

Filed on behalf of Guangdong Laitu Imaging Technology Co., Ltd.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Guangdong Laitu Imaging Technology Co., Ltd. dba Leofoto
Petitioner

v.

Really Right Stuff, LLC
Patent Owner

U.S. Patent No. 8,398,037
Title: Equipment Support

Case No. Unassigned

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 8,398,037
UNDER 35 U.S.C. § 312 AND 37 C.F.R. § 42.104**

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Patent Trial and Appeal Board
P.O. Box 1450
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EXHIBIT LIST

Exhibit No.	Description
1001	U.S. Patent No. 8,398,037 (“the ‘037 Patent”)
1002	Transaction History for U.S. Patent No. 8,398,037
1003	Prosecution History for U.S. Patent No. 8,398,037
1004	U.S. Patent Publication No. 2008/0224000 (“Yang”)
1005	Gitzo 2009 sales catalog (“Gitzo 2009”)
1006	YouTube1 Video: Gitzo Tripods (“YouTube1”)
1007	YouTube2 Video: Gitzo G1098 Tripod (“YouTube2”)
1008	YouTube3 Video: Shooting Videos with a DSLR Camera – English (“YouTube3”)
1009	YouTube4 Video: Really Right Stuff L Plate Advantages (“YouTube4”)
1010	Declaration of Howard H. Sheerin attorney for Petitioner

I. INTRODUCTION

On behalf of Guangdong Laitu Imaging Technology Co., Ltd., dba Leofoto (“Petitioner”) and in accordance with 35 U.S.C. § 311-319 and 37 C.F.R. § 42.100, *Inter Partes* Review is respectfully requested for claims 1-8 and 15-28 (the “Challenged Claims”) of U.S. Patent No. 8,398,037 (“the ‘037 patent”), attached hereto as Exhibit 1001, and owned by Really Right Stuff, LLC.

Petitioner asserts that is more likely than not that at least one of the Challenged Claims is unpatentable for the reasons set forth herein and respectfully requests review of, and judgement against, all Challenged Claims under 35 U.S.C. § 102 as anticipated and/or § 103 as obvious.

The Challenged Claims recite various aspects of a tripod for supporting equipment such as a camera. The Challenged Claims include six independent claims which cover in relevant part:

Claims 1 and 18: elongated hollow legs having an off-center pivot axis;

Claim 6: an apex comprising a warning member having a first state that indicates that a platform is securely engaged with said apex and a second state that indicates that said platform is not securely engaged with said apex;

Claim 16: a selectively releasable angle stop that defines a plurality of fixed angular positions around a pivot axis;

Claim 22: a foot having a curved surface; and

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Claim 25: a platform including an open-ended hook integrally forming a closed-loop aperture.

During prosecution of the of the Challenged Claims, the Patent Owner did not submit a single reference for consideration by the patent examiner. (Ex-1002, pp. 1-3). As a result, there were only five prior art references considered by the patent examiner during prosecution, all of which were discovered and cited by the patent examiner. The Patent Owner's failure to disclose a single prior art reference increases the likelihood that material prior art was not considered by the patent examiner during prosecution, and this is exactly the case.

As set forth in detail below, the Petitioner has identified multiple prior art publications not considered by the examiner during prosecution that clearly invalidate the Challenged Claims. Further, none of the relied upon prior art publications can be considered cumulative to any of the five prior art references considered by the patent examiner during prosecution. Had the patent examiner considered the relied upon prior art publications, the Challenged Claims would not have been allowed. Therefore this petition for *Inter Partes* Review should be granted and the Challenged Claims canceled.

II. GROUNDS FOR STANDING (37 C.F.R. § 42.104(a))

Petitioner hereby certifies that the '037 Patent is available for *Inter Partes* Review ("IPR"), and that Petitioner is not barred or estopped from requesting IPR

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of the Challenged Claims on the grounds identified herein. Specifically: (i) Petitioner is not the owner of the '037 Patent; (ii) Petitioner has not, and no real party-in-interest to Petitioner has, filed a civil action involving the '037 Patent; (iii) the estoppel provisions of 35 U.S.C. §315(e)(1) do not prohibit this IPR; (iv) this Petition is filed more than nine months after the date of grant of the '037 Patent; and (v) Petitioner has not previously filed a petition for IPR of the '037 Patent.

III. IDENTIFICATION OF CHALLENGE (37 C.F.R. § 42.104(b))

Petitioner requests that the Challenged Claims be found unpatentable and cancelled.

A. Claims For Which IPR is Requested

Petitioner requests IPR of claims 1-8 and 15-28 of the '037 patent.

B. Priority Date of the '037 Patent

The '037 patent was filed as a non-provisional application number 13/032,149 on February 22, 2011, which claimed priority to provisional application number 61/343,114 filed on April 23, 2010. In this petition, all of the cited references pre-date April 23, 2010 and, therefore, qualify as prior art even if the Challenged Claims were found to be entitled to the filing date of the '114 provisional application (which is not conceded).

C. Prior Art Publications Which the Challenge is Based

This Petition cites the following references, each of which is prior art to the ‘037 Patent under 35 U.S.C. §§ 102(a). None of these references were considered by the examiner during prosecution of the ‘037 patent, and none of these references can be considered cumulative to the prior art considered by the examiner during prosecution of the ‘037 patent:

Yang: U.S. Patent Pub. No. 2008/0224000 (Ex. 1004) (“Yang”) published on September 18, 2008, from an application filed on November 24, 2005. Yang qualifies as §102(a)(1) prior art because it was described in a printed publication, before the effective filing date of April 23, 2010 of the ‘037 patent. Yang also qualifies as §102(a)(2) prior art because it was described in a patent issued under §151, or in an application for patent published under §122(b), in which another inventor was named, and was effectively filed before the earliest possible effective filing date of April 23, 2010 of the ‘037 patent.

Gitzo 2009: The *Gitzo 2009 collection* (Ex. 1005) (“Gitzo 2009”) is a sales catalog of photography equipment published and disseminated by Gitzo S. A. at least as early as June 22, 2009 and, therefore, qualifies as §102(a)(1) prior art because it was described in a printed publication, before the earliest possible effective filing date of April 23, 2010 of the ‘037 patent.

YouTube1: Gitzo tripods

Pub. Date: September 19, 2008

Exhibit: 1006

<https://www.youtube.com/watch?v=AEgbj5J5n9Q&t=90s>

YouTube2: Gitzo G1098 Tripod

Pub. Date: November 18, 2008

Exhibit: 1007

https://www.youtube.com/watch?v=Zh_Uuga-UEIa

YouTube3: Shooting Videos with a DSLR Camera – English

Pub. Date: February 18, 2010

Exhibit 1008

<https://www.youtube.com/watch?v=OB64XUTzEjI>

The three YouTube videos referenced above (YouTube1, YouTube2, and YouTube3) were all published on the YouTube.com website with a corresponding publication date which qualifies the videos as §102(a)(1) prior art because they were described in a printed publication, before the earliest possible effective filing date of April 23, 2010 of the '037 patent.

D. Publication Date and Access of Prior Art

1. Gitzo 2009

Gitzo 2009 is a printed publication as demonstrated by the declaration of Howard H. Sheerin, who downloaded the Gitzo 2009 publication from Wikipedia.org (Gitzo webpage) as a PDF file, and then evaluated the “Document Properties” of the PDF file which shows a creation date of January 12, 2009 and a modification date of January 13, 2009. (*See* Declaration of Mr. Sheerin, Ex. 1010,

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pp. 4-7). In addition, Mr. Sheerin downloaded a screen capture of the Gitzo.com website, as published on June 22, 2009, from the Internet Archive Wayback Machine accessed through archive.org. (See Declaration of Mr. Sheerin, Ex. 1010, pp. 8-10). This screen capture clearly shows that the Gitzo 2009 collection catalog was available for download from the Gitzo.com website as early as June 22, 2009. “Gitzo 2009” is the title of the catalog printed on the cover page which at least indicates the catalog was published in 2009. In addition, the cover page of the Gitzo 2009 catalog is shown in the archived Gitzo.com screen capture under the heading “New 2009 Catalogues Available” and adjacent the description “Gitzo has released the new catalogue... links to the pdf files.” (Ex. 1010, p. 9). In *Valve Corp. v. Ironburg Inventions Ltd.*, 8 F.4th 1364, 1374-75 (Fed. Cir. 2021), the Federal Circuit recognized the value of judicial notice of archived webpages downloaded from the Wayback Machine accessed through archive.org:

“The Wayback Machine is an online digital archive of web pages. It is run by the Internet Archive, a nonprofit library in San Francisco, California.” *Mojave Desert Holdings, LLC v. Crocs, Inc.*, 844 F. App'x 343, 346 n.2 (Fed. Cir. 2021). “[E]xaminers use ‘The Wayback [M]achine’ as a source of information to determine when a Web reference was first made available to the public.” *America Invents Act (AIA) Frequently Asked Questions*, United States Patent and Trademark Office, https://www.uspto.gov/patents/laws/america-invents-act-aia/america-invents-act-aia-frequently-asked#type-browse-faqs_2998

(last visited July 25, 2021). District courts have taken judicial notice of the contents of webpages available through the Wayback Machine “as facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *Erickson v. Neb. Mach. Co.*, No. 15-CV-01147-JD, 2015 WL 4089849, at *1 n.1 (N.D. Cal. July 6, 2015) (comparing “copies of current versions” of websites with versions available on the Wayback Machine to determine “that the websites were substantively identical during the relevant timeframe”); *see also Pohl v. MH Sub I, LLC*, 332 F.R.D. 713, 716 (N.D. Fla. 2019) (collecting cases); *UL LLC v. Space Chariot Inc.*, 250 F. Supp. 3d 596, 603–04 & n.2 (C.D. Cal. 2017) (determining when websites began advertising a certification mark and collecting cases). We agree. *Id.* 1374-1375.

It’s reasonable that a person of ordinary skill in the art (POSITA) would be aware of and frequent the Gitzo website¹ since Gitzo was a large manufacturer of tripods and other camera equipment. (Ex. 1010, pp. 2-3). A POSITA involved in researching tripods prior to the earliest possible effective filing date of the ‘037 patent (April 23, 2010) would have incentive to investigate all of the large tripod manufacturer websites, including the Gitzo website, as well as incentive to download

¹ Prior to the earliest possible effective filing date of the ‘037 patent (April 23, 2010).

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and review the Gitzo 2009 collection catalog that was available for download from the Gitzo website as early as June 22, 2009.

2. YouTube Videos

It is well established that videos, such as the above referenced YouTube videos (YouTube1 YouTube2, and YouTube3), meet the definition of printed publications under §102(a)(1). For example, in *HVLPO2, LLC v. Oxygen Frog, LLC et al*, 4-16-cv-00336 (FLND May 28, 2018, Order) (Walker, USDJ), this issue was addressed extensively specifically with respect to a YouTube video:

Although the Federal Circuit has not explicitly ruled that YouTube videos qualify, “the statutory phrase ‘printed publication’ has been interpreted to give effect to ongoing advances in the technologies of data storage, retrieval, and dissemination.” *In re Hall*, 781 F.2d 897, 898 (Fed. Cir. 1986). Accordingly, courts have held that videos meet the definition.² Similarly, the United States Patent Office’s Manual of Patent Examining Procedure (“MPEP”) states that “digital video . . . is considered to be a ‘printed publication’ within the meaning of . . . pre-

² See *Kimberly-Clark Worldwide, Inc. v. First Quality Baby Prods., LLC*, No. 09-C-0916, 2012 WL 5930609, at *6–7 (E.D. Wis. Nov. 27, 2012); *Apple, Inc. v. Samsung Elecs. Co.*, 877 F. Supp. 2d 838, 885 (N.D. Cal. 2012), rev’d on other grounds, 695 F.3d 1370 (Fed. Cir. 2012); but see *Diomed, Inc. v. AngioDynamics, Inc.*, 450 F. Supp. 2d 130, 141–42 (D. Mass 2006).

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AIA 35 U.S.C. 102(a) and (b) provided the publication was accessible to persons concerned with the art to which the document relates.” MPEP § 2128(II)(A) (9th ed., last revised Jan. 2018).

Although the Court in *HVLPO2* did not address the authenticity of the publication date of a YouTube video, the publication date shown on the webpage of a YouTube video is not hearsay because it is “computer generated” when the video is uploaded rather than a date asserted by a person.³ (See *Commonwealth v. Davis*, 487 Mass. 448, 465 (2021)). In addition, the publication date of a YouTube video is not hearsay under Rule 807 “Residual Exception” because YouTube videos are published by a “well-known, reputable compiler and publisher” similar to the finding in *Ericsson Inc. v. Intellectual Ventures I LLC*, IPR2014-00527, Paper 41 (P.T.A.B. May 18, 2015) for a publication date of an *IEEE* publication.

The YouTube videos referenced above (YouTube1, YouTube2 and YouTube3) are also publications that were “accessible to persons concerned with

³Rule 801(a) limits the definition of a statement to “(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.”

the art to which the document relates”⁴ and therefore meet the definition of a printed publication under §102(a)(1). The title of YouTube1 is “Gitzo tripods,” the title of YouTube2 is “Gitzo G1098 Tripod,” and the description of YouTube3 includes the keywords “Gitzo tripod” which means a search on the YouTube.com website for the keywords “Gitzo tripod” would likely have listed YouTube1, YouTube2, and YouTube3 high in the search results, particularly if the search were performed during the 2008-2010 timeframe since a search today for the keywords “Gitzo tripod 2008” displays YouTube1 and YouTube2 both as a top ten search result (Ex. 1010, pp. 13, 22), and a search today for the keywords “Gitzo tripod 2010” displays YouTube3 as a top ten search result. (Ex. 1010, p. 29). In addition, YouTube3 was published on the Gitzo company YouTube channel “Gitzo Inspires.” (Ex. 1010, p. 30). A POSITA involved in researching tripods prior to the earliest possible effective filing date of the ‘037 patent (April 23, 2010) would have incentive to investigate Gitzo tripods (a large manufacturer of tripods) by searching the well known YouTube.com website using the keywords “Gitzo tripod” during the 2008-2010 timeframe, as well as by investigating the Gitzo company YouTube channel “Gitzo Inspires.”

⁴ Prior to the earliest possible effective filing date of the ‘037 patent (April 23, 2010).

3. Hearsay Exception under Fed. R. Evid. (FRE) 807

Petitioner has established that Gitzo 2009 and the YouTube videos meet the definition of a printed publication under §102(a)(1) and are not hearsay. However, even assuming *arguendo* that either Gitzo 2009 or any of the three YouTube videos are considered hearsay, all four publications meet the exception for hearsay under Fed. R. Evid. (FRE) 807 since the four requirements of this rule are met: (1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will best serve the purposes of these rules and the interests of justice. FRE 807.

a. FRE 807(1)

Gitzo 2009 and the YouTube videos are each equivalent circumstantial guarantees of trustworthiness for one another since they disclose the same or similar Gitzo tripod models. (*See* Declaration of Mr. Sheerin, Ex. 1010, pp. 13-19, 22-23, 31-32). In addition, there is evidence of different, independent publication sources for each of these publications: the publisher of Gitzo 2009 and YouTube3 are the Gitzo company, the publisher of YouTube1 is the YouTube channel “Vincent Oliver photo-i”, and the publisher of YouTube2 is the YouTube channel “PhotoVideoAU”.

The odds these three independent publishers collaborated to publish fake videos are essentially zero.

b. FRE 807(2)

The publications are offered as evidence of a material fact: the publication date of each reference, as well as whether the publications were accessible to persons concerned with the art to which the publications relate.

c. FRE 807(3)

The publications are more probative on the point for which it is offered than any other evidence that the Petitioner can obtain through reasonable efforts. Even assuming the Petitioner were able to obtain human testimony as to the authenticity of the publication dates as well as accessibility, the publication of these references occurred approximately 14 years ago. Surely computer generated and digitally preserved evidence of publication and accessibility should be considered more reliable than the fading memory of any human testimony.

d. FRE 807(4)

Admitting the publications will best serve the purpose of these rules and the interests of justice. In 2010, Gitzo was a large manufacturer of tripods (*see* Declaration of Mr. Sheerin, Ex. 1010, p. 2-3), and most likely the Patent Owner was aware of this fact. It is more likely than not the Patent Owner (a competitor in the tripod industry) was fully aware of the Gitzo tripods, including particular models

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being sold as well as publications describing the Gitzo tripods, at the time the patent application was filed (April 23, 2010). Yet the Patent Owner failed to disclose a single reference to the patent examiner, let alone any reference regarding the Gitzo tripods which are obviously material to patentability as applied to most of the claims of the '037 patent. The Patent Owner is now engaged in a campaign to stifle competition by wielding the '037 patent without having made any effort to disclose even a single reference to the patent examiner during prosecution. Justice is best served by admitting the Gitzo 2009 and YouTube videos so that a complete and fair examination of the '037 patent can occur, as opposed to rewarding the Patent Owner for their best case lazy, and worst case deceptive, conduct in front of the United States Patent Office.

