the engineering groups and make assessments on whether or not we should go for patents on them.
Q During your time at Cummins, did you ever file for any patents?
A Yes, I did.
Q Did any of your patents issue?
A Fourteen of them.
Q What technologies are those patents on?
A They're in different areas of controls and diagnostics for diesel engines.
Q They're all related to diesel engines or vehicles?
A Diesel engines, vehicles, diagnostics to meet OBD, that type of technology.
Q Let's flip to Figure 1 of the Braitberg patent. Let's go to Figure 5.
A How about 15?
Q All right, let's go to 15. When you were reviewing the Braitberg patent, what were you looking for?
A Very similar devices on the -- described here that were in the Flick patents.
Q And were you looking for certain things based on the language in the '876 patent?
A Yes, I was.
Q And we talked earlier. You were aware that the Court had construed certain terms across the four patents

in this lawsuit?
A Correct.
Q Did you apply the Court's claim construction to the terms of the patent?
A Yes, I did.
Q So was one of the things you were looking for in the '876 patent a transmitter and a receiver?
A Yes.
Q And did you find that in the Braitberg '479 patent?
A Yes. It's described here, cellular radio telephone, which is number 10, the top of the figure.
THE COURT: I'm sorry. Can you make that a little bit larger? I think it's going to be difficult for the jury to see. Thank you.
BY MR. KAUTH:
Q And that cellular radio telephone, 10, would that be a transmitter or a receiver?
A Actually that would contain both.
Q And would it talk to another transmitter or receiver?
A Yes, it will.
Q And what will it be connecting with?
A A cell tower back to either probably a server in this case.
Q Did you find a controller in the Braitberg patent?

A Yes, I did. This is item 200, which is the dark rectangle with all the different boxes inside of it.
Q Do you recall what the Court's definition was for a controller?
A I'd like to pull that out, just not paraphrase.
Q Please do.
A A controller is defined by the Court as electronic circuitry that performs one or more control functions.
Q And did you have an understanding of what a control function would be?
A Yes, I do.
Q What's your understanding of a control function?
A A control function is a message on the bus that is going to control a device exhibiting a physical change in the device or the system.
Q Now, you gave a cruise control example before and you mentioned, I believe, querying for data related to the speed; is that correct?
A Yes, I did.
Q Would that query for data relating to speed fit your definition of a control function?
A No, it doesn't.
Q What about the part where you said the engine control unit could add more fuel, would that be a control function?

A Yes, that was.
Q Is this your personal definition of control function or is this based on your experience?
A Based on my experience.
Q Other people in the industry, it's your understanding they would have the same definition?
A Controllers control.
Q One of the other terms in the '876 patent is the multi-vehicle compatible controller?
A Yes.
Q Did you find a multi-vehicle compatible controller in the Braitberg reference?
A Yes, because it's attached to a bus, and typically a bus is a way of giving you multiple vehicle compatibility, and the bus in this figure is 280.
Q In the United States right now, is it your understanding that every vehicle would have a bus in it?
A As required by law, as required by the EPA, yes, it's got to have a bus to do on-board diagnostics.
Q Why does the EPA care about your car having a bus?
A They're interested in making sure vehicles are not polluting. The OBD is that dashboard check engine light, so there's quite a bit of diagnostics and information that is required by the EPA to make sure your vehicle is running properly. And to get that

information out, it uses the data bus as a way of communicating the diagnostic fault information across the data bus to a service tool.
Q And does the EPA mandate that it be compatible with multiple vehicles?
A The data bus -- yes, certainly service tool does. There is a requirement that service tools can talk to any vehicle bus.
Q How did things work prior to this mandate that you've mentioned?
A Prior to OBD, all the engine manufacturers, vehicle manufacturers had their own proprietary data links, their own proprietary service tools. So an OBD -- the original OBD was available. Typically to get your car serviced, you'd have to go back to the manufacturer. Or if you went to an independent, typically they would have to take licenses to use the vehicle manufacturer's tools or go to the dealer to get it checked out.
Q You mentioned in your previous testimony that Cummins had a service tool, so could that -- back prior to this mandate, would the Cummins service tool only read Cummins equipment?
A Correct.
Q And did this EPA mandate come with any standards?
A The original one came with just the light duty

standards. There were three standards in the 1994 time frame. They were 1850 and ISO 9141 and a CAN standard or ISO CAN standard.
Q Make sure you're close to the mic so everyone can hear you, please.
A Sorry.
Q With the mandated standard, then, what changed? Could one device now talk to multiple vehicles?
A Could one device talk to multiple vehicles?
Q After this EPA mandate could your Cummins service tool now read data from vehicles other than a Cummins vehicle?
A Correct, yes. That was EPA mandated, the use of an SAE standard which resulted in having an interface procedure to talk to any vehicle.
Q And is another name for a service tool a diagnostic scan tool?
A Yes, it is.
Q And do you know which -- is there an SAE standard that pertains to diagnostic scan tools?
A 1978, 1979, SAE J1978 and J1979.
Q And at a high level, what does SAE J1978 require for an SAE scan tool?
A It's to hook up to a common SAE-defined connector, which on most passenger cars is underneath a dashboard.

So it defines a connector and then how to talk to that connector to identify which type vehicle you're running and, as a result, which data bus you're on.
Q When you say, "...how to talk," can you explain that a little more?
A The scan tool, as defined in 1978, will talk on each of the data links that are available on different wires asking, in its own language, the protocol -- hey, are you the right bus, hey, are you the right bus -- until it finds the right bus and then can start talking in that language.
Q And how does it know when it finds the right bus?
A Well, if it doesn't get the right information, it's not going to -- no data will come back. It won't say anything. It's smart enough to say, well, it's not that one, it will go over to the next one. When it does get the right one, essentially every device that's on the network will respond a, hey, I'm here kind of thing, describing what data that it has available.
Q So does J1978 define the messages that need to be sent on the bus to determine what type of bus it is?
A Yes. It defines the queries for all of the buses. And it's actually the same message, just in multiple protocols.
Q And in the current version of J1978, do you know how

many different protocols there are?
A It's up to six.
Q When did J1978 come into being?
A The 1994 time frame.
Q Back then, were there six protocols in J1978?
A Only three.
Q Did it still work the same way, send a message?
A Correct.
Q Then, does it wait for a response?
A Yes, it does.
Q And if it gets a response, does it send another message?
A No, it doesn't. It stops. If it's got the right answer, no reason to keep going.
Q Now, in this case, do you understand that Omega has asserted that CalAmp's devices, part of the infringement is when they perform a bus discovery procedure?
A Yes.
Q Do you have an understanding of how CalAmp's devices perform a bus discovery procedure?
A Yes, I do.
Q Let's stick with the LMU-3000. What's your understanding of how it performs a bus discovery procedure?
A Well, it's following the standard of trying one bus

at a time. If it gets data back, it's done. It knows which bus to work on.
Q So what would be the first message that it sends out, according to the standards?
A In technical terms, it's called the mode 1 PID zero, P-I-D zero. And it's the CAN message profile -- protocol. And it's just a, hey, who's there.
Q And if it's on that type of bus, what happens next?
A Essentially every piece of hardware that's on that data link would respond back. So you'd have engine controllers, transmission controllers, and the other peripheral devices that are on that bus at that time.
Q Another term the Court has defined is device code. Are you aware of the Court's definition of device code?
A Yes, I am.
Q And what's that definition?
A A signal from a vehicle device.
Q So in the example we just talked about with the bus discovery protocol, did you say that the initial message was a query?
A Yes, I did.
Q And what do you recall that response back?
A These would be device codes, as the Court has described.
Q Let's jump back to the Braitberg patent here in

Exhibit 10. We were at multi-vehicle compatible controller when we got a little sidetracked.
A Yes.
Q Is it your understanding that Omega contends CalAmp's devices include a multi-vehicle compatible controller because they perform the bus discovery function?
A Yes.
Q And does the Braitberg patent disclose the bus discovery function?
A Not the 1978, no.
Q And as one with ordinary skill in the art -- let me rephrase that. Would one of ordinary skill in the art look to J1978 to determine how to connect to a bus?
A Yes.
Q Why would they look there?
A It's an industry standard at the time and actually necessary to sell vehicles in the United States.
Q And was J1978, that was specific to automobiles, correct?
A Correct.
Q And is there anything in Braitberg, the Exhibit 10, that makes you think that's in an automobile?
A It does have a vehicle data bus on there, as described in the patent.

Q So is it your opinion that if you combined the Braitberg reference with J1978, the controller, I believe you identified as 200 in Braitberg would be a multi-vehicle compatible controller?
A Correct.
Q The next thing we want to look at in the '876 patent is working and non-working command signals. And I believe command signals, is that another term that's been defined in this litigation?
A Yes, it is.
Q What's that definition?
A A signal generated on the data communications bus for operating a vehicle device.
Q And when it says for operating a vehicle device, what's your opinion on what that means?
A This would be once again asking that device to do something, commanding it to perform an action.
Q So in your cruise control example, it's telling it to increase the fuel and the fuel actually increasing?
A Correct.
Q Did you find any command signals in the Braitberg reference?
A Yes, I did.
Q Can you tell me what one of those is?
A For example, to display information -- using bus 280

to display information that would come from the controller or, you know, actuate the cd-rom to pull up a map or something like that. Those would be examples.
Q How about a non-working command signal, is that something you found in the Braitberg reference?
A There is a description.
Q Can I turn your attention to Figure 16?
A Yeah, thank you.
Q If we can zoom in on the top half of that to make it readable.
A Yes. So this is the logic that this patent is using to receive information across the data link and then figure out what to -- excuse me -- across the wireless and then to determine what that information is and who's it for. Do you want me to walk through or --
Q Yes, please.
A Okay.
Q If a signal comes in, tell me what happens next.
A So block 300, you get the information. Then you have a decision, which is the diamond. Does it contain voice or data/control information? And let's follow the down arrow, which is data.
Q Okay. So we follow the data control information down, then what?
A To 312. So we route the data to microprocessor 208.

And we come to the next decision block, is the data information addressed to a peripheral device? If yes, we'd go down, so it goes to the device that it has on the bus. If it's not data for -- or if it's addressed to the processor, we'd go to the right and then ask, is it for the processor? Then we could say, yes. Then it will go to the -- it will go to that information within the processor. If it's not data for the processor or the vehicle device, you'd go down into this initiate error routine. So as a result it does have the ability to work with non-- to -- that non-working codes could be dealt with.

Q So the signal that ended up in box 318 there, that would be the non-working command signal?

A Correct.

Q That wouldn't operate any other devices on the bus?

A Correct.

Q Is it your opinion that the Braitberg patent discloses signals that were sent sequentially?

A Yes, it does.

Q For my benefit, what does "sent sequentially" mean?

A One after the other. In computers, in general, things happen sequentially. You can't do that much parallel.

Q And would those signals necessarily be digitally

coded as well if they're on a computer?

A Yes, they would be.

Q Let's go back to Figure 15. Did you find a memory for storing data related to command signals?

A Yes, I do. Next to the microprocessor, number 264.

Q Data storage, that's memory?

A Yes, it is. As well as 212, which is non-volatile memory.

Q And is it your opinion that -- if we can scroll down a little bit more -- did this reference disclose data being able to go -- be put on to the bus and also being able to receive data off the bus?

A Correct.

Q And I believe you told me earlier that a device code would be a signal from a vehicle device, right?

A Correct.

Q Did you find a signal from a vehicle device disclosed in this reference?

A Yes, I did.

Q What was that?

A Well, this would be like GPS information being sent out wirelessly to a remote location.

Q So for that example, can you walk me through how the information gets from the GPS receiver and where it goes?

A GPS information would go on to the bus, the 280, go

through the microprocessor, would be routed up and turned into the right communication package. Information would go through microprocessor 208, go up to RF switch, and then shipped out via the cell phone.

Q So you could send that GPS data out from this device?

A Correct.

Q From the diagram here in Figure 15, is it your opinion you could also store that data, if you desired?

A Yes, through data storage 264.

Q Is that why that arrow has arrow heads on both ends?

A Directional, yes.

Q If I could have you turn to Defendant's Exhibit 11 in the stack over here, the much smaller-sized folders.

MR. KAUTH: May I approach, Your Honor?

THE COURT: Yes, you may.

(Counsel assists witness.)

A There it is.

BY MR. KAUTH:

Q Do you recognize the document in Exhibit 11?

A Yes, I do.

Q And what is that document?

A This is the Bambini patent.

Q Is that another reference that you considered in preparing your report?

A Yes, it was.

Q And what is the Bambini patent about?

A The Bambini patent describes a controller sitting on the data bus and able to communicate wirelessly, remotely by directional information.

Q And if we could turn to Figure 4 of the Bambini patent, please. Is that a good figure to show the representative parts disclosed in the Bambini patent?

A Yes, it is.

Q Can you show me, is there a transmitter and a receiver?

A Yes. The transmitter/receiver 71 is really the antenna. But 70 is called the transceiver here, which is a combination of transmitter and receiver.

Q And like last time, since that's a cellular telephone transceiver, would that be transmitting out to a cell tower or receiving from a cell tower?

A It would be both.

Q How about a controller, was that present in Bambini?

A Yes, it is. It's the first and second microprocessor. The first one is there on the left, the big rectangle. And down low just out of sight is the second microprocessor, so these are working in conjunction with the different functions the system provides.

Q And if we could zoom out just a bit. So the first processor and the second processor, in conjunction, form the controller. Is that connected to the vehicle data bus?
A Yes, it is. Down below, number 85 and 86, it's interfacing onto a data bus.
Q So, 86 connects to the data bus?
A Yes, it does.
Q And did you find -- I remember we have to find that the controller performs a control function. Did you find a control function disclosed in the Bambini patent?
A Yes, it does.
Q And what was the control function performed?
A This was door locks. There's a good example of if you lock your keys out you could remotely have somebody call in and unlock the doors.
Q And in Bambini, was this controller that you identified disclosed as a multi-vehicle compatible controller?
A Through the CAN bus, yes, the CAN bus being somewhat multi-vehicle controlled -- capable, excuse me.
Q And is the CAN bus the current bus in use in the United States?
A Yes. It's over 80 or 90 percent, I believe, the standard bus that everybody's using.

Q Are there multiple types of CAN bus?
A Yes, there's two. There's one called CAN 11 bit and one is CAN 29 bit. They're very similar.
Q And the J1978 standard you talked about earlier, does that apply to the CAN bus as well?
A Yes, it does.
Q So you can do bus discovery on a CAN bus?
A It is one of the six.
Q How about command signals, were those present in the -- is there a working command signal that you identified in the Bambini patent?
A Yes, there is. This would be opening the door locks remotely would be a command on the bus from the controller to the vehicle device.
Q So, I think our command signal we had to cause operation to a vehicle device?
A Correct.
Q What's the vehicle device?
A Would be the door lock actuator and the result -- resulting function would be opening the locks.
Q Did you find working and non-working command signals -- I'm sorry. Did you find non-working command signals on the -- in the Bambini reference?
A No, I didn't.
Q So would you look to anything to identify the

non-working command signal limitation?
A J1978 would be a good example of that, of both working and non-working.
Q So you mentioned this was a CAN bus and it would do the bus discovery? Is that how we get to J1978?
A Yes.
Q And do you recall when the Bambini patent was filed?
A '98, I believe.
Q Back in 1998, would a person of ordinary skill in the art be aware of J1978?
A Yes, sir. Already in existence before and being used for four years.
Q You mentioned earlier that I think CARB had pushed for this for a particular reason, and then you said it was mandated by the EPA. Do you know when the J1978 standard became mandatory in the U.S.?
A I believe '96 was the first model year that vehicles had to be using the standard.
Q So before 1998?
A Yes.
Q And is it true for this reference as well that because it's on a computerized bus the signals would have to be digital?
A Correct.
Q And would they have to be sent sequentially?

A Yes, they would be.
Q Let's go back to the figure we were on. I believe it was Figure 4. Would you identify a memory on Figure 4?
A Yes, I can.
Q Zoom in a little bit more. Where's the memory?
A Well, people would know also that in -- microprocessors do contain on-board memory.
Q So it could be either the first processor or second processor?
A Yes.
Q And when you say "people would know," is that --
A One of ordinary skill in the art with processors and electronics.
Q So, someone like you working on the vehicle bus?
A Correct.
Q You mentioned device codes in the last patent. Did you identify any device codes in the Bambini patent?
A Device codes being commands to various vehicle devices?
Q Let's go back to the Court's definition.
A Oh, I'm sorry.
Q What's a device code?
A Yep, you're right. I'm thinking the other way. Signal from a vehicle device. Yes. There were several

examples of various things on the bus that were sending information through this system and back out on wireless.
Q Did the Bambini reference disclose receiving data from vehicle devices on the bus and sending it out remotely?
A Yes, it did.
Q Is it your understanding that's what the CalAmp devices do?
A Yes, they do.
Q How about a central station transmitter, could you identify something that would be a central station transmitter that communicated with a receiver of the vehicle?
A Yes. Figure 1 is a great example of that.
MR. KAUTH: If you could go to Figure 1, then, please.
BY MR. KAUTH:
Q So which item is the central station transmitter?
A Well, we could call a cell tower a central station transmitter. But, I mean, it's interfacing remotely with various either phones, computers in the system.
Q And if the transmitter is at the vehicle, does that make the cell tower then the receiver?
A Yes, it does.

Q All right. If you could turn to Exhibit 12, please. Do you recognize Exhibit 12?
A Yes, I do.
Q And what is that?
A It's the J1978 standard.
Q Did you rely on that standard in forming your opinions in this case?
A Yes, I did.
Q And is that the standard that you said talks about bus discovery?
A Correct.
Q What version of the standard do you have there in that Exhibit 11?
A Let's see --
Q Sorry, Exhibit 12.
A Issued in 1992, revised in 1994 or revision June 1994, excuse me.
Q So did you say 1994?
A Correct.
Q In what month in 1994?
A June.
Q And this was the diagnostic scan tool specification?
A Correct.
Q And it set out the steps of bus discovery?
A Right.

Q And back in 1994, you said it just had three types of messages it sent?
A Yes, it did.
Q Can you tell me what the first message was it would send?
A Do you want to go into the section number? It would be Section 6.5.2 and talks about the procedure as well as -- of each of them. It's SAE J1850, which is the PWM standard.
Q And what's the second type of message it sends?
A SAE 1850 VPW.
Q And how about the third?
A And then, finally the ISO 9141.
Q And that follows that procedure you mentioned where you're yelling out hello, waiting for a response?
A Exactly.
Q All right. Let's set that one aside and turn to the Braitberg patent which is Exhibit 10 in that small stack. Is this another one of the patents you reviewed for your report?
A Yes, it is.
Q The last two patents we talked about, we were talking about with respect to the '876 patent; is that correct?
A Correct.

Q Do you recall which patent you applied the Braitberg reference to?
A Both '876 and '885.
Q Okay. So with respect to the '885, would it still have a transmitter and a receiver in it that you identified previously?
A Yes.
Q And a controller?
A Correct.
Q And it would still work on a CAN bus?
A Correct.
Q And would the device code you identified still be the same?
A Yes, it would be.
Q And how about the memory?
A Still there.
Q And is it your opinion that someone skilled in the art would still know to combine the Braitberg patent with J1978 for bus discovery?
A Yes, they would.
Q Let's get into that a little bit more. Why would they make that combination in 1993? Was J1978 still out?
A Actually it pre-dates -- this patent actually pre-dates the first release of the standard, but it's an excellent way of communicating with multiple vehicles,

you know, so a single product, as defined here, could hook up and run without any effort.
Q And when did this patent, the Braitberg patent, actually issue?
A December of '95, which was after the SAE standard was released. Actually, the second release of the standard.
Q So refresh my recollection. I believe you said the version that you had of the J1978 standard was from 1994; is that correct?
A June '94.
Q Was there an earlier version?
A Yes, there was. It was 1992.
Q And is that before the date on the Braitberg patent?
A Yes, it is.
Q And working in the automotive industry, was it well-publicized when J1978 came out?
A Yes, it was.
Q Is the SAE a government organization?
A No, it's not.
Q Who makes up the SAE?
A Actually, the SAE is an industry-wide group, both manufacturers, components, suppliers. Really anybody in the automotive industry can join.
Q And you mentioned you were in the automotive

industry?
A Yes, I was.
Q And you were a member?
A Yep.
Q So did you know about J1978?
A Yes, I did.
Q All right. Let's jump back to the Braitberg patent. Did you find a central station transmitter in this one, same as before?
A Yes, I did.
Q All right. I'm going to have you turn to -- you can put that one away. Turn to Defendant's Exhibit 26.
THE COURT: We'll go about ten more minutes before we take our afternoon break.
A I have it.
BY MR. KAUTH:
Q And do you recognize that exhibit?
A Yes, I do.
Q What is that?
A That's the Cellport description of MobileWeb.
Q Did you consider this document in preparing your report on invalidity?
A Yes, I did.
Q Did you review the entire document?
A Yes, I did.

Q Did it disclose a transmitter and a receiver?
A Yes.
Q How about controller?
A Yes.
Q What types of things were disclosed as being controlled in that document?
A Quite a few things -- displays, two-way radio, GPS, different vehicle devices could shut down the vehicle.
Q So would that be a physical change? Does that mean your control function definition?
A Correct.
Q How about a command signal? Is there anything in there that lists -- would that also be a command signal if you shut down the vehicle?
A Shutting down the vehicle would be a good example of the command signal.
Q Do you know what type of -- well, let me back up a step. Was there a bus disclosed in the --
A It discussed a common vehicle bus used in the industry.
Q Did it specify by name or just that it was a --
A A CAN device, a CAN interface.
Q And you testified earlier that CAN devices would be compatible with bus discovery protocol?
A Yes, it was.

Q Did you find a non-working command signal in this reference?
A No, I did not.
Q So how do we get to the non-working command signal for the -- required in the claim?
A We could use J1978 to identify both working and non-working.
Q Now sitting here today, we can do that. But back in 1994, I guess it was, when J1978 was there, in those days would someone have known to look to J1978 for bus discovery?
A Yes, they would have.
Q And you said that was mandated --
A By the EPA, yep.
Q And what year was the mandate?
A They mandated it in '94 with the expectation that everyone would be compliant by '96.
Q And the reference you're reading now, is that a device that was for putting it inside of an automobile?
A Yes, it is.
Q And J1978 is specific to automobiles?
A Yes. Yes, it is.
Q For trucks?
A Right.
Q All right. What about device codes? Remind me

again, a device code, that's a signal from the vehicle device, right?
A Correct.
Q Did you find any of those in the exhibit?
A Yes. There's quite a bit of information coming from the various vehicle devices.
Q Can you give me an example of what kind of information it disclosed coming from vehicle devices?
A GPS location, the current state of various sensors, that type of information.
Q And what about memory? Did you find memory in there?
A Yes. It would contain memory.
Q And was there a processor cooperating with the memory?
A It does describe the processor.
Q What made up the controller in that device? Was it just the processor?
A It was the processor and the interface to the wireless device. It had various I/O, as well as -- input/outputs, excuse me.
Q What type of wireless was disclosed?
A It was universal wireless ports, so cellular.
Q And just like the other references, would cellular have a tower that it --

A Yes, it would.
Q So was there something that was a transmitter at the vehicle for remote receiver?
A Yep. Figure 2 is a good example, if you need to pull it up.
Q All right. And how about a -- that would be two-way communication between --
A Correct.
Q -- that box and the cell tower?
A Yes.
Q I'm going to jump back to the Bambini reference, which was Exhibit 11. Now you talked about Bambini, I believe, with respect to the '876 patent. Did you also, in your non-infringement report, apply Bambini to the '278 patent?
A To the '278? Yes, I did.
Q So did you find a vehicle position determining device in Bambini?
A Yes, you do.
Q And what is a vehicle position determining device?
A The GPS receiver.
Q Can you show me where in Bambini there is a GPS receiver?
A In Figure 4, 77 and 78 GPS/DGPS, right there, attached to the first microprocessor.

Q Okay. And is there -- I think last time the words were transmitter and receiver. This time we need to find a wireless communications device. Is that a transmitter and receiver?
A Yes, it is.
Q And where did you identify that?
A Up on top, which is 70 and 71.
Q So if 71 -- okay. 71 is the wireless communication device, and that's communicating with?
A Terminal server.
Q Would that be through a cell tower or --
A Yes, it would.
Q And do you -- is it still your opinion that there is a controller disclosed in Bambini?
A Yes, there is, which is pretty much the entire system in this. This is the controller.
Q And did it perform a -- I think you said one skilled in the art would interpret a control function as requiring some sort of physical change. Remind me again, did Bambini perform that physical change?
A Yes, it did.
Q The controller cause that?
A Unlocking the cars, car doors if it was locked is the example.
Q Okay. And again, was this a multi-vehicle

compatible controller disclosed? I think you said it was the first and second processor?
A Yes.
Q And why was that compatible with the multiple vehicles?
A It was using a vehicle data bus, which would be compatible with multiple vehicles.
Q Do you have the Court's construction of multi-vehicle compatible controller handy?
A I do.
Q And what does the Court require that a multi-vehicle compatible controller have?
A Electronic circuitry that performs more than one control function and can operate with more than one vehicle.
Q And you said this had a standard bus in it and that would be the type of bus available in more than one vehicle?
A Correct.
Q The Claim 1 of the '278 patent also requires a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller. Let's see if we can break that up. Did you find something that was a downloading

interface disclosed in this patent?
A Yes. Going up to the top, that wireless interface can be used to download information remotely.
Q That's the 71?
A Yep. It also has a wired interface as well, too, off to the right, this and a connection port so it has both wireless and wired connection capabilities.
Q So what would be the wired connection in the handset connection port?
A If you go further to the right, it's essentially describing the handset. So you'd stick your cell phone onto the handset, which would then communicate wirelessly, as well as into the system here.
THE COURT: All right. Let's take our break at this point. We'll take our morning break [sic]. We'll be in recess until 3:25.
(Jury exits.)
The jury has withdrawn. We're in recess.
Thank you.
(Recess 3:12 p.m. to 3:35 p.m.)
The record should reflect the jury is absent, and the parties are present. For planning purposes, I want to get through as much testimony as possible. If we can complete the day and almost conclude the case then we can come in early tomorrow, work through

instructions, those can be finalized, conclude the case and have closings, and so forth. So I'm trying to use their time as best we can. So I'll defer to you to tell me how much time you think you have left in your case, if you know at this point.
MR. KAUTH: It'll be close. I was planning on stopping in a half hour, but --
THE COURT: We will sojourn through right until 5:00, and we'll come in in the morning and start early.
MR. GILCHRIST: Your Honor, for planning purposes, it's likely we'll have rebuttal to their case in chief. It won't be more than probably an hour.
THE COURT: All right. And what I would think we'll do is it will depend on how much we'll have when the day is over. Mr. Kauth, you will let me know how much time you think, and we already know it's about an hour in rebuttal and then we can plan a time that makes sense in the morning. I just have a status at 3:00 tomorrow. If it's to the jury by 3:00, we're in great shape. If not, I may be able to push my status back a little bit. If you're in the middle of closings, they're going to wait for you to be done. And then, let me know tomorrow how much time you want for closing. I am not going to put any time pressure on you all. It's

a complicated case. Take as much time as you need to talk to the jury. I'm not going to put any limit on you all. All right. Thank you. Please, can we have the jury. I'm sorry to keep you all waiting. I had a phone call from another judge. I couldn't get off as quickly as I would have liked to.
(Jury present.)
The record should reflect the jury has returned, and we're still on direct examination.
I apologize for the delay in getting you back. I was on a telephone call. I couldn't get off. It's not the fault of the parties. I just was trying to get another judge to stop talking, and that's virtually impossible. So please, when you're ready, go right ahead.
MR. KAUTH: Thank you, Your Honor.
DIRECT EXAMINATION (Continued.)
BY MR. KAUTH:
Q Mr. Andrews, we left off speaking about the Bambini patent. Could you turn to Figure 9 in your copy?
A Yes.
Q Can you tell me what's shown in Figure 9?
A This is incoming information from the wireless. And it's being processed in terms of determining what to do in the system. So, data processing comes in.

It records the messages in box 275. It's identifying the sequence of DTMFs. Should I describe? It's a dial tone modulated frequency. If you sent a fax before, you've heard DTMF when the two computers start talking. It's that funny noise.
Transmit the acknowledgment. So you say, yes, I did receive it back. And then, you have to determine what to do with it. Are you going to activate one of the controller -- one of the vehicle devices or reprogram? And that information's contained in the DTMFs, and then you go and do the action.
Q So if it goes to the activation branch out of the diamond 277, what happens next?
A This would be where you're actually controlling the vehicle device to do something.
Q And was this a patent where you gave me door locks as an example?
A Yes, it was. So you would be actuating the door lock mechanism to change from an unlock/lock or vice versa.
Q And the DTMF codes that you mentioned, you said they were like what you hear on a fax machine?
A Yes.
Q How do you input a DTMF code?
A You can do it by punching in the keypad or you could

do special sequences as described in the patent for various commands.
Q And in box 279, what does that mean?
A 279 formulate and transmit proper control signals to electrical accessories identified in the received DTMF. So this would be your activation, turning them on and off, the various vehicle devices that were on the bus. So it's a description of what you want to do to the device.
Q Let's go back to Figure 4 for a minute. I think the last thing you had identified on there was a downloading interface?
A Yes.
Q And I believe you said it could be the cellular telephone transceiver?
A Yes.
Q Or it could be the wired connection through the handset connection port; is that right?
A Correct.
Q If we go back to the claim language, there is more to it than the downloading interface. And it says, for permitting downloading of enabling data, relating to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller. Did you find something in the Bambini patent that satisfies the rest

of that limitation?
A Yes, it does. Yes, there is.
Q And what did you find?
A Well, Figure 9 is a great example of that where it's actually bringing in coded information used to control and actuate vehicle devices.
Q And I believe you mentioned the downloading interface for the handset, that was a wired downloading interface?
A Correct.
Q The patent also has a claim that requires a wired downloading interface that has a connector for temporary connection to a downloading device?
A Yes. So that's 73, which is the handset and connection port 72.
Q So does that mean I could connect my handset while I was in my vehicle and remove it later?
A Correct.
Q And if the requirement is that the downloading interface is wireless, does that put us back to the transceiver in --
A Number 70.
Q -- number 70, okay.
Did you find any reading of data from the vehicle bus in the Bambini patent?

A Yes, we did.
Q And where was that again?
A Coming across interface 86, which was the vehicle data bus and being worked on in processor 2, the second processor.
Q And can you remind me, for the data coming in, data coming in on that arrow 86, if you wanted to store that data, how would that data be routed?
A That would be stored in either first or second microprocessor temporarily and then sent out wirelessly at a convenient time.
Q That was in the built-in storage in one of the processors?
A Correct.
Q I believe previously you identified the GPS could be a positioning determining device. That's still true when you apply it to the '278 patent?
A Correct.
Q All right. If you could turn to Defendant's 17, please. Do you recognize that document?
A Yes.
Q And what is that?
A It's the Spaur patent.
Q Is that one of the patents you considered in preparing your invalidity report?

A Yes, it is.
Q And what is the Spaur patent about?
A It describes a controller on a vehicle interfacing with a vehicle bus communicating wirelessly off board.
Q And let's go through the same steps and see if we can identify all the necessary pieces.
A Mm-hmm.
Q Where would be a good place to look for a vehicle positioned determining device? Is that shown in any of the figures?
A Actually on this example, it's going to be on one of the vehicle device interfaces. So on Figure 2, it'll be off to the right, Vehicle Device 1, 2, it's described in the patent.
Q So are you saying the vehicle devices on the right column there, one of those could be a GPS --
A Correct.
Q -- or a position determining device?
A Yes.
Q And is that described in detail in the patent? Do they actually use the words GPS?
A Yes, they do. Would you like me to pull it up or --
Q If you can, please.
A Sure. Specifically, column 14, lines 1 through 5. This is referring to Figure 4. "At block 300, vehicle

positioning data is available from one of the vehicle devices 50, which might be a GPS." This is 1 through 5. Should I highlight it or --

Q Yeah. If you could draw a circle around that on the screen. You need to tap one of the corners to pick a color.

(Pause in proceedings.)

A Okay. So, there's a learning curve here, isn't there?

Q We'll highlight it from this side. Is this the section you just read?

A Yes.

Q And if we go back to the figure earlier, that was the figure 50. Do you recall that?

A These are the multiple vehicles on the network.

Q All right. How about a wireless communication device. Did you locate one of those disclosed in the Spaur patent?

A Yes. Actually Figure 2 is a little bit better, shows a little more detail. If you look to the left, there's a wireless -- okay. It's described as the air link, so you have a cell phone communicating wirelessly to a remote terminal.

Q And how about the controller?

A The controller would be described as the -- as 30,

which is the dotted line.

MR. KAUTH: Will you scroll down a little bit so we can see all of 30?

BY MR. KAUTH:

Q So that whole dotted line, within that is the controller?

A Correct.

Q And did this controller perform one or more control functions?

A Yes, they did.

Q And can you identify one of the control functions it performed?

A This did quite a bit in terms of interfacing with airbags, door locks, quite a few different subsystems within the vehicle.

Q All right. What type of bus is disclosed in this -- in the Spaur patent?

A Spaur describes a CAN bus.

Q And is that shown on the diagram we're looking at?

A Yes. 126, off to the right.

Q And I believe you testified earlier, more than one vehicle uses the CAN bus?

A Correct.

Q And the CAN bus also you can use the J1978 bus discovery protocol on it?

A Yes, you can.

Q Are the CalAmp devices that are accused in this lawsuit, are those compatible with the CAN bus?

A Yes, they are.

Q And every new car in the U.S. since 2008, is it required to have a CAN bus?

A Correct.

Q All right. So you identified the controller. Can you show me, is that cooperating with a position determining device?

A As we discussed, it could be a vehicle device off to the right, 50a, b, all the way through n.

Q So they would be communicating with each other over the CAN bus shown there?

A Correct.

Q And again, we're looking for a downloading interface. Did you find anything that was a downloading interface in the Spaur '074 patent?

A Yes. It describes a wireless interface as one way to download.

Q So if we scroll down a little bit, that was the air link at the top?

A Correct.

Q Anything else that could be a downloading interface?

A Also, 148, the PCMCIA interface is a temporary means

to download data.

Q And what is PCMCIA?

A PC memory -- it's essentially a connector system used in PCs to help exchange information. It's a standard connector in a PC world.

Q So is it a card that you put in and pull out?

A It can be, yes.

Q All right. It's actually the connector type that's --

A It's the connector, yes.

Q Okay. So could that be a temporary connection?

A Yes, it would be.

Q Anything else in the '074 patent that you would consider would be a downloading interface?

A Well, just those two, the wireless and the wired.

Q So we've got a wireless one and a wired one, and could both of those be temporary? They're not permanent connections?

A Correct.

Q And how about in the Spaur patent, did it disclose reading data from the vehicle bus?

A Yes, it did.

Q And where is that shown?

A For example, just reading some of the device data on the right, the numbers 50, bringing that back in, things

like GPS location, different interface -- or different vehicle sensors as well, too.
Q All right. We've been focusing a lot on Figure 2. Does Figure 1 also show a similar configuration?
A Yes.
Q So if we looked here, could you find a wireless connection for me?
A Yes, I can. That would be the air link, 16 through 18, from off board/on board, so the wireless device.
Q And how about a controller?
A That would be described on number 30 off to the right.
Q And a con --
A And actually, a controller, I would put this all in one box. I mean, you've got the wireless section, the controller, the standardized network. Ultimately in a product, it would highly likely be in one box.
Q So in the box there towards the bottom that says Vehicle Standardized Network, what does that mean?
A It's essentially using the standard CAN protocol as an interface.
Q And similar to the picture we saw before, the devices on the right, those are connected over the CAN bus?
A Correct.

Q And could one of those be the GPS?
A Yes, it would be.
Q And in this embodiment was there a wired downloading interface as well?
A The PCMCIA was in one of them and everything else, no.
Q And is there anything in the Spaur patent that said that this should be contained within a housing?
A No.
Q In your experience at Cummins would one skilled in the art typically put a vehicle device within a housing?
A Yes, you would.
Q Is that to protect the device?
A Correct.
Q Could you turn to Figure 4, please. Can you step me through what is happening in this chart?
A So this would be device code information from the various devices returning it back -- or taking it off board remotely. So obviously the devices are communicating across the bus, goes through CAN bus interface, which is 304. CAN control unit handling would be probably reformatting the data for the processor. Goes through the vehicle controller handling and then off board to the cell phone and ultimately to a receiver off board.

Q Okay. Scroll down a little bit.
A Once across the air link, the data is reformatted and then sent to a computer for display.
Q And would this correspond to what you showed me at the bottom of the diagram, the two-way arrow on the bus?
A Correct.
Q This is coming from the vehicle device that you said could be a GPS?
A Correct.
Q Went back up through the controller?
A Correct.
Q And so would this be in the -- in the GPS example this would be sending location data to a remote location?
A Yes.
Q Do you understand that's one of the capabilities of the accused CalAmp devices is sending GPS data to a remote location?
A Yes, I do.
Q But in the CalAmp devices the GPS is not connected to the bus, is it?
A Correct.
Q Did you determine that the controller shown on Figure 2 was a multi-vehicle compatible controller?
A Well, it does have the CAN bus, so that would be one way of describing a multi-vehicle compatible controller.

Q And that CAN bus could work with J1978 as well?
A Correct. It would.
Q We've been talking a lot about J1978. You told me before that was a diagnostic scan tool --
A Scan tool.
Q -- specification?
A Yes.
Q Is there any reason someone would use that in a vehicle and not just in a body shop or in an auto shop?
A It would be the easiest way, very well-defined way of interfacing to get information off a vehicle.
Q Were you here earlier when Mr. Chen testified that some customers hook an AutoTap scan tool to the LMU devices?
A No. I was not here for that.
Q Would that surprise you to hear that, that --
A No, not at all.
Q And I know we've talked about several patents here, and I know door locks came up in several of them. Was -- what was the physical change you identified to satisfy your control function in the Spaur patent?
A The Spaur is interfacing with several vehicle devices. Let's see, Spaur was -- well, discussed programming and actuation across the CAN bus of various vehicle devices.

Q Okay, so actuation?
A Yep.
Q All right. I'd like you to turn to Defendant's 24, please.
A I have it.
Q Are you familiar with that document?
A Yes, I am.
Q And what is that document?
A That's the Mobile-Trak brochure describing the Mobile-Trak product.
Q And is this a document that you relied on in providing your opinion of invalidity?
A Yes, it was.
Q And do you know what type of device is described in this document?
A It's a controller hooked to a vehicle device able to communicate wirelessly by directionally sending and receiving information in both directions.
Q Can you identify if this document discloses a transmitter and a receiver?
A Yes, it does. I always go back to the back. The last page, page 7, is a good example of all the different functionality that the device has. Scroll down a little bit. Towards the bottom, it says transmission data via analog cellular network for --

keep going down two or three more, right in the middle -- sorry.
Q Okay. So that would be a wireless connection?
A Yes.
Q How about a controller? Did you identify that controller?
A There is a microprocessor, also a controller being something that commands vehicle devices, yes. If you go down to the bottom, it discusses some of the interfaces. Send and receive messages for the -- messages to driver, so as controller it would be displaying information.
Q And what type of bus did this Mobile-Trak device work on?
A This is actually working on three different buses at the time -- J1708, 1939, and 1850.
Q And is that disclosed in this document?
A Yes, it is. It's probably on the last page. Yeah, right there in the middle. Down a little bit. Right there.
Q Can you circle that?
A There we go.
Q Okay. So you said we've got J1708, J1850, and J1939?
A Yes.
Q And I know you mentioned J1939 earlier. I believe

you said that was a bus type that Cummins was trying to get put into the J1978 standard?
A Correct.
Q What is J1850?
A J1850 was one of the original bus prototypes in J1978.
Q And is that one of the messages you mentioned earlier that had an 1850 in it for the bus discovery protocol?
A Correct.
Q And what is J1708?
A Is an older bus. It's not very common anymore.
Q So this device worked on three different bus types?
A Correct.
Q And does that mean it would work on multiple vehicles?
A Yes, it would.
Q Do you know if the NEOTech device had the ability to monitor speed?
A Yes, it did.
Q And where did you get that information?
A Page up a little bit, logging information, speed is number 4 there.
Q And do you know if you could set a speed alert?
A Yes, you could.

Q And where do you see that?
A If you scroll up, this would be on page 3 actually shows a PC Windows version of how to set the threshold, set the speed.
Q Let's zoom in on just that colored window.
A So as you can see, you could set up a speed threshold monitor by clicking the left button saying speed monitoring and then set the speed you so desired to trip the event.
Q All right. So you said this one had a wireless communications device. It had a controller. It was multi-vehicle compatible. And I believe you said it could be coupled to one of three types of vehicle devices. Is that accurate?
A Yes, it is.
Q Now, we just talked about speed monitoring. Does this device also include a GPS?
A Yes, it did. If you scroll down to page 7 again, towards the bottom, fifth from the bottom, discusses real time vehicle location.
Q If we scroll to the right, what does that say over there?
A It's an add-on feature within the system that's available.
Q So is it your opinion that long range communication,

would that be a two-way communication system?
A Yes, it would be.
Q And how about above that where it says optional short range radio module?
A Yep. That's another method of wireless communication.
Q Then, between those two is that what you were referring to when you said it was optional for the GPS?
A Yes.
Q All right. And in your report, do you recall the '727 patent is where you address speed; is that correct?
A Yes, it is.
Q So we've addressed the '727 patent with respect to the Mobile-Trak device. Let's go back through the Spaur device and see if it also has all those speed features, and that's Defendant's 17. So is there anything in Spaur that tells you, you could monitor a threshold?
A Yes, in the details of the patent. It's not very well described in this picture, but it does. So if we look at page 80 of my report or we could go into the Spaur in column 2. Actually, column -- row 11 through 15 describes the first part of it.
Q Okay. And that part talks about standardized communication links?
A Mm-hmm.

Q And does it talk about monitoring data in there?
A No. Actually --
Q Well, I guess what's your understanding at the end of the paragraph you pointed to, there is the last sentence --
MR. KAUTH: If you would go back up to where you highlighted there.
BY MR. KAUTH:
Q The paragraph that begins on line 10, the last sentence of that paragraph, can you tell me what you understand that to mean in column 2?
A So it's really the ability to extract data information from the various vehicle devices and also to be able to set limits and to retrieve that information.
Q And the very last part of that sentence says to obtain the desired information while avoiding design complexities in interfacing the remote site with the vehicle devices?
A Right.
Q What's your understanding of what that's talking about?
A Well, this is a way of reducing the amount of data that's coming across the bus so you could actually set up different methods of only communicating when something -- an event happened or it was a good

opportunity to send data.
Q I believe you mentioned earlier Spaur had a CAN bus. Is that specifically called out in the -- I'm sorry -- in the patent?
A Yes, it is.
Q Can you give me one example?
A How about Figure 1.
Q All right. You've already showed me that one?
A Yep.
Q I remember now. And do they talk about the -- if you can turn to column 10, please, and beginning at line 37, I'd like to know what that means.
MR. KAUTH: If you could highlight that paragraph, please, Eugene.
BY MR. KAUTH:
Q Is that generally describing the specifics of the CAN bus that you recognize?
A Yeah. It describes both electrical circuits as well as the higher level communication.
Q So does that tell you this is a CAN bus that you're familiar with or some other type of CAN bus?
A This would be the standard CAN bus.
Q If you could also flip back to column 12, about line 25. I guess line 23, maybe, when it starts with embodiment?

A Right. So this would be an example of where you could set up certain notifications to reach when certain conditions are met. For example, your vehicle reaches a desired destination. Also, if you keep going, "a predetermined threshold value upon occurrence of a predetermined event or condition." So this would be an example of speed, of a speed condition.
Q So when it says it could request a notification message when the vehicle reaches a certain location when a sensor in the vehicle measures a value relative to a predetermined threshold value and upon the occurrence of other predetermined events or conditions. So those are all options when you can send a message?
A Correct.
Q Can you step us through what it means when it says, when a sensor in the vehicle measures a value relative to a predetermined threshold value?
A So this would be where the controller is querying the various vehicle devices for information. It would take that information in the controller, compare it to an existing value that it's looking for, if it exceeded, or depending on what the condition is. It could then generate a report based on that condition. So you could set up things like speed thresholds. You know, if the coolant temperature got too hot, that type stuff, as a

way of monitoring what's going on and then sending that information back remotely.
Q And on a CAN bus, are the available values from a CAN bus known to those skilled in the art?
A Yes, there would be methods.
Q Is there a name for those? Are they parameters or--
A Or vehicle device codes is information that's coming back from the vehicle devices. One way of getting that information is described in J1979. Essentially, upon receiving a signal, the bus parameters will be identified, be transmitted on the bus so you'd know what parameters would be available.
Q And in J1979 does that list all the standard parameters available on the bus?
A Yes, it does.
Q Is speed one of those parameters?
A Yes, it is.
Q So if someone was skilled in the art and familiar with J1979, they would know that speed is an available parameter on the vehicle data bus?
A Correct.
Q Would one skilled in the art reading this section about being able to set a -- compare a -- measure a value relative to a predetermined threshold value understand that the measured value could be speed?

A Yes, you would.
Q And the predetermined threshold value could be a speed value?
A Correct.
Q So we've gone through all four of the patents. We've used a couple different references. There was Bambini, Braitberg, Spaur, the NEOTech device, and the J1978 standard, and I guess in this case the J1979 standard that mentioned speed?
A Correct.
Q Did you rely on anything else to come up with your combinations for the different patent claims?
A No, I didn't.
Q Did you select which references you wanted to use in your report for invalidity?
A Yes, I did.
Q I know we talked about this seems like awhile ago. You mentioned that you did some searching. You received some documents. How did you narrow it down to the set of references you used in your invalidity report?
A That was challenging to find which ones to use. I thought they were all very good references. I thought some had descriptions better than others, so I chose those.
Q Now, remind me again, were you working in the

automobile industry in 1993?
A Yes, I was.
Q So you were at Cummins when J1978 came out?
A Yes, I was.
Q And you were aware of that?
A Yep.
Q And were you aware of devices like those described in the patents we've talked about today in 1993?
A Yes, I was.
Q All right. We're going to shift our focus now and go over to non-infringement. Did you also prepare a report regarding non-infringement in this case?
A Yes, I did.
Q So I understand you had a lot of experience in the data bus industry. How did you become knowledgeable on the CalAmp devices?
A Through reading various manuals, reading the CalAmp engineers depositions as well.
Q So when you say various manuals, are those CalAmp's own manuals for devices?
A Yes, programming manuals, physical descriptions of the products.
Q And if you could turn to your --
MR. KAUTH: May I approach the witness, Your Honor?

THE COURT: Yes, you may.
BY MR. KAUTH:
Q If you could turn to your report on non-infringement, which is Exhibit 47, did you identify in your report all the materials you considered?
A Yes, I did.
Q And can you remind me what other CalAmp materials you considered?
A That was a long list of programming guides, programming Wiki.
Q Was the PEG programming guide one of those?
A That was the programming guide that I was looking at. There's also various examples of scripts and how to write scripts, the programs in the LMUs.
Q Did you have a chance to review any scripts as part of your investigation into the CalAmp devices?
A I did. I was curious how it was set up, and so I actually reversed engineered a couple scripts.
Q And did you also look at -- well, I believe you said you looked at several of the CalAmp engineers' depositions?
A Yes, I did.
Q Did that include the deposition of Mr. Bergesheimer?
A Correct.
Q And how about Mr. Chen?

A Mr. Chen -- what was his background?
Q Well, let's go on. How about Mr. Hall?
A Yes.
Q And Mr. Eiberger?
A Correct, yes.
Q And Mr. Hardee?
A Yes.
Q And after reviewing those depositions and reviewing the documentation on the CalAmp devices, did you come to an understanding of how they operate?
A Yes, I did.
Q And let's start with the basics. If I want to take one of those CalAmp LMU devices and make it work, where do I put it in the vehicle?
A You'd hook it up to the OBD connector.
Q I'd just plug it in for that?
A Correct.
Q So it gets power through that connector? I don't have to do other wiring?
A Correct.
Q It's data through that connector?
A Yes.
Q What happens after I plug it in?
A Typically, if there's a script in there, it would go through the bus discovery protocol to identify what bus

was on the vehicle.
Q And you believe it follows the J1978 protocol, correct?
A Yes, I do.
Q And you said if there's a script on there -- if there's not a script on there, do you know what will happen?
A No, I don't.
Q Do you remember reading Mr. Chen's testimony that without a script it's basically a paper weight?
MR. GILCHRIST: Objection, Your Honor. That's leading, and he already indicated he did not --
THE COURT: Sustained.
A Though, I would believe that anything without a software program in it --
MR. GILCHRIST: Your Honor, I think the objection was sustained.
THE COURT: The question was sustained. When that happens, please don't answer the question.
THE WITNESS: Sorry.
THE COURT: All right. I know you're new to this.
BY MR. KAUTH:
Q With respect to the VPOD and the VPOD2, what's your understanding of how they work?

A Well, it's the interface that is used to extract data off the bus.
Q And do you know if the VPOD includes a wireless transmitter?
A To my understanding, no, it doesn't.
Q So how does it get wireless functionality?
A That's where the LMU portion of it comes in.
Q So it would plug into a different LMU?
A Correct.
Q And is it the same basically with the VPOD2?
A Correct, and to the 3030.
Q All right. Let's turn to the '876 patent, which is Joint Exhibit 1.
A Exhibit 1?
Q We'll put it up on the screen for you.
A Okay.
DEPUTY CLERK: Counsel, it's probably in the box.
MR. KAUTH: If you can turn back to the claims, let's take a look at claim 1.
BY MR. KAUTH:
Q While we do that, do you have an understanding of independent and dependent claims in a patent?
A Yes, I do.
Q And does a dependent claim include everything from

an independent claim from which it depends?
A Yes, it does.
Q So let's look at Claim 1 here. We have a control system for a vehicle comprising a data communications bus and at least one vehicle device connected to the data communications bus. The control system comprising. Did you determine that the CalAmp devices were a control system as called that in the preamble?
A No. It's not really a control system. As defined by the Court, a controller is electronic circuitry that performs one or more control functions, and I don't see that the LMU devices actually control anything.
Q Well, in your example before on the cruise control you mentioned there was a part of it that monitors the speed data?
A Right.
Q And then, there was a part of it that seemed to actuate the throttle to provide more fuel?
A Yes.
Q If you took out the actuation step, would you still consider that cruise control to be a control system?
A No. That's not controlling.
Q Is it just a speedometer, then?
A Pretty much, yes.
Q So if we look here at Claim 1, the second element

that begins, a multi-vehicle compatible controller. Did you find that present in the LMU-3000?

MR. KAUTH: That whole block.

A Once again it's back to the controller function that the LMU is not a controller, because it's not really controlling anything.

BY MR. KAUTH:

Q And later on in that clause, it talks about one set of command signals?

A Yes.

MR. KAUTH: If you could highlight from beginning at generating, please.

BY MR. KAUTH:

Q It says, generating at least one set of command signals on the bus. Did you find that in the CalAmp device?

A It's not generating any command signals.

Q And from the Court's definition, what does a command signal have to do?

A A command signal is defined as signals generated on the data communications bus for operating a vehicle device.

Q And in your opinion, the CalAmp devices don't operate a vehicle device?

A Correct.

Q In your opinion, is a query a command signal?

A No, it's not.

Q Are you familiar with the SAE distinction between commands and queries?

A Yes. It's very well defined in the SAE documentation.

Q All right. So in your opinion, there's no multi-vehicle compatible controller and there's no one set of command signals. Does that mean you don't think there's a working or a non-working command signal?

A Correct.

Q All right. If you could turn to Joint Exhibit 3. We'll put it up on the screen for you. If you could go to Claim 1 of the '865 patent, please. And that preamble looks pretty similar, so am I correct that you still don't believe these CalAmp devices constitute a control system?

A Correct.

Q I think on the previous one I only asked you with respect to the LMU-3000. And I think you said it didn't perform the required control function and didn't have the command signals?

A Correct.

Q Is that true about the LMU-3030 as well?

A Yes, it would be.

Q And how about the VPOD?

A The same thing.

Q And the VPOD2?

A Correct.

Q All right. So back here there's a very similar clause that requires a multi-vehicle compatible controller, if we could highlight that whole element. Did you find that present in the CalAmp device?

A No, I did not.

Q And is that for the same reason you mentioned earlier regarding the control function?

A Yes, it is.

Q What about the second half of that where it says storing a set of device codes for a given vehicle device for a plurality of different vehicles.

A It does not do that either.

Q How about reading a device code from the data communications bus?

A For determining a match? It does read device code data, but there's nothing stored to match it against.

Q So it doesn't do the storing part or the determining a match part?

A Correct.

Q Anything else in there that you thought was missing from the CalAmp devices?

A Besides the word controller, it's not a controller also.

Q And is this true -- is your analysis that we just went through true for the LMU-3000?

A Yes.

Q And the LMU-3030?

A Yes.

Q And the VPOD?

A Correct.

Q And how about the VPOD2?

A Also.

Q All right. If we could turn to Joint Exhibit 5, please, and we'll put that up on the screen for you, and to Claim 1 of that patent. So this one doesn't use the same control system term. The preamble's a little bit different. Did you analyze whether the preamble applied in this claim?

A Yes, I did.

Q And did you think that the CalAmp devices constituted a multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout the vehicle the multi-vehicle compatible tracking unit comprising all the following --

A So far, so good. Yep.

Q So let's get to the individual pieces of the

comprising part. Did you find that the CalAmp devices had the multi-vehicle compatible controller for cooperating with the vehicle position determining device?
A Once again, it's not a controller, because it's not controlling anything.
Q Is it just reading data?
A Yep.
Q How about the next clause, said multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles.
A It's not doing that either. It can only work with one vehicle at a time.
Q And how about the downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code?
Let's do this one part at a time. Did you find that the LMU-3000 had a downloading interface?
A Yes, it does.
Q Is that a serial port?
A Yes.
Q And is that interface for permitting downloading of enabling data, as stated in the claim, related to at

least one corresponding vehicle device code?
A No, that's not.
Q And is that true -- is your analysis true with the LMU-3030 as well?
A Correct.
Q And in the LMU-3030 is there even a downloading interface?
A No, there's not.
Q How about on the VPOD or the VPOD2?
A I think it's internal, and it's not accessible by the customer.
Q All right. Let's go to the next independent claim. I thought we had one. Let's turn to Joint Exhibit 4, which is the '727 patent, and we'll put that up on the screen for you. Well, I apologize. If we could go back to Joint Exhibit 5. We're going to look at Claim 13 as well.
A Okay.
Q So looking at this part of the claim there's at the bottom a multi-vehicle compatible controller -- you can read that clause. Did you find that present in the LMU-3000?
A Once again, it's not a controller, because it doesn't control anything. It just listens to the data that's coming across the bus.

Q So, in your opinion, reading data does not constitute a control function?
A Correct. It's well defined in the SAE documentation.
Q Let's go down to the next part of claim 13, please. And is there a multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles?
A No.
Q And when you analyzed this, what definition did you use for device code to determine if a device code was present?
A This one is showing -- well, actually, as the Court defines, it's a signal coming from a vehicle device, not going to a vehicle device.
Q And is your analysis on the downloading interface the same as it was with respect to Claim 1?
A Yes, it is.
Q And is your analysis the same with respect to the LMU-3000 and the 3030?
A Yes, it is.
Q And the VPOD?
A Correct.

Q And the VPOD2?
A Yes.
Q If we could turn to Claim 18, please. And did you determine -- well, we'll go to the actual elements. If you could go to the top of the next column, the first element there, did you find that present in the LMU-3000?
A Yes, I do.
Q And what definition of controller do you apply?
A Excuse me. I was reading beyond the word controller. As defined by the Court it's not doing a control function so it's not really -- it's not a controller.
Q I see. But it does have a vehicle positioning determining device, and it has wireless communication?
A Yes, that's where I was.
Q But it doesn't have the controller?
A Correct.
Q How about the next section?
A No, it doesn't, because it's not sending device codes. Device codes is defined by the Court is signals from a vehicle device.
Q And how about the downloading interface, is that the same as your analysis with respect to the previous two claims that we looked at?

A Yes, it is.
Q So it's not down -- to the extent the LMU-3000, I think you said it does have a downloading interface?
A I believe it's internal, the serial port.
Q But it's not downloading what's required be the claim?
A No. Because vehicle devices -- the information coming from a vehicle device would be on the CAN or the bus and not to an external interface.
Q All right. Now, we can jump to that next patent I was trying to get to. That would be Joint Exhibit 4, the '727 patent. Looking at Claim 1, it's got a speed-exceeded notification device. Do you understand that the CalAmp devices do have certain functions for setting speed thresholds.
A Yes, they do.
Q And are you familiar with the function called speed above threshold?
A Yes.
Q And did you become familiar with that by reading the CalAmp documentation?
A Yes, I did.
Q What's your understanding of how speed above a threshold works?
A You could actually set it remotely, and it did have

a debounce feature which we described as sort of making sure the speed is really above the threshold.
Q Where did it obtain the speed data?
A That speed data is coming from the internal GPS sensor.
Q I think we mentioned this earlier, but is that internal GPS sensor on the bus in the CalAmp devices?
A No, it's not.
Q Is that over on the LMU layer?
A Yes, it is.
Q So when we look at this claim, did you find the CalAmp devices had a controller coupled to the data communications bus?
A No, it did not.
Q And why is that?
A The LMU products are not controllers, because they're not controlling.
Q Again, for the control function reason?
A Correct.
Q How about that next clause, reading the data related to vehicle speed from the vehicle data communications bus?
A That is possible to read vehicle data from the bus.
Q And how about determining when a vehicle speed exceeds a speed threshold for a first time period?

A Yes. They are capable of that. However, as defined in the previous one, the vehicle speed is on the bus and reading the documentation of the LMUs they use the GPS speed that's on-board as opposed to vehicle speed from a bus.
Q And when you looked at that last highlighted clause, determining when a vehicle speed exceeds a speed threshold for a first time period, were you looking at that in terms of bus speed or GPS speed?
A I look at that as for the claim as describing vehicle speed coming across the bus.
Q And that wasn't present in the 3000?
A Correct.
Q Or the 3030?
A Correct.
Q How about the VPOD?
A Correct.
Q And the VPOD2?
A Yep.
MR. KAUTH: Could I have one minute, Your Honor, to switch positions?
THE COURT: Yes, you may.
(Pause in proceedings.)
MR. KAUTH: Thank you.
BY MR. KAUTH:

Q If you could look to your monitor, this is the first patent we went over today; is that correct?
A Yes, it is.
Q And I believe the first reference we discussed was the Braitberg reference?
A Right.
Q And did you tell me that the Braitberg reference had a transmitter and a receiver?
A Yes, I did.
Q And how about a multi-vehicle compatible controller -- all that language there?
A Yes, it does.
Q And it was generating command signals?
A Yes, it was.
Q And some of those worked and some of those didn't?
A Correct.
Q And was that in combination with J1978?
A Yes, it can be.
Q And you understand that in this case Omega is alleging that performing a bus discovery protocol satisfies the limitation of working and non-working command signals?
A Yes, I do.
Q So if we have both of those, have we satisfied everything for that claim?

A Yes, we have.
Q And do you recall when we were discussing Braitberg that we asked about whether commands were generated sequentially?
A Mm-hmm. Yes, they are.
Q And are those digitally coded information?
A Yes.
Q And did you locate the memory on the Braitberg patent?
A Yes, I did.
Q And how about reading device codes, storing the device codes, and determining a match between a read device code and a stored device codes?
A Yes, I did.
Q And did you identify the central station transmitter?
A Yes, I did.
Q That was where the receiver was at the vehicle, and what was our central station transmitter?
A The cell phone.
Q Cell phone tower. And is the opposite true that --
A Yes, by directional communication, as a result, you have a receiver in the vehicle and a transmitter remotely.
Q All right. Let's look over at the Bambini patent.

Did you find a transmitter and a receiver in the Bambini patent?
A Yes.
Q And did you find the multi-vehicle compatible controller generating the command signals that were working and non-working in the Bambini patent?
A Yes.
Q And did you have to combine the Bambini patent with anything to get there?
A Yes, J1978.
Q And that's the bus discovery protocol?
A Correct.
Q And in Bambini, was that a vehicle data bus that was disclosed?
A Yes, it was.
Q And were the signals on that bus sent sequentially?
A Yes they were.
Q Were those digitally coded signals?
A Yes, they are.
Q And did you find memory for storing in Bambini?
A One skilled in the art would realize that there is memory associated with microprocessors.
Q So that was either in that first or second microprocessor that you identified?
A Correct.

Q How about this: Reading of device code, storing a device code and determining a match between the read device code, was that in -- did you identify that in Bambini as well?
A Yes. Well, actually -- excuse me -- it's part of 1978.
Q So that's in combination with J1978 with respect to that element?
A Yes, it would be.
Q And did Bambini disclose a central station transmitter with a receiver at the vehicle?
A Yes, it does.
Q And how about a central station transmitter acting as a receiver and the transmitter of the vehicle?
A Yes.
Q Can you remind me what those were?
A It was the cell phone tower and the cell phone on the vehicle.
Q Okay. So is it your opinion, then, that each of the claims asserted on the '876 patent was obvious in view of Braitberg and SAE J1978?
A Yes, I do.
Q And also obvious in view of Bambini and J1978?
A Yes.
Q All right, looking at the '885 patent. Again, was

there a transmitter and receiver in the Braitberg patent?
A Yes, there is.
Q And a multi-vehicle compatible controller cooperating with the transmitter and the receiver for storing a set of device codes, for reading a device code, and for determining a match?
A Yes, there is.
Q And was that in Braitberg by itself or did you have to combine it with something?
A I did combine those. On Braitberg, no, excuse me, there was a separate error correction or error identification.
Q Did you also combine it with J1978 for --
A Yes, I could. Yes, I did.
Q In Braitberg, do you have two examples of --
A Yes, I do.
Q And did Braitberg disclose memory that could store device codes?
A Yes, it does.
Q And how about a control system with a processor cooperating with memory for determining the match between the read device code and the stored device codes?
A With the addition of 1978, yes.
Q Okay. And you identified both the processor and the memory in Braitberg?

A Yes, I do.
Q And in Claim 12, the control system wherein the transmitter comprises at least a central station transmitter and wherein the receiver is at the vehicle?
A Yes.
Q And the opposite where the central station transmitter is the receiver and the transmitter is at the vehicle?
A Correct.
Q And what was your example for that?
A That was another cell phone interface.
Q And in the Mobile-Web document, did you find a transmitter and a receiver?
A Yes.
Q And did you find a multi-vehicle compatible controller?
A Yes, I did.
Q And it could store a set of device codes?
A Yes.
Q Read device codes from a vehicle device?
A Correct.
Q Determine a match between them?
A Yes.
Q And was that disclosed specifically in the Mobile-Web publication?

A That was with the addition of 1978.
Q Okay. So the bus discovery procedure again?
A Correct, yep.
Q And did the Mobile-Web publication disclose memory for the stored device codes?
A Yes, it does.
Q And did it have a processor that could cooperate with memory to read the codes and determine a match?
A Yes, it does.
Q You identified separately a processor and memory in the Mobile-Web device?
A Yes, I did.
Q And what do you rely on for reading the device codes and determining a match?
A Once again, J1978.
Q And again, in Mobile-Web did you find a central station transmitter with a receiver at the vehicle?
A Yes, I do.
Q And a central station transmitter acting as a receiver with a transmitter at the vehicle?
A Correct, yes.
Q Is that a cell phone, one more time?
A Yes, it is.
Q With a cell tower?
A Correct.

Q So is it your opinion that each claim of the '885 patent is obvious in view of Braitberg when combined with SAE J1978?
A Yes, I do.
Q And is it your opinion that each asserted claim of the '885 patent is obvious over the combination of the Mobile-Web publication and SAE J1978?
A Yes, I do.
Q And turning to the '278 patent, when you looked at Bambini in combination with J1978 did you find a vehicle position determining device?
A Yes.
Q And what was that?
A It was GPS.
Q And did you find a wireless communications device?
A Yes, I did, a cell phone.
Q And how about a multi-vehicle compatible controller for cooperating with the vehicle position determining device and the wireless communications device to send vehicle position information?
A Yes, I did.
Q And did you find the multi-vehicle compatible controller coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code

from among a plurality thereof for different vehicles?
A With the addition of J1978, yes.
Q So the bus discovery again?
A Correct.
Q How about a downloading interface, did you find one of those in Bambini?
A Yes, I do.
Q Going on to the dependent claims. Did you find where the downloading interface had a wired interface?
A Yes, I do.
Q And how about where the wire interface was a temporary connection?
A Yes.
Q Does that just mean it can be unplugged?
A Correct.
Q And how about a downloading interface comprising wireless signal downloading interface?
A Yes, there is.
Q Is that using the cell phone again?
A The cell phone, yep.
Q And the wireless signal downloading interface compromising a wireless receiver for temporary connection to a downloading device?
A Yes.
Q So the wireless connection is not permanent?

A Correct.
Q And how about the corresponding at least one vehicle code is for reading at least one vehicle device?
A Yes.
Q Is that in combination with J1978?
A Correct.
Q And did we talk about downloading programming instructions for the multi-vehicle compatible controller?
A Yes.
Q And you said you could do that over the wireless or over the wired interface?
A This is correct.
Q And when you identified the wireless positioning device, what type of device did you identify in Bambini?
A It was GPS.
Q And what about a housing?
A Did contain a housing as well, too.
Q And when we get to Claim 13, was your analysis the same for Claim 13 as it was for Claim 1?
A Yes, it was.
Q So we had a position determining device?
A Correct.
Q A wireless communications device?
A Yes.
Q The multi-vehicle compatible controller?

A Correct.
Q The controller coupled to the data bus for communication thereover with a vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles?
A With the addition of J1978, yes.
Q Downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code?
A Yes.
Q And where the downloading interface is a temporary connection to the downloading device?
A Yes.
Q And in Bambini did you identify that it disclosed reading at least one vehicle code -- I'm sorry -- the corresponding at least one vehicle code is for reading the at least one vehicle device?
A Yes.
Q So, Bambini read data. And how about where the downloading interface is for permitting downloading for at least one programming instruction?
A Yes.
Q Same as above when we covered that?
A Yeah.
Q And going on to Claim 18, is your analysis the same

as with respect to Claims 1 and 13?
A Yes, it is.
Q So we've got a vehicle position determining device?
A Correct.
Q The wireless device?
A Yes.
Q The multi-vehicle compatible controller that cooperates with the wireless device?
A Yes.
Q And the vehicle position determining device. And the multi-vehicle compatible controller coupled to the data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code?
A Correct.
Q From among a plurality thereof?
A Yes.
Q And a downloading interface for permitting downloading of enabling data related to the corresponding vehicle device code for use by the said multi-vehicle compatible controller?
A Yes.
Q And the downloading interface is a temporary connection to a downloading device?
A Yes.

Q That could be wire to wireless?
A Correct.
Q We're getting there. And the multi-vehicle compatible tracking unit, according to Claim 18, where the vehicle code is for reading from the at least one vehicle device?
A Yes.
Q And the next claim, wherein the downloading interface is also permitting downloading of at least one programming instruction?
A Correct.
Q All right. That was Bambini combined with J1978, correct?
A Mm-hmm.
Q And you found that all of the elements were present in that combination of Bambini and J1978 to satisfy the asserted claims of the '278 patent?
A Yes.
Q And with the combination of Spaur, the '074 patent and J1978, did you find a vehicle position determining device?
A Yes, I did.
Q And remind me again what that was?
A GPS.
Q And a wireless communications device?

A Yes.
Q And a multi-vehicle compatible controller for cooperating with said vehicle position determining device and said wireless communications device to send vehicle position information?
A Yes.
Q And that controllers coupled to the vehicle data bus for communication thereover with at least one vehicle device?
A Yes.
Q And it uses at least one corresponding vehicle device code from among a plurality thereof?
A Correct.
Q And was that based on J1978?
A Yes. Yes, it is.
Q And a downlosding interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller?
A Yes.
Q And how about wherein the downloading interface comprises a wired signal downloading interface?
A Yes.
Q And wherein the wired signal downloading interface is a connector for a temporary connection to a

downloading device?
A Correct, yes.
Q And the downloading interface comprises a wireless signal downloading interface?
A Yes.
Q And the wireless signal downloading interface comprises a wireless receiver for temporary connection to a downloading device?
A Yes.
Q And the multi-vehicle compatible tracking unit wherein the corresponding at least one vehicle code is for reading from the at least one vehicle device?
A Yes.
Q And then, we've got the downloading interface is for permitting downloading of at least one programming instruction?
A Yes.
Q And the wireless position determining device comprises a GPS?
A Correct.
Q And the multi-vehicle compatible tracking unit further comprising a housing containing the vehicle position determining device and the wireless communications device, the multi-vehicle compatible controller, and the downloading interface?

A Yes.
Q And for Claim 13, is your analysis the same as Claim 1?
A Yes, it is.
Q So we've got a vehicle position determining device?
A Yep.
Q A wireless communication device?
A Yes.
Q Multi-vehicle compatible controller for cooperating with the device?
A Yes.
Q How about the multi-vehicle compatible controller coupled to the vehicle data bus for communication thereover?
A Yes.
Q And a downloading interface for permitting downloading?
A Yes.
Q And the downloading interface compromising a connector for a temporary connection to a downloading interface?
A Yes.
Q And moving on to the dependent claims. The multi-vehicle compatible tracking unit, according to Claim 13, with a vehicle code for reading from the at

least one vehicle device?
A Yes.
Q And the Claim 16, the downloading interface is also for permitting downloading of at least one programming instruction for the multi-vehicle compatible controller?
A Yes.
Q And is your analysis for Claim 18 the same as for Claims 1 and 13?
A Yes, it is.
Q So we've still got a vehicle positioning -- position determining device?
A Correct.
Q And a wireless communications device?
A Yes.
Q And the multi-vehicle compatible controller?
A Yes.
Q And the controller's coupled to the data bus for communication thereover with at least one vehicle device?
A Yes.
Q And a downloading interface?
A Yes.
Q And the downloading interface is a wireless receiver for temporary connection to a downloading device?
A Yes.
Q And the multi-vehicle compatible tracking unit

wherein the corresponding at least one vehicle device code is for reading from the at least one vehicle device?
A Yes.
Q And the multi-vehicle compatible tracking unit wherein the downloading interface is for permitting downloading of at least one programming instruction for the multi-vehicle compatible controller?
A Yes.
Q So if we look back at the '278 claim, you said Spaur, combined with J1978, satisfied everything in Claim 1, right?
A Yes, I did.
Q And you said it satisfied everything in Claim 13 as well, right?
A Correct.
Q And we had said that Bambini in J1978 also satisfied everything in Claim 13, right?
A Yes, we did.
Q And when we look at Claim 18, is it your opinion that Bambini and SAE J1978 satisfy all the limitations of Claim 18?
A Yes, it does.
Q And how about when you combine Spaur with SAE J1978, does that satisfy every limitation of Claim 18 as well?
A Yes, it does.

Q So is it your opinion that all the asserted claims of the '278 patent are obvious in view of Bambini combined with J1978?
A Yes, it does.
Q And is it your opinion that all of the asserted claims of the '278 patent are also obvious over Spaur when combined with J1978?
A Yes, it does.
Q And our last patent, the '727 patent regarding speeding. Did you find the speed-exceeded notification device for a vehicle of a type comprising a vehicle data communications bus extending throughout the vehicle and at least one vehicle device generating data related to vehicle speed on the vehicle speed -- I'm sorry -- on the vehicle data communications bus, the speed-exceeded notification comprising a wireless communications device?
A Yes.
Q And do you recall in Spaur was that -- what was that?
A A cell phone interface.
Q And was there a controller coupled to the vehicle for reading data related to vehicle speed from the vehicle data communications bus and determining when a vehicle speed exceeds a speed threshold for a first time period?

A Yes.
Q And was that just in Spaur or did you combine Spaur with something?
A With J1979.
Q And that was the list of parameters on the bus?
A The parameters, correct.
Q And speed was in there?
A Yes, it is.
Q So was there a -- did Spaur disclose a notification device, according to Claim 1, wherein the remote vehicle speed-exceeded notification further comprises the speed of a vehicle?
A With the addition of 1979, yes.
Q And how about wherein the remote vehicle speed-exceeded notification further comprises a vehicle position?
A Yes.
Q All right. And now looking at the combination of the Mobile-Trak device with J1979, did you find that Mobile-Trac disclosed -- or that combination disclosed a wireless communications device?
A Yes, it does.
Q And how about the controller with all that other stuff in the box, the --
A Yes.

Q -- getting the vehicle speed from the bus, determining when a speed exceeds a threshold?
And did you find that the speed-exceeded notification device further comprised the notification included the speed of the vehicle?
A Yes, it does.
Q And how about where the notification includes the vehicle position?
A Yes.
Q Is that from the GPS unit?
A Correct.
Q So is it your opinion that the combination of the Spaur patent and J1979 discloses all of the elements of Claim 1?
A Yes, it does.
Q And it's also your opinion that the combination of the Mobile-Trak 2 and J1979 discloses all the elements of Claim 1?
A Yes, it does.
MR. KAUTH: Your Honor, if this is a good stopping point, I could break between my next set.
THE COURT: That would be fine.
It's a good stopping point. Thank you.
Ladies and gentlemen, it's 5:00. And what we're going to do is recess for the evening. We are

very close to being done with getting the evidence to you. We'll have you come back at 9:30 tomorrow morning. We're going to meet here considerably earlier than that to talk about jury instructions and things, so hopefully we don't have any further delay getting the case to you by sometime tomorrow.

So with that, tonight, please, again refrain from discussing the case with anyone else or even amongst yourselves, and please conduct no research on your own. Drive carefully. We'll see you tomorrow morning at 9:30, and we should be ready to get started right at that time.

(Jury exits.)

All right. The jury has withdrawn.

What I'm thinking in terms of the charge conference for tomorrow morning, I've already gone through the instructions and, in my mind, pieced together portions that I think fit together and made some preliminary decisions about instructions I think are either not warranted or need to be tailored.

Similarly with the verdict form, I've looked at how I think it needs to be modified, so that will hopefully move it along a bit.

Koretta, can you be here as early as 8:15?

COURT REPORTER: Of course.

THE COURT: 8:15?

COURT REPORTER: Yes, sir.

THE COURT: That way it gives us hopefully enough time to get situated, gives Robin some time to get the final set, and you can all look at it on the first break to make sure there's no mistakes on my part. All right. So, 8:15 tomorrow morning. Thank you.

You won't be needed until 9:30, so you get to sleep in a little later than the rest of us.

THE WITNESS: Thank you.

THE COURT: Have a good night, gentlemen and ladies.

(Adjourned at 5:03 p.m.)

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Reporter's Certification

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

s/Koretta Stanford

Official Court Reporter
United States District Court
Middle District of Florida Date: April 14, 2016

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

OMEGA PATENTS, LLC,
Plaintiff,
v.
CALAMP CORP.,
Defendant.

Case Number 6:13-CV-1950

TUESDAY, FEBRUARY 23, 2016, 8:18 A.M.
CIVIL JURY TRIAL - VOLUME VI (DAY 6)
BEFORE THE HONORABLE PAUL G. BYRON, AND A JURY
UNITED STATES DISTRICT JUDGE
ORLANDO, FLORIDA

COUNSEL FOR PLAINTIFF:
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Ryan Santurri, Esq.

COUNSEL FOR DEFENDANT:
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Eugene Chong, Esq.
Carrie Wozniak, Esq.
Charles Halloran, Esq.

*Proceedings recorded by mechanical stenography
Transcript produced by computer transcription*

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PROCEEDINGS

(Jury not present.)

DEPUTY CLERK: This is the matter of Omega Patents versus CalAmp Corp., case number 6:13-CV-1950-Orlando-40DAB. For the plaintiffs.

MR. GILCHRIST: Brian Gilchrist and Ryan Santurri.

THE COURT: And defense.

MR. KAUTH: Joel Kauth, Eugene Chong, Carrie Ann Wozniak, and Charles Halloran.

THE COURT: Good morning.

COUNSEL: Good morning.

THE COURT: All right. We should all have our jury instructions in front of us, I hope. What I'd like to do is just go through them one at a time and we'll identify the ones that there's been objection to, and then I'll talk to you about the ones that I have looked at where there are objections, my thoughts on the objections, and some of the commingling, if you will, of some of the instructions, I think, makes sense.

I'm going to apologize in advance if my voice goes out, but I was at a wedding on Saturday and the bride's son -- this is obviously their second marriage -- had a really ferocious cold, and I didn't realize it until after I got done playing with him, so now I have

his ferocious cold, so it's just the way those things go.

Okay. The first page is obviously just the Duty to Instruct. Is there any objection to the first page?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: Please stay seated.

All right, so it will be given.

The second page is Direct and Circumstantial Evidence. I didn't see any objection. Is that one good as well?

MR. SANTURRI: Yes, Your Honor.

MR. CHONG: Yes, Your Honor.

THE COURT: Okay.

Fourth page is Credibility of Witnesses.

Any objection to that one?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No objections, Your Honor.

THE COURT: It will be given.

The sixth page -- the last one was two pages. The sixth page is jury instruction three, Impeachment based on Inconsistent Statements. Any objection to that instruction?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: Seventh page is jury instruction 4, Expert Witnesses. The alternative is on page 8, expert witness, when the fee represents a significant portion of the witness's income. I'm inclined to give alternate number 4, since there is quite a bit of testimony about the amount of money the experts are paid. Any objection to giving number 4, alternate number 4?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: All right. So alternate number 4 will be given. Burden of Proof is jury instruction number 5 on pages 9 and 10. Any objection to that?

MR. SANTURRI: None from plaintiff, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: Next we have Summary of Patent Issues. That's jury instruction number 6, page 11 and 12. First off, in all of the instructions as a whole, I will not have anything italicized. I'm trying not to draw any attention of any type, so in all the instructions will be no italics. I know there was no objection to that. In paragraph 2, jury instruction number 6, there was the claim of anticipation which I

ruled upon, so that will be removed. Any objection, other than the objection to the ruling on the anticipation defense?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: And I'm saying it that way, because I want you to preserve your issues for appeal. I don't want you to feel like -- I'm not rushing you, I understand you need to have your record.

Claims Construction generally is jury instruction number 7, page 13. Any objection to that one?

MR. SANTURRI: No, Your Honor.

MR. CHONG: Your Honor, I believe that line -- five lines down for the '278 patent it says, Claim 25, but I believe that should be 21.

THE COURT: All right. So it should be Claims 1 through 6, 8, 11 through 14, 16, 18, 19, and 21.

MR. CHONG: That's my understanding, Your Honor.

THE COURT: Is that correct?

MR. SANTURRI: Yes, Your Honor.

THE COURT: All right, we'll make that change. With that change is there any objection?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: All right, it will be given.

Next we have Role of the Claims of a Patent.

There was no objection to this, but let me tell you my thoughts. This is on page 14, role of the claims in a patent. If you turn to page 16, we have another instruction, 2.2, it's the 8.2 Claim Construction, jury instruction number 9, How a Claim Defines what is Covered. I'm avoiding duplication for many reasons, including these instructions are very long, but it doesn't help to repeat. It just confuses them.

But I do think that if you look at page 16, the second full paragraph, it starts with, there can be several claims in a patent. If you go to the third sentence, all the way to the end, it seems to me that that language should be inserted in 2.1, role of the claims in a patent, at the end of the first paragraph. So let me just get you all oriented.

If you look at page 14, Role of the Claims in a Patent, the first full paragraph ends with the wording, therefore, when a patent depends -- what a patent covers depends, in turn, on what each of the claims covers.

If we go to 16, where I just was talking a

moment ago, page 16, the second full sentence of the middle paragraph, it reads: The coverage of a patent is assessed claim-by-claim. In patent law, the requirements of a claim are often referred to as "claim elements" or "claim limitations." When a thing (such as a product or a process) meets all of the requirements of a claim, the claim is said to "cover" that thing and that thing is said to "fall" within the scope of the claim. In other words, a claim covers a product or process where each of the claim elements or limitations is present in that product or process.

It seems that that should go at the end of the first paragraph on page 14 to help them understand how to use these claims. The rest of jury instruction 9 would be a duplication of what we already have in 2.1. If you want to take a second to read both of those in their entirety, and then let me know your thoughts.

(Pause in proceedings.)

MR. SANTURRI: Your Honor, just so I make sure that I understand what the Court's proposal is, it's taking the portion that you just read from, what was jury instruction 9, insert it into jury instruction 8, and then removing the rest of 9, right?

THE COURT: Correct.

MR. SANTURRI: That's fine from plaintiff's

perspective.

MR. CHONG: Your Honor, the only portion that I don't see in -- on page -- in jury instruction number 8 is the first paragraph in jury instruction 9, the first full paragraph that says that a claim is, in essence, in a single sentence.

THE COURT: Okay.

MR. CHONG: And "If a device or method satisfies each of these requirements then it is covered by the claim," I would suggest placing that also into the instruction number 8 just because I don't see that as a duplicate.

THE COURT: I think you're right. And if we go back to jury instruction number 8, the second full sentence reads: The patent claims are the numbered sentences at the end of each patent. It seems it would be a good place to put it right there.

So it would read: The patent claims are the numbered sentences at the end of each paragraph [sic]. A claim sets forth, in words, a set of requirements. Each claim sets forth its requirements in a single sentence. If a device or method satisfies each of these requirements, then it's covered by the claim.

Well, actually we could put it -- I'm looking at the next sentence of instruction 9 -- perhaps after

the third sentence. "The claims are important because it is the words of the claims that define what a patent covers." Then put in the paragraph that you mentioned -- or the sentence that you mentioned, Mr. Chong.

MR. CHONG: Yes.

That will work for us, Your Honor.

THE COURT: Any objection to doing that?

(Pause in proceedings.)

Mr. Santurri, what's your thought?

MR. SANTURRI: I'm just trying to -- it seems like we have -- I mean, I think we had originally objected on several of these just 'cause they seemed to say the same thing about six different ways.

THE COURT: Yes. That's why I'm striking most of Claim 9. But what we don't have in -- pardon me -- most of instruction 9. What we don't have in instruction 8 so far is the single sentence language that Mr. Chong mentioned, which is important.

MR. SANTURRI: Well, it does say in Claim 8, the patent claims are the numbered sentences at the end of each patent. I don't know that it makes any difference to the jury, but --

THE COURT: It's not that much duplication to -- I'm sorry. I was speaking over you.

It's not that much duplication to add the

first paragraph of instruction 9. And this is, quite frankly, where the rubber hits the road for the jury. And I think my concern is we're going to be getting peppered with questions after the fact if we don't give them some pretty clear guidance on how to read the claim, and we're not going to be able to tell them because, as you know, our typical response to a question is, "Sorry, we can't help you," so we almost have to hit it now.

MR. GILCHRIST: Your Honor, are you sending the written copy back with the jurors?

THE COURT: Yes. They'll each have a copy. And when it's read to them, it will go on the monitor, so they will see it when I read it.

MR. SANTURRI: That's fine, Your Honor.

THE COURT: Okay. So what we'll do is on instruction 8, the first full paragraph of instruction 9, starting with, "The claim sets forth...," will be inserted after the third sentence of instruction 8.

Then, the second full sentence down to the end of the second full paragraph on instruction 9 will go at the end of the first paragraph of instruction 8, which is what we all discussed.

Any objection to proceeding as I proposed?

MR. CHONG: No, Your Honor.

MR. SANTURRI: No, Your Honor.

THE COURT: We'll make sure you all have a copy of this before the first break so you can proofread it.

All right. That takes us now to page 18, independent and dependent claims, proposed instruction 10. I read instruction 10 in conjunction with instruction 5.1 on page 39. And it seems to me that there's some -- there is a way to work these in together.

Let's deal with jury instruction 21, 5.1 of Invalidity of Independent and Dependent Claims on page 39. If we can turn to that and have page 18, independent and dependent claims, instruction 10, side by side, it's going to be easier to follow.

MR. CHONG: I'm sorry, Your Honor. I think my page numbers are a little --

THE COURT: Do you have the same page numbers, Robin?

LAW CLERK: 38.

THE COURT: Pardon me?

LAW CLERK: 38 on my copy.

THE COURT: 38. All right, thank you.

So, you should have jury instruction 21 and 10 side-by-side. So, here is what I've been thinking.

Let's focus on 21 as the independent and dependent claim instruction, and there's language from instruction 10 I'd like to include into 21.

Now where we place 21, we'll get to next. But for focusing just on the language of independent and dependent claims, 21 seems to have the best description with the following that I'd like to suggest.

If we start on the first paragraph of instruction 21, we should include from instruction 10 the introduction, "This case involves two types of patent claims: independent and dependent claims," so they understand the preamble here. So that would be first, for example.

Next we would have, turning back to instruction 21: An independent claim does not refer to any of the other claims of the patent. An independent claim must be read separately from the other claims to determine the scope of the claim. That's correct. Then, I would suggest we insert here from instruction 10, the first sentence of the first -- of the second paragraph of instruction 10.

So in other words, at the end of the independent claim introduction in instruction 21 would be the language, an independent claim sets forth all of the requirements that must be met in order to be covered

by the patent. That way, they understand what an independent claim is.

Next we turn to dependent claims in instruction 21, which those two sentences are correct. And I would add to the end of dependent claim, looking back at instruction 10 now, the last two sentences of the second full paragraph.

So in other words, the description after dependent claim would be -- from instruction 10 -- to determine what a dependent claim covers, it is necessary to look at both the dependent claim and other claims to which it refers. A product that meets all of the requirements of both the dependent claim and the claim to which it refers is covered by that dependent claim.

So they now would understand fully what independent and dependent are. Is everyone following me so far? If not let me know. I'll go over it again.

Then, I would insert, after the language that I just read, the list of dependent and independent claims that appear in instruction 10, because they're going to need help in understanding which are which.

So at the end of the independent claim language that I just read, it would state, in this case Claims 1 of the '876 patent, Claim 23 of the '989 -- well, we'll take that out. '989 is out, so that will be

removed.

In this case, Claim 1 of the '876 patent, Claim 1 of the '885 patent, Claim 1 and 19 of the '727 patent, and Claims 1, 13, and 18 of the '278 patent are each independent claims. That way they know which are which. That would conclude the first three paragraphs of instruction 21, and then we would just give the rest of 21, which will explain to them the difference between these types of claims. Read those two, and let me know if there's additional language that I'm missing.

MR. CHONG: Your Honor, for the listing of the independent claims, I believe Claim 19 of the '727 patent is actually a dependent claim.

THE COURT: Pardon me? 19 is a dependent claim?

MR. CHONG: I believe so, yes.

THE COURT: Okay. So which are the independent claims that we should be identifying? I can go back to my notes, but you all know this by heart.

MR. CHONG: For the -- all the other listings look okay to me. But the '727 patent, it says that Claims 1 and 19 are independent.

THE COURT: Yes.

MR. CHONG: And I think we should strike "and

19," because 19 is a dependent claim.

THE COURT: All right. Is there agreement on that, Mr. Santurri? There's no hurry, guys. I'm just trying to get us focused.

MR. SANTURRI: Yes, Your Honor. I think it's only Claim 1 of the '727 patent.

THE COURT: All right. We will take the "and 19" out. So if there's any -- if I haven't confused you all terribly already, if you would look at the balance of 21 and the balance of instruction 10 and tell me if there is any additional language you would like to have one complete instruction on independent and dependent, and then tell me if you want to leave 21 where it is or move it up to where 10 was.

MR. CHONG: Your Honor, just to clarify, on the '727 patent, the Claim 19, it's not that it's a dependent claim, it's just that that claim is no longer asserted.

THE COURT: I see. All right.

MR. SANTURRI: Your Honor, I think it's fine as the Court has modified it. But I think we would want to put it in further back with 21, because we addressed infringement and validity separate. And since this -- the instruction that we have now crafted is really specific to challenging validity of the claims, I think

that -- or at least 21 was, then I think that it stays where 21 is with the modifications that the Court's proposed.

THE COURT: All right.

Any objection to that, Mr. Chong.

MR. CHONG: Your Honor, the only problem I have is we get into infringement in instruction 12 and we're already talking about claims, but we haven't really explained to them what the independent and dependent claims are, so my concern is that we will be jumping right into infringement without having discussed the claim portion.

THE COURT: What do you think, Mr. Santurri?

MR. SANTURRI: Well, we have the instruction that we worked on just a moment ago that generally defines or explains what claims are.

THE COURT: It does. It talks about independent and dependent claims and what they are.

MR. SANTURRI: When we go through infringement, we talked about --

THE COURT: Well, claims anyway.

MR. SANTURRI: We do have explanation in the infringement section that's currently number 16 that explains what independent and dependent claims are and explains how one goes about determining infringement

related to independent versus dependent claims.

And then, the work that we just did on this one relates to validity. I mean, it could be that we -- what we really need to do is strip out some of the discussion of what an independent and dependent claim is in this later 21 and move it to what is currently claim -- instruction 16 just so that we give them one explanation of what an independent and dependent claim is, and then we talk about here's how you infringe independent versus dependent, and then when get to the validity section. We talk about here's the test for validity of independent and dependent claims.

THE COURT: Okay. Run that by me again. How would you anticipate moving some of this around?

MR. SANTURRI: Well, to the extent that the Court thinks that more explanation of the distinction between independent and dependent claims is necessary, sort of what we worked on in this merged 10 and 21, I would think that that general discussion could go into what's currently jury instruction number 16, because that instruction talks about the two different types of claims, independent and dependent, and then it goes on to explain how to address infringement of independent or dependent claims.

And so to the extent we want to talk about or

explain to the jury what an independent and dependent claim is, it seems like that's where we would do it, maybe move some of the explanation we worked on in the other instruction up into here and then -- but I do think it's helpful to talk about independent and dependent separately in the context of both validity and infringement.

THE COURT: Okay. So let's pull up 16 for a second, which is infringement of dependent claims. This is where you're pointing to, Mr. Santurri?

MR. SANTURRI: Yes, Your Honor.

THE COURT: We could take the independent claim language from instruction 16 and insert the language I had mentioned inserting into 21 there, instead, is what you're suggesting?

MR. SANTURRI: Yes, Your Honor.

THE COURT: And then, the same for dependent.

Insert that language that I was putting into 21 at the end of dependent claim in 16.

MR. SANTURRI: Correct.

THE COURT: Any objection to doing that, Mr. Chong?

MR. CHONG: I do, Your Honor. Because now we're starting to mix in together the infringement based on independent and dependent claims and invalidity based

on independent and dependent claims, and I think it's just going to start getting really confusing at that point.

THE COURT: So, where do you propose the additional language regarding independent and dependent should sit?

MR. CHONG: I'm actually okay with the way you had proposed previously and just leaving it towards the back or leaving it where it currently is at instruction 21.

THE COURT: All right.

MR. CHONG: Because the problem I see is if we mix the two together, the standards are different for invalidity and infringement, depending on what you --

THE COURT: Right.

All right. They are told, obviously, the instructions are read as a whole. And this is a very attentive jury. I mean, I think you all have seen that. They are paying remarkably close attention, but they are going to need to go back and chew on these many times. Whether we add it, the definitions, further or earlier, you're going to have to, in closing, explain to them how this works, because a lot of this is going to go way past everybody, unless you really highlight them.

I'm inclined to leave 21 as I suggested it,

and then you all can argue how it fits in, since they take all of these as a whole and cannot single out or disregard any instruction, it would seem to me that that's the proper way to go.

Mr. Santurri, any objection to leaving it as we've been discussing with 21?

MR. SANTURRI: Your Honor, I do still think that we end up putting more background in the later instruction. But, you know, if the Court's inclined -- you know. So, I think I'll stand on that objection.

THE COURT: Is there any problem with having the additional language on independent and dependent claims that I suggested in 21, is there any problem with me having that in two places, in 16 and 21?

MR. CHONG: No objection, Your Honor.

THE COURT: I'll just give it twice. I try not to make these longer, but that's only a couple of sentences. And if it's going to resolve the issue, it just seems to me we'll just do it twice. By the time we get to 21, they'll probably have forgot what I read in 16 anyway, so we'll say it twice.

Robin, have you followed that?

Okay. Let's turn now, if we can, to 12, infringement generally, page 22 or thereabouts, depending on your copy, but jury instruction 12.

I didn't see any objection to 12.

I do not intend to read them the verdict form since they will have that in the final instruction when they're told how the verdict form works and it's put up on the screen and so forth, is there any objection to me not covering the verdict form at this stage?

MR. CHONG: No, Your Honor.

MR. SANTURRI: No, Your Honor.

THE COURT: All right. The rest of the instruction, as written, will be given unless there's an objection. Any objection?

MR. CHONG: No, Your Honor.

MR. SANTURRI: No, Your Honor.

Your Honor, I noticed that you skipped over 2.1. I know you talked about that before. I'm assuming that's the reason you skipped it.

THE COURT: Oh, I'm sorry. Yes, that's the claims construction one. I assumed that was all right since we read that already.

MR. SANTURRI: All right.

THE COURT: Any objection?

MR. CHONG: No, Your Honor.

THE COURT: All right. So 12, we've moved through now. Now we're at 13, direct knowledge -- infringement. I did not see an objection to that one.

Is there any objection?

MR. CHONG: No, Your Honor.

THE COURT: That will be given.

14 is also Direct Infringement and Literal Infringement. I didn't see an objection. Is there any objection to 14?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: It will be given as well.

15 is inducing. There was an objection by CalAmp including this instruction due to their position that the indirect infringement theory was not disclosed. I've already ruled on that in the judgment as a matter of law, so I'll overrule the objection by CalAmp.

Is there any other objection to 15, other than the one stated in the footnote by defendant?

MR. CHONG: No additional objections, Your Honor.

THE COURT: All right. Then, we'll give 15 with the objection of the defendant.

16 is Infringement of Dependent Claims. The only objection to this instruction was Omega objecting to the use of the language, intermediate dependent claims. I have not seen any evidence or discussion by any expert as to intermediate dependent claims, so I'm

inclined to strike that language. Is there any objection?

MR. CHONG: No, Your Honor.

THE COURT: Mr. Santurri, your silence is taken as consent.

MR. SANTURRI: Yes, Your Honor. Though I'll note, I think this was also the instruction that we had talked about adding the --

THE COURT: Yes, and we will. At the end of the second paragraph, independent claim will have the added language from 21 and dependent claim will have that added language from 21 as well.

MR. SANTURRI: With that, no objection, Your Honor.

THE COURT: 30 is Summary of Invalidity Defenses. Anticipation will be removed pursuant to the objection of Omega and based on my ruling. That language, anticipation, appears in the third paragraph.

No one identified this language, and maybe it's not a problem for you all, and I'll defer to you all on this, but in the first paragraph of Summary of Invalidity Defenses it reads as follows:

CalAmp contends that the asserted claims of the patents in suit are invalid. CalAmp must prove that it is highly probable that each asserted claim is

invalid. Highly probable is language used earlier in the instructions on the definition of clear and convincing evidence. I don't know if you want me to insert, must prove by clear and convincing evidence, that is, highly probable, so they don't think there are two different standards.

MR. SANTURRI: I think the Court's right, that to keep it consistent we should stick with clear and convincing evidence.

THE COURT: So it would say, CalAmp must prove by clear and convincing evidence. Any objection to me including a semicolon and then putting that is, comma, highly probable, comma, so they have the consistency of what clear and convincing means?

MR. SANTURRI: Didn't we already define it for them earlier?

THE COURT: We did. We did define it.

MR. SANTURRI: I don't know that it needs to go in there again.

THE COURT: I don't think that we need to, personally. I'm just asking you all. All right. Any objection to having, CalAmp must prove by clear and convincing evidence that each asserted claim is invalid? That is the standard.

MR. CHONG: Your Honor, could we just add,

CalAmp must prove by a clear and convincing?

THE COURT: How is that grammatically correct if there's more than one claim? Not to be an English geek -- we're going to stick with the language that the Federal Circuit has told me to give, which is by clear and convincing evidence. All right. "CalAmp must prove by clear and convincing evidence that each claim asserted is invalid." Is that fair enough?

MR. CHONG: Yes, Your Honor.

MR. SANTURRI: Yes, Your Honor.

THE COURT: All right. So what we'll read is, as I just stated. We'll take out "highly probable" and use "clear and convincing" instead and remove reference to anticipation. I know there was objection by CalAmp as to whether anticipation was preserved, so you're not waiving your objection. Any other objection to 17 other than those covered? No?

MR. CHONG: No, Your Honor.

THE COURT: All right. It will be given as read. 18, Written Description Requirement. I have not yet seen any testimony that there was an issue with the written description in terms of being a defense, the competency or equality of the written description.

In my motion in limine rulings at docket 122, I covered the issue of undisclosed invalidity theories.

There was the defense of invalidity due to lack of a description, enablement and definiteness under 112. I defined enablement, indefiniteness, and written description. And I granted the motion in limine on enablement and indefiniteness, but I didn't grant it on lack of written description pending how the evidence came out at trial. I have not yet heard testimony.

Now, the case isn't closed. So the reason I'm highlighting this is I don't know if the rest of the direct examination on Mr. Andrews is going to cover this. But assuming it's not, then I would be inclined, obviously, not to give a written description instruction if there is no defense presented. So can you proffer to me whether Mr. Andrews will be covering this?

MR. KAUTH: He will not be.

THE COURT: All right.

So, 18 will not be given. Any objection?

MR. CHONG: No, Your Honor.

THE COURT: We turn now to 19, Prior Art Defined. There was an objection to improper inventorship. I didn't see that in the instruction. And maybe I'm just not getting the point, but when I look at 19, Prior Art Defined, footnote 9, Omega objects to this instruction as CalAmp did not disclose the claim of invalidity based on improper inventorship. I granted

that motion in limine, but I don't see in the definition of prior art any reference to improper inventorship. Am I missing something?

MR. SANTURRI: No. I don't think it's there, Your Honor.

THE COURT: Okay. One thing I thought should probably be added to prior art. If we look at jury instruction 20, the next instruction which also talks about prior art, at the end of the first paragraph there is the language, "However, prior art does not include a publication that describes the inventor's own work and was published less than one year before the date of invention," I would think that should go after the definition of what prior art is.

MR. SANTURRI: Your Honor, I'm not aware of any evidence that would meet that anyways.

THE COURT: I'm not either. I just didn't know if you wanted that.

MR. SANTURRI: From the plaintiff's perspective, we don't.

THE COURT: All right. And so let's turn, then, for a second -- and I'm not moving on, I'm just continuing the discussion here. Let's turn to 20 for a second. There's some duplication here.

The first sentence of 20 is a duplication of

what we just heard in 19, as is the second sentence. The second paragraph of 20 is anticipation, which is out. And if we turn to page -- the following page of instruction 20, we get into the date of the claimed invention.

Help me to understand if this is needed in this case, this language on the second full page of instruction 20 that starts with, "In this case, you must determine the date of the invention for the claimed invention." And then there's a long description consisting of two paragraphs, a page in length of how one determines the date of the invention. I haven't seen how this has come into the case, and I'm interested in knowing if it's necessary. If it's not, then just let me know.

MR. SANTURRI: From a claims perspective, we don't think that there is evidence related to it or any reason to give that part of the instruction.

MR. CHONG: We'd agree, Your Honor.

THE COURT: You agree?

MR. CHONG: Yes.

THE COURT: All right. So what will happen is 19 will be given, but 20 will not be given as duplicative of number 19. Any objection to that?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No objection, Your Honor.

THE COURT: All right. I appreciate it, because my voice is going to be rough enough.

21 is Invalidity of Independent and Dependent Claims. We discussed that with the modifications at independent claim and dependent claim and the of list independent claims. Is there any objection to it being given as modified?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No objection, Your Honor.

Just going back to instruction number 19 for one second.

THE COURT: Okay.

MR. CHONG: I believe at the top it said -- at the very top, it says B.4.3, Validity - The Claims.

THE COURT: Yes.

MR. CHONG: That's a holdover from a different instruction that we had, and that's why the footnote is going to that. I believe that should be -- we should strike that portion.

THE COURT: Right. They won't have any of those titles.

MR. CHONG: All right.

THE COURT: They'll have Instruction 1 through whatever. All the titles are just for us to track what

we're doing, so they get a cleaned-up copy.
MR. CHONG: Yes, Your Honor.
THE COURT: So now we're at 22, which is Person of Ordinary Skill in the Art. I saw no objection. Is there an objection to 22?
MR. SANTURRI: No, Your Honor.
MR. CHONG: No, Your Honor.
THE COURT: All right. It will be given.
23, Printed Publication. I saw this as pertaining to anticipation. If so, then I won't be giving it. Is there any other application for printed publication that I'm missing?
The first paragraph says: Printed Publication. CalAmp contends that the asserted claims of Omega's patents were anticipated because the invention of those claims were described in a printed publication more than one year before the established priority date for the claims.
And if we don't have anticipation, is there any other language from this instruction that's relevant to the case?
MR. SANTURRI: Your Honor, I think that this is really -- this instruction is really more of a def-- further defines --
THE COURT: The date of publication that we've

already agreed is not in play?
MR. SANTURRI: No. It further defines that -- really, it provides explanation for what prior art is, like what was defined in 19. So it's just this basically provides all of the elements that the jury has to decide in order to determine that a printed publication in any of the documents that we've -- that they've put in as evidence meet all the qualifications to qualify as prior art, which was defined in jury instruction 19, basically.
THE COURT: All right. So where would you anticipate the language, other than the word anticipation?
MR. SANTURRI: That was our only objection is that --
THE COURT: I see. So the word "anticipation" should come out, and otherwise it should be given, that the patents were invalid --
MR. SANTURRI: Right.
THE COURT: -- due to obviousness? Would that a better way to state it?
MR. SANTURRI: Yes, Your Honor.
THE COURT: Instead of anticipation -- instead of it saying in the first paragraph: CalAmp contends the asserted claims of Omega's patents were anticipated,

it should read CalAmp contends the asserted claims of Omega's patents were -- are invalid due to obviousness, because the invention in those claims were described in printed publications, instead of "a", more than one year before they established priority dates for the claim.
Is that correct?
MR. SANTURRI: Yes, Your Honor.
MR. CHONG: Your Honor, I would suggest just striking this entire paragraph, because if you substitute the word obvious --
THE COURT: Okay.
MR. CHONG: And then the description is actually a description of anticipation.
THE COURT: I see. Right. So you're saying 23 should start with: A patent claim is invalid if the invention defined in that claim was defined as a printed publication. Shouldn't it say, in printed publications since a publication is anticipation and publications is plural -- is obviousness? [sic]
MR. CHONG: We could do that, but we could also strike that second paragraph as well. And then go from the third paragraph which just describes what a printed publication is.
THE COURT: I tend to think they need that second paragraph to understand why we're talking about

printed publication dates in some format. It's going to be -- you all know the terrain. They don't. So I would tend to think if you don't have some preamble, they're not going to really understand why the dates matter.
MR. SANTURRI: I agree, Your Honor.
THE COURT: So maybe we can strike the first paragraph of 23 and stay with the second one that states: A patent claim is invalid if the invention defined by that claim was described in printed publications more than one year prior to the date, and then the rest.
Mr. Gilchrist, have I confused you?
MR. GILCHRIST: No, sir. You've caused me heartburn, because for obviousness it's not just, hey, I've got these two things and two publications.
THE COURT: I know. There has to be some motive and so forth.
MR. GILCHRIST: Yes, sir.
THE COURT: I don't know that there's another instruction in here that addresses motive.
MR. GILCHRIST: There is. We've got the obviousness instruction.
THE COURT: Okay. Then I think that's where they'll pick up the fact that it's not literally that, but this is only dealing with the date. And I'm talking

about plural, because I'm concerned that they may go back and somebody says, well, you only need one, and that's a problem.

Any objection to adding -- to modifying it as I suggest, knocking out the first paragraph, changing the second to say, printed publications? Or do you want it to say, a publication?

