

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

MULLEN INDUSTRIES LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 6:22-cv-00145-ADA

JURY TRIAL DEMANDED

**PLAINTIFF MULLEN INDUSTRIES LLC'S
RESPONSIVE CLAIM CONSTRUCTION BRIEF**

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Plaintiff Mullen Industries LLC (“Plaintiff”) files its responsive claim construction brief pursuant to the Court’s Scheduling Order in this case. Dkt. 30.

I. INTRODUCTION

In this patent infringement action, Plaintiff asserts that Defendant Apple Inc. (“Apple”) infringes each of U.S. Patent Nos. 8,374,575, 9,204,283, 9,635,540, 11,096,039, 11,109,218, 11,122,418, 11,190,633, 11,234,117, and 11,246,024, and that Apple’s infringement has been willful. *See* Dkt. 25, First Amended Complaint, and accompanying exhibits Dkt. 25-1 to 25-9. Apple manufactures, develops, and tests infringing Mac Pro computers in this District, researches and develops the claimed processors of the accused products in this District, provides servers that enable location-based features and the delivery of directions between locations of interest, and sells the accused products including Mac computers, iPhones, iPads, iPod touch devices, and Watches in this District and nationwide. *E.g., id.*

For the reasons detailed herein, the Court should reject Apple’s proposed claim constructions, which amount to impermissible claim alteration, rather than interpretation. The Court should also reject Apple’s unsupported indefiniteness arguments. Apple’s attorney arguments unsupported by any declaration of a POSITA cannot establish with the requisite clear and convincing evidence that any claim is indefinite.

II. APPLICABLE LEGAL PRINCIPLES

The Court is intimately familiar with the legal principles of claim construction, including that commonly understood words carry their plain and ordinary meaning and need not be further construed. *E.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (“In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges.”); *mCom IP, LLC v. Woodforest Nat’l Bank*, No. 6:21-cv-989-ADA, 2022 U.S. Dist. LEXIS 79781 (W.D. Tex. May 3, 2022) (according several claim terms their “plain

and ordinary meaning” with no further construction); *Koss Corp. v. Apple Inc.*, No. 6:20-cv-00665-ADA, Dkt. 83, Claim Construction Order, at 1-2 (June 2, 2021) (according all disputed claim terms their “[p]lain and ordinary meaning” with no further construction) (Ex. 1).

Additional relevant legal authority is cited in-line below.

III. DISPUTED CLAIM TERMS

1. “wireless telephone”
8,374,575, Claims 1, 2, 3, 6, 8, 13, 26, 28, 30, 35, 37-38, 42, 44
11,234,117, Claims 1-48, 51-92
11,246,024, Claims 1, 4-14, 16, 18-20, 22-35, 37, 39-41, 43-44, 78
“wireless telephonic device”
11,109,218, Claims 11-15

Apple repeats the same flawed claim construction arguments for these claim terms that Apple raised, and Plaintiff rebutted, in Apple’s partial motion to dismiss. *See* Dkt. 29, at 14-17. Apple’s arguments fare no better here, as no evidence supports Apple’s proposed construction. Apple, instead of according these terms their plain and ordinary meaning, seeks to rewrite these terms in contravention of well-settled law by replacing the word “wireless” with the narrower term “cellular” or “cell,” notwithstanding that (i) the claims recite no such limitation and (ii) the shared specification expressly states that a cellular device is merely an example of a wireless device according to the patents’ teachings.

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning	“cellular phone or cell phone”
Overview: Plaintiff adopts the plain and ordinary meaning of these common claim terms, which are readily understood even by lay people and thus no construction is required. Apple seeks to rewrite these terms to replace the word “wireless” with the narrower term “cellular,” which amounts to impermissible claim alteration, rather than interpretation.	

Turning first to the claim language, the claims of the asserted patents recite a “wireless telephone” or a “wireless telephonic device.” These terms simply mean what they say, namely,

that each such device is capable of making telephone calls wirelessly. Nothing more is required. *Vitronics Corp. v. Conceptronic*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (“[W]e look to the words of the claims themselves ... to define the scope of the patented invention.”).

Indeed, had Plaintiff wanted to limit the claims to a “cellular phone,” Plaintiff knew how to do so but chose not to in regard to the claims at issue. *Cf.*, Dkt. 25-9, U.S. Pat. No. 11,246,024, dependent claim 46 (claiming that “said first wireless device and said second wireless device are cellular phones”). This claim differentiation, too, confirms that no such narrowing limitation appears in the claims reciting the broader terms “wireless telephone” or “wireless telephonic device.” *See Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004) (“As this court has frequently stated, 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.”).

There is also nothing in the plain and ordinary meaning of the claim language that limits the meaning of the word “telephone” to a device that transmits audio signals via a cellular communications connection, as opposed to, for example, a wireless internet connection. Accordingly, a device that is capable of making telephone calls via a wireless internet connection is within, and cannot be excluded from, the scope of the claims. *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012) (“It is the claims that define the metes and bounds of the patentee’s invention. The patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope.” (citation omitted)). Here, the applicant never redefined or disavowed the full scope of the terms “wireless telephone” or “wireless telephonic device,” nor does Apple even argue in its brief that lexicography or disavowal justifies narrowing the scope of the claims. *See* Dkt. 41, at 5-9.

Turning next to the specification, it confirms that the terms “wireless telephone” and “wireless telephonic device” carry their plain and ordinary meaning and are not limited to a “cellular phone” or “cell phone.” For example, the specification clearly describes “*cell phones ... and other locatable devices*.” Dkt. 25-6, U.S. Pat. No. 9,635,540,¹ at 4:23-24 (emphases added). The specification also expressly states that a cell phone is merely an example of a wireless device according to specification’s teachings. *Id.* at 7:7-8 (“wireless device (*e.g.*, cell phone)”) (emphases added). The specification further states that “[p]ersons skilled in the art will also appreciate that *devices other than cell phone 300 may be used to incorporate the features of the present invention*. Such devices could include, for example, personal digital assistants (PDAs), laptop, GPS pagers, GPS watches, car positioning devices, or any other devices that can be located.” *Id.* at 7:12-18 (emphases added).² In addition, the specification could not be clearer that its teachings are not limited to devices that communicate over a cellular communications network: “[c]ommunications network 1610 may include, for example, any type of communications, routing, amplification, encryption, decryption, parsing, modulation, or demodulation technologies.” *Id.* at 11:41-45; *see also id.* at 2:57-64, 5:8-10, and 9:66-10:1 (referring to devices that communicate via the “internet”). Accordingly, in light of the patents’ express teachings, the claims cannot be limited to the example embodiment of a “cellular phone” or “cell phone.” *Phillips*, 415 F.3d at 1323 (“[W]e have repeatedly warned against confining the claims to those embodiments” disclosed in that patent’s specification).

¹ Consistent with Apple’s practice in its opening claim construction brief (Dkt. 41), Plaintiff cites to the ’540 Patent, which has substantively the same patent specification as each of the asserted patents in the same family. Only the asserted ’633 Patent is from a different patent family.

² *See also id.* at 5:53-45 (“cell phone (or watch, clothing, PDA, or other positioning enabled device)”); 10:58-61 (“One or more wireless devices 1601 may be included in topology 1600 and may be, for example, watches, PDAs, cellular phones, radios, cars, or any other mobile device whose location can be determined.”).

Apple's arguments fall well short of establishing that the terms "wireless telephone" and "wireless telephonic device" must be construed to mean "cellular phone" or "cell phone."

First, Apple's argument that "a POSITA at the time of the invention" would have understood such claim terms to be limited to a "cellular phone" or "cell phone" is the epitome of attorney argument that is entitled to no weight. Dkt. 41 at 6. Apple's brief was not accompanied by an expert declaration nor that of any POSITA.

Second, Apple's argument that the titles of the asserted patents refer to "Cellular Phones" and thus "mak[e] clear the focus of the systems and methods of the invention, first and foremost, are cellular phones" is easily dismissed. *Id.* It is well-settled that patent titles do not limit the scope of the claims. *E.g., Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1312 (Fed. Cir. 1999) (noting "[t]he near irrelevancy of the patent title to claim construction"). The patents' titles are especially irrelevant here because, as discussed *supra*, the patents' shared specification repeatedly states that a cellular phone is merely an example.

