

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ATRIUS DEVELOPMENT GROUP CORP.,
Petitioners

v.

ABC IP LLC,
Patent Owner.

IPR2025-01473
U.S. Patent No. 12,038,247

PATENT OWNER'S PRELIMINARY RESPONSE
37 C.F.R. § 42.107(a)

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2001	Settlement Agreement between United States and Named Claimants (May 13, 2025)
2002	U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives Cease and Desist Letter (July 26, 2021)
2003	<i>Rare Breed Triggers, LLCs et al. v. Garland</i> , 6:21-cv-01245 (M.D. Fla.) Docket 2, Plaintiff's Emergency Motion for Preliminary Injunction and Supporting Memorandum of Law
2004	<i>Rare Breed Triggers, LLC et al. v. Garland et al.</i> , 6:21-cv-01245 (M.D. Fla.) Docket Report
2005	<i>Rare Breed Triggers, LLC v. Garland et al.</i> , 3:22-cv-00085 (D. N.D.) Docket 1, Complaint for Vacatur of Unlawful Agency Rule and Related Alleged Final Agency Action, and Declaratory Relief
2006	<i>Rare Breed Triggers, LLC v. Garland</i> , 3:22-cv-00085 (D. N.D.) Docket Report
2007	<i>U.S. v. Rare Breed Triggers, LLC et al.</i> , 1:23-cv-00369 (E.D.N.Y.) Docket 1, Complaint
2008	<i>U.S. v. Rare Breed Triggers, LLC et al.</i> , 1:23-cv-00369 (E.D.N.Y.) Docket Report
2009	<i>U.S. v. Miscellaneous Firearms and Related Parts and Equipment Listed in Ex. A</i> , 1:23-cv-00017 (D. Utah) Docket 2, Verified Complaint for Forfeiture <i>In Rem</i>
2010	<i>U.S. v. Miscellaneous Firearms and Related Parts and Equipment Listed in Ex. A</i> , 1:23-cv-00017 (D. Utah) Docket Report
2011	<i>National Association for Gun Rights, Inc. et al. v. Garland et al.</i> , 4:23-cv-00830 (N.D. Tex.) Docket 1, Complaint for Declaratory and Injunctive Relief
2012	<i>National Association for Gun Rights, Inc. et al. v. Garland et al.</i> , 4:23-cv-00830 (N.D. Tex.) Docket Report
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Ex. #	Description
2015	U.S. Patent No. 11,724,003
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2021	America Invents Act, H.R. Rep. No. 112-98, Part 1 (June 1, 2011)
2022	United States District Court Northern District of Ohio User’s Manual for NextGen Case Management/Electronic Case Filing (NextGen CM/ECF) Civil and Criminal, February 10, 2020, available at https://www.ohnd.uscourts.gov/sites/ohnd/files/NextGenCMECFUserManual%202-10-2020.pdf (last visited Dec. 10, 2020)
2023	United States District Court Northern District of Ohio Electronic Filing, available at https://www.ohnd.uscourts.gov/electronic-filing (last visited Dec. 10, 2020)
2024	SOAX – How many hours of video are uploaded to YouTube each minute? (Oct. 30, 2024), <i>available at</i> https://soax.com/research/how-many-hours-of-video-are-uploaded-to-youtube-every-minute (last visited Dec. 9, 2025)

I. INTRODUCTION

Patent Owner ABC IP, LLC (“ABC”) and exclusive licensee Rare Breed Triggers, Inc. (“RBT”), a real party-in-interest in this matter, submit this Preliminary Response to the Petition for *Inter Partes* Review filed by Atrius Development Group Corp. (“Petitioner”), by which Petitioner challenges claims 1-23 of U.S. Patent Number 12,038,247 (“the ’247 patent”). Paper 1 (“Petition” or “Pet.”); *see also* Paper 4, 1. For purposes of this brief, ABC and RBT collectively are referred to as “Patent Owner” for ease of reference and due to their aligned interest in the ’247 patent.

The Petition should be denied. **First**, despite the statutory requirement that an *inter partes* review (“IPR”) be based on patents or printed publications, the Petition here relies upon products described in several YouTube videos and a district court Complaint. Reliance on products, instead of the printed publications themselves, violates 35 U.S.C. § 311(b). *Infra* § VI.A. **Second**, the Petition presents insufficient evidence to establish a reasonable likelihood that these YouTube videos and district court Complaint were even publicly accessible at the critical date. Accordingly, these materials do not qualify as printed publications upon which an IPR may be based. *Id.* § VI.C. **Third**, the Petition violates additional governing guidance because, contrary to 35 U.S.C. § 312(a)(3) and 37 C.F.R. § 42.104(b), the Petition’s asserted grounds are not identified with requisite

particularity. Instead, Petitioner presents a single, co-mingled, omnibus analysis that addresses all three distinct grounds together, even though each ground purports to rely upon different combinations of references. *Id.* § VI.B. **Finally**, the Petition fails to present a reasonable likelihood of prevailing on the merits, both due to facially defective testimony—offered by Petitioner’s own founder and president who has not been established as an expert qualified to testify—and the alleged prior art’s lack of cam-based locking and trigger reset functions that are recited in each challenged claim. *Id.* § VI.D.

II. THE ’247 PATENT

A. The ’247 Patent Claims

The ’247 patent has 23 claims, all challenged here. Claims 1, 4, 9, 14, 15, and 20 are independent. Claim 1 is reproduced below with emphases added to the two limitations about which Patent Owner makes preliminary arguments.

1[pre]. A firearm trigger mechanism comprising:

[1a] a hammer having a sear catch and a hook for engaging a disconnecter and adapted to be mounted in a fire control mechanism pocket of a receiver to pivot on a transverse hammer pivot axis between set and released positions, said hammer adapted to be pivoted rearward by rearward movement of a bolt carrier,

[1b] a trigger member having a sear and adapted to be mounted in the fire control mechanism pocket to pivot on a transverse trigger member pivot axis between set and released positions,

[1c] wherein said sear and sear catch are in engagement in said set positions of said hammer and trigger member and are out of engagement in said released positions of said hammer and trigger member,

[1d] a disconnecter having a hook for engaging said hammer and adapted to be mounted in the fire control mechanism pocket to pivot on said transverse trigger member pivot axis,

[1e] a cam having a cam lobe and adapted to be mounted in the fire control mechanism pocket to pivot on a transverse cam pivot axis, said cam being pivotable between a first position at which said cam lobe does not force said trigger member towards said set position and a second position at which said cam lobe does force said trigger member towards said set position, and

[1f] a safety selector adapted to be mounted in the fire control mechanism pocket to pivot between safe, standard semi-automatic, and forced reset semi-automatic positions,

[1g] whereupon in said standard semi-automatic position, rearward movement of the bolt carrier causes rearward pivoting of said hammer and pivoting of said cam from said first position to said second position such that said cam lobe forces said trigger member towards said set position but prior to reaching said set position said disconnecter hook catches said hammer hook, and thereafter forward movement of the bolt carrier causes said cam to pivot to said first position, at which time a user must manually release said trigger member to free said hammer from said disconnecter to permit said hammer and trigger member to pivot to said set positions so that the

user can pull said trigger member to fire the firearm, and

[1h] whereupon in said forced reset semi-automatic position,
rearward movement of the bolt carrier causes rearward pivoting of
said hammer and pivoting of said cam from said first position to said
second position such that said cam lobe forces said trigger member to
said set position, said safety selector preventing said disconnecter
hook from catching said hammer hook, and thereafter forward
movement of the bolt carrier causes said cam to pivot to said first
position, at which time the user can pull said trigger member to fire
the firearm without manually releasing said trigger member.

Ex. 1001, 10:24-11:11 (formatting, brackets, and emphasis added).

As emphasized above, claim 1 requires that, when the claimed safety selector is in its “standard semi-automatic position” and its “forced reset semi-automatic position,” movement of a “cam” controls both the locking and the resetting of the trigger to prevent (in standard semi-automatic position) or allow (in forced reset semi-automatic position) the user to pull the trigger again. *Id.* Specifically, movement of the cam while in standard semi-automatic position requires the user to “manually release said trigger member” before firing; while in forced reset semi-automatic position, movement of the cam allows “the user [to] pull said trigger member to fire the firearm without manually releasing said trigger member.” *Id.*

Each of independent claims 4, 9, 14, 15, and 20 include similar limitations.

Id. at 11:20-12:9 (claim 4), 12:26-13:15 (claim 9), 13:42-14:29 (claim 14), 14:30-15:3 (claim 15), 15:20-16:29 (claim 20). Pet. 75-85.

B. The '247 Patent Disclosure

The '247 patent presents a firearm trigger mechanism that is selectively mechanically reset to increase the rate of fire, also termed a “forced reset trigger” or FRT. Ex. 1001, 1:12-15, 2:18-20. The '247 patent's Figure 7 is shown below.

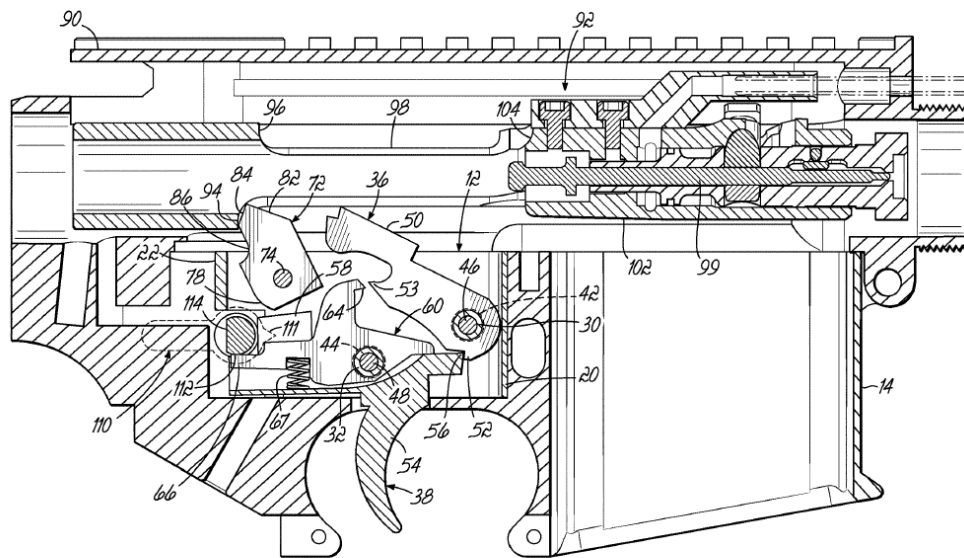


FIG. 7

Figure 7 depicts components of the trigger mechanism including: trigger mechanism 38 with sear 56, and hammer 36 with sear catch 52. “When the sear 56 and the sear catch 52 are engaged, the hammer 36 and trigger member 38 are in their set positions. When the sear 56 and sear catch 52 are not engaged, the hammer 36 and trigger member 38 are in their released positions.” Ex. 1001, 7:55-59.

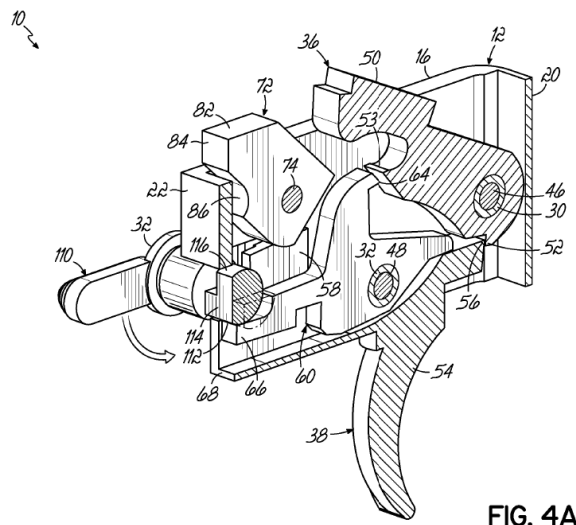
As pertinent to the claim language emphasized above, Figure 7 also depicts

disconnecter 60 with disconnecter hook 64 and tail 66. *Id.* at 7:64-66. Figure 7 also depicts cam 72 with cam lobe 78, which interacts with cam follower 58 of trigger member 38 to control trigger locking and trigger reset in standard and forced reset semi-automatic modes. *Id.* at 8:3-14 (also describing first and second contact surfaces 82, 84 of cam 72). Bolt carrier assembly 92 is also shown above, which “slidably reciprocates in the upper receiver 90 and engages the breach of a barrel or barrel extension.” *Id.* at 8:15-18.

Finally, the trigger mechanism shown above includes “three position safety selector 110,” which “has safe, standard semi-automatic, and forced reset semi-automatic positions” that may be selected as described below. *Id.* at 8:43-44.

1. Safe Mode

“When in the safe position (safety selector indicator 111 pointing forward), a wide semi-circular portion 112 of the safety selector 110 prevents the trigger blade 54 from being pulled.” *Id.* at 8:45-48.



2. Standard Semi-Automatic Mode

When safety selector 110 is in standard semi-automatic mode, trigger member 38 rotates when pulled, as shown in Figure 8A below. *Id.* at 8:66-9:6.

