

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PPC BROADBAND, INC.,
Petitioner,

v.

TIMES FIBER COMMUNICATIONS, INC.,
Patent Owner.

IPR2022-00946
Patent 10,988,342 B2

Before BART A. GERSTENBLITH, GEORGE R. HOSKINS, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

IPPOLITO, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

I. INTRODUCTION

PPC Broadband Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–12 and 14–22 of U.S. Patent No. 10,988,342 B2 (Ex. 1001, “the ’342 patent”). Paper 2 (“Pet.”). Times Fiber Communications, Inc. (“Patent Owner”) did not file a Preliminary Response to the Petition.

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition and any response thereto shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Considering the arguments presented in the Petition, we conclude that the information presented in the Petition establishes that there is a reasonable likelihood that Petitioner would prevail in challenging at least one of claims 1–12 and 14–22 of the ’342 patent as unpatentable under the grounds presented in the Petition. Pursuant to § 314, we hereby institute an *inter partes* review.

A. *Real Parties-in-Interest and Related Matters*

Petitioner identifies itself and Belden Inc. as real parties-in-interest. *See* Pet. 89. In its Mandatory Notices, Patent Owner identifies itself as a real party-in-interest. *See* Paper 5, 1.

There are five related IPR proceedings, challenging patents related to the ’342 patent. *See, e.g.*, Paper 5, 1. They are IPR2022-00830 (U.S. Patent No. 10,913,632 B2, in which institution was denied after Patent Owner canceled all challenged claims); IPR2022-00831 (U.S. Patent No. 10,589,957 B2, in which institution was denied after Patent Owner canceled all challenged claims); IPR2022-00947 (U.S. Patent

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No. 11,001,471 B2); IPR2022-01087 (U.S. Patent No. 10,941,016 B2); and IPR2022-01088 (U.S. Patent No. 10,906,771 B2).

The parties indicate that the '342 patent has been asserted in *Times Fiber Communications, Inc. v. PPC Broadband, Inc.*, No. 1:21-cv-01823-UNA (D. Del.) filed December 27, 2021 (“District Court Litigation”). Pet. 89; Paper 5, 1. On July 1, 2022, the District Court Litigation was stayed “pending at least a decision by the PTAB on institution of the [five] IPR petitions.” *Times Fiber*, Docket Nos. 36, 37.

B. The '342 Patent

The '342 patent is directed generally to a system for using a cable reel. *See* Ex. 1001, code (57). Figure 1, reproduced below, shows cable reel apparatus 100 without a supporting bag or box. *Id.* at 7:22–23.

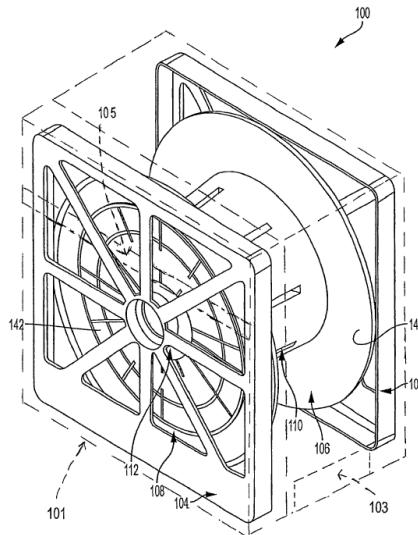


Figure 1, above, shows support frames 102 and 104 of cable reel 100 that rotatably support flanges 106 and 108 with hub member 110 therebetween. *Id.* at 8:40–43. The '342 patent teaches that the support flanges may be sized to fit within the outer frame portions of its respective support frame. *Id.* at 9:4–6. Further, the '342 patent teaches that hub member 110 supports and holds the cable coil. *Id.* at 9:23–24. Additionally, the hub member may

include a first hub portion and a second hub portion that are axially aligned and configured to mate with one another. *See id.* at 9:24–27.

The '342 patent also discloses that cable reel 100 may be inserted into and supported by the payout bag or box wherein support frames 102 and 104 are attached to the bag's cover and base. *Id.* at 8:46–50.

C. Challenged Claims

Petitioner challenges claims 1–12 and 14–22. Claims 1, 12, and 19 are independent. Claims 1 and 12 are illustrative and reproduced below:

1. A system for using a cable reel apparatus, comprising:

providing components of a separable cable reel for assembly of a cable reel apparatus, the components of the separable cable reel including,

a first frame,

a second frame, the second frame being separate from the first frame,

a first flange configured to engage the first frame, the first flange having an inner side and an outer side, the outer side of the first flange faces the first frame when the first flange is engaged therewith,

a second flange configured to engage the second frame, the second flange having an inner side and an outer side, the outer side of the second flange faces the second frame when the second flange is engaged therewith;

providing a bag having a base and a cover, wherein the bag is sized to hold the cable reel apparatus when assembled, the first frame has a geometry configured for placement in the base of the bag, and the second frame has a geometry configured for placement at or near the cover of the bag; and

providing a pre-wound, reel-less coil of cable that is separate from the separable cable reel,

wherein the first and second flanges are configured to releasably couple with one another to support the pre-wound, reel-less coil of cable therebetween.

