

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RAVIN CROSSBOWS, LLC,
Petitioner,
v.
MCP IP, LLC,
Patent Owner.

IPR2024-00522 (Patent 8,683,989 B1)
IPR2024-00523 (Patent 9,354,017 B2)
IPR2024-00524 (Patent 9,909,831 B2)

Record of Oral Hearing
Oral: June 12, 2025

Before MEREDITH C. PETRAVICK, MITCHELL G. WEATHERLY, and
ARTHUR M. PESLAK, Administrative Patent Judges.

IPR2024-00522 (Patent 8,683,989 B1)
IPR2024-00523 (Patent 9,354,017 B2)
IPR2024-00524 (Patent 9,909,831 B2)

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The above-entitled matter came on for hearing Monday,
June 12, 2025, commencing at 10:00 a.m., at the U.S. Patent and Trademark
Office, 600 Dulany Street, Alexandria, Virginia.

P-R-O-C-E-E-D-I-N-G-S

10:03 a.m.

JUDGE WEATHERLY: Good morning, everybody. You can be seated. This is a joint hearing. Is the court reporter ready? You ready?

This is a joint hearing for three inter partes review proceedings, including IPR2024-00522 relating to U.S. Patent 8,683,989, IPR2024-00523 relating to U.S. Patent 9,354,017, and IPR2024-00524 relating to U.S. Patent 9,909,831. Petitioner is Ravin Crossbows, LLC. Patent Owner is MCP IP, LLC.

I am Judge Mitchell Weatherly, and I'm joined in person on the panel by Judge Meredith Petravick and remotely by Judge Arthur Peslak. All of us have a copy of each party's demonstrative exhibits and access to the full trial record in both proceedings. Because Judge Peslak is attending the hearing by video conference, please speak clearly and deliberately and take extra care to avoid speaking over other people.

When referring to material appearing on a slide from your demonstrative exhibits, please provide the page number of that slide. It keeps the record cleaner and more useful for us, and it helps Judge Peslak also. As indicated in our hearing order, we allocated 90 minutes for each party to present its argument. Each party may reserve time solely to rebut the opposing party's arguments. You may not use your rebuttal time to address an issue for the first time.

Petitioner will proceed first because it bears the burden of proving unpatentability. Right now, I'd ask each party to introduce the attorneys who are attending, along with any guests listening to the hearing who are associated with your client, beginning with counsel for Petitioner.

1 MR. SEITZ: Good morning, Your Honors. Adam Seitz on behalf of
2 Ravin. With me here today at the table is Ms. Lydia Raw. I have no one
3 with us here today, and I'm not certain who's on the phone.

4 JUDGE WEATHERLY: Okay. Patent Owner?

5 MR. GRISWOLD: Thank you, Your Honor. My name is Josh
6 Griswold. I'm with Fish & Richardson for MCP IP. I have with me my
7 colleague, Matt Colvin, also with Fish & Richardson, also for MCP. In the
8 gallery, I have Ken Hoover and Ken Langley, also for MCP. Each of those
9 persons are of record in this hearing. And then I have Jeff Ozanne with
10 Mathews Archery, Inc., and Gabby Cordono, also with Mathews Archery,
11 Inc., and Nick Vogel, who is outside counsel for Mathews and MCP.

12 JUDGE WEATHERLY: Thank you. Before we begin, I believe that
13 the parties' demonstrative exhibits reflect that neither party plans to discuss
14 confidential information during the hearing because none of the exhibits
15 appears to cite or describe any such information in a confidential way.
16 Please confirm my understanding is correct.

17 MR. COLVIN: That's correct, Your Honors.

18 MR. SEITZ: That's right, Your Honor. And I'll talk about deposition
19 transcripts I've gone through and ensured everything I'm going to talk about
20 today is what was released on the public side, the public record. So when I
21 mention things today, I've ensured everything is on the public side, not on
22 the confidential side.

23 MR. COLVIN: And we filed updated public versions of the
24 transcripts so that the hearing could be open, Your Honor.

25 JUDGE WEATHERLY: Thank you both for working through that.
26 And that's good news. Thanks for getting that sorted. It makes today's

1 hearing a lot easier.

2 Petitioner, how much time, if any, do you wish to reserve for rebuttal?

3 MR. SEITZ: Thirty minutes, please.

4 JUDGE WEATHERLY: Thirty minutes. I guessed wrong, as you
5 can tell from the clock behind me. So the time, I'm going to try to keep the
6 time. You should be able to see it behind my head. You're not obligated to
7 stop instantly at the 60-minute mark. I'm sure you've done this before. But
8 if you go over the mark, it'll come out of your rebuttal time. So unless
9 anyone has any questions. Patent Owner, you look like you might want to
10 ask me a question.

11 MR. COLVIN: No, we're good.

12 JUDGE WEATHERLY: You're good? All right, great. So,
13 Petitioner, you may begin when you're ready.

14 MR. SEITZ: Thank you, Your Honors. It's a pleasure to be back in
15 person.

16 JUDGE WEATHERLY: Likewise. And thank you, everyone, for
17 being here in person. I'm a big fan. Partially because I'm an old man, but,
18 you know. Thank you.

19 MR. SEITZ: And thank you for your patience. It was a lot of people
20 to get through security today. So I appreciate your patience as we got
21 through. I'm having issues with the monitors. I'm just going to disconnect
22 my computer. I believe you have everything. So I'll proceed in that manner.
23 And you can turn off the album. I won't need that.

24 So may it please the Board. Your Honors, we're here today to talk
25 about three different patents belonging to MCP IP. Those three patents are
26 largely the same. They're related. The claims include very similar concepts.

1 And so I'm going to be focusing a lot of my time in my slides and in my
2 discussions on the '989 Patent. I believe the patent owner has done the
3 same. These arguments will apply across the Board, but I'm focusing on the
4 '989 today.

5 Judge Peslak, I just wanted to make sure you could hear me okay.
6 Make sure I'm talking loud enough and into the microphone well enough.

7 JUDGE PESLAK: Yes, I can hear you. Thank you very much.

8 MR. SEITZ: Thank you, sir.

9 JUDGE WEATHERLY: So, before you go further, because of what
10 you just said, I wanted to find out from you, and I'll probably ask the patent
11 owner the same thing. Claim 11 in the '831 patent, the 524 case, seems to
12 get at the so-called reverse wrap concept differently than the others. Sort of
13 by reciting kind of some geometries rather than the rotational relationships
14 of the various components in the claimed bow. So I'm testing your assertion
15 that you can talk about one patent and have it apply.

16 MR. SEITZ: I believe the same arguments apply, Your Honor. The
17 same points that Patent Owner has made about our combination relating to
18 whether there is a proper combination there apply equally. I don't believe
19 there's anything different about 11 that would give rise today to us having a
20 different discussion based on the points I'm going to discuss.

21 JUDGE WEATHERLY: But it does approach the concepts
22 differently, right?

23 MR. SEITZ: It does, but it's the same general idea of the reverse
24 wrapping.

25 JUDGE WEATHERLY: Okay. I don't know if we'll clarify, I'm sure,
26 if you've got it wrong or I've got it wrong.

1 MR. SEITZ: I'm sure they will. Your Honors, let me start at DX4
2 with a summary of the challenged patents. And I won't belabor the point
3 here, but what I do want to point out is that the focus of our dispute in this
4 case has come down to the reverse wrap feature in the claims.

5 We're not going to be disputing before you today the question of
6 whether there's a riser, a first limb, whether there are rotatable members,
7 which I may inadvertently call a cam. They're the same thing. But those
8 disputes are not between the parties. There's no challenges to the references
9 on whether they actually have those components. The focus of our dispute
10 today is on the where-in clause, and specifically on this question of what is
11 the reverse wrap.

12 And so to address that briefly on DX5, I've depicted figure 1 of the
13 '989 Patent here. And I want to talk to make sure we're on the same page as
14 to what the reverse wrap is. So the reverse wrap in the claims covers the
15 idea that you have a power cable. And there's two different cables that we're
16 going to be talking about today. A drawstring, which is what you would
17 knock your arrow on and pull back. And there's a power cable. The power
18 cable is what ultimately imparts power, hence the name, to the arrow to
19 shoot it out from the bow.

20 The power cable here for the reverse wrap is depicted in red in figure
21 1 on DX5. That power cable wraps around something called a capstan in a
22 first rotational direction according to the claims. Capstan is what looks like
23 an apostrophe in figure 1. It just simply changes or reverses the direction of
24 that power cable.

25 The reverse wrap aspect comes in because the power cable wraps
26 around the capstan in a first rotational direction. Here we can see it comes

1 down. The red power cable comes down, goes around the capstan, and then
2 moves in a direction towards the right, which is counterclockwise. You can
3 see the yellow arrow on that figure on the left side showing its rotation
4 around that capstan.

5 JUDGE WEATHERLY: So I'll tell you that one of the biggest
6 challenges in this case for me is that you all say things with an implied frame
7 of reference without recognizing that you're doing that. And the frames of
8 reference keep shifting around. For example, when you say that that red
9 highlighted cord wraps, you said clockwise?

10 MR. SEITZ: I said counterclockwise. If I said clockwise, I
11 apologize. I meant counterclockwise.

12 JUDGE WEATHERLY: It looks to me like it wraps clockwise
13 around that structure. Because the fixed part is at the blue post.

14 MR. SEITZ: I see, Your Honor.

15 JUDGE WEATHERLY: See what I mean about the frame of
16 reference?

17 MR. SEITZ: Yes. And so the blue post is called a terminal or an
18 anchor point --

19 JUDGE WEATHERLY: And by the way, I'm talking about this
20 concept with an unstated frame of reference also. Because as it appears in
21 this figure, the figure is the frame of reference. So I might interrupt every
22 once in a while when I get confused about the frames of reference. And I
23 only bring it up. You all have been living with these cases in detail for a lot
24 longer than we have. I'm counting on you to be able to adapt more nimbly
25 than I can.

26 MR. SEITZ: Absolutely, Your Honor.

1 JUDGE WEATHERLY: So that's why I'm raising this concept.

2 MR. SEITZ: I fear between our demonstratives there are figures that
3 are the same as what you see in the patents. And sometimes folks have
4 rotated those.

5 JUDGE WEATHERLY: Right.

6 MR. SEITZ: So if I'm not clear, if you have questions, please do
7 interrupt. I'm happy to stop. Let me take a step back in light of that.

8 JUDGE WEATHERLY: But the important part isn't that it wraps
9 clockwise or counterclockwise. The important part is that it wraps in a
10 different direction from a different string that's depicted in the same figure.

11 MR. SEITZ: That it wraps in a rotational direction different from the
12 direction that the cam will rotate when it is drawn.

13 JUDGE WEATHERLY: As it's shown in this figure?

14 MR. SEITZ: Correct.

15 JUDGE WEATHERLY: Okay.

16 MR. SEITZ: So as the bow string is drawn, if you were going to
17 knock an arrow and pull it back to fire, the cam here will rotate, as the green
18 arrow indicates, in a clockwise direction.

19 JUDGE WEATHERLY: Okay.

20 MR. SEITZ: But if we look at the capstan, which is not the purple.
21 The purple portion is called a terminal. In Darlington, it can be called an
22 anchor point. It is where that power cable attaches. The question is the
23 direction that that power cable wraps around the capstan. So looking at this,
24 I should have colored that for you. The capstan is the apostrophe-looking
25 component near the end of that red power cable.

26 And as it comes down, as I look at the figure down, make sure we're

1 trying to talk in correct terms here, it comes around and then it loops in a
2 counterclockwise direction around that capstan to where then it ultimately
3 terminates or attaches on the terminal or the anchor point. That is a
4 counterclockwise direction. The cam will rotate in a clockwise direction.
5 That is what makes the reverse wrap.

6 So you're looking for the power cable to wrap around the capstan in
7 one direction, and that can be any direction, Your Honor, and then we're
8 looking for the cams to rotate in a different direction.

9 JUDGE WEATHERLY: That's also why I'm glad that we have some
10 of these in the hearing room today.

11 MR. SEITZ: Yes. So, Your Honor, let me move to our combination.
12 I'm on DX7, for Your Honors. Our combination relies on Darlington in light
13 of Islas, and I may be pronouncing that different than other people are. I'm
14 happy to pronounce it however is easiest for most folks. I honestly don't
15 know how that's pronounced. But it's Darlington in view of Islas, which
16 comes up with a modified Darlington cam.

17 Now let me start with a few things here that are not in dispute.
18 Darlington discloses a cam with a capstan, and that capstan is the orange,
19 looks almost like a circle, number 72 from figure 40 on the left side of DX7.
20 So there's the capstan. That's the point at which the power cable will move
21 around. It also discloses a terminal, that anchor point, which is where that
22 cable attaches. That is pink. That is number 56.

23 And if we're looking at this, the green power cable, the focus on our
24 power cable here is on that green power cable, number 30, that comes in the
25 downward direction from figure 40, and then it wraps in a clockwise
26 direction towards the left of the figure and back up towards the anchor point.

1 So that power cable in this instance, in Darlington, is coming down and then
2 wrapping or rotating in a clockwise direction.

3 JUDGE WEATHERLY: So wrapping, you're saying -- when you talk
4 about wrapping, you're talking about the cable when it's not connected to the
5 purple anchor point.

6 MR. SEITZ: That's right.

7 JUDGE WEATHERLY: Physically, the direction that you lay the
8 cable on onto the capstan is clockwise before you connect it up to the
9 anchor.

10 MR. SEITZ: Apologies for interrupting. That's right.

11 JUDGE WEATHERLY: Yes, it's how you move that cable, wrap that
12 cable around that capstan.

13 MR. SEITZ: Right. And wrap may be, I see now, because you do
14 wrap it around the terminal point, where that can get confusing. I'll try and
15 do a better job there.

16 JUDGE WEATHERLY: Yeah, I mean, you can also put it on the
17 terminal -- on the anchor point first, and then wrap the cable the other
18 direction.

19 MR. SEITZ: Correct. The key question for us here is what direction
20 is it working around the orange capstan?

21 JUDGE WEATHERLY: Toward the anchor point.

22 MR. SEITZ: Towards the anchor point. That's right. Yeah, very
23 good way to put that. Towards the anchor point. And here in Darlington,
24 that is in the clockwise direction, okay?

25 JUDGE WEATHERLY: Yeah.

26 MR. SEITZ: So no disputes so far between the parties on this. No

1 disputes --

2 JUDGE PESLAK: Mr. Seitz, I have a question about what capstan
3 means here. When you were talking about the challenged pattern, you
4 referred to the thing that looked like an apostrophe as a capstan. And now,
5 here at Darlington, there is something like an apostrophe, but you're not
6 calling that a capstan. You're calling what looks like another apostrophe a
7 terminal or something.

8 So I guess my question is, in this art, what is a capstan? I mean, my
9 concept of a capstan is something like on a boat. It's like a winch that
10 people use to pull up an anchor, right? What's the significance of capstan in
11 this art?

12 MR. SEITZ: The significance of the capstan, and you're right in
13 referring to the marine reference there. That is where that term comes from,
14 where you'll see on boats, it's typically that large white tubular structure
15 where a rope will come in from an anchor or from something that attaches
16 you to the shore, and it will change direction on that capstan as it comes
17 back to where you would wind that anchor rope up.

18 So here, capstan in the patents is really broad, referring to some
19 structure that's going to change the direction of that cable. So Darlington, if
20 I look at it, it's not an apostrophe shape. What I've highlighted in orange is
21 not an apostrophe shape, but it absolutely meets that question of capstan,
22 because it is changing the direction of that cable.

23 I suppose an argument could be made, Your Honor, that the, I call it
24 the hockey stick. It almost looks like an apostrophe or a hockey stick. It
25 does change the direction. I suppose an argument could be made that that's
26 another capstan. That's not something that the parties have focused on as a

1 dispute in this proceeding. There's no limitation, though, in the patent that
2 would say you can only have one capstan. It's just a question of finding the
3 rotation on the capstan in one direction and comparing that to the rotation of
4 the cam.

5 JUDGE PESLAK: Okay. Thank you.

6 MR. SEITZ: A few other points on Darlington, just to point out,
7 because they're really part of the basis of our combination. There's no
8 dispute here that Darlington actually contemplates or discloses modifications
9 that a user can make to its cam system. And specifically, they have
10 something called a draw length module. We have lots of words floating
11 around here, but a draw length module.

12 And, Your Honors, in the figure on DX7, figure 40 on the left side,
13 that's labeled as 64, also labeled as B-1, B1. In other figures, that's number
14 44, it's number 60, it's number 62, it's number 64. Darlington contemplates
15 that that draw length module can be changed. You can undo the screws that
16 are on there, and you can put in different sized draw length modules, which
17 allow you to progressively decrease or increase the length of your draw, how
18 far back you can pull that draw string.

19 And so even in some of the figures that we set forth in our petition
20 and in Darlington itself, it shows you different sizes of that draw length
21 module, which is expressly contemplated by Darlington to be modifiable by
22 the user to adjust their draw. Similarly, that hockey stick looking
23 component that comes off the right side of B-1, is just called section 42 in
24 the patent in Darlington. It is a part of that draw length module. It is a
25 separate part. It also is removable, as you put in different components to
26 adjust your draw length.

1 And then finally, Your Honors, the last piece of Darlington that's
2 modifiable that I want to point out here for purposes of our discussion, is the
3 orange capstan that I've indicated. That's number 72 here in figure 4D of
4 Darlington. That, if you look closely, shows numbers 1, 2, and 3. And
5 similar to the draw length module, you can unscrew that component, that
6 capstan, and move it to one of those three holes to adjust the length of your
7 power cable.

8 So Darlington discloses a very user modifiable, very adjustable cam
9 that allows you to adjust draw length, lengths of your power cable, all that
10 the user can do themselves with that screen and other things.

11 I'm going to move to DX8, and I want to talk about Islas now. So
12 again, Islas is another reference that discloses a bow, discloses rotatable
13 numbers, here cams, discloses these cams on DX8 from figure 3 is what I
14 have focused on here. What we see in Islas, as we look at the cam as it
15 would be drawn, it is going to move in, A, that's one, is moving in a
16 counterclockwise direction. That's that pink or magenta arrow.

17 It also discloses two power cables, similar to Darlington that has two
18 power cables, similar to our challenged patent that has two power cables.

