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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/895,430	05/16/2013	Roger Serad	GBRS001	6243

98346 7590 12/18/2018

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EXAMINER	
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ART UNIT	PAPER NUMBER
3681	

NOTIFICATION DATE	DELIVERY MODE
12/18/2018	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROGER SERAD

Appeal 2017–004068
Application 13/895,430
Technology Center 3600

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and KENNETH G. SCHOPFER, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Roger Serad (Appellant) seeks review under 35 U.S.C. § 134 of a final rejection of claims 55, 68, and 70, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

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[1] Our decision will make reference to the Appellant's Appeal Brief ("Appeal Br.," filed November 21, 2016) and Reply Brief ("Reply Br.," filed January 17, 2017), and the Examiner's Answer ("Ans.," mailed December 2, 2016), and Final Action ("Final Act.," mailed July 29, 2016).

The Appellant invented a way of "extending social networking features to a map based system Social Navigation." Specification 1:6–7.

An understanding of the invention can be derived from a reading of exemplary claim 55, which is reproduced below (bracketed matter and some paragraphing added).

> 55. A computer–implemented system for interactively providing information to user in a social GPS environment, comprising:
>
> [1] a server;
>
> [2] a plurality of user devices, wherein each of the plurality of user devices comprises a beacon installed therein;
>
> the plurality of user devices at least include a first user device and a second user device and a network communicating with the server and the plurality of user devices;
>
> [3] wherein each beacon emits a beacon signal of user location information to the server via the network when the [sic] each beacon is turned on,
>
> [4] wherein
>
> the server receives
>
> a first beacon signal of a first user location information from a first beacon of the first user device
>
> and
>
> a second beacon signal of a second user location information from a second beacon of the second user device
>
> via the network or from a GPS system via a GPS network,
>
> and

the first user device emits a first message along with the first beacon signal of user location information to the server,

and

the first message indicates that the second user device receives the first user location information of the first user device,

and

the server sends a second message to the second user device to share the first user location information of the first user device on a social GPS on the second user device;

and

visibility of the each beacon is set at a street level, at a city level or not visible on the plurality of user devices;

[6] wherein

the second message is accepted via the network by the second user device, the second beacon of the second user device is turned on and the second user location information of the second user device is shared with the first user device by the network,

and

the second beacon of the second user device is turned off by deleting the second message.

The Examiner relies upon the following prior art:

Altman US 2008/0132251 A1 Jun. 5, 2008

Claims 55, 68, and 70 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 55, 68, and 70 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Altman.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

The issues of obviousness turn primarily on whether Altman describes turning a beacon on and off as recited in the claims.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

01. The disclosure contains no lexicographic definition of "beacon."

02. The ordinary meaning of "beacon" is:[2]

> A signal fire, especially one used to warn of an enemy's approach.
>
> A signaling or guiding device that emits light, such as a lighthouse.

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[2] American Heritage Dictionary, 5th ed. 2018, last visited _____ https://www.ahdictionary.com/word/search.html?q=beacon

A radio transmitter that emits a characteristic guidance signal for aircraft.

A signaling device that emits a repeating sound; a pinger.

Facts Related to Appellant's Disclosure

03. The user controlling user device 2 can send user device 3 and user device 4 a message and makes it active or selects a destination that can be a friend, a beacon id, a featured place, an event or a street address. If user device 3 and user device 4 accept the message, then a reply is sent and the private beacons of the accepting users are turned on. This enables the users to locate each other in the active message in real time on the social GPS. Private beacons are turned off by deleting the message or through the user beacon control function. If user device 3 and user device 4 accepts the message, then a reply is sent and the private beacons of the accepting users are turned on. This enables the users to locate each other in relationship to the destination. If the destination is a friend beacon id the location is dynamic. Spec. 6:1–10.

Facts Related to the Prior Art

Altman

04. Altman is directed to creating and sharing journal entries containing location–based information. Altman para. 2.

05. Altman describes a location–based social network manager process. The process is executed on a server computer coupled to mobile communication devices over a wireless network. At least

some of the mobile devices are location–aware mobile communication devices. The process determines the geographic location of a mobile communication device operated by a user within an area, displays a map representation of the area around the mobile communication device on a graphical user interface of the mobile communication device, and superimposes on the map the respective locations of one or more other users of mobile communication devices coupled to the mobile communication device over the network. The user can build a database of trusted friends among the one or more other users whose location can be displayed on each respective mobile communication device. A journal creation and management component provides tools for users to create and store user–generated content in the form of an online journal. This user–generated content can be automatically tagged with location information provided by the location–aware mobile communication device. Such geo–tagged journal information can be shared with specific users in the network or utilized by users with specific interest in the location dimension of the journal content. The user–generated content can be provided in the form of text or graphic messages, pictures, audio/video clips, reviews/ratings, past events and the like. Altman para. 6.

