

**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.

C.A. No. 2:22-394-JRG

JURY TRIAL DEMANDED

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



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TABLE OF ABBREVIATIONS

Abbreviation	Term
Verizon	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
Plaintiff or GAS	General Access Solutions, Ltd.
'794 Patent	U.S. Patent No. 9,426,794
'794 Patent File History	Prosecution history of the '794 Patent (GA0200000)
'424 Application	U.S. Appl. No. 11/982,424
'424 Appl. File History	Prosecution history of the '424 Patent (VZNGAS_003001277)
'555 Patent	U.S. Patent No. 9,225,555 (GA0123984)
Asserted Claims	Claims 1, 2, and 5 of the '794 Patent
IAD	Integrated access device
Madisetti Rebuttal Rep.	Rebuttal Expert Report of Dr. Vijay K. Madisetti on Validity, dated Mar. 7, 2024
MPEP	Manual of Patent Examining Procedure
Markman Tr.	Transcript of claim construction hearing, dated Dec. 15, 2023
Preliminary Construction	Preliminary Claim Construction, issued Dec. 15, 2023
Struhsaker Dep. (2024)	Deposition transcript of Paul F. Struhsaker, dated Jan. 26, 2024
WLAN	Wireless local area network

TABLE OF EXHIBITS

Ex.	Description
1	'794 Patent
2	'794 Patent File History (GA0200000)
3	'424 Appl. File History (VZNGAS_003001277)
4	IEEE 802.11 (1999) (VZNGAS1004777)
5	Preliminary Construction
6	Markman Tr.
7	Struhsaker Dep. (2024)
8	Madisetti Rebuttal Rep.

I. INTRODUCTION

The '794 Patent is directed to a wireless communication device capable of receiving a first signal from a base station in a wide area network using a “first wireless transceiver” of the device (e.g., a cellular radio) and then re-transmitting that signal to multiple mobile stations in a wireless local area network using a “second wireless transceiver” (e.g., a Wi-Fi radio). All of the Asserted Claims require that the “second transceiver . . . routes information” to the mobile stations, which this Court held means “directs information through a specified path” to the mobile stations, with the clarification that “simply ‘forwarding information,’ without more, is not ‘routing.’” Dkt. 86 at 22, 24. But the '794 Patent does not mention, let alone convey possession of, the claimed routing by the second transceiver (*i.e.*, directing information through a specified path). Counsel for GAS openly conceded as much in arguing against the Court’s construction of this limitation, and Mr. Struhsaker, the named inventor, gave sworn testimony that the patent does not describe routing by the second transceiver. The Patent Office drew the same conclusion, rejecting as unsupported a related application for this reason. And GAS’s technical expert does not meaningfully dispute the overwhelming evidence that the claim limitation is not described. Thus, summary judgment that the '794 Patent is invalid for lack of written description is warranted.

II. ISSUES TO BE DECIDED BY THE COURT

1. Whether the Asserted Claims of the '794 Patent are invalid for lack of written description support for the claim element reciting, “wherein the second transceiver monitors first signal characteristics of the second downlink signal of the first mobile station and monitors second signal characteristics of the second mobile station, and based on the first signal characteristics and the second characteristics, *routes information to the first mobile station and the second mobile station, respectively.*” Ex. 1 ('794 Patent), Cl. 1 (all emphases in quotations added unless otherwise noted).

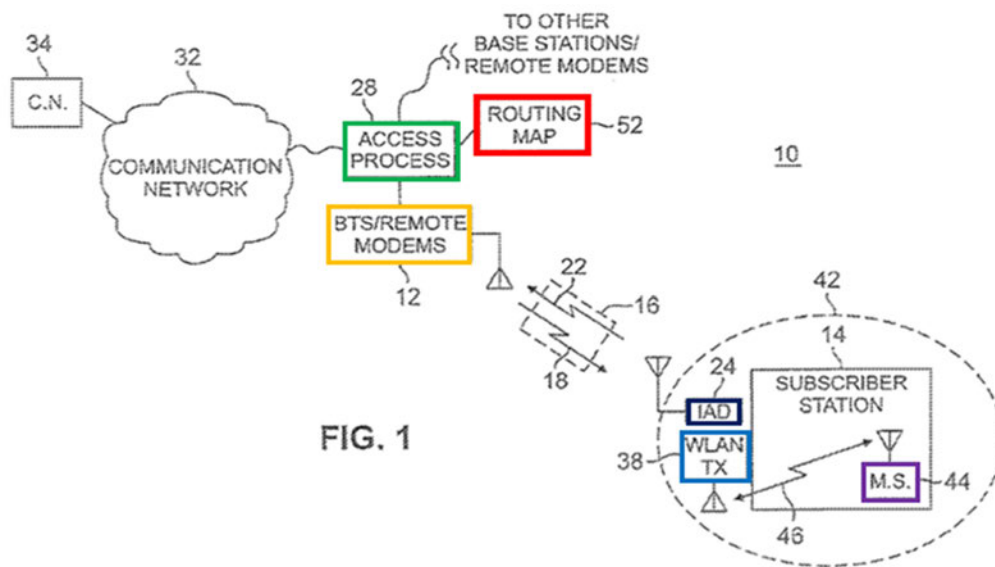
III. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. The '794 Patent and Prosecution History

