

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIMPSON STRONG-TIE COMPANY INC.,
Petitioner

v.

COLUMBIA INSURANCE COMPANY,
Patent Owner

Case PGR2024-00050
U.S. Patent No. 11,920,339

**PETITIONER SIMPSON STRONG-TIE COMPANY INC.'S REPLY TO
PATENT OWNER'S RESPONSE**

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PETITIONER’S UPDATED EXHIBIT LIST

Exhibit No.	Description
1001	U.S. Patent No. 11,920,339 to Brekke et al. (“the Patent-at-Issue”)
1002	Prosecution History of the Patent-at-Issue
1003	Declaration of W. Andrew Fennell in Support of Petition for Post-Grant Review of U.S. Patent No. 11,920,339
1004	GB Patent App. Pub. No. 2,451,853A (Cullen)
1005	U.S. Patent No. 9,394,680 to Bundy et al. (“Bundy”)
1006	U.S. Patent No. 4,827,684 to Allan (“Allan”)
1007	Japanese Design Patent No. D1213894 to Yamaguchi (Yamaguchi) with attached certified English-language translation
1008	Japanese Application No. 19991014482 to Tsukamoto (“Tsukamoto”)
1009	U.S. Patent No. 4,696,113 to Rice (“Rice”)
1010	U.S. Patent App. Pub. No., 2011/0047806 to Harrison (“Harrison”)
1011	GB Patent App. Pub. No. 2,433,522 to Robinson (“Robinson”)
1012	“Technical Bulletin: Top Flange Joist Hangers Installed on Walls Over Wood Structural Patent Sheathing or Drywall”, Simpson Strong-Tie Company, Inc., published August 2013.
1013	U.S. Patent No. 4,196,556 to Russo (“Russo”)
1014	U.S. Patent No. 9,151,058 to Leathe (“Leathe”)
1015	U.S. Publication No. 2001/0054270 to Rice (“Rice”)

Exhibit No.	Description
1016	<i>Fire-Rated Assemblies in Commercial Construction (“The Purple Book”)</i> , National Gypsum Properties, LLC (November 5, 2013)
1017	<i>GA-600-2012 Fire Resistance Design Manual, 20th Ed.</i> , Gypsum Association (June 2012).
1018	<i>2012 International Building Code</i> , International Code Council, June 2011 (“IBC-2012”)
1019	WoodWorks, Four-story Wood-frame Structure over Podium Slab (2010) (“WoodWorks”).
1020	ASTM C1396 Standard Specification for Gypsum Board (2001).
1021	U.S. Patent Application Publication No. 2012/0219785 to Yu et al. (“Yu”).
1022	U.S. Patent No. 3,601,428 to Gilb
1023	U.S. Patent No. 3,633,950 to Gilb
1024	U.S. Patent No. 3,752,512 to Gilb
1025	U.S. Patent No. 4,480,941 to Gilb
1026	EP Patent No. 0210744 B1 to Adams (“Adams”)
1027	U.S. Patent Application Pub. No. 2008/0134620 to Contasti (“Contasti”)
1028	<i>Curriculum Vitae</i> of Andrew Fennell
1029	Ferguson, Drywall: Professional Techniques for Great Results, Taunton Press, 2012
1030	U.S. Patent No. 4,261,155 to Gilb (“Gilb’155”)

Exhibit No.	Description
1031	“Mass Timber and Wood Framing,” Architectural Record Magazine, McGraw Hill Construction, November 2012, pp. 165-169 (“ArchRecord”)
1032	U.S. Patent No. 4,714,372 to Commins (“Commins”)
1033	ASTM C840 Standard Specification for Application and Finishing of Gypsum Board (2001)
1034	2012 International Building Code
1035	Definitions of “plate” and “bounding,” Merriam Webster’s Collegiate Dictionary, Tenth Edition, Merriam-Webster, Inc., 1993
1036	U.S. Patent App. Pub. No. 2005/0155307 to Timony (“Timony”)
1037	U.S. Patent Provisional App. No. 61/922,531 to Brekke et al. (‘339 Prov”)
1038	The Gypsum Construction Handbook, Sixth Edition, USG Corporation, Published by John Wiley & Sons, Inc. 2009
1039	Declaration of Sylvia D. Hall-Ellis, Ph.D.
1040	Curriculum Vitae of Sylvia D. Hall-Ellis, Ph.D.
1041	Wayback Machine Screenshot of Architectural Record website (November 12, 2012)
1042	Wayback Machine Screenshot of Architectural Record Continuing Education Website (January 23, 2013)
1043	Wayback Machine Screenshot of Wikipedia Architectural Record Entry (December 5, 2012)
1044	Declaration of Joseph V. Mauch in support of Motion for <i>Pro Hac Vice</i> Admission

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1047	Declaration of Sam Hensen
1048	Declaration of Tom Evans
1049	Michael Nelson Deposition Transcript
1050	Ryan Holmes Deposition Transcript
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1052	Richard Kazckowski Deposition Transcript
1053	Dwight Duncan Deposition Transcript
1054	Thomas Irmiter Deposition Transcript
1055	Paul Tucker Deposition Transcript
1056	Chris Horwitz Deposition Transcript
1057	Matt Church Deposition Transcript
1058	Andrea Baranyk Deposition Transcript
1059	“outward” definition, <i>Merriam-Webster Dictionary</i>
1060	“close” definition, <i>Merriam-Webster Dictionary</i>
1061	“conformance” definition, <i>Merriam-Webster Dictionary</i>
1062	U.S. Patent No. 4,464,877 to Gebhardt et al. (“Gebhardt”)
1063	U.S. Patent App. Pub. No. 2012/0219785 to Yu et al. (“Yu”)
1064	U.S. Patent No. 10,024,049 to Brekke et al. (’049 patent)

Exhibit No.	Description
1065	U.S. Patent No. 11,649,626 to Brekke et al. ('626 patent)
1066	<i>Simpson Strong-Tie Company, Inc. Columbia Insurance Co., PGR2023-00047, Final Written Decision, Paper 14 (P.T.A.B. Feb. 28, 2025).</i>
1067	<i>Simpson Strong-Tie Company, Inc. Columbia Insurance Co., PGR2021-00109, Final Written Decision, Paper 73 (P.T.A.B. Mar. 15, 2023).</i>
1068	Supplemental Declaration of W. Andrew Fennell
1069	<i>Intentionally Left Blank</i>
1070	<i>Intentionally Left Blank</i>
1071	Japanese Design Patent No. D1226744 to Kanai (Kanai) with attached certified English-language translation
1072	Wayback Machine Screenshot of Gypsum Association Website showing Fire Resistance Design Manual (GA-600-12) (November 12, 2012)
1073	Simpson Email (SST0012139) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1074	Simpson Email (SST0037770) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1075	Simpson Email (SST0087068) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1076	Simpson Email (SST0087225) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1077	Simpson Email (SST0087439) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1078	U.S. Patent No. 8,789,341 to Shepard

Exhibit No.	Description
1079	Simpson Photos of Prototype Joist Hangers (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1080	Simpson Email: forwarding IIC Complaint (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1081	U.S. Gypsum Company, “Pre Dry-In construction: The Evolution of Construction Starts From Within,” White Paper (2014)
1082	Simpson Email (SST0012140) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1083	Simpson Email (SST0012141) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1084	Simpson Email (SST0087474) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1085	Simpson Email (SST0037834) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)
1086	<i>Simpson Strong-Tie Company, Inc. Columbia Insurance Co., PGR2021-00109, Patent Owner’s Response, Paper 45 (P.T.A.B. Jun. 9, 2022).</i>
1087	<i>Simpson Strong-Tie Company, Inc. Columbia Insurance Co., PGR2019-00063, Patent Owner’s Response, Paper 27 (P.T.A.B. Jun. 4, 2020).</i>
1088	Patent Owner’s Response to Office Action mailed July 17, 2017 of U.S. Application No. 14/555,049 (the ’049 patent)
1089	Simpson Email (SST0086165) (PROTECTIVE ORDER MATERIAL - ATTORNEY EYES ONLY)

I. INTRODUCTION

The Institution Decision (“ID”) correctly determined that there was nothing patentable about using one of two possible methods to install an otherwise unpatentable hanger, and that the claimed method was not patentably distinct over the applied art.

