

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

STORMSEAL USA, LLC and SYSTEM
STORMSEAL PTY LTD,

Plaintiffs,

v.

ABC SUPPLY CO., INC., MULE-HIDE
PRODUCTS CO., INC., and STRUCTURAL
WRAP, LLC,

Defendants.

Case No.: 9:22-cv-81726-AHS

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STRUCTURAL WRAP, LLC’S INITIAL INVALIDITY CONTENTIONS

Pursuant to the proposed Scheduling Order (ECF No. 36-1), Defendant Structural Wrap, LLC (“Structural Wrap”), by and through its undersigned attorneys, hereby submits its Initial Invalidity Contentions to Plaintiffs Stormseal USA, LLC and System Stormseal Pty Ltd. (collectively, “Stormseal”) with respect to U.S. Patent No. 11,168,484 (“’484 Patent” or “Asserted Patent”) and Claims 1–3 of the ’484 Patent (“Asserted Claims”).

Structural Wrap submits these initial contentions without prejudice to Structural Wrap’s right to supplement or revise them, including but not limited to Structural Wrap’s right to assert additional contentions based on additional analysis and/or further information obtained during discovery, which has just begun, including third party discovery. The prior art and other evidence cited in these initial contentions is exemplary and is not intended to be limiting. Structural Wrap reserves the right to use additional evidence and prior art to support its invalidity claims.

Structural Wrap reserves the right to modify or further supplement these contentions, including in any final invalidity contentions, based on, among other things, production of additional documents, discovery of additional facts and materials (including by third parties), and

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other developments in this action, including any claim construction positions by Stormseal or claim construction ruling by the Court. Structural Wrap also reserves the right to submit expert opinions and analyses of the invalidity and unenforceability of the Asserted Patent and the Asserted Claims in accordance with the schedule for expert discovery.

Structural Wrap provides these Initial Invalidity Contentions prior to the parties’ claim construction briefing and a claim construction order from the Court, while Structural Wrap’s investigation regarding the invalidity of the ’484 Patent is ongoing. Structural Wrap’s Initial Invalidity Contentions do not represent its agreement or view as to the proper construction of any term in any of the Asserted Claims. Thus, to the extent that Structural Wrap provides contentions regarding, for example, a broader interpretation of a claim term than Structural Wrap believes is appropriate, that is not a waiver of Structural Wrap’s claim construction position. Structural Wrap thus reserves all rights to present arguments and evidence regarding the proper claim scope and claim construction for all Asserted Claims. Structural Wrap’s contentions also should not be seen as a suggestion that the terms of those claims would have had definite meanings to one of skill in the art or that there is any guidance in the specification as to the enablement, possession, or meaning of the terms of those claims. These contentions are made in the alternative and are not necessarily intended to be consistent with each other.

Structural Wrap reserves the right to rely on prior art not included in this initial disclosure, whether now known or not known to Structural Wrap. For example, Structural Wrap is currently unaware of the extent to which Stormseal will contend that limitations of the ’484 Patent are not disclosed in the prior art identified by Structural Wrap, or other challenges Stormseal may raise to Structural Wrap’s invalidity contentions. To the extent Stormseal raises any such challenges, Structural Wrap reserves the right to identify other prior art that discloses or would render obvious

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the allegedly missing limitation(s) of the Asserted Claims, that would provide the motivation to combine or reasonable expectation of success, or would demonstrate that the cited prior art is analogous.

The references cited herein disclose the limitations of the Asserted Claims of the '484 Patent either explicitly and/or inherently and/or may be relied upon to show the state of the art during the relevant time frames. Structural Wrap endeavored to identify the most relevant portions of each reference. The references, however, may contain additional support for particular claim limitations. Structural Wrap may rely on uncited portions of the prior art references, other documents, and expert testimony to provide context or to aid in understanding the cited portions of the references. Where Structural Wrap cites to a particular figure in a reference, the citation should be understood to encompass the caption and description of the figure and any text relating to or discussing the figure, and, where Structural Wrap cites to particular text referring to a figure, the citation should be understood to include the figure as well.

Subject to the foregoing, Structural Wrap provides the following information with respect to the Asserted Claims of the '484 Patent. Each of the Asserted Claims is invalid because it fails to meet one or more of the requirements for patentability under 35 U.S.C. §§ 101, 102, 103, and/or 112.

This disclosure is without any concession, agreement, admission, or waiver of any ultimate determination of relevance, admissibility, or discoverability of particular information for any purpose and without waiver of any attorney-client, work product, or other privilege or immunity.

Exhibits A through DD are attached to these contentions and are hereby incorporated by reference.

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I. Prior Art Invalidity

Subject to the foregoing, each of the Asserted Claims is invalid based on the prior art references and/or prior knowledge, use, or invention by others listed or described below and/or in the Exhibits attached hereto and incorporated herein, under 35 U.S.C. § 102 and/or under 35 U.S.C. § 103.

A. Identification of Prior Art

Each of the Asserted Claims is invalid because they are anticipated under 35 U.S.C. § 102 and/or rendered obvious under 35 U.S.C. § 103, by at least the prior art identified in Exhibit A to these contentions. Exhibit A identifies the production Bates number, where applicable, at which copies of the prior art has been produced. Structural Wrap incorporates by reference the prior art documents in Exhibit A. To the extent a prior art patent or patent application publication claims priority to one or more priority applications (including provisional applications), the prior art reference as cited herein is to both the patent or patent application publication itself as well as any priority applications within the priority chain of that patent or patent application publication. Exhibit A also identifies prior art systems, uses, and methods that were known, used, and/or invented by others, prior to the earliest priority date of the Asserted Claims.

Charts in Exhibits B through DD provide exemplary citations identifying where in the prior art references, systems, uses, and methods each element of the Asserted Claims is found.

