

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

MEL NAVIP LLC,

Plaintiff

-against-

TOYOTA MOTOR NORTH AMERICA,
INC.; TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA,
INC.; and TOYOTA MOTOR SALES,
U.S.A., INC.,

Defendants.

Civil Action No.: 2:22-cv-00152-JRG

Jury Trial Demanded

MEL NAVIP'S RESPONSE-IN-OPPOSITION TO TOYOTA'S MOTION TO DISMISS

TABLE OF CONTENTS

I.	THE '971 PATENT AND TOYOTA'S MOTION.....	1
II.	THE PATENTEE DID NOT DISCLAIM NAVIGATION DEVICES THAT AUTOMATICALLY RE-SEARCH FOR A ROUTE RETURNING TO A WAYPOINT AS SUGGESTED BY TOYOTA.....	3
	A. The Purported Disclaimer Of The '971 Patent Is Inconsistent With Federal Circuit Precedent.....	3
	B. The '971 Patent Includes The Supposedly Disclaimed Feature In The Preferred Embodiment.....	8
III.	MEL NAVIP DOES NOT ACCUSE SUPPOSEDLY DISCLAIMED FEATURES OF INFRINGEMENT	10
IV.	CONCLUSION	14

TABLE OF AUTHORITIES

Federal Cases

<i>Bayer HealthCare LLC v. Baxalta Inc.</i> , 989 F.3d 964 (Fed. Cir. 2021).....	8, 9
<i>Billjco v. Cisco Sys.</i> , No. 2:21-CV-00181-JRG, 2021 U.S. Dist. LEXIS 251455 (E.D. Tex. Nov. 30, 2021).....	14
<i>Cont’l Circuits LLC v. Intel Corp.</i> , 915 F.3d 788 (Fed. Cir. 2019).....	3, 7, 8, 9
<i>Corelogic Info. Sols., Inc. v. Fiserv, Inc.</i> , No. 2:10-CV-132-RSP, 2012 U.S. Dist. LEXIS 135386 (E.D. Tex. Sep. 21, 2012)	11
<i>Epistar Corp. v. ITC</i> , 566 F.3d 1321 (Fed. Cir. 2009).....	11
<i>Epos Tech. Ltd. v. Pegasus Tech. Ltd.</i> , 766 F.3d 1338 (Fed. Cir. 2014)	15
<i>Gaus v. Conair Corp.</i> , 363 F.3d 1284 (Fed. Cir. 2004).....	5, 8, 9
<i>Indivior Inc. v. Dr. Reddy’s Laboratories, S.A.</i> , 930 F.3d 1325 (Fed. Cir. 2019)	6, 8
<i>Liebel-Flarsheim v. Medrad, Inc.</i> , 358 F.3d 898 (Fed. Cir. 2004)	15
<i>R+L Carriers, Inc. v. DriverTech LLC (In re Bill of Lading Transmission & Processing Sys. Patent Litig.)</i> , 681 F.3d 1323 (Fed. Cir. 2012)	14
<i>Retractable Techs., Inc. v. Becton, Dickinson & Co.</i> , 653 F.3d 1296 (Fed. Cir. 2011).....	3
<i>SciMed Life Systems, Inc. v. Advanced Cardiovascular Systems, Inc.</i> , 242 F.3d 1337 (Fed. Cir. 2001)	4, 8, 9
<i>UltimatePointer, L.L.C. v. Nintendo Co.</i> , 816 F.3d 816 (Fed. Cir. 2016)	6, 7, 9

Rules

Fed. R. Civ. P. 12(b)(6).....	1, 14
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I. INTRODUCTION

Toyota's Motion should be denied because the single statement in the specification that the cited prior art reference is "inferior in user friendliness" does not amount to a clear and unmistakable disavowal of claim scope required for specification disclaimer, especially in view of the inclusion of the supposedly disclaimed feature in the preferred embodiment. To the extent the Court finds disclaimer of some scope, Mel NavIP accuses Toyota Cloud Navigation features that (1) are different from the supposedly disclaimed ones and (2) are covered by the '971 Patent claims that Toyota attempts to narrow through premature and improper claim construction.

