

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NXTGEN TOYS, LLC.,

Petitioner,

v.

ZIPSTRING, LLC,

Patent Owner.

Case IPR2024-01213

Patent 11,674,774

PATENT OWNER'S RESPONSE

I. SUMMARY OF THE INVENTION

Zipstring, LLC. markets and sells a novel toy that is a string shooting device having a string capable of generating lift when propelled from the string shooting device and a guide to readily attach and the detach the string from the string shooting device.

II. LEGAL STANDARDS

The Board has instituted an *inter partes* review of U.S. Patent No. 11,674, 774 (the ‘774 patent) based upon 4 grounds raised by petitioners. However, the Petitioners rely on an anticipation and obvious analysis that is unreasonable in light of how a (“POSITA”) would not be motivated to combine the references cited in the petition to achieve the results disclosed by the Patent Owner in the ‘774 patent.

A patent is invalid for obviousness “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103. Obviousness is a question of law based on underlying factual findings: (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the art; and (4) objective indicia of nonobviousness. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18

(1966). The Board must consider all evidence relevant to obviousness or non-obviousness and consider the evidence collectively before reaching a conclusion regarding obviousness. *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig.*, 676 F.3d 1063, 1078 (Fed. Cir. 2012). Petitioners bear the burden of proving obviousness by a preponderance of the evidence. 35 U.S.C. § 316(e).

As explained by the Supreme Court, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed Cir. 2006)). Specifically, a petitioner must demonstrate that, at the time of invention, a POSITA would have had a reason to attempt to make the invention and “a reasonable expectation of success in doing so.” *Procter & Gamble Co. v. Teva Pharm. USA, Inc.*, 566 F.3d 989, 995 (Fed. Cir. 2009). In an *inter partes* review, the burden of proof always rests on the Petitioner to articulate this reasoning; the burden never shifts to the Patent Owner to prove the absence of a motivation to combine. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). “To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d

1364, 1380 (Fed. Cir. 2016). Similarly, it is not enough to identify what one of skill in the art “would have known” or “could have done” to meet a limitation. *Black & Decker, Inc. v. Positec USA, Inc.*, No. 2015-1646, 2016 WL 2898012 at *6 (Fed. Cir. May 18, 2016). Rather, a Petitioner must articulate why a skilled artisan would actually make a combination. *Id. See, Ball Aerosol & Specialty Container, Inc. v. Limited Brands, Inc. v. Limited Brands, Inc.*, 555 F.3d 984, 993 (Fed. Cir. 2009) (explaining that the skilled artisan’s motivation “should be made explicit”). The Board may not look beyond the Petition to find this reasoning. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (explaining that “the Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond”).

Based on the evidence of record, as is further explained *infra*, Petitioner has not met the burden of proving its claims of anticipation and obviousness by a preponderance of the evidence. Accordingly, Patent Owner respectfully requests that the Board confirm the challenged claims of the ‘774 patent.

III. PERSON OF ORDINARY SKILL IN THE ART

Patent Owner, which is the Plaintiff in United States District Court for the Northern District of Georgia 1:24-cv-00136-TCB, put forth that a POSITA as of the priority date of the ‘774 Patent “would have had at least a B.S. degree in Mechanical

Engineering, Electrical Engineering, Aerospace Engineering, Industrial Design, Product Design, or similar field, with at least two years industry experience in one of these fields, and such POSITA would have been familiar with general principles of mechanics, fluid mechanics and aerodynamics.”

IV. CLAIM CONSTRUCTION

Patent Owner does not believe express claim constructions are necessary during this proceeding because the claims can readily be given their ordinary and customary meaning in the context of the patent at the time it was filed. A Markman hearing has not yet been held in the underlying District Court case, 1:24-cv-00136-TCB.

V. DISCUSSION OF PRIOR ART

A. Yeany

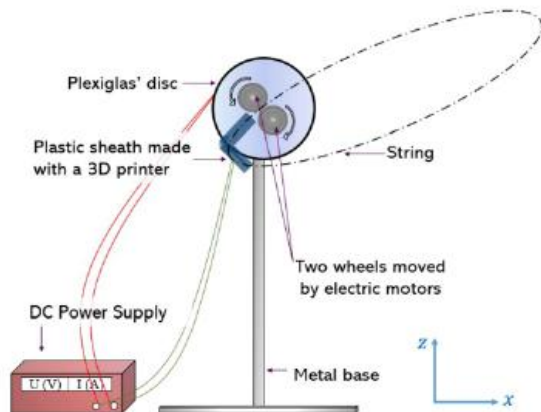
The Yeany reference is a video in which Professor Bruce Yeany discusses a string shooting device that he created. As shown in Yeany, the device is constructed from a length of string, 2 driven wheels, motors, batteries, and on off switch, some wires and the body of the device is comprised of wooden blocks.



