VERIZON CONNECT, INC.
(Petitioner)

v.

OMEGA PATENTS, LLC
(Patent Owner)

Inter Partes Review

Case No. IPR2023-01162 | U.S. Patent No. 8,032,278
Patent Owner's Demonstrative Exhibits

Hearing November 20, 2024

Allen, Dyer, Doppelt + Gilchrist, PA
INTELLECTUAL PROPERTY LAW

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

OMEGA EXHIBIT 2046

Overview

- Three Grounds of IPR
  - Ground 1 - Flick Patents 6,756,885 ("Flick885") and 6,606,561 ("Flick561") render Claims 1-22 obvious
  - Ground 2 – U.S. Patent Application Publication No. 2006/0161315 ("Lewis") renders Claims 1-6, 8, 10-14, 16, 18-19, 21 anticipated
  - Ground 2a - Lewis + U.S. Patent Application Publication No. 2003/0182003 ("Underdahl") render Claims 1-22 obvious
- Petitioner withdrew Grounds 2 and 2a in Petitioner's Reply to Patent Owner's Response to Petition

Petition, p. 6; Paper 24, p. 4

Overview

- The only Ground remaining presents the same patents, Flick885 and Flick 561, already before the original Examiner, and multiple Examiners in the multiple reexams, because both are expressly referenced in the '278 patent:

Related U.S. Application Data

(63) Continuation-in-part of application No. 11/076,259, filed on Mar. 9, 2005, now Pat. No. 7,720,597, which is a continuation of application No. 10/383,496, filed on Mar. 7, 2003, now Pat. No. 7,149,623, which is a continuation of application No. 09/859,972, filed on May 17, 2001, now Pat. No. 6,606,561.

munication with a downloading device. Additionally, U.S. Pat. No. 6,756,885, also assigned to Omega Patents, LLC, discloses a multi-vehicle control system whereby a multi-vehicle compatible controller stores a set of device codes for a given vehicle device for a plurality of different vehicles. Device codes are read from the data communications bus, and a match between a read device code and the stored device codes is determined to provide compatibility with different vehicles.

- Examiners have considered the combination of multi-vehicle databus controller plus GPS since the original filing and always found the claims patentable, as did multiple licensees/litigants

Ex. 1001; POPR, p. 15

Overview

- In the Institution Decision, the panel stated "while we do not second-guess our colleagues' decisions that Patent Owner's evidence of secondary considerations either outweighed or 'further weigh[ed]' against the Examiner's evidence of obviousness based on other prior art, we cannot say the same at this stage of the proceeding based on Flick '885 and Flick '561." Institution Decision, p. 21 (underlining added).

Decision, p. 21

Overview

- Similarly, in the Institution decision, the panel stated "this is not a case where Petitioner failed to address known evidence of secondary considerations. *See, e.g.*, *Stryker Corp. v. KFX Medical, LLC*, IPR2019-00817, Paper 10 at 29 (PTAB Sept. 16, 2019) (finding that "Petitioner's failure to address the known evidence of secondary considerations further weighs in favor of denying institution" and collecting decisions)."

Decision, p. 21; PO Sur-Reply, p. 9

Overview

- Now, at the conclusion of the evidence, Petitioner failed to offer any testimony to rebut the evidence of secondary considerations from their expert, who submitted a declaration and supplemental declaration
- Petitioner's primary response to secondary considerations is to point to the panel decision in a different proceeding, while Petitioner offered nothing to the panel beyond references to the prior proceeding

Petitioner's Reply, p. 13

Ground 1-Flick's Own Patents

- The sole remaining Ground 1 proposes the combination of the Flick885 with the vehicle position determining device, *e.g.* GPS, from Flick561
- Examiners have considered the combination of multi-vehicle databus plus GPS since the original filing and in multiple reexams
- Similarly, licenses and litigation reinforce the claims are patentable

Petition, pp. 21-32; POR, p. 15

Ground 1-Flick's Own Patents

- Flick885 and Flick 561 were already before the Examiner because both are expressly referenced in the '278 patent

munication with a downloading device. Additionally, U.S. Pat. No. 6,756,885, also assigned to Omega Patents, LLC, discloses a multi-vehicle control system whereby a multi-vehicle compatible controller stores a set of device codes for a given vehicle device for a plurality of different vehicles. Device codes are read from the data communications bus, and a match between a read device code and the stored device codes is determined to provide compatibility with different vehicles.

- This Board has recognized that the inclusion of Flick885 in the background necessarily placed it before the Examiner for consideration

Ex. 1001; Decision, p. 14

Ground 1-Flick's Own Patents

- However, the Board mistakenly concluded in the Institution Decision that the Flick561 "was not before the Examiner during the original prosecution"
- "The examiner will consider information which has been considered by the Office in a parent application [ ] when examining: [ ] (C) a continuation-in-part application" MPEP 609.02(II)(A)(2)

Related U.S. Application Data

(63) Continuation-in-part of application No. 11/076,259, filed on Mar. 9, 2005, now Pat. No. 7,720,597, which is a continuation of application No. 10/383,496, filed on Mar. 7, 2003, now Pat. No. 7,149,623, which is a continuation of application No. 09/859,972, filed on May 17, 2001, now Pat. No. 6,606,561.

- Pursuant to MPEP 609.02, the Examiner did consider the Flick561 (and the art cited therein)

Ex. 1001; Decision, p. 15, POR, p. 6

Ground 1-Flick's Own Patents

- Regardless whether the Board concludes Flick561 was before the Examiner during the original prosecution as the parent, U.S. Patent No. 7,149,623, a continuation of Flick561 with the identical specification, was cited by the examiner during the prosecution of the '278 Patent
- Thus, the content and disclosure of Flick561 was before the Examiner in the original prosecution and every proceeding thereafter

Related U.S. Application Data

(63) Continuation-in-part of application No. 11/076,259, filed on Mar. 9, 2005, now Pat. No. 7,720,597, which is a continuation of application No. 10/383,496, filed on Mar. 7, 2003, now Pat. No. 7,149,623, which is a continuation of application No. 09/859,972, filed on May 17, 2001, now Pat. No. 6,606,561.

7,015,830	B2 *	3/2006	Flick	340/989
7,085,775	B2 *	8/2006	Short et al.	1/1
7,149,623	B2 *	12/2006	Flick	701/207
7,196,621	B2 *	3/2007	Kochis	340/539.13
7,305,293	B2 *	12/2007	Flick	701/45

