UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/234,618	08/11/2016	Sudhir Vissa	MM02059-US-NP	1377

138908   7590   10/06/2020
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ART UNIT	PAPER NUMBER
2494	

NOTIFICATION DATE	DELIVERY MODE
10/06/2020	ELECTRONIC

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PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte SUDHIR VISSA, BINESH BALASINGH, MARY HOR-LAO,
and VIVEK TYAGI

_____

Appeal 2019-003560
Application 15/234,618
Technology Center 2400

_____

Before ALLEN R. MacDONALD, CAROLYN D. THOMAS, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

MacDONALD, *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 1–7, 9–17, 19, and 20. Appeal Br. 2.
Claims 8 and 18 have been cancelled. Advisory Act. 2. We have
jurisdiction under 35 U.S.C. § 6(b).

We reverse, and we enter a new ground of rejection.

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[1] Appellant identifies the real party in interest as Motorola Mobility LLC.
Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the claimed subject matter (emphasis, formatting, and bracketed material added):

1. A method, comprising:

[A.] receiving an incoming biometric identification request on a first device from a user;

[B.] determining first location data for the first device;

[C.] retrieving second location data associated with at least one previous biometric identification request associated with the user;

[D.] *determining a time interval* between the incoming biometric identification request and the previous biometric identification request;

[E.] *estimating a travel time based on*

[i.] the first and second *location data* and

[ii.] *transportation schedule data*; and

[F.] selectively initiating a second level identification request on the first device based on the estimated travel time *exceeding* the time interval.

REFERENCES[2]

The Examiner relies on the following references:

Name	Reference	Date
Lerenc	US 2014/0207373 A1	July 24, 2014
Bataller	US 2015/0067890 A1	Mar. 5, 2015

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[2] All citations herein to patent and pre-grant publication references are by reference to the first named inventor only.

REJECTIONS

A.

The Examiner rejects claims 1–7, 10–17, and 20 under 35 U.S.C.
§ 102 as being anticipated by Bataller. Final Act. 4–13.

We select claim 1 as the representative claim for this rejection. The
contentions discussed herein as to claim 1 are determinative as to this
rejection. Therefore, except for our ultimate decision, we do not address the
merits of the § 102 rejection of claims 2–7, 10–17, and 20 further herein.

B.

The Examiner rejects claims 9 and 19, under 35 U.S.C. § 103 as being
unpatentable over the combination of Bataller and Lerenc. Final Act. 14–15.

To the extent that Appellant discusses claims 9 and 19, Appellant
merely refers to the arguments directed to claim 1. Appeal Br. 6. Such a
referenced argument (or repeated argument) is not an argument for "separate
patentability." Thus, the rejection of this claim turns on our decision as to
claim 1. Except for our ultimate decision, we do not address the merits of
the § 103 rejection of claims 9 and 19 further herein.

OPINION

We have reviewed the Examiner's rejections in light of Appellant's
Appeal Brief and Reply Brief arguments.

A. Bataller

Bataller discloses:

> For example, in some embodiments, the location data
> indicates the geographical zone 114A, 114B or 114C within
> which the authorization requesting module is located. A

3

candidate record is only included in the subset or considered a match if the latest user position indicated by the historical location data is within the corresponding zone, and if the age of this position data is not older than a certain *age threshold.* The *age threshold* is for example a parameter of the system, and could be set at a value of between 1 and several hours. For example, *the age of each record is determined by subtracting the time information associated with the position data from a current time*.

As a further example, a distance separating the location of the identification request as indicated by the location data and one or more locations indicated by the historical location information of a candidate record is determined. This *distance is compared to a threshold*, and if the threshold is exceeded, the candidate record is for example filtered out or considered not to correspond to the person requesting identification.

The *distance threshold* may be variable based on the age of the historical location information. For example, historical location information indicating that a user was more than 500 km from the location of the identification request *less than three hours* before the request may lead to a record being deemed not to match, while historical location information indicating that a user was more than 1000 km from the location of the identification request *less than six hours* before the request may also lead to the record being deemed not to match.

The *distance threshold* may also be variable based on the transport infrastructure linking the locations. For example, *if the identification request is made from the vicinity of an airport, and the historical location information is 6 hours old or less and indicates that a user was in the vicinity of another airport, a distance of up to 2000 km may be deemed feasible*.

Bataller ¶¶ 67–70 (emphasis added).

B.

The Examiner finds:

> Battaller discloses . . .

