

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC

Petitioner,

v.

WIRELESSWERX IP LLC,

Patent Owner.

IPR2023-00850

Patent No. 8,315,203

PATENT OWNER'S PRELIMINARY RESPONSE

TO PETITION FOR INTER PARTES REVIEW

TABLE OF CONTENTS

I. INTRODUCTION	1
II. OVERVIEW OF THE '203 PATENT	2
A. Brief Description	2
B. Prosecution History	5
C. Claim Construction	5
III. LEVEL OF ORDINARY SKILL IN THE ART	6
IV. THE ASSERTED PRIOR ART	6
A. Wrappe (Ex. 1005)	6
B. Belcea (Ex. 1006)	8
C. Christopher (Ex. 1007)	10
V. PETITIONER HAS NOT DEMONSTRATED A REASONABLE LIKELIHOOD OF SUCCESS FOR THE GROUNDS ADVANCED IN THE PETITION, AND THE PETITION SHOULD BE DENIED	12
A. Requirements for Showing Obviousness Under 35 U.S.C. § 103	12
B. Petitioner Fails to Establish in Ground 1 that Challenged Claims 1-5 are Obvious Over Wrappe and Belcea	14
1. Claim 1	14
a. The combination of Wrappe and Belcea does not teach the limitation 1[A]	15
b. The combination of Wrappe and Belcea does not teach the limitation 1[Diii]	20
c. Wrappe in view of Belcea Does Not Render Claim 1 Obvious	23
2. Claims 2-5	23
C. Petitioner Fails to Establish in Grounds 2 and 3 that Challenged Claims 6-30 are Obvious Over Wrappe in view of Belcea and Christopher or Kinnunen	24
1. Claims 6, 29 and 30	24
a. The combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 6[G]	26
b. The combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 29[G]	27

c. The combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 30[A].....	29
d. Wrappe in view of Belcea and Christopher or Kinnunen Does Not Render Claims 6, 29 and 30 Obvious.....	30
2. Claims 7-28.....	30

TABLE OF AUTHORITIES

Cases

<i>Chef America, Inc. v. Lamb-Weston, Inc.</i> , 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir.2004).	6
<i>Graham v. John Deere Co.</i> , 383 U.S. 1 (1966)	12
<i>Pers. Web Techs., LLC v. Apple, Inc.</i> , 848 F.3d 987 (Fed. Cir. 2017)	12
<i>Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016)	13
<i>Los Angeles Biomedical Res. Inst. at Harbor-UCLA Med. Ctr. v. Eli Lilly Co.</i> , 849 F.3d 1049 (Fed. Cir. 2017)	13
<i>Broadcom Corp. v. Emulex Corp.</i> , 732 F.3d 1325 (Fed. Cir. 2013).	13
<i>In re Van Os</i> , 844 F.3d 1359 (Fed. Cir. 2017).....	14
<i>Innogenetics, N.V. v. Abbott Labs.</i> , 512 F.3d 1363 (Fed. Cir. 2008).	14
<i>CFMT, Inc. v. Yieldup Intern. Corp.</i> , 349 F.3d 1333, 1342 (Fed. Cir. 2003).....	24

PTAB Cases

<i>Apple, Inc. v. Contentguard Holdings, Inc.</i> , IPR2015-00355, Paper 9 (P.T.A.B. June 26, 2015)	12
--	----

Statutes

35 U.S.C. §103.....	12
---------------------	----

Rules

37 C.F.R. § 42.107	1
37 C.F.R. . §42.100(b)	5

I. INTRODUCTION

On May 12, 2023, Google LLC (“Petitioner”) submitted a Petition for *Inter Partes* Review (“Petition”) of U.S. Patent No. 8,315,203 (“the ’203 Patent,” “Ex. 1001”), challenging Claims 1-30 (“Challenged Claims”). Pursuant to 37 C.F.R. § 42.107, Wirelesswerx IP. LLC, (“Patent Owner”) files this Preliminary Response to the Petition, setting forth reasons the Board should deny institution.

Petitioner challenges the patentability of Claims 1-30 of the ’203 Patent based on four (4) different alleged prior art references as follows.

International Pub. No. WO2005/106523 (“Wrappe”);

U.S Patent No. 7,203,497 (“Belcea”);

U.S. Patent Pub. No. 2008/0042836 (“Christopher”)

U.S. Patent No. 6,813,501 (“Kinnunen”)

Petitioner requests institution of the IPR proceeding on the following grounds.

Ground	Claims	Basis
1	1-5	§103 – Wrappe in view of Belcea
2	6-30	§103 – Wrappe in view of Belcea and Christopher
3	6-30	§103 – Wrappe in view of Belcea and Kinnunen

Petitioner fails to establish a reasonable likelihood that the Challenged Claims are unpatentable. Patent Owner will specifically address each of Petitioner's arguments in the following sections.

II. OVERVIEW OF THE '203 PATENT

A. Brief Description

The '203 Patent relates to developing a map of a multi-dimensional space for use by a user. The system for generating the map involves using a geographical zone, where the zone is selectively a preconfigured geographical zone. In addition, the zone includes a plurality of spaced apart nodes, and the nodes are arranged in a multi-dimensional sense. The system further includes sending data communications between one or more of the nodes, one or more users, and one or more control stations. Also, the system contemplates affecting multi-dimensional mapping according to the placement of nodes and the communications between the nodes and the control stations. Ex-1001, 1:58-67. The mapping is affected in a three-dimensional sense, selectively being a three-dimensional sense in the x, y, and Z axes or coordinates. [t]he nodes are selectively part of a mesh network or other suitable network configuration. Ex-1001, 2:4-15.