Third, Apple's arguments regarding the specification fall well short of establishing lexicography that would limit the meaning of "wireless telephone" or "wireless telephonic device" to something less than the full scope of these terms' plain and ordinary meaning. *GE Lighting Sols., LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014) ("[T]he specification and prosecution history only compel departure from the plain meaning in two instances: lexicography and disavowal."); *Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1358 (Fed. Cir. 2004) ("Absent a clear disavowal in the specification or the prosecution history, the patentee is entitled to the full scope of its claim language."). In fact, Apple concedes that the specification "explains that a 'cell phone' or 'cellular phone' is an *example* of a 'wireless device' whose 'location can be determined,'" which alone establishes that applicant did not act as his own lexicographer. Dkt. 41

at 6 (emphases added). Apple’s further argument that the specification allegedly draws a “distinction ... between the location system’s primary use with cell phones and its potential secondary use with other devices” (*id.* at 7) also does not support Apple’s proposed construction. Even if a cell phone could be considered the specification’s “primary” embodiment, it does not limit the scope of the claims. The Federal Circuit has “expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment.” *Phillips*, 415 F.3d at 1323.

Fourth, Apple’s arguments regarding the prosecution history are incorrect, and do not establish disclaimer. *Mass. Inst. of Tech. v. Shire Pharm., Inc.*, 839 F.3d 1111, 1119 (Fed. Cir. 2016) (“[I]n order for prosecution disclaimer to attach, the disclaimer must be both clear and unmistakable.”); *id.* (“Where the alleged disavowal is ambiguous, or even ‘amenable to multiple reasonable interpretations,’ we have declined to find prosecution disclaimer.”) (citations omitted). Apple does not even attempt to make a “clear and unmistakable” showing of disclaimer, nor can it. Instead, Apple repeats the same flawed arguments from its partial motion to dismiss. Dkt. 41, at 7-8 (citing the exhibit to Apple’s motion, Dkt. 26-2). As Plaintiff showed in its opposition to Apple’s motion, Apple’s conclusion is a non-sequitur. *See* Dkt. 29, at 16-17. It is true that not all wireless devices are wireless telephones or wireless telephonic devices. But that does not mean that a watch or a computer cannot be a wireless telephone or a wireless telephonic device. In fact, the opposite is true—watches and computers that are capable of making telephone calls wirelessly are “wireless telephones” and “wireless telephonic devices” and the applicant did not clearly and unmistakably disclaim such claim scope during prosecution.

Accordingly, the Court should accord the terms “wireless telephone” and “wireless telephonic device” their plain and ordinary meaning and reject Apple’s proposed construction.

**2. “said user” / “said one user”
8,374,575, Claims 13, 38**

Apple feigns confusion when it argues that these terms render the claims indefinite. Apple concedes that the term “said user” in each claim possesses antecedent basis because the term “a user” appears earlier in the claim. Dkt. 41, at 10 (“Both claims proceed to require ... ‘a user’”). Moreover, from the context of the claim, the term “said one user” also possesses antecedent basis because it refers to the same “a user” and “said user” previously identified in the claim. Apple’s attorney argument, unsupported by any declaration of a POSITA, fails to meet Apple’s high burden of establishing with clear and convincing evidence that the claims are indefinite for failing to “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 910 (2014).

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	Indefinite
Overview: The parties agree that the term “said user” has express antecedent basis in the claims’ earlier recitation of “a user.” The term “said one user” also possesses antecedent basis because it refers back the same “a user” and “said user” previously recited in the claims. Apple cannot meet its high burden of establishing indefiniteness with clear and convincing evidence.	

Contrary to Apple’s argument (Dkt. 41, at 9-10), each of claims 13 and 38 of the ’575 Patent informs those skilled in the art about the scope of the invention with reasonable certainty. The text of these claims, which Apple omits from its brief, is instructive and is reproduced below.

13. A method comprising:
- determining a location of a first wireless telephone;
 - transmitting said location from said first wireless telephone to a remote server;
 - changing a list of users on said remote server for a profile associated with said first wireless telephone that are allowed to access said location, wherein each user of said list of users is representative of one of a plurality of wireless telephones;

transmitting an alert message, comprising information associated with said location, from said remote server to ***a user*** of said list of users when ***said user*** is within a certain distance of said location;

determining a second location associated with said wireless telephone associated with ***said one user***; and

providing directional information to said wireless telephone associated with said user, wherein said directional information is representative of directions between said location and said second location.

38. A method comprising:

obtaining a location of said first wireless telephone;

changing a list of users on a remote server for a profile associated with said first wireless telephone that are allowed to access said location, wherein each user of said list of users is representative of one of a plurality of wireless telephones;

transmitting an alert message, comprising information associated with said location, from said remote server to ***a user*** of said list of users when ***said user*** is within a certain distance of said location;

determining a second location associated with said wireless telephone associated with ***said one user***; and

providing directional information to said wireless telephone associated with said user, wherein said directional information is representative of directions between said location and said second location.

Dkt. 25-8, U.S. Pat. No. 8,374,575, at 13:55-14:6, 16:12-28 (emphases added).

Each claim recites, in order, “a user,” “said user,” and “said one user.” In the context of the claim language, it is evident in each claim that “***said user***” and “***said one user***” refer to the same user previously referenced in the claim, i.e., “***a user***.”

The specification also supports this reading of the claims. For example, the specification describes that User B associated with a wireless telephone can receive an alert message indicating that the location of User B’s wireless telephone is “within a certain distance” of User A’s wireless telephone. Dkt. 25-8, U.S. Pat. No. 8,374,575, 9:27-36 and Figure 11. This is an embodiment of what is claimed, and demonstrates that the meaning of claims 13 and 38 of the ’575 Patent is clear and understandable to a POSITA.

In *mCom IP*, this Court considered similar facts and found that the claims were not indefinite. 2022 U.S. Dist. LEXIS 79781, at *14. Like Apple argues here, the defendant argued

that the claim term “said active session” lacked antecedent basis or that its antecedent basis was unclear. Notwithstanding defendant’s argument, however, the Court found that the claim was not indefinite because “despite the lack of explicit antecedent basis for the term ... [the claim] has a reasonably ascertainable meaning ... in context.” *Id.* (citing *Energizer Holdings, Inc. v. Int’l Trade Comm’n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006) (“When the meaning of the claim would reasonably be understood by persons of ordinary skill when read in light of the specification, the claim is not subject to invalidity based upon departure from the protocol of ‘antecedent basis.’”)); *see also id.* at *19-23 (rejecting defendant’s argument that the term “said user-defined preferences” was indefinite for lack of antecedent basis). The Court should reach the same result here because, as discussed above, it is clear from the context of each claim that “said user” and “said one user” refer to the same user previously referenced in the claim, i.e., “a user.”

Accordingly, the Court should accord these terms their plain and ordinary meaning and reject Apple’s argument that these claims are indefinite.

**3. Whether all claimed method steps must be performed in order
9,204,283, Claim 1**

The Court should reject Apple’s argument that “each step of method claim 1 [of the ’283 Patent] must be performed in order.” Dkt. 41, at 12. While the plain language of the claim establishes that certain steps of claim 1 must complete before others (e.g., step [a] completes before step [b]), Apple’s blanket approach and conclusion that all steps must be performed in order is incorrect.³ Specifically, there is no basis to find that step [c] (“receiving on said first wireless telephonic device an input in a form of a login and a second manual input in a form of a password”) must be performed after steps [a] and [b]. Indeed, as the patent’s specification describes, step [c]

³ Labels [a] – [f] have been added to claim 1 of the ’283 Patent below for ease of reference.

could alternatively be performed before steps [a] and [b], and it would be legal error to exclude such an embodiment from the scope of the claims because a construction that excludes a preferred embodiment is “rarely, if ever, correct.” *E.g., C.R. Bard, Inc. v. United States Surgical Corp.*, 388 F.3d 858, 865 (Fed. Cir. 2004). The applicant also did not clearly and unmistakably disavow such claim scope through lexicography or prosecution history disclaimer, and Apple does not even argue lexicography or disclaimer in its brief. See Dkt. 41, at 11-15.

Apple is also incorrect to the extent it argues that each step must *begin and end* before another step begins, including because Apple has “provided no evidence to show why the [steps] could not be performed concurrently.” See *Ancora Techs., Inc. v. LG Elecs. Inc.*, No. 1:20-cv-00344-ADA, 2020 U.S. Dist. LEXIS 150002, at *14-15 (W.D. Tex. Aug. 19, 2020). Accordingly, to the extent any order is required amongst the claim limitations, such ordering only refers to the “completion of certain limitations ... [and] neither the claim language nor the specification requires an order to when the steps begin.” *Id.* (citing *Kaneka Corp. v. Xiamen Kingdomway Grp. Co.*, 790 F.3d 1298, 1306 (Fed. Cir. 2015) (“We also disagree ... that the claimed order requires that each step occur independently or separately.”)).

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	The claimed method steps must be performed in the order that the steps are recited. Alternatively: Indefinite
Overview: Apple argues incorrectly that all steps in method claim 1 of the ’283 Patent must be performed in order. Step [c] is not required to be performed after steps [a] and [b]. In addition, where certain other steps do recite an order, the order refers to when such steps must complete but does not limit when such steps must begin nor preclude the steps from being performed concurrently.	

