IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

YONDR, INC.	*	
	*	September 22, 2025
VS.	*	
	*	CIVIL ACTION NO. 1:24-CV-1326
BE SMARTER, LLC	*	
JAMES GUERRA	*	

BEFORE THE HONORABLE ALAN D ALBRIGHT
MARKMAN HEARING (via Zoom)

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09:31 (Hearing begins.)

09:31 DEPUTY CLERK: A civil action in Case AU:24-CV-1326, Yondr, Incorporated, versus Be Smarter, LLC, James Guerra. Case called for a Markman hearing.

09:31 THE COURT: Announcements from counsel, please. Starting with the plaintiff.

09:31 MR. EARLE: Good morning, Your Honor. Robby Earle from Scott Douglass & McConnico on behalf of plaintiff Yondr, Incorporated. I'm joined today by my colleagues from the firm of Knobbe Martens, Steve Jensen and Jeremiah Helm.

09:32 THE COURT: Good morning, all.

And for defendant?

09:32 MR. GOLLWITZER: Good morning, Your Honor. Arthur Gollwitzer and my colleague Leisa Peschel on behalf of defendants Be Smarter and James Guerra. And Mr. Guerra also is on the conference call or the video.

09:32 THE COURT: We'll start with the claim term "locking means." And let me start with the defendant, please.

09:32 MR. GOLLWITZER: Your Honor, Arthur Gollwitzer again on behalf of defendants. We will take locking means in two separate parts, if that is okay with the Court.

09:32 First of all, in the Court's preliminary
09:32 constructions, we will -- we do feel like we have to
09:32 revisit the function in light of its important role in
09:32 both the claimed invention and the problem that
09:33 Mr. Dugoni, the inventor, sought to solve.
09:33 But with regard to the structure for
09:33 unlocking means, we think we can propose a reasonable,
09:33 maybe even mutually agreeable adjustment to the Court's
09:33 claim language that would address that issue for us.
09:33 So turning back to the invention and the
09:33 core of this whole dispute. I'm holding up to the
09:33 camera a simple pouch. This is a cloth, or in this
09:33 case, neoprene pouch. It opens. You can put a cell
09:33 phone inside it. It's not working real well. But it's
09:33 just a pouch that locks. Okay. This is what we're
09:33 talking about here. There's no fancy technology in
09:33 there. There's no computer chip. There's no
09:33 Bluetooth. It's a locking pouch.
09:33 So what was the -- what's the issue here?
09:33 What is the problem that the inventor was trying to
09:33 solve and what was his solution? And again, we touch
09:33 on this because it's critical to understanding locking
09:34 means and predetermined condition.
09:34 Let's see here.
09:34 Little trouble sharing my screen.

09:34 Okay. So straight from the inventor's
09:34 mouth, people use cell phones and other mobile
09:34 electronic devices in inappropriate places. He
09:34 describes this as a highly addictive, pernicious
09:34 problem.
09:34 How did he solve it?
09:34 The '788 patent discloses preventing a
09:34 user from accessing his or her own device. He says
09:34 that it is impenetrable, non-disengageable. That it
09:34 allows the user to keep that device in his or her
09:34 possession without being able -- without giving into
09:34 that temptation, that highly addictive temptation to
09:34 access it.
09:34 The key is Mr. Dugoni invented a way for
09:35 the user to keep that device until a certain condition
09:35 is met. And the claim terms need to reflect that.
09:35 But there is a fundamental tension
09:35 between that background and Yondr's claim
09:35 constructions. Right? If the goal is limit user
09:35 access, a claim construction that does not limit user
09:35 access, that makes it essentially illusory, leaves us
09:35 with nothing more than a simple locking case.
09:35 One quick aside. I think all counsel may
09:35 slip into the habit of referring to this as a pouch for
09:35 cell phones, but the patent is pretty clear here that

