

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 SUR-REPLY TO PETITIONER'S REPLY TO PATENT
OWNER RESPONSE**

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I. INTRODUCTION

On September 2, 2025, Petitioner filed a reply to the Patent Owner’s Response to the Petition. As explained in the Patent Owner’s Response (“POR”), Petitioner still has not met the burden of proving its claims of anticipation and obviousness by a preponderance of the evidence for the asserted claims of U.S. Patent No. 11,674,774 (the “’774 Patent”). 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). Accordingly, Patent Owner respectfully requests that the Board confirm the challenged claims of the ’774 Patent.

In its latest reply, the Petitioner relies on an argument that the Patent Owner is improperly attempting to import claim limitations into the Patent Owner’s analysis of the state of the prior art. It is well established that “The descriptions in patents are not addressed to the public generally, to lawyers or to judges, but, as section 112 says, to those skilled in the art to which the invention pertains or with which it is most nearly connected. Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the

disputed term appears, *but in the context of the entire patent, including the specification.*” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1326 (Fed. Cir. 2005) (en banc). (emphasis added).

The context of the prior art matters to a POSITA. Under *KSR*, the Court required an analysis that reads the prior art in context, taking account of “demands known to the design community,” “the background knowledge possessed by a person having ordinary skill in the art,” and “the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Patent Owner, put forth in its POR 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.”

Dr Janét, who meets Petitioner’s requirements of a POSITA, did not evaluate the prior art in a vacuum but in view of not just the claims, but the teachings of the intrinsic evidence provided by the specification, and consequently conducted an evaluation consistent with how a POSITA would understand the claims in view of the specification. For example, the string shooting device of the ’774 Patent is clearly

and unequivocally stated in the specification as being “**configured to be handheld devices, where a user holds the body**”. ’774 Patent Col. 6 lines 14-17. Dr. Janét in making his analysis recognized that a POSITA would look to the intrinsic evidence of the specification and drawings and read the claims to the body as being a hand-held device.

II. ARGUMENTS

A. Ground 1- Yeany Does not Anticipate Claims 1-3, 12 and 15 under 35 U.S.C. § 102

1. Claim 1

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 and that Yeany is not so configured. Dr. Janet Opinion, Ex. 2002, ¶98.¹

Claim 1 recites, “a string, wherein the string comprises a surface texture

¹ In addition to the definition in the specification that the body is configured to be hand-held, the specification also repeats several times that movement of the string corresponds to the user’s movement of the body of the device. For example, “The user’s movements can be manifested as waves in the string corresponding to the user’s movement of the body 5.” ’774 Patent Col. 5 lines 49-51 In addition, “user’s movements can be manifested as waves in the string corresponding to the user’s movement of the body.” *Id.* Col. 7, lines 26-28. Also, “movement of the string shooter by a user can introduce waves into the floating string.” *Id.* Col. 4, lines 49-51.

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.*” (emphasis added) Yeany does not disclose the surface texture of the string as being configured to increase air friction. 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 Yeany video starts with the table-top devices in use with each device already propelling the string. The Petitioner cites to Yeany at 1:05, 1:16 and 1:30. At no point before or after this point in the video does Dr. Yeany describe the string, or its fibers.

The fact that a close-up of the string after it has been shooting through the two rotating wheels for an indeterminate number of times and for an indeterminate length of time and shows a fuzzy surface from use does not indicate that the string is configured to increase the air friction as claimed. Namely, including a plurality of fibers extending away from the axis prior to use and prior to being exposed to the friction created by the wheels as the string passes through them. *Id.* In *Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672 F.3d 1335, 1349 (Fed. Cir. 2012), the Court cautioned that “designed or configured” as opposed to “adapted to” means that “members *are designed or configured to accomplish the specified objective*, not simply that they can be made to serve that purpose” (emphasis added). The same is

true here. For the prior art to anticipate claim 1, it must disclose that the string is "configured to" perform a function, therefore the Petitioner must demonstrate a purposeful design that achieves the specified function and not merely the capability to achieve the function. Petitioner has failed to do so. Since there is no disclosure by Yeany that the string was designed with a surface texture configured to increase air flow with a plurality of fibers extending away from the axis, the Yeany reference cannot render the Patent invalid under 35 U.S.C. §102.

