

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAFE HAVEN WILDLIFE REMOVAL AND
PROPERTY MANAGEMENT EXPERTS LLC,

Petitioner,

v.

MERIDIAN WILDLIFE SERVICES LLC,

Patent Owner.

Case IPR2023-01341
Patent No. 10,154,663

Patent Owner's Preliminary Response

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE ’663 PATENT	2
III.	THE PETITION FAILS TO MEET THE PARTICULARITY REQUIREMENT OF 35 U.S.C. § 312(A)(3) AND SHOULD BE DENIED UNDER § 314(A)	4
IV.	CLAIM CONSTRUCTION	9
A.	Safe Haven fails to sufficiently identify how the challenged claims are to be construed as required by 37 C.F.R. § 42.104(b)(3)	9
B.	Construction of “wherein the rope is configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate” (in limitation 1.2.3).	12
V.	THE PETITION FAILS TO DEMONSTRATE A REASONBLE LIKELIHOOD THAT THE ’663 PATENT’S CLAIMS ARE UNPATENTABLE	15
A.	Claim 1	16
1.	The Petition fails to establish a sufficient motivation for combining Kunz, Albanese, and/or Sheldon with the Bird Barrier Video	16
(a)	Safe Haven previously argued to the Board that references directed to outdoor capture techniques (including Kunz) would not be combined with references directed to indoor capture techniques (including the Bird Barrier Video and a publication of the ’663 patent’s parent application)	16
(b)	The Petition’s new rationales for combining Kunz, Albanese, and/or Sheldon with the Bird Barrier Video are unavailing	21
2.	Even if combined with the Bird Barrier Video, Kunz, Albanese, and Sheldon fail to disclose or suggest	

“wherein the rope is configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate” (in limitation 1.2.3).....	25
3. Safe Haven cannot rely on a hearsay declaration from another proceeding and, even if it were permissible, the declaration does not support Safe Haven’s arguments.	29
B. Claims 2 and 3	33
VI. CONCLUSION.....	33
VII. CLAIMS LISTING.....	34
VIII. CERTIFICATE OF COMPLIANCE	35
IX. CERTIFICATE OF SERVICE	35

PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
2001	Declaration of Dr. Michael J. Chamberlain (Nov. 29, 2023)
2002	Safe Haven's Patent Owner Preliminary Response, IPR2022-01254, Paper 8 (October 19, 2022)
2003	Safe Haven's Patent Owner Preliminary Response, IPR2022-01340, Paper 6 (November 8, 2022)
2004	Safe Haven's Sur-Reply, IPR2022-01340, Paper 8 (November 22, 2022)

GLOSSARY OF TERMS

TERM	DEFINITION
“Patent Owner” or “Meridian”	Meridian Wildlife Services, LLC
“Petitioner” 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.
“’073 Patent”	U.S. Patent No. 9,943,073 to Brugh et al
“’663 Patent”	U.S. Patent No. 10,154,663 to Brugh et al
“’374 Patent”	U.S. Patent No. 10,251,374 to Tolley
“’108 Patent”	U.S. Patent No. 10,729,108 to Tolley
“’683 Patent”	U.S. Patent No. 11,064,683 to Tolley
“Challenged Claims”	Claims 1-3 of U.S. Patent No. 10,154,663.
“Brugh”	U.S. Patent Application Publication No. 2017/0238524
“Kunz”	Thomas H. Kunz et al., Ecological and Behavioral Methods for the Study of Bats 1-29 (1st ed. 1990). (Ex-1009)
“Albanese”	Gene Albanese et al., An Inexpensive Elevated Mist Net Apparatus, 24 N. Am. Bird Bander 129-134 (1999) (Ex-1010)
“Sheldon”	William G. Sheldon, <i>A Method of Mist Netting Woodcocks in Summer</i> , 31 Bird Banding 130-135 (1960) (Ex-1011)
“Bird Barrier Video”	Bird Barrier, Mist Net Kit Assembly and Use, YouTube (Aug. 29, 2014), https://www.youtube.com/watch?v=yHtYi-vUFXs (Ex-1003 and Ex-1004)

I. INTRODUCTION

Safe Haven's Petition challenges the '663 patent's claims under a single invalidity ground, within which it asserts that various permutations of the Bird Barrier Video, Kunz, Albanese, and Sheldon render the challenged claims obvious. But the Petition's arguments lack sufficient particularity, leaving it up to the Board to reverse engineer how the various references are being combined and why a POSA would have found it obvious to do so. In any combination, however, the Petition's evidence fails to establish a reasonable likelihood of unpatentability.

The Petition fails to properly construe the claims and offers no supporting testimony from a witness (expert or otherwise) who has reviewed the '663 patent and offered opinions supporting the Petition. Rather than securing such testimony, Safe Haven points to inadmissible and irrelevant testimony from an entirely different proceeding regarding an entirely different patent. And while the Petition's cited references lack the necessary disclosure to support an obviousness finding, Safe Haven's proposed motivations for combining them are even more deficient. The Petition does an about-face, proposing combinations of references that Safe Haven itself argued would never be combined in IPRs last year. For at least these reasons, the Board should deny institution.