There is clear evidence the Patent Owner and co-inventor Joseph Johnson of the '037 patent was aware of at least the Gitzo tripods at the time the patent application was filed (April 23, 2010) in that the Patent Owner published a video (YouTube4; Ex. 1009) on their company YouTube channel on April 09, 2009, with the CEO and co-inventor Mr. Johnson demonstrating camera equipment using both a Gitzo Systematic collection tripod (see annotated figure below) and a Gitzo Basalt collection tripod (see annotated figure below). (*See Declaration of Mr. Sheerin, Ex. 1010, pp. 32-37*). Further, the attorney (Kevin Russell) for the Patent Owner admitted in a letter dated April 9, 2023 sent to the attorney (Howard H. Sheerin) for

Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

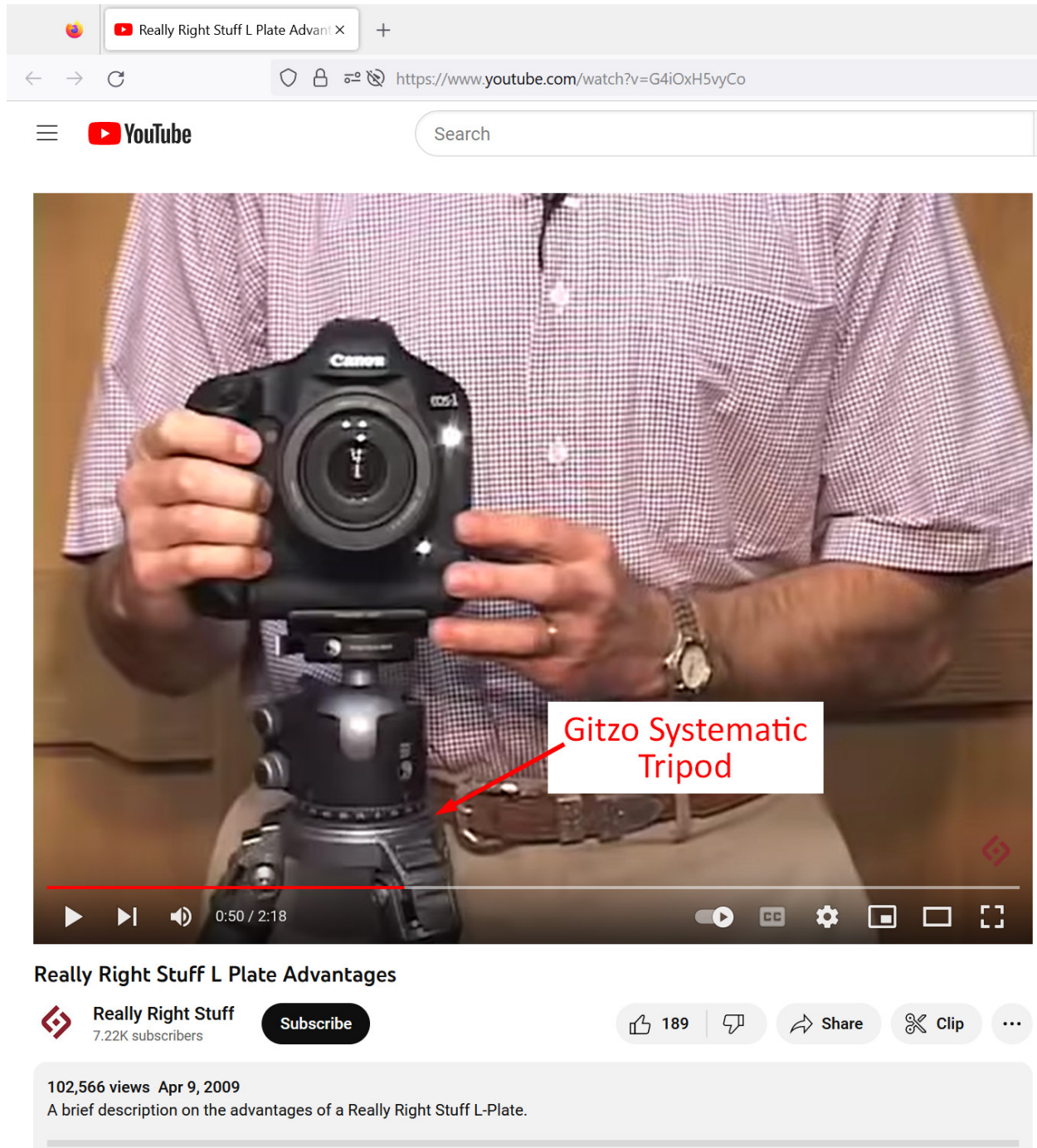
the Petitioner that the tripods used in Mr. Johnson's demonstration video (YouTube4) are in fact Gitzo tripods. Specifically, Mr. Russell stated in his letter to the Petitioner: "[Y]our letter of April 4, 2023, merely identifies a prior-art Gitzo tripod used in a video by Joe Johnson of Really Right Stuff." (*See* Declaration of Mr. Sheerin, Ex. 1010, pp. 34, 36).

Given that the YouTube4 video, as corroborated by the correspondence with the attorney for the Patent Owner, clearly shows the Patent Owner and co-inventor Mr. Johnson was aware of at least the Gitzo tripods at the time the '037 patent application was filed (April 23, 2010), it is more likely than not Mr. Johnson was also aware of the Gitzo 2009 sales catalog at the time the '037 patent application was filed. Once this *Inter Partes* Review is instituted, the Petitioner will depose the co-inventor Mr. Johnson to elicit testimony that will likely further authenticate and establish accessibility of all of the above prior art publications, as well as further corroborate Mr. Johnson was aware of at least the Gitzo tripods at the time the '037 patent application was filed.

In addition, once this *Inter Partes* Review is instituted, the Petitioner intends to depose an employee of archive.org (publisher of the Wayback Machine) in order to further corroborate the publication date and public accessibility of the Gitzo 2009 sales catalog.

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YouTube4 (Ex. 1009, p. 4) - Gitzo Systematic Tripod



The screenshot shows a YouTube video player. The browser address bar displays the URL <https://www.youtube.com/watch?v=G4iOxH5vyCo>. The video title is "Really Right Stuff L Plate Advantages". The video content shows a person in a purple checkered shirt holding a Canon camera mounted on a Gitzo Systematic Tripod. A red arrow points to the tripod with the text "Gitzo Systematic Tripod". The video player controls show a progress bar at 0:50 / 2:18. Below the video, the channel name "Really Right Stuff" is displayed with 7.22K subscribers and a "Subscribe" button. The video has 189 likes and a "Share" button. The description indicates 102,566 views on April 9, 2009, and provides a brief description of the Really Right Stuff L-Plate.

Really Right Stuff L Plate Advantages

Really Right Stuff
7.22K subscribers

Subscribe

189 | Share | Clip

102,566 views Apr 9, 2009
A brief description on the advantages of a Really Right Stuff L-Plate.

Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

YouTube4 (Ex. 1009, p. 5) - Gitzo Systematic Tripod Enlarged



Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

YouTube4 (Ex. 1009, p. 8) - Gitzo Basalt Tripod



The screenshot shows a YouTube video player interface. The video content features a man in a light purple shirt standing in front of a wood-paneled wall, holding a black DSLR camera mounted on a black tripod. A white text box with red text "Gitzo Basalt Tripod" and a red arrow points to the tripod. The video player controls at the bottom show a progress bar at 1:38 / 2:18, a play button, and various icons for settings, full screen, and sharing. Below the video player, the video title "Really Right Stuff L Plate Advantages" is displayed, followed by the channel name "Really Right Stuff" with 7.22K subscribers and a "Subscribe" button. Engagement metrics show 189 likes and 102,566 views from April 9, 2009. The description reads: "A brief description on the advantages of a Really Right Stuff L-Plate."

Really Right Stuff L Plate Advantages

Really Right Stuff
7.22K subscribers

Subscribe

189

Share

Clip

102,566 views Apr 9, 2009

A brief description on the advantages of a Really Right Stuff L-Plate.

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YouTube4 (Ex. 1009, p. 9) - Gitzo Basalt Tripod Enlarged



E. Grounds of Unpatentability

The following claims should be cancelled on the following grounds:

Ground	Statutory Basis for Challenge
1	Claims 1, 2, 5 and 18 are anticipated by Yang.
2	Claims 3 and 4 are rendered obvious by Gitzo 2009/YouTube2 in view of Yang.
3	Claims 19, 20 and 21 are obvious in view of Yang.
4	Claims 16 and 17 are anticipated by Yang.
5	Claims 6, 7, 8, are anticipated by Gitzo 2009/YouTube1/YouTube3.
6	Claim 15 is anticipated by Gitzo 2009.
7	Claim 15 is rendered obvious by YouTube1/YouTube3 in view of Yang.
8	Claims 22, 23, and 24 are anticipated by Gitzo 2009.
9	Claims 25, 26, 27, and 28 are rendered obvious by Gitzo 2009 in view of Yang.

IV. OVERVIEW OF THE '037 PATENT

A. Technical Background of Tripods

Conventional tripods for supporting equipment, such as cameras, were conceived many decades ago, long before the priority date of the '037 patent. There have been multiple companies engaged in the manufacture of tripods, one such being Gitzo founded in France in 1917 which introduced tripods and tripod heads into their product line during the late 1940s. (Ex. 1010, pp. 2-3). All of the prior art publications relied on to support this petition, including the Yang patent publication,

the sales catalog published by Gitzo in 2009, and the three YouTube videos, together or separately, clearly either anticipate or render obvious all limitations of the Challenged Claims as described in detail below, including a tripod having legs with an “off-center” pivot axis, the use of an angle stop, an apex comprising a warning member, a foot having a curved surface, a platform including an open-ended hook, and an “elevator column” type platform

B. The ‘037 Patent Specification

1. Claims 1 and 18: Off-center Pivot Axis

FIGs. 2 and 3A of the ‘037 patent show an embodiment wherein a tripod has legs 14 that rotate about a pivot 22 that is off-center in relation to a circumference of the leg 14:

Referring also to FIG. 2, each of the legs 14 preferably pivots about a respective axis 22 proximate the apex 18. (Ex. 1001, 3:1-2). Referring to FIGS. 3A-3C, the tripod 10 preferably includes legs 14 that pivot about the axis 22 off-center from a longitudinal centerline of the respective legs 14. (Ex. 1001, 3:36-38).

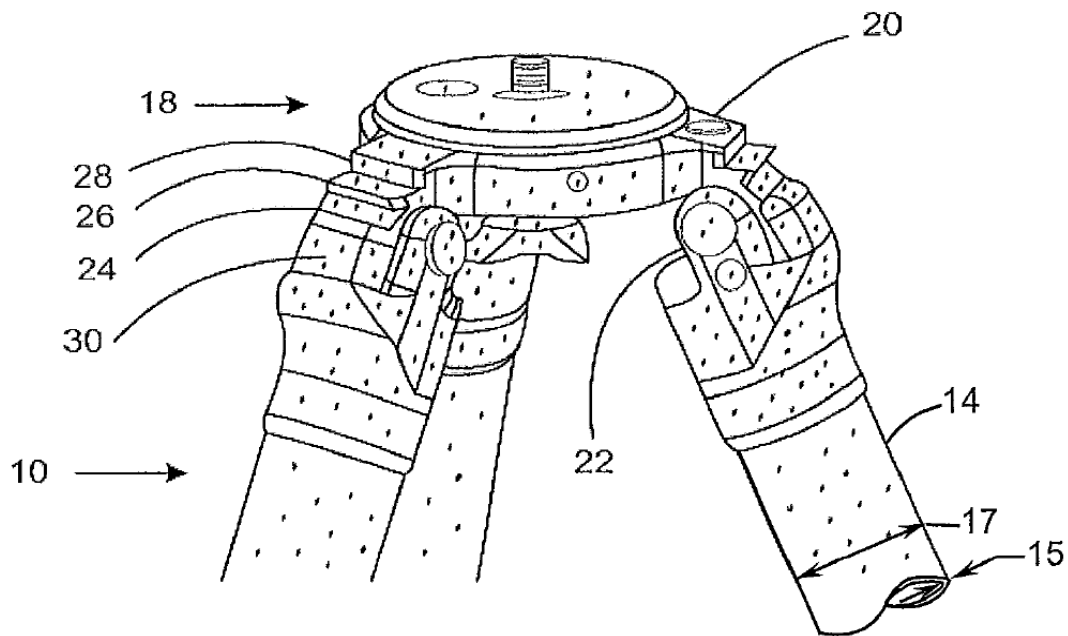


Fig. 2

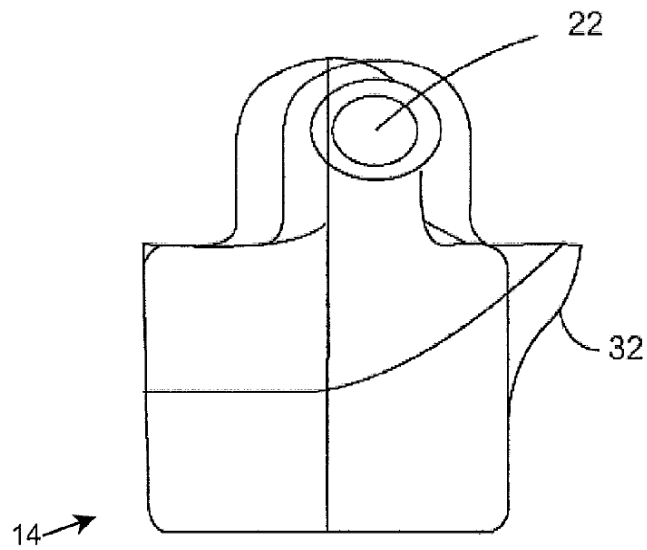


Fig. 3A

2. Claim 6: Apex Comprising a Warning Member

FIG. 4A of the '037 patent shows an embodiment wherein an apex 18 comprises a warning member in the form of screws 50 having a first state “screws in” that indicates that a platform 12 is securely engaged with said apex 18, and a second state “screws out” that indicates that said platform 12 is not securely engaged with said apex 18:

Tripods are often carried from one location to another with the equipment, e.g. a camera, still attached. In this situation, it is sometimes the base of the platform 12, and hence the equipment, that is not securely attached to apex 18 causing the equipment to detach and fall to the ground. This can be disastrous if the equipment is expensive. To reduce the likelihood of such a disastrous event, the tripod 10 may include a visual warning system 40, illustrated in FIGS. 4A and 4B, that indicates to a user when the platform 12 is not securely fastened to the apex 18. (Ex. 1001, 4:6-15). Preferably, the warning members 50 include an outer surface 52 that is flush with the surface 54 of the apex 18 when the platform 12 is fully locked into the apex 18. In this manner, a user can be quickly visually warned when the platform is not securely engaged because the warning members 50 will be extended radially-outward from the outer surface 54 of the apex 18. (Ex. 1001, 4:34-40).

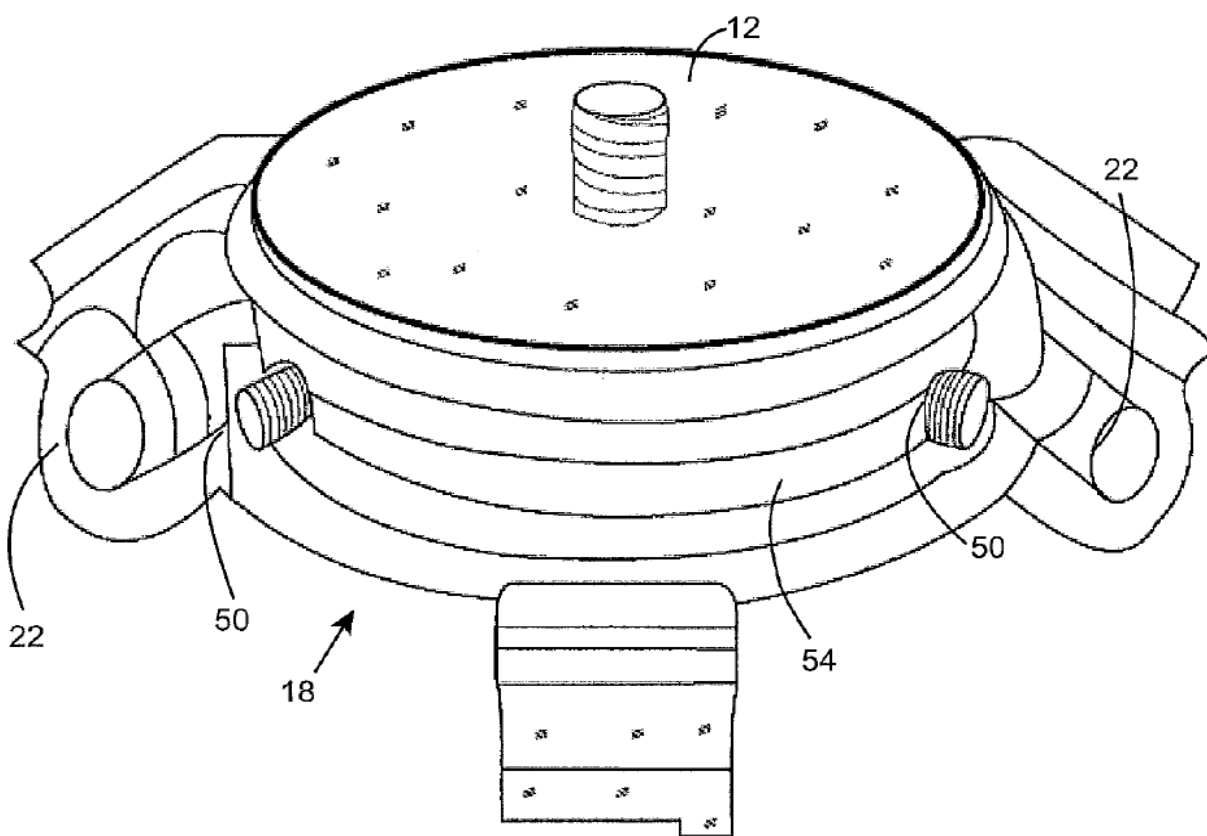


Fig. 4A

3. Claim 16: A Selectively Releasable Angle Stop

FIGs. 14 and 16 of the '037 patent show an embodiment wherein a selectively releasable angle stop 30 defines a plurality of fixed angular positions around a pivot axis:

The tripod 10 preferably includes graduated ratcheting surfaces 24, 26, and 28, along with a retractable angle stop 30. In operation, the pivot angle of the legs may be adjusted so that the angle stop 30 rests against a desired one of the ratcheting surfaces 24, 26, or 28, which then

prevent the weight of the attached equipment from further pivoting the legs. (Ex-1001, 3:55-59).

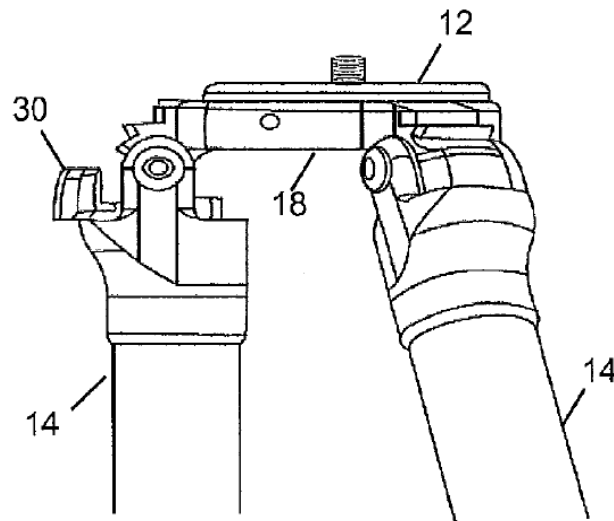


Fig. 14

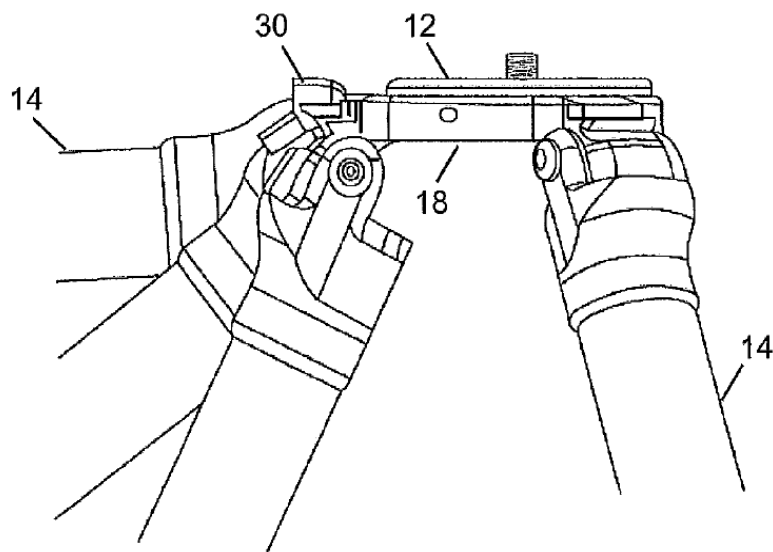


Fig. 16

4. Claim 22: A Foot Having a Curved Surface

FIG. 8 of the '037 patent shows an embodiment wherein a foot 80 has a curved surface 86:

Referring to FIG. 8, each of the legs 14 of the tripod 10 may include a foot 80 having a shape that includes an upper portion secured to a respective leg and a lower portion defining a convex surface 86 that extends radially beyond the diameter of the respective leg 14 to which the foot 80 is attached. (Ex. 1001, 5:44-48).

