

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CIRCUSTRIX HOLDINGS, LLC, SKY ZONE LLC, ROCKIN' JUMP LLC, *et al.*

Petitioners,

v.

CHEROKEE GRAY EAGLE IP, LLC,

Patent Owner.

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Case IPR2019-00263  
U.S. PATENT 8,764,575

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**PATENT OWNER'S PRELIMINARY RESPONSE  
UNDER 37 C.F.R. § 42.107**

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### PATENT OWNER'S LIST OF EXHIBITS

Exhibit	Description
2001	“Our Team” Page for Rebounderz Franchise and Development, <a href="https://rebounderzfranchise.com/our-team/">https://rebounderzfranchise.com/our-team/</a> (last visited February 21, 2019)
2002	October 7, 2015 Assignment from M. Gurley to Cherokee Grey Eagle IP, LLC
2003	“The 5 Best Trampoline Park Franchises of 2019” page from Franchise Chatter, <a href="https://www.franchisechatter.com/2018/04/21/the-5-best-trampoline-park-franchises-of-2018/">https://www.franchisechatter.com/2018/04/21/the-5-best-trampoline-park-franchises-of-2018/</a> (last visited February 21, 2019)
2004	U.S. Patent No. 8,657,696 (Grandparent)
2005	U.S. Patent No. 9,149,674 (Parent)
2006	U.S. Patent No. 8,128,534 (Crawford)
2007	“Indoor trampoline parks are ‘springing’ up everywhere!”, Tracy Sarris, Play Meter (April 2014) at pp.34-37.
2008	September 7, 2004 Assignment from Winkelhorn to Skyzone, LLC
2009	Exhibit A-3 to Defendants’ Initial Invalidity Contentions ( <i>Winkelhorn</i> ), <i>Cherokee Gray Eagle IP, LLC, et al v. Sky Zone LLC, et al.</i> , 6:18-cv-00355 (M.D. Fla. Oct. 11, 2018)
2010	Exhibit A-7 to Defendants’ Initial Invalidity Contentions ( <i>Guo</i> ), <i>Cherokee Gray Eagle IP, LLC, et al v. Sky Zone LLC, et al.</i> , 6:18-cv-00355 (M.D. Fla. Oct. 11, 2018)
2011	Exhibit A-9 to Defendants’ Initial Invalidity Contentions ( <i>Crawford</i> ), <i>Cherokee Gray Eagle IP, LLC, et al v. Sky Zone LLC, et al.</i> , 6:18-cv-00355 (M.D. Fla. Oct. 11, 2018)
2012	Exhibit A-6 to Defendants’ Initial Invalidity Contentions ( <i>Widich</i> ), <i>Cherokee Gray Eagle IP, LLC, et al v. Sky Zone LLC, et al.</i> , 6:18-cv-00355 (M.D. Fla. Oct. 11, 2018)
2013	Dkt. 65 - Order Extending Skyzone Defendants’ Time to Disclose Non-Infringement, Invalidity and Enforceability Contentions, <i>Cherokee Gray Eagle IP, LLC, et al v. Sky Zone LLC, et al.</i> , 6:18-cv-00355 (M.D. Fla. Sept. 20, 2018)
2014	Dkt. 47 - Order Extending CircusTrix Defendants’ Time to Disclose Non-Infringement, Invalidity and Enforceability Contentions, <i>Cherokee Gray Eagle IP, LLC, et al v. CircusTrix LLC, et al.</i> , 6:18-cv-00356 (M.D. Fla. Sept. 20, 2018)

Exhibit	Description
2015	<i>Polygroup Limited MCO v. Willis Elec. Co.</i> , Appeals No. 2018-1748, 2018-1749, and 2018-1750 (Fed. Cir. January 28, 2019)



Pursuant to 37 C.F.R. § 42.107, Patent Owner Cherokee Gray Eagle IP, LLC (“Cherokee”) submits this Preliminary Response to the Petition for *Inter Partes* Review (“IPR”) of U.S. Patent 8,764,575 (the “’575 Patent”) (Paper 1).

## **I. THE RELATED CASES**

Cherokee and Rebounderz Franchise and Development Inc.<sup>1</sup> have asserted the ‘575 Patent in the following cases filed on March 8, 2018: (1) *Cherokee Gray Eagle IP, LLC, et al. v. Sky Zone LLC, et al.*, 6:18-cv-00355 (M.D. Fla.); (2) *Cherokee Gray Eagle IP, LLC, et al. v. CircusTrix, LLC, et al.*, 6:18-cv-00356 (M.D. Fla.); and (3) *Cherokee Gray Eagle IP, LLC, et al. v. Rockin’ Jump, LLC, et al.*, 0:18-cv-60502 (S.D. Fla.).

