

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

DBR FINANCE, INC.
Petitioner,

Vs.

RUGGED CROSS HUNTING BLINDS, LLC,
Patent Owner.

Patent 11,399,535
Filing Date: June 11, 2021
Issue Date: August 2, 2022

Title: CAMOUFLAGE MATERIAL, FOR A HUNTING BLIND

Inter Partes Review No.: IPR2024-00291

The discovery deposition of HERBERT JASON HARRIS, appearing remotely from Brandon, Mississippi, taken in the above-entitled cause, before Tracy L. Abbott, Certified Shorthand Reporter, on the 31st day of October, 2024, at the hour of 9:00 AM, pursuant to notice, via Zoom videoconference.

REPORTED BY:
Tracy L. Abbott, CSR
License No. 084-003182
APPEARING REMOTELY FROM WINNEBAGO COUNTY, ILLINOIS

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On behalf of the Petitioner;

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On behalf of the Patent Owner.

ALSO PRESENT:

MR. JOSEPH CRAIG, In-House Counsel,
Revelyst.

I N D E X

WITNESS

PAGE

HERBERT JASON HARRIS

Examination by Mr. Abdelnour

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Examination by Mr. Wolter

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EXHIBITS

(No exhibits marked.)

1 (Witness sworn remotely.)

2 THE COURT REPORTER: Please, proceed.

3 HERBERT JASON HARRIS,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. ABDELNOUR:

8 Q. Good morning. Please, state your name
9 and address for the record, please.

10 A. Herbert Jason Harris. My address is
11 229 Camelot Way, Brandon, Mississippi.

12 Q. Mr. Harris, where do you work?

13 A. I work for Vista Outdoors, but
14 primarily work for the Primos business unit.

15 Q. How is Primos related to Vista?

16 A. It is a brand or subsidiary that's
17 owned by Vista.

18 Q. Mr. Harris, have you been deposed
19 before?

20 A. I have.

21 Q. How many times?

22 A. I think twice.

23 Q. When was the last time you were
24 deposed?

1 A. I don't know that I can answer that
2 accurately. Probably two or three years ago.

3 Q. Have you ever been involved in a patent
4 case?

5 A. Yes, I have.

6 Q. Were your depositions in connection
7 with any patent cases?

8 A. They were.

9 Q. Both?

10 A. Yes.

11 Q. Okay. What was the first case?

12 A. First case was a patent case when I
13 worked for Easton Technical Products in Salt Lake
14 City, Utah. The case pertained to IP on a lighted
15 nock invention.

16 Q. Were you on the defendant side or the
17 plaintiff side?

18 A. Plaintiff side.

19 Q. So you owned the patent?

20 A. Yes, sir.

21 MR. WOLTER: Object to lack of
22 foundation.

23 BY MR. ABDELNOUR:

24 Q. Were you the inventor of the patent?

1 A. I was not.

2 Q. Why were you deposed?

3 A. I was the product manager at the time
4 that worked on the product in the launch. The
5 patent was owned by a private inventor in which we
6 purchased the patent -- the company purchased the
7 patent from.

8 Q. What was the second patent case you
9 were involved in?

10 A. It was a -- I believe it was another
11 shooting stick patent. I honestly don't recall.
12 I think it was a shooting stick one. There's been
13 a few.

14 Q. Was that while you were at Easton Tech?

15 A. No, that was at Primos.

16 Q. And when was that?

17 A. Again, I don't recall exactly.
18 Probably two to three years ago.

19 Q. Was Primos the patent owner?

20 A. They were the owner, yes.

21 Q. They were asserting their patents?

22 A. Yes.

23 Q. Why were you deposed?

24 A. Just my connection in understanding of

1 the product line and the product launch.

2 Q. Were you an inventor?

3 A. No. No, I was not.

4 Q. Let me run through the ground rules for
5 you. You have done this before, but a couple
6 things. So first we have got a court reporter who
7 is going to take everything down. So, please,
8 make sure all your answers are audible. Is that
9 okay?

10 A. Yes.

11 Q. You understand that you're under oath?

12 A. I do.

13 Q. You understand that I'm going to ask
14 questions and that you have to answer those
15 questions?

16 A. Yes.

17 Q. If there is an objection, you
18 nevertheless have to answer the question; you
19 understand that?

20 A. Yes.

21 Q. If I ask a question and you don't hear
22 it, please, let me know. Okay?

23 A. Yep.

24 Q. If you -- if I ask a question and you

1 don't understand it, will you also let me know?

2 A. I will.

3 Q. And I'll do my best to make sure I give
4 you a question that you understand; is that fair?

5 A. That's fair.

6 Q. If you do give me an answer, is it fair
7 for me to assume that you heard it and understand
8 it?

9 A. Yes.

10 Q. Is there any reason you can't give
11 full, accurate, and truthful testimony today?

12 A. No.

13 Q. Mr. Harris, you understand this
14 deposition is pursuant to a Patent Office
15 proceeding regarding a patent owned by Rugged
16 Cross; you understand that?

17 A. I do.

18 Q. And the patent at issue is 11,399,535.
19 Are you familiar with that patent?

20 A. I am.

21 Q. And the IPR number is 2024-291,
22 correct?

23 A. Correct.

24 Q. All right. And in this -- well, let me

1 back up. Do you understand what this Patent
2 Office proceeding is about?

3 A. I believe I do.

4 Q. What is it about from your
5 understanding?

6 A. My understanding is we're trying to
7 determine the validity of the claims of being, I
8 guess -- I'm trying to think of the right
9 terminology, but essentially the claims being
10 unique and a true invention for the space.

11 Q. And, Mr. Harris, you submitted a
12 declaration in support of the patent owner Rugged
13 Cross in this IPR, correct?

14 A. I gave my testimony as I knew it to be,
15 yes.

16 Q. And your declaration -- well, let me
17 ask this. Do you have a copy of it in front of
18 you?

19 A. I do, yeah.

20 Q. I'm going to share my screen so we can
21 all take a look at it.

22 A. Sure.

23 Q. Okay. Mr. Harris, do you see my PDF
24 Viewer?

1 A. I can.

2 Q. All right. So I've got a first page of
3 what is labeled Declaration of Jason Harris in
4 Opposition to Petition for Inter Partes Review of
5 U.S. Patent number 11,399,535. Did I read that
6 right?

7 A. Correct.

8 Q. Is this the declaration that you
9 submitted in this IPR?

10 A. Yes, sir.

11 Q. And for the record, this has been
12 labeled Exhibit 2033, correct?

13 A. Correct.

14 Q. You see it in the bottom right-hand
15 corner here on the front page?

16 A. I do. It's not on my copy, but I do
17 see that, yes, sir.

18 Q. If I turn to page 26 of your
19 declaration?

20 A. Yes, sir.

21 Q. There's a signature line there, do you
22 see that?

23 A. Yes, sir.

24 Q. And it's dated August 29th, 2024. Do

1 you see that?

2 A. Yes, sir.

3 Q. Is that your signature?

4 A. It is.

5 Q. And does this declaration contain your
6 complete testimony that you wish to offer the
7 Patent Office in this case?

8 A. Yes, it does.

9 Q. And you signed this declaration under
10 penalty of perjury, correct?

11 A. Correct.

12 Q. Are you aware of any mistakes in this
13 declaration?

14 A. No, sir.

15 Q. Is there anything you wish to correct
16 in this declaration?

17 A. No, sir.

18 Q. Are you being represented by counsel
19 here today, Mr. Harris?

20 A. I do have a representative from my
21 organization that's present, Joe Craig.

22 Q. Is Mr. Wolter, who is Rugged Cross's
23 counsel, is he representing you?

24 A. I don't know that to be true or false.

1 I don't know.

2 Q. Do you know if you're paying Mr. Wolter
3 for his time?

4 A. I am not.

5 Q. Who asked you to put together this
6 declaration?

7 A. I was requested via internal counsel at
8 the request of the Rugged Cross team.

9 Q. What do you mean by internal counsel?

10 A. I'm sorry, with our internal legal
11 department, Mr. Joe Craig asked if I would be
12 willing to put together a declaration on behalf of
13 the request coming from Rugged Cross; and I agreed
14 to do so.