In order to detect a wireless communication device's location, the location node selection algorithm 2050 begins with a general wireless communication device discovery 2052 of all location node's 2014, 2016, 2018 located within

communication range. Ex-1001, 26:29-34. If more than one valid location node has been discovered then a series of steps begins to reduce this list down to one location node that is the most practically near to the wireless communication device. If after any step, only one valid transmitter remains in the list the selection process ends with that location node being selected. Ex-1001, 26:64-27:3.

[T]he algorithm may utilize a step 2062 distinguish between different floors of a building or installation. When location nodes are installed, all the location nodes installed that are on different floors of the same installation are assigned different floor identifiers in the location node name. In this step 2062, the wireless communication device determines if more than one floor number is represented within one installation identifier. If there are unequal numbers of location nodes on multiple floors 2064, the wireless communication device eliminates those locations transmitters on the minority floors, i.e., on those floors which have the smaller number of location nodes 2068 sensed. If at this point, only one location node is available, the wireless communication device chooses this location node as the location node that is most practically near. Ex-1001,27: 38:53.

Regarding the “mesh network,” FIGS. 19A and 19B (reproduced below) illustrate an exemplary mesh network 4001 of nodes 4000 in communication with base stations 4004 and, in turn, in communication with control centers 4008. Ex-1001,31: 29:32.

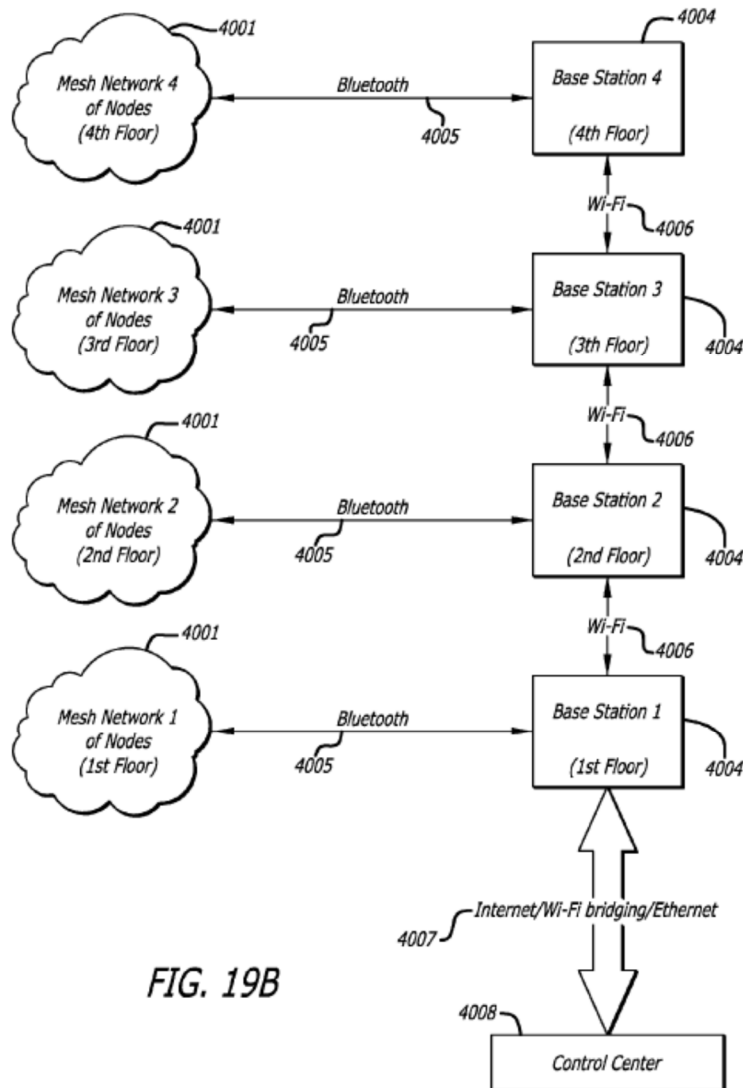


FIG. 19B

'203 Patent – Figure 19B

[T]he location information of the mobile device 4010 may be communicated from nearby node 4000 to nearby node 4000 within the mesh network 4001 in a daisy-chain arrangement until the location information of the mobile device 4010

is finally communicated to at least one base station 4004 associated with the nodes 4000 mesh network 4001. Ex-1001,33: 25:31.

B. Prosecution History

The '203 Patent issued on November 20, 2012, from U.S. Patent Application No. 12/350,817 (“’817 Application”), filed on January 8, 2009 which is a Continuation in Part of U.S. patent application Ser. No. 11/848,178, filed Aug. 30, 2007, and claims the benefit of the prior filing date of U.S. Provisional Patent Application Ser. No. 60/625,467, filed Nov. 5, 2004. Ex. 1001, 1:6-10.

References cited by the applicant and considered by the Examiner included US 20050090978 (Bathory), US 20040225436 (Yoshihashi), and US 6,198,431 (Gibson).

C. Claim Construction

According to 37 C.F.R. §42.100(b), in an inter partes review, claim terms are construed using the same standard used in a civil action under 35 U.S.C. § 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.

