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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JAIME JIMÉNEZ, PETRI JOKELA,
and HEIKKI MAHKONEN

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Appeal 2018-005242
Application 14/910,863[1]
Technology Center 2600

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Before ELENI MANTIS MERCADER, CARL W. WHITEHEAD JR., and NORMAN H. BEAMER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–16. We have jurisdiction over the pending rejected claims under 35 U.S.C. § 6(b).

We affirm-in-part.

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[1] Appellants identify TELEFONAKTIEBOLAGET L M ERICSSON (PUBL) as the real party in interest. (App. Br. 2.)

## THE INVENTION

Appellants' disclosed and claimed invention is directed to providing improved inter-node communication of position specific information in a communication network. (Spec. 2:5–6.)

Independent claim 1, reproduced below, is illustrative of the subject matter on appeal:

> 1. A method performed in a node comprised in a communication network, the method comprising:
>
> obtaining a set of coordinates of a coordinate system used by the communication network, which set of coordinates specifies a geographical position held by the node;
>
> obtaining a first identifier for the node, the identifier comprising at least a part of the obtained set of coordinates such that the identifier can specify to the communication network a first geographical area in which the node is positioned; and
>
> uploading data to a server comprised in the communication network, said data being associated with the obtained identifier when uploaded to the server.

## REJECTIONS

The Examiner rejected claims 1, 5, 6, and 11–16 under 35 U.S.C. § 102(a)(1) as being anticipated by Petersen et al. (US 2012/0054011 A1, pub. Mar. 1, 2012) (hereinafter "Petersen"). (Final Act. 8.)

The Examiner rejected claims 2 and 10 under 35 U.S.C. § 103 as being unpatentable over Petersen and Irvine (US 2013/0061049 A1, pub. Mar. 7, 2013). (Final Act. 12.)

The Examiner rejected claim 3 under 35 U.S.C. § 103 as being unpatentable over Petersen and Bedi et al. (US 2007/0067389 A1, pub. Mar. 22, 2007) (hereinafter "Bedi"). (Final Act. 14.)

The Examiner rejected claim 4 under 35 U.S.C. § 103 as being unpatentable over Petersen and MacNeille et al. (US 2005/0273258 A1, pub. Dec. 8, 2005) (hereinafter "MacNeille"). (Final Act. 15.)

The Examiner rejected claim 7 under 35 U.S.C. § 103 as being unpatentable over Petersen and Carttar et al. (US 2007/0118291 A1, pub. May 24, 2007) (hereinafter "Carttar"). (Final Act. 15.)

The Examiner rejected claim 8 under 35 U.S.C. § 103 as being unpatentable over Petersen and Baalu et al. (US 2013/0178965 A1, pub. July 11, 2013) (hereinafter "Baalu"). (Final Act. 16.)

The Examiner rejected claim 9 under 35 U.S.C. § 103 as being unpatentable over Petersen, Baalu, and Schirmacher et al. (US 9,127,962 B1, iss. Sept. 8, 2015) (hereinafter "Schirmacher"). (Final Act. 17.)

## ISSUES ON APPEAL[2]

Appellants' arguments in the Appeal Brief present the following issues[3]:

*Issue One*: Whether the Examiner erred in finding Petersen discloses the independent claim 1 limitation,

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[2] In addition to the six issues enumerated in this section, Appellants also argue the rejection of claim 4 is in error, because the motivation set forth in the Final Rejection "discusses modifying 'the method of Petersen with the teaching of Bedi,' instead of 'MacNeille.'" (App. Br. 11, citing Final Rejection 15.) This typographical error is harmless, and Appellants fail to provide any additional argument regarding the patentability of claim 4. Accordingly, we sustain the rejection of claim 4.

[3] Rather than reiterate the arguments of Appellants and the positions of the Examiner, we refer to the Appeal Brief (filed Oct. 24, 2017); the Reply Brief (filed April 23, 2018); the Final Office Action (mailed June 20, 2017); and the Examiner's Answer (mailed Feb. 23, 2018) for the respective details.

> obtaining a first identifier for the node, the identifier comprising at least a part of the obtained set of coordinates such that the identifier can specify to the communication network a first geographical area in which the node is positioned,

and the commensurate limitations recited in independent claims 13 and 15. (App. Br. 6–9.)

*Issue Two*: Whether the Examiner erred in finding Petersen discloses the dependent claim 11 limitation,

> wherein the node is a mobile node and the obtaining a set of coordinates comprises periodically updating the set of coordinates, and the obtaining a first identifier comprises updating the first identifier based on the updated set of coordinates.

(App. Br. 9–10.)

*Issue Three*: Whether the Examiner erred in finding motivation to combine Petersen and Irvine in the rejection of dependent claims 2 and 10. (App. Br. 11.)

*Issue Four*: Whether the Examiner erred in finding the combination of Petersen and Carttar teaches or suggests the dependent claim 7 limitation, "the first identifier being constructed to comprise the same first number of characters from each of the first and second coordinates." (App. Br. 12–13.)

