

Filed on behalf of TRACBEAM, LLC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

T-MOBILE US, INC., T-MOBILE USA, INC.,
TELECOMMUNICATION SYSTEMS, INC., ERICSSON INC., and
TELEFONAKTIEBOLAGET LM ERICSSON
Petitioners,

v.

TRACBEAM, LLC.
Patent Owner

Case No. IPR2015-01687
Patent 7,764,231

PATENT OWNER'S RESPONSE PURSUANT TO 37 C.F.R. § 42.120

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Cases

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Updated Exhibit List

<u>Exhibit No.</u>	<u>Description</u>
2001	The American Heritage Dictionary, p. 575 (3 rd ed. 1994)
2002	Webster's New World College Dictionary, p. 996 (4 th ed. 2010)
2003	The American Heritage Dictionary, p. 235 (3 rd ed. 1994)
2004	Narrowing Agreement
2005	Memorandum Opinion and Order entered 7/14/16 in <i>TracBeam LLC v. T-Mobile US, Inc., et al.</i> , case no 6:14-cv-678 (E.D. Tex.) (" <i>Markman</i> Order")

I. Introduction.

This *Inter Partes* Review is limited to review of claims 20 and 25 of the ‘231 patent, which are challenged as obvious based on a combination of Loomis and Wortham. IPR2015-01687, Paper 10 (“Decision”). Patent Owner TracBeam appreciates the guidance provided by the Board in its Decision but respectfully maintains that Petitioners have failed to show the challenged claims are obvious.

II. Claim Construction.

The Board ruled that “[f]or purposes of this Decision, we are persuaded that no claim term requires express construction.” Decision at 8. Since the Decision, the District Court in the pending infringement action issued a *Markman* Order that addresses challenged claim 25. Ex. 2005. The District Court’s constructions for claims 20 and 25 are set forth below:

Claim term or Phrase	District Court Construction / Ruling
wireless mobile station (claim 20 and 25)	“mobile wireless device that is at least a transmitting device and may include a receiving device” Ex. 2005 at 8.
location information (claim 20 and 25)	No construction necessary. <i>Id.</i> at 9.
“first receiving...second	The receiving steps require an order. <i>Id.</i> at 18-

Claim term or Phrase	District Court Construction / Ruling
receiving” (claim 20)	19; <i>id.</i> at 27 (‘first [obtaining/receiving]...’ indicates that this [obtaining/receiving] must occur first in time relative to the second act of [obtaining/receiving] (‘second receiving...’). <i>Additionally:</i> Both receiving steps must be performed. <i>Id.</i> at 17, 27.
first obtaining...second obtaining... (claim 25)	The obtaining steps require an order. <i>Id.</i> at 18-19; <i>id.</i> at 27 (‘first [obtaining/receiving]...’ indicates that this [obtaining/receiving] must occur first in time relative to the second act of [obtaining/receiving] (‘second receiving...’). <i>Additionally:</i> Both the obtaining steps must be performed, however: “(1) the step of ‘first obtaining the first location information of said mobile station, the first location information determined by

Claim term or Phrase	District Court Construction / Ruling
	computational machinery when said corresponding location technique for using the first collection is supplied with an instance of said first collection’ need not be performed in those circumstances in which the ‘first collection of measurements’ is not available; (2) the step of ‘second obtaining the second location information of said mobile station, the second location information determined by computational machinery when said corresponding location technique for receiving the second collection is supplied with an instance of said second collection’ may but need not be performed in those circumstances in which the ‘first collection of measurements’ is available.” <i>Id.</i> at 19, 27.
“computational machinery” (claim 20 and 25)	No construction necessary. <i>Id.</i> at 23, 28.

Claim term or Phrase	District Court Construction / Ruling
“outputting, to a source for accessing location data for said mobile station, resulting location information that is dependent upon: at least one of said first and second location information”	No construction necessary. <i>Id.</i> at 21, 27-28.

Patent Owner respectfully submits that—for the reasons expressed by the Court in its *Markman* Order—the foregoing claim construction rulings for ‘231 claims 20 and 25 are correct under both the *Phillips* standard and the broadest reasonable interpretation standard and should be adopted by the Board.

III. Petitioners have failed to satisfy their burden of demonstrating that Claim 20 is unpatentable.

Patent Owner maintains each of the arguments asserted in its Preliminary Response. Paper 6 (“Prelim. Resp.”) at 16-23. Below we restate our arguments from the Preliminary Response and the Board’s Decision, and we then respond to the Board.