MR. SANTURRI: Your Honor, as an alternative proposal, maybe we do dump the first two paragraphs and start with the third paragraph and basically -- I don't know exactly how this is going to work out yet, but essentially, what I think we're trying to say here is that in order to qualify as prior art, a printed publication --

THE COURT: How about that? In order to qualify as prior art, a printed publication --

MR. SANTURRI: -- must be published more than a year prior to the filing date. And then, everything else that it says in paragraph 3 on.

THE COURT: I think that's a very nice way to go. Just say, in order to qualify as prior art. That way, they know why we're talking about this.

MR. CHONG: Your Honor, the only problem is that's actually not the definition for printed publications as they are used for obviousness. And

every publication doesn't necessarily have to be one year before the filing date of the U.S. application. That only applies for prior art under Section 102(b).

So again, that kind of goes back to why this is an anticipation definition. And I think we're going to be giving them the wrong definition, because they're going to assume that it has to be one year before the application date, which isn't true.

THE COURT: All right. Maybe this will be addressed by looking at obviousness and see if we can just modify obviousness, if we need to. Because I see your point, Mr. Chong, that this instruction was designed to deal with anticipation. The date matters more in anticipation. If we look at 25, not to get too far ahead, we're now dealing with obviousness.

The obviousness instruction seems to be fine. Having just read 25, the obviousness instruction, I am having a hard time understanding why we need the date of the printed publication from 23.

MR. CHONG: Your Honor, I would suggest if we could just from that sentence, the patent claim is invalid if the invention is defined, if we just strike the language at the end that says, more than one year prior to the filing date of the U.S. application --

THE COURT: Okay, I'm sorry. Where are you?

And are we in 25, you're talking about?

MR. CHONG: No. I'm in instruction 23.

THE COURT: Okay. Let's go back to 23.

And one more time, please.

MR. CHONG: And then, the paragraph that starts, a patent claim is invalid if the invention defined by that claim was described in printed publications, and strike the language after that that says, more than one year prior to the filing date of the U.S. application.

THE COURT: And then, the balance of the instruction, you're okay with?

MR. CHONG: Yes.

THE COURT: Is there any objection to proceeding in that manner?

MR. SANTURRI: Have him say that once more.

THE COURT: Sure.

MR. SANTURRI: Because I feel like we went back to the instruction we talked about before where all we're saying, for purposes of obviousness, is you have to be able to find it in a publication somewhere without regard to combining them.

THE COURT: Right. Right.

And I had moved up to 25 obviousness, and commented it looked like it was fine. There was no

objection. Then, Mr. Chong suggested going back to 23, that he was all right with 23 being read if we take out the first paragraph of 23, and if we end the second paragraph at the word "publications," and then read the balance.

MR. SANTURRI: I know he's okay with it, because it sounds like it makes obviousness a lot easier than it really is.

THE COURT: Okay.

MR. SANTURRI: So, I think that was the problem that we had mentioned before is that it's not enough just that you can grab a couple pieces of prior art and find it. You've got to have a reason to combine. So --

THE COURT: Right, which is going to come up in the obviousness instruction when we talk about motive. So is 23 necessary at all for obviousness, the priority date?

MR. KAUTS: I think we already said to define a printed publication. I think we may have a suggestion that was close to one that Mr. Santurri mentioned earlier. If we struck the first two paragraphs and just inserted in front of the paragraph beginning, a printed publication to qualify as prior art, comma, and we don't discuss that it's invalid or anything here. It's just

defining what a printed publication is.

THE COURT: All right. Any objection to that?

MR. SANTURRI: I think that works, Your Honor.

THE COURT: All right. So just so we're all on the same page here. 23 would now start at the third paragraph with the first words being, "In order to qualify as priority, a printed publication must have been maintained in some tangible form...," et cetera, through the balance of that instruction.

Is that correct?

MR. CHONG: Yes, Your Honor.

THE COURT: Mr. Santurri?

MR. SANTURRI: Yes, Your Honor, that's fine.

THE COURT: Okay.

We'll give 23 with that modification.

All right. 24 was Anticipation, so that's no longer needed. The objection is preserved.

25 is Obviousness.

No objection to that, I assume?

MR. CHONG: That's correct, Your Honor.

MR. SANTURRI: No objection.

THE COURT: All right. So that will be given.

26 is the Scope and Content of Prior Art.

The first sentence is a problem, because the first sentence of 26 states: The prior art that you

considered previously for anticipation purposes is also prior art for obviousness. So I think we just take that sentence out.

MR. SANTURRI: Correct, Your Honor.

THE COURT: And then the rest of it, is there any objection?

MR. CHONG: No objection, Your Honor.

THE COURT: 27, The Second Factor. I didn't see any objection. So if there's no objection, that will be given. Is that fine, 27?

MR. SANTURRI: Yes.

MR. CHONG: Yes, Your Honor.

THE COURT: 28 is The Third Factor: Level of Ordinary Skill. Is there any objection?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: 29 is The Fourth Factor.

Is there any objection?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: 30 is Equitable Estoppel.

That's no longer in the case.

Any objection to me excluding that?

MR. CHONG: No, Your Honor.

THE COURT: Other than those previously stated

by defense. Unclean Hands, the same. So that will not be given as well.

Damages, 32, I saw no objection.

Any objection to 32?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: All right.

33 is Date Damages Begin. There's been no objection stated. Is there any objection at this time?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: 34 is Reasonable Royalty. No objection stated. Is there any objection now?

MR. SANTURRI: No.

MR. CHONG: No, Your Honor.

THE COURT: 35, Hypothetical Negotiation.

Is there any objection to that instruction?

MR. SANTURRI: No, Your Honor.

THE COURT: Mr. Chong?

MR. CHONG: No, Your Honor.

THE COURT: 36 is the various factors that the jury considers in the hypothetical negotiation.

Is there any objection to that?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: All right. It will be given.

Reasonable Royalty - Multiple Patents.

That's jury instruction number 37.

Here is a dilemma. Mr. McAlexander testified that the -- pardon me, not Mr. McAlexander, but the forensic accountant, whose name escapes me at the moment -- testified that the royalty would be the same regardless of what infringement -- that is, of one patent or all, and this instruction speaks about multiple patents and the reasonable royalty.

MR. SANTURRI: Your Honor, we're okay with dropping this. This was in the context when we had two different -- we had both tracker and data bus patents, and there were two different types of royalties that could have been triggered. I think that with just data bus and just one royalty rate presented by Omega, I don't think we need this.

THE COURT: All right. Any objection to removing 37?

MR. CHONG: No, Your Honor.

THE COURT: 37 will not be given.

38 is the timing of the reasonable royalty.

Is there any objection to 38?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: It will be given.

39 is the Use of Comparable License Agreements. Any objection to 39?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: It will be given.

40 is Willful Infringement - Generally.

Any objection to 40?

MR. SANTURRI: No, Your Honor.

MR. CHONG: Your Honor, I think the first paragraph should substitute in where it says, the defendant, we should put in CalAmp Corp.

THE COURT: Yes, of course.

MR. CHONG: Of course.

THE COURT: Yes, thank you.

Yes, it will say CalAmp. Yeah, I don't like to use defendant or plaintiff in these things.

MR. CHONG: And also in that first sentence there is -- the first sentence, second line, "...either literally or under the doctrine of equivalents...," I believe the doctrine of equivalents is no longer used in this case. That should be taken out as well.

THE COURT: All right. Any objection to that?

MR. SANTURRI: No, Your Honor.

THE COURT: So it will say -- just take out,

"...either literally or under the doctrine of equivalents."

MR. CHONG: Yes, Your Honor.

MR. SANTURRI: Yes, Your Honor.

THE COURT: So that will be stricken.

Any objection with those modifications?

MR. SANTURRI: No, Your Honor. I see one more instance of Defendant and one of Patentee. But everything in brackets will basically be Omega or CalAmp.

THE COURT: Yes. I saw that as well. The third line down it says Defendant as well.

All right. Very good.

Let's turn now to 41, Duty to Deliberate.

No objection, I assume?

MR. CHONG: No objection, Your Honor.

THE COURT: 42 is the verdict form, which I will explain to them, and we'll turn to next.

Any objection to that?

MR. SANTURRI: No, Your Honor.

MR. CHONG: No, Your Honor.

THE COURT: All right. Very good. We're doing good on time, too.

I have the two verdict forms in front of me. I'm assuming -- and I've lost track of whose is whose,

but I'm assuming the one that has the cover sheet proposed is defendant's, and the one that starts with the blocks is plaintiff's.

Is this correct? This is defendant?

LAW CLERK: That's correct.

THE COURT: All right. So I will refer to them as defendant's and plaintiff's.

Let's start with the first page of defendant's verdict form. The first page of defendant's verdict form is a reference to infringement. Do you find Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the Plaintiff's asserted patents? No or yes. I don't know if we need for defendant CalAmp or for Omega. It's a yes or no question. If your answer is no, proceed to question 2. If your answer is yes, then complete below.

CalAmp's verdict form, then, has for each patent each claim and each accused device, the 3000, 3030, 3050, VPOD and VPOD2, and they work through sequentially. That strikes me as the appropriate way to go since you will know exactly what the jury has found as to each accused device. Is there any objection to having the interrogatory format that CalAmp is suggesting.

(Pause in proceedings.)

MR. SANTURRI: Yes, Your Honor, 'cause I think that all of the testimony that we've gotten in the whole case is that all the products work the same, and so this seems like it creates a lot of additional work for the jury.

THE COURT: I see what you're saying, that the testimony has been that the 3000, the 3050 and 3030 and essentially saying that the VPOD and VPOD2 are an instrumental part of the overall component.

MR. SANTURRI: Right. And they all work the same way, and they all have the same functions.

THE COURT: Right. And the VPOD may not infringe by itself. It may be when used in conjunction.

MR. SANTURRI: It can only infringe with another CalAmp device, so we don't see any way that you could get to infringement of one without all.

THE COURT: Yeah. That's a good point.

All right. I'd like to hear your thoughts, Mr. Chong.

MR. CHONG: Your Honor, they are individually separate devices. Evidence has come out as separate devices. Even though there is some overlap, even for damages, the sales figures, they're all separated into these categories.

And Omega's own evidence actually shows that the evidence proven to each of these devices is different. Their own chart that they provided the X's and check marks on for some of the claims, some of the devices don't have check marks on them. So if we start collapsing these devices into just one device or a yes or no, I think we're going to have some serious issues.

THE COURT: Right.

Well, I think Mr. Chong's correct on this one. I think you can clarify this in your closing by telling the jury that our review of the evidence is that these are all components. I don't need to tell you your argument. You've made them throughout the case. But then, the jury, I mean they're smart enough to be able to say, check, check, check, check, if they want to or they can follow Mr. Chong's argument or Mr. Kauth's argument that some of these devices are not infringed or the evidence is somewhat different.

The concern that I have is that if we have a general verdict form, you may have problems later on in sorting out what did they agree to. And if the Federal Circuit concurs with the defense view of the theory of the case, then you're going to have a verdict that doesn't do you a whole lot of good, assuming you prevail.

MR. SANTURRI: Very good, Your Honor.

THE COURT: All right. So we'll give the defendant's version of infringement for the various patents in suit.

What I will do is when the verdict goes back to the jury for a couple of the pages, if it's long, for example, in the '876 patent when you go to the second page of th verdict form, it doesn't have that header again so we'll insert the header so they don't have to flip back and forth and get confused.

And for the '885, the same thing, we'll insert the header on the second page.

'727 is fine, because it's short.

But '278, the same thing. On the second page of the list of claims, we will insert the header so they'll know which device they're checking the block to so they don't have any confusion as to where they're going. Is that something you can do, Robin?

LAW CLERK: Yes.

THE COURT: Okay. Then, let's turn to plaintiff's verdict form now.

The second question on plaintiff's verdict form is: Which of the following factors that tend to indicate non-obviousness, if any, has been established by the evidence with respect to the claimed invention?

Check any that apply.

All right. I understand why these factors are important in the obviousness defense. Help me understand, Mr. Santurri, why it goes here as opposed to somewhere else. I mean, if this is the proper place, then so be it, but it seems like we're going to get to invalidity later.

MR. SANTURRI: I don't think it's necessary. I do believe these are necessary, but I don't believe they're necessary here, and it may make sense to do it after obviousness.

THE COURT: All right. Okay. So let's put a pin in that for a second. That will go after obviousness.

The third question for plaintiff is: Has Defendant proved by clear and convincing evidence that any of the patents are invalid? That seems to be the next logical question.

The first question is infringement, the general yes or no. If yes, then which ones.

The second question should be, are any invalid. If the answer is yes, then we turn to which ones are invalid.

I think when we talk about invalidity, I'm having some difficulty with the notion that the jury has

to track the combination of prior art.

There's only four pieces. They can -- it's not like they're being given 50, and they have to the sort out the combination. So it would seem to me that the defendant's version of validity or invalidity is the better one where you have Claim 1, yes/no; Claim 2 yes/no, or however, as opposed to write down if it's Spaur and the J1978 or something else.

I think we're getting into too detailed of an inquiry into how they got here. Because they're going to have instructions and they're going to have argument from you all, and that's combined, and the motive and all the other things, and they have only four references they're talking about. So, it's going to be a yes or a no for them. So, I'd like to hear your thoughts on that, whoever would like to go.

MR. CHONG: Your Honor, we would agree with the Court's assessment. We don't find that to be a necessary finding. And it's just going to create a lot of confusion for the jury.

MR. SANTURRI: Your Honor, I think the Federal Circuit wants to know what art they used. And the defendants went through a chart yesterday, just like we've done and identified each of the combinations necessary. If they don't use references that actually

include all of the elements, then the jury hasn't gotten it right and it would be incorrect as a matter of law. So I think we have to know how they got to that conclusion.

THE COURT: All right.

You have not offered that chart yet, but I'm assuming you were going to, because I know you were looking at the clock last night. It was getting late. And one of the notes to myself is to make sure you're going to offer that, so I expect you're going to.

MR. KAUTH: That's correct, Your Honor.

THE COURT: I'm going to be consistent here. To the extent that the infringement requires specific findings, then invalidity will require specific findings as well. And you can put your chart up. It will go back there. And they can follow it just like they're going to have to follow it for the plaintiff's. So we will use plaintiff's question number 4, which will now be question number 3.

MR. CHONG: Your Honor, if I may be heard on that?

THE COURT: Of course.

MR. CHONG: For the plaintiff's chart, we're not asking them to identify if each element is -- we're not requesting them to identify that each element has

been met. All we're asking them is that each product has been infringed.

THE COURT: Per claim.

MR. CHONG: Per claim.

THE COURT: Per claim.

MR. CHONG: The problem with this chart is it's actually going into more detail. I mean, we're okay going per claim and per patent, but this is actually asking them for more detail than we're asking them for, for the infringement section.

THE COURT: But how does the Federal Circuit figure out if they're reviewing this case what the invalidity finding was by the jury if they have no idea what they combined? Because the argument on appeal may be lack of motivation to combine the particular pieces that he found that invalidated the '876 patent. Well, if they don't know which pieces the jury considered, how will they know where in the record to marry those up? And that's an appellate nightmare.

MR. CHONG: Your Honor, I understand that argument, but on appeal that would be for the appellate attorneys to point to the record. I don't think it's necessary to be on a verdict form.

THE COURT: I'm sorry to interrupt you. I've handled a lot of appeals in my life. And I can tell you

right now, that's a very difficult way to proceed. I'm going to require that they identify the pieces of prior art.

You have the chart. You will be explaining to them when the verdict form goes up. I'm going to give you all as much time as you want in closing. Do not feel rushed. If we roll over into tomorrow, so be it. But, to me, closing is very important. It's important in this case. You will tell me how much time you will need. And if you are wrapping up your closing and you are not quite done, finish. I want you to be able to use the tools you have. But that gives you the duty now to explain to them what your job -- they're going to need your help. So, question 3 will be as presented by plaintiff.

So, question 1 will be infringement from defendant's verdict form. Question 2 will be clear and convincing from plaintiff's verdict form. 3 will be the invalidity from plaintiff's form. Question 4 should now probably be the factors of non-obviousness.

Is that right?

MR. SANTURRI: Yes, Your Honor.

THE COURT: Okay.

Question 5, now we'll turn to damages.

MR. CHONG: Your Honor, the defense would

object to adding the factors of non-obviousness.

THE COURT: Okay. And on what basis?

MR. CHONG: The basis being that they're not actually findings that are necessary for the jurors to -- they're merely factors for them to determine if there is non-obviousness. They're not findings for the jurors. And as it's implicated in this version, it's not clear that they are, indeed, factors and not elements.

THE COURT: All right.

MR. CHONG: And the main issue I have is that this mirrors jury instruction 29.

THE COURT: All right. I get your point. You're correct.

MR. CHONG: Except it's paraphrasing too much.

THE COURT: No, you're correct. They're not factors. They're not an element of the proof or the defense. It's part of the instructions. Just like I would say was a party negligent. I don't ask them to break down duty, breach, causation, and so on. Those are all instructions that they can get --

MR. CHONG: Yes, Your Honor.

THE COURT: All right. I agree. I note there is an objection to it, but I don't think the non-obviousness findings needs to be interrogatory

verdict form.

MR. SANTURRI: There is objection from our perspective, because I think the jury is -- I think you have to consider it, and I think if nothing else it provides an advisory finding for the Court, because ultimately obviousness is a legal conclusion. You have to know where the jury went, and if they found these factors as part of that analysis.

THE COURT: Now, let's assume that I agree with your view. How do we explain to them that's not an element so they don't get turned around? It's a factor. It's a weight issue. Just like in willfulness, there's a weight issue as to the high probability and is it reasonable to rely upon the defenses, and then I determine reasonableness after the fact if it's a mixed question of law and fact. How do I articulate to them that they're not getting turned around on what the relevance is of these questions?

MR. SANTURRI: I don't know if they need an explanation just because of this, especially the way that we have reworded it. At the point that they get to these questions, they've already resolved the question of invalidity, and this is provide an advisory opinion to the Court on the factors that they believe are present.

So this is not like a pre-- in the order that we have now set it up, this is not some sort of prerequisite to get in obviousness. This is just a -- we've already found that they're either obvious or they're not, and here's our advisory opinion on these factors.

THE COURT: I see what you're -- they've already said it's invalid, for example, because it's obvious. Check the block. Here is the art. And now they're indicating what they considered for obviousness, so that I can know what their thought process was.

MR. SANTURRI: Right, Your Honor.

THE COURT: I can explain that to them when I read the charge -- when I explain the verdict form, that you determine invalidity here, and these factors are addressed only if you find any of the patents are invalid.

MR. SANTURRI: Well -- I don't --

THE COURT: They need to understand why they have to answer these questions.

MR. SANTURRI: All right. I think the way the Court has proposed it is okay.

MR. CHONG: Your Honor, I would point the Court, again, to jury instruction number 29 that specifically describes what these factors are. And it

actually even goes into the nexus that's required in order for these to be found. Just having a checklist for the -- I think takes away from --

THE COURT: I agree with you, Mr. Chong, that 29 covers this. But the point that I missed when we were having our discussion is that ultimately obviousness falls upon review. And how do I know what they considered, the reasonableness of their decision, if I don't know what they checked off?

Because I may conclude that they didn't consider things that were obvious from the evidence, or who knows what. I don't want to get into hypotheticals, but it doesn't affect the invalidity which has already been determined. I'd have more of a problem if the non-obviousness questions came before invalidity, because that could confuse them. But after, it's simply there to guide me, and we'll be talking about that in the willfulness section in just a moment.

MR. CHONG: And, Your Honor --

THE COURT: Go ahead.

MR. CHONG: The list also paraphrases what's in instruction 29.

THE COURT: Well, we want the exact language from 29.

MR. CHONG: If we're going to provide it, I

think it should be the language that's actually in instruction 29.

THE COURT: Right. And direct me to the language in 29. I want to make sure I don't hand you the verdict form later, and you think I've misstated it. But I agree with you, it shouldn't be paraphrased.

MR. SANTURRI: I believe it's numbers 1 through 7, Your Honor.

THE COURT: All right, 1 through 7. So, question 4 will be non-obviousness factors 1 through 7.

MR. CHONG: Your Honor, we would request the portion of instruction 29 that speaks to nexus, which is also -- which is a requirement before they can find these factors also be -- because we would --

THE COURT: How do you envision it looking?

Just tell me that. I understand your point.

How do you envision it looking?

If this question number 4 is on the factors, currently question number 4 in plaintiff's verdict form says: Which of the following factors tend to indicate non-obviousness, if any, has been established by the evidence with respect to the claimed invention? Check the one that applies. And now, instead of being paraphrased, we'll have the seven factors.

MR. CHONG: In instruction 29, there's a

sentence at the bottom paragraph that starts answering -- if you go to the third sentence, it says, "These factors are relevant only if there is a connection, or nexus, between the factor and the invention covered by the patent claims." I believe that should be included.

THE COURT: Okay.

MR. SANTURRI: Your Honor, if I could address --

THE COURT: Yes, go ahead.

MR. SANTURRI: Number one, you said earlier you would only get to these if they found --

THE COURT: Invalidity.

MR. SANTURRI: I don't think that's correct. I think for purposes of appeal, whether they're found invalid or not, both sides are going to be able to look at these.

THE COURT: Good point.

MR. SANTURRI: Secondly --

THE COURT: I'm going to stay away from explaining the verdict form other than here is where you check.

MR. SANTURRI: And I don't understand why we're inserting these portions of the instructions into the verdict form about nexus. I mean, we don't go back and reiterate portions of the instructions about --

THE COURT: I agree. I agree.

MR. SANTURRI: I mean, they have -- I mean we actually provide them an instruction --

THE COURT: You're already winning that argument. You might want to stop.

So on this particular question, here's how I'm going to go. We need to put this to rest. I understand the points from the various sides.

In question number 4, non-obviousness, we'll have the preamble the plaintiff suggests and the 7 factors verbatim. The rest of the nexus language contained in the instruction can be identified when you're going through the verdict form in your closing argument, that you only get here if there's a nexus, see instruction 29. They'll get that.

Let's talk about question number 5, which will be damages. Defendant suggests in their question 6 the damages as to each patent with a date for the commencement of each patent. Plaintiff just has a generic fill-in-the-blank amount.

If the reasonable royalty, assuming there is infringement, can be based on one or more patents -- well, don't we need a date of commencement somewhere so we can calculate the damages? Anybody think we need a date of commencement?

MR. CHONG: We do, Your Honor.

THE COURT: Or do you think the instructions cover that, and that's just based on their math?

MR. CHONG: Defendant's Section A, we have for each patent the date that the damages should commence. Oh, you mean to figure out the --

THE COURT: Right. To use an analogy, if it was a medical malpractice case, for example, you would have past economic damages, future, pain and suffering. All of these components would be broken out so you would know how they got to the total number.

Defendant suggests a commencement date for each patent, assuming they're different, so they can identify how they got to the reasonable royalty they got to, assuming there's a plaintiff's verdict.

Tell me, Mr. Santurri, why there shouldn't be a date of commencement so that we can understand how they got their math, and it may be in your expert summary chart already.

MR. SANTURRI: Because the -- all of these products were -- they began infringement after they had notice on a number of these patents. So I don't understand how you -- how they're going to figure it out, and I don't think it's necessary for them to figure it out in order to determine damages. I mean, you're

going have them go through the record and try to figure out -- well, I don't know how they go about doing --

THE COURT: Well, when they look at your forensic auditor accountant, he had, as I recall, a summary chart he prepared with a number of units sold and the price of royalty per unit with a total and then a multiplier, for lack of a better term, based on some other factors.

MR. SANTURRI: He did, but it wasn't broken out by patent, because the infringement started with respect to all of the patents at the same time.

THE COURT: My question's a little bit different, and I just didn't say it very clearly. Is it necessary for the jury to determine whether or not the royalty per unit applies if they determine a commencement date, if they know which number of units apply or does that matter?

MR. SANTURRI: I don't think it matters, no, Your Honor.

THE COURT: Why not?

I mean, if I want to know what my past medicals are, I have to have a date of injury, forward, just to use a simple case. I can't give you lost earnings for the day before I injured you. I have to give you as of the date of. I mean, in a negligence

case you wouldn't give the date, because it's not in dispute. The accident date would be obvious. But here, there may be a continuum of infringement or maybe not.

MR. SANTURRI: I don't think that there is. I think we have a start date, and that's what their expert sets out. Here's when the sales began. That's when the product started selling. That's where your numbers are. And I don't think -- the jury hasn't been provided evidence on damages specific to each patent.

THE COURT: All right. Okay.

Let me turn now back to Mr. Chong. Why is a commencement date necessary if an infringement of one is as good as an infringement of all? And if, additionally, the concept is that the date of sale is the start date, and that's not in dispute?

MR. CHONG: Your Honor, I would draw the Court's attention to instruction 33. It is Omega's -- it's their burden to prove what the start date is in order for us to calculate damages. And the evidence has been -- I mean, it's -- the evidence -- even their own expert is suggesting different dates. And there's no way for us to know -- if the jurors come back with just a number, there's no way for us to know if that's a valid number, if we don't know how they got to that number.

THE COURT: Mr. Santurri, what's your response that there's some disagreement in the evidence as to the start date for infringement on the various patents --

MR. SANTURRI: I don't --

THE COURT: -- in light of instruction 33 where there has to be a start date identified by the jury?

MR. SANTURRI: I don't think that there is, because I think the patents issued before infringement began. And therefore, once infringement began, if we establish notice, then, I mean, that's all you need. I mean, there was undisputed evidence that CalAmp had these patents before infringement began. They asked us about it, chose not to take a license, so I don't see -- that's why the damages aren't really broken up that way through the expert testimony, and I don't think that the jury can sort it out.

THE COURT: All right. I agree.

I'm going to give the damages question as a generic, here is the damages amount. They're going to determine, as they do in many cases, based on the instructions as a whole, whether or not the plaintiff has established a start date, what the number is, and they'll come up with their calculation.

MR. KAUTH: Can I give one example, Your

Honor? I believe with respect to the '278 patent there has been evidence that notice wasn't provided until July 2013. And so, if there were a finding of infringement on that and not on -- it would not be the earliest date that was in Mr. Tregillis's chart, but would actually lag a year and a half, I believe, until we get to that date.

THE COURT: And is the expert on damages, is his report broken to '278 sold X number of units or does it not work that way?

MR. KAUTH: It states by number of units.

So if the jury were to find only infringement of the '278, they could at least go to the date column and start it on the right date versus throwing in an extra year and a half of damages.

THE COURT: In light of instruction 33, why can't that be addressed in closing to the jury that, for example, ladies and gentlemen, if you found that '278 is the only infringement, we contend that the commencement date of infringement was this, you would have to look at the chart and come up with an amount. We don't typically get behind the scenes of the jury's deliberative process in this great a detail. In other cases, we can already break it down.

For example, pain and suffering, we don't

break it down into is it mental anguish, loss of consortium, et cetera, et cetera. It's, here is that number for that element of harm. However you got there is how you got there.

MR. KAUTH: To me, this seems like a much more high level and important detail than things such as breaking down which factors for obviousness and that. So, for us, we think it is important that we see where do they actually think notice was given and damages began.

THE COURT: All right. All right. I appreciate the objection. I'm going to overrule the objection and give the damages question as set forth in question 5 of plaintiff's verdict form.

The next question is willfulness. Defendant suggests a two-step question for -- let me -- before I do that, let me not move on. Defendant also suggested with damages royalty as a percentage of sale for total royalty damages. The only thing I heard is royalty rate based on comparable settlements, not as a percentage of sale. I've seen no forensic evidence that defendant addressed as a percentage of sale. So I don't know how they can answer that question based on the state of the evidence. Any disagreement?

MR. SANTURRI: I agree, Your Honor.

THE COURT: Correct?
MR. CHONG: That's fine, Your Honor.
THE COURT: All right. So we'll keep damages, appreciating the objection as I suggested.
And on willfulness, defendant in section 2 of their verdict form has willfulness as a two-part question. A: Has Omega proven by clear and convincing evidence that CalAmp acted despite a high likelihood that CalAmp's actions infringed a valid and enforceable patent. I'm going to take out the language reckless, because that's inherent in the instruction.
And B: Has CalAmp proved by clear and convincing evidence that they knew or should have known that they -- that the actions constitute an unjustifiably high risk of infringement.
This strikes me as the non-obviousness factors analysis on the other side where if I'm going to ultimately determine reasonableness, I'd kind of like to know what they're thinking. It's only two questions. One goes to the high likelihood and the other was, was it justified.
The justified question becomes reviewed by me later. And I would, similar to looking at the non-obviousness factors for obviousness, I'd like to be able to look at what they thought in terms of this

two-part question. It is a two-part test, and there are different elements. You could have yes to one and no to the other and, therefore, it's not willful.
Any objection to having willfulness read the way the defendant suggested with the removal of the language reckless?
MR. SANTURRI: I think that we should probably mirror what's in the jury instruction, kind of like what we did with the obviousness factors.
THE COURT: All right. Point me to that instruction.
MR. SANTURRI: Instruction 40, number 1 and 2.
THE COURT: All right. We'll use verbatim from instruction 40, number 1 and 2, just to be consistent with the language. And the rest will be signed and dated by the foreperson, et ceters, on the given date.
All right. That's how the verdict form will look. All objections have been raised and preserved. Let's take a couple of minutes. The jury is supposed to be coming in right now.
Would you let them know we've just finished with our conference. We're just going to take a comfort break, and we'll bring them in.
COURT SECURITY OFFICER: Thank you.

THE COURT: All right. Thank you, ladies and gentlemen.
(Recess from 9:32 a.m. to 9:41 a.m.)
COURT SECURITY OFFICER: All rise. The Honorable Court is back in session. Please be seated.
THE COURT: Mel, can you get the jury, please.
(Jury present.)
The record should reflect the jury has returned, and the parties are present.
Good morning, ladies and gentlemen.
THE JURY: Good morning.
THE COURT: I hope you had a good evening and you are ready to get started again. I need to ask my question, if anyone has discussed the case amongst themselves or with anyone else or conducted any research. If you have, please let me know. There are no further responses. Ready to go. Does anyone need an additional legal pad or any additional supplies?
We're all set? Very good.
We have Mr. Andrews in the witness box, and we will continue with his direct examination.
DIRECT EXAMINATION OF ERIC ANDREWS (Continued.)
BY MR. KAUTH:
Q Good morning, Mr. Andrews.
A Good morning.

Q We spoke yesterday about a variety of prior art, and we touched a little bit that you had prepared two reports in this case; is that correct?
A Yes, I did.
Q When you prepared your report regarding invalidity of the patents in suit, did you address different factors to show obviousness of the patents?
A Yes, I did.
Q And were you aware of any commercial success of Omega that had a strong showing of commercial success attributable to the merits of the claimed invention of the patents in suit?
MR. GILCHRIST: Objection, Your Honor. It's leading. I think it's beyond the scope of his report.
THE COURT: All right.
Was this addressed in the report?
MR. KAUTH: There is a section where he addresses the factors he considered, and I wanted to make sure I used the proper language for the factor.
THE COURT: All right. Let's turn to the -- let's have the witness have the ability to look at his report, direct him to the section. And if the issue was covered in the report, then he may testify regarding it.
BY MR. KAUTH:
Q Can you turn to the section on obviousness in your

invalidity report, please.
THE COURT: And for my benefit, which exhibit is this again, please?
THE WITNESS: 38.
THE COURT: Thank you.
A I have it.
BY MR. KAUTH:
Q And do you see the section in your report where you describe the factors you consider in an obviousness determination?
A Yes, there is. I do.
Q Could you read those factors to me?
MR. GILCHRIST: Your Honor, may I have the page?
THE WITNESS: Oh, I'm sorry, page 18.
MR. KAUTH: I'm sorry.
MR. GILCHRIST: Thank you.
A I have been also advised that the following factual inquiries should be considered: The scope and claim of the prior art, the differences between the prior art, and the claims at issue, the level of ordinary skill in the art, and objective evidence of non-obviousness such as a strong showing of commercial success that has been attributed to the merits of the claimed invention; copying by others; failure of others to achieve that

which is claimed: a long-standing but unmet need for the invention; or unexpected results.
BY MR. KAUTH:
Q If you could go back to the first factor you read about the prior art?
A Scope and content.
Q Did you look into the scope and content of the prior art around the vehicle data bus?
A Yes, I did.
Q And is that how you came up with the combinations you talked about yesterday?
A Correct.
Q Let's go to the second factor you read.
A The differences between the prior art and the claims at issue.
Q Yesterday, we went through some claim charts. And did you identify that the prior art had the same elements as the claimed inventions?
A Yes, I did.
Q So for the particular combinations we talked about, you didn't find any differences?
A Not at all.
Q Let's go to the third factor.
A The level of ordinary skill in the art.
Q Did you address the level of -- the level of

ordinary skill in the art in your report?
A Yes, I did.
Q Could you tell us what page that's on?
A That would be page 17, Section 6.1.
Q And can you read how you described a person of ordinary skill in the art?
A The relevant field for purposes of construing the claims of this patent in this lawsuit is the vehicle telematics industry. A person of ordinary skill in the art in this field would have at least an undergraduate degree in electrical engineering, automotive engineering or an equivalent engineering discipline, and several years' experience in designing, manufacturing, installing and/or working on vehicle telematics system. Alternatively, additional years of practical experience may replace the engineering degree, or completion of post-graduate engineering studies may reduce the years of practical experience necessary.
Q And you have an undergraduate degree in engineering, correct?
A Yes, I do.
Q And do you have several years experience in designing, manufacturing, installing or working on vehicle telematics systems?
A Yes, I do.

Q So do you consider yourself to be a person of ordinary skill in the art?
A Yes, I do.
Q Let's jump back to the fourth factor you mentioned before, and we'll just address it each subpart at a time.
A Okay. Objective evidence of non-obviousness such as a strong of commercial success that is attributed to the merits of the claimed invention.
Q Were you aware of any commercial success attributable to the merits of the invention in this case?
A No, I was not.
Q And what's the next factor?
A Copying by others.
Q Were you aware of any copying by CalAmp?
A No, I was not.
Q Were you aware of any products made by Omega that CalAmp could have copied?
A No.
Q All right. What's the next factor?
A Failure of others to achieve what is claimed.
Q Tell me what you understand that to mean.
A Failure of others to achieve what is claimed is essentially there are no products that were described as Mr. Flick's patents described them.
Q And, in your opinion, were you able to find products

that, in fact, were described in the Flick patents?
A Both in prior art and in production.
Q What's the next factor?
A A longstanding but unmet need for the invention.
Q And did you find any evidence of a longstanding but unmet need for the invention?
A I think the needs were already met by the products that are in the field.
Q All right. And is there one more factor?
A Unexpected results.
Q And based on your knowledge of the vehicle data bus, do the patents in this lawsuit teach any results that you wouldn't expect?
A None at all.
Q We talked yesterday about SAE J1978, the OBD-II diagnostic scan tool standard. And does that standard set forth steps for performing bus discovery?
A Yes, it does.
Q And that came out in I believe you said first in 1992; is that correct?
A Yes.
Q And the version you were looking at was from 1994?
A Yes.
Q And from 1992 and 1994, were you in the automotive industry?

A Yes, I was.
Q We also talked a little bit yesterday about claim construction that the Court had provided. Did you use the Court's claim construction in your opinion?
A Yes, I did.
Q And for terms that the Court had not provided a claim construction on, how did you determine the meaning of those terms?
A Well, since I was in the industry at the time, it was plain meaning, you know, common terms.
Q So plain meaning to you or a person of ordinary skill in the art?
A Correct.
Q When we talked about whether the CalAmp devices infringed, I know you said that they didn't perform a control function; is that right?
A Correct.
Q And your interpretation -- what was your interpretation the control function required?
A Control function is actually controlling something and the result being a physical change in the system.
Q And I believe you also found that the CalAmp devices didn't infringe the '876 patent, because they didn't have command signals; is that right?
A Correct.

Q And what was the requirement for something to be a command signal?
A By the Court definition, signals operated on a data communication bus for operating a vehicle device. And none of the CalAmp devices were operating a vehicle device.
Q You understand that in this litigation Omega contends that the bus discovery procedure performed by the CalAmp devices satisfies the command signal limitation?
A Yes.
Q And do you understand that they contend that same bus discovery procedure performed by the CalAmp devices also satisfies the control function limitation required of a controller?
A I do understand that.
Q And do you agree with that?
A No, I don't.
Q For purposes of your invalidity analysis, did you use the constructions Omega has put forward at all?
A Yes, I did.
Q And is that where you were combining things were J1978?
A Yes.
Q Is that -- well, in your claim charts that we went

through yesterday, there were certain elements where you said J1978 satisfied the element?
A Correct.
Q And are those the same elements that Omega is claiming the bus discovery procedure in the CalAmp devices satisfies the element?
A Correct.
Q All right. I'm going to step back to the projector and --
A No Sharpie.
Q Do you recall yesterday going over this chart with me called Summary of Invalidity?
A Yes, I do.
Q And you will see that in a rush to end at the 5:00 deadline yesterday, it looks like we missed a square; is that correct?
A Correct.
Q So do you recall on the combination you made of Bambini and J1978, did it have all of the elements for Claim 1?
A Yes, it did.
Q So it had the transmitter and receiver?
A Yes.
Q The multi-vehicle compatible controller?
A Correct.

Q So I can go ahead and put the X up here?
A Yes.
Q So it's your opinion, then, for the '876 patent it's rendered obvious by the combination of Braitberg and SAE J1978 or Bambini and J1978?
A Yes.
Q That's true for Claim 1, Claim 3, Claim 4: is that correct?
A Yes.
Q Claim 5?
A Yes.
Q Claim 12?
A Correct.
Q Claim 14?
A Yes.
Q Claim 16?
A Yes.
Q And do you recall we did that for all of the other patents, correct?
A Yes.
Q So for the '885 patent, it's your opinion that a combination of Braitberg and J1978 were the combination of the MobileWeb and J1978 renders each of the asserted claims of the '885 patent obvious?
A Yes.

Q And just to confirm on the '727 patent, your combination of Spaur and J1979 or the Mobile-Trak publication in J1979 renders all the asserted claims of the '727 patent obvious?
A Yes.
Q And with respect to the '278 patent, the combination of Bambini and J1978 or Spaur and J1978 renders each of the asserted claims of the '278 patent obvious?
A Yes.
MR. KAUTH: Your Honor, I'd move to admit this demonstrative as Defendant's Exhibit 80.
THE COURT: Any objection?
MR. GILCHRIST: No objection, Your Honor.
THE COURT: It will be admitted.
BY MR. KAUTH:
Q Let's turn our focus to non-infringement. We talked about this yesterday, but we never summarized your findings. With respect to the '876 patent, do you find that any of the CalAmp devices infringe the '876 patent?
A No, it did not.
Q So that's the LMU-3000, the 3030, the VPOD and the VPOD2?
A Correct.
Q And does that also include the LMU-3050?
A I am not familiar with the workings of 3050.

Q Do you recall the discussion about the European model of the LMU-3030?
A Okay. Yes, I do.
Q And as part of your analysis do you recall actually looking at the --
A Not in great detail, I did not.
Q It is your understanding that the 3030 is just a -- rebranded --
A -- European -- yes, I do --
THE COURT: All right. One at a time, gentlemen. Please wait for him to finish the question.
THE WITNESS: Oh, I'm sorry.
THE COURT: And I tell you that because the court reporter needs to get it down on the record so just pause a moment between question and answer.
THE WITNESS: Sorry.
BY MR. KAUTH:
Q So it would be fair for me to write -- to also include LMU-3050 in this list?
A Yes.
Q Did you find that any of the CalAmp devices included a multi-vehicle compatible controller at the vehicle and cooperating with said transmitter and receiver, said multi-vehicle compatible controller generating at least one set of command signals on the data communications bus

for the at least one vehicle device, the at least one set of command signals comprising at least one working command signal and at least one non-working command signal for a given vehicle to thereby provide command compatibility with a plurality of different vehicles?
A No.
Q And what was the reason you thought that was not present in any of the CalAmp devices?
A It doesn't generate command signals.
Q And with respect to the dependent claims of the '876 patent, can anyone infringe the dependent claim if they don't infringe the independent claim?
A No.
Q So we can just strike that out. Let's turn to the '885 patent. In your analysis of the '885 patent, did you find -- well, let me back up a step. Can we include the LMU-3050 as well in the finding?
A Yes.
Q And your understanding is it operates in the same manner as the LMU-3030?
A Correct.
Q So for any of the CalAmp devices, did you find a multi-vehicle compatible controller cooperating with said transmitter and said receiver and for storing the set of device codes for a given vehicle device for a

plurality of different vehicles for reading a device code from the data communications bus and for determining a match between a read device code and the stored device codes to thereby provide compatibility with a plurality of different devices?
A No.
Q And why did you find that was not present?
A It's not a controller, because it's not operating vehicle devices. Also, it doesn't store multiple device codes for a plethora of vehicles, plurality of different vehicles.
Q And so for -- is it possible that the CalAmp devices could infringe any of the dependent claims that depend from Claim 1?
A No.
Q All right. Let's turn to the '278 patent.
For Claim 1 of the '278 patent, you analyzed the CalAmp devices, correct?
A Yes.
Q And, again, can we include the LMU-3050 in that?
A Yes.
Q And did you find that the CalAmp devices included a multi-vehicle compatible controller for cooperating with said vehicle position determining device and said wireless communications device to send vehicle position

information?
A Yes. Oh, I'm sorry. It's on a controller since it's not controlling vehicle devices.
Q And did you find a multi-vehicle compatible controller -- I'm sorry -- said multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles?
A No.
Q And why did you think that was not present?
A Does not have a plurality of device codes for a plurality of vehicles.
Q It's a difficult word.
A Yes, it is.
Q Did you find that any of the CalAmp devices had a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller?
A No.
Q And with respect to the independent Claims 2, 3, 4, 5, and 6 that all depend ultimately to Claim 1, could any of the CalAmp devices infringe any of those claims?
A No.

Q And for Claims 8, 11, and 12, that also depend back to Claim 1, is your answer the same?
A Yes, it is.
Q They cannot infringe those claims?
A Correct.
Q We have another independent claim, Claim 13.
Did you find that the CalAmp devices included a multi-vehicle compatible controller for cooperating with said vehicle position determining device and said wireless communications device to send vehicle position information?
A No.
Q And did you find that any of the CalAmp devices included said multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles?
A No.
Q Did you find that any of the accused CalAmp devices included a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller?
A No.

Q So based and your finding that Claim 13 was not infringed, is it possible that any of the CalAmp devices could infringe either Claim 14 or 16 which depend from 13?
A No.
Q Let's turn to the last independent claim of the '278 patent. Did you find that -- well, first, is your analysis with respect to all of the accused CalAmp devices, including the LMU-3050?
A Yes, it would be.
Q Did you find that any of the accused CalAmp devices included a multi-vehicle compatible controller for cooperating with said vehicle position determining device and said wireless communications device to send vehicle position information?
A No.
Q And how about did any of the accused CalAmp devices include said multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles?
A No.
Q And why wasn't that element present?
A Not storing more than -- or not working with a

plurality of vehicles based on the information that was provided.
Q And I forgot to ask you with the previous element, why wasn't this first element present?
A Because it's not a multi-vehicle compatible controller.
Q And that's using the Court's construction for a controller?
A That's correct.
Q Did you find that any of the CalAmp devices included a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller?
A No.
Q Claims 19 and 21 both depend from Claim 18, so do you find that they can be infringed by any CalAmp device?
A No.
Q Let's turn to the last. For the '727 patent, does your analysis apply to the LMU-3050 as well?
A Yes, it does.
Q Did you find that any of the accused CalAmp devices included a controller to be coupled to the vehicle data communications bus for reading the data related to vehicle speed from the vehicle data communications bus

and determining when a vehicle speed exceeds a speed threshold for a first time period and based thereon cooperated with said wireless communications device to send a remote vehicle speed exceeded notification?
A No.
Q And why do you feel that that element was not satisfied?
A Two reasons. One, it's not a controller, as we discussed before. But also, that it's using GPS speed to make its decisions and not the vehicle speed on the bus.
Q And for Claims 10 and 11, which depend from Claim 1, could those -- could the CalAmp devices infringe either of those claims?
A No.
MR. KAUTH: Your Honor, we move for admission of this demonstrative as Defendant's 81.
THE COURT: Any objection?
MR. GILCHRIST: No objection.
THE COURT: 81 is admitted.
MR. KAUTH: I have nothing further, Your Honor.
THE COURT: Thank you.
All right. Mr. Gilchrist, any cross examination?

MR. GILCHRIST: Yes, Your Honor, I do. Your Honor, if I could just have a minute to set up.
THE COURT: That's fine. Take your time.
(Pause in proceedings.)
CROSS EXAMINATION
BY MR. GILCHRIST:
Q Mr. Andrews, let's start off on some areas we can agree on, all right?
A Yes.
Q You're familiar with the patent process, correct?
A Yes, I am.
Q And the patent process begins with an application, right?
A Yes.
Q And that application's prepared by lawyers, right?
A Yes.
Q And it's prepared at or about the time of the invention?
A Yes.
Q And that application has to describe in word terms what the invention is?
A Correct.
Q And that application is then sent to Washington, D.C., to the United States Patent and Trademark Office?
A Yes.

Q It's actually in Virginia, but right next to Washington, D.C.?
A Yes.
Q And they hire a selection of well-trained patent examiners, correct?
A That's my understanding.
Q And these are folks that specialize in this field, right?
A To some extent, I would assume, yes.
Q Well, when you file an application, it gets assigned to a specific classification, right?
A Yes.
Q And that classification is sent to examiners that they do nothing but work through these applications in that field?
A Okay.
Q Is that true?
A To my knowledge, yes.
Q Okay. And they're trained in the legal process?
A And not engineers?
Q Pardon?
A Are they engineers also or --
Q Do you know?
A No, I don't.
Q Do you know if they get training?

A As lawyers, I hope so.
Q And so, they deal with all the new technology at or about the time those applications come in, right?
A Correct.
Q And one of their jobs is also to gather all the information and make sure that what the inventor is claiming is new and novel and not obvious, right?
A Correct.
Q And they do their own research?
A Yes.
Q And they take what the inventor provides?
A Yes.
Q And they're tasked with studying all that information, right?
A Correct.
Q And then they interpret the claims as they're written and make a determination whether the patent claims are obvious?
A Yes.
Q And in this case, examiners looked at all four patents and made that determination?
A Yes.
Q Well, that's not quite true, though, is it?
A Can you be more specific or --
Q The '885 --

A Yes.
Q -- that examiner had some issues with the patent, right?
A Correct.
Q And for purposes of infringement, it is the Court that interprets the claims, right?
A Correct.
Q And the Court has given the instructions?
A Yes.
Q And you have to follow those?
A Yes.
Q Do you have to apply the same claim construction for both infringement and invalidity?
A Yes, I do.
Q And as you interpret the claim language, you cannot interpret it in a way that makes the invention inoperable, right?
A Correct.
Q Because it's got to make sense, correct?
A Yes.
Q And you read those claims in the context of the whole specification?
A Yes.
Q And the specification includes different embodiments, right?

A Correct.
Q And those embodiments, unless they're in the claim language, are just examples?
A Correct.
Q That the inventor isn't claiming what's in the specification as his invention, right?
A Correct.
Q So issues of door locks, those aren't in the claims, right?
A Correct.
Q So, we wouldn't use a door lock as an element of any of the patents that we've got here, would we?
A That's an example of a vehicle device.
Q It's an example of one embodiment out of many, many, many, correct?
A Correct.
Q And when you go through that infringement analysis, you have to make the claim terms understood by one of ordinary skill in the art at the time of the invention?
A Correct.
Q So you've got to make sure you understand what the inventor is saying in his specification and make sure you understand the claim terms as it fits within that specification?
A Yes.

Q And make sure that you apply the appropriate instruction from the Court?
A Correct.
Q And then, we get to invalidity. Invalidity is a different animal, right?
A Yes, it is.
Q Considerably different?
A Yes.
Q Much higher burden, right?
A Correct.
Q And, in fact, because the Patent Office is presumed to have done their job, you have to start with the belief or, not the belief, you must start under the basis that the patent is valid?
A Correct.
Q You can't use the patent as a blueprint, right?
A Yep.
Q You have to put yourself back in the time of the invention and say, would it have been obvious to one of ordinary skill at the time of the invention?
A Correct.
Q Without looking at the claims of the patent?
A Right.
Q And how did you make sure you didn't fall into this trap of hindsight analysis when you did your analysis?

A Well, I was aware being -- by working in the industry what was going on at the time in telematics and, you know, working with various devices, working on the bus.
Q Well, that doesn't really provide any level of protection of, well, this is the elements of the claim, let me go see if I can find some of those elements in various publications. You're not allowed to do that, right?
A Well, I looked at both patents, and some of their current products are available at that time.
Q All right. But -- and I'm sorry I'm not articulating myself well.
A That's all right.
Q You can't use the claims of the patent as a blueprint, correct?
A Correct.
Q So you must, as you're doing your analysis, make sure you're not falling into that trap, because it's very easy. I can see all the claims, and I'll just pick them from various prior art references, right?
A Correct.
Q And that would be improper, right?
A Correct.
Q And how did you make sure you didn't fall into that

very-easy-to-fall-into trap?
A Just looking at the various patents that were available. I did my own key word searches and pulled up other patents, just comparing the two.
Q All right, sir. And you have to put yourself as one of ordinary skill in the art at the time of the invention, right?
A Correct.
Q Years ago?
A Yes.
Q And your experience -- I mean, you're certainly well-qualified -- would make you one of extraordinary skill in the art, wouldn't it?
A Thank you.
Q Well, it's true, isn't it? You have much more experience than what you believe an ordinary person with skill in the art has, right?
A Okay.
Q And so, you need to be careful that you don't apply your own analysis, that higher level, when you're determining invalidity, right?
A Correct.
Q And how did you go about that safeguard?
A It was easy, because I had a lot of different jobs within Cummins, and I could isolate, based on the time

period, what I was doing, what were the tools available to talk to the bus, that type stuff.
Q And when you do your invalidity analysis, you also may have to make a determination of whether the art that you're relying upon is more relevant than what the examiner looked at, right?
A Yes.
Q In other words, if the examiner had similar or just about all the same things in front of him, that art wouldn't be very strong for purposes of invalidity, correct?
A Correct.
Q And so, you would have to go back and understand everything the examiner went through when you're doing your invalidity analysis, right?
A Yes.
Q And in the context of what we do in this courtroom, you're required by the judge and the rules of the court, to put all of your analysis and everything you do into a report?
A Yes.
Q And you have to identify everything you looked at in that report, right?
A Correct.
Q And, in this case, you made two reports, right?

A Yes.
Q Your first report was that all of the claims were invalid, right?
A Correct.
Q Your second report was all the claims are not infringed?
A Correct.
Q And you put everything in that report that you relied upon, right?
A Yes, I did.
Q And you've got all of your various opinions, whatever they are, in that report?
A Yes.
Q Okay. And so at that time of your report, that's what I want to focus on. Because if you did something after that, that really isn't appropriate for the jury to hear about, because your opinions were set at that time, right?
A Well, I -- yes. Yes.
Q Okay. Now, when your lawyer talked to you yesterday, you indicated that you had read a bunch of depositions, right?
A Yes.
Q Of all the engineers involved here?
A Yes.

Q That's not quite accurate, is it, in the context in your report?
A Can you be more specific?
Q Yes, sir. Your report indicates -- you have a list on your first report of what you looked at on page 14. Do you see anything in there about all these engineers' depositions?
A Well, this was invalidity, so I really wasn't looking at what the CalAmp products were doing at that time.
Q Okay. So just so the jury's clear, at the time that you wrote your report on invalidity, you hadn't looked at any of those depositions, right?
A That was not part of my assignment.
Q So that would be a yes to my question, right?
A Correct.
Q So when you told the jury yesterday you looked at all of these various engineers' depositions, that didn't have anything to do with your invalidity analysis, right?
A Correct.
Q Okay. Now if you will look at your second report, infringement --
THE COURT: Which exhibit is that, Mr. Gilchrist?
MR. GILCHRIST: I'll have to rely upon --

THE WITNESS: 47.
THE COURT: Thank you.
BY MR. GILCHRIST:
Q Have you got Exhibit 47?
A Yes, I do.
Q On page 45, you list everything you looked at, right?
A Actually, I only see the Eiberger deposition.
Q Yes, sir. So that was the only one you looked at, right?
A Incorrect.
Q I'm sorry?
A No. I looked at many more depositions.
Q But you just forgot to put them in your report?
A This is correct.
Q So when you submitted your report to this court and to all the people involved, you omitted all these other depositions that you supposedly relied upon, sir, correct?
A Correct.
Q And, in fact, for purposes of your invalidity report, you never even spoke to anybody at CalAmp, right?
A Correct.
Q You reached your conclusions on invalidity without ever having seen or tested an LMU product?

A Correct.
Q And all the prior art that you relied upon was provided by CalAmp's lawyer, correct?
A Correct.
Q So all that studying you talked about yesterday, all that wasn't as good as what CalAmp's lawyer provided you, right?
A [No response.]
Q And so, I guess my natural question is, we established a second ago that there has to be more relevant prior art, right?
A Yes.
Q And at the time of your invalidity analysis you hadn't looked at the file histories, correct?
A Correct.
Q So how could you possibly establish in your mind that the art that the lawyers gave you was more relevant than what the examiner looked at?
A I did look at some of the references that were on the front page of the Flick patents. However, none of them were as compelling as what was available to me.
Q Did you look at all of them?
A No. I looked at a subset of them.
Q So you don't know if all of them are more relevant or less relevant at the time that you rendered your

opinion, correct?
A Correct.
Q And when you went through your invalidity analysis, you applied the term controller that did not require something with a physical change, right?
A Each of the patents I used describe physical changes in the system.
Q That wasn't my question, sir.
A I'm sorry.
Q The term "controller" that we've heard so much about, when you went through your analysis for invalidity, you didn't apply this physical change, correct?
A I disagree.
Q Isn't that what you said? Isn't that what you said in your deposition when we were talking to you?
A Can you be more specific?
MR. GILCHRIST: May I approach, Your Honor?
THE COURT: Yes, you may.
BY MR. GILCHRIST:
Q Do you have your deposition?
A What number is it?
Q It has not been entered.
MR. GILCHRIST: I'll approach, Your Honor.
THE COURT: You may.

MR. GILCHRIST: Would the Court care for a copy?
THE COURT: No, sir. Thank you.
THE WITNESS: Thank you.
BY MR. GILCHRIST:
Q And I will direct you to page 96.
A Okay.
Q Have you had the opportunity to review it?
A Yeah.
Q Does that refresh your recollection that, in fact, you didn't apply this physical change controller when you did the invalidity analysis?
A Yes. I did misspeak here. And later in the deposition, I did correct myself.
Q So when you testified under oath in the deposition that you didn't apply the physical when you did your invalidity analysis, you were misspeaking?
A Well, we were jumping around a lot. This was my first deposition, and I did misspeak.
Q Now, do you understand infringement is also a requirement that one make it?
A Make it?
Q Yes, sir. How does one infringe a patent?
A You essentially look at each claim.
Q And if it's a product patent claim, one infringes by

making that product, right?
A Is the product before the patent or after the patent?
Q I'm not sure I understand your question. But my question is if I make a product that has all those elements of the claim, I would infringe it, right?
A If the patent pre-dates the product. However, in the cases that I've used in my report, those products pre-dated the patents.
Q I'm not asking about the products in your report. I want to make sure the jury understands the law that you applied for purposes of infringement.
A Okay.
Q If one were to make a product that contains all of the elements of the claims, that would infringe, right?
A I still have this timing issue and, you know, if you throw time away, I would say yes.
Q All right.
A But if one pre-dates the other, clearly no.
Q And if one were to use a product that meets all the elements of the claims, one would infringe, correct?
A If you use a product that you bought that infringed a patent?
Q Yes, sir.
A I'm not a lawyer. I don't know that type of detail.

Q How about if you sell a product?
A I would assume, yes, then you might be in trouble.
Q All right, sir. Let's take a look at the '885 patent. That would be Joint Exhibit number 3. This is one of the patents that you've rendered opinions on?
A Correct.
Q And so let's -- you've looked at the file history. You looked at the file history of this after you rendered your opinion that it was invalid, right?
A Yes.
Q And the file history, just to make sure we're all on the same page, is all the back and forth with the Patent Office, right?
A Correct.
Q And that's that big stack of documents you got over there, right?
A Actually, I don't have Exhibit 3 in here.
Q Well, you can look on the screen.
A I'd like to have the complete --
THE COURT: I'm going to have Nancy hand that to you, sir, just --
DEPUTY CLERK: You don't have it?
THE WITNESS: No, I don't.
(Deputy clerk assists witness.)
THE WITNESS: Thank you.

THE COURT: All right. The witness has Exhibit 3. Please continue.
BY MR. GILCHRIST:
Q Have you had an opportunity to familiarize yourself with '885?
A Many times over.
Q Okay. So, '885 has to do with the multi-vehicle controller that stores and then determines a match, right?
A Correct.
Q And in order to understand the patent one would have to read all the specifications, right?
A Yes.
Q And all the claims?
A Correct.
Q And one -- to really understand the patent -- would best be served by reviewing the file history, right?
A To better understand some of the claim terms and -- yes, mm-hmm.
Q And understand the relevant prior art that the examiner looked at, right?
A Right.
Q You didn't do that for your invalidity analysis, right?
A No.

Q But you did finally come around to it and looked at the file history, right?
A Correct.
Q Okay. And what we see on the patent as References Cited are these various patents, including foreign patents, right?
A Mm-hmm.
Q Is that a yes?
A Yes.
Q And we also see Other Publications, right?
A Correct.
Q Including IEEE that we've heard so much about?
A Yes.
Q And SAE standards that we've heard so much about?
A Right.
Q So the examiner was aware of SAE standards, right?
A At least those, yes.
Q And they're aware of the J-- what is it --1850?
A Correct.
Q And they're aware of various articles, correct?
A Yes.
Q And the examiner was to apply the same standard that you applied for obviousness, and that is if two references or if a reference directs you to another reference and combine, they would have it, the patent,

and that would be obvious, right?
A Correct.
Q But the examiner didn't stop at these patent documents, did he?
A Correct.
Q Okay. And the examiner that we have here is Mr. Pham, right?
A Yes.
Q And if we turn to the second page of the '885, we have quite a few more patents that Examiner Pham looked at, right?
A Correct.
Q And Examiner Pham would have gone through each and every one of these patents, right?
A Yes.
Q And the Other Publications, right?
A Correct.
Q Including more SAE references, right?
A Correct.
Q In fact, we've got one, two, three here, right?
A Mm-hmm, yes.
Q And Mr. Pham also considered a patent involving a scan tool, right?
A Which one is that?
Q The Berra patent?

A Okay.
Q Is that a yes? You saw Berra?
A Is that one on the short stack?
Q I haven't seen your stack. I can't help you.
A Okay.
Q But I do know that the examiner saw it.
A Oh, Berra. Yes, I am familiar with that one.
Q And that involves a scan tool that we've heard so much about?
A Mm-hmm, yes.
Q Okay. So Examiner Pham, when he looked at all these, he decided that there was a reference that had all the elements of the claim, right?
A Correct.
Q And he rejected all the claims that we have here today, right?
A Yes.
Q Because he said that if I construe multi-vehicle as having a bus, that would be a lot of vehicles, that reference has it, right?
A Yes.
Q And that's the same way you sort of construe it, correct?
A Correct.
Q Okay. And then, Mr. Flick's patent lawyers went

back to him and said, no, no, that's not the proper construction, and that reference doesn't have multi-vehicle compatibility, right?
A Correct.
Q And the examiner said, well, I'll try another patent, the Dery patent, right?
A Correct.
Q And he said, well, how about Dery, does that have multi-vehicle, and he rejected all the claims again, right?
A Correct.
Q And that was his final rejection. He says, I'm standing by my guns on this one. There is multi-vehicle, because it has a bus, right?
A Correct.
Q Okay. And can you tell the jury what Mr. Flick's patent lawyers did at that point?
A Resubmitted the -- well, just continued with the discussion.
Q Well, that's not quite right. Didn't they appeal it?
A Yes, that's what I meant. I'm sorry.
Q Okay. And at the Patent Office, you can take an appeal to a group of even more experts? It's a three-panel judge, right?

A I believe you.
Q Three judges, right?
A I believe you, yeah.
Q Okay. And you take it up to these experts, and you make the same argument testing whether Examiner Pham was right in that a single bus could be multi-vehicle, right?
A Correct.
Q And what did that panel of experts do?
A I believe they reversed Mr. Pham's decision.
Q Yes. And they said, no, having just a bus is not multi-vehicle compatible, right?
A Yeah.
Q And so, the patent was allowed?
A Correct.
Q So when you tell the jury that you find a single bus to be multi-vehicle compatible, when you're doing you're invalidity analysis, you're telling -- you're taking the position that Examiner Pham took, right?
A Correct.
Q Okay. And that's been rejected by the appeal, right?
A Well, I also used the additional bus discovery protocol to further --
Q Okay. But I'm just talking about that position you took, that has been rejected.

A I also discussed --
Q I'm sorry, sir.
A -- on the stand yesterday the use of a bus implies multi-vehicle.
Q Is the answer to my question a yes or a no?
A Can you repeat your question?
Q Yes, sir. The position you took in front of this jury that a single bus would be multi-vehicle, that has been firmly rejected by the board of patent and appeals?
A Correct.
Q And that's how we got to the '885 issuing, right?
A Right.
Q And the examiner that we see, did you recognize him anywhere else?
A Is he in some of the other patents? It's been awhile since I've looked at the details of each.
Q Fair enough. Let me direct your attention to Joint Exhibit number 1. That's the '876 patent. Do you see the examiner?
A Yes, I do.
Q Who is he?
A Mr. Pham.
Q Does he show up anywhere else?
A I believe he's in one other patent.
Q Which one would that be?

A Probably '278.
Q Do you recognize him as the examiner in the '392, the Bambini reference?
A Yes, I do.
Q So this examiner that you point to in Bambini has studied the Flick patents, has studied the references, has looked at the SAE documents --
A Doesn't Bambini pre-date? So this one would have come before?
Q You tell me.
A All right. Well, let's see, with '885 in front of me, the file date is May 2000. The Bambini reference in front of me is filed February of 1998.
Q When an examiner picks up a case such as the '885, isn't he tasked with knowing the history of the patent in front of him?
A Yes.
Q Including all these various continuations?
A Correct.
Q So he knows all the way back to what year, the '551?
A August '96.
Q So, this is the same examiner. So would this, in your opinion, lead you to believe that Examiner Pham fully understood the state of the art at the time of the patents?

A He should.
Q All right. Let's look at what else the examiner looked at. We talked about the SAE standards. He also looked at some of Flick patents, right?
A Yes.
Q Okay. And I think one of your positions was that a controller isn't enough to be just sending a signal, right? There has to be some physical manifestation?
A Correct.
Q Okay. Is there anywhere in the specification that you had to read to get an understanding of the claim terms that would suggest otherwise?
A No.
Q Well, let me first start out with the -- in the specification of the patent --
A Which patent is this? I'm sorry.
Q I'm sorry. This is the '885 patent.
A Okay.
Q At column 2, Mr. Flick discusses various SAE documents, right?
A Correct.
Q So the examiner was familiar with all these various documents?
A Yes.
Q So for purposes of infringement, you first must

understand how the LMUs and the VPODs work, right?
A Correct.
Q And the LMUs and the VPODs, the microprocessor sends a signal on the bus to the ECU and asks or basically says, send a response, right?
A It's a query message as defined by the SAE.
Q Well, let me just see if I can break it down rather than referring to SAE, because we're referring to the patent, right?
A Okay.
Q So when the bus -- when the start-up begins, it sends a message on the bus that says, ECU, return a message, right?
A Yes.
Q The ECU has no choice when it gets that message, right?
A It's following the protocol defined by the SAE, yes.
Q It must return a code?
A Correct.
Q Are you familiar with the slave and master relationship?
A Yes. That's a different bus protocol, yeah, or bus strategy.
Q Well, in the electronics world, if I've got a slave to a master, that must do what the master says?

A Yes.
Q Okay. And in the LMUs and the VPODs, when it sends that signal to the ECU, it must respond with a signal, if it reads that code?
A Correct.
Q Okay. But in your mind, that's not commanding?
A As defined in SAE documentation, one with ordinary skill in the art, in the automotive industry in telematics, would understand the difference between a command and a query.
Q Would it surprise you that Mr. Chen said that he didn't know about SAE protocol until he started working to find a way around these patents?
MR. KAUTH: Objection. Misstates prior testimony.
THE COURT: Overruled.
A What was the question? I lost you.
BY MR. GILCHRIST:
Q Would it surprise you that Mr. Chen got on that stand and said he didn't realize those SAE standards were out there until he started looking at these patents?
A Well, you know, as a senior manager, I would expect him not to know all the details of, you know, what the engineers are digging into.
Q You don't believe he's an engineer?

A Oh, of course, he's an engineer, but --
Q Is he one of ordinary skill in the art?
A I would hope so.
Q And that person of ordinary skill in the art didn't even know about those SAE standards, right?
A I haven't heard the deposition, so if that's what he said, yes, I believe it.
Q And the Court's construction for controller is electronic circuitry that performs one or more control functions?
A Correct.
Q And when I have the LMU send that message, it controls the ECU to get a receiving message back, right?
A I think we're sort of mixing terms, and those terms are defined very clearly in the SAE documentation.
Q Okay. The Court didn't make any reference to an SAE documentation, did it?
A Correct.
Q Okay. So this Court's definition is not an SAE definition, is it?
A Correct.
Q What the Court said -- Judge Byron said -- was electronic circuitry that performs one or more control functions?
A Correct.

Q And you read that to require it to have some physical property?
A Correct.
Q Do you see anywhere in that language that it has to have a physical embodiment of that control?
A No.
Q So that's something you put in there, not Judge Byron, right?
A Well, one of ordinary skill in the art, if you say the word control and you're -- you know, you're expecting something to happen. An action, a physical change, is a great example of it.
Q That is exactly right, sir. That is a great example of it. But it is not the only way that you control an electronic device, is it?
A Say more or give me an example.
Q Let's say the ECU responds with this device code signal --
A Mm-hmm.
Q -- that would be controlling the ECU, wouldn't it?
A You're asking it for information. It's providing it back, yes.
Q So that's a yes?
A Okay.
Q So after the ECU responds to this command and sends

back the signal, what happens?
A This would be the mode 1 PID zero request or what are we asking for?
Q What happens? You understand how the LMU works, right?
A Okay.
Q The LMU sends a series of inquiries on the bus, right?
A Yes, to find the right bus.
Q Okay. And when it -- the messages get back, it keeps them in a box and it determines that one of these messages was received and responded to, right?
A It doesn't keep any messages.
Q Did you see the flow chart that the jury saw?
A The one from McAlexander's testimony or --
Q Yes, sir.
A That's incorrect, as I understand. It certainly doesn't follow the protocol of J1978.
Q Would you believe that Mr. Hergesheimer would know how his system worked?
A Yes.
Q So if he said that that flow chart that Mr. McAlexander relied upon was accurate, would you tend to believe him?
A Yes.

Q Okay. So if that flow chart is accurate, isn't it true that there are non-working and working commands that go out and come back?
A Working queries, yes.
Q And would you also agree with me, because I think you said you read Mr. Hergesheimer's deposition, that he said sending a signal and getting a response could be a control function?
A Okay. Is that in his testimony?
Q Well, you read it, right?
A Oh, yes, certainly I read it.
Q And the jury had to listen to it.
A Okay.
Q So would you agree with Mr. Hergesheimer that sending a signal and getting a response would be a control function?
MR. KAUTH: Objection. Misstates prior testimony.
THE COURT: Overruled.
A Yes.
BY MR. GILCHRIST:
Q And, in fact, if you will turn again to Joint Exhibit number 3 -- that is the '885 -- column 6, lines 35, we're talking about the controller, right?
A Yes.

Q The multi-vehicle compatible controller includes a bus interface, right?
A Yes.
Q For generating signals, right?
A Yes.
Q And the bus interface includes circuitry for interfacing -- you see that?
A Yes.
Q Okay. And then, if we go down that -- and now, I've lost my place.
THE COURT: Line 37.
MR. GILCHRIST: Okay.
BY MR. GILCHRIST:
Q Perform reading signals from the data communications bus. So the controller is to perform at least one of those functions, right?
A Yes.
Q One could be reading a signal, right?
A Yes.
Q Or generating a signal?
A Okay.
Q So that would be how the patentee described his controller, right?
A Yes.
Q And that would be how the examiner understood the

controller, right?
A Correct.
Q There's nothing in there that even suggests any physical activity, right?
A Correct.
Q And I believe your other concern with respect to infringement on the '885 patent was whether the signals were stored, right?
A Correct.
Q Can you explain that to me again, what you mean, what your concern is about infringement?
A That it wasn't storing multiple vehicle device information for a plethora -- or for a plurality of vehicles.
Q All right. Well, when the LMU works, it has the information for various bus types, right?
A Correct.
Q Okay. And that would be -- well, and it also has codes for various ECUs on those bus types, right?
A Codes for various -- can you say that differently?
Q Well, the process it goes through.
A Yes.
Q And I may not be as technically advanced as you are, and I apologize.
A No problem.

Q The LMU and the VPODs send signals. ECU sends a response, right?
A Can I back up? I just want to clarify. Are you talking about the bus discovery protocol --
Q Yes, sir.
A -- or just the normal communication?
Q The bus discovery protocol.
A Okay. Thank you.
Q So it sends out the signals. ECU sends a response, right?
A No. It's a hello on that circuit to anybody on the bus to please respond.
Q Okay. Please or must -- depends on how polite they are, I suppose.
A Semantics, exactly.
Q But if it gets that hello, please respond, it must respond, right?
A Correct.
Q And it says it -- sends it in several different languages?
A No.
Q Sends it on different CAN types?
A Oh, yes. Only when it does respond, it will only talk in whatever --
Q Right.

A -- protocol, yes.
Q Let's hold on.
A I just want to make sure we're talking the same language.
Q Okay. It'll send that hello, please respond, in several different languages?
A Yes.
Q And those are all stored on the controller?
A Yes.
Q And when it gets those responses, it then finds the one that did respond and matches it up to what it has stored in the controller?
A No, it's a sequential process. You try the first bus, which is CAN, which 80 to 90 percent of the vehicles already have. Once -- if you do get information back, you're done. If you don't get information back, then you go on to the next protocol. So it's the receiving and information that tells you, hey, I've got the right bus. It's not that, hey, these are the things that are on the bus. So you're not using that information.
Q Well, once you get it back, then you know what data it is --
A Then you're talking what language you should be speaking.

Q Exactly.
A Yeah.
Q And that's all stored in the controller?
A As a flag to say, hey, continue to use that.
Q Yes. And then that LMU is permanently changed, and it uses those flags, as you described them, each and every time?
A Until it's unplugged and re-plugged and you start back over again.
Q So that would be yes. I don't want to get too out in the field on this, all right?
A No problem.
Q Okay. And I guess there's a dispute between you and Mr. Hergesheimer over whether it sends all the messages out and receives them or whether it does sequentially, right?
A Correct.
Q You haven't tested it to see, right?
A Correct.
Q You just relied upon what the lawyers told you, right?
A And the depositions.
Q Well, the signal --
A Part of the discussion was does it follow J1978, and the answer on that was yes.

Q Okay. But that came from the lawyers?
A I believe that was in one of the testimonies that I read.
Q Well, for the purposes of your report, remember you told me you didn't rely upon any of those testimonies?
A Okay. Correct.
Q Okay. Are there any other elements that you believe are not present for the purposes of infringement of the '885?
A In Claim 1? Or which claim?
Q We can go through them all. I'm trying to get a summary of what you find missing?
A Well, we've been spending quite a bit of time on the controller piece. We talked about matching vehicle device codes.
Q Right.
A It does look at the VIN information and store that. That's been described. But the VIN is not for a plurality of vehicles. The VIN is a unique serial number identifying one vehicle. So it doesn't meet the needs of the second part of -- for more than one vehicle.
Q Well, let me back you up there. Do you believe -- well, you understand vehicles. The VIN is the vehicle identification number, right?

A Yes.
Q And there are some of those identifiers that go to a group of car types, right?
A The first few digits would be, yes.
Q And so the LMU-3000 doesn't store the ten million independent VINs, correct?
A Correct. That would be impractical.
Q It takes a subset, very large subset, to know what type of CAN we're talking about, right?
A I think you might be using the wrong term.
Q I'm sure I am, sir.
A Well, the VIN is unique to one vehicle, correct.
Q Right. But they don't store the whole VIN, right?
A I think you're just looking for a make and model number, yes.
Q Right. So it would be a cross -- a range of models, say, the Pontiac Firebird --
A Okay.
Q -- in certain years; you would be able to get that just from a portion of the VIN?
A Yes, you would.
Q Is that how the LMU works?
A Yes, it is.
Q Okay. So that stores it for multiple vehicles, right?

A Yes.
Q Okay. Is there anything else I've missed on your non-infringement position with respect to the '885?
A It's not storing multiple vehicle device codes for comparison.
Q Well, it is storing codes for ECUs for various bus types, right?
A No. It's just which protocol that's available in the industry and you've identified, because you don't want to go through the process every time a car starts.
Q Right.
A So the only piece of information is a VIN, so it's not a set of vehicle device codes for comparison.
Q Well, once it has that VIN, then it has all of the protocols for that type of car, right?
A Yes.
Q Okay. Is there anything else I've missed?
A No.
Q Let's move on to your invalidity positions on the '885. You rely upon Braitberg and the MobileWeb?
A Yes.
Q But you combine them with the J1978?
A Correct.
Q Can you explain to the jury what the Braitberg patent was about?

A Will you -- if you pull up a copy that would be more beneficial. But the title is multi-vehicle compatible control system from reading from data bus and associated methods.
Q And really, what did the spec describe it as?
A Sorry. The '885, not the '479, I'm sorry.
Q Yeah, the Braitberg.
A Method and apparatus for transmission and receiving of signals from digital information using an air link.
Q And what does all that mean?
A It's really the communication interface from a wireless system to a vehicle data bus.
Q All right. Is it putting a hot spot in the car?
A Yes. That would be one term.
Q Okay. And Braitberg was also almost identical to your Cellport reference?
A Yes.
Q Okay. Because essentially, they're the same thing?
A Yes, they are.
Q All right. And would you agree with me that neither Braitberg or the Cellport are multi-vehicle?
A You could argue that the CAN is a way of getting multiple vehicle.
Q Well, isn't that what the examiner did and the appeals said no?

A Correct.
Q So that was rejected?
A Correct.
Q So you're going back -- you're on the Pham side of this dispute?
A Well, that's why we added 1978 to the discussion.
Q All right. So would you agree with me, then, that Braitberg, as in the context of the '885 patent, is not multi-vehicle?
A Correct.
Q The same with Cellport?
A Correct.
Q All right. And you had never seen this device actually in use?
A The Cellport? No.
Q Can you explain to the jury where in the '479 Braitberg patent that you would go to and say now I have reason to combine Braitberg with the SAE 1978?
A That's where somebody of ordinary skill in the art, knowing the automotive industry at the time, would look to make it multiple vehicle compatible. I think it's a detail that's not described in Braitberg, but is an obvious way to describe multiple vehicle compatibility.
Q So you're combining the two to solve a problem that Braitberg doesn't recognize, right?

A I think the reason he's got a CAN bus is he -- well, correct, yes.
Q Okay. Isn't that exactly what we talked about earlier today about using Mr. Flick's patent as a blueprint to say, look, if Braitberg had just recognized what Mr. Flick had, that down the road there would be multiple CANs, he could have gone and found something to do that, right?
A Correct.
Q And that would be an improper hindsight analysis, wouldn't it?
A My hindsight analysis or Mr. Braitberg's.
Q It would be yours. Mr. Braitberg isn't offering an opinion that Flick's is invalid, right?
A Correct.
Q Okay.
A However, I was in the industry at that time aware of the specifications, other people in the industry were aware of the specifications, because they were necessary to sell products.
Q You never produced a product that was multi-vehicle as described in the Flick patent, right?
A I would disagree with that. The engines that we sold went into many different vehicles.
Q They were a single CAN, right?

A Correct.
Q Proprietary to Cummins?
A Yeah -- no. It was a customer's link.
Q Okay. But it was a single type of data bus?
A No. We went into -- you know, in Ford it was J1978 and in -- you know, there were multiple links.
Q So are you testifying before this jury that you had a product in hand that went through the bus discovery protocol that used wireless transmission or GPS?
A No. I'm sorry.
Q Okay. So you didn't invent anything that's described in the Flick patent, right?
A Correct.
Q And you're one of extraordinary skill in the art, right?
A Thank you.
Q And when you went through this process of looking for things to invalidate Mr. Flick's patent, it would have been great to find something that had all the elements, right?
A Of course.
Q 'Cause then you don't have to go through this process of giving a reason why it would be combined?
A Correct.
Q But you couldn't find that 'cause nobody had

invented it? Right?
A Nobody described it.
Q Right. Or invented it that you could find?
A Okay.
Q And so you had to find something that was close enough, and then add some other things to it, right?
A Add J1978, yes.
Q But there has to be, under the law, a reason to add it to Braitberg, right?
A Correct.
Q And you've got to protect against this idea of, I'm going to take Flick's patent, and I'm going to check all the boxes with various references, right?
A Mm-hmm, yes.
Q And what did you do to safeguard against that when you arrived at the conclusion that Mr. Flick's patent was invalid?
A I'm so -- what was -- can you repeat that question? I'm sorry.
Q I'll do my best. What did you do to safeguard against this appealing idea of just checking the boxes to make sure you weren't applying what they referred to as hindsight analysis?
A Well, it was a step-by-step process of looking at each claim, comparing it to Braitberg with the addition

of J1978, just a claim-by-claim basis to understand those were already taught.
Q So you just went through, and you checked the boxes?
A There was no box checking, in my mind.
Q All right. You just found the elements and put them together?
A Correct.
Q Nothing more?
A Correct.
Q Why is Braitberg more relevant than, say, the Dery patent?
A I think that would be using cumulative -- sorry. I'm not a legal -- but that would be -- I did look at Dery, because when I saw the details of the conversation between the inventors in the Patent Office -- but I didn't use that 'cause I didn't think it was appropriate.
Q Well, let me back you up to make sure the jury's clear.
A Okay.
Q When you arrived at invalidity, you didn't look at Dery, did you?
A No, I didn't.
Q Okay.
A I'm sorry.

Q Now, after you've concluded that it's invalid --
A Right.
Q -- you went back and looked at it?
A Correct.
Q I guess confirmed?
A More curiosity than anything.
Q All right, more curiosity. What makes Braitberg a better reference than Dery?
A Well, I had already finished with Braitberg so -- and my report was complete so, you know, I didn't use Dery.
Q And when your lawyer was asking you about all these considerations, did you consider the various people who have taken licenses under the '885 patent?
A That information was unavailable.
Q Well -- it wasn't available? Was that your testimony?
A To me, it was not.
Q Did you ask for it?
A No, I did not.
Q Okay. So you just didn't use it?
A Correct.
Q If there were any licenses?
A Correct.
Q And you didn't ask for any?

A No.
Q Did you consider whether there had been copying by others?
A I was already aware of products in the field that pre-dates these patents, so I would say the patents copied what was already in the field. I mean at Cummins, we were using data loggers to stream a lot of data off and use wireless information, you know, wireless interfaces to get it off, both WiFi and eventually cell phones as well, too.
Q Sure. Cell phones were known, right?
A Right.
Q Examiner knew that, right?
A Yep.
Q And wireless communication's known generally?
A Mm-hmm.
Q The examiner knew that, right?
A Correct.
Q And data buses were known, right?
A Yep.
Q But when you put all these things together, that's what makes the invention, right?
A Correct.
Q Okay. So, my question is did you consider whether others copied the '885?

A No.
Q I'm sorry?
A No.
Q Would it surprise you if this jury has learned that Directed Electronics was found to have copied the '885?
A No.
Q So as you reach your conclusion on invalidity of the '885 patent, you have to take the position that the extensive process the Patent Office went through, they were all wrong?
A Well, they might not have had the right data available.
Q But they were wrong?
A Yes.
Q And if there were a number of licensees that this jury had to go through, all those licensees would be wrong?
A Yes.
Q All right, sir. Let's talk about the '876.
THE COURT: Why don't we take our break at this point, Mr. Gilchrist, if you don't mind.
MR. GILCHRIST: Certainly.
THE COURT: It's about ten minutes after eleven. We'll come back at 11:25. I apologize for the late break, but we got a little bit of a late start, and

I wanted to get some testimony in. We'll be on break for a few minutes.
(Jury exits.)
The jury has withdrawn. We're in recess until 11:25. Thank you.
(Recess from 11:12 a.m. to 11:28 a.m.)
THE COURT: Thank you.
Are we ready to proceed?
MR. GILCHRIST: Yes, sir.
THE COURT: All right.
Let's have the jury, please.
(Jury present.)
THE COURT: The record should reflect the jury has returned, the parties are present, and we're on continued cross examination. When you're ready, Mr. Gilchrist, please continue.
MR. GILCHRIST: I am, Your Honor, thank you.
BY MR. GILCHRIST:
Q I'd like to move you next into the '876 patent, and that is Joint Exhibit number 1. And generally, is the '876 the patent that deals with working and non-working signals?
A Correct.
Q And you had studied -- well, for the purpose of invalidity, you had to study the file history, right?

A Correct.
Q Okay. And you determined that it was invalid without the benefit of the file history, right?
A Correct.
Q And then, you went back when you were looking at non-infringement, and you did actually study the file history, right?
A Yes.
Q And you recognized, of course, that our Examiner Pham is on the '876, right?
A Correct.
Q And he had some help as well, didn't he?
A Yes.
Q A Mr. Daniel Woo was also an examiner?
A Correct.
Q And similar to the '885, they rejected the claims as sought, right?
A Right.
Q And the same general arguments were made if it's a bus it must be multi-vehicle, right?
A Yes.
Q And the examiner this time around said, all right, I don't see a multi-vehicle controller in any of the art and, therefore, I will allow it, right?
A Correct.

Q And that was based upon the idea that multi-vehicle compatible controller was for various types of buses or ECUs, right?
A Yes.
Q And that's the basis upon which the '876 is a patent, right?
A Yes.
Q And for purposes of your invalidity you've, again, joined team Pham in taking his prior position with respect to controller and multi-vehicle, right?
A In my report, I added 1978, but --
Q And so if we look, again, at what the examiners had, we see a list of United States patent documents, right?
A Yes.
Q And this was being prosecuted about the same time as the '885, right?
A Correct.
Q In fact, almost identical there, going in parallel, right?
A Yes.
Q So, Examiner Pham would have known everything that was in the '885, right?
A Mm-hmm.
Q Is that a yes?
A Yes.

Q As well as he went out and did some more research and found some more references, right?
A Correct.
Q Okay. And those would be reflected patents such as Gronsheim, right?
A Yes.
Q The foreign patent documents?
A Yes.
Q And the various U.S. patent documents?
A Yes.
Q The SAE documents?
A Yes.
Q And some IEEE article?
A Correct.
Q Have you read that article?
A Which one?
Q The IEEE article?
A The Thick and Thin of Car Cabling? No. Based on the title, it doesn't look appropriate for this.
Q So you weren't able to make a determination of whether The Thin and Thick of Car Cabling [sic] is more relevant than the references you relied upon, correct?
A Correct.
Q And then, if we turn it over, we see quite a few more?

A Yes.
Q Including the Flick, right?
A Yep.
Q Dery?
A Yes.
Q And Dery is the one we talked about in the '885, correct?
A Yes.
Q And we see the Di Croce, right?
A Yes.
Q That was one that went through the '885, right?
A Correct.
Q That was one of the references that team Pham relied upon to reject the '885, right?
A Correct.
Q So for purposes of today's opinion, you believe that Mr. Pham and Mr. Wu got it wrong?
A Yes.
Q Let's start with your infringement position.
Can you tell me what is missing in the '885 -- I'm sorry -- the '876?
A To start with the controller part, the LMUs are not controllers, because they don't perform control functions.
Q They do send signals and command a response, right?

A They do query the bus for information, yes.
Q And that bus, the device on the bus must respond, right?
A Yes.
Q And you believe that it's not a controller?
A As defined by the SAE, it's not.
Q How about as defined by Judge Byron?
A As defined by Judge Byron, it's electronic circuitries that perform one or more control functions. So no, it wouldn't be a controller.
Q It would be?
A Would not be a controller. I'm sorry.
Q Why is that?
A Because it's not performing control functions.
Q Well, didn't you tell me when you went through the '885 that it could be a control function to send that signal and force the SAE to send it back?
A SAE. Let's keep going back to the SAE, which is somebody who is skilled in the art, working in the automotive industry. And skilled in the art, as we have said, is an engineering degree and working in the industry. Mr. Pham is not working in the industry. He's not an engineer. Those skilled in the industry would understand the use of the SAE documents.
Q I'm sorry, sir. What is Mr. Pham's background?

A I can't tell from this. I would assume he's a lawyer.
Q You just told the jury that he's not an engineer.
A I'm sorry?
Q Do you have any basis whatsoever to make that statement?
A No, I don't.
Q In fact, the Patent Office hires a huge number of engineers, right?
A I don't know.
Q Well, then, on what basis can you tell this jury that Mr. Pham was not a person of ordinary skill in the art?
A I would assume that he was a lawyer. He might have --
Q So you don't know?
A No, I don't.
Q Okay. So when you told this jury a minute ago he's not one of ordinary skill in the art, you just made that up, right?
A I don't have data to go either way on that.
Q Is that a different way of saying that you just made it up?
A No. It's my understanding that most of the Patent Office clerks are non-engineers, lawyers.

Q Where do you get that understanding, sir?
A That was just my awareness.
Q Based upon what?
A Well, let's see, as part of working at Cummins, we did take information on how to deal with patents. I was on the patent committee. I mean, just discussion among the other groups and the lawyers, our own counsel and Cummins.
Q Have you ever met a patent examiner?
A No, I haven't.
Q Where -- how do you think these examiners have the level of skill to read and understand these applications?
A I would assume through the on-the-job training.
Q Do you know?
A No, I don't.
Q If I set aside the SAE documents, is there any other basis upon which you believe that Judge Byron's definition of controller is not met by the LMU and VPOD devices?
A For this patent?
Q Yes, sir.
A The first claim? So we can't follow a command and an action, correct? Is that what we're throwing out? I mean, it's a control function, right, so it's not -- the LMUs are not controlling anything.

Q Except the ECU, right?
A No, they're just talking on the bus. These are passive devices, all right. This is a gateway between pulling information from a vehicle device and putting it on the airwaves, all right. This is just a go between. These are not devices with the intention of doing things on the vehicle. I mean, just -- you're sucking information out to be used elsewhere remotely.
Q Would you be surprised that the schematic that the jury looked at for the LMU identifies the chip as a microcontroller?
A Yes. No, I would not be surprised.
Q Because it's a microcontroller, right?
A Correct.
Q And they're not passive devices in the sense that someone not entrenched in SAE would view it, correct? They do perform certain functions, right?
A Yes.
Q Otherwise, there's no point to having them there, right?
A Correct. Well, no. I mean, you're getting information. You're not controlling, but you're -- the value is to get that vehicle information -- location, speed, you know, all that stuff -- to the end customer to track vehicles, that type of stuff. So it's not

about controlling.
Q Well, that's all that the microchip is for, controlling the functions, right?
A Of the LMU, yes.
Q Now with respect to the '876, the examiner had the opportunity to review the SAE documents identified, right?
A They're not the appropriate ones but, yes, they did review some SAE documents.
Q Well, the SAE documents you're referring to are geared toward scan tools, right?
A Surface vehicle information report, I doubt that's a scan tool document.
Q Pardon?
A I doubt that's a scan tool document.
Q The 1978?
A I see Other Publications.
Q No, no, no. I apologize. I don't think we're talking about the same thing.
A Sorry.
Q The 1978 reference that you've got throughout this entire invalidity analysis --
A Yes.
Q -- that deals with scan tools, right?
A Correct.

Q All right. We've talked about controller, multi-vehicle compatible controller in Claim 1 of the '876. And while you and I disagree -- we'll put that aside for a moment -- what else is missing for purposes of non-infringement?
A On '876?
Q Yes, sir, Claim 1.
A That's it.
Q So if the jury did not apply the SAE controller standards to the '876 patent, you would agree that the LMU units infringe, correct?
A Let me -- just one last check. Sorry. It's important. I want to get it right so I want to go back to my report just for a moment. Well, it's also talking about working and non-working command signals.
Q Yes, sir.
A And we're using 1978 as a define, the working and non-working command signals.
Q I believe you are confusing invalidity with infringement. My question was to infringement.
A I'm sorry. Correct.
Q Okay.
A Yeah.
Q So it's just the controller. If the jury decides that the SAE definition that you rely upon is not

appropriate, you would agree that the LMU infringes the '876?
A Correct.
Q Okay. And I want to just clarify something for the jury. When you did that chart and you went through -- we just went through the dependent claims.
A Yes.
Q Your lawyer wrote down, "Not present." You see that?
A Correct.
Q That's not actually true, is it? Those elements in the claims are, in fact, present, but it's because the controller earlier wasn't present, right?
A Correct.
Q Okay. So it's not that these elements aren't present, it's that something in Claim 1 wasn't present?
A Yes. Let's go up to the dependent claims, please.
Q And that's the controller we talked about?
A Yes.
Q Okay. Just wanted to make sure everyone was on the same page on that. All right. Now, I want to focus your attention on the validity portion of the '876. And you, again, rely upon the Braitberg patent. And the Braitberg was the WiFi hot spot in a car?
A Correct.

Q And that didn't have multi-vehicle, so you had to import something from the J1978, right?
A Yes.
Q Okay. Can you point to the jury anything in Braitberg that directs one of ordinary skill in the art to the J1978?
A Mainly the theme of the patent's vehicle related so one skilled in the art would understand the need to be multiple vehicle compatible and, as a result, use J1978.
Q So it's nothing more than you say so, right?
A One skilled in the art would have to be using SAE standards at the time.
Q They may or may not be. Mr. Chen wasn't, right?
A That's what I understand.
Q So back to my question. What in the Braitberg patent helps direct the jury that one of ordinary skill in the art would, in fact, look to the 1978?
A Needing the multi-vehicle compatibility.
Q Okay. So they would identify the problem that Flick saw. And once they identified that problem, they would figure out how to solve it, right?
A Yes.
Q Isn't that, in fact, the hindsight analysis that's prohibited by law?
A Well, you're asking me to do the analysis or a jury

who's not familiar with SAE standards?
Q I'm asking for one of ordinary skill in the art at the time of the invention.
A Okay. Then, yes, he would be aware of the standards and would be using that to help him describe multiple vehicle --
Q I'm not asking about the standards. I'm asking about the problem. You understand Mr. Flick was in a rather unique position. He was in this aftermarket business. And he recognized that for all of his component parts to work, he wanted it to work with all kinds of different cars rather than a bunch of different SKUs, right?
A Right.
Q Someone in the OEM, the original equipment manufacturers, GM or Ford, they wouldn't have had that same type of problem to overcome, right?
A Yes, they would.
Q If they did, they didn't overcome it, because you couldn't find that, right?
A On the time frame we're talking about, scan tools -- these are service tools that you plug in -- that was already a product in the market using J1978 to diagnose any vehicle that walked into their service shop. So the problem -- there was an awareness of the problem.

There was a solution to the problem on multi-bus compatibility, and there were products on the market in that time frame describing what's described here.
Q Well, the patent doesn't describe multi-bus compatibility as its claims, does it?
A No.
Q Okay. So that scan tool wasn't the problem recognized and solved at all, was it?
A Correct.
Q Okay. Mr. Flick recognized that if I want to get on the bus, on various buses and keep my SKUs down, I want to be able to talk to all the buses?
A Correct.
Q For GPS and for wireless communication, right?
A Right.
Q That's what's claimed by Mr. Flick as his invention?
A Correct.
Q Okay. We can't exclude GPS and wireless, can we?
A No.
Q Because that's an important element of every one of the patents, right?
A Yes.
Q Okay. So, Mr. Flick recognized that to be a problem back at the time of his invention, right?
A Yes.

Q And he solved it, right?
A He's got a patent, yes.
Q Okay. So my question -- I'm sorry we did a long circle back to it. My question is how does one go about making sure that we're not using improper hindsight analysis, in other words, that we're not using Mr. Flick's identification of the problem and solving it 15 years later?
A 'Cause that information was available at the time prior to Mr. Flick's patent.
Q There's a lot of information available.
A Right.
Q Would that suggest no patents are valid? Every patent is built upon something, right?
A Yes.
Q Okay. Everything is generally known going back to the wheel time, right?
A Yes.
Q Okay. And I suppose I could patent a shovel with a bus communicator device, but there's no need for it, right?
A No.
Q There would be no practical purpose?
A Correct.
Q Okay. But Mr. Flick identified a problem and

because of his position, whatever it may have been, and solved it, right?
A Okay.
Q And so, the law says what we can't do is sit in a federal courthouse in Orlando 15 years later and look at Mr. Flick's patent and say, this is one, this is one, therefore, it's invalid, correct?
A Correct.
Q Okay. So my question comes back to what did you do, as the expert, to make sure you didn't fall into that very easy trap of hindsight analysis?
A Because 15 years ago the standards were in process, and the industry was using those.
Q They were using them for a scan tool?
A Correct. That's a way of talking with multiple vehicles on different buses. And it's very clear. You don't have to re-invent the wheel and do it a different way. Those skilled in the art would know that was available.
Q We don't have anything objective to make sure or to point from Braitberg to the J1978, right?
A Correct.
Q We have it because you say so, right?
A Correct.
Q Okay. The next combination that you proffer is

Bambini. Can you explain to the jury generally what Bambini is?
A It was a lot like an OnStar product working on the vehicle bus communicating wirelessly information back out. It had the ability to do things like unlock doors, for example.
Q One of the embodiments was that you could record turn-by-turn directions and to play it back as you drove?
A That's another one, yes.
Q Okay. And that didn't have multi-bus compatibility, right?
A Correct.
Q So because you can't find it in Bambini, that's why you had to turn to the J1978?
A Yes.
Q And is there anything that I can circle on the Bambini reference in front of me that will help the jurors put themselves 15 years ago and say, yes, I would have -- Mr. Bambini and I would have turned to the SAE J1978?
A No.
Q Okay. Again, this is a combining because you say so?
A Because it was available in the industry at the time, yes.

Q But there is no objective evidence that one would do so, right?
A Right. Correct.
Q All right. Let's move to the '278. You're familiar with the '278 patent?
A Yes, I am.
Q Okay. '278 is generally what?
A '278 is about similar things we've been talking about all along. The main one here is vehicle device information being stored in the controller.
Q Well, how about some shorthand so the jury can sort of conceptualize in its mind. This is the one that has GPS and downloadable codes, right?
A Yes.
Q And what references did you combine to find the '278 invalid?
A I used Bambini and Spaur.
Q And again, if we go through the '278, that was prosecuted around the 2007 time period?
A Yes.
Q Okay. And the examiner was not our friend Mr. Pham again this time, was he?
A Correct.
Q Okay. This time it's Mr. Nguyen, right?
A Yes.

Q And it was a continuation of the various patent applications, continuation-in-part by Mr. Flick, right?
A Yes.
Q So the examiner would have been aware of everything that went on before it?
A Correct.
Q Would that include the '885 prosecution?
A Yes, 'cause I think it's listed.
Q So the examiner would have known of the Pham decision that a single bus is a multi-bus controller and that was rejected, right?
A Correct.
MR. KAUTH: Objection. Calls for speculation.
THE COURT: Sustained.
BY MR. GILCHRIST:
Q Well, let me ask you this. The examiner, for purposes of your analysis, is presumed to have known all about the '885 patent prosecution, right?
A Correct.
Q And this is a list of everything that Mr. Nguyen had to look at, right?
A Correct.
Q And we have quite a few references in here, as well the Other Publications?
A Yes.

Q Okay. And now we've got "...sleep scheduling on moving directions in target tracking sensor network." Do you see that?
A Yes, I do.
Q Did you review that?
A No, I didn't.
Q Did you review the Digital Object Identifier?
A No, I didn't.
Q How about, "A self-organizing hybrid sensor --
A Nope.
Q -- system"? I was going to read the whole thing, but I won't have to now. Did you -- well, let me ask you this. Did you review anything --
A Other Publications?
Q -- in the Other Publications?
A Well, I read through the paragraph but, no, I didn't do further analysis on it.
Q Let's start with infringement. What did you find missing for the '278?
A First of all, no controller as defined by the courts and J19-- and not using command signals.
Q Is that two separate things?
A Well, it's not a controller 'cause it's not doing control functions, correct. '278 also didn't have a wired interface and the external wired -- let me see,

am I on the right one? '278. Sorry. So it's not performing control functions.
Q All right. Let's start with that, control functions. And that's what we talked about earlier and you and I disagree on control function --
A Okay.
Q -- on whether it sends a signal and must return. That's that argument, right?
A Correct.
Q Okay. So we don't need to rehash that one. What else is missing?
A Said wireless compatible controller to be coupled to a vehicle data bus for communications with at least -- excuse me -- thank you -- with at least one vehicle device using at least one corresponding vehicle device code from among a plurality for different vehicles.
Q And that's that argument we -- not an argument. That's that discussion we had concerning VIN?
A Correct.
Q Okay. So if the LMU has partial VIN, you would agree that this element would be met?
A Another interesting phenomenon is when you unplug that LMU, it loses the information and starts the whole process over again, so it's not you're able to go to multiple vehicles. You have to restart the process, get

a new VIN. So it's not really multi-vehicle at that point.
Q Well, it --
A When you turn the key off, it stays powered, so as a result it keeps the information that was on the same car.
Q Let me explore that for a minute. When I turn the vehicle off --
A Yes.
Q -- it has already gone through the vehicle bus discovery process, right?
A Correct.
Q Okay. So it is already active -- if my version of controller is correct, it is already infringing?
A Your version, yes.
Q Okay. And so when I turn it back on, it doesn't matter if it infringes again, does it?
A In your opinion the way -- yes.
Q Okay. And -- but if I take it out and put it in a different vehicle, it goes through that discovery bus process again?
A Right, and can work with that one vehicle.
Q Okay. So it -- but it can work two vehicles that way, right?
A Yes.

Q Okay.
A But not with the same stored information that you took --
Q Right.
A -- from the first vehicle.
Q Right. And you think the claim requires that it has to use from the first vehicle?
A Well, it's corresponding with at least one vehicle device using at least one corresponding vehicle device code, so when you go to the next vehicle you're using the same device code to get the VIN.
Q Unless it's a different CAN?
A No. It's the same device information you're receiving. It's a VIN.
Q You're sending them sequentially, as we've discussed?
A Correct. So the information you're receiving describes that it could work on all Pontiacs, as you mentioned. But as soon as you unplug it, you're starting back from scratch.
Q Correct.
A All right? So you're only getting one device code for one vehicle that you were plugged into. As soon as you remove it and there's no more power, it's no longer a multi-vehicle compatible controller.

Q And if it's sitting there on the witness stand, it's not a multi-vehicle compatible controller?
A Not without power.
Q But it's intended to be plugged in, right?
A Yes.
Q Intended to be used?
A To one vehicle, yes.
Q Why is it intended to be used for one vehicle?
A Plugged in at a time, I'm sorry.
Q Oh, just one at a time?
A Yes.
Q Okay. But it can be used in multiple vehicles?
A Correct.
Q Is there anything else in '278?
A Keep going. Next page, please, up towards the top.
Q Now, we're moving into a new claim?
A Okay. Well, we can stop on the first one.
Q Yes, sir. So I've got the fact that it can be unplugged, it won't save the memory as one basis for non-infringement and a controller argument?
A Right.
Q Anything else?
A No.
Q Then, our next independent claim would be Claim 13. Are there any different arguments for Claim 13? Let me

know, and I'll move it up for you when you get to it.
A Go down. The downloading interface permitting downloading of enabling data related to at least one corresponding vehicle device for use by said multiple vehicle compatible controller. At this point, the information that's being returned from the remote server is just information for this vehicle.
Q Are data codes downloaded in Oxnard, California?
A Device codes, do you mean?
Q Yes, sir.
A No, they're not.
Q What's downloaded?
A It's really just pointers identifying what parameters the LMU should be looking at.
Q Would that include any information concerning the bus that we talked about, the bi, how are you, please respond?
A We've identified the bus, and then you get the VIN. And from the VIN, you get the informa-- you send it off remotely to get the information that is of interest.
Q That's not a downloading? Well, what is --
A I'm commenting on the multiple vehicle part of it.
Q Okay.
A Which is a different argument than we say before about unplugging and plugging it. It's the information

that's available for that -- that is of interest for that vehicle.
Q Because it goes through the discovery bus protocol, you would agree that it can discover multiple different bus types?
A Yes.
Q Is there anything else?
A Not on that one.
Q Number 18.
A And the same arguments are applying on this as we go, so I don't have to repeat those; is that correct?
Q No. I'm looking for new argument, something the jury hasn't already heard you and I go back and forth.
A Okay, yeah. Sorry. We're in agreement.
Go down, please. The temporary connection on the bottom is one.
Q That's something new?
A Yes, it is.
Q All right. When the units are provisioned in Oxnard, California, are they connected to the board?
A Yes, they are.
Q With a temporary connection?
A That's how I understand it, yes.
Q Okay. So that would be found?
A The way I read this is beyond the vehicle at the

time.
Q Beyond the vehicle at the time?
A Yes.
Q What does that mean?
A Well, this was programming and -- this was -- described what's going on in the vehicle in terms of the information available on the bus, the communication to get information to send it out wirelessly and then said downloading interface comprised of a wireless receiver temporarily connected to a downloading device.
Q Well, the wireless refer would be temporarily connected, right? It's not always on.
A Okay. Yes, you're right.
Q Anything else?
A No.
Q And that's all the independent claim of the '278?
A Yes.
Q Now, why is the '278 invalid?
A 'Cause of what I just described -- oh, invalid, I'm sorry.
Q Yes, sir.
A Based on the references that I looked at and analyzed, I saw the claim, a good description of the Flick patents.
Q And which references did you throw at the '278?

A '278 was Spaur and Bambini.
Q Bambini, we've talked about. That's that turn-by-turn direction patent, right?
A Yes.
Q Okay. And that's missing the multi-vehicle compatible element?
A Correct.
Q And you have to import that from the J1978 standards?
A Correct.
Q And can you point to anything in Bambini that helps the jury understand why you would do so?
A Beyond the time frame of this patent versus what was available, no, there's nothing described in this patent.
Q Any objective evidence the jury can rely upon to make sure that they wouldn't be using improper hindsight analysis?
A No.
Q And then, you combined Spaur. That's the '074 patent?
A Yes.
Q With again, the J1978?
A Yes.
Q So that would indicate Spaur, likewise, failed to have that multi-vehicle capability?