In addition, independent claim 1 also recites that the string shooting device comprises "a housing attached to the body." The specification of the '774 Patent defines the housing as "configured to receive therein wheels for propelling a looped string." '774 Patent, Col. 9, lines 37-38. The Yeany device is a tabletop device with the wheels exposed and does not include a housing. In addition, there is no disclosure or suggestion of a housing since Yeany describes using the device to propel other objects other than string, which requires access to the wheels to place the objects between the wheels. See Yeany video.

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

Likewise, the reasons discussed with respect to claim 1 apply equally to independent claim 12 and claim 15, which depends therefrom. More specifically,

because Yeany lacks any disclosure regarding the surface texture of the string being configured to increase air friction, claim 12 is also not anticipated by Yeany since it also requires the surface texture of the string to be “configured to increase air friction.”. *See* Exhibit 2002, ¶115. Nor does Yeany disclose “receiving a looped string into a housing” as claimed in claim 12 because Yeany lacks a housing. Finally, Yeany also does not disclose “receiving the looped string through an intake aperture of the housing,” because Yeany does not disclose a housing or an intake aperture of the housing. Accordingly, Petitioner has failed to meet the burden that Yeany anticipates every element disclosed in claim 12 and claim 15, which depends therefrom.

B. Ground 2: Abello in view of Yeany does not render Claims 1-3, 12 and 15-17 obvious under 35 U.S.C. § 103.

In reviewing the context of the prior art, a POSITA would identify that Abello 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. However, because Abello notes that “smoothest strings” were the ones with the highest takeoff speeds, modifying the strings “roughness” would include taking away the roughness to make it smoother. A reference teaches away from a claimed invention if it “criticizes, discredits, or otherwise discourages” modifying a reference to arrive at the claimed invention. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2024). Abello teaches away from a string that “comprises a surface texture configured to increase air friction” and “wherein the string comprises a plurality of fibers extending away from the axis” because it indicates a preference for smooth strings instead of strings with a surface texture and fibers extending away from the axis, and discloses that intentionally modifying the string would yield unknown results.

Dr. Kudrowitz’s conclusory opinion that it would have been obvious to a POSITA to use a string with fibers extending away from the string’s axis with Abello’s string shooter should be disregarded. As explained, *supra*, Abello teaches that intentionally modifying the string would yield unknown results and Dr. Kudrowitz relies upon these teaching to formulate an opinion of what a POSITA would understand in selecting a string for the Abello shooter while ignoring the statements made by Abello regarding the desired qualities of a smooth string. Dr

Kudrowitz selectively ignores that intentionally modifying the string in a manner that would include a surface texture with a plurality of fibers extending away from the axis would cause unknown results. In *Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1322 (Fed. Cir. 2019), the Federal Circuit held that the benefits, both lost and gained, should be weighed against one another, and the prior art must be considered for all its teachings, not selectively.

A Petitioner must articulate why a skilled artisan would actually make the claimed 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”). Dr. Kudrowitz has not sufficiently articulated why after reviewing the negative results and cautions regarding string modifications disclosed in Abello a POSITA would nevertheless decide to create a string with a surface texture designed to increase air friction including a plurality of fibers extending away from the axis as claimed in the ‘774 patent. 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). Nevertheless, the Patent Owner has provided not only the absence of a motivation to combine but why Abello actually teaches away from the combination.

Yeany does not disclose the body, a housing or surface texture of the string as recited in claim 1. 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. For the reasons discussed above with respect to Yeany and Abello, both of which lack a body that is hand-held and a housing that receives the wheels, combined with not only the lack of disclosure regarding the surface texture of the string being configured to increase air friction but also a preference for a smooth string, Abello in view of Yeany likewise does not render claim 12 obvious. Exhibit 2002, ¶141.

