

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 IPR2014-00732
Patent 8,106,748

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

EXHIBIT LIST

Exhibit No.	Description	Date Filed
1001	U.S. Patent 8,106,748	5/6/2014
1002	U.S. Patent 5,043,646	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. Publication No. 2006/0144994	5/6/2014
1006	<i>Exhibit Intentionally Left Blank</i>	n/a
1007	U.S. Patent No. 7,219,861	5/6/2014
1008	U.S. Patent No. 6,751,529	5/6/2014
1009	U.S. Patent No. 7,145,551	5/6/2014
1010	U.S. Publication No. 2004/263479	5/6/2014
1011	Declaration of Dr. Raffaello D'Andrea (Attachments A-C)	5/6/2014
1011, Att. A	U.S. Patent No. 613,809 to Tesla ("Tesla")	5/6/2014
1011, Att. B	U.S. Patent No. 3,101,569 to Giardina ("Giardina")	5/6/2014
1011, Att. C	U.S. Patent No. 8,072,417 ("Jouanet")	5/6/2014
1011 (<i>corrected</i>)	Corrected Declaration of Dr. Raffaello D'Andrea	2/9/2015
1012	Claim Chart	5/6/2014
1013	Declaration of Deborah Skolaski	2/9/2015
1014	Declaration of James Hopenfeld	2/9/2015
1015	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	T. Terry email to Board, dated 1/28/2015	2/16/2015

I. PETITIONERS FAILED TO ADDRESS TWO DIRECT QUESTIONS

During the 2/2/15 conference call, this Honorable Board posed two questions: (1) Where are Dr. D'Andrea's original signature pages? (2) Did Dr. D'Andrea confirm his declaration during his deposition? Petitioners' motion and declarations fail to answer either question.

Regarding the first question, this Honorable Board is thus left with Dr. D'Andrea's testimony that (1) he did "not have a specific recollection of signing the declaration," (2) that "[i]t may be that it never happened," and (3) that he didn't know where the original signature pages were. Ex. 2015, 71:15-17; 73:9-10; 80:9-12. As to the second, Dr. D'Andrea never confirmed or adopted his unsigned declaration, even during redirect. *Id.*, p. 322.

II. DR. D'ANDREA'S CURATIVE DECLARATION RAISES MORE QUESTIONS THAN IT ANSWERS

A. Why Did Petitioners Alter Dr. D'Andrea's Email? While Dr. D'Andrea swears that Attachment A is "a true and correct copy" of his 4/30/14 email (Ex. 1015, ¶ 4), inconsistencies suggest otherwise: (i) the "To" and "Cc" fields in Dr. D'Andrea's 5:33 AM email have been removed (although they *are* present in preceding 6:26 AM email); (ii) the timestamps suggest that Dr. D'Andrea's 5:33 AM response was sent *earlier* than the 6:26 AM request of the same day; and (iii) Dr. D'Andrea apparently has no record of the email as

Attachment A was printed by Houston-based paralegal, Ms. Skolaski. *Id.*

Petitioners' offer no explanation or clarification on any of these points.¹

B. Where Is The Off-white, A4 Paper, and the Signatures on Each Page? When working with hardcopies, Dr. D'Andrea's standard practice in Zurich is to use off-white, A4 paper.² Consistent with his practice, Dr. D'Andrea printed his curative declaration on off-white, A4-size paper (indicated by the shading and whiter margins) and signed each page in the bottom right-hand corner. *Id.* If Petitioner contends that the signature page in Ex. 1015 is a copy of the original (albeit missing) signature page, why are there no artifacts (e.g. off-white body and whiter margins) indicating that it was printed and signed on Dr. D'Andrea's off-white, A4 paper? And why is there no signature in the lower right-hand corner (Ex. 1011) as he did with his curative declaration (Ex. 1015)?

C. What, If Anything, Was Actually Signed? Dr. D'Andrea's 4/30/14 email explained that he didn't "go over the documents" prior to signing and that he assumed Petitioners' counsel would "personally ensure that the documents are ready to go." Ex. 1015, Attach. A. Dr. D'Andrea also testified that Ms. Terry typed the declarations while in Zurich and returned to the U.S. with his

¹ Mr. Hopfenfeld's declaration is no better (Ex. 1014). He also attests to attaching "a true and correct copy" of the email in question (*id.*, ¶ 5), but no such email is attached.

² When looking at his petition declaration that was filed on standard paper, Dr. D'Andrea noted: "It's just funny to see it in a different sized paper and color." Ex. 2012, p. 176, ll. 4-5.

“incomplete” declarations on her laptop. Ex. 2012, p. 67, l. 12 – p. 69, l. 15, and p. 293, ll. 2-5. While they remained in her control until filing, Ms. Terry did not offer a declaration as to the contents of the signed and filed declarations; nor did Petitioners attach the 4/30/14 version that would permit comparison between what was allegedly signed and what was filed six days later. Ex. 1011. Importantly, if there are material differences, then the declaration is inadmissible. *See United States v. Mathies*, 350 F.2d 963 (3d Cir. 1965).

III. PETITIONERS' INCONSISTENT EXPLANATIONS

Ms. Skolaski knew of the missing signature “in January before Dr. D’Andrea’s deposition.” Ex. 1013, ¶6. Mr. Hopenfeld (lead counsel) learned about it “during” the January 8, 2015 deposition (Ex. 1014, ¶6) and Ms. Terry (backup counsel) told this Board in writing and orally that Petitioner did not know about the errors until “after Patent Owner sent Petitioner a letter dated January 22, 2015.” Ex. 2014. Beyond these inconsistencies, Petitioners fail to explain why the issue was not brought to the Board’s attention immediately. After all, the Board instituted trial based, at least in part, on Dr. D’Andrea’s unsigned declaration.

IV. CONCLUSION

Because Petitioners (i) are unable to answer this Honorable Board’s simple questions concerning Dr. D’Andrea’s declaration and (ii) failed to demonstrate that the mistakes they are seeking to correct are merely “clerical or typographical” (37 C.F.R. § 42.104(c)), Petitioners’ Motion (Paper No. 14) should be denied.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.