1. The '794 Patent issued to Paul F. Struhsaker on August 23, 2016. GAS asserts claims 1, 2, and 5 against Verizon. Claims 2 and 5 depend from claim 1. Ex. 1 ('794 Patent).

2. The Asserted Claims of the '794 Patent recite, inter alia, a “wireless communication device” which has (1) a “first wireless transceiver operable to communicate with a base station” according to a wide area communication protocol and (2) a “second wireless transceiver coupled to the first wireless transceiver and operable to directly communicate with a first mobile station and a second mobile station” according to a local area wireless communication protocol. *Id.*, Cl.

1. Figure 1 of the '794 Patent shows embodiments of the **first transceiver** (24) and **second transceiver** (referred to as the “WLAN transceiver”) (38) in communication with a **base station** (12) and **mobile station** (44), respectively. *Id.*, Cl. 1, Fig. 1.

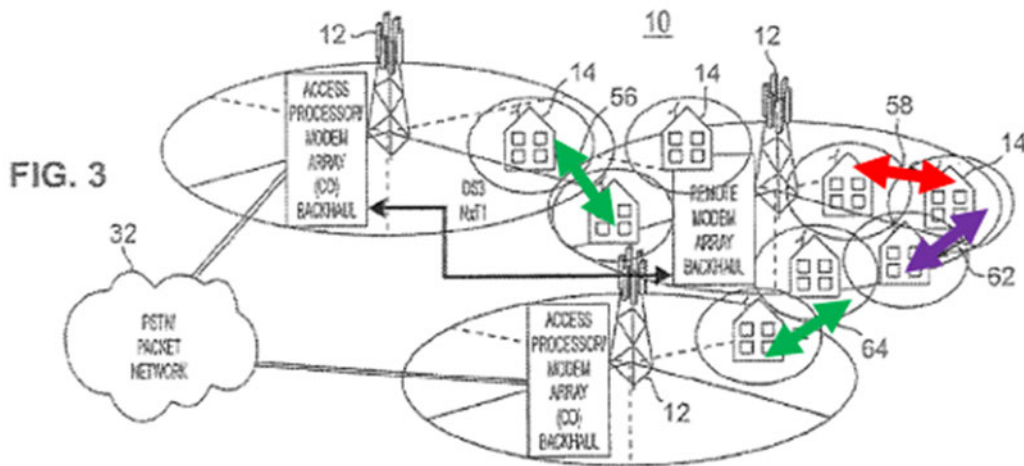


Id. at Fig. 1 (annotated).

3. The specification explains that in embodiments, “each base transceiver station includes a **remote modem** (modulator-demodulator) capable of communicating with” the wireless devices (via the wide area wireless network). *Id.* at 7:44–47. In addition, each “base station . . .

is coupled to an *access process* 28 which is operable, amongst other things, to perform control operations to control operation of the communication system.” *Id.* at 7:50–53. A “*routing map*” is connected to the “*access process*.” *Id.*, Fig. 2; *see also* Fig. 1.

4. The ’794 Patent specification discusses “routing” in context of “handover of communications,” which is effectuated when a mobile station travels from one WLAN transceiver coverage area to another. *Id.* at 8:50–9:19. The specification describes three handover scenarios, as the mobile station travels (i) between different WLAN coverage areas in the same sector of the same base station (arrow 58 below); (ii) between different WLAN coverage areas in different sectors of the same base station (62); or (iii) between different WLAN coverage areas in different cell sites (different base stations) (56 and 64). *Id.* at 9:20–56; *id.*, Fig. 3 (annotated below).