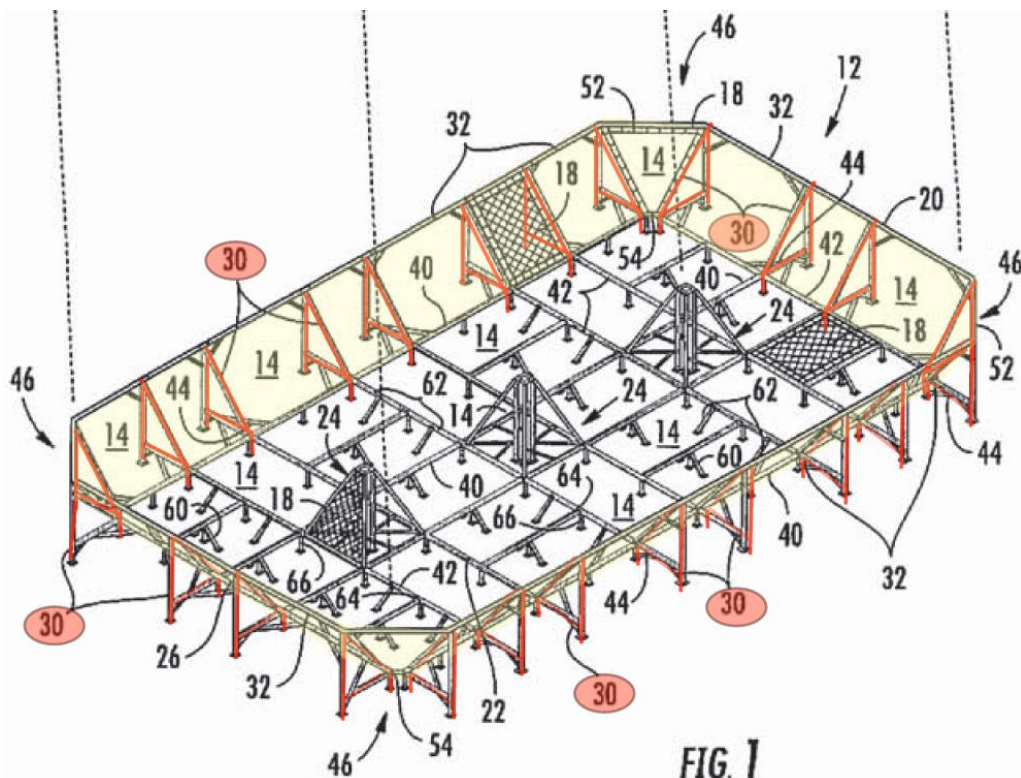
## **II. INTRODUCTION**

Although “[t]rampolines have long been recognized as a source of fun and exercise for young and old,” as of 2010 “trampolines, and particularly large trampolines, have also been viewed as a considerable safety risk.” Ex. 1001 (‘575 Patent) at 1:22-25. The inventions that Marcus Gurley disclosed and claimed in the ‘575 Patent solved that problem and launched a new industry that grew from only a

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<sup>1</sup> Marcus Gurley, the sole inventor of the ‘575 Patent, is the Chairman and Founder of Rebounderz. Ex. 2001. Mr. Gurley assigned all right, title, and interest in the ‘575 Patent to Cherokee on October 7, 2015. Ex. 2002.

few parks at the time of his original priority filing to over 1000 trampoline parks worldwide today. *See* Ex. 2003 (“As recently as 2009, there were only 3 parks in the world – a figure that now stands at well over 1,000”); Ex. 2007 at p.34 (noting, in April 2014, that “[j]ust three years ago there were only about 35 to 40 indoor trampoline parks in operation”). Mr. Gurley disclosed **and claimed** a complex trampoline arena architecture, in which an interconnected network of rigid side frames [red] of an outwardly sloping outer wall [yellow] are connected to each other and a horizontal deck, with numerous trampolines attached in voids formed in the frames and deck:

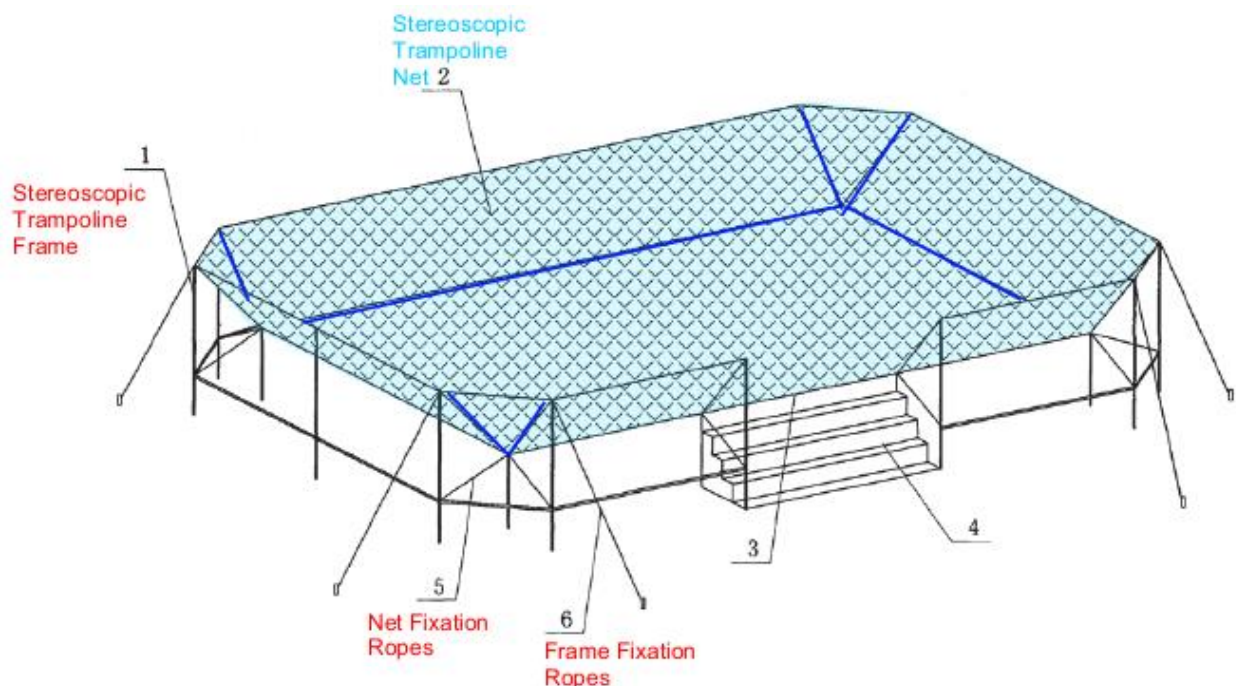


The ‘575 Patent issued in July 2014. Throughout prosecution the Examiner relied upon U.S. Patent 5,624,122 to *Winkelhorn* for multiple rejections. The

Examiner also cited U.S. Patent No. 8,128,534 to *Crawford*.

Petitioners assert that their Petition relies on “new” references, but this assertion is smoke and mirrors. The purported new references are virtually identical in all relevant respects to *Winkelhorn* and *Crawford*. Indeed, in their invalidity contentions from the Related Cases, Petitioners purport to find in *Winkelhorn* and *Crawford* virtually identical components that they now purport to find in the “new” references. Accordingly, trial should not be instituted pursuant to § 325(d). *See infra* at § VI.

Petitioners also fail to show a reasonable likelihood that they will prevail as to any claims. One of Petitioners’ primary references (*Guo*) describes a “stereoscopic trampoline net 2” [light blue] that is attached by “net fixation ropes 5” to a “stereoscopic trampoline frame 1.” *E.g.*, Ex. 1004 at FIG. 1, ¶[0021]. *See* below:



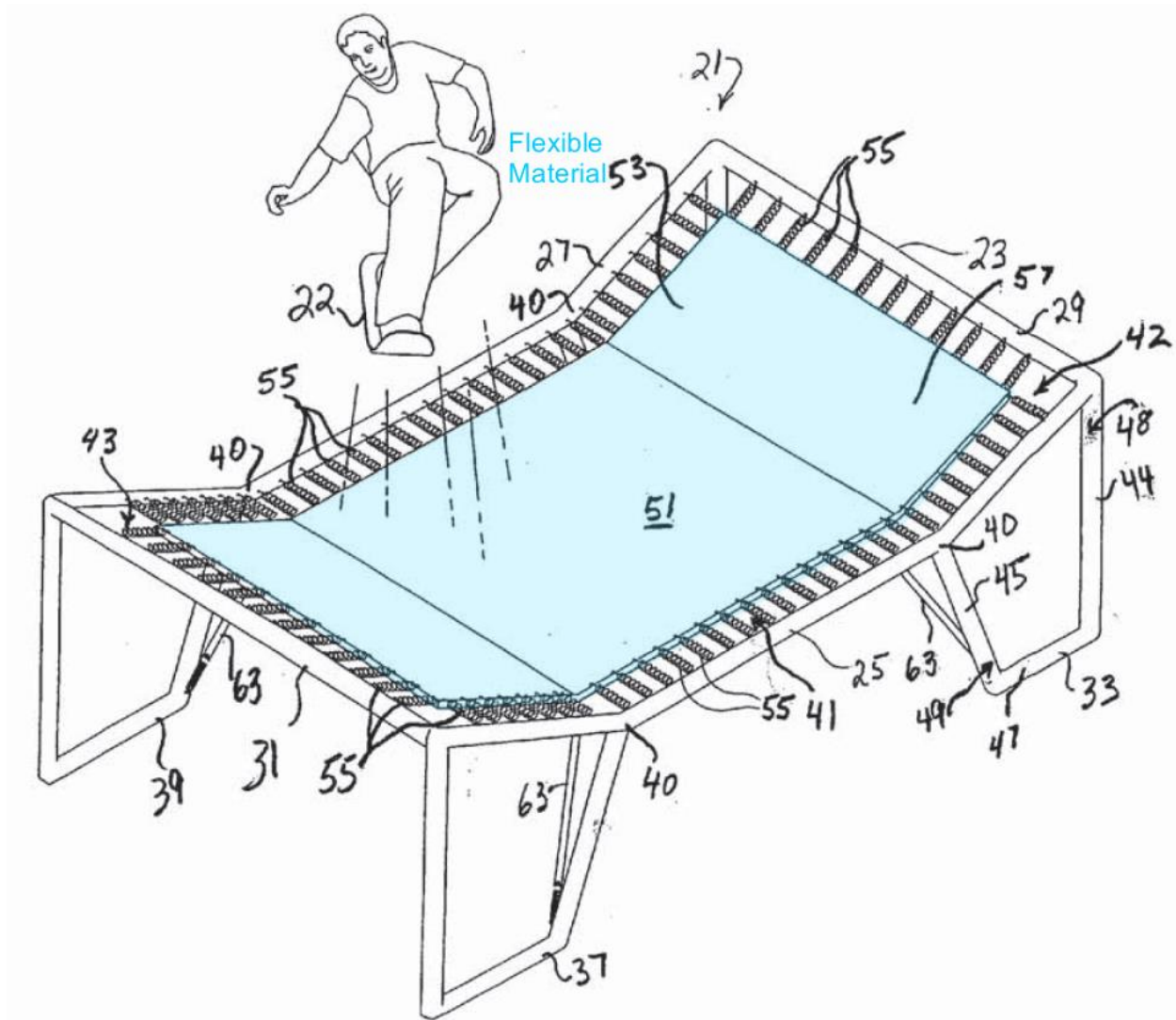
As is described in detail *infra* at § VII(A), Petitioners assert incorrectly that *Guo*'s joints where adjacent trampoline nets are pieced together (dark blue above) correspond to claimed "rigid angled members" of the '575 Patent. **Petitioners fail to cite to any evidence from *Guo* to support this assertion because *Guo*'s joints are made of adjacent pieces of trampoline net, not a rigid material.** Compare Ex. 1004 at ¶[0025] ( "The trampoline net is made from a plurality of trampoline nets pieced together" at "joint[s] between adjacent trampoline nets . . . .") with Ex. 1004, *passim* (discussing the trampoline net dozens of times without describing any intervening rigid components at the joints between pieces of trampoline net). **"[T]he material used for the trampoline net is very soft"—not rigid.** *Id.* at ¶[0036].