A Correct.
Q So you had to pull into Spaur this bus protocol that you've described?
A Correct.
Q And can you point anywhere in Spaur that there is evidence that someone of ordinary skill in the art at the time of the invention would have looked to the scan tool bus discovery process of J1978 to solve the problem identified by Mr. Flick?
A No.
Q Did you also look at the '727?
A Yes, I did.
Q And I know engineers and patent lawyers hate for me to do it, but generally for the shorthand version of it, this is the speed notification patent, right?
A Yes.
Q And I understand, you have to use all the terms of the claim, but just for shorthand.
A No problem.
Q And did the prosecution of the '272 follow along the similar lines that we've seen on the other three patents?
A Yes, it did.
Q Claims were rejected?
A Yes.
Q And then, the argument was made that I don't find

anything in what you're asserting that has multi-vehicle compatible controllers, right?
A Correct.
Q And then, the examiner reluctantly shook his head and said, all right, you got me, I'm going to allow it; fair enough?
A Fair enough.
Q And during that process, they relied upon all the various patents that we've talked about in the file histories, in the whole history of the Flick conglomeration of patents?
A Yes.
Q And they looked at various references?
A Yes.
Q And Other Publications?
A Yes.
Q Including Omega's GPS 2000?
A Yes.
Q And this one's got quite a laundry list, correct?
A Yes.
Q And I assume you did not review each and every one of these cited references?
A Correct.
Q But you were still comfortable enough making a determination that the references you relied upon were

more relevant than what the examiners had in front of them?
A Yes.
Q They would not have been merely cumulative?
A Correct.
Q How did you make that determination without actually reviewing what the examiner had?
A I was assuming that the patent was valid, is still valid, and just looking at the claims and comparing it with the patents that I had found.
Q All right. I'm not asking the question well, then.
A I'm sorry.
Q Would you agree with me that the law says that if it's merely cumulative of what the examiner had in front of him, the art you're referring to, it would be a much higher burden to prove invalidity?
A Correct.
Q Okay. So my question is, as part of your analysis, did you make that determination that what you relied upon was more relevant than any of this?
A No.
Q All right, sir. I'm going to turn your attention to the claims of the '727. Can you identify for the jury what elements you found missing from the '727?
A The third one, a controller to be coupled to the

vehicle data communications bus for reading the data related to the vehicle speed from the vehicle data communication bus.
Q All right. I think the jury has heard us debate the controller enough.
A Yes.
Q Okay.
A This one, the -- while the vehicle speed is available on the bus, it's my understanding that the LMU is using GPS speed.
Q Are all of them using GPS speed?
A Yes. To my knowledge, they are.
Q Would it surprise you if the engineers that the jury listened to said about five percent or more use the speed from the bus?
A To do this determination?
Q Yes, sir.
A Okay. That's news.
Q Okay. So you didn't consider that testimony when you arrived at your non-infringement position?
MR. KAUTH: Objection. Misstates prior testimony.
THE COURT: Overruled.
A Ask the question again, I'm sorry.
BY MR. GILCHRIST:

Q You didn't rely upon any such testimony when you made your determination that the LMU-3000, 3030, were non-infringing?
A Correct.
Q And if the jury were to believe or determine that there were LMU devices programmed to read speed off the bus, would you agree that the LMU infringed?
A Well, not necessarily. Because just reading speed, there's the second part of this about, you know, then comparing it against the threshold.
Q Right. And do you have any reason to believe that when they read the bus speed that they don't compare them?
A Well, it depends on what that information's used for. If the program in the LMU is not set up for an overspeed condition, then no.
Q All right. So if it's not doing it, it doesn't infringe. I get that argument.
A Okay.
Q But would you agree with me that many of them set up are set up to do it?
A You said five percent?
Q Well, I didn't say it, but, sure, five percent?
A And the question was would I be surprised or --
Q Right.

A Yes. Based on what I understand, the capability of the LMU software using the GPS speed.
Q And would you -- well, would you agree with me that the speed data that's being sent to the remote -- sent remotely -- doesn't have to be the same speed?
A As the GPS?
Q Right.
A Correct.
Q And can it be the GPS speed that's sent?
A Yes.
Q Anything else?
A The second part of that, determining the speed exceedance. So if it's using the vehicle speed I guess it could, you know, in this five percent that you describe. But as I understand it and the way I read it in the PEG programming guide that there's very good capability using the GPS speed to make that determination.
Q Is the LMU capable of infringing if it's programmed to read the data bus speed?
A And make the determination based on that, then, as I would read this, yes.
Q And you know it had to be capability to make that determination. Your dispute is whether it's using GPS or data bus speed, right?

A Correct. I guess the question becomes if you had the capability of an LMU, you know, why would you re-invent the wheel to re-program it to -- but, I mean, that's up to the customer.
Q Correct. Anything else?
A No.
Q And you have also determined that '727 is invalid?
A Yes.
Q What did you rely upon to make the determination of invalidity?
A Two patents of Bambini and Spaur.
Q What did you look at for Spaur?
A The claims.
Q And you found that it was not multi-vehicle compatible?
A Correct.
Q And, therefore, you had to go back to the SAE standard, right?
A Yes.
Q But this time you went to a different standard, didn't you?
A Yes, I did.
Q So this person of ordinary skill in the art at about the time of the invention would have known to bypass the scan tool SAE reference and go to get another one?

A Correct.
Q And the reason that they had to go to another one is because your J1978 doesn't have anything in it about the speed, does it?
A Correct.
Q Because that's a scan tool?
A Yeah, that's about asking which bus. It's called bus determination.
Q For a scan tool?
A For any device that needs to talk to multiple vehicle -- multiple --
Q Doesn't the SAE reference scan tool?
A Yes, that's the title.
Q And scan tool, at or about the time, was a device that you went on to look at your emissions control and make sure that your warning items on the emission control were all in compliance?
A It had a little more capability than that, but yes.
Q And so, one of ordinary skill at or about the time of the invention, if they looked to that scan tool SAE document, they still wouldn't come up with the '727 patent, in your opinion, right?
A Well, 72 -- excuse me -- 1978 in the description refers to 1979. 1978 is that query of information to find the right bus. And 1979 describes the information

that's available that would come back from the various devices. So they go together.
Q All right. So you're saying that one of -- well, for purpose of invalidity, you have to combine Spaur 1978 and 1979?
A No, you don't.
Q Okay. So we jump from Spaur to 1979?
A Correct.
Q Okay. Because 1978 doesn't have anything to do with speed?
A Correct.
Q And can you tell the jury or point to anything in Spaur that would suggest combining an SAE reference to Spaur would solve a problem?
A Just that vehicle speed was available on the bus as a standard feature.
Q All right. That's it?
A Yes.
Q And what else did you combine or what other combination did you make?
A Just those two.
Q No other? I don't want to fool you. I could have sworn that you told the jury that Mobile-Trak --
A Oh, I'm sorry. I thought you were still on the patent, not the --

Q I am still on the patent, sir.
A No, I just -- okay, sorry. You flashed up the first patent.
Q Mobile-Trak, that doesn't have multi-vehicle compatibility, correct?
A Actually, Mobile-Trak describes three different data buses.
Q Does it describe how you can work with all three or would you have to have separate programming?
A I don't think it describes that. In the features it just said the three were capable.
Q In fact, isn't that exactly the argument that the examiner, Mr. Pham, made when he was trying to reject the '885 that he told the patent attorneys that, I can simply reprogram the Dery product to make it multi-vehicle compatible?
A It was capable of three different communication protocols on three different wires, I believe.
Q Now, you're talking about Mobile-Trak?
A Yes, I am.
Q Okay. I was asking about the argument that the examiner made.
A Oh, single bus means no multi-vehicle?
Q Right.
A Correct.

Q Because being able to reprogram them isn't what the examiner ultimately found was patentable?
A Correct.
Q Is that the same thing we've got with Mobile-Trak?
A No, because I don't believe it required reprogramming to talk with multiple buses.
Q It required three different connections?
A I believe so.
Q Okay. And each of those connections would have had a different identifier?
A Different identifier?
Q If I plugged it into one --
A Each one has two wires, yeah. So part of the connector would go, you know, if you had that on your bus you'd wire up to these two wires. If it was this on your bus -- so it will all depend on what you were using it for and what bus the vehicle had.
Q It didn't go through that bus discovery protocol?
A No, it didn't.
Q And than you have to combine that Mobile-Trak with the J1979, right?
A Correct.
Q Because Mobile-Trak didn't talk at all about the speed notification?
A Correct.

Q And is there anything in Mobile-Trak that you can point to this jury as evidence, objective evidence, that one of ordinary skill in the art would have combined the two?
A No.
Q They simply have to rely upon what you're telling them?
A Correct.
Q And we started a way back on this idea of secondary considerations, and on the questioning of your lawyer you said, well, I considered it commercial success. Do you remember that?
A Yes.
Q Did you consider it in the sense that it was listed on your report? Or did you actually go out and see whether Mr. Flick's inventions generated commercial success?
A No, I didn't.
Q And that was a terrible question 'cause I asked you two questions. Did you investigate whether Mr. Flick's patents generated commercial success?
A I did look on the Internet. I didn't find anything that when using Mr. Flick as a key word and automotive and whatnot, I didn't find any products that jumped out at me.

Q Did you find the DEI line of products?
A I don't think that -- no, I did not.
Q All right. Are you familiar with DEI, Directed Electronics?
A I have heard the company name.
Q Very large company, right?
A I don't know.
Q Okay. Have you heard of the company AudioVox?
A Yes, I have.
Q Now known as Voxx?
A Yes.
Q Very large company?
A Okay.
Q Would you agree that if they had products licensed under the patent that were successful, that would be an indication of commercial success?
A To avoid litigation or to -- you know, there's a valid -- possibly, yes.
Q And you're not suggesting to this jury that Voxx was involved in litigation with Mr. Flick, are you?
A No, I'm not.
Q And you did not investigate whether there had been copying of Mr. Flick's invention by others, correct?
A Correct.
Q And if I were to tell you that DEI was found to be

a willful infringer, would that surprise you?
A No.
Q Would that alter your opinion that the secondary considerations that this jury is required to consider would lean towards the patents being valid?
A Are these the same patents that are in question that they're copying?
Q One of them was; the '885, sir.
A Okay. No.
Q It wouldn't change your opinion?
A Oh, I'm sorry. It could. I'd have to look at it in more detail. It wasn't part of my analysis to look at that product.
MR. GILCHRIST: Your Honor, that's all I have.
THE COURT: All right, thank you.
Why don't we take the lunch break now. It's 12:25. We'll come back at 1:25. We'll have redirect examination. And we should be -- we're moving along well, ladies and gentlemen, but I think it's obvious we are not moving quite as quickly as we had hoped, and that's all right. That happens in these matters. We'll talk about the schedule as we go through the day, but I think there is no doubt that the evidence will be to you today.
The question I'll have is if it's so late in

the day, my preference is to have you be willing to come back fresh for closing arguments, because I think there's only so much the human brain can take at one time. And so, perhaps we'll discuss that later about coming back in the morning if it's mid-afternoon or something like that. That might make more sense rather than at 5:00 me asking you to go back and start talking. I think that's a lot to ask of anyone. So enjoy your lunch. We'll see you at 1:25.
(Jury exits.)
Thank you. The jury has withdrawn.
For scheduling purposes, redirect examination, Mr. Kauth, roughly, I'm not going to hold you to it. I'm just getting a sense.
MR. KAUTH: Twenty minutes.
THE COURT: All right. Is this your last witness in the case?
MR. KAUTH: Yes, it is.
THE COURT: And then, rebuttal case I think you indicated was an hour?
MR. GILCHRIST: Yes, I think an hour.
THE COURT: Is this the same measuring stick for an hour used in your cross examination or a different one?
MR. GILCHRIST: I'm not sure I referenced that

in my cross examination.
THE COURT: Just giving you a hard time.
MR. GILCHRIST: And if you weren't the judge, I would object.
[Light laughter.]
I believe an hour should include most of the cross as well. I don't -- Mr. Santurri's going to do it. He's kind of slow, but I don't think he's that slow.
THE COURT: Because what I'm thinking, folks, is that by the time we conclude evidence, it's probably getting close to three. And if you're closing's going to take several hours, you know, whatever it is, two, two and a half, whatever the number of hours is, we're not going to get to the charge, and I don't want to split closings up. So in that case, we'll come back in the morning. And I'll be asking if they can come back at 8:30 just so that they have time to really get to work. I don't want to start them too late. So we'll kind of go in that regard.
MR. GILCHRIST: I understood you had sentencings all day tomorrow.
THE COURT: I do. But I just told Nancy we're going to move some of those.
MR. GILCHRIST: Okay.

THE COURT: They're not going anywhere.
All right, thank you.
(Lunch recess from 12:28 p.m. to 1:32 p.m.)
COURT SECURITY OFFICER: Court is back in session. Please be seated.
THE COURT: The record should reflect the jury is absent. There was a question from one of the jurors which is what caused my delay in getting back out here. Let me just read it to you. We'll mark it as a court's exhibit. But the question is -- from juror number 4, Ms. Gibson -- my boss has asked if there is any way to know whether this case will conclude Thursday or Friday. She is trying to determine coverage for my patient care load.
Here is the response I would like to give to juror number 4: The evidence presented by the parties will conclude today by mid-afternoon. We will have closing arguments first thing in the morning. I expect the case to be with you before noon tomorrow. It is not possible to predict how long you may deliberate. You are entitled to deliberate for as long as you deem necessarily. Accordingly, whether your work will conclude Thursday or Friday is not within the control of the Court, signed by me.
All right? I don't want to suggest a deadline

to anybody. All right. I got nods all around, so I am going to make the question the next court's exhibit and the answer the one following that, and we'll send the answer back.
DEPUTY CLERK: And this will be number 10.
THE COURT: Number 10. Thank you, Nancy.
DEPUTY CLERK: Should I not have a copy?
THE COURT: Pardon me?
DEPUTY CLERK: I need a copy.
THE COURT: Yes, you do, and I forgot to bring you one.
DEPUTY CLERK: May I make it?
THE COURT: Yes, you may.
MR. GILCHRIST: While we are at a lull, just for my benefit, does the Court generally allow me to have a rebuttal to the opening? [sic]
THE COURT: Of course.
MR. GILCHRIST: Okay.
THE COURT: Yeah. So you will tell me how much time you need for rebuttal, and we'll do timekeeper and tell you. And any exhibit that's in evidence, feel free to use in a power point type of format, or however you want to educate the jury, is fine by me.
MR. SANTURRI: Your Honor, with the verdict forms, we got the -- we were asked to review these and

confirm. I think we are good with everything. The only suggestion we had, and I think the defendants are okay with it, the '278 patent, Claim 12, which is on page 6, page 6 of the verdict form.
THE COURT: Okay.
MR. SANTURRI: During the presentation of evidence, Omega did not assert Claim 12 of the '278 patent against the VPOD or VPOD2.
THE COURT: Okay.
MR. SANTURRI: Rather than have check boxes, since the jury is not being asked to determine those, we suggest just emptying those two boxes.
THE COURT: Absolutely. The last two boxes were for Claim 12?
MR. SANTURRI: Correct.
THE COURT: All right.
Can you make that change?
LAW CLERK: Yes.
THE COURT: We will do that.
The jury instructions, you will have obviously before you leave today and then you can look at them and we'll get together before the jury comes in case there are any last-minute changes to be made.
Mr. Andrews, when we do this next section, try to stay close to the microphone. Sometimes it's hard

for me to hear you.
THE WITNESS: Sorry.
THE COURT: It's not you. It's just I'm getting old.
THE WITNESS: Okay. Aren't we all.
(Pause in proceedings.)
THE COURT: Oh, I'm sorry.
DEPUTY CLERK: It already went in.
THE COURT: The note went back?
DEPUTY CLERK: The note went back.
THE COURT: I thought you were still getting it ready.
DEPUTY CLERK: Oh, no.
THE COURT: We're ready.
(Jury present.)
The record should reflect the jury has returned, the parties are present, and we are at redirect examination. When you're ready, you may proceed.
MR. KAUTH: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. KAUTH:
Q Mr. Andrews, how long have you been an engineer?
A Since 1983.
Q And how long have you been working on the vehicle

data bus?
A Twenty-two years.
Q And are you a lawyer?
A I am not.
Q There was some discussion earlier about your opinions. Could you please turn to Exhibit 38 to your expert report regarding invalidity?
A Yes.
Q Does that report contain all your opinions on why you believe the Omega patents are invalid?
A Yes, it does.
Q Could you turn to Exhibit 47, please. I'm sorry, Court Exhibit 47, not the exhibit in your report.
A Yes.
Q And is that your expert report regarding non-infringement?
A Yes, it is.
Q And does that report contain all your opinions why you believe the CalAmp products do not infringe any of the Omega patents?
A Correct.
Q You were discussing some appeal process on the '885 patent with Mr. Gilchrist earlier. Do you recall that?
A Yes, I do.
Q Could you turn to page 22 in your report?

MR. GILCHRIST: Counsel, which report?
MR. KAUTH: I'm sorry. Exhibit 47, the non-infringement report.
A I'm there.
BY MR. KAUTH:
Q And on -- were you on page 21 of your report or before the page number in your report there is also an exhibit number.
A Okay.
Q So, I'd like you to go to the page number that says Defendant's Exhibit 47, page 22.
A Okay.
Q And is that a discussion of the prosecution history of the '885 patent and the appeal you were discussing earlier?
A Yes, it is.
Q And if you continue down two more pages to the page marked Defendant's Exhibit 47, page 24.
A Yes.
Q Is that a decision of the actual -- I'm sorry -- is that a discussion of the actual decision of the Board of Patent Appeals and Interferences?
A Yes, it is.
Q In that very last paragraph that begins with the word, "Turning --"

A Yes.
Q -- could you read that paragraph, please?
A Turning next to the appellant's challenge to the examiner's finding inherency to the controller 20 in Dery, we agree with the appellant's argument. Although the controller may be multiple compatible, it can only store codes for one vehicle at a given time. Thus, the anticipation rejection of claims 1 through 8, 11, 16 through 26, 32 through 38 and 40 through 44 is revised[sic] because the mere fact that Dery is software driven, and can be reprogrammed by the owner of the vehicle to provide multi-vehicle compatible does not necessarily lead to the conclusion that the controller stores "a set of device codes for a plurality of different vehicles as claimed." [sic]
Q Is it your understanding that the '885 patent was allowed because Dery did not disclose that last sentence you read?
A Correct.
Q And the second sentence of that paragraph said, "Although the controller may be multi-vehicle compatible, it can only store codes for one vehicle at a given time," correct?
A Correct.
Q Does that make you reconsider your agreement with

Mr. Gilchrist that multi-vehicle had been shut down by the Board of Patent Appeals?
A Yes, it does.
Q When you were going through your opinion with Mr. Gilchrist, he was asking you about the '876 patent. Could you turn back to page 11 of your report for your discussion of the '876 patent in your same report, Defendant's Exhibit 47?
A Yes.
Q And am I on the right page for your discussion of the '876 patent?
A Claim 1, yes.
Q And I believe when you spoke with counsel earlier, you said that one reason Claim 1 would not infringe is because it didn't have a controller?
A Correct.
Q I'm sorry. One reason the CalAmp device would not infringe Claim 1?
A Yes.
Q And I believe you didn't give any other reasons?
A Correct.
Q Looking at your opinion, did your opinion provide any other reasons why the CalAmp devices would not infringe Claim 1?
A Being a multi-vehicle controller, yes, as well, too.

Q And what about do the CalAmp devices provide working and non-working command signals?
A Correct, they do not.
Q So if you omitted that earlier, was that a mistake?
A Yes, it was.
Q And your opinion is that the CalAmp devices do not provide working and non-working command signals?
A Correct.
Q Let's turn now to your discussion of the '278 patent in your report. Actually, let's just put the '278 patent up on the screen. If you could put up Joint Exhibit 5, I believe, and if you could turn to Claim 1 of Joint Exhibit 5, and the top of the second column, please. Would you take a look at that fourth paragraph there. It says, said multi-vehicle compatible controller to be coupled.
A Yes.
Q And did you provide an opinion whether the CalAmp devices satisfied that limitation?
A Yes, I did.
Q And what was your opinion on that?
A That it did -- that CalAmp did not provide vehicle device information onto the bus. Vehicle device information as described by the Court is coming from a vehicle device.

Q And about halfway through that section, it says, at least one vehicle device using at least one corresponding vehicle device code?
A Correct.
Q What interpretation were you using for the word device code?
A As defined by the Court, it's a signal from a vehicle device.
Q And do the CalAmp devices store or use at least one corresponding vehicle device code from among a plurality thereof for different vehicles?
A No, it does not.
Q Earlier in your discussion, you were also talking about the '727 patent. And in one or your statements regarding GPS speed, I wasn't sure if you were talking about what the '727 patent says or what the CalAmp devices do. So to clarify, could you tell me do you believe that the CalAmp devices use bus speed for measuring a speed threshold and determining if a speed exceeds a speed threshold?
A No, they do not.
Q And what do you think they use to determine speed for that purpose?
A On-board GPS receiver.
Q If you could turn now to Defendant's Exhibit 17.

That's the Spaur patent. And specifically, Figure 2 of that patent. We just read some testimony from the Board of Patent Appeals and Interference decision regarding the '885 patent about multi-vehicle. Can you refresh my memory? What's the Court's definition of multi-vehicle compatible controller?
A Multi-vehicle compatible controller is defined as electronic circuitry that performs one or more control functions and can operate with more than one vehicle.
Q And I know you had a discussion earlier about the CAN bus. Did you previously identify that the Spaur patent utilized a CAN bus?
A Yes, it does.
Q And when was the Spaur patent filed?
A I think '97 -- January '96.
Q Do you know in January of 1996 how many different CAN bus types there were for automobiles?
A Six. Oh, CAN bus, two, excuse me. There was -- yes, two.
Q What were those two?
A It was 11 and 29 bit. Essentially, one is an extension of the other.
Q If you're on a CAN bus, do you have to do a bus determination to determine if it's an 11 bit or a 29 bit bus?

A No, you don't.
Q I believe you also testified about Spaur obtaining data from the bus and you combined it with J1979 for speed parameters?
A Correct.
Q Does Spaur discuss obtaining any type of data from the bus?
A Yes, it does. Different -- the vehicle device information described in the patent.
Q Back in 1996, when the Spaur patent was filed, how would a person of ordinary skill in the art determine what data was available on a vehicle bus?
A Actually, the information coming back from J1979 would tell you all the parameters that could be available.
Q Could you turn your attention to Defendant's Exhibit 24, please. Earlier, I believe you testified that your obviousness combination for the '727 patent, one of those combinations included this Mobile-Trak 2 reference with J1979; is that correct?
A That's correct.
Q Does the Mobile-Trak reference itself disclose setting speed alerts?
A Yes, it does.
Q And can you point me to where it discloses that?

A On page 3, it's got a PC Windows display of how to set it up.
Q So if the Mobile-Trak 2 reference already disclosed speed, why did you combine it with J1979?
A Actually, I didn't need to 'cause it was already defined in this document. Well, that it was -- well, it was part of this document, so I knew that it did have speed.
Q And in this case is J1979 for the same purpose as before, just to show that speed is an available bus parameter?
A Correct.
Q You answered some questions before -- I think you were asked whether you would be surprised if a CalAmp engineer, Mr. Hergesheimer, had said certain things. Do you recall those?
A Yes, I do.
Q Would it surprise you if I told you that in response to a question whether querying a bus and receiving response constituted a control function, that Mr. Hergesheimer said he didn't consider it a control function, it's a query process?
A I believe that.
Q You were also asked about some factors that you set out in your report regarding obviousness, and you were

asked if anyone had copied I believe it was the '885 patent. Do you recall that?
A Yes, I do.
Q Do you have any understanding with regard to those obviousness factors whether copying has to include copying an actual product or can it include copying a patent?
A I was assuming it was copying a patent in this example.
Q Would it surprise you if I told you the law said it had to be copying a product?
MR. GILCHRIST: Objection, Your Honor.
THE COURT: Sustained.
BY MR. KAUTH:
Q You were also asked about, I think, your knowledge of a DEI lawsuit and a couple hypothetical questions and asked if they would surprise you. I believe you were asked if you knew whether DEI was found to be a willful infringer of the '885 patent in a previous patent case. Do you recall that?
A I remember that.
Q Were you aware that that judgment was later vacated?
A I didn't know that.
Q Are you aware if any of the Omega patents had claims invalidated in the DEI litigation?

A No, I didn't.
Q Would it surprise you if I told you claims were invalidated in that DEI litigation --
MR. GILCHRIST: Your Honor --
BY MR. KAUTH:
Q -- and that judgment was later vacated as well?
THE COURT: Pardon me. There's an objection.
MR. GILCHRIST: He's getting into facts that we've heard nothing about.
THE COURT: Sustained.
MR. GILCHRIST: He's suggesting to the witness --
THE COURT: Sustained.
MR. KAUTH: Your Honor, I'd move for admission of Defendant's Exhibit 38 under Rule 703 to aid the jury with determination of the patent analysis.
THE COURT: 38 is the expert report?
MR. KAUTH: Correct.
THE COURT: Any objection?
MR. GILCHRIST: Well, it is hearsay, but I think it's fair. We've got our expert report in as well.
THE COURT: Thank you for that concession. I was going to ask that --
MR. KAUTH: And I'd likewise move for

admission of Exhibit 47.
THE COURT: Any objection? It's the rebuttal report.
MR. GILCHRIST: No, sir.
MR. KAUTH: No further questions, Your Honor.
THE COURT: All right, thank you.
There were a few new matters brought up in cross examination. Is there any desire to inquire on limited recross?
MR. GILCHRIST: No, Your Honor.
THE COURT: All right. Thank you very much. Sir, you are excused. Thank you very much.
THE WITNESS: Thank you.
THE COURT: All right. Your next witness, please.
MR. KAUTH: Your Honor, we had one housekeeping matter. I don't know if we want to do this here or at a sidebar.
THE COURT: We can go to the sidebar if it's going to be fairly quick.
[Sidebar.]
THE COURT: Since I have a cold, I'm going to try and stay away from you guys.
MR. KAUTH: Okay.
THE COURT: All right.

MR. KAUTH: It was regarding our move to admit the opinion letters. I didn't know if we needed to make a formal proffer to get those on the record.

THE COURT: We can -- if you'd like, it can be a court's exhibit so it's there for review by the Federal Circuit.

MR. KAUTH: Perfect, Your Honor.

THE COURT: Rather than a proffer.

My concern was -- just so the record is clear -- that there's a number of legal statements that invades the province of --

MR. KAUTH: Understood.

THE COURT: -- me giving instructions to the jury, as well as the fact that to my knowledge the attorney is not disclosed as an expert to render an opinion. But that's my --

MR. KAUTH: I just wanted to make sure that as an unadmitted exhibit it would still be part of the record.

THE COURT: Yes. I can make those a court's exhibit.

MR. KAUTH: Thank you.

THE COURT: Do you intend to renew your motion for judgment as a matter of law so you can preserve it?

MR. KAUTH: We do.

MR. GILCHRIST: We have some motions as well.

THE COURT: Okay. Let's give the jury a break. I hate to do this, because we just brought them back in, but I don't want to rush you.

MR. KAUTH: And we have no further witnesses, Your Honor.

THE COURT: All right. Thank you.

[End sidebar.]

Ladies and gentlemen, I do apologize. We just brought you in, but we have one housekeeping matter. And rather than have you listen to that static for the next ten minutes, I'll give you a very brief break, and then we'll push through and finish the evidence for the day and get out of here a little bit earlier. I just don't want to have you listen to that static for ten minutes while we whisper over here.

(Jury exits at 1:55 p.m.)

All right. The jury has withdrawn.

Any motions to be made at this time, gentlemen?

MR. SANTURRI: Yes, Your Honor. The plaintiff has some motions, if the Court wants to hear them now.

THE COURT: Yes.

MR. SANTURRI: Omega's going to move for judgment as a matter of law with respect to obviousness

for each of the patents. There are a couple of grounds for this. First at least -- they did rest, correct, Your Honor?

THE COURT: Yes, they did, correct.

MR. SANTURRI: There were at least two of the references that they rely upon for --

THE COURT: Would you do me a favor and please go to the microphone? I just can't hear you very well. It's probably because I have a cold, and I'm not hearing very well.

MR. SANTURRI: No problem, Your Honor.

THE COURT: Thank you.

MR. SANTURRI: So two of the references that were relied upon in every one of the combinations, the J1978 and the J1979, are not in evidence for those purposes. I will say that the J1978 came in. The Court allowed it in for a limited purpose. But it was only, I believe, with respect to Mr. Chen's belief or how B&B told him that their technology worked.

And so, it's Omega's position that without those documents the jury couldn't possibly reach a determination on obviousness, because they can't go on oral testimony alone. There has to be documentary corroboration with respect to each of those. So that's going to be the first basis.

Alternatively -- and I don't have to go through it now, but if the Court is not -- depending on how that ruling goes, if the Court's going to defer ruling on that, then we'd move for the Court striking testimony related to those exhibits and not permitting those exhibits to go back with the jury or at least a limitation -- well, a limitation with respect to the 1978, that they can't consider it for purposes of invalidity.

Additionally, Mr. Andrews testified he had no -- he offered no reason to combine. I think the Federal Circuit and the case law requires that the defendants must articulate a reason to combine the references.

Additionally, there was no reference or reliance on or explanation or analysis of secondary considerations by the only expert that offered invalidity opinions. And the Federal Circuit has said that one must consider the evidence of secondary considerations in order to determine obviousness. I think that covers it with respect to the obviousness issue.

THE COURT: All right. Let me take these down in bullet format.

MR. SANTURRI: So I guess, as a result of all that discussion, they haven't met their burden of clear

and convincing evidence as to the issue of obviousness.

THE COURT: All right. So just so I make sure I understand -- I'm sorry, before you walk away -- your contention as to obviousness, first and foremost, that the SAE standards, J1978 and 79, which are referenced in combination with patents has not been offered through the expert. He has made some reference to why he consulted them, but not offered the document. And your position is that absent -- well, to state it more clearly, that oral testimony is insufficient for purposes of obviousness.

MR. SANTURRI: Yes, sir.

THE COURT: Do I understand that correctly?

MR. SANTURRI: Yes, Your Honor. And we can provide some case law, but I think there are a number of cases that say that the jury can't rely upon evidence that hasn't been admitted for purposes of invalidity.

THE COURT: All right. And then, secondly, you were referring to -- I just lost my train of thought.

MR. SANTURRI: Well, I think that basically they haven't met their burden because they haven't -- number one, they haven't offered any basis -- articulated a reason to combine the references.

THE COURT: You're talking about the

motivation?

MR. SANTURRI: Yes, Your Honor.

And additionally, there was no analysis of the secondary considerations, which was required.

THE COURT: All right. Thank you very much.

All right. Let's hear a response to that.

And my concern is this: There was an objection to the introduction of J1978 -- I believe it was, it may have been 1979 -- when Mr. Chen testified. The reason I sustained the objection is that he was a lay witness -- testifying as a lay witness and was not the proper party to authenticate J1978 or 79. And a lay witness cannot rely upon hearsay as an expert can. 1978 and 1979 were not re-offered through the expert who can rely upon hearsay if it's within the wheelhouse of matters they typically rely upon. So --

MR. KAUTH: They were a part of his expert report, though, Your Honor, and are part of the exhibit over here.

THE COURT: Are they attached to his report?

MR. KAUTH: They were. And they're in separate folders here, not in bulk, but they are all part of respective Exhibits 38 and 47.

THE COURT: Mr. Santurri, how does that -- how do you respond to that? 38 and 47 were just

admitted without objection. If J1978 and 79 are included, aren't they before the jury?

MR. SANTURRI: Your Honor, I think that those documents still haven't been authenticated properly in order for the jury to consider them.

THE COURT: But if it's been admitted, that horse has left the barn.

MR. SANTURRI: There are voluminous attachments there, including pleadings, other depositions, those sorts of things. I don't know that simply allowing those reports in somehow authenticates and properly provides every attachment for the jury's consideration of those.

THE COURT: In the plaintiff's reports that have been previously admitted, is that the report itself or is that the report and attachments?

MR. SANTURRI: Well, they are the report and the claim charts, but there are no external references that were attached.

THE COURT: Mm-hmm. Mm-hmm.

Because I'll just say this. Mr. Kauth, when I admitted 38 and 47, Defendant's 38 and 47, I looked at them in the PDF format I have, and it's just the report without all the attachments. So I don't know if -- it wasn't clear to me that you were speaking to all of

that. And I may be mistaken --

MR. KAUTH: May I check the folder?

THE COURT: Yes.

MR. KAUTH: Okay. These are all listed as those exhibits. And my understanding was they're on our exhibit list as report with exhibits, and I thought my PDF had them as well. It's about 1,600 pages long.

THE COURT: All right.

Let's turn to the next issue, though, which is the evidence of motivation. As the case has been unfolding -- and I take very detailed notes. Periodically, I will word search for motivation or combine or something that takes me back to where a witness may have put these together.

My recollection of the testimony based upon my notes and my memory, which may not be perfect, is that I have heard several references to why a person of ordinary skill in the art might look -- well, let me put it this way -- that a person of ordinary skill in the art looking at Spaur or Bambini would know to look at J1978, because SAE standards for bus communication or what have you is -- you know, was around before.

What I didn't hear -- and maybe it's semantics -- I didn't hear the testimony of the motivation, why a person would choose to go from the patent, Spaur, for

example, or Bambini, to the SAE standard, you know, what would motivate one to do that, I didn't hear that.

The other concern I had is there is a litany of secondary considerations that the witness indicated he had not considered. Unknown to him, either it wasn't provided to him, such as licensing agreements, didn't understand that DEI was found to be a willful infringer.

It was -- they did set aside the judgment, but that was due to the settlement, as I recall on direct examination, I think, of Mr. Flick or one of the witnesses which doesn't, in my mind, take away the weight that one would attach to a willful infringement finding.

And there were other secondary considerations, such as the fact that large vendors, such as Voxx or DEI, were utilizing the technology that's contained within in the patents in suit. And if those secondary considerations weren't considered, that's troubling. I'm not going to get into some of the opinions and their foundation, because there's no Daubert challenge. I'm just talking about the test for obviousness.

So let's assume, just for the moment, that J1978 and 79 are properly in the record because they're part of the folder, and experts can rely upon hearsay, and they can rely upon hearsay without the foundation

coming in separately.

Expert witnesses rely on medical records they didn't authenticate themselves routinely. I'm not as concerned about that. It goes more to the likelihood that the document is what it purports to be. An SAE standard has some inherent indicia of reliability.

I'm concerned about the evidence of motivation. And there is one statement made by Mr. Andrews that troubles me, and I'll read it to you, because I wrote it down and then highlighted it. He testified that he looked at each claim in the patents in suit and compared them to Braitberg to match them up and then added 1978, which strikes me as hindsight.

So if we're looking at evidence of motivation, it's improper to generate that evidence of motivation by looking at the claims and going back and picking prior art that might work and then combining it with something else to close the gap.

And that particular sentence was asked right after a long colloquy between plaintiff's counsel and the witness regarding the need to avoid hindsight and what did you do to ensure you avoid that very easy trap, and the answer was, I looked at the claims, compared them, and went back.

When I consider that in light of the fact that

the witness was unaware of many of the PTO references, that gives me some concern. How can you argue obviousness if you don't know if the material reviewed by the PTO is not the most relevant?

MR. KAUTH: I think there's a misnomer about having to be the most relevant. I think cumulative does not say that anything you rely on -- you can actually, you know, rely on litigation or a re-exam on the exact same references previously considered, so I don't think that's dispositive. I think Mr. Andrews' statement is likely more of a ministerial in that you have to see if all of the elements are in one reference and does it anticipate before you have a -- know it's obviousness.

But I think his testimony was back in 1993 when this J1978 specification came out. He was working in the industry. It dictates -- well, the SAE standards, as a whole, dictate how you talk on the bus. It's not an option. If you're on a vehicle data bus, you must follow the SAE standards to have the communications work, unless you're in a very proprietary space. But any of the major manufacturers that had to comply with the federal mandate had to do that.

And his testimony was that people looking at telematics devices in the automotive industry, such as all the reference he cited, would look to the

controlling automotive specs that control the bus those devices are designed to work on, including, I think, several of them referenced the CAN bus, which multiple flavors of it we heard about, but would all follow the SAE protocols.

I think under the KSR ruling, the old teaching suggestion motivation is out, there doesn't need to be an explicit motivation to combine. You're allowed to give credit to one of ordinary skill in the art. I think the Court said they're not automatons. They actually can think. If it's an obvious combination of something, if it would have -- I don't think it has to be obvious to try. There's a litany of suggestions the Court gives that say you must give more credit to one skilled in the art. It may include fitting things together like a jigsaw puzzle is one of their quotes. And you can't shortchange these people. You know, they're innovators for a reason.

THE COURT: Now what about the secondary considerations that were not factored in, such as licensing which he was completely unaware of, and we heard many references to licensing. And it wasn't brought up, but there were royalties that were paid in a very high amount. What do you think of these?

MR. KAUTH: And I think Mr. Tregillis noted

that a lot of those -- all but five of those royalties were probably very low volume and the result of litigation. He could not identify for me any product that was actually covered by the four patents in this lawsuit. Those license agreements cover hundreds. And what has happened is you miss the required nexus that is -- has to be present before you can even consider the secondary considerations. We think there's been no evidence of that, and so it doesn't trump. I think if we had a license agreement that actually said this company's making a product and it's covered by this patent, we would have given it to him, but we asked for that from Omega. We didn't get it.

THE COURT: All right. Let me turn back to your colleague just for a second.

Mr. Santurri, the notion -- and I think your colleague is correct that motivation is not as hard and fast a rule as it once was. I recall that from my review of the case law that it's no longer the silver bullet it once was. It's a factor. And so there's been some references to why one of ordinary skill in the art would know to look and combine these. Whether the jury accepts that or not is another story. But I tend to think the point made by Mr. Kauth is correct, that motivation is not as hard and fast a rule as it once

was, and I may have gotten a little bit off the beaten path when I stated it so strongly.

MR. SANTURRI: I think the KSR decision does say that the teaching-suggestion-motivation test isn't as rigid a rule as applied, but I believe there is a statement in KSR that specifically says that the person that is arguing for invalidity still has to articulate -- I think the language is articulate a reason that combines the references. There must be some articulated reason. I don't have the quote directly in front of me.

THE COURT: But didn't he do that by simply saying -- whether the jury accepts it or not is not germane at the moment. But the witness identified the two or three or whatever it may be, prior art pieces -- Spaur, Bambini, Mobile-Trak, et cetera -- for various purposes and realized they were deficient to get to where he needed to get. So he looked at the SAE standards and testified that at the time people in the industry dealing with vehicles, in general, would have been aware generally of SAE, and it wouldn't have been a big stretch to look.

Now the point made, of course, on cross is that other people who are learned did not look, presumably, if that was Mr. Chen's testimony, which I seem to recall it was, but it may not be quite that

clear. But that seemed to me more of a jury question. But going back to the point, the witness did identify why one skilled in the art would combine these together.

MR. SANTURRI: Well, I think what he did was say in order to get to the claimed invention, I have to combine them, because something's missing. But when he was asked --

THE COURT: In fairness, he was a little bit broader than that.

MR. SANTURRI: But when asked -- well, you know -- I mean, I think the test is when you look at the first reference, if it's lacking, is there something within that reference that suggests you go elsewhere, I think that, you know, was there a problem that's still left there; I think the point is that all the references they present -- the Bambini, the Spaur, those -- they're directed to a single bus, the single type of device. I think Mr. Andrews conceded that they were all single bus controllers.

And so, there was no reason for those inventors or one of skill in the art to try to convert that into a multi-vehicle device. I mean, that just isn't part of those patents. There was no indication that any those had any -- you know, that multi-vehicle wasn't important to any of them.

THE COURT: But isn't that why you combine for obviousness? Otherwise, it would be anticipated.

MR. SANTURRI: Right.

But the point is that there was nothing within, for example, the Bambini reference that suggested that you would use it in multiple buses. It was directed to a single bus. And the only reason you would go to look for multi-bus compatibility is if you knew the problem you were trying to solve ahead of time, and I think that's the essence of --

THE COURT: Let's turn to secondary considerations. As to secondary considerations, there is some issue about licenses and the use of the product, and so forth. Let's assume that Mr. Andrews did not know about licensing or did not know about DEI or did not know about Voxx, but does that go to the weight of his opinions or does it go to the admissibility? I mean, how strict is that rule, in your view?

MR. SANTURRI: Well, I think in our view the Federal Circuit says that secondary considerations must be considered. And --

THE COURT: But if you consider some you may miss some. And I'm sorry to interrupt you, but I'm just mindful of the jury sitting there. If you have considered secondary considerations, which he lists in

his opinion, but you miss some of the secondary considerations. There is a distinction, it seems to me, that if you just fail to look at secondary considerations, you don't think about profitability, you don't think about any of these things, that's one thing. But if it's in your analysis and you miss some of the evidence doesn't that go to the cross examination that you did a poor job of considering secondary --

MR. SANTURRI: What I think -- my recollection of what he read while he was on the stand was he read the four Graham factors that -- you know, those were inserted as sort of the legal test for obviousness in his report.

THE COURT: Right.

MR. SANTURRI: And, of course, the fourth factor says to consider secondary considerations, such as whatever it mentioned. And so, it wasn't that he offered any opinions or did any analysis of that factor number four. He just recited factor number four as being the test. I think, you know, you won't find anything in those reports that talks about any of the secondary consideration.

I know we asked him about several of them. He didn't consider any of the ones we asked about. And so, it's not that he just missed some. It's just that

he said this is the standard, but he didn't bother to apply it. And so I think that's -- you know, that's the argument is that without consideration, that undermines any analysis that he has. It was a basis for our Daubert, but I think the Court at the time found it was a little unclear from the deposition. So I think we believe that without that that's the end of the day.

THE COURT: All right. Let me turn back to Mr. Kauth one last time. This final point is the one that gives me the most trouble, to tell you the truth, because the motivation, I think, it's not -- the KSR opinion makes it clear that it's not as Draconian as I may have started off with, and I think there was some evidence as to why some people with skill in the art would look at SAE. We can let the jury decide if they agree with that or not.

But on secondary considerations, the DEI suit, for example, Mr. Andrews testified very clearly that if he had known that the DEI suit had been filed and that there was a willfulness found, that that could effect his opinions, that he just hadn't thought about it. Isn't that fatal to his obviousness analysis?

MR. KAUTH: I don't think it is. I don't think secondary considerations -- well, in answer to an earlier question you posed, we believe it does go to

weight. It's how you attack the opinion. But there is cases out there where courts have done sort of a sliding scale. And if it's found to be extremely obvious, they basically don't consider the secondary considerations. I think, depending on which three-judge panel you get from the Fed Circuit, there's very different treatment of the secondary considerations.

But here in trial, at his deposition, he did talk about many of those Graham versus Deere factors. I think the licenses, he wasn't aware of any. And if we had ever been given that, that we asked for, he could have opined on that, but he didn't.

THE COURT: Okay. Here's what I'm going to do. I'm going to withhold ruling on the judgment as a matter of law on obviousness dealing specifically with secondary considerations. The jury will get the case. They'll make their findings. And depending on how they come back on their verdict, if I need to have some post-trial briefing on obviousness and the law that deals with it and whether or not the failure to consider some of these secondary considerations should preclude the matter from going to the jury, then I can deal with it since ultimately obviousness falls on my shoulders, nonetheless.

I think for where we are right now, as to the

1978 and 79, it's in the report. Experts rely on hearsay. I don't have any real problem with reliability of an expert relying upon hearsay, periodicals and publications. And it wasn't objected to as it came in. I know that's a bit of a punt, but that is what it is.

The motivation. I think there's enough evidence under the standard that I'm applying at the moment to allow that to go to the jury.

Secondary considerations is a bit trickier since there is some direct testimony as to what was considered and what was not considered. But it strikes me that the argument, that it goes to the weight.

I don't feel comfortable precluding that issue to the jury at this juncture. I'm not going to reserve. I'm not going to foreclose a later second look at that, because that is a very significant issue based on the questions that were asked very directly.

MR. SANTURRI: We do have a couple more.

THE COURT: Okay.

MR. SANTURRI: They're brief.

And I believe this may have already been resolved. We sort of touched on it in the context of the jury instructions. But after summary judgment, there was still written description. As a defense, I don't think we have a ruling on that, though they agreed

that would be dropped so we don't believe there's any testimony. We'll move on that.

THE COURT: And there's not. And to the extent that written description was a defense, then judgment as a matter of law will be entered in favor of the plaintiff.

MR. SANTURRI: And the other -- I don't recall off the top of my head if there were other equitable defenses pending, but I don't think we've gotten evidence on any of them, so --

THE COURT: And there was a motion -- I'm failing to recall the name of it -- dealing with the equitable defenses, whether they should be bifurcated or not and I ruled upon that, but none of that is present in this case. I am reluctant to rule on it as a matter of law, because it could be something that could have been tried separately.

MR. SANTURRI: Okay.

THE COURT: And if it's not before us, it's improper to preclude it right now.

MR. SANTURRI: I understand, Your Honor.

And then, the final one is that we're going to move for judgment as a matter of law on infringement. We don't think that they have been able to overcome the evidence put on in direct.

And, in particular, Mr. Andrews focused primarily on his interpretation of control functions which he made very clear was an amalgamation, at the very best, of this Court's definition and the SAE definitions which aren't anywhere in the claim construction or even in the patent. So I think that we'll move that they haven't rebutted our case, and that we should have judgment as a matter of law on infringement.

THE COURT: That motion will be denied.

Control function issues, as I've indicated in my order, dealing with whether or not the expert had deviated from the claim construction, the trouble I have, and you may prove that I'm completely wrong on this point, but it struck me that the law is clear that an expert cannot stray from the claim construction, but the dilemma is that within the terms that are construed, there are some terms of art that were not construed. And it would be very difficult -- it seems to me it's appropriate for an expert to disagree as to the meaning of something like control and function. Like circuitry may not be subject to dispute, but control function, there's been evidence presented, whether the jury accepts it or not, that it has a different meaning than perhaps the patents provide. It could very well be the

testimony of the various witnesses who talk about getting a response when the bus is queried is, in fact, a control function, but that's for the jury to determine. There seems to have been some concessions in that regard. But as it stands right now, I'll allow that to go to the jury. Any motion by the defense?

MR. KAUTH: Yes, Your Honor. We'd like to renew our prior motion. And I can step through that if you want or we can leave that as it was --

THE COURT: If there's anything new, tell me that. If not, then the ruling is the same.

MR. KAUTH: For the same reasons, so nothing there.

THE COURT: Same ruling.

MR. KAUTH: The new one is we move that -- for judgment as a matter of law that the plaintiff has failed to provide evidence sufficient to overcome the finding of obviousness for all four of the patents in suit based on the combinations put forth by Mr. Andrews.

THE COURT: All right. That motion will be denied. And the reason being that it is a matter for the jury to determine whether or not one would have combined the various pieces of art and whether or not, even in combination, those pieces anticipated what we have here in terms of making it obvious. I just don't

think that's as clear-cut as is necessary for judgment as a matter of law.

MR. KAUTH: Our second motion would be for judgment as a matter of law that the plaintiffs failed to provide legally sufficient evidence to show willful infringement. CalAmp put forth Mr. Chen for the extensive search that CalAmp commissioned from him, as well as the extensive opinion letters from counsel, and we've seen no rebuttal to that.

THE COURT: I'm going to deny that motion, and let me tell you why. And this is -- I'm being careful in my wording, because I know that sometimes lawyers hear things louder than I intend to say them.

But a jury could look at an opinion letter from a lawyer who works for the same firm that's defending the case with some -- being somewhat skeptical. And in certain circumstances, you would have an outside firm do an opinion letter of non-infringement so that they could critique the lawyers who either are advising that their product go to the market or what have you.

So whether or not the opinion letters or the opinions provided by the attorneys -- or the attorney, in this case, will convince the jury that there was a lack of willfulness or whether they will conclude, that

is the jury, that the written opinion letters that occurred after the suit was filed are designed to protect coverage is up for them.

There was testimony that there was oral communications of certain non-infringement opinions by the attorneys. It's not very clear as to exactly when. And a jury could conclude that lawyers don't typically give important advice of that type orally, unless they don't want it found in discovery. And that's, I think, a matter for a jury to determine.

MR. KAUTH: And our last motion -- and I apologize, because I do not recall if this was part of our motion at the close of plaintiff's evidence -- was judgment on a matter of law that the notice date is the filing date of the lawsuit for lack of any evidence of prior notice being granted to -- or being given to CalAmp and notice being used. And the way the Fed Circuit uses it where it's notice of the patents and the products you believe it infringes.

I think for some of our issues, they're claiming notice of the 3030 before the 3030 was even produced, and on others it's notice going back years before the '278 patent had issued and before they had provided a copy, I think, to CalAmp in late 2013.

THE COURT: All right. Help me to understand,

Mr. Santurri, the notice issue. When does notice materialize for these purposes? I understand the 3030, the European version of the -- or the 3050, rather, the European version of the 3030 is roughly the same. So it would seem if you have notice for the 3030, you have it for the 3050. But what's the time line?

MR. SANTURRI: I apologize, Your Honor. I wanted to see if I could grab my exhibit list.

I know that we had testimony from Chen and an e-mail from Mr. Chen where he explained having gone through all of the patents in suit, except for the '278 -- the first e-mail dealt with that -- and recall there was testimony and e-mails from Mr. Chen prior to creating these devices, contacting Omega, discussing specifically products they were going to put on the bus to which Omega directed Mr. Chen and to CalAmp back to the same patents, offered to license the patents.

We also had the e-mail from Mr. Chen, who specifically called out the '278 patent and said this one's going to be harder to avoid. So, I think that the jury could easily determine that they had notice of the patents and specifically before these products were even developed. And then once they began discussions with Omega as to the specific products, they were certainly on notice at that point.

So, you know, I think the important thing is that with patents having issued and then the product subsequently being developed and offered for sale, remember the damages won't start until those products are being offered for sale. And clearly, at that point in time there was not only notice of the patents but also ongoing discussions with Omega that any products that went on to the bus were going to be viewed as infringing.

THE COURT: Well, and the argument on advice of counsel is that prior to the lawsuit there was verbal discussion regarding the patents and whether they infringed or not.

MR. SANTURRI: Exactly. The opinion letters made reference, and I think they talked about having analyzed the patents for non-infringement and validity going back prior to these products even being issued. And I think Mr. Bailey explained that not only did he offer them opinions prior to the products, but he went back and confirmed that the products worked as he believed when he gave the earlier opinions and we affirmed his opinions, essentially.

THE COURT: All right. Thank you very much.

I think there's sufficient evidence in the record for the jury to determine the date that notice

commences in this matter. Is there any other motions to take up at this time?

MR. KAUTH: None here, Your Honor.

THE COURT: All right, very good.

So when we come back we'll have Mr. McAlexander, I guess, back on the stand, whoever is taking him.

MR. SANTURRI: Yes, Your Honor.

THE COURT: Mr. McAlexander, do you want to come on up so we can save some time. If there are any documents left there from the last witness, if we can just kind of sort that out. Thank you very much.

(Pause in proceedings.)

Are we all set? All right. If we could have the jury, please. Thank you, Mel.

(Jury present at 2:25 p.m.)

The record should reflect the jury has returned, and we are now in the plaintiff's rebuttal case with Mr. McAlexander on the stand. And, sir, you are still under oath. All right. You may proceed when you are ready.

MR. SANTURRI: Thank you, Your Honor.

JOSEPH McALEXANDER, PREVIOUSLY SWORN, PLAINTIFF WITNESS

DIRECT EXAMINATION

BY MR. SANTURRI:

Q Welcome back, Mr. McAlexander.
A Thank you.
Q Did you offer rebuttal opinions in this case as to the invalidity positions of CalAmp?
A Yes. I offered a rebuttal response report.
Q And so, you generated a written report in response to CalAmp's invalidity theories?
A Yes, sir, that's correct.
Q And you have it in front of you? Is that what we have as Exhibit -- Plaintiff's Exhibit 105?
A That is correct.
Q And as part of your analysis of validity did you take steps to prevent the use of improper hindsight that we've heard so much talk about today?
A Yes. I took steps not to do that.
Q Did you identify evidence of secondary considerations in your report?
A Yes. In my rebuttal report, I actually identified a number of different secondary considerations for non-obviousness.
Q And those were the same considerations that we heard Mr. Andrews did not consider, right?
A That is correct.
Q We also heard some discussion about patent examiners. Do you know whether patent examiners have to

have a specific level of education?
A By law, they have to have at least a bachelor of science degree from an accredited university in an engineering field.
Q Is that consistent with your work with patent examiners over the years?
A Oh, yes. I've actually interviewed with a number of patent examiners orally. And I've actually gone to the Patent Office a number of times and sat and conferred with patent examiners, so I know it to be true. I also have a number of patent attorneys I work with on other cases who were prior examiners, and they have also confirmed that.
Q All right, sir. Now, you've been here throughout the trial; is that right?
A Yes, I have.
Q And is there anything that you've heard throughout the course of the trial that changes your opinions that each of the asserted claims of the patents in suit are valid?
A No. Nothing's changed my opinion that each of the claims that have been asserted in this case for each of the patents are valid.
Q And is there anything you've heard over the course of the trial that changes your opinion that each of the

asserted claims has been infringed by the CalAmp devices?
A No. I still stand by my testimony that each of the claims are being practiced by the 3000, 3030, 3050, the VPOD, VPOD2, with the exception of the VPOD and VPOD2 are not enclosed in the housing.
Q All right, sir.
MR. SANTURRI: I don't have any further questions, Your Honor.
THE COURT: All right. Thank you.
Any cross examination?
MR. KAUTH: No cross, Your Honor.
THE COURT: Very good. Well, that was much quicker than we expected.
Any other witnesses in your rebuttal case?
MR. SANTURRI: No, Your Honor.
THE COURT: All right. Ladies and gentlemen, I can tell you, it always concerns me when I start and stop, because we are all very aware of the fact that you are leaving your work and your other responsibilities to be here and serve and it is truly a service.
I just think if we start with closings now -- the instructions that I will be giving you are quite long -- we won't get this to you by 5:00. It's my preference that we start first thing in the morning. If we could start at 8:30, you will have the case before

lunch. We'll order lunch in for you. We'll have menus given to you, and that way you can have a day that's fairly --
DEPUTY CLERK: We don't have menus, Judge.
THE COURT: Pardon me?
DEPUTY CLERK: We do not have menus.
THE COURT: She's telling me we don't have any menus, but there will be a list of options for you. It's not the -- I just realized it's not the Ritz. So it is my suggestion that we start in the morning, because I think you will be fresh and it will make your day be more productive tomorrow. Is there any objection to proceeding in that manner? No?
I understand we're taxing your goodwill here, and that's my fault. The lawyers will do whatever I tell them to do. It is my decision entirely. I just think it's better if we start in the morning. So if there's no strenuous objection, we'll start in the morning. Would you like to start at 8:30 or 9? It's your preference. Do you want to confer? Some of you are driving in quite far, I know. Nine o'clock?
THE JURY: 8:30.
THE COURT: 8:30, it is. We'll be here at 8:30 and ready to go. I apologize again for not getting a full day in, but there were some matters we had to

deal with to make the day more productive. And I just know from the clock we won't get it to you by the close of business, and that's not right, and it doesn't really do service to the parties either. So thank you for your patience. I do appreciate it. This is entirely my decision. So if it offends anyone, please be offended with me and not the parties. Thank you.

Have a very good evening. Please do not discuss the case amongst yourselves or with anyone else. Please refrain from an independant research. We will see you tomorrow morning at 8:30 bright and early, ready to go. All right. Thank you very much. I appreciate your cooperation.

(Jury exits at 2:31 p.m.)

The record should reflect the jury has withdrawn. The courtroom deputy goes in to talk to them, but only to determine food allergies to make sure that their menu is fine in today's world.

So that concludes the case for the time being. We'll be back at 8:30 in the morning. Are we close to having the jury instructions ready?

LAW CLERK: I have them on the printer.

THE COURT: Okay. If you would stand by, we'll have the jury instructions given to you. If for some reason they're not exactly correct, I'll be here

before 8:00. We can always talk about them, if need be.

How much time would you like for closing? We have the day, so you're doing pretty good.

MR. GILCHRIST: An hour and 30 minutes, I believe, and then another 15 for rebuttal.

THE COURT: Okay. And how about defense?

MR. KAUTH: I think probably closer to an hour for me.

THE COURT: All right, very good. So you have an hour and thirty, plus fifteen; an hour, and if you want to go over, feel free to do so.

MR. KAUTH: Thank you.

THE COURT: All right, very good.

I'm going to just step down and get ready for my next hearing. Robin will bring you the instructions. If there are any problems with them, just let me know, and we'll get them squared away. Thank you very much.

(Adjourned at 2:32 p.m.)

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Reporter's Certification

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

s/Koretta Stanford

Official Court Reporter
United States District Court
Middle District of Florida Date: April 14, 2016

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

OMEGA PATENTS, LLC, Plaintiff,

v.

CALAMP CORP., Defendant.

Case Number 6:13-CV-1950

WEDNESDAY, FEBRUARY 24, 2016, 8:30 A.M.
CIVIL JURY TRIAL - VOLUME VII (DAY 7)
BEFORE THE HONORABLE PAUL G. BYRON, AND A JURY
UNITED STATES DISTRICT JUDGE
ORLANDO, FLORIDA

COUNSEL FOR PLAINTIFF:
Brian Gilchrist, Esq.
Ryan Santurri, Esq.

COUNSEL FOR DEFENDANT:
Joel Kauth, Esq.
Eugene Chong, Esq.
Carrie Wozniak, Esq.
Charles Halloran, Esq.

*Proceedings recorded by mechanical stenography
Transcript produced by computer transcription*

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PROCEEDINGS

(Jury not present.)

THE COURT: The record should reflect the jury is absent, and the parties are present.

All right. The instructions, the final set we got to you all. Any issues or problems with the instructions, other than those previously discussed?

MR. CHONG: Your Honor, madam clerk has found one spelling error.

THE COURT: I think that was -- yes, that was corrected.

MR. CHONG: Okay. That's all we had.

THE COURT: And then, there were three opinion letters you wanted marked as a court's exhibit for your proffer.

MR. KAUTH: Four, Your Honor.

THE COURT: Four. Can you identify those, which exhibit numbers they are. We discussed it at sidebar, and my clerk could not hear that.

MR. KAUTH: That is Defendant's Exhibit 71, 73, 74, and 75.

THE COURT: Great. All right, thank you.

Those will be assigned the next sequential court number so they will go with the record.

DEPUTY CLERK: So that will be 11, 12, 13, 14.

THE COURT: There you go. All right.

Are we ready to proceed?

MR. GILCHRIST: Yes, we are.

THE COURT: Very good.

Please call the jury, please.

(Jury present at 8:32 a.m.)

The record should reflect the jury is present.

The parties are present as well.

Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: We are about to start our closing arguments in the case. But, of course, I need to ask you if anyone has discussed the case with anyone else or even amongst yourselves or conducted any independent research? If so, please raise your hand. There are no affirmative responses. Then, we are ready to go.

Mr. Gilchrist.

MR. GILCHRIST: Thank you, Your Honor.

I'd like to start this morning and give you a very brief lesson in American history. Back in the 1850s, there was a gentleman by the name of L. L. Langstroth. He was a rather uneducated man. He didn't have formal training. He was a minister at times. He was a schoolmaster at times. But he had a certain interest in bees, of all things. Bees produced the

honey that created the -- what we now know as sugar, but sweetness for the food at the time.

At the time, beekeepers had to create hives in a single embodiment. And in order to recover the honey, they had to break the hives. And if folks tried to make slats in them, if they were too close together, the bees would just make one big honeycomb. If they were too far apart, the bees weren't interested. Mr. Langstroth thought, well, that's odd.

He spent hours in his backyard after school adjusting these slats trying to figure out a way to make it more reasonable that he could pull out slats and make the bee hives. He finally discovered the magical number. It was a certain range of inches that those bee slats that you see in beehives had to be apart in order to be useful. And he just did that through trial and error. He did what he was supposed to do. He said, wow, I've discovered something.

He went to a cabinetmaker. The cabinetmaker made it according to his specifications. He took it out back. It worked incredible. The bees could be removed for harvesting the honey, and they would come right back. No disruption of the hive at all. So he went to his patent lawyer and said, I think I've got something here. His patent lawyer took his information, sent it

off to the Patent Office, and he got a patent on these beehives. I mean, the idea that if they are between this range, they will be successful.

Mr. Langstroth didn't notice, but people were starting to copy his beehives. In fact, everyone in his neighborhood was copying. The surrounding counties were copying. So, he went to his patent lawyer and said, wait a minute, I've got a patent. So his lawyer went around and tried to get people to stop, or at least take a license.

The response was, well, Mr. Langstroth, you don't have a degree in entomology. You couldn't have come up with this. Mr. Langstroth, these were European designs. I learned it when I was visiting France. Mr. Langstroth, you're not the inventor. The cabinetmaker is the one who designed it, not you. Mr. Langstroth, this is obvious. It's just a measurement, the two slats.

Years went by, and he was trying to enforce what the United States federal government gave him as an exclusive right to his beehives. And after years, he went back to his lawyer's office, sat down exhausted, gathered up his papers, said it's just not worth it. I can't continue this. They can have the hives.

/////

Mr. Langstroth -- you can look it up in Wikipedia -- is now known as the king of American beekeeping. He is now recognized as being the inventor. Never made a penny on his invention.

In this case, Mr. Flick, rather than gathering his documents at his lawyer's office, he said, I'm going to fight. That's why we're here. Mr. Flick decided to stand up to others that wanted to take his inventions. He's put up with all the same arguments.

Mr. Flick, you don't have an education. You barely got out of high school. Mr. Flick, this was all known. You're not even in the automobile industry. Come on, Mr. Flick. You don't even know about computers. You don't even know about data buses. How can you possibly be an inventor of this complicated technology? You went to trade school.

We've heard all those same defenses here for the last week and a half. But Mr. Flick was undeterred and he's been doing this for years, standing up for his rights, and that's why we're here. He's standing up for what he invented, what he did, and what he got from the Patent Office.

Oftentimes, in cocktail parties or social gatherings, people ask me what I do for a living and I'll explain, I'm a patent lawyer and I try these patent

cases, and I can see the glossiness wash over their face as they look over my shoulder for something more interesting. But I do this for the stories that I get. I have met some of the most unique inventors, some of the strangest personalities, some of the wildest stories of inventorship.

This is a unique area of the law. These folks that come before you as inventors, as patentholders, are some of the most creative people in the United States. They think outside what the rest of us think. They come up with ideas far beyond what those with technical degrees may come up with to follow the normal path.

Instead, they look beyond it. And as you heard from Mr. Flick, when he went to his patent lawyer years ago, his patent lawyer said what's your industry going to be in five years. Mr. Flick had already foreseen it. He can't explain it all that well to you. He certainly couldn't write about it. But he could draw pictures, and he could talk all day about it.

You saw his passion on the witness stand. You saw his interest. It's his baby. And those are the kind of human stories I get to deal with all the time. I get to learn new technology all the time. And I get the opportunity to try and teach folks, such as yourself, this new technology. So let's take a step

back from the technology aspect of this case and look at the human side of this story.

Mr. Flick, a trade school attendee, had this rather unique circumstance of when his car was broken into, rather than stomping his feet and calling it all the misfortune, the world's against me, people such as Mr. Flick decided, I'm going to do something about it. He went out and designed a car alarm. It became his passion.

He spent years developing his business. He designed car alarms. He designed speaker systems. He designed all kinds of things. This from a man who didn't have a degree from Berkeley. This from a man who slept in a stereo shop in the back office for three years to develop his business. This is a man who refuses to back down and refuses to give up.

The easy course would have been, I can't continue this. I can't continue these fights. He's had to fight Directed Electronics, as you've heard. A similar group, such as yourself, sat there and listened to these very similar stories with DEI, Directed Electronics. He's had to fight for every one of those licensees that I walked through with you. Now a couple of them, say, for instance, Voxx, they approached him. They recognized him. They studied his

patent and said, we'll take a license. No need to fight.

That's not the same with CalAmp. As you may recall, CalAmp met with Mr. Flick in 2009, sat down with him and asked Mr. Flick to explain his patents. And you saw Mr. Chen, and you heard Mr. Flick's testimony. And Mr. Flick began to try and explain it to him. And Mr. Chen didn't think much of him. I'm sure if you can put yourself in that room, you can see Mr. Chen snickering at him.

You heard his testimony. Mr. Flick thought he designed and invented hysteresis. I had to look that up. It's an electronic term about debouncing. But you heard the contempt in that room. You heard the contempt for Mr. Flick and for his inventions.

And so what happened? They went out. Mr. Chen and his staff of lawyers, and began to get all the evidence they could, all these big stacks, little stacks, in order to try and defeat Mr. Flick and his patents. But they weren't done. Mr. Flick filed suit against them. And what did they do? They said, not us. Not only are your patents invalid, but we don't even load those scripts on these units, so you can't sue us. It's our customers. We don't do a thing.

So, Mr. Flick was directed to the customers.

He fought that fight. The customer took a license. He fought the next fight against a group known as Sky Patrol, another one of their customers. It turns out Sky Patrol said, wait a minute. I don't know what CalAmp told you, but they're the ones who loaded the script. So CalAmp said, all right, caught me. I'll buy that lawsuit off. I'll take a license, but I don't want any other licenses.

And one of the unique things -- and I'll go into it in more detail later -- during this very time that Mr. Chen was creating big stacks, little stacks, telling anyone who would listen that Mr. Flick didn't invent anything, telling anyone, listen, that we don't even put scripts on the units, he went to the United States Patent Office and sought a patent for himself over nearly identical technology.

So, here he is telling the world, all this is known. It's obvious. Anybody in the industry would know it. He went out and tried to get his own patent on the same technology to cover the LMU products so he can stand in this courtroom and say, I didn't copy Mr. Flick. Look, I have my own patent.

So, let's talk a little bit about what we did here in this last week. It was somewhat difficult for us in that we couldn't present direct testimony. We had

to present it by videotape. That wasn't our choice. Those were all CalAmp employees.

But what we learned -- part of this human story we learned -- is that, first of all, they just don't like Mr. Flick. You heard Mr. Chen call him a troll. Doesn't like a troll. Doesn't think he should be enforcing his inventions. They all thought they were smarter than Mr. Flick, but he stood up. He fought.

Then they said, well -- and you may hear in this some of the argument -- well, we weren't aware of the patents, so you can't award damages that early when the LMUs came out 'cause we weren't even aware of them.

And if you will look on Exhibit 39 -- and you will have all four boxes back with you, and you will be able to look at these in detail -- Exhibit 39 is an e-mail from Mr. Flick's employee, Mr. Duffy, that identifies all of his patents. Said look here, these are the patents I have and the communication back and forth at CalAmp about, well, let's take a look at all these patents. So if you hear anybody suggest they weren't aware of it, I want you to look at Exhibit number 39.

But it goes further. And sometimes these things are hard to flesh out in the context of videotape depositions. But you heard in the testimony that while

Mr. Flick was sending him his patents, trying to negotiate a license, customers of CalAmp were saying, we really need this On-Board Diagnostic technology. You heard Mr. Hergesheimer tell you that. You heard Mr. Hall tell you that. We really need it.

So, what did CalAmp do? They decided that they were going to take a look at the patents and begin to gather evidence 'cause they knew they were going to infringe. They knew this day would come. And rather than negotiating with Mr. Flick, they decided, let's put up our defense.

So in words spoken between them, not believing that it would ever see the light of day, you can look at Exhibit number 47. Exhibit number 47 talks frankly as opposed to the carefully-crafted testimony you heard that they want to take a look at the '278 patent that's been part of their review. And when they were talking amongst themselves you don't hear them say these are all invalid, Mr. Flick didn't invent anything. What they say is 13 may relate to how we program a unit at the factory so it may be harder to avoid.

Internally, they're acknowledging that they're going to be infringing. That's the evidence that they had when they were not coached, when they were talking frankly, quite a different story when we get here.

'278, it would be harder to avoid.

And what did they do next behind Mr. Flick's back? You can take a look at Exhibit number 48. Exhibit number 48 is a series of e-mails back and forth amongst CalAmp and their lawyer, and it talks about, let's take the LMUs down from our website. Well, why would you want to do that? Well, here's the answer.

Number one -- this is the third page of 48 -- starting next week, we will be on a fast track to a lawsuit. I think it's okay to share the data with them today. Your call. Number two. We don't want to make it easy for Omega to build their infringement case by just looking at the data sheets on our website.

Talking internally, they acknowledge if they could see our data sheets, if they had that information, they would have their infringement case. These are internal documents. These aren't the carefully-crafted testimony that we've got at trial.

So that's real evidence of CalAmp trying their best to take that beekeeper's invention away from him. Let's make it as expensive as possible. Let's hide information. This one's going to be harder to avoid. Let's take it off our website. We know we're going to get sued, but our customers need it, so we're going to go forward.

And it didn't stop there. We get into the courtroom. And you saw in the opening, here's a big long list of patents that are going to invalidate clear and convincingly all the patents. We heard about Lang. We heard about Nathanson. We heard about several of them. And yet, when the time came to present that evidence, we heard about big stacks, little stacks.

You can't find Lang anywhere in what Mr. Andrews talked about. You can't find all of the lists of patents that Mr. Kauth indicated would convince you, clear and convincingly, that the patents are invalid.

So what did they do? They brought in an expert to add words to the judge's construction. You heard him. A controller is not something that controls. A controller is something that not only controls, but has some physical reaction.

Take a look at the judge's construction. He provided you with a copy. Not a word in there about any physical activity. He said, well, really in the LMU it's not a controller. Take a look at their schematics, and I'll go over it in a minute.

Their own schematics identify it as a controller. And yet, it's not a controller for your purposes. And then, they brought in their lawyer to

create plausible deniability. Well, I took a look at it, and I don't think it's infringed. And that lawyer with the same law firm that's defending it, I think he said it best when he said, well, we'll do anything for our clients.

This is a client that internally said, this one's going to be harder to avoid, then internally said we're on a fast track to a lawsuit, let's not give them the information to make their case. And their lawyer comes in and says, well, I don't think they're valid. That's the continuation of the effort to avoid paying Mr. Flick for his invention.

So what did we do during the trial? As I was preparing last night and thinking about what we've been doing since last Tuesday, I had sort of fuzzy memories at times about some of those videos that we watched. So I want to sort of walk you through and remind you of the evidence that we put through.

As you recall in my opening statement, I told you, I've got to prove by a preponderance of the evidence that we have -- own patents, how the LMUs work, and whether they meet the claims of the patent and what our damages are. I don't have to do a thing about validity. That is the defendant's burden. They're presumed valid.

So, did I do so? We start with Mr. Flick. He explained the details about his invention. He described climbing in that Jeep Cherokee. He described realizing the difficulty that we would have in five years. A different man, someone other than Mr. Flick, would have crawled under that Jeep Cherokee and said, wow, there's a lot of computer stuff in here. I'm a trade school dropout. I give up. Let's hard wire it. I can run a wire over there, just like I've been doing since 1975.

But Mr. Flick says, can't do that. I foresee this is where the future's going. I've got to learn what's going on here. And I understand, because of the way my mind works, that in five, ten years there's going to be cables like these running everywhere in the car. He understood that the car manufacturers would each have their own unique type of computer system, like a Mac versus a PC.

And he understood at that time that if he was going to remain competitive, if he was going to stay ahead of the market, he had to design a product that would come up and work in multiple vehicles, access that database that he discovered, and learn the system so that he would only have to carry one SKU, he could plug it in, and he would be good for a number of vehicles.

That's what he envisioned long before anybody else through his hard work, through his efforts at studying what's going on, and the way his mind works, the creativity it took somebody in that unique market.

And the market, as you may recall that he explained that the OEMs -- the Fords, the GMs of the world -- they try to keep these aftermarket people out of their cars -- because if you can buy a car alarm for $70 at the auto parts store, they can't sell their car alarm for $2,000 as an option package when they sell you the car.

Mr. Flick realized that. He had been working against that his entire career. So he understood these types of things. He understood how this system would go down the future. Everyone would have their own unique device codes. Everyone would have their own unique command codes. That's why he went to his lawyer -- or when he went to his lawyer, his lawyer asked him in five years what's going on, he explained it to him. And when he put it down on paper, sent it to the Patent Office, then received patents, over 50 of them, variations of this. His mind is working a mile a minute on all kinds of different things.

He explained that he had a difficult time getting people to the table to take a license on his

inventions, that one of the larger aftermarket companies in the world, Directed Electronics, absolutely not. He explained that it's almost a sense of deja vu sitting here today on what DEI did. The same patent, '885 patent, and they took all the same shots at him. You didn't invent anything. Your patents are worthless. Somebody else with more degrees would have come up with it. And a jury, just like yourself, returned a verdict and said, no, the patents are valid, and you infringed. And that started the ball rolling. That's why Mr. Flick was able to generate a substantial income in royalties.

Once Voxx, one of the other largest companies, publicly-traded companies, took a look at Mr. Flick's patents, Voxx didn't ask for a fight. Voxx didn't come to him and say, you didn't invent anything. They said, how much? We need it. Our systems need it. Our customers need it. How much? They negotiated a license for his patents, and they continue to pay today. Those are the same publicly-traded corporations with the same groups of lawyers who looked at the same thing and they said, we need a license.

And he went through all the licenses, the fights he had to pick. He made some -- licensed some folks out there that he didn't trust, made them take them out of the business. He wouldn't license them.

He didn't need the headache of licensing every-- that's his right. He has exclusive rights to his invention, so he excluded some people.

You heard about them. And I'm sure you were angry with me at the time, but we had to go through all the licenses to help understand the extent of what he's done and what the type of damages have we got folks out in the market that refuse to abide by the law.

So then, he went and met CalAmp, and that began the process of why we're here today. Met CalAmp at a show and he explained to you, they talked down to him. They mentioned their degrees to him. They told him, you didn't invent anything. I can just imagine being in that room at that trade show and Mr. Flick being asked by Mr. Chen, explain your invention. And Mr. Flick struggling with it and trying to explain it and talking about it. You saw him talk.

He's very passionate, doesn't always get the words right. He called the controller and the microcircuitry a brain box. You can imagine the chuckling that went on in that room from the CalAmp side. Brain box? I didn't learn that in Berkeley. And so what did they do? They said, well, we're not going to take a license. If you've got the wherewithal and you've got the time, we've got the money.

So, Mr. Flick sued them, and I put together a time line for you to try and sort through what we've got here.

So we have the first CalAmp lawsuit in 2009. After the lawsuit was filed, as Mr. Flick testified, they met again at a trade show and Mr. Chen confirmed this. And Mr. Flick told you, what they told me was they don't load any of these scripts. They sell a blank box, a paper weight I think one of the witnesses called it. And the customers take care of all the programming. If they use the data bus, if they use the speed, if they do the vehicle, multi-vehicle control, that's on them. We don't tell them what to do.

So, Mr. Flick accepted that, dismissed the lawsuit with the understanding he could bring it again, and filed against one of their customers, Numerex, and that was September 2, 2010. And Numerex, with their stable of lawyers, looked at the Flick patents and said, all right, I think we need a license, and they took a license. Didn't go to trial. No jury had to sit there and analyze the same arguments. Numerex recognized it, and moved on.

And then November 10th, while the Numerex lawsuit was still going on, we have Plaintiff's Exhibit 39. That's the list of the patents that Omega sent to CalAmp and said, take a look at all these. I really

think you need a license. There's the list of the patents, including a couple of patents at issue. So, CalAmp was aware of the ongoing dispute with Numerex. They were told about the patents. And what do they do? Short stack, big stack.

And then on November 17th, Mr. Chen contacts Omega and says, you know, we're thinking about doing an OBD product -- and you will see this in Exhibit 38 -- but it really doesn't operate like your patents say so I think it'll be okay, didn't explain the details of what it was, but you can take a look at 39 and determine if Mr. Chen is telling the truth. I'm sorry, 38.

And then, December 21, 2010, just after he says, we're thinking about an OBD product -- Exhibit number 14, Mr. Chen, while he has a list of Mr. Flick's patents, while he has a short stack and a big stack, while he's telling you that the patents are known and obvious to one of ordinary skill in the art, he files his own patent application with the United States Patent Office claiming the same subject matter, naming himself an inventor, representing to the Patent Office that all this is new, novel, and unique to him.

Take a look at Exhibit number 14. Look at what he's claiming. He's claiming Mr. Flick's invention with memory. That's what he added as an inventor.

All the short stack, big stack, prior art, all the SAE documents, as you heard, that are supposed to be disclosed to the Patent Office, take a look at Plaintiff's Exhibit 14 and see if he submitted any of those to the Patent Office. All this important prior art that absolutely destroys any suggestion of how you would look up data bus and do the data bus protocol absent when Mr. Chen is looking for a patent.

So after he files his patent application, the LMU-30 -- or 3000 launches. And you can find that date on Exhibit number 159. Shortly thereafter, as I mentioned, Omega goes after Sky Patrol. And Sky Patrol says, whoa, whoa, wait a minute, why are you suing me for a CalAmp product? And Sky Patrol says, I didn't put the script on it. I didn't design this programming. I bought it from CalAmp. Whoops. CalAmp was caught.

What did they do? They said, all right, we'll take a license, but only for those Sky Patrol units. We're still going to force you to fight. If you want a real license, you're going to fight us for it. And that's when in August of 30 -- as they're looking at the two -- or they're contemplating what's going to happen now that they have been caught with this Sky Patrol lawsuit, in July 30th, Plaintiff's Exhibit 47, the '278, that's going to be harder to avoid infringement.

They recognize that.

Exhibit 48. We're on a fast track to a lawsuit. Let's make it harder for Omega to make their infringement case. Exhibit 48. They knew they were infringing. They knew the patents were valid. They sought their own patent. And yet, they forced Mr. Flick to come to this courtroom and bring this lawsuit.

Lawsuit was filed December of 2013. Mr. Flick provided that information for you during his direct testimony and his cross testimony. You saw it. You saw his passion. You saw that he couldn't get the technical terms right. That's the nature of the beast. Doesn't mean he's not an inventor.

So then, we were forced by video to bring Mr. Gallin Chen before you. You may recall Mr. Chen's video. Mr. Chen chose not to show up at trial. I can't force him. It's his right not to show up, not to participate, not to care about these proceedings. That's his right.

In his video deposition, first he claims he didn't really recall this meeting with Mr. Flick. The second meeting he testified, well, Mr. Flick was trying to explain his technology, and he thought he invented hysteresis. That's the debouncing. You can see his contempt for Mr. Flick as he said that.

Mr. Chen acknowledged that he had the patent application in his name, Exhibit 14. And then, Mr. Chen, through his videotape deposition, had some other interesting things to say. When they were developing this LMU-3000 that was so obvious to anybody in the marketplace, they couldn't develop it, they hired B&B to develop it for them.

B&B, without patents, without any rights, exclusive rights, to any of the technology, designed it for them and charged them $7.00 a unit. That was more than what Mr. Flick was seeking. They could not develop themselves 15 years later. It took them a year and a half for B&B to develop a product that was so obvious.

When they went to the 3030, they had to hire somebody else to develop it, Innova. Again, no patents. They paid Innova millions of dollars for this obvious everybody knows SAE standard technology. Eight months it took Innova to develop it. Very interesting that in the real world it takes a long time to develop it, and they're willing to pay a lot of money. But in the courtroom, it was all known. It would have been obvious to the village idiot if they had just looked at SAE. But in the real world, they had to pay millions of dollars to develop it.

Mr. Chen also testified that the reason they

were developing is because customers were demanding it. This was an important aspect to the industry, something Mr. Flick saw years earlier, 15 years earlier, CalAmp was now discovering. Customers were demanding it.

If you may recall, the PJC dispute, Mr. Chen testified, that's a group that sued CalAmp 'cause they were infringing their patents on different products, and CalAmp again directed PJC, go after my customers. And they got together in a settlement agreement with PJC that the customers contributed to, but CalAmp paid not a dime for their products. It's a pattern with CalAmp. It's always somebody else.

Mr. Chen acknowledged that he sent Mr. Flick to Numerex, acknowledged that they didn't put any scripts in the units, and he acknowledged they knew the patents. So, Mr. Chen, I've got knowledge, I've got their activity, and I've got some development information.

So then, we had to call Mr. Peter Hergesheimer, and you may recall him. He's an engineer with CalAmp. He had some very dry, technical testimony. He described how the LMUs work. He was the one that, again, acknowledged that a lot of customers were calling for this data bus functionality, that it was a customer-driven decision, this obvious technology that

Mr. Flick envisioned 15 years ago. He also testified that he studied within CalAmp how to avoid the patents. And he couldn't come up -- he didn't make a single change to the LMU product. He could not design around these patents. He tried. He couldn't do it.

We heard a lot of technical information about how the LMUs work. We confirmed that the flow chart of working and non-working codes was how the LMU worked. You will find that flow chart in Mr. McAlexander's exhibit, in his report. And you may recall this flow chart. And that was in response to one of CalAmp's positions that if I send out a signal and I get a response, I don't send out any more. Mr. Hergesheimer confirmed, well, this is the flow chart. This is the way it works. It sends out a signal sequentially, gathers those signals, and then makes a determination on which bus they are. That's what their own engineer said, the one who helped design it.

Mr. Hergesheimer also said he was identified by CalAmp as the one who could tell us why they don't willfully infringe. And what he said was, well, CalAmp doesn't willfully infringe, because our customers ask for it. We didn't go out and steal it. We were just responding to customer demand. That's still infringement, and that's still intentional. They were

very well aware of the patents.

Mr. Hergesheimer also confirmed that one of the patents, as you may recall, requires certain downloading means. He confirmed what used downloading means and have a downloading interface and confirmed it was very important to the product. He said the customers wouldn't buy the LMU without the downloading feature 'cause they needed to download their scripts.

He described the technical aspects of the VPOD. This was the technical data that I had to prove to you -- teach you how the LMU units work. This is the technical information that Mr. McAlexander had to know and had to rely upon in order to provide his opinions that they infringe.

Then you saw Mr. Jeffrey Eiberger. He's another engineer from CalAmp. He confirmed, contrary to what CalAmp has told you, that the speed exceedance notifications often come from the bus. He said the majority of CalAmp customers use CalAmp to write the scripts, configure the devices and program the devices, directly contrary to what Mr. Chen said, directly contrary to what Mr. Chen told Mr. Flick -- we don't do anything. They're paperweights.

Mr. Eiberger said, no, the majority of our customers have us write all the scripts. We load and

test the units before we ship them out of Oxnard, California. That was important, because you may hear, well, we don't directly infringe. It must be our customers. Well, every time they load and test, that's infringement.

You heard the testimony or the cross examination, rather. Well, it doesn't infringe sitting there, does it? And you will hear the test for infringement is make, use, or sell. Just defense after defense. I didn't do it. I don't know who did it. Doesn't do it there. Doesn't do it here. That's why we had to bring Mr. Eiberger in to identify that they actually wrote the scripts, they downloaded the scripts, and they tested the scripts.

Then, you met Joe McAlexander. He was our expert on the technical issues. And you may recall Mr. McAlexander, he methodically went through each of the claims of the patent. Claim by claim, he identified where they were in the various documents. You may recall him pulling up the schematics and identifying that this is the controller, this is where it sends command signals, the flow chart. He identified every element of every asserted claim found on the LMU. It's a process. It's not an easy process. It's a long process. But we went through it. Evidence connecting

each element of the LMU to the claims of the patent.

You can judge Mr. McAlexander's demeanor. Was he shady? Was he fudging anything? Did the cross examination reveal any errors in his analysis? Mr. McAlexander, I would suggest to you, was very clear, very steadfast. It's there. Here's the controller. Here's where it sends the signal. Here's the ECU that receives the signal. The signal comes back. The controller takes that signal and determines what bus. They download codes. We've heard it all, bit by bit.

And you may recall the chart, Plaintiff's Exhibit number 162. You can bring that back with you. Each of these red check marks, as Mr. McAlexander went through all of the claims, pulled out the schematic, here it is, here it is, here it is, bit by bit, slowly developed it.

He confirmed every single one of the asserted claims, except those that require certain housings are infringed by the LMU. That's Exhibit number 163. So you can make your determination on what Mr. McAlexander relied upon to give you the evidence of infringement, his analysis, and whether that analysis is appropriate.

Then, you heard from Mr. Stephen Hall. Mr. Stephen Hall was another one of CalAmp's employees. He identified -- as you may recall, there was some cross

examination of Mr. McAlexander. And the idea behind it was, well, there's not really any evidence that the speed is read off the bus, is there, Mr. McAlexander? And he said, no, I think there is. I read it in the depositions. Oh, are you sure? Do you remember that line of cross examination?

Well, then, we played Mr. Hall. What did Mr. Hall say? Yes, there are customers who read speed off the bus. Here's the list of them. And that list is in evidence. You see that list. Those are the people that they've told you, we don't know if they read speed off the bus. There's the list. Their own employee.

Mr. Hall identified them, how valuable it is to have a multi-bus LMU unit. He identified the importance of the units for sales purposes. And again, confirmed that it's the customers who drove this invention or drove this development 'cause the customers were demanding it. They couldn't continue to sell their LMU products without taking Mr. Flick's technology.

Then, you heard from Mr. Christian Tregillis. He was our expert on damages. He was the accountant that sat up here. And he went through the licenses. He went through the analysis of this hypothetical negotiation. And he told you that if the two had sat down at about the time of the infringement, that the two

would have reached an agreement on royalty per unit of about $6.38, I think it was, 6.38.

He explained how he got there. He explained the variations in the license agreements. He explained the importance of some of the elements on the clauses, the innovation clause, that where those voluntary licensees assign their rights to future inventions to Mr. Flick and that such a thing couldn't be done in the context of this proceeding. And he gave you a chart and outlined his damages, outlined how he calculated a 6.38 per unit royalty to come to the conclusion of $2,975,200. And you will have that chart back with you.

At that point, we closed our case. We had shown you how the LMUs worked. We had shown you who owned the patents. We had shown you the patents. We had shown you the file history. We had done our best to explain to you how to read a patent, how you look at those claims and match up each element of those claims to what the LMUs do.

We brought in Mr. Joe McAlexander to do that and help you walk through that process. And just as I told you in opening, that was our burden. We had to prove that it infringed all the claims we were asserting, and we had to show you how much the damages were. We did what we promised you. We showed you

infringement of the asserted claims and damages.

Which then became CalAmp's turn to explain to you why they shouldn't have to take a license, why they shouldn't be charged for using Mr. Flick's technology. CalAmp's case consisted of three witnesses.

We saw Mr. Chen again. He decided to show up. And you heard a long background about his technical expertise and how smart he was and all the jobs he had and how he got a pink slip and a job in Hawaii and a promotion of some sort all in the same day, and then somehow chose a pink slip.

We heard how he develops things. He goes out and buys companies. We didn't hear any independent development. We didn't hear about innovation within CalAmp. We heard, well, we sell to the Tampa Fire Department, as if that means anything for purposes of today.

We heard all about his big stack and his little stack. Didn't hear any analysis of those patents. We just -- "I did a bunch of work. I worked really hard." He acknowledged he knew of the patents. He acknowledged he had been in an effort for hundreds of hundreds of hours, he said, in an effort to defeat the patents.

He admitted he knew of the DEI situation and

that a jury had returned a verdict of willful infringement and validity for the '885. He admitted he knew of the Voxx voluntary license. He, again, described how it took so long, a year and a half for the LMU-3000, eight months for the LMU-3030 to develop what CalAmp contends would have been obvious 15 years ago.

You're entitled to judge his demeanor. Did he have contempt for this proceeding? I asked him a simple question. In this time line I was developing, when did this lawsuit start? "I don't know. I don't have time for those details." He doesn't have time to sit in this courtroom, defend his company, or even care much about the lawsuit. It was his decision not to come, therefore, forcing us to play videotape deposition of him. Presumably, it was his decision to try to keep his engineers at home so we couldn't inquire any further than what we saw in the videotaped deposition.

It came across, I believe, a superiority complex. He believed he was above this, that he was above spending time in this courtroom defending. He knew, and he did all the research. So spent hundreds of hours. And besides that, he had lawyers. He mentioned that. They had lawyers look through this, so we don't need to worry. Why am I here?

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And as I was listening to him provide his testimony and during my cross examination of him, I kept going back to that meeting at that trade show. And if that's how he acted in this courtroom in the United States District Court for the Middle District of Florida, I can only imagine the contempt he must have shown for Mr. Flick as Mr. Flick described his brain box invention.

Next witness. So, Mr. Chen didn't really offer anything that you can rely upon for anything. Came in and told you what CalAmp does. He told you how important he was and all the companies he's acquired, but he didn't tell you anything about what we're here about, infringement or invalidity.

So they brought in Mr. Bailey, their attorney. Mr. Bailey came in and said, yeah, I've been working with Mr. Chen. I've been working on the big stack, little stack, and I agree, I agree with my partner that all these things must be either invalid or infringed.

You heard that he was the managing partner of my opposition's law firm, that they were responsible for the financial interest of the firm. They had four lawyers sitting here full time, plus Mr. Bailey here all week. Five lawyers, not Mr. Chen. What a billing opportunity.

And I think, ultimately, Mr. Bailey said it best when I asked him, he said, we will do anything for our clients. That includes making up opinions of counsel to try to cover for them. Hey, look, we didn't do anything wrong. We had lawyers look at it. We'll do anything for our clients.

So the entire defense of CalAmp Corporation to Omega Patents, LLC, boil down to one witness, Mr. Andrews. He was the expert witness they brought in. And he was going to provide testimony on both infringement and invalidity, very nice man. Unfortunately for CalAmp, very honest.

I think he did an admirable job of trying to hold the party line for quite some time. But on cross examination, he acknowledged, well, yes, I was -- my theories are the same as Examiner Pham's that were rejected. Yes, I acknowledge that the term controller can be used as Mr. Hergesheimer -- or that there be no requirement for physical action.

He acknowledged that, yes, there would be a command and a response, but he said it's more of a hi, how are you, please respond. So I guess it's a level of politeness within the microchip controller.

He acknowledged that if you, the jury, rejected his idea of what a controller was that nearly

all the claims would be infringed.

He agreed that his opinions were on the losing side of the team Pham. He agreed that the only way to avoid infringement was if he took Judge Byron's claim construction order on controller and added the SAE definition of controller, and that if he was allowed to do that, then he had a credible argument for non-infringement.

And this is what -- as I sat at the table I was thinking, this is a defense of, because I said so. Did you see any SAE document that said controller must take some physical activity? No. Mr. Andrews said it is, because I said so.

Did you see Mr. Andrews pull out a single diagram? No. It's not infringing, because I said so. Did you see Mr. Andrews identify anywhere within any of the exhibits why they didn't infringe? No. Because I said so. Mr. Andrews went through similar charts. And all he said was no, no, no, because I said so.

They didn't provide you any evidence of why it doesn't infringe, except for the idea that the controller must have some physical activity because that's what an unknown SAE document says to him and that one of ordinary skill in the art would somehow understand that.

But as you recall, Mr. Chen, with all of his degrees, all of his information, all of his activity in telematics, he testified and admitted, I didn't know about SAE until I was trying to invalidate Mr. Flick's patents. One of ordinary skill in the art, Mr. Chen, did not know about SAE. He can we possibly interpret Judge Byron's claim construction to require it to incorporate an unidentified and unknown SAE definition? Well, we can't. That's simply a made-up defense.

Mr. Andrews acknowledged that it has to be made, used, or sold, that this idea that if I've got it on the witness stand, I don't infringe, is nonsense. Mr. Andrews acknowledged that all the devices were multi-vehicle compatible. He acknowledged that it was set up and performed in the exact manner that Mr. McAlexander described.

There was no argument that they performed in a different way. It's only his idea, that I interpret it different, because I am an expert on SAE documents that I'm not going to show you and, therefore, my view of the world is that all these things are not found, because I say so.

As you may recall, the '885 patent is a patent that describes a match between a stored and read code. Mr. Andrews acknowledged that, yeah, he was taking a

position that Examiner Pham had rejected by the Patent and Appeals Board. And if the Patent and Appeals Board was correct, he was incorrect.

The '876, that's the one with working and non-working signals. And that was -- again, goes to that flow chart we saw, that if it sends out a request and gets something back immediately, it doesn't send out any more, contrary to what CalAmp's engineer said. But even then, it's somewhat of a silly defense. Some of our products, we don't infringe, because if it happens to get the right match the first time, it won't send out the second control. They still infringe. When you put it in there, it goes through that process.

'278. That's the control for using code from a selection of code with a downloading interface. Mr. Andrews said, well, I didn't see a downloading interface, and yet he acknowledged there was a downloading socket for it. But because it was enclosed within the housing, then he probably didn't infringe.

Remember, he said he never saw a device before he rendered his opinion. He never talked to an engineer at CalAmp before he rendered his opinions. Really, what he did was take what the lawyers gave him and put his signature on it. There was no independent investigation.

One of the first things we talked about on cross examination, Mr. Andrews got in front of you on direct and said, I reviewed all of the depositions for all the engineers, and that's how I arrived at my opinions. One of my first questions was, that's not true, is it? We went through his report and he looked and said, you're right, I did not review all the things I said when I arrived at my opinion. He simply took what the lawyers gave him, put his signature to it.

The speed notification argument, that's the last patent, the '727. Again, he said, I was told that they never use speed from the data bus. I asked him if his opinion might change if one of their experts or one of their engineers said otherwise. He acknowledged that. He was a fair, honest man. And that's exactly what Mr. Hall did. Yeah, here's the whole list of the people that do that. Mr. Andrews was spoon-fed the information that the lawyers wanted him to know and kept away from the information that may alter his opinion.

So then, we get to validity. This is the heart of what their position and what their defense seems to be, that it was all obvious to one of ordinary skill in the art. They've got to prove that by clear and convincing evidence.

If you have -- if you believe it could be, not

necessarily absolutely is, it's not clear and convincing. Are you clearly convinced that the patents are invalid? Well, let's take a look at what Mr. Andrews said.

His first goal, of course, would be define a product that had everything in a claim, everything in the claim, something that would prove somebody actually invented it 15 years ago. And despite all the efforts by Mr. Chen and his lawyers and Mr. Andrews, nobody, nobody could find a reference, a patent, a product that did everything that's claimed in those inventions, not one. Objective evidence, then it wasn't obvious, nobody did it. Nobody had done it for years before Mr. -- years after Mr. Flick.

So he began to look at, well, let's see if I can piece this argument together. Let's combine some references with an SAE document, and we'll just push them together and that will be his invention and one of ordinary skill in the art would do so, because I say so. He even acknowledged that on cross examination.

He doesn't have any objective evidence on why one of ordinary skill in the art would combine the two. He just thinks they would. Despite the fact no one had. Despite the fact Mr. Chen, one of ordinary skill in the art, didn't even know about SAE.

These inventions took the unique creativity of somebody in the aftermarket field, who recognized years before anybody else that all the OEMs would have all different buses and in order to remain competitive he had to have the ability to utilize the different buses for his data bus and for his communication and for his GPS. Certainly easy to sit here 15 years later and say, all right, it would have been obvious to me, and perhaps you might believe him. But let's take a look at the objective evidence.

Did he ever do it? No. He worked at Cummins, large diesel provider, on their data bus technology. He never came up with it. And this is a man not of ordinary skill in the art. This man was far beyond an ordinary technician. He didn't come up with it.

You will be provided by Judge Byron your instructions. How do we go about resolving this dispute between Omega and CalAmp? You will take those instructions back. And there's a few instructions I want you to particularly pay attention to, not that you would ignore any of them, but there are some that are more important on this issue.

In instruction number 20, Judge Byron will advise you that in order to avoid this trap of hindsight, you cannot use the patents as a road map.

In other words, you can't take Mr. Flick's claims and say, let me have that element, let me have that element, let me have that element, and I'll find something that fits that. You can't do it. It's not proper. The law doesn't allow it. And yet, Mr. Andrews told you that's what he did. He looked at it and said, I need to find these elements, and I'll find them through Bambini, I might find them through Spaur, and the SAE documents.

I asked him time and time again, what objective evidence -- or how did you avoid this trap of falling into hindsight analysis? Because I didn't. He had no response to how he avoided this hindsight analysis.

Jury instruction number 22 will tell you that a claim is not obvious by merely demonstrating that all of the elements are in the prior art. That is exactly what Mr. Andrews did. It's exactly what Mr. Andrews admitted he did. He looked at the claims and looked for those elements in the art.

The instruction number 22 will tell you there's got to be some articulated reason to combine these references 15 years later. You can't just say, well, I would have done it. Instead, there's got to be some reason. All you heard was, because I say so.

I want you to look at instruction number 24.

Instruction number 24 instructs you that one of the safeguards against this hindsight analysis is that you look at secondary considerations, what else was going on in the real world. There's a whole list of these considerations. Were there other licensees taking license to these products? Was there copying by others? There was DEI. Were there licenses? Certainly. Those are the objective evidence of what's happening in the real world. Mr. Andrews didn't consider any of them.

He wasn't told anything about DEI by the lawyers. He wasn't given any information about licenses by the lawyers. Instead, he was spoon-fed his information and told, repeat it. On this basis alone, I think you should reject the entirety of Mr. Andrews' testimony on validity. If he didn't consider something that you must consider, you as a jury, by law, must consider it. He can't be trusted on his opinion.

You will also learn in the instructions that when we look at these prior art references 15 years later, you've got to look at the reference as a whole, what it teaches. In other words, what would one of ordinary skill in the art understand from the reference? If you look at, say, for instance, Braitberg, Braitberg dealt with a phone charger, a universal hookup for a phone in the mid '90s. And that phone could be charging

various phones, so it's got universality of phones. Braitberg wasn't even addressing the issue that Mr. Flick recognized. It had nothing to do with data bus. Data bus is mentioned. I'll give him that. It's in there. But there's nothing that has anything to do with the problem Mr. Flick was trying to solve, with the problem that he recognized and that he resolved. It's about a phone charger. Again, you can't just pick something out of the blue and say, there's an element, there's an element.

The Bambini reference. It says data bus, therefore, it must be important. Instead, Bambini was an early version of the OnStar that we're all familiar with where you can record turn-by-turn directions as you drive. It has nothing to do with compatibility with multiple vehicles. It really doesn't have anything to do with what we're doing here today. And instead, what the examiner had was all the relevant prior art, the details about data bus technology.

You will see some of the articles, the IEEE articles, The Thin and Thick of Car Cabling. There were articles before the Patent Office that specifically dealt with issues involving data bus. And yet, Mr. Andrews comes in and wants you to take a look at a cumulative reference that has to do with turn-by-turn

directions and combine it with SAE. You heard that he didn't even look at the extensive prior art that the examiner had.

Spaur reference he also pulled out. And he said, well, that's got two buses in it. It identifies two CAN buses. I got you. And yet, he acknowledged on his own lawyer's questioning that they were the same bus. They operated the same way. And again, it has nothing to do with the problem that Mr. Flick identified and solved. And even within it, those references, they still couldn't find anything to do with this data bus compatibility analysis, so they had to turn to a scan tool reference. They kept referencing it as a required SAE code.

Take a look at the SAE reference they keep talking about. You didn't see much of it, but it's a recommendation. It's not a requirement. It's a recommendation on how to set up a scan tool. Again, nothing to do with what Mr. Flick was involved in.

So why would one of ordinary skill combine the two? Because I said so. No other reason. They would know -- absolutely they would know about SAE documents. Well, the Patent Office knew about them 'cause they were referenced in the patents. The examiner knew about them. The Patent Appeals Board knew about SAE

documents, patent issue.

You know who didn't know about SAE documents? One of ordinary skill in the art, Mr. Chen. He hadn't even seen them. And yet, somehow Mr. Andrews is here to tell you that one of ordinary skill in the art absolutely would have combined them, because they would have known about them.

Mr. Andrews' testimony is the classic example of looking back in the past and using the patents as a blueprint to do what Mr. Flick did before anyone else. The law doesn't allow that. Your instructions will tell you the law doesn't allow that. You look at objective criteria. You look at reasons to combine. It would be far, far too easy to invalidate every United States patent if all you had to do was check off these elements.

As Mr. Andrews acknowledged, every patent is built upon what is known. If all you had to do was check it off, well, you wouldn't have lightbulbs, because the glass bulb was known. Certainly filaments were known. Electricity was known. I would have come up with it. The law doesn't allow that type of hindsight analysis. If he didn't consider secondary considerations, he didn't do his job, and he provided you faulty opinions. He could not provide you one bit,

one iota, of objective evidence that these patents would have been obvious to one of ordinary skill in the art.

The damages analysis by Mr. Tregillis of $6.38 a unit was unrebutted. You didn't hear any testimony that that would not have been fair, would not have been right, would not have been anything but fair under the circumstances. The only evidence you have for purposes of damages is Mr. Tregillis' testimony and the spreadsheet, Exhibit 164, and that's $2,975,200.

So at the end of the day, when Mr. Kauth and I are done talking and presenting our show and tell, you will be asked to go back to your room. All these exhibits will be wheeled back for you. And you will be presented with a verdict form.

May I go to the document camera?

THE COURT: Yes, sir, you may.

MR. GILCHRIST: This is a copy of the verdict form that you will be asked to fill out, and there's a series of questions. And you will select a foreman. And that foreman will ultimately sign it, but all of you will discuss the verdict form and decide how to fill it out.

First question is: Do you find Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringe any of the asserted

claims of Omega's asserted patents? Do you find there's any infringement? Of course, there is. Mr. McAlexander went through painstaking detail that, yes, this is how the LMU works. These are the elements that are in the patent, and here they are.

The next question is somewhat longer for you. And if you said yes that there is infringement, what we need to know, what you find to be infringed. So you will be asked to identify that LMU-3000, 3030, 3050, infringed every claim of the patents. And you heard the testimony, they all operate essentially the same way. So I would suggest to you that if the LMU-3000 infringes, they all infringe.

The VPODs, you heard testimony, only work through an LMU. So, I would suggest to you that if the LMUs infringe, the VPODs necessarily infringe. You will be asked to check "yes" as to each claim that you find infringes as to each product you find infringes.

And you may recall that because of a housing requirement, Mr. McAlexander acknowledged that some of the VPODs wouldn't infringe some of the claims. We don't contend they infringe. So we've left these blank for you. So you don't have to try and remember which were the claims that Mr. McAlexander acknowledged didn't infringe.

You will next be asked has CalAmp proven by clear and convincing evidence -- now that's a different standard than what I had to meet for infringement. I had to prove to you by a preponderance of the evidence. CalAmp's got to prove that it's clearly invalid, that any of the claim is invalid.

Remember for invalidity, just like infringement, each claim is an independent invention. They have to prove that each claim is rendered invalid under their obviousness theory. So we've got to say no for Omega. But if there's a claim, say it's Claim 12, if you believe to be infringed or invalid, you can identify it, and then tell us exactly what those references are you're referring to. Is that the Bambini reference? Is that the SAE document? Is that Spaur? Is it something -- one of those references that we saw in opening -- Lang, Suman -- things we didn't see? You will be asked to fill in that information, if there is anything.

You will get to question 5. And this is what I keep talking about on the secondary considerations that Mr. Andrews didn't even know about. And that's to help make sure that it's clear in the jury's mind that you must consider these factors. Has the evidence established that any of these factors are present:

Were the accused products covered by the claim commercially successful? Absolutely. Mr. Flick talked about his Omega products that were covered by it. I think he said he grew that company to a $34 million a year business. They were successful. DEI, the group that fought him and got caught willfully infringing, their product's successful. You heard that testimony.

Now, I will acknowledge that there was no evidence for this one or this one. But you heard evidence of copying of the claimed invention. DEI was found to have willfully infringed at least the '885 patent. I don't think it achieved unexpected results. I just think Mr. Flick was ahead of his time.

Did the others in the field praise the invention? Well, I can say unequivocally they did not. They all made fun of Mr. Flick. But did others accept licenses under patents because of the merits of the claimed invention? Absolutely. AudioVox, now known as Voxx, came to them and said, I reviewed your patents. I want a license.

The next question, 6-A, goes to the issue of whether you believe CalAmp took these actions willfully. In other words, have I proven that CalAmp willfully chose to ignore all these patents, chose to ignore all the evidence in front of it and decide I'm going to go

ahead and infringe? Have I proven that despite an objectively high likelihood that its actions infringed the valid patent? I think the clear answer is yes, CalAmp knew they were infringing. You saw the e-mails. This one's going to be hard to avoid. We're on the fast track to a lawsuit. We'd better take that information off our website so they can't get their case together.

The next question, very similar, but was there an objectively high likelihood of infringement so it would have been obvious to CalAmp? Absolutely. They knew it was infringed. They said it internally, this one's going to be harder to avoid. Watch out for the '278, Claim 13. I don't think we can get around it. You heard Mr. Hergesheimer. He said, yeah, we tried to design around it, couldn't do it. They absolutely knew they were infringing valid claims.

So then, you will be asked the amount of damages. And the only evidence you've got before you is Mr. Tregillis' evidence, and that's the -- make sure I get this right -- $2,975,200. That is the only evidence before us. It's unrebutted.

