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June 21, 2019

Via electronic mail

Isaac P. Rabicoff
Rabicoff Law LLC
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Chicago, IL 60603
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Re: *Inventergy LBS, LLC v. EasyTracGPS, Inc.*

Dear Mr. Rabicoff,

The Electronic Frontier Foundation ("EFF") represents EasyTracGPS, Inc. ("EasyTracGPS") on a pro bono basis. We write in response to the Complaint filed in the Northern District of Illinois by Inventergy LBS, LLC ("Inventergy") alleging EasyTracGPS infringes U.S. Patent No. 8,760,286 (the "'286 Patent"). We have reviewed the '286 Patent, and concluded it is invalid, including for claiming an ineligible abstract idea under 35 U.S.C. § 101, and that EasyTracGPS does not infringe. Your allegations are objectively baseless.

We have also concluded your allegations constitute evidence of bad faith patent assertion pursuant to Ga. Code Ann. § 10-1-771. Pursuant to § 10-1-771(b)(3), EasyTracGPS requests the information that Georgia requires in an assertion of patent infringement: information about the "specific areas in which the . . . products, services, and technology infringe the patent or are covered by the claims in the patent."

EasyTracGPS will not agree to any monetary settlement. Renounce your allegations immediately.

1. **EasyTracGPS is a Family Business in Georgia that EFF Represents Pro Bono.**

EasyTracGPS is a family business, incorporated in Illinois, that has business operations and employees located in Georgia. EFF is representing EasyTracGPS on a pro bono basis. Accordingly, EasyTracGPS is not amenable to entering into an agreement requiring them to pay you any amount of money. Pursuing these allegations further will only cause you to incur more unrecoverable costs.

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2. <u>Your Bad Faith Assertion of Patent Infringement Violates Ga. Code § 10-1-771.</u>

Because EasyTracGPS has operations and employees located in Georgia, they are protected by the laws of that state. Ga. Code Ann. § 10-1-771 (2014). More so, section 773(a) prohibits bad faith assertions of patent infringement, and states: "[a] violation of this article shall constitute an unfair and deceptive act or practice in the conduct of consumer transactions under Part 2 of Article 15 of this chapter . . . and shall be enforceable through private action." Ga. Code Ann. § 10-1-773(a).

In addition, it provides that:

> Any person who suffers injury or damages as a result of a violation of this article may bring an action individually against the person or persons engaged in such violation under the rules of civil procedure to seek equitable injunctive relief and to recover his or her general and exemplary damages sustained as a consequence thereof in any court having jurisdiction over the defendant. Such relief may include . . . [p]unitive damages in an amount equal to $50,000.00 or three times the combined total of damages, costs, and fees, whichever is greater.

Ga. Code Ann. § 10-1-773(c)(2).

The law provides a list of factors that each constitute evidence of a bad faith assertion, and thus a violation of its prohibition. Of particular relevance are the following bad faith factors:

- "The person or its subsidiaries or affiliates have previously filed or threatened to file one or more lawsuits based on the same or similar claim of patent infringement and . . . [t]hose threats or lawsuits lacked the information described in paragraph (1) of this subsection;" *id.* § 10-1-771(b)(8)(A).

- "The claim or assertion of patent infringement is meritless, and the person knew, or should have known, that the claim or assertion is meritless;" *id.* § 10-1-771(b)(6).

- "Prior to sending the demand letter, the person fails to conduct an analysis comparing the claims in the patent to the target's products, services, and technology, or such an analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent;" *id.* § 10-1-771(b)(2).

- "The demand letter does not contain . . . [f]actual allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by the claims in the patent;" *id.* § 10-1-771(b)(1)(C).

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- "The demand letter lacks the information described in paragraph (1) of this subsection, the target requests such information, and the author of the demand letter fails to provide such information within a reasonable period of time;" *id.* § 10-1-771(b)(3).