06. Altman describes a location–aware device as a mobile phone or similar mobile device that incorporates the location sharing feature provided by the location–based social network manager process. This allows the location of device to be displayed on its

own display as well as on the display of other user devices, which may or may not have location capabilities, and/or server computers. Location information for the device is determined by position determination unit, such as a Global Positioning System (GPS) method, or other location determination process implemented within the device. The location information is provided in a standardized format, such as latitude/longitude to a processor and a data radio. The data radio transmits the location data for the device as well as the scale information over network to the server. Altman para. 44.

07. Altman describes the location–based social network manager process being executed by the server as including a location–to–display process. This process converts the location data into pixel data that displays an icon representing the device on a map that is appropriately scaled based on user input. The background maps may be provided by a separate map server. The location–based social network manager process includes components that display the location information for device to other user devices based on lists of friends whom user has specified as authorized to view such location information. Altman para. 45.

08. Altman describes individual users being provided the capability of turning on or off their location sharing capability. This can be implemented through means of a toggle switch provided by the user interface on the mobile device or the web page, for each individual user of the system. This would allow a

user to turn off location sharing for friend 1, but keep it on for friend 2, or to turn it off for a class of friends, and so on. The user interface also provides a method for the user to specify certain times or time periods in which location sharing is to be automatically disabled or enabled. For example, a user may specify that his or her location should never be shared between 11 pm and 9 am, or on weekends, or any other time parameter. Such restrictions can also be specified for location, such as enabling or disabling location based on area. Altman para. 60.

09. Altman describes the location information for mobile communication device being transmitted and stored in the server computer of the network. The location information for all of the users is then transmitted from the server to the mobile communication devices based on the filters and preferences established for each of the users. Altman para. 88.

10. Altman describes data being cached on the mobile communication device, including the status of a user's friends on the network and other similar data that is small in size and frequently accessed. The synchronization function is used in conjunction with the mobile communication device cache to ensure data coherence between the user's mobile communication device and the server computer. Any friends with updated information transmit the new data to the server computer. The updated information can be generated by a new location fix or through a message transmitted over the system or a parameter

> change in the user's database. For example, an information update can be performed by the user inputting certain new or modified information directly into his or her mobile device, or automatically through a friend update, such as a status change caused by a friend changing location, sending a message, or changing the status availability flag. The updated information is transmitted from the mobile communication device to the server computer. On the server computer, the data is updated and flagged as updated data. The server computer can be configured to transmit the updated information along to the user as soon as it is received. Altman paras.98–99.

ANALYSIS

Claims 55, 68, and 70 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more

Claim 55 is the sole independent claims on appeal, with the rest of the claims on appeal depending therefrom.

The Examiner rejects these claims according to the two step procedure in *Alice Corp., Pty. Ltd. v CLS Bank Intl*, 134 S.Ct. 2347 (2014). As to the first step, the Examiner finds that the claims are directed to receiving a first user location information and a second user location information, emitting a first message by the first user, sending a second message to the second user, sharing the first user location information, and accepting a second message by the second user, and sharing the second user location information with the first user, which is considered an abstract idea. Final Act. 2. We agree.

The preamble to claim 1 recites that the claim is to system for interactively providing information to user in a social GPS environment. The steps performed by the system of claim 55 result in sending and sharing information. The Specification at 1:6–7 describes the invention as being related to extending social networking features to a map based system Social Navigation. Thus, all of the evidence supports the Examiner's finding that claim 1 is directed to sending and sharing information, which, like the risk hedging in *Bilski* is a notoriously old practice and therefore an abstract idea. *See Bilski v. Kappos*, 561 U.S. 593 (2010).

The second step of the *Alice* test requires the consideration of "the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent–eligible application." *Alice*, 134 S. Ct. at 2355.

