

# **EXHIBIT 2**

**U.S. Pat. Publ. No. 2013/0019794 to Neal**

Claim 44 of the Reissue Patent is anticipated (i.e., lacks novelty) under 35 U.S.C. § 102 based on U.S. Pat. Publ. No. 2013/0019794 to Neal. Neal is a printed publication that was published on January 24, 2013. Neal is submitted as Exhibit 3 to ShoreShade's response. Even assuming Solbello is entitled to its earliest possible priority date dating back to the provisional patent application that it filed, the earliest possible priority date for the Reissue Patent would be August 28, 2019.<sup>1</sup> Consequently, Neal constitutes prior art relative to the Reissue Patent.

The analysis below is consistent with the rejection based on Neal that were made of Claim 4 of Solbello's EP Pat. App. No. 4,585,774, which is identical to Claim 44 of the Reissue Patent, but is derived independently under U.S. law.

FIG. 5 of Neal is the relevant embodiment here:

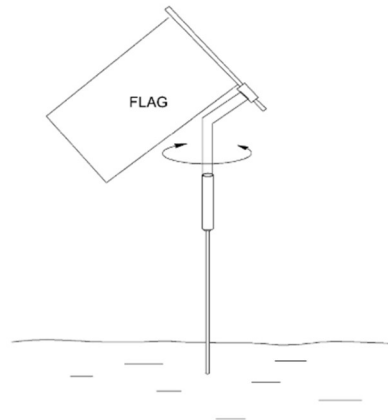


**FIG. 5**

An annotated version of this figure is shown below. Text in all caps shows where elements of the claim are located in this device, and the text in *italics* shows certain names used for components in the Neal reference.

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<sup>1</sup> ShoreShade does not concede that Solbello is entitled to this earliest possible priority date for its patent.

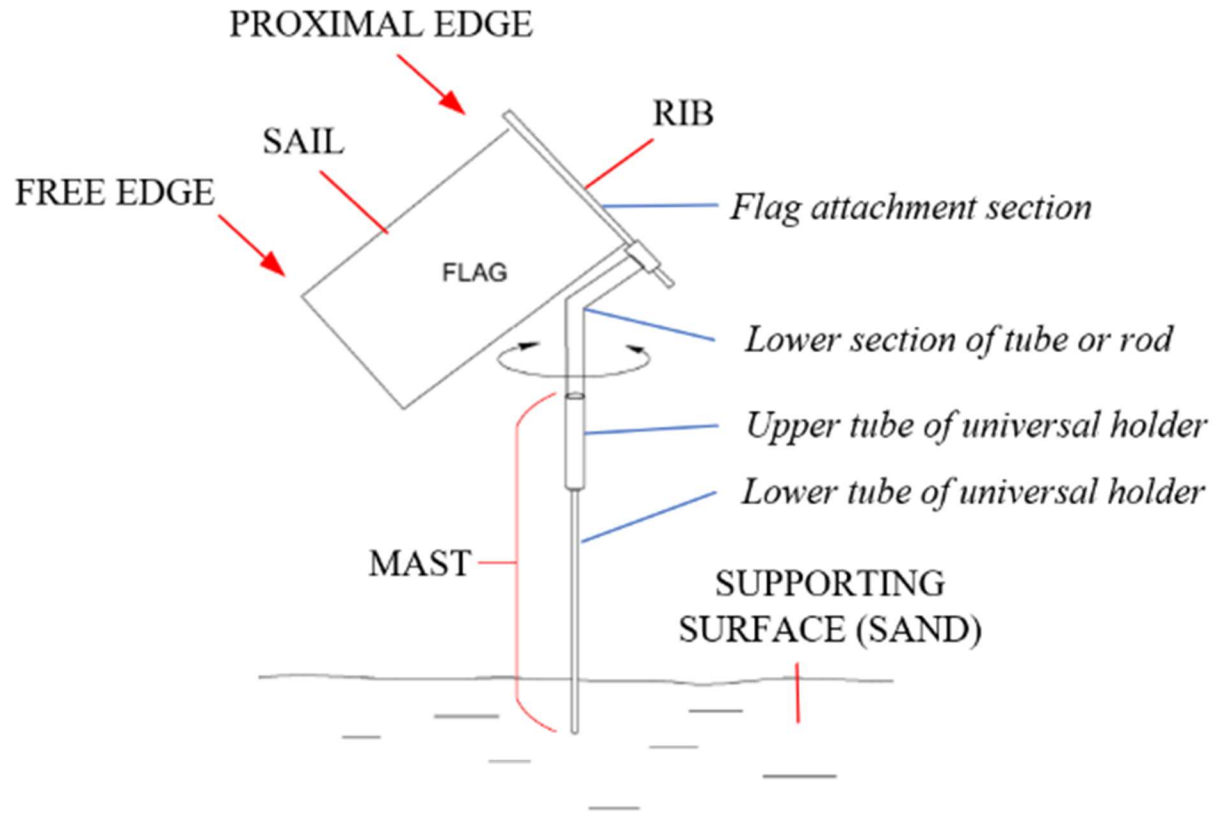


**FIG. 5**

Neal states as follows at Paragraph [0028]:

The special flag pole accessory shown in FIG. 5 can be conveniently made from sections of PVC pipe or other material. It can be designed as shown in FIG. 5 to hold the flag at an angle. This allows the flag to turn in the wind. A lower section of tube or rod has an angle of around 45 degrees and thus points upward at an angle when its lower end is inserted into

the universal holder. A flag attachment section is attached to the upper end of the tube or rod as a second tube or rod at around 90 degrees as shown in FIG. 5. This upper tube or rod can hold a flag by tying the flag to it, having rings or otherwise allowing a flag to be attached to it. The flag flies at an angle and the entire assembly can turn freely in the wind since the lower section of tube or rod loosely fits into the upper tube of the universal holder. Alternatively, a straight vertical flagpole can also be held by the present invention.

