IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number	:	90/006,492 90/006,679	Confirmation No.: 9466
Applicant	:	Campana, Jr. et al.	
Filed	:	December 26, 2002	
Title	:	SYSTEM FOR TRANSFERRING INFORMATION FROM A RF RECEIVER TO A PROCESSOR UNDER CONTROL OF A PROGRAM STORED BY THE PROCESSOR AND METHOD OF OPERATION THEREOF	
TC/Art Unit	:	2682	
Examiner:	:	Charles R. Craver	
Docket No.	:	49671.000006	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF DR. V. THOMAS RHYNE UNDER 37 C.F.R. § 1.132

I. INTRODUCTION AND BACKGROUND

1. I was previously retained by NTP, Inc. ("NTP") in connection with litigation pending in the United States District Court for the Eastern District of Virginia. NTP, Inc. v. Research In Motion, Ltd., Civil Action No. 3:01CV767 ("NTP v. RIM"). I was qualified, without objection, to testify as an expert witness in the field of electrical engineering at the November 2002 trial in that case. My educational background and expert qualifications are set forth at pages 392-403 of my trial testimony, the summary Qualifications section of my August 6, 2002 expert report, and my short form resume, all of which are attached hereto as Exhibits 1, 2 and 3, respectively. I am also a Registered Professional Engineer (TX, No. 28,728) and a Registered Patent Agent (No. 45,041).

2. I have spent more than 500 hours of professional time in connection with the *NTP v. RIM* litigation. As a major part of that effort, I carefully studied and analyzed all eight of the

Campana wireless email patents, including U.S. Patent No. 5,631,946 (the '946 Patent") the patent under reexamination as set forth in the above caption. I have also studied the references cited in the Office Action dated March 21, 2005 in the above-captioned reexamination. I have also offered a Declaration of Dr. V. Thomas Rhyne dated February 24, 2003 in connection with the above-captioned reexamination, the entirety of which is incorporated herein by reference.

3. I am being compensated by NTP for my time in providing this expert analysis at the rate of $495.00 per hour.

II. CLAIM CONSTRUCTIONS FOR THE CAMPANA PATENTS

4. The claims of the Campana patents make repeated use of several terms and phrases that have significant meaning and context in the Campana patents. Of those, the terms and phrases important for review of the claims of the '946 Patent are: (1) "electronic mail system," (2) "originating processor," (3) "destination processor," (4) "RF information transmission network / RF information network / RF information transmission system / RF transmission system," (5) "interface / interface switch," (6) "RF receiver," and (7) "originated information." Below I explain what these terms and phrases mean, using the claim-construction rulings made by the Honorable Judge James R. Spencer of the United States District Court for the Eastern District of Virginia and affirmed by the United States Court of Appeals for the Federal Circuit, with one exception; for that phrase, "originating processor," I have used the Federal Circuit's interpretation – a slight variation of Judge Spencer's construction.

"Electronic mail system"

5. The phrase "electronic mail system," as used in the Campana patents, refers to a type of communication system which includes a plurality of processors running electronic mail

programming. The processors and the electronic mail programming are configured to permit communication by way of electronic mail messages among recognized users of the electronic mail system. The various constituent processors in the electronic mail system typically function as both "originating processors" and "destination processors."

"Originating processor"

6. The phrase "originating processor," as used in the Campana patents, refers to the processor that initiates the transmission of the electronic mail message text into the electronic mail system and is separate from the gateway or interface switch.

"Destination processor"

7. The phrase "destination processor," as used in the Campana patents, refers to any one of the constituent processors in an electronic mail system to which information is transmitted by the system. The destination processor is identified by an address which initiates the transmission of the originated information from the originated processor.

"RF information transmission network / RF information network / RF information transmission system / RF transmission system"

8. The phrase "RF information transmission network" as well as the other similar terms listed above, as used in the Campana patents, refers to a combination of circuits and devices for transmitting data, which combination includes a plurality of RF transmitters for transmitting RF signals carrying data and one or more RF receivers for receiving data. Each RF transmitter has a substantial geographic RF coverage area and is interconnected with other RF transmitters. The combination may include pluralities of local, lata and hub switches. (Underlining added.)

"Interface / interface switch"

9. The terms "interface" and "interface switch," as used in the Campana patents, refer to a device or system, which includes a processor, that transmits electronic mail messages to a wireless system for delivery to a mobile processor which can be carried by a person outside of a home or office and which executes electronic mail programming to function as a destination and/or source of electronic mail.