5. The specification discloses “*access process* routing” (*i.e.*, routing performed by the access process) for routing information to a new base station (“to a new cell”) or to a new sector of a base station (a “new remote modem sector”). *Id.* at 9:33–36; *id.* at 9:42–51.

6. The specification also discloses “*remote modem* routing” (*i.e.*, routing performed by the remote modem) for routing to a new wireless access device (the “subscriber station” including the WLAN transceiver) within a sector. *Id.* at 9:37–41; *id.* at 9:51–52.

7. All of the routing described in the specification is either “access process routing” between base stations or sectors, or “remote modem routing” between access devices in a sector. The specification does not describe the WLAN transceiver (“second transceiver”) performing any routing. Instead, the specification merely states that “information is forwarded to the WLAN transceiver to be *transmitted* therefrom by way of the local radio link through the mobile station.” *Id.* at 6:7–9. There is no suggestion “transmitting” is anything more than “forwarding.”

8. Claim 1 recites:

wherein the *second transceiver* monitors first signal characteristics of the second downlink signal of the first mobile station and monitors second signal characteristics of the second mobile station, and based on the first signal characteristics and the second characteristics, *routes information to the first mobile station and the second mobile station, respectively.*

9. Claim 1 was amended in prosecution to add that “the second transceiver monitors first signal characteristics of the second downlink signal . . . and based on the first signal characteristics . . . routes information.” Ex. 2 (’794 Patent File History) at GA0200180.

B. Prosecution History of the Abandoned Parent Application

10. The ’794 Patent claims priority to a now-abandoned U.S. Appl. No. 11/982,424 (“’424 Application”), which shares the same specification with the ’794 Patent. GAS filed the ’424 Application on October 31, 2007. In response to an obviousness rejection, the applicant added a new claim limitation reciting, “wherein the second transceiver . . . routes information to the first mobile station and the second mobile station, respectively.” Ex. 3 (’424 Appl. File History) at VZNGAS_003001395 (3/29/2011 Amendment at 2). The applicant stated that written description support existed in the following passage of the specification:

Determination of when to initiate handover of communications is made responsive to measurements of signal characteristics of communication signals communicated between the WLAN transceiver and the mobile station. In one implementation signal characteristics are measured, or otherwise determined, at the mobile station and results of such measures or determinations of are reported back to the WLAN

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transceiver and appropriate control circuitry. Thereafter, if appropriate, the handover of communications is effectuated.

Id. at VZNGAS_003001387–88 (3/29/2011 Remarks at 5–6). This passage appears verbatim in the ’794 Patent specification. *Id.* at VZNGAS_003001304; *cf.* Ex. 1 at 8:61–9:3.

11. The Examiner rejected the amended claim, finding the added limitation was “not supported anywhere in the disclosure,” including in the excerpt specifically identified by the applicant. Ex. 3 at VZNGAS_003001399–400 (5/4/2011 Office Action at 2–3). The ’424 Application was subsequently abandoned. *Id.* at VZNGAS_003001421.

C. IEEE 802.11 Standard

12. The predominant WLAN protocol is IEEE 802.11 (Wi-Fi). The 1999 version of the IEEE 802.11, published before the claimed priority date of the ’794 Patent, states that “routing information parameter” is always null in Wi-Fi, which means that “routing is not to be used.”

The routing information parameter specifies the route desired for the data transfer (a null value indicates source routing is not to be used). For IEEE 802.11, the routing information parameter must be null.

Ex. 4 (IEEE 802.11 (1999)) at VZNGAS1004822 (§ 6.2.1.1.2).

D. Claim Construction

13. During the December 15, 2023 claim construction hearing before this Court, GAS’s counsel made several statements regarding the patent disclosures—or the lack thereof—relevant to routing. In the portions of the hearing cited below, GAS was arguing against the Court’s tentative construction (which the Court has since adopted) requiring that the second transceiver “directs information through a specified path to the first mobile station and the second mobile station, respectively.” Ex. 5 (Preliminary Construction) at 2.