12. A system for using a cable reel apparatus, comprising:
- providing components of a separable cable reel for assembly of a cable reel apparatus, the components of the separable cable reel including,
- a first frame,
 - a second frame, the second frame being separate from the first frame,
 - a first flange having an inner side and an outer side, the first flange being configured for engaging the first frame such that the outer side of the first flange faces the first frame, and the first flange having a first hub portion on the inner side of the first flange, and
 - a second flange having an inner side and an outer side, the second flange being configured for engaging the second frame such that the outer side of the second flange faces the second frame, and the second flange having a second hub portion on the inner side of the second flange; and
- providing a bag having a base and a cover, wherein the bag is sized to hold the cable reel apparatus when assembled, the first frame is configured to be disposed in the base of the bag, and the second frame is configured to be disposed at or near the cover of the bag; and
- providing a pre-wound, reel-less coil of cable that is separate from the separable cable reel, and
- wherein the first and second hub portions are sized to fit within the inner diameter of the coil of cable and are configured to releasably couple with one another to form a hub member for supporting the pre-wound, reel-less coil of cable between the first and second flanges.

Id. at 12:26–56.

D. Alleged Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–12, 14–22	103	Brochure, ¹ Blunt ²
1–12, 14–22	103	Brochure, Blunt, Johanson ³
1–12, 14–22	103	Brochure, Blunt, Fontana ⁴
1–12, 14–22	103	Brochure, Blunt, Johanson, Fontana

Pet. 2. Petitioner asserts the references qualify as prior art to the '342 patent by virtue of their respective publication dates preceding the '342 patent's earliest claimed priority date of February 27, 2015. *See* Pet. 1, 4, 9–17. This assertion is undisputed at this stage of the proceeding.

In addition to the references listed above, Petitioner relies on the Declaration of Charles Eldering, Ph.D. Ex. 1002.

II. ANALYSIS

A. Principles of Law

In *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), the Supreme Court set out a framework for assessing obviousness under § 103

¹ Perfect Tote™ 500 Eco Brochure, PPC (“Brochure,” Ex. 1006). Petitioner asserts Brochure is a printed publication as of September 25, 2014, when it was disseminated at the Cable Tec Expo 2014 in Denver, Colorado. *See* Pet. 9–17 (citing Exs. 1007, 1009, 1010, 1016, 1018–1038).

² U.S. Patent Application Publication No. US 2012/0168554 A1, published July 5, 2012 (“Blunt,” Ex. 1004).

³ U.S. Patent No. 7,938,357 B2, issued May 10, 2011 (“Johanson,” Ex. 1013).

⁴ U.S. Patent No. 6,145,780, issued Nov. 14, 2000 (“Fontana,” Ex. 1005).

that requires consideration of four factors: (1) the “level of ordinary skill in the pertinent art,” (2) the “scope and content of the prior art,” (3) the “differences between the prior art and the claims at issue,” and (4) “secondary considerations” of non-obviousness such as “commercial success, long-felt but unsolved needs, failure of others, etc.” *Id.* at 17–18. “While the sequence of these questions might be reordered in any particular case,” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 407 (2007), the Federal Circuit has “repeatedly emphasized that an obviousness inquiry requires examination of all four *Graham* factors and that an obviousness determination can be made only after consideration of each factor.” *Nike, Inc. v. Adidas AG*, 812 F.3d 1326, 1335 (Fed. Cir. 2016).

We note that, with respect to the fourth *Graham* factor, the current record in this proceeding does not include any argument or evidence directed to secondary considerations of nonobviousness. The analysis below addresses the first three *Graham* factors.

B. Level of Ordinary Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. United States*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

Petitioner contends that a person of ordinary skill in the art (POSITA) at the time of the invention of the ’342 patent “would have at least a bachelor’s degree in physics or engineering and experience with the installation of cable.” Pet. 4 (citing Ex. 1002 ¶ 15). For purposes of this

Decision, we adopt Petitioner’s proposal as reasonable and consistent with the prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

C. Claim Construction

We interpret the ’342 patent claims “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b). This “includ[es] construing the claim[s] in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” *Id.*

Petitioner proposes “the plain meaning of each claim term can be applied.” Pet. 5.

For purposes of this Decision, we do not expressly construe any terms. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

D. Overview of the Prior Art

1. Summary of Brochure (Ex. 1006)

Brochure is a one-page document describing the features and use of the Perfect Tote™ 500 Eco made by PPC. Ex. 1006. Brochure describes how to install a cable reel in the bag so that the reel fits in the frame hub. *Id.* Below is a figure from Brochure showing the bag with a cable reel inside. *Id.*



The figure above shows the frame on the inside of the open flap, indicated by an arrow. *Id.* Brochure also shows where the cable payout is located. *Id.*



The figure above provides two views of the bag when closed and indicates the location of the cable payout opening. *Id.*

Brochure further provides instructions on how to use the illustrated cable tote. In step 1: “Insert the cable reel into the bag so that the flange center hole fits over the frame hub and so that the cable pays straight across the bottom of the reel and out the opening of the bag.” *Id.* In step 2: “Close the side panel and ensure that the frame hub is positioned in the cable reel flange opening.” *Id.* In step 3: “Zip the side panel so it is secured.” *Id.*

2. *Summary of Blunt (Ex. 1004)*

Blunt is a reference titled “System for Storing a Bulk Supply of Cable for Controlled Payout and Method of Using the System.” Ex. 1004, code (54). Blunt discloses “a system for storing a wrapped supply of cable for controlled payout.” *Id.* ¶ 30. Blunt further discloses that the wrapped supply of cable is placed within a container and sits on a first axis. *Id.* Blunt states that the supply of wrapped cable turns on the first axis and is “controllably paid out through the peripheral wall opening.” *Id.* Figure 11, reproduced below, shows an exploded view of the container and the supply of wrapped cable.

