

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 8,315,203 B2

Record of Oral Hearing
Held: September 11, 2024

Before JOHN A. HUDALLA, JOHN D. HAMANN, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

IPR2023-00850
Patent 8,315,203 B2

APPEARANCES:

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The above-entitled matter came on for hearing on Wednesday,
September 11, 2024, commencing at 9:00 a.m., by video/by telephone.

P R O C E E D I N G S

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JUDGE HAMANN: This is the oral hearing in IPR2023-00850, Google, LLC v. WirelessWerx IP, LLC. I am Judge Hamann. Also on the Panel today are Judges Hudalla and Meyers. I'd like to begin with appearances by the parties. Who is appearing on behalf of Petitioner today? You're muted, sir, I believe.

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MR. HABER: Sorry about that. Benjamin Haber of O'Melveny & Myers on behalf of Petitioner Google. With me on the line is William Fink and I believe I also have some client representatives on the public line as well.

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JUDGE HAMANN: Thank you. And for Patent Owner. Who is appearing on its behalf?

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MR. HENRY: Jacob Henry for Patent Owner.

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JUDGE HAMANN: I'm sorry, was that Mr. Henry?

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MR. HENRY: Yes. Jacob Henry, sir.

JUDGE HAMANN: Thank you. Good morning to everyone. I remind the parties that there is a public line, so please refrain from discussing any confidential information. I don't believe there's a protective order in this case. I don't think there'll be a problem, but I provide this reminder nonetheless. As evident, this hearing is proceeding as a video conference. To the extent you have any problems with losing your connection or it's degraded to the point you can't participate fully, please let us know immediately either, if you can, via this conference, or if not, you should reach out to the folks that you did in setting up today's conference on

1 your all's end. You should have information for the people at the Patent
2 Office.

3 We have copies of the papers and the exhibits and whatnot for this
4 proceeding, so when referring or making argument to any particular
5 document, please do so by slide number, or exhibit number, or page number,
6 or paragraph number, et cetera, whatever is appropriate. Endeavor to mute
7 yourself when you're not speaking and not presenting, which is harder of the
8 two, endeavor to unmute yourself before you begin speaking.

9 Each side will have 45 minutes today for total argument. We're going
10 to begin with Petitioner, as Petitioner bears the burden, followed by Patent
11 Owner's response, followed by any time for rebuttal and sur-rebuttal that
12 was reserved. I will endeavor to provide a time warning as you approach
13 your initial allotment or as you approach the time you have available for that
14 segment of argument. But you may find it helpful to track your own time so
15 you can better pace the presentation of your arguments.

16 With that, I turn to Mr. Haber. How much time, if any, would you
17 like to reserve for rebuttal?

18 MR. HABER: I'd like to reserve 15 minutes, Your Honor.

19 JUDGE HAMANN: Mr. Henry, did you have a question?

20 MR. HENRY: I wished to make a comment before Mr. Haber gave
21 his answer with respect to him. After giving this matter a great deal of
22 thought Patent Owner wishes to proceed based on written documents only.
23 Patent Owner withdraws its request to give oral arguments today.

24 JUDGE HAMANN: All right, Mr. Haber, what is Petitioner's
25 position?

1 MR. HABER: Well, so Petitioner would still like to present at least
2 our opening presentation. I understand that there may be nothing to respond
3 to in rebuttal time. And then I respectfully believe it will be less than 45
4 minutes. But we would like to proceed with our presentation today if that's
5 acceptable for Your Honors.

6 JUDGE HAMANN: If the parties would just hold a moment while I
7 confer with my colleagues. I had a chance, this is Judge Hamann. I had a
8 chance to confer with my colleagues. We're going to proceed with hearing
9 oral arguments. Petitioner may proceed how Petitioner intends to. We'll
10 give Patent Owner, at that time, after Petitioner's presentation in chief,
11 whether or not Patent Owner wants to respond. At that point, if Patent
12 Owner just wants to rest on his papers during its time, we turn to it for its
13 response, then that will be the end. There won't be any further rebuttal or
14 sur-rebuttal, but we will allow Patent Owner to make that decision after
15 Petitioner sets forward its presentation.

16 So, I remind you, Mr. Haber, with that ruling, Petitioners still may
17 want to reserve some time in case Patent Owner does decide to make some
18 comment during its response time, and not just rest on his papers.

19 MR. HABER: Understood, Your Honors. I will endeavor to proceed
20 efficiently, and should Your Honors have questions, I'd be happy to answer
21 them, but I do believe it will be less than 45 minutes.

22 JUDGE HAMANN: With that, I'm going to, for timing purposes,
23 then, I will assume that you still want 15 minutes for rebuttal, at least to the
24 extent for when I provide a time warning.

25 MR. HABER: Thank you, Your Honor.

1 JUDGE HAMANN: You may proceed, Mr. Haber, when you're
2 ready.

3 MR. HABER: Thank you. Meanwhile, just share my screen and I
4 will proceed, please. All right, can everyone see my screen?