09:35 it -- this device, this purported invention can apply
09:35 to a tablet like an iPad or even a laptop. And that
09:35 will be maybe important down the road.
09:35 So with that background in mind, let's
09:35 look at that function for locking means.
09:35 In this slide, we show the portion of the
09:36 function that -- the beginning part that I think we all
09:36 agree on, at least partially securing the opening.
09:36 But Yondr's proposed construction and the
09:36 Court's preliminary construction leaves out the rest,
09:36 that without locking contingent on a condition, we just
09:36 have a locking pouch. We're leaving out a core aspect
09:36 of this invention. Okay? Unless the invention has
09:36 something more than a lock, it's just a -- it's just a
09:36 cloth container that holds -- it's a pouch that can
09:36 hold a phone that you can lock.
09:36 And we're not making this up. This isn't
09:36 coming out of whole cloth. Right? It's in the
09:36 patent's claims. Right? The additional description of
09:36 function that we include comes straight out of
09:36 Independent Claim 3. This is a good exemplary claim
09:36 because 1 and 2 are not at issue in the case.
09:36 So Claim 3 of the '788 patent, the only
09:36 remaining independent claim, tells us that the locking
09:36 means partially secures the opening, sure, but it does

09:37 so until a condition is met. It's in the claims. This
09:37 is the point of the invention.
09:37 And we asked if the invention -- if this
09:37 key concept is not in the term "locking means" and it's
09:37 not in predetermined conditions, as we discuss later,
09:37 Yondr would like that just to have plain and ordinary
09:37 meaning, we ask where is it? How does this purported
09:37 invention control the user's access to his or her own
09:37 phone, that highly addictive access?
09:37 Yondr tries to tell us in its brief that
09:37 it is the combination of limitations and not any single
09:37 one that provides the benefits of the invention.
09:37 But then when we take a look at the claim
09:37 element by element, which of course is how we do this,
09:37 how we analyze infringement and invalidity, how the
09:37 jury will be instructed, Yondr doesn't want that
09:38 qualifier anywhere in here even though that's the whole
09:38 point.
09:38 So respectfully, Your Honor, we believe
09:38 that something needs to be added to simply partially
09:38 securing the opening. Something in this invention has
09:38 to capture the concept that the user cannot access his
09:38 own device until the predetermined condition is met.
09:38 That's what the locking means does here.
09:38 Okay. If I may also address the

09:38 structure for unlocking means. And this is the one
09:38 where we -- the defendants propose that it be an
09:38 electronic signal transmitter. And maybe it helps if I
09:38 just remind us of where we're at. Right?
09:38 Defendants proposed electronic signal
09:38 transmitter. Yondr proposed a number of items and the
09:38 Court has preliminarily adopted that description. I
09:38 think we could live with a construction that included
09:38 both. Because the electronic signal transmitter, based
09:39 on language in the patent, is clearly part of Mr. --
09:39 part of the structure that would satisfy this
09:39 means-plus-function claim.
09:39 Mr. Dugoni used electronic signal
09:39 transmitter multiple times in the specification. Or
09:39 used that -- used the transmitter language, to be
09:39 clear, or language that implies that it must be there.
09:39 So for instance he says: The locking
09:39 means must be remotely engageable or disengageable.
09:39 That seems to require a transmitter. He says it --
09:39 when it receives a signal from a proximity transmitter.
09:39 He says the locking device may receive instructions to
09:39 unlock. It's equipped with a microprocessor configured
09:39 to receive Bluetooth or other wireless data signals.
09:39 The latter embodiments specifically includes
09:39 transmitting to or from the Internet.

09:39 Thus, for example, the locking means may receive instructions to lock when it is located in the geographical region. And locking means may receive instructions to unlock when it's outside that range.

09:40 So these are all descriptions of embodiments, understandably, but in a means-plus-function claim, when defining the structure of that claim, we look to the specification. And so we respectfully request that the Court include electronic signal transmitter in this proposed definition.

09:40 Your Honor, I think you asked us to address locking means first, so I can stop there, and unless the Court has questions, turn it over to the other side.

09:40 THE COURT: A response?

09:40 MR. JENSEN: Thank you, Your Honor. Steve Jensen for the plaintiff.

09:40 I think the Court had it right in its tentative proposed claim construction. With respect to the function, what counsel -- what Be Smarter is trying to do, I think we all understand, violates basic claim construction law as cited in our brief, the Creo Products versus Presstek case.