II. OVERVIEW OF THE '663 PATENT

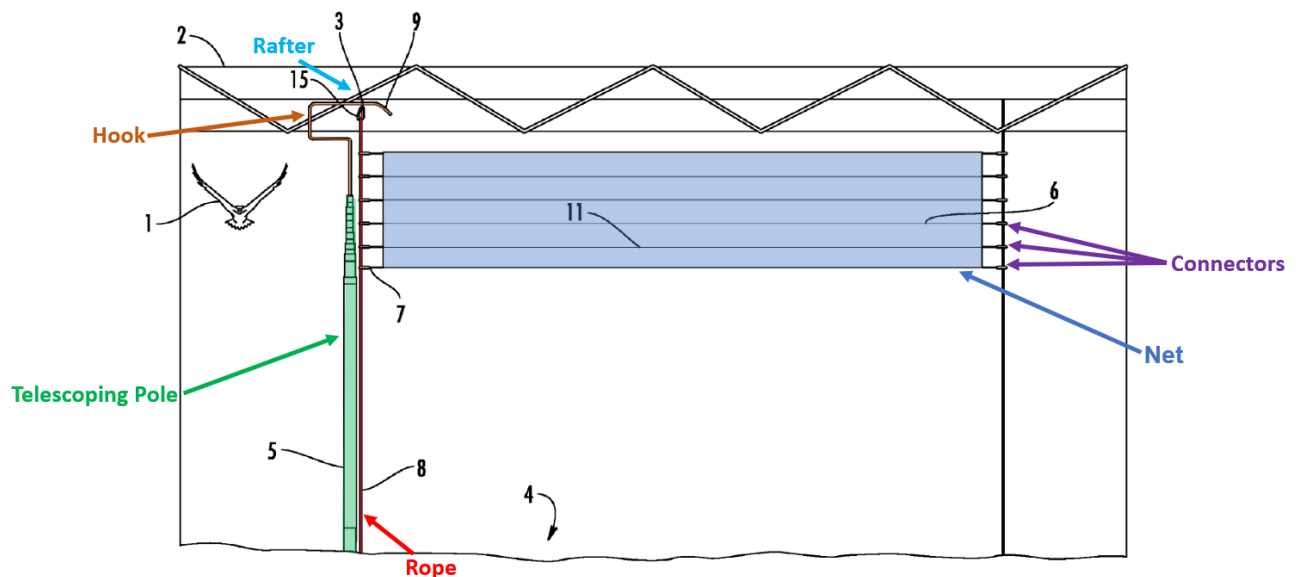
The capture device claimed and described in the '663 patent is designed to address a specific problem: how to remove a variety of flying vertebrate species from the inside of large, high-ceilinged buildings both safely and effectively. The resulting device—reflected in the '663 patent's claims—has proven effective in solving this challenging problem.

As described in the '663 patent, the inventors first recognized that the “advent of large warehouses, big box stores, large grocery stores, malls, and the like, ... 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-1001, 1:27-30. For large building operators, this proved highly problematic. “Depending on the species,” flying vertebrates could “remain in the building for an extended time,” leading to “the spread of disease,” “annoyance to customers,” and “the destruction of products inside the store.” Ex-1001, 1:30-35.

Equally problematic were the challenges in safely capturing and removing flying vertebrates in this indoor environment. Existing capture methods were typically inhumane, inefficient, or ineffective—in some cases all three. Ex-1001, 1:36-47. Moreover, large buildings “have high ceilings, making vertebrate removal very difficult.” *Id.*, 3:46-50. In addition, in any given large building, different species of flying vertebrate may be encountered—including “birds, bats, or any large flying

mammal.” *Id.*, 3:31-32, 1:27-30, 4:6-9. The variety of flying vertebrates encountered—coupled with the sheer size of the buildings they were increasingly inhabiting—presented a sizeable challenge.

To address this problem, the inventors developed (among other things) an improved capture device that could be “deployed, repositioned, and lowered” quickly and easily, thereby “allowing for a much higher chance of recovering the flying vertebrate without harm.” *Id.*, 1:51-58. As shown by way of example in the ’663 patent’s Figure 1, the improved capture device included a bird netting (6) having pockets (11), a plurality of adjustable height support poles (5), a hook (9) for attaching the poles overhead (e.g., to ceiling rafter (3)), a pulley (15) attached to an upper portion of the poles, and a rope (8) attached to the pulley (the rope being attached to the bird netting by attachment devices (7)). *Id.*, 4:36-52, 2:12-22, Fig. 1.



'663 Patent – Figure 1 (annotated)

The configuration of the device allows the poles to be easily secured to the rafters (3) in the interior of a large building. Ex-1001, 4:37-43, Fig. 1. The rope (8) and pulley (15) are configured such that “the rope can pass through [the pulley] in order to raise or lower [the] bird netting to the ends of the poles, such as the top.” Ex-1001, 3:51-53. In this position, as shown in Figure 1, the bird netting (6) is raised to an upper position such that the area beneath it is clear and does not block activities on the floor of the building it is being used in. Ex-1001, Fig. 1.

“If the netting is placed correctly, then driving [an identified flying] vertebrate will cause it to fly into the netting and one of the pouches in the netting.” Ex-1001, 4:13-15, 1:59 to 2:12, 4:53-65, Fig. 4. With the targeted flying vertebrate retained by the netting pockets, the netting can be lowered using the height adjustable support poles and the flying vertebrate can be manually removed from the netting. Ex-1001, 1:59 to 2:12, 4:53-65, Fig. 4. As a result of the improved capture device's features and configuration, the device can be easily and quickly “deployed, repositioned, and lowered” within a building, thereby improving the effectiveness of capturing flying vertebrates. *Id.*, 1:51-58.

III. THE PETITION FAILS TO MEET THE PARTICULARITY REQUIREMENT OF 35 U.S.C. § 312(a)(3) AND SHOULD BE DENIED UNDER § 314(a)

The Petition asserts that Claims 1-3 are obvious under Ground 1, which it characterizes as “Bird Barrier Video in view of Kunz and/or Albanese and/or

Sheldon.” Pet. 4, 22. Although Safe Haven suggests this constitutes a single invalidity ground, the Petition’s proposed combination of the references under “Ground 1” would encompass seven unique combinations:

	Possible Combinations Encompassed by Petitioner’s Single “Ground 1”
1	Bird Barrier Video + Kunz
2	Bird Barrier Video + Albanese
3	Bird Barrier Video + Sheldon
4	Bird Barrier Video + Kunz + Albanese
5	Bird Barrier Video + Kunz + Sheldon
6	Bird Barrier Video + Albanese + Sheldon
7	Bird Barrier Video + Kunz + Albanese + Sheldon

While there is no rule prohibiting the assertion of seven different invalidity grounds, it is Petitioner’s responsibility—not the Board’s and not Meridian’s—to “identif[y] ... with particularity ... the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016). This burden of persuasion never shifts to Meridian. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

Here, the Petition suggests that some permutation of Kunz, Albanese, and/or Sheldon would be combined with the Bird Barrier Video to render the challenged

claims obvious. Pet. 4, 22. With respect to claim limitations [1.1], [1.2], [1.2.2], and [1.2.3],¹ the Petition points to all four cited references—Bird Barrier Video, Kunz, Albanese, and Sheldon. Pet. 23-33. In one instance, the Petition cites none of the four references at all (limitation 1.2.1). Pet. 28-29 (relying on USPN 117,729, which is not included in Ground 1). Moreover, the Petition offers no supporting testimony from a witness (expert or otherwise) who has reviewed the '663 patent and offered opinions supporting and clarifying Safe Haven's invalidity ground(s). With respect to each of the seven possible combinations of references, it is unclear what exactly in Kunz, Albanese, and/or Sheldon is being combined with the Bird Barrier Video (or not), how the disclosures are being combined (with the Bird Barrier Video or the other references), and what the specific motivations for each of the combinations would be.