5 JUDGE HAMANN: Yes.

6 MR. HABER: Thank you. Your Honor. So, this is Benjamin Haber
7 on behalf of Google. I'm going to be presenting in IPR 2023-00805. Here
8 we're at the end of my presentation instead of the beginning. One second.

9 All right, Your Honor's on slide 2. I have an overview of what we're
10 going to be talking about today. The issues in dispute are fairly narrow, so
11 I'm going to begin with a brief overview of the alleged invention, brief
12 overview of the prior art, summary of some undisputed issues and claim
13 elements. And then the two disputes are identified at the end of slide 2, and
14 I will move into those after some of these preliminary issues.

15 So first, the alleged invention, the patent, the '203 Patent is entitled
16 mapping in a multidimensional space. According to its abstract, there is a
17 multidimensional such as three-dimensional space, for example in a
18 building, and a map can be created using nodes in communication with each
19 other distributed throughout the building. We have on slide 5, figure 19A of
20 the patent which is an example of the multidimensional space. You can see
21 a four story building with nodes identified in purple, distributed amongst the
22 various floors of the building and distributed vertically from one floor to
23 another. A user is in this case walking on the fourth floor holding a green
24 device in communication with the various nodes and the nodes are used to
25 identify where in the building that user is.

1 The prior art at issue in this case discloses all of the features of the
2 challenge patent. So, we have on slide 7 summary of the institute grounds.
3 Ground 1 is directed to claims 1 through 5. Grounds 2 and 3 are directed to
4 claims 6 through 30. Ground 1 applies prior art referred to as Wrappe, in
5 combination with another piece of prior art called Belcea. Grounds 2 and 3
6 add an additional reference, Christopher and Kinnunen, to address specific
7 limitations in those claims related to advertising, tracking, maintaining a
8 user profile, things like that. None of those features are actually disputed by
9 Patent Owner in this case.

10 So, I wanted to just give you a brief overview of the primary reference
11 Wrappe. On slide 8 you can see figure 5 of Wrappe. This is a top down
12 view of a floor plan of a number of stores. You can see on the top row
13 stores identified A1 through A4 and on the bottom row stores B1 through
14 B6. And between those stores is a hallway. A user is walking down that
15 hallway and there are various nodes identified in purple that cover the floor
16 plan of the stores and extend part of the way out into the hallway so that as a
17 user is walking down the hallway, the system knows which particular store a
18 user might be nearest by determining which node footprint that user falls
19 into.

20 One of the things about Wrappe is that it talks about stores on a given
21 floor. It talks about these nodes and how they can provide information to
22 help locate the user. It explains that that information can include altitude
23 information so that you can do altitude aiding. One of the things that graph
24 doesn't do is it doesn't specifically disclose, for example, that figure 5 is
25 repeated across multiple floors of a multi-story building, despite the fact that
26 it does identify that these nodes can provide altitude based information.

1 The specific teaching about nodes being distributed vertically in a
2 multi-story building comes from Belcea. Belcea figure 3 is on slide 9. You
3 can see a side view of the building. You can see nodes distributed at various
4 levels of the building at various floors of the building, and Belcea teaches
5 that these nodes can be stacked across the height of the building. And
6 Belcea provides specific teaching and algorithms for how you identify what
7 particular floor a user may be on based on information received from the
8 various nodes. We have, here's, on slide 10, a summary figure of
9 Christopher. Christopher again has a six story structure and nodes
10 distributed among the various floors of the structure.

11 So, before I get into the disputes, I wanted to just highlight a couple
12 undisputed issues that you'll see in the party's papers. The first is a priority.
13 The challenged patent is a continuation in part. A number of features were
14 added later in the prosecution. And so you'll see in Petitioner's petition a
15 discussion of the proper priority for the claims that are challenged here.
16 That date is January 8, 2009. Patent Owner presents no dispute as to that
17 issue. Patent Owner also doesn't dispute motivations to combine for
18 Wrappe, Belcea or Wrappe, Belcea, and Christopher. I did want to point out
19 there is no dispute presented about Wrappe, Belcea, and Kinnunen. That is
20 ground 3.

21 Ground 3 was presented in case Patent Owner presented some sort of
22 a dispute about Christopher, whether its date or substantive here. There is
23 no such dispute that was presented by Patent Owner. And so should Your
24 Honors decide the issue on ground 2 that it need not reach ground 3.

25 Identified on the bottom of slide 12 is a number of undisputed issues.
26 Most of the claim elements of the independent claims are not disputed, and

1 none of the dependent claims are disputed other than the fact that they
2 depend from independent claims.

3 JUDGE HAMANN: Mr. Haber?

4 MR. HABER: Yes.

5 JUDGE HAMANN: This is Judge Hamann. I recognize there are, as
6 you termed it, a number of elements that are undisputed. But the Petitioner
7 would agree that Petitioner still bears the burden of establishing by a
8 preponderance of the evidence that the cited references teach the claim
9 limitations.