19 What we notice here in Islas, though, is the power cable that I've
20 depicted in green, coming in from the left side of the screen. So as you're
21 looking at figure 3 to orient us, Your Honors, the way that the inventors of
22 Islas drew their figures was as if the bow was sitting horizontally as opposed
23 to vertically.

24 JUDGE WEATHERLY: With the drawstring at the top.

25 MR. SEITZ: Yeah, that's right. And so it -- I appreciate what Patent
26 Owner has done by moving those around, perhaps we both should have done

1 that, but that's the orientation that we're looking at here at Islas.

2 So we see a power cable that's coming in from the left side, depicted
3 in green, that's number 31, and it comes down to a structure depicted in
4 orange, where it then bends or wraps or goes around that orange structure
5 towards an anchor point or a terminal, which is not depicted in this picture.
6 The key aspect of Islas is that that power cable there rotates in a clockwise
7 direction.

8 It comes in from the left, and as it wraps, it goes down towards the 6
9 o'clock position and then wraps back up towards the 9 o'clock position,
10 telling us that it's wrapping in a clockwise direction.

11 JUDGE WEATHERLY: You said it rotates in a --

12 MR. SEITZ: It works around --

13 JUDGE WEATHERLY: Wraps around --

14 MR. SEITZ: Yes.

15 JUDGE WEATHERLY: It wraps in a counterclockwise, or
16 clockwise.

17 MR. SEITZ: Clockwise.

18 JUDGE WEATHERLY: Clockwise direction.

19 MR. SEITZ: Right. Basically, it's coming in at the 3 o'clock, it is
20 wrapping towards the 6 o'clock, wrapping back up towards the 9 o'clock.

21 JUDGE WEATHERLY: Right.

22 MR. SEITZ: So what we see from Islas is what you would refer to as
23 a reverse-wrap arrangement. The cams will rotate in a counterclockwise
24 arrangement. The power cable here, number 31, will wrap in a clockwise.
25 So you have counterclockwise and clockwise.

26 Now, our combination, supported by our expert Joshua Lange, takes

1 the concept of the counter-rotational wrap, that reverse-wrap, from Islas, and
2 uses that concept of the reverse-wrap in Darlington.

3 And let me actually go to DX9 to show you this in a bit more detail.
4 So DX9 shows Darlington figure 4D on the left. It shows Darlington, again,
5 figure 4D on the right, with different portions that are highlighted. And in
6 the middle is our modified bow, the proposed combination set forward in our
7 petition.

8 So what we see with our combination, we take the concept of the
9 reverse-wrap from Islas, which would wrap your power cable in a different
10 direction than the cam rotates. The cam of Darlington rotates in a clockwise
11 direction, that's the magenta arrow in the center picture, from 3 o'clock to 6
12 o'clock to 9 o'clock.

13 So using the concept of reverse-wrap from Islas, we move the
14 terminal, that's 56, the pink, the anchor point, as we've also been referring to
15 it, to the other side of the capstan. Then you have --

16 JUDGE WEATHERLY: So even though it's not necessary to show
17 that a feature from one reference can be bodily incorporated into another
18 one, it's an almost irresistible urge to do it, to try to make it easier for people
19 sitting up here in my seat to understand. I'd rather focus, though, on the -- I
20 understand the concepts of the reverse-wrapping. Help me understand just
21 why in the world would somebody make this modification.

22 MR. SEITZ: Yeah, absolutely.

23 JUDGE WEATHERLY: You've convinced me that it's possible, but
24 that's not really the question that we have to decide.

25 MR. SEITZ: Yeah, let's start with DX11. We start with the concept -
26 - in our petition and with Mr. Lange, we start with the concept that

1 Darlington already discloses a highly modifiable cam for its users. And so
2 we know from Darlington that you can remove those cable wrap portions,
3 44, 62, 64, as well as the hockey stick-looking component. Darlington
4 expressly tells us that. And so it's replaceable with components that will
5 give you a desired draw cycle. So that's the start of our assumption, that
6 Darlington invites or encourages its users to modify its cam.

7 So then we get to DX12, where we have our expert, Mr. Lange. And
8 let me just explain about Mr. Lange. Mr. Lange is our -- Petitioner's
9 declarant. He's the expert in this matter. He is an individual that has
10 actually worked in the archery industry. He worked for a company called
11 Hoyt. Hoyt is a bow or archery company. They manufacture bows and
12 cams and all sorts of different things.

13 He's designed bows. He's designed cams. He's designed hybrid cam
14 systems. And he was doing all of this work in the '07 to '08 timeframe. So
15 he has hands-on experience with designing cam systems for archery bows.
16 Not just a generic cam in some mechanical engineering sense, but cams that
17 are used in archery systems. Paragraphs 7 to 8 of his declaration.

18 So on DX12, he opines that there's a number of reasons, as a designer
19 of a cam, and as looking at this as one of ordinary skill in the art, he opines
20 that you would want to -- a POSITA would want to make these
21 modifications for a number of different reasons. Some of those are listed
22 here on DX12. You'd have a reduction in weight, because you're removing
23 components from that cam. You would have a decrease in the
24 manufacturing cost.

25 You have a significant portion of aluminum that is coming off. That's
26 that hockey stick shaped component of Darlington. Those are big benefits in

1 a cam that rotates, getting rid of that rotational weight, reducing costs that
2 can be passed on to a consumer. It would reduce the effort to carry a bow.
3 It would reduce the effort to hold that bow up. Archers will often sit at a
4 draw position for quite some time.

5 It also is going to allow the user to design a system that can impart
6 more power to the arrow as it is shot out. You will have less parts that are,
7 for lack of a better phraseology, are soaking up that energy from the power
8 cables and imparting that back to the bow.

9 And then one last width that we'll talk about here as well, is this
10 question of advanced wear on your power cables. It's not a surprise. You'll
11 see it when you see the bows that they pull out. But these power cables are
12 under a tremendous amount of tension.

13 And you'll even see, if you've read the transcripts of the experts, they
14 talk about, and some of the opponents, they talk about questions of bows
15 exploding. Exploding in terms of, you can have a fray that comes into your
16 power cable. That's under a tremendous amount of pressure. It's almost like
17 slicing a rump under tension with a knife. It eventually is going to snap
18 apart.

19 JUDGE WEATHERLY: So, in use, does this power cable shown in
20 Darlington -- when an archer draws the bow and releases an arrow, does the
21 power cable essentially slide around that structure 72?

22 MR. SEITZ: Yeah. If we go to --

23 JUDGE WEATHERLY: Is that what cause the wear?

24 MR. SEITZ: If we go to DX -- let's see here on the exhibit --

25 JUDGE WEATHERLY: And it would slide around this element that
26 you've colorized brown in DX9.

1 MR. SEITZ: Yeah.

2 JUDGE WEATHERLY: It would slide on that, I think we've called
3 that a capstan. You don't like us calling it that, I think, because capstan is
4 one of the most used in your complaint.

5 MR. SEITZ: If you look at DX14, Your Honor.

6 JUDGE WEATHERLY: Okay.

7 MR. SEITZ: I think that's a really good example.

8 JUDGE WEATHERLY: All right.

9 MR. SEITZ: DX14 shows us Darlington.

10 JUDGE WEATHERLY: Unmodified.

11 MR. SEITZ: Correct, unmodified. And so what we see with
12 Darlington is that -- I'm going to move my slides here. We see the power
13 cable on the right. That's number 30. It's not colored in this picture. As you
14 draw the bow, that power cable is going to sit into a groove that is in 62, B2,
15 and the hockey stick. The brown component there. It is going to rest in that.
16 So these grooves are almost like a channel.

17 JUDGE WEATHERLY: Yeah.

18 MR. SEITZ: So already in Darlington, you have the cable sitting in a
19 groove constantly as it comes around the end of that hockey stick towards
20 the capstan 72. Mr. Lange opined that any amount of time that you're
21 putting something that's under that high of pressure onto and rubbing against
22 components on the cam, you're introducing wear.

23 JUDGE WEATHERLY: Yeah, I'm just trying to understand whether
24 that cable actually moves in those grooves or in the wrap around capstan in
25 use.

26 MR. SEITZ: I want to be careful with the word moves. It will --

1 JUDGE WEATHERLY: I literally mean, does the cable slide against
2 the surface of those things?

3 MR. SEITZ: Yes, it will.

4 JUDGE WEATHERLY: Okay.

5 MR. SEITZ: As the cam rotates, the cam is going to rotate into those
6 power cables, and the power cable is going to fit inside the channel that
7 would be contained within 62.

8 JUDGE WEATHERLY: And the power cable slides inside that
9 channel as the bow is being used.

10 MR. SEITZ: Yes, that's right. And that's where the wear is going to
11 cause because it's moving along in that channel, causing premature wear and
12 friction and hitting the edges. And those are some of the issues that you're
13 going to have.

14 JUDGE WEATHERLY: One of the reasons I love being in person is
15 that I can see one of Patent Owners counsel for the record shaking his head
16 no.

17 MR. SEITZ: Shaking his head, yes. I sensed him back there.

18 JUDGE WEATHERLY: And so, again, this is one of the reasons why
19 I'm happy to have some of these things here in the hearing room today.

20 MR. SEITZ: Now, I'm not certain what he's shaking his head at.

21 JUDGE WEATHERLY: Well, I think he's saying it doesn't slide
22 inside that structure, but we'll see. I don't know.

23 MR. SEITZ: I don't know either. You have a fixed cable, absolutely.

24 JUDGE WEATHERLY: It matters to me because it's relevant to the
25 rationale to avoid wear.

26 MR. SEITZ: Right.

1 JUDGE WEATHERLY: You might be able to convince me that even
2 if it doesn't move in there, that it's still a wear point. I don't know. I've shot
3 arrows before, but I was maybe 12, so we're talking about 50 years ago.

4 MR. SEITZ: Let me see if I can describe it this way. So you'll have
5 your power cable. Your cam is going to rotate. That cable is going to hit the
6 edges of your channel, and it is going to slide. In a perfect scenario, you're
7 going to fit right into that channel. Perfect scenario.

8 JUDGE WEATHERLY: All right.

9 MR. SEITZ: But there is no perfect scenario. So your cable, those
10 power cables are fixed. But when I'm talking about moving, I'm talking
11 about it will slide into that channel. It will hit those edges where it will then
12 move into the channel, and as that moves, you're going to have friction there
13 that's being exerted onto that power cable.

14 JUDGE WEATHERLY: Okay.

15 MR. SEITZ: And that's really, Your Honor, what I've set forth on
16 DX13. It doesn't have that picture. I went to 14 because it has that picture.
17 But contact, as Mr. Lange, the cam designer, has testified, contact between
18 the power cables and other bow elements. That could be another string.
19 That could be just contact against the metal on the cam itself, is going to
20 start causing abrasion and fraying. Wear is naturally going to occur as a
21 cable rides in and out of that track. These are pretty high tensions that
22 they're under. That cable wear can induce premature wear.

23 And it's not just that premature wear is an issue. It's that premature
24 wear can cause these bows to, as people have said, explode or cause user
25 injury. And additional contact with other --

26 JUDGE PESLAK: Counsel?

1 MR. SEITZ: Yes.

2 JUDGE PESLAK: Just so I'm clear, the only difference between, in
3 terms of wear, between Darlington and the modified bow is you remove this
4 element 42. So you're just -- it's in a groove in the capstan, but now it's no
5 longer in the element 42. Is that correct?

6 MR. SEITZ: That is correct, Your Honor. Depicted in the middle of
7 DX9. We've removed the hockey stick. Benefit of that being you no longer
8 have that wear point. And then the anchor point has moved into that
9 position towards the periphery of that cam. So you are correct there.

10 Our expert, Mr. Lange, did testify, Your Honor, that you could modify
11 what is depicted, if you're on DX9, in the middle picture of our modified
12 bow. He did testify that you can modify B4, which is 44 in that picture. He
13 did testify you could modify that if you wanted to round an edge to try and
14 reduce any point that might cause premature wear to a bow. But Your
15 Honor is correct. The main difference is removing of the hockey stick and
16 moving the anchor point to its location.

17 JUDGE PESLAK: Okay, thank you.

18 MR. SEITZ: And Judge Weatherly, if you're on DX9, what you can
19 see in the middle where it says modified bow, those dashed lines on item 44,
20 or B4, that cable groove, that depicts where your power cable is going to lie.

21 JUDGE WEATHERLY: That's the surface it's going to contact.

22 MR. SEITZ: That's right. And that's in that channel that I was
23 depicting between my two buckles there.

24 JUDGE WEATHERLY: Sure. You have to kind of be a human CAD
25 machine to be able to do these cases.

26 MR. SEITZ: Yes, Your Honor. And I don't know whether I'm

1 accomplishing that or not, but --

2 JUDGE WEATHERLY: I try. I used to think I was good at it, but
3 this case has been tough.

4 MR. SEITZ: Mechanical cases are often tough. Back to DX14, Your
5 Honor, one of the other benefits that we've talked about. So where is a big
6 one? Because of the safety issues that come with that. One of the other
7 benefits is the reduction of manufacturing costs, and this goes to what Judge
8 Peslak was just talking about. We're removing the hockey stick portion
9 from that cam, which would have been a machined piece of aluminum, an
10 extra cost that goes with that. Another benefit to using the reverse wrap
11 design.

12 DX15, Your Honors, we also heard from Mr. Lange in his declaration
13 that wrapping the power cable with the reverse wrap concept of Islas would
14 allow you to design a cam that allows for a greater draw length. You can
15 design that cam so you're going to have longer power cables to impart more
16 power towards the arrow as it is sent out.

17 And that's one of the things that he said in his declaration. You could
18 design that in a number of different ways depending on where you wanted to
19 put your cap stand, how long you wanted those cables to be, things, again,
20 that are contemplated by Darlington as being adjustable in its original form.
21 Okay. Questions before I move on?

22 JUDGE PESLAK: Counsel, is there any dispute from Patent Owner
23 that this change will allow you to increase the draw length?

24 MR. SEITZ: They do dispute that it would provide more rotational
25 power in the pictures that are shown in Mr. Lange's declaration. There was a
26 component in his deposition where he was asked if the picture as drawn of

1 Darlington as modified would absolutely increase the rotational ability of
2 that cam, and he says, as drawn, no, but embodiments of it, yes. So to be
3 fair to them, I think there is a dispute, but it's a question of as drawn or as a
4 POSITA could design it to be operated.

5 JUDGE PESLAK: There's another question. When you're taking out
6 the brown hockey stick, what's the reason that you're moving the terminal to
7 the other side?

8 MR. SEITZ: So moving that terminal to the other side, there's two
9 different reasons. One is what we've talked about before, the aspect of
10 allowing you to have that wrap, which Mr. Lange talked about. By having
11 the reverse wrap, you remove that cable from other components. You
12 remove it from the question of whether it's going to abrade on other
13 components on that cam. It gives you the ability to increase draw lengths. It
14 allows you to have that reverse wrap.

15 But also, Your Honor, if we look at Islas, it is a spoke design cam.
16 And by spoke design I mean if you look at Darlington on DX14, it appears
17 to be a solid cam, very different from like a bike wheel that you would have.
18 Islas, however, if we go back to DX8, Islas is depicted in the middle figure
19 of DX8. That's figure 3 from Islas, and it also discloses a spoke design. So
20 that is where you have just removed significant portions of the cam to save
21 weight, more of a bicycle spoke design.

22 So you don't have a thick, solid design on your wheel, but you would
23 have those spokes that come out. And so the reason that you would move
24 that anchor point towards the periphery is to put it back onto a solid portion
25 of that cam. As you can see --

26 JUDGE WEATHERLY: Doesn't that also increase the rotational

1 moment of inertia of that cam, something that the expert said you wanted to
2 avoid? I mean, that's why you took that brown part off, was to impart more
3 energy. I know that he didn't use the term rotational moment of inertia, but I
4 understood that as being essentially a concept. You want the cam to be able
5 to spin more easily. So you've moved weight away from the center of
6 rotation, so doesn't that work against one of the stated --

7 MR. SEITZ: Mr. Lange, at paragraph 58 of his declaration, talked
8 about how moving the anchor point out to the periphery would actually
9 increase your rotational energy, the ability to increase your rotational
10 energy. Paragraph 58, he says, increasing the fraction of rotational energy
11 being imparted to the fired arrow.

12 JUDGE WEATHERLY: I thought that was the rationale for
13 removing the brown -- what we've been calling the hockey stick.

14 MR. SEITZ: Also why you would want to put things on the
15 periphery.

16 JUDGE WEATHERLY: So it doesn't make sense to me. I could be
17 completely missing it, but this is how I do it. I talk out loud and I let the
18 crowd correct me. If I remove the hockey stick, then that cam is going to
19 have a lower rotational moment of inertia. It's going to spin more easily.

20 MR. SEITZ: Yes.

21 JUDGE WEATHERLY: With less energy needed to make it spin.

22 MR. SEITZ: Correct.

23 JUDGE WEATHERLY: Which I suppose means it can more
24 efficiently impart energy to the string instead of rotating the structure. And I
25 could be butchering this badly. But that anchor point is moving from a point
26 that is closer to the rotational axis out toward the outside, just like a figure

1 skater who extends their arms so that they spin more slowly.

2 It feels a little bit like you all are picking and choosing the rationale
3 and how they apply to the various alterations that you've done. It's one of
4 the pitfalls, frankly, of taking this bodily incorporation approach where
5 you're trying to give me something that I can wrap my brain around and if
6 you'll pardon the use of the phrase.

7 MR. SEITZ: Taking the concept of that, yes. To avoid the bodily
8 incorporation errors.

9 JUDGE WEATHERLY: You don't have to avoid it. It's our job to
10 understand fully what the argument is and whether the argument is
11 consistent internally. This is an aspect that feels a little bit internally
12 inconsistent.

13 MR. SEITZ: And so if we look at Islas, figure 3, in our petition claim
14 10 specifically, Mr. Lange testified how you would also want to incorporate
15 this spoke design from Islas. I think this is probably one of the best figures
16 for depicting that.