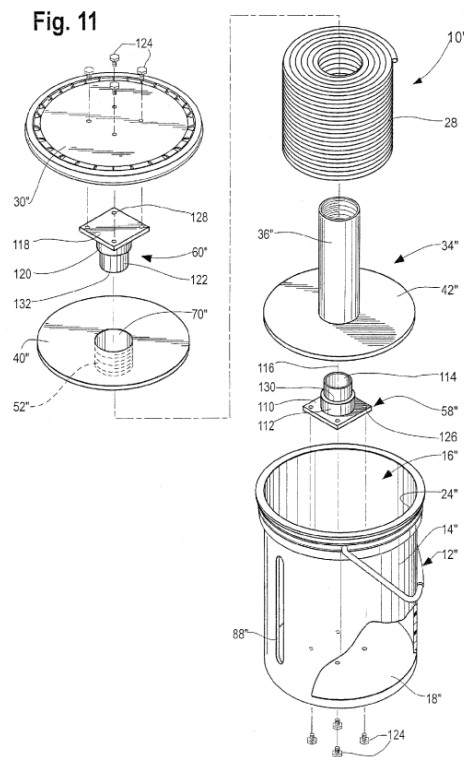


Figure 11 above shows shaft 114 mounted to the bottom of container 18". *Id.* ¶¶ 92–93. The cable reel sits on shaft 114 and rotates to payout cable. *See id.* ¶¶ 30, 97. Flange 40" may be “selectively separated” from core 36" in order to add pre-wound cable 28 to cable reel 34". *Id.* ¶¶ 72–73.

3. Summary of Fontana (Ex. 1005)

Fontana is a reference titled “Portable Device for Dispensing Cables.” Ex. 1005, code (54). Fontana discloses a reusable cable payout system that eliminates plastic waste, which is a disadvantage of using cable on plastic reels. *Id.* at 1:10–20, 1:57–64. Fontana also discloses a mechanism that allows for the user to “partially rewind [the cable] when it is too long.” *Id.* at 1:62–64.

Figure 6, reproduced in part below, shows an embodiment of a reloadable cable supply.

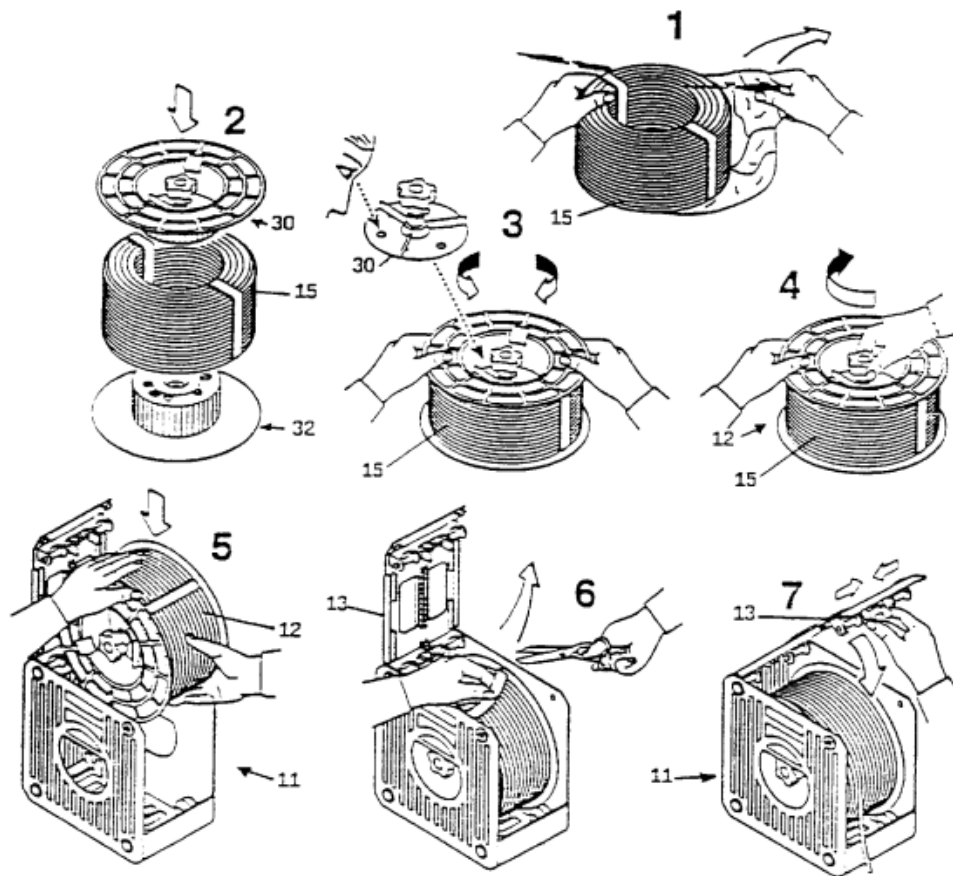


Figure 6 shows the process of adding a cable that is not on a reel to a reel that fits within the payout device. *Id.* at 4:38–53.

4. *Summary of Johanson (Ex. 1013)*

Johanson is a reference titled “Dispenser for Elongate Material.” Ex. 1013, code (54). Johanson discloses a device “for holding and dispensing elongate material, such as cable or wire, from a spool or reel.” *Id.* at 1:5–6.

Figure 1, reproduced below, shows a device according to an exemplary embodiment.