10 MR. HABER: Yes, sir.

11 JUDGE HAMANN: Correct?

12 MR. HABER: Certainly, Your Honor, the Petitioner bears the burden
13 and all of these issues that are undisputed are set out in our petition. Our
14 petition goes in a lot of detail as to all of these claim elements and the
15 evidence on which they rely. In the interest of brevity, I wasn't going to
16 address undisputed issues here.

17 JUDGE HAMANN: Particular questions about exactly what
18 Petitioners contended as to some of these limitations. And I'm sort of
19 focusing on claim 1. I am focusing on claim 1 to begin.

20 MR. HABER: Right.

21 JUDGE HAMANN: And I assume that, Mr. Haber, you have access
22 to the petition and to the challenged patent?

23 MR. HABER: Yes, Your Honor.

24 JUDGE HAMANN: And I don't know if you have a slide on this, and
25 obviously if you don't that's fine. We can refer to the papers. We have
26 them.

1 MR. HABER: Yes, sir. That's slide 14, that's claim 1.

2 JUDGE HAMANN: Thank you. The zone, I'm sorry. Using a
3 geographical zone is the first element. What has, specifically, has Petitioner
4 identified as being the geographical zone in the references for ground 1?

5 MR. HABER: Yes, Your Honor. So, the geographical zone is the
6 building in which all of these nodes are located. And so, the geographical
7 zone has to be a preconfigured geographical zone, and it has to include
8 nodes that are arranged in a multidimensional sense. And you can see that,
9 just, on slide 16. So, the zone is the combination of Wrappe and Belcea
10 here, where you have nodes distributed in an X/Y sense on a particular floor,
11 and then in a Z sense height distributed in a building. And it's preconfigured
12 because all of these nodes are installed in the building basically when the
13 system is being constructed.

14 JUDGE HAMANN: And just for the clarity. Exactly, you know,
15 looking at slide 16, or is it 15, I believe, that you have displayed now?

16 MR. HABER: Sixteen.

17 JUDGE HAMANN: Sixteen, figure 5, I believe from Wrappe, for
18 example. Specifically, is it all of those individual stores? So, there's what
19 A1 through A4 and B1 through --

20 MR. HABER: That would be B6.

21 JUDGE HAMANN: -- B6. Are all of those within the zone as
22 identified by Petitioner or is each individual store a zone?

23 MR. HABER: So, if you look at the claim language, let me just go
24 back to the claim language. The geographical zone is preconfigured, and the
25 geographical zone includes a plurality of spaced apart nodes arranged in a
26 multidimensional sense. And so, the zone, as the claim is describing, is all

1 of the nodes that are positioned in a particular building. So, there is going to
2 be a number of nodes arranged in an X/Y sense on any given floor of the
3 building, and then a number of floors stacked upon each other. And so, the
4 zone is basically where all of these nodes are in a multi-dimensional sense,
5 in a three-dimensional sense.

6 JUDGE HAMANN: So, a zone includes the plurality of stores and an
7 individual store is not a zone, is that Petitioner's position?

8 MR. HABER: Well, so an individual store is a zone for that store,
9 and each one of the nodes is identifying a particular subset of the larger zone
10 where all of these nodes are positioned. I think the way that this is being
11 applied and the way that the claim works is you have to have a number of
12 these nodes identifying stores all in one area, and then the claim is directed
13 to specifically identifying where the user is with respect to any particular
14 node in that larger zone.

15 JUDGE HAMANN: Okay. And I'm not meaning to belabor this, but
16 I really do want to fully understand what Petitioner's identified here.

17 MR. HABER: Sure.

18 JUDGE HAMANN: Using a geographical zone is a limitation. What
19 exactly in Wrappe and Belcea teaches, what does Petitioner contend is that
20 geographical zone?

21 MR. HABER: Yes. And Your Honor, I'm sorry if I'm not answering
22 your question. Clearly, the geographical zone is the area in three-
23 dimensional space. So, the building where all of these nodes are positioned.
24 So, for example, if I have a multi-story mall. The mall has three stories, and
25 there are nodes in each one of the stores of the mall. The mall, the larger
26 mall, that is the geographical zone. The larger geographical zone, where all

1 of these nodes are located and each have a fixed position in space. The mall
2 has an address. Each one of these particular nodes has a point in space. In
3 that zone where that node is located. Basically, the entire structure is this
4 geographical zone.

5 JUDGE HAMANN: Okay, thank you. I also had a question, again,
6 claim one, I believe it's slide 14. And this is an interesting word in this
7 claim. And I'll note, I think it's the word affecting that begins the, I believe
8 it's the fourth limitation.

9 MR. HABER: Yes.

10 JUDGE HAMANN: In claim 1, it's spelled with an A, begins with an
11 A. I think in some of the independent claim, other independent claims, it
12 begins with an E. But I'm trying to understand what meaning exactly
13 Petitioner is ascribed to affecting in claim 1? It seems to be used as a verb
14 here, I'd suggest. I'm not certain that's Petitioner's position.

