

## Amazon Neutral Evaluation

Evaluation No.: 13018290951 (O/R: 93795-0047)  
Asserted Patent: U.S. Pat. No. 10,413,047.  
Asserted Claim: Independent Claim 16.  
Patent Owner: Lindsay Albanese, an individual.  
Accused Infringer: Amazon seller “Klipsta” (AmznID: A1PYOI0FIUIC0Z).  
Accused Product(s): B0B83VWS8J, B0B8353QYH, B0B838BNZG, B0B837HX6Q, B0B83PD5RG, and B0B836QZQT.

### PATENT OWNER’S INITIAL WRITTEN SUBMISSION

Pursuant to the Schedule and Instructions issued on August 1, 2023, the Patent Owner, by and through the undersigned counsel, hereby submits this initial written submission.

#### I. INTRODUCTION

The ‘047 patent relates to a clip configured to retain a hat between two magnetic ends. The clip can be attached to another object such as a backpack or a suitcase to carry and store the hat, prevent damage, and provide easy access. The novel hat clip, and the carrying method it enabled, spawned an entirely new way to fashionably carry and display a hat without wearing it. The Patent Owner’s commercial embodiments of the invention were an immediate success and are carried by luxury retailers such as Nordstrom’s and Saks Fifth Avenue.

The Accused Infringer instructs and encourages its customers and end users to combine the Accused Products with a hat and therefore infringes the Asserted Claim under 35 USC 271(b).

#### A. The Asserted Patent

The ‘047 patent discloses a magnetic clip that can be used to secure a hat to another object for travel and storage. See, e.g. ‘047, FIG. 7. The ‘047 patent describes the novel clip as having “[a] rear strap 110 and [a] front strap 120... coupled together at their top...” (‘047 Col. 3:33-34).

“The rear strap 110 can have a ferromagnetic member 115 near its lower end 111 and the front strap 120 can have a ferromagnetic member 125 in its lower end 121.” (‘047 Col. 3:63-65). The patent teaches that “the brim of a hat can be placed between the ferromagnetic members 115 and 125 and the force of magnetic attraction... can substantially hold the hat” (‘047 Col. 4:15-17) enabling “a user to carry a hat ‘hands-free’.” (‘047 Col. 4:21-22).

Although the ‘047 patent refers to the straps as a “front strap” and a “rear strap”, the ‘047 patent discloses that the straps “can be formed from a single piece of material that is folded approximately in half where a first half can be the rear strap 110 and a second half can be the front strap 120.” (‘047 Col. 3:37-40). Indeed, forming the “front strap” and “rear strap” from by folding single strap is robustly described at least a dozen times throughout the ‘047 patent specification and embodied the figures (e.g. FIG. 1C, 2C).

## **B. The Accused Products**

The Accused Products are magnetic hat clips and are a “dead read” on the Asserted Claim. A claim chart mapping the components of the Accused Products to Asserted Claim is attached hereto as Exhibit A. The Accused Products are identical except for color. References and arguments herein refer to ASIN: B0B83VWS8J (black) but are applicable to all the Accused Products.

## **II. LEGAL STANDARDS FOR INDUCED INFRINGEMENT.**

Title 35 of the U.S. Code provides “whoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C. § 271 (b).

**A. Direct Infringement.**

Inducement gives rise to liability when inducement leads to actual infringement. In other words, there can be no indirect infringement without direct infringement. *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 526 (1972).

**B. Knowledge.**

Liability for induced infringement exists where the accused infringer “knew of [the patent holder]’s patent.” *See Akamai Technologies, Inc. v. Limelight Networks Inc.*, 692 F.3d 1301, 1318 (Fed. Cir. 2012). The filing of a complaint for patent infringement is sufficient to put an accused infringer “on notice” of the patent for purposes of calculating damages in a patent infringement case. *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 60 (Fed. Cir. 2012)

**C. Specific Intent to Cause Infringement**

An accused infringer is liable for induced infringement if there is sufficient evidence, direct or circumstantial, that the accused infringer “advises, encourages, or otherwise induce[d] others to engage in acts that collectively practice the steps of the patented method.” *See Aristocrat Technologies Australia Pty Ltd. v. International Game Technology*, 709 F.3d 1348 (Fed. Cir. 2013).