A. The Petition fails to meet its burden as to the “receiving” and “determining” steps.¹

As shown below, the Petition’s analysis of independent claim 20 fails because it relies on the Petition’s analysis of claim 17, which has different elements and limitations.

1. “first receiving, from a first of said location techniques, first location information for the mobile station...” (20.4).

Element 20.4 requires:

(a) first receiving, from a first of said location techniques, first location information for the mobile station, wherein said corresponding input information for said first location technique includes timing data from wireless signals transmitted from one or more global positioning satellites, and received by the mobile station...

‘231, col. 179:18-24.

The Petition’s entire analysis of this element is as follows:

20.4 (a) first receiving, from a first of said location techniques, first location information for the mobile station, wherein said corresponding input information for said first location technique includes timing data from wireless signals transmitted from one or more global positioning satellites, and received by the mobile station,
See Analysis for Claim Element 17.3.

Pet. 47. This is insufficient to satisfy Petitioners’ burden.

¹ For ease of reference, this section presents the arguments found at pages 16-23 of Patent Owner’s Preliminary Response.

A Petitioner cannot satisfy its burden of showing that an element in one independent claim is found in the prior art merely by pointing back to its analysis of another element, of an entirely different claim, that has different limitations. But that is exactly what Petitioners did here.

Element 17.3 provides:

first obtaining a first instance of the location information when supplied with signal time delay data obtained from wireless signal data received by the mobile station from a satellite, wherein a geographic range corresponding to the signal time delay data is used to determine the first instance.

‘231, col. 177:24-29. This element from claim 17 has several significant differences from element 20.3 from claim 20, as shown in following redline comparing the differences between the two elements.

“(a) first ~~obtaining~~ receiving, from a first ~~instance~~ of ~~the~~said location techniques, first location information ~~when supplied with signal time delay~~for the mobile station, wherein said corresponding input information for said first location technique includes timing data ~~obtained~~ from wireless ~~signal data~~signals transmitted from one or more global positioning satellites, and received by the mobile ~~station~~ from a satellite, wherein a geographic range corresponding to the signal time delay data is used to determine the first instance.”station”

As this comparison demonstrates, element 17.3 does not contain several significant limitations that are found in element 20.4 including:

- “first receiving,”
- “first of said location techniques,” and
- “corresponding input information for said first location technique.”

As a result, Petitioners’ analysis of element 17.3 does not assert—much less demonstrate how—any of these limitations from element 20.4 are found in Loomis. Pet. 36-37. Petitioners’ cross-reference to claim element 17.3 fails to mention, much less address, “first receiving” or “receiving” at all. Petitioners’ cross-reference to element 17.3 similarly does not purport to identify a “first of said location techniques” or “corresponding input information for said first location technique.”

Accordingly, Petitioners fail to satisfy their burden of demonstrating that these elements are met or rendered obvious by the asserted art. *Wowza Media Sys., LLC et al. v. Adobe Sys., Inc.*, IPR2013-00054, Paper 16 at 3 (July 13, 2013) (“failure to point out where each element is found in the prior art is a deficiency in the substantive requirements of the petition,” which warrants denial under Section 42.104(b)(4)).

2. “second receiving, from a second of said location techniques, second location information for the mobile station...” (20.6).

Element 20.6 requires:

second receiving, from a second of said location techniques, second location information for the mobile station, wherein said corresponding input information for said second location technique includes data that is a function of a signal time delay of wireless signals transmitted between the wireless mobile station and one of said plurality of fixed location terrestrial stations during a plurality of transmissions between the mobile station and the one terrestrial station.

‘231, col. 179:31-40.

The Petition’s entire analysis of this element is as follows:

20.6 (b) second receiving, from a second of said location techniques, second location information for the mobile station, wherein said corresponding input information for said second location technique includes data that is a function of a signal time delay of wireless signals transmitted between the wireless mobile station and one of said plurality of fixed location terrestrial stations during a plurality of transmissions between the mobile station and the one terrestrial station;

See Analysis for Claim Element 17.5.

Pet. 49.