15 Q. And did you only interact with internal
16 counsel about this declaration, or did you
17 interact with Rugged Cross or Rugged Cross's
18 counsel?

19 A. I interacted with Rugged Cross's
20 counsel, as well.

21 Q. Did you interact with Rugged Cross's
22 business folks?

23 A. Not in relation to this deposition.

24 Q. In relation to the declaration?

1 A. Or declaration, sorry, wrong
2 terminology.

3 Q. Did you interact with them in relation
4 to the deposition?

5 A. No, neither.

6 Q. Okay. Describe your interaction with
7 Rugged Cross's counsel in preparing the
8 declaration.

9 A. We spent some time going over kind of
10 the history of the way the relationship was
11 developed between myself, my organization, and the
12 Rugged Cross team. We talked about the invention
13 and the launch of the product line that was the
14 Surroundview product line, the timing in which
15 that happened, and some of the events around the
16 launch of that product, which is what was included
17 in the declaration.

18 Q. Was this a phone call, in-person
19 meeting? What was it?

20 A. It was both phone call and
21 videoconference.

22 Q. How many phone calls and
23 videoconferences did you have?

24 A. I don't recall.

1 Q. More than one?

2 A. More than one.

3 Q. More than five?

4 A. Probably in that range, but I'm not
5 sure.

6 Q. How were you compensated for your time
7 working on this declaration?

8 A. I have not been compensated at all.

9 Q. Who put pen to paper? Did you write
10 the declaration?

11 A. I wrote parts of it. And, I guess, I
12 told the rest of it verbally, that someone else
13 put that pen to paper; and then I read it and
14 validated what was transcribed.

15 Q. And was the someone else Rugged Cross's
16 counsel?

17 A. It was.

18 Q. Since the time you began working on
19 this declaration, have you had any discussions
20 with any business people at Rugged Cross?

21 A. Yes, I've had conversations with Chris
22 Seaton but not in relation to this declaration,
23 just general business conversations.

24 Q. Can you be more specific? What do you

1 mean by general business conversations?

2 A. Well, in our partnership, we obviously
3 both work to promote the product lines, and
4 occasionally we will call to talk about movement
5 within the space and the industry and what
6 competition is doing out on the street, as well
7 as, you know, if we're seeing any type of, you
8 know, increases or declines in business as a
9 general rule. We also talk about opportunities to
10 promote the product; and upon occasion, Chris will
11 contact me with some leads on different
12 individuals that would like to help promote the
13 blind in which I'll reach out, contact them, and,
14 you know, foster a relationship there.

15 Q. Are you in partnership with Rugged
16 Cross in promoting Primos' blind products?

17 A. I don't know I would call it a
18 partnership. We are obviously a licensee of the
19 IP that they hold, and so -- in which that case,
20 we're a partner in that way; but I understand that
21 we're not the sole licensee. So we work together
22 to help promote the products that we build that
23 utilize that IP.

24 Q. Outside of being a licensee of Rugged

1 Cross, in what other ways are your interests
2 aligned?

3 A. They're not. We don't have anything
4 else, no other business engagement outside of
5 Rugged Cross, the IP, and the promotion of the
6 Surroundview blind, that's it.

7 Q. How did you prepare -- did you prepare
8 for your deposition today?

9 A. I just spent some time re-reading my
10 declaration just to refresh my memory because it
11 has been a while since it was originally composed;
12 and really that's it.

13 Q. Did you have any meetings in
14 preparation for today?

15 A. I did have one meeting earlier in the
16 week just to ensure that I had the latest copy,
17 the signed original, and had a copy of all of the
18 exhibits that were included in that submission,
19 and I did; and that was it.

20 Q. And who was that meeting with?

21 A. It was with my internal legal team
22 which is Joe, as well as the legal team for Rugged
23 Cross.

24 Q. And were there discussions with Rugged

1 Cross's counsel about the substance of your
2 deposition?

3 A. No, not about the substance. It's just
4 they asked me to validate and verify that
5 everything was good and I didn't need to make any
6 changes or tweaks, and I read it and validated
7 that it was fine as it was.

8 Q. Who do you interact with at Rugged
9 Cross?

10 A. Primarily Chris Seaton.

11 Q. Who else?

12 A. Occasionally, and it's been a while,
13 but his brother Tim.

14 Q. Anybody else?

15 A. No.

16 Q. When did you first meet Chris or Tim
17 Seaton?

18 A. I met them in February of, I believe,
19 it was 2017 at the NWTF, National Wild Turkey
20 Federation convention in Nashville, Tennessee.

21 Q. That's the trade show that you have
22 described in your declaration, correct?

23 A. Yes, sir.

24 Q. Now, I think you said 2017. I know in

1 your declaration you said 2016.

2 A. Maybe it was 2016. There is -- yeah,
3 it was 2016 because we launched it in 2018. So
4 yes, February, 2016.

5 Q. So the first time you met Chris Seaton
6 or Tim Seaton was in February, 2016 at the NWTs
7 trade show?

8 A. NWTF, yes.

9 Q. TF, okay.

10 A. Yeah.

11 Q. And you described that interaction in
12 your declaration, correct?

13 A. I did.

14 Q. Did he know who you were when you first
15 met him?

16 A. No. No, we had never met. I don't
17 think he knew who I was, not that I know of
18 anyway.

19 Q. And you were working at Primos at the
20 time, right?

21 A. I was, yes.

22 Q. Did he know of Primos at the time?

23 MR. WOLTER: Objection to form of
24 question.

1 BY MR. ABDELNOUR:

2 Q. You can answer.

3 A. Yes.

4 Q. Describe the nature of your first
5 discussion.

6 A. I was making rounds at the show looking
7 for new inventions or new products that would
8 either inspire us from a development standpoint
9 and/or look for opportunity to partner with
10 someone who has something unique. It's pretty
11 common practice for the product development team
12 at trade shows to walk and research, as well as
13 scope out the competition.

14 I walked down an aisle, saw a
15 product that was being presented that I thought
16 was very interesting. So I stopped, took a look;
17 upon looking at it, realized it was very
18 interesting and that it was very unique in nature,
19 was intrigued by the fact that this shooting house
20 or blind contraption they had built there was
21 utilizing a flexible, you know, woven fabric that
22 was kind of a one-way see-through fabric. And
23 immediately, it sparked my interest because we
24 were in the ground blind -- pop-up ground blind

1 business which utilizes flexible fabric. And we
2 didn't have anything like that or have seen
3 anything like that. And so I immediately walked
4 up, got some information on the product, went back
5 to my booth, thought about it, talked to a couple
6 people, went back to their booth and said we need
7 to talk immediately and tried to schedule a
8 meeting right there at the show.

9 Q. And what were you interested in doing
10 with this product that you had seen of Rugged
11 Cross's?

12 A. So the product they had presented and
13 was marketing and selling was a fixed shooting
14 house, if you will, so a fixed structure,
15 non-portable in nature; but it just utilized that
16 see-through fabric as the walls in that structure.
17 I saw the opportunity to take that same fabric,
18 apply it to a pop-up style blind which we were
19 manufacturing to add a new dimension, a new
20 technology to the category in which we were
21 operating in.

22 So my thought process at the
23 moment was, hey, if you're going to go chase this
24 permanent shooting house, you know, product, then

1 let's work together utilizing the fabric with our
2 brand and our designs to, you know, include it or
3 employ it on a pop-up style blind.

4 Q. Did -- was it your idea to put that
5 mesh in a pop-up blind, or did somebody else
6 suggest that to you?

7 A. No, it was my idea at the time.

8 Q. Okay. So I want to unpack that just a
9 little bit. So the product that Rugged Cross was
10 displaying was a fixed structure, almost like a
11 shed; fair enough?

12 A. Fair.

13 Q. It had mesh material that you were
14 particularly interested in, correct?

15 A. Correct.

16 Q. Was there anything about the structure
17 of the shed outside of this mesh material that you
18 thought you were interested in for use with a
19 Primos product?

20 A. No.

21 Q. Did the idea of using this mesh in a
22 pop-up blind occur to you immediately upon seeing
23 it, or was this after you went back and sat down
24 and thought about it for a while?

1 MR. WOLTER: Objection as to beyond
2 scope.

3 BY MR. ABDELNOUR:

4 Q. You can answer.

5 A. It was -- I don't recall exactly. It
6 was fairly immediate. I mean, it was kind of
7 obvious in nature. When I saw it, I was, like,
8 yes, that would work. And I think when I went
9 back -- again, just recollection, it's many years
10 ago. I think when I went back, I thought about
11 the fact that, you know, one, could we do it?
12 And, two, is there -- do they have IP on it? So
13 that's when I immediately went back and engaged to
14 figure that part out to see, hey, is this
15 something that we could go chase, or do I need to
16 work with these guys? That's when I decided I
17 needed to work with them.

18 Q. So when you went back, you engaged with
19 Mr. Seaton again --

20 A. Uh-huh.

21 Q. -- within some short period of time
22 same day, right?

23 A. Yeah.

24 Q. And then what was the nature of that

1 next conversation?

2 A. It was just that I'd like to sit down
3 and talk through their invention with them, see
4 where they were at on the development of the
5 fabrics, the IP, the cost, and whether or not it
6 would be applicable to use in our product, in our
7 design; and I just really wanted to forge that
8 relationship out of the gate because when I saw
9 it, I knew that there would be others asking that
10 same question of them immediately.

11 And so when I learned that that
12 was their first real outing into the public world,
13 if you will, with their product, a big show where
14 it was seen by lots of people, I knew it wouldn't
15 take long for someone to jump on the idea. So I
16 was very eager to engage with them and get a
17 relationship started.

18 Q. And you were talking to Chris Seaton,
19 is that right?

20 A. I was, yes.

21 Q. So what did Mr. Seaton say about IP?
22 How did he answer your questions?

23 A. I don't recall exactly what his answers
24 were that day. I only recall that over a period

1 of time thereafter, it could have been within that
2 week or maybe a little bit longer, we learned that
3 they had -- or at least we were told that they
4 were working on IP and had some things filed, but
5 nothing had issued yet; and that's the first I
6 learned of it. But I don't recall exactly what
7 time or when that was that I learned that.

8 Q. How did you leave the conversation?

9 A. We exchanged information and vowed to
10 follow-up after we got through that show season
11 and got done with all the hustle and bustle of
12 what that was, and we did.

13 Q. And when did you next connect with
14 Chris Seaton or Tim Seaton?

15 A. I don't recall the date or time, but it
16 was fairly soon afterwards. I would think within
17 a week or two of that meeting we were -- or maybe
18 even sooner.

19 Q. And what was the nature of that next
20 discussion?

21 A. Just more of the same conversation of,
22 you know, really want to work with you, would like
23 to figure out how we can make this happen. On our
24 side, we were trying to figure out, you know, the

1 best approach and figure out if we could lock it
2 up, so to speak, and get an exclusive with the
3 Seatons. And I'm sure on their side, they were
4 trying to figure out their best route forward, as
5 well, that would be most advantageous for them
6 financially. So it was a little bit of
7 negotiation back and forth of figuring out how
8 that relationship would work.

9 Q. So when did you consummate the
10 relationship in terms of an agreement to work
11 together?

12 A. Verbally, I don't recall. Obviously
13 there was a written formal agreement that did
14 eventually come to be. I want to say it was
15 somewhere around 12 months later, but I don't
16 recall what those dates were.

17 Q. What about verbally? And I'm not
18 asking for specifics, but in relation to that
19 first meeting at the trade show.

20 A. I think within the first two or three
21 months, we both -- both parties realized that we
22 did indeed want to work together, and we were
23 going to formulate a plan to get that
24 accomplished. Again, I don't know, like, when we

1 kind of -- a formal handshake or anything took
2 place, but I think back and forth through
3 conversations and e-mail, you know, we came to the
4 conclusion, yeah, we're going to do this together.

5 Q. In your declaration, in paragraph 47,
6 for example, you state that you signed a license
7 with Rugged Cross in 2017?

8 A. Uh-huh.

9 Q. Is that right?

10 A. Yeah, that sounds about the right
11 timing. Yes, sir.

12 MR. WOLTER: Dennis, excuse me for
13 interrupting, what paragraph are you on?

14 Mr. ABDELNOUR: I said 47, yeah, under
15 the heading licensing.

16 BY MR. ABDELNOUR:

17 Q. Can you be more specific? Do you know
18 when in 2017 that was signed?

19 A. I don't recall.

20 Q. And those details aren't in your
21 declaration, right?

22 A. No, I didn't put it in that at all
23 because I don't recall the exact date, but it is a
24 formal agreement. So those dates could be pulled

1 or researched.

2 Q. Your declaration didn't attach or
3 include this license, correct?

4 A. You said it did not?

5 Q. It did not.

6 A. Not, correct. I do not have that as an
7 appendix.

8 Q. So did you say -- I think did you say
9 not correct. Let me just get the Q and A so we
10 don't have a double negative. You agree with me
11 that that license is not attached to your
12 declaration?

13 A. I agree, yes.

14 Q. Okay. Now, you state that the license
15 of 2017 was an exclusive license, correct?

16 A. Correct.

17 Q. What does that mean?

18 A. The purpose of that was to make sure
19 that they were not licensing that technology to
20 any other pop-up ground blind manufacturer within
21 the space.

22 Q. In 2017 Rugged Cross did not have any
23 issued patents, correct?

24 A. That's correct.

1 MR. WOLTER: Object for lack of
2 foundation, but --

3 BY MR. ABDELNOUR:

4 Q. Rugged Cross had open patent
5 applications, correct?

6 A. Correct.

7 MR. WOLTER: Same objection.

8 BY MR. ABDELNOUR:

9 Q. So I take it you take on the risk that
10 patents may never issue, right?

11 A. Correct.

12 Q. I take it you take on the risk that
13 patents may issue with a scope that may not be as
14 valuable as you would be hoping for; fair?

15 A. That's fair.

16 Q. Okay. The terms of the exclusive
17 license are not described in your declaration,
18 correct?

19 A. Correct.

20 Q. So, for example, we don't know what
21 Primos might be paying to Rugged Cross and vice
22 versa; fair?

23 A. Fair.

24 Q. Is it fair for me to assume that you

1 would have had a license to any patent in any
2 claim that would have issued to Rugged Cross?

3 A. I don't know how to answer that. My
4 assumption is that yeah, you know, the agreement
5 was entered into in respect to, you know, the
6 claims that they were wanting to get granted or
7 allowed; and that's what we were interested in.
8 So yes, in that regard, but I don't know about any
9 application in any claims. There were claims that
10 were specific to our -- you know, what we were
11 wanting to do with the technology and our
12 business.

13 Q. Would there have been terms in this
14 agreement that would deal with the possibility
15 that no IP ever issues?

16 A. Yeah. Yes.

17 Q. I take it those aren't described in
18 your declaration?

19 A. Correct.

20 Q. Now, when Rugged Cross is trying to get
21 these patents and paying lawyers to do patent work
22 for them, is Primos contributing to that
23 financially?

24 A. No.

1 Q. Is Primos paying anything to get these
2 patents prosecuted?

3 A. No.

4 Q. Is it your understanding that that
5 financial burden was undertaken solely by Rugged
6 Cross?

7 A. Yes.

8 Q. In paragraph -- turn to paragraph 19 of
9 your declaration.

10 MR. WOLTER: What paragraph?

11 MR. ABDELNOUR: 19.

12 BY MR. ABDELNOUR:

13 Q. Are you there?

14 A. Yep.

15 Q. In paragraph 19 you state that Primos,
16 with the help of RCHB, developed its double bull
17 Surroundview Hunting Blinds. Do you see that?

18 A. Yep.

19 Q. Can you describe what RCHB did to help
20 Primos develop the Surroundview Hunting Blinds?

21 A. Their contribution was purely the
22 fabric, specifically the see-through fabric.

23 Q. And that's it?

24 A. That's it.

1 Q. I take it they didn't do -- they didn't
2 offer anything in terms of the structure of the
3 blind --

4 A. No.

5 Q. -- fair?

6 A. Fair.

7 Q. Did they have any input as to where you
8 would deploy the mesh, for example, whether it
9 would be 360 degrees around the tent or 270
10 degrees? Did they contribute anything to those
11 ideas?

12 A. No.

13 Q. Did they contribute anything to the
14 type of material that Primos would be using for
15 any panels that were not mesh?

16 A. No.

17 Q. When did Primos first begin work on the
18 Surroundview Hunting Blind?

19 A. I don't recall exactly; but it was not
20 long after our meeting and conversations at NWTF
21 in 2016. Possibly towards the end of 2016, after
22 we had -- I don't recall if it was before or after
23 the written agreement was in place; but once we
24 did decide that we were going to work together, I

1 requested a sample roll of the fabric that they
2 had developed. And so it probably was somewhere
3 around the end of 2016, possibly as late as
4 beginning of 2017 that I got that fabric and
5 started prototyping.

6 Q. As a housekeeping matter, do you
7 understand that you are being offered to testify
8 as a fact witness about your personal experiences
9 in this case; is that right?

10 A. That's correct.

11 Q. You're not being offered as an expert
12 witness, is that correct?

13 A. That's correct.

14 Q. Okay.

15 MR. WOLTER: I will object to the lack
16 of foundation and form.

17 BY MR. ABDELNOUR:

18 Q. Primos released the Surroundview
19 Hunting Blind in 2018, correct?

20 A. Correct.

21 Q. And the Surroundview Hunting Blind was
22 using the Rugged Cross mesh material, right?

23 A. Correct.

24 Q. And that was the first Primos blind

1 using the Rugged Cross material, right?

2 A. That is correct.

3 Q. Has Primos introduced other hunting
4 blinds that use the Rugged Cross material?

5 A. I'm sorry, what was the question?

6 MR. ABDELNOUR: Tracy, would you read
7 that one back?

8 (The record was read.)

9 A. Yes.

10 BY MR. ABDELNOUR:

11 Q. How many?

12 A. Probably in the neighborhood of eight
13 or nine SKUs total.

14 Q. What do you mean by SKU?

15 A. Individual unique products.

16 Q. Now, are these eight or nine SKUs
17 fundamentally different tents, or are they
18 different versions of the same thing?

19 A. Depends on how you want to look at it.
20 Subtle tweaks in design elements could be
21 differences in size and footprint of the overall
22 blind, different window configurations, different
23 camo or color treatments. All of these would
24 constitute a new and unique product.

1 Q. How many of them are under the
2 Surroundview trade term?

3 A. All of them.

4 Q. Okay. They're all Surroundview tents?

5 A. Correct.

6 Q. Does Primos have any other hunting
7 blinds under a different branding?

8 A. We do. We sell some blinds under just
9 the Primos brand, not the Double Bull Surroundview
10 heading or title.

11 Q. And do those contain the Rugged Cross
12 material?

13 A. They do not.

14 Q. Do you still sell Double Bull blinds
15 without Rugged Cross material?

16 A. We do.

17 Q. Did you ever pause sales in the
18 Surroundview blinds after you introduced them in
19 2018?

20 A. No, we never paused sales. We
21 certainly went through a period where we were out
22 of inventory, so there were no sales taking place,
23 but not intentionally.

24 Q. Okay. Turn to paragraph 48 in your

1 declaration?

2 A. Sure. Yes, sir, I'm there.

3 Q. At 48 -- paragraph 48, you state that
4 Primos later transitioned to a non-exclusive
5 license with respect to its Surroundview ground
6 blinds. Do you see that?

7 A. I do.

8 Q. What do you mean transition to a
9 non-exclusive license?

10 A. At the time, we went to a licensing
11 program where Rugged Cross was able to license
12 that same technology to other manufacturers in our
13 space.

14 Q. Let me see if I can try to unpack that
15 a little bit. Was the original exclusive license
16 amended to become non-exclusive, is that what
17 you're telling us?

18 A. I was not the person responsible for
19 making those changes and negotiating those changes
20 with Rugged Cross at the time. I was managing a
21 different portion of our business at that point.
22 My understanding is that it was a new agreement
23 that was a non-exclusive agreement.

24 Q. What happened to the exclusive

1 agreement? Was it terminated?

2 A. Again, I wasn't managing at that time.

3 So I don't know exactly what they did with it.

4 Q. When was the non-exclusive agreement
5 signed?

6 A. I don't recall.

7 Q. Other than being non-exclusive, your
8 declaration does not describe the terms of that
9 license; true?

10 A. True.

11 Q. And same question I asked earlier, but
12 with respect to this non-exclusive license, it's
13 true that it is not an exhibit or otherwise
14 submitted in this Patent Office proceeding;
15 correct?

16 A. Correct.

17 Q. Why did Primos shift from an exclusive
18 license with Rugged Cross to a non-exclusive
19 license?

20 A. Again, I was not managing that portion
21 of the business or making the decisions on behalf
22 of the business at that time. My understanding
23 and the way I interpreted it was that we were not
24 able to realize the benefit of an exclusive

1 license at that time because there were other
2 manufacturers building products utilizing the
3 technology. So we were not able to experience
4 that non-exclusive, you know, benefit to the
5 original agreement.

6 Q. At the time that -- at that time did
7 Rugged Cross have issued patents that could be
8 enforced?

9 MR. WOLTER: Object for lack of
10 foundation.

11 A. I don't recall the timing in which
12 their first claims were allowed and issued.
13 Again, I wasn't as close to that side of the
14 business at that point in time, otherwise I
15 probably would have been more intimate with it;
16 but I don't -- I don't recall the timing of the
17 new non-exclusive agreement versus the timing of
18 the issuance of their IP. I don't know which one
19 came first.

20 BY MR. ABDELNOUR:

21 Q. Did Primos have discussions with Rugged
22 Cross about the enforcement of its patents so that
23 Primos could realize the benefit of an exclusive
24 license?

1 A. I feel certain they did.

2 Q. And what were the nature of those
3 discussions?

4 A. I wasn't necessarily involved in all of
5 those discussions, so I don't know. Again, it
6 would be speculation on my part of what was
7 discussed and how it was discussed; but being on
8 this side, I do believe that, you know, given the
9 fact that we were invested in the exclusive
10 agreement, the fact that we were not able to
11 experience that, we obviously were very interested
12 in them achieving claims and protection and
13 displeased with the fact that we weren't getting
14 that protection.

15 Q. So I understand that you were only
16 somewhat involved. Tell me your involvement in
17 those discussions with Rugged Cross about
18 enforcement of patents?

19 A. Honestly I tried to stay clear of
20 conversations directly with Rugged Cross as it
21 pertained to enforcement of those patents. We had
22 internal legal counsel at the time that was
23 engaging them in those conversations, and I stayed
24 clear of it.

1 My role at that time, again, was
2 not to be intimately involved with this side of
3 the business. And so my relation with Chris was
4 purely more of a friendship, you know, or a
5 business acquaintance; and we talked about, again,
6 business stuff, but I steered clear of engaging
7 with him specifically about the IP and the
8 protection that it did or didn't provide.

9 Q. I take it that the fundamental terms of
10 your license arrangement with Rugged Cross changed
11 between the period when it was exclusive to when
12 it was non-exclusive; is that fair?

13 A. I would say that's fair.

14 Q. Based on your declaration and the fact
15 that I don't have either of those licenses in the
16 record, I don't know what the nature of those
17 differences is; correct?