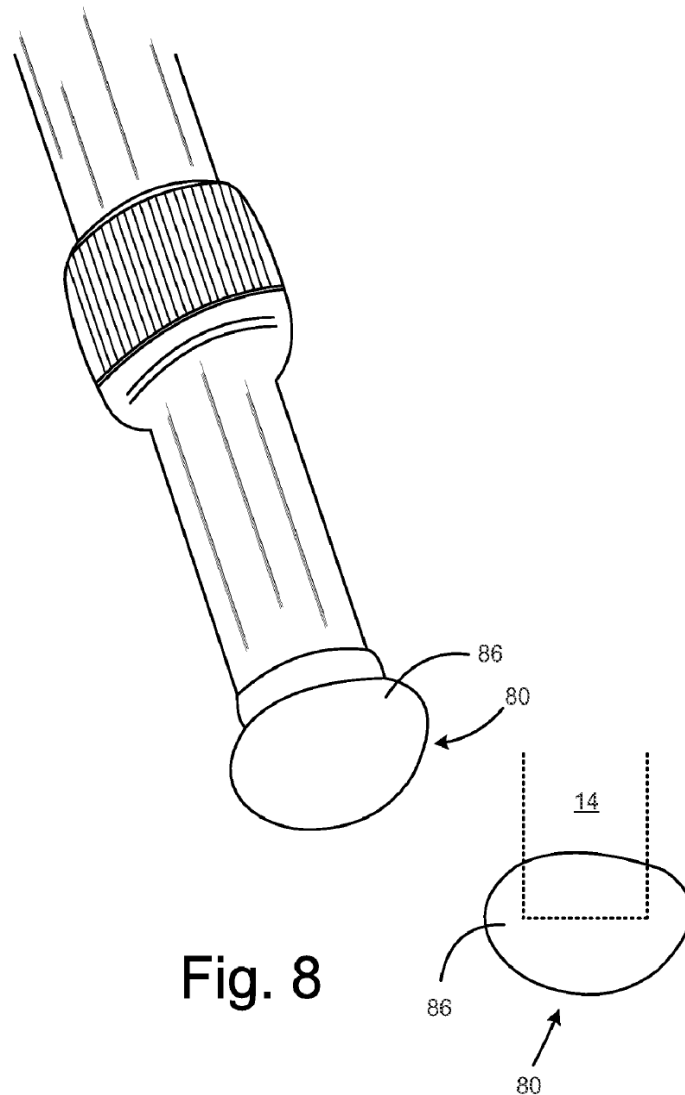


Fig. 8

5. Claim 25: A Platform Including an Open-Ended Hook

FIG. 7A of the '037 patent shows an embodiment wherein a platform 12 comprises an open-ended hook 70 integrally forming a closed-loop aperture 78:

Referring to FIGS. 7A and 7B, the tripod 10 may include a platform 12 having a fastener 70 attached to the bottom surface of the platform 12. The fastener 70 is preferably shaped, in profile, as a hook... (Ex. 1001, 5:23-26). The surface 76 preferably defines closed-loop aperture 78 by which a carabineer or similar attachment device may be securely attached to the fastener 70. (Ex. 1001, 5:34-36).

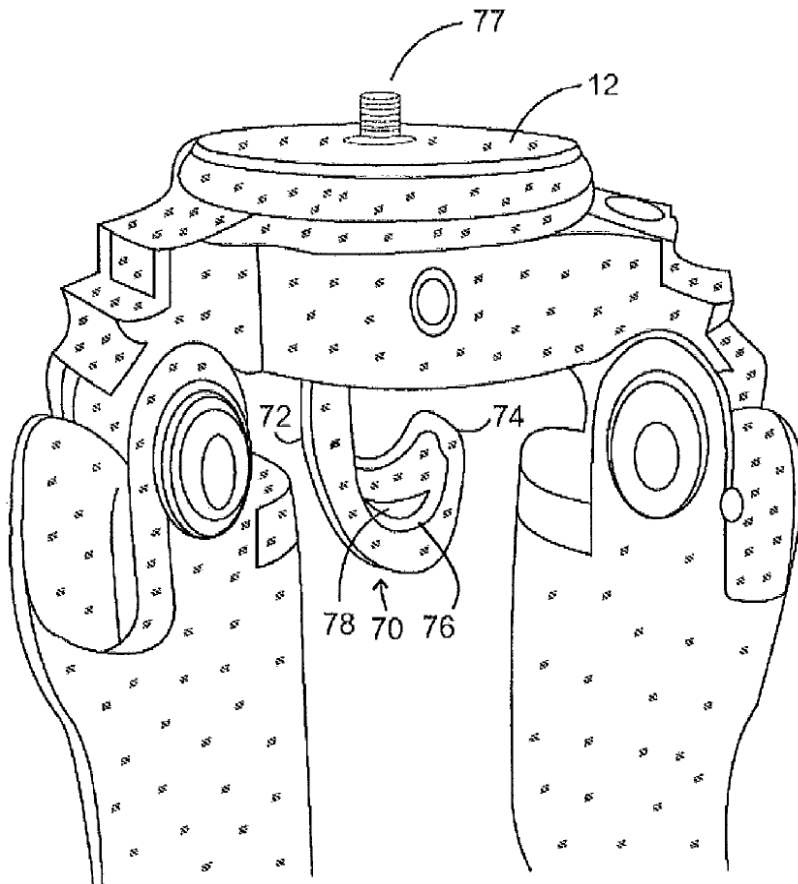


Fig. 7A

6. Claim 15: Platform Attached at Selective Height

FIGs. 11A and 11B of the '037 patent show an embodiment wherein an “elevator column” type platform 106 is attachable to said attachment member at a selective height relative to said apex:

Referring to FIGs. 11A and 11B, a quick column 106 may be engaged within the apex of the tripod, in a manner similar to that of the platform. By loosening and tightening the knurled stem 108, the head 110 of the quick column 106 may be raised and lowered, and selectively secured in position. This provides a platform for equipment of variable height in a manner generally independent of the height of the tripod. (Ex. 1001, 5:65 to 6:4).

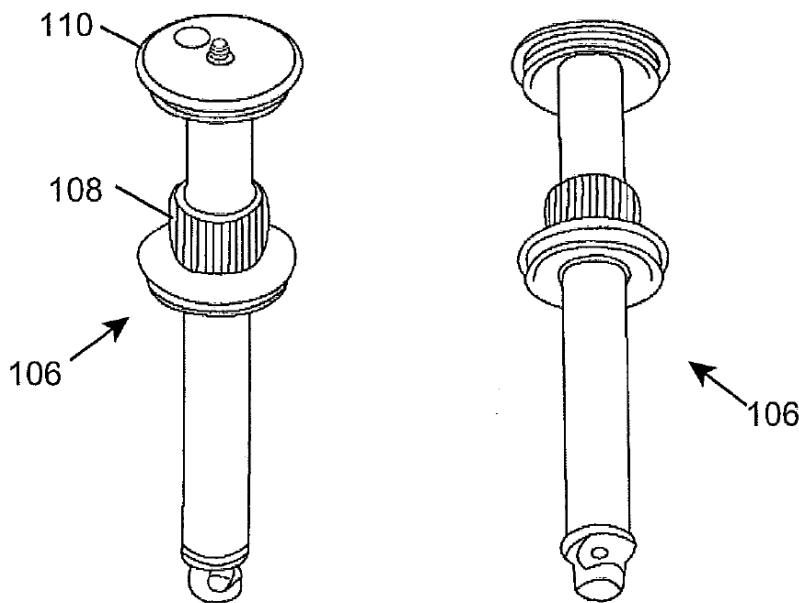


Fig. 11A

Fig. 11B

C. Prosecution History of the ‘037 Patent

The non-provisional application for the ‘037 patent was filed on February 22, 2011. On August 09, 2012, the patent examiner rejected original claims 1-5 under 35 U.S.C. § 103 as unpatentable over Wood, III et al. Pub. No. 20060175484 (Ex. 1003, pp. 16-19). Original claims 1-5 are reproduced below (Ex. 1003, pp. 21-25):

1. A support having a plurality of elongated hollow leg members, each at least partially supporting an apex selectively, detachably mountable to equipment, at least one leg member having a circumferential wall of a thickness along a major portion of its length no more than approximately 0.04 inches.
2. The support of claim 1 where said at least one leg member is selectively, alternatively extensible from and retractable into another one of said leg members.
3. The support of claim 1 where said plurality of elongated hollow leg elements are arranged radially around said apex.
4. The support of claim 1 where said at least one leg member has a diameter of at least approximately 1.5 inches.
5. The support of claim 1 where said apex defines a supporting surface for said equipment, and said at least one leg member selectively pivots about a pivot axis parallel to said supporting surface.

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In rejecting original claims 1-5, the patent examiner asserted:

Wood, III discloses a tripod having an apex (102), three hollow legs pivotally attached to the apex, the legs being adjustable in length. The dimension of the legs is considered a matter of engineering choice; one skilled in the art would make the legs of any desired diameter. (Ex. 1003, pp. 17-18).

The patent examiner objected to, but otherwise allowed, original claims 6-10, and allowed original claims 11-33. (Ex. 1003, p. 18). In a response filed on November 09, 2012, the applicant canceled original claims 1-5, rewrote allowed claim 6 to incorporate the limitations of independent and intervening claims 1 and 5, and accepted allowed claims 11-33 (Ex. 1003, pp. 6-14) which issued as claims 1-28 in the 037 patent. (Ex. 1001, pp. 20-21).

The prosecution history clearly shows that certain claim limitations in the Challenged Claims were clearly known to those skilled in the art, including tripods having an apex, and hollow legs for supporting the apex. The prosecution history also demonstrates how particular dimensions or degree of offset is a matter of “engineering choice.” (Ex. 1003, pp. 17-18).

D. The Challenged Claims

The challenged independent claims of the ‘037 patent are reproduced in the chart below:

Claim		Element
1.	[Pre]	A support having
	[A]	a plurality of elongate hollow leg members,
	[B]	each at least partially supporting an apex selectively, detachably mountable to equipment and defining a supporting surface for said equipment,
	[C]	at least one leg member selectively pivoting about a pivot axis parallel to said supporting surface and at an off-center position in relation to a circumference of said at least one leg member.
6.	[Pre]	A support having
	[A]	an apex selectively, detachably mountable to a platform for securing equipment to said platform,
	[B]	said apex comprising an attachment member selectively attachable to a said platform; and at least one warning member
	[C]	[the at least one warning member] having a first state that indicates that said platform is securely engaged with said apex
	[D]	[the at least one warning member having] a second state that indicates that said platform is not securely engaged with said apex.
16.	[Pre]	A support comprising:
	[A]	at least one elongate leg element at least partially supporting an apex selectively, detachably mountable to equipment;
	[B]	a selectively releasable angle stop that, together with said apex, defines a plurality of fixed angular positions around a pivot axis at which angular rotation of said at least one leg element around said pivot axis in a first direction is selectively, automatically inhibited; where
	[C]	said angle stop has a first position that permits manual rotation of said leg element in said first direction without

Claim		Element
		said angle stop engaging with said apex in at least one of said fixed angular positions, and
	[D]	[said angle stop has] a second position where manual rotation of said leg element in a second direction causes said angle stop to automatically engage into a next sequential one of said fixed angular positions.
18.	[Pre]	A support comprising:
	[A]	an apex supported by at least one elongate leg capable of pivoting about a pivot axis parallel to a support surface of said apex; where
	[B]	said pivot axis is offset from a centerline of a cross section of said elongate leg, said centerline parallel to said pivot axis.
22.	[Pre]	A support for supporting equipment, said [support] comprising:
	[A]	at least one elongate leg element at least partially supporting an apex selectively, detachably mountable to equipment, where said leg includes a first end proximate said apex and a second end distal said apex, and where said leg is pivotal about an axis proximate said first end throughout a limited arc
	[B]	a foot at said second end having a curved surface that, while said support supports equipment above a supporting surface, is tangent to said supporting surface throughout said arc.
25.	[Pre]	A platform
	[A]	selectively, detachably mountable to an apex of a support having a plurality of legs extending from said apex,
	[B]	said platform including an open-ended hook integrally forming a closed-loop aperture,
	[C]	said hook rotatable about a substantially vertical axis.

The challenged dependent claims are: (i) 2-5 from independent claim 1; (ii) 7-8 and 15 from independent claim 6; (iii) 17 from independent claim 16; (iv) 19-21 from independent claim 18; (v) 23-24 from independent claim 22; and (vi) 26-28 from independent claim 25.

V. LEVEL OF ORDINARY SKILL IN THE ART

The person of ordinary skill in the art is a hypothetical person who is presumed to have known the relevant art at the time of the invention. *In re GPAC, Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). The "hypothetical 'person having ordinary skill in the art' to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art." *Ex parte Hiyamizu*, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Inter. 1988). In the present case, a person having ordinary skill in the art would have had, through education or practical experience, at least the equivalent of a bachelor's degree in mechanical engineering, or a related field, and would have understood the basics of designing and manufacturing tripod devices (e.g., screws, levers, rings, and other related hardware). This characterization is supported by the prior art of record which in this case reflects the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

VI. CONSTRUCTION OF THE CHALLENGED CLAIMS

Petitioner only addresses the question of the correct construction of those terms relevant to this Petition. Petitioner makes no admission as to the interpretation to be given any term in district court litigation. Additionally, Petitioner makes no admission that the claims conform to the requirements of 35 U.S.C. § 112 and preserves all such arguments.

A. “off-center support surface”

Petitioner asserts the term “off-center support surface” of the “leg” recited in claims 3 and 4 of the '37 patent should be construed as “off-center” relative to the pivot axis of the leg. This construction is consistent with the term “off-center” in the independent claim 1 which recites “at least one leg member selectively pivoting about a pivot axis... at an ‘off-center’ position in relation to a circumference of said at least one leg member.”

VII. EXPLANATION OF THE GROUNDS OF UNPATENTABILITY

A. Ground 1: Claims 1, 2, 5, and 18 are anticipated by Yang

Yang (Ex. 1004), which is entitled “TRIPOD FOR CAMERA”, discloses a tripod in FIG. 1 for supporting camera equipment. As described in greater detail below, Yang discloses many limitations recited in the claims of the '037 patent, including a hollow leg that is off-center from a pivot axis, a selectable height

“elevator column” type platform, a rotatable hook for supporting a weight, as well as other of the claim limitations clearly shown in the additional drawings.

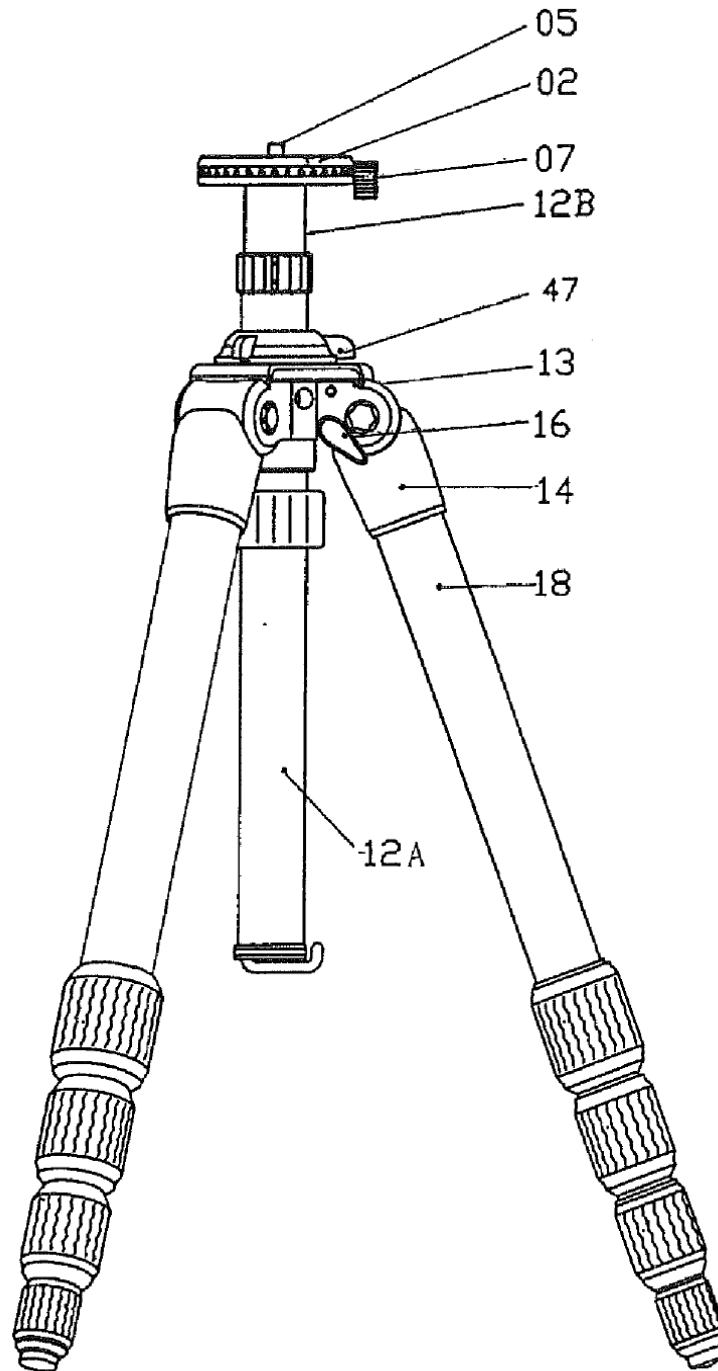


FIG. 1

1. Yang anticipates independent claim 1

a. The Preamble [Pre] – claim 1

A support having

To the extent that the preamble is limiting, Yang discloses a support (FIG. 1).

b. Limitation [A]

a plurality of elongate hollow leg members,

Yang discloses in FIG. 1 and 2, a plurality of elongate hollow leg members, such as leg member 18. (Ex. 1004, [0030]).

c. Limitation [B]