II. THE '971 PATENT AND TOYOTA'S MOTION

Toyota¹ has moved to dismiss Count III relating to infringement of U.S. Patent No. 8,649,971 of Mel NavIP LLC's ("Mel NavIP") First Amended Complaint (Dkt. 8) ("FAC") pursuant to Fed. R. Civ. P. 12(b)(6) based on the doctrine of "specification disclaimer or disavowal" (Dkt. 18).

The invention of the '971 Patent relates to navigation devices that carry out route guidance of a route including waypoints. '971 Patent, Col. 1:5-6. "More particularly, it relates to a technology of providing information suitable for users when a vehicle travels without passing via a waypoint on a route." *Id.* at 1:7-10. The '971 Patent describes the situation where the user has not passed a certain waypoint and is traveling along the route toward either another waypoint or the destination, in other words, bypassing the waypoint. *Id.* at 1:24-26. The user could have bypassed the waypoint intentionally or unintentionally. According to one prior-art solution, in this situation, a navigation device "automatically re-searches for [1] a route returning to the [bypassed] waypoint . . . or [2] a route in which the [bypassed] waypoint . . . is not set as a

¹ In this brief, "Toyota" refers collectively to Defendants Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.

waypoint” *Id.* at 1:27-30. The new route is set “independently of the user’s will” *Id.* at 1:30-31. In other words, this prior-art solution does not take into consideration the user’s intent behind bypassing a waypoint and desire—providing, for example, a new route passing through the bypassed waypoint, even if the user bypassed it intentionally, and vice-versa, presumably without alerting the user or allowing for the opportunity to adjust the route.

As such, a prior art solution disclosed in JP,2003-166834, addresses the bypassed waypoint by determining the distance from the current position to the waypoint. And if this distance “is longer than a predetermined amount (e.g., 1 km), this [prior art] car navigation device determines that the vehicle has [bypassed] the waypoint and sets a new whole route leading from the current position to the waypoint.” *Id.* at 1:43-46. Again, the automatic re-routing occurs irrespective of the user’s will and intention for bypassing the waypoint and without the ability to change the route once it is recalculated.

The ’971 Patent notes that a problem with this prior-art navigation device is that a new route may be set “against the user’s own will” with no recourse, and because of that “the related art navigation device is inferior in user-friendliness.” *Id.* at 1:52-56. Addressing the above problems, the ’971 Patent’s object is to “provide a navigation device superior in user-friendliness.” *Id.* at 1:59-60.

Toyota incorrectly focuses only on the automatic re-search (i.e., re-route) feature of the prior art and argues that the ’971 Patent applicant disclaimed the automatic-reroute solution based on the discussion of the prior art in the Background of the patent. And therefore, Toyota argues, an accused system that meets all claim elements is outside the scope of claims merely because it automatically recalculates the route after determining that a waypoint was bypassed. Motion at 7.

Toyota's argument should be rejected because the discussion of the prior art in the '971 Patent Background section does not amount to disclaimer or disavowal. But even if it did, what the patentee has purportedly disclaimed are non-user-friendly navigation systems that set a new route and never give the user an opportunity to input the user's true intention, which stands in contrast with Toyota's accused system that alerts the user of the route being recalculated and affords the user the opportunity to remove the bypassed waypoint from the route.

