

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* KENNETH WILLS

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

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Decided: May 31, 2007

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

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 29, 30, 38 and 39. We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a). In a facsimile communication received on May 16, 2007, Appellant waived the confirmation of attendance at the Oral Hearing set for May 23, 2007.

As best representative of the disclosed and claimed invention, independent claim 29 is reproduced below:

29. A method for retrieving information, comprising:
- sending a request identifying a first site, a second site and a type of location of interest;
  - generating a geometric shape that defines an area, the geometric shape being generated based on a first distance value representing the distance between the first and second sites, and a second distance value determined based on the first distance value; and
  - receiving information associated with the first and second sites and selected based on the type of location of interest and selected using the geometric shape.

The following references are relied on by the Examiner:

Bellesfield	US 6,282,489 B1	Aug. 28, 2001 (Filed May 28, 1993)
Bouve	US 5,682,525	Oct. 28, 1997 (Filed January 11, 1995)

All claims on appeal, claim 29, 30, 38, and 39, stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the Examiner relies upon Bellesfield in view of Bouve.

Rather than repeat the positions of the Appellant and the Examiner, reference is made to the Brief and Reply Brief for Appellant's positions, and to the Answer for the Examiner's positions.

## OPINION

We affirm.

Our consideration of the issues on appeal focuses on independent claim 29 as representative of that claim and independent claim 38. No arguments are presented before us as to the actual features recited in dependent claims 30 and 39 since Appellant's positions at page 5 of the principal Brief on appeal argue for patentability of these dependent claims based upon the patentability alleged for their parent independent claims.

At the outset, to the extent the Brief and Reply Brief allege that the Examiner has not set forth in the Final Rejection details of the Examiner's reliance upon Bouve, this position is misplaced. The Final Rejection mailed April 8, 2005, rejected all pending claims at that time, including claims 17 through 30, 32, 33, and 35 through 39 as being obvious within 35 U.S.C. § 103 over the combined teachings of Bellesfield in view of Bouve, the same rejection of the present claims on appeal. On the one hand, Appellant alleges at the top of page 3 of the principal Brief on appeal, "that although the Bouve patent was cited against independent claims 29 and 38 in the Final Office Action of April 8, 2005, no specific reference to the Bouve patent was provided". Appellant wrongly asserts at page 3 of the Reply Brief that "the Bouve patent, which was not cited in reference to independent claims 29 and 38 in . . . the Final Office Action." In fact, the Examiner's Final Rejection at pages 3 through 5 makes detailed references to Bouve, the reliance upon which was discussed in details at pages 4 through 6 of the after Final communication received on July 7, 2005.

Appellant's arguments in the Brief and Reply Brief focus only on the generating clause of representative independent claim 29, reproduced earlier. Not only do the positions set forth by Appellant in the principal and Reply Brief not argue before us that the references are not properly combinable

within 35 U.S.C. § 103, the arguments are presented as if two separate rejections of the claims under 35 U.S.C. § 102 are presented for our consideration on appeal. The Brief and Reply Brief do not consider the Examiner’s arguments of combinability or contest them.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1996). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

As compared with the Final Rejection, the Examiner’s statement of the rejection at pages 3 through 6 of the Answer is an expanded analysis of the rejection which has been further buttressed by the responsive arguments at pages 6 through 8 of the Answer. Since we consider these positions of the Examiner to be consistent with and follow the reasoning of the above noted precedent, we sustain the rejection of all claims on appeal under 35 U.S.C. § 103.

Although still contesting the Examiner's views with respect to Bellesfield in the Reply Brief, with respect to the above-noted generating clause of representative independent claim 29 on appeal, Appellant would appear to agree with the Examiner's views that at least the features of generating a shape based on a first distance value between two locations was taught in Bellesfield. As in the principal Brief on appeal, Appellant's principal argument is directed to the feature of this clause alleging that the requirement of this claim that a second distance value be determined based on the first distance value is not met by Bellesfield alone or in combination with Bouve.

This identical argument was made as well beginning at page 4 of the principal Brief on appeal. Appellant's own consideration there of the teachings of Bellesfield makes reference to the teachings at columns 10 and 11 of this reference, asserting that the width of the corridor is not related to the distance between the departure and destination points. We agree with the views expressed here as to this portion of the reference since it focuses upon a predetermined distance from a so-called shape point to determine the location of a place of interest. On the other hand, however, the teaching at the bottom of column 9, clearly indicates otherwise. At lines 53 through 55 it is stated 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." Once the route and the distance between the departure and destination point are determined in Bellesfield, the displayed value is highlighted as stated. This is done to first determine the route or the distance of this route and then to determine the widest road for this route or distance and in turn to depict the route in a slightly wider fashion, thus clearly indicating to the artisan that

the displayed routing is broadly “based upon” the relationship of the determination of the initial distance. Stated otherwise, since the actual display width is slightly wider than the widest road along the route, there is a broadly defined relationship as required by a second distance claimed.

From our studied consideration of Bellesfield alone, the broadly claimed generation of a geographic shape appears to be met initially by the determination of the various regions depicted in figure 3, including the respective latitudes and longitudes of an entire geographic area or region. This corresponds to the claimed determination of first distances since figure 3 shows the latitudes and longitudes of the upper left and lower right portions of these regions. Next, the determination of the actual route within these respective regions is based upon a starting point and ending point, thus, determining a second claimed distance broadly “based upon” the initial distance. The determination of the starting and ending points of a given route selectively has distance values associated with the figure 5 depiction of the length of various routes or route/road segments which may in turn be considered to be the first distance claimed. Correspondingly, the determination of the second claimed distance is broadly “based upon” this determination since the routine/places/portions of figure 5 indicates a distance along the length to determine a given place as well as a distance from a link or road segment such as the depiction of place 3 in figure 5.

Moreover, our detailed consideration of Bouve merely confirms what the artisan would have appreciated from Bellesfield. Note especially figures 1 through 5, 9, 10, and 12. The claimed geometric shape that defines an area is clearly shown at various levels and the different portions of figures 3, 4, and 4A. Country maps represent various regions or areas as do state and city

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maps, each of which are selectable. Each depicts some form of an area of interest and makes available to the user items of interest in and around the particular region or vicinity of a selected area as shown in a different manner in these figures. Figure 2 shows downtown Boston, Mass. and the geographic vicinity within this downtown region or area. Bouve teaches that for each identifiable “item of interest” there are correlated geographic correspondences provided. A given area or region at one of these levels depicts various distances of the type broadly set forth in claim 1 as a first distance between points. Figure 2 also shows relative distances, like the claimed second distance, which is in turn “based on” the first distances within a given region or locational area/region. The discussion at column 6, lines 55 through 60 indicates the ability of a user to “locate items of interest within the geographic vicinity of the user and relative to the user’s current location. The scope of the geographic vicinity is generally within walking distance.” Thus, the artisan would well appreciate that the claimed first and second distance are relatively illustrated and that the second distance is determined by or based upon or within the first distances illustrated.

In view of the foregoing, the decision of the Examiner rejecting all claims on appeal under 35 U.S.C. § 103 is affirmed.

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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).

AFFIRMED

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