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 SUR REPLY TO PETITIONER'S REPLY

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

TABLE OF CONTENTS **Page**

PATENT OWNER'S EXHIBIT LIST iii

TABLE OF AUTHORITIES vii

I. STRENGTH DOES NOT DISCLOSE HOLE FORMATION IN THE EXTRUSION COATING AND THEREFORE DOES NOT PERMIT VISIBILITY 1

II. CLAIMS OF THE '535 PATENT REQUIRE THAT THE "ONE OR MORE PANELS" BE A MESH 7

III. EFFECTIVE FILE DATE OF THE '535 PATENT IS FEBRUARY 29, 2016 9

IV. EXHIBITS 2032-E and 2032-F ARE NOT PRIOR ART AND DO NOT DISCLOSE THE CLAIMED MESHED 11

V. EXHIBIT 1014 DOES NOT DISCLOSE A MESH MATERIAL WITH CAMOUFLAGE ON AN EXTERIOR AND A BLACK COATING OR LINING ON AN INTERIOR 12

VI. SECONDARY CONSIDERATIONS 16

VII. LONG-FELT NEED 18

VIII. INDUSTRY PRAISE 20

IX. COPYING 21

X. LICENSING 23

XII. CONCLUSION 25

CERTIFICATE OF WORD COUNT 25

CERTIFICATE OF SERVICE 26

PATENT OWNER'S EXHIBIT LIST

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

Ex. 2008	Civil Docket, *Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.*, Case No: 1:23-cv-02231-jpc pending in the United States District Court for the Northern District of Ohio
Ex. 2009	Civil Docket, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690-jdp pending in the United States District Court for the Western District of Wisconsin
Ex. 2010	(Dkt. 66) Order Denying Defendant, FeraDyne Outdoors, LLC's Motion to Stay pending *inter partes* review, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2011	(Dkt. 96) Order Denying Defendant, DBR Finance, Inc.'s Motion to Stay Litigation pending *inter partes* review, *Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.*, Case No: 1:23-cv-02231-jpc,United States District Court for the Northern District of Ohio
Ex. 2012	(Dkt. 23) Plaintiff's Disclosure of Infringement Contentions, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2013	(Dkt. 67) Plaintiff's Disclosure of Supplemental Infringement Contentions, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2014	Minutes of Proceedings on Court's Status Conference and Order transferring case back to the Western District of Wisconsin, *Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.*, Case No: 1:23-cv-02231-jpc,United States District Court for the Northern District of Ohio
Ex. 2015	Minutes of Proceedings, Preliminary Pretrial Conference, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin

Ex. 2016	(Dkt. 28) FeraDyne Outdoors, LLC's Answer to Second Amended Complaint, Affirmative Defenses and Counterclaims, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2017	(Dkt. 73) Defendant, DBR Finance, Inc.'s Answer, Affirmative Defenses and Counterclaims to Plaintiff's Second Amended Complaint, *Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.*, Case No: 1:23-cv-02231-jpc,United States District Court for the Northern District of Ohio
Ex. 2018	(Dkt. 37) Declaration of Dan Reaser in Support of Defendant, DBR Finance's Motion to Dismiss for Improper Venue, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690, United States District Court for the Western District of Wisconsin
Ex. 2019	Federal Register, Vol. 88, No. 77, April 21, 2023
Ex. 2020	United States Patent, Reis, et al., Patent No.: US 7,565,909
Ex. 2021	United States Patent, Nagata, Patent No.: US 6,004,649
Ex. 2022	United States Patent, Ransom, et al., Patent No.: US 7,040, 333
Ex. 2023	(Dkt. 48) Amended Scheduling Order, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2024	(Dkt. 96) Scheduling Order, *Rugged Cross Hunting Blinds, LLC v. DBR Finance, Inc.*, Case No: 1:23-cv-02231-jpc,United States District Court for the Northern District of Ohio
Ex. 2025	Amended Notice of Taking Deposition of Non-Party, Tru-View, LLC, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC*, Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin

Ex. 2026	Report of Preliminary Management Hearing and Scheduling Order, *DBR Finance, Inc., f/k/a Outdoor Product Innovations, Inc. v. Tru-View, LLC*, Case No: 01-23-0003-4043, American Arbitration Association
Ex. 2027	Complaint, *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,* Case No: N23C-03-173 AML CCLD, Superior Court for the State of Delaware
Ex. 2028	(Dkt. 27) Second Amended Complaint, *Rugged Cross Hunting Blinds, LLC v. FeraDyne Outdoors, LLC,* Case No: 3:22-cv-00690-jdp, United States District Court for the Western District of Wisconsin
Ex. 2029	Allowed Claims, U.S. Application No. 16/998,843
Ex. 2030	Issue Notification, U.S. Application No. 16/998,843
Ex. 2031	Declaration of Dr. Kimberly Cameron
Ex. 2032	Declaration of Christopher Seaton in Opposition to Petition for *Inter Partes* Review of U.S. Patent No. 11,399,535
Ex. 2033	Declaration of Jason Harris in Opposition to Petition for *Inter Partes* Review of U.S. Patent No. 11,399,535
Ex. 2034	Declaration of Robert M. Ranson in Opposition to Petition for *Inter Partes* Review of U.S. Patent No. 11,399,535
Ex. 2035	Declaration of Jay Scholes Seaton in Opposition to Petition for *Inter Partes* Review of U.S. Patent No. 11,399,535
Ex. 2036	Declaration of Dr. Kimberly Cameron (Second)
Ex. 2037	Declaration of Robert M. Ransom (Second)
Ex. 2038	Deposition Transcript of Dr. Michael Ellison

TABLE OF AUTHORITIES Page

Apple Inc. v. Samsung Electronics Co., Ltd., *816 F.3d 788,804-05* (Fed.Cir. 2016) 19