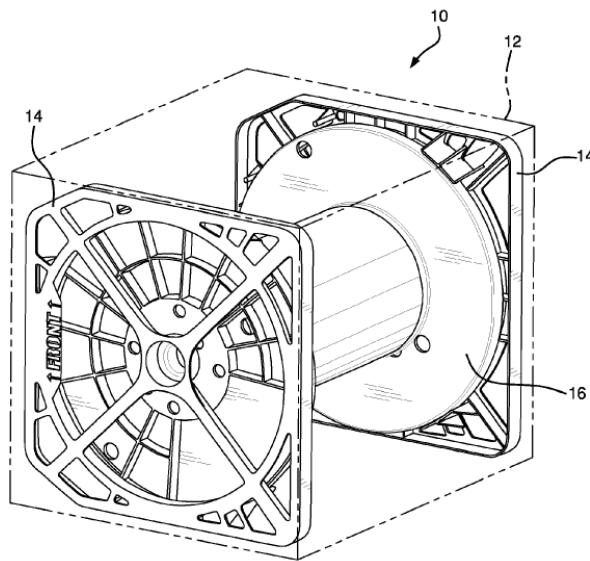


Figure 1 above is a perspective view “of a dispensing device including a surrounding container, shown in phantom [view].” *Id.* at 2:16–17.

Johanson’s dispensing device includes end plates 14 and spool 16. *Id.* at 2:55–59.

E. *Obviousness Based on Brochure and Blunt*

Petitioner asserts that claims 1–12 and 14–22 would have been obvious based on the teachings of Brochure and Blunt. Pet. 17–81. As mentioned, Patent Owner did not file a preliminary response.

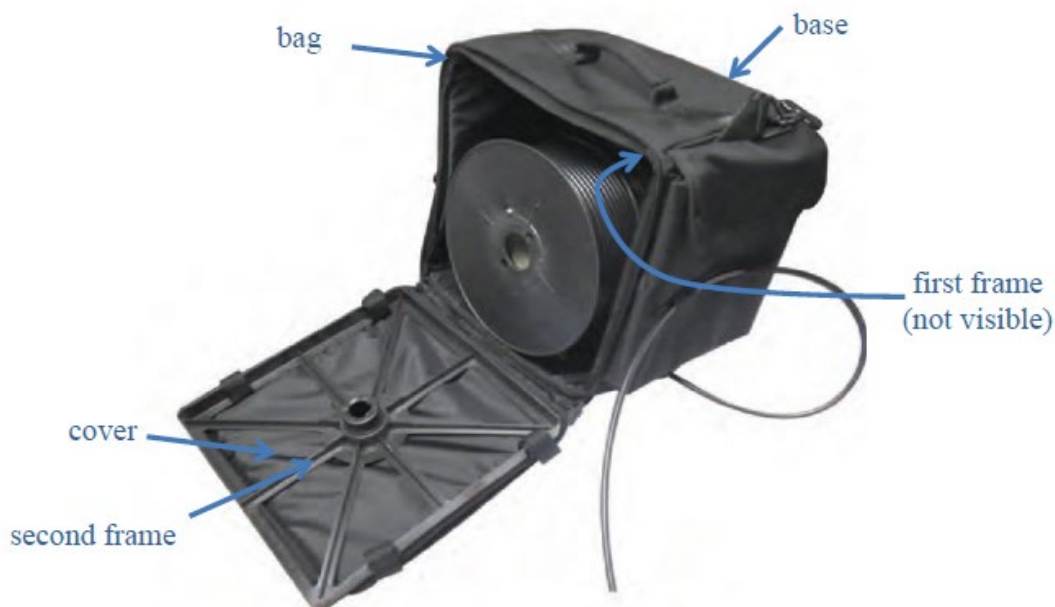
Having considered the arguments and evidence before us, we find that the record establishes a reasonable likelihood that Petitioner would prevail

on this asserted ground of obviousness based on Brochure and Blunt for claims 1–12 and 14–22.

1. *Claim 1*

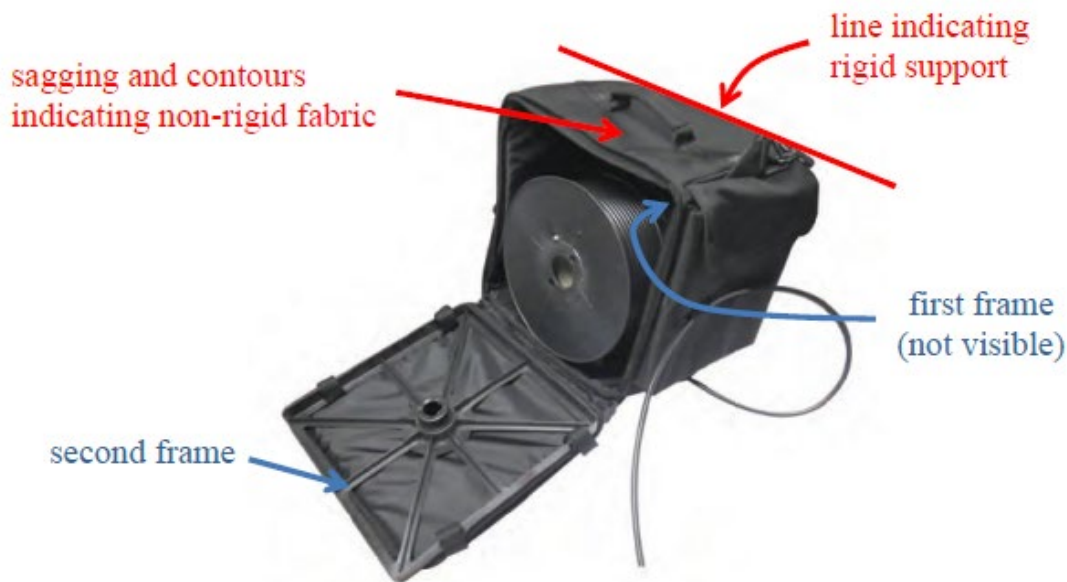
Independent claim 1 recites, *inter alia*, “a system for using a cable reel apparatus” including “a first frame,” “a second frame, the second frame being separate from the first frame,” and “a bag having a base and a cover, wherein the bag is sized to hold the cable reel apparatus when assembled, the first frame has a geometry configured for placement in the base of the bag, and the second frame has a geometry configured for placement at or near the cover of the bag.” Ex. 1001, 11:35–41, 11:51–56.

