

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WAVEMARKET, INC. D/B/A/ LOCATION LABS

Petitioner

v.

LOCATIONNET SYSTEMS, LTD.

Patent Owner

Case IPR2014-00199

U.S. Patent 6,771,970

**Patent Owner's Opposition to Petitioner's Request
For Rehearing Pursuant To 37 C.F.R. §§ 42.71(c)–(d)
For Partial Reconsideration of the Decision To Institute**

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I. Introduction

Petitioner's Request For Rehearing (Paper No. 20; "Req.") of the Board's Decision of May 9, 2014 (Paper No. 18; "Dec.") denying review of claims 1–17 and 19 based on U.S. Patent No. 6,321,092 ("Fitch") alone or in combination with other references should be denied for three reasons.¹ First, the Petitioner failed to demonstrate that the Board abused its discretion in denying review of claims 1–17 and 19 based on Fitch alone or in combination with other references. Second, Petitioner's Request presents new arguments and theories that are inconsistent with the arguments and mapping of the Fitch reference to the claim elements presented in its IPR Petition (Paper No. 1; "Pet."). Third, the Board's Decision is correct, reasonable, and supported by substantial evidence.

II. Standard of Review

A motion for rehearing the Board's Decision is reviewed for an abuse of discretion. 37 C.F.R. § 42.71(c)–(d). "An abuse of discretion occurs if the decision (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact findings; or (4) involves a record that contains no evidence on which the Board could rationally base its decision." *Abrutyn v. Giovanniello*, 15 F.3d 1048, 1050–51 (Fed. Cir. 1994) (citing

¹ Petitioner's Request only addresses "grounds relying on Fitch alone or in combination with Jones, Shah, or Elliot." (Req. at 1 n.1.)

Heat & Control, Inc. v. Hester Indus., Inc., 785 F. 2d 1017, 1022 (Fed. Cir. 1986)).

Under this standard, “as long as the [Board’s] choice falls within a reasonable range, it cannot constitute an abuse of discretion.” *Id.* at 1053.

As the party challenging the Board’s Decision, Petitioner has the burden of proof, and among other things, must specifically identify “the place where each matter was previously addressed.” 37 C.F.R. § 42.71(d). “A request for rehearing is not an opportunity to present new arguments or evidence that could have been presented in the petition.” *EFF v. Personal Audio, LLC*, IPR2014-0070, No. 28 at 5.

III. The Board’s Finding that Fitch Does Not Teach the “*location determination system*” of Independent Claim 1 Is Correct, Reasonable, and Supported By Substantial Evidence

The Board did not abuse its discretion by finding that Petitioner failed to provide "evidence sufficient to demonstrate that Fitch describes that LFS 116, LM 116, or LM 214, LFS 214 (Fig. 2) (i.e., location determination system) is arranged to perform the function of determining which of LFEs 104, 106, 108, 110, 202, 204, and 206 is appropriate for use and to cause that system to be used.” Dec. at 22. Petitioner’s contention that “the Petition pled facts demonstrating that LFS/LM (116/214) cooperates with other components of platform 114” to teach the “location determination system” of claim 1 is directly contradicted by the Petition itself. Req. at 2. The Petition specifically attempted to map the “Location

Finding System (LFS) (116)” in Fitch to the “location determination system” of claim 1. See Pet. at 36. It did not, however, include any assertion that the “location determination system” of claim 1 is “platform 114, which includes *inter alia*, LFS/LM (116/214) and wireless location applications (118 and 226–230).” Req. at 3 (emphasis in original). Indeed, while the Petition asserted that the LFS (116) is “resident on the platform (114),” it never identified the network platform (114) as the “location determination system” of claim 1. Pet. at 36–39.

Claim 1 further requires “said location determination system is arranged to determine an appropriate one of the plurality of remote tracking systems.” Based on the disclosure of Fitch and Petitioner’s own arguments and claim mapping, the Board properly found that “Fitch does not describe that LFS 116, LM 116, or LM214, LFS 214 selectively prompt one or more LFEs.” Dec. at 21–22. In its Request, Petitioner concedes that the LFS/LM (116/214) alone is insufficient, but instead, contends for the first time that “the LFS/LM (116/214) **works together with** wireless location-based applications (118 and 226–230) and WLI (224) (as part of platform 114) to selectively prompt the LFEs.” Req. at 6 (emphasis in original). In other words, Petitioner now self-servingly argues that the claimed “location determination system” can map to any number of things in Fitch, including the network platform (114), the LFS (116/214), the wireless location-

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