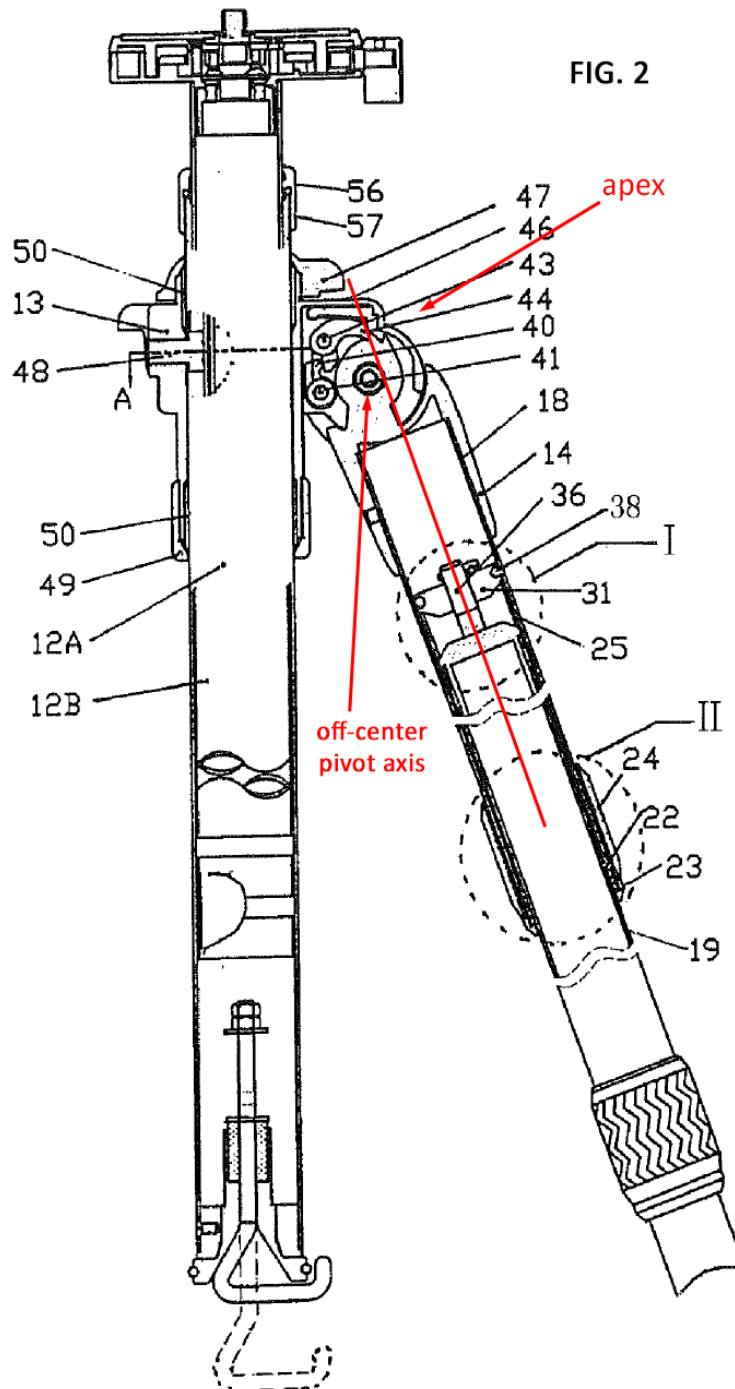
each at least partially supporting an apex selectively, detachably mountable to equipment and defining a supporting surface for said equipment,

Yang discloses in FIG. 1 and 2, each [leg] at least partially supporting an apex selectively, detachably mountable to equipment and defining a supporting surface (turntable 2) for said equipment, (Ex. 1004, [0032]).

d. Limitation [C]

at least one leg member selectively pivoting about a pivot axis parallel to said supporting surface and at an off-center position in relation to a circumference of said at least one leg member.

Yang discloses in FIG. 2 (annotated below), at least one leg member 18 selectively pivoting about a pivot axis parallel to said supporting surface and at an off-center position in relation to a circumference of said at least one leg member 18.



The attorney (Kevin Russell) for the Patent Owner stated in letter dated April 9, 2023 sent to the attorney (Howard H. Sheerin) for the Petitioner: “Upon further review of the ‘000 publication, we agree with your position that the drawings of the ‘000 publication itself shows that the pivot point is at an ‘off-center’ location.” (*See* Declaration of Mr. Sheerin, Ex. 1010, p. 38). This statement is an admission by the Patent Owner that Yang anticipates at least claims 1 and 18 of the ‘037 patent, which means this IPR should be instituted.

The Petitioner also anticipates the Patent Owner may assert the “off-center position” of the pivot axis shown in FIG. 2 of Yang is a scaling artifact of the patent drawings,⁵ and that Yang fails to disclose any benefit for the “off-center position.” However, the Federal Circuit in *Hockerson-Halberstadt* merely held that “patent drawings do not define the precise proportions of the elements and may not be relied on to show *particular sizes* if the specification is completely silent on the issue.” *Hockerson-Halberstadt* at 956 (emphasis added). In this case, FIG. 2 of Yang is not relied on to show any *particular size* of elements; rather, Yang simply and clearly shows the claimed element of a tripod leg having an “off-center position” relative to its pivot axis. Further, there is nothing in patent law that requires a prior art reference to teach a benefit of any particular mechanical configuration in order for the prior

⁵ *Hockerson-Halberstadt v. Avia Group Int'l*, 222 F.3d 951 (Fed. Cir. 2000).

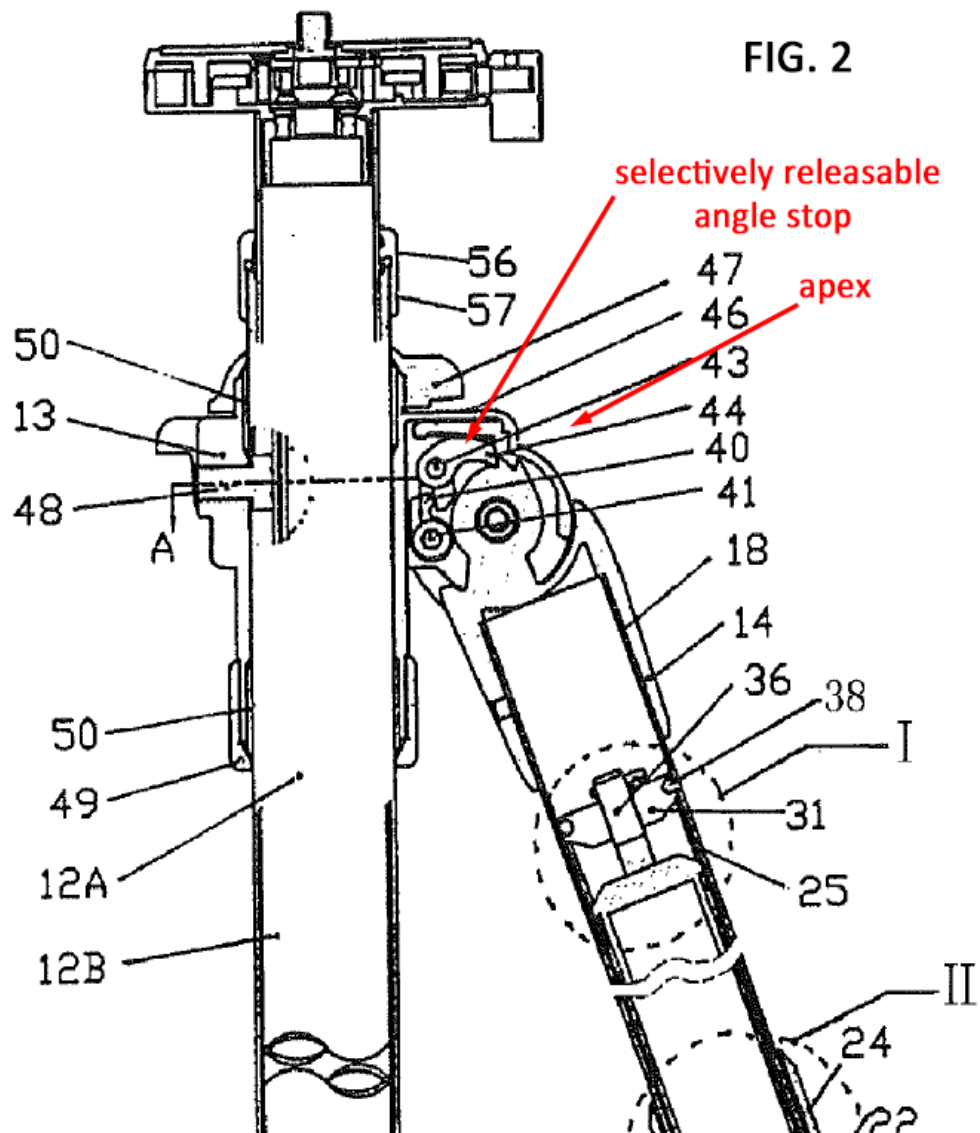
art to anticipate a claim limitation. To the contrary, it is well established that the benefits of any particular mechanical configuration are inherent regardless as to whether they are described in a prior art reference.⁶

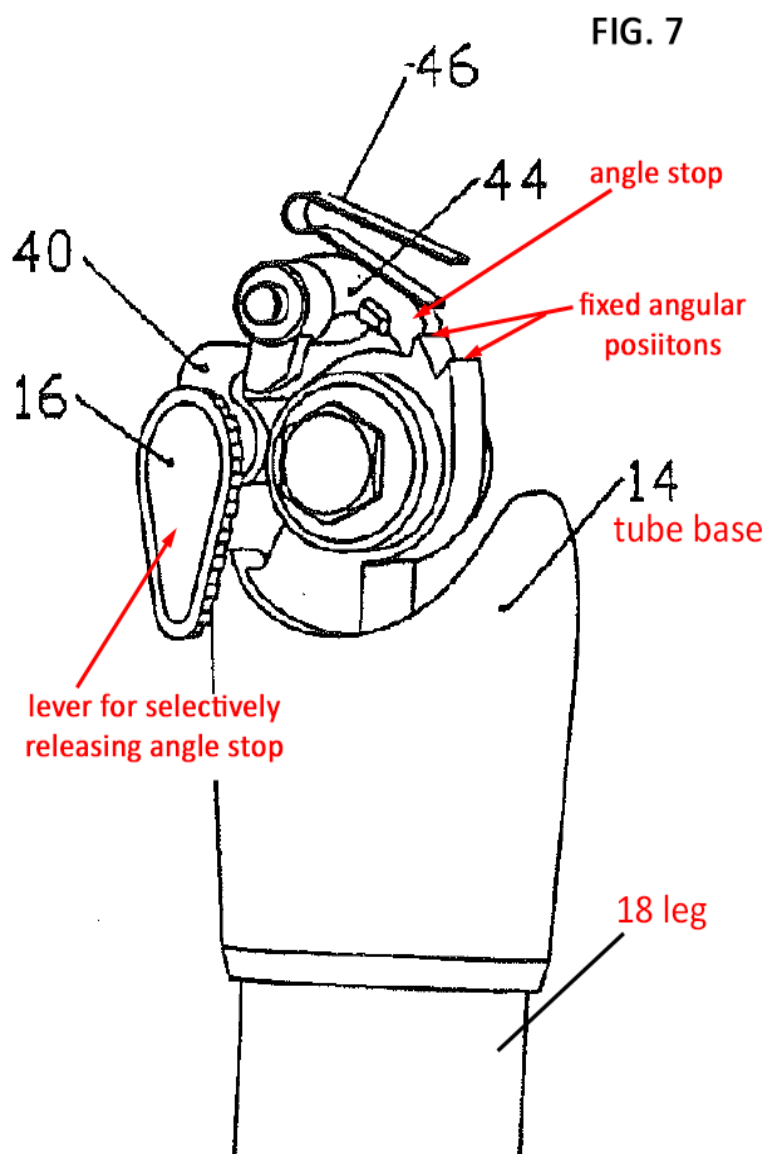
2. Yang anticipates dependent claim 2

The support of claim 1 where said at least one leg member is operatively engaged with a selectively releasable angle stop that, together with said apex, defines a plurality of fixed angular positions around said pivot axis at which angular rotation of said at least one leg member around said pivot axis is inhibited.

Yang (Ex. 1004) discloses in FIGs. 2 and 7 (annotated below), where said at least one leg member 18 is operatively engaged with a selectively releasable angle stop 44 that, together with said apex, defines a plurality of fixed angular positions around said pivot axis at which angular rotation of said at least one leg member around said pivot axis is inhibited. (Ex. 1004, [0028]-[0029]).

⁶ See MPEP § 2112 citing *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977); In *In re Crish*, 393 F.3d 1253, 1258, 73 USPQ2d 1364, 1368 (Fed. Cir. 2004); *Schering Corp. v. Geneva Pharm. Inc.*, 339 F.3d 1373, 1377, 67 USPQ2d 1664, 1668 (Fed. Cir. 2003); *Et al.*





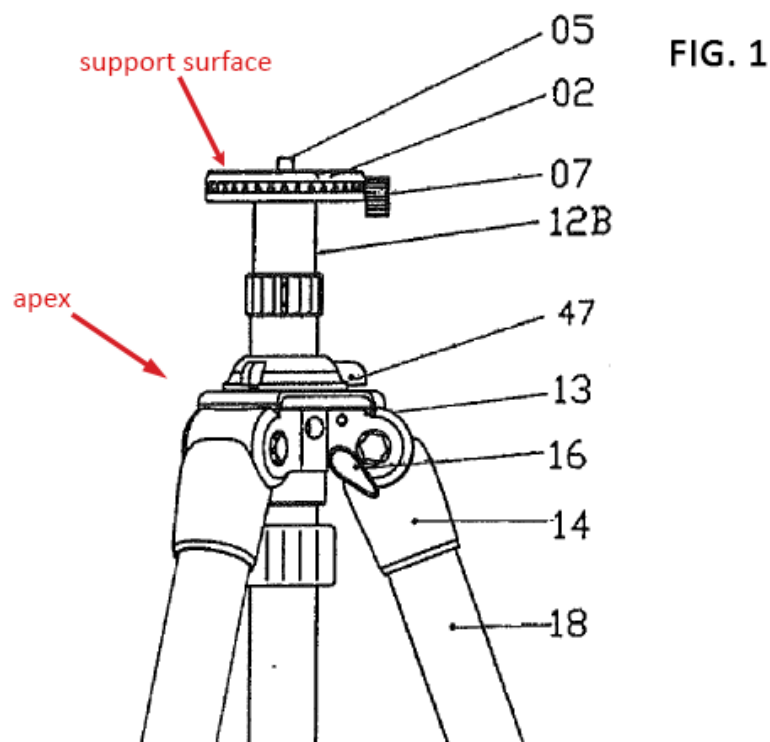
The limitation of the claim “together with said apex” is met by Yang under at least two interpretations of claim 2. First, the angle stop 44 shown in FIG. 2 of Yang is connected to the apex in order to inhibit the rotation of the leg 18. (Ex. 1004, [0028]). Alternatively, the tube base 14, which includes the ratchet (teeth) for

engaging the angle stop 44, is part of the “apex” recited in claim 2 rather than part of the leg 18 (see above annotated FIGs. 2 and 7 of Yang, Ex. 1004).

3. Yang anticipates dependent claim 5

The support of claim 2 where said apex defines a supporting surface for said equipment, and where said angle stop automatically ratchets into a next sequential one of said fixed angular positions as said at least one leg member is pivoted towards a perpendicular position with respect to said supporting surface.

Yang (Ex. 1004) discloses in FIGs. 1 and 7 (annotated below), where said apex defines a supporting surface for said equipment, and where said angle stop automatically ratchets into a next sequential one of said fixed angular positions as said at least one leg member is pivoted towards a perpendicular position with respect to said supporting surface. (Ex. 1004, [0028]-[0029]).



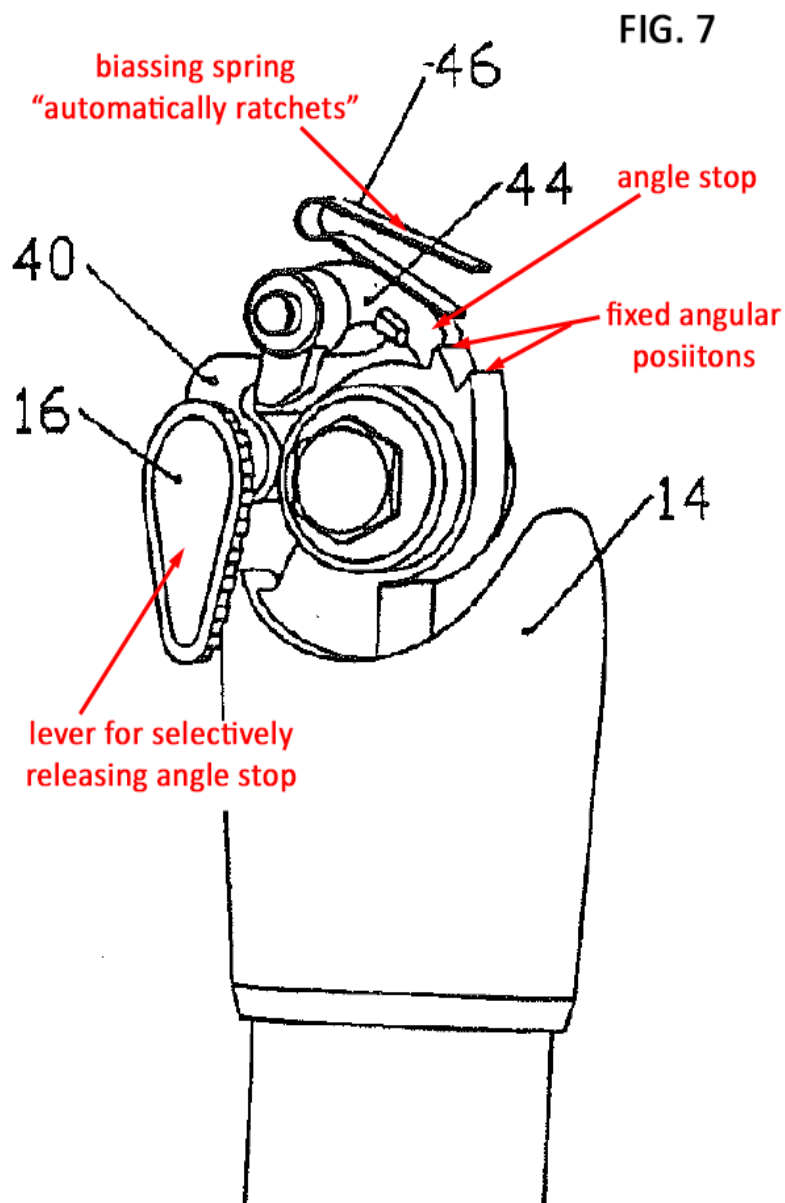


FIG. 7 of Yang (annotated above) clearly shows a biasing spring 46 which biases the angle stop 44 towards the ratchet (teeth) that define the fixed angular positions. When the lever 16 is rotated clockwise, the angle stop 44 disengages the ratchet (teeth) so that the leg may be pivoted away from an initial perpendicular

position. When the lever 16 is released, the spring 46 biases the angle stop 44 toward the ratchet (teeth) such that the “angle stop automatically ratchets into a next sequential one of said fixed angular positions as said at least one leg member is pivoted towards a perpendicular position with respect to said supporting surface.” (Ex. 1004, [0028]-[0029]).

4. Yang anticipates independent claim 18

a. The Preamble [Pre] – claim 18

A support comprising:

To the extent that the preamble is limiting, Yang discloses a support (FIG. 1).

b. Limitation [A]

an apex supported by at least one elongate leg capable of pivoting about a pivot axis parallel to a support surface of said apex; where

Yang discloses Limitation [A] (*see* Sections VII.A.1.b, VII.A.1.c, VII.A.1.d *supra*).

c. Limitation [B]

said pivot axis is offset from a centerline of a cross section of said elongate leg, said centerline parallel to said pivot axis.