Stormseal contends that “all of the Asserted Claims are entitled to a priority date of at least as early as June 2, 2008, based on the filing date of Australian application 2008202416.” *See* Stormseal’s June 12, 2023 Responses and Objections to Structural Wrap’s First Set of Interrogatories, at 5–6 (Response to Interrogatory No. 2). Structural Wrap reserves the right to challenge the alleged priority date of the Asserted Claims, as discovery continues. While Structural Wrap does not agree that the Asserted Claims are entitled to a priority date “at least as

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early as June 2, 2008,” Structural Wrap has provided prior art in these contentions responsive to Stormseal’s contention that it is entitled to a June 2, 2008 priority date, and Structural Wrap may rely on additional prior art if the Asserted Claims are not entitled to such a priority date. Structural Wrap reserves the right to supplement its invalidity contentions to the extent Stormseal alleges that the ’484 Patent is entitled to a priority date earlier than June 2, 2008.

To establish the scope and content of the prior art, a motivation to combine or modify the prior art, or the knowledge and level of skill of those of ordinary skill in the art, Structural Wrap may rely on additional prior art or other evidence, including, but not limited to, patents, patent applications or other publications, the prosecution history files of the ’484 Patent and of U.S. and foreign patent applications related to the ’484 Patent, testimony of fact and expert witnesses, expert declarations and reports, admissions by Stormseal or its agents, and responses to discovery.

Structural Wrap expects that further discovery, including third-party discovery, will reveal additional prior art, including related disclosures for many of the prior art references, systems, uses, and methods identified herein. Structural Wrap reserves the right to present additional prior art located during the course of discovery or further investigation, and to assert additional invalidity grounds based on such additional prior art, including in Structural Wrap’s Final Invalidity Contentions (*see* ECF No. 36). In addition, prior art not included in this disclosure, whether now known or not known to Structural Wrap, may become relevant. In particular, Structural Wrap is currently unaware of the extent, if any, to which Stormseal will contend that limitations of the Asserted Claims are not disclosed in the prior art identified by Structural Wrap. To the extent such an issue arises, Structural Wrap reserves the right to identify other prior art that discloses or would render obvious the allegedly missing limitation(s) of the Asserted Claims. The prior art references identified in Exhibit A are presumed to be enabled for all that they disclose.

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Structural Wrap reserves the right to identify additional prior art evidencing enablement of these references should Stormseal challenge the presumption of enablement. Additionally, Structural Wrap is currently unaware of the extent, if any, to which Stormseal will contend that any of the references, systems, uses, and methods identified by Structural Wrap are not prior art. To the extent such an issue arises, Structural Wrap reserves the right to present additional evidence that the references, systems, uses, and methods identified by Structural Wrap are prior art to the Asserted Claims.

In addition to the prior art described above, Structural Wrap incorporates by reference each and every prior art reference of record in the prosecution of the '484 Patent and related United States and foreign applications, including, but not limited to abandoned U.S. Application No. 17/519,787 and pending U.S. Application No. 17/977,136, and including the statements made therein by the applicant, as well as the prior art discussed in the specification of the '484 Patent.

B. Identification of Exemplary Anticipation and Obviousness Grounds

1. Anticipation

The following prior knowledge, use, and/or invention by others anticipate one or more of the Asserted Claims of the '484 Patent under at least 35 U.S.C. § 102(a), (b), and (g)(2).

- **Global Wrap Method.** Upon information and belief, and as will be further developed during discovery, including third-party discovery, the invention claimed in the '484 Patent was known and/or was used and/or was conceived and reduced to practice by individuals affiliated with Global Wrap and individuals using Global Wrap's system/method/use or using Global Wrap products/services ("Global Wrap Method"), prior to the priority date of the '484 Patent. *See* Exhibit B, which is incorporated by reference herein. For example, Anthony Seraphin of Global Wrap demonstrated the Global Wrap Method at a convention prior to the priority date of the Asserted Claims. Additionally, for example, before the priority date of the Asserted Claims, Global Wrap installed shrink wrap containments for its customers in accordance with the methods of the Asserted Claims. The following references evidence the prior knowledge, use, and/or invention of the Global Wrap Method, prior to the priority date of the Asserted Claims, but Structural Wrap intends to rely on additional evidence as discovery, including third-party discovery, progresses:

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Globalwrap.com Webpage; Globalwrap.com Webpage 2; Global Wrap Video; NYT Shrink Wrap; Global Wrap Demonstration; Talbot 509; Talbot 783; Talbot 911.¹

- **Americover Method.** Upon information and belief, and as will be further developed during discovery, including third-party discovery, the invention claimed in the ’484 Patent was known and/or was used and/or was conceived and reduced to practice by individuals using Americover’s system/method/use/products (“Americover Method”), prior to the priority date of the ’484 Patent. *See* Exhibit D, which is incorporated by reference herein. The following references evidence the prior knowledge, use, and/or invention of the Americover Method, prior to the priority date of the Asserted Claims, but Structural Wrap intends on relying on additional evidence as discovery, including third-party discovery, progresses: Americover Webpage; Americover FAQ; Fine Homebuilding.

The following reference anticipates one or more of the Asserted Claims of the ’484 Patent under at least 35 U.S.C. § 102(a), (b), and (e).

- **Panasik.** *See* Exhibit G, which is incorporated by reference herein.

This identification of anticipatory prior art under 35 U.S.C. § 102 is merely exemplary and is not intended to be exhaustive. Structural Wrap may also point to additional anticipatory prior art identified in these contentions, in the prosecution history, or that is discovered or found to be relevant during discovery. Structural Wrap is currently unaware of the extent, if any, to which Stormseal will contend that limitations of the Asserted Claims are not disclosed or enabled in the prior art identified by Structural Wrap. To the extent that an issue arises with any such limitations, Structural Wrap reserves the right to identify other prior art evidencing such disclosure or enablement.

2. Obviousness

The prior art identified in Exhibit A renders obvious the Asserted Claims, under 35 U.S.C. § 103, either alone or in combination with the knowledge of one of ordinary skill in the art at the time of the alleged invention and/or one or more prior art references or systems/methods/uses identified in Exhibit A.

¹ Short cites for the prior art referenced throughout are identified in Exhibit A.

1. Prosecution History

Structural Wrap incorporates by reference the full prosecution history of the '484 Patent, as well as the prosecution histories of related U.S. and foreign applications, including, but not limited to, abandoned U.S. Application No. 17/519,787 and pending U.S. Application No. 17/977,136.