09:40 Counsel is trying to add something to the function that is not stated in the function. The claim

09:41 itself gives us the function, and that's what the case
09:41 law requires, a locking means for at least partially
09:41 securing the opening.
09:41 The other limitation that they are trying
09:41 to add is in a different limitation and it is in the
09:41 claim. It clearly limits the claim, but it does not
09:41 limit the locking means. And I think the Court got
09:41 that right.
09:41 If the Court has any further questions on
09:41 that, I'm happy to address it.
09:41 The -- with respect to the structure,
09:41 counsel is trying to add something here that I think is
09:41 a little bit of a slight of hand. The only thing
09:41 disclosed in the specification is an RFID -- on the
09:41 electronic side, there is a number of examples and I
09:41 think the Court has read them, looking at the
09:41 construction in Column 6 and 7 of both patents, that go
09:41 through a number of embodiments of locking means. And
09:41 it includes the plates and the latch and a magnetic
09:41 detacher.
09:41 And counsel showed the Court a pouch and,
09:42 you know, remarkably these pouches look exactly the
09:42 same. And the way these look, work -- the current
09:42 ones, you click something in. There's no electronics
09:42 in it. There is a unlocker. And all you have to do to

09:42 unlock it -- and it's in a magnet -- is touch it on to
09:42 that and it's unlocked. Right? That is one of the
09:42 embodiments disclosed in the patent and the embodiment
09:42 that the defendants are using.
09:42 So there's all of these different
09:42 embodiments. You could walk to an exit. You could
09:42 walk to a specific room. You can have a key and find
09:42 the venue staff to unlock it. All of those take that
09:42 out of the -- out of the control of the person who owns
09:42 the cell phone.
09:42 They are turning to the electronic and
09:42 trying to broaden the claim, it appears to be, to be a
09:42 transmitter in the locking means. But the only thing
09:42 disclosed from a transmitter or electronic is an RFID
09:43 wireless transmitter pair. And in an RFID, the RFID
09:43 would be in the -- there would be a receiver in the
09:43 pouch and the locking and the unlocking means would
09:43 have some kind of transmitter. Right? So there's a
09:43 little bit of backwards work here.
09:43 The electronic signal transmitter that
09:43 he's talking about, I don't find anywhere in the spec.
09:43 In any of the cites he put up there, that would be part
09:43 of the unlocking means, which would potentially in that
09:43 embodiment, might be transmitting to a geographic area
09:43 or in a particular room or an RFID Bluetooth type of

09:43 1 situation.
09:43 2 That's all I have unless Your Honor has
09:43 3 some other questions for that.
09:43 4 THE COURT: Anything else from defendant?
09:43 5 MR. GOLLWITZER: Your Honor, if I may
09:43 6 make two points.
09:43 7 One -- I'll share my screen again.
09:43 8 The -- we're not adding limitations from
09:43 9 out of whole cloth or the specification. When
09:44 10 addressing the function of locking means, it's right
09:44 11 there in the phrase that comes right before locking
09:44 12 means, until a predetermined condition's met, that's
09:44 13 where it comes from.
09:44 14 As far as the other point about the
09:44 15 electronic signal transmitter, I might not have been
09:44 16 clear enough. We're talking about the structure for
09:44 17 the unlocking means at this point. And it says -- I
09:44 18 mean, the best example is right at the top of the
09:44 19 second column: Includes transmitting information to
09:44 20 and from the Internet. That is an electronic signal
09:44 21 transmitter.
09:44 22 There's no other way to get information
09:44 23 to and from the Internet other than electronically, so
09:44 24 this is -- and we're not saying this is the only
09:44 25 structure. Right? We're suggesting tack this on to

09:44 the proposed structure the Court already came up with
09:44 for the unlocking means.
09:44 THE COURT: Anything else from plaintiff?
09:44 MR. JENSEN: Just that I think I already
09:44 said it, that the only structure is an RFID
09:45 microprocessor Bluetooth, that's the only electronic
09:45 structure disclosed for the unlocking means. Where
09:45 there -- all the other manual ones, where there's all
09:45 the ones that I already talked about.
09:45 Thank you, Your Honor.
09:45 THE COURT: I'll be back in a second.
09:45 (Pause in proceedings.)
09:46 THE COURT: Okay. The Court is going to
09:46 maintain its preliminary construction.
09:46 The second claim term we have to take up
09:46 is "means for unlocking."
09:46 I'll start again with the defendant,
09:47 please.
09:47 MR. GOLLWITZER: Yes, Your Honor. I may
09:47 have caused some confusion here by lumping these
09:47 together. So the structure of means for unlocking is
09:47 where we believe electronic signal transmitter may be
09:47 at.
09:47 THE COURT: Okay.
09:47 MR. GOLLWITZER: Court's construction.