Apple, Inc. v. Samsung Electronics Co., Ltd., 839 F.3d, 1034, 1057 (Fed.Cir. 2016)..... 19

Ariad Pharms., Inc. v. Eli Lily & Co., 598 F.3d 1336, 1351 (Fed. Cir. 2010)..... 9

Boston Sci. Corp. v. Johnson & Johnson, 647 F.3d 1353, 1366 (Fed. Cir. 2011)..... 9

Brown & Williamson, 229 F.3d at 1130 18

Cable Elec. Prods., Inc. v. Genmark, Inc., 770 F.2d 1015, 1027 (Fed. Cir. 1985)..... 22

Chemours Co. FC, LLC v. Daikin Indus., 4 F.4th 1370, 1378 (Fed. Cir. 2021)..... 18

Demaco, 851 F.2d at 1393)..... 18

EIS GmbH v. Novoluto GmbH, IPR2020-00007, Paper 41 (Sept. 23, 2021)..... 19

Hologic, Inc. v. Smith & Nephew, Inc., 1357, 1360 (Fed. Cir. 2018) 9

In re Affinity Labs of Texas, LLC, 856 F.3d 883,901-02 (Fed.Cir. 2017)..... 23, 24, 25

In re Cree, Inc., 818 F.3d 694, 703 (Fed. Cir. 2016)..... 24, 25

Tec Air, Inc. v. Denso Mfg. Mich. Inc., 192 F.3d 1353, 1360-61 (Fed. Cir. 1999) 18

TABLE OF AUTHORITIES, cont'd. **Page**

WBIP, LLC v. Kohler Co., 329 F.3d 1317, 1331 (Fed. Cir. 2016) 17

Yita LLC v. MacNeil IP LLC, 69 F.4th 1356 (Fed. Cir. 2023) 17

I. STRENGTH DOES NOT DISCLOSE HOLE FORMATION IN THE EXTRUSON COATING AND THEREFORE DOES NOT PERMIT VISIBILITY

The Petitioner initially defined "mesh material" as "a woven material of open texture with spaced holes therein." Paper 1, p 25. Dr. Cameron testified that the fabric of Strength was not a mesh because the fabric did not have any holes as a result of application of the 3mil polymer coating. Ex. 2031 ¶¶61-62, 74-75. Dr. Cameron also explained that Strength was concerned with making sure the walls of a hunting blind blocked light without making the walls too heavy. *Id*.

Dr. Ellison's arguments regarding a threshold molecular weight fails because: 1) none of the references cited by Mr. Ellison establish that holes will form if the molecular weight of the polymer drops below some threshold; 2) a PHOSITA would not intentionally create holes in the lining when the objective is to block the transmission of external light through the fabric and 3) the process used in Strength necessarily produces a material without holes. Ex. 2036, ¶ 9

Dr. Cameron's testimony regarding coverage does not imply that it is possible to have regular holes in the material of Strength after application of the coating. Ex. 2031, ¶¶ 70, 86. Rather, coverage refers to thickness, uniformity, coating weight (typically expressed as mass per unit area), etc. Ex. 2036 ¶ 10, Ex. 2036-Q, p. 8. Molecular weight of a coating polymer can affect the uniformity or texture; however,

the references (Exs. 1012 and 1013) do not discuss uniform holes formed by lowering the molecular weight. Ex. 2036 ¶ 10.

Strength discloses application of film using extrusion cast. Ex. 2036, ¶11; Ex. 1003, 2:26-33. Extrusion is a manufacturing process by which thermoplastic materials are melted and forced through an wide, narrow "die" slit forming a continuous thin sheet or "curtain." Ex. 2036, ¶2036; Ex. 2036-A, p. 259.

Occasionally, voids or pinhole defects can occur in extrusion coatings. Ex. 2036, ¶ 9; Ex. 2036-E, pp 36-37. Where voids or pinhole defects do form, they tend to be randomly distributed and would not be expected to form a mesh which would permit visibility through the coated fabric. Ex. 2036, ¶ 9. Materials with very low molecular weight, which might theoretically be susceptible to problems like intermittent and isolated hole formation under normal processing conditions, would not be used for extrusion coating by a PHOSITA. Ex. 2036, ¶15. The use of such a poorly-suited material for extrusion coating would result in excessive neck-in, edge bead, and edge weave well before any isolated hole formation began to occur. *Id*. These defects would alert a PHOSITA of an issue, causing the PHOSITA to modify either the process conditions (such as using a lower line speed) or to select a more appropriate material. Ex. 2036, ¶15.

Thus, a PHOSITA would not allow holes to form in an extrusion coating on a textile, and even if those defects did form, they would not be of the frequency and

regularity that would lead to the material being a mesh. Ex. 2036, ¶ 15. In addition, contrary to the deposition testimony of Dr. Ellison, the holes that do form in the coating would not be necessarily between the fibers but rather could be at the fibers which would mean the holes would not even extend through the entirety of the panel. Ex. 2036, ¶15; Ex. 2036-E, p. 36-37; Ex. 2038, 42:1-13.

Equation 2-59 of Ex. 1012 teaches that a relationship exists between polymer molecular weight and a critical shearing stress, beyond which "melt fracture" occurs. Ex. 2036, ¶16. However, Ex. 1012 defines "melt fracture" as a loss of smoothness (i.e. roughening) of the surface of the extruded material. *Id*. Ex. 1012 says nothing about hole formation in extruded polymer materials, consistent with the common understanding of the term "melt fracture" which does not refer to hole formation in extruded polymers, but only distortion of surface texture. *See*, Ex. 2036, ¶16; Ex. 2036-F, pp 96-100; Ex. 2036-G, pp. 15-16; Ex. 2036-H, p. 1. Melt fracture is not discussed in the literature reviewed on extrusion coatings, suggesting it is not a common occurrence for coating processes. *See*, Ex. 2036, ¶16; Ex. 2036-I, pp107-108; Ex. 2036-A, p. 258; Ex. 2036-B, pp. 1-11; Ex. 2036-C, pp. 1-3; Ex. 2036-D, pp. 1-26.

