

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS AMERICA, INC.

Petitioner

v.

UNILOC LUXEMBOURG, S.A.¹

Patent Owner

IPR2018-01664

PATENT 8,872,646

**PATENT OWNER REPLY TO PETITIONER'S OPPOSITION
TO PATENT OWNER'S MOTION TO AMEND**

¹ The owner of this patent is Uniloc 2017 LLC.

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I. INTRODUCTION

Uniloc 2017 LLC (“Uniloc” or “Patent Owner”) hereby replies to Petitioner’s Opposition (“Opposition” or “Opp.,” filed as Paper 11) to Uniloc’s Motion to Amend U.S. Patent No. 8,872,646 (“the ’646 patent”), which seeks to replace challenged claim 22 with proposed substitute claim 23.

Petitioner does not dispute that substitute claim 23 does not enlarge claim scope *and* does respond to a ground of unpatentability in the trial. The only dispute Petitioner raises against entering the amendment is that the phrase “within an operational range” allegedly lacks written description support. Opp. 1–5. Petitioner fails to meet its burden of proof on this issue. Accordingly, the Motion should be granted as satisfying all requirements for entry of the amendment. Petitioner also fails to meet its burden to prove obviousness of substitute claim 23.

II. PETITIONER FAILED TO PROVE CLAIM 23 IS UNSUPPORTED

Petitioner failed to prove that substitute claim 23 is unsupported by the specification of the application as originally filed. The Federal Circuit has instructed that a petitioner challenging the patentability of a proposed amended claim bears the burden of proof “for questions of indefiniteness, as with other questions of unpatentability.” *Bosch Auto. Serv. Sols., LLC v. Matal*, 878 F.3d 1027, 1040 (Fed. Cir. 2017), *as amended on reh’g in part* (Mar. 15, 2018).

The only claim language Petitioner identified as allegedly lacking sufficient written description support is the phrase “within an operational range.” Opp. 1–5. This phrase must be understood at least within the fuller context of “the one or more glitches each indicating a respective detected motion that is both *within an*

operational range of the motion sensor and outside an acceptable range,” as recited in claim 23. Thus, it is the *respective detected motion* that is within an operational range of the motion sensor, yet outside an acceptable range. Petitioner glosses over this informative context, and corresponding disclosure in the specification as originally filed, in alleging there is “no written description support.” Opp. 1.

To be clear, the disputed issue here is not whether the specification as originally filed requires, *in all disclosed examples*, that a glitch must be defined as encompassing a detected motion that is within the operational range of the motion sensor. Rather, the only issue raised by Petitioner's challenge is whether there is sufficient written description support for “within an operational range.” Opp. 1–5. Even *one* disclosed embodiment may provide sufficient written description support; and Uniloc had identified several that Petitioner failed to even acknowledge.

Notably absent from Petitioner's challenge, for example, is any direct rebuttal to the embodiment summarized in Uniloc's Motion as follows:

For example, the original application discloses “glitch correcting logic 235 further may be used to discard non-human motions” that are nevertheless accurately detectable by the sensor. EX1002, pp. 12-13, ¶ 21. This example is further explained in the context of “a device [that] is not being used but is in a moving vehicle.” *Id.* While the vehicle's motion is measurable by the sensor, it is considered a glitch that “can be discarded as not fitting the signature of human motion.” *Id.*

Mot. (Paper 10) 5; *see also id.*, 12–13 (“To be clear, the data influenced by the vehicle's motion is not inherently deemed an impossible error of the sensor. Rather, the data is presumably accurately measured yet not within a predetermined range indicative of human motion.”) (citations omitted).

Petitioner mischaracterized the embodiment summarized in the block quotation above as merely addressing “data outside a pre-determined range of acceptable data.” Opp. 3 (quoting Ex. 1002, pp. 12-13, ¶21). Petitioner’s selective quotation addresses a different embodiment introduced with its own respective phrase “[i]n one embodiment.” See Ex. 1002, pp. 12-13, ¶21. The same paragraph expressly introduces *another* embodiment directed to detecting and discarding glitches as representative of “non-human motions.” *Id.* One disclosed example of non-human motion is “a vehicle’s motion.” *Id.* Petitioner has the burden of proof, yet its Opposition fails to address this distinct embodiment directed to discarding as glitches certain motion (*e.g.*, a “vehicle’s motion”) that is accurately detected, yet within a range deemed to be non-human. Mot. 5; *see also id.*, 12–13.

Petitioner also failed to address additional example support for the challenged claim language, which Uniloc had summarized in its Motion as follows:

The original application provides another example in the context of removing a measured reading of “64 feet per second squared (equivalent to 2 g)”. *Id.*, pp. 19–20, ¶ 52. In this example, a “glitch” is identified not because the motion data is outside the operational range of the sensor, but rather because of the specific context of immediately “going from idle (*e.g.*, no motion) to moving at [such] an acceleration.” *Id.*

Mot. 5–6. It remains undisputed that, in this example, the measurement of “64 feet per second squared” is a detected motion within the operational range of the motion sensor. Petitioner also did not dispute that a glitch is identified in this example not because of the measured reading itself being *outside an operational range*, but rather because of the change between readings *within the operational range*—*i.e.*, “going from idle (*e.g.*, no motion) to moving at [such] an acceleration.” *Id.* (citing Ex. 1002,

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