An accused infringer induces others if it has “specific intent to encourage another’s infringement.” *DSU Med. Corp. v. JMS Co., Ltd.*, 471 F.3d 1293, 1306 (Fed. Cir. 2006). Specific intent may be established through “evidence of culpable conduct, directed to encouraging another’s infringement.” *Id.* (citing *Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.*, 545 U.S. 913, 936-37 (2005)). It is well established that evidence of culpable conduct need not be direct; “rather, circumstantial evidence may suffice.” *Id.* (quoting *Water Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988)). “Circumstantial evidence is not only sufficient, but may also be more

certain, satisfying and persuasive than direct evidence.” *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1272 (Fed. Cir. 1986).

The Federal Circuit has found that providing instructions to consumers or direct infringers are sufficient to establish evidence of specific intent. See *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1272 (Fed. Cir. 1986) (sales of product with instructions to use product in an infringing manner); *Water Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668 (Fed. Cir. 1988) (providing product and instructions to use in infringing manner); *GlaxoSmithKline LLC v. Teva Pharmaceuticals USA, Inc.*, No. 2018-1976 (Fed. Cir. Aug. 5, 2021) (labels encouraging an infringing use.)

### **III. CLAIM CONSTRUCTION.**

Patent Owner submits that each of the terms of the Asserted Claim should be construed in accordance with their plain and ordinary meaning. The terms of the Asserted Claim, generally, are ordinary words in common use that have not been ascribed specific meaning by the specification.

### **IV. KLIPSTA INDUCES INFRINGEMENT OF CLAIM 16 OF THE ‘047 PATENT.**

#### **A. The Accused Products Meet All Limitations of Claim 16 except “a hat.”**

As more fully set forth in the attached claim chart (Exhibit A), the Accused Products meet each and every limitation of claim 16 of the ’047 patent except a “hat.” To the extent the Accused Infringer contends any limitation is not literally met, Patent Owner contends such limitation is met under the doctrine of equivalents.

As issued, claim 16 reads as follows.

16. A system for holding a hat, the system comprising:  
the hat;  
a first strap having a first end and a second end;

a second strap having a first end and a second end, the second strap joined to the first strap at their respective second ends;

a magnet coupled to the first end of the first strap;

a ferromagnetic member coupled to the first end of the second strap;

wherein the first strap and the second strap are configured to be separably joined at their respective first ends by a force of magnetic attraction between the magnet and the ferromagnetic member; and

wherein the first strap and the second strap are configured to retain a portion of the hat therebetween.

**1. The Accused Product has a first strap having a first end and a second end.**

The Accused Product has at least two straps, each having a first and second ends. Either of the two straps of the Accused Product meet this limitation. See Exhibit A.

The straps of the Accused Product appear to be formed from a single piece of material. It should be noted that forming the first and second straps from a single piece of material is well within the scope of the claimed invention. Indeed, the specification expressly addresses this detail:

The rear strap 110 and the front strap 120 can be formed from a single piece of material that is folded approximately in half where a first half can be the rear strap 110 and a second half can be the front strap 120. Thus, although the rear strap 110 and the front strap 120 are referred throughout the specification as separate straps, those of skill in the art will appreciate that the rear strap 110 and the front strap 120 can be formed from a single piece of material. ('047, Col. 3:37-44)

**2. The Accused Product has a second strap having a first end and a second end, the second strap joined to the first strap at their respective second ends**

The Accused Product has at least two straps, each having a first and second ends. Either of the two straps of the Accused Product meet this limitation. See Exhibit A.

The two straps of the Accused Product are “joined” at their respective second ends and meet this limitation in at least two ways. First, the straps of the Accused Products are joined at the point where the first strap is inserted through the second strap. See Exhibit A, reference numeral 007A. Second, the straps of the Accused Products are joined at the point where the continuous material is folded thereby creating the first and second straps. See Exhibit A, reference numeral 007B.

Patent Owner submits that the term “joined” has its plain and ordinary meaning and does not need construction. Notwithstanding, the specification provides broad support for all manner of joining methods including “stitching, cleats, rivets, buttons, snaps, or other methods of mechanical coupling known in the art of textiles” ‘047, Col. 3:35-36. If the term “joined” were to be construed, the Accused Product would infringe under any reasonable construction of that term.