It is well settled that “[u]nless the steps of a method actually recite an order, the steps are not ordinarily construed to require one.” *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1369 (Fed. Cir. 2003) (citation omitted). Tellingly, Apple ignores this principle of law in its brief.

Starting with the claim language, claim 1 of the ’283 Patent recites as follows:

1. A method comprising:

[a] displaying on a first wireless telephonic device a plurality of users, wherein each one of said plurality of users is associated to a different one of a plurality of wireless telephonic devices;

[b] receiving on said first wireless telephonic device a first manual input in a form of a selection of one of said plurality of users;

[c] receiving on said first wireless telephonic device an input in a form of a login and a second manual input in a form of a password;

[d] determining whether to allow access of location information for said one of said plurality of wireless telephonic devices associated to said selected one of said plurality of users, wherein said determination includes identifying said user of said first wireless telephonic device from said plurality of users using said login and determining said password is associated with said login and determining whether said selected one of said plurality of users has provided access rights for said location information to said user of said first wireless telephonic device, and said first wireless telephonic device is operable to assign location access rights to said one of said plurality of wireless telephonic devices associated with said selected one of said plurality of users for obtaining a location of said first wireless telephonic device;

[e] transmitting said location information from a server to said first wireless telephonic device; and

[f] displaying said location information on said first wireless device.

Dkt. 25-7, U.S. Pat. No. 9,204,283, at 12:63-13:25 (labels [a] – [f] added for reference).

The plain language of the claim establishes that certain steps must complete before others, including because “the language of a claimed step refers to the completed results of the prior step.” *Ancora Techs.*, 2020 U.S. Dist. LEXIS 150002, at *13 (citing *Kaneka Corp.*, 790 F.3d at 1306). Relying on Federal Circuit precedent, this Court has specifically endorsed the approach of construing a method claim by specifying the order in which certain steps must “complete,” without restricting or specifying when any such step must start. *Ancora Techs.*, 2020 U.S. Dist. LEXIS 150002, at *15-16 (“The Court finds that Claim 1 presents no restrictions on when any limitation

may start Instead, Claim 1 presents restrictions only on when certain actions must complete before another is also completed.”). The Court should adopt the same approach here.

Namely, step [a] must complete before step [b] completes because step [b] refers to a selection of one of the plurality of users previously displayed in step [a] (i.e., step [a] (“displaying ... a plurality of users”); step [b] (“receiving ... a selection of one of said plurality of users”).

Step [b] likewise must complete before step [d] completes because step [d] refers to a determination made in regards to the one of the plurality of users selected in step [b] (i.e., step [b] (“receiving ... a selection of one of said plurality of users”); step [d] (“determining whether to allow access of location information for ... said selected one of said plurality of users”)).

Step [d] must complete before step [e] completes because step [e] refers to transmitting the location information for which access is determined in step [d] (i.e., step [d] (“determining whether to allow access of location information for ... said selected one of said plurality of users”); step [e] (“transmitting said location information ...”)).

Step [e] must complete before step [f] completes because step [f] refers to displaying the location information transmitted in step [e] (i.e., step [e] (“transmitting said location information ... to said first wireless telephonic device”); step [f] (“displaying said location information ... on said first wireless device”)).

In addition, step [c] must complete before step [d] completes because step [d] refers to using the login and password received in step [c] (i.e., step [c] (“receiving ... an input in a form of a login and a second manual input in a form of a password”); step [d] (“identifying said user of said first wireless telephonic device from said plurality of users using said login and determining said password is associated with said login”)).

Contrary to Apple’s argument, however, step [c] need not be performed after step [a] and step [b] because nothing in the claim language imposes such a temporal requirement. For example, nothing in the claim precludes the “receiving ... an input in a form of a login and a second manual input in a form of a password” of step [c] from being performed before, or concurrent with, step [a] (“displaying ... a plurality of users”) or step [b] (“receiving ... a selection of one of said plurality of users”). That the claim language requires step [c] to be performed in regard to the same “first wireless telephonic device” identified in steps [a] and [b] through the use of antecedent basis (i.e., “receiving on *said* first wireless telephonic device ...”) is insufficient to impose a required temporal order. *Altiris*, 318 F.3d at 1369; *see also Axxess Int’l, Inc. v. Amag Tech., Inc.*, No. 2:16-cv-01360-JRG-RSP, 2017 U.S. Dist. LEXIS 187212, *12-14 (E.D. Tex. Nov. 10, 2017) (finding that the claimed “recording” limitation did not possess a required order because it was not “temporally tied” to any other claim limitations notwithstanding that it used antecedent basis to refer to “*the* access door” identified in earlier claim limitations).

To illustrate, and by way of example only, nothing in the claim precludes step [c] (receiving on the first wireless device an input in a form of a login and a password) from being performed before step [a] (displaying on the first wireless device a plurality of users). As another example, nothing in the claim precludes the simultaneous display on the first wireless device of (i) a plurality of users and (ii) field(s) for entry of a login and password, such that receiving an input in a form of a login and a password (step [c]) can occur before the receiving of an input in a form of a selection of one of the plurality of users (step [b]). The absence of claim language that excludes these scenarios renders Apple’s proposed claim construction improper. *E.g., Ancora Techs.*, 2020 U.S. Dist. LEXIS 150002, at *15 (“This Court ... finds no reason to impose all of the limitations on the claim steps that Defendants urge.”)

Turning to the specification, it also describes that step [c] need not be performed after step [a] and step [b]. That is, nothing in the “specification directly or implicitly requires [such] an order of steps.” *Mformation Techs., Inc. v. Research in Motion Ltd.*, 764 F.3d 1392, 1398 (Fed. Cir. 2014). In fact, the specification repeatedly refers to the receipt of an input in a form of a login and a password *without* requiring the same to occur after any other steps at all. The specification describes, for example, that a person “may login on a friend’s cell phone and determine the husband’s location” Dkt. 25-7, U.S. Pat. No. 9,204,283, at 3:5-7. In this embodiment, the receipt of the person’s login is indeed the very first step that is performed, before any other steps are performed. *See also id.* at 3:26-30 (same). This, too, precludes a finding that the receipt of the login and password of step [c] must occur after steps [a] and [b] because such a finding would impermissibly exclude a preferred embodiment in the specification from the scope of the claim.

As another example, the specification discloses in connection with Figures 13 and 14 that “[d]isplay screen 1300 allows for a user to log into a locating device” and “[d]isplay screen 1400 may be used by a user to enter a password.” *Id.* at 9:46-47, 9:64-67, Figures 13-14. Again, in these example embodiments, the specification contains no requirement that such login and password must be received only after other steps are completed. *Id.*

In still another example, the specification describes that “[d]atabase 1602 may, for example, be located in cell phone base station 1603 if database 1602 is utilized to assist in cell phone locating. Database 1602 may be utilized, for example, to store a history a of a device’s locations, a user’s list of assigned access rights to other users, a log of a user’s call activity, a log of a location initiations, a user profile, login/password information, or any other sort of information.” *Id.* at 10:53-60. Here again, nothing in the specification requires a temporal order for the receipt of a login/password or precludes it from being the very first step performed. *Id.*

Apple relies heavily on its argument that step 1703 (“Check Access Rights”) in Figure 17 allegedly requires to a user input a password after the user has requested a location. Dkt. 41, at 14. However, step 1703 does not refer to a user inputting a password or login. It instead refers to making “a call to a database storing a list of assigned access rights.” Dkt. 25-7, U.S. Pat. No. 9,204,283, at 11:47-50. And, nothing in the specification precludes the scenario wherein the user has already provided a login and password before the call to the database is made. Accordingly, the specification does not support Apple’s argument.

In view of the foregoing, the Court should reject Apple’s proposed construction that all steps of method claim 1 of the ’283 Patent must be performed in order, as well as Apple’s alternative argument that the claim is indefinite. Apple’s attorney argument regarding indefiniteness falls well short of establishing that the claim fails to “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus*, 572 U.S. at 910. In addition, the claim language, read in light of the specification’s embodiments discussed *supra*, does inform a POSITA about the scope of the claim with reasonable certainty.

No construction is required because the scope and meaning of claim 1 of the ’283 Patent is evident from the plain language of the claim. Nevertheless, to the extent the Court decides to construe the claim by defining an order of steps, and as the Court has done in similar circumstances, the Court should find that: step [a] must complete before step [b] completes; step [b] must complete before step [d] completes; step [d] must complete before step [e] completes; step [e] must complete before step [f] completes; and step [c] must complete before step [d] completes. The Court should hold that step [c] need not be performed after step [a] and step [b] because nothing in the claim language imposes such a temporal requirement. *See Ancora Techs.*, 2020 U.S. Dist. LEXIS 150002, at *14-15.

