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IPR2014-00411 Paper 114
IPR2014-00434 Paper 16
IPR2015-00065 Paper 72
Entered: September 3, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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FLIR SYSTEMS, INC.,
Petitioner,

v.

LEAK SURVEYS, INC.,
Patent Owner.
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Case IPR2014-00411/434 (Patents 8,426,813 B2 and 8,193,496 B2)
Case IPR2015-00065 (Patent 8,426,813 B2)
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Before FRED E. McKELVEY, JAMES T. MOORE, and
TREVOR M. JEFFERSON, *Administrative Patent Judges.*

JEFFERSON, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

FLIR Systems, Inc. ("Petitioner" or "FLIR") filed four petitions seeking *inter partes* review of U.S. Patent No. 8,426,813 B2 ("the '813 patent") and U.S. Patent No. 8,193,496 B2 ("the '496 patent"). Filed were a first petition in IPR2014-00411 ("IPR '411") and a second petition in IPR2014-00608 ("IPR '608") seeking *inter partes* review of claims 1–58 (all of the claims) of the '813 patent. 35 U.S.C. § 311; Paper 2 (IPR '411); Paper 2 (IPR '608).[1] Also filed were a third petition in IPR2014-00434 ("IPR '434") and a fourth petition in IPR2014-00609 ("IPR '609") seeking *inter partes* review of claims 1–7 and 9–20 the '496 patent. 35 U.S.C. § 311; Paper 2 (IPR '434); Paper 2 (IPR '609).

Leak Surveys, Inc. ("Patent Owner" or "LSI") filed a Patent Owner's Preliminary Response in IPR '411 (Paper 6 corrected by Paper 8); IPR '608 (Paper 6 corrected by Paper 8); IPR '434 (Paper 6); and IPR '609 (Paper 7).

In a consolidated Decision to Institute (Paper 9 in IPR '411 and Paper 9 in IPR '434, "Dec. '411"), we denied institution in IPR '608 and IPR '609 and in IPR '411 and IPR '434 instituted this proceeding as to claims 1–22, 31, 37–40, 42–56, and 58 of the '813 patent and claims 1–7 and 9–20 of the '496 patent. Dec. '411, 35–36. Subsequently, we consolidated IPR2014-00434 with IPR2014-00411 and terminated the IPR2014-00434 proceeding. Paper 10 (IPR '411); Paper 9 (IPR '434).

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[1] The IPR in parentheses after a paper number or exhibit number indicates the IPR docket that contains the numbered filing.

In IPR2015-00065 ("IPR '065"), FLIR filed a fifth petition, requesting *inter partes* review of claims 23–30, 32–36, 41, and 57 of the '813 patent pursuant to 35 U.S.C. §§ 311–319. Paper 2 (IPR '065). FLIR subsequently withdrew claim 29 from the requested *inter partes* review, thus challenging only claims 23–28, 30, 32–36, 41, and 57 of the '813 patent. Paper 10 (IPR '065). LSI filed a Preliminary Response in two parts, Part 1 (Paper 8 (IPR '065)) and Part 2 (Paper 16 (IPR '065)).

Pursuant to 35 U.S.C. § 314, in our Decision to Institute (Paper 25, "Dec. '065"), we instituted *inter partes* review as to claims 23–28, 30, 32–36, 41, and 57 of the '813 patent. Dec. '065, 18–19. We further combined IPR2014-00411 with IPR2015-00065 for purposes of scheduling, briefing, and trial. Paper 28, 7 (IPR '065).

LSI filed a Patent Owner Response as to all IPRs (Paper 65 (IPR '411), Paper 37 (IPR '065), "PO Resp.") and FLIR filed a Reply to the Patent Owner Response (Paper 77 (IPR '411), Paper 42 (IPR '065), "Reply").[2] A consolidated oral hearing for IPR2014-00411 and IPR2015-00065 (Paper 70 in IPR '065 and Paper 112 in IPR '411, "Tr.") was held on July 2, 2015.

