

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERIDIAN WILDLIFE SERVICES LLC,
Petitioner,

v.

SAFE HAVEN WILDLIFE REMOVAL AND
PROPERTY MANAGEMENT EXPERTS LLC,
Patent Owner.

**PETITION FOR *INTER PARTES* REVIEW
OF U.S. PATENT NO. 10,251,374**

*Submitted via PTAB E2E on
July 8, 2022*

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PETITIONER'S EXHIBIT LIST

Exhibit	Description
1001	U.S. Patent No. 10,251,374 to Tolley
1002	U.S. Patent No. 10,729,108 to Tolley
1003	U.S. Patent No. 11,064,683 to Tolley
1004	Declaration of Dr. Michael J. Chamberlain (July 8, 2022)
1005	File History of U.S. Patent No. 10,251,374, U.S. Application 15/159,733 (filed May 19, 2016)
1006	File History of U.S. Patent No. 10,729,108, U.S. Application 16/691,664 (filed Nov. 22, 2019)
1007	File History of U.S. Patent No. 11,064,683, U.S. Application 16/297,820 (filed Mar. 11, 2019)
1008	U.S. Patent Publication No. 2017/0238524 to Brugh et al.
1009	Bird Barrier, <i>Mist Net Kit Assembly and Use</i> , YouTube (Aug. 29, 2014), https://www.youtube.com/watch?v=yHtYi-vUFXs .
1010	Thomas H. Kunz et al., <i>Ecological and Behavioral Methods for the Study of Bats</i> 1-29 (1st ed. 1990).
1011	Bird Barrier Mist Net Kit Products Webpage (from p. 6 of Exhibit A to Frank-White Affidavit) <i>available at</i> https://web.archive.org/web/20150919150636/http://www.birdbarrier.com/products/mist-net-kits/
1012	[reserved]
1013	Affidavit of Nathaniel E. Frank-White (dated June 30, 2022)
1014	Transcript and Screenshots of Bird Barrier, <i>Mist Net Kit Assembly and Use</i> , YouTube (Aug. 29, 2014), https://www.youtube.com/watch?v=yHtYi-vUFXs .

Exhibit	Description
1015	Bird Barrier 2013 Product Catalog (from pp. 135-194 of Exhibit B to Frank-White Affidavit) <i>available at</i> https://web.archive.org/web/20130509202821/http://www.birdbarrier.com/library/bird-barrier-catalog.pdf .
1016	Declaration of Felice Ernst (July 8, 2022)
1017	Balazs I. Elody et al., <i>A Mist Net Technique Useful for Capturing Barred Owls</i> , 9 N. Am. Bird Bander 13-14 (1984)
1018	Tuttle, M.D. 1976a. <i>Collecting Techniques</i> . Pp. 71-78, in <i>Biology of the bats of the New World family Phyllostomatidae. Part I</i> (R.J. Baker, D.C. Carter, and J.K. Jones, Jr., eds.) Spec. Publ. Mus., Texas Tech Univ., Lubbock, Texas, 218 pp.
1019	@BirdBarrier, Twitter (Aug. 29, 2014, 2:48 PM), https://twitter.com/BirdBarrier/status/505426711324803072
1020	@BirdBarrier, Twitter (Sept. 2, 2014, 12:22 PM), https://twitter.com/BirdBarrier/status/506851686615244801
1021	Sanford D. Schemnitz et al., <i>Capturing and Handling Wild Animals</i> , in <i>The Wildlife Techniques Manual</i> 232-69 (Nova J. Silvy ed., 2009).
1022	Paul A. Racey, <i>Book Review</i> , <i>Zoological Journal of the Linnean Society</i> , 2011, 162, 243.
1023	Bird-B-Gone 2014 Product Catalog, (from pp. 21-80 of Exhibit B to Frank-White Affidavit) <i>available at</i> https://web.archive.org/web/20140726064216/http://www.birdbgone.com/media/PDFs/BirdBGone_Catalog_2014_SM.pdf
1024	Bird-B-Gone 2016 Product Catalog, (from pp. 82-133 of Exhibit B to Frank-White Affidavit) <i>available at</i> https://web.archive.org/web/20160415224522/https://www.birdbgone.com/media/PDFs/2016-product-catalog.pdf

Exhibit	Description
1025	[reserved]
1026	J. Michael Meyers, <i>In My Experience: Improved Capture Techniques for Psittacines</i> , 22 Wildl. Soc. Bull. 511-516 (1994)
1027	CV of Dr. Michael J. Chamberlain
1028	Waiver of the Service of Summons, <i>Safe Haven Wildlife Removal & Property Management Experts, LLC v. Meridian Wildlife Services, LLC</i> , No.7:21-cv-00577 (W.D.V.A. July 8, 2021), ECF No. 6
1029	C.E. Shackelford et al. <i>Project Prairie Birds: A citizen science project for wintering grassland birds</i> , Texas Parks and Wildlife Department Publication, PWD BK W7000-485, 2001, Austin, TX. 24 pp. Available online at http://www.tpwd.state.tx.us/publications/pwdpubs/medialpwd_bk_w7000_0485.pdf .
1030	Jerome A. Jackson, <i>A Simple, Effective Net for Capturing Cavity Roosting Birds</i> , 16 N. Am. Bird Bander, 30-31 (1991)
1031	William G. Sheldon, <i>A Method of Mist Netting Woodcocks in Summer</i> , 31 Bird Banding 130-135 (1960)
1032	Bird-B-Gone Mist Net Capture Kits, <i>available at</i> https://web.archive.org/web/20160518205547/https://www.birdbgone.com/media/Literature/BBG_Mist_Net_Capture_Kit_2014_v1.pdf
1033	Bruce A. Colvin et al., <i>Techniques for Capturing Common Barn-Owls</i> , 57 J. Field Ornithol. 200-207 (1986)
1034	Seth H. Low, <i>Banding with Mist Nets</i> , 28 Bird Banding, 115-128 (1957)
1035	Docket Report of <i>Safe Haven Wildlife Removal & Property Management Experts, LLC v. Meridian Wildlife Services, LLC</i> , No.7:21-cv-00577 (W.D.V.A. July 8, 2021) (printed July 1, 2022).
1036	Brian E. Keyes et al., <i>Capturing Birds with Mist Nets: A Review</i> , 7 N. Am. Bird Bander 2-14 (1982)

Exhibit	Description
1037	Peter H. Bloom et al., <i>Capture techniques: 12</i> , p. 193–219 from Raptor Research and management techniques, (2d. ed., 2007).
1038	Stephen G. Martin, <i>A Technique for Capturing Nesting Grassland Birds with Mist Nets</i> , 40 Bird Banding 233-237 (1969)
1039	C. John Ralph et al., <i>Recommendations for the Use of Mist Nets for Inventory and Monitoring of Bird Populations</i> , 29 Studies in Avian Biology 187-196 (2004)
1040	Bird Hazing Manual (W. Paul Gorenzel & Terrell P. Salmon eds., 1 st ed., 2008)
1041	Gene Albanese et al., <i>An Inexpensive Elevated Mist Net Apparatus</i> , 24 N. Am. Bird Bander 129-134 (1999)
1042	H. Elliott McClure, <i>Methods of Bird Netting in Japan Applicable to Wildlife Management Problems</i> , 27 Bird Banding 67-73 (1956)

GLOSSARY OF TERMS

TERM	DEFINITION
“Petitioner” or “Meridian”	Meridian Wildlife Services, LLC
“Patent Owner” or “Safe Haven”	Safe Haven Wildlife Removal and Property Management Experts LLC
“Board”	USPTO Patent Trial and Appeal Board
“IPR”	<i>Inter Partes</i> Review
“POSA”	Person of ordinary skill in the art at the time of the invention.
“’374 Patent”	U.S. Patent No. 10,251,374 to Tolley (Ex-1001)
“’108 Patent”	U.S. Patent No. 10,729,108 to Tolley (Ex-1002)
“’683 Patent”	U.S. Patent No. 11,064,683 to Tolley (Ex-1003)
“Challenged Claims”	Claims 1-16 of U.S. Patent No. 10,251,374.
“Brugh”	U.S. Patent No. 9,943,073 to Brugh et. al (Ex-1008)
“Kunz”	Chapter 1 of <i>Ecological and Behavioral Methods for the Study of Bats</i> by Thomas H. Kunz (1990) (Ex-1010)
“Bird Barrier Video”	Bird Barrier, <i>Mist Net Kit Assembly and Use</i> YouTube Video (Ex-1009)
“Bird Barrier Webpage”	Bird Barrier Mist Net Kit Products Webpage (Ex-1011)

I. INTRODUCTION

For the reasons explained herein, Petitioner seeks *Inter Partes* Review of Claims 1-16 of U.S. Patent No. 10,251,374 (“Challenged Claims”).

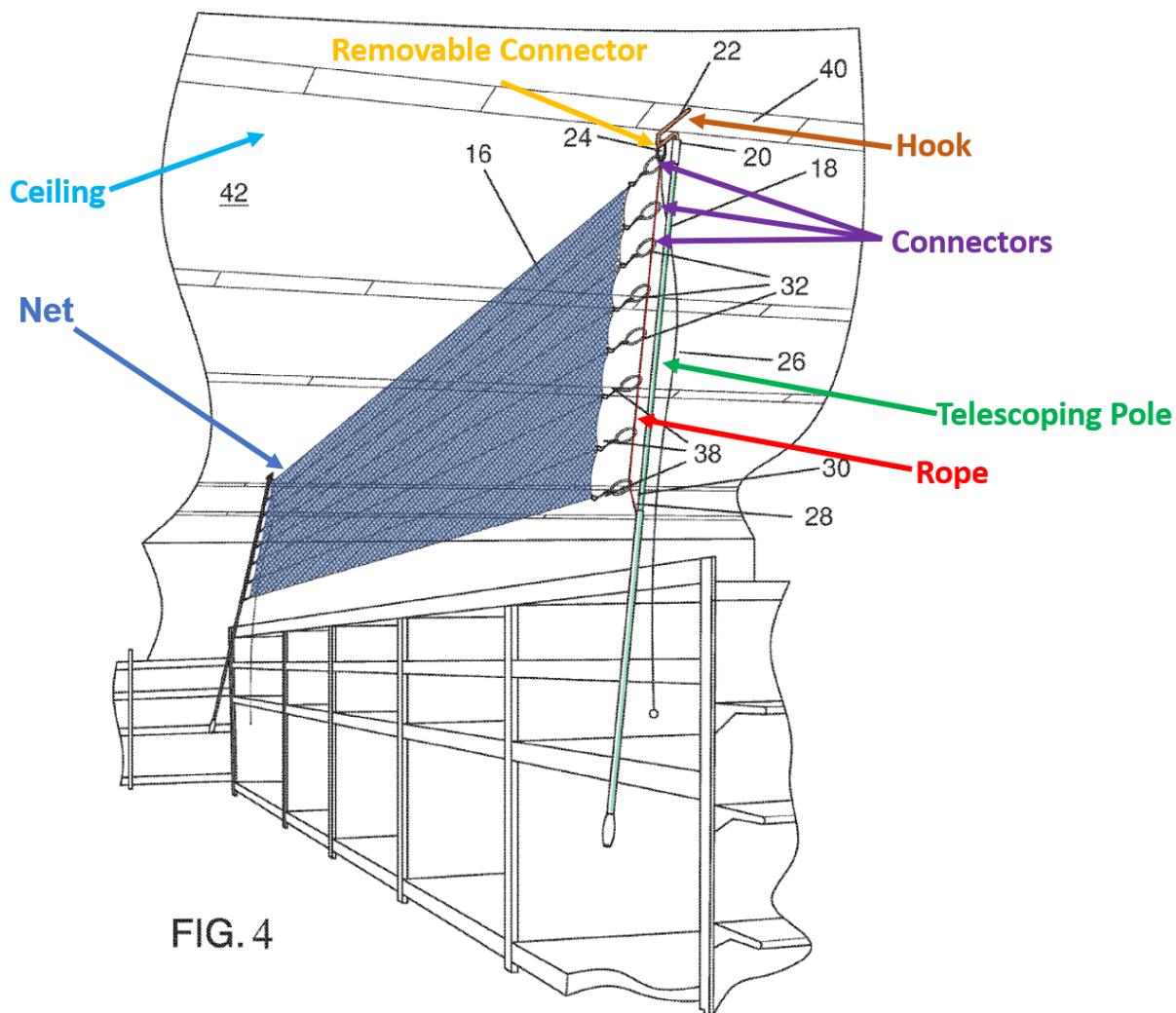
II. THE '374 PATENT

A. Overview

The '374 Patent is directed to systems and methods for capturing animals (e.g., birds)¹ within a building. Ex-1001, Abstract, 1:24-66, 2:51-55. The Specification notes that birds roost in “[t]he rafters of big box stores, warehouses, and other structures containing exposed support beams.” *Id.*, 1:24-28. To capture birds in this environment, the '374 Patent describes a net configured to be hung from a building’s ceiling. *Id.*, 4:55-58.

As shown in Figure 4, the net (16) is positioned between a pair of telescoping poles (18), with each side of the net (16) attached to one of the poles (18). Ex-1001, 3:63-65. The pole ends (20) each include a hook (22) allowing them to be hung from a ceiling (42) (e.g., from a “hanging member” (40), such as a rafter). *Id.*, 4:11-17. By securing the poles (18) to the ceiling (42), the net (16) can be suspended at a height above the building’s floor. *Id.*, 4:55-60.

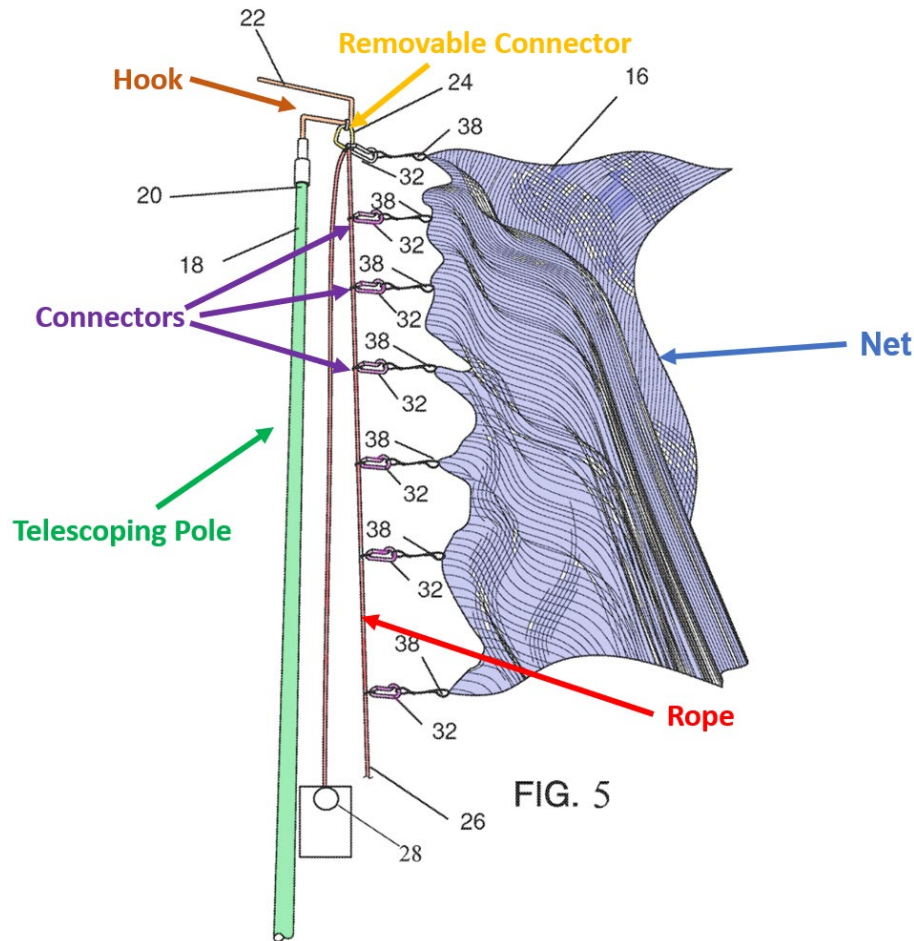
¹ The '374 Patent’s claims extend to the capture of “animals” generally.



'374 Patent – Figure 4 (annotated)

Figure 5 depicts how the sides of the net (16) are attached to each pole (18) using fasteners (38). Ex-1001, 4:48-55. Connectors (32) are used to secure the net fasteners (38) to a rope (26). *Id.*, 4:1-2. The rope (26) is suspended below the hook (22) by a removable connector (24) and routed through a pulley (28) to form a “rope and pulley system 30.” *Id.*, 4:53-55. The rope and pulley system (30) allows both

sides of the net (16) to be lifted proximate to the ceiling (42) (e.g., with the poles (18) hanging from rafters (40)). *Id.*, 4:3-17 and 55-60.



'374 Patent – Figure 5 (annotated)

The '374 Patent discloses that multiple nets can be hung at various locations in a building (36). Ex-1001, 4:18-34. In one example, two nets are hung “along the outer perimeter of the enclosure 36” (referred to as “perimeter nets 12”) and three nets are positioned “on the interior of the enclosure 36” (referred to as “trapping nets 14”). *Id.*, 4:19-28. This five-net arrangement is shown below in Figure 2. *Id.*, 4:19-20 and 25-28. However, the patent explains that the perimeter nets (12) and trapping

nets (14) are structurally identical—each of the nets (12, 14) includes a net (16) attached to a pair of telescoping poles (18) as described with respect to Figures 4 and 5. Ex-1001, 3:61-65, 4:48-50.

