

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 PRELIMINARY RESPONSE TO PETITION FOR
INTER PARTES REVIEW OF U.S. PATENT NO. 7,584,071
CASE IPR2014-00730**

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I. INTRODUCTION

Whether intended or not, one obvious effect of the AIA's *inter partes* review (IPR) procedure (35 U.S.C. § 311, *et. seq.*) is that defendants in patent litigation are now routinely filing petitions in an attempt to stay the district court proceedings. This tactic is being employed by accused infringers, regardless of the strength or weakness of their invalidity arguments.

This Petition is a perfect case in point. Petitioners rely on inadequate prior art, and assert conclusory and unsupported arguments. As a result, Petitioners fail to meet the requisite standard of "reasonable likelihood" of success. 35 U.S.C. §314(a). After due consideration, this Honorable Board should deny all the grounds presented in this Petition.

A. **Petitioners Filed This Petition in Order to Delay the District Court Proceedings**

Despite lacking adequate prior art and plausible arguments, Petitioners filed this Petition with one goal in mind – to delay the district court proceedings. Given Petitioners' considerable financial resources, the cost of filing this Petition was inconsequential when compared to the costs of district court litigation and, most importantly, an adverse infringement determination. After all, a finding of infringement will have far-reaching impacts on Petitioners, including:

(1) substantial monetary damages (due to the high volume of infringing sales),

(2) the risk of a potential business-ending injunction, and (3) the lasting stigma of being branded an “infringer” in a market that rewards “innovators.”

Delay has been Petitioners’ strategy from the start. Petitioners became aware of the infringement allegations in September, 2012. ECF No. 18 at 2.¹ For more than a year, Petitioners offered various excuses and promised to negotiate a settlement in good faith. When that did not happen, Patent Owner was forced to file suit on January 24, 2014. ECF No. 1. True to their delay-at-all-costs approach, Petitioners sought extensions of time to answer the Complaint. ECF No. 9.

Of course, that was all a ruse, as Petitioners used the extensions it requested from Patent Owner to secretly prepare two petitions for *inter partes* review, one for each of the two patents asserted against them in the district court litigation. On May 6, 2014, Petitioners filed both Petitions (Cases IPR2014-00730 and IPR2014-00732).

The very next day, on May 7, 2014, Petitioners finally answered the Complaint, ECF No. 16, and concurrently filed a Motion to Stay the district court proceedings. ECF No. 17. However, Petitioners’ plans were thwarted less than two weeks later when, on May 19, 2014, the district court denied their motion to stay. ECF No. 29.

¹ References to “ECF No. ___” refer to documents filed in related pending litigation, *Drone Techs., Inc. v. Parrot S.A.*, No. 2:14-cv-111 (W.D. Pa.).

B. Petitioners Are Now Stuck With This Petition, and Its Inadequate Prior Art and Unsupported Arguments

In their haste to file their Petition and stay the district court proceedings, Petitioners neglected to make plausible arguments that would satisfy this Honorable Board that a review should be instituted. Instead, their Petition is replete with material misstatements, conclusory arguments, and misdirection. Petitioners are now saddled with this Petition, as filed, and its inadequate prior art and unsupported arguments.

1. Neither of Petitioners' Primary References Discloses the Fundamental Claim Element

For example, Petitioners cite Smith [Ex. 1002] as a primary reference, asserting that it is “[a]n early example of a sensed-motion control device.” Pet. at 9. Smith, however does not disclose “a sensed-motion control device” in any way, shape, or form. What Smith discloses, and what Petitioners cite, is using the Earth’s magnetic North as a reference to determine the angle at which a remote controller is pointing. Pet. at 18-26; Smith, col. 6, ll. 29-35 [Ex. 1002].

Smith determines the Earth’s magnetic North (Smith, col. 3, ll. 51-60 [Ex. 1002]), but that is not what is required by the claims of the ‘071 Patent. Rather, independent claim 1 (the only independent claim) fundamentally requires “a motion detecting module, which detects the remote controller’s motion.” ‘071

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