Neither Abello nor Yeany teach Claim 12, from which Claim 15 depends. Additionally, neither Abello nor Yeany alone or in combination teaches receiving the looped string through an intake aperture of the housing as recited in claim 15. Thus, Abello in view of Yeany also does not render obvious Claim 15.

Claim 16 includes the limitation of a looped string comprising a surface texture configured to increase air friction, a body and a housing attached to the body and defining a loading slot. Neither Abello nor Yeany teach a body that is designed to be hand-held by a user, a looped string with a surface texture or a housing as

discussed above. In addition, neither Abello nor Yeany include a housing defining a loading slot, wherein the loading slot is disposed at least partially over at least one of the pair of wheels as claimed in claim 16. Nor does Petition provide any motivation as to why a POSITA observing prior art that is neither hand-held, nor includes a cover, would be motivated to include a cover and then create a slot in the cover in a position that is at least partially over at least one of the pair of wheels as claimed in claim 16. Thus, Abello in view of Yeany does not render obvious Claim 16.

Neither Abello nor Yeany teach Claim 16, from which Claim 17 depends. Claim 17 includes the limitation that surface texture comprises a plurality of fibers extending away from an axis along which the looped string extends to generate a turbulent air boundary layer, which is also not rendered obvious by either Abello or Yeany either alone or in combination. Thus, Abello in view of Yeany does not render Claim 17 obvious.

C. Ground 3: Wagner in view of Yeany does not render Claims 1-3, 12 and 15 obvious under 35 U.S.C. § 103.

The 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

with fibers extending away from the axis, as claimed in independent claim 1 and 12.

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 do not disclose that the surface texture of the string is configured to increase air friction wherein the string comprises a plurality of fibers extending away from the axis as claimed in both claims 1 and 12 . *See* Exhibit 2002, ¶159.

For the reasons disused herein Yeany does not disclose a body, housing or surface texture of the string as recited in claim 1. Wagner does not cure the deficiencies found in Yeany with respect to the string As such, Wagner in view of Yeany does not render claim 1 or claims 2-3, which depend therefrom obvious.

Claim12 likewise claims receiving a looped string into 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

from claim 12. Thus, Wagner in view of Yeany Claim 15 is also not obvious in view of Wagner and Yeany.

D. Ground 4: Wagner in view of Yeany and Scorch does not render Claims 4, 16 and 17 obvious under 35 U.S.C. § 103.

A POSITA would not be motivated to combine the references suggested by the Petitioner to add a loading slot to the cover of Wagner.

Dr. Janét evaluated the prior art in the manner that a POSITA would have evaluated the prior art without having prior knowledge of the claimed invention as a road map. As Dr. Janét explained in his declaration, A POSITA would not be motivated to modify the Wagner device by using a funnel with a slot in it as disclosed by Scorch. Indeed, Dr. Janét's analysis reveals that the modification suggested by Dr. Kudrowitz results in a worse design that would not be considered by a POSITA as a result. Petitioner selectively chooses prior art and randomly combines the references using a kitchen sink approach to achieve the invention disclosed by the Patent Owner. Petitioner cannot and does not identify any compelling reason as to a POSITA's motivation to combine the references gathered by Dr. Kudrowitz and it is clear that Dr. Kudrowitz is using impermissible hindsight reconstruction by using the '774 Patent as a roadmap. The Federal Circuit, in *Echolochem Inc. v. Southern Cal. Edison Co.* 227 F.3d 1361,1375 (Fed. Cir. 2000), reiterates that: "We have previously held that "the suggestion to combine may be found in explicit or implicit

teachings within the references themselves, from the ordinary knowledge of those skilled in the art, or from the nature of the problem to be solved”” *WMS Gaming, Inc. v. International Game Tech.*, 184 F.3d, 1339, 1355, 51 U.S.P.Q.2D (BNA) 1385, 1397 (Fed. Cir. 1999). The Court goes on to warn that, “[h]owever, there still must be evidence that “a skilled artisan, confronted with the same problems as the inventor and without knowledge of the claimed invention, would select the elements from the cited prior art reference for combination *in the manner claimed.*” (emphasis added). In re Rouffet, 149 F.3d at 1357, 47 U.S.P.Q.2D (BNA) AT 1456; see also In re Werner Kotzab, 217 F.3d 1365, 1371, 55 U.S.P.Q.2D (BNA) 1313, 1317 (Fed. Cir. 2000).