This cite-back approach again fails. Claim element 17.5 is not the same as Claim element 20.6. The two elements have several significant differences as

demonstrated in the redline comparing claim elements 17.5 and 20.6 and depicting the differences in the elements:

(b) second ~~obtaining~~receiving, from a second ~~instance~~of the said location techniques, second location information ~~offor~~for the mobile station ~~when supplied with second,~~ wherein said corresponding input information for said second location technique includes data ~~indicative of that~~is a function of a signal time ~~delays~~delay of wireless signals transmitted between the wireless mobile station and ~~a one of said~~a one of said plurality of fixed location terrestrial ~~transceivers cooperatively linked together for use in two way communication with stations during a plurality of transmissions between the mobile station and the mobile~~one terrestrial station;

As reflected in the comparison above, unlike claim element 20.6, claim element 17.5 does not have the following claim limitations:

- “second receiving,”
- “second of said location techniques,”
- “corresponding input information for said second location technique,”
- “data that is a function of a signal time delay of wireless signals,” or
- “plurality of transmissions between the mobile station and the one terrestrial station.”

As a result, Petitioners’ analysis of claim element 17.5 does not contain any discussion or assertion that any of these elements are found (or rendered obvious) in claim element 20.6 based on the asserted combination. Pet. 38-40.

Accordingly, Petitioners have not met their burden of demonstrating that these limitations are disclosed or rendered obvious by the asserted art.

3. “determining, a plurality of resulting location estimates for the mobile station...” (20.8).

Element 20.8 requires:

determining, a plurality of resulting location estimates for the mobile station, wherein said step of determining includes steps (c) and (d) following: (c) obtaining at least one of said resulting location estimates using an instance (I1) of said first location information for locating the mobile station; and (d) obtaining at least one of said resulting location estimates using an instance (I2) of said second location information for locating the mobile station.

‘231, col. 179:50-58.

The Petition’s entire analysis of this element is as follows:

For the reasons presented with respect to Claim Element 17.10, *Loomis* satisfies this claim element. Moreover, *Loomis* discloses determining “the present location of the user [] at selected times (e.g., second-by-second, or more or less often, if desired)” (*i.e.*, “*determining, a plurality of resulting location estimates*”). (Ex. 1008 (*Loomis*) at 8:26-35.)

Pet. 50-51.

This discussion also fails to satisfy Petitioners' burden. Cross-referenced claim element 17.10 does contain any of the following limitations found in claim element 20.8:

- “a plurality of resulting location estimates for the mobile station,”
- “step of determining includes steps (c) and (d),”
- “instance (I1) of said first location information for locating the mobile station,” and
- “instance (I2) of said second location information for locating the mobile station.”

Accordingly, Petitioners' analysis of claim 17.10 fails to address or analyze any of these limitations from claim element 20.8 or assert that these elements are found in Loomis. Pet. 43-44. Therefore, Petitioners have not satisfied their burden of demonstrating that these limitations are met or rendered obvious by the asserted art. *Whole Space Ind. V. Zipshade Industrial*, IPR2015-00488, Paper 14 at 18 (July 24, 2015) (“The Petition improperly shifts the burden of deciphering Petitioner's arguments onto Patent Owner and the Board, which, as we discussed above, is contrary to the statutory and regulatory provisions governing *inter partes* review proceedings, as well as the best practices outlined in the Office Patent Trial Practice Guide.” (*citing* 35 U.S.C. § 312(a)(3); 37 C.F.R. §§ 42.22(a)(2), 42.104(b)(4)–(5))).

B. The Decision

The Board was not persuaded by Patent Owner's arguments that Petitioners failed to satisfy their burden for claim 20 by conclusorily citing back to the analysis of claim 17, a different claim having different limitations. Decision at 21-23. The Board found that the cited-to sections of the Petition's analysis of claim 17 disclosed the elements of claim 20. *Id.*

C. Response to the Decision

Patent Owner respectfully requests that the Board reconsider its analysis, in particular as to the Petition's showing for the "receiving" steps. Claim 20 recites a first receiving step and a second receiving step:

(a) first receiving, from a first of said location techniques, first location information for the mobile station, wherein said corresponding input information for said first location technique includes timing data from wireless signals transmitted from one or more global positioning satellites, and received by the mobile station, wherein said first location technique also uses information dependent upon a location of a terrestrial receiver, TS, that receives a wireless transmission from the mobile station, and resulting in the first location information being dependent on the location of TS and the timing data, wherein TS is remote from the mobile station;

(b) second receiving, from a second of said location techniques, second location information for the mobile station, wherein said corresponding input information for said second location technique includes data that is

a function of a signal time delay of wireless signals transmitted between the wireless mobile station and one of said plurality of fixed location terrestrial stations during a plurality of transmissions between the mobile station and the one terrestrial station.”