15 MR. HABER: Yeah. So, I think the term affecting/effecting the way
16 that it's used in these claims is allowing. So, essentially, you have this
17 system where you have these nodes in a building, and they're configured in a
18 certain way and they allow for certain actions to be taken. And so, one of
19 the things, so, element Diii is a very long element. I think what affecting
20 means here is that these features of element 1D have to be capable of being
21 performed by the system that is described in the earlier elements.

22 JUDGE HAMANN: And Mr. Haber, you say the system. That was
23 actually a question I also had. What is the system? It seems to not have an
24 antecedent basis. And so, what is it but regardless, what does Petitioner
25 contend is the system in claim 1 and how is that taught?

1 MR. HABER: Yeah, so the hardware, the infrastructure that claim 1
2 is using, I believe, is the system. It is this plurality of spaced apart nodes
3 that are configured in a multi-dimensional sense in a geographical zone. So,
4 basically, going back to my example of the mall, that the system would be
5 all of those nodes distributed amongst the floors of the mall being used to
6 identify where a user is in that three-dimensional space.

7 JUDGE HAMANN: Okay. You say the system is the hardware.

8 MR. HABER: It is.

9 JUDGE HAMANN: Is that a fair, high-level view of what you just
10 said?

11 MR. HABER: Yes. Yes, correct.

12 JUDGE HAMANN: Okay. So, this says wherein the system narrows.
13 So, it's wherein the hardware narrows, the plurality of nodes, for example.
14 Is that right?

15 MR. HABER: So, the hardware and the software that is implemented
16 by that hardware, but yes.

17 JUDGE HAMANN: Sure. Okay, thank you.

18 MR. HABER: So, with that background, we have these nodes. They
19 are distributed in a building. The example I keep going back to is a multi-
20 story mall. And what the last part of element 1D describes is system. The
21 plurality of spaced apart nodes that is referred to earlier in claims identifies
22 the most practically near node to a user. The claim describes these nodes
23 being distributed at various elevation levels. So, there's a first elevation
24 level, and then the claim talks about another elevation level. There are
25 nodes at each one of these elevation levels. I think when the claim is talking
26 about elevation levels, they're talking about floors. And what they say is

1 that despite that, a particular node might be physically closer on a different
2 elevation level, the system will identify the most practically near node to the
3 user as the node that is on the same elevation level as the user.

4 And when you look at the claim language, I think it's helpful to also
5 go to the specification to see the example that was talked about in the
6 specification. I mentioned a multi-story mall. So, again, we have an
7 example where, for example, a user is on the second floor of a mall, the user
8 might be standing in a certain area, and directly below that user, affixed to
9 the ceiling of the first floor, is one of these positioning nodes that is actually
10 physically closer to the user, but on a different floor. What the patent says is
11 that although the location node on the first floor is actually closer in
12 distance, it might be directly underneath the user, that location node on the
13 first floor is not easily accessible because it is directly through the floor. So,
14 the system will identify the location node on the second floor, the same
15 elevation level as the user, as the most practically near node.

16 We talked about the actual geographical zone here, which is Wrappe's
17 nodes distributed across the floor of a building and then a number of floors
18 distributed vertically in a building. So, the teaching from Belcea is to take
19 Wrappe's single story and stack them across the floors of a building. Belcea
20 also teaches methods and algorithms to identify which particular floor a user
21 might be on. Wrappe uses what they referred to as a scoring process to
22 identify the correct floor.

23 Wrappe incorporates by reference another -- I'm sorry, Belcea
24 incorporates by reference another reference by Mr. Belcea that specifically
25 describes these algorithms that was submitted as Exhibit 1008. And you can
26 see on slide 20 an excerpt from Belcea shown building. And then an excerpt

1 from Exhibit 1008, which is incorporated by reference describing certain
2 signal characteristics that are used to narrow down what particular floor a
3 user might be on. Those two characteristics are time of flight, TOF and
4 received signal strength indicator, RSSI. Those particular values are used to
5 evaluate the appropriate floor number to return for where the user is.

6 And on slide 20, sorry, on slide 21, we have some more additional
7 detail about Belcea's incorporated floor scoring algorithms. What's shown in
8 slide 21 is figure 7 is a fairly detailed explanation for how this scoring
9 process works. Figure seven is an example of four scoring operations. In
10 essence, what Belcea describes is a technique for setting the score in each
11 floor and selecting which floor has the best score. It goes through this loop
12 that loops through the signal characteristics received from each floor, assigns
13 a score to those signal characteristics, and then returns, ultimately, the floor
14 receiving the best score as the floor where the user is.

15 And so, in the combined system we have on slide 22 what that would
16 look like. We have Wrappe's figure 5, kind of, repeated across multiple
17 floors of a building. A user can go from floor one to floor two to floor three.
18 And this particular scenario, the user is located on floor three. The system
19 identifies store, I'm sorry, node 545 as a node that's most practically near the
20 user because that is the node that is on the same floor as the user and closest
21 to the user, despite that, for example, the user might be standing directly
22 above a different node in floor two.