17 JUDGE WEATHERLY: Which figure?

18 MR. SEITZ: Figure 3 of Islas. And I'm on DX8 if you are looking
19 for a handy reference.

20 JUDGE WEATHERLY: Yeah, I am.

21 MR. SEITZ: So as we see around that whole cam, there are cutouts.

22 JUDGE WEATHERLY: Yeah.

23 MR. SEITZ: Which reduces your overall weight, which is a benefit.

24 JUDGE WEATHERLY: And reduces the rotational moment of
25 inertia of that structure.

26 MR. SEITZ: Correct.

1 JUDGE WEATHERLY: Okay.

2 MR. SEITZ: Mr. Lange testified that you would still need a solid or
3 sturdy place to have that anchor which would be on the periphery, out
4 towards that edge. Almost where that number 20 is depicted on that edge
5 there because that gives you a solid and sturdy place to put that mount.

6 JUDGE WEATHERLY: All right. Fair enough.

7 MR. SEITZ: Because you're still dealing with significant forces, I
8 mean the stresses of how strong those are strung, and so putting them in a
9 place where you have both the edge and the meeting of one of your spokes is
10 going to provide the most strength for a mounting place.

11 Okay. Let's turn to DX17, Your Honors. I want to talk through some
12 of the arguments from Patent Owner. And the focus, there's a number of
13 focuses, but a focus that I'd like to talk about first is that Patent Owner
14 spends a lot of time talking back and forth between the two power cables
15 that are disclosed in the various references. Now looking at DX17, you have
16 Darlington on the right, figure 4D. You have Islas figure 3 on the left.

17 Our petition, our combination, focuses on the green power cable 30 of
18 Darlington and on the blue power cable 30 of Islas. That's our combination.
19 Now Patent Owner spends a significant amount of time focusing very
20 heavily on the other power cables and what they do in this combination.
21 But, as I depict on DX18, our original petition is focusing on the power
22 cable that wraps outwardly, which is the blue power cable of Islas.

23 So first question raised, DX19, by Patent Owner is this question of
24 whether the combination, the anchor point would be near the periphery.
25 Your Honor, I think we just discussed that. I've told you the arguments that
26 we have for that, the support from Mr. Lange described in connection

1 specifically with Claim 10 about moving that anchor point to a solid point, a
2 very sturdy point on the cam.

3 We also have this question raised by Patent Owner in DX20, of
4 whether a single prior reference must show the two power cables wrapping
5 in the same direction. And so their point there, to phrase their argument,
6 both in our modified Darlington, which was -- let me flip back real quick,
7 Your Honor. In our modified Darlington, we have, and this is seen on DX8,
8 modified Darlington has both power cables coming down and rotating in a
9 counterclockwise direction.

10 JUDGE WEATHERLY: You mean wrapping?

11 MR. SEITZ: Wrapping, thank you.

12 JUDGE WEATHERLY: Okay.

13 MR. SEITZ: Yeah, thank you for catching me again. Wrapping in a
14 counterclockwise direction. And Patent Owner is saying that because Islas
15 and Darlington originally had wraps that went in opposite directions for the
16 power cables, that you would not make this combination. But Your Honor,
17 that fundamentally misses the point. There is not a limitation in the claims
18 of any of the asserted patents that's going to demand that. From the
19 independent claim perspective, you cannot find a limitation that says both
20 power cables must wrap in the same direction.

21 JUDGE WEATHERLY: I'm not sure that that's what the argument is,
22 though. I mean, Islas does show its power cables, its pair of power cables
23 being wrapped in different directions around the structures that they're
24 anchored to, right?

25 MR. SEITZ: That is correct.

26 JUDGE WEATHERLY: I think the argument is that that's what Islas

1 thought was the right thing to do. And so why would you just arbitrarily
2 change it so that they both wrap in the same direction, as in your modified
3 version? Not that the claim requires it or doesn't require it, right?

4 MR. SEITZ: Yeah. So let's take a step back on that one then. There
5 is no disclosure in Islas that says that that aspect of the cables wrapping in
6 the manner that they did, the opposite directions, is a key aspect of the
7 invention or is the only way that you could do it.

8 JUDGE WEATHERLY: Okay.

9 MR. SEITZ: In fact, Darlington says the same. They talk about how
10 you could mirror your cams with your arrangements on both cams. They
11 talk about how you could have different setups with the cams. There's
12 significant freedom that is given in the descriptions of both of those
13 references to the design of those cams.

14 JUDGE WEATHERLY: And by the cams, you're referring to the
15 large structure that the drawstring contacts? Are you talking about some of
16 the intermediate structures that some of the power cables wrap around?

17 MR. SEITZ: Yes, to all of that.

18 JUDGE WEATHERLY: Okay.

19 MR. SEITZ: So the cams, I'm thinking of Darlington, but there's
20 given significant leeway to the design of the cams and how they would take
21 up or let out the various power cables. And they note that they could be
22 mirrored. So the individual aspects of how the power cables are taken up or
23 let out could be mirrored between top and bottom. They could be designed
24 in different ways.

25 So there is nothing -- and maybe more to the point, if their argument
26 is not one from the claims perspective, there's nothing in Islas or Darlington

1 that says you cannot do it this way. In fact, I would say, as we've just
2 discussed, it's the opposite. There's an attitude.

3 JUDGE WEATHERLY: Yeah. There's some question about whether
4 you -- some cases talk about a distinction between whether you could do
5 something versus whether you would do something. Bluntly, I don't really
6 love those cases, but they do exist.

7 MR. SEITZ: I think if we had guidance from Islas or Darlington
8 saying don't do it this way, that would be a much more palatable argument.

9 JUDGE WEATHERLY: Okay. Fair enough.

10 MR. SEITZ: Let's look at DX21. DX21 talks about an argument
11 from Patent Owner. It talks about this question, it's the difference between
12 the two power cables. One is a let-out end and one is a take-up end. So
13 we're introducing more phrases here.

14 So let me explain. As you draw the bow, pull back on the drawstring,
15 one of your power cables is going to let out more cable that has been
16 wrapped. It's going to let it out. It's going to lengthen. The other power
17 cable and its structure is going to take up. As we talked about, Judge
18 Weatherly, it's going to go into those channels in the cams that you have,
19 those grooves that you have.

20 And in Islas, there is both a let-out and a take-up, just like in
21 Darlington. And they are right that we have focused on the green power
22 cable, which is a let-out end of the power cable. And we have taken that
23 concept of the reverse wrap shown for the green let-out power cable and put
24 it into the take-up cable, take-up structure, that is in Darlington.

25 And this, Your Honor, is why I've pushed back against the bodily
26 incorporation, because if we had tried to take that structure from Islas, there

1 would be questions there of modifying different structural aspects and trying
2 to bodily incorporate that same function depicted in orange with its anchor
3 point, with its specific wrapping functionality. But we have not done that.
4 We have taken the concept of the reverse wrapping and applied that to
5 Darlington.

6 And the experts on both sides admit that the functions that the power
7 cables perform are the same. Whether that is a let-out or a take-up, the
8 functionality is the same. It's going to impart the power to the arrow. And
9 so, again, those are interchangeable in that aspect of how you could design
10 them. Again, you can mirror designs on top and bottom, and that is we take
11 -- the critical aspect here is that we've taken that concept of the reverse wrap,
12 not the structure and tried to incorporate that structure of Islas into
13 Darlington.

14 And then on DX22, there's been an argument about whether you
15 would need to have Islas teach a power cable wrapping around a capstan.
16 So, again, I think this is very close to bodily incorporation, whether Islas is
17 disclosing a capstan as a --

18 JUDGE WEATHERLY: When you say it's close to bodily
19 incorporation, do you mean that Patent Owner is arguing that you have to
20 demonstrate bodily incorporation?

21 MR. SEITZ: I believe Patent Owner's arguments are saying you could
22 not incorporate the orange portion of Islas into that.

23 JUDGE WEATHERLY: You can't bodily incorporate it differently.

24 MR. SEITZ: You cannot bodily incorporate it.

25 JUDGE WEATHERLY: Okay. All right.

26 MR. SEITZ: And, Your Honors, just to be clear on DX22, cited from

1 Exhibit 1003 in Mr. Lange's declaration, at paragraph 57, we are not using
2 Islas for the teaching of a capstan. We rely on Darlington for that.
3 Darlington expressly discloses its capstan that changes the direction. We are
4 using the concept of the reverse wrap from Islas. So we have not relied on
5 Islas at all for its disclosure or operation of a capstan.

6 JUDGE WEATHERLY: Okay.

7 MR. SEITZ: So the question is not whether that orange capstan-like
8 structure of Islas, around which that green power cable that we've been
9 discussing wraps, whether that could be incorporated into Darlington. That's
10 the wrong standard. On DX23, I've cited cases that I'm sure Your Honors
11 are familiar with. We're not looking at the question of incorporating that
12 structure. We're looking at taking the concept of reverse wrap from Islas.

13 JUDGE WEATHERLY: I don't know if you're planning on
14 addressing the swear-behind evidence in your opening. I said something at
15 the introduction of the hearing that may have implied that we wouldn't let
16 you talk about that in your rebuttal.

17 MR. SEITZ: Yes.

18 JUDGE WEATHERLY: I'm backing away from that to the extent
19 that you heard me saying that. I mean, that's an issue for which the patent
20 owner had the burden of production. I don't know if you're going to address
21 it in your opening portion.

22 MR. SEITZ: I'm prepared to address it now.

23 JUDGE WEATHERLY: I don't have any preference. I just want to
24 make sure you know that you don't have to do it in your opening to be able
25 to talk about it in your rebuttal.

26 MR. SEITZ: I heard you say that and assumed I better cover

1 everything I needed to cover.

2 JUDGE WEATHERLY: Just to be clear, I'm realizing as I'm sitting
3 here listening to this part, which is essentially your affirmative case --

4 MR. SEITZ: Yes.

5 JUDGE WEATHERLY: -- that what I said at the beginning could
6 have been. I didn't mean for it to mean that, if you heard it that way.

7 MR. SEITZ: Okay. Thank you. Why don't I cover it just at the level
8 where I want you thinking while you hear his evidence and I can address the
9 case?

10 JUDGE WEATHERLY: Yes. I mean, say your option.

11 MR. SEITZ: Okay. Thank you, Your Honor. If there's no other
12 questions, let me, in my time, I'll probably end up going over -- and we
13 spend a little longer on that, but let me move to that swear-behind.

14 JUDGE WEATHERLY: Sure. Okay.

15 MR. SEITZ: Okay. So, on the swear-behind, Your Honor, I actually
16 want to look at the swear-behind evidence and walk through the issues that
17 we see with that swear-behind evidence from the evidentiary side of things
18 and look at the mess that's been created here. So I want to walk through a
19 timeline, and then I want to walk through the issues that we have, and that I
20 want to flag for you to think through here. This is their burden. Nobody
21 disputes that. That is abundantly clear from the Federal Circuit.

22 So let's look at the way they met their burden at the time of the patent
23 owner response. At the time of the patent owner response, the evidence at
24 face value showed you a swear behind date of September 26, 2008. That
25 was in the Hoff Declaration in paragraph 12. He said the bows were
26 produced and shipped September 26, 2008, between September 26, 2008 and

1 June 29, 2009.

2 Hoff Appendix A, the very first two entries, show the word shipped
3 and show 9/26/2008. The patent owner response expressly stated that the
4 product was first shipped to customers September 26, 2008.

5 JUDGE WEATHERLY: I thought it was October 1st.

6 MR. SEITZ: We're going to get there.

7 JUDGE WEATHERLY: I know the --

8 MR. SEITZ: They've changed it.

9 J1 I'm in the details already.

10 MR. SEITZ: Yeah, they've changed it.

11 JUDGE WEATHERLY: And I'm not sure that the details are
12 incredibly relevant, frankly. I mean, an on-sale bar is not something that we
13 can adjudicate.

14 MR. SEITZ: I agree. And I'm not asking you to find an on-sale bar.

15 JUDGE WEATHERLY: Right.

16 MR. SEITZ: My point though, Your Honor, is that as of the date of
17 the POR, the evidence showed September 26, 2008.

18 JUDGE WEATHERLY: Why are you focusing on as of the date of
19 the POR?

20 MR. SEITZ: Because they changed their story.

21 JUDGE WEATHERLY: Why does that matter?

22 MR. SEITZ: Because you are entitled to evaluate the credibility of
23 the witnesses in determining, as the fact finder here, the credibility of the
24 evidence that they had put forward to you.

25 JUDGE WEATHERLY: Okay.

26 MR. SEITZ: And I think there's a significant credibility problem.

1 JUDGE WEATHERLY: So it sounds like you're about to present a
2 flavor, a variation of the tried and true. Are they lying now or did they lie
3 earlier?

4 MR. SEITZ: I think that's a fantastic question --

5 JUDGE WEATHERLY: You don't need to reach that decision.

6 MR. SEITZ: I'm not asking you to find that anybody has lied to you.

7 JUDGE WEATHERLY: Okay.

8 MR. SEITZ: I'm going to point out that I think there are questions
9 that have been raised about their own evidence that have now raised the bar
10 for them and left a gap in the evidence that you need to make a proper
11 determination. And that is not going to require you to find that anybody has
12 lied or not lied to you.

13 JUDGE WEATHERLY: Okay. I'm interested. I'm not sure I'm
14 following exactly what you mean. And my instinct is that most of this sort
15 of dispute about is there or isn't there an on-sale bar is a little bit of a red
16 herring, frankly.

17 MR. SEITZ: Fair enough. I think, let's look at it in terms, bear with
18 me as I walk through this. I look at this in terms of it has shown you that
19 there is holes in their evidence that they submitted with their patent owner
20 response that they have not now filled. And if I may walk through what I
21 see here, Your Honor, and then I'm happy to take questions. So patent
22 owner response --

23 JUDGE PESLAK: Counsel, I have a question.

24 MR. SEITZ: Yes.

25 JUDGE PESLAK: I mean, I've read all of the papers here. And if
26 Patent Owner's evidence, which I think it's in the record, showed that they

1 shipped one Monster bow and one Menace bow on June 29, 2009, wouldn't
2 that be sufficient to show a reduction to practice? Forget about everything
3 else.

4 MR. SEITZ: If that's what their evidence showed and they could
5 prove that it was shipped with the cam covered by the patent claims, that it
6 embodied the claims, then yes, Your Honor.

7 JUDGE PESLAK: Okay. Thank you.

8 MR. SEITZ: Here's why I have a problem with their evidence. Their
9 evidence with the POR showed the on-sale bar date. Again, to be clear, I'm
10 not asking you to find an on-sale bar.

11 JUDGE WEATHERLY: What do you mean it showed the on-sale bar
12 date?

13 MR. SEITZ: It showed a date of September 26, 2009.

14 JUDGE WEATHERLY: Showed shipping two bows on that date.

15 MR. SEITZ: Correct. Statements made by the attorneys said shipped
16 to customers on September 26, 2008.

17 JUDGE WEATHERLY: Okay.

18 MR. SEITZ: We raised that issue with them and said, this is an issue
19 in the litigation that we're going to need to decide for the on-sale bar issue.
20 The story changed after that. In his deposition, Mr. Hoff testified that
21 shipped -- for his Appendix A, which is the sales data for the shipping data,
22 he said shipped does not actually mean shipped.

23 JUDGE WEATHERLY: For those two bows.

24 MR. SEITZ: He said shipped does not mean shipped. Now, here's
25 the question I have, Your Honor. You look at that data in Appendix A from
26 their made-to-manage system. Those first two sales that he says shipped

1 does not mean shipped look identical to all the other entries that they are
2 going to point to for other bows that were sold. Bows that were sold on June
3 29. Bows that were sold on other dates in 2009. There is no ability for you
4 to determine, looking at that, what was actually shipped or made or sent out
5 to customers. They themselves raised this issue with the insufficiency of the
6 evidence in Mr. Hoff's declaration.

7 The key here, my point here, the key here is when you look at the
8 Appendix A information for the first two entries, there is nothing in that
9 appendix that tells you that that information is somehow different or special
10 as compared to the entries for the physical bows that they are going to hold
11 up for you later. You need more now because Mr. Hoff said I can't trust the
12 information that's entered into Appendix A because shipped doesn't mean
13 shipped. I need to look at it closer. My point to be --

14 JUDGE WEATHERLY: Yeah, but shipped isn't the issue for
15 reduction to practice. You know, you don't have to ship the bow anywhere
16 to demonstrate reduction to practice. I don't care whether it's been shipped
17 or not shipped, frankly.

18 MR. SEITZ: Okay. So --

19 JUDGE WEATHERLY: And I don't care if the evidence is
20 ambiguous about what was shipped. All I care about is what was reduced to
21 practice and is there evidence demonstrating that the bows that they have
22 photographs of and that their expert has testified about were in existence
23 before June of 2009.

24 MR. SEITZ: Okay. Other than the Appendix A spreadsheet, which
25 they will show you serial numbers and shipment dates for the serial numbers
26 of the three bows, two or three bows that they're going to show you today,

1 there is not any evidence in the record that says those are the bows that
2 existed in 2009 with the cams that existed in 2009. So if you're looking for
3 evidence from --

4 JUDGE WEATHERLY: There isn't any evidence. That's a very
5 strong statement. Is that going to withstand scrutiny?

6 MR. SEITZ: Let me rephrase that. Mr. Hoff has called into question
7 the evidence in Appendix A. He has called into question what it is actually
8 saying. So when you look at the physical bows, the physical bows were
9 reacquired from customers by MCP. We don't know whether those
10 customers changed those cams. We don't know whether those customers
11 modified those cams. We don't know if those cams were the cams that were
12 sold in 2009 such that you could write an opinion that says, I have evidence
13 from a declarant who purchased this bow in 2009.

14 JUDGE WEATHERLY: And I might agree with you that we don't
15 know if the customers modified the bows, but what we can do is look at the
16 bows and compare them to the drawings that are in the patent.

17 MR. SEITZ: You can.

18 JUDGE WEATHERLY: And I think what you're trying to tell me is
19 that if there is a possibility that a customer actually reduced the invention to
20 practice by modifying a bow that they received, then that wouldn't be a
21 reduction of practice by the inventor.

22 MR. SEITZ: No, and I'm doing a bad job explaining myself.

23 JUDGE WEATHERLY: All right. That's why I like to talk out loud
24 in these hearings.

25 MR. SEITZ: I'm saying you can look at that physical bow, but you do
26 not have a piece of evidence in the record that you can cite to that says this

1 was the cams as they existed prior to Darlington. That's what I'm saying.

2 JUDGE WEATHERLY: Other than things like the serial number.

3 JUDGE PESLAK: Counsel, did the declarants say they were
4 unmodified from what was produced in 2008? I'm not sure which declarant
5 said that. It may have been Mr. Hoff.

