

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH WILLS

Appeal 2007-0967
Application 10/367,001
Technology Center 2600

Decided: November 27, 2007

Before JAMES D. THOMAS, JOSEPH F. RUGGIERO,
and ALLEN R. MACDONALD, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

ON REQUEST FOR REHEARING

In a paper filed electronically on July 25, 2007, Appellant requested rehearing of our decision in this appeal dated May 31, 2007, wherein we affirmed the Examiner's rejection of all claims on appeal, claims 29, 30, 38, and 39. We adhere to the original reasoning, conclusions and decision of unpatentability as set forth in our prior decision.

As set forth at the bottom of page 3 of our original opinion, the Brief and Reply Brief focus only on the generating clause of representative independent claim 29, where we also indicated that no arguments were made in these Briefs that the references were not properly combinable within 35 U.S.C. § 103 as asserted by the Examiner. The first paragraph under topic I at page 1 of the request agrees with this view and focuses the analysis upon the claimed second distance value that is determined based upon the first distance value. This is also consistent with our discussion in the first paragraph at the top of page 5 of our original opinion. Even though our original opinion answers the question of whether the second distance value is determined based upon the first distance value, it also explains our views with respect to the manner in which the first distance value is determined separately in both references, Bellesfield and Bouve.

In recognizing again at the middle of page 2 of the request that the principal argument was directed to this claimed second distance value determined based upon the first distance, Appellant urges that we misconstrued the language of the claims and/or misapplied Bellesfield. As an initial discussion of our view with respect to Bellesfield, we make note of the paragraph bridging pages 5 and 6 of our original opinion where we made

specific reference to column 9, lines 53 through 55 and our interpretation of it, from an artisan's perspective, as applied to the generating clause on appeal.

We adhere to the view that the claimed second distance is related to the first distance according to the teachings of Bellesfield as explained in this paragraph. The noted portion of column 9 again states that "the travel route is preferably displayed with a video line having a width which is slightly wider than the widest road along the route." According to the teachings of Bellesfield as a whole, a route chosen yields a certain distance. Additionally, another, perhaps user extended or redirected, route chosen would likely yield another, different distance. Different routes yielding different distances, the claimed first distance, would be depicted having respectively different shapes which in turn define respectively different geometric areas. Different routes defining different distances may or likely would cause different widths of the showings of the respectively widest roads within the respectively different routes since roads with different widths would be encountered within the different routes. Thus, as we explained in a prior decision, the geometric shape of the respectively different routes would yield respectively different geometric areas such that

the video line having a width slightly wider than the widest road along the respective routes would be differently displayed according to what we believed would be an artisan's consideration of the noted portion of Bellesfield. The middle of page 4 of the request states, as part of an example, that "a longer route may have narrower roads between the same two sites than a shorter route that may have wider roads between the two sites." Appellant appears implicitly to therefore recognize that according to the noted teaching in Bellesfield, the shape of or width of the depiction of the actual route would be differently displayed between the different routes since in one route, as admitted, narrower roads may be encountered from another route where wider roads may be encountered between the same two sites. These examples illustrate that within Bellesfield the claimed second distance may be fairly stated to be broadly "based on" the respective route's (first) distance.

We also separately considered from our own perspective Bellesfield's teachings in the paragraph encompassing the bulk of page 6 of our prior decision. The corresponding discussion in the paragraph bridging pages 4 and 5 of the request misinterpreted our statements made at page 6 of our original decision. The showings in figures 3 and 4 of Bellesfield, as

explained, illustrate that the upper left corner and the lower right corner are respectively stated to have latitudes and longitudes which clearly may be interpreted to yield a respective distance there between. As explained, the respective second distance claimed is within this variably-sized region as depicted in figure 4, which depicts a display offset within the defined region. The correlating discussions begin at column 3 through column 4. We went on in our discussion to also indicate that according to the showing in figure 5 (note also figure 6) starting and ending points of a given route having a selective distance associated with them and with respective road segments within them were explained to be correlated to the first distance claimed. We further determined that the second claimed distance was broadly “based on” this initial determination since the route, the PLACE names, and portions of figure 5 indicate that a distance along the length to determine a given PLACE associated with the route is depicted as a distance from a length or road segment such as the depiction of PLACE 3 in figure 5, which is illustrated in figure 6. The discussions of these figures are included within column 5 through the initial portion of column 9.

Throughout our discussions of Bellesfield at pages 5 and 6 of our prior decision, we emphasized the breadth of the broadly recited “based on”

language of a second distance value being determined based upon a first distance value. Appellant's arguments and request again appear not to appreciate the broad scope that this loosely defined correlation encompasses. Even a revised, longer, second route to a first route/distance, when the second route contains a new segment added to the first route/distance, would have a new, second distance "based on" a first route/distance.

The paragraph bridging pages 6 and 7 of our prior decision also separately and independently considered Bouve's teachings as confirming what the artisan would have appreciated from Bellesfield as stated in the initial paragraph at the bottom of page 6 of our prior decision. The extent of our discussion here is not fully addressed at page 5 of the request. The request does not address our discussion at page 7 of the prior decision relating to the claimed first distance and second distance. Contrary to the view expressed at the top of page 5 of the request, we did correlate certain teachings of Bouve's patent to the claimed second distance value determined "based on" the first distance value.

Thus, various interpretations of both references were offered from an artisan's perspective in our prior decision. It is significant to note that the combinability of both references within 35 U.S.C. § 103 was not asserted to

be an issue in the Brief and Reply Brief as explained earlier. Moreover, the thrust of Appellant's arguments has always been the absence of a determination of the claimed second distance, a position with which we strongly disagree.

At page 5 of the request Appellant also recites the receiving information clause, which is at the end of the representative independent claim 29 on appeal. This clause has not been argued in the Brief and Reply Brief as impliedly admitted at page 1 of the request. Therefore, any arguments that could have been made in the earlier Briefs have been waived.

Lastly, page 1 of the principal Brief cross references to a related appeal based on application serial number 09/698,077, which is Appeal No. 2007-2001. We incorporate herein by reference the reasoning, conclusions and findings of unpatentability from appeal 2007-2001.

In conclusion, we have granted Appellant's request to rehear our prior decision, but the request is denied with respect to making any change therein.

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

DENIED

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