The ordinary and customary meaning of a term may be evidenced by a variety of sources, including the words of the claims themselves, the specification, drawings, and prior art. However, the best source for determining the meaning of a

claim term is the specification – the greatest clarity is obtained when the specification serves as a glossary for the claim terms. The words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004).

In accordance with these principles, Patent Owner submits that the terms of the '203 Patent are clear on their face.

Patent Owner reserves all rights to raise claim construction arguments in district court and in this proceeding should the Board grant institution.

III. LEVEL OF ORDINARY SKILL IN THE ART

For purposes of this Response, Patent Owner adopts Petitioner's proffered level of ordinary skill in the art because it comports with the technology and claims of the '203 Patent as well as the asserted prior art.

IV. THE ASSERTED PRIOR ART

A. Wrappe (Ex. 1005)

Wrappe is titled as "Methods and Apparatuses for Beacon Assisted Position Determination Systems," EX1005, Abstract.

One or more microcell beacons are used to provide precise location fixes in highly blocked environments where there are commercial and/or safety-based

applications. EX1005, ¶ [0034]. The mobile station is assumed to be at the position that is indicated by the microcell beacon station when the GPS signals are not available (or having a signal strength below a threshold value). For example, when it is determined that the accuracy of a position solution is degraded to a threshold level (e.g., due to the blockage of GPS signals), the center of the coverage area of the microcell beacon station is used as the position solution for the mobile station. When beacon signals from more than one microcell beacon station are received, the centers of the coverage areas of the microcell beacon stations can be weighted according to the corresponding signal strength to determine an estimate of the position of the mobile station. Further, the microcell beacon may also broadcast the transmission strength level so that a range to the microcell beacon can be estimated from the transmission strength level and the received signal strength level at the mobile station. EX1005, ¶ [0043].

According to one embodiment of the present invention, microcell beacons are placed to aid the position determination. For example, the position information (e.g., altitude aiding information) broadcast at the microcell beacons are used to improve the accuracy of the position solution so that it can be reliably determined which of the stores (e.g., 511-517, 521-529) the mobile station is in. In one embodiment of the present invention, the signal transmission strength of the microcell beacons and the distribution of the microcell beacons are adjusted during the installation process

such that the beacon signals identifying one of the stores covers substantially the store. Thus, when the mobile station enters the store, the dominant beacon signals received at the mobile station identifies the store. For example, the beacon signals for store 511-517 have coverage areas 531-537 respectively so that when mobile stations 501 receives a signal beacon signal for a store (e.g., store 515 when the mobile station is in area 535), the mobile station can identify the store from the beacon signal (e.g., the store ID broadcast by beacon 545). The coverage areas of the microcell beacons for different stores may overlap with each other. In one embodiment of the present invention, microcell beacons are used to broadcast information specific to the store in which they are installed. Thus, during the installation of the microcell beacons, the placement and the signal transmission strength of the microcell beacons are adjusted so that the coverage of the dominant beacon signals substantially covers the store without substantially intruding into neighboring stores to cause misidentification. EX1005, ¶ [0046].

B. Belcea (Ex. 1006)

Belcea, titled “System and Method for Accurately Computing the Position of Wireless Devices inside High-rise Buildings,” discloses a “network of wireless devices including Mobile Terminals, Wireless Routers and Controllers within a three-dimensional deployment structure such that communication, identification and

position calculations can be achieved with high accuracy regardless of the building structure.” Ex-1006, 1:24-33.

FIG. 3 (reproduced below) shows a deployment of the “vertical” infrastructure in a high-rise building and includes a number of Intelligent Access Points (IAP) 122-1 to 122-n, and a system of Vertical Routers (VR) 124-1 to 124-n, dispersed among a number of floors of an example building. Because radio signal penetration is almost impossible through the concrete floors in the example building, a system of Vertical Routers 124-1 to 124-n is used to achieve communication between the Local Control and each floor of the building. Ex-1006, 6:17-21.

During the installation phase, the Routers database is loaded with the position (i.e., floor, x, y, and so forth) of each Horizontal and Vertical Router. In the same phase, the building maps are loaded in the Building database. Ex-1006, 10: 61-64. During the operating phase, The Mobile Terminals can determine their respective locations using Algorithms such as Time of Flight (TOF) data and Received Signal Strength Indicator (RSSI) data and a scoring process to identify the correct floor on which they are located. Ex-1006, 11:20-38.