III. THE PATENTEE DID NOT DISCLAIM NAVIGATION DEVICES THAT AUTOMATICALLY RE-SEARCH FOR A ROUTE RETURNING TO A WAYPOINT AS SUGGESTED BY TOYOTA

A. The Single Statement in The '971 Patent Background Does Not Amount to Disclaimer Under the Federal Circuit Precedent

The applicant of the '971 Patent characterized the prior art solutions to the stated problem of a bypassed waypoint as "inferior in user friendliness." '971 Patent, Col. 1:55-56. This is the *entirety* of the language that Toyota incorrectly claims amounts to specification disclaimer. Motion at 10-11. Toyota incorrectly transforms that purportedly disclaimed feature to the concept of automatically re-searching for a route returning to a waypoint. Mel NavIP addresses this error in Section III below. In this section, however, Mel NavIP establishes that the '971 Patent does not contain any specification disclaimer.

"To disavow claim scope, the specification must contain 'expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.'" *Cont'l Circuits LLC v. Intel Corp.*, 915 F.3d 788 (Fed. Cir. 2019) (citing *Retractable Techs., Inc. v. Becton, Dickinson & Co.*, 653 F.3d 1296, 1306 (Fed. Cir. 2011)). The cases in which the Federal Circuit found specification disclaimer dealt with patents that defined the invention in terms of excluding a particular feature and/or used repeated and definitive or disparaging statements to exclude the features from the claim scope. Yet, even in cases where the Federal Circuit found *no*

specification disclaimer, patentees used language stronger than what is found in the '971 Patent, when characterizing allegedly disclaimed features. With the innocuous single instance of the “inferior in user friendliness” language, this case lays comfortably in the no-disclaimer zone.

Examining the cases where the Federal Circuit found disclaimer, including the ones cited by Toyota, in *SciMed Life Systems, Inc. v. Advanced Cardiovascular Systems, Inc.*, 242 F.3d 1337 (Fed. Cir. 2001), the Federal Circuit found the claimed invention to be limited to coaxial, rather than side-by-side lumens. *Id.* at 1345. In reaching this conclusion, the Federal Circuit pointed at (1) the abstract that identified the “inflation lumen . . . as annular, i.e., coaxial rather than dual in structure”; (2) the specification indicated that side-by-side lumens “suffer from several disadvantages” and elaborated on those disadvantages; (3) characterized the coaxial configuration as part of the present invention; (4) contained a statement that the coaxial lumen was the “basic sleeve structure for *all embodiments of the present invention contemplated and disclosed herein . . .*” The Federal Circuit found “[t]he words ‘all embodiments of the present invention’ are broad and unequivocal. *Id.* at 1344. “It is difficult to imagine how the patents could have been clearer in making the point that the coaxial lumen configuration was a necessary element of every variant of the claimed invention.” *Id.* The totality of the above specification statements in *SciMed* amounted to a disclaimer of claim scope. Here, the specification of the '971 Patent contains a single statement that does not relate to the invention or all embodiment and therefore does not affect the claim scope.

In *Gaus v. Conair Corp.*, 363 F.3d 1284 (Fed. Cir. 2004), the asserted claim recited “‘electrical operating unit’ separately from the ‘pair of spaced-apart electrically exposed conductive probe networks,’” and [did] not suggest [as the patentee argued] that the ‘pair of . . . probe networks’ consists in part of a portion of the ‘electrical operating unit.’” *Id.* at 1288. The

Federal Circuit observed that even if the claim language itself did not support the interpretation it adopted (i.e., “operating unit” separate from “probe networks”), there was in the specification “a clear case of disclaimer of subject matter . . .” *Id.* at n.2. The *Gaus* court pointed at numerous portions of the specification that it found not only did not suggest the overlapping structure, but “to the contrary, . . . plainly describe[d] the two components as separate” and that “the structural separation was essential to the operation of the device in the prescribed manner.” *Id.* at 1288. The patent in *Gaus* described “one of the principal advantages of the claimed invention in a way that excluded the electrical operating unit from serving as part of the pair of probe networks.” *Id.* at 1289. In other words, an interpretation where the touted principal advantage was impossible to achieve with the overlapping components was improper. In view of the language of the claim and the numerous statements indicating that the structure with overlapping components could not accomplish one of the main goals of the invention, the Federal Circuit found disclaimer of the overlapping components. In the present case, however, the automatic re-route feature is not inconsistent with any advantages of the invention set forth in the ’971 Patent claims.