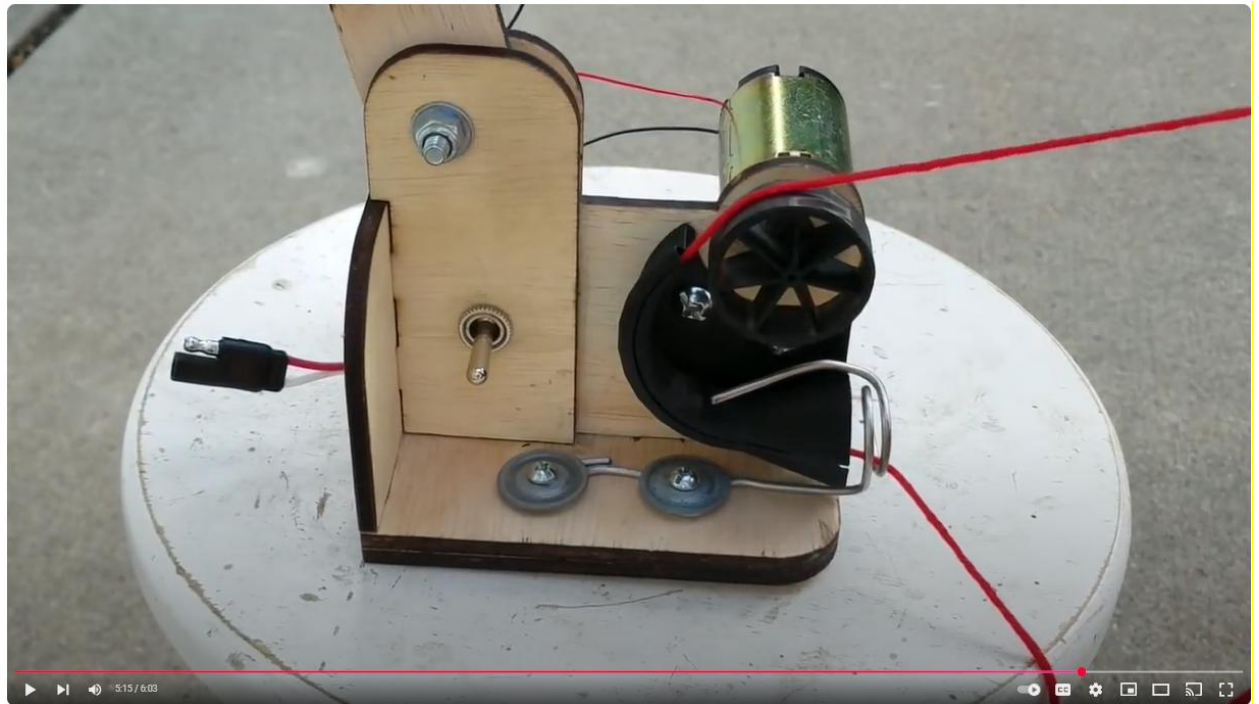
Dr. Janét made a reasoned analysis pointing out specifically why the combination would not be considered by a POSITA and why it would not yield the claimed invention. Dr. Janét opined that Dr. Kudrowitz’s proposed combination of Wagner in view of Yeany and Scorch results in a housing design that is impractical, unsuitable for a kinetic device, unsafe and unnecessarily complicated to use, including for both string loop installation and removal. Dr. Kudrowitz’s modification of Wagner actually results in a worse design than if Wagner was left as-is. Dr. Janét identifies these design deficiencies in evaluating how a POSITA would not be motivated to combine the references in the conclusory manner advanced by Dr. Kudrowitz to show that there is not only no motivation to combine

the references, but even if a POSITA tried to combine the references because a worse design would result, a POSITA would choose not to modify Wagner. Dr. Kudrowitz fails to articulate why a skilled artisan would be motivated to combine the references of Wagner, Yeany and Scorch, which results in the Petitioner again failing to meet its burden.