Unlike the "completely free standing" structure enabled by the '575 Patent's invention (Ex. 1001 at 2:51-53, 4:8-12), *Guo*'s net fixation ropes 5 "tighten the connection" of the trampoline net such that the "angle included between" the bottom and sides "of the stereoscopic trampoline net can also be adjusted." Ex. 1004 at ¶[0022]. Joints of trampoline net that can be tightened and have their angle modified by a rope simply are not rigid. Accordingly, trial should not be instituted on Grounds 1-4 based on *Guo*.

Petitioners' other primary reference (*Widich*) discusses a single piece of trampoline (*i.e.*, a single piece of flexible material 53 in blue below) that angles slightly upward at opposite ends in a configuration "particularly adapted for use in

the new activity of trampoline boarding (also called trampboarding)” (Ex. 1005 at

¶[0001]):



Despite the fact that Petitioners analyze each claim element independently for *Guo*, for *Widich* Petitioners and their expert analyzed the following separate claim elements as one:

<b>Petitioners on <i>Widich</i> (Petition at p.59):</b>	<b>Petitioners’ Expert on <i>Widich</i> (Ex. 1013 at p.80)</b>
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<p>b. a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including:</p> <p>i. a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor</p> <p>ii. a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members</p>	<p><i>a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including:</i></p> <p><i>a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor</i></p> <p><i>a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members</i></p>
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As described *infra* at § VII(B), by collapsing multiple elements into one element Petitioners not only ignore the black letter law of anticipation and obviousness but also present no evidence for multiple elements of the claims. Accordingly, trial should not be instituted on Grounds 5-7 based on *Widich*.

### III. OVERVIEW OF U.S. PATENT NO. 8,764,575

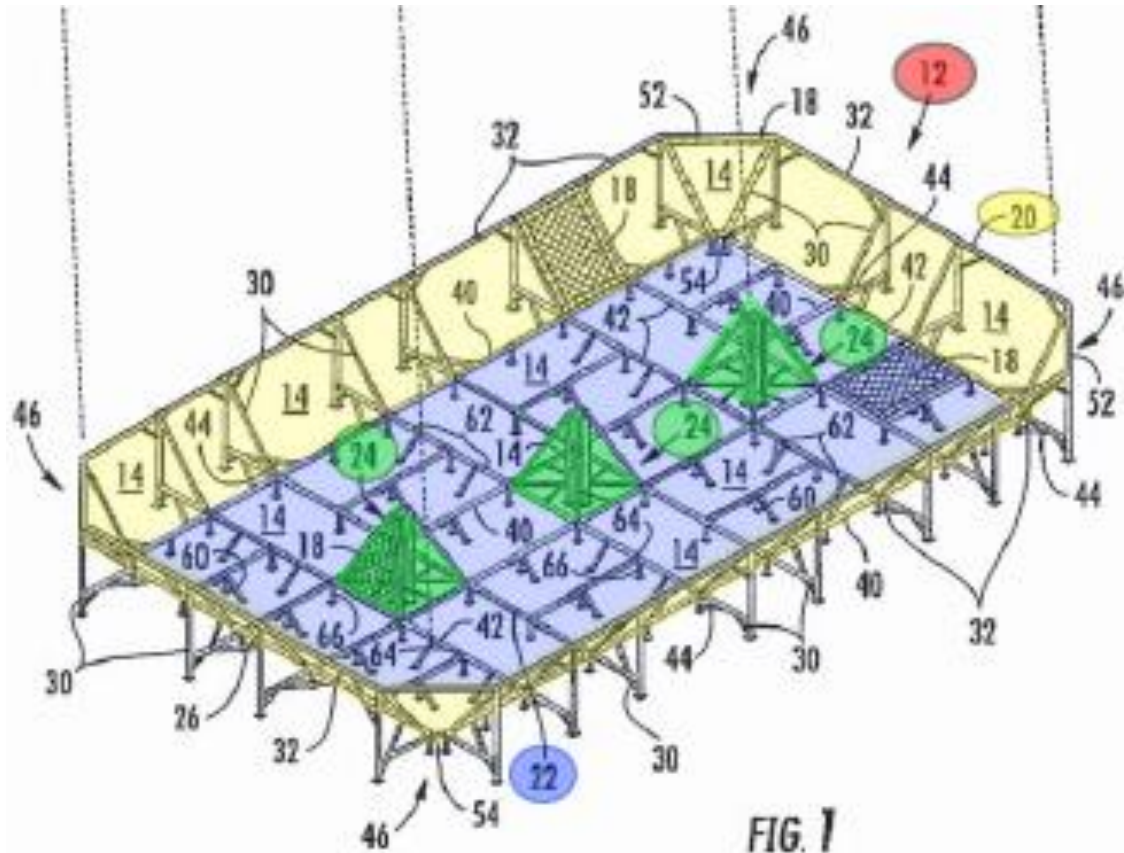
#### A. The '575 Patent Specification and Claims