Then, you will be asked to sign this verdict form and date it and return it. And upon returning this verdict in favor of Mr. Flick and Omega Patents, LLC, your service will be over. You would have helped.

Mr. Flick ensure justice. You would have protected the inventions of Mr. Flick. And you would have said no to those that used their power, their wealth in order to steal the inventions that others have worked so hard to achieve.

And I'm sure I speak on behalf of all the folks in this courtroom. I thank you for your attention. You've been an incredibly attentive jury through some oftentimes difficult and dry subject matter. I ask you to return a verdict in favor of my client in the amount that Mr. Tregillis had and that you find that CalAmp's actions were willful. Thank you.

THE COURT: All right, thank you.

Ladies and gentlemen, since we have about at least an hour, perhaps more than an hour of the next closing statement, why don't we take a short break so you can clear your minds and get ready to come back and listen some more, and then you will have instructions from me. Thank you very much.

COURT SECURITY OFFICER: All rise for the jury.

THE COURT: And again, please do not start discussing the case until after you receive the instructions from me.

(Jury exits at 9:53 a.m.)

COURT SECURITY OFFICER: Please be seated.

THE COURT: Thank you.

The jury has withdrawn. It's about ten minutes to 10:00. Let's come back at five after. That will give you a chance to get everything set up and use the rest room, if you need to, what have you.

All right, thank you.

(Recess from 9:54 a.m. to 10:06 a.m.)

Mr. Kauth, you all set?

MR. KAUTH: Yes, Your Honor.

THE COURT: All right. You can get the jury, please.

(Jury present at 10:09 a.m.)

The record should reflect the jury has returned. We will now hear closing arguments from Mr. Kauth. When you're ready, sir.

MR. KAUTH: Good morning. You've heard a lot of testimony this week. Well, there have been a lot of different stories on a lot of the different events that have happened on what things mean. There has been one thing that everyone has agreed on, the CalAmp products in this case just read data. They don't unlock doors. They don't perform alarm functions. They don't remotely start the car. They just read data.

Omega insists that when the patent talks about

those control functions -- starting the car and unlocking the doors -- that those are just examples and that much more is covered in the patent. But no one has been able to identify where in the patent more is disclosed.

The claims cover what the patent covers. The specification can include more or less, but the scope of the claims can't exceed what's included in the specification. And here, the specification, that written part of the patent that we talked about, doesn't explain anything beyond the control functions like unlocking doors, remotely starting the engine, or arming an alarm system.

It's undisputed that Omega did not invent the bus discovery process. It's not listed in the patent, and Mr. Flick admitted he didn't invent that. Mr. Andrews testified that that was a prior art standard known since 1994.

Mr. Flick testified that his innovation was using the bus to connect to car alarms. He had started his business long ago, innovated in the car alarm industry, went from the old discreet wiring systems, and decided he could connect to the bus to perform those same control functions he used to do with discreet wiring.

Omega urges you to ignore the context of the patent, the discussion in the specification, and the claim construction of this Court that specifically set out command signals, device codes, and controller. Under Omega's view, every function is a control function. However, if that's true, then Omega's invention was disclosed years ago and cannot be valid.

The prior art we looked at, like the Bambini reference. I think you heard moments ago that this wasn't really related to Mr. Flick's invention. But Mr. Andrews showed you that this was a device that could connect to the vehicle data bus. It could control vehicle devices connected to that bus, which is the same thing that we've been hearing these claims cover in this case. Unlike the CalAmp products, Bambini could actually unlock doors. It was for much more than just reading data.

We heard about the Braitberg patent as well. It was belittled as just being a car charger. In fact, it was a cradle for your phone so that your phone could hook into the bus system of your vehicle and allow you to contact through the bus of the vehicle different vehicle devices within the vehicle and either adjust or control them.

Another one of the prior art references we

heard about was Mobile-Trak. The purpose of Mobile-Trak, it's a telematics device, just like the CalAmp devices. It had an optional GPS unit for location information. It could connect -- Mr. Andrews testified and the brochure listed -- three different bus types, so not only compatible with multiple vehicles, but compatible with multiple types of buses. It specifically mentioned that it could do speeding alerts.

We also heard about the Spaur patent, the '074. Again, it connected to the vehicle data bus, performed control functions on these vehicle devices connected there, included the GPS unit for location information, these very same features that the CalAmp devices perform. But unlike the CalAmp devices that only read data, Spaur could actually perform true control functions.

When you get back into the jury room, I direct you to Exhibits 10 for the Braitberg patent, 11 for the Bambini patent, 24 for the Mobile-Trak device, and 17 for the Spaur patent. And I further urge you to consider Mr. Andrews' report, Exhibit 38. At page 981 of that report, you will see the MobileWeb reference. And at page 1039 of that report, you will see the J1978 SAE specification that you've been hearing about so much this week.

During the past week, you've seen that the '876 patent involved in this case discusses signals that cause a response or an operation. That's listed right in the patent. You've heard from Mr. Andrews that the Society of Automotive Engineers makes a similar distinction between commands that load or modify things and queries for data.

And you've heard CalAmp witnesses testify that the CalAmp devices don't send commands, as the Court has described those, to cause operation of vehicle devices and instead they simply query for data.

But in order to try and make the patents cover the CalAmp devices, Omega's ignoring its own patent language and expanding the patents to claim that all messages must be commands.

The witnesses talked about the Court's claim construction that requires a controller perform one or more control functions. And a big dispute has been well, what does a control function mean?

On one hand, Mr. McAlexander said, well, any function a controller performs is automatically a control function. And he pointed to a diagram that showed an ST microcontroller. It's a type of product, a microprocessor. Just because it has the word microcontroller on it doesn't mean it means -- it meets

this Court's definition of a control function. Mr. McAlexander basically took the word control function out of its definition by saying any function's a control function.

In contrast, Mr. Andrews said what would one of ordinary skill in the art understand a control function to be. And he applied his skill and knowledge from his actual work as one of ordinary skill in the art to tell us what a control function may include, which included that physical change he mentioned.

He was not adding to the Court's construction or changing the Court's construction. He was giving you the context of someone who was actually working in the automotive industry in the year 2000 or 2007 when these patents were filed to understand what the term of art control function means.

Mr. Chen also testified in his testimony that a control function would require a state change in a vehicle device. It's just another way of saying there would be a physical change in the vehicle device.

We've heard a lot about Mr. Hergesheimer's testimony. And I know you saw the video. I trust you remember what it was. But he noted in a question about whether he would consider a query and a response to be a control function, no, I would consider that a query

process. He didn't agree that was a control function.

You may recall back in the opening statement Omega said this whole case started with a Cherokee, that Mr. Flick first discovered the vehicle bus in that Cherokee and quickly set out to figure out how he could tap into that vehicle bus and control the door locks. We're back to door locks again.

You heard Mr. Flick testify that he was able to hook a device up to that Cherokee and look at the codes coming across the screen and push certain of those codes back into the vehicle to unlock the doors. That Cherokee had one type of bus. I believe Mr. McAlexander and I agreed it was the ISO 9141-2, just a single bus.

The patents tell a similar single bus story. When you go back in the jury room and you look at Joint Exhibit 1, 3, 4, and 5 -- those are the four patents in this suit -- you won't see any discussion in there of the bus discovery procedure. Mr. Flick admitted he didn't invent the bus. He didn't invent command signals. He didn't invent devices. And he didn't invent bus discovery. Those are all known things that have been codified by the SAE.

If you needed to speak on the vehicle bus or communicate, if you wanted to listen to data like CalAmp, if you wanted to perform command signals and

control the operation of the vehicle devices, like the prior art, you actually had to follow those SAE standards so that the bus could understand the messages, kind of like if you try and run a Mac program on a PC, it just doesn't work very well. You have to follow the right protocol.

Now, Mr. Flick's invention was to send different codes on that one bus. In the Cherokee, he could send different codes until the doors unlocked. He had samples in his patent. If you look at Figure 3 of the '876 patent, you will see a table that we talked about a lot, Table 3, that listed multiple device codes for different vehicle devices.

And the theory was you could just keep sending codes until you got to the right code and the device operation would occur and you'd know I sent the right code, and then the next time you wouldn't have to look through all those. It was a great invention, but it wasn't what we're talking about here. It's not bus discovery. That was all on a single bus.

The patents talk about sending working and non-working command signals. You probably remember Mr. McAlexander and I having quite a discussion about that. The patent gives an example. It says you could have a code for a '96 Cherokee and a 2000 Cherokee.

And if you're on the 2000 Cherokee, only the door lock code for the 2000 Cherokee will work. And if you try using the '96 Cherokee code, it just won't work. It's not the right code. But both of those Cherokees had the same ISO 9141-2 type of bus.

Mr. Flick's invention in the alarm space have carried over to the bus. He took his door locks, his remote starting, his alarm functions, and connected them to the bus. He testified that it made it easier for installation. Instead of having to run wires everywhere in the vehicle, you could run one wire and tap it into the bus and control these devices. We admit that's what he did, but that's not what CalAmp's doing.

His story is that by doing that, he could save a lot of time, installers could save a lot of time and explains why a lot of people in the alarm space, people making remote starters were willing to license those patents.

The testimony -- you have heard of lots of licenses. I think we saw 15 or 16 licenses from Mr. Tregillis, but he told us that I believe 11 of those were very small licensees with low volume and were the result of litigation, so it was probably cheaper to take the license than to litigate, but there were some big players in there, too. Mr. Tregillis couldn't tell us

what they actually make or what their devices were. He seemed to agree with me when I asked him, well, were those remote start systems, alarm systems. They weren't just data monitoring systems.

Now, Mr. Gilchrist told you a story about a beekeeper. I believe his name was Mr. Langstroth. Got a patent number 9300 back in 1852. Just for reference I believe, you know, we have seven digits in the patent numbers now, and I believe we're up over nine million, so that was quite awhile ago.

Mr. Langstroth came up with an 8-millimeter groove that was a better mousetrap, if you will. It was a better beehive. But the story is not quite so simple. Over the years it's been sanitized a bit, but there was a very large dispute over whether Mr. Langstroth actually invented that 8-millimeter strip or space. There's tales out there that he spoke to a man name Berlepsch and to Dzierzon, two other beekeepers, and that he knew about their inventions in the area.

He actually did try to enforce his patent. There's coverage in the Kansas City Beekeeper, a periodical from May of 1884, so it goes pretty far back. In that one, the Kansas City Beekeeper noted that Mr. Langstroth knew about the mun hive [phonetic], another piece of prior art out there that he hadn't

disclosed to the Patent Office.

The article says that Mr. Langstroth took the witness stand and gave testimony. But after cross examination, when the defendants were prepared to show that Mr. Langstroth was not an original inventor, he abandon his suit. It wasn't that he didn't have the opportunity. It was that he may not have been the original inventor. I don't particularly think a story about beekeeping from 1852 is relevant here, but I think what is relevant is you have to know all the facts. Here, Omega is saying Mr. Flick is a great inventor, he has over 150 patents, and no one's disputing that. The dispute is over what his patents cover.

You've heard testimony that CalAmp values technology. They've got a lot of technical expertise in-house and sometimes, when necessary, they go outside to get that expertise. It's how Mr. Hergesheimer ended up at CalAmp when the LMU product line was acquired from Technocom. It's how Mr. Chen ended up there when his start-up, Aircept or Skybility, was acquired by CalAmp.

You've also heard that CalAmp has licensed technologies from others. Even in the LMU devices involved in this case there was testimony that they took a license on the wireless technologies and had to pay a royalty on that. CalAmp is willing to pay the license

when they believe the technology they are licensing is actually included in their products, but here we don't agree.

There was testimony from Mr. Chen that Omega initially offered to license its patents to CalAmp. A lot of discussion about the meetings, whether it was at SEMA or at CES in Vegas. But what came down to it was Mr. Chen met with Mr. Flick and Mr. Flick offered him a license and said it would allow you to add more features to your product. He actually told him you could unlock the doors, you could remotely start the engine. Well, that's not a market CalAmp was interested in, and CalAmp declined the license.

You may recall Mr. Flick testifying that he thought the CalAmp engineers were belittling him at that meeting and that he was being attacked and being called uneducated. But what struck him was he said they were smiling too much. He had to get in their face. He had to shake them up, start calling them names and calling them liars. That doesn't sound like someone that was demeaning Mr. Flick. I think you saw from Mr. Gallin's demeanor, he's a very calm and rational guy.

Over the years, Omega and CalAmp continued discussions. When CalAmp declined the license for control functions, Omega offered a different license.

They said, well, you can have a limited license. It'll just cover the features of the LMU.

Well, Omega wasn't able to assign that license. CalAmp declined that license as well, because they looked at the Omega patents and they thought they lined up with Omega's first offer, that it has to perform these control functions. And when Omega came back with the second license and said, well, we believe our patents now cover anything, including just reading data like your devices, CalAmp declined.

Another topic we've heard a lot about is bus discovery. You heard about the SAE standard, this J1978 standard that when you're plugging a device into the bus and you need to find out what type of bus that device has, you send messages. I think it was the CAN 11 bit message first, then the CAN 29 bit message, then the J1850 message.

CalAmp follows that standard. The standard's been around since 1994. However, despite the fact that the CalAmp devices are following that prior art standard, Omega claims that by performing the bus discovery process, the CalAmp devices must infringe.

I mentioned earlier Mr. Flick admitted he didn't invent the command signals, the device codes. He was utilizing technology that others had and he had

an innovative way to use it for his control functions. He didn't invent the bus discovery either. In fact, if he had known about the bus discovery, he would have had to disclose that to the Patent Office when he filed his patent. He said he didn't know about it, it's not on the face of the patent, so we can assume he knew nothing about J1978 and the bus discovery procedure.

Well, if he knew nothing about it, it's awfully hard to believe that it's something covered by the claims of his patent. To be the inventor of that patent you need to know what you invented. And if you didn't know what the bus discovery process was, that can't be part of what you invented.

You heard Mr. McAlexander say that by following the teaching of the '876 patent to send working and non-working command signals on the same bus type, such as the Grand Cherokee that was listed in the patent, he told me that would be a waste of time, despite the fact that that's one of the examples in the patent.

In fact, he asked me, why in the world would you send a non-working signal when you already know what the bus is? Well, the answer is because that's what's disclosed in the '876 patent. There's nothing in there about finding out what the bus is. The '876 patent

talks about being on the bus and sending your different door lock code signals or your remote start signals until the action you want actually happens.

Omega has the burden in this case to show infringement by a preponderance of the evidence. And that means for each asserted claim they have to show every element is present.

Now, Omega's expert based his opinion on a flow chart that he didn't create, that he knew nothing about, and that does not accurately reflect the operation of the CalAmp devices.

Mr. McAlexander speculated that, well, this must have been made when they tested an LMU-3000, but he had no evidence of that. He had no personal knowledge of any actual testing. He couldn't identify any testing procedure that was used, any testing equipment that was used or anyone that might have performed such a test. He didn't know when, where, or how such testing might have occurred. There is no evidence of any test actually being performed. There's just an anonymous unsupported flow chart that he relied on for his report.

You remember back to Mr. Andrews' testimony and Mr. Chen's testimony. They both testified that that chart didn't accurately reflect how the CalAmp devices work. They said the CalAmp devices send a standard

which means they send out that CAN 11 bit signal, and they wait. If they get a response, they don't send any more signals. If they don't get a response, they move on to the next signal. Mr. Chen testified he personally observed the testing on both the LMU-3000 and the LMU-3030 to make sure he understood how it worked.

We've also heard a lot about Mr. Hergesheimer and that he supposedly agreed that that chart was correct. Well, first, as you recall from the video, when they put the chart in front of him, he said he had never seen it before. He said he was sort of familiar with the procedure on J1978 and it sent a sequence of signals. And under questioning, he didn't agree that the chart was correct. He simply agreed that the bus messages were sent out one at a time and that a new message was sent out only if no response was received.

The chart shows that no matter what -- and Mr. McAlexander told us that's what the chart shows -- that all six messages had to be send and that the results were stored somewhere else and after sending six messages you go back and check, but the CalAmp devices don't operate that way. They follow the standard.

You will see, I think, in 6.5.1 of the J1978 document, it shows the steps that are followed, and it says you send out a message. If you get a response,

you're on this bus, and there's not a second step. Mr. Chen, Mr. Andrews, Mr. Hergesheimer all confirm that that's the way it works, but Mr. McAlexander insisted that his chart was correct.

Well, creating even more error in his opinion and his report that rely on that chart is the fact that he starts with unreliable, unknown data in the chart, and then he expands that and says, well, I think it works the way this chart shows. Even though I'm not sure where the chart comes from, I don't know who did the testing, how it was performed, or if a device was even used. This could be something somebody just drew up on the computer. When I asked where he got it from, it came from his lawyers, no actual technical knowledge that this is, in fact, how an LMU-3000 works.

Well, he took that and said, well, since I think the LMU-3000 works like that chart, I'm just going to assume the LMU-3030, VPOD, and VPOD2 all work that way as well. This is despite the testimony from Mr. Chen, Mr. Andrews, Mr. Hergesheimer, and the support of the SAE J1978 document that shows the actual procedure to the contrary. Because Mr. McAlexander's report is based on unreliable data, his entire opinion is unreliable.

You've heard testimony that for every Omega

patent involved in this suit, there are at least two claim elements not present in the accused CalAmp devices. You probably remember I was standing back there and Mr. Andrews was checking off the boxes and telling me which elements were missing.

For the '876 patent, the LMU devices didn't have a controller as defined by this Court, because they didn't perform a control function. The LMU devices also lacked the working and non-working command signals required by the Court's claim construction.

We've heard the SAE standards make a distinction between queries and commands. When you look at the '876 and '885 patents, you will see the passage that says you can send signals to cause operations or responses. This is confirmed by the Court's claim construction where command signal is a signal generated on the data communications bus for operating a vehicle device, not just getting a response.

But Omega argues that queries for data constitute commands, ignoring this distinction. If you apply that definition, well, then, command signal really has no meaning. It should just be signal, but that's not what the claim construction is.

You also saw the '876 patent says that command signals must be bus compatible. When I spoke with

Mr. McAlexander about that, he said, well, not always. So the patent says it has to be that way, but in hindsight, Mr. McAlexander says, well, that only applies to working command signals, not non-working command signals. But the patent says it applies to all command signals.

If you follow the examples in the patent, it would be true. When you're on that Cherokee bus and you're sending the different door lock codes, the one that works, that's a bus compatible command signal, and it's a working command signal.

The one that doesn't work, remember on the 2000 Cherokee and we send that 96 bus signal, that's still a command signal, but it's a non-working command signal, and it's still compatible with the bus, just like the patent says it should be.

When we look to what the CalAmp devices are doing, they're following that SAE J1978 procedure, sending out those six different messages.

Mr. McAlexander testified, and I think one of the few points probably Mr. Andrews agreed with, that only one of those messages is compatible with the bus that that vehicle's on. The other five are going to be non-bus compatible.

Mr. McAlexander agreed that, yep, only one of

those six messages would be bus compatible. But it didn't bother him, because he said that portion of the patent that said they must be bus compatible was sort of an optional part. It didn't apply here.

For the '885 patent, you heard that the CalAmp devices are not for storing a set of device codes for a given vehicle device from among a plurality of different vehicles for reading a device code from the data communications bus and for determining a match between the read device codes and storing device codes.

That's an awful lot of words. But when we've heard Omega go over this, they've simplified it and just said, well, is there a read device code and a stored device code. They left out all that other language.

As you probably noticed, I'd like to leave out that language, too. I've had a pretty tough time the last couple days pronouncing plurality, especially when your mouth gets dry. But you can't just leave out language from the claims. It's in there for a reason. The Patent Office allowed that patent based on that language. If you take that out, you're making your patent even broader. That's not what the Patent Office gave you. A patent in this country is a limited monopoly. You have the right to exclude others from doing what's covered in your patent. You don't have the

right to keep expanding that monopoly to cover everything you want.

Here, we're talking about patents where the Patent Office didn't have all the information in front of them. When you look at the front of every patent, J1978's not listed on there. In fact, all of the references we've told you about -- Bambini, Braitberg, Spaur, Suman, the Mobile-Trak reference, the MobileWeb reference -- none of those were considered by the Patent Office when issuing all four of the patents in this lawsuit.

For the '278 patent, you heard that the CalAmp devices, again, don't have a controller, they don't perform that required control function, and they don't -- they're not coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding device code from among a plurality thereof for different vehicles.

We saw no evidence of that. We just heard, well, they send this bus signal -- we use that first CAN 11 bit message -- and a response comes back. And they somehow match the response to the sent message. But when queried further on that, Mr. McAlexander actually said, well, the command signal in the '876 patent, that's that bus message, the bus discovery message.

When we get to '278 we asked him, well, what's the device code that's been defined as something from a vehicle device? A signal from a vehicle device, well, it's the same thing. He thinks this one bus discovery message can be both a command signal and it could be a vehicle -- sorry -- a device code where the Court's definition has specifically culled them out as different things.

For the '727 patent, you've heard testimony that the CalAmp device uses speed from the GPS device. It's not on the bus side of things. It's on the LMU side of things. And you heard testimony that using GPS speed's been known for a pretty long time. I believe Mr. Chen testified that back when he had his company, Aircept, not a company he bought, the company where he actually built a working telematics device, they used GPS speed.

You probably recall Mr. Eiberger's testimony. I think there's been a lot of dispute about that. We're going to try and remember back to what he actually said. He testified that he thought about 95 percent of CalAmp customers used GPS speed for speed thresholds. He also testified that CalAmp provides pre-defined functions for their customer. There's a speed above threshold, speed below threshold, and a debounce

feature. He said all of those pre-defined functions use GPS speed.

Mr. Hergesheimer testified that the app layer in the LMU didn't use bus speed. It used GPS speed. So then, we get to the five percent. Mr. Eiberger testified that although he thought 95 percent of the people -- or the CalAmp customers use GPS speed for speed thresholds, he ran a query for scripts, and he got back this five percent.

Now that five percent was not people that were using scripts to set up a threshold using vehicle bus speed and send out a notification report. That five percent was for people who were accumulating vehicle bus speed, and he said he would have to look at each script to figure out what they actually did. He said he wasn't aware of anyone actually using bus speed for a speed threshold.

Mr. McAlexander tried to get around all that testimony. When we asked him why does he think the CalAmp patents infringe, the testimony was, well, they're hooked to the bus and they can get bus speed from the bus, but I know they're just using GPS speed for speed thresholds, but that doesn't matter. You can use the GPS speed for speed thresholds, just like everyone else has done for years. But even if you have

an unrelated connection to the vehicle data bus for speed for another purpose, I think that satisfies the claim. So he basically said, I'm just going to ignore the part that says speed from the data bus. And I'm going to let it be data bus speed in this part of the claim, and it's going to be GPS for this part of the claim.

The burden is on Omega to show each and every element of the asserted claims in the accused devices and they can't meet this burden, because the evidence shows that in every CalAmp device for every Omega claim at least two of the elements are missing.

As you heard during trial, and you will hear again in the jury instructions, you will hear about independent and dependant claims. And the rule is if a party doesn't infringe an independent claim, they can't infringe the dependent claims that depend from that. So here, if we show that CalAmp does not infringe Claim 1 of the '876 patent, they can't infringe any of the other claims of the '876 patent either, just like Mr. Andrews showed you on the chart.

As we mentioned before, Omega claims in this case that bus discovery infringes the patent, even though Mr. Flick admitted he didn't invent that concept. The evidence showed that was a concept that's been

around since at least 1994 in the SAE giant J1978 protocol. There's been a lot of discussion, well, J1978, that's just for scan tools. No one would ever use that. But if you recall from Mr. Chen's testimony, he pointed out the Nathanson and Lang patents where there was a scan tool connected to the vehicle data bus.

He told you that some of the CalAmp customers have used the AutoTap scan tool and connected to a CalAmp device. So it's clear that people in the industry know that you can connect a scan tool to a telematics device, to achieve connection with the bus. In doing that, when you get into that diagnostic layer that Mr. McAlexander testified about, the controlling specification for that diagnostic layer is J1978.

Now, Mr. McAlexander testified that the set of bus discovery messages were both command signals and device codes, as I mentioned earlier. We also had a hard time when we got to, I believe, the '278 patent. You remember we went round and round about, it was quite a mouthful, but what's a corresponding vehicle device code. And he said, well, the device code -- well, he identified the ECU or ECM, which is the engine control unit or engine control module in the vehicle. And he said for the purposes of this claim, that's the device -- I mean, the vehicle device I identified.

But when we got to corresponding vehicle device codes, that meant that code was coming from the wrong place. He didn't identify any signal from the ECU or ECM, which is what he would have had to do to satisfy the Court's construction that the device code is a signal from a vehicle device.

Instead, he said, well, to satisfy that definition, let's just pretend the LMU is the vehicle device. That would result in the LMU trying to communicate with itself and frustrate the purpose of the claim. You can't keep changing the vehicle device in each part of the claim to try and get around and make it fit your construct. And I think the problem was he was trying to shoe horn in the same bus message that he says is a command signal -- make it a device code, make it a corresponding device code. It's kind of the universal piece that he kept trying to fill in to try and claim infringement. It satisfied many and many of the elements of the claim.

You heard testimony from both Mr. Eiberger and Hergesheimer about GPS speed and CalAmp using GPS speed. I think that in one of the e-mails that was up earlier today, CalAmp mentioned that they would use GPS speed, because that wasn't covered in the patent.

Mr. Gilchrist put up an e-mail that said there

were issues with, I think it was Claim 13 of the '278 patent. There was no discussion that we think our current product infringes that patent. They said it may be harder to avoid, so that meant they were going to make sure it operated in a way that didn't infringe that patent. The next two lines in that e-mail actually show we don't use GPS speed -- or we use GPS speed and don't use bus speed, so we're going to be fine on the '727 patent. We don't do command signals as required by the '876 patent.

Now, early on in opening statement, Omega said it was going to try and simplify this case. And patent cases are notoriously dry and boring. They're very, very technical. We had two experts talking about a lot of technical stuff. But when you go in to simplify the case, you can't simplify it by just ignoring certain portions of the claim.

There was discussion about, well, Mr. Andrews said there was a port, but then in his chart he said there wasn't a downloading interface, and that's because the claim didn't just say downloading interface. It had a whole section of what that downloading interface had to include.

It said, the downloading interface had to be for permitting downloading of enabling data related to

the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller. But we didn't hear anything about that part of the claim.

You heard a lot of discussion of the CalAmp specifications and the drawings that showed the chips and the different pieces of the devices. Again, that's structure. And while these claims have structure, they all require more.

If you look at the '876 patent, it doesn't say it's configured to do something. It actually says generating -- that verb -- you've got to generate working and non-working command signals.

You can't just ignore that and say, well, they have structure. You actually have to read the entire claim and satisfy every limitation. Just like we talked about with '278 a minute ago, you can't just stop and say they have a downloading interface. You have to say, keep going further and identify, well, is there enabling data and is it related to the corresponding vehicle device code. There's been no evidence at all on that.

Giving the patents the proper meaning they're entitled to, as issued by the Patent Office and construed by the courts, the patents don't cover the CalAmp devices. However, if you think the patents are broad enough to cover the CalAmp devices, then that big

stack of prior art that we had renders the patents invalid, and you have to conclude they're invalid in view of that prior art.

CalAmp has the burden of proving invalidity by clear and convincing evidence. CalAmp put on Mr. Chen and Mr. Andrews to satisfy that burden. I think you saw Mr. McAlexander for about three or four minutes yesterday. He didn't even attempt to rebut that burden. He didn't tell you anything about the prior art that had been analyzed. You didn't hear him talk about Suman, Bambini, Braitberg, Spaur, Nathanson, Lang. He just chose to remain silent.

Mr. Chen and Mr. Andrews, both with years of experience in the telematics field, mentioned that they had seen wireless communications, GPS units, and controllers connected to the vehicle data bus.

Now, Omega's made a big deal that Mr. Chen didn't know about the vehicle data bus standard until, I believe, 2010 or 2011 when he learned about it from B&B. It was the first time Mr. Chen had actually made a device to work on the vehicle data bus.

Mr. Andrews, he'd been working on the data bus for years. He said, everybody working on the data bus would know about the data bus. But when we look at the prior art patents, there's been an argument that there's

no motivation to combine. Why would someone looking at the Bambini patent, that's this OnStar device that can actually control your door locks over the vehicle bus, why would they look to the SAE specifications?

Well, Bambini specifically discloses there's a CAN bus in there. The SAE specifications control operation on that CAN bus. That's what you have to follow if you want to be able to successfully communicate on that data bus.

There was no stretch. The references you saw were all one patent combined with the standard that controls operation of that patent. Those patents all had vehicle data buses in it. And Mr. Andrews combined them with the specification for that vehicle data bus.

This was not combining a baseball and a softball, baseball and basketball. These were things in a very narrow field. And as you saw, it was one structural device and then the specification that would say if you want to be compliant with the federal standards, this is the way you operate.

Now, I mentioned earlier that Mr. Chen found some diagnostic scan tools being used that interfaced to the bus. He also testified that he was aware of a company called B&B, a company that had come up for sale and CalAmp investigated, decided not to buy them, but

they partnered with them for technology. And why did they partner with their technology? Well, CalAmp had never made a device that connected to the vehicle data bus. B&B had. They had the AutoTap, this diagnostic scan tool that they had been selling for years.

So rather than try and re-invent the wheel, CalAmp said, there's a device that knows how to contact the bus, knows how to speak the language, and it also fit in with CalAmp's goal. CalAmp didn't want to control anything on the bus. They wanted to do the very same thing a diagnostic scan tool does. They wanted to read the data.

The next company you heard about with CalAmp was Innova, another scan tool maker. Not a coincidence that CalAmp went to two different scan tool makers to try and obtain the technology to connect to the data bus. Now you heard that while it took a long time for them to get that technology, must not have been that obvious. They went to B&B and they said you have this scan tool, pretty big device, we've got our LMU, the 2600 that these are based on, that's a good-sized device, we want to collapse it down into a device this size. That alone takes some impressive engineering.

But the next step is this is a device that's being plugged into the core of your automobile system.

The data bus is where all the communication happens. You don't want to put that device in the data bus and have it start causing problems, causing issues with the cars. So, CalAmp had to be careful and make sure that everything was right before they released the product.

You haven't heard that CalAmp copied the technology from anyone. What you heard is it took a year and a half of CalAmp engineering working with B&B, and then I think it was six months or eight months working with Innova to come up with these products. They built these products based on their previous LMU technology, combining it with the diagnostic scan tool from Innova or B&B, and following the J1978 specification.

We stepped through with Mr. Andrews all the prior art that he had compiled for his report. He had a lot of combinations -- Bambini and J1978, Braitberg and J1978. He explained how one of ordinary skill in the art working on the vehicle data bus would have been familiar with the J1978 bus discovery procedure, and one would have looked to J1978 for connecting to the vehicle data bus. He went through each of the asserted claims of the patent in suit, and he found that they were all obvious in view of the prior art. As I mentioned, Braitberg and J1978, Bambini and J1978, that's what

rendered the '876 patent obvious.

For the '885 patent, it was Braitberg and J1978 or MobileWeb and J1978; again, a device designed to connect to a vehicle data bus, and the specification that controls the operation or specifies the operation on that vehicle data bus.

The combination of Spaur and 1979 rendered the '727 patent invalid as obvious. Again, Spaur was a telematics device that said you could obtain parameters or data from the vehicle data bus. It didn't expressly mention speed. It said you could monitor location of vehicles. You could check their status. Well, if one skilled in the art read the Spaur patent, it said you can determine values from the data bus and you can set a threshold for a value and set a notification when that value exceeds their threshold.

The only question one skilled in the art would have is, well, what data can I get from the vehicle data bus? When it says I can use data from the data bus to set up this threshold, where is my menu of available data? Well, the SAE is the party that publishes that menu of available data, so that's how you get to J1979. This is the standard that says here are the data values that have to be available on the data bus.

So it's not a stretch that one skilled in the

art reading Spaur that says you can do these neat things with data from the data bus, set up a threshold. When you exceed that threshold, you will trigger a notification. The obvious place anyone would have looked is, well, where is the listing of what data I can do? Can I do speed? Can I do engine temperature? Can I do RPMs? One skilled in the art would understand that all those things were possible just by looking in the place that the patent directs you. It said, you need to know the bus values. So one skilled in the art, you look to the publication that tells you what bus values are available.

For the '278 patent, Mr. Andrews used combinations of Bambini and J1978, and Spaur and J1978, again, the device and the specification that teaches how that device operates on the bus.

Now, Mr. Chen testified that -- he went through, I believe, it was 300-plus patents, the big stack. He narrowed it down to the short stack. He didn't tell you a lot about them. He told you, these are the ones I compiled. These are the ones my company, CalAmp, relied on. Also testified that he worked with CalAmp's intellectual property counsel and obtained an opinion.

So, before CalAmp actually made these LMU

devices, they said we're going to investigate the lay of the land, I believe he called it, what's out there in the field. We need to see what's out there. It wasn't just Omega. They were looking at who else had patents. I think he said Hughes, Cellport, some of the others. Let's see what's out there, and what areas are free.

They weren't doing this hiding it from anyone. There's e-mails that were put up on the screen that he was communicating with Omega. He told Omega what the features would be. They provided sales data of their products once they started selling them. These were not hidden negotiations. It was an ongoing dialogue. It was CalAmp cooperating with Omega over what we thought was an actual despite over what the patents covered.

You saw a lot of e-mails about lists of patents that Omega provided to CalAmp, but missing from that list is what CalAmp products they thought were covered. It sounds like today they thought all CalAmp products were covered. But every time CalAmp spoke to them, you will see in the correspondence, it seemed like a different product was being asserted.

At times, it was products that connected to the data bus. At other times, it was, well, we think the LMU-2600 might infringe. There was the LMU-2000,

a device that looks the same, but only gets power from the data bus and doesn't communicate.

CalAmp didn't know which devices Omega thought infringed its patents. So, Omega didn't put CalAmp on notice of the infringement until they told them, we believe this device infringes a certain patent, and you've seen no evidence that that happened before the filing of this lawsuit.

Two of the patents I mentioned that Mr. Chen had in his short stack were Nathanson and Lang, and that's Defendant's Exhibit 27 and 28. I think those are really important for you to look at. Mr. Chen said he was happy they were very short patents. The figures are very straightforward. I believe each just had a single figure -- shows a data bus, a diagnostic scan tool connected to the data bus, and a telematics unit at the other end. You can think of that as an LMU-2600 connected to a diagnostic scan tool from B&B or Innova or you could think of it as one of the LMUs that supports the VPOD or VPOD2.

We heard testimony that these VPOD and VPOD2s that basically just have the diagnostic scan tool portion in them, these are basically shrinking down with Innova or what B&B used to make and put them in a small package for connection to the existing LMUs.

Another patent that you saw Mr. Chen found was the Lhamon patent. Sounded very simple. Had kind of a funny-looking diagram of a really boxy car. Showed the two-way signal going from a tower, hitting the car, and that was to unlock the doors in the vehicle using the vehicle data bus.

Now, Omega doesn't dispute that every element claimed in the Omega patents has been found in the prior art. We didn't hear any expert testimony from Mr. McAlexander that he thought certain elements were missing from any of the references found by CalAmp. And what we've heard today is, well, no one would have known to combine that, that Mr. Andrews didn't talk about that, but Mr. Andrews did talk about that.

He didn't have to speculate about what one of ordinary skill in the art would know, because he is one with ordinary skill in the art. He didn't need the time machine to go back to the 2000 period or guess what would one of skill in the art would know in 2000. He was one with skill in the art in 2000.

Omega's claimed that Mr. Andrews just used hindsight. That means he took the patent as a road map and just tried to piece together, like a jigsaw puzzle, all the pieces. Well, when you look at the combinations, you'll see that's not actually true.

These are not three or four references combined where it took a transmitter and a receiver from here and a GPS from here and a bus connection from here. These are references where all the hardware is in a single reference -- transmitter, receiver, GPS, bus connection, ability to control vehicle devices on the bus. I think the only issue that Mr. McAlexander would have with those is, well, there is the multi-vehicle compatibility. There's been a lot of testimony about the CAN bus, that there's a CAN 11 bit, CAN 29 bit.

The Court's definition regarding multi-vehicle compatibility is on your list. It comes in with multi-vehicle compatible controller. And when you look at the difference between that definition and the definition of controller, you will see that the difference is it works with more than one vehicle. Doesn't say more than one bus type. Doesn't say different models or platforms. It just says more than one vehicle.

When Mr. McAlexander was on the stand, he said, well, I think that really needs to mean more than one bus, and we seemed to have kind of a disagreement between what he thought, what the patent said, and what the Court's directed us that term must mean. Well, here, we have to follow the Court's definition.

It's more than one vehicle.

There was testimony all around that a CAN bus works with well over more than one vehicle, whether it's the 11 bit or the 29 bit variety. Testimony was that since 2008, every light-duty vehicle in the U.S. -- so anything under 8500 pounds -- has to have a CAN bus in it. That's a lot of different vehicles, definitely more than one.

Now, going back to this claim of hindsight reconstruction, Mr. Andrews was able to find one device. And as he read through the patent or in the MobileWeb case -- it's a publication regarding an actual device -- he could look and see, wow, this seems to say everything that Omega does.

And to be safe, I think on some of them, he said, well, I thought this did multi-vehicle, but I combined it with the SAE J1978 'cause I know that also does multi-vehicle. And I asked him, well, why would anyone want to combine that? And the answer was the same in every case, well, this is connected to the bus. And those working in the automotive industry, working on the vehicle bus, know that the SAE standards are what you have to follow to actually make a device communicate on the bus.

With respect to hindsight, Omega's own expert

in his report noted that prior art references are properly combined when they involve the use of known techniques to improve similar devices in the same way.

Well, we heard testimony that J1978 was a known technique for multi-vehicle compatibility across different bus types since 1994, so that would be a known technique. It's designed to work on devices that connect to the vehicle data bus.

Every prior art reference we saw talked about a device designed to connect to the vehicle data bus, so that's applying a known technique to improve similar devices in the same way, just as Mr. McAlexander admitted was a proper combination.

Another step that Mr. McAlexander noted would be proper was obvious to try. Would one skilled in the art say, you know, before I embark on this design of trying to figure out how to connect to the bus myself, maybe I should look and see if anyone else has tackled this project before.

I need to connect my device to the bus. I could use a scan tool or, if I don't want to compile all the information myself, I could just look to the SAE specification that's going to give me a step by step of how do I connect to the vehicle data bus. That's definitely a combination that would have been obvious to

try.

So, I direct your attention when you get back into the jury room and after the judge has read the instructions, jury instruction 22 specifically lists what are proper combinations of the prior art, and you will see that every combination proposed by CalAmp clearly fits within those guidelines.

Another theory that Omega has put up for why you should ignore the fact that every element is present in the prior art is called secondary indicia of non-obviousness. You will see the word non-obviousness in the jury instructions. But as you will see in the instructions, the law requires -- and this is jury instruction 24 -- the law requires that any purported evidence of non-obviousness has to have a connection, not just to the patent number, but to the merits of the invention.

Omega's been pointing to patent licenses that have 30, 40, 50 or upwards patents listed on them. For some of them, they include several of the patents in this lawsuit. I think there was a single patent where they identified -- a single license where they identified three of the patents in suit and they identified the publication of the '278 patent, so it hadn't actually issued as a patent yet.

That's not enough. The law says you can't just point to a patent number. It says specifically, licenses are not enough. You have to have what's called a nexus or a connection to the merits of the invention. So you've got to look past the numbers in the license and say, does that company make a product that's actually covered by one of the patents? And it's not one of the patents on that license of 50-some patents, it's one of the four patents in this lawsuit. There's been no evidence of any product covered by the four patents in this lawsuit. We haven't seen any samples. We haven't seen any pictures. CalAmp asked Omega for that information. Nothing was provided. There was no evidence that any product is covered by the patents in suit.

When Mr. Flick was stepping through his license agreements, he said, I have a marking provision. When my licensees make a product covered by the patents in suit, they have to mark it. And that's a federal provision. That's so that people who pick up that product can look at it and say, this product's covered by a patent. I should look up that patent and see what it covers. There's been no evidence of a single product out in the marketplace covered by any of the four patents in this lawsuit.

One of the other things that Mr. Flick mentioned about his licensees was they didn't really like that marking provision. It might look cool when you put in that big list of patents and he said everyone says, ooh, Omega R&D is a great inventor, kind of got a kick out of that, but he said they didn't like listing all those patents.

Some of these products are not particularly big since we -- we haven't seen what any of those licensees make. We don't really know how big their patents are, but he said they put it on their documentation. They didn't like having that. And he said a lot of licensees said, we don't want to list them all 'cause we don't use all the patents in his license.

We know that, I think, only in one case where we showed a patent that had almost all the licenses from this lawsuit, the rest had some -- I think Mr. Tregillis testified that from his count, six or seven of the licenses included patents that are involved in this lawsuit, but we saw no evidence that anyone was marking.

And those patentees -- Mr. Flick testified that his patentees said they don't use all the patents in the license. So even if you see one of the patent numbers from this lawsuit on the license, the testimony is that those licensees may not actually use them.

When Mr. Tregillis was asked for details on those licenses, what do those people make? Do they really just make alarm systems or remote starters? There was no evidence. I think we heard that Lear and GM, that those licenses involved remote starters.

Another non-obviousness factor that you'll hear about is copying. Well, you'll see in the jury instructions, did they copy the invention, not the patent, the invention. There's been no evidence of any product from the invention. I think Mr. Andrews testified on some of the other factors -- was there a long-felt, but unmet need? He said, no, people knew how to do this already.

Now getting back to some comments that were made earlier, there was a lot of testimony about Mr. Chen and his degree from Berkeley in sort of a condescending way about Berkeley, I guess.

Mr. Chen is a very skilled engineer. You heard he worked at a lot of different companies, worked on some interesting technology, had his own start-ups, ended up at CalAmp. He's been kind of the point man dealing with Mr. Flick and these license negotiations that have stretched for years. Well, Mr. Chen gave testimony about how the CalAmp devices work. You know, he said he wasn't at the SEMA meeting,

and he said he didn't get in Mr. Flick's face and call him names.

He also testified about those discussions that at one point he was -- understood that the license would include controlling door locks, remote starting. He said CalAmp wasn't interested and that some time later he got a different license proposal that said, well, this will be the light license. It's limited to just what the LMU can do now. And that's when he decided he had to kind of re-expand his search.

He had been looking for prior art that did control functions. Now he had to broaden it back out 'cause he understood that Omega was saying, well, even though our patents are about control functions, we're saying if you hook to the bus and do anything, we think our patents cover you, so he branched out and found even more prior art.

There's also been a lot of discussion that we had to hear Mr. Chen via video 'cause he refused to show up. There was an offer that the plaintiffs could have cross examined Mr. Chen in the defendant's case, but they declined that offer, said they'd play the video instead.

The other question is, well, why are all the CalAmp engineers flying across the country to Florida,

if we had it Omega's way. Well, we're in this Florida lawsuit, because in the prior lawsuit, I believe that one was in Georgia between CalAmp and Omega, the lawsuit that was settled where the parties had discussions, Omega had sued on different patents, not the patents in this suit, not covering the vehicle data bus, but as part of that lawsuit CalAmp agreed to a settlement agreement, had a long list of patents on the settlement agreement.

One is the '989 patent that you may have seen some stray evidence about. That settlement agreement said if we're ever in a dispute with Omega that involves any of the patents in this list, CalAmp will agree to come to Orlando for the trial. So when this lawsuit started, the '989 patent was part of this lawsuit, but fairly recently that patent dropped out.

But that's why CalAmp's here. If Omega really wanted to have all the CalAmp engineers testify, there's a really easy solution, they could have filed in California, all the CalAmp personnel would have had to be there, and would have been much more practical, CalAmp engineers not flying across the country for weeks. As you know, it's kind of an unpredictable schedule. They could have had all they wanted.

In this case, they did have all they wanted.

Omega took all the depositions of Omega personnel. CalAmp cooperated. But I think here if you look at it, is it reasonable to expect Mr. Hergesheimer, Mr. Hall, Mr. Chen -- I know I'm missing somebody else -- but to expect them to fly across the country and wait in the back until we get to them where just a single person, Mr. Flick, could have flown out to California if he really thought it was important to have their testimony? I think what we're seeing is that's sort of an excuse. That's why there isn't enough evidence. That's why the questions haven't been answered on certain items.

There's also testimony about Mr. Hall that he talked about a list. And that list was actually a list that had come up in Mr. Eiberger's deposition. I think we talked about it before. It was the five percent list. You saw it up on the screen. As I explained before, that's not a list of people that use data bus speed to set up a threshold and trigger a notification upon exceeding that threshold for a period of time. That's a list of everyone that had an accumulator set up to track vehicle speed.

You probably remember from the testimony, Mr. Eiberger went on and on about how one would go to set up this accumulator to track vehicle speed and could do all these other things. He said it was possible he

could do it in a short amount of time, but he wasn't aware of customers doing it. He also didn't even get to the last part of the claim requirement which is, well, you actually have to set up a notification, so we know he wasn't aware of anyone doing that speed section so, therefore, he wasn't aware of anyone doing a speed section plus a notification. Again, it was an instance of Omega picking out the key words and leaving out the rest of the requirements of the claim.

Another exhibit you saw was Exhibit 48. And that's been characterized as showing that CalAmp was trying to hide stuff. They had a data sheet. They didn't want to put it online. They wanted to hide it. Well, I urge you to read that e-mail 'cause you're going to see, the lawyer says put it online. That's the opposite of hide it. Everyone knows once something is online, it's out there. There was no instruction to hide it. There was the instruction to show it. He said, we're on a fast track to lawsuit, but he said put it online.

There was also some discussion about the license to B&B that CalAmp was willing to pay $7.17 to B&B, but they weren't willing to pay $5.00 to Mr. Flick. Well, Mr. Chen testified that when he asked Omega about the technology, he found out there was no technology to

be had. He would get a license on the patents, but CalAmp would still have to either spend the hours themselves to try and do their first vehicle bus project or do what they did and partner with someone with vehicle bus expertise.

This was not a choice. They needed the actual technology to accomplish the task. And what they found was there was pre-existing technology. It was pointed out that neither Innova nor B&B had patents. That's because this was basically known technology. This was how to operate on the vehicle data bus, not an area that CalAmp had ever participated in before, but definitely known in the industry. I think Mr. Chen testified that Innova was one of the largest diagnostic scan tool makers out there. And if they don't have patents to cover the technology, you have to believe that's pretty widely known.

There was also discussion about Mr. Hergesheimer, whether he saw the chart. I think we covered that. He never said that the chart that Mr. McAlexander had in his report was accurate. He said he knew there were sequences, sequence of messages that they were sent one at a time. And if they sent and received a response, they stopped. That's directly contrary to what Mr. McAlexander told us on the stand.

Mr. Hergesheimer testified, yeah, there's a serial port on the device. You could download with it. But again, the rest of the question was never asked. Omega never asked, well, can you use that serial port as a downloading interface for enabling data for corresponding vehicle device codes.

Mr. Hergesheimer never said all that was in there. He just said there was a physical port, so we're back to that same problem of just because the structure's there doesn't mean it can perform the steps in the claim. You heard, I believe, Mr. Andrews testify that it doesn't actually download enabling data that's related to a corresponding vehicle device code. He agreed, there is a serial port, but it doesn't do what the claim requires.

We heard a discussion of Steve Hall, I think, in reference to the list of customers. Well, we've heard a lot about degrees and that Mr. Flick has had a lot of success, and he doesn't have a college degree. No one can argue that. He's an extremely successful man. But it's been portrayed that CalAmp is kind of stuck on its degrees. But they have Mr. Hall, who was deposed. He's the director of system engineering and technology at CalAmp. He doesn't have a degree.

We also heard about the testimony of

Mr. Bailey, that he's my partner, can't be trusted. He's an Australian guy, came in and just said, wow, I gave an opinion, but I'll do anything for my client. Well, he gave a thoughtful reasoned opinion. Mr. Chen said, I worked with him over the months, that they had looked at the 300-some references. Mr. Bailey, I think, told us he had an electrical engineering degree, worked with some very high-tech clients. You can't just dismiss him because he knows me.

You have to actually weigh what CalAmp did, commissioning Mr. Chen to find all those patents, looking at Mr. Chen saying, you know, we want a second opinion. No offense to Mr. Chen, but let's ask a patent lawyer, not an engineer. So they asked a patent lawyer, and the patent lawyer said, yeah, you don't infringe the '876 patent. The '885 patent is invalid, as is the '278 and the '727 patent. CalAmp reasonably relied on those opinions.

You heard discussion about the damages case and Mr. Tregillis. Mr. Tregillis kind of inflated the damages a bit. He told us, while I looked at, I think, it was 16 or 17 Omega licenses, couldn't tell us if any of those licenses related to data reading technology, like we have here, but he considered them anyway.

He said that they were related to -- two of

the licenses included a provision where there was a higher royalty rate -- excuse me for just a second -- they started with a higher royalty rate, and they kicked down to a lower royalty rate. I think Mid City Engineering was one. Said they had a cap. They had to exceed 10,000 units before they would get down to the better rate. Never exceeded that cap. Mr. Tregillis admitted, yeah, they're a very low volume licensee.

There was another one, had a higher rate. I believe it was $10 to start with for the first, I think it was 20,000 units. For the second phase, the rate was zero. Mr. Tregillis admitted, yeah, the effective rate, if they ever met their units, was $5.00 a unit.

But Mr. Tregillis took the doubling of the royalty rate and the different periods and kind of morphed that all together and came up with a theory that he put on his chart. He said, well, if I do that instead of a $5.00 rate, I've got a $6.00 plus rate that I think is appropriate, increasing the damages by almost 30 percent based on two unrelated licenses that he kind of cobbled together for very low volume sellers.

As we discussed earlier, he admitted that a lot of these licenses were entered into to resolve litigation and that in his experience it was common for

parties to enter into licenses to resolve litigation when it's cheaper than paying for lawyers. As you heard from Mr. Gilchrist's cross of Mr. Bailey, lawyers are pretty expensive.

Now, Mr. Tregillis assumed that the licensees of the Omega patents used the patents in suit. But we heard there's no evidence of that, that even if all of the patents in suit were listed on any of the license agreements, which we never saw they issued '278 on any license agreement, but even if we assume it was there, there was no evidence that anyone was actually making a product covered by any of the patents in this lawsuit. Mr. Tregillis didn't need to worry about that, though. He just applied those licenses anyway.

There was also testimony that a lot of the licensees that he looked at were for alarm systems, for remote starting systems. He testified that, well, there's an established royalty, and then I used my methodology to increase it. But even his established royalty was a little off, because it was people making different products covered by different patents.

And he kind of left out a couple big factors. When looking at the established royalty, a lot of the licensees he considered were very small players, the ones he didn't have in his top five, but there were also

some very large licenses that didn't include a per-unit license. There was the Enfora license. That was a flat rate. He said, well, they estimated it to be the right amount of royalty.

There was the Lear and GM license. I think the GM license was $50,000. And we didn't have any evidence, but we had a lot of speculative testimony that, well, it was really cheap 'cause we were worried GM might go bankrupt and we wouldn't get paid, so we just took the money they had, but there was no evidence that GM is not still selling a product. GM is a really big company. It wouldn't take much to turn a $50,000 lump-sum payment into a penny a unit royalty.

There was also Lear, 5.9 million, I believe. When you looked at the back of the license, that was for supplying 11 different devices to five different companies, including Ford, Chrysler, General Motors, and Honda, again, four very large auto makers with an open-ended license.

Mr. Tregillis admitted that, well, they tried to estimate what they thought the sales would be and make that a $5.00 per unit royalty, but he admitted there was no actual certainty there. And again, it was an open-ended license for four different manufacturers, so we have no idea what the effective royalty rate is

there. Again, given the volume of cars sold by GM, Honda, Chrysler, and Ford, could easily be 5.9 million cars. This is over a number of years and continuing on. We could, again, get down to royalties on the order of pennies per unit.

Now in addition to considering licenses that were inappropriate that were Omega licenses, Mr. Tregillis failed to consider some of the appropriate CalAmp licenses. Now looking at a patent license, he knew that the B&B agreement had a 17-cent provision. That was a provision that B&B had to pay to Bosch, which Mr. Chen testified was a license for Bosch's CAN bus patents. So Omega was paying -- CalAmp was paying 17 cents to B&B and B&B was passing that on to Bosch, so 17 cents for patents that controlled access to the entire bus, not just the subset of being able to send particular signals in a particular order, working and non-working command signals. So if that was worth 17 cents, you have to ask yourself the subset that's described in the Omega patents, what's that worth.

Other evidence we heard was the wireless devices in the CalAmp units. CalAmp pays a percentage of royalty on those, somewhere between zero and half -- I mean, between half and one percent, I believe for key wireless technology. They also pay $1.50 royalty to

Innova for their codes, for their data, for their support. We heard that they paid, I think, a million and a half dollars to pay out the support provision, but that the per-unit royalty was going to end in a couple of years, so the royalty is just going to keep dropping and dropping and dropping. That's a payment for actual technology versus patents that CalAmp still doesn't believe cover simply reading data.

Another issue we have with Mr. Tregillis, you probably remember, he said in his report that GPS off the -- GPS location and GPS speed would not be referred to as bus speed. And his analysis for that was, well, I have a bike and I like to ride my bike and I have a consumer-level GPS unit. And when I take a corner on my bike, it thinks I'm going 150 miles an hour, and I'm not really going that fast. So he had a disparaged GPS speed reading based on a consumer-level GPS unit he had.

He had said how it worked, said he got that information from Mr. McAlexander. But on cross he testified he would actually be surprised if CalAmp used a much more advanced method of finding speed. You heard Mr. Chen testify that they use a doppler shift method to get much more accurate speed and nearly instantaneous readings from the GPS instead of from the bus.

Mr. Tregillis had used that factor to say,

well, CalAmp would be willing to pay more so that they could get speed from the bus in this hypothetical negotiation, because speed from the bus would be a much better alternative to speed from the GPS. But you heard Mr. Chen testify that CalAmp chooses to use speed from the GPS, because it's their preferred mode of operation. So in that hypothetical negotiation, they wouldn't have been willing to pay more for that feature.

The last part relating to damages is notice. We've talked a lot about when did Omega first tell CalAmp, we believe the LMU-3000 infringes the '876, the '885, the '727, and '278 patents. We saw in an e-mail earlier today that, I believe, it was July 31st, 2013, was the first evidence we saw of discussions regarding the '278 patent. That's years past the starting date on Mr. Tregillis' damages model.

We haven't had any evidence of a letter from Omega saying here's the patents that we think cover these particular devices. There have been negotiations back and forth, but no one's put up anything from those negotiations saying here's the product we thought was covered. Here are the patents or the claims we think cover it. The only evidence we have is Omega filed this lawsuit on December 20, 2013. So if you do feel that damages are necessary in this case, that should be the

starting date.

Another concept we have to look at is willfulness. Omega claims that time CalAmp willfully infringed its patents. The burden is on Omega to prove willfulness by clear and convincing evidence.

Omega has to show that CalAmp's conduct, in bringing its products to market, was reckless and that CalAmp actually knew or should have known its actions constituted an unjustifiably high risk of infringement of a valid and enforceable patent.

Well, you heard that rather than just making a product, putting it out on the market and seeing what happens, CalAmp started the diligence project. They tasked Mr. Chen with developing the big stack and the small stack. He disseminated the small stack, he said, to people at CalAmp. That wasn't enough. Even if they thought, well, we think we're safe, they went out and they got an attorney, not for one opinion, for four opinions. That is not the actions of someone that is -- those are not actions that constitute an unjustifiably high risk. The opinions came back that one patent was not infringed, that three patents were invalid. CalAmp relied reasonably on the opinions, both of its internal investigation and the opinions of outside counsel.

After the Court instructs you on the law, you will be given jury instructions and verdict forms. A couple of the jury instructions you should pay attention to. In addition to the ones I mentioned earlier, instructions 20 and 22, those talk about hindsight. They talk about a person of ordinary skill in the art. They talk about putting yourself in the place of a person of ordinary skill in the art.

Now, we heard Mr. McAlexander say he took steps to prevent hindsight reconstruction, never said what those steps were or how he did that, but Mr. McAlexander was not in the art in 2000, so he would have had to look back and do that.

Mr. Andrews, on the other hand, was a person of ordinary skill in the art in 2000. When it says put yourself in the place of the person of ordinary skill in the art in the year 2000 or 2007, the filing date of the other patent, you can put yourself in the place of Mr. Andrews. He was that person of ordinary skill in the art.

I'd like you to step --

Could I go to the Elmo?

I'd like to step you briefly through the verdict forms.

THE COURT: Go right ahead.

MR. KAUTH: Now as you saw earlier, the verdict form starts with a question. "Do you find that Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the asserted claims of Omega's asserted patents?" We think the answer there is clearly no.

For each of the patents, Omega has failed to prove that they contain a controller as defined by this Court. For the '876 patent, they lack the working and non-working command signals. For the '885 patent, they don't have the reading, storing, and matching of device codes that is required. For the '278 patent, they don't have the communication over the vehicle, the bus, using a corresponding vehicle device code from among a plurality thereof. And for the '727, they don't use the required vehicle bus speed to set the speed threshold.

If your answer for question 1 is "No," then you proceed to question 3. For question 3: "Has CalAmp proven by clear and convincing evidence that any claim of the asserted patents is invalid?" We think the combinations that Mr. Andrews gave you, the stand-alone patents that Mr. Chen gave you, demonstrate that all of the patents in this lawsuit are invalid. If you find the patents are invalid, you move to question 4.

So, for example, with Claim 1, if you found

that claim to be invalid, you can put "yes" or a check mark in that box, and then you list the references disclosed in that claim. So for Claim 1 of the '876 patent, you'd put Braitberg and J1978, if you felt that way. If you think there is more, you can put more.

Once you complete Section 4, you move on to Section 5. "Which of the following factors that tend to indicate non-obviousness, if any, has been established by the evidence with respect to the claimed invention?" So if you think none of the factors apply, you move on. If you think certain factors apply, you move step by step through these.

Then we ask, were accused products by the claim commercially successful due to the merits of the claimed invention? That takes us back to that connection or nexus that you will read about in the jury instructions, that there has to be proof that these go to the merits of the patents in this suit and not just generally to license agreements on an entire portfolio of patents.

Yesterday, Mr. Andrews testified he didn't believe there was a long-felt need for the solution, that it was already being met. He didn't know of anyone that tried to solve this solution but failed. He mentioned that J1978 had already provided the road

map for multi-vehicle compatibility and other references like Suman, Spaur, Braitberg, and the rest had all the hardware.

Did others copy the claimed invention? There's been no evidence of an actual product that's covered by these patents and any copying of such a product. In fact, the evidence is the opposite. It's been that it took CalAmp several years to get this product up and functioning in a way that would integrate their existing product with the Omega -- or with the B&B or Innova product and shrink it down into the size they needed and then make sure it was compatible with the bus and not doing any harm. I think there was also testimony that there was no unexpected superior results. We didn't hear anything about praise of the invention.

The last factor is did others accept licenses under the patent because of the merits of the claimed invention? We heard a lot about licenses. We heard Mr. Tregillis say litigation was involved in at least some of them. We haven't seen anything that anyone took a license so they could make a product covered by either the '876, the '885, the '727, or the '278 patent.

The last question, I think, in our verdict form, we had a no, so we wouldn't get there. If you did get to this question, if you found there to be

infringement, you would have to determine were CalAmp's actions willful.

"Has Omega proven by clear and convincing evidence that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent?"

You've heard all the precautions that CalAmp took, the efforts it took both in-house and with its outside counsel. If you found there is infringement, I think it's clearly a no, that there was no willful infringement. CalAmp, in good faith, relied not only on opinions of its employees, but also of outside counsel, and it was reasonable for CalAmp to rely on that.

We urge you to look at the evidence very carefully. We know this is a technical case, and we think the exhibits that are in give you the road map you need to see how the CalAmp devices work, what the Omega patents cover. We think you will determine that when properly read, the Omega patents don't cover the data-reading capabilities of the LMU devices.

I want you to look at the prior art references, Mr. Andrews' reports at Exhibit 38 and 47, those show you how he combined the references. You will get his flavor for one of ordinary skill in the art and see why he thought those references went together. We think looking at that you will find that in view of

the prior art out there and the motivation to combine vehicle data bus products and patents with vehicle data bus standards, you will find the Omega patents to be invalid.

And we urge you not to rely on Mr. McAlexander's testimony, which is based almost solely on a chart that he knows nothing about. He didn't make it, doesn't know where it came from, other than counsel gave it to him and thought someone made a test, doesn't know the test performed, doesn't really know any reason to give it any reliability, and it contradicts the CalAmp testimony of how their devices actually work.

When you consider all the evidence, you will see that the CalAmp devices cannot infringe the patents and that the Omega patents are, indeed, invalid.

We thank you for all your time and effort in this matter. I know it's been a kind of long, dry case, and you've been great at paying attention. We're confident that when you go back to deliberate, you will find that the CalAmp products do not infringe and that if the Omega patents would cover the bus discovery process, you must find them invalid in view of the prior art. Thank you.

THE COURT: Thank you.

All right. We will take a short recess and we will come back for the rebuttal argument and the charge conference and then we will break for lunch. We'll be in recess for a few minutes.

(Jury exits at 11:36 a.m.)

All right. The jury has withdrawn. The note that was passed during the argument was simply that one of the jurors needed a rest room break. So I knew you were close to wrapping, so I thought we would hold on.

About ten minutes, all right? Thank you.

(Recess from 11:37 a.m. to 11:46 a.m.)

All right. Will you see if the jury is ready?

DEPUTY CLERK: I made this last note Court's 15.

THE COURT: Thank you.

(Jury present at 11:47 a.m.)

The record should reflect the jury has returned, and the parties are present.

Mr. Gilchrist, your rebuttal argument.

MR. GILCHRIST: Thank you, Your Honor.

I've been told that there are over 230 different defenses that one could raise to a patent infringement claim. I can swear I've heard nearly all of them in the last hour.

Mr. Kauth begins by saying, well, Mr. Flick

couldn't possibly be an inventor. He didn't know anything about SAE. Well, if you look at Mr. Andrews' report that they like to point to, he identifies one of those ordinary skill in the art in his opinion. That person is an SAE expert. That person doesn't necessarily have an automotive telematics database background. It's one of ordinary skill in the art.

Mr. Andrews would be classified as one far beyond that, extraordinary skill in the art. He knew about SAE. Mr. Chen, closer to one of ordinary skill in the art, didn't know about it, and yet Mr. Chen decides he's an inventor of the B6B device when he filed his patent applications.

Mr. Kauth reminds us that we have to look very carefully at the claim language unless it doesn't suit its purpose. So the claim language on controllers says controller, as defined -- well, let's add some additional factors, following physical operation of the door locks, let's go back to the specification and make sure we throw that in. He talked a great deal in the very beginning all about door locks and remote car starters. They're not in the claims. You can't import from the specification in the claims. The claims are what defines the invention. The specification is simply various embodiments of how you can use the invention.

Mr. Kauth complained that Mr. McAlexander never tested or never performed that flow chart analysis. I believe you heard that Mr. Andrews, not only didn't he test, he hadn't even seen a device when he rendered his opinions on invalidity.

He was told and he accepted that the start-up procedure follows SAE standards, so he made the decision that the SAE standards requires one signal and see if I -- and wait and see if I get something back, because I told you so.

Well, if you look at the SAE standards, it doesn't quite say that. He didn't point to anything in the SAE standards. Instead what it says is that these tests may be performed in any order and where possible may be performed in parallel. That's the chart that Mr. Kauth wants to dispute so vigorously.

And oddly enough, that chart and that issue goes to a single patent. That's in the '876 where it said working and non-working. And the argument, although it morphs quite a bit, is, well, in that occasion when that first signal is sent and gets a response, it doesn't send anymore. But the other times when it doesn't get the response, okay, maybe we're infringing, but let's not ignore that part, but we don't know where that flow chart came from. Well, let's look

at SAE. Well, SAE says it's appropriate. It's, again, as many defenses and as many road blocks as can be thrown up to avoid their day in court.

Mr. Kauth says, well, query is defined in the SAE as something other than command. Where? Just because Mr. Kauth says so or Mr. Andrews says so, it is because I say so. That's not a defense. It's not evidence.

We continued to hear about Mr. Andrews and he testified to this and he testified to that, limited to direct examination. And yet on cross examination, he testified just the opposite, and agreed with most of what I had to say. And then back on redirect, he went back to his report and read you what his report said, so we have three different stories from Mr. Andrews.

There was a complaint that Mr. McAlexander didn't have a lot to say in response to the invalidity position. You're welcome to look at Mr. McAlexander's report on the invalidity. It's at Exhibit number 105.

He takes those one by one and explains why there's a need -- there's no need to combine and there must be a need to combine. He explains what the patents are. And you're welcome to take a look at it. Simply because he didn't spend your time to reiterate what Mr. Andrews had already conceded on cross examination

does not mean it's not evidence.

And then, finally, I think this sort of drives home the point that I began this morning with. I gave you a story about Mr. Langstroth and his difficulties in pursuing those 230-something defenses. And the point was that Mr. Flick, unlike Mr. Langstroth, stood up for himself and has put himself out in front of you and has gone through the trouble of defending his patents, and CalAmp continues to hammer at him -- he's not an inventor. He doesn't have a degree. He doesn't know SAE. But CalAmp doesn't stop there. CalAmp cannot control themselves.

Now 150 years later, they're now accusing Mr. Langstroth of not being an inventor. And they're telling you information about some proceeding in Missouri somewhere that Mr. Langstroth said this so that, therefore, means he's not an inventor. One hundred and fifty years later, they still want to debate whether Mr. Langstroth's an inventor. It goes to the CalAmp mentality.

There is nothing that anybody can invent anywhere that good lawyers can't raise defenses around, 150 years later. All we've heard during these seven days is you can't prove this and you can't prove that and you should just believe us, because we said so.

It's not evidence. It's not appropriate. Clear and convincing burden is not met. CalAmp willfully chose to infringe upon Mr. Flick's patents. They did so with the intent to make it as difficult as possible for Mr. Flick, removed items from the website, sought cover with their lawyers, came up with all kinds of different theories.

We heard Mr. Kauth say, well, you need to look at these patents that I introduced but never talked about, because they're very important. 230-some defenses, and yet none of them apply in this case. I ask you to go back in that room, find that CalAmp is responsible for infringing Mr. Flick's patents and they did so willfully and intentionally. Thank you.

THE COURT: Thank you.

All right. Ladies and gentlemen, I'm going to charge you on your instructions to be used in your deliberations in this matter.

My courtroom deputy, Nancy, will place the instructions one at time on the overhead viewer there, the Elmo, so they'll come up on your screen. You don't need to take notes on these instructions. You will get copies to take back with you. So I'm going to read them to you and you will have them to read yourself and you will have sets to refer to during your deliberations.

Members of the jury, it's my duty to instruct you on the rules of law you must use in deciding this case. When I have finished, you will go to the jury room to begin your discussions, sometimes called your deliberations.

As I have said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted, but anything the lawyers say is not evidence and is not binding on you. You should not assume from anything I have said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts. Your own recollection and interpretation of the evidence is what matters.

In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions. You should not be concerned about whether the evidence is direct or circumstantial.

Direct evidence is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There is no legal difference

in the weight that you may gave to either direct or circumstantial evidence.

When I say you must consider all the evidence, I do not mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say and how important that testimony was.

In making that decision, you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point does not necessarily matter. To decide whether you believe any witness, I suggest you ask yourself a few questions:

Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness have a good memory? Did the witness have the opportunity and ability to accurately observe the things that he or she testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from other testimony or other evidence?

You should also ask yourself whether there was evidence that a witness testified falsely about an

important fact. Also, ask yourself whether there was evidence that at some other time a witness said or did something or did not say or do something that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake does not mean that a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

When scientific, technical, or other specialized knowledge might be helpful, a person who has specialized training or experience in that field is allowed to state an opinion about the matter. But that does not mean you must accept the witness's opinion. As with any other witness, you must decide for yourself whether to rely upon the opinion.

When a witness is being paid for reviewing and testifying concerning the evidence, you may consider the possibility of bias and should view with caution the testimony of such witnesses where court testimony is

given with regularity and represents a significant portion of the witness's income.

In this case, it is the responsibility of Omega to prove every essential part of its infringement allegation by a preponderance of the evidence. This is sometimes called the burden of proof or the burden of persuasion.

A preponderance of the evidence simply means an amount of evidence that is enough to persuade you that Omega's allegations are more likely true than not. If the proof fails to establish any essential part of an allegation or contention by a preponderance of the evidence, you should find against Omega.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses regardless of who may have called them and all of the exhibits received in evidence regardless of who may have produced them.

If the proof fails to establish any essential part of Omega's allegations by a preponderance of the evidence, you should find for CalAmp as to that claim.

Even if Omega proves its claim of infringement by a preponderance of the evidence, CalAmp can prevail in this case if it proves its allegations of invalidity by clear and convincing evidence. This is a higher

standard of proof than proof by a preponderance of the evidence. It means the evidence must persuade you that the allegation or defense is highly probable or reasonably certain. The Court will tell you when to apply this standard.

I will now summarize the issues that you must decide and for which I will provide instructions to guide your deliberations. You must decide the following three issues:

1. whether Omega has proved by a preponderance of the evidence that CalAmp infringed Claims 1, 3 through 5, 12, 14, and 16 of the '876 patent; Claims 1 through 3, 12, and 14 of the '885 patent; Claims 1, 10, and 11 of the '727 patent; and Claims 1 through 6, 8, 11 through 14, 16, 18, 19, and 21 of the '278 patent. These are known as the "asserted claims."

2. whether CalAmp has proved by clear and convincing evidence that the asserted claims were obvious works in light of multiple pieces of prior art.

3. what amount of damages, if any, Omega has proved.

Before you decide whether CalAmp has infringed the claims of the patents or the patent claims are invalid, you will have to understand the patent claims.

The patent claims involved hear are Claims 1, 3 through 5, 12, 14, and 16 of the '876 patent; 1 through 3, 12, and 14 of the '885 patent; 1, 10, and 11 of the '727 patent; and Claims 1 through 6, 8, 11 through 14, 16, 18, 19, and 21 of the '278 patent, found at the end of the patents, which are exhibits in evidence.

The claims are intended to define in words the boundaries of the inventor's rights. Only the claims of the patent can be infringed. Neither the written description nor the drawings of a patent can be infringed. Each of the claims must be considered individually. You must use the same claim meaning for both your decision on infringement and your decision on invalidity.

Before you can decide many of the issues in this case, you will need to understand the role of patent "claims." The patent claims are numbered sentences at the end of each patent. The claims are important, because it is the words of the claim or claims that define what the patent covers.

A claim sets forth, in words, a set of requirements. Each claim sets forth its requirements in a single sentence. If a device or a method satisfies each of these requirements, then it is covered by the

claim.

The figures and text in the rest of the patent provide a description and/or examples of the invention and provide a context for the claims. But it is the claims that define the breadth of the patent's coverage. Each claim is effectively treated as if it were a separate patent. And each claim may cover more or less than another claim. Therefore, what a patent covers depends, in turn, on what each of its claims covers.

The coverage of a patent is assessed claim by claim. In patent law, the requirements of a claim are often referred to as claim elements or claim limitations. When a thing, such as a product or a process, meets all of the requirements of a claim, the claim is said to cover that thing, and that thing is said to fall within the scope of the claim.

In other words, a claim covers a product or process where each of the claim elements or limitations is present in that product or process.

You will first need to understand what each claim covers in order to decide whether or not there is infringement of the claim and to decide whether or not the claim is invalid.

The law says that it is my role to define the terms of the claims. And it is your role to apply my

definitions to the issues that you are asked to decide in this case. Therefore, as I explained to you at the start of the case, I have determined the meaning of the claims, and I will provide to you my definitions of certain claim terms. You must accept my definitions of these words in the claims as being correct. It is your job to take these definitions and apply them to the issues that you are deciding, including the issues of infringement and validity.

It is my job as judge to provide to you the meaning of any claim language that must be interpreted. You must accept the meanings I give you and use them when you decide any claim has been infringed and whether any claim is invalid.

I will now tell you the meanings of the following words and groups of words from the patent claims. For any words in the claim for which I have not provided you with a definition, you should apply their plain and ordinary meaning.

Claim term: Transmitter.

Court's construction: Radio frequency transmitter.

Claim term: Receiver.

Court's construction: Radio frequency receiver.

Claim term: Controller.

Court's construction: Electronic circuitry that performs one or more control functions.

Claim term: Data communication bus.

Court's construction: Wired connection for communication of digital messages among vehicle devices with each message including one or more device addresses.

Claim term. Multi-vehicle compatible controller.

Court's construction: Electronic circuitry that performs one or more control functions and can operate with more than one vehicle.

Claim term: Command signal.

Court's construction: Signal generated on the data communications bus for operating a vehicle device.

Claim term: Device codes.

Court's construction: Signal from a vehicle device.

Claim term: Enabling data.

Court's construction: Data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller.

Claim term: Programming instructions.

Court's construction: Code which instructs

the controller to perform an operation.

I will now instruct you as to the rules you must follow when deciding whether Omega has proved that CalAmp infringed any of the claims of the Omega patents.

Patent law gives the owner of a valid patent the right to exclude others from importing, making, using, offering to sell, or selling the patented invention within the United States during the term of the patent. Any person or business entity that has engaged in any of those acts without the patent owner's permission infringes the patent.

Here, Omega alleges that CalAmp's LMU-3000, LMU-3030, LMU-3050, VPOD, and VPOD-2, infringe the asserted claim of the Omega patents. In deciding the issue of infringement, you must compare the CalAmp accused products to the claims of the Omega patents.

A patent may be infringed directly or indirectly. As explained further in the following instructions, direct infringement results if the accused product is covered by at least one claim of the patent. Indirect infringement results if the defendant induces another to infringe a patent or contributes to the infringement of a patent by another.

In this case, Omega asserts that CalAmp has directly infringed the patent. CalAmp is liable for

directly infringing Omega's patent if you find that Omega has proven that it is more likely than not that CalAmp made, used, imported, offered to sell, or sold the invention defined in at least one claim of Omega's patent.

Someone can directly infringe a patent without knowing of the patent or without knowing that what they are doing is an infringement of the patent. They may also directly infringe a patent even though they believe in good faith that what they are doing does not infringe a patent or if they believe in good faith that the patent is invalid.

To determine literal infringement, you must compare the accused products with each claim that Omega asserts is infringed using my instructions as to the meaning of the patent claims.

A patent claim is literally infringed only if CalAmp's products include each and every element of that patent claim. If CalAmp's products do not contain one or more elements recited in a claim, CalAmp does not literally infringe that claim. You must determine literal infringement with respect to each claim of the '876, '885, '727, and '278 patents individually.

The accused product should be compared to the invention described in each patent claim it is alleged

to infringe. The same element of the accused product may satisfy more than one element of a claim.

In this case, CalAmp is accused of actively inducing its customers to directly infringe Omega's patent. To find that CalAmp actively induced infringement, it is not necessary to show that CalAmp personally infringed, provided, (a) a single actor is responsible for direct infringement, namely, all of the components or steps of the product or method accused of infringing the patent; and CalAmp actively induced these acts of infringement by its -- another entity. [sic]

If you do not find that there is direct infringement by a single actor or if you do not find that CalAmp actively induced these acts, you must find that CalAmp did not induce infringement of the patents.

To prove active infringement, Omega must establish it is more likely than not:

1. CalAmp aided, instructed, or otherwise acted with the intent to cause acts by CalAmp's customers that would constitute direct infringement of the patent;

2. CalAmp knew of the patent or showed willful blindness to the existence of the patent at the time;

3. CalAmp knew, or showed willful blindness,

that it consciously ignored the possibility that CalAmp's customers would infringe at least one claim of the patent; and

4. CalAmp's customers infringed at least one patent claim.

To find willful blindness, CalAmp must have subjectively believed that there was a high probability that a patent existed covering the accused CalAmp products and CalAmp must have taken deliberate actions to avoid learning of the patent.

There are two different types of claims in the patent. One type is called an independent claim. The other is called a dependent claim.

An independent claim does not refer to any other claim of the patent.

An independent claim must be read separately from the other claims to determine the scope of the claim.

An independent claim sets forth all the requirements that must be met in order to be covered by that claim.

A dependent claim is a claim that refers to at least one other claim in the patent.

A dependent claim includes all the elements of the claim to which the dependent claim refers, as well

as all the elements recited in the dependent claim itself.

To establish literal infringement of a dependent claim, Omega must show that it is more likely than not that CalAmp's products or methods include each and every element of the independent claim and the dependent claim.

If you find that the independent claim from which the dependent claim depends is not literally infringed, then you must find that the dependent claim is also not literally infringed.

CalAmp contends that the asserted claims of the patents in suit are invalid. CalAmp must prove by clear and convincing evidence that each asserted claim is invalid.

Claims of an issued patent may be found to be invalid. Thus, you must determine whether each of Omega's claims is invalid.

CalAmp contends that the patents in suit are invalid as obvious in light of the prior art, such as products, publications, and/or patents publicly known or available prior to the asserted patents.

I will now instruct you in more detail why CalAmp alleges that the asserted claims of Omega's patents are invalid.

Prior art includes any of the following items received into evidence during the trial:

1. Any product or method that was publicly known or used by others in the United States before the patented invention was made;

2. Patents that issued more than one year before the filing date of the patent, or before the invention was made;

3. Publications having a date more than one year before the filing date of the patent or before the invention was made;

4. Any product or method that was in public use or on sale in the United States more than one year before the patent was filed;

5. Any product or method that was made by anyone before the named inventors created the patented product or method where the product or method was not abandoned, suppressed, or concealed.

As I mentioned before, this case involves two types of claims, independent claims and dependent claims. An independent claim does not refer to any other claim of the patent. An independent claim must be read separately from the other claims to determine the scope of the claim. An independent claim sets forth all of the requirements that must be met in order to be

covered by that claim.

A dependent claim is a claim that refers to at least one other claim in the patent. A dependent claim includes all of the elements of the claim to which the dependent claim refers, as well as the elements recited in the dependent claim itself.

In this case, Claim 1 of the '876 patent; Claim 1 of the '885 patent; Claim 1 of the '727 patent; and Claims 1, 13, and 18 of the '278 patent are each independent claims.

You must evaluate the invalidity of each asserted claim separately. Even if an independent claim is invalid, this does not mean that the dependent claims that depend from it are automatically invalid. Rather, you must consider the validity of each claim separately.

You must decide the issue of validity on a claim-by-claim basis. However, if you find that a dependent claim is invalid, then you must find that the independent claim from which it depends is also invalid. The dependent claim includes all of the elements of the independent claim from which it depends.

The question of invalidity of a patent claim is determined from the perspective of a person of ordinary skill in the art in the field of the asserted invention.

You must determine the level of ordinary skill in the field of invention. The higher the level of ordinary skill, the easier it may be established that an invention would have been obvious.

Persons having a greater level of education, training or experience in the field will more readily appreciate technical details that may be more challenging for persons having a lower level of skill.

On the other hand, persons having a lower level of skill may not perceive as obvious technical details that would be apparent to persons having a greater skill.

In order to determine the obviousness of the invention, you will be asked to determine what the ordinary level of skill was in the field of the invention.

Regardless, whether you decide to articulate in your verdict what you believe was the level of ordinary skill in the field of the invention, you must consider and assess this factor before reaching your conclusion in the case.

In order to qualify as prior art, a printed publication must have been maintained in some tangible form, such as printed pages, typewritten pages, magnetic tape, microfilm, photographs, Internet publication,

photocopies, and must have been sufficiently accessible to persons interested in the subject matter of its contents.

Information is publicly accessible if it was distributed or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter exercising reasonable diligence can locate it. It is not necessary for the printed publication to have been available to every member of the public. An issued patent is a printed publication. A published patent application is a printed publication as of its publication date.

The disclosure of the claimed invention in the printed publication must be complete enough to enable one of ordinary skill in the art to use the invention without undue experimentation.

In determining whether the disclosure is enabling, you should take into account what would have been within the knowledge of a person of ordinary skill in the art one year before the application for the patent was filed, and you may consider evidence that sheds light on the knowledge such a person would have had.

CalAmp contends the asserted claims of Omega's patents are invalid as "obvious." A claimed invention

is invalid as "obvious" if it would have been obvious to a person of ordinary skill in the art of the claimed invention at the time the invention was made. Unlike anticipation, which allows consideration of only one item of prior art, obviousness may be shown by considering more than one item of prior art.

In deciding obviousness, you must avoid using hindsight. That is, you should not consider what is known today or what was learned from the teachings of the patent. You should not use the patent as a road map for selecting and combining items of prior art. You must put yourself in the place of a person of ordinary skill in the art at the time the invention was made. The following factors must be evaluated to determine whether CalAmp was establish that the claimed invention(s) is or are obvious:

1. the scope and content of the prior art relied upon by CalAmp;

2. the difference or differences, if any, between each claim of the patents that CalAmp contends is obvious and the prior art;

3. the level of ordinary skill in the art at the time the invention of the patent was made;

4. additional considerations, if any, that indicate the invention was obvious or not obvious.

Each of these factors must be evaluated, although they may be analyzed in any order, and you must perform a separate analysis for each of the claims. CalAmp must prove by clear and convincing evidence that the invention would have been obvious. I will now explain each of the four factors in more detail.

You must determine what is the prior art that may be considered in determining whether any claim of the Omega patents is obvious. A prior art reference may be considered if it discloses information designed to solve any problems or need addressed by the patent or if the reference discloses information that has obvious uses beyond its main purpose that a person of ordinary skill in the art would reasonably examine to solve any problem or need addressed by the patent.

You should analyze whether there are any relevant differences between the prior art and the claimed invention from the view of a person of ordinary skill in the art at the time of the invention. Your analysis must determine the impact, if any, of such differences on the obviousness or non-obviousness of the invention, as a whole, and not merely some portion of it.

In analyzing the relevance of the differences between the claimed invention and the prior art, you do

not need to look for precise teaching in the prior art directed to the subject matter of the claimed invention.

You may take into account the inferences and creative steps that a person of ordinary skill in the art would have employed in reviewing the prior art at the time of the invention.

For example, if the claimed invention combined elements known in the prior art and the combination yielded results that were predictable to a person of ordinary skill in the art at the time of the invention, then this evidence would make it more likely that the claim was obvious.

On the other hand, if the combination of known elements yielded unexpected or unpredictable results or if the prior art teaches away from combining the known elements, then the evidence would make it more likely that the claim that successfully combined these elements was not obvious.

Importantly, a claim is not proved obvious merely by demonstrating that each of the elements was independently known in the prior art. Most, if not all, inventions rely on building blocks long known, and claimed discoveries almost of necessity will likely be combinations of what was already known. Therefore, you should consider whether a reason existed at the time of

the invention that would have prompted a person of ordinary skill in the art in the relevant field to combine the known elements in the way the claimed invention does.

The reason could come from the prior art, the background knowledge of one of ordinary skill in the art, the nature of any problem or need to be addressed, market demand, or common sense.

You may also consider whether the problem or need was known, the possible approaches to solving the problem or addressing the need were known and finite, and the solution was predictable through use of a known option.

If you find that a reason existed at the time of the invention to combine the elements of the prior art to arrive at the claimed invention, this evidence would make it more likely that the claimed invention was obvious. Again, you must undertake this analysis separately for each claim that CalAmp contends is obvious.

The determination of whether a claimed invention is obvious is based on the perspective of a person of ordinary skill in the art. The person of ordinary skill is presumed to know all prior art that you have determined to be reasonably relevant. The

person of ordinary skill is also a person of ordinary creativity that can use common sense to solve problems.

When determining the level of ordinary skill in the art you should consider all the evidence submitted by the parties, including evidence of:

1. the level of education and experience of persons actively working in the field at the time of the invention, including the inventor;

2. the types of problems encountered in the art at the time of the invention;

3. the sophistication of the technology in the art at the time of the invention, including the rapidity with which innovations were made in the art at the time of the invention.

Before deciding the issue of obviousness, you must also consider certain factors which may help to determine whether or not the invention would not have been obvious. No factor alone is dispositive. And you must consider the obviousness or non-obviousness of the invention as a whole.

1. Were accused products covered by the claim commercially successful due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or features of the product other than those found in the claim?

2. Was there a long-felt need for a solution to the problem facing the inventors, which was satisfied by the claimed invention?

3. Did others try, but fail to solve the problem solved by the claimed invention?

4. Did others copy the claimed invention?

5. Did the claimed invention achieve unexpectedly superior results over the closest prior art?

6. Did others in the field praise the claimed invention or express surprise at the making of the claimed invention?

7. Did others accept licenses under patents because of the merits of the claimed invention?

Answering all, or some, of these questions "yes" may suggest that the claim was not obvious.

Answering all or some of these questions "no" may suggest that the claims would have been obvious.

These factors are relevant only if there is a connection or nexus between the factor and the invention covered by the patent claims.

Even if you conclude that some of the above indicators have been established, those factors should be considered along with all the other evidence in the case in determining whether CalAmp has proved that the

claimed invention would have been obvious.

If you find that the accused device infringes any of the claims of the Omega patents and that those claims are not invalid, you must determine the amount of damages to be awarded Omega for the infringement.

On the other hand, if you find that each of the asserted patent claims is either invalid or is not infringed, then you need not consider damages in your deliberation.

Omega must prove each element of its damages, including the amount of the damages, by a preponderance of the evidence, which means more likely than -- pardon me -- more likely true than not.

If proven by Omega, damages must be an amount adequate to compensate Omega for the infringement. The purpose of a damage award is to put Omega in about the same financial position it would have been in if the infringement had not happened. But if the damages award cannot -- pardon me -- but the damages award cannot be less than a reasonable royalty.

You may not add anything to the amount of damages to punish an accused infringer or to set an example. You also may not add anything to the amount of damages for interest. The fact that I am instructing you on damages does not mean that the Court believes

that one party or the other should win the case. My instructions about damages are for your guidance only in the event you find in favor of Omega. You will need to decide the issue of damages only if you find that one or more of the asserted claims are both not invalid and infringed.

The date that Omega first notified CalAmp of its claim for patent infringement is the date for the start of damages. The parties do not agree on that date, and it is up to you to determine what that date is. Omega must prove that it is more likely than not that CalAmp actually was notified of the claim for patent infringement as of the date alleged by Omega.

Patent law provides that the amount of damages that CalAmp should pay Omega for infringing Omega's patents must be enough to compensate for the infringement, but may not be less than a reasonable royalty for the use of Omega's invention.

You must award Omega a reasonable royalty in the amount that Omega has proved. A royalty is a payment made to a patent owner by someone else in exchange for the right to make, use, sell, or import a patented product.

A reasonable royalty award must be based on the incremental value that the patented invention adds

to the end product. When the infringing products have both patented and unpatented features, measuring this value requires a determination of the value added by the patented features. The ultimate combination of royalty base and royalty rate must reflect the value attributable to the infringing features of the product and no more.

A reasonable royalty is a royalty that would have resulted from a hypothetical license negotiation between Omega and CalAmp. Of course, we know that they did not agree to a license and a royalty payment.

But in order to decide on the amount of reasonable royalty damages, you should assume that the parties did negotiate a license just before the infringement began. This is why it is called a hypothetical license negotiation.

You should assume that both parties to the hypothetical negotiation understood the patent was valid and infringed and both were willing to enter into a license. You should also presume that the parties had full knowledge of the facts and circumstances surrounding the infringement at the time of the hypothetical negotiation.

In determining the amount of reasonable royalty, you may consider evidence on any of the

following factors, in addition to any other evidence presented by the parties on the economic value of the patent:

1. any royalties received by the licensor for the licensing of the patent in suit proving or tending to prove an established royalty.

2. the rates paid by CalAmp to license other patents comparable to the patents in suit.

3. the nature and scope of the license, as exclusive or non-exclusive, or as restricted or non-restricted, in terms of its territory or with respect to whom the manufactured product may be sold.

4. the licensor's established policy and marketing program to maintain its right to exclude others from using the patented invention by not licensing others to use the invention or by granting licenses under special conditions designed to preserve that exclusivity.

5. the commercial relationship between the licensor and the licensee such as whether or not they are competitors in the same territory in the same line of business.

6. the effect of selling the patented product in promoting sales of other products of the licensee; the existing value of the invention to the licensor as a

generator of sales of its non-patented items; and the extent of such collateral sales.

7. the duration of the patents and the term of the license.

8. the established profitability of the product made under the patents in suit; its commercial success and its current popularity.

9. the utility and advantages of the patented invention over the old modes or devices, if any, that had been used for achieving similar results.

10. the nature of the patented invention; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the invention.

11. the extent to which CalAmp has made use of the invention and any evidence that it shows the value of that use.

12. the portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or an analogous inventions.

13. the portion of the profit that arises from the patented invention itself as opposed to profit arising from unpatented features, such as the manufacturing process, business risks, or significant

features or improvements added by the accused infringer.

14. the opinion testimony of qualified experts.

15. the amount that a licensor and a licensee, such as CalAmp, would have agreed upon at the time the infringement began, if both sides had been reasonably and voluntarily trying to reach an agreement at that time is the amount which a prudent licensee who desired as a business proposition to obtain a license to manufacture and sell a particular article embodying the patented invention would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a patentee who was willing to grant a license.

16. any other economic factor that normally a prudent business person would, under similar circumstances, take into consideration in negotiating the hypothetical license.

Although the relevant date for the hypothetical license negotiation is just before the infringement began, you may consider evidence relating to events after the infringement began, any actual profits made by CalAmp due to its infringement, and any commercial success of the patented invention or the infringing products after that date.

When determining a reasonable royalty, you may consider evidence concerning the amounts that others have paid for rights to the patents in question or for rights to similar technologies. A license agreement must not be perfectly comparable to a hypothetical license that would be negotiated between Omega and CalAmp in order for you to consider it.

However, if you choose to rely upon evidence from any other license agreements, you must account for any differences between those licenses and the hypothetically negotiated license between Omega and CalAmp, in terms of the technologies and economic circumstances of the contracting parties when you make your reasonable royalty determination.

If you find that it is more likely than not that CalAmp infringed Omega's patent, then you must also determine whether or not CalAmp's infringement was willful. In contrast to proving that infringement is more likely than not, Omega must prove willfulness by clear and convincing evidence. Willfulness requires clear and convincing evidence that:

1. CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent;

2. the objectively high likelihood of infringement was either known or so obvious that it

should have been known to CalAmp.

In making the determination of whether CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent, you are to consider what a reasonable person would have believed and are not to consider CalAmp's actual state of mind.

In determining whether CalAmp knew of the objectively high likelihood of infringement or whether the likelihood was so obvious that CalAmp should have known of that likelihood, you must consider the totality of the circumstances.

The totality of the circumstances comprises a number of factors which include, but are not limited to whether CalAmp intentionally copied the claimed invention or a product covered by the patent, whether CalAmp relied on competent legal advice, and whether CalAmp presented a substantial defense to infringement, including the defense that the patent is invalid.

Of course, the fact that I have given you instructions concerning the issue of Omega's damages should not be interpreted as an indication in any way that I believe that Omega should, or should not, prevail in this case.

Your verdict must be unanimous. In other words, you must all agree. Your deliberations are

secret, and you will never have to explain your verdict to anyone. Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another to try to reach an agreement.

While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest belief just because others think differently or because you simply want to get the case over with.

Remember, ladies and gentlemen, that in a very real way, you are judges here, you are judges of the facts, and your only interest is to seek the truth from the evidence in the case.

Now when you go to the jury room, you will choose one of your members to act as a foreperson. The foreperson will direct your deliberations and speak for you in court. A verdict form has been provided for you assistance. The lawyers have spoken about it several times, but let me go through it with you.

All right. You will see the verdict form consists of a number of pages and each question is individually numbered. The first question states:

Do you find Omega has proved by a

preponderance of the evidence that any of the accused CalAmp devices infringed any of the asserted claims of Omega's asserted patents? You check either Yes or No.

You will see at the bottom of Question 1, further directions. If your answer to Question 1 is "No," proceed to Question 3. If your answer to Question 1 is "Yes" for any claims that Omega has proved by a preponderance of the evidence that any of the accused CalAmp devices infringed, indicate a finding of infringement by marking a "Yes" in the corresponding space provided in questions 2-A through 2-D below.

For any claim that Omega has failed to prove by a preponderance of the evidence that any of the accused CalAmp devices infringed, indicate a finding of non-infringement by marking "No" in the corresponding space in Questions 2-A through 2-D.

To facilitate that process, you will see in Questions 2-A through 2-D, the patent number, the claim number, the accused device, and a place for you to indicate "Yes" or "No," and that will be true all the way through.

The next question, which is Question 3, is:

Has CalAmp proved by clear and convincing evidence that any of the asserted patents is invalid? There's a check for "Yes" or "No." If your answer to

Question 3 is "No," you proceed to Question 5. If your answer to Question 3 is "Yes," then you answer Question 4 below by indicating with an X, whichever claim you find invalid by clear and convincing evidence and indicate the reasons for invalidity, that is, the identity of the prior art references that disclose the elements of the claim. Again, it's broken out by patent, by claim, for each of the patents in suit.

Question 5 asks you: Which of the following factors that tend to indicate non-obviousness, if any, has been established by the evidence with respect to the claimed invention? Write the word "Yes" in the blank below for any one that applies. You can check it or write "Yes," whatever you prefer.

5-A is a question that deals with the issue of willfulness and it states in 6-A: Has Omega proved by clear and convincing evidence that CalAmp acted despite an objectively high likelihood the actions infringed a valid patent? "Yes" or "No." If you answer "Yes" to that question, you go to 6-B, which asks: Has Omega proved by clear and convincing evidence that this objectively high likelihood of infringement was either known or so obvious that it should have been known? Answer "Yes" or "No." Now, obviously if you answer "No" to 6-A, you need not answer 6-B.

Finally, you will be asked to identify the amount of damages which you believe are adequate to compensate Omega for CalAmp's infringement of any claim found to be valid and not licensed. And then, you will date and sign the verdict form.

If you wish to communicate with me at any time during your deliberations, please write down your message or question and give it to the court security officer. He will then bring it to me, and I will respond as promptly as possible, either in writing or by having you return to the courtroom. It's my practice to respond in writing, so that's what you would expect.

Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so please be patient while you await my response.

However, I caution you, please do not indicate your -- please do not indicate the -- how many jurors have voted one way or the other at the time.

For example, if you have taken a vote, we don't want to know what the vote is. That's for you all to know. That type of information remains with you in the jury room. It should not be shared with anyone, including me, in your question.

So your question would simply be the question

signed by the foreperson, and I will share it with the lawyers, and we will answer it to the extent that we can.

All right. Is there any objection to the instructions or the manner in which I gave them, other than those previously stated?

MR. GILCHRIST: None from the plaintiff.

MR. KAUTH: No, Your Honor.

THE COURT: Very good.

Ladies and gentlemen, the case is now yours.

This is the time when I will not be telling you not to discuss the case. You are now to actually discuss the case. Everyone here is greatly appreciative of your attention throughout this trial. It's gone longer than expected.

Any delay that occurred in this case, quite frankly, is my doing, not the lawyers'. We would work all night if I wanted to, but I try to keep an eye on the jury and get a sense for when I feel like you just need a break. And so with that, you are excused to begin your deliberations. Thank you very much.

(Jury exits at 12:44 p.m.)

THE COURT: All right. Well, it's 12:45.

MR. GILCHRIST: Your Honor?

THE COURT: Yes, sir.

MR. GILCHRIST: I have a quick motion for the Court.

THE COURT: Okay.

MR. GILCHRIST: While the original ribbed copies go back to the jury, once the deliberations are over and the verdict's in, I'd like to move to substitute copies for the originals.

THE COURT: That will be fine.

MR. KAUTH: No objection.

THE COURT: All right, very good.

Nancy should have your contact numbers in case you want to go back to your respective firms and await a phone call, if there's a question. If you'd prefer to stay in the area, that's fine as well, you're welcome to do so, but whatever you prefer.

All right. Thank you so much.

DEPUTY CLERK: All rise.

THE COURT: You should know I have a sentencing starting at 1:30, so you may want to kind of just start to collect up your items a bit. You don't need to take them out, just to let you know there will be people sitting at your tables.

(Recess from 12:45 p.m. to 3:53 p.m.)

THE COURT: All right. I am told we have a verdict. So we will get the jury in, and we'll find out

what it is when they're ready.

(Jury present at 3:54 p.m.)

The record should reflect the jury is present. The parties are present. I am told we have a verdict in this case; is that correct?

THE JUROR: Yes, Your Honor.

THE COURT: All right. Who speaks as the foreperson?

THE JUROR: I am, Your Honor, John Micelotta.

THE COURT: All right. Mr. Micelotta, if you would hand the verdict form to the court security officer please, and he will pass that up to me for inspection.

(Pause in proceedings.)

All right. Thank you very much. The verdict is in proper format. If you'd publish the verdict.

DEPUTY CLERK: Omega Patents, LLC, Plaintiff versus CalAmp Corp., Defendant, case number 6:13-CV-1950-Orlando-40DAB.

Verdict form.

1. Do you find Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the asserted claims of Omega's asserted patents? Yes for Omega.

Question 2-A. U.S. patent number 6,346,876 B1

(the '876 patent.) Has Omega proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the '876 patent? Claim 1. Yes, as to all devices.

Claim 3. Yes, as to all listed devices.

Claim 4. Yes, as to all devices.

Claim 5. Yes, as to all devices.

Claim 12. Yes, as to all devices.

Claim 14. Yes, as to all devices.

Claim 16. Yes as to all devices.

Section 2-B. U.S. patent number 6,756,885 B1, (the '885 patent.) Has Omega proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the '885 patent? Claim 1. Yes, as to all devices.

Claim 2. Yes, as to all devices.

Claim 3. Yes, as to all devices.

Claim 12. Yes, as to all devices.

Claim 14. Yes, as to all devices.

Question 2-C. U.S. patent number 7,671,727 B2, (the '727 patent.) Has Omega proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the '727 patent? Claim 1. Yes, as to all devices.

Claim 10. Yes, as to all devices.

Claim 11. Yes, as to all devices.

2-D. U.S. patent number 8,032,278 B2, (the '278 patent.) Has Omega proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the '278 patent? Claim 1. Yes, as to all devices.

Claim 2. Yes, as to all devices.

Claim 3. Yes, as to all devices.

Claim 4. Yes, as to all devices.

Claim 5. Yes, as to all devices.

Claim 6. Yes, as to all devices.

Claim 8. Yes, as to all devices.

Claim 11. Yes, as to all devices.

Claim 12. Yes, as to all devices.

Claim 13. Yes, as to all devices.

Claim 14. Yes, as to all devices.

Claim 16. Yes, as to all devices.

Claim 18. Yes, as to all devices.

Claim 19. Yes, as to all devices.

Claim 21. Yes, as to all devices.

3. Has CalAmp proven by clear and convincing evidence that any claim of the asserted patent is invalid? No for Omega.

5. Which of the following factors that tend to indicate non-obviousness, if any, has been

established by the evidence with respect to the claimed invention?

Were accused products covered by the claim commercially successful due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or a feature of the product other than those found in the claim? Yes.

Did others copy the claimed invention? Yes.

Did others accept licenses under patents because of the merits of the claimed invention? Yes.

6-A. Has Omega proven by clear and convincing evidence that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent? Yes.

6-B. Has Omega proven by clear and convincing evidence that this objectively high likelihood of infringement was either known or so obvious that it should have been known to CalAmp? Yes.

7. What amount of damages, if any, do you find is adequate to compensate Omega for CalAmp's infringement of any claim found to be valid and not licensed? That would be $2,975,200 and no cents.

So say we all this 24th day of February, the year of 2016, and it's signed by our foreperson, John Micelotta.

THE COURT: Very good.

Would anyone like the jury polled?

MR. GILCHRIST: Not for the plaintiff, Your Honor.

MR. KAUTS: Yes, Your Honor.

THE COURT: All right.

If you'd poll the jury, please.

DEPUTY CLERK: Natvar Nana, is this your verdict?

THE JUROR: Yes.

DEPUTY CLERK: Amy Luhn, is this your verdict?

THE JUROR: Yes.

DEPUTY CLERK: Kimberly Gibson, is this your verdict?

THE JUROR: Yes.

DEPUTY CLERK: Christine Steele, is this your verdict?

THE JUROR: Yes.

DEPUTY CLERK: Clyde Jackson, is this your verdict?

THE JUROR: Yes.

DEPUTY CLERK: John Micelotta, is this your verdict?

THE JUROR: Yes.

DEPUTY CLERK: Michael Wilson, is this your

verdict?

THE JUROR: Yes.

THE COURT: All right, ladies and gentlemen. The verdict is proper, as determined by the polling. This concludes your service in this case. And if you would do me one kindness. Before you go downstairs to the jury assembly room to have your final instructions before departing, if you would wait for me, I would like to speak with you.

I never discuss with juries how they reached their verdict or anything about the verdict. I'm more interested in, first off, personally thanking you for your service and then finding out if there is anything we can do to improve the experience of jurors that follow. So if you would wait just for a moment, I will be right in there. All right. Thank you very much. You're excused.

(Jury exits.)

DEPUTY CLERK: Please be seated.

THE COURT: The record should reflect the jury has withdrawn. Are there any other matters to take up this afternoon?

MR. GILCHRIST: Not this afternoon, Your Honor.

MR. KAUTH: No, Your Honor.

THE COURT: Thank you very much.

On a personal note, I would like to compliment all the lawyers involved in this case. The level of professionalism you showed each other was amazing. This has been, hands down, the most enjoyable trial that I have been involved in as a judge, and that's because the presentations were clear and crisp. Everyone accepted the rulings without a whole lot of looking disappointed. And I really do think you all represented your clients in a truly exemplary manner, and it was a real privilege to be here with you. So thank you very much. Have a good evening.

MR. GILCHRIST: Thank you, Your Honor.

MR. KAUTH: Thank you, Your Honor.

(Adjourned at 4:05 p.m.)

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Reporter's Certification

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

s/Koretta Stanford

Official Court Reporter
United States District Court
Middle District of Florida Date: April 18, 2016

EXHIBIT 6

EXHIBIT LIST

__PLAINTIFF x_DEFENDANT
__JOINT

__GOVERNMENT __COURT

CASE NO. 6:13-cv-1950-PGB-DAB
STYLE: OMEGA PATENTS, LLC V. CALAMP CORP.

EXHIBIT NO.	DATE IDENTIFIED	DATE ADMITTED	SPONSORING WITNESS	OBJECTIONS/ STIPULATED ADMISSIONS[1]	DESCRIPTION OF EXHIBIT
1			Andrews/Chen/Flick	401	U.S. Pat. No. 5,719,551
2	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		File History for U.S. Pat. No. 6,346,876
3			Andrews/Chen		File History for U.S. Pat. No. 6,737,989
4	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		File History for U.S. Pat. No. 6,756,885
5	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		File History for U.S. Pat. No. 7,671,727
6	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		File History for U.S. Pat. No. 8,032,278
7			Flick	401	Provisional Application 60/205,178
8			Flick	401	Provisional Application 60/222,777
9			Flick	401	Provisional Application 60/258,005

[1] Use a code (e.g. "A" or "*") in this column to identify exhibits to be received in evidence by agreement without objection. Otherwise, specifically state each objection to each opposed exhibit. Please note that each date box on the left must be one inch wide to accommodate the Clerk's date stamp.