Ex. 1001; Ex. 2042; POR, p. 7

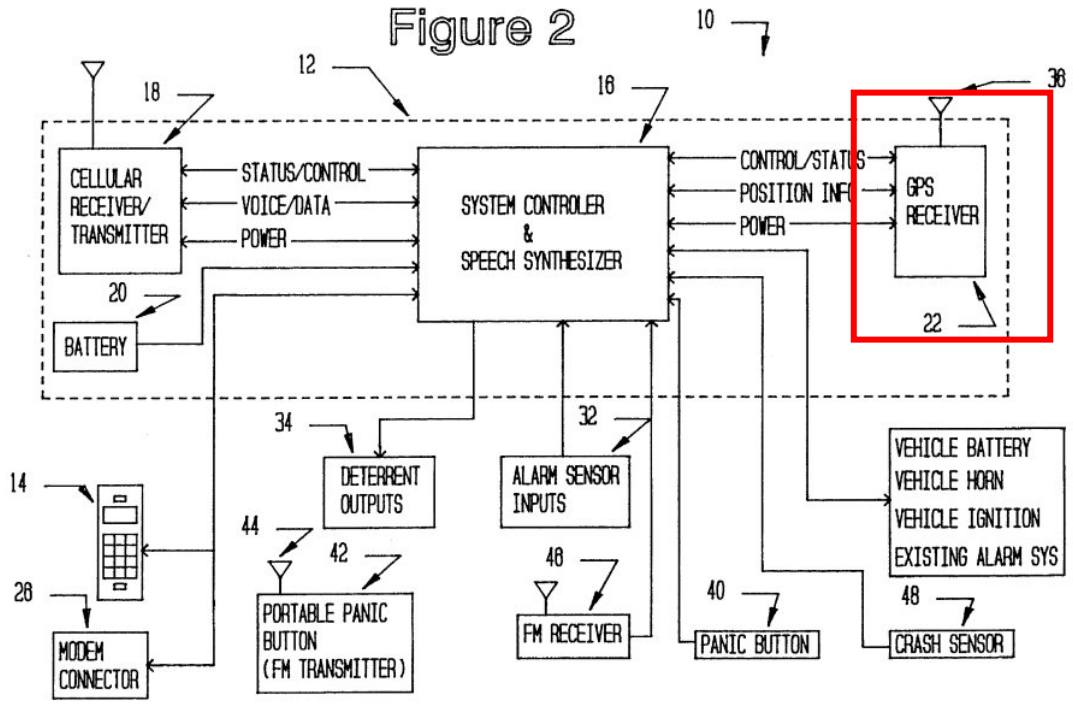
Flick561 is Like Art Already Considered When Combined with Flick885

- Petitioner relies on Flick561 solely as a GPS tracker. Numerous GPS trackers were considered across prosecutions, such as the following during the initial prosecution:
  - U.S. Patent No. 5,515,043 to Berard et al., U.S. Patent No. 5,223,844 to Mansell et al., U.S. Patent No. 6,611,755 to Coffee et al., and U.S. Patent No. 6,628,233 to Knockeart et al.

Ex-1001; PO Sur-Reply, p. 3-4

Flick561 is Like Art Already Considered When Combined with Flick885 During Prosecution

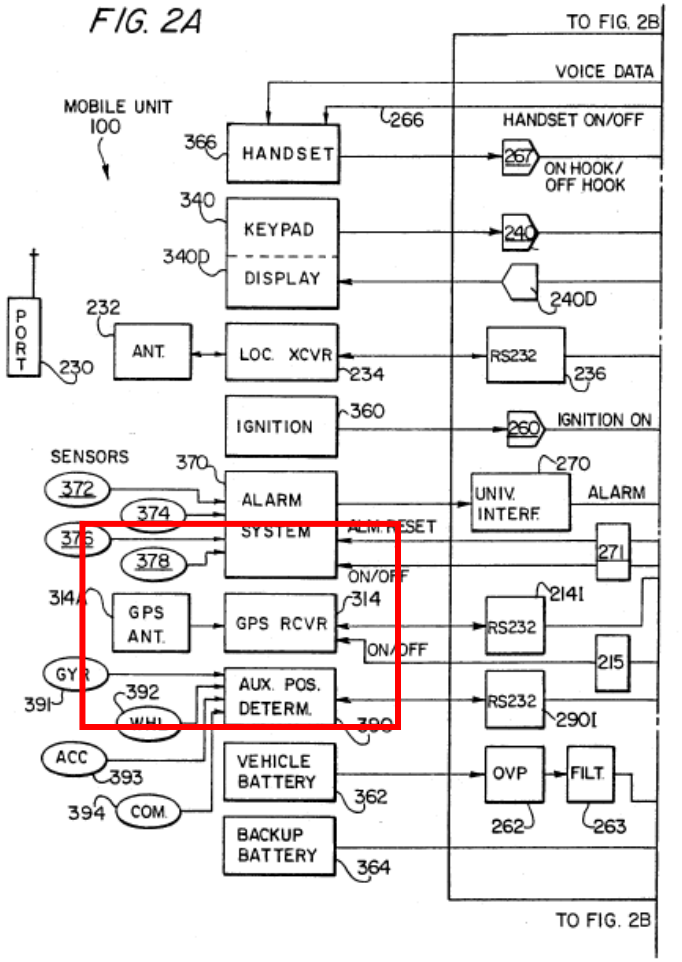
- U.S. Patent No. 5,515,043 to Berard



PO Sur-Reply, p. 3

Flick561 is Like Art Already Considered When Combined with Flick885 During Prosecution

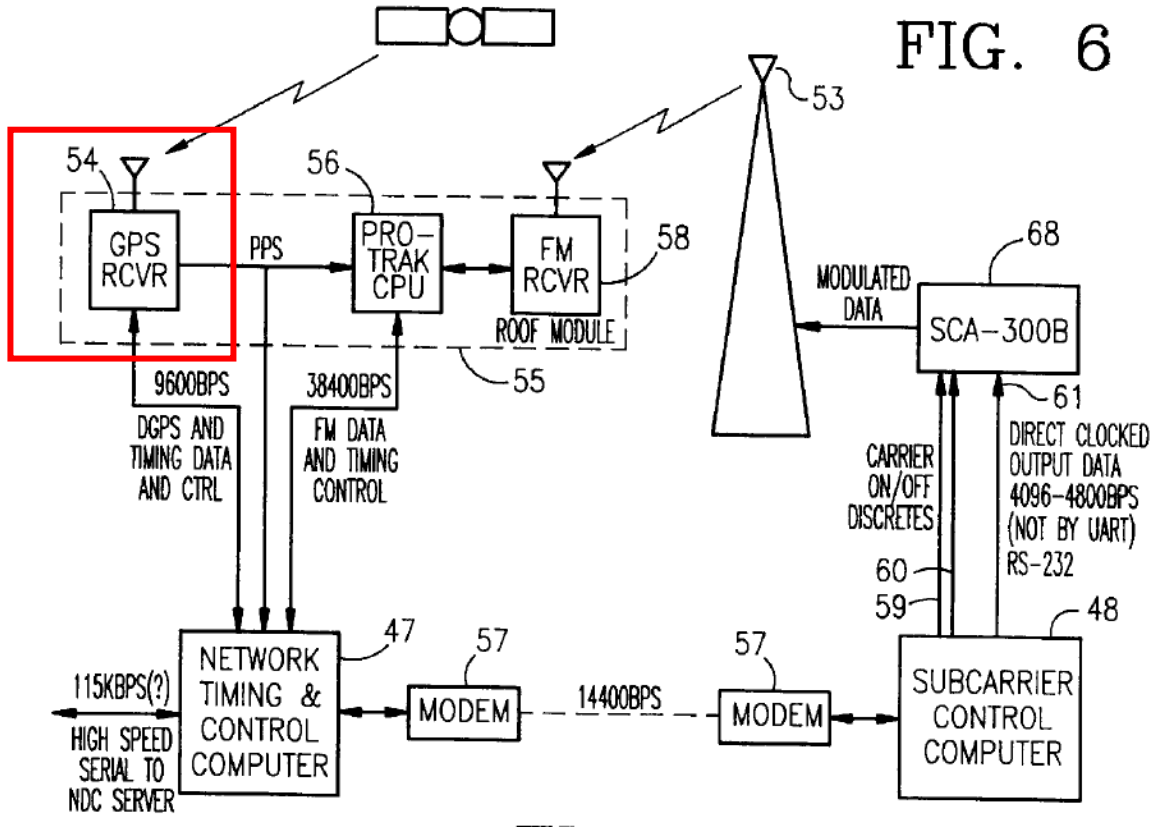
- U.S. Patent No. 5,223,844 to Mansell



PO Sur-Reply, p. 4

Flick561 is Like Art Already Considered When Combined with Flick885 During Prosecution