During the prosecution of the '484 Patent, the examiner determined that Crook teaches:

“a method of covering a roof structure (See Abstract), the method comprising: selecting a roll (37,520) of shrink wrap material; cutting a required number of strips (33,35,233,235,270,272) from the roll, wherein the strips are of sufficient length to extend from one end of roof structure to an opposite end thereof; positioning the strips over the roof structure by attaching a leading edge of a strip to a first edge of the roof structure and attaching a trailing edge of the strip to a second edge of the roof structure which is opposite the first edge; applying multiple strips to the roof structure with overlapping portions between adjacent strips; applying adhesive tape to the overlapping portions such that the strips are assembled into a sheet (100,200,250,300); and using a heat gun to apply heat to the sheet such that shrinking occurs and a tight fit between the sheet and the roof structure is achieved (See Figures; [0022]-[0066]).”

E.g., '484 Patent Prosecution History, 10/6/2020 Office Action, at 3. The examiner also determined that “the heating of the sheet of Crook causes the sheet to shrink and thereby conform tightly against the roof structure (See Figures; [0008]) which meets the claim.” *E.g.*, '484 Patent Prosecution History, 2/25/2021 Office Action, at 2. The examiner determined that it would have been obvious to use low density polyethylene film as the material in Crook, in light of the teachings of Lachapelle (US 6,425,213) and Myhre. *E.g.*, '484 Patent Prosecution History, 10/6/2020 Office Action, at 3; '484 Patent Prosecution History, 2/25/2021 Office Action, at 3. Additionally, the examiner determined that it would have been obvious to use batten strips as a fastener for holding the sheet of Crook, in light of the teachings of Starr (US 6,206,991). *E.g.*, '484 Patent Prosecution History, 10/6/2020 Office Action, at 4; '484 Patent Prosecution History, 2/25/2021 Office Action, at 3-4. The examiner also determined that placement of the batten strips under the eaves or to the

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facia of the built structure was “a routine matter of design choice for one of ordinary skill in the art such that the use of a batten strip on eaves, rafters, walls, or any other portion of a building structure would have been obvious depending upon where it is desired to fasten the sheet.” *E.g.*, ’484 Patent Prosecution History, 2/25/2021 Office Action, at 4.

The examiner, nevertheless, allowed the Asserted Claims, mistakenly stating that the “prior art fails to teach or fairly suggest applying a film strip to a roof structure by wrapping leading and trailing ends around battens and securing said battens to the structure.” ’484 Patent Prosecution History, Notice of Allowability, dated 09/13/2021.

The examiner erred in stating that the prior art failed to teach or suggest this fastening technique, admitting as much by subsequently rejecting nearly identical claims in the now abandoned U.S. Application No. 17/519,787. During the prosecution of U.S. Application No. 17/519,787, the same examiner rejected then-pending claims 1, 10, and 15, as obvious over Crook, Best Pat., Kelly Pat. 958, and Inzeo. As in the prosecution of the application that led to the ’484 Patent, the examiner determined that the prior art disclosed or rendered obvious a method of covering a roof with heat shrinkable film made of low density polyethylene, and attaching the film under the eaves or at the facia of the built structure. ’787 App Prosecution History, 12/19/2022 Office Action, at 6-10. The examiner, by this time, also discovered prior art Kelly Pat. 958, which “teaches a method of attaching a waterproof membrane to a roof assembly, the method comprising: wrapping a membrane (46) around a stiff member (40) and attaching the stiff member to a side face of a wall (12) with fasteners (42) (See Figs. 2A and 2B; col. 2, line 62 to col. 3, line 62).” ’787 App Prosecution History, 12/19/2022 Office Action, at 6-7, 9. The examiner determined that the “stiff member” of Kelly Pat. 958 “functions as a batten as claimed.” ’787 App Prosecution

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History, 12/19/2022 Office Action, at 6-7, 9. Thus, the prior art teaches what the examiner mistakenly believed was novel during the ’484 Patent prosecution.

Moreover, the examiner acknowledged that pending (and now abandoned) claims 1, 10, and 15 claimed the “same invention as” claims 1, 2, and 3, respectively, of the ’484 Patent. ’787 App Prosecution History, 12/19/2022 Office Action, at 12. The claims are nearly identical. Stormseal failed to respond to the office action, and the application is abandoned. ’787 App Prosecution History, 6/23/2023 Notice of Abandonment.

Accordingly, the examiner erred in allowing the Asserted Claims. The Asserted Claims are invalid as obvious for the same reasons the examiner rejected claims 1, 10, and 15 of the ’787 Application.

**2. Disclosure, Teaching, Motivation, or Suggestion of the
Elements of the Asserted Claims in the Prior Art / Motivations
to Combine the Prior Art**

(1) Shrink Wrap Elements

As described herein and in the attached exhibits, the prior art identified as “Shrink Wrap Art” in Exhibit A discloses, teaches, motivates, or suggests (expressly or inherently or in view of the knowledge of a person of ordinary skill in the art) at least the following elements of the Asserted Claims:

- [1.pre] A method of providing covers over at least a portion of a roof of a storm damaged built structure
- [1.d] heating the sheet of heat shrinkable film to bring the film into conformity with the portion of the roof, wherein said heating step shrinks the sheet of film tight against the built structure to cover over the portion of the roof
- [2.pre] A method of covering at least a portion of a roof of a [built] structure
- [2.a] cutting a sheet of film from a roll of heat shrinkable film

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- [2.b] after said cutting step, applying the sheet of film over the portion of the roof to extend from a first edge to a second edge of the [built] structure, wherein the film includes a leading edge and a trailing edge
- [2.e] heating the film to cause the film to conform to the portion of the roof
- [3.pre] A method of covering at least a portion of a roof of a [built] structure
- [3.a] applying a pre-cut sheet of heat shrinkable film over the portion of the roof to extend from a first edge to a second edge of the [built] structure, wherein the film includes a leading edge and a trailing edge
- [3.d] heating the film to cause the film to conform to the portion of the roof

The Shrink Wrap Art discloses the use of shrink wrap as a roof covering material. The Shrink Wrap Art describes reasons why a Person of Ordinary Skill in the Art (“POSITA”) would select shrink wrap as a roof cover material. For example, it is waterproof and lightweight, it conforms to different structures, and has been used with success in similar applications, such as wrapping boats. *See* Shrink Wrap Art, including citations provided for Shrink Wrap Art in the attached exhibits.