10	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 5,479,479 to Braitberg et al.
11	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 5,898,392 to Bambini et al.
12	2/22/16	2/22/16	Andrews/Chen	901	SAE J1978
13			Andrews/Chen	901	SAE J1979
14			Andrews/Chen	901	SAE J1850
15			Andrews/Chen	901	SAE J2201
16			Andrews	901	ISO 9141-2 Road Vehicles – Diagnostic Systems – Part 2: CARB requirements for interchange of digital information
17	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 5,732,074 to Spaur et al.
18			Andrews/Chen	901	CrossCheck AMPS Cellular Product Description
19			Chen	901; DISCLOSED FOR THE FIRST TIME AT PRETRIAL	CrossCheck AMPS Physical Device
20			Andrews/Chen	901	CrossCheck AMPS with IQEvent Engine Firmware Operations Manual
21			Andrews/Chen	901	IQEvent Engine Configuration Utility User's Guide
22			Andrews/Chen	901	TAIP/IQEventEngine Reference
23			Andrews/Chen	901	Neotech Website
24	2/22/16	2/22/16	Andrews/Chen	901	Mobile-Trak: A Vehicle Tracking System for Fleet Management

25			Andrews/Chen	901	MSC-9710 On-Line Brochure
26	2/22/16	cdg	Andrews/Chen	901	MobileWeb Article ("Changing the Face of Mobile Networking through Universal Wireless Connectivity")
27	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 8,295,492 to Lang et al.
28	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 6,263,268 to Nathanson
29	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 4,853,850 to Krass et al.
30	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 5,557,254 to Johnson et al.
31	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 6,505,108 to Lawrence et al.
32	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 5,959,545 to Lhamon
33	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 5,479,157 to Suman et al.
34	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. No. 6,028,537 to Suman et al.
35			Andrews/Chen	901	OBD-II to RS-232 Interface Adapter Autotap
36			Andrews/Chen	901	Japanese Pub. Hei 11[1999]-62793
37	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen		U.S. Pat. Publication 2004/0249557
38	2/22/2016	2/23/16	Andrews	802	Andrews Report re Invalidity (including exhibits)
39	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen/Eiberger		PEG Programming Guide

40	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen/Eiberger		PEG Support Guide
41	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen/Eiberger		LM Direct Reference Guide
42	FEB 2 2 2016	FEB 2 2 2016	Andrews/Chen/Eiberger		LM Direct Reference Guide - PULS Wiki
43	FEB 2 2 2016	FEB 2 2 2016	Chen		LMU-2000 Data Sheet
44	FEB 2 2 2016	FEB 2 2 2016	Chen		LMU-2600 Data Sheet
45	FEB 2 2 2016	FEB 2 2 2016	Chen		LMU-3000 Data Sheet
46	FEB 2 2 2016	FEB 2 2 2016	Chen		LMU-3030 Data Sheet
47	2/22/16	2/23/16	Andrews	802	Andrews Rebuttal Report (including exhibits)
48	FEB 2 2 2016	FEB 2 2 2016	Chen/Sarkissian/ McDuff		Sales of Accused Devices
49	FEB 2 2 2016	FEB 2 2 2016	Chen/Sarkissian/ McDuff		Sales of Accused Devices
50	FEB 2 2 2016	FEB 2 2 2016	Chen/Sarkissian/ McDuff		Sales of Accused Devices
51	FEB 2 2 2016	FEB 2 2 2016	Chen/McDuff		Bosch Licensing info dated 06/2014
52	FEB 2 2 2016	FEB 2 2 2016	Chen/McDuff		Bosch Licensing info dated 01/2015
53			Chen	901	Xirgo Pricing
54	FEB 2 2 2016	FEB 2 2 2016	Chen		CalAmp License with B&B
55	FEB 2 2 2016	FEB 2 2 2016	Chen		CalAmp License with Innova
56	FEB 2 2 2016	FEB 2 2 2016	Chen		CalAmp License with WiLan
57	FEB 2 2 2016	FEB 2 2 2016	McDuff/Flick		Omega-Enfora License
58	FEB 2 2 2016	FEB 2 2 2016	McDuff/Flick		Omega-Lear License
59	FEB 2 2 2016	FEB 2 2 2016	McDuff/Flick		Omega-GM License
60			McDuff/Flick	802/ DAUBERT	McDuff Expert Report (including exhibits)
61			McAlexander/Flick	802, 901, 401	Opposition to DEI JMOL

62			McAlexander/Flick	802, 901, 401	1/31/2007 Transcript of Jury Trial (Omega v. DEI)
63			McAlexander/Flick	802, 401	McAlexander Rebuttal Report from Lear litigation
64			McAlexander/Flick	401	U.S. Pat. No. 6,812,829
65	FEB 2 2 2016	FEB 2 2 2016	McAlexander/Flick		Office Action mailed 7/30/2003 from Application No. 10/105,676
66	FEB 2 2 2016	FEB 2 2 2016	Flick		Signed Oath by Kenneth Flick to application for U.S. Patent 6,346,876
67	FEB 2 2 2016	FEB 2 2 2016	Flick		Signed Oath by Kenneth Flick to application for U.S. Patent 6,737,989
68	FEB 2 2 2016	FEB 2 2 2016	Flick		Signed Oath by Kenneth Flick to application for U.S. Patent 6,756,885
69	FEB 2 2 2016	FEB 2 2 2016	Flick		Signed Oath by Kenneth Flick to application for U.S. Patent 7,671,727
70	FEB 2 2 2016	FEB 2 2 2016	Flick		Signed Oath by Kenneth Flick to application for U.S. Patent 8,032,278
Court's 11 71	2/22/16		Chen	802, 901	Opinion Letter re U.S. Pat. No. 6,346,876
72			Chen	802, 901	Opinion Letter re U.S. Pat. No. 6,737,989
Court's 12 73	2/22/16		Chen	802, 901	Opinion Letter re U.S. Pat. No. 6,756,885

Court's 13

Court's 14

74	2/22/16		Chen	802, 901	Opinion Letter re U.S. Pat. No. 7,671,727
75	2/22/16		Chen	802, 901	Opinion Letter re U.S. Pat. No. 8,032,278
76	FEB 2 2 2016	FEB 2 2 2016			Plaintiff's Answers to Defendant's First Set of Interrogatories
77	FEB 2 2 2016	FEB 2 2 2016			Plaintiff's Answers to Defendant's Second Set of Interrogatories
78	FEB 2 2 2016	FEB 2 2 2016			Plaintiff's Response to Defendant CalAmp Corp.'s First Requests for Admissions
79	FEB 2 2 2016	FEB 2 2 2016			Plaintiff's Response to Defendant CalAmp Corp.'s Second Requests for Admissions
80	2/23/16	2/23/16	Andrews		Demonstrative Charts
81	2/23/16	2/23/16	Andrews		Demonstrative Charts

EXHIBIT 7

EXHIBIT LIST

_____Government __X__ Plaintiff _____Defendant _____Court
X Joint

Case No. 6:13-cv-01950-PGB-DAB
Style: Omega Patents, LLC v. Calamp Corp.

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
JE1	2/17/16	2/17/16	Flick		US Patent No 6,346,876 B1	Doc. 1
JE2					US Patent No 6,737,989 B2	Doc. 1
JE3	2/17/16	2/17/16	Flick		US Patent No 6,756,885 B1	Doc. 1
JE4	2/17/16	2/17/16			US Patent No 7,671,727 B2	Doc. 1
JE5	2/17/16	2/17/16			US Patent No 8,032,278 B2	Doc. 1
JE6	2/17/16	2/17/16			File History-US Patent No 6,346,876 B1	OMEGA_CAL0 05315-6299
JE7					File History-US Patent No 6,737,989 B2	OMEGA_CAL0 03159-3346
JE8	2/17/16	2/17/16			File History-US Patent No 6,756,885 B1	OMEGA_CAL0 02939-3158
JE9	2/17/16	2/17/16			File History-US Patent No 7,671,727 B2	OMEGA_CAL0 02815-2938
JE10	2/17/16	2/17/16			File History-US Patent No 8,032,278 B2	OMEGA_CAL0 00796-1035
JE11	2/17/16	2/17/16			Calamp Product Exemplars-LMU-3000	
JE12	2/17/16	2/17/16			Calamp Product Exemplars-LMU-3000	
JE13	2/17/16	2/17/16			Calamp Product Exemplars-vPod	
JE14	2/17/16	2/17/16			Calamp Product Exemplars-vPod2	
PL1	2/17/16	2/17/16			LMU-3000 product information sheet	Pete Hergesheimer Depo Exhibit 1 CALAMP00003 04-0000305

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL2	2/17/16	2/17/16			LMU-3030 product information sheet	Pete Hergesheimer Depo Exhibit 2 CALAMP00004 09-0000410
PL3	2/17/16	2/17/16			Product photos	Pete Hergesheimer Depo Exhibit 3
PL4	2/17/16	2/17/16			Product photos	Pete Hergesheimer Depo Exhibit 4
PL5	2/17/16	2/17/16			Product photos	Pete Hergesheimer Depo Exhibit 5
PL6	2/17/16	2/17/16			Calamp LM Direct Reference Guide	Pete Hergesheimer Depo Exhibit 6 OMEGA_CAL0 04306-004421
PL7				Relevance – FRE 401-403	Cron/Oracle Scheduler Package/Script Name	Pete Hergesheimer Depo Exhibit 7 CALAMP00028 67-0002876
PL8	2/17/16	2/17/16			Calamp PEG Programming Guide Version 1.0.0	Pete Hergesheimer Depo Exhibit 8 OMEGA_CAL0 04425-004554
PL9	2/17/16	2/17/16			Calamp PULS User Guide	Pete Hergesheimer Depo Exhibit 9 OMEGA_CAL0 04557-004599

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL10	2/17/16	2/17/16			PEG Support Guide for Vehicle Bus Features	Pete Hergesheimer Depo Exhibit 10 CALAMP0000693-0000710
PL11	2/17/16	2/17/16			Product Schematic – LMU2000/3000	James Hardee Depo Exhibit 11
PL12	2/17/16	2/17/16			Product Schematic – LMU3030	James Hardee Depo Exhibit 12
PL13				Foundation; Hearsay	Product Flow Chart	Radhakarishnan Ramachandran Depo Exhibit 13
PL14	2/17/16	2/17/16		Relevance – FRE 401-403	US Patent No 2012/0158211 A1	Radhakarishnan Ramachandran Depo Exhibit 14
PL15	2/17/16	2/17/16			Calamp Corp's Supplemental Responses to Omega's First Set of Interrogatories	Stephen Hall Depo Exhibit 15
PL16	2/17/16	2/17/16			Calamp Corp's Second Supplemental Response to Omega's First Set of Interrogatories	Stephen Hall Depo Exhibit 16
PL17	2/17/16	2/17/16			Computer code	Stephen Hall Depo Exhibit 17 CALAMP0008417-0008423
PL18	2/17/16	2/17/16			Calamp OBDII Plug-On Tracking Unit CRS-Commercial Requirements Specification	Stephen Hall Depo Exhibit 18 CALAMP0008175-0008193
PL19	2/17/16	2/17/16			Calamp Corp's Responses to Omega's First Set of Interrogatories	Stephen Hall Depo Exhibit 19
PL20	2/17/16	2/17/16			Calamp LMU-3030 Tracking Unit CRS Commercial Requirements Specification	Stephen Hall Depo Exhibit 20 CALAMP0008205-0008222
PL21	2/17/16	2/17/16			Innova Calamp Software Interface Definition Version 3.8	Stephen Hall Depo Exhibit 21 CALAMP0008328-0008416

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL22	2/17/16	2/17/16			Calamp's News Bulletin	Stephen Hall Depo Exhibit 22
PL23	2/17/16	2/17/16			LM Direct Reference Guide	Eiberger Depo Exhibit 23 CALAMP00005 24-0000636
PL24				Relevance	Settlement, Release & License Agreement between Melvino Technologies Lmtd. & ArrivalStar S.A.	Gallin Chen Depo Exhibit 25 CALAMP00412 55-0041260
PL25				Relevance	Settlement, Release & License Agreement between Melvino Technologies Lmtd. & ArrivalStar S.A.	Gallin Chen Depo Exhibit 26 CALAMP00412 76-0041282
PL26				Relevance	Settlement, Release, Covenant Not to Sue & Patent License Agreement between PJC Logistics, LLC, Calamp Corp, & GPS Insight, Inc.	Gallin Chen Depo Exhibit 27 CALAMP00412 61-0041275
PL27				Foundation; Hearsay	Email correspondence between Kevin Christensen & Bill Duffy	Gallin Chen Depo Exhibit 28 CALAMP00019 0-000191
PL28				Foundation; Hearsay	Email correspondence between Kevin Christensen & Bill Duffy	Gallin Chen Depo Exhibit 29 CALAMP00018 5
PL29				Relevance	Draft GPS Patent License Agreement between Omega Patents, LLC & Calamp, Corp 12.01.09	Gallin Chen Depo Exhibit 30 CALAMP00023 6-000247
PL30				Foundation; Hearsay	Email correspondence between David Bailey & Brian Gilchrist	Gallin Chen Depo Exhibit 31 CALAMP00016 7-000169
PL31				Foundation; Hearsay	Email correspondence between David Bailey & Brian Gilchrist	Gallin Chen Depo Exhibit 32 CALAMP00016 6

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL32				Relevance	Draft GPS Patent License Agreement between Omega Patents, LLC & Calamp, Corp 02.15.10	Gallin Chen Depo Exhibit 33 CALAMP00096 7-000981
PL33				Foundation; Hearsay	Email correspondence between David Bailey & Brian Gilchrist	Gallin Chen Depo Exhibit 34 CALAMP00010 7-000108
PL34				Foundation; Hearsay	Email correspondence between David Bailey & Ryan Santurri	Gallin Chen Depo Exhibit 35 CALAMP00007 3-000076
PL35				Foundation; Hearsay	Email correspondence between Ken Flick & Ryan Santurri; Patent License and Settlement Agreement between Omega Patents, LLC & Calamp Corp. 06.01.10	Gallin Chen Dep Exhibit 36
PL36				Foundation; Hearsay	Email correspondence between David Bailey & Ryan Santurri	Gallin Chen Dep Exhibit 37
PL37				Hearsay; Relevance	Dismissal Agreement between Omega Patents, LLC & Calamp Corp. 06.09.10	Gallin Chen Depo Exhibit 38 CALAMP00000 1
PL38	2/17/16	2/17/16			Email correspondence between Gallin Chen & Ken Flick	Gallin Chen Depo Exhibit 39
PL39	2/17/16	2/17/16		Hearsay	Email correspondence between Gallin Chen & Garo Sarkissian	Gallin Chen Depo Exhibit 40 CALAMP00334 20
PL40				Foundation; Hearsay	Email correspondence between David Bailey & Chris Regan	Gallin Chen Depo Exhibit 41
PL41				Hearsay	Email correspondence between Mike Crawford & Michael Burdiek, Garo Sarkissian, Justin Schmid, Rick Vitelle	Gallin Chen Depo Exhibit 42 CALAMP00203 64-0020365
PL42				Foundation; Hearsay	Email correspondence between Ryan Santurri, Brian Gilchrist & David Bailey	Gallin Chen Depo Exhibit 43 CALAMP00017 8-000180

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL43				Foundation; Hearsay	Email correspondence between Ken Flick & Chris Regan	Gallin Chen Depo Exhibit 44
PL44				Foundation; Hearsay	Email correspondence between Ken Flick & Ryan Santurri	Gallin Chen Depo Exhibit 45 OMEGA CAL000692-000713
PL45	2/17/16	2/17/16	Flick	Relevance	License Agreement between Omega Patents, LLC & Calamp Corp	Gallin Chen Depo Exhibit 46 CALAMP00163 11-0016312
PL46				Foundation; Relevance	Email correspondence between Ryan Santurri, Brian Gilchrist & David Bailey	Gallin Chen Depo Exhibit 47
PL47	2/17/16	2/17/16			Email correspondence between Gallin Chen, David Bailey & Garo Sarkissian	Gallin Chen Depo Exhibit 48 CALAMP00334 48-0033449
PL48	2/17/16	2/17/16		Hearsay; Relevance	Email correspondence between Gallin Chen, David Bailey & Garo Sarkissian	Gallin Chen Depo Exhibit 49 CALAMP00411 34-0041150
PL49	2/17/16	2/17/16			Email correspondence between Gallin Chen, Kim Cauthorn & Garo Sarkissian	Gallin Chen Depo Exhibit 50 CALAMP00304 26-0030438
PL50				Relevance, Hearsay	Calamp Corp's Response to Request for Proposal – Enterprise Holdings RFP	Gallin Chen Depo Exhibit 56 CALAMP00257 75-0025837
PL51				Relevance, Hearsay	Email correspondence between Gregory Gower, Joyce Tam & Steve Hall	Gallin Chen Depo Exhibit 57 CALAMP00157 10-0015750
PL52					**WITHDRAWN** Letter from David Bailey to Garo Sarkissian	Gallin Chen Depo Exhibit 58 CALAMP00072 00-0007225

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL53					**WITHDRAWN** Letter from David Bailey to Garo Sarkissian	Gallin Chen Depo Exhibit 59 CALAMP00059 81-0006097
PL54					**WITHDRAWN** Letter from David Bailey to Garo Sarkissian	Gallin Chen Depo Exhibit 60 CALAMP00054 18-0005535
PL55					**WITHDRAWN** US Patent No 5,732,074	Gallin Chen Depo Exhibit 61 CALAMP00023 39-0002353
PL56					**WITHDRAWN** Letter from David Bailey to Garo Sarkissian	Gallin Chen Depo Exhibit 62 CALAMP00040 79-0004158
PL57					**WITHDRAWN** Letter from David Bailey to Garo Sarkissian	Gallin Chen Depo Exhibit 63 CALAMP00029 47-0003019
PL58					**WITHDRAWN** US Patent No 5,898,392	Gallin Chen Depo Exhibit 64 CALAMP00023 54-0002372
PL59	2/17/16	2/17/16			Calamp vpod schematics	Hergesheimer-30(b)(6) Depo Exhibit 65
PL60	2/17/16	2/17/16			Calamp OBD-II Devices Presentation	Hergesheimer-30(b)(6) Depo Exhibit 66
PL61				Hearsay, Relevance	Sarkissian timeline	Garo Sarkissan Depo Exhibit 67
PL62	2/17/16	2/17/16			Financial Spreadsheet	Garo Sarkissan Depo Exhibit 68
PL63	2/17/16	2/17/16			Financial Spreadsheet	Garo Sarkissan Depo Exhibit 69
PL64	2/17/16	2/17/16			Charts with asserted claim language	N/A
PL65	2/17/16	2/17/16			Expert Report of Christian Tregillis	Christian Tregillis Depo Exhibit 2

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL66	2/17/16	2/17/16			Supplemental Expert Report of Christian Tregillis	Christian Tregillis Depo Exhibit 3
PL67	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents LLC & Mid City Engineering, LLC	Christian Tregillis Depo Exhibit 4 OMEGA_CAL 000171-000180
PL68	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents LLC & Cimble Corp.	Christian Tregillis Depo Exhibit 5 OMEGA_CAL 007374-007383
PL69	2/17/16	2/17/16	Flick	Hearsay, Relevance	Patent License & Settlement Agreement between Omega Patents LLC & 160031 Canada Inc	Christian Tregillis Depo Exhibit 6 OMEGA_CAL 000003-000015
PL70	FEB 17 2016	FEB 17 2016			License Agreement between Omega Patents LLC & Numerex	Christian Tregillis Depo Exhibit 7 OMEGA_CAL 000181-000195
PL71	2/17/16	FEB 17 2016	Flick		Patent License & Settlement Agreement between Omega Patents LLC & Lear Corp.	Christian Tregillis Depo Exhibit 8 OMEGA_CAL 007362-007371
PL72	FEB 17 2016	FEB 17 2016			Settlement Agreement & Covenant Not to Sue between Omega Patents LLC & OnStar, LLC	Christian Tregillis Depo Exhibit 9 OMEGA_CAL 000229-000239
PL73	2/17/16	2/17/16			Settlement Agreement between Omega Patents LLC & Enfora Inc.	Christian Tregillis Depo Exhibit 10 OMEGA-CAL 000132-000140
PL74	FEB 17 2016	FEB 17 2016			Automotive Electronics License Conditions CAN Protocol and CAN FD Protocol	Christian Tregillis Depo Exhibit 11

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL75	FEB 17 2016	FEB 17 2016			Automotive Electronics License Conditions CAN Protocol and CAN FD Protocol	Christian Tregillis Depo Exhibit 12
PL76	FEB 17 2016	FEB 17 2016			Wi-Lan Inc. Patent License Agreement	Christian Tregillis Depo Exhibit 13 CALAMP 0041285-0041314
PL77	FEB 17 2016	FEB 17 2016			Settlement, Release, Covenent Not to Sue and Patent License Agreement between PJC Logistics LLC, Calamp Corp, & Procon Fleet Services LLC	Christian Tregillis Depo Exhibit 14 CALAMP 0041261-0041275
PL78	FEB 17 2016	FEB 17 2016			Screen Shot of OBD Device Xirgo XT-2000	Christian Tregillis Depo Exhibit 16
PL79	FEB 17 2016	FEB 17 2016			Calamp LMU-2600 GPRS/CDMA/HSPA Series	Christian Tregillis Depo Exhibit 17
PL80	FEB 17 2016	FEB 17 2016			Calamp LMU-2000 GPRS/CDMA/HSPA Series	Christian Tregillis Depo Exhibit 18
PL81	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Accele Electronics, Inc.	OMEGA_CAL 007401-007410
PL82	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Accessories Electroniques Bomar, Inc.	OMEGA_CAL 007395-007400
PL83	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Applicated Security Technologies, Inc.	OMEGA_CAL 000030-000035
PL84	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Astroflex, Inc.	OMEGA_CAL 000040-000045
PL85	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Audiovox Corporation	OMEGA_CAL 000053-000072

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL86	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Automotive Data Solutions, Inc.	OMEGA_CAL 000017-000029
PL87				Hearsay, Relevance	License Agreement between Omega Patents, LLC and Autopage, Inc.	OMEGA_CAL 000073-000079
PL88	2/17/16	2/17/16			License Agreement between Omega Patents, LLC and Calamp Corp.	OMEGA_CAL 000080-000083
PL89				Hearsay, Relevance	License Agreement between Omega Patents, LLC and Designtech International, Inc.	OMEGA_CAL 000129-000131
PL90	2/17/16	2/17/16			License Agreement between Omega Patents, LLC and Enfora, Inc.	OMEGA_CAL 000132-000144
PL91				Hearsay, Relevance	License Agreement between Omega Patents, LLC and Firsttech, LLC	OMEGA_CAL 007414-007417
PL92	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Fortin Auto Radio, Inc.	OMEGA_CAL 000145-000166
PL93	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and JSB Technologies, LLC	OMEGA_CAL 000167-000170
PL94				Hearsay, Relevance	License Agreement between Omega Patents, LLC and Limitless Creations, LLC	OMEGA_CAL 007384-007386
PL95				Hearsay, Relevance	License Agreement between Omega Patents, LLC and Magnadyne Corporation	OMEGA_CAL 007388-007390
PL96	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC, Omega Research and Development, Inc and Directed Electronics, Inc.	OMEGA_CAL 000084-000101
PL97	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Omega Research and Development, Inc.	OM EGA_CAL 000196-000228
PL98	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Autosport, LLC	OMEGA-00182-OMEGA-00188

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL99	2/17/16	2/17/16			License Agreement between Omega Patents, LLC and Numerex Corporation	OMEGA_CAL 000181-000195
PL100	2/17/16	2/17/16	Flick		License Agreement between Omega Patents, LLC and OnStar, LLC	OMEGA_CAL 000229-000239
PL101	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Portman Security Systems, Ltd.	OMEGA_CAL 000240-000248
PL102	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Precision Engineering Industries, Inc.	OMEGA_CAL 000249-000252
PL103	2/17/16	2/17/16	Flick	Hearsay, Relevance	License Agreement between Omega Patents, LLC and Trilogix Electronics Systems, Inc.	OMEGA-CAL 000523-000270
PL104	2/17/16	2/17/16			Expert Report of Joseph McAlexander	Joseph McAlexander Depo Exhibit 2
PL105	2/17/16	2/17/16			Rebuttal Expert Report of Joseph C. McAlexander	Joseph McAlexander Depo Exhibit 6
PL106	2/17/16	2/17/16			Supplemental Expert Report of Joseph C. McAlexander (5-22-2015)	
PL107				Foundation; Hearsay, Relevance	"Telematics," Gartner IT Glossary, <http://www.gartner.com/it-glossary/telematics/>.	Tregillis Expert Report Page 4
PL108				Foundation; Hearsay, Relevance	"Telematics," Gartner IT Glossary, <http://www.gartner.com/it-glossary/telematics/>.	Tregillis Expert Report Page 4
PL109				Foundation; Hearsay, Relevance	Setar, Lauren, "IBIS World Industry Report OD4546 Fleet Telematics Systems," November 2012.	Tregillis Expert Report Page 4
PL110				Foundation; Hearsay, Relevance	"Telematics," Automotive Fleet Encyclopedia, <http://www.automotive-fleet.com/encyclopedia/telematics.aspx>.	Tregillis Expert Report Page 4

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL111				Foundation; Hearsay, Relevance	"M2M," Automotive Fleet Encyclopedia, <http://www.automotive-fleet.com/encyclopedia/m2m.aspx>.	Tregillis Expert Report Page 4
PL112				Foundation; Hearsay, Relevance	"Machine-to-Machine (M2M) Communications," Gartner IT Glossary, <http://www.gartner.com/it-glossary/machine-to-machine-m2m-communications>.	Tregillis Expert Report Page 4
PL113				Foundation; Hearsay, Relevance	Crosby, Tim, "How Machine-to-Machine Communication Works," How Stuff Works, <http://computer.how stuffworks.com/m2m-communication.htm/printable>.	Tregillis Expert Report Page 4
PL114				Foundation; Hearsay, Relevance	Emmerson, Bob, "M2M: the Internet of 50 billion devices," M2M the Magazine, <http://204.93.85.96/servlet/JiveServlet/previewBody/1043-102-1-1033/M2M_Magazine_The_internet_of_50_billion_devices.pdf>	Tregillis Expert Report Page 4
PL115				Foundation; Hearsay, Relevance	"Consumer Telematics," Gartner IT Glossary, <http://www.gartner.com/it-glossary/consumer-telematics/>.	Tregillis Expert Report Page 5
PL116				Foundation; Hearsay, Relevance	"OnStar Services," Onstar, <https://www.onstar.com/us/en/services/services.html>	Tregillis Expert Report Page 5
PL117				Foundation; Hearsay, Relevance	"OnStar Company Information," OnStar,<http://media.gm.com/Media/us/en/onstar/company/company.html	Tregillis Expert Report Page 5

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL118				Foundation; Hearsay, Relevance	Fletcher, Lauren, "Focus on Telematics Goals for Greater ROI," Automotive Fleet, January 2013, <www. automotive-fleet.com/article/print/ story/2013/01/ focus-on-telematics-goals- for-greater-roi.aspx>.	Tregillis Expert Report Page 5
PL119				Foundation; Hearsay, Relevance	Kolman, David, "How to Harness the Power of Vehicle Telematics," Vehicle Service Pros , August 30, 2011, <http:// www.vehicleservicepros .com/article/ 10291142/how-to- harness-the-power-of-vehicle- telematics>	Tregillis Expert Report Page 5
PL120				Foundation; Hearsay, Relevance	"Beyond the Basics : Fleet Management Solutions at the Next Level," <http://www. automotive-fleet.com/channel/gps- telematics/whitepapers/detail/ beyond-the-basics-fleet- management- solutions-at-the-next-level. aspx>	Tregillis Expert Report Page 5
PL121				Foundation; Hearsay, Relevance	"Telematics ROI Beyond Fuel Savings," Automotive Fleet, October 2014, <http://www.automotive-fleet. com/article/print/story/2014 /10/telematics-roi-beyond-fuel- savings.aspx>	Tregillis Expert Report Page 5
PL122				Foundation; Hearsay, Relevance	"Usage-Based Insurance and Telematics," National Association of Insurance Commissioners and The Center for Insurance Policy Research, <http:// www.naic.org/ cipr_topics/topic_usage_ based_insurance.htm>.	Tregillis Expert Report Page 5

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL123				Foundation; Hearsay, Relevance	Wolski, Chris, "How Telematics is Improving Fleet Productivity," Automotive Fleet, February 2015, <http://www.automotive-fleet.com/article/print/story/2015/02/how-telematics-is-improving-fleet-productivity.aspx>	Tregillis Expert Report Page 5
PL124				Foundation; Hearsay, Relevance	Mika, Shelly, "Telematics Sensor-Equipped Trucks Help UPS Control Costs," Automotive Fleet, July 2010, <www.automotive-fleet.com/article/print/story/2010/07/green-fleet-telematics-sensor-equipped-trucks-help-ups-control-costs.aspx>.	Tregillis Expert Report Page 6
PL125				Foundation; Hearsay, Relevance	"Wireless OBD-2 Vehicle Monitor Analyzer for Fleet Management Applications," Fleet Genius, 2013, <http://www.fleetgenius.com/wireless_fleet_management_monitors_obd2_remote_diagnostics>.	Tregillis Expert Report Page 6
PL126				Foundation; Hearsay, Relevance	Top 300 have over 1 million. "The Blog for AutoGas Fleets," AutoGas Fleet, <http://www.autogasfleet.com>.	Tregillis Expert Report Page 8
PL127				Foundation; Hearsay, Relevance	*See*, for example, "Top 100 Truck Fleets," Fleet Central, 2013, <http://www.fleet-central.com/TopFleets/pdf/AUTOF_top100trucks.pdf>. The top ten include UPS, AT&T, PepsiCo, and Comcast	Tregillis Expert Report Page 8

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL128				Foundation; Hearsay, Relevance	"Top 300 commercial Fleets", 2012, Automotive Fleet 500, <http://www.fleetcentral.com/TopFleets/pdf/FLT500top300.pdf>	Tregillis Expert Report Page 8
PL129				Foundation; Hearsay, Relevance	"Types of Vehicles by WeightClass," US Department of Energy Alternative Fuels Data Center, <http://www.afdc.energy.gov/data/widgets/10381>.	Tregillis Expert Report Page 8
PL130				Foundation; Hearsay, Relevance	"Top 300 commercial Fleets", 2012, Automotive Fleet 500, <http://www.fleet-central.com/TopFleets/pdf/FLT500top300.pdf>.	Tregillis Expert Report Page 8
PL131				Foundation; Hearsay, Relevance	Antich, Mike, "2013: State of the Commercial Fleet Market," Automotive Fleet, April 1, 2013, <http://www.automotive-fleet.com/article/print/story/2013/04/2013-state-of-the-commercial-fleet-market.aspx>.	Tregillis Expert Report Page 8
PL132				Foundation; Hearsay, Relevance	"Fleetmatics Introduces Fleetbeat Report, an Industry First, Revealing Fleet Benchmarking Data and the Economic Impact of Commercial Fleet Telematics," Fleetmatics, April 23, 2014, <http://www.fleetmatics.com/fleetmatics-introduces-fleetbeat-report>.	Tregillis Expert Report Page 8
PL133				Foundation; Hearsay, Relevance	"Telematics Usage in the Fleet Industry Survey Results," Donlen, 2012, <http://www.donlen.com/pdf/Donlen-Telematics-Survey.pdf>.	Tregillis Expert Report Page 9

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL134				Foundation; Hearsay, Relevance	Wolski, Chris, "How Telematics is Improving Fleet Productivity," Automotive Fleet, February 2015, <http://www.automotive-fleet.com/article/print/story/2015/02/how-telematics-is-improving-fleet-productivity.aspx>.	Tregillis Expert Report Page 9
PL135				Foundation; Hearsay, Relevance	"Verizon Telematics Offers The Right Solutions," Verizon, 2015, <https://www.verizontelematics.com/>; "Fleet, Trailer and Asset Management," Sprint Business, 2015, <https://www.sprint.com/business/solutions/fleet_and_asset_management/index.htmlINTNAV=ATG:HE:FleetTrailAssetMgmt&ECID=vanity:connected fleet>	Tregillis Expert Report Page 10
PL136				Foundation; Hearsay, Relevance	"GE Capital Fleet Services," General Electric Company, 2015,<https://www.gefleet.com/home>; "Complete Suite of Vehicle Management Solutions," LeasePlan, <http://www.us.leaseplan.com/pu/enUS/>	Tregillis Expert Report Page 10
PL137				Foundation; Hearsay, Relevance	"Working Smarter Starts Here," Fleetmatics, 2015, <http://www.fleetmatics.com/>; "Real World Wireless Solutions," Sierra Wireless,<http://www.sierrawireless.com/>.	Tregillis Expert Report Page 10
PL138				Foundation; Hearsay, Relevance	"Fleet Management & Computerized Systems." NAFA Fleet Management Association Online Buyer's Guide <http://nafa.officialbuyersguide.net/SearchResults?categories=16&pg=1>.	Tregillis Expert Report Page 11

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL139				Foundation; Hearsay, Relevance	"Telematics Usage in the Fleet Industry Survey Results", Donlen, 2012,http://www.donlen.com/pdf/Donlen-Telematics-Survey.pdf >.	Tregillis Expert Report Page 11
PL140				Foundation; Hearsay, Relevance	Setar, Lauren, "IBIS World Industry Report OD4546 Fleet Telematics Systems," November 2012, p. 5.	Tregillis Expert Report Page 12
PL141	2/11/16	2/11/16	Flick	Foundation; Hearsay, Relevance	Omega/Audiovox GPS Patent License and Settlement Agreement, April 1, 2007	Tregillis Expert Report Page 24
PL142				Foundation; Hearsay, Relevance	CalAmp Corp. Form 10-K for the fiscal year ended February 28, 2014, p. 2	Tregillis Expert Report Page 28
PL143				Foundation; Hearsay, Relevance	"CalAmp Products," CalAmp, <http://www.calamp.com/products> .	Tregillis Expert Report Page 29
PL144				Foundation; Hearsay, Relevance	"Tracking and Telemetry Devices," CalAmp, <http://www.calamp.com/products#term=93>.	Tregillis Expert Report Page 31
PL145				Foundation; Hearsay, Relevance	"LMU-2600 Series," CalAmp, <http://www.calamp.com/products/tracking-and-telemetry-devices/fleet-tracking-units/lmu-2600-series>.	Tregillis Expert Report Page 32
PL146				Foundation; Hearsay, Relevance	"OBD-3000 – OBDII Plug-On Tracking Unit CRS – Commercial Requirements Specification," CalAmp, October 29, 2010	Tregillis Expert Report Page 32
PL147				Foundation; Hearsay, Relevance	"OBD-3030 – LMU-3030 Tracking Unit CRS – Commercial Requirements Specification," CalAmp, January 11, 2013,	Tregillis Expert Report Page 32
PL148				Foundation; Hearsay, Relevance	"On-Board Diagnostics (OBD) Basic Information," United States Environmental Protection Agency, <http://www.epa.gov/obd/basic.htm >	Tregillis Expert Report Page 32

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL149				Foundation; Hearsay, Relevance	"On-Board Diagnostic Guidance – Diagnostic Link Connector Location and Accessibility," United States Environmental Protection Agency, December 14, 1998, <http://www.epa.gov/obd/pubs/vpcd 9814.txt>	Tregillis Expert Report Page 32
PL150				Foundation; Hearsay, Relevance	"On-Board Diagnostics (OBD) Basic Information," United States Environmental Protection Agency, <http://www.epa.gov/obd/basic.htm >.	Tregillis Expert Report Page 33
PL151				Foundation; Hearsay, Relevance	"OBD-II Background," The OBD II Home Page, <http://www.obdii.com/background. html>.	Tregillis Expert Report Page 33
PL152				Foundation; Hearsay, Relevance	"On-Board Diagnostic Guidance – Diagnostic Link Connector Location and Accessibility," United States Environmental Protection Agency, December 14, 1998, <http://www.epa.gov/obd/pubs/vpcd 9814.txt>.	Tregillis Expert Report Page 33
PL153				Foundation; Hearsay, Relevance	"Programmable Event Generator," CalAmp, <http://www.calamp.com/products/ peg>.	Tregillis Expert Report Page 34
PL154	2/17/16	2/17/16	Flick	Foundation; Hearsay, Relevance	Omega Patent Royalty Chart (all years)	OMEGA_CAL0 07418
PL155				Foundation; Hearsay, Relevance	Omega Patent Royalty Chart (all years)	OMEGA_CAL0 07949-7954
PL156	2/17/16	2/17/16	Flick		Assignments for Omega patents	OMEGA_CAL0 07955-07967
PL157				Foundation, Relevance	U.S. Patent No. 8,812,173	McAlexander Report, p. 59
PL158				Foundation, Relevance	U.S. Patent No. 6,924,750	
PL159	2/17/16	2/17/16			Calamp's response to Omega's First Set of Interrogatories	

Exhibit No.	Date Identified	Date Admitted	Sponsoring Witness	Objection	Description of Exhibit	Ref. Nos.
PL160	2/17/16	2/17/16			Calamp's first supplemental response to Omega's First Set of Interrogatories	
PL161	2/17/16	2/17/16			Calamp's second supplemental response to Omega's First Set of Interrogatories	
PL162	2/18/16	2/18/16	McAlexander		Chart	
PL163	2/18/16	2/18/16	McAlexander		Summary Infringed Claims	
PL164	2/19/16	2/19/16	Tregillis		Chart	
PL165						
PL166						
PL167						
PL168						
PL169						
PL170						

EXHIBIT 8

Exhibit List

___Government ___Plaintiff ___Defendant X Court

Exhibit No.	Date Identified	Date Admitted	Witness	Objections	Description
1	2/16/16				Civil Challenge Sheet
2	2/16/16				Juror note
3	2/17/16				juror note
4	2/17/16				Deposition of Gallin Chen
5	2/18/16				Deposition dated 8-18-2014 of Peter Hergesheimer
6	2/18/16				Deposition dated 4-22-2015 of Peter Hergesheimer
7	2/18/16				Deposition of Jeffrey Eisenberger
8	2/18/16				Claim Construction for the Case
9	2/19/16				Deposition of Stephen Hall
10	2/23/16				Juror note

Case Number: 6:13cv1950-ORL-40DAB Style: Omega -v- Cal Comp

Exhibit list continued:

Style: Omega v CalAmp Case No. 6:13-cv-950-ORL-40 DAB

Government ☐ Plaintiff ☐ Defendant ☐ Court ☒

Exhibit No.	Date Identified	Date Admitted	Witness	Objections	Description
Deft 11	11	2/23/16			opinion letter re: patent 876
Deft 13	12	2/23/16			opinion letter re: patent 885
Deft 14	13	2/23/16			opinion letter re: patent 727
Deft 15	14	2/23/16			opinion letter re: patent 278
	15	2/24			juror note

EXHIBIT 9

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OMEGA PATENTS, LLC,

Plaintiff,

v. Case No: 6:13-cv-1950-Orl-40DAB

CALAMP CORP.,

Defendant.
_____/

COURT'S INSTRUCTIONS TO THE JURY

Members of the jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. When I have finished you will go to the jury room and begin your discussions, sometimes called deliberations.

JURY INSTRUCTION NO. 1

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact.

There's no legal difference in the weight you may give to either direct or circumstantial evidence.

JURY INSTRUCTION NO. 2

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

JURY INSTRUCTION NO. 3

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. Also ask yourself whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

JURY INSTRUCTION NO. 4

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

When a witness is being paid for reviewing and testifying concerning the evidence, you may consider the possibility of bias and should view with caution the testimony of such witness where court testimony is given with regularity and represents a significant portion of the witness's income.

JURY INSTRUCTION NO. 5

In this case it is the responsibility of Omega to prove every essential part of its infringement allegation by a "preponderance of the evidence." This is sometimes called the "burden of proof" or the "burden of persuasion."

A "preponderance of the evidence" simply means an amount of evidence that is enough to persuade you that Omega's allegations are more likely true than not true.

If the proof fails to establish any essential part of an allegation or contention by a preponderance of the evidence, you should find against Omega.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of Omega's allegations by a preponderance of the evidence, you should find for CalAmp as to that claim.

Even if Omega proves its claim of infringement by a preponderance of the evidence, CalAmp can prevail in this case if it proves its allegations of invalidity by clear and convincing evidence. This is a higher standard of proof than proof by a preponderance of the evidence. It means the evidence must persuade you that the allegation or defense is highly probable or reasonably certain. The Court will tell you when to apply this standard.

JURY INSTRUCTION NO. 6

I will now summarize the issues that you must decide and for which I will provide instructions to guide your deliberations. You must decide the following three issues:

1. Whether Omega has proved by a preponderance of the evidence that CalAmp infringed claims 1, 3-5, 12, 14, and 16 of the '876 patent, 1-3, 12, and 14 of the '885 patent, 1, 10, and 11 of the '727 patent, and claims 1-6, 8, 11-14, 16, 18, 19, and 21 of the '278 patent. These are known as the "asserted claims."

2. Whether CalAmp has proved by clear and convincing evidence that the asserted claims were obvious in light of multiple pieces of prior art.

3. What amount of damages, if any, Omega has proved.

JURY INSTRUCTION NO. 7

Before you decide whether CalAmp has infringed the claims of the patents or whether the patent claims are invalid, you will have to understand the patent claims. The patent claims involved here are claims 1, 3-5, 12, 14, and 16 of the '876 patent, 1-3, 12, and 14 of the '885 patent, 1, 10, and 11 of the '727 patent, and claims 1-6, 8, 11-14, 16, 18, 19, and 21 of the '278 patent, found at the end of the patents, which are exhibits in evidence. The claims are intended to define, in words, the boundaries of the inventor's rights. Only the claims of the patent can be infringed. Neither the written description, nor the drawings of a patent can be infringed. Each of the claims must be considered individually. You must use the same claim meaning for both your decision on infringement and your decision on invalidity.

JURY INSTRUCTION NO. 8

Before you can decide many of the issues in this case, you will need to understand the role of patent "claims." The patent claims are the numbered sentences at the end of each patent. The claims are important because it is the words of the claims that define what a patent covers. A claim sets forth, in words, a set of requirements. Each claim sets forth its requirements in a single sentence. If a device or a method satisfies each of these requirements, then it is covered by the claim.

The figures and text in the rest of the patent provide a description and/or examples of the invention and provide a context for the claims, but it is the claims that define the breadth of the patent's coverage. Each claim is effectively treated as if it were a separate patent, and each claim may cover more or less than another claim. Therefore, what a patent covers depends, in turn, on what each of its claims covers.

The coverage of a patent is assessed claim-by-claim. In patent law, the requirements of a claim are often referred to as "claim elements" or "claim limitations." When a thing (such as a product or a process) meets all of the requirements of a claim, the claim is said to "cover" that thing, and that thing is said to "fall" within the scope of that claim. In other words, a claim covers a product or process where each of the claim elements or limitations is present in that product or process.

You will first need to understand what each claim covers in order to decide whether or not there is infringement of the claim and to decide whether or not the

claim is invalid. The law says that it is my role to define the terms of the claims and it is your role to apply my definitions to the issues that you are asked to decide in this case. Therefore, as I explained to you at the start of the case, I have determined the meaning of the claims and I will provide to you my definitions of certain claim terms. You must accept my definitions of these words in the claims as being correct. It is your job to take these definitions and apply them to the issues that you are deciding, including the issues of infringement and validity.

JURY INSTRUCTION NO. 9

It is my job as judge to provide to you the meaning of any claim language that must be interpreted. You must accept the meanings I give you and use them when you decide whether any claim has been infringed and whether any claim is invalid. I will now tell you the meanings of the following words and groups of words from the patent claims. For any words in the claim for which I have not provided you with a definition, you should apply their plain and ordinary meaning.

CLAIM TERM	COURT'S CONSTRUCTION
Transmitter	Radio frequency transmitter
Receiver	Radio frequency receiver
Controller	Electronic circuitry that performs one or more control functions
Data communication bus	Wired connection for communication of digital messages among vehicle devices, with each message including one or more device addresses
Multi-vehicle compatible controller	Electronic circuitry that performs one or more control functions, and can operate with more than one vehicle
Command signal	Signal generated on the data communications bus for operating a vehicle device
Device codes	Signal from a vehicle device
Enabling data	Data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller
Programming instructions	Code which instructs the controller to perform an operation

JURY INSTRUCTION NO. 10

I will now instruct you as to the rules you must follow when deciding whether Omega has proven that CalAmp infringed any of the claims of the Omega patents.

Patent law gives the owner of a valid patent the right to exclude others from importing, making, using, offering to sell, or selling the patented invention within the United States during the term of the patent. Any person or business entity that has engaged in any of those acts without the patent owner's permission infringes the patent. Here, Omega alleges that CalAmp's LMU-3000, LMU-3030, LMU-3050, vpod, and vpod2 infringe the asserted claims of the Omega patents.

In deciding the issue of infringement, you must compare the CalAmp accused products to the claims of the Omega patents.

A patent may be infringed directly or indirectly. As explained further in the following instructions, direct infringement results if the accused product is covered by at least one claim of the patent. Indirect infringement results if the defendant induces another to infringe a patent or contributes to the infringement of a patent by another.

JURY INSTRUCTION NO. 11

In this case, Omega asserts that CalAmp has directly infringed the patent. CalAmp is liable for directly infringing Omega's patent if you find that Omega has proven that it is more likely than not that CalAmp made, used, imported, offered to sell, or sold the invention defined in at least one claim of Omega's patent.

Someone can directly infringe a patent without knowing of the patent or without knowing that what they are doing is an infringement of the patent. They also may directly infringe a patent even though they believe in good faith that what they are doing does not infringe a patent or if they believe in good faith that the patent is invalid.

JURY INSTRUCTION NO. 12

To determine literal infringement, you must compare the accused products with each claim that Omega asserts is infringed, using my instructions as to the meaning of the patent claims.

A patent claim is literally infringed only if CalAmp's products include each and every element in that patent claim. If CalAmp's products do not contain one or more elements recited in a claim, CalAmp does not literally infringe that claim.

You must determine literal infringement with respect to each patent claim of the '876, '885, '727 and '278 patents individually.

The accused product should be compared to the invention described in each patent claim it is alleged to infringe. The same element of the accused product may satisfy more than one element of a claim.

JURY INSTRUCTION NO. 13

In this case, CalAmp is accused of actively inducing its customers to directly infringe Omega's patent. To find that CalAmp actively induced infringement, it is not necessary to show that CalAmp personally infringed, provided: (a) a single actor is responsible for direct infringement, namely, all of the components or steps of the product or method accused of infringing the patent; and (2) CalAmp actively induced these acts of infringement by its another entity. If you do not find that there is direct infringement by a single actor, or if you do not find that CalAmp actively induced these acts, you must find that CalAmp did not induce infringement of the patents.

To prove active infringement, Omega must establish it is more likely than not that:

1. CalAmp aided, instructed, or otherwise acted with the intent to cause acts by CalAmp's customers that would constitute direct infringement of the patent;
2. CalAmp knew of the patent, or showed willful blindness to the existence of the patent, at that time;
3. CalAmp knew, or showed willful blindness that it consciously ignored the possibility that CalAmp's customers would infringe at least one claim of the patent; and
4. CalAmp's customers infringed at least one patent claim.

To find willful blindness: (1) CalAmp must have subjectively believed that there was a high probability that a patent existed covering the accused CalAmp

products and (2) CalAmp must have taken deliberate actions to avoid learning of the patent.

JURY INSTRUCTION NO. 14

There are two different types of claims in the patent. One type is called an independent claim. The other is called a dependent claim.

An independent claim does not refer to any other claim of the patent. An independent claim must be read separately from the other claims to determine the scope of the claim. An "independent claim" sets forth all of the requirements that must be met in order to be covered by that claim.

A dependent claim is a claim that refers to at least one other claim in the patent. A dependent claim includes all of the elements of the claim to which the dependent claim refers, as well as the elements recited in the dependent claim itself.

To establish literal infringement of a dependent claim, Omega must show that it is more likely than not that the CalAmp's products or methods include each and every element of the independent claim and the dependent claim.

If you find that the independent claim from which the dependent claim depends is not literally infringed, then you must find that the dependent claim is also not literally infringed.

JURY INSTRUCTION NO. 15

CalAmp contends that the asserted claims of the patents-in-suit are invalid. CalAmp must prove by clear and convincing evidence that each asserted claim is invalid.

Claims of an issued patent may be found to be invalid. Thus, you must determine whether each of Omega's claims is invalid.

CalAmp contends that the patents-in-suit are invalid as obvious in light of prior art such as products, publications, and/or patents publicly known or available prior to the asserted patents.

I will now instruct you in more detail why CalAmp alleges that the asserted claims of Omega's patents are invalid.

JURY INSTRUCTION NO. 16

Prior art includes any of the following items received into evidence during trial:

1. any product or method that was publicly known or used by others in the United States before the patented invention was made;

2. patents that issued more than one year before the filing date of the patent, or before the invention was made;

3. publications having a date more than one year before the filing date of the patent, or before the invention was made;

4. any product or method that was in public use or on sale in the United States more than one year before the patent was filed;

5. any product or method that was made by anyone before the named inventors created the patented product or method where the product or method was not abandoned, suppressed, or concealed.

JURY INSTRUCTION NO. 17

This case involves two types of patent claims: independent claims and dependent claims.

An independent claim does not refer to any other claim of the patent. An independent claim must be read separately from the other claims to determine the scope of the claim. An "independent claim" sets forth all of the requirements that must be met in order to be covered by that claim.

A dependent claim is a claim that refers to at least one other claim in the patent. A dependent claim includes all of the elements of the claim to which the dependent claim refers, as well as the elements recited in the dependent claim itself.

In this case, claim 1 of the '876 patent; claim 1 of the '885 patent; claim 1 of the '727 patent; and claims 1, 13, and 18 of the '278 patent are each independent claims.

You must evaluate the invalidity of each asserted claim separately. Even if an independent claim is invalid, this does not mean that the dependent claims that depend from it are automatically invalid. Rather, you must consider the validity of each claim, separately. You must decide this issue of validity on a claim-by-claim basis. However, if you find that a dependent claim is invalid, then you must find that the independent claim from which it depends is also invalid. The dependent claim includes all of the elements of the independent claim from which it depends.

JURY INSTRUCTION NO. 18

The question of invalidity of a patent claim is determined from the perspective of a person of ordinary skill in the art in the field of the asserted invention.

You must determine the level of ordinary skill in the field of the invention. The higher the level of ordinary skill, the easier it may be to establish that an invention would have been obvious. Persons having a greater level of education, training, or experience in the field will more readily appreciate technical details that may be more challenging for persons having a lower level of skill. On the other hand, persons having a lower level of skill may not perceive as obvious technical details that would be apparent to persons having greater skill. In order to determine the obviousness of the invention you will be asked to determine what the ordinary level of skill was in the field of the invention. Regardless whether you decide to articulate in your verdict what you believe was the level of ordinary skill in the field of the invention, you must consider and assess this factor before reaching your conclusion in this case.

JURY INSTRUCTION NO. 19

In order to qualify as prior art, a printed publication must have been maintained in some tangible form, such as printed pages, typewritten pages, magnetic tape, microfilm, photographs, internet publication, photocopies, and must have been sufficiently accessible to persons interested in the subject matter of its contents.

Information is publicly accessible if it was distributed or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter exercising reasonable diligence can locate it. It is not necessary for the printed publication to have been available to every member of the public. An issued patent is a printed publication. A published patent application is a printed publication as of its publication date.

The disclosure of the claimed invention in the printed publication must be complete enough to enable one of ordinary skill in the art to use the invention without undue experimentation. In determining whether the disclosure is enabling, you should take into account what would have been within the knowledge of a person of ordinary skill in the art one year before the application for the patent was filed, and you may consider evidence that sheds light on the knowledge such a person would have had.

JURY INSTRUCTION NO. 20

CalAmp contends the asserted claims of the Omega's patents are invalid as "obvious."

A claimed invention is invalid as "obvious" if it would have been obvious to a person of ordinary skill in the art of the claimed invention at the time the invention was made. Unlike anticipation, which allows consideration of only one item of prior art, obviousness may be shown by considering more than one item of prior art.

In deciding obviousness, you must avoid using hindsight; that is, you should not consider what is known today or what was learned from the teachings of the patent. You should not use the patent as a road map for selecting and combining items of prior art. You must put yourself in the place of a person of ordinary skill in the art at the time the invention was made.

The following factors must be evaluated to determine whether CalAmp has established that the claimed invention(s) is obvious:

1. the scope and content of the prior art relied upon by CalAmp;
2. the difference or differences, if any, between each claim of the patents that CalAmp contends is obvious and the prior art;
3. the level of ordinary skill in the art at the time the invention of the patent was made; and
4. additional considerations, if any, that indicate that the invention was obvious or not obvious.

Each of these factors must be evaluated, although they may be analyzed in any order, and you must perform a separate analysis for each of the claims.

CalAmp must prove by clear and convincing evidence that the invention would have been obviousness.

I will now explain each of the four factors in more detail.

JURY INSTRUCTION NO. 21

You must determine what is the prior art that may be considered in determining whether any claim of the Omega patents is obvious. A prior art reference may be considered if it discloses information designed to solve any problem or need addressed by the patent or if the reference discloses information that has obvious uses beyond its main purpose that a person of ordinary skill in the art would reasonably examine to solve any problem or need addressed by the patent.

JURY INSTRUCTION NO. 22

You should analyze whether there are any relevant differences between the prior art and the claimed invention from the view of a person of ordinary skill in the art at the time of the invention. Your analysis must determine the impact, if any, of such differences on the obviousness or nonobviousness of the invention as a whole, and not merely some portion of it.

In analyzing the relevance of the differences between the claimed invention and the prior art, you do not need to look for precise teaching in the prior art directed to the subject matter of the claimed invention. You may take into account the inferences and creative steps that a person of ordinary skill in the art would have employed in reviewing the prior art at the time of the invention. For example, if the claimed invention combined elements known in the prior art and the combination yielded results that were predictable to a person of ordinary skill in the art at the time of the invention, then this evidence would make it more likely that the claim was obvious. On the other hand, if the combination of known elements yielded unexpected or unpredictable results, or if the prior art teaches away from combining the known elements, then this evidence would make it more likely that the claim that successfully combined those elements was not obvious.

Importantly, a claim is not proved obvious merely by demonstrating that each of the elements was independently known in the prior art. Most, if not all, inventions rely on building blocks long known, and claimed discoveries almost of necessity will likely be combinations of what is already known. Therefore, you should consider whether a reason existed at the time of the invention that would

have prompted a person of ordinary skill in the art in the relevant field to combine the known elements in the way the claimed invention does. The reason could come from the prior art, the background knowledge of one of ordinary skill in the art, the nature of any problem or need to be addressed, market demand, or common sense. You may also consider whether the problem or need was known, the possible approaches to solving the problem or addressing the need were known and finite, and the solution was predictable through use of a known option.

If you find that a reason existed at the time of the invention to combine the elements of the prior art to arrive at the claimed invention, this evidence would make it more likely that the claimed invention was obvious. Again, you must undertake this analysis separately for each claim that CalAmp contends is obvious.

JURY INSTRUCTION NO. 23

The determination of whether a claimed invention is obvious is based on the perspective of a person of ordinary skill in the art. The person of ordinary skill is presumed to know all prior art that you have determined to be reasonably relevant. The person of ordinary skill is also a person of ordinary creativity that can use common sense to solve problems.

When determining the level of ordinary skill in the art, you should consider all the evidence submitted by the parties, including evidence of:

1. the level of education and experience of persons actively working in the field at the time of the invention, including the inventor;
2. the types of problems encountered in the art at the time of the invention; and
3. the sophistication of the technology in the art at the time of the invention, including the rapidity with which innovations were made in the art at the time of the invention.

JURY INSTRUCTION NO. 24

Before deciding the issue of obviousness, you must also consider certain factors, which may help to determine whether or not the invention would not have been obvious. No factor alone is dispositive, and you must consider the obviousness or nonobviousness of the invention as a whole.

1. Were accused products covered by the claim commercially successful due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or features of the product other than those found in the claim?

2. Was there long felt need for a solution to the problem facing the inventors, which was satisfied by the claimed invention?

3. Did others try, but fail, to solve the problem solved by the claimed invention?

4. Did others copy the claimed invention?

5. Did the claimed invention achieve unexpectedly superior results over the closest prior art?

6. Did others in the field, praise the claimed invention or express surprise at the making of the claimed invention?

7. Did others accept licenses under patents because of the merits of the claimed invention?

Answering all, or some, of these questions "yes" may suggest that the claim was not obvious. Answering all, or some, of these questions "no" may suggest that the claims would have been obvious. These factors are relevant only if there is a connection, or nexus, between the factor and the invention covered by the patent claims. Even if you conclude that some of the above indicators have been established, those factors should be considered along with all the other evidence

in the case in determining whether CalAmp has proven that the claimed invention would have been obvious.

JURY INSTRUCTION NO. 25

If you find that the accused device infringes any of the claims of the Omega patents, and that those claims are not invalid, you must determine the amount of damages to be awarded Omega for the infringement. On the other hand, if you find that each of the asserted patent claims is either invalid or is not infringed, then you need not consider damages in your deliberations.

Omega must prove each element of its damages – including the amount of the damages – by a preponderance of the evidence which means more likely true than not.

If proven by the Omega, damages must be in an amount adequate to compensate Omega for the infringement. The purpose of a damage award is to put Omega in about the same financial position it would have been in if the infringement had not happened. But, the damage award cannot be less than a reasonable royalty. You may not add anything to the amount of damages to punish an accused infringer or to set an example. You also may not add anything to the amount of damages for interest.

The fact that I am instructing you on damages does not mean that the Court believes that one party or the other should win in this case. My instructions about damages are for your guidance only in the event you find in favor of Omega. You will need to decide the issue of damages only if you find that one or more of the asserted claims are both not invalid and infringed.

JURY INSTRUCTION NO. 26

The date that Omega first notified CalAmp of its claim for patent infringement is the date for the start of damages. The parties do not agree on that date, and it is up to you to determine what that date is. Omega must prove that it is more likely than not that the CalAmp actually was notified of the claim for patent infringement as of the date alleged by Omega.

JURY INSTRUCTION NO. 27

The patent law provides that the amount of damages that CalAmp should pay Omega for infringing Omega's patents must be enough to compensate for the infringement, but may not be less than a reasonable royalty for the use of Omega's invention.

You must award Omega a reasonable royalty in the amount that the Omega has proved. A royalty is a payment made to a patent owner by someone else in exchange for the rights to make, use, sell, or import a patented product.

The reasonable royalty award must be based on the incremental value that the patented invention adds to the end product. When the infringing products have both patented and unpatented features, measuring this value requires a determination of the value added by the patented features. The ultimate combination of royalty base and royalty rate must reflect the value attributable to the infringing features of the product, and no more.

JURY INSTRUCTION NO. 28

A reasonable royalty is the royalty that would have resulted from a hypothetical license negotiation between Omega and CalAmp. Of course, we know that they did not agree to a license and royalty payment. But, in order to decide on the amount of reasonable royalty damages, you should assume that that the parties did negotiate a license just before the infringement began. This is why it is called a "hypothetical" license negotiation. You should assume that both parties to the hypothetical negotiation understood that the patent was valid and infringed and both were willing to enter into a license. You should also presume that the parties had full knowledge of the facts and circumstances surrounding the infringement at the time of the hypothetical negotiation.

JURY INSTRUCTION NO. 29

In determining the amount of a reasonable royalty, you may consider evidence on any of the following factors, in addition to any other evidence presented by the parties on the economic value of the patent:

1. Any royalties received by the licensor for the licensing of the patent-in-suit, proving or tending to prove an established royalty.

2. The rates paid by CalAmp to license other patents comparable to the patents in suit.

3. The nature and scope of the license, as exclusive or non-exclusive, or as restricted or non-restricted in terms of its territory or with respect to whom the manufactured product may be sold.

4. The licensor's established policy and marketing program to maintain its right to exclude others from using the patented invention by not licensing others to use the invention, or by granting licenses under special conditions designed to preserve that exclusivity.

5. The commercial relationship between the licensor and the licensee, such as whether or not they are competitors in the same territory in the same line of business.

6. The effect of selling the patented product in promoting sales of other products of the licensee; the existing value of the invention to the licensor as a generator of sales of its non-patented items; and the extent of such collateral sales.

7. The duration of the patents and the term of the license.

8. The established profitability of the product made under the patents in suit; its commercial success; and its current popularity.

9. The utility and advantages of the patented invention over the old modes or devices, if any that had been used for achieving similar results.

10. The nature of the patented invention; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the invention.

11. The extent to which CalAmp has made use of the invention; and any evidence that shows the value of that use.

12. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or analogous inventions.

13. The portion of the profit that arises from the patented invention itself as opposed to profit arising from unpatented features, such as the manufacturing process, business risks, or significant features or improvements added by the accused infringer.

14. The opinion testimony of qualified experts.

15. The amount that a licensor and a licensee (such as CalAmp) would have agreed upon (at the time the infringement began) if both sides had been reasonably and voluntarily trying to reach an agreement; that is, the amount which a prudent licensee—who desired, as a business proposition, to obtain a license to manufacture and sell a particular article embodying the patented invention—would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a patentee who was willing to grant a license.

16. Any other economic factor that a normally prudent business person would, under similar circumstances, take into consideration in negotiating the hypothetical license.

JURY INSTRUCTION NO. 30

Although the relevant date for the hypothetical license negotiation is just before the infringement began, you may consider evidence relating to events after the infringement began, any actual profits made by CalAmp due to its infringement and any commercial success of the patented invention or the infringing products after that date.

JURY INSTRUCTION NO. 31

When determining a reasonable royalty, you may consider evidence concerning the amounts that other parties have paid for rights to the patents in question, or for rights to similar technologies. A license agreement must not be perfectly comparable to a hypothetical license that would be negotiated between Omega and CalAmp in order for you to consider it. However, if you choose to rely upon evidence from any other license agreements, you must account for any differences between those licenses and the hypothetically negotiated license between Omega and CalAmp, in terms of the technologies and economic circumstances of the contracting parties, when you make your reasonable royalty determination.

JURY INSTRUCTION NO. 32

If you find that it is more likely than not that CalAmp infringed Omega's patent, then you must also determine whether or not Calamp's infringement was willful. In contrast to proving that infringement is more likely than not, Omega must prove willfulness by clear and convincing evidence. Willfulness requires clear and convincing evidence that:

1. CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent, and
2. This objectively high likelihood of infringement was either known or so obvious that it should have been known to CalAmp.

In making the determination of whether CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent, you are to consider what a reasonable person would have believed and are not to consider CalAmp's actual state of mind.

In determining whether CalAmp knew of the objectively high likelihood of infringement or whether the likelihood was so obvious that CalAmp should have known of that likelihood, you must consider the totality of the circumstances. The totality of the circumstances comprises a number of factors, which include, but are not limited to, whether CalAmp intentionally copied the claimed invention or a product covered by patent, whether CalAmp relied on competent legal advice, and whether CalAmp presented a substantial defense to infringement, including the defense that the patent is invalid.

JURY INSTRUCTION NO. 33

Of course, the fact that I have given you instructions concerning the issue of Omega's damages should not be interpreted in any way as an indication that I believe that the Omega should, or should not, prevail in this case.

Your verdict must be unanimous—in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges— judges of the facts. Your only interest is to seek the truth from the evidence in the case.

JURY INSTRUCTION NO. 34

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it and date it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so you should be patient as you await my response. But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.

REMARKS

The Patent Owner thanks the Examiner for the careful and thorough reexamination of the present application, and for the helpful response to the Patent Owner's Arguments and Declaration included with the final Office Action on pages 2-11. Based upon the helpful clarifications provided therein, the Patent Owner provides the following additional arguments and a declaration from Mr. Suman, an inventor on one of the cited references, and a declarant in the first reexamination of the '278 patent. It is respectfully requested that the Examiner enter and favorably consider the Suman Declaration.

The Patent Owner submits that all of the claims are patentable, presents arguments herein supporting such patentability, and respectfully requests that the Examiner withdraw all pending rejections and issue a Reexamination Certificate confirming all claims as patentable.

I. Updated Background

A. The Related Litigations

1. Calamp (Requester) Litigation

The status for the related litigation with the Requester, Calamp, is unchanged. Requester has obtained an order for a stay of execution of judgment based upon posting a *supersedeas* bond in the amount of $17M. Requester has filed a renewed motion for judgment as a matter of law and for a new trial, and has filed a motion to vacate the judgment for lack of venue. These motions are pending.

Of further interest in the Calamp litigation, Calamp was found to have obtained two patents (8,812,173 and its continuation, 9,171,460) on data bus technology similar to the

'278 patent. While Calamp was aware of the Chou et al. patent, Calamp did not cite it in the prosecution of these two patents.

2. Enfora Litigation

The Patent Owner filed a new patent infringement lawsuit on July 21, 2017 against Enfora, Inc. in the Northern District of Georgia, Atlanta Division (Case 1:17-cv-02769-TWT). The asserted patents in this Enfora suit include the '278 patent, which is the subject of this second reexamination by Calamp.

B. First Reexamination of the '278 Patent

As the Examiner is aware, the first reexamination (90/013,587) also filed by Requester, resulted in a Reexamination Certificate being issued on December 28, 2016. The United States Patent and Trademark Office (PTO) in that first reexamination:

(1) construed the claims of the '278 patent,
(2) considered the prior art submitted by Requester, including Suman et al. and Spaur et al. used in the present reexamination,
(3) favorably considered a Declaration by Mr. McAlexander,
(4) favorably considered a Declaration submitted by Mr. Suman, and
(5) confirmed the patentability of all of the claims of the '278 patent.

C. Other Related Reexaminations

The Requester filed reexamination requests against the three other patents of the Patent Owner found to be willfully infringed by the Court in the related Calamp litigation. All

three of these reexaminations have terminated in favor of the Patent Owner. This is the list of the other three reexaminations:

(1) U.S. Patent No. 6,756,885; Reexamination 90/013,741 - filed April 28, 2016. **Ex Parte Reexamination Certificate issued August 1, 2017.**

(2) U.S. Patent No. 6,346,876; Reexamination 90/013,659 - filed December 11, 2015. **Ex Parte Reexamination Certificate issued September 1, 2017.**

(3) U.S. Patent No. 7,671,727: Reexamination 90/013,832 - filed October 12, 2016. **Ex Parte Reexamination Certificate issued August 1, 2017.**

The Examiner on page 4 of the Office Action stated that Chou et al. is not of record in any of the related co-pending reexaminations. The '885 and '876 patents each has an earlier priority date than Chou et al. so that Chou et al. is not prior art to them. **However, the Examiner's attention is directed to the '727 patent, where Chou et al. was indeed cited and considered in the original prosecution.**

II. The Pending Claims

The claimed invention, as recited in independent Claim 1, for example, is directed to a multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout the vehicle. The multi-vehicle compatible tracking unit comprises a vehicle position determining device, a wireless communications device, and a multi-vehicle compatible controller for cooperating with the vehicle position determining device and the wireless communications device to send vehicle

position information. The multi-vehicle compatible controller is to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles. The multi-vehicle compatible tracking unit comprises a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller.

Independent Claims 13 and 18 are directed to related multi-vehicle compatible vehicle tracking units. Independent Claim 13 recites that the downloading interface includes a connector for temporary connection to a downloading device. Independent Claim 18 recites that the downloading interface includes a wireless receiver for temporary connection to a downloading device.

III. The Proper Claim Construction

A. Introduction

On pages 6-8 of the final Office Action, the Examiner contended that Patent Owner's positions regarding Chou et al. failing to disclose the multi-vehicle compatible controller and downloading interface "are not commensurate with the terms of the claim itself and/or such terms given the broadest reasonable interpretation consistent with the specification but not reading limitations in the specification into the claims, the teachings of Chou and/or the 3/29/2017 Office Action."

Further, on page 9 of the final Office Action, the Examiner contended that Patent Owner's positions, including the

supporting declaration of Mr. McAlexander regarding Chou et al. teaching away from the claimed invention, are also said to be "not commensurate with the terms of the claim itself and/or such terms given the broadest reasonable interpretation consistent with the specification but not reading limitations in the specification into the claims." More particularly, the Examiner stated that "the claim language does not require specifics (e.g. on-board structure with the ability to work with different vehicles having different codes, i.e. simultaneous storage data/codes of vehicles from different manufacturers and/or different models and use of such codes) as asserted, as best understood." *Id.*

In other words, the Patent Owner understands that the Examiner contended: (1) that the claim construction asserted by Patent Owner is not correct, and/or (2) that the Patent Owner does not correctly read the disclosure of Chou et al. The Patent Owner respectfully disagrees on both points and offers the following supporting arguments.

The Patent Owner respectfully submits that the Examiner has improperly disregarded the prior Patent Office claim construction, improperly dissected the claims into isolated elements, and has used an improper broadest reasonable interpretation under 35 U.S.C. §112, 6th paragraph. Further, the Patent Owner asserts that the Examiner's interpretation of the claims when applied to the prior art Chou et al. patent, is inconsistent with the Examiner's own interpretation of the corresponding structure of the claim elements in later parts of the final Office Action.

B. The Patent Owner's Claim Construction Is The Same As Used By The USPTO In The First Reexamination

During the first USPTO reexamination of the '278 patent, the USPTO determined and applied a claim construction and found all of the claims to be patentable. The Examiner's statement of reasons for patentability is: "the Examiner agrees that the declarations by Suman and McAlexander provide sufficient evidence that Suman and Spaur each fail to disclose the multi-vehicle compatible controller as recited in independent claims 1, 13 and 18." (Notice of Intent to Issue a Reexamination Certificate, 12/01/2016, page 2; Exhibit 1; emphasis added).

The referenced prior declarations of Mr. McAlexander and Mr. Suman are also attached as Exhibits 2 and 3, respectively, for the Examiner's convenience. These declarations also address rejections using Suman et al. and Spaur et al., both now applied as secondary references in the present reexamination.

The claim construction used in both the Suman and McAlexander earlier declarations from the first reexamination is essentially the same. For the Examiner's convenience, the construction used by Mr. Suman in his earlier declaration is as follows:

> 7. I understand that the '278 patent includes three independent claims and twenty-two claims total. Representative Claim 1 is directed to a multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout the vehicle. The multi-vehicle compatible tracking unit includes a vehicle position determining device, a wireless communications device, and a multi-vehicle compatible controller for cooperating with the vehicle position determining device and

the wireless communications device to send vehicle position information. The multi-vehicle compatible controller communicates over the vehicle data bus with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles. A downloading interface is included for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller.

8. I understand that the specification of the '278 patent at column 24, lines 8-12, provides that "[t]he enabling data may be the vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for example."

9. I further understand that independent Claim 13 of the '278 patent recites that the downloading interface includes a connector for temporary connection to a downloading device, and that independent Claim 18 recites that the downloading interface includes a wireless receiver for temporary connection to a downloading device.

10. Based upon my study of the '278 patent, and my knowledge of the relevant technology, I understand that the '278 patent is directed to a multi-vehicle compatible tracking unit that may be used to write to and/or read from vehicle devices via the vehicle data communications bus, and do so despite the fact that different vehicles have different device codes.

C. The Claim As A Whole Must Be Considered

On page 7 of the current final Office Action, the Examiner contended that the claimed multi-vehicle compatible controller, as it relates to the cited Chou et al. patent:

> requires of corresponding structure merely the capability of using at least one code from among a plurality thereof for "different vehicles", see again the 3/29/2017 Office action bridging pages 2-3 and 24-26, i.e. teaching of such a capability by '499, i.e. capable of using a code from among a plurality thereof, i.e. model dependent.
>
> (Emphasis added).

The Examiner contended that the multi-vehicle compatible controller "does not require compatibility among vehicles of different manufacturers and/or different 'product' lines of the same manufacturer." *Id.* at 6.

The Examiner is reminded that "when evaluating the scope of a claim, every limitation in the claim must be considered. USPTO personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered." (MPEP §2103I.C.; emphasis added). The Examiner's apparent reading of the claim elements improperly dissects the claimed invention into discrete elements -- "multi-vehicle compatible controller", and "downloading interface" -- and evaluates those elements in isolation. Indeed, the multi-vehicle compatible controller must be interpreted with respect to the other recitations and elements in the claim, notably its cooperation with the downloading interface and the use of enabling data.

The Patent Owner respectfully submits that the Examiner cannot properly parse the claim so that the multi-vehicle controller is only defined by the language appearing in the clause "said multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different

vehicles." In particular, the claimed downloading interface permits downloading of enabling data related to the at least one corresponding vehicle device for use by the multi-vehicle compatible controller.

It is the claimed combination of the multi-vehicle compatible controller and downloading interface along with the enabling data, and the associated recitations, that provides compatibility among vehicles of different manufacturers and/or different product lines of the same manufacturer, as noted in the specification of the '278 patent.

D. The Broadest Reasonable Interpretation Under 35 U.S.C. §112 6th Paragraph

The Patent Owner respectfully points out that while a broadest reasonable interpretation of the claim element is proper, the recent Federal Circuit case of *IPCom GMBH & Co. v. HTC Corporation*, No. 2016-1474, 2017 U.S. App. LEXIS 12135 (Fed. Cir. July 7, 2017) *citing In re Donaldson Co.*, 16 F.3d 1189, 1193 (Fed. Cir. 1994) *en banc*, makes clear that a proper USPTO construction does not include any means capable of performing the recited function, giving no consideration to the content in the specification. *IPCom* provides:

> §112 ¶6 "sets a limit on how broadly the PTO may construe means-plus-function language under the rubric of 'reasonable interpretation,'" and "the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination." (Emphasis added).

As noted above on page 9 of the final Office Action, the Examiner further explained the construction of the multi-

vehicle compatible controller and downloading interface with respect to the disclosure of Chou et al. stating:

> the claim language does not require specifics (e.g. on-board structure with the ability to work with different vehicles having different codes, i.e. simultaneous storage data/codes of vehicles from different manufacturers and/or different models and use of such codes) as asserted, as best understood. (Emphasis added).

The Patent Owner respectfully disagrees with the Examiner's overly broad interpretation which, in essence, reads out recitations from the claims, fails to consider the claims as a whole, and fails to follow the claim construction approach mandated to the USPTO from the Federal Circuit based on the *IPCom* decision.

E. The Examiner Uses Inconsistent Claim Constructions

The Examiner interpreted the claim elements of the "multi-vehicle compatible controller" and "downloading interface" under 35 U.S.C. §112, 6th paragraph. Under that interpretation, the Examiner has identified in the Office Action the structure in the specification of the '278 patent corresponding to these two claim elements on pages 22-23 and 27-28, respectively. More particularly, the corresponding structure for the multi-vehicle compatible controller is described on pages 22-23 of the Office Action as:

> a controller including CPU, operating under stored program control, or other logic circuit, a memory, a clock and input/output circuitry for cooperating with said vehicle position determining device and said wireless communications device to send vehicle position information and for coupling to a vehicle data bus for communication thereover with at least one vehicle device using at least one

> corresponding vehicle device code from among a plurality thereof for different vehicles. (Emphasis added).

The corresponding structure for the downloading interface is defined by the Examiner on pages 27-28 of the final Office Action as:

> a downloading interface (Figure 10, 116), e.g. interface circuitry 132 (e.g. logic circuitry or other control circuitry along with switching components) for controlling communication with a downloading device, and either a wireless signal downloading interface (e.g. a wireless receiver 114, such as for temporary connection to the downloading device 115 via any one or more of a number of wireless technologies, such as cellular, satellite, IR, Bluetooth or WiFi technologies (Fig. 11) or a temporary wireless communication link with the downloading device provided by sharing the wireless communications device that sends position data (Fig. 12)) or a wired signal downloading interface (e.g. a connector 133a in the form of a socket to accept a memory card or other data storage medium capable of transferring data or a connector 133a for temporary connection to a mating connector 133b of the downloading device (Fig. 13) wherein the downloading device can be, e.g., a laptop computer, via RS232/429 protocol, USB, Fire Wire, TCP/IP (Internet), or any other wired protocol.) [] The corresponding structure [] is therefore such a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code, e.g. vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for use by said multi-vehicle compatible controller [].
>
> (Emphasis added).

However, as noted above, the Examiner has taken inconsistent positions in earlier parts of the Office Action,

that is, on pages 6-9. On page 9 of the final Office Action the Examiner states that "the claim language does not require specifics (e.g. on-board structure with the ability to work with different vehicles having different codes, i.e. simultaneous storage data/codes of vehicles from different manufacturers and/or different models and use of such codes) as asserted, as best understood." This asserted construction is incorrect for the reasons identified above and is also inconsistent with the Examiner's construction in other parts of the final Office Action.

The Patent Owner respectfully submits that the construction of the downloading interface on pages 27-28 is correct, and is also consistent with the USPTO construction applied in the first reexamination. More particularly, the corresponding structure for the downloading interface is a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code, e.g. vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for use by said multi-vehicle compatible controller. This is not found in the disclosure of Chou et al.

IV. The Claims Are Patentable

A. The Teachings of Chou et al.

FIG. 1 from Chou et al. is reproduced below for convenience.

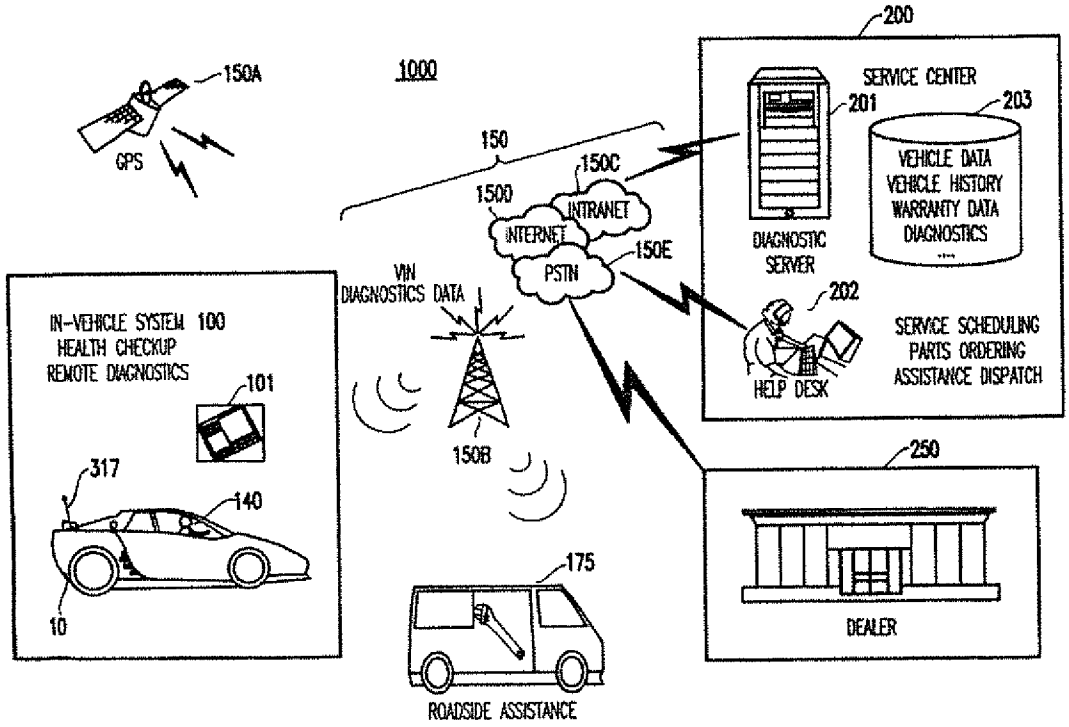


Figure 1 of Chou et al. Patent

The Chou et al. system includes a vehicle 10 having an in-vehicle computing system 100, and a client computer device 101 to enable vehicle health checkup and remote diagnostics. A communication link 150 is for communicating vehicle information (e.g., vehicle identification number, (VIN), diagnostic data, and the like). The vehicle location is established, for example, by a device 317 (e.g., antenna or the like) for receiving positioning information. A remote service center 200 is also provided having a diagnostic server 201, a help desk 202 and a data repository 203. The help desk 202 schedules services, orders parts, and dispatches assistance through the roadside assistance unit 175. The remote service

center 200 of FIG. 3 comprises a diagnostic server 201 that has access to data related to the vehicle such as as-built, history, diagnostics, warranty, service information and failure mode data. The diagnosis server 201 is linked to the data repository 203.

The Patent Owner submits that Chou et al. fails to disclose the claimed vehicle tracking unit including the multi-vehicle compatible controller and the downloading interface, as these terms are properly construed.

B. The Deficiencies of Chou et al.

1. Chou et al. is Cumulative of Suman et al.

Chou et al. discloses a remote diagnostic system including a data bus interface, a GPS module, an RF transceiver, and a processor at the vehicle that communicates with a remote service center. The Suman et al. '537 patent, cited as an anticipation reference and overcome in the first reexamination, includes the same elements (see FIGS. 1a and 5, reproduced below, and col. 15, lines 52-63, for example). (See also the attached Declaration of Mr. Suman for this reexamination, Exhibit 4).

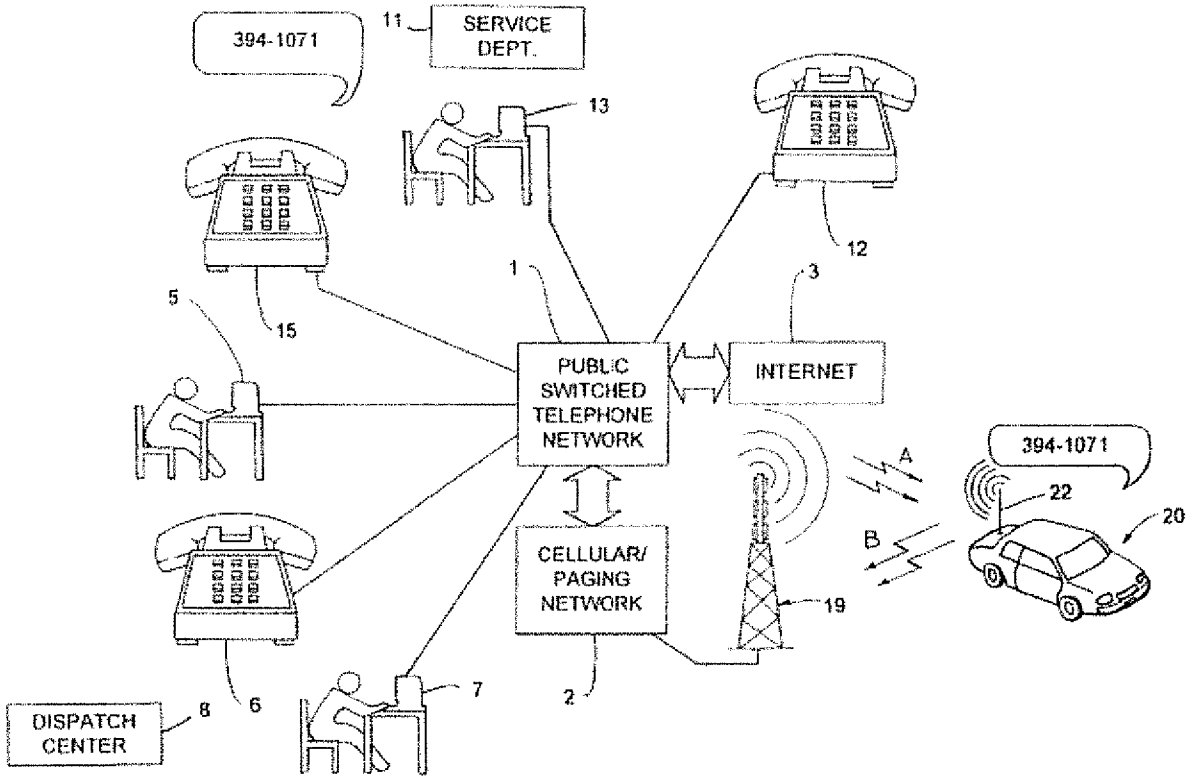


Figure 1a of Suman et al. '537 Patent

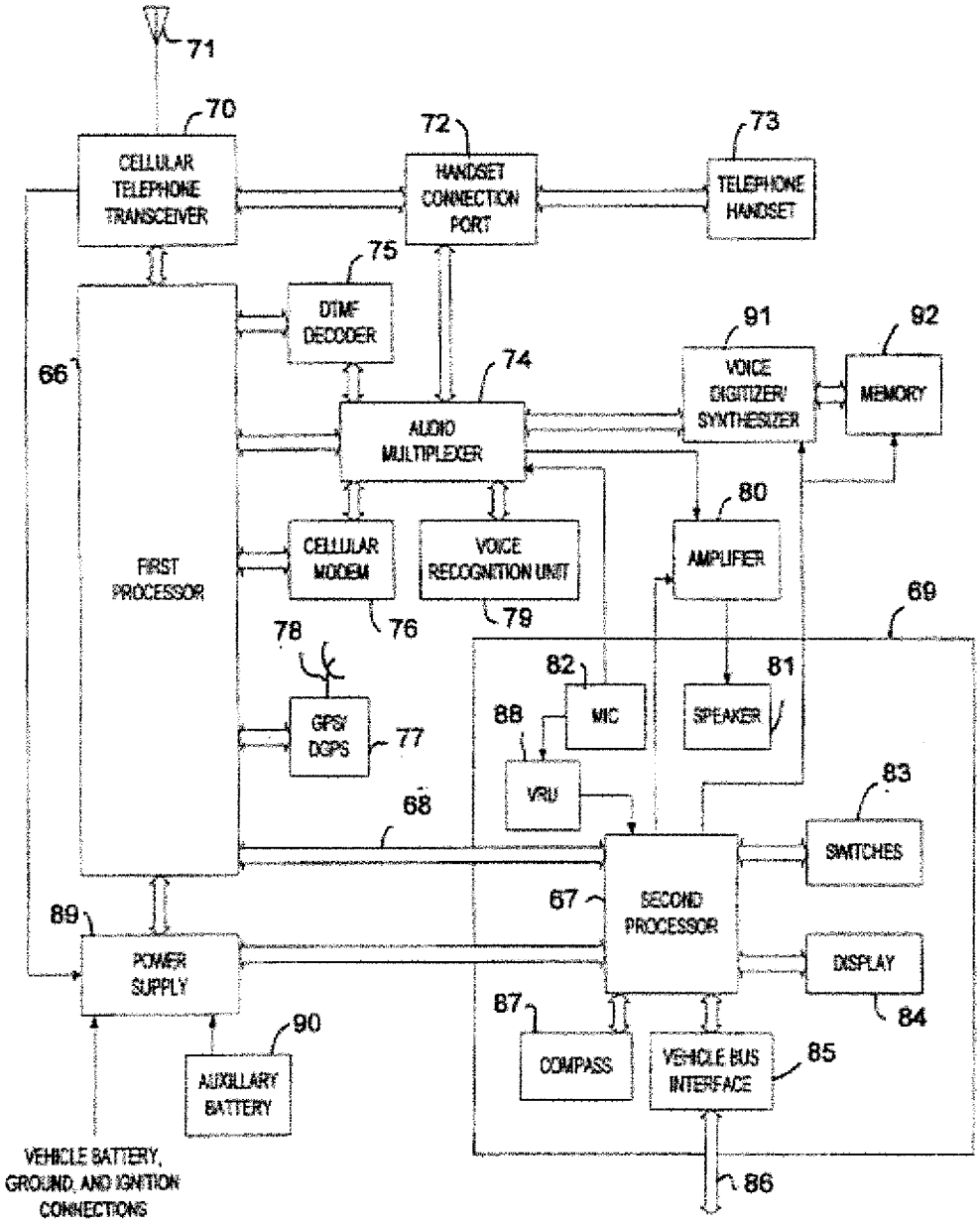


Figure 5 of Suman et al. '537 Patent

As noted above, the Examiner's statement of reasons for patentability in the first reexamination was: "the Examiner agrees that the declarations by Suman and McAlexander provide sufficient evidence that Suman and Spaur each fail to disclose the multi-vehicle compatible controller as recited in independent claims 1, 13 and 18." (Notice of Intent to Issue a Reexamination Certificate, 12/01/2016, page 2).

Chou et al., just like Suman et al., and as explained in greater detail below, fails to disclose a multi-vehicle compatible controller and downloading interface that permits downloading of enabling data for use by the multi-vehicle compatible controller.

2. Chou et al. Fails to Disclose the Multi-Vehicle Compatible Controller

Independent Claim 1, for example, recites a multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles.

Chou et al. provides the following description of the vehicle bus interface, as is pertinent to the different device codes for different vehicles:

> [t]he vehicle bus interface 120 includes the following modules: vehicle bus adapter 120C, fault detector 120B, and diagnostic data service 120A. The fault detector 120B polls the vehicle bus 104 through the vehicle bus adapter 120C checking for fault codes reported by the vehicle ECUs 103. The vehicle bus adapter 120C translates the messages received from the vehicle bus into the language of the fault detector. It also translates messages from the fault detector into

> the language of the vehicle bus. The fault code specifications and protocols of the vehicle may be Original Equipment Manufacturer (OEM) and model dependent. The term "vehicle fault codes" is meant to be synonymous with the term "trouble code" or "diagnostic trouble code". A listing of such codes may be found in the publication of the Society of Automotive Engineers, "SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual". The diagnostic data service 120A accepts request for vehicle parametric data and retrieves the data using the vehicle bus adapter.
>
> (Col. 4, lines 20-38; emphasis added).

The Examiner, on pages 35-36, contended that "Chou either implicitly discloses or obviously suggests a 'multi-vehicle compatible controller' and such controller is coupled to a vehicle data bus, e.g. 335, 104, for communication thereover, e.g. via 330, 120, with at least one vehicle device, e.g. 103, using at least one corresponding vehicle device code, i.e. (DTC), vehicle fault codes/protocols, which is vehicle model dependent, i.e. from among a plurality thereof for 'different vehicles'".

The cited SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual, i.e. the SAE HS-3000, provides that: "[c]urrently there is no uniformity in these numeric Diagnostic Trouble Codes (DTC) between manufacturers, and in some cases, even within the same manufacturer across different product lines." (SAE HS-3000, 1997, page 39).

Indeed, the lack of vehicle code compatibility among different vehicles for vehicle tracking units is the problem addressed by the claimed invention of the '278 patent (See Exhibit 3, paragraph 10; and Exhibit 4, paragraph 12). The inventor, Mr. Flick, recognized that having many different model

vehicle tracking units for many different vehicles presented significant inventory control and product development challenges, particularly in the aftermarket vehicle tracking unit area.

3. Chou et al. Fails to Disclose the Downloading Interface

Independent Claim 1, for example, further recites that the vehicle tracking unit comprises "a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller". Accordingly, the combination of the multi-vehicle controller and downloading interface reduces the need for expansive inventory and simplifies supplying vehicle tracking units for new vehicles.

As noted above, the Examiner has interpreted the downloading interface of the claimed vehicle tracking unit as structure "for permitting downloading of enabling data related to the at least one corresponding vehicle device code, e.g. vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for use by said multi-vehicle compatible controller." (final Office Action, page 18; emphasis added).

The Examiner, on page 36, contended that Chou et al. discloses the claimed downloading interface as follows:

> interface circuitry, e.g. NETWORK INTERFACE, 320, 107, docking facility, and a temporary wireless communication link, e.g. arrow 7, 14, arrow 3, 9, with the downloading device, i.e. TCP/IP(an internet/the Internet), 201, provided by sharing

the wireless communications device, e.g. 102, that sends position data, see, e.g. col. 7, lines 32-40, (see also discussion of claims 2-5) and such structure permits downloading of enabling data, e.g. instruction to gather data, vehicle parameter update/change, related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller, e.g. steps 2-6 in Figure 5.

FIG. 5, which illustrates a health checkup event operation flow, is reproduced below for convenience.

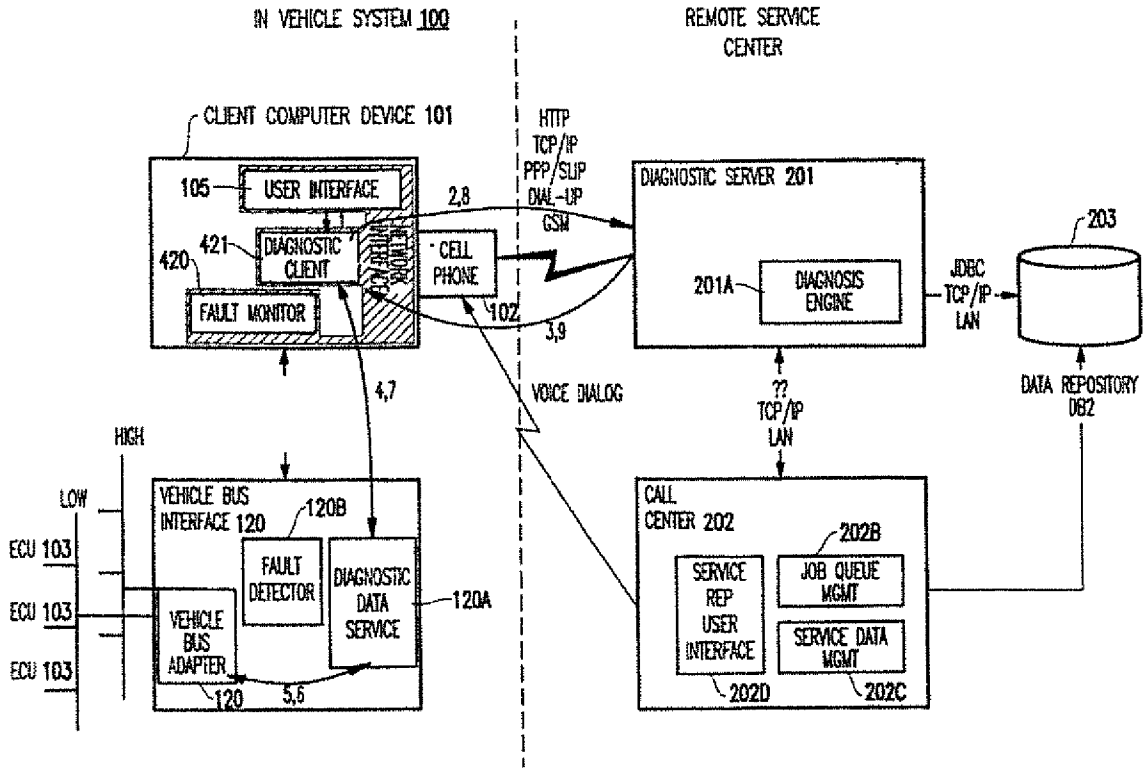


Figure 5 of Chou et al. Patent

Based upon FIG. 5 and these cited portions of Chou et al., the Examiner contended that: "[t]hus '499 discloses or obviously suggests 'a downloading interface' and such permits

downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller." (Pages 36-37).

The Patent Owner respectfully submits that Chou et al. fails to disclose or obviously suggest the claimed multi-vehicle compatible controller and downloading interface in the vehicle tracking unit. Instead, data from the ECUs on the vehicle bus is merely passed from the in-vehicle system to the remote service center of Chou et al. And, in the reverse direction, data is passed to the in-vehicle system in Chou et al. There is no discussion in Chou et al. of downloading enabling data related to at least device code for use by the multi-vehicle controller in the vehicle.

4. Comments on Specific Cited Portions of Chou et al.

The Examiner expressed on page 8 of the Office Action that the Patent Owner did not "discuss the entirety of the rejection, i.e. all the cited portions of Chou, e.g. col. 9, lines 35-45, col. 4, lines 15-38, col. 10, lines 1-11, with regard to the corresponding structure and function/capability of the functional phase [downloading interface clause]". To more clearly address these cited portions, the Patent Owner offers the following:

a. Comments on Chou et al. col. 9, lines 35-45

This cited portion of Chou et al. is reproduced below:

> [t]hen in step 2, the diagnostic client 421 initiates a health checkup session with the diagnostic server 201, and in step 3, the diagnostic server instructs the diagnostic client

> to gather vehicle data, such as VIN, malfunction codes, and/or a snapshot of the vehicle data.
>
> Then in step 4, the diagnostic client 421 requests the data from the diagnostic data service 120A at the vehicle bus interface 120. Then, in step 5, the diagnostic data service interrogates the ECUs 103 via the vehicle bus adapter 120C for the requested data.

The Patent Owner respectfully notes that this language is with reference to FIG. 5 and merely states that the driver can trigger a request for the health checkup of the vehicle. And the driver can do so by pressing a "checkup" button which causes the client computer device in the vehicle to contact the diagnostic server at the remote service center. The diagnostic server at the remote service center reads the vehicle data from the client computer. The vehicle data can include malfunction codes from vehicle ECUs. These malfunction codes are often different for different vehicles.

The diagnostic server at the remote service center also includes the data repository 203 (FIG. 1). Chou et al. discloses with respect to such a health checkup that:

> [t]he vehicle client 101 combines vehicle ID information with the information from the vehicle bus interface 120 and sends the data to the Diagnostic Server 201 over a data link. The data link is kept open. The diagnostics server 201 retrieves vehicle information from the data repository 203 and compares the data from the vehicle with the repository data. Then, the diagnostic server 201 prepares a report listing any out-of-range parameters and actions required (e.g., "coolant level is low"). Trend analysis on the parameters may also be performed, based on the present and historical data collected from the vehicle, to detect any drifting of the performance characteristics and to provide early guidance for

> preventive maintenance (e.g., "change oil in 1500 miles"). (Col., lines 9-21).

Accordingly, the Patent Owner respectfully submits that there is no enabling data downloaded via a downloading interface for use by a multi-vehicle compatible controller for communication by a vehicle device using at least one corresponding code from among a plurality thereof for different vehicles. Instead, this cited portion of Chou et al. merely discloses obtaining diagnostic data at a remote service center from a vehicle. Patent Owner also respectfully notes that this is cumulative with the teachings of Suman et al., an asserted anticipatory reference overcome in the first reexamination, as discussed above.

b. Comments on Chou et al. col. 4, lines 15-38

This cited portion of Chou et al. is reproduced below:

> [t]he vehicle bus interface 120 is responsible for replying to requests for parametric data. It is also responsible for continuously monitoring the vehicle bus 104 for any fault reported by the ECUs 103, in terms of diagnostic trouble codes (DTCs).
>
> The vehicle bus interface 120 includes the following modules: vehicle bus adapter 120C, fault detector 120B, and diagnostic data service 120A. The fault detector 120B polls the vehicle bus 104 through the vehicle bus adapter 120C checking for fault codes reported by the vehicle ECUs 103. The vehicle bus adapter 120C translates the messages received from the vehicle bus into the language of the fault detector. It also translates messages from the fault detector into the language of the vehicle bus. The fault code specifications and protocols of the vehicle may be Original Equipment Manufacturer (OEM) and model dependent. The term

> "vehicle fault codes" is meant to be synonymous with the term "trouble code" or "diagnostic trouble code". A listing of such codes may be found in the publication of the Society of Automotive Engineers, "SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual". The diagnostic data service 120A accepts request for vehicle parametric data and retrieves the data using the vehicle bus adapter.

As noted by the Patent Owner in the previous response and repeated above, the ECUs will indeed use their own respective trouble codes, and these codes are different for different vehicles. The SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual, i.e. the SAE HS-3000, referred to in Chou et al. and of record in the reexamination, provides that: "[c]urrently there is no uniformity in these numeric Diagnostic Trouble Codes (DTC) between manufacturers, and in some cases, even within the same manufacturer across different product lines." (SAE HS-3000, 1997, page 39). The lack of vehicle code compatibility among different vehicles for vehicle tracking units is the problem addressed by the claimed invention of the '278 patent.

c. Comments on Chou et al. col. 10, lines 1-11

This cited portion of Chou et al. is reproduced below:

> [i]t may be desirable to bundle the remote health monitoring and diagnostics with other services or to extend it with related application functions. For example, the remote diagnostics service could certainly be offered on top of an Emergency/Mayday service (e.g., "OnStar"). Other applications and services that can be developed or bundled as extensions of the diagnostics services include: breakdown service, network diary, vehicle user

> manual update, OEM Callback Services, fleet management, theft prevention, vehicle parameter update/change, remote vehicle access, concierge services, etc.

The quoted language is highly generalized regarding possible additional services. It is unclear what if anything this language has to do with the claimed invention. It is unspecified and unclear which possible services are to be possibly implemented using one or more of the remote service center 200, the dealer 250, the roadside assistance vehicle 175, the in-vehicle system 100, and/or some other third party facility or equipment.

Chou et al. discloses that the diagnostic server at the remote service center lists "out-of-range parameters" and performs "trend analysis on the parameter values". (Col. 9, lines 12-21). Accordingly, the cited portion with respect to vehicle parameter update/change could readily be performed at the remote service center alone.

The Patent Owner respectfully asserts that if a claim element is not expressly disclosed by the prior art, the prior art reference must inherently disclose the claim element to anticipate it. (*See In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999)). The court went on to state that:

> {t]o establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 U.S.P.Q.2D (BNA) 1746, 1749 (Fed. Cir. 1991). "Inherency, however, may not be established by probabilities or

> possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Id. at 1269, 20 U.S.P.Q.2D (BNA) at 1749 (quoting In re Oelrich, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). *Id.* at 745. (Emphasis added).

The Manual of Patent Examining Procedure (MPEP) also states: "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." (MPEP §2112, *citing In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, (CCPA 1981); and *Metabolite Labs., Inc. v. Lab.Corp. of Am. Holdings*, 370 F.3d 1354, 1367 (Fed. Cir. 2004)).

The Patent Owner respectfully submits that this cited portion of Chou et al. adds nothing to the asserted deficiencies elsewhere in Chou et al. Moreover, there is no proper way to attempt to read this cited section as inherently disclosing any of the recited claim elements.

5. Chou et al. Teaches Away from the Claimed Invention

The Patent Owner again submits that the teachings of Chou et al. include that the in-vehicle computer system (the left hand side of FIG. 5) simply interfaces to the various specific ECUs on the bus. Further, Chou et al. teaches that the diagnostic server of the remote service center (on the right hand side of FIG. 5) provides the ability to read data from the data bus or write data to the data bus, even though different manufacturers and different models use different codes for their ECUs. In other words, Chou et al. teaches away from the claimed

vehicle tracking unit including the multi-vehicle controller and downloading interface.

For example, Chou et al. provides that:

> [t]he remote service center 200 of FIG. 3 comprises a diagnostic server 201 that has access to data related to the vehicle such as as-built, history, diagnostics, warranty, service information and failure mode data. The diagnosis server 201 is linked to the data repository 203 via a TCP/IP link, LAN, or the like.
>
> (Col. 5, lines 34-39; emphasis added).

And Chou et al. also provides:

> [w]ithin the diagnostic server 201 at the service center 200 is a diagnosis engine 201A. The main function of the diagnosis engine 201A is to provide a health checkup or a diagnosis using the data obtained from the vehicle, the vehicle's past history, and the diagnostics information about the particular model of the vehicle.
>
> (Col. 5, line 53-58; emphasis added).

In operation, "[t]he diagnosis engine 201A first determines if a fault or a potential of a fault is present by checking if any trouble code is reported by the client, and checking a predetermined list of vehicle attribute values against their normal operating characteristics." (Col. 5, lines 61-64).

During the diagnosis session, "the diagnostic client 421 passes the fault codes, vehicle identification and other relevant information to the [diagnostic] server 201". (Col. 8, lines 19-21). The fault detector and diagnostic client are both at the vehicle, and, the diagnostic server is at the remote service center. The diagnostic server can also request data from the diagnostic client at the vehicle.

The vehicle driver may also initiate a vehicle health checkup. Chou et al. further describes this health checkup as follows:

> [t]hen, vehicle information, estimated to be on the order of 1 kilobyte in size, including, for example, vehicle identification number (VIN), any trouble codes, and/or a snapshot of the vehicle data, are retrieved by the vehicle client 101 through the vehicle bus interface 120. The vehicle client 101 combines vehicle ID information with the information from the vehicle bus interface 120 and sends the data to the Diagnostic Server 201 over a data link. The data link is kept open. The diagnostics server 201 retrieves vehicle information from the data repository 203 and compares the data from the vehicle with the repository data. Then, the diagnostic server 201 prepares a report listing any out-of-range parameters and actions required (e.g., "coolant level is low").
>
> (Col. 9, lines 3-16; emphasis added).

The Patent Owner submits that Chou et al. teaches that the ability to work with different vehicle device codes is provided at the remote service center using the diagnostic server 201 in combination with the data repository 203 (FIG. 1) also at the remote service center – and not at the vehicle. Chou et al. provides no disclosure, express or inherent, and no reason, for this capability to be provided at the in-vehicle system.

