

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte EUGENE GERBER, MICHAEL JOSEPH MEYER and TED MOULOS

---

Appeal No. 2002-1986  
Application No. 09/283,167<sup>1</sup>

---

ON BRIEF

---

Before RUGGIERO, LEVY and SAADAT, Administrative Patent Judges.  
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1-21, which are all the claims pending in this application.

We reverse.

BACKGROUND

Appellants' invention is directed to a method and apparatus for determining the service provider that should receive the telephone call placed by a wireless caller based on a plurality

---

<sup>1</sup> Application for patent filed April 1, 1999.

Appeal No. 2002-1986  
Application No. 09/283,167

of call routing parameters. The method includes determining the location of the wireless telephone set which is used to generate call routing parameters to be placed in a list and transmitted to a switching system (specification, page 3). The parameters are read by the switching system until one parameter can be used to determine the location of the service provider that services the location of the wireless telephone set (id.). The call is then extended to the selected service provider (id.).

Representative independent claim 1 is reproduced as follows:

1. A system for extending a telephone call from a wireless telephone set that is served by a cellular communication system to an automatically selected one of a plurality of location-based service providers comprising:

means for determining a present location of said wireless telephone set;

means responsive to determining said present location of said wireless telephone set for generating a list that contains a plurality of call routing parameters, each of which is determined from said present location of said wireless telephone set and wherein each of said plurality of call routing parameters is a location identifier for said wireless telephone set; and

means for transmitting said list of said plurality of call routing parameters to a switching system.

The Examiner relies on the following prior art references:

LaDue	5,845,203	Dec. 1, 1998
Kallioniemi et al. (Kallioniemi)	6,134,316	Oct. 17, 2000 (filed Oct. 18, 1996)

Appeal No. 2002-1986  
Application No. 09/283,167

Claims 1-21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kallioniemi in view of LaDue.<sup>2</sup>

We make reference to the answer (Paper No. 11, mailed March 26, 2002) for the Examiner's reasoning in support of the rejection, and to the brief (Paper No. 10, filed February 20, 2002) and the reply brief (Paper No. 12, filed May 24, 2002) for Appellants' arguments thereagainst.

#### OPINION

In rejecting the claims, the Examiner relies on Kallioniemi for teaching the routing of calls through a telecommunications system between a subscriber and a resource as the claimed system for extending a telephone call from a wireless telephone to a location-based service (answer, page 3). The Examiner recognizes that Kallioniemi does not clearly teach the step of providing a list comprising a plurality of location parameters to enable the system to identify the present location of a roaming subscriber (id.). However, referring to Figures 1B and 3 and column 7, line 64 to col. 8, line 38 and col. 11, lines 18-57, the Examiner asserts that LaDue discloses the technique of providing call

---

<sup>2</sup> Method claims 16-21 are, directly or indirectly, dependent on system claim 14. Although not an issue before us, we note that the system claim 14 cannot be further limited by a step of, for example, "identifying" or "determining." Therefore, the dependency of these claims should be corrected (should probably be dependent upon method claim 15) such that the conflict in their language is removed.

Appeal No. 2002-1986  
Application No. 09/283,167

routing parameters with a routing table for identifying the location of a wireless telephone user (answer, page 4). The examiner then concludes that the combination would have been obvious since locating roaming subscribers based on the routing table with routing call parameters is desired (id.).

Appellants, although acknowledging that Kallioniemi relates to both wireline and wireless networks (reply brief, page 2), argue that the relied on section in Kallioniemi relates to network routing prefix (NRP) and simply identifies the local exchange that has been determined to serve the subscriber's telephone (reply brief, page 3). In particular, Appellants assert that identifying the local exchange serving a subscriber in Kallioniemi is different from the claimed use of the subscriber's location to generate a list of location parameters (reply brief, page 3). Appellants further argue that LaDue merely uses GPS data to locate a subscriber telephone, but fails to teach or suggest the use of a number of subscriber location parameters which define different aspects of the physical location of the subscriber's telephone (reply brief, page 4).

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d

Appeal No. 2002-1986  
Application No. 09/283,167

1955, 1956 (Fed. Cir. 1993). The conclusion that the claimed subject matter is obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). This evidence is required in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984); In re Cofer, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966).

