

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CIRRUS DESIGN CORPORATION

Petitioner,

v.

HOYT AUGUSTUS FLEMING

Patent Owner.

Case IPR2019-01566

Patent RE47,474

**PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION TO
REVISED MOTION TO AMEND**

TABLE OF CONTENTS

TABLE OF EXHIBITS	ii
I. INTRODUCTION	1
II. THE RMTA RESPONDS TO THE PANEL’S PRELIMINARY GUIDANCE AND PETITIONER’S OPPOSITION TO THE MTA	2
III. THE SUBSTITUTE CLAIMS HAVE WRITTEN DESCRIPTION SUPPORT	4
IV. THE CLAIMS ARE DEFINITE	8
V. THE SUBSTITUTE CLAIMS ARE NOT OBVIOUS	9
A. The rMTA Was Not Required to Identify Evidence Demonstrating that the Claims Are Nonobvious	9
B. The Proposed Amendments Limit the Method Claims	9
C. Petitioner’s Obviousness Argument Fails to Address the Procedure Selection Limitations, which Distinguish over the Prior Art.....	10
VI. CONCLUSION.....	12

TABLE OF EXHIBITS

- Ex. 2033 Declaration and *Curriculum Vitae* of Dr. Chris Gregory Bartone in support of Patent Owner’s Reply to Petitioner’s Opposition to Revised Motion to Amend
- Ex. 2034 Intentionally Left Blank
- Ex. 2035 Intentionally Left Blank
- Ex. 2036 Webster’s New Collegiate Dictionary, Definition of “Procedure”
- Ex. 2037 Notice Regarding a New Pilot Program Concerning Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board (March 15, 2019)

I. INTRODUCTION

Petitioner raises two main arguments, the first of which is that the revised Motion to Amend (rMTA) is impermissible because it allegedly “advances entirely new claim limitations and accompanying arguments ‘unrelated to issues raised in the preliminary guidance [PG] and/or petitioner’s opposition to the MTA.’” Opp. at 6. However, the rMTA is responsive to the opposition and PG because it i) removes limitations argued by Petitioner and observed by the PG to constitute new matter, and ii) adds limitations which narrow the claims to exclude subject matter that Petitioner’s expert argued as being the “safest and most logical” application of auto-pilot principles to prior art parachute deployment systems. PG at 5; Ex. 1045 ¶89. Further, the Notice regarding the rMTA program specifically addressed the concern raised by Petitioner and concluded that “to the extent that a revised motion to amend is deemed to be a second motion to amend . . . the filing of an opposition to an initial MTA by a petitioner, or the issuance of preliminary guidance by the Board, provides ‘a good cause showing’ for purposes of the filing of a revised MTA under 37 CFR 42.121(c) and 42.221(c).” Ex. 2037 at 9504. The rMTA is thus proper.

Petitioner’s second argument (at 8-13), that the original disclosure does not disclose “processor-based selection between the two recited ‘procedures’” ignores the ’911 Application’s teachings concerning the determinations made by the processor. The specification teaches that the processor selects one of the following

two procedures based, for instance, on the handle pull-count: i) increase altitude and then deploy the parachute (when pull-count equals one) or ii) the override procedure (when pull-count equals two). The application thus supports the substitute claims.

II. THE RMTA RESPONDS TO THE PANEL'S PRELIMINARY GUIDANCE AND PETITIONER'S OPPOSITION TO THE MTA

Petitioner argues (at 1-6) that the rMTA is improper because it is not “responsive” to the opposition or PG. Underlying the Petitioner’s argument is the notion that the original MTA somehow constrains the rMTA like an original brief and opposition constrain a reply or sur-reply. An rMTA is not so constrained.

This same concern was raised by commenters opposing the rMTA program and the concern was rejected by the Director. Some commenters argued that “patent owners would not file their most substantive claim amendments until filing a revised MTA.” Ex. 2037 at 9504. The Director responded by explaining that, to the extent the rMTA is considered a new MTA, that is justified by the PG and the opposition.

In addition, the revised motion to amend is not a second motion to amend per se, but rather a revised version of the initially-filed motion to amend. For purposes of the pilot program, *to the extent that a revised motion to amend is deemed to be a second motion to amend, however, the filing of an opposition to an initial MTA by a petitioner, or the issuance of preliminary guidance by the Board, provides “a good cause showing” for purposes of the filing of a revised MTA under 37 CFR 42.121(c) and 42.221(c). The Office determines that each of those papers provides “good cause”* because they present information relevant to whether an MTA meets statutory and regulatory requirements and/or whether proposed substitute claims meet the patentability requirements under the Patent Act in light of prior art of record.

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.