Thus, Chou et al. teaches away from the vehicle tracking unit of the claimed invention that includes: the multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles, and the downloading

interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller.

Accordingly, the Patent Owner submits that independent Claims 1 and 18 are patentable over Chou et al. Spaur et al. is cited for the teaching of a wired connection in the rejection of independent Claim 13, and, the Patent Owner submits that Spaur et al. adds nothing to the deficiencies of Chou et al. Accordingly, independent Claim 13 is also patentable. In view of the patentability of the independent Claims 1, 13 and 18, it is submitted that their dependent claims are also patentable, and require no further discussion herein.

V. Evidence of Secondary Considerations and Declaration Evidence

A. Secondary Considerations of Non-Obviousness

On pages 9-10 of the Office Action, the Examiner contended that the "evidence of secondary considerations must be related to the claimed invention, i.e. a nexus between the invention as claimed and evidence of the secondary consideration." The Patent Owner submitted the relevant court documents finding evidence of secondary considerations which necessarily includes a finding of nexus, submitted trial testimony that constituted the evidence at trial resulting in finding of evidence of secondary considerations for the asserted patents including the '278 patent, and submitted the Declaration of Mr. McAlexander further explaining his analysis and conclusions from the evidence he considered, as set forth in paragraphs 19a-19j of his Declaration.

The Patent Owner respectfully submits that evidence of secondary considerations, including nexus, has been presented and requests that the Examiner reconsider same.

Further, the Patent Owner highlights this passage from page 10 of the Court Order (submitted as Exhibit 2 with the prior response), which highlights the nexus between the claims of the '278 patent and the copying by Requester, CalAmp:

> [f]urther indicia of willful infringement by CalAmp is found in an e-mail sent by Mr. Chen to outside patent counsel, Mr. David Bailey 12, and senior vice president for corporate development, Mr. Garo Sarkissian. (Doc. 182, 112:13-19). On July 30, 2013, eight months after Omega instituted this lawsuit, Mr. Chen wrote to Messrs, Bailey, and Sarkissian and asked them to look at the '278 patent. (Pl.'s Ex. 48). Referring to claim 13 of the '278 patent, Mr. Chen wrote: "13 may relate to how we program a unit at the factory so it may be harder to avoid." (Id.). The '278 patent has as an object of the invention to "provide a multi-vehicle compatible tracking unit which may be used to control operable vehicle devices, and/or read information therefrom via the vehicle data communications bus." (Joint Ex. 5, column 2, lines 46-49). Clearly, Mr. Chen was concerned as late as July 30, 2013, that the accused devices infringe claim 13 of the '278 patent, as the jury ultimately found. His admission in this e-mail that the units are programed at the CalAmp factory is further evidence that his trial testimony describing the LMU as a black box, programmed by the end-user, was false.
>
> (Emphasis added).

The Examiner also noted that "the evidence of non-obviousness (i.e. testimony/trial transcript, exhibits, instructions) are not of record, e.g. jury instructions, financial expert Reports, or only partially of record, e.g. excerpts of testimony of trial transcript, as best understood."

To address the Examiner's concern the following materials are attached: Exhibit 5, trial transcript; Exhibit 6, list of defendant's trial exhibits; Exhibit 7, list of plaintiff's trial exhibits; Exhibit 8, list of Court's trial exhibits; and Exhibit 9, jury instructions. The Patent Owner will be pleased to provide any further materials helpful to the Examiner, subject to the confidentiality limits imposed by the Court.

In view of the evidence of secondary considerations the Patent Owner submits that any obviousness type rejection of the pending claims is overcome.

B. Mr. McAlexander Declaration Evidence

The Examiner contended that the positions and opinions of Declarant, Mr. McAlexander, were merely conclusory. The Patent Owner points out that the McAlexander Declaration sets forth the analysis performed by highly experienced patent agent and technical expert whose testimony was persuasive at the related litigation, and whose declaration was part of the basis for the USPTO confirming the claims of the '278 patent in the first reexamination. Mr. McAlexander states his understanding of the claims - consistent with the first reexamination, cites to the specific relevant teachings of Chou et al. as would be understood by one of skill in the art, and renders his opinions.

Mr. McAlexander's analysis also walks through the extensive evidence of secondary considerations. As noted above, the Patent Owner has provided additional supporting materials from the related litigation. Accordingly, the Examiner is

respectfully requested to reconsider the McAlexander Declaration.

C. Mr. Suman Declaration Evidence

The new Declaration of Mr. Suman is submitted to support the position that Chou et al. is merely cumulative to the teachings of Mr. Suman's '537 patent, overcome in the first reexamination. Mr. Suman is also able to provide factual evidence regarding the teachings of Chou et al. Mr. Suman is a prolific inventor in his own right, and particularly knowledgeable in the technology area of interest. In addition, his input on the first reexamination proved most helpful to the USPTO in that reexamination.

CONCLUSIONS

In view of the arguments presented above, and the evidence submitted in the attached Rule 132 Declaration from Mr. Suman, it is submitted that all of the claims are patentable. Accordingly, a Reexamination Certificate confirming all claims as patentable is respectfully requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized to charge or credit any discrepancies in fee amounts to Deposit Account No. 01-0484.

Respectfully submitted,

/JACK G. ABID/

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Attorney for the Patent Owner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	)	
	)	
Request for Reexamination of **U.S. PATENT NO. 8,032,278**	)	
	)	
Control No. **90/013,851**	)	Attorney Docket No.: **C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	)	
	)	Examiner: **K. Reichle**
Filing Date: **OCTOBER 28, 2016**	)	
	)	Art Unit: **3992**
For: **VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	)	

RESPONSE TO THE OFFICE ACTION MAILED JULY 19, 2017 IN EX-PARTE REEXAMINATION

EFILE
Commissioner for Patents

Commissioner:

Responsive to the final Official Action of July 19, 2017, please enter and consider the remarks set out below.

CONSIDERED: /KR/

09/26/2017

EXHIBIT 2

DO NOT ENTER: /KR/

09/26/2017

EXHIBIT 7

DO NOT ENTER: /KR/

09/26/2017

EXHIBIT 5

DO NOT ENTER: /KR/

09/26/2017

EXHIBIT 6

DO NOT ENTER: /KR/

09/26/2017

EXHIBIT 9

DO NOT ENTER: /KR/

09/26/2017

EXHIBIT 8

CONSIDERED: /KR/
09/26/2017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	
Request for Reexamination of **U.S. PATENT NO. 8,032,278**	
Control No. **90/013,851**	Attorney Docket No.: **C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	
Filing Date: **OCTOBER 28, 2016**	Examiner: **K. Reichle**
For: **VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	Art Unit: **3992**

RESPONSE TO THE OFFICE ACTION MAILED JULY 19, 2017 IN EX-PARTE REEXAMINATION

EFILE
Commissioner for Patents

Commissioner:

Responsive to the final Official Action of July 19, 2017, please enter and consider the remarks set out below.

CONSIDERED: /KR/

09/26/2017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	
Request for Reexamination of **U.S. PATENT NO.6,032,278**	
Control No. **90/013,851**	Attorney Docket No.: **C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	
Filing Date: **OCTOBER 28, 2016**	Examiner: **K. Reichle**
For: **VEHICLE TRACKING UNIT WTIH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	Art Unit: **3992**

DECLARATION BY JOSEPH C. McALEXANDER, III UNDER 37 C.F.R. §1.132

I, the undersigned, hereby declare that:

I. Background

1. I am the Founder and President of McAlexander Sound, formerly IP Director of CCI and Vice President of EPI Technologies, Inc., and have 44 years of experience in microcircuit and semiconductor technologies, including: device design, fabrication, assembly, testing, and marketing, and control system design, analysis, quality, reliability, and defect/failure analysis at Texas Instruments.

2. I am a Registered Professional Engineer (#79454) in the State of Texas and hold a Bachelor of Science degree in Electrical Engineering from North Carolina State University.

CONSIDERED: /KR/

09/26/2017

EXHIBIT 1

CONSIDERED: /KR/

09/26/2017

EXHIBIT 3

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/013,851	10/28/2016	8032278	C13-03896.RE2	8717

7590 09/29/2017

CHRISTOPHER F. REGAN, ESQUIRE
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.
P. O. BOX 3791
ORLANDO, FL 32802-3791

EXAMINER
REICHLE, KARIN M

ART UNIT	PAPER NUMBER
3992	

MAIL DATE	DELIVERY MODE
09/29/2017	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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KPPB LLP

2400 EAST KATELLA AVENUE

SUITE 1050

ANAHEIM, CA 92806

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/013,851*.

PATENT NO. *8032278*.

ART UNIT *3992*.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Karin M. Reichle

Primary Examiner

Art Unit: 3992

Ex Parte Reexamination Advisory Action *Before the Filing of an Appeal Brief*	**Control No.** 90/013,851	**Patent Under Reexamination** 8032278	
	Examiner Karin Reichle	**Art Unit** 3992	**AIA (First Inventor to File) Status** No

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE PROPOSED RESPONSE FILED *18 September 2017* FAILS TO OVERCOME ALL OF THE REJECTIONS IN THE FINAL REJECTION MAILED *19 July 2017*.

1. ☒ Unless a timely appeal is filed, or other appropriate action by the patent owner is taken to overcome all of the outstanding rejection(s), this prosecution of the present *ex parte* reexamination proceeding WILL BE TERMINATED and a Notice of Intent to Issue *Ex Parte* Reexamination Certificate will be mailed in due course. Any finally rejected claims, or claims objected to, will be CANCELLED.

   THE PERIOD FOR RESPONSE IS EXTENDED TO RUN *2* MONTHS FROM THE MAILING DATE OF THE FINAL REJECTION. Extensions of time are governed by 37 CFR 1.550(c).

NOTICE OF APPEAL

2. ☐ An Appeal Brief is due two months from the date of the Notice of Appeal filed on _____ to avoid dismissal of the appeal. See 37 CFR 41.37(a). Extensions of time are governed by 37 CFR 1.550(c). See 37 CFR 41.37(e).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final action, but prior to the date of filing a brief, will not be entered because:
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the proceeding in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____ (See 37 CFR 1.116 and 41.33(a)).

4. ☐ Patent owner's proposed response filed _____ has overcome the following rejection(s):_____

5. ☐ The proposed new or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

6. ☐ For purposes of appeal, the proposed amendment(s) a)☐ will not be entered, or b)☐ will be entered and an explanation of how the new or amended claim(s) would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) patentable and/or confirmed: _____
   Claim(s) objected to: _____
   Claim(s) rejected: _____
   Claim(s) not subject to reexamination: _____

AFFIDAVIT OR OTHER EVIDENCE

7. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because patent owner failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence fails to overcome all rejections under appeal and/or appellant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

12. ☐ Note the attached Information Disclosure Statement(s), PTO/SB/08, Paper No(s) _____.

13. ☐ Other:_____..

/Karin Reichle/	/J.W./	/WHC/
Primary Examiner, Art Unit 3992	Primary Examiner, Art Unit 3992	SPRS, Art Unit 3992

cc: Requester (if third party requester)

Affidvits/Evidence Previously of Record/Reviewed/Considered:
Exhibit 1: Notice of Intent to Issue-12/1/2016-90/013587-see pages 20-22 of the 12/15/2016 Order and Search Notes of the instant file.

Exhibit 2: McAlexander Declaration with Exhibits (14-15)-7/6/2016-90/013587-see again pages 20-22 of the 12/15/2016 Order and Search Notes of the instant file.

Exhibit 3: Suman Declaration-7/5/2016-90/013587-see again pages 20-22 of the 12/15/2016 Order and Search Notes of the instant file.

June 12, 2017 McAlexander Declaration-see pages 2 and 10-12 of the 7/19/2017 FINAL.

Continuation of 8:

Exhibit 4: 9/18/2017 Suman Declaration-see pages 8, 21-24 and 39 of Remarks which do not provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

Exhibit 5: each of 317 pages including 4 pages of testimony which pages are not numbered consequtively but rather, e.g., 1-72, 1-146, 1-162, 1-210, 1-272, 1-232, 1-168-see paragraph bridging pages 37-38 of Remarks which does not provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented when relied upon, e.g., see page 27 of the 6/12/2017 Remarks and 37 CFR 1.116(e), nor any specifics as to how the various groups of pages collaborate such 6/12/2017 Remarks.

Exhibit 6: 6 page listing of defendant's trial exhibts but not copies of listed evidence-see paragraph bridging pages 37-38 of Remarks which does not provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented when relied upon, e.g., see page 27 of the 6/12/2017 Remarks and 37 CFR 1.116(e), nor any specifics as to how the mere listing collaborates such 6/12/2017 Remarks.

Exhibit 7: 19 page listing of plaintiff's trial exhibts but not copies of listed evidence-see paragraph bridging pages 37-38 of Remarks which does not provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented when relied upon, e.g. see page 27 of the 6/12/2017 Remarks and 37 CFR 1.116(e), nor any specifics as to how the mere listing collaborates such 6/12/2017 Remarks.

Exhibit 8: 2 page listing of Court's trial exhibts but not copies of listed evidence-see paragraph bridging pages 37-38 of Remarks which does not provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented when relied upon, e.g., see page 27 of the 6/12/2017 Remarks and 37 CFR 1.116(e), nor any specifics as to how the mere listing collaborates such 6/12/2017 Remarks.

Exhibit 9: 41 page listing of jury instructions-see paragraph bridging pages 37-38 of Remarks which does not provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented when relied upon, e.g., see page 27 of the 6/12/2017 Remarks and 37 CFR 1.116(e), nor any specifics as to how the mere listing collaborates such 6/12/2017 Remarks.

Continuation of 10. The request for reconsideration filed 9/18/2017, hereinafter also referred to as the remarks, and the accompanying affadavits/evidence have been received. Such remarks and the "Affidvits/Evidence Previously of Record/Reviewed/Considered" enumerated supra has been considered in their entirety but do NOT place the application in condition for allowance.

Updated Background:
Patent Owner's (hereinafter also referred to as PO) discussion of the related litigation,first reexamination and related reexaminations, pages 8-10, and Exhibits 1-3, has been noted and considered. Attention is reinvited to pages 3-4 of the 7/19/2017 FINAL. Specifically with regard to the lines 20-22 on page 10 regarding the '727 patent, although Chou was cited on the four page 1449 it was not applied against the claims which claims do not claim either a multi-vehicle comparable control server downloading interface as in the instant claims.

Pending Claim
PO's renewed presentation of the pending claims 1, 13 and 18, pages 10, has been noted and considered.

Claim Construction
PO's discussion of the construction of the claims, pages 11-19, has been noted and considered. Attention is reinvited to the pages of the 12/19/17 FINAL directed to discussion of claim construction, i.e. pages 4-5 (e.g. First, see MPEP 2258, 1, G, and MPEP 2181,1, third paragraph and 2181,1, C, fourth paragraph (i.e. the lack of the explicit use of the terminology "means" creates a rebuttable presumption that 112, sixth paragraph, does not apply) and pages 2-20 of the 3/29/2017 Office Action (rebuttal of the presumption), especially the paragraph bridging pages 2-3, and the discussions of "3-Prong Analysis Prong (A)" of the various specific phrases, and pages 15-20 with regard to the phrase "a downloading interface....controller". Attention is also invited to the prosecution history of copending reexaminations 90/013659 and 90/013832 with regard to claim language interpretation. Second, it is further noted that the agreed construction of the claim term "Multi-vehicle compatible controller" during the related litigation was "[electronic circuitry that performs one or more control function, and can operate with more than one vehicle". In other words electronic circuitry that has the capability to operate with at least two vehicles but those vehicles do not have to be of different models and/or from different manufacturers, i.e. could be of the same make and model from the same manufacturer. See again the paragraph bridging pages 2-3 of the 3/29/2017 Office Action. Note also the discussion of the patentability of the pending claims infra. Finally, PO merely concludes with:"The Patent Owner disagrees with the Examiner's assertion that any of the claim terms should be construed in accordance with § 112, 6th paragraph for the first time now. The Patent Owner notes that there are differences between the Examiner's claim interpretations under §112, 6th paragraph, and Patent Owner's asserted interpretations consistent with the Court, but believes these differences are not likely material for purposes of this Response."…Note also the discussion with regard to the declaration infra.) as well as well as the entirety of the cited pages 6-9 thereof directed to claim patentability. Therefore the FINAL does not improperly disregard the prior Patent Office claim construction (note again, e.g., '659 and '832), improperly dissect the claims into isolated elements, use an improper broadest reasonable interpretation under 35 U.S.C. §112, 6th paragraph nor use inconsistent claim constructions.

Claim Patentability
PO's discussion of the recitations "a multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles" and "a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multivehicle compatible controller" page 19-page 21, line 9, page 24, line 13-page 28, line 13 and discussion of Chou's teachings on page 33, line 21-page 36, line 12 which are substantially identical to those of 6/12/2017 and those on page 28, line 14-page 33, line 20 have been considered but are still deemed unpersuasive for the reasons set forth on page 6-9.

Chou Cumulative of Suman '537
PO's newly presented arguments on pages 21-24 and 39 have been noted. With regard to Exhibit 4 see Note 8 supra. Also see discussion in preceding paragraph.

Secondary Considerations/McAlexander Declaratory Evidence
PO's discussion of secondary considerations, pages 36-39, has been noted and considered/reconsidered but are not persuasive. First,with regard to Exhibits 5-9 see note 8 supra. See also pages 9-12 of the FINAL again. Also note, e.g., MPEP 716.01 (c), I and III.

In conclusion neither the PO's remarks and/or the affidavits/evidence previously of record, i.e. Exhibits 1-3 and June 12, 2017 McAlexander Declaration, are not effective to overcome the rejection of the claims as set forth in the 7/19/2017 Office Action.

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EXAMINER
REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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MAIL DATE	DELIVERY MODE
10/10/2017	PAPER

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The time period for reply, if any, is set in the attached communication.

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KPPB LLP

2400 EAST KATELLA AVENUE

SUITE 1050

ANAHEIM, CA 92806

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/013,851*.

PATENT NO. *8032278*.

ART UNIT *3992*.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Karin M. Reichle

Primary Examiner

Art Unit: 3992

Ex Parte Reexamination Advisory Action *Before the Filing of an Appeal Brief*	**Control No.** 90/013,851	**Patent Under Reexamination** 8032278	
	Examiner Karin Reichle	**Art Unit** 3992	**AIA (First Inventor to File) Status** No

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE PROPOSED RESPONSE FILED *18 September 2017* FAILS TO OVERCOME ALL OF THE REJECTIONS IN THE FINAL REJECTION MAILED *19 July 2017*.

1. ☒ Unless a timely appeal is filed, or other appropriate action by the patent owner is taken to overcome all of the outstanding rejection(s), this prosecution of the present *ex parte* reexamination proceeding WILL BE TERMINATED and a Notice of Intent to Issue *Ex Parte* Reexamination Certificate will be mailed in due course. Any finally rejected claims, or claims objected to, will be CANCELLED.

   THE PERIOD FOR RESPONSE IS EXTENDED TO RUN *4* MONTHS FROM THE MAILING DATE OF THE FINAL REJECTION. Extensions of time are governed by 37 CFR 1.550(c).

NOTICE OF APPEAL

2. ☐ An Appeal Brief is due two months from the date of the Notice of Appeal filed on _____ to avoid dismissal of the appeal. See 37 CFR 41.37(a). Extensions of time are governed by 37 CFR 1.550(c). See 37 CFR 41.37(e).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final action, but prior to the date of filing a brief, will not be entered because:
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
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   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____ (See 37 CFR 1.116 and 41.33(a)).
4. ☐ Patent owner's proposed response filed _____ has overcome the following rejection(s):_____
5. ☐ The proposed new or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
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   Claim(s) rejected: _____
   Claim(s) not subject to reexamination: _____

AFFIDAVIT OR OTHER EVIDENCE

7. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
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REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.
12. ☐ Note the attached Information Disclosure Statement(s), PTO/SB/08, Paper No(s) _____.
13. ☐ Other:_____..

/Karin Reichle/ Primary Examiner, Art Unit 3992	/J.W./ Primary Examiner, Art Unit 3992	/WHC/ SPRS, Art Unit 3992

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UNITED STATES PATENT AND TRADEMARK OFFICE

USPTO Automated Interview Request (AIR)

Oct 16 2017

This paper requesting to schedule and/or conduct an interview is appropriate because:

This submission is requested to be accepted as an authorization for this interview to communicate via the internet. Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with the undersigned concerning scheduling of the interview via video conference, instant messaging, or electronic mail, and to conduct the interview in accordance with office practice including video conferencing.

Name(s):
JACK ABID

S-signature:
/jack abid/

Registration Number:
58237

U.S. Application Number:
90013851

Confirmation Number:
8717

E-mail Address:
jabid@allendyer.com

Phone Number:
4079866929

Proposed Time of Interview:
10-25-2017 11:00 AM ET

Prefered Interview Type:
Telephonic

I am the applicant or applicant's representative for this application.

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EXAMINER
REICHLE, KARIN M

ART UNIT	PAPER NUMBER
3992	

MAIL DATE	DELIVERY MODE
10/27/2017	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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KPPB LLP

2400 EAST KATELLA AVENUE

SUITE 1050

ANAHEIM, CA 92806

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/013,851*.

PATENT NO. *8032278*.

ART UNIT *3992*.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Ex Parte Reexamination Interview Summary	Control No.	Patent Under Reexamination
	90/013,851	8032278
	Examiner	Art Unit
	Karin Reichle	3992

All participants (USPTO personnel, patent owner, patent owner's representative):

(1) *Karin Reichle*	(3) *Jalatee Worjloh*
(2) *Woo Choi*	(4) *Jack Abid*

Date of Interview: *25 October 2017*

Type: a)☒ Telephonic b)☐ Video Conference
c)☐ Personal (copy given to: 1)☐ patent owner 2)☐ patent owner's representative)

Exhibit shown or demonstration conducted: d)☐ Yes e)☒ No.
If Yes, brief description: _____

Agreement with respect to the claims f)☐ was reached. g)☐ was not reached. h)☒ N/A.
Any other agreement(s) are set forth below under "Description of the general nature of what was agreed to…"

Claim(s) discussed: *N/A*.

Identification of prior art discussed: *N/A*.

Description of the general nature of what was agreed to if an agreement was reached, or any other comments:
Items II-IV of the Interview Outline, copy attached, were discussed. With regard to Section III, PO indicated the intent to file a Supplemental After FINAL amendment with showings under 37 CFR 116(b) for previously not entered evidence. Also with regard to Section IV, PO will provide further elaboration if such "confirmation" is again requested in such Supplemental.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims patentable, if available, must be attached. Also, where no copy of the amendments that would render the claims patentable is available, a summary thereof must be attached.)

A FORMAL WRITTEN RESPONSE TO THE LAST OFFICE ACTION MUST INCLUDE PATENT OWNER'S STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. (See MPEP § 2281). IF A RESPONSE TO THE LAST OFFICE ACTION HAS ALREADY BEEN FILED, THEN PATENT OWNER IS GIVEN **ONE MONTH** FROM THIS INTERVIEW DATE TO PROVIDE THE MANDATORY STATEMENT OF THE SUBSTANCE OF THE INTERVIEW (37 CFR 1.560(b)). THE REQUIREMENT FOR PATENT OWNER'S STATEMENT CAN NOT BE WAIVED. **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

/Karin Reichle/ Primary Examiner, Art Unit 3992	/J.W./ Primary Examienr, Art Unit 3992	/whc/

cc: Requester (if third party requester)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	
Request for Reexamination of **U.S. PATENT NO. 8,032,278**	
Control No. **90/013,851**	Attorney Docket No.: **C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	
Filing Date: **OCTOBER 28, 2016**	Examiner: **K. Reichle**
For: **VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	Art Unit: **3992**

INTERVIEW SUMMARY FOR TELEPHONIC INTERVIEW OF OCTOBER 25, 2017

EFILE
Commissioner for Patents

The Patent Owner thanks the U.S. Patent and Trademark Office and the Examiners for extending all courtesies to the Patent Owner's Representatives during the telephonic interview of October 25, 2017.

During the telephonic interview, Examiner Karin Reichle, Examiner Woo Choi, and Examiner Jalatee Worjloh were present on behalf of the U.S. Patent and Trademark Office, and Attorney Jack G. Abid (Reg. No. 58,237) was present on behalf of the Patent Owner.

The Patent Owner discussed the attached agenda with the Examiners. In particular, the Patent Owner discussed whether a more formal showing under 37 C.F.R. §1.116(b) was required for prior filed evidence. The Examiner's encouraged the Patent Owner to provide a further response. The Patent

_____/

Owner also discussed interpretation of "and/or" statements within the final Office Action.

Respectfully submitted,

/JACK G. ABID/

JACK GEORGE ABID
Reg. No. 58,237
Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.
255 S. Orange Avenue, Suite 1401
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Attorney for the Patent Owner

In re Patent of
Kenneth E. FLICK
Reexamination Control No. **90/013,851**
Filed: **OCTOBER 29, 2016**
_____/

CERTIFICATE OF SERVICE

Certificate of Service in compliance with 37 C.F.R. §1.530(c)

Pursuant to 37 C.F.R. §§1.530(c), 1.248, I hereby certify that on November 2, 2017, a complete copy of this Amendment is being served via First Class U.S. Mail upon Third Party Requester at the correspondence address as shown in PAIR:

KPPB LLP
2400 EAST KATELLA AVENUE
SUITE 1050
ANAHEIM, CA 92806

Respectfully submitted,

/JACK G. ABID/

_____
JACK GEORGE ABID
Reg. No. 58,237
Allen, Dyer, Doppelt +
Gilchrist, P.A.
255 S. Orange Avenue, Suite 1401
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Orlando, Florida 32802
407-841-2330
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Attorney for the Patent Owner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Request for Reexamination of **U.S. PATENT NO. 8,032,278**	
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Owner also discussed interpretation of "and/or" statements within the final Office Action.

Respectfully submitted,

/JACK G. ABID/

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Reg. No. 58,237
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Attorney for the Patent Owner

REEXAMINATION 90/013,851 (8,032,278)
Interview Outline (October 25, 2017 @ 10:00 AM EST)

I. Participants

Examiners:
(1) Karin M. Reichle
(2)
(3)

Patent Owner Attendees:
Jack Abid (58,237)

II. Background

Patent Owner:
Omega Patents LLC – Ken Flick
150+ patents
Omega Research & Development sold to Audiovox

Omega v. Calamp Litigation:
Filed – 12/20/13
Actual trial date: 2/16/16 to 2/24/16 **(Reexamination filed 10/28/16)**
Verdict: all asserted claims valid, infringed, secondary considerations found
Final Order issued 4-5-17
Final Judgment issued 4/24/17
Requester's motion to vacate judgment denied 9/22/17 **[Updated]**

Prior Reexamination on '278 Patent filed by Requester
Reexamination Certificate confirming patentability of all claims issued December 28, 2016. Current reexamination filed during pendency of the prior reexamination in an attempt to convert the *ex parte* reexamination into an *inter partes* one.

Other Related Reexaminations (Ex Parte Reexamination Certificates issued in all)
(1) U.S. Patent No. 6,756,885; Reexamination 90/013,741 – filed April 28, 2016. Ex Parte Reexamination Certificate issued August 1, 2017.

(2) U.S. Patent No. 6,346,876; Reexamination 90/013,659 – filed December 11, 2015. Ex Parte Reexamination Certificate issued September 1, 2017.

(3) U.S. Patent No. 7,671,727: Reexamination 90/013,832 – filed October 12, 2016. Ex Parte Reexamination Certificate issued August 1, 2017.

III. Examiner's Refusal to Enter Evidence After Final

MPEP §2272
"It should be kept in mind that a patent owner cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection, or reinstate previously canceled claims. For an amendment filed after final rejection and prior to the appeal brief, a showing under 37 CFR 1.116(b) is required and will be evaluated by the examiner for all proposed amendments after final rejection ***except where*** an amendment merely cancels claims, adopts examiner's suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner."

"Since patents undergoing reexamination cannot become abandoned and cannot be refiled, and since the holding of claims unpatentable and canceled in a certificate is absolutely final, it is appropriate that the examiner consider the feasibility of entering amendments touching the merits after final rejection or after appeal has been taken, where there is a showing why the amendments are necessary and a suitable reason is given why they were not earlier presented."

- In other words, amendments and evidence that "adopts examiner's suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner" should be entered as a matter of right, and the showing of good and sufficient reasons is not required.

- Given the finality of *Ex Parte* reexaminations, the MPEP encourages the Examiner to liberally enter evidence when the evidence addresses a concern noted in the final Office Action.

Exhibit 4
Rule 132 Declaration of Michael Suman

Firstly, Applicant submits that this Rule 132 Declaration requires cursory Examination and should be entered as a matter of right.

Additionally, Applicant submits that this Rule 132 Declaration addresses the claim interpretation position taken in the final Office Action. Hence, it could not be presented earlier, and it is necessary since it touches on the skilled person's interpretation of the claims.

Thirdly, this Rule 132 Declaration supplements the nexus between the secondary considerations and the claimed invention to address the Examiner's comments on prior declaratory evidence at Pages 9-10 of the final Office Action.

Exhibits 5-9
Trial Transcript from related litigation
Requester Exhibit List from related litigation
Patent Owner Exhibit List from related litigation
Court Exhibit List from related litigation

Jury Instructions from related litigation

In the final Office Action at page 10, the Examiner stated: "PO asserts litigation evidence (testimony/trial transcript, exhibits, instructions, see, e.g., page 26, first full paragraph, page 26, second to last line-page 27, line 12, page 28, line 4-page 30, last line, section 3 on page 31 and the testimony excerpts bridging pages 32-37) for the conclusions regarding the secondary considerations. However such referenced testimony/trial transcript, exhibits, instructions are not of record, e.g. jury instructions, or only partially of record, e.g. excerpts of testimony of trial transcript, as best understood. Finally PO asserts the declaration for the conclusions regarding the secondary considerations. However see the discussion of the declaration infra. Note also the evidence of record is silent with regard to the Chou '499 reference."

In short, Exhibits 5-9 are submitted at the suggestion of the Examiner, i.e. "adopt[ing] examiner's suggestions", MPEP §2272, and should all be entered as a matter of right.

IV. Clarity of Examiner's Positions

Throughout the final Office Action and the Advisory Action, the Examiner stated "and/or". In some instances, the connector was used multiple times within the same sentence. (*See, e.g.,* final Office Action at page 7). Applicant would like confirmation of the breadth of the connector phrase, particularly when both options do not appear to be independently viable.

For example, page 8 of the final Office Action, recites: "[h]owever such assertions/conclusions are not commensurate with the terms of the claim itself and/or such terms given the broadest reasonable interpretation consistent with the specification but not reading limitations in the specification into the claims, the teachings of Chou and/or the 3/29/2017 Office Action."

Electronic Acknowledgement Receipt

EFS ID:	30827832
Application Number:	90013851
International Application Number:	
Confirmation Number:	8717
Title of Invention:	Vehicle Tracking Unit with Downloadable Codes and Associated Methods
First Named Inventor/Applicant Name:	8032278
Correspondence Address:	CHRISTOPHER F. REGAN, ESQUIRE ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A. P. O. BOX 3791 - ORLANDO FL 32802-3791 US 407-841-2330 -
Filer:	Jack G. Abid/sheryllee scheibe
Filer Authorized By:	Jack G. Abid
Attorney Docket Number:	C13-03896.RE2
Receipt Date:	01-NOV-2017
Filing Date:	28-OCT-2016
Time Stamp:	15:46:58
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Applicant summary of interview with examiner	SSREX2INT.pdf	235746 0092e6b70676e64bc26790c5d05452fcc68e71d9	no	9

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Information:

Total Files Size (in bytes):	235746

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

In the Claims:

This listing of claims replaces all prior versions and listings of claims in the application.

1. (Pending) A multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout the vehicle, the multi-vehicle compatible tracking unit comprising:

a vehicle position determining device;

a wireless communications device;

a multi-vehicle compatible controller for cooperating with said vehicle position determining device and said wireless communications device to send vehicle position information;

said multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles; and

a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller.

2. (Pending) The multi-vehicle compatible tracking unit according to claim 1 wherein said downloading interface comprises a wired signal downloading interface.

3. (Pending) The multi-vehicle compatible tracking unit according to claim 2 wherein said wired signal downloading

interface comprises a connector for temporary connection to a downloading device.

4. (Pending) The multi-vehicle compatible tracking unit according to claim 1 wherein said downloading interface comprises a wireless signal downloading interface.

5. (Pending) The multi-vehicle compatible tracking unit according to claim 4 wherein said wireless signal downloading interface comprises a wireless receiver for temporary connection to a downloading device.

6. (Pending) The multi-vehicle compatible tracking unit according to claim 1 wherein the corresponding at least one vehicle code is for reading from the at least one vehicle device.

7. (Pending) The multi-vehicle compatible tracking unit according to claim 1 wherein the corresponding at least one vehicle code is for writing to the at least one vehicle device.

8. (Pending) The multi-vehicle compatible tracking unit according to claim 1 wherein said downloading interface is also for permitting downloading of at least one programming instruction for said multi-vehicle compatible controller.

9. (Pending) The multi-vehicle compatible tracking unit according to claim 1 further comprising a remote transmitter; and wherein said multi-vehicle compatible

controller also performs at least one vehicle remote control function responsive to said remote transmitter.

10. (Pending) The multi-vehicle compatible tracking unit according to claim 9 wherein the at least one vehicle remote control function comprises at least one of a vehicle security function, a remote keyless entry function, and a remote engine starting function.

11. (Pending) The multi-vehicle compatible tracking unit according to claim 1 wherein said wireless position determining device comprises a Global Positioning System (GPS) receiver.

12. (Pending) The multi-vehicle compatible tracking unit according to claim 1 further comprising a housing containing said vehicle position determining device, said wireless communications device, said multi-vehicle compatible controller, and said downloading interface.

13. (Pending) A multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout the vehicle, the multi-vehicle compatible vehicle tracking unit comprising:

a vehicle position determining device;

a wireless communications device;

a multi-vehicle compatible controller for cooperating with said vehicle position determining device and said wireless communications device to send vehicle position information;

said multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles; and

a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller;

said downloading interface comprising a connector for temporary connection to a downloading device.

14. (Pending) The multi-vehicle compatible tracking unit according to claim 13 wherein the corresponding at least one vehicle code is for reading from the at least one vehicle device.

15. (Pending) The multi-vehicle compatible tracking unit according to claim 13 wherein the corresponding at least one vehicle code is for writing to the at least one vehicle device.

16. (Pending) The multi-vehicle compatible tracking unit according to claim 13 wherein said downloading interface is also for permitting downloading of at least one programming instruction for said multi-vehicle compatible controller.

17. (Pending) The multi-vehicle compatible tracking unit according to claim 13 further comprising a remote transmitter; and wherein said multi-vehicle compatible

controller also performs at least one vehicle remote control function responsive to said remote transmitter.

18. (Pending) A multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout the vehicle, the multi-vehicle compatible vehicle tracking unit comprising:

a vehicle position determining device;

a wireless communications device;

a multi-vehicle compatible controller for cooperating with said vehicle position determining device and said wireless communications device to send vehicle position information;

said multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles; and

a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller;

said downloading interface comprising a wireless receiver for temporary connection to a downloading device.

19. (Pending) The multi-vehicle compatible tracking unit according to claim 18 wherein the corresponding at least one vehicle code is for reading from the at least one vehicle device.

20. (Pending) The multi-vehicle compatible tracking unit according to claim 18 wherein the corresponding at least one vehicle code is for writing to the at least one vehicle device.

21. (Pending) The multi-vehicle compatible tracking unit according to claim 18 wherein said downloading interface is also for permitting downloading of at least one programming instruction for said multi-vehicle compatible controller.

22. (Pending) The multi-vehicle compatible tracking unit according to claim 18 further comprising a remote transmitter; and wherein said multi-vehicle compatible controller also performs at least one vehicle remote control function responsive to said remote transmitter.

Electronic Acknowledgement Receipt

EFS ID:	30984241
Application Number:	90013851
International Application Number:	
Confirmation Number:	8717
Title of Invention:	Vehicle Tracking Unit with Downloadable Codes and Associated Methods
First Named Inventor/Applicant Name:	8032278
Correspondence Address:	CHRISTOPHER F. REGAN, ESQUIRE ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A. P. O. BOX 3791 - ORLANDO FL 32802-3791 US 407-841-2330 -
Filer:	Jack G. Abid/sheryllee scheibe
Filer Authorized By:	Jack G. Abid
Attorney Docket Number:	C13-03896.RE2
Receipt Date:	17-NOV-2017
Filing Date:	28-OCT-2016
Time Stamp:	14:19:28
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$800

OMEGA EXHIBIT 2036

RAM confirmation Number	112017INTEFSW14201500
Deposit Account	
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		SS58106REXNOA1.pdf	1137140 a1829ef2f1d3d48eb3e22907000ab935e56de567	yes	35

Multipart Description/PDF files in .zip description

Document Description	Start	End
Notice of Appeal Filed	1	1
Supplemental Response or Supplemental Amendment	2	2
Claims	3	8
Applicant Arguments/Remarks Made in an Amendment	9	15
Reexam Certificate of Mailing	16	16
Reexam Miscellaneous Incoming Letter	17	35

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Information:

2	Fee Worksheet (SB06)	fee-info.pdf	30200 f34ba5fb9f374c6f52395a7f311762485b316550	no	2

Warnings:

Information:

Total Files Size (in bytes):	1167340

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New Applications Under 35 U.S.C. 111

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National Stage of an International Application under 35 U.S.C. 371

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New International Application Filed with the USPTO as a Receiving Office

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EXHIBIT 10

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OMEGA PATENTS, LLC,

Plaintiff,

v. Case No: 6:13-cv-1950-Orl-40DCI

CALAMP CORP.,

Defendant.
_____/

ORDER

This cause is before the Court on the following:

1. Defendant CalAmp Corporation's Renewed Motion for Judgment as a matter of law and Motion for New Trial, (Doc. 216);
2. Plaintiff Omega Patents, LLC's Response in Opposition, (Doc. 226);
3. CalAmp's Supplemental Motion for Judgment as a Matter of Law, for New Trial, and to Vacate the Judgment, (Doc. 228); and
4. Omega's Response in Opposition to Defendant's Supplemental Motions, (Doc. 228).

Upon due consideration of the foregoing, Defendant CalAmp's Renewed Motions for Judgment as a Matter of Law and for New Trial are denied.[1]

I. BACKGROUND

Omega Patents, LLC ("Omega") brought the instant action against CalAmp Corp.

[1] The supplemental briefing is not necessary to preserve the challenges directed by CalAmp against the Final Judgment, notwithstanding the entry of an Amended Final Judgment. Additionally, the Court has resolved the Motion to Vacate the Judgment for Lack of Venue. (Doc. 230).

("CalAmp") and contends that CalAmp infringed the claims of U.S. Patent No. 6,346,876 ("the '876 Patent"),[2] U.S. Patent No. 6,756,885 ("the '885 Patent"),[3] U.S. Patent No. 7,671,727 ("the '727 Patent"),[4] and U.S. Patent No. 8,032,278 ("the '278 Patent")[5] (collectively, the "patents-in-suit").[6] (Doc. 1). The trial of this matter commenced on February 16, 2016, and concluded on February 24, 2016, (Doc. 178–184), with the jury returning a verdict in favor of Omega in which they found that all of Omega's asserted claims were valid and had been infringed upon by CalAmp's accused devices: the LMU 3000, LMU 3030, LMU 3050, the V-Pod and the V-Pod 2. (Docs. 144, pp. 1–6). The jury rejected Defendant's invalidity contentions and made three findings for Plaintiff on secondary considerations indicating nonobviousness. (*Id.* at pp. 7–9). Finally, the jury found Plaintiff had proven by clear and convincing evidence that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent and that this high likelihood of infringement was either known or so obvious that it should have been known to CalAmp. (*Id.* at pp. 9–10). The jury awarded damages in the amount of $2,975.200. (*Id.* at p. 10).

II. STANDARDS FOR REVIEW

A. Judgment as a Matter of Law

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[2] The jury found infringement of claims 1, 3, 4, 5, 12, 14, and 16. (Doc. 144, p. 2).
[3] The jury found infringement of claims 1, 2, 3, 12, and 14. (Id. at p. 3).
[4] The jury found infringement of claims 1, 10, and 11. (Id. at p. 4).
[5] The jury found infringement of claims 1–6, 8, 11–16, 18–19, and 21. (Id. at pp. 5–6).
[6] The patents-in-suite relate to control systems for vehicles with a "data communication bus." The term "data communication bus" has been previously construed by the Court to mean "wired connection for communication of digital messages among vehicle devises, with each message including one or more device addresses." (Doc. 50, p. 25).

Judgment as a matter of law should only be granted if no objectively reasonable jury, based on the evidence and inferences adduced at trial and through the exercise of impartial judgment, could reach the verdict reached. *Brown v. Ala. Dep't of Transp.*, 597 F.3d 1160, 1173 (11th Cir. 2010); *Combs v. Plantation Patterns*, 106 F.3d 1519, 1526 (11th Cir. 1997). Stated differently, the party moving for judgment as a matter of law must show that the trial evidence "is so overwhelmingly [in its favor] that a reasonable jury could not arrive at a contrary verdict." *Middlebrooks v. Hillcrest Foods, Inc.*, 256 F.3d 1241, 1246 (11th Cir. 2001). However, where there is substantial evidence in the trial record which would allow reasonable minds to reach different conclusions, judgment as a matter of law is inappropriate. *Mee Indus. v. Dow Chem. Co.*, 608 F.3d 1202, 1211 (11th Cir. 2010). In considering a motion for judgment as a matter of law, the district court must review the record and draw all reasonable inferences derived therefrom in the light most favorable to the non-moving party. *Brown*, 597 F.3d at 1173. Importantly, the district court must not make credibility determinations or weigh evidence, as these are functions reserved for the jury. *Id.*

Rule 50 is clear in its procedure. Before a case is submitted to the jury for consideration, a party may move for judgment as a matter of law on any issue which is not supported by legally sufficient evidence. Fed. R. Civ. P. 50(a). If the court denies relief at that time, the party may renew the motion after the jury has returned its verdict. Fed. R. Civ. P. 50(b). It is well-established that "any renewal of a motion for judgment as a matter of law under Rule 50(b) must be based upon the same grounds as the original request for judgment as a matter of law made under Rule 50(a)" and that "a party cannot assert grounds in the renewed motion that it did not raise in the earlier motion." *SEC v.*

Big Apple Consulting USA, Inc., 783 F.3d 786, 813 (11th Cir. 2015). Although "[s]trict identity of issues . . . is not required" of the two motions, the grounds identified in a Rule 50(b) motion must be "closely related" to the grounds raised in the prior Rule 50(a) motion such that opposing counsel and the court are notified of the evidentiary shortcomings asserted. *Howard v. Walgreen Co.*, 605 F.3d 1239, 1243 (11th Cir. 2010). This procedural safeguard "protects the non-moving party's right to cure deficiencies in the evidence before the case is submitted to the jury" and ensures that "[t]he moving party cannot ambush the court and opposing counsel after the verdict when the only remedy is a completely new trial." *Middlebrooks*, 256 F.3d at 1245.

B. New Trial

A district court may grant a new trial for a variety of reasons, including when the verdict is against the great weight of the evidence, the damages awarded by the jury are excessive, the court erred in admitting or excluding evidence or in instructing the jury on the law, or other circumstances resulted in a patently unfair trial. Fed. R. Civ. P. 59; *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940). Whatever its reason, "a district court may, in its discretion, grant a new trial 'if in [the court's] opinion, the verdict . . . will result in a miscarriage of justice, even though there may be substantial evidence'" which would preclude the entry of judgment as a matter of law. *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 817 F.3d 1241, 1254 (11th Cir. 2016) (quoting *Hewitt v. B.F. Goodrich Co.*, 732 F.2d 1554, 1556 (11th Cir. 1984)). Unlike a motion for judgment as a matter of law made pursuant to Rule 50, the court "is free to weigh the evidence" in assessing whether to grant a new trial under Rule 59. *Id.* (quoting *Rabun v. Kimberly-Clark Corp.*, 678 F.2d 1053, 1060 (11th Cir. 1982)).

III. CALAMP'S JMOL ARGUMENTS AT TRIAL

At the conclusion of Omega's case-in-chief, CalAmp moved for judgment as a matter of law. (Doc. 182). CalAmp argued the evidence was insufficient to establish infringement, contending that Mr. McAlexander failed to address what control functions were being performed with respect to the '876 patent. (*Id.* at 3:23 to 4:2). CalAmp also argued that Omega's expert did not establish "they were actually generating the working and non-working command signals." (*Id.* at 4:10–12). As to the '876 and '885 patent, CalAmp claimed Plaintiff satisfied the "transmitter requirement" based on the CalAmp server, which they contend is a deviation from Mr. McAlexander's expert report where he "relied on the chip set on the device having both the transmitter and the receiver." (*Id.* at 4:14–23). Moreover, CalAmp argued the Court defined device codes "as being signals from a vehicle device," and Omega presented testimony that "[i]t was coming from the LMU and going onto the vehicle bus." (*Id.* at 5:8–14).

As to the '278 patent, CalAmp averred that Omega's expert "didn't show any control function the LMU was actually performing onto the bus." (*Id.* at 5:17–19). CalAmp elaborated that "the claim required a corresponding vehicle device code from among a plurality thereof for different vehicle, and he [McAlexander] was using different constructions. (*Id.* at 5:20–23). With regard to the '727 patent, Defendant submitted that Omega's expert testified to a "new theory of infringement that using GPS speed could now satisfy the claim limitation . . . [and] [w]e saw he was relying on speed from the vehicle bus" in his report. (*Id.* at 6:4–13).

On the issue of indirect infringement, CalAmp claimed Omega failed "to provide sufficient evidence of indirect infringement, [because] [t]here was no testimony about an

intent to infringe that's required for indirect infringement. And there was no testimony that—of an actual customer that he determined actually infringed." (*Id.* at 6:15–19). CalAmp next offered that Omega failed to provide sufficient evidence to support willful infringement. (*Id.* at 6:23–24). Finally, CalAmp argued the damages evidence was insufficient. (*Id.* at 9:17–18).

Following the close of the defense case, CalAmp renewed its motion for judgment as a matter of law "[f]or the same reasons, so nothing [is new] there." (Doc. 183, 221:10–13). CalAmp also argued that Omega failed to provide evidence sufficient to overcome the defense of obviousness for all four patents. (*Id.* at 221:15–19). The defense concluded by restating their claim that Omega failed to prove willfulness. (*Id.* at 222:3–9). These are the only grounds preserved for consideration by this Court at this juncture.

IV. CALAMP'S JMOL ARGUMENTS

A. The Verdict Form

CalAmp advocates that "[a]n overreaching issue on noninfringement is the fact that the verdict for asked only about, and the jury therefore could find only, direct infringement under 35 U.S.C. § 271(a)." (Doc. 216, p. 3). Since the claims of the '876 and '885 patents require "a transmitter and a receiver for receiving signals from said transmitter," CalAmp contends infringement is only possible if the jury found the infringing product was "the LMU in combination with other components such as a server." (*Id.* at pp. 3–4). Accordingly, CalAmp submits the verdict form can only sustain direct infringement. (*Id.* at p. 3).

Absent from CalAmp's argument, however, is that the Court used the verdict form submitted by the Defendant. (Doc. 90-11). CalAmp's verdict form poses the following

question: "Do you find Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the Plaintiff's asserted Patents?" (*Id.* at p. 3). The verdict form proffered by Omega, however, asked: "Do you find by a preponderance of the evidence that Defendant infringed any of the following claims of Plaintiff's Patents?" (Doc. 90-10, p. 2).

CalAmp was well aware that indirect infringement was before the jury along with direct infringement, because CalAmp argued for judgment as a matter of law ("JMOL") on indirect infringement. (Doc. 182, 6:15–19). Yet, CalAmp offered, and the Court accepted, the verdict form which CalAmp now characterizes as fatally flawed. As Omega correctly observes in their response, to the extent the verdict form is lacking CalAmp invited the error by crafting that very verdict form.[7] *See Slip-N-Slide Records, Inc. v. TVT Records, LLC,* 2007 U.S. Dist. LEXIS 80788 (S.D. Fla. Oct. 31, 2007) (party's attack on verdict form is barred by invited error doctrine where that party failed to object to the verdict form). CalAmp cannot create the verdict form with full knowledge that indirect infringement had been presented to the jury and later complain that their form is deficient. Additionally, CalAmp failed to raise any objection to the verdict form during either of their arguments for judgment as a matter of law at trial and have waived this issue.[8]

B. The '876 and '885 Patents

CalAmp suggests that the '876 and '885 patents are not infringed, because the "accused products are not 'at the vehicle' when CalAmp makes, uses or sells them. (Doc.

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[7] Questions 6A and 6B of the verdict form ask the jury to address CalAmp's actions, as opposed to the device.

[8] The Court discussed indirect infringement (inducement) with the parties during the charge conference. (Doc. 183, 23:10–16). The inducement instruction was given. (Doc. 143, p. 15).

216, p. 5). Since the '876 patent requires the multi-vehicle compatible controller ("MVCC") to be "at the vehicle," direct infringement fails. (*Id.*). CalAmp did not make this argument at either JMOL motion hearing during the course of the trial and has waived this issue. Additionally, the Plaintiff's theory was not limited to direct infringement, as discussed previously in this Order.

Next, CalAmp contends the '885 patent requires the MVCC to cooperate with the transmitter and receiver and avers that the devices are not cooperating with a RF transmitter and receiver until they are turned on. (*Id.*). This is an example of yet another argument that was not advanced during either JMOL hearing at trial. Regardless, Omega is correct that the testimony at trial established the "accused devices had a transmitter and receiver that are used to transmit and receive," and CalAmp's PULS server transmits scripts and updates directly from CalAmp to the accused devices via a cellular network. (Doc. 226, p. 3).[9] This is adequate to support infringement.

CalAmp asserts that Mr. McAlexander "tried to inject a new theory at trial by pointing to 'a transmitter receiver that's associated with a server that receives and communicates with it' in combination with the accused devices." (Doc. 216, p. 4). While Omega disagrees with this characterization of Mr. McAlexander's testimony, the point raised by CalAmp is not relevant. That is, the party moving for judgment as a matter of law must show that the trial evidence "is so overwhelmingly [in its favor] that a reasonable jury could not arrive at a contrary verdict." *Middlebrooks v. Hillcrest Foods, Inc.*, *supra*. CalAmp's argument is not that the evidence presented by Omega on this issue was

[9] Omega cites the testimony and exhibits supporting this statement, and the Court will not repeat the record citations here.

deficient, but rather that Mr. McAlexander allegedly injected a new theory at trial. Assuming CalAmp is correct that Plaintiff's expert modified the opinion set forth in his report, CalAmp's objection is to the introduction of a "new theory." An evidentiary objection does not equate with a lack of sufficient evidence to support the jury's verdict which is all the JMOL analysis concerns.

C. The Device Codes Limitation

The next argument advanced by Defendant is that all asserted claims of the '278 and '885 patents and claim 12 of the '876 patent have requirements for "device codes" which is a signal "from" a vehicle bus. (Doc. 216, p. 5). CalAmp acknowledges that Omega's expert testified that "the query sent by the LMU as part of the bus discovery process." (*Id.* at p. 6). In fact, Mr. McAlexander testified that the LMU device is a controller that is multi-vehicle compatible. (Doc. 180, 78:19–21). Defendant's witness, Mr. Chen, acknowledge that the LMU devices are able to read the device codes from the bus and match them with look-up tables. Accordingly, the jury was presented with sufficient evidence to sustain their finding of infringement.

D. Determining a Match Between Read and Stored Codes

CalAmp claims the asserted claims of the '885 patent, and claim 12 of the '876 patent, require "storing a set of device codes for a given vehicle device for a plurality of different vehicles," "reading a device code from the data communications bus," and "determining a match between a read device code and the stored device codes." (Doc. 216, pp. 6–7). The Defendant failed to raise this issue during either of their JMOL arguments. Mr. McAlexander was asked by Plaintiff's counsel if he found that the MVCC "is for reading a device code from the data communications bus and for determining a

match between a read device code and the stored device codes to thereby provide reading compatibility with a plurality of different vehicles?" (Doc. 180, 77:11–16). Mr. McAlexander replied:

> Yes, I did. One of the unique aspects of this type of a system is the fact that you send out a sequence of codes, and only the code which is understood by some downstream vehicle device on the vehicle bus is going to respond. And so, it's called a working command. When you get that working signal provides a response, that's a match.

(*Id.* at 77:17–23). The fact that CalAmp's expert disputes that a match is performed does not warrant judgment as a matter of law in favor of CalAmp.

E. Reading and Using Vehicle Speed from the Bus

In its JMOL argument, CalAmp contended that Omega's expert testified to a "new theory of infringement that using GPS speed could now satisfy the claim limitation." (Doc. 182, 6:4–13). As previously discussed, an objection to the propriety of offering an allegedly new opinion does not meet the standard for judgment as a matter of law. CalAmp elaborates upon their earlier argument by explaining that "the default speed above threshold functions uses only GPS speed, [hence] the accused products do not necessarily infringe." (Doc. 216, p. 9). CalAmp therefore concludes it "could be liable only under an indirect infringement theory, but the jury was not asked to and did not find that CalAmp induced or contributed to another's direct infringement," harkening back to their earlier objection to the verdict form that they had offered for use at trial. (*Id.* at p. 10). CalAmp argues they are entitled to a new trial because it is impossible to know if the verdict was based on Mr. McAlexander's incorrect claim construction theory. (*Id.*).

First, CalAmp cannot complain that their own verdict form has complicated matters in terms of direct and indirect infringement. Second, juries are routinely confronted with

competing legal theories, and a new trial is not warranted simply because the losing party cannot discern why the jury found as they did. In the instant case, the verdict form prepared by CalAmp allowed the jury to indicate which claims of each patent had been infringed. The jury concluded the '727 patent (speed from the vehicle data communication bus) had been infringed. (Doc. 144, p. 4). Lastly, CalAmp's engineer, Mr. Jeffrey Eiberger, testified that 5% of CalAmp's customers used bus speed for speed exceedances. (Doc. 147, 78:14–20). This is sufficient to support the finding of direct and indirect infringement.

F. Command Signals and Controller

CalAmp asserts that its products "merely request and receive data" and "do not infringe because they do not send signals to operate a vehicle device." (Doc. 216, p. 11). However, in the Claim Construction Order, this Court observed:

> Since the system is designed to operate with a variety of vehicle platforms, not every signal generated on the data communications bus will cause a function to be performed . . . . Accordingly, CalAmp's proposed construction incorrectly includes within the definition of the "command signal" the requirement that a signal generated on the data communication bus must always cause a desired function to be performed.

(Doc. 50, p. 15). Besides, Mr. McAlexander testified that the LMU meets this definition. (Doc. 180, 66:16 to 69:15). Defense expert, Mr. Eric Andrews, ignores the Court's construction by inserting into the claim the requirement that the command function have a physical embodiment. (Doc. 183, 117:22–25; 118:1–12). Mr. Andrews admitted that a command signal need not result in a physical manifestation, when he acknowledged that an ECU responding with a device code signal is responding to a command signal. (*Id.* at 118:17–24). CalAmp's argument for JMOL disregards this testimony.

G. Patents-in-Suit is Invalid as Obvious

Judgment as a matter of law should only be granted if no objectively reasonable jury, based on the evidence and inferences adduced at trial and through the exercise of impartial judgment, could reach the verdict reached. *Brown v. Ala. Dep't of Transp.*, *supra.* CalAmp argued at trial and in their JMOL that "a person of ordinary skill would have looked to the J1978 standard to solve the problem of multi-vehicle compatibility (and thus combine the references)." (Doc. 216, pp. 12–13). The J1978 standard relates to a scan tool and, notwithstanding Mr. Andrews failure to articulate why one would have combined an SAE standard pertaining to scan tools with the referenced prior art, CalAmp contends "it is self-evident why one of ordinary skill would do so." (*Id.* at p. 14).

CalAmp is required to prove by clear and convincing evidence that one of ordinary skill in the art would be motivated to combine the references provided by the Defendant. *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008). The jury rejected Mr. Andrew's argument that one would have—without relying on the benefit of hindsight—combined the prior art with the SAE specification. (Doc. 144, p. 7). Based upon the quality of Mr. Andrew's testimony, an objectively reasonable jury could have reached this verdict.

H. Secondary Considerations

"The jury found three secondary considerations of nonobviousness—commercial success, copying, and licensing by others. Dkt. 144 at 9" (Doc. 216, p. 15). While this precise argument was not presented at either JMOL hearing, it is sufficiently tied to the issue of obviousness to warrant further examination. CalAmp contends Omega failed to

sufficiently demonstrate a nexus between the claimed invention and the secondary considerations. (*Id.*).

Plaintiff, in its response to this assertion, summarizes ample evidence presented at trial which rebuts CalAmp's claim that the secondary considerations are unsupported. (Doc. 226, pp. 10–11). Plaintiff observes that Defendant's corporate representative and employees testified that the infringing products (and DEI's product) were "commercially successful due to the merits of Omega's invention." (*Id.* at p. 10). Witnesses testified that features on the infringing CalAmp products were requested by customers. (*Id.*). Additionally, Mr. Flick sold devices with the patented features, generating sales revenue of $33 million annually. (*Id.*). Moreover, the jury heard testimony that Mr. Flick, via his company, issued dozens of licenses to the patents-in-suit and entered into settlement agreements with infringers. (*Id.*). Finally, Omega presented evidence that CalAmp knew of Omega's patents and discussed the difficulty of designing around the patents. (*Id.* at p. 11). This testimony was sufficient for an objectively reasonable jury to find the secondary considerations.

I. Willfulness

Defendant argues that no reasonable jury could have found willfulness. (Doc. 216, p. 22). In partial support for this premise, CalAmp states it relied upon counsel's legal opinion that the '885, '876 and '727 patents were invalid and their products would not infringe. (*Id.* at p. 18). However, the advice of counsel was not allowed into evidence, and CalAmp now contends this warrants JMOL on willfulness and a new trial. (*Id.*). As previously observed in this Order, CalAmp confuses JMOL, which questions the sufficiency of the evidence presented by the non-moving party, with a motion for new trial

due to an evidentiary error. In the interest of completeness, the Court will address its evidentiary ruling before turning to the weight of the evidence presented by Omega.[10]

Counsel for CalAmp asked Mr. Chen, senior director of business development in CalAmp's corporate development group,[11] if he had received written and oral opinions by legal counsel regarding the validity of the patents-in-suit. (Doc. 182, 116:6-23). When asked to state the content of the oral opinion provided by counsel regarding whether the LMU-3000 infringed the '885 patent, counsel for Omega objected to the hearsay testimony elicited by the question. (*Id.* at 116:21–25; 117:1). Because the legal opinion was being offered for the truth of the matter, the Court sustained the objection. (*Id.* at 117:5).

Following the lunch recess, the Court discussed the opinion letter of Mr. David Bailey, exhibits 71 and 73, in which he opines that the '876 and '883 patents are invalid due to obviousness. (*Id.* at 119:15–24). After discussing the content of the opinion letters, the Court concluded the opinions are offered for their truth and do not fall within an exception to hearsay. (*Id.* at 120:16 to 124:24). Having found the opinion letter to be hearsay, the Court advised CalAmp that the attorney who authored the opinions, if properly disclosed on CalAmp's witness list, could testify that he gave an opinion that the two patents were invalid. (*Id.* at 124:19–24). While CalAmp did not disclose Mr. Bailey as a witness, and even though Omega objected to the witness testifying, the Court allowed Mr. Bailey to testify that the CalAmp devices did not infringe the '876 and '883 patents. (*Id.* at 125:3–16).

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[10] For the reasons expressed herein, CalAmp's motion for new trial on willfulness (Doc. 216, p. 29) is denied.

[11] *See* Doc. 182, 38:24–25; 39:1.

When the jury returned, Mr. Chen identified the opinion letters and testified that he relied upon them along with his independent research of the prior art. (*Id.* at 127:18–25; 128:1–9). Mr. Bailey testified immediately following Mr. Chen, and he acknowledged giving opinions to CalAmp relating to the four patents in this lawsuit in which he opines the '727 and '278 are invalid. (*Id.* at 150:22–25 through 157:7). At the conclusion of his testimony, CalAmp offered the two opinion letters, Omega objected, and the objection was sustained. (*Id.* at 159:9–13). The next witness was Mr. Andrews, CalAmp's expert on invalidity and noninfringement. Accordingly, CalAmp was permitted to present extensive testimony by Mr. Chen regarding his investigation of the prior art and his reliance upon Mr. Bailey's legal opinions (notwithstanding the failure to list Mr. Bailey as a witness). Mr. Bailey thereafter testified that he advised Mr. Chen the '727 and '278 were invalid, and Mr. Andrews testified that none of the CalAmp devices infringe. CalAmp's defense as to willfulness was presented and was rejected by the jury.

This Court has already summarized the evidence supporting a finding of willfulness, (Doc. 206), in its award of enhanced damages. The facts, exhibits and record citations cited in the Court's previous order at pages 7–12 are incorporated by reference herein for brevity's sake. Omega details the facts presented at trial which support a finding of willfulness, including the 2009 meeting between Mr. Flick and CalAmp's representatives where Mr. Flick told CalAmp they were infringing his patents. (Doc. 226, p. 11). As a result, Mr. Chen requested a license agreement which he later declined to execute. (*Id.*). The jury also heard that two end users of CalAmp's infringing devices settled with Omega and entered into licensing agreements. (*Id.* at 12). The jury also learned on cross-examination that Mr. Chen lacked any contemporaneous

documentation to support his claim to having conducted an exhaustive analysis of Omega's patents and prior art. (*Id.*). Moreover, while Mr. Chen testified that the LMU speed data is never derived from the vehicle bus, CalAmp's engineer testified that some customers' units read speed from the bus. (*Id.* at 13). Perhaps most telling is the email sent by Mr. Chen to a CalAmp vice president shortly before the lawsuit was initiated wherein Mr. Chen stated Claim 13 of the '278 patent "may relate to how we program a unit at the factory so it may be harder to avoid." (*Id.*).

These facts, and the reasonable inferences to be drawn from the facts, were sufficient for a reasonable jury to find willfulness.

J. ENHANCED DAMAGES and ATTORNEYS' FEES

CalAmp argues the Court should not exercise its discretion to enhance the damages and award attorneys' fees in this case. The Court addressed these issues previously, and none of the arguments advanced by CalAmp warrant a different outcome. (*see* Doc. 206). Omega's opposition to CalAmp's motion is detailed, and the Court agrees with the arguments advanced by Plaintiff. For the reasons stated in this Order, and based upon the Court's analysis at docket number 206, CalAmp's motion to alter its judgment to disallow enhanced damages and attorneys' fees is denied.

V. NEW TRIAL ON DAMAGES

CalAmp seeks a new trial on the issue of damages to the extent the Court overturns the verdict with respect to infringement or validity. Having denied the Defendant's motion for judgment as a matter of law on these issues, the motion for new trial on the issue of damages is denied.

CalAmp also seeks a new trial on damages on the basis that the Court erred when it excluded Dr. DeForest McDuff. (Doc. 216, p. 27). CalAmp also argues the Court should have permitted Dr. McDuff to testify to his opinion that the license agreements relied on by Omega were not comparable to the license that would result from the hypothetical negotiation in this case. (*Id.*). Additionally, CalAmp contends the non-comparable license agreements relied upon by Mr. Tregillis (Omega's expert) were admitted in error. (*Id.*).

The Court excluded Dr. McDuff based upon the unreliability of his methodology. (Doc. 117, pp. 18–27). CalAmp did not seek reconsideration of the Court's Order to allow Dr. McDuff to testify that the license agreements relied upon by Omega were not comparable to those that would result from a hypothetical negotiation in this case, presumably because the Court found Dr. McDuff to have formulated unreliable opinions using improper methodologies. To the extent CalAmp may have asserted an objection to the Court's Order excluding Dr. McDuff as a damages witness, that objection has been waived. To the extent CalAmp submits Mr. Tregillis failed to cite comparable license agreements, this was an issue for the jury to resolve. As Omega correctly notes, Mr. Tregillis was subjected to extensive cross-examination on whether the licenses he selected were in fact comparable, and the jury was instructed on what constitutes a comparable license—without objection. The Defendant's motion for new trial on damages is denied.

Next, CalAmp asserts a new trial is warranted due to erroneous claim construction rulings. Defendant basis its motion upon the conclusion that the Court erred in not accepting some of its proffered claim constructions. Defendant did not seek additional

construction of any disputed claim during the trial. Hence, the motion is denied. *Weinar v. Rollform, Inc.*, 744 F.2d 797, 809 (Fed. Cir. 1984).

In a catch-all summary of alleged errors, CalAmp seeks a new trial due to the alleged plethora of evidentiary missteps by the Court during trial, including the closing argument of Omega's counsel to which there was no objection. CalAmp fails to demonstrate how any of the perceived errors individually or collectively warrant a new trial, and the motion is denied.

VI. CONCLUSION

The verdict rendered by the jury was not against the greater weight of the evidence. To the contrary, an objectively reasonable jury could, and did, conclude that CalAmp had infringed Omega's patent-in-suit and had done so willfully. Defendant's Motions for Judgment as a Matter of Law and for New Trial, (Doc. 216) are **DENIED**; and Defendant's Supplemental Renewed Motion for Judgment as a Matter of Law, for a New Trial, and to Vacate the Judgment (Doc. 228) is **DENIED**.

DONE AND ORDERED in Orlando, Florida on November 14, 2017.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

REMARKS

The Patent Owner thanks the Examiner for the careful and thorough reexamination of the present application, for the helpful response to the Patent Owner's Arguments and Declaration included in the final Office Action and the Advisory Action, and for extending all courtesies to the Patent Owner's Attorney during the telephonic interview of October 25, 2017, for which the Patent Owner filed an Interview Summary on November 1, 2017.

I. Updated Background

A. The Related Litigation

The status for the related litigation with the Requester, Calamp, is changed. In an order dated November 14, 2017, the Court denied Calamp's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial; and denied Calamp's Supplemental Renewed Motion for Judgment as a Matter of Law, for a New Trial, and to Vacate the Judgment. A copy of the order is attached as Exhibit 10.

Of particular interest in the present reexamination, the Court provided the following judicial findings regarding Secondary Considerations:

> "The jury found three secondary considerations of nonobviousness – commercial success, copying, and licensing by others. Dkt. 144 at 9" (Doc. 216, p. 15). While this precise argument was not presented at either JMOL hearing, it is sufficiently tied to the issue of obviousness to warrant further examination. CalAmp contends Omega failed to sufficiently demonstrate a nexus between the claimed invention and the secondary considerations. (Id.).

> Plaintiff, in its response to this assertion, summarizes ample evidence presented at trial which rebuts CalAmp's claim that the secondary onsiderations are unsupported. (Doc. 226, pp. 10-11). Plaintiff observes that Defendant's corporate representative and employees testified that the infringing products (and DEI's product) were "commercially successful due to the merits of Omega's invention." (Id. at p. 10). Witnesses testified that features on the infringing CalAmp products were requested by customers. (Id.). Additionally, Mr. Flick sold devices with the patented features, generating sales revenue of $33 million annually. (Id.). Moreover, the jury heard testimony that Mr. Flick, via his company, issued dozens of licenses to the patents-in-suit and entered into settlement agreements with infringers. (Id.). Finally, Omega presented evidence that CalAmp knew of Omega's patents and discussed the difficulty of designing around the patents. (Id. At p. 11). **This testimony was sufficient for an objectively reasonable jury to find the secondary considerations.**
> (Emphasis added).

B. Other Related Reexaminations

The status of the other related reexaminations has also changed. Calamp has filed yet another reexamination of the '885 patent on October 26, 2017, Serial No. 90/014,038. As a reminder, the '885 patent was found willfully infringed in the related Calamp litigation, and was found valid in the prior reexamination.

The Patent Office records indicate this second '885 patent reexamination is assigned to Examiner Roland Foster, although Calamp identifies the present examiner, Examiner Karin Reichle, for this additional reexamination.

II. The Prior Filed Evidence Should Be Admitted

Based upon the helpful clarifications provided during the telephonic interview, the Patent Owner provides the following additional comments to demonstrate a showing under 37 C.F.R. §1.116(e), which recites: "[a]n affidavit or other evidence submitted after a final rejection or other final action (§1.113) in an application or in an ex parte reexamination filed under § 1.510, ... may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented."

With regards to prior filed Exhibit 4 (i.e. the Rule 132 Declaration of Michael Suman), the Patent Owner firstly submits that this Rule 132 Declaration addresses the claim interpretation position taken by the Examiner in the final Office Action. Secondly, this Rule 132 Declaration supplements the nexus between the evidence of secondary considerations of non-obviousness and the claimed invention to address the Examiner's comments on prior declaratory evidence at Pages 9-10 of the final Office Action. Because this declaration was submitted to address concerns noted by the Examiner in the final Office Action, it could not be presented earlier, and it is necessary since it touches on the skilled person's interpretation of the claims and the nexus between the claimed invention and evidence for secondary considerations for non-obviousness. Accordingly, Exhibit 4 should be admitted and properly considered.

With regards to Exhibits 5-9 (i.e. respectively the Trial Transcript from related litigation, the Requester Exhibit List from related litigation, the Patent Owner Exhibit List from

related litigation, the Court Exhibit List from related litigation, and the Jury Instructions from related litigation), these exhibits were submitted to address comments and suggestions noted by the Examiner in the final Office Action.

In particular, in the final Office Action at page 10, the Examiner stated:

> PO asserts litigation evidence (testimony/trial transcript, exhibits, instructions, see, e.g., page 26, first full paragraph, page 26, second to last line-page 27, line 12, page 28, line 4-page 30, last line, section 3 on page 31 and the testimony excerpts bridging pages 32-37) for the conclusions regarding the secondary considerations. However such referenced testimony/trial transcript, exhibits, instructions are not of record, e.g. jury instructions, or only partially of record, e.g. excerpts of testimony of trial transcript, as best understood. Finally PO asserts the declaration for the conclusions regarding the secondary considerations. However see the discussion of the declaration infra. Note also the evidence of record is silent with regard to the Chou '499 reference.
> (Emphasis added).

The Patent Owner submits that these Exhibits were introduced at the suggestion of the Examiner's helpful comments in the final Office Action, and therefore could not have been presented earlier. Moreover, since the Examiner comments were made within the context of considering prior filed evidence of secondary considerations for non-obviousness, the new exhibits are necessary and should be admitted and properly considered.

III. The Claims Are Patentable Over Chou et al.

The Examiner rejected the independent claims over Chou et al. The Patent Owner respectfully submits that given proper consideration of evidence, Chou et al. fails to disclose or fairly suggest the claimed invention.

In the Advisory Action, the Examiner noted: "Chou Cumulative of Suman '537 PO's newly presented arguments on pages 21-24 and 39 have been noted. With regard to Exhibit 4 see Note 8 supra [Note 8 refused entry]. Also see discussion in preceding paragraph." As established hereinabove, the Rule 132 Declaration of Michael Suman should be admitted and properly considered.

As noted in the Rule 132 Declaration of Michael Suman:

> [m]y '537 patent, used as an anticipation reference and overcome in the first reexamination, and now used in an obviousness rejection of Claims 9-10, 17 and 22, includes the same components as in Chou et al. (see FIGS. 1a and 5, and col. 15, lines 52-63 in my '537 patent, for example). In other words, I believe that Chou et al. is the same as my '537 patent, and includes the same deficiencies with respect to the claims of the '278 patent as my '537 patent. (Exhibit 4 at Page 6).

The Rule 132 Declaration of Michael Suman also notes: "at the time of my '537 patent, the vehicle device codes were proprietary to different manufacturers, and even different model lines offered by manufacturers. Moreover, the device codes were not made freely available, and were quite difficult to obtain." *Id.* at 7. Accordingly, the Chou et al. fails to disclose or fairly suggest the multi-vehicle compatible controller to be

coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles, as recited in independent Claim 1, for example.

Moreover, the Rule 132 Declaration of Michael Suman also notes:

> Chou et al. discloses that data from the ECUs on the vehicle bus is merely passed from the in-vehicle system to the remote service center of Chou et al. In the reverse direction, data is passed to the in-vehicle system in Chou et al. There is no discussion in Chou et al. of downloading enabling data related to at least device code for use by the multi-vehicle controller in the vehicle. *Id.* at 8.

Because of at least the above reasons and the detailed reasons provided in the prior responses, the Patent Owner submits that all of the claims are patentable, presents arguments herein supporting such patentability, and respectfully requests that the Examiner withdraw all pending rejections and issue a Reexamination Certificate confirming all claims as patentable.

CONCLUSIONS

In view of the arguments presented above, it is submitted that all of the claims are patentable. Accordingly, a Reexamination Certificate confirming all claims as patentable is respectfully requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized to charge or credit any discrepancies in fee amounts to Deposit Account No. 01-0484.

Respectfully submitted,

/JACK G. ABID/

JACK GEORGE ABID
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407-841-2343 fax
Attorney for the Patent Owner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	)	
	)	
Request for Reexamination of	)	
U.S. PATENT NO. 8,032,278	)	
	)	
Control No. **90/013,851**	)	Attorney Docket No.:
	)	**C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	)	
	)	Examiner: **K. Reichle**
Filing Date: **OCTOBER 28, 2016**	)	
	)	Art Unit: **3992**
For: **VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	)	
	)	

SUPPLEMENTAL RESPONSE TO THE OFFICE ACTION MAILED JULY 19, 2017 IN EX-PARTE REEXAMINATION

EFILE
Commissioner for Patents

Commissioner:

Responsive to the final Official Action of July 19, 2017 and the Advisory Action of October 10, 2017, and further to the Notice of Appeal submitted herewith, please enter and consider the remarks set out below.

Electronic Patent Application Fee Transmittal

Application Number:	90013851
Filing Date:	28-Oct-2016
Title of Invention:	Vehicle Tracking Unit with Downloadable Codes and Associated Methods
First Named Inventor/Applicant Name:	8032278
Filer:	Jack G. Abid/sheryllee scheibe
Attorney Docket Number:	C13-03896.RE2

Filed as Large Entity

Filing Fees for ex parte reexam

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
NOTICE OF APPEAL	1401	1	800	800
Post-Allowance-and-Post-Issuance:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	**800**

PTO/SB/06 (09-11)
Approved for use through 1/31/2014. OMB 0651-0032
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 90/013,851	Filing Date 10/28/2016	☐ To be Mailed

ENTITY: ☒ LARGE ☐ SMALL ☐ MICRO

APPLICATION AS FILED – PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA	RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A	N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A	N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A	N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*	X $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*	X $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).			
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))				
* If the difference in column 1 is less than zero, enter "0" in column 2.			TOTAL	

APPLICATION AS AMENDED – PART II

AMENDMENT	11/17/2017	(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 22	Minus	** 22	= 0	X $80 =	0
	Independent (37 CFR 1.16(h))	* 3	Minus	***3	= 0	X $420 =	0
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	0

AMENDMENT		(Column 1) CLAIMS REMAINING AFTER AMENDMENT		(Column 2) HIGHEST NUMBER PREVIOUSLY PAID FOR	(Column 3) PRESENT EXTRA	RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=	X $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=	X $ =	
	☐ Application Size Fee (37 CFR 1.16(s))						
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))						
						TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

LIE
PATRICIA F. LEWIS

This collection of information is required by 37 CFR 1.16. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Considered
11/28/2017
/KMR/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	
Request for Reexamination of **U.S. PATENT NO. 8,032,278**	
Control No. **90/013,851**	Attorney Docket No.: **C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	
Filing Date: **OCTOBER 28, 2016**	Examiner: **K. Reichle**
For: **VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	Art Unit: **3992**

SUPPLEMENTAL RESPONSE TO THE OFFICE ACTION MAILED JULY 19, 2017 IN EX-PARTE REEXAMINATION

EFILE
Commissioner for Patents

Commissioner:

Responsive to the final Official Action of July 19, 2017 and the Advisory Action of October 10, 2017, and further to the Notice of Appeal submitted herewith, please enter and consider the remarks set out below.

DO NOT ENTER: /KR/

09/26/2017

11/27/2017

EXHIBIT 7

DO NOT ENTER: /KR/

09/26/2017

11/28/2017

EXHIBIT 8

Not entered
11/28/2017
/KR/

EXHIBIT 4

DO NOT ENTER: /KR/

09/26/2017

11/28/2017

EXHIBIT 6

DO NOT ENTER: /KR/

09/26/2017

11/28/2017

EXHIBIT 5

DO NOT ENTER: /KR/

09/26/2017

11/28/2017

EXHIBIT 9

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/013,851	10/28/2016	8032278	C13-03896.RE2	8717

7590 12/05/2017

CHRISTOPHER F. REGAN, ESQUIRE
ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.
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ORLANDO, FL 32802-3791

EXAMINER
REICHLE, KARIN M

ART UNIT	PAPER NUMBER
3992	

MAIL DATE	DELIVERY MODE
12/05/2017	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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KPPB LLP

2400 EAST KATELLA AVENUE

SUITE 1050

ANAHEIM, CA 92806

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/013,851*.

PATENT NO. *8032278*.

ART UNIT *3992*.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Ex Parte Reexamination Advisory Action *Before the Filing of an Appeal Brief*	**Control No.** 90/013,851	**Patent Under Reexamination** 8032278	
	Examiner Karin Reichle	**Art Unit** 3992	**AIA (First Inventor to File) Status** No

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE PROPOSED RESPONSE FILED *17 November 2017* FAILS TO OVERCOME ALL OF THE REJECTIONS IN THE FINAL REJECTION MAILED *19 July 2017*.

1. ☒ Unless a timely appeal is filed, or other appropriate action by the patent owner is taken to overcome all of the outstanding rejection(s), this prosecution of the present *ex parte* reexamination proceeding WILL BE TERMINATED and a Notice of Intent to Issue *Ex Parte* Reexamination Certificate will be mailed in due course. Any finally rejected claims, or claims objected to, will be CANCELLED.

   THE PERIOD FOR RESPONSE IS EXTENDED TO RUN _____ MONTHS FROM THE MAILING DATE OF THE FINAL REJECTION. Extensions of time are governed by 37 CFR 1.550(c).

NOTICE OF APPEAL

2. ☒ An Appeal Brief is due two months from the date of the Notice of Appeal filed on *17 November 2017* to avoid dismissal of the appeal. See 37 CFR 41.37(a). Extensions of time are governed by 37 CFR 1.550(c). See 37 CFR 41.37(e).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final action, but prior to the date of filing a brief, will not be entered because:
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the proceeding in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____ (See 37 CFR 1.116 and 41.33(a)).
4. ☐ Patent owner's proposed response filed _____ has overcome the following rejection(s):_____
5. ☐ The proposed new or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☐ For purposes of appeal, the proposed amendment(s) a)☐ will not be entered, or b)☐ will be entered and an explanation of how the new or amended claim(s) would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) patentable and/or confirmed: _____
   Claim(s) objected to: _____
   Claim(s) rejected: _____
   Claim(s) not subject to reexamination: _____

AFFIDAVIT OR OTHER EVIDENCE

7. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because patent owner failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence fails to overcome all rejections under appeal and/or appellant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.
12. ☐ Note the attached Information Disclosure Statement(s), PTO/SB/08, Paper No(s) _____.
13. ☐ Other:_____..

/Karin Reichle/	/J. W./	/whc/
Primary Examiner, Art Unit 3992	Primary Examiner, Art Unit 3992	SPRS, Art Unit 3992

cc: Requester (if third party requester)

Continuation of 10. The request for reconsideration filed 11/17/2017, hereinafter also referred to as the remarks, and renewed request for entry of previously filed Exhibits 4-9 have been received. See Note 8. Accordingly such remarks do NOT place the application in condition for allowance.

Claims Patentable over Chou
PO's arguments on pages 12-13 have been noted. However with regard to Suman declaration see Note 8.

Continuation of 8:

Exhibits 4-9: Attention is reinvited to the October 10, 2017 Advisory Action. With regard to page 10, second full paragraph of the 11/17/17 response, the specifics of the "claim interpretation position" and "comments on prior declaratory evidence at Pages 9-10 of the final Office Action" and "concerns noted by the Examiner in the final Office Action", i.e. where can the specifics be found, i.e. line numbers and what the specific words of such were as well as or also with the page number(s), are unclear/not provided. With regard to page 10, third to last line-page 11, last line, as indicated by the citation therein, i.e. "However such referenced testimony/trial transcript, exhibits, instructions", Exhibits 5-9 pertaining thereto were available for presentation prior to the FINAL. Therefore the explanation that "these Exhibits were introduced at the suggestion of the Examiner's helpful comments in the final Office Action, and therefore could not have been presented earlier" is not supported by the record. Thereby, a showing of good and sufficient reasons why the affidavit or other evidence, Exhibits 4-9, is necessary and was not earlier presented in compliance with 37 CFR 1.116(e) has still not been provided.

PTO/AIA/31 (03-14)
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NOTICE OF APPEAL FROM THE EXAMINER TO THE PATENT TRIAL AND APPEAL BOARD

Docket Number (Optional): C13-03895(58106CIP1_REX2)

I hereby certify that this correspondence is being facsimile transmitted to the USPTO, EFS-Web transmitted to the USPTO, or deposited with the United States Postal Service with sufficient postage in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, on Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____.

Signature _____

Typed or printed name _____

In re Application of: KENNETH E. FLICK

Application Number	Filed
90/013,851	OCTOBER 28, 2016

For: VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS

Art Unit	Examiner
3992	K. REICHLE

Applicant hereby **appeals** to the Patent Trial and Appeal Board from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) $ 800

☐ Applicant asserts small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by 50%, and the resulting fee is: $ _____

☐ Applicant certifies micro entity status. See 37 CFR 1.29. Therefore, the fee shown above is reduced by 75%, and the resulting fee is: $ _____
Form PTO/SB/15A or B or equivalent must either be enclosed or have been submitted previously.

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☑ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 01-0484.

☐ Payment made via EFS-Web.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/AIA/22 or equivalent) is enclosed.
For extensions of time in reexamination proceedings, see 37 CFR 1.550.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant

☑ attorney or agent of record
Registration number 58237

☐ attorney or agent acting under 37 CFR 1.34
Registration number _____

Signature /JACK ABID/

Typed or printed name JACK GEORGE ABID

Telephone Number 407-841-2330

Date 11/17/2017

NOTE: This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4 for signature requirements and certifications. Submit multiple forms if more than one signature is required, see below*.

☐ * Total of _____ forms are submitted.

This collection of information is required by 37 CFR 41.20(b)(1) and 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	)	
	)	
Request for Reexamination of **U.S. PATENT NO.6,032,278**	)	
	)	
Control No. **90/013,851**	)	Attorney Docket No.: **C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	)	
	)	Examiner: **K. Reichle**
Filing Date: **OCTOBER 28, 2016**	)	
	)	Art Unit: **3992**
For: **VEHICLE TRACKING UNIT WTIH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	)	

DECLARATION BY JOSEPH C. McALEXANDER, III UNDER 37 C.F.R. §1.132

I, the undersigned, hereby declare that:

I. Background

1. I am the Founder and President of McAlexander Sound, formerly IP Director of CCI and Vice President of EPI Technologies, Inc., and have 44 years of experience in microcircuit and semiconductor technologies, including: device design, fabrication, assembly, testing, and marketing, and control system design, analysis, quality, reliability, and defect/failure analysis at Texas Instruments.

2. I am a Registered Professional Engineer (#79454) in the State of Texas and hold a Bachelor of Science degree in Electrical Engineering from North Carolina State University.

3. I am an inventor on 31 U.S. patents and a number of foreign patents, and I am familiar with the patent process.

4. I have been an expert witness and technical consultant for the past 26 years in IP matters related to product/process analysis and investigation.

5. I prepared expert reports and provided trial testimony in the case of Omega Patents, LLC (the '278 Patent Owner) v. CalAmp Corp. (the Requester) that recently concluded in the Middle District of Florida (hereinafter referred to as the "CalAmp litigation"). In that CalAmp litigation, the '278 patent was asserted and determined by the jury to be not invalid, to be infringed by CalAmp, and that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent, and that this objectively high likelihood of infringement was either known or so obvious that it should have been known to CalAmp. (Jury Verdict, Exhibit 1). In the Court's Final Order of April 5, 2017 (Exhibit 2), the Court confirmed that the asserted claims were not invalid (including the claims of the '278 patent), and that CalAmp was a willful infringer. In the Court's Final Judgment (Exhibit 3), the Court awarded damages of $10,144,286.

6. I have been retained by the Patent Owner to provide technical consultation in the present reexamination of

the '278 patent, particularly with respect to addressing rejections based upon U.S. Patent No. 6,330,499 to Chou et al.

II. The '278 Patent and Current Office Action

7. I have extensively reviewed the '278 patent, along with its file history, and arguments advanced by Requester's trial expert, Mr. Andrews, as part of my work on behalf of the Patent Owner during the course of the CalAmp litigation. I have also reviewed the related litigation trial transcript and exhibits, and have reviewed the Court's Final Order of April 5, 2017, and Final Judgment of April 24, 2017.

8. I have reviewed the current Office Action dated March 29, 2017 for the reexamination of the '278 patent. In that Office Action, the claims were rejected as follows:

> Claims 1, 4-8, 11-12, 18-21 were rejected as anticipated by or, in the alternative, obvious over U.S. Patent No. 6,330,499 to Chou et al.
>
> Claims 9-10 and 22 were rejected over Chou et al. and U.S. Patent No. 6,028,537 to Suman et al.
>
> Claims 2-3 and 13-16 were rejected over Chou et al. and U.S. Patent No. 5,732,074 to Spaur et al.
>
> Claim 17 was rejected over Chou et al. and Suman et al. and Spaur et al.

9. Representative Claim 1 of the '278 patent is directed to a multi-vehicle compatible tracking unit for a

vehicle comprising a vehicle data bus extending throughout the vehicle. The multi-vehicle compatible tracking unit comprises a vehicle position determining device, a wireless communications device, and a multi-vehicle compatible controller for cooperating with the vehicle position determining device and the wireless communications device to send vehicle position information. The multi-vehicle compatible controller is to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles. The multi-vehicle compatible tracking unit comprises a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller. Independent Claim 13 recites that the downloading interface includes a connector for temporary connection to a downloading device. Independent Claim 18 recites that the downloading interface includes a wireless receiver for temporary connection to a downloading device.

III. The Prior Art Analysis

10. I understand that Chou et al. discloses a system including a vehicle having an in-vehicle computing system, and a client computer device to enable vehicle health checkup and remote diagnostics. A communication link is for communicating vehicle information (e.g., vehicle identification number (VIN), diagnostic data, and the like). The vehicle location is established, for example by a device (e.g., antenna

or the like) for receiving positioning information. A remote service center is also provided having a diagnostic server, a help desk and a data repository. The help desk schedules services, orders parts, and dispatches assistance through the roadside assistance unit.

11. I understand that the vehicle bus interface of Chou et al. includes the following modules: "vehicle bus adapter 120C, fault detector 120B, and diagnostic data service 120A. The fault detector 120B polls the vehicle bus 104 through the vehicle bus adapter 120C checking for fault codes reported by the vehicle ECUs 103. The vehicle bus adapter 120C translates the messages received from the vehicle bus into the language of the fault detector. It also translates messages from the fault detector into the language of the vehicle bus. The fault code specifications and protocols of the vehicle may be Original Equipment Manufacturer (OEM) and model dependent. The term 'vehicle fault codes' is meant to be synonymous with the term 'trouble code' or 'diagnostic trouble code'." (Col. 4, lines 21-32).

12. I further understand that Chou et al. discloses that a "listing of such codes may be found in the publication of the Society of Automotive Engineers, 'SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual'." (Col. 4, lines 33-36).

13. I have previously studied the SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual, SAE HS-3000 (1997), identified in Chou et al., as part of my studies for related reexaminations (90/013,741 and 90/013,659). The SAE HS-3000 Manual provides that: "[c]urrently there is no uniformity in these numeric Diagnostic Trouble Codes (DTC) between manufacturers, and in some cases, even within the same manufacturer across different product lines." (SAE HS-3000, 1997, page 39).

14. I understand that the Examiner has interpreted the claimed downloading interface as structure "for permitting downloading of enabling data related to the at least one corresponding vehicle device code, e.g. vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for use by said multi-vehicle compatible controller."

15. I understand that the Examiner contends that Chou et al. discloses an interface and wireless communication link structure that "permits downloading of enabling data, e.g. instruction to gather data, vehicle parameter update/change, related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller, e.g. steps 2-6 in Figure 5."

16. It is my opinion that one of ordinary skill in the art would recognize that Chou et al. fails to disclose the multi-vehicle compatible controller and downloading interface of the claimed vehicle tracking unit, as these claim recitations are interpreted by the Examiner.

17. It is my opinion that one of ordinary skill in the art would recognize that Chou et al. teaches away from the claimed invention. Chou et al. provides repeated disclosure that the diagnostic server at the remote service center permits multi-vehicle compatibility. See, for example, col. 5, lines 34-39; col 5, lines 53-58; col. 5, lines 61-64; col. 8, lines 19-21; and col. 9, lines 3-16.

IV. Evidence of Secondary Considerations

18. I submit that the person of ordinary skill in the art would not find it obvious to selectively modify Chou et al. Instead, it is my opinion that such a selective modification or combination would only be motivated by improper hindsight reconstruction - here about twenty years of hindsight.

19. I submit that merits of the claimed invention extend to providing multi-vehicle compatibility as described above. Accordingly, there exists evidence of secondary considerations of non-obviousness including:

a. The Jury Verdict, page 9, provides that others accepted licenses under the patents "because of the merits of the claimed invention."

b. I also understand that Omega has received in excess of $50 million in licensing revenue, much of it from the '278 patent and the other asserted patents in the CalAmp litigation. The Final Judgment adds another $10M to this amount.

c. The '278 patent is one of three patents asserted in the related litigation providing features for multi-vehicle compatibility as is important for the overall licensing program of the Patent Owner.

d. The Jury Verdict, page 9, includes the Jury's determination that the accused products were "commercially successful due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or features of the product other than those found in the claim." And the Jury determined that the asserted claims of the '278 patent were infringed by each of the accused CalAmp devices. (Jury Verdict, Pages 5-6).

e. CalAmp's employees testified in the related litigation that the multi-vehicle compatibility provides for simplified installation in a vehicle, and avoids the need for separated stock keeping units (SKUs). Hall

deposition, 40:25 - 41:2; and Hergesheimer deposition, 43:3-16).

f. CalAmp telemetry devices have enjoyed significant commercial success having sold over 466,000 units of the accused products, earning over $4.1 million in gross profits based upon the financial Expert Report of Mr. Tregillis.

g. The Jury Verdict, on page 9, includes a finding that others copied the claimed invention.

h. The Court determined that "CalAmp was well aware of Omega's patents since at least 2010. Rather than take a license, and choosing not to design around Omega's patents, CalAmp elected to sell infringing products and continues to do so to this day. CalAmp's motivation to engage in this behavior is obvious: their customers wanted this technology, and CalAmp wanted to provide it." (Final Order, pg. 19).

i. The Accused Products in the CalAmp litigation were developed because of "customer need." (Hall deposition, 40:20-41:12; Hergesheimer deposition, 40:23-41:3.).

j. Further, the infringing CalAmp Products would have "limited value" if it were not for the multi-vehicle

compatibility. (Hergesheimer deposition, 46:25-47:169.).

20. I hereby declare further that all statements made herein are of my own knowledge and are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful and false statements may jeopardize the validity of the application or any patent issued thereon.

Joseph C. McAlexander, III

June 12, 2017
Date

In re Patent of
Kenneth E. FLICK
Reexamination Control No. **90/013,851**
Filed: **OCTOBER 29, 2016**
_____/

CERTIFICATE OF SERVICE

Certificate of Service in compliance with 37 C.F.R. §1.530(c)

Pursuant to 37 C.F.R. §§1.530(c), 1.248, I hereby certify that on November 2, 2017, a complete copy of this Amendment is being served via First Class U.S. Mail upon Third Party Requester at the correspondence address as shown in PAIR:

KPPB LLP
2400 EAST KATELLA AVENUE
SUITE 1050
ANAHEIM, CA 92806

Respectfully submitted,

/JACK G. ABID/

_____
JACK GEORGE ABID
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In re Patent of
Kenneth E. FLICK
Reexamination Control No. **90/013,851**
Filed: **OCTOBER 29, 2016**
_____/

CERTIFICATE OF SERVICE

Certificate of Service in compliance with 37 C.F.R. §1.530(c)

Pursuant to 37 C.F.R. §§1.530(c), 1.248, I hereby certify that on September 19, 2017, a complete copy of this Amendment is being served via First Class U.S. Mail upon Third Party Requester at the correspondence address as shown in PAIR:

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2400 EAST KATELLA AVENUE
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Attorney for the Patent Owner

In re Patent of
Kenneth E. FLICK
Reexamination Control No. **90/013,851**
Filed: **OCTOBER 29, 2016**
_____/

CERTIFICATE OF SERVICE

Certificate of Service in compliance with 37 C.F.R. §1.530(c)

Pursuant to 37 C.F.R. §§1.530(c), 1.248, I hereby certify that on November 17, 2017, a complete copy of this Amendment is being served via First Class U.S. Mail upon Third Party Requester at the correspondence address as shown in PAIR:

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ANAHEIM, CA 92806

Respectfully submitted,

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Attorney for the Patent Owner

ITEM 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OMEGA PATENTS, LLC,

Plaintiff,

v. Case No: 6:13-cv-1950-Orl-40DAB

CALAMP CORP.,

Defendant.
_____/

VERDICT FORM

1. Do you find Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the asserted claims of Omega's asserted Patents?

   ✓ Yes (for Omega) _____No (for CalAmp)

If your answer to Question 1 is "No," proceed to Question 3. If your answer to Question 1 is "Yes," for any claim(s) Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringed, indicate a finding of infringement by marking "Yes" in the corresponding space provided in Questions 2.A through 2.D. below; for any claim(s) Omega has failed to prove by a preponderance of the evidence that any of the accused CalAmp devices infringed, indicate a finding of non-infringement by marking "No" in the corresponding space provided in Questions 2.A through 2.D. below.

2.A. U.S. Patent No. 6,346,876 B1 ("the '876 patent")

Has Omega proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the '876 patent?

	LMU-3000	LMU-3030	LMU-3050	VPOD	VPOD2
Claim 1	☑ Yes ☐ No	☑ Yes ~~☑ No~~	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 3	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 4	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 5	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 12	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 14	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 16	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No

2.B. U.S. Patent No. 6,756,885 B1 ("the '885 patent")

Has Omega proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the '885 patent?

	LMU-3000	LMU-3030	LMU-3050	VPOD	VPOD2
Claim 1	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 2	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 3	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 12	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 14	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No

2.C. U.S. Patent No. 7,671,727 B2 ("the '727 patent")

Has Omega proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the '727 patent?

	LMU-3000	LMU-3030	LMU-3050	VPOD	VPOD2
Claim 1	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 10	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 11	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No

2.D. U.S. Patent No. 8,032,278 B2 ("the '278 patent")

Has Omega proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the '278 patent?

	LMU-3000	LMU-3030	LMU-3050	VPOD	VPOD2
Claim 1	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 2	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 3	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 4	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 5	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 6	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 8	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 11	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No

U.S. Patent No. 8,032,278 B2 ("the '278 patent") continued from previous page

	LMU-3000	LMU-3030	LMU-3050	VPOD	VPOD2
Claim 12	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No		
Claim 13	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 14	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 16	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 18	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 19	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No
Claim 21	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No	☑ Yes ☐ No

After answering Questions 2.A. through 2.D., proceed to Question 3.

3. Has CalAmp proven by clear and convincing evidence that any claim of the asserted Patents is invalid?

_____ Yes (for CalAmp) ____✓____ No (for Omega)

4. If your answer to Question 3 is "No," proceed to Question 5. If your answer to Question 3 is "Yes," answer Question 4 below by indicating with an X any claim(s) you find invalid by clear and convincing evidence and indicate the reasons for invalidity, namely, identify which prior art references disclose the elements of the claim.

PATENT CLAIM	YES, INVALID	REFERENCES DISCLOSING THE ELEMENTS OF THE CLAIM
U.S. Patent No. 6,346,876		
Claim 1		
Claim 3		
Claim 4		
Claim 5		
Claim 12		
Claim 14		
Claim 16		
U.S. Patent No. 6,756,885		
Claim 1		
Claim 2		
Claim 3		
Claim 12		

PATENT CLAIM	YES, INVALID	REFERENCES DISCLOSING THE ELEMENTS OF THE CLAIM
U.S. Patent No. 6,756,885 (continued from previous page)		
Claim 14		
U.S. Patent No. 7,671,727		
Claim 1		
Claim 10		
Claim 11		
U.S. Patent No. 8,032,278		
Claim 1		
Claim 2		
Claim 3		
Claim 4		
Claim 5		
Claim 6		
Claim 8		
Claim 11		
Claim 12		
Claim 13		
Claim 14		
Claim 16		
Claim 18		
Claim 19		
Claim 21		

After answering Question 4, answer Question 5.

5. Which of the following factors that tend to indicate nonobviousness, if any, has been established by the evidence with respect to the claimed invention (write the word "yes" in the blank below to any question that you answer "yes" to):

YES	Were accused products covered by the claim commercially successful due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or features of the product other than those found in the claim?
X	Was there long felt need for a solution to the problem facing the inventors, which was satisfied by the claimed invention?
X	Did others try, but fail, to solve the problem solved by the claimed invention?
YES	Did others copy the claimed invention?
X	Did the claimed invention achieve unexpectedly superior results over the closest prior art?
X	Did others in the field praise the claimed invention or express surprise at the making of the claimed invention?
YES	Did others accept licenses under patents because of the merits of the claimed invention?

If your answer to Question 1 is "Yes," answer Question 6.A. If your answer to Question 1 is "No," skip all remaining questions and proceed to sign and date this Verdict Form.

6.A. Has Omega proven by clear and convincing evidence that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent?

✓ Yes _____ No

If your answer to Question 6.A. is "Yes," proceed to Question 6.B. If your answer to Question 6.A. is "No," proceed to Question 7.

6.B. Has Omega proven by clear and convincing evidence that this objectively high likelihood of infringement was either known or so obvious that it should have been known to CalAmp?

✓ Yes _____ No

Proceed to Question 7.

7. What amount of damages, if any, do you find is adequate to compensate Omega for CalAmp's infringement of any claim found to be valid and not licensed?

$ 2,975,200

After answering Question 7, sign and date this Verdict Form.

SO SAY WE ALL THIS 24th DAY OF FEBRUARY, 2016.

JURY FOREPERSON

ITEM 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OMEGA PATENTS, LLC,

Plaintiff,

v. Case No: 6:13-cv-1950-Orl-40DCI

CALAMP CORP.,

Defendant.
_____/

ORDER

This cause is before the Court on the following:

1. Defendant CalAmp Corporation's Renewed Motion for Judgment as a matter of law and Motion for New Trial, (Doc. 216);
2. Plaintiff Omega Patents, LLC's Response in Opposition, (Doc. 226);
3. CalAmp's Supplemental Motion for Judgment as a Matter of Law, for New Trial, and to Vacate the Judgment, (Doc. 228); and
4. Omega's Response in Opposition to Defendant's Supplemental Motions, (Doc. 228).

Upon due consideration of the foregoing, Defendant CalAmp's Renewed Motions for Judgment as a Matter of Law and for New Trial are denied.[1]

I. BACKGROUND

Omega Patents, LLC ("Omega") brought the instant action against CalAmp Corp.

[1] The supplemental briefing is not necessary to preserve the challenges directed by CalAmp against the Final Judgment, notwithstanding the entry of an Amended Final Judgment. Additionally, the Court has resolved the Motion to Vacate the Judgment for Lack of Venue. (Doc. 230).

("CalAmp") and contends that CalAmp infringed the claims of U.S. Patent No. 6,346,876 ("the '876 Patent"),[2] U.S. Patent No. 6,756,885 ("the '885 Patent"),[3] U.S. Patent No. 7,671,727 ("the '727 Patent"),[4] and U.S. Patent No. 8,032,278 ("the '278 Patent")[5] (collectively, the "patents-in-suit").[6] (Doc. 1). The trial of this matter commenced on February 16, 2016, and concluded on February 24, 2016, (Doc. 178–184), with the jury returning a verdict in favor of Omega in which they found that all of Omega's asserted claims were valid and had been infringed upon by CalAmp's accused devices: the LMU 3000, LMU 3030, LMU 3050, the V-Pod and the V-Pod 2. (Docs. 144, pp. 1–6). The jury rejected Defendant's invalidity contentions and made three findings for Plaintiff on secondary considerations indicating nonobviousness. (*Id.* at pp. 7–9). Finally, the jury found Plaintiff had proven by clear and convincing evidence that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent and that this high likelihood of infringement was either known or so obvious that it should have been known to CalAmp. (*Id.* at pp. 9–10). The jury awarded damages in the amount of $2,975,200. (*Id.* at p. 10).

II. STANDARDS FOR REVIEW

A. Judgment as a Matter of Law

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2 The jury found infringement of claims 1, 3, 4, 5, 12, 14, and 16. (Doc. 144, p. 2).
3 The jury found infringement of claims 1, 2, 3, 12, and 14. (Id. at p. 3).
4 The jury found infringement of claims 1, 10, and 11. (Id. at p. 4).
5 The jury found infringement of claims 1–6, 8, 11–16, 18–19, and 21. (Id. at pp. 5–6).
6 The patents-in-suite relate to control systems for vehicles with a "data communication bus." The term "data communication bus" has been previously construed by the Court to mean "wired connection for communication of digital messages among vehicle devises, with each message including one or more device addresses." (Doc. 50, p. 25).

Judgment as a matter of law should only be granted if no objectively reasonable jury, based on the evidence and inferences adduced at trial and through the exercise of impartial judgment, could reach the verdict reached. *Brown v. Ala. Dep't of Transp.*, 597 F.3d 1160, 1173 (11th Cir. 2010); *Combs v. Plantation Patterns*, 106 F.3d 1519, 1526 (11th Cir. 1997). Stated differently, the party moving for judgment as a matter of law must show that the trial evidence "is so overwhelmingly [in its favor] that a reasonable jury could not arrive at a contrary verdict." *Middlebrooks v. Hillcrest Foods, Inc.*, 256 F.3d 1241, 1246 (11th Cir. 2001). However, where there is substantial evidence in the trial record which would allow reasonable minds to reach different conclusions, judgment as a matter of law is inappropriate. *Mee Indus. v. Dow Chem. Co.*, 608 F.3d 1202, 1211 (11th Cir. 2010). In considering a motion for judgment as a matter of law, the district court must review the record and draw all reasonable inferences derived therefrom in the light most favorable to the non-moving party. *Brown*, 597 F.3d at 1173. Importantly, the district court must not make credibility determinations or weigh evidence, as these are functions reserved for the jury. *Id.*

Rule 50 is clear in its procedure. Before a case is submitted to the jury for consideration, a party may move for judgment as a matter of law on any issue which is not supported by legally sufficient evidence. Fed. R. Civ. P. 50(a). If the court denies relief at that time, the party may renew the motion after the jury has returned its verdict. Fed. R. Civ. P. 50(b). It is well-established that "any renewal of a motion for judgment as a matter of law under Rule 50(b) must be based upon the same grounds as the original request for judgment as a matter of law made under Rule 50(a)" and that "a party cannot assert grounds in the renewed motion that it did not raise in the earlier motion." *SEC v.*

Big Apple Consulting USA, Inc., 783 F.3d 786, 813 (11th Cir. 2015). Although "[s]trict identity of issues . . . is not required" of the two motions, the grounds identified in a Rule 50(b) motion must be "closely related" to the grounds raised in the prior Rule 50(a) motion such that opposing counsel and the court are notified of the evidentiary shortcomings asserted. *Howard v. Walgreen Co.*, 605 F.3d 1239, 1243 (11th Cir. 2010). This procedural safeguard "protects the non-moving party's right to cure deficiencies in the evidence before the case is submitted to the jury" and ensures that "[t]he moving party cannot ambush the court and opposing counsel after the verdict when the only remedy is a completely new trial." *Middlebrooks*, 256 F.3d at 1245.