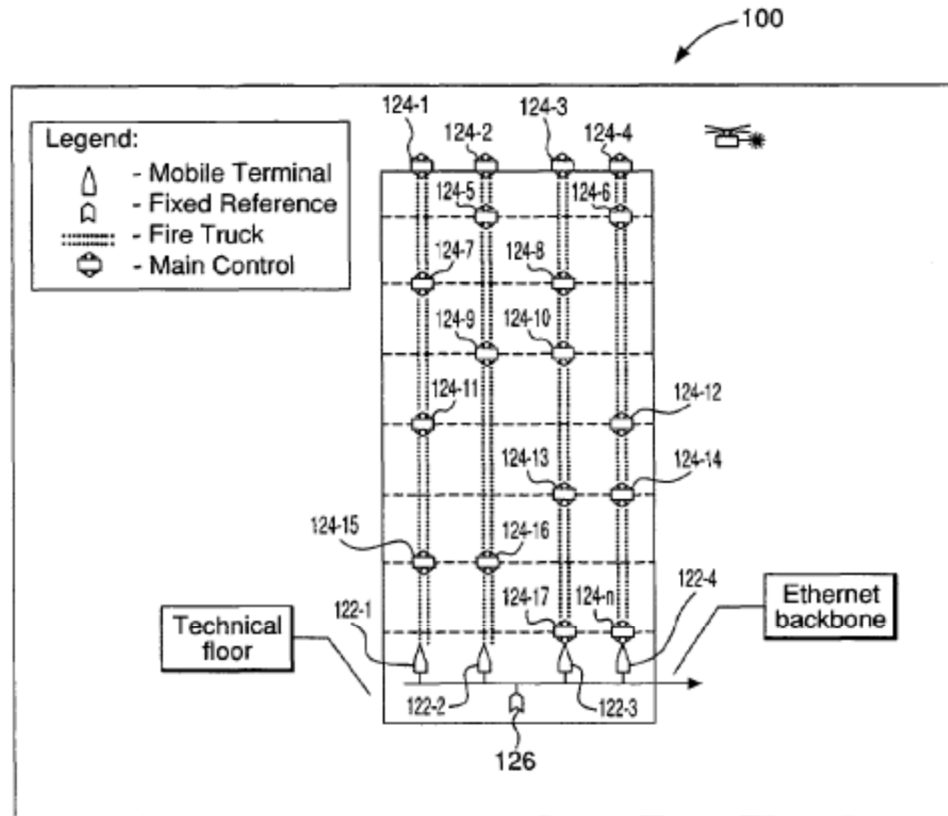


FIGURE 3

Belcea – Figure 3

C. Christopher (Ex. 1007)

Christopher, titled “System and Method for Tracking Shopping Behavior,” the method comprises emitting an RF interrogation signal using an interrogator relay unit (“IRU”), receiving, at the IRU, location data from an RFID tag in response to the RF interrogation signal; transmitting the location data, identification information of the IRU, and timestamp data to a remote server using the IRU; and generating a behavior report using the transmitted location data, the identification information, and the timestamp data. Ex-1007, ¶ [0006].

To provide better customer service, the ViewPoint system 1320 may keep records of mobile device behavior such as purchase history and past searches. Ex-1007, ¶ [0076]. The ViewPoint system 1320 may also send inventory related data to mobile device 1360 based on the purchase history of mobile device. Ex-1007, ¶ [0077].

D . Kinnunen (Ex. 1009)

Kinnunen, titled “Location Dependent Services,” describes a method for providing Services to at least one mobile terminal comprising the steps of: associating services with a plurality of service locations in an area the mobile terminal being moveable within the area, providing location information from a plurality of location information sources indicating the location of the mobile terminal; tracking the mobile terminal relative to the service locations so that the presence of the mobile terminal at a particular service location of a service can be determined; receiving the location information and determining whether the location information from at least one source provides a basis for providing the service; and providing the service to the mobile terminal. Ex-1009, 4: 4-22.

Kinnunen “targets services to suitable mobile terminals or users by using profiles.” Ex-1009, 6:10-11, 6:43-44. “The user and mobile terminal profiles can be used to determine targeting of advertisements.” Ex-1009, 3:41-43

V. PETITIONER HAS NOT DEMONSTRATED A REASONABLE LIKELIHOOD OF SUCCESS FOR THE GROUNDS ADVANCED IN THE PETITION, AND THE PETITION SHOULD BE DENIED

A. Requirements for Showing Obviousness Under 35 U.S.C. § 103

The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). The Board has held that a failure to identify the differences between the claimed subject matter and the prior art is fatal to an obviousness challenge. See, *Apple, Inc. v. Contentguard Holdings, Inc.*, IPR2015-00355, Decision Denying Institution of *Inter Partes* Review, Paper 9 at 9–10 (P.T.A.B. June 26, 2015) (denying institution for failure to identify the differences between the claimed subject matter and the prior art).

In arriving at an obviousness determination, the Board must sufficiently explain and support the conclusions that the prior art references disclose all the elements recited in the Challenged Claims and a relevant skilled artisan not only could have made but would have been motivated to combine all the prior-art references in the way the patent claims. *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017). That is, even if all the claim elements are found across a number of references, an obviousness determination must consider whether

a person of ordinary skill in the art would have been motivated to combine those references. *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1368 (Fed. Cir. 2016); *Los Angeles Biomedical Res. Inst. at Harbor-UCLA Med. Ctr. v. Eli Lilly Co.*, 849 F.3d 1049, 1067 (Fed. Cir. 2017) (vacating and remanding an obviousness determination, in part, because the Board did not make factual findings as to whether there was an apparent reason to combine all three prior art references to achieve the claimed invention and whether a POSITA would have had a reasonable expectation of success from such a combination). This combination determination, as supported by an articulated motivation to combine, requires a plausible rationale as to why those prior art references would have worked together. *Broadcom Corp. v. Emulex Corp.*, 732 F.3d 1325, 1335 (Fed. Cir. 2013). Absent some articulated rationale, a “common sense” finding is no different than the conclusory statement “would have been obvious.” *In re Van Os*, 844 F.3d 1359, 1361 (Fed. Cir. 2017). Of additional importance, “knowledge of a problem and motivation to solve it are entirely different from motivation to combine particular references.” *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363, 1373 (Fed. Cir. 2008).