As an example, commenting on limitation [1.2.3], the Petition argues that “[i]t would be obvious to modify Bird Barrier Video's mist net kit to include the rope/pulley system of Kunz, Albanese or Sheldon to facilitate raising and lowering the mist net position, which necessarily requires the claimed attachment devices.” Pet. 33. But this is not what is required by limitation [1.2.3]. Claim 1 requires the

¹ Meridian refers herein to the limitation numbers assigned to the challenged claims in the Petition. *See* Pet. 22-33.

claimed device to be “configured to raise *the entire* bird netting to the upper portion of the plurality of poles,” which the Petition does not address at all despite this feature being relied on during prosecution to secure allowance of the claims. Ex-1002, 18, 21, 30; *infra* § IV(B). Moreover, while the Petition includes cites to various portions of the references, it is unclear which references are being relied on for this feature and why those references would be combined with the Bird Barrier Video (or one another). Pet. 33.

The Petition also offers an omnibus “Motivation for Combining” section that it seems to suggest applies to all seven combinations of the references and for every challenged claim. Pet. 34-36. In this section, the Petition provides a conclusory and unsupported assertion that a POSA would have combined the references in some way:

[B]ecause Kunz, Albanese, Sheldon, and Bird Barrier Video all pertain to mist nets hung between two poles that can be raised and lowered, and they all focus on the common goal of capturing birds, a POSA would have been motivated to combine them to arrive at the claimed invention.

Pet. 35.

However, as explained herein (*infra* § V(A)(1)(b)), neither a “common goal of capturing birds” nor the use of a mist net between poles is a specific reason that a POSA *would have* modified the Bird Barrier Video, much less one that would

specifically lead to modifications of the Bird Barrier Video satisfying each of the limitations where the Petition relies on all four cited references ([1.1], [1.2], [1.2.2], and [1.2.3]). Here, the Petition provides no cite for this alleged motivation, no expert declaration or other supporting evidence, and no reasoned explanation of why a POSA would have combined the references to arrive at the claimed invention.

For all of these reasons, the Petition's analysis of Ground 1 lacks sufficient particularity. Where a petition "asserts that several of the claimed limitations are taught by multiple references," and it is unclear "what, exactly, is being combined to meet the claimed limitations," the Board has found a failure to meet the particularity requirement of 35 U.S.C. § 312(a)(3). *Salpeter v. ARP Wave LLC*, IPR2019-01384, Paper 12 at 24-25 (PTAB January 27, 2020) (citing 35 U.S.C. § 312(a)(3) and 37 C.F.R. § 42.104(b)(4)). For each limitation in the challenged claims, the Petition's arguments leave it unclear how and why Kunz, Albanese, and/or Sheldon are being combined with the Bird Barrier Video (individually or in various combinations with one another).

Notably, the Petition certifies that it contains 5,307 words—8,693 words less than the 14,000 words permitted by the Board's rules. Pet. 40 (certificate of compliance); 37 C.F.R. § 42.24(a)(1)(i). Had Safe Haven desired to provide greater clarity with respect to its challenges to the '663 patent, it could have. It is not Meridian's or the Board's responsibility to reverse engineer why, exactly, Safe

Haven believes the challenged claims to be unpatentable under the various combinations of references it proposes (purportedly as a single invalidity ground). This burden belongs exclusively to Safe Haven and the Petition's failure to meet it warrants the Board exercising its discretion to deny the Petition under 35 U.S.C. § 314(a). *See Adaptics LTD. v. Perfect Co.*, IPR2018-01596, Paper 20 at 18 (PTAB March 6, 2019) (Informative) (denying institution where Petition lacked "particularity" because it presented a "multiplicity of grounds" from using "and/or" conjunction between references in Grounds); *Salpeter*, IPR2019-01384, Paper 12 at 24-25 (finding no likelihood of prevailing in part based on lack of particularity).

IV. CLAIM CONSTRUCTION

A. Safe Haven fails to sufficiently identify how the challenged claims are to be construed as required by 37 C.F.R. § 42.104(b)(3).

In an IPR, a petitioner "must identify" in the petition "[h]ow the challenged claim is to be construed." 37 C.F.R. § 42.104(b)(3). Safe Haven's petition fails to satisfy this bedrock requirement, leaving its challenge to the '663 patent's claims insufficient to warrant institution. 35 U.S.C. § 314(a).

The Petition's analysis of the challenged claims begins with Safe Haven's affirmation that it "does not propose any constructions for this proceeding." Pet. 22. The Petition offers nothing more. In fact, the Petition fails to identify the standard under which the challenged claims are interpreted and fails to account for the '663 patent's prosecution history in interpreting the challenged claims.

In this proceeding, the '663 patent claims are construed under the same claim construction standard that would be used in a civil action under 35 U.S.C. § 282(b). 37 C.F.R. § 42.100(b). Thus, the claims terms are generally given their ordinary and customary meaning as would be understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *See id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (en banc). The context provided by the patent disclosure is critical as the claim terms “must be read in view of the specification,” which is highly relevant, usually dispositive, and “the single best guide to the meaning of a disputed term.” *Phillips*, 415 F.3d at 1315 (citations omitted).

Phillips also instructs that “the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Phillips*, 415 F.3d at 1317. Indeed, the prosecution history has long been used as tool in claim construction to prevent claims from being construed in one manner to obtain allowance and then in a different manner when asserted against infringers. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995); *Hockerson-Halberstadt, Inc. v. Avia Group Int'l, Inc.*, 222 F.3d 951, 957 (Fed. Cir.

2000); *Pall Corp. v. PTI Techs. Inc.*, 259 F.3d 1383, 1392 (Fed. Cir. 2001); *MBO Labs., Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1330-1331 (Fed. Cir. 2007).

