

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AXON ENTERPRISE, INC. and DEDRONE HOLDINGS, INC.,
Petitioner,

v.

AIRSPACE SYSTEMS, INC.,
Patent Owner.

IPR2025-00530
Patent 10,249,199 B2

Before MICHAEL R. ZECHER, BARRY L. GROSSMAN, and
SCOTT C. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background and Summary*

Axon Enterprise, Inc. and Dedrone Holdings, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–9 of U.S. Patent No. 10,249,199 B2 (Ex. 1001, “the ’199 Patent”). Paper 1 (“Pet.”). Airspace Systems, Inc. (“Patent Owner”) waived its Preliminary Response. Paper 9.

We may institute an *inter partes* review when “the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). If we institute an *inter partes* review, the trial must encompass all claims and grounds identified in the Petition. 37 C.F.R. § 42.108(a) (“When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.”).

For the reasons set forth below, we conclude that there is a reasonable likelihood that Petitioner will prevail in establishing the unpatentability of at least one of the challenged claims. We, therefore, institute *inter partes* review of claims 1–9 on the grounds asserted in the Petition.

B. *Real Parties in Interest*

Petitioner identifies the real parties in interest as Axon Enterprise, Inc. and Dedrone Holdings, Inc. Pet. 1. Patent Owner identifies Airspace Systems, Inc. as the real party in interest. Paper 3, 2.

C. *Related Matters*

The parties identify as related proceedings the following matter involving the ’199 Patent: *Airspace Systems, Inc. v. Dedrone Holdings, Inc.*, No. 1-24-cv-01625 (E.D. VA). Pet. 1; Paper 3, 2. Petitioner is also pursuing two co-pending *inter partes* review proceedings against Patent

Owner: IPR2025-00525 and IPR2025-00629. The patents challenged in those *inter partes* reviews are not related to the '199 Patent.

D. The '199 Patent

The '199 Patent describes an “aerial system discrimination system.” Ex. 1001, code (57). An “aerial system” is “preferably an aircraft (e.g., a manned or unmanned aircraft)” such as “gliders, rotorcraft, human-powered aircraft (HPA), unmanned aerial vehicles (UAVs), planes, drones, or any other suitable aerial system.” *Id.* at 3:25–32. The discrimination system “functions to determine whether an aerial system is authorized or unauthorized to be in the airspace,” which, in turn, allows for “selective removal from and/or permission into [an] airspace.” *Id.* at code (57), 1:34–36.

The discrimination system includes a “disruption system,” an “identification system,” and a “permissions module.” *Id.* at 1:60–63, Fig. 1. In operation, the identification system “receives an aerial system identifier 300 broadcast from a [sic] aerial system 100.” *Id.* at 2:10–12. The permissions module “determines whether the [received] aerial system identifier 300 is associated with an authorized or unauthorized UAV.” *Id.* at 2:12–15. If unauthorized, the disruption system may become “unlocked” and, subsequently, “launch [an] interdiction module 304 toward the UAV” to “immobilize the motive mechanism of the aerial system 100.” *Id.* at 2:15–26.

E. Challenged Claims

Petitioner challenges claims 1–9 of the '199 Patent. Of these, claim 1 is independent. Claims 2–9 depend from claim 1.

Claim 1, reproduced below with bracketed identifiers and formatting added (*see* Ex. 1013), is representative.

- [1p] A discrimination system comprising:
 - [1a] an identifier transmission system coupled to an aerial system, wherein the identifier transmission system is configured to broadcast an aerial system identifier signal unique to the aerial system;
 - [1b] an identification receiver;
 - [1c] a permission module,
 - [1d] wherein the identification receiver is configured to receive the aerial system identifier signal and to provide the aerial system identifier signal to the permission module,
 - [1e] wherein the permission module is configured to determine that the aerial system associated with the aerial system identifier signal is not permitted to be in an airspace; and
 - [1f] a disruption system configured to disrupt an operation of the aerial system, wherein the disruption system is preemptively enabled based the received aerial system identifier signal.

Ex. 1001, 20:44–60.

F. Asserted Grounds

Petitioner asserts the following grounds of unpatentability for the challenged claims:

Ground	Claims Challenged	35 U.S.C. §	Reference(s)/Basis
1	1–3, 5–9	103	Whitmarsh ¹
2	4	103	Whitmarsh, Falk ²

¹ U.S. Patent App. Pub. No. 2019/0003807 A1, published Jan. 3, 2019 (Ex. 1005), claiming priority to U.S. Prov. App. No. 62/267,393, filed Dec. 15, 2015 (Ex. 1006).