14. GAS first explained that the specification discloses handovers of mobile stations from one WLAN coverage area to another, and that this process is coordinated at the base station:

And if we look at the specification, there is disclosure in the specification of handovers. If you have a mobile station that goes from the coverage area of one communication device to another, we're dealing again with kind of Wi-Fi hotspots like you might have on your phone now, and if you're -- if the -- whatever is attached to your phone leaves the service area of your phone but it comes into the service area of some other device that has Wi-Fi, it would pick that up. ***But all of that is done according to the patent at the base station.***

Ex. 6 (Markman Tr.) at 67:23–68:7.

15. Counsel for GAS further confirmed that routing takes place at the base station level, “not at the second transceiver,” which is incapable of “directing” signals.

The items highlighted in yellow^[1] are the base station, referred to as the BTS/remote modems, and the access process. That's the logic, if you will, the controller. And then there's a routing map attached to the base station as well which keeps a list, a table of all the mobile stations out there and which wireless access points -- or which wireless communication devices they are attached to. ***But all the routing, the selecting of network paths or the selecting of the paths of communication all takes place at that level. . . .***

[T]he language of the specification that makes clear that the base station -- that the access process, and the routing map are connected to the base station. ***That's where the -- that's where routing -- to the extent routing means figuring out the path, that's where it takes place, not at the second transceiver, according to the specification.***

Id. at 68:8–69:10. GAS's counsel further stated:

A transceiver means a device that can send and receive signals. ***There's nothing in the specification or the claims to indicate that it is directing or necessarily directing a signal in a particular direction.***

Id. at 86:15–18.

16. Following the *Markman* hearing, this Court adopted its tentative construction and construed the phrase “routes information to the first mobile station and the second mobile station, respectively” as “directs information through a specified path to the first mobile station and the second mobile station, respectively.” Dkt. 86 at 24–25. The Court also clarified that “simply

¹ The “Access Process” (28), “Routing Map” (52), and “BTS/Remote Modems” (12) of Fig. 1.

‘forwarding information,’ without more, is not ‘routing.’” *Id.* at 22.

E. Inventor Testimony

17. The named inventor, Mr. Struhsaker, made multiple statements about the “routing” limitation in his deposition, which took place on January 26, 2024, after the claim construction order was issued. Mr. Struhsaker confirmed that the specification of the ’794 Patent at 8:61–9:19 discusses “routing *performed in the network* to reroute the information to the WLAN transceiver” in case of handover. Ex. 7 (Struhsaker Dep. (2024)) at 276:24–277:22.

18. Mr. Struhsaker gave his opinion that “all wireless LANs have a local routing capability inherent and understood by anybody in the art.” *Id.* at 265:21–267:9. He added that “[p]eer-to-peer routing is always available in Wi-Fi.” *Id.* at 268:17–21. But Mr. Struhsaker confirmed that the ’794 Patent specification describes routing only “one layer up” from the WLAN, and “doesn’t talk about” the WLAN transceiver (the claimed “second transceiver”) routing “at all.” He explained that the ’794 Patent specification does not disclose the WLAN transceiver routing because and “[a]nyone skilled in the art by 2001 understood that an access point routes to things within itself”:

Q. Now, this passage is not talking about the WLAN transceiver itself performing routing, right? . . .

A. *It doesn’t talk about that at all because it’s understood*, ten years of legal precedents and standards and everything else, that routing is performed at that function. . . . *So of course it is not discussed. It would be superfluous*, I think.

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. 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.*

Id. at 278:16–280:1.

19. Mr. Struhsaker conceded that nothing in the '794 Patent describes “that the second transceiver itself routes to different mobile devices,” because “[t]here was no reason to discuss it”:

Q. 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. 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 the second transceiver was a wireless LAN and you don't have a LAN unless you have routing in the LAN.*

Id. at 280:2–281:4.

20. Mr. Struhsaker also explained that there is no specified “path” over which information is sent from a WLAN transceiver to a mobile device in the WLAN.

Q. All right. Now, in that circumstance -- so let me first ask: Do you understand what I'm talking about by a wireless transceiver, the second transceiver . . . specifying a path over which to send information to a mobile device to which it is connected?

A. *At the time of writing this, your word, 'specify a path,' there isn't a path.* There is a *retransmission* in a small, omnidirectional cell.

Id. at 284:22–285:7.