4. **“login”**
9,204,283, Claims 1, 8, 15
11,096,039, Claim 1
11,234,117, Claims 15, 17,⁴ 29
11,246,024, Claims 24, 53

The Court should reject Apple’s proposed construction, which erroneously seeks to rewrite the term “login” to include the same word plus additional words (i.e., “login to the location system”). *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999) (“Courts do not rewrite claims; instead, [courts] give effect to the terms chosen by the patentee.”); *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1374 (Fed. Cir. 2004) (“[C]ourts may not redraft claims”). The Court should also reject Apple’s proposed construction because its reference to “the location system” is unsupported and undefined. None of the claims recite a “location system,” and thus Apple’s reference to “the location system” would improperly inject ambiguity into the claims.

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning	“login to the location system”
Overview: “Login” is a commonly understood term and should be accorded its plain and ordinary meaning with no further construction required. The Court should reject Apple’s proposed construction, which erroneously seeks to rewrite the term to import an extraneous limitation (“to the location system”).	

Turning first to the claim language, none of the claims refer to a “location system.” Indeed, Apple admits this in its brief by acknowledging that “the location system” it seeks to import into the claims is “the location system that is described *in the specification*.” Dkt. 41, at 15 (emphases added). Accordingly, the Court should reject Apple’s proposed construction because when construing claim terms courts do not read embodiments from the specification into the claims.

⁴ Apple erroneously identifies claim 17 of the ’117 Patent in its brief, which does not recite the term “login.” Dkt. 41, at 15.

E.g., Phillips, 415 F.3d at 1323 (“[W]e have repeatedly warned against confining the claims to those embodiments” disclosed in that patent’s specification).

Apple also omits from its brief any real examination of the claims’ use of the term “login.” The table below reproduces the relevant language from each claim. On examination, it is clear that the claims do not recite any requirement that the “login” must be a “login to the location system.” This, too, weighs heavily against rewriting the claims in the way Apple proposes now.

9,204,283, Claim 1	“receiving on said first wireless telephonic device an input in a form of a login and a second manual input in a form of a password”
9,204,283, Claim 8	“receiving manual input entered into said wireless device that includes a login and a password”
9,204,283, Claim 15	“determining on a server whether said second wireless device has provided permission for said first wireless device to locate said second wireless device based, at least in part, on an identification of a login , that identifies the user of said first wireless device from a plurality of users, and password”
11,096,039, Claim 1	“user information is operable to be identified from a plurality of different user information by receiving at least a manually entered login from a first wireless device associated with said user information and a manually entered password associated with said login”
11,234,117, Claim 15	“receiving an input in a form of a login and a second manual input in a form of a password”
11,234,117, Claim 29	“receiving user information comprising a manually entered login associated with a user of said wireless telephone and a manually entered password associated with said login”
11,246,024, Claim 24	“receiving from said first wireless telephone information indicative of a login and a password”
11,246,024, Claim 53	“wherein said remote system is further capable of receiving a login and password from said second wireless device to identify a user of said second wireless device”

The specification likewise confirms that Apple’s proposed construction is incorrect. For example, as discussed in detail *supra* at Section III.3, the shared specification repeatedly discloses that the claimed “login” can be entered into a user’s device, without specifying a required temporal

order in connection with the same. *E.g.*, U.S. Pat. No. 9,204,283, at 9:46-47 (“[d]isplay screen 1300 allows for a user to log into a locating device”). Nor does the specification require that such a login can *only* serve to function as a “login to the location system” as Apple apparently argues now. That such a login may, in some embodiments, be utilized to verify a user’s identity does not mean that such a login can only be used to verify the user’s identify for the specific purpose of providing location-based features by a location system.

Accordingly, the Court should accord this claim term its plain and ordinary meaning and reject Apple’s proposed construction.

**5. Whether all claimed method steps must be performed in order
9,204,283, Claim 8**

As with claim 1 of the ’283 Patent (discussed *supra* at Section III.3), Apple again argues incorrectly that “all limitations of Claim 8 of the ’283 Patent [must] be performed in the order recited” (Dkt. 41, at 18) notwithstanding the presumption that no such temporal order is required. *Altiris*, 318 F.3d at 1369. And again, Apple has “provided no evidence to show why the [steps] could not be performed concurrently.” *Ancora Techs., Inc.*, 2020 U.S. Dist. LEXIS 150002, at *14-15 (citing *Kaneka Corp.*, 790 F.3d at 1306). Apple’s proposed construction is also incorrect because it fails to account for differences in the plain language of claims 1 and 8 of the ’283 Patent that affect whether certain steps are required to be performed in order.

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	The claimed method steps must be performed in the order that the steps are recited. Alternatively: Indefinite
Overview: Apple argues incorrectly that all steps of method claim 8 of the ’283 Patent must be performed in order. Steps [c], [d], [e], and [f] are not required to be performed after steps [a] and [b]. And, where the plain language of certain other steps does recite an order, the order refers to when such steps must complete but does not limit when the steps must begin nor preclude the steps from being performed concurrently.	

Claim 8 of the '283 Patent recites as follows:

8. A method comprising:

[a] displaying on a wireless device a first name associated to a first wireless telephonic device and a second name associated to a second wireless telephonic device;

[b] accepting a selection of said first name on said wireless device;

[c] receiving manual input entered into said wireless device that includes a login and a password;

[d] determining whether to transmit location information associated to said first wireless telephonic device from a server to said wireless device, wherein said determining includes performing an identification process based, at least in part, on said manual input to identify the user of said wireless device and determining whether said first wireless telephonic device has provided access rights for said location information for said identified user and said server is located remotely from said wireless device, said first wireless telephonic device, and said second wireless telephonic device, and said wireless device is operable to assign location access rights to said first wireless telephonic device for obtaining a location of said wireless device;

[e] transmitting said location information to said wireless device based on said determination; and

[f] displaying said location information on said wireless device.

Dkt. 25-7, U.S. Pat. No. 9,204,283, at 13:57-14:16 (labels [a] – [f] added for reference).

Similar to claim 1 of the '283 Patent, the plain language of claim 8 establishes that certain steps must complete before others, including because “the language of a claimed step refers to the completed results of the prior step.” *Ancora Techs.*, 2020 U.S. Dist. LEXIS 150002, at *13 (citing *Kaneka Corp.*, 790 F.3d at 1306).

Namely, step [a] must complete before step [b] completes because step [b] refers to a selection of a name associated to a first wireless telephonic device that was displayed in step [a] (i.e., step [a] (“displaying ... a first name associated to a wireless telephonic device”); step [b] (“accepting a selection of said first name”).

Step [c] must complete before step [d] completes because step [d] refers to use of the manual input including a login and a password that was received in step [c] (i.e., step [c]

(“receiving manual input ... that includes a login and a password”); step [d] (“performing an identification process based, at least in part, on said manual input”)).

Step [d] must complete before step [e] completes because step [e] refers to transmitting the location information based on the determination made in step [d] (i.e., step [d] (“determining whether to transmit location information ...”); step [e] (“transmitting said location information ... based on said determination”)).

Step [e] must complete before step [f] completes because step [f] refers to displaying the location information transmitted in step [e] (i.e., step [e] (“transmitting said location information to said wireless device”); step [f] (“displaying said location information on said wireless device”)).

As with claim 1 of the '283 Patent (discussed *supra* at Section III.3), Apple is incorrect to argue that step [c] must be performed after step [a] and step [b] because nothing in the claim language imposes such a temporal requirement. For example, nothing in the claim precludes the “receiving manual an input entered into said wireless device that includes a login and a password” of step [c] from being performed before, or concurrent with, step [a] (“displaying on a wireless device a first name associated to a first wireless telephonic device”) or step [b] (“accepting a selection of said first name on said wireless device”). Again, that the claim language requires step [c] to be performed in regard to the same “wireless telephonic device” identified in steps [a] and [b] through the use of antecedent basis (i.e., “receiving manual input entered into *said* wireless device ...”) is insufficient to impose a temporal order. *Altiris*, 318 F.3d at 1369; *Axcess Int'l*, 2017 U.S. Dist. LEXIS 187212, at *12-14. Apple’s proposed construction that step [c] must be performed after step [a] and step [b] would also impermissibly exclude from the scope of the claims the specification’s embodiments that do not impose such a restriction. *See supra* at Section III.3;

C.R. Bard, 388 F.3d at 865 (holding that a construction that excludes a preferred embodiment is “rarely, if ever, correct”).

The plain language of claim 8 renders Apple’s proposed construction incorrect for additional reasons. Specifically, in claim 8, steps [a] and [b] need not complete before steps [d], [e], and [f] because—unlike claim 1 of the ’283 Patent that expressly links steps [b] and [d] (i.e., step [d] refers back to “said *selected* one of said plurality of users” selected in step [b])—claim 8 contains no such requirement. That is, in claim 8, step [d] does **not** refer to the selection that occurs in step [b] and thus there is no temporal requirement that steps [a] and [b] must complete before step [d]. Likewise, because step [d] is not temporally linked to steps [a] and [b] in claim 8, steps [e] and [f] (which complete after step [d] completes) in claim 8 also are not restricted in regard to their temporal order relative to steps [a] and [b].