> determining a time interval between the incoming biometric identification request and the previous biometric identification request **(Bataller: ¶ [0067] age threshold is for example a parameter of the system, and could be set at a value of between 1 and several hours. For example, the age of each record is determined by subtracting the time information associated with the position data from a current time)**;

> estimating a travel time based on the first and second location data and transportation schedule data **(Bataller: ¶ [0069] distance threshold may be variable based on the age of the historical location information. For example, historical location information indicating that a user was more than 500 km from the location of the identification request less than three hours before the request may lead to a record being deemed not to match, and ¶ [0070] if the identification request is made from the vicinity of an airport, and the historical location information is 6 hours old or less and indicates that a user was in the vicinity of another airport, a distance of up to 2000 km may be deemed feasible, also see ¶¶ [0042] and [0067])**;

Final Act. 5–6.

C.

Appellant raises the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 102.

> ***Bataller is completely silent regarding the use of transportation schedule data to estimate a travel time***. Bataller simply increases a distance threshold if the request is made near an airport. ***This analysis is based solely on location. There is no estimation of a travel time***, and no determination of a travel schedule associated with the airport.

5

. . .

The adjustment of the distance threshold taught by Bataller only takes location and absolute time difference into consideration. ***The evaluation of elapsed time and location does nothing to determine if travel was actually possible between the two airports.*** The only teaching suggesting the use of transportation schedule data to estimate a travel time comes from Applicant's own Application.

Appeal Br. 4–5 (emphasis added).

Batallter [sic] does not "***need***" time data that an airplane would take to go from first airport to another to determine if travel is possible. Bataller expressly teaches that the distance threshold is only adjusted based on the ***time elapsed*** and the ***position data*** indicating the user was near two airports. Hence, Bataller expressly teaches determining that travel is possible if the ***elapsed time*** and ***airport vicinity*** conditions are met. It does not necessarily flow nor is it obvious that Bataller would use transportation schedule data to estimate a travel time, since Bataller expressly chooses to use elapsed time and location data to make that determination.

Appeal Br. 6.

Bataller includes ***no teaching of computing a travel time***. Simply adjusting the distance threshold based on the proximity of the user to two airports does not include a calculation of a travel time. ***The units on distance are time-independent.*** Bataller is completely silent regarding the estimation of a travel time.

Reply Br. 2 (emphasis added).

<div align="center">C.</div>

The Examiner responds:

Claim 1 require nothing more than that, estimating travel time based on transportations schedule data (i.e. flying time, driving time, etc.) between the two locations. In order for Bataller to deem certain distance is feasible to travel, Bataller

would be required to find each available transportation mean[s] and respective travel time between the two locations before concluding whether it is possible to travel between the two locations in the elapsed time. Therefore, a person having an ordinary skill in the art would have understood that the transportation schedule data (i.e. flying time) would be required for Bataller to determine whether it is possible for a user to travel between two airports within the time indicated by the age of the record.

. . .

A person of ordinary skill in the art reading Bataller would understand that a schedule of travel times between airports would be vital to Bataller's method. Appellant argues that distance threshold is only adjusted based on the time elapsed and the position data. Similar to the previous response, the Examiner would like to draw Appellant's attention to ¶ [0070] of Bataller. Bataller discloses that distance threshold is also a variable of transport infrastructure, i.e. the distance threshold may also be variable based on the transport infrastructure linking the locations (Bataller ¶ [0070]). Bataller would *necessarily* require transportation schedule data (i.e., flying times and/ or other travel times between those points) to accurately setup a distance threshold. A person of ordinary skill in the art would understand that Bataller would be unable to determine if the travel is possible (i.e., to travel a certain distance within a given time) without the knowledge of the travel time associated with the threshold. Consistent with the broadest reasonable interpretation and the reasons discussed above with respect to previous argument, a person having an ordinary skill in the art would have understood that the transportation schedule data would be required in order for Bataller to determine if it is possible for a user to travel between two airports within the time indicated by the age of the record.

Ans. 6–7.

D.

First, we note that Specification discloses:

> In method block 405, a travel time for traveling between the first and second locations is estimated. In determining the estimate, ***travel schedules*** (e.g., plane schedules, train schedules, ***estimated driving time, walking time, biking time, etc.***) may be employed to estimate ***possible*** travel times. For example, a minimum travel time may be determined based on the distance between the locations and the available transportation resources.

Spec. ¶ 20 (emphasis added). Therefore, the claimed "transportation schedule data" is broadly construed as including any estimate of the travel time between two locations, i.e., the phrase "transportation schedule data" is not limited to "plane schedules" and "train schedules."

Second, contrary to Appellant's argument that Bataller "does nothing to determine if travel was actually possible between the two airports," Bataller discloses determining if the travel was "feasible." Bataller ¶ 70.