The European patent examiner in the European Application rejected a claim identical to Claim 44 of the Reissue Patent based on Neal, which the European patent examiner refers to as D1.

4 Lack of novelty, Article 54(1) and (2) EPC

4.1 The present application does not meet the requirements of Article 52(1) EPC, because the subject matter of claims 4 and 10 is not new in the sense of Article 54(1) and (2) EPC.

4.2 Independent claim 4:

Document D1 (the expressions in brackets refer to this document) discloses

a sun shade assembly (see fig 5, it has to be noted that the flag also provides shade) comprising:

a mast ("rod" 1) configured to extend upwardly from a supporting surface, and having a top end and a bottom end (see fig 5);

at least one rib (the rod to which the flag is attached) located proximate the top end of said mast, and configured to rotate relative to the supporting surface;  
 a sail (the flag in fig 5) having a proximal edge secured to said rib and an unrestrained free edge adapted to unfurl in response to blowing of the wind, and wherein an entire surface area of said sail is unrestrained from the proximal edge to the free edge; and  
 when unfurled, said sail and rib are adapted to rotate together to a direction of the blowing wind (see [0028]).

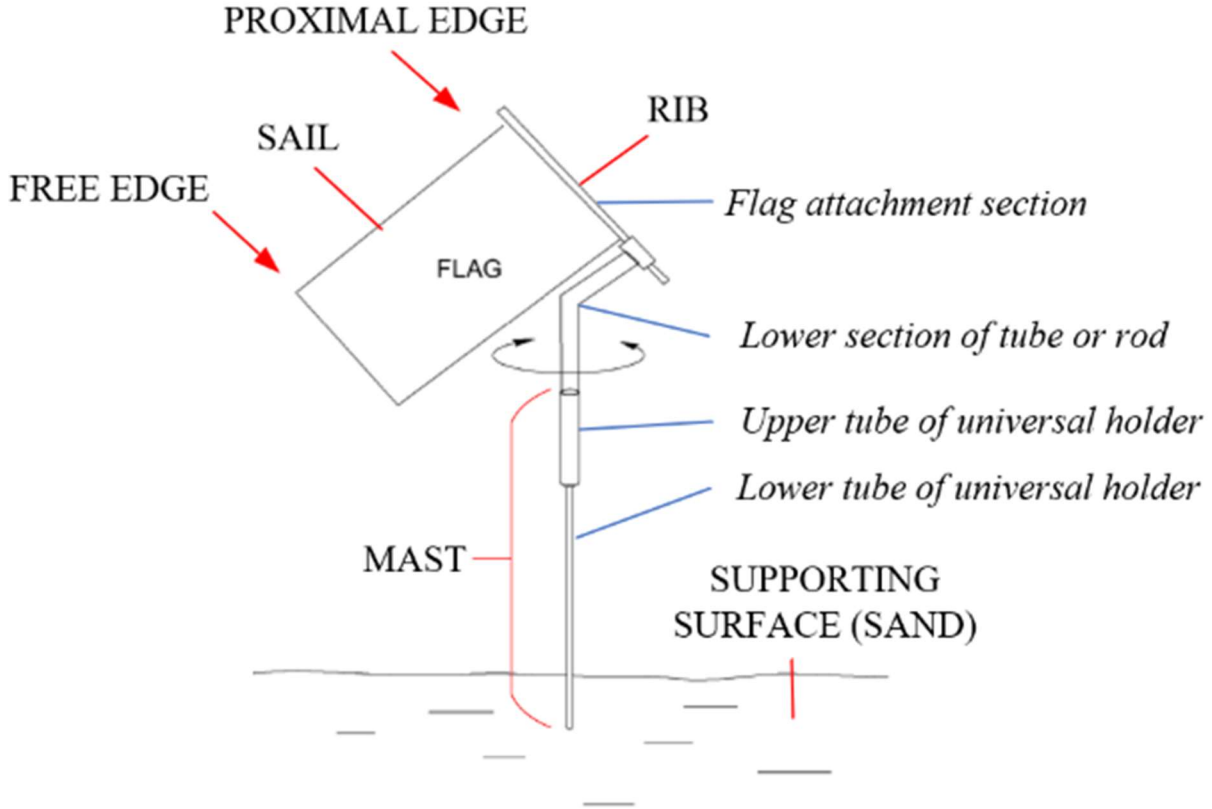
The subject matter of claim 4 is therefore already known from document D1.

The table shown below describes how every element (limitation) of Claim 44 is disclosed in Neal.

