

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PARROT S.A. and PARROT, INC.
Petitioners

v.

DRONE TECHNOLOGIES, INC.
Patent Owner

Case IPR2014-00730
Patent 7,584,071

**PATENT OWNER'S RESPONSE TO PETITIONERS'
MOTION TO CORRECT EXHIBIT TO PETITION [PAPER NO. 14]**

EXHIBIT LIST

Exhibit No.	Description	Date Filed
1001	U.S. Patent 7,584,071	5/6/2014
1002	U.S. Patent 5,043,646 ("Smith")	5/6/2014
1003	French Patent No. 2789765	5/6/2014
1004	Certified Translation of French Patent No. 2789765	5/6/2014
1005	U.S. Patent No. 7,219,861 ("Barr")	5/6/2014
1006	U.S. Patent No. 6,751,529 ("Fouche")	5/6/2014
1007	U.S. Publication No. 2006/0144994 ("Spirov")	5/6/2014
1008	U.S. Patent No. 7,145,551 ("Bathiche")	5/6/2014
1009	U.S. Publication No. 2004/263479 ("Shkolnikov")	5/6/2014
1010	Declaration of Raffaello D'Andrea (Attachments A-C)	5/6/2014
1010, Att. A	U.S. Patent No. 613,809 ("Tesla")	
1010, Att. B	U.S. Patent No. 3,101,569 ("Giardina")	
1010, Att. C	U.S. Patent No. 8,072,417 ("Jouanet")	
1010 (<i>corrected</i>)	Corrected Declaration of Dr. Raffaello D'Andrea	2/9/2015
1011	Claim Chart	5/6/2014
1012	Declaration of Deborah Skolaski	2/9/2015
1013	Declaration of James Hopenfeld	2/9/2015
1014	Declaration of Dr. Raffaello D'Andrea	2/9/2015
2001	D'Andrea Deposition Exhibit – Declaration Signature Page, '071	Not filed
2002	D'Andrea Deposition Exhibit – Appendix A, Materials Considered by Dr. Raffaello D'Andrea	Not filed
2003	D'Andrea Deposition Exhibit – Smith Patent	Not filed
2004	D'Andrea Deposition Exhibit – Potiron Patent, French	Not filed
2005	D'Andrea Deposition Exhibit – Translations Certification	Not filed
2006	D'Andrea Deposition Exhibit – Declaration, '071	Not filed
2007	D'Andrea Deposition Exhibit – Lee Patent, '071	Not filed
2008	D'Andrea Deposition Exhibit – Bathiche Patent	Not filed
2009	D'Andrea Deposition Exhibit – Declaration, '748	Not filed
2010	D'Andrea Deposition Exhibit – Parrot Exhibits 1011 and 1010	Not filed
2011	D'Andrea Deposition Exhibit – Lee Patent, '748	Not filed
2012	Transcript of Dr. Raffaello D'Andrea Deposition	2/11/2015
2013	Declaration of Robert Sturges	2/11/2015
2014	Declaration of Jay Smith, III	2/11/2015
2015	Definition for term "motion"	2/11/2015
2016	Mot. to Correct & Decls. from IPR 2014/00732	2/16/2015

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On February 9, 2015, Petitioners filed a motion to correct an exhibit in the above-captioned proceeding pursuant to 37 C.F.R. § 42.104(c). Paper No. 14 (“Motion”). At the same time, Petitioners filed a second motion to correct an exhibit in the co-pending *Inter Partes* Review, Case No. 2014-00732 (“the ‘732 Motion”). See ‘732 Proceeding, Paper No. 14, which is attached hereto as Ex. 2016.¹

Patent Owner has separately filed its response to the ‘732 Motion. However, some of the statements made in the ‘732 Motion and supporting declarations for the first time raise serious concerns as to procedures used by Petitioners and Dr. D’Andrea in *this* proceeding as well.² More specifically, statements in Dr. D’Andrea’s and Mr. Hopfenfeld’s declarations in the ‘732 Proceeding suggest that the declaration that this Honorable Board relied on, at least in part, in instituting *this* proceeding may not be admissible.

I. WHAT DID DR. D’ANDREA ACTUALLY SIGN?

In his 2/9/15 declaration supporting the ‘732 Motion (Ex. 1015, ‘732 Proceeding) (“D’Andrea Declaration”), Dr. D’Andrea references an email that he purportedly sent to counsel for Petitioners attaching signature pages for his declarations in both this proceeding and the ‘732 Proceeding:

¹ For purposes of this brief, citations are to the exhibit numbers as used in the ‘732 Proceeding.

² Patent Owner’s response in the ‘732 IPR also addressed these concerns.

Here are the signed forms. I have not had a chance to go over the documents one more time, but really, at this stage, it should only be typos and organizational. I can't justify spending more time on it (to myself, and to the client). I am thus going to assume that you will personally ensure that the documents are ready to go.

Id. ¶ 4 (Attachment A) (emphasis added). Mr. Hopenfeld explained that he understood this email to be Dr. D'Andrea's "authorization to finalize any remaining typographical errors[.]" Ex. 1014 ('732 Proceeding), ¶ 5 ("Hopenfeld Decl.").

Given that Dr. D'Andrea (i) admitted that he did not review the declarations before executing the signature pages, and (ii) invited Petitioners' counsel to make changes *after* sending his signature pages—not to mention the numerous other missing attachments and irregularities surrounding Dr. D'Andrea's declarations—the pointed question now becomes: *Did Dr. D'Andrea's declaration materially change between April 30, 2014 (when he allegedly signed them) and May 6, 2014 (when the petitions and declarations were filed)?*

More specifically, this Honorable Board and Patent Owner are left to wonder:

- Did Petitioners simply correct typographical errors?
- What is a "typographical error" to Petitioners?
- Did Petitioners undertake more substantive "organizational" changes to the declaration, per Dr. D'Andrea's authorization?

These questions are of critical importance because if the 4/30/14 and 5/6/2014 versions of D'Andrea's declaration are materially different, then the declaration is not admissible. *See United States v. Mathies*, 350 F.2d 963 (3d Cir. 1965) (holding a signed, but unreviewed declaration that was altered after its original drafting was inadmissible). Petitioners can address these issues by producing the 4/30/14 version of the declaration that Dr. D'Andrea allegedly signed for comparison to what was filed on 5/6/14.

Though the correction of Petitioners' alleged clerical mistake motivated the submissions currently under consideration by this Honorable Board, those submissions, for the first time, raise substantial concerns regarding the admissibility of Dr. D'Andrea's declarations. Unless and until Petitioners demonstrate that Dr. D'Andrea's declaration did not materially change between the version he signed (but did not review) and the version that was filed with this Honorable Board, Petitioners' Motion should be denied.

Respectfully submitted,

Date of Deposit: February 16, 2015

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