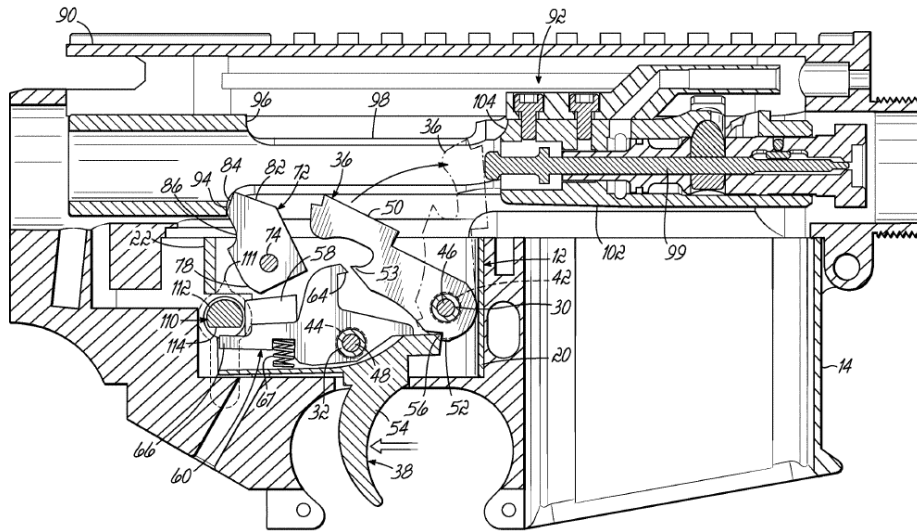


FIG. 8A

This causes sear 56 to disengage from sear catch 52, which causes hammer 36 to drop via spring force onto firing pin 99 of bolt carrier assembly 92, as shown in Figure 8B below, discharging the ammunition cartridge. *Id.* at 8:66-9:9.

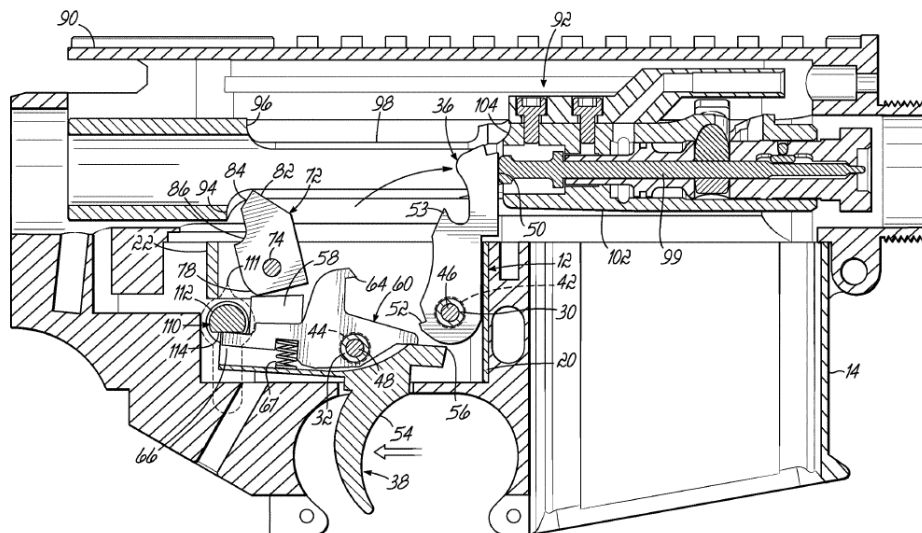


FIG. 8B

When the cartridge discharges, the action cycles by moving bolt carrier 92 rearward, which, in turn, causes the bolt carrier's lower surface 102 to contact hammer head 50 and cause hammer 36 to pivot counter-clockwise. *Id.* at 9:9-13. The bolt carrier's lower surface 102 also contacts surface 82 of cam 72 causing the cam to pivot counter-clockwise, during which movement cam lobe 78 may act upon cam follower 58 to pivot the trigger member counter-clockwise. *Id.* at 9:15-20. This is depicted in Figure 8C below.

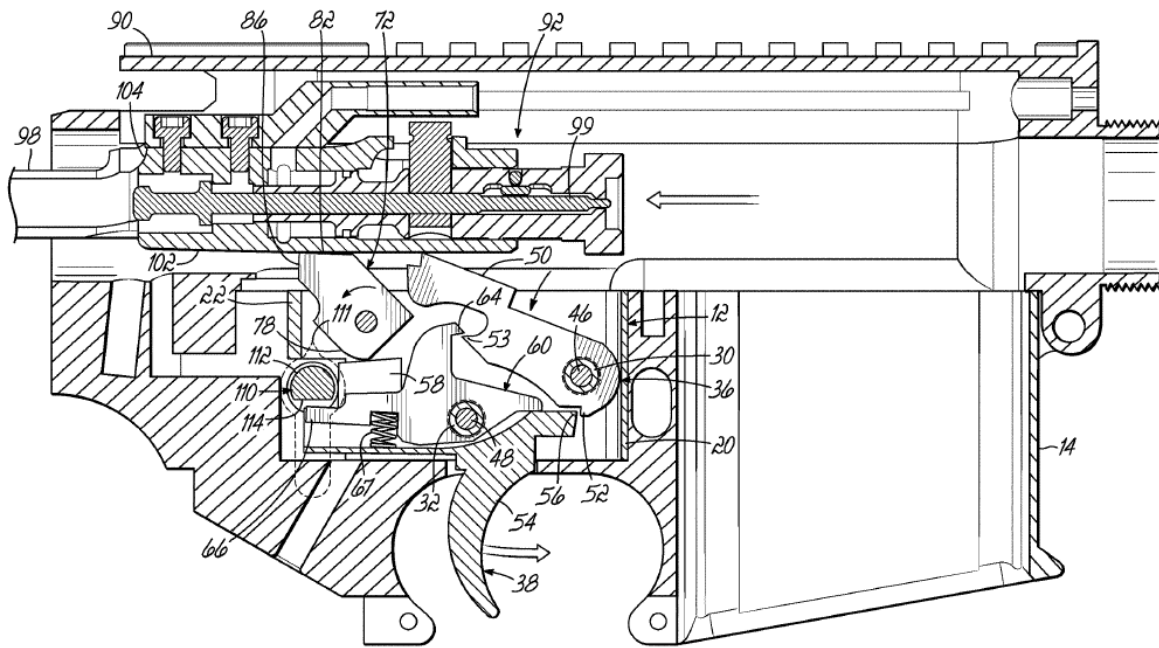


FIG. 8C

FIG. 8D

“At this point rearward finger pressure on the trigger blade 54 must be released,” *id.* Fig. 8D (arrow at trigger), “to allow the sear 56 to engage the sear catch 52, returning the hammer 36 and trigger member 38 to their set positions. Thereafter the user can reapply rearward finger pressure on the trigger blade 54 to fire another round.” *Id.* at 9:23-27.

3. Forced Reset Semi-Automatic Mode

When trigger member 38 is pulled by a user with safety selector 110 in forced reset semi-automatic mode, as shown in Figure 9A below, trigger member 38 will rotate. *Id.* at 9:28-31. In contrast to standard semi-automatic mode, “narrow semi-circular portion 116 of the safety selector 110 prevents the disconnecter 60 from rotating with the trigger member 38, thus ‘disabling’” it, such that disconnecter hook 64 cannot catch hammer hook 53. *Id.* at 9:31-35.

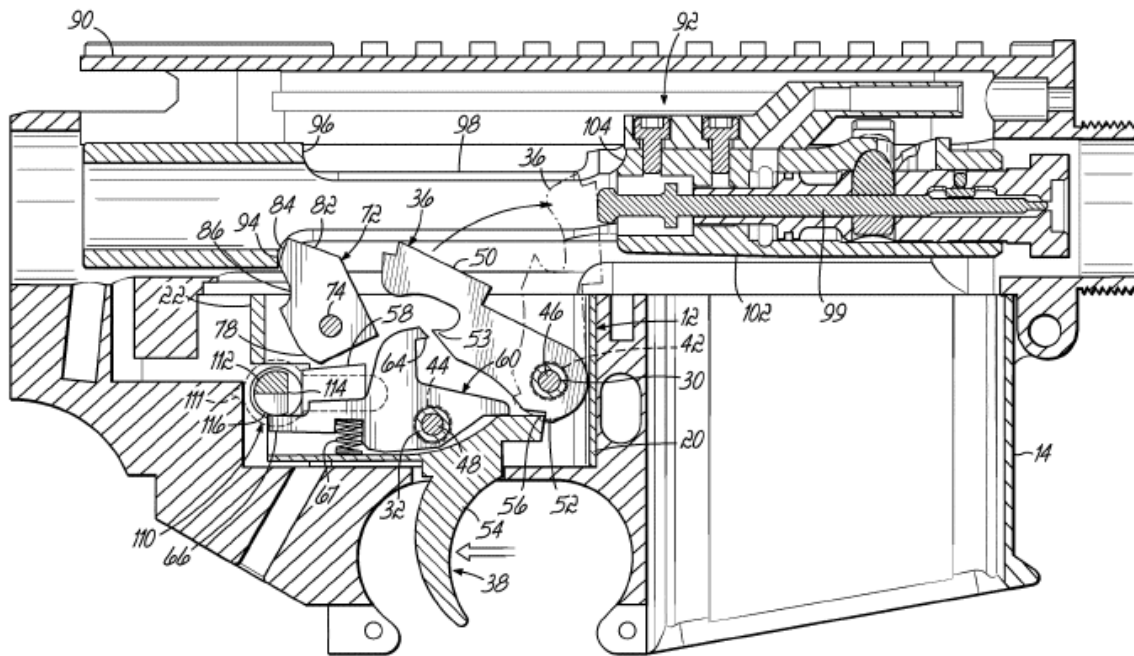


FIG. 9A

This causes sear 56 to disengage from sear catch 52 of hammer 36 and hammer 36 will drop via spring force onto firing pin 99 of bolt carrier assembly 92, as shown in Figure 9B below, discharging the ammunition cartridge. *Id.* at 9:38-45.

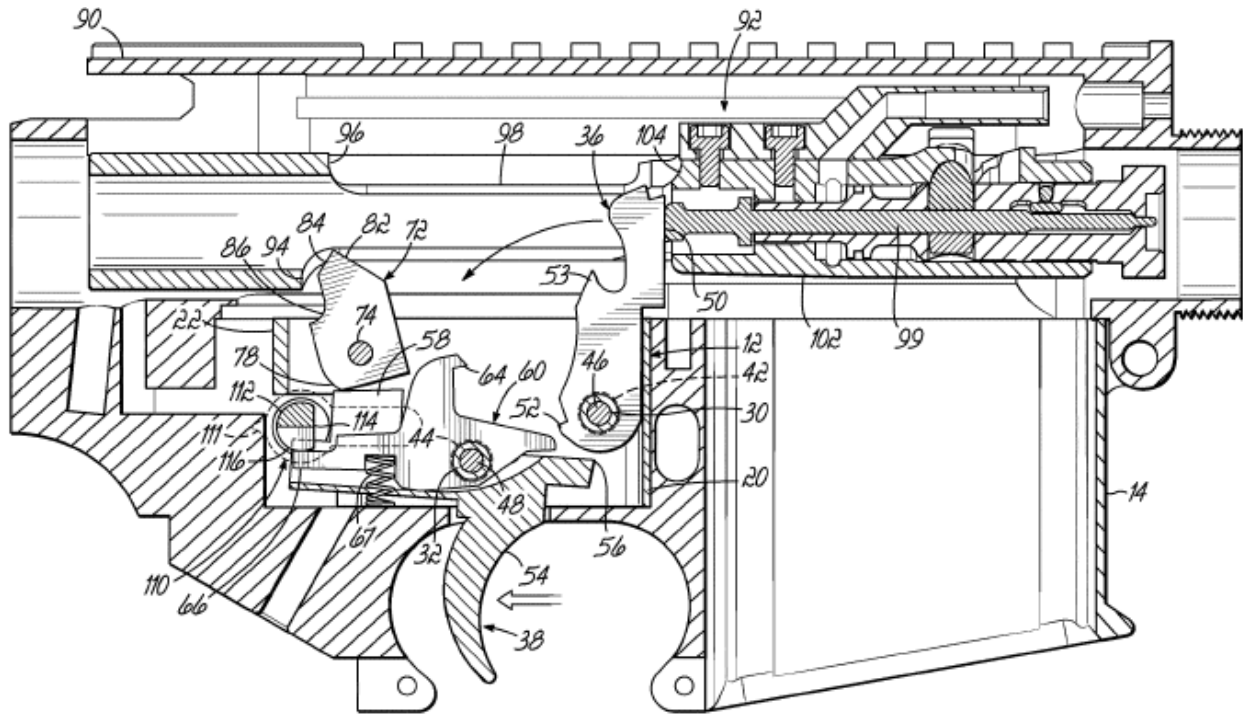


FIG. 9B

FIG. 9C

Because disconnecter 60 is disabled, as discussed above regarding Figure 9A, movement of the cam and cam follower “thereby forces the hammer 36 and trigger member 38 to their set positions wherein the sear 56 engages the sear catch 52.” *Id.* at 9:51-54. Then, forward travel of bolt carrier assembly 92

returning to battery causes bolt carrier's engagement surface 94 to contact surface 84 of cam 72 to pivot the cam clockwise, as shown below in Figure 9D. *Id.* at 9:54-57. “[A]s the bolt carrier assembly 92 returns forward, the trigger member 38 is held in its set position by cam 72. The trigger member 38 cannot be pulled to release the sear/sear catch engagement, thus precluding early hammer release.... When the bolt carrier assembly 92 has reached (or nearly reached) its closed, in-battery position, the engagement surface 94 contacts and forwardly displaces the contact surface 84 of cam 72, disengaging the cam lobe 78 from the cam follower 58, allowing the trigger blade 54 to be pulled.” *Id.* at 9:61-10:4.