In response, Patent Owner (PO) challenges the grounds by mischaracterizing the claims and the prior art combinations, egregiously misrepresenting data relied upon by its experts while obfuscating data contrary to its position, and taking inconsistent positions when discussing the prior art (alleging claim scope is narrow) vis-à-vis the secondary indicia (alleging claim scope is broad). EX1068, ¶¶1-172. Further, despite the sheer number of pages submitted, PO’s secondary considerations evidence lacks any nexus to the actual claims of the ’339 patent.

A. Comparing select commercial products is no substitute for comparing the claims to the prior art combinations.

Throughout its Response, PO references its licensee’s (MiTek’s) commercial “FWH” hanger as a strawman for the claims of the ’339 patent, and Petitioner’s commercial “DU” hanger as a strawman for the prior art – then rests many arguments on a comparison *between the two commercial products*. This comparison fails because the FWH hanger has many features not claimed in the ’339 patent, and the DU hanger is not representative of the hangers from the challenged prior art combinations. EX1068, ¶¶87-103, 122-142. Further, PO’s

declarants consistently identified the “narrow slot” in the sheathing to “minimize penetration” by the FWH hanger’s “back-to-back” extension flanges as the advantageous feature of the claimed method – despite this not being recited in the claims at all. EX1050, 28:17-30:24; EX1052, 50:3-52:25; EX1054, 50:16-20; EX1057, 51:8-52:18.

B. PO mischaracterizes the prior art combinations and argues distinctions not recited in the claims.

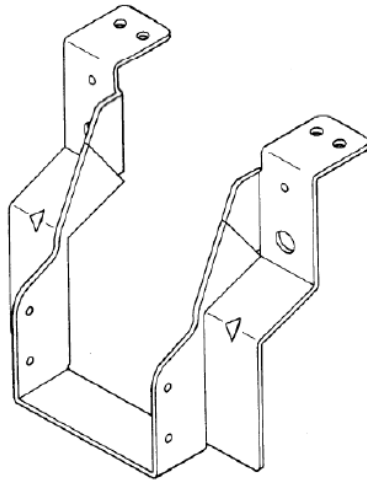
As already appreciated by the Board, the cited prior art combinations show the claimed installation method. As discussed throughout the Petition, Allan explicitly teaches installing a connector, cutting sheathing, and sliding sheathing into place so an outstanding extension portion extends through the sheathing. EX1006, 3:28-42, 4:1-14; Pet., 23-27; EX1068, ¶¶61-67. Commins similarly describes cutting an opening at a sheathing panel top edge and sliding the cut sheathing into place around a connector. EX1032, 4:27-41; Pet., 148-149. PO attempts to dismiss Allan’s teaching because “cutting a hole in a fire barrier can provide a path for fires to spread.” POR, 45. Yet, as discussed in depth below, the claims include no limitations on “opening” size, and no requirement that the opening itself satisfy a particular fire rating. PO attempts to dismiss Commins as being a “hurricane tie” (POR, 54), but Commins is nonetheless a structural connector used in framing and thus analogous art within the toolbox of a POSA. EX1068, ¶¶73-74.

PO lists Petition sections that allegedly “fail[] to identify or provide any citation to where claim limitations” are taught in the art (POR, 56-57), but PO appears to have ignored such sections’ references to corresponding “Motivation to Combine” sections of the Petition, which explained—with pin-cites—the art citations in even further detail. *See*, Pet., 21-27, 66-72, 102-109, and 144-153.

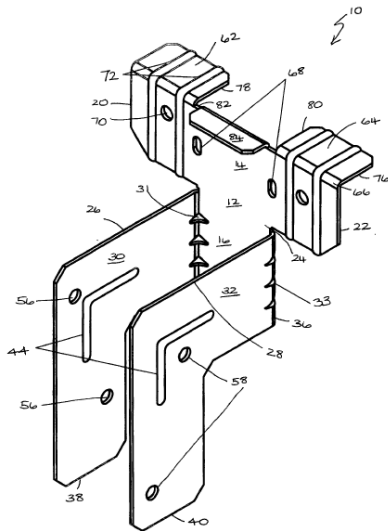
Further, PO mischaracterizes most of Petitioner’s prior art grounds as “start[ing] with” and “modifying” Bundy (POR, 22-23), constructing yet another strawman and simply arguing against Bundy rather than the actual art combinations. None of the asserted grounds, however, rely on Bundy’s *hanger* in the prior art combinations, nor did Petitioner “start with” Bundy and propose modifications thereto. Rather, Petitioner’s grounds *start with* other hangers, each of which by their structural nature would have been installed prior to sheathing. Petitioners then show how *those hangers* would have been modified given certain of Bundy’s teachings (e.g., using drywall to protect wood-frame construction in a fire wall assembly). Petitioner does not propose modifications *to Bundy*, but rather modifications *to Cullen, Yamaguchi, and Robinson* based on certain teachings found in Bundy. Pet., 20-23, 65-68, 102-105; EX1068, ¶¶87-103.

PO also raises the red herring of “moment arm”/”buckling” concerns against the art, despite acknowledgement from its own declarants that addressing load and moment arm concerns were well within a POSA’s skillset (e.g., calibrating height

and thickness of the hanger metal). EX1049, 42:9-43:1; EX1052, 79:15-18, 97:13-17; EX1055, 23:6-21; EX1068, ¶¶95-100. PO further ignores that, contrary to its position, similar successful commercial products operate with no apparent “buckling” issues:



EX1007, Perspective View vs. EX2051, 289 (showing Simpson's DGT Hanger).



EX1004, FIG. 1 vs. EX2020 (showing Simpson's DGH Hanger).

C. PO grossly misrepresents data on which its secondary considerations evidence is based, and obfuscates data contradicting its conclusions.

PO grossly misrepresents and obfuscates key data in a report relied upon by its experts, calling into question its entire secondary considerations position.

EX1068, ¶¶143-149. PO and several PO experts tout the Alley report (EX2054) for showing that installing hangers prior to drywall was “the primary reason” for the FWH hanger’s success. EX2050, ¶368; EX2051, ¶383; EX2055, ¶18.

Mr. Alley states: “In open-ended feedback, a majority of construction professionals cite the installation process as a reason for [selecting] the FWH or DGT products.” EX2054, ¶¶23, 80, 6. Yet the underlying data reveals this is *patently false*. In Table II (EX2054, ¶¶83-84), Mr. Alley admittedly cherry-picked responses allegedly supporting this statement (EX1051, 24:21-25:5)—yet when questioned further, acknowledged that only 22 of 84 respondents selecting the FWH hanger (about 26%) mentioned the installation method as influencing their decision (with about the same percentage for the DGT hanger). EX1051, 23:6-23:23, 25:23-26:3. And of those 22 responses, most included additional features unrelated to installation, such as durability and fire rating. So while *only about a quarter of respondents* mentioned the installation method as being influential, with

even fewer listing it as the sole reason, *Alley states that “a majority” of respondents* did so.