In *Indivior Inc. v. Dr. Reddy’s Laboratories, S.A.*, 930 F.3d 1325 (Fed. Cir. 2019), the Court found disclaimer of “conventional drying from the top” from the scope of the claims because “the specification *repeatedly* disparages conventional top air drying [methods]” and “provides examples that demonstrate the failure of conventional drying methods.” *Id.* at 1337. Specifically, (1) the specification stated that “the conventional drying methods themselves are unable to provide uniform films,” which was “the central object of the claimed invention”; (2) the specification stated that “conventional convection air drying from the top is not employed”; (3) the specifically explained that conventional drying produces undesirable phenomenon; and

(4) the specifically provided examples that demonstrated the failure of conventional drying methods to achieve uniformity. The Federal Circuit characterized these statements in the specification as “unequivocal disparagement” of conventional top air drying, which could not even be cured by other factors that may contribute to uniformity, even if employed with conventional drying methods. *Id.* The Court found that the specification clearly disavowed conventional drying methods. By contrast, the specification of the ’971 Patent does not disparage, let alone *repeatedly* conventional methods, and therefore falls short of disclaiming claim scope.

In *UltimatePointer, L.L.C. v. Nintendo Co.*, 816 F.3d 816 (Fed. Cir. 2016), the Federal Circuit found “indirect-pointing” devices to be clearly outside the scope of the invention in construing “handheld device” as “handheld direct point device.” The Federal Circuit noted that the title of the patent at issue is “Easily-Deployable Interactive *Direct Pointing* System . . .,” the specification repeatedly described the handheld device as a “direct-pointing device” for interacting with a presentation in a “direct-pointing” manner, and repeatably disparaged indirect pointing as “less natural” and as not providing “the speed and intuitiveness afforded by direct-pointing systems.” *UltimatePointer*, 816 F.3d at 823. “Taken together, the repeated description of the invention as a direct-pointing system, the repeated extolling of the virtues of direct pointing, and the repeated criticism of indirect pointing clearly point to the conclusion that the ‘handheld device’ [] is limited to a direct-pointing device.” *Id.*, 816 F.3d at 823. As to the ’971 Patent, however, Toyota cannot point to a totality of disclosures showing a clear disclaimer of an automatic re-searching operation, rather only a single statement that the cited prior art reference is inferior in user-friendliness.

Common across all the above cases that found specification disclaimer are repeated statements either limiting the invention expressly or criticizing and disparaging the features in question. Such language is absent from the '971 Specification. And even in the cases where the Federal Circuit found no specification disclaimer, the language in question was stronger than a single mildly worded observation that prior art systems were “inferior” in user friendliness found in the '971 Patent.

In *Cont'l Circuits LLC v. Intel Corp.*, 915 F.3d 788 (Fed. Cir. 2019), the Court overturned the district court's claim construction that limited the claims to the electric device with the dielectric material to be “produced by a repeated desmear process” thereby excluding “a single-pass desmear process.” The Court focused on the following statements in the specification: (1) the statement describing the repeated desmear process as being “contrary to all known teachings in the prior art”; (2) “the present invention can be carried out by a new use [repeated desmear]; and (3) “for example, the present invention [being different] from the common desmear process in that sub-steps in the desmear process are repeated as a way of forming the teeth, which was “in stark contrast with the end and swell process of the known prior art.” *Id.* at 797. The Court found that these “[were] not statements clearly limiting the claimed ‘electrical device’ to require a repeated desmear process.” The statements in the *Cont'l Circuits* patent were stronger-worded and more numerous than in the '971 Patent, and yet, the Federal Circuit found no disclaimer, necessitating the same result here.