Yang discloses Limitation [B] (*see* Section VII.A.1.d *supra*).

B. Ground 2: Gitzo 2009/YouTube2 in view of Yang render obvious claims 3 and 4

Gitzo 2009 is a sales catalog published by Gitzo S.A. at least as early as June 22, 2009, and YouTube2 is a YouTube.com video published on November 18, 2008 that reviews the Gitzo G1098 tripod. Both of these publications show the configuration and operation of a “Basalt” collection tripod manufactured by Gitzo.⁷ (Ex. 1010, pp. 20-23).

1. Gitzo 2009/YouTube2 in view of Yang render obvious dependent claim 3

Claim 3 depends from claim 2 which depends from independent claim 1.

a. The Preamble [Pre] – claim 1

A support having

To the extent that the preamble is limiting, Gitzo 2009/YouTube2 discloses a support (Ex. 1005, p. 33; Ex. 1007, pp. 1-4).

⁷ The Gitzo G1098 tripod is part of the “Basalt” collection of Gitzo tripods which are described in detail in Gitzo 2009 on pages 33-35. (Ex. 1005, pp. 33-35). The tripod shown on page 33 of Gitzo 2009 (Ex. 1005, p. 33) titled “Basalt Collection” is essentially the same as the Gitzo G1098 tripod reviewed in the YouTube2 video (Ex. 1007, pp. 1-4).

b. Limitation [A]

a plurality of elongate hollow leg members,

Gitzo 2009 discloses a plurality of elongate hollow leg members (Ex. 1005, p. 34) as does YouTube2 (Ex. 1007, p. 1).

c. Limitation [B]

each at least partially supporting an apex selectively, detachably mountable to equipment and defining a supporting surface for said equipment,

Gitzo 2009 discloses that each [leg] at least partially supporting an apex selectively, detachably mountable to equipment and defining a supporting surface for said equipment, (Ex. 1005, pp. 33-35) as does YouTube2 (Ex. 1007, pp. 1-4).

d. Limitation [C]

at least one leg member selectively pivoting about a pivot axis parallel to said supporting surface and at an off-center position in relation to a circumference of said at least one leg member.

Yang discloses Limitation [C] (*see* Sections VII.A.1.b, VII.A.1.c, VII.A.1.d *supra*).

e. Claim 2

The support of claim 1 where said at least one leg member is operatively engaged with a selectively releasable angle stop that, together with said apex, defines a plurality of fixed angular positions around said pivot axis at which angular rotation of said at least one leg member around said pivot axis is inhibited.

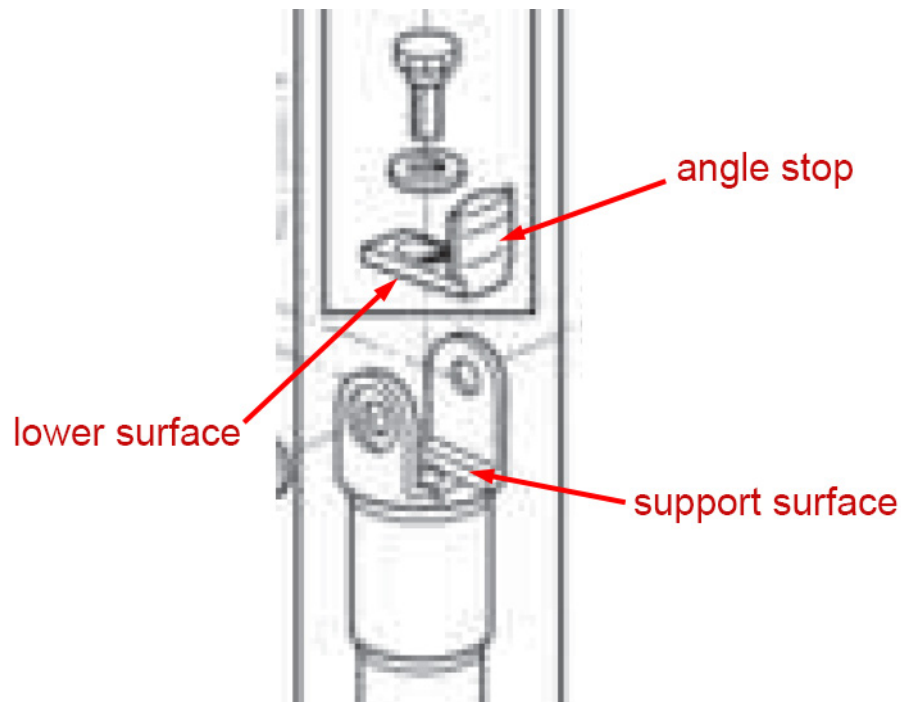
Yang discloses the limitations of claim 2 (*see* Sections VII.A.2 *supra*).

f. Claim 3

The support of claim 2 where said angle stop has a lower surface that bears against said at least one leg member, and where said at least one leg member includes an off-center support surface that bears against said angle stop along a major portion of said lower surface in each of said plurality of fixed angular positions.

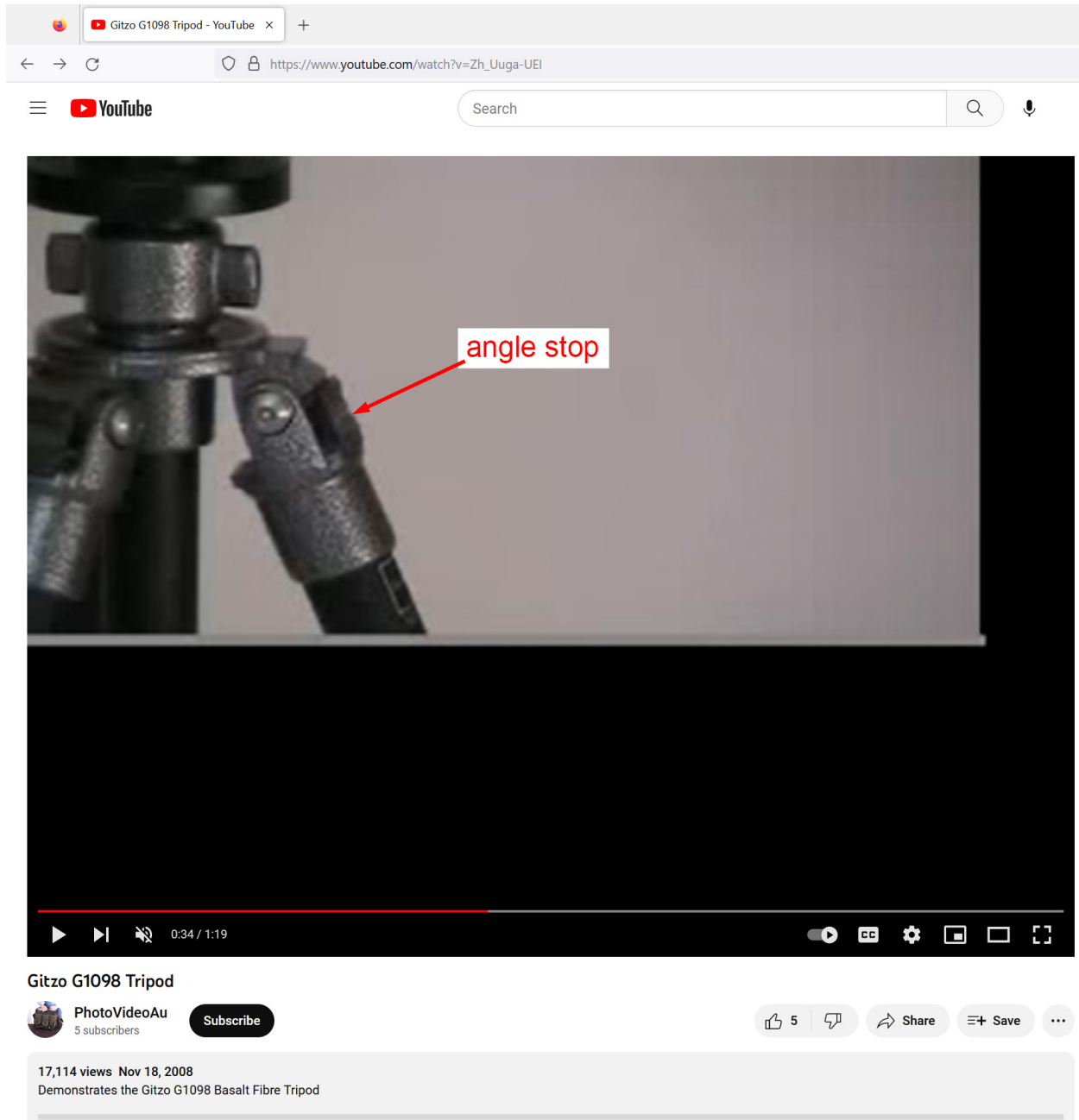
The annotated figures below show that Gitzo 2009/YouTube2 both disclose an angle stop having a lower surface that bears against said at least one leg member, where said at least one leg member includes a support surface that bears against said angle stop along a major portion of said lower surface in each of said plurality of fixed angular positions.

Gitzo 2009 (Ex. 1005, p. 114)



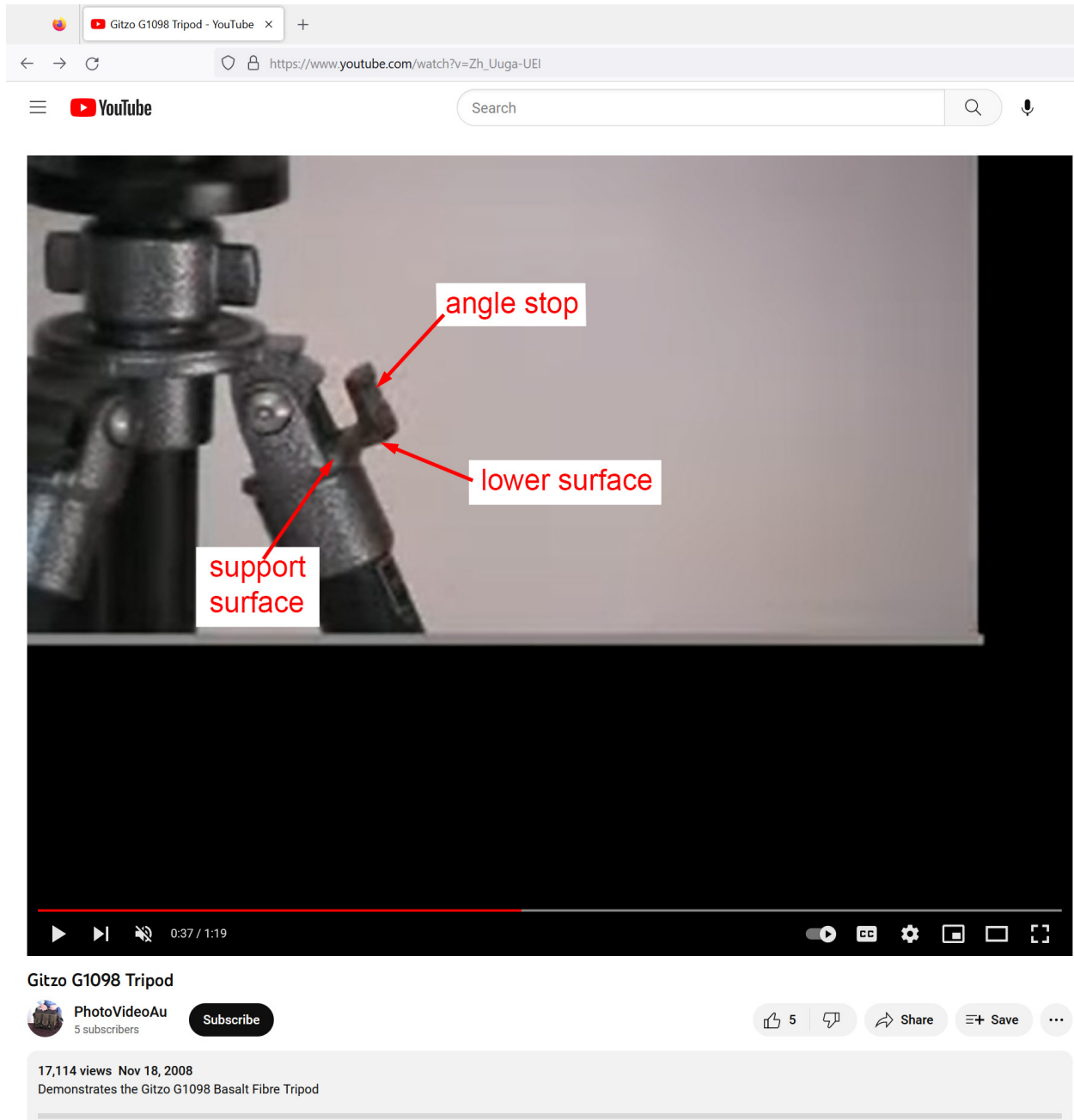
Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

YouTube2 (Ex. 1007, p. 3)



Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

YouTube2 (Ex. 1007, p. 4)



It would have been obvious to modify Gitzo 2009/YouTube2 in view of Yang so that the angle stop in Gitzo 2009/YouTube2 (which has a lower surface that bears against at least one leg member) would bear against an “off-center support surface”

of the leg. As asserted above in Section VI.A, the term “off-center support surface” should be construed as “off-center” relative to the pivot axis of the leg. A POSITA would be motivated to combine Gitzo 2009/YouTube2 with Yang (so that each leg has an “off-center” pivot access as taught by Yang) since all three references are in the same field. Further, there would be no unforeseen benefit of modifying the legs of a tripod so that each leg has an “off-center” pivot axis as taught by Yang. Once Yang discloses this modification to tripods, the modification becomes merely a design choice to a POSITA. Given that the “off-center” pivot axis would be an obvious design choice to a POSITA, once Gitzo 2009/YouTube2 are modified to have legs with an “off-center” pivot axis, then the “off-center support surface” of each leg recited in claim 3 becomes inherent as clearly illustrated by the above annotated figures.

2. Gitzo 2009/YouTube2 in view of Yang render obvious dependent claim 4

Claim 4 depends from claim 3 which depends from claim 2 which depends from independent claim 1, where claim 3 is rendered obvious by Gitzo 2009/YouTube2 in view of Yang (*see* Sections VII.B.1.b-f *supra*).

The support of claim 3 where said off-center support surface bears against said angle stop along all of said lower surface in each of said plurality of fixed angular positions.
--

This limitation of Claim 4 is clearly shown in the above annotated figures for Gitzo 2009/YouTube2 (*see* Section VII.B.1.f *supra*).

C. Ground 3: Yang renders obvious Claims 19, 20 and 21

1. Yang renders obvious claim 19

The support of claim 18 where said offset measures at least one-tenth the minimum diameter of said elongate leg.

2. Yang renders obvious claim 20

The support of claim 18 where said offset measures at least one-eighth the minimum diameter of said elongate leg.

3. Yang renders obvious claim 21

The support of claim 18 where said offset measures approximately one-sixth the minimum diameter of said elongate leg.

Yang anticipates claim 18 (*see* Section VII.A.4 *supra*), and it is well established that any particular dimensions or degree of offset is a matter of “engineering choice” as noted by the patent examiner during prosecution of the ‘037 patent. (Ex. 1003, pp. 17-18). *See* MPEP § 2144.VI.C “shifting the position of [an element] would not have modified the operation of the device.” citing *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975). In this case, shifting the “offset” any degree does not provide any unforeseen benefit or modify the operation of the device in any unforeseen way.

Even assuming *arguendo* that shifting the “offset” will modify the operation of the device, in view of the teaching of Yang it would have been obvious for a POSITA to try different “offset” positions of the leg relative to its pivot axis. See MPEP § 2143.I(E) “‘Obvious to Try’ - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;” referencing *KSR International*: “When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.” *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). Clearly trying different “offset” positions in view of Yang in order to arrive at claims 19, 20 and 21, would be the product not of innovation but of ordinary skill and common sense.

D. Ground 4: Yang anticipates claims 16 and 17

1. Yang anticipates independent claim 16

a. The Preamble [Pre] – claim 1

A support comprising:

To the extent that the preamble is limiting, Yang (Ex. 1004) discloses a support (FIG. 1).

b. Limitation [A]

at least one elongate leg element at least partially supporting an apex selectively, detachably mountable to equipment;

Yang anticipates this limitation (*see* Sections VII.A.1.b-c *supra*).

c. Limitation [B]

a selectively releasable angle stop that, together with said apex, defines a plurality of fixed angular positions around a pivot axis at which angular rotation of said at least one leg element around said pivot axis in a first direction is selectively, automatically inhibited; where

Yang anticipates this limitation (*see* Section VII.A.3 *supra*).

d. Limitation [C]

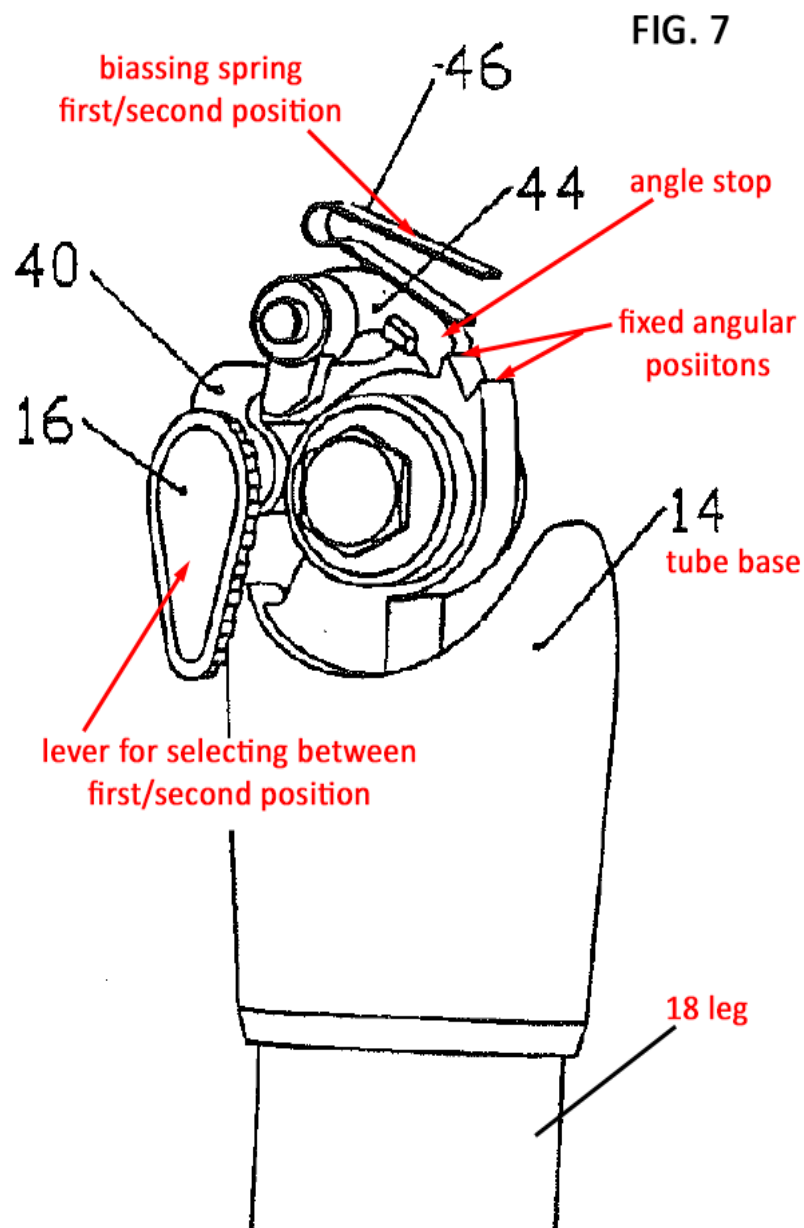
said angle stop has a first position that permits manual rotation of said leg element in said first direction without said angle stop engaging with said apex in at least one of said fixed angular positions, and

Yang discloses in FIG. 7 (annotated below), said angle stop 44 has a first position (by rotating lever 16 clockwise) that permits manual rotation of said leg element in said first direction (away from perpendicular position) without said angle stop engaging with said apex in at least one of said fixed angular positions (*see* Section VII.A.3 *supra*).

e. Limitation [D]

[said angle stop has] a second position where manual rotation of said leg element in a second direction causes said angle stop to automatically engage into a next sequential one of said fixed angular positions.