"RF receiver"

10. The phrase "RF receiver," as used in the Campana patents, refers to a device for receiving radio frequency electromagnetic signals, for demodulating the radio frequency electronic signals, and for recovering data that is carried by the radio frequency electromagnetic signals. The RF receiver can be carried by a person outside a home or office and can receive data while being carried.

"Originated information"

11. The phrase "originated information," as used in the Campana patents, refers to the text of an electronic mail message. As originally inputted to an electronic mail system by the sender, the electronic mail message includes the following characteristics: (a) a destination address identifying the person(s), place(s) or object(s) to which the message is directed; (b) an indication of the sender (which may be added automatically by the electronic mail programming); (c) a subject field (which may be blank); and (d) the inputted message text. An electronic mail message encompasses all forms of the message as it moves through the communication system (information may be added or deleted to facilitate further transmission as it proceeds through the system).

III. THE COLE ARTICLE FAILS TO ANTICIPATE CLAIMS 1, 5, 24, 34, 115 OR 119 OF THE '946 PATENT

A. Cole is in a Different Field of Endeavor

12. I have reviewed the article "An Architecture for a Mobile OSI Mail Access System" by Robert Cole and John Burns, from the *IEEE Journal on Selected Areas in Communications*, Vol. 7, No. 2, February 1989 ("Cole" hereafter). Cole describes a system that allows messages to be sent to portable computers through a cellular telephone network. The Cole system is designed to use the then-existing standards of the Open Systems Interconnection (OSI) model, including the X.400 messaging protocol standard and the X.25 networking protocol standard.

13. Within the Cole Message Transfer System, messages are sent from one User Agent to another User Agent. Cole provides for the implementation of User Agents on portable computers. Such *Mobile* User Agents require that a Message Store accept incoming mail messages. At a suitable time, the user instructs the Mobile User Agent to conduct a data transfer using a cellular radio telephone link to access the Message Store. Cole does not address User Agents that are in different electronic mail systems.

14. The user instruction disclosed by Cole to pull data from the Message Store is fundamentally different from the pushing of electronic mail messages without interaction by the recipient as described and claimed in the Campana patents. Accordingly, Cole is directed to a different field of endeavor from the Campana patents.

B. Cole Does Not Disclose or Suggest Numerous Limitations of Claim 1 of the '946 Patent under Reexamination

a. Summary of My Opinion

15. In view of the claim constructions made by Judge Spencer and the CAFC, it is my opinion that Cole fails to teach or suggest at least one limitation of each of the independent claims of the '946 Patent and indeed, fails to disclose most of the limitations of those claims. I start my technical analysis with Claim 1 of the '946 Patent.

b. Cole fails to disclose or suggest the limitation of Claim 1 requiring an "interface connecting the electronic mail system containing the plurality of originating processors to the RF information transmission network."

16. The PTO relies on Cole's Message Transfer Agent (MTA) as meeting the "interface" limitation. That is not correct. Cole fails to disclose an "interface" as that term has been defined by Judge Spencer and the CAFC.

17. This limitation of Claim 1 requires three elements: (1) an electronic mail system, (2) an interface, and (3) the RF information transmission network. An "electronic mail system" means a plurality of processors running electronic mail programming. The processors and the electronic mail programming are configured to permit communication by way of electronic mail messages among recognized users of the electronic mail system.

18. Thus, at a minimum, this limitation of Claim 1 requires that there is a system comprising at least two processors running electronic mail programming configured in a way to permit communication among recognized users of the electronic mail system, plus an additional processor (the required "interface") to connect that system to the RF information transmission network.

19. Cole simply does not provide that configuration. Cole's User Agents cannot individually be "an electronic mail system" because they are *single* processors. Even groups of User Agents cannot be electronic mail systems because such groups would have no way of "permitting communication among" that group without having something within that group that knows how to deliver messages between them. Cole provides no structure other than the Message Transfer Agent to serve that purpose.

20. Thus, even if one viewed the combination of one or more User Agents and the Message Transfer Agent as "an electronic mail system," there is nothing in the Cole system that serves as the "interface" that Claim 1 requires.