Although “[t]rampolines have long been recognized as a source of fun and exercise for young and old, . . . trampolines, and particularly large trampolines, have also been viewed as a considerable safety risk.” Ex. 1001 at 1:22-25. “As a result, trampolines have been underutilized in group and commercial recreation applications.” *Id.* at 1:25-27. The ‘575 Patent claims priority to a provisional application filed June 18, 2010, when the trampoline park industry was virtually non-existent. *See* Ex. 2003 at p.2 (noting in 2018 that “[a]s recently as 2009, there were only 3 parks in the world – a figure that now stands at well over 1,000”).

The ‘575 Patent explains that “the present invention provide[s] an improved trampoline arena that can be freestanding, in which stresses from the use of the

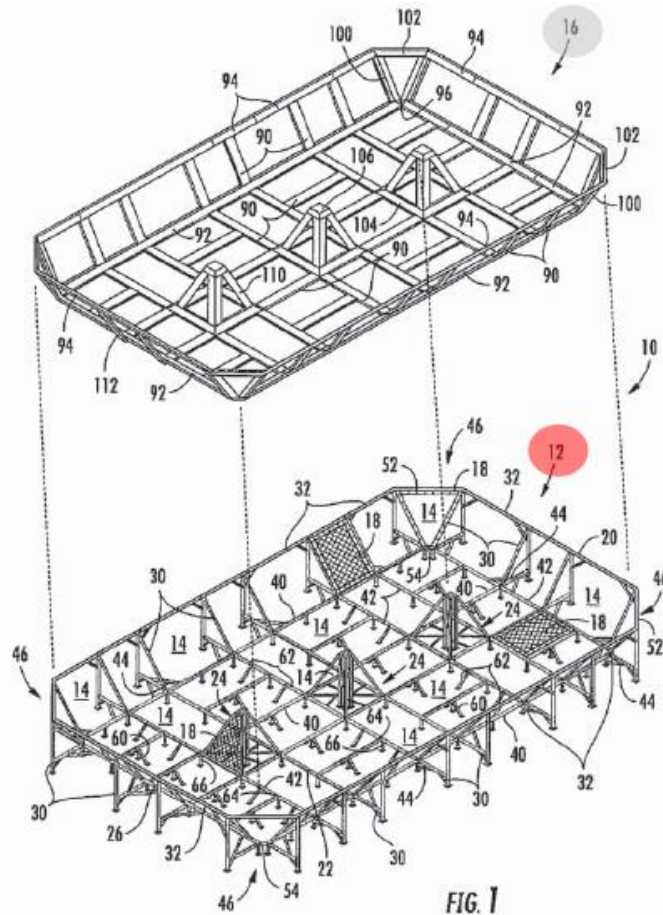
trampolines are very evenly distributed throughout the framework assembly . . . .”

Ex. 1001 at 4:8-12. “Referring . . . to FIG. 1, [a] framework assembly 12 [red] defines an outwardly sloping outer wall 20 [yellow], a deck 22 [blue] and a plurality of pyramids 24 [green]<sup>2</sup> extending upwardly from the deck 22.” *Id.* at 2:46-49.



“A padding assembly 16 [grey] covers the framework assembly 12 [red] cushioning any contact therewith, and inhibiting entanglement in trampoline springs.” *Id.* at 3:35-37.