09:47 THE COURT: Okay. Then we can move on to the next one, "configured to unlock."

09:47 MR. GOLLWITZER: And, Your Honor, on this point, I'm not sure there's -- there was an exchange of e-mails -- I guess there's been an e-mail from opposing counsel late last night and one from me this morning. But without waiving their position, I think they don't believe we need to argue this term today in light of the Court's preliminary construction.

09:47 THE COURT: Okay.

09:47 MR. GOLLWITZER: Unless --

09:47 MR. JENSEN: That's correct, Your Honor.

09:47 THE COURT: Okay. Next up, I have "predetermined condition."

09:48 MR. GOLLWITZER: Yes, sir. All right. On behalf of defendants, Your Honor, this is the final term that we need to discuss because, like locking means, they go hand in hand, right?

09:48 As we can see from the claim language -- I'll share this again.

09:48 The predetermined -- the lock, the device, the pouch that Mr. Jensen showed us, this simple pouch is what locks. Like many devices for hundreds of years, it is locked until a predetermined condition is met.

09:48 So if the concept of unlocking --
09:48 THE COURT: And what is that predetermined condition?
09:48 MR. GOLLWITZER: Well, that's a good question, Your Honor. And Ms. Peschel is going to address part of that.
09:48 The specification refers specifically to time and geographic region. We're talking about phones in school, after school is over, outside of the school premises. But I'm not sure that's clear enough to know.
09:49 But let's just for the sake that there are dependent claims that make the specific point. And there are, I believe, independent claims in the '078 patent that specifically refer to one or the other, but there's some ambiguity there.
09:49 But the core point here is, when used sort of generically without that qualifier as we have in Claim 3, Mr. Dugoni seems to believe he invented the concept of a locking pouch that unlocks only when the condition is met. This was his statement about allowing the user to keep possession of his or her device instead of having to leave it.
09:49 So he explains that people don't like that. Right? If you go to a comedy club, you go into

09:49 a concert, you don't necessarily want to leave your
09:49 phone at the front desk. I mean, there's courts in
09:49 this country, Your Honor, where they -- in the Southern
09:49 District of New York where they make you leave your
09:49 phone in a lockbox at the -- at the front -- the CSO's
09:50 front desk. People don't like that. Right?
09:50 So the idea behind this invention is you
09:50 can keep your device, and despite its addictive nature,
09:50 you can't unlock it until a condition is met.
09:50 So Yondr would like to leave this for
09:50 plain and ordinary meaning. And we think if this is
09:50 not embodied in the function of the locking means, that
09:50 it needs to be captured here in the definition of
09:50 "predetermined condition," that this device only
09:50 unlocks under certain -- in certain situations and a
09:50 jury would need to understand that. That would be
09:50 helpful to the jury.
09:50 We can add, by the way, in plaintiff's --
09:50 excuse me, in defendant's proposed construction, we
09:50 said the lock is programmed to allow access. When
09:50 dealing with the phrase "configured to unlock," the
09:50 Court decided to treat that as designed to or made to.
09:50 We could live with that here as well.
09:50 The point is predetermined condition
09:50 shouldn't be left to plain and ordinary meaning. And

09:51 that is shown best, again, when looking at Yondr's own
09:51 statement that it is a combination of limitations, not
09:51 any single one, that provides the benefits of the
09:51 invention.
09:51 But at the end of the day, the Court
09:51 needs to instruct the jury. And if no element contains
09:51 the core concept of this invention, we think the jury
09:51 will be left without a complete understanding and might
09:51 look at just a simple fabric pouch with a lock and
09:51 think that's good enough.
09:51 I'd add one other point here, and that is
09:51 this predetermined condition was important to
09:51 allowability. In the application for the '078 patent,
09:51 the second patent at issue in this case and they stem
09:51 from the same seminal application and have the same
09:51 specification, the examiner rejected numerous claims of
09:51 the '078 patent.
09:51 And I believe I'm sharing my screen
09:51 again.
09:51 I have a picture of this Stewart
09:52 reference. It's a pouch with a cell phone in it. And
09:52 in the response to this rejection, Yondr and Mr. Dugoni
09:52 further limited the claim. They added based on a
09:52 predetermined condition to the claim. That has to mean
09:52 something. It has to make this invention narrower or

have that extra element that Yondr was arguing Stewart didn't have.