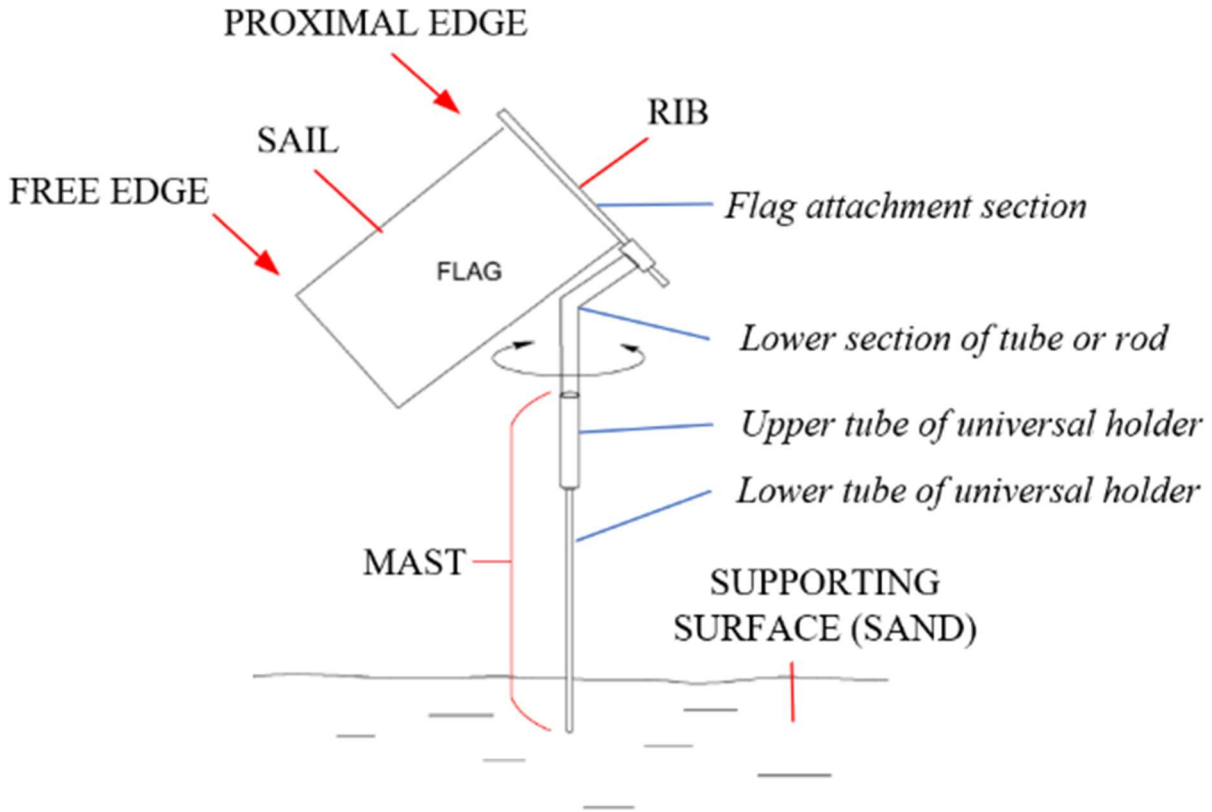
| Claim Limitation                                       | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A sun shade assembly:                                  | <p>Preamble is not considered limiting as a general rule. Even if consideration of the preamble is appropriate, the flag of FIG. 5 in Neal provides shade from the sun, making it a sun shade assembly.</p> <p>This is consistent with the European examiner's rejection</p> <p>Document D1 (the expressions in brackets refer to this document) discloses<br/> a sun shade assembly (see fig 5, it has to be noted that the flag also provides shade) comprising:</p> |
| A mast configured to extend upwardly from a supporting | <p>Neal discloses "[a] mast configured to extend upwardly from a supporting surface, and having a top end and a bottom end." FIG. 5 of Neal shows a mast configured to extend upwardly from a supporting surface, and having a top end and a bottom end as shown in the annotated image below.</p>                                                                                                                                                                     |

| Claim Limitation                                       | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p>surface, and having a top end and a bottom end;</p> | <div data-bbox="659 263 1877 1070"> <p>The diagram illustrates a flag assembly. A flag is shown with a proximal edge (top), a free edge (left), and a sail (right). The flag is attached to a mast via a flag attachment section. The mast is supported by a universal holder, which consists of an upper tube and a lower tube. The mast is shown extending from a supporting surface (sand) upwards. The flag is shown in a partially deployed state, with the sail and free edge visible. The mast is labeled 'MAST' and the supporting surface is labeled 'SUPPORTING SURFACE (SAND)'. The flag attachment section is labeled 'Flag attachment section'. The lower section of the tube or rod is labeled 'Lower section of tube or rod'. The upper tube of the universal holder is labeled 'Upper tube of universal holder'. The lower tube of the universal holder is labeled 'Lower tube of universal holder'. The sail is labeled 'SAIL'. The proximal edge is labeled 'PROXIMAL EDGE'. The free edge is labeled 'FREE EDGE'. The flag is labeled 'FLAG'. The rib is labeled 'RIB'.</p> </div> <p style="text-align: center;"><b>FIG. 5</b></p> <p>This is consistent with the European examiner's rejection:</p> <p style="text-align: center;">Document D1 (the expressions in brackets refer to this document) discloses</p> |

