IN THE 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
U.S. Patent No. 7,584,071

Before HOWARD B. BLANKENSHIP, MATTHEW R. CLEMENTS, and CHRISTOPHER M. KAISER, *Administrative Patent Judges.*

PETITIONER'S REQUEST FOR REHEARING OF THE FINAL WRITTEN DECISION OF OCTOBER 20, 2015, PAPER 27

Petitioner respectfully requests reconsideration of the Board's Final Written Decision of October 20, 2015, Paper 27 ("Decision") finding claims 4 and 15 of U.S. Patent No. 7,584,071 (the '071 Patent) not unpatentable.

Pursuant to 37 C.F.R. § 42.71(d), Petitioner specifically identifies "all matters Petitioner believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." As discussed in more detail below, rehearing is warranted because the Board overlooked record evidence showing that: (1) Smith (Ex. 1002) meets claim 4's "difference of motion" requirement; (2) Shkolnikov (Ex. 1009) is analogous art; and, that (3) all claims are obvious even if Shkolnikov is not considered analogous. Rehearing should also be granted because the Board misapplied the burdens of production and persuasion.

Petitioner does not seek reconsideration of the PTAB's decision that claims 1-3 and 5-14 are unpatentable.

I. FACTUAL BACKGROUND

The '071 Patent is directed to the remote control of a device such as a model plane. The '071 Patent teaches that such devices can be more easily controlled by using a "magnetic sensor" in the remote control and the device to "synchronize" the motion of the remote controller with the device. Ex. 1001, 2:62-3:3. To synchronize motion, both the remote controller and the device measure and

compare changes in their orientations as detected by the magnetic sensors. Ex. 1001, 4:5-48.

At issue before the Board is whether the prior art satisfies two claim limitations of the '071 Patent: (1) the "difference of motion" requirement of claim 4, and (2) the "configuration switch" requirement of claim 15.

A. "Difference of Motion"

Claim 1, the sole independent claim, broadly claims a system for sensing "terrestrial magnetism" in a remote-controlled device and a remote controller to control the motion of the remote-controlled device. The remote controller's motion is communicated to the remote-controlled device as a "target motion signal."

Claim 4 further requires the calculation of the "difference of motion" between the remote-controlled device on one hand and the remote controller on the other. The term "difference of motion" does not appear anywhere in the '071 Patent Specification. The Patent specification only refers to the "difference" between "terrestrial magnetism" (orientation) measured in the device and the terrestrial magnetism in the remote controller, which is communicated to the device by the "target motion signal." Ex. 1001, 4:42-48; Ex. 1010, ¶¶ 89-90.

Petitioner challenged claim 4 as anticipated by Smith (Ex. 1002), and, in the alternative, obvious based on the combination of Smith and Fouche (Ex. 1006), or

knowledge of a person of ordinary skill in the art. Petitioner's support included the prior art references and the Declaration of Prof. Raffaello D'Andrea (Ex. 1010), which expressly addressed both anticipation and obviousness of claim 4. Prof. D'Andrea explained how Smith teaches a "difference" calculation related to motion that causes a change of orientation, resulting in a vehicle's motion in a clockwise or counterclockwise direction. Ex. 1010, ¶¶ 90-92.

In its decision instituting IPR, the Board construed "difference of motion" to require "relative motion" (Paper 8, 9-10), and found Petitioner had established a reasonable likelihood of prevailing in its anticipation challenge against claim 4 (*Id.*, 13). The Board declined to institute IPR on the alternative obviousness ground, exercising its discretion under 37 C.F.R. § 42.108(a) and citing "administrative necessity" to ensure timely completion of the instituted proceeding. *Id.*, 18.

In its Patent Owner Response (Paper 15, "POR"), Patent Owner argued that Smith does not teach "difference of motion" because it does not convey any information about "changes in orientation" of the remote controller. Paper 15, 10. The Board properly rejected this same argument in the institution decision, relying on the specification of Smith to conclude, "when the claims are interpreted in light of the specification, as they must be, detecting the orientation of a remote controller with respect to magnetic North is, at the least, *within the scope of*

'detect[ing] the remote controller's motion' as claimed." Paper 8, 12 (emphasis in original).

In its Final Decision, the Board stated that "Petitioner in its Reply does not . . . provide a persuasive explanation with respect to how the signal sent by the remote controller in Smith, or its 'target motion signal' in the terms of claim 4, may contribute to getting the relative motion between the remote controller and the remote-controlled device." Paper 27, 17. In a footnote, the Board stated that, although trial had not been instituted on obviousness, that argument "would suffer from the same deficiency as the anticipation ground." *Id.*, 17 n.2.

B. "Configuration Switch"

In addition to the use of magnetic sensors in a remote controller and remote-controlled device to control the device's motion, claim 15 requires a "configuration switch" in the remote controller that would allow users to switch between manual (prior art) remote control, remote control using magnetic sensors, or a combination of the two. The '071 Patent describes the configuration switch only in summary language (Ex. 1001, 6:53-57). The "configuration switch" was not alleged to play any role in the solution to the problem addressed by the '071 Patent.

In instituting trial, the Board found that Petitioner had shown a reasonable likelihood it would prevail in its challenge of claim 15 as obvious over Smith, Spirov, Bathiche, and Shkolnikov. Paper 8, 18. Although Patent Owner had

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