

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

v.

WIRELESSWERX IP LLC,
Patent Owner.

Case No. IPR2023-00850
U.S. Patent No. 8,315,203

PETITIONER'S PRELIMINARY REPLY

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As authorized by Paper 7, Petitioner submits this Preliminary Reply regarding the construction of the claim limitation “preconfigured geographical zone.”

I. The “Preconfigured Geographical Zone” Need Not Be Defined By A User—Patent Owner’s Proposed Construction Is Wrong

Patent Owner argues that the “preconfigured geographical zone” must be defined by a user. *See* Patent Owner’s Preliminary Response (POPR) at 18. The claims themselves contradict that proposed construction, and that construction is not supported by the specification.

A. The Claims Contradict Patent Owner’s Proposed Construction

The term “preconfigured geographical zone” appears in Claims 1 and 30, but nothing in the claims require that the “preconfigured geographical zone” be defined by the user. Ex-1001, Cls. 1, 30.

Claim 1 does not set out any specific requirement for how the zone is defined. *Id.*, Cl. 1. It does not require the zone to be defined by the “user” as Patent Owner argues, or indeed that it be defined in any specific way, other than that it is “pre-configured.” *Id.* The user in claim 1 is defined as “selectively individuals, vehicles, and other entities” and is recited as doing certain things, but defining the zone is not one of them. *See id.* (user is at a specific elevation in a building, user sends data communications).

Claim 30, on the other hand, explicitly requires “applying the plurality of *transponders* in the network with each other *to define the zone*” and requires that those transponders are “arrang[ed] . . . at locations in the zone, and the respective locations of the plurality of transponders in the zone” are “placed within a building structure.” *Id.*, Cl. 30. Claim 30 separately recites a “user” of a mobile device and says nothing about the user defining the geographical zone. *Id.* Thus, at least in Claim 30, “transponders”—*not* the “user”—define the zone. *Id.*

Moreover, the term itself, “*preconfigured* geographical zone,” suggests that the geographical zone must be pre-defined and not defined upon use by the user. If the Applicant had intended to claim a user-defined geographical zone, it could have used the descriptor “user-defined” or “user-configured” instead of “preconfigured.” By choosing “preconfigured” the Applicant indicated that the geographical zone is configured before the method is executed, without restricting who or what defines the zone.

B. Patent Owner’s Construction Improperly Imports Limitations

Patent Owner’s construction must also be rejected because it impermissibly imports limitations from certain embodiments while excluding others. While the term “preconfigured geographical zone” (or “pre-configured geographical zone”) appears in the specification six times, none of those uses describes the meaning of the term. Ex-1001 at 1:27, 1:62, 3:23, 7:34, 31:56, 37:37. The Parties must thus

rely on other descriptions in the patent of “geographical zones,” “geographical areas,” and “zones” to determine the scope of the term. Those descriptions make clear that the geographical zone can be defined in many ways and that a user-defined zone is just one embodiment.

1. Patent Owner’s Proposed Construction Excludes Preferred Embodiments

Patent Owner’s proposed construction impermissibly excludes disclosed embodiments. In one embodiment, the patent describes that the geographical zone can be defined by geometrical shape or by the borders of “a building, address, street, state, city, country, or country.” *Id.* at 5:21–24. In another embodiment, a plurality of coordinates are loaded from a computing device and those coordinates are used to define the zone. *Id.* at 4:28–44. The specification makes clear that these non-user-defined zones are standard, while allowing the user to define the zone is an alternative option: “***In some embodiments***, users have the ability to define and change the boundaries of the zones employed by the system.” *Id.* at 32:19–21; *see also* 32:7–19 (describing, e.g., how zones are typically defined).

“[T]here is a strong presumption against a claim construction that excludes a disclosed embodiment.” *Nobel Biocare Servs. AG v. Intradent USA, Inc.*, 903 F.3d 1365, 1381 (Fed. Cir. 2018), as amended (Sept. 20, 2018). That presumption may be overcome only if the claim language requires exclusion of those

embodiments or there is other basis in the intrinsic record for excluding them. *Id.*

Here, there is no such claim language or intrinsic record that explicitly excludes geographic zones that are defined by, e.g., beacons, nodes, building perimeters, state borders, or any of the other examples listed in the specification.

2. The User-Defined Zones Are Mere Embodiments Whose Limitations Should Not Be Imported Into The Claims

To be clear, the specification provides that a user certainly *could* define the geographical zone, but the specification makes clear the error in concluding that the user *must* define that zone. The specification explains that the user-defined zones are only certain embodiments. For example, following the disclosure of the embodiment wherein coordinates from a computer are used to define the zone, the specification discloses that in one embodiment, the coordinates could be entered by the user. *Id.* at 4:52–60. In “another aspect,” the user can select a section of a grid to define a geographical area, region or space. *Id.* at 5:49–55. And “[i]n some embodiments,” the users can define and change the boundaries of the zones. *Id.* at 32:19–21.

But the user-defined zone of those embodiments should not be imported into the claim term “preconfigured geographical zone” because there is no indication in the claims or intrinsic record to support that the Applicant intended to narrow the claims to only the user-defined zone embodiment. *Nautilus Grp., Inc. v. Icon*

Health & Fitness, Inc., 82 F. App'x 691, 694 (Fed. Cir. 2003) (“a construing court may not limit the claims to the disclosed embodiments without a clear disclaimer in the intrinsic record that limits the invention to these embodiments and nothing more.”).

* * *

In short, there is nothing to support Patent Owner’s position that the “preconfigured geographical zone” must be limited to a zone that is user-defined and can be changed by the user.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies pursuant to 37 C.F.R. §§ 42.6(e) and 42.105 that on September 27, 2023, a true and correct copy of this Preliminary Reply was served in its entirety by filing this document through the Patent Trial and Appeal Board P-TACTS System, as well as by email, on the counsel of record for the Patent Owner.

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