

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SZ DJI TECHNOLOGY CO., LTD.,
Petitioner,

v.

TEXTRON INNOVATIONS INC.,
Patent Owner.

Case IPR2023-01107
Patent No. 10,275,950

PATENT OWNER'S PRELIMINARY SUR-REPLY

Petitioner's Reply (Paper 11) erroneously argues Patent Owner ("PO") is taking "inconsistent interpretations" in this IPR and related litigation.

I. PETITIONER FAILED TO MEET ITS BURDEN

The Petition must identify "[h]ow the challenged claim is to be construed" (37 C.F.R. § 42.104(b)(3)), but Petitioner failed to meet its burden. Instead, after filing its petition, Petitioner alleges the POPR's arguments regarding "'transceiver' limitations [9C.1]/[9C.2] and [13D]/[13F]/[13G] and the 'only accessible' limitation [9D]/[13H]" are based on alleged implicit claim interpretations that are inconsistent with alleged implicit interpretations in PO's district court infringement contentions. Reply, 1-3, 5. Petitioner then attempts to advance the contentions' supposed implicit interpretations as constructions here. *Id.* This is inappropriate. *Target Corp. v. Destination Maternity Corp.*, IPR2013-00531, Paper 10 at 6-7 (PTAB Feb. 14, 2014) (declining petitioner's "request for the Board to search" infringement contentions "for implicit constructions and find a basis for adopting them"); *Ericsson Inc. v. Koninklijke KPN N.V.*, IPR2023-00582, Paper 10 at 17-18 (PTAB Sept. 7, 2023); *Johnson & Johnson Surgical Vision, Inc. v. Alcon Inc.*, IPR2021-01053, Paper 52 at 16-17 (PTAB Dec. 5, 2022); *Workspot, Inc. v. Citrix Systems, Inc.*, IPR2019-01001, Paper 17 at 3-5 (PTAB Feb. 27, 2020). Moreover, "[i]t is well-settled that claims may not be construed by reference to the accused device." *Neomagic Corp. v. Trident Microsystems Inc.*, 287 F.3d 1065, 1074 (Fed.

Cir. 2002); *E.I. Du Pont v. Monsanto*, IPR2014-00332, Paper 16 at 6-7 (PTAB Jul. 11, 2014). Thus, as discussed further below, not only has Petitioner inaccurately and inappropriately attempted to pin alleged implicit claim interpretations on PO, it continues to fail in meeting *its* burden to construe these claim limitations.

II. PATENT OWNER’S POSITIONS ARE CONSISTENT

Regarding the “*transceiver*” limitations, PO did not “implicitly” apply any “narrow interpretation” or “active, yet unspecified, step.” Reply, 2. Instead, PO identified the Petition’s improper lack of explanation in mapping cited art. POPR, 40-43, 54-57. Pointing out these deficiencies is not implying a claim construction and is not taking a position inconsistent with PO’s litigation positions. It is instead holding Petitioner to the requirements of a proper petition. *See* 35 U.S.C. § 312(a)(3); 37 C.F.R. §§ 42.104(b)(4)-(b)(5), 42.22(a)(2). The Reply underscores PO’s argument. For example, citing to the Petition at 31-33, 38-39, 64-66, and 71-72, Petitioner states that for limitations [9C.2]/[13F]-[13G] “the Petition established, for example, to create and transmit an 802.11 message containing flight data and ‘*pilot identification information*’, the transceiver must associate (relate) that flight information with the pilot identification information and with the MAC ID for the device.” Reply, 2. This is an inaccurate representation of the Petition as it *adds* explanation missing from the Petition. The Petition’s limitation [9C.2]/[13F]-[13G] analysis does not mention “an 802.11 message” or “MAC ID.”

Petition, 31-33, 38-39, 64-66, 71-72. And in the Reply, Petitioner tellingly added the parenthetical “(relate)” to explain its intended meaning of “associate,” but the Petition’s limitation [9C.2]/[13F]-[13G] analysis did not include this. *Id.* Petitioner cannot fix the Petition’s deficiencies through the Reply.