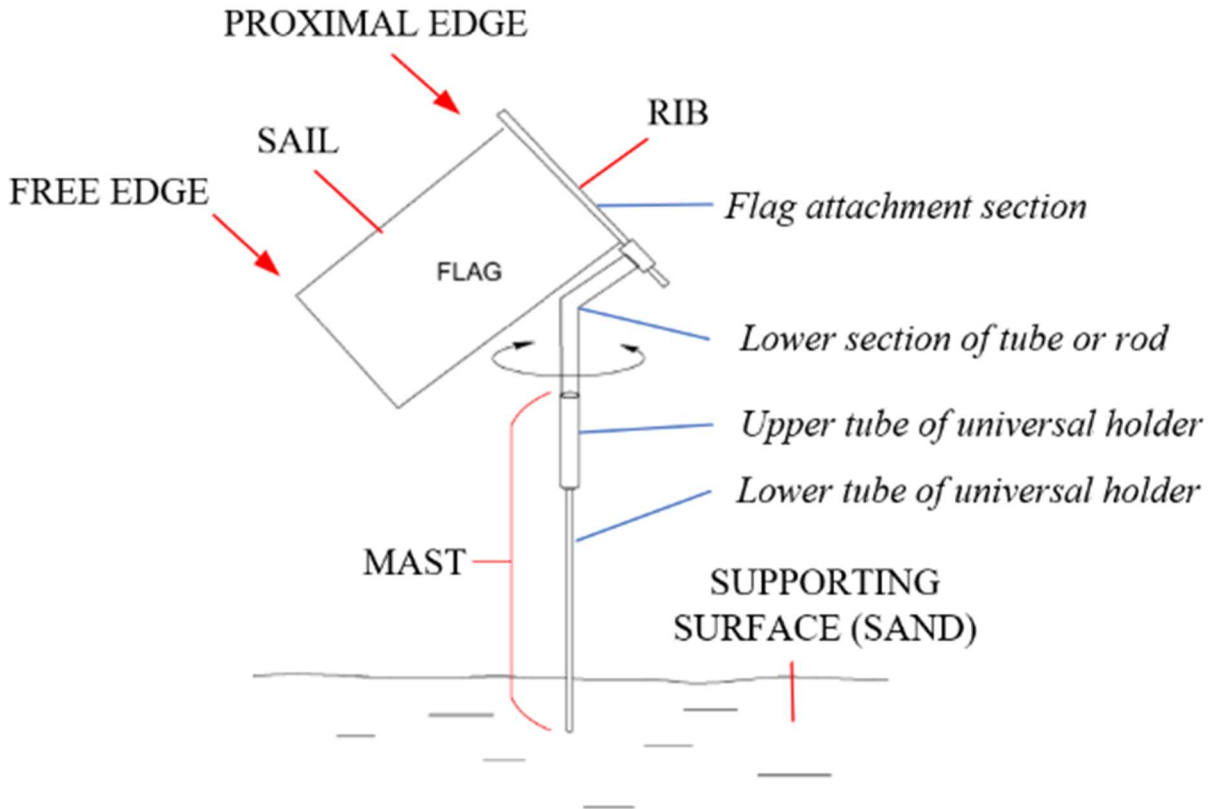
| Claim Limitation                                                                                                          | Discussion                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                           | a mast ("rod" 1) configured to extend upwardly from a supporting surface, and having a top end and a bottom end (see fig 5);                                                                                                                                                                                                                          |
| At least one rib located proximate the top end of said mast, and configured to rotate relative to the supporting surface; | Neal discloses "[a]t least one rib located proximate the top end of said mast, and configured to rotate relative to the supporting surface." FIG. 5 shows a rib located proximate the top end of the mast that is configured to rotate relative to the supporting surface as shown in the annotated image below (see the arrows just below the flag): |

| Claim Limitation | Discussion                                                                                                                                                                                                           |
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|                  |  <p style="text-align: center;"><b>FIG. 5</b></p> <p>The rotatability is disclosed in Paragraph [0028] of Neal, which states:</p> |

| Claim Limitation                                                                        | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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|                                                                                         | <p>The special flag pole accessory shown in FIG. 5 can be conveniently made from sections of PVC pipe or other material. It can be designed as shown in FIG. 5 to hold the flag at an angle. This allows the flag to turn in the wind. . . . The flag flies at an angle and the entire assembly can turn freely in the wind since the lower section of tube or rod loosely fits into the upper tube of the universal holder.</p> <p>This is consistent with the European examiner's rejection:</p> <p>Document D1 (the expressions in brackets refer to this document) discloses</p> <p>at least one rib (the rod to which the flag is attached) located proximate the top end of said mast, and configured to rotate relative to the supporting surface;</p> <p>Paragraph [0028] also describes an alternative embodiment stating that "a straight vertical flagpole can also be held by the present invention." In this embodiment, the rib identified above would be inserted directly into the upper tube of the universal holder, allowing the rib to rotate relative to the mast and relative to the supporting surface. This would similarly cover this claim, regardless of the construction.</p> |
| A sail having a proximal edge secured to said rib and an unrestrained free edge adapted | Neal discloses "[a] sail having a proximal edge secured to said rib and an unrestrained free edge adapted to unfurl in response to the blowing of the wind, and wherein an entire surface area of said                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