23 Now, Patent Owner presents a particular construction for this term,
24 the most practically near node. I think it's important to recognize that Patent
25 Owners and Petitioner don't appear to generally dispute how this term
26 should be understood. This term should be understood as narrowing down

1 floors as to where a particular user is. The issue with Patent Owner's
2 proposed construction is that they attempt to rewrite the claim by bringing in
3 terms from the specification, removing the term most practically near with
4 closest accessible location, removing the term user with movable entity.
5 This construction is not necessary to address the prior art. The prior art
6 discloses it under any potential construction that has been advanced. The
7 issue is that these terms are at best somewhat ambiguous and are just not
8 necessary to resolve the party's dispute.

9 Patent Owner essentially makes two arguments against both Wrappe
10 and Belcea. The first is that they identify that Wrappe does not disclose
11 multi-floor configuration. The response there is that Petitioner doesn't rely
12 on Wrappe for that particular disclosure. Wrappe teaches that its system can
13 be used for altitude aiding, but the specific floor scoring algorithms come
14 from Belcea. Patent Owner then argues that in Belcea, a user can only
15 communicate with nodes located on the same floor. That is, respectfully,
16 just not correct. As I mentioned earlier, Exhibit 1008, excerpted on slide 25,
17 has the floor-scoring algorithm that operates as a loop to essentially receive
18 and judge signals that are received on each floor and assign a score to
19 identify which floor the user is on.

20 So, that was for a claim element 1. The very similar term most
21 practically near appears in claim element 6, as well. The only difference is
22 that in claim 6, it is most practically near transponder rather than node. But
23 there is no difference, it's argued, between those terms node and transponder
24 as they're used in these claims. So, there is no substantive difference
25 between -- sorry, between Patent Owner's argument for claim 1 and for
26 claim 6.

1 JUDGE HAMANN: Mr. Haber, let me, if I could, direct you to one
2 of the, I think there is a dispute and we have a question over, at least I do.
3 The system narrows the probability of nodes for use by the user. That is in
4 claim 1. I'm trying to understand what exactly Petitioner contends, teaches
5 that limitation, that aspect of the limitation.

6 MR. HABER: Yes, Your Honor. I think what teaches that is the
7 particular algorithms that are incorporated by reference into Belcea. So, on
8 slide 21, we have Belcea's figure 7, and this algorithm specifically teaches
9 that claim element. What it does is it cycles through all of the floors. And
10 so, let's say, for example, a user is located on the third floor, the system will
11 cycle through the nodes on the sixth floor, a fifth floor, a third floor, a fourth
12 floor, a second floor, first floor, and figure out characteristics about the
13 signal that is being received. Those characteristics are time of flight and
14 RSSI. And then after going through each one of those floors, analyzing
15 those characteristics, the system then narrows down to the user on the third
16 floor. And so, that's the floor with the highest score, and so that's the floor
17 that is returned. So, this algorithm is what is disclosing the narrow-down
18 portion of the claim element.

19 JUDGE HAMANN: What is your response to Patent Owner's
20 argument on page 20 of its response, that Belcea '926, which I believe is
21 Exhibit 1008, that is incorporated, that Belcea '926 relates to a user only
22 communicating with nodes on a particular floor, and doesn't need to remove
23 nodes that are located on other floors? And I'm paraphrasing Patent Owner's
24 argument.

25 MR. HABER: Right. That is Patent Owner's argument.
26 Respectfully, Your Honor, that is not an accurate description of Belcea.

1 Belcea has a loop, and that loop goes through each one of the floors, and the
2 user is sitting as the example I gave before sitting on floor three. And so,
3 that user will be sending a signal. That signal will be received by the nodes
4 on floor three. It will also be received by the nodes on floor four, floor five,
5 floor six, on floor one. But the characteristics of that signal will be different
6 for the user on different floors. It will take longer, that is the time of flight
7 consideration, and then there will be some sort of signal strength attenuation
8 as well as the signal goes through multiple floors, multiple walls. And so, as
9 the system is looping through the different floors, the system is receiving
10 those signals from the user on floor three, identifying those signal
11 characteristics and saying, hey, this is not where the user is. The user is not
12 on floor six because it took a long time for the signal to get here. Signal is
13 highly attenuated and ultimately the highest score of those characteristics is
14 on floor three. And so, that's where the user is. So, the system is actually
15 receiving signals from the user at all of the different nodes and that is how it
16 is identifying where the user is.

17 So, that's what I have for this particular claim element. Unless Your
18 Honors have some additional questions, I will move on to the last.

19 JUDGE HAMANN: Mr. Haber, I apologize. I forgot to unmute
20 myself. I was just going to say that you have about five minutes left in your
21 initial allotment. Obviously, in light of what Patent Owner stated earlier,
22 you may want to adjust the 15 minutes you reserved and you can bleed into
23 that. We can do the math. Please proceed how you'd like to, but I do have a
24 question about claim 6 and an argument that Patent Owner makes about that.