6 MR. SEITZ: It was Mr. Hoff, but he didn't say that exactly because
7 that's a good question. I looked at that last night, Your Honor. He said the
8 serial number did not appear to be modified. He did not provide in his
9 declaration testimony that the cams were unmodified from what was sold
10 prior to Darlington. But he did say that the serial number was unmodified.

11 JUDGE WEATHERLY: And what effect does the similarity of the
12 cams as we now can look at them, similarity of those cams with the
13 drawings and the patent, what are we to make of that in terms of evidence of
14 whether those are the cams as they were received by the customer?

15 MR. SEITZ: We have not challenged the aspect of the disclosure of
16 those cams and the physical bows, Your Honor. My focus has been on the --

17 JUDGE WEATHERLY: Then I don't understand why we're talking
18 about the possibility of a modification.

19 MR. SEITZ: You still have to prove that those are the bows as they
20 existed prior to Darlington. Those are the cams that existed prior to
21 Darlington.

22 JUDGE WEATHERLY: And I keep going back to why isn't the
23 similarity, in fact striking similarity between the drawings in the patent and
24 the physical structures on these bows that they retrieved from customers,
25 why isn't that sufficient to accomplish what they need to accomplish to show
26 a reduction to practice, an actual reduction to practice?

1 MR. SEITZ: Because we need evidence to show us that those were
2 the actual sales that occurred prior to the date of Darlington. And my point
3 on that, Your Honor, is that Mr. Hoff, because he has raised questions about
4 the sufficiency of the information in the appendix --

5 JUDGE WEATHERLY: And what exactly has he questioned? What
6 sufficiency did he question?

7 MR. SEITZ: What he told us, shipped doesn't mean shipped. And
8 my point is, if you can't look at things and see a difference between them, if
9 the entries for September 26, 2008 are identical to June 28, 2009, but in one
10 instance he's telling you this is not what it says it is, what basis do I have to
11 say that this, the June 28th date, is what it says it is?

12 JUDGE WEATHERLY: Tell me how the serial numbers come into
13 play.

14 MR. SEITZ: Again, the serial numbers come into play from an aspect
15 of he's told us that the data -- so your only way to verify the serial numbers
16 is to go look at Appendix A from Mr. Hoff, right?

17 JUDGE WEATHERLY: You tell me.

18 MR. SEITZ: The only way is to go look at the Appendix A from Mr.
19 Hoff. I will answer that question. And so as you look at that, you have this
20 question of Mr. Hoff and his declaration and what he has said about the
21 spreadsheet, that Appendix A not meaning what it says it means in the back
22 of your head.

23 JUDGE WEATHERLY: Yeah, but you keep trying to extend this
24 statement about it doesn't mean what it says it means. And I don't think it's
25 fair to characterize Mr. Hoff's testimony that way. The Appendix has a lot
26 of information in it. Some of it could have errors in it and some of it may

1 not have errors in it. To simply note that there's an error in one entry doesn't
2 mean that you can't trust any of the information anywhere else in the
3 Appendix.

4 And that's what I'm trying to get you to tell me, why should I treat it
5 as such? It seems like that's your argument. Your argument is that Mr. Hoff
6 says you can't believe the first two entries in this Appendix, so you can't
7 believe anything that's in the Appendix.

8 MR. SEITZ: That is my argument. That's right.

9 JUDGE WEATHERLY: That's a stretch. I mean, in a situation in
10 which the standard of proof is a preponderance of evidence, you're asking us
11 to apply a very stringent view of that.

12 MR. SEITZ: Look at the evidence that's missing. The evidence that
13 we have for the inside archery article, they managed to find an invoice and a
14 shipping record for that. Now, the inside archery article doesn't show the
15 bow in a drawn condition. That's my contention with that magazine article.
16 And if we go --

17 JUDGE WEATHERLY: Yeah, but the article does show test results
18 from having drawn the bow.

19 MR. SEITZ: It doesn't show the geometry of the bow when it was
20 drawn.

21 JUDGE WEATHERLY: Is it because the drawstring, you can't see
22 the drawstring on the cam in the image in one of the photographs in the --

23 MR. SEITZ: It's because it's not drawn in the image.

24 JUDGE WEATHERLY: Why not?

25 MR. SEITZ: I don't dispute --

26 JUDGE WEATHERLY: That's your assertion is that you don't see

1 the drawstring because the drawstring isn't being drawn?

2 MR. SEITZ: I don't dispute that they fired it. They said in the article
3 that they tested it.

4 JUDGE WEATHERLY: Yeah.

5 MR. SEITZ: But the article doesn't show us what the claims in our
6 patent requires that in the drawn condition you see the following, the
7 specific geometry that's laid out there.

8 JUDGE WEATHERLY: But again, now we're talking about almost
9 as if the article itself has to be the thing that demonstrates a reduction of
10 practice. But there's a whole suite of evidence here. It's not just the article.
11 It's physical bows. It's bows that they retrieve from customers that they
12 believe were shipped before Darlington's effective date. And they don't have
13 to show that the article depicts a bow that meets every limitation to prove
14 that there was a reduction of practice.

15 MR. SEITZ: Yes.

16 JUDGE WEATHERLY: Do they?

17 MR. SEITZ: And I am picking apart their evidence that's outside of
18 that article. That's right. So I'm picking those apart.

19 JUDGE WEATHERLY: Okay.

20 MR. SEITZ: So as I look at these and I look at these, I see the article
21 which doesn't show me the claims, all the aspects of the claimed invention
22 because it does not show a drawn bow. That takes me to the point you're
23 making, Judge Weatherly, which is I have this other evidence before me.
24 And my contention on that other evidence before you is that it is lacking
25 from an evidentiary standpoint to show that it is what it says it is.

26 JUDGE WEATHERLY: Wouldn't you say, and from an evidentiary

1 standpoint, you need to be more precise?

2 MR. SEITZ: Yes. Let's do that. There's no shipping records for the
3 physical bows. There's no invoices --

4 JUDGE WEATHERLY: By the physical bows.

5 MR. SEITZ: The ones that are going to stand up and show.

6 JUDGE WEATHERLY: Okay.

7 MR. SEITZ: And they had specific --

8 JUDGE WEATHERLY: And those bows are purported to be the ones
9 that they retrieve from customers.

10 MR. SEITZ: Correct.

11 JUDGE WEATHERLY: Which they assert were shipped before June
12 30, 2009.

13 MR. SEITZ: That's right. We don't have a shipping or an invoice to
14 whatever archery store received those. We don't have a declaration from
15 that archery store saying I received this bow on that date. Presumably they
16 have connections with those. They reached out to the customers, I'm
17 guessing end users that had purchased those bows and bought those bows
18 back. Where's the declaration from that end user saying this is the bow that
19 was purchased? No changes. It is the bow as it was in 2009. We don't have
20 any of those types of things.

21 So as I look and bucket these pieces of evidence, Your Honor, my
22 contention with the magazine article is the fact that we don't have it in the
23 drawn condition to see whether it meets the geometry required in a drawn
24 condition from the claims. My issue with the physical bows is nobody has
25 shown us the type of evidence they submitted that we know they have based
26 on what they submitted with the inside archery article. They had invoices

1 and shipping records for that.

2 Mr. Hoff testified in his deposition that they have shipping records
3 and customer invoices and customer names and shipping receipts. They
4 know the names of the employees who sell bows to customers. They know
5 the names of the employees who enter information into the database.
6 They've reached out and talked in some way, shape, or form to the
7 customers who have these bows. And there is no declaration from those
8 individuals that ties up this evidentiary pitfall here. That's my problem with
9 --

10 JUDGE WEATHERLY: So it sounds like what you're really arguing
11 is a kind of chain of custody problem.

12 MR. SEITZ: I think that's a good way to put it.

13 JUDGE WEATHERLY: Essentially.

14 MR. SEITZ: I think that's a good way to put it. They managed to
15 muster that chain of custody for the inside archery article. There are
16 shipping records. I think it's page 12. It might be page 12. There's shipping
17 records that they're going to go through in their demonstratives that show the
18 invoices and the shipping information. There's an utter lack of that when we
19 get to the question of the physical bows.

20 JUDGE PESLAK: Counsel, I'm looking at Mr. Hoff's declaration and
21 at paragraph 18, he's testifying about the Menace bows that they retrieved
22 from the customer. And we know that Mr. Hoff worked at Mathews
23 Archery in 2008. And he testifies that I have personally inspected these two
24 bows and they are Menace bows. Why doesn't that authenticate these bows?

25 MR. SEITZ: I think that's a very generic statement, Your Honor.
26 What I'm looking for is not just the aspect of a bow with limbs. I'm looking

1 for the claimed features in the patents which are down to the cams and the
2 geometry of the cables.

3 JUDGE PESLAK: But doesn't Dr. Reinholtz compare those bows to
4 the claims to do that?

5 MR. SEITZ: He does compare the bows to the claims. But again, my
6 contention is on the evidentiary -- the chain of title as Judge Weatherly has -
7 -

8 JUDGE WEATHERLY: I said chain of custody.

9 MR. SEITZ: Chain of custody, I'm sorry. Thank you.

10 JUDGE PESLAK: Okay. But then what is in those two bows that
11 does not correlate to any of challenged claims?

12 MR. SEITZ: We haven't provided any evidence on that, Your Honor.
13 That's not an aspect that we've challenged. We've challenged the evidentiary
14 side of this and the questions of the holes that are left in the evidentiary
15 record.

16 JUDGE WEATHERLY: So what I hear you saying is you don't
17 dispute that the bows that Dr. Reinholtz reviewed meet the limitations of the
18 claims.

19 MR. SEITZ: That's right.

20 JUDGE WEATHERLY: Okay.

21 MR. SEITZ: I dispute that they have submitted evidence showing that
22 they are what they are from the appropriate time.

23 JUDGE WEATHERLY: But the bows actually were made before
24 June 30th of 2009.

25 MR. SEITZ: It'd be nice if we had a witness that said these are the
26 bows that were made before that time. I don't see that in the record.

1 JUDGE WEATHERLY: Okay.

2 MR. SEITZ: Judge Peslak, I wanted to make sure I didn't cut you off.

3 I think you were done, but I wanted to make sure.

4 JUDGE PESLAK: I was done. Thank you.

5 MR. SEITZ: Okay. To be honest with that, I'm over my time, but

6 have additional for rebuttal. And I'll stand up then to address any other

7 questions and respond to counsel.

8 JUDGE WEATHERLY: Okay. Got you with seven minutes into

9 your -- so you've got 23 minutes remaining for rebuttal.

10 MR. SEITZ: Thank you, Your Honor.

11 MR. COLVIN: Just a moment, Your Honors, as we reshuffle here.

12 JUDGE WEATHERLY: Sure. No problem. Clock's now running.

13 Wow. It's been a while since I've seen an Elmo.

14 MR. COLVIN: I thought that may be helpful to put the cam on the

15 Elmo so that Judge Peslak can see.

16 JUDGE WEATHERLY: It's taking me back. I'm really liking this.

17 MR. COLVIN: We can do this whole thing with just paper and no

18 slides.

19 MR. HOOVER: Your Honors, we have paper copies.

20 JUDGE WEATHERLY: I fell just short of making paper models of

21 these things to try to understand.

22 MR. HOOVER: We have paper copies of the demonstratives.

23 JUDGE WEATHERLY: No, that's fine. We've got this. I'm not that

24 old.

25 MR. COLVIN: Your Honor, for rebuttal we reserve 20 minutes.

26 JUDGE WEATHERLY: Thank you.

1 MR. COLVIN: Do you need anything else with the Elmo to show up
2 the slides? It's connected to the computer. Is there anything I can push into
3 the computer?

4 MR. HOOVER: See if you can display your main display before
5 going to presentation.

6 MR. COLVIN: Did it get unplugged, maybe?

7 MR. HOOVER: No. We might need to use paper.

8 MR. COLVIN: I got this.

9 MR. GRISWOLD: All right, here we go. This one came loose.

10 MR. COLVIN: Your Honor --

11 JUDGE WEATHERLY: Give me one second to get your clock set
12 up. I should have been doing that already. Okay. Whenever you're ready.

13 MR. COLVIN: May it please the Board. This is Matt Colvin for
14 Patent Owner MCP IP. So my colleague and I, Mr. Griswold, are going to
15 split the argument today. I'm going to be handling all of the reduction to
16 practice issues. Mr. Griswold is going to handle the combination of
17 Darlington and Islas issues.

18 I thought we would start by talking about compound bows. There
19 seems to be some difficulty, and I don't blame you in understanding exactly
20 how these things work. We've been in this case a long time, and it's taken a
21 while to really get our heads around all of this. So let me explain a little bit
22 about compound bows to get us started and level set.

23 So for the record, we have with us today the actual physical bow that
24 is the Menace 455. We also have the Menace 817 in an unstrung
25 configuration, and we also have the Monster 775 here in the room. I'll be
26 talking about them, and I'll try to reference them. But just for the record,

1 Mr. Hosein, his declaration, Exhibit 2017, talked about those as in Appendix
2 A, B, and C. It's got images of them.

3 So a few features are found in all compound bows. You have a riser.
4 That's this straight part in the middle. And then there's limbs on each end.
5 This one happens to be a split-limb configuration, but it doesn't have to be.
6 It could be solid here. The limbs are connected on one end to the riser, and
7 on the other end, limbs in a compound bow are connected to cams, or
8 sometimes called pulleys. If you're riding, Patent Owner may call them
9 rotational members. But they're cams.

10 JUDGE WEATHERLY: And sometimes they're not really cams.
11 Sometimes they're just wheels, right?

12 MR. COLVIN: Sometimes they're just wheels. They can be idler
13 wheels. That's exactly right. And the cams are connected to the limb with
14 an axle. If I put it on the Elmo, let me just unplug this.

15 JUDGE WEATHERLY: Is Judge Peslak going to be able to see that
16 Elmo feed?

17 MR. COLVIN: I hope so.

18 JUDGE WEATHERLY: I hope so too.

19 MR. COLVIN: Judge Peslak, can you see that?

20 JUDGE PESLAK: I don't have a feed from the Elmo.

21 JUDGE WEATHERLY: That's too bad.

22 MR. COLVIN: I don't know if a technology in the room can send him
23 a feed of the Elmo. Sorry, Your Honor, should we continue or pause?

24 JUDGE WEATHERLY: No, I think -- well, Judge Peslak, do you
25 want to wait and see if we can get that sorted or do you want to just go
26 forward?

1 JUDGE PESLAK: Yeah, why don't we go forward.

2 JUDGE WEATHERLY: Okay.

3 MR. COLVIN: Okay. Also, as part of a compound bow, you have
4 cables and a string. Now, the drawstring is what you put the arrow on and
5 you draw. And when you let it go, obviously that moves forward. In
6 addition to the drawstring, you also have cables. Compound bows typically
7 have two cables, and they're connected to either the cams or the limbs on
8 each end.

9 Sometimes the cables are both connected to cams on each end. In the
10 Menace bow, the cable is connected to the cam on one end, and if you
11 follow it all the way, it's actually connected to the axle or the limb at the
12 other end. And the other cable is the opposite, right? The other cable would
13 be connected to the cam on one end and to the limb on the other.

14 In the Darlington and Islas references, the cams are both connected,
15 both cables are connected to the cams on each end. One would be let out,
16 one would be take out. Mr. Griswold will talk about that. In the case, we
17 talk about two conditions of the bow. The brace condition is in its undrawn
18 condition. It's strong, but it's not drawn. This is the standard brace
19 condition. And then the drawn condition is when the bow is fully drawn.
20 Can we have slide --

21 JUDGE PESLAK: Mr. Colvin, when the bow is drawn, what loads
22 the power in the cables? And the reason I'm asking this is for -- I still don't
23 understand what's going on, when Judge Weatherly was asking whether the
24 power cable moves. Can you explain that?

25 MR. COLVIN: Absolutely, Your Honor. Thanks for asking the
26 question. Can we actually have slide 8, please?

1 JUDGE WEATHERLY: And by the way, Judge Peslak, for your
2 benefit, it was Mr. Colvin who was shaking his head before on this question
3 that I raised. So he's the right person to be getting clarity about this.

4 MR. COLVIN: So what we're showing on slide 8 are two videos that
5 were from Mr. Ozanne's declaration. The one on the right, this is the
6 appendix Menace 455 lower cam MP4, shows the cam of the Menace bow
7 rotating when it's being drawn. And so when you go back in deliberation
8 and you have a hard time remembering what's going on, that's your key
9 piece of evidence to watch the cam rotate and watch the cables lay into the
10 track.

11 JUDGE WEATHERLY: The cables lay into the track. The power
12 cables lay into --

13 MR. COLVIN: The power cables lay into the track.

14 JUDGE WEATHERLY: The track on that smaller cam that's --

15 MR. COLVIN: That's right.

16 JUDGE WEATHERLY: Okay.

17 MR. COLVIN: So on the Elmo --

18 JUDGE WEATHERLY: I'm whipping out my old deposition skills to
19 try to make a written record that Judge Peslak can rely on later. That's why
20 I'm over speaking. And I apologize.

21 MR. COLVIN: On the Menace cam, and we can look at it with the
22 Monster cam as well. On the Menace cam, you see the power cable --

23 JUDGE WEATHERLY: Since there are multiple cams, it would help
24 to make sure which cam you're talking about.

25 MR. COLVIN: That's right. So this is the Menace cam. It's also the
26 embodiment in figure 1 through 3 --

1 JUDGE WEATHERLY: When I say Menace cam, it to me is not
2 sufficient. You're showing me a structure that has two cams on it. It's on the
3 Menace bow. When you say the Menace cam --

4 MR. COLVIN: Okay. So what we have is the large cam and then we
5 have an adjustable draw module.

6 JUDGE WEATHERLY: Right.

7 MR. COLVIN: That's what this is. And what you can do, you see it's
8 got numbers on it here, 30, and it goes all the way down to 17. And you can
9 take this screw out and you can adjust this module around to set your draw
10 length.

11 JUDGE WEATHERLY: And it is proper to call that module a cam, is
12 it not?

13 MR. COLVIN: I believe that's right.

14 JUDGE WEATHERLY: Okay.

15 MR. COLVIN: It's a cam. For sure it is. And as the bow is drawn,
16 and you can see this in the video we showed earlier, the cable lays into the
17 groove that is on that draw module. And so that's what happens. The cable
18 doesn't slide in there. It just lays in and comes out.