| Claim Limitation                                                                                                                                                      | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <p>to unfurl in response to the blowing of the wind, and wherein an entire surface area of said sail is unrestrained from the proximal edge to the free edge; and</p> | <p>sail is unrestrained from the proximal edge to the free edge.” Fig. 5 of Neal shows these features as shown in the annotated version of that figure below.</p>  <p>The diagram, labeled FIG. 5, illustrates a sail assembly. A rectangular sail is shown with its proximal edge (top) and free edge (bottom) indicated by red arrows. The sail is attached to a vertical mast via a rib and a flag attachment section. The flag attachment section is connected to a lower section of a tube or rod, which is part of a universal holder. The universal holder consists of an upper tube and a lower tube. The mast is shown extending from a supporting surface (sand). The sail is shown in a partially unfurled state, with the free edge trailing behind the proximal edge.</p> <p><b>FIG. 5</b></p> |

| Claim Limitation                                                                                           | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|                                                                                                            | <p>This is consistent with the European examiner's rejection:</p> <p>Document D1 (the expressions in brackets refer to this document) discloses</p> <p style="padding-left: 40px;">a sail (the flag in fig 5) having a proximal edge secured to said rib and an unrestrained free edge adapted to unfurl in response to blowing of the wind, and wherein an entire surface area of said sail is unrestrained from the proximal edge to the free edge; and</p> |
| <p>When unfurled, said sail and rib are adapted to rotate together to a direction of the blowing wind.</p> | <p>Neal discloses that “[w]hen unfurled, said sail and rib are adapted to rotate together to a direction of the blowing wind.” This is readily apparent from the circular black arrow in FIG. 5 of Neal (which appears in the original).</p>                                                                                                                                                                                                                  |

| Claim Limitation | Discussion                                                                                                                                                                                                                                                                                                                                                                    |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                  |  <p>PROXIMAL EDGE</p> <p>SAIL</p> <p>FREE EDGE</p> <p>FLAG</p> <p>RIB</p> <p>Flag attachment section</p> <p>Lower section of tube or rod</p> <p>Upper tube of universal holder</p> <p>Lower tube of universal holder</p> <p>MAST</p> <p>SUPPORTING SURFACE (SAND)</p> <p><b>FIG. 5</b></p> |

| Claim Limitation | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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|                  | <p>Paragraph [0028] states that the flag of FIG. 5 is allowed to turn in the wind and also states that “[t]he flag flies at an angle and the entire assembly can turn freely in the wind since the lower section of tube or rod loosely fits into the upper tube of the universal holder.”</p> <p>This is consistent with the European examiner’s rejection:</p> <p>Document D1 (the expressions in brackets refer to this document) discloses</p> <p style="padding-left: 40px;">when unfurled, said sail and rib are adapted to rotate together to a direction of the blowing wind (see [0028]).</p> |

**DE202014103145U1 (“German Reference”)**

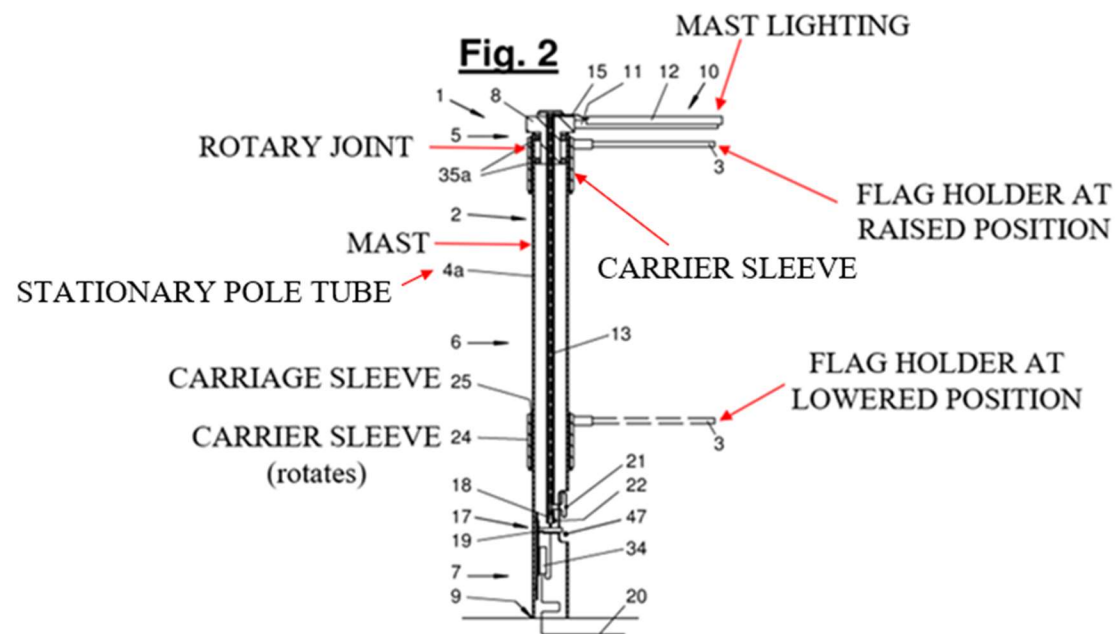
Claim 44 of the Reissue Patent is anticipated (lacks novelty) under 35 U.S.C. § 102 based on the German Reference. This German Reference is provided entirely in German, but a certified translation of this reference is provided as Exhibit 4 to ShoreShade’s response alongside the original copy of the reference. The German Reference is a printed publication that was published on October 12, 2015. Even assuming Solbello is entitled to its earliest possible priority date dating back to the provisional patent application that it filed, the earliest possible priority date for the Reissue Patent would be August 28, 2019.<sup>2</sup> Consequently, the German Reference constitutes prior art relative to the Reissue Patent.