IV. LEGAL STANDARD

The “test for sufficiency” of the patent's written description “is whether the disclosure of

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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.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010). “But the hallmark of written description is disclosure. Thus, ‘possession as shown in the disclosure’ is a more complete formulation. . . . [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.” *Id.* “Compliance with the written description requirement is a question of fact but is amenable to summary judgment in cases where no reasonable fact finder could return a verdict for the non-moving party.” *PowerOasis, Inc. v. T-Mobile USA Inc, Inc.*, 522 F.3d 1299, 1306–07 (Fed. Cir. 2008).

V. ARGUMENT

Summary judgment of invalidity for lack of written description should be granted because there is no genuine dispute of material fact that the “routing” element of claim 1 of the ’794 Patent is not described. It is blackletter law that although “the meaning of terms, phrases, or diagrams in a disclosure is to be explained or interpreted from the vantage point of one skilled in the art, all the limitations must appear in the specification.” *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997). Here, the ’794 Patent specification provides no description of the claim limitation requiring the “second transceiver” to “route[] information” to mobile stations. The lack of description is confirmed by GAS’s own counsel in statements to this Court, testimony of the named inventor himself, and the Patent Office. Accordingly, no jury could reasonably conclude that the ’794 Patent provides adequate written description for the “routing” limitation.

A. The ’794 Patent Specification Does Not Disclose That The Second Transceiver “Routes” Information As Claimed

The ’794 Patent specification provides no description of routing by the second transceiver, as claimed. The required “objective inquiry into the four corners of the specification” here reveals

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not a single mention of the claimed “second transceiver” (the “WLAN transceiver”) performing routing or doing so based on the recited “signal characteristics.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010).

All of the descriptions of routing in the ’794 Patent relate to mobile station handovers from one WLAN coverage area to another and specify that one of two components performs the claimed routing: the “access process” or the “remote modem”—yet critically, there is never any mention of the “second transceiver” (or WLAN transceiver) performing routing. SUMF ¶¶ 1–8. But the claims require the “second transceiver” of the “wireless communication device” to “route[] information” to the mobile stations. The disclosures with respect to “access process routing” and “remote modem routing” are insufficient; written description is not satisfied on the basis that “other components” perform a similar function. *CUPP Cybersecurity LLC et al. v. Trend Micro Inc., et al.*, 3:20-cv-1251 (N.D. Tex. Jan. 18, 2023), Dkt. 329 at 37–38 (granting summary judgment of invalidity for lack of written description).

Moreover, in addition to failing to disclose that the second transceiver routes information, the ’794 Patent specification also provides no description of routing by the second transceiver to the first mobile station and the second mobile station, respectively, based on monitoring “first signal characteristics of the second downlink signal” and “second signal characteristics of the second mobile station,” as claimed. Not only does the specification never mention the “second transceiver” routing information, it never suggests routing information “based on” monitoring “first signal characteristics of the second downlink signal” and “second signal characteristics of the second mobile station,” respectively. There is simply no written description support for the claimed differential routing by the second transceiver. *See Neology, Inc. v. Int’l Trade Comm’n*, 767 Fed. Appx. 937, 943 (Fed. Cir. 2019) (where a claim limitation requiring the “transmission of

[a] security key” lacked written description, there was likewise inadequate support for a related claim limitation requiring the “validation” of the transmitted security key).

B. The Record Confirms the Lack of Description in the Specification

Through the arguments of its counsel and in sworn testimony of the sole named inventor of the ’794 Patent, GAS has conceded that the ’794 Patent does not describe the second transceiver routing information as claimed. SUMF ¶¶ 1–8. The absence of disclosure is also confirmed by the prosecution history of the abandoned parent application. SUMF ¶¶ 10–11.

In arguing against the construction the Court ultimately adopted (requiring that the second transceiver “directs information through a specified path” to the mobile stations and does not merely forward information), GAS’s counsel repeatedly told this Court that routing by the second transceiver under the Court’s construction is not described in the patent. Indeed, the Court, in its Order, remarked that GAS’s counsel “stressed the specification does not disclose ‘routing’ by the second transceiver.” Dkt. 86 at 21. According to GAS’s counsel, “all of that is done according to the patent at the base station,” and “not at the second transceiver,” based on the “language of the specification.” *See, e.g.,* Ex. 6 (Markman Tr.) at 67:23–69:10. Thus, “nothing in the specification” indicates that the second transceiver “is directing a signal in a particular direction.” *Id.* at 86:16–18. GAS’s purpose at the time was to persuade this Court to deviate from its preliminary construction—which it did not—but that does not change the import of the statements.