As for drywall installation order allegedly being “the primary reason” for the FWH hanger’s success, Mr. Alley admitted that *other factors were “statistically similar”* to the FWH hanger’s drywall installation method, and that those features, such as the hanger’s “penetration [of the drywall] without reducing the fire resistant rating,” *“could also be a primary factor.”* EX1051, 35:5-36:9. Indeed, Mr. Alley admitted that 82% of survey respondents identified the penetration aspects as a reason to select the hanger, while only 79% identified the installation method as a reason.¹ EX1051, 31:10-33:19. Mr. Alley limited his suggestive “primary reason” questions to the installation method—despite respondents’ stronger interest in maintaining the fire rating—simply because PO’s attorneys informed him the installation method was “the patented feature.” EX1051, 11:2-5, 14:22-15:14.

Compounding the egregiousness, the Alley report obfuscated data contradicting PO’s positions, which would have presented a more accurate comparison of features—namely the full set of open-ended responses identifying features other than installation method as influencing respondents’ decisions. *See,*

¹ PO similarly mischaracterizes data about the Simpson DGT hanger.

EX1051, 34:12-35:9.

EX2054, Appx. C, pp. 11-12, columns “Q102” and “Q103.” When questioned, Mr. Alley admitted the report presented in this proceeding did not disclose all underlying data for the conclusions presented. EX1051, 26:19-27:15.

Accordingly, no weight should be given to the Alley report, or the opinions of PO’s declarants who relied on it.

D. PO’s secondary indicia lacks nexus to the claims.

PO’s misrepresentations and obfuscations attempt to hide that PO’s secondary considerations evidence lacks nexus as not commensurate with the breadth of the claims. EX1068, ¶¶122-142. It is not enough that the relied-upon product “include[s]” the invention – the product and evidence must be “coextensive” with the claims. *Polaris Indus., Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1072 (Fed. Cir. 2018). Claims lacking patentable detail do not become patentable simply because they are broad enough to read on some aspects of a commercial product.

Indeed, the challenged claims omit critical features—cutting narrow slots instead of larger openings and providing hangers with surface-to-surface extension flanges so the penetration maintains a given fire rating—that PO’s own experts agree were the reasons for any alleged secondary considerations, as discussed in §III below. Without reciting these critical features, the challenged claims are “broad enough to cover” hangers and installation methods that “do or do not” solve

the stated goal of the '339 patent—that “the integrity of the fire retardant sheathing should be maintained and interruptions of the sheathing kept to a minimum.”

Therasense, Inc. v. Becton, Dickinson and Co., 593 F.3d 1325, 1336 (Fed. Cir. 2010); EX1001, 1:44-46; EX1068, ¶¶120-121.

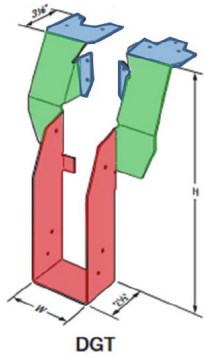
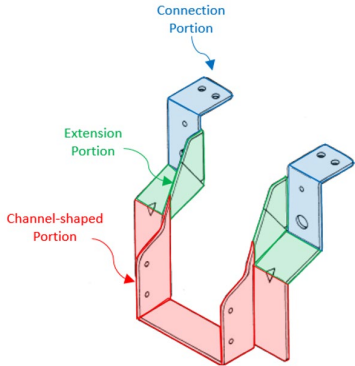
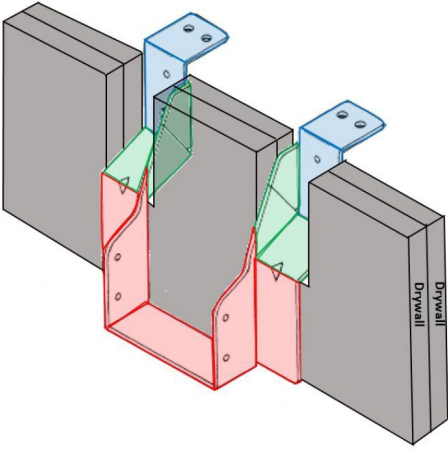
Underscoring this lack of nexus is that out of all PO's experts, only Mr. Tucker and Mr. Kaczkowski ever read the '339 patent claims. Their secondary considerations analysis relied on the other declarants' analysis of the alleged “patented method.” Yet none of the other declarants actually read the '339 patent claims, instead relying upon PO's counsel's characterization of “the patented method” as simply claiming installation of a hanger prior to sheathing.² EX1049, 11:16-20; EX1050, 11:2-7; EX1051, 10:9-11; EX1053, 16:2-17:3; EX1057, 12:12-14.

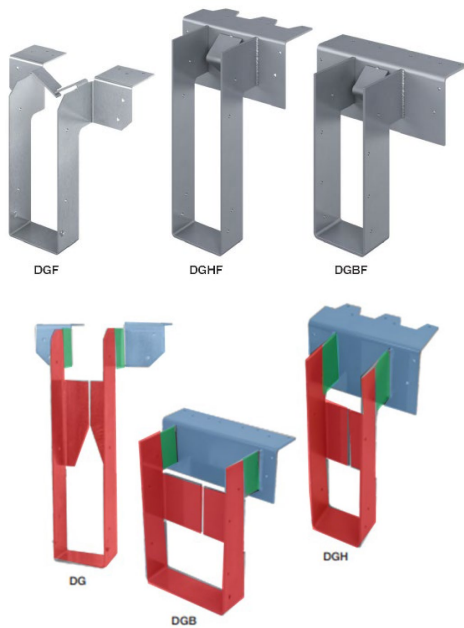
E. PO inconsistently construes its claims narrowly against the prior art but broadly everywhere else.

PO inconsistently alleges its claims are broad when asserting secondary indicia and infringement, but narrow when prior art is raised. For example, PO's evidence routinely identifies “the patented method” as simply installing the hanger prior to drywall—significantly broader than the claims. *See, e.g.*, POR, 78-83. In

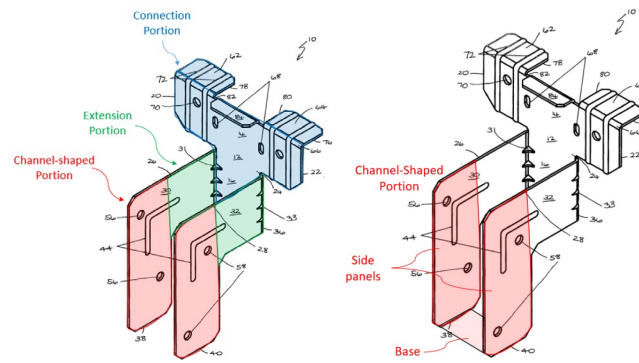
² PO did not present Mr. Dunkle for deposition, so EX2057 should be given no weight.

another example, PO has filed suit contending that installing Petitioner's products on the left in the below table is "coextensive with the claimed features" of the '339 patent, and refers to those products in this proceeding to allege copying of the claimed method. POR, 86-88, EX2050, ¶357. Yet PO asserts that installing the prior art on the right as provided in the combined grounds is fundamentally different from the '339 patent claims.

Allegedly the same as the claims	Allegedly different from the claims
 <p>DGT EX2050, 155.</p>	 <p>Pet., 68.</p>
 <p>DGT fire wall hanger installation. EX2051, 292.</p>	 <p>Pet., 69.</p>



POR, 88, 94; EX2134, 2.

