, the Court correctly reasoned that, although “T-Mobile frames the dispute as whether the specification adequately describes intra-RAN handovers,” “Huawei [was] correct that the issue is

really whether the claim terms, i.e., the source and target network elements, have been adequately described.” *Id.* at 27. And, although the Court in *Huawei* only recounts what it deemed “general” disclosures, it held that “it cannot conclude as a matter of law that the patent’s general description and the disclosure of the inter-RAN species are both insufficient to provide written description support for the genus of inter- and intra-RAN handovers.” *Id.* at 28. The same result should apply here. Indeed, the written description support for the WLAN transceiver “routing” both at the network level and in the LAN is far more robust than the “general” disclosures in *Huawei*.

The ’794 specification makes clear that: 1) the WLAN transceiver “routes information” to the mobile stations, 2) a “routing map” is used to maintain a listing of the location of mobile stations, 3) the WLAN transceiver “communicate[s] by way of local radio links,” and, 4) the routing map allows information to be “most efficiently **routed** to the mobile station.” The specification squarely addresses, therefore, how communications take place within the local area network, how the routing map maintains a listing of the location of the mobile stations that communicate with the WLAN transceiver, and ultimately how the routing map allows for information to be efficiently routed to the mobile stations. At a minimum, there is certainly a question of fact whether “routing” is supported by an adequate written description in the ’794 Patent that should go to the jury. *See Vasudevan Software, Inc.*, 782 F.3d at 682.

For purposes of infringement, Verizon can disagree that its WLAN transceiver “routes information” as construed by the Court, but at this stage there is ample written description support for the claims as construed.

III. Verizon’s Arguments Based on the Prosecution History and What General Access Counsel Said During Claim Construction Are Off-Base

First, Verizon argues that an Examiner, in a different patent application that was ultimately abandoned, made a written description rejection. Verizon fails to note that the Examiner made no such rejection in the application that led to the ’794 Patent, which of course demonstrates that the

Examiner concluded the “routing” limitation has written description support or the patent would never have issued. Moreover, it appears the exchange between General Access and the Examiner in the other application related to one part of the specification (what appears as Col. 8:61-9:3 in the ’794 Patent), not to other parts of the specification discussed here. Finally, the Examiner also made rejections on the grounds of anticipation and obviousness, and so any supposition that General Access abandoned the application because of the written description rejection is mere speculation. Verizon Ex. 2 at VZNGAS_003001400-03.

Second, Verizon’s reliance on General Access’s arguments at the Markman hearing recycles the same trick it used in contorting Mr. Struhsaker’s testimony. As General Access’s counsel made clear, its arguments about what the patent described were directed at the “selection” concept that Verizon attempted to inject into the claims—that is, the notion that the patent was directed only at network-level selection and handover. *See* Ex. 8, Markman Tr. 84:17-20 (“***to the extent ‘routing’ means selecting a path over the network***, that’s where the selection of the network path occurs”) (emphasis added); *see also id.* at 66:4-11; 85:2-15. But nothing in that argument went to “routing” as the Court construed the term, that is “directing” information to mobile stations. To the contrary, General Access stated that it generally agreed with the Court’s tentative construction but was concerned that the formulation might lead to certain ambiguities. *See id.* at 72:20-22. In any event, the Court did not accept General Access’s argument, and, therefore, no judicial estoppel applies. *Love v. Tyson Foods, Inc.*, 677 F.3d 258, 261 (5th Cir. 2012) (recognizing “a court accepted the prior position” as a requirement for judicial estoppel).

CONCLUSION

For the foregoing reasons, General Access respectfully requests that the Court deny Defendant’s Motion for Partial Summary Judgment of Invalidity of U.S. Patent No. 9,426,794 for Lack of Written Description.

Dated: April 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Civil Procedure and Local Rule CV-5, I hereby certify that a copy of the foregoing document was filed via the Court's CM/ECF system on April 8, 2024, which will send a notification of such filing to all counsel of record.

/s/ Glen E. Summers
Glen E. Summers

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that pursuant to the protective order in the above-captioned case, this motion contains confidential information. Accordingly, this document is to be filed under seal.

/s/ Glen E. Summers
Glen E. Summers