² U.S. Patent No. 9,805,238 B2, issued Oct. 31, 2017 (Ex. 1011), claiming priority to U.S. Prov. App. No. 62/301,858, filed Mar. 1, 2016 (Ex. 1012).

Ground	Claims Challenged	35 U.S.C. §	Reference(s)/Basis
3	1–3, 5–9	103	Whitmarsh, Goodrich ³
4	4	103	Whitmarsh, Goodrich, Falk
5	1–3, 5–9	103	Viggiano ⁴ , Goodrich
6	4	103	Viggiano, Goodrich, Falk

Pet. 10. Petitioner also relies on the Declaration of Dr. Girish Chowdhary. Ex. 1003. Patent Owner has not submitted declaration testimony at this stage of the proceeding.

II. ANALYSIS

A. *Level of Ordinary Skill in the Art*

The level of skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). Petitioner submits that one of ordinary skill in the art relevant to the ’199 Patent:

would have either (1) a Bachelor of Science in Mechanical Engineering, Electrical Engineering, Aerospace Engineering, Aviation Technologies, Avionics, or an equivalent field, as well as at least 2 years of academic or industry experience in the aerospace, avionics, telecommunications, or electronic device manufacturing industry, or (2) at least four years of industry experience in any of the above industries.

Pet. 10 (citing Ex. 1003 ¶ 62). For purposes of this Decision, we adopt and apply Petitioner’s formulation regarding the level of ordinary skill in the art

³ U.S. Patent App. Pub. No. 2016/0023760 A1, published Jan. 28, 2016 (Ex. 1008).

⁴ U.S. Patent App. Pub. No. 2007/0239986 A1, published Oct. 11, 2007 (Ex. 1007).

because (1) it is consistent with the '199 Patent and the asserted prior art; and (2) it is supported by the testimony of Dr. Chowdhary.

B. Claim Construction

We interpret claims in the same manner used “in a civil action under 35 U.S.C. § 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b). When applying that standard, we interpret the claim language as it would have been understood by one of ordinary skill in the art in light of the specification. *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1279–80 (Fed. Cir. 2017). Thus, we give claim terms their ordinary and customary meaning as understood by an ordinarily skilled artisan. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (*en banc*). Only terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017).

Our rules require that a petition set forth “[h]ow the challenged claim is to be construed.” 37 C.F.R. § 42.104(b)(3). For means-plus-function limitations, “the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function.” *Id.*

1. “*permission module . . . configured to determine that the aerial system associated with the aerial system identifier signal is not permitted to be in an airspace*”

Petitioner identifies “permission module” in claim 1 as a term that may require construction. Pet. 11–13. Although Petitioner does not

affirmatively argue that 35 U.S.C. § 112(f) should apply to “permission module,” Petitioner observes that “[t]he [U.S. Court of Appeals for the Federal Circuit has in some circumstances interpreted the term ‘module’ in computer-related uses to be a nonce term subject to 35 U.S.C. §112(f).” *Id.* at 11 (citing *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1350 (Fed. Cir. 2015)).

Petitioner provides the following proposed construction for “permission module” should we determine that 35 U.S.C. § 112(f) applies:

[T]o the extent the claimed permission module is interpreted under §112(f), its function is “determining that the aerial system associated with the aerial system identifier signal is not permitted to be in an airspace;” and its corresponding structure for performing that function is “storage on-board the disruption system, storage on-board the identification receiver, a remote computing system connected to the disruption system or any other suitable computing system programmed to compare an aerial system parameter, such as an identifier, with the permissions for the airspace.

Id. at 11–13.

As was the case in *Williamson*, there is no evidence that the term “permission module,” as used in claim 1, has “a well understood structural meaning in the computer technology field.” 792 F.3d at 1350. Rather, the limitation in question is “drafted in the same format as a traditional means-plus-function limitation, and merely replaces the term ‘means’ with ‘nonce’ word ‘module,’ thereby connoting a generic ‘black box’ for performing the recited computer-implemented functions.” *Id.* And, while claim 1 recites the “outputs” of the permission module (i.e., a determination regarding the permissions of an aerial system), “the claim does not describe how the [permission module] interacts with other components in the [discrimination system] in a way that might inform the structural character of the limitation-

in-question or otherwise impart structure to the [permission module] as recited in the claim.” *Id.* at 1351. We also reviewed the Specification, and we agree with Petitioner that the Specification identifies the following structure as corresponding to the claimed permission module: “storage on-board the disruption module 105, storage on-board the identification receiver 102, a remote computing system connected to the disruption module..., or [] any other suitable computing system.” *See* Pet. 12; Ex. 1001, 9:64–10:4.