Accordingly, the Court should reject Apple’s proposed construction and argument that all steps of method claim 8 of the ’283 Patent must be performed in order, and Apple’s alternative argument that the claim is indefinite because Apple has not shown that a POSITA would not understand the scope of the claim with reasonable certainty. *Nautilus*, 572 U.S. at 910.

No construction is required because the scope and meaning of claim 8 of the ’283 Patent is evident from the plain language of the claim. Nevertheless, to the extent the Court decides to construe the claim by defining an order of steps, as the Court has done in similar circumstances the Court should find that: step [a] must complete before step [b] completes; step [c] must complete before step [d] completes; step [d] must complete before step [e] completes; and step [e] must complete before step [f] completes. The Court should also find that steps [c], [d], [e], and [f] need not be performed after steps [a] and [b] because nothing in the claim language imposes such a temporal requirement. *See Ancora Techs.*, 2020 U.S. Dist. LEXIS 150002, at *14-15.

**6. Whether all claimed method steps must be performed in order
9,635,540, Claim 1**

As with claims 1 and 8 of the '283 Patent (discussed *supra* at Sections III.3 and III.5), Apple fails to properly analyze which, if any, steps of claim 1 of the '540 Patent must be performed in temporal order. The Court should reject Apple's proposed construction that "all limitations of Claim 1 of the '540 Patent [must] be performed in the order recited" and Apple's alternative argument that the claim is indefinite. Dkt. 41, at 21-23.

PLAINTIFF'S PROPOSED CONSTRUCTION	APPLE'S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	The claimed method steps must be performed in the order that the steps are recited. Alternatively: Indefinite
Overview: Apple argues incorrectly that all steps in claim 1 of the '540 Patent must be performed in order. Step [a] is not required to complete before any of steps [b]-[g]. In addition, steps [b] and [c] do not have a required temporal order with regard to any other steps. The plain language of the claim requires certain other steps to have an order; however, such order refers to when such steps must complete but does not limit when the steps must begin nor preclude the steps from being performed concurrently.	

Claim 1 of the '540 Patent recites as follows:

1. A method of mobile-to-mobile locating, said method comprising:
 - [a] requesting a location of a first wireless device by a second wireless device from a server located remotely from said first and second wireless devices;
 - [b] determining that said second wireless device does not have location access rights for said first wireless device;
 - [c] asking said second wireless device if said location access rights are to be requested from said first wireless device after determining that said second wireless device does not have said location access rights for said first wireless device;
 - [d] requesting that said location access rights be assigned for said second wireless device by said first wireless device;
 - [e] assigning said location access rights on said server to said second wireless device by said first wireless device;
 - [f] storing said location access rights on said server;
 - [g] determining said access rights assigned by said first wireless device to said second wireless device on said server; and
 - [h] providing said location from said server to said second wireless device dependent upon said access rights.

Dkt. 25-7, U.S. Pat. No. 9,635,540, at 13:14-40 (labels [a] – [h] added for reference).

The language of the claim establishes that certain steps must complete before others, including because “the language of a claimed step refers to the completed results of the prior step.” *Ancora Techs.*, 2020 U.S. Dist. LEXIS 150002, at *13 (citing *Kaneka Corp.*, 790 F.3d at 1306).

Namely, step [a] must complete before step [h] completes because step [h] refers to providing the location requested in step [a] (i.e., step [a] (“requesting a location ...”); step [h] (“providing said location ...”)).

Step [b] must complete before step [c] completes because step [c] refers to asking if location access rights are to be requested “after” the determining in step [b] (i.e., step [b] (“determining that said second wireless device does not have location access rights ...”); step [c] (“asking ... if said location access rights are to be requested ... after determining that said second wireless device does not have said location access rights ...”)).

Step [d] must complete before step [e] completes because step [e] refers to assigning the location access rights that were requested to be assigned in step [d] (i.e., step [d] (“requesting that said location access rights be assigned ...”); step [e] (“assigning said location access rights ...”)).

Step [e] must complete before step [f] completes because step [f] refers to storing the location access rights assigned in step [e] (i.e., step [e] (“assigning said location access rights on said server ...”); step [f] (“storing said location access rights on said server”)).

Step [f] must complete before step [g] completes because step [g] refers to determining the location access rights on the server that were stored on the server in step [f] (i.e., step [f] (“storing said location access rights on said server”); step [g] (“determining said location access rights ... on said server”)).

Step [g] must complete before step [h] completes because step [h] refers to providing the location from the server “dependent upon” the access rights determined in step [g] (i.e., step [g] (“determining said access rights ... on said server”); step [h] (“providing said location from said server ... dependent upon said access rights”)).

Contrary to Apple’s argument, however, step [a] need not complete before any of steps [b]-[g] completes because nothing in the claim language imposes such a temporal requirement. For example, nothing in the claim precludes the “requesting a location ...” of step [a] from being performed after step [f] (“storing said location access rights on said server”). Indeed, the specification specifically contemplates such an embodiment. For example, database 1602 may store “assigned access rights” before location access is requested, which information can be accessed and utilized to assess future requests for access to location information. Dkt. 25-7, U.S. Pat. No. 9,635,540, at 11:6-10; *id.* at 11:66-12:2 (“Step 1703 may be employed for example, as a call to a database storing a list of assigned access rights for the requested device/user and finding if any access rights were assigned to the requestor’s identity.”).

Apple is also incorrect to argue that steps [b] and [c] have a mandatory order with regard to any other steps. For example, nothing in the claim precludes the “determining that said second wireless device does not have location access rights ...” of step [b] and the “asking ... if said location access rights are to be requested ... after determining that said second wireless device does not have said location access rights ...” of step [c] from being performed before step [a] (“requesting a location of a first wireless device ...”). In fact, the specification expressly discloses such an embodiment and thus there is no basis to exclude it from the scope of the claim. For example, in Figure 17, at step 1703 it can be determined that a device does not have access rights, and at step 1711 the user can be asked if access rights are to be requested. *Id.* at 11:66-12:2, 12:34-

37, Figure 17. In one embodiment, if the user declines to request access rights, the method then proceeds to step 1702 wherein the device requests a location. Accordingly, in one embodiment, steps [b] and [c] can be performed before step [a].

Accordingly, the Court should reject Apple's proposed construction that all steps of method claim 1 of the '540 Patent must be performed in order and its argument that the claim is indefinite.

No construction is required because the scope and meaning of claim 1 of the '540 Patent is evident from the plain language of the claim. Nevertheless, to the extent the Court decides to construe the claim by defining an order of steps, as the Court has done in similar circumstances the Court should find that: step [a] must complete before step [h] completes; step [b] must complete before step [c] completes; step [d] must complete before step [e] completes; step [e] must complete before step [f] completes; step [f] must complete before step [g] completes; and step [g] must complete before step [h] completes. The Court should also find that step [a] need not complete before any of steps [b]-[g] completes. In addition, the Court should find that steps [b] and [c] do not have a mandatory order with regard to any other steps (e.g., steps [b] and [c] could be performed before step [a]). *See Ancora Techs.*, 2020 U.S. Dist. LEXIS 150002, at *14-15.

**7. "at least in part, region-based"
11,096,039, Claim 1
11,234,117, Claim 29
"region-based"
11,234,117, Claim 35**

The Court should reject Apple's proposed construction, which improperly seeks to import embodiments from the specification into the claims. *E.g.*, *Phillips*, 415 F.3d at 1323 ("[W]e have repeatedly warned against confining the claims to those embodiments" disclosed in that patent's specification). The claims recite a location-based event that is "region-based" at least in part, which is clear and understandable on its face. Nothing supports Apple's proposal to limit these claim terms to the specification's examples of region-based event notifications that are "based on

the geographic location of the requested or requesting user (i.e., city, state, etc.).” The recitation of “etc.” in Apple’s construction is also undefined and would inject ambiguity into the claims.

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning	“based on the geographic location of the requested or requesting user (i.e., city, state, etc.)”
Overview: “Region-based” should be accorded its plain and ordinary meaning with no construction required. The Court should reject Apple’s proposed construction, which improperly seeks to import embodiments from the specification into the claims. The recitation of “etc.” in Apple’s proposed construction is also ambiguous and renders unclear how Apple seeks to improperly limit the meaning of these terms.	

