

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 RESPONSE TO ORDER FOR
ADDITIONAL BRIEFING RELATING TO
THE “COMMUNICATION TRANSPONDER” TERMS OF CLAIMS 6-30**

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As ordered by the Board in Paper 21, Petitioner submits this briefing addressing the “communication transponder” terms in claims 6-30. Specifically, the Board asked the parties “to address the meaning of ‘communication transponder’ and ‘transponder,’ in the context of the challenged claims, including whether it is appropriate to deviate from how the specification uses these terms and whether these terms cover a node.” Paper 21 at 4. As discussed in this paper, the “communication transponder”/“the transponder” recited in claims 6-30 is not the same as the “transponder or subscriber device” described in the specification. And, while the “communication transponder” of claims 6-30 and the “node” of claims 1-5 perform similar functions, they are not the same because the claims recite different requirements for how these components perform the recited functions.

I. Claims 6-30 Unambiguously Describe the Features of the “Communication Transponder”

The “communication transponder” of claims 6-30 is described by the claim language itself. The claim first recites “a plurality of spaced apart communication transponders.” The next clause recites “*the* transponder including a transmitter and a receiver.” The antecedent basis for “*the* transponder” is the “communication transponder” recited in the previous clause. So when the claim recites “the transponder” in the later claim elements, it is always referring to one of the “spaced apart communication transponders” recited first. Thus, as used in claims 6-30, the

“communication transponder” and “transponder” are the same.

The claims recite communication transponders with both “a transmitter and a receiver.” This is because the communication transponders must both transmit and receive to and from other components. Specifically, the communication transponder “permits communication with a mobile device of a user.” It must also communicate with other communication transponders for “sending data communication between pluralities of the transponders in a network communication protocol with each other.” The claims also recite “the plurality of transponders in the zone being placed within a building structure.”

Accordingly, the unambiguous language of claims 6-30 make plain the following features of the recited “communication transponder”:

- It includes both a transmitter and receiver
- It sends and receives communications with a user’s mobile device
- It sends and receives communications with other communication transponders
- It is placed within a building structure.

II. The Term “Communication Transponder” Was Added During Prosecution in New Claims 29-52, Which Ultimately Issued as Claims 6-30

The term “communication transponder” does not appear in the specification as-filed. Instead, “communication transponder” appears only in issued claims 6-30.

The first appearance of “communication transponder” in the intrinsic record was a claim amendment adding new claims 29-52, filed on June 22, 2012. Ex-

1004, 1052. As support for the amendment, the Applicant pointed to a single paragraph of the as-filed application, paragraph 175. *Id.* at 1054. Paragraph 175, Ex-1004, 0054, (column 26, lines 15-28 of the issued patent), is below:

[00175] In the disclosed system and method, the wireless communication device **2012** will receive selection parameter data from each location node **2014, 2016, 2018**. 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. In an exemplary embodiment, an algorithm **2050**, as shown in **Figures 13A and 13B**, located within the wireless communication device **2012** is utilized to determine the location node **2014, 2016, 2018** that is most practically near.

Neither the term “communication transponder” nor “transponder” appears here. Instead, this paragraph describes “location nodes.” This paragraph also refers to “algorithm 2050, as shown in Figures 13A and 13B.” Figure 13A and 13B are described in paragraphs 176-192, Ex-1004, 0054-0058, (column 26, line 29 through column 28, line 33 of the issued patent), which refer to “location nodes,” not any “transponder.” So when the term “communication transponder” was added, the applicant did not identify any additional meaning associated with the term, other than specific algorithms and uses of the “location nodes” for determining the floor of the building where “wireless communication device 2012” is located.

III. The Isolated Term “Transponder” in the Specification Describes a User’s Device Rather Than the “communication Transponder” of Claims 6-30

When the specification uses the isolated term “transponder,” it is not referring to the “communication transponder” of claims 6-30. Specifically, the term “transponder” is used in a manner that equates it to the user’s mobile device: “transponder or subscriber device.” The specification uses this phrase more than 250 times, and explains that the “transponder or subscriber device” is a user’s device, “such as a cell phone or PDA.” Ex-1001, 11:30-31. The “transponder or subscriber device” is thus not the “communication transponder” of claims 6-30.

Claims 6-30 recite a “mobile device of a user” separate from, but in communication with, the recited “communication transponder.” A subscriber’s device, such as a cell phone or PDA, corresponds to the recited “mobile device,” not the “communication transponder.” Also, the “communication transponder” as claimed is “placed within a building or structure.” That is, the “communication transponder” is in a fixed location in the building, while the subscriber’s mobile device moves in the building with the user. The “transponder or subscriber device” in the specification refers to the recited “mobile device” that is located by the “communication transponder,” not the “communication transponder” itself.