B. Petitioner Fails to Establish in Ground 1 that Challenged Claims 1-5 are Obvious Over Wrappe and Belcea

1. Claim 1

Independent claim 1 has been divided into elements for consideration by the Petitioner as follows:

1.[pre] A method for developing a map for use by a user, the user being selectively individuals, vehicles, and other entities, comprising:

1[A] using a geographical zone, the zone selectively being a preconfigured geographical zone,

1[B] the zone including a plurality of spaced apart nodes, wherein the nodes are arranged in a multi-dimensional sense, the location of the plurality of nodes in the multidimensional sense being placed with a structure attached to the ground;

1[C] sending data communications between one or more of the nodes, one or more users, and one or more control stations; and

1[Di] affecting multi-dimensional mapping according to the placement of the nodes and the communications between the nodes and the control stations, wherein the mapping is affected in a three-dimensional sense, selectively being a three-dimensional sense in the x, y, and z axes or coordinates and the structure is a building, the building having different elevational levels

1[Dii] and there are nodes on different elevational levels whereby there are nodes at multiple different elevational levels,

1[Diii] and wherein the system narrows the plurality of nodes for use by the user at a first elevational level to the most practically near node to the user, such that a node at another elevational level, even though physically closer to the user at the first elevational level is excluded as being a node the most practically near to that user, and a different node at the elevational level of the user is selected as the most practically near to that user.

a. The combination of Wrappe and Belcea does not teach the limitation 1[A]

Regarding the limitation 1[A] “using a geographical zone, the zone selectively being a preconfigured geographical zone,” the ’203 Patent describes “there is a method to define a geographical zone, which can be in two or three dimensions.” Ex-1001, 4: 28-29. “The method comprises loading from a computing device to a memory in a transponder or Subscriber device a plurality of coordinates. The coordinates are mapped on a pixilated image so as to assign one pixel to each coordinate of the plurality of coordinates.” Ex-1001, 4: 35-39. “The plurality of coordinates are entered by a user of a computer device and transmitted to the transponder or subscriber device. The user is allowed to enter geographical coordinates in a three-dimensional sense by allowing a user to select points in a map in a computer by clicking on the map and calculating the geographical coordinates of each selected point in the map.” Ex-1001, 4: 52-58.

In another aspect, the geographical area is a geometrical shape such as a square, rectangle, triangle, circle, oval, or trapezoid in two or three dimensions. The shape of the geographical area can also be the shape of a non-geometrical shape such as the shape of the border delimiting a building, address, street, state, city, county, or country. Ex-1001, 5: 19-24.

In one aspect, there is a method to define a geographical zone in two or three dimensions utilized to regulate a movable entity having a transponder or subscriber device. The method comprises allowing a user to enter a plurality of waypoints, each waypoint in the plurality of waypoints being defined by a geographical coordinate and a radius. Ex-1001, 5: 25-29.

In another aspect, the transponder or subscriber device can determine whether the transponder or subscriber device is inside or outside the geographical zone in two or three dimensions by obtaining global positioning coordinates, and calculating whether the global positioning coordinates are inside at least one waypoint of the plurality of waypoints. Ex-1001, 5: 35-40.

Configurable boundaries or geographical Zones may also be employed and can be configurable to any shape the user desires. A further benefit of the present disclosure is that the transponder or subscriber device can be updated and configured locally or wirelessly. Ex-1001, 9: 8-20.

Users have the ability to define and change the boundaries of the zones employed by the system. Ex-1001, 32: 19-21.

The language of the limitation 1[A] and corresponding description in the specification shows that “the preconfigured geographical zone” is defined by a user by entering a plurality of coordinates, and can be reconfigured by the user.

To argue that Wrappe discloses the limitation 1[A], Petitioner proffers that:

Wrappe discloses spaced apart beacons (purple) “which are placed to aid [in] position determination,” “can provide information such as ... zone identification information,” and are arranged about the zone. Ex-1005 ¶¶45, 46. Wrappe’s Figure 5 “illustrates a situation where each store (e.g., 511-517) has only one microcell beacon station (e.g., 541-547) Id. ¶47. A POSITA would have understood Wrappe’s beacons are positioned in a “geographical zone” because the beacons provide zone identification information and adjust radio signals within the geographical boundary of a site. Ex-1002 ¶¶137-138. This is consistent with the “selectively preconfigured geographical zones” of the ’203 Patent, which explains “nodes [] are located at various locations within the geographical space, which comprises of at least one zone” and “users have the ability to [] change the boundaries of the zones.” Ex-1001, 31:56-59, 32:12-14, 32:19-21. Wrappe’s zone is “preconfigured” because the beacons are placed in advance, and the positioning is configured before the system is put into use. Ex-1002 ¶138. Pet., 24-26.

The argument of the petition shows that Petitioner admits that Wrappe does not disclose the limitation 1[A] explicitly, but a POSITA would have understood Wrappe's beacons are positioned in a "geographical zone" because the beacons provide zone identification information and adjust radio signals within the geographical boundary of a site.

Patent Owner respectfully submits that Wrappe's beacons define a "geographical zone," not a "preconfigured geographical zone" defined by a user as recited in the limitation 1[A]. When the beacons are deployed, the "geographical zone" is determined by the beacons and cannot be changed by the user.

First, the limitation 1[Di] recites "affecting multi-dimensional mapping according to the placement of the nodes and the communications between the nodes and the control stations," the context of claim 1 shows the "multi-dimensional mapping" is conducted in the "preconfigured geographical zone," the placement of the nodes (counterpart of Wrappe's beacons) can only affect the "multi-dimensional mapping," not to determine the "preconfigured geographical zone."