The Petition eschews these well-settled claim construction principles entirely. Safe Haven chooses not to propose any claim constructions at all, while at the same time purporting to “expressly reserve[] its claim scope arguments” for some (unstated) later time. Pet. 22. Although the PTAB may permit a Petitioner to respond to “new claim construction issues raised by the patent owner,” this is not an invitation for a Petitioner to simply ignore its burden to identify how the challenged claims are to be construed and unilaterally defer its claim construction arguments and evidence to a time of its choosing. *See Consolidated Trial Practice Guide* at 44-45 (November 2019).

As discussed herein, the '663 patent's prosecution history included claim amendments and arguments in relation to limitation [1.2.3] that “inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution.” *Phillips*, 415 F.3d at 1317; *see* Ex-1002, 18, 21, 30; *infra* § IV(B). The Petition utterly fails to account for the prosecution history in its analysis of the challenged claims, which Safe Haven was obligated to do under *Phillips* and the Board's rules. 37 C.F.R. § 42.104(b)(3); *Phillips*, 415 F.3d at 1315.

The Petition's failure to identify how the challenged claims are construed is not inconsequential. As explained herein, under the correct claim construction of limitation 1.2.3, the Petition fails to establish a reasonable likelihood that the challenged claims are unpatentable. *Infra* § V. Here, the Petition's failure to recognize and address the prosecution history—and instead offer a generic assertion that it “does not propose any constructions for this proceeding”—is insufficient to satisfy the requirements of 37 C.F.R. § 42.104(b)(3). Pet. 22. Safe Haven's failure to satisfy the Board's rules further warrants denial of institution under 35 U.S.C. § 314(a).

B. Construction of “wherein the rope is configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate” (in limitation 1.2.3).

Claim 1 is directed to “a device for repeated quick set up for safe live capture of a flying vertebrate indoors in a large building having a floor and a ceiling supported by rafters or beams.” The device includes, among other things, bird netting (as recited in limitation 1.1), a plurality of adjustable height vertical support poles (as recited in limitation 1.2), and a rope and pulley system. In particular, the pulley is “attached to an upper portion of at least one pole of the plurality of poles” (as recited in limitation 1.2.2), while the rope is “attached to the pulley” and includes “attachment devices to attach the bird netting to the rope” (as recited in limitation 1.2.3). Critically, as further recited in limitation 1.2.3, “*the rope is configured to*

raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate.”

While no construction of this phrase appears in the Petition, it was discussed specifically during prosecution of the '663 patent. Under *Phillips*, which Safe Haven ignores in its Petition, “the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.” *Phillips*, 415 F.3d at 1317; *see also MBO Labs*, 474 F.3d at 1330-1331.

In a non-final Office Action, the original version of Claim 1 (then Claim 4) was rejected as being anticipated by U.S. Publication No. 2014/0141906 to Hulbert. Ex-1002, 14 (Office Action dated April 11, 2018). In response, Meridian amended the claim to specify that the rope is used to deploy the netting by raising *the entire* bird netting to the upper portion of the poles in a position to capture the flying vertebrate:

- iii. a rope attached to the pulley, the rope having attachment devices to attach the bird netting to the rope wherein the rope is used to deploy the netting by raising the entire bird netting to the upper portion of the poles in a position to capture the flying vertebrate.

Ex-1002, 18 (Amendment in Response dated April 18, 2018).²

In the arguments accompanying this amendment, Meridian was clear what was intended by this amendment:

“Applicant’s claims, as now amended, claim that the pulleys are capable of raising ***the entire netting*** to an upper position during use; and that the netting is of the type and position to catch and hold a flying vertebrate flying into the netting. ***The entire netting needs to be raised to the upper part of the poles to prevent it from blocking activities on the floor of the building it is used in.*** . . . Accordingly, the Hulbert reference does not teach each and every limitation of the claims as amended.”

Ex-1002, 21 (Amendment in Response dated April 18, 2018).

The foregoing amendments and arguments lead to allowance and the issuance of the '663 patent. In particular, the Examiner articulated the reasons for allowance of the application as follows:

Hulbert fails to show a plurality of adjustable height vertical poles, a hook positioned at a top of each pole of the plurality of poles configured to attach the plurality of poles overhead to the ceiling by attachment over the top of one of the ceiling rafters and the ceiling beams, and *wherein the rope is configured to raise the entire bird netting to the*

² The language of Claim 1 was modified slightly in a later Examiner’s amendment appearing in the Notice of Allowance. Ex-1002, 29-30.

upper portion of the plurality of poles in a deployed position to capture the flying vertebrate.

Ex-1002, 30 (Notice of Allowance dated August 10, 2018) (emphasis added).

As is the case here, where the prosecution history “demonstrate[es] how the inventor understood the invention and ... limited the invention in the course of prosecution,” the resulting claim must be construed consistently with the statements made to the PTO during prosecution. *Phillips*, 415 F.3d at 1317; *see also Hockerson-Halberstadt*, 222 F.3d at 957; *MBO Labs.*, 474 F.3d at 1330-1331. The amendments and arguments made during prosecution of the '663 patent reveal that the phrase “configured to raise the entire bird netting” in Claim 1 must be construed to require the capability to *raise the entire bird netting to prevent the netting from blocking activities on the floor of the building it is used in*. Ex-1002, 21.

**V. THE PETITION FAILS TO DEMONSTRATE A REASONBLE
LIKELIHOOD THAT THE '663 PATENT'S CLAIMS ARE
UNPATENTABLE**

Under the correct claim construction, the references cited under Ground 1 fail to disclose every limitation of independent Claim 1. The Petition also fails to establish a sufficient motivation for combining the references in the various combinations it asserts under Ground 1. Moreover, in its attempt to fashion a motivation to combine, the Petition advances arguments that are diametrically

opposed to those it made in prior IPR proceedings before the Board. For these reasons, the Board should deny institution.

A. Claim 1

1. The Petition fails to establish a sufficient motivation for combining Kunz, Albanese, and/or Sheldon with the Bird Barrier Video.

