

Filed on behalf of: Kustom Signals Inc.

Filed: September 13, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Applied Concepts Inc.,

Petitioner,

v.

Kustom Signals Inc.,

Patent Owner.

Case IPR2024-00884

Patent No. 11,703,602

PATENT OWNER'S PRELIMINARY SUR-REPLY

ACI exceeds the narrow authority it was granted—to only argue claim construction—by arguing obviousness issues. ACI does so because the premise on which it sought additional briefing is false. Kustom made no claim construction arguments imposing an “accuracy” limitation for the speed determining element. Rather, Kustom identified evidence in ACI’s own prior art demonstrating a POSA would not be motivated to make or have a had a reasonable expectation of success in making ACI’s proposed combinations.

Kustom’s non-obviousness arguments that ACI now misconstrues as claim construction are responsive to ACI’s argument that “Aker discloses receiving a current vehicle speed from the speedometer, *without limitation to any specific type of speedometer*.” (Paper 1, at 11, emphasis added). The POPR details why ACI’s characterization of Aker is incorrect and why, after considering the Aker and Thomas references’ *entire teachings*, a POSA would not combine them. Aker prefers radar-derived speed determination over a patrol vehicle’s own speedometer because Aker considers the radar-derived speed determination to be more accurate than the vehicle’s speedometer. (Paper 6, at 28–31). Based on that teaching, Kustom argued a POSA would *not* be motivated to substitute Thomas’s *less accurate GPS* in place of Aker’s vehicle speedometer. (*Id.*). The same argument applies to ACI’s alternate combination of Shelton and Thomas. There are no claim construction arguments in the POPR’s prior art–focused analyses.

ACI further exceeds its authority by briefing an additional combination never raised in its petition. ACI argues Thomas has a “non-limiting disclosure of using the difference between positions over time.” (Paper 8, at 2). But that disclosure is the *exact and only* teaching of Thomas: subtracting two separate position readings over time to determine speed. (Paper 6, at 30-31; EX1005, at 17, ll. 11–15). Of course, Thomas recognizes *each reading* in its method is inaccurate up to about *10 meters*, which error is not disclosed as a “centered” ± 5 meters as ACI suggests. (*Id.*; EX1005, at 11, ll. 15–21). If each reading can be off by 10 meters, each reading can be either 10 meters closer or 10 meters farther away than the true position. ACI’s argument regarding extending the time interval for calculating patrol speed to a 10-second interval is equally unavailing. Given the potential variability in a target vehicle’s speed, ten-second intervals between calculations of a patrol vehicle’s speed would be of little use in a speed enforcement environment. Realizing this, ACI seeks to modify Thomas’s method of speed determination—subtracting out the difference between two separate position determinations over time—in a *new combination* with MacNielle. But even now ACI provides no reason to modify Thomas. Nor does ACI explain why a POSA would modify Thomas (or the base references) with MacNielle given MacNielle’s criticism of GPS. (Paper 6, at 35–36). Critically, ACI’s proposed new combination—as poorly laid out as it is—at this stage is manifestly unfair, and

ACI cites no authority allowing it to propose an entirely new combination in a petitioner's sur-reply limited to a narrow claim construction issue.

ACI's effort to correct the frailties in its petition and weak obviousness arguments are offered in the guise of responding to a claim construction argument Kustom never made. The Board should disregard ACI's preliminary reply because it exceeded the narrow authority granted for additional briefing and proposed a new combination. Alternatively, the Board should reject ACI's flawed arguments if the Board reaches their merits, and deny ACI's petition.

Respectfully submitted,

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Certificate of Service

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 13th day of September, 2024, a true and correct copy of the foregoing **Patent Owner's Preliminary Sur-Reply** was served by filing thereof through the P-TACTS electronic filing system and a courtesy copy thereof was emailed to Petitioner's lead and backup counsel at the following email addresses:

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