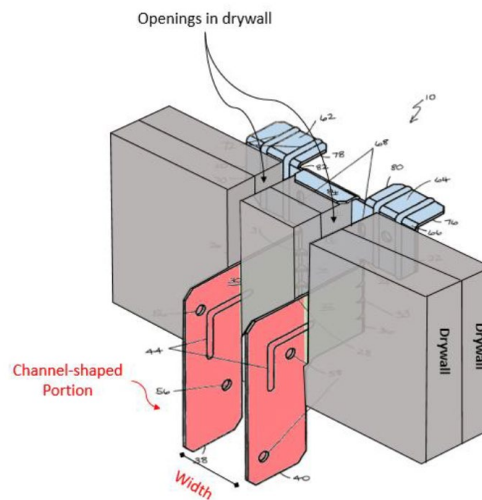


Pet., 29, 40.



DG Hanger with I-Joists

EX2020, 2.



Pet., 33.

PO's alleged deficiencies in the prior art combinations (e.g., large cutout, moment-arm considerations, etc.) also exist in the accused commercial products.

PO cannot take one position to establish infringement and then take a conflicting or

inconsistent position to defend against invalidity. The Board should find all challenged claims unpatentable. EX1068, ¶¶101-103.

II. CLAIM CONSTRUCTION³

A. “Planar Extension Plates”

A “planar extension plate” does not include a bend. PO’s construction would make claim 23 superfluous. EX1001, 14:45-54; EX1068, ¶¶25-27. Additionally, as PO argues that a bend’s existence matters when addressing the prior art (POR, 68-71), PO cannot inconsistently argue the bend is irrelevant for its claim construction and subsequent written description arguments. Even the specification identifies bends as separate elements. EX1001, 2:15-18, 14:45-54; EX1068, ¶26. That *Bundy* is PO’s entire claim construction support instead of its own specification and claims is telling. POR, 6-10.

³ PO proposes certain constructions different from those in the Petition.

Petitioner maintains its original constructions are correct, but even under PO’s constructions, the claims are unpatentable. EX1068, ¶¶24-30.

III. PO'S SECONDARY CONSIDERATIONS EVIDENCE SHOULD BE GIVEN LITTLE WEIGHT.

A. PO fails to show nexus.

1. PO's evidence is not coextensive with the patented invention.

First, PO is not entitled to a presumption of nexus for its secondary considerations evidence because its FWH product and installation method are *not* coextensive with the patented invention, as evidenced by PO's own witnesses. EX1068, ¶¶120-135.

A nexus is presumed when the patentee's product "embodies the claimed features, and is *coextensive with them*." *Polaris*, 882 F.3d at 1072; *Therasense*, 593 F.3d at 1336; *In re Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011).⁴ The coextensive requirement is not met simply by showing that "the patent claims broadly cover the product that is the subject of the evidence of secondary considerations." *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1377 (Fed. Cir. 2019). Further, a "patent claim is not coextensive with a product that includes a 'critical' unclaimed feature that is claimed by a different patent and that materially impacts the product's functionality." *Id.* at 1375. This is the case here with PO's FWH hanger.

⁴ Emphasis is added throughout, except where otherwise indicated.

It was not the installation order alone that drove the demand for MiTek's FWH hanger. Rather, it was the ability to install sheathing after mounting the hanger *without creating disruptions in the firewall assembly*, which is attributable to the unclaimed feature of cutting a *slot* in the drywall to receive the hanger's *surface-to-surface extension flanges*. EX1068, ¶¶123-134. While the challenged claims simply require cutting *an opening* in the sheathing, the '339 patent specification specifies cutting a "slot." *See generally* EX1001 (describing to cut a "slot" sixty times *while never* reciting the term "opening"). The '339 patent's use of the term "slot" is significant as distinguishing from the '339 patent's admission that it was known to provide a "cutout for the entire cross section of the truss" in the firewall assembly. EX1001, 1:41-42. Indeed, Mr. Kaczkowski noted that a "person of ordinary skill in the art would recognize that an opening in this case is simply this narrow slot that is being taught by the specification." EX1052, 52:1-25; 51:5-17, 49:24-50:2, 50:3-10. Per Mr. Church, "It's a very clean, single cut, and so there's not really any notching that has to go on...a notch would require two vertical cuts and a horizontal cut to notch out a section of gypsum. The FWH hanger doesn't require that. It's just a simple vertical cut." EX1057, 52:8-53:7. In fact, many of PO's declarants emphasized the importance of the "slot" over a larger opening. EX1054, 50:6-20, 52:19-23, 53:4-7; EX1055, 62:13-18.

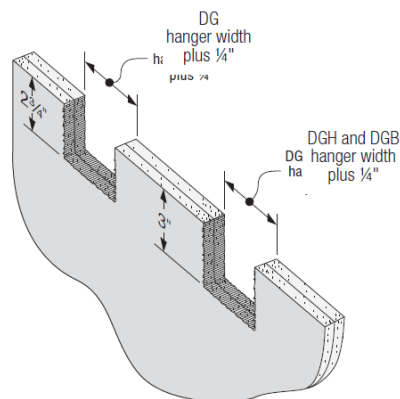
The significance of the narrow slot is further exemplified in PO's FWH product literature, [REDACTED]
[REDACTED]
[REDACTED] See EX2132; EX2146; EX2158; EX2054, 8. None of PO's secondary considerations evidence allows for simply cutting an opening of indiscriminate size. EX1068, ¶¶131-134.

Mr. Kaczkowski repeatedly acknowledged that the unclaimed spatial arrangement of the extension flanges "significantly increases the moment resistance provided by the hanger," enabling the hanger to hold a joist's end offset from a wall without buckling by EX2050, ¶70. "[T]he back-to-back extension flanges and the narrow width of these flanges enables the installation sequence that is being taught in the 339 patent while at the same time minimizing the amount of fire-rated sheathing that needs to be removed," which he agreed was a differentiator over the art, as well. EX1052, 52:18-25, 84:21-85:12; *see also* EX1001, 11:33-41. Mr. Holmes similarly confirmed the significance of cutting only an unclaimed narrow slot because of the hanger's unclaimed shape. EX1050, 28:17-30:24.

Notably, in the same family, US10,024,049 and US11,649,626 positively recite surface-to-surface extension flanges. EX1064, 11:40-48. At the time, PO asserted that "the extension portion 140 is very thin so that only a very small slit

through the firewall board is required.” EX1088, 7. Moreover, the only ’626 patent claims that survived PGR recite “the first and second extension flanges engaging each other along a juncture.” EX1065, 15:28-33, 21:41-46. The patent protection sought for the surface-to-surface extension flanges “is *alone probative*” of the feature’s significance. *Fox Factory*, 944 F.3d at 1378; EX1068, ¶126.

To the extent PO alleges that the preamble or term “fire wall hanger” in the ’339 patent infers that the recited openings are necessarily “narrow,” PO has asserted the same claims against commercial hangers that clearly require cuts larger than a simple slot:



Drywall Notches



DG Hanger with I-Joists

EX2020, 2-3.



EX2051, 292.

2. PO’s arguments relate to a known prior art element.

Second, PO fails to establish a nexus between its secondary considerations evidence and the claimed invention because their arguments rely on a feature that was already well known in the art—installing sheathing after mounting a structural connector. EX1068, ¶¶136-142.

“[O]ur case law makes clear that objective evidence of nonobviousness lacks a nexus if it exclusively relates to a feature that was known in the prior art”—not necessarily well-known. *Yita LLC v. MacNeil IP LLC*, 69 F.4th 1356, 1364 (Fed. Cir.) (quotes omitted).

PO’s secondary considerations rationales rest on the premise that the construction industry never mounted hangers prior to drywall installation before

introduction of their FWH hanger. POR, 97-101. PO supports its contention by comparison to Petitioner's DU product. POR, 77-82. But PO appears to forget that other hangers were installed before drywall prior to the introduction of Petitioner's DU product. Allan, ArchRecord, and Commins each teach that it was known to notch and install drywall around a mounted structural connector so that the connector extends through sheathing. EX1006, 4:10-14; EX1031, 166; EX1032, 1:63-168, 4:27-41. PO's own experts agreed that hangers prior to the DU hanger were routinely mounted before drywall—even in fire assemblies. EX1052, 28:24-29:2; EX1050, 46:2-12. Even the '339 patent background admits it was known to cut openings in drywall to accommodate trusses or joists, as supported by Mr. Hensen's declaration. EX1001, 1:25-41; EX1047, ¶¶12-13. Thus, the touted "FWH method" of simply installing sheathing after mounting a hanger, without more, was well-known, and therefore lacks a nexus to the secondary considerations. EX1068, ¶¶136-142; *Ormco Corp. v. Align Tech., Inc.*, 463 F.3d 1299, 1312 (Fed. Cir. 2006); POR, 75-82.

B. PO falls short of establishing nexus of commercial success.

PO's assertion that the installation sequence alone was the "primary driver" for consumer demand is wrong. POR, 83. As discussed in §1.C, Mr. Alley's survey results show that an unclaimed feature—that the hanger's penetration (e.g., via a slot) will not reduce the assembly's fire rating—was the most influential factor

influencing the respondent's decision to purchase a FWH hanger. EX2054, 30-31.

And a majority of respondents cited *factors other than* the installation sequence as influencing their decision. EX2054, 59-61.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, there were other market forces at work than simply relying on the installation method as being the primary driver of sales. EX1068, ¶¶143-149.

C. PO fails to show copying.

“Not every competing product that arguably [falls] within the scope of a patent is evidence of copying...Rather, copying requires the replication of a specific product.” *Iron Grip Barbell Co. v. USA Sports, Inc.*, 392 F.3d 1317, 1325 (Fed. Cir. 2004).

PO's own evidence confirms that Petitioner did not copy PO's hanger design. EX2050, ¶265. Mark Rolf, a named inventor of the '339 patent, also admitted that Petitioner's DGT hanger required “*a bigger notch* in the drywall”

and was “*completely different*” than MiTek’s FWH hanger. EX2070, 86:4-15; EX1068, ¶¶150-154; EX1047, ¶54; EX1048, ¶22.

D. PO’s industry praise is not tied to the claimed invention.

PO’s cites Simpson and MiTek emails to show industry praise. POR, 88-89. But this “praise” has *no nexus* to a claimed feature. EX1068, ¶¶155-162. The email communications are generic statements, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, PO ignores other evidence suggesting that customers preferred mounting Petitioner’s DU hanger over installed sheathing for its cost-effectiveness. EX2067, 59:20-60:5; EX1068, ¶163.

E. PO fails to show industry skepticism and failures by others.

PO’s industry skepticism/failure arguments cherry-pick evidence out of context. POR, 89-91. Petitioner’s engineers designed the DU hanger to extend over installed sheathing to facilitate the trending practice of “pre-rocking.” EX1047, ¶¶20-35; EX1048, ¶¶5-17. That Petitioner elected to design a hanger for a different construction practice does not constitute skepticism or failure to develop FWH’s

design. EX1068, ¶¶164-165. Furthermore, PO's evidence shows that Petitioner's engineers understood how the FWH hanger could hold a joist's end offset from a wall. [REDACTED]

[REDACTED] PO's reliance on one person's individual, unsubstantiated skepticism does not evidence that PO went against conventional industry wisdom.

Moreover, Petitioner developed hangers based on prior art designs that allowed the hanger to be mounted before sheathing installation. EX1068, ¶166 (comparing Petitioner's DG/DGB/DGH hangers to Cullen and Petitioner's DGT hanger to Yamaguchi). Thus, Petitioner had no difficulty developing a hanger that permitted sheathing to be installed after mounting the hanger. EX1068, ¶166.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] EX1047, ¶¶27, 46-50; EX1048, ¶¶18-23. The

final outcome is what matters. *Id.*

F. There was no long-felt need

PO fails to establish a long-felt need, which cannot be presumed. *In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006).

No need to provide fire-rated assemblies in multi-story construction was prevalent until the early 2010s. EX1068, ¶¶167-168; EX1047, ¶¶5-9; EX1054, 41:14-42:12. At this time, the wood-construction industry pushed for the use of wood instead of traditional steel or masonry for Type III multi-family structures. EX1068, ¶168; EX1047, ¶¶5-9; EX1031; EX2067, 46:3-9, 57:25-58:9. The rise in wood-frame mid-rise construction naturally raised the demand for constructing fire-rated wall assemblies to comply with local building codes. EX2067, 51:1-10; EX1068, ¶169.

In response—around 2012-2013—MiTek and Simpson started developing hangers specifically designed for fire-rated assemblies to meet the higher demand. EX1068, ¶170. Thus, PO's invention was merely the result of rising demand for fire-rated assemblies in wood-frame mid-rise construction, not a solution to some long-felt need. EX1068, ¶171; EX1047, ¶¶5-35; EX1048, 5-8.

PO has not demonstrated that any secondary considerations outweigh Petitioner's strong obviousness showing. EX1068, ¶172.

IV. PO'S EXPECTATION-OF-SUCCESS, MOTIVATION-TO-COMBINE, AND HINDSIGHT ARGUMENTS FAIL

A. PO misrepresents Petitioner's prior art combinations in Grounds 3-8 by alleging that Bundy's hanger is the starting point.

As discussed in §1.B, PO approaches the combinations incorrectly. The Petition relies on Cullen's, Yamaguchi's, and Robinson's hangers with Bundy's

wall assembly layers. Pet., 20-23, 65-68, 102-105. Thus, PO's arguments about testing of Petitioner's DU hanger is moot with respect to the asserted combinations. EX1068, ¶¶87-103.

B. Bundy does not teach away from cutting drywall.

Bundy's preference for mounting the hanger over the drywall does not constitute a teaching away from Allan's teaching to cut insulation to receive an extension of a structural connector. EX1068, ¶104; POR, 28-31. Rather, as explained by Thomas Evans, a named inventor of the Bundy patent, Petitioner pursued Bundy's hanger over other designs that allowed sheathing installation after mounting the hanger to reduce costs and facilitate the emerging practice of "pre-rocking." EX1048, ¶¶5-17; EX1047, ¶¶26-34; EX1068, ¶105. [REDACTED]

[REDACTED]

[REDACTED]

Furthermore, prior to 2013 it was common practice to cut openings in sheathing around structural connectors or other penetrations, as acknowledged by PO's declarants. EX1050, 46:2-12; EX1049, 27:1-4, 27:20-23; EX1068, ¶¶106-110. Indeed, Allan, ArchRecord, and Commins teach cutting drywall to fit around mounted structural connectors as a common, alternative solution to Bundy's method. EX1003, ¶¶50-58, 418-424.

C. Petitioner’s rationales for adapting Cullen’s, Yamaguchi’s and Robinson’s hangers to extend through sheathing are premised on the prior art.

The Board has already held that the proposed modifications to Yamaguchi’s and Robinson’s hangers would have been obvious to a skilled artisan. PGR2023-00047, Paper 14 at 20-48, 56-66; PGR2021-00109, Paper 73 at 143-152. PO attempts to retread the same arguments here, but should meet the same result. Contrary to PO’s “hindsight” argument (POR, 34-36), Petitioner’s rationales for extending prior art hangers through sheathing are rooted in the references as discussed in §1.B. EX1068, ¶¶111-113.

D. PO mischaracterizes the references to support its arguments against motivation-to-combine.

1. Holding a joist’s end away from Cullen’s back flange would not change Cullen’s principle of operation.

Contrary to PO’s assertions, nowhere does Cullen describe that a joist must abut the back flange of the hanger to mount the joist to the wall assembly. *See* EX1004. PO’s argument relies on Cullen’s disclosure of “barbs,” but ignores that “[a]lternatively, the one or more barbs are arranged on an inner face of the side walls.” EX1004, 4:11-12; EX2061, 113:9-25. Further, Cullen’s principle of operation is fully addressed in the Petition. Pet., 21-23; EX1068, ¶¶114-116.

Allegations that Cullen’s sidewalls would “buckle” in this arrangement are unfounded. POR, 38-39. *See supra* §1.B. EX1068, ¶¶95-103.

2. Using Yamaguchi's hanger as proposed would not change Yamaguchi's principle of operation.

Yamaguchi never describes that the joist must abut the back flange of the hanger to mount the joist to the wall assembly. *See* POR, 40-41; EX1007. A POSA would have understood to adjust the thickness of Yamaguchi's hanger and the height of its extension flanges to securely hold a joist's end away from a wall without sheathing, just like Petitioner's similarly-shaped DGT hanger (see §1.B above). EX1068, ¶117.

Furthermore, as previously held by the Board, Yamaguchi's hanger would have been suitable for a firewall assembly, not just for a foundation wall. EX1066, 42; POR, 39; EX1003, ¶240; EX1068, ¶118.

3. Receiving sheathing in Robinson's hanger would not change Robinson's principle of operation.

As explained in Mr. Fennell's first declaration, a POSA would have understood to size the gap between surfaces 118, 122 to receive sheathing while additionally accommodating cables/piping if needed. EX1003, ¶338; EX1068, ¶119.

V. THE PRIOR ART COMBINATIONS RENDER ALL THE CLAIMED STEPS OBVIOUS.

PO defines a POSA as having more work experience than was proposed by Petitioner. POR, 4. Petitioner disagrees, and asserts that its proposed definition, which PO agreed with in related PGRs, is still appropriate. Regardless, because

connector designers generally have knowledge of associated installation and performance requirements, Petitioner asserts that the claims would have been obvious to a POSA under either definition. EX1068, ¶9.

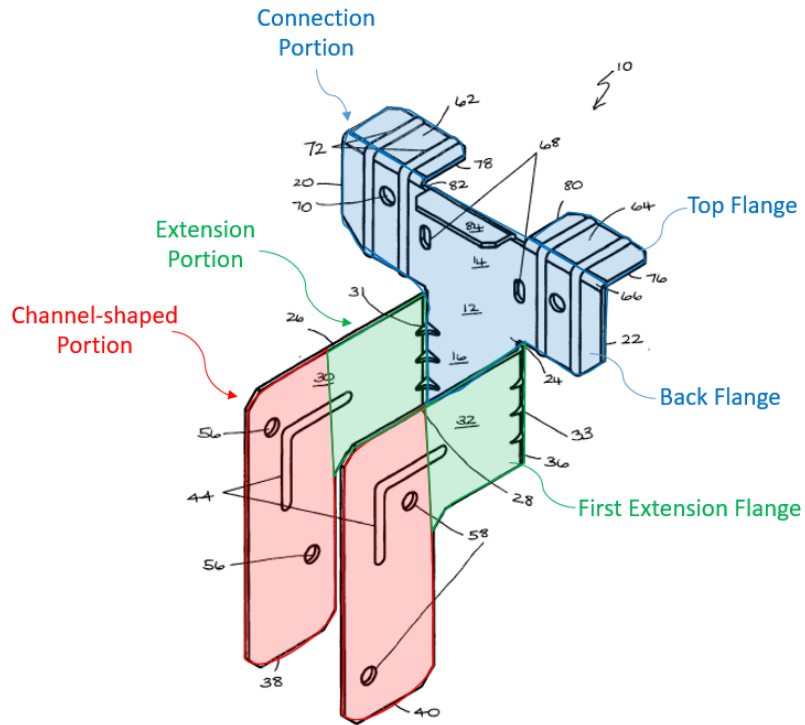
A. PO attacks asserted references individually and ignores the Petition’s rationale for combining the references.

See supra §1.B; EX1068, ¶¶54-55.

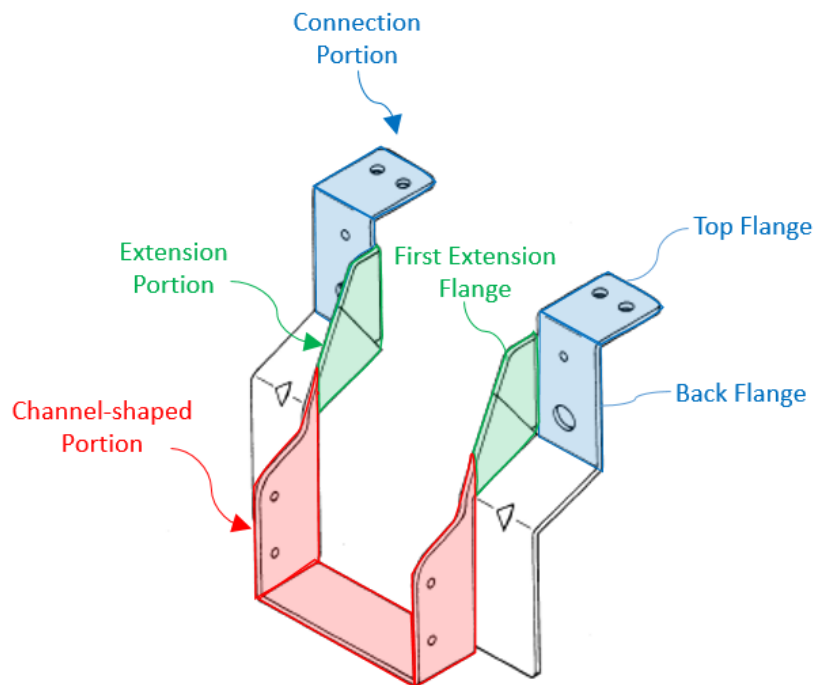
1. Cullen’s, Yamaguchi’s, and Robinson’s hangers must be mounted before installing Bundy’s sheathing to access the hangers’ back flange mounting holes.

PO’s arguments regarding Bundy’s installation method (POR, 58, 64-65) fail to consider (1) how Cullen’s, Yamaguchi’s, and Robinson’s hangers are secured to the wall frame, and (2) that Bundy is relied upon for its disclosure of a wood-frame wall assembly with drywall, not its installation method. Allan in conjunction with the hanger structures below describes the installation order. EX1068, ¶56-60.

