

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

**DECLARATION OF JAY SCHOLLES IN OPPOSITION TO PETITION FOR
INTER PARTES REVIEW OF U.S. PATENT NO. 11,399,535**

1. My name is Jay Scholes, and I am over the age of majority and competent to make this declaration based on my personal and professional knowledge. I have not been retained by the Patent Owner, Rugged Cross Hunting Blinds, LLC. (“RCHB”) to provide this declaration. I am not being compensated for this declaration. I am making this declaration in support of RCHB’S response in Opposition to Petitioner’s, DBR Inc.’s, Petition for Inter Partes Review of U.S. Patent 11,399,535.

2. I have been an avid hunter, fisherman and outdoors enthusiast for most of my life. My interest in archery began when I was nine years old which resulted in me participating in archery competitions when I was 13. Indeed, my preferred form of hunting is bowhunting (archery) and I have been bowhunting wild game (especially wild turkey) for most of my life. I am also an avid fly-fishing enthusiast, among having other outdoor interests.

3. I am the Chairman of Outtech, Inc, (“Outtech”) which I co-founded in 1989, and which is headquartered in Aurora, Ohio. I have worked in the outdoor industry for about forty (40) years. Outtech provides sales and marketing services to manufacturers of outdoor products. To that end, Outtech assists its manufacturing partners in designing and developing new products, advising on manufacturing applications and providing in-depth marketing assistance including in advertising, packaging point-of-sale and more.

4. During my career I have had the privilege of serving on the boards of various organizations associated with the outdoor industry. For example, I currently sit on the Board of Directors of the Archery Trade Association (ATA).

5. In 2016, I co-founded and joined the board of directors for Origin Outdoor Group, the first firm devoted to investing in early-stage outdoor product companies and scaling them for sustainable long-term success.

6. I also serve on the Advisory Council for the well-known retailer buying group, Nation's Best Sports, and previously served on the Board of Directors for the Youth Shooting Sports Alliance. I am a founding member of the International Bowhunting Organization and, in 2011, I established Quickfire Digital, a digital commerce agency that specializes in ecommerce, social media and digital content creation.

7. Since 1989 I have been intimately involved with many businesses that have had novel ideas and assisted those businesses in bringing their ideas to the marketplace and getting the end products to the consumers. With respect to new product designs and launches, Outtech and I have been involved in product categories including game cameras (for capturing images of wild game), fiber optic sights (primarily for archery shooting mechanisms) and ground hunting blinds, to name a few.

8. Throughout my career I worked with the Ameristep team on several different projects, helping to work on the production of their ground blinds, including their hub-style blinds. Indeed, I worked with the Ameristep brand through 2022, when it was sold to GSM. Additionally, I worked with Ameristep on a regular basis (at least monthly, if not more) to help create and implement their marketing, sales, and distribution strategies for their ground blinds.

9. Over the course of my career I have, on only a few occasions, experienced the introduction of technology into a sector of the outdoor industry that is truly revolutionary and “game-changing”. One such example was the introduction of fiber optics as a mechanism for illuminating sights on bows and crossbows for the archery industry.

10. Another such technology is the mesh material that Rugged Cross Hunting Blinds (“RCHB”) has introduced to the outdoor industry, and in particular to the hunting ground blind market. There are a couple of reasons why I consider this technology so ground-breaking: (1) hunting blinds incorporating this mesh material (with a camo pattern on one side and a dark solid color on the other side) solve or satisfy problems and a long felt need associated with prior ground blinds, such problems and needs that have gone unresolved for a long time; and, (2) it expands the consumer market of end users who may use these blinds (especially for consumer interests other than hunting).

11. Regarding the long-felt need, one of the most basic strategies for hunting wild game is to best ensure that the hunter is not detected by wild game, via either sight or smell.

12. At least with respect to sight, hunters typically wear camouflage clothing. In addition, hunters position themselves in the hunting environment so they will not be seen. This is done in some instances by elevating themselves in or against a tree using what are known as “treestands.”

13. Some treestands have a seat or seats mounted at the top of a ladder both of which are secured to a tree. Other stands have a seat and climbing mechanism that enable a hunter to climb a tree, to a desired height. At elevated spots in or against a tree, a hunter is not in a line-of-sight of game, and the hunters have a panoramic view from the elevated position.

14. Others prefer to hunt from the ground, so hunters often position themselves in what are known as “ground blinds.” Some ground blinds are portable in nature and have a frame with camouflage material covering the sides of the blinds. Windows are provided so one may view the outside environment of the blind and any game as it approaches. I have used ground blinds, including the below-referenced hub-style blinds for hunting for many years, and I have hunted from ground blinds literally hundreds of times.

Long-felt and Unresolved Need in Ground Blinds

15. One particular type of portable ground blind that has been around since the 1990's is the hub-style (a/k/a pop-up) blind. The basic design of the hub-style blind has not changed since its introduction in the '90's. The hub-style blind includes a frame that supports camouflage material to form an enclosure. Along each side (usually four sides) and the roof there are four diagonally ranged flexible rods. Each rod has one end in a central hub and the other end is attached the camouflage material at the roof or sides. The roof frame includes a similar configuration.

