

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ADB SAFEGATE SWEDEN AB, ADB SAFEGATE BV, and
ADB SAFEGATE AMERICAS, LLC,

Petitioners

v.

HONEYWELL INTERNATIONAL INC.,

Patent Owner

Case PGR2023-00053
Patent 11,538,349 B2

PATENT OWNER'S SUR-REPLY

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TABLE OF EXHIBITS

No.	Description
2001	U.S. Patent No. 9,635,656
2002	Declaration of Christopher K. Wilson
2003	Deposition Transcript of Mark Campbell, Ph.D.

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Patent Owner Honeywell International Inc. respectfully submits this Sur-Reply in response to the Reply filed by Petitioners.

I. Introduction

Petitioners' Reply presents a new and flawed claim construction argument, ignores numerous arguments set forth in the Patent Owner Response, and doubles down on the faulty logic set forth in the Petition. The Board should reject the Petition and find that none of the challenged claims are invalid.

For Ground 1, Petitioners are unable to properly distinguish *Thales Visionix Inc. v. United States*, 850 F.3d 1343 (Fed. Cir. 2017), which is the closest Federal Circuit authority on point. As demonstrated in Patent Owner's Response, this is a situation where the Federal Circuit has already expressly ruled on the patentability of claims with limitations extremely similar to those at issue here, and found them to include eligible subject matter. Petitioners instead attempt to shift the focus to the conventionality of certain limitations, but their argument fails to address the conventionality of the claims "as a whole," especially in view of the intrinsic record, as required under a proper Section 101 analysis.

With respect to Ground 2, Petitioners present a new, flawed interpretation of the claims that is inconsistent with the specification. Even under that new construction, Berkmo still fails to disclose all of the limitations of the challenged claims. Petitioners also cite to completely different sections of Berkmo than were

relied upon in the Petition, and *fail* to address Patent Owner's argument demonstrating how they clearly mis-represent the disclosure by improperly mixing and matching different embodiments.

In Ground 3, Petitioners simply refer back to the Petition, stating only that their explanations and motivations are adequate, while failing to address *any* of Patent Owners' numerous arguments.

II. Claim Construction

A. "Directional ... guidance"

Petitioners disagree with Patent Owner's proposed construction, but do not provide an explicit construction of their own. Instead, Petitioners tacitly provide a construction of "information for how to direct the aircraft," or "simply telling the pilot which way to go," or "which direction to go." Reply (Paper 17) at 2; *see also* 21 ("turn left at the end of the runway, continue approaching gate A1, then turn right at gate A1"). This construction is tantamount to simply providing directions, much like one would give directions to a traveler on how to get to a gas station down the road.

This interpretation is entirely too broad, and is inconsistent with the stated purpose of the '349 Patent – which is to improve docking precision in order to reduce the time for connecting a ramp and/or eliminate tow vehicles adjusting the docking, in order to reduce aircraft turnaround time. Ex1001 ('349 Patent) at 2:61-3:18.

Simply giving a pilot directions on *how to get to* the correct stand is not the same as providing the pilot with the needed “directional guidance” to ensure that the plane is accurately and precisely docked at the gate, e.g., to reduce the time to connect the jetway and reduce turnaround time.

Because the construction of the term is in dispute, and that dispute is “necessary to resolve the controversy,” the Board must construe the term. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019). As discussed in detail in Patent Owner's Response, the term should be construed as “navigational instructions, including the horizontal deviation with respect to the center line of a path.” *See* Patent Owner's Response (“POR”) (Paper 15) at 16-17. This construction is consistent with the plain and ordinary meaning of the phrase in the context of the claims, as demonstrated through the teachings within the specification.

B. “Speed guidance”

Again, Petitioners disagree with Patent Owner's proposed construction, but do not provide an explicit construction of their own. Instead, Petitioners tacitly provide a construction of “instructing a pilot how to regulate speed (e.g., ‘5 mph’ or ‘slow down’ or ‘stop’).” Reply at 4. This interpretation is similar to Patent Owner's proposed construction of “instructions concerning maximum speeds for approaching a gate,” in that it also concerns maximum speeds (e.g., “5 mph” or “slow down”). The primary difference is that Petitioners' overly broad construction includes

instances (i.e., “stop”) that lack any actual “speed” requirement at all. An instruction to stop the plane does not provide speed guidance as it is merely an instruction to cease approaching the gate, rather than speed related instructions for approaching the gate.

The description in the specification of speed guidance concerns maximum speeds for approaching the gate. Ex1001 at 10:16-19. As such, Patent Owners’ proposed construction is consistent with the plain and ordinary meaning in the context of the claims, as demonstrated through the teachings within the specification.

Construction of this term is “necessary to resolve the controversy” because the Petitioner has applied a meaning to the phrase that lacks any actual “speed” requirement at all. *See Realtime Data*, 912 F.3d at 1375.

C. “Displaying...with the merged data set”

Neither party, nor the Board, has suggested that “displaying ... with the merged data set” is a phrase that needs any construction, nor has any party put forth a proposed construction. Patent Owner’s Response has addressed the Petition’s “interpretation of the claims” and has also demonstrated why limitations are not disclosed in Berkmo under the straight forward reading of the claims. *See* POR at 58-60.

Relying on the claim language “displaying...with the merged data set,” Petitioners now introduce a new interpretation of the claims, arguing for the first

time that the directional and speed guidance are *not* based on the merged data set. This new interpretation is flawed, unsupported, and represents a significant change from Petitioners' position set forth in the Petition.

As properly interpreted, the directional and speed guidance are based on the merged data set, which is consistent with the specification, Petitioners' previous interpretation, Patent Owner's interpretation, and the Board's understanding. *See*, Reply at 6 ("The Petition interprets it to mean that the displayed direction and speed guidance are determined by the 'merged data set'") (citing Petition (Paper 1) at 54); POR at 16, 18, 26, 36-37, 41, 49, 51, 76; Ex1001 at 5:18-28 ("The data from multiple systems are collected and merged via a data fusion process described herein which provides a rich data set to track and provide guidance to the aircraft, from entry into the ramp area to docking."), 3:4-18, 4:35-37, 7:31-37, Title; Institution Decision (Paper 10) at 25.

Having expressly asserted its understanding of the claims in the Petition, it is too late now for Petitioners to argue for a new claim construction in their Reply. *See* 37 C.F.R. § 42.104(b)(3) (The Petition is required to identify "[h]ow the challenged claim is to be construed"); U.S. Patent Trial and Appeal Board, Consolidated Trial Practice Guide 45 (Nov. 2019) (a petitioner "cannot raise new claim construction issues that were not previously raised in its petition"); *see also Continental Auto. Sys., Inc. v. Intellectual Ventures II LLC*, IPR2022-00972, Paper 49 at 14-16 (PTAB

Dec. 5, 2023) (denying Petitioner's new claim construction that is inconsistent with the position taken in its petition).

III. The Challenged Claims Are Patentable in view of Each of the Asserted Grounds.

A. Ground 1 - The challenged claims are directed to patentable subject matter.

1. The challenged claims are similar to the patent eligible claims in *Thales*

Petitioners ignore the striking similarities between the '349 Patent claims and the patent eligible claims in *Thales*. See POR at 23-25. The clear holding by the Federal Circuit on claims that directly track those at issue here, however, should be enough alone for this Board to conclude that the challenged claims here are directed to patent eligible subject matter. *Thales*, 850 F.3d at 1348-49.

Petitioners' Reply attempts to shift the focus to alleged conventionality of specific individual limitations in the claims. However, Petitioners' analysis disregards the non-conventionality of the claims "as a whole" detailed in Patent Owner's Response. POR at 34-38. The claims "as a whole" use unconventional techniques to track aircraft including by merging both camera and LIDAR/RADAR sensor data, and using that merged data to provide directional and speed guidance to the pilot, which provides numerous advantages including more efficient tracking over conventional systems. *Id.* at 26, n3; *accord* 34-38 (explaining that the claims are focused on advances over the prior art), *and* 48-52 (explaining that the claims

are unconventional). Contrary to Petitioners' assertions, and as evidenced by the similarity to the actual claims in *Thales*, these are exactly the type of configurations and usages of sensors contemplated in *Thales*. See POR at 4, 22-26, 34-36 (noting that the '349 Patent claims include even more particularity and detail than the claims in *Thales*).

Further, Petitioners disregard the proper §101 analysis under *Alice* Step 1 by ignoring the intrinsic record that establishes the non-conventional nature of the claims. See Reply at 8 (citing Ex1004 (Campbell Declaration) and Ex1003 (Berkmo)); see POR at 34-38 (setting for the correct legal analysis). Petitioners fail to address the '349 Patent specification's clear explanations of the advances over the prior art, indicating the unconventional nature of the claims. See POR at 26, n3, 34-38.¹

2. Electric Power Group is distinguishable.

Petitioner's Reply re-asserts *Electric Power Group* as the closest authority supporting Petitioners' position on subject matter eligibility. Reply at 10-11 (citing *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353-54 (Fed. Cir. 2016)).

¹ Additionally, in the first example (of many) of reliance on its new incorrect interpretation of the claims, Petitioners state that the claims are directed to "merely displaying guidance and merged data together without connecting the guidance determination to the merged data." Reply at 6-7; see also 8-9. As discussed above, Petitioners' new interpretation is unsupported and is inconsistent with the '349 Patent and Petitioners' own prior interpretation.

Patent Owner respectfully submits that, as discussed directly above, *Thales* is more directly on point for the claims at issue here. Moreover, Petitioners fail to respond to Patent Owner's detailed explanation concerning the inapplicability of *Electric Power Group* to the types of claims at issue here. As explained, the '349 Patent claims are distinguishable from *Electric Power Group* because they "require an arguably inventive set of components or methods, such as measurement devices or techniques, that would generate new data" (in this instance being the "merged data set" and the displayed "messages to provide directional and speed guidance to a pilot with the merged data set"). See POR at 42-44 (*quoting Electric Power Group*, 830 F.3d at 1355).

Further, Petitioners continue to rely on an overgeneralized "abstract idea" that is not tied to the actual claim language, a practice that the Federal Circuit has long admonished. See POR at 26-34. Petitioners fail to address Patent Owner's cited authority or arguments, and likewise fail to show that the claims as a whole are abstract and directed to non-patentable subject matter.

3. The claims are focused on advances over the prior art.

Petitioners incorrectly argue that if the claims do not *explicitly* recite the asserted improvements over the prior art, the claims do not focus on those improvements. Reply at 12-14. However, the specification can provide the basis for the improvements, even when those improvements are not explicitly recited in

the claim. *See McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1313-14 (Fed. Cir. 2016) (relying on the specification's description of the improvement to computer animation in finding the claims eligible); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016) (relying on the specification's discussion of how the invention improved computer memory usage in finding the claims eligible); *see also* MPEP §2106.04(d)(1) ("The claim itself does not need to explicitly recite the improvement described in the specification (e.g., 'thereby increasing the bandwidth of the channel')."), *and* §2106.05(a). Here, as explained in detail in Patent Owner's Response, the '349 Patent specification identifies many problems with the prior art that are specifically overcome by the claimed arrangement. POR at 35-36.²

4. The claims cannot practically be performed in the human mind.

Petitioners argue again that the fact that a computer can perform calculations more efficiently does not make the claims patent eligible. Reply at 14. However, during his deposition, Dr. Campbell agreed that some of the claims require computer systems, and admitted that "I don't believe claims, such as those, because they're hardware, would be the same as what could be done with the human mind." Ex2003

² Additionally, Petitioners' position on the claims is again based on a twisted interpretation of the claims stemming from its misguided new theory that the directional and speed guidance are not based on the merged data set. Reply at 13.

(Campbell Dep. Tr.) at 71:11-22. Dr. Campbell's attempts to fix his deposition admissions with a new declaration testimony should be given little weight.

Additionally, in particular, the timing requirements set forth in the claims (i.e., "*while the aircraft is approaching a ramp area for parking the aircraft on an airside of an airport*") dictate that this process be completed far quicker than a human could ever practically perform – otherwise any calculated result would be entirely pointless as the plane would have already left. Even Petitioners' expert admitted that "it would take a long time" to perform the recited steps of the claims. Ex2003 at 98:3-21, 89:22-90:11. Patent Owner argued this point in its Response, which Petitioners failed entirely to address. POR at 41-42.

5. *Alice* Step 2 – The claims include an inventive concept.

Petitioners argue that the claims do not capture the alleged improvements described in the specification, and therefore do not include an "inventive concept" under *Alice* Step 2.³ In so arguing, Petitioners assert that merging is "completely disconnected from 'data fusion.'" Reply at 17. This new position is inconsistent with Petitioners' previous positions that the disclosed merging occurs "via a data fusion process." See Petition at 5, 26.

Further, the '349 Patent clearly connects merging and data fusion. See, e.g.,

³ Because the claims are not directed to an abstract idea, the analysis ends with *Alice* Step 1, and the Board need not consider the arguments raised under *Alice* Step 2.

Ex1001 at Title; 5:25-28, 7:31-35, 8:64-9:10, FIG. 3 (“data fusion module 358”). The specification also expressly links *merging* the data to the disclosed advantages over the prior art, explaining that it is the “*merged data set* that can provide many benefits over prior systems, as discussed herein.” *Id.* at 11:60-12:5 (emphasis added). As such, it is clear that the advantages over the prior art discussed in the specification are captured by the claims, and the claims as a whole represent an unconventional arrangement that improves the prior art. *See Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1302 (Fed. Cir. 2016) (finding claims eligible under *Alice* Step 2 in view of the specification’s explanation that the ordered combination is unconventional and improves the prior art).⁴

Lastly, while Petitioners again attempt to argue that the claimed limitations are individually well-known, routine, and conventional (Reply at 16-18), Petitioners again fail to establish as much for the entire recited combination under the proper §101 analysis. Specifically, Petitioners fail to establish that merging data from the camera and LIDAR/RADAR into a merged data set, and then using that merged data for tracking and guiding the aircraft was well-known, routine, and conventional. *See* POR at 48-52.

⁴ And, yet once again, Petitioner relies on its misguided new theory that the directional and speed guidance are not based on the merged data set. Reply at 18. As discussed above, this is flawed, unsupported, and represents a significant change from Petitioners’ position set forth in the Petition.

6. Dependent claims 7

Petitioners incorrectly state that Patent Owner does not dispute that claim 7 is abstract. *See Id.* at 44-45 (explaining that claim 7 is not abstract).

Petitioners then argue that the “comparing” step in claim 7 is not a condition to the “merging” step of claim 1, in support of an argument that the claim contains no “inventive concept” under *Alice* Step 2. However, claim 1 requires merging of camera and LIDAR/RADAR data “*of the aircraft*,” thereby including a condition that the aircraft be present in both sets of data before merging. The plain language of claim 7 provides a way to ensure that condition is met. The specification also makes clear that this is the purpose of the “comparing” step of claim 7. Ex1001 at 9:61-10:4 (“computing resources won’t be wasted on analysis of objects that are not aircraft”). As is clear here, claim 7’s “comparing” step is a condition for the merging, and this conditionality improves the functioning of the computer itself by reducing wasted computing resources.

7. Dependent claims 19

Petitioners’ Reply fails entirely to address Patent Owner’s arguments that, like the claims in *Research Corp.*, claim 19 cannot be performed in the mind, and therefore is not abstract. *See* POR at 47-48 (*citing Research Corp. Tech. v. Microsoft Corp.*, 627 F.3d 859, 868 (Fed. Cir. 2010)). Further, the pixel-by-pixel comparison in *Research Corp.* was simply the claimed method to halftone a color image. 627

F.3d at 865. Here, in a similar manner, the claimed point cloud process is the method to correlate the data points to each other. As such, claim 19 clearly ties using the point cloud process to a recited result, just like the eligible claims of *Research Corp.*

B. Ground 2 – Claims 1, 6-10, and 13-20 are not anticipated by, or rendered obvious over, Berkmo.

1. Berkmo fails to disclose “displaying messages to provide directional ... guidance to a pilot.”

Berkmo fails to disclose “displaying messages to provide directional ... guidance to a pilot” under the Patent Owner’s proposed construction of: “navigational instructions, including the horizontal deviation with respect to the center line of a path.” POR at 16-17. Petitioners do not refute this point.

Instead, Petitioners’ arguments are only focused on their flawed, new implied construction of the phrase (which Petitioners claim is the plain and ordinary meaning). Reply at 20-21, 2. However, the claims remain valid even under Petitioners’ overly broad interpretation. Berkmo’s disclosed guidance is only a permissive go/no-go (i.e., “continue approaching” / “stop”) guidance, and does not provide *any* guidance as to “which direction to go” as proposed by Petitioner. See POR at 54-57; Ex2002 (Wilson Decl.), ¶¶ 88-89; *see also* Reply at 2. Berkmo fails even to disclose the example used by Petitioners (“turn left at the end of the runway, continue approaching gate A1, then turn right at gate A1”). Reply at 21. Instead, using Berkmo’s system, once given the permission to continue to approach the stand,

it is entirely incumbent upon *the pilot* to determine which direction to move the airplane when docking to get it to the correct location, and the pilot is provided with no directional guidance at all to assist in that process. As such, Berkmo fails to disclose this limitation.

2. Berkmo fails to disclose “displaying messages to provide ... speed guidance to a pilot.”

Berkmo also fails to disclose “displaying messages to provide ... speed guidance to a pilot” under the Patent Owner’s proposed construction of: “instructions concerning maximum speeds for approaching a gate.” POR at 18-19, 57-58. Petitioners do not refute this.

Instead, Petitioners continue to argue that Berkmo’s instruction to “stop the aircraft” is speed guidance. However, Berkmo’s instruction to stop is merely an instruction to cease approaching the gate (i.e., a revocation of permission to proceed toward the gate) rather than speed related instructions for approaching the gate. Ex2002, ¶ 92.