21. In addition, nothing disclosed by Cole connects the User Agent / Message Transfer Agent group of elements to an "RF information transmission network" as that term has been defined by Judge Spencer and the CAFC. Specifically, the only wireless network disclosed is the cellular network that is located within (in between) the User Agents and the MTA's.

22. Moreover, I find nothing in Cole to suggest that the X.25 system may comprise an electronic mail system. Even if that were the case, I still find nothing in Cole to suggest an "interface" as that term has been defined by Judge Spencer and the CAFC which would connect such an X.25 electronic mail system to the cellular system of Figure 3 of Cole.

c. Cole fails to disclose or suggest the transmission of originating information "in association with an address of the one interface from the one of the plurality of originating processors to the one interface to direct the originating information from the one of the plurality of originating processors to the one interface" as required by Claim 1.

23. Even if the hypothetical system identified in ¶ 20 was disclosed by Cole (which I contend it was not), there was no disclosure or suggestion of the originating information being

transmitted "in association with an address of the one interface from the one of the plurality of originating processors to the one interface to direct the originating information from the one of the plurality of originating processors to the one interface" as required by Claim 1. In this hypothetical system, the "originating processor" would have to be a computer within the X.25 system that is hypothesized to include an electronic mail system. There is absolutely nothing to suggest that such a computer could address a message to the MTA of Cole. Rather, Cole explicitly teaches away from that by stating that all messages are addressed to the User Agent of the recipient user. Certainly, there is nothing in Cole to suggest a message being "transmitted in association with an address of the one interface." Rather, messages are transmitted in Cole with the address of the user device.

24. Similarly, because these missing limitations are present in independent Claims 5, 24, 34, 115 and 119, Cole fails to anticipate those claims for the same reasons.

25. In addition, as described above, Cole does not disclose a plurality of electronic mail systems as required by Claims 24 and 34. Cole also fails to disclose transmission of the originated information by an RF interface network switch through the RF information transmission network to the at least one RF receiver in response to information inputting to the system as required by Claims 115 and 119.

IV. U.S. PATENT NO. 5,159,592 TO PERKINS FAILS TO ANTICIPATE CLAIMS 1, 5, 24, 34, 115 OR 119 OF THE '946 PATENT

A. Perkins is in a Different Field of Endeavor

26. The Perkins patent ("Perkins" hereafter) relates to a field of technology – managing addresses for local area networks implemented preferably via wireless infrared (IR) links – that is different from that disclosed and claimed in the Campana patents. Perkins, for

example, details a scheme for establishing and maintaining a low-level connection between a wired network and wireless network involving the transport and host protocol layers. Once that low-level connection is established, the Perkins system does not know or care what type of data is being communicated by any higher-level application programs using that connection.

27. Moreover, Perkins does not relate to systems and methods for *pushing* wireless email from a recipient's regular wired mailbox to a mobile processor over a wireless connection. To the contrary, the local area network (LAN) connections between his or her mobile units and header stations are referred to as sessions-type links, meaning that a mobile unit must first establish a network connection and initiate a new network session before any data is transmitted (*see* the Perkins specification at 4:49-65 and 5:50-65). This is similar to the prior art "dial-up" systems that teach away from the "push" approach of the Campana patents.

B. Perkins Does Not Disclose or Suggest Numerous Limitations of Claim 1 of the '946 Patent under Reexamination

a. Summary of My Opinion

28. In view of the claim constructions made by Judge Spencer and the CAFC, it is my opinion that Perkins fails to teach or suggest at least one limitation in each of the independent claims of the '946 Patent and indeed, fails to disclose most of the limitations in those claims. I start my technical analysis with Claim 1 of the '946 Patent.

b. Perkins fails to disclose or suggest the required "[s]ystem for transmitting originated information from one of a plurality of originating processors contained in an electronic mail system ..."

29. Perkins contains no teachings or suggestions relating to an "electronic mail system" as that term has been defined by Judge Spencer and the CAFC. While Perkins does make passing reference to "mail" in its specification and Figure 1, Perkins does not disclose any

processors, electronic mail server computers, or electronic mail programming that are configured to permit communication by way of electronic mail messages among recognized users of the electronic mail system. In fact, at 7:37-44 Perkins states that "*if* a remote user obtains the pseudo-IP address of a registered mobile unit 10, the remote user is enabled to send messages, such as mail, to the mobile unit 10, even if the mobile unit is inactive." (Emphasis added.) In my opinion, such a statement does not disclose "an electronic mail system," but rather an addressing scheme that, if properly effected or implemented, *may* be used by an electronic mail system to transmit communication of electronic mail messages among users. The fact that the systems described in Perkins may be used to transmit mail does not convert those systems into "electronic mail systems" as that term has been defined by Judge Spencer and the CAFC.

30. Further, Claim 1 of the '946 Patent requires one or more components that have a particular relationship or association with an electronic mail system. For example, Claim 1 expressly requires "[a] system for transmitting *originated information from one of a plurality of originating processors contained in an electronic mail system* to at least one RF receiver with the originated information originating from one of the plurality of originating processors and being transmitted by an RF information transmission network to the at least one RF receiver...." (Emphasis added.) This claim language makes clear that the originated information comes from an originating processor that is part of the electronic mailing system. Similar relationships and associations between the electronic mail system and other components are set forth in the other claims of the Campana patents.

31. Moreover, none of the components disclosed by Perkins (*e.g.*, a global gateway, a local gateway, mobile units, *etc.*) are described as having any relationship or association with an

electronic mail system. In fact, given the technology of Perkins – managing network address assignments in a network that includes mobile users – one of skill in the art would not understand any of the components disclosed by Perkins to have any relationship or association with electronic mail systems. Electronic mail systems involve email servers that run specialized email software and maintain an account for each subscriber or authorized user who can receive email on the server. Authorized users communicate with such an email server via simple text conversations from the user's processor, which also runs specialized email software. Perkins described no such relationship between electronic mail systems and any component within his system.

32. For example, the remote users and mobile units disclosed in Perkins are not described as being part of an electronic mail system, or as being able to process electronic mail messages. In fact, the mobile units disclosed by Perkins are associated with a particular local gateway in their own localized wireless LAN, but those mobile units have no addressing relationship with any reasonably defined electronic mail system. This is unlike the Campana patents in which fundamentally there are an electronic mail system and specifically identified originating and destination processors and RF devices, all of which are associated with particular electronic mail system(s).

c. Perkins does not disclose the requirement for an "originating processor in an electronic mail system."

33. Because Perkins does not teach or suggest an electronic mail system, he does not teach or suggest a processor *in an* electronic mail system that initiates the transmission of a message in the system. The remote users and the mobile units disclosed by Perkins cannot comprise an "originating processor" as that term has been defined by Judge Spencer and the

CAFC because neither is described as being part of an electronic mail system, nor as being able to process electronic mail programming.

d. Perkins does not disclose any of the required "destination processors" as that term has been defined by Judge Spencer and the CAFC.

34. Because Perkins does not teach or suggest an electronic mail system, it does not teach or suggest a "destination processor" as defined above – as a constituent processor *in an* electronic mail system to which information is transmitted by the system. The remote users and mobile units disclosed in Perkins cannot comprise "destination processors" because neither is described as being part of an electronic mail system, nor as being able to process electronic mail programming.

e. Perkins fails to disclose the requirement for transmission using "an RF information transmission network" as that term has been defined by Judge Spencer and the CAFC.

35. Perkins does not teach or suggest any feature or functionality comprising an "RF information transmission network" as that term has been defined by Judge Spencer and the CAFC. Perkins' discussion of a wireless network is limited to a plurality of mobile communication units in wireless communication with a plurality of header stations. Nothing in Perkins suggests that such a wireless network has a substantial geographic RF coverage area as the phrase "RF information transmission network" has been defined. One of skill in the art would not expect the wireless network disclosed by Perkins to have a substantial or even wide geographic coverage area given the nature of the systems and methods disclosed by Perkins. Campana, on the other hand, describes a backbone network connecting geographically dispersed RF transmitters, each of which has a substantial geographic RF coverage area.

36. The preferred implementation of the LAN of Perkins is suitable, at best, only for an internal office environment where a mobile unit can be placed near to the IR header station in a particular room. While the Perkins system can provide limited room-specific wireless network connectivity for mobile units, it is not practical for more general usage. Perkins does state that "other embodiments may employ an RF wireless medium," but given its focus on *local* area networks, Perkins does not describe how this RF medium could be utilized with the type of substantial geographic RF coverage described in the RF system used in the Campana patents.