16. These hub-style blinds have always included windows along multiple sides of the blind. Camouflage covered material (that is foldable or moveable) were/are provided to open and close the window openings.

17. One persistent problem that has existed over decades with ground blinds, including hub-style blinds, and long before RCHB and Primos introduced the SurroundView blinds in 2018, is that opened windows expose the hunter inside the blind to the view of the game. That is the game may be able to see a person inside the blind, especially if that person moves, for example to improve one's view from the blind. Accordingly, the hunter inside the blind must be very careful to minimize movement within the blind to prevent detection by wild game.

18. While the ground blinds have windows on multiple sides of the blind, windows on one side may be opened, and the windows on other sides may be closed

to limit the exposure of the occupant of the blind. This also limits the field of view of the hunter. Hunting blind suppliers in the past have used different sized, shaped, and numbers of windows. Smaller windows translate to more blind spot areas in the blinds, which means that the hunter must necessarily move within the blind to get a more panoramic view of the outside. Again, such movement can be detected by game.

19. Another issue with these ground blinds is that as the windows are open so game may be able to pick up the hunter's scent through the opened window. In addition, because the sides of the blind are non-transmissive, that is one cannot see through the camouflage material, especially with a black interior, some blinds create a sort of claustrophobic feeling when sitting in the ground blind.

20. Some ground blind manufacturers have tried to unsuccessfully solve some of these problems, for example, by providing a black interior fabric along one or more sides of the ground blind. It is believed that the black interior aids in minimizing the exposure, relative to sight of wild game, of the hunter; however, the hunter remains visible. Such blinds still require the opened windows, the size of which, along with the non-mesh sides restrict the hunters' viewing area. Moreover, the opened windows allow a hunter's scent to travel to the exterior of the blinds. Also, the dark siding on the interior, at least for me, further promotes that claustrophobic effect within the blind.

21. In the past and today, suppliers have applied what is known as a “shoot-through” mesh material to the windows as a cover that fits over the blind or attached along the camouflage material to cover the windows. While the mesh hides to hunter inside the blind to some degree, one can still see into the blind and see the hunter. In addition, light entering into the blind from other opened windows creates a silhouette of the hunter at the window opening covered by the “shoot-through” mesh, which can be seen from outside the blind.

One-Way See through Mesh was the Solution to Long-felt Needs

22. I was first made aware of and witnessed a blind made of novel one-way see-through mesh material during a turkey hunt in Southern Ohio in early 2021. Immediately, I was truly amazed by this revolutionary concept and its ability to solve many issues that have often faced hunters using ground blinds. I truly believe that this is one of the most innovative technologies I have seen enter the hunting marketplace in the past ten years. There had not been a major advancement in ground blind technology since the introduction of the hub-style blinds in the 1990’s.

23. The SurroundView blinds that I have inspected, that incorporate the RCHB novel mesh material have solved the above-identified problems and is a technology that I predict has and will continue to revolutionize the outdoor industry. The one-way see-through mesh material with a camouflage pattern on a surface facing an exterior of the blind and dark color on the inside surface, enable a hunter

to view the outside for wild game without being seen. A hunter may move freely within the blind without being seen, this is especially critical for younger or inexperienced hunters. Hunters can focus on looking for game and not on whether their movements are detected. To that end, a hunter can see if wild game is approaching and can then open a window, undetected, to prepare to shoot. Moreover, without a window being opened, the mesh material can also block (not necessarily completely but more so than an open window) a hunter's scent. Additionally, the comfort provided by the open view through the novel mesh material expands the use of ground blinds to those that might otherwise not be able to utilize them. My young grandson did not like the closed-in darkness of a traditional ground blind but was able to spend time in a ground blind using the novel mesh technology without issue. This ability for him to enjoy hunting and our time spent together is priceless to me.

24. This invention for a ground blind with a one-way see-through mesh is absolutely revolutionary and opens the markets of the outdoor industry to non-hunters such as outdoor enthusiasts that may want to experience the outdoors. The novel mesh technology allows anyone who would like to observe wildlife undetected to do so, including nature photographers, biologists, and bird watchers to name a few.

Licensing

25. After having inspected and reviewed ground blinds with this one-way see-through technology, Outtech conducted research in 2021 on trends in the ground blind market. As part of its marketing services, Outtech is always surveying retailers to identify the trends generated by consumer demand and purchasing. Based on our research, everything was pointing to consumer demand for ground blinds with a one-way see-through mesh.

26. Based on that research I reached out to Chris Seaton to inquire about obtaining a license to use this technology in ground blinds. I had not met Chris before this first contact. In 2021, I arranged to meet Chris in Florida and discuss a business relationship. Chris and I met and discussed business in a meeting for three hours in a conference room at the airport.

27. Outtech eventually entered into a license agreement with Rugged Cross in December 2021. I negotiated with Chris with the belief and understanding that the one-way see-through mesh material was truly revolutionary, and that Rugged Cross had valid patents to protect this technology, and I believe that today.

28. I hereby declare that all statement made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that with false statement and the like so made are punishable by fine or imprisonment, or both,

under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Jay Scholes
Jay Scholes

Dated: 09-04-2024