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**Datasheet for the decision  
of 11 September 2018**

**Case Number:** T 0136/13 - 3.5.01

**Application Number:** 08770994.5

**Publication Number:** 2171602

**IPC:** G06F15/16

**Language of the proceedings:** EN

**Title of invention:**  
INTERACTIVE ADVISORY SYSTEM

**Applicant:**  
Locator IP, LP

**Headword:**  
Location-based advertising / LOCATOR IP

**Relevant legal provisions:**  
EPC Art. 56

**Keyword:**  
Inventive step - location-based advertising (no - obvious  
implementation of non-technical idea)

**Decisions cited:**  
T 0641/00, T 1463/11



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Case Number: T 0136/13 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 11 September 2018**

**Appellant:** Locator IP, LP  
(Applicant) 385 Science Road  
State College, PA 16803 (US)

**Representative:** Richards, John  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 29 August 2012  
refusing European patent application No.  
08770994.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** W. Chandler  
**Members:** A. Wahrenberg  
Y. Podbielski

## **Summary of Facts and Submissions**

- I. The appeal is against the decision of the examining division to refuse the European patent application No. 08770994.5.
- II. The reasons for the refusal was that the application did not meet the requirements of Articles 78(1) and 113(2) EPC, because the main and first auxiliary request were not admitted into the examination procedure under Rule 137(3) EPC, and consequently, there was no agreed set of claims on file.
- III. In its statement setting out the grounds of appeal the appellant requested that the decision to refuse the application be set aside and that a patent be granted on the basis of the main, or the auxiliary request, both filed therewith. The subject matter defined in claim 1 of those requests was in substance the same as in the requests not admitted by the examining division.
- IV. In a communication accompanying a summons to oral proceedings, the Board set out its preliminary observations on the issues of clarity (Article 84 EPC), added matter (Article 123(2) EPC) and inventive step (Article 56 EPC).
- V. With a reply dated 9 August 2018, the appellant submitted an amended set of claims to replace both the main and auxiliary request on file if admitted into the appeal proceedings.
- VI. The appellant informed the Board that it would not attend the oral proceedings. The Board held oral

proceedings and admitted the newly filed request into the proceedings.

VII. Claim 1 reads:

*A method implemented on a computer for providing targeted marketing and advertising information to a user located remotely from a vendor (102) or service provider (90), the method comprising:*

*receiving, by a server (12) from a plurality of retail stores, information indicative of the locations of products (102) within the plurality of retail stores;*

*maintaining a database of information (16) indicating locations of products (102) within the plurality of retail stores;*

*maintaining, by a server (12), a user profile in a user profile database (100), the user profile including a user identifier code identifying a communicator device (11) associated with a particular user;*

*receiving, by the server (12) from one or more position sensors located in or in close proximity to one of the plurality of retail stores, real-time spatial locations of the communicator device (11) within one of the plurality of retail stores;*

*correlating, by the server (12), the real-time spatial locations of the communicator device (11) within the retail store with the location of one or more products (102) within the retail store;*

*updating the user profile, by the server (12), with information regarding likes/dislikes of the user based on the spatial proximity of the communicator device (11) relative to the one or more products (102) as well as the time spent in proximity to the one or more products (102) within the retail store;*

*generating targeted marketing or advertising*

*information, by the server (12), based on the real-time spatial location of the communicator device (11) and the updated user profile; and*

*outputting the targeting marketing or advertising information, by the server (12), to a communication network (20) for transmittal to the communicator device (11).*

VIII. The appellant's arguments can be summarised as follows:

The use of position sensors to determine the location and duration of users in proximity to one or more products within a retail store, and analysing information received from the sensors to determine what information to send to potential customers, were technical features that contributed to inventive step.

The real-time correlation of location information with information being drawn from a database that was itself subject to random updates of information to select further information and sending it to the recipient was clearly a technical problem requiring a technical solution.

Receiving product locations from a plurality of stores and inferring likes or dislikes of the user based on the location of the communicator device and the time spent relative to those product locations comprised the technical steps of synthesizing data from multiple vendors and performing a technical process to determine the time spent relative to those product locations.

Receiving product locations from multiple retail stores provided an important technical benefit because the user could interact with the system using one communication device (e.g. a mobile phone) rather than

requiring each retail store to provide their own device.