- U.S. Patent No. 6,611,755 to Coffee



PO Sur-Reply, p. 4

Flick561 is Like Art Already Considered When Combined with Flick885 During Prosecution

- U.S. Patent No. 6,628,233 to Knockeart

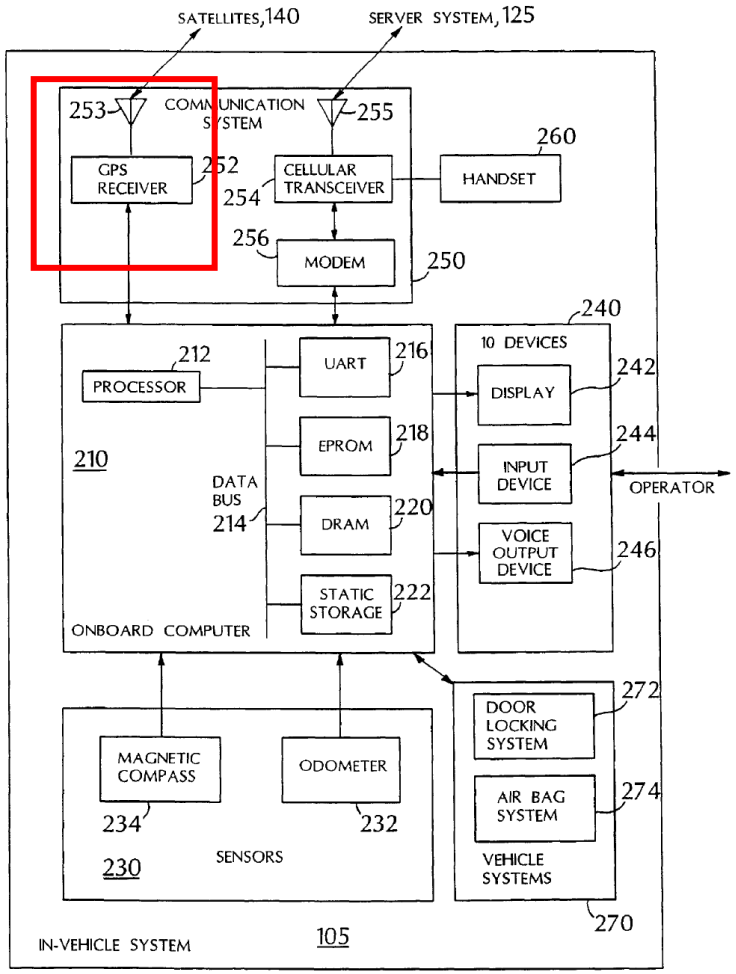


FIG. 2

PO Sur-Reply, p. 4

Flick561 is Like Art Already Considered When Combined with Flick885 During Reexamination

- Not only were numerous references with GPS considered during the initial prosecution, challengers continued to offer cumulative references as one reexamination after the next was filed

PO Sur-Reply, p. 4

Flick561 is Like Art Already Considered When Combined with Flick885 During Reexamination

- U.S. Patent No. 5,557,254 to Johnson in RX1

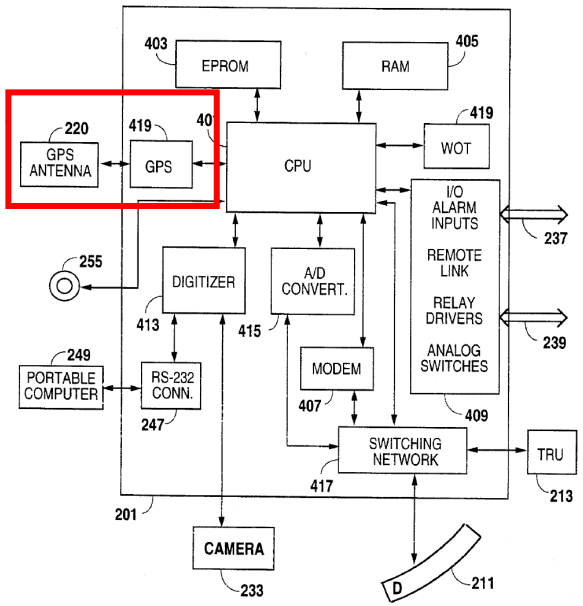


Fig. 4A

- U.S. Patent No. 6,028,537 to Suman in RX1

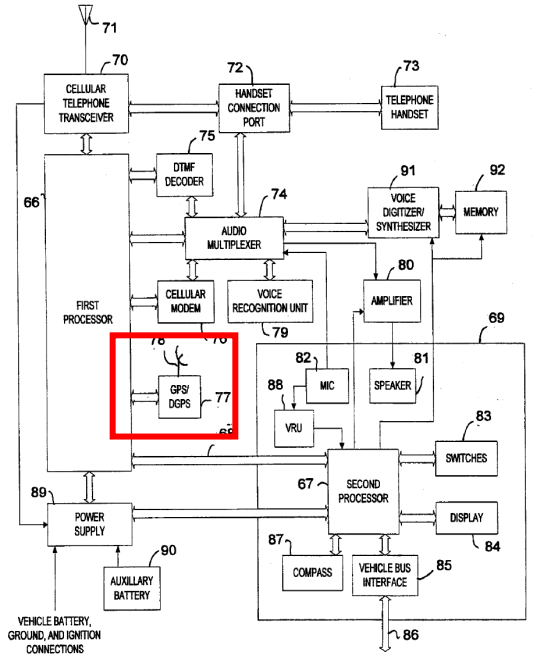


Fig. 5

PO Sur-Reply, p. 4; Ex. 2035

Flick561 is Like Art Already Considered When Combined with Flick885 During Reexamination