*Issue Five*: Whether the Examiner erred in finding the combination of Petersen and Baalu teaches or suggests the dependent claim 8 limitation,

> downloading data from the server relating to a second geographical area by using a second identifier specifying said second geographical area for identifying the data on the server which is associated with an identifier specifying a geographical area comprised in or overlapping with said second geographical area.

(App. Br. 13–15.)

*Issue Six*: Whether the Examiner erred in finding the combination of Petersen, Baalu, and Schirmacher teaches or suggests the dependent claim 9 limitation,

> wherein the second geographical area is constructed by the node from a plurality of subareas which are combined to form the second geographical area, and the second identifier is constructed by the node such that it specifies the constructed second geographical area.

(App. Br. 16–17.)

## ANALYSIS

### *First Issue*

In finding Petersen discloses the claim 1 limitation at issue, the Examiner relies on the disclosure of geographic coordinates identifying a location within a geographic boundary that defines the interior of a store, and mapping a geographic location identifier to an associated business entity using a data mapping table. (Final Act. 8–9; Ans. 17; Petersen ¶¶ 31, 34, 44.)

Appellants argue that in Petersen, "it is the specific geographic location of the mobile device at the time of scanning/buying a product at a particular store location which is determined," whereas

> Appellant's disclosure and claims are not directed solely to a specific geographic location, but also to a geographical area, where the size of the area can be determined by the number of characters of each of the coordinates used in the identifier, for example.

(App. Br. 7.) Appellants contend that the "'geographic location identifier' of Petersen never suggests that only 'a part' of the coordinates are used to determine a location." (App. Br. 7, citing Petersen ¶ 24.)

We do not agree with Appellants. Appellants' argument regarding the number of characters used in the identifier is not commensurate with the scope of claim 1, which only requires "the identifier comprising at least a part of the obtained set of coordinates such that the identifier can specify . . . a first geographical area in which the node is positioned." Nothing in the independent claims relates the size of the geographical area to the number characters used in the identifier.

We agree with the Examiner's findings that "Petersen requires the complete set of GPS coordinates to determine where the mobile device is in the physical retail store" (Ans. 15), that "the term 'at least' does not limit the claimed invention to only 'a part' of the coordinates (Ans. 16), and that Petersen discloses "identification of a geographic location of a computing device may be determined based on a coordinate." (Ans. 16, quoting Petersen ¶ 7 (emphasis omitted); *see also* Petersen ¶ 34.)

Accordingly, we sustain the Examiner's rejection of independent claim 1 and independent claims 13 and 15 commensurate in scope, as well as dependent claims 5, 6, and 12–16. We also sustain the Examiner's rejection of claim 3, not separately argued with particularity. *See* App. Br. 11.

*Second Issue*

Appellants argue that "[n]owhere is it suggested that Petersen 'periodically' updates its location so that the identifier is also updated. Petersen uses only the geographic location identifier at the time a product is scanned/purchased." (App. Br. 10, citing Petersen ¶¶ 71, 32–33, 37, Figs. 2–3.)

We agree with Appellants. The Examiner finds that "as the GPS coordinates change, the geographic location identifier, changes, and one of routine skill in the art would understand that Petersen 'periodically' updates its location so that the identifier is also updated." (Ans. 21, citing Petersen ¶ 44.) However, as indicated by Fig. 3, the determination of the current location, followed by the mapping of the geographic location identifier to a business entity, occurs only after the user has manually scanned a book. *See* Petersen Fig. 3, steps 300–308. Thus it is not inherent that in Petersen's method there is a periodic update of location followed by an update of the location identifier. Accordingly, we are constrained by the record to reverse the anticipation rejection of claim 11.

*Third Issue*

Appellants argue the Examiner erred because "since Petersen requires a user to install an app on their mobile device, as well as require a user's input to scan or purchase an item, the user's identity would not be anonymous." (Reply Br. 5.)

We are not persuaded of Examiner error. The Examiner finds, and we agree, that "motivation to combine Petersen and Irvine would also provide secure and private storage of data and shared resources for users on a distributed system." (Ans. 22, citing Irvine ¶ 103.) Appellants fail to address and challenge the Examiner's finding in the Reply.

Accordingly, we sustain the Examiner's rejection of dependent claims 2 and 10.

*Fourth Issue*

In finding that the combination of Petersen and Carttar teaches or suggests the claim 7 limitation at issue, the Examiner relies on the disclosure

of Carttar wherein a set of coordinates comprising a first coordinate and a second coordinate, each comprising a number of characters, the identifier being constructed to comprise the same first number of characters from each of the first and second coordinates. (Final Act. 16; Ans. 23; Carttar ¶¶ 32–46, Table I.)

Appellants argue the Examiner erred, because "the GEOID of Carttar is a fixed number of characters, where the GEOID begins with a number that is not from the coordinates, such as the '3' at the beginning of South Carolina's GEOID and the '4' at the beginning of Hawaii's GEOID" and that "with respect to Hawaii, the '1' at the beginning of the latitude is not included in the GEOID, so the GEOID does not include the 'first number of characters,' as recited in Appellant[s'] claim 7." (Reply Br. 5, citing Carttar ¶ 47, Table I.)