Immediately noticeable to Dr. Jason Janét, PhD, who is a POSITA, from the Yeany video, is that it is a tabletop device that includes a large wooden base on which another round wooden piece is mounted that supports 2 rotatable wheels. This contrasts with the device of the '774 patent that is shown and described as being configured to be held by a user. See Exhibit 2002, Declaration of Dr. Jason Janét ¶73.

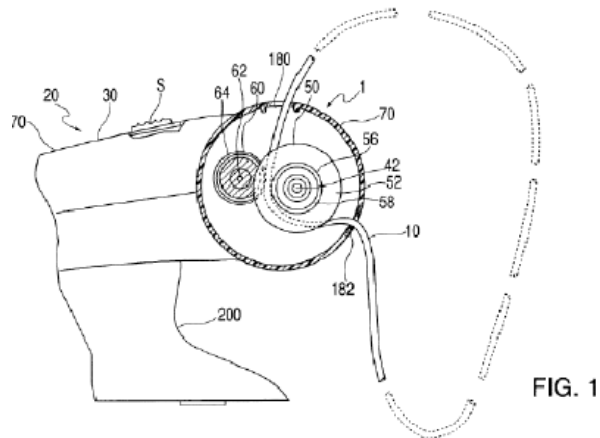
Another immediately distinguishable element from the Yeany video is the inability to “readily attach and detach the string from the string shooting device”. *Id.* ¶ 74. More specifically, Yeany also does not disclose a housing that in any way covers the pair of wheels, nor a housing that defines a loading slot through which a looped string is loaded or removed from between the pair of wheels. *Id.*

B. Abello



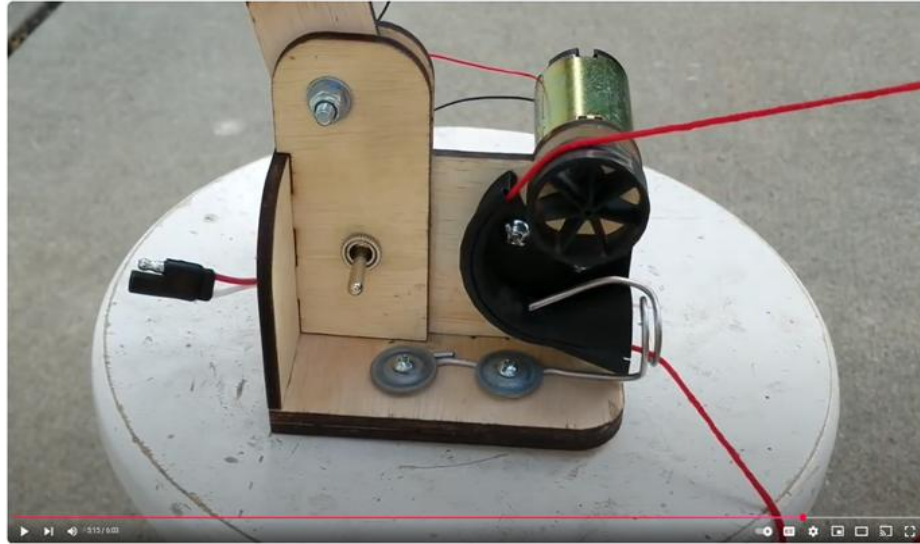
Abello “noticed that the most dense strings as well as the smoothest strings were the ones to have the highest takeoff speeds,” and “[a]lthough these results are counterintuitive, it was found that for a given string, [take-off speed] depend [sic] neither on the length L of the SSh (see Tab. 3) nor the angle”. [Abello pp 4-5]. The fact that Abello specifically notes that the “smoothest” string have the highest takeoff speeds indicates a desirability for the string to be smooth, which teaches away from the device as claimed in the ‘774 Patent. Exhibit 2002 ¶ 77

Wagner



A POSITA would notice that Wagner does not have a housing, as it is defined in the '774 Patent, including a loading slot that allows one to insert or remove a looped string. The '774 Patent specifies that the housing defines a loading slot through which the string is loaded or removed from between the pair of wheels [‘774, 1:63-66] In contrast, Wagner’s cover 150 and rotatable cup 100 do not comprise a channel, groove or long, narrow aperture or slit defining a slot for insertion and/or removal of a looped string. Wagner does not have a loading slot as defined at one edge by a loading tab. [‘774, 2:50-54] Wagner does not have a loading tab that guides the string from the loading slot to the intake aperture. [‘774, 8:66-9:3] Wagner also does not have a loading slot 101, exit aperture 103, or guiding slot 108 [‘774, 10:17-19].