Dr. Ellison also relies on Ex. 1013 as a review of polymer latex film formation. Ex. 2036, ¶17; Ex. 1025, ¶55. Latexes have very low viscosity (resistance to flow) compared to melted thermoplastic materials. Ex. 2036, ¶17. All of the

coating methods listed by Strength (hot melt coating, extrusion coating, or laminating a sheet to a base textile) are melt processes. Ex. 2036, ¶17; Ex. 2036-I, pp. 5-6. Therefore Ex. 1013 has no relevance to the disclosure of Strength, because Ex. 1013 does not teach that holes form in coatings produced by melt processes involving high viscosity molten thermoplastics. Ex. 2036, ¶17.

More fundamentally, Strength itself establishes that there are no holes formed in the extrusion process because the process can achieve zero light transmission - and simply varying the amount of carbon black cannot introduce holes. *See*, Ex. 2036, ¶18; Ex. 1003, 2:60 -4:5, FIG. 2. Strength describes a preferred embodiment of the disclosed invention containing an opaque film. Ex. 2036, ¶18; Ex. 1003; 2:11-12. As would be understood by a PHOSITA, opaque is the technical term for a material which transmits 0% of incident light. Ex. 2036, ¶18.

A PHOSITA would understand that it is possible for materials without holes to transmit light (an obvious example is window glass), the reverse is not true – it is not possible for a material containing holes to fail to transmit any light at all, because light propagates through holes. Ex. 2036, ¶19. Light transmission of fabrics is highly correlated with air permeability, openness, hole density, and thread counts per inch. Ex. A; pp. 76-82; Ex. K; Ex. L, p. 1.

In Strength, the weight percent of carbon black is the only variable that changes in the formulation described in the example embodiments. Ex. 2036, ¶120;

Ex. 1003; 2:60 – 4:5. Therefore, a PHOSITA would understand that the additional described embodiments would also not have holes. Ex. 2036, ¶20.

Simply put, Strength does not disclose a mesh material containing holes. The literature reviewed teaches that holes do not commonly form in coatings formed by extrusion when common thermoplastic materials. Ex. 2036, ¶21. In rare cases where voids or pinhole defects do form, they tend to be randomly distributed and would not be expected to form a mesh which would permit visibility through the coated fabric. *Id*.

The argument surrounding the 'about' 3 mil thickness of the coating is irrelevant. Ex. 2036, ¶22. Strength teaches reducing, up to and including completely eliminating, light transmission through the use of carbon black to increase the opacity of the coating on a fabric mesh substrate. *Id*. It is clear that Strength teaches, and indeed necessitates, a coating free of holes, regardless of the thickness of said coating. *Id*.

The most basic purpose of the invention of the '535 Patent is for a hunter inside the blind to have visibility of game outside the blind. Ex. 2036, ¶23. This is made plain by claim 5, "… such that an exterior of the camouflage structure is visible through the camouflage material from the interior of the camouflage structure…". Ex. 2036, ¶23; Ex. 1001; 10: 35-49; See also, Ex. 1001: 11, 36-46, and 12: 39-49 (claims 17 and 19 also referencing one-way visibility). Ellison repeatedly insists that

the Strength invention provides "one-way" viewing, yet Strength makes no claim to a material with one-way visibility because it describes a material which restricts light transmission up to and including fully preventing visibility Ex. 2036, ¶ 23.

A PHOSITA would not combine the invention disclosed by Strength with the Whybrew disclosure, because Strength teaches reducing, up to and including completely eliminating, light transmission **through the use of carbon black to increase the opacity of the coating on a fabric mesh substrate**. Ex. 2036, ¶ 22, 24. In combination with the discussion above related to the processes of extruded coatings in Strength, it is clear that Strength teaches, and indeed necessitates, a coating free of holes, regardless of the thickness of said coating. Ex. 2036, ¶ 22. Adding the extruded film of Strength would be the equivalent of lining an interior of a mesh material with a trash bag, eliminating any visibility, and which is why a PHOSITA would not combine the invention disclosed by Strength with the Whybrew disclosure. Ex. 2036, ¶ 24.

Visibility requires transparency, or it requires holes in the material that are large enough that incident light is not primarily scattered. Ex. 2036, ¶ 25. Examples of transparent materials permitting visualization include window glass and clear plastic film. *Id*. An example of a material with holes large enough to permit visibility through it is the scrim banner mesh as presented in the '535 patent. *Id*.

If a material does not permit even shadows to be visualized through it, then by definition it does not permit visibility. Again, light transmission is a necessary condition for visibility. The Strength material does not permit visibility and is thus an entirely unsuitable material for viewing and seeing outside a hunting blind.

II. CLAIMS OF THE '535 PATENT REQUIRE THAT THE "ONE OR MORE PANELS" BE A MESH

Petitioner's originally proposed construction requires a mesh to be a "woven material texture with spaced holes therein." Paper 1, p. 25. PO's position is that Strength does not disclose a mesh material because the final material of Strength does not have any holes. Petitioner now proposes a claim construction that does not require that the claimed one or more panels be a mesh material. Paper 28, 12; Ex. 1025, ¶¶57-58.

The plain and ordinary meaning of "one or more panels of mesh material" does not include a panel with no holes, and Petitioner's expanded interpretation is not supported by the specification or prosecution history of the '535 Patent. To that end, Petitioner does not cite any evidence in the specification or prosecution history of '535 Patent that supports this new, expanded claim construction.