Yang discloses in FIG. 7 (annotated below), [said angle stop has] a second position (by releasing lever 16) where manual rotation of said leg element in a second direction (toward perpendicular position) causes said angle stop to automatically engage (due to force of biasing spring 46) into a next sequential one of said fixed angular positions (*see* Section VII.A.3 *supra*).



Similar to claim 2 (*see* Section VII.A.2 *supra*), in claim 16 the limitation “without said angle stop engaging with said apex” is met by Yang by interpreting the tube base 14, which includes the ratchet (teeth) for engaging the angle stop 44, as being part of the “apex” recited in claim 16 rather than being part of the leg 18 (*see* annotated FIG. 2 in Section VII.A.2 *supra*).

2. Yang anticipates dependent claim 17

The support of claim 16 where said apex has a support surface for supporting said equipment, and said first position causes said angle stop to engage in only the one of said fixed angular positions closest to said support surface.

Yang anticipates claim 16 (*see* Section VII.D.1 *supra*). In the above annotated FIG. 7, Yang additionally discloses said first position causes said angle stop to engage in only the one of said fixed angular positions closest to said support surface. This limitation is met by the user manually rotating the lever 16 clockwise to move the angle stop 44 into the first position, thereby disengaging the angle stop 44 from the ratchet (teeth), manually holding the lever 16 while moving the leg in the second direction until reaching the angular position closest to said support surface, and then manually releasing the lever 16 to move the angle stop 44 into the second position, thereby engaging the angle stop 44 with the ratchet (teeth). This operation by the user corresponds to the “manual rotation” recited in the above Limitation [C] of claim 16.

E. Ground 5: Gitzo 2009/YouTube1/YouTube3 each anticipates claims 6, 7, and 8

Gitzo 2009 is a sales catalog published by Gitzo S.A. at least as early as June 22, 2009, YouTube1 is a YouTube.com video published on September 19, 2008 showing a tour of the Gitzo factory including manufacturing phases of various Gitzo tripods, and YouTube3 is a YouTube.com video published by the Gitzo YouTube channel on February 18, 2010 showing an end user using a Gitzo tripod. Gitzo 2009 discloses on pages 56-61 information on the “Systematic” collection of tripods manufactured by Gitzo (Ex. 1005, pp. 56-61). YouTube1 shows various stages of manufacturing of the “Systematic” collection of tripods manufactured by Gitzo (Ex. 1006, pp. 1-6). YouTube3 shows an end user operating a Gitzo GT3320BS tripod which is part of the “Systematic” collection of Gitzo tripods. (Ex. 1008, pp. 1-4, Ex. 1010, pp. 24-32). The “Systematic” Gitzo tripod disclosed in all three of these prior art publications anticipates claims 6, 7 and 8 of the ‘037 patent.

1. Gitzo 2009/YouTube1/YouTube3 each anticipates claim 6

a. The Preamble [Pre] – claim 1

A support having

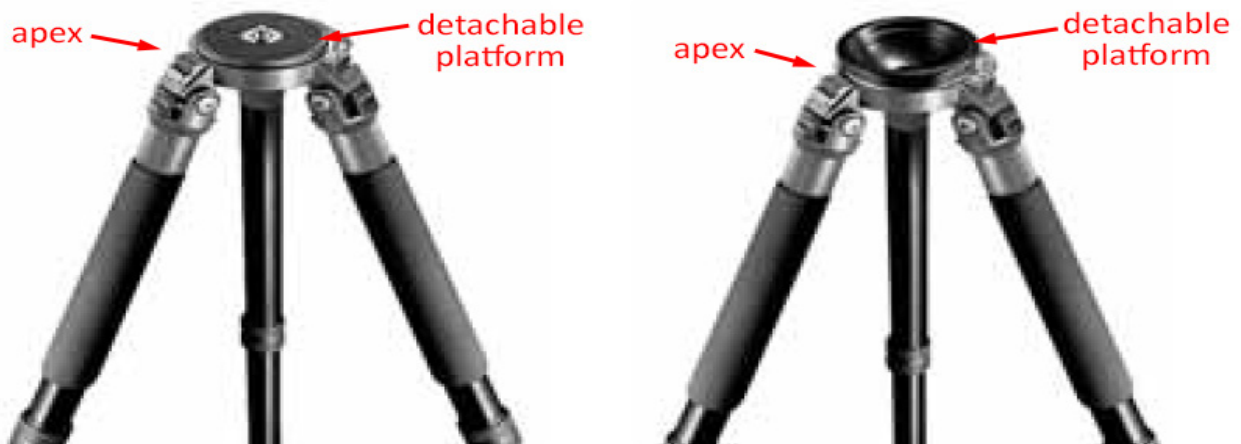
To the extent that the preamble is limiting, Gitzo 2009/YouTube1/YouTube3 each disclose a support. (Ex. 1005, p. 56; Ex. 1006, p. 3; Ex. 1008, p. 2).

b. Limitation [A]

an apex selectively, detachably mountable to a platform for securing equipment to said platform,

Gitzo 2009/YouTube1/YouTube3 each disclose the “apex” and “detachable platform” as shown in the below annotated figures:

Gitzo 2009 (Ex. 1005, p 56)



Gitzo 2009 (Ex. 1005, p. 57)



GS5320SP
(series 4, 5)

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YouTube1 (Ex. 1006, p. 3)

Gitzo tripods - YouTube

https://www.youtube.com/watch?v=AEgbj5J5n9Q&t=90s

Search



apex

detachable platform

2:19 / 4:29

Gitzo tripods

Vincent Oliver photo-i
1.25K subscribers

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79,840 views Sep 19, 2008
Gitzo tripod factory tour

Show less

Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

YouTube3 (Ex. 1008, p. 2)

Shooting Videos with a DSLR Camera - English

Gitto Inspires
1.79K subscribers

152

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Clip

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70,285 views Feb 18, 2010

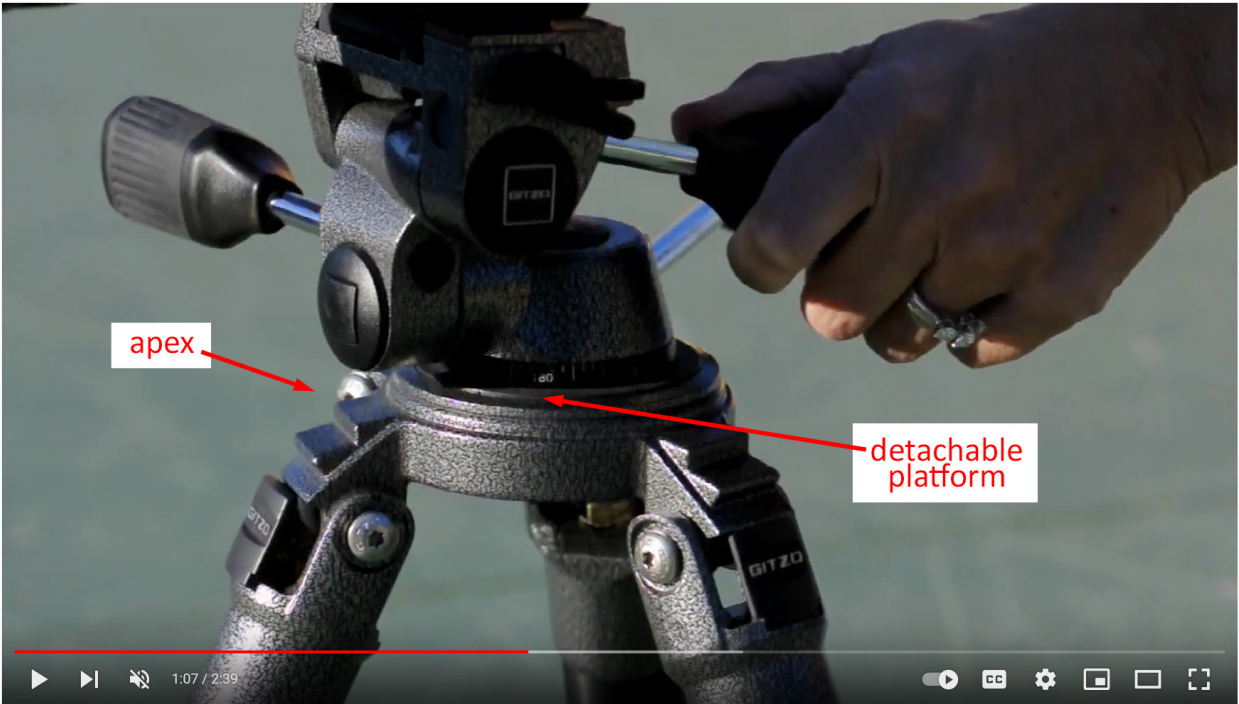
With the ability to shoot video with many new DSLR cameras, the necessary changes in handling them has become evermore important. Professional photographer Bill Frakes, in conjunction with Bogen Imaging (now Manfrotto Distribution), shot a video using a DSLR camera with Manfrotto and Gitto photography equipment. These were his conclusions:

The new cameras look and feel like traditional still cameras, but handle very differently, especially when shooting video. The weight distribution and focusing techniques involved require a tough, durable, and rock steady platform to shoot with.

When shooting video with the new DSLR cameras like the Nikon D90, I rely heavily on Manfrotto and Gitto tripods to keep the camera steady and video smooth.

The Manfrotto 700RC2 and the 190XB are an excellent solution for working on the go. The 701HDV is an even more robust head that is still lightweight and very easy to use.

The Gitto fluid damped 3-way head G2272M is great on the GT3320BS tripod. The G2180 and the G2380 fluid heads are terrific options as well.

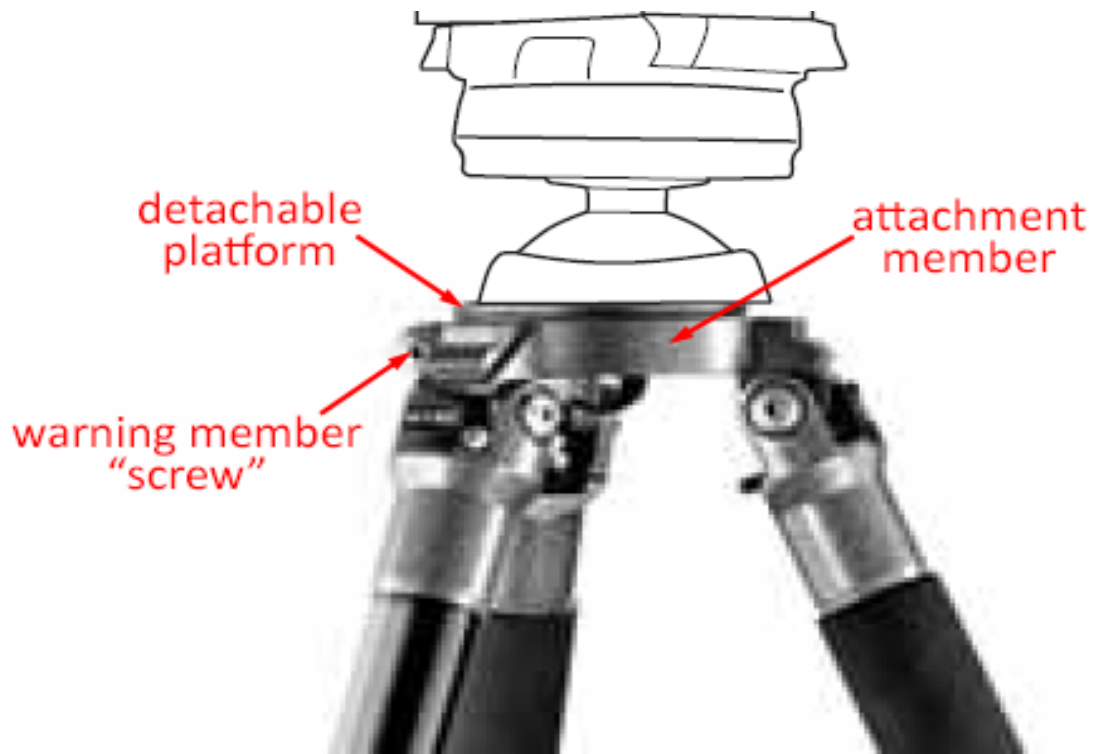


c. Limitation [B]

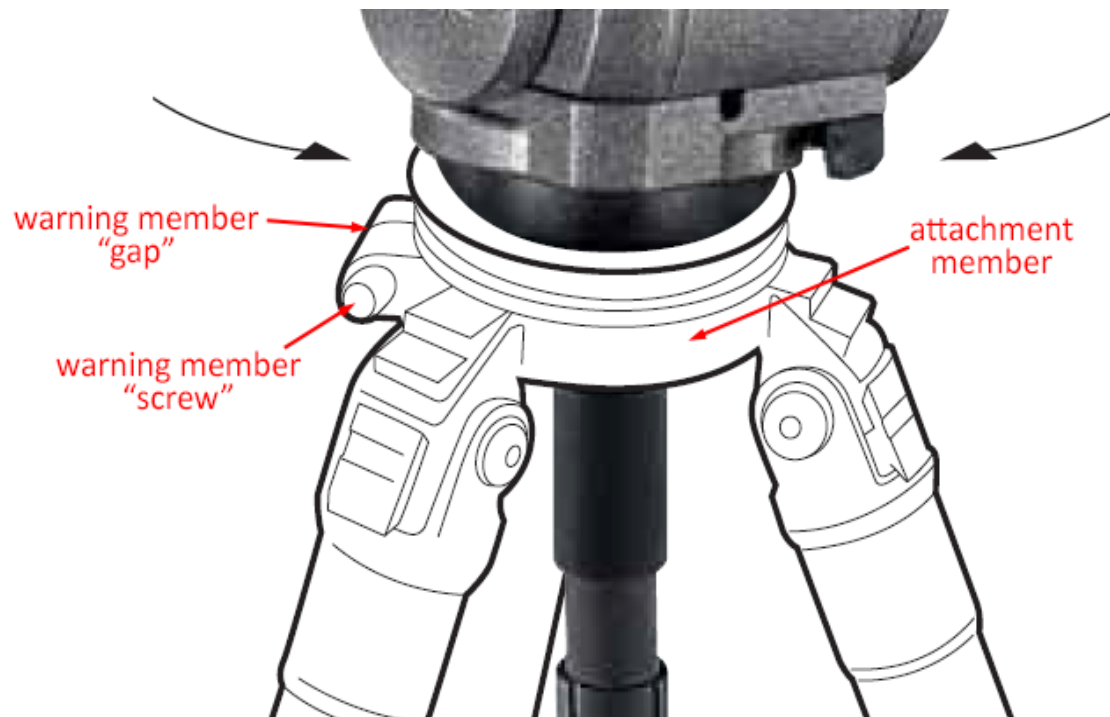
said apex comprising an attachment member selectively attachable to a said platform; and at least one warning member

Gitzo 2009/YouTube1/YouTube3 each disclose the “attachment member” and “warning member” as shown in the below annotated figures, wherein the “attachment member” is a retaining ring and the “warning member” is at least one of a “gap” or a “screw”:

Gitzo 2009 (Ex. 1005, p. 56)



Gitzo 2009 (Ex. 1005, p. 85)



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YouTube1 (Ex. 1006, p. 2)

Gitzo tripods - YouTube

https://www.youtube.com/watch?v=AEgbj5J5n9Q&t=90s

Search



Gitzo tripods

Vincent Oliver photo-i
1.25K subscribers

Subscribe

79,840 views Sep 19, 2008
Gitzo tripod factory tour

Show less

123

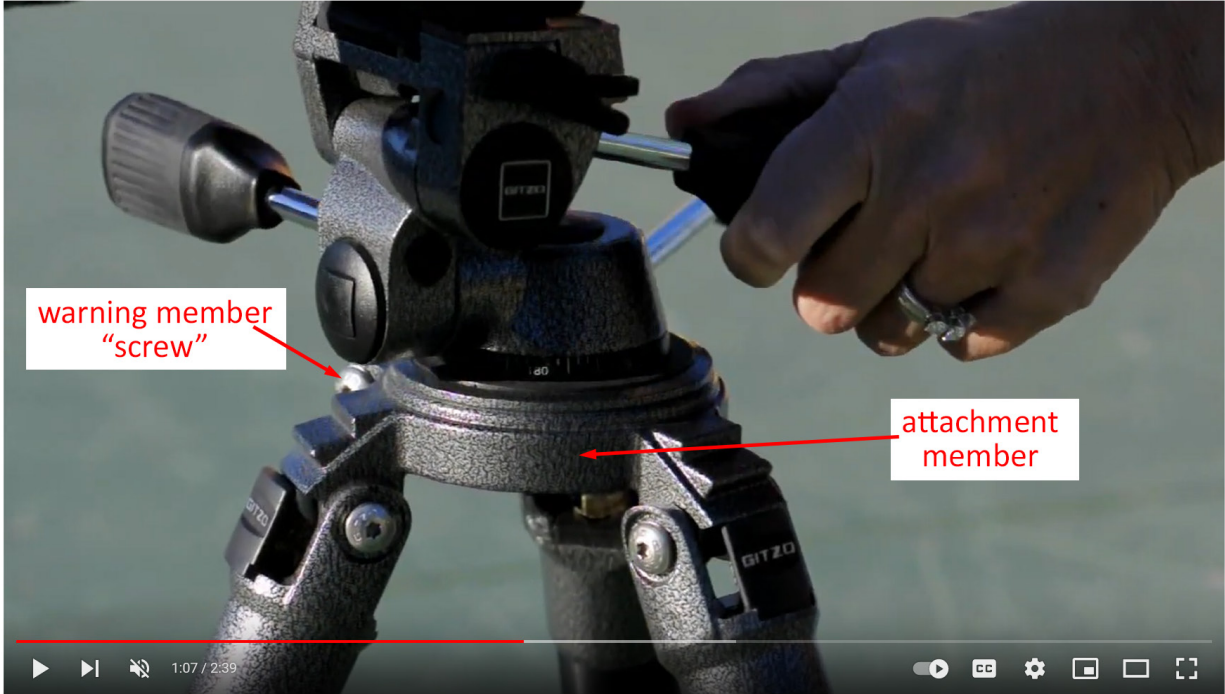
Share

Clip

Save

Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

YouTube3 (Ex. 1008, p. 2)



Shooting Videos with a DSLR Camera - English

Gitzo Inspires
1.79K subscribers

70,285 views Feb 18, 2010

With the ability to shoot video with many new DSLR cameras, the necessary changes in handling them has become evermore important. Professional photographer Bill Frakes, in conjunction with Bogen Imaging (now Manfrotto Distribution), shot a video using a DSLR camera with Manfrotto and Gitzo photography equipment. These were his conclusions:

The new cameras look and feel like traditional still cameras, but handle very differently, especially when shooting video. The weight distribution and focusing techniques involved require a tough, durable, and rock steady platform to shoot with.