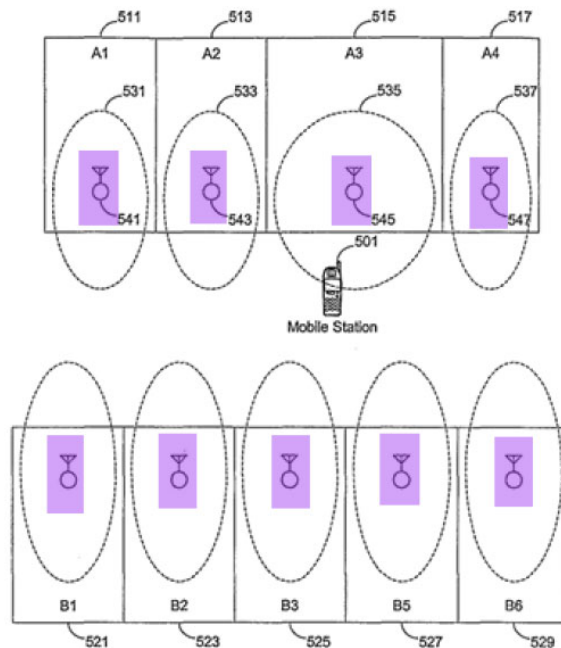
IV. The “Code” of Claims 1-5 and the “Communication Transponder” of Claims 6-30 Have Different Requirements, and Both Are Met by Different Teachings of the Prior Art.

As used in the claims, the “node” of claims 1-5 and the “communication transponder” of claim 6-30 have similar purposes, but are not the same. Both the

“node” and the “communication transponder” will identify the “most practically near [node/transponder]” to the mobile user. But they each do so in a different way. Specifically, claims 1-5 recite “communications between one or more of the nodes, one or more users, and one or more control stations.” There is thus no requirement that the nodes of claims 1-5 communicate with other nodes. And these claims also involve a “control station,” which is separate and apart from the nodes. claims 6-30, on the other hand, require that the “communication transponders” communicate with other transponders and do not require a separate control station. Also, unlike the “nodes,” the “communication transponders” also must use a “network communication protocol with each other.” Accordingly, while performing similar purposes in the claims, “communication transponders” in claims 6-30 are different than “nodes” in claims 1-5.

The “nodes” and “communication transponders” are also found in different teachings of the prior art. Specifically, a single one of Wrappe’s microcell beacons may correspond to a “node” of claims 1-5 (since there is no requirement that the nodes communicate with other nodes). Ex-1002 ¶¶142-148. For claims 6-30, on the other hand, the claimed “communication transponder” is taught by the embodiment in which multiple of Wrappe’s microcell beacons work together to cover the footprint of a larger store, using mesh communication protocols amongst themselves as taught by Belcea. Ex-1002 ¶¶202-204, 209-211, 217-221.

Regarding the “nodes” of claims 1-5, the Petition and Mr. Andrews explained that “[a] POSITA would have understood Wrappe’s beacons (purple) are spaced apart because they are located in different stores that are spaced apart, e.g., adjacent or across from each other in Rows A1-A4 and B1-B6, and/or at different altitudes.” Pet. at 28. The microcell beacons, corresponding to each individual node in a store (purple), are shown in Wrappe’s Figure 5.



Regarding the “communication transponders” of claims 6-30, the Petition and Mr. Andrews explained “a POSITA would have implemented Wrappe using multiple beacons that intercommunicate with each other to cover a large-area store where a single beacon could not cover the entire store footprint.” Pet. at 46 (citing Ex-1002 ¶203). In a larger department store for example, Wrappe’s system would

have been implemented with Belcea’s meshed devices, so the entire store could be covered at least because Wrappe teaches “more than one microcell beacon station can be used to create a desirable coverage.” *Id.*

The Petition explained that the claimed communication transponder “has the same role” as a “node,” but different features in these claims. Pet. 46. For example, in the Wrappe-Belcea combination, Wrappe’s devices are augmented with Belcea’s teaching “of communicating with each other directly, or via one or more other devices operating as a router or routers for packets being sent between nodes.” Ex-1006, 5:59-6:1; Pet. 51. A POSITA would have used Wrappe’s microcell beacons this way “because, as Belcea describes, close proximity improves reliability of communications.” Ex-1002 ¶219; Pet. 52. Wrappe also teaches embodiments where “[i]t is understood that in general *more than one microcell beacon station* can be used to create a desirable coverage, depending on the size of the store, GPS signal blockage conditions, radio signal blockage conditions, desirability of coverage, and others.” Ex-1005 ¶46; Pet. 53.

V. Conclusion

Accordingly, the “communication transponders” of claim 6-30 should be understood as discussed in Google’s Petition. And as the Petition explains, the claimed “communication transponders” perform a similar function as the claimed “nodes,” but are different and are met by different teachings in the art.

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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 October 4, 2024, 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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