19 JUDGE WEATHERLY: Got you.

20 MR. COLVIN: Now, I don't disagree that the cable could impact the
21 edge of the groove as it lays in and comes out.

22 JUDGE WEATHERLY: So it could slide against the walls of that
23 groove.

24 MR. COLVIN: That's right.

25 JUDGE WEATHERLY: The lateral walls of the groove.

26 MR. COLVIN: That's right. Now, these cam designs, and let's just go

1 back to slide 8 of the video. These cam designs are sort of engineering
2 marvels. There's a lot that goes into these cam designs. The cam --

3 JUDGE WEATHERLY: When you say cam design, are you talking
4 about the larger outer structure or the whole assembly?

5 MR. COLVIN: Everything.

6 JUDGE WEATHERLY: Okay.

7 MR. COLVIN: Everything.

8 JUDGE WEATHERLY: All right.

9 MR. COLVIN: Because when this cam rotates, when the bow is
10 drawn, so when you draw a bow, the draw string rotates the cam. And when
11 that happens, the power cable is taken up by modules on the cam. And as
12 that power cable gets taken up, it gets shorter. When the power cable gets
13 shorter, the limb flexes. That's what stores the energy. When you let go of
14 the draw string, the limb is going to straighten out. It causes the cam to
15 rotate and drive the draw string and the arrow forward.

16 Design choices you make in the cam such as how big it is, how many
17 degrees it can rotate, how much and when the power cable is taken up as it's
18 being drawn, all of that affects the performance of the bow. Even things like
19 having a capstan improves the efficiency of the bow because the cable now
20 doesn't have to rotate about its terminal. That can just be fixed. Even just a
21 little bit of rotation can make a big difference in the efficiency of a bow.

22 JUDGE WEATHERLY: A little bit of rotation on the terminal end?

23 MR. COLVIN: On the terminal end, that's right. So a little friction
24 there.

25 JUDGE WEATHERLY: Meaning it gets a little sticky.

26 MR. COLVIN: That's right.

1 JUDGE WEATHERLY: Okay.

2 MR. COLVIN: That's exactly right. If I could have the Elmo again.
3 An interesting thing about this Menace bow, and this is not in the record, but
4 I want to tell you because it's interesting, okay? There are two differences
5 between the physical cam on the Menace bow and what's shown in figures 1
6 through 3 of the patent. The first is this arrow on the capstan. You see how
7 it has a little arrow going around? That arrow does not appear in the figures.

8 JUDGE WEATHERLY: I really can't see the arrow, actually.
9 Unfortunately, it might be a lighting issue on the Elmo.

10 MR. COLVIN: How about there?

11 JUDGE WEATHERLY: Now I see it. Yeah, I see it.

12 MR. COLVIN: That, and then this C, which actually stands for cable.
13 Those are the differences.

14 JUDGE WEATHERLY: Where is the best place for us to see that in
15 the record, just in case?

16 MR. COLVIN: Well, in the figures of the cams that we probably --
17 the figures that are attached to Exhibit 217, Mr. Ozanne's declaration, we
18 have close-up pictures of the cam.

19 JUDGE WEATHERLY: Okay. Right. Of the cam, meaning this
20 physical item --

21 MR. COLVIN: This physical item, this exact one.

22 JUDGE WEATHERLY: Okay.

23 MR. COLVIN: So that arrow and the C are the differences. That
24 arrow is there to inform the bow techs which way to attach.

25 JUDGE WEATHERLY: Which way to wrap that power cable.

26 MR. COLVIN: Which way to wrap it. That's right.

1 JUDGE WEATHERLY: Okay.

2 MR. COLVIN: Because at the time this was new. In fact, this
3 apostrophe-looking capstan is there to prevent a bow tech from taking this
4 cable and going directly to the terminal end. Again, that's not in the record.

5 JUDGE WEATHERLY: Or wrapping it --

6 MR. COLVIN: Yeah, or wrapping it around.

7 JUDGE WEATHERLY: -- the other direction around that.

8 MR. COLVIN: That's right.

9 JUDGE WEATHERLY: Okay.

10 MR. COLVIN: That's exactly right. So --

11 JUDGE WEATHERLY: I almost said counterclockwise. I caught
12 myself.

13 MR. COLVIN: That's right. So any just general questions about the
14 cam and the bow before I go further?

15 JUDGE PETRAVICK: Could we see it closer?

16 MR. COLVIN: Absolutely.

17 JUDGE PETRAVICK: Because it's black on black on black. Can we
18 also see the side?

19 MR. COLVIN: Yeah. I've got another one up here.

20 JUDGE PETRAVICK: I just want to see how the bow lays into it
21 from this direction.

22 JUDGE WEATHERLY: It's hard to pull.

23 JUDGE PETRAVICK: Yeah.

24 MR. COLVIN: Yeah, that was actually quite easy to pull. Just if you
25 pull it back, don't let it go.

26 JUDGE WEATHERLY: Again, frame of reference problem.

1 (Laughter.)

2 JUDGE WEATHERLY: I'd like to see it. Oh, yeah, it's hard at first,
3 and then it's like, almost like a clutch on an automobile.

4 MR. COLVIN: That is a great reference, absolutely.

5 JUDGE PETRAVICK: Thank you.

6 MR. COLVIN: I also have one -- I'll go back to the mic. We also
7 have the Menace 817 here, and we had taken the draw string off of this bow,
8 I had it around the riser. The draw string has been removed here. I'll talk
9 about this a little bit later, but we have one in case you're interested in it.

10 JUDGE WEATHERLY: Okay, all right.

11 MR. COLVIN: Okay. So with that background, the question for the
12 Board is, were the inventions that were claimed and the patents at issue here
13 actually reduced to practice before June 30th, 2009? And the bottom line is,
14 there is an essentially uncontested line of evidence that shows that they
15 were. We have heard today that there is now no dispute that the Menace and
16 the Monster bows practice the claims of the patent. We've just heard that
17 today. And there is, I'll say, very little dispute that the Menace and the
18 Monster bows were actually reduced to practice and sold before that critical
19 Darlington date. Now, that's all you really need to get rid of this case,
20 because Darlington is a prior art, but we have a lot more. Can I have Slide
21 12, please?

22 JUDGE WEATHERLY: So even if it was on sale in September of
23 2008, that would still be a reduction to practice before June 30th, 2009?

24 MR. COLVIN: That's right. For the record, it wasn't.

25 JUDGE WEATHERLY: It might create problems for you guys later,
26 but --

1 MR. COLVIN: That's not in front of the Board.

2 JUDGE WEATHERLY: That's not in front of us.

3 MR. COLVIN: That's right. So we actually have an abundance of
4 evidence here. And we have what I'm calling four categories of independent
5 and --

6 JUDGE WEATHERLY: Which slide is this?

7 MR. COLVIN: This is Slide 12. We have four categories of
8 independent and interrelated, and also some corroborating evidence that
9 shows that these bows were reduced to practice. I submit to you that any of
10 these categories alone is enough.

11 JUDGE WEATHERLY: I don't think you mean self-corroborating,
12 per say. I think what you mean is cross corroborating.

13 MR. COLVIN: Cross corroborating, that's much better, that's right.
14 Cross corroborating. So we have the actual bows that were sold, we have
15 evidence that they were produced and shipped before the Darlington date,
16 we have the sales records showing that it's not just one or two bows, it's
17 over 20,000 bows before June 30th of 2009, we have the Inside Archery
18 articles that are publications that show that yeah, these bows are out there,
19 they were reduced to practice. The pictures of the cams are there, the bows
20 are there, they look exactly like the bows that we have in front of you today.

21 JUDGE WEATHERLY: The one that you showed us before, which
22 serial number is that?

23 MR. COLVIN: The one I showed you before was the Menace 455.

24 JUDGE WEATHERLY: Okay.

25 MR. COLVIN: And we have the declarations of Mr. McPherson, who
26 is the inventor, and also Mr. Hoff. And so why the Menace and the

1 Monster? Slide 14, please. It's undisputed here that the cams of the Menace
2 substantially match the patent figures. What we're showing on Slide 14, on
3 the left is a close-up picture of the Menace 455, lower cam, in the middle we
4 have Figure 1 from the '989 Patent, and on the right we have a zoomed in
5 picture from the Exhibit 2002, the 2008 Inside Archery article. And you can
6 see here that they look virtually identical, and that's why there's no dispute
7 that that is the case.

8 If I could have Slide 15, please. We haven't looked at the Monster
9 bow yet, but the Monster bow is the exact same story. The Monster bow,
10 the physical one is the Monster 775 that was from Appendix C to the
11 Ozanne declaration, Exhibit 2017. On the left side of the screen we have a
12 picture of the lower cam of that Monster bow, in the middle we have a
13 picture of Figure 4 from the '989 Patent, and then we have a picture from the
14 Inside Archery article that also shows the cam. And again, there's no
15 dispute that these cams are the same.

16 So I'm going to walk through, now, a lot of the evidence we have for
17 the Menace, and I'm going to do that in some detail. We have the exact
18 same evidence for the Monster, and we'll see where we're at when we get
19 through the Menace, and maybe we'll do the Monster in the same detail, or
20 maybe we'll do it a little shorter.

21 JUDGE WEATHERLY: I want to make sure that you agree that y'all
22 have to demonstrate reduction to practice for each and every one of the
23 challenged claims individually, right?

24 MR. COLVIN: Yes, Judge. Yes, that's right.

25 JUDGE WEATHERLY: Okay.

1 MR. COLVIN: And Dr. Reinholtz did that, and I'll show you before I
2 sit down where he looked at every single claim for both bows.

3 JUDGE WEATHERLY: Right. Every single challenged claim.

4 MR. COLVIN: That's right.

5 JUDGE WEATHERLY: My memory, at least of the 524 IPR, is that
6 there's not an assertion that either of these two bows -- well, maybe the
7 Monster bow is the -- a reduction to practice of all the challenged claims, but
8 I don't think the Menace is.

9 MR. COLVIN: The Menace does not hit every single one, that's
10 right.

11 JUDGE WEATHERLY: Okay.

12 MR. COLVIN: Let's go to Slide 25, please. Actually, let's go to
13 Slide 24.

14 JUDGE WEATHERLY: There's not actually a way that y'all are
15 going to show us all 123 slides, is there?

16 MR. COLVIN: No way.

17 JUDGE WEATHERLY: Okay, which slide are we going to then?

18 MR. COLVIN: Slide 24. And I'm not going to belabor this point
19 because it's undisputed, but I do just want to emphasize, because I think it is
20 important for you to understand that the exact same features from the patent
21 are present in the Menace cam. We had labeled this here, this came from
22 Dr. Reinholtz's declaration, and this is directly from our sur-reply on page
23 25, but you can see here that the terminal is the same, the capstan is the
24 same, the draw module, the axle, and so forth.

25 And then if you look at Slides 25, 26, and 27, if we can just step
26 through those, please? What we've done here, and again, this is also from

1 our sur-reply, we've done an overlay of them. So you can see that they
2 actually really are the same. Even the very tiny details, the locations of the
3 various holes and things like that, they are the same.

4 JUDGE WEATHERLY: I don't see that arrow in that --

5 MR. COLVIN: Minus the arrow in the seat. Substantially,
6 substantively. And so how do we know that the Menace bow was actually
7 reduce to practice before June 30th, 2009? Well, it was sold. It was sold in
8 abundance. And what evidence do we have to show that? First, we have the
9 McPherson declaration, Exhibit 2006. He says that the Mission Menace
10 bow was produced by his company, Mission Archery. Mr. McPherson
11 owned Mission Archery and Matthew's Archery, and in fact if you look at
12 the Inside Archery article it's actually Mission by Matthew's. They were
13 affiliate companies, Mission was kind of a sub-brand underneath Matthew's.
14 They've since merged, but Mission Archery is Mr. McPherson, the
15 inventor's, company. He says that he designed the Mission bow in 2008 and
16 then it was lost in October 2008, that's from paragraph 9 of his declaration.
17 And in a typical swear behind case, that's about all you would get, and it's
18 now a struggle to corroborate that, right? Because you have to corroborate.
19 And maybe you're searching through emails, maybe you're digging, trying
20 to find that old CAD file, but wow, did we corroborate this.

21 I mean, there is an abundance of corroborating evidence here. We
22 have the actual bows, serial number 455 and serial number 817. The serial
23 number 455 bow was shipped November the 4th, 2008. The 817 Menace
24 bow was --

1 JUDGE WEATHERLY: And that piece of information is in the
2 evidence that Petitioner would call into question because of the first few
3 entries in that table, right? And the backtracking about that?

4 MR. COLVIN: That's what it sounded like. Now, I think actually
5 there is only a dispute about the first two entries in that list, were those
6 shipped or not? I actually don't think there's much of a dispute about the
7 rest of the, call it, 23,000 bows that are on that list. But to be fair, that's
8 what he said. If I could have DX-17, sorry, just Slide 17, please?

9 JUDGE WEATHERLY: 17, you say?

10 MR. COLVIN: Slide 17 and then Slide 18. So, let's just go to Slide
11 18. What we see on Slide 18 is the row in Appendix A to Mr. Hoff's
12 declaration for the 455 Menace. And it shows shipped November 4th, 2008.

13 JUDGE WEATHERLY: And what is the October 1st date on that?

14 MR. COLVIN: I suspect it's the date the bow was ordered.

15 JUDGE WEATHERLY: Okay.

16 MR. COLVIN: If you look at the list, a bunch of orders came in on
17 October 1st. If you look at Appendix A, there are rows and rows and rows
18 of orders that happened on October 1st of 2008, and then they shipped a bit
19 later than that.

20 JUDGE WEATHERLY: So any person who has prosecuted patent
21 applications, and I have, sometimes has a horror story about a bar date
22 problem caused by their client. The provisional application was filed 364
23 days after October 1st, 2008, right?

24 MR. COLVIN: That's correct.

25 JUDGE WEATHERLY: That's all I'll say about it.

26 MR. COLVIN: I'll tell you --

1 JUDGE WEATHERLY: I have a horror story, it involves being stuck
2 in an elevator.

3 MR. COLIN: I'll tell you with the Hoff deposition, and I'm happy to
4 get into that if you're interested. We're not worried about those September
5 dates at all.

6 JUDGE WEATHERLY: I'm not worried about them, but they are for
7 you to worry about.

8 MR. COLVIN: That's right. So, we have the actual bows, those are
9 corroborated by Appendix A, but even if you don't have Appendix A, we
10 still win because of Inside Archery. Let me get DX-19, sorry, Slide 19. So,
11 the Inside Archery article -- the full Inside Archery magazine is Exhibit
12 2013. Page 43 starts the article that's on the Menace bows. There articles
13 are authenticated by Mr. Ozanne who testifies in Exhibit 2017 that he pulled
14 these articles from the archives, Matthew's archives, scanned them.

15 We also have a declaration from Mr. Rother, who is the owner of the
16 publishing company that runs Inside Archery. He says that they match
17 what's in his files, and he says another thing, that the magazine would be
18 distributed one to two weeks before the month of the issue of the magazine.
19 The Menace bow has a month of issue of December, and so we would
20 expect that, based on his declaration, that the Inside Archery article would
21 have come out in November of 2008. Now, they did not choose, they chose
22 not to depose Mr. Ozanne on this, they chose not to depose Mr. Rother on
23 this. So all of this is unrebutted, and there's no evidence that ever even
24 suggests that that's not the case.

25 And we know when this bow was sent to Inside Archery. We have
26 that from Appendix A. And if I can get Slide 21, please? We also know it

1 from Appendix B of the Hoff declaration. I'm showing here one of the
2 shipping records --

3 JUDGE WEATHERLY: Which looks a lot like a QuickBooks
4 invoice.

5 MR. COLVIN: And I should note that Appendix B doesn't just have
6 this document, it's got this, it has the invoice, and one other document, all
7 corroborating the exact same thing, that this bow was shipped October 27th,
8 2008.

9 JUDGE WEATHERLY: Well, be careful about 'this bow.' You're
10 talking about the bow that's shown in the article in Inside Archery.

11 MR. COLVIN: Correct, in the Inside Archery article, that's right.
12 And we see the serial number of this bow here, which is 935923, that is
13 different than the physical bows that we have here today.

14 JUDGE WEATHERLY: Right. And the physical bows that you have
15 here today, the only evidence demonstrating when they were made is the
16 information that appears in Appendix A, right?

17 MR. COLVIN: That's right.

18 JUDGE WEATHERLY: Okay.

19 MR. COLVIN: Okay. The Inside Archery article also shows that the
20 bow is reduced to practice. It describes that the bow was tested, it shows the
21 bow -- if you go back to Slide 20, sorry, go to 19. What's shown on the side
22 of Slide 19 is an image from the Inside Archery article, and it shows the bow
23 fully strung. You see the drawstring in the bow. Now, I have to take a
24 minute and address something that Petitioner said in their reply. Can I get
25 the ELMO, please? I've put on the ELMO page 5, and I'll go to page 6 of
26 Petitioner's reply. This is a document signed by Mr. Seitz, and he says that

1 the images in the 2008 Inside article depicts an unstrung bow that is not in a
2 braced condition at all and certainly could not teach a drawn condition.

3 Well, I take real issue with that. The article shows a strung bow and it is in
4 the braced condition, we just looked at it. That's just attorney argument,
5 there's no expert declaration on that. They could have put a declaration on
6 that, but they didn't.

7 JUDGE WEATHERLY: Well, to be fair, it's attorney argument, your
8 assertion is attorney argument as well.

9 MR. COLVIN: Well, my --

10 JUDGE WEATHERLY: But I will say, I think you have the better of
11 it on this point.

12 MR. COLVIN: He goes on to say then at the top of page 6, that when
13 a bow is unstrung, the cams can rotate freely. And then what I really take
14 issue with is he says in our photo 12, this was the photo 12 from our POR,
15 he says the cams have been intentionally rotated --

16 JUDGE WEATHERLY: Which part is this on the ELMO? Is this
17 still part of the reply? Is this page 6?

18 MR. COLVIN: This is their reply, this is paper --

19 JUDGE WEATHERLY: And it's page 6 of the reply, right?

20 MR. COLVIN: Page 6 of Paper 25.

21 JUDGE WEATHERLY: I'm just trying to help Judge Peslak.

22 MR. COLVIN: The top of page 6 of Paper 25, they said that the cams
23 have been intentionally rotated, and that when a bow is unstrung the cams
24 can rotate freely. Well, I have an unstrung bow here, it's an unstrung
25 Menace bow, and I'm happy to pass this up to the Board to see if the cam
26 rotates freely. I'm also happy for Mr. Seitz to show you when he stands

1 back up how freely this cam rotates, and how it would be that we could
2 intentionally rotate it to distinguish something. That's just not the case at
3 all. When you take the drawstring off, the cables are still under enough
4 tension that the cam pulls back, and it just is where it is. So, I welcome Mr.
5 Seitz to correct the record on that when he stands back up.