(2) Polyethylene Elements

As described herein and in the attached exhibits, the prior art identified as “Polyethylene Art” in Exhibit A discloses, teaches, motivates, or suggests (expressly or inherently or in view of the knowledge of a person of ordinary skill in the art) at least the following element of the Asserted Claims:

- [1.a] applying a sheet of heat shrinkable film over the portion of the roof, the sheet having a leading edge and a trailing edge and being a film of low density polyethylene including shrinking resins

It would have been obvious to choose low density polyethylene as the material for the roofing membrane in any of the Shrink Wrap Art because a POSITA would understand low density polyethylene is one of the possible materials that can be heat welded and heat sealed. *See* Polyethylene Art, including citations provided for Polyethylene Art in the attached exhibits. For

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example, Americover Method, Americover Website, Myhre Pat., and Best Pat. disclose low density polyethylene as a heat sealable material that is used for shrink wrap, including for roofs. A POSITA would have known that low density polyethylene is one possible option for heat sealable material. For example, while Crook and other Shrink Wrap Art teach a shrink wrap material, one of ordinary skill in the art would look to other prior art references to determine which types of shrink wrap materials were conventionally used, such as the Polyethylene Art, such as Americover Method, Americover Website, Myhre Pat., and Best Pat. *See* '484 Patent Prosecution History, 2/25/2021 Office Action, at 3. Shrink film was well known and conventionally used at the time of invention. The Polyethylene Art, such as Myhre Pat., Best, and Americover Method, teach that shrink resins containing low density polyethylene and shrink resins are well known and conventionally used, including to protect building structures and roofs. A POSITA would be motivated to select low density polyethylene given its properties, such as strength, stability, shrinkage percentage, and activation temperature. Therefore, it would have been obvious to one of ordinary skill in the art to use low density polyethylene shrink film as the shrink film of Crook or other Shrink Wrap Art.

Additionally, the motivation to use a film of low density polyethylene would have been provided by the teaching of, for example, Lachapelle (US 6,425,213 at 6:57-61) and Polyethylene Art, that to do so would predictably allow for easy installation. Further, since the shrink film shrinks upon heating, a POSITA would understand that it must inherently include at least some shrinking resins as claimed. *See, e.g.,* '484 Patent Prosecution History, 2/25/2021 Office Action, at 3; '787 App Prosecution History, 12/19/2022 Office Action, at 8 (“there must be some polymeric component in the blend which shrinks in order to form a shrink wrap film, so the formulations of Best which form shrink wrap must therefore include some type of ‘shrinking resins’ as claimed.”).

(3) Attachment Point Elements

As described herein and in the attached exhibits, the prior art identified as “Attachment Point Art” in Exhibit A discloses, teaches, motivates, or suggests (expressly or inherently or in view of the knowledge of a person of ordinary skill in the art) at least the following elements of the Asserted Claims:

- [1.b] attaching the first batten to an underside of a first eave or to a facia of the built structure
- [1.c] attaching the second batten to an underside of a second eave or to the facia of the built structure at a location different than the first batten
- [2.c] attaching the first batten to an underside of a first eave or to a facia of the [built] structure
- [2.d] attaching the second batten to an underside of a second eave or to the facia of the built structure at a location different than the first batten
- [3.b] attaching the first batten to an underside of a first eave or to a facia of the [built] structure
- [3.c] attaching the second batten to an underside of a second eave or to the facia of the built structure at a location different than the first batten

It would have been obvious to attach the batten to an underside of an eave or to the facia of the built structure because a POSITA would understand that those are two of a small, finite number of attachment points for the battens. The placement of the battens would have been a routine matter of design choice for one of ordinary skill in the art such that the use of a batten on eaves, rafters, walls, or any other portion of a building structure would have been obvious depending upon where it is desired to fasten the sheet. *See, e.g.*, ’484 Patent Prosecution History, 10/6/2020 Office Action, at 4. For example, it would have been obvious to one of ordinary skill in the art at the time of invention that the films of Crook or other Shrink Wrap Art and the battens of Kelly Pat. 958, Lowe’s, Plastic Sheeting, Blue Roof Tarps, and other Batten Art could be attached to an underside of an eave or to the facia of the built structure, rather than the wall or roof

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surface. There is no advantage, or new or unpredictable result, achieved by attaching to eaves or fascia rather than a wall or roof. As long as the point of attachment is structurally sound, the result is the same and predictable. Therefore, any attachment point, including a wall, eaves, fascia, soffit, rafters, nailers, or any other roof structure would have been obvious to one of ordinary skill in the art. *See, e.g.,* ’787 App Prosecution History, 12/19/2022 Office Action, at 9-10.

Moreover, the Attachment Point Art, such as Inzeo, Blue Roof Tarps, Global Wrap Video, and Fine Homebuilding, teach a membrane that is attached to an underside of an eave or to the fascia of the built structure. *See* Attachment Point Art, including citations provided for Attachment Point Art in the attached exhibits. Since it was known in the prior art to attach membranes to various points on the structure, including to the roof surface, to the wall, to an underside of an eave, or to the fascia of the built structure, the substitution of one known attachment point for another would have been obvious.

To the extent a POSITA did not already know where to attach the membrane to the roof, a POSITA would have been motivated to look for ways to attach the roof cover to the roof because a POSITA would have understood that it is desirable to secure the covering to the roof such that it would not blow away during subsequent windy or storm conditions. A POSITA would have readily come across the Attachment Point Art, which is in the same field as the Shrink Wrap Art and Batten Art.

