

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

Case IPR 2023-01287
U.S. Patent No. 11,482,121

**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 “an area where vehicles are *excluded* or at least operatively restricted upon entry.” POPR, 2 (emphasis original). However, the term “restriction region” on its face connotes regions where some *restriction* exists, which would encompass regions that *confine* vehicles to a region as well as regions that merely generate a response if the vehicle crosses *into or out of the* region. PO’s narrow meaning contradicts this plain meaning. Worse, PO’s construction reads out express embodiments that force the vehicle to *remain* in the region (and thus *confine* the vehicle to the region). EX1001, 17:48-49 (“The UAV may be forced to **remain within** the flight restriction region.”). PO’s should be rejected for this reason alone. But more reasons exist to reject PO’s construction.

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.”). PO does not contend that there is any clear definition of “restriction region” in the ’121 Patent. Instead, PO cherry-picked a few examples from the specification that purportedly support its narrow construction. POPR at 8. However, all the examples cited by PO recite that flight restriction regions **may** include prohibited airspace, or they **may** include locations

that *may* limit operation of a UAV. *Id.* Explaining a term that *may* include an embodiment is far from the “clear and unmistakable disclaimer” required to support PO’s narrow construction. *See Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1632, 1366–67 (Fed. Cir. 2012).

Second, PO’s construction is unsupported and ambiguous. For example, the phrase “operatively restricted” appears nowhere in the patent, and PO fails to explain what it means for a vehicle to be “operatively restricted.” On its face, constraining the movement of a vehicle within a region *is* operatively restricting the vehicle in that region upon entry. And PO concedes that Humphries discloses an embodiment that “constrain[s] movement within the geofence object.” POPR, 9. PO thus admits that Humphries discloses a restriction region that falls within the scope of PO’s construction of this term.

Third, PO’s construction incorrectly excludes disclosed embodiments. For example, the specification describes a flight-restricted region where “flight is allowed but is associated with a set of flight response measures.” EX1001, 15:32-34. One of the claimed “response measures” is “providing an alert.” *See, e.g.*, EX1001, Claim 1. PO’s construction of the term thus improperly excludes a claimed embodiment—the vehicle is allowed within the restriction region and an alert is provided, even though the vehicle is not “operatively restricted.” *See Baxalta Inc. v. Genentech, Inc.*, 972 F.3d 1341, 1346 (Fed. Cir. 2020) (“The district court’s

construction which excludes these explicitly claimed embodiments is inconsistent with the plain language of the claims.”).

Furthermore, PO’s argument for its construction is based on limiting the claimed “restriction region” to certain embodiments ***inside*** of which flight is prevented or “operatively restricted.” For example, PO describes the restriction regions as “a region where the operation of a vehicle is more restricted within the region relative to when the vehicle is outside the region.” POPR, 8. Setting aside the ambiguity stems from the word “operation,” the embodiments described in the specification directly contradict PO’s assertion. In one embodiment, the specification describes a scenario where “an image capture device on-board the UAV ***may be permitted*** to stream video down to a terminal off-board the UAV ***while the UAV is within a flight restriction region***, and ***may not be able to*** stream video down ***when outside a flight restriction region***.” EX1001, 19:43-48.

As another example, the specification describes an embodiment where “***over a flight restriction region***, a preference for direct ***communications may be established . . . , while outside a flight restriction region, no communications are permitted***.” EX1001, 21:42-47. PO’s construction thus improperly excludes these disclosed embodiments where the operation of a vehicle is less restricted within the region relative to when the vehicle is outside the region. *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, the ’121 Patent describes embodiments of operating the UAV “freely” within the flight restriction region after applying for flight or applying for a permitted flight time. *See, e.g.*, EX1001, 17:48-49 (“The UAV may be forced to **remain within** the flight restriction region.”); 34:37-40 (“For example, if the period of time is defined as the duration of time the white house is holding a public event, **the UAVs may freely fly during the period of time**”); 10:53-11:6 (describing a method comprising applying for flight in the permitted flight region, wherein the permitted flight region is equal to the flight restriction region); 26:52-55 (“a UAV may be issued a warning signal if entering a flight restriction region that is categorized as a private residence but be allowed to enter the flight restriction region”). These embodiments thus demonstrate that the patentee intended to include, for the term “restriction region,” regions that *confine* vehicles to the region as well as regions that merely generate a response if the vehicle crosses *into* the region, and 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 PO’s construction is unduly narrowing, inconsistent with disclosed embodiments, and should be rejected by the Board.

Respectfully submitted,

/Brian W. Oaks/

Brian W. Oaks

MCDERMOTT WILL & EMERY

300 Congress Ave., Suite 2200

Austin Texas 78701

Tel: 512.726.2574

boaks@mwe.com

Reg. No. 44,981

Lead Attorney for Petitioner

Textron Specialized Vehicles Inc.

Date: December 28, 2023

BAKER BOTTS L.L.P.

Jeffery S. Becker

Reg. No. 68,553

Phone: 214-953-6526

jeff.becker@bakerbotts.com

Harrison Rich

Reg. No. 65,132

Phone: 214.953.6896

harrison.rich@bakerbotts.com

2001 Ross Ave., Suite 900

Dallas, TX 75201-2980

Fax: 214-661-4526

Boyang Zhang

Phone: 212.408.2561

Reg. No. 77,498

boyang.zhang@bakerbotts.com

30 Rockefeller Center

New York, NY 10112

Fax: 212.259.2561

CERTIFICATE OF SERVICE

The undersigned hereby certifies on December 28, 2023, a true and correct copy of the foregoing **Petitioner's Preliminary Reply to Patent Owner's Preliminary Response** was served to the following counsel for Patent Owner by email:

Matthew Argenti (margenti@wsgr.com)
Richard Torczon (rtorczon@wsgr.com)

Date: December 28, 2023

/Brian W. Oaks/

Brian W. Oaks
MCDERMOTT WILL & EMERY
300 Congress Ave., Suite 2200
Austin Texas 78701
Tel: 512.726.2574
boaks@mwe.com
Reg. No. 44,981

*Lead Attorney for Petitioner
Textron Specialized Vehicles Inc.*