6 So in addition to the Inside Archery articles and the physical bows, we
7 also have thousands, and like I said, more than 20,000 sales records for both
8 the Menace and the Monster bow, showing these things were sold. The idea
9 that maybe this wasn't reduced to practice, 20,000 bows --

10 JUDGE WEATHERLY: Well, and the 20,000 sales records are
11 reflected in Exhibit A, and that's the only place they're reflected, right?

12 MR. COLVIN: Well, and in, I think the testimony of Mr. Hoff.

13 JUDGE WEATHERLY: Fair enough.

14 MR. COLVIN: You could say whether or not those were strictly
15 relying on the sales records, but I'll note that Mr. Hoff was the director of
16 manufacturing operations during the relevant time. If anybody would know
17 if the Menace and Monster bows were actually sold in late 2008 and early
18 2009, it would be him.

19 So I just said all of that with respect to the Menace bow. The story is
20 the same for the Monster. We haven't spent a lot of time talking about the
21 Monster, but again, the evidence is the same. Could I get slide 34, please?
22 On Slide 34 you can see how the Monster cam, the physical Monster cam
23 shown on the right, matches the embodiment of Figure 4 in the patent. The
24 axle is in the same location, the capstan is the same, the terminal is the same.
25 You may be able to see, on the physical cam, that there is also an arrow on
26 the capstan, and a C for the cable connection point on the bow. But the

1 location of the holes, even the very tiny holes, are all shown in the figure of
2 the patent.

3 And so just like the Menace bow, we've got a lot of evidence showing
4 that this bow was actually, that this embodiment in the patent was reduced to
5 practice in the form of the Monster bow. We have the McPherson
6 declaration, and again, 2006. We have the actual bow, which is serial
7 number, ends in 775, and I have it here today.

8 JUDGE WEATHERLY: You mean 755.

9 MR. COLVIN: That's right, 775.

10 JUDGE WEATHERLY: 755?

11 MR. COLVIN: 755. No, it's 775.

12 JUDGE WEATHERLY: Then your slide is wrong.

13 MR. COLVIN: Oh, the title on the slide is wrong. That's right.

14 JUDGE WEATHERLY: Okay.

15 MR. COLVIN: I'm happy to pass this up --

16 JUDGE WEATHERLY: Which means I'm wrong, and it's not the
17 first time.

18 MR. COLVIN: Would you like to see the bow? Hold it, look at it?

19 JUDGE WEATHERLY: I think I'm okay.

20 MR. COLVIN: All right. This one is much -- it is in fact the
21 Monster, and it is very hard to pull back, so hard I'm not going to do it for
22 fear of ripping my suit.

23 JUDGE WEATHERLY: I understand.

24 MR. COLVIN: But it is the embodiment shown in the patent. In
25 addition to the actual bow and the accompanying sales records, which by the
26 way, the Monster sales records are shown in Appendix C of Hoff

1 declaration. That is not Appendix A that they apparently have an issue with.
2 They may say they all rise and fall together, but it is a different appendix.
3 The Hoff declaration Exhibit C, has all the records for the Monster bow.

4 We also have the Inside Archery article talking about the Monster
5 bow, this is shown on Slide 30. The Inside Archery article is Exhibit 2014,
6 page 31, 30 and 31 I believe are the pages for the Monster article in the full
7 publication. Like Menace, the Monster article also shows the bow in its
8 braced condition, fully strung, just like the one I have here. You see there's
9 a drawstring on the back, that's a fully strung, braced condition bow, and
10 there's also a zoom in on the cam so that you can see that it matches the
11 patent figure. Like Menace, we also have other records about this Inside
12 Archery article. The bow that was sent to them, that's in Appendix D. If I
13 could have Slide 32, there's the same type of sales record, shipping record
14 for this bow, showing that it was shipped on March 23rd, 2009.

15 Now, this Inside Archery publication for the Monster bow says it was
16 a June issue. And that's why it's important that the Rother declaration
17 supporting that says that the article would go out two weeks before that. So
18 we would expect this June issue of Inside Archery to have gone out in May,
19 late May of 2009. Again, before the filing date of Darlington. The Inside
20 Archery article talks about how it was shot, it describes the arrows feeds, it
21 describes the shooting characteristics and all of those things, just like it did
22 for Menace, and we also have the thousands of sales records from Mr. Hoff.

23 Can I get Slide 39, please? On Slide 39, I have a summary of the
24 locations in Dr. Reinholtz, that's our expert, in Dr. Reinholtz's declaration,
25 where he analyzed the claims with the Menace bow. And I want to point out
26 that he analyzed the claims using the Inside Archery information, and also

1 the physical bows. So it's not as though it's just one or the other, he did
2 both, and the reason he could do both is because they're the same, right? In
3 supporting our preliminary response, we just looked at the Inside Archery
4 article, but here, he was able to do both for our POR.

5 And could I get Slide 54? Slide 54 is a similar chart for the Monster
6 bow, and this shows where he analyzed actually all the claims for the
7 Monster bow, and it shows the corresponding paragraphs. Now, we heard
8 today again, I want to not miss this, they don't dispute that the Menace and
9 the Monster meet all of the claims. There's been some discussion about
10 burden, and I just want to make sure the Board is clear on this burden issue,
11 because I do think it's important and I'm worried that maybe it's not clear
12 right now. Petitioner has the burden of persuasion that the claims are
13 invalid. That never shifts to us as Patent Owners. What we have is the
14 burden of production. We have to produce the evidence that we say shows
15 that the invention was reduced to practice for the prior art. After we do that,
16 and we did, the burden goes back to them to show that what we have done is
17 not enough, that it does not show that the claims were reduced to practice.
18 They haven't even really attempted that.

19 JUDGE WEATHERLY: I will tell you that the *Dynamic Drinkware*
20 case was a case that I worked on here at the Board. The Federal Circuit's
21 opinion is a cross that I must bear, and the mess that they've made of the
22 allocation of burdens on issues in front of us. I appreciate you addressing
23 the concept. I'm not motivated to try to clean up the mess that I think
24 *Dynamic Drinkware* has made of this issue.

25 MR. COLVIN: Very well. That's a very famous case,
26 congratulations.

1 JUDGE WEATHERLY: Yeah, I think it must be the most cited case
2 in Board decisions. I wish it weren't.

3 MR. COLVIN: Well, I'm happy to hear that you're not inclined to
4 rewrite that case here, because under that case, I think you would agree, they
5 still have the burden here after we produce the evidence.

6 JUDGE WEATHERLY: I'm not sure I agree with that, but I'm not
7 sure it really makes that much of a difference.

8 MR. COLVIN: Sure, yeah. I would also agree, regardless of the
9 burden here, I think we have met it.

10 JUDGE WEATHERLY: I don't think the case turns on whether
11 someone has met or not met a burden.

12 MR. COLVIN: So unless the Board has any other questions about
13 Menace or the Monster bow and the reduction to practice, I'll just quickly
14 conclude and then have a seat and let my colleague come up.

15 JUDGE WEATHERLY: I don't have any other questions on this part.
16 Judge Peslak?

17 JUDGE PESLAK: I don't.

18 JUDGE WEATHERLY: Okay.

19 MR. COLVIN: Let me say one bit in conclusion here then, and then I
20 will sit. I don't think the evidence here shows there is -- well, I should say, I
21 think the evidence here shows that there is no doubt that the invention was
22 actually reduced to practice before June 30th of 2009. They don't even
23 contest that the Menace and Monster bows do not practice, they don't
24 contest that the bows -- let me get that right. There's no opposition that the
25 bows actually practiced the claims of the asserted patent, of course they do.
26 Dr. Reinholtz analyzed every asserted claim here, and in the face of that,

1 Ravin chose silence. They could have let their expert talk all about that, but
2 they didn't.

3 And so where does that leave us? Well, once that's been established,
4 the only remaining inquiry is to determine if the Menace and Monster bows
5 were actually sold before June 30th of 2009.

6 JUDGE WEATHERLY: I disagree with you. They don't have to
7 have been sold.

8 MR. COLVIN: They don't have to be, but the fact is they were.

9 JUDGE WEATHERLY: They simply have to have been made.

10 MR. COLVIN: I agree. I agree with that, 100%. And so consider
11 what would have to happen here for Ravin to win. For Ravin to win, the
12 Inside Archery articles would have to be fakes of some sort, and Ravin never
13 even challenges their authenticity of their dates.

14 JUDGE WEATHERLY: Well, they wouldn't have to be fakes, they
15 would just have to not show enough.

16 MR. COLVIN: The bows sent to Inside Archery, and the record
17 supporting them, would have to be wrong, or fakes, or misinformation of
18 some sort. The physical bows that we have here today had to have not been
19 made before June 30th, but we know that there's evidence showing that they
20 were shipped before June 30th of 2009. Mr. McPherson's statements --

21 JUDGE WEATHERLY: What's your reaction to the chain of custody
22 concept? You know, that those bows got shipped a long time ago and they
23 were in customer's hands for over a decade and y'all just recently retrieved
24 them, and god knows what happened to them between then, and --

25 MR. COLVIN: Thank you for raising that. I've got a lot to say about
26 that. One, it's not relevant. The Board's job here is to look at the totality --

1 JUDGE WEATHERLY: Careful about relevant.

2 MR. COLVIN: Well --

3 JUDGE WEATHERLY: Relevant's a pretty low bar.

4 MR. COLVIN: Well, the Board's job here is to look at the totality of
5 the evidence, and I think this little chain of custody issue just doesn't move
6 the needle, and here's why. What they're essentially saying is that look, we
7 have all of these cams on these physical bows --

8 JUDGE WEATHERLY: I would say be careful about overstating
9 your position.

10 MR. COLVIN: Okay. The cams that are on the physical bows match
11 the cams that are in the pictures of the Inside Archery article. If they're
12 suggestion is that the customers modified these cams, or that somehow after
13 June 30th of 2009 these cams were modified to look like the patent --

14 JUDGE WEATHERLY: I don't know that their argument is that they
15 were modified, so much as that maybe they were modified. I don't know,
16 Petitioner may clarify in their rebuttal. I mean, I'll leave it to them.

17 JUDGE PETRAVICK: Let me ask a question. Did you sell kits so
18 that previously sold bows could be modified with these new cams?

19 MR. COLVIN: Oh, not to my knowledge, Judge Petravick. I have no
20 knowledge of that, we've shown no evidence of it. They didn't ask that in
21 their deposition, I don't know.

22 JUDGE PETRAVICK: So the likelihood that these bows were sold
23 before hand and then modified to look like what they are today, that matches
24 the pictures, is very low if the people that bought them couldn't have gotten
25 these parts separately and then modified them?

26 MR. COLVIN: That's my understanding.

1 JUDGE WEATHERLY: I know of at least one judge here who could
2 make his own part and modify almost anything. Yeah, I understand where
3 you're going.

4 MR. COLVIN: I think if you take a look at -- let's look at Slide 14.
5 This is really my point. The cam on the physical bow matches the cam that
6 is in the picture in the Inside Archery article. The picture of the Inside
7 Archery article was taken sometime in 2008. And so even if you could get a
8 replacement cam for the Menace bows, and there was some change made,
9 that is completely rebutted by the fact that the physical bow matches the
10 picture of the bow from 2008. That is an independent publication. And all
11 of those match the patent figures.

12 And so the line here of was it reduced to practice, the way you
13 can think about it is, in 2008 the cam looked exactly like it did in the patent,
14 minus the arrow, we have Hoff's declaration saying that yeah, what we
15 received back was a Menace bow, that was it, and still to this day on the
16 physical bows that we have, we don't just have one Menace we have two,
17 the cams are same. And that line of argument is also true for the Monster
18 bow. If you look at Slide 15, the story is the same. These cams have not
19 been modified. The cams are what they are. Any other questions about
20 that?

21 JUDGE WEATHERLY: None from me. Judge Peslak? I wasn't
22 watching you, so I don't know.

23 JUDGE PESLAK: No, I don't have any questions.

24 MR. COLVIN: Okay, thank you. Well I will cede the podium to my
25 colleague Mr. Griswold.

1 MR. GRISWOLD: Thank you, Your Honors, I too am happy to be
2 here in person. This is definitely a hearing you need to have in person.

3 JUDGE WEATHERLY: Yes.

4 MR. GRISWOLD: The complexity of the bows. And I'm a
5 mechanical engineer, and I have struggled to get my head around this.

6 JUDGE WEATHERLY: So am I.

7 MR. GRISWOLD: And as Mr. Colvin said, I'm going to speak to
8 why it's just not obvious from Islas and Darlington to provide the reverse
9 wrap as claimed. I think, you know, I'm going to hit on a handful of topics,
10 how the combination makes no sense because Islas and Darlington show the
11 same power cable wrap directions, and we'll talk about clockwise, counter
12 clockwise, I'll clarify my terminology there. So there's no reason why a
13 POSITA would look to Islas for inspiration to modify Darlington. I'm going
14 to talk about how the asserted motivations, they're not really even benefits
15 or advantages that stem from changing the wrap direction on the cam, and so
16 there's no basis in the prior art to make the modification that the Petitioner is
17 advancing, other than hindsight. And I don't argue hindsight very often
18 because there's not an objective test for hindsight, it's usually about other
19 failings. And I'm going to talk about the other failings at this point, that I
20 feel comfortable labeling this an issue with hindsight, simply because the
21 modification doesn't make sense. So let me get into it. Slide 80, please?

22 JUDGE WEATHERLY: 8-0?

23 MR. GRISWOLD: 8-0.

24 JUDGE WEATHERLY: Okay.

25 MR. GRISWOLD: And you guys are deep, deep, deep into this, and
26 I've got a lot to say, but don't be afraid to stop me and ask questions.

1 JUDGE WEATHERLY: Oh, I'm not afraid. I think we all know that
2 I'm not afraid to do that.

3 MR. GRISWOLD: And we can dig down on the things that matter to
4 you. And so I'll talk and you just pull me to the side and let's get into the
5 stuff that matters to you. So Slide 80 is Petitioner's proposed modification,
6 and in it you'll notice that the power cable, which is on the right it's marked
7 30, my right, and on the left it's marked 32, it's not highlighted in this view.
8 And you'll see that the power cables wrap in the same direction, and I'm
9 going to say that they wrap counter clockwise from the perspective of, if you
10 follow the straight portion around and it wraps around the capstan in this
11 view, it wraps counter clockwise.

12 JUDGE WEATHERLY: As shown in the figure, yeah.

13 MR. GRISWOLD: Yeah. And the same is true of the other power
14 cable, and in this view, the cam rotates clockwise when you draw it, so this
15 is in the brace condition, and when you pull that cable, 28 is the drawstring,
16 and when you pull on 28 it rotates the cam in the direction of the big pink
17 arrow. And so what's important about this is, in their modified design, the
18 cables wrap in the same direction, counter clockwise in this view. So I can I
19 get Slide 70, please?

20 And so I think that that modification is hindsight, and why do I think
21 it's hindsight? Well, it's because Islas and Darlington's cams, they show
22 more or less the same configuration, wrap configuration, of the power
23 cables. On the left, I have Islas and I've done something that would only
24 exist in the magic of computers, we've flipped it and rotated it so it's in the
25 same orientation.

26 JUDGE WEATHERLY: And I thank you for that.

1 MR. GRISWOLD: And it took me a long time --

2 JUDGE WEATHERLY: My brain can do it, but this does make it
3 easier.

4 MR. GRISWOLD: That's right, and if you see, I have two power
5 cables identified by color, a blue and a green power cable. And I can't read
6 the letters upside down and backwards, you see if you can read the numbers,
7 the records number's upside down and backwards, but if you can see the
8 colors, those are the two power cables. And you'll see that the blue one, it's
9 wrapped counter clockwise, again from the perspective of the straight strain
10 and then wrapping around the can there. And the green wraps clockwise, so
11 they're wrapping in opposite directions. And the cam in this instance, when
12 it's drawn, it rotates in the direction of the big pink arrow.

13 And we have Darlington, and this is why I say that they essentially
14 have the same wrap configuration, the blue power cable in Darlington, it
15 wraps counter clockwise, and the green power cable in Darlington wraps
16 clockwise. And so if you switch back to Slide 80, quickly, you can see we
17 have a configuration where both of the power cables wrap in the same
18 direction, and we slip to Slide 70, we have two pieces of prior art where both
19 of the power cables wrap in -- in each cam, the two power cables wrap in
20 opposite directions.

21 And so, that gives me pause for two reasons. One, where in a prior art
22 have we seen the reverse wrap? Kind of the core of the claims here, where
23 you have a power cable that wraps in the reversed direction, and then two --
24 I would say wraps in the reverse direction and then ultimately, as in
25 Petitioner's combination, wraps in the same direction as the other power
26 cable. And then two, if you have these two pieces of prior art that

1 effectively show the same thing, why would you look to Islas to modify
2 Darlington? It doesn't make sense, the same configuration already exists in
3 Darlington.

4 And I would point out that Islas and Darlington, they're both typical
5 configurations of a synchronized bow. An earlier version of Darlington was
6 cited by the examiner has a very similar cam to --

7 JUDGE WEATHERLY: All right, I'm not going to let you say
8 synchronized bow without telling me what that means.

9 MR. GRISWOLD: Synchronized bow means that the two cams, the
10 top cam and the bottom cam, and when I talk about the cam I'm talking
11 about the assembly.

12 JUDGE WEATHERLY: Okay, all right.

13 MR. GRISWOLD: They rotate together at the same rate, as opposed
14 to, you had mentioned some have wheels --

15 JUDGE WEATHERLY: Yeah, and I've seen some like a wheel on
16 one limb, and a cam on the other. That would not be synchronized, correct?