Second, "preconfigured geographical zone" is defined by the user, the transponder or subscriber device can determine whether the transponder or subscriber device is inside or outside the geographical zone. Ex-1001, 5: 35-40. On the contrary, in Wrappe, the "geographical zone" is defined by beacons, which can be larger or smaller than the "preconfigured geographical zone" defined by the user.

Thus, Wrappe does not disclose the limitation 1[A], particularly, Wrappe does not disclose the limitation “preconfigured geographical zone.”

Belcea describes in FIG. 3 (reproduced below) a deployment of the “vertical infrastructure in a high-rise building and includes a number of Intelligent Access Points (IAP) 122-1 to 122-n, and a system of Vertical Routers (VR) 124-1 to 124-n, dispersed among a number of floors of an example building. Ex-1006, 6: 5-11.

The written description of Belcea shows that, similar to Wrappe, Belcea define a “geographical zone” by a number of Intelligent Access Points (IAP), not a “preconfigured geographical zone” defined by a user as recited in the limitation 1[A].

Therefore, the combination of Wrappe and Belcea does not disclose the limitation 1[A].

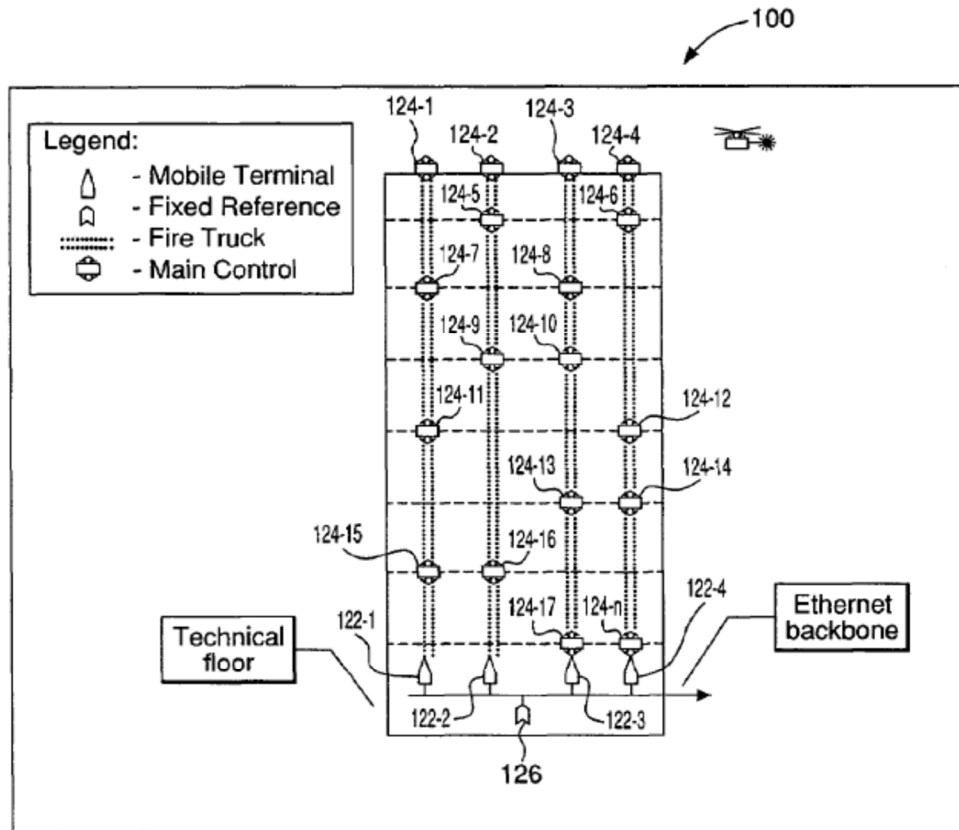


FIGURE 3

Belcea – Figure 3

The advantages of the limitation 1[A], among others, includes that the user can define the geographical zone he is interested in, not determined by the geographical zone defined by only the placement of the nodes.

b. The combination of Wrappe and Belcea does not teach the limitation 1[Diii]

Regarding the limitation 1[Diii], “wherein the system narrows the plurality of nodes for use by the user at a first elevational level to the most practically near node to the user, such that a node at another elevational level, even though physically closer to the user at the first elevational level is excluded as being a node the most

practically near to that user, and a different node at the elevational level of the user is selected as the most practically near to that user,” the ’203 Patent describes:

Utilizing these selection parameters, the location node will narrow the plurality of location nodes 2014, 2016, 2018 to the most practically near location node 2014, 2016, 2018. This is necessary because the closest location node to a wireless communication device 2012 on the second floor of a building could be on the ceiling of the first floor and, thus, be inaccessible from the second floor. Ex-1001, 26: 20-24.

To determine “the most practically near location node,” the ’203 Patent describes:

In this step 2062, the wireless communication device determines if more than one floor number is represented within one installation identifier. If there are unequal numbers of location nodes on multiple floors 2064, the wireless communication device eliminates those locations transmitters on the minority floors, i.e., on those floors which have the smaller number of location nodes 2068 sensed. If at this point, only one location node is available, the wireless communication device chooses this location node as the location node that is most practically near. Ex-1001, 27: 44-54.

