

338. Dr. Heppe describes forwarding or transmitting location information from a mobile device in a variety of ways omits the requirement of receiving location information of a mobile device. There is no limitation on the methods of acquiring the location information of a mobile device by the mobile device.

339. Therefore, Dr. Heppe did not establish by clear and convincing evidence that Thomas disclosed the present limitation. Accordingly, Thomas does not anticipate element 2.1.

340. In addition, Thomas does not disclose receiving device location from a mobile device. See section above “In Thomas the Location Information Provider is not disclosed.”

8.2.2.3 Claim 2.2 – Thomas does not disclose receiving a request for information regarding the location of a vehicle or the freight carried by the vehicle.

341. Claim 2.2 requires “ the central processing unit programmed to: receive a request for information regarding the location of the vehicle or the freight carried by the vehicle” Dr. Heppe asserts that this is disclosed by Thomas. Heppe Opening report at ¶216-217. I disagree. Thomas does not disclose receiving a request for information regarding the location of the vehicle or the freight carried by the vehicle. See Notice of Allowability at §5; Protest Response at 31, 34.

342. Dr. Heppe has not demonstrated by clear and convincing evidence that Thomas discloses a request for location of a vehicle or the freight carried by the vehicle. While Thomas does use a wireless network to monitor mobile devices, Notice of Allowability at §5, Dr. Heppe has not asserted that any of the requests he asserts are

disclosed by Thomas are a request for location of a vehicle or freight carried by a vehicle. All the requests Dr. Hepe has identified in Thomas involve a mobile device. In my opinion a mobile device is not a vehicle nor is a mobile device the freight carried by the vehicle.

343. Therefore, Dr. Hepe did not establish by clear and convincing evidence that Thomas disclosed a request for location of a vehicle or the freight carried by the vehicle. Accordingly, Thomas does not anticipate element 2.2.

344. In addition, Thomas does not disclose monitoring vehicles or freight carried by vehicles. See section above “In Thomas the location of a mobile phone is not the location of a vehicle.”

8.2.2.4 Claim 2.3 – Thomas does not disclose a location information provider.

345. Claim 2.3 requires “the central processing unit programmed to . . . request location information of the mobile device comprising the GPS receiver from a location information provider.” Dr. Hepe opined that claim 2.3 was disclosed by Thomas or would have been obvious over Thomas. Hepe Opening Report at paragraph 218-23 (disclosed) and paragraph 223 (obvious). I disagree. Dr. Hepe has not established that Thomas discloses location information of the mobile device being obtained from a location information provider. See File Wrapper of ‘659 Patent, *Notice of Allowability* §5 (July 6, 2016) (the “Notice of Allowability”). Thomas does not anticipate or render obvious claim 2 for at least this reason.

346. Dr. Hepe observes that the ’659 Patent discloses that the claimed “location information provider” can be a “wireless service provider,” (Hepe Opening

Report at §218), and then Dr. Heppe incorrectly concludes that in Thomas, “the wireless network is the claimed location information provider.” Heppe Opening Report at ¶220. This is incorrect. Dr. Heppe improperly conflates a wireless network with a wireless service provider.

347. A person of ordinary skill in the art would understand that a network, such as a wireless network, is infrastructure, while a service provider, such as a wireless service provider or a location information provider, provides a service that may use the infrastructure. Accordingly, the ‘659 Patent consistently treats the location information provider 150 and the wireless network 155 as distinct throughout the patent. The ‘659 Patent teaches, for example, “In one embodiment, the location information provider 150 is a wireless service provider that provides wireless service in a network 155.” ‘659 Patent at 4:35-38.

348. In Thomas, by contrast, “the location of the client device (mobile device) can be determined . . . by a wireless network infrastructure,” (Thomas at 5:54-61), “us[ing] location information obtained from a wireless network,” (Thomas at 4:37). Heppe Opening Report at ¶219. “In an embodiment of Thomas where location is determined by the wireless network, a POSITA would understand that this information would be requested from the wireless network . . . ” Heppe Opening Report at ¶221. “[A] POSITA would understand the scope of these disclosures in Thomas to include a pair of servers – the location monitoring server 102 plus a server associated with the wireless network infrastructure – wherein the location monitoring server requests location

information of the client (mobile) device from the server associated with the wireless network infrastructure.” Heppe Opening Report at ¶222.

349. Dr. Heppe has not demonstrated Thomas to disclose that the location of a mobile device can be determined from a service provider of any kind, much less a location information provider.

350. Thus, while Thomas may disclose a wireless network,(Notice of Allowability at §5), Defendants and Dr. Heppe have not met their burden to prove by clear and convincing evidence that Thomas discloses “the central processing unit programmed to . . . request location information of the mobile device comprising the GPS receiver from a location information provider.”

351.

352. The argument that Thomas anticipates and/or renders obvious the asserted claims has been made before. File Wrapper of ‘659 Patent, *Protest Under 37 C.F.R. § 1.291* at 4-5 (Jan. 27, 2016) (the “Protest”). Protestants specifically stated regarding Thomas: “Another method is to use location information from a wireless network. The wireless network can provide location information on some or all of the mobile units. (Thomas, 4:37-41).” Protest at 4. The Examiner plainly appreciated the distinction between a network and a provider. The Examiner stated in his Notice of Allowability “One embodiment [of Thomas] includes mobile computing devices supported by a wireless network . . . ,” “Thomas doesn’t appear to teach the location information of the mobile device being obtained from a location information provider . . . ,” and “While

Thomas does use a wireless network to monitor mobile devices, the [Thomas] reference doesn't teach all the limitations . . . The prior art of record fails to teach or render obvious the unique system of monitoring freight locations . . . “*Id. at* §5.

353. Thomas discloses a first approach that transmits GPS data from a mobile device, *through* (rather than *from*) a wireless network, to a server. *See* Thomas at 1:66-67 (“transmitting the location information to a web server *through* at least in part a wireless network”). (emphasis added) *See also* Thomas at 3:15-17, 4:5-9, and 4:23-28 (location information transmitted through wireless network) and 4:2-3 (wireless network “enabled” mobile device to communicate with server).

354. Thomas also discloses a second approach (discussed above) involving tower-based data acquisition from a wireless network. *See* Thomas at 4:37-42. As Thomas makes clear, the second approach does not involve GPS data originating on the mobile device. “In this case, the mobile units need not participate in obtaining the location information.” Thomas at 4:41-42. *See also* Heppe Opening Report at paragraph 219 (quoting Thomas’s statement that “the mobile units need not participate in obtaining the location information”). Thus, Thomas expressly disclaims receiving GPS-

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