C. Scorch



Scorch discloses a string shooter device that uses two wheels to shoot a loop of string. *See Exhibit 2002, Declaration of Dr. Jason Janét ¶192.* Scorch does not, however, disclose a housing that at least partially covers the wheels and includes a loading slot through which the looped string is inserted or removed. Scorch’s “funnel” is not a “housing” because it does not cover the wheels of Scorch’s string shooter, in whole or in part. Scorch’s slot is also not a “slot through which the string is loaded or removed between the pair of wheels”. *Id.* Instead, Scorch’s slot terminates at a substantial distance from where the two wheels meet; Scorch’s slot is not over the area between the pair of wheels. In fact, Scorch’s design substantially separates the wheels to load the string. *Id.*

VI. Ground 1: Claims 1-3, 12 and 15 are patentable over Yeany under 35

U.S.C. § 102

Claim 1 recites:

[1.0] a string shooting device comprising:

[1.1] a body;

As described above, Yeany is a table-top string shooting device. A POSITA would understand upon reading the ‘774 Patent that the body of the claimed device is configured to be held by a user [‘774 Patent Col. 6, lines 14-17] and that Yeany is not so configured. Exhibit 2002, ¶98.

[1.2] a housing attached to the body;

Yeany also does not disclose a housing as disclosed in the ‘774 patent that is configured to receive wheels for propelling the looped string. [‘774 Patent Col. 9, lines 37-38]

[1.3] a pair of wheels, wherein at least one of the pair of wheels is a driven wheel.

[1.4] a string, wherein the string comprises a surface texture configured to increase air friction in response to the string being propelled through air by the pair of wheels, wherein the string defines an axis along which the string extends, and wherein the string comprises a plurality of fibers extending away from the axis.

Yeany does not disclose the surface texture of the string as being configured to increase air friction in response to the string being propelled through air by the pair of wheels. Instead, Yeany is completely silent as to the surface texture of the string and does not discuss it or any purported function. See Exhibit 2002, ¶103. The fact that a close-up of the string after it has been shooting through the two rotating wheels shows a fuzzy surface texture does not indicate that the fuzziness is configured to increase the air friction as claimed. *Id.*

Because Yeany does not disclose the body, housing or surface texture of the string it cannot anticipate claim 1 or claims 2-3, which depend therefrom.

Claim12 likewise claims receiving a housing between a pair of wheels and generating lift at an end of the looped string distal from the housing based on a surface texture of string configured to increase air friction in response to being propelled. For the reasons discussed with respect to claim 1 concerning the housing, and the lack of disclosure regarding the surface texture of the string being configured to increase air friction, claim 12 is likewise not anticipated by Yeany. See Exhibit 2002, ¶115.

Finally, claim15, which depends from claim 12 and recites “receiving the looped string through an intake aperture of the housing, guiding the looped string between the pair of wheels, and propelling the looped string through an exit aperture of the housing is also not anticipated by Yeany. Specifically, Yeany does not teach

a housing and as such cannot and does not include an intake aperture of the housing or an exit aperture in addition to the elements of claim 12 that are not disclosed in Yeany. *See* Exhibit 2002 ¶ 116.

VII. Ground 2: Claims 1-3, 12 and 15-17 are patentable over Abello in view of Yeany under 35 U.S.C. § 103.

Abello also does not include a body configured to be held by a user, and as such, does not meet the limitation of claim 1 regarding a body. *See* Exhibit 2002 ¶ 119. Nor does Abello include a housing as disclosed in the ‘774 patent that is configured to receive wheels for propelling the looped string. [‘774 Patent Col. 9, lines 37-38]

As Dr. Kudrowitz admits, “Abello does not provide explicit details on the surface texture of the string.” *See* Exhibit 2002 ¶ 132. In fact, Abello states that “we noticed that the most dense strings as well as the smoothest strings were the ones to have the highest takeoff speeds”. [Abello, pp 4-5] *See* Exhibit 2002 ¶ 130. Abello merely discusses exploring changing various parameters by modifying the string such as its linear density, roughness, fibre material, diameter, etc. *See* Exhibit 2002 ¶ 132. As such, Abello teaches away from a fuzzy string because it indicates a preference for smooth strings and discloses that intentionally modifying the string would yield unknown results.

