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 PRELIMINARY RESPONSE TO PETITION PURSUANT TO 37 C.F.R. § 42.107

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Patent Owner MacroPoint LLC ("Patent Owner"), pursuant to 35 U.S.C. § 313 and 37 C.F.R. § 42.170, respectfully requests that the Patent Trial and Appeal Board ("Board") deny institution of IPR2017-02016. This filing is timely made within three months of the date of the Notice according the Petition a filing date. Notice, Paper 3.

I. INTRODUCTION

Although the Poulin reference and the '358 patent offer solutions to similar problems—getting authorization from a mobile user to track and share her location information with others—petitioner acknowledges that Poulin fails to disclose every limitation of any claim of the '358 patent. 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 ***first 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

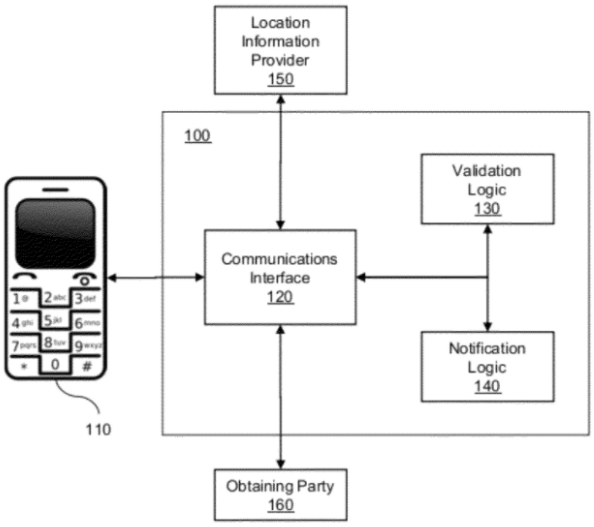
some rational underpinning." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 538, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006)).

Petitioner has failed in its petition to meet its burdens of production and persuasion, and the Board should decline to institute an *inter partes* review on any claim on any ground.

II. OVERVIEW OF U.S. PATENT NO. 8,275,358

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.



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

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