The Petition acknowledges that the Bird Barrier Video fails to disclose or suggest every limitation of Claim 1. *See* Pet. 4 (setting forth no anticipation or single-reference obviousness grounds based on Bird Barrier Video); *See* Pet. 29-33 (conceding the Bird Barrier Video does not disclose limitations 1.2.2 and 1.2.3). To cure the deficiencies in the Bird Barrier Video, the Petition points to an ambiguous combination of Kunz, Albanese, and/or Sheldon. *Id.*, 4 and 22. Although the Petition lacks sufficient particularity with respect to exactly how these references are combined (*supra* § III), the Petition plainly fails to establish that POSA would have been motivated to combine Kunz, and/or Albanese, and/or Sheldon with the Bird Barrier Video to arrive at Claim 1.

(a) Safe Haven previously argued to the Board that references directed to outdoor capture techniques (including Kunz) would not be combined with references directed to indoor capture techniques (including the Bird Barrier Video and a publication of the '663 patent's parent application).

The Petition begins its motivation to combine analysis by discussing an entirely different proceeding (IPR2022-01253) in which Meridian challenged Safe

Haven's U.S. Patent No. 10,251,374. Pet. 34-35. As the Petition acknowledges, in this earlier proceeding Safe Haven argued that a POSA *would not* be motivated to combine the Bird Barrier Video with Kunz—the opposite of what it argues now. *Id.* The Petition casts aside this about-face, suggesting that Safe Haven's prior arguments against combining the Bird Barrier Video and Kunz were limited and focused only on a particular system of nets claimed by the '374 patent. *Id.*, 35.

But Safe Haven sells its prior arguments short. In a pair of companion IPR proceedings that the Petition fails to address in its motivation to combine analysis (IPR2022-0154 and IPR2022-01340), Safe Haven's arguments were far more robust than the current Petition lets on. The central theme of Safe Haven's arguments in these earlier IPRs was this: a POSA would never be motivated to combine references directed to *indoor* trapping techniques (Bird Barrier Video) with references directed to *outdoor* trapping techniques (Kunz). This argument—which Safe Haven repeated ad nauseum to the Board—is the *opposite* of what it now argues in the current Petition.

In IPR2022-01254 and IPR2022-01340, ***Safe Haven argued repeatedly and unequivocally that a POSA would never combine the teachings of Kunz with the teachings of the Bird Barrier Video because Kunz is directed to outdoor capture techniques and the Bird Barrier Video is directed to indoor capture techniques:***

- “As noted above, capturing bats in outdoor settings presents a very different set of challenges than trapping vertebrate in indoor structures due to the presence of walls and ceilings. ***For this reason alone, a POSA would not be motivated to combine the teachings of Bird Barrier Video with Kunz.***” Ex-2002, 56 (Safe Haven’s Preliminary Response, IPR2022-01254) (citations omitted) (emphasis added).
- “As explained throughout the Preliminary Response, ***Kunz is irrelevant to the claimed invention as it is directed to outdoor netting systems.*** Likewise, Mattox is directed to outdoor netting systems. The fact that Mattox is directed to capturing ‘large, wild foraging animals’ is beside the point – ***no POSITA seeking to design a method and system for capturing birds inside big box stores would look to Kunz or Mattox, and the Examiner apparently agreed. Legally and factually, neither reference is relevant or material to the patentability of the claimed invention.***” Ex-2004, 1-2 (Safe Haven’s Sur-Reply, IPR2022-01340) (citations omitted) (emphasis added).
- “As noted above with respect to Brugh in view of Kunz, capturing bats in outdoor settings presents a very different set of challenges than trapping vertebrate in indoor structures due to the presence of walls and ceilings. Thus, ***a POSA similarly would not be motivated to combine the teachings of Bird Barrier Video with Kunz. Any alleged advantage of Kunz’s outdoor capture system would not apply to Bird Barrier Video’s indoor capture system.***” Ex-2003, 44

(Safe Haven's Preliminary Response, IPR2022-01340) (citations omitted) (emphasis added).

- “[A]lthough Kunz is not cited on the face of the ‘683 Patent, ***that is no surprise considering it covers the use of outdoor trapping nets . . .***” Ex-2003, 22 (Safe Haven's Preliminary Response, IPR2022-01340) (emphasis added).

Safe Haven used the same distinction to also argue that a POSA would never combine the teachings of Kunz with the teachings of Brugh (U.S. Patent Publication No. 2017/0238524), which is the initial publication of the ‘663 patent's parent application (U.S. Application No. 15/048,231). ***Stated plainly, Safe Haven argued to the Board that a POSA would not be motivated to consider Kunz in combination Brugh—the earliest publication of the very patent it now argues is invalid in view of Kunz:***

- First and foremost, due to the presence of walls and ceilings, ***trapping vertebrates in enclosed spaces is nothing like capturing bats in outdoor settings*** and presents a very different set of challenges. ***A POSA would not be motivated to look to a patent direct to outdoor bat-capturing systems like Kunz to modify an indoor trapping system like that taught in Brugh.*** Ex-2002, 45 (Safe Haven's Preliminary Response, IPR2022-01254) (citations omitted) (emphasis added).
- First and foremost, a POSA would have no motivation to modify the capture system of Brugh with the teachings of Kunz ***in general***

because any alleged advantage of Kunz's outdoor capture system would not apply to Brugh's indoor capture system. Due to the presence of walls and ceilings, trapping vertebrates in enclosed spaces is very different from capturing bats in outdoor settings and presents a very different set of challenges. Ex-2003, 38-39 (Safe Haven's Preliminary Response, IPR2022-01340) (citations omitted) (emphasis added).

The Board found Safe Haven's arguments convincing and—in each of IPR2022-01253, IPR2022-01254, and IPR2023-01340—denied institution. But Safe Haven now asks the Board to do the *opposite* in this proceeding and combine a reference directed to *indoor* capture techniques (Bird Barrier Video) with various references exclusively directed to *outdoor* capture techniques (Kunz, Albanese, Sheldon). The Petition offers no compelling reason for the Board to do so and points to no evidence (including no expert testimony addressing the proposed combination(s)) to support its position.

Like Kunz, Albanese and Sheldon are directed to outdoor capture techniques. *See* Ex-1009, 8-16 (Kunz describing outdoor placement of nets). Albanese describes the “use of a mist net apparatus capable of sampling vegetation strata from ground level to an 8.5m height” and tested its net “on the north side of Pewaukee Lake in Waukesha Co., Wisconsin.” Ex-1010, 129. Sheldon describes techniques for “capturing American woodcocks (*Philohela minor*) with Japanese mist nets during

the summer months in central Massachusetts” and describes the placement of these nets in multi-acre outdoor fields. Ex-1011, 130, 1314. None of Kunz, Albanese, or Sheldon disclose or suggest indoor capture techniques.

