

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PARROT S.A., PARROT DRONES, S.A.S. and PARROT INC.,
Petitioners,

v.

QFO LABS, INC.,
Patent Owner.

Case IPR2017-01089
Patent 7,931,239 B2

Before MEREDITH C. PETRAVICK, HYUN J. JUNG, and
SCOTT C. MOORE, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review

37 C.F.R. § 42.108

Dismissing Motion for Joinder

37 C.F.R. § 42.122(b)

I. INTRODUCTION

Parrot S.A., Parrot Drones S.A.S., and Parrot Inc. (“Petitioners”) filed a Petition (Paper 2, “Pet.”), requesting institution of an *inter partes* review of claims 1–9 of U.S. Patent No. 7,931,239 B2 (Ex. 1001, “the ’239 patent”). Petitioners also filed concurrently a Motion for Joinder that seeks joinder to Case IPR2016-01550. Paper 3. QFO Labs, Inc. (“Patent Owner”) timely filed a Preliminary Response¹ (Paper 7, “Prelim. Resp.”).

For the reasons below, based on the circumstances of this case, we exercise our discretion pursuant to 35 U.S.C. § 314(a) and 37 C.F.R. § 42.108(a) to deny the Petition and, therefore, decline to institute an *inter partes* review. Because the Petition is denied, we also dismiss as moot Petitioners’ Motion for Joinder.

A. The ’239 Patent (Ex. 1001)

The ’239 patent relates to a “homeostatic flying hovercraft.” Ex. 1001, 1:19. Homeostatic flying craft 200 has upper surface 202, bottom surface 204, four duct openings 212, and battery-powered ducted fan 214 mounted inboard from each duct opening 212. *Id.* at 9:14–29. Each fan 214 is powered from an internal pair of batteries 216. *Id.* at 9:41–42. Homeostatic control system 300 is “operably connected to the thrusters . . . in order to maintain a desired orientation” and includes “XYZ sensor arrangement 302 and associated control circuitry 304 that dynamically determines an inertial gravitational reference.” *Id.* at 10:64–11:5.

¹ The Preliminary Response improperly contains arguments against Petitioners’ Motion for Joinder. *See* Prelim. Resp. 19–23; 37 C.F.R. § 42.6(3) (“Combined motions, oppositions, replies, or other combined documents are not permitted.”) and § 42.25(a)(1) (“An opposition is due one month after service of the motion.”).

A radio-controlled (“RC”) controller 220 “includes a body adapted to be held in one hand” and a “homeostatic control system IS positioned within the body.” *Id.* at 10:13–17. A user selectively positioning an orientation of RC controller 220 provides a “desired orientation.” *Id.* RC controller 220 includes a “bidirectional radio frequency (RF) transceiver providing two-way RF communications between the RC aircraft and the hand-held RC controller that communicates the desired orientation to the RC aircraft.” *Id.* at 10:22–25.

B. Illustrative Claim

The ’239 patent has 10 claims, of which Petitioners challenge claims 1–9. Of the challenged claims, claims 1 and 6 are independent, and claim 1 is reproduced below:

1. A radio controlled (RC) homeostatic flying hovercraft comprising:
 - a flying structure having lift generated by at least four electrically, powered generally downwardly directed thrusters, said flying structure including:
 - a homeostatic control system operably connected to said thrusters that automatically controls a thrust produced by each thruster in order to automatically maintain a desired orientation of said flying structure, said homeostatic control system including at least a three dimensional, three-axis sensor system and associated control circuitry that dynamically determines a gravitational reference other than by dead reckoning for use by said homeostatic control system in automatic control of said thrusters to maintain homeostatic stabilization in said desired orientation;
 - a radio frequency (RF) receiver; and
 - a battery system electrically coupled to said thrusters, said RF receiver and said homeostatic control system; and
 - an RC controller separate and remote from said flying structure and adapted to control said desired orientation of said flying structure, said RC controller including:

a handheld structure housing a sensor system that senses at least a two dimensional, two-axis sensed orientation of said handheld structure as a result of a user remote from said flying structure selectively orienting said handheld structure; and

an RF transmitter that communicates information based on said sensed orientation to said receiver of said flying structure as said desired orientation used by said homeostatic control system to automatically control said thrusters to maintain said desired orientation.

C. Asserted Grounds

Petitioners challenge, under 35 U.S.C. § 103, the claims as follows:

References	Claim(s) Challenged
Louvel ² , Thomas ³ , Jimenez ⁴ , and Kroo ⁵	1–3, 5–7, and 9
Louvel, Thomas, Jimenez, Yavnai ⁶ , and Kroo	3
Louvel, Thomas, Jimenez, Carroll ⁷ , and Kroo	4–8
Louvel, Thomas, Jimenez, and asserted admitted prior art ⁸	1–3, 6, 7, and 9
Louvel, Thomas, Jimenez, Yavnai, and asserted admitted prior art	3
Louvel, Thomas, Jimenez, Carroll, and asserted admitted prior art	4–8
Louvel, Thomas, Jimenez, Kroo, and asserted admitted prior art	5

² US 2002/0104921 A1, published Aug. 8, 2002 (Ex. 1004).

³ US 5,128,671, iss. July 7, 1992 (Ex. 1005).

⁴ US 2002/0106966 A1, published Aug. 8, 2002 (Ex. 1007).

⁵ I. Kroo & P. Kunz, “Mesoscale Flight and Miniature Rotorcraft Development,” Fixed and Flapping Wing Aerodynamics for Micro Air Vehicle Applications (Thomas J. Mueller ed., 2001) (Ex. 1006).

⁶ US 6,588,701 B2, iss. July 8, 2003 (Ex. 1009).

⁷ US 6,847,865 B2, iss. Jan. 25, 2005 (Ex. 1008).

⁸ Ex. 1001, 3:46–54, 4:27–34. See Pet. 74 (quoting these portions).

References	Claim(s) Challenged
Louvel, Thomas, and Jimenez	1–3, 6, 7, and 9
Louvel, Thomas, Jimenez, and Yavnai	3
Louvel, Thomas, Jimenez, and Carroll	4–8
Louvel, Thomas, Jimenez, and Kroo	5

Pet. 17–18.

D. Related Proceedings

A related patent is at issue in Cases IPR2016-01559 and IPR2017-01090. Pet. 90; Paper 5, 2; Prelim. Resp. 9.

Patent Owner indicates that the '239 patent is involved in *Parrot S.A. v. QFO Labs, Inc.*, case 1:16-cv-00682-GMS (D. Del.) and *QFO Labs, Inc. v. Brookstone Stores, Inc.*, case 0:17-cv-01100-JNE-SR (D. Minn.). Paper 5, 4–5; Prelim. Resp. 9; Ex. 2014; *see also* Pet. 90 (indicating intent to file an action in the District of Delaware). The '239 patent was also involved in a case that has been dismissed without prejudice. Prelim. Resp. 9.

Additionally, the '239 patent was the subject of a petition filed by Petitioners in Case IPR2016-01550 (“the '1550 proceeding”). Pet. 1; Paper 5, 1–2; Prelim. Resp. 9. In the '1550 proceeding, Petitioners challenged:

- (1) claims 1–3, 5–7, 9, and 10 as unpatentable over Louvel, Thomas, and Jimenez;
- (2) claim 3 as unpatentable over Louvel, Thomas, Jimenez, and Yavnai;
- (3) claims 4 and 8 as unpatentable over Louvel, Thomas, Jimenez, and Carroll;

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