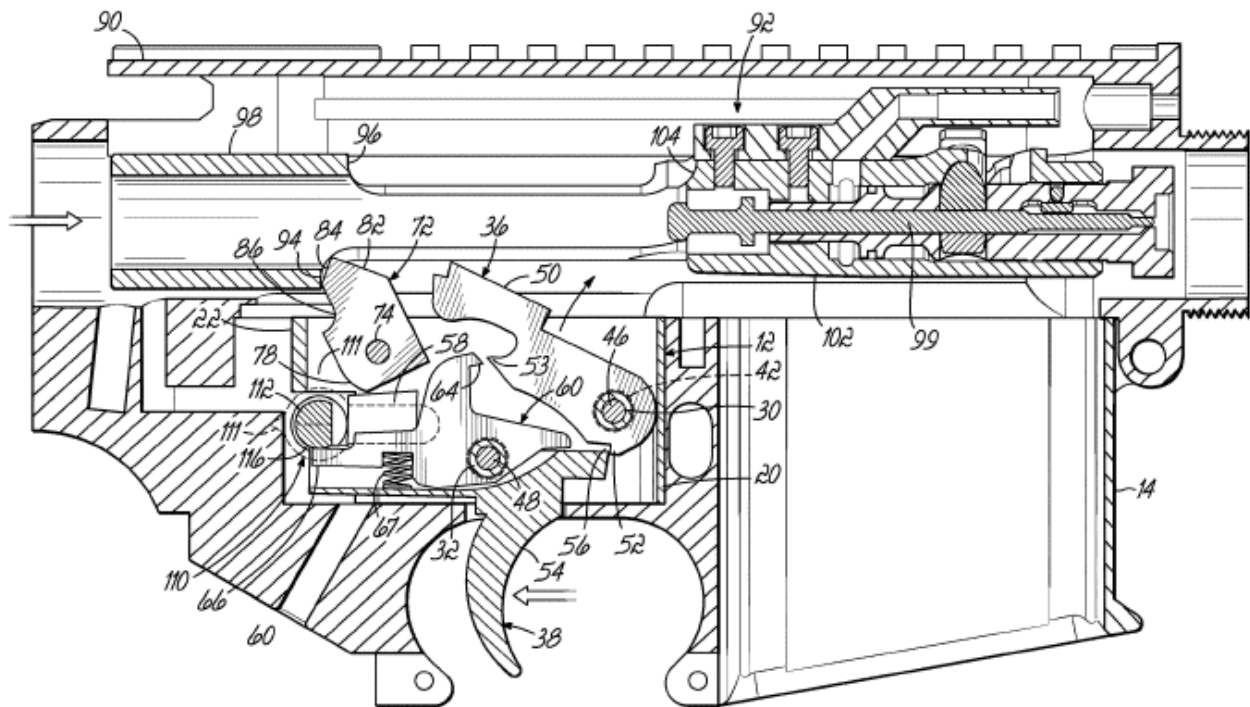


FIG. 9D

“At this point the user can reapply rearward finger pressure on the trigger blade 54 to fire another round, without first manually releasing rear finger pressure on the trigger blade 54.” *Id.* at 9:57-60.

Accordingly, as described above, in standard and FRT semi-automatic modes, movement of cam 72 acting on cam follower 58 is responsible for trigger reset.

C. The '247 Patent Prosecution

The '247 patent issued from U.S. Patent Application No. 18/325,225, which was filed on May 30, 2023, and claims priority to provisional U.S. Patent Application No. 63/374,941, filed September 8, 2022. Ex. 1001, (21-22), (60). The applicant filed an Information Disclosure Statement (“IDS”) and submitted a preliminary amendment that added claims 15-23. Ex. 1002, 65-79, 82-101.

The Petition wrongly asserts that Patent Owner failed to disclose pertinent prior art to the USPTO during prosecution of the '247 patent, namely Strbac '003 and the Tommy Triggers products depicted in the alleged printed publications asserted here, Exs. 1005-1008, which Petitioner contends embody Strbac '003.¹ Pet. 12-13; Paper 6, 8-12. That is incorrect. As discussed in Patent Owner's

¹ U.S. Patent No. 11,724,003, issued Aug. 15, 2023, to Mladen Thomas Strbac, the previous owner of Tommy Triggers. Ex. 2015; Pet. 12; Ex. 1008 ¶¶ 43-45.

request for discretionary denial, Strbac '003 was disclosed to the USPTO in Applicant's IDS and was considered by the Examiner. Paper 6, 8; Ex. 1002, 82 (IDS), 43 (signed IDS). Additionally, the application that led to Strbac '003 is cited and incorporated in the '247 patent itself. Ex. 1001, 1:66-2:1; Ex. 2015, (21).²

² Contrary to the Petition's suggestion, Strbac '003 is not subject to the prior art exception of 35 U.S.C. § 102(b)(2)(C) because Strbac '003 and the '247 patent were not "commonly owned" as of the effective filing date. Pet. 12-13; Paper 6, 9. Equally important, for this exception to apply, the '247 applicant must have expressly invoked it by filing a statement with the Office. They did not. *See generally* Ex. 1002; 37 C.F.R. § 1.104(c)(4)(i) ("Subject matter ... will be treated as commonly owned for purposes of 35 U.S.C. 102(b)(2)(C) if the applicant or patent owner provides a statement to the effect") (emphasis added). Office guidance is clear that, absent an express statement invoking it, the Examiner assumes the exception does not apply and "will ... apply the best references against the claimed invention ... until such time that the subject matter disclosed in the reference is shown to be excepted." MPEP § 717.02(c). The Examiner did so here. Ex. 1002, 18-59. Petitioner's suggestion that the Examiner somehow could

On May 22, 2024, the Examiner issued a Notice of Allowance. Ex. 1002, 18. The Examiner stated that “the closest prior art is to Blakley (US 7,398,723),” which Petitioner again relies upon here. *Id.* at 23; Ex. 1009. The Examiner found that Blakley ’723 does not teach the claimed movement of the cam when the safety selector is in standard and forced reset semi-automatic positions. Specifically, the Examiner stated:

Blakley does not show, however, a safety selector ...

whereupon in said standard semi-automatic position, rearward movement of the bolt carrier causes rearward pivoting of said hammer and pivoting of said cam from said first position to said second position such that said cam lobe forces said trigger member towards said set position but prior to reaching said set position said disconnecter hook catches said hammer hook ... [or]

whereupon in said forced reset semi-automatic position, rearward movement of the bolt carrier causes rearward pivoting of said hammer and pivoting of said cam from said first position to said second position such that said cam lobe forces said trigger member to said set position, said safety selector preventing said disconnecter hook from catching said hammer hook

not have considered Strbac ’003 because of this uninvoked exception—and despite the Examiner’s express acknowledgement of the reference (Ex. 1002, 43), which appeared twice in the Examiner’s search report (*id.* at 33, 37) and was cited in the challenged patent itself (Ex. 1001, 1:66-2:1)—strains credulity and defies Office procedure.

Ex. 1002, 23-24 (emphasis added).

As further discussed in Patent Owner’s request for discretionary denial, Paper 6, this conclusion was not erroneous because no prior art—neither Blakely ’723 (Ex. 1009), Strbac ’003 (Ex. 2015), nor the alleged videos and Complaint that depict Strbac’s product (Exs. 1005-1008)—disclose or suggest the claimed operation of the cam to control trigger locking and resetting in standard and forced reset modes. Paper 6, 8-16.

Accordingly, on July 16, 2024, the ’247 patent issued.

III. LEVEL OF SKILL IN THE ART

At this stage of the proceeding, Patent Owner does not raise a dispute regarding Petitioner’s identified level of skill possessed by a person of ordinary skill in the art (“POSITA”). Pet. 44-45.

IV. CLAIM CONSTRUCTION

At this stage of the proceeding, claim construction is not necessary to determine whether to institute.

V. PETITIONER’S ASSERTED GROUNDS OF UNPATENTABILITY

A. The Asserted Grounds

The Petition relies upon the following:

- U.S. Patent No. 7,398,723 (“Blakley ’723,” Ex. 1009);
- Three YouTube videos (“Bingly_1,” Ex. 1005; “Bingly_2,” Ex. 1006, parts 1-3; “Bingly_3,” Ex. 1007); and

- A district court patent infringement complaint filed in *Rare Breed Triggers, LLC et al. v. Mladen Thomas (“Tom”) Strbac dba Tommy Triggers*, No. 1:22-cv-280 (N.D. Ohio Feb. 21, 2022) (“Complaint,” Ex. 1008).

Petitioner alleges that the three YouTube videos (Exs. 1005-1007) and Complaint (Ex. 1008) describe FRT products sold by Tommy Triggers. Pet. 12-14 (“Petitioner relies upon ... three [Bingly] videos pertaining to Tommy Triggers’ FRT” product), 54 (alleging the Complaint discloses “the inner workings of the Tommy product”).

The Petition presents three grounds of unpatentability (Pet. 14):

Ground	Claims	Basis	Reference(s)
1	1-23	§103	Blakley ’723, Bingly_1, Bingly_2, Bingly_3, Complaint
2	1-23	§103	Blakley ’723, Bingly_1, Bingly_2, Bingly_3
3	1-23	§103	Blakley ’723, Bingly_2

Petitioner alleges that it presents three distinct grounds because “Petitioner is uncertain about which of the printed publications the Board will consider as prior art and also because there is uncertainty as to whether claims 14-23 are entitled to the priority date claimed.” Pet. 14.

Confusingly, however, Petitioner presents a single unpatentability analysis for all three distinctly identified grounds. Pet. 69-86; *infra* § VI.B. To amplify the

confusion, Petitioner’s single analysis then lumps together the disparate YouTube videos (Exs. 1005-1007) and Complaint (Ex. 1008) under the moniker “PP_FRT-15-3MD” and relies only upon that “PP_FRT-15-3MD” moniker in its unpatentability analysis. Pet. 62 (“‘PP_FRT-15-3MD’ is being used to refer to Complaint (Ex.1008) and Bingly videos (Exs. 1005-1007) publications individually.”), 69-86 (analysis relying only on PP_FRT-15-3MD). In doing so, it is entirely unclear which of the alleged printed publications Petitioner relies upon for each claim limitation in each distinctly identified ground – whether Bingly_1, Bingly_2, Bingly_3, or Complaint, and whether alone or in combination with each other. *Infra* § VI.B.

B. The Asserted Prior Art

1. Blakely ’723 (Ex. 1009)

Blakley ’723 is titled “Trigger Forward Displacement System and Method” and is directed to “increasing the cyclic rate of actuating the trigger and discharging a semi-automatic firearm.” Ex. 1009, Abstract, 1:7-10.

Blakley ’723 discloses a system allowing for a trigger to be reset to increase the rate of fire. Specifically, Blakley ’723 discloses:

On the rearward travel of the reciprocating member the mechanism resets the trigger to the forward, ready-to-fire position. The trigger reset may be against the rearward pressure on the trigger applied by the operator’s finger. The trigger is positively held in the

forward, ready-to-fire position until such time as the reciprocating member has reversed direction and has reached the nearly-fully-forward position where it is safe to allow discharge of the firearm.

When the nearly-fully-forward, or nearly closed, position is reached, the accelerating mechanism disengages and allows the operator to again pull the trigger rearward. This cycle will be repeated [allowing] the firearm to be discharged at a[n] accelerated rate. The semi-automatic status of the firearm is retained as the firearm only discharges one round of ammunition for each pull of the trigger.

Id. at 8:12-26. Blakely '723 does not disclose a safety selector with a standard semi-automatic position. *See generally id.*; Pet. 48-54. Nor does Blakely '723 disclose a safety selector that prevents the disconnecter hook from catching the hammer hook in forced reset mode. *See generally* Ex. 1009; Pet. 48-54.

As discussed above, the Examiner considered Blakley '723 during prosecution but concluded that it did not disclose, *inter alia*, the claimed operation in standard and forced reset semi-automatic positions, including the claimed movement of the cam. Ex. 1002, 23-24 (emphasis added); *supra* § II.C.

2. Complaint (Ex. 1008)

Petitioner relies on “ABC’s complaint against Tommy [Triggers],” which “contains a detailed description of how these [Tommy Triggers’ FRT] devices work.” Pet. 14 (citing Ex. 1008). Petitioner alleges, *inter alia*, “Complaint teaches a cam that pivots about an axis.” Pet. 55 (citing Ex. 1008, 19). But this is facially

incorrect.

a. The Complaint's asserted patent

The Complaint was filed by Patent Owner in the Northern District of Ohio, asserting infringement of U.S. Patent No. 10,514,223 (“the ’223 patent”) against Mladen Thomas Strbac individually, doing business as Tommy Triggers.