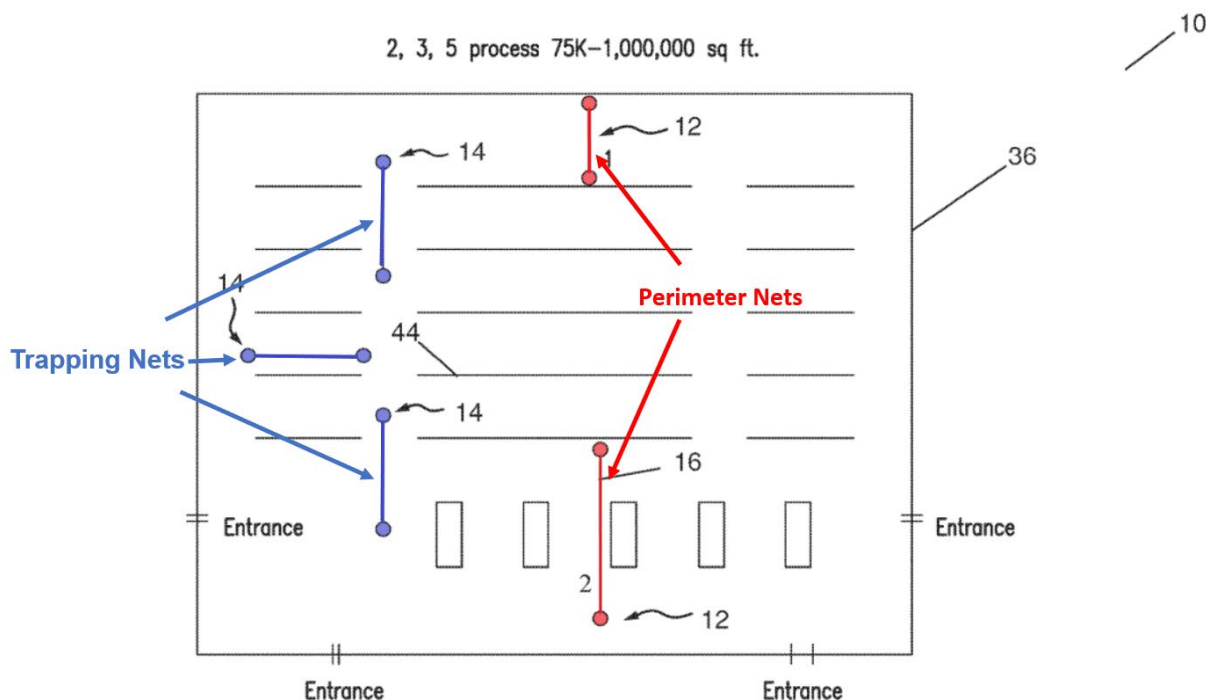
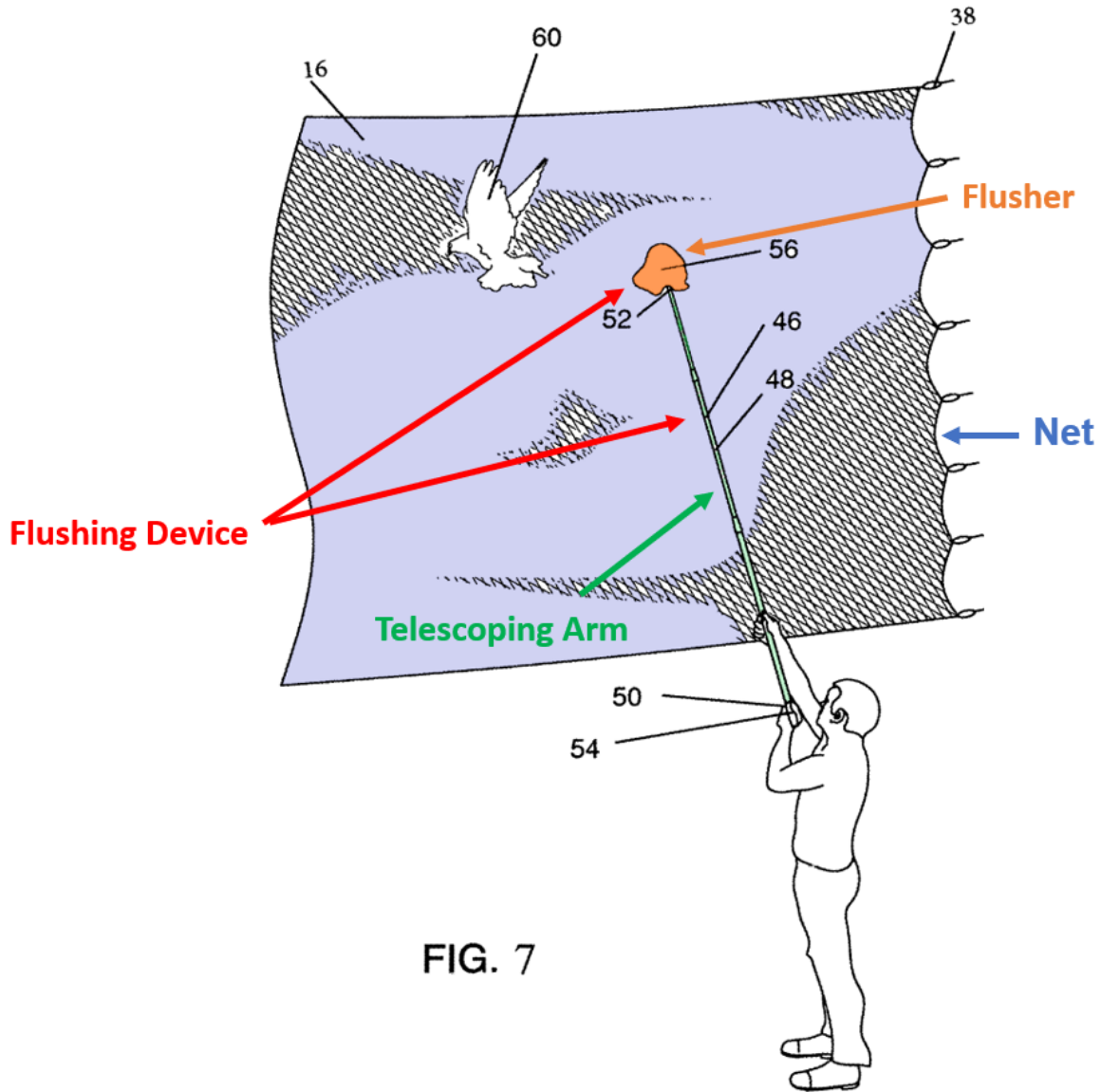


FIG. 2

'374 Patent – Figure 2 (annotated)

To capture a bird, the '374 Patent suggests “using flushing device 46 to drive the [bird] toward a net.” *Id.*, 4:13-15. As shown in Figure 7, the flushing device (46) includes a telescoping arm (48) having a “flusher” (56). *Id.*, 4:61-64. The Specification discloses that “[t]he flusher 56 can be any object that, when shaken or moved, creates noise, movement, or both,” such as a “plastic bag.” *Id.*, 4:64-67 and 5:1-2. The trapped bird can then be removed and relocated. *Id.*, 5:12-13.



'374 Patent – Figure 7 (annotated)

B. Prosecution History

The '374 Patent issued from U.S. Patent Application No. 15/159,733 (“’733 Application”), filed on May 19, 2016. Ex-1001, (21), (22). Following a restriction requirement, Claims 1 and 6 were amended to recite that the “trapping net system” or “trapping net”, respectively, comprised a “first trapping net, a second trapping

net, and a third trapping net.” Ex-1005, 59-61. After these amendments, a Notice of Allowance was mailed (no substantive Office Action was issued). *Id.*, 72.

In the Notice of Allowance, the Examiner offered no reasoned explanation of the features distinguishing the claims from the prior art. The Examiner explained merely that the prior art “fails to disclose or render obvious a motivation to provide a bird relocation system having the combination of method limitations” recited in the claims. *Id.*, 72-73.

The renumbered claims (1-16) issuing in the ’374 Patent are provided in the Claim Listing herein. *Infra* XII.

III. LEVEL OF ORDINARY SKLL IN THE ART

The ’374 Patent describes its “Field” as “animal relocation” and, more specifically, relocating animals in buildings “using a net system and various flushing techniques.” Ex-1001, 1:8-12. A person of ordinary skill in the art (“POSA”) at the time of the ’374 Patent’s filing would have had (i) at least a bachelor’s degree in the study of wildlife management or wildlife ecology and (ii) two or more years of field experience trapping flying animals. Ex-1004, ¶25.

As confirmed by Petitioner’s expert, Dr. Chamberlain, a POSA with this background would have been familiar with capture devices used for trapping flying vertebrates, techniques for deploying those devices, an understanding of the

behavior of flying vertebrates, and awareness of various well-known ornithological and chiropterological texts and publications. Ex-1004, ¶¶26-27.

IV. CLAIM CONSTRUCTION

In IPRs, claims are construed in accordance with their ordinary and customary meaning as understood by one of ordinary skill in the art in light of the specification and the prosecution history. 37 C.F.R. § 42.100(b); *see also Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). Terms not specifically construed below have their ordinary and customary meaning.

A. “Perimeter Net” and “Trapping Net”

The '374 Patent uses the terms “perimeter net” and “trapping net” to refer to the intended use of the recited nets. A “perimeter net” is one capable of being installed along the perimeter of an enclosure, while a “trapping net” is one capable of trapping an animal. The '374 Patent (and its related Patents) support this interpretation in several ways.

First, the '374 Patent discloses that the structure of the “perimeter net” and “trapping net” can be structurally the same. The Specification describes that “[e]ach net system comprises at least one net 16 attached to a telescoping pole 18 ... with a hook 22.” Ex-1001, 3:62-65, 4:9-14 (describing the “installation ... for each net 16” generically). The patent identifies no structural difference between the “perimeter net” and “trapping net.”

Second, the '374 Patent confirms that its “perimeter net” is not always installed along a perimeter of a building. The Specification discloses only that perimeter nets are “preferably ... set up around the perimeter.” Ex-1001, 4:18-20. Likewise, the term “trapping net” requires no particular location and can be set up “on the interior” of a structure (Ex-1001, 4:19-21) or “on one side” of the structure (*Id.*, 4:38). In fact, Figure 2 depicts a trapping net (14) installed along a perimeter of an enclosure (36) (*see* left-most net (14)) in a position functionally indistinguishable from one of the perimeter nets (12) (*see* bottom net (12)). *Id.*, 4:18-28, Fig. 2.

Third, Patent Owner has made clear that the term “perimeter net”—on its own—should not be interpreted as requiring the net to be installed in a particular location. In the '108 Patent (which issued from a continuation application), the term “perimeter net” is recited in Claim 1. But Dependent Claims 2 and 3 further require that one side of the perimeter net is “proximal” or “in contact with” one side of the structure, respectively.² Ex-1002, 5:53-58. These additional limitations would be meaningless if the term “perimeter net” itself necessarily required installation along a perimeter.

When Patent Owner has intended for a claim to require installation of the nets in a particular location or orientation, it has made that clear. The '374 patent includes

² Claim 17 in the '108 Patent recites the same “proximal” qualification as Claim 2.

claims that require nets to be installed in certain locations (e.g., “secured to a rafter” in Claim 1), orientations (e.g., “parallel” or “perpendicular” in Claims 1, 9, 11, and 12), and arrangements (e.g., “such that the square footage available for the animal to travel is halved” in Claims 2 and 14). Likewise, the ’108 Patent included claims requiring a particular installation location (e.g., “one side of the perimeter net proximal to one side of the structure” in Claim 2).³ But *none* of the ’374 Patent claims require that a “perimeter net” is installed along a building’s perimeter, and *none* of the ’374 Patent claims require that a “trapping net” is installed away from a building’s perimeter. At best, the terms “perimeter net” and “trapping net” should be construed in view of their intended uses.

Accordingly, a POSA would understand the term “perimeter net” to mean a net capable of being installed along the perimeter of an enclosure, and the term “trapping net” to mean a net capable of trapping an animal. Ex-1004, ¶¶50-57.

B. “Flushing Device” and “Flusher”

Each independent claim recites a “flushing device,” which the ’374 Patent describes as a device capable of “driv[ing] the animal 60 toward a net 16.” Ex-1001, 4:13-14. While Claims 1 and 15 require the “flushing device” to include an “arm and

³ In the related ’683 Patent, *none* of the claims recite any location relative to the structure. Ex-1003, 6:6-31.

a flusher,” the other claims describe the “flushing device” only by what it does. *E.g.*, Claim 6 (“used to direct the animal into the trapping net”), Claim 13 (“chases the animal towards the perimeter net system and into the trapping net”); *see also* Ex-1001, Abstract (“[T]he flushing device channels the animal through the perimeter net system and into the trapping net.”), 5:9-10.

The Specification discloses one embodiment of a flushing device with a telescoping arm and a “flusher” at the end, but even the flusher is characterized by its intended use: “The flusher 56 can be *any object* that, when shaken or moved, creates noise, movement, or both,” so that the “noise and/or movement can drive the animal ... from a hiding spot into one of the nets.” *Id.*, 4:64-67 (emphasis added). For example, the “flusher” can simply be a “plastic bag” that is “attached to [the] flushing device 46 and shaken.” *Id.*, 5:1-2. Claims 1 and 15 recite a “flusher,” but claim no specific structure.

Therefore, the term “flushing device” would be understood by a POSA to mean a device capable of being used by a handler to drive an animal from one location to another, and the term “flusher” would be understood by a POSA as “any object that creates noise, movement, or both when shaken or moved.” Ex-1004, ¶¶58-60.

V. REQUIREMENTS FOR IPR UNDER 37 C.F.R. § 42.104

A. Grounds for Standing

Petitioner certifies that the '374 Patent is available for IPR and that Petitioner is not barred or estopped from challenging the claims in this Petition.

Patent Owner asserted claims of infringement of the '374 Patent and the '108 Patent against Petitioner in a case filed in June 2021, *Safe Haven Wildlife Removal and Property Management Experts, LLC v. Meridian Wildlife Services, LLC*. Patent Owner filed Petitioner's waiver of service on July 8, 2021. *See* Ex-1028. The date a waiver of service is filed "is deemed to be the date on which [the defendant] was served." *Avigilon Corp. v. Canon Inc.*, No. IPR2018-01626, 2019 WL 1291042, at *2 (PTAB Mar. 18, 2019). This Petition is therefore timely under 35 U.S.C. § 315(b).

B. Identification of Challenge

The Challenged Claims are invalid for the following reasons:

Ground	Claims	Statute	Prior Art
A	6-14	§ 103(a)	Brugh
B	1-16	§ 103(a)	Brugh and Kunz
C	1-16	§ 103(a)	Bird Barrier Video and Kunz

VI. GROUND A: CLAIMS 6-14 ARE OBVIOUS IN VIEW OF BRUGH.

For at least the following reasons, Claims 6-14 are obvious in view of Brugh.

A. Overview of Brugh

U.S. Patent Publication No. 2017/0238524 to Brugh (“Brugh,” Ex-1008) was filed as U.S. Application 15/048,231 on February 19, 2016 and published on August 24, 2017. Brugh’s filing date predates the earliest filing date of the ’374 Patent (May 19, 2016). Brugh is therefore prior art under post-AIA 35 U.S.C. § 102(a)(2).

Brugh explains that the “advent of large warehouses, big box stores, large grocery stores, malls, and the like, has caused an increase in the number of birds, as well as other large flying vertebrates, such as bats, finding their way inside the buildings.” Ex-1008, ¶0005. To address this problem, Brugh discloses “a device for repeated quick set up for safe live capture of a flying vertebrate in a large building” (herein “capture device”). Ex-1008, ¶0019, Fig. 1.

Brugh’s capture device includes a net (6) suspended between a pair of telescoping poles (5). Ex-1008, ¶¶0007-0024, 0039-0042, 0049-0052, Figs. 1 and 2. Although Figure 1 depicts one of the poles (5), Brugh discloses that its capture device includes telescoping poles (5) on each side of the net (6). *See* Ex-1008, ¶¶0049 (“net 6 mounted on height adjustable posts 5”), 0008, 0019, 0042, 0049, 0052. Each pole (5) includes a hook (9) configured for attachment to a rafter (3) in a ceiling (2). Ex-1008, ¶¶0008, 0012, 0022, 0039, 0049. The net (6) also defines pockets (11) for trapping flying vertebrates (including “birds, bats or any large flying mammal or the like”). Ex-1008, ¶¶0043, 0049, 0037, Fig. 1.

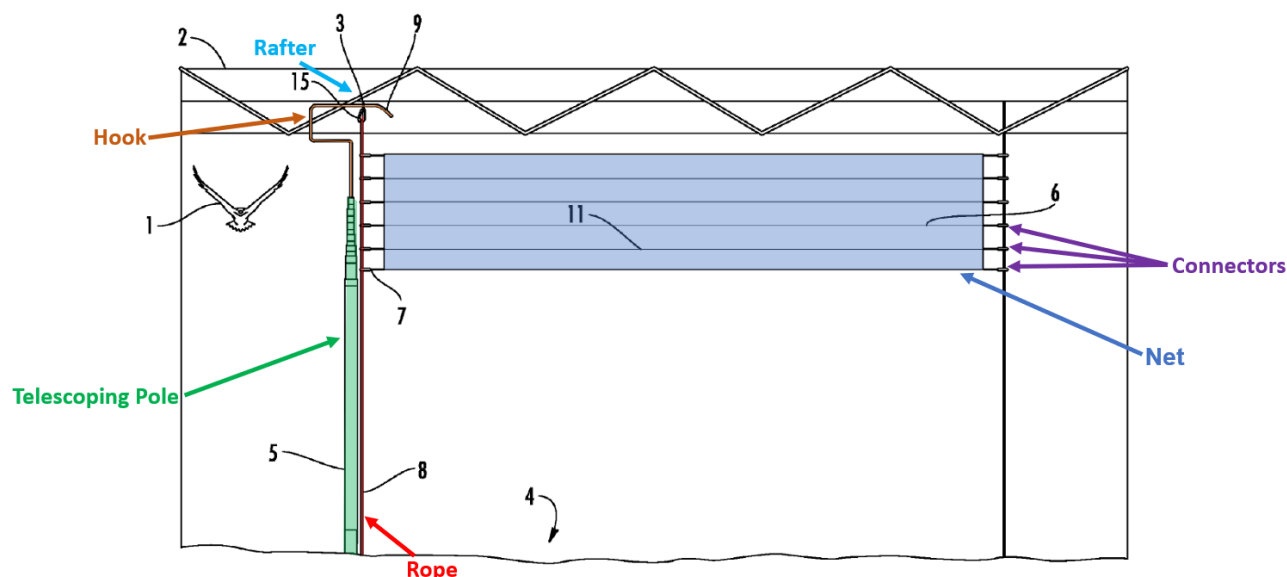


FIG. 1

Brugh – Figure 1 (annotated)

Brugh discloses that the net (6) is mounted on the poles (5) by clips (7) secured to ropes (8). Ex-1008, ¶¶0049, 0051. The ropes (8) are each run through a pulley (15), which allows the net (6) to be raised and lowered. Ex-1008, ¶¶0042, 0049. By securing the poles (5) to the rafters (3) (e.g., using their hooks) and raising the net (6) (e.g., using the rope and pulley), the net (6) can be positioned for capturing flying vertebrates. Ex-1008, ¶¶0008-0018.

B. Independent Claim 6

1. [6pre] – “An animal relocation system for relocating an animal in a structure, the system comprising”

Brugh discloses a “device for repeated quick set up for safe live capture of a flying vertebrate in a large building.” Ex-1008, ¶¶0019-0024, 0049-0052, Fig. 1,

Claim 4. Brugh also discloses that captured flying vertebrates can be removed from the capture device and released. Ex-1008, ¶0052, Abstract. Thus, although the preamble is not limiting, Brugh's capture device is "[a]n animal relocation system for relocating an animal in a structure," as recited in Claim 6's preamble. Ex-1004, ¶67.

2. **[6a] – "a perimeter net;"**
 [6b] – "a trapping net wherein the trapping net comprises a
 first trapping net, a second trapping net, and a third
 trapping net;"

Elements [6a] and [6b] recite that the system of Claim 6 includes "a perimeter net" (i.e., at least one net capable of being installed along the perimeter of an enclosure) and three "trapping nets"⁴ (i.e., at least three nets that are each capable of trapping an animal). *Supra* IV.A (claim construction). Brugh's capture device is both a perimeter net and a trapping net, and a POSA would have found it obvious to provide four of Brugh's capture devices as part of an animal relocation system (e.g., one perimeter net and three trapping nets).

⁴ Patentee likely intended for Claim 6 to recite "a trapping net system" comprising first, second, and third "trapping nets" as described in the Specification. Ex-1008, 2:47-48, 4:25-28. Regardless, Claim 6's recitation of "a trapping net" is clearly satisfied by the presence of first, second, and third "trapping nets" in the animal relocation system.

Brugh's capture device includes a net (6) configured for being hung from rafters (3) inside a building. Ex-1008, ¶¶0007-0024, 0039-0042, 0049-0052, Figs. 1 and 2. A POSA would have appreciated that Brugh's capture device is capable of being positioned along the perimeter of an enclosure (e.g., by hanging the net (6) from a building's rafters (3) proximal to a perimeter wall). *See* Ex-1008, Fig. 1 (showing that the sides of the net (6) and poles (5) are substantially straight and can be positioned adjacent a wall); Ex-1004, ¶70. Brugh's net (6) also includes pockets (11) configured for trapping a flying vertebrate. Ex-1008, ¶¶0043, 0049, 0052; Ex-1004, ¶70. Thus, a POSA would have appreciated from Brugh that its capture device is both a perimeter net and a trapping net. Ex-1004, ¶70.

A POSA would have found it obvious to provide four of Brugh's capture devices for several reasons. Brugh discloses that flying vertebrates' "flight characteristics" within a building should be observed and that the observed "flight pattern can then be used to place the netting in relationship to the position of the flying vertebrate." Ex-1008, ¶¶0015, 0045. Given this teaching, a POSA would have found it obvious to provide four of Brugh's capture devices, for example, where (i) the flight pattern of a flying vertebrate (or multiple vertebrates) within a building includes (or is expected to include) four different locations or (ii) where four or more flying vertebrates are present (or expected to be present) in the building. Ex-1004, ¶71. Additionally, a POSA would have understood that providing four or more of

Brugh's capture devices would generally increase the likelihood of capturing flying vertebrates within the building. Ex-1004, ¶72.

The mere duplication of parts is obvious absent a new and unexpected result. *See In re Application of Harza*, 274 F.2d 669, 671 (C.C.P.A. 1960); *see also Low Temp Indus., Inc. v. Duke Mfg. Co.*, No. 2021-2137, 2021 WL 6124455, at *5-6 (Fed. Cir. Dec. 28, 2021). Here, the effect of using four of Brugh's capture devices would have been predictable—increased netting coverage within the building and a higher likelihood of capture—and well within the skill of a POSA. Ex-1004, ¶73. Thus, a POSA would have found it obvious to provide four of Brugh's capture devices, which would necessarily include “a perimeter net” (i.e., at least one net capable of being placed along the outer perimeter of an enclosure) and three “trapping net[s]” (i.e., at least three nets that are each capable of trapping an animal).

Claim 6 does not require that the “perimeter net” or first/second/third “trapping net[s]” are installed in a building (or placed in a particular location). Nevertheless, Petitioner notes that a POSA would have found it obvious to install **(i)** one of Brugh's capture devices along a perimeter wall within a building and **(ii)** three more of Brugh's capture devices in additional locations (e.g., around the building's interior). Ex-1004, ¶74.

First, given Brugh's teaching that a flying vertebrate's “flight pattern” should be used to place nets, a POSA would have it found obvious to place at least one of

Brugh's capture devices along a perimeter wall and at least three of Brugh's capture devices in other locations within a building in response to observing flight patterns in those locations. Ex-1008, ¶¶0015, 0045; Ex-1004, ¶75. Second, a POSA would have understood that placing Brugh's capture device proximal to a flying vertebrate—with at least one capture device along a perimeter wall and at least three capture devices in other locations—would effectively shrink the area in which the vertebrate is able to fly and thereby improve the likelihood of capture. Ex-1004, ¶76. Indeed, this is a matter of basic geometry and a predictable result of using multiple capture devices within a building. Ex-1004, ¶76. Third, a POSA would know that increased net density would result in increased capture rate. Ex-1004, ¶77.

Accordingly, it would have been obvious in view of Brugh to provide “a perimeter net” and “a trapping net wherein the trapping net comprises a first trapping net, a second trapping net, and a third trapping net,” as recited in elements [6a] and [6b].

3. [6c] – “a flushing device, wherein the flushing device is used to direct the animal into the trapping net.”

Brugh discloses that flying vertebrates can be captured by “driving the flying vertebrate ... into the netting pockets” of the capture device. Ex-1008, ¶0016. Brugh notes that this may be accomplished by “getting the flying vertebrate to fly, by making a loud noise, approaching the vertebrate, or by the placement of food, light, or odorant or the like.” Ex-1008, ¶0046.

In view of Brugh's disclosure, a POSA would have found it obvious to provide a flushing device for "making a loud noise," "approaching the vertebrate," or placing "light" in a manner that would induce flight. Ex-1008, ¶0046; Ex-1004, ¶80. For example, a POSA would have known that a noise-maker could be used to "mak[e] a loud noise," a pole or other elongated member could be used to "approach[] the vertebrate," and a laser pointer or flash light could be used to place "light" near the flying vertebrate. Ex-1004, ¶81; Ex-1008, ¶0046. Each of these devices are capable of being used to direct a flying vertebrate into Brugh's net (6) and, therefore, each are a "flushing device." *Supra* IV.B (claim construction); Ex-1004, ¶¶82-83. Accordingly, it would have been obvious in view of Brugh to provide with Brugh's capture device "a flushing device, wherein the flushing device is used to direct the animal into the trapping net," as recited in element [6c].

Accordingly, Claim 6 is obvious over Brugh.

C. Claim 7 – "The animal relocation system of claim 6, further comprising: the perimeter net comprising: a net and a telescoping pole, the net attached to the telescoping pole and the telescoping pole attached to the structure."

As discussed above with respect to Claim 6, Brugh's capture device is a "perimeter net." *Supra* VI.B (discussion of Claim 6). Brugh discloses that its capture device includes a "net 6 mounted on height adjustable posts 5 by attaching [the net] to clips 7 on [a] rope 8." Ex-1008, ¶¶0007-0024, 0039-0042, 0049-0052, Figs. 1-3. The "adjustable posts 5 in this embodiment are telescoping poles." Ex-1008, ¶¶0049,

0039. Furthermore, Brugh discloses that each of the telescoping poles (5) include a hook (9) configured for attachment to a rafter (3) in a ceiling (2) (i.e., a “structure”).

Ex-1008, 0008, 0012, 0022, 0039, 0049.

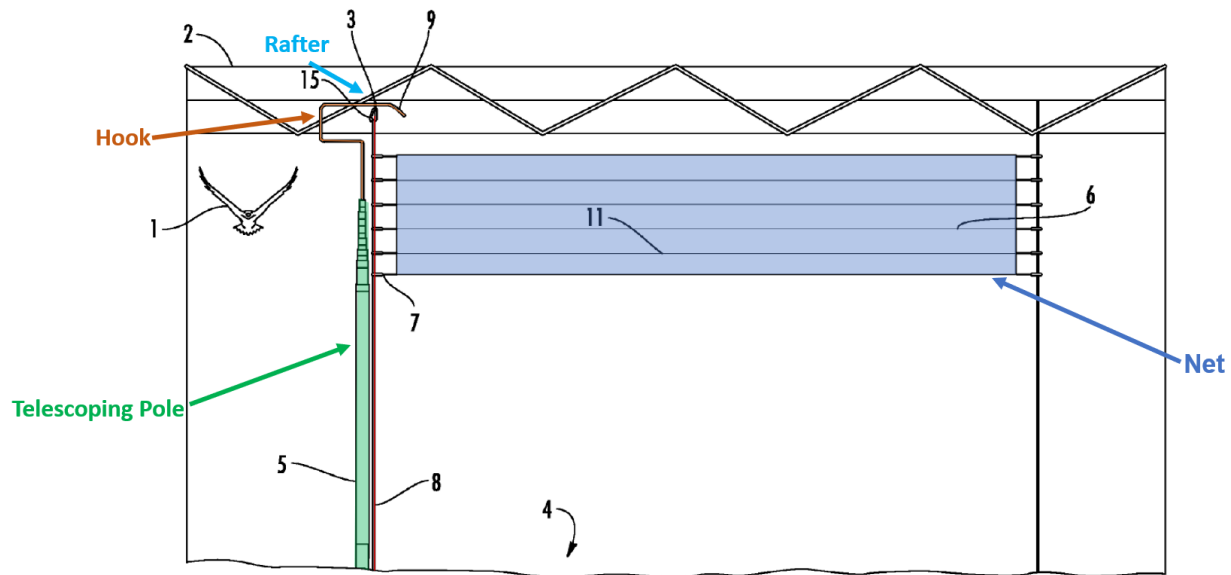


FIG. 1

Brugh – Figure 1 (annotated)

Accordingly, Brugh discloses “perimeter net comprising: a net and a telescoping pole, the net attached to the telescoping pole and the telescoping pole attached to the structure,” as recited in Claim 7. Ex-1004, ¶¶84-85. Claim 7 is thus obvious over Brugh.

D. Claim 8 – “The animal relocation system of claim 6, wherein the structure is less than or equal to 75,000 square feet, the animal relocation system comprising: the perimeter net comprising a first net and a second net.”

Brugh discloses that its capture device is configured “for repeated quick set up for safe live capture of a flying vertebrate in a large building,” such as “large warehouses, big box stores, large grocery stores, malls, and the like.” Ex-1008, ¶¶0019, 0005. A POSA would know that many large buildings of this type are “less than or equal to 75,000 square feet.” Ex-1004, ¶86. Moreover, mere changes in size are generally recognized as within the level of ordinary skill in the art. *See, e.g., In re Rose*, 220 F.2d 459 (CCPA 1955). Thus, a POSA would have appreciated that Brugh’s capture device is capable of being used in structures “less than or equal to 75,000 square feet” (and would have found it obvious to install Brugh’s capture device in such a structure).⁵

A POSA also would have found it obvious to provide two perimeter nets (i.e., “the perimeter net comprising a first net and a second net”). As discussed with respect to Claim 6, Brugh discloses that a flying vertebrate’s observed “flight pattern” should be used to place nets. Ex-1008, ¶¶0015, 0045. A POSA would have found obvious to use an additional capture device (for a total of five capture

⁵ Petitioner notes that the recited “structure” is not a claimed feature of Claim 6’s animal relocation system, nor is any installation within such a structure required.

devices) in a variety of circumstances, including where the flight pattern of flying vertebrate(s) within a building included five different locations or where five or more flying vertebrates are present. Ex-1004, ¶87.

Although not required by Claim 8, a POSA would have found it further obvious to locate at least two of Brugh's capture devices along a perimeter wall of the building (e.g., as "first" and "second" perimeter nets). Ex-1004, ¶88. A POSA would have been motivated to do this in response to observing the flight pattern of flying vertebrate(s) in such a location or for the purpose of shrinking the effective area in which an identified vertebrate can fly. Ex-1004, ¶88.

Accordingly, Brugh renders obvious "wherein the structure is less than or equal to 75,000 square feet, the animal relocation system comprising: the perimeter net comprising a first net and a second net," as recited in Claim 8. Ex-1004, ¶89. Claim 8 is thus obvious over Brugh.

E. Dependent Claims 9-12.

Dependent Claims 9-12 each recite relative orientations of the perimeter and trapping nets. Each of these orientations would have been obvious to a POSA in view of Brugh. Ex-1004, ¶90.

Brugh discloses that its capture device is configured for being hung from rafters (3) in a building's ceiling (2). The hooks (9) of the capture device's telescoping poles (5) are attached to the rafters (3), with the net (6) suspended

between the poles (5). As a result, the orientation of the each hung capture device is generally dictated by the orientation of the rafters (3). Ex-1004, ¶91. As a POSA would have appreciated, the rafters in “large box stores, warehouses, storage facilities, retail buildings and the like”—in which Brugh’s capture device can be used—are often straight and arranged in a grid (i.e., with each rafter either parallel or perpendicular to an adjacent rafter). Ex-1004, ¶92. As a result, when installing multiple capture devices (for the reasons explained above in relation to Claims 6-8), a POSA would understand that the net (6) of any hung capture device would be parallel to (or perpendicular to) the net of the other hung capture devices. Ex-1004, ¶92.

Brugh also discloses that a flying vertebrate’s observed “flight pattern” can be “used to place the netting in relationship to the position of the flying vertebrate.” Ex-1008, ¶¶0015, 0045. A POSA would have appreciated from this teaching that a capture device’s net (6) should intersect the anticipated flight pattern of a targeted vertebrate. Ex-1004, ¶93. Thus, a POSA would select the location and orientation of each capture device based on the anticipated flight pattern(s) of targeted flying vertebrates and the orientation of the rafters from which the capture devices can be hung. Ex-1004, ¶93. These locations and orientations would include parallel and perpendicular relationships among the capture devices.

Claim 9 depends from Claim 8 and recites “wherein the first net and second net are installed parallel to one another” (referring to the pair of perimeter nets recited in Claim 8). It would have been obvious to a POSA to install perimeter nets parallel to one another in instances where (i) the flight pattern of flying vertebrate(s) was observed (or expected to be) along two locations of the same perimeter wall (or parallel perimeter walls) or (ii) where the observed/expected flight pattern otherwise required hanging of Brugh’s capture device from parallel rafters. Ex-1004, ¶94. Similarly, **Claim 12** depends from Claim 6 and recites “wherein the second trapping net is installed parallel to the perimeter net.” For substantially the same reasons, a POSA would have found it obvious to install one of Brugh’s capture devices (a trapping net) parallel to another of Brugh’s trapping devices along perimeter wall (a perimeter net). Indeed, a POSA would have appreciated that an observed flight pattern or rafter orientation would frequently suggest this orientation. Ex-1004, ¶95.

Claim 10 depends from Claim 9 and recites “wherein the trapping net is installed at a ninety-degree angle to the perimeter net,” while **Claim 11** depends from Claim 6 and recites “wherein the first trapping net is installed perpendicular to the perimeter net.” A POSA would have found it obvious to install one of Brugh’s capture devices (a trapping net) in an orientation perpendicular to (specifically, at a 90-degree angle to) another of Brugh’s trapping devices along a perimeter wall (a perimeter net). Ex-1004, ¶96. A POSA would have appreciated that an observed

flight pattern or rafter orientation would frequently suggest this orientation between trapping and perimeter nets. Ex-1004, ¶96.

Accordingly, each of Claims 9, 10, 11, and 12 are obvious over Brugh.

F. Independent Claim 13

1. [13pre] – “A method for relocating animals within a structure comprising:”

Brugh discloses a “a method for the safe live capture of a flying vertebrate inside a large building.” Ex-1008, ¶¶0008-0018, 0028, 0049-0052, Figs. 1 and 4, Claims 1-3. Brugh also discloses that captured vertebrates can be relocated into the wild. Ex-1008, ¶0052, Abstract. Thus, although the preamble is not limiting, Brugh discloses “[a] method for relocating animals within a structure,” as recited in Claim 13’s preamble. Ex-1004, ¶98.

2. [13a] – “installing an animal relocation system, the animal relocation system comprising:”

For the reasons discussed above with respect to Claim 6’s preamble, Brugh discloses a capture device that is “an animal relocation system.” *Supra* VI.B.1; Ex-1008, ¶¶0019-0024, 0049-0052, Fig. 1, Claim 4. Brugh also discloses using this device as part of its capture method. Ex-1008, ¶¶0008-0018, 0028, 0049-0052, Figs. 1 and 4, Claims 1-3; Ex-1004, ¶99.

**3. [13b] – “a perimeter net system comprising two nets;”
[13c] – “a trapping net;”**

For the reasons discussed above with respect to Claim 6 (elements [6a] and [6b]) and Claim 8, a POSA would have found it obvious in view of Brugh to provide at least two perimeter nets (e.g., two of Brugh’s capture devices hung along a perimeter wall) and at least one trapping net (e.g., a third capture device hung in an additional location within the building). *Supra* VI.B.2 and VI.D; *see* Ex-1008, ¶¶0007-0024, 0039-0043, 0049-0052, Fig. 1; Ex-1004, ¶100.

4. [13d] – “and a flushing device;”

For the reasons discussed above with respect to Claim 6 (element [6c]), a POSA would have found it obvious in view of Brugh to provide “a flushing device.” *Supra* VI.B.3; *see* Ex-1008, ¶¶0016, 0046; Ex-1004, ¶101.

5. [13e] – “flushing the animal through the structure wherein the flushing device chases the animal towards the perimeter net system and into the trapping net.”

Brugh discloses that flying vertebrates can be captured by “driving the flying vertebrate ... into the netting pockets” of the capture device. Ex-1008, ¶0016. Brugh notes that this may be accomplished by “getting the flying vertebrate to fly, by making a loud noise, approaching the vertebrate, or by the placement of food, light, or odorant or the like.” Ex-1008, ¶0046. As discussed above in relation to Claim 6 (element [6c]), a POSA would have found it obvious to use a flushing device for “making a loud noise,” “approaching the vertebrate,” or placing “light” in a manner

that would induce flight. *Supra* VI.B.3; Ex-1008, ¶0046; Ex-1004, ¶102. Accordingly, Brugh renders obvious the step of “flushing the animal through the structure wherein the flushing device chases the animal towards the perimeter net system and into the trapping net,” as recited in element [13e]. Ex-1004, ¶¶103-104.

Accordingly, Claim 13 is obvious over Brugh.

G. Claim 14 – “The method of claim 13 further comprising: installing the perimeter net system, such that the square footage available for the animal to travel within the structure is halved.”

For the reasons explained above with respect to Claim 6 and Claim 8, a POSA would have found it obvious to install Brugh’s capture device in several locations throughout a building, including at least two along perimeter walls and at least three in other locations. *Supra* VI.B.2 and VI.D. A POSA would have understood that placing multiple capture devices proximal to a flying vertebrate would effectively shrink the area in which the vertebrate is able to fly and thereby improve the likelihood of capture. Ex-1004, ¶104. A POSA would have found it obvious to hang Brugh’s capture devices “such that the square footage available for the animal to travel within the structure is halved” as (i) this would be a matter of basic geometry, (ii) would frequently occur simply as a function of placing the capture devices in the flight patterns of observed flying vertebrates, and (iii) would have the entirely predictable result of improving the likelihood of capture. Ex-1008, ¶¶0015, 0045; Ex-1004, ¶¶104-105.

Accordingly, Claim 14 is obvious over Brugh.

VII. GROUND B: CLAIMS 1-16 ARE OBVIOUS IN VIEW OF BRUGH AND KUNZ.

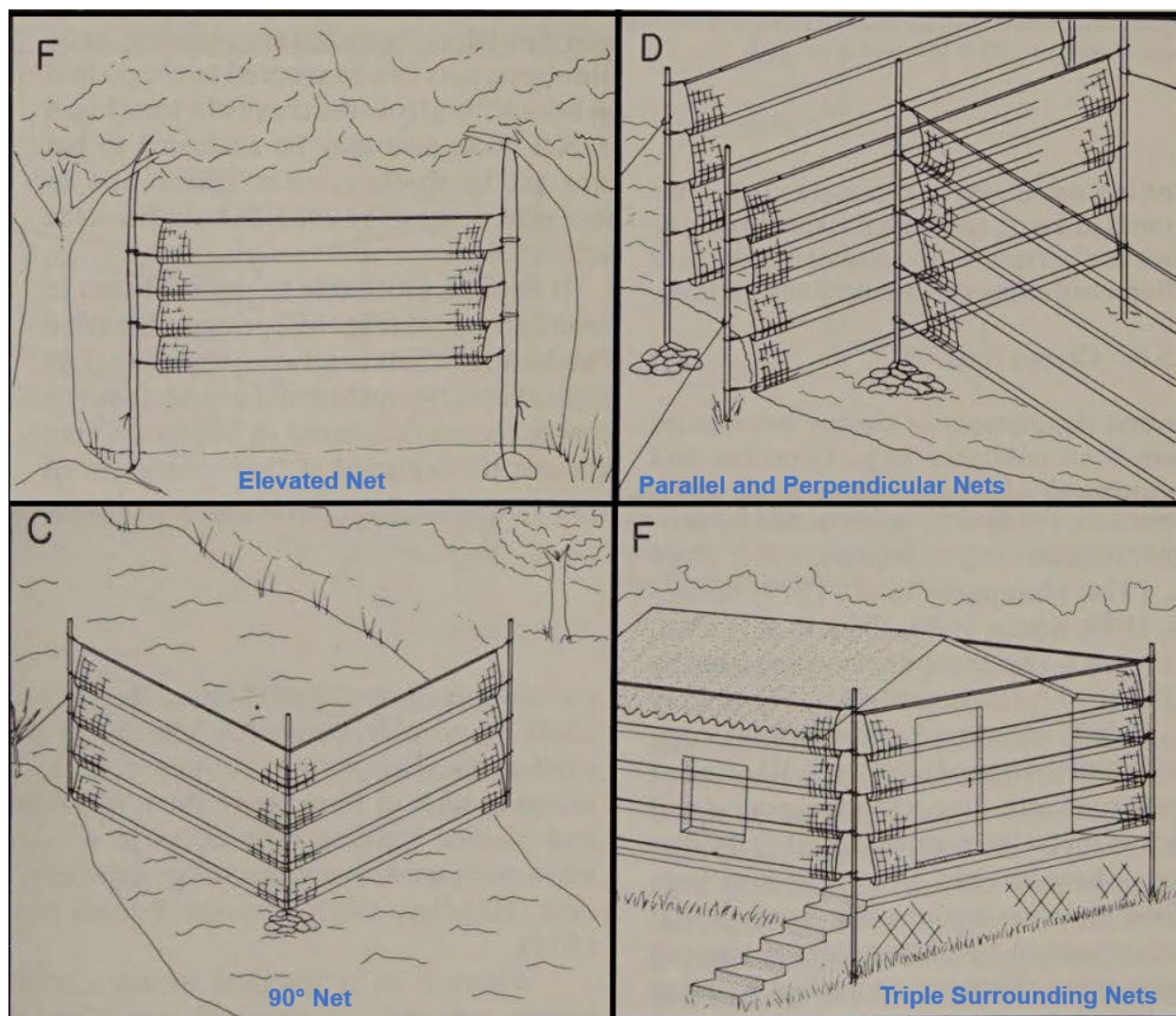
For the following reasons, Petitioner asserts that Claims 1-16 are obvious in view of Brugh and Kunz.

A. Overview of Kunz

Kunz is a chapter from the book *Ecological and Behavioral Methods for the Study of Bats* by Kunz and Kurta, published in 1990.⁶ Ex-1010 (copyright page). Kunz is therefore prior art to the '374 Patent under § 102.

Kunz discloses techniques and systems for trapping bats (and other flying vertebrates) in various environments. In particular, Kunz describes various netting configurations in which multiple, pole-mounted mist nets are used to effectively capture bats. Ex-1010, 6-11. Kunz champions multiple-net capture systems, noting that “[a]s bats attempt to avoid one net they frequently become captured in another.” Ex-1010, 10. Examples of Kunz’s mist-net configurations are shown below.

⁶ Kunz was originally published in 1988. The version provided as Ex-1010 is the paperback edition published in 1990.



Kunz – Figs. 3 (F) and 4 (C, D, F) (annotated)

Kunz also discloses various field equipment used for animal capture. For example, Kunz describes poles to erect mist netting (Ex-1010, 7-9); ropes, pulleys, extension poles, cleats, and other netting attachments (Ex-1010, 7-8, 10-15); and flushing devices for dislodging roosted bats (Ex-1010, 5).

B. Motivation to Combine

A POSA would be motivated to combine the teachings of Brugh and Kunz to arrive at the claimed invention. Ex-1004, ¶110. The '374 Patent broadly defines its “Field” as “animal relocation” and, more specifically, relocating animals “using a net system and various flushing techniques.” Ex-1001, 1:8-12. Brugh’s field likewise “relates to the live capture of flying vertebrates,” specifically using a “net deploying system designed for inside large enclosure buildings.” Ex-1008, ¶0003. Brugh teaches its method is useful to capture “wild vertebrate, such as birds and bats” (Ex-1008, ¶0005), while Kunz elaborates on the use of mist nets to capture bats. Ex-1010, 10-12. Kunz also discloses that its techniques are “equally suitable for ecological and behavioral studies of *other terrestrial vertebrate*,” which would include birds. *See also* Ex-1010, ix, 1 (observing that “methods used to capture animals” is a “fundamental” topic in “ecology and behavior”).

Kunz would have been well-known to a POSA as a leading treatise on the capture and study of bats (and other flying vertebrates). Ex-1004, ¶111; Ex-1022, 243. Like Brugh, Kunz describes the use of nets suspended between poles to capture flying vertebrates. Ex-1010, 6-11, Figs. 3 and 4; Ex-1008, ¶¶0039-0052, Figs. 1 and 2. Kunz also notes that mist nets are “the most commonly used devices for capturing flying bats” and “may be deployed successfully at almost any site where bats are expected to fly.” Ex-1010, 6, 8.

Accordingly, a POSA would have been motivated to look to the teachings of both Kunz and Brugh within the field of animal (specifically, flying vertebrates) capture and relocation. *Cf.* Ex-1001, 1:50-65 (Challenged Patent also noting a POSA could adapt its techniques “different animals” with “different movement tendencies”); Ex-1004, ¶112. As described below, a POSA would have found it obvious to use and adapt Brugh’s capture device in accordance with the teachings of Kunz.

C. Independent Claim 6

1. Elements [6a], [6b]

Claim 6 is obvious over Brugh and Kunz for at least the same reasons explained with respect to Brugh alone (Ground A). *Supra* VI.B. However, Kunz would have further motivated a POSA to use a plurality of Brugh’s capture devices—specifically, at least one “perimeter net” and at least three “trapping nets” as recited in elements [6a] and [6b]. Ex-1004, ¶113.

Kunz discloses that mist nets can be deployed anywhere bats (and other animals) “are expected to fly.” Ex-1010, 8. Consistent with Brugh’s teaching that a flying vertebrate’s “flight pattern” should be used to place nets, Kunz discloses that mist nets should be placed in sites “used as flyways” and are “most productive” when placed in locations “identified from visual observations of flying bats” (including anywhere bats “regularly enter and exit”). Ex-1010, 8; Ex-1008, ¶¶0015, 0045; Ex-

1004, ¶114. As a single bat (or multiple bats) may traverse many different flyways, Kunz proposes various multi-net “configurations,” which ensure that when a bat attempts to “avoid one net” it may “become captured in another.” Ex-1010, 10, Figures 3-4. In particular, Kunz notes that it is effective to place multiple nets such that “the perimeters of roosts are either partially or completely surrounded by one or more nets.” Ex-1010, 10-11, Fig. 4.

In view of Kunz’s teachings regarding the placement of multiple nets, a POSA would have found it obvious (and would have been motivated) to observe the flyways of flying vertebrates in a building and place multiple nets (e.g., at least one perimeter net and at least three trapping nets) within the building for the purpose of effectively capturing the identified flying vertebrates. Ex-1004, ¶115. Moreover, although not required by Claim 6, a POSA would have found it further obvious in view of Kunz to specifically (i) install one of Brugh’s capture devices along a perimeter wall within a building and (ii) three more of Brugh’s capture devices in additional locations (e.g., around the interior of the building). In view of Kunz, installation of Brugh’s capture device in this way (e.g., in response to observing flyways in these locations) would have predictably resulted in an effective capture system within the building. Ex-1004, ¶115. Accordingly, elements [6a] and [6b] would have been obvious to a POSA in view of Brugh and Kunz.

2. Element [6c]

Kunz also discloses the use of a “flushing device.” In particular, Kunz discloses that roosting bats can be “dislodged with ... extension poles to which small hoop nets are attached” to aid in capture. Ex-1010, 5. A POSA would have found it obvious (and would have been motivated) to dislodge a flying vertebrate using Kunz’s net-extension pole and drive it into Brugh’s capture device (rendering element [6c] further obvious). Ex-1010, 5; Ex-1008, ¶¶0016, 0046 (driving vertebrate into netting pockets); Ex-1004, ¶¶116-117.

Accordingly, Claim 6 is obvious over Brugh and Kunz (Ground B).

D. Claim 7

Brugh discloses the features of Claim 7 for the reasons discussed above under Ground A. *Supra* VI.C. Petitioner notes that Kunz furthers reinforces the use of multiple nets secured between poles (including extension poles). Ex-1010, 4, 7-11; Ex-1004, ¶118. Accordingly, Claim 7 is further obvious over Brugh and Kunz (Ground B).

E. Claim 8

Claim 8 is obvious over Brugh and Kunz for at least the same reasons explained with respect to Brugh alone (Ground A). *Supra* VI.D. However, Kunz would have further motivated a POSA to provide two perimeter nets (i.e., “the perimeter net comprising a first net and a second net”) as recited in Claim 8. Ex-1004, ¶119.

Kunz reaffirms Brugh's teaching that the flight patterns of flying vertebrates should be used to place capture devices, rendering it obvious to use first and second perimeter nets in instances where those nets would intersect observed flight patterns. Ex-1010, 8; Ex-1008, ¶¶0015, 0045; Ex-1004, ¶120. Moreover, Kunz identifies the advantages of using multiple nets (Ex-1010, 8-11) and teaches the effectiveness of nets placed such that "the perimeters of roosts are either partially or completely surrounded by one or more nets" (Ex-1010, 10-11, Fig. 4). Thus, a POSA would have found it obvious (and been motivated) to provide two perimeter nets as recited in Claim 8. Ex-1004, ¶120.

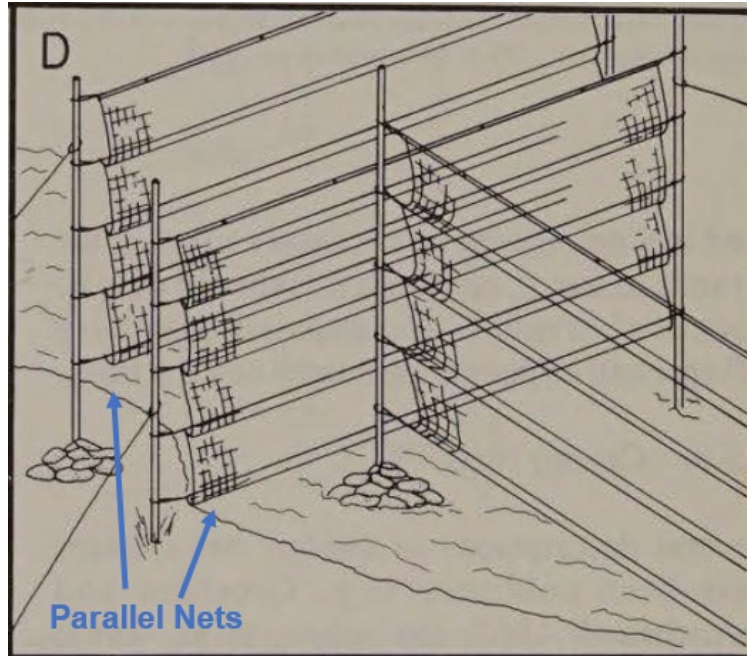
Accordingly, Claim 8 is further obvious over Brugh and Kunz (Ground B).

F. Claims 9-12

Claims 9-12 are obvious over Brugh and Kunz for at least the same reasons explained with respect to Brugh alone (Ground A). *Supra* VI.E. However, Kunz would have further motivated a POSA to arrange perimeter and trapping nets in the relative orientations recited in Claims 9-12. Ex-1004, ¶121.

With respect to Claim 9 (perimeter nets "parallel" to one another) and Claim 12 (trapping net "parallel" to perimeter net), Kunz illustrates an example of multiple nets positioned parallel to one another for effective vertebrate capture. Ex-1010, 10-11, Fig. 4(D). In combination with Brugh and Kunz's previously discussed teachings regarding the placement of nets in flight patterns (and a POSA's knowledge of the

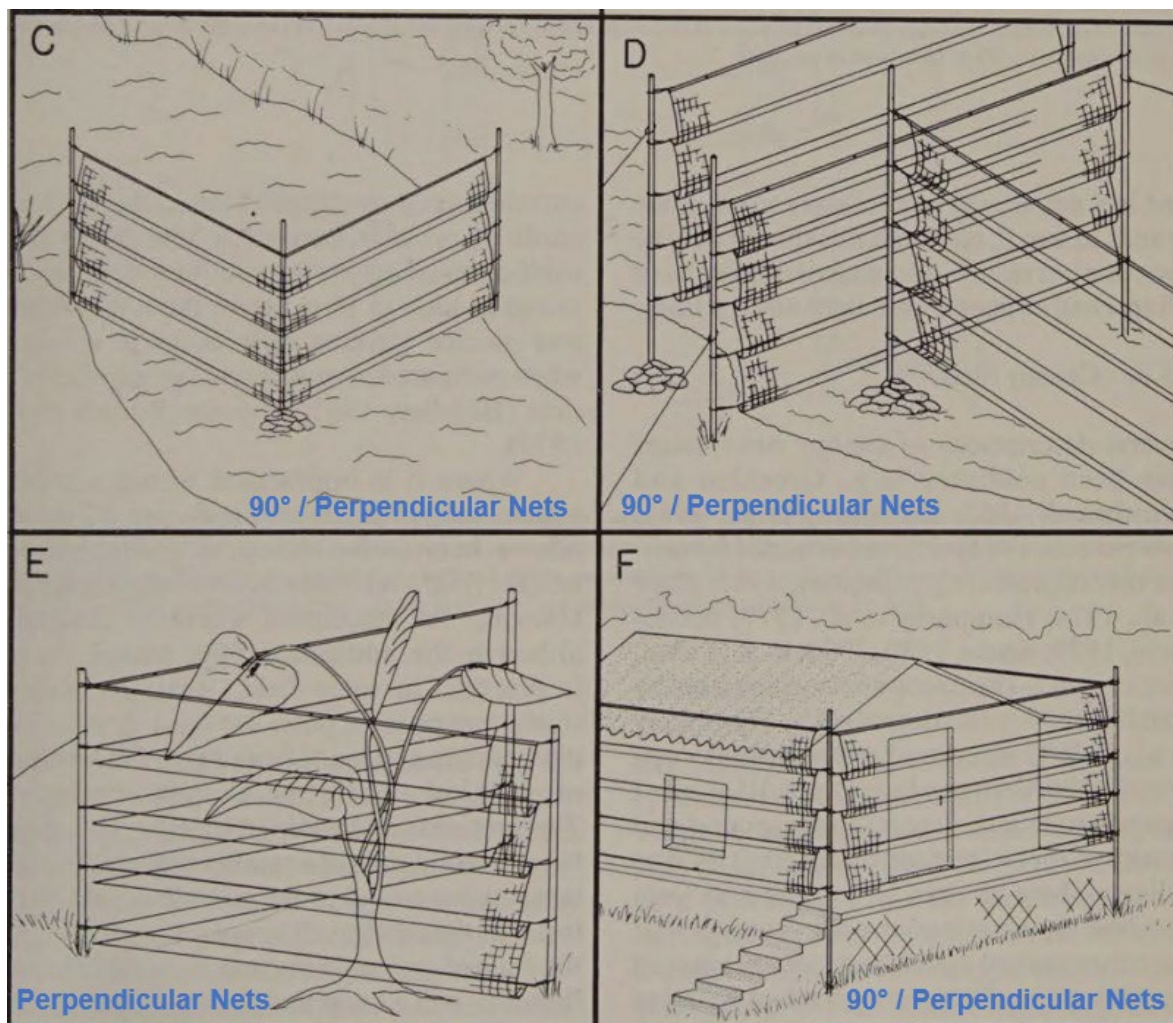
typical grid-like orientation of building rafters), a POSA would have found it obvious (and would have been motivated to) position Brugh's capture nets in a parallel orientation as recited in Claims 9 and 12. Ex-1004, ¶122.



Kunz – Fig. 4(D) (annotated)

With respect to Claim 10 (trapping net 90° angle to perimeter net) and Claim 11 (trapping net “perpendicular” to perimeter net), Kunz shows several examples of nets arranged in 90°/perpendicular orientations for effective vertebrate capture. Ex-1010, 8-11, Figs. 3(C), 4(C-F). In combination with Brugh and Kunz’s previously discussed teachings regarding the placement of nets in flight patterns (and a POSA’s knowledge of the typical grid-like orientation of building rafters), a POSA would

have found it obvious (and would have been motivated to) position Brugh's capture nets in 90°/perpendicular orientations as recited in Claims 10 and 11. Ex-1004, ¶123.



Kunz – Fig. 4(C-F) (annotated)

Accordingly, for these additional reasons, each of Claims 9, 10, 11, and 12 are obvious over Brugh and Kunz (Ground B).

G. Independent Claim 13

1. Element [13pre]

Claim 13's preamble would have been obvious to a POSA over Brugh and Kunz for at least the same reasons explained with respect to Brugh alone (Ground A). *Supra* VI.F.1; Ex-1004, ¶124.

2. Element [13a]

Element [13a] would have been obvious to a POSA over Brugh and Kunz for at least the same reasons explained with respect to Brugh alone (Ground A). *Supra* VI.F.2; Ex-1004, ¶125.

3. Elements [13b] and [13c]

Elements [13b] and [13c] would have been obvious to a POSA over Brugh and Kunz for at least the same reasons explained with respect to Brugh alone (Ground A). *Supra* VI.F.3. However, as discussed above with respect to Claim 6 (elements [6a] and [6b]) and Claim 8 under Ground B, a POSA would have been further motivated by the additional disclosure of Kunz to provide at least two perimeter nets (e.g., two of Brugh's capture devices hung along a perimeter wall) and at least one trapping net (e.g., a third capture device hung in an additional location within the building) as recited in [13b] and [13c]. *Supra* VII.C.1 and VII.E; *see* Ex-1010, 8-11, Figures 3-4; Ex-1008, ¶¶0007-0024, 0039-0043, 0049-0052, Fig. 1; Ex-1004, ¶126.

4. Elements [13d] and [13e]

Elements [13d] and [13e] would have been obvious to a POSA over Brugh and Kunz for at least the same reasons explained with respect to Brugh alone (Ground A). *Supra* VI.F.4 and VI.F.5. However, as discussed above with respect to Claim 6 (element [6c]) under Ground B, a POSA would have been further motivated by the additional disclosure of Kunz to provide “a flushing device” and to “flush[] the animal through the structure wherein the flushing device chases the animal towards the perimeter net system and into the trapping net,” as recited in [13d] and [13e]. *Supra* VII.C.2; *see* Ex-1010, 5; Ex-1008, ¶¶0016, 0046; Ex-1004, ¶¶127-128.

Accordingly, for these additional reasons, Claim 13 is further obvious over Brugh and Kunz (Ground B).

H. Claim 14

Claim 14 is obvious over Brugh and Kunz for at least the same reasons explained with respect to Brugh alone (Ground A). *Supra* VI.G. However, Kunz would have further motivated a POSA to provide multiple nets to shrink the area in which the vertebrate is able to fly and improve the likelihood of capture. Ex-1010, 10-11 (discussion of multiple net configurations and surrounding areas with the same); Ex-1004, ¶¶129-130. In view of Brugh and Kunz, a POSA would have found it further obvious to hang Brugh’s capture devices “such that the square footage

available for the animal to travel within the structure is halved” as recited in Claim 14. Ex-1004, ¶¶129-130.

Accordingly, for these additional reasons, Claim 14 is further obvious over Brugh and Kunz (Ground B).

I. Claim 15 and Claim 16

Claim 15 depends from Claim 13 and recites “the flushing device further comprising an arm and a flusher,” while Claim 16 depends from Claim 15 and recites “wherein the flushing device arm comprises a telescoping arm.” Kunz discloses that roosting bats can be “dislodged with ... extension poles to which small hoop nets are attached” to aid in capture. Ex-1010, 5. A POSA would have recognized that Kunz’s extension pole is a “flushing device” as it is capable of being used by a handler to drive an animal from one location to another, and would have regarded Kunz’s “extension pole” as both an “arm” (Claim 15) and a “telescoping arm” (Claim 16). Ex-1004, ¶131. Moreover, a POSA would have recognized that Kunz’s “small hoop net” on the end of the extension pole is a “flusher” as it creates noise, movement, or both when shaken or moved. Ex-1004, ¶132.

As explained above in relation to Claim 6 (element [6c]), a POSA would have found it obvious (and would have been motivated) to dislodge a flying vertebrate using Kunz’s net-extension pole and drive it into Brugh’s capture device (rendering element [6c] further obvious). Ex-1010, 5; Ex-1008, ¶¶0016, 0046; Ex-1004, ¶132.

Moreover, to the extent there is any doubt Kunz’s extension pole is a “telescoping pole,” a POSA would have found it obvious to use the telescoping pole disclosed in Brugh for the same dislodging purpose. Ex-1008, ¶0026, 0050, Fig. 2; Ex-1004, ¶132. And to the extent there is any doubt that Kunz’s “hoop net” is a “flusher,” a POSA would have found it obvious to substitute any device capable of making noise, approaching a vertebrate, or emitting light as recommended in Brugh. Ex-1008, ¶0046; Ex-1004, ¶132.

Thus, a POSA would have found it obvious to (and would have been motivated to) provide a flushing device “comprising an arm and a flusher,” as recited in Claim 15, and specifically a flushing device having a “telescoping arm” as recited in Claim 16 in view of the combined teachings of Brugh and Kunz. Ex-1004, ¶133. Accordingly, Claims 15 and 16 are each obvious over Brugh and Kunz (Ground B).

J. Independent Claim 1

1. Element [1pre] and [1a]

Claim 1’s preamble would have been obvious to a POSA over Brugh and Kunz for at least the same reasons explained with respect to Elements [13pre] and [13a] under Ground A (Brugh) and Ground B (Brugh and Kunz). *Supra* VI.F.1, VI.F.2, VII.G.1-VII.G.2; Ex-1004, ¶134.

2. Perimeter Net System (Elements 1b-1e)

Claim 1 recites “a perimeter net system” that include “two perimeter nets.” A POSA would have found it obvious to provide two perimeter nets as recited in

Element [1b] for the same reasons explained with respect to Claim 6 ([6a]), Claim 8, and Claim 13 ([13B]) under Ground A and Ground B. *Supra* VI.B.2, VI.D, VI.F.3, VII.C.1, VII.E, and VII.G.3; Ex-1004, ¶135.

Claim 1 also recites that each of the perimeter nets includes a variety of features (Elements 1c-1e), each of which is disclosed in the combination of Brugh and Kunz. As explained earlier, Brugh's capture device is a "perimeter net." *Supra* VI.B.2. Furthermore, as shown below, Brugh's capture device includes a net (6) having a first side and a second side, each having a plurality of connectors (7), as recited in *Element [1c]*.

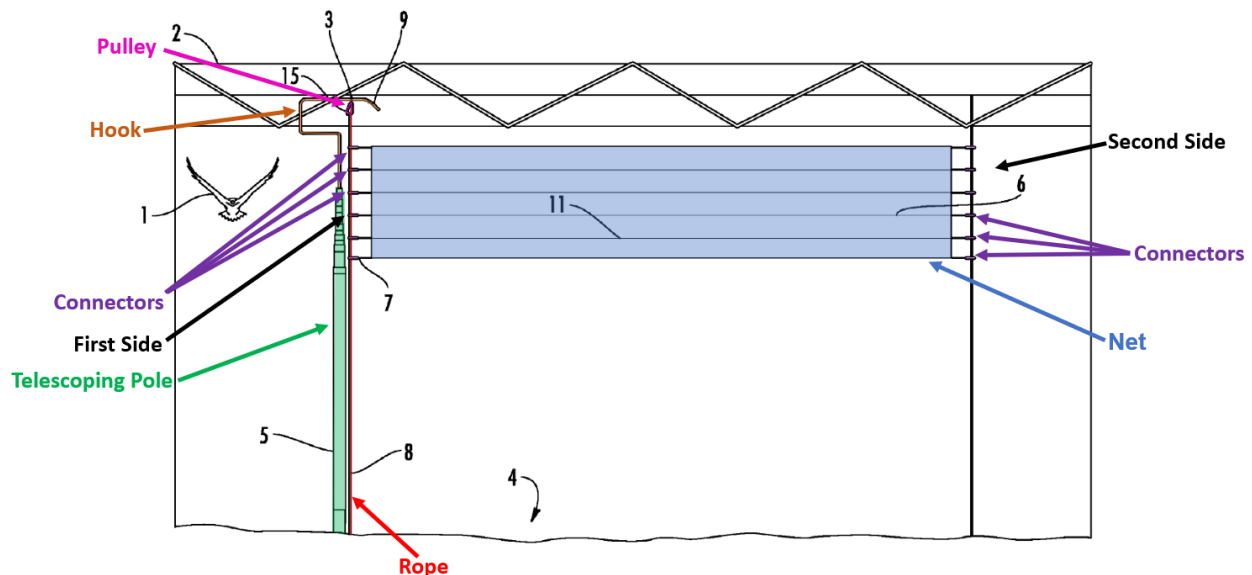


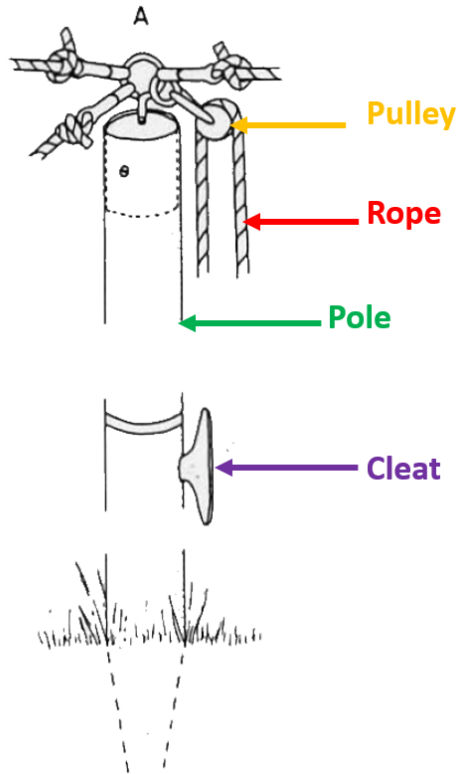
FIG. 1

Brugh – Fig. 1 (annotated)

Brugh discloses that its net (6) is suspended between a pair of telescoping poles (5). Ex-1008, ¶¶0007-0024, 0039-0042, 0049-0052, Figs. 1 and 2. Although

Figure 1 depicts one of the poles (5), Brugh discloses that its capture device includes telescoping poles (5) on each side of the net (6). *See* Ex-1008, ¶¶0049 (“net 6 mounted on height adjustable posts 5”), 0008, 0019, 0042, 0049, 0052, claim 1 (“plurality of ... support poles”). Moreover, Kunz’s disclosure of using nets suspended between poles would have rendered providing Brugh’s telescoping poles (5) on both sides of its net (6) further obvious (and would have motivated a POSA to modify any conceivable embodiment of Brugh having one pole). Ex-1004, ¶137. As shown above, Brugh also discloses that each of its telescoping poles (5) includes “a first end and a second end, the first end having a hook” (9), “a removable connector” (one of the clips 7), “a rope” (8), “and pulley” (15), as recited in Element [1d]. Ex-1008, ¶0019-0024, 0042, 0049-0051.

Furthermore, Kunz (which also discloses a pole, rope, and pulley arrangement), discloses a “cleat” for securing a rope (shown below). Ex-1010, 13-15, Fig. 7. It would have been obvious to a POSA to provide Kunz’s cleat on Brugh’s telescoping poles for the purpose of securing Brugh’s rope (8), and would have rendered further obvious the use of a pole-rope-pulley arrangement in Brugh’s capture device. Ex-1004, ¶138. Thus, the combination of Brugh and Kunz discloses the features of *Element [1d]*.



Kunz – Fig. 7 (annotated)

Brugh discloses that its ropes (8) and pulleys (15) secure both sides of its net (6) to their respective telescoping poles (5) through removable connectors (7), as recited in Element [1e]. Ex-1008, ¶0019-0024, 0042, 0049-0051, Figs. 1-3; Ex-1004, ¶139. Brugh also discloses that its telescoping poles (5) are secured to rafters (3). Ex-1008, ¶0049, Fig. 1. Furthermore, for the reasons discussed above with respect to Claims 9 and 12 (under Grounds A and B), a POSA would have found it obvious to install first and second perimeter nets “parallel” to one another. *Supra* VI.E and VII.F; Ex-1004, ¶139. Thus, the combination of Brugh and Kunz discloses the features of *Element [1e]*.

3. Trapping Net System (Elements 1f-1i)

Claim 1 also recites “a trapping net system” that includes first, second, and third “trapping nets.” A POSA would have found it obvious to provide three trapping nets as recited in *Element [1f]* nets for the same reasons explained with respect to Claim 6 ([6b]) under Ground A and Ground B. *Supra* VI.B.2 and VII.C.1; Ex-1004, ¶140.

Claim 1 also recites trapping net features (Elements [1g]-[1i]) that are identical to those identified for the perimeter nets (Elements [1c]-[1e]). As explained earlier, Brugh’s capture device is also “trapping net” (*Supra* VI.B.2) and, for the same reasons provided above regarding Elements [1c]-[1e], renders obvious (alone or with Kunz) the trapping net features recited in *Elements [1g]-[1i]*. Ex-1004, ¶141.

Element [1i] further recites that the first/second trapping nets are installed “parallel” to the first/second perimeter nets, and that the third trapping net is installed “at a ninety-degree-angle” relative to the first/second perimeter nets. For the reasons discussed above with respect to Claims 9-12 (under Grounds A and B), a POSA would have found it obvious to install the perimeter and trapping nets in these basic orientations (which in many cases are dictated by rafter orientations). *Supra* VI.E and VII.F; Ex-1004, ¶142.

4. Flushing Device (Elements 1j-1k)

Claim 1 also recites “a flushing device comprising a telescoping arm and a flusher” ([1j]) and “flushing the animal through the enclosed building wherein the flushing device chases the animal towards the perimeter net system and into the trapping net” ([1k]). Elements [1j], [1k] would have been obvious to a POSA over Brugh and Kunz for the same reasons explained with respect to Elements [6c], [13d], [13e] and Claims 15 and 16 under Grounds A and B. *Supra* VI.B.3, VI.F.4-VI.F.5, VII.C.2, VII.G.4, and VII.I; Ex-1004, ¶¶143-144.

Accordingly, Claim 1 is obvious over Brugh and Kunz (Ground B).

K. Claim 2

Claim 2 recites “placing the perimeter net system within the enclosed building such that the square footage available for the animal to travel within the enclosed building is halved.” For the same reasons explained regarding Claim 14 under Grounds A and B, Claim 2 is obvious over Brugh and Kunz (Ground B). *Supra* VI.G and VII.H; Ex-1004, ¶145.

L. Claim 3

Claim 3 recites that “the flushing device is used to guide the animal towards the animal relocation system by angling the flushing device to around a 40 degree angle and guiding the bird towards the animal relocation system.” For the reasons discussed above in relation to Elements [6c], [13d], [13e], Claims 15-16, and Elements [1j] and [1k] under Grounds A and B, it would have been obvious to use a

pole as a flushing device. *Supra* VI.B.3, VI.F.4-VI.F.5, VII.C.2, VII.G.4, VII.I, and VII.J.4. A POSA using a pole would hold the pole at a 40° angle for at least some period of time during flushing (e.g., when lifting the pole from the ground). Ex-1004, ¶¶146-147. Moreover, holding the pole at a 40° angle would be obvious in scenarios where the flushing device would need to be angled to move around other objects (e.g., rafters, shelves, or the like). Ex-1004, ¶¶146-147. Thus, Claim 3 is obvious over Brugh and Kunz (Ground B).

M. Claim 4

Claim 4 is obvious over Brugh and Kunz (Ground B) as Brugh discloses positioning nets “at a height above the floor of the enclosed building based on the species of animal being relocated.” Ex-1008, ¶0008-0018, 0044, 0058, 0052 (determining species as part of capture method), Fig. 1 (net above floor); Ex-1004, ¶148.

N. Claim 5

Claim 5 recites that “the perimeter net system and trapping net system use mist nets.” Brugh discloses that its net (6) can be “nylon or other plastic netting,” and Kunz discloses that mist nets are “braided nylon,” “commonly used,” and “may be deployed successfully at almost any site where bats are expected to fly.” Ex-1008, ¶0043; Ex-1010, 6-8. A POSA would have thus found it obvious (and would have

been motivated to) use a mist net as Brugh's net (6). Ex-1004, ¶149. Claim 5 is therefore obvious over Brugh and Kunz (Ground B).