## **Reasons for the Decision**

### 1. *The decision under appeal*

1.1 The Board finds the decision of the examining division somewhat confusing and contradictory. On the one hand, the main and first auxiliary requests were said to be not admitted under Rule 137(3) EPC. On the other hand, the examining division carried out a full and detailed examination of both requests with respect to clarity (Article 84 EPC), added matter (Article 123(2) EPC), and inventive step (Article 56 EPC). Thus, the examining division, despite concluding that it did not admit the requests, provided reasons which treated the requests as if they had been admitted. For these reasons, the Board takes the substantive grounds raised against the claimed subject matter to be the starting point for the present appeal.

### 2. *The invention*

2.1 The idea of the invention is the following:

A customer (user) walks into a store. He is monitored. Depending on the user's location within the store, and the amount of time that he spends in proximity to certain products, the user receives advertisements to his mobile phone. For example, a user looking at shoes in the sports section of a department store might receive an advertisement about running shoes.

2.2 The invention in claim 1 involves the use of one or more position sensors, located in the store, for monitoring the user's real-time location within the store.

There is also a server that maintains a database comprising product locations, and a database comprising a user profile that includes the user's past or present location/s. The server generates and outputs advertising information based on the user's current location and on the user profile.

The server is connected to a plurality of stores, each having its own monitoring system. Thus, the user can walk from store to store and continue to receive advertisements that are relevant to his shopping.

3. *Inventive step*

3.1 It is common ground that D1 discloses a system for transmitting individualised information, for example weather information, to a user's communication device, based on the real-time spatial location of the communication device and information in a user profile. The system in D1 has means for determining the user's real-time location and various databases for storing the locations, the user profile, and the weather information. There is also an analysis unit that selects the information to be provided to the user based on the user profile and the user's real-time location.

3.2 The appellant argued the benefits of having just one communication device for a plurality of services (stores). However, that is already in D1. The weather analysis unit in D1 receives weather information from a

plurality of resources, for example government weather information resources, and privately operated weather resources (paragraph [0027]). There is no need to have separate devices for different weather services.

- 3.3 In the Board's view, the subject-matter of claim 1 differs from D1 by the type of information that is being stored and processed by the server. In claim 1, the outputted information is targeted marketing or advertising information that is selected based on the user's location *within a store*, and the time that the user spends, or has spent, in proximity to certain products in the store.

A further difference is that the user's location is measured by position sensors located in the stores.

- 3.4 According to the Comvik approach (T 641/00 - Two identities/COMVIK), non-technical features cannot contribute to inventive step. Instead, the non-technical features may legitimately appear in the formulation of the problem as part of the framework of the technical problem to be solved. Very often, the problem takes the form of a requirement specification that the skilled person has to implement. The first step in formulating the technical problem is, thus, to define the non-technical features of the invention.

- 3.5 In doing that, it may be helpful to consider the notional business person defined in T 1463/11 (Universal merchant platform /Cardinalcommerce). Anything that can be formulated by the business person is non-technical and part of the requirement specification.



- 3.6 Turning back to claim 1, the Board considers that the idea of providing targeted advertising based on the user's real-time location within a store, and the time that the user spends in proximity to certain products, can be formulated by the business person. This sort of concept does not rely on any technical knowledge or skill. Therefore, it is part of the business requirements that the technical implementation has to meet.
- 3.7 The appellant's arguments in favour of technical character concern the implementation of the location-based advertising on a computer communication system. The Board agrees that this is technical and must be evaluated for inventive step. However, in the Board's view, the implementation would have been obvious to the skilled person on the basis of D1. Indeed, D1 has all the technical infrastructure for providing location-based information to a mobile device, including databases that are suitable for storing the relevant information. Furthermore the processing of the information by the server merely follows from the business requirements, and hardware suitable for this purpose is already available in D1. The hardware needs to be adapted to perform the business requirements, but that is just a matter of normal programming.
- 3.8 The business requirements dictate that the user's position within the store be determined. The Board considers that it would have been obvious to use position sensors, placed at suitable locations within the store, to that end. Such position sensors were well known (see paragraph [0125] of the published application), and using known technology for its intended purpose does not involve an inventive step.

3.9 For these reasons, the Board judges that the subject matter of claim 1 does not involve an inventive step (Article 56 EPC).

## Order

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated