

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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PARROT S.A. and PARROT, INC.  
Petitioners

v.

DRONE TECHNOLOGIES, INC.  
Patent Owner

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Case IPR2014-00732  
Patent 8,106,748

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**PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION FOR  
*INTER PARTES* REVIEW OF U.S. PATENT NO. 8,106,748  
CASE IPR2014-00732**

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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. After numerous attempts to resolve the matter with Petitioners failed, Patent Owner was

forced to file suit on January 24, 2014. ECF No. 1.<sup>1</sup> 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 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. 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.

**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, this Petition is replete with material misstatements, conclusory arguments, and misdirection. Petitioners

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<sup>1</sup> 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.).

are now saddled with this Petition, as filed, and its inadequate prior art and unsupported arguments.

**1. Petitioners' Primary Reference Fails to Disclose a Fundamental Claim Element**

Petitioners argue that all of the claims of the '748 Patent are invalid as obvious. Each proposed rejection is based upon Spirov [Ex. 1005] in view of Bathiche [Ex. 1009] and/or Shkolnikov [Ex. 1010], with additional secondary references used in specific rejections. Pet. at 18-51.

Petitioners acknowledge that Spirov does not disclose, either expressly or inherently, a "configuration switch module" to select among three configurations, as recited by claim 1 of the '748 Patent. *Id.* at 20. Petitioners argue that that limitation is obvious because Spirov allegedly discloses a remote control that operates in two modes, which "necessarily" discloses a switch module to switch between those modes. *Id.* at 19-20.

Petitioners' argument suffers from two foundational errors, readily apparent from a review of Spirov. First, Petitioners misinterpret Spirov. Petitioners (and their expert) cite to sections of Spirov (§ 77) that describe the remotely controlled vehicle to support their interpretation of the remote controller's operation. Pet. at 20. They also cite two different embodiments of Spirov's remote controller to support their non-disclosed embodiment of a remote control having two modes.

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