When shooting video with the new DSLR cameras like the Nikon D90, I rely heavily on Manfrotto and Gitzo tripods to keep the camera steady and video smooth.

The Manfrotto 700RC2 and the 190XB are an excellent solution for working on the go. The 701HDV is an even more robust head that is still lightweight and very easy to use.

The Gitzo fluid damped 3-way head G2272M is great on the GT3320BS tripod. The G2180 and the G2380 fluid heads are terrific options as well.

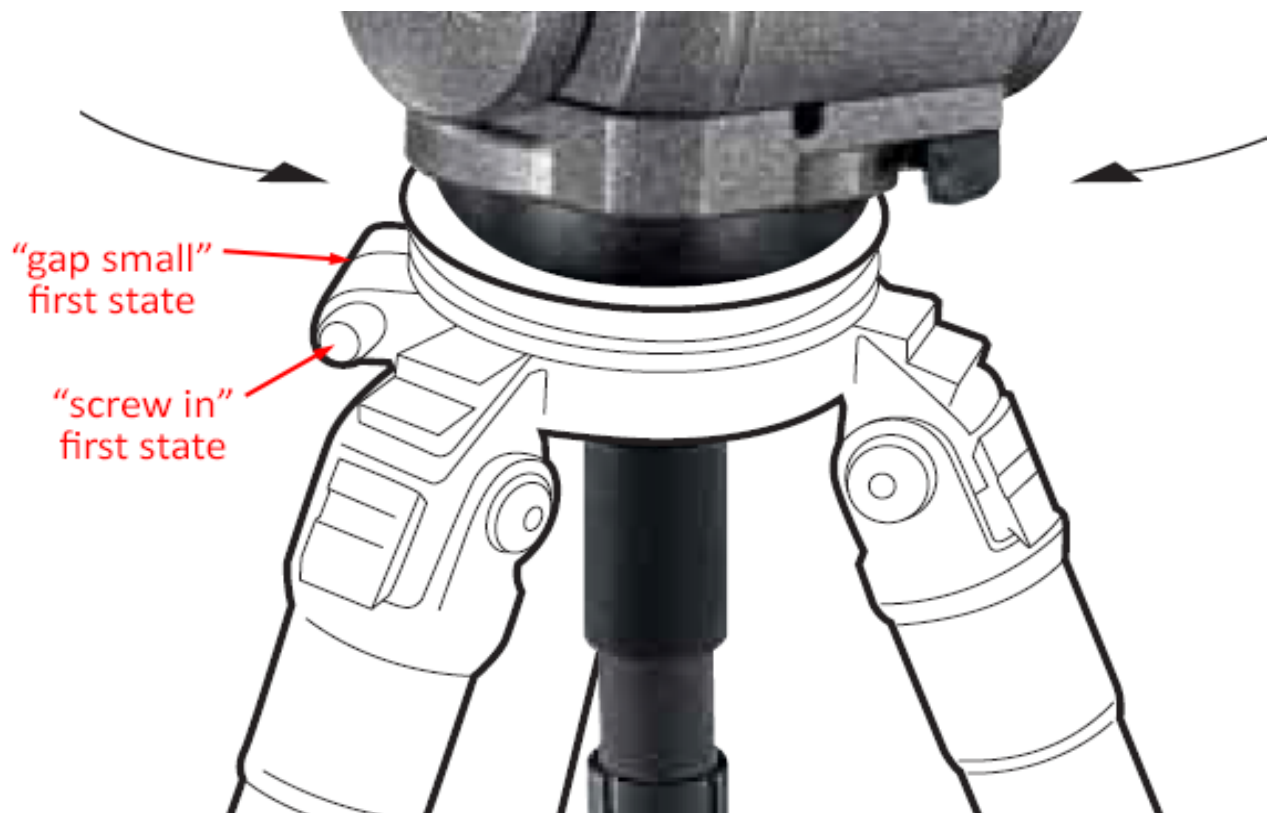
d. Limitation [C]

[the at least one warning member] having a first state that indicates that said platform is securely engaged with said apex

Gitzo 2009/YouTube1 each disclose the “warning member having a first state” indicating the platform is secure as shown in the below annotated figures:

Gitzo 2009 (Ex. 1005, p. 85)

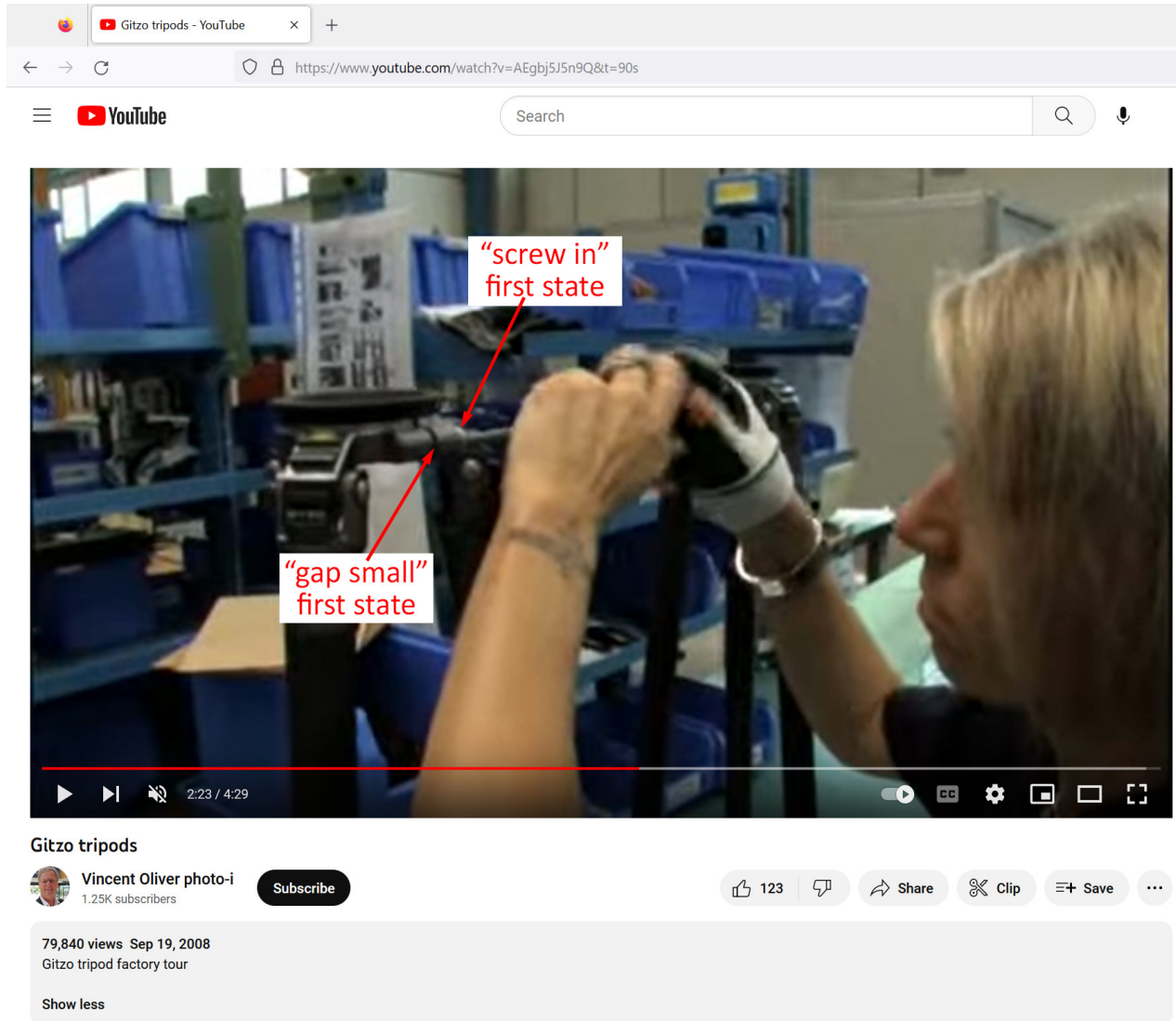
Gitzo 2009 discloses two alternatives for the “first state” indicating the platform is secure: 1) a smaller “gap” in the retaining ring; or 2) a “screw” for the retaining ring that “sticks in” when tightened:



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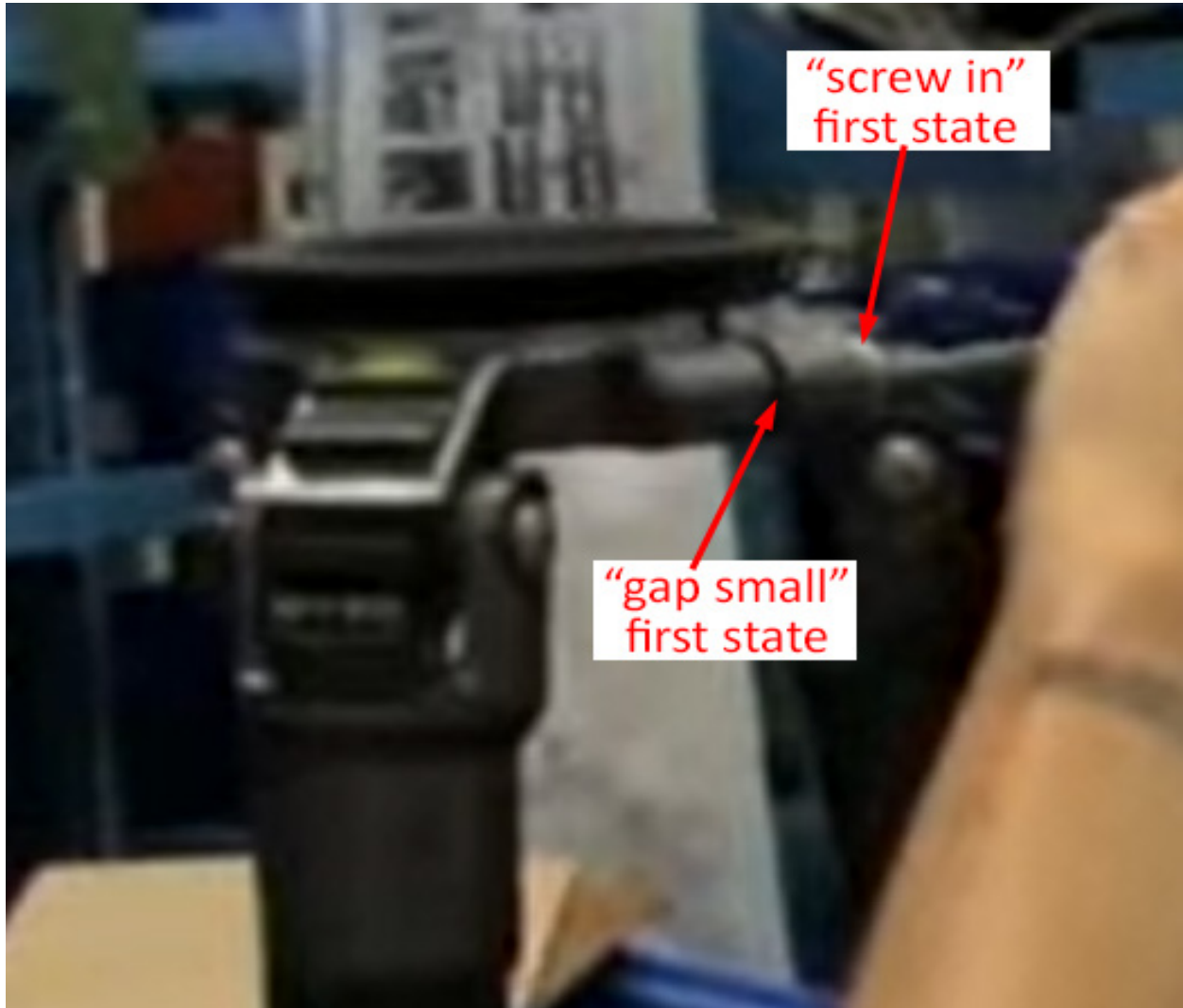
YouTube1-1 (Ex. 1006, p 5)

YouTube1 discloses the two alternatives for the “first state” indicating the platform is secure : 1) a smaller “gap” in the retaining ring; or 2) a “screw” for the retaining ring that “sticks in” when tightened:



YouTube1-2 (Ex. 1006, p. 6)

Below is an enlarged area of the above figure showing the first state of the alternative warning members: “gap small” and “screw in”:



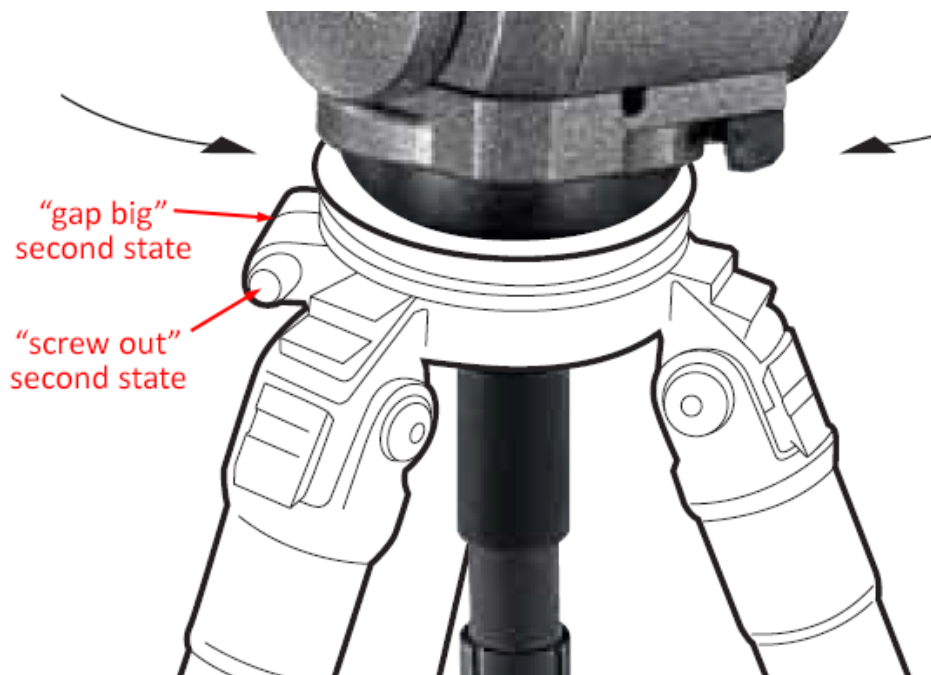
e. Limitation [D]

[the at least one warning member having] a second state that indicates that said platform is not securely engaged with said apex.

Gitzo 2009/YouTube1 each disclose the “warning member having a second state” indicating the platform is not secure as shown in the below annotated figures:

Gitzo 2009 (Ex. 1005, p. 85)

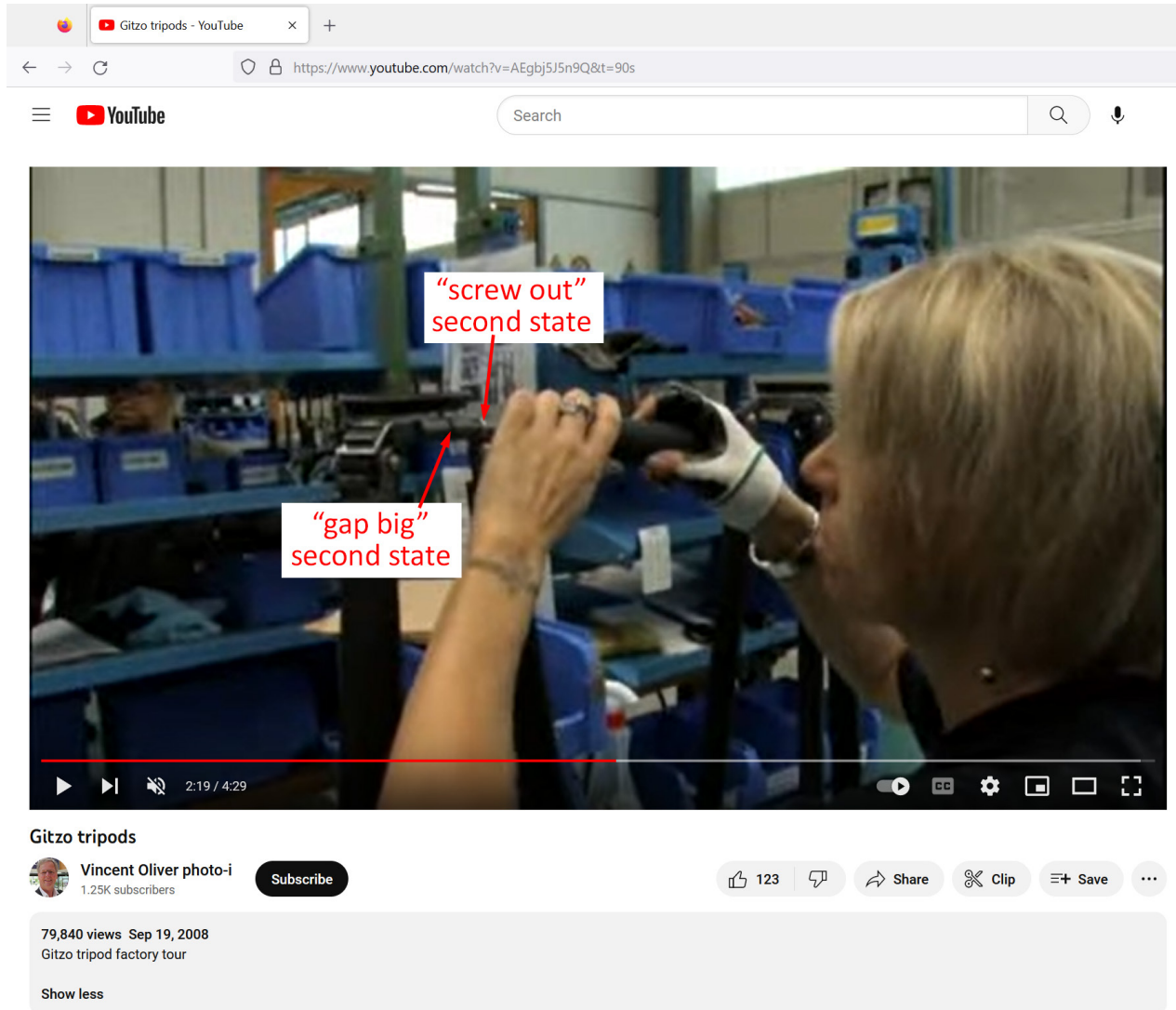
Gitzo 2009 discloses two alternatives for the “second state” indicating the platform is not secure: 1) a bigger “gap” in the retaining ring; or 2) a “screw” for the retaining ring that “sticks out” when loosened. Although the “second state” is not shown explicitly in the figure below, one skilled in the art would understand this operation of the retaining ring and second state of the warning member (“gap” or “screw”) when the retaining ring is loosened.