Ex. 1008, 1. The Complaint describes the invention claimed in the ’223 patent:

The ’223 Patent teaches a forcible reset of the trigger by the **hammer** while the bolt returns to the in-battery position. The ’223 Patent also teaches a “**locking bar**” which limits movement of the trigger. The locking bar acts to prevent the trigger from being pulled a second (or subsequent) time until the bolt carrier has returned to the in-battery position.

Id. ¶ 30 (emphasis added). In other words, the Complaint describes the ’223 patent’s (1) hammer that forces the trigger to reset and (2) locking bar that locks the trigger to prevent it from being pulled until the bolt carrier has returned to the in-battery position. *Id.* ¶¶ 35-36.

b. Tommy Triggers’ infringing products

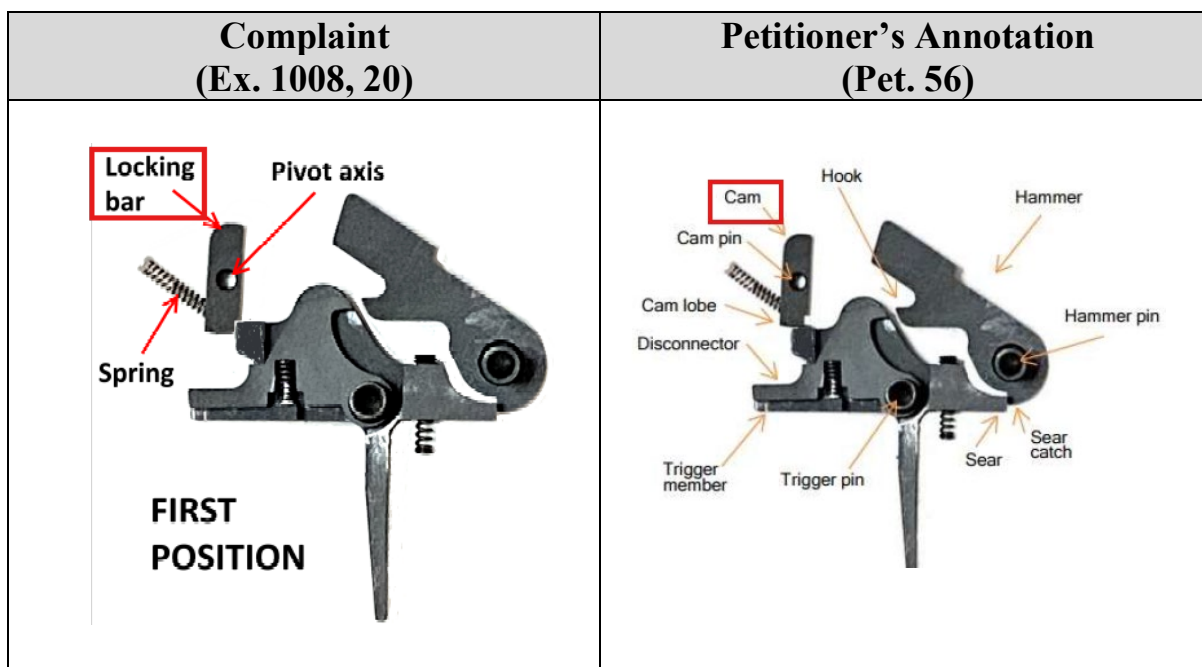
The Complaint identifies Tommy Triggers infringing trigger assembly, “called the ‘FRT-15-3MD.’” *Id.* ¶ 44 (offered in four different models). “Defendant also makes, offers, and sells what it calls ‘The Ultimate Upgrade for the Rare Breed Trigger.’” *Id.* ¶ 47.

c. Tommy Triggers’ infringing products practice hammer-based forced trigger reset and a locking bar

The Complaint explains that Tommy Triggers’ infringing products practice the ’223 patent. Specifically, the Complaint explains that these products “us[e] the hammer to forcibly reset the trigger” and “prevent the trigger from being pulled again by virtue of the locking bar engaging the trigger.” *Id.* ¶ 50.

d. The Complaint does not disclose a “cam,” cam-based locking, or cam-based forced trigger reset

The Complaint provides an annotated image of Tommy Triggers’ product, reproduced below on the left. Petitioner’s incorrect annotation, by contrast, is reproduced below on the right. Ex. 1008, 20 (red box emphasis added); Pet. 56 (red box emphasis added).



As clearly shown, Petitioner falsely states that the Complaint discloses a

“cam.” Pet. 56. The Complaint contains no such disclosure. Ex. 1008. Instead, Petitioner mislabels Tommy Triggers’ clearly identified “locking bar” as a “cam.” *Id.* There is no support for this label, as the Complaint clearly identifies this structure as a locking bar and explains its function: “the locking bar mechanically blocks the trigger member from moving to the released position” until the locking bar “mov[es] against the spring bias to a second position when contacted by the bolt carrier reaches a substantially in-battery position.” Ex. 1008, 19-20.

Contrary to Petitioner’s annotation, the Complaint does not disclose a “cam” that operates as claimed at all. *Compare generally* Ex. 1008, *with* Ex. 1001, 10:24-11:11 (claim 1). As explained above, the ’247 patent claims require that movement of the claimed “cam” control both the locking and the resetting of the trigger to prevent or allow the user to pull the trigger again, respectively, when in standard or forced reset semi-automatic positions. In fact, Petitioner admits that the locking bar structure that it misidentifies above as a cam “functions only to keep the hammer from following the bolt when in FRT mode, it does not also function to reset the trigger,” as required by the claimed “cam.” Pet. 67 (emphasis added) (“[T]he hammer strikes the top of the trigger causing it to reset.”).

3. Bingly Videos (Ex. 1005, Ex. 1006, Ex. 1007)

“Petitioner relies upon a series of three videos pertaining to Tommy Triggers’ FRT to be used with a 3-position selector switch,” i.e., Bingly_1

(Ex. 1005), Bingly_2 (Ex. 1006), and Bingly_3 (Ex. 1007). Pet. 13. Petitioner generally discusses these videos together. *Id.* at 62.

Despite being grouped together, the Bingly videos contain different disclosures. For example, Petitioner describes the Bingly videos as follows:

- “Bingly_1 demonstrates in more detail how to convert a standard 2-position selector switch into a 3-position selector switch for use with an FRT.” Pet. 62.
- “Bingly_2 ... demonstrates two FRT’s, a Rare Breed FRT-15 and a PBG Alamo-15 FRT, both having Tommy Triggers upgrade kits installed in them, so that they can be used with a 3-position selector.” Pet. 61.
- “Bingly_3 demonstrates the installation of a Tommy Trigger for use with a 3-position selector.” *Id.*

Of note, none of the Bingly videos disclose a “cam” at all, let alone a cam that operates as required by the claims when the safety selector is placed in standard or forced reset semi-automatic positions. *See generally* Exs. 1005-1007.

VI. PETITIONER FAILS TO DEMONSTRATE A REASONABLE LIKELIHOOD OF UNPATENTABILITY

A. The Petition Attempts An End-Run Around 35 U.S.C. § 311(b)

The Petition violates 35 U.S.C. § 311(b). Despite paying lip service to the statutory requirement that IPRs may be based only upon “patents or printed publications,” the Petition’s grounds rely on certain products instead. Pet. 62.

In alleging unpatentability, Petitioner points to Blakely '723 and “PP_FRT-15-3MD,” where “‘PP_FRT-15-3MD’ is being used to refer to Complaint (Ex.1008) and Bingly videos (Exs. 1005-1007) publications individually.” Pet. 62, 69-86.³ But Petitioner does not identify any specific disclosures in the videos or Complaint themselves, despite nominally relying upon those alleged publications. *Id.* at 69-86 (lacking any citation to Exs. 1005-1008 in the claim analysis); *id.* at 65-68 (lacking any citation to Exs. 1005-1008 regarding rationale to combine). Petitioner simply points to the common Tommy Triggers’ FRT products described in each of the four alleged publications instead of relying upon disclosures in the publications themselves.

Petitioner’s treatment of limitation [1g] confirms that it is the underlying Tommy Triggers products upon which the IPR is based, not the publications. In fact, Petitioner relies exclusively upon its declarant’s testimony regarding the operation of the Tommy Triggers product. Specifically, Mr. Brown states:

It is well-known to a POSITA and inherent in PP_FRT-15-3M[D] that in semi-automatic mode, after a round is fired, the bolt carrier moves rearward, striking the hammer and causing it to pivot back and latch on the disconnecter hook. As the bolt carrier continues rearward, it strikes the cam, which is rotated rearward, however, because the

³ Elsewhere, Petitioner references “PP_FRT-15-3MR.” *E.g.*, Pet. 65.

disconnecter is engaged, the trigger cannot reset. As the bolt carrier reverses direction and moves forward it again strikes the cam resetting it back to its original position. The bolt carrier moves into battery. The shooter must release the trigger to free the hammer from the disconnecter, but before the hammer can fall, it resets itself when the hammer sear catch mates with the sear on the trigger.

Ex. 1004 ¶ 122 (emphases added);⁴ Pet. 73 (same). Tellingly, neither Mr. Brown nor the Petition identify where, in the PP_FRT-15-3MD references themselves (i.e., the Bingly videos or Complaint), this operation is discussed or depicted. Pet. 72-73; Ex. 1004 ¶¶ 122-123. Petitioner relies only upon extrinsic testimony regarding the products' alleged operation to attempt to satisfy this limitation.

However, even if the Board were to credit Mr. Brown's testimony regarding the allegedly well-known or inherent operation of the Tommy Triggers' product depicted in the PP_FRT-15-3MD references (the Board should not; *infra* § VI.D.1-2), this alleged operation is found entirely outside of the references themselves. This exceeds the permissible scope of an IPR, as the Board confirmed in *Cartessa Aesthetics, LLC v. Serendia, LLC*. IPR2022-00594, Paper 9 (PTAB Aug. 12, 2022). In *Cartessa*, the Board explained that it would exceed the statutory limits

⁴ The Petition miscites the Brown Declaration as Ex. 1003; it is Ex. 1004. The correct exhibit, Ex. 1004, is cited herein for clarity.

of 35 U.S.C. § 311(b) to rely upon testimony regarding the operation of a product. *Id.* at 26. There, like here, the petition nominally relied upon a video publication that described a product, “the INTRAcel RF Micro-needling workstation” device. The Board explained that the workstation device itself—and any statements about the device not presented in the video itself—cannot form the basis of an IPR because they are not printed publications. *Id.* at 30 (“The INTRAcel Device, as well as any statements about the device not disclosed in the prior art [video], fall outside the scope of our review, as they do not qualify as a ‘printed publication’ under 35 U.S.C. § 311(b).”).

In the Board’s words, “the issue is whether the prior art [video] discloses or suggests the limitation, not whether the device discloses or suggests the limitation.” *Id.* at 38 (emphasis modified). Such is the case here. To the extent the Bingly YouTube videos or the Complaint constitute printed publications at all (they do not; *infra* § VI.C), it is only those videos and Complaint upon which the Petition may be based. The Tommy Triggers products themselves, as well as statements about those products that are not included in the videos or Complaint, fall outside the scope of review. This includes the testimony of Mr. Brown. His testimony about how these products allegedly operate plainly is not disclosed in the videos or Complaint; his testimony falls outside of the scope of this IPR. *Cartessa*, IPR2022-00594, Paper 9 at 30, 38; *Qualcomm Inc. v. Apple Inc.*, 24

F.4th 1367, 1376 (Fed. Cir. 2022) (“Congress sought to create a streamlined administrative proceeding that avoided some of the more challenging types of prior art identified in 35 U.S.C. § 102, such as commercial sales and public uses.”).

Here, the Petition does not rely upon anything apart from these extra-publication statements about the products themselves, which cannot form the basis of the IPR. Pet. 72-73. Accordingly, denial is warranted.

B. The Petition Lacks Particularity Required By 35 U.S.C. § 312(a)(3)

The Petition violates 35 U.S.C. § 312(a)(3) and 37 C.F.R. § 42.104(b) because it lacks requisite particularity. 35 U.S.C. § 312(a)(3) (requiring a petition identify “with particularity ... the grounds on which the challenge to each claim is based, and the evidence that supports the grounds”); *Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 (PTAB Mar. 6, 2019) (informative).

1. The Petition’s Omnibus Analysis Lacks Particularity

The Board routinely denies institution where, as here, the Petition lumps together multiple distinctly identified grounds into a single, co-mingled analysis. Pet. 69-86; *supra* § V.A. The Board does so for very good reason. By combining disparate challenges into a single analysis, the Petition lacks specificity and particularity regarding what exactly is asserted for each discrete ground. A petition presented in this manner improperly “sketch[e] out myriad paths and invite[s] Patent Owner and the Board to choose their own adventure to arrive at the

challenged claims. [But t]hat is not the Board’s role, nor is it fair to Patent Owner to have to defend against such ill-defined and multifarious challenges.” *Playtika Ltd. v. NexRF Corp.*, IPR2021-00952, Paper 14 at 14 (PTAB Nov. 6, 2021).