In Wrappe’s system, “the signal transmission strength of the microcell beacons and the distribution of the microcell beacons are adjusted during the installation process such that the beacon signals identifying one of the stores covers

substantially the store.” Ex-1005 ¶46. In Figure 5, “beacon signals for store 511-517 have coverage areas 531-537 respectively so when mobile stations 501 [green] receives a signal beacon signal for a store [], the mobile station can identify the store from the beacon signal.” Ex-1005 ¶46.

The written description of Wrappe shows that in Wrappe’s system, the user can only receive a signal beacon signal for a store, there is no need to “narrow the plurality of nodes for use by the user at a first elevational level to the most practically near node to the user.” Thus, Wrappe does not disclose the limitation 1[Diii].

In Belcea’s system, the floor number is found using Time of Flight (TOF) and Received Signal Strength Indicator (RSSI) data. Ex-1008 ¶45. The technique looks first for the smallest value of TOF (or smallest absolute value of RSSI) divided by the number of measurements performed between a mobile terminal 116 and FIRS 106 whose signals the mobile terminal 116 can receive. The FIR 106 giving the smallest value of weighted TOF is representative of the most likely floor on which the MT 116 is located, and its score is set to the maximum value. Ex-1008 ¶48.

Since “The FIR 106 giving the smallest value of weighted TOF(most physically close to the user) is representative of the most likely floor on which the MT 116 is located” in Belcea is conflicted with “the most practically near node to the user, such that a node at another elevational level, even though physically closer to the user at the first elevational level is excluded as being a node the most

practically near to that user, and a different node at the elevational level of the user is selected as the most practically near to that user” in the limitation 1[Diii], Belcea does not disclose the limitation 1[Diii].

Therefore, the combination of Wrappe and Belcea does not disclose the limitation 1[Diii].

c. Wrappe in view of Belcea Does Not Render Claim 1 Obvious

Petitioner fails to undertake a proper Graham analysis, because Petitioner’s combination of Wrappe and Belcea lacks evidence of crucial limitations of claim 1, such as the elements 1[A] and 1[Diii]. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Therefore, the combination of Wrappe and Belcea does not render claim 1 obvious because it has not established its prima facie case, since “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003).

2. Claims 2-5

Claims 2-5 depend from claim 1 and are not obvious over Wrappe in view of Belcea for at least the same reasons.

C. Petitioner Fails to Establish in Grounds 2 and 3 that Challenged Claims 6-30 are Obvious Over Wrappe in view of Belcea and Christopher or Kinnunen

1. Claims 6, 29 and 30

Independent claims 6, 29 and 30 have been divided into elements for consideration by the Petitioner as follows:

6/29/30[Pre] A method of communicating data between at least one selected communication transponder and at least one selected mobile communication device comprising:

6/29/30[A] – using a [preconfigured] geographical zone, wherein the zone includes a plurality of spaced apart communication transponders; the transponders including a transmitter and receiver and wherein at least one of the transponders permits communication with a mobile device of a user;

6/29/30[B] – sending data communication between pluralities of the transponders in a network communication protocol with each other, applying the plurality of transponders in the network with each other to define the zone,

6/29/30[C] – communicating between at least one transponder to the mobile user and between at least one transponder; the communication between the mobile device of the user and the least one transponder being effected by at least one of bluetooth or a wifi protocol thereby to determine the location of the user in the zone through such communication;

6/29/30[D] – arranging the transponders at locations in the zone, and the respective locations of the plurality of transponders in the zone being placed within a building structure;

30[Di] – arranging the transponders in a multidimensional sense about the zone, the transponders being distributed in separate mesh networks, and the mesh networks being in different specific zones, and wherein different mesh networks of transponders are associated with a dedicated base station;

6/29/30[E] – obtaining and analyzing data related to the location of the mobile user according to the placement of the transponders in the zone;

6/29/30[F] – enabling selected mobile communication devices to be in communication with at least one selected communication transponder when the devices are within range of the selected transponder;

6[G] – the mobile user receiving selection parameter data from multiple transponders, and utilizing the selection parameters, such that the system narrows the plurality of transponders to the most practically near transponder, such most practically near transponder not necessarily being the transponder physically closest to the mobile user;

29[G] – effecting a location transponder selection by a general wireless communication of multiple location transponder located within communication range in the zone, obtaining unique location transponder radio addresses, searching

for wireless devices of at least one subclass, the subclasses being selected to include specific types of wireless communication devices, selectively cell phones, pagers, PDAs, and laptop computers, or by searching for at least one specific wireless device operating in a specific mode;

6/29/30[H] – associating respective users of respective mobile devices with a respective profile of the respective user of the respective mobile device;

6/29/30[I] – sending a targeted message to a selected mobile device of a selected user from the selected communication transponder when the selected mobile device is in range; and

6/29/30[J] – tailoring the targeted message to the profile of the user associated with the mobile device.

a. The combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 6[G]

The limitation 6[G] recites “the mobile user receiving selection parameter data from multiple transponders, and utilizing the selection parameters, such that the system narrows the plurality of transponders to the most practically near transponder, such most practically near transponder not necessarily being the transponder physically closest to the mobile user.”

As discussed in Section V.B.1.b, the combination of Wrappe and Belcea does not teach the limitation “the system narrows the plurality of transponders to the most

practically near transponder, such most practically near transponder not necessarily being the transponder physically closest to the mobile user,” thus the combination of Wrappe and Belcea does not teach the limitation 6[G].