Petitioner contends that Brochure discloses a cable reel apparatus comprising a bag that contains two frames, a base, and a cover, and is dimensioned to hold a cable reel. Pet. 34. Petitioner’s annotated version of a figure shown in Brochure is provided below.



Id. at 38. Petitioner marked one of Brochure’s figures to indicate a bag, base, first frame, cover, and second frame. According to Petitioner,

Brochure demonstrates that the featured bag contains two separate frames, the first frame being located at the base of the bag and the second frame being located at the bag's cover. *Id.* at 37–38, 45–47 (citing Ex. 1002 ¶¶ 63–64, 76–79; Ex. 1006). Petitioner contends that a POSITA would understand that the base of the bag appears rigid and therefore contains an identical yet separate frame from the second frame, as shown in the below annotated figure provided by Petitioner. *See id.*



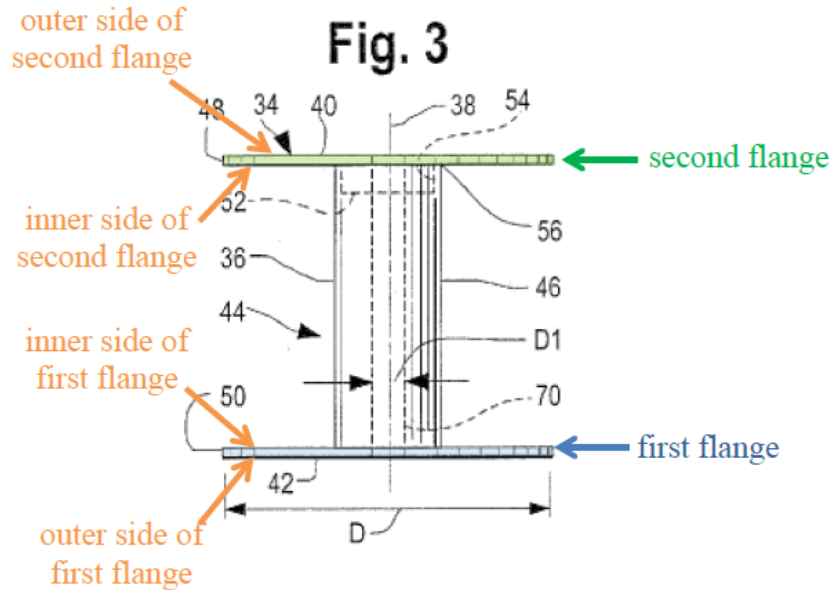
Pet. 21–22. Petitioner annotated a figure from Brochure to indicate a first frame, a second frame, and a rigid support at the base of the bag. Referring to the annotated figure, Petitioner also asserts that the frames in Brochure are configured for placement inside the bag's base and cover, and also for engagement with a cable reel. *Id.*

At this juncture, the preliminary record supports Petitioner's position. Brochure provides instructions for installing the cable reel in the bag. Ex. 1006. Step 1 instructs to "[i]nsert the cable reel into the bag so that the flange center hole fits over the frame hub," and Step 2 states "[c]lose the side panel [to] ensure that the frame hub is positioned in the cable reel flange

opening.” *Id.* Read together, we agree with Dr. Eldering’s testimony that a POSITA would have understood that Step 1 is performed while the side panel (i.e., cover) is open, and that the “frame hub” of Step 1 is not the “frame hub” of the “second frame,” but a part of a duplicate frame in the base of the bag towards which the cable reel is inserted. *See* Ex. 1002 ¶ 44. Dr. Eldering further explains that “it was well known to a POSITA that a cable payout container includes two duplicate frames positioned on opposite ends inside the container, each frame including a frame hub to rotatably support a cable reel in the container for cable payout.” *Id.* ¶ 45. Because of this, Dr. Eldering reasons that “a POSITA would have understood that the *Tote* bag along with its installation instructions as disclosed in Brochure would have a duplicate frame in the base of the bag to support a cable reel for cable payout.” *Id.* Based on the preliminary record, including Dr. Eldering’s testimony and the relied upon disclosure in Brochure, we determine Petitioner has sufficiently explained how Brochure teaches or suggests these specific claim limitations.

Additionally, claim 1 recites a separable cable reel containing “a first flange configured to engage the first frame, the first flange having an inner side and an outer side” and “a second flange configured to engage the second frame, the second flange having an inner side and an outer side.” Ex. 1001, 11:42–48.