For example, in *Playtika Ltd. v. NexRF Corp.*, the Board denied institution where, like here, “Petitioner does not separately discuss each individual ground, but instead lumps together the discussion of large numbers of grounds under a single heading.” *Playtika*, Paper 14 at 12 (explaining that this approach “obscures the specific arguments advanced and the claims challenged in each individual ground”); *Uber Techs., Inc. v. Surgetech LLC*, IPR2023-00738, Paper 8 at 21 (PTAB Oct. 23, 2023) (denying institution where Petitioner presented multiple grounds in “a single, omnibus claim chart”); *Supercell Oy v. Gree, Inc.*, IPR2021-00500, Paper 7 at 12 (PTAB Aug. 16, 2021) (“[W]ithout any explanation [of] what is missing in the primary reference, what is modified, and in view of what teachings in which reference’ the primary reference is modified, the Petition fails to adequately explain ... the basis of the proposed ground(s).”).

The Petition’s co-mingled approach here is especially problematic because it does not include any citations to any of the YouTube or Complaint references upon which Petitioner purports to rely, in various combinations, for each ground. For example, the Petition fails to identify any portions of Bingly_1, Bingly_2, Bingly_3, and/or the Complaint (the PP_FRT-15-3MD references) that are relied

upon for, e.g., claim limitations [1f], [1g], or [1h]. Pet. 71-75 (failing to identify any portion of the PP_FRT-15-3MD references, i.e., Exs. 1005-1008, that Petitioner alleges teach the limitation). Instead, Petitioner provides narrative attorney argument that cites only to declarant testimony and Blakley '723, but not once cites to the PP_FRT-15-3MD references themselves. Pet. 71-75 (citing Ex. 1004 ¶¶ 119-127; Ex. 1009, 8:12-19, 20-26)). In turn, Petitioner's declarant provides substantially verbatim testimony also without citation to any PP_FRT-15-3MD reference or other supporting evidence. Ex. 1004 ¶¶ 119-127. In short, Petitioner's "attempts at claim mapping are not self-explanatory or accompanied by adequate analysis." *Sinjimoru v. Geneze Innovation, Inc.*, IPR2021-00493, Paper 8 at 12 (PTAB July 28, 2021) (denying institution).

In its patentability analysis, the Petition purports to incorporate a previous portion of the Petition. Pet. 71 n.24 ("[sic].See discussion above re FRT-15-3M[D] beginning at 18.")). But cited page 18 simply reflects the middle of a discussion of "How a Standard M-16 Functions"; it does not map any alleged prior art to any specifically recited claim language. This is not the particularity required by statute. To the contrary, this approach "would require the panel or the Patent Owner to scour the Petition to discern Petitioner's evidence as to each of [23] claims in each of three obviousness grounds." *InVue Sec. Prods., Inc. v. Mobile Tech., Inc.*, IPR2019-00078, Paper 7 at 15 (PTAB May 1, 2019). This approach

“lacks particularity and is tantamount to impermissibly shifting Petitioner’s burden under 35 U.S.C. § 312(a)(3).” *Id.* (denying institution where the petition required “piecing together the references to claims in various subsections” of the petition).

Petitioner does not incorporate any other section of the Petition. Pet. 69-86. But, even if it had, other sections of the Petition that purport to describe the content of the PP_FRT-15-MD references are similarly divorced from the claim language and the Petition’s patentability analysis. *E.g.*, Pet. 48-64. Consider, for example, the Petition’s description of the Bingly videos’ “semi-automatic mode.” Pet. 63-64. The Petition identifies over 16 minutes of footage across three separate videos. *Id.* (citing “Ex.1005, 0:00-2:09; Ex.1006-PT1, 3:20 to Ex.1006-PT3, 3:38; Ex.1007, 3:55-8:00”). It remains a mystery exactly what portion(s) of these 16 minutes of footage Petitioner alleges relates to any claim limitation(s) associated with the claimed “standard semi-automatic position,” whether regarding structure or function, because the Petition does not map this footage to the claim language or its unpatentability analysis at all. *Id.*; *id.* at 64 (identifying the exact same 16 minutes, 42 seconds of video footage as also related to “FRT mode”). The Petition simply lacks any mapping of the claim limitations to the purported prior art references themselves.

“It is not the Board’s job to cobble together assertions from different sections of a petition ... to infer every possible permutation of a petitioner’s

arguments. Arguments in a petition must be made with particularity, not opacity.”

Microsoft Corp. v. FG SRC, LLC, 860 Fed. Appx. 708, 713 (Fed. Cir. 2021).

2. The Petition’s Approach Is Not Justified

Petitioner states that “[w]hile Bingly_1, Bingly_2, Bingly_3, and Complaint are very similar prior art disclosures, multiple Grounds were necessary” because Petitioner (1) “is uncertain about which of the printed publications the Board will consider as prior art,” and (2) “because there is uncertainty as to whether claims 14-23 are entitled to the priority date claimed.” Pet. 14, 42-43. But the Petition belies its own argument regarding the necessity of its approach.

First, Petitioner is correct to recognize uncertainty in the prior art status of the YouTube videos and Complaint. In fact, as discussed below, they were not publicly accessible as of the critical date and, accordingly, do not qualify as printed publications for use in an IPR. *Infra* § VI.C. But this specter of public inaccessibility does not warrant the Petition’s catch-all, omnibus analysis of “multiple Grounds” because, in fact, the Petition does not actually rely on different combinations of references to cure this “uncertain[ty].” To the contrary, as detailed above, Petitioner lumps each of these references together in a single, comingled, omnibus analysis.

Second, Petitioner does not dispute that the ’247 provisional filing date applies to claims 1-13. Pet. 42-43. Yet Petitioner did not identify with statutorily

required particularity the references and/or grounds it applies to claims 1-13 *despite* the absence of any asserted priority dispute as to those claims. *Id.* at 14.⁵

C. The Complaint and Bingly Videos Were Not Publicly Accessible

IPR is limited to review based on “patents or printed publications.” 35 U.S.C. § 311(b). For a reference to qualify as a “printed publication,” it must be publicly accessible. *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 8-9 (PTAB Dec. 20, 2019) (precedential). Here, neither the Bingly videos (Exs. 1005-1007) nor Complaint (Ex. 1008) were publicly accessible as of the critical date, regardless of whether all claims of the ’247 patent are afforded its provisional filing date of September 8, 2022 or its actual filing date of May 30,

⁵ As discussed previously, Paper 6 at 9-10, the ’247 provisional application sufficiently describes the movable cam recited in claims 14-23. *E.g.*, Ex. 1003, 23 (“various embodiments can be practiced ... with other methods, components, materials, or the like”), 24-25 (“a first embodiment” that “is pivoted on a cam pin”), 25 (“cam 72 is pivoted on a cam pin 74”), 26 (“bolt carrier assembly ... can [vary] depending on the design of the cam 72”), 29 (“numerous modifications and changes will readily occur to those skilled in the art, [the disclosure] is not intended to limit the invention to the exact construction and operation shown”).

2023. Accordingly, denial is warranted.⁶

1. Petitioner Bears the Burden to Identify Evidence Sufficient to Establish a Reasonable Likelihood

PTAB precedent is clear: at the institution stage, “the burden is on the petitioner to identify with particularity evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent, and therefore that there is a reasonable likelihood that it qualifies as a printed publication.” *Hulu*, Paper 29 at 16 (emphasis added). Although a “reasonable likelihood” is lower than the “preponderance of evidence” required to prevail in a final written decision, the Petition must still identify actual evidence of public accessibility—not the mere plausibility of obtaining evidence in the future—to secure institution. *Id.* at 13 (“This [pre-institution] standard is far

⁶ Each asserted ground relies on Bingly_2, Pet. 14, which was not publicly accessible. *Infra* § VI.C.3 (similar defects in Bingly_1 and Bingly_3).

Accordingly, denial is warranted on that basis alone. Alternatively, because it is impossible to ascertain which reference is relied upon for each limitation of each asserted ground under Petitioner’s comingled, omnibus analysis reflecting “PP_FRT-15-MD,” the public inaccessibility of the Complaint is also independently fatal to the Petition. *Infra* § VI.B.

more than is required in typical notice pleading, which only requires that a party make plausible claims.”), 16. To be sure, “there is no presumption in favor of institution or in favor of finding a reference to be a printed publication”; the burden is Petitioner’s to meet. *Id.* at 16.

A reference is considered publicly accessible if it was “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.” *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008). Public accessibility “must be determined in light of the technology employed,” *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1369 (Fed. Cir. 2019), because “public accessibility” requires more than “technical accessibility.” *Id.* Indeed, “a work is not publicly accessible if the only people who know how to find it are the ones who created it.” *Id.* at 1372.

In certain situations, such as for materials stored in libraries, courts may inquire whether a reference was sufficiently indexed, catalogued, and shelved. *In re Hall*, 781 F.2d 897, 898-99 (Fed. Cir. 1986); *In re Lister*, 583 F.3d 1307, 1315 (Fed. Cir. 2009). Analogously, electronic documents may be publicly accessible if they were indexed or catalogued, or if there were other tools for customary and meaningful research. *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1196 (Fed. Cir. 2008). “[I]ndexing is no more or less important in evaluating the public

accessibility of online references than for those fixed in more traditional, tangible media.” *Voter Verified, Inc. v. Premier Election Sols., Inc.*, 698 F.3d 1374, 1380 (Fed. Cir. 2012).

2. The Complaint (Ex. 1008) Is Not a Printed Publication

Petitioner relies upon a district court patent infringement Complaint filed by Patent Owner against Tommy Triggers, which it alleges “is a publicly available, printed publication.” Pet. 54; *supra* § V.B.2. Not so.

a. A Federal court filing is not a “printed publication”

As an initial matter, Petitioner does not identify *any* support for its position that a legal pleading qualifies as a “printed publication” for use in an IPR. In fact, this is contrary to Congress’ express understanding of a “printed publication” in the post-grant statutory scheme.

For example, 35 U.S.C. § 301 expressly *distinguishes* a patent owner’s Federal court filing from “prior art consisting of patents or printed publications.” 35 U.S.C. § 301(a) (“Any person at any time may cite to the Office in writing—
(1) *prior art consisting of patents or printed publications* which that person believes to have a bearing on the patentability of any claim of a particular patent; *or* (2) *statements of the patent owner filed in a proceeding before a Federal court or the Office in which the patent owner took a position on the scope of any claim of a particular patent.*”).

Indeed, Congress specified that such Federal court filings “shall not be considered by the Office for any purpose other than to determine the proper meaning of a patent claim” in, *inter alia*, an IPR proceeding. *Id.* § 301(d). Petitioner here presents the Complaint as an alleged printed publication upon which an IPR is requested, not to determine the “proper meaning of a patent claim.” This is impermissible. *Id.*; *cf.* Ex. 2021 (America Invents Act, H.R. Rep. No. 112-98, Part 1 (June 1, 2011)) at 46 (“[T]he Committee does not intend these [§ 301(a)(2)] statements to be a basis for the institution of a reexamination proceeding. Reexaminations will continue to be available only on the basis of ‘patents or printed publications.’”).

b. The Complaint could not be located by an interested artisan exercising reasonable diligence

The Petition alleges that the Complaint “was filed in the publicly accessible docket of the N.D. Ohio” and a “POSITA would have known of ABC’s lawsuit against Tommy and could have easily downloaded the Complaint to learn of the inner workings of the Tommy product.” Pet. 54. However, Petitioner’s bald attorney argument is entirely unsupported and overlooks the layered access requirements for court filings.

(i) Access requires an account, a log-in, and a fee

Even if an interested artisan might have known of the pending lawsuit, Petitioner fails to demonstrate that they could have located its Complaint through

the exercise of reasonable diligence given the unwieldy process for obtaining legal documents. The Northern District of Ohio makes court records, like the Complaint, available online through its Case Management/Electronic Case Filing (“CM/ECF”) system. As explained in the court’s CM/ECF User’s Manual (dated February 10, 2020, before the critical date, and currently linked on the court’s website (Ex. 2023 (under “References”))), CM/ECF users must have a PACER account to obtain court records, like the Complaint. Ex. 2022, 3. A user may establish a PACER account online through the PACER Service Center. *Id.*

After a PACER account is obtained, the user must return to the Northern District of Ohio’s CM/ECF system, log in, and search for “specific case information by case number, nature of suit, cause of action, party name, etc.” Ex. 2022, 7, 30. Once the appropriate case is located, the user must access the case docket or locate the document of interest, e.g., the Complaint, and pay a fee to access and download that document. *Id.* at 8 (“You will be charged a fee by PACER to view NextGen CM/ECF case dockets and documents.”), 32 (Docket Report), 33 (View a Document).

The requirements that a user (1) locate the Northern District of Ohio’s online CM/ECF system; (2) learn about how to access its records; (3) navigate to the PACER Service Center; (4) create a PACER account; (5) return to the Northern District of Ohio’s online CM/ECF system; (6) log in; (7) search for the desired

case; (8) search for the desired document; (9) pay a fee to access the document; and (10) download the document, belie the Petition’s unsupported attorney argument that a POSITA “could have easily downloaded the Complaint.” Pet. 54. Petitioner presents *no evidence* to support its contentions. *Id.* Like the Federal Circuit concluded in *Koninklijke Philips N.V. v. Zoll Med. Corp.*, Petitioner’s “theor[y] that some member of the public could have found out about” the lawsuit and sought access through the Northern District of Ohio’s online Case Management system “relies on a considerable amount of conjecture that is not supported by the record.” 656 Fed. Appx. 504, 529 (Fed. Cir. 2016) (“Philips theorizes that some member of the public could have found out about the application, requested it from the FDA, and then received it ... But this relies on a considerable amount of conjecture that is not supported by the record.”).

