

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

FENNER INVESTMENTS, LTD.

Plaintiffs,

v.

**CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS, et al.,**

Defendants.

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CIVIL ACTION No. 6:11cv348

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above entitled and numbered civil action was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. The Report and Recommendation of the Magistrate Judge (Doc. No. 122) (“R&R”), which contains his construction of disputed terms in U.S. Patent No. 5,561,706 (“the ‘706 Patent”), as well as his recommendation that Defendant Cellco Partnership d/b/a Verizon Wireless’s (“VZW”) Motion for Summary Judgment (Doc. No. 89) be denied, has been presented for consideration. Plaintiff Fenner Investments, Ltd. (“Fenner”) has filed objections and a motion for reconsideration to the R&R (Doc. No. 129) (“FENNER OBJ.”) and VZW filed a Response (Doc. No. 135). VZW also filed objections and a motion for reconsideration to the R&R pursuant to Federal Rule of Civil Procedure 72(a) (Doc. No. 130) (“VZW OBJ.”).

Having reviewed the parties’ submissions, the Court is of the opinion that Fenner’s objection to the Magistrate Judge’s construction of “personal identification number” requires no further clarification or alteration. As to VZW’s request for reconsideration of the Magistrate

Judge's construction of "billing code," VZW expands upon what it offered in its initial claim construction briefing of the term, but the positions argued by VZW do not warrant any alteration to the Magistrate Judge's construction of the term. VZW's proposed construction for "billing code" requires that the mobile user enter the billing code. However, Claim 1 of the '706 patent recites "receiving from the mobile user at the communication switch a billing code..." '706 patent at 6:5-6. Thus, VZW's proposed construction would conflate "entering" by the mobile user with "receiving" from the mobile user, and thereby impose an affirmative requirement on the mobile user that is not otherwise supported by the '706 patent. Accordingly, the Court finds the constructions of the Magistrate Judge are correct.

Finally, as the parties have filed supplemental briefing on the term "mobile user," (Doc. Nos. 143, 144, 147, 148), the Court agrees with the Magistrate Judge that matter was not yet ripe for a determination of summary judgment. Therefore the Court finds the Magistrate Judge's denial of VZW's Motion for Summary Judgment proper.

Accordingly, the Court **ADOPTS** the Report & Recommendation of the United States Magistrate Judge as the opinion of this Court. All objections are overruled and all motions for reconsideration are **DENIED**.

So ORDERED and SIGNED this 30th day of July, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE