

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MISSION INTEGRATED TECHNOLOGIES, LLC
Petitioner,

v.

JOSHUA CLEMENTE
Patent Owner.

IPR2023-01285
Patent 11,174,677

Record of Oral Hearing
Held: November 22, 2024

Before: BARRY L. GROSSMAN, MATTHEW S. MEYERS, and
ARTHUR M. PESLAK, *Administrative Patent Judges.*

IPR2023-01285
Patent 11,174,677

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on November 22, 2024,
commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE GROSSMAN: We're here this morning to consider the argument in IPR number 2023-01285, which is Mission Integrated Technologies, LLC v. Joshua Clemente. So, for the Petitioner, Mission Integrated Technologies, can you state your name and spell it for the court reporter and make your appearance?

MR. BROWN: Yes. Good morning. My name is Thomas Brown, and that's T-H-O-M-A-S, B-R-O-W-N.

JUDGE GROSSMAN: Okay. Thank you, Mr. Brown. And for Patent Owner.

MR. CLEMENTE: Good morning, Your Honors. My name is Joshua Clemente. I'm representing myself, pro se, in the proceeding.

JUDGE GROSSMAN: Okay. Thank you, Mr. Clemente. Now, I understand from the usher that, Mr. Clemente, you do not have a video access to the argument, but you do have a audio access. Is that correct?

MR. CLEMENTE: That's right. I'm on an eventful trip here in North Seattle, and the power outage from the storm has taken out my power. So, I'm actually in transit right now trying to get out of here. So, unfortunately I'll just be calling in from my phone, which is audio only.

JUDGE GROSSMAN: Okay. My understanding, there are no demonstratives that have been submitted in this case. So, there is no video part of the hearing which will be substantive. The only part of the video is it allows you to see the Judges and Mr. Brown. But the entirety of the argument will be audio. There won't be any video component. So, there

1 will not be anything that happens during this argument that you are not able
2 to hear. And there won't be any, as I said, there won't be any video. There
3 won't be any slides. There won't be any demonstratives.

4 With that, let us go over a couple of very basic ground rules, and
5 then we'll get started. The Petitioner requested 20 minutes of time. Mr.
6 Clemente, we didn't hear from you, and we will typically give the Patent
7 Owner, we'll give you the same time that we give to the Petitioner. So, as
8 we start out, each side will have 20 minutes. We do have the discretion to
9 provide more time if we think it's necessary and helpful to the argument.
10 But each side will have 20 minutes. If you want to have a rebuttal, you may
11 reserve some of that time for a rebuttal, and I'll ask each of the parties
12 whether they want to reserve any time for a rebuttal. Your time in
13 presenting your argument is all yours. There's no objections to anything that
14 the other side said while they're at the podium or the virtual podium or at the
15 microphone. If you think that someone's misrepresented the record or said
16 something that you want to make a comment on, make a note to yourself and
17 tell us when it's your turn to take the microphone. With that, let me ask if
18 either side has any questions.

19 I'll start with you, Mr. Brown. Any questions about the procedures
20 we're going to follow this morning?

21 MR. BROWN: Is there any way to get a reminder when there's
22 like five minutes left? I'd like to keep at least five minutes for rebuttal.

23 JUDGE GROSSMAN: Yeah, I will be both the unofficial and
24 official timekeeper. We don't have a clock on these video hearings that will
25 show you the green, yellow, and red lights typically you'd have in a

1 courtroom that we have in our courtrooms here. But I will do my best to
2 keep the time. But I will let you know that I'm really listening to your
3 argument and looking at documents and not always just watching the clock.
4 So, I will do my best to let you know when you're within five minutes for
5 your rebuttal. But if you have a colleague who's listening in, it might be
6 helpful, or sitting in the room with you, it might be helpful for them to keep
7 some time as well. Having said that, are there any other representatives with
8 you, Mr. Brown, for the oral argument?

9 MR. BROWN: No, just myself.

10 JUDGE GROSSMAN: And Mr. Clemente, is there anyone
11 participating with you or is it just you?

12 MR. CLEMENTE: It's just me, Your Honor.

13 JUDGE GROSSMAN: Okay, thank you. And while Mr.
14 Clemente, any questions from you about the procedures we're going to
15 follow in the argument this morning?

16 MR. CLEMENTE: No questions.

17 JUDGE GROSSMAN: All right. I'm going to -- give me a second
18 to set the timer for you, Mr. Brown. You will have a total of 20 minutes,
19 and I will do my best to let you know when you've hit the 15-minute mark or
20 you're getting close and you may begin whenever you're ready.

21 MR. BROWN: Okay, thank you. May it please the Board. For
22 this case here, we filed a petition based on two prior art videos and a
23 brochure. The first video is the ARES 6 video. The second video is the
24 Elevated ARES video, and the brochure was a derivative product of the
25 ARES 6 video.

1 In this case, there was a jury verdict, the Eastern District of
2 Virginia, and this was, I believe, I don't have the -- oh, yeah July 10th, 2024.
3 And this jury verdict, Exhibit 1054, you have on pages 2 and 3, you have the
4 jury verdict there, and you have the invalidity of Claims 1 through 8, and 10
5 through 17. This verdict was based on an on-sale bar and the printed
6 publication. The printed publication being the ARES 6 video, which is the
7 prior art that the current IPR was instituted on and applied on the claim.

8 JUDGE GROSSMAN: Mr. Brown?

9 MR. BROWN: Yes.

10 JUDGE GROSSMAN: Is there any evidence in the record in this
11 IPR that that that was the evidence on which the jury relied, the printed
12 publication?

13 MR. BROWN: I believe so. I believe the printed publication.

14 JUDGE GROSSMAN: We have copies of what you said in your
15 petition, of course. We've got all those, the ARES video. We've got the
16 printed publication. What I'm asking is the verdict form, Exhibit 1054, page
17 2, is consistent with what you just asserted, in that the jury relied on an on-
18 sale bar or alternatively because there was a printed publication. What we
19 don't know in the record before us is what that printed publication was.

20 MR. BROWN: Well, it was the ARES thing. But --

21 JUDGE GROSSMAN: And I understand that's your argument, but
22 your argument isn't evidence. What I'm looking for is there some evidence
23 in our record to show what was the basis for the jury's verdict?

24 MR. BROWN: I believe there is in the record, but I'd have to go
25 through it. I believe there was. I mean if you look at the --

1 JUDGE GROSSMAN: When I'm talking about the record, I'm
2 talking about the record in this inter-parties review proceeding before PTAB,
3 not what might have been in the record in the District Court that wasn't
4 submitted to us.

5 MR. BROWN: Yeah, if you look at the Clemente (sic) Exhibit
6 2009, the deposition, and I believe in there we might talk about that. But I
7 think the fact is that the jury still invalidated the claims, and there was no
8 appeal. So, it's a final decision with regard to the validity of those claims.
9 So, I don't --

10 JUDGE GROSSMAN: I understand that.

11 MR. BROWN: So, but I believe in one of the exhibits I was
12 reading through it, and it was -- that was the issue on the -- that was the prior
13 art. It was the ARES 6 video. So, I believe it's in there. I don't particularly
14 point it out, but even if it's not in there, it's -- the claims are still invalid.
15 There was no appeal. And the reason the jury found is because it's basically
16 the ARES 6 is verbatim to the patent claims here. So, we believe that those
17 claims were invalid, 1 through 8, and 10 through 17, which just leaves Claim
18 9. And Claim 9, we believe, is in the prior art.

19 If you look at Claim 9, just a second here. Claim 9 basically
20 says -- let me see here. Sorry. I --

21 JUDGE GROSSMAN: I'll save you the time of looking it up.

22 MR. BROWN: Thank you.

23 JUDGE GROSSMAN: Claim 9, I'll read it into the record for you.
24 The vehicle mounting access system of Claim 1, wherein the inclinable
25 access structure further comprises a ramp. That's the entirety of Claim 9.

1 MR. BROWN: Yeah. So, in our petition, we pointed out that the
2 ARES video 6 and the Elevated ARES, and I'd like to point out that Claim 9
3 in the petition was not rejected under the brochure. It was just rejected
4 under the ARES 6 video and the Elevated ARES video. So, and in the
5 petition we pointed out and Exhibit 1010, which is a screenshot of the ARES
6 promo 6. And here, according to our expert, which is an expert report, we
7 believe that it chose a ramp. And this is the same figure as in the ARES
8 Elevated video, which is Exhibit 1024, page 1, and it shows a ramp.

9 Now, the Patent Owner response, there was no alleged
10 infringement in the District Court case with regard to Claim 9. They said it
11 was different. Now, when I look at this figure and when the expert looked at
12 it, it looks like a ramp to me. And the argument would be it's a ramp, shows
13 a ramp. And even if it's not a ramp, it clearly suggests a ramp to one
14 ordinarily skilled in the art. Looking at this, you would see a ramp on the
15 acclimatable structure there. And in addition, one second, as pointed out --

16 JUDGE PESLAK: Counsel, this is Judge Peslak. I mean, this is
17 an anticipation claim. So, it's got to show the ramp or it's got to be inherent,
18 correct? So, is it your position that the prior art actually shows a ramp? And
19 if so, where do you say that in the petition or in your expert declaration?

20 MR. BROWN: We say it in the petition on page 62, claim not in
21 our chart, a claim chart. Let's see Exhibit -- one second here. We see it for
22 both of the videos we have it, we have the ARES 6. Sorry, the ARES 6 is on
23 page 56 of the petition. See Exhibit 1007, Exhibit 1010 at page 1, and then
24 the elevated ARES shows the same exact thing. So, that would be on page
25 62 we cite Exhibit 1019 and Exhibit 1024 at page 1.

1 JUDGE PESLAK: Counselor, I'm looking at the petition, and it's
2 only 59 pages. Where's page 62?

3 MR. BROWN: Page 62. Oh, hang on one second here. Sorry.

4 JUDGE GROSSMAN: This is Judge Grossman, Mr. Brown, and
5 we've got your petition, which is paper number 1 that you filed on August 7
6 of 2023 is exactly as Judge Peslak described it. It's got 59 pages.

7 MR. BROWN: Sorry, I might have opened the wrong document.
8 Okay. Sorry about that. Page 38 at the bottom for the ARES 6 video, we
9 have Exhibit 1007 and Exhibit 1010 at page 1. And then for the Elevated
10 ARES video in the petition, we have it at the top of page 46 at Exhibit 1019,
11 Exhibit 1024 at page 1. And then our expert, and the expert opinion, and the
12 claim table is going to be on page 50 -- oh, I'm sorry, I was looking at the
13 expert opinion before. That was a mix-up. Fifty-six, page 56 to the ARES 6
14 video. And again, we cite the same Exhibit 1007, and then Exhibit 1010 at
15 page 1. And then for the ARES Elevated video, we cite on page 62 in the
16 middle, Claim 9, Exhibit 1010.

17 JUDGE GROSSMAN: Mr. Brown, this is Judge Grossman. I'm
18 not sure what document you're reading from, but the record you're creating
19 is, I think, making me more confused than the question. You're referring to
20 page 62 of a petition that only has 59 pages.

21 MR. BROWN: Oh, I said the expert.

22 JUDGE GROSSMAN: Right. But what we're asking is where in
23 your petition. That's like the equivalent of a complaint. We want to see --

24 MR. BROWN: Yeah, I already said that. I said page -- I just said
25 it. Maybe I wasn't clear.

1 JUDGE GROSSMAN: Where does it cite to that expert report in
2 your petition? The petition has to make your argument. The expert doesn't
3 make your argument. The petition can rely on the expert for evidence. But
4 the petition has to make the argument. And I think the question that I'd like
5 to have answered is where in the petition do you make that argument?

6 MR. BROWN: I made it in page 38 at the bottom with the claim
7 chart.

8 JUDGE GROSSMAN: And at the bottom of page 38, all you do is
9 say, see Exhibit 1007, Exhibit 1010 at page 1.

10 MR. BROWN: Yeah, because that's where it shows it.

11 JUDGE GROSSMAN: Okay. Is there any place in your petition
12 where you cite to your expert report to support that as evidence?

13 MR. BROWN: Let me see, I believe so.

14 JUDGE GROSSMAN: And just, you're about 10 seconds away
15 from getting into your rebuttal time, Mr. Brown.

16 JUDGE MEYERS: It looks like there's a blanket statement at the
17 beginning on page 35. I could be wrong, though.

18 MR. BROWN: Yeah, so we kind got a -- yeah, the expert right
19 there. We cite to the expert for the ARES video.

20 But I'd also like to say that in the video itself, both the ARES and
21 the Elevated ARES, there's a disclosure regarding the ramp. It's disclosed
22 that the status quo of today is a ramp in the video. And we cited that in our
23 response to the petition. Petitioner's reply to Patent Owner's response. So,
24 in the video, per se, in the ARES video and the Elevated ARES video, it is
25 said that, quote, anyone familiar with elevated tactical systems knows that

1 the status quo today is a ramp. So, we believe that that teaches the teacher
2 under 102, Claim 9 wherein the inclinable access structure further comprises
3 a ramp. And then in the patent, the '677 patent, right on the front page, it
4 says, in the background, conventional elevated access systems, including
5 ramp or stairways. So, right there, we have it.

6 And then, I would like to point out that in the prior art that was
7 submitted, WO 0197919, which our exhibit -- is part of the file wrapper
8 history, and it would be Mission Exhibit 1002 at page 0082 to 8003, 8004,
9 8005, they all show the inclinable access structure with the ramp and here
10 with the stairs as well. So, this is clearly a conventional feature in the prior
11 art. And so, Claims 1 through 8 and 10 through 17 have already been
12 invalidated. There was no appeal, so these claims are invalid under 102.

13 And now we have the ramp that is shown in the ARES 6 video.
14 It's disclosed as being the status quo. Then it's discussed as being
15 conventional, the use of a ramp. And finally, in the prior art that was
16 submitted to get the '677 patent, it's shown. So, there's absolutely no novelty
17 with regard to this feature at all. And we believe this is 102 anticipated.
18 And with that, I would like to stop my time.

19 JUDGE GROSSMAN: You've got one minute left of your rebuttal
20 time.

21 MR. BROWN: Thank you, sir.

22 JUDGE GROSSMAN: Okay. Mr. Clemente, we will give you the
23 same time that was allowed for the Petitioner, which will be 20 minutes.
24 Would you like to reserve any rebuttal time for your argument?

25 MR. CLEMENTE: I don't anticipate taking 20 minutes.

1 JUDGE GROSSMAN: Okay. You can begin whenever you're
2 ready.

3 MR. CLEMENTE: It's mainly -- I have two things, the evidence
4 submitted in the trial, I had not seen submitted in this IPR proceeding that
5 the jury relied on, which included various documents and offers for sale that
6 intended to anticipate or provide a on-sale bar. And Claim 9, the evidence
7 submitted in the record, specifically the screenshots, do not show a ramp
8 configuration. That vehicle in the ARES 6 video in the elevated system or
9 the elevated video and brochure is strictly configured in a stairway
10 configuration, and what is shown there is a low angle of the stairway.

11 So, at a low angle, the novelty of the design is that the stairs are
12 always parallel to the ground as the system articulates at a higher and higher
13 angle, the riser distance between the stair treads increases. So, at a low
14 angle, nearly flat, the system just has a very low riser distance between the
15 two steps. And it is in fact flat parallel treads relative to gravity. And so,
16 that's what's seen there, which they submitted as evidence of the ramp
17 configuration being anticipated. And the novelty of the elevated access
18 system in combination with the ramp design is what is described in Claim 9.

19 So, those are my primary responses. And I can stop there and
20 yield the time back to the proceeding.

21 JUDGE GROSSMAN: Okay. One question for you, Mr.
22 Clemente, is in your response to the petition, and you submitted a Patent
23 Owner response. You didn't submit a sur-reply according to our record. Is
24 that correct?

25 MR. CLEMENTE: That's correct. That's right. The primary

1 focus was the trial proceedings.

2 JUDGE GROSSMAN: And in your response, we've just been
3 talking about this now, Claim 9. But in your response, you focus on Claim
4 16 is being pivotal in the invention, and refer to -- the pages aren't numbered
5 at the bottom, but of the copy that was filed, it's page 10 out of a 24-page
6 PDF document that you make the statement that the novelty of the invention
7 is in identifying a structural configuration that would enable the actuator to
8 be placed in tension, enabling the system to benefit from the nonlinear
9 efficiency advantage for mass and load capability. And so, my question
10 really is, your focus was on Claim 16, and is that still part of your argument,
11 or are you giving up on your Claim 16 and just arguing Claim 9?

12 MR. CLEMENTE: Well, Your Honor, Claim 16 was certainly
13 pivotal in my response and is far from anticipated in the submitted evidence.
14 That said, the reason I have not focused on it in this proceeding this morning
15 is that the jury, I think on -- you know, I will respect the Court's decision in
16 the trial, but the jury found that claim to be invalid. I think it was due to
17 incorrect evidence submitted by the expert witness, but I have to accept that
18 decision which the Court made.

19 So, that's really the reason for me not focusing there. The final
20 claim that was left standing after that jury decision was claimed. So, that's
21 the reason. I still stand by everything that's submitted on that initial
22 Petitioner response as correct and pivotal in the response to whether or not
23 these claims are anticipated, which I do not believe they were by the
24 administrator.

25 JUDGE GROSSMAN: Okay. Thank you, Mr. Clemente. And so,

1 as I understand it then, that that will be the end of your argument. You can
2 reserve -- you'll have reserved 15 minutes for any rebuttal that you'd like to
3 make to Mr. Brown if you'd like to use it, but it's yours to use if you'd like.
4 But if that's all you'd like to say at this time, we'll give you your 15 minutes
5 in response to whatever Mr. Brown may want to say in his one minute of
6 rebuttal.

7 MR. CLEMENTE: Thank you, Your Honor.

8 JUDGE GROSSMAN: Mr. Brown, you've got one minute for
9 your rebuttal.

10 MR. BROWN: Okay. Thank you. Yeah, I just want to emphasize
11 again with regard to Claim 9 that you do have the ARES screenshot, for
12 example, in Exhibit 1010. In the video per se, like I said earlier, there's an
13 admission that the ramp is the status quo. That is part of the prior art that is
14 conventional, and this is discussed right on the first page of the patent.
15 There's nothing novel about using this ramp. And there's nothing novel in
16 view of the ARES 3 video -- sorry, ARES 6 video or the other.

17 JUDGE MEYERS: Mr. Brown, is that your position in the
18 petition? Are you relying on that in the petition?

19 MR. BROWN: Yes, we rely on the whole ARES video, yes.

20 JUDGE MEYERS: Well, I'm looking at the ARES video, Exhibit
21 1010, and while page 1 may appear to be a ramp, if you look at page 2, for
22 example, page 3, page 4, it's clearly stairs. To Patent Owner's point that as
23 it's articulated, it goes -- the angle increases and decreases stairs.

24 MR. BROWN: Well, our expert looked at it, and he disagreed
25 with that. And so, that's our position. And then it suggests a ramp. Looking

1 at it, it looks like a ramp.

2 JUDGE MEYERS: Well, again, this is an anticipation ground, not
3 an obviousness ground. So, but it suggests it's not what we're looking at
4 here. It's what it anticipates or (CROSSTALK) --

5 MR. BROWN: Yeah. He acknowledges in the video that the ramp
6 is a status quo, and it's discussed in the patent. And the prior art, which he
7 submitted, shows it, shows the ramp as the prior art. So, there's no point in
8 novelty with regards to the ramp at all. It's in the prior art. It could
9 essentially be getting a claim, which is all the claims are invalid, except for
10 9. So, you'd have a declinable access structure with a ramp and a stairs,
11 which is not even shown in the patent. But that extra feature, the last
12 feature, which would be the only point of novelty, is discussed as
13 conventional. So, the PTAB would be issuing or allowing a patent to stand,
14 which is clearly in the prior art. I mean, I think that's against the public
15 interest view.

16 JUDGE MEYERS: The PTAB does not allow claims.

17 MR. BROWN: All right. Well, it would be --

18 JUDGE MEYERS: But I think we understand your position.

19 MR. BROWN: Yeah. I'm finished. Thank you, sir.

20 JUDGE GROSSMAN: And, Mr. Brown, you've gone a little
21 beyond the one minute you had for your rebuttal. Mr. Clemente, any further
22 comments from you? You've got 15 minutes, if you'd like to use it.

23 MR. CLEMENTE: Thank you, Your Honor. The only thing I
24 would submit is that the claim is written as, which would further comprise of
25 a ramp which, you know, quite obviously in the context of the entirety of the

1 submitted, of the patent and the invention, the ramp configuration is an
2 element of a novel elevated tactic system, which is fully articulated in the
3 patent submission. And so, the ramp, in combination with the other
4 submitted information about the invention, is novel relative to the state of
5 the art, and that's fully described in the patent.

6 So, as I said prior, the evidence submitted does not anticipate
7 numerous of the claims. It does an insufficient job of anticipating Claim 1,
8 Claim 16, to say the least. And I articulated that in my response and Claim 9
9 is nowhere to be found in any of the evidence. And I think it's a real reach
10 to say that it suggests a ramp when it is, in fact, there. So, not to repeat
11 myself, but I think that it's important to recognize that it simply is not
12 anticipated in the submitted evidence.

13 So, with that, I think I'll yield the rest of my time. Thank you.

14 JUDGE GROSSMAN: Thank you, Mr. Clemente. Any further
15 questions from the Judges Peslak or Meyers?

16 JUDGE PESLAK: I don't have any.

17 JUDGE MEYERS: Not at this time, thank you.

18 JUDGE GROSSMAN: All right. We will go off the record.

19 COURT REPORTER: We're going off record and the time is
20 10:37 a.m. Eastern Standard.

21 (Whereupon the above-entitled matter went off the record at 10:37
22 a.m.)

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