So I guess I'll close this section, Your Honor, with the -- a question, which is if the concept of the user not being allowed to unlock the pouch -- remember, Mr. Dugoni said it was impenetrable -- if that's not in these claims, where is it? Or more importantly, I'd ask Yondr what is the inventive concept here? What do we have that makes this a patentable invention other -- when, as you've seen from the videos, we've both held up a fabric pouch with a lock.

THE COURT: A response?

MR. JENSEN: Okay. Thank you, Your Honor.

The limitation that Be Smarter's trying to add really just restates the word "predetermined condition" with "preestablished requirement." That doesn't seem to help the jury any more than predetermined condition.

And then restates a bunch of language that is, again, in a different claim element stating it slightly different. This is in the claim. Contrary to what my esteemed counsel has said. It says: Operative to become locked so that the user is unable to access

his own mobile electronic device contained therein.

That's in two elements above. That language is already there in the claim. And then it is until a predetermined condition is met. And yes, that was added to the claim. And it was -- and it is part of the invention.

And what it has to do with and is explained in several embodiments in the spec, the predetermined condition is something that the user or the -- it can be manually, it can be electronic, it can be from the event staff, it can be a key, but it is out of the control of the user except the user can walk to the exit, the user can find a detacher, the user can find a key, and Stewart was different.

Stewart didn't require predetermined condition. Stewart, the user could open any time he wanted. Didn't have to satisfy any condition.

And so we think the Court got it right in its construction. This is understandable to the jury, just as much as preestablished requirement would be. And this of course will be explained by the experts and the examples will be elucidated to the jury. I think the jury will understand this, and I think the Court got it right.

THE COURT: I will say, I am -- by

09:54 defense counsel's -- so what exactly is the invention
09:55 here? What did the inventor invent?
09:55 MR. JENSEN: So the --
09:55 THE COURT: What separates this from just
09:55 being a container that you put your phone in?
09:55 MR. JENSEN: Yeah. What separates this
09:55 from the art as done in the -- in the prosecution
09:55 history, the art cited, was the addition of the term
09:55 "predetermined condition." Right? In other words, you
09:55 can't just unlock the case without there being a
09:55 predetermined condition met.
09:55 Those are described in the spec as being
09:55 something like you got to walk to the exit. You got to
09:55 leave the venue. You got to go to the bathroom and it
09:55 will be -- there'll be an unlocker there. Or it will
09:55 be automatically unlocked there.
09:55 So when you put this pouch -- when you
09:55 put your phone in this pouch, right, and it is locked,
09:55 the user, as stated in the claim, cannot access it
09:55 until that predetermined condition is met.
09:55 THE COURT: Okay. How does he set the
09:55 predetermined condition?
09:55 MR. JENSEN: Say that again, Your Honor.
09:55 THE COURT: Sure. How is the
09:56 predetermined condition set?

09:56 MR. JENSEN: Oh, the predetermined condition is -- it separates the unlocking and the control of locking. So it gets locked and the --

09:56 THE COURT: But how do I set the predetermined condition?

09:56 MR. JENSEN: I'm -- the venue would set the predetermined condition. Right?

09:56 THE COURT: What is the venue?

09:56 MR. JENSEN: So it could be the school where your kids go to school. It could be a comedy club. It could be the opera. So the venue that you're attending this, you want to go, could be church, any of these things. You walk in and you have to lock the pouch and the venue sets the predetermined condition for you being able to unlock it.

09:56 Whether it's with -- if you walk out. So you're in the chapel of your church, you have to put your cell phone in your pouch. You walk out, there's a magnetic detacher. As you walk out, you tap it and you have access to your phone again. But the venue put that at the exit.

09:57 THE COURT: Got it.

09:57 MR. JENSEN: He couldn't access it until you met that predetermined condition. Does that make sense, Your Honor? Did I answer your question?