We do not agree with Appellants. The Examiner finds, and we agree, that "the GEOID for South Carolina is constructed by using [six] characters from each of the latitude and the longitude" (Ans. 23, citing Carttar Table I) and "the claim does not state the total number of characters after combination." (Ans. 23.) We note that algorithm used by Carttar for the results shown in Table I ensures that in the 13 character GEOID, the first character is a digit based on a combination of the longitude and a "quadrant prefix", followed by a scrambling of six characters taken from each of the longitude and latitude values, and thus the "first number of characters from each" of the longitude and latitude coordinates is six. *See* Carttar ¶¶ 36–47.

Accordingly, we sustain the Examiner's rejection of claim 7.

*Fifth Issue*

In finding that the combination of Petersen and Baalu teaches or suggests the claim 8 limitation at issue, the Examiner relies on the disclosure of Petersen of multiple locations, multiple geographic areas, and multiple geographical location identifiers. (Ans. 24; Petersen ¶¶ 44, 59, 62, 67.) The Examiner further relies on Baalu of downloading data from a server relating to a geographical area. (Final Act. 17; Ans. 24; Baalu ¶¶ 23–26.)

Appellants argue that "[s]ince neither Petersen, nor Baalu, disclose using multiple geographic locations at the same time (e.g., first, second), there also cannot be any 'geographical area comprised in or overlapping with said second geographical area'" (App. Br. 14 (emphasis omitted)), as recited in claim 8. Appellants contend that "it would not make sense for Petersen's 'geographic boundary 118' to be 'comprised in or overlapping with' another 'geographic boundary,' because it would be practically impossible to determine the physical store associated with the product." (Reply Br. 6.)

We do not agree with Appellants. The Examiner finds, and we agree, that:

> Petersen discloses multiple locations, multiple geographical areas, and multiple geographical location identifiers. Therefore, Baalu is only shown to disclose a concept of downloading data from the server relating to a geographical area by using an identifier specifying said geographical area for identifying the data on the server which is associated with an identifier specifying a geographical area comprised in or overlapping with said geographical area.

(Ans. 24, citing Petersen ¶¶ 44, 59, 62, 67.) The Examiner's findings are additionally confirmed by Petersen's teaching that redirector manager 130

(*see* Petersen ¶¶ 44, 59, 62) "may recognize that a user is located in a television or electronics area of a physical retail store based on a lookup in the table" (Petersen ¶ 70), thus teaching a geographical area comprised in or overlapping with another geographical area. Further, the claim does not exclude (1) a "geographical area" that comprises the claimed "second geographical area" or (2) a "second identifier" that is the same as "an identifier specifying a geographical comprised in or overlapping with said second geographical area."

Accordingly, we sustain the Examiner's rejection of claim 8.

*Sixth Issue*

In finding the combination of Petersen, Baalu, and Schirmacher teach or suggest the claim 9 limitation at issue, the Examiner relies on the disclosure of Schirmacher of a personalized area of interest defined as any number of locations or areas associated with user. (Final Act. 18; Schirmacher 4:14–64, Figs. 1–3.)

Appellants argue that "Schirmacher's method teaches away from the prior approaches of identifying a user's location, and then using a radius around the location (circular) or using rectangular map views." (App. Br. 15, citing Schirmacher 2:38–65.) Appellants contend "Schirmacher uses more than just the geographical location coordinates to determine the user's personalized area. In addition, none of Schirmacher's locations overlap one another." (App. Br. 15, citing Schirmacher claim 1.)

We do not agree with Appellants. The Examiner finds, and we agree, that:

> Schirmacher discloses a concept wherein the geographical area is constructed by the node from a plurality of subareas which are combined to form the geographical area (col.4, ll.14-64, and

> figs.1–3) {the reference discloses a geographic area constructed by combining a plurality of locations (102-110) associated with the user}.

(Final Act. 18.) Appellants' contention that "Schirmacher's method teaches away from the prior approaches" does not meet the applicable standard to establish any kind of teaching away[4], as Appellants fail to demonstrate a person of ordinary skill would be discouraged from following Schirmacher or led in a direction divergent from the path taken by Appellants. Nor do Appellants establish that constructing a geographic area by combining a plurality of locations would "make Petersen's goals unworkable" (App. Br. 16) by interfering with Petersen's ability to specify "a first geographical area in which the node is positioned," as recited in claim 1.

Further, Appellants' other arguments with respect to Schirmacher are not commensurate with the scope of claim 9, which places no restrictions on the claimed "plurality of subareas which are combined to form the second geographical area."

Accordingly, we sustain the Examiner's rejection of claim 9.

## CONCLUSION

For the reasons stated above, we:

1. affirm the anticipation rejections of claims 1, 5, 6, and 12–16;
2. reverse the anticipation rejection of claim 11; and

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[4] "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

3. affirm the obviousness rejections of claims 2–4 and 7–10.

DECISION

The Examiner's decision rejecting claims 1–10 and 12–16 is affirmed.

The Examiner's decision rejecting claim 11 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART