

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**DBR FINANCE, INC.,
Petitioner,**

v.

**RUGGED CROSS HUNTING BLINDS, LLC,
Patent Owner**

**Case IPR 2024-00291
Patent 11,399,535
Issue Date: August 2, 2022**

Title: CAMOUFLAGE MATERIAL, FOR A HUNTING BLIND

**PATENT OWNER, RUGGED CROSS HUNTING BLINDS, LLC'S
RESPONSE TO PETITION FOR *INTER PARTES* REVIEW
OF U.S. PATENT NO. 11,399,535**

Robert L. Wolter
Florida Bar No.: 0906344/Reg. No. 36972
Amber N. Davis, *Pro Hac Vice*
Florida Bar No.: 0026628
WOLTER VAN DYKE DAVIS, PLLC
1900 Summit Tower Boulevard, Suite 140
Orlando, Florida 32810
Telephone: (407) 926-7700
Facsimile: (407) 926-7720
Email: rwolter@savvyIPLaw.com
Email: adavis@savvyIPLaw.com
Attorneys for Patent Owner

<u>TABLE OF CONTENTS</u>	<u>Page</u>
PATENT OWNER’S EXHIBIT LIST	iii
TABLE OF AUTHORITIES	vii
I. INTRODUCTION	1
II. ARGUMENTS AS TO NONOBVIOUSNESS	4
III. SECONDARY CONSIDERATIONS	34
A. UNEXPECTED RESULTS	35
B. INDUSTRY PRAISE OF AUSTIN BLIND AND PRIMOS SURROUNDVIEW BLIND	38
C. PRIMOS SURROUNDVIEW INDUSTRY PRAISE AND COMMERCIAL SUCCESS.....	44
D. COPYING BY OTHERS	52
E. RCHB LICENSING	56
F. LONG-FELT BUT UNRESOLVED NEED.....	57
G. THE NEXUS BETWEEN THE CLAIMED INVENTION AND OBJECTIVE INDICIA.....	63
IV. CONCLUSION.....	64
CERTIFICATE OF WORD COUNT.....	64
CERTIFICATE OF SERVICE	65

PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
Ex. 2001 Preliminary Response	(Dkt. 1) Complaint, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp pending in the United States District Court for the Western District of Wisconsin
Ex. 2002 Preliminary Response	(Dkt. 24) Unopposed Motion for Leave to Join as a Defendant, DBR Finance, Inc., <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2003 Preliminary Response	(Dkt. 74) Plaintiff's Motion For Leave To File An Amended Complaint And Memorandum Of Law In Support Thereof, <i>Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.</i> , Case No: 1:23-cv-02231-jpc pending in the United States District Court for the Northern District of Ohio
Ex. 2004 Preliminary Response	(Dkt. 89) Plaintiff's Response In Opposition To Defendant DBR Finance, Inc.'s Motion For Stay, <i>Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.</i> , Case No: 1:23-cv-02231-jpc pending in the United States District Court for the Northern District of Ohio
Ex. 2005 Preliminary Response	(Dkt. 26-1) Second Declaration of Christopher Seaton in Support of Defendant Rugged Cross Hunting Blinds, LLC's Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue, <i>Good Sportsman's Marketing, LLC v. Rugged Cross Hunting Blinds, LLC</i> , Case No: 4:23-cv-3243, United States District Court for the Southern District of Texas
Ex. 2006 Preliminary Response	(Dkt. 26) Order Granting Joint Motion to add DBR Finance, Inc., as a Defendant, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp pending in the United States District Court for the Western District of Wisconsin
Ex. 2007 Preliminary Response	(Dkt. 51) Order Granting Joint Motion to Transfer Case against DBR Finance, Inc., to the United States District Court for the Northern District of Ohio, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne</i>

	<i>Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp pending in the United States District Court for the Western District of Wisconsin
Ex. 2008 Preliminary Response	Civil Docket, <i>Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.</i> , Case No: 1:23-cv-02231-jpc pending in the United States District Court for the Northern District of Ohio
Ex. 2009 Preliminary Response	Civil Docket, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp pending in the United States District Court for the Western District of Wisconsin
Ex. 2010 Preliminary Response	(Dkt. 66) Order Denying Defendant, FeraDyne Outdoors, LLC's Motion to Stay pending <i>inter partes</i> review, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2011 Preliminary Response	(Dkt. 96) Order Denying Defendant, DBR Finance, Inc.'s Motion to Stay Litigation pending <i>inter partes</i> review, <i>Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.</i> , Case No: 1:23-cv-02231-jpc, United States District Court for the Northern District of Ohio
Ex. 2012 Preliminary Response	(Dkt. 23) Plaintiff's Disclosure of Infringement Contentions, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2013 Preliminary Response	(Dkt. 67) Plaintiff's Disclosure of Supplemental Infringement Contentions, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2014 Preliminary Response	Minutes of Proceedings on Court's Status Conference and Order transferring case back to the Western District of Wisconsin, <i>Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.</i> , Case No: 1:23-cv-02231-jpc, United States District Court for the Northern District of Ohio

Ex. 2015 Preliminary Response	Minutes of Proceedings, Preliminary Pretrial Conference, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2016 Preliminary Response	(Dkt. 28) FeraDyne Outdoors, LLC's Answer to Second Amended Complaint, Affirmative Defenses and Counterclaims, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2017 Preliminary Response	(Dkt. 73) Defendant, DBR Finance, Inc.'s Answer, Affirmative Defenses and Counterclaims to Plaintiff's Second Amended Complaint, <i>Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.</i> , Case No: 1:23-cv-02231-jpc, United States District Court for the Northern District of Ohio
Ex. 2018 Preliminary Response	(Dkt. 37) Declaration of Dan Reaser in Support of Defendant, DBR Finance, Inc.'s Motion to Dismiss for Improper Venue, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2019 Preliminary Response	Federal Register, Vol. 88, No. 77, April 21, 2023
Ex. 2020 Preliminary Response	United States Patent, Reis, et al., Patent No.: US 7,565,909
Ex. 2021 Preliminary Response	United States Patent, Nagata, Patent No.: US 6,004,649
Ex. 2022 Preliminary Response	United States Patent, Ransom, et al., Patent No.: US 7,040, 333

Ex. 2023 Preliminary Response	(Dkt. 48) Amended Scheduling Order, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2024 Preliminary Response	(Dkt. 96) Scheduling Order, <i>Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.</i> , Case No: 1:23-cv-02231-jpc, United States District Court for the Northern District of Ohio
Ex. 2025 Preliminary Response	Amended Notice of Taking Deposition of Non-Party, Tru-View, LLC, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2026 Preliminary Response	Report of Preliminary Management Hearing and Scheduling Order, <i>DBR Finance, Inc., f/k/a Outdoor Product Innovations, Inc. v. Tru-View, LLC</i> , Case No: 01-23-0003-4043, American Arbitration Association
Ex. 2027 Preliminary Response	Complaint, <i>FeraDyne Outdoors, LLC and Outdoor Product Innovations Acquisition, LLC v. Daniel B. Reaser, Sr., Individually and as trustee of the Daniel B. Reaser Sr. Trust, Outdoor Product Innovations, Inc. and Rhino Treestands, LLC</i> , Case No: N23C-03-173 AML CCLD, Superior Court for the State of Delaware
Ex. 2028 Preliminary Response	(Dkt. 27) Second Amended Complaint for Patent Infringement, <i>Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC</i> , Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2029 Preliminary Response	Allowed Claims, U.S. Application No. 16/998,843
Ex. 2030 Preliminary Response	Issue Notification, U.S. Application No. 16/998,843
Ex. 2031	Declaration of Kimberly K. Cameron, Ph.D., PE under 37 C.F.R. §1.132

Ex. 2032	Declaration of Christopher Seaton in Opposition to Petition for <i>Inter Partes</i> Review of U.S. Patent No. 11,399,535
Ex. 2033	Declaration of Jason Harris in Opposition to Petition for <i>Inter Partes</i> Review of U.S. Patent No. 11,399,535
Ex. 2034	Declaration of Robert M. Ramson in Opposition to Petition for <i>Inter Partes</i> Review of U.S. Patent No. 11,399,535
Ex. 2035	Declaration of Jay Scholes in Opposition to Petition for <i>Inter Partes</i> Review of U.S. Patent No. 11,399,535

TABLE OF AUTHORITIES

	<u>Page</u>
<i>In re Glatt Air Techniques, Inc.</i> , 630 F.3d 1026, 1030 (Fed. Cir. 2011)	64
<i>KSR Int'l Co. v. Teleflex Inc.</i> , 550 U.S. 398, 407 (2007)	4
<i>Leapfrog Enters., Inc. v. Fisher-Price, Inc.</i> , 485 F.3d 1157, 1162 (Fed. Cir. 2007).....	35
<i>Spectralytics Inc. v. Cordis Corp.</i> , 649 F.3d 1336, 1343 (Fed. Cir. 2011)	4
<i>Stratoflex, Inc. v. Aeroquip Corp.</i> , 713 F.2d 1530, 1538 (Fed. Cir 1983)	34
<i>Transocean Offshore Deepwater Drilling Inc. v. Maersk Drilling USA, Inc.</i> , 699 F.3d 1340, 1349 (Fed. Cir. 2012).....	34, 35
<i>Truswal Sys. Corp. v. Hydro-Air Eng'g, Inc.</i> , 813 F.2d 1207, 1212 (Fed. Cir. 1987).....	34
<i>Volvo Penta of the Ams., LLC v. Brunswick Corp.</i> , 81 F.4th 1202, 1210 (Fed. Cir. 2023)	63

I. INTRODUCTION

Patent Owner (also referred to as “RCHB”) responds to the Petitioner challenging the validity of all claims of the ‘535 Patent, including independent claims 1 and 19, which grounds are based on the combination of Whybrew and Strength. The Petitioner argues that Whybrew teaches all the limitations of claim 1 except for the claimed mesh material of the ‘535 Patent which includes a woven mesh fabric with a camouflage pattern on a first, external side and a dark coating on a second, internal side.¹ To that end, the Petitioner notes that the claimed mesh material of the ‘535 Patent provides a “one-way” viewing feature.

The Petitioner interprets Strength as disclosing a base textile 100 that is a mesh fabric with a camouflage pattern 110 on a first side and a dark color coating 200 on a second side 112. Petitioner then argues that Strength suggests by varying an amount of carbon black pigment of the dark coating 200, one could achieve a desired “one-way” viewing feature.

Petitioner assumes that, based on the teachings of Whybrew, that a PHOSITA would have been motivated to replace the mesh window 24 of Whybrew with the base textile 100 of Strength. To that end, the Petition argues that combining these

¹ Claim 19 has limitations not found in claim 1 (e.g. a window), so Petitioner relies on Ransom as disclosing a window that “...can be opened to provide a shooting position upon the approach of prey from the first side.” However, Petitioner, at least in part, relies on the combination of Whybrew and Strength for the same reasons as applied to independent claim 1.

references would be a simple substitution of a known element to achieve a predictable result.

Patent Owner submits that Petitioner's challenge must fail, and the claims of the '535 Patent are not obvious, because Petitioner's rational is based on an overly broad and unreasonable construction "one or more panels of mesh material of woven fabric," which is not supported by the specification or claims of the '535 Patent. Accordingly, Strength does not disclose a mesh fabric as claimed, and Strength teaches away from using a mesh material that has a "one-way" viewing feature. A PHOSITA would not look to the fabric of Strength for the window because the Strength teaches to increase the blocking of light - exactly contrary to the purpose of Whybrew's mesh fabric window that allows increased transmission of light in that location so that the exterior of the blind can be observed. Strength and Whybrew teach away from one another.

In support of its position of claim validity and non-obviousness, Patent Owner submits herewith the report of Dr. Kimberly Cameron (Ex. 2031)

In addition, the Board must consider Patent Owner's objective indicia of non-obviousness. Patent owner submits herewith the following declarations as evidence of secondary considerations:

- 1) Mr. Christopher Seaton (Ex. 2032), a named inventor of '535 Patent and principal of Patent Owner attests to unexpected results, industry praise, licensing and copying by others;
- 2) Mr. Jason Harris (Ex. 2033) attests to long felt and unresolved need related to ground hunting blinds, industry praise, commercial success and licensing;
- 3) Mr. Robert M. Ransom (Ex. 2034) attests to long-felt, unresolved need related to ground hunting blinds;
- 4) Mr. Jay Scholes (Ex. 2035) attests to long-felt, unresolved need related to ground hunting blinds; and,
- 5) Dr. Kimberly Cameron (Ex. 2031) who opines on the above declarations and evidence of secondary considerations.

The objective indicia of non-obviousness as it relates to hub-style (pop-up) ground incorporating a one-way see-through mesh is reasonably commensurate in scope with the claims of the '535 Patent. Patent Owner submits that its evidence of secondary considerations overwhelming establishes that the claims of the '535 Patent are not obvious in view of the cited prior art.

Accordingly, Patent Owner respectfully requests the Board to find that all claims are valid over the prior art cited in the Petition.

II. ARGUMENTS AS TO NONOBVIOUSNESS

In attempting to prove obviousness, a challenger may rely on the “teaching, suggestion, or motivation” test (“TSM”). Under this test, a patent claim may be proved obvious if "some motivation or suggestion to combine the prior art teachings" can be found in the prior art, the nature of the problem, or the knowledge of a person having ordinary skill in the art. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 407 (2007).

However, there is no motivation to combine reference if one references teaches away from the other. A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference or would be led in a direction divergent from the path that was taken by the applicant. *Spectralytics Inc. v. Cordis Corp.*, 649 F.3d 1336, 1343 (Fed. Cir. 2011).

THE ’535 PATENT

The ’535 Patent was issued on August 2, 2022. Independent claims 1 and 19 of the ’535 Patent are reproduced below. For ease of reference, I have assigned claim identifiers. Claims 2-18 of the ’535 Patent depend from Independent Claim 1 and include all of the limitations of Claim 1.

Claim Identifier	Claim Language
1 [preamble]	A camouflage structure, comprising:
1a	a pop-up frame including a plurality of flexible frame members, said plurality of flexible frame members comprising at least two spaced apart frame members along a side of the camouflage structure and at least two spaced apart frame members along a roof of the camouflage structure; and
1b	one or more panels of mesh material of interwoven fabric configured to be attached between the at least two spaced apart frame members that are along the side of the camouflage structure, said one or more panels comprising:
1c	a first side with a camouflage pattern; and
1d	a second side with a dark color coating, said second side opposite to the first side; and
1e	one or more panels of non-mesh material provided along the roof of the camouflage structure and configured to be attached to the at least two spaced apart frame members that are along the roof of the camouflage structure to cover an area between the at least two spaced apart frame members;
1f	wherein the one or more panels of the mesh material define an outer surface of the camouflage structure; and
1g	wherein the one or more panels of non-mesh material are non-transmissive such that incident radiation from an exterior of the camouflage structure is not transmitted through the non-mesh material.

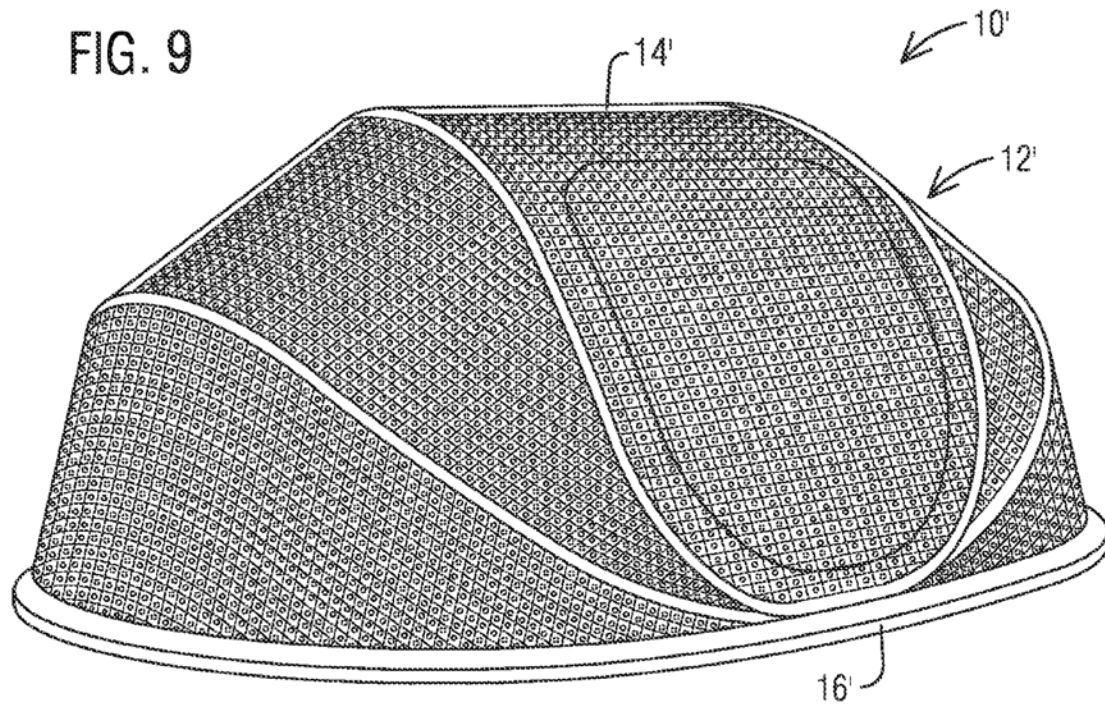
Claim Identifier	Claim Language
19 [preamble]	A camouflage structure comprising;

Claim Identifier	Claim Language
19a	a pop-up frame including a plurality of flexible frame members, said plurality of flexible frame members comprising at least two spaced apart frame members along a side of the camouflage structure and at least two spaced apart frame members along a roof of the camouflage structure; and
19b	one or more panels of mesh material of interwoven fabric configured to be attached between the at least two spaced apart frame members that are along the side of the camouflage structure, said one or more panels comprising;
19c	a first side with a camouflage pattern; and
19d	A second side with a dark color coating, said second side opposite to the first side; and
19e	one or more panels of non-mesh material configured to be provided along the roof of the camouflage structure and configured to be attached to the at least two spaced apart frame members that are along the roof of the camouflage structure to cover an area between the at least two spaced apart frame members;
19f	wherein the one or more panels of the mesh material define an outer surface of the camouflage structure;
19g	wherein the camouflage pattern is based on an exterior environment where the camouflage structure will be positioned to make the camouflage structure blend in with the exterior environment;
19h	wherein the one or more panels of the non-mesh material are non-transmissive such that incident radiation from an exterior of the camouflage structure is not transmitted through the non-mesh material;
19i	wherein the camouflage structure includes a window along the side of the camouflage structure that can be opened to provide a shooting position upon the approach of prey from the side;
19j	wherein the pop-up frame is movable from a folded position to a deployed position; and

Claim Identifier	Claim Language
19k	wherein the one or more panels of mesh material are secured between the at least two spaced apart flexible frame members along the side of the camouflage structure in the folded position such that when the frame is moved from the folded position to the deployed position an exterior of the camouflage structure is visible through the one or more panels of mesh material from an interior of the camouflage structure yet the interior of the camouflage structure is not visible through the one or more panels of mesh material from the exterior of the camouflage structure.

The Specification of the ‘535 Patent

The ‘535 Patent is related to hunting blinds and camouflage material for a hunting blind. The “inventors [] recognized that conventional hunting blinds are formed with closed panels that provide limited ventilation and thus have limited use in high humidity hunting climates. To overcome this noted drawback, the inventors of the present invention designed a hunting blind with panels of mesh material that simultaneously provide ventilation to an interior of the hunting blind and camouflage the interior of the hunting blind.” Ex. 1001 Patent 2:44-52. The exterior side of the mesh has a camouflage pattern while the interior side has a dark color coating. [’535 Abstract]. Figure 1 of the ‘535 Patent below is reproduced below to show the structure of the hunting blind.



The File History of the '535 Patent

The application for the '535 Patent was filed on August 20, 2020 as a continuation of App. No. 16/998,843, filed on August 20, 2020, which was a continuation of App. No. 15/444,909, which issued as U.S. Patent No. 10,765,108, and filed on February 28, 2017, claiming priority to U.S. App. No. 62/301,007 file on February 29, 2016. Ex. 1002, p.1-2. There were two non-final office actions entered and dated November 21, 2021, and February 24, 2022. Patent Owner timely responded with amendments and arguments. A Notice of Allowance was entered March 23, 2022 and after payment of an issue fee, the '535 issued on August 2, 2022.

U.S. Patent No. 8,375,968 – Whybrew

U.S. Patent Number 8,375,968 (“Whybrew”) to Whybrew issued on February 19, 2013 and is reproduced in Ex. 1002. Whybrew address “the needs of sportsmen who hunt and observe wildlife in rice paddies, marshes and other bodies of shallow water.” [EX. 1002 2:4-6]. Whybrew discloses “a manually retractable sportsman’s blind releasably attached to a support [that] provides a flexible camouflaged body having a mesh fabric window and supported on a frame comprised of plural elongate flexibly resilient stays pivotally attached to one another at proximate end portions to support the flexible camouflaged body and mesh fabric window in a hemispherical shape.” [Abstract Whybrew]. The blind is in a hemispherical shape because “one naturally occurring structure that is common in rice paddies, swamps, marshes, bodies of shallow water, and other flooded areas where hunting and wildlife observing activities occur is the muskrat hut. Muskrat huts typically have a hemispherical shape and are commonly covered in sticks, branches and grasses.” [EX. 1002 2:17-22]. Figure 2 of Whybrew, reproduced below, shows the blind.

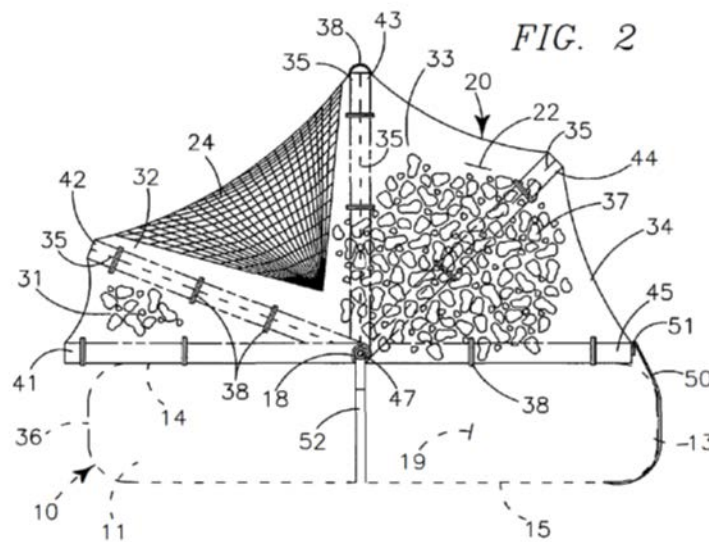


Figure 2 of Whybrew

With reference to the hunting blind shown in Figure 2, “body 20 is of a color that blends into the environmental surroundings in which the blind is used. A generalized ‘blotch pattern’ camouflage is shown [number 37] as an example.” [EX. 1002 4:58-62]. “Flexible body 20 is preferably formed of fabric material that is waterproof, weather resistant and imprinted with a camouflage pattern 37.” [EX. 1002 4:46-38]. “Sections 31, 32, 33, 34 form the flexible body 20.” [EX. 1002 4:63]. “Mesh fabric window 24 is carried by the flexible body 20, over an opening (not shown) preferably defined in the second section 32 and is fastened to the second section 32 with 5 stitching (not shown)” [EX. 1002 5:3-6]. Mesh fabric window 24 is not shown as having the camouflage that is on body 20. [EX. 1002 Figure 2].

Whybrew teaches that despite the presence of the mesh fabric window 24, animals “will only visualize the camouflaged 37 first outer surface 22 of the body

20, and are not able to visualize the occupant within the blind because there is no open top, and because the interior of the blind is darker than the exterior, the animal is also not able to visualize the occupant through the mesh fabric window.” [EX. 1002 9:5-11]. The presence of the sections that have a denser weave than the mesh fabric window are what cause the interior of the blind to be darker than the exterior of the blind and prevent an observer outside the blind from observing hunters within the blind despite the presence of the mesh fabric window. Whybrew explains that:

Sections 31, 32, 33, 34 of the body 20 are formed of a material that is not as translucent, or light permeable as the mesh fabric window 24 and therefore the interior of the blind is darker and less illuminated than the exterior of the blind. This light differential facilitates vision of an occupant through the mesh fabric window 24 from the inside to the outside, but inhibits vision from the outside to the inside of the blind through the mesh fabric window 24.

Whybrew 5:22-26.

Whybrew describes this phenomenon that is created by the sections of denser weave that are less translucent as “the ‘one-way’ vision characteristic of the mesh fabric window [that] results from, among other things, light differential between the exterior of the blind and the interior of the blind.” [EX. 1002 5:16-18].

U.S. Patent No. 6,709,993 – Strength

U.S. Patent Number 6,709,993 (“Strength”) to Strength issued March 23, 2004 and is reproduced in Ex. 1003. In the context of applications such as hunting

blinds where camouflage is used, Strength discusses the problem of translucent fabrics that can allow sun behind the blind to create a silhouette of a hunter on the camouflage material that is visible from camouflage side of the blind. [EX. 1003 1:21-28]. Strength explains that, “[t]o overcome this problem, the prior art has used heavier weight material that will be less translucent. However, the increased bulk and weight of the heavier material makes the camouflage less desirable for packing in and out of hunting areas. Therefore, there is a need for camouflage material that is light blocking and light weight. Additionally, for applications such as hunting, the camouflage will need to be quiet, and have a high degree of flexibility at varying temperatures. [EX. 1003 1:19-27].

Strength describes achieving a lighter weight blind by using a base textile with a lower weight coated on one side with a thermoplastic material that blocks light. [EX. 1003 1:38-67]. The combination of the base textile and the coating “provides a barrier to light such as shadows created by sunlight, are not visible on the opposite side of the camouflage material.” [EX. 1003 1:67-2:3]. Strength explains that “when a 1000 ft-candle light source (or 380 μ A) (visual spectrum) is located adjacent to the camouflage pattern side of the camouflage material 10, and a sensor is located adjacent to the coating 200 side of the camouflage 10, it was determined that a transmission of about 100 μ A or less provides adequate blocking of light to prevent shadows or silhouettes on the opposite side of the camouflage material, and more

preferably of about 60 μ A or less. In one preferred embodiment, the coating 200 is an opaque coating.” [EX. 1003 2:4-13]. A camouflage pattern is placed on the side opposite the thermoplastic material.

U.S. Patent 7,137,399 – Ransom

U.S. Patent Number 7,137,399 (“Ransom”) to Ransom issued November 21, 2006 and is reproduced in Ex. 1004.

Ransom discusses a collapsable structure comprised of a plurality of panel elements, each having a coilable frame element and flexible material attached to the frame element, as well as flexible roof-support elements. Specifically, Ransom set out to solve the problem of supporting the roof panel of collapsable tents and hunting blinds.

Ransom discusses attaching sleeves to the roof panel of the enclosure, and at least one roof support rod may be disposed within those sleeves.

U.S. Patent 5,385,165 – Hazinski

U.S. Patent Number 5,385,165 (“Hazinski”) to Hazinski issued January 31, 1995 and reproduced in Ex. 1005.

Hazinski discusses self erecting tent structures, which can be readily opened by a hunter. Upon disengaging a quick disconnect buckle, each half of the loop forming the blind rapidly falls away from the other, like a clam shell, leaving the entire blind structure laying flat on the ground, with the hunter fully exposed.

'535 Patent Analysis

Obviousness Ground One: Whybrew in view of Strength.

Claim 1:

Claim Identifier	Claim Language
1 [preamble]	A camouflage structure, comprising:
1a	a pop-up frame including a plurality of flexible frame members, said plurality of flexible frame members comprising at least two spaced apart frame members along a side of the camouflage structure and at least two spaced apart frame members along a roof of the camouflage structure; and
1b	one or more panels of mesh material of interwoven fabric configured to be attached between the at least two spaced apart frame members that are along the side of the camouflage structure, said one or more panels comprising:
1c	a first side with a camouflage pattern; and
1d	a second side with a dark color coating, said second side opposite to the first side; and
1e	one or more panels of non-mesh material provided along the roof of the camouflage structure and configured to be attached to the at least two spaced apart frame members that are along the roof of the camouflage structure to cover an area between the at least two spaced apart frame members;
1f	wherein the one or more panels of the mesh material define an outer surface of the camouflage structure; and
1g	wherein the one or more panels of non-mesh material are non-transmissive such that incident radiation from an exterior of the camouflage structure is not transmitted through the non-mesh material.

Below I have addressed elements 1c and 1d that are not met for Claim 1 under Ground One.

1c: a first side with a camouflage pattern;

Claim 1c is not disclosed by Whybrew. Mesh fabric window 24 (which Petitioner has identified as the “panel of mesh material of interwoven” recited in 1b) is not shown as having the camouflage that is on body 20. [Ex. 1002:Figure 2]. Below is a reproduction of Figure 2 of Whybrew. There is no disclosure in Whybrew that there is a camouflage pattern on mesh window 24.

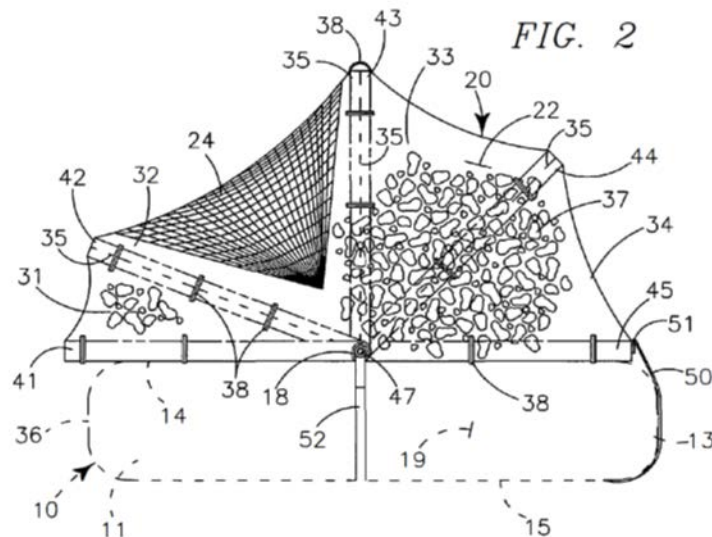
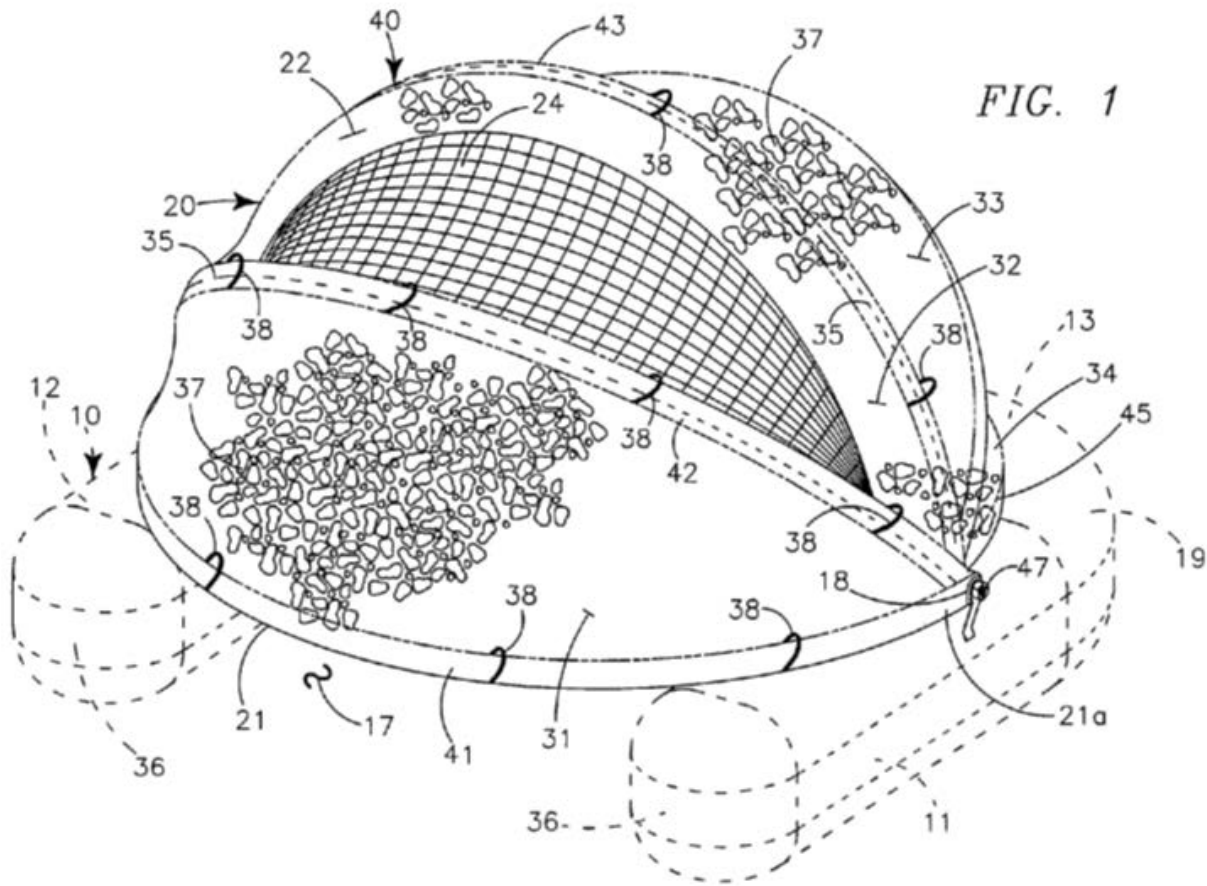


Figure 2 of Whybrew

Petitioner acknowledges that Whybrew does not directly disclose limitations concerning mesh material panels having a camouflage patterned panel but instead argues that a PHOSITA would appreciate the benefit of having the camouflage

pattern from the body on the first side of the fabric mesh window, to further benefit in making the hunting blind blend into its surrounding environment. [Ex. 2031; ¶69]

Patent Owner disagrees that a PHOSITA would contemplate that the open mesh of Whybrew would benefit from a camouflage pattern. The mesh of Whybrew has large holes which makes putting a camouflage pattern on the mesh more difficult and costly without significant benefit. [Ex. 2031; ¶70]. For example, the large openings in the mesh of Whybrew could lead to uneven coverage or a less defined pattern. Figure 1 of Whybrew is reproduced below where the mesh fabric window is number 24. [Ex. 2031; ¶70] Whybrew lists a porthole mesh as an example material for the window 24. [EX. 1002 5:26-27]. Porthole mesh has large openings for extra ventilation. [Ex. 2031; ¶70]. A common application is practice football jerseys where the large openings allow increased ventilation. [Ex. 2031; ¶70]



Ground One is Whybrew in view of Strength, not Whybrew in view of Strength in view of the knowledge of a POSHITA. [Ex. 2031; ¶71]

Dr. Ellison alternatively opines that a PHOSITA would be motivated to replace the mesh window of Whybrew with the fabric of Strength. Patent Owner disagrees. Whybrew teaches that having all the material of body 20 outside of the mesh window be formed from a material that is not as translucent, or light permeable as the mesh window achieves the benefit of an observer (animal) not being able to see into the blind despite the ability of an observer inside the blind being able to see

through the mesh window. [Ex. 2031; ¶72] The purpose of the mesh window is the ability to see the exterior of the blind. [Ex. 2031; ¶72] A PHOSITA would not look to the fabric of Strength for the window because the Strength teaches to increase the blocking of light - exactly contrary to the purpose of Whybrew's mesh fabric window that allows increased transmission of light in that location so that the exterior of the blind can be observed. Strength and Whybrew teach away from one another. [Ex. 2031; ¶72]

In particular, Strength addresses the need for a camouflage material that is "light blocking and light weight," [EX. 1003 1:24-25], and explains that "it was determined that a transmission of about 100 μ A or less provides adequate blocking of light to prevent shadows or silhouettes on the opposite side of the camouflage material **100**, and more preferably of about 60 μ A or less." [EX. 1003 2:8-11].

Furthermore, the fabric described in Strength is not a mesh. [Ex. 2031; ¶74]. There are no visible holes in the fabric shown in Figure 1 of Strength and in fact, the fabric in Strength is described as created by using hot melt extrusion to place "a 3 mil [thick] extrusion coating," [EX. 1003 3:4-5], "on a plain weave textile formed of 70 denier per yarn textured polyester yarn, with about 85 yarns per inch in the warp direction and about 90 yarns per inch in the fill direction." [EX. 1003 3:62-66]. Below is Figure 1 of Strength showing the coating 200.

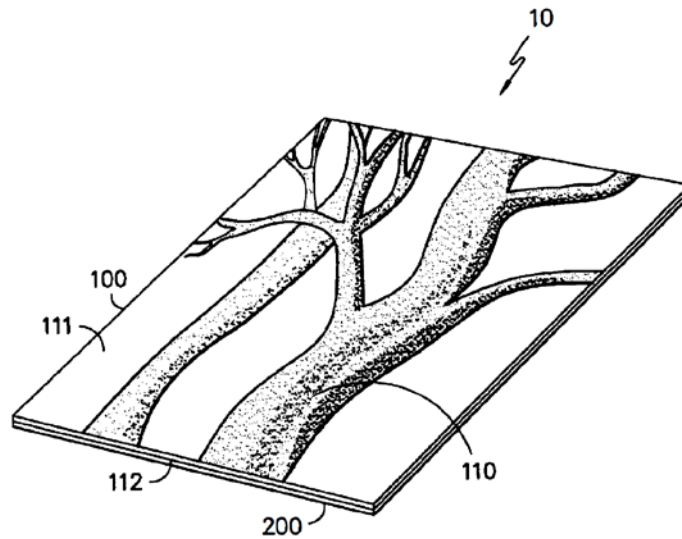


FIG. -1-

This fabric will not allow water or air to pass through as there are no holes in the fabric because the 3 mil thick extrusion coating eliminates them and creates a solid barrier. [Ex. 2031; ¶75] In the context of the '535 Patent, mesh material has holes that allow air and water to pass through. [Ex. 2031; ¶75] As explained in the '535 Patent, “[t]he inventors of the present invention recognized that conventional hunting blinds are formed with closed panels that provide limited ventilation and thus have limited use in high humidity hunting climates. [Ex. 2031; ¶75] To overcome this noted drawback, the inventors of the present invention designed a hunting blind with panels of mesh material that simultaneously provide ventilation to an interior of the hunting blind and camouflage the interior of the hunting blind.” [’535 Patent 2:44-52]. “In an example embodiment, the mesh material 26 allows

airflow in a range of 30-40%, such as 37%, for example, where airflow is defined as a ratio of a velocity of outgoing air from the mesh material 26 to a velocity of incident air onto the mesh material 26.” The fabric of Strength is not a mesh.

Putting aside that the fabric of Strength is actually not open at all, even if the 3 mil coating (which accounts for 50% of the weight of the fabric) were ignored, the fabric would not be considered a mesh in the context of the ’535 Patent. [Ex. 2031; ¶76] Dr. Ellison misleadingly proposes that the fabric in Strength is a mesh because it is 70% open based on his calculation of the openness of the fabric (in addition to ignoring the 3 mil extrusion coating). [DBR Finance, Inc., Exhibit 1007, pages 44-45].

Despite acknowledging the relationship between openness and the cover factor, [Exhibit 1007, page 15], Dr. Ellison fails to explain that the cover factor is typically calculated based on the area and so if a weave covers 30% when only considering each direction rather than the area, then the openness will be significantly less than 70% (and instead would be 50%) when considering the percentage of the area that is not covered by the yarns as is appropriate when calculating the cover factor or the openness. [Ex. 2031; ¶77]

More importantly, the base material (minus the coating) described in Strength has a very high hole per inch ratio. [Ex. 2031; ¶78] This is in contrast to a mesh material in the context of the ’535 Patent which is used to ensure ventilation, like a

porthole mesh, which typically has a hole per inch ratio between 5-10 holes per inch. The base material (minus the coating) described in Strength has a hole per inch ratio of 85-90 holes per inch. [Ex. 2031; ¶78] This is important in the context of the '535 Patent, because a high hole per inch ration leads to reduced airflow even at the same cover factor or openness. [Ex. 2031; ¶78] This occurs because a smaller hole increases the resistance to the passage of air. Fewer but larger holes allow more airflow compared to many smaller holes, even at the same cover factor. Overall, the base material of Strength does not comport with the plain and ordinary meaning of mesh in the context of the '535 Patent. Dr. Ellison over broadens the term mesh² beyond what a PHOSITA would understand mesh to mean in the context of the '535 Patent by not acknowledging any context regarding the size or density of the open spaces that would be understood to be a mesh material. [Ex. 2031; ¶78]

**ii 1d: a second side with a dark color coating, said
second side opposite to the first side; and**

Claim 1d is not disclosed by Whybrew. Petitioner acknowledges that Whybrew does not disclose limitations concerning mesh material panels having a second side, opposite to the first side, with a dark color coating. Petitioner points to Strength to overcome this deficiency of Whybrew. However, a PHOSITA would

² Dr. Ellison defines mesh fabric as a fabric characterized by open spaces between the yarns.

not have any motivation to replace the mesh fabric window of Whybrew with the fabric of Strength as discussed above in 1c above. [Ex. 2031; ¶79]

As also discussed above in 1c above, Strength does not disclose a mesh material in the context of the '535 Patent.

Thus, the combination of Whybrew with Strength does not disclose each and every feature of Claim 1. [Ex. 2031; ¶81] Claims 2-18 depend from Claim 1, above. The combination of Whybrew with Strength does not disclose each and every feature of Claim 1. Therefore, Claims 2-18 are also not rendered obvious by Whybrew in view Strength. [Ex. 2031; ¶81]

2. Claim 14

Claim 14 recites: The camouflage structure of claim 13, wherein the one or more panels of mesh material provide a 360 degree view of the exterior of the camouflage structure from the interior of the camouflage structure. Neither Whybrew nor Whybrew with the fabric of Strength in place of the mesh fabric window of Whybrew results in a structure that provides a 360 degree view of the exterior of the camouflage structure from the interior of the camouflage structure. Therefore, Ground One does not render claim 14 obvious. [Ex. 2031; ¶82]

3. Claim 19:

Claim 19 is an independent claim with the following elements:

Claim Identifier	Claim Language
19 [preamble]	A camouflage structure comprising;
19a	a pop-up frame including a plurality of flexible frame members, said plurality of flexible frame members comprising at least two spaced apart frame members along a side of the camouflage structure and at least two spaced apart frame members along a roof of the camouflage structure; and
19b	one or more panels of mesh material of interwoven fabric configured to be attached between the at least two spaced apart frame members that are along the side of the camouflage structure, said one or more panels comprising;
19c	a first side with a camouflage pattern; and
19d	A second side with a dark color coating, said second side opposite to the first side; and
19e	one or more panels of non-mesh material configured to be provided along the roof of the camouflage structure and configured to be attached to the at least two spaced apart frame members that are along the roof of the camouflage structure to cover an area between the at least two spaced apart frame members;
19f	wherein the one or more panels of the mesh material define an outer surface of the camouflage structure;
19g	wherein the camouflage pattern is based on an exterior environment where the camouflage structure will be positioned to make the camouflage structure blend in with the exterior environment;

Claim Identifier	Claim Language
19h	wherein the one or more panels of the non-mesh material are non-transmissive such that incident radiation from an exterior of the camouflage structure is not transmitted through the non-mesh material;
19i	wherein the camouflage structure includes a window along the side of the camouflage structure that can be opened to provide a shooting position upon the approach of prey from the side;
19j	wherein the pop-up frame is movable from a folded position to a deployed position; and
19k	wherein the one or more panels of mesh material are secured between the at least two spaced apart flexible frame members along the side of the camouflage structure in the folded position such that when the frame is moved from the folded position to the deployed position an exterior of the camouflage structure is visible through the one or more panels of mesh material from an interior of the camouflage structure yet the interior of the camouflage structure is not visible through the one or more panels of mesh material from the exterior of the camouflage structure.

As discussed for Claim 1, there is no motivation to replace the mesh material window of Whybrew with the fabric of Strength. [Ex. 2031; ¶84] Below are addressed elements 19c and 19d that are not met for Claim 19 under Ground Two

either for Whybrew or for Whybrew in view of Strength. Therefore Whybrew in view of Strength does not render Claim 19 obvious. [Ex. 2031; ¶84]

i. 19c: a first side with a camouflage pattern;

Claim 19c is not disclosed by Whybrew. Mesh fabric window 24 (which Petitioner has identified as the “panel of mesh material of interwoven” recited in 1b) is not shown as having the camouflage that is on body 20. [EX. 1002 Figure 2]. Below is a reproduction of Figure 2 of Whybrew. There is no disclosure in Whybrew that there is a camouflage patten on mesh window 24. [Ex. 2031; ¶84]

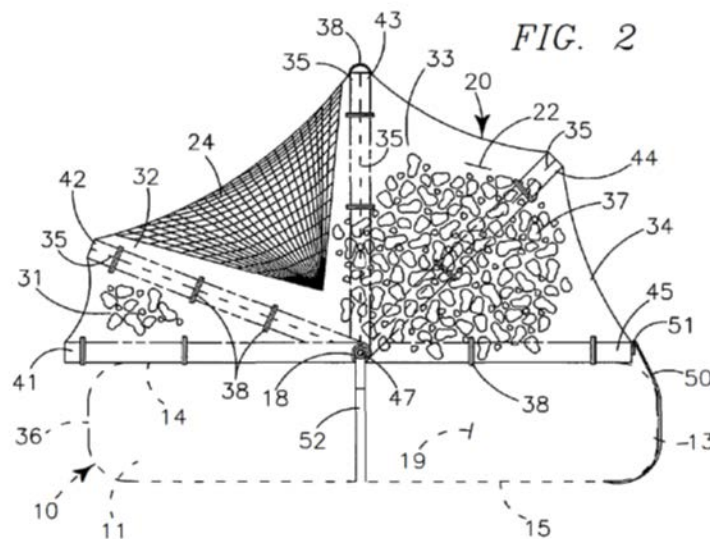
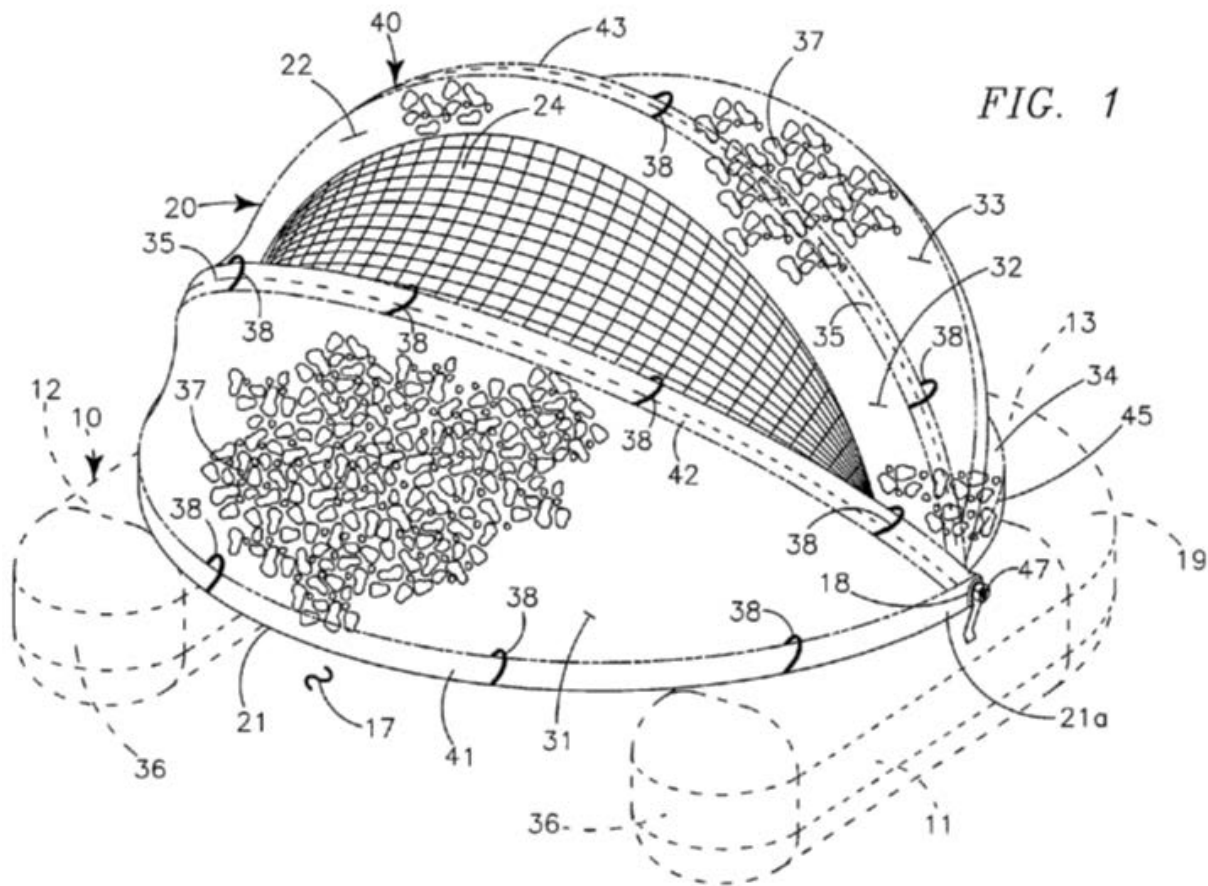


Figure 2 of Whybrew

Petitioner acknowledges that Whybrew does not directly disclose limitations concerning mesh material panels having a camouflage patterned panel but instead

argues that a PHOSITA would appreciate the benefit of having the camouflage pattern from the body on the first side of the fabric mesh window, to further benefit in making the hunting blind blend into its surrounding environment. [Ex. 2031; ¶85]

Patent Owner disagrees that a PHOSITA would contemplate that the open mesh of Whybrew would benefit from a camouflage pattern. [Ex. 2031; ¶86] The mesh of Whybrew has large holes which makes putting a camouflage pattern on the mesh more difficult and costly without significant benefit. [Ex. 2031; ¶86] For example, the large openings in the mesh of Whybrew could lead to uneven coverage or a less defined pattern. As a reminder below Figure 1 of Whybrew is below where the mesh fabric window is number 24. Whybrew lists a porthole mesh as an example material for the window 24. [EX. 1002 5:26-27]. Porthole mesh has large openings for extra ventilation. A common application is practice football jerseys where the large openings allow increased ventilation. [Ex. 2031; ¶86]



Ground One is Whybrew in view of Strength, not Whybrew in view of Strength in view of the knowledge of a POSHITA. [Ex. 2031; ¶68]

Dr. Ellison alternatively opines that a PHOSITA would be motivated to replace the mesh window of Whybrew with the fabric of Strength. [Ex. 2031; ¶88]

Patent Owner disagrees. Whybrew teaches that having all the material of body 20 outside of the mesh window be formed from a material that is not as translucent, or light permeable as the mesh window achieves the benefit of an observer (animal) not being able to see into the blind despite the ability of an observer inside the blind

being able to see through the mesh window. [Ex. 2031; ¶88] The purpose of the mesh window is the ability to see the exterior of the blind. [Ex. 2031; ¶88] A PHOSITA would not look to the fabric of Strength for the window because the Strength teaches to increase the blocking of light - exactly contrary to the purpose of Whybrew's mesh fabric window that allows increased transmission of light in that location so that the exterior of the blind can be observed. Strength and Whybrew teach away from one another. [Ex. 2031; ¶88]

In particular, Strength addresses the need for a camouflage material that is "light blocking and light weight," [EX. 1003 1:24-25], and explains that "it was determined that a transmission of about 100 μ A or less provides adequate blocking of light to prevent shadows or silhouettes on the opposite side of the camouflage material **100**, and more preferably of about 60 μ A or less." [EX. 1003 2:8-11].

Furthermore, the fabric described in Strength is not a mesh. There are no visible holes in the fabric shown in Figure 1 of Strength and in fact, the fabric in Strength is described as created by using hot melt extrusion to place "a 3 mil [thick] extrusion coating," [EX. 1003 3:4-5], "on a plain weave textile formed of 70 denier per yarn textured polyester yarn, with about 85 yarns per inch in the warp direction and about 90 yarns per inch in the fill direction." [EX. 1003 3:62-66]. Figure 1 of Strength showing the coating 200 is reproduced below.

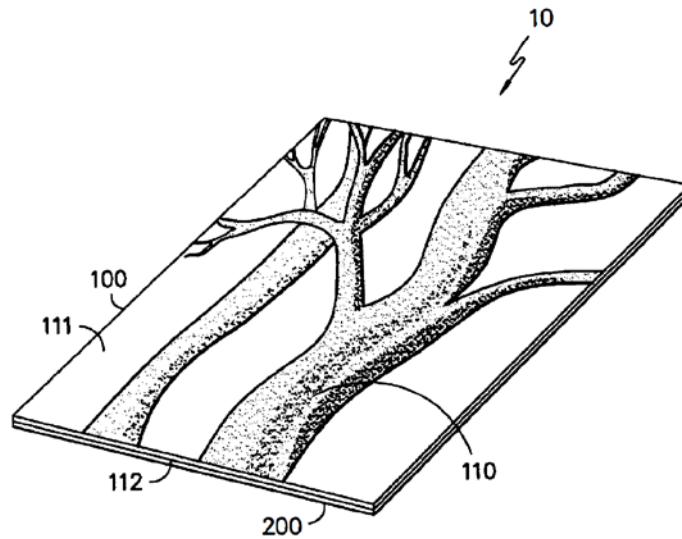


FIG. -1-

This fabric will not allow water or air to pass through as there are no holes in the fabric because the 3 mil thick extrusion coating eliminates them and creates a solid barrier.³ [Ex. 2031; ¶91] In the context of the '535 Patent, mesh material has holes that allow air and water to pass through. [Ex. 2031; ¶91] As explained in the '535 Patent, “[t]he inventors of the present invention recognized that conventional hunting blinds are formed with closed panels that provide limited ventilation and thus have limited use in high humidity hunting climates. To overcome this noted drawback, the inventors of the present invention designed a hunting blind with panels of mesh material that simultaneously provide ventilation to an interior of the hunting blind and camouflage the interior of the hunting blind.” [Ex. 1001; 2:44-52].

³ While the '535 Patent does discuss backing on the mesh, this is removed after printing. '535 Patent 7:5-12.

“In an example embodiment, the mesh material 26 allows airflow in a range of 30-40%, such as 37%, for example, where airflow is defined as a ratio of a velocity of outgoing air from the mesh material 26 to a velocity of incident air onto the mesh material 26.” [Ex 1001; 7:16-20. The fabric of Strength is not a mesh.

Putting aside that the fabric of Strength is actually not open at all, even if the 3 mil coating (which accounts for 50% of the weight of the fabric) were ignored, the fabric would not be considered a mesh in the context of the '535 Patent. [Ex. 2031; ¶92] Dr. Ellison misleadingly proposes that the fabric in Strength is a mesh because it is 70% open based on his calculation of the openness of the fabric (in addition to ignoring the 3 mil extrusion coating). [Exhibit 1007, pages 44-45].

Despite acknowledging the relationship between openness and the cover factor, [Exhibit 1007, page 15], Dr. Ellison fails to explain that the cover factor is typically calculated based the area and so if a weave covers 30% when only considering each direction rather than the area, then the openness will be significantly less than 70% (and instead would be 50%) when considering the percentage of the area that is not covered by the yarns as is appropriate when calculating the cover factor or the openness. [Ex. 2031; ¶93]

More importantly, the base material (minus the coating) described in Strength has a very high hole per inch ratio. [Ex. 2031; ¶94] This is in contrast to a mesh material in the context of the '535 Patent which is used to ensure ventilation, like a

porthole mesh, which typically has a hole per inch ratio between 5-10 holes per inch. [Ex. 2031; ¶94] The base material (minus the coating) described in Strength has a hole per inch ratio of 85-90 holes per inch. [Ex. 2031; ¶94] This is important in the context of the '535 Patent, because a high hole per inch ration leads to reduced airflow even at the same cover factor or openness. [Ex. 2031; ¶94] This occurs because a smaller hole increases the resistance to the passage of air. [Ex. 2031; ¶94] Fewer but larger holes allow more airflow compared to many smaller holes, even at the same cover factor. [Ex. 2031; ¶94] Overall, the base material of Strength does not comport with the plain and ordinary meaning of mesh in the context of the '535 Patent. [Ex. 2031; ¶94] Dr. Ellison overbroadens the term mesh⁴ beyond what a PHOSITA would understand mesh to mean in the context of the '535 Patent by not acknowledging any context regarding the size or density of the open spaces that would be understood to be a mesh material. [Ex. 2031; ¶94]

**i. 19d: a second side with a dark color coating,
said second side opposite to the first side; and**

Claim 19d is not disclosed by Whybrew. Petitioner acknowledges that Whybrew does not disclose limitations concerning mesh material panels having a second side, opposite to the first side, with a dark color coating. Petitioner points to Strength to overcome this deficiency of Whybrew. However, a PHOSITA would

⁴ Dr. Ellison defines mesh fabric as a fabric characterized by open spaces between the yarns.

not have any motivation to replace the mesh fabric window of Whybrew with the fabric of Strength as discussed above in 19c. [Ex. 2031; ¶95] To the contrary, a PHOSITA would be motivated to NOT combine Strength with Whybrew, as outlined below. [Ex. 2031; ¶94]

As also discussed above in 19c, Strength does not disclose a mesh material in the context of the '535 Patent. [Ex. 2031; ¶96]

Thus, the combination of Whybrew with Strength does not disclose each and every feature of Claim 19, and therefore Claim 19 is not rendered obvious by Whybrew in view Strength. [Ex. 2031; ¶97]

B. Ground Two: Whybrew in view of Strength and Ransom

The addition of Ransom to Ground One does not render any of the claims obvious. [Ex. 2031; ¶98] Petitioner relies upon Ransom only for element 1g (1F of Ellison) and the additional limitation of Claim 15 in ground 1. All of the arguments for Ground One apply equally to Ground Two.

Therefore, none of the claims of the '535 Patent were rendered obvious by Whybrew in view of Strength, and Ransom. [Ex. 2031; ¶99]

Claim elements 19c and 19d are analogous to claim elements 1c and 1d, and as such for at least the same reasons that claim elements 1c and 1d are not obvious, claim elements 19c and 19d are not obvious. [Ex. 2031; ¶100]

C. Ground Three: Whybrew in view of Strength and Hazinski.

The addition of Hazinski to Ground 1 does not render any of the claims obvious. [Ex. 2031; ¶101] Petitioner relies upon Hazinski in Ground Three for element 1f, the additional limitation of Claim 15, and the additional limitation of Claim 14. All of the arguments for Ground One apply equally to Ground Three.

Furthermore, Claim 14 additionally requires that wherein the one or more panels of mesh material provide a 360 degree view of the exterior of the camouflage structure from the interior of the camouflage structure. While Dr. Ellison claims that the fabric material of Hazinski is a mesh, there is no disclosure of a mesh in Hazinski. [Ex. 2031; ¶102]

Additionally, beyond that the fabric 26 should be a screen or see through type, Hazinski provides no information to a PHOSITA on how to actually make the fabric 26 to allow a “hunter to have three hundred and sixty degrees of visibility from within the blind 10 and yet provides him with hunting invisibility.” [Hazinsky 4:14-17] [Ex. 2031; ¶103]. In fact, Strength teaches that “[i]n camouflage used for applications such as blinds, translucent fabrics can result in the creation of silhouettes on the camouflage from a light source, such as the sun. For example, in a blind having a translucent camouflage, the sun behind the blind can create a silhouette on the camouflage material of a hunter inside the blind that is visible on the exterior of the blind.” [EX. 1003 1:13-19]. [Ex. 2031; ¶102]

Furthermore, Patent Owner disagrees that a PHOSITA would be motivated to add the material of Hazinski to the blind of Whybrew. [Ex. 2031; ¶104] In Whybrew, flexible body 20 is preferably formed of fabric material that is waterproof, weather resistant and imprinted with a camouflage pattern 37 at least on the first outer surface 22 and preferably on both the first outer surface 22 and the second inner surface 23. [EX. 1002 4:46-50] [Ex. 2031; ¶104]. “The waterproof quality of the material of the body sections 31, 32, 33, 34 allows an occupant inside the blind to remain relatively dry, when the blind is used in rainy conditions, by moving rearwardly inside the blind so that the third section 33 is vertically over the occupant’s head. (FIG. 4).” [EX. 1002 5:35-39] [Ex. 2031; ¶104]. In contrast, Hazinski discusses the use of the blind 10 with a tent fly. [Hazinshi 4:19-20]. A PHOSITA would consider the fabric of Whybrew to be more desirable because it is waterproof and weather resistant. [Ex. 2031; ¶104]

III. SECONDARY CONSIDERATIONS

The Federal Circuit has held that "evidence of secondary considerations may often be the most probative and cogent evidence in the record." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed. Cir 1983); see also *Truswal Sys. Corp. v. Hydro-Air Eng'g, Inc.*, 813 F.2d 1207, 1212 (Fed. Cir. 1987). In addition, Federal Circuit has emphasized that objective considerations of non-obviousness must be considered in every case. *Transocean Offshore Deepwater Drilling Inc. v. Maersk*

Drilling USA, Inc., 699 F.3d 1340, 1349 (Fed. Cir. 2012). Secondary considerations may include any of the following: long-felt but unsolved needs, failure of others, unexpected results, commercial success, copying, licensing, and praise. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

A. UNEXPECTED RESULTS

The named inventors of the ‘535 Patent are brothers Timothy (“Tim”) and Christopher (“Chris”). Ex. 2032; ¶1. Tim and Chris are both first responders. Timothy is a firefighter for Tampa Fire Rescue, and Chris is a retired detective for the Hillsborough Count Sherriff’s Office in Florida. *Id.* Indeed, Chris served as a detective in the Special Investigations Division and Criminal Investigations Division for 13 years before retiring in 2018. Ex. 2032; ¶3.

Tim and Chris came up with the idea of using a banner mesh material for use in a hunting blind in 2015, when designing a hunting build so Chris could hunt with his son, who was six (6) years old at the time. Ex. 2032; ¶6. Chris focused on developing a ground blind that was structurally sound and safe for his son to hunt in and protect him from the outside environment, while including sufficient ventilation for the hot Florida weather. Ex. 2032; ¶7. Tim and Chris chose to build a blind with extruded aluminum frame members to meet their goal of a structurally sound frame for the blind. Ex. 2032; ¶7. Chris also wanted to build a blind that had a window

that would open at a height so my six-year-old could see through the window opening. Ex. 2032; ¶7.

Chris was familiar with banner mesh materials that he believed would snugly fit within the spline grooves of the frame members and obtained some of this mesh material to install as panels for a blind. Ex. 2032; ¶8. Chris thought the use of the mesh material would provide sufficient ventilation and air flow to provide a comfortable setting for hunting. Ex. 2032; ¶8. One could also see through the mesh, but he was unsure of the clarity of the view it may provide. Ex. 2032; ¶8. Regardless, Chris expected to view exterior to the blind for wild game through the opened windows of the blind. Ex. 2032; ¶8.

Based on Chris's experience at that time in 2015, Chris understood that mesh material used for hunting was more of a "netting" material and was very thin and flimsy and could not practically be affixed to the extruded frame members. Ex. 2032; ¶9. The holes were also larger so one could see through it and into the blind. Ex. 2032; ¶9.

The mesh material Chris and Tim used for their blind was a scrim banner mesh material and was white so they applied a camouflage pattern on what would be an exterior side of the blind. Ex. 2032; ¶¶10-11, Ex. A. This banner mesh material was thicker than the net-like mesh he was familiar with and would not slip out of the fastening systems. Ex. 2032; ¶¶10-11, Ex. A.

The camouflage pattern was applied using an eco-solvent ink from an ink cartridge. Ex. 2032; ¶11. The other side (what would be the interior) was not coated and left white. Ex. 2032; ¶12. When installed they noticed ink coating of the camouflage leaked through the apertures of the mesh and created a one-sided coated mesh that was difficult to see through and had a messy looking interior. Ex. 2032; ¶13.

Chris and Tim then applied a dark bronze color spray paint to the inside surface of the banner mesh material strictly for cosmetic purposes. Ex. 2032; ¶13. The results were surprising and quite unexpected, because they could see through the mesh to the exterior, albeit the view was not clear. Ex. 2032; ¶13. Again, viewing or seeing through the mesh was not a goal they were trying to achieve. Ex. 2032; ¶13.

They then tried coating (with an eco-solvent ink) the exterior with the same camouflage pattern and coated the interior side with a black ink (eco-solvent) to prevent the blotching of ink that that may leak through to the inside surface. Ex. 2032; ¶14. The use of the black ink dramatically improved the see-through characteristic that they had surprisingly found by applying the dark bronze colored spray paint. Ex. 2032; ¶1. More specifically, the mesh material allowed a clear view of the exterior form inside the blind; however, one viewing from the exterior could not make out or see what or who was on the other side of the mesh material. Ex.

2032; ¶14. This one-way see-through effect was **entirely unexpected**. Ex. 2032; ¶15. Again, Chris was trying to build a blind for his son that had a window at a height where he could open the window and see through. Ex. 2032; ¶15.

B. INDUSTRY PRAISE OF AUSTIN BLIND AND PRIMOS SURROUNDVIEW BLIND

When the Seaton's set out to build this blind, they had no expectation to go into the business of building hunting blinds; however, they knew they had something, so they decided to form the company, Rugged Cross Hunting Blinds, LLC (hereinafter "RCHB") in October of 2015. Ex. 2032; ¶18

RCHB then built another blind (called it the "Austin", after Chris's son) and displayed the blind at the 2016 National Wild Turkey Federation (NWTF) convention in February 2016, in Nashville, Tennessee. Ex. 2032; ¶19. Images of the Austin blind are attached as Exhibits B, C and D, to Mr. Seaton's declaration were taken from a YouTube video [Rugged Cross Blinds @ 2016 NWTFShow \(youtube.com\)](#). Ex. 2032; ¶19, which was filmed at the 2016 NWTF convention and describes and displays the Austin blind in detail. Ex. 2032; ¶19.

The images of Exhibits B-D of Chris's Declaration, show the Austin blind which demonstrate the one-way see-through feature. As depicted in image C, a person standing outside the blind cannot see Tim standing inside the blind. Ex. 2032; ¶21. Exhibit D is an image from the video that shows a view from the interior of the

blind. Ex. 2032; ¶22. More specifically, the image demonstrates the clear view of the exterior of the blind from an interior, or from standing inside the blind. Ex. 2032; ¶22.

The Austin blind with the above-described mesh material was met with rave reviews as evidenced by the comments from Josh Honeycutt of Realtree and entitled “Cool Hunting Gear from the 2016 NWTF Convention”.⁵ Ex. 2032; ¶27; Ex. E. The Realtree article includes the heading “Awesome Gear from an Awesome Convention” over a photo of the RCHB Austin blind displayed at the 2016 NWTF Convention. Ex. 2032; ¶28.

In addition, Bowhunting.com referred to the Austin blind the attached article, posted February 17, 2016, by Brodie Swisher and entitled “Great Turkey Gear from the NWTF Show.” Ex. 2032; ¶30.⁶ The blind was described as follows:

The **really cool** feature of this material is that you can see out, but game cannot see in. It offers true 360-degree viewing. You can see it all with this blind. No obstructed views and peeking out windows. (emphasis added). Ex. 2032; ¶30.

⁵<https://link.edgepilot.com/s/bae67c2c/LnanwvQfL0iXQKDMKj8fmA?u=https://www.realtree.com/turkey-hunting/galleries/cool-hunting-gear-from-the-2016-nwtf-convention> is a copy of the link to the post. Copies of links to exhibit posts/articles are set forth in corresponding footnotes.

⁶https://link.edgepilot.com/s/914c0a12/VR8zOzk7Ek68tbesa6X_zA?u=https://www.bowhunting.com/blog/2016/02/16/great-turkey-gear-from-the-nwtf-show/

While attending the 2016 NWTF convention, Mr. Jason Harris of Primos Hunting (hereinafter “Primos”) approached RCHB and expressed his excitement about the RCHB mesh material and the Austin blind. Ex. 2032; ¶31. Mr. Harris also mentioned that his employer, Primos, would be very interested in talking with the us/RCHB about a business relationship that would involve Primos developing products that incorporated our novel mesh material. Ex. 2032; ¶31.

More specifically, Mr. Harris mentioned that he believed that the one-way see-through mesh material would be a great addition to the Primos’ Double Bull pop-up (hub-style) ground blinds. Ex. 2032; ¶32.

RCHB and PrimoS Introduction of One-Way See-Through Mesh

Mr. Harris has been the Director of Marketing and Product Management at Primos Hunting (“Primos”) since April 2020. Ex. 2033; ¶2. Prior to that, he has held other sales and product management positions with Primos since 2012. Ex. 2033; ¶2. As a Director of Marketing and Product Management for Primos, one of Harris’ responsibilities is to oversee the design and development of new products to be introduced under the Primos brand. Ex. 2033; ¶3. This involves his oversight typically from conception to commercialization of new products. Ex. 2033; ¶3.

Since he has been employed with Primos, Mr. Harris has managed or participated in dozens of product development projects or new product development and introductions. Ex. 2033; ¶6. The different types of products included the pop-

up hunting blinds, hunting blind accessories, game calls, decoys, shooting supports, arrows, archery accessories, misc. hunting accessories. Ex. 2033; ¶6. Mr. Harris has been involved with product management of the hub style blinds hunting blinds for Primos in some way for 12 years either as primary developer, leader of product development team, or overseeing the commercialization process. Ex. 2033; ¶7.

Based on inquiries of persons within Primos and some research on his part, Mr. Harris attests that the hub-style blind was first introduced to the market in 1996 and made popular by a company called Double Bull Archery, Inc. Ex. 2033; ¶10. These first hub-style blinds were introduced primarily for archery or bow hunting as it provided a ground level perspective and an opportunity to be intimately close to target while providing concealment so the archer can draw their bow. Ex. 2033; ¶10. According to Mr. Harris, Primos acquired Double Bull Archery in late 2007 and shortly afterward began selling Double Bull branded ground blinds. Ex. 2033; ¶10.

Double Bull ground blinds are portable, pop-up style (hub-style) ground blinds that include flexible frames that fold so that the blind can be carried to and from hunting locations. Ex. 2033; ¶10. Double Bull blinds generally have always included camouflage patterned material over and attached to the frame members. In addition, windows are provided at locations along one or more sides of a blind to open and see out from the interior of the blind. Ex. 2033; ¶10. The inside surfaces

of the side walls have typically been black in an attempt to hide the occupants in the blind. Ex. 2033; ¶10.

As part of his employment with Primos, Mr. Harris typically attends several trade shows each year. Ex. 2033; ¶13. Two of the largest trade shows in the outdoor industry are the Archery Trade Association show and the Shot Show (hosted by the National Shooting Sports Foundation). Ex. 2033; ¶13. Another, trade show he often attends is the National Wild Turkey Federation (“NWTF”) show. Ex. 2033; ¶13.

Mr. Harris attended the NWTF show in Nashville, Tennessee in February 2016. Ex. 2033; ¶14. While attending the show, Mr. Harris noticed a company named Rugged Cross Hunting Blinds (“RCHB”) displaying a ground blind that included panels of a mesh material attached between aluminum frame members. Ex. 2033; ¶14. According to Mr. Harris, the mesh material had a camouflage pattern on an outside surface and was colored black on the inside surfaces. Ex. 2033; ¶15. Again, according to Mr. Harris: “What was truly remarkable is that this material created an optical effect such that when I was in the blind, I had a relatively clear view of the exterior of the blind; however, when I stood outside the blind I could not see into the blind. For example, I could not see people standing inside the blind.” Ex. 2033; ¶15.

Mr. Harris further attests he had never seen, either in his professional career or hunting experience, a hunting blind that included such a feature. Ex. 2033; ¶16.

Mr. Harris thought then, as he believes now, that “such a feature used in ground blinds would be a ***major advancement*** in the ground blind market and industry.” Ex. 2033; ¶16.

Accordingly, Mr. Harris approached Chris, and they discussed the possibility of Primos collaborating to develop products with the RCHB mesh material. Ex. 2033; ¶17. Indeed, in 2016 and 2017, Primos worked with RCHB in incorporating the mesh material into new models of Double Bull (hub-style) ground blinds. Ex. 2033; ¶17. To that end in 2017, RCHB and Bushnell Holdings, Inc. entered into an exclusive license agreement with RCHB to make and sell hunting blinds with the one-way see-through mesh material. Ex. 2033; ¶18.

Eventually, Primos, with the help of RCHB, developed its Double Bull SurroundView hunting blinds that incorporated this “one-way see-through” mesh material that was introduced at the 2018 ATA trade show in January 2018, in Indianapolis, Indiana. Ex. 2033; ¶19. Attached as Exhibits A and B to Mr. Harris declaration are images taken from a Primos promotional video that was shot at the above-referenced 2018 ATA trade show.⁷ Ex. 2033; ¶20.

⁷ The video can be found at the following YouTube link: [Primos Ground Blind Review - 2018 ATA Show \(youtube.com\)](#)

C. PRIMOS SURROUNDVIEW INDUSTRY PRAISE AND COMMERCIAL SUCCESS

The SurroundView hunting blind was met with rave reviews and industry praise including multiple and articles which are referred to below and are evidence of industry praise, especially with respect to solving the above-described long-felt need. Ex. 2033; ¶21. While the SurroundView blinds had, and have, several distinguishing features, the one feature that distinguished it from the other blinds on the market is, and was, the unique one-way see through mesh material. Ex. 2033; ¶21.

The SurroundView blinds created a great deal of excitement as it was truly revolutionary and game changing. Ex. 2033; ¶25. For example, in January 2018 the SurroundView blinds were not only unveiled at the ATA show, but also via a video launched on Primos Hunting Facebook, Instagram and YouTube channels. Ex. 2033; ¶25. The video includes reactions of non-actors that hunt and can be found at this link, [Double Bull SurroundView Real Hunters Reactions \(youtube.com\)](https://www.youtube.com/watch?v=DoubleBullSurroundViewRealHuntersReactions). Ex. 2033; ¶25. The video quickly amassed four (4) million impressions, with about 230,000 users engaging with initial launch post. Impressions are views, engagement means the viewer either “liked”, commented or shared the content. Ex. 2033; ¶25. Attached as Exhibit D of Mr. Harris’ declaration are Images A-D showing the one-

way see-through effect of a licensed hunting blind SurroundView blind including the one-way see-through mesh material. Ex. 2033; ¶26.

To put this in perspective, there are about somewhere from fourteen (14) sixteen (16) million hunters in the United States. Ex. 2033; ¶27. This number can be readily tracked by counting the number of hunting licenses granted in each state. Therefore, almost thirty percent (30%) of potential consumers selected and viewed this video. Ex. 2033; ¶27. According to Mr. Harris it was the most digitally viewed new product introduction Primos has ever had. Ex. 2033; ¶27.

There were numerous articles and reviews describing the SurroundView ground blinds with the one-way see-through mesh material as “revolutionary,” a “game changer,” etc. Ex. 2033; ¶30. A more recent article posted April 22, 2022, is attached as Exhibit 5 and provides the following:

In my lifetime (born in 1965), I’ve witnessed two advancements in ground blind design that I would classify as “game changing.”

The first was in spring 1996 when bowhunters/entrepreneurs Keith Beam and Brooks Johnson brought a concept to market for a pop-up blind featuring the effective hub system commonly used today...

The second game-changing advancement in blinds — see-through walls — happened in early 2018 (to the best of my knowledge). I think Primos, which had purchased Double Bull years earlier, was the first company to offer this feature. The Primos Double Bull SurroundView blind took the hunting industry by storm.

(emphasis added). Ex. 2033; ¶30, Ex. E.

An article from Grand View Outdoors, January 18, 2018, written by Jace Bauserman and provides:

New ground blinds for 2018 – yes, ground blinds – made a splash at the ATA Show

Primos SurroundView 360

I hate the word **game-changer**, but I simply can't think of a better description for Primos' new SurroundView ground blind series...