18 A. Correct.

19 MR. WOLTER: Object to form.

20 BY MR. ABDELNOUR:

21 Q. Let me ask the same question in a
22 better way. Without that information, I can't
23 know the nature of the differences between the two
24 different licenses; fair?

1 MR. WOLTER: Again, object to form.

2 BY MR. ABDELNOUR:

3 Q. You can answer.

4 A. Fair.

5 Q. To the extent that there are any
6 payments being made on either of these licenses,
7 did you describe those payments in your
8 declaration?

9 A. I did not.

10 Q. So, for example, the amount of any
11 royalty payments is not described in the
12 declaration; correct?

13 A. That is correct.

14 Q. There's no invoices attached to your
15 declaration, correct?

16 A. That is correct.

17 Q. Your declaration does not disclose unit
18 sales of Surroundview products, correct?

19 A. Correct.

20 Q. It does not disclose revenue or profits
21 associated with the Surroundview products,
22 correct?

23 A. Correct.

24 Q. Your declaration does not disclose

1 Primos' market share with respect to these
2 products, correct?

3 A. That's correct.

4 Q. Did Primos have an expectation that
5 Rugged Cross would be the party that would enforce
6 the IP against other competitors in the markets
7 with products having see-through mesh?

8 A. Yes.

9 Q. And why is that?

10 A. Because they were the inventors and
11 retained and maintained the ownership of that IP;
12 and by nature of most of our agreements and our
13 space, if you owned the patent, it's your job to
14 defend it.

15 Q. Maybe I can fast forward to this Patent
16 Office proceeding. Is the same true here? Is it
17 Primos' expectation that Rugged Cross bears the
18 burden of defending this Patent Office proceeding?

19 A. Yes.

20 Q. Is Primos contributing to the defense
21 of this patent in any way possible, put to the
22 side your declaration?

23 A. Not to my knowledge.

24 Q. Turn to paragraph 31 of your

1 declaration. Let me know when you're there.

2 A. Okay.

3 Q. At the bottom -- sorry, the second
4 sentence of paragraph 31 talks about competitors
5 to Primos selling hub-style ground blinds with
6 one-way see-through mesh. Do you see that?

7 A. Yes.

8 Q. And in the next sentence, you refer
9 specifically to GSM and Rhino Blinds. Do you see
10 that?

11 A. I do.

12 Q. You state that they came out with
13 one-way see-through blinds in 2019 or in 2020. Do
14 you see that?

15 A. I do.

16 Q. And you state that they came out with
17 those blinds at lower prices than the Surroundview
18 blinds, correct?

19 A. That is correct.

20 Q. Is that based on your observation of
21 the market?

22 A. It is.

23 Q. And you're familiar with Rhino Blinds,
24 correct?

1 A. I am.

2 Q. And you understand that Rhino Blinds
3 were sold by Outdoor Products, Inc., OPI; correct?

4 A. Uh-huh; yes.

5 MR. WOLTER: Objection. Lack of
6 foundation.

7 BY MR. ABDELNOUR:

8 Q. And that OPI was run, controlled by
9 DBR? Are you familiar with DBR?

10 A. I am not familiar with DBR.

11 Q. You're familiar that OPI sold its
12 hunting blind business to a company called
13 Feradyne?

14 A. I am aware.

15 Q. And whether you're aware or not, I can
16 represent to you that DBR is the petitioner in
17 this case who had a level of control over OPI. So
18 my question to you is: DBR, by virtue of this
19 proceeding and litigation, is taking the position
20 that the 535 patent is invalid. Did you know
21 that?

22 A. I knew that that was the stance or
23 what's being asserted.

24 Q. Are you aware that GSM and Rugged Cross

1 have an ongoing lawsuit?

2 A. I am not. Not familiar.

3 Q. Okay. Did the competition with GSM and
4 Rhino Blinds have an impact on Primos' sales?

5 A. I believe it did.

6 MR. WOLTER: Object to lack of
7 foundation.

8 BY MR. ABDELNOUR:

9 Q. Did Primos' sales go down?

10 A. Correct.

11 Q. Was Primos offering its Surroundview
12 products at a price point that was higher than GSM
13 and Rhino?

14 A. Yes, we were.

15 Q. Is that price point due in part to the
16 exclusive nature of your IP relationship with
17 Rugged Cross?

18 A. It absolutely has an impact on the
19 price.

20 Q. Was Primos the beneficiary of an
21 exclusive license with Rugged Cross in that it
22 could charge higher prices than the market might
23 otherwise dictate?

24 A. No, I don't agree with that. I think

1 that we -- if you look at the history of the
2 Double Bull product line, it was always priced at
3 a premium and lived at a premium price point for
4 years and years prior to the invention of the
5 Surroundview.

6 As a matter of fact, we only
7 charged what I would consider a slight premium for
8 the Surroundview technology above and beyond what
9 the already established price points were for
10 Double Bull. So what wasn't a problem is the fact
11 that I had, per my agreement, obviously had an
12 obligation to pay royalties on the licensing of
13 the technology, whereas my competition did not.

14 Q. And so Primos' reaction was to
15 terminate the exclusive license, correct?

16 MR. WOLTER: Objection. Lack of
17 foundation.

18 A. I don't believe that to be our
19 reaction. I think we continued with our agreement
20 for at least two years, possibly longer. Again, I
21 transitioned to a different role. So it wasn't
22 part of my day-to-day management.

23 BY MR. ABDELNOUR:

24 Q. Now, Rugged Cross doesn't compete in

1 the marketplace against Primos, correct?

2 A. That's correct.

3 Q. So in an exclusive license arrangement
4 with Rugged Cross, Primos would be the only player
5 in the hunting blind space that would benefit from
6 the IP; fair?

7 A. For pop-up blinds, that's fair.

8 MR. WOLTER: I object to that question
9 as lack of foundation.

10 MR. ABDELNOUR: Mr. Harris, it's been
11 about an hour and five. I'd suggest a ten-minute
12 break if you're okay with that.

13 THE WITNESS: It's up to you guys. I'm
14 fine.

15 MR. WOLTER: I'm good with a break.

16 (A brief recess was taken.)

17 BY MR. ABDELNOUR:

18 Q. So, Mr. Harris, I take it you have a
19 number of years of experience in the hunting blind
20 industry; right?

21 A. I do.

22 Q. Do you have a technical background?

23 A. I do not. From a schooling
24 perspective, I have a degree in business

1 management, marketing. So I'm not an engineer by
2 trade, but I've worked closely with product and
3 product development in the hunting and shooting
4 space for all of my professional career, so for
5 the last 22ish years.

6 Q. So I take it you're well familiar with
7 the products in the hunting blind space?

8 A. Correct.

9 Q. And the competition?

10 A. Yes, sir.

11 Q. Are you familiar with the manufacturer
12 of products in the hunting blind space?

13 A. Several.

14 Q. In terms of technical understanding, do
15 you have any background in materials?

16 A. Only what I've gathered and learned
17 through the job itself. You know, you obviously
18 pick up things over time, but I've never had any
19 formal training in raw materials.

20 Q. And same question with respect to
21 fabrics, do you have any technical background in
22 fabrics?

23 A. Again, same answer, just what I've
24 learned over the years of being fairly hands on.

1 Q. Okay. And then same question with
2 respect to textiles generally?

3 A. Correct, same answer.

4 Q. Okay. In your declaration, and
5 specifically at paragraph 32, you talk about
6 long-felt need, correct?

7 A. I did, yes.

8 Q. And the long-felt need that you have
9 identified is for a hunting blind with no blind
10 spots, fair?

11 A. Correct.

12 Q. And from your perspective, that need is
13 solved in part due to the use of the one-way mesh,
14 correct?

15 A. Correct.

16 Q. Are you aware of a long-felt need for
17 one-way viewing materials generally?

18 A. I would say as a user and someone who
19 has worked in the space, I do recognize the need
20 to be able to see out of a blind, yet not be seen
21 while doing so.