- U.S. Patent No. 6,009,363 to Beckert in RX1

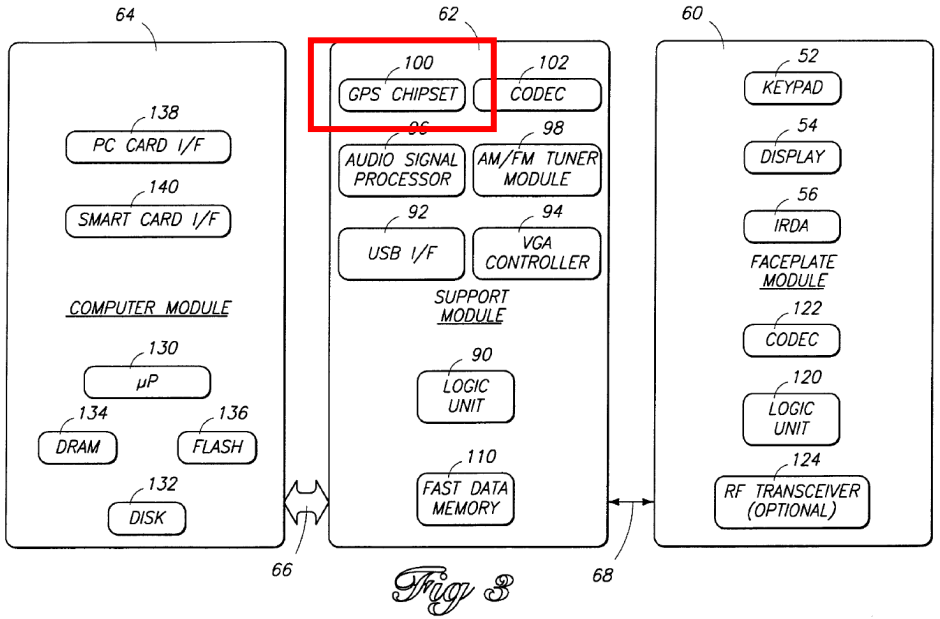


Fig 8

- U.S. Patent No. 7,484,008 to Gelvin in RX1

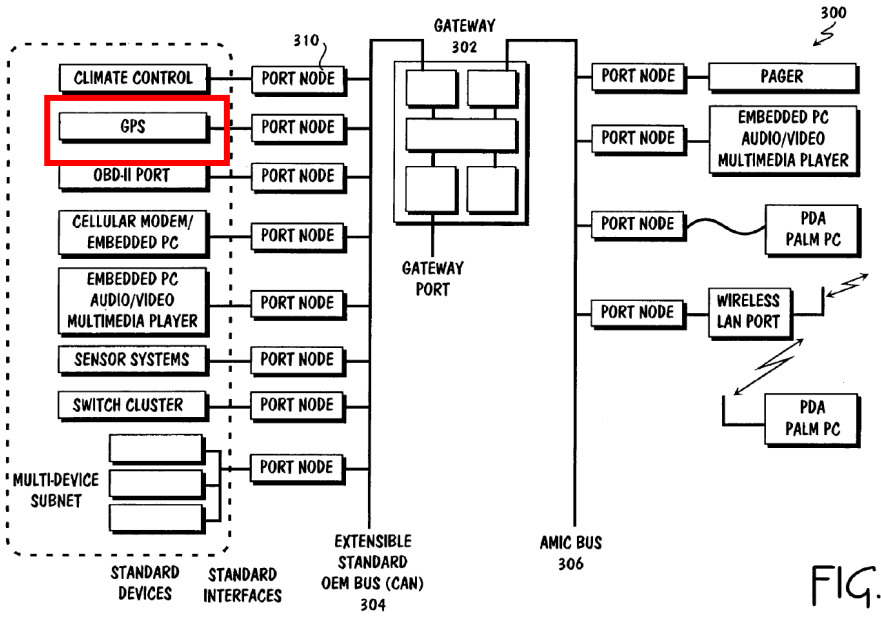


FIG. 3

PO Sur-Reply, p. 4; Ex. 2035

Flick561 is Like Art Already Considered When Combined with Flick885 During Reexamination

- U.S. Patent Application Publication No. 2001/0033225 to Razavi in RX1

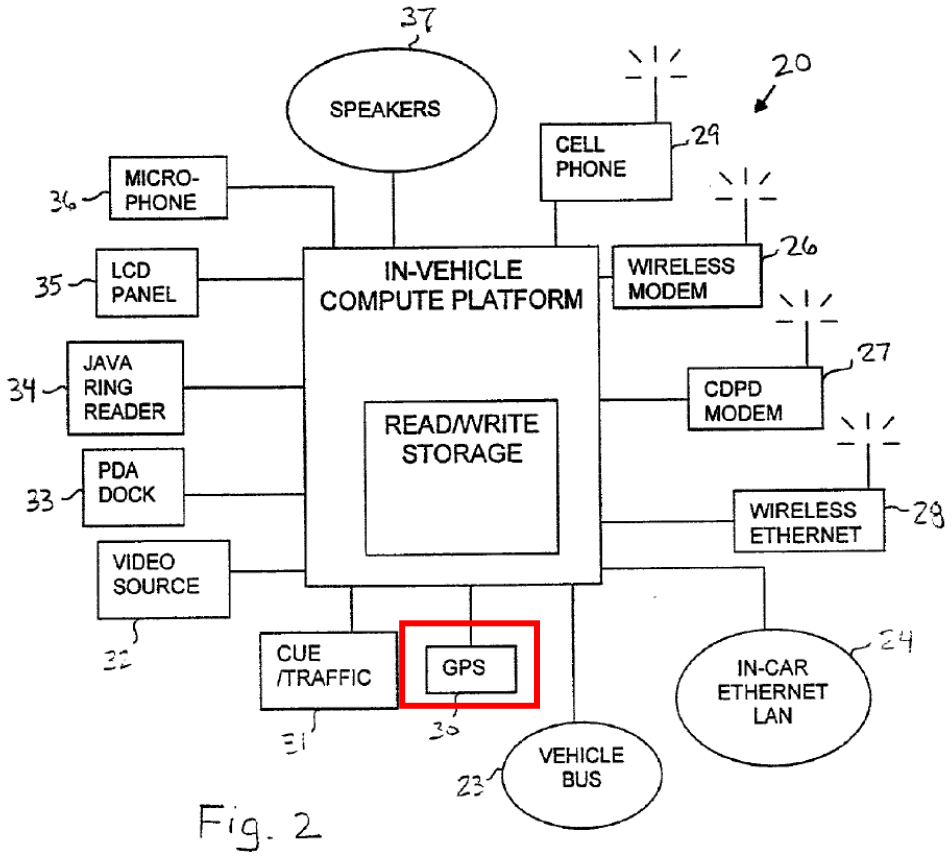


Fig. 2

PO Sur-Reply, p. 4; Ex. 2035

Flick561 is Like Art Already Considered When Combined with Flick885 During Reexamination

- U.S. Patent No. 5,732,074 to Spaur in RX2

each vehicle in a fleet of vehicles might be required to report its location on a periodic basis to a remote station **10**. The steps of FIG. **4** are next described in the context of such an example. At block **300**, vehicle positioning data is available from one of the vehicle devices **50**, which might be a GPS. On a requested or regular input scheme, such vehicle device data is sent to the CAN bus **126** at block **304**. The CAN

- U.S. Patent No. 6,330,499 to Chou in RX2 (Col. 2 shown)

private) switch telephone network (PSTN) **150**E. Further shown, the vehicle location is established, for example by a device **317** (e.g., antenna or the like) for receiving positioning information from orbiting Global Positioning System (GPS) satellites **150**A.

PO Sur-Reply, p. 4; Ex. 2036

Flick561 is Like Art Already Considered When Combined with Flick885 During Reexamination