25 MR. HABER: Okay.

1 JUDGE HAMANN: So, you can do that at some point, but whenever
2 you think is best.

3 MR. HABER: Yeah. So, if it is related against this most practically
4 near element or really anything. Your Honor, I'd be happy to take your
5 question right now. I think I'm nearing the end of my presentation anyway,
6 so I'd be happy to answer your question.

7 JUDGE HAMANN: Actually, then look at claim 6, if we could?

8 MR. HABER: Oh, I actually do have that one. That's fine.

9 JUDGE HAMANN: I'm going to --

10 MR. HABER: And after you --

11 JUDGE HAMANN: I guess there's two things. There's certainly
12 what you highlighted here on slide, is it 28?

13 MR. HABER: Yes.

14 JUDGE HAMANN: Is, I think, a question, but before we get to. So,
15 you can leave slide 28 up.

16

17 MR. HABER: Okay.

18 JUDGE HAMANN: But before we get to that, on the petition, I'm
19 looking on page 46 of the petition, the very bottom, the last sentence. And
20 I'll give you a moment to reach that, if you have that available. You may not
21 have it on a slide. I don't know if you have it up.

22 MR. HABER: I have it electronically. I will put it on screen. All
23 right. Sorry, was there --

24 JUDGE HAMANN: Forty-six, page 46, the last sentence on the page.
25 As 46 of, as denoted in the petition. I'm not sure what page it is in the PDF.

26 MR. HABER: Yeah, just, it should be here. All right.

1 JUDGE HAMANN: Yeah. That's accurately displayed. Let me read
2 for the record this last sentence I'm referring to, and I'll endeavor to do it
3 verbatim, but obviously the document reads, but it's, "For clarity, the,
4 "communication transponder," "transponder," in the claims is not the same
5 transponder described in the specification and earlier applications." And
6 trying to understand what Petitioner -- end quote. That's the end of the
7 sentence, but I'm trying to understand what Petitioner's position really is as
8 to what transponder means. It seems like you're suggesting that we should
9 ignore the intrinsic evidence as to what transponder means.

10 MR. HABER: No, Your Honor, that is not the position. As I
11 mentioned earlier with regard to the priority issue, this is a CIP application.
12 And so, the earliest application that was submitted in this family really
13 related to a mobile application, like in a car. And the transponder that was
14 being referred to in those earlier applications was the transponder in a car
15 that was being identified. And what is being described in the claims is a
16 transponder in the building, the transponder that is being used to identify a
17 user.

18 And so, we're not suggesting that you should ignore the intrinsic
19 record. What we did identify is that partially through the lifetime of this
20 family, the thrust of these claims did change a little bit, which is why the
21 priority is broken. And the way that transponder is being used now is the
22 same as the node that is identified in claim 1. And so, there are some
23 additional capabilities of the transponder of claim 6, for example, they
24 communicate with each other. So, it's not exactly the same, but the purpose
25 in the system of the transponder and claim 6 is serving the same purpose as
26 the node in claim 1.

1 JUDGE HAMANN: Okay. Yeah, and you make the patent petition
2 makes a statement on page 47 of the petition at the -- and again, I'm going to
3 paraphrase this, but the transponder has the same role as the nodes. And I'm
4 trying to understand the support for that because it's clear from the
5 specification as a whole that a node and a transponder may be different
6 things. And so, I'm just trying to, you know, because we still have to view
7 what's in the specification as obviously, you know, being relevant, I think, to
8 these claim terms. So, I'm trying to understand the support for Petitioner's
9 position that, you know, basically equating a transponder and a node in the
10 context of claims 6 through 30.

11 MR. HABER: Right. And so, a node and a transponder are not the
12 same things. So, in claim 6, it is slightly different. In claim 6, the
13 transponder is described so that it communicates with the user and with
14 other transponders. And so, there is a difference between the node of claim
15 1 and the transponder of claim 6. That difference is apparent from the
16 claims themselves. But the use of the term of the transponder in claim 6 is
17 being used in the same way as the node of claim 1. It is being used to be
18 positioned in a multi-dimensional sense and identify a user in a particular
19 building. And so, we're nothing saying that you have to ignore what was in
20 the specification. But what we are saying is that, you know, during the
21 prosecution of these claims, claim 6 was added later, and this particular term
22 is being used in a slightly different way than it was used in the earliest file
23 application.

24 JUDGE HAMANN: Well, doesn't the Spec. link a transponder to a
25 particular movable entity, such as a vehicle or user, for example? Because
26 I'm not so certain a node does. There seems to be a distinction there.

