

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DJI EUROPE B.V.,  
Petitioner,

v.

TEXTRON INNOVATIONS INC.,  
Patent Owner.

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IPR2023-01107  
Patent 10,275,950 B2

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Before MICHAEL R. ZECHER, SCOTT A. DANIELS, and  
NATHAN A. ENGELS, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

DECISION  
Denying Institution of *Inter Partes* Review  
35 U.S.C. § 314

## I. INTRODUCTION

Petitioner, DJI Europe B.V., filed a Petition (Paper 3, “Pet.”) requesting *inter partes* review (“IPR”) of claims 9–14 and 16 of U.S. Patent No. 10,275,950 B2 (Ex. 1001, “the ’950 patent”). Patent Owner, Textron Innovations Inc., filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). With authorization from the Board, Petitioner filed a Preliminary Reply to Patent Owner’s Preliminary Response (Paper 11, “Prelim. Reply”), and Patent Owner filed a Preliminary Sur-Reply (Paper 12, “Prelim. Sur-Reply”).

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition and any response thereto shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Upon consideration of the Petition and the evidence of record, we determine Petitioner has not demonstrated a reasonable likelihood of prevailing in establishing unpatentability of at least one claim of the ’950 patent. Accordingly, we do not institute *inter partes* review.

### A. *Real Parties-in-Interest*

Petitioner identifies itself, SZ DJI Technology Co., Ltd., DJI Technology, Inc., iFlight Technology Company Limited, SZ DJI Baiwang Technology Co. Ltd., and DJI Research LLC as the real parties-in-interest. Pet. 80. Patent Owner identifies itself, Bell Textron Inc., and Textron Inc. as the real parties-in-interest. Paper 4, 1.

### B. *Related Matters*

The parties identify the following related proceedings:  
*Textron Innovations Inc. v. SZ DJI Technology Co.*, 2-22-cv-351 (E.D.

Tex.). Pet. 80; Paper 4, 1. In addition to this Petition, Petitioner filed the following four other petitions challenging related patents owned by Patent Owner: (1) *DJI Europe B.V. v. Textron Innovations Inc.*, IPR2023-01104, Paper 2 (PTAB July 28, 2023) (challenging claims 1–20 of U.S. Patent No. 8,682,505 B2); (2) *DJI Europe B.V. v. Textron Innovations Inc.*, IPR2023-01105, Paper 2 (PTAB July 28, 2023) (challenging claims 1–20 of U.S. Patent No. 8,332,082 B2); (3) *DJI Europe B.V. v. Textron Innovations Inc.*, IPR2023-01106, Paper 2 (PTAB July 27, 2023) (challenging claims 1–5, 7, and 8 of the '950 patent); and (4) *DJI Europe B.V. v. Textron Innovations Inc.*, IPR2023-01227, Paper 2 (PTAB Aug. 15, 2023) (challenging claims 1–20 of the U.S. Patent No. 11,288,972 B2). *See* Paper 4, 1.

*C. Illustrative Claim*

Of the challenged claims, claims 9 and 13 are independent claims, and claim 9 is copied below with bracketed labels added to reflect those referenced in the Petition.

[9P] An aircraft flight performance monitoring system, comprising:

[9A] a wireless transmitter having memory,

[9A.1] the wireless transmitter in data communication with an avionics system of an aircraft,

[9A.2] the avionics system comprising a memory card interface and the wireless transmitter comprising a non-volatile memory card coupled to the memory card interface of the avionics system;

[9B] a database in data communication with the avionics system,

**[9B.1]** the database being configured to store information relating to a pilot flying the aircraft during flight and flight performance of the aircraft during flight;

**[9C]** a transceiver comprising an input device;

**[9C.1]** the transceiver having a transceiver identity associated with pilot identification information,

**[9C.2]** the transceiver being configured for receiving information relating to sensed flight performance from the wireless transmitter, for associating the thus received information with the pilot identification information associated with the transceiver identity, and for transmitting the received information with the thus associated pilot identification information to the database;