The '535 Patent identifies two advantages of using the claimed mesh material, including improved air flow for ventilation and one-way visibility. Ex. 2036, ¶30; Ex. 1001; 2:43-52; Ex. 1001; 3:61 – 5:34. Visibility requires transparency, or it

requires holes in the material that are large enough that incident light is not primarily scattered, thus allowing the shape of objects to be perceived based on the undisturbed incident light rays. Ex. 2036, ¶ 31.

The specification is consistent with and supports a claim construction that the panels be mesh. The panels of mesh material 26 are first introduced in col. 3, lines 17-60 (Ex. 1001) of the specification in reference to FIGS 1A and 1B. Ex. 2036, ¶ 32. The mesh material 26 is described as including camouflage pattern 29 printed on a first side 27 using ink, and a dark color ink 33 on the second side 31. Ex. 2036, ¶ 32; 3:40-41.

Immediately following this detailed description of the mesh material 26, and in reference to FIGS. 1C and 1D, the specification includes a detailed description of the function of the previously described mesh material 26 relative to visible light incident on the hunting blind 10. Ex. 2036, ¶ 33; Ex. 1001; 3:61 – 5:34. Of course, visibility through the mesh material from an interior of the blind 10 necessarily requires holes in the mesh material. Ex. 2036, ¶ 33.

Therefore, the claim language “one or more panels of mesh material” means that the panels are made from mesh or the panels are mesh, which Petitioner has defined as including holes.

III. EFFECTIVE FILE DATE OF THE '535 PATENT IS FEBRUARY 29, 2016

The test for the written description requirement is whether the disclosure relied upon reasonable conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date. *Ariad Pharms., Inc. v. Eli Lily & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010). This test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art. *Id*. In some instances, the PO may rely on information that is "well-known in the art" to satisfy written description, and a patent specification need not re-describe known prior art. *See*, *Boston Sci. Corp. v. Johnson & Johnson*, 647 F.3d 1353, 1366 (Fed. Cir. 2011).

The level of detail required to satisfy the written description requirement depends on the nature of the claims and the complexity of the technology. *See*, *Ariad*, 598 F.3d at 1351. For technologies that involve predictable arts, as in this case, a lower level of detail in the written description is required. *See*, *Hologic, Inc. v. Smith & Nephew, Inc*., 1357, 1360 (Fed. Cir. 2018).

Petitioner argues that the paragraph [032] of the provisional does not meet the written description as it does not describe a pop-up frame including flexible frame members.

The term "pop-up" is and was (as of February 29, 2016) a term used by a PHOSITA to refer to ground hunting blinds that have a frame including flexible frame members that are foldable relative to one another to move the blind between a collapsed position and a deployed position. Ex. 2037, ¶¶ 28-35; Ex. 2036, ¶¶ 48, 49, 63. Indeed, the term "pop-up" frames/blind was and is used interchangeably with "hub-style" frames/blinds. Ex. 2037, ¶¶ 28, 35; Ex. 2036, ¶¶ 49, 61.

Mr. Ransom previously testified that hub-style blinds, then and now, comprise a frame including bendable or flexible rods interconnected at central hubs at the sides and roof of the blind. Ex. 2034; ¶ 38. Mr. Ransom further attests it was well known to PHOSITA as of February 29, 2016 that a pop-up frame for a hunting blind necessarily included flexible frame members that were flexible and foldable relative to one another, and spaced apart. Ex. 2037; ¶ 30, 34-35.

As further evidence of the knowledge of a PHOSITA regarding pop-up frames, Mr. Ransom and Dr. Cameron refer U.S. Patent No. 7,565,909 (Reis) and U.S. Pub. No. 2008/0083443 (Eastman). Ex. 2036; ¶ 54-58; Ex. 2037, ¶ 30-32; Exs. 2036-M and 2036-N. Both prior art references disclose hub-style (pop-up) blinds including a frame composed of flexible frame members spaced part along sides and a roof and are foldable. Ex. 2037, ¶ 32. In addition, a pop-up frame is similarly described in U.S. Pat. No. 5,628,338 as including flexible rods 6A. Each of these

references describes the flexible frames and/or frame members as foldable. Ex. 2036, ¶¶ 59-60, Ex. P; 3:8-15.

Mr. Ransom and Dr. Cameron, both PHOSITA, attest that it was known to a PHOSITA as of the provisional filing date, that a pop-up frames included the claim limitations of: (1) a frame composed of multiple flexible frame members, (2) at least two flexible frame members spaced apart from one another along a side of the structure, and (3) at least two flexible frame members spaced apart from one another along the roof of the structure. Ex. 2036, ¶¶ 53, 62-3; Ex. 2037, ¶36-40. To that end, the written description of the provisional application, according to Mr. Ransom and Dr. Cameron, reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date, February 29, 2016, of the provisional application. *Id*.

Given that pop-up frames or pop-up blinds were so well known in the art at that time and the predictable nature of this technology, it was not necessary to describe in detail the features of a pop-up frame.

IV. EXHIBITS 2032-E AND 2032-F ARE NOT PRIOR ART AND DO NOT DISCLOSE THE CLAIMED MESH

On pages 27-32 of the Reply, Petitioner uses Exhibits 2032-E and 2032-F as evidence of general knowledge of a PHOSITA in support of combining Whybrew and Strength. Paper 28, p. 31. Petitioner describes these exhibits as disclosing prior

art mesh material that included a camouflage pattern on one side and a black lining or dark coating on "an inside of the mesh." Paper 28, pp 19 and 28.

To be clear, these articles never mention or describe the mesh material of the Austin blind as including a black coating or lining on an internal side of the mesh material. Ex. 2036, ¶ 65. The articles simply describe the one-way see-through characteristic of the mesh material, without reference to an interior lining or coating on the mesh. *Id*.

Moreover, these exhibits are not evidence of the general knowledge of a PHOSITA because Exhibits 2032-E and 2032-F were not published more than one year prior to February 29, 2016. Ex. 2036, ¶ 65

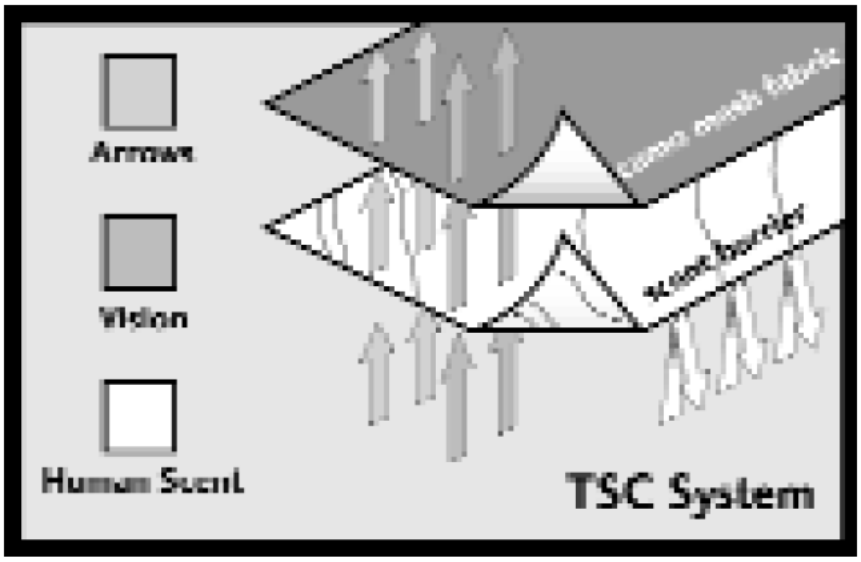
V. EXHIBIT 1014 DOES NOT DISCLOSE A MESH MATERIAL WITH CAMOUFLAGE ON AN EXTERIOR AND A BLACK COATING OR LINING ON AN INTERIOR

The Petitioner cites Ex. 1014 as disclosing a mesh material with a black lining on the interior of the mesh and a camouflage pattern on an exterior. In reaching this conclusion, Petitioner grossly mischaracterizes Mr. Ransom's testimony and then uses his testimony to create a false narrative of the disclosure of Exhibit 1014.

The Total Scent Containment (TSC) System works by having the black ShadowGuard interior lining on the walls and roof and a clear cellophane membrane on the windows. Ex. 2037, ¶¶ 9-10; Ex. 1014: 5. Mr Ransom testified during cross-

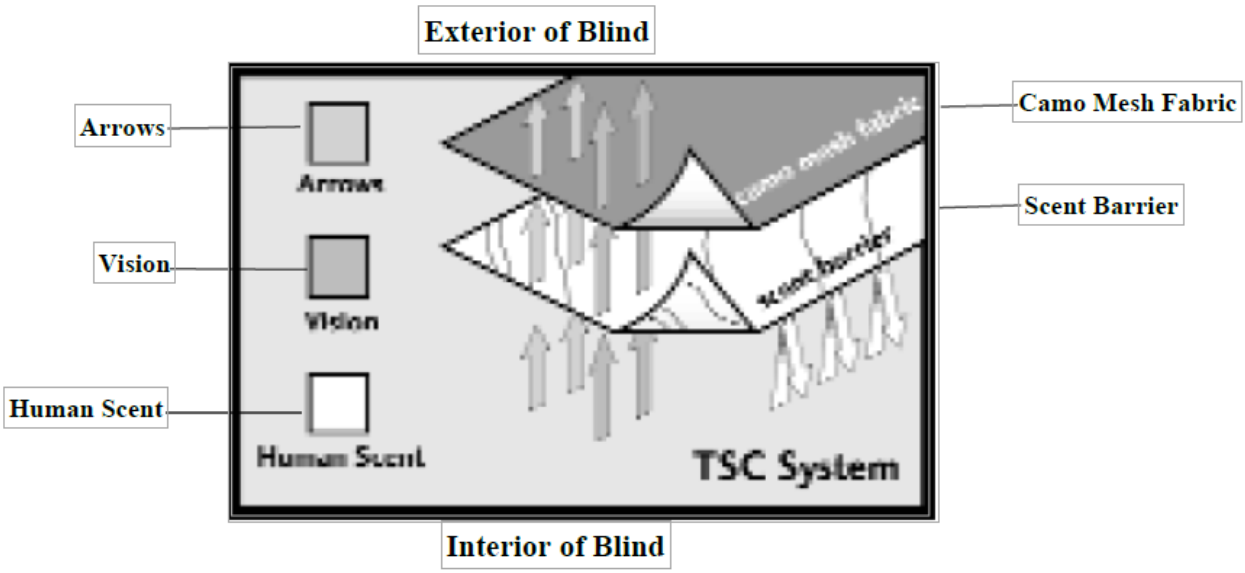
examination that Exhibit 1014 explains that the mesh windows have a membrane to block scent. Ex. 1022, 51:11-18; Ex. 1014: 5.

The figure in question is reproduced below. Ex. 1014: 5. The text on the top layer says "camo mesh fabric" and the text on the bottom layer says "scent barrier." Ex. 2036; ¶ 70. The references ShadowGuard (dark) lining is not shown. *Id*.



