

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PARROT S.A., PARROT DRONES, S.A.S., and PARROT INC.,
Petitioners,

v.

QFO LABS, INC.,
Patent Owner.

Case IPR2016-01559
Patent 9,073,532 B2

Before MEREDITH C. PETRAVICK, HYUN J. JUNG, and
SCOTT C. MOORE, *Administrative Patent Judges*.

JUNG, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Parrot S.A., Parrot Drones S.A.S., and Parrot Inc. (“Petitioners”) filed a Petition (Paper 2, “Pet.”), requesting institution of an *inter partes* review of claims 1–24 of U.S. Patent No. 9,073,532 B2 (Ex. 1001, “the ’532 patent”). QFO Labs, Inc. (“Patent Owner”) timely filed a Preliminary Response (Paper 6). Upon considering the Petition and the Preliminary Response, we instituted *inter partes* review of claims 8–14 of the ’532 patent. Paper 15 (“Dec. on Inst.”).

After institution, Patent Owner filed a Response (Paper 25, “PO Resp.”)¹ and a Contingent Motion to Amend (Paper 26, “Mot.”). Petitioners filed a Reply (Paper 37, “Pet. Reply”) and an Opposition to Patent Owner’s Contingent Motion to Amend (Paper 38), to which Patent Owner filed a Reply to Petitioner Opposition to Contingent Motion to Amend (Paper 39). Because of then-recently issued *en banc* decision in *Aqua Products, Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017) (“*Aqua Products*”), the parties requested, and we authorized, additional briefing regarding Patent Owner’s Contingent Motion to Amend. Paper 43. Petitioners thereafter filed a Brief in Opposition to Patent Owner’s Contingent Motion to Amend (Paper 47), and Patent Owner filed a Reply to Petitioner Opposition to Contingent Motion to Amend (Paper 48), to which Petitioners filed a Sur-Reply Brief in Opposition to Patent Owner’s Contingent Motion to Amend (Paper 51).

Petitioners proffered a Declaration of Prof. Girish Chowdhary, Ph.D. in Support of Petition (Ex. 1003, “First Chowdhary Declaration” or “1st Chowdhary Decl.”), a Declaration of Prof. Girish Chowdhary, Ph.D. in

¹¹ See also Paper 27 (correcting certain citations from Ex. 1006 to Ex. 1005 or from Ex. 1007 to Ex. 1006).

IPR2016-01559
Patent 9,073,532 B2

Support of Petitioners' Opposition to Patent Owner's Contingent Motion to Amend and Its Reply to Patent Owner's Response (Ex. 1030, "Second Chowdhary Declaration"), and a Declaration of Prof. Girish Chowdhary, Ph.D. in Support of Petitioners' Brief in Opposition to Patent Owner's Contingent Motion to Amend (Ex. 1035, "Third Chowdhary Declaration" or "3d Chowdhary Decl."). Patent Owner proffered a Declaration of John P. Condon (Ex. 2005, "1st Condon Decl.") with its Preliminary Response and a Second Declaration of John P. Condon (Ex. 2013, "Second Condon Declaration" or "2d Condon Decl.") with its Response. A deposition transcript for Mr. Condon (Ex. 1034) was filed, but no deposition transcript was filed for Prof. Chowdhary.

A joint oral hearing in this proceeding and Case IPR2016-01550 was held on November 15, 2017; a transcript of the hearing is included in the record (Paper 54, "Tr.").

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioners have shown by a preponderance of the evidence that 8–14 of the '532 patent are unpatentable. Also based on the entirety of the record, we *deny* Patent Owner's Contingent Motion to Amend.

A. Grounds of Unpatentability at Issue

We instituted *inter partes* review on the grounds that, under 35 U.S.C. § 103(a):

- (1) claims 8–12 and 14 are unpatentable over Louvel², Thomas³, and Jimenez⁴;
- (2) claims 10 and 11 are unpatentable over Louvel, Thomas, Jimenez, and Yavnai⁵; and
- (3) claim 13 is unpatentable over Louvel, Thomas, Jimenez, and Gabai⁶. Dec. on Inst. 36.