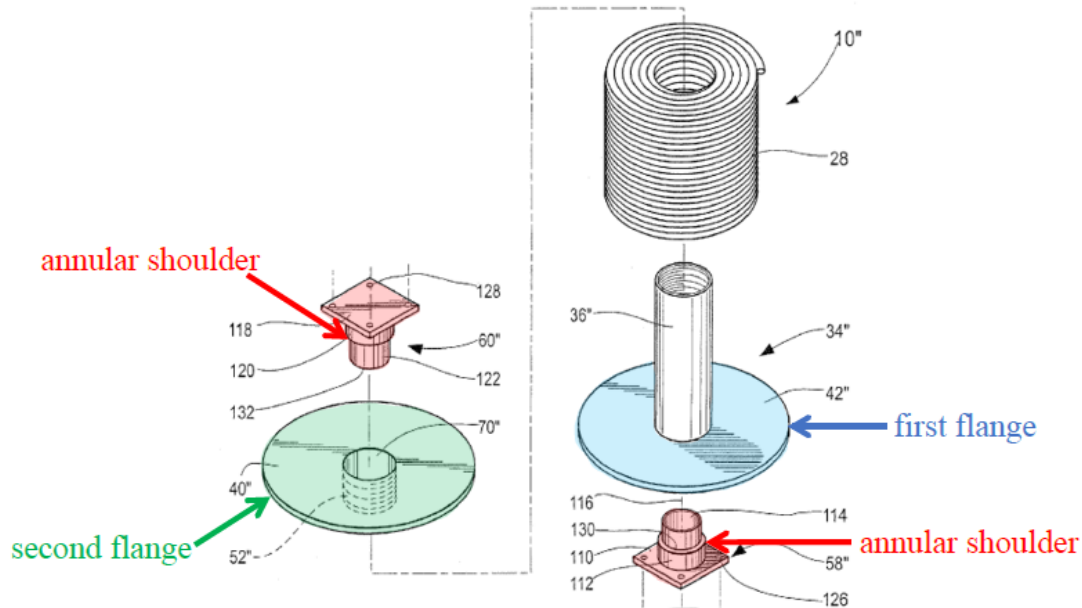
Petitioner asserts that Blunt discloses these limitations as shown in an annotated figure of Blunt’s Figure 3 that Petitioner provided on page 39 of the Petition. The annotated figure is reproduced below.



Pet. 39. Petitioner’s annotated version of Blunt’s Figure 3 marks Blunt’s cable reel with first and second flanges, and the inner and outer side of each flange. *Id.* More specifically, Petitioner refers to these annotations as showing that Blunt discloses cable reel 34 containing first flange 42 and second flange 40 where both flanges are depicted as having an inner and outer side. *Id.*

Claim 1 further requires “a pre-wound, reel-less coil of cable that is separate from the separable cable reel,” and that “the first and second flanges are configured to releasably couple with one another to support the pre-wound, reel-less coil of cable therebetween.” Ex. 1001, 11:57–61.

For these limitations, Petitioner contends that Blunt discloses a cable reel that is separable between the first and second flanges in order to load pre-wound coil, as shown in Petitioner’s annotated version of Blunt’s Figure 11 reproduced below.



Pet. 43–44; *see* Ex. 1004, Fig. 11. Petitioner’s annotated version of Blunt’s Figure 11 marks Blunt’s cable reel with first and second flanges, and an annular shoulder. Petitioner argues that first flange 42" is separated from second flange 40" by core 36" that is used to support pre-wound cable reel 28. Pet. 47–48. According to Petitioner, second flange 40" can be released from core 36" and first flange 42" in order to fit a pre-coiled supply of cable over the core 36". *Id.*

In addition, Petitioner contends that a POSITA would understand that Brochure in combination with Blunt teaches the “first flange configured to engage the first frame” and the “second flange configured to engage the second frame.” Pet. 42–44 (citing Ex. 1002 ¶¶ 65–75; Ex. 1004 ¶¶ 96–97, Figs. 3, 11; Ex. 1006; Ex. 1001, 10:50–53). Specifically, Petitioner argues that a POSITA would understand that when the separable cable reel disclosed in Blunt is inserted into the bag in Brochure, “the ‘first flange’ is ‘configured to engage’ the ‘first frame’ in the base of the bag and the outer

side of the ‘first flange’ would face the ‘first frame’ when the ‘first flange’ is engaged with the ‘first frame.’” *Id.* at 40.

Petitioner reasons that a POSITA would understand that the cable reels of Brochure and Blunt are similarly configured when the cable reel in Blunt is assembled. Pet. 40 (citing Ex. 1002 ¶ 68). According to Petitioner, a POSITA would know that when the Blunt cable reel is inserted into the Brochure bag, the outer side of the flange first inserted into the bag (i.e., the “first flange”) is configured to engage with the first frame at the base of the bag in Brochure. *Id.* Petitioner explains the same is true for the outer side of the second flange, which is the flange facing out of the bag cover. *Id.*