On this record, and at this stage of the proceeding, we preliminarily determine that the term “permission module” is properly governed by 35 U.S.C. § 112(f). The recited function of the claimed permission module is “determining that the aerial system associated with the aerial system identifier signal is not permitted to be in an airspace,” and the corresponding structure is “storage on-board the disruption system, storage on-board the identification receiver, a remote computing system connected to the disruption system or any other suitable computing system programmed to compare an aerial system parameter, such as an identifier, with the permissions for the airspace.”⁵

⁵ Any determination, no matter how designated in this Institution Decision (except our ultimate decision to institute), is preliminary and non-binding. Our Final Written Decision, based on a fully developed record of arguments and evidence, will state our binding determinations, findings, and conclusions. If a party disagrees with this preliminary construction, or any other determination set forth in this Institution Decision, that party should present its arguments at trial. The parties are reminded that any arguments not made during trial will be considered waived. Patent Owner is further reminded that arguments in the Preliminary Response are not preserved and will be considered waived at trial unless those arguments are re-raised in the Patent Owner Response. The parties are additionally reminded that arguments raised in subsequent briefing must be set forth in full in the briefs

C. *Obviousness under 35 U.S.C. § 103*

An invention is not patentable under 35 U.S.C. § 103 “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and, (4) where in evidence, so-called secondary considerations, including commercial success, long-felt but unsolved needs, and failure of others.⁶ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

When evaluating a combination of teachings, we must also “determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

1. *Ground 1: Obviousness of Claims 1–3 and 5–9 over Whitmarsh*

a) *Independent Claim 1*

Preamble

The preamble (claim element [1p]) recites “A discrimination system comprising.” Ex. 1001, 20:44.

themselves, and may not be incorporated by reference from prior filings such as the Preliminary Response. See 37 C.F.R. § 42.6(a)(3).

⁶ At this stage of the proceeding, Patent Owner has not directed us to evidence of such secondary considerations.

Petitioner contends that Whitmarsh discloses “[unmanned aerial vehicle] UAV defense system 10,” which “identifie[s] and detect[s] unauthorized or hostile drones in and around [an] area or region that is to be protected,” including by “be[ing] able to determine between friendly and hostile drones.” Pet. 15–16 (first quoting Ex. 1005 ¶ 13, then quoting Ex. 1006 ¶ 9, then quoting Ex. 1006 ¶ 13) (citing Ex. 1005 ¶¶ 2, 28, 33, 50; Ex. 1006 ¶¶ 1, 10).

Patent Owner does not contest that Whitmarsh describes the subject matter of the preamble. We find that Petitioner has made a sufficient showing that Whitmarsh discloses the subject matter of the preamble.

Limitation [1a]

Limitation [1a] recites “an identifier transmission system coupled to an aerial system, wherein the identifier transmission system is configured to broadcast an aerial system identifier signal unique to the aerial system.” Ex. 1001, 20:45–48.

Petitioner contends that Whitmarsh’s “UAV defense system receives from nearby UAVs wireless communications that include information or signatures unique to the UAVs, such as a MAC [media access control] address of the UAV, that is used to identify the transmitting UAV.” Pet. 16–18 (citing Ex. 1005 ¶¶ 20, 27; Ex. 1006 ¶¶ 8, 10, 13, 15–17; Ex. 1003 ¶¶ 117–118). For example, Petitioner cites Whitmarsh’s teachings that “[a]ll drones have a unique identifier, such as a media access control (MAC) address, that can be determined or read by the DDS [drone defense system] and can be used to identify the drone.” *Id.* at 16 (quoting Ex. 1006 ¶ 13). Based on these teachings, Petitioner submits that the signal received from the UAVs includes an aerial system identifier signal unique to the aerial system. *Id.* at 17–18 (citing Ex. 1005 ¶ 27; Ex. 1006 ¶ 13).

Petitioner further submits that the UAVs detected by Whitmarsh’s defense system are aerial systems that are coupled to an identifier transmission system. Pet. 17–18. Specifically, Petitioner submits that, in order to transmit the signals used to identify the UAVs as described in Whitmarsh, the UAVs must “include one or more components for transmitting such communications/signals.” *Id.* at 17. Petitioner also contends that it would have been obvious to a person of ordinary skill in the art that the UAVs would have been coupled to such an “identifier transmission system” because “such wireless communications would have involved the use of well-known, dedicated components, such as an antenna element and a signal processor.” *Id.* at 17 (emphasis omitted) (citing Ex. 1003 ¶ 118).

