

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TEXTRON SPECIALIZED VEHICLES INC.,

Petitioner

v.

SZ DJI TECHNOLOGY CO. LTD.,

Patent Owner

IPR2023-01217

U.S. Patent No. 11,462,116

**PETITIONER'S PRELIMINARY REPLY TO PATENT OWNER'S
PRELIMINARY RESPONSE**

Submitted Electronically

Patent Owner (“PO”) advances a narrow construction of “restriction region,” limiting the term to “a region it is undesirable to allow vehicles to enter” (POPR, 6) and “where the vehicle is **excluded** from entry or at least warned upon transgression” (POPR, 7). PO’s construction violates bedrock principles of claim construction. Nothing in the specification supports PO’s narrow meaning; the term “restriction region” on its face includes regions that *confine* vehicles to the region as well as regions that merely generate a response if the vehicle crosses *into or out of the* region. These are examples expressly disclosed in the ‘116 Patent. In any event, PO’s construction fails to distinguish Humphries, which discloses generating an alert if crossing *into* the object. *See, e.g.*, Pet. at 20-21 (citing EX1004, at 6:2-5, Fig. 4).

First, there is no express definition of the term “restriction region” nor any clear disclaimer that would limit the term in the manner advocated in the POPR. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1365 (Fed. Cir. 2005) (“To act as its own lexicographer, a patentee must clearly set forth a definition of the disputed claim term other than its plain and ordinary meaning.”). The term is only used **twice** in the specification outside the claims, and in both instances, the term is used with the modifier “*flight* restriction region” to describe example embodiments. *See* EX1001, 4:41-44; 7:32-42 (describing a response measure “may” include “preventing the UAV from entering the flight restriction region, **or any other flight response measure**”). Neither of these passages support limiting the plain meaning of a

“restriction region” to an exclusionary region or one that warns only on entry. *Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1632, 1366–67 (Fed. Cir. 2012) (“To constitute disclaimer, there must be a clear and unmistakable disclaimer.”).

Second, rather than provide an express definition, the specification describes “restriction regions” by way of numerous example embodiments. The patent describes “no-fly zones,” “flight-restricted regions,” “flight restriction zones,” “flight limitation regions,” and “predetermined regions;” a number of those embodiments directly contradict PO’s proposed construction. In the absence of any clear disclaimer, the term “restriction region” should be construed consistently with all these disclosed embodiments. *Thorner*, 669 F.3d at 1366–67. Put another way, there is no evidence patentee intended to use the term “restriction region” to exclude any disclosed embodiment.

PO’s argument for its construction is based on limiting the claimed “restriction region” to certain embodiments inside of which flight is prevented (i.e., a “no-fly zone” or “exclusionary region”). See POPR, 6-7. PO’s construction admittedly requires exclusion of “flight limitation regions,” in which the vehicle may fly freely and the response occurs on exiting. EX1001, 46:30-44. But PO offers no evidence or reasoning that “restriction region” *excludes* this disclosed embodiment. *Johns Hopkins Univ. v. CellPro, Inc.*, 152 F.3d 1342, 1355 (Fed. Cir. 1998) (finding that “[a] claim construction that does not encompass a disclosed embodiment is . . .

rarely, if ever, correct and would require highly persuasive evidentiary support.”).

And PO’s construction excludes yet more embodiments. For example, a similarly named embodiment is the “flight restriction zone,” which “may refer to any region in which it is possible to limit or affect operation of an aerial vehicle.” EX1001, 4:8-11. This description does not exclude “confinement regions” because confining a vehicle to a region *is* limiting or affecting operation of the vehicle in that region. The specification goes on to describe that “a flight restriction zone associated with flight response measures may be generated in region 2012 in association with the flight restriction strips” (EX1001, 27:24-27; *see also* 26:3-6) to “provide an enclosed area 2012 ***in which the UAV is permitted to operate freely in,***” whereas “[a]n area ***outside of the permitted area*** (e.g., enclosed area) may be associated with flight response measures that compel the UAV to abide by certain rules.” EX1001, 28:12-16; *see also* 27:20-21 (stating that “the UAV may be ***permitted*** to fly in regions 2012 and/or 2014.”).

Similarly, “a flight restriction zone associated with flight response measures may be generated in an area ***outside the region*** enclosed by the flight restricted strips . . . ***alternatively, or in addition*** to the flight restriction zone defined by the areas of the flight restriction strips themselves and/or the flight restriction zone ***in the region enclosed*** by the flight restriction strips.” EX1001, 27:66-28:8; *see also* 23:8-12 (“The area enclosed by the one or more flight restriction strips may define a flight

restriction zone. *In some embodiments, an area outside of the region enclosed* by the one or more flight restriction strips may define a flight restriction zone.”); 29:53-55; 30:21-24. Consistently, Claim 12 recites that “one or more response measures are undertaken only in an area *outside the restriction region*.”

As another example, the patent describes that a “flight restriction strip 2104 *may permit flight* of the UAV while other flight restriction strips may prevent UAV flight” and that “the one or more flight response measures may be taken when the UAV is *about to exit* the one or more flight restriction strips.” EX1001, 29:20-31; 32:29-31. Accordingly, the patent uses the same term—“restriction”—to describe regions in which flight is specifically *permitted* or where the response occurs when *exiting*, which is consistent with the so-called “confinement” embodiments of Humphries. This use of the same term “restriction” in connection with “restriction strips” undercuts any suggestion that the use of the same term with respect to “restriction region” was intended to exclude regions permitting flight or causing alerts when crossing *out* of the region. Instead, these are expressly disclosed embodiments of the claimed “restriction region.” PO’s construction would, again, wrongly exclude these embodiments. *Johns Hopkins Univ.*, 152 F.3d at 1355.

Petitioner respectfully submits that no construction is necessary for the term “restriction region,” and that Patent Owner’s construction is unduly narrowing, inconsistent with disclosed embodiments, and should be rejected by the Board.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 29th day of November, 2023, **Petitioner's Preliminary Reply to Patent Owner's Preliminary Response** was served by email on the following counsel for Patent Owner:

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