UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RUIZ FOOD PRODUCTS, INC.,

Petitioner,

v.

MACROPOINT LLC,

Patent Owner.

Case IPR2017-02016
U.S. Patent No. 8,275,358 B1

PATENT OWNER'S RESPONSE PURSUANT TO 37 C.F.R. § 42.120

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EXHIBIT LIST

Exhibit Number	Description
2001	Expert Declaration of David Hilliard Williams
2002	David Hilliard Williams CV
2003	Ruiz Food Products, Inc.'s Initial Invalidity Contentions, Civil Action 6:16-cv-1133
2004	Expert Report of Dr. Stephen B. Heppe dated January 25, 2017, Civil Action 6:16-cv-1133
2005	Ruiz Food Products, Inc.'s Final Election of Asserted Prior Art, Civil Action 6:16-cv-1133

I. INTRODUCTION

Petitioner acknowledges that Poulin fails to disclose every limitation of any claim of the '358 patent, despite both offering solutions to similar problems—getting authorization from a mobile user to track and share her location information with others. However, rather than offering a secondary reference or other evidence of the art at the time, Petitioner attempts to inject the missing limitations with bald, unexplained conclusions from its expert that it would have been "obvious" to modify Poulin to achieve the claims of the '358 patent.

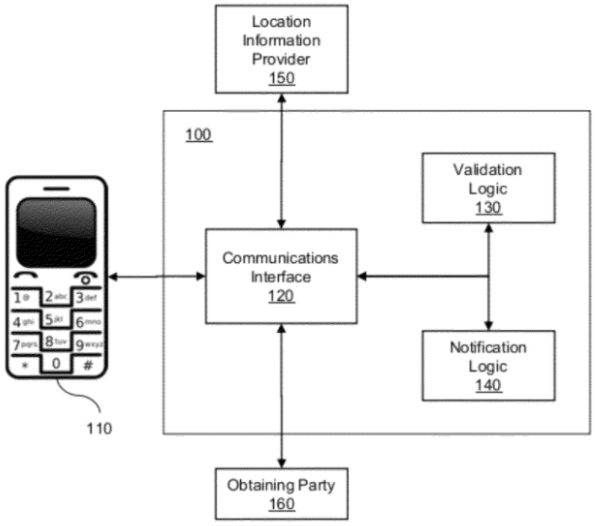
But Petitioner's arguments, and Mr. Denning's assertions, are nothing more than improper hindsight bias, fallaciously using a problem and solution ***identified*** in the '358 patent as the basis for concluding that it is obvious in retrospect. But § 103 does not work that way and, even under the relaxed rubric of *KSR,* hindsight bias is impermissible and "obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 538, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006)).

II. OVERVIEW OF U.S. PATENT NO. 8,275,358 (Ex. 1001)

A. Summary of the '358 Patent

The '358 patent is directed to systems and methods for providing notification to and receiving consent from a user whose mobile device's location is to be obtained. Ex. 1001 at 1:9-11.

FIG. 1 of the '358 patent (right) illustrates an exemplary system 100 for providing user notification and receiving user consent to obtaining location information of a mobile device 110 of the user. The system 100 includes a communications interface 120 configured for communication with the mobile device 110. *Id.* at FIG. 1. The communications interface 120 is configured to participate in telephone calls with the mobile device 110. *Id.* at 1:56-62.



Validation logic 130 is configured to identify the mobile device 110 at least in part by obtaining an identifier associated with the mobile device 110. This ensures that the right party, the user, is notified that location information of the mobile device 110 will be used and that the right party, the user, consents to the disclosure of the location information. *Id.* at 4:3-10.

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