In *Bayer HealthCare LLC v. Baxalta Inc.*, 989 F.3d 964 (Fed. Cir. 2021), the Federal Circuit upheld the district court's construction of a claim term that did not exclude both random and non-random approaches. The defendant pointed to the following statement in the Background of the asserted patent as an indication of specification disclaimer: “[t]his random

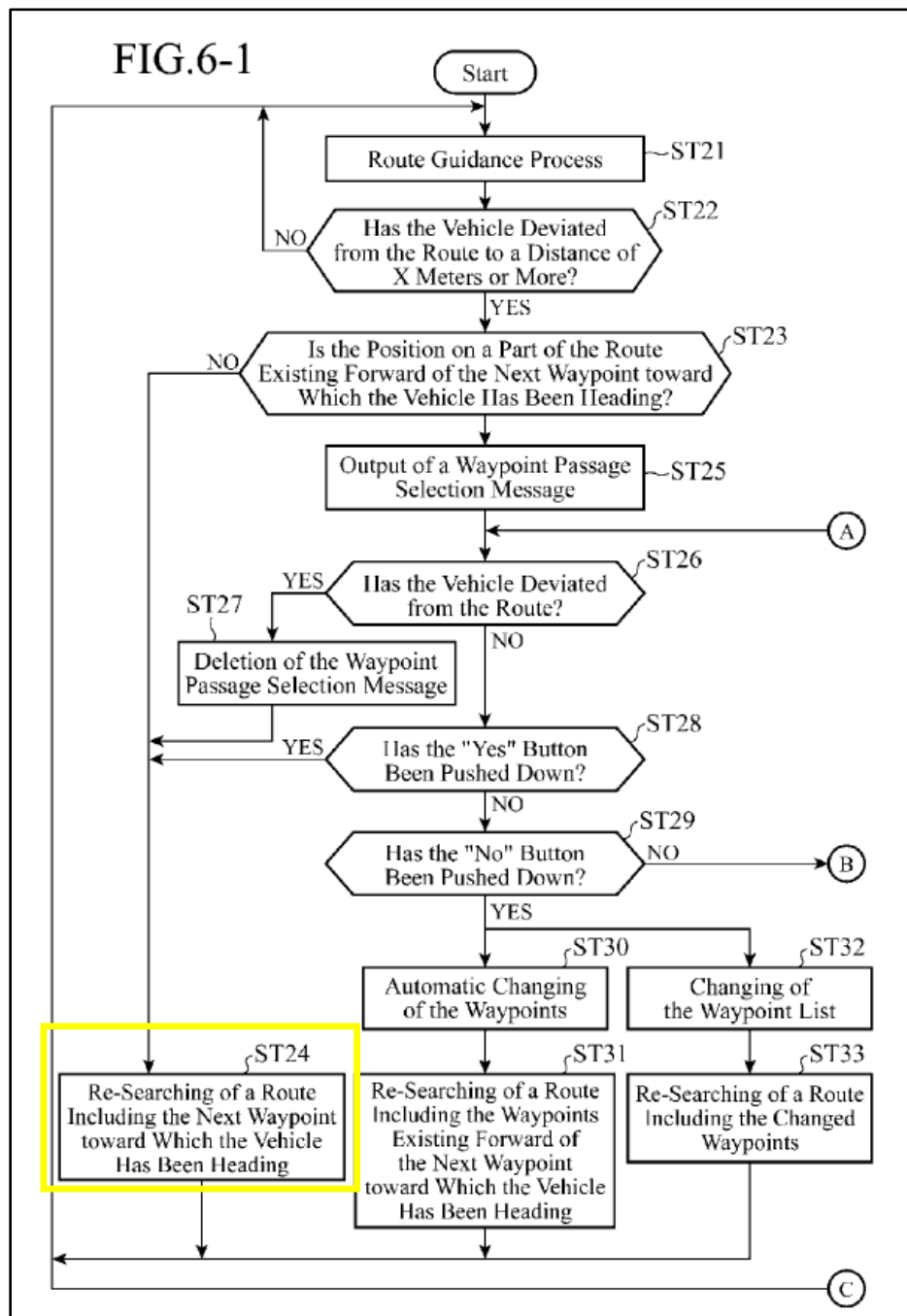
approach, however, is much more problematic.” Id. at 970-974. The Federal Circuit acknowledged that this language presented a close question as to disparagement but observed that the facts were different from *Indivior*, *SciMed*, and *Gaus*. The *Bayer HealthCare* court noted that the above three cases “presented a strong case of disclaimer of a particular feature from the scope of a claim because the specification made clear that the invention did not include that feature.” *Id.* at 975. Agreeing with the district court, the *Bayer HealthCare* Federal Circuit panel observed that the specification “disparages random [approaches], but nowhere disparages non-random, site-directed [approaches].” *Id.* Notwithstanding the disparagement of random approaches, the Federal Circuit held that there was no clear disclaimer. *Id.* Similarly, the ’971 Patent noted the non-user-friendly nature of a navigation device that automatically recalculates the route in response to a bypassed waypoint, but does not provide the user with an opportunity to change the route to make it consistent with her will. Under the holding of *Bayer HealthCare* because the ’971 Patent contemplates automatic rerouting *with* the ability to remove the intentionally bypassed waypoint from the route, the automatic reroute function cannot be excluded from the claim scope.