(4) Batten Elements

As described herein and in the attached exhibits, the prior art identified as “Batten Art” in Exhibit A discloses, teaches, motivates, or suggests (expressly or inherently or in view of the knowledge of a POSITA) at least the following elements of the Asserted Claims:

- [1.b] wrapping portions of the leading edge around a first batten
- [1.c] wrapping portions of the trailing edge around a second batten

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- [2.c] wrapping portions of the leading edge around a first batten
- [2.d] wrapping portions of the trailing edge around a second batten
- [3.b] wrapping portions of the leading edge around a first batten
- [3.c] wrapping portions of the trailing edge around a second batten

It would have been obvious to wrap the films of the Shrink Wrap Art and Attachment Point Art around a batten as a means for the attachment. For example, it would have been obvious to one of ordinary skill in the art at the time of invention to use batten strips as a fastener for holding the sheet of Crook or other Shrink Wrap Art and Attachment Point Art to the roof structure. Crook, for example, teaches that any suitable fastener may be used. *See* Crook at [0049]. The Batten Art, such as Fine Homebuilding, Kelly Pat. 958, Panasik, Blue Roof Tarps, Lowe’s, and Plastic Sheeting, teaches wrapping membranes around batten strips to secure them to a structure, including a roof. *See* Batten Art, including citations provided for Batten Art in the attached exhibits. One of ordinary skill in the art would thus readily understand that “any appropriate fastening device” as taught by Crook, for example, would include wrapping batten strips because the Batten Art teaches that wrapping battens with the membrane was recognized in the prior art as being suitable for fastening waterproof membranes on roofs. *See, e.g.,* ’484 Patent Prosecution History, 10/6/2020 Office Action, at 4; ’787 App Prosecution History, 12/19/2022 Office Action, at 9. A POSITA would have understood that wrapping a roof cover around a batten and attaching the batten to the fascia or underside of an eave would hold the cover tight against the roof thereby improve waterproofing, while also distributing stress associated with the attachment. A POSITA also would have been motivated to use this attachment method because it would improve the durability and life of the cover, which can be susceptible to wind and rain, requiring replacement if not secured properly. As a POSITA would readily understand, Plastic Sheeting, for example, teaches that attaching a plastic membrane to a structure by first wrapping it around a batten is “very

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good for spreading the load” to avoid fixings from pulling through the sheeting over time. *E.g.*, Plastic Sheeting at 24; *see also* Exhibit X.

To the extent a POSITA did not already know how to attach the membrane to the roof using a batten, a POSITA would have been motivated to look for ways to do so because a POSITA would have understood that it is desirable to secure the covering to the roof such that it would not blow away during subsequent windy or storm conditions, or rip through the fixings. A POSITA would have readily come across the Batten Art, which is in the same field as the Shrink Wrap Art and Attachment Point Art.

(5) Order of Steps

To the extent one or more of the Asserted Claims require a particular order of the steps of the method, for example, that the “cutting step” occur before the “applying” step, any such arrangement of the steps is obvious. The “selection of any order of performing process steps is *prima facie* obvious in the absence of new or unexpected results.” *E.g.*, ’787 App Prosecution History, 12/19/2022 Office Action, at 10. The timing of the cutting step does not achieve any new or unexpected result. “Regardless of whether the strips are cut and then applied or first applied via a roll and then cut, the same predictable result-having a discrete film of a desired size applied to a roof for protection-is achieved.” *Id.* “[B]oth sequences of steps provide the same predictable result, which is a sheet of heat shrink material formed of strips present on a roof surface for protection. This is further supported by the teachings of Hammer [US 4,061,519], which show that a sheet may be formed on the ground and transported to a building surface for application to the surface.” *E.g.*, ’484 Patent Prosecution History, 1/16/2020 Office Action, at 7-8.

* * *

The obviousness combinations identified above are merely exemplary and are not intended to be exhaustive. Structural Wrap may also point to additional obviousness combinations of the

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prior art identified in these contentions, in the prosecution history, or that is discovered or found to be relevant during discovery, as well as other prior art discovered during discovery. Structural Wrap is currently unaware of the extent, if any, to which Stormseal will contend that limitations of the Asserted Claims are not disclosed in, enabled by, or rendered obvious by the prior art identified by Structural Wrap. To the extent that an issue arises with any such limitations, Structural Wrap reserves the right to identify other prior art evidencing such disclosure, enablement, or obviousness.

Structural Wrap reserves the right to change, amend, or modify this identification of exemplary anticipatory prior art and exemplary obviousness combinations. Discovery is just beginning. Structural Wrap reserves its right to present additional or different prior art in its final invalidity contentions, including prior art that has not yet been discovered, but are found during the course of discovery and prior art that is found to be relevant during discovery.

C. Purported Secondary Considerations

Structural Wrap understands that Stormseal intends to argue non-obviousness based on secondary considerations, including long-felt need, industry praise, copying, and commercial success. *See* Stormseal’s June 12, 2023 Responses and Objections to Structural Wrap’s First Set of Interrogatories, at 7–10 (Response to Interrogatory No. 4). Stormseal bears the burden to establish the existence of any secondary considerations, an essential part of which is establishing nexus between the secondary considerations and the patented invention, which Stormseal has provided no evidence of to-date. *See Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373 (Fed. Cir. 2019). Structural Wrap reserves the right to respond to any evidence of secondary considerations if and when Stormseal makes any allegations that go to the essential requirement of nexus. To date, Stormseal has provided only conclusory statements, which do not provide Structural Wrap with sufficient notice of Stormseal’s allegations related to secondary

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considerations. For example, Stormseal says without citing any evidence that it expects discovery will reveal, “others, including Structural Wrap, have copied Stormseal’s innovative temporary roofing solution and installation methods.” *See* Stormseal’s June 12, 2023 Responses and Objections to Structural Wrap’s First Set of Interrogatories, at 10 (Response to Interrogatory No. 4). Stormseal also asserts with no support that “Stormseal has also had commercial success training installers...and has a network of Accredited Stormseal Installers who purchase and use the product and installation methods.” *Id.* Similarly, for long-felt need, Stormseal cites nothing to support its assertions about the alleged long-felt need. *Id.* Stormseal also cites to alleged awards and industry praise but provides no explanation for how what it points to relates to the Asserted Claims. Stormseal also points to a video that Structural Wrap produced and asserts that “Structural Wrap itself touts that ability of shrinkwrap roof film installed in accordance with Stormseal’s methods to withstand punishing winds.” *Id.* at 9. As an initial matter, Structural Wrap does not tout using Stormseal’s methods. Further, Stormseal provides no explanation for how the cited document supports Stormseal’s contentions related to secondary considerations. Structural Wrap therefore reserves its right to respond further to any allegations related to evidence of secondary considerations.