Petitioner does not argue that Christopher or Kinnunen cure the deficiencies noted above with respect to Wrappe and Belcea regarding the limitation 6[G]. Instead, Christopher and Kinnunen is cited for teaching the limitation 6/29/30[H] – associating respective users of respective mobile devices with a respective profile of the respective user of the respective mobile device (*see, e.g.*, Petition, 62-63, 77).

Therefore, the combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 6[G].

b. The combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 29[G]

Regarding the elements “searching for wireless devices of at least one subclass, the subclasses being selected to include specific types of wireless communication devices, selectively cell phones, pagers, PDAs, and laptop computers, or by searching for at least one specific wireless device operating in a specific mode” in the limitation 29[G], the ’203 Patent describes:

In one or more alternative embodiments, the wireless communication device 2012 performs a custom device discovery 2052 by searching for wireless devices of at least one specific subclass. specific subclasses include, but are not limited to,

location notes 2014, 2016, 2018 and specific types of wireless communication devices 2012. Such as cell phones, pagers, PDAs, and/or laptop computers. Also, in Some alternative embodiments, the wireless communication device 2012 performs a custom device discovery 2052 by searching for at least one specific wireless device 2012 operating in a specific mode. Ex-1001, 26:41-51.

The language of the limitation 29[A] and corresponding description in the specification shows that “searching for wireless devices of at least one subclass” is conducted by the mobile communication device, not by the communication transponder.

Petitioner contends that Wrappe teaches searching for a subclass of wireless devices including a cell phone or PDA. A POSITA would have understood that mobile user devices would be in at least the subclasses of a cell phone or PDA, A POSITA would have understood that the Wrappe system searches for such devices by monitoring such devices and sending communications upon a device entering a site. Pet., 60-61.

Christopher’s Viewpoint system “interface[s] with mobile device 1350 and PDA 1360 to collect device related data such as the device’s present location, identification data and communications capabilities (802.11, Bluetooth).” Ex-1007,

¶71. Christopher teaches searching for such devices—“once PDA 1360 is within the communication range of RFID tag 1310, RFID tag 1310 will transmit its location data to PDA 1360.” Id. ¶73. Ex-1002 ¶243. Pet., 61.

The argument of Petitioner shows that “searching for wireless devices of at least one subclass” is conducted by Wrappe system or Viewpoint system, not by the mobile communication device.

Petitioner does not argue that Kinnunen cures the deficiencies noted above with respect to Wrappe and Christopher regarding the limitation 29[G]. Therefore, the combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 29[G].

c. The combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 30[A]

The limitation 30[A] recites: using a preconfigured geographical zone, wherein the zone includes a plurality of spaced apart communication transponders; the transponders including a transmitter and receiver and wherein at least one of the transponders permits communication with a mobile device of a user.

As discussed in Section V.B.1.a, the combination of Wrappe and Belcea does not teach the limitation “preconfigured geographical zone,” the limitation 30[A] comprises the limitation “preconfigured geographical zone,” thus the combination of Wrappe and Belcea does not teach the limitation 30[A].

Petitioner does not argue that Christopher or Kinnunen cure the deficiencies noted above with respect to Wrappe and Belcea regarding the limitation 30[A]. Instead, Christopher and Kinnunen is cited for teaching the limitation 6/29/30[H] – associating respective users of respective mobile devices with a respective profile of the respective user of the respective mobile device (*see, e.g.*, Petition, 62-63, 77).

Therefore, the combination of Wrappe, Belcea and Christopher or Kinnunen does not teach the limitation 30[A].

d. Wrappe in view of Belcea and Christopher or Kinnunen Does Not Render Claims 6, 29 and 30 Obvious

Petitioner fails to undertake a proper Graham analysis, because Petitioner’s combination of Wrappe, Belcea and Christopher or Kinnunen lacks evidence of crucial limitations of claims 6, 29 and 30, lacks evidence of crucial limitations of claim 1, such as the elements 6[G], 29[G] and 30[A]. Therefore, combination of Wrappe, Belcea and Christopher or Kinnunen does not render claims 6, 29 and 30 obvious because it has not established its prima facie case, since “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003).

2. Claims 7-28

Claims 7-28 depend from claim 1 and are not obvious over Wrappe, Belcea and Christopher or Kinnunen for at least the same reasons.

VI. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Board deny institution of the Petition in its entirety.

Dated: September 14, 2023

Respectfully submitted,
RAMEY LLP

/Jacob B. Henry/
Jacob B. Henry
Registration No. 61,093
5020 Montrose Blvd., Suite 800
Houston, Texas 77006
Telephone: (832) 454-1456
Facsimile: (832) 900-4941
jhenry@rameyfirm.com
uspto@rameyfirm.com

Attorneys for Patent Owner,
WirelessWerx IP LLC

CERTIFICATE OF WORD COUNT

I certify that the foregoing document contains no more than 7,000 words as calculated using the word count function of Microsoft Word, not including material excluded under 37 C.F.R. 42.24(a)(1).

Date: September 14, 2023

/Jacob B. Henry/
Jacob B. Henry

CERTIFICATE OF SERVICE

I hereby certify that all counsel for Petitioner who have appeared in this case are being served on this day of September 14, 2023, with a copy of the foregoing document via e-mail.

/Jacob B. Henry/
Jacob B. Henry

COUNSEL FOR PETITIONER:

Williams M. Fink
Benjamin Haber
Amy Liang
Kyla Butler
tfink@omm.com
bhaber@omm.com
aliang@omm.com
kbutler@omm.com