Like *Cont’l Circuits* and *Bayer HealthCare*, the facts here are distinguishable from *Indivior*, *SciMed*, *Gaus*, and *UltimatePointer*. The ’971 Patent does not contain any statements disparaging the automatic rerouting feature or repeated statements that render this feature inconsistent with the invention.

B. The ’971 Patent Includes The Supposedly Disclaimed Feature In The Preferred Embodiment

In fact, other portions of the specification contemplate automatic re-search of the route that Toyota contends to be disclaimed. Fig. 6-1 (described as “a flow chart showing a route guidance process carried out by the navigation device in accordance with Embodiment 1 of the

present invention”) reproduced below includes step ST24, which is “re-searching of a route including the next waypoint toward which the vehicle has been heading.”



'971 Patent, Fig. 6-1 (yellow box added). The accompanying specification portion discloses that if the navigation unit determines that the vehicle deviated from the route, then the route will be recalculated automatically and, as is seen from Fig. 6-1, without any user input. '971 Patent,

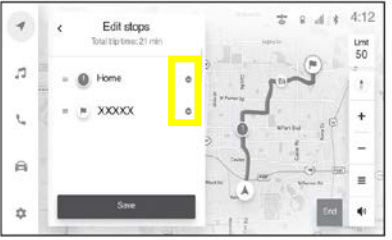
Col. 8:46-59. The fact that automatic re-searching of a route *without user's knowledge or participation* is a part of an embodiment of the invention further indicates that this feature was not disclaimed. *See Epistar Corp. v. ITC*, 566 F.3d 1321, 1335 (Fed. Cir. 2009) (“A patentee’s discussion of the shortcomings of certain techniques is not a disavowal of the use of those techniques in a manner consistent with the claimed invention.”); *see also Corelogic Info. Sols., Inc. v. Fiserv, Inc.*, No. 2:10-CV-132-RSP, 2012 U.S. Dist. LEXIS 135386, at *15-16 (E.D. Tex. Sep. 21, 2012) (This Court finding that “[b]ecause the specification criticizes ‘traditional regression models’ and simultaneously teaches using ‘regression modeling,’ the patentee did not manifestly exclude or restrict all regression models).

In sum, a single mildly-worded observation of inferiority of prior art features coupled with the inclusion of this supposedly-disclaimed feature in the embodiment of the invention is a strong indication that this feature was not disclaimed.