II. Section 112 Invalidity

Structural Wrap identifies below the grounds of invalidity under 35 U.S.C. § 112 for the Asserted Claims. Structural Wrap provides these contentions without the benefit of upcoming claim construction exchanges and other ongoing discovery. Discovery is in its early stages, and Structural Wrap’s analysis and investigation continues. Structural Wrap accordingly reserves the right to amend these disclosures in view of further discovery, information, and/or analysis.

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A. The Asserted Claims Lack of Written Description

35 U.S.C. § 112, ¶ 1 requires that a patent specification contain “a written description of the invention.” “The test for sufficiency is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad Pharms. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc).

The Asserted Claims are invalid under 35 U.S.C. § 112 for lack of written description. For example, the Asserted Claims are invalid under 35 U.S.C. § 112 for lack of written description because, to the extent that Stormseal argues that wrapping the film around a batten and attaching it to the fascia of the built structure was novel, attaching the batten to the fascia of the built structure is not sufficiently described in the specification. For example, there are no drawings showing an attachment of the batten at a fascia of the built structure. The only disclosure in the specification about a “fascia” are:

- In this embodiment as shown in FIG. 3, the heat shrinkable film **18** is applied after the roof framing is complete but preferably prior to the attachment of fascia boards. (’484 Patent, 7:51-54.)
- Alternatively, the leading edge may be secured to the barge or fascia boards. (’484 Patent, 7:41-42.)

To the extent that the attachment of the batten at the fascia of the built structure is the alleged point of novelty, this disclosure would not be sufficient. Similarly, to the extent Stormseal argues that the claimed attachment of the batten is a point of novelty, it is not sufficiently described in the specification.

III. Subject Matter Ineligibility

Structural Wrap identifies below the grounds of invalidity under 35 U.S.C. § 101 for the Asserted Claims. Structural Wrap provides these contentions without the benefit of upcoming

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claim construction exchanges and other ongoing discovery. Discovery is in its early stages, and Structural Wrap’s analysis and investigation continues. Structural Wrap accordingly reserves the right to amend these disclosures in view of further discovery, information, and/or analysis.

The Asserted Claims are invalid under 35 U.S.C. § 101 for failing to recite patent-eligible subject matter. *See Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014). A claimed invention falls outside 35 U.S.C. § 101 and is not patentable where (1) it is “directed to” a patent-ineligible concept, i.e., a law of nature, natural phenomenon, or abstract idea, and (2), the particular elements of the claim, considered “both individually and as an ordered combination,” do not add enough to “supply an inventive concept” to “transform the nature of the claim into a patent-eligible application.” *Id.* at 217 and 222. Each of the Asserted Claims is fundamentally directed to an abstract idea. The elements of the claims do not provide any inventive concept in the application of the abstract idea. For example, each of the Asserted Claims is directed to “a method of covering at least a portion of a roof” and require “applying...heat shrinkable film over a portion of the roof,” “attaching” the heat shrinkable film to the structure at a conventional attachment point with a conventional attachment technique, and “heating” the film such that it shrinks. *See Batten Art; Attachment Point Art; Shrink Wrap Art.* Claim 1 additionally recites a “film of low density polyethylene,” a conventional material for shrink wrapping. *See Polyethylene Art.* There is nothing in the claims that transform the claims into a patent eligible application because “[s]imply appending conventional steps, specified at a high level of generality” is not enough to supply the “inventive concept” required to transform the claimed abstract idea into a patent eligible application. *Id.* at 221–22.

By: /s/ Stephen Accursio Maniscalco

Kevin P. Jacobs
HOMER BONNER JACOBS ORTIZ
1200 Four Seasons Tower
1441 Brickell Avenue
Miami Florida 33131
305-350-5143 (telephone)
kjacobs@homerbonner.com

Jennifer H. Wu
Jennifer Rea Deneault
Stephen Accursio Maniscalco
Chih-wei Wu
GROOMBRIDGE, WU,
BAUGHMAN & STONE LLP
565 Fifth Avenue, Suite 2900
New York, New York 10017
332-269-0030 (telephone)
jennifer.wu@groombridgewu.com
jenna.deneault@groombridgewu.com
stephen.maniscalco@groombridgewu.com
chihwei.wu@groombridgewu.com

*Attorneys for Defendant/Counterclaim Plaintiff
Structural Wrap, LLC.*

June 26, 2023

Exhibit A Identification of Prior Art References, Systems, Uses, and Methods

	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art²	Prior Art Category
1.	U.S. Patent No. 2,445,368	Scharnhorst	SW0002619-2622	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
2.	U.S. Patent No. 3,830,441	McQuiston	SW0001757-1763	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
3.	U.S. Patent No. 4,112,632	Simpson	SW0002628-2655	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
4.	U.S. Patent No. 4,247,509	Talbot 509	SW0002656-2659	At least 102(a), (b), (e)	Shrink Wrap Art
5.	U.S. Patent No. 4,445,306	Schauffele	SW0002623-2627	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
6.	U.S. Patent No. 4,585,682	Colarusso	SW0001330-1338	At least 102(a), (b), (e)	Shrink Wrap Art
7.	U.S. Patent No. 4,763,783	Talbot 783	SW0002660-2668	At least 102(a), (b), (e)	Shrink Wrap Art
8.	U.S. Patent No. 5,081,911	Talbot 911	SW0002669-2675	At least 102(a), (b), (e)	Shrink Wrap Art

² Unless stated otherwise, the listed statute references Section 35 of the U.S. Code.