‘231 claim 20, col. 179:18-40 (emphasis added).

As the parties agreed in the District Court, both of these receiving steps must be performed. Ex. 2005 at 17, 27. And, as the District Court correctly held—as “a matter of logic and grammar”—the “first receiving” step must be performed prior to the “second receiving step.” *Id.* at 18-19, 27. The Petition fails to show that both of the receiving steps are performed in the asserted art and performed in the required order.

As explained above, the Petition provides no actual analysis of either receiving step of claim 20 but instead cites back to its analysis of claim 17. Pet. 47, 49. In the analysis of claim 17, the Petition states: “Section IX.D.6 (Order of Techniques) explains that, if this claim requires an order for the steps, Loomis discloses the required order and also renders it obvious.” Pet. 37, 40. But that section still fails to show that Loomis teaches or suggests performing both the first receiving step (i.e., first receiving first location information determined by a satellite technique) and the second receiving step (i.e., second receiving second location information determined by a terrestrial time delay

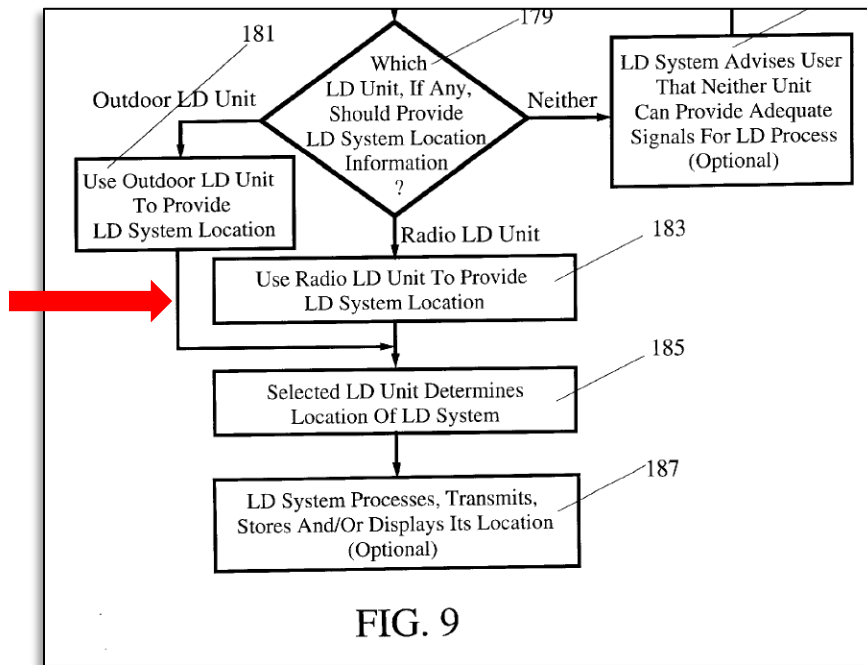
technique) and doing so in the required order. Indeed, the very embodiment in Loomis that the Petition relies upon teaches away from these requirements.

The Petition relies upon this passage of Loomis:

“If the outdoor LD signals are adequate and the outdoor LD unit is selected, in step 181, to determine the location, the system (or controller) uses the outdoor LD unit information to determine the present location of the user. If the radio LD signals are adequate and the radio LD unit is selected, in step 183, to determine the location, the system (or controller) uses the radio LD unit information to determine the present location of the user.”

Pet. 27-28 (quoting Loomis at col. 19:52-60).

This passage, which describes Figure 9, does not teach first receiving location information from the outdoor/GPS technique and then also second receiving location information from the radio/terrestrial technique. Rather, this embodiment teaches that “if the outdoor LD signals are adequate and the outdoor LD unit is selected” then the system “uses the outdoor LD unit information to determine the present location of the user.” *Id.* This does not teach to additionally, and secondarily, use the indoor LD unit to obtain a second instance of location information. Indeed, Figure 9 teaches that if the outdoor LD Unit is selected the step of using the radio unit is entirely bypassed:



Loomis Fig. 9.

Accordingly, because a Petitioner cannot rely upon an embodiment that teaches away from a claim requirement to prove obviousness and that is what Petitioners did here, they have failed to meet their burden of showing claim 20 is obvious.

