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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/615,198	09/13/2012	Jennifer Granito	19487.110.1.2	1283

107193 7590 01/24/2020

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EXAMINER	
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ART UNIT	PAPER NUMBER
2449	

NOTIFICATION DATE	DELIVERY MODE
01/24/2020	ELECTRONIC

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JENNIFER GRANITO, STEVE GREENBERG, ANDY WICK, TOM JARMOLOWSKI, ALAN KEISTER, and JEREMY REPHLO

Appeal 2018-004838
Application 13/615,198
Technology Center 2400

Before BARBARA A. BENOIT, JOHN R. KENNY, and PHILLIP A. BENNETT, *Administrative Patent Judges*.

KENNY, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 43–48, 55–61, 63–70, and 72–75. Non-Final Act. 1, 4–13; Appeal Br. 8, 15. The Examiner objected to claims 50–54 as being dependent on a rejected base claim. *Id.* at 4. Claims 1–42, 49, 62, and 71 have been canceled. Claims Appendix. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Facebook, Inc. Appeal Br. 2.

SPECIFICATION

Appellant's Specification relates to "the identification of users of an instant-messaging system that share common characteristics." Spec. 1. In one embodiment, an instant messaging (IM) server detects that a first user in a participant list of users is near a geographic location, such as a building or an intersection. Spec. 24. The IM server also detects that a second user in the participant list is near that same geographical location. *Id.* Without first receiving a request from either user, the IM server provides an indication that the first and second users are near the geographical location. *Id.* at 25.

CLAIMS

Claims 43, 57, and 64 are the pending independent claims. Claim 43 is illustrative and, with disputed limitations highlighted, reads as follows:

> 43. A method comprising:
>
> identifying one or more co-users associated with a user of a communications system;
>
> *determining, by at least one processor, locations of mobile devices of the one or more co-users relative to one or more locations other than a current location of a mobile device of the user*;
>
> *updating, in real time, positions of representations of the one or more co-users in a graphical user interface based on the determined locations of the mobile devices of the one or more co-users relative to the one or more locations other than the current location of the mobile device of the user*, wherein updating the positions of the representations of the one or more co-users in the graphical user interface comprises providing visual indicators of the positions of the one or more co-users relative to the one or more locations other than the current location of the mobile device of the user; and
>
> presenting the graphical user interface for viewing by the user of the communications system.

REFERENCES

The references relied upon by the Examiner are:

Name[2]	Reference	Date
Mayer	US 2002/0178163 A1	Nov. 28, 2002
Amir	US 7,289,814 B2	Oct. 30, 2007

REJECTION

Claims 43–48, 55–61, 63–70, and 72–75 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Mayer and Amir.[3] Non-Final Act. 1, 4–13.

ANALYSIS

Claim 43

Determining Limitation

Appellant argues that the combination of Mayer and Amir does not teach or suggest "determining . . . the locations of mobile devices of co-users relative to one or more locations other than a current location of a mobile device of the user," as recited in claim 43. Appeal Br. 8.

The Examiner finds that the combination of Mayer and Amir teaches or suggests this disputed determining limitation. Non-Final Act. 6; Ans. 3–6. The Examiner finds that Mayer teaches determining the locations of a user's and co-user's mobile devices. Non-Final Act. 6; Ans. 3–6. Further, the Examiner finds that Amir teaches a buffering region between user devices that allow the user devices to not track each other's locations until

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[2] All reference citations are to the first named inventor only.

[3] The final sentence on page 6 of the Non-Final Action indicates that claims 49, 50, 62, and 71 were also rejected under 35 U.S.C. § 103. Paragraph 4 of the Non-Final Action, however, indicates that claim 50 would be allowable if rewritten in independent form. Non-Final Action 6. And the Claims Appendix indicates that claims 49, 62, and 71 have been canceled.

one of them enters the buffering region. Ans. 5. The Examiner explains that once one of the user's devices enters the buffering region, the two devices exchange location information to determine whether the two users are within vicinity of R distance of each other. *Id.* The Examiner concludes that an ordinarily skilled artisan would combine Amir's buffering region with Mayer's system and that the resulting system would teach or suggest the disputed limitations of claim 43. *Id.* at 5–6.