We find that Petitioner has made a sufficient showing regarding this limitation for purposes of institution.

Limitation [1b]

Limitation [1b] recites “an identification receiver.” Ex. 1001, 20:49.

Petitioner cites Whitmarsh’s teaching that its UAV defense system “receives from nearby UAVs wireless communications that include information or signatures unique to the UAVs, such as a MAC address of the UAV, that is used to identify the broadcasting UAV.” Pet. 18 (citing Ex. 1005 ¶¶ 20, 27; Ex. 1006 ¶¶ 8, 10, 13, 15–17). Based on these teachings, Petitioner contends that Whitmarsh discloses an identification receiver “that acts as the component for actually receiving these wireless communications and the identification information (*e.g.*, the MAC address) contained therein.” *Id.* at 18 (citing Ex. 1003 ¶ 121). Petitioner further contends that Whitmarsh renders obvious the identification receiver because “[a person of ordinary skill in the art] would have understood that receiving

wireless communication signals would have involved using well-known, dedicated components, such as an antenna element and a signal processor.” *Id.* at 19 (citing Ex. 1003 ¶ 122).

We find that Petitioner has made a sufficient showing regarding this limitation for purposes of institution.

Limitations [1c], [1e]

Limitation [1c] recites “a permission module.” Ex. 1001, 20:50. Limitation [1e] recites “wherein the permission module is configured to determine that the aerial system associated with the aerial system identifier signal is not permitted to be in an airspace.” *Id.* at 20:53–56.

Petitioner advances the same arguments and evidence regarding Limitations [1c] and [1e]. Specifically, Petitioner contends that Whitmarsh discloses or renders obvious a “permission module” applying Petitioner’s proposed construction under 35 U.S.C. § 112(f), which we preliminarily adopt for the reasons set forth in Section I.B above. *See* Pet. 19, 21–25.

Regarding the function of limitations [1c] and [1e], Petitioner cites Whitmarsh’s teachings that its UAV defense system “receives a MAC address from a UAV” and, thereafter, “determines if a countermeasure against the detected UAV should be performed ‘based on the identity and/or position of the detected UAV 14.’” *Id.* at 21 (quoting Ex. 1005 ¶ 17) (Ex. 1006 ¶¶ 13, 16–18). Petitioner further cites that the defense system “correlate[s] the unique MAC addresses of the UAV systems with information relating to the identity of the persons or entities that acquired the UAV 14” and, if appropriate, deploys a “disable countermeasure . . . to actually disable the detected UAV.” *Id.* at 21–22 (citing Ex. 1005 ¶ 29; Ex. 1006 ¶ 10). Petitioner contends that, based on these teachings, Whitmarsh’s UAV defense system performs the function of determining that

an aerial system associated with an aerial system identifier signal is not permitted to be in an airspace. *Id.*

Regarding the structure of limitations [1c] and [1e], Petitioner cites Whitmarsh's teaching that its UAV defense system "'interfac[es] with a UAV registry database 36' to allow the UAV defense system to 'correlate the unique MAC addresses of the UAV systems with information relating to the identity of the persons or entities that acquired the UAV 14,' such as 'information and data relating to prior detection and countermeasures activities, thereby allowing troublesome or suspect UAVs 14 to be identified so that appropriate action can be taken.'" *Id.* at 24 (quoting Ex. 1005 ¶ 29) (Ex. 1006 ¶ 10). Petitioner submits that a person of ordinary skill in the art would have understood the performance of these steps to involve using a computer system or processor to compare an identifier of the aerial system (e.g., the UAV's MAC address) with permissions for the airspace (e.g., the information relating to prior detection and countermeasures). *Id.* at 24–25 (citing Ex. 1003 ¶ 132).

We find that Petitioner has made a sufficient showing regarding these limitations for purposes of institution.

Limitation [1d]

Limitation [1d] recites "wherein the identification receiver is configured to receive the aerial system identifier signal and to provide the aerial system identifier signal to the permission module." Ex. 1001, 20:50–53.