IV. Petitioners have failed to satisfy their burden of demonstrating that Claim 25 is unpatentable.

Patent Owner maintains each of the arguments asserted in its Preliminary Response. Paper 6 (“Prelim. Resp.”) at 23-28. Below Patent Owner restates its arguments from the Preliminary Response and the Board’s Decision, and then responds to the Board.

A. The Petition fails to meet its burden as to the “obtaining” and “outputting” steps.²

As shown below, the Petition’s analysis of independent claim 25 fails because it heavily relies on the Petition’s analysis of claim 17, which has different elements and limitations.

1. “first obtaining the first location information of said mobile station...” (25.7).

Claim element 25.7 requires:

first obtaining the first location information of said mobile station, the first location information determined by computational machinery when said corresponding location technique for using the first collection is supplied with an instance of said first collection.

‘231, col. 180:57-61.

The Petition’s entire analysis of this element is as follows:

See Claim Element 17.3 Analysis (and 17.1 for “computational machinery”).

Pet. 58.

This assertion fails to satisfy Petitioners’ burden. Claim element 17.3 is not the same as claim element 25.6. For example, element 17.3 does not include the

² For ease of reference, this section presents the arguments found at pages 23-28 of Patent Owner’s Preliminary Response.

limitation: “the first location information determined by computational machinery when said corresponding location technique for using the first collection is supplied with an instance of said first collection.” As a result, Petitioners’ cross-referenced analysis of claim 17 contains no analysis or discussion of this claim element. Pet. 36. The Petition simply fails to address any of the differences between claim elements 25.7 and 17.3.

Accordingly, Petitioners have not satisfied their burden of showing that this element is disclosed or rendered obvious.

2. “second obtaining the second location information of said mobile station...” (25.8).

Claim element 25.8 requires:

second obtaining the second location information of said mobile station, the second location information determined by computational machinery when said corresponding location technique for receiving the second collection is supplied with an instance of said second collection.

‘231, col. 180:62-67.

The Petition’s entire analysis of this element is as follows:

See Claim Element 17.5 Analysis (and 17.1 for “computational machinery”).

Pet. 58. This does not satisfy Petitioners’ burden.

Claim element 17.5 is not the same as claim element 20.6. For example, Claim 17 does not contain the limitation: “second location information determined by computational machinery when said corresponding location technique for receiving the second collection is supplied with an instance of said second collection.” As a result, Petitioners’ analysis of claim 17 does not mention this limitation at all, much less provide any analysis or discussion of the limitation. Pet. 38-40. The Petition again fails to address any of the differences between the elements of claim 25 and claim 17. Accordingly, Petitioners failed to “specify where each element of the claim is found in the prior art,” 37 C.F.R. § 42.104(b)(4), and therefore do not meet their burden.

3. “outputting, to a source for accessing location data” (25.9).

Element 25.9 requires:

outputting, to a source for accessing location data for said mobile station, resulting location information that is dependent upon: at least one of said first and second location information, and also dependent upon data for indicating a likelihood of the mobile station being in a geographical extent represented by of at least one of said first location information and said second location information.

‘231, col. 181:1-8.

A “source for accessing location data” is a place or location from which the location data can be accessed or obtained. *See* Ex. 2003 Random House Webster’s

Dictionary, p. 688 (4th ed. 2001) (source: “n. 1. any thing or place from which something comes or is obtained”). Petitioners identify no such source in Loomis or in the asserted combination. In the single sentence in which Petitioners address this claim requirement, they assert:

Loomis’ location system transmits (i.e., “outputting”) the selected location estimate (i.e., “resulting location information”) to an interested person or facility (i.e., “a source for accessing location data for said mobile station”).
(Ex. 1008 (Loomis) at 5:14-22, 12:30-40; *see also id.* at 12:62-13:1.)

Pet. 59-60.

This assertion fails. The Petition does not explain how the identified “person or facility” is a “source for accessing location data for said mobile station,” as required by this claim element. Moreover, the cited portion of Loomis does not suggest or disclose that the “interested person or facility” in Loomis acts as a “source for accessing location data” for the identified mobile station.

The Petition provides three cites to Loomis: (1) 5:14-22, (2) 12:30-40; and (3) 12:62-13:1. Each is addressed in turn.

(1) Loomis at 5:14-22 does not mention an “interested person or facility,” much less suggest that the interested person or facility act as a source for accessing location data. Loomis, col. 5:14-22.