17 MR. GRISWOLD: That would not be synchronized. And there is a
18 lot of small little details you have to get right to make the synchronization
19 right, and it relates to the power cable ends and how they wrap and how they
20 unwrap, and what they wrap onto and the shape of it, it's --

21 JUDGE WEATHERLY: I can imagine that if you had the wrong
22 shapes or wrong lengths or something out of whack that it wouldn't feel very
23 good to release an arrow with one of those.

24 MR. GRISWOLD: That's right, and you're controlling the tension in
25 the power cables, so that you can control both the profile of -- you noticed

1 earlier when you pulled the Mission bow, how you kind of fell the over
2 center?

3 JUDGE WEATHERLY: Yeah, yeah.

4 MR. GRISWOLD: Yeah, so that's intentional, right? You don't want
5 to have to hold the whole weight of the bow when you're at full draw, so
6 you get over center. There's a lot of geometry, a lot of very complex
7 geometry that makes this all work, but that, I think, is getting down into the
8 details we don't need to get into.

9 JUDGE WEATHERLY: They're fun details, though.

10 MR. GRISWOLD: They are, definitely, and at PTAB bar association
11 meeting, if I run into you we can talk bows. Anyway, I was positive that this
12 combination made sense, because here -- yes, Judge Peslak?

13 JUDGE PESLAK: I'm sort of confused with this, what you said
14 about synchronized. So, synchronized means -- what we see in Darlington is
15 that both cams are set up the same, is that what you mean by synchronized?

16 MR. GRISWOLD: Synchronized has to do with the way the cams
17 move, that they move in synchronicity. But in Darlington, the bottom cam
18 and the top cam have essentially the same configuration, but they're mirror
19 images of one another.

20 JUDGE PESLAK: Okay.

21 MR. GRISWOLD: And actually, this leads me to the next set of the
22 slides, and that's the take up end and the let out end of the power cables. I
23 think there was a lot of briefing on that, and it's a really difficult concept to
24 get your head around. So I have an animation, 71 please, Slide 71?

25 And it's a bit blocky, but this is how those cams work. And you can
26 see -- so, you'd have to imagine that in a physical bow, you have a cam up

1 top and a cam on the bottom, and when you draw it, they move. So what's
2 happening is, in the blue cable in both of these views, the cable is letting out
3 on the bottom side, and on the top side there is effectively the yellow end
4 that's taking up the cable. And so in this view, Islas --

5 JUDGE WEATHERLY: These referential terms like top and bottom
6 are just so full, it's just so fraught. I know what you're saying because I'm
7 looking at this animation and when you say the top side, that happens to be
8 located on the bottom of this image.

9 MR. GRISWOLD: Well, so both of these are bottom cams.

10 JUDGE WEATHERLY: Yeah, yeah.

11 MR. GRISWOLD: And there's definitely a top and a bottom to a
12 bow, and I appreciate you trying to clarify the record. These are both
13 bottom cams, and this blue power cable extends upward and attaches to the
14 tear dropped shaped thing at the other end of the other cam. And so as the
15 cam, as the cable is drawn, as the bow is drawn, you see the cam rotates
16 clockwise in its view, and the blue cable is let out, and the yellow orange
17 power cable is taken up. And on the opposite side, the same thing happens,
18 except the blue cable is taken up, and the orange cable is let out.

19 JUDGE WEATHERLY: Right.

20 MR. GRISWOLD: But what's important to take away from these,
21 and these are in the record by the way, so you can look at --

22 JUDGE WEATHERLY: Are they in the record as animations like
23 this?

24 MR. GRISWOLD: They are.

25 JUDGE WEATHERLY: Okay.

1 MR. GRISWOLD: You can stare at them for a bit and you'll see that
2 the blue cable on Islas and the blue cable on Darlington are doing the same
3 thing here, and the yellow cable on Islas and the yellow cable on Darlington
4 are doing the same thing here. But Petitioner's combination, if we go back
5 to Slide 80 please, is importing a feature from Islas' let out power cable, and
6 putting it on Darlington's take out cable.

7 JUDGE WEATHERLY: So I think what you're trying to say is, if
8 you were to rotate that modified cam, the let out cable on the left would
9 want to be taken up on the other side but it wouldn't be, this cam would
10 essentially be letting out both cables on that --

11 MR. GRISWOLD: Well, no.

12 JUDGE WEATHERLY: No?

13 MR. GRISWOLD: I think that the example that they have drawn
14 makes sense, they've modified it for their purposes, but they're looking to
15 the left hand for inspiration on how to make the right hand. They're looking
16 to an end of the power cable that has a specific function and using it for
17 inspiration on how to modify the other end of the power cable. And those
18 ends have very specific functions that Dr. Reinholtz testifies pretty clearly
19 that -- and this is his declaration 2018 paragraph 13, a POSITA would not
20 have incorporated the features from the unwrapping end of a power cable to
21 the wrapping end of a power cable, because of the differences between the
22 functions and the purposes of those two ends of the power cable.

23 JUDGE PESLAK: Mr. Griswold? Claim 1 of the '989 Patent only
24 requires the reverse wrapping on one rotatable member. So, can you
25 comment on how that slide supports your argument -- doesn't that undercut
26 your argument about take up end versus the let out end?

1 MR. GRISWOLD: My argument is about what makes sense to make
2 the combination. And there's been no argument, and nothing in the record
3 here, that suggests that either Islas alone or Darlington alone meet Claim 1.
4 And it isn't about the scope of the claim, I'm not talking about the scope of
5 the claim, I'm talking about would a POSITA have modified Darlington
6 with the teaching of Islas? And my point is, is that Islas and Darlington are
7 functionally the same with respect to the cable ends, they wrap in the same
8 way, and Petitioner's combination is to take more or less the exact same
9 thing and use it to modify Darlington with. And then moreover, they're
10 applying something that's in one context to a completely out of context
11 configuration. So it isn't really about what the claim says, it's about what
12 makes sense.

13 JUDGE WEATHERLY: Does your claim require that the reverse
14 wrap occur on the take up end? And I realize it may not use those terms.
15 And I think what I hear you saying is that it doesn't really matter for what
16 you're trying to illustrate for us now, which is the viability of the
17 combination or the legal soundness of the combination.

18 MR. GRISWOLD: Correct, Your Honor.

19 JUDGE WEATHERLY: And that the Petitioner hasn't argued that
20 the other power cable, essentially, in Darlington, or the other power cable in
21 Islas is a reverse wrap arrangement.

22 MR. GRISWOLD: That's correct, that's correct.

23 JUDGE WEATHERLY: Okay.

24 MR. GRISWOLD: Does the further question need answering?

1 JUDGE WEATHERLY: I don't think I need you to answer my
2 question, in fact probably falls into the category of a question that I don't
3 want the answer to.

4 MR. GRISWOLD: I'll also point out that in Islas the -- I'll go back to
5 the slide that has Islas on it. Let's go back to Slide 71 again? Actually, 66
6 might be cleaner.

7 JUDGE WEATHERLY: 66 you said?

8 MR. GRISWOLD: 66. So there's another kind of logical jump that
9 the Petitioners made in their proposed modification -- 68, I'm sorry -- and
10 that is, their expert acknowledges that the center of Islas, its power cable, the
11 one that's not colored in this view, wraps around a cam, it doesn't wrap
12 around a capstan. And this is their expert's characterization of it. This is in
13 the petition at 31. And so, actually also their expert declaration at paragraph
14 57, Islas is not being used to teach a capstan. So we have this cable
15 wrapping around a cam in what Petitioner would characterize as a reverse
16 wrap, and I don't see anything in the prior art that suggests even this cable
17 direction could be applied to a capstan.

18 JUDGE WEATHERLY: you mean you don't see anything in the
19 prior art that's of record?

20 MR. GRISWOLD: True.

21 JUDGE WEATHERLY: Okay.

22 MR. GRISWOLD: Well, I don't know of other prior art, Your
23 Honors.

24 JUDGE WEATHERLY: Okay, I'm guessing you haven't looked very
25 hard for it either.

1 MR. GRISWOLD: I did read the file history, so I've seen a bit of
2 prior art.

3 JUDGE WEATHERLY: Fair enough.

4 MR. GRISWOLD: All right, so let me talk a little bit about --

5 JUDGE PESLAK: Mr. Griswold? I don't mean to interrupt you
6 again, but what you just said goes back to what I asked your friend there,
7 which is what's a capstan in this argument? You seem to say that -- are you
8 arguing that Islas doesn't show a capstan, and that's the distinction between
9 that and the cam that it wraps around?

10 MR. GRISWOLD: I'm saying that the only thing -- I can't give you a
11 definition of a capstan. We're relying on the plain meaning of the word, and
12 I'm not prepared to break out a very detailed construction of it at this point.
13 I can tell you that the only thing in the record that explains what the thing at
14 the center of Islas is refers to it as a cam, and that is Petitioner's testimony.
15 And so taking Petitioner at its word, Islas doesn't show the power cable
16 wrapped in its supposed reverse wrap direction around a capstan, and so
17 they're applying this wrap direction from a cam now also to an arrangement
18 with a capstan and a terminal. And we don't have --

19 JUDGE WEATHERLY: Except that they're removing the capstan. It
20 said in the modification, right? Well, not the capstan that they identified, but
21 they're removing another structure, another capstan.

22 MR. GRISWOLD: And I would also point out that I don't think
23 there's expert testimony that explains why a POSITA would leave Islas' cam
24 configuration for the capstan and terminal configuration, other than they've
25 said well, ignore everything about Islas except for the wrap direction. And
26 we're going to apply that wrap direction to Darlington using Darlington's

1 hardware, and then we're going to make some other modification that we're
2 not going to talk about, that I'll talk about now.

3 JUDGE WEATHERLY: Okay.

4 MR. GRISWOLD: My time is running out, so let me hit it very
5 quickly. The terminal position, I think you heard the Petitioner explain that
6 Islas has this spoke configuration, and the spoke configuration drives the
7 position of the terminal. I would point you to Slide 67, which comes from
8 their reply. In the combination, I'm reading, in the combination, only the
9 rotational direction of Islas power cable around the orange element is being
10 combined with hardware components already present in Darlington's bow.
11 So they're not combining this spoke configuration from Islas.

12 And if we return back to the slide that had Islas and Darlington on it,
13 that was Slide 68, you'll see that the terminal in both of those is inward, it's
14 very close to the center of the cam. And in the modified configuration, the
15 terminal is now on the periphery. And I can point out that there is expert
16 testimony for Dr. Reinholtz, our expert, that basically says the positioning of
17 the anchor, this terminal, it's not arbitrary, because it effects the forces on
18 the pulley by the power cable, and consequentially movement of the pulley.
19 This is 2018 paragraph 113. And so there's a lot more to placing terminal
20 than just the convenience, and the web work in the interior of Islas, I'd
21 propose, is designed based on where they're going to put the terminal, it
22 doesn't drive the position of the terminal. The terminal is a dynamic thing,
23 it goes back to the complexity and the geometries that we discussed at the
24 outset.

25 Let me talk briefly about the motivations to combine. Can I have
26 Slide 82? So, Petitioner has identified three motivations to modify the

1 Darlington cam based on Islas. That's safety and maintainability, which if
2 you dig into the record relates to wear and friction and cable contact,
3 potential cable contact. Simplifying the design due to -- and thus reducing
4 the manufacturing costs, and then increasing the angular sweep of the cam.
5 And on this slide, this is from their expert, and he says eliminating section
6 42 decreases wear and friction and cable contact. Eliminating section 42
7 results in reduced manufacturing costs because you've eliminated in part --
8 eliminating 42 increases the maximum allowable pulley sweep. So these are
9 all things that are attributed to eliminating section 42, and -- can I have Slide
10 84, please?

11 In Slide 84, Dr. Reinholtz, he said all these great things about
12 removing section 42, why didn't you just remove section 42? He says it
13 could work if someone wanted to make it happen. And he gives an example
14 of what it would look like if we remove section 42. I also want to make a
15 quick comment about removing section 42. I don't have it here, Petitioner's
16 Slide 14 says sections 42 and 44 of Darlington are designed to be removable.
17 That's just not true. If you look at Darlington, Exhibit 1004, it describes the
18 module 44, which is the thing with the label b1 b4 on it, that's the
19 replaceable module. It describes it as, module 44 is removably mounted on
20 the base, and refers to it as a replaceable draw in module. That's analogous
21 to the module that Mr. Colvin showed you before on the Menace bow, but in
22 contrast we read about section 42, section 42 is not described as replaceable
23 or removable, it's referred to as fixed section 42.

24 And I can really just very quickly, because I'm already over, but let's
25 look at Slide 97. This is Petitioner's expert where he admits that the take up
26 of the power cable is what stores energy, and in the very last of this he says

1 during draw, fixed section 42 takes a power cable as shown on the bottom of
2 Figure 2, correct? Correct. So he's admitting that the purpose of this fixed
3 section is to store energy, take up energy. Our expert agrees, slide 98. And
4 goes further to say section 42 is not superfluous, eliminating has severe
5 consequences that will require additional design work and added or modified
6 components to address.

7 Actually, while I'm not this slide, I will jump very quickly to cost.
8 Our expert testifies that those severe consequences that he just discussed in
9 this very same slide will require a larger rotatable member, so a larger outer
10 diameter cam to regain the lost energy storage capacity. It will require more
11 material, more time spent machining the rotatable member, and any small
12 material savings or simplification gained by eliminating fixed section 42 will
13 be more than offset by the added complexity of the material required to
14 create the functional design. And I'd point out that this testimony is
15 un rebutted. This testimony came after the original testimony by Petitioner's
16 expert, and they didn't submit a reply declaration. Do you have questions
17 about cable wear?

18 JUDGE WEATHERLY: Not anymore.

19 MR. GRISWOLD: Okay. I'm going to stop and ask if there are any
20 questions.

21 JUDGE PESLAK: I have one question, Mr. Griswold. Can you put
22 up Slide 82, about the reasons that Petitioner's expert gave for the
23 modification? What I get from your argument is this, and tell me whether
24 it's wrong. What you seem to be arguing is that Petitioner's expert gave
25 reasons for eliminating section 42, but did not give reasons for moving the
26 terminal to the periphery. Is that your argument?

1 MR. GRISWOLD: It's close, Judge Peslak. Petitioner's expert gave
2 reasons for eliminating fixed section 42, but didn't give reasons for
3 wrapping the cable in the opposite direction. That cable could go a number
4 of different places. The cam could be large to accommodate that terminal.
5 The terminal could be closer in. I think if you look at it, you can imagine
6 both fixed section 42 and that terminal coexisting. They apply wrap
7 direction to the capstan and put the terminal right where fixed section 42 is,
8 yet there were lots of other places on that the cam is drawn, and of course a
9 POSITA wouldn't have been constrained to the exact shape. As Mr. Seitz
10 said, these guys are very smart and they know a lot of the parameters that
11 they can change when designing a cam. So he wouldn't have been
12 constrained to put the terminal exactly where the fixed section is. they've
13 chosen to take out the fixed section, and that's the basis that their selection,
14 their choice to remove the fixed section, is the tail wagging the dog. We
15 remove the fixed section, it has all these advantages. Oh, by the way, you
16 could have reverse wrap, is a better way to consider their argument.

17 JUDGE PESLAK: One last question then. Patent Owner is not
18 making an argument here that any of these modifications would be outside
19 the skill level of a person of ordinary skill in the art, is that correct?

20 MR. GRISWOLD: Yes that is correct, but I'd give one caveat. So,
21 we have very conclusory testimony from the Petitioner's expert that you
22 could make these changes with no explanation. We have very detailed
23 explanation.

24 JUDGE WEATHERLY: When you say conclusory, what do you
25 mean by it?

1 MR. GRISWOLD: I mean it just flat says a POSITA would make the
2 design changes necessary to make this a really great cam.

3 JUDGE WEATHERLY: And cites no objective evidence to support
4 it?

5 MR. GRISWOLD: And cites no objective evidence. And I think if
6 you compare the analogous testimony where our expert analyzed the very
7 broad conclusory statements by their expert and responded to them, he gives
8 a lot of detail on the problems you would encounter if you had to implement
9 these things. And so there isn't a -- it's just a flat assertion, well, you make
10 whatever you want to make. And the reality of that is these cams are very
11 complex, and it isn't, simply if you make anything, you have constraints.
12 And then fundamentally, would you have been motivated given the
13 similarities in Islas and in Darlington? Judge Peslak, does that answer your
14 question?

15 JUDGE PESLAK: It does, thank you.

16 MR. GRISWOLD: Okay, any further questions?

17 JUDGE WEATHERLY: None from me.

18 MR. GRISWOLD: Okay, I appreciate it, thank you.

19 MR. SEITZ: One second please, let me get my set together here.

20 JUDGE WEATHERLY: Take your time.

21 MR. SEITZ: Thank you. I think we've covered a lot of issues here
22 today, I'll be brief.

23 JUDGE WEATHERLY: We have.

24 MR. SEITZ: I want to start with a question you asked, Judge Peslak,
25 on the question of did we submit any sort of motivation for why we would
26 get rid of the portion 42, section 42, and the probably more pertinent

1 question after that, why would we do the reverse wrap in that scenario? And
2 I would refer the Board to paragraph 63 of Exhibit 1003, which is Mr.
3 Lang's declaration. He does talk about elimination section 42 in that
4 paragraph, paragraph 63, but he goes on to say the rotational limit of the
5 original Darlington design would have been overcome by wrapping the
6 power cable the opposite direction, and then he explains, toward the edge of
7 the pulley, getting the end of the power cable and the terminal out of the way
8 of the rotation of the pulley. So he does describe why you would want to
9 move that anchor point to the edge, because it gets it out of the way of the
10 rotation of the pulley, and that's paragraph 63 of his declaration.

11 I'm going to refer paper-wise to Patent Owner's demonstratives, Your
12 Honor. It's 71 in Patent Owner's demonstratives, where they have made an
13 argument about Darlington and Islas teaching the same types of wrap,
14 almost as if they're the same thing. And I think this is probably a great
15 example of the concept that we are taking from Islas to put into Darlington.
16 And again, it's page 71 of Patent Owner's demonstratives. And here what
17 you see is Islas on the right and Darlington on the right, blue and yellow
18 power cables, and then the green bowstring, if you all are looking at the
19 same thing I am.

20 JUDGE WEATHERLY: Yeah.

21 MR. SEITZ: Okay, thank you. The key aspect from Islas that I
22 think is being looked over here is that it is unique and different from
23 Darlington in that its wrap, as it comes down, it wraps towards the periphery
24 of the cam, of the rotatable member there. That is the blue line of Islas on
25 the left of page 71 of Patent Owner's demonstratives. It comes down the
26 center line, wraps away from the axle towards the periphery of the cam.