B. New Trial

A district court may grant a new trial for a variety of reasons, including when the verdict is against the great weight of the evidence, the damages awarded by the jury are excessive, the court erred in admitting or excluding evidence or in instructing the jury on the law, or other circumstances resulted in a patently unfair trial. Fed. R. Civ. P. 59; *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940). Whatever its reason, "a district court may, in its discretion, grant a new trial 'if in [the court's] opinion, the verdict . . . will result in a miscarriage of justice, even though there may be substantial evidence'" which would preclude the entry of judgment as a matter of law. *McGinnis v. Am. Home Mortg. Servicing, Inc.*, 817 F.3d 1241, 1254 (11th Cir. 2016) (quoting *Hewitt v. B.F. Goodrich Co.*, 732 F.2d 1554, 1556 (11th Cir. 1984)). Unlike a motion for judgment as a matter of law made pursuant to Rule 50, the court "is free to weigh the evidence" in assessing whether to grant a new trial under Rule 59. *Id.* (quoting *Rabun v. Kimberly-Clark Corp.*, 678 F.2d 1053, 1060 (11th Cir. 1982)).

III. CALAMP'S JMOL ARGUMENTS AT TRIAL

At the conclusion of Omega's case-in-chief, CalAmp moved for judgment as a matter of law. (Doc. 182). CalAmp argued the evidence was insufficient to establish infringement, contending that Mr. McAlexander failed to address what control functions were being performed with respect to the '876 patent. (*Id.* at 3:23 to 4:2). CalAmp also argued that Omega's expert did not establish "they were actually generating the working and non-working command signals." (*Id.* at 4:10–12). As to the '876 and '885 patent, CalAmp claimed Plaintiff satisfied the "transmitter requirement" based on the CalAmp server, which they contend is a deviation from Mr. McAlexander's expert report where he "relied on the chip set on the device having both the transmitter and the receiver." (*Id.* at 4:14–23). Moreover, CalAmp argued the Court defined device codes "as being signals from a vehicle device," and Omega presented testimony that "[i]t was coming from the LMU and going onto the vehicle bus." (*Id.* at 5:8–14).

As to the '278 patent, CalAmp averred that Omega's expert "didn't show any control function the LMU was actually performing onto the bus." (*Id.* at 5:17–19). CalAmp elaborated that "the claim required a corresponding vehicle device code from among a plurality thereof for different vehicle, and he [McAlexander] was using different constructions. (*Id.* at 5:20–23). With regard to the '727 patent, Defendant submitted that Omega's expert testified to a "new theory of infringement that using GPS speed could now satisfy the claim limitation . . . [and] [w]e saw he was relying on speed from the vehicle bus" in his report. (*Id.* at 6:4–13).

On the issue of indirect infringement, CalAmp claimed Omega failed "to provide sufficient evidence of indirect infringement, [because] [t]here was no testimony about an

intent to infringe that's required for indirect infringement. And there was no testimony that—of an actual customer that he determined actually infringed." (*Id.* at 6:15–19). CalAmp next offered that Omega failed to provide sufficient evidence to support willful infringement. (*Id.* at 6:23–24). Finally, CalAmp argued the damages evidence was insufficient. (*Id.* at 9:17–18).

Following the close of the defense case, CalAmp renewed its motion for judgment as a matter of law "[f]or the same reasons, so nothing [is new] there." (Doc. 183, 221:10–13). CalAmp also argued that Omega failed to provide evidence sufficient to overcome the defense of obviousness for all four patents. (*Id.* at 221:15–19). The defense concluded by restating their claim that Omega failed to prove willfulness. (*Id.* at 222:3–9). These are the only grounds preserved for consideration by this Court at this juncture.

IV. CALAMP'S JMOL ARGUMENTS

A. The Verdict Form

CalAmp advocates that "[a]n overreaching issue on noninfringement is the fact that the verdict for asked only about, and the jury therefore could find only, direct infringement under 35 U.S.C. § 271(a)." (Doc. 216, p. 3). Since the claims of the '876 and '885 patents require "a transmitter and a receiver for receiving signals from said transmitter," CalAmp contends infringement is only possible if the jury found the infringing product was "the LMU in combination with other components such as a server." (*Id.* at pp. 3–4). Accordingly, CalAmp submits the verdict form can only sustain direct infringement. (*Id.* at p. 3).

Absent from CalAmp's argument, however, is that the Court used the verdict form submitted by the Defendant. (Doc. 90-11). CalAmp's verdict form poses the following

question: "Do you find Omega has proven by a preponderance of the evidence that any of the accused CalAmp devices infringed any of the following claims of the Plaintiff's asserted Patents?" (*Id.* at p. 3). The verdict form proffered by Omega, however, asked: "Do you find by a preponderance of the evidence that Defendant infringed any of the following claims of Plaintiff's Patents?" (Doc. 90-10, p. 2).

CalAmp was well aware that indirect infringement was before the jury along with direct infringement, because CalAmp argued for judgment as a matter of law ("JMOL") on indirect infringement. (Doc. 182, 6:15–19). Yet, CalAmp offered, and the Court accepted, the verdict form which CalAmp now characterizes as fatally flawed. As Omega correctly observes in their response, to the extent the verdict form is lacking CalAmp invited the error by crafting that very verdict form.[7] *See Slip-N-Slide Records, Inc. v. TVT Records, LLC*, 2007 U.S. Dist. LEXIS 80788 (S.D. Fla. Oct. 31, 2007) (party's attack on verdict form is barred by invited error doctrine where that party failed to object to the verdict form). CalAmp cannot create the verdict form with full knowledge that indirect infringement had been presented to the jury and later complain that their form is deficient. Additionally, CalAmp failed to raise any objection to the verdict form during either of their arguments for judgment as a matter of law at trial and have waived this issue.[8]

B. The '876 and '885 Patents

CalAmp suggests that the '876 and '885 patents are not infringed, because the "accused products are not 'at the vehicle' when CalAmp makes, uses or sells them. (Doc.

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[7] Questions 6A and 6B of the verdict form ask the jury to address CalAmp's actions, as opposed to the device.

[8] The Court discussed indirect infringement (inducement) with the parties during the charge conference. (Doc. 183, 23:10–16). The inducement instruction was given. (Doc. 143, p. 15).

216, p. 5). Since the '876 patent requires the multi-vehicle compatible controller ("MVCC") to be "at the vehicle," direct infringement fails. (*Id.*). CalAmp did not make this argument at either JMOL motion hearing during the course of the trial and has waived this issue. Additionally, the Plaintiff's theory was not limited to direct infringement, as discussed previously in this Order.

Next, CalAmp contends the '885 patent requires the MVCC to cooperate with the transmitter and receiver and avers that the devices are not cooperating with a RF transmitter and receiver until they are turned on. (*Id.*). This is an example of yet another argument that was not advanced during either JMOL hearing at trial. Regardless, Omega is correct that the testimony at trial established the "accused devices had a transmitter and receiver that are used to transmit and receive," and CalAmp's PULS server transmits scripts and updates directly from CalAmp to the accused devices via a cellular network. (Doc. 226, p. 3).[9] This is adequate to support infringement.

CalAmp asserts that Mr. McAlexander "tried to inject a new theory at trial by pointing to 'a transmitter receiver that's associated with a server that receives and communicates with it' in combination with the accused devices." (Doc. 216, p. 4). While Omega disagrees with this characterization of Mr. McAlexander's testimony, the point raised by CalAmp is not relevant. That is, the party moving for judgment as a matter of law must show that the trial evidence "is so overwhelmingly [in its favor] that a reasonable jury could not arrive at a contrary verdict." *Middlebrooks v. Hillcrest Foods, Inc.*, *supra*. CalAmp's argument is not that the evidence presented by Omega on this issue was

[9] Omega cites the testimony and exhibits supporting this statement, and the Court will not repeat the record citations here.

deficient, but rather that Mr. McAlexander allegedly injected a new theory at trial. Assuming CalAmp is correct that Plaintiff's expert modified the opinion set forth in his report, CalAmp's objection is to the introduction of a "new theory." An evidentiary objection does not equate with a lack of sufficient evidence to support the jury's verdict which is all the JMOL analysis concerns.

C. The Device Codes Limitation

The next argument advanced by Defendant is that all asserted claims of the '278 and '885 patents and claim 12 of the '876 patent have requirements for "device codes" which is a signal "from" a vehicle bus. (Doc. 216, p. 5). CalAmp acknowledges that Omega's expert testified that "the query sent by the LMU as part of the bus discovery process." (*Id.* at p. 6). In fact, Mr. McAlexander testified that the LMU device is a controller that is multi-vehicle compatible. (Doc. 180, 78:19–21). Defendant's witness, Mr. Chen, acknowledge that the LMU devices are able to read the device codes from the bus and match them with look-up tables. Accordingly, the jury was presented with sufficient evidence to sustain their finding of infringement.

D. Determining a Match Between Read and Stored Codes

CalAmp claims the asserted claims of the '885 patent, and claim 12 of the '876 patent, require "storing a set of device codes for a given vehicle device for a plurality of different vehicles," "reading a device code from the data communications bus," and "determining a match between a read device code and the stored device codes." (Doc. 216, pp. 6–7). The Defendant failed to raise this issue during either of their JMOL arguments. Mr. McAlexander was asked by Plaintiff's counsel if he found that the MVCC "is for reading a device code from the data communications bus and for determining a

match between a read device code and the stored device codes to thereby provide reading compatibility with a plurality of different vehicles?" (Doc. 180, 77:11–16). Mr. McAlexander replied:

> Yes, I did. One of the unique aspects of this type of a system is the fact that you send out a sequence of codes, and only the code which is understood by some downstream vehicle device on the vehicle bus is going to respond. And so, it's called a working command. When you get that working signal provides a response, that's a match.

(*Id.* at 77:17–23). The fact that CalAmp's expert disputes that a match is performed does not warrant judgment as a matter of law in favor of CalAmp.

E. Reading and Using Vehicle Speed from the Bus

In its JMOL argument, CalAmp contended that Omega's expert testified to a "new theory of infringement that using GPS speed could now satisfy the claim limitation." (Doc. 182, 6:4–13). As previously discussed, an objection to the propriety of offering an allegedly new opinion does not meet the standard for judgment as a matter of law. CalAmp elaborates upon their earlier argument by explaining that "the default speed above threshold functions uses only GPS speed, [hence] the accused products do not necessarily infringe." (Doc. 216, p. 9). CalAmp therefore concludes it "could be liable only under an indirect infringement theory, but the jury was not asked to and did not find that CalAmp induced or contributed to another's direct infringement," harkening back to their earlier objection to the verdict form that they had offered for use at trial. (*Id.* at p. 10). CalAmp argues they are entitled to a new trial because it is impossible to know if the verdict was based on Mr. McAlexander's incorrect claim construction theory. (*Id.*).

First, CalAmp cannot complain that their own verdict form has complicated matters in terms of direct and indirect infringement. Second, juries are routinely confronted with

competing legal theories, and a new trial is not warranted simply because the losing party cannot discern why the jury found as they did. In the instant case, the verdict form prepared by CalAmp allowed the jury to indicate which claims of each patent had been infringed. The jury concluded the '727 patent (speed from the vehicle data communication bus) had been infringed. (Doc. 144, p. 4). Lastly, CalAmp's engineer, Mr. Jeffrey Eiberger, testified that 5% of CalAmp's customers used bus speed for speed exceedances. (Doc. 147, 78:14–20). This is sufficient to support the finding of direct and indirect infringement.

F. Command Signals and Controller

CalAmp asserts that its products "merely request and receive data" and "do not infringe because they do not send signals to operate a vehicle device." (Doc. 216, p. 11). However, in the Claim Construction Order, this Court observed:

> Since the system is designed to operate with a variety of vehicle platforms, not every signal generated on the data communications bus will cause a function to be performed . . . . Accordingly, CalAmp's proposed construction incorrectly includes within the definition of the "command signal" the requirement that a signal generated on the data communication bus must always cause a desired function to be performed.

(Doc. 50, p. 15). Besides, Mr. McAlexander testified that the LMU meets this definition. (Doc. 180, 66:16 to 69:15). Defense expert, Mr. Eric Andrews, ignores the Court's construction by inserting into the claim the requirement that the command function have a physical embodiment. (Doc. 183, 117:22–25; 118:1–12). Mr. Andrews admitted that a command signal need not result in a physical manifestation, when he acknowledged that an ECU responding with a device code signal is responding to a command signal. (*Id.* at 118:17–24). CalAmp's argument for JMOL disregards this testimony.

G. Patents-in-Suit is Invalid as Obvious

Judgment as a matter of law should only be granted if no objectively reasonable jury, based on the evidence and inferences adduced at trial and through the exercise of impartial judgment, could reach the verdict reached. *Brown v. Ala. Dep't of Transp.*, *supra.* CalAmp argued at trial and in their JMOL that "a person of ordinary skill would have looked to the J1978 standard to solve the problem of multi-vehicle compatibility (and thus combine the references)." (Doc. 216, pp. 12–13). The J1978 standard relates to a scan tool and, notwithstanding Mr. Andrews failure to articulate why one would have combined an SAE standard pertaining to scan tools with the referenced prior art, CalAmp contends "it is self-evident why one of ordinary skill would do so." (*Id.* at p. 14).

CalAmp is required to prove by clear and convincing evidence that one of ordinary skill in the art would be motivated to combine the references provided by the Defendant. *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008). The jury rejected Mr. Andrew's argument that one would have—without relying on the benefit of hindsight—combined the prior art with the SAE specification. (Doc. 144, p. 7). Based upon the quality of Mr. Andrew's testimony, an objectively reasonable jury could have reached this verdict.

H. Secondary Considerations

"The jury found three secondary considerations of nonobviousness—commercial success, copying, and licensing by others. Dkt. 144 at 9" (Doc. 216, p. 15). While this precise argument was not presented at either JMOL hearing, it is sufficiently tied to the issue of obviousness to warrant further examination. CalAmp contends Omega failed to

sufficiently demonstrate a nexus between the claimed invention and the secondary considerations. (*Id.*).

Plaintiff, in its response to this assertion, summarizes ample evidence presented at trial which rebuts CalAmp's claim that the secondary considerations are unsupported. (Doc. 226, pp. 10–11). Plaintiff observes that Defendant's corporate representative and employees testified that the infringing products (and DEI's product) were "commercially successful due to the merits of Omega's invention." (*Id.* at p. 10). Witnesses testified that features on the infringing CalAmp products were requested by customers. (*Id.*). Additionally, Mr. Flick sold devices with the patented features, generating sales revenue of $33 million annually. (*Id.*). Moreover, the jury heard testimony that Mr. Flick, via his company, issued dozens of licenses to the patents-in-suit and entered into settlement agreements with infringers. (*Id.*). Finally, Omega presented evidence that CalAmp knew of Omega's patents and discussed the difficulty of designing around the patents. (*Id.* at p. 11). This testimony was sufficient for an objectively reasonable jury to find the secondary considerations.

I. Willfulness

Defendant argues that no reasonable jury could have found willfulness. (Doc. 216, p. 22). In partial support for this premise, CalAmp states it relied upon counsel's legal opinion that the '885, '876 and '727 patents were invalid and their products would not infringe. (*Id.* at p. 18). However, the advice of counsel was not allowed into evidence, and CalAmp now contends this warrants JMOL on willfulness and a new trial. (*Id.*). As previously observed in this Order, CalAmp confuses JMOL, which questions the sufficiency of the evidence presented by the non-moving party, with a motion for new trial

due to an evidentiary error. In the interest of completeness, the Court will address its evidentiary ruling before turning to the weight of the evidence presented by Omega.[10]

Counsel for CalAmp asked Mr. Chen, senior director of business development in CalAmp's corporate development group,[11] if he had received written and oral opinions by legal counsel regarding the validity of the patents-in-suit. (Doc. 182, 116:6-23). When asked to state the content of the oral opinion provided by counsel regarding whether the LMU-3000 infringed the '885 patent, counsel for Omega objected to the hearsay testimony elicited by the question. (*Id.* at 116:21–25; 117:1). Because the legal opinion was being offered for the truth of the matter, the Court sustained the objection. (*Id.* at 117:5).

Following the lunch recess, the Court discussed the opinion letter of Mr. David Bailey, exhibits 71 and 73, in which he opines that the '876 and '883 patents are invalid due to obviousness. (*Id.* at 119:15–24). After discussing the content of the opinion letters, the Court concluded the opinions are offered for their truth and do not fall within an exception to hearsay. (*Id.* at 120:16 to 124:24). Having found the opinion letter to be hearsay, the Court advised CalAmp that the attorney who authored the opinions, if properly disclosed on CalAmp's witness list, could testify that he gave an opinion that the two patents were invalid. (*Id.* at 124:19–24). While CalAmp did not disclose Mr. Bailey as a witness, and even though Omega objected to the witness testifying, the Court allowed Mr. Bailey to testify that the CalAmp devices did not infringe the '876 and '883 patents. (*Id.* at 125:3–16).

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[10] For the reasons expressed herein, CalAmp's motion for new trial on willfulness (Doc. 216, p. 29) is denied.

[11] *See* Doc. 182, 38:24–25; 39:1.

When the jury returned, Mr. Chen identified the opinion letters and testified that he relied upon them along with his independent research of the prior art. (*Id.* at 127:18–25; 128:1–9). Mr. Bailey testified immediately following Mr. Chen, and he acknowledged giving opinions to CalAmp relating to the four patents in this lawsuit in which he opines the '727 and '278 are invalid. (*Id.* at 150:22–25 through 157:7). At the conclusion of his testimony, CalAmp offered the two opinion letters, Omega objected, and the objection was sustained. (*Id.* at 159:9–13). The next witness was Mr. Andrews, CalAmp's expert on invalidity and noninfringement. Accordingly, CalAmp was permitted to present extensive testimony by Mr. Chen regarding his investigation of the prior art and his reliance upon Mr. Bailey's legal opinions (notwithstanding the failure to list Mr. Bailey as a witness). Mr. Bailey thereafter testified that he advised Mr. Chen the '727 and '278 were invalid, and Mr. Andrews testified that none of the CalAmp devices infringe. CalAmp's defense as to willfulness was presented and was rejected by the jury.

This Court has already summarized the evidence supporting a finding of willfulness, (Doc. 206), in its award of enhanced damages. The facts, exhibits and record citations cited in the Court's previous order at pages 7–12 are incorporated by reference herein for brevity's sake. Omega details the facts presented at trial which support a finding of willfulness, including the 2009 meeting between Mr. Flick and CalAmp's representatives where Mr. Flick told CalAmp they were infringing his patents. (Doc. 226, p. 11). As a result, Mr. Chen requested a license agreement which he later declined to execute. (*Id.*). The jury also heard that two end users of CalAmp's infringing devices settled with Omega and entered into licensing agreements. (*Id.* at 12). The jury also learned on cross-examination that Mr. Chen lacked any contemporaneous

documentation to support his claim to having conducted an exhaustive analysis of Omega's patents and prior art. (*Id.*). Moreover, while Mr. Chen testified that the LMU speed data is never derived from the vehicle bus, CalAmp's engineer testified that some customers' units read speed from the bus. (*Id.* at 13). Perhaps most telling is the email sent by Mr. Chen to a CalAmp vice president shortly before the lawsuit was initiated wherein Mr. Chen stated Claim 13 of the '278 patent "may relate to how we program a unit at the factory so it may be harder to avoid." (*Id.*).

These facts, and the reasonable inferences to be drawn from the facts, were sufficient for a reasonable jury to find willfulness.

J. ENHANCED DAMAGES and ATTORNEYS' FEES

CalAmp argues the Court should not exercise its discretion to enhance the damages and award attorneys' fees in this case. The Court addressed these issues previously, and none of the arguments advanced by CalAmp warrant a different outcome. (*see* Doc. 206). Omega's opposition to CalAmp's motion is detailed, and the Court agrees with the arguments advanced by Plaintiff. For the reasons stated in this Order, and based upon the Court's analysis at docket number 206, CalAmp's motion to alter its judgment to disallow enhanced damages and attorneys' fees is denied.

V. NEW TRIAL ON DAMAGES

CalAmp seeks a new trial on the issue of damages to the extent the Court overturns the verdict with respect to infringement or validity. Having denied the Defendant's motion for judgment as a matter of law on these issues, the motion for new trial on the issue of damages is denied.

CalAmp also seeks a new trial on damages on the basis that the Court erred when it excluded Dr. DeForest McDuff. (Doc. 216, p. 27). CalAmp also argues the Court should have permitted Dr. McDuff to testify to his opinion that the license agreements relied on by Omega were not comparable to the license that would result from the hypothetical negotiation in this case. (*Id.*). Additionally, CalAmp contends the non-comparable license agreements relied upon by Mr. Tregillis (Omega's expert) were admitted in error. (*Id.*).

The Court excluded Dr. McDuff based upon the unreliability of his methodology. (Doc. 117, pp. 18–27). CalAmp did not seek reconsideration of the Court's Order to allow Dr. McDuff to testify that the license agreements relied upon by Omega were not comparable to those that would result from a hypothetical negotiation in this case, presumably because the Court found Dr. McDuff to have formulated unreliable opinions using improper methodologies. To the extent CalAmp may have asserted an objection to the Court's Order excluding Dr. McDuff as a damages witness, that objection has been waived. To the extent CalAmp submits Mr. Tregillis failed to cite comparable license agreements, this was an issue for the jury to resolve. As Omega correctly notes, Mr. Tregillis was subjected to extensive cross-examination on whether the licenses he selected were in fact comparable, and the jury was instructed on what constitutes a comparable license—without objection. The Defendant's motion for new trial on damages is denied.

Next, CalAmp asserts a new trial is warranted due to erroneous claim construction rulings. Defendant basis its motion upon the conclusion that the Court erred in not accepting some of its proffered claim constructions. Defendant did not seek additional

construction of any disputed claim during the trial. Hence, the motion is denied. *Weinar v. Rollform, Inc.*, 744 F.2d 797, 809 (Fed. Cir. 1984).

In a catch-all summary of alleged errors, CalAmp seeks a new trial due to the alleged plethora of evidentiary missteps by the Court during trial, including the closing argument of Omega's counsel to which there was no objection. CalAmp fails to demonstrate how any of the perceived errors individually or collectively warrant a new trial, and the motion is denied.

VI. CONCLUSION

The verdict rendered by the jury was not against the greater weight of the evidence. To the contrary, an objectively reasonable jury could, and did, conclude that CalAmp had infringed Omega's patent-in-suit and had done so willfully. Defendant's Motions for Judgment as a Matter of Law and for New Trial, (Doc. 216) are **DENIED**; and Defendant's Supplemental Renewed Motion for Judgment as a Matter of Law, for a New Trial, and to Vacate the Judgment (Doc. 228) is **DENIED**.

DONE AND ORDERED in Orlando, Florida on November 14, 2017.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

ITEM 3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OMEGA PATENTS, LLC,

Plaintiff,

v. Case No: 6:13-cv-1950-Orl-40DCI

CALAMP CORP.,

Defendant.
_____/

ORDER

This cause is before the Court on the following:

1. Plaintiff's Motion for Entry of Final Judgment, Including Entitlement to Attorneys' Fees, Enhanced Damages, and Entry of a Permanent Injunction (Doc. 148), filed March 9, 2016;
2. Plaintiff's Renewed Motion to Award Prejudgment Interest (Doc. 154) filed March 18, 2016;
3. Defendant's Response in Opposition to Plaintiff's Renewed Motion to Award Prejudgment Interest (Doc. 166), filed April 4, 2016;
4. Defendant's Opposition to Plaintiff's Motion for Entry of Final Judgment, Including Entitlement to Attorneys' Fees, Enhanced Damages, and Entry of a Permanent Injunction (Docs. 169, 170), filed April 11, 2016;
5. Plaintiff's Notice of Filing Declarations (Doc. 187), filed April 28, 2016;
6. Defendant's Notice of Filing Responsive Declarations (Doc. 188), filed April 29, 2016;

7. Defendant's Notice of Supplemental Authority regarding Response in Opposition to Plaintiff's Motion for Entry of Final Judgment (Doc. 192), filed May 17, 2016;
8. Defendant's Notice of Grant of Reexamination of '885 Patent (Doc. 193), filed June 6, 2016;
9. Plaintiff's Notice of Supplemental Authority (Doc. 194), filed June 13, 2016;
10. Defendant's Response to Plaintiff's Notice of Supplemental Authority (Doc. 195), filed June 14, 2016;
11. Plaintiff's Response to Defendant's Notice of Supplemental Authority at Docket Number 192 (Doc. 198), filed July 19, 2016;
12. Defendant's Reply to Plaintiff's Response to Notice of Supplemental Authority (Doc. 199), filed July 22, 2016;
13. Defendant's Notice of Grant of Supplemental Authority (Patent Office Action) (Docs. 200, 201), filed August 30, 2016; and
14. Defendant's Notice of Supplemental Authority (Patent Office Action) (Doc. 202), filed September 19, 2016.

Upon due consideration, and after reviewing the pleadings and the transcript of the trial (Doc. 178–184) and the transcript of the post-trial motion's hearing (Doc. 196), Plaintiff's Motions for Entry of Final Judgement, Enhanced Damages, and Reasonable Attorneys' Fees are granted, and Plaintiff's motions for Permanent Injunction is denied.

I. BACKGROUND

Omega Patents, LLC ("Omega") brought the instant action against CalAmp Corp. ("CalAmp") and contends that CalAmp infringed the claims of U.S. Patent No. 6,346,876

("the '876 Patent")[1], U.S. Patent No. 6,756,885 ("the '885 Patent")[2], U.S. Patent No. 7,671,727 ("the '727 Patent")[3], and U.S. Patent No. 8,032,278 ("the '278 Patent")[4] (collectively, the "patents-in-suit").[5] (Doc. 1). The trial of this matter commenced on February 16, 2016, and concluding on February 24, 2016, (Doc. 178–184), with the jury returning a verdict in favor of Omega in which they found that all of Omega's asserted claims were valid and had been infringed upon by CalAmp's accused devices: the LMU 3000, LMU 3030, LMU 3050, the V-Pod and the V-Pod 2. (Doc. 144, p. 1–6). The jury rejected the Defendant's invalidity contentions and made three findings for Plaintiff on secondary considerations indicating nonobviousness. (*Id.* at pp. 7–9). Finally, the jury found Plaintiff had proven by clear and convincing evidence that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent and that this high likelihood of infringement was either known or so obvious that it should have been known to CalAmp. (*Id.* at pp. 9–10). The jury awarded damages in the amount of $2,975.200. (*Id.* at p. 10).

Omega contends the Court should award reasonable attorneys' fees pursuant to 35 U.S.C. § 285, enhanced damages pursuant to § 284, and a permanent injunction pursuant to § 283. (Doc. 148). CalAmp opposes the relief requested by Omega. (Doc. 169). The Court held oral argument on the post-trial motions on May 2, 2016. (Doc. 196).

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[1] The jury found infringement of claims 1, 3, 4, 5, 12, 14, and 16. (Doc. 144, p. 2).
[2] The jury found infringement of claims 1, 2, 3, 12, and 14. (*Id.* at p. 3).
[3] The jury found infringement of claims 1, 10, and 11. (*Id.* at p. 4).
[4] The jury found infringement of claims 1–6, 8, 11–16, 18–19, and 21. (*Id.* at pp. 5–6).
[5] The patents-in-suite relate to control systems for vehicles with a "data communication bus." The term "data communication bus" has been previously construed by the Court to mean "wired connection for communication of digital messages among vehicle devises, with each message including one or more device addresses." (Doc. 50, p. 25).

The parties subsequently submitted numerous pleadings consisting of supplemental authority and notices of *ex parte* reexamination by The Patent Office of the '278 patent, the '885 patent, and the '876 patent. (Docs. 198–202).

II. STANDARD

A. Enhanced Damages

When this litigation proceeded to trial, the issue of enhanced damages was governed by the two-step inquiry announced by the Federal Circuit in *In re Seagate Tech., LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007) (*en banc*). Following oral argument on Omega's motion for enhanced damages, the United States Supreme Court decided *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923 (2016). The Court in *Halo* rejects the *Seagate* two-part test for determining when a district court my increase damages pursuant to 35 U.S.C. § 284 as being inconsistent with the plain language of the statute. *Halo*, 136 S. Ct. at 1928. Following a historical exegesis of enhanced damages under the Patent Act, the Court concluded that "although there is 'no precise rule or formula' for awarding damages under § 284, a district court's 'discretion should be exercised in light of the considerations' underlying the grant of that discretion." *Halo,* 136 S. Ct. at 1932 (quoting *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749, 1756 (2014)).

The Court in *Halo* remarked that enhanced damages under patent law "should generally be reserved for egregious cases typified by willful misconduct." *Halo*, 136 S. Ct. at 1934. The Court observed that "[t]he sort of conduct warranting enhanced damages has been variously described in our cases as willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate." *Halo,*

136 S. Ct. at 1932. The Court rejected the heightened standard of proof provided for by the Federal Circuit in *Seagate* in favor of a preponderance of the evidence standard. *Halo,* 136 S. Ct. at 1934. The type of culpability that supports an award of enhanced damages is "measured against the knowledge of the actor at the time of the challenged conduct." *Halo,* 136 S. Ct. at 1933.[6] Once a jury determines that an infringer "is guilty of conduct upon which increased damages may be based [,] ... the court then determines, exercising its sound discretion, whether, and to what extent, to increase the damages award given the totality of the circumstances." *Jurgens v. CBK, Ltd.*, 80 F.3d 1566, 1570 (Fed. Cir. 1996). While a finding of willful infringement does not mandate the imposition of enhanced damages, once the finding is made "the court must explain its reasons for declining to award enhanced damages." *Carnegie Mellon Univ. v. Marvell Tech. Group, Ltd.*, No. CIV.A. 09-290, 2014 WL 1320154, at *9 (W.D. Pa. Mar. 31, 2014), *rev'd in part on other grounds*, 807 F.3d 1283 (Fed. Cir. 2015).

B. Attorney's Fees

The Supreme Court in *Octane Fitness* rejected the "more rigid and mechanical formulation" for determining when the district court may award reasonable attorney fees to the prevailing party in favor of the plain statutory text of § 285, which provides "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285; *Octane Fitness*, 134 S. Ct. at 1755. An exceptional case is "simply one that stands out from others with respect to the substantive strength of a party's litigating

[6] The Court in *Halo* criticized, in pertinent part, the second prong of the *Seagate* test which allowed an infringer to escape enhanced damages by mustering a defense of invalidity or noninfringement at trial "even if [the infringer] did not act on the basis of the defense or was even aware of it." *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 136 S. Ct. 1923, 1933 (2016).

position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." *Octane Fitness*, 134 S. Ct. at 1756. The district court applies the preponderance of the evidence standard and considers the totality of the circumstances. The district court may consider a number of factors in determining whether to award fees, including: (1) whether the infringer deliberately copied the invention; (2) whether the infringer had a good faith basis for believing it did not infringe or that the patent was invalid; (3) the closeness of the case; (4) conduct of the part in litigation; (5) defendant's relative size and financial condition; (6) the duration of the infringement; (7) remedial action by the defendant; (8) defendant's motivation for harm, and (9) whether defendant attempted to conceal its misconduct. *Read Corp. v. Portec, Inc.*, 970 F.2d 816, 827 (Fed. Cir. 1992).[7]

C. Permanent Injunction

The Supreme Court in *eBay Inc. v. MercExchange, L.L.C.*, 126 S. Ct. 1837, 1839 (2006), held that to obtain an injunction a party "must demonstrate: (1) that is has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest wound not be disserved by a permanent injunction." The Federal Circuit subsequently held that *eBay* eliminates a presumption of irreparable injury to the patent holder after a judgment of infringement and of no invalidity is returned. *Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1149 (Fed. Cir. 2011). Moreover, there must be a

[7] The *Read* factors are equally applicable to the assessment of enhanced damages.

causal nexus between the irreparable injury and the patent infringement. *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1360 (Fed. Cir. 2013).

III. DISCUSSION

Mr. Flick, the inventor of the four patents at issue, met with representatives of CalAmp, including Mr. Gallin Chen, in 2009 at a trade show to discuss Omega's belief that CalAmp was infringing certain patents. (Doc. 179, 76:10-18). During this initial meeting, Mr. Chen expressed his view that the Omega patents were invalid, but he nonetheless requested a draft license agreement. (*Id.* at 78:1-11). Omega complied and sent CalAmp a license agreement that CalAmp rejected shortly thereafter, resulting in Omega filing suit against CalAmp on December 15, 2009.[8] (*Id.*). Once litigation had commenced, Mr. Chen agreed to meet with Mr. Flick again at a trade show scheduled for January 2010. (*Id.* at 81:14-18). During the ensuing conversation, Mr. Chen represented to Omega that CalAmp did not program their products and any alleged infringement was caused by the end-user who programs the CalAmp devices. (*Id.* at 81:24– 82:13). Based upon this representation Mr. Flick stayed the litigation against CalAmp and sued two end users: Numerex and Sky Patrol. (*Id.*). Numerex quickly settled with Omega and entered into a licensing agreement. (*Id.* at 82:14-23). Sky Patrol, however, revealed that, contrary to Mr. Chen's representation, CalAmp was responsible for programing their offending devices.[9] (*Id.* at 83:11–84:12). CalAmp subsequently settled with Omega and agreed to pay a royalty. (*Id.* at 84:13-21; Pl.'s Ex. 45).

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[8] The lawsuit filed by Omega in 2009 pertained to patents other than those at issue in the instant litigation.

[9] The deposition of CalAmp engineer, Peter Hergesheimer, was played at trial, and Mr. Hergesheimer acknowledged that CalAmp programs LMUs for approximately 75% of their customers, contradicting Mr. Chen's claim that CalAmp sold a black box. Mr.

Against this backdrop, CalAmp introduced the accused devices in late 2011 or early 2012. (Doc. 182, 53:2-5). Prior to introducing the accused products, CalAmp's counsel, Mr. David Bailey, reviewed a number of patents held by the Plaintiff, including the '885 and '727 patents at issue in this litigation. (Pl.'s Ex. 39). At the same time counsel for Omega and for CalAmp engaged in discussions concerning Omega's "extensive patent portfolio" in the area of databus applications.[10] (Pl.'s Ex. 34). It is, therefore, beyond dispute that CalAmp was fully aware of the Omega patents prior to introducing the accused products into the market.

Mr. Chen admitted on cross-examination that the LMUs and V-Pod and V-Pod2 were introduced as a direct result of consumer demand. (Doc. 182, 142:11-24). Mr. Chen explained that the LMUs connect to the vehicle data bus and read data from the bus. (*Id.* at 54:8-14). According to Mr. Chen, the LMU has a transmitter and a receiver, can read data from the vehicle data bus, can query a vehicle device for data, and can store the data received in response to the query. (*Id.* at 129:1-21). The '727 patent held by Omega, for example, claims a speed exceeded notification device for a vehicle comprising a "vehicle data communications bus" and "at least one vehicle device generating data related to vehicle speed on the" bus which determines when a vehicle's speed has exceeded a set threshold. (Joint Ex. 4, column 7, lines 4-17).

In an attempt to distinguish the LMU devices from the '727 patent, Mr. Chen testified that the LMU speed data is derived from the GPS module and not from the vehicle

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Hergesheimer also testified that software is loaded on the LMU online, because that is more cost effective than loading it at the time of manufacture.

[10] CalAmp engineer, Peter Hergesheimer, testified at trial via deposition that he did not design around the Omega patents.

bus.[11] (Doc. 182, 133:13-21). He added that the LMU has the capacity to read speed from the bus, but CalAmp does not allow this because speed data generated from GPS is more accurate. (*Id.*). However, Mr. Jerrery Eidberger, a CalAmp field application engineer, testified via deposition that a substantial percentage of customers do in fact have the LMU programmed by CalAmp to read the speed from the bus. Additionally, CalAmp responded to Omega's Frist Set of Interrogatories, wherein Omega asks CalAmp to "identify all customers for whom CalAmp has loaded scripts for geofencing or speed alerts into an Accused Product" by providing a long list of customers for whom CalAmp has loaded scripts related to speed alerts, noting that "some scripts do not cause a speed exceeded notification." (Pl.'s Ex. 16). CalAmp's acknowledgement that some scripts do not cause a speed exceeded notification means that other scripts do provide the speed exceeded notification from the vehicle bus as opposed to the GPS. Mr. Chen's testimony wherein he flatly denies the LMU reads vehicle speed from the bus is clearly contradicted by CalAmp's interrogatory answers.

Mr. Andrews, CalAmp's retained expert, echoed this misrepresentation when he testified that the CalAmp devices obtain speed data from the internal GPS sensor as opposed to obtaining speed from the bus. (Doc. 182, 248:3-5; 249:1-5). On cross-examination, Mr. Andrews admitted that if the LMU is programmed to read speed from the data bus and make the threshold determination that the speed has been exceeded, the accused device infringes the '727 patent. (Doc. 183, 172:19-22). Either Mr. Andrews ignored CalAmp's answers to Omega's interrogatories in reaching his opinion that the

[11] The '727 patent indicates that it is an object of the invention "to provide a speed exceeded notification device which may be readily used in a vehicle including a data communications bus and related methods." (Joint Ex. 4, column 2, lines 38-40).

accused products do not infringe the '727 patent because speed is derived via GPS, or CalAmp withheld this information from its expert in order to obtain a non-infringement opinion. Either way, the testimony of Mr. Chen and Mr. Andrews provide substantial support for the jury's finding of willful infringement of the '727 patent, and this Court concurs in the jury's finding of willful infringement.

Further indicia of willful infringement by CalAmp is found in an e-mail sent by Mr. Chen to outside patent counsel, Mr. David Bailey[12], and senior vice president for corporate development, Mr. Garo Sarkissian. (Doc. 182, 112:13-19). On July 30, 2013, eight months after Omega instituted this lawsuit, Mr. Chen wrote to Messrs, Bailey, and Sarkissian and asked them to look at the '278 patent. (Pl.'s Ex. 48). Referring to claim 13 of the '278 patent, Mr. Chen wrote: "13 may relate to how we program a unit at the factory so it may be harder to avoid." (*Id.*). The '278 patent has as an object of the invention to "provide a multi-vehicle compatible tracking unit which may be used to control operable vehicle devices, and/or read information therefrom via the vehicle data communications bus." (Joint Ex. 5, column 2, lines 46-49). Clearly, Mr. Chen was concerned as late as July 30, 2013, that the accused devices infringe claim 13 of the '278 patent, as the jury ultimately found. His admission in this e-mail that the units are programed at the CalAmp factory is further evidence that his trial testimony describing the LMU as a black box, programmed by the end-user, was false.

In the same e-mail, Mr. Chen predicts what will ultimately become a defense theory advanced at trial, when he writes: the '727 patent "can be avoided by using GPS speed,

[12] Mr. Bailey is an attorney practicing in the same firm as trial defense counsel. (Doc. 182, 144:20-25).

not vehicle bus received speed, for speeding alerts." (Joint Ex. 5). It is difficult to ascribe a good faith basis for persisting at trial on the theory that the LMU determines speed from the GPS, as opposed to obtaining the data from the bus, when CalAmp's supplemental response to Omega's interrogatory, in which CalAmp admits to loading scripts for speed exceeded notification, was filed March 6, 2015—more two years after Mr. Chen suggested to his counsel and his colleague that using GPS speed will allow CalAmp to avoid the '727 patent. This email is consistent with an attempt to create a plausible defense at trial, perhaps in anticipation of the then-available *Seagate* enhanced damages analysis.[13] That Mr. Chen continued to advance the GPS theory at trial and in view of CalAmp's interrogatory answer demonstrates willful copying of Omega's invention.

In an attempt to satisfy the *Seagate* two-part test at trial, Mr. Chen testified that prior to launching the accused devices, CalAmp investigated the vehicle data bus market. (Doc. 182, 55:21-24). Mr. Sarkissian directed Mr. Chen to search for prior art, resulting in Mr. Chen reviewing over 300 patents. (*Id.* at 57:12–58:2). Mr. Chen also stated that in late 2010, Mr. Sarkissian, Mr. Steven Moran (CalAmp's general counsel), and he had received verbal opinions from Mr. Bailey that the accused products did not infringe existing patents. (*Id.* at 114:7-25; 117:7-12). Mr. Chen stated that he did not request Mr. Bailey to memorialize these oral opinions in writing until after the lawsuit was commenced by Omega. (*Id.* at 145:1-3). The defense marked for identification exhibits 71–74, which are opinion letters written by Mr. Baily as to each patent-in-suit, and each opinion letter is

[13] The Supreme Court in *Halo* disapproved of the *Seagate* test in part because it allowed an infringer to "escape any comeuppance under § 284 solely on the strength of his attorney's ingenuity." *Halo*, 136 S. Ct. at 1933. Hence, opinion letters issued after-the-fact shed little light upon the infringer's culpability which must be "measured against the knowledge of the actor *at the time* of the challenged conduct." *Id.* [emphasis added].

dated June 27, 2014.[14] (Def.'s Exs. 71–74). However, it is curious—assuming Mr. Bailey had vetted the accused products against existing patents back in 2010—that in July 2013 Mr. Chen highlighted the difficulty of avoiding claim 13 of the '278 patent and suggested that the '727 patent can be avoided by focusing upon GPS speed determination. If, in fact, counsel had vetted the accused devices and the Omega patents three years earlier, there is no reason for Mr. Chen to suggest a noninfringement theory to his counsel, nor is there any reason for Mr. Chen to be concerned over claim 13 of the '278 patent. The Court does not find the testimony of Mr. Chen or of Mr. Bailey credible on the issue of whether counsel had rendered legal opinions prior to the launch of the accused products in which he opined the accused products do not offend any patent held by Omega. Mr. Chen's credibility is undermined by other evidence presented at trial[15], and it is incomprehensible that counsel would refrain from issuing a written opinion of noninfringement or invalidity to his client at or near the time that CalAmp launched the accused products. No reasonable explanation for this highly unusual practice was offered by CalAmp or Mr. Bailey.

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[14] The Court sustained Omega's objection to the admissibility of Mr. Bailey's opinion letters on the grounds that the letters—offered during Mr. Chen's testimony—constitute hearsay, and the letters confer expert testimony which was not properly disclosed by the Defense. However, the Court has considered the four opinion letters for purposes of the enhanced damages analysis. The Court is unaware of the substance of the verbal opinions allegedly offered by Mr. Bailey in 2010 prior to the launch of the accused products.

[15] Mr. Chen testified via deposition that he removed information from the CalAmp website regarding the LMU devices to make it more difficult for Omega to identify infringement. (Pl.'s Ex. 48) ("We don't want to make it easy for Omega to build their infringement case by just looking at the datasheets on our website. . . . the bigger hole is LMU 3000; it's launched, mature and broadly integrated by multiple partners. We can bury (i.e. omit) the LMU3030 for now on open website.").

The Court next considers whether this was a "close case" and whether CalAmp held a good faith belief the patents were not infringed or were invalid. CalAmp and their expert, Mr. Andrews, note that the Omega patents require the performance of a control function. (Doc. 182, p. 177:7-15; Doc. 195, p. 3). At trial Mr. Andrews defined "control function" as "a message on the bus that is going to control a device exhibiting a physical change in the device or the system." (Doc. 182, 177:7-15). The notion that control function envisions a physical change is critical to the Defendant's noninfringement arguments. Based upon the Court's review of Mr. Andrew's initial expert report, (Def.'s Ex. 38), this definition of control function does not appear in his original expert report. Mr. Andrews acknowledged on cross-examination that he did not apply the physical change qualifier to control function in his deposition. (Doc. 183, 103:10-14). Mr. Andrews explained that he had misspoken in his deposition when he failed to describe control function as requiring a physical change in the device or the system. (*Id.*). Mr. Andrews did, however, include in his rebuttal report the definition of control function as having the ability to enable a physical change in a device of the system; for example, locking a door, starting the engine, or turning on a light." (Def.'s Ex. 47, pp. 11–12). The crux of the non-infringement defense is that the LMU merely sends a "query for data" and does not control a vehicle device. (Doc. 182, p. 177:20-22). Because the LMU does not control a vehicle device, Mr. Andrews argues the accused products cannot satisfy the multi-vehicle compatible controller claim in the patents. (*Id.* at 238:9-12; 238:25–239:6; 239:14–240:6). Accordingly, Mr. Andrews' definition of control function as mandating a physical change precludes one from finding for Plaintiff Omega.

In order for Mr. Andrews' non-infringement argument to prevail, one must accept his opinion that the LMU is a passive device that uses the bus to request and receive data, but which does not "perform one or more control functions" with respect to the vehicle device. (Def.'s Ex. 47, p. 12; Doc. 182, 240:9-11). The difficulty lies in finding a basis for Mr. Andrews' interpretation of "control function." The Court construed the claim term "controller" to mean "electronic circuitry that performs one or more control functions." (Doc. 50, p. 24). The claim term "multi-vehicle compatible controller" was construed by the Court to mean "electronic circuitry that performs one or more control functions, and can operate with more than one vehicle." (*Id.*). The Court did not construe the term control function. CalAmp urged the Court to construe "function" as "[a]n operation of a vehicle device, such as remote starting the engine, remotely unlocking the vehicle doors, or changing the mode of a security system between armed and disarmed." (*Id.* at 18). But the Court observed: "The patent states the invention may be embodied in many different forms and should not be construed as limited to the illustrated embodiments set forth herein." (*Id.* at 18) (internal quotation marks and citations omitted). Accordingly, Mr. Andrews' interpretation of "control function" is not based upon the Court's claim construction. Similarly, nothing in any specification of the four patents-in-suit support Mr. Andrews' definition of "control function." (Joint Ex. 1-4; Doc. 183, 117:8-11; 118:1-6).

Mr. Andrews acknowledged that the microprocessor in the LMUs and the V-Pods sends a signal along the bus to the ECU and requests a response. (Doc. 183, 114:17–115:6). Omega's counsel engaged Mr. Andrews in the following colloquy:

> Q: Let's say the ECU responds with the device code signal—that would be controlling the ECU, wouldn't it?
>
> A: You're asking it for information. It's providing it back, yes.

Q: So that's a yes?

A: Okay.

(*Id.* at 118:9-24)

Q: And would you also agree with me ... that sending a signal and getting a response could be a control function?

A: Yes.

(*Id.* at 120:5-20)

Mr. Andrews admits that when the LMU seeks information from the ECU, the ECU must respond via the bus; however, he contends this is not a control function. (*Id.* at 143:1-6). Mr. Andrews argues that "one with ordinary skill in the art, in the automotive industry in telematics, would understand the difference between a command and a query." (*Id.* at 116:7-10). It is Mr. Andrews' contention that a command—or as he would call it a query—by the LMU that produces a mandatory response by the ECU does not meet the definition of controller and control function. The Defendant's attempt to cast a mandatory response to a query as a passive act that falls short of a control function is unsupported by the record and was conspicuously absent from Mr. Andrews' initial expert report. The emergence of this opinion late in the litigation is highly suspect, particularly when one considers that Mr. Andrews' also opined that the LMU cannot infringe the '727 patent because the LMU only generates speed data from the GPS—which is clearly contradicted by CalAmp's response to Omega's interrogatories.

Mr. Andrews and counsel for CalAmp presented other non-infringement arguments at trial. However, the Court finds that these additional grounds—all of which were rejected by the jury—do not, giving the totality of the circumstances, mitigate against an award of enhanced damages and reasonable attorneys' fees. For example, Mr.

Andrews took issue with whether signals were stored on the accused devices as required by the '885 patent. (Doc. 183, 122:6-9). However, on cross-examination, Mr. Andrews agreed that the LMU sends out signals and the ECU sends a response, "[a]nd those signals are stored on the controller." (*Id.* at 123:7–124:9). Mr. Andrews admits the signals are stored on the LMU until the device is unplugged and re-plugged at which time it starts over. (*Id.* at 125:5-9). In fact, Mr. Andrews agrees the LMU is intended to be used in a manner that would store the CAN data and can be used in multiple vehicles. (*Id.* at 162:6-13).

CalAmp also presented invalidity defenses by identifying prior art that, when considered with SAE standards, rendered the patents obvious. In supplemental filings by the parties, the Court has been made aware that CalAmp sought *ex parte* reexamination of three of the patents-in-issue. The United States Patent and Trademark Office ("USPTO") has reexamined the '278 patent[16], (Doc. 192); the '885 patent[17], (Doc. 193), and the '876 patent[18], (Doc. 201). The USPTO rejected the pertinent claims of these three patents. While the USPTO issued Office Actions in *Ex Parte* Reexamination of the '278, '885, and '876 patents and rejected the relevant claims of these patents, the finding by the USPTO does not have preclusive effect as to the verdict rendered by the jury in the instant litigation unless the final USPTO decision is affirmed by the Federal Circuit before the jury's verdict become final. *Fresenius USA, Inc. v. Baxter Inter., Inc.*, 721 F.3d 1330,

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[16] Omega's response, including declarations from Mr. Suman, (Doc. 198-2), whose patent is being considered by the examiner as prior art, and Mr. McAlexander, (Doc. 198-3), demonstrates that the examination of '278 remains in a state of flux. (Doc. 198).
[17] The USPTO rejected every claim of the '885 patent on anticipation and obviousness grounds. (Doc. 202, p. 1).
[18] The USPTO rejected every claim of the '876 patent on anticipation and obviousness grounds. (Doc. 201, p. 2).

1346 (Fed. Cri. 2017). Accordingly, the Court is not bound by the examiner's non-final conclusions when determining whether the jury's verdict is supported by substantial evidence.

The Court recognizes that CalAmp does not suggest in their notices of supplemental authority that the non-final action of the PTO is outcome determinative. Rather, CalAmp cites to the examiner's findings to support the reasonableness of their reliance upon invalidity as a defense. The Court rejects CalAmp's position for a number of reasons. CalAmp's expert, Mr. Andrews, combined certain prior art, such as the Braitberg '497 patent, (Def. Ex. 10), with the Society of Automotive Engineers ("SAE") standard J1978, to predict the Omega '876 patent. (Doc. 182, 173:14–175:23; 178:8-15; 180:22–181:19). Mr. Andrews testified that "one of ordinary skill in the art [would] look to J1978 to determine how to connect the bus." (*Id.* at 184:13–18). However, Mr. Andrews, despite numerous questions posed on cross-examination, failed to articulate the motive for one of ordinary skill in the art to combine these references.[19] The best Mr. Andrews could do in suggesting a motive to combine J1978 with Braitberg is that scan tools were being used at the relevant time; hence, one would know to combine SAE J1978 with Braitberg to make a device multi-vehicle compatible.[20] (Doc. 183, 149:21–150:3). Mr. Andrews applied the Braitberg reference to the '876 and '885 patents, (Doc. 182, p. 198:1-

[19] "A party seeking to invalidate a patent on the basis of obviousness must demonstrate by clear and convincing evidence that a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success in doing so." *Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1360 (Fed. Cir. 2012) (internal quotation marks omitted).

[20] Mr. Andrews admits that Braitberg does not provide multiple vehicle compatibility, a claim that is necessary to invalidate the Omega patents, so he adds SAE J1978. (Doc. 183, p. 130:6-10). Interestingly, Mr. Chen testified he was unware of J1978.

20), and he applied J1978 to all four patents-in-suit. (*Id.* 250:1–270:19). The motive to combine prior art is critical to CalAmp's invalidity defense, because Mr. Andrews could not find prior art that had all of the claims that Mr. Flick has in his patents. (*Id.* at 132:17–133:7). Mr. Andrews failed to provide more than a conclusory opinion that one of ordinary skill in the art at the relevant time would have known to look to SAE J1978 in combination with the various prior art references. In this regard, Mr. Andrews' fails to assist the Defendant in carrying its burden of proof on invalidity.

In addition, the Court in *Halo* has eliminated the ability of an accused infringer to posit reasonable invalidity defenses which were not relied upon at the time the accused products were introduced into the market. *Halo*, 136 S. Ct. at 1933. Under *Seagate*, "the ability of the infringer to muster a reasonable (even though unsuccessful) defense at the infringement trial" was dispositive of the issue of enhanced damages. *Id.* Post-*Halo*, however, "culpability is generally measured against the knowledge of the actor at the time of the challenged conduct." *Id.* There is no indication in the record that Mr. Andrews provided CalAmp his opinion on invalidity before the accused products went into production in 2011. While the opinion letters issued by Mr. Bailey as to the '885 patent refer to SAE J1978, J1979, (Def.'s Ex. 73), this letter was written in June 2014 long after infringement had begun. Thus, there is no record evidence that CalAmp had knowledge of the invalidity defense derived from the combination of prior art and SAE standards at the time of the challenged conduct.[21] Since culpability is measured against the infringer's

[21] In fact, Mr. Chen filed for patent US 2010/0158211on December 21, 2011, claiming "[s]ystems and methods in accordance with embodiments of the invention continuously collect information from vehicle devices via a vehicle data bus, store information in a database, and retrieve information from the database in response to requests from

knowledge at the time of the challenged conduct, the after-the-fact invalidity defense is of little merit in assessing enhanced damages.[22]

The next *Read* factor directs the Court to consider the Defendant's size and financial condition. According to Omega's expert, Mr. Christian Tregillis, "CalAmp has sold over 245,000 units of the Accused Products, for over $21.5 million from April 2011 through November 2014," (Pl.'s Ex. 65, p. 37), "earning over $4.1 million in gross profits." (Pl.'s Ex. 65, p. 47). CalAmp is a publicly-traded corporation with over $75 million dollars in earnings last year. (Pl.'s Ex. 65). While CalAmp argues that the accused products are low-margin products sold in an extremely competitive market, this misses the point. The overall financial health of the infringer is evaluated—not the net profit generated by the offending conduct—to "ensure that enhanced damages would not prejudice defendant's non-infringing business." *Powell v. Home Depot U.S.A., Inc.*, 715 F. Supp. 2d 1285, 1298 (S.D. Fla. May 28, 2010). The Defendant has the financial wherewithal to endure the sanction of enhanced damages and an award of reasonable attorneys' fees.

A closely related factor for the Court to consider is the duration of CalAmp's conduct. As previously discussed, CalAmp was well aware of Omega's patents since at least 2010. Rather than take a license, and choosing not to design around Omega's patents, CalAmp elected to sell infringing products and continues to do so to this day. CalAmp's motivation to engage in this behavior is obvious: their customers wanted this technology, and CalAmp wanted to provide it. Moreover, as previously discussed,

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remote devices." (Pl.'s Ex. 14, Abstract). The patent issued June 21, 2012, and Mr. Chen did not disclose the prior art relied upon to invalidate Omega's similar patents.

[22] Assuming CalAmp had knowledge of the invalidity defense at the relevant time, the Court would not reach a different conclusion, since the motive to combine the prior art with the SAE standards is deficient.

CalAmp attempted to conceal its infringement by misrepresenting to Omega that it only sold black boxes which were programmed by customers and by removing information from the CalAmp website to make discovery of infringement more difficult. These additional factors all weigh in favor of an award of enhanced damages and reasonable attorneys' fees.

Based upon the foregoing, the Court finds CalAmp willfully infringed the Omega patents-in-suit, further finding that the jury's finding of willful infringement is supported by substantial evidence. The Court independently reviewed the record evidence and finds an award of enhanced damages of threefold the actual damages and an award of reasonable attorneys' fees is supported by the evidence.[23]

The Court turns now to Omega's request for a permanent injunction. Omega quotes Chief Justice Robert's concurring opinion in *eBay* wherein he remarks that from "at least the early 19th century, courts have granted injunctive relief upon a finding of infringement in the vast majority of patent cases." *eBay*, 126 S. Ct. at 1841. However, Justice Thomas speaking for the majority clarified that "the decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity, in patent disputes no less than in other cases governed by such standards." *Id.* As Justice Kennedy elaborates in his concurrence, "trial courts should bear in mind that in many instances the nature of the patent being enforced and the economic function of the patent holder

[23] The Court notes that even if the PTO's non-final action rejecting the relevant claims of the '885 and '876 patents are affirmed by the Federal Circuit, enhanced damages and reasonable attorneys' fees are appropriate for the willful infringement of the '727 and '278 patents—assuming the '278 patent survives reexamination.

present considerations quite unlike earlier cases." *Id.* at 1842. Justice Kennedy cautions trial courts to use care in issuing permanent injunctions in the context of patent holders who primarily employ their patent to obtain licensing fees. *Id.* "When a patented invention is but a small component of the product the companies seek to produce and the threat of an injunction is employed simply for undue leverage in negotiations, legal damages may well be sufficient to compensate for infringement and an injunction many not serve the public interest." *Id.*

Mr. Flick is a patent holder who presently generates revenue by licensing his patents; he no longer manufactures products. While Omega argues that it has maintained a restrictive licensing program of the patents-in-suit and has selectively licensed only a limited number of entities in the marketplace, (Doc. 148, p. 17), it is equally true that Omega was willing to license its patents to CalAmp. While Mr. Flick testified that Omega requires most licensees to transfer rights of improvements to Omega in order to strengthen its patents, it is clear that Omega does not require every licensee to agree to this term. In fact, the License Agreement entered into between Omega and CalAmp in relation to the products sold to SKYPATROL does not provide for assignment of improvements to Omega. (Pl.'s Ex. 88).

While cognizant of Omega's contention that a compulsory licensing agreement does not make Omega whole, and recognizing the Court need not balance the hardships in cases of willful infringement[24], the Court finds that monetary damages are adequate to compensate Omega for the injury sustained by CalAmp's infringement. Moreover, as

[24] *United States v. Marine Shale Processors*, 81 F.3d 1329, 1358 (5th Cir. 1996); *see also Windsurfing Int'l v. AMF, Inc.*, 782 F.2d 995, 1003 (Fed. Cir. 1986).

indicated by the declaration of Mr. Michael Zachan, CalAmp's Senior Vice President, a number of public safety, local government, and utility providers would be placed at a considerable disadvantage in the execution of their important duties if a permanent injunction issues. The Court agrees with Omega that the logistic and financial turmoil that befalls CalAmp should an injunction be ordered is of their own design. However, the collateral impact upon important public safety functions weighs against a permanent injunction.

For the foregoing reasons, the Court denies Omega's request for a permanent injunction, finding that the payment of customary licensing fees to Omega is adequate to protect the interests of Omega.

IV. CONCLUSION

For the aforementioned reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff Omega Patents, LLC's Motion for Entry of Final Judgement (Doc. 148) is **GRANTED**.
2. Plaintiff Omega Patents, LLC's Renewed Motion to Award Prejudgment Interest (Doc. 154) is **GRANTED**.
3. Plaintiff Omega Patents, LLC's Motion for Enhanced Damages (Doc. 148) is **GRANTED** and Plaintiff is awarded treble damages in the amount of eight million, nine hundred and twenty-five thousand and six hundred dollars ($8,925,600).
4. Plaintiff Omega Patents, LLC's Motion for Entitlement to Reasonable Attorneys' Fees (Doc. 148) is **GRANTED**.

5. Plaintiff Omega Patents, LLC's Motion for Entry of a Permanent Injunction (Doc. 148) is **DENIED**.

DONE AND ORDERED in Orlando, Florida, on April 6, 2017.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

ITEM 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	
Request for Reexamination of **U.S. PATENT NO.8,032,278**	
Control No. **90/013,587**	Attorney Docket No.: C13-03895(0058106CIP1_REX)
Confirmation No. 8867	
Filing Date: SEPTEMBER 14, 2015	Examiner: M. GRAHAM
For: **VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	Art Unit: 3993

RULE 132 DECLARATION BY MICHAEL J. SUMAN

I, the undersigned, hereby declare that:

Background

1. I am currently the owner of a consulting company, Product and Market Development L.L.C., located in Caledonia, Michigan. Prior to that, from 1996 until 2002, I was the Group Vice President at Johnson Controls Automotive. And prior to that, from 1979 to 1996, I was at Prince Corporation, and my last position was Vice President of Sales and Marketing.

2. I received a BS degree in Business and Marketing from Ferris State University in 1974.

3. I am a listed inventor on over 50 U.S. patents and I am familiar with the patent process.

4. I have been retained by the Patent Owner to provide technical assistance in the present reexamination of the '278 patent, particularly with respect to assisting with the proper understanding of the teachings of my cited U.S. Patent No. 6,028,537, and to also assist the with the correct understanding of the relevant technology at the time of my '537 patent.

The '278 Patent

5. I have reviewed the '278 patent which is the subject of the present reexamination.

6. I have reviewed the Official Action dated May 6, 2016 for the reexamination of the '278 patent.

7. I understand that the '278 patent includes three independent claims and twenty-two claims total. Representative Claim 1 is directed to a multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout the vehicle. The multi-vehicle compatible tracking unit includes a vehicle position determining device, a wireless communications device, and a multi-vehicle compatible controller for cooperating with the vehicle position determining device and the wireless communications device to send vehicle position information. The multi-vehicle compatible controller communicates over the vehicle data bus with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles. A downloading interface is included for permitting downloading of enabling

data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller.

8. I understand that the specification of the '278 patent at column 24, lines 8-12, provides that "[t]he enabling data may be the vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for example."

9. I further understand that independent Claim 13 of the '278 patent recites that the downloading interface includes a connector for temporary connection to a downloading device, and that independent Claim 18 recites that the downloading interface includes a wireless receiver for temporary connection to a downloading device.

10. Based upon my study of the '278 patent, and my knowledge of the relevant technology, I understand that the '278 patent is directed to a multi-vehicle compatible tracking unit that may be used to write to and/or read from vehicle devices via the vehicle data communications bus, and do so despite the fact that different vehicles have different device codes.

Teachings of My '537 Patent & Relevant Technology

11. I have reviewed my cited '537 patent and the provisional application No. 60/019,773 filed June 14, 1996, from which my '537 patent claims priority.

12. Section 5 of the Official Action characterizes the teachings of my '537 patent as follows:

> Suman discloses that the controller is coupled to the vehicle data bus for communication with at least one vehicle device, using a corresponding vehicle device code, from among a plurality of codes for different vehicles. As the device uses different vehicle codes for different vehicles it is thus multi-vehicle compatible. The devices include sensors and controls for doors, windows, ignition, speedometer, RPMs, fuel level, turn signals, lights, gears, temperature, oil pressure, defroster, headlights, etc.). See Figs. 3, 5, 44, 45, 47; see also col. 43, lines 27-47. As noted in col. 37, lines 15- 17: "The multiplexing scheme is set forth in SAE standard J1850 and is universally used in the automotive industry." It is also inherent that the J1850 bus described in the Suman '537 patent is included in a variety of different makes and models of vehicles per the federally mandated standard.

Based upon my knowledge and experience, I respectfully disagree with these contentions with respect to the characterization of a multi-vehicle compatible controller. The embodiments contemplated by me at the time of my '537 patent, the disclosure in my '537 patent, and the related commercial developments within my work responsibilities were not directed to a multi-vehicle compatible controller and downloading interface as in the '278 patent claims. The embodiments contemplated by me at the time of my '537 patent did not include multi-vehicle compatibility, and at the time I left Johnson Controls in 2002 I had never contemplated or worked with any multi-vehicle compatible controller as described in the '278 patent. I point out that at the time of my '537 patent, the vehicle device codes were proprietary to different manufacturers, and even different

model lines offered by manufacturers. Moreover, the device codes were not made freely available, and were quite difficult to obtain.

13. The Official Action also cited to my '537 patent in col. 36, lines 31-52, as follows:

> To achieve these aspects and other advantages, the vehicle accessory control system of the present invention includes a plurality of electrically-operated vehicle accessories, a receiver to be mounted in a vehicle for receiving RF signals from a land-based transmitter, and a control circuit coupled to the receiver and to the vehicle accessories for controlling the operation of the vehicle accessories in accordance with a control program. The RF signals include an address uniquely identifying the vehicle and a reprogramming signal for reprogramming the operation of at least one of the vehicle accessories. The control circuit includes an input interface for receiving information regarding a plurality of sensed conditions, control means for controlling the operation of the vehicle accessories in accordance with the control program and in response to sensed conditions received from the input interface. The control circuit further includes reprogramming means for selectively reprogramming the control program in response to the detection of an RF signal including an address identifying the vehicle and the reprogramming signal, to selectively change the manner in which the control means controls the operation of at least one of the vehicle accessories.

Based upon my knowledge and experience, the reprogramming means is not related to vehicle codes or to providing a downloading interface for permitting downloading of enabling data related to

the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller, as in the '278 patent claims. Instead, the reprogramming means is for vehicle personalization and was not capable of making communications level changes that would be necessary to provide multi-vehicle compatibility.

14. I would also like to clarify that the following passage from my '537 patent does not support the contention that my patent discloses a multi-vehicle compatible controller and downloading interface as in the '278 patent claims:

> Yet another aspect of the present invention is to provide a vehicle locating system that allows the vehicle owner to determine the location of the vehicle when the vehicle has been loaned to a friend or family member. In this regard, the present invention may also be used by the manager of a fleet of commercial vehicles, such as taxis, police cars, trucks, or other delivery vehicles, to track the location of each vehicle in the fleet. (Col. 2, lines 3-10).

It was expected that the vehicles in a given fleet would be the same type vehicle having the same device codes.

15. I have also carefully considered the contentions in the Official Action, that my '537 patent discloses: a downloading interface in the form of a connector for temporary connection to a downloading device (as relates to Claim 13 of the '278 patent); and a downloading interface in the form of a wireless receiver for temporary connection to a downloading device (as relates to Claim 18 of the '278 patent). In particular, the Official Action provides that the cellular phone could be connected through the vehicle bus, or a wired RS-232

serial connection of the controller, and thus the RS-232 connector provides an additional wired connection. It is my position, based upon my knowledge and experience, that none of the cited portions of my '537 patent supply these teachings relating to a wired or wireless interface. Indeed, I was simply not working on the problem of multi-vehicle compatibility, and there was no project to develop any software to give the connector the functions as contended in the Official Action. Moreover, the embodiments conceived and described in the '537 patent were not capable of modifying the communications level to allow for multi-vehicle compatibility. Along these lines, there is also no disclosure in my '537 patent of using the telephone to provide a wireless interface as in the '278 patent.

16. I hereby declare further that all statements made herein are of our own knowledge and are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful and false statements may jeopardize the validity of the application or any patent issued thereon.



Michael J. Suman

July 5, 2016

Date

ITEM 5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	
Request for Reexamination of **U.S. PATENT NO.8,032,278**	
Control No. **90/013,587**	Attorney Docket No.: C13-03895(0058106CIP1_REX)
Confirmation No. 8867	
Filing Date: SEPTEMBER 14, 2015	Examiner: M. GRAHAM
For: **VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	Art Unit: 3993

RULE 132 DECLARATION
BY JOSEPH C. McALEXANDER, III

I, the undersigned, hereby declare that:

Background

1. I am the Founder and President of McAlexander Sound, formerly IP Director of CCI and VP of EPI Technologies, Inc., and have 43 years of experience in microcircuit and semiconductor technologies, including: device design, fabrication, assembly, testing, and marketing, and control system design, analysis, quality, reliability, and defect/failure analysis at Texas Instruments.

2. I am Registered Professional Engineer (#79454) in the State of Texas and hold a Bachelor of Science degree in Electrical Engineering from North Carolina State University.

3. I am an inventor on 31 U.S. patents and a number of foreign patents, and I am familiar with the patent process.

4. I have been an expert witness and technical consultant for the past 26 years in IP matters related to product/process analysis and investigation.

5. I prepared expert reports and provided trial testimony in the case of Omega Patents, LLC (the '278 Patent Owner) v. Calamp Corp. (the Requester) that recently concluded in the Middle District of Florida. In that Calamp litigation the '278 patent was asserted and determined by the jury to be not invalid, to be infringed by Calamp, and that Calamp acted despite an objectively high likelihood that its actions infringed a valid patent, and that this objectively high likelihood of infringement was either known or so obvious that it should have been known to CalAmp.

6. I have been retained by the Patent Owner to provide technical consultation in the present reexamination of the '278 patent, particularly with respect to addressing rejections based upon U.S. Patent No. 5,732,074 to Spaur et al.

The '278 Patent

7. I have extensively reviewed the '278 patent, along with its file history, and arguments advanced by Requester's trial expert, Mr. Andrews, as part of my work on behalf of the Patent Owner during the course of the Calamp

litigation. I also reviewed the materials again for the analysis provided herein.

8. I have reviewed the Official Action dated May 6, 2016 for the reexamination of the '278 patent.

9. I have reviewed Exhibits 14 and 15 from the expert report of Requester's trial expert, Mr. Andrews, (attached hereto for the convenience of the Examiner) that were asserted to describe the actual CellPort Labs products of the Spaur et al. patent.

10. I have also reviewed the Rule 132 Declaration being submitted concurrently herewith by Michael J. Suman, the lead inventor on U.S. Patent No. 6,028,537, i.e., another reference being cited in the Official Action. In that Declaration, Mr. Suman confirms my understanding that at the time of the Spaur et al. patent (filed about six months before the filing of the provisional application leading to the Suman et al. patent), the vehicle device codes were proprietary to different manufacturers, and even different model lines offered by manufacturers; and that the device codes were not made freely available, and were quite difficult to obtain.

11. I understand that the '278 patent includes three independent claims and twenty-two claims total. Representative Claim 1 is directed to a multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout

the vehicle. The multi-vehicle compatible tracking unit includes a vehicle position determining device, a wireless communications device, and a multi-vehicle compatible controller for cooperating with the vehicle position determining device and the wireless communications device to send vehicle position information. The multi-vehicle compatible controller communicates over the vehicle data bus with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles. A downloading interface is included for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller.

12. I understand that the specification of the '278 patent at column 24, lines 8-12, provides that "[t]he enabling data may be the vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for example."

13. I further understand that independent Claim 13 of the '278 patent recites that the downloading interface includes a connector for temporary connection to a downloading device, and that independent Claim 18 recites that the downloading interface includes a wireless receiver for temporary connection to a downloading device.

Analysis of Spaur et al.

14. I attended the in-person interview kindly granted to Patent Owner's legal representatives and me on June 16, 2016, during which the Spaur et al. reference, among other things, was discussed.

15. I understand that during the in-person interview, Patent Owner's legal representatives clarified to the Examiners that Spaur et al. discloses sending position data from a GPS receiver via the cellular phone (col. 14, lines 4-25). In other words, the addition of Johnson et al. with Spaur et al. was not needed in view of the contentions with respect to Spaur et al., since Johnson et al. was cited only for its teaching of a GPS receiver sending position information. Accordingly, I have limited my analysis to the teachings of Spaur et al.

16. As noted in the Ex Parte Reexamination Interview Summary dated 6/21/16, the Examiners helpfully suggested that Patent Owner "provide evidence relating to the use of device codes in vehicles at the time of the invention in relation to their inherent use in Suman and Spaur."

17. I understand that, to rely upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

18. I confirm and reproduce below the portion of my analysis relating to Spaur et al. and the '278 patent from my expert report in the Calamp litigation:

> Spaur is directed to enhancing communication between a remote site and vehicle, especially involving information transfer and storage, including data and control, using standard communication protocol and hardware network features. Specifically, Spaur contemplates communication with a vehicle via modem (72/76, 82) from a browser terminal via the internet to a cellular based vehicle network (82). A protocol controller and converter (3) translates the information transferred and communicates that information via a Controller Area Network (CAN) interface via the CN bus to the different vehicle devices. The flow of communication is bi-directional.
>
> Mr. Andrews [Calamp's trial expert] argues that Spaur discloses a multi-vehicle compatible controller. I disagree. The CAN controller described in Spaur does not specify, in fact is silent, that it communicates with a vehicle device "using at least one corresponding vehicle device code from among a plurality thereof for different vehicles," as required by independent claims 1 and 13. Further, Spaur fails to specify that it has a download interface for "downloading of enabling data… for use by said multi-vehicle compatible controller," also required by both independent claims 1 and 13. Spaur fails to disclose device codes.

19. The Official Action incorporates by reference a listing of how Spaur et al. (and Johnson et al.) relates to the claims of the '278 patent from Requester's Exhibit F. From Exhibit F, the following sections of Spaur et al. are asserted

as disclosing a multi-vehicle controller using at least one corresponding device code from among a plurality thereof for different vehicles:

> The controller 30 is responsible for a number of functions related to understanding and acting on information received from one or more remote stations 10, obtaining and responding to requested information and operatively functioning with information including data available from other elements in the vehicle. In that regard, the controller 30 communicates with a controller interface 34 that electrically links the controller 30 with a vehicle standardized network 40. The vehicle standardized network 40 includes a controller unit 44 that provides appropriate message and data handling functions associated with sending and receiving information including data from each of a plurality of physical vehicle devices 50 that are operatively connected to a bus 46 of the vehicle standardized network 40. Like the remote standardized network 14, the vehicle standardized network 40 is an established and previously developed network that interfaces with components in a vehicle, such as engine related components in order to provide desired or requested data concerning the operations or status of these components. (Col. 6, lines 31-50).

> This further standardized communications network is responsible for handling the communication exchange functions associated with sending and receiving information relative to the vehicle devices 50. In a preferred embodiment, this further standardized network is a network that has been previously devised and is commonly used in a number of makes and models of vehicles. This communications network is defined as the controller area network (CAN) 124. Although the

> CAN 124 has previously commonly been used in operative association with automotive electronics including engine control elements, sensors, lamps, electric windows etc., the present invention also enables the CAN 124 to be used with a variety of other devices contained in the vehicle, such as the previously described devices. (Col. 10, lines 15-29).
>
> In interfacing with the CAN 124, the controller 30 also has device drivers 128 that are useful in achieving desired communications in both directions between the CAN 124 and the controller 30. For example, the processor 90 is able to obtain data or other information from the vehicle devices 50a-50n using the device drivers 128 and which information can be used by the processor 90 including, for example, storing data in the data memory 106 for subsequent access and transmission to a remote station 10. (Col. 10, lines 55-64.

Based upon my knowledge, experience and analysis, I do not believe that these cited portions of Spaur et al. disclose the multi-vehicle compatible controller as in the claims of the '278 patent. In addition, I also believe that, based upon these portions of Spaur et al., or any other portions of Spaur et al., there is no inherent teaching of the multi-vehicle compatible controller as in the '278 patent claims. In other words, it does not necessarily flow that Spaur et al. would have a multi-vehicle compatible controller using the device codes as in the '278 patent claims.

20. I also point out that Exhibits 14 and 15 from Requester's technical trial expert, Mr. Andrews, and describing the actual CellPort Labs products as disclosed in Spaur et al.,

also fail to have any express or inherent teaching of the multi-vehicle compatible controller as in the '278 patent claims. Indeed, Mr. Andrews cited the CellPort Labs products disclosed in Exhibits 14 and 15 for the teaching of a common housing as follows:

> The GPS receiver, the wireless communications device, the controller and the downloading interface are all electronically coupled. It would have been obvious to one skilled in the art to place them in a single housing, as was done with the actual CellPort Labs products, the C/P Connect and the CP 2100 (the '074 [Spaur et al.] patent is assigned to Cell-Port). (Andrews' Expert Report, page 181).

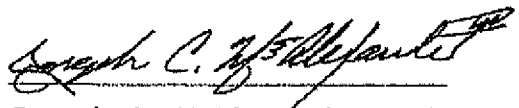
21. The Official Action also cites to the following language from col. 4, lines 38-45 of Spaur et al. for the alleged teaching of the downloading interface as recited in the '278 patent claims:

> Preferably, the controller in the vehicle is also associated with an interface for communication with one or more available systems, such as an RS232 connection, an Ethernet connection and/or a PCMCIA unit. In a related embodiment, the controller includes a direct communications port for receiving and sending information without requiring the wireless device and the Internet connection to the wireless device.

Again, based upon my knowledge, experience and analysis, I do not believe that these cited portions of Spaur et al., or any other portions of Spaur et al., disclose (either directly or through inherency) a downloading interface for permitting

downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller as found in the claims of the '278 patent. Spaur et al. does disclose an interface in combination with a controller; however, Spaur et al. fails to disclose the multi-vehicle compatible controller and the downloading interface as recited in the claims of the '278 patent. In addition, there is nothing in the description of the corresponding CellPort Labs actual products (Exhibits 14 and 15) that discloses the multi-vehicle compatible controller and the downloading interface as recited in the claims of the '278 patent.

22. I hereby declare further that all statements made herein are of our own knowledge and are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful and false statements may jeopardize the validity of the application or any patent issued thereon.



Joseph C. McAlexander, III

July 6, 2016
Date

EXHIBIT 14

MOBILEWEB™
CHANGING THE FACE OF MOBILE NETWORKING THROUGH UNIVERSAL WIRELESS CONNECTIVITY

Pat Kennedy
CellPort Labs, Inc.
885 Arapahoe Avenue
Boulder, CO 80303

The world is going wireless. The U.S. alone claims over 32 million of the world's 100+ million cellular and Personal Cellular Service (PCS) subscribers. The annual global growth rate still exceeds 35 percent. And 80 percent of users worldwide rely on handheld, pocket-sized phones.

The Internet's World Wide Web connectivity phenomenon is happening even faster. Enabled by CERN HTTP server development in 1991 and the NCSA Mosaic web browser 1992, the ease of establishing Home Pages and utilizing the "Net" has lured everyone from business professionals to home users to investigate its wares. It now boasts 20 million users in the U.S., exponential growth and increasingly innovative new application offerings.

Internet and World Wide Web application development tools and standards simplify networking opportunities. This opens avenues for new business and personal applications. CellPort Labs extends this ever-expanding networking paradigm by combining the power of the Internet and World Wide Web with the flexibility of wireless connectivity, changing the face of mobile networking.

CellPort Labs' MobileWeb™ technology integrates a complete "mobile" Internet/Web server into appropriately equipped vehicles. Running on the CellPort™ Controller/Server, and coupled with its patented Universal Wireless Port technology, MobileWeb opens an unlimited range of bidirectional data networking opportunities and applications, unencumbered or restricted by a single, fixed geographic location.

This vehicular connectivity is unprecedented in its power and potential. It solves the problem of cost-effective, bidirectional wireless data connectivity. As an integrated mobile server it offers complete Internet/Web functionality. Supporting ongoing browser Plug-In innovations such as Java™, MobileWeb embraces the Internet/Web's dynamic environment.

The MobileWeb looks and functions like any other TCP/IP and HTTP-based Internet/Web site. Using standardized applications development tools, it enables unprecedented mobile networking capability by reducing development complexity. Requirements for customized application development are more easily accommodated, lowering economic barriers and opening mobile networking opportunities to businesses and consumers.

ISBN# 0-7803-3277-6

Affordable applications will touch every mobile industry. One-to-one networking or broadcast capability from vehicle to Internet/Web or vice versa can simplify business and operating procedures. Whether providing real-time, ambulance/emergency room connectivity, routing and redirecting delivery services or simply sending vehicle status information, MobileWeb revolutionizes mobile networking.

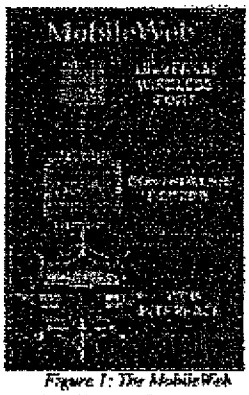


Figure 1: The MobileWeb

Vehicular Data Communications

Many businesses provide some or all of their daily services and transactions from mobile platforms. Incorporating these vehicles into an expanding data networking world previously required extensive custom software application and hardware development. Correspondingly high price tags eliminated all but the largest companies, placing potential applications out of reach for the majority of business and public service organizations.

The World Wide Web has become an applications enabler. Its development tools hide TCP/IP networking complexities, offering simplified communications with HTTP and HTML formatting. This has forged an industry unto itself and will transform the way businesses communicate and transact. Until now, the component missing from this communications revolution was the ability to effectively combine wireless communications with mobile networking.

CellPort Labs, recognizing the need for vehicle-based, mobile data networking, understood the simplicity and precedent-setting significance of the World Wide Web. The company incorporated internal vehicular communications, wireless and data connectivity, and Internet/Web networking, creating MobileWeb technology. The data networking and Internet paradigm is enhanced, enabling a heretofore impossible range of mobile applications.

Web-On-Wheels

Running on the CellPort Controller/Server, MobileWeb functions like any Internet/Web site. Its two-way data networking capability allows the vehicle to respond to Internet/Web data requests, or send data to other Internet/Web sites by executing internal application programs.

For example, remote clients can access the vehicle's "pages" or, equipped with special client applications, download data to the vehicle. Similarly, MobileWeb can run stored or downloaded programs, combining vehicular data with Internet-accessed, environmental or geographic information. These "on-the-fly" applications further extend the intelligent networking opportunities.

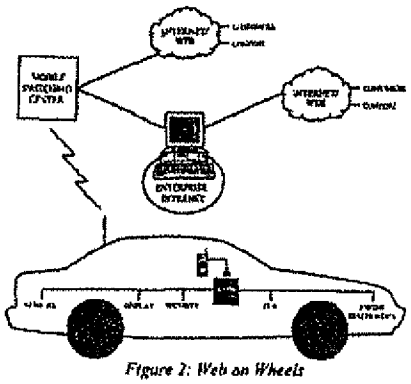


Figure 2: Web on Wheels

The CellPort Controller/Server is an Internet Protocol (IP) addressable node within the Internet's TCP/IP network of networks. Because Internet addresses define physical nodes rather than geographic locations, the server's "mobility" is virtually transparent.

As long as it is connected to the Internet "cloud", MobileWeb can be accessed transparently (like any other Internet/Web server) regardless of location. The MobileWeb server can store and dispense real-time data, varying or correlated, with its geographic location and physical status.

MobileWeb pages contain information gathered from the vehicle's internal data network "vehicular local area network (VLAN)," or from other Internet/Web sites. The VLAN is similar in concept to a LAN except for the fact that it consists of the vehicle's electronic devices instead of personal computers. VLAN devices could include PCs, as well as other vehicular devices such as air bag controllers, door locks, Global Positioning System (GPS) equipment, ignition controls, LCD displays, medical equipment and temperature sensors/equipment.

MobileWeb communicates with embedded vehicular or Plug-In devices through the Controller function of the CellPort Controller/Server, collecting data or sending commands. Although they appear to, remote Web clients cannot access these devices directly. This is accomplished by pages that present device interfaces and intranet with the vehicle devices using CGI-Bin.

Architecture

The CellPort Controller/Server is the heart and brain of MobileWeb. The Controller function is a powerful multitasking processor/micro computer, communicating with inboard vehicle devices connected to the VLAN and a wireless-access network.

MobileWeb is dependent upon - but independent of - specific wireless technology. It requires a wireless connection in order to provide a link to the Internet cloud. But by incorporating CellPort Labs' Universal Wireless Port, it enables any cellular, PCS or wireless handheld device to interface with the vehicle. This universal interfacing capability provides significant cost and application benefits over other available proprietary, non-universal or embedded mobile wireless solutions.

In the Client/Server architecture, the VLAN connects various internal or peripheral electronic devices using a standard automotive LAN protocol. Most manufacturers incorporate internal LANs into new vehicles, but thus far applications and uses have been limited by vehicle-specific control problems.

The CellPort Controller can communicate with these devices in their own language, then translates information to the Internet's standard transmission protocol (HTTP).

As a multitasking processor, the CellPort Controller monitors and communicates with multiple vehicular devices simultaneously. For example, it can monitor the status of electronic devices, at the same time as it accepts wireless data packets from an external Internet site. Users making data requests appear to have transparent access to vehicular devices, but are actually communicating through the CellPort Controller/Server.

CDPD packet data is particularly well-suited to MobileWeb applications. It uses the IP, eliminating the translation gateways and custom software required by other solutions. It is an encrypted, digital-packet-data overlay that talks directly to the Internet through a secure firewall connection. Using CDPD, MobileWeb is capable of a 19.2 Kbps raw-data rate with effective throughput of approximately 10 Kbps.

Wireless communication to the Internet is handled through the Server function of the CellPort Controller/Server. It has a standard twelve-digit IP address and incorporates the complete TCP/IP protocol stack, controlling the sending, receiving and proper routing of Internet data packets. As an addressable Internet node, the server provides the required intelligence and messaging for advanced networking and application opportunities.

The Server stores applications in RAM or ROM, and can incorporate flash memory or PCMCIA storage for dynamic additions or changes. Not requiring disk drives, the Server relies on its processing and memory power to parse application data. But its software architecture places no limits on functionality, offering a complete Internet Web server package.

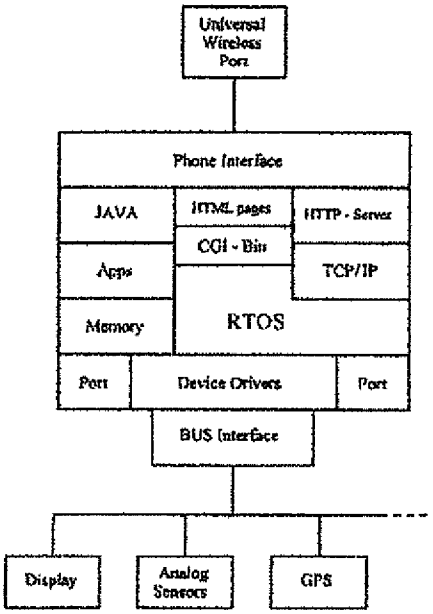


Figure 3: Controller/Server internal architecture

CellPort Server capability includes complete support for ongoing Internet/Web browser Plug-In developments, including Java applets, RealAudio™ and others. Plug-Ins extend Web capabilities to other dimensions by adding interactivity, sound and other features. The wealth of Web developer talent addressing Plug-Ins will keep the Internet/Web a dynamic environment. CellPort's complete Plug-In support extends this evolving capability to the mobile environment.

Applications

Extending World Wide Web connectivity to mobile vehicles expands the concept of an Internet server. It eliminates its tethered connection and opens up a host of new application development.

Vertical applications will dominate near-term development. Using CellPort development kits, businesses can conceptualize, create and implement wireless connectivity solutions in a fraction of the time required for typical customized developments. The range of mobile Internet uses is limited only by application developers' imaginations.

Delivery services become two-way active nodes on a data communications network. Internet-savvy customers can request a service pick-up or monitor delivery status by accessing the Web. Interacting directly with the system provides instant service gratification, eliminating the aggravation of customer service systems.

Within the vehicle, GPS systems can continuously monitor positions, communicate with the CellPort Controller/Server and post or send data through the Web. Dispatchers can monitor vehicle locations and re-route nearby vehicles to incorporate additional pickups and eliminate secondary dispatches.

Other vehicle data tracking examples include: monitoring temperature sensors for damaging deviations in environmental conditions; checking engine or component performance data to anticipate breakdowns/failures; and notifying dock personnel of approaching vehicles for quicker loading or unloading.

One of MobileWeb's compelling application capabilities lies in a vehicle's ability communicate bidirectionally through the Internet to any connected client or server worldwide. By bringing in a MobileWeb-equipped vehicle, oil companies could monitor instruments in remote land or sea locations without having to invest in proprietary systems.

A whole host of telemedicine and emergency-care applications are also possible. Ambulances can connect and send patient data ahead to hospital emergency rooms. Remote specialists and experts can access the same MobileWeb provided pages, resulting in enhanced medical diagnostics. Connecting mobile-care units with stationary-care facilities or other remote locations provides a diagnostic and treatment link not previously possible.

Embedded server applications can analyze data, warn of trouble ahead and provide alternate directions. Vehicle-based interactions can incorporate readily available voice recognition, touch screen displays and text-to-speech technologies, addressing driver interference concerns.

Consumers can also use CellPort Labs' vehicle-based technologies to access a host of horizontal market applications, including restaurant information and reviews, travel or route guidance, automated vehicle maintenance reporting or emergency vehicle dispatch.

Extending the Internet

MobileWeb takes advantage of the Internet/Web's development simplicity, adding additional functionality by enabling mobile server environments. Devices talk to a standard API and therefore require less custom software development, resulting in lower applications costs.

With MobileWeb, incorporating wireless connectivity requires less specialized developer expertise. Working with data services like CDPD, the Server/Controller and Universal Wireless Port keep the connection transparent.

Developers do not need to know or understand protocols for communicating with engine controllers, air bag sensors or GPS devices. The CellPort Controller/Server handles it all. Extensive applications can be written more quickly and cost-effectively.

Customized wireless applications do exist. Many rely on private wireless networking capability and proprietary software developments, which require specialized programming expertise. Depending on the scale of the application, development can cost anywhere from several hundred thousand to millions of dollars in infrastructure and software. These systems require ongoing maintenance, updates and changes, which necessitate additional customized development and added expense.

Because of the cost, vehicle-based wireless data connectivity applications were limited to large organizations, with corresponding budgets. Small users, such as 50-truck delivery fleets, could not cost justify the prohibitive development and ongoing expenses.

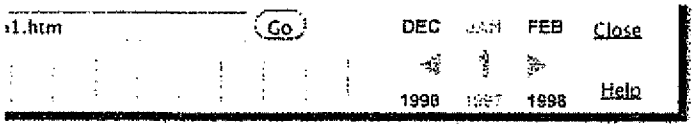
In contrast, the Internet/Web relies on open systems and standards. It uses TCP/IP for data-packet routing and control. HTTP is the transmission protocol describing what to do with messages. HTML handles "page formatting." As an open standard, anyone can develop Internet applications if they incorporate and conform to the published protocols.

Available Internet/Web application development tools incorporate standard Internet protocols. Developers need not worry about TCP/IP connections and data networking. These high-level tools sit "above" the Internet's embedded protocols, reducing much of the application development to simple HTML formatting. By slashing development costs from 30% to 80%, this offers a significant implementation savings.

In contrast to proprietary and embedded single-solution wireless architectures, CellPort Labs' open architectural solution borrows the s successful formula of winning technologies in the '90s. Open systems and standards continually result in the most robust, innovative, flexible and cost-effective solutions.

CellPort Labs MobileWeb enables an unlimited number of mobile-market application opportunities. Its ties to the Internet and World Wide Web lower the economic barriers of mobile connectivity solutions, eliminates the need for complex proprietary developments and makes it available to all.

EXHIBIT 15



MSC-9710 On-Line Brochure

- Introduction
  - Developer's Kit
  - MobileWeb: The Mobile Server/Controller
  - Unlimited Application Potential
  - CellPort's MobileWeb
- Software
  - C/P Connect
  - Core Features
  - Using the Developer's Kit
  - Developer's Kit Requirements
- Hardware
  - Design Concepts
  - Hardware Implementation
  - Developer's Kit Block Diagram
  - Front and Back Panel Illustrations
  - Product Photos
- Purchasing a MSC-9710 and Software Development Kit
- How to obtain a MobileWeb
- Back to the CellPort Labs Homepage

Introduction

Developer's Kit

The CellPort Labs MSC-9710 MobileWeb Developer's Kit is a hardware/software platform designed to facilitate the efficient development of wireless data solutions based upon CellPort Labs' universal wireless connectivity and mobile networking technologies. The Kit provides:

- Hardware development platform
- Software development tools
- Developer's environment

MobileWeb: The Mobile Server/Controller

CellPort Labs' MobileWeb combines universal wireles connectivity with Internet access, creating a universal data interface that turns any vehicle into an untethered "Web site". This allows information to be shared easily between fixed and mobile platforms. From checking local traffic conditions to tracking a fleet of delivery trucks, MobileWeb provides an unlimited range of bi-directional data opportunities and applications utilizing Internet/Web and intranet networks.

This advancement is made possible through a combination of internal vehicular communications; wireless, voice and data connectivity, and Internet/Web networking, all handled by MobileWeb. Utilizing an embedded server/controller based on a

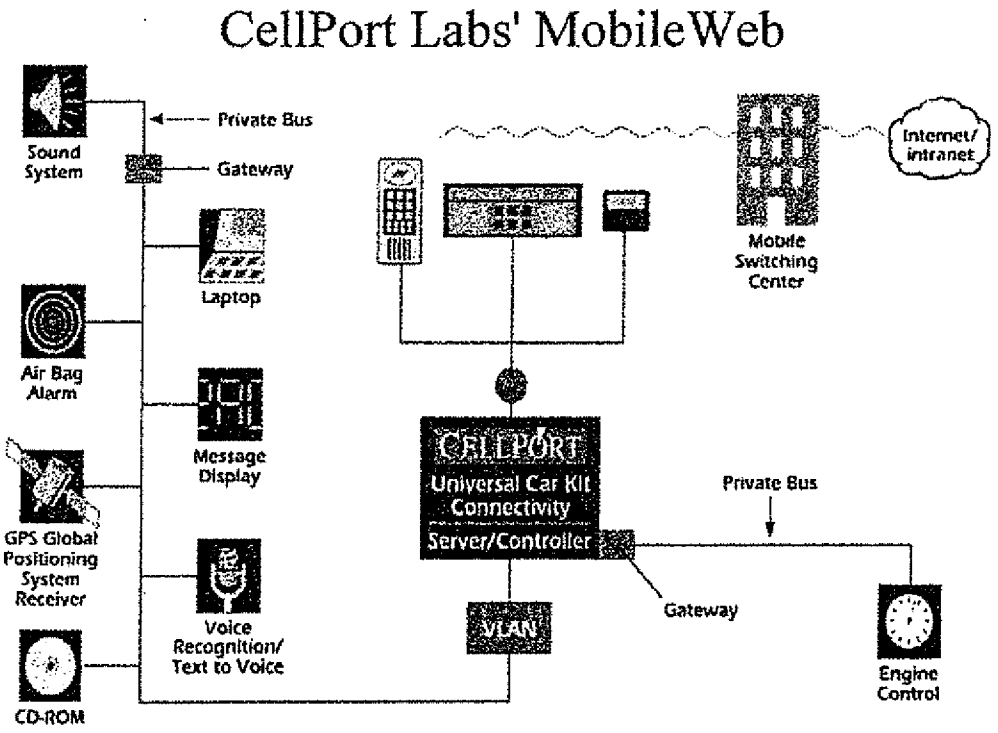
powerful pre-emptive multi-tasking operating system, MobileWeb links cellular, satellite, or PCS phones, independent of brand or airlink standard used, to the vehicle's multiple digital electronic devices. A variety of vehicular local area networks (VLANs) allows for bi-directional data communications between the vehicle and any public or private network.

Most importantly, by using TCP/IP and HTTP protocols, both standard Internet/Web protocols, MobileWeb drastically cuts application development time and costs, and opens a host of new mobile networking opportunities and applications. And since most business and government intranets take advantage of these same protocols, MobileWeb can add capabilities to their existing infrastructures, offering a viable way to enhance intranet functionality and efficiency without requiring large investments in hardware and applications development.

Unlimited Application Potential

Using the developer's kit, organizations can explore MobileWeb's unlimited application potential and create cost-effective prototypes. The kit provides multiple bus and multiple PC card interfaces to enhance development opportunities.

In addition to the many vehicular applications utilizing Internet connectivity and bidirectional data transmission, a wealth of portable applications requiring remote data acquisition and control are also possible, such as environmental monitoring, industrial processes and control, vending machine monitoring and agricultural applications.



- Airlink and Communication Device Independent
- Internet and Intranet Capable
- Bus Neutral
- Embedded or Non-Embedded Device Independent

Back to the top

Software

C/P Connect

C/P Connect is CellPort Labs' MobileWeb server/controller operating system. C/P Connect contains a set of core software features which come with the system. It can also be extended ot specific applications by programming the system using the CellPort Labs MSC-9710 MobileWeb Developer's Kit. The MSC-9710 is constantly undergoing performance enhancements and improvements.

Core Features

- C/P Connect is a real-time, multi-tasking, embedded operating system.
- For full connectivity to the Internet, a TCP/IP networking stack is provided.
- Supports CDPD cellular phones/modems and other wireless devices in connecting to the Internet. UDP is also available
- Supports the SLIP and PPP link layer services for connectivity to different Internet providers.
- Contains a HTTP 1.0 compatible Web Server including support for HTML FORMS for user input and server side include functions for specialized output processing.
- A FTP server is provided to download/upload new web pages and applications.
- A FTL file system is implemented in Flash memory for easy access to HTML web pages and for extension of the system.
- Supports PCMCIA flash memory cards.
- Different levels of security denies unauthorized access to system configuration and other sensitive pages.
- System management and configuration is accomplished through user-friendly FORMS based web pages.
- System management and configuration can be either accomplished through the Internet or via a directly attached laptop computer.
- A laptop computer can access the Internet via MobileWeb's universal wireless connectivity.
- Updates of the system software can easily be accomplished by uploading the new software and reprogramming the flash memory.

Using the Developer's Kit

The developer's kit is designed to allow easy customization. Developers can easily add new applications which are accessed through the Internet via web browsers. These applications might contain:

- New web pages.
- New server functions to process FORMS and server side include functions.
- New application tasks which monitor devices attached to MobileWeb.
- New device drivers.

In order to facilitate quick development of customer applications, CellPort Labs provides several libraries:

- APIs which help create new web-based applications.
- Common run time C functions (such as sprintf, memcpy, and strcpy).
- Pre-packaged serial device drivers and Controller Area Network device drivers.
- Card and Socket services are provided for development of PCMCIA drivers.

Development of new web pages can be done through one of the many commercially available web development tools, or with an ordinary text editor. Application development uses the commonly available MicroSoft Visual C++ compiler.

Newly developed code is easily uploaded to MobileWeb through a directly connected serial line.

Developer's Kit Requirements

There are three levels of developers for the C/P connect software. Each level requires more technical sophistication and development tools. All levels require the following:

- C/P Connect from CellPort Labs.
- MicroSoft Visual C++ Professional (Version 4 or higher).
- A PC capable of running Windows 95 (a Pentium/100 or better is recommended).
- A web browser (such as Navigatior or Explorer).
- A connection from the development PC to MobileWeb.

The three levels of developers and their specific requirements are:

Web Page Developer
This is the developer who wants to create web pages. This developer needs to be well-versed in HTML, CGI, and URI.
Application Developer
This is the developer who wants to communicate with a locally attached device, and control the device, or display the status of the device, through web pages. The locally attached device is attached via a CellPort Labs supplied driver (serial or CAN). This developer should be a systems programmer comfortable in programming multi-tasking systems in the C programming language. In addition to the tools listed above, this developer would need:

- Debugging version of C/P Connect.
- SoftScope debugger from Concurrent Sciences.
- MASM Assembler from MicroSoft.

Driver Developer
In addition to the applications, this developer wants to interface to a specialized PCMCIA card, CAN or ARCNET device. This developer should be a system programmer comfortable in programming systems in C, as well as in assembly language. In addition, the driver developer should have some background working with hardware devices, and should be familiar with PCMCIA hardware/software structure. The following development tools are helpful(in addition to the Application Developer's tools):

- promICE in-circuit ROM emulator (optional).
- C/P Connect Driver Developers Guide and libraries.

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Hardware

Design Concepts

The CellPort Labs MSC-9710 MobileWeb Developer's Kit is a single-board computer that connects a variety of wireless interfaces to one or more vehicle buses. The MobileWeb server/controller contains a microprocessor, 2 Megabytes of RAM, and up to 8 Megabytes of Flash Memory to implement an in-vehicle server/controller with file system. It has six serial ports and two PCMCIA slots for connection to a wide variety of devices, both vehicular and wireless. There are also native CAN and ARCNET interfaces for device-specific connections. It is powered by unconditioned automobile voltage (10.5V to 16V DC).

Hardware Implementation

The MobileWeb server/controller is based on on Intel 386EX CPU and has the following features:

- 2 Megabytes Dynamic RAM. The interrupt vectors, any variables, and the stack are stored in RAM.
- 512 Kilobytes (512K x 8) FLASH EPROM. This is the Boot FLASH. On Power Up, the processor accesses the reset vector in the top word of this device. This is where the operational code and unique device I.D. are stored. A 32 pin PLCC socket is provided for this device, so that code updates, or an In Circuit ROM Emulator, can be place here.
- 2 Megabytes(1Mx16) of FLASH FILE EPROM. This is one of two Flash File devices. The Flash file is used to store records and applications. Optionally, a 2Mx16 FLASH can be inserted to give 4 Megabytes of Flash File EPROM.
- 2 Megabytes (1Mx16) of FLASH FILE EPROM. This is the other Flash File device. Optionally a 2Mx16 FLASH EPROM can be inserted to give 4 Megabytes of Flash File EPROM.
- Two Type 3 PCMCIA Slots with one socket per slot. The PCMCIA Controller is the Cirrus Logic CPLD6720. One slot is 5V only and the other has intelligence to detect low voltage cards.
- Six RS-232 serial ports, with speeds up to 120K baud. Two of the serial ports are embedded in the 386EX. The other four are implemented with the Texas Instruments TL16C554 Quad UART. The TL16C554 consists of four improved 16C550 UARTs with 16 Byte FIFOs on the receivers. The serial ports are connected to Dsub9 connectors on the back panel. The pinout is as follows:

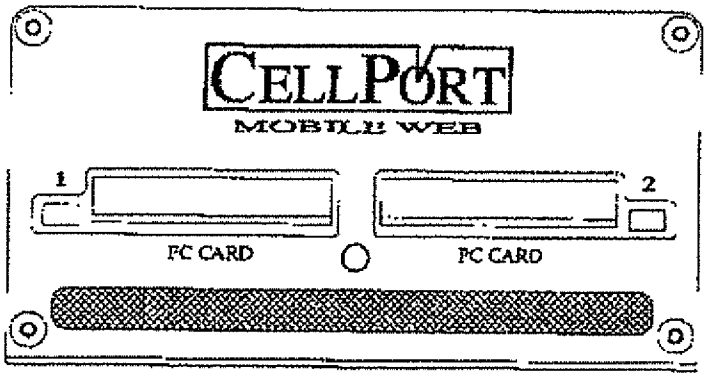
Data Carrier Detect	DCD	input	Pin 1
Receive Data	RXD	input	Pin 2
Trasmit Data	TXD	output	Pin 3
Data Terminal Ready	DTR	output	Pin 4
Ground	GND	--	Pin 5
Request to Send	RTS	output	Pin 7
Clear to Send	CTS	input	Pin 8

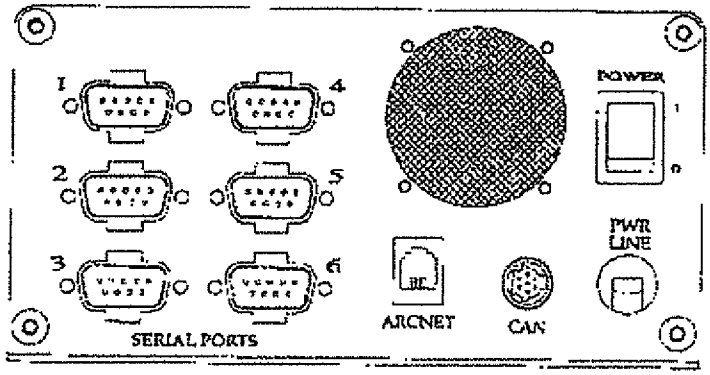
- A battery backed-up Real Time Clock (RTC) with 50 bytes of NVRAM utilizing the Dallas Semicondutor DS1286 RTC. It is interfaced as 64 RAM locations with 14 Bytes of clock and control registers, and 50 Bytes of general purpose Non-Volatile RAM.
- A CAN interface utilizing the Intel 82527 CAN Controller. The 82527 supports the standard and extended message frames in CAN Specification 2.0 Part B.
- An ARCNET interface utilizing the SMC COM20020 Universal Local Area Network Controller. The physical interface is an RS-485 tranceiver on an RJ11 connector.
- User selectable DIP Switch for custom setup.
- A Power On Reset generator and Power Fail interrupt based on the Maxim MAX707. The MAX707 generates an active low RESET-to the 386EX and peripherals when VCC drops below 4.7 Volts, and generates a 200 Msec RESET-on Power Up when VCC rises above 4.6 Volts. It also generates a Non Maskable Interrupt (NMI), when it detect the unregulated DC Power has dropped below 10.5 Volts, to provide an early warning of imminent power failure. The software then suspends all activity until power is restored. The 386EX also contains a Watch-Dog Timer that requires software toggling every 1.2 seconds. If the WDT is not toggled, the processor is Reset.
- A Three Ampere DC-DC switching power supply to convert from 10.6-20 Volts unregulated DC to 5.0 Volts for logic.
- A 300mA DC-DC switching power booster ot onvert from 5.0 Volts to 12V ± 5% for the PCMCIA slots and optionally the Flash Memory.
- The case is 6061 extruded aluminum with a black anodized finish. Its dimensions are:

Length	Width	Depth
6.15"	3.09"	8.0"
156.21mm	78.54mm	203.20mm

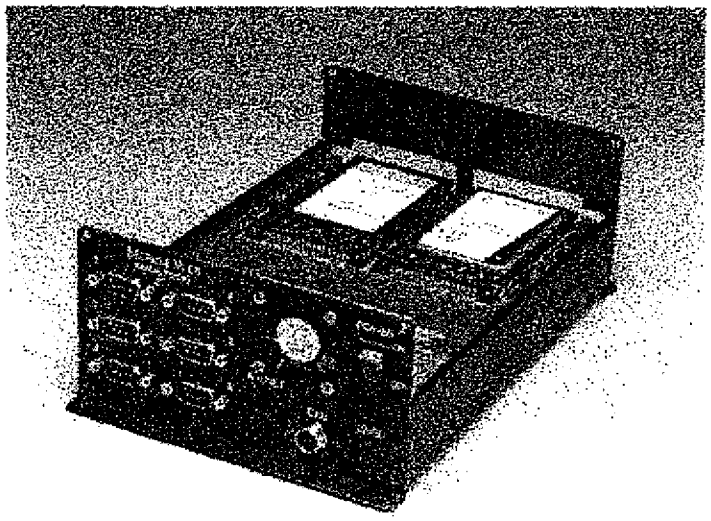
Developer's Kit Block Diagram

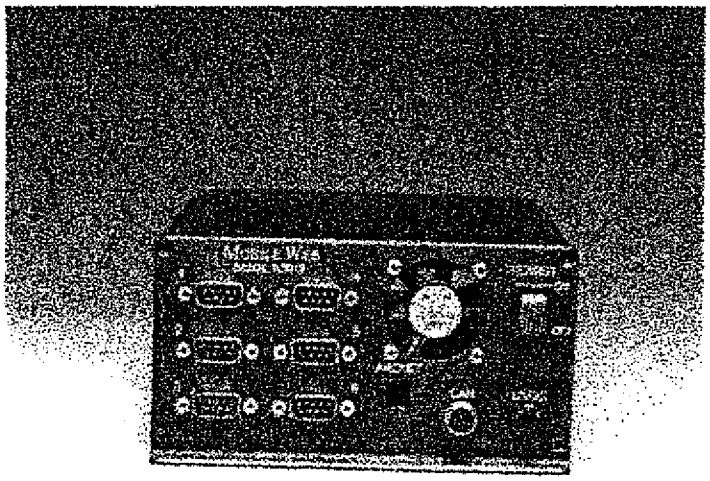
Front And Rear Panel Illustrations





Product Photos





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Purchasing a MSC-9710 and Software Development Kit

Item	Price
MSC-9710	$695.00
SDK	$3000.00

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How to Obtain a MobileWeb

CellPort Labs Contact Information:

CellPort Labs, Inc.
885 Arapahoe Avenue
Boulder, CO 80302
Tel (303)541-0722
Fax (303)541-0731
Email: patk@cellport.com

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ITEM 6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of **KENNETH E. FLICK**	
Request for Reexamination of **U.S. PATENT NO.6,032,278**	
Control No. **90/013,851**	Attorney Docket No.: **C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	
Filing Date: **OCTOBER 28, 2016**	Examiner: **K. Reichle**
For: **VEHICLE TRACKING UNIT WTIH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	Art Unit: **3992**

DECLARATION BY JOSEPH C. McALEXANDER, III UNDER 37 C.F.R. §1.132

I, the undersigned, hereby declare that:

I. Background

1. I am the Founder and President of McAlexander Sound, formerly IP Director of CCI and Vice President of EPI Technologies, Inc., and have 44 years of experience in microcircuit and semiconductor technologies, including: device design, fabrication, assembly, testing, and marketing, and control system design, analysis, quality, reliability, and defect/failure analysis at Texas Instruments.