22 Q. And I appreciate that. So my question
23 is a little bit different. Are you aware of a
24 need for one-way viewing material in all contexts,

1 even including outside of hunting blinds?

2 MR. WOLTER: Objection to lack of
3 foundation and form. I think he asked and
4 answered that question.

5 BY MR. ABDELNOUR:

6 Q. You can answer.

7 A. I think one-way see-through materials
8 in general do have a need, just I mean in basic
9 needs like one-way windows in childcare
10 facilities, for instance. My church uses that, so
11 that jumps to the top of my mind; but I think it's
12 needed in a lot of different applications.

13 Q. Are you aware of any one-way viewing
14 materials that existed before the Rugged Cross
15 patents?

16 A. For blinds specifically?

17 Q. Generally.

18 A. Not fabric, woven fabric; but as I just
19 stated, there's obviously coatings that you can
20 put on windows and mirrors that essentially
21 provide that same result.

22 Q. Are you aware of one-way viewing fabric
23 materials outside the context of hunting blinds?

24 A. Not prior to seeing the invention

1 presented by the Seatons.

2 Q. Would you agree that the need for a
3 hunting blind without any blind spots was a need
4 for a feature in functionality?

5 A. Yeah, I would agree with that.

6 Q. Would you agree that the need for a
7 hunting blind without blind spots was not a
8 technological need?

9 A. I don't know that I would agree with
10 that. I mean, we'd have to tear apart and define
11 technological need. I could argue that having a
12 hub and rod for technology to create a pop-up
13 blind is a need, but some may argue that it is a
14 feature. So, I guess, I have a hard time defining
15 the difference between technology and a feature.
16 To me they're one and the same.

17 Q. I understand. In your declaration
18 you've listed and quoted various third-party
19 materials under your section long-felt need,
20 correct?

21 A. Yes.

22 Q. Is it fair to say that all of those
23 materials are made in the context of describing
24 the Primos Surroundview blind?

1 A. I'm not sure I understand the question.
2 Let me review the paragraph that you're referring
3 to.

4 Q. So, for example, on paragraph 33, you
5 state there's an article referring to the
6 Surroundview blinds?

7 A. Correct.

8 Q. All right. So you agree that the
9 article quoted in paragraph 33 is a discussion
10 about the Surroundview blinds, right?

11 A. Correct.

12 MR. WOLTER: Object. Lack of
13 foundation. Is there an exhibit you're referring
14 to? Sorry.

15 BY MR. ABDELNOUR:

16 Q. Paragraph 34, as well, you've quoted an
17 article that is discussing the Surroundview
18 blinds, correct?

19 A. Correct.

20 Q. Okay. And so in both of those
21 instances, the discussion of the problem is being
22 made in association with the discussion of the
23 solution; fair?

24 A. Fair.

1 Q. Have you cited any materials that
2 describe the problem of long-felt need, as you've
3 described it, outside the context of the
4 Surroundview blinds?

5 A. I don't think so.

6 Q. Did you do any research to determine --
7 actually strike that.

8 When you were looking at the
9 question of long-felt need, at what point in time
10 were you opining on a long-felt need? In other
11 words -- let me start over. I don't think that
12 was very clear. You agree with me that you have
13 to define the long-felt need as of a particular
14 time; correct?

15 MR. WOLTER: Objection. Lack of
16 foundation.

17 A. Yes.

18 BY MR. ABDELNOUR:

19 Q. For example, today there is not a
20 long-felt need for one-way mesh because those
21 products have been on the market for five years;
22 right?

23 A. Correct.

24 Q. So when you were looking at the

1 question of long-felt need, at what point in time
2 were you looking at whether there existed a
3 long-felt need?

4 A. I don't know that I can pinpoint the
5 timeframe, but the fact that we recognized that
6 need can be displayed through the products that
7 were developed and invented prior to the
8 Surroundview. We actually invented and have IP on
9 a window configuration designed for pop-up style
10 blinds that allows greater visibility while inside
11 the blind.

12 So as an organization, we, as a
13 team, were working on solutions of some sort or
14 another over time to give users more visibility
15 while in the blind and hunting. And up until the
16 point before being introduced to Surroundview
17 fabric, we were trying to accomplish that via
18 window styles, configurations, et cetera.

19 Q. Was Primos attempting to solve the
20 problem of blind spots by developing its own
21 one-way viewing fabric?

22 A. No.

23 Q. Did Primos ever attempt to develop a
24 one-way viewing fabric?

1 A. No, not to my knowledge. I did not.

2 Q. Did Primos ever fail at attempting to
3 develop a one-way viewing fabric?

4 A. Not to my knowledge.

5 Q. Are you aware of anyone in the industry
6 attempting to develop a one-way viewing fabric?

7 A. No.

8 Q. And same similar question, are you
9 aware of anybody in the industry attempting and
10 then failing to develop a one-way viewing fabric?

11 A. Not to my knowledge.

12 Q. Would you agree with me that you could
13 design a pop-up blind that uses one-way viewing
14 fabric in certain positions, but that there would
15 still be blind spots, for example, if you only put
16 the one-way mesh on one side of the tent?

17 A. Sure.

18 MR. WOLTER: Objection. Beyond scope
19 and lack of foundation.

20 BY MR. ABDELNOUR:

21 Q. Before Rugged Cross, Primos had hunting
22 blinds that used mesh material, correct?

23 A. Correct.

24 Q. At paragraph 41, you describe a

1 shoot-through mesh?

2 A. Correct.

3 Q. Why don't you turn there?

4 A. Okay. I'm there.

5 Q. What was the difference between the
6 shoot-through mesh that Primos was using on
7 hunting blinds before the Rugged Cross material
8 and the Rugged Cross mesh?

9 A. Fabric construction is different. The
10 way that the fabric is woven, it is -- the
11 visibility through that mesh is identical from
12 either side. So it doesn't matter which side of
13 that mesh you were on, your visibility is the
14 same, which is quite different from the one-way
15 see-through mesh. It is also very much thinner
16 and was camouflage on both sides.

17 Q. So the prior shoot-through mesh was
18 camouflage, correct?

19 A. Correct.

20 Q. How is it camouflaged? Was it ink
21 printed on the mesh material?

22 A. I honestly don't know the exact process
23 in applying that camouflage. I assume it is
24 sublimation, but I don't know that for certain. I

1 don't think it's ink jet printed. Based off the
2 cost of the fabric, that would be an expensive way
3 to do it.

4 Q. Okay. But you're not certain?

5 A. But I'm not certain.

6 Q. You said camouflage was on both sides
7 of the shoot-through mesh, is that correct?

8 A. That's correct.

9 Q. Were there ever any implementations
10 where the camouflage was only applied to one side
11 of the shoot-through mesh?

12 A. Not that I recall.

13 Q. If somebody took the prior shoot-
14 through mesh and applied a camouflage design on
15 one side and applied a black color to the other
16 side, would that shoot-through mesh be see through
17 -- one-way see through?

18 MR. WOLTER: Objection. Beyond the
19 scope of his direct testimony and lack of
20 foundation.

21 A. My experience would tell me probably
22 not; but without doing it, I couldn't tell you
23 with certainty. The mesh -- the size of the mesh,
24 if you will, the whole density of the mesh is

1 really what made that fabric to where you could
2 see through equally from either side.

3 BY MR. ABDELNOUR:

4 Q. So that whole density would have been
5 the key, correct?

6 A. I believe so, yes.

7 Q. In your declaration, you describe
8 praise for the Surroundview and success of the
9 Surroundview; fair?

10 A. Yes.

11 Q. In your view, that praise and success
12 is due to the one-way see-through mesh panels,
13 correct?

14 A. Correct.

15 MR. WOLTER: Objection. The
16 declaration speaks for itself.

17 BY MR. ABDELNOUR:

18 Q. In terms of the difference between the
19 Surroundview blinds and the blinds that Primos and
20 others were offering on the market before, it's
21 your view that the one distinguishing feature was
22 the unique mesh material that you've described;
23 correct?