To the extent the evaluator determines that the two straps in the Accused Products are not literally “joined”, Patent Owner contends this limitation is also met under the doctrine of equivalents because the connection of the first strap to the second strap in the Accused Products perform substantially the same function, in substantially the same way, to achieve substantially the same result.

At reference numeral 007A (Exhibit A) of the Accused Product, a slot is cut in one strap allowing the second strap to be threaded therethrough thereby mechanically coupling the two straps together at respective second ends. See Exhibit A, FIG. 2, step 2. This performs the same function as “joining” in the claimed invention – namely securing the two straps together so that they do not inadvertently become detached and facilitating easy alignment and magnetic connection between their opposite ends. This function is achieved in substantially the same way

– namely by mechanically joining the ends together. Finally, the same result is achieved – namely the second ends are in fact mechanically coupled together.

**3. The Accused Product a magnet coupled to the first end of the first strap and a ferromagnetic member coupled to the first end of the second strap;**

The Accused Product has magnets at the first ends of each strap. See Exhibit A. A magnet is ferromagnetic.

**4. The first strap and the second strap of the Accused Product are configured to be separably joined at their respective first ends by a force of magnetic attraction between the magnet and the ferromagnetic member and the first strap and the second strap are configured to retain a portion of the hat therebetween.**

The magnetic attraction between the magnets at the first ends of the straps allow the straps to be separably joined. See Exhibit A. A force created by the magnetic attraction can hold the ends of the straps together thereby retaining a hat. *Id.*

**B. Customers and End Users Combine the Accused Product with a Hat**

An underlying act of direct infringement is required to find induced infringement under 35 U.S.C. § 271(b). Here, even the limited record in this evaluation is overflowing with evidence of direct infringement. For example, Amazon reviews of the Accused Product include pictures and descriptions of customers combining the Accused Product with a hat. See, e.g. Exhibit B, Product Page for ASIN B0B83VWS8J, Downloaded June 12, 2023 (available at <https://www.amazon.com/dp/B0B83VWS8J>).

**C. The Accused Infringer had knowledge of the ‘047 Patent Since at least June 2023.**

Knowledge of a patent is established upon filing of proceeding to enforce the patent. *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 60 (Fed. Cir. 2012) (filing of a

complaint is sufficient to establish knowledge). Here, the Amazon APEX complaint that initiated this proceeding was filed on June 13, 2023 and the Accused Infringer was reasonably on notice of the patent as of that date. Additionally, the Patent Holder and the Accused Infringer have a history of correspondence on the Asserted Patent, extending back nearly three years to August 26, 2020.

**D. Klipsta had specific intent to encourage its customers and end users to combine the accused products with a hat.**

The Federal Circuit has established that the requisite “specific intent” for induced infringement is established if an accused infringer provides others instructions on how to infringe. The Amazon Product page is overflowing with instructions and encouragement to combine the Accused Product with a hat and prominently describes the Accused Product as a “hat clip.” See Exhibit B. By way of example:

1. The title describes the Accused Product as a “...hat clip – magnetic hat holder...”
2. The product description describes the Accused Product ideally used to “secure your hat to any bag, belt, schoolbag or purse” and “works with any type of hat...”
3. The product description assures prospective customers to “feel confident your hat will be secured... and will not slip loose.”
4. No less than 14 images demonstrate use of the Accused Product with a hat.
5. Express written instructions describe how to combine the Accused Product with a hat; See Exhibit A, FIG. 2 and FIG. 3 and Exhibit B
6. Illustrated features of the Accused Product instruct others to use it to “keep the hat safely attached” and “goes perfectly with any bag or hat.” See Exhibit A, FIG. 1; Exhibit B

## V. CONCLUSION

The Accused Products practice each and every limitation of the Asserted Claim except a “hat.” The Accused Infringer infringes claim 16 of the ‘047 under 35 USC 271(b) by instructing and encouraging its customers and end users to combine the Accused Products with a hat thereby directly infringing the Asserted Claim. In view of the foregoing, the Patent Owner respectfully requests that the evaluator issue a decision that the Asserted Claim is infringed.