By Safe Haven's own admission, references directed to outdoor capture techniques are “irrelevant” to capturing flying vertebrates inside large buildings. *See* Ex-2004, 1-2. Thus, a POSA would not have been motivated to combine Kunz, Albanese, and/or Sheldon with the Bird Barrier Video. For at least this reason, the Petition fails to establish a sufficient motivation for combining the references under Ground 1.

(b) The Petition's new rationales for combining Kunz, Albanese, and/or Sheldon with the Bird Barrier Video are unavailing.

Following its analysis of Claims 1-3, the Petition sets forth a “Motivation for Combining” section that focuses primarily on attempting to explain away Safe Haven's previous arguments in IPR2022-01253 (ignoring the even more contradictory arguments advanced in IPR2022-01254 and IPR2022-01340). In fact, the Petition's “Motivation for Combining” section includes just a single sentence directed to why a POSA would have allegedly combined the references under Ground 1. The Petition explains that because the Bird Barrier Video, Kunz, Albanese, and Sheldon “all pertain to mist nets hung between two poles than can be raised and lowered, and they all focus on the common goal of capturing birds, a

POSA would have been motivated to combine them to arrive at the claimed invention.” Pet. 35.

As an initial matter, the Petition's argument is diametrically opposed to its arguments in IPR2022-01254 and IPR2022-01340, where it characterized references directed to outdoor capture techniques as “irrelevant” to references directed to indoor capture techniques. Ex-2004, 1-2; *supra* § V(A)(1)(a). Nevertheless, the Petition's argument is deficient for additional reasons.

The Petition's suggestion that the references pertain to adjustable mist nets between poles and relate to capturing birds is, at most, an argument that the references might be regarded as analogous art (notwithstanding the contradictory positions Safe Haven has taken previously). But “[d]emonstrating that a reference is analogous art or relevant to the field of endeavor of the challenged patent is not sufficient to establish that one of ordinary skill would have had reason to combine its teachings with other prior art in the manner set forth in the claim.” *Johns Manville Corp. v. Knauf Insulation, Inc.*, IPR2018-00827, Paper 9 at 10 (PTAB Oct. 16, 2018) (informative) (citing *Securus Techs., Inc. v. Global Tel*Link Corp.*, 701 F. App'x 971, 977 (Fed. Cir. 2017) (“a broad characterization of [prior art references] as both falling within the same alleged field . . . without more, is not enough for [Petitioner] to meet its burden of presenting a sufficient rationale to support an obviousness conclusion”)). Moreover, “[m]ere compatibility of the references is likewise not

sufficient.” *Id.* at 11 (citing *Personal Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 993 (Fed. Cir. 2017) (it is not enough to show that “a skilled artisan, once presented with the two references, would have understood that they could be combined”))).

Here, the Petition fails to explain why a POSA *would have* combined the four references in Ground 1 in the manner set forth in the claim. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (obviousness requires “a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does”). Indeed, the Petition proposes modifying numerous aspects of the Bird Barrier Video in view of different disclosures in Kunz, Albanese, and Sheldon. Pet. 22-33. But the Petition fails to sufficiently explain what would have motivated a POSA to make each of these modifications in view of the various combination of references (and cites to no testimony from a POSA suggesting that it would do so).

Elsewhere, the Petition proposes other motivations for some of the combinations contemplated by Ground 1 (but not others). For example, with respect to limitation [1.2.3], the Petition argues that “[i]t would be obvious to modify Bird Barrier Video’s mist net kit to include the rope/pulley system of Kunz, Albanese or Sheldon to facilitate raising and lowering the mist net position, which necessarily requires the claimed attachment devices.” Pet. 33. But this is not what is required by limitation [1.2.3]. Under the correct claim construction, this portion of Claim 1

requires the claimed device to be “configured to raise the entire bird netting to the upper portion of the plurality of poles” such that the netting is prevented from blocking activities on the floor of the building it is used in. *Supra* § IV(B); Ex-1002, 21.

The Petition offers no motivation for configuring the Bird Barrier Video's device—which lacks any pulley and rope arrangement—such that “the entire bird netting” can be raised to prevent the netting from blocking activities on the floor of the building it is used in. In fact, the phrase “the entire”—which was added by amendment to secure allowance of Claim 1—appears nowhere in the Petition's analysis. The Petition simply fails to explain how the Ground 1 references would be combined to satisfy this requirement.

The Petition cannot satisfy its burden of proving obviousness by employing “conclusory statements”—there must “instead [be] specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016); *KSR Int'l*, 550 U.S. at 418. Here, the Petition fails to explain how—and, importantly, *why*—a POSA would have modified the Bird Barrier Video in view of Kunz, Albanese, and/or Sheldon. Moreover, Safe Haven offers no testimony from an expert that has reviewed the '663 patent or opined on its patentability in view of Ground 1. In fact, setting aside the Petition's failure to address the correct construction of limitation 1.2.3, *no evidence*

is cited to support the Petition's assertion that "[i]t would be obvious to modify Bird Barrier Video's mist net kit to include the rope/pulley system of Kunz, Albanese or Sheldon to facilitate raising and lowering the mist net position." *See* Pet. 33.

Notably, the Petition also fails to explain how the *outdoor* capture techniques described in Kunz, Albanese, and Sheldon (apparently no longer irrelevant) would improve the *indoor* capture techniques of the Bird Barrier Video. *See* Ex-2004, 1-2; *supra* § V(A)(1)(a). Indeed, as these references are focused on outdoor capture techniques, none of Kunz, Albanese, or Sheldon would have been concerned with configuring capture devices such that the entire netting can be raised to *prevent the netting from blocking activities on the floor of a building it is used in*. *Supra* § IV(B); Ex-1002, 21.

Ultimately, the Petition fails to provide a reason, supported by rational underpinnings, to combine the teachings of Bird Barrier Video, Kunz, Albanese, and/or Sheldon and, accordingly, fails to demonstrate obviousness. *KSR Int'l Co.*, 550 U.S. at 418.