2. I am a Registered Professional Engineer (#79454) in the State of Texas and hold a Bachelor of Science degree in Electrical Engineering from North Carolina State University.

3. I am an inventor on 31 U.S. patents and a number of foreign patents, and I am familiar with the patent process.

4. I have been an expert witness and technical consultant for the past 26 years in IP matters related to product/process analysis and investigation.

5. I prepared expert reports and provided trial testimony in the case of Omega Patents, LLC (the '278 Patent Owner) v. CalAmp Corp. (the Requester) that recently concluded in the Middle District of Florida (hereinafter referred to as the "CalAmp litigation"). In that CalAmp litigation, the '278 patent was asserted and determined by the jury to be not invalid, to be infringed by CalAmp, and that CalAmp acted despite an objectively high likelihood that its actions infringed a valid patent, and that this objectively high likelihood of infringement was either known or so obvious that it should have been known to CalAmp. (Jury Verdict, Exhibit 1). In the Court's Final Order of April 5, 2017 (Exhibit 2), the Court confirmed that the asserted claims were not invalid (including the claims of the '278 patent), and that CalAmp was a willful infringer. In the Court's Final Judgment (Exhibit 3), the Court awarded damages of $10,144,286.

6. I have been retained by the Patent Owner to provide technical consultation in the present reexamination of

the '278 patent, particularly with respect to addressing rejections based upon U.S. Patent No. 6,330,499 to Chou et al.

II. The '278 Patent and Current Office Action

7. I have extensively reviewed the '278 patent, along with its file history, and arguments advanced by Requester's trial expert, Mr. Andrews, as part of my work on behalf of the Patent Owner during the course of the CalAmp litigation. I have also reviewed the related litigation trial transcript and exhibits, and have reviewed the Court's Final Order of April 5, 2017, and Final Judgment of April 24, 2017.

8. I have reviewed the current Office Action dated March 29, 2017 for the reexamination of the '278 patent. In that Office Action, the claims were rejected as follows:

> Claims 1, 4-8, 11-12, 18-21 were rejected as anticipated by or, in the alternative, obvious over U.S. Patent No. 6,330,499 to Chou et al.
>
> Claims 9-10 and 22 were rejected over Chou et al. and U.S. Patent No. 6,028,537 to Suman et al.
>
> Claims 2-3 and 13-16 were rejected over Chou et al. and U.S. Patent No. 5,732,074 to Spaur et al.
>
> Claim 17 was rejected over Chou et al. and Suman et al. and Spaur et al.

9. Representative Claim 1 of the '278 patent is directed to a multi-vehicle compatible tracking unit for a

vehicle comprising a vehicle data bus extending throughout the vehicle. The multi-vehicle compatible tracking unit comprises a vehicle position determining device, a wireless communications device, and a multi-vehicle compatible controller for cooperating with the vehicle position determining device and the wireless communications device to send vehicle position information. The multi-vehicle compatible controller is to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles. The multi-vehicle compatible tracking unit comprises a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller. Independent Claim 13 recites that the downloading interface includes a connector for temporary connection to a downloading device. Independent Claim 18 recites that the downloading interface includes a wireless receiver for temporary connection to a downloading device.

III. The Prior Art Analysis

10. I understand that Chou et al. discloses a system including a vehicle having an in-vehicle computing system, and a client computer device to enable vehicle health checkup and remote diagnostics. A communication link is for communicating vehicle information (e.g., vehicle identification number (VIN), diagnostic data, and the like). The vehicle location is established, for example by a device (e.g., antenna

or the like) for receiving positioning information. A remote service center is also provided having a diagnostic server, a help desk and a data repository. The help desk schedules services, orders parts, and dispatches assistance through the roadside assistance unit.

11. I understand that the vehicle bus interface of Chou et al. includes the following modules: "vehicle bus adapter 120C, fault detector 120B, and diagnostic data service 120A. The fault detector 120B polls the vehicle bus 104 through the vehicle bus adapter 120C checking for fault codes reported by the vehicle ECUs 103. The vehicle bus adapter 120C translates the messages received from the vehicle bus into the language of the fault detector. It also translates messages from the fault detector into the language of the vehicle bus. The fault code specifications and protocols of the vehicle may be Original Equipment Manufacturer (OEM) and model dependent. The term 'vehicle fault codes' is meant to be synonymous with the term 'trouble code' or 'diagnostic trouble code'." (Col. 4, lines 21-32).

12. I further understand that Chou et al. discloses that a "listing of such codes may be found in the publication of the Society of Automotive Engineers, 'SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual'." (Col. 4, lines 33-36).

13. I have previously studied the SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual, SAE HS-3000 (1997), identified in Chou et al., as part of my studies for related reexaminations (90/013,741 and 90/013,659). The SAE HS-3000 Manual provides that: "[c]urrently there is no uniformity in these numeric Diagnostic Trouble Codes (DTC) between manufacturers, and in some cases, even within the same manufacturer across different product lines." (SAE HS-3000, 1997, page 39).

14. I understand that the Examiner has interpreted the claimed downloading interface as structure "for permitting downloading of enabling data related to the at least one corresponding vehicle device code, e.g. vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for use by said multi-vehicle compatible controller."

15. I understand that the Examiner contends that Chou et al. discloses an interface and wireless communication link structure that "permits downloading of enabling data, e.g. instruction to gather data, vehicle parameter update/change, related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller, e.g. steps 2-6 in Figure 5."

16. It is my opinion that one of ordinary skill in the art would recognize that Chou et al. fails to disclose the multi-vehicle compatible controller and downloading interface of the claimed vehicle tracking unit, as these claim recitations are interpreted by the Examiner.

17. It is my opinion that one of ordinary skill in the art would recognize that Chou et al. teaches away from the claimed invention. Chou et al. provides repeated disclosure that the diagnostic server at the remote service center permits multi-vehicle compatibility. See, for example, col. 5, lines 34-39; col 5, lines 53-58; col. 5, lines 61-64; col. 8, lines 19-21; and col. 9, lines 3-16.

IV. Evidence of Secondary Considerations

18. I submit that the person of ordinary skill in the art would not find it obvious to selectively modify Chou et al. Instead, it is my opinion that such a selective modification or combination would only be motivated by improper hindsight reconstruction - here about twenty years of hindsight.

19. I submit that merits of the claimed invention extend to providing multi-vehicle compatibility as described above. Accordingly, there exists evidence of secondary considerations of non-obviousness including:

a. The Jury Verdict, page 9, provides that others accepted licenses under the patents "because of the merits of the claimed invention."

b. I also understand that Omega has received in excess of $50 million in licensing revenue, much of it from the '278 patent and the other asserted patents in the CalAmp litigation. The Final Judgment adds another $10M to this amount.

c. The '278 patent is one of three patents asserted in the related litigation providing features for multi-vehicle compatibility as is important for the overall licensing program of the Patent Owner.

d. The Jury Verdict, page 9, includes the Jury's determination that the accused products were "commercially successful due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or features of the product other than those found in the claim." And the Jury determined that the asserted claims of the '278 patent were infringed by each of the accused CalAmp devices. (Jury Verdict, Pages 5-6).

e. CalAmp's employees testified in the related litigation that the multi-vehicle compatibility provides for simplified installation in a vehicle, and avoids the need for separated stock keeping units (SKUs). Hall

deposition, 40:25 - 41:2; and Hergesheimer deposition, 43:3-16).

f. CalAmp telemetry devices have enjoyed significant commercial success having sold over 466,000 units of the accused products, earning over $4.1 million in gross profits based upon the financial Expert Report of Mr. Tregillis.

g. The Jury Verdict, on page 9, includes a finding that others copied the claimed invention.

h. The Court determined that "CalAmp was well aware of Omega's patents since at least 2010. Rather than take a license, and choosing not to design around Omega's patents, CalAmp elected to sell infringing products and continues to do so to this day. CalAmp's motivation to engage in this behavior is obvious: their customers wanted this technology, and CalAmp wanted to provide it." (Final Order, pg. 19).

i. The Accused Products in the CalAmp litigation were developed because of "customer need." (Hall deposition, 40:20-41:12; Hergesheimer deposition, 40:23-41:3.).

j. Further, the infringing CalAmp Products would have "limited value" if it were not for the multi-vehicle

compatibility. (Hergesheimer deposition, 46:25-47:169.).

20. I hereby declare further that all statements made herein are of my own knowledge and are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful and false statements may jeopardize the validity of the application or any patent issued thereon.

Joseph C. McAlexander, III

June 12, 2017
Date

ITEM 7

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OMEGA PATENTS, LLC,

Plaintiff,

v. Case No: 6:13-cv-1950-Orl-40DCI

CALAMP CORP.,

Defendant.
_____/

FINAL JUDGMENT

This case was tried to a jury which returned a verdict in favor of plaintiff on February 24, 2016. On April 5, 2017, this Court granted in part and denied in part plaintiff's motion for entry of judgment but did not enter a form of judgment specifying its terms. This Final Judgment reflects the substance of that ruling.

Pursuant to Rule 58 of the Federal Rules of Civil Procedure, in accordance with the jury verdict delivered on February 24, 2016, and this Court's Orders, Final Judgment is hereby entered in favor of Plaintiff, OMEGA PATENTS, LLC, and against CALAMP CORP., as follows:

a. CALAMP CORP. willfully infringed OMEGA PATENTS, LLC's U.S. Patent No. 6,346,876, Claims 1, 3, 4, 5, 12, 14, and 16; U.S. Patent No. 6,756,885, Claims 1, 2, 3, 12, and 14; U.S. Patent No. 7,671,727, Claims 1, 10, and 11; and U.S. Patent No. 8,032,278, Claims 1, 2, 3, 4, 5, 6, 8, 11, 12, 13, 14, 16, 18, 19, and 21 (collectively, the claims of patents-in-suit);

b. The claims of the patents-in-suit have not been proven invalid or unenforceable;

c. The Court finds this to be an exceptional case and the amount of the damages awarded by the jury shall be trebled;

d. OMEGA PATENTS, LLC, shall be entitled to recover its reasonable attorneys' fees; and

e. The Court will not issue an injunction against further infringement.

Accordingly, it is hereby **ORDERED and ADJUDGED**:

1. Defendant CALAMP CORP. shall pay damages to OMEGA PATENTS, LLC, in the amount of $2,975,200.00, which shall be trebled, for a total amount of **$8,925,600.00**;
2. OMEGA PATENTS, LLC, shall be awarded prejudgment interest in the amount of $302.00 *per diem*, from the date of the verdict on February 24, 2016, to entry of this Final Judgment (393 days) for the total amount of **$118,686.00**;
3. By stipulation of the parties, the Court awards Reasonable Attorney's Fees and Costs to OMEGA PATENTS, LLC, in the amount of **$1,100,000.00**. CalAmp Corp. reserves the right to contest the amount of and/or entitlement to fees in the event that this Final Judgment is modified or overturned as a result of CalAmp Corp.'s motions for judgment as a matter of law and for a new trial, or on appeal.
4. The Court reserves jurisdiction to consider an ongoing royalty for any infringing sales after February 24, 2016. If the parties cannot agree on an appropriate procedure, the parties shall submit legal memoranda outlining any requested relief within thirty (30) days.
5. This Final Judgment incorporates all previous orders in the case. CalAmp Corp.'s agreement to the form of this Final Judgment shall not be construed as a waiver

of CalAmp Corp.'s right to appeal, or to file a renewed motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50 or a motion for new trial pursuant to Fed. R. Civ. P. 59. The time for filing such motions shall run from the date of the entry of this Final Judgment.

6. Plaintiff OMEGA PATENTS, LLC, shall be awarded Final Judgment in its favor, against Defendant CALAMP CORP., in the amount of **$10,144,286.00**.

FOR WHICH SUM, LET EXECUTION ISSUE.

DONE AND ORDERED in Orlando, Florida on April 24, 2017.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties

ITEM 8

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

OMEGA PATENTS, LLC,
a Georgia limited liability company,

Plaintiff,

v. Case No: 6:13-cv-1950-Orl-40DAB

CALAMP CORP.,
a Delaware corporation,

Defendant.

ORDER

This cause comes before the Court on the following:

1. Plaintiff's Motion for Claim Construction (Doc. 38), filed September 5, 2014;
2. Defendant Calamp Corp.'s Opening Claim Construction Brief (Doc. 39), filed September 5, 2014;
3. Plaintiff's Opposition to Calamp's Motion for Claim Construction (Doc. 40), filed October 3, 2014; and
4. Calamp Corp.'s Responsive Claim Construction Brief (Doc. 41), filed October 3, 2014.

The Court heard oral argument from the parties on November 24, 2014 (Doc. 46). At the conclusion of the hearing, the Court requested the parties to submit briefs addressing the issue of when and under what circumstances a claim should be construed by the Court. The parties filed briefs on this issue on December 12, 2014. (Docs. 48, 49). In total, the parties request the Court to construe eleven terms across five patents.[1]

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[1] The patents-in-suit include U.S. Patent Nos. 6,346,876 (the "'876 Patent"); 6,737,989

I. BACKGROUND

Plaintiff, Omega Patents, LLC ("Omega"), initiated this patent infringement lawsuit on December 20, 2013 (Doc. 1). Omega then filed a Motion for Claim Construction requesting the Court to construe two claims. (Doc. 38). Defendant Calamp Corp. ("Calamp") filed a claim construction brief requesting the Court to construe nine claims. (Doc. 39). The parties have reached agreement on the construction of the following claim terms: "Controller" and "Multi-vehicle compatible controller." (Doc. 38, p. 1). All of the patents-in-suit were invented by Mr. Kenneth E. Flick, and the technologies at issue involve control systems for vehicles with a data communications bus, which is a computer network within a vehicle, and various codes, signals, and data which monitor particular vehicle characteristics and conditions and which perform or command certain functions, including the operation of certain vehicle devices.

II. LEGAL STANDARDS FOR CLAIM CONSTRUCTION

The Court construes a patent claim as a matter of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996). To construe a claim, the Court begins with the words of the claim itself. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Generally, the Court accords the words of a claim "their ordinary and customary meaning," which is "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (internal quotation marks omitted). Persons of ordinary skill in the art do not read the claim term in isolation, but in the context of the

---

(the "'989 Patent"); 6,756,885 (the "'885 Patent"); 7,671,727 (the "'727 Patent"); and 8,032,278 (the "'278 Patent"). (Doc. 38, p. 2).

entire patent. *Id.* at 1313. If the ordinary meaning of claim language is "readily apparent even to lay judges," then claim construction requires "little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314. But because the meaning of a claim term as understood by a person skilled in the art is often not immediately apparent, the Court looks to both intrinsic evidence (the words of the claims themselves, the specification, and the prosecution history) and extrinsic evidence (sources such as dictionaries and expert testimony). *Id.*; *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1328 (Fed. Cir. 2008).

The patent's specification is "the single best guide to the meaning of a disputed term," as it may reveal that the patentee intended a special definition to apply to a claim term that differs from its ordinary meaning or that the patentee intentionally disclaimed or disavowed the claim's scope. *Phillips*, 415 F.3d at 1315–16 (internal quotation marks omitted). The Court also considers the prosecution history, which is created by the patentee in an attempt to explain and obtain the patent. *Id.* at 1317. The prosecution history consists of the complete record of proceedings before the Patent and Trademark Office ("PTO") and the prior art cited during the examination of the patent. *Id.* Unlike the specification, which is a final product, the prosecution history is less useful in claim construction because it represents the ongoing negotiations between the PTO and applicant. *Id.*

The Court also looks at the prosecution history "to determine whether the applicant clearly and unambiguously 'disclaimed or disavowed'" an interpretation of claim scope in order to obtain the patent grant. *Middleton, Inc. v. Minn. Mining and Mfg. Co.*, 311 F.3d 1384, 1388 (Fed. Cir. 2002) (quoting *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d

448, 452 (Fed. Cir. 1985)). A patentee disclaims an interpretation by "clearly characterizing the invention in a way to try to overcome rejections based on prior art," as opposed to simply describing features of the prior art without distinguishing the claimed invention based on those features. *Computer Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1374–75 (Fed. Cir. 2008). Thus, the Court protects the public's reliance on the definitive statements made during the prosecution by precluding the patentee from "recapturing" through claim construction an interpretation disclaimed during prosecution. *Id.* at 1374 (quoting *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003)). However,

> [I]f the specification expressly defines a claim term and remarks made to distinguish claims from the prior art are broader than necessary to distinguish the prior art, the full breadth of the remark is not a clear and unambiguous disavowal of claim scope as required to depart from the meaning of the term provided in the written description.

Id. at 1375 (internal quotation marks omitted) (quoting *3M Innovative Props. Co. v. Avery Dennison Corp.*, 350 F.3d 1365, 1373 (Fed. Cir. 2003)).

Extrinsic evidence, such as expert testimony and dictionary definitions, is helpful but "less significant than the intrinsic record." *Phillips*, 415 F.3d at 1317 (internal quotation marks omitted). However, expert testimony about claim terms that is conclusory, unsupported or "clearly at odds" with the intrinsic evidence is not useful. *Id.* at 1318 (internal quotation marks omitted). Moreover, while dictionaries and treatises are relevant, the Court must ensure that the dictionary definition does not contradict a definition "found in or ascertained by a reading of the patent documents." *Id.* at 1322–23 (quoting *Vitronics*, 90 F.3d at 1584 n.6). "In sum, extrinsic evidence may be useful to the court, but it is unlikely to result in a reliable interpretation of patent claim scope unless considered in the

context of the intrinsic evidence." *Phillips*, 415 F.3d at 1319. In the instant case, the parties agree that the Court need not consider extrinsic evidence to construe the claim terms in dispute, and neither party has presented extrinsic for the Court's consideration.

Several other principles guide the Court's construction of claim terms. First, the Court presumes that the same terms appearing in different portions of the claims have the same meaning, unless the specification and prosecution history clearly demonstrate otherwise. *Fin Control Sys. Pty, Ltd. v. OAM, Inc.*, 265 F.3d 1311, 1318 (Fed. Cir. 2001). While the "[i]nterpretation of a disputed claim term requires reference to the other claims," *Georgia-Pacific Corp. v. U.S. Gypsum Co.*, 195 F.3d 1322, 1331 (Fed. Cir. 1999), "the presence of a dependent claim that adds a particular limitation raises a presumption that the limitation in question is not found in the independent claim." *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004). Courts are further cautioned that "a construction that renders the claimed invention inoperable should be viewed with extreme skepticism." *Talbert Fuel Sys. Patents Co. v. Unocal Corp.*, 275 F.3d 1371, 1376 (Fed. Cir. 2002) (citation omitted), *vacated and remanded on other grounds*, 537 U.S. 802 (2002).

Finally, district courts have an obligation to construe terms when it is necessary to resolve a genuine and material legal dispute between the parties. *See O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., Ltd.*, 521 F.3d 1351, 1361–62 (Fed. Cir. 2008); *E-Pass Techs., Inc. v. 3Com Corp.*, 473 F.3d 1213, 1219 (Fed. Cir. 2007) ("[A]ny articulated definition of a claim term ultimately must relate to the infringement questions that it is intended to answer."). The party requesting the Court to construe a claim term must demonstrate that the construction is both necessary and correct; that is, construction of

the claim term must be fundamental to issues of infringement or invalidity, and the Court may not issue an advisory opinion. *IP Cleaning S.p.A. v. Annovi Reverberi S.p.A.*, No. 08-cv-147-bbc, 2008 U.S. Dist. LEXIS 102312, at *3 (W.D. Wisc. Dec. 17, 2008).

III. AGREED TERMS

As previously noted, the parties have reached an agreement as to the proper construction of the following two terms:

Claim Term	Agreed Construction
Controller	Electronic circuitry that performs one or more control functions.
Multi-vehicle compatible controller	Electronic circuitry that performs one or more control functions, and can operate with more than one vehicle.

IV. DISPUTED TERMS

Omega filed the initial Motion for Claim Construction, requesting the Court to construe two terms: "transmitter" and "receiver." (Doc. 38). Accordingly, the Court will construe these two claims prior to addressing Calamp's request for construction of nine additional terms.

A. The '876 and '885 Patent Terms: "Transmitter" and "Receiver"

Claim Term	Omega's Construction	Calamp's Construction
Transmitter	Radio frequency transmitter.	Device that sends signals.
Receiver	Radio frequency receiver.	Device that receives signals.

The terms "transmitter" and "receiver" are used in asserted claims of the '876 Patent (Doc. 39-1) and the '885 Patent (Doc. 39-2). Turning first to the construction of "transmitter," Calamp contends that the patents describe the transmitter as sending

signals without restricting the specific type of signals being sent—that is, without limiting the construction to require "radio frequency." (Doc. 39, p. 21). Calamp submits that the '876 and '885 Patents do not specifically define transmitter to limit the meaning of that term as commonly understood by individuals skilled in the art.[2] (*Id.* at p. 22). Similarly, Calamp contends that "receiver" is described in the patents as receiving signals and is not restricted to radio frequency signals. (*Id.* at p. 23).[3]

Omega submits that Calamp's construction and citation to the specifications of the '876 and '885 patents fail to place the terms "transmitter" and "receiver" into the context of the invention which Omega argues envisions remote control systems for a vehicle. (Doc. 38, p. 6). Omega proposes that the Court need only consider the claims, read in light of the specification, to comprehend that the invention focuses upon a remote control system for cars. (*Id.*). Omega directs the Court to the '551 Patent, noting that both the '876 and '885 Patents claim priority back to the '551 Patent. The Court agrees with Omega that both the '876 and '885 Patents are continuations-in-part and claim priority back to the '551 Patent. (*Id.* at p. 7). The background to the '551 Patent provides:

> The concepts and features of the invention may also be desirably incorporated in a remote control system for a vehicle, such as a vehicle security system, a remote engine starter system, or a remote keyless entry system, for example. The remote control system preferably comprises a remote transmitter and a receiver within the vehicle for receiving a signal from the remote transmitter.[4]

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[2] Calamp directs the Court to the '876 Patent at 3:5–12; 3:63–4:9; 4:14–28; 4:33–36; 5:35–54; 5:55–6:2; 6:3–16; 6:17–27, and cites the '885 Patent at 3:5–12; 3:49–62; 4:5–8 4:9–24; 5:16–24; 5:35–62; 5:64–6:8. (Doc. 39, p. 22).

[3] Calamp cites the same specification language as was relied upon for its proposed construction of "transmitter."

[4] References to the column and lines within a given specification shall be denoted by the column number and line numbers. For example, column 1, lines 2–10 are denoted as 1:2–10.

(Doc. 38-3, 4:12–18).

As noted by counsel for Omega at the *Markman* hearing, Figure 1 of the '551 Patent depicts a remote transmitter/receiver, denoted as TX/RX (13), with an antenna (13a). (*Id.* at Fig. 1; 5:12–15). Similarly, Figure 2 of the '551 Patent also depicts a remote transmitter (57, 57a). (*Id.*, Fig. 2; 5:51–6:21). Figures 7, 8, and 9 of the '551 Patent also illustrate a radio frequency ("RF") transmitter and receiver and an antenna for communicating with various devices. [5] (*Id.*, Figs. 7–9, 8:1–35).

Omega next directs the Court to the abstract of the '876 Patent which describes "[a] control system [that] includes a transmitter and a receiver for receiving signals from the remote transmitter, and a multivehicle compatible controller cooperating with the transmitter and receiver." (Doc. 39-1). Similarly, the abstract of the '885 Patent describes the invention and states "[t]he approach is useful for a number of vehicle remote control functions including vehicle security, remote keyless entry and remote starting." (Doc. 39-2). While claim 1 of the '876 and '885 Patents do not describe the transmitter or receiver as remote, wireless, or receiving a RF signal, Omega correctly notes that no dependent claim in either patent limits the transmitter or receiver to a hardwired device. To the contrary, several dependent claims in the '876 and '885 Patents describe and discuss remote transmitters and receivers, including dependent claims 13–18 and 30–32 of the '876 Patent (Doc. 39-1) and claims 8, 12–15, 22–23, and 26–31 of the '885 Patent. (Doc. 39-2).

Based on the foregoing, the Court concludes that the dependent claims in the '876 and '885 Patents do not contain limitations or language requiring the Court to limit the

[5] Figures 1, 2, 7, 8, and 9 of the '551 Patent appear in Appendix A to this Order.

scope of the independent claims. Accordingly, the independent claims may properly be construed in the context of the patent specifications and in view of the '551 Patent to provide for remote control functions. Therefore, the Court construes the terms "transmitter" as **radio frequency transmitter** and the term "receiver" as **radio frequency receiver**, adopting the construction proposed by Omega.

B. The '876, '885, '727, and '278 Patent Terms: "Data Communication Bus/ Vehicle Data Communications Bus/ Vehicle Data Bus"

Claim Term	OMEGA's Construction	CALAMP's Construction
Data communication bus	*No construction needed; alternatively, it should be defined as follows:* Wired connection for communication of digital messages among vehicle devices, with each message including one or more device addresses	Wired connection for transferring data to and from vehicle devices

The term "data communication bus" is used in the '876 (Doc. 39-1) and '885 Patents (Doc. 39-2). The term "vehicle data communications bus" is used in the '727 Patent. (Doc. 39-3). The term "vehicle data bus" is found in the '278 Patent. (Doc. 39-4). Calamp asks the Court to construe these three sets of terms appearing in patents '876, '885, '727, and '278, arguing that construction is necessary to assist the jury.

Calamp contends that in all of the patents-in-suit, the data communication bus is described as a wired connection for transferring data to and from vehicle devices. (Doc. 39, p. 11). Calamp cites the '876 Patent specification which states, "Digital messages

are communicated to all modules over the data communications bus." (Doc. 39-1, 2:18–19). Calamp further refers the Court to the '885 Patent specification language which is identical to the '876 language. (Doc. 39-2, 2:18–19). Calamp also quotes the '278 Patent, which provides, "This and other objects, features, and advantages in accordance with the present invention are provided by a multi-vehicle compatible tracking unit for a vehicle comprising a *vehicle data bus extending throughout the vehicle.*" (Doc. 39-4, 2:50–53) (emphasis added). Finally, Calamp cites to the '727 Patent which similarly provides for a "vehicle data bus extending throughout the vehicle."[6] (Doc. 39-3, 2:44–45).

Omega submits that Calamp incorrectly seeks a construction which requires data transfer both to and from vehicle devices, whereas the patents-in-suit do not require two-way commands transferred on the bus. (Doc. 40, p. 4). Omega directs the Court to the plain language of claim 1 of the '876 Patent which provides, in pertinent part:

> 1. A control system for a vehicle comprising a data communications bus and at least one vehicle device connected to the data communications bus, the control system comprising:
>
> . . . .
>
> a multi-vehicle compatible controller at the vehicle and cooperating with said transmitter and receiver, said multi-vehicle compatible controller *generating at least one set of command signals on the data communications bus* for at least one vehicle device . . . .

(Doc. 39-1, 11:30–42) (emphasis added). Omega reasons that the plain language of claim 1 of the '876 Patent instructs the reader that at least one signal is generated, or sent, to at least one vehicle device. (Doc. 40, p. 5). The use of the term "generating" indicates

[6] The Court notes that none of the language cited by Calamp contained within the various patents-in-suit requires two-way communication of messages along the bus.

sending a signal and does not require a signal to be both sent to a device and received from a device.

When one considers the background to the invention, as stated in the '876 Patent, it is clear that a signal may be generated or sent along the bus to a vehicle device without a return signal being sent from the device to the bus. For example, the background to the '876 Patent states that an "alarm indication may typically be a flashing of the lights and/or the sounding of the vehicle horn or a siren." (Doc. 39-1, 1:35–37). Such an alarm may consist of a signal being generated and sent to the device without the device sending a return signal along the bus. One skilled in the art need only read the description of preferred embodiments for the '885 Patent to understand that the data communications bus controls complex and simple functions within the vehicle. "In other words, the vehicle devices connected to the data bus may be considered to be relatively simple devices, such as sensors, or more complicated devices with some internal processing, such as may generally be considered as controllers." (Doc. 39-2, 6:48–52). The simple devices, such as sensors, receive a signal generated and sent to the device without sending a reply to the controller. Accordingly, giving the words of the claim(s) their ordinary and customary meaning that the term would have to those skilled in the art, and taking the term within the context of the entire patent, the terms "data communications bus," "vehicle data communications bus," and "vehicle data bus" do not envision or require the transference of data "to and from" vehicle devices.

Calamp next proposes that Omega's insertion of device "addresses" in their proposed definition of the above terms is not supported by the patents-in-suit. (Doc. 39, p. 12). Calamp argues that the term "address" is an optional feature in the systems

described in the '876 and '885 Patents. (*Id.*). Calamp cites the '885 Patent specification to support this interpretation, which reads, "Each message *may* have one or more addresses associated with it so that the devices can recognize which messages to ignore and which messages to respond to or read." (Doc. 39-2, 2:20–22) (emphasis added). However, the Court finds that this quote is taken out of context. The context is found in the following excerpt:

> With multiplexing technology, the various electronic modules or devices may be linked by a single signal wire in a bus also containing a power wire, and one or more ground wires. Digital messages are communicated to all modules over the data communications bus. Each message may have one or more addresses associated with it so that the devices can recognize which message to ignore and which message to respond to or read.

(*Id.* at 2:16–22). Therefore, the word "may" cannot reasonably be interpreted to suggest that associating an address with a message is optional. Rather, each message will have at least one and perhaps multiple addresses associated with it, depending on the number of electronic modules or devices linked by the command bus. The Court finds that the presence of at least one address is fundamental to the functioning of the invention.[7]

Based on the foregoing, the Court construes the term "data communications bus" as used in the '876 (Doc. 39-1) and '885 Patents (Doc. 39-2), "vehicle data communications bus" as used in the '727 Patent (Doc. 39-3), and "vehicle data bus" as found in the '278 Patent, collectively "data communication bus" as follows: **"wired connection for communication of digital messages among vehicle devices, with each message including one or more device addresses."**

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[7] While the '727 and '278 Patents do not specifically reference an address, one skilled in the art at the time of the invention would understand a vehicle data communications bus to require one or more addresses in order to control or read a device.

C. The '876, '885, '727, '278 Patent Term: "Vehicle Device"

Claim Term	OMEGA's Construction	CALAMP's Construction
Vehicle device	No construction needed	Electrical or electronic component in a vehicle that can be controlled and/or the status thereof read

Calamp contends the term "vehicle device" should be construed by the Court because the term is broad and susceptible to many meanings. (Doc. 39, p. 13). The parties agree that claim terms should be construed by the Court when it is necessary to resolve a genuine and material legal dispute between the parties or when necessary to aid the jury in understanding claim terms. Calamp's proposed construction of the term "vehicle device" is taken verbatim from the '876 and '885 Patents, with closely analogous language found in the '727 and '278 Patents. (*Id.*). Since Calamp's proposed construction of "vehicle device" is taken from the patents-in-suit, the Court need not construe the claim term. The definition is not in dispute, nor is additional construction necessary to aid the jury in understanding the claim term. Calamp's request to construe the term "vehicle device" is denied.

D. The '876 Patent Term: "Command Signal"

Claim Term	OMEGA's Construction	CALAMP's Construction
Command signal	*No construction needed; alternatively, it should be defined as follows:* Signal generated on the data communications	Signal generated on the data communications bus for operating a vehicle device to cause a desired function to be performed at the vehicle

	bus for operating a vehicle device	

The term "command signal" appears in claims of the '876 Patent. Calamp contends the '876 Patent, when read in its entirety, supports construction of the term "command signal" as requiring that the signal causes a desired function to be performed. (Doc. 39, p. 14). Calamp notes that the specifications include the following language: "will cause an operation or response from the vehicle device." (Doc. 39-1, 3:16–20). Defendant quotes portions of the specifications which state command signals may be "for operating" a specific vehicle device. (*Id.* at 3:39, 41–45; 5:45–49).

Omega submits that claim 1 of the '876 Patent clearly states that not every command signal will cause an operation or response from a vehicle device:

> 1. A control system for a vehicle comprising a data communications bus and at least one vehicle device connected to the data communications bus, the control system comprising:
>
> . . . .
>
> a multi-vehicle compatible controller at the vehicle and cooperating with said transmitter and receiver, said multi-vehicle compatible controller generating at least one set of command signals on the data communications bus for at least one vehicle device, the at least one set of command signals comprising at least *one working and at least one non-working command signal* for a given vehicle to thereby provide command compatibility with a plurality of different vehicles.

(*Id.* at 11:30–48) (emphasis added).

The claim makes it clear that the control system uses a working and non-working command signal because "multiple signals or codes can be generated on the data communications bus, and only that code for the *given vehicle and device* will cause an operation or response from the vehicle device." (*Id.* at 3:17–20) (emphasis added). Further, "an object of the invention [is] to provide a control system and related method for

a vehicle comprising a data communications bus and at least one vehicle device connected to the data communications bus, and wherein the system is *adapted to operate with different vehicles.*" (*Id.* at 2:66–3:4) (emphasis added). Since the system is designed to operate with a variety of vehicle platforms, not every signal generated on the data communications bus will cause a function to be performed. In order for a signal to cause a function to be performed, the signal must be received by a device contained within a compatible vehicle platform.[8] Accordingly, Calamp's proposed construction incorrectly includes within the definition of the "command signal" the requirement that a signal generated on the data communication bus must always cause a desired function to be performed.

Based on the foregoing, the Court construes "command signal" as follows: **"signal generated on the data communications bus for operating a vehicle device."**

E. The '876 and '885 Patent Term: "Device Code"

Claim Term	OMEGA's Construction	CALAMP's Construction
Device codes	*No construction needed; alternatively, it should be defined as follows:* Signal to or from a vehicle device	Signal from a vehicle device read on the vehicle bus. *Amended at the Markman hearing as follows:* Signal from a vehicle device read on the vehicle bus and/or stored in the controller

Calamp asserts that the '876 and '885 Patents describe "device code" as a signal from a vehicle device that is read on the vehicle bus. (Doc. 39, p. 15). Calamp's

[8] "In other words, multiple signals or codes can be generated on the data communications bus, and only that code for the given vehicle will cause an operation or response from the vehicle device." (Doc. 39-2, 7:31–34).

proposed construction is based on select language from the '876 and '885 Patents. For example, both the '876 and '885 Patents discuss "reading a device code *from* the data communications bus." (Doc. 39-1, 9:22–23; Doc. 39-2, 3:12-13) (emphasis added). The complete text of the specification is, as always, helpful in construing the claim terms:

> More particularly, the multi-vehicle compatible controller is for storing a set of device codes for a given vehicle device for a plurality of different vehicles, for reading a device code from the data communications bus, and for determining a match between a read device code and the stored device codes to thereby provide compatibility with a plurality of different vehicles.

(Doc. 39-1, 9:19–25).

The '885 Patent further elaborates upon the manner in which the multi-vehicle compatible controller functions:

> Moreover, the multi-vehicle compatible controller is also for storing a set of device codes for a given vehicle device for a plurality of different vehicles, for reading a device code from the data communications bus, and for determining a match between a read device code and the stored device codes to thereby provide compatibility with a plurality of different vehicles.

(Doc. 39-2, 3:10–16). Both of these patents clearly state that when a device code is read, it is read "from" the data communications bus and not "on" the vehicle bus. To the extent Calamp's proposed construction describes the signal from the vehicle device as being read "on" the vehicle bus, the claims and specifications of the pertinent patents contradict this interpretation.

The next issue is whether the device codes travel "from" a vehicle device, as Calamp contends, or travels "to and from" a vehicle device, as Omega suggests. As previously discussed, the relevant specifications state: "[T]he multi-vehicle compatible controller is also for storing a set of device codes for a given vehicle device for a plurality

of different vehicles, for reading a device code from the data communications bus [and determining whether a match exists] . . . ." (*Id.*). The specifications, therefore, certainly state that device codes, or signals, are stored on the multi-vehicle compatible controller, and codes received from the data communications bus can be read to determine if the stored code matches the code received from the data communications bus. The claims and specifications do not describe any scenario wherein the device code is a signal sent "to" a vehicle device, which appears to be accomplished by command signals. Omega does not direct the Court to any intrinsic evidence to support its contention that a device code, or signal, travels both to and from a vehicle device.

Based on the foregoing, the Court agrees with Calamp that the claims and specifications of the pertinent patents-in-suit describe "device codes" as **signal from a vehicle device.** The Court, however, declines to adopt Calamp's construction to the extent it describes device codes as being "read on the vehicle bus." The description proffered by Calamp is contradicted by the clear wording of the claims and specifications, which state the signal or code is read "from" the bus and not "on" the bus. Additionally, Calamps's construction focuses on the signal being "read" and fails to address the storage of device codes and the comparison of stored codes to codes received from the communications bus. The Court finds it is not necessary to include a partial description of how device codes are utilized by the multi-vehicle compatible controller, because the ordinary meaning of the claim language relative to the uses made of the device codes is readily apparent to those skilled in the art.

Thus, the term "device codes" is construed by the Court to mean: **"signal from a vehicle device."**

F. The '885 Patent Term: "Function"

Claim Term	OMEGA's Construction	CALAMP's Construction
Function	*No construction needed; alternatively, it should be defined as follows:* An operation of a vehicle device	An operation of a vehicle device, such as remote starting the engine, remotely unlocking the vehicle doors, or changing the mode of a security system between armed and disarmed

Calamp contends that the definition of the term "function" found in claim 24 of the '885 patent should be limited to the three embodiments identified in Calamp's proposed claim construction. (Doc. 39, p. 17). Omega asserts the term "function" does not require construction because the ordinary meaning of the claim language is readily apparent to persons of ordinary skill in the art and even to lay judges. (Doc. 40, pp. 9–10). The Court agrees that the claim language is sufficiently clear and unambiguous to enable an individual of ordinary skill in the art, as well as lay judges, to apply the language in the context of this litigation.

The patent states the invention may be embodied in "many different forms and should not be construed as limited to the illustrated embodiments set forth herein." (Doc. 39-2, 4:63–65). The term "function" is self-evident from the context of the list of embodiments:

> The second transmitter/receiver pair may be used to cause a *desired function* to be performed at the vehicle, such as remote starting the engine, remotely unlocking the vehicle doors, or changing the mode of a security system between armed and disarmed modes, for example. Many other similar applications are contemplated by the present invention as will be appreciated by those skilled in the art.

(*Id.* at 5:24–31) (emphasis added). Clearly, a function is the operation of one of the vehicle devices. Accordingly, the Court declines to construe this term.

G. The '727 Patent Term: "Remote Vehicle Speed Exceeded Notification"

Claim Term	OMEGA's Construction	CALAMP's Construction
Remote vehicle speed exceeded notification	*No construction needed; alternatively, it should be defined as follows:* Notification sent when a vehicle speed exceeds a speed threshold for a first time period	A message sent from a vehicle indicating that the vehicle speed has exceeded a particular speed

The term "remote vehicle speed exceeded notification" is found in the '727 Patent. Calamp proposes a construction of the term which emphasizes that the message indicating that a preset speed has been exceeded is sent "from" the vehicle. (Doc. 39, p. 18). Calamp asserts that the patent, and Omega's proposed construction, fail to state that the message originates from within the vehicle. (*Id.*). Omega argues that no construction is required because the ordinary meaning of the claim language is readily apparent. (Do. 40, p. 11). The Court agrees with Omega and finds that the term "remote vehicle speed exceeded notification" does not require construction or clarification.

Claim 1 of the '727 Patent clearly identifies that the speed exceeded notification device includes "at least one vehicle device *generating* data related to vehicle speed." (Doc. 39-3, 7:6–7) (emphasis added). Therefore, the message is clearly sent from the vehicle, where the vehicle devices reside. The claim language further states that the

device determines "when a vehicle speed exceeds a speed threshold *for the first time period*" and sends a remote vehicle speed exceeded notification. (*Id.*) (emphasis added). That is, a device internal to the vehicle sends the notification outside of the vehicle. To the extent the patent provides for multiple speed exceeded notifications being sent from the vehicle, the claim language clearly addresses the manner in which this is accomplished. (*Id.* at 7:18–22, 27–29).

Based on the foregoing, the Court declines Calamp's request for construction of the term "remote vehicle speed exceeded notification."

H. The '278 Patent Term: "Downloading Interface"

Claim Term	OMEGA's Construction	CALAMP's Construction
Downloading interface	No construction needed	Connection that can receive data

Calamp asserts that the term "downloading interface" is unclear and may result in jurors concluding the term involves a software interface for downloading or some other type of interface. (Doc. 39, p. 19). Calamp contends that the patent describes the downloading interface as "hardware" or a connection to the tracking unit. (*Id.*). However, the plain language of the patent describes downloading interface more broadly. The patent provides the following variety of methods for data to be received from the downloading interface:

> The downloading interface may comprise either a wired or wireless signal downloading interface. The wired signal downloading interface may comprise a connector for temporary connection to a downloading device, for example. The wireless signal downloading interface may include a wireless receiver for temporary connection

> to a downloading device . . . . The downloading interface may also be for permitting downloading of at least one programming instruction for the multi-vehicle compatible controller, in some embodiments.

(Doc. 39-4, 3:4–16). The summary of the invention, cited above, tracks the language found in claims 1, 2, 4, and 8. (*Id.* at 25:63–26:39).

The ordinary meaning of "download interface" is readily apparent to persons of ordinary skill in the art. To the extent one may desire additional context for the term "downloading interface," that context is found in the background and summary of the invention. The background statement provides, "For a company with hired drivers, it may be desirable to know the driver's whereabouts during the course of the day. Similarly, a rental car agency or other fleet operator, for example, may wish to know the whereabouts of its fleet of vehicles." (*Id.* at 1:37–41). To facilitate these objectives, the summary of the invention informs the reader that, "[t]he tracking unit may also include a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code . . . ." (*Id.* at 2:63–66). The embodiment section of the patent further educates the reader that data received via the downloading interface may provide a number of pieces of information regarding the vehicle, including whether the vehicle is being moved by an unauthorized driver, whether the vehicle is being broken into, whether the vehicle is being driven in excess of an authorized speed, and the like. (*Id.* at 11:36–12:10).

Accordingly, the ordinary meaning of the language of the patent, including the term downloading interface, instructs the reader, including lay judges and jurors, of the type of data transmitted from the vehicle device and the manner of its transmission: wired,

wireless, and for permitting downloading of at least one programming instruction, for example. A downloading interface is, therefore, not limited to a hardwired connection.

Based on the foregoing, the Court declines to construe the term "downloading interface."

I. The '278 Patent Term: "Enabling Data"

Claim Term	OMEGA's Construction	CALAMP's Construction
Enabling data	*No construction needed; alternatively, it should be defined as follows:* Data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller	A vehicle device code or codes, and instruction to select a code or codes, or the data or sequence to allow the controller to generate a vehicle device code or codes

The term "enabling data" appears in the '278 Patent. (Doc. 39-4). Calamp avers that the term lacks any common meaning or specific structure to one of ordinary skill in the art and should be construed. (Doc. 39, p. 20). Calamp acknowledges the term enabling data is referenced in several places, but submits the term is not defined other than at column 24, lines 8–12 of the '278 Patent. (*Id.*) The specification provides, in pertinent part:

> The multi-vehicle compatible tracking unit also illustratively includes a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller. The enabling data may be the vehicle device code or codes, an instruction to select a code or codes from among those already stored, or the data or sequence

> to allow the controller to generate the vehicle device code or codes, for example.

(Doc. 39-4, 24:4–12). Other references to "enabling data" include references to figures within the patent, stating, "Enabling data related to at least one corresponding vehicle device code for use by the multi-vehicle compatible controller is downloaded via a downloading interface." (*Id.* at 25:14–16).

Calamp suggests that any construction of enabling data should be limited to claim 1 of the '278 Patent (Doc. 39-4, 26:13–15), which provides, in part, "[E]nabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller." (Doc. 40, p. 13). Omega objects to Calamp's inclusion of some of the preferred embodiments into their proposed definition, citing *Northern Telecom Ltd. v. Samsung Elecs. Co.*, 215 F.3d 1281, 1293 (Fed. Cir. 2000) ("This court consistently declines to construe claim terms according to the preferred embodiment."). The Court agrees that Calamp's proffered construction improperly restricts or narrows the scope of this term.

Based on the foregoing, the Court construes the term "enabling data" as follows: **data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller.**

J. The '278 Patent Term: "Programming Instruction"

Claim Term	OMEGA's Construction	CALAMP's Construction
Programming instructions	No construction needed	Code which instructs the controller to perform an operation

The term "programming instructions" is found in the '278 Patent. (Doc. 39-4). Calamp submits that this term should be construed by the Court because the term is susceptible to multiple meanings. (Doc. 39, p. 21). Omega advised the Court during the *Markman* hearing that it does not object to Calamp's proposed construction. The Court therefore adopts Calamp's proposed construction.

V. CONCLUSION

The Court adopts the following constructions:

CLAIM TERM	AGREED CONSTRUCTION
Controller	Electronic circuitry that performs one or more control functions.
Multi-vehicle compatible controller	Electronic circuitry that performs one or more control functions, and can operate with more than one vehicle.

[ORDER CONTINUES ON FOLLOWING PAGE]

CLAIM TERM	COURT'S CONSTRUCTION
Transmitter	Radio frequency transmitter.
Receiver	Radio frequency receiver.
Data communication bus/ vehicle data communications bus/ vehicle data bus	Wired connection for communication of digital messages among vehicle devices, with each message including one or more device addresses.
Vehicle device	Plain meaning
Command signal	Signal generated on the data communications bus for operating a vehicle device.
Device codes	Signal from a vehicle device.
Function	Plain meaning
Remote vehicle speed exceeded notification	Plain meaning
Downloading interface	Plain meaning
Enabling data	Data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller.
Programming instructions	Code which instructs the controller to perform an operation.

DONE AND ORDERED in Orlando, Florida on February 20, 2015.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

APPENDIX A

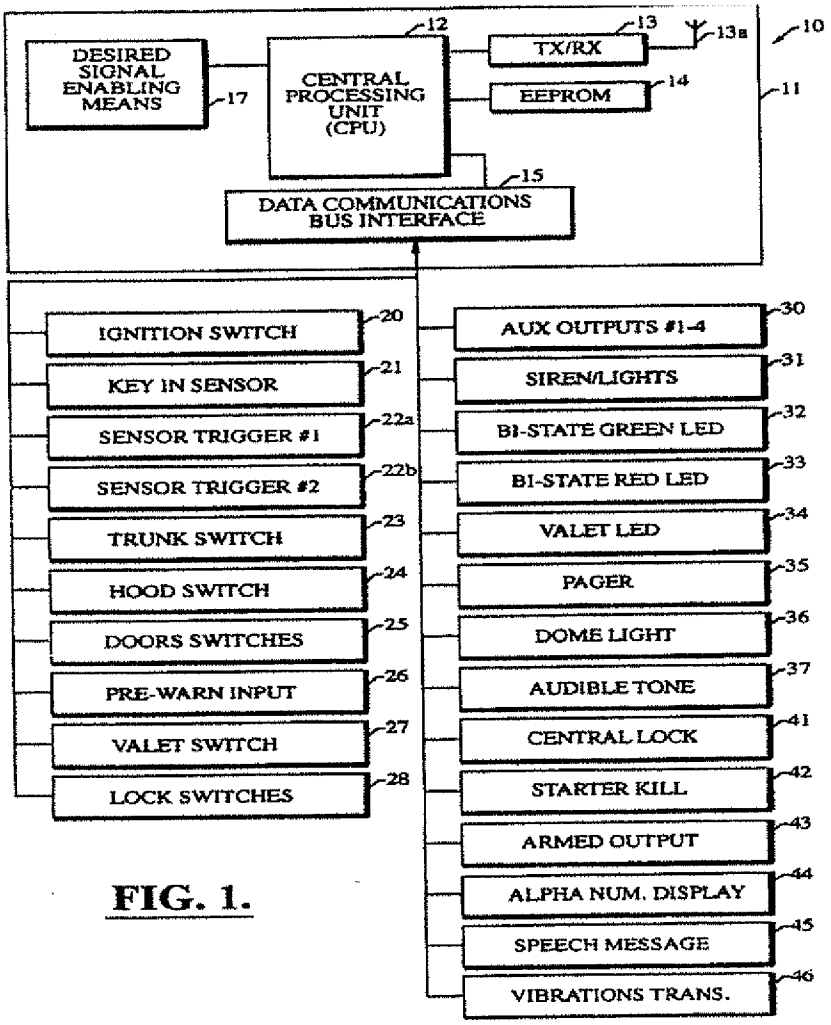


FIG. 1.

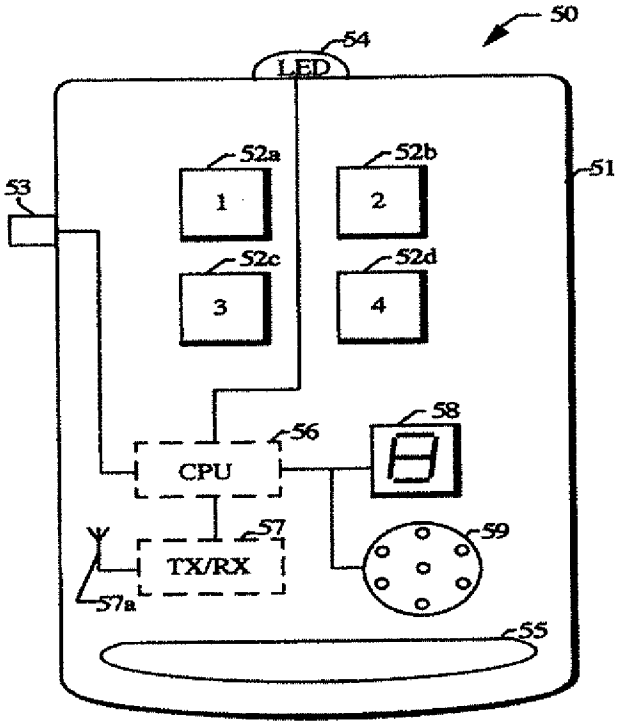

50
54
LED
52a
1
52b
2
51
53
52c
3
52d
4
58
56
CPU
57
TX/RX
57a
59
55

FIG. 2.

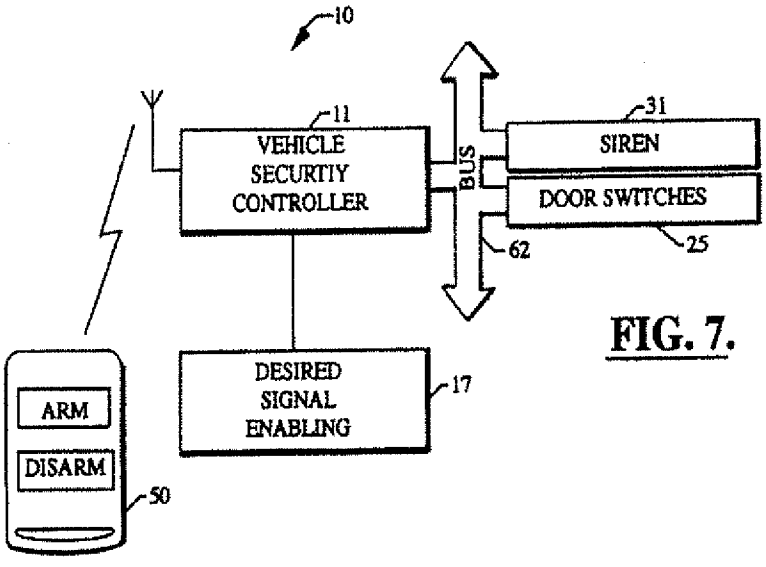

10
11
VEHICLE
SECURTIY
CONTROLLER
BUS
31
SIREN
DOOR SWITCHES
62
25
DESIRED
SIGNAL
ENABLING
17
ARM
DISARM
50

FIG. 7.

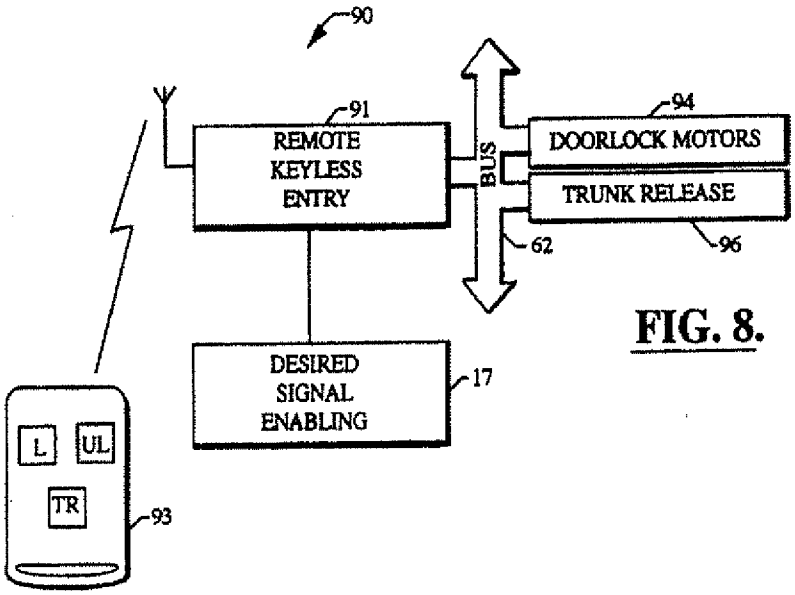

90
91
REMOTE KEYLESS ENTRY
BUS
94
DOORLOCK MOTORS
TRUNK RELEASE
62
96
DESIRED SIGNAL ENABLING
17
L
UL
TR
93

FIG. 8.

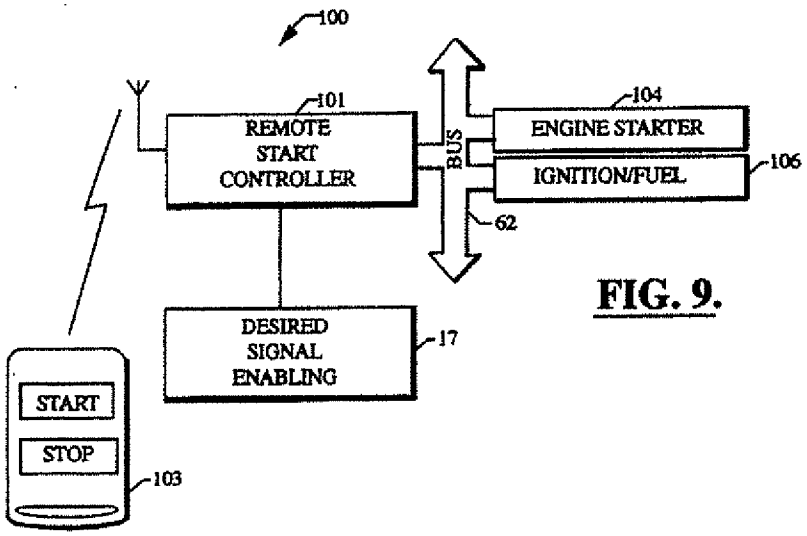

100
101
REMOTE START CONTROLLER
BUS
104
ENGINE STARTER
IGNITION/FUEL
106
62
DESIRED SIGNAL ENABLING
17
START
STOP
103

FIG. 9.

ITEM 9

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/013,587	09/14/2015	8032278	C13-03895	8867

7590 12/01/2016

CHRISTOPHER R. REGAN, ESQ.
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P O BOX 3791
ORLANDO, FL 32802-3791

EXAMINER
GRAHAM, MATTHEW C

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
12/01/2016	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Commissioner for Patents
United States Patent and Trademark Office
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KPPB LLP

2400 EAST KATELLA AVENUE

SUITE 1050

ANAHEIM, CA 92806

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/013,587*.

PATENT NO. *8032278*.

ART UNIT *3993*.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

PTOL-465 (Rev.07-04)

Notice of Intent to Issue Ex Parte Reexamination Certificate	Control No.	Patent Under Reexamination	
	90/013,587	8032278	
	Examiner	Art Unit	AIA (First Inventor to File) Status
	MATTHEW C. GRAHAM	3993	No

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ Prosecution on the merits is (or remains) closed in this *ex parte* reexamination proceeding. This proceeding is subject to reopening at the initiative of the Office or upon petition. *Cf.* 37 CFR 1.313(a). A Certificate will be issued in view of
   - (a) ☒ Patent owner's communication(s) filed: *7/6/2016*.
   - (b) ☐ Patent owner's failure to file an appropriate timely response to the Office action mailed: _____.
   - (c) ☐ Patent owner's failure to timely file an Appeal Brief (37 CFR 41.31).
   - (d) ☐ The decision on appeal by the ☐ Board of Patent Appeals and Interferences ☐ Court dated _____
   - (e) ☐ Other: _____.
2. The Reexamination Certificate will indicate the following:
   - (a) Change in the Specification: ☐ Yes ☒ No
   - (b) Change in the Drawing(s): ☐ Yes ☒ No
   - (c) Status of the Claim(s):
     - (1) Patent claim(s) confirmed: *1-22*.
     - (2) Patent claim(s) amended (including dependent on amended claim(s)): _____
     - (3) Patent claim(s) canceled: _____.
     - (4) Newly presented claim(s) patentable: _____.
     - (5) Newly presented canceled claims: _____.
     - (6) Patent claim(s) ☐ previously ☐ currently disclaimed: _____
     - (7) Patent claim(s) not subject to reexamination: _____.
3. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
4. ☒ Note the attached statement of reasons for patentability and/or confirmation. Any comments considered necessary by patent owner regarding reasons for patentability and/or confirmation must be submitted promptly to avoid processing delays. Such submission(s) should be labeled: "Comments On Statement of Reasons for Patentability and/or Confirmation."
5. ☐ Note attached NOTICE OF REFERENCES CITED (PTO-892).
6. ☐ Note attached LIST OF REFERENCES CITED (PTO/SB/08 or PTO/SB/08 substitute).
7. ☐ The drawing correction request filed on _____ is: ☐ approved ☐ disapproved.
8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All b)☐ Some* c)☐ None of the certified copies have
   - ☐ been received.
   - ☐ not been received.
   - ☐ been filed in Application No. _____.
   - ☐ been filed in reexamination Control No. _____.
   - ☐ been received by the International Bureau in PCT Application No. _____.

   * Certified copies not received: _____.
9. ☐ Note attached Examiner's Amendment.
10. ☐ Note attached Interview Summary (PTO-474).
11. ☐ Other: _____.

All correspondence relating to this reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

cc: Requester (if third party requester)

NIRC

STATEMENT OF REASONS FOR PATENTABILITY AND/OR CONFIRMATION

1. The following is an examiner's statement of reasons for patentability and/or confirmation of the claims found patentable in this reexamination proceeding: the Examiner agrees that the declarations by Suman and McAlexander provide sufficient evidence that Suman and Spaur each fail to disclose the multi-vehicle compatible controller as recited in independent claims 1, 13 and 18. Claims 2-12, 14-17 and 19-22 are considered to be patentable due to their dependency on claims 1, 13 and 18, respectively.

Any comments considered necessary by PATENT OWNER regarding the above statement must be submitted promptly to avoid processing delays. Such submission by the patent owner should be labeled: "Comments on Statement of Reasons for Patentability and/or Confirmation" and will be placed in the reexamination file.

2. Any inquiry concerning this communication should be directed to Matthew C. Graham at telephone number 571-272-7116.

Please mail any communications to:

Attn: Mail Stop "Ex Parte Reexam"
Central Reexamination Unit
Commissioner for Patents
P. O. Box 1450
Alexandria VA 22313-1450

Please FAX any communications to:

(571) 273-9900
Central Reexamination Unit

Please hand-deliver any communications to:

Customer Service Window
Attn: Central Reexamination Unit
Randolph Building, Lobby Level
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Reexamination Legal Advisor or Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

Signed:

/Matthew C. Graham/

Matthew C. Graham
CRU Examiner
3993
(571) 272-7116

Conferees: /GAS/
/PCE/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

In re Patent of **KENNETH E. FLICK**	)	
	)	
Request for Reexamination of	)	
U.S. PATENT NO. 8,032,278	)	
	)	
Control No. **90/013,851**	)	Attorney Docket No.:
	)	**C13-03895(58106CIP1_REX2)**
Confirmation No. **8717**	)	
	)	Examiner: **K. REICHLE**
Filing Date: **OCTOBER 28, 2016**	)	
	)	Art Unit: **3992**
For: **VEHICLE TRACKING UNIT WITH DOWNLOADABLE CODES AND ASSOCIATED METHODS**	)	
	)	

PATENT OWNER'S APPEAL BRIEF

EFILED
Commissioner for Patents

Dear Commissioner:

Submitted herewith is Patent Owner's Appeal Brief. If any fee is required, authorization is given to charge Deposit Account No. 01-0484.

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(1) Real Party in Interest

The real party in interest is OMEGA PATENTS, L.L.C., assignee of the present application as recorded at reel 019515, frame 0350.

(2) Related Appeals, Interferences, and Trials

At present there are no related appeals, or interferences. There are two related trials.

I. First Trial

In the first trial, the '278 patent was subject to a litigation between the Requester and the Patent Owner. The Patent Owner filed its complaint alleging patent infringement against the Requester on December 20, 2013. After extensive discovery, including discovery from the trial experts, the trial commenced on February 16, 2016 and concluded on February 24, 2016. The jury found that all of asserted claims from all four of the asserted patents were infringed, and, as particularly relevant in this reexamination, that all of the asserted claims were not invalid -- rejecting Requester's invalidity contentions (*See* Jury Verdict, Evidence Appendix Item 1).

In an order dated November 14, 2017, the Court denied Requester's Renewed Motion for Judgment as a Matter of Law and Motion for New Trial, and denied Requester's Supplemental Renewed Motion for Judgment as a Matter of Law, for a New Trial, and to Vacate the Judgment. (*See* Order, Evidence Appendix Item 2).

Of particular interest in the present reexamination, the Court provided the following judicial findings regarding Secondary Considerations:

> "[t]he jury found three secondary considerations of nonobviousness – commercial success, copying, and licensing by others. Dkt. 144 at 9" (Doc. 216, p. 15). While this precise argument was not presented at either JMOL hearing, it is sufficiently tied to the issue of obviousness to warrant further examination. CalAmp [Requester] contends Omega failed to sufficiently demonstrate a nexus between the claimed invention and the secondary considerations. (Id.).
>
> Plaintiff, in its response to this assertion, summarizes ample evidence presented at trial which rebuts CalAmp's claim that the secondary considerations are unsupported. (Doc. 226, pp. 10-11). Plaintiff observes that Defendant's [Requester] corporate representative and employees testified that the infringing products (and DEI's product) were "commercially successful due to the merits of Omega's invention." (Id. at p. 10). Witnesses testified that features on the infringing CalAmp products were requested by customers. (Id.). Additionally, Mr. Flick sold devices with the patented features, generating sales revenue of $33 million annually. (Id.). Moreover, the jury heard testimony that Mr. Flick, via his company, issued dozens of licenses to the patents-in-suit and entered into settlement agreements with infringers. (Id.). Finally, Omega presented evidence that CalAmp knew of Omega's patents and discussed the difficulty of designing around the patents. (Id. At p. 11). **This testimony was sufficient for an objectively reasonable jury to find the secondary considerations.**

(Pages 12-13, Emphasis added).

II. Second Trial

In the second trial, the Patent Owner filed a new patent infringement lawsuit on July 21, 2017 against Enfora, Inc. in the Northern District of Georgia, Atlanta Division (Case 1:17-cv-02769-TWT). The asserted patents in this Enfora suit include the '278 patent, which is the subject of this second reexamination by Requester.

(3) Related Reexaminations

The Requester filed a first reexamination (90/013,587) of the '278 patent on September 14, 2015, just prior to the scheduled start of trial, which was postponed. In that first reexamination, Requester initially presented invalidity positions based on: (1) U.S. Patent No. 6,028,537 (Suman et al.) alone; (2) U.S. Patent No. 5,732,074 (Spaur et al.) alone; and (3) Spaur et al. in combination with various secondary references. Requester added additional invalidity positions based on: (1) U.S. Patent No. 6,009,363 (Beckert et al.) alone; (2) U.S. Patent No. 7,484,008 (Gelvin et al.) alone; and Published Application 2001/0033225 (Razavi et al.) alone.

All of these invalidity positions of Requester were carefully considered and overcome as the Patent Office issued a Notice of Intent to Issue a Reexam Certificate on December 1, 2016, and issued a Reexamination Certificate on December 28,

2016.

The second reexamination request was filed after the Patent Owner's response in the first reexamination, and before the decision of the Patent Office to confirm patentability of the claims. The second request included attacks on the Patent Owner's response. In other words, the second reexamination request was an improper attempt to convert an ex parte reexamination into an inter partes review (IPR).

This second reexamination request asserted invalidity positions based upon the same recycled Beckert et al., Spaur et al., and Suman et al. patents - sometimes in combination with an SAE document compendium, SAE HS-3000 which includes the SAE J1978 reference asserted at trial. The SAE HS-3000 is titled "SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual" (1994 Edition). Beckert et al. was asserted alone, and in combination with SAE HS-3000. Suman et al. was asserted alone, and in combination with SAE HS-3000. Spaur et al. was asserted in combination with SAE HS-3000.

Requester did add a new "old art" reference, U.S. Patent No. 6,330,499 (Chou et al.), to the request leading to this second reexamination. Despite the Requester's arguments to the contrary, Chou et al. is not a new reference. Indeed, Chou et al. was considered in the original prosecution of the '278 patent as correctly noted by the Examiner on page 41 of the Reexam Order Determination dated December 15, 2016.

Chou et al. is cited in the '278 parent patent, U.S.

Patent No. 7,720,597 (Flick); grandparent patent, U.S. Patent No. 7,149,623 (Flick); and great-grandparent, U.S. Patent No. 6,606,561 (Flick). The MPEP provides that in continuation applications "[t]he examiner will consider information which has been considered by the Office in a parent application ... A listing of the information need not be resubmitted in the continuing application unless the applicant desires the information to be printed on the patent." (MPEP §609.02II.A.2).

The Requester filed numerous reexamination requests against the three other patents of the Patent Owner found to be willfully infringed by the Court in the related Requester litigation. This is the list of the all prior and current reexaminations by the Requester:

(1) U.S. Patent No. 8,032,278; Reexamination 90/013,587 - filed September 14, 2015. **Ex Parte Reexamination Certificate issued December 28, 2016.**

(2) U.S. Patent No. 8,032,278; Reexamination 90/013,851 - filed October 29, 2016. [PRESENT REEXAMINATION]

(3) U.S. Patent No. 6,756,885; Reexamination 90/013,741 - filed April 28, 2016. **Ex Parte Reexamination Certificate issued August 1, 2017.**

(4) U.S. Patent No. 6,756,885; Reexamination 90/014,038 - filed October 26, 2017. **Order Granting Reexamination issued December 27, 2017.**

(5) U.S. Patent No. 6,346,876; Reexamination 90/013,659 - filed December 11, 2015. **Ex Parte Reexamination Certificate issued September 1, 2017.**

(6) U.S. Patent No. 7,671,727: Reexamination 90/013,832 - filed October 12, 2016. **Ex Parte Reexamination Certificate issued August 1, 2017.**

(4) Summary of the Claimed Subject Matter

Independent Claim 1 is directed to a multi-vehicle compatible tracking unit 110 for a vehicle comprising a vehicle data bus 122 extending throughout the vehicle. The multi-vehicle compatible tracking unit comprises a vehicle position determining device 112, a wireless communications device 113, and a multi-vehicle compatible controller 111 for cooperating with the vehicle position determining device and the wireless communications device to send vehicle position information. The multi-vehicle compatible controller is to be coupled to the vehicle data bus for communication thereover with at least one vehicle device 121 using at least one corresponding vehicle device code from among a plurality thereof for different

vehicles. The multi-vehicle compatible tracking unit comprises a downloading interface 116 for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller. (Figures 10-13, reproduced below, and Page 27, Col. 23, line 41 through Page 28, Col. 25, line 61).

Independent Claim 13 is directed to a multi-vehicle compatible tracking unit 110 for a vehicle comprising a vehicle data bus 122 extending throughout the vehicle. The multi-vehicle compatible vehicle tracking unit comprises a vehicle position determining device 112, a wireless communications device 113, and a multi-vehicle compatible controller 111 for cooperating with the vehicle position determining device and the wireless communications device to send vehicle position information. The multi-vehicle compatible controller is to be coupled to the vehicle data bus for communication thereover with at least one vehicle device 121 using at least one corresponding vehicle device code from among a plurality thereof for different vehicles. The multi-vehicle compatible vehicle tracking unit comprises a downloading interface 116 for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller. The downloading interface comprises a connector 133a-133b for temporary connection to a downloading device 115''. (Figures 10 & 13, reproduced below, and Page 27, Col. 23, line 41 through Page 28, Col. 25, line 61).

Independent Claim 18 is directed to a multi-vehicle compatible tracking unit 110 for a vehicle comprising a vehicle data bus 122 extending throughout the vehicle. The multi-vehicle compatible vehicle tracking unit includes a vehicle position determining device 112, a wireless communications device 113, and a multi-vehicle compatible controller 111 for cooperating with the vehicle position determining device and the wireless communications device to send vehicle position information. The multi-vehicle compatible controller is to be coupled to the vehicle data bus for communication thereover with at least one vehicle device 121 using at least one corresponding vehicle device code from among a plurality thereof for different vehicles. The multi-vehicle compatible vehicle tracking unit includes a downloading interface 116 for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by the multi-vehicle compatible controller. The downloading interface comprises a wireless receiver 114 for temporary connection to a downloading device 115. (Figures 10-11, reproduced below, and Page 27, Col. 23, line 41 through Page 28, Col. 25, line 61).

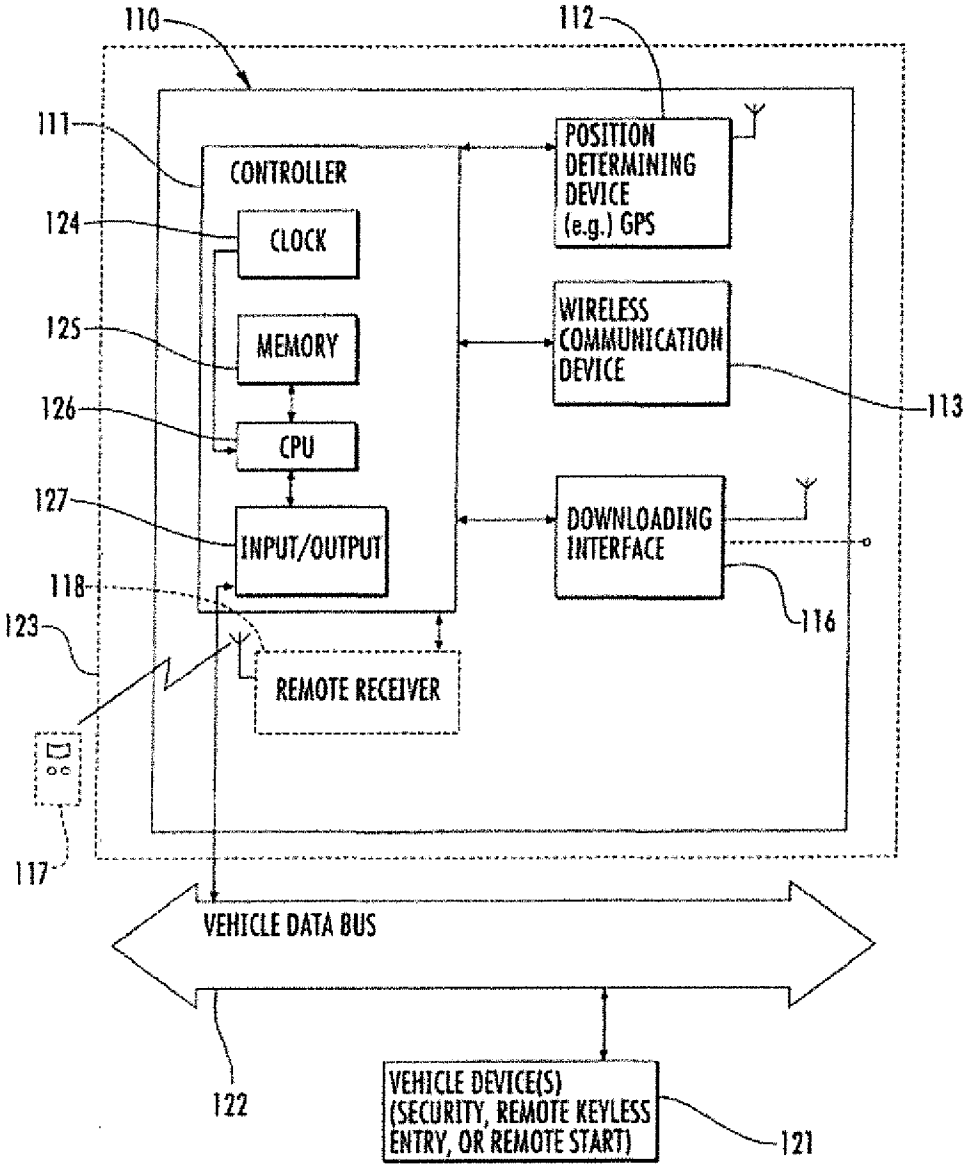


Figure 10 of the '278 Patent

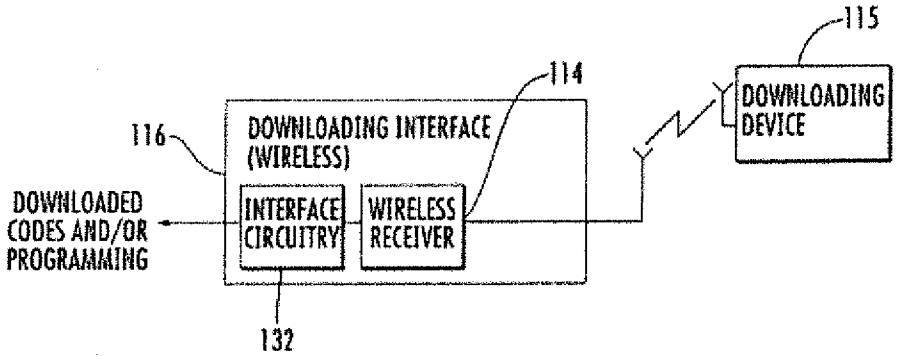


Figure 11 of the '278 Patent

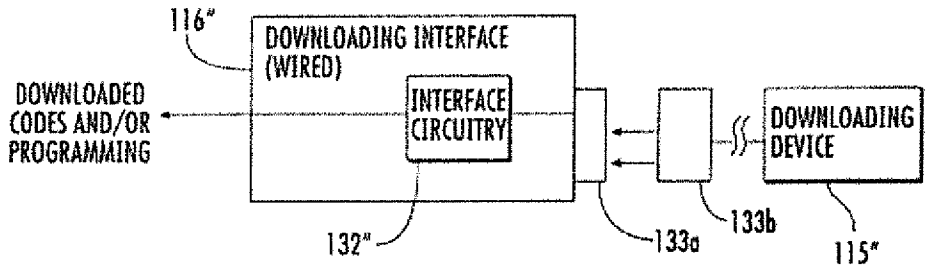


Figure 13 of the '278 Patent

(5) Evidence Improperly Refused Admission Into the Record

The Patent Owner submits that the exhibits attached to the Response to the Final Office Action, filed September 18, 2017 should have been properly admitted to the record.

The Patent Owner respectfully submits that the existing record demonstrates a showing under 37 C.F.R. §1.116(e), which recites: "[a]n affidavit or other evidence submitted after a

final rejection or other final action (§1.113) in an application or in an ex parte reexamination filed under § 1.510, ... may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented."

With regards to prior Exhibit 4 filed September 18, 2017 (i.e. the new Rule 132 Declaration of Michael Suman), the Patent Owner firstly submits that this Rule 132 Declaration addresses the claim interpretation position taken by the Examiner in the Final Office Action dated June 19, 2017. Secondly, this Rule 132 Declaration supplements the nexus between the evidence of secondary considerations of non-obviousness and the claimed invention to address the Examiner's comments on prior declaratory evidence at Pages 9-10 of the Final Office Action. Because this declaration was submitted to address concerns noted by the Examiner in the Final Office Action, it could not be presented earlier, and it is necessary since it touches on the skilled person's interpretation of the claims and the nexus between the claimed invention and evidence for secondary considerations for non-obviousness. Accordingly, Exhibit 4 filed September 18, 2017 should be admitted and properly considered.

With regards to Exhibits 5-9 filed September 18, 2017 (i.e. respectively the Trial Transcript from related litigation with the Requester, the Requester Exhibit List from related litigation, the Patent Owner Exhibit List from related litigation, the Court Exhibit List from related litigation, and

the Jury Instructions from related litigation), these exhibits were submitted to address comments and suggestions noted by the Examiner in the Final Office Action.

In particular, in the Final Office Action at page 10, the Examiner stated:

> PO asserts litigation evidence (testimony/trial transcript, exhibits, instructions, see, e.g., page 26, first full paragraph, page 26, second to last line-page 27, line 12, page 28, line 4-page 30, last line, section 3 on page 31 and the testimony excerpts bridging pages 32-37) for the conclusions regarding the secondary considerations. However such referenced testimony/trial transcript, exhibits, instructions are not of record, e.g. jury instructions, or only partially of record, e.g. excerpts of testimony of trial transcript, as best understood. Finally PO asserts the declaration for the conclusions regarding the secondary considerations. However see the discussion of the declaration infra. Note also the evidence of record is silent with regard to the Chou '499 reference.
> (Emphasis added).

The Patent Owner submits that these exhibits were introduced at the suggestion of the Examiner's helpful comments in the Final Office Action, and therefore could not have been presented earlier. Moreover, since the Examiner comments were made within the context of considering prior filed evidence of secondary considerations for non-obviousness, the new exhibits

are necessary and should have been admitted and properly considered.

(6) Argument

As will be described in greater detail below, the Patent Owner respectfully submits that the Examiner erred in the rejections under §102 and §103 and over Chou et al. Chou et al. is not a long and complicated reference, and the Patent Owner submits it fails to render the claimed invention unpatentable. Chou et al. includes five drawing figures -- three of which are essentially the same -- and about eight columns of description.

Indeed, as a prior art reference cited in the prosecution history of the '278 patent, Chou et al. was known by Requester since at least the beginning of the related lawsuit in December of 2013. Having been known and given little value by all concerned in the related litigation with Requester and prior Patent Office proceedings, only now, in a second reexamination proceeding from the same Requester, has the well-known Chou et al. reference gained any traction at all for the Requester.

The Patent Owner respectfully submits that Chou et al. fails to disclose or fairly suggest the claimed multi-vehicle compatible controller and downloading interface in the vehicle tracking unit. Instead, data from the ECUs on the vehicle bus is merely passed from the in-vehicle system to the remote service center of Chou et al. And, in the reverse direction, data is passed to the in-vehicle system in Chou et al. There is no

discussion in Chou et al. of downloading enabling data related to at least device code for use by the multi-vehicle controller in the vehicle. Detailed arguments supporting the patentability of the claimed invention follow.

I. The §102/§103 Rejections Over Chou et al. Should Be Overturned

A. The Teachings of Chou et al.

Figure 1 from Chou et al. is reproduced below for convenience.

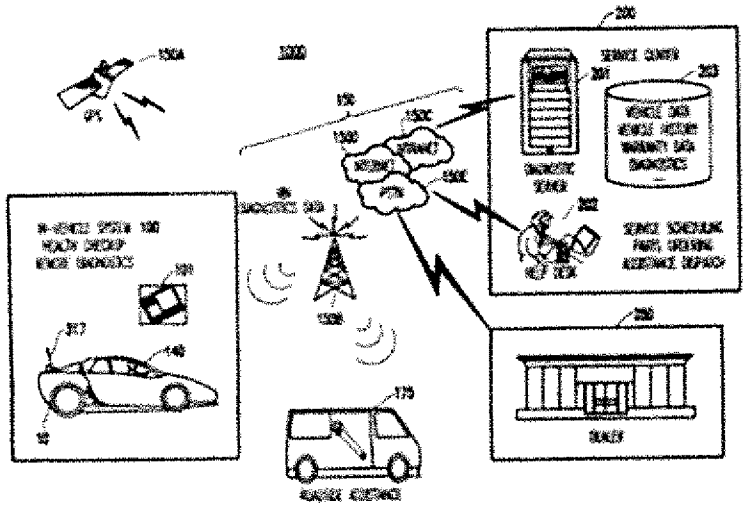


Figure 1 of Chou et al. Patent

The Chou et al. system includes a vehicle 10 having an in-vehicle computing system 100, and a client computer device 101 to enable vehicle health checkup and remote diagnostics. A communication link 150 is for communicating vehicle information (e.g., vehicle identification number, (VIN), diagnostic data, and

the like). The vehicle location is established, for example, by a device 317 (e.g., antenna or the like) for receiving positioning information. A remote service center 200 is also provided having a diagnostic server 201, a help desk 202 and a data repository 203. The help desk 202 schedules services, orders parts, and dispatches assistance through the roadside assistance unit 175. The remote service center 200 of Figure 3 comprises a diagnostic server 201 that has access to data related to the vehicle such as as-built, history, diagnostics, warranty, service information and failure mode data. The diagnosis server 201 is linked to the data repository 203.

The Patent Owner submits that Chou et al. fails to disclose the claimed vehicle tracking unit including the multi-vehicle compatible controller and the downloading interface, as these terms are properly construed.

B. The Deficiencies of Chou et al.

1. Chou et al. is Merely Cumulative of Suman et al.

Chou et al. discloses a remote diagnostic system including a data bus interface, a GPS module, an RF transceiver, and a processor at the vehicle that communicates with a remote service center. The Suman et al. '537 patent, cited as an anticipation reference and overcome in the first reexamination, includes the same elements (see FIGS. 1a and 5, reproduced below, and col. 15, lines 52-63, for example).

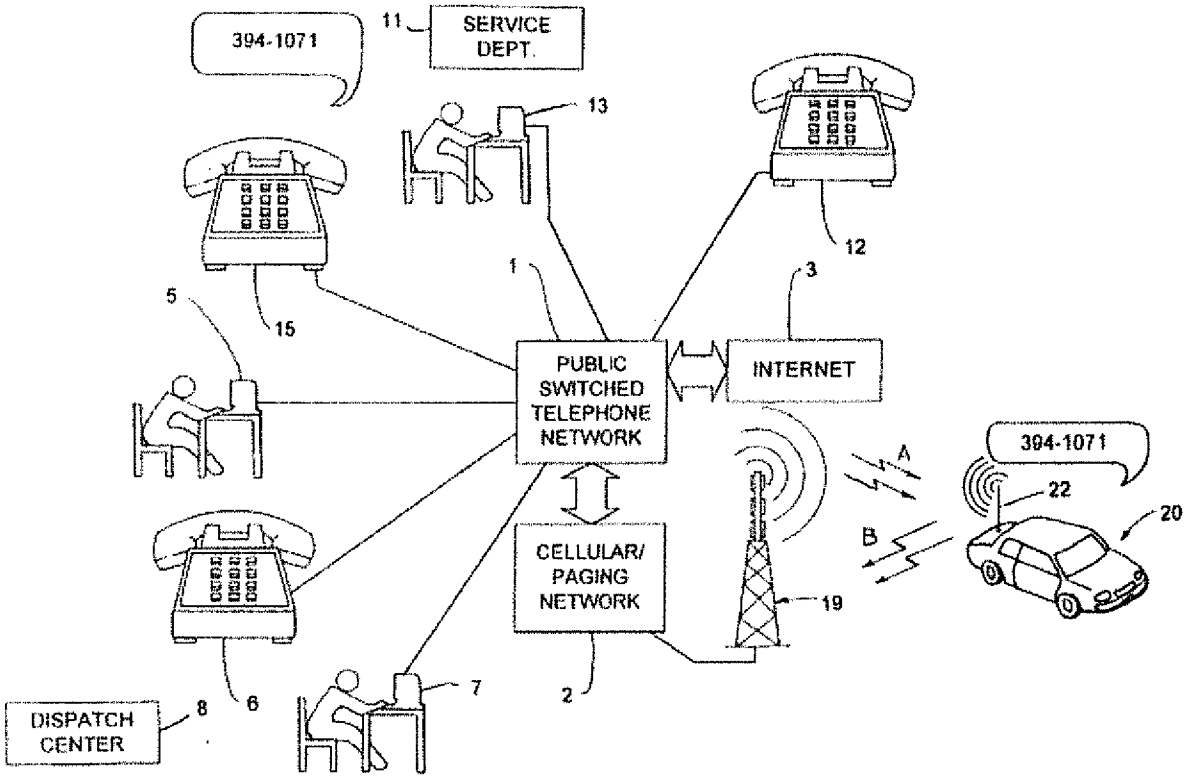


Figure 1a of Suman et al. '537 Patent

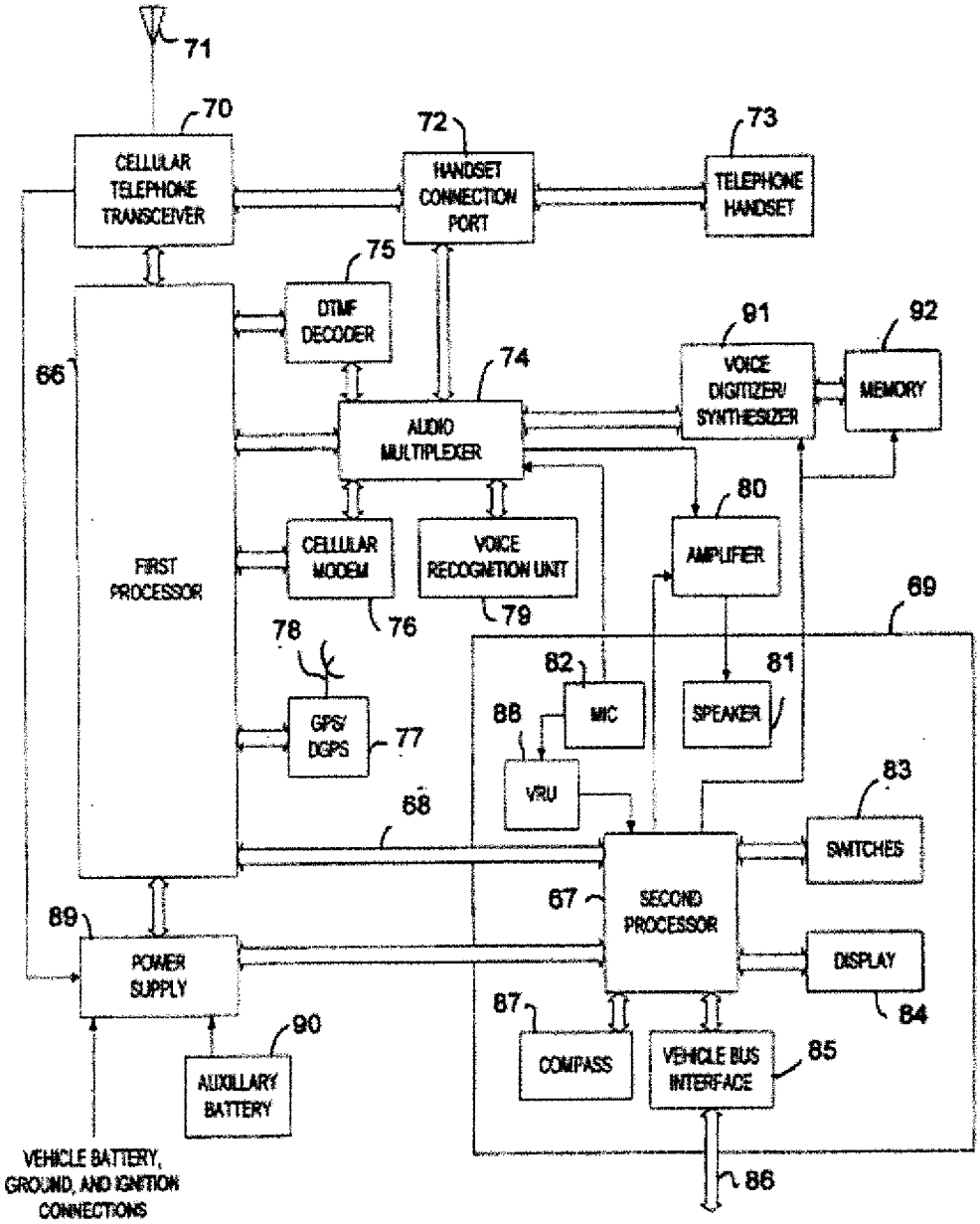


Figure 5 of Suman et al. '537 Patent

As noted above, the Examiner's statement of reasons for patentability in the first reexamination was: "the Examiner agrees that the declarations by Suman and McAlexander provide sufficient evidence that Suman and Spaur each fail to disclose the multi-vehicle compatible controller as recited in independent claims 1, 13 and 18." (Notice of Intent to Issue a Reexamination Certificate, 12/01/2016, page 2, Evidence Appendix Item 9).

Chou et al., just like Suman et al., and as explained in greater detail below, fails to disclose a multi-vehicle compatible controller and downloading interface that permits downloading of enabling data for use by the multi-vehicle compatible controller. These deficiencies of Chou et al. are discussed in greater detail below.

2. Chou et al. Fails to Disclose the Multi-Vehicle Compatible Controller

Independent Claim 1, for example, recites a multi-vehicle compatible controller to be coupled to the vehicle data bus for communication thereover with at least one vehicle device using at least one corresponding vehicle device code from among a plurality thereof for different vehicles.

Chou et al. provides the following description of the vehicle bus interface, as is pertinent to the different device codes for different vehicles:

> [t]he vehicle bus interface 120 includes the following modules: vehicle bus adapter 120C, fault detector 120B, and diagnostic data service 120A.

> The fault detector 120B polls the vehicle bus 104 through the vehicle bus adapter 120C checking for fault codes reported by the vehicle ECUs 103. The vehicle bus adapter 120C translates the messages received from the vehicle bus into the language of the fault detector. It also translates messages from the fault detector into the language of the vehicle bus. The fault code specifications and protocols of the vehicle may be Original Equipment Manufacturer (OEM) and model dependent. The term "vehicle fault codes" is meant to be synonymous with the term "trouble code" or "diagnostic trouble code". A listing of such codes may be found in the publication of the Society of Automotive Engineers, "SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual". The diagnostic data service 120A accepts request for vehicle parametric data and retrieves the data using the vehicle bus adapter.
>
> (Col. 4, lines 20-38; emphasis added).

The Examiner, on pages 35-36 of the Final Office Action, contended that "Chou either implicitly discloses or obviously suggests a 'multi-vehicle compatible controller' and such controller is coupled to a vehicle data bus, e.g. 335, 104, for communication thereover, e.g. via 330, 120, with at least one vehicle device, e.g. 103, using at least one corresponding vehicle device code, i.e. (DTC), vehicle fault codes/protocols, which is vehicle model dependent, i.e. from among a plurality thereof for 'different vehicles'".

The referenced SAE On-Board Diagnostics for Light and Medium Duty Vehicles Standards Manual, i.e. the SAE HS-3000, provides that: "[c]urrently there is no uniformity in these

numeric Diagnostic Trouble Codes (DTC) between manufacturers, and in some cases, even within the same manufacturer across different product lines." (SAE HS-3000, 1997, page 39).

Indeed, the lack of vehicle code compatibility among different vehicles for vehicle tracking units is the problem addressed by the claimed invention of the '278 patent. The inventor, Mr. Flick, recognized that having many different model vehicle tracking units for many different vehicles with different codes presented significant inventory control and product development challenges, particularly in the aftermarket vehicle tracking unit area.

3. Chou et al. Fails to Disclose the Downloading Interface

Independent Claim 1, for example, further recites that the vehicle tracking unit comprises "a downloading interface for permitting downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller". Accordingly, the combination of the multi-vehicle controller and downloading interface reduces the need for expansive inventory and simplifies supplying vehicle tracking units for new vehicles.

The Examiner has interpreted the downloading interface of the claimed vehicle tracking unit as structure "for permitting downloading of enabling data related to the at least one corresponding vehicle device code, e.g. vehicle device code or codes, an instruction to select a code or codes from among those

already stored, or the data or sequence to allow the controller to generate the vehicle device code or codes, for use by said multi-vehicle compatible controller." (Final Office Action, page 18; emphasis added).

The Examiner, on page 36 of the Final Office Action, contended that Chou et al. discloses the claimed downloading interface as follows:

> interface circuitry, e.g. NETWORK INTERFACE, 320, 107, docking facility, and a temporary wireless communication link, e.g. arrow 7, 14, arrow 3, 9, with the downloading device, i.e. TCP/IP(an internet/the Internet), 201, provided by sharing the wireless communications device, e.g. 102, that sends position data, see, e.g. col. 7, lines 32-40, (see also discussion of claims 2-5) and such structure permits downloading of enabling data, e.g. instruction to gather data, vehicle parameter update/change, related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller, e.g. steps 2-6 in Figure 5.

Figure 5, which illustrates a health checkup event operation flow, is reproduced below for convenience.

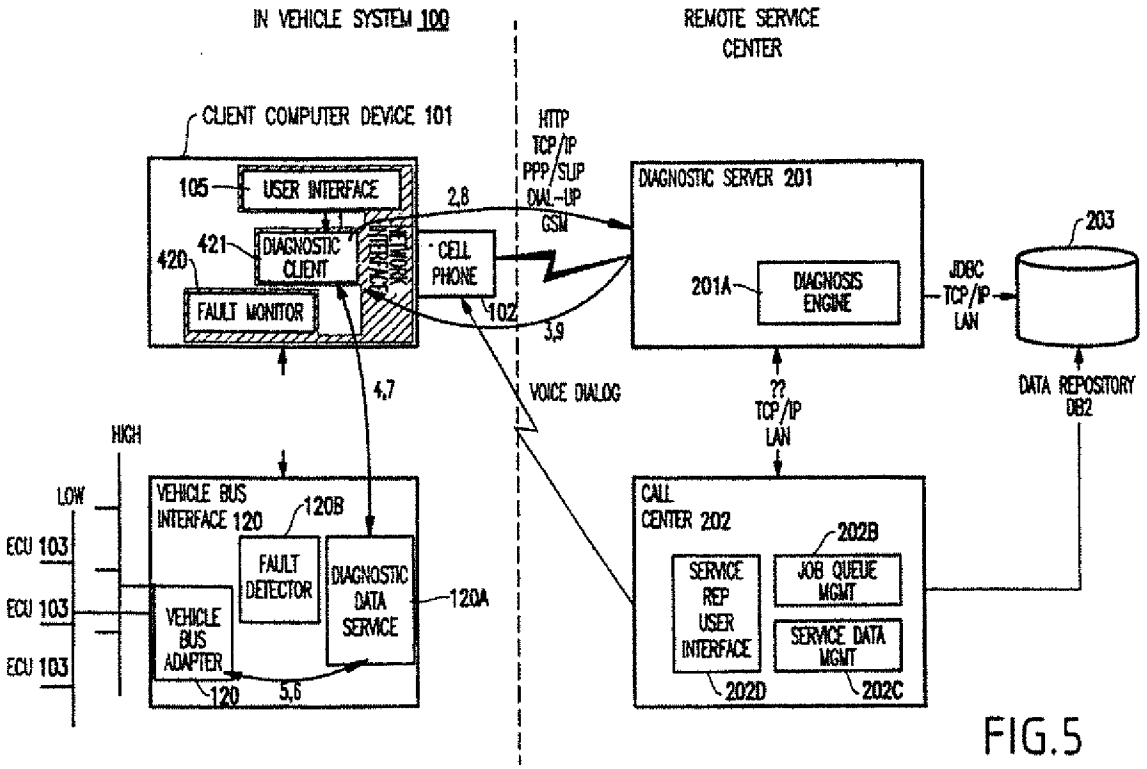


Figure 5 of Chou et al. Patent

Based upon Figure 5 and these cited portions of Chou et al., the Examiner contended that: "[t]hus '499 discloses or obviously suggests 'a downloading interface' and such permits downloading of enabling data related to the at least one corresponding vehicle device code for use by said multi-vehicle compatible controller." (*Id.* at 36-37).

The Patent Owner respectfully submits that Chou et al. fails to disclose or obviously suggest the claimed multi-vehicle compatible controller and downloading interface in the vehicle

tracking unit. Instead, data from the ECUs on the vehicle bus is merely passed from the in-vehicle system to the remote service center of Chou et al. And, in the reverse direction, data is passed to the in-vehicle system in Chou et al. There is no discussion in Chou et al. of downloading enabling data related to at least device code for use by the multi-vehicle controller in the vehicle.

4. Comments on Specific Cited Portions of Chou et al.

The Examiner expressed on page 8 of the Final Office Action that the Patent Owner did not "discuss the entirety of the rejection, i.e. all the cited portions of Chou, e.g. col. 9, lines 35-45, col. 4, lines 15-38, col. 10, lines 1-11, with regard to the corresponding structure and function/capability of the functional phase [downloading interface clause]". To more clearly address these cited portions, the Patent Owner offers the following:

a. Comments on Chou et al. col. 9, lines 35-45

This cited portion of Chou et al. is reproduced below:

> [t]hen in step 2, the diagnostic client 421 initiates a health checkup session with the diagnostic server 201, and in step 3, the diagnostic server instructs the diagnostic client to gather vehicle data, such as VIN, malfunction codes, and/or a snapshot of the vehicle data.

> Then in step 4, the diagnostic client 421 requests the data from the diagnostic data service 120A at the vehicle bus interface 120. Then, in step 5, the diagnostic data service interrogates the ECUs 103 via the vehicle bus adapter 120C for the requested data.

The Patent Owner respectfully notes that this language is with reference to Figure 5 and merely states that the driver can trigger a request for the health checkup of the vehicle. And the driver can do so by pressing a "checkup" button which causes the client computer device in the vehicle to contact the diagnostic server at the remote service center. The diagnostic server at the remote service center reads the vehicle data from the client computer. The vehicle data can include malfunction codes from vehicle ECUs. These malfunction codes are often different for different vehicles.

The diagnostic server at the remote service center also includes the data repository 203 (Figure 1). Chou et al. discloses with respect to such a health checkup that:

> [t]he vehicle client 101 combines vehicle ID information with the information from the vehicle bus interface 120 and sends the data to the Diagnostic Server 201 over a data link. The data link is kept open. The diagnostics server 201 retrieves vehicle information from the data repository 203 and compares the data from the vehicle with the repository data. Then, the diagnostic server 201 prepares a report listing any out-of-range parameters and actions required (e.g., "coolant level is low"). Trend analysis on the parameters may also be performed, based on the present and historical data collected from the

> vehicle, to detect any drifting of the performance characteristics and to provide early guidance for preventive maintenance (e.g., "change oil in 1500 miles"). (Col., lines 9-21).

Accordingly, the Patent Owner respectfully submits that there is no enabling data downloaded via a downloading interface for use by a multi-vehicle compatible controller for communication by a vehicle device using at least one corresponding code from among a plurality thereof for different vehicles. Instead, this cited portion of Chou et al. merely discloses obtaining diagnostic data at a remote service center from a vehicle. The Patent Owner also respectfully notes that this is cumulative with the teachings of Suman et al., an asserted anticipatory reference overcome in the first reexamination, as discussed above.

b. Comments on Chou et al. col. 4, lines 15-38

This cited portion of Chou et al. is reproduced below:

> [t]he vehicle bus interface 120 is responsible for replying to requests for parametric data. It is also responsible for continuously monitoring the vehicle bus 104 for any fault reported by the ECUs 103, in terms of diagnostic trouble codes (DTCs).
>
> The vehicle bus interface 120 includes the following modules: vehicle bus adapter 120C, fault detector 120B, and diagnostic data service 120A. The fault detector 120B polls the vehicle bus 104 through the vehicle bus adapter 120C checking for fault codes reported by the vehicle ECUs 103. The