Third, as to above claim 1, we look to the algorithms underlying Appellant's steps B–F:

B.   Determine first location data (i.e., location = l_2 and time = t_2)

C.   Retrieve prior location data (i.e., location = l_1 and time = t_1)

D.   Calculate actual time interval $\Delta t_{act} = t_2 - t_1$

E.   Estimate minimum needed travel time t_{min}, based on:

    i. first location = l_2 and second location = l_2

       (i.e., travel distance, calculated as $\Delta l = l_2 - l_1$)

    ii. transportation schedule data

       (e.g., estimated driving or flying time for Δl)

F.   If $t_{min} > \Delta t_{act}$, then the actual travel is not feasible.

Appellant acknowledges:

> Bataller . . . teaches that the distance threshold is . . . adjusted based on the ***time elapsed*** and the ***position data*** indicating the user was near two airports. Hence, Bataller . . . teaches determining that travel is possible if the ***elapsed time*** and ***airport vicinity*** conditions are met.

Appeal Br. 6. That is, Appellant acknowledges that Bataller teaches:

B.   First location data (i.e., location = l_2 and time = t_2)

C.   Prior location data (i.e., location = l_1 and time = t_1)

D.   Calculate actual time interval $\Delta t_{act} = t_2 - t_1$

and

F′.   The travel is (or is not) feasible based on a distance threshold (which is based on l_1, l_2, and Δt_{act}).

We disagree with Appellant's argument that Bataller only discloses a distance threshold and "does not '***need***' time data that an airplane would take to go from first airport to another to determine if travel is possible." Appeal Br. 6. Bataller states:

> The distance threshold may be variable based on the age of the historical location information. For example, historical location information indicating that a user was ***more than 500 km*** from the location of the identification request ***less than three hours*** before the request may lead to a record being deemed not to match.

Bataller ¶ 69 (emphasis added). We determine that Bataller's "more than 500 km" requires comparison of two values, and thus discloses calculation of an actual travel distance as a value to compare to the 500 km. That is, Bataller requires:

E′.i.   Calculate travel distance, as $\Delta l = l_2 - l_1$.

Further, we determine that Bataller's "less than three hours" discloses the minimum needed travel time (i.e., 3 hours = t_{min}), and $\Delta t_{act} < t_{min}$ is "deemed to not match" (i.e., not be feasible). That is, Bataller discloses:

E'.ii. Estimate the needed travel time t_{min} for Δl

(e.g., if $\Delta l > 500$ km, then t_{min} must be at least 3 hours).

F. If $t_{min} > \Delta t_{act}$, then the actual travel is not feasible.

Therefore, we determine that while Bataller's process focuses on a distance threshold, the threshold is based on time values that correspond to Appellant's claimed time values. However, given that the reason above is provided by this Panel, we agree with Appellant to the extent that Appellant argues the Examiner presents insufficient articulated reasoning to support the Examiner's finding that Bataller anticipates claim 1.

Fourth, Appellant arguments that "[i]t does not necessarily flow nor is it obvious that Bataller would use transportation schedule data to estimate a travel time." Appeal Br. 6. As noted above, we agree with Appellant that the Examiner presents insufficient articulated reasoning to support the Examiner's finding that Bataller *anticipates* claim 1. However, for the reasons discussed above, we disagree with Appellant that claim 1 is not obvious under 35 U.S.C. § 103 in light of Bataller. Although, claim 1 requires direct use of the time values, and Bataller indirectly uses those time values while directly using the distance threshold, we deem that it would have been obvious to one of ordinary skill in the art at the time of Appellant's invention to directly use the time values underlying Bataller's distance threshold.

Similarly, based on the Examiner's § 102 and § 103 rejections and the above reasons, we designate our reversal of the Examiner § 103 rejection as a new ground of rejection under 35 U.S.C. § 103.

CONCLUSION

Appellant has demonstrated the Examiner erred in rejecting claims 1–7, 10–17, and 20 as being anticipated under 35 U.S.C. § 102.

Appellant has demonstrated the Examiner erred in rejecting claims 9 and 19 as being unpatentable under 35 U.S.C. § 103.

The Examiner's rejections of claims 1–7, 9–17, 19, and 20 as being unpatentable are **reversed**.

We newly reject claims 1–7, 9–17, 19, and 20 under 35 U.S.C. § 103 as being unpatentable.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed	New Ground
1–7, 10–17, 20	102	Bataller		1–7, 10–17, 20	
9, 19	103	Bataller, Lerenc		9, 19	
1–7, 10–17, 20	103	Bataller			1–7, 10–17, 20
9, 19	103	Bataller, Lerenc			9, 19
Overall Outcome				1–7, 9–17, 19, 20	1–7, 9–17, 19, 20

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that Appellant, <u>WITHIN TWO MONTHS FROM THE DATE OF THE DECISION</u>, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

> (2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

<u>REVERSED; 37 C.F.R. § 41.50(b)</u>