

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
Patent 8,275,358

**DECLARATION OF SCOTT DENNING IN SUPPORT OF PETITIONER'S
OPPOSITION TO PATENT OWNER'S MOTION TO AMEND**

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I, Scott Andrew Denning, of Colorado Springs, Colorado, declare that:

1. I have been retained by Ruiz Food Products, Inc. in the above-captioned *Inter Partes* Review (IPR) as an independent expert in the fields of location tracking and telecommunications.

2. As explained in paragraphs ¶¶8-15 of my initial Declaration (Ex. 1002), I would have been a person with at least ordinary skill in the art of U.S. Patent No. 8,275,358 (the '358 patent) as of the time of its alleged invention.

3. I have been asked to provide expert testimony in this declaration regarding the patentability of the claims of the '358 patent as well as new amendments to the original claims of the '358 patent.

I. Background

4. As I explained in paragraphs ¶¶45-50 of my original declaration, the features described in the claims of the '358 patent were widely known and routine at the time of the filing of the '358 patent. For example, automated interactive voice response (IVR) was widely used to provide information and receive signals within a telephone call well before the filing of the '358 patent. *See e.g.*, [Ex. 1009. at 1:19-28 (in 1993 stating, “IVR provides an interactive voice session between customer and business...the customer interacts using a telephone keypad or through voiced statements.”)]. Moreover, at the time of the filing of the '358 patent, it was widely known that an IVR system can be used as an equivalent to a

website or SMS as a form of communicating information to a user when signing-up for a service and getting consent for the service to share information, including location information, about the user. *See e.g.*, [Ex. 1010 at 0033 (“A person can use a number of methods to sign up for the service and interact (for example: web, mobile, messaging, IVR, call centre).”) and 0048 (example using SMS to obtain consent of user to join group sharing status information of the user)].

5. Further, it was widely known to provide notice of location tracking via messages to the user whose location was being tracked and potentially disclosed. For example, Exhibit 1014 to Roach discusses a system where a third party is requesting a user’s directory information. *See* [Roach at Abstract, 0008 (directory information includes “location information”), 0035, and FIG 4]. Further this “notice” can be tailored to the features and functionality of the intended device. *See [id.* 0036 (using IVR, text message, email, video or any other appropriate delivery mechanism interchangeably), 0044]. There is nothing in the ’358 patent that was not well-known in the art prior to the filing of the ’358 patent.

6. Finally, using codes to verify identities and permissions was also known in the art at the time of the filing of the ’358 patent. For example, in Ex. 1010 at [0048] discusses transmitting security codes with a message to join a group. Accordingly, using codes to verify identify and permissions was also one

step that a POSITA could use when designing a system to further enhance security within the system.

II. Original Dependent Claims

7. I have been asked to review Mr. Williams' opinion as it relates to the original dependent claims. It is my opinion that Mr. Williams takes an overly narrow view of what teachings Poulin provides to a POSITA. While we both agree that a notice is provided, with respect to claims 3 and 21, Mr. Williams takes issues with whether the notice is for the service or for location. Ex. 2001 at [0066]-[0070]. However, a POSITA reviewing Poulin's system would not recognize this distinction because the very purpose of the system is to track the user, and a POSITA would view this teaching of notice as notice that the user is being tracked. In Poulin's system, these are the same thing, as there is no real purpose in having an active service in Poulin if the system is not tracking your location. In other words, the notice that we both agree is provided by Poulin, is to a user and informs them that the system is tracking them when the service is being used.

8. A POSITA does not read Poulin looking for exact phrases, but instead reads the reference for all it teaches. It is my opinion that the Poulin teaches all the elements of claims 3 and 21.

9. Regarding his commentary with respect to claims 8 and 26, his opinion is based on language not in the claim. The claim recites "communicating

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