

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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RF CONTROLS, LLC,  
Petitioner

v.

A-1 PACKAGING SOLUTIONS, INC.,  
Patent Owner

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Patent 8,690,057  
Issue Date: April 8, 2014

Title: RADIO FREQUENCY IDENTIFICATION SYSTEM FOR TRACKING  
AND MANAGING MATERIALS IN A MANUFACTURING PROCESS

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Case IPR: IPR2014-01536

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Patent Owner Preliminary Response

**TABLE OF CONTENTS**

I. Introduction .....3

II. Governing authority and rules.....4

III. The Petition is fatally flawed because it provides no declaratory evidence of any kind .....5

IV. Claim Construction .....6

    A. “Antenna” should carry its plain and ordinary meaning .....7

    B. “Inventory tracking region” should carry its plain and ordinary meaning .....9

    C. The claimed “detection controller” should carry its plain and ordinary meaning .....9

V. Ground 1: Subramanian does not anticipate because it does not disclose two coordinate units..... 11

    A. The ‘057 Patent prosecution history does not concede nor does Subramanian disclose the determination of two coordinate unit values with a single antenna ..... 11

    B. There is no reasonable likelihood that Subramanian anticipates dependent claims 2-7, 10-11, 13, and 15-16..... 16

    C. Subramanian’s lack of two coordinate units cannot be cured with mere attorney argument ..... 19

VI. Ground 2: There is no reasonable likelihood that Hofer/Bloy anticipates claim 1 because Hofer/Bloy does not teach the claimed inventory tracking system.....21

    A. Hofer/Bloy’s lack of a tracking system cannot be cured with mere attorney argument .....23

VII.	Ground 3: There is no reasonable likelihood that Husak anticipates claim 1 because Husak does not teach determining two coordinate units.....	23
A.	Husak’s lack of two coordinate units cannot be cured with mere attorney argument.....	27
VIII.	Ground 4: There is no reasonable likelihood that any combination of Subramanian, Husak, Hofer/Bloy, and Takaku renders claims 1-16 obvious because Petitioner offers no reason to combine the cited references, only a reason to not combine them .....	28
A.	Petitioner cites no evidence of a reason to combine .....	28
B.	The only evidence in the record reflects that a person of ordinary skill would not combine the references.....	31
IX.	Additional defects in the petition .....	34
X.	Cumulative and unnecessary grounds .....	35
XI.	No evidence is provided to show “public accessibility” of Exhibits 1013-1020.....	37
XII.	Relief requested .....	41

## I. Introduction

The Petition fails to meet the threshold for institution of *inter partes* review because it does not demonstrate that there is a reasonable likelihood that it will prevail in showing that at least one of the challenged claims is unpatentable. The Petition fails for three reasons:

1. Each alleged anticipatory references is missing a key limitation, either the determination of “two coordinate units,” or a “current physical location of at least one particular inventory item,”

2. Each alleged obvious combination is improper because the Petition provides no reason to combine the cited references and, in fact, the ‘057 Patent teaches a reason to not combine them; and

3. The Petition is not supported by evidence as required by 35 U.S.C. §312(a)(3), failing to provide *any* declaratory evidence, including no expert declaration, instead relying entirely on attorney argument.

Even if supported, the Petition fails to show a reasonable likelihood of prevailing because Petitioner’s arguments depend upon improper claim interpretations. *See* IPR2012-00026 (Doc. 17 at 24) (denied the proposed grounds, stating that “[a]s this argument is premised on Petitioner's *erroneous claim*

*construction* we are not persuaded of a reasonable likelihood of prevailing.")  
(emphasis added).

Additionally, Grounds 2 and 3 are horizontally redundant to Ground 1 and are thus cumulative. Ground 4 also includes both a partial and a full combination of the cited references and therefore includes vertically redundant grounds. Grounds 2-4 should be denied consideration, taking into account the burden on the Patent Owner and considerations set forth in 35 U.S.C. § 326(b).

The Notice of Filing Date for the Petition in the instant proceeding issued on October 7, 2014 (Doc. 3 at 1). This Patent Owner Preliminary Response is timely filed on or before January 7, 2015, as required by 37 C.F.R. § 42.107(b).

## **II. Governing authority and rules**

The Petitioner in an *inter partes* review bears the burden of proof. *See* 37 C.F.R. § 42.20(c) (“The moving party has the burden of proof to establish that it is entitled to the requested relief”). The Petition must identify “with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3); IPR2013-00091 (Doc. 5) (“vagueness and generality do not support any specific ground of unpatentability against any claim”). As the Office

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