09:57 THE COURT: It does. Absolutely you did.
09:57 Okay. Did you have anything else to say with regard to the claim term?
09:57 MR. GOLLWITZER: No, sir.
09:57 MR. JENSEN: No.
09:57 THE COURT: I'll take it from both of you. I'll be back in a second.
09:57 (Pause in proceedings.)
09:58 THE COURT: The Court is going to maintain its preliminary construction.
09:58 I think that takes care of -- also takes care of "until a predetermined condition is met," but if I'm wrong about that, please let me know.
09:58 MR. GOLLWITZER: No, Your Honor. I mean, the only suggestion there was if the "programming" term was problematic for the Court, we suggested maybe go with designed to or made to, as the Court has done with configured.
09:58 THE COURT: Okay.
09:58 MR. GOLLWITZER: With that, Your Honor, I'll turn it over to Ms. Peschel, who will address "associated with" and some remaining issues.
09:58 THE COURT: Okay.
09:58 MS. PESCHEL: Good morning, Your Honor. I want to address associated with. And,

09:58 Mr. Gollwitzer, can you put up Slide 15 for me, please?
09:58 THE COURT: Actually, if you'll give me just one second. I want to check something with my clerk. I'll be right back.
09:58 (Pause in proceedings.)
10:03 THE COURT: Okay. Thank you for that.
10:03 Yes, ma'am. Please.
10:03 MS. PESCHEL: All right. Your Honor, the next term that we're dealing with is -- really comes only from the '078 patent. And in those independent claims, there are phrases that limit the predetermined condition to being associated with something. And we maintain that that should be held indefinite.
10:03 On what I'm showing as Slide 15, I have the dichotomy of the two different patents. So the '788 patent and the '078 patent at issue share the same specification. But the claims in this respect are different.
10:03 So on the left is from the '788 patent. I really want to focus on Claim 7, which depends from Claim 3. Claim 7 says: Wherein the predetermined condition is physical presence outside of a defined geographical region. So in that sense, it's defining what that predetermined condition actually is.
10:04 In contrast, in all of the '078 claims,

10:04 we have this "associated" phrase. In Claim 1, it's based on a predetermined condition associated with a geographic region. Very similar in Claim 9. And at the bottom of this slide on the right, I have part of Claim 15, which is the predetermined condition being associated with a physical presence of the case being outside of a defined geographical region.

So between Claim 7 of the '788 patent and Claim 15 of the '078 patent, they have very similar language but the distinction is this is versus associated with.

And typically when we have different words in related patents and related claims, we presume they have a different meaning. And you would go into the specification, and like some of the cases that have been cited in the parties' briefing, you would find examples or discussion in the specification that delineates what that difference in scope is.

And that just doesn't exist here. Nothing -- there's nothing in the specification that's determining the bounds of how far associated will reach and who determines it.

Can we go to the next slide?

MR. GOLLWITZER: Yes. Trying.

MS. PESCHEL: And so in the parties'

10:05 1 briefing, there's been a lot of discussion of the
10:05 2 examples in the specification. But those examples
10:05 3 really indicate when the predetermined condition is
10:05 4 something to do with a geographic region. When it's
10:05 5 the user must go to a specific location. That's
10:05 6 physical presence of the case outside of defined
10:05 7 geographical region according to Yondr.
10:05 8 The question is, what does it mean when
10:05 9 it's just associated? How do we determine how far that
10:05 10 is?
10:05 11 Can we go to the next slide?
10:05 12 And I think it's particularly problematic
10:06 13 when we consider the embodiment that Yondr claims is
10:06 14 covered underneath these claims, which is just the
10:06 15 manual unlocking embodiment, that you have a pouch with
10:06 16 a lock and it can be manually unlocked somehow. And
10:06 17 you just have to find the key or you have to find the
10:06 18 detacher in order to unlock it.
10:06 19 And so, you know, what I want to raise is
10:06 20 a hypothetical. If we have a classroom -- and as Yondr
10:06 21 explained earlier, it's the venue, it's the staff.
10:06 22 It's the school that's setting this predetermined
10:06 23 condition.
10:06 24 Well, how do we know what the
10:06 25 predetermined condition is and whether it's associated