You have to see it to believe it. No more craning your neck to spot approaching game through a side window. You have a full view (front, left and right) of your surroundings.⁸ Ex. 2032; ¶43, Ex. G.

The SurroundView blinds are described in an article, entitled “The Blind Without a Blind Sport” from Sportsman’s Warehouse, which was posted in 2018:

A New Innovation

This exclusive fabric has unique properties that allow it to function like a two-way mirror—hiding the hunter from the game outside the blind but offering a full view **without gaping windows.**

⁸https://link.edgepilot.com/s/6853f5a2/3UWY4Bpst06vxEl_cUB6vA?u=https://www.grandviewoutdoors.com/bowhunting/the-surprising-product-category-that-saw-a-lot-of-innovation-for-2018

...The benefits to hunters are pretty obvious: No more silent gobblers sneaking in the back door. No wary bucks skirting the setup just out of view of a window.

Hunting Without a Blindspot

Anyone who has hunted in a pop-up blind, or even a shooting house, can understand the limitations to a reliance on windows. It seems you are always trying to see what you can't see, because narrow shooting portals, or windows, only provide a limited point of view. It gives you ample opportunity to prepare yourself if an animal is approaching in what would traditionally be a blind spot. (emphasis added).⁹ Ex. 2032; ¶44; Ex. H.

On January 12, 2018, Lynn Burkhead of Bowhuntingmag.com, provided yet another extremely positive review of the SURROUNDVIEW blinds at the 2018 ATA show, Top New Treestands, Ground Blinds & Accessories:

Primos Double Bull SurroundView Ground Blind

The word **revolutionary** gets tossed around a lot at the annual ATA Show, but in this case, that might be the perfect word to describe the new Double Bull SurroundView ground blind from Primos. With exclusive one-way, see-through walls that look solid outside the blind and yet offer a wide open view from inside the blind, this Double Bull

9

<https://link.edgepilot.com/s/11fc354a/thiTmljPjECafLpkWYWHPA?u=https://news.sportsmans.com/product-review/blind-without-blind-spot>

model has to be seen to be believed. (emphasis added)(See, Exhibit 9, pg. 3). Ex. 2032; ¶45, Ex. I.¹⁰

In March 2018, an article by Nancy Jo Adams was posted on Gritr Outdoors blog, referring to the Primos Double Bull SURROUNDVIEW 360° blinds displayed in February 2018 at the NWTf in Nashville, Tennessee as follows:

“This blind has received more attention in the Bowhunting and hunting world than any other product since its release at ATA in January. The one-way see-through walls allow the hunter inside the blind to have an unobstructed 180° view of the surroundings. (emphasis added) (See, Exhibit 10).” Ex. 2032; ¶46, Ex. J¹¹

A post from bowhuntingmag.com written by Christian Berg, dated July 5, 2018, entitled “Gear Review: Primos SurroundView Series Blinds” provides:

“There are hundreds of new bowhunting products released every year, but relatively few are **unique, useful and innovative** enough to truly stand out from the crowd. However, the new SurroundView ground blinds from Primos Double Bull certainly stand out. In fact, I believe SurroundView blinds — featuring an exclusive, one-way fabric that appears completely solid from the outside but allows a panoramic view of your surroundings from the inside — will revolutionize the category

¹⁰https://link.edgepilot.com/s/5ca5b454/q0zz7y8wF0ahAm_cK75yxg?u=https://www.bowhuntingmag.com/editorial/ata-2018-top-new-treestands-ground-blinds-accessories/309560

¹¹<https://link.edgepilot.com/s/427fad0e/UynEBVAJb0CT6YnIxCbA?u=https://blog.gritroutdoors.com/best-of-nwtf-2018-part-1/>

by eliminating the closed-in feeling so many bowhunters have hated about ground blinds in the past. (emphasis added). Ex. 2033; ¶47, Ex. K

The one-way fabric in SurroundView blinds isn't designed to be shot through, so you still have to arrange the various window openings based on your hunting style and anticipated shot opportunities. **However, the unrestricted views the fabric offers eliminate the need to constantly stand up or lean awkwardly to "peek" from side and rear windows.**” (emphasis added). Ex. 2032; ¶47, Ex. K.¹²

On July 17, 2018, Deer & Deer Hunting posted the following:

“We first saw it at the January trade shows, but when our staff was able to finally test this **revolutionary** Primos Double Bull Blind on a June axis deer hunt in Texas, we were blown away. Primos touts the **SurroundView** as the “Blind Without A Blind Spot” – and it truly is. Thanks to the exclusive one-way, see-through walls that let you see all of your surroundings without being seen, hunters now can spot all of the movement that you missed with traditional blinds that have solid walls, yet remain just as concealed. It’s like looking through a one-way mirror! (See, Exhibit 12) (emphasis added).” Ex. 2032; ¶48, Ex. L.¹³

¹²https://link.edgepilot.com/s/16dde877/yzTXhuytnE6vmuedX_CYMQ?u=https://www.bowhuntmag.com/editorial/gear-review-primos-surroundview-series-blinds/309428

¹³<https://link.edgepilot.com/s/0404eb65/Dx0bJfcfa0CdUCFAfOBmsw?u=https://www.deeranddeerhunting.com/content/articles/deer-hunting-gear/primos-newest-double-bull-blind-the-surroundview>

On October 24, 2018, a post/article by Brodie Swisher was published on the bowhunting blog of bowhunting.com about the Double Bull SURROUNDVIEW blind and provided:

“If there’s one hunting product that stirred up the hunting industry about as much as anything else this year, it would have to be the new Primos Double Bull SurroundView ground blinds. There were a lot of folks talking about this one the moment it was released. **It was something new and innovative that answered the demand for more visibility when it comes to hunting from the ground blind.** The Primos crew stepped up and changed the game with this exciting new blind for 2018.” (emphasis added) (Ex. 2032; ¶49, Ex. M).¹⁴

All this activity culminated in an article posted December 27, 2018, by the NRA American Hunter publication announcing the winners of the 2019 Golden Bullseye Awards posted on www.americanhunters.org.¹⁵ Ex. 2032; ¶50, Ex. N; Ex. 2033, ¶22, Ex. C. The American Hunter’s 2019 Golden Bullseye Awards included the Primos Double Bull SURROUNDVIEW 360 blind, which won the “Gear of the

¹⁴<https://link.edgepilot.com/s/91357d72/IcDhxaa3Ek2tJmNyZ7wOQ?u=https://www.bowhunting.com/blog/2018/10/24/primos-double-bull-surroundview-270-ground-blind-review-video/?amp>

¹⁵<https://link.edgepilot.com/s/08a14253/rp9hcZL7GEqyDiqvAR1Qdw?u=https://www.americanhunter.org/articles/2018/12/27/american-hunters-2019-golden-bullseye-award-winners/>

Year Award.” Ex. 2033; ¶50. The article even lists the qualifications considered to win such an award including:

- Recently introduced and available to consumers prior to the selection of the Golden Bullseye Awards;
- Used/tested by a staff member or regular contributor to the magazine and/or affiliated media;
- Reliable in the field, meeting or exceeding the evaluator’s expectations;
- **Innovative in design and function;**
- Readily perceived as a value to the purchaser; and
- Styled in a manner befitting the shooting and hunting industry and, perhaps more importantly, its enthusiasts. Ex. 2032; ¶50, Ex. N; Ex. 2033, ¶22, Ex. C.

While Primos received numerous other accolades and awards as from publisher and media outlets, the Golden Bullseye award is widely considered as a more prestigious award as it covers the hunting and shooting space of the outdoor industry. Ex. 2033, ¶23. Other awards are often limited to categories of products within the industry. Ex. 2033, ¶23. For example, the SurroundView blinds would have competed with other new products that were not ground blinds. Ex. 2033, ¶23. This was the first time and last time Primos won the Golden Bullseye Award since Mr. Harris joined Primos in 2012. Ex. 2033, ¶23. According to Mr. Harris this was the first and only time Primos won this award since the origination of the award in 2002. Ex. 2033, ¶23.

Primos blind **sales increased 161% YOY in 2018** with the launch of the SurroundView line of ground blinds. The SurroundView family drove nearly 100% of that growth. Ex. 2033, ¶28. The three SurroundView skus outsold the entire assortment of “normal” Double Bull and Primos branded blinds that did not utilize the new SurroundView fabric despite the premium prices at which they were offered. SurroundView blinds sold at a 20-25% premium over similar size and quality offerings that did not have the one-way see through mesh. Ex. 2033, ¶28.

D. COPYING BY OTHERS

After the time Primos introduced its SurroundView ground blinds the major ground blind brands besides Primos, Ameristep, Rhino Blinds, and Muddy Outdoors. Ex. 2033, ¶31. It didn’t take long for Primos competitors to start selling hub-style ground blinds with a one-way see-through mesh material. Ex. 2033, ¶31. GSM (Muddy Outdoors) and Rhino Blinds came out with one-way see-through blinds in late 2019 or in 2020 at lower prices than the SurroundView blinds, less than two years before Primos SurroundView blinds. Ex. 2033, ¶31. The introduction of these blinds directly resulted in a decline of the Primos SurroundView blinds. Ex. 2033, ¶31.

For example, GSM Outdoors advertised its Infinity series of ground blinds as, “**Innovative** SHADOW MESH means you can see game, but they can’t see you.” GSM sells four different ground blinds under the series names INFINITY and

PREVUE, each of which includes the one-way see through mesh. (See, Exhibits 15, 16 and 17). Ex. 2032, ¶52, Exs. O, P, and Q.

Similarly, GSM is also selling the Ameristep hub-style blinds including the PRO SERIES™ **EXTREME VIEW™** HUB BLIND and describes its blind as: “Ground blinds are only as good as their visibility and convenience. Ex. 2032, ¶53, Ex. R. The Pro Series™ Extreme View™ blind takes these features to ***pro-level status*** with new Extreme View one-way, see-through mesh.” Ex. 2032, ¶53, Ex. R.

Petitioner’s Copying

55. Another culprit was Outdoor Product Innovations, Inc. n/k/a DBR, Inc., who is the Petitioner in this case. Petitioner started selling its Rhino 180 hub-style ground blinds in 2020 touting the unique benefits of a one-way see-through mesh material used in the Rhino 180 blinds. Ex. 2032, ¶54, Ex. S. For example, the Rhino 180 blind was promoted as a “...see through blind that **takes ground hunting blind to a whole new level!** This ***unique*** 2-way mesh system prevents wild game from seeing in while allowing you, the hunter, to see out crystal clear without any obstruction.” Ex. 2032, ¶54, Ex. S.

56. Indeed, an article, published in the April 2022 edition of Inside Archery, quotes a DBR representative shamelessly describing its Rhino 180 blinds as follows:

Another factor that has greatly contributed to Rhino Blinds' success in recent years is the company's approach to product innovation. **For instance, just look at the Rhino 180 See Through Blind, which uses a revolutionary mesh material that allows hunters to see out without game seeing in.** Ex. 2032, ¶55, Ex. T

Patent Owner hopes the Board sees the irony in this case. That is, the Petitioner, DBR filed a petition arguing that the claims '535 Patent are obvious; however, a few short years ago DBR was representing to the public that it had developed an innovative product with, "...**a revolutionary mesh material that allows hunters to see out without game seeing in.**" Accordingly, DBR essentially admitted that RCHB's invention of a camouflage structure (hunting blind) with a one-way see through mesh was not obvious.

Moreover, in June 2021, the Petitioner asked for a sample of the RCHB's mesh material which Chris sent to the Petitioner. In addition, Chris met with representatives of the Petitioner that same month to inspect a manufacturing facility together with the prospect of establishing a business relationship between RCHB and DBR.

The Barronett HI-FIVE blind is advertised as "**FEATURING 1-WAY FABRIC!**" As described, "the 1-way fabric provides an undistorted view from the inside, while the exterior appears completely solid to keep you shielded from prey." (See, Ex. 21)(emphasis added). Ex. 2032, ¶57, Ex. U.

Yet another blind incorporating the RCHB novel mesh material is a blind manufactured and sold by Tidewe. Tidewe describes its blind as having a “ **Unique Invisible Design**” TIDEWE hunting blind is equipped with three full panels of one-way see-through mesh.” Ex. 2032, ¶58, Ex. V.

All of the above-referenced companies came out with their respective blinds well after RCHB introduced its Austin blind in 2016 and after Primos introduced its SurroundView blinds in 2018. Ex. 2032, ¶60. As apparent from the above advertising, all of these copycat manufacturers and sellers have adopted the RCHB invention disclosed and claimed in the ‘535 Patent and incorporated the technology in their hub-style ground blinds.