Your conduct to date supports multiple grounds of bad faith. For example, your Complaint does not contain "allegations concerning the specific areas in which the target's products, services, and technology infringe the patent or are covered by the claims in the patent," which constitutes evidence of bad faith assertion. *id.* § 10-1-771(b)(1)(C).

Instead of providing specific information about how any accused product compares to any individual claim, your Complaint lumps together five different products that use vastly different technologies, such as satellite and non-satellite tracking. It then strings together marketing statements relating to a number of different products to support assertions of infringement for all five, despite the self-evident technological differences between them. That is not an allegation of infringement by any device that exists, but rather an amalgamation of separate products that use different technologies and are not used, made, or sold as one. Accordingly, your Complaint does not include allegations concerning the way in which any existing product or service is covered by the '286 Patent's claims.

EasyTracGPS demands you provide "factual allegations concerning the specific areas in which [the accused] products, services, and technology infringe the patent or are covered by the claims in the patent," pursuant to Ga. Code Ann. § 10-1-771(b)(3). Failing to do so will constitute additional evidence of bad faith. *Id.*

3. The Subject Matter of the '286 Patent Is Not Eligible for Patent Protection Under 35 U.S.C. § 101.

The '286 Patent is ineligible for patent protection because it is directed to an abstract idea and lacks anything that could constitute an inventive concept under Section 101.

A. Relevant Legal Principles

The Supreme Court confirmed in *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) that to decide whether a patent claims an ineligible abstract idea, courts must: "determine whether the claims at issue are directed to . . . [a] patent-ineligible concept[]," and if so, "ask, '[w]hat else is there in the claims' that could constitute 'an inventive concept'—*i.e.,* an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *id.* at 217-218 (citations omitted).

In *Alice*, the Supreme Court also confirmed that methods of organizing human activity qualify as ineligible, and that abstract ideas, *Id.* at 220 (affirming that claims previously held ineligible involved "a method of organizing human activity"), even if they require computers, *Id.* at 223

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("merely requiring generic computer implementation fails to transform that abstract idea into a patent-eligible invention"). As a result, claiming steps that humans can and do perform without technological intervention and adding generic networked devices is not enough to render claims eligible for patent under § 101.

Following *Alice*, the Federal Circuit has repeatedly applied it to find claims involving methods of collecting, organizing, and transmitting data ineligible for patent, even though they included recitations of generic network technology. For example, in *BSG Tech LLC v. Buyseasons, Inc.*, 899 F.3d 1281, 1286 (Fed. Cir. 2018), the ineligible claims were "directed to the abstract idea of considering historical usage information while inputting data,"; in *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1372 (Fed. Cir. 2017), to the "the collection, storage, and recognition of data" regarding "financial transactions in a particular field (i.e., mass transit) and data collection related to such transactions"); and in *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) to "collecting information, analyzing it, and displaying certain results of the collection and analysis."

B. Application of Legal Principles to the '286 Patent

The '286 Patent recites generic steps of data collection and processing: collecting, storing, and sending location information at regular intervals based on previously-communicated instructions.

For example, claim 23 reads:

> A method for communicating with a tracking device, said method comprising:
> communicating with said tracking device via a wireless network;
> providing configuration data to said tracking device via said wireless network, said configuration data causing said tracking device to operate according to a first configuration;
> receiving processed data from said tracking device, said processed data being generated by said tracking device in said first configuration;
> providing new configuration data to said tracking device via said wireless network, said new configuration data changing said first configuration of said tracking device to a different configuration; and
> receiving additional processed data from said tracking device, said additional processed data being generated by said tracking device in said different configuration; and wherein said configuration data at least partially determines a location data buffering interval; and wherein said location data buffering interval at least partially controls how frequently newly acquired location data will be stored in said memory.

In substance, this claim requires (1) communicating with a tracking device over a generic wireless network, (2) providing information to the device that affects its operation in some unspecified way, (3) receiving information from the device, (4) providing new information to the device that changes its operation in another unspecified way, and (5) receiving additional

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information from the device operating in its new mode of operation, while specifying that the transmitted information at least partly determine how often information is collected and locally stored.

Computer jargon aside, these steps describe actions that humans with nothing beyond notebooks, pens, and telephones can easily do: gather, record, and report location information. Many spy movies begin with a scene where these steps play out when an operator delivers instructions to an agent to surveil a target and report back to the operator when back in range. Nothing in the claim requires anything beyond what a telephone operator could readily achieve.

The analysis is the same for the method and non-method claims. The latter recite generic and functional items, such as a "tracking device" and "recordable storage medium," that merely serve as conduits for the performance of the same method steps without adding anything new. Indeed, they do exactly what the tracking device in claim 23 does: determine its own location, communicate that information to a central operator, receive information, and update information, including information about how long to wait before collecting location information when the device cannot communicate with the operator. Again, there is nothing the claimed device must do that a person with a pen and paper cannot: it merely records data at intervals that will be transmitted at a later time.

The claims of the '286 Patent are directed to the basic idea of collecting location data about a device at regular intervals, determined at least in part by earlier communications, but add nothing to that idea that could possibly qualify as an inventive concept. As the specification admits, tracking systems like the kind claimed were in use at the time of the application's filing: "Currently, systems exist for tracking the location of persons and/or property. Generally, such systems include a tracking device that transmits the location of the tracking device to a central station, which may then take some action based on the location data." '286 Patent col. 1 ll. 22-26. It also makes clear the claims do not require any particular device, central station, or communication network; an ordinary mobile phone will do. As the patent explains, "the communication methods described herein can be used to provide direct communication . . . via a communication link (e.g., mobile phone network)" and "between tracking devices (e.g., GPS enabled cell phone to GPS enabled cell phone)." *Id.* at col. 4 ll. 44-53. In other words, a conventional "mobile phone network" and "GPS enabled cell phone" is all the claims require.

Nor do the claims say anything about *how* configuration data is used to determine time intervals for data collection, including during periods without network access. Instead, they claim the general idea of using unspecified data for that broad result. That broad result cannot be an inventive concept attributable to the applicant. Moreover, the idea of collecting location information at predetermined time intervals and transmitting the collected information later was conventional and well-established long before the advent of modern network technology. Adding generic and conventional devices to this uninventive and non-technological cannot possibly confer patent-eligibility under *Alice*. The claims of the '286 Patent are therefore ineligible under Section 101 as a matter of law.

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4. **Numerous Prior Art References Render the '286 Patent Invalid as Anticipated and/or Obvious Under 35 U.S.C. §§ 102 & 103.**

Preliminary research has produced numerous prior art references that render the '286 Patent anticipated or obvious at the time of the patent's February 8, 2008 priority date. Any ordinarily-skilled artisan in the field of location tracking would have known, used, and found obvious the individual elements as well as the combinations thereof in the '286 Patent. Examples of prior art references that anticipate and/or render obvious the '286 Patent include:

- Breedlove, Global Tracking and Communications Device, Pub. No. US 2007/0109096 (Sept. 1, 2006)
- Park, et al., Customized Location Tracking Service, U.S. Pat. No. 8,055,277 (Oct. 26, 2007)
- Coffee, et al., Vehicle Tracking, Communication and Fleet Management System, U.S. Pat. No. 6,611,755 (Dec. 19, 1999)
- Braatz, et al., Method and Apparatus for Network-Enablement of Devices Using Device Intelligence and Network Architecture, Pub. No. US 2002/120728A1 (Dec. 22, 2000)
- Brown, et al., GPS Tracking System, U.S. Pat. No. 5,379,224 (Nov. 29, 1991)
- Trimble, TrimTrac, including TrimTrac Pro Locator (Oct. 2007)

5. **Renounce Your Allegations**

EasyTracGPS believes your allegations objectively baseless, and therefore will not negotiate or agree to any monetary settlement. Provide us with the information required by Georgia law, and renounce your allegations without delay.

If you have any questions, please contact me at (415) 436-9333x160 or alex@eff.org.

Regards,

Alex Moss
for the Electronic Frontier Foundation