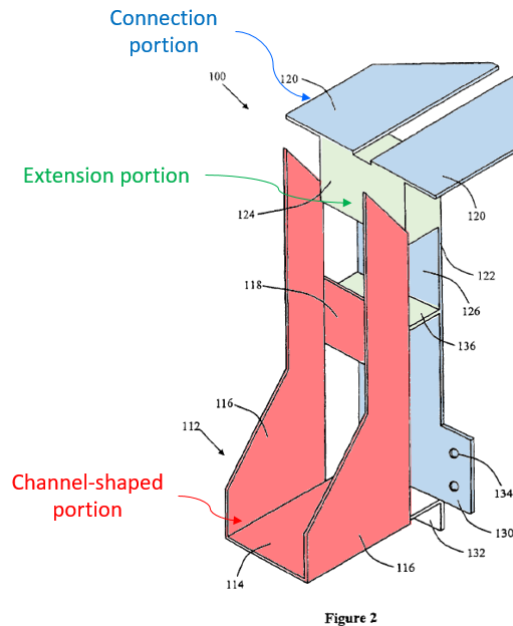
Cullen’s, Yamaguchi’s, and Robinson’s hangers include mounting holes on their back flange to receive fasteners installed into the wall frame. EX1004, 16:7-10; EX1007, 2; EX1011, 5:10-11.



EX1004, FIG. 1 (annotated).



EX1007, Front View (annotated).



EX1011, FIG. 2 (annotated).

Petitioner's challenges do not propose changing such references' attachment mechanisms (e.g., connection portions). Access to these mounting holes is critical for securing the hanger in Cullen, Yamaguchi, and Robinson to the wall frame.

EX1068, ¶¶58-60. Accordingly, a POSA would have mounted Cullen's, Yamaguchi's, and Robinson's hangers before installing drywall so that the installer would have clear access to the back flange mounting holes. *Id.*

2. Allan teaches installing drywall after mounting a structural connector to a wall.

PO misapplies the art. PO's Allan argument turns on when Allan's anchor is attached to the *masonry veneer wall M*. POR, 44-49, 62-63. But the claims require that the hanger be mounted *to the frame wall* (Allan's frame wall F) before

installing sheathing. Allan discloses mounting the anchor to frame wall F *prior* to installing the drywall. EX1006, 3:28-42, 4:1-14; EX1068, ¶¶61-67.

3. ArchRecord-Commins-Cullen renders all claim limitations obvious.

As explained in the Petition, a POSA would have been motivated to replace the hanger in Option A of ArchRecord with the functionally equivalent hanger of Cullen. Pet., 150; EX1003, ¶¶417-432. In doing so, a POSA would have understood that Cullen's hanger would have to be installed before the drywall to access apertures 68 on the hanger's back plate. Pet., 153; EX1068, ¶¶68-69. In view of Commins and Option B in ArchRecord, a POSA would have understood to notch the exterior edge of the drywall to receive the drywall around Cullen's hanger. Pet., 146, 149; EX1031, 166; EX1032, 1:63-68, 4:27-41; EX1068, ¶¶70-74. PO simply fails to recognize what is taught by the *combination* of the references. POR, 49-54. *See also* §1.B.

B. PO ignores the background knowledge in the art showing that it was well known to cut and install sheathing around penetrations in the wall assembly.

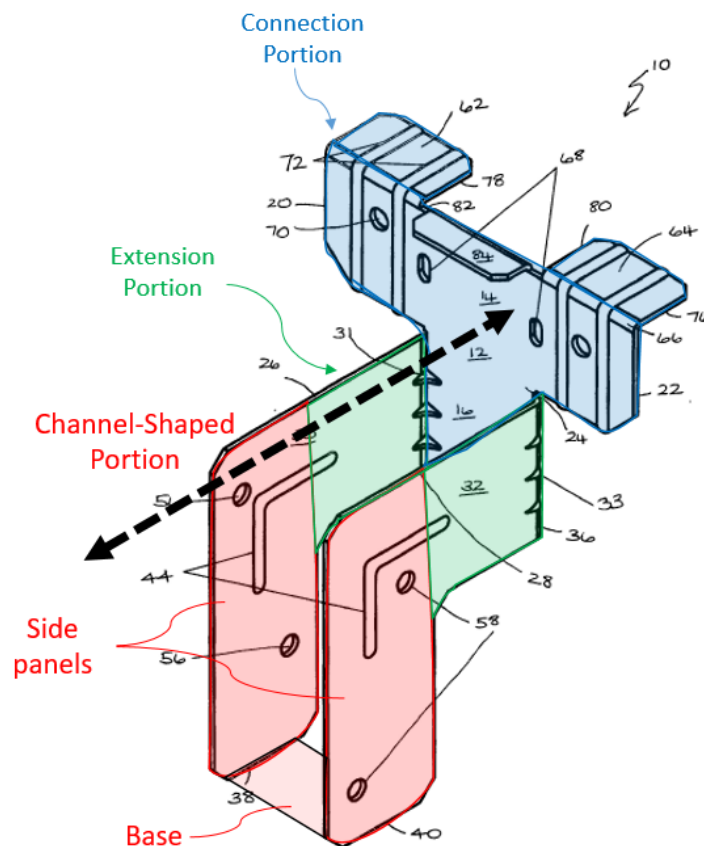
PO's reference to *Arendi S.A.R. v. Apple Inc.*, 832 F.3d 1355, 1361 (Fed. Cir. 2016) is inapposite. POR, 65-67. In *Arendi*, common sense was relied upon for a "major" limitation missing in a *single reference* obviousness ground. In contrast, Petitioner cites additional references to show that Allan's technique of cutting slots and installing sheathing around a mounted structural connector was commonly

practiced in wood-frame assemblies. *See Messerschmidt v. United States*, 29 Fed.

Cl. 1, 27 (Fed. Cl. 1993), *aff'd*, 14 F.3d 613 (Fed. Cir. 1993); EX1068, ¶¶75-83.

C. Cullen discloses claim 25 under PO's own construction.

PO's arguments about Cullen's "bend" for claim 25 are contradicted by PO's additional position that "planar" plates include "*de minimis* bends at the ends of the plate." *Compare* POR, 68-71 *with* POR, 10 (emphasis in original). If "planar" plates include portions of bends at the ends of the plate, as purported by PO (POR, 115), then the axis extending along Cullen's sidewall 30 must extend normal to the planar surface of its back plate. EX1068, ¶84.



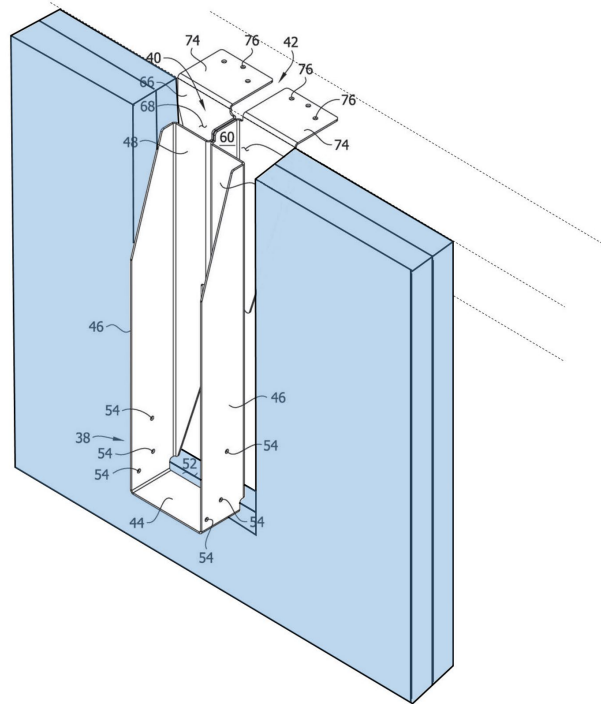
Cullen, FIG. 2 (annotations from Pet., 62).