The NWTF and ATA trade shows are two of the largest trade shows held each year, and suppliers to the outdoor industry like GSM and DBR (Rhino 180), attend those shows every year. Ex. 2032, ¶66. So, GSM and DBR knew about the SURROUNDVIEW blinds if not by seeing the blinds at the ATA tradeshow then by reading about the blinds for example in the above-referenced articles and posts. Ex. 2032, ¶66. The timeline bears this out, because the Austin blinds were introduced in 2016, the SURROUNDVIEW blinds were introduced in 2018, and then the competitor copycat blinds came out in 2019 and/or 2020. Ex. 2032, ¶66. Moreover, these competitors could have readily acquired a SurroundView blind to inspect the mesh material for reproduction.

E. RCHB LICENSING

RCHB currently has four different non-exclusive licensees for the technology disclosed in the '535 Patent including Bushnell Holdings, Inc. (Primos); Primal Treestands, Inc. (Primal), Millenium Outdoors LLC (Millenium) and Outtech Inc. (Outtech). Ex. 2032, ¶69. These license agreements were **not** born from accusations of patent infringement from RCHB, but from the licensees' strong interest in making ground blinds with a one-way see-through mesh materials or panels of such mesh material. Ex. 2032, ¶70.

As mentioned above, Jason Harris of Primos approached Chris and Tim expressing his and Primos' enthusiasm and interest in the RCHB concept of using the one-way see-through mesh in ground hunting blinds. Ex. 2032, ¶71. Eventually, RCHB and Bushnell Holdings, Inc. entered into an exclusive license agreement in 2017. Ex. 2032, ¶71. That exclusive license agreement was terminated and RCHB and Bushnell entered into a non-exclusive license in 2023 with respect to its SurrounView blinds. Ex. 2032, ¶72. In addition, Primos is in discussions with RCHB regarding a license for the Primos Full Frontal blinds. Ex. 2033, ¶48.

In 2021, representatives of Outtech reached out to Chris expressing an interest in a license agreement, and RCHB and Outtech entered into a non-exclusive license with respect to the '535 Patent in December 2021. Indeed, after Jay Scholes of Outtech had inspected blinds with the one-way see-through technology and

conducted market research that indicated consumer demand for ground blinds was trending to blinds with one-way see-through mesh, Mr. Scholes reached out to Chris.

Similarly, in 2022 representatives of Millenium Outdoors contacted Chris and expressed an interest in a license. RCHB and Millenium Outdoors later entered licensing agreements in December 2022, and January 2023, with respect to Milleniums use of one-way see-through mesh with camouflage printed on one side and a color coating printed on the other side.

In addition, RCHB and Primal Treestands, Inc. entered into a non-exclusive license agreement in July 2022 soon after Primal began selling hub-style blinds with a one-way see-through mesh. Chris reached out to Mr. Ransom after Primal had started selling its blinds, and Primal evaluated the RCHB patents and decided to enter into a license with RCHB.

F. LONG-FELT BUT UNRESOLVED NEED

Patent Owner submits the declarations of Mr. Jason Harris, Mr. Robert M. Ransom, Mr. Jay Scholes as evidence of long-felt and unresolved need. In each of their opinions there has been a long-felt need for a ground hunting that minimized or eliminated “blind spots” in a ground blind that restrict a field of view of an occupant yet concealed the occupant so that movement in the blind could not be detected by game.

The Patent Owner's evidence establishes that this long-felt need has existed since at least as early as 1996 when the hub-style ground was introduced to the outdoor industry. In addition, while others have attempted to solve the inherent problems associated with hunting from a ground blind, these problems have gone unresolved until RCHB's introduction in 2016 of a one-way see-through mesh material incorporated onto a ground blind.

There are several tactics that are employed by hunters to remain as much as possible, undetected including wearing camouflage clothing and applying formulations to the clothing and person's body to mask any human. (Ex. 2034, 19) If the hunters are not further hidden, they risk being seen or their scent is detected by the game, especially if the hunters remain on the ground. (Ex. 2034, 21) Accordingly, hunters may use, for example, hunting ground blinds that are collapsible and portable, permanent blinds that may be on the ground or elevated on a platform, tree stands, tree climbing stands, or seats with foot platforms that mounted in a tree and accessed via steps nailed to the tree. (Ex. 2034, ¶21)

Tree stands, also known as ladder stands, include a ladder on the top of which a seat and/or platform is securely mounted or connected. (Ex. 2034, ¶21-22) The ladder is leaned against a tall tree (typically a pine tree) so the seat is elevated. These ladder stands have been on the market since at least 1990. (Ex. 2034, ¶22-23)

The climbing tree stand also enables a hunter to view surroundings from elevated positions. (Ex. 2034, ¶24) Climbing stands include a foot platform and a seat both with gripping arms that enable a hunter to climb a tree to a desired height. Again, these climbing stands have been on the market for decades. (Ex. 2034, ¶24)

An advantage of the tree/ladder stands and climbing stands is that the hunter is elevated above a line of sight and smell of the game. In addition, from an elevated position the hunter has an expansive, mostly unrestricted (restricted by natural obstructions such as trees and foliage) field of view as compared to hunting from the ground. (Ex. 2034, ¶26) That is, there are no artificial barriers such as walls or sides of an enclosure, as in a ground hunting blind, that may form blind spots or restrict a field of view.

Many hunters prefer to hunt game from the ground as they may feel more comfortable on the ground. To that end, ground blinds, for example, provide the hunter with an enclosure to remain, to a degree, hidden from game and protected from the elements (rains, wind, cold etc.). (Ex. 2034, ¶28)

Portable, collapsible ground blinds have been around for over twenty years and generally comprise a collapsible frame that supports a camouflage material to form an enclosure. An advantage of portable ground blinds is that the enclosure of the ground blind provides a comfortable and protected enclosure, which can fit chairs for sitting and room for equipment (guns, bows, cameras etc.). (Ex. 2034,

¶29) The ground blinds are typically sold with camouflage patterns that provide some level concealment.

The hub-style ground blind was first introduced to the outdoor industry by Double Bull Archery in 1996. (Ex. 2034, ¶33) and these blinds provided a portable blind that was easy to set up and carry, yet the hub-style blind was large enough for one or two people to comfortably sit. (Ex. 2034, ¶21)

An inherent problem with ground blinds in general including the hub-style ground blind since its introduction to the outdoor industry in 1996, is that the blinds included significant “blind spots” and the opened windows for viewing and shooting exposed the hunters to the sight of the wild game. (Ex. 2034, ¶42) To that end, given the walls of the blind restricted the viewing area of the blind, the hunters had to move (lean forward, crane the neck) to expand a field of view.

As noted above four sides of the blind were typically made of a woven polyester or polyester blend material that had a black surface or internal black coating facing the interior of the blind, and which did not allow light to pass into the blind to hide the hunter so the hunter could see out but game could not see the hunter in the blind. (Ex. 2034, ¶43)

Accordingly, ground blinds necessarily included windows that had to be opened so the hunter can see outside to see the environment and wild game. (Ex. 2034, ¶44) The window designs have varied over the years, but originally included

large windows that spanned the width of a side of the blind, and these windows may have been included on multiple sides of the blinds. (Ex. 2034, 44)

The hunters, then and now, had or have the option of opening windows on multiple sides of the blind to expand their field of view. Of course, the problem with opening windows on multiple sides of the blind, the hunter is exposed to the sight of game. (Ex. 2034, ¶46) A solution to the problem was to **not** open windows on multiple sides and this obviously severely limited one's viewing area. (Ex. 2034, ¶46)

Adjustable panels or flaps enabled the hunter to create much smaller openings to at least temporarily see out the blind. (Ex. 2034, ¶47) So, the hunter could have one window openly more widely than the others with expectation of shooting out the larger window opening while viewing through the smaller openings. (Ex. 2034, ¶47) In some cases, the window flaps are left close but the hunter can, or could, move to temporarily create a small "slit" to see through. (Ex. 2034, ¶47)

Suppliers of these blinds have attempted to resolve these problems, by changing the size, shape, placement, and configuration of the windows; however the problem has persisted. (Ex. 2034, ¶49) That is, the blinds continued to have windows on multiple sides that had to be opened simultaneously, even if temporarily, to expand a field of view. (Ex. 2034, ¶49) Moreover, the windows were made smaller

and spaced apart creating more area of non-mesh material and thereby creating more blinds spots. (Ex. 2034, ¶49)

Another proposed solution is the use of what is known as a “shoot-through” mesh that covers window openings. The mesh material is designed to hide the hunter who can see through the mesh. The shoot-through mesh or screen has relatively large holes such that one can see into blind. (Ex. 2034, ¶53) So, while the hunter is partially hidden, one can actually see into the blind and see the hunter. (Ex. 2034, ¶53)Another problem associated with seeing someone in the blind, it was known as silhouetting, which can happen with the see through mesh. (Ex. 2034, ¶53)

Thus as long as ground blinds have been in existence, and certainly from the introduction of the hub-style blind in 1996, there has been a long-felt need for a ground blind for a hunting or viewing nature that did not include blinds spots or minimized the blind spots that required an occupant to move to expand a field of view. (Ex. 2034, ¶59) Accordingly, a long-felt need has existed and persisted for a ground blind that provides a more panoramic view for the hunter without risking the hunter being seen by moving within the blinds. (Ex. 2034, ¶59) (Ex. 2035¶17-19), Indeed, the design and development of the portable ground blinds has always revolved around minimizing the hunter’s visual exposure to game while maximizing the viewing area of the hunters. (Ex. 2034, ¶59)

Over the years since the introduction of the hub-style collapsible blind, suppliers of these blinds have not been able to, or failed to, resolve this age-old problem and long-felt need. (Ex. 2034, ¶60) These suppliers tried different window designs (size, shape, placement etc.) in an attempt to provide concealment options to the hunter. (Ex. 2034, ¶60) In addition, different shoot-through mesh materials were provided over the windows; however, these designs never had the potential to eliminate the blind spots as the one-way see through hunting blinds introduced by RCHB and Primos. (Ex. 2034, ¶60) The prior ground blinds worked in terms of a hunter was able to successfully hunt game, but these above-identified problems and needs have persisted and gone unresolved and others have failed to resolve this age-old problem. (Ex. 2034, ¶60).

Indeed, Mr. Scholes referred to the invention as absolutely revolutionary and not only solves these problems and long felt need, but opens the market and industry to non-hunters such as outdoor enthusiasts that want to experience the outdoors. (Ex. 2035, ¶24)

G. THE NEXUS BETWEEN THE CLAIMED INVENTION AND OBJECTIVE INDICIA

For secondary considerations to be relevant to a claim of non-obviousness, “there must be a nexus between the merits of the claimed invention and the objective evidence.” *Volvo Penta of the Ams., LLC v. Brunswick Corp.*, 81 F.4th 1202, 1210

(Fed. Cir. 2023). Objective evidence of nonobviousness need only be reasonably commensurate with the scope of the claims. *In re Glatt Air Techniques, Inc.*, 630 F.3d 1026, 1030 (Fed. Cir. 2011)

Patent Owner refers to pages 51-66 expert report of Dr. Cameron (Ex. 2031), which provides a claim chart identifying each of the elements of claims 1, 15, 16, 17 and 19 relative to Primos Double Bull SurroundView ground blind. It is this blind that was a commercial embodiment of the claimed invention available for purchase since 2018 and the subject of industry praise and industry awards.

In addition to establishing the nexus between the above listed and described secondary considerations, Dr. Cameron after considering the declarations of Jason Harris, Chris Seaton, Jay Scholes and Robert Ransom, and the application legal standards as to unexpected results, long-felt need, commercial success, industry praise, licensing and copying by others, she opined as to each of these objective indicia that the claims of the '535 Patent are valid.

IV. CONCLUSION

For the foregoing reasons, there is no likelihood of Petitioner prevailing with respect to any of the challenged claims 1-19.

CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24

I HEREBY CERTIFY that the word count for the foregoing Patent Owner Preliminary Response contains 13,776 words produced using the Times New

Roman 14-point typeface.

DATED this 5TH day of September, 2024.

Respectfully submitted,
WOLTER VAN DYKE DAVIS, PLLC
1900 Summit Tower Blvd, Suite 140
Orlando, FL 32810
Telephone: (407) 926-7700
Email: rwolter@savvyIPLaw.com
Email: adavis@savvyIPLaw.com
Attorneys for Patent Owner

By: /s/ Robert L. Wolter
Robert L. Wolter
Florida Bar No.: 0906344/Reg. No. 36972
Amber N. Davis, *pro hac vice*
Florida Bar No.: 0026628

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to 37 C.F.R. §§ 42.6(e) and 42.105, a true and correct copy of the foregoing Patent Owner, Rugged Cross Hunting Blinds, LLC's Response to Petition for *Inter Partes* Review of U.S. Patent No. 11,399,535 was served via electronic mail to: Thomas G. Eschweiler, Esquire (teschweiler@epiplaw.com), Eschweiler & Potashnik, LLC, 195 S. Main St., Ste 400, Akron, OH 44308 this 5th day of September, 2024.

/s/ Robert L. Wolter
Attorney