(ii) The Petition provides insufficient evidence that an interested artisan could locate the Complaint

The Petition fails to demonstrate that the Complaint was publicly accessible at all, much less by “persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence.” *Kyocera*, 545 F.3d at 1350 (internal quotation and citation omitted). Petitioner alleges that a POSITA “would have an associate’s degree in gunsmithing or two years of experience working in the field of firearms or gunsmithing.” Pet. 44. But the Petition makes no effort to demonstrate that such an artisan—lacking any stated legal experience or facility

with court case management systems—would know of, or could navigate, the systems described above to locate the Complaint.

The Petition relies upon the testimony of Petitioner’s founder and President, Mr. Malcolm Brown, who states that he meets the skill level of a POSITA.

Ex. 1004 ¶ 36. Despite providing hundreds of paragraphs of testimony in this matter, notably Mr. Brown does not testify that he accessed or could have located the Complaint. Instead, Mr. Brown states that he was “told” that the Complaint “qualifies as prior art under [*sic* (left blank)].” *Id.* ¶ 91.

This is not evidence sufficient to establish a reasonable likelihood that the Complaint was publicly accessible. *E.g., Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 774 (Fed. Cir. 2018) (indexing by author and year insufficient to establish accessibility); *Schlumberger Tech. Corp. v. Integrated Drive Syst. LLC*, IPR2018-00603, Paper 40 at 23-24 (PTAB Sept. 3, 2019) (finding a lack of evidence “that persons interested in drilling rig systems in 2013 would have been aware of [a product depicted in the Joy reference] or the MinePro website [that hosted the Joy reference] in 2013 such that mere presence of Joy on the MinePro website would have made Joy publicly accessible to persons concerned with the art before the critical date”).

In sum, the record lacks any evidence to support the attorney argument that the Complaint was publicly accessible. This falls far short of Petitioner’s burden.

3. The Bingly Videos (Exs. 1005-1007) Are Not Printed Publications

Petitioner states that “Bingly posted three related videos on YouTube with posting dates of June 5, 2022 (Ex.1005), June 19, 2022 (Ex.1006), and August 1, 2022 (Ex.1007)” and alleges these were publicly accessible. Pet. 58. Not so.

a. Petitioner applies the wrong legal standard

Petitioner alleges that it “need only demonstrate a reasonable likelihood that it will be able to prove by a preponderance of the evidence that Bingly videos were publicly available” and that “the Board need only determine that the Petitioner (with the benefit of a subpoena to YouTube) is reasonably likely to obtain a declaration which would provide a reasonable fact finder sufficient evidence that the videos were publicly available.” Pet. 57-58.⁷ This is incorrect as a matter of law.

PTAB precedent states clearly that “the burden is on the petitioner to identify with particularity evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible.” *Hulu*, Paper 29 at 16 (emphasis added). Accordingly, the question is not whether it is “reasonably likely” that Petitioner may

⁷ Petitioner’s discussion of the authentication rule of the Federal Rules of Evidence is inapposite. Pet. 57-58 (citing FRE 104(a), 901(a)). A showing regarding authentication does not equate to evidence of public accessibility.

later be able to obtain evidence to demonstrate public accessibility, e.g., with the benefit of a speculative, future-issued subpoena. Rather, *Hulu* instructs that the pertinent question is whether Petitioner presents sufficient evidence now—in its Petition—to establish a reasonable likelihood that the reference was publicly accessible. *Id.*

Although *Hulu* permits introduction of some post-Petition evidence, those are “limited opportunities” that do not excuse Petitioner from meeting its burden. *Hulu*, Paper 29 at 16. Importantly, there is “no presumption in favor of institution or in favor of finding a reference to be a printed publication.” *Id.* The Petition’s failure to present evidence supporting the public accessibility of the Bingly videos is fatal at the institution stage.

b. The Petition lacks evidence providing facial indicia of accessibility

The Petition largely addresses the three videos together, addressing only Bingly_2 (Ex. 1006) with any specificity. Pet. 59-60. In that regard, Petitioner simply alleges that Bingly_2 “is dated June 19, 2022—over three years ago. It has been viewed nearly 64,000 times, suggesting it was publicly available. The page also contains 100 posts and replies that are each marked as ‘3 years old.’” *Id.* at 59. But the Petition cites no evidence in support of these contentions regarding publication date, viewership, or posted comments. *Id.* Absent an identification of the evidence upon which Petitioner relies, Patent Owner is hamstrung to respond.

Nonetheless, the record does not support this attorney argument. First, the Bingly_2 video itself does not indicate its posting date, viewership, or comments at all. Ex. 1006. Second, the purported Internet Archive Wayback Machine capture of this video does not align with the attorney argument offered in the Petition. Ex. 1021 (failing to reflect a “June 19, 2022” posting date, that it has been “viewed nearly 64,000 times,” or that it includes “100 posts and replies that are each marked as ‘3 years old’”).⁸

Finally, to the extent Petitioner attempts to rely upon the link to the active YouTube video itself, which is provided in the Petition’s Table of Exhibits but was not introduced as evidence in this proceeding, that is prohibited by the PTAB’s

⁸ The Table of Exhibits lists Bingly_2, Ex. 1006, as a June 29, 2022 YouTube video accessible at <https://www.youtube.com/watch?v=00mQ2mfjqfU>. Pet. 10. Although the Table lists Ex. 1022 as a Wayback Machine capture of Ex. 1006, that appears erroneous. *Id.* at 11. Instead, Ex. 1021 purports to reflect a Wayback Machine page related to the URL for Ex. 1006. Ex. 1021, 1 (<https://web.archive.org/web/20220705044110/https://www.youtube.com/watch?v=00mQ2mfjqfU>). In any event, both Ex. 1021 and Ex. 1022 lack the information identified above. *Infra* at page 48 n.10 (regarding lack of authentication).

rules. Pet. 10 (providing active URL); 37 C.F.R. § 42.63(a) (“All evidence must be filed in the form of an exhibit.”). Moreover, the active YouTube page is wholly irrelevant because current viewership does not demonstrate public accessibility “before the critical date of the challenged patent.” *Hulu*, Paper 29 at 16.

Likewise, to the extent the active YouTube link or Wayback Machine capture of the video purport to reflect dates on which the video was posted or commented upon, this is impermissible hearsay and should not be considered.⁹ *E.g.*, *Guangdong Laitu Imaging Tech. Co., Ltd. v. Really Right Stuff, LLC*, IPR2023-00853, Paper 13 at 22-27 (PTAB Oct. 25, 2023) (denying institution and determining that dates purportedly shown in YouTube videos were hearsay); *Standard Innovation Corp. v. Lelo, Inc.*, IPR2014-00148, Paper 42 at 15-16 (PTAB Apr. 23, 2015) (“[T]o the extent that the dates presented in Exhibit 1013 are relied upon as proof of dates relevant to the creation or publication date ..., those dates are inadmissible hearsay.”); *ServiceNow, Inc. v. Hewlett-Packard Co.*, IPR2015-00707, Paper 12 at 16 (PTAB Aug. 26, 2015) (finding as hearsay “the date on the

⁹ Moreover, the Wayback Machine capture purports to reflect a video posted in 2022 but with comments dated “9 years ago”—an impossibility that further discredits this exhibit. Ex. 1021, 2.

face of each exhibit and the indications of the availability of these references for download”).

These deficiencies also infect the Petition’s limited and unsupported attorney argument regarding Bingly_1 and Bingly_3, where Petitioner identifies only alleged posting dates of these videos. Pet. 59 (“Bingly posted three related videos on YouTube with posting dates of June 5, 2022 (Ex.1005), June 19, 2022 (Ex.1006), and August 1, 2022 (Ex.1007).”). Again, these dates are not supported by the video exhibits themselves. Ex. 1005; Ex. 1007. And as discussed above regarding Bingly_2, any dates reflected in the purported Wayback Machine captures (Ex. 1022; Ex. 1023) or in the linked active YouTube pages themselves (Pet. 10) reflect impermissible hearsay. *Guangdong*, Paper 13 at 22-27 (denying institution and determining that dates purportedly shown in YouTube videos were hearsay). Likewise, the active YouTube pages cited in the Petition’s Table of Exhibits are divorced from the critical date of the ’247 patent and were not submitted as evidence in this proceeding. Pet. 10 (providing URLs); 37 C.F.R. § 42.63(a).

c. The Petition provides insufficient evidence that an interested artisan could locate the videos

Petitioner alleges that a “POSITA ‘exercising reasonable diligence’ could have readily located the videos.” Pet. 60. According to Petitioner, “a POSITA could locate these videos by using a search engine and looking for Tommy

Trigger, Alamo 15, Rare Breed FRT, FRT with 3-position selector, FRT/E3 or other similar searches.” Pet. 60. Petitioner contends this is so because “Petitioner located the videos within minutes by running such searches.” *Id.*; Ex. 1004 ¶ 96. But this is insufficient to demonstrate public accessibility before the critical date.

(i) No evidence of indexing, cataloguing, or other meaningful search tools

As discussed above, electronic documents may be deemed publicly accessible if they were indexed or catalogued, or if there were other tools for customary and meaningful research. *SRI Int’l*, 511 F.3d at 1196. Critically, the Petition lacks any evidence demonstrating that these videos were indexed, catalogued, or otherwise available through searching such that they could have been located before the critical date. Pet. 56-60.

Petitioner’s reliance on its own reported success in finding these videos is not sufficient evidence of public accessibility for several critical reasons.

- First, that Petitioner or its declarant located these videos at the time it filed the Petition is irrelevant to demonstrate public accessibility “before the critical date of the challenged patent.” *Hulu*, Paper 29 at 16.

Petitioner offers no evidence regarding accessibility as of the critical date. Pet. 59-60; Ex. 1004 ¶ 96.

- Second, that Petitioner could locate these videos with the post-hoc benefit of specific search terms derived from the videos themselves is

also irrelevant to demonstrate public accessibility. Pet. 60. Petitioner again offers no evidence regarding accessibility by an interested artisan without knowledge of specific terms that are recited in the videos themselves. Pet. 59-60; Ex. 1004 ¶ 96.

In this regard, the Petition’s showing aligns with that in *Blue Calypso LLC v. Groupon, Inc.*, where “[t]he record [was] devoid of any evidence that a query of a search engine before the critical date, using any combination of search words, would have led to [the report] appearing in the search results.” 815 F.3d 1331, 1350 (Fed. Cir. 2016) (emphasis added). For the same reasons, the Board here should conclude that Petitioner’s present-day search results constitute insufficient evidence of indexing, cataloguing, or searchability as of the critical date.

Likewise, Mr. Brown’s testimony that “it is common for POSITA to look on-line and especially watch videos to learn how to make simple modifications to firearms” does not remedy these failings because it does not address how a POSITA could have located these specific videos before the critical date to learn about firearm modifications. Ex. 1004 ¶ 96. This is especially so considering the massive volume of content available on YouTube with, in 2022, over 500 hours of video being uploaded to YouTube every minute. Ex. 2024. Quite simply, Mr. Brown fails to explain how a POSITA could have located these specific videos before the critical date—which run for a total of 26.9 minutes—out of the decades

of content uploaded to YouTube each day at that time. *Id.* (“roughly 82 years of content” uploaded each day in 2022).

Absent any evidence of how these videos were indexed or catalogued before the critical date, or how they could have been located with other tools for customary and meaningful research, Petitioner presents nothing more than attorney argument. This does not satisfy its burden.

(ii) The Petition’s PageVault and Wayback Machine evidence required knowledge of the specific URL

Petitioner also alleges that “the declaration of Mr. Price of Page Vault, states he was able to find copies of screen captures of the videos (Exs.1005-1007) on the Wayback Machine which were downloaded on August 13, 2022; July 5, 2022; and May 10, 2023, respectively.” Pet. 59 (citing “Exs. 18-23”).¹⁰ But, again, this does not demonstrate that an interested artisan could have located the videos before the

¹⁰ Mr. Price testifies that the Bingly videos and Wayback Machine webpages that he captured with the Page Vault Capturing Server are attached to his declaration. Ex. 1018 ¶¶ 13-19. But neither the Bingly videos nor the Wayback Machine captures are attached. *See generally id.* Accordingly, to the extent Petitioner relies upon Mr. Price’s declaration for authentication, that is insufficient. Pet. 11 (claiming the Price Declaration “authenticat[es] YouTube videos”).

critical date absent knowledge of the specific URLs for each video.

Specifically, Mr. Price testifies that Page Vault allows a user to capture web content when the “User provides URLs (Uniform Resource Locators) associated with the Web Content to be captured.” Ex. 1018 ¶¶ 3-4 (emphasis added). To that end, Mr. Price testifies that Page Vault captured content from three Bingly YouTube videos (*id.* ¶¶ 13, 15, 17) and three Wayback Machine webpages (*id.* ¶¶ 14, 16, 18) using the URLs provided in his declaration. Accordingly, all that Mr. Price has established is that if a specific URL is already known by a user, like those at issue here, then Page Vault can create a screen capture of the content of that user-provided URL. Mr. Price does not testify, however, that the Bingly videos were publicly accessible, or even operational, as of the critical date, or that these URLs were known to interested artisans at that time. Nor does Mr. Price testify that the Bingly videos were indexed, catalogued, or otherwise searchable in any manner before the critical date. Finally, Mr. Price does not testify that the Bingly videos could have been located by an interested artisan exercising reasonable diligence without knowledge of the specific URLs that he input into Page Vault to capture the web content.

