

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SkyHawke Technologies, LLC,

Petitioner,

v.

L&H Concepts, LLC,

Patent Owner.

Case IPR2014-00437

U.S. Patent No. 5,779,566

PETITIONER'S REPLY BRIEF

Pursuant to 37 C.F.R. §§ 42.23 and 42.24(c)(1), Petitioner SkyHawke Technologies, LLC (“SkyHawke” or “Petitioner”) hereby submits the following Reply in Support of its Petition for *Inter Partes* Review (“IPR”).

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I. INTRODUCTION

Patent Owner's opposition is largely impertinent to the instituted grounds. Trial has been instituted on claims 8-11, 14, and 18 of the '566 patent in view of Palmer, Osamu, and Vanden Heuvel. Rather than address this ground of unpatentability, Patent Owner instead focuses its attention elsewhere, arguing perceived limitations that are not found in the claims or even mentioned in the specification of the '566 patent. Specifically, Patent Owner argues that the claimed invention solves the purported problem of LCD screen "wash out" (Response at 15-17), yet this alleged problem is not discussed in the '566 patent or the prior art, and it is certainly not addressed in the challenged claims.

Such subterfuge is necessary because the claims of the '566 patent are the epitome of obviousness. The patent simply incorporates a "screen-dependent" input mechanism (*i.e.*, inputting data using left/right and up/down arrow keys) into a handheld device, and arranges the screens of the device in a logical fashion, *e.g.*, temporally, from pre-game, to game interactive, to post-game screens. (Ex. 1001 2:44-58, 3:38-44, 4:10-31, 6:47-7:11, 7:28-44.)

Indeed, the inventor of the '566 patent, Peter S. Wilens, and Patent Owner's expert, Alan Ball, admitted that none of the features recited in the challenged claims of the '566 patent were invented by Mr. Wilens. Mr. Wilens admitted that he was not the first to invent a handheld device for the game of golf. (Ex. 1032

35:16-24.) He also admitted that he did not invent screen-dependent data input. (Ex. 2016 ¶ 12.) Mr. Ball agreed during his deposition. (Ex. 1033 91:18-21.)

Similarly, both Mr. Wilens and Mr. Ball admitted that organizing the screens in a logical fashion, such as temporally, as described in the ‘566 patent, was a well-known design goal and a matter of common sense. (Ex. 1032 183:4-22; Ex. 1033 90:6-18.) Mr. Wilens admitted that using a screen dependent input mechanism with a handheld sports device was not a patentable invention at the time the ‘566 patent was filed. (Ex. 1032 184:2-8.) The challenged claims should be found unpatentable for the reasons set forth in SkyHawke’s petition.

II. PATENT OWNER RECHARACTERIZES THE ‘566 PATENT

In a blatant attempt to skirt the prior art presented in SkyHawke’s petition, Patent Owner attempts (at 15-17) to re-pitch the ‘566 patent as somehow solving a problem of LCD screen readability in direct sunlight, which Mr. Wilens refers to as screen “wash out.” But the purported “wash out” problem is not even mentioned in the ‘566 patent. Confusingly, Patent Owner alleges that by replacing the keypads of prior art handheld devices such as Palmer or Osamu, *but without*

improving the LCD screen itself,¹ the alleged invention of the ‘566 patent results in a more readable device, less susceptible to wash out. (Response at 18; Ex. 2016 ¶ 13; Ex. 1032 85:14-87:5, 161:2-162:2, 205:2-24.)

As an initial matter, *there is no basis for Mr. Wilens’ argument found anywhere in the ‘566 patent*. The words sunlight, wash out, glare, sun, or outdoor appear nowhere in the ‘566 patent. Surely if implementation of the screen-dependent input mechanism and screen sequence described in the ‘566 patent was intended to make an “exclusive outdoor” device (Ex. 2016 ¶ 8) more readable, it would have been described somewhere in the specification. However, the patent is silent in this regard. (*See, e.g.*, Ex. 1032 205:22-24.)

Neither Mr. Wilens nor Mr. Ball could point to a single instance in the ‘566 patent where the alleged readability problem of LCD displays for “exclusive outdoor” devices is mentioned, or where Mr. Wilens’ alleged solution to that problem is described. (*See, e.g.*, Ex. 1032 113:20-24, 114:2-6, 114:20-24, 168:10-172:21, 205:22-24; Ex. 1033 73:4-74:3, 145:5-146:7, 188:8-11, 190:21-191:18, 192:15-194:13.) Mr. Wilens testified that the ‘566 patent makes no mention of

¹ Mr. Wilens admits that he did not invent a better LCD screen. Rather, he believed that his alleged invention could be implemented “as LCD screen technology evolved.” (Ex. 2016 ¶ 13.)

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