Trials@uspto.gov
571.272.7822

Paper No.34
Entered: February 21, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SZ DJI TECHNOLOGY CO., LTD. and PARROT INC.,
Petitioners,

v.

DRONE-CONTROL, LLC,
Patent Owner.

Case IPR2018-00204 (Patent 8,200,375 B2)
Case IPR2018-00205 (Patent 8,380,368 B2)
Case IPR2018-00206 (Patent 8,649,918 B2)
Case IPR2018-00207 (Patent 9,079,116 B2)
Case IPR2018-00208 (Patent 9,568,913 B2)[1]

Before PATRICK R. SCANLON, FRANCES L. IPPOLITO, and TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

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[1] We exercise our discretion to issue one order to be filed in each proceeding. The parties may use this style heading only if the paper includes a statement certifying that the identical paper is being filed in each proceeding listed in the caption.

At Patent Owner's request, we conducted a pre-hearing conference call with counsel for the parties on February 20, 2019. In its email requesting the conference, Patent Owner stated that it "would like to discuss the possibility of Patent Owner submitting, prior to the oral hearing, a revised listing of amended claims that make clear the corrections to typographical errors collectively addressed in the papers surrounding the Motions to Amend." During the call, Patent Owner explained that the corrections it wishes to make are as follows:

- In IPR2018-00206, claim 33 recites "wherein ψ_2 comprises the roll axis command angle." Patent Owner wishes to change the quoted phrase to "wherein ψ_2 comprises the pitch axis command angle."
- In IPR2018-00207, claim 25 recites that "the command data is generated only at the RC aircraft." Patent Owner wishes to change the quoted phrase to "the motion data is generated only at the RC aircraft."

Patent Owner argues that these changes correct inadvertent, typographical errors in its proposed substitute claims. Patent Owner states that it first became aware of these errors when Petitioners pointed them out in their oppositions to the motions to amend. Petitioners oppose Patent Owner's request to submit a revised listing. Petitioners argue that Patent Owner's changes are not typographical because they seek to change words that have one meaning to other words that have a different meaning. Further, Petitioners argue that their oppositions to the motions to amend

were based on the substitute claims that were presented, and that permitting Patent Owner to change its claims at this stage would deprive Petitioners of a fair opportunity to address the new claims.

After considering the parties' arguments, we are not persuaded that Patent Owner should be permitted to submit a revised listing of amended claims at this stage of the proceedings. During the call, Patent Owner was unable to direct us to any proceeding in which the Board allowed a patent owner to revise its proposed claim amendments. Further, Patent Owner did not provide a satisfactory explanation for why it chose to wait until the final days before the hearing to seek this relief. Permitting a change in the proposed substitute claims at this point leaves little opportunity for Petitioners to present their opposition to the newly revised claims. Accordingly, no submission of a revised listing is authorized.

During the call, the parties also raised potential objections to hearing demonstratives. Patent Owner expressed its concern that Petitioners' introductory slides include citation to evidence that is discussed only in the briefing on the motions to amend, and not in the briefing on the cases-in-chief. Patent Owner argues that this blending of the record may be confusing, and requests that we require Petitioners to remove from their introductory slides any evidence that was cited only in the briefing on the motions to amend. Petitioners respond that their slides include citations to the papers in the record where the evidence is discussed, so there is no risk of confusion.

The panel has not seen the slides in question, so we are not prepared to issue specific rulings at this time. However, by way of guidance, the

panel does not intend to police the manner in which either party organizes its presentation. There is a significant overlap of issues and arguments between these five proceedings, which is why we granted the parties' request for a single hearing for all five cases. *See* Case IPR2018-00204, Paper 28, 2. Attempting to impose a rigid framework controlling when certain issues or evidence can be discussed within a party's allotted argument time would be inefficient and, in our view, unhelpful. The parties are not permitted to present new arguments at the hearing, but we leave it up to them to decide which arguments from their briefs they wish to highlight at the hearing and how best to organize those remarks. If Patent Owner believes that Petitioners are improperly relying on arguments or evidence against the original claims that were presented only in opposition to the motion to amend, Patent Owner should make that point during its presentation at the hearing.

As for other demonstrative-related disputes, to the extent the parties are unable to resolve those disputes through meeting and conferring, the parties should follow the procedure outlined in the Hearing Order regarding objections to demonstratives. *See* Case IPR2018-00204, Paper 28, 4.

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PETITIONER:

Stephen Kabakoff
Joshua Goldberg
Qingyu Yin
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
stephen.kabakoff@finnegan.com
joshua.goldberg@finnegan.com
qingyu.yin@finnegan.com

Matthew Traupman
Jim Glass
QUINN EMANUEL URQUHART & SULLIVAN, LLP
matthewtraupman@quinnemanuel.com
jimglass@quinnemanuel.com

PATENT OWNER:

Jeffrey Toler
Aakash Parekh
Craig Jepson
TOLER LAW GROUP, PC
jtoler@tigiplaw.com
aparekh@tlgiplaw.com
cjepson@tlgiplaw.com