This is precisely the circumstance the Board considered in *Valve Corp. v. Ironburg Inventions Ltd.*, in which the Board found that the declarant’s testimony “merely indicate[d] that an ordinarily skilled artisan in 2013 could have used a

URL to access publicly available material on the internet,” but did not demonstrate that “anyone was, in fact, supplied with the URL.” IPR2017-01928, Paper 36 at 24 (PTAB Feb. 7, 2019) (emphasis added). Specifically, the Board found:

[The declarant] does not explain how URLs enable ‘finding’ a reference in the sense of discovering the reference via a search. Instead, we understand his testimony to reflect that, if a person were supplied with a URL, that person would be able to ‘find’ and ‘access’ material associated with the URL if that material were on a public server. He also does not testify that the URL itself rendered the reference more amenable to searches or caused the reference itself to be indexed in a manner that an ordinarily skilled artisan would have been able to locate it using reasonable diligence.

Id. (emphasis added); *Blue Calypso*, 815 F.3d at 1349-50 (“[T]he present case lacks any testimonial evidence that a person interested in [this technology] would be independently aware of the web address for [the] personal page [of the report’s author].”).

In other words, that Page Vault (or the Wayback Machine) may be technically capable of locating specific videos once their URLs are known does not establish that an interested artisan could have found the videos independently, without knowledge of those URLs. Nor does the Petition’s evidence speak to whether these videos could have been accessed by a query of a search engine before the critical date. *Contra* Pet. 59-60. At best, Petitioner attempts to show

that these videos were technically accessible. But “public accessibility requires more than technical accessibility.” *Samsung*, 929 F.3d at 1369 (internal quotations and citation omitted).

In other words, “evidence of availability--even public availability--is not evidence of ‘public accessibility.’” *Schlumberger*, Paper 40 at 16. It is insufficient “[t]hat a person might have been able to locate [a reference] through public means” absent “evidence of any steps the skilled artisan could or would have taken to find [it]” before the critical date. *Id.* at 16-17. This type of evidence related to, e.g., “steps the skilled artisan could or would have taken to find [the references]” is precisely what is missing here. *Id.* at 17; *First Solar, Inc. v. Rovshan Sade*, IPR2023-00827, Paper 13 at 18 (PTAB Nov. 16, 2023) (denying institution despite a Wayback Machine capture because the record lacked any evidence that an interested artisan “would be independently aware of the web address for [the reference]” or that the reference was “indexed (through search engines or otherwise) and thus locatable by a search engine”).

(iii) The Petition does not establish that the videos or channel were well known

Finally, Petitioner alleges that “Bingly has a channel with about 800 members, so it is unlikely he would have posted this video for private viewing.” Pet. 59. But, again, the Petition does not cite any evidence to support this attorney argument. None of the video exhibits themselves depict the number of followers

of Bingly’s channel. Exs. 1005-1007. The purported Wayback Machine screen captures also do not support this claim of “800 members.” Exs. 1021-1023 (not depicting a subscription number, depicting 535 subscribers, and depicting 192 subscribers, respectively); *supra* page 44-45, 48 n.10 (regarding hearsay and lack of authentication). And as discussed above, the active YouTube videos themselves are not evidence in this proceeding and are irrelevant to the question of public accessibility before the critical date. 37 C.F.R. § 42.63(a).

Nor does the Petition explain the pertinence of the size of Bingly’s channel to the only question that is relevant here—whether “persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it.” *Kyocera*, 545 F.3d 1340, 1350 (Fed. Cir. 2008). For example, the Petition does not contend (much less show) that the alleged subscription size, even if supported with evidence (which it is not), correlates to wide public accessibility before the critical date.

To the contrary, the alleged size of the Bingly channel following does not demonstrate that an interested artisan could have located these videos, or how they would have done so absent knowledge of the Bingly channel’s URL. Nor does the channel’s subscription size demonstrate that the webpage was sufficiently widely known in the pertinent art to demonstrate public accessibility. *Adaptics*, Paper 20 at 23 (“Petitioner addresses neither whether the references were meaningfully

indexed and could be located by a POSITA using a reasonably diligent search, nor whether they were widely disseminated to persons of ordinary skill in the art.”).

4. Petitioner Failed to Meet Its Burden Even Though This Issue Was Entirely Foreseeable

Petitioner simply fails to meet its pre-institution burden to identify “evidence sufficient to establish a reasonable likelihood that” the Bingly videos or Complaint were “publicly accessible before the critical date.” *Hulu*, Paper 29 at 16.

Accordingly, Petitioner has not established that these references qualify as printed publications. *Id.* The Petition should be denied.

Although this issue was entirely foreseeable, *see* Pet. 14, 54, 56-60 (devoting six pages to whether the references qualify as printed publications), Petitioner nonetheless failed to present sufficient evidence. It should not be permitted to supplement the record with information that it was required to include in its Petition. PTAB Consolidate Trial Practice Guide (“CTPG”), Nov. 2019 at 73 (“Petitioner may not submit new evidence or argument in reply that it could have presented earlier.”). Good cause does not exist, especially given the foreseeability of the issue. 37 C.F.R. § 42.108(c) (requiring a “showing of good cause”); *BMW of N. Am. LLC v. Intellectual Ventures*, IPR2017-01558, Paper 8 at 2-3 (PTAB Oct. 25, 2017) (denying a pre-institution reply and stating, “[t]hat Patent Owner would challenge the sufficiency of Petitioner’s showing [as to printed publication status] is an entirely foreseeable circumstance”).

D. The Petition Fails on the Merits

The Petition relies upon a declaration filed by Mr. Malcolm Brown to support its contentions. But Mr. Brown is not established to be an expert who may testify in this proceeding. Moreover, this declaration is self-serving, self-interested, and entirely conclusory.

1. Mr. Brown Is a Self-Interested Declarant

Mr. Brown's declaration states that he is "employed by Atrius." Ex. 1004 ¶ 3. This is quite an understatement; Mr. Brown is, in fact, the founder and President of Petitioner Atrius Development Group Corp. Ex. 2018 ¶¶ 10, 14, 16 (founding and serving as an officer in Atrius Development Group); Paper 2, 2 (signing the Petition's Power of Attorney as "President"). He is the utmost interested party and a facially self-interested declarant.

Mr. Brown's statement that he is "being compensated at [his] normal salary for [his] work in this matter" and that his "compensation is not contingent on the outcome of this proceeding or the specifics of my testimony" is at best disingenuous given his role as President of the company that initiated this proceeding. Ex. 1004 ¶ 3. Petitioner, and by corporate association Mr. Brown, must have believed that it stood to benefit from this proceeding in some way, otherwise it would not have brought the IPR.

2. Mr. Brown's Qualifications to Testify Are Not Established

The Petition relies on Mr. Brown to provide expert technical opinion

testimony. But that testimony should be discarded given his demonstrated self-interest and because the record does not establish that he is qualified to testify as an expert witness. Board guidance is clear: “An expert witness must be qualified as an expert by knowledge, skill, experience, training, or education to testify in the form of an opinion.” CTPG 34 (permitting expert testimony “where the expert’s scientific, technical, or other specialized knowledge will help the trier of fact”); Fed. R. Evid. 702 (“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify.”).

Here, the record contains insufficient evidence to establish that Mr. Brown possesses any scientific, technical, or other specialized knowledge that qualifies him to testify as an expert witness. For example, Mr. Brown states that his “qualifications and professional experience for forming the opinions set forth in this declaration are summarized here and explained in more detail in my *curriculum vitae*, which is included as part of exhibit ???.” Ex. 1004 ¶ 5. But no *curriculum vitae* was included. *See generally* Pet.; Ex. 1004. Accordingly, his scientific, technical, or other specialized knowledge cannot be assessed through review of, e.g., Mr. Brown’s education, employment history, past research or areas of study, or any other experience that may bear on the topics of his testimony.

To the extent Mr. Brown testifies that his qualifications are “summarized” in his declaration, Ex. 1004 ¶ 5, the declaration contains only vague and unsupported

conclusions; it does not present facts sufficient to establish specific knowledge, skill, experience, training, or education that demonstrates his opinions would be helpful to the trier of fact. Ex. 1004 ¶ 7 (“I have been gunsmithing and working on guns for 15 years.”), ¶ 8 (“I have extensive experience and proficiency with multiple weapon systems due to my Marine Corps training as well as interests pre- and post-service.”). In fact, the declaration lacks specificity as to any dates, employers, job titles, or scopes of responsibilities, without which his qualifications and competency to testify cannot be established. Ex. 1004 ¶¶ 7-9, 11-13. The record simply does not establish that Mr. Brown is “qualified as an expert by knowledge, skill, experience, training, or education to testify in the form of an opinion.” CTPG 34.

Moreover, even a brief review of the substance of Mr. Brown’s declaration establishes that it is entitled to no weight. 37 C.F.R. § 42.65. As discussed above and below, his declaration presents bald conclusions devoid of any supporting evidence or technical reasoning. *Supra* § VI.A; *infra* § VI.D.3.b. But his declaration suffers from more than a lack of support; it conflicts with prior well-established determinations. For example, as discussed above, Mr. Brown falsely equates the locking bar in the Tommy Triggers’ products depicted in the Complaint as the claimed “cam,” despite the fact that the ’247 claims require that the cam perform certain functions that are undisputedly not performed by the

locking bar. Ex. 1004 ¶ 92; *supra* § V.B.2. The Complaint plainly does not disclose the claimed cam, Ex. 1008, and Mr. Brown’s assertion that it does directly conflicts with the established structure and function of a locking bar as determined in prior litigation of which Mr. Brown was aware. Paper 6, 15-16; Ex. 1004 ¶ 43 (discussing the Texas litigation in which the structure and function of a locking bar was determined).

Specifically, in prior litigation in the Northern District of Texas, the court issued a Memorandum and Order which established that, in Rare Breed Triggers’ previously litigated commercialized design, “the trigger is forcibly reset by the hammer ... [and a] ‘locking bar’ mechanically locks the trigger in its reset state, preventing the user from moving the trigger rearward to function.” Ex. 2013, 3;¹¹ Ex. 2001 ¶ 11.a (incorporating the Texas decision into a settlement between the U.S. Department of Justice and RBT). But the Complaint’s locking bar does not reset the trigger, as required by the “cam” claimed in the ’247 patent, as Mr.

¹¹ As described above, the Complaint concerns Tommy Triggers’ infringement of the ’223 patent, which is also practiced by exclusive licensee RBT, where both the RBT and Tommy Triggers’ products include a locking bar and hammer-based trigger reset. RBT’s product was discussed by the Northern District of Texas in one of a series of litigations discussed at length previously. Paper 6, 3-7.

Brown freely admits. Ex. 1004 ¶ 109 (stating that “[t]he disclosure of PP_FRT15-3M[D] teaches an FRT ... [whose] cam functions only to keep the hammer from following the bolt when in FRT mode, it does not also function to reset the trigger.”). Mr. Brown’s testimony that the Complaint’s “locking bar” is instead the claimed “cam” is simply not credible, especially in view of the locking bar’s established structure and operation.

Because Mr. Brown “is not credible as to multiple material aspects of his testimony, it would be inappropriate in this instance to rely on this testimony for” other issues, especially where Petitioner present as single comingled analysis that purports to apply to various grounds that present various combinations of references. *Interactive Comm. Int’l, Inc. v. Blackhawk Network Inc.*, IPR2024-00465, Paper 39 (Dir. Squires Oct. 1, 2025).

3. The Petition Fails to Demonstrate a Reasonable Likelihood of Prevailing Regarding At Least Claim Limitations [1g] and [1h]

As set forth below, the Petition fails to demonstrate a reasonable likelihood of prevailing with respect to at least limitations [1g] and [1h] of the ’247 patent. With respect to claim [1g], Petitioner admits that this limitation is missing from Blakely ’723. Yet as shown below, this limitation is also missing from PP_FRT-15-3MD and a POSITA would not have been motivated to further modify PP_FRT-15-3MD to provide this limitation. And with respect to claim [1h],

Petitioner also fails to explain how the proposed combination renders this limitation obvious.

As discussed above, the Petition presents a single co-mingled analysis for three distinctly identified grounds and does not identify any portions of the videos or Complaint upon which it relies for these limitations. *Supra* §§ V.A, VI.B; Pet. 72-75. Accordingly, Patent Owner’s arguments below apply to each identified ground. Neither of the Bingly videos nor Complaint teach or render obvious these limitations.

a. The proposed combination fails to teach the claimed “standard semi-automatic” mode in limitation [1g]

Claim 1[g] requires that, “in said standard semi-automatic position, rearward movement of the bolt carrier causes rearward pivoting of said hammer and pivoting of said cam from said first position to said second position *such that said cam lobe forces said trigger member towards said set position ... and thereafter forward movement of the bolt carrier causes said cam to pivot to said first position, at which time a user must manually release said trigger member to free said hammer from said disconnecter.*” Pet. 73 (emphasis added). This limitation requires *cam*-based trigger reset and locking. Petitioner admits that Blakely ’723 does not teach this but alleges that “PP_FRT-15-3M[D] does.” *Id.* at 72.

