

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HEWLETT PACKARD ENTERPRISE CO., ARUBA NETWORKS, LLC.,
APPLE INC.
Petitioner,

v.

BILLJCO LLC,
Patent Owner.

IPR2022-00426
Patent 8,761,804 B2

Before THU A. DANG, ROBERT J. WEINSCHENK, and
GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. Background and Summary

Hewlett Packard Enterprise Co., Aruba Networks, LLC, and Apple Inc. (together, “Petitioner”)¹ filed a Petition (Paper 4, “Pet.”) requesting an *inter partes* review of claims 1 and 10–12 (“the challenged claims”) of U.S. Patent No. 8,761,804 B2 (Ex. 1001, “the ’804 patent”). BillJCo, LLC (“Patent Owner”) filed a Preliminary Response (Paper 8, “Prelim. Resp.”) to the Petition. With our authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response. Paper 11 (“Reply”).

An *inter partes* review may not be instituted unless “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Further, a decision to institute may not institute on fewer than all claims challenged in the petition. 37 C.F.R. § 42.108(a). Based on the arguments and evidence of record, Petitioner demonstrates a reasonable likelihood of prevailing in showing that at least one of the challenged claims of the ’804 patent is unpatentable. Accordingly, we institute an *inter partes* review as to the challenged claims of the ’804 patent on all the grounds of unpatentability in the Petition.

B. Related Matters

The parties indicate that the ’804 patent is the subject of the following district court cases: *BillJCo, LLC v. Apple Inc.*, No. 6:21-cv-00528 (W.D. Tex.); *BillJCo, LLC v. Cisco Systems, Inc.*, No. 2:21-cv-00181 (E.D. Tex.)

¹ Cisco Systems, Inc. originally was a party to this proceeding, but has now been terminated. Paper 14.

(“ED Litigation”); and *BillJCo, LLC v. Hewlett Packard Enterprise Company*, No. 2:21-cv-00183 (E.D. Tex.). Pet. 1; Paper 6, 2.

C. The '804 Patent

The '804 patent “relates generally to location based services for mobile data processing systems, and more particularly to location based exchanges of data between distributed mobile data processing systems for locational applications.” Ex. 1001, 1:20–24. The '804 patent’s claims recite a “sending data processing system,” that accesses four types of information associated with the sending data processing system: “identity information,” “application information,” “location information,” and “reference information.” *Id.* at 117:60 118:7. The four types of accessed information are combined into a “broadcast unidirectional wireless data record,” which the sending data processing system transmits to “receiving mobile data processing systems in a wireless vicinity of the sending data processing system.” *Id.* at 118:24–52.

D. Illustrative Claim

Of the challenged claims, claim 1 is independent. Claim 1 is reproduced below.

1. A method by a sending data processing system, the method comprising:

accessing, by the sending data processing system, identity information for describing an originator identity associated with the sending data processing system;

accessing, by the sending data processing system, application information for an application in use at the sending data processing system;

accessing, by the sending data processing system, location information associated with the sending data processing system;

accessing, by the sending data processing system, reference information for further describing the location information associated with the sending data processing system;

preparing, by the sending data processing system, a broadcast unidirectional wireless data record including:

the identity information for describing the originator identity associated with the sending data processing system,

the application information for the application in use at the sending data processing system,

the location information associated with the sending data processing system, and

the reference information for further describing the location information associated with the sending data processing system;

maintaining, by the sending data processing system, a configuration for when to perform beaconing of the broadcast unidirectional wireless data record; and

transmitting, by the sending data processing system, the broadcast unidirectional wireless data record for receipt by a plurality of receiving mobile data processing systems in a wireless vicinity of the sending data processing system wherein the broadcast unidirectional wireless data record is beaconed by the sending data processing system in accordance with the configuration for when to perform beaconing, and wherein the broadcast unidirectional wireless data record includes at least:

the identity information for describing the originator identity associated with the sending data processing system wherein the identity information is for an alert determined by each receiving mobile data processing system of the plurality of receiving mobile data processing systems that the each receiving mobile data processing system is in the wireless vicinity of the sending data processing system,

the application information for the application in use at the sending data processing system,

the location information associated with the sending data processing system to be used by the each receiving mobile data

processing system for determining their own location relative to the location information, and

the reference information for further describing the location information associated with the sending data processing system for describing to the each receiving mobile data processing system useful information associated with the sending data processing system.

Ex. 1001, 117:60–118:52.

E. Evidence

Petitioner submits the following evidence:

Evidence	Exhibit No.
Declaration of Darrell D.E. Long	1004
U.S. 7,123,926 B2, Oct. 17, 2006 (“Himmelstein”)	1005
U.S. 2003/0014181 A1, published Jan. 16, 2003 (“Myr”)	1006
U.S. 6,327,535 B1, Dec. 4, 2001 (“Evans”)	1007

F. Asserted Grounds

Petitioner asserts that the challenged claims are unpatentable on the following grounds:

Claims Challenged	35 U.S.C. §	References/Basis
1, 10–12	103	Himmelstein, Myr
1, 10–12	103	Himmelstein, Myr, Evans

II. ANALYSIS

A. Discretionary Denial based on Fintiv

Relying on the framework from *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”), Patent Owner argues we should deny the Petition based on related district court cases. Prelim. Resp. 9–19. We disagree.

“[W]here the PTAB determines that the information presented at the institution stage presents a compelling unpatentability challenge, that determination alone demonstrates that the PTAB should not discretionarily

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