1 MR. HABER: Let me just pull up claim 6 again, because I think we
2 have to go back to the particular language of claim 6. And the link in claim
3 6 of a transponder to a user is that they communicate with each other. And
4 what the claim describes is, again, very similar to what's described in claim
5 1, a geographical zone that includes a plurality of spaced apart
6 communication transponders, and they communicate with the mobile device
7 of a user. And so, I think it's very clear from looking at the claims, there is a
8 link between the nodes and the user, and that is a communication link. And
9 so, the transponders are arranged in the same sort of geographical sense as
10 they are arranged in claim 1, and they are communicating both with the user
11 and with other transponders in that geographical space. And again, you can
12 see under the box that I have highlighted there, the transponders are arranged
13 at locations in the zone, and the respective locations of the plurality of
14 transponders in the zone are being placed within a building or a structure.
15 And so, claim 6 makes very clear that what these transponders are, are
16 transponders positioned in a building arranged geographically to help
17 identify where a user is.

18 JUDGE HAMANN: This is Judge Hamann again. It seems like
19 Petitioner is arguing that the functions formed or functionality provided by
20 the nodes in claim 1 is analogous or similar to the functionality for
21 transponders in claim 6. But I'm not so certain that would equate a node and
22 a transponder. They still seem to be separate structures, even if they may be
23 performing similar functions in different claims.

24 MR. HABER: Right. And that is exactly right, Your Honor. They
25 are separate structures, and they do perform some of the same functions, but
26 they perform some different functions, and they are not exactly the same.

1 And it is not Petitioner's view, for example, that you can take the term
2 transponder out of claim 6 and replace it with the term node claim 1, because
3 they are not the same. They are different structures performing slightly
4 different functions as described in the claims themselves.

5 JUDGE HAMANN: And then also focusing on claim 6, which we
6 have up here on slide 28 of Petitioner slides. And you have a box for me, so
7 that's helpful. But beginning that limitation, I'm trying to understand what
8 Petitioner contends that limitation means. It's communicating between at
9 least one transponder to the mobile user and between at least one
10 transponder. I believe there's a semicolon there. What's --

11 MR. HABER: Right.

12 JUDGE HAMANN: Where's the communication occurring for that
13 limitation I just read?

14 MR. HABER: Right. And so this is the difference, I think, between
15 claim one and claim six. And this claim language is not 100 percent as
16 clearly written as perhaps I might have drafted it. But I think what it is
17 saying is that you're communicating between at least one transponder to the
18 user. So, you're communicating with the user, and you are communicating
19 between, it says, at least one transponder. I think what it means is at least
20 another transponder. So, you have multiple transponders that are
21 communicating with each other and also with the user.

22 JUDGE HAMANN: Thank you. I believe you have about nine
23 minutes left in your total overall time. We have gone through what you had
24 reserved.

25 MR. HABER: Okay, that's fine. I just have a couple points on
26 exactly this issue, because this is the point that Patent Owner appears to

1 dispute with respect to claim 6[C]. And as I mentioned, claim 6 has some
2 features that are different than claim 1. And so, all of these issues that I'm
3 going to be talking about relate to the dependent claims in claim 6 through
4 30. They don't actually relate to claim 1 because claim 1 doesn't have these
5 transponder features. And as we noted, I think what claim 6 describes is
6 these transponders communicating amongst themselves. And Patent Owner
7 makes the argument that the nodes or transponders in the prior art do not
8 communicate amongst themselves. That is not accurate. What Wrappe
9 teaches is, for example, more than one microcell beacon station can be used
10 to create a desirable coverage area depending on the size of the store. So,
11 for example, you have a very large store, you might need to put two nodes or
12 beacons or transponders in that store to achieve the desired coverage area.
13 And then those transponders, those nodes, those beacons, will relay data
14 amongst themselves back to a controller, and they actually do communicate
15 with each other.

16 JUDGE HAMANN: So, for --

17 JUDGE HUDALLA: Mr. Haber?

18 MR. HABER: Yeah.

19 JUDGE HAMANN: Mr. Haber --

20 MR. HABER: Oh.

21 JUDGE HAMANN: -- this is Judge Hamann. I'm sorry, Judge
22 Hudalla, did you have a question also?

23 JUDGE HUDALLA: I was hoping to, yeah. Mr. Haber, I just wanted
24 to ask you about this particular slide, if I could. Your position here seems to
25 be for Wrappe, is that it expressly teaches this communication among the
26 different stations, or is this something that you must rely on expert testimony

1 and have the expert say that a person of ordinary skill in the art, looking at
2 these teachings from Wrappe, would know that they communicate among
3 themselves?

4 MR. HABER: Yeah, thank you, Your Honor. This is, correct, this is
5 an obviousness argument. Wrappe says that you have these situations where
6 you might have multiple beacons. I think it would have been obvious that in
7 order to have these multiple beacons, you need to have them communicate
8 amongst themselves. But that is not expressly disclosed by Wrappe. That
9 expressive teaching actually comes from Belcea. And so, the reason that
10 this slide is here is because I don't think it's an accurate characterization of
11 Wrappe. But if you actually want to get this specific disclosure, that
12 disclosure comes from Belcea itself. Belcea discloses a mesh network, a
13 mesh network of these nodes. A mesh network is a series of nodes that are
14 in communication with each other, specifically talk to each other to provide
15 a larger coverage area as described by Wrappe. And that was taught by
16 Belcea. I think it's fairly suggested by Wrappe, but it is not expressly
17 disclosed by Wrappe.