VIII. GROUND C: CLAIMS 1-16 ARE OBVIOUS IN VIEW OF BIRD BARRIER VIDEO AND KUNZ.

For the following reasons, Claims 1-16 are obvious in view of the Bird Barrier Video (Ex-1009, Ex-1014) and Kunz.

A. Bird Barrier Video Publication.

The Bird Barrier Video (Ex-1009) was uploaded to YouTube on August 29, 2014 and was publicly accessible as of that date. Petitioner also provides a transcript of the Bird Barrier Video including screenshots as Exhibit 1014. *See generally* Ex-1016 (authenticating exhibits).

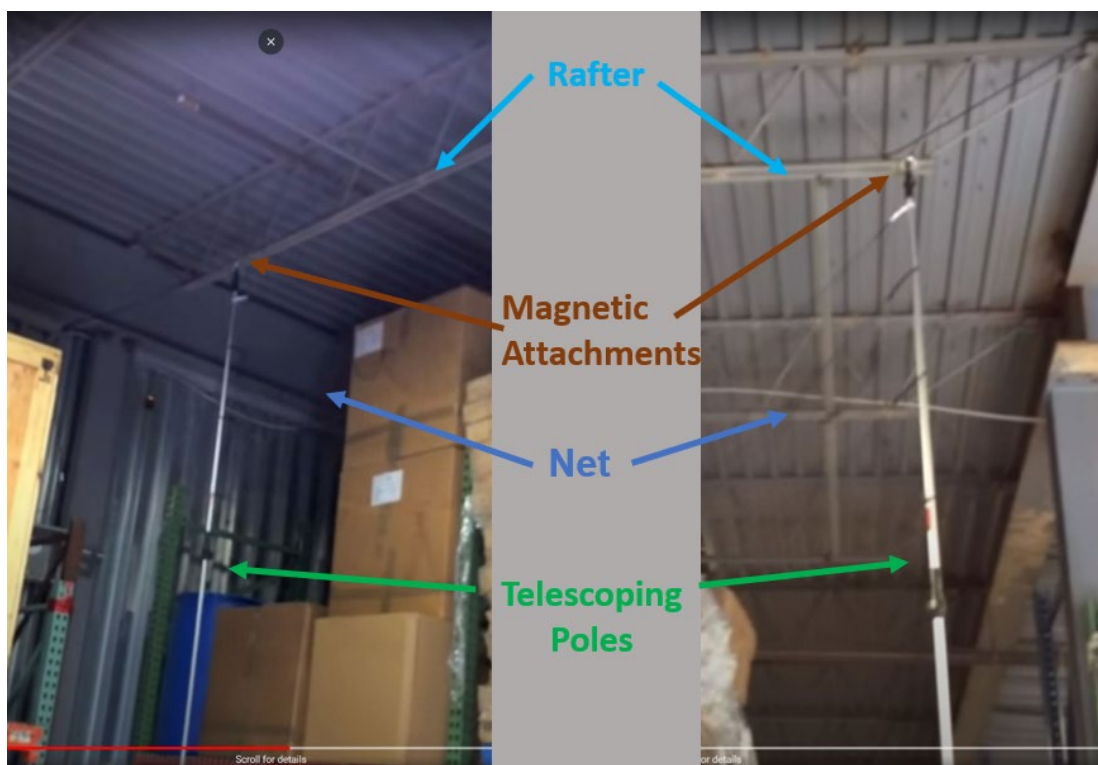
The Bird Barrier Video's public accessibility as of August 29, 2014 is corroborated by evidence:

- the YouTube page hosting the Bird Barrier Video indicates that it was published on "8/29/14" (Ex-1014, Fig. 1);
- Bird Barrier posted a link to the Bird Barrier Video on its Twitter account on 8/29/14 (Ex-1019, 1) and 9/2/14 (Ex-1020, 1);
- Bird Barrier's website posted the video link as early as 9/9/14 (Ex-1013, 11) and indicated the video had been viewed numerous times as of 9/10/14 (Ex-1013, 14); and
- external websites linked to the Bird Barrier Video as of 9/28/15 (Ex-1013, 17).

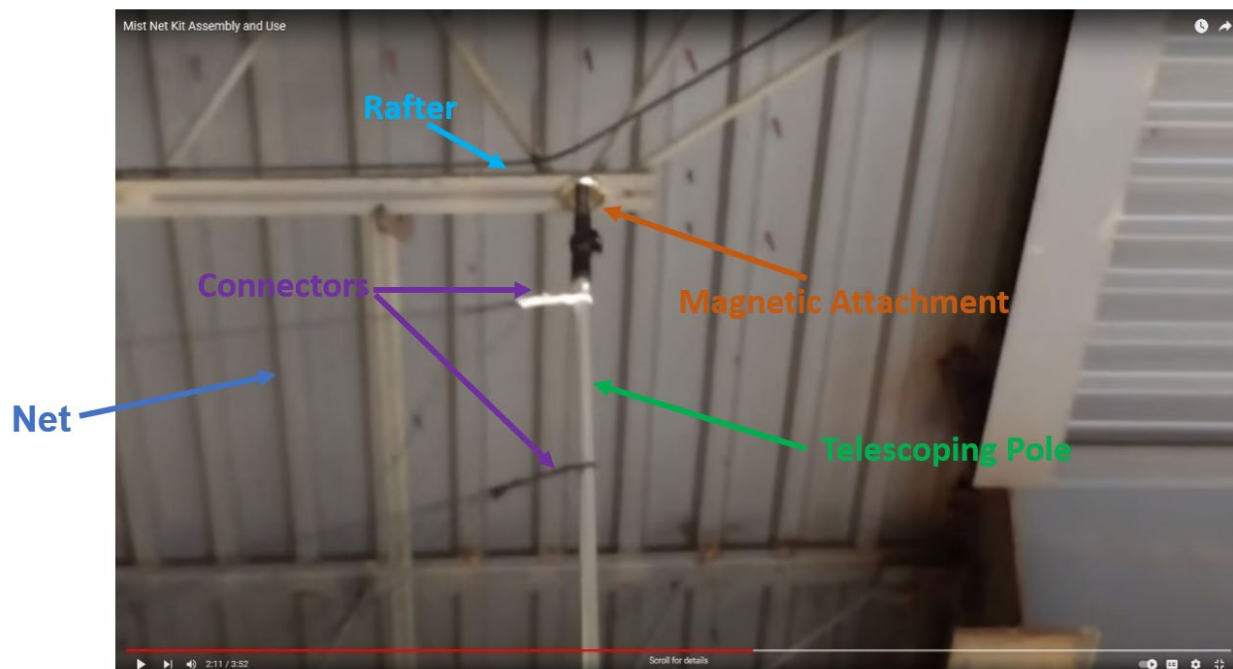
Given the Bird Barrier Video’s posting on YouTube (a well-known platform with sophisticated video indexing) and the proliferation of video links before the patent’s filing date, the Bird Barrier Video was meaningfully indexed such that an interested artisan exercising reasonable diligence would have found it. *See e.g., Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 774 (Fed. Cir. 2018); *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). Accordingly, the Bird Barrier Video (Ex-1009, Ex-1014) is a printed publication that was publicly accessible before the earliest filing date of the ’374 Patent and is prior art under § 102(a)(2).

B. Overview of Bird Barrier Video.

The Bird Barrier Video demonstrates installing a “mist net kit” configured for catching birds within a building. Ex-1009, 0:10-2:19; Ex-1014, Figs. 2-15. As shown below, the Bird Barrier Video’s shows and discusses a “mist net” suspended between a pair of “telescoping poles.” Ex-1009, 0:10-0:37; Ex-1014, Figs. 11-13. Each of the poles includes a “magnetic head” for attaching the pole to a rafter in the ceiling. Ex-1009, 1:03-1:59; Ex-1014, Fig. 8 (showing magnetic head), Figs. 11, 13, 14 (showing pole attached to rafter). The mist net also includes “horizontal pockets” to capture birds. Ex-1009, 0:10-0:37; Ex-1014, Figs. 6, 15.



Bird Barrier Video –1:49 (right) & 1:59 (left) (annotated)



Bird Barrier Video – 2:11

The Bird Barrier Video also discloses that each side of the mist net is mounted on the poles by sliding the poles through loops on sides of the net. Ex-1009, 0:37-0:58; Ex-1014, Figs. 5-8. With the net secured to the poles, the poles can be attached to rafters in the ceiling (via magnetic heads) and positioned at a height to capture targeted birds. Ex-1014, Figs. 10-15.

C. Motivation for Combining Bird Barrier Video and Kunz.

The Bird Barrier Video discloses a netting device for capturing birds trapped within a structure. As discussed *supra* in Section VII.B, Kunz teaches that its bat capture techniques “should be equally suitable for ecological and behavioral studies of other terrestrial vertebrate.” Ex-1010, ix. Thus, both Bird Barrier Video and Kunz analogously include methods for capturing flying vertebrates.

A POSA would be motivated to combine the teachings of the Bird Barrier Video and Kunz to arrive at the claimed invention. Ex-1004, ¶¶155-158. The '374 Patent broadly defines its “Field,” generally encompassing relocating animals with a “net system and various flushing techniques.” Ex-1001, 1:8-12. The Bird Barrier Video is directed to the same field—a mist net kit for capturing birds inside a building. Ex-1009, 0:10-0:37; Ex-1014, Fig. 2. Likewise, Kunz discusses the use of mist nets to capture bats (Ex-1010, 6, 8, 10-12) and discloses that its techniques are “equally suitable for ... other terrestrial vertebrate,” which would include birds (Ex-

1010, ix, *see also* 1). Indeed, both the Bird Barrier Video and Kunz disclose techniques for using mist nets and poles to capture flying vertebrates.

Accordingly, a POSA would have been motivated to look to the teachings of both the Bird Barrier Video and Kunz for installing systems to capture and relocate birds. Ex-1004, ¶¶155-158. As described below, a POSA would have found it obvious to use and adapt the Bird Barrier Video mist net kit in accordance with the teachings of Kunz.

D. Independent Claim 6

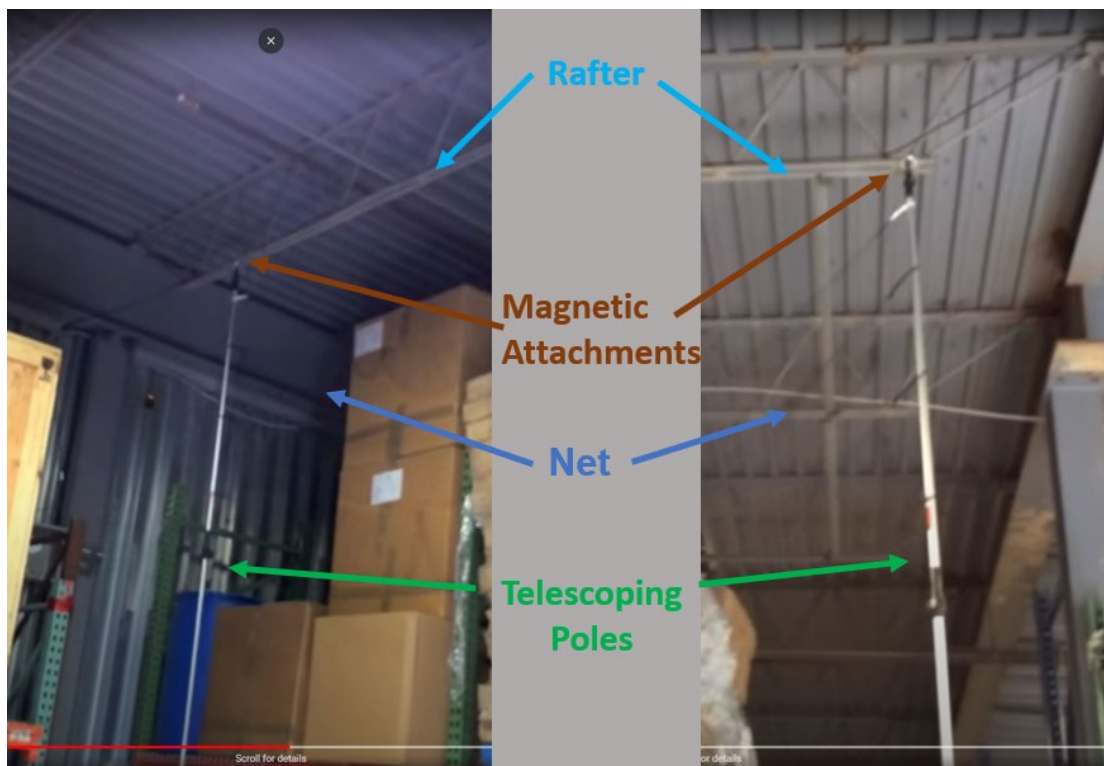
1. Element [6pre]

The Bird Barrier Video discloses a mist net kit for capturing birds in a building. Ex-1009, 1:03-2:47; Ex-1014, Figs. 10-15. Once captured, the birds are removed from the netting and released outside. Ex-1009, 2:19-2:34; Ex-1014, Fig. 15. Thus, although the preamble is not limiting, the Bird Barrier Video's mist net kit is "[a]n animal relocation system for relocating an animal in a structure," as recited in Claim 6's preamble. Ex-1004, ¶159.

2. Elements [6a] and [6b]

Elements [6a] and [6b] recite that the animal relocation system of Claim 6 includes "a perimeter net" and three "trapping nets." The Bird Barrier Video's mist net kit is both a perimeter net and a trapping net, and a POSA would have found it obvious to provide four of the mist net kits as part of an animal relocation system (e.g., one perimeter and three trapping nets). Ex-1004, ¶¶160-163.

The Bird Barrier Video’s kit includes a mist net configured for being hung from rafters. Ex-1009, 0:10-0:58, 3:01-3:10; Ex-1014, Figs. 11-14. A POSA would have appreciated that the Bird Barrier Video’s kit is capable of being positioned along the perimeter of enclosure. Ex-1009, 1:44-2:06; Ex-1014, Fig. 13 (showing mist net installed along a perimeter wall); Ex-1004, ¶¶164-165. The mist net includes “horizontal pockets” to capture birds. Ex-1009, 0:10-0:37; Ex-1014, Figs. 6, 15. Thus, a POSA would have appreciated that the mist net kit is both a perimeter net and a trapping net. Ex-1004, ¶¶164-166.



Bird Barrier Video –1:49 (right) & 1:59 (left) (annotated)

The Bird Barrier Video indicates that during installation, operators should “walk the completed net assembly to a target location near where the bird activity

has been observed.” Ex-1009, 1:27-1:40; Ex-1014, 1. Likewise, Kunz discloses that mist nets can be deployed anywhere bats (and other animals) “are expected to fly.” Ex-1010, 8. Additionally, Kunz discloses various multi-net “configurations,” which ensure that when a bat attempts to “avoid one net” it may “become captured in another.” Ex-1010, 10, Figures 3-4.

Given these teachings in Bird Barrier Video and Kunz, a POSA would have found it obvious to (and would have been motivated to) provide four of the mist net kits, for example, in instances where **(i)** the flight pattern of a flying bird (or multiple birds) within a building includes (or is expected to include) four different locations or **(ii)** where four or more flying birds are present (or expected to be present) in the building. Ex-1004, ¶161. Moreover, the inclusion of four nets would amount to the mere duplication of parts with a predictable result (increased capture effectiveness), which is well-within the level of skill in the art. Ex-1004, ¶162; *see In re Application of Harza*, 274 F.2d 669, 671 (C.C.P.A. 1960); *see also Low Temp Indus., Inc. v. Duke Mfg. Co.*, No. 2021-2137, 2021 WL 6124455, at *5-6 (Fed. Cir. Dec. 28, 2021)

Although not required by Claim 6, a POSA would have found it further obvious in view of the Bird Barrier Video and Kunz to specifically **(i)** install one of the mist net kits along a perimeter wall and **(ii)** three more of the mist net kits in additional locations (e.g., around the interior of the building). Given the combined teachings of the Bird Barrier Video and Kunz, a POSA would have understood that

installing the Bird Barrier Video mist net kit in this way (e.g., in response to observing flyways in these locations) would have predictably resulted in an effective capture system within the building. Ex-1004, ¶¶164-165. Accordingly, elements [6a] and [6b] would have been obvious to a POSA over the Bird Barrier Video and Kunz.

3. Element [6c]

Element [6c] recites “a flushing device, wherein the flushing device is used to direct the animal into the trapping net.” Kunz discloses the use of a “flushing device” for this purpose. In particular, Kunz discloses that roosting bats can be “dislodged with ... extension poles to which small hoop nets are attached” to aid in capture. Ex-1010, 5.

Kunz’s extension pole is capable of being used by a handler to drive an animal from one location to another and is therefore a “flushing device”. *Supra* IV.B (claim construction). A POSA would have found it obvious (and would have been motivated) to dislodge a bird using Kunz’s net-extension pole and drive it into the Bird Barrier Video’s mist net kit (rendering element [6c] obvious). Ex-1010, 5; Ex-1014, Fig. 15 (capturing bird); Ex-1004, ¶¶167-168.

Accordingly, Claim 6 is obvious over the Bird Barrier Video and Kunz (Ground C).

E. Claim 7

As discussed above with respect to Claim 6, the Bird Barrier Video's mist net kit is a "perimeter net." *Supra* VIII.D (discussing Claim 6). The Bird Barrier Video discloses that its kit includes a mist net mounted on "telescoping poles." Ex-1009, 0:37-0:58, 1:03-1:44; Ex-1014, ¶1; Figs. 5-7. Furthermore, the Bird Barrier Video discloses that each of the telescoping poles include magnetic heads for attachment to a rafter (i.e., a "structure"). Ex-1009, 1:15-1:44; Ex-1014, Figs. 8, 10-14.

Accordingly, the combination of Bird Barrier Video and Kunz discloses "perimeter net comprising: a net and a telescoping pole, the net attached to the telescoping pole and the telescoping pole attached to the structure," as recited in Claim 7. Ex-1004, ¶¶169-170. Claim 7 is thus obvious over Bird Barrier Video and Kunz (Ground C).