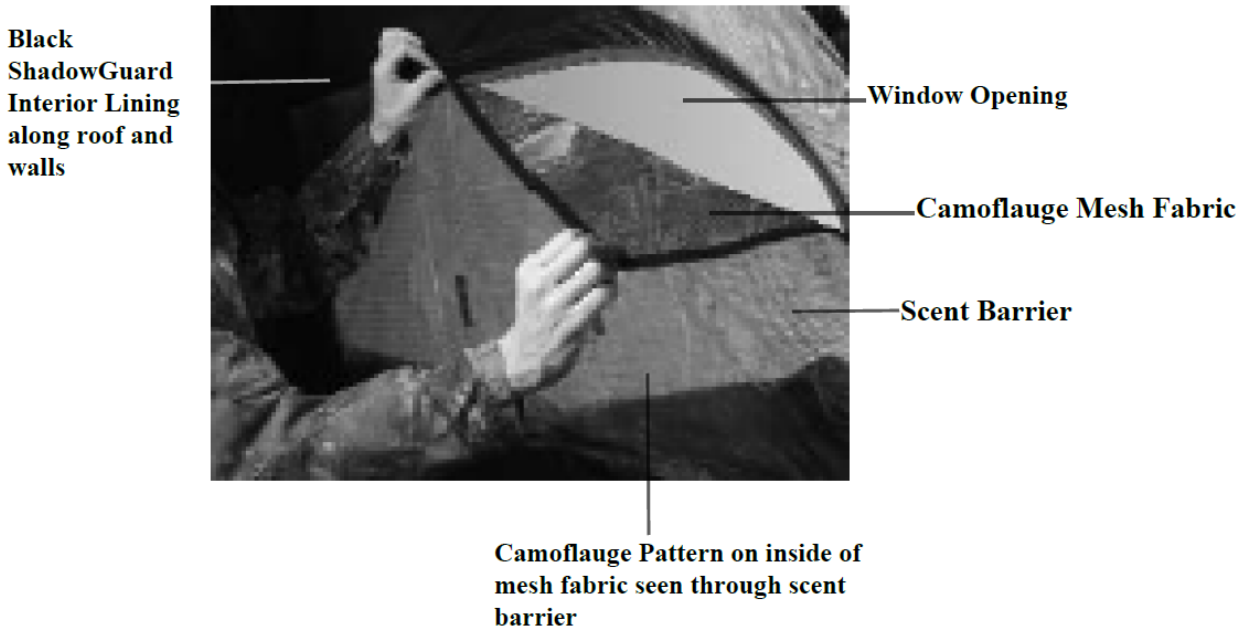
When questioned about this in FIG. C in his deposition, Dr. Ellison responded that the mesh fabric was not shown in this drawing, and the grey sheet represented the black interior lining on the inside of the mesh fabric (not shown). It is unreasonable to think that a PHOSITA would interpret the label on the white layer to be what the layer is, but the label on the grey layer to not correspond to what the layer is. Ex. 2036; ¶ 71. It is also unreasonable to think that a PHOSITA would assume that the camo mesh fabric (that is actually labeled) in the figure was simply not shown and was above the grey layer. Ex. 2036; ¶ 71.

The below annotated image accurately represents the schematic drawing of Ex. 1014.



The arrows on the figure here are instructive to establish which side is the exterior versus interior of the blind, and to establish that the line of sight passes through the membrane and then mesh (no black lining). Ex. 2036; ¶ 72-75.

PO's interpretation of the above schematic is consistent with the photograph below also taken from page 5 of Exhibit 1014. Ex. 2036; ¶ 76. The below image shows a TSC system (window covering) installed over a window opening of the Penthouse blind.



The TSC system shown in the photograph includes a shoot-through mesh and the transparent or translucent scent barrier is attached to the shoot-through mesh, which had a camouflage pattern on both sides. Ex. 2036; ¶ 77-78; Ex. 2037, ¶¶ 20-21. The camouflage pattern can be seen through the scent barrier and appears as shadows in the photograph. *Id*. The mesh does not have a black lining. The individual in the photo has folded a corner of the TSC system back to show the camouflage pattern of the mesh material, which can be seen through the scent barrier. *Id.*

The black ShadowGuard interior lining is shown on the non-mesh walls and roof surrounding the window; however, the photograph clearly shows a black interior lining is not on the mesh fabric of the TSC system. Ex. 2036, ¶ 78; Ex. 2037,

¶ 20-20. If the lining were on the mesh fabric, an occupant of the blind could not see through the window. *Id*.

In the excerpt of Mr. Ransom's cross-examination cited by Petitioner, Mr. Ransom attests that the mesh material described in Exhibit 1014 has a black lining. Mr. Ransom admits only that the ShadowGuard technology of the exhibit referred to a black interior lining of the hunting blind, but he did not testify that a black lining was *on a mesh material* at a window of the blind. Mr Ransom was never asked the question of whether a black lining was actually on the mesh material.

Mr. Ransom also testified that the Penthouse blind was unsuccessful and taken off the market because it did not work for its intended purpose. Ex. 1022, 51:8-52:4; 71:9-19. The cellophane membrane reflected light and gave away the location of the blind and the see-through clarity was not acceptable. *Id*.

Exhibit 1014 is not evidence that it was known to a PHOSITA to use a mesh material with a camouflage pattern on an outside and a dark color on the inside to hide an occupant within a blind because it does not disclose this. The black lining referred in Exhibit 1014 is a black lining (not simply a color coating) on the non-mesh walls and not on the shoot-through mesh.

VI. SECONDARY CONSIDERATIONS

Petitioner argues that the PO has not established a nexus because the claimed mesh features of the '535 Patent are known in the prior art, and the claims are broad

enough encompass prior art mesh that does not provide one-way viewing. However, the Federal Circuit has emphasized that where the allegedly obvious patent claim is a combination of prior art elements, the patent owner can show that it is the claimed combination as a whole that serves as a nexus for the objective evidence. *See*, *WBIP, LLC v. Kohler Co.*, 329 F.3d 1317, 1331 (Fed. Cir. 2016).

PO's evidence of secondary considerations is directed to a pop-up style hunting blind that incorporates the known structural features of a hub-style blinds with a one-way see-through mesh material, a camouflage pattern on an external side and dark color (black) on an internal side, and the mesh defines an outer surface of the hunting blind.