Petitioner cites Whitmarsh's teaching that its UAV defense system receives wireless communications that include a unique MAC address of a transmitting UAV. Pet. 19–20 (citing Ex. 1005 ¶¶ 20, 27; Ex. 1006 ¶¶ 8, 10, 13, 15–17; Ex. 1003 ¶¶ 121–22). Petitioner further cites Whitmarsh's

teaching that its defense system uses this unique MAC address to determine whether to deploy a countermeasure based on the detected UAV's identity. *Id.* at 20–22 (citing Ex. 1005 ¶¶ 18, 28–29; Ex. 1006 ¶¶ 9–11, 17–18; Ex. 1003 ¶ 130). Based on these teachings, Petitioner contends that a person of ordinary skill in the art would have understood Whitmarsh to disclose, or at least render obvious, an identification receiver that would receive an aerial system identifier signal and provide that signal to a permission module. *Id.* at 20 (citing Ex. 1003 ¶¶ 124–25).

We find that Petitioner has made a sufficient showing regarding this limitation for purposes of institution.

Limitation [1f]

Limitation [1f] recites “a disruption system configured to disrupt an operation of the aerial system, wherein the disruption system is preemptively enabled based the received aerial system identifier signal.” Ex. 1001, 20:57–60.

Petitioner cites Whitmarsh's teaching of a “countermeasures system that ‘develops one or more countermeasures based on the identity and/or position of the detected UAV 14,’ where the identity of the detected UAV is determined based on a MAC address included in a wireless communication received by the UAV defense system.” Pet. 25 (quoting Ex. 1005 ¶ 17) (citing Ex. 1005 ¶ 27; Ex. 1006 ¶¶ 10, 16–18). Petitioner further cites Whitmarsh's teaching of an “intercept countermeasure” wherein “the UAV defense system 10 may dispatch one or more security vehicles 44 and operate it so that it actually collides with the detected UAV 14.” *Id.* at 26 (quoting Ex. 1005 ¶ 18)(citing Ex. 1005 ¶¶ 17, 28; Ex. 1006 ¶¶ 10–11). Based on these teachings, Petitioner contends that Whitmarsh discloses a

disruption system configured to disrupt an operation of the aerial system. *Id.* at 26.

Petitioner further cites Whitmarsh’s teaching that the determination to deploy the above-described countermeasures may occur “when a UAV is identified as many as five miles from a protected asset,” which occurs before the detected UAV is “proximate to, and at risk of damaging or otherwise interfering with, the protected asset.” *Id.* at 26–27 (citing Ex 1005 ¶¶ 31, 36; Ex. 1006 ¶¶ 17–18; Ex. 1003 ¶ 136). Based on this teaching, Petitioner contends that Whitmarsh discloses preemptively enabling its countermeasures system. *Id.* at 26–27 (citing Ex. 1003 ¶ 136; Ex. 1001, 19:16–20).

We find that Petitioner has made a sufficient showing regarding this limitation for purposes of institution.

Conclusion Regarding Claim 1

For the reasons set forth above, we find that Petitioner has demonstrated a reasonable likelihood of proving that claim 1 is unpatentable as obvious over Whitmarsh.

b) Dependent Claims 2, 3, and 5–9

Petitioner contends that dependent claims 2, 3, and 5–9 would have been obvious over Whitmarsh and supports its contentions with testimony from Dr. Chowdhary. Pet. 27–34 (citing Ex. 1003 ¶¶ 140–153). We need not fully address Petitioner’s challenges to claims 2, 3, and 5–9 to determine whether to institute review, and we express no opinion on the strength or weakness of those challenges at this stage of the proceeding.

2. Remaining Grounds 2–6

Petitioner sets forth five other challenges that one or more of claims 1–9 are unpatentable as obvious over other prior art. Because Petitioner

demonstrates a reasonable likelihood of success in showing that claim 1 is unpatentable as obvious over Whitmarsh, we institute an *inter partes* review as to all the challenges asserting that claims 1–9 are unpatentable identified in the Petition. *See* 37 C.F.R. § 42.108(a). At this stage in the proceeding, we need not fully address these challenges to determine whether to institute review, and we express no opinion on the strength or weakness of those challenges at this stage of the proceeding.

III. CONCLUSION

For the reasons discussed above, Petitioner has shown a reasonable likelihood it will succeed in demonstrating that one or more claims of the '199 Patent are unpatentable under 35 U.S.C. § 103(a). We, therefore, institute an *inter partes* review as to claims 1–9 on all grounds set forth in the Petition. 35 U.S.C. § 314(a); 37 C.F.R. § 42.108(a).

This Decision does not reflect a final determination on the patentability of any claim. We further note that the burden remains on Petitioner to prove unpatentability of each challenged claim. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED, pursuant to 35 U.S.C. § 314(a), that an *inter partes* review of claims 1–9 of U.S. Patent No. 10,249,199 B2 is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), that this *inter partes* review shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

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