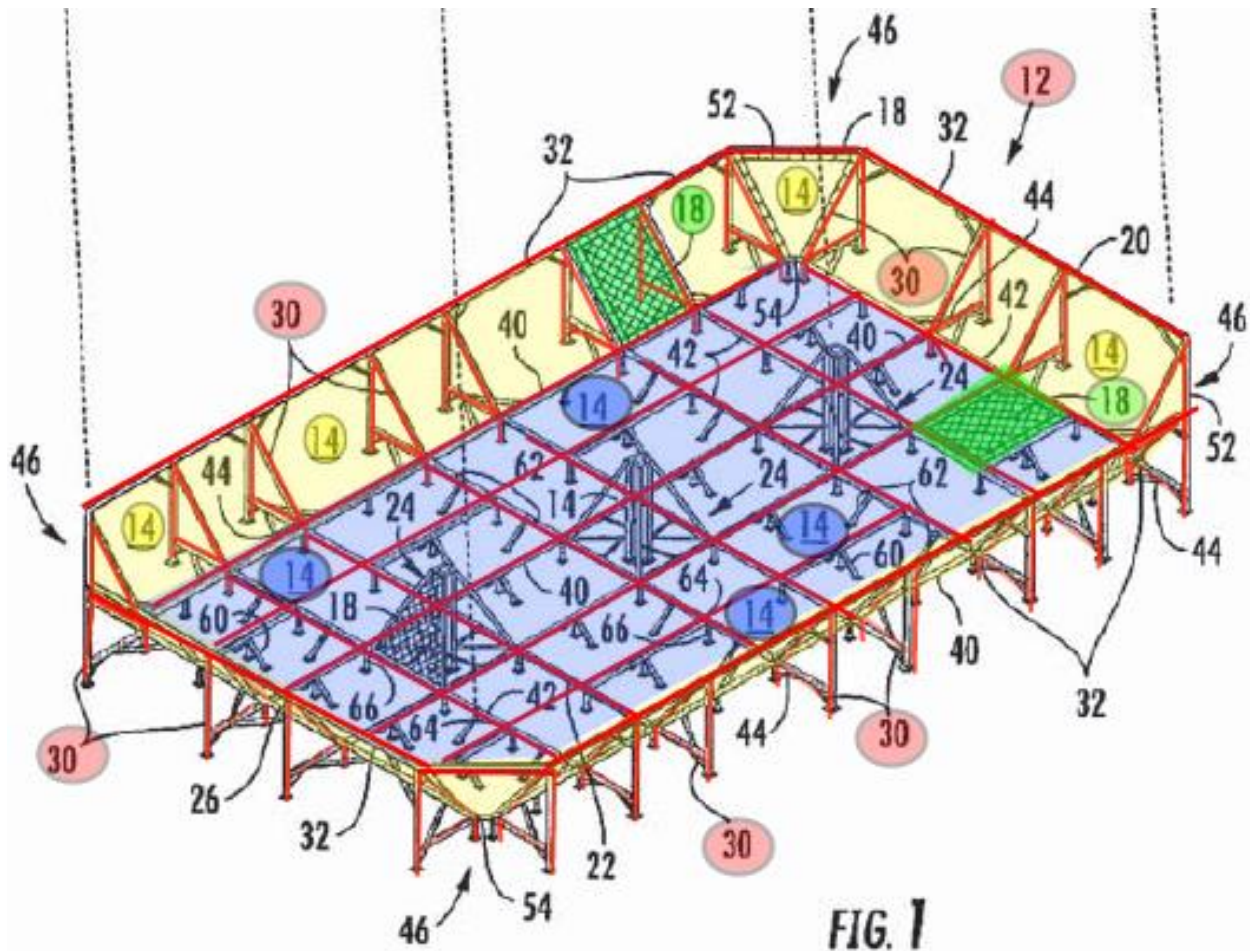
<sup>2</sup> Because the ‘575 Patent does not claim pyramids, they will not be addressed further.



“Advantageously, the framework assembly is adapted to bear the stresses of arena 10 usage while being completely free standing.” *Id.* at 2:51-53. The “framework assembly 12 support[s] a plurality of trampolines 18 (only a portion of the trampolines 18 are shown to more clearly depict the framework assembly 12) across voids 14 thereof . . . .” *Id.* at 2:32-36. Annotated FIG. 1 *below* depicts the framework 12 [red], voids 14<sup>3</sup> [yellow in outwardly sloping outer wall, blue in deck], and the depicted plurality of trampolines 18 [green]:

<sup>3</sup> Only some of the voids 14 include a reference numeral in FIG. 1.





“[S]ides of the wall 20 are supported by a plurality of substantially parallel, spaced apart, side frames 30<sup>4</sup> [red in yellow wall, above].” *Id.* at 2:56-58.

As shown in annotated FIG. 2 *below*, “[e]ach side frame 30 includes first and second spaced apart side frame vertical members 30A, 30B [red] and a side frame angled member 30C [orange] extending between the tops of the vertical members 30A, 30B.” *Id.* at 2:58-61. Upper brackets 34 [blue] tie the side frames to upper frame members [not depicted] that in turn tie the side frames together, while lower

<sup>4</sup> Only some of the side frames 30 include a reference numeral in FIG. 1.

brackets 36 [blue] “tie a knee of each side frame 30” to the deck 22 [not depicted].

