

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ETN CAPITAL, LLC, d/b/a BEECH LANE,

Petitioner

v.

FBA OPERATING CO.,

Patent Owner

Case No. IPR2024-01445

US Patent No. 10,890,925

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

This Reply is made to Patent Owner's Preliminary Response.

Petitioner received consent from the Patent Owner to file this reply and the Board authorized Petitioner to file this Reply on January 24, 2025.

**A. The Patent Infringement Case Filed By Patent Owner
Against Petitioner Has Been Dismissed With Prejudice**

Patent Owner has requested that the Board exercise discretion to deny the Petition because of the pending litigation. On January 17, 2025, the District Court entered an order dismissing Patent Owner's complaint with prejudice and granting judgement in favor of Petitioner. The appeal will still be pending when the Board renders its decision in the case.

The case before the District Court never proceeded beyond the pleading stage. All arguments made to the District Court were directed to the issue of infringement. Neither party has filed any motion or other paper related to the issue of invalidity.

At this point, the Board's ruling would be most beneficial, because it would come long before any decision on appeal. The Board's ruling on invalidity would simplify the litigation even if Patent Owner prevails in the appeal.

**B. All Of The Asserted Grounds Raise New Issues Not
Previously Considered By The Patent Office.**

Patent Owner contends that the petition should be denied on discretionary grounds under §325(d) because the arguments advanced simply mirror arguments already considered by the Patent Office. The arguments made in support of this position contain a number of factual and legal inaccuracies which could not have been anticipated.

First, Patent Owner argues that “the prior art combination in grounds 1 – 6, and particularly grounds 1 – 4, mirror those asserted by the Examiner during prosecution.” Grounds 5 and 6 are based entirely on new references and therefore could not mirror those exerted by the Examiner.

Second, it is not true that the arguments made in grounds 1 – 4 simply mirror arguments made by the Examiner. While grounds 1 – 4 rely on Thorpe, which was previously cited in a rejection of the claims, other references combined with Thorpe (i.e., Clark, TealLevel, Garceau) have not been previously considered by the Patent Office. Each of these references are in the same field of endeavor (i.e. leveling vehicles parked on the ground) as the claimed invention and disclose a mobile application for leveling a vehicle. Clark and TealLevel both teach a graphical interface that simultaneously displays multiple adjustment pairs and an image representative of the vehicle. Further, Clark provides explicit motivation for replacing the character based display of Thorpe with a graphical display. Therefore, grounds 1-4, not to

mention grounds 5 and 6, raise new issues not previously considered by the Patent Office.

The Zhong prior art relied upon by the Examiner was a graphical display for a remote control unit for a drone showing the spatial orientation of the drone in flight. During prosecution, Patent Owner argued that a drone was non-analogous art because it related to a vehicle in flight as opposed to a vehicle on the ground. Accepting arguments made by Patent Owner during prosecution as true, it is inconsistent to now argue that Clark and TealLevel, which both relate to displays for vehicle leveling systems and provide explicit motivation for their combination with Thorpe, are no more relevant than Zhong which has been argued to be non-analogous art.

C. Clark Is Analogous Art

Patent Owner's Preliminary Response makes the completely baseless argument that "Clark is not analogous art because it pertains to airplane technology." FBA2001. Clark discloses a vehicle leveling system with a sensor device and smart device (computer or mobile phone) that wirelessly communicates with the sensor device. The smart device includes a graphical display that simultaneously displays pitch and roll information for the vehicle along with "at least one representation of the vehicle which rotates in real-time as the at least one inclination angle changes." ETN1006, Abstract. Clark

states that the monitoring system can be used with “a vehicle 1 such as an aircraft, automobile, ship, bus, train, **or recreational vehicle.**” ETN1006, 2:51 (emphasis added).

The argument made in the Petition is that it would be obvious to replace the character-based display of Thorpe with a graphical display as taught by Clark to provide the user with “an intuitive understanding of the measurements taken by the clinometer 2, such as the roll and pitch conditions of the vehicle 1” and enable the vehicle to be “jacked and leveled with few persons and in less time” ETN1006, 3:57-63; 8:66-9:7. The Patent Owner’s argument that Clark is non-analogous art is wholly without merit.

D. The Grimes Declaration Provides Evidence Of The Level Of Ordinary Skill

Patent Owner’s Preliminary Response falsely implies that Petitioner has not provided evidence of the level of ordinary skill and is deliberately sandbagging Patent Owner. In fact, the Grimes Declaration states that “a PHOSITA would have been a person having a Bachelor of Science degree in a relevant field of science or engineering with one to two years of experience as an engineer and a working knowledge of sensor design and application development.” ETN1004, ¶17. The Grimes Declaration further states that his analysis is from the perspective of a person of ordinary skill. ETN1004, ¶18.

The Petition states that “explanation and support are provided in the Declaration of James Grimes.” Petition, p. 2. Further, the Petition cites numerous paragraphs of the Grimes Declaration describing the knowledge possessed by a PHOSITA, including, without limitations, ¶¶58-60, 75, 80, 85-89, 95-96, 109, 113, 116, 124, 133, 137, 140, 142, 144, 147, 150, 158-159, 163, 167, 172, 176, 177, 180, 190, 198, 200, 206, and 210. While Petitioner inadvertently omitted a citation to ¶¶17 and 18 of the Grimes Declaration, the Petition nevertheless contains numerous references to the knowledge of a PHOSITA, which are based on the definition in ¶17 of the Grimes Declaration. Therefore, the Petition at least implicitly incorporates the definition of a PHOSITA contained in the Grimes Declaration. In any event, the level of ordinary skill proposed by Patent Owner is substantially the same as the level of ordinary skill set forth in the Grimes Declaration.

Dated: January 31, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned hereby certifies that a true copy of the foregoing PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE was served in their entirety via electronic mail upon the Patent Owner's attorneys of record:

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