Appellant disagrees, arguing that combining Amir's buffering region with Mayer's system would not satisfy the disputed determining limitation. Appeal Br. 11–12; Reply Br. 2–6. Appellant asserts that the boundaries of Amir's buffering region are based on the user's and co-user's respective locations to one another and, therefore, Mayer's system as modified by Amir would not determine locations of mobile devices relative to one or more locations other than a current location of a mobile device of a user. Appeal Br. 11–12; Reply Br. 2–6.

We agree with the Examiner that the combination of Mayer and Amir teaches or suggests the disputed determining limitation. Ans. 3–6, 12–14. Amir is directed to a system that alerts friends when one friend moves into the vicinity of another (e.g., within a distance of R). Amir, 1:22–24, 5:46–49. Amir creates a boundary region to minimize the number of location update messages that need to be exchanged between the friends to provide such an alert. *Id.* at 2:66–3:2, 3:36–45. Strip 330, shown in Figure 3A, is a boundary region for the devices for user a (305) and friend b_1 (310). *Id.* at 5:56–58; Fig. 3A. Because strip 330 has a width of R, "a" and b_1 will be at least R distance apart (not in the requisite vicinity of one another) as long as they remain on opposite sides of strip 330. *Id.* at 6:10–14. This allows "a"

to move continuously without updating its location to b_1 until either "a" or b_1 enters strip 330 (and vice versa). *Id.* at 6:10–12, 20–26. Once "a" or b_1 penetrates strip 330, their devices exchange location information. *Id.* at 6:27–29. If the two devices are determined to be closer than R + €, then the devices alert the friends. *Id.* at 6:32–34. Amir's comparison of b_1's device location to strip 330 is the recited comparison of a co-user's (b_1's) device location to a location other than the location of the user's (a's) device. Thus, we agree with the Examiner that the combination of Mayer and Amir teaches or suggests the disputed determining limitation. Non-Final Act. 6; Ans. 3–6.

Updating Limitation

Appellant argues that even if the combining Amir's buffering region with Mayer's system would satisfy the determining location of claim 43, that combination would not satisfy the limitation of:

> updating, in real time, positions of representations of the one or more co-users in a graphical user interface based on the determined locations of the mobile devices of the one or more co-users relative to the one or more locations other than the current location of the mobile device of the user,

also recited in claim 43. Appeal Br. 12–13; Reply Br. 4–6. Appellant asserts that, until a user or co-user enter the buffer region in Amir, the user's and co-user's devices do not exchange location information. Appeal Br. 12–13; Reply Br. 4–6. Further, Appellant asserts that once the user or co-user enter the buffer region, the user's and co-user's devices exchange information based on their locations, not that of the buffering region. Appeal Br. 12–13; Reply Br. 4–6. Appellant asserts that, therefore, Amir does not update in real time positions of the co-user in a graphical user interface based on the location of the buffering region and that the only

updating that is performed is based on the co-user's location with respect to the user. Appeal Br. 12–13; Reply Br. 4–6.

The Examiner responds that the proposed combination does not involve mechanically combining Amir with Mayer, but rather combining (i) Amir's teaching of using a buffering region as a reference for the user and co-user's device locations with (ii) Mayer's teachings of displaying the device locations in real-time, so that the combined system would update the location of the user's and co-user's devices with respect to a buffering region. Ans. 13. Appellant has not identified any errors with respect to that combination. Reply Br. 4–6. Instead, Appellant has merely argued why if Amir's lack of exchange of device information were incorporated into the combination, the combination might not satisfy the disputed limitations. *Id.* As mentioned, however, that argument is not responsive to the combination set forth by the Examiner and is thus not persuasive. Ans. 13.

Accordingly, we agree with the Examiner that the combination of Mayer and Amir teaches or suggests the disputed updating limitation.