Turning first to the claims, the relevant claim language recites that a location-based event is “region-based” at least in part, which is clear and understandable on its face and no construction is required. Contrary to Apple’s proposed construction, nothing in the claims requires that such region-based event must be “based on the geographic location of the requested or requesting user (i.e., city, state, etc.).” The relevant claims recite as follows:

1. A system comprising:

a remote system, wherein user information is operable to be identified from a plurality of different user information by receiving at least a manually entered login from a first wireless device associated with said user information and a manually entered password associated with said login, a location of said first wireless device is operable to be recorded on said remote system after said user information has been identified on said first wireless device and said location is associated with said user information and provided by said first wireless device to said remote server, a location-based event is operable to be provided based, at least in part, on said location of said first wireless device, wherein said located-based event is operable to be manually pre-selected from a list of at least three types of location-based events on a device, a location-based event notification is operable to be provided on said device as a result of, at least in part, location access rights of said device from said first wireless device, wherein ***a first one of said at least three types of location-based events is, at least in part, region-based***, and a second one of said at least three types of location-based events is, at least in part, distance-based.

Dkt. 25-5, U.S. Pat. No. 11,096,039, at 13:16-39 (emphases added).

29. A wireless telephone comprising:
 a processor;
 a positioning system for determining a location of said wireless telephone;
 and
 memory storing programming capable of:
 receiving user information comprising a manually entered login associated with a user of said wireless telephone and a manually entered password associated with said login;
 providing said location for recording on a remote system in association with said user information;
 selecting a location-based event that is based, at least in part, on a location of a second wireless telephone, wherein said location-based event is operable to be manually pre-selected from a list of at least three types of location-based events;
 and
 receiving a location-based event notification corresponding to said selected location-based event as a result of, at least in part, location access rights of said wireless telephone from said second wireless telephone,
 wherein *a first one of said at least three types of location-based events is, at least in part, region-based*, and a second one of said at least three types of location-based events is, at least in part, distance-based.

35. The wireless telephone of claim 29, wherein said programming is further capable of specifying said region, and *said region-based location-based event indicates that said location of said second wireless telephone is within said region*.

Dkt. 25-1, U.S. Pat. No. 11,234,117, at 15:42-67, 16:26-30 (emphases added).

Turning next to the specification, it too confirms that Apple's proposed construction is incorrect. The specification describes *examples* of region-based events that are based on whether a user is within a country, state, or city, but it is well-settled law that such examples cannot be read into the claims. *E.g., id.* at Abstract ("Other levels of location information that can be granted include, *for example*, proximities, states, and countries."), 9:22-24 ("Possible location access rights may be, *for example*, by country, state, city, exact location, or any other scope of location."), 9:27-36 (describing that Figure 11 shows "[e]xamples of alerts" including an alert when an individual enters a given city) (emphases added).

The Court should also reject Apple's proposed construction because its recitation of "etc." is ambiguous. Apple's proposed construction seeks to artificially limit what "regions" are covered

by the claims by including a parenthetical definition that begins with “i.e.,” reciting “city” and “state” thereafter, and then including the undefined recitation “etc.” It is unclear, for example, whether Apple’s proposed construction would include, or exclude, “region-based” events that correspond to regions including, for example, a part of a city (e.g., receiving an event notification when an individual enters or leaves the east side of Manhattan) or a region corresponding to another area (e.g., receiving an event notification when an individual enters or leaves a work or school building or a sports arena). All of such “regions” and “region-based” events are within the plain and ordinary meaning of the claims, and there was no lexicography or prosecution history disclaimer that would limit the meaning of the claims to something less than the full scope of their plain and ordinary meaning. Indeed, Apple does not even argue in its brief that the applicant acted as its own lexicographer or disclaimed claim scope during prosecution. *See* Dkt. 41, at 23-26.

Accordingly, the Court should accord these claim terms their plain and ordinary meaning and reject Apple’s proposed construction.

**8. “said first user information”
11,096,039, Claim 9**

Apple falls well short of establishing with clear and convincing evidence that the term “said first user information” in dependent claim 9 of the ’039 Patent is indefinite. Instead, read in the context of the claims, this term possesses antecedent basis and refers back to the “user information” of the “first wireless device” recited in claim 1 from which claim 9 depends.

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	Indefinite
Overview: This claim term possesses antecedent basis and refers back to the “user information” of the “first wireless device” recited in claim 1. Apple falls well short of showing that claim 9 is indefinite with clear and convincing evidence.	

Claims 1 and 9 of the ’039 Patent recite as follows:

1. A system comprising:

a remote system, wherein ***user information*** is operable to be identified from a plurality of different user information by receiving at least a manually entered login from ***a first wireless device associated with said user information*** and a manually entered password associated with said login, a location of said first wireless device is operable to be recorded on said remote system after said user information has been identified on said first wireless device and said location is associated with said user information and provided by said first wireless device to said remote server, a location-based event is operable to be provided based, at least in part, on said location of said first wireless device, wherein said location-based event is operable to be manually pre-selected from a list of at least three types of location-based events on a device, a location-based event notification is operable to be provided on said device as a result of, at least in part, location access rights of said device from said first wireless device, wherein a first one of said at least three types of location-based events is, at least in part, region-based, and a second one of said at least three types of location-based events is, at least in part, distance-based.

9. The system of claim 1, wherein said first wireless device is operable after said identifying of said user information on said first wireless device to provide a travel time between said location associated with ***said first user information*** and a third location associated with a third user information.

Dkt. 25-5, U.S. Pat. No. 11,096,039, at 13:16-39, 14:30-35 (emphases added).

Read in context, the recitation in claim 9 of “said first user information” refers back to the “user information” of the “first wireless device” recited in claim 1. Apple argues that the term “said first user information” must be found indefinite because it lacks express antecedent basis. Dkt. 41, at 26. However, as this Court has held, express antecedent basis is not required. *E.g.*, *mCom IP*, 2022 U.S. Dist. LEXIS 79781, at *14 (holding that the claim term “said active session” was not demonstrated to be indefinite because “despite the lack of explicit antecedent basis for the term ... [the claim] has a reasonably ascertainably meaning ... in context”) (citation omitted).

The Court should reject Apple’s argument that claim 9 of the ’039 Patent is indefinite.

**9. “said wireless telephonic device”
11,109,218, Claim 11**

As with the immediately preceding claim term, Apple again argues incorrectly that this claim must be held indefinite because a term recited in the claim allegedly lacks express antecedent

basis. Contrary to Apple’s argument, however, express antecedent basis is not required. In any event, the term “said wireless telephonic device” is understandable because it refers back to the “wireless device” recited earlier in the claim and thus the claim is not indefinite.

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	Indefinite
Overview: This claim term possesses antecedent basis and refers back to the “wireless device” recited earlier in the claim. Apple cannot demonstrate indefiniteness with clear and convincing evidence.	

Claim 11 of the ’218 Patent recites as follows:

11. A system comprising:
a wireless device operable to provide a display screen after a request from *said wireless telephonic device* for access to a first location of a first wireless device, wherein said display screen includes a map from the perspective of said wireless device, said display screen includes indicia on said map representative of said first location, said display screen includes indicia on said map representative of a second user according to a second location obtained from a second wireless device, and said display screen includes a distance from said wireless telephonic device to said first location, said display screen includes a compass, said display screen includes an address of said first location, and said display screen includes a travel time based on at least the first location and the location of said wireless telephonic device.

Dkt. 25-4, U.S. Pat. No. 11,109,218, at 14:24-40 (emphases added).

Read in context, the term “said wireless telephonic device” refers back to the “wireless device” recited earlier in the claim. In similar circumstances, this Court has held that the claim is not indefinite and the Court should reach the same conclusion here. *See e.g., mCom IP*, 2022 U.S. Dist. LEXIS 79781, at *14 (holding that the claim term “said active session” was not demonstrated to be indefinite because “despite the lack of explicit antecedent basis for the term ... [the claim] has a reasonably ascertainably meaning ... in context”) (citation omitted).

Apple’s argument regarding the “first wireless device” and “second wireless device” recited in claim 11 also does not support a finding of indefiniteness. Dkt. 41, at 27. These first

and second wireless devices are different than the claimed “wireless telephonic device” and do not change that such “wireless telephonic device” refers back to the “wireless device” recited earlier in the claim. The claimed wireless telephonic device is capable of “request[ing] ... access to a first location of a first wireless device.” Dkt. 25-4, U.S. Pat. No. 11,109,218, at 14:26-27. In addition, the claimed wireless telephonic device is operable to provide a display screen that “includes indicia ... representative of a second user according to a second location obtained from a second wireless device.” *Id.* at 14:31-34. There is no ambiguity.

The Court should reject Apple’s argument that claim 11 of the ’218 Patent is indefinite.