37. Moreover, while Perkins involves "coupling" users via localized links to a network, it describes the provision of mobility only within a small LAN implemented by providing a means for managing IP addresses assigned either dynamically or statically for its "mobile units," although some of those units may well be "permanently situated" (*see* 7:49-50 of the Perkins specification). The teachings of the Perkins patent therefore have utility only in a LAN context using a protocol that encodes a LAN identification into a network address. Perkins does not address the type of wide-area wireless distribution of electronic mail to a configured user's mobile processor as taught and claimed by the Campana patents.

f. Perkins fails to disclose or suggest the requirement for "at least one interface, one of the at least one interface connecting the electronic mail system containing the plurality of originating processors to the RF information transmission network."

38. Perkins does not teach or suggest an "electronic mail system" or an "RF information transmission network," nor does Perkins teach or suggest an "interface" or "interface switch" that connects the two. Neither the global gateway nor the local gateway disclosed by Perkins serves this function since the former merely connects remote users to LANs, and the merely latter connects mobile users to LANs.

39. Perkins also does not teach or suggest any "interface" or "interface switch," as those terms are used in the Campana claims. In particular, Perkins does not teach or suggest transmission of electronic mail messages for delivery to mobile processors which can be carried by a person outside of a home or office and which execute electronic mail programming. To the contrary, the mobile units disclosed in Perkins must always be located in close proximity to a header station. Neither the global gateway or the local gateway serve this function since the former merely connects remote users to the local gateway, and the latter is not described as being capable of transmitting electronic mail messages.

g. Perkins fails to disclosure or suggest the requirement that "the originated information is transmitted in association with an address of the one interface from the one of the plurality of originating processors to the one interface with the electronic mail system responding to the address of the one interface to direct the originated information from the one of the plurality of originating processors to the one interface."

40. Perkins does not teach or suggest "originated information," as the phrase has been defined by Judge Spencer and the CAFC. Rather, because of the type of system Perkins relates to, the only information disclosed in Perkins concerns internet addresses (*e.g.*, LAN addresses) of mobile units and remote users. While Perkins does mention that remote users may be enabled to send messages, such as mail, there is no disclosure that such messages or mail comprise the text of an electronic mail messaging comprising: (a) a destination address identifying the person(s), place(s) or object(s) to which the message is directed; (b) an indication of the sender; (c) a subject field; and (d) the inputted message text.

41. Perkins also does not describe any data transmission containing the "originated information" in association with an address of an "interface" from an "originating processor," as

those terms have been defined by Judge Spencer and the CAFC. In particular, Perkins does not disclose any processor *in an* electronic mail system that initiates the transmission of a message in the system, nor does Perkins disclose transmission of originated information with an address of an interface, wherein the interface is capable of transmitting electronic mail messages to a wireless system for delivery to a mobile processor.

h. Perkins fails to disclose or suggest the requirement that "the originated information is transmitted from the one of the at least one interface to the RF information transmission network with an address of the at least one RF receiver to receive the originated information being associated with the originated information before transmission of the originated information to the at least one RF receiver."

42. Perkins does not teach or suggest any feature or component comprising an "RF receiver," as that term has been defined by Judge Spencer and the CAFC. The mobile units of Perkins cannot comprise RF receivers because they are not described as being capable of receiving RF signals outside a home or office. In fact, the wireless network of Perkins is suitable, at best, only for an internal office environment where a mobile unit can be placed near to the header station in a particular room.

43. Perkins also does not describe any feature or functionality that transmits originated information from an interface to an RF information transmission network with an address of an RF receiver, where the originated information is transmitted in association with an address of the interface. The pseudo-IP address of a mobile unit disclosed in Perkins cannot comprise the address of the RF receiver because that address is not known before transmission by the remote user to the network. In fact, Perkins clearly states that "[a]ll communication from a remote user to a mobile unit 10 employs the pseudo-IP address of the mobile unit 10" (*see*

7:5-7). To obtain the pseudo-IP address necessary to communication with a mobile unit, the remote user must first consult a network nameserver. If a pseudo-IP address has been assigned to the mobile unit, that address is returned to the remote user. Only after the remote user obtains the pseudo-IP address can it begin to direct data packets to the mobile unit. Thus, the pseudo-IP address is not associated with the originated information at the interface before transmission of the originated information to the at least one RF receiver.

