

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SkyHawke Technologies, LLC  
Petitioner

v.

L&H Concepts, LLC  
Patent Owner

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Case IPR2014-00438  
Patent 5,779,566

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**PATENT OWNER L&H CONCEPTS, LLC'S  
PRELIMINARY RESPONSE**

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## LIST OF EXHIBITS<sup>1</sup>

Exhibit No.	Description
2001	<i>Berk-Tek LLC v. Belden Technologies Inc.</i> , IPR2013-00057 (Paper 21, May 14, 2013)
2002	<i>In re Morris</i> , 127 F.3d 1048 (Fed. Cir. 1997)
2003	<i>NTP, Inc. v. Research In Motion, Ltd.</i> , 418 F.3d 1282 (Fed. Cir. 2005)
2004	<i>Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.</i> , 289 F.3d 801 (Fed. Cir. 2002)
2005	<i>Novatek, Inc. v. Sollami Co.</i> , No. 2013-1389, 2014 U.S. App. LEXIS 5512 (Fed. Cir. Mar. 26, 2014)
2006	'566 patent prosecution history, May 27, 1997 Office Action Response
2007	<i>Blackberry Corporation, et a., v. Mobilemedia Ideas, LLC</i> , IPR2013-00036, (Paper 65, Mar. 7, 2014)
2008	<i>Universal Remote Control, Inc. v. Universal Electronics, Inc.</i> , IPR2013-00152, (Paper 8, Aug. 19, 2013)
2009	<i>Sony Corp v. Yissum Research Development Co. of the Hebrew Univ. of Jerusalem</i> , IPR2013-00219 (Paper 33, Nov. 21, 2013)
2010	<i>Liberty Mutual Ins. Co. v. Progressive Casualty Co.</i> , CBM2012-00003 (Paper 7, Oct. 25, 2012)
2011	<i>Oracle Corp. v. Patent of Clouding IP, LLC</i> , IPR2013-00075 (Paper 15, June 13, 2013)

<sup>1</sup> Consistent with 37 C.F.R. §§ 42.6(c)-(d), none of these cited exhibits are already in the record.

Pursuant to 37 C.F.R. § 42.107(a), the patent owner, L&H Concepts, LLC (“L&H” or “Patent Owner”), hereby submits the following Preliminary Response in response to the Petition for Inter Partes Review (“IPR”) of U.S. Patent No. 5,779,566 (“the ’566 patent”) numbered IPR2014-00438 (the “00438 Petition”), filed by SkyHawke Technologies, LLC (“SkyHawke” or “Petitioner”).

## I. INTRODUCTION

*Inter partes* review is a forum—much like the original examination—where the PTO can consider the best and most comprehensive prior art and determine whether or not the claims are allowable. Instituting *inter partes* review on “multiple grounds without meaningful distinction by the petitioner is contrary to the legislative intent [of the AIA].” *Berk-Tek LLC v. Belden Technologies Inc.*, IPR2013-00057 (Paper 21, May 14, 2013), Ex. 2001 at 5.

Petitioner is seeking (at least) a double review of the claims of the ’566 patent, with only conclusory language to support its assertion of non-redundancy. Petitioner reasonably could have limited its challenge of the claims of the ’566 patent to a single petition<sup>2</sup> but chose not to, instead using twice the pages and twice (and, for one claim, thrice) the reference combinations in hopes of invalidating

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<sup>2</sup> IPR2014-00437 also addresses claims of the ’566 patent based on the same references.

claims which have already been recognized as valid through *ex parte* reexamination.

Given that the Patent Owner is unable to present new evidence in the Preliminary Response context, Patent Owner focuses this response on addressing defects in the Petition and addressing the redundancies in the Petition that will make any eventual proceeding less efficient for the parties and the Board.<sup>3</sup> First, as described below, the Petition fundamentally fails with regard to claims 1-5 and 13 because (1) Petitioner asserts that the claims are indefinite, and (2) the cited references do not meet the claim construction proposed by Petitioner. Thus, even if one were to accept the Petition as wholly correct in its assertions, the references cited fail.

Next, with regard to the remaining claim 17, if the Board chooses to institute, the challenge based on the combination of the Palmer and Vanden Heuvel references is needlessly redundant, as even Petitioner concedes that the combination of Palmer and Vanden Heuvel is less complete (and thus inferior) to

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<sup>3</sup> No adverse inference should be drawn from Patent Owner's discussion of the comparative strength of the base references with regard to institution of this IPR. *See Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48764, § II-C (Aug. 14, 2012).

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