- U.S. Patent No. 6,430,164 to Jones in RX3

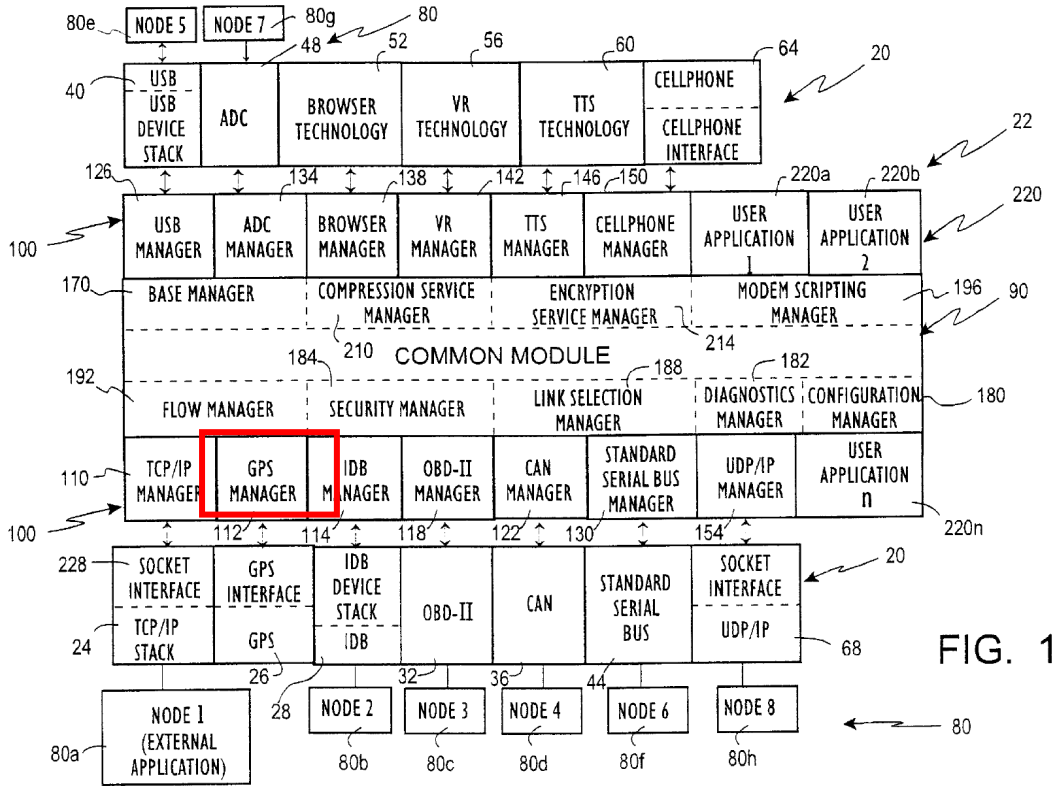
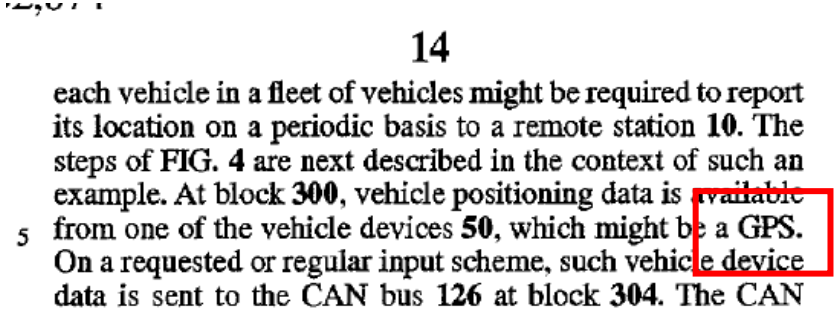


FIG. 1

PO Sur-Reply, p. 4; Ex. 2037

Flick561 is Like Art Already Considered When Combined with Flick885 During Reexamination

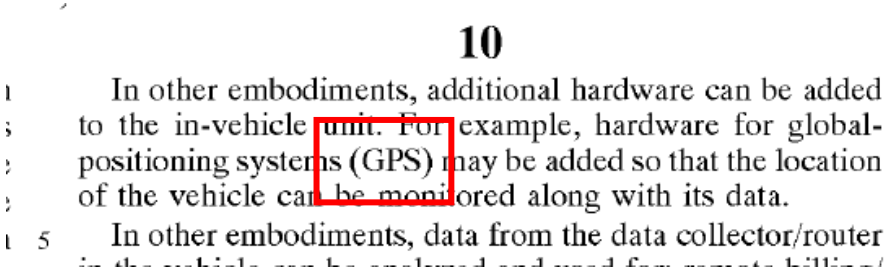
- U.S. Patent No. 6,611,740 to Lowrey in RX5



14

each vehicle in a fleet of vehicles might be required to report its location on a periodic basis to a remote station **10**. The steps of FIG. **4** are next described in the context of such an example. At block **300**, vehicle positioning data is available from one of the vehicle devices **50**, which might be a GPS. On a requested or regular input scheme, such vehicle device data is sent to the CAN bus **126** at block **304**. The CAN

- U.S. Patent No. 6,636,790 to Lightner in RX5



10

In other embodiments, additional hardware can be added to the in-vehicle unit. For example, hardware for global-positioning systems (GPS) may be added so that the location of the vehicle can be monitored along with its data.

In other embodiments, data from the data collector/router

PO Sur-Reply, p. 4; Ex. 2013, 2014,

USPTO Review(s) of the '278 Patent

- *Ex Parte* Reexamination 90/013,587 (RX1)
  - The examiner reviewed the request for reexamination and evidence and confirmed the claims
  - 78 page request, six grounds for unpatentability

- **ALL CLAIMS PATENTABLE**

POR, p. 12; Ex 2035

USPTO Review(s) of the '278 Patent

- *Ex Parte* Reexamination 90/013,851 (RX2)
  - The claims were rejected by the examiner, but the PTAB reversed, expressly relying on evidence of secondary considerations, and the claims of the '278 Patent were confirmed
  - Six grounds by requester

- **ALL CLAIMS PATENTABLE**

POR, p. 12; Ex 2036

USPTO Review(s) of the '278 Patent

- *Ex Parte* Reexamination 90/014,309 (RX3)
  - The examiner reviewed the request for reexamination and evidence and confirmed the claims
  - Three prior art grounds for rejection

- **ALL CLAIMS PATENTABLE**

POR, p. 12; Ex 2037

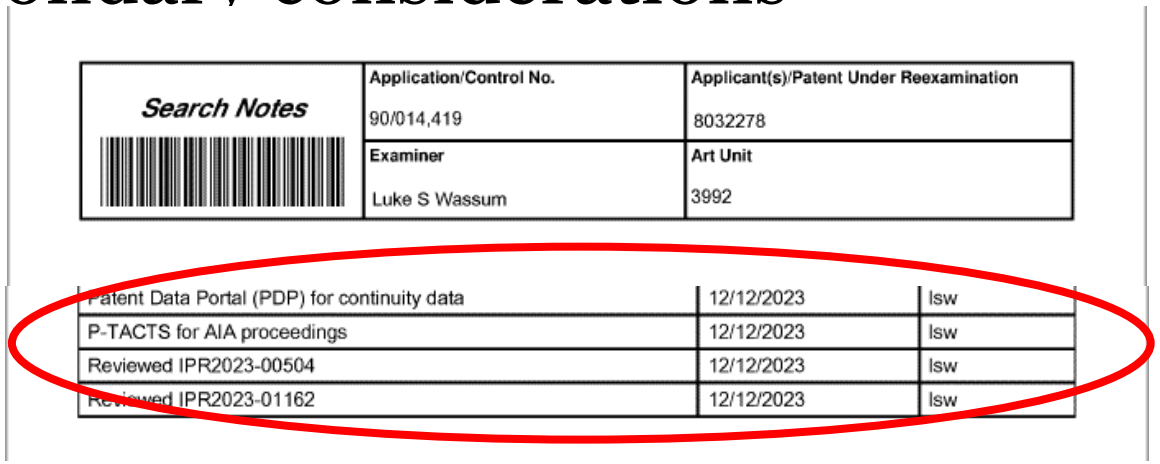
USPTO Review(s) of the '278 Patent

- *Ex Parte* Reexamination 90/014,419 (RX4)
  - The Examiner confirmed the patentability of claims of the '278 Patent
  - Original request included four prior art requests, including an earlier Flick '551 Patent