10:06 with a geographic region if it's that you can't use
10:06 this in my class? Is that a geographic region? Is
10:06 that a time restriction? How do we classify that
10:06 predetermined condition?
10:06 And in the case where it's physical
10:07 presence outside of a geographic region, does it make a
10:07 difference if the teacher's standing with the key or
10:07 the detacher inside or outside of that classroom? If
10:07 you can -- if the user, the person whose cell phone is
10:07 in the pouch, can get it unlocked inside the classroom,
10:07 well, was that predetermined condition really physical
10:07 presence outside or is it associated with physical
10:07 presence outside of its geographic region?
10:07 These are real scope issues. And it's
10:07 hard and it's impossible from the specification to be
10:07 able to figure out how far exactly associated with goes
10:07 as compared to is in the '788 patent.
10:07 And for that reason, we would ask that
10:07 the Court would find it to be indefinite.
10:07 THE COURT: A response?
10:07 MR. JENSEN: Thank you, Your Honor.
10:07 A couple things. First, the
10:07 specification makes clear that you could be leaving.
10:08 It could be at an exit. You could unlock it at the
10:08 exit. There could be an unlocker at the exit. The --

10:08 you could leave the geographic location. There could
10:08 be certain rooms you go to to be unlocked, like the
10:08 restroom. Right? That could be the thing. So that
10:08 "associated with" is an understandable term.
10:08 And it's important I think to note that
10:08 in our declaration we submitted, our expert talks about
10:08 this at length. He doesn't just draw a conclusion, he
10:08 goes through Paragraphs 27 through 36 to explain how
10:08 this is understood, going through the various
10:08 embodiments in the specification on how geographic
10:08 location is explained in the spec.
10:08 It actually sounds like a classic fact
10:08 issue for the jury to decide. Claim construction is
10:08 not intended to take away all the factual issue. Is --
10:08 and there is -- there's some dependencies that we
10:08 discuss in our brief, but more importantly, the
10:09 amendment -- and Ms. Peschel mentioned time versus
10:09 geographic region.
10:09 The amendment -- there was some
10:09 discussion in the file history of it being allowable
10:09 based upon a time period. The amendment was to add the
10:09 predetermined condition based on a geographic location.
10:09 That's the thing that was put into the claims.
10:09 So what we know we're talking about is a
10:09 location, whether it is go to a room, leave a room,

leave the area. There's geofences talked about in the spec. There's exits talked about in the spec. There's go to the foyer talked about in the spec. There's go to the restroom, go to the lobby. All of these things are addressing location.

And our expert explained that a person of ordinary skill in the art would understand what that means. And he will explain it to the jury.

That's all.

THE COURT: Anything else?

MS. PESCHEL: Your Honor, I just -- I have a lot of -- I have a lot of issues with these claims. But, you know, I think the effect of Yondr's argument is just what we're talking about, again, is just a locking case where you have to find the key.

And that predetermined condition, what I heard is doesn't necessarily have to exist at the time that that case is sold. It's later determined by somebody else. And that's part of what makes this particular phrase indefinite.

It's the predetermined condition is supposed to be, for instance, if we look at Claim 1: The lock further configured to unlock to enable access to the mobile device based on a predetermined condition associated with a geographic region.

10:10 1 And, you know, if we're talking about
10:10 2 while that can all be done later, then how is that
10:10 3 possibly -- how is that configuration possibly based on
10:10 4 something that's associated with that geographic
10:11 5 region?
10:11 6 And again, you know, and this will come
10:11 7 up later. I don't think we're hiding the ball here.
10:11 8 We don't think that this is a patent-eligible
10:11 9 invention. We think it's just the abstract idea of
10:11 10 limiting that access to a key that's used to unlock a
10:11 11 case.
10:11 12 And it is -- in this particular case, in
10:11 13 the '078 patent, I think that when we take what I
10:11 14 believe is already a hard-to-determine phrase in terms
10:11 15 of "predetermined condition" and we add the subjective
10:11 16 "associated with" versus actually defining that
10:11 17 predetermined condition as something very specific, I
10:11 18 think that's where we get into indefiniteness.
10:11 19 THE COURT: Anything else?
10:11 20 MR. JENSEN: I would just say, Your
10:11 21 Honor, I don't think we're going to be getting into
10:11 22 these abstract ideas. The claims do not claim the idea
10:12 23 of a phone-free space. They give a very specific
10:12 24 embodiment of a pouch. And I don't think we're going
10:12 25 to be dealing with any ambiguities when the pouch at