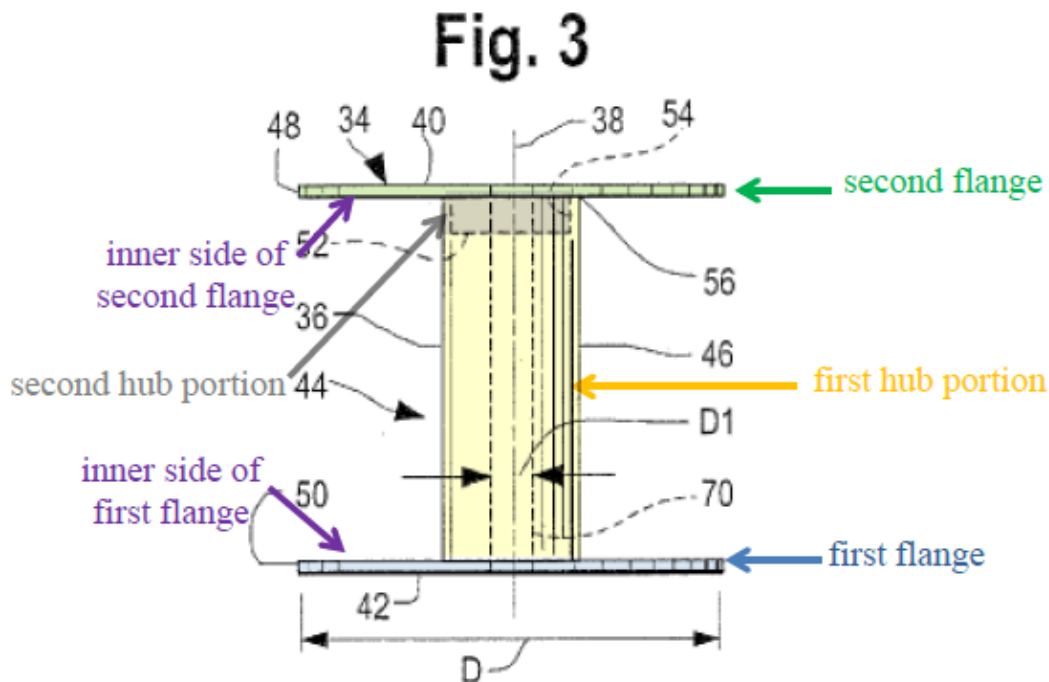
At this stage, we note that the preliminary evidence supports Petitioner’s contentions that Blunt teaches reel 34", flange 42", core 36", and separate flange 40". Ex. 1004 ¶ 96, Fig. 11. Further, Dr. Eldering’s un rebutted testimony supports Petitioner’s position that a POSITA would have been motivated to implement a two-component reel structure, such as Blunt’s cable reel 34", within Brochure’s cable reel apparatus. *See* Ex. 1002 ¶ 57. Dr. Eldering also testifies a POSITA would understand the environmentally friendly advantages of replenishing the supply of cable in the cable reel installed in the Tote bag. *Id.* ¶ 53 (citing Ex. 1004 ¶ 107).

Upon review of the preliminary record and based on the evidence and arguments discussed, we determine that Petitioner has provided sufficient argument and evidence in relation to the proposed obviousness of claim 1 over Brochure and Blunt to demonstrate a reasonable likelihood that Petitioner would prevail with respect to this challenge. *See* Pet. 33–51.

2. *Claim 12*

Independent claim 12 recites limitations similar to claim 1 but further includes a hub portion on the inner side of both the first and second flanges

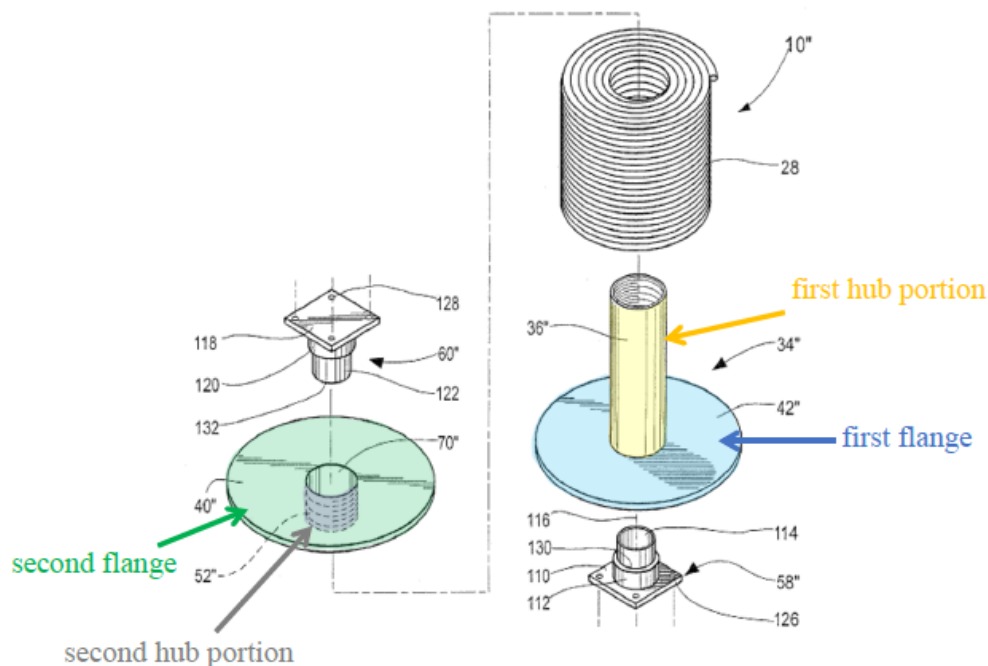
such that “the first and second hub portions are sized to fit within the diameter of the coil of cable and are configured to releasably couple with one another to form a hub member for supporting the pre-wound, reel-less coil of cable between the first and second flanges.” Ex. 1001, 12:51–56. For claim 12, Petitioner relies primarily on the arguments made for claim 1, but adds Blunt discloses both a first and second hub portion that are releasably coupled with one another to create a support for the pre-wound coil. *See* Pet. 52–54 (citing Ex. 1002 ¶¶ 91–93, 65–75, Ex. 1004, Figs. 3, 11, ¶ 96), 55–57 (citing Ex. 1002 ¶¶ 98–103; Ex. 1004 ¶¶ 72–73). For these arguments, Petitioner relies on its annotated version of Blunt’s Figure 3 provided below.