POR, p. 12; Ex 2038

USPTO Review(s) of the '278 Patent

- *Ex Parte* Reexamination 90/014,419 (RX4)
  - The examiner considered this IPR (and Geotab) and cited evidence of secondary considerations



Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/014,419	8032278
	Examiner	Art Unit
	Luke S Wassum	3992

Patent Data Portal (PDP) for continuity data	12/12/2023	lsw
P-TACTS for AIA proceedings	12/12/2023	lsw
Reviewed IPR2023-00504	12/12/2023	lsw
Reviewed IPR2023-01162	12/12/2023	lsw

- **ALL CLAIMS PATENTABLE**

PO Sur-Reply, p. 6; Ex 2038

USPTO Review(s) of the '278 Patent

- *Ex Parte* Reexamination 90/014,675 (RX5)
  - The claims were rejected by the examiner, but the Board reversed and the claims of the '278 Patent were confirmed
  - Two grounds of rejection (under Lowrey)

- **ALL CLAIMS PATENTABLE**

POR, p. 13; Ex 1015

Inconsistentcy of USPTO/PTAB Decisions

- Examiners in the original prosecution and reexaminations Rx1, Rx3 and Rx4 had the Flick885 and numerous GPS references before them but found the claims valid in each instance
- PTAB panels in reexaminations Rx2 and Rx5 had the Flick885 and numerous GPS references before them, along with limited evidence of secondary considerations, and both times found the claims valid
- In this proceeding (and in the Geotab proceeding), the universe of evidence of secondary considerations is even more developed and compelling, while Petitioner failed to offer rebuttal evidence

PO Sur-Reply, p. 6

Petitioner Fails to Estabilsh a Motivation to Combine

- Precisely the circumstance where secondary considerations are most relevant
  - Here the '278 Patent expressly disclosed Flick885 and various GPS references were considered in prosecution and various reexaminations

PO Response, p. 21-22

Petitioner Fails to Estabilsh a Motivation to Combine

- In the institution decision, the Board states any known problem in the art can serve as a motivation
  - The Board does not articulate the known and shared problem between the Flick references
- In the context of motivation to combine, the Board seemingly equates the vehicle sensors in Flick885 with GPS in Flick561, despite finding the Flick885 does not disclose tracking a geographic position
  - Flick885 was directed to a control system with multi-vehicle compatibility
  - Flick561 was directed to a tracking system for reporting geographic location

Decision, p. 31, 41; PO Response, p. 21-23; Petitioner's Reply, 9-11; PO Sur-Reply, p. 7

Petitioner Fails to Estabilsh a Motivation to Combine

- Petitioner focused on the notion that the technology in Flick885 and Flick561 could be combined
- However, Omega presented testimony from Mr. Flick that acknowledged it was not in fact combined until the '278 Patent
  - The fact that the technology was known but never combined until Mr. Flick is not a motivation to combine
- Similarly, in Rx1 the inventor of related prior art (Mr. Suman) provided testimony acknowledging that the combination of multi-vehicle compatibility and GPS was not considered by POSA
  - The very purpose of secondary considerations is to avoid hindsight- there is no evidence a POSA would combine these technologies

Decision, p. 39; PO Response, p. 23-24

Petitioner Fails to Estabilsh a Motivation to Combine

- The Board ultimately found that the Flick885 and Flick561 could be combined with a reasonable expectation of success, pointing to the fact that GPS was not new
  - As noted by Mr. McAlexander and Mr. Flick, only nearly 20 years later is the Board determining a POSA would combine multi-vehicle compatibility and GPS, but the evidence and actual filings show it was not obvious
  - Yet GPS was considered countless times in prosecution and reexamination, coupled with the secondary considerations, directs away from the combination

PO Response, p. 23-25

Petitioner Fails to Estabilsh a Motivation to Combine

- Common sense and market forces point to the fact that both technologies existed (and were considered repeatedly in the USPTO) but were not combined--until in the '278 Patent
  - As discussed below, CalAmp only recognized the benefits and the market forces associated with the '278 Patent years later
- The mere possibility that Flick885 and Flick561 could be combined is not a motivation to do so

PO Response, p. 23-27; PO Sur-Reply, p. 7

Secondary Consideration Evidence is Extensive and Unrebutted

- Secondary consideration evidence cannot be ignored or discounted
- Twice the PTAB has relied on extensive secondary consideration evidence in confirming validity of the '278 Patent

"A key aspect of our finding in this regard is, as it was in a related appeal, (1) the jury's verdict in related litigation that there was a nexus between the evidence of secondary considerations of non-obviousness and the claimed invention, and (2) the Federal Circuit's affirming the district court's upholding the jury's infringement verdict. *See Omega Patents*, 13 F.4th at 1365 (affirming the judgment of infringement of the '278 patent's asserted claims).

POR, p. 4; Ex Parte Flick, Appeal 2022-003758 (Ex 1015), p. 13; Ex Parte Omega Patents, Appeal 2018-008119 (Ex 2005); Ex 2038

Secondary Consideration Evidence is Extensive and Unrebutted

- "[T]his court requires consideration of these objective indicia because they provide objective evidence of how the patented device is viewed in the marketplace, by those directly interested in the product." *Mintz v. Dietz & Watson, Inc.*, 679 F.3d 1372, 1378 (Fed. Cir. 2012) (internal citations omitted, underlining added)
- The '278 Patent dates to the 2000s, and secondary considerations "help turn back the clock and place the claims in the context that led to their invention." *Id.*

POR, p. 28-29

Secondary Consideration Evidence is Extensive and Unrebutted

- Commercial success
  - "We presume that such a nexus applies for objective indicia when the patentee shows that the asserted objective evidence is tied to a specific product and that product 'embodies the claimed features, and is coextensive with them.'" *Polaris Indus. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1072 (Fed. Cir. 2018), quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1130 (Fed. Cir. 2000)(underlining added).

POR, p. 38

Secondary Consideration Evidence is Extensive and Unrebutted

- Commercial success
  - 917,222 units specifically infringed the '278 Patent in second CalAmp trial and affirmed infringement (*Omega Patents, LLC v. CalAmp* Corp., 13 F.4th 1361, 1373 (Fed. Cir. 2021))

Total damages awarded: $ 4,586,111

Number of accused products included in damages award: 917,223

5.B. Of the total number of accused products found to infringe and therefore included in the damage award (see question 5.A. above), how many accused products have been found to infringe each patent (for any patents found not infringed, please leave that line blank):

'876 patent: ∅

'885 patent: ∅

'727 patent: 1 unit

'278 patent: 917,222 unit

POR, p. 39, 46

Evidence of Commercial Success is Significant and Coextensive

- Commercial success
  - The '278 Patent is not an example where "the patented invention is only a component of a commercially successful machine or process." *Demaco Corp. v. F. Von Langsdorff Licensing, Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988)

PO Sur-Reply, p. 9-10

Evidence of Commercial Success is Significant and Coextensive

- Commercial success-Nexus
  - Expert Joseph McAlexander testified that "Based on the advertising, consumer requirements documentation, and the schematics, the LMU-3000, 3030, 3050 products embodied the claimed features of the '278 Patent and are coextensive with them."
  - He further testified all independent claims of the '278 patent recite "a multi-vehicle compatible tracking unit for a vehicle comprising a vehicle data bus extending throughout the vehicle"—just like the infringing products.