- 2. Even if combined with the Bird Barrier Video, Kunz, Albanese, and Sheldon fail to disclose or suggest "wherein the rope is configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate" (in limitation 1.2.3).**

As discussed above, the Petition acknowledges that the Bird Barrier Video fails to disclose or suggest every limitation of Claim 1. *See* Pet. 4, 22-33. Among

other things, the Bird Barrier Video fails to disclose “a pulley attached to an upper portion of at least one pole of the plurality of poles” (limitation 1.2.2) and “a rope attached to the pulley, the rope having attachment devices to attach the bird netting to the rope, wherein the rope is configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate” (limitation 1.2.3). *See* Pet. 29-33 (conceding same).

With respect to limitation 1.2.3, the Petition points to the disclosure of Kunz, Albanese, and Sheldon. Pet. 33. However, under the proper construction of limitation 1.2.3, none of these references disclose a rope “configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate.” Properly construed, the phrase “configured to raise the entire bird netting” in Claim 1 requires the capability to raise the entire bird netting to prevent the netting from blocking activities on the floor of the building it is used in. *Supra* § IV(B); Ex-1002, 21.

Kunz discusses the use of ropes and pulleys in relation to its netting arrangements. Ex-1009, 8-14. However, there is no teaching in Kunz of an arrangement where the pulley is attached to the pole, the rope is attached to the bird netting, and “the rope is configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate.” At no point is Kunz’s netting raised using poles and a pulley such that

it would be prevented from blocking activities on the floor of a building. *Supra* § IV(B); Ex-1002, 21. Instead, in nearly every example shown in Kunz, a portion of the netting is positioned proximate to the ground. Ex-1009, 9 (Fig. 3A and 3C-F), 11 (Fig. 4A-F), 13 (Fig. 6). In the only example where the netting is raised significantly above the ground, no poles are used and the rope is secured to a cave wall (a scenario wholly inapplicable to the Bird Barrier Video). Ex-1009, 9 (Fig. 3B).

Albanese and Sheldon are similarly deficient. In Albanese, the “mist net apparatus [is] capable of sampling vegetation strata from ground level to an 8.5 m height.” Ex-1010, 129. While Albanese suggests the top of its mist net may reach these heights, there is no disclosure of a device configured for raising the entire bird netting to the upper portion of the plurality of poles to prevent the netting from blocking activities on the floor a building. *Supra* § IV(B); Ex-1002, 21. In fact, Albanese employs a double pulley system in which the rope spans between a lower portion of the poles and obstructs the very area the device of Claim 1 is configured to keep clear. Ex-1010, Figs. 1 and 2.

In Sheldon, mist nets are erected using elongated poles. Ex-1011, 132-133 (Figs. 1-3). However, once again, in every example shown in Sheldon, the mist nets extend to an area proximate to the ground. *Id.* Sheldon fails to disclose a device configured for raising the entire bird netting to the upper portion of the plurality of

poles to prevent the netting from blocking activities on the floor a building. *Supra* § IV(B); Ex-1002, 21.

As Kunz, Albanese, and Sheldon are directed to *outdoor* trapping techniques, it should come as no surprise that their disclosures would be unconcerned with raising the entire bird netting to the upper portion of the plurality of poles to prevent the netting from blocking activities on the floor a building. The advantage of this feature is inapplicable in the outdoor environments to which these references are directed. Moreover, Safe Haven offers no expert testimony or evidence to support its assertions that limitation 1.2.3 would have been obvious in view Kunz, Albanese, or Sheldon.

Accordingly, even if combined with the Bird Barrier Video, Kunz, Albanese, and Sheldon fail to disclosure or suggest “a rope attached to the pulley, the rope having attachment devices to attach the bird netting to the rope, wherein the rope is configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate” (limitation 1.2.3). For these additional reasons, the Petition fails to establish a reasonable likelihood that the challenged claims are unpatentable.

3. Safe Haven cannot rely on a hearsay declaration from another proceeding and, even if it were permissible, the declaration does not support Safe Haven's arguments.

The Petition provides no testimony from a witness (expert or otherwise) who has reviewed the '663 patent and offered opinions supporting Safe Haven's invalidity ground(s). Instead, Safe Haven cites liberally to a previous declaration submitted by Dr. Michael Chamberlain (Meridian's expert) in IPR2022-01253. Pet. 24, 29, 34; *see generally* Ex-1013. Safe Haven's reliance on Dr. Chamberlain's prior declaration is both impermissible and misguided.

In the event the Board institutes this IPR, Meridian intends to object to Ex-1013 (Dr. Chamberlain's declaration in IPR2022-01253) as being inadmissible and intends to move to exclude it from this proceeding. First, Safe Haven cannot comply with 37 C.F.R. §§ 42.51–42.53 as it cannot produce Dr. Chamberlain for cross-examination in relation to his prior testimony in Ex-1013. Dr. Chamberlain has provided a declaration, accompanying this Preliminary Response, in which he confirms that he was “unaware of the Safe Haven Petitions until being informed of their existence by counsel for Meridian,” has “never provided testimony in support of the Safe Haven Petitions,” and was “never asked by Safe Haven (or its counsel) to do so.” Ex-2001, ¶ 3. Dr. Chamberlain testifies that he has “never been engaged by Safe Haven, compensated by Safe Haven, or otherwise provided consulting services for Safe Haven.” *Id.*

Dr. Chamberlain also testifies that he is “unwilling to participate in a deposition or otherwise sit for cross-examination in relation to any of my prior testimony that has been (or will be) submitted by Safe Haven in support of the Safe Haven Petitions.” Ex-2001, ¶ 4. Finally, Dr. Chamberlain confirms that his “contractual obligations to Meridian constrain [him] from participating in . . . cross-examination.” *Id.* Thus, Safe Haven will not be able to comply with 37 C.F.R. §§ 42.51–42.53 and produce Dr. Chamberlain for cross-examination in relation to his prior testimony in Ex-1013.