(2) Loomis at 12:30-40 is reproduced below:

In one embodiment, the I/O port includes a cellular communication means **101** with associated cellular antenna **103** for communicating with another person or facility by cellular telecommunications, the cellular means being connected to the controller module **93**. At one or more selected times, or upon receipt by the controller module **93** of a command by radiowave signals or telecommunication signals, the controller module causes the cellular communication means **101** to send information on the present or recent location of the LD unit 11 to a person or facility spaced apart from this LD unit.

Loomis, col. 12:30-40.

This section states that (1) the “person or facility” can be communicated with by cellular telecommunications, and (2) that “information on the recent or present location” can be sent to the person or facility. There is no suggestion in this passage that the identified person or facility acts as “source for accessing location data” (*e.g.*, as a database or repository from which the location data can be accessed or obtained).

(3) Loomis at 12:62-13:1 states that the controller module can “notif[y] any interested person or facility that the methods used for location determination have an unacceptably high errors associated with them and should not be used, or should be used with caution.” Loomis, col. 12:62-13:1. This passage also fails to disclose a “source for accessing location data;” instead, it states that location data is not sent to the interested party or facility in some cases.

Accordingly, the passages from Loomis cited by Petitioners provide no support for the suggestion that the “person or facility” satisfy the “source for source for accessing location data” requirement. And Petitioners have failed in their analysis to demonstrate this requirement is met or rendered obvious by Loomis.

B. The Decision

The Board was not persuaded by Patent Owner’s arguments that Petitioners failed to meet their burden for Claim 25 by conclusorily citing back to the analysis of claim 17, a different claim having different limitations. Decision at 24-26. The Board found that the cited-to sections of the analysis of claim 17 disclosed the elements of claim 25. *Id.*

C. Response to the Decision

Patent Owner respectfully requests that the Board reconsider its analysis, in particular as to the Petition’s showing for the “obtaining” steps. Claim 25 recites a first obtaining step and a second obtaining step:

first obtaining the first location information of said mobile station, the first location information determined by computational machinery when said corresponding location technique for using the first collection is supplied with an instance of said first collection;

second obtaining the second location information of said mobile station, the second location information determined by computational machinery when said corresponding location technique for receiving the second collection is supplied with an instance of said second collection.

‘231 claim 25, col. 180:57-67.

As the District Court correctly held—as “a matter of logic and grammar”—the “first obtaining” step must be performed prior to the “second obtaining step.” *Id.* at 18-19, 27. The Petition fails to show that both of the obtaining steps are performed in the asserted art and performed in the required order. As explained above, the Petition provides no actual analysis of either obtaining step of claim 25 but instead cites back to its analysis of claim 17. Pet. 58. In the analysis of claim 17, the Petition fails to show that Loomis teaches or suggests performing the first and second obtaining steps and doing so in the required order. The Petition again relies upon the following passage:

“If the outdoor LD signals are adequate and the outdoor LD unit is selected, in step 181, to determine the location, the system (or controller) uses the outdoor LD unit information to determine the present location of the user. If the radio LD signals are adequate and the radio LD unit is selected, in step 183, to determine the location, the system (or controller) uses the radio LD unit information to determine the present location of the user.”

Pet. 27-28 (quoting Loomis at col. 19:52-60).

But this passage does not teach or suggest obtaining two instances of location information, as explained above in addressing claim 20. Moreover, it also does not teach or suggest that location information is obtained from the radio/terrestrial LD unit (which is alleged to perform the “second predetermined technique”) “at least when said first collection is not available” (col. 180:36-37). To the contrary, the relied-upon passage of Loomis presumes that the outdoor/GPS LD unit’s signals (which are alleged to be the “first collection of measurements”) are indeed available and it is only a matter of whether they are “adequate” such that the outdoor LD unit will be selected as the one to determine the location. Loomis, col. 19:52-63.

Accordingly, Petitioners have failed to show that Loomis or Wortham teaches or suggests the “obtaining” steps of claim 25 and have therefore failed to show claim 25 is obvious.

V. Conclusion.

For the foregoing reasons, the Board should reject Petitioners’ challenge to claims 20 and 25 and confirm that validity of those claims.

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Certificate of Filing and Service

I hereby certify that a true and correct copy of the foregoing **PATENT OWNER'S RESPONSE PURSUANT TO 37 C.F.R. § 42.120** together with **EXHIBIT 2005** are being filed via PTAB E2E and served by electronic mail this 19th day of August, 2016 on counsel for Petitioners as follows:

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