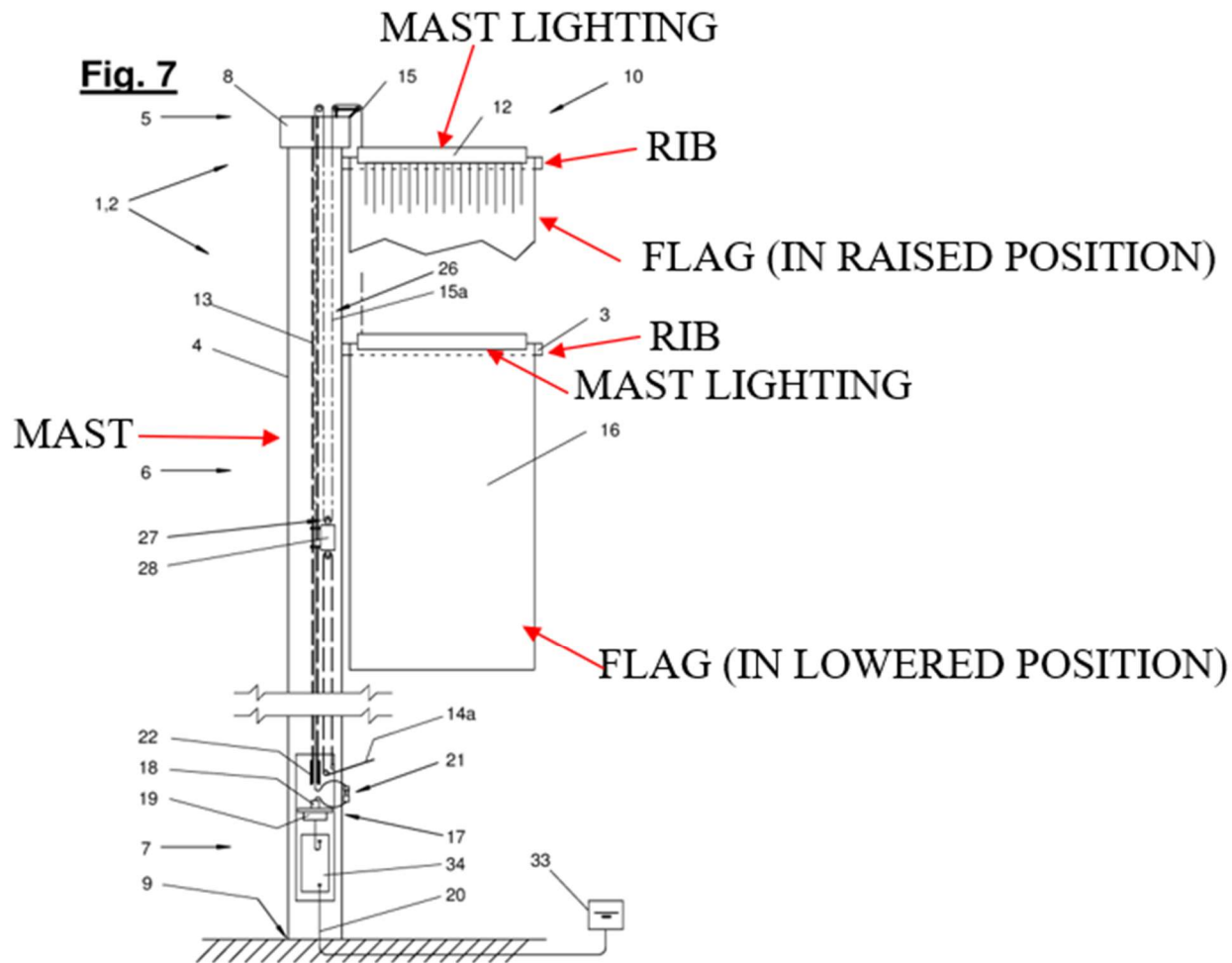
Claim 4 of Solbello’s EP Pat. App. No. 4,585,774 is identical to Claim 44 of the Reissue Patent. The European patent examiner rejected that identical claim based on the German Reference, saying that the German Reference disclosed every limitation in Claim 44.

Annotated versions of some of the relevant figures are shown below:

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<sup>2</sup> ShoreShade does not concede that Solbello is entitled to this earliest possible priority date for its patent.





The European patent examiner in the European Application rejected a claim identical to Claim 44 of the Reissue Patent based on the German Reference, which the European patent examiner refers to as D2. When evaluated under applicable U.S. legal principles, the result is the same (invalidity). The European patent examiner pointed specifically to FIG. 2 and Paragraph [0045] of the German Reference.