For the reasons that follow, we determine that FLIR has shown by a preponderance of the evidence that claims 1–28 and 30–58 of the '813 patent and claims 1–7 and 9–20 of the '496 patent, are unpatentable.

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[2] All references herein to the Patent Owner Response (PO Resp.) are to the redacted Paper 66 (IPR '411) and Paper 37 (IPR '065).

B. Related Cases

FLIR states that the '813 patent, which claims priority to the '496 patent, has been asserted by LSI in *Leak Surveys, Inc. v. FLIR Systems, Inc.*, Civil Action No. 3:13-CV-02897-L (N.D. Tex.) (filed July 25, 2013). Paper 2, 1 (IPR '411); Paper 4, 2 (IPR '065).

C. The Asserted Grounds

In the consolidated IPRs, we instituted trial on the grounds that the following cited references[3] render the challenged claims unpatentable as obvious pursuant to 35 U.S.C. § 103(a):

References	IPR	Claim(s) Challenged
Merlin Brochure[4] and Strachan[5]	IPR '411	'813 Patent: 1–4, 6, 8–22, 31, 37–40, 42–56, 58
Merlin Brochure, Strachan, and Piety[6]	IPR '411	'813 Patent: 5 and 7
Merlin Brochure and Strachan	IPR '434	'496 Patent: 1–5 and 9–20
Merlin Brochure, Strachan, and Brengman[7]	IPR '434	'496 Patent: 6

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[3] Exhibit numbers herein refer to exhibits filed in both IPR '411 and IPR '065 that share the same number. An exhibit number followed by a specific IPR in parentheses denotes an exhibit filed in the identified IPR.

[4] Indigo Systems Corporation, Merlin: The ultimate combination of flexibility and value in high-performance Infrared Cameras (Rev. A 1/02), dated ©2002 (Ex. 1007, "Merlin Brochure").

[5] D.C. Strachan et al., *Imaging of Hydrocarbon Vapours and Gases by Infrared Thermography*, 18 J. PHYS. E: SCI. INSTRUM. 492-498 (1995) (Ex. 1008, "Strachan").

[6] U.S. Patent No. 5,386,117 issued on January 31, 1995 (Ex. 1018, "Piety").

References	IPR	Claim(s) Challenged
Merlin Brochure, Strachan, and Hart[8]	IPR '434	'496 Patent: 7
Merlin Brochure and Strachan	IPR '065	'813 Patent: 23, 25, 28, 30
Merlin Brochure, Strachan, and Spectrogon[9]	IPR '065	'813 Patent: 27, 32–35, 41
Merlin Brochure, Strachan, and OCLI[10]	IPR '065	'813 Patent: 24, 26, 36, 57
Merlin User's Guide[11] and Kulp[12]	IPR '065	'813 Patent: 23, 33, 35
Merlin User's Guide, Kulp, and Spectrogon	IPR '065	'813 Patent: 25, 27, 28, 30, 32, 34, 41
Merlin User's Guide, Kulp, and OCLI	IPR '065	'813 Patent: 24, 26, 36, 57

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[7] U.S. Patent No. 3,662,171 issued on May 9, 1972 (Ex. 1013 (IPR '434), "Brengman").

[8] U.S. Patent No. 6,056,449 issued on May 2, 2000 (Ex. 1014 (IPR '434), "Hart").

[9] Spectrogon Catalog of Bandpass Filters (http://www.spectrogon.com /bandpass.html dated October 6, 2001) (Ex. 1017, "Spectrogon").

[10] OPTICAL COATING LABORATORY, INC. SPECTRABAND STOCK PRODUCTS CATALOG, Vol. 5 (1994) (Ex. 1014, "OCLI").

[11] Indigo Systems Corporation, MERLIN™ MID, INSB MWIR CAMERA, User's Guide, Version 1.10, 414-0001-10 (Ex. 1011, "Merlin User's Guide").

[12] Thomas J. Kulp et al., *Remote Imaging of Controlled Gas Release using Active and Passive Infrared Imaging Systems*, 3061 SPIE 269 (1997) (Ex. 1012, "Kulp").

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