**[9D]** wherein the stored sensed flight performance is only accessible with the associated pilot identification information;

**[9E]** wherein the wireless transmitter is configured to receive and transmit flight performance data from the avionics system to the transceiver, which in turn is transmitted to the database; and

**[9F]** wherein the pilot identification information is entered directly into the input device of the transceiver.

*D. Alleged Grounds of Unpatentability*

Petitioner asserts that the challenged claims would have been unpatentable on the following grounds:

| <b>Claims Challenged</b> | <b>35 U.S.C. §</b> | <b>Reference(s)/Basis</b>                                      |
|--------------------------|--------------------|----------------------------------------------------------------|
| 9–14, 16                 | 103 <sup>1</sup>   | Warner, <sup>2</sup> Wakutsu, <sup>3</sup> Shavit <sup>4</sup> |
| 9–14, 16                 | 103                | Warner, Wakutsu, Shavit, Greubel <sup>5</sup>                  |
| 9, 11–14, 16             | 103                | Uczekaj, <sup>6</sup> Jiang <sup>7</sup>                       |
| 9, 11–14, 16             | 103                | Uczekaj, Jiang, Greubel                                        |

Pet. 2. Petitioner also supports its challenge with a Declaration of Dr. Charles Reinholtz. Ex. 1003.

II. DISCUSSION

*A. Principles of Law*

In an *inter partes* review, the petitioner must show with particularity why each challenged claim is unpatentable. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016); 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b). As part of the petitioner’s burden, the petition must state how a challenged claim is to be construed and how each element of the construed claim is found in prior art patents or printed publications. 37 C.F.R.

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<sup>1</sup> The ’950 patent issued from an application filed after the Leahy-Smith America Invents Act (“AIA”) revisions to 35 U.S.C. § 103 became effective. Therefore, we apply the AIA version of § 103; however, our analysis would be the same under the pre-AIA version of the statute.

<sup>2</sup> US 9,563,580 B2; filed July 24, 2014. Ex. 1005.

<sup>3</sup> WO 2012/105083 A2; published Aug. 9, 2012. Ex. 1007.

<sup>4</sup> US 2011/0241902 A1; published Oct. 6, 2011. Ex. 1008.

<sup>5</sup> US 9,402,174 B2; filed May 6, 2013. Ex. 1009.

<sup>6</sup> US 9,141,830 B2; PCT published Jan. 24, 2013. Ex. 1010.

<sup>7</sup> US 6,278,913 B1; issued Aug. 21, 2001. Ex. 1011.

§§ 42.104(b)(3)–(4). The burden of persuasion never shifts to the patent owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

*B. “Pilot Identification Information”*

1. *Obviousness Grounds, Based in Whole or in Part, on Warner, Wakutsu, and Shavit*

In claim 9, each of limitations [9C.1], [9C.2], [9D], and [9F] recites “pilot identification information.” In claim 13, limitations [13D]–[13H] similarly recite “pilot identification information.” The Petition does not address the scope and meaning of these claim terms, but Patent Owner argues (Prelim. Resp. 44–46, 57–60; Prelim. Sur-Reply 2–3), and we agree, that Petitioner’s analyses of these limitations are inconsistent and deficient.

Highlighting the Petition’s inconsistencies, addressing limitations [9C] and [9F], Petitioner states “in Shavit, . . . the pilot ‘types in or selects his name, the name of the co-pilot if any, and the aircraft’s serial number’” and “[t]he name of the pilot entered into the pilot tablet/[electronic flight book] is ‘*pilot identification information.*’” Pet. 28 (quoting Ex. 1008 ¶ 108). Addressing limitation [9D], however, Petitioner states “Shavit teaches the use of a user’s credentials to control access to stored data” and “[t]he user credentials for a pilot includes ‘*pilot identification information.*’” Pet. 34 (citing Ex. 1008 ¶ 87).