Petitioner's reliance on *Yita LLC v. MacNeil IP LLC*, 69 F.4th 1356 (Fed. Cir. 2023) is misplaced because the claimed mesh material with a camouflage pattern on one side and a dark color on the other side was not known in the prior art. Petitioner cites Strength (Ex. 1003) as disclosing the claimed mesh material, which it does not. As argued above PO's Exhibits 2032-E, 2032-F are not prior art; and Exhibit 1014 does not disclose this claimed feature.

VI. COMMERCIAL SUCCESS

Petitioner attempts to discount PO's evidence of commercial success arguing first that PO's increased sales figures were not supported by other information such as "market share." Paper 28, p. 22. The Federal Circuit has repeatedly stated market

share data, and other contextual information, is not required to show commercial success, and gross sales figures may be sufficient. *See*, *Chemours Co. FC, LLC v. Daikin Indus*., 4 F.4th 1370, 1378 (Fed. Cir. 2021). Indeed, sales figures alone are evidence of commercial success. *See*, *Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360-61 (Fed. Cir. 1999). Accordingly, Primos sales figures alone are sufficient to prove commercial success.

Petitioner also argues that any increase in Primos sales of hunting blinds was due to Primos' investment in marketing the SurroundView blind; however, Petitioner did not submit evidence to support this argument. *Id*. Petitioner simply refers to the testimony of Jason Harris and then concludes that an increase in marketing expenditures as to the SurroundView blind likely drove any increase in sales of the Primos blinds. *Id*. The Federal Circuit has explained that a patent challenger cannot successfully rebut the presumption of nexus with argument alone—it must present evidence. *Brown & Williamson, 229 F.3d at 1130* (citing *Demaco, 851 F.2d at 1393*). In this regard, Petition has failed to rebut the presumption with any evidence and relies solely on speculative arguments.

VII. LONG-FELT NEED

Petitioner suggests that PO's evidence as to long-felt need is insufficient because there is no extrinsic evidence of an articulated problem in the prior art. Paper 28, p. 24-25. However, Petitioner does not cite any cases that require extrinsic

evidence, beyond testimony of a PHOSITA. Petitioner cites *Apple Inc. v. Samsung Electronics Co., Ltd.*, 816 F.3d 788,804-05 (Fed.Cir. 2016) *vacated* 839 F.3d 1034,1057 (Fed.Cir. 2016) for the proposition that "where differences between the prior art and the claimed invention are minimal, no long-felt need was unsolved." However, in its *en banc* decision, the Federal Circuit specifically rejected this statement as a categorical rule in determining if evidence is sufficient for finding long-felt need. *See, Apple, Inc*. 839 F.3d at 1055. Moreover, the Court in the *Apple* case did not state that extrinsic evidence, beyond witness testimony, was required to prove long-felt need.

In addition, the Board has not required extrinsic evidence and has relied on testimony of a single expert witness (with extensive experience in relevant field) as sufficient for finding a PO has proven long-felt need. See, *EIS GmbH v. Novoluto GmbH*, IPR2020-00007, Paper 41 (Sept. 23, 2021). In *EIS GmbH* the Board noted that the petitioner did not submit any rebuttal evidence in the form of an expert with a similar background.

PO's evidence includes the corroborating testimony of three PHOSITA as to long-felt need and unsuccessful efforts to solve the persistent problems of ground blinds. Ex. 2033, ¶¶ 32-42; Ex. 2034, ¶¶ 42-60; Ex. 2035, ¶¶ 15-21. All of these witnesses have extensive professional design and development of ground hunting blinds including pop-up frames. Ex. 2033, ¶¶ 2-9; Ex. 2034, ¶¶ 2-14; Ex. 2035, ¶¶

1-9. To be clear, Petitioner has not submitted any evidence that this long-felt yet unresolved need did not exist. Petitioner's expert simply opines whether PO evidence is legally sufficient.

Again, Petitioner refers to the Ameristep Penthouse™ blind (Ex. 1014) as disclosing the claimed mesh material; however, as explained above, Exhibit 1014 does not disclose the claimed feature. In fact, the product was removed from the market because it did not work for its intended purpose. Ex. 1022, 51:8-52:4; 71:9-19.

Petitioner then relies on prior art blinds that had interior black lining to improve concealment. Paper 28: 25. PO's witnesses identify these prior art blinds as proposed solutions to the identified long-felt need, but these devices were not successful in eliminating or minimizing blinds spots. Ex. 2033, ¶¶ 37-42; Ex. 2034, ¶¶ 42-60. To that end, the claims of the '535 Patent are not broad enough to cover these devices because the claims require a mesh material that has, "… a first side with a camouflage pattern; and a second side with a dark color coating, said second side opposite to the first side."

VIII. INDUSTRY PRAISE

Petitioner argues that the evidence of industry praise is not directed to "points of novelty" of the claimed invention. Paper 28, p. 26. More specifically, Petitioner

suggests during prosecution claims were amended to include the limitations of spaced apart frame members gain allowance. *Id.*

However, the Examiner's reasons for allowance with respect to claims 16 and 20, as amended, were not related to spaced apart frame members. Ex. 2036, ¶¶ 82-87; Ex. 1006, pp 39, 45, 72, 91, 94. The reasons for allowance were for the combination of the non-mesh panels along the roof that are non-transmissive to exterior incident radiation in combination with the claimed mesh material defining an outer surface of the camouflage structure and the remaining claim elements Ex. 2036, ¶¶ 85, 88.

Indeed, Mr. Harris attests that the commercial success of the SurroundView blinds was a direct result of a combination of one-way see-through mesh material or panels of mesh material with a camouflage pattern on the outside surface and a dark color on the inside surface, with the known structure of a hub-style blind. Ex. 2033, ¶ 29.