*Id.* at 2:61-65. “[T]he trampolines 18 preferably connect to the framework assembly 12 via hooks at the end of trampoline springs 18A [green] inserted into respective eyes 18B [orange] on members [of] the framework.” *Id.* at 2:38-41. *See below:*

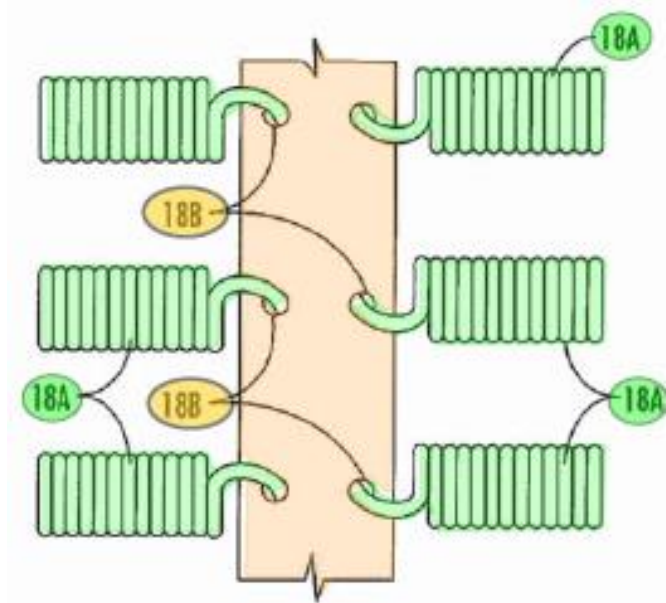
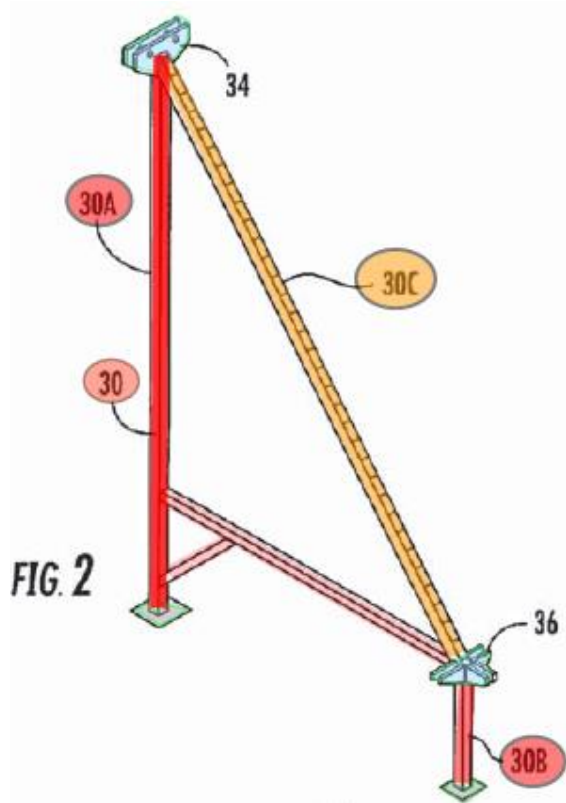


FIG. 1A

Independent claim 1 includes (1) “a plurality of side frames defining an outwardly sloping outer wall”; (2) “a horizontally-extending deck”; (3) “a plurality of trampolines”; and (4) “a padding assembly including a plurality of pads.” Specifically, claim 1 first requires “a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including”:

a rigid first upright member having a top first upright member portion and a

bottom first upright member portion mountable to a floor; and  
a rigid angled member connected at an upper angled member portion to the  
top first upright member portion and extending at a downward angle  
therefrom to a lower angled member portion, a plurality of voids being  
defined between the plurality of angled members;

**All of the other claim elements interface with the rigid angled members of the side frames of the outwardly sloping outer wall.** The horizontally-extending deck is “connected to the lower angled member portions of the plurality of side frames.” The plurality of trampolines are “connected to the angled members along peripheries thereof and extending across the plurality of voids.” Finally, the padding assembly “at least partially overl[ies] the angled members and the peripheries of the trampolines.”

Dependent claims further detail the side frames (claims 2-4), require that the outwardly sloping outer wall substantially surrounds the deck (claim 5), include an opening in one of the voids for access (claim 6), claim the upper frame member(s) and bracket (claims 7-9), claim the lower bracket (claim 10), claim aspects of the deck (claims 11-15), claim additional aspects of the padding (claims 16-17), and detail the corners of the outer wall (claim 18).

Claim 19 is an independent claim, and according to Petitioners, “is essentially the same scope as claim 1, except that it includes additional bracket elements for connecting the upper frame members and for connecting the deck.” Petition at p.46,

pp.75-76. For purposes of the limited issues addressed in this Preliminary Response, Cherokee agrees that claim 19 rises or falls with claim 1.

## **B. The Prosecution History**

The application that resulted in the '575 Patent was filed on February 18, 2014 as Application No. 14/182,775 claiming priority to Application No. 14/151,975 (filed January 10, 2014 – “Parent”), Application No. 13/164,356 (filed June 20, 2011 – “Grandparent”), and Provisional Application No. 61/356,108 (filed June 18, 2010 – “Provisional”). The Grandparent issued as U.S. Patent No. 8,657,696 (Ex. 2004) and the Parent issued as U.S. Patent No. 9,149,674 (Ex. 2005).