**10. “wherein said first event and second event are different”
11,190,633, Claim 1
“wherein each of said first event, second event, and third event is
different”
11,190,633, Claim 27**

Apple misconstrues the plain language of claim 1, which requires *both* (i) the existence of a “first event” and a “second event” (i.e., they are not the same event), and also (ii) that the first event and second event are “different.” Dkt. 41, at 28-30. Only by conflating these two separate and distinct requirements of the claim can Apple incorrectly argue that the claim is “broad enough ... to cover the situation where” the first event and second event are, for example, both text messages. *Id.*

Tellingly, Apple ignores the prosecution history in its brief, which confirms that the claims *cannot* be construed in the manner Apple proposes now. Indeed, the prosecution history makes clear that claimed first event and second event, which are further required to be “different,” cannot both be, for example, text messages or cannot both be incoming calls. Rather, the claim requires the first event to be, for example, an incoming call and the second event to be a text message, or vice versa (i.e., the events must be different). This is precisely why the Examiner held that an alleged prior art reference referring only to incoming call notifications does not satisfy the claims.

PLAINTIFF'S PROPOSED CONSTRUCTION	APPLE'S PROPOSED CONSTRUCTION
Plain and ordinary meaning	<p>“wherein said first and second events are different events but may be the same or different types of events”</p> <p>“wherein each of said first event, second event, and third event is a different event but may be the same or different type of event”</p>
<p>Overview: The Court should reject Apple’s proposed constructions, which conflate the separate and distinct claim requirements for (i) a “first event,” a “second event,” and a “third event” (i.e., they are not the same event), with the further requirement that (ii) the first, second, and third events are “different.” Apple also ignores the prosecution history, which clearly demonstrates that Apple’s proposed constructions are incorrect.</p>	

Claims 1 and 27 of the '633 Patent recite as follows:

1. A watch for use with a mobile telephonic device that provides notification of an incoming call, said watch comprising:

a watch band;

a second watch band;

a buckle, wherein said buckle is coupled to said second watch band; and

a device operable to receive first wireless communication signals associated with *a first event* and second wireless communication signals associated with *a second event* from said mobile telephonic device, *wherein said first event and second event are different*, said device includes a battery, said device includes motion sensing operable to distinguish between a plurality of different types of motion, said device is operable to provide first user-perceivable notification signals that are dependent upon said received first communication signals, and said device is operable to provide second user perceivable notification signals that are dependent upon said second communication signals.

27. The watch of claim 1, wherein said device is operable to receive third wireless communication signals associated with *a third event, wherein each of said first event, second event, and third event is different*, and said device is operable to provide third user-perceivable notification signals that are dependent upon said third wireless communication signals.

Dkt. 25-2, U.S. Pat. No. 11,190,633, at 6:48-67, 8:5-10 (emphases added).

Starting with the plain language of claim 1, the claim requires not only (i) a “*first event*” and a “*second event*” (i.e., they are not the same event), but also (ii) that the first and second events are “different.” This supports Plaintiff’s position that the claim does not cover a first event and a

second event that are, for example, both text messages or both incoming calls. To hold otherwise would ignore and conflate these two separate and distinct requirements of the claim. For similar reasons, the plain language of dependent claim 27 does not cover first, second, and third events that are, for example, all text messages or all incoming calls, because claim 27 likewise requires each of first, second, and third events (i.e., they are not the same event) and further requires that each such event is “different.”

The specification also supports this plain reading of the claims. For example, the specification refers to “different” events as events that are associated with different “type[s] of alert[s].” *Id.* at 5:32-36. The specification also refers to an incoming call and a calendar notification as “different” alerts. *Id.* at 2:41-44. Conversely, nowhere does the specification refer to two text messages as “different” events, or two to incoming calls as “different” events.

The prosecution history is also highly instructive. On March 19, 2019, applicant amended independent claim 15 (later renumbered as independent claim 1 in the ’633 Patent) to require (i) a “first event” and a “second event” and to further require (ii) that “said first event and second events are different.” Ex. 2, at p. 12 of the exhibit (i.e., the page numbered “2” at the bottom). On April 16, 2019, the Examiner mailed an Office Action rejecting the claims. Ex. 3, at p. 5 of the exhibit (i.e., the page numbered “Page 3” in the top-right corner). The Examiner stated that the primary reference, Chihara U.S. Pub. No. 2002/0068600A1, disclosed a first event corresponding to an incoming call. *Id.* (citing Ex. 4, at ¶ [0062]). However, importantly, the Examiner held that the fact that such reference disclosed receiving notifications of various incoming calls over time did **not** mean that the reference disclosed “first” and “second” events where such events were “different,” as Apple argues now. Rather, the Examiner expressly held that the Chihara reference did **not** disclose “a second event ... wherein said first event and second events are different.” Ex.

3, at pp. 5-6 of the exhibit (i.e., the pages numbered “Page 3” and “Page 4” in their top-right corners) (emphases added). The Examiner relied instead on secondary reference, Pinsky U.S. Pub. No. 2004/0204044A1, to allegedly disclose this feature. *Id.* (citing Ex. 5, ¶ [0019]). Critically, the cited portion of the Pinsky reference refers to notifications corresponding to “different” events—i.e., incoming phone calls, e-mails, and appointment reminders. Ex. 5, ¶ [0019]. Thus, the prosecution history, too, makes clear that the “different” first, second, and third events claimed in claims 1 and 27 of the ’633 Patent cannot all be, for example, incoming calls or cannot all be text messages like Apple urges now.

Accordingly, the Court should reject Apple’s proposed constructions and accord these claim terms their plain and ordinary meaning.

**11. “A wireless telephone comprising: ... a positioning system for determining a location of said wireless telephone”
11,234,117, Claims 1, 15, 29, 42, 73**

This claim term is clear and understandable on its face and requires no construction. The claim is directed to a “wireless telephone,” and the identified term recites “a positioning system for determining a location of said wireless telephone.” With reference to Figure 15, for example, the specification describes that a wireless telephone’s “Positioning System 1530” can include a GPS receiver, and thus, a GPS receiver is within the scope of the claims. There is no ambiguity, and Apple’s unsupported attorney argument does not establish that these claims are indefinite.

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	Indefinite
Overview: This claim term is clear and understandable on its face and no construction is required. As described in the patent’s specification, the claimed “positioning system ...” of the wireless telephone can be, for example, a GPS receiver in the wireless telephone. Apple’s unsupported attorney argument falls well short of demonstrating with clear and convincing evidence that these claims are indefinite.	

The term “a positioning system for determining a location of said wireless telephone” is clear and understandable on its face, and no construction is required. This term is also amply supported by examples in the patent’s specification, including, for example, the “GPS receivers ... incorporated into cellular phones” Dkt. 25-1, U.S. Pat. No. 11,234,117, at 4:42-45; *see also id.* at 10:33-36 (“Positioning system 1530 may be, for example, a GPS system or a similar positioning system. Positioning system 1530 may include its own receiver for receiving particular signals utilized in positioning cell phone 1500.”). It would be error to exclude the specification’s embodiment of a GPS receiver from the scope of the claims. *E.g.*, *C.R. Bard*, 388 F.3d at 865 (holding that a construction that excludes a preferred embodiment is “rarely, if ever, correct”).

Apple’s argument that these claims are indefinite because GPS systems can also include “satellites ... outside of the cell phone and not a part of it” is nonsensical. Dkt. 41, at 31. The claims are directed to the positioning system in the wireless telephone. Nothing in these claims precludes the wireless telephone’s positioning system (e.g., a GPS receiver or other positioning system) from being capable of communicating with external devices such as satellites, but such external devices are not recited in claims 1, 15, 29, 42, and 73 of the ’117 Patent.

Accordingly, the Court should reject Apple’s unsupported attorney argument that these claims of the ’117 Patent are indefinite.

**12. “programming is ... capable of displaying” / “programming is ... capable of ... displaying”
11,234,117, Claims 1, 3-4, 10-13, 15-16, 24-27, 31, 32, 37-40, 42, 53-54, 56-58, 60-61, 63, 68-71, 75, 79, 83, 88-91**

Apple again feigns confusion over the scope and meaning of the claims when it argues—with unsupported attorney argument—that these claims are indefinite. These claims refer in relevant part to a wireless telephone with a processor and computer programming that is capable of displaying certain information. There is no ambiguity. For example, as described in the patent’s

specification, the wireless telephone’s computer programming executing on the processor can cause such information to be output on a display screen of the wireless telephone.

PLAINTIFF’S PROPOSED CONSTRUCTION	APPLE’S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	Indefinite
Overview: These claim terms are clear and understandable on their face and no construction is required. For example, as described in the patent’s specification, the wireless telephone’s programming can cause information to be output on a display screen of the wireless telephone. Apple’s unsupported attorney argument does not establish that these claims are indefinite.	