IX. COPYING

With respect to copying, Petitioner argues that PO has not provided evidence of product replication and PO did not provide evidence of comparing alleged infringing products to the claims of the '535 Patent. Copying may be demonstrated either through internal documents or access to, and substantial similarity to, the

patented product (as opposed to the patent), *Cable Elec. Prods., Inc. v. Genmark, Inc.*, 770 F.2d 1015, 1027 (Fed. Cir. 1985).

Without question, Petitioner and other competitors had access to the Primos SurroundView blind which were available to the public for purchase and available for inspection at trade shows. It is standard practice in the outdoor industry to continue to evaluate and update products (e.g. hub-style blinds) every couple of years, which includes evaluating competitors' products. Ex. 1020, 72:11-73:14. To that end, Mr. Harris attests that Primos may actually purchase the product "… to inspect and look at it in person at a trade show without actually having to go and purchase the product … and with respect to hub-style blinds inspect the type of materials used to make the blinds." *Id*.

Moreover, Mr. Chris Seaton attests that in June 2021, Petitioner requested, and Mr. Seaton sent Petitioner a sample of the RCHB mesh material. Ex. 2032, ¶ 68. Notably, **Petitioner does not deny that these events occurred**.

Regarding substantial similarity, PO's expert witness, Dr. Kimberly Cameron provided a detailed claim chart comparing claims 1, 17 and 19 of the '535 Patent to a sample Double Bull SurroundView blind. In that regard the claim chart includes images of Figs. 1-7 including the different components of the blind in reference to the claimed elements.

PO directs the Board's attention to Ex. 2013 including PO's infringement contentions which provides a detailed comparison of claims of the '535 Patent to the alleged infringing Rhino 180 blind, which Petitioner sold. As shown, the Rhino 180 blind is virtually identical to the SurroundView blind in all respects, with a possible exception that a panel of mesh material of the Rhino 180 blind covers an entire wall of the blind. Ex. 2036, ¶ 9. Accordingly, the Primos non-licensed competitors, including the Petitioner, have copied the Primos SurroundView blinds that PO has patented.

X. LICENSING

Citing *In re Affinity Labs of Texas, LLC*, Petitioner asserts that the board should, as a rule, discredit PO's evidence of licensing because "PO failed to disclose the license terms." Paper 28, p. 23. *Affinity* does not require license terms to be disclosed for evidence of licensing to be given weight in a secondary considerations analysis.

Affinity holds that evidence of licensing is correctly given little weight when there is a "lack of specificity" about the "circumstances under which [the licenses] were granted." 856 F.3d 883 at 902. However, *Affinity* does not require that the terms be disclosed for evidence of licensing to be given weight. Rather, the test is whether the facts indicate that the licenses were entered into "because of the merits of the claimed invention or because they were entered into as business decisions to avoid

litigation or because of prior business relationships, or for other economic reasons." *Id.*; *In re Cree, Inc.*, 818 F.3d 694, 703 (Fed. Cir. 2016).

Affinity's president admitted that some of the licenses for the patent at issue in the case "were entered as part of settlement of pending lawsuits." Rugged Cross is a family-run startup created by two industry newcomers. It had no outstanding lawsuits prior to the creation of the '535 Patent, and as the industry newcomer, it did not have the sway to strongarm the industry veterans such as Primos, Primal, Millenium, and Outtech with the threat of litigation. Furthermore, as an industry newcomer, it had no preexisting business relationships with any of its licensees. There is no evidence that the subject licenses were entered into to resolve or avoid litigation or to upkeep existing business relationships.

Also, the only information given in *Affinity* regarding the licenses was the total revenue generated by several of their patent licenses, not facts about the motivation to enter into the license agreements. *Id*. Jason Harris of Primos stated that he was the one to approach Rugged Cross regarding a license in 2016. Ex. 2033 ¶ 17. On cross examination, he expressly clarified that "the agreement was entered into in respect to, you know, the claims that they were wanting to get granted or allowed; and that's what we were interested in… There were claims that were specific to our – you know, what we were wanting to do with the technology and our business." Ex. 1020, 29:3-12.

Similarly, Jay Scholes of Outtech approached Rugged Cross about taking a license because "we saw the technology and were very impressed by it." Ex. 1021 24:4-25:4. After meeting with the Seaton brothers, Scholes believed that the Rugged Cross blind "was the innovation." Ex. 1021, 25:5-21. Scholes stated "I've hunted around the world, and I felt that the innovation that was shared with me was revolutionary." Ex. 1021, 25:23-26:1.

Finally, in Ransom's deposition, he testified that he initially did not want to take a license, but, after consulting with an attorney, decided to take one according to the attorney's instruction. Ex. 1022, 19-20. All three licensee deponents testified in some way that they took a license out of respect for the "merits of the claimed invention." *See, In re Cree*, 818 F.3d at 703. Therefore, the Board should distinguish the present case from *Affinity* and hold that the evidence of licensing is probative of nonobviousness.

XII. CONCLUSION

For the foregoing reasons, claim 1-19 of the '535 Patent are not obvious, and should not be cancelled.

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

I HEREBY CERTIFY that the word count for the foregoing Patent Owner's Sur Reply contains 5600 words produced using the Times New Roman 14-point

typeface.

DATED this 24th day of January, 2025.

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 Patent Owner, Rugged Cross Hunting Blinds, LLC's Sur Reply to Petitioner's Reply was served via electronic mail to: Thomas G. Eschweiler, Esq. (teschweiler@epiplaw.com), Eschweiler & Potashnik, LLC, 195 S. Main St., Ste 400, Akron, OH 44308 and Dennis J. Abdelnour, Esq. (dabdelnour@honigman.com), Honigman LLP, 155 N. Wacker Drive, Ste 3100, Chicago, IL 60606, this 24th day of January, 2025.

/s/ Robert L. Wolter
Attorney