

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TYROL R. GRAHAM

Appeal 2007-0482
Application 10/256,683
Technology Center 2600

Decided: April 18, 2007

Before JAMES D. THOMAS, JOSEPH F. RUGGIERO, and
JEAN R. HOMERE, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1 through 40. We have jurisdiction under 35 U.S.C. § 6(b) to decide this appeal.

Appellant invented a method and apparatus for displaying the locations of subscribers of a wireless communication system on mobile stations of fellow subscribers. (Specification 5).

Claim 1 illustrates and represents the claimed invention. It reads as follows:

In a computing environment, a method of operation:

receiving from a wireless mobile station external to the computing environment a request for presence and locations of wireless communication subscribers for a first geographic area;

in response, the computing environment performing one of

dynamically generating a displayable image that conveys presence and locations of wireless communication subscribers for a second geographic area substantially comprising the first geographic area, and

selecting a pre-generated displayable image that conveys presence and locations of wireless communication subscribers for a second geographic area substantially comprising the first geographic area; and

the computing environment further transmitting the dynamically generated/selected displayable image to the external wireless mobile station for display on the external wireless mobile station.

In rejecting the claims on appeal, the Examiner relied upon the following prior art:

Hashimoto	GB 2 322 248	Aug. 19, 1998
Burfeind	US 2002/0152266 A1	Oct. 17, 2002
Singer	US 5,485,163	Jan. 16, 1996
Kepler	US 6,748,225 B1	Jun. 08, 2004
Smith	US 6,084,951	Jul. 04, 2000

The Examiner rejected the claims on appeal as follows:

- I. Claims 1-2, 5-6, 7-10, 13-14, 17-22, 25, and 28-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.K. Patent Application No. 2 322 248 to Hashimoto (hereinafter “Hashimoto”) in view of U.S. Patent Publication No. 2002/0152266 A1 to Burfeind et al. (hereinafter “Burfeind”).
- II. Claims 3-4 and 15-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto and Burfeind further in view of U.S. Patent No. 5,485,163 to Singer et al. (hereinafter “Singer”).
- III. Claims 31 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto in view of Singer.
- IV. Claims 32-35 and 37-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto and Singer further in view of Burfeind.
- V. Claims 11-12 and 23-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto and Burfeind further in view of U.S. Patent No. 6,748,225 to Kepler (hereinafter “Kepler”).
- VI. Claims 26-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto and Burfeind further in view of U.S. Patent No. 6,084,951 to Smith et al. (hereinafter “Smith”).

Appellant contends¹ that Hashimoto, in combination with various references, does not render claims 1 through 40 unpatentable. Particularly, Appellant contends that Hashimoto does not fairly teach or suggest receiving

¹ This decision considers only those arguments that Appellant submitted in the Appeal and Reply Briefs. Arguments that Appellant could have made but chose not to make in the Briefs are deemed to have been waived. *See* 37 C.F.R. § 41.37(c)(1) (vii)(eff. Sept. 13, 2004). *See also In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

from a wireless mobile station external to the computing environment a request for presence and locations of wireless communications subscribers for a first geographic area. (Br. 8, Reply Br. 2). Appellant further contends that Hashimoto does not teach either dynamically generating or selecting a pre-generated display image of a second geographical area comprising a first requested area. (Id.)

The Examiner, in contrast, contends that Hashimoto teaches the cited limitations of representative claim 1 as a portable terminal of a specific holder that requests a central system to acquire and display the position of a third party on the holder's portable terminal. (Answer 21). The Examiner therefore concludes that Hashimoto, in combination with various references, renders claims 1 through 40 unpatentable. (Id.)

We affirm.

ISSUES

The *pivotal* issue in the appeal before us is as follows:

- (1) Under 35 U.S.C § 103(a), would one of ordinary skill in the art, at the time of the present invention, have found that the disclosure of Hashimoto renders the claimed invention unpatentable when Hashimoto teaches a portable terminal of a specific holder that requests a central system to acquire the position of a third party, and the specific holder subsequently displays a map with its current location and that of the third party?

FINDINGS OF FACT

Appellant invented a method and apparatus for displaying the presence and locations of subscribers of a communication system on a portable device of a fellow subscriber. (Specification 5). As depicted in Figure 1, a subscriber in a first geographic area issues a request from a wireless mobile station (Figure 5) to a subscriber locator (11) to locate fellow subscribers in a second geographic area. The subscriber locator (11), in response, accesses the home location register (14) and the visiting location register (16) to dynamically generate a displayable image indicating the presence and location of each mobile subscriber in a particular area. (Specification 9, 10). Alternatively, in cases where displayable images in pre-selected geographic areas have already been generated ahead of time, the subscriber locator (11) processes in real time such requests to locate the presence of fellow subscribers. (Specification 10, 11). The subscriber locator (11) subsequently displays the generated location images of subscribers of the wireless communication system on the mobile station of the requesting subscriber.

Hashimoto discloses a position information management system for allowing holders of portable remote terminals to mutually locate fellow terminal holders. (Page 25, ll. 1-4). As depicted in Figure 6, a terminal holder (11) instructs its own terminal to display its position relative to that of a third party (S33). Then, the instructing terminal issues a request to a central system to obtain the current position of the holder(s) of another portable terminal (S34). In response, the central system obtains the requested information from the third party mobile device (S40). Alternatively, the central system estimates the location of the third party

mobile device and transmits the information to the requesting terminal (S39). (Page 27, l. 7- page 28, l. 10). Finally, the requesting terminal displays a map with its current position and that of the third party mobile terminal (S45).

PRINCIPLES OF LAW
OBVIOUSNESS

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellant. *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. *See also Piasecki*, 745 F.2d at 1472, 223 USPQ at 788. Thus, the Examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the Examiner's conclusion

ANALYSIS

As set forth above, representative claim 1 requires in response to a request for presence and location of subscribers, (1) performing dynamically generating a displayable image that conveys presence and locations of

subscribers **or** (2) selecting a pre-generated displayable image that conveys presence and location of the subscribers. As detailed in the facts section above, we have found that Hashimoto discloses displaying a map with the current positions of a requesting holder in a first geographic area and a third party in a second geographic area.² We note that the claimed limitation of dynamically displaying an image indicating the location of subscribers encompasses Hashimoto's teaching of displaying on a map the current position of a third party irrespective of whether such third party is known or unknown to the requesting terminal. We therefore find that Hashimoto teaches the claimed limitation. As to Burfeind, we find that its disclosed teachings are cumulative to those of Hashimoto. Therefore, we find the combination of Burfeind with Hashimoto properly renders representative claim 1 unpatentable. Thus, after considering the entire record before us, we conclude that the Examiner did not err in rejecting representative claim 1 as being unpatentable over Hashimoto and Burfeind. We also conclude for the same reasons that the Examiner did not err in rejecting claims 2 through 40 as being unpatentable over Hashimoto in combination with various references.

CONCLUSION OF LAW

On the record before us, one of ordinary skill in the art at the time of the present invention, would have found that Hashimoto in combination with various references renders the claimed invention unpatentable under

² Hashimoto suggests that the disclosed system can be used by a plurality of holders of portable terminals so they can mutually locate one another. See page 25, lines 1 through 4.

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35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's decision to reject claims 1 through 40 under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto in combination with various references.

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

tdl/ce

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