Petitioner overlooks the fact that 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). Despite this, the Patent holder has shown why a POSITA would lack motivation by analyzing the proposed combination to show exactly why a POSITA wouldn't consider it.

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 device, that Scorch does not include a housing that covers a pair of wheels nor a loading slot defined by the housing through which the string is loaded or removed from between the pair of wheels, and that Scorch acknowledges that during use the string often flies out of the slot requiring an additional metal

corkscrew element to prevent the string from leaving the slot and the device. Below is a screen shot of the video of the Scorch funnel.



As shown above, 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, Dr. Janét opined that a POSITA would understand from reviewing the ‘774 Patent that the slot in Scorch’s funnel is not a “slot through which the string is loaded or removed between the pair of wheels.” In fact, when watching the video utilizing the funnel with a slot, the video shows that one of the wheels is swung up at a pivot point so that it is no longer adjacent the other wheel, as shown in the photo above. As such, although the funnel is used with a looped string it is not a “slot through which the string is loaded or removed between

the pair of wheels” because one of the wheels is moved out of the way, as shown in the video. Because of the positioning of the slot, and the fact that the string remains within the slot during operation, it is clear that the funnel with a slot is not the slot as claimed in the ’774 Patent.

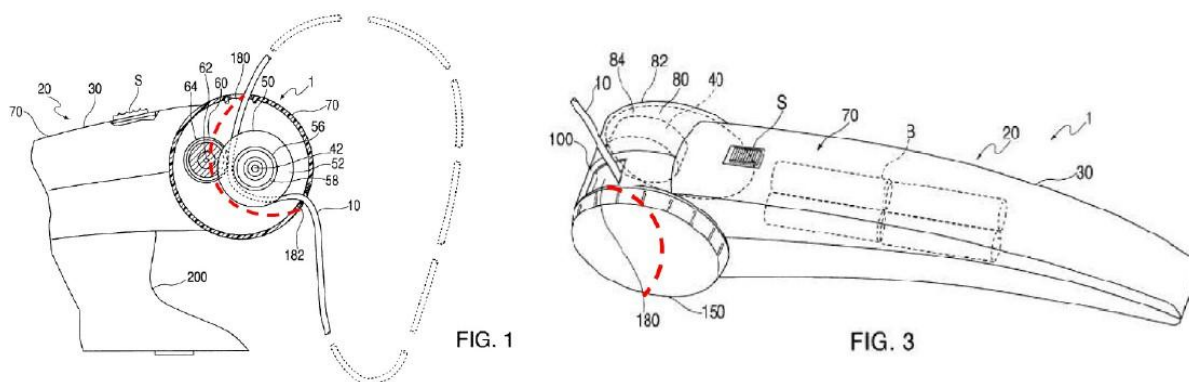
Dr. Janét opines in his declaration that a POSITA would not choose to modify Wagner in the manner proposed by Petitioner and Dr. Kudrowitz because the proposed modifications result in a more complicated and overall less functional design. Exhibit 2002, ¶191. This is well reasoned and clearly articulated evidence of why a POSITA would not be motivated to make the modification to Wagner as suggested by the Petitioner and Dr. Kudrowitz.

Conversely, Dr. Kudrowitz, using impermissible hindsight analysis, arbitrarily decides that the Wagner device can be improved by adding a loading slot to the cover of the Wagner device. As shown above, the Scorch funnel containing a slot is a separate device with a different configuration than claimed in the ’774 Patent. Dr. Kudrowitz conveniently creates a design that assumes that a POSITA would choose to incorporate the funnel of Scorch into the cover of Wagner by only selecting the portion of the funnel, namely the slot, that he needs to meet a claim limitation.

