

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

Case IPR2022-01340
Patent No. 11,064,683

PATENT OWNER'S SUR-REPLY

Pursuant to Board's Authorization, Patent Owner Safe Haven submits this sur-reply to Petitioner's reply (Paper 7). Recognizing that it trots out essentially the same prior art and positions that failed during prosecution, Petitioner argues that its Petition should not be denied in the Board's discretion under 35 U.S.C. §§ 325(d), but its reply arguments miss the mark.

First, Petitioner draws a distinction between the prior art product Safe Haven cited to the USPTO during prosecution, "BIRD BARRIER 'Mist Kits'" (Ex. 1007 at 47, 97) and the Bird Barrier Video (Ex. 1009). If anything, the citation to the product itself is more comprehensive than the Bird Barrier Video, which expressly teaches away from the claimed methods and systems of the '683 Patent. Both "Bird Barrier" citations show the setup of a single net, and the Bird Barrier Video effectively disavows any plan or system for setting up a perimeter net or multiple nets, and makes explicit reference to "setting up where a bird has been seen" and moving it around as needed (i.e., the prior art "hit or miss" method). Paper 6 at 3. Safe Haven already explained at length why the Bird Barrier mist netting method failed to teach multiple claimed elements, and thus Petitioner can establish no "material error" in the Examiner's decision to ignore this deficient prior art.

Second, Petitioner misses the point regarding Kunz. As explained throughout the Preliminary Response, Kunz is irrelevant to the claimed invention as it is directed to outdoor netting systems. Paper 6 at 38-39. Likewise, Mattox is directed to

outdoor netting systems. Ex. 1043. 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.

Third, Petitioner hand-waves in conclusory fashion saying the Examiner “plainly overlooked” Brugh’s disclosure. Paper 7 at 2. Not so. Brugh discloses a single net and not even a perimeter net (Paper 6 at 34-36), so any POSITA would readily appreciate that the Examiner correctly dismissed its teachings. Thus, Petitioner failed in its Petition and fails now to establish any “material error” by the Office in not applying the prominently cited Brugh reference to the claims during prosecution.

It is unclear why Petitioner addresses § 314(a) in this proceeding when Safe Haven did not raise this issue in the Preliminary Response. Petitioner’s discussion of “compelling evidence of unpatentability” is misplaced but also irrelevant.

Respectfully submitted,

Dated: November 22, 2022

/Preston H. Heard/

Reg. No. 64,675

Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), I hereby certify that a true and correct copy of the foregoing Sur-Reply was served on Petitioner via electronic mail at the following:

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Dated: November 22, 2022

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