24 A. That was the most significant

1 distinguishing feature, yes.

2 Q. And at paragraph 21, in fact, you say
3 that that was the one feature that distinguished
4 it; correct?

5 A. If it says that I said it, yes. Sorry,
6 I'm trying to get to that paragraph.

7 Q. Take your time. It's the last sentence
8 in paragraph 21.

9 MR. ABDELNOUR: And then, Tracy, when
10 he gets there, would you just read the question
11 back so we have a clean question and answer?

12 (The record was read.)

13 A. Yes; correct.

14 BY MR. ABDELNOUR:

15 Q. In Primos hunting blinds, the inside
16 surface of those blinds have typically been black
17 so that you hide occupants inside the blind;
18 right?

19 A. Correct.

20 Q. Why would the inside surface of the
21 blind be black? How does that work?

22 A. The black color on the inside prevents
23 reflection of light coming through any opening,
24 window, door, seem, et cetera, which then just

1 keeps the interior of the blind in a kind of
2 subdued level, low-light level, which makes it
3 harder to see inside.

4 Q. And would that principle apply to the
5 entirety of the blind?

6 MR. WOLTER: Objection. Lack of
7 foundation.

8 BY MR. ABDELNOUR:

9 Q. You can answer.

10 A. Make sure I understand. You're asking
11 if it's the entirety of the blind? Generally
12 speaking, yes, the entire inside of the blind is
13 coated in black, if that's what the question was.

14 Q. Yes. Turn to paragraph 25 of your
15 declaration, please.

16 A. Okay.

17 Q. In paragraph 25, you describe a video
18 posted on various sites, including YouTube,
19 correct?

20 A. Correct.

21 Q. And the video concerns the Surroundview
22 blinds and their introduction, right?

23 A. Correct.

24 Q. And a link to the YouTube version of

1 that video is hyperlinked into your paragraph 25,
2 right?

3 A. Correct.

4 Q. So we can click on it, and the board
5 can click on it and watch the same video, right?

6 A. Correct.

7 Q. All right. In the last sentence, you
8 state that the video quickly amassed 4 million
9 impressions. Do you see that?

10 A. I do see it.

11 Q. With about 230,000 users engaging with
12 initial launch post. Do you see that?

13 A. I do.

14 Q. What is the support for that statement?

15 A. I believe at the time I was looking at
16 the number of views that we had acquired over --
17 since the video had been posted. And the 230,000
18 users engaging with the launch post, I don't
19 recall if that was solely from the YouTube video
20 and/or also the videos reposting on other social
21 media platforms.

22 Q. How would I verify the numbers that you
23 have provided there?

24 A. I'm not sure. I think you can see the

1 number of views specifically on the YouTube videos
2 that were produced, which there were multiple; but
3 I think -- I don't know if you would actually be
4 able to go back and track down any of the
5 additional engagement provided through the rest of
6 our social media platforms, but maybe you can.
7 I'm not familiar enough to know.

8 Q. So in preparing this declaration, did
9 you go out and pull together all of this data in
10 one place?

11 A. It's not in one place. I reviewed some
12 of the data that we had from the time by going
13 back on our platforms and looking.

14 Q. And is any of the information that you
15 reviewed information that would only be in the
16 possession of Primos?

17 A. I don't recall. I don't think so, but
18 I don't recall.

19 Q. So let me share my screen and put up
20 the declaration.

21 A. Sure.

22 Q. Okay. You see paragraph 25?

23 A. I do.

24 Q. All right. So for the record, I want

1 to click on the hyperlink in the document and go
2 to the YouTube page. So I am going to do that.
3 And I'm not sure if -- can you see the video when
4 I'm playing it?

5 A. Yeah. Yeah, we can see your screen.

6 Q. Let me play through the add. Okay. So
7 let me pause there. Is this the video that you
8 hyperlinked in your declaration?

9 A. It is.

10 Q. And it's called Double Bull
11 Surroundview Real Hunters' Reactions, correct?

12 A. Right.

13 Q. And underneath that title, it appears
14 it was posted by Primos Hunting, right?

15 A. Correct.

16 Q. And Primos Hunting has 116,000
17 subscribers, is that correct?

18 A. That's correct.

19 Q. And that's what it says here. That's
20 as of today, right?

21 A. Yes, I believe that would be correct.

22 Q. And so if I look at the data on this
23 particular video, it says it was posted six years
24 ago, right?

1 A. Yes.

2 Q. And it says it has 113K views, 113,000
3 views, correct?

4 A. Correct.

5 Q. And it's got 13 comments, correct?

6 A. That's what I see, yes.

7 Q. Is there any indication on this site of
8 the 4 million impressions?

9 A. No, not on that specific post.

10 Q. So to get to 4 million, I would have to
11 go to different posts?

12 A. Correct, and the 4 million is
13 engagement. So that could be -- or impressions,
14 sorry, not engagement. But impressions, so that
15 could be either seen through a YouTube video
16 and/or content that was produced and put out not
17 only by us but by others on social media. There
18 were at the time of launch multiple posts
19 generated by many individuals and/or media groups
20 at the trade show at the time, some of which are
21 referenced in the declaration.

22 Q. The video at the YouTube page is a
23 promotion for the Surroundview blind, correct?

24 A. Yes, it is.

1 Q. There is a comment on this page, it's
2 the second one down, and it was posted six years
3 ago by @Darth.Fluffy. Do you see that?

4 A. I do see it, yeah.

5 Q. This commenter says, "It's like those
6 advertising coverings that they put on buses." Do
7 you see that?

8 A. I do.

9 Q. Do you know what he's talking about?

10 A. I do.

11 Q. Can you explain what you understand
12 that to mean?

13 A. My assumption is it is the laminate or
14 vinyl that they put on the side of a bus window
15 that the passengers on the inside can see out, but
16 the people on the outside cannot see in would be
17 my guess.

18 Q. Okay. And you're familiar with
19 advertisements on buses like that?

20 A. I am, yes.

21 Q. Do you know how those advertisements
22 allow for one-way viewing?

23 MR. WOLTER: Object to form and lack of
24 foundation.

1 A. My assumption is it works in the same
2 way that our woven fabric works.

3 BY MR. ABDELNOUR:

4 Q. So, for example, on the outside of the
5 bus, you would have an advertisement, like,
6 whatever it may be; correct?

7 A. Yes.

8 Q. On the inside of the bus, you would not
9 have the advertisement. You would have a single
10 color, correct?

11 A. A solid color, yes.

12 Q. A solid color. Typically, it would be
13 dark so that you could -- so that somebody inside
14 the bus could see out, right?

15 A. Correct.

16 MR. WOLTER: Object for lack of
17 foundation.

18 BY MR. ABDELNOUR:

19 Q. Can you turn to paragraph 28 of your
20 declaration, please.

21 A. Okay.

22 Q. In paragraph 28, you're talking about
23 Primos blind sales increased 161 percent YOY in
24 2018. Do you see that?

1 A. I do.

2 Q. YOY is year over year, correct?

3 A. Correct.

4 Q. And when you say Primos blind sales,
5 you're talking about the full set of Primos
6 blinds, including the Surroundview, as well as
7 other blinds; correct?

8 A. Correct.

9 Q. In the second sentence, you state, The
10 Surroundview family drove nearly 100 percent of
11 that growth. Do you see that?

12 A. I do, yes.

13 Q. What was the proportion of advertising
14 for the Surroundview blinds in that year relative
15 to other blinds?

16 A. It was nearly all -- nearly all the
17 blind marketing dollars were set aside for the
18 launch of that Surroundview product line.

19 Q. The numbers that you provided in
20 paragraph 28, 161 percent year-over-year growth,
21 what's the basis for that?

22 A. It's our internal revenue reporting.

23 Q. Is that something that you provided
24 with your declaration?

1 A. No.

2 Q. Other than this number, 161 percent,
3 did you provide any other details around those
4 sales?

5 A. Not in the declaration, no.

6 Q. Now, you didn't provide profit
7 information regarding the different Primos blinds
8 that year, correct?

9 A. Correct.

10 Q. And, again, you didn't provide unit
11 sales of each of the individual types of blinds
12 that Primos was offering, correct?