Pet. 53; *see* Ex. 1004, Fig. 3. Petitioner’s annotated version of Blunt’s Figure 3 marks Blunt’s cable reel with first and second flanges, a first hub portion, a second hub portion, and the inner sides of each flange. Petitioner asserts Blunt’s “flange 42” constitutes the claimed ‘first flange,’ core 36” constitutes the claimed ‘a first hub portion,’ flange 40” constitutes the

claimed ‘second flange,’ and stub component 52" constitutes the claimed ‘a second hub portion.’” Pet. 54 (citing Ex. 1002 ¶ 93). Petitioner argues that both hub portions are connected to the inner side of their respective flanges. *Id.*

On page 56 of the Petition, Petitioner relies on another annotated version of Blunt’s Figure 11 to show Blunt’s purported first and second hub portions are releasably coupled to one another.



Pet. 56. There, the annotated figure includes color and text indicating a second hub portion (gray) at flange 40" (green) and a first hub portion at core 36" (yellow) extending from flange 42" (blue). Petitioner contends that stub component 52" (or second hub portion) can be removed from core 36" (or first hub portion) in order to slide pre-wound coil 28 onto the cable reel apparatus. *Id.*

Petitioner adds that as discussed in the analysis of claim 1, a POSITA would have understood that Blunt’s core 36" (‘first hub portion’) and stub

component 52" ('second hub portion') would releasably couple with one another via a friction fit or cooperating threads to form a hub member to support the pre-coiled supply of cable 28 ('pre-wound, reel-less coil of cable') directed through core 36" between flange 42" and flange 40".

Pet. 57 (citing Ex. 1002 ¶¶ 103, 83–86; Ex. 1004 ¶ 73).

Based on the preliminary record and Petitioner's arguments and evidence discussed and cited above (including those presented for claim 1), we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail with respect to this challenge for this claim. *See* Pet. 51–57.

3. *Claim 19*

Independent claim 19 is directed to a "system for using a cable reel apparatus." *See* Ex. 1001, 13:13–14:18. Claim 19 recites limitations similar to those recited in independent claims 1 and 12 but further requires, among other things, "a longitudinal axis of the separable cable reel is horizontal" and "the base of the bag includes a payout opening sized for dispensing cable of the pre-wound, reel-less coil of cable therebetween once the bag and the separable cable reel are positioned in the horizontal orientation." *Id.*

Petitioner relies largely on the analysis discussed above for claims 1 and 12, but further contends that the central longitudinal axis of Brochure's cable reel is oriented horizontally when the cable reel is horizontal inside the bag. Pet. 63. Petitioner's annotated version of one of Brochure's figures is provided below.



Pet. 63; Ex. 1006. Petitioner marked one of the figures from Brochure to identify a cable reel having a longitudinal axis and a bag containing a cable reel with the longitudinal axis in a horizontal configuration. Pet. 63. Referring to this annotated figure, Petitioner asserts that Brochure discloses a payout opening at the base of the bag from which the cable can be dispensed when in a horizontal configuration. *Id.*

Based on the preliminary record and Petitioner’s arguments and evidence discussed and cited above (including those presented for claim 1), we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail with respect to this challenge for this claim. *See* Pet. 57–65.

4. *Dependent Claims 2–11, 14–18, and 20–22*

“When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.” 37 C.F.R. § 42.108(a). We must “either (1) institute as to all claims challenged in the petition and on all grounds in the petition, or (2) institute on no claims and deny institution.”

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(Nov. 2019) (“CTPG”)⁵, 5–6, 64. We “will not institute on fewer than all claims or all challenges in a petition.” *Id.* at 5, 64; *see also PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1359–60 (Fed. Cir. 2018) (stating a decision to institute is “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

Thus, because we have decided to grant institution on Ground 1 against claims 1, 12, and 19, we do not need to address Petitioner’s contentions for claims 2–11, 14–18, and 20–22.

Nonetheless, we note that Petitioner has also provided sufficient argument and evidence to demonstrate a reasonable likelihood that it would prevail with respect to this challenge. *See* Pet. 65–68 (claims 2, 17, 20), 68–69 (claims 3, 18, 21), 70 (claim 4), 70–73 (claims 5–6), 74–77 (claims 7–10, 22), 78 (claim 11), 78–80 (claims 14–15), 80–81 (claim 16).

F. Obviousness Based on Brochure, Blunt, and Johanson; Based on Brochure, Blunt and Fontana; and Based on Brochure, Blunt, Johanson, and Fontana – Claims 1–12 and 14–22

Petitioner also asserts claims 1–12 and 14–22 would have been obvious based on the teachings of: (1) Brochure, Blunt, and Johanson (Pet. 81–83); (2) Brochure, Blunt, and Fontana (*id.* at 83–86); and (3) Brochure, Blunt, Johanson, and Fontana (*id.*). Pursuant to U.S. Patent and Trademark Office rules and policy, we must either institute as to all grounds in the Petition, or deny institution entirely. Thus, because we have decided to grant institution on Ground 1, we do not need to address Petitioner’s contentions for Grounds 2–4.

⁵ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

III. CONCLUSION

After considering the evidence and arguments presented in the Petition, we determine that Petitioner has demonstrated a reasonable likelihood of success in proving that at least one claim of the '342 patent is unpatentable. Accordingly, an *inter partes* review of claims 1–12 and 14–22 on all of the grounds presented in the Petition is hereby instituted. *See also PGS Geophysical AS*, 891 F.3d at 1360 (indicating that a decision whether to institute an *inter partes* review “requires a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

At this stage of the proceeding, the Board has not made a final determination as to the patentability of any challenged claim or any underlying factual or legal issues.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1–12 and 14–22 of the '342 patent is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '342 patent shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

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Patent 10,988,342 B2
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