Responding to Patent Owner’s arguments that those positions are inconsistent (Prelim. Resp. 44–46), Petitioner’s Preliminary Reply argues “[Patent Owner] offers no[] explicit construction of ‘*pilot identification information*’ but implicitly interprets the independent claims to require the identical information be used as ‘*pilot identification information*’ in each limitation” (Prelim. Reply 4). Critically, though, the same is true of the

Petition; Petitioner offers no explicit construction of “pilot identification information,” and Petitioner fails to establish or even address whether each limitation requires identical information as the “pilot identification information.”

Indeed, even though Petitioner’s Preliminary Reply acknowledges Patent Owner’s inconsistency arguments and the potential for different interpretations of the claim terms, Petitioner chose not to provide a claim interpretation nor otherwise rectify or clarify the positions taken in the Petition with respect to “pilot identification information.” Instead, Petitioner argues only that Patent Owner takes similarly inconsistent positions in its district-court infringement contentions. Prelim. Reply 5 (citing Ex. 1012, 87, 92, 96, 133–134, 145). And although Petitioner argues Patent Owner’s claim interpretation in this proceeding is too narrow, Petitioner does not present its own interpretation, much less provide a claim interpretation analysis. Prelim. Reply 1 (arguing “[patent owner] applies a broad interpretation of these terms in the district court to show alleged infringement but in this IPR argues that the plain meaning of the terms is narrow to avoid invalidity”), 5 (referring to Patent Owner’s arguments as a “narrow view of ‘*pilot identification information*’” that requires a “strict identity interpretation of ‘*pilot identification information*’ in the ‘*transceiver*’ and ‘*only accessible*’ limitations”). Even if Petitioner is correct that Patent Owner arguments treat the patent claims like a nose of wax (Prelim. Reply 1), that cannot alleviate Petitioner’s burden of persuasion and only highlights Petitioner’s failure to provide an interpretation in the face of claim language that is admittedly subject to some range of interpretations.

For these reasons, on this record, Petitioner has not carried its burden to show a likelihood of prevailing in its challenge to either independent claim 9 or 13 as presented in the Warner-Wakutsu-Shavit grounds, nor dependent claims 10–12, 14, and 16, which include the same deficiencies.

2. *Obviousness Grounds, Based in Whole or in Part, on Uczekaj and Jiang*

Petitioner’s mapping of “pilot identification information” to the prior art in the Uczekaj-Jiang grounds is less clear than in the Warner-Wakutsu-Shavit grounds, and ultimately suffers from the same inconsistencies and deficiencies. Addressing limitation [9C] and [9F], which requires “*pilot identification information is entered directly into the input device of the transceiver,*” Petitioner states “Jiang’s pilot log contains the pilot’s **personal identification data**, the pilot’s authorization codes, and flight history data” and “[a person of ordinary skill in the art] would have been motivated to provide the pilot with the ability to enter and modify the personal identification data stored in the log via the user interface of the device.” Pet. 62–63 (citing Ex. 1001, 4:6–13, 14:27–15:10). For the “only accessible” requirement of limitation [9D], however, the Petition states that Jiang teaches a “pilot’s secret codes and encryption keys are part of the identification information for a pilot” and that Uczekaj teaches a “security key feature is **specific to each user.**” Pet. 66–67.

As discussed above, the Petition does not provide a clear interpretation of “pilot identification information,” nor does it meaningfully address whether the claims “require the identical information be used as ‘*pilot identification information*’ in each limitation.” Prelim. Reply 4. Moreover, Petitioner’s arguments in Uczekaj-Jiang grounds fail to make

sufficiently clear what Petitioner considers to be the scope and meaning of the “pilot identification information.”

For these reasons, on this record, Petitioner has not carried its burden to show a reasonable likelihood that it would prevail in its challenge of either independent claim 9 or 13 as presented in the Uczekaj-Jiang grounds, nor dependent claims 11, 12, 14, and 16, which include the same deficiencies.

### III. CONCLUSION

Petitioner has not carried its burden to show a reasonable likelihood that it would prevail in any of its challenges to claims 9–14 and 16 of the ’950 patent.

### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied*, and no trial is instituted.

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Patent 10,275,950 B2

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