10:12 issue is precisely one of the embodiments in the spec
10:12 using the magnetic EAS detacher.
10:12 And I leave it at that, Your Honor.
10:12 THE COURT: There's nothing by my
10:12 construction that prevents the defendant from filing a
10:12 motion for summary judgment on this issue, is there?
10:12 MS. PESCHEL: No, Your Honor.
10:12 THE COURT: Okay. So I'm going to
10:12 maintain the construction.
10:12 I will tell you, I'm curious about what
10:12 the invention is here still. And so what -- let me ask
10:12 you this: Would it make sense in this case to -- I'm
10:13 just -- I'll -- the defendant can turn me down, but --
10:13 because you may need to do discovery, you may need to
10:13 do expert reports or anything.
10:13 Does the defendant have any interest in
10:13 doing an accelerated summary judgment on -- I mean,
10:13 I'm -- I'll hear a motion on -- now, that -- if you
10:13 lose, that kind of takes away your, you know,
10:13 something -- a missile that's in your silo.
10:13 But I would be happy to hold off on --
10:13 well, I guess you can go ahead and begin discovery
10:13 after today. But I would be happy to take up a motion
10:13 for summary judgment, if that's what defendant wanted.
10:13 MS. PESCHEL: Yes, Your Honor.

10:13 MR. GOLLWITZER: Yes, Your Honor. We actually -- we're very interested in that and we would love to hold off on discovery for a couple months while we do that. Avoid unnecessary costs to our client, who's a very small business, Mr. Guerra, who's on the call with us. That would be wonderful.

10:13 THE COURT: Yeah. I think --

10:14 MR. JENSEN: Your Honor.

10:14 THE COURT: Yes, go ahead.

10:14 MR. JENSEN: I was going to say, we would very much like to continue with discovery. The defendant is trying to get an IPR instituted. And the speed at which this is moving is important, and I think that delay is just a tactic to try to avoid the IPR.

10:14 THE COURT: Given -- if there were no -- if there were no application for an IPR, I would -- let me ask defendant. When do you expect to hear about whether or not this will be instituted? Or has it been instituted and is it going on?

10:14 MR. GOLLWITZER: It has not yet been instituted. There's several steps in this process in light of the new procedures in the Patent Office.

10:14 Director Stewart, or I guess maybe now the new confirmed director, are entertaining Yondr's motion for discretionary denial. That decision is

probably -- it's fully briefed, so I suspect that'll come in a matter of weeks.

If there is no discretionary denial, then the IPR addressing the '788 patent should reach an Institution decision in December. And then there's a PGR addressing the '078 patent which should reach an Institution decision in January.

THE COURT: Well, given that you are -- and I'm not faulting you in any way for doing that, of course, but it does make plaintiff's argument make sense.

So I'm not going to stay discovery, but I will -- I will -- you know, I can't keep you from filing summary judgment whenever you want. But I will tell you that if you would like to -- after we get off the Zoom call, if you all -- if you'd like to discuss with counsel a schedule for briefing and everything and let -- I think this is Anna's case, if you'd let her know once you come up with when you think everything will be done being briefed, just -- I'll hear a motion -- I'll set a hearing for this just as soon as we have it briefed.

MR. GOLLWITZER: Thank you, Your Honor.

THE COURT: So it should be -- y'all should be able to get it briefed within a couple

months, I would think.

MR. GOLLWITZER: Oh, yes, sir. We'll move promptly.

THE COURT: Okay. Very good.

Is there anything else we need to take up? And is there anything -- I babbled a bit. Is there anything y'all are unclear about, first? And if there -- and assuming there isn't, is there anything else we need to take up?

MR. JENSEN: Not from plaintiff's perspective, Your Honor.

THE COURT: Okay. Very good.

Anything from defendant?

MR. GOLLWITZER: Nothing from defendant, Your Honor. Thank you.

THE COURT: Okay. I look forward to seeing you again in a couple of months. Take care.

(Hearing adjourned.)

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 26th day of September 2025.

/s/ Kristie M. Davis

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