1 Compare that to the blue power cable in Darlington shown on the right side
2 of Patent Owner's demonstratives at page 71, it comes down and then turns
3 in towards the axle and up towards the center of that cam. So the concept
4 we're taking from Islas is not just the reverse wrap, but this question of
5 moving outwardly towards the periphery. This is explained in our petition at
6 page 33 and page 38. These are the slides I have of the arguments that I had
7 on page 18 of our demonstratives where we explained what Islas is teaching
8 is that its power cable wraps outwardly, away from the axis and towards the
9 pulley's periphery. Page 33 of our petition there. The same thing, talking
10 about outwards on page 38 of our petition. So there is a distinction between
11 Islas and Darlington that's being glossed over there, and it deals with really
12 the aspect of the direction of that wrap where it's moving towards.

13 Okay Your Honor, we've discussed the onset of our issue quite a bit,
14 and so I want to go back to this just to summarize where my arguments are.
15 I'm happy to answer any questions. There was a statement that was made,
16 Judge Petravick, it may have been by you, it's just a question of whether it
17 was made before June 30, 2009. And I agree with that, we've talked about
18 making and shipping, and I want to go back and reiterate, was it made before
19 June 30, 2009, and then look in terms of what we just saw. We saw Inside
20 Archery articles, those were before 2009, June 30, 2009. We do not see in
21 those articles any evidence of the bows in a drawn condition. They never
22 show that to you. when they did that, you'll notice they went to the physical
23 bows right here on the floor, they had to jump to those physical bows.

24 Now, as to the physical bows, my point on that evidence -- and I think
25 you mentioned that, I'm going to get it wrong again Judge Weatherly, chain

1 of custody, the evidentiary aspect is where I have my objections to that. I
2 believe, stated in a different way --

3 JUDGE WEATHERLY: Rather than using a term of art that I may be
4 misusing, the issue ends up being -- I think the issue you're raising is that we
5 don't know at all times where the physical bows that are shown to us today
6 were. We don't know when they were made, we don't know when they
7 were shipped, we don't know what the customer did when they had them,
8 we don't know how many customers had them.

9 MR. SEITZ: That's correct. Initiated by, the doubt here is initiated
10 by Mr. Hoff's walking back of the statements that he made in his
11 declarations. So my point is, the credibility loss that Mr. Hoff has had from
12 walking back his positions gives a taint to Appendices that he is attached.
13 And I heard some, oh, it's Appendix A, he didn't talk about Appendix C. I
14 believe there is a taint to everything submitted by Mr. Hoff. I believe that
15 because he has walked back the shipping, I like the discussion of an accident
16 in prosecution, that'll be fun to litigate that out in the district court, but he's
17 walked back the statements that he made not just in the appendices, but in
18 his sworn declaration that was provided under oath, paragraph 12 calling out
19 September 26th, 2008. It's not just the appendices, it was the statement that
20 he provided under oath there. He also walked back whether shipping means
21 shipping in terms of looking at the appendices. I believe that raises
22 questions about his credibility. There are two things that raise questions
23 about his credibility.

24 And then Your Honors, I didn't discuss this in my opening or raise it
25 as a rebuttal issue, but we had Mr. Hoff in his deposition, this is page 32,
26 lines 13 to 15 in the public record, I confirmed that this morning. He was

1 asked, do you know how these two physical Mission Menace bows were
2 acquired? Answer, no. Unequivocally no in his deposition, but in his
3 declaration, paragraph 18, Matthew's Archery obtained these bows from the
4 customers for compensation. He is a witness that will say things both ways.
5 That to me raises credibility issues, it taints the appendices. So then we need
6 to look for what other corroborating evidence do we have for the
7 information that is in his appendices?

8 Things I was hoping to see when they stood up. I was hoping to see,
9 and it is similar to PDX -- oh, I said PDX. Patent Owner's demonstratives,
10 this is page 21 of Patent Owner's demonstratives. I want you to see this to
11 see the kind of things that I'm talking about. Page 21 of Patent Owner's
12 demonstratives, the title on that page is Menace Bow Inside Archery. We
13 see an awful lot of redactions, but what we see is shipping dates, I think you
14 described this as perhaps looking very much like a QuickBooks invoice. I
15 agree, some type of a --

16 JUDGE WEATHERLY: I had my own law firm for a while and used
17 QuickBooks, and this looks just exactly like my invoices.

18 MR. SEITZ: Some type of an invoice with proof of shipping. I was
19 hoping they would stand up and show us that for these three bows. Didn't
20 see it, we don't have it. This type of information exists, presumably, based
21 on Mr. Hoff's deposition, presumably exists for these three physical bows
22 here, the Menace and the Monster, that can answer these questions, were
23 they made, shipped, sent to these customers? I think it answers the
24 fundamental question, Judge, of were they made during that timeframe? If
25 we had something like this showing ship to this archery store, or shipped and
26 bought by this customer, a warranty submitted for this bow, we would tie

1 that together. Again, why do I say that's necessary here? Because I do
2 believe --

3 JUDGE PESLAK: Mr. Seitz?

4 MR. SEITZ: Yes sir.

5 JUDGE PESLAK: Did you ask Mr. Hoff that question in his
6 deposition, whether Patent Owner had an invoice for any of those bows they
7 recovered from the customers?

8 MR. SEITZ: Very similar to that question, Your Honor, we asked
9 him do you maintain sales orders, shipping information, invoice details, that
10 was page 14 -- lines 7 to 6 is what I have written down, let me check that.
11 Page 14, Your Honor, let me say that. And he did clarify that they did
12 maintain that type of information for their sales with make to manage. So
13 page 14, it's right around line 7, my notes are a little backward on that. But
14 we did ask him, do you maintain that? And he said yes to that. He even said
15 at pages 20 and 23, this is confidential, so -- let me phrase it this way. You
16 should look at pages 20 and 23 of his deposition as well, listed confidential
17 for other information that they maintain about make to manage that's
18 missing here. So yes, Your Honor, we did ask him specifics.

19 JUDGE PESLAK: Okay, and let me ask you this, can you point to --
20 did you ask him in his deposition whether the invoice to Inside Archery
21 came from Patent Owner's business records? And if so, just tell us where
22 you asked that question.

23 MR. SEITZ: That question was not asked of Mr. Hoff, because it was
24 clarified by Mr. Ozanne in his declaration, which says that they kept -- gosh,
25 Your Honor, let me see, I'm recalling this. Mr. Ozanne said that he pulled
26 the Inside Archery records from their archive, and I don't recall off the top

1 of my head, Your Honor, whether we got information on where those
2 records for Inside Archery came from. That's not immediately coming to
3 mind. The information from Mr. Ozanne is about where the Inside Archery
4 articles came from.

5 JUDGE PESLAK: Okay, thank you.

6 MR. SEITZ: If there's additional questions I'm happy to answer
7 them. If not, Your Honors, I will rest.

8 JUDGE WEATHERLY: Judge Peslak?

9 JUDGE PESLAK: I just have one last question. So, for the issue you
10 raised on Mr. Hoff's testimony, you cited we should read the portions of his
11 deposition that you cited in your Petitioner's reply.

12 MR. SEITZ: Yes Your Honor, and also I can't tell you whether this
13 lines up perfectly as I sit here. I have my notes in front of me, not the reply.
14 I was also referring to page 20, lines 4 to 13, and 23, 15 to 18 about what we
15 asked him on information that they maintained on the made to manage
16 system.

17 JUDGE PESLAK: Okay. I just want to be clear, you've told us
18 though that you have some things we should look at to evaluate your claim
19 on Mr. Hoff's credibility.

20 MR. SEITZ: Yes, that's right. Our reply was certainly characterized
21 as a full throated attack on the credibility of Mr. Hoff, and Mr. McPherson
22 as well. So yes, it will be listed there, what we've discussed today.

23 JUDGE PESLAK: Okay, thank you.

24 MR. SEITZ: Anything further, Your Honors?

25 JUDGE WEATHERLY: I have nothing further.

1 MR. SEITZ: I appreciate your time, and appreciate you again
2 appearing in person.

3 MR. GRISWOLD: Your Honors, bear with us for a second while we
4 get the slides back up again.

5 JUDGE WEATHERLY: No problem. While you're setting up, I
6 have you with 11 minutes remaining.

7 MR. GRISWOLD: I'm going to speak just a little bit and then turn
8 the podium over to my colleague Mr. Colvin.

9 JUDGE WEATHERLY: 11 minutes goes quick.

10 MR. GRISWOLD: If you're ready, Your Honors?

11 JUDGE WEATHERLY: Ready

12 MR. GRISWOLD: Okay, so I -- the teach a man to fish and he'll eat
13 forever, I'm going to point you to Slide 100, and Slide 100 shows the type of
14 impact or contact that you might have on Darlington's bow and the modified
15 bow. And to Petitioner's point that movement of the terminal frees up space
16 and avoids this contact, if you look at that you can see the points that will
17 contact. This is from Dr. Reinholtz's declaration. It's actually the capstan
18 that contacts the power cable right there, and you can see also in the original
19 Darlington, it's the same thing. Dr. Reinholtz does some analysis of the
20 geometry of it, but it's a patent figure, so there might be complain had with
21 that. With the configuration as drawn, though, you can see the point of
22 impact. So eliminating, or improving angular sweep and eliminating contact
23 is really not a function of the terminal location.

24 And then the second thing I would point out, if we could go to Slide
25 69, please? Petitioner stood up and said well, really if you look at Islas, it
26 wraps outwardly, and that's the difference. Well, so Darlington wraps

1 outwardly too, to your point earlier, clockwise and counter clockwise is
2 confusing, outwardly is yet further confusing, because it's a function of
3 where you are on the cable and I think to draw the distinction on that, I just
4 can't even get my head around it. so any further questions?

5 JUDGE WEATHERLY: None from me.

6 MR. GRISWOLD: Okay, then I'm going to turn the --

7 MR. COLVIN: Thank you, Your Honors, Matt Colvin again for
8 MCP. So I just had a few points here. First, I think it's important that we
9 take a step back on these internal tracking records to understand where they
10 came from. These are records that were exported from Matthew's Made to
11 Manage system, this is their internal tracking system. And I think you
12 should pay --

13 JUDGE WEATHERLY: You're talking about the things that look
14 like spreadsheets, Appendix A for example?

15 MR. COLVIN: That's right. Appendix A and Appendix C to Mr.
16 Hoff's declaration are output from Matthew's Made to Manage system. And
17 I think you should really spend some time in the first part of Mr. Hoff's
18 declaration, at paragraphs, we'll call it 4 through 11, where he explains just
19 what this Made to Manage system is. Some of it's redacted here, and so I'm
20 not going to go into the details, but in particular, in paragraph 11 he
21 comments that this isn't information that can be changed, right? And so I
22 think through that lens, then you can better assess the voracity of what's
23 actually shown in these spreadsheets.

24 I also want to take a second and recognize that what Petitioner is,
25 what their dispute is with Mr. Hoff, and I think they said it just here, is well,
26 shipped meant one thing and now it means something else. When you look

1 at Mr. Hoff's deposition, they spent quite a bit of time asking him questions
2 on this, and it makes complete sense what happened. And his testimony
3 makes complete sense, and I would just direct you to page 13, line 17,
4 through page 14 line 25. And what he says there is that shipping was the
5 term they would use in the Made to Manage field to indicate when
6 something is relieved from inventory. These two bows that are on the sheet
7 from September of 2008 were taken out of inventory, so Mr. McPherson can
8 -- this was in his testimony.

9 And so to get them out of inventory, to show they are out of
10 inventory, this is what it looks like in Made to Manage. But Mr. Hoff can
11 look at that information and show that well, this is to an internal customer
12 number. And so it wasn't shipped, it was relieved from inventory, and he
13 even says that it didn't leave the building.

14 JUDGE PESLAK: Mr. Colvin, go back to what you just said, it
15 showed an internal customer number? Is there a column in Appendix A that
16 indicates it's an internal customer? So we know shipped means it just was
17 taken out of inventory and not shipped to a customer?

18 MR. COLVIN: It is, Your Honor. There's a customer number
19 column, and if you'll just look at the first page, it's the fifth column in, it
20 says customer number. Customer number there is redacted in the public
21 version, but you'll notice that customer number is unique, and Mr. Hoff
22 testifies what that number means. And it is that customer number that
23 means the bows stayed inside the building, as he said in his deposition.

24 JUDGE PESLAK: Okay, thank you.

25 MR. COLVIN: Mr. Seitz mentioned that there's just no evidence in
26 Inside Archery articles that the Inside Archery bows couldn't be drawn or --

1 JUDGE WEATHERLY: He said they aren't shown in a drawn
2 position.

3 MR. COLVIN: They aren't shown drawn. I don't think that's
4 relevant. Dr. Reinholtz looked at what was in the Inside Archery articles
5 and said that obviously the bow could be drawn, he opined on what it would
6 look like when it was in the drawn condition, and he also analyzed the exact
7 same geometry of the physical bows that obviously can be drawn. I think
8 somehow the -- I just don't know what that argument by him buys them.
9 Are they somehow saying that well, these Inside Archery bows weren't
10 reduced to practice, because it doesn't show them drawn? That just doesn't
11 make sense, and there's certainly no evidence by them of that point.

12 And Dr. Reinholtz, on the other hand --

13 JUDGE WEATHERLY: Well, I think the issue of drawing is
14 probably related to the way the claims are written to recite limitations in the
15 context of rotational directions when drawn and -- I'm getting it wrong, I'm
16 getting the exact language incorrect because there's so many variations
17 throughout the three cases, but --

18 MR. COLVIN: Right, but these bows have, thankfully follow physics
19 and geometry, and we know exactly how they will rotate when they are
20 drawn. This is not a mystery. If you see a picture of cam and a drawstring
21 and cables, a person skilled --

22 JUDGE WEATHERLY: You say it's not a mystery, but it does take
23 some study.

24 MR. COLVIN: I will also note that Mr. Seitz took the opportunity to
25 correct the record about this freely rotating cam, if it didn't have a string,

1 that did not happen. Your Honors, I have three and a half minutes left, I
2 would love to answer any further questions you have.

3 JUDGE PESLAK: Mr. Colvin, it's Judge Peslak again. I'm looking
4 at this Appendix A spreadsheet to Mr. Hoff's declaration, and even in the
5 sealed -- next to the customer numbers there's a column that says retailer
6 name, and even in the sealed version all those columns are blacked out.

7 MR. COLVIN: That's right.

8 JUDGE PESLAK: Subject to an objection by Petitioner, would your
9 client consider -- I mean, I understand you don't want customer names in the
10 record, but would Patent Owner consider, again, subject to Petitioner's
11 objection, unblocking the retailer name on those first two entries for
12 September 26, 2008?

13 MR. COLVIN: We would have no problem doing that, Your Honor.
14 And I'll just add that the column just to the left of that customer number is
15 what most of the deposition testimony is over. That corresponds to a retailer
16 name, certainly, but I just want to flag that it's the customer numbers that
17 you'll find correlate with the deposition testimony. If you see those in the
18 chart, if not, I'm happy to point them out to you.

19 JUDGE PESLAK: No, I see the customer number, I would assume
20 the retailer names are customer names, that they would be people that your
21 client sells to.

22 MR. COLVIN: We'd be happy to do that and keep it under seal, Your
23 Honor.

24 JUDGE PESLAK: Okay, and would Petitioner have any objection to
25 that at this point?

1 MR. SEITZ: The key there is that this point -- so, absolutely. Those
2 have been redacted in our documents from the beginning, so I haven't had a
3 good chance to conduct any discovery on those, I haven't had a chance to
4 ask any witness about those under depositions, they've been hidden from us
5 this entire case. That is absolutely objectionable, to undo it now and use that
6 to their advantage.

7 JUDGE WEATHERLY: I think I would sustain your objection.

8 MR. SEITZ: Thank you.

9 MR. COLVIN: I would also add --

10 JUDGE WEATHERLY: I can't speak for my colleagues on that, by
11 the way we vote here at the board, but yeah, I would have an objection too.

12 MR. COLVIN: I would also add, Your Honor, that I think for the
13 purposes of what the Board has to do, questions that this Board has to
14 answer, I don't think it matters. Whether or not the bows in September were
15 sold and shipped to customers, which I'm sure that Petitioner would love for
16 that to be the case, if that's the case, this proceeding is over. Because now
17 there's no objection to what Mr. Hoff says, the records they say are now
18 perfectly accurate and they want to rely on them, and so you know, it's not
19 right. those bows were not sold to customers, those September bows were
20 not sold to customers, you can tell that by the customer number and by the
21 Hoff testimony. But certainly, the other 20,000 plus bows, they don't have
22 anything to say about them.

23 JUDGE WEATHERLY: Well, I think except that Mr. Hoff's
24 testimony is unreliable.

1 MR. COLVIN: They do say that. Your Honors, I am 15 seconds
2 over. I'm happy to stand up here and answer more questions, otherwise I'll
3 rest and sit down.

4 JUDGE WEATHERLY: Judge Peslak, any questions?

5 JUDGE PESLAK: Nothing else from me.

6 JUDGE WEATHERLY: Nothing from me either.

7 MR. COLVIN: Okay, thank you. Appreciate your time.

8 JUDGE WEATHERLY: Thank you. I want to say on the record I'm
9 really very much impressed by everybody in this room and the preparation
10 that you all put in on this case, and I really appreciate it. I also really
11 appreciate the effort and expense to come here in person and deliver the
12 arguments in person. I'm glad to hear the advocates saying that it's helpful
13 for them too, it's certainly very helpful for us on the panel. And a lot of
14 other things I'd like to say which wouldn't be appropriate for the record, so I
15 won't, other than to say thank you very much for coming, and all the
16 preparation, I really appreciate it profoundly. Thank you. Anything else
17 from anyone on the panel?

18 JUDGE PESLAK: Nothing from me.

19 JUDGE WEATHERLY: All right, great. Thank you again. We're
20 off the record and the case is submitted.

21 (Whereupon, the above-entitled matter went off the record at 1:03
22 p.m.)

IPR2024-00522 (Patent 8,683,989 B1)
IPR2024-00523 (Patent 9,354,017 B2)
IPR2024-00524 (Patent 9,909,831 B2)

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