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YouTube1-1 (Ex. 1006, p. 3)

YouTube1 discloses two alternatives for the “second state” indicating the platform is not secure : 1) a bigger “gap” in the retaining ring; or 2) a “screw” for the retaining ring that “sticks out” when loosened:



YouTube1-2 (Ex. 1006, p. 4)

Below is an enlarged area of the above figure showing the second state of the alternative warning members: “gap big” or “screw out”:



2. Gitzo 2009/YouTube1/YouTube3 each anticipates claim 7

The support of claim 6 where said at least one warning member is viewable from any angle around said tripod.

Gitzo 2009/YouTube1/YouTube3 each anticipates claim 6 (*see* Sections VII.E.1.a-e *supra*), and the above figures clearly show that the “warning member” is viewable from any angle around said tripod, particularly when a camera is not mounted onto the detachable platform.

3. Gitzo 2009/YouTube1/YouTube3 each anticipates claim 8

The support of claim 6 where said apex forms a perimeter surface into which said platform is selectively insertable.

Gitzo 2009/YouTube1/YouTube3 each anticipates claim 6 (*see* Sections VII.E.1.a-e *supra*), and the above figures clearly show that the apex forms a perimeter surface (ring) into which the platform is selectively inserted.

F. Ground 6: Gitzo 2009 anticipates claim 15

The support of claim 6 where said platform is attachable to said attachment member at a selective height relative to said apex.

Gitzo 2009 anticipates claim 6 (*see* Sections VII.E.1.a-e *supra*). Gitzo 2009 further discloses on multiple pages (e.g., Ex. 1005, p. 58), the well known “elevator column” or “rapid column” type platform that can be attached to the apex at a selective height relative to the apex. This “elevator column” type platform is also

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disclosed by Yang in FIG. 1 (Ex. 1004, element 12A, 12B; [0027], [0032]). This element is so well known and old in the prior art it is astonishing it was claimed in the ‘037 patent.

**G. Ground 7: YouTube1/YouTube3 in view of Yang render obvious
claim 15**

The support of claim 6 where said platform is attachable to said attachment member at a selective height relative to said apex.

YouTube1/YouTube3 each anticipates claim 6 (*see* Sections VII.E.1.a-e *supra*). Further, the “elevator column” type platform recited in claim 15 is disclosed by Yang in FIG. 1 (Ex. 1004, element 12A, 12B; [0027], [0032]). This element is so well known and old in the prior art it is astonishing it was claimed in the ‘037 patent. Of course it would be obvious to one skilled in the art to use an “elevator column” type platform with any tripod, including the Gitzo tripod shown in the above figures from YouTube1/YouTube3.

H. Ground 8: Gitzo 2009 anticipates claims 22, 23, and 24

1. Gitzo 2009 anticipates claim 22

a. The Preamble [Pre] – claim 1

A support for supporting equipment comprising:
--

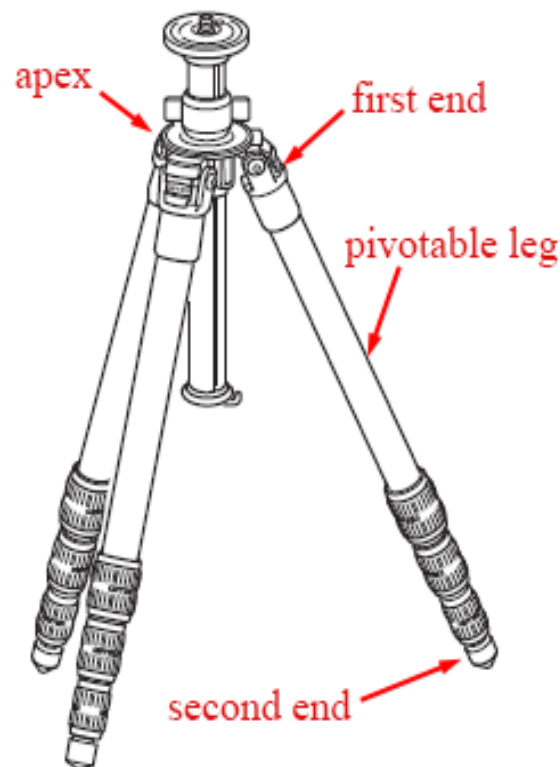
To the extent that the preamble is limiting, Gitzo 2009 discloses a support for supporting equipment. (Ex. 1005, p. 56).

b. Limitation [A]

at least one elongate leg element at least partially supporting an apex selectively, detachably mountable to equipment, where said leg includes a first end proximate said apex and a second end distal said apex, and where said leg is pivotal about an axis proximate said first end throughout a limited arc

Gitzo 2009 anticipates this limitation as shown in the below annotated figure:

Gitzo 2009 (Ex. 1005, p. 94)



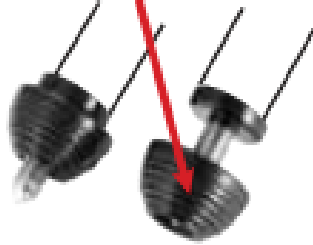
c. Limitation [B]

a foot at said second end having a curved surface that, while said support supports equipment above a supporting surface, is tangent to said supporting surface throughout said arc.

Gitzo 2009 anticipates this limitation as shown in the below annotated figure:

Gitzo 2009 (Ex. 1005, p. 94)

foot at said second end having
a curved surface



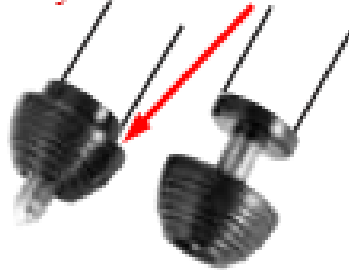
2. Gitzo 2009 anticipates claim 23

The support of claim 22 where said curved surface is convex and extends radially beyond an outer diameter of said leg proximate said foot.

Gitzo 2009 anticipates this limitation as shown in the below annotated figure:

Gitzo 2009 (Ex. 1005, p 94)

convex and extends radially
beyond diameter of leg



3. Gitzo 2009 anticipates claim 24

The support of claim 22 where said foot has a mushroom shape.

Gitzo 2009 anticipates this limitation as shown in the below annotated figure:

Gitzo 2009 (Ex. 1005, p 94)



I. Ground 9: Gitzo 2009 in view of Yang renders obvious claims 25, 26, 27 and 28

1. Gitzo 2009 renders obvious claim 25

a. The Preamble [Pre] – claim 1

A platform

To the extent that the preamble is limiting, Gitzo 2009 discloses this limitation (*see* Section VII.H.1.b *supra*).

b. Limitation [A]

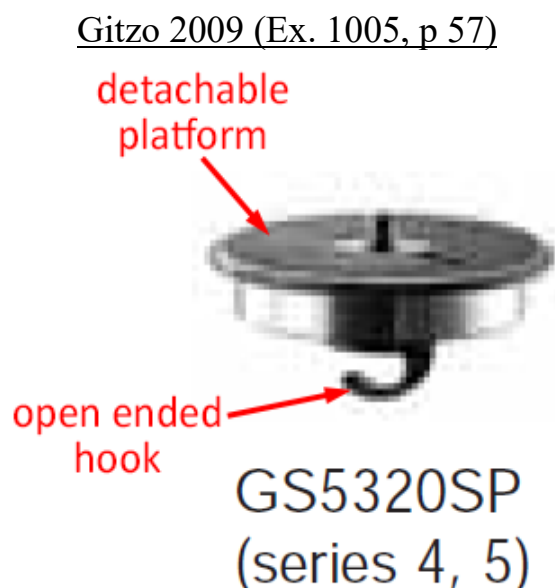
selectively, detachably mountable to an apex of a support having a plurality of legs extending from said apex,

Gitzo 2009 discloses this limitation (*see* Section VII.H.1.b *supra*).

c. Limitation [B]

said platform including an open-ended hook integrally forming a closed-loop aperture,

Gitzo 2009 discloses a platform (product GS5320SP) including an open ended hook as shown in the below annotated figure:



In addition, Gitzo 2009 discloses a platform (Ex. 1005, p. 28) including a closed-loop aperture (a hanging ring) as shown in the below annotated figure. Accordingly, it would have been obvious under 35 USC § 103 to modify the hook disclosed in Gitzo 2009 (Ex. 1005, p. 57) in view of the hanging ring disclosed in Gitzo 2009 (Ex. 1005, p. 28) to include a closed-loop aperture in the hook. Alternatively, it would have been obvious under 35 USC § 103 to modify the hanging ring in view of the hook so that the hanging ring takes on a hook shape. Even if Gitzo 2009

provides no reason for the modification, merely providing an “aperture” in the above Gitzo hook, or bending the below Gitzo ring into a hook shape, would have been an obvious design choice that does not rise to the level of innovation warranting patent protection. Further, the modification would provide no unexpected benefit.

Gitzo 2009 (Ex. 1005, p. 28)

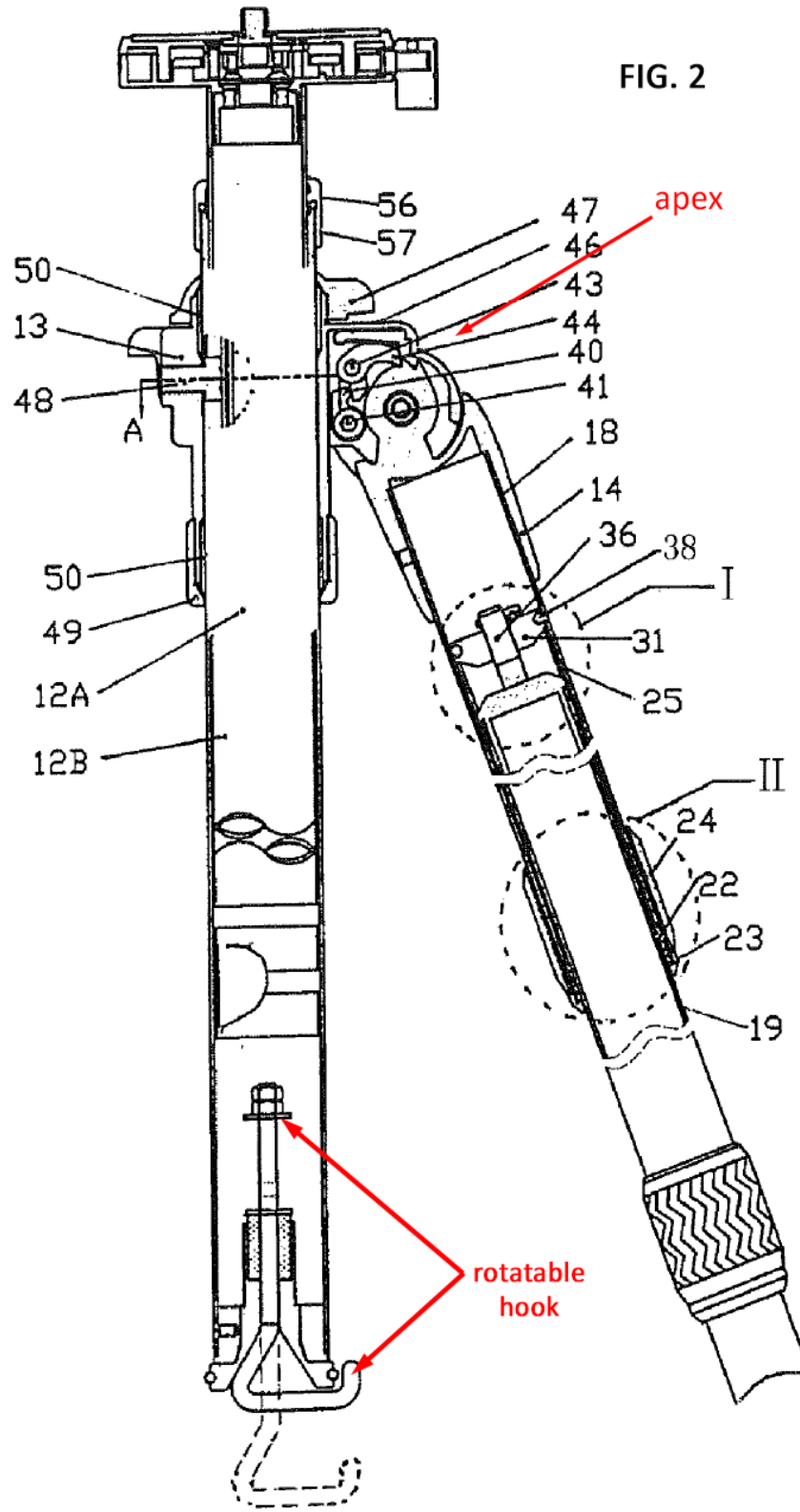


d. Limitation [C]

said hook rotatable about a substantially vertical axis.
--

Yang discloses in FIGs. 2 and 5 (Ex. 1004, p. 3, p. 5) a hook 55 that is rotatable about a substantially vertical axis as shown in the annotated figure below. In addition, the ring disclosed by Gitzo 2009 (Ex. 1005, p. 28) is likely rotatable even if not described as being rotatable. Still further, the hook disclosed by Gitzo 2009 (Ex. 1005, p. 57) is rotatable because the entire platform is rotatable when the retaining ring is loosened. Accordingly, either Gitzo 2009 anticipates the “rotatable” limitation, or it would have been obvious to modify Gitzo 2009 in view of Yang so that the hook or hanging ring disclosed by Gitzo 2009 would be rotatable about the vertical axis.

Yang (Ex. 1004, p. 3)



2. Gitzo 2009 renders obvious claim 26

The platform of claim 25 where said hook is capable of selectively, detachably supporting a weight from a closed-loop strap.

Gitzo 2009 renders this limitation obvious (*see* Section VII.I.1.c *supra*) because the function of “selectively, detachably supporting a weight from a closed-loop strap” is inherent in any “hook”, including the hook disclosed by Gitzo 2009 (Ex. 1005, p. 57).

3. Gitzo 2009 renders obvious claim 27

The platform of claim 26 where said hook is capable of securely interlocking with a carabineer.

Gitzo 2009 renders this limitation obvious (*see* Section VII.I.1.c *supra*) because the function of “capable of securely interlocking with a carabineer” is inherent in any “hook”, including the hook disclosed by Gitzo 2009 (Ex. 1005, p. 57).

4. Gitzo 2009 renders obvious claim 28

The platform of claim 26 where said aperture is generally perpendicular to said hook.

Gitzo 2009 renders this limitation obvious (*see* Section VII.I.1.c *supra*) because the limitation “where said aperture is generally perpendicular to said hook” is inherent in any “hook” having an aperture, including the hook disclosed by Gitzo

Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

2009 (Ex. 1005, p. 57) when modified to have an aperture. Alternatively, it would have been an obvious design choice to modify the hook disclosed by Gitzo 2009 (Ex. 1005, p. 57) to have an aperture that is perpendicular to the hook.

VIII. MANDATORY NOTICES (37 C.F.R. § 42.8)

A. Real Party-In-Interest

The real parties-in-interest are Guangdong Laitu Imaging Technology Co., Ltd. dba Leofoto. To the best of Petitioner's knowledge, additional real parties-in-interest include the patent owner Really Right Stuff, LLC.

B. Related Matters

To the best of Petitioner's knowledge, there are no related matters involving the '037 patent.

C. Payment of Fees

An electronic payment in the amount of \$43,750 for the *Inter Partes* Review fees specified by 37 C.F.R. § 42.15(a)(1)-(4) – comprising the \$19,000 request fee, \$22,500 post-institution fee, \$750 request fee for two claims in excess of twenty, and \$1,500 post-institution fee for two claims in excess of twenty – are being submitted at the time of filing this petition. If there are any additional fees due in connection with the filing of this paper, please charge the required fees to our deposit account no. 605025.

D. Designation of Lead and Backup Counsel

Lead Counsel	Backup Counsel
Howard H. Sheerin, Reg. No. 37,938 Attorney at Law 8711 E Pinnacle Peak Rd., Suite 289 Scottsdale, AZ 85255 Phone: 415-238-4007 sheerin@siliconvalleyip.com	Steven Rinehart, Reg. No. 61,403 VESTED LAW LLP 110 S. Regent St., Suite 200 Salt Lake City, UT 84111 Phone: 801-347-5173 srinehart@vestedlaw.com

E. Power of Attorney

Pursuant to 37 C.F.R. §42.10(b), a Power of Attorney appointing the above identified attorneys is filed herewith.

F. Service Information

Service information for lead and backup counsel is provided above.

Petitioner consents to electronic service by email at each of the following two email address:

(i) sheerin@siliconvalleyip.com and (ii) srinehart@vestedlaw.com

IX. CONCLUSION

Petitioner respectfully requests that Trial be instituted and that claims 1-8 and 15-28 of the '037 patent be canceled.

Respectfully submitted,

Date: 04/14/2023

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CERTIFICATE OF COMPLIANCE PURSUANT TO 37 C.F.R. § 42.24

Pursuant to 37 C.F.R. § 42.24, the undersigned hereby certifies that the foregoing PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,398,037 PURSUANT TO 37 C.F.R. § 42.100 *et seq.*, contains 10,382 words, excluding the parts of the paper exempted by 37 C.F.R. § 42.24(a), and complies with the typeface requirements of 37 C.F.R. § 42.6(a)(ii) and the style requirements of 37 C.F.R. § 42.6(a)(iii) and (iv). The undersigned relies on the word count of the computer program used to prepare this paper.

Respectfully Submitted,

Date: 04/14/2023

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Petition for *Inter Partes* Review of U.S. Patent No. 8,398,037

CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e), 42.205(a))

The undersigned hereby certifies that the foregoing PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,398,037 PURSUANT TO 37 C.F.R. § 42.100 *et seq.*, the accompanying Power of Attorney, and all associated exhibits, were served in their entireties on April 14, 2023 electronically via email access to a DropBox folder (emailed to Kevin Russel at kevin@chernofflaw.com), as well as delivering a copy via USPS Priority Mail Express, upon the following parties:

Attorney of Record for U.S. Patent No. 8,398,037:

Kevin Russell
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Suite 725
PORTLAND, OR 97201

Respectfully Submitted,

Date: 04/14/2023

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