Under these circumstances, the Board may not consider Dr. Chamberlain's testimony in Ex-1013 as cited in the Petition. “[I]f a party proffers a witness's testimony, that party must make that witness available for cross-examination by the other party.” *Vudu, LLC v. Ideahub, Inc.*, Case IPR2020-01688, Paper 47 (March 16, 2022) (citing 37 C.F.R. §§ 42.51–42.53); *see also* Consolidated Trial Practice Guide 23 (November 2019); 37 C.F.R. § 42.53(g) (burden of producing a witness for cross-examination falls on the party presenting the witness). Furthermore, the Board has consistently held that “responsibility for [a] declarant's refusal to participate in [a] deposition ultimately must rest with . . . the party proffering the witness.” *HTC Corporation et. al, v. NFC Technology, LLC*, IPR2014-01198, Paper 41 at 5 (PTAB Nov. 6, 2015) (striking declaration of non-party witness who refused to partake in deposition noticed by petitioner).

The Board has also held that “where a third party has submitted a declaration and has either refused or otherwise has not been made available to be cross examined, we have historically given little weight to or stricken the third party’s declaration.” *Vudu*, IPR2020-01688, Paper 47 at 10-11; *L’Oreal USA, Inc. v. Liqwd, Inc.*, PGR2018-00025, Paper 107, 55–60 (PTAB July 30, 2019) (giving little weight to inventor (alleged third-party) declaration submitted during prosecution and related expert testimony on alleged unexpected results because Patent Owner did not make the inventor available for cross examination on the testing reported in the declaration); *HTC Corp.*, IPR2014-01198, Paper 41, 4–5 (striking declaration of non-party witness who refused to participate in deposition noticed by petitioner); *John’s Lone Star Distribution, Inc. v. Thermolife Int’l, LLC*, IPR2014-01201, Paper 31, 3 (PTAB May 13, 2015) (“By refusing to make [the declarant] available for cross-examination, Petitioner has failed to comply with an applicable rule in this proceeding, entirely to Patent Owner’s detriment. Thus, an appropriate action is to expunge [the declaration].”). Accordingly, Dr. Chamberlain’s testimony in Ex-1013 should be stricken or, at the very least, accorded no weight.

In the absence of cross-examination of Dr. Chamberlain, which will not occur, his testimony in Ex-1013 is also inadmissible hearsay.³ *See* Federal Rules of Evidence 801 and 802; 37 CFR § 42.62. Moreover, none of the hearsay exceptions will apply. For example, as an expert witness, Dr. Chamberlain is not an agent or employee of Meridian with respect to Federal Rules of Evidence 802(d)(2)(C)-(D). *See HTC Corp. v. Telefonaktiebolaget LM Ericsson*, 12 F.4th 476, 489-490 (5th Cir. 2021) (“Since an expert witness is not subject to the control of the party opponent with respect to consultation and testimony he or she is hired to give, the expert witness cannot be deemed an agent.” (quoting *Kirk v. Raymark Indus., Inc.*, 61 F.3d 147, 164 (3d Cir. 1995))).

Even if the Board declined to strike or expunge Dr. Chamberlain's declaration, it would be entitled to no weight in this proceeding. Dr. Chamberlain's declaration assesses an entirely different patent—Safe Haven's U.S. Patent 10,251,374. Ex-1013, ¶¶ 1-2. Dr. Chamberlain did not purport to have reviewed the claims of the '663 patent and certainly did not consider their patentability in view of the Petition's proposed combination of the Bird Barrier Video, Kunz, Albanese, and Sheldon. *Id.*, ¶ 12. Moreover, in reviewing Dr. Chamberlain's testimony in IPR2022-

³ Meridian acknowledges that objections to evidence are ordinarily not served until after institution. In this case, addressing the objection is appropriate at this stage.

01253, the Board itself previously afforded it minimal weight in denying institution. Ex-1014, 35-37 (cites to Ex-1004 corresponding to Ex-1013 in the current proceeding). Accordingly, for purposes of evaluating institution of *this* IPR, the Board should assign no weight to Dr. Chamberlain's testimony in Ex-1013.

For all of the foregoing reasons, the Petition fails to establish a reasonable likelihood that Claim 1 is unpatentable under Ground 1. The Board should therefore deny institution.

B. Claims 2 and 3

For the reasons explained above with respect to Claim 1, the Petition's arguments in relation to Claims 2 and 3 are similarly insufficient and do not warrant institution. Meridian reserves the right to comment further on the patentability of Claim 2 and 3 in the event the Board institutes review.

VI. CONCLUSION

For at least the foregoing reasons, Patent Owner Meridian requests that the Board decline to institute this proceeding.

Dated: November 29, 2023

Respectfully submitted,

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

VII. CLAIMS LISTING

Claim Element	Challenged Claims
[1.0]	1. A device for repeated quick set up for safe live capture of a flying vertebrate indoors in a large building having a floor and a ceiling supported by rafters or beams comprising:
[1.1]	a) bird netting capable of catching and holding the flying vertebrate when it flies into the bird netting; and
[1.2]	b) a plurality of adjustable height vertical support poles attached to the netting, the poles for sitting on the floor and comprising:
[1.2.1]	i. a hook positioned at a top of each pole of the plurality of poles configured to attach the plurality of poles overhead to the ceiling by attachment over the top of one of the ceiling rafters and the ceiling beams;
[1.2.2]	ii. a pulley attached to an upper portion of at least one pole of the plurality of poles; and
[1.2.3]	iii. a rope attached to the pulley, the rope having attachment devices to attach the bird netting to the rope, wherein the rope is configured to raise the entire bird netting to the upper portion of the plurality of poles in a deployed position to capture the flying vertebrate.
[2]	2. The device according to claim 1 further comprising at least one bird capture pocket in the bird netting.
[3]	3. The device according to claim 1 wherein the attachment devices are carabiners.

VIII. CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(b)(1), the undersigned hereby certifies that the foregoing **Patent Owner's Preliminary Response** contains 7,443 words, 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: November 29, 2023

/Christopher B. Kelly/

Christopher B. Kelly
Reg. No. 62,573

IX. 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 **Patent Owner's Preliminary Response** and all supporting exhibits were served on November 29, 2023, via e-mail to the counsel of record for Petitioner at the email addresses below. The parties both consented to electronic service prior to filing of this Petition.

Preston Heard (Preston.Heard@wbd-us.com)

John F. Morrow, Jr. (John.Morrow@wbd-us.com)

James E. Dority (James.Dority@wbd-us.com)

Dated: November 29, 2023

/Christopher B. Kelly/

Christopher B. Kelly
Reg. No. 62,573