For the “*only accessible*” limitation, PO did not apply any “implicit[] interpret[ation].” Reply, 4. PO instead identified the Petition’s inconsistent mapping of cited art to “*pilot identification information.*” POPR, 43-46, 57-60. Doing this does not conflict or have anything to do with PO’s litigation positions. Petitioner states it established “‘*stored flight performance*’...is accessible only through entry of ‘*pilot identification information*’ such as the pilot’s credentials (e.g., username and password).” Reply, 4. But as the POPR explained, the Petition did not map “pilot’s credentials (e.g., username and password)” consistently to “*pilot identification information.*” POPR, 43-46, 57-60. Pointing out a Petition’s inconsistent prior art mapping is not a claim construction or interpretation; it is instead holding Petitioner to 35 U.S.C. § 312(a)(3) and 37 C.F.R. §§ 42.104(b)(4)-(b)(5) and 42.22(a)(2). *Id.* Petitioner’s identification of allegedly inconsistent statements in the contentions is also erroneous as it selectively points to discrete parts. Reply, 5 (citing to EX1012, 87, 92, 96, 133-134, 145). The contentions’ full analysis for limitations [9C.2]/[13F] and [9D] shows PO consistently mapped, for example, “DJI account login credentials” (also referred to as “DJI login

credentials”) to *pilot identification information*. EX1012, 86-97, 133-140, 144-151.

III. RELIANCE ON INFRINGEMENT CONTENTIONS IS IMPROPER

Petitioner’s reliance on infringement contentions as a basis for alleging PO’s inconsistent claim interpretation positions in this IPR and related litigation is improper. For example, the Board in *Intex Recreation* refused to consider district court infringement contentions when analyzing claim construction because the contentions were made “[w]ithout being bound by any particular claim construction at this stage of the litigation,” the district court “had not yet construed the meaning of the claims,” the patent owner “reserve[ed] all rights to amend, supplement, and/or modify its Contentions after the claims have been construed by the Court,” and the claims were not “construed by the District Court.” *Intex Recreation Corp. v. Bestway (USA), Inc.*, IPR2019-00454, Paper 34 at 25 (PTAB June 22, 2020). This mirrors the present proceeding, where PO’s allegedly inconsistent litigation statements are from PO’s infringement contentions (see Reply, 3, 5 (citing DJI-1012)) that noted (1) PO “expressly reserves the right to modify, supplement, or amend these contentions,” (2) “the Court has not construed any claim terms,” (3) PO “cites to exemplary evidence...[and] citations are provided as illustrations to identify the accused functionality and should not be construed to limit the evidence,” and (4) the provided analysis was “a non-limiting, representative example of DJI’s infringement.” EX1012, 1-2.

Other Board panels have ruled similarly. See *Mentor Graphics v. Synopsis*, IPR2014-00287, Paper 17 at 3 (PTAB Aug. 1, 2014); *Dish Network L.L.C. v. TQ Beta, LLC*, IPR2015-01756, Paper 12 at 6 (PTAB Feb. 19, 2016); *Workspot, Inc. v. Citrix Systems, Inc.*, IPR2019-01001, Paper 17 at 3-5 (PTAB Feb. 27, 2020); *Apple, Inc. v. Immersion Corp.*, IPR2016-01371, Paper 7 at 57 (PTAB Jan. 11, 2017); *Johnson & Johnson Surgical Vision, Inc. v. Alcon Inc.*, IPR2021-01053, Paper 52 at 16-17 (PTAB Dec. 5, 2022); *Ericsson Inc. v. Koninklijke KPN N.V.*, IPR2023-00582, Paper 10 at 17-18 (PTAB Sept. 7, 2023); *InfoBionic, Inc. v. Braemer Mfg., LLC*, IPR2015-01704, Paper 11 at 6 (PTAB Feb. 16, 2016); *Travelocity.com, L.P. v. Cronos Techs., LLC*, CBM2014-00082, Paper 10 at 14, FN8 (PTAB Sep. 15, 2014); *Toyota Motor Corp. v. Am. Vehicular Scis.*, IPR2013-00424, Paper 16 at 23 (PTAB Jan. 14, 2014); *Sony Computer Entertainment of America v. Grobler*, IPR2013-00076, Paper 12 at 6 (PTAB Jul. 22, 2013). Petitioner does not consider these cases, pointing only to *Amazon.com* and *Ericsson*. Reply, 1. These cases are inapposite. *Amazon.com* dealt with a court’s allegedly inconsistent constructions for infringement and validity (239 F.3d at 1351)—not the situation here. *Ericsson* addressed the relevance of IEEE articles to specific disputed constructions a PO advanced in an IPR and district court. IPR2014-00915, Paper 37 at 8, 22-23. Not here; PO advanced the same plain and ordinary interpretation here and in litigation and has been consistent in both.

Respectfully submitted,

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Date: January 16, 2024

CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. §§ 42.6(e), the undersigned certifies that on January 16, 2024, a complete and entire copy of **PATENT OWNER'S PRELIMINARY SUR-REPLY** was served on Petitioner via electronic mail at the below addresses:

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