4 Lack of novelty, Article 54(1) and (2) EPC

4.1 The present application does not meet the requirements of Article 52(1) EPC, because the subject matter of claims 4 and 10 is not new in the sense of Article 54(1) and (2) EPC.

4.2 Independent claim 4:

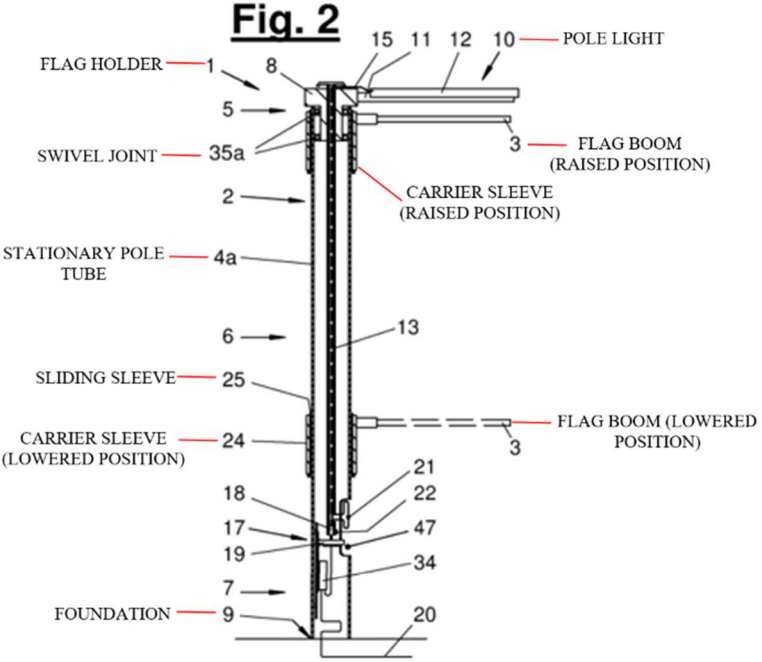
4.4 Furthermore the features of the claims 4 and 10 are also disclosed in document D2 (see fig 2 and [0045]).

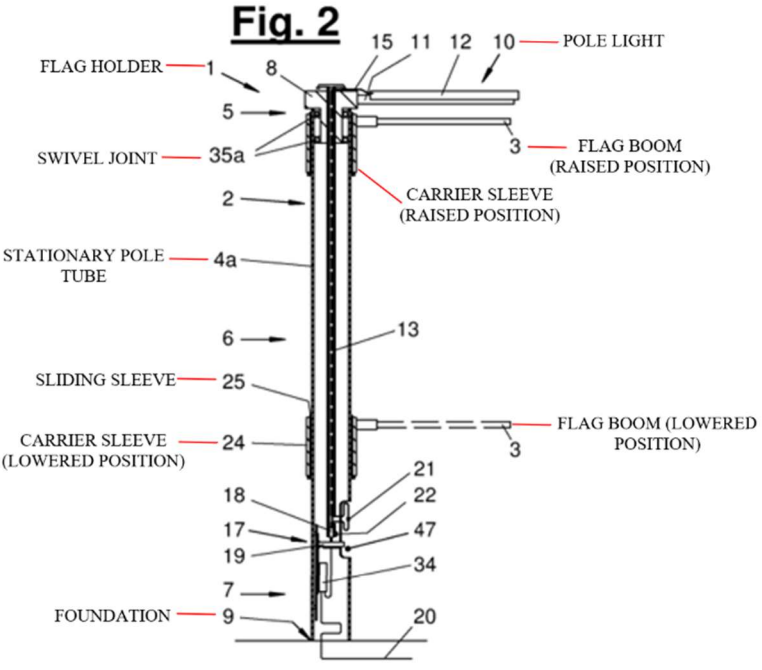
Paragraph [0045] of the translated German Reference states as follows:

[0045] Fig. 2 shows a second variant of a flagpole (1) with a power supply device (2) in cross-section. Here again, the support body (8) is mounted via a swivel joint (35a) at the pole head (5) and equipped with a transversely protruding pole light (10). On the outside of the pole, a sliding sleeve (25) is guided on which a carrier sleeve (24) with a flag boom (3) is placed. The sliding sleeve (25) and the carrier sleeve (24) can be part of a hoisting device (14). The sliding sleeve (25) can be raised or lowered using a hoisting cable (not shown). It is preferably mounted rotationally fixed and axially displaceable on the stationary pole tube (4a). The carrier sleeve (24) is entrained by the sliding sleeve (25) and is rotatably mounted thereon so that the flag boom (3) with a flag can rotate freely in the wind around the stationary pole tube (4a).