C. Perkins Fails to Disclose or Suggest Numerous Limitations of Claim 5 of the '946 Patent

44. Many of the limitations in Claim 5 are also included in Claim 1. Perkins fails to disclose or suggest a method for transmitting originated information "from one of a plurality of originating processors contained in an electronic mail system;" "destination processors;" "an RF information transmission network;" "at least one interface" that "connect[s] the electronic mail system containing the plurality of originating processors to the RF information transmission network;" transmitting "the originated information in association with an address of the one interface from the one of the plurality of originating processors to the one interface with the electronic mail system responding to the address of the one interface to direct the originated information from the one of the plurality of originating processors to the one interface;" or transmitting "the originated information is transmitted from the one of the at least one interface to the RF information transmission network with an address of the at least one RF receiver to receive the originated information being associated with the originated information before transmission of the originated information to the at least one RF receiver" as I described above with reference to Claim 1.

D. Perkins Fails to Disclosure or Suggest Numerous Limitations in Claims 24 and 34 of the '946 Patent

45. Many of the recitations in claims 24 and 34 are also included in Claim 1. Thus, Perkins fails to disclose or suggest any of the missing requirements listed in ¶ 44.

46. Moreover, Claims 24 and 34 further recite a plurality of electronic mail systems. Perkins fails to disclose or suggest even one such system and thus, certainly fails to disclosure or suggest a plurality of such systems.

E. Perkins Fails to Disclosure or Suggest Numerous Limitations of Claims 115 and 119 of the '946 Patent

47. Many of the limitations of Claims 115 and 119 are also included in Claim 1. Thus, Perkins fails to disclose or suggest any of the missing requirements listed in ¶ 44.

48. Additionally, Claims 115 and 119 recite that the "RF information transmission system provides transmission of the originated information from the one interface through the RF information transmission network to the at least one RF receiver in response to information inputted to the system." Perkins does not describe the transmission of originated information through an RF information transmission network to at least one RF receiver, as those terms have been defined by Judge Spencer and the CAFC.

V. The Alleged Modification of the AT&T System in view of Harrison and Shoch Fails to Invalidate any Claim of the '946 Patent under Reexamination

49. In view of the claim constructions made by Judge Spencer and the CAFC, it is my opinion that the proposed modification of the AT&T System described in the background of the '946 Patent in view of U.S. Patent No. 5,631,946 to Harrison ("Harrison" hereafter) and the IEEE article written by Shoch ("Schoch" hereafter) is improper and fails to provide all of the elements of the '946 Patent claims. I start my technical analysis with Claim 1 of the '946 Patent.

B. Harrison is in a Different Field of Endeavor

50. Harrison relates to communications between LAN's – not electronic mail system components. Accordingly, it is not related to the same field of endeavor as the Campana patents.

C. The AT&T System and Harrison are not properly combined

51. It is my opinion that one of ordinary skill in the art would not have been motivated to modify the AT&T system described in the Campana patent with Harrison. Nothing suggests that use of Harrison would cure any of the deficiencies identified in the Campana relative to the AT&T system. The AT&T system already had a wireless capability, but it did not have an interface between an electronic mail system and an RF transmission network that was addressable as such. Adding Harrison would not cure that deficiency.

D. The Proposed Combination Fails to Disclose All of the Limitations of the Claims of the '946 Patent

52. I do not agree that the Host CPU described in the background of the Campana patents is an "interface" as required by Claims 1, 5, 24, 34, 115 and 119 of the '946 Patent.

53. The "Host CPU" as asserted by the PTO to be the claimed "interface" does not connect an electronic mail system to an RF information transmission network. Rather, the Host CPU is part of the electronic mail system that enables communications between processors A, B, ... N. There is no element in the AT&T system, as described in the Campana patent, that operates between the Host CPU and the RF information transmission network.

54. Moreover, Harrison does not disclose an "interface" as that term has been defined by Judge Spencer and the CAFC. Harrison does not disclose any type of messages being addressed to the "interface" and then having the messages addressed to the recipient. To the contrary, in Harrison messages are addressed to the mobile unit from the start. *See, e.g.*, 9:10-11.

Thus, Harrison fails to cure that deficiency of the AT&T system. Any combination of Harrison with the AT&T system would thus fail to provide an interface "connecting the electronic mail system ... to the RF information transmission network" as required by Claim 1.

55. Further, the originating information in Harrison is never transmitted "in association with an address of the one interface from the one of the plurality of originating processors to the one interface." The messages in both the AT&T system and Harrison are transmitted in association with an address of the recipient unit.