Dr. Janét, who is a POSITA, approached the modification proposed by Dr. Kudrowitz in the manner that a skilled artisan, confronted with the same problems

as the inventor and without knowledge of the claimed invention would select the elements from the cited prior art reference. Dr. Janét's performed his analysis from the perspective of a POSITA who did not have knowledge of the claimed invention.

Interestingly, the Petitioner in their response criticized that the: Patent Owner “attacks a modification of its own making rather than Petitioner’s proposed modification of Wagner.” This is simply not true, what Dr. Janét attacked was Dr. Kudrowitz’s insufficient explanation of a motivation to combine, and his clearly using impermissible hindsight to arrive at the opinion that utilized Petitioner’s design as a road map. Dr. Janét in his opinion was explaining why a POSITA, even if motivated, would not arrive at the design represented by the dotted red line:



Dr. Kudrowitz used impermissible hindsight to illustrate a loading slot on the body of the Wagner device in the red dotted lines. Again, Petitioner is attempting to shift the burden of establishing obviousness onto the Patent Owner. Dr. Kudrowitz uses the Scorch reference to find what he categorizes as a loading slot used in string shooting device. Dr. Janét, evaluating as a POSITA, reviewed both the references

and combined them in a manner a POSITA would, not in the manner to achieve the desired result as the Petitioner has proposed. The combination made by Dr. Janét shows the flaws in the Petitioner's argument. Dr. Kudrowitz fails to articulate how a POSITA would be motivated to combine the references and fails to disclose why the manner he has illustrated would be chosen, what is the motivation to achieve what type of advantage in the resulting device, and at what cost to the operation of the device? The Scorch reference does not support a reason that a POSITA would be motivated to combine the references for the reasons articulated by Dr. Janét in his report. Whether a skilled artisan would have been motivated to combine prior art references is also a question of fact. *Wyers v. MasterLock Co.*, 616 F.3d 1231, 1238-39 (Fed. Cir. 2010). “([T]he burden falls on the challenger to show that ‘a skilled artisan would have been motivated to combine the teachings of the prior art,’ and that a ‘skilled artisan would have had a reasonable expectation of success in doing so’” (quoting *Pfizer, Inc. v. Apotex, Inc.* 480 F.3d 1348, 1361 (Fed. Cir. 2007)).

Dr. Janét clearly articulates why a POSITA in attempting to combine the Scorch reference with Wagner in view of Yeany and Scorch would not have a reasonable expectation of success including that the resulting housing design would be impractical, unsuitable for a kinetic device, unsafe and unnecessarily complicated to use, including for both string loop installation and removal. For the reasons articulated by Dr. Janét, Wagner in view of Yeany and Scorch do not render claims

4, 16 and 17 obvious under 35 U.S.C. § 103

III. 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 October 14, 2025

EPSTEIN DRANGEL LLP

/s/ Kenneth W. Cohen

Kenneth W. Cohen (Reg. No. 69,686)

Jodi-Ann McLane (Reg. No. 36,215)

60 East 42nd Street, Suite 1250

New York, NY 10165

(305) 978-9914

Kcohen@ipcounselors.com

Jmclane@ipcounselors.com

mail@ipcounselors.com

Attorneys for Patent Owner

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 4865 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: October 14, 2025

/s/ Kenneth W. Cohen
Kenneth W. Cohen (Reg. No. 69,686)
EPSTEIN DRANGEL LLP
60 East 42nd Street, Suite 1250
New York, NY 10165
(305) 978-9914
Kcohen@ipcounselors.com
Jmclane@ipcounselors.com
mail@ipcounselors.com
Attorneys for Patent Owner

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2025 a copy of Patent Owner's Motion to Amend has been served via email on the following:

Email: jpmurphy@polsinielli.com

jkuo@polsinelli.com

Dated: October 14, 2025

/s/ Kenneth W. Cohen

Kenneth W. Cohen (Reg. No. 69,686)

EPSTEIN DRANGEL LLP

60 East 42nd Street, Suite 1250

New York, NY 10165

(305) 978-9914

Kcohen@ipcounselors.com

Jmclane@ipcounselors.com

mail@ipcounselors.com

Attorneys for Patent Owner