

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

PerdiemCo LLC

Plaintiff,

v.

Industrack LLC et al.

Defendants.

Docket No. 2:15-cv-727-JRG-RSP

**DEFENDANTS' MOTION FOR JUDGMENT ON
THE PLEADINGS PURSUANT TO 35 U.S.C. § 112 ¶¶ 1 AND 2**

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1. Written Description Requirement of 35 U.S.C. § 112 ¶ 112

2. Requirement under 35 U.S.C. § 112, ¶ 2 that the Claims Point Out and Distinctly Claim the Subject Matter which the Inventor Regards as the Alleged Invention.....13

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A. The Asserted Claims Are Not Described in the Patent Specification, and Thus Fail to Satisfy the Written Description Requirement of 35 U.S.C. § 112 ¶ 1.....14

1. The common specification of the Asserted Patents, as well as the prosecution history of the Asserted Patents, unequivocally establish that the inventor required user defined zones and user defined events to be essential claim elements.15

a. The inventor clearly indicates in the specification and prosecution history that user defined zones and user defined events are “required” elements of the alleged invention.15

b. The particular embodiments and applications of the alleged invention further evidence that user defined zones and user defined events are “essential” or “critical” elements to the purported invention.16

c. The original claims in the prosecution history further evidence that user defined zones and user defined events are “essential” or “critical” elements to the purported invention.19

2. The Asserted Claims do not include the “required” user defined zone and user defined event elements, and are thus invalid under the written description requirement as being broader than the specification disclosure20

B. The Asserted Claims Do Not Claim The Subject Matter Which The Inventor Regards as the Alleged Invention, and Thus Fail to Satisfy the Conditions of 35 U.S.C. § 112 ¶ 2.24

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