But that claim is belied by the Petition itself, where Petitioner concedes that PP_FRT-15-3MD *does not teach* cam-based trigger reset, which is expressly

required by the claims. Pet. 67 (acknowledging that, in “PP_FRT-15-M[D] ... the hammer strikes the top of the trigger causing it to reset”). Indeed, Petitioner’s own evidence demonstrates that PP_FRT-15-3MD discloses only hammer-based trigger reset and locking with a locking bar. Ex. 1008 ¶ 50 (“[The] Infringing Devices ... us[e] the hammer to forcibly reset the trigger and ... prevent the trigger from being pulled again by virtue of the locking bar.”).

Attempting to avoid this deficiency, Petitioner falsely equates the locking bar in PP_FRT-15-3MD to the claimed “cam.” Pet. 56; *supra* § V.B.2.d. But the locking bar of PP_FRT-15-3MD as shown in the Complaint does not perform the cam’s claimed function. More specifically, the locking bar does not cause the trigger member to move towards a set position as required by the ’247 patent claims; instead, the hammer performs that function, as Petitioner freely admits. Ex. 1008, 18; Pet. 67 (acknowledging that, in “PP_FRT-15-M[D] ... the hammer strikes the top of the trigger causing it to reset”).

Contrary to the Petition’s assertions, the locking bar disclosed in the Complaint simply blocks the trigger from moving out of its set position while the bolt carrier assembly returns forward, in standard semi-automatic mode; it does not reset the trigger. Ex. 1008, 19 (describing “a locking bar pivotally mounted in the housing and spring biased toward a first position in which the locking bar mechanically blocks the trigger member from moving to the released position”).

Thus, even accepting Petitioner’s misguided attempt to equate the locking member with the claimed “cam,” that structure also does not “force[] said trigger member towards said set position” as required by the ’247 patent claims and as Petitioner admits.

b. The proposed combination fails to render obvious limitation [1g]

The Petition’s additional argument that it would have been obvious to combine Blakley ’723 with PP_FRT-15-3MD and then to further modify PP_FRT-15-3MD to, *inter alia*, allow cam-based trigger reset is nothing more than unsupported hindsight. Pet. 67-68. Petitioner identifies three alleged “disadvantages” of PP_FRT-15-3MD’s hammer-based trigger reset that it alleges make obvious the proposed modification to cam-based trigger reset: “timing; hammer wear, and shooter discomfort.” Pet. 68. But, in support of this critical proposed modification to satisfy the claim limitations, Petitioner cites to no evidence other than the unsupported and conclusory testimony of Petitioner’s founder and president. *Id.*; Ex. 1004 ¶¶ 109-112. But these unsupported arguments fail on the merits.

First, as to timing, Petitioner alleges that the timing of hammer-based trigger reset “must be precise, and is complicated by manufacturing tolerances across various AR-15’s.” Pet. 67-68; Ex. 1004 ¶ 110 (verbatim). But the Petition does not explain how adding an additional component (a cam) to reset the trigger

(instead of the hammer) would improve timing. If anything, adding an additional component would complicate timing considerations, as the movement of the cam must also be accounted for in the proposed combination.¹²

Moreover, as detailed in the '247 patent, cam-based trigger reset also requires precise timing. Ex. 1001, 8:66-9:27. And, when incorporated in various firearms, as expressly envisioned by the '247 patent, manufacturing tolerances associated with cam-based trigger reset would also be complicated. *Id.* at 2:18-20 (“The present invention provides a semiautomatic trigger mechanism for increasing rate of fire that can be retrofitted into popular existing firearm platforms.”). Simply put, apart from presenting the bare and unsupported conclusion that the proposed modification would avoid timing issues, Pet. 68, neither the Petition nor the Brown declaration support that claim with any evidence. Pet. 67-68; Ex. 1004 ¶¶ 109-112.

Second, as to hammer wear, Petitioner alleges that hammer-based trigger reset causes the hammer to wear prematurely. Pet. 67; Ex. 1004 ¶ 109. But again,

¹² Notably, neither Petitioner nor Mr. Brown explain how the structures that support the existing hammer-based reset would be modified or replaced to account for this additional structure and function associated with cam-based trigger reset.

the Petition and Brown declaration fail to support both this claim of increased wear associated with hammer-based trigger reset and the equally bare and unsupported conclusion that the proposed modification would avoid this alleged issue. Pet. 67-68; Ex. 1004 ¶¶ 109-112. In fact, the Petition presents no objective metric, no evidence, and no technical reasoning upon which its conclusions can be verified. Petitioner simply does not establish that avoiding hammer wear would have been desirable or necessary, that this would motivate a POSITA to further modify the proposed combination of Blakley '723 and PP_FRT-15-3MD, or that the alleged modification would have been successful to avoid the alleged wear.¹³

And finally, as to shooter discomfort, Petitioner alleges that, in PP_FRT-15-3MD, “the downward force on the trigger can be felt by the shooter, which is both unpleasant and distracting.” Pet. 67; Ex. 1004 ¶ 109. Again, the Petition and Brown declaration fail to support both this claim of increased shooter discomfort and the equally unsupported claim that the proposed modification would avoid that alleged discomfort. Pet. 67-68; Ex. 1004 ¶¶ 109-112. Nor does the Petition

¹³ What is more, the Petition fails to address the wear caused by the hammer striking the firing pin, which would continue to be experienced even in the modification proposed by Petitioner.

account for the downward force that would continue to be felt on the trigger in both Petitioner's proposed combination (from the cam) and in PP_FRT-15-3MD (from the hammer). Neither Petitioner nor its expert provide any evidence or explanation supporting a measurable difference in force.

Finally, as set forth in Patent Owner's request for discretionary denial (Paper 6), this is nothing more than the same combination of prior art teachings that the Examiner already considered. Paper 6, 7-16 (regarding Strbac '003, considered by the Examiner, and which is practiced by the Tommy Triggers products). For at least these reasons, Petitioner has failed to show that the combination of Blakely '723 and PP_FRT-15-3MD renders claim [1g] obvious.¹⁴

c. The proposed combination fails to render obvious limitation [1h]

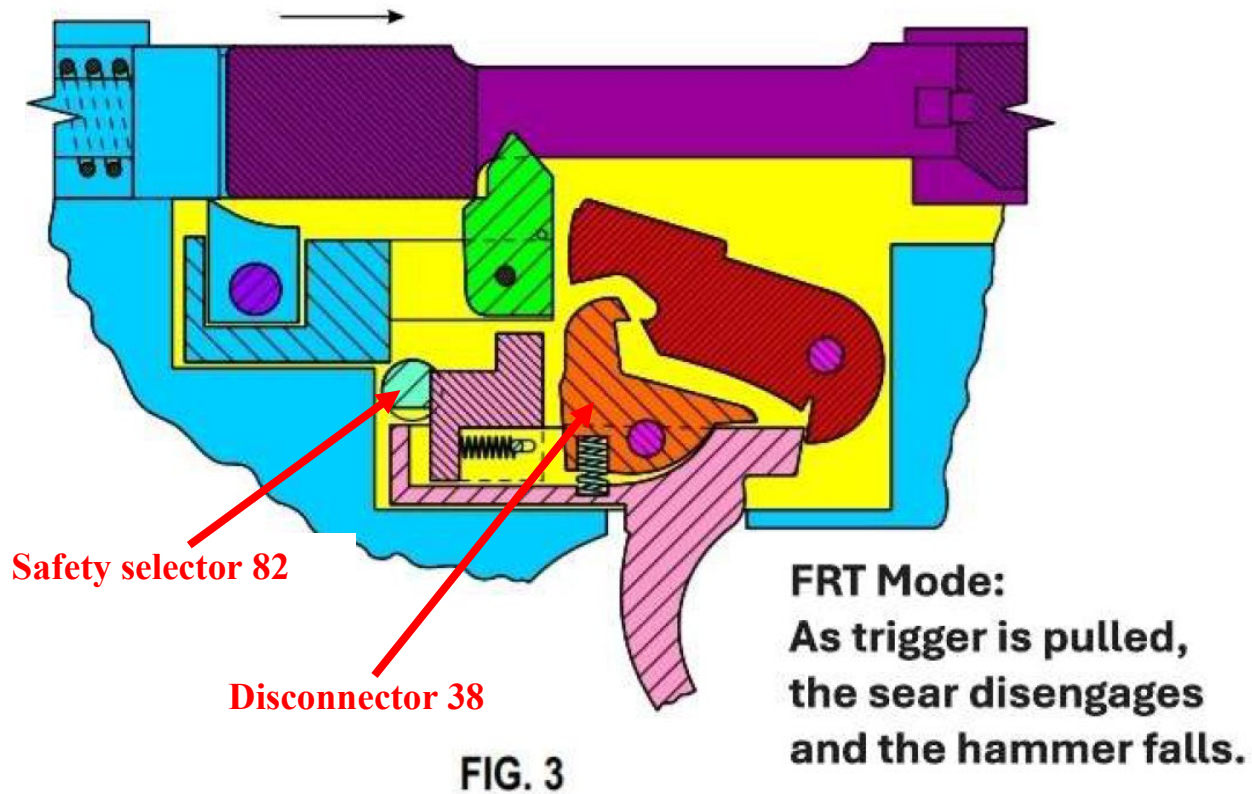
Claim [1h] recites, "said safety selector preventing said disconnecter hook from catching said hammer hook." Ex. 1001, 11:6-7. Petitioner admits that "Blakely '723 does not disclose 'safety selector preventing said disconnecter hook from catching said hammer hook.'" Pet. 74. To remedy this deficiency, Petitioner argues that "it would have been obvious ... to combine Blakely '723 with the

¹⁴ Petitioner admits that claims [4h], [9i], [14g], and [15e] disclose the same features as claim [1g]. Pet. 78-83.

safety selector taught by PP_FRT-15-3M[D].” *Id.* Petitioner argues that the PP_FRT-15-3MD safety selector, when set in FRT mode, “disables the disconnecter while allowing the trigger to rotate and reset automatically via the cam.” *Id.* at 74-75.¹⁵

But even if a POSITA would have found it obvious to replace Blakely ’723’s safety selector with the alleged “3-position safety selector” of PP_FRT-15-3MD, this modified safety selector still would not prevent the disconnecter hook in Blakely ’723 from catching the hammer hook as claimed. As shown in Petitioner’s annotation of Blakely ’723’s Figure 3, shown below, Blakely ’723’s disconnecter 38 does not have any structural component (such as disconnecter tail 66 shown in the ’247 patent) that ever contacts safety selector 82, even if selector 82 were replaced with a 3-position safety selector.

¹⁵ This alleged operation is belied by the record given that, as discussed above, PP_FRT-15-3MD does not have a cam.



Pet. 50 (red annotated text and arrows added) (citing Ex. 1009, Fig. 3).

Instead, when Blakley '723's disconnecter rotates, it bypasses the safety selector entirely, regardless of whether the safety selector is a 2-position selector as taught by Blakley '723 or a 3-position safety selector, as proposed in Petitioner's modification. Thus, adding a 3-position safety selector to Blakely '723 would not "disable the disconnecter" of Blakely '723, since it would not prevent any part of disconnecter 38 from catching Blakely '723 hammer hook 44. Indeed, Petitioner admits that the "disconnecter" in Blakely '723 "serves no apparent function" (Pet. 74), and that "disconnecter 38 is missing its tail portion," which, in the claimed '247 patent, is the structure that "prevent[s] disconnecter hook from

catching said hammer hook.” Pet 67, 73. Thus, Petitioner’s proposed modification to add a 3-position safety selector to Blakely ’723 would not solve this admitted shortcoming of Blakely ’723.

Nor does Petitioner identify any basis for why a POSITA would have found it obvious to modify the disconnecter in Blakely ’723 so that it does interact with Blakely ’723’s safety selector. Instead, in a single sentence, Petitioner states that “[b]y lengthening the disconnecter tail, it could be made to fall under the safety selector.” Pet. 67. But this only describes the result of Petitioner’s proposed modification of Blakely ’723—it provides no explanation or reasoning as to why a POSITA would have found it obvious to do so in the first instance. *Id.*; Ex. 1004 ¶ 108 (likewise failing to explain why a POSITA would lengthen the tail). Nor does the Petition explain why a POSITA would have had any reasonable expectation of success in such a modification. In other words, Petitioner’s proposed combination is entirely unsupported and relies on pure hindsight.

For at least these reasons, Petitioner has failed to show that a reasonable likelihood of prevailing in establishing the unpatentability of claim [1h].¹⁶

¹⁶ Petitioner admits claims [4i], [9j], [14h], and [15f] disclose the same features as claim [1h]. Pet. 78-83.

VII. CONCLUSION

For these reasons, Petitioner fails to meet its burden under 35 U.S.C.

§ 314(a). Patent Owner respectfully requests that the Director deny institution.

Dated: December 11, 2025

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24(D)

I hereby certify that this preliminary response, excluding its table of contents, table of authorities, table of exhibits, certification under 37 C.F.R. § 42.24(d), and certificate of service has 13,953 words as counted by Microsoft Word, the word-processing system used to prepare this preliminary response.

Dated: December 11, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on December 11, 2025 a copy of the foregoing document was served by e-mail on the following:

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