These claim terms refer to computer programming that is “capable of displaying” certain information, which is clear and understandable on its face and no construction is required. For example, with reference to the patent’s specification, it describes that a cell phone may include “display screen 320.” Dkt. 25-1, U.S. Pat. No. 11,234,117, at 6:21-23. The specification further describes and shows various illustrative display screens of information (e.g., Figure 4) that can be output on display screen 320, and for which “[t]he programming for the feature may ... be stored in memory of the cell phone and executed by the processor.” *Id.* at 6:49-51. In other words, the wireless telephone’s processor and computer programming display information by causing such information to be output on the wireless telephone’s display screen 320. It would be error to exclude such an embodiment from the scope of the claims. *E.g.*, *C.R. Bard*, 388 F.3d at 865 (holding that a construction that excludes a preferred embodiment is “rarely, if ever, correct”).

Apple’s attorney argument that “[i]n general ... ‘programming’ is not capable of displaying, rather display screens are” does not establish indefiniteness. Dkt. 41, at 33. It is of no moment that the wireless telephone’s computer programming for displaying the recited information may cause such information to be output via a display screen, and nothing in the identified claims excludes such an embodiment from the scope of the claims. The Court should

reject Apple's erroneous attempt to read the term "display" as synonymous with the phrase "output via a display screen" and to exclude from the scope of the claim the operation of the claimed computer programming to cause such a display screen to output information.

Accordingly, the Court should reject Apple's argument that these claims are indefinite.

**13. Whether all claim elements of an *apparatus* claim must be performed in order
11,234,117, Claim 15**

As a preliminary matter, Apple argues incorrectly that claim 15 of the '117 Patent includes "method steps." Dkt. 41, at 35. It does not. Claim 15 is directed to an apparatus, not a method. The apparatus includes, for example, memory storing programming capable of functioning as recited in several claim elements. Importantly, "apparatus claims cover what a device *is*, not what a device *does*." *Paragon Solutions, LLC v. Timex Corp.*, 566 F.3d 1075, 1091 (Fed. Cir. 2009). Accordingly, an apparatus need only store programming "capable of" functioning in accordance with the recited elements to come within the scope of the claims; actual execution of the programming by the apparatus's processor is not required.

Even aside from the Apple's failure to acknowledge this fundamental difference between apparatus and method claims, Apple misreads the claim language when arguing that "all limitations" of claim 15 of the '117 Patent must "be performed in order." Dkt. 41, at 36. The plain language of the claim indicates that the apparatus must be "capable of" executing certain programming elements in an order. For other claim elements, however, no order is required.

PLAINTIFF'S PROPOSED CONSTRUCTION	APPLE'S PROPOSED CONSTRUCTION
Plain and ordinary meaning; not indefinite	The claimed method steps must be performed in the order that the steps are recited. Alternatively: Indefinite
Overview: Apple argues incorrectly that claim 15 of the '117 Patent—an apparatus claim— includes “method steps” that must be performed in order. Programming elements [c], [d], [f], and [g] are not required to be capable of completing execution after programming elements [a] and [b]. In addition, where the plain language of the claim requires that certain programming elements are capable of executing in an order, such order refers to when such programming elements must be capable of completing but does not limit when such elements must begin nor preclude the programming elements from executing concurrently.	

Claim 15 of the '117 Patent is an apparatus claim and recites as follows:

15. A wireless telephone comprising:
a processor;
a positioning system for determining a location of said wireless telephone;
and
memory storing programming capable of:
 [a] displaying a plurality of users, wherein each one of said plurality of users is associated to a different one of a plurality of wireless telephones;
 [b] receiving a first manual input in a form of a selection of one of said plurality of users;
 [c] receiving an input in a form of a login and a second manual input in a form of a password;
 [d] providing said login and said password to a remote server for use in determining whether to allow access of location information for said one of said plurality of wireless telephones associated to said selected one of said plurality of users, said determining including identifying a user of said wireless telephone using said login, determining said password is associated with said login, and determining whether said selected one of said plurality of users has provided access rights for said location information to said user of said wireless telephone,
 [e] assigning location access rights to said one of said plurality of wireless telephones associated with said selected one of said plurality of users for obtaining said location of said wireless telephone;
 [f] receiving said location information for said one of said plurality of wireless telephones from a server; and
 [g] displaying said location information.

Dkt. 25-1, U.S. Pat. No. 11,234,117, at 14:23-52 (labels [a] – [g] added for reference).

The plain language of the claim establishes that certain programming elements must be capable of executing before other programming elements; however, such a requirement does not apply to all programming elements identified above as [a]-[g].

Namely, programming element [a] must be capable of completing execution before programming element [b] completes execution because programming element [b] refers to the capability to receive a selection of one of a plurality of users that can be displayed by programming element [a] (i.e., programming element [a] (“displaying a plurality of users”); programming element [b] (“receiving ... a selection of one of said plurality of users”)).

Programming element [b] must be capable of completing execution before programming element [e] completes execution because programming element [e] refers to the capability to assign location access rights to a wireless telephone associated with “said selected” user selected by programming element [b] (i.e., programming element [b] (“receiving ... a selection of one of said plurality of users”); programming element [e] (“assigning location access rights to said one of said plurality of wireless telephones associated with said selected one of said plurality of users”)).

Programming element [c] must be capable of completing execution before programming element [d] completes execution because programming element [d] refers to the capability to provide a login and a password that can be received by programming element [c] (i.e., programming element [c] (“receiving ... a login and ... a password”); programming element [d] (“providing said login and said password to a remote server ...”)).

Programming element [d] must be capable of completing execution before programming element [f] completes execution because programming element [f] refers to the capability to receive location information for which access rights are determined according to information

provided by programming element [d] (i.e., programming element [d] (“providing said login and said password to a remote server for use in determining whether to allow access of location information ...”); programming element [f] (“receiving said location information ...”)).

Programming element [f] must be capable of completing execution before programming element [g] completes execution because programming element [g] refers to the capability to display location information received by programming element [f] (i.e., programming element [f] (“receiving said location information ...”); programming element [g] (“displaying said location information”)).

Contrary to Apple’s argument, however, programming element [c] need not be capable of completing execution after programming elements [a] and [b] because nothing in the claim language imposes such a requirement. For example, nothing in the claim precludes the “receiving ... a login and ... a password” of programming element [c] from executing before, or concurrent with, programming element [a] (“displaying a plurality of users”) or programming element [b] (“receiving ... a selection of one of said plurality of users”). In fact, for similar reasons discussed *supra* in Section III.3, such a requirement would impermissibly exclude from the scope of the claim the specification’s embodiments that do not impose such a restriction, and for which the receipt of a user’s login and password can be the first action executed by the processor before the display of users or the receipt of a user’s selection of such users from the display. *C.R. Bard*, 388 F.3d at 865 (holding that a construction that excludes a preferred embodiment is “rarely, if ever, correct”).

For similar reasons, because the timing of execution of programming element [c] is unrestricted in relation to the timing of execution of programming elements [a] and [b], the timing of execution of programming elements [d], [f], and [g] (which must be capable of completing

execution after programming element [c] completes execution as set forth above) is also unrestricted in relation to the timing of execution of programming elements [a] and [b]. For example, one embodiment contemplated and encompassed by the plain language of the claim is that programming elements [c], [d], [f], and [g] (relating to receiving a login and password, providing same to a remote server, receiving location information, and displaying the location information) are capable of executing before programming elements [a], [b], and [e] (relating to displaying a plurality of users, receiving a selection of one of the plurality of users, and assigning location access rights to a wireless telephone associated with the selected one of the plurality of users).

Accordingly, the Court should reject Apple's proposed construction and argument that all programming elements of claim 1 of the '117 Patent must execute in order, as well as Apple's alternative argument that the claim is indefinite. Apple has not shown that claim 1 fails to "inform those skilled in the art about the scope of the invention with reasonable certainty." *Nautilus*, 572 U.S. at 910.

The Court should accord claim 1 of the '117 Patent its plain and ordinary meaning. To the extent the Court decides to define an order in which the programming recited in the claim must be capable of executing, the Court should find that: programming element [a] must be capable of completing execution before programming element [b] completes execution; programming element [b] must be capable of completing execution before programming element [e] completes execution; programming element [c] must be capable of completing execution before programming element [d] completes execution; programming element [d] must be capable of completing execution before programming element [f] completes execution; and programming element [f] must be capable of completing execution before programming element [g] completes

execution. The Court should find that programming elements [c], [d], [f], and [g] need not be capable of completing execution after programming elements [a] and [b].

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court to adopt Plaintiff's proposed constructions for each of the disputed claim terms. The Court should reject Apple's proposed constructions and arguments as to alleged indefiniteness.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 9, 2022, I electronically filed the foregoing and the accompanying exhibits with the Clerk of Court using the CM/ECF system, which will send notification of such filing via electronic mail to all counsel of record.

/s/ Peter F. Snell
Peter F. Snell