13 A. Correct.

14 Q. And you didn't provide any context for
15 market share, correct?

16 A. Correct.

17 MR. ABDELNOUR: Okay. Let's take ten
18 minutes. I want to look over my notes, and I'm
19 nearly there.

20 (A brief recess was taken.)

21 MR. ABDELNOUR: Okay. Thank you, Mr.
22 Harris. Welcome back. I looked over my notes. I
23 have no further questions.

24 THE WITNESS: Okay. Well, thank you.

1 MR. WOLTER: I have some questions for
2 redirect.

3 THE WITNESS: Sure.

4 EXAMINATION

5 BY MR. WOLTER:

6 Q. Mr. Harris, there was some discussion
7 about coverings for bus windows. The coverings
8 that you were familiar with, was that a mesh
9 material you were referring to?

10 A. A vinyl is what I was referring to,
11 vinyl-type material, sticker, if you will.

12 Q. Okay. So it was not a mesh material?

13 A. Correct.

14 Q. Do you recall questions and testimony
15 about the money Primos spent on marketing of the
16 Surroundview blinds?

17 A. I do.

18 Q. Based -- while you've been at Primos in
19 your previous work experience, how many different
20 new product launches have you been involved in?

21 A. Too many to count. I do not know the
22 number.

23 Q. Do you know how many new product
24 launches you have been involved with at Primos

1 regarding hub-style blinds?

2 A. I don't off the top of my head, but
3 it's been several.

4 Q. So is it five or more?

5 A. Yes.

6 Q. You said that -- I may be paraphrasing,
7 but I think your testimony was akin to Primos
8 dedicated its marketing funds entirely to the
9 Surroundview blinds. Why did they do that?

10 A. So I said almost entirely, and the
11 reason why is because it was a new technology that
12 we understood to be a true change in the space and
13 would give us a leg up on our competition. And we
14 also identified it as an opportunity for
15 significant revenue growth. And in such, we
16 poured the marketing dollars to it in order to get
17 as much ROI on that launch as possible.

18 Q. What's ROI?

19 A. Return on investment.

20 Q. The product launches you've been
21 involved in, does Primos -- or has Primos spent
22 more money on marketing for a new product line
23 than, for example, the existing product lines?

24 MR. ABDELNOUR: Objection to form.

1 A. Generally speaking, we will obviously
2 pour more money into a new product launch if we
3 think it has significant value or the potential
4 for that return on investment. Not every new
5 product launch gets that same treatment, but the
6 big ones do.

7 BY MR. WOLTER:

8 Q. You also testified regarding the
9 development and -- of the Surroundview blinds and
10 Rugged Cross's role in that development?

11 A. I did.

12 Q. Didn't Rugged Cross have input on the
13 types of inks that they had used on their mesh
14 material?

15 MR. ABDELNOUR: Objection. Leading.

16 A. Rugged Cross had already formulated the
17 process in which the fabric mesh was created. We
18 did not tweak, change, redevelop any of that. We
19 used exactly what they had already created.

20 BY MR. WOLTER:

21 Q. So did that include the type of ink
22 that was used on the mesh material?

23 A. Yes, it did.

24 Q. Did that include the type of ink

1 application process?

2 A. As far as I know, yes.

3 Q. Can you refer to paragraph 21 of your
4 declaration?

5 A. I'm there.

6 Q. You're seeing the last sentence in
7 reference to several distinguishing features?

8 A. Yes.

9 Q. Can you identify those, what you're
10 referring to in reference to several
11 distinguishing features relative to the
12 Surroundview blind?

13 A. Sure. So the biggest distinguishing
14 feature, the number 1 obviously was the use of the
15 mesh in the panels or walls. In addition to that,
16 we had some ways that we configured the fabric and
17 built the fabric that was different because we
18 were using two separate types of fabric on a
19 single wall. So that required a different type of
20 cutting and stitching of the fabric to create a
21 panel call it midway down to the ground which was
22 solid, and then midway to the panel to the roof
23 which was see-through. So that was another
24 distinguishing feature in the way that that

1 product was assembled and put together.

2 We also -- we introduced three
3 different Surroundview blinds that year, and one
4 of which was the 360 which gave you 360 degrees of
5 visibility through the walls. So we also had to
6 include what we call blackout curtains. So we
7 included curtains that could be hung behind the
8 user to create any -- or to shade any potential
9 light intrusion from the wall behind the person.
10 So that was another feature set.

11 Q. Okay. Is it a business practice for
12 Primos to inspect your competitors' products?

13 A. It is.

14 Q. And why would you do that?

15 A. We like to keep tabs on their quality,
16 durability, also any technologies they may be
17 utilizing that could appeal or benefit the
18 consumer, appeal to the consumer. So we try to
19 just, you know, make sure that we're understanding
20 what we're up against in the marketplace and,
21 also, so that we know how we compare with our
22 products. Sometimes we will even use that in our
23 marketing.

24 Q. So you actually purchase and acquire

1 your competitors' products in order to go through
2 that process?

3 A. Yes --

4 MR. ABDELNOUR: Objection.

5 A. -- sometimes, sometimes. We don't buy
6 every competitors' products. Some of which, you
7 know, fortunately we're able to inspect and look
8 at in person at a trade show without actually
9 having to go and purchase the product.

10 BY MR. WOLTER:

11 Q. So would you also inspect, for example,
12 with respect to hub-style blinds, inspect the type
13 of materials used to make the blinds?

14 A. Yes.

15 MR. WOLTER: I have no further
16 questions.

17 MR. ABDELNOUR: Nothing here. Thank
18 you, Mr. Harris.

19 THE WITNESS: Yes, sir.

20 MR. WOLTER: So he'll want to review
21 that.

22 THE COURT REPORTER: Do you want to
23 order the transcript, Dennis?

24 MR. ABDELNOUR: Yes, please.

1 THE COURT REPORTER: Would you like a
2 copy of the transcript?

3 MR. WOLTER: Yes, please.

4 FURTHER DEPONENT SAITH NOT AT 11:18 AM.
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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

DBR FINANCE, INC.
Petitioner,

Vs.

RUGGED CROSS HUNTING BLINDS, LLC,
Patent Owner.

Patent 11,399,535
Filing Date: June 11, 2021
Issue Date: August 2, 2022

Title: CAMOUFLAGE MATERIAL, FOR A HUNTING BLIND
Inter Partes Review No.: IPR2024-00291

This is to certify that I have read the
transcript of my deposition taken in the above-
entitled cause by Tracy L. Abbott, Certified
Shorthand Reporter, on October 31, 2024, and that
the foregoing transcript consisting of Pages 1
through 74 accurately state the questions asked of
me and the answers given by me as they now appear.

Jason Harris

No errata sheets submitted (Please initial)_____.
Number of errata sheets submitted _____(pgs.)

Subscribed and sworn to
before me this _____ day
Of _____, A.D. 2024.

Notary Public

1 STATE OF ILLINOIS)
2 COUNTY OF WINNEBAGO) SS.

3 I, Tracy L. Abbott, Certified Shorthand
4 Reporter, within and for the State of Illinois, do
5 hereby certify:

6 That prior to being examined, the
7 witness in the foregoing proceedings was by me
8 duly sworn to testify to the truth, the whole
9 truth, and nothing but the truth;

10 That said proceedings were taken
11 remotely before me at the time and places therein
12 set forth and were taken down by me in shorthand
13 and thereafter transcribed into typewriting under
14 my direction and supervision;

15 I further certify that I am neither
16 counsel for, nor related to, any party to said
17 proceedings, not in anywise interested in the
18 outcome thereof.

19 In witness whereof, I have hereunto
20 subscribed my name.

21 Dated: November 6, 2024.

22 
23

24 Tracy L. Abbott, C.S.R.
License Number 084-003182

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