

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 IPR2023-01287
Patent 11,482,121

PATENT OWNER DJI'S SURREPLY
(authorized in Paper 7)

TABLE OF CONTENTS

	<u>Page</u>
I. Legal standards	1
II. The disclosure of “restriction region” is clear	2
A. Adverse consequences for transgression	2
B. Temporary restriction region	3

TABLE OF AUTHORITIES

Page

Cases

<i>Thorner v. Sony</i> , 669 F.3d 1362 (Fed. Cir. 2012)	1
<i>Wi-LAN USA, Inc. v. Apple, Inc.</i> , 830 F.3d 1374 (Fed. Cir. 2016)	1

Statutes

35 U.S.C. 316(e)	1
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Petitioner Textron’s belated construction argument proves its error: it is Petitioner that cherry-picks disclosure phrases out of context to invert the actual meaning of the disclosed “restriction region”. When considered in context, the disclosure consistently uses “restriction region” to mean an area of exclusion, with the disclosed exceptions simply proving the rule. Petitioner cites examples in which the exclusion is being enforced or in which, in special circumstances, the region is not being restricted. Tellingly, even now, Petitioner refuses to provide an explicit construction of its own. Paper 8 (Rep.), 4.

Petitioner’s argument should be rejected as untimely, not considered on the merits; but if entertained, it should be rejected as facially wrong.

I. LEGAL STANDARDS

Consistent use informs construction. *Wi-LAN USA, Inc. v. Apple, Inc.*, 830 F.3d 1374, 1382 (Fed. Cir. 2016). Petitioner bears the burden of proof for its theories of the case, including claim construction. 35 U.S.C. §316(e). Petitioner attempts to flip the burden by arguing against a “disclaimer” without ever establishing a basis for its own “plain” implied construction. Petitioner offers no authority or evidence that consistent use of the word “may” to provide alternatives *within* the plain meaning of a “restriction region” as a region that is restricted somehow opens the term to inconsistent alternatives as well. Rep., 2, *citing Thorner v. Sony*, 669 F.3d 1362 (Fed. Cir. 2012), which provides no such holding.

II. THE DISCLOSURE OF “RESTRICTION REGION” IS CLEAR

Petitioner’s examples fall into two sets: transgressing a restriction region resulting in an adverse consequence and permitting activities in a restriction region. Both sets are consistent with a restriction region being an exclusionary zone. Petitioner’s acontextual argument does not and cannot support its inverted construction of “restriction region” to be an “approval region”, and does not, cannot (and, in its petition, did not) relate Petitioner’s belated, mis-implied construction to Humphries.

A. Adverse consequences for transgression

Petitioner’s first example involves forcing a UAV “to remain in the flight restriction region.” Rep., 1, quoting EX1001, 17:48-49. In context, “[o]peration of a UAV”¹ involves either complete exclusion of a UAV or consequences for transgression, including forced landing, forced removal, imposed restrictions, and trapping of the UAV. EX1001, 17:37-50. Petitioner cherry-picks a phrase to imply

¹ Petitioner asserts without proof or explanation that “operation” creates “ambiguity” (Rep., 3), but it is clear enough in context in the disclosure. *E.g.*, EX1001, 1:25-28 (describing “restrictions on the operation of such aerial vehicles with respect to certain regions”).

it relates to Humphries’ constraining UAV operation inside a region without analyzing the context or explaining its relevance to Humphries’ purpose of confining.² Similarly, Petitioner cites triggering an alert when a restriction region is transgressed. Rep., 4 citing EX1001, 26:52-55. Indeed, the disclosure expressly recognizes the possibility of unauthorized UAVs in its definition of a restricted region. See EX1001, 14:29-15:20, especially 14:62-63. But independent claims 1 and 18 make the alert an alternative consequence of transgressing (“within or near”) the restriction region, not its definition. Petitioner’s belated construction is unsupported.

B. Temporary restriction region

Petitioner also cites examples where the restriction region is temporarily imposed or temporarily lifted. Rep., 2, citing EX1001, 15:32-34. The examples in the paragraph, such as a visiting leader, impose temporary restrictions on who or what may operate and how they may operate. The restriction region remains

² Petitioner similarly interprets the POPR out of context to “admit” Humphries also traps a vehicle within a zone. Rep., 2. The POPR does no such thing: it explains that Humphries teaches confining operations to within a permitted zone, not trapping a vehicle that has transgressed a restricted zone. POPR, 9.

restricted, with the limited exceptions underscoring its restricted nature. Indeed, another section Petitioner cites makes the temporal nature of restriction explicit. Rep., 4, citing 10:53-11:6 (equating an approval region with a restriction region). Read as a whole, this section defines an approval region and approval times, during which the restriction region might not be restricted. The plain reading of this section refutes Petitioner's inverted inferences.

Another example the Petitioner cites is a period when the restriction region is temporarily off. Rep., 4, citing EX1001, 34:37-40. Indeed, the cited paragraph begins "[o]utside of the period of time the flight restriction region may be cancelled or null" and the phrase Petitioner quotes ends "however, outside the period of time, the set of flight response measures associated with the flight restriction region may prevent a UAV from operating within the flight restriction region." EX1001, 34:21-42. In addition to quoting the specification misleadingly, Petitioner utterly fails to account for the significance of these exceptions to the restrictions into account when pointing to examples of authorized operation within the restricted zone. Rep., 3, citing EX1001, 19:43-48, 32:42-47.

Once again, Petitioner makes no effort to relate this to Humphries' teaching of confining vehicles to routes within a permitted region—and cannot at this stage without impermissibly advancing a new theory.

Petitioner's belated, implicit, unapplied construction should be rejected.

Respectfully submitted,

Dated: January 5, 2024

/Matthew A. Argenti/
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CERTIFICATE OF SERVICE

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