### 1. The Grandparent File History

The originally filed Grandparent application included 23 claims. Ex. 1012 at pp.100-104. The first Office Action, issued 23 months after filing, rejected claims 1-14 and 18-21, and allowed claims 15-17 and 22-23. *Id.* at pp.61-62. Independent claim 1 was rejected in view of U.S. Patent No. 5,624,122 to *Winkelhorn* (Ex. 1009). Ex. 1012 at pp.63-64. The Examiner also cited U.S. Patent No. 8,128,534 to *Crawford* (Ex. 2006) in the Office Action. *Id.* at p.67. Cherokee amended claim 1 to incorporate the elements of allowed dependent claim 15 relating to “pyramids,” and amended allowed dependent claim 22 relating to the “plurality of pads” as a new independent claim. *Id.* at pp.48, 52-53. The Examiner issued a Notice of Allowance on October 23, 2013, and the Issue Fee was paid on January 9, 2014. *Id.* at pp.34-

40, 14-19.

2. The Parent File History

By January 2014 when Cherokee paid the issue fee on the – and over 3½ years after Cherokee’s Provisional filing – the trampoline park industry had exploded. For example, in an April 2014 article entitled “Indoor trampoline parks are ‘springing’ up everywhere!”, the author explained:

Just three years ago there were only about 35 to 40 indoor trampoline parks in operation. Today the International Association of Trampoline Parks (IATP) has been able to identify over 280 existing parks or those in the development stages of opening. Parks are being built on an average of five to six per month.

Ex. 2007 at p.34. The article also discussed Mr. Gurley’s Rebounderz as an early mover in the industry. *Id.* at pp.35-36.

The Parent was filed as a Track I application on January 10, 2014. Ex. 1011 at pp.60, 90-91. The claims of the Parent included significant differences compared to the allowed claims from the Grandparent application, as depicted in the comparison *below* of issued claim 1 of the Grandparent to as-filed claim 1 of the Parent (~~strikeout~~ included in claim 1 of Grandparent but not Parent, underline included in claim 1 of Parent but not Grandparent):

1. A trampoline arena comprising:

~~a framework assembly including a~~ a plurality of ~~frame elements~~ side frames defining an outwardly sloping outer wall, each of the plurality of side frames including:

a rigid first upright member having a top first upright member portion and a ~~deck~~ bottom first upright member portion mountable to a floor; and

a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the ~~framework elements~~ plurality of angled members;

a horizontally-extending deck connected to the second angled member portions of the plurality of side frames;

a plurality of trampolines connected to the ~~frame elements~~ angled members along peripheries thereof and extending across the plurality of voids ~~to further define the outwardly sloping outer wall and deck;~~ and

a padding assembly including a plurality of pads at least partially overlying the ~~frame elements~~ angled members and the peripheries of the trampolines;

~~wherein the plurality of frame elements further define a plurality of pyramids extending upwardly from the deck, the plurality of trampolines connecting to the frame elements along the peripheries thereof and extending across the plurality of voids to further define the plurality of pyramids.~~

*Compare* Ex. 2004 at claim 1 *and* Ex. 1011 at p.77.

Track I processing of the Parent was denied for failure to pay the processing fee. Ex. 1011 at pp.53-54. Cherokee then pursued the initially filed claims of the Parent as a new Track I filing in the application that resulted in the ‘575 Patent. Ex. 1002 at pp.73, 90-94, 103-104. The first Office Action in the Parent was mailed on February 26, 2015, after the claims of the ‘575 Patent (including the originally filed claim 1 of the Parent) were allowed and issued. *See* Ex. 1011 at pp.31-34 (rejecting the claims of the Parent “as claiming the same invention as that of claims 1-19 of prior U.S. Patent No. 8,764,575.”). Following the rejection of the Parent based on the issued ‘575 Patent, Cherokee amended the Parent claims to recite a number of

different claim elements. *Id.* at pp.19-20 and 24-25. The amended claims were allowed and issued as U.S. Patent No. 9,149,674. *Id.* at pp.7-11; Ex. 2005 (issued Parent).

### 3. The ‘575 File History

The as-filed claims of the Application that resulted in the ‘575 Patent correspond to the as-filed claims of the Parent. *Compare* Ex. 1002 at pp.90-94 *with* Ex. 1011 at pp.77-81. Petitioners mistakenly assert that these “claims [are] similar in scope to the originally filed claims in the grandparent application.” Petition at p.8. As can be seen from the redlined comparison on the previous page, the as-filed claims of the ‘575 Patent have numerous additional elements that appear nowhere in the claims of the Grandparent.

The same Examiner (Examiner Kien Nguyen of Art Unit 3711 including “amusement devices”) who examined the Grandparent and Parent applications also examined the application for the ‘575 Patent. *Compare* Ex. 1002 at pp.24-26, 28, and 51-52 *with* Ex. 1012 at 11-12, 31, 34-35, 37, 40, and 61-62 *and* Ex. 1011 at 7-9, 11, and 31-32. In a first Office Action, the Examiner determined that the subject matter of claims 1-18 and 20 was allowable, but rejected a broader independent claim 19 (*e.g.*, that did not include the rigid upright member, rigid angled member, or deck – *see* Ex. 1002 at p.94) as allegedly obvious under § 103 based on *Winkelhorn* in view of U.S. Patent No. 6,607,468 to *Nichols*. Ex. 1002 at pp.52-54.

In response, Cherokee amended claim 19 to include the elements of allowed claim 20, resulting in allowance of all pending claims and issuance of the '575 Patent. Ex. 1002 at pp.28 and 46-47.

4. Winkelhorn (U.S. Patent No. 5,624,122)