56. Because these elements are also present in claims 5, 24, 34, 115, and 119, the proposed modification of AT&T with Harrison fails to invalidate any of those independent claims or any of the dependent claims therefrom (which covers all 185 claims of the '946 Patent).

VI. THE VERJINSKI ARTICLE FAILS TO ANTICIPATE CLAIMS 1, 2, 4-6, 8, 9, 15, 18, 24, 25, 27, 31, 34, 35, 37, 38, 44, 115, 116, 118-120, 122, 123, 129, 132, 138 OR 141 OF THE '946 PATENT

57. I have reviewed the article "PHASE, A Portable Host Access System Environment," by Richard D. Verjinski, from the IEEE Publication No. CH2681-5/89/0000-0806 dated October 18, 1989 ("Verjinski" hereafter).

58. Verjinski teaches nothing more than did the prior art systems described and distinguished in the '946 Patent specification with reference to FIGS. 2 and 7. Similar to the prior art systems described in that specification, a portable host PC in the Verjinski system must dial into the system (the Portable Host Access Component or "PHAC") via a cellular phone to connect the portable host PC to the system. The portable host PC uses that connection to transmit its IP address to a Dynamic Domain Name Server (DDNS). A remote host PC sender of

an email message (the "originating processor") must also dial into the system via the portable host PC's phone to connect to the system. The remote host PC queries the DDNS for the portable host PC's IP address and receives it. The remote host PC can then transmit an email message directly to the portable host PC using this IP address. The remote host PC then disconnects from the system. The portable host PC receives the email and then disconnects from the system.

59. Thus, in the system described in Verjinski, there are not two different networks for transmission of information. Both the processor that transmits a communication and the processor that receives the communication must dial in and remain connected to the system, and all data / email is transmitted via the single network. *See* pages 0808-0809.

60. Moreover, in the Verjinski system, if the receiving processor is not connected to the system at the same time as the transmitting processor, the email message remains queued at the transmitting processor. The transmitting processor and the system cannot push the email message to an "interface" as recited in the claims of the '946 Patent. *See* page 0808 ("If the mail recipient domain name is resolved to an address, but the *sendmail* program cannot connect to the address, then the mail message is queued at the sending machine for future transmission. This would be the case when the Portable Host is not connected.").

B. Verjinski Does Not Disclose or Suggest Numerous Limitations of Claim 1 of the '946 Patent under Reexamination

a. Summary of My Opinion

61. In view of the claim constructions made by Judge Spencer and the CAFC, it is my opinion that Verjinski fails to teach or suggest at least one limitation of each of the independent claims of the '946 Patent. I start my technical analysis with Claim 1 of the '946 Patent.

b. Verjinski fails to disclose or suggest the limitation of Claim 1 requiring transmission of "other originated information originating from one of the originating processors with the electronic mail system without using the RF information transmission network."

62. In the Verjinski system, all information is sent from one processor to another through a single network connection. Verjinski fails to disclose or suggest communication of data without using the alleged "RF information transmission network."

c. Verjinski fails to disclose or suggest the limitation of Claim 1 requiring a "interface connecting the electronic mail system containing the plurality of originating processors to the RF information transmission network."

63. The PHAC, identified by the PTO as the required "interface," is not an interface "connecting the electronic mail system containing the plurality of originating processor to the RF information transmission network." The only RF information network mentioned is a cellular connection between a single computer and the PHAC. On one side of that cellular connection is a single computer running an SMTP client. A single computer running a mail program is not an electronic mail system as defined by Judge Spencer and the CAFC. On the other side is a single computer dialing into the PHAC using X.PC. That other single computer also is not an electronic mail system as defined by Judge Spencer and the CAFC. Thus, the PHAC does not "connect" any electronic mail system as defined above with an RF information transmission network.

d. Verjinski fails to disclose or suggest the limitation of Claim 1 requiring a "originating information [being] transmitted in association with an address of the one interface from the one of the plurality of originating processors."

64. There is nothing in Verjinski to suggest that any "originating information" may be transmitted in associated with an address of the PHAC. Rather, the protocol described in

Verjinski involves determining the address of the PC first. Then, the remote SMPT client communicates with the PC's SMTP server using the address of the PC provided to it. Thus, the information is not transmitted in association with an address for the PHAC. Instead, as illustrated in the example in Section 6.0 and Figure 4 of Verjinski, the purported "originating processor" and "destination processor" must both be simultaneously connected via telephone to the network at the time of the transmission of the electronic mail message and the electronic mail message is transmitted directly from the "originating processor" to the "destination processor" once the originating processor receives the temporary IP address assigned to the destination processor from the DDNS.