Respectfully submitted,

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/Benjamin E. Maskell/

Benjamin E. Maskell  
MASKELL LAW PLLC  
937 N. Daniel St.  
Arlington, VA 22201  
703-568-4523  
Ben@MaskellLaw.com

*Attorney for Patent Owner Lindsay Albanese*

## Exhibit A

### Claim Chart U.S. Pat. No. 10,413,047 v “Klipsta” ASIN: B0B83VWS8J

The images below were extracted from the Amazon product page for the Accused Product (<https://www.amazon.com/dp/B0B83VWS8J>) on June 12, 2023. Reference numerals (in red) have been added by counsel. Reference numerals in the claim chart are cross references to like numerals in the images.

**Fig. 1 (image extracted from Product Page)**



**Fig. 2 (instructions image1 extracted from Product Page)**



**Fig. 3 (instructions image2 extracted from Product Page)**

## WHAT MAKES KLIPSTA CLIPS SO GOOD:

**SUPER STRONG**  
We use rare earth neodymium magnets for a super strong grip

**EXTRA SECURE**  
Our patented locking system means your Klipsta is locked onto your bag

**SO HANDY**  
Use them to hold hats, masks, gloves, jumpers and sport towels

**WEATHER RESISTANT**  
Our clips can handle any weather. Hot, cold, wind or rain - you name it, they've got your back and your hat!

**AUSTRALIAN MADE**

**EASY TO CLEAN**  
Simply wiped down with a wet cloth or soak them in some soapy water

## EASY TO USE & GENTLE ON YOUR STUFF

- 1. ATTACH**  
to your bag, backpack, or belt.
- 2. LOCK**  
the clip with our secure loop feature.
- 3. CLIP**  
your hat and you're good to go!

Instructions to combine with hat

**Fig. 4 (extracted from Product Page)**



**Fig. 5 (extracted from Product Page)**



| U.S. Pat. No. 10,413,047, Claim 16                                                                                                                                                                              | Where Found in Accused Product                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| [16.P] A system for holding a hat, the system comprising:                                                                                                                                                       | The Accused Product is a system for holding a hat. See generally, Fig. 4 and Fig. 5.                                                                                                                                                                          |
| [16.1] the hat;                                                                                                                                                                                                 | The Accused Infringer provides instruction and encouragement to combine the Accused Product with a hat. See Fig. 2 and Fig. 3. See also, Fig. 4, Fig. 5, and generally, text and images on Exhibit B (print out of product page)                              |
| [16.2] a first strap having a first end and a second end;                                                                                                                                                       | The Accused Product has a first strap (001) having a first end (002) and a second end (003);                                                                                                                                                                  |
| [16.3] a second strap having a first end and a second end, the second strap joined to the first strap at their respective second ends;                                                                          | The Accused Product has a second strap (004) having a first end (005) and a second end (006), the second strap (004) joined (at point 007A or 007B) to the first strap (001) at their respective second ends;                                                 |
| [16.4] a magnet coupled to the first end of the first strap;                                                                                                                                                    | The Accused Product has a magnet (008) coupled to the first end (002) of the first strap (001);                                                                                                                                                               |
| [16.5] a ferromagnetic member coupled to the first end of the second strap;                                                                                                                                     | The Accused Product has a ferromagnetic member (009) coupled to the first end (005) of the second strap (004). A magnet is ferromagnetic.                                                                                                                     |
| [16.6] wherein the first strap and the second strap are configured to be separably joined at their respective first ends by a force of magnetic attraction between the magnet and the ferromagnetic member; and | the first strap (001) and the second (004) strap of the Accused Product has are configured to be separably joined at their respective first ends (002 and 005) by a force of magnetic attraction between the magnet (008) and the ferromagnetic member (009). |
| [16.7] wherein the first strap and the second strap are configured to retain a portion of the hat therebetween.                                                                                                 | the first strap (001) and the second strap (004) of the Accused Product are configured to retain a portion of the hat therebetween. See Fig. 4 and Fig. 5.                                                                                                    |

**Exhibit B**

**Printout from Amazon Product Page June 12, 2023**

<https://www.amazon.com/dp/B0B83VWS8J>