IV. MEL NAVIP DOES NOT ACCUSE SUPPOSEDLY DISCLAIMED FEATURES OF INFRINGEMENT

Even if the Court finds specification disclaimer (which the '971 Patent does not contain), it is important to determine the scope that was supposedly disclaimed. Toyota argues that what was disclaimed is the automatic recalculation of a route after a waypoint is bypassed. Motion at 10. But this is *not* what the specification characterized as “inferior.” The specification stresses that the object of the invention is to provide a navigation device “superior in user-friendliness . . .” '971 Patent, Col. 1:59-60. The problem with the prior art appears not to be the automatic reroute in and of itself. Rather characterization of “inferiority” stems from never affording the user an opportunity to adjust the route when automatic rerouting occurs “against the user’s own will.” *Id.* at 1:52-53.

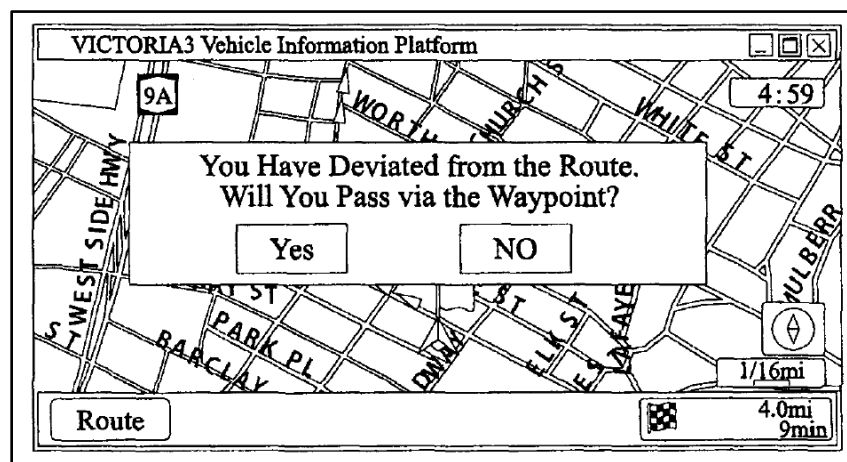
In its FAC, Mel NavIP sufficiently pleads facts demonstrating Toyota's infringement of each element of Claim 1 of the '971 Patent in Count III. For example, Toyota's Cloud Navigation "Re-calculating . . ." message reads on "output[s] a message . . ." of the claims. See FAC (Dkt. 8), Ex. 10. Further, Toyota's Cloud Navigation provides the $\ominus$ icon on the screen, pressing which Mel NavIP alleges corresponds to "input[ting] a command indicating whether or not to travel via said first next waypoint in response to the message outputted by said output unit." The following chart provides the allegations from the FAC with respect to the claim limitations highlighted by Toyota:

an output unit configured to output a message showing that a vehicle has deviated from a route leading to a first next waypoint toward which the vehicle has been heading when said route guidance unit determines that the vehicle has deviated from the route to a predetermined distance or more and is traveling along a route after said first next waypoint;	 Ex. 10 (yellow box added)
an input unit configured to input a command indicating whether or not to travel via said first next waypoint in response to the message outputted by said output unit	3 Touch [$\ominus$] for the destination you wish to delete. 

	Ex. 9 ² at 149 (yellow box added).
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Toyota's Cloud Navigation is "superior in user-friendliness" compared to the cited prior art because it alerts a user of recomputing of the route when a waypoint is bypassed and enables the user to determine how to handle a waypoint on a route which the user has bypassed according to the user's will, *i.e.*, by outputting a re-calculating message and accepting a user's command to determine how to handle a bypassed waypoint, such as pressing on the ⊖ icon, corresponding to the waypoint. Even if the prior art system discussed in the Background section were found to be disclaimed, Mel NavIP's allegations as to Toyota's Cloud Navigation accuses the features that were not characterized as "inferior," but rather correspond to "superior" user-friendly features.

To the extent Toyota argues that the above allegations do not meet the asserted claims because they differ from Fig. 7 of the '971 Patent (reproduced below), Toyota implicitly engages in premature claim construction.