B. Related Proceedings

Patent Owner indicates that the '532 patent, U.S. Patent No. 7,931,239 B2 (“the '239 patent”) (Ex. 2002), and U.S. Patent No. 9,645,580 B2 (“the '580 patent”) (Ex. 2012) are involved in case 1:16-cv-00682-GM in the U.S. District Court for the District of Delaware. Paper 4, 2; Paper 14, 3; PO Resp. 11; Paper 44, 3; Paper 52, 3; *see also* Pet. 76 (indicating intent to file an action in the District of Delaware). The parties indicate that the '532 patent issued from a continuation application of the '239 patent, and the '580 patent issued from a continuation application of the '532 patent. Pet. 76; Paper 14, 1–2; Paper 14, 1–2; Mot. 4–5; PO Resp. 9; Paper 44, 2; Paper 52, 2.

Patent Owner also indicates that the '239 patent, the '532 patent, and the '580 patent were asserted against Petitioners in case 0:16-cv-03443-JRT-

² US 2002/0104921 A1, published Aug. 8, 2002 (Ex. 1004).

³ US 5,128,671, issued July 7, 1992 (Ex. 1005).

⁴ US 2002/0106966 A1, published Aug. 8, 2002 (Ex. 1006).

⁵ US 6,588,701 B2, issued July 8, 2003 (Ex. 1007).

⁶ US 2001/0021669 A1, published Sept. 13, 2001 (Ex. 1008).

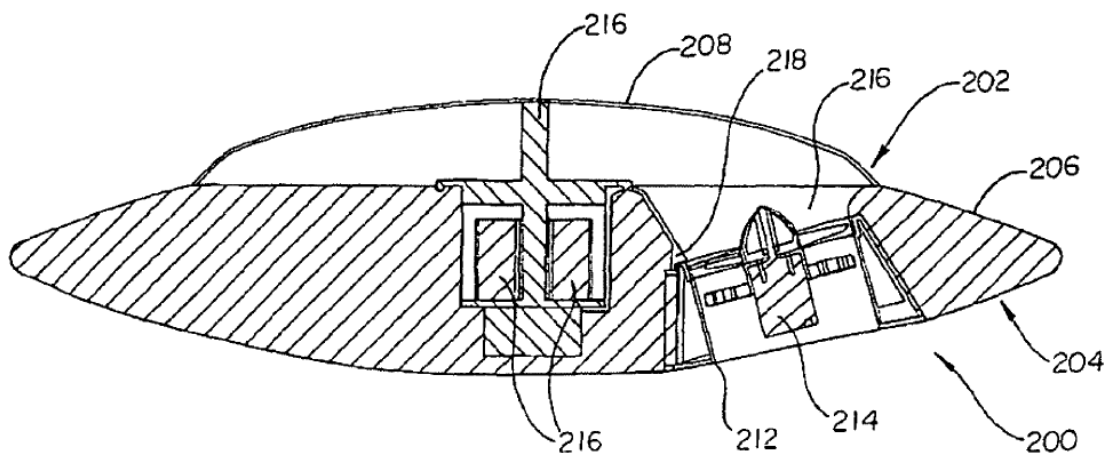
HB (D. Minn.) and in *QFO Labs, Inc. v. Brookstone Stores, Inc.*, case 0:17-cv-01100-JNE-SR (D. Minn.), both of which were dismissed. Paper 14, 3–4; PO Resp. 11; Paper 44, 3–4; Paper 52, 3–4; Ex. 1027. Patent Owner further indicates that the '239, '532, and '580 patents have been asserted in *QFO Labs, Inc. v. Amazon.com, Inc.*, case 0:17-cv-05014-DWF-HB (D. Minn.); *QFO Labs, Inc. v. Best Buy Co., Inc.*, case 0:17-cv-5011-JNE-TNL (D. Minn.); and *QFO Labs, Inc. v. Target Corp.*, case 0:17-cv-05012-JRT-DTS (D. Minn.). Paper 52, 4–5.

The '532 patent is also the subject of Case IPR2017-01090; the '239 patent is the subject of Cases IPR2016-01550 and IPR2017-01089; and the '580 patent is the subject of Case IPR2017-01400. Paper 4, 1–2; Paper 14, 1–2; PO Resp. 11; Paper 44, 2–3; Paper 52, 2; Ex. 1026; Ex. 2014. We denied institution in IPR2017-01089, IPR2017-01090, and IPR2017-01400.

C. The '532 Patent (Ex. 1001)

The '532 patent relates to a “homeostatic flying hovercraft and to a radio controlled flying saucer toy employing the [principles] of a homeostatic flying hovercraft.” Ex. 1001, 1:19–25. Figure 21 of the '532 patent is reproduced below:

Fig. 21



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.