F. Claim 8

The Bird Barrier Video shows the bird capture kit's installation in a warehouse. Ex-1009, 1:15-1:44; Ex-1014 Figs. 12-13; Ex-1004, ¶171. A POSA would know that many buildings of this type are "less than or equal to 75,000 square feet." Ex-1004, ¶171. Moreover, mere changes in size are generally recognized as within the level of ordinary skill in the art. *See, e.g., In re Rose*, 220 F.2d 459 (CCPA 1955). Thus, a POSA would have appreciated that the Bird Barrier Video mist net

kit is capable of being installed in structures “less than or equal to 75,000 square feet” (and would have found it obvious to do so).

A POSA also would have found it obvious to provide two perimeter nets (i.e., “the perimeter net comprising a first net and a second net”). As discussed with respect to Claim 6, the Bird Barrier Video discloses that the mist net kit should be moved to a “target location near where the bird activity has been observed.” Ex-1009, 1:21-1:44; Ex-1014, ¶1; Ex-1004, ¶171. Kunz reaffirms Bird Barrier Video’s teaching that flight patterns should be used to place nets, rendering it obvious to use first and second perimeter nets in instances where those nets would intersect observed flight patterns. Ex-1010, 8; Ex-1008, ¶¶0015, 0045; Ex-1004, ¶172. Moreover, Kunz identifies the advantages of using multiple nets (Ex-1010, 8-11) and teaches the effectiveness of nets placed such that “the perimeters of roosts are either partially or completely surrounded by one or more nets” (Ex-1010, 10-11, Fig. 4).

Given the teachings in Bird Barrier Video and Kunz, a POSA would have it found obvious to use an additional mist net (for a total of five) in a variety of circumstances, including where the flight pattern of birds within a building included five different locations or where five or more birds are present. Ex-1004, ¶172. Additionally, while not required by Claim 8, a POSA would have found it obvious to locate at least two of the Bird Barrier Video’s mist nets along a perimeter wall of

the building, as shown in the Bird Barrier Video. Ex-1009, 1:15-1:44; Ex-1014 Figs. 12-13; Ex-1004, ¶173. A POSA would have been motivated to do this in response to observing the flight pattern of bird(s) in such a location or to shrinking the effective area where an identified vertebrate can fly. Ex-1004, ¶173.

Accordingly, the Bird Barrier Video and Kunz render obvious “wherein the structure is less than or equal to 75,000 square feet, the animal relocation system comprising: the perimeter net comprising a first net and a second net,” as recited in Claim 8. Ex-1004, ¶174. Claim 8 is thus obvious over the Bird Barrier Video and Kunz (Ground C).

G. Dependent Claims 9-12

Dependent Claims 9-12 each recite relative orientations of the perimeter and trapping nets. Each of these orientations would have been obvious to a POSA in view of the Bird Barrier Video and Kunz. Ex-1004, ¶175.

As discussed above, the Bird Barrier Video’s mist net kit is configured for being hung from rafters in a building’s ceiling, so the orientation of the each hung mist net is generally dictated by the orientation of the rafters. As the Bird Barrier Video shows below, the rafters in a warehouse are typically straight and arranged in a grid (i.e., with each rafter either parallel or perpendicular to an adjacent rafter). Ex-1009, 1:44-1:49; Ex-1014, Fig. 10. When installing multiple mist net kits devices (for the reasons explained above in relation to Claims 6-8), a POSA would

understand that the net would be parallel to (or perpendicular to) to other nets hung from a building's rafters. Ex-1004, ¶176.

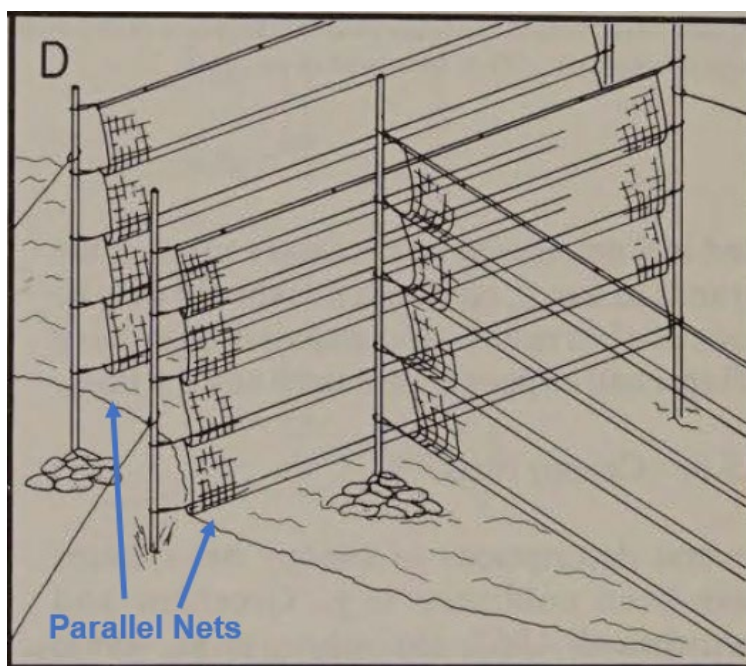


Bird Barrier Video – 1:44

The Bird Barrier Video also indicates that mist nets should be installed in “a target location near where the bird activity has been observed.” Ex-1009, 1:27-1:40; Ex-1014, ¶2. A POSA would have appreciated that mist nets should intersect the anticipated flight pattern of a targeted bird. Ex-1004, ¶177. Thus, a POSA would select the location and orientation of each mist net based on the anticipated flight pattern(s) of the bird and the orientation of the rafters. Ex-1004, ¶177.

Claim 9 depends from Claim 8 and recites “wherein the first net and second net are installed parallel to one another” (referring to the pair of perimeter nets recited in Claim 8). It would have been obvious to a POSA to install perimeter nets

parallel to one another in instances where (i) the flight pattern of flying vertebrate(s) was observed (or expected to be) along two locations of the same perimeter wall (or a parallel perimeter walls or (ii) where the observed/expected flight pattern otherwise required hanging of the Bird Barrier Video's mist net form parallel rafters. Ex-1004, ¶178. Moreover, Kunz confirms that multiple nets positioned parallel to one another are effective for vertebrate capture, which would have further motivated this orientation in combination with the Bird Barrier Video's disclosure. Ex-1010, 10-11, Fig. 4(D); Ex-1004, ¶178.



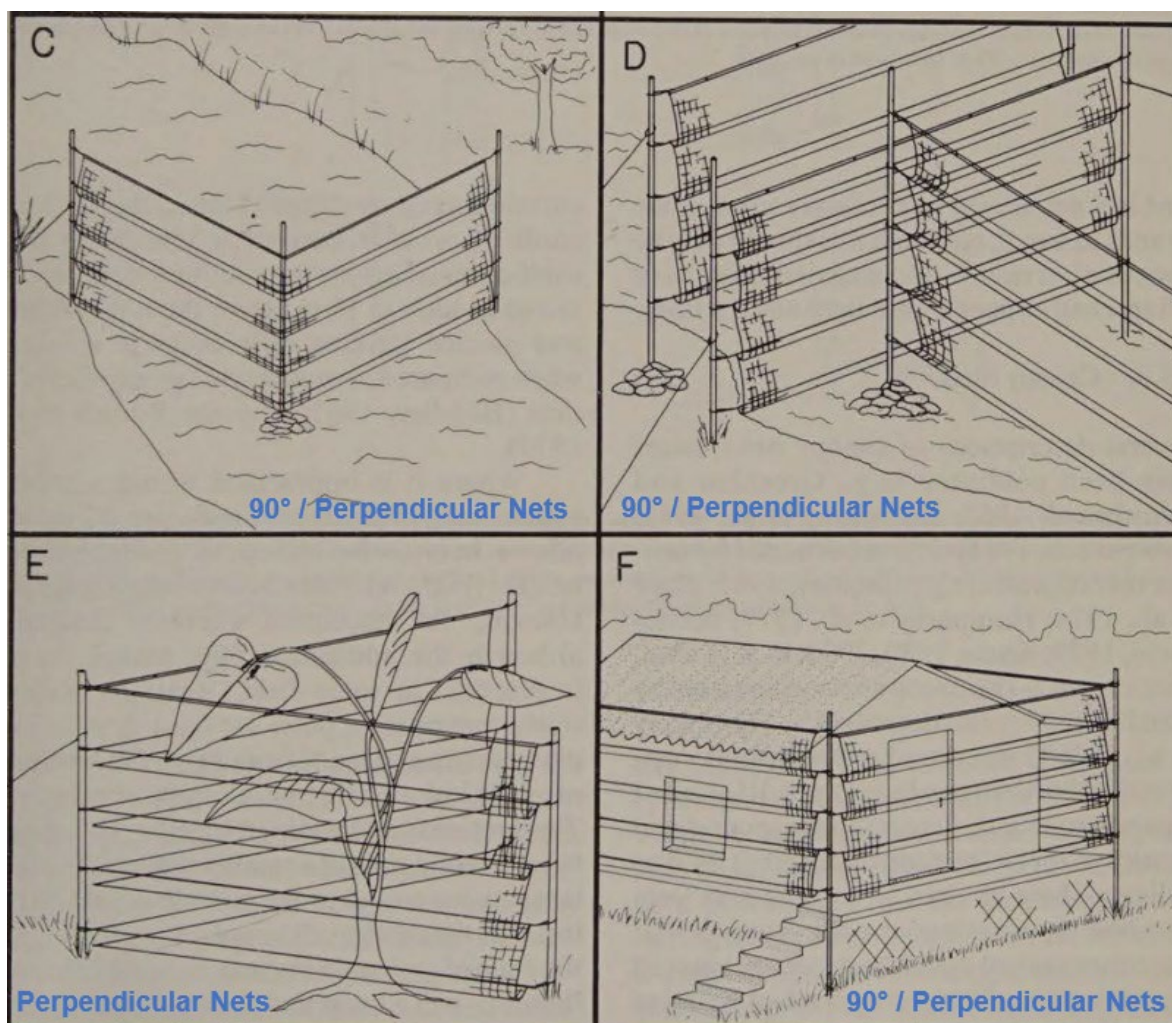
Kunz – Fig. 4(D) (annotated)

Similarly, **Claim 12** depends from Claim 6 and recites “wherein the second trapping net is installed parallel to the perimeter net.” For substantially the same reasons, a POSA would have found it obvious to install one of Bird Barrier Video's

mist nets (a trapping net) parallel to another of the mist nets along perimeter wall (a perimeter net). Ex-1004, ¶179. Indeed, a POSA would have appreciated that an observed flight pattern or rafter orientation would frequently suggest this orientation. Ex-1004, ¶179.

Claim 10 depends from Claim 9 and recites “wherein the trapping net is installed at a ninety-degree angle to the perimeter net,” while **Claim 11** depends from Claim 6 and recites “wherein the first trapping net is installed perpendicular to the perimeter net.” A POSA would have found it obvious to install one of the Bird Barrier Video’s mist nets (a trapping net) in an orientation perpendicular to (specifically, at a 90-degree angle to) another of the Bird Barrier Video’s mist nets along perimeter wall (a perimeter net). Ex-1004, ¶180. It would have been obvious to include perimeter nets and trapping nets in this orientation to follow the orientation of the rafters or in response to observed flight patterns. Ex-1004, ¶180.

Kunz also shows several examples of nets arranged in 90°/perpendicular orientations for effective vertebrate capture. Ex-1010, 8-11, Figs. 3(C), 4(C-F). Thus, given the combined teachings of the Bird Barrier Video and Kunz, a POSA would have found it obvious (and would have been motivated to) position the Bird Barrier Video’s mist net kits in 90°/perpendicular orientations as recited in Claims 10 and 11. Ex-1004, ¶180.



Kunz – Fig. 4(C-F) (annotated)

Accordingly, each of Claims 9, 10, 11, and 12 are obvious over the Bird Barrier Video and Kunz (Ground C).

H. Independent Claim 13

1. Element [13pre]

The Bird Barrier Video discloses a method for installing a mist net kit for trapping bird within a building. Ex-1014, 1, Figs. 10-15. Once captured, the birds are removed from the netting and released outside. Ex-1009, 2:19-2:34; Ex-1014,

¶2, Fig. 15. Thus, although the preamble is not limiting, the Bird Barrier Video discloses “[a] method for relocating animals within a structure,” as recited in Claim 13’s preamble. Ex-1004, ¶182.

2. Element [13a]

For the reasons discussed above with respect to Claim 6’s preamble, the Bird Barrier Video discloses a mist net kit that is “an animal relocation system.” *Supra* VIII.D.1. The Bird Barrier Video also discloses using the mist net kit as part of its capture method. Ex-1009, 2:19-2:34; Ex-1014, ¶2, Fig. 15. Thus, the Bird Barrier Video discloses “installing an animal relocation system,” as recited in Element [13a]. Ex-1004, ¶183.

3. Elements [13b] and [13c]

For the reasons discussed above with respect to Claim 6 (elements [6a] and [6b]) and Claim 8 (Ground C), a POSA would have found it obvious to provide at least two perimeter nets (e.g., two of the Bird Barrier Video’s mist nets hung along a perimeter wall) and at least one trapping net (e.g., a third mist net hung in an additional location within the building), as recited in Elements [13a] and [13b]. *Supra* VIII.D.2 and VIII.F; *see* Ex-1009, 1:21-2:19; Ex-1014, ¶2; Figs. 10-14; Ex-1004, ¶184.

4. Elements [13d] and [13e]

For the reasons discussed above with respect to Claim 6 (element [6c]), a POSA would have found it obvious to provide “a flushing device” (e.g., Kunz’s

extension pole) as recited in Element [13d]. *Supra* VIII.D.3; Ex-1010, 5; Ex-1004, ¶185. Furthermore, Kunz discloses that its extension pole is used to dislodge a roosted bat for the purpose of then trapping that bat using netting. Ex-1010, 5 (discussing extension pole flushing device), 6-11 (discussing trapping bats using mist nets). Similarly, the Bird Barrier Video discloses that the purpose of its mist net is capturing birds. Ex-1009, 1:59-2:47; Ex-1014, Fig. 15. Thus, a POSA would have found it obvious (and indeed a matter of common sense) to “flush[] the animal through the structure wherein the flushing device chases the animal towards the perimeter net system and into the trapping net,” as recited in [13d] and [13e]. Ex-1004, ¶185.

Accordingly, Claim 13 is obvious over the Bird Barrier Video and Kunz (Ground C).

I. Claim 14

For the reasons explained above with respect to Claim 6 (elements [6a], [6b]) and Claim 8 under Ground C, a POSA would have found it obvious to install the Bird Barrier Video’s mist net kit in several locations throughout a building, including at least two along perimeter walls and at least three in other locations. *Supra* VIII.D.2 and VIII.F; Ex-1004, ¶186. A POSA would have understood that placing multiple capture devices proximal to a bird would effectively shrink the area in which the vertebrate is able to fly and thereby improve the likelihood of capture.

Ex-1004, ¶186. Indeed, Kunz confirms that the use of multiple nets can increase capture effectiveness. Ex-1010, 10-11 (discussion of multiple net configurations and surrounding areas with the same).

A POSA would have found it obvious to hang the Bird Barrier Video's mist net kits "such that the square footage available for the animal to travel within the structure is halved," as recited in Claim 14, as (i) this would be a matter of basic geometry, (ii) would frequently occur simply as a function of placing the mist net kits in the flight patterns of observed flying vertebrates, and (iii) would have the entirely predictable result of improving the likelihood of capture. Ex-1009, 1:21-1:44; Ex-1014, ¶2, Figs. 11-12; Ex-1004, ¶186. Accordingly, Claim 14 is obvious over the Bird Barrier Video and Kunz (Ground C).

J. Claim 15 and Claim 16

Claim 15 depends from Claim 13 and recites "the flushing device further comprising an arm and a flusher," while Claim 16 depends from Claim 15 and recites "wherein the flushing device arm comprises a telescoping arm."

Kunz discloses that roosting bats can be "dislodged with ... extension poles to which small hoop nets are attached" to aid in capture. Ex-1010, 5. A POSA would have recognized that Kunz's extension pole is a "flushing device" as it is capable of being used by a handler to drive an animal from one location to another, and would have regarded Kunz's "extension pole" as both an "arm" (Claim 15) and a

“telescoping arm” (Claim 16). Ex-1004, ¶188. Moreover, a POSA would have recognized that Kunz’s “small hoop net” on the end of the extension pole is a “flusher” as it creates noise, movement, or both when shaken or moved. Ex-1004, ¶188.

As explained above in relation to Element [6c], a POSA would have found it obvious (and would have been motivated) to dislodge a flying vertebrate using Kunz’s net-extension pole and drive it into the Bird Barrier Video’s mist net. Ex-1010, 5; Ex-1004, ¶189. Moreover, a POSA would have found it obvious to use the telescoping pole disclosed in the Bird Barrier Video for the same dislodging purpose. Ex-1014, ¶¶2-3; Figs. 6, 9, 10; Ex-1004, ¶190. To the extent there is any doubt that Kunz’s “hoop net” is a “flusher,” a POSA would have found it obvious to substitute any device capable of making noise, approaching a vertebrate, or emitting light for the purpose of inducing flight. Ex-1004, ¶189.

Thus, a POSA would have found it obvious to (and would have been motivated to) provide a flushing device “comprising an arm and a flusher,” as recited in Claim 15, and specifically a flushing device having a “telescoping arm” as recited in Claim 16 in view of the combined teachings of the Bird Barrier Video and Kunz. Ex-1004, ¶190. Accordingly, Claims 15 and 16 are each obvious over the Bird Barrier Video and Kunz (Ground C).

