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 REPLY BRIEF IN SUPPORT OF CONTINGENT MOTION TO AMEND

UPDATED LIST OF EXHIBITS

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
2006	Declaration of Kyle B Fleming, Esq.
2007	Kyle B. Fleming CV
2008	Complaint filed in *FourKites, Inc. v MacroPoint*, LLC, Case No. 1:16-cv-02703-CAB (N.D. Ohio)

I. THE PROPOSED CLAIMS ARE NOT INVALID UNDER § 101

The patented invention solved a technological problem. Location information of freight is valuable to shippers, freight hauling services providers, and consumers. The use of location information technology, however, raises privacy issues; a user's privacy may be at risk if location information is misused or disclosed without the user's authorization or knowledge. Prior art systems created to solve these privacy issues used web browsers or mobile devices' SMS texting capabilities to provide notification and obtain the user's consent. These prior art systems proved inconvenient and often required extensive user training.

The invention provides a unique communications interface that provides notification and obtains the user's consent in a convenient way.

The claims thus recite "a method for receiving consent from a user of a mobile device to obtaining location information." Like most software, the invention uses algorithms. But the claim is not a method for, for example, merely calculating numbers. It is a method for producing a tangible result—electronically providing notification and obtaining the user's consent for tracking her location. The method is precisely the sort of "improve[ment to] an existing technological process" that meets the Supreme Court's test for patent-eligibility under § 101. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2358 (2014).

Petitioner does not seriously dispute that. Instead, Petitioner attempts to change the subject by declaring without support that "receiving consent" is an "abstract idea" and ultimately falsely declaring that "the '358 patent does not disclose any new devices or algorithms for monitoring locations or obtaining consent." Opp. at 3-4.

Petitioner's arguments regarding both steps of the *Alice*/*Mayo* framework consist of repeating (but not proving) those false premises. The actual claim language and prior art show that the claims are neither directed to nor seek to claim an abstract idea. Instead, they claim a specific, step-by-step technological process for producing a tangible result. Like the claims in *Diamond v. Diehr*, 450 U.S. 175 (1981), they are "eligible to receive the protection of our patent laws." *Id*. at 184.

A. The Claims Are a Patent-Eligible Improvement to a Technological Problem

Under *Alice*, a claim is not an unpatentable abstract idea if it "improve[s] an existing technological process." 134 S. Ct. at 2358. That precisely describes the invention here: For the first time a communications interface electronically provides notification and obtains a user's consent in a convenient way.

Petitioner nonetheless asserts over and over, and each time without support, that the claims "are directed to an abstract idea." Opp. at 2-7. From there, the Petitioner digresses into whether the claims limit the abstract idea to a particular field, whether the recited hardware around the abstract idea is conventional, *etc*.

eventually concluding that "[n]one of them alters the abstract idea recited in claim 1 of receiving consent." Opp. at 7. Thus, Petitioner begins and ends by asserting that the claims are directed to an abstract idea without ever actually demonstrating that the claims are directed to an abstract idea.

Claims (even claims directed to "computer-related technology") that provide improvements in a technology are not directed to abstract ideas. *McRO, Inc. dba Planet Blue v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1316 (Fed. Cir. 2016). An indication that a claim is directed to an improvement in computer-related technology may include a teaching in the specification about how the claimed invention improves a computer or other technology. *Id.* at 1313.

The '358 patent teaches regarding prior art technology that "[a]lthough, electronic methods have been developed that make use of web browsers and SMS texting capabilities of mobile devices to provide notification and consent, some of these systems have proved inconvenient and may require advanced mobile devices or extensive user training." Col. 2, lines 4-8. The Specification then offers the disclosed invention as an improvement in the technology. *See*, *e.g.* Col. 2, lines 9-51. Thus, as in *McRO*, the '358 patent makes clear the problem to be improved upon and offers the claimed invention as the technological improvement. The claimed invention is a patent-eligible technological advance under *Alice*.

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