Further, Petitioners continue to rely on Berkmo’s permission-based stop/go instructions for both the speed guidance and the separate directional guidance. Again, while Berkmo’s stop/go instructions do not read on either form of guidance, they certainly do not read on both separate forms of guidance.

3. Berkmo fails to disclose “displaying messages to provide ... guidance to a pilot *with* the merged data set.”

Berkmo fails to disclose displaying messages with the merged data set. Petitioners do not dispute that the claims require that at least a portion of the merged data set is displayed. However, Petitioners failed entirely to address this limitation in their Petition. *See* POR at 59-60.

Now, in its Reply, Petitioners assert for the first time that it “would have been obvious to do so.” Reply at 22. While the Petition included a one-sentence alternative obviousness ground under § 103, the Petition never explained this alternative theory nor applied it to this particular limitation. Petition at 55. As such, Petitioners’ new obviousness theory in its Reply was not previously raised in the Petition, and is thus improper. *See Wasica Finance GmbH v. Continental Auto. Sys.*, 853 F. 3d 1272, 1286-87 (Fed. Cir. 2017) (“Rather than explaining how its original petition was correct, [petitioner’s] subsequent arguments amount to an entirely new theory of *prima facie* obviousness absent from the petition. Shifting arguments in this fashion is foreclosed by statute, our precedent, and Board guidelines.”).

4. Berkmo fails to disclose “merging” camera image sensor data with LIDAR/RADAR sensor data.

In the Petition, Ground 2 relied primarily on the disclosures in paragraph 129 of Berkmo to show that the “merging” limitations of the independent claims were satisfied. Petition at 46. However, as discussed in detail in Patent Owner’s

Response, that paragraph, and the others cited by Petitioner, discuss an embodiment where radar data is combined with laser data. POR at 60-63. There is no disclosure within Berkmo, or further explanation provided, concerning how the disclosed method of using “spatially resolved weighted average of the combined output data” could be implemented for image data combined with the radar data given the two disparate and incompatible types of data. *See Id.*

Petitioners do not address that deficiency in their Reply. Instead, Petitioners cite to seven other paragraphs of Berkmo, six of which are newly cited and were not relied on in the Petition for this point. *Compare* Reply at 23 (citing Ex1004, ¶¶ 0017-21, 0023, 0032) *with* Petition at 46.⁵ None of these newly cited disclosures were discussed, relied upon, or cited by Petitioners’ expert. In any event, these newly cited paragraphs generally refer to the idea that “one or more additional systems” may refer to an “imaging system.” However, the only examples that Petitioners actually rely on for any specific disclosure of “merging” of the data, and how that would be accomplished, are in paragraphs 129 and 130. Petition at 46.

⁵ To the extent disclosures were not cited in the Petition and rely on new embodiments, that represents an improper new theory raised for the first time in Reply. *See Rembrandt Diagnostics, LP v. Alere, Inc.*, 76 F. 4th 1376, 1385 (Fed. Cir. 2023) (Petitioners cannot “rel[y] on ‘an embodiment of the prior art that was not discussed in the petition’ to switch theories between its petition and reply”) (*discussing Ariosa Diagnostics v. Verinata Health, Inc.*, 805 F. 3d 1359 (Fed. Cir. 2015)).

Again, those paragraphs are limited to using laser and radar data, and fail to disclose using image data in any “merging” or how that would be accomplished, particularly in view of the differences in the type of data that would need to be “merged.” *See* POR at 60-63. Petitioners’ Reply also adds a citation to eleven paragraphs of a new declaration by their expert suggesting that there were other ways to merge different types of data. Reply at 24 (*citing* Ex1044 (Campbell Decl.), ¶¶ 40-51). However, such a late stage attempt to effectively *supplement* Berkmo’s disclosure with a general discussion of what would have been known by a person of ordinary skill in the art cannot change the specific method actually disclosed in Berkmo, and relied upon in the Petition.

C. Ground 3 – Claims 1-20 are not obvious over Berkmo in view of Richman.

Petitioners fail to address Patent Owner’s arguments that (a) Petitioners failed to explain how to combine Berkmo and Richman, (b) the motivation to combine is not supported by evidence, and (c) Petitioners failed to provide any allegation concerning reasonable expectation of success. *See* POR at 72-80.

IV. Conclusion

Petitioners have failed to establish the invalidity of the challenged claims based on any of the asserted grounds. Patent Owner therefore respectfully requests that the patentability of claims 1-20 of the ’349 Patent be confirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that, according to the word count provided by the word-processing software use to prepare the document, this Patent Owner's Sur-Reply contains 4,019 words, and thus is in compliance with the word count limit specified by 37 C.F.R. § 42.24(c)(4).

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2024, I caused a true and correct copy of
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