'971 Patent, Fig. 7. Claim construction is inappropriate at the 12(b)(6) pleading stage. See *R+L Carriers, Inc. v. DriverTech LLC (In re Bill of Lading Transmission & Processing Sys. Patent*

² The FAC incorrectly refers to this exhibit as Exhibit 10, as a result of a typographical error.

Litig.), 681 F.3d 1323, at 1343 n.13 (Fed. Cir. 2012) (finding the district court's reliance on a “narrow construction of the patent's claims” at the pleading stage prior to conducting any discovery and “with no claim construction process undertaken . . . was inappropriate”); *see also Billjco v. Cisco Sys.*, No. 2:21-CV-00181-JRG, 2021 U.S. Dist. LEXIS 251455, at *12-13 (E.D. Tex. Nov. 30, 2021) (“At the 12(b)(6) stage, the parties have neither completed claim construction discovery nor briefed claim construction related issues. The Court therefore declines to determine at this juncture whether asserted method claims require multiple steps or which actors must perform those steps.”).

Not only is claim construction inappropriate at the pleading stage, but Toyota appears to force a construction that is inconsistent with established claim construction principles. Specifically, Toyota appears to improperly limit “output[ting] a message . . .” and “input[ting] a command . . .” to a single embodiment, “Embodiment 1.” *See* ’971 Patent, Col. 2:56-61 (refers to “preferred embodiments” and an exemplary “Embodiment 1” (emphasis added)). And “it is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.” *Epos Tech. Ltd. v. Pegasus Tech. Ltd.*, 766 F.3d 1338, 1341 (Fed. Cir. 2014) (quoting *Liebel-Flarsheim v. Medrad, Inc.*, 358 F.3d 898, 914 (Fed. Cir. 2004)).

Moreover, Toyota’s implied claim construction is inconsistent with the claim differentiation doctrine. Claim 3 of the ’971 Patent (which depends on claim 1) recites “the output unit outputs a waypoint list in which a list of the waypoints set by the setting unit is shown, and the route searching unit re-searches for a new whole route according to a new waypoint list which is acquired by changing the waypoint list” *Id.*, Claim 3 (emphasis

added). Accordingly, recalculating the route based on the change in the waypoint list is covered by claim 3 and also claim 1, which is broader. And construing claim terms to be limited to the embodiment shown in Fig. 7 thereby excluding subject matter expressly recited in a dependent claim would improperly narrow the scope of the claims.

Toyota's attempt to limit the scope of the claims to Embodiment 1 and Fig. 7 should be rejected, especially at the pleading stage.

V. CONCLUSION

A single innocuous statement in the specification does not amount to clear and unmistakable disavowal of claim scope required for specification disclaimer, especially in view of the inclusion of the supposedly disclaimed feature in the preferred embodiment. But even if it did amount to disclaimer, Mel NavIP accuses Toyota Cloud Navigation features that are different from the supposedly disclaimed ones. To the extent Toyota claims that the accused navigation features are different from Embodiment 1 that displays a message alerting the user that she deviated from the route and asking if she wants to bypass the waypoint, it implies an improper claim construction, consideration of which is premature at this stage. For all these reasons, Toyota's motion should be denied.

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Respectfully submitted,

/s/ Brandon G. Moore
 Dmitry Kheyfits
 dkheyfits@kblit.com
 Brandon G. Moore
 bmoore@kblit.com
 KHEYFITS BELENKY LLP
 108 Wild Basin Road, Suite 250
 Austin, TX 78746
 Tel: 737-228-1838

Fax: 737-228-1843

Andrey Belenky
abelenky@kblit.com
Hanna G. Cohen
hgcohen@kblit.com
KHEYFITS BELENKY LLP
80 Broad Street, 5th Floor
New York, NY 10004
Tel: 212-203-5399
Fax: 212-203-5399

Attorneys for Plaintiff
Mel NavIP LLC

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3) on August 11, 2022.

/s/ Brandon G. Moore

Brandon G. Moore