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art²	Prior Art Category
9.	U.S. Patent No. 5,586,414	Tawzer	SW0002676-2679	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
10.	U.S. Patent No. 5,864,992	Bigelow	SW0001236-1245	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
11.	U.S. Patent No. 5,916,391	Riedel	SW0002053-2059	At least 102(a), (b), (e)	Shrink Wrap Art, Polyethylene Art
12.	U.S. Patent No. 5,935,357	Hubbard	SW0001670-1686	At least 102(a), (b), (e)	Shrink Wrap Art, Polyethylene Art
13.	U.S. Patent No. 6,764,260	Nebesnak Pat.	SW0001853-1860	At least 102(a), (b), (e)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art, Batten Art
14.	U.S. Patent Appn. No. 2005/0183261 A1	Nebesnak Pub.	SW0001861-1870	At least 102(a), (b), (e)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art, Batten Art
15.	U.S. Patent No. 6,797,218	Bickerstaff	SW0001231-1235	At least 102(a), (b), (e)	Shrink Wrap Art, Polyethylene Art
16.	U.S. Patent No. 6,851,229	Inzeo	SW0001687-1693	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
17.	U.S. Patent No. 7,517,941	Myhre Pat.	SW0001840-1845	At least 102(a), (b), (e)	Shrink Wrap Art, Polyethylene Art

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art²	Prior Art Category
18.	U.S. Patent Appn. No. 2006/0106182 A1	Myhre Pub.	SW0001846-1852	At least 102(a), (b), (e)	Shrink Wrap Art, Polyethylene Art
19.	U.S. Patent No. 7,793,478	Ehsani Pat.	SW0001363-1370	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
20.	U.S. Patent Appn. No. 2006/0283138 A1	Ehsani Pub.	SW0001371-1378	At least 102(a), (b), (e)	Attachment Point Art, Batten Art
21.	U.S. Patent No. 7,951,873	Best Pat.	SW0001140-1182	At least 102(a), (e)	Shrink Wrap Art, Polyethylene Art
22.	U.S. Patent Appn. No. 2007/0260016 A1	Best Pub.	SW0001183-1230	At least 102(a), (e)	Shrink Wrap Art, Polyethylene Art
23.	U.S. Patent No. 8,407,958	Kelly Pat. 958	SW0001717-1735	At least 102(a), (e)	Attachment Point Art, Batten Art
24.	U.S. Patent No. 8,567,144	Kelly Pat. 144	SW0001694-1698	At least 102(a), (e)	Attachment Point Art, Batten Art
25.	U.S. Patent No. 8,863,475	Kelly Pat. 475	SW0001699-1716	At least 102(a), (e)	Attachment Point Art, Batten Art
26.	U.S. Patent Appn. No. 2007/0261346 A1	Kelly Pub. 346	SW0001736-1753	At least 102(a), (e)	Attachment Point Art, Batten Art
27.	U.S. Patent Appn. No. 2005/0217202 A1 (Crook)	Crook	SW0001349-1362	At least 102(a), (b), (e)	Shrink Wrap Art

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art²	Prior Art Category
28.	U.S. Patent Appn. No. 2005/0279040 A1	Panasik	SW0001875-1889	At least 102(a), (b), (e)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art, Batten Art
29.	U.S. Patent Appn. No. 2007/0266643 A1	Cowvins	SW0001339-1348	At least 102(a), (e)	Attachment Point Art, Batten Art
30.	U.S. Patent Appn. No. 2008/0060302 A1	Bletsos	SW0001246-1268	At least 102(a), (e)	Attachment Point Art, Batten Art
31.	U.S. Patent Appn. No. 2009/0145049 A1	Roshdy	SW0002612-2618	At least 102(e)	Attachment Point Art, Batten Art
32.	R.A. Aldrich & J.W. Bartok, Jr., Prefabricated Double Layer Greenhouse Glazing Panels, ISHS Acta Hortic. 245, 107-113 (1989)	Greenhouse Panels	SW0001663-1669	At least 102(a), (b)	Shrink Wrap Art, Polyethylene Art
33.	Robert A. Aldrich et al., NRAES-33: Greenhouse Engineering (August 1994)	Greenhouse Engineering	SW0001443-1662	At least 102(a), (b)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art, Batten Art
34.	Americover - Heat Shrink Wrap: Flame Retardant UV enhanced heat shrink films, http://www.americover.com/Product/s/HeatShrink/HeatShrinkWrap.html [https://web.archive.org/web/20061016090141/http://www.americover.co	Americover Webpage	SW0001012-1013	At least 102(a), (b)	Shrink Wrap Art, Polyethylene Art

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art²	Prior Art Category
	m//Products/HeatShrink/HeatShrink Wrap.html]				
35.	Americover - Heat Shrink Wrap: Heat Shrink Wrap FAQ vs. C&A Film, http://www.americover.com//Products/HeatShrink/Compare.html [https://web.archive.org/web/20061016091836/http://www.americover.com//Products/HeatShrink/Compare.html]	Americover FAQ	SW0001010-1011	At least 102(a), (b)	Shrink Wrap Art, Polyethylene Art
36.	Anderson Monarflex, FireSmart Single Ply Roofing Systems (April 2005)	FireSmart	SW0001417-1436	At least 102(a), (b)	Attachment Point Art, Batten Art
37.	Ardex, Butynol & EPDM Membranes, http://www.butynol.co.nz/files/butynol manual.pdf [https://web.archive.org/web/20081014171913/http://www.butynol.co.nz/files/butynol manual.pdf]	Ardex	SW0001014-1066	At least 102(a)	Attachment Point Art, Batten Art
38.	British Standards Institution, BS 8217:2005, Reinforced bitumen membranes for roofing – Code of practice (2 nd ed. 2005)	British Standard	SW0001270-1329	At least 102(a), (b)	Attachment Point Art, Batten Art