18 JUDGE HUDALLA: Thank you.

19 JUDGE HAMANN: Mr. Haber, if you could refer back to slide 29.

20 MR. HABER: Yes, Your Honor.

21 JUDGE HAMANN: You seem to equate node and the teaching here
22 with transponder. I want to go through that more slowly. Here on slide 29,
23 you talk about Wrappe's teaching, and I believe you cite to the microcells,
24 the beacon stations.

25 MR. HABER: Yes.

1 JUDGE HAMANN: And my understanding is Petitioners map that to
2 a node or as nodes. Is that fair?

3 MR. HABER: Yes, Your Honor, I think a single microcell beacon
4 can be considered a node of claim 1.

5 JUDGE HAMANN: Okay. And a collection of the microcell beacons
6 would be a collection of nodes; that mapping, the beacon stations to nodes, I
7 think, is what Petitioner's done?

8 MR. HABER: Yes.

9 JUDGE HAMANN: Okay. I think we've also said that nodes and
10 transponders are different structurally. And so, I'm trying to understand how
11 Petitioner was equating Wrappe's teaching of a node structurally with the
12 teaching of a transponder, which it seems to be doing?

13 MR. HABER: Yeah, I think that's a fair point, Your Honor. And as I
14 mentioned earlier, claim 1 really doesn't require that the nodes communicate
15 amongst themselves. And so, a single microcell beacon Wrappe, I think,
16 meets the description of node one -- of claim 1. What is added in claim 6 is
17 the capability that these devices, transponders and claim 6 can communicate
18 amongst themselves. And so, a single microcell beacon in Wrappe isn't
19 going to be able to do that because it's not going to have another microcell
20 beacon to communicate with. However, when you have two microcell
21 beacons together that are working together to provide coverage for a larger
22 store area, they do communicate amongst themselves, and therefore they
23 meet the additional requirement of the transponder of claim 6. And so, the
24 difference again is one node in claim 1, and claim 6 actually requires more
25 than one node communicating with another one. So, that is a separate

1 additional teaching that is also suggested by Wrappe and further disclosed
2 by Belcea in the combination.

3 JUDGE HAMANN: I certainly understand Petitioner's argument as it
4 relates to, I think, nodes in claim 1 communicating with each other. I'm
5 trying to understand how that follows fully that transponders then, which are
6 different than nodes, communicate with each other. And that may be back to
7 the underlying issue of can you point to a node to teach a transponder?

8 MR. HABER: Right, and I don't think that you can point to a single
9 node to teach a transponder. I think claim 6 is very specific that an
10 additional feature of the transponders, compared to claim 1, is that they
11 communicate amongst themselves. And so, if, for example, Wrappe had a
12 single node and didn't teach communication among multiple nodes, then I
13 don't think that the microcell beacons would necessarily meet the additional
14 requirements of claim 6. But that isn't what Wrappe teaches. What Wrappe
15 teaches is that you can have a single node that doesn't communicate with
16 other nodes, or you can have a configuration where you have more than one
17 microcell beacon that is in communication with another one. And that meets
18 the additional requirement of claim 6. So, it is again, similar underlying
19 structure, but an additional capability that Wrappe also teaches that describes
20 the additional feature of claim 6.

21 JUDGE HAMANN: Thank you. You have about three minutes left
22 in your total time, Mr. Haber.

23 MR. HABER: And I think with that, unless Your Honors have any
24 additional questions, that was all of the subject matter that I wanted to get
25 through.

1 JUDGE HAMANN: No additional questions. I'll turn to Mr. Henry.
2 I know Mr. Henry, before we begin, I just wanted to confirm Patent Owner
3 didn't file a sur-reply? It's not required to. I just want to make certain I
4 didn't miss anything.

5 MR. HENRY: You did not, Your Honor.

6 JUDGE HAMANN: Okay. Obviously, you began the hearing stating
7 that Patent Owner was going to rest on his papers and obviously Patent
8 Owner is entitled to do that and can. But I wanted to give Patent Owner the
9 opportunity now if it wants to present arguments, it may.

10 MR. HENRY: Thank you for the opportunity, but we're going to rest
11 on the papers.

12 JUDGE HAMANN: Okay, thank you, Mr. Henry. If the parties will
13 pause please, while I confer with my colleagues and make certain that they
14 have nothing further. We have no further questions. I thank the parties for
15 their appearances here today. I would ask that the parties remain on the line
16 after the hearing is adjourned so that they may answer any spelling questions
17 or whatnot that the court reporter may have. And with that, this hearing is
18 adjourned. Thank you.

19 MR. HABER: Thank you, Your Honors.

20 (Whereupon, the proceedings at 9:53 a.m. were concluded.)

IPR2023-00850
Patent 8,315,203 B2

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