C. Verjinski Fails to Disclose The Recitations in the Other Claims Rejected by the PTO Under section 102

65. All of the other independent claims of the '946 Patent also include the above limitations and thus, are not anticipated by Verjinski for the above reasons. Further, Verjinski fails to anticipate the corresponding dependent claims.

66. Further, with respect to Claims 4, 8, 27, 37, 118, and 122, there is no "other originated information" transmitted between an "originating processor" and a "destination processor" in Verjinski. All of the information transmitted by the originating processor to the destination processor is sent via the same email message using the single network. Thus, there is no information transmitted to the destination processor "using a different address than the address used during transmission of the originated information to the at least one RF receiver." While the originating processor must first query the DDNS to receive the destination processor's current IP address, all of the information transmitted by the originating processor to the destination processor is then sent to that same current IP address in a single email transmission.

VII. VERJINKSI FAILS TO RENDER ANY OF CLAIMS 10, 11, 16, 17, 19, 20, 32, 33, 39, 40, 45, 46, 124, 125, 130, 131, 133, 134, 139, 140, 142 OR 143 OBVIOUS IN VIEW OF DEVANEY

67. The proposed combination of Verjinski in view of U.S. Patent No. 4,698,839 to DeVaney ("DeVaney" hereafter) also fails to render dependent claims 10, 11, 16, 17, 19, 20, 32, 33, 39, 40, 45, 46, 124, 125, 130, 131, 133, 134, 139, 140, 142 and 143 obvious. DeVaney fails to provide an "interface" or "originating information transmitted in association with an address of the one interface" as defined by Judge Spencer and the CAFC and required by independent claims 1, 5, 24, 34, 115 or 119. Thus, the proposed combination fails to cure Verjinski's deficiency.

VIII. VERJINKSI FAILS TO RENDER ANY OF CLAIMS 3, 7, 12, 21, 26, 28, 36, 41, 50, 53, 58, 67, 71, 73, 81, 85, 117, 121, 127, 135, 148, 152, 157, 158, 166, 167 or 177 OBVIOUS IN VIEW OF THE ALLEGED ADMITTED PRIOR ART

68. The proposed combination of Verjinski in view of the alleged admitted prior art also fails to render dependent claims 3, 7, 12, 21, 26, 28, 36, 41, 50, 53, 58, 67, 71, 73, 81, 85, 117, 121, 127, 135, 148, 152, 157, 158, 166, 167 and 177 obvious. The alleged admitted prior art explicitly fails to provide either an "interface" or "originating information transmitted in association with an address of the one interface" as defined above and required by independent claims 1, 5, 24, 34, 115 or 119. Thus, the proposed combination fails to cure Verjinski's deficiency.

69. As for Claims 12, 21, 28, 41, 127 and 135, the assertion that the "TCP/IP based email system such as that taught by Verjinski would remove, at a first communication node, the IP address of said node upon receipt of the message in order to replace it with the IP address of the next node in the chain" is wholly unsupported. Nothing in Verjinski teaches performing that

step, and the alleged admitted prior art does not suggest it, either. Moreover, that removal would not necessarily occur because additional IP addresses in a string may be added without removing anything. There is absolutely nothing to suggest that the "system removes from the originated information added by the electronic mail system" as required by these dependent claims.

70. As for claims 50, 53, 58, 67, 71, 73, 81 and 85, the Office Action's assertion that the proposed combination would inherently compare destination addresses lacks any foundation. There is nothing in Verjinski or the alleged admitted prior art to suggest that the proposed combination would necessarily compare information "to determine if the originated information should be transmitted by the RF information transmission network."

71. All statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true. These statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

V. Thomas Rhyne, Ph.D., P.E., R.P.A.

DATE: June 21, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 21st of June, 2005, I caused a copy of the foregoing DECLARATION OF DR. V. THOMAS RHYNE UNDER 37 C.F.R. § 1.132 to be served as follows:

By First Class Mail:

Customer Number 28,694

Novak Druce DeLuca & Quigg

1300 Eye Street, N.W.

Suite 400 East Tower

Washington DC US 20005

Brian M. Buroker