After the Court issued its construction, the named inventor, Mr. Struhsaker, also admitted, in sworn testimony, that the patent does not describe that the second transceiver “routes” information. He had a reason for doing so: he did not believe disclosure was required. But that legally erroneous assumption does not take away from his repeated testimony that routing by the WLAN transceiver “is not discussed” anywhere in the ’794 Patent. Ex. 7 at 278:16–281:4. Mr. Struhsaker testified accurately that the discussion of routing in the ’794 Patent is limited to network

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communication “one layer up” from the communication between the WLAN transceiver and the mobile stations. *Id.* at 278:16–281:4. Moreover, based on his testimony, it would be impossible for the “second transceiver” to “route[] information” to the mobile stations under the Court’s construction, because “*there isn’t a path*” between the second transceiver and the mobile device. *Id.* at 284:22–285:7. Instead, “[t]here is a *retransmission*”—but merely “‘forwarding information,’ without more, is not ‘routing,’” as the Court expressly held. *Id.*; Dkt. 86 at 22.²

The prosecution history of the ’794 Patent’s abandoned parent application (i.e., the ’424 Application), with which the ’794 Patent shares a common specification, further confirms that the ’794 Patent specification does not disclose that the “second transceiver . . . routes information” to the mobile stations. That is precisely what the Patent Office concluded in rejecting claims of the parent application. SUMF ¶¶ 10–11. GAS argued that written description support for the claim limitation reciting that “the second transceiver . . . routes information to the first mobile station and the second mobile station, respectively” could be found in a passage of the specification that appears verbatim in the ’794 Patent specification, discussing “when to initiate handover of communications.” Ex. 3 (’424 Appl. File History) at VZNGAS_003001387–88 (3/29/2011 Remarks at 5–6); *id.* at VZNGAS_003001304; *cf.* Ex. 1 at 8:61–9:3.

But the Examiner disagreed and rejected the pending claim in the ’424 Application on the basis that there was no written description support—not only in the disclosure GAS cited, but “anywhere in the disclosure.” Ex. 3 at VZNGAS_003001399–400 (5/4/2011 Final Rejection at 2–3). In other words, the Examiner concluded that the very specification at issue here lacks any disclosure that “the second transceiver . . . routes information to the first mobile station and the

² Mr. Struhsaker’s testimony is consistent with GAS’s opposition to the Court’s construction, as GAS’s counsel stated in the *Markman* hearing that the phrase “specified path” in the construction “connotes that there might be [] physically different paths that are taken.” Ex. 6 at 70:20–22.

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second mobile station, respectively.” In response, GAS abandoned the parent application and filed a new application for the ’794 Patent—presumably so that the limitation would not attract scrutiny as “new matter” for which an applicant must affirmatively cite supporting disclosure. MPEP § 2163 (II.A). The prosecution history therefore further confirms what GAS’s counsel and the inventor of the ’794 Patent likewise conceded: the ’794 Patent does not describe or convey possession of the claimed limitation requiring that the “the second transceiver . . . routes information” to the mobile stations.

C. The Inventor’s Reasons For Not Disclosing The Claimed Limitation Fail As A Matter Of Law

At his deposition, the inventor, Mr. Struhsaker, justified the lack of written description for the “routes information” limitation on two related grounds: that it would have been obvious to a person of ordinary skill in the art at the time of the invention, and that routing is inherent in a wireless local area network (WLAN). Neither argument avoids summary judgment.

Contrary to Mr. Struhsaker’s argument that “there was no reason to discuss” routing by the second transceiver because “[a]nyone skilled in the art by 2001 understood that an access point routes to things within itself,” Ex. 7 at 278:16–280:1, mere obviousness of a limitation “is not sufficient to satisfy the written description requirement.” *Regents of the Univ. of Cal. v. Eli Lilly & Co.*, 119 F.3d 1559, 1567 (Fed. Cir. 1997) (citing *Lockwood*, 107 F.3d at 1572). “It is not sufficient for purposes of the written description requirement of § 112 that the disclosure, when combined with the knowledge in the art, would lead one to speculate as to modifications that the inventor might have envisioned, but failed to disclose.” *Lockwood*, 107 F.3d at 1572. Thus, Mr. Struhsaker’s belief that a person of ordinary skill in the art would have understood the limitation without it being described in the patent does not cure the lack of written description.