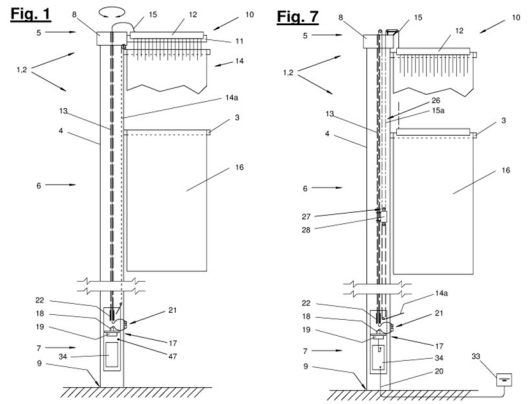
By saying that Claim 4 is “not new,” the European examiner is saying the claim lacks novelty. The table shown below describes how every limitation within Claim 44 is disclosed in the German Reference.

| Claim Limitation      | Discussion                                                                                                                                                                                                                            |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A sun shade assembly: | A preamble is not considered limiting as a general rule. Even if consideration of the preamble is appropriate, the flag the German Reference provides shade from the sun just like the one from Neal, making it a sun shade assembly. |

| Claim Limitation                                                                                              | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>A mast configured to extend upwardly from a supporting surface, and having a top end and a bottom end;</p> | <p style="text-align: center;"><b>Fig. 2</b></p>  <p>The German reference includes a “mast configured to extend upwardly from a supporting surface, and having a top end and a bottom end.” This is shown in FIG. 2, but it is also shown in FIGS. 3 and 7. The stationary pole tube (4a) and the base region (7) of the pole (1) serve as the mast. German Reference at [0031]. The mast formed by these components rests on the foundation (9), which constitutes a supporting surface. German Reference at [0031]. The mast formed by these components has a top end and a bottom end.</p> |

| Claim Limitation                                                                                                                 | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>At least one rib located proximate the top end of said mast, and configured to rotate relative to the supporting surface;</p> | <p>The assembly of the German Reference includes “[a]t least one rib located proximate the top end of said mast, and configured to rotate relative to the supporting surface.”</p> <p>The German Reference includes a “flag boom (3),” which is also referred to as a “flag holder (3)” at times in the Certified Translation. The flag boom (3) constitutes a rib, and the flag boom (3) is located proximate the top end of the pole (1) in the annotated version of FIG. 2 shown below when in the raised position.</p>  <p><b>Fig. 2</b></p> <p>Labels in the diagram include:</p> <ul style="list-style-type: none"> <li>FLAG HOLDER 1</li> <li>SWIVEL JOINT 35a</li> <li>STATIONARY POLE TUBE 4a</li> <li>SLIDING SLEEVE 25</li> <li>CARRIER SLEEVE (LOWERED POSITION) 24</li> <li>FOUNDATION 9</li> <li>POLE LIGHT 10</li> <li>FLAG BOOM (RAISED POSITION) 3</li> <li>CARRIER SLEEVE (RAISED POSITION)</li> <li>FLAG BOOM (LOWERED POSITION) 3</li> </ul> |

| Claim Limitation                                                                                                                                                                                                                                              | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                               | <p>Regardless of whether “configured to” is construed as “capable of” or “specifically designed to,” the German Reference covers the “configured to rotate relative to the supporting surface” limitation. The German Reference states:</p> <ul style="list-style-type: none"> <li>• “[t]he flag holder (3) is preferably axially displaceable and rotatable mounted on the pole (1).” Certified Translation at ¶ [0035].</li> <li>• “The <u>carrier sleeve (24) is entrained by the sliding sleeve (25) and is rotatably mounted thereon so that the flag boom (3) with a flag can rotate freely in the wind around the stationary pole tube (4a).</u>” Certified Translation at ¶ [0045].</li> </ul> <p>As such, the flag holder (3) is capable of rotating relative to the supporting surface (foundation 9) and the mast (stationary pole tube 4a), and it is specifically configured to rotate relative to the mast (stationary pole tube 4a).</p> |
| <p>A sail having a proximal edge secured to said rib and an unrestrained free edge adapted to unfurl in response to the blowing of the wind, and wherein an entire surface area of said sail is unrestrained from the proximal edge to the free edge; and</p> | <p>The German Reference includes “[a] sail having a proximal edge secured to said rib and an unrestrained free edge adapted to unfurl in response to the blowing of the wind, and wherein an entire surface area of said sail is unrestrained from the proximal edge to the free edge.”</p> <p>In the German Reference, the flag is allowed to simply hang down from the flag holder without a second flag holder at the bottom of the flag. The flag is not shown in FIG. 2 (likely to allow other components to be seen), but it is shown in FIGS. 1 and 7.</p>                                                                                                                                                                                                                                                                                                                                                                                       |

| Claim Limitation                                                                                           | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                            | <p>These figures show the flag in two different locations for the purposes of illustrating that the flag boom (3) is capable of moving vertically. In FIGS. 1 and 7, the flag is shown with only a single flag holder. The flag has a proximal edge and an unrestrained free edge.</p>  <p>The figures shown above illustrate the flag (16) hanging down without any fasteners connecting the flag 16 to the pole tube (4).</p> |
| <p>When unfurled, said sail and rib are adapted to rotate together to a direction of the blowing wind.</p> | <p>The flag and the flag holder are both capable of and specifically designed to rotate together to a direction of the blowing wind. The reference states “[t]he carrier sleeve (24) is entrained by the sliding sleeve (25) and is rotatably mounted thereon so that the flag boom (3) with a flag can rotate freely in the wind around the stationary pole tube (4a).” Certified Translation at ¶ [0045].</p>                                                                                                    |