Because Yeany does not disclose the body, housing or surface texture of the

string as recited in claim 1 and because Abello does not cure the deficiencies found in Yeany for the reasons stated above, Abello in view of Yeany does not render claim 1 or claims 2-3, which depend therefrom obvious.

Claim 12 likewise claims receiving a housing between a pair of wheels and generating lift at an end of the looped string distal from the housing based on a surface texture of string configured to increase air friction in response to being propelled. For the reasons discussed with respect to claim 1 concerning the housing, and the lack of disclosure regarding the surface texture of the string being configured to increase air friction, Abello in view of Yeany does not render claim 12 obvious. Exhibit 2002, ¶141.

Neither Abello nor Yeany teach Claim 12, from which Claim 15 depends. Additionally, as previously discussed regarding Claims 1, 12 and 15, neither Abello nor Yeany teaches a housing. Thus, Abello in view of Yeany does not render obvious Claim 15.

Claim 16 includes the limitation of a body and a housing attached to the body and defining a loading slot. Neither Abello nor Yeany teach a body configured to be held by a user, as discussed above. In addition neither Abello nor Yeany include a housing and as such do not include a housing defining a loading slot. Thus, Abello in view of Yeany does not render obvious Claim 16.

Neither Abello nor Yeany teach Claim 16, from which Claim 17 depends.

Thus, Abello in view of Yeany does not render obvious Claim 17.

VIII. Ground 3: Claims 1-3, 12 and 15 are patentable over Wagner in view of Yeany under 35 U.S.C. § 103.

The final combination of Wagner in view of Yeany suffers from the same lack of disclosure regarding the surface texture of the string being configured to increase air friction in response to the string being propelled through air by the pair of wheels, as claimed in independent claim 1.

Dr. Kudrowitz acknowledges that “Wagner does not explicitly state that the surface texture of the string is configured to increase air friction in response to the string being propelled through air by the pair of wheels.” See Exhibit 2002, ¶158. As such, both Wagner and Yeany are silent as to the surface texture of the string and whether or not the surface texture configured to increase air friction in response to the string being propelled through air by the pair of wheels. See Exhibit 2002, ¶159.

Because Yeany does not disclose the body, housing or surface texture of the string as recited in claim 1 and because Wagner does not cure the deficiencies found in Yeany for the reasons stated above, Wagner in view of Yeany does not render claim 1 or claims 2-3, which depend therefrom obvious.

Claim 12 likewise claims receiving a housing between a pair of wheels and generating lift at an end of the looped string distal from the housing based on a surface texture of string configured to increase air friction in response to being

propelled. For the reasons discussed with respect to claim 1 regarding the lack of disclosure regarding the surface texture of the string being configured to increase air friction, Wagner in view of Yeany does not render claim 12 obvious. See Exhibit 2002, ¶172.

Neither Wagner nor Yeany teach Claim 12, from which Claim 15 depends. Thus, Wagner in view of Yeany does not render obvious Claim 15.

Claim 16 includes the limitation of a body and a housing attached to the body and defining a loading slot. Neither Wagner nor Yeany include a housing defining a loading slot, as discussed below with respect to claim 4. Thus, Wagner in view of Yeany does not render obvious Claim 16 for the reasons stated below.

IX. Ground 4: Claims 4, 16 and 17 are patentable over Wagner in view of Yeany and Scorch.

The Petitioner admits that Dependent claim 4 and independent claim 16 add limitations for a “loading slot” that are not expressly taught by Wagner or Yeany. However, they then rely on Scorch, a YouTube video, that discloses a string shooting device with a separate element on the side of the device for loading a string. It is noteworthy that the Scorch reference does not have a housing either.

Claim 4: The string shooting device of claim 1, wherein the housing covers, at least partially, the pair of wheels, and wherein the housing defines a

loading slot through which the string is loaded or removed from between the pair of wheels.