Alleged Inoperability and Teaching Away

Appellant argues that the combination of Mayer and Amir would render Amir inoperable for its intended purpose because Mayer updates user locations in real-time, which is purportedly contrary to Amir's desire to minimize the number of location update messages exchanged. Appeal Br. 13; Reply 6–7. Appellant argues that, for the same reasons, Amir teaches away from the claimed invention. Reply Br. 7. We are not persuaded by either argument. Even if Mayer discloses updating user locations in real-time, Appellant cites nothing from Mayer that would prevent its system from incorporating Amir's buffer regions to minimize the

exchange of update messages. Appeal Br. 13; Reply Br. 6–7. Nor does Appellant cite anything that would prevent Mayer's system from merely using Amir's boundary region as a reference for comparison. Appeal Br. 13; Reply Br. 6–7. Similarly, Appellant cites nothing in Amir that teaches away from the combination (i.e., criticizes, discredits, or discourages the addition of Amir's boundary region to Mayer's system). *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). Accordingly, we are not persuaded that Mayer would be rendered inoperable by the proposed combination with Amir or that Amir teaches away from that combination.

Thus, we sustain the rejection of claim 43.

Claims 57 and 64

Appellant presents the same arguments for claims 57 and 64 as for claim 43. Appeal Br. 8–14. As Appellant notes, claims 57 and 64 recite similar limitations to the disputed limitations of claim 43.[4] *Id.* at 8–9. Thus, we sustain the rejection of claims 57 and 64 for the same reasons as for claim 43.

[4] Claim 57 recites "determining locations of mobile devices of the one or more co-users relative to one or more locations other than a current location of a mobile device of the user" and "updating, in real time, positions of representations of the co-users in a graphical user interface based on the locations of the mobile devices of the one or more co-users relative to the one or more locations other than the current location of the mobile device of the user." Claims Appendix. Claim 64 recites "wherein locations associated with the co-users of the first subgroup are determined and updated in real time based on a location of mobile devices of the co-users of the first subgroup relative to a location other than a current location of a mobile device of the user." Claims Appendix.

Claims 44 and 58

Appellant argues that Mayer and Amir do not teach or suggest "updating positions of representations of the one or more co-users in the graphical user interface based on the determined locations of the mobile devices of the one or more co-users comprises positioning co-users at common locations into groups," as recited in claims 44 and 58. Appeal Br. 14. In particular, Appellant asserts that neither Mayer nor Amir teaches positioning co-users at common locations into groups in a graphical user interface. *Id.* The Examiner finds that Mayer teaches or suggests this limitation by disclosing that, when potential dates (co-users) are very close to the user, those potential dates can be moved to a special category on top of the list of search results. Ans. 15; Mayer ¶ 72. Appellant identifies no error in this finding, and we see none. Reply Br. 7. Thus, we sustain the rejection of claims 44 and 58.

Claims 45 and 59

Appellant argues that Mayer and Amir do not teach or suggest "updating positions of representations of the one or more co-users in the graphical user interface based on the determined locations of the mobile devices of the one or more co-users further comprises indicating which co-users are near each other," as recited in claims 45 and 59. Appeal Br. 15. Appellant asserts that neither Mayer nor Amir teach indicating which co-users are near each other. *Id.* The Examiner finds that Mayer teaches or suggests this limitation by disclosing that, when potential dates (co-users) are very close to the user, those potential dates can be moved to a special category on top of the list of search results for dates. Ans. 15; Mayer ¶ 72. Appellant identifies no error in this finding, and we see none. Reply Br. 7. Thus, we sustain the rejection of claims 45 and 59.

Claim 47

Appellant argues that Mayer and Amir do not teach or suggest "indicating which co-users are near each other comprises grouping co-user near each other into a group and identifying the group as being near each other," as recited in claim 47. Appeal Br. 15. Appellant asserts that Mayer and Amir do not group co-users based on proximity. *Id.* The Examiner finds that Mayer teaches or suggests this limitation by disclosing that, when potential dates (co-users) are very close to the user, those potential dates can be moved to a special category on top of the list of search results for dates. Ans. 15; Mayer ¶ 72. Appellant identifies no error in this finding, and we see none. Reply Br. 7. Thus, we sustain the rejection of claim 47.

Claims 46, 48, 55, 56, 60, 61, 63, 65–70, and 72–75

Appellant does not argue claims 46, 48, 55, 56, 60, 61, 63, 65–70, and 72–75 separately. Thus, we sustain the rejection of these claims.

CONCLUSION

The Examiner's rejection is affirmed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
43–48, 55–61, 63–70, 72–75	103(a)	Mayer, Amir	43–48, 55–61, 63–70, 72–75	

AFFIRMED