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art ²	Prior Art Category
39.	Emergency Management Australia, Manual 30: Storm and Water Damage Operations – 3 rd Edition, http://www.ema.gov.au/agd/EMA/rwpattach.nsf/VAP/(A80860EC13A61F5BA8C1121176F6CC3C)~AEM_30_StormDamage.pdf/\$file/AEM_30_StormDamage.pdf [https://web.archive.org/web/20070510065244/http://www.ema.gov.au/agd/EMA/rwpattach.nsf/VAP/(A80860EC13A61F5BA8C1121176F6CC3C)~AEM_30_StormDamage.pdf/\$file/AEM_30_StormDamage.pdf]	Australian Disaster Handbook	SW0001071-1139	At least 102(a), (b)	Attachment Point Art, Batten Art
40.	Fox 13 News Video, Global Wrap, available at https://www.youtube.com/watch?v=fKTIAqd8VT4	Global Wrap Video	N/A	At least 102(a), (b)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art
41.	Global Wrap Demonstration performed at the Tampa National Insurance Conventions. E.g., https://www.youtube.com/watch?v=fKTIAqd8VT4	Global Wrap Demonstration	N/A	At least 102(a), (b)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art
42.	Global Wrap, Shrink Wrap Containment – Global Wrap, http://www.globalwrap.com [https://web.archive.org/web/200705	Globalwrap.com Webpage	SW0001440-1442	At least 102(a), (b)	Shrink Wrap Art, Attachment Point Art

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art ²	Prior Art Category
	25131311/http://www.globalwrap.com:80/]				
43.	Global Wrap LLC, we invented the process of shrink wrapping http://www.globalwrap.com/shrink-wrap-scaffolding- [https://web.archive.org/web/20080122081534/http://www.globalwrap.com/shrink-wrap-scaffolding-/]	Globalwrap.com Webpage 2	SW0001437-1439	At least 102(a), (b)	Shrink Wrap Art, Attachment Point Art
44.	Jim Howard and Ron Spice, Plastic Sheeting: Its use for emergency shelter and other purposes (2 nd ed. 1989)	Plastic Sheeting Emergency Shelter	SW0001890-1933	At least 102(a), (b)	Shrink Wrap Art, Attachment Point Art, Polyethylene Art
45.	IFRC Oxfam, Plastic Sheeting: A guide to the specification and use of plastic sheeting in humanitarian relief (July 2007)	Plastic Sheeting	SW0001934-1987	At least 102(a)	Attachment Point Art, Batten Art, Polyethylene Art
46.	Lowe’s, How-to Clinics Brochure: Hurricane Essentials, How to Tarp a Roof (2006)	Lowe’s	SW0001754-1756	At least 102(a), (b)	Batten Art
47.	Nora Nix, Ask This Old House, Emergency Roofing, This Old House Magazine, March 2005 [https://archive.org/details/This-Old-	Old House	N/A	At least 102(a), (b)	Batten Art

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art²	Prior Art Category
	House-Magazine-2005-03/page/n21/mode/2up]				
48.	R.M. Paroli et al., Shrinkage of EPDM roof membranes: phenomenon, causes, prevention and remediation, Proceedings of the 11 th Conference on Roofing Technology (1996)	EPDM Roof Membranes	SW0001379-1402	At least 102(a), (b)	Attachment Point Art, Batten Art
49.	PatchhogPhil, Temporary 12 month roof covering? Discussion Forum, Fine Homebuilding Magazine (Jan. 15, 2006, 5:29 AM) https://www.finehomebuilding.com/forum/temporary-12-month-roof-covering	Fine Homebuilding	SW0001403-1416	At least 102(a), (b)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art, Batten Art
50.	Michael Quint, Technology; Shrink Wrap Goes Really Big Time, N.Y. Times, Sept. 25, 1994 (§ 3), at 8	NYT Shrink Wrap	SW0001871-1874	At least 102(a), (b)	Shrink Wrap Art
51.	Myer J. Rosenfield, Construction of Experimental Polyvinyl Chloride (PVC) Roofing, AD-A145 406, Technical Report M-343 (April 1984)	PVC Roofing	SW0001988-2052	At least 102(a), (b)	Attachment Point Art, Batten Art
52.	Myer J. Rosenfield et al., Investigation of Standing Seam Metal	Metal Roofing	SW0001764-1839	At least 102(a), (b)	Polyethylene Art, Attachment Point Art

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art ²	Prior Art Category
	Roofing, AD-A172 614, Technical Report M-86/10 (June 1986)				
53.	Robert Scharff & Terry Kennedy, Roofing Handbook (2nd ed. 2001)	Roofing Handbook	SW0002060-2611	At least 102(a), (b)	Polyethylene Art, Attachment Point Art, Batten Art
54.	Tarp Country, Blue Roof Tarps, http://www.tarpcountry.com:80/roof-tarps.html [https://web.archive.org/web/20070827011503/http://www.tarpcountry.com:80/roof-tarps.html]	Blue Roof Tarps	SW0001269-1269	At least 102(a), (b)	Attachment Point Art, Batten Art
55.	Tufcoat Shrink-wrap, Boat Shrink Wrap Process #2 – Shrinking, https://www.youtube.com/watch?v=aObC2vyyAy4&ab_channel=TufcoatShrink-wrap	Tufcoat Video	N/A	At least 102(a), (b)	Shrink Wrap Art
56.	U.S. Army Corps of Engineers, How to Install Self-Help Tarp	USACE Tarp Installation Guide	SW0003296-3315	At least 102(a)	Attachment Point Art, Batten Art
57.	U.S. Army Corps of Engineers, Contract Opportunity, Z--Contractor shall install 12 mil shrink wrap material which must be fire retardant and seamless. Shrink wrap material shall protect 2,746 sq. ft roof deck, attaching to the parapet walls, or drip	Army Corp Work Description	SW0001067-1070	At least 102(a)	Shrink Wrap Art, Attachment Point Art

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	Reference	Short Cite	Bates Number	Statutory Basis for Prior Art ²	Prior Art Category
	edge of the roof, https://sam.gov/opp/249d11746a0190250626c23f6299c3f5/view				

	Systems/Methods/Uses	Statutory Basis for Prior Art	Prior Art Category
1.	Americover Method	At least § 102(a), (b), and (g)(2)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art, Batten Art
2.	Global Wrap Method	At least § 102(a), (b), and (g)(2)	Shrink Wrap Art, Polyethylene Art, Attachment Point Art, Batten Art