VI. CLAIMS 1-31 LACK WRITTEN DESCRIPTION

A. Claims 1 and 27: “inserting” and “moving”/“arranging” steps.

In its ID, the Board appears to have misapprehended Petitioner’s first ground as arguing that the ’339 patent specification does not support installing the hanger before installing sheathing. ID, 29. Petitioner’s ground actually focuses on “*inserting*”, not “installing”—specifically, the ’339 patent does not support an “inserting” step that is separate and distinct from the claimed “moving” step. Pet., 10-11. Separately recited elements in a claim are presumed to be distinct elements. *Kyocera Senco Industrial Tools Inc. v. ITC*, 22 F.4th 1369, 1382 (Fed. Cir. 2022). Because “inserting” and “moving”/“arranging” are recited as separate, distinct elements, the ’339 patent specification must adequately support *each* of them, *regardless of sequence*. Pet., 10-12; EX1068, ¶¶31-32.

The specification describes three installation sequences; as PO admitted, only in the third is the sheathing installed after the hanger. POR, 103, *ref’g* EX1001, 7:65-8:21. In that embodiment, only one step is associated with “installing” the sheathing: “*moving* the sheathing upward into place”—not inserting. See EX1001, 8:17-21, 11:26-31; Pet., 10-11. This does *not* inherently result in sheathing being *inserted* behind the channel-shaped portion. EX1068, ¶¶31-36. Consider, e.g., an opening matching the channel-shaped portion’s footprint:



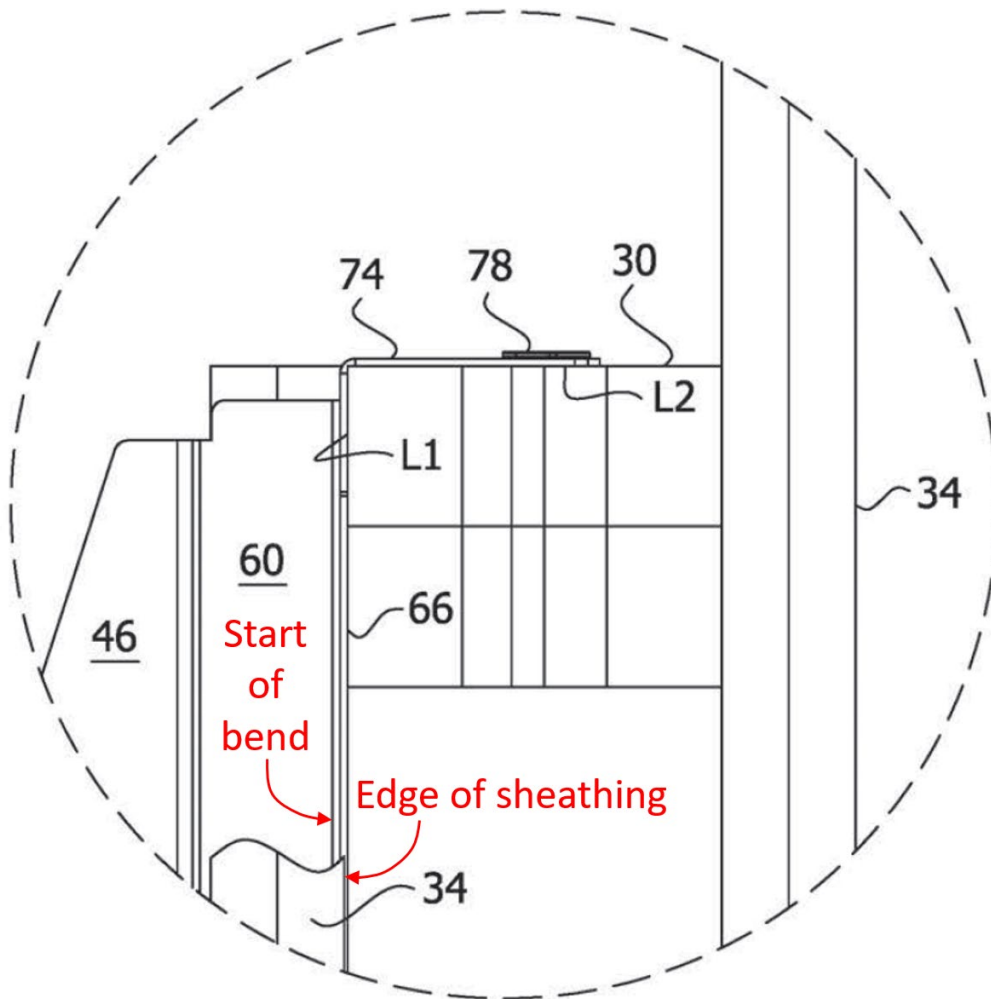
PO's written description argument mischaracterizes the specification. POR, 103. "[P]ositioned in the sheathing channels" at 8:19-21 is merely the *result* of "moving the sheathing upward into place," as described immediately prior in 8:17-19; EX1003, ¶¶34-35. PO's own expert Mr. Tucker agreed that the specification "doesn't discuss step one" and "goes straight to step -- step two." EX1055, 79:14-16.

B. Claims 20-23: "Planar Extension Plates."

For the reasons discussed in §II.A, this limitation lacks support. EX1003, ¶40.

C. Claim 20: “only first and second planar extension plates ... extend through the opening.”

PO alleges Figures 11, 13A, and 36 show only the planar extension plates extending through the opening in the sheathing. POR, 116. But PO mischaracterizes the figures, which actually show sheathing flush against the connection portion, such that bends are necessarily within the sheathing. *See, e.g.*, FIG. 13A; EX1068, ¶41.



EX1001, FIG. 13A (annotated).

VII. CLAIMS 1-31 ARE INDEFINITE

A. Claims 1 and 27: “fire wall hanger.”

PO has agreed that a “fire wall hanger” is any hanger simply having a “channel-shaped portion,” “connection portion,” and “extension portion.” POR, 120-121. With this definition, PO effectively admits that each of Cullen, Yamaguchi, and Robinson, which clearly have those features, are “fire wall hangers.” Indeed, a variety of hangers could be—and were—used in both fire-resistive and non-fire-resistive assemblies, regardless of being marketed as such. EX1049, 29:8-11; EX1057, 29:10-31:7. Any argument by PO to the contrary renders this term indefinite. EX1068, ¶¶43-46.

B. Claims 1 and 27: “opening outwardly from the exterior edge”

It remains unclear which edge of the fire-retardant sheathing is “opening outwardly.” ID, 42. The exterior edge can be disposed along the front face, the rear face, or the top side of the sheathing, as evidenced by PO’s further clarification of this element in its Contingent Motion to Amend. Without more, the opening can extend from any one of these edges of the sheathing. EX1068, ¶¶47-49.

C. Claim 13: “close conformance”

PO’s construction’s reference to “*a short distance away*” (POR, 16) is similarly vague and indefinite. PO’s own expert disagrees with PO’s argument that the ’339 patent specification provides “objective boundaries.” EX1052, 69:24-25; POR, 128-129. The specification’s 1/8 gap disclosure is meaningless because

sheathing can still “closely conform” even if the gap is larger. EX1052, 69:18-76:10; EX1068, ¶¶51-53.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This Petitioner's Reply complies with the type-volume limitation of 5,600 words, comprising 5,543 words, excluding the parts exempted by 37 C.F.R. § 42.24(c).

2. This Petitioner's Reply complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word 2010 in 14 point Times New Roman.

Respectfully submitted,

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CERTIFICATION OF SERVICE (37 C.F.R. § 42.6(e))

The undersigned hereby certifies that on August 18, 2025, true and correct copies of the foregoing **PETITIONER SIMPSON STRONG-TIE COMPANY INC.'S REPLY TO PATENT OWNER'S RESPONSE** and Exhibits 1047-1068 and 1071-1089 were served electronically via e-mail in their entirety on the following counsel for Patent Owner:

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