K. Independent Claim 1

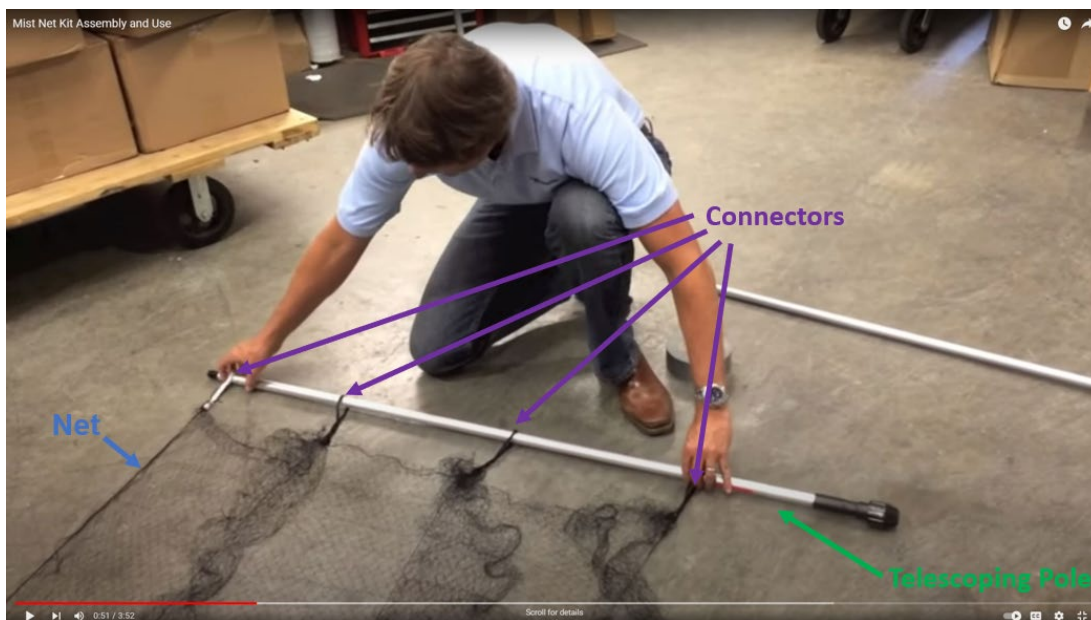
1. Element [1pre] and [1a]

Claim 1's preamble would have been obvious to a POSA over the Bird Barrier Video and Kunz for at least the same reasons explained with respect to Elements [13pre] and [13a] under Ground C. *Supra* VIII.H.1-VIII.H.2; Ex-1004, ¶191.

2. Perimeter Net System (Elements 1b-1e)

Claim 1 recites “a perimeter net system” that include “two perimeter nets.” A POSA would have found it obvious to provide two perimeter nets as recited in *Element [1b]* for the same reasons explained with respect to Claim 6 ([6a]), Claim 8, and Claim 13 ([13B]) under Ground C. *Supra* VIII.D.2, VIII.F, and VIII.H.3; Ex-1004, ¶192.

Claim 1 also recites that the perimeter nets include a variety of features (Elements 1c-1e), each of which is disclosed in the combination of the Bird Barrier Video and Kunz. As explained earlier, the Bird Barrier Video's mist net is a “perimeter net.” As shown below, the first/second sides of the Bird Barrier Video's mist net include plurality of connectors (“loops”), as recited in *Element [1c]*. Ex-1009, 0:10-0:58; Ex-1014, Fig. 6.

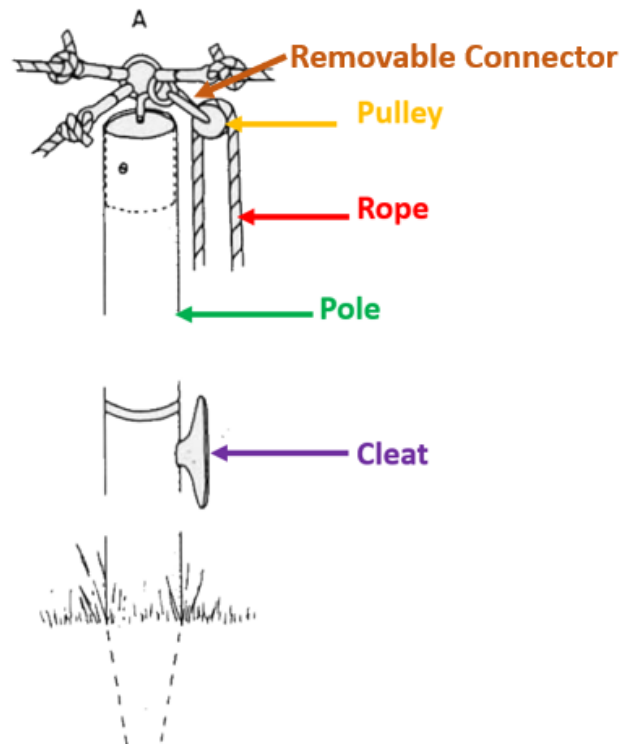


Bird Barrier Video –0:51 (annotated)

The Bird Barrier Video discloses that its mist net is suspended between a pair of telescoping poles. Ex-1009, 1:15-2:11; Ex-1014, Figs. 10-13. Although the mist net is secured to the rafters by magnetic heads, it would have been an obvious and easily implemented design choice to a POSA to replace the magnetic heads with another known attachment means providing the same functionality, such as a “hook” as recited in Element [1d]. Ex-1004, ¶194. Furthermore, although the mist net is secured to the poles by loops, it would have been an obvious design choice to a POSA to replace the loops with removable connectors (e.g., carabiners) providing the same functionality. Ex-1004, ¶195.

Additionally, Kunz discloses that mist nets can be secured to poles using “a removable connector,” “a rope,” a “pulley,” and a “cleat,” as recited in Element [1d].

Ex-1010, 13-15, Fig. 7. It would have been obvious to a POSA to modify the Bird Barrier Video's mist net kit to include the rope/pulley/cleat/connector arrangement disclosed in Kunz to arrive at the features recited in Element [1d]. Ex-1004, ¶195. A POSA would have been motivated to make this modification to allow for easy adjustment of the mist net position. Ex-1004, ¶195. Thus, the combination of the Bird Barrier Video and Kunz discloses the features of *Element [1d]*.



Kunz – Fig. 7 (annotated)

The Bird Barrier Video's mist net kit—modified in view of Kunz as discussed above—would have resulted in ropes and pulleys securing both sides of the net to their respective telescoping poles through removable connectors, as recited in Element [1e]. Ex-1004, ¶196. The Bird Barrier Video also discloses that its

telescoping poles are secured to rafters. Ex-1014, Figs. 10-13. Furthermore, for the reasons discussed above with respect to Claims 9 and 12 (under Ground C), a POSA would have found it obvious to install first and second perimeter nets “parallel” to one another. *Supra* VIII.G; Ex-1004, ¶196. Thus, the combination of the Bird Barrier Video and Kunz discloses the features of *Element [1e]*.

3. Trapping Net System (Elements 1f-1i)

Claim 1 also recites “a trapping net system” that includes first, second, and third “trapping nets.” A POSA would have found it obvious to provide three trapping nets as recited in *Element [1f]* nets for the same reasons explained with respect to Claim 6 ([6b]) under Ground C. *Supra* VIII.D.2; Ex-1004, ¶197.

Claim 1 also recites trapping net features (Elements [1g]-[1i]) that are identical to those identified for the perimeter nets (Elements [1c]-[1e]). As explained earlier, Bird Barrier Video’s mist net is also “trapping net” (*Supra* VIII.D.2) and, for the same reasons provided above regarding Elements [1c]-[1e], renders obvious (with Kunz) the trapping net features recited in *Elements [1g]-[1i]*. Ex-1004, ¶198.

Element [1i] further recites that the first/second trapping nets are installed “parallel” to the first/second perimeter nets, and that the third trapping net is installed “at a ninety-degree-angle” relative to the first/second perimeter nets. For the reasons discussed above with respect to Claims 9-12 (under Ground C), a POSA would have found it obvious to install the perimeter and trapping nets in these basic orientations

(which in many cases are dictated by rafter orientations). *Supra* VIII.G; Ex-1004, ¶199.

4. Flushing Device (Elements 1j-1k)

Claim 1 also recites “a flushing device comprising a telescoping arm and a flusher” ([1j]) and “flushing the animal through the enclosed building wherein the flushing device chases the animal towards the perimeter net system and into the trapping net” ([1k]). Elements [1j], [1k] would have been obvious to a POSA in view of the Bird Barrier Video and Kunz for the same reasons explained with respect to Elements [6c], [13d], [13e] and Claims 15 and 16 under Ground C. *Supra* VIII.D.3, VIII.H.4, and VIII.J; Ex-1004, ¶¶200-201.

Accordingly, Claim 1 is obvious over the Bird Barrier Video and Kunz (Ground C).

L. Claim 2

Claim 2 recites placing the perimeter net system “such that the square footage available for the animal to travel within the enclosed building is halved.” For the reasons explained regarding Claim 14 under Grounds C, Claim 2 is obvious over Bird Barrier Video and Kunz (Ground C). *Supra* VIII.I; Ex-1004, ¶202.

M. Claim 3

Claim 3 recites “angling the flushing device to around a 40 degree angle and guiding the bird towards the animal relocation system.” For the reasons discussed above in relation to Elements [6c], [13d], [13e], Claims 15-16, and Elements [1j]

and [1k] under Ground C, it would have been obvious to use a pole as a flushing device. *Supra* VIII.D.3, VIII.H.4, VIII.J, and VIII.K.4. A POSA using a pole would hold the pole at a 40° angle for some period of time during flushing (e.g., when lifting the pole) and during maneuvering of the flushing device. Ex-1004, ¶203. Thus, Claim 3 is obvious over Bird Barrier Video and Kunz (Ground C).

N. Claims 4 and 5

Claim 4 is obvious over Bird Barrier Video and Kunz (Ground C) as the Bird Barrier Video discloses positioning nets “at a height above the floor of the enclosed building based on the species of animal being relocated.” Ex-1014, Figs. 10-13; Ex-1004, ¶204. Claim 5 recites that “the perimeter net system and trapping net system use mist nets.” The Bird Barrier Video discloses that its net is a mist net. Ex-1009, 0:10-0:51; Ex-1014, Fig. 2; Ex-1004, ¶204. Claim 5 is therefore obvious over the Bird Barrier Video and Kunz (Ground C).

IX. DISCRETIONARY FACTORS DO NOT FAVOR DENIAL

The factors considered under 35 U.S.C. §§ 325(d) and 314(a) do not weigh in favor of exercising discretion to deny institution.

First, the Grounds of unpatentability presented here have not been considered by the Office, so denial is not warranted under § 325(d) and *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential). The Office issued *no rejections* over any art

cited here. *See generally* Ex-1005. While Brugh and Bird Barrier “Mist Net Kits” are cited on the face of the patent, nothing in the prosecution record indicates whether or to what extent the Office considered their relevance. In any case, this Petition has shown why it was error to not reject the claims under the theories presented.

Second, there is no reason to deny institution under § 314 and *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential). Petitioner is the defendant in a now-pending case in the Western District of Virginia, but that case is effectively stayed pending the Court resolving a pre-Answer motion to dismiss the complaint. *See generally* Ex-1035. No scheduling order has been issued, no discovery has been conducted, and no trial date has been set. Thus, *Fintiv* factors 2-4 (at minimum) weigh strongly against discretionary denial. Moreover this Petition has presented compelling evidence of unpatentability that precludes discretionary denial under the Director’s recent guidance memorandum.⁷

⁷ *See* https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621.pdf.

X. CONCLUSION

For at least the foregoing reasons, Petitioner requests that the Board institute an *Inter Partes* Review and cancel Claims 1-16 of the '374 Patent.

Dated: July 8, 2022

Respectfully submitted,

/Christopher B. Kelly/
Christopher B. Kelly, Esq.
Reg. No. 62,573

XI. MANDATORY NOTICES - 37 C.F.R. § 42.8

Petitioner Meridian Wildlife Services, LLC submits the following mandatory notices pursuant to 37 C.F.R. § 42.8(a)(2).

A. Real Parties-In-Interest (37 C.F.R. § 42.8(b)(1))

The sole real party-in-interest in this Petition is: Meridian Wildlife Services, LLC.

B. Related Matters (37 C.F.R. § 42.8(b)(2))

As of the filing date of this Petition and to the best of Petitioner's knowledge, the '374 Patent has not been subject to a previous request for *inter partes* review or other administrative proceeding before the USPTO. Petitioners also identify the related patents U.S. Patent No. 10,729,108, U.S. Patent No. 11,064,683 and U.S. Application No. 17/352,524 and the contemporaneously filed Petition, IPR2022-01254 (challenging the '108 patent) as related matters.

Patent Owner Safe Haven alleged infringement of the '374 Patent and the '108 Patent against Petitioner Meridian Wildlife in *Safe Haven Wildlife Removal and Property Management Experts, LLC v. Meridian Wildlife Services, LLC*, No.7:21-cv-00577 (W.D. Va. filed June 25, 2021).

C. Lead and Back-up Counsel (37 C.F.R. § 42.8(b)(3))

Petitioner's designation of counsel is below, and a Power of Attorney is being filed concurrently with these Mandatory Notices.

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D. Service Information (37 C.F.R. § 42.8(b)(4))

Please direct all correspondence regarding this proceeding to the counsel at the addresses listed above. Patent Owner also consents to electronic service by email to email on all counsel of record.

XII. CLAIMS LISTING

Claim Element	Challenged Claims
[1pre]	1. A method for relocating animals within an enclosed building comprising:

Claim Element	Challenged Claims
[1a]	installing an animal relocation system, the animal relocation system comprising:
[1b]	a perimeter net system comprising two perimeter nets, wherein each perimeter net comprises:
[1c]	a perimeter net, the perimeter net comprising a first perimeter net side and a second perimeter net side, wherein the first perimeter net side and the second perimeter net side each have a plurality of perimeter net connectors;
[1d]	a first telescoping pole and a second telescoping poles, each telescoping pole comprising: a first end and a second end, the first end having a hook; a removable connector; a rope and pulley; and a cleat
[1e]	wherein the first telescoping pole rope and pulley secures the first perimeter net side to the first telescoping pole through the first telescoping pole removable connector and the second telescoping pole rope and pulley secures the second perimeter net side to the second telescoping pole through the second telescoping pole removable connector; and wherein the first telescoping pole hook is secured to a rafter of the enclosed building and the second telescoping pole hook is secured to a rafter of the enclosed building; and wherein the first perimeter net and second perimeter net are installed parallel to one another;
[1f]	a trapping net system comprising a first trapping net, a second trapping net, and a third trapping net, wherein each trapping net comprises:
[1g]	a trapping net, the trapping net comprising a first trapping net side and a second trapping net side, wherein the first trapping net side and the second trapping net side each have a plurality of trapping net connectors;
[1h]	a first telescoping pole and a second telescoping poles, each telescoping pole comprising: a first end and a second end, the first end having a hook; a removable connector; a rope and pulley; and a cleat

Claim Element	Challenged Claims
[1i]	wherein the first telescoping pole rope and pulley secures the first trapping net side to the first telescoping pole through the first telescoping pole removable connector and the second telescoping pole rope and pulley secures the second trapping net side to the second telescoping pole through the second telescoping pole removable connector; and wherein the first telescoping pole hook is secured to a rafter of the enclosed building and the second telescoping pole hook is secured to a rafter of the enclosed building; and wherein the first trapping net and second trapping net are installed parallel to the first perimeter net and second perimeter net and the third trapping net is installed at a ninety-degree-angle relative to the first perimeter net and second perimeter net; and
[1j]	a flushing device comprising a telescoping arm and a flusher;
[1k]	flushing the animal through the enclosed building wherein the flushing device chases the animal towards the perimeter net system and into the trapping net.
[2]	2. The animal relocation method of claim 1 wherein the perimeter net system further comprises placing the perimeter net system within the enclosed building such that the square footage available for the animal to travel within the enclosed building is halved.
[3]	3. The animal relocation method of claim 1 wherein the flushing device is used to guide the animal towards the animal relocation system by angling the flushing device to around a 40 degree angle and guiding the bird towards the animal relocation system.
[4]	4. The animal relocation method of claim 1 wherein the perimeter net system and trapping net system are placed at a height above the floor of the enclosed building based on the species of animal being relocated.
[5]	5. The animal relocation method of claim 1 wherein the perimeter net system and trapping net system use mist nets.

Claim Element	Challenged Claims
[6pre]	6. An animal relocation system for relocating an animal in a structure, the system comprising
[6a]	a perimeter net;
[6b]	a trapping net wherein the trapping net comprises a first trapping net, a second trapping net, and a third trapping net; and
[6c]	a flushing device, wherein the flushing device is used to direct the animal into the trapping net.
[7]	7. The animal relocation system of claim 6, further comprising: the perimeter net comprising: a net and a telescoping pole, the net attached to the telescoping pole and the telescoping pole attached to the structure.
[8]	8. The animal relocation system of claim 6, wherein the structure is less than or equal to 75,000 square feet, the animal relocation system comprising: the perimeter net comprising a first net and a second net.
[9]	9. The animal relocation system of claim 8, wherein the first net and second net are installed parallel to one another.
[10]	10. The animal relocation system of claim 9, wherein the trapping net is installed at a ninety-degree angle to the perimeter net.
[11]	11. The animal relocation system of claim 6, wherein the first trapping net is installed perpendicular to the perimeter net.
[12]	12. The animal relocation system of claim 6, wherein the second trapping net is installed parallel to the perimeter net.
[13pre]	13. A method for relocating animals within a structure comprising:

Claim Element	Challenged Claims
[13a]	installing an animal relocation system, the animal relocation system comprising:
[13b]	a perimeter net system comprising two nets;
[13c]	a trapping net;
[13d]	and a flushing device;
[13e]	flushing the animal through the structure wherein the flushing device chases the animal towards the perimeter net system and into the trapping net.
[14]	14. The method of claim 13 further comprising: installing the perimeter net system, such that the square footage available for the animal to travel within the structure is halved.
[15]	15. The method of claim 13 further comprising: the flushing device further comprising an arm and a flusher.
[16]	16. The method of claim 15 wherein the flushing device arm comprises a telescoping arm.

XIII. CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the foregoing **Petition for *Inter Partes* Review of U.S. Patent No. 10,251,374** contains 13,937 words (excluding the portions identified in 37 C.F.R. § 42.24(a)), which is less than the total words permitted by the U.S. Patent Trial and Appeal Board rules. Counsel relies on the word count of the computer program used to prepare the brief

Dated: July 8, 2022

/Christopher B. Kelly/

Christopher B. Kelly, Esq.
Reg. No. 62,573

XIV. CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that a complete and entire copy of the foregoing **Petition for *Inter Partes* Review of U.S. Patent No. 10,251,374** and all supporting exhibits were served on July 8, 2022, via e-mail to the counsel of record for the '374 Patent at the email addresses below. The parties both consented to electronic service prior to filing of this Petition.

Andrew Fitzgerald (andy@fitzgeraldlitigation.com)

Carl Massey (carl@masseyip.com)

Dated: July 8, 2022

/Christopher B. Kelly/

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