With respect to the claimed feature of generating a list that contains a plurality of call routing parameters based on the present location of the wireless telephone, we agree with Appellants that neither reference discloses or suggests such feature. LaDue, in portions relied on by the Examiner, is merely concerned with the location parameter of the server that serves the user (col. 8, lines 23 and 24) or with routing parameters used for sending a message packet to the appropriate link (col. 11, lines 18-21 and 29-33). In sending the packets, although LaDue relies on GPS information related to the subscriber's location, the Examiner has pointed to no teaching or suggestion

Appeal No. 2002-1986  
Application No. 09/283,167

for determining call routing parameters from the location information of the wireless telephone.

We also agree with Appellants' characterization (reply brief, page 2) of the Network Routing prefix (NRP) of Kallioniemi and find that the NRP merely locates the base station or the server associated with the subscriber's telephone (col. 17, lines 20-22 and lines 32-37). We further note that the disclosed routing parameter does not relate to the location of the subscriber and merely defines the server location as stated in col. 3, lines 20-36:

The subscriber location server has a changeable mapping of subscriber numbers and exchange identifiers. Subscriber directory numbers are not used for routing calls through the domain. Rather, the node identifier (NI) in the form of the Network Routing Prefix (NRP) is used to route calls to a terminating locating exchange.

A change of connection (e.g., relocation) of a called subscriber from a first exchange to a second exchange involves a remapping, in a database of the subscriber location server, of the subscriber number from an exchange identifier of the first exchange to an exchange identifier of the second exchange. ... The present invention is easily implemented and also provides efficient and effective way e.g., of temporarily rerouting calls for a subscriber to a different exchange. [Emphasis added.]

Therefore, only the location identifier of the exchange or server, and not of the wireless telephone, is of interest to Kallioniemi, which is used to reroute incoming calls to a subscriber when the subscriber moves.

Appeal No. 2002-1986  
Application No. 09/283,167

We also are mindful of the Examiner's struggle to relate the claimed "call routing parameters" to the teachings of LaDue (answer, page 4) and later to Kallioniemi (answer, pages 9 & 10). The Examiner further changes the gist of the rejection by stating that Kallioniemi does not identify the "present location" and by relying on LaDue for specifying the use of GPS location of the subscriber (answer, the sentence connecting pages 11 and 12). In order to justify the combination of Kallioniemi and LaDue, the Examiner additionally relies on the fact that both references are in the same field of endeavor (answer, page 10) and relate to wireless communications and determining the location of the user (answer, page 12).

As discussed above, Kallioniemi is concerned with the location of the server whereas LaDue uses the GPS location of a subscriber to route message packets from one cellular system to the one serving the user. Therefore, neither reference teach or suggest the claimed feature of "generating a list that contains a plurality of call routing parameters, each of which is determined from said present location of said wireless telephone set."

Furthermore, we cannot agree with the Examiner that being in the same field of endeavor and the fact that the references could have been combined is sufficient to support the combination.

Appeal No. 2002-1986  
Application No. 09/283,167

While the relocated subscriber in Kallioniemi may be capable of being modified to use the GPS location of the subscriber in LaDue (although the list of call routing parameters is still missing), there must be a suggestion or motivation in the references to do so. See In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification."). We see no such suggestion. The location of the servers in Kallioniemi are known and do not require to be identified by their GPS location while the "location parameter" of LaDue also relates only to the server system serving the current user and is not required to be determined from the present location of the wireless telephone.

Thus, not only there is no reason or suggestion for combining various teachings from these references, as set forth by the Examiner, we also find that the combination would not have taught all the recited features of the claimed invention.

Appeal No. 2002-1986  
Application No. 09/283,167

Accordingly, we do not sustain the 35 U.S.C. § 103 rejection of claims 1-21 over Kallioniemi and LaDue.

CONCLUSION

In view of the foregoing, the decision of the Examiner to reject claims 1-21 under 35 U.S.C. § 103 is reversed.

REVERSED

	)	
JOSEPH F. RUGGIERO	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
STUART S. LEVY	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
MAHSHID D. SAADAT	)	
Administrative Patent Judge	)	

MDS/ki

Appeal No. 2002-1986  
Application No. 09/283,167

Patton Boggs  
P.O. Box 270930  
Louisville, CO 80027