Independent claim 1 uses a beacon installed in each user device to share location information and sends messages affirming receipt of such location information and recites

> the second message is accepted via the network by the second user device, the second beacon of the second user device is turned on and the second user location information of the second user device is shared with the first user device by the network, and the second beacon of the second user device is turned off by deleting the second message.

Claim 55. According to the Appellant,

> the limitations "the second message is accepted via the network by the second user device, the second beacon of the second user device is turned on and the second user location information of the second user device is shared with the first user device by the network, and the second beacon of the second user device is turned off by deleting the second message" are all technical

> features, and the location information is obtained by the interactions with message, beacon and network

Appeal Br. 12.

Examiner finds that the

> claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the claims do nothing more than use a server, user devices, a network, beacons, GPS system, and GPS network to perform the steps of the abstract idea. The additional elements of the claims, including the beacon, the GPS system, and the GPS network are all generic GPS elements and beacons which perform generic beacon and GPS functions and which are used to determine the user location, and do not add meaningful limitation to the abstract idea because they are generic computer components which perform do not add a meaningful limitation to the abstract idea because they are generic computer components which perform generic computer functions and they would be routed in a computer implementation.

Final Act. 3. We agree with the Examiner that the claims appear to recite "generic computer components" that perform generic computer functions which are "well–understood, routine and conventional." *Id.* And the Appellant does not contend that they invented the server, beacon, or other computer–related equipment recited in the claims on appeal.

However, the Examiner does not sufficiently establish that the "ordered combination" of the recited elements also fails to "'transform the nature of the claim' into a patent–eligible application." *Alice*, 134 S. Ct. at 2355. "[A]n inventive concept can be found in the non–conventional and non–generic arrangement of known, conventional pieces," even if these pieces constitute generic computer–related components. *Bascom Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016). The instant

claims are analogous to those in *Bascom* in that, as in *Bascom*, an intermediary is inserted between two otherwise conventional computer nodes to move the location where a process is otherwise ordinarily executed. In *Bascom* it was filtering. In the instant claims it is a beacon and the messages the beacons send and the way the linkage between them is implemented. The claims further recite automated operation of the beacon based on this linkage. The reason for the linkage is rooted in the ways of internet technology.

As discussed above, the Appellant explains that the claimed architecture (i.e., the ordered combination and arrangement of the recited elements) provides a particular technical advantage. The Examiner does not persuasively challenge the Appellant's position on this matter.

Accordingly, the Examiner has not sufficiently established, on the record before us, that independent claim 55 and the claims depending therefrom do not pass muster under step two of the *Alice* test.

Claims 55, 68, and 70 rejected under 35 U.S.C. § 103(a) as unpatentable over Altman

First, the Specification does not lexicographically define "beacon." FF 01. Of the accepted meanings of "beacon" the ones closest in context are a radio transmitter that emits a characteristic guidance signal or a signaling device that emits a repeating sound. FF 02. Thus we construe a beacon as a device that emits either a guidance or a repeating signal.

We are persuaded by Appellant's argument that "**the beacon of claim 55 can be turned on and off, while the features "'location sharing feature"**

and "position determination unit 166" of Altman cannot be turned on and off." Appeal Br. 15. The limitation at issue is

> wherein the second message is accepted via the network by the second user device, the second beacon of the second user device is turned on and the second user location information of the second user device is shared with the first user device by the network, and the second beacon of the second user device is turned off by deleting the second message
>
> Claim 55.

Thus the second beacon is turned on when the second message is accepted and turned off when the second message is deleted. [3] Altman describes individual users being provided the capability of turning on or off their location sharing capability. Altman describes doing so with a toggle switch provided by the user interface on the mobile device or the web page. Altman does not describe doing so when a message is accepted or deleted. The Examiner determines that Appellant admitted that one of ordinary skill knew to do so when deleted. Final Act. 9–10. Appellant responds that the portion of the prosecution history the Examiner relies on was misworded, misunderstood, or taken out of context. Appeal Br. 16. In any event, we find that Altman still does not describe turning the beacon on when a message is accepted.

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[3] See Specification 6:1–10 for support.

CONCLUSIONS OF LAW

The rejection of claims 55, 68, and 70 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is improper.

The rejection of claims 55, 68, and 70 under 35 U.S.C. § 103(a) as unpatentable over Altman is improper.

DECISION

The rejection of claims 55, 68, and 70 is reversed.

REVERSED