Nor could a reasonable jury conclude that the limitation is inherent—*i.e.*, necessarily

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present—in the claimed “second transceiver.” Mr. Struhsaker testified that “wireless LANs have a local routing capability inherent,” that a person of skill would have known that “an access point routes to things within itself,” and that “you don’t have a LAN unless you have routing in the LAN.” *Id.* at 267:7–9; 268:17–21; 269:21–23; 278:16–280:1; 280:7–16; 281:1–4. But to escape the requirement for an express written description of a claim limitation, the law requires that “the missing descriptive matter must *necessarily* be present” in what is described. *Tronzo v. Biomet, Inc.*, 156 F.3d 1154, 1159 (Fed. Cir. 1998). GAS would have to show that the generic description of wireless local area networks (WLANs) in the specification “*unavoidably* teaches” routing by the WLAN transceiver (*e.g.*, the Wi-Fi radio), which GAS cannot do. *Agilent Techs., Inc. v. Affymetrix, Inc.*, 567 F.3d 1366, 1382–83 (Fed. Cir. 2009).

The undisputed facts establish that it is impossible for GAS to show a WLAN transceiver necessarily “routes information” to mobile stations, let alone responsive to particular signal monitoring, as claimed. Indeed, the undisputed facts establish the exact opposite. The prior art IEEE 802.11 WLAN protocol in existence at the time of the application—what Mr. Struhsaker called “the de facto worldwide wireless LAN standard,” Ex. 7, 282:19–23—explicitly states that “routing is not to be used” in the access point and the “routing information parameter must be null” in the MAC layer transmission from an access point. Ex. 4 (IEEE 802.11 (1999)) at VZNGAS1004822. Thus, no reasonable jury could conclude that the ’794 Patent discloses, either explicitly or inherently, that the second transceiver “routes information” to mobile stations.

D. The Testimony of GAS’s Expert Does Not Raise a Genuine Fact Dispute

Although GAS’s technical expert, Dr. Madisetti, attempts to rebut Defendants’ showing of lack of written description, nothing in Dr. Madisetti’s testimony creates a genuine dispute of material fact sufficient to defeat summary judgment. Dr. Madisetti suggests that the handover examples in the specification are merely embodiments, but that does not address the lack of written

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description of what is claimed. Ex. 8 (Madisetti Rebuttal Rep.) ¶¶ 716–17. He also states that “it is clear that the specification talks about information going between the base station and mobile stations, and that information must follow a ‘path’ to ultimately get to the mobile station,” *id.* ¶ 718; *see also id.* ¶ 721, but that too fails to disclose the “second transceiver” actually routing information to mobile stations, as claimed. And although he asserts that the specification at 6:27–44 provides support for the routing limitation, *id.* ¶ 722, that passage merely discloses that routing is done using a “routing map,” but never suggests that the “second transceiver” is the one that “routes” the information. To the contrary, GAS’s counsel explained at the *Markman* hearing that the process Dr. Madisetti references occurs at the base station. SUMF ¶¶ 13–15.

Dr. Madisetti also contends, without support, that the disclosure of a “‘radio link’ formed between the mobile station and WLAN transceivers” necessarily discloses that the “second transceiver . . . routes information.” *Id.* ¶ 722 (citing the specification at 8:2–14). That is wrong as a matter of law, as nothing in the specification suggests that the existence of a “radio link” means the second transceiver “directs information through a specified path to the first mobile station and the second mobile station, respectively”—as the Court’s construction requires—as opposed to “simply ‘forwarding information,’” which the Court explained, “without more, is not ‘routing.’” Dkt. 86 at 22–25. Dr. Madisetti’s assertion is also contradicted by Mr. Struhsaker’s sworn testimony that “*there isn’t a path*” over which the second transceiver directs information to the mobile devices—there is merely “a *retransmission*.” Ex. 7 at 284:22–285:7. Accordingly, no reasonable jury could find written description support in the ’794 Patent for the limitation of the Asserted Claims requiring that the “second transceiver . . . routes information.”

VI. CONCLUSION

For the foregoing reasons, Verizon respectfully requests that this Court grant summary judgment that Asserted Claims of the ’794 Patent are invalid for lack of written description.

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2024, the foregoing was served upon all counsel of record who have consented to electronic service.

/s/ Katherine Q. Dominguez
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CERTIFICATE OF AUTHORIZATION TO SEAL

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

/s/ Katherine Q. Dominguez
Katherine Q. Dominguez