PO Sur-Reply, p. 9-10; Ex 2044, p. 13

Evidence of Commercial Success is Well Supported

- Expert Christian Tregillis highlighted commercial requirements emphasizing the value through the combination of an OBDII product with "a value added GPS tracking and cellular communication product," just as claimed in the '278 patent and evidencing coextensiveness

1.1 Purpose

This document defines the commercial and customer requirements for the Onboard Diagnostic OBD-3000 Plug-On OBDII product for a value added GPS tracking and cellular communication product. This product is designed to meet the specific requirements contained herein and agreed upon by CalAmp, with Beta customer opportunities already identified.

PO Sur-Reply, p. 10; Ex 2019, p. 20-21; Ex 2023, p. 4; Ex 2024, p. 5

Evidence of Commercial Success is Well Supported

- Mr. Tregillis also highlighted the belief of insiders of the market need for devices with the '278 Patent technology

Q. Was there a particular market need that you identified leading up to the creation of the CRS for the LMU-3000?

A. The 3000 was driven by a general market need that we heard from a number of customers. The primary interest was coming from a need for a simple installation type of solution and the opportunity to enhance the capability of the product that we could offer with certain data items coming off of the vehicle bus.

PO Sur-Reply, p. 14; Ex 2019, p. 24; Ex 2011, 40:20-41:4

Evidence of Commercial Success is Well Supported

- Mr. Tregillis referenced testimony showing the "sales-driven request" and market demand for the infringing products, which reflected the technology merged into a single housing

Q. Do you know what's driving the increased demand for these products like the 3000 and the 3030?
A. It comes from a variety of places, roadside services, insurance. You know, there's a lot -- in the fleet management space there's a lot of pressure to -- fleet management solutions have typically been professionally installed which is very expensive. It can cost more to install it than the device itself, and so just a simple plug-in solution is extremely attractive.

PO Sur-Reply, p. 14; Ex 2019, p. 22-24; Ex 2012, p. 64; Ex 2011, pp. 40-41

Evidence of Commercial Success and the Technology Value is Well Supported

- As noted by Mr. Tregillis, CalAmp's engineer admitted they were unaware of a design around, which is also relevant to the commercial success, and particularly the value of the technology:

15 Q. But you -- ultimately Calamp didn't implement
16 whatever alternative designs you came up with in an effort to
17 avoid the patents you reviewed?
18 A. To tell you the truth, I don't think we came up with
19 any alternative designs.

PO Sur-Reply, p. 14; Ex 2019, p. 26; Ex 2011, p. 44-45

Evidence of Commercial Success and the Technology Value is Well Supported

- In his testimony on the value of the technology from the '278 Patent as found in CalAmp's products, Mr. Tregillis noted the value of CalAmp's product was limited without the patented technology, as confirmed by a CalAmp employee

25 Q. Do you know whether the LMU3000 would have any value
1 if it didn't work on multiple vehicles?
2 A. It would have a limited value.
3 Q. You would need separate skus for each vehicle; right?
4 A. That would be one way of solving that problem.
5 Q. Is there any other way?
6 A. Different skus could be different software got loaded
7 onto the same sku.

Reply, p. 44; Ex 2019, p. 25-26; Ex 2011, p. 46-47

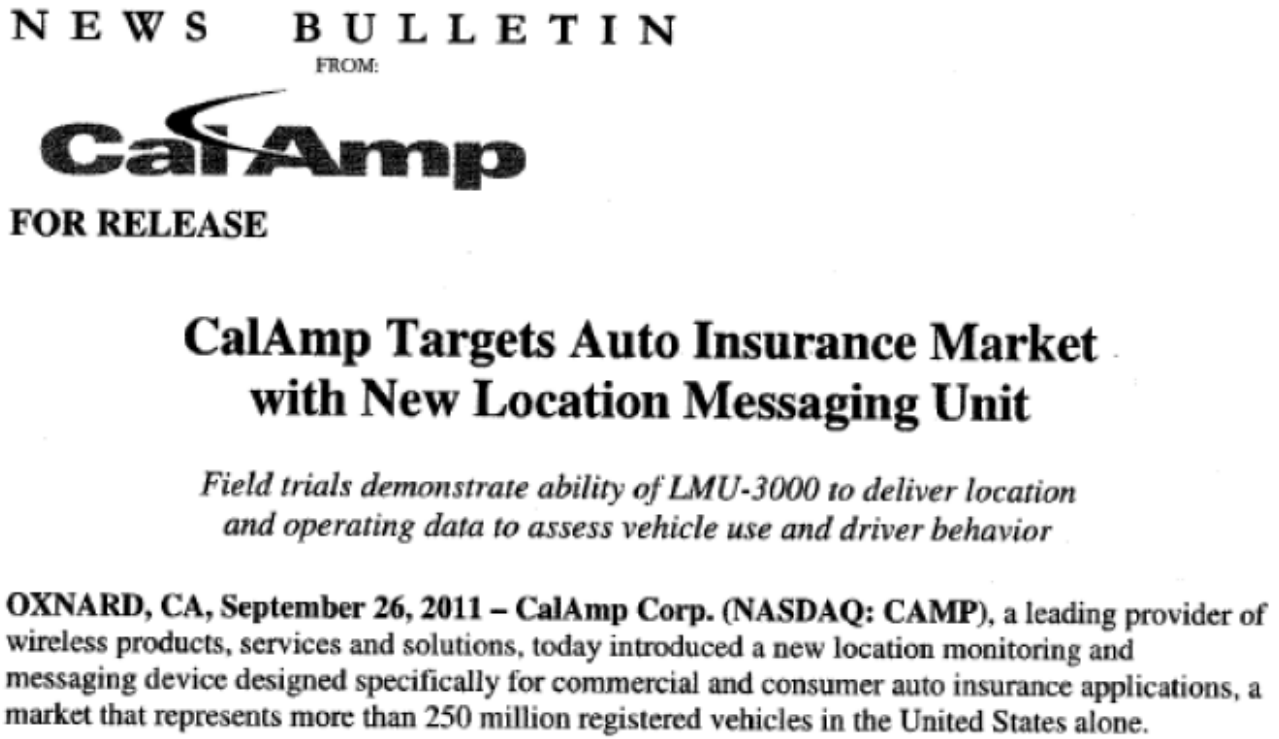
Evidence of Commercial Success and the Technology Value is Well Supported

- Mr. Tregillis' opinion on the lack of commercially acceptable alternatives was further supported by Mr. Flick, the inventor of the '278 Patent and more than 100 other patents in vehicle systems and accessories
- Mr. Flick testified that he was unaware of other commercial alternatives before he filed the '278 Patent
- CalAmp knew this, recognizing infringement was "harder to avoid"

POR, p. 38, 44; Ex 2019, p. 25-26; Ex 2001, p. 6-7

Evidence of Commercial Success is Well Supported

- CalAmp's infringing products recognized the need for a combination of technologies, not discrete or unclaimed features already available separately



NEWS BULLETIN

FROM:

CalAmp

FOR RELEASE

CalAmp Targets Auto Insurance Market with New Location Messaging Unit

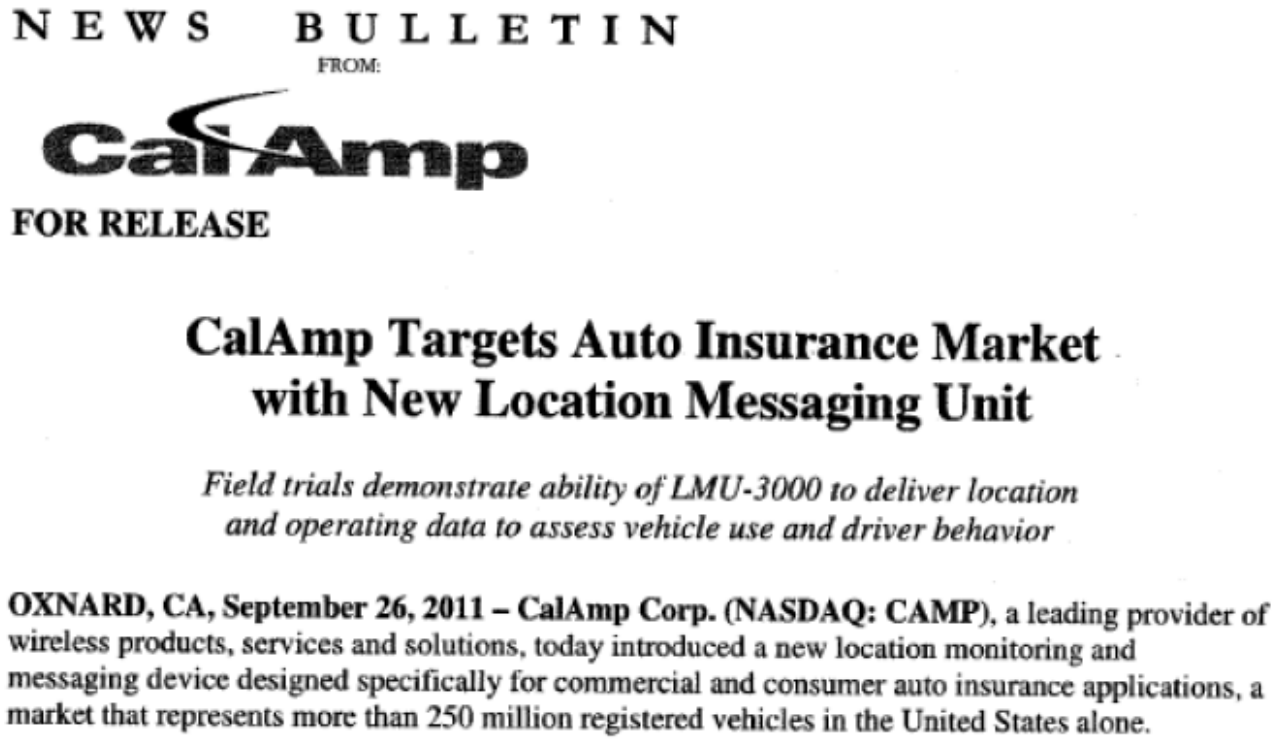
Field trials demonstrate ability of LMU-3000 to deliver location and operating data to assess vehicle use and driver behavior

OXNARD, CA, September 26, 2011 – CalAmp Corp. (NASDAQ: CAMP), a leading provider of wireless products, services and solutions, today introduced a new location monitoring and messaging device designed specifically for commercial and consumer auto insurance applications, a market that represents more than 250 million registered vehicles in the United States alone.

POR, p. 39; Ex 2019, p. 15

Evidence of Commercial Success is Well Supported

- "The objective considerations reflect the contemporary view of the invention by competitors and the marketplace." *Spectralytics, Inc. v. Cordis Corp.*, 649 F.3d 1336, 1344 (Fed. Cir. 2011)



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POR, p. 39; Ex 2019, p. 15

Evidence of Commercial Success is Unrebutted by Petitioner

- Commercial success-Nexus
  - Petitioner argued (without evidence) that CalAmp's infringing products had "significant unclaimed features"
  - "To be sure, we have never held that the existence of one or more unclaimed features, standing alone, means nexus may not be presumed." *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1374 (Fed. Cir. 2019)
  - Petitioner's expert never considered Mr. McAlexander's testimony on coextensiveness or Mr. Tregillis' testimony on secondary considerations, much less offered any rebuttal

Petitioner's Reply, p. 14; PO Sur-reply, p. 12; Ex 1033, iii

Evidence of Commercial Success is Unrebutted by Petitioner

- Commercial success-Nexus
  - This Board previously characterized the evidence as "weak" and "irrelevant" despite no evidence by Petitioner
  - Mr. McAlexander presented testimony addressing the attorney argument from this Petitioner, stating that the supposed "significant" features referenced by Petitioner were mundane and implemented by a $1.26 component and an off-the-shelf microprocessor also used for claimed features

PO Sur-reply, p. 12; Ex 2044, p. 14-16

Evidence of Commercial Success is Unrebutted by Petitioner

- Nexus between commercial success and the '278 Patent is presumed (*Polaris*)
  - Unrebutted testimony from PO experts
  - No evidence from Petitioner challenging the coextensiveness of nearly 1 million infringing units
  - At most Petitioner focuses on a Fed. Cir. decision reversing the amount of damages
  - Given the unrebutted evidence, the nexus has been established

PO Sur-reply, p. 11, 13-14

A Jury Verdict Considered and Rejected an Invalidity Challenge to '278 Patent

- *Omega Patents, LLC v. CalAmp Corp.*, 920 F.3d 1337, 1343 (Fed. Cir. 2019)
- Jury determined the '278 Patent was not invalid

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?

POR, p. 31; Ex 2032, p. 7-8

Ex 2032, p. 9

A Jury Verdict Considered and Rejected an Invalidity Challenge to '278 Patent

- Jury found the CalAmp products infringe Omega's '278 patent, providing a presumed nexus
  - Commercial success
  - Copying
  - Licenses

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?

POR, p. 32

Second Verdict-Confirming Sales of Infringing Products

- *Omega Patents, LLC v. CalAmp Corp.*, 13 F.4th 1361 (Fed. Cir. 2021)
- Jury determined the '278 Patent was infringed; 917,000+ units were sold

Total damages awarded: $ 4,586,111

Number of accused products included in damages award: 917,223

5.B. Of the total number of accused products found to infringe and therefore included in the damage award (see question 5.A. above), how many accused products have been found to infringe each patent (for any patents found not infringed, please leave that line blank):

'876 patent: Ø

'885 patent: Ø

'727 patent: 1 unit

'278 patent: 917,222 unit

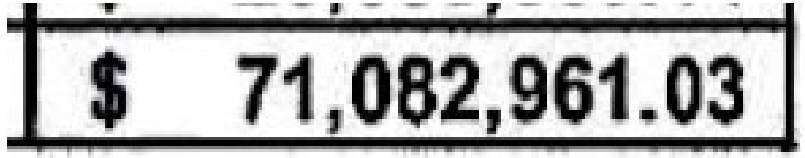
POR, p. 11-12; Ex 2033, p. 6

Ex 2033, p. 6

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

Additional Secondary Considerations-Licensing

- Evidence of commercial success parallels the evidence of licensing
  - Several Omega licenses included the '278 Patent, and Omega's license portfolio generated more than $70MM overall
  - Mr. Tregillis noted the license payments continued when only the '278 Patent remained



PO Sur-Reply, p. 14; Ex 2019, 9-10

Repeated Challenges and Secondary Considerations Establish Validity

- The USPTO and PTAB have consistently confirmed validity of the '278 Patent, with the same and/or cumulative references
- Omega presented considerable evidence of secondary considerations showing, in particular, commercial success
- Petitioner offers no rebuttal evidence
- The Board should confirm patentability

PO Sur-reply, p. 6, 12; Ex 1033, iii