

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CIRRUS DESIGN CORPORATION,
Petitioner,

v.

HOYT AUGUSTUS FLEMING
Patent Owner.

IPR2020-00762
Patent RE47,474 E

Record of Oral Hearing
Held: June 29, 2021

Before JOSIAH C. COCKS, SCOTT C. MOORE, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

IPR 2020-00762
Patent RE47,474E

APPEARANCES:

ON BEHALF OF THE PETITIONER:

KEVIN WAGNER, ESQ.
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, Minnesota 55402
(612) 766-6922
kevin.wagner@faegredrinker.com

ON BEHALF OF THE PATENT OWNER:

MICHAEL DOWLER, ESQ.
Park, Vaughan & Fleming LLP
2820 Fifth Street
Davis, California 95618
(713) 821-1540
mike@parklegal.com

The above-entitled matter came on for hearing on Tuesday, June 29, 2021,
commencing at 2:00 p.m. EDT, by video/by telephone.

P-R-O-C-E-E-D-I-N-G-S

2:01 p.m.

JUDGE COCKS: Good afternoon, and welcome to the board. We're here today for oral arguments in case IPR 2020-00762 involving Reissued Patent 47474. I am Judge Cocks, I'm joined on the panel by Judges Belisle, and Moore. Let's go ahead and begin with introduction of counsel. Would counsel for the petitioner please state their appearance today?

MR. WAGNER: Yes your honor, this is Kevin Wagner of Faegre Drinker, with me is Joel Sayres, and Mr. Jonas.

JUDGE COCKS: All right, thank you Mr. Wagner, and would counsel for the patent owner please state their appearance?

MR. DOWLER: Good afternoon your honor, my name is Mike Dowler, I'm here on behalf of Mr. Fleming, the patent owner. Also with me is Greg Gardello.

JUDGE COCKS: Thank you, could you say your last name again?

MR. DOWLER: Dowler, D-O-W-L-E-R.

JUDGE COCKS: All right, thank you Mr. Dowler.

MR. DOWLER: You're welcome.

JUDGE COCKS: Okay, as we set forth in the trial hearing order, each side has 60 minutes of argument time. Petitioner bears the burden of showing unpatentability, and will argue their case, and may reserve rebuttal time. Patent owner will then argue their opposition to petitioner's case, and may reserve surrebuttal time. Thereafter petitioner will argue their rebuttal, and patent owner will argue their surrebuttal. We have the parties' demonstrative electronic files before us, so we ask, so that we can follow along, when referring to the slide deck please identify the page number. And lastly, please mute yourself when you're not speaking. That being said, Mr. Wagner, you may proceed first.

1 MR. WAGNER: Thank you your honor. I'd like to reserve 15
2 minutes for rebuttal.

3 JUDGE COCKS: Thank you.

4 MR. WAGNER: So, I'll start on slide two of the demonstratives,
5 which sets forth the ground that we're asserting in the petition. It's only one
6 ground, and it relies on the combination of the POH, James, and Hoffman.
7 The POH sets forth an aircraft with all the components that are claimed,
8 including the ballistic parachute. It also specifies the actions that are to be
9 taken before applying a parachute. James, and Hoffman both set forth
10 foster, and software based solutions for controlling parachute deployment.

11 James in particular teaches to control parachute deployment using
12 the autopilot, and to customize that to match the flight laws of an aircraft,
13 which we'll get into. Then Hoffman really reinforced some of the teachings
14 of the POH with his teaching to have an air speed limited deployment, as
15 well as using a back up time lock feature. So, that's the combination that
16 we're talking about. Turning to slide three, that combination in our view
17 renders all of the challenged claims, claims 95 through 131, unpatentable as
18 obvious.

19 Note that the patent owner has disclaimed claim 125, so that one is
20 no longer at issue. There are really two issues with this IPR that make it
21 stand out from maybe your run of the mill IPR, and in my view should make
22 this somewhat easier. If you turn to slide four, the first of those is that
23 there's an earlier IPR with very similar grounds, IPR 2019 01566. That's the
24 same patent, and largely the same combination of POH, and James being
25 combined is the obviousness ground there.

26 As you can see on slide five, the final written decision that your
27 honors entered there found all the challenge claims obvious under that
28 combination, and in doing so, rejected many of the same arguments that

1 we've seen in the briefing from Mr. Fleming in this case. Also rejected
2 Fleming's gap filling argument about the software, and there being some gap
3 with applying that software from James into the POH. It rejected Fleming's
4 argument that autopilot programming was beyond the skill of a person of
5 ordinary skill in the art.

6 It rejected Fleming's argument that improved safety was an
7 insufficient motivation to combine the references. And then Fleming, in that
8 case, also made some arguments about teaching away, and autopilot
9 limitations somehow teaching away from using the autopilot in a pressure
10 deployment scenario, and that was also rejected. Turning then to slide six,
11 the second factor here that I think makes this case somewhat unique is that
12 Fleming has chosen not to put in any expert evidence. He chose not to cross
13 examine our expert, Frank Hoffman, and he chose not to offer any response
14 of expert testimony of his own.

15 So, this is really a case where we already have a similar ground that's
16 been established, and (audio interference).

17 I'll turn now to the 47474 patents, and come back on that patent
18 beginning with slide eight. We see here, this is the cover page of the patent,
19 we've got the priority date in 2009, there's no issue around that. What the
20 474 patent attempts to do is really claim conventional components, and
21 conventional actions, and merely automating them.

22 As you can see on slide nine, that the patent itself recognizes that the
23 physical components its talking about here, being the ballistic parachute
24 system, the pull handle, and the activation interface, processors, memory,
25 these are all conventional components, the patent itself recognizes that, and
26 there's really no dispute that the physical components here are not new.
27 Similarly on slide nine, those components are all well known, and
28 conventional, as of the priority date at issue here. And then on slide 11, our

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