A POSITA would not be motivated to combine the references suggested by the Petitioner. As Dr. Janét explains in his declaration, A POSITA would understand that a housing for a kinetic device like a string shooter should have at least the following qualities. First, the housing should be stable and structurally sound in such a way that it simultaneously protects the device's moving components and does not inadvertently expose the moving components to pose a safety risk to users or bystanders. Second, the string shooter housing should be user-friendly, enabling string loop installation and removal without the need for special tools, motions or complex assembly/disassembly steps. Third, building on the second feature, the string shooter housing should allow visual and tactile feedback for users during operation, troubleshooting, string loop exchanges, etc. Exemplified by the following figures, the string shooter housing of the '774 Patent uniquely provides these features. ['774 9:17-11:47] For example, the structural design of the '774 housing is stable, reliably integrated to the device body, minimizes exposing the wheels to ambient effects, and minimizes exposing users or bystanders to wheel entanglement (e.g., hair, apparel, appendages, etc.). The '774 Patent housing is also user friendly, enabling a minimal number of motions to install and/or remove the string loop, and providing visual and tactile feedback during the process. For

example, a POSITA would notice that the ‘774 Patent loading slot requires the user to simply lower the string into loading slot 101, slightly rotate the string counter clockwise, and then lower the string in a flossing-like manner into a seat between the two wheels, all while having visibility through the openings to see the string install (or be removed), as well as having tactile feedback to feel when the string is seated between the wheels. Exhibit 2002 ¶ 120.

In contrast, Dr. Kudrowitz’s proposed combination of Wagner in view of Yeany and Scorch results in a housing design that is impractical, unsuitable for a kinetic device, unsafe and unnecessarily complicated to use, including string loop installation and removal. Dr. Kudrowitz’s modification of Wagner actually results in a worse design than if Wagner was left as-is. Regardless, the combinations proposed do not render obvious the invented system of the ‘774 Patent. For these reasons, and the reasons stated below, it would not be obvious for a POSITA to combine Wagner in view or Yeany and Scorch. Even if such a combination were made, it would not yield the results claimed by the Petitioner. Exhibit 2002 ¶ 121.

Petitioner and Dr. Kudrowitz admit that Dependent claim 4 and independent claim 16 add limitations for a “loading slot” that are not expressly taught by Wagner or Yeany. However, they then rely on Scorch, representing that it is a YouTube video prior to the time of the invention that teaches a string shooter device with a loading slot on the side, ignoring the fact that the so-called loading slot

is a separate element that does not cover the wheels in any manner. Exhibit 2002, ¶174.

Scorch's "funnel" is not a "housing" as defined in the claims of the '774 patent because it does not cover the wheels of Scorch's string shooter, in whole or in part. In addition, a POSITA would understand from reviewing the '774 Patent that Scorch's slot is not a "slot through which the string is loaded or removed between the pair of wheels". Exhibit 2002, ¶183.

A POSITA when reviewing the video would hear the narrator saying that "the string can shoot out the slot" [Scorch 4:00-4:04] and understand that Scorch's slotted funnel does not actually "house the looped string". To reinforce this, the Scorch narrator adds "an extra piece that'll go on there" which is "basically a bent wire with a corkscrew at the end" to "prevent the string from coming out the side". [Scorch 4:05-4:30] Exhibit 2002, ¶184.

The Scorch narrator says that not using the slotted funnel and, instead, gluing the ends of string together when it is fully assembled "is a much simpler scenario to have. To have this extra piece in here is a little bit of a complication". [Scorch 5:35-5:45] Scorch also explains that "sometimes the string will actually get stuck around this" separate piece, and that he's "thought about extending that back even further". [Scorch 5:55-6:05] Exhibit 2002, ¶184.

Not one of the references cited by the Petitioner includes a housing that has a loading slot through which the string is loaded or removed from between the pair of wheels.

Ignoring these differences and deficiencies, Petitioner and Dr. Kudrowitz state that “A POSITA would apply the teaching of a side loading slot from Scorch to the Wagner device to improve the convenience of replacing a loop of string. Wagner already teaches that a loop of string may need to be “removed from the device 1 or reinstalled between the” wheels. Wagner at 3:58-62. However, Wagner teaches doing so by removing the cover and then reinstalling the cover after the loop of string has been replaced. Wagner at 3:46-4:45. Petitioner goes on to characterize the removal of the Wagner cover as an inconvenient process that requires a user overcoming the “friction fit” to remove the cover and then lining up complementary structures on the cover and the cup to reattach the cover. *Id.* Instead of removing a friction fit cover, Petition states that using a loading slot to replace a loop of string instead of Wagner’s existing process, the replacement of string in Wagner’s string shooter device can be easier and quicker for a user. Exhibit 2002, ¶186.

