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 IPR2014-00732
U.S. Patent No. 8,106,748

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 29

Petitioner respectfully requests reconsideration of the Board's Final Written Decision of October 20, 2015 (Paper 29) finding claims 1-12 of U.S. Patent No. 8,106,748 (the '748 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 Shkolnikov (Ex. 1010) is analogous art and that all claims are obvious even if Shkolnikov is not considered analogous, and because the Board misapplied the burdens of production and proof.

I. FACTUAL BACKGROUND

A. The "Configuration Switch"

The '748 Patent purports to address problems associated with prior art manual (*i.e.*, joystick based) remote control of devices such as model airplanes. Ex. 1001, 2:17-58. The purported solution is to deploy accelerometers in the remote controller and remote-controlled device to sense their movement. Ex. 1001, 2:18-22. The system purports to "synchronize" the user's movement of the remote-controller with the movement of the remotely-controlled device. Ex. 1001, 2:53-60; Ex. 1011 ¶¶ 49-50, 54.

Claim 1 originally was directed broadly to a system using accelerometers to control devices remotely, but when the Examiner rejected that claim, the applicant amended it to include a dependent claim limitation requiring a "configuration switch." The "configuration switch" selects between three modes of operating the remote controller: (1) manual control; (2) control using the accelerometer to sense motion only; or, (3) a combination of the two. Ex. 1001, 6:33-36; Fig. 5.

B. The Prior Art

Petitioner challenged claim 1 as obvious over Spirov in view of Bathiche and/or Shkolnikov. Spirov expressly discloses the same accelerometer-based system for remotely-controlling aircraft as does claim 1. See Paper 1, 19; Ex. 1011, ¶¶ 66, 74. Because Spirov also teaches two modes of operation in the same remote-controller, which means there must be a switch to select the chosen mode, Spirov also necessarily discloses a "configuration switch." Ex. 1011, ¶¶ 77-78. The only element Spirov does not expressly or inherently disclose is the third switch-selectable mode—the prior art "manual only" mode. Both Bathiche and Shkolnikov teach a manual only mode. Paper 1, 22; Ex. 1011, ¶¶ 69-70.

Shkolnikov teaches an "active keyboard system" for hand-held devices such as a phone, PDA, or remote controller. Ex. 1010, ¶¶ [0086]-[0087], [0094]; Ex. 1011, ¶ 70. As in Bathiche, Shkolnikov uses motion detectors such as accelerometers to detect the motion of the handheld device. Shkolnikov teaches

three modes of operation: (1) manual input only; (2) sensed motion; and, (3) a combination of sensed and manual motion. Ex. 1010, ¶¶ [0024]-[0025]; Ex. 1011, ¶ 70.

Shkolnikov expressly teaches uses of motion-sensing and manual remote control beyond entry of alphanumeric text entry, such as for gaming. Figure 46 shows a video game in which a gunsight can be controlled with a manually operated joystick together with motion by tilt (*e.g.*, accelerometer). Ex. 1010, ¶ [0136].

C. The Board's Decision

The Board rejected Petitioner's obviousness challenge to the '748 Patent based on one—and only one—reason: that Shkolnikov is not "analogous art."

The Board further found that Shkolnikov is "critical to the asserted ground of unpatentability because that reference provides the teaching of three modes of operation including 'the combination of the first acceleration sensing module and the manual input module.'" Paper 29, 13. The Board stated that it could "find no fault" with Patent Owner's argument that Shkolnikov is non-analogous art, stating that it teaches an active keyboard system for handheld electronic or data entry devices. *Id.*, 12. The Board "[found] little in Shkolnikov that would be reasonably pertinent to an artisan seeking to improve upon control of the motion of a remotely controlled device." *Id.*, 13.

In contrast, the Board found that Bathiche is analogous art. Paper 29, 8 n.2.

II. ARGUMENT

A. Shkolnikov Is Analogous Art

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). A reference qualifies as prior art for an obviousness determination under § 103 only when it is analogous to the claimed invention. *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011).[1]

A reference is considered analogous if: (1) it is from the same field of endeavor as the claimed subjected matter, regardless of the problem addressed; or (2) it "still is reasonably pertinent to the particular problem with which the inventor is involved," even though the reference is not within the inventor's field of

---

[1] Neither the Patent Act nor *KSR* recognizes a separate analogous-art inquiry. Field of endeavor and the pertinence of the prior art, like common sense, are at most considerations in the general obviousness inquiry. The vitality of a "non-analogous art" subtest in view of *KSR*, however, is an issue for the Federal Circuit to consider in the first instance.

DOCKET ALARM

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.