Wagner teaches that the user removes the “top flange 54” to install the loop between hub 56 of the drive wheel and hub 64 of the back wheel. [Wagner 2:42-48] A POSITA would understand that the top flange 54 is removed in part because “[t]he base flange 52, intermediate hub 56 and removable top flange 54 of drive wheel 50,

and the hub 64 of backup wheel 60, form a channel for trapping and guiding loop 10.” [Wagner 2:48-53] The flange removal may also seem inconvenient but, again, a POSITA would recognize the design as suitable for a kinetic device. Exhibit 2002, ¶187.

A POSITA would also understand that adding a slot to Wagner’s cover still does not allow the top flange 54 to be removed. Petitioner and Dr. Kudrowitz say that a “POSITA would understand that the slot would extend between the intake and exit apertures of Wagner’s housing while also going around wheel 50 so that user has sufficient access to load the string around the flanges of wheel 50.” [Kudrowitz, ¶175] But neither Petitioner nor Dr. Kudrowitz provide support for the assumption that Wagner’s design allows the string to slide between top flange 54 and the top surface of wheel 60, especially since they are designed to “trap” the loop 10, a point that Dr. Kudrowitz acknowledges. [Kudrowitz, ¶176] Exhibit 2002, ¶188.

Petitioner and Dr. Kudrowitz’s design assumes that a POSITA would choose to incorporate the funnel of Scorch into the cover of Wagner by only selecting certain portions of the funnel, namely the slot. This assumes that a POSITA would see the open design of Scorch where the wheels are not covered and which is supported on a table base and decide that the Scorch funnel, which includes elements not present once the cover of Wagner is cut in two, would operate as a less “inconvenient process” than removing a friction fit cover for inserting and removing

the looped string despite the obstacles described above. Ultimately, a POSITA would not choose to modify Wagner in the manner proposed by Petitioner and Dr. Kudrowitz because the proposed modifications result in a more complicated and overall less functional design. Exhibit 2002, ¶191.

X. A POSITA Would not be motivated to combine Scorch with Wagner and Yeany and, if motivated, would not result in the claimed loading slot.

Kudrowitz's prescribed arcing slot in Wagner requires a significantly more complex string loop installation process where in a user must coax a loose string arc through an arced slot and make multiple direction changes, two of which are occluded by top flange 54. Exhibit 2002, ¶201.

A POSITA would see Wagner's disclosure as an effective string shooter with performance and design stability as-is; a POSITA would not see the need to modify it unless the end result was an improvement. A POSITA would not see Scorch's external slotted funnel tube as an improvement, much less a design fit for Wagner's cover 152, for the reasons articulated above. If a POSITA was inclined to bring over Scorch's slotted funnel tube, the POSITA may be more inclined to place Scorch's slotted funnel tube on Wagner's body, like Scorch's current design. Otherwise, a POSITA would not be motivated to move from a stable design to a two-piece cover that is unsuitable for kinetic devices, and may pose hazard(s)/risks

to the device, users and bystanders. Exhibit 2002, ¶201

In addition to the foregoing, Scorch describes his slotted funnel as ineffective because the funnel still does not house the string and requires a separate piece to prevent the string from popping out of the slot. Thus, Scorch teaches away from using his slotted funnel by describing it as complicated, prone to entanglement and incomplete. Exhibit 2002, ¶¶204-205

XI. CONCLUSION

For the foregoing reasons, Petitioner has not met the burden of proving its claims of anticipation and obviousness by a preponderance of the evidence. Accordingly, Patent Owner respectfully requests that the Board confirm the challenged claims of the ‘774 patent.

Respectfully submitted,

Dated May 20, 2025

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. §§ 42.24(a)(1)(i), (b)(1), and (d), Patent Owners hereby certify, in accordance with and reliance on the word count provided by the word-processing system used to prepare this Response, that the number of words in this paper is 4626 words. Pursuant to 37 C.F.R. § 42.24(a)(1), this word count excludes the “table of contents, a table of authorities, mandatory notices under § 42.8, a certificate of service or word count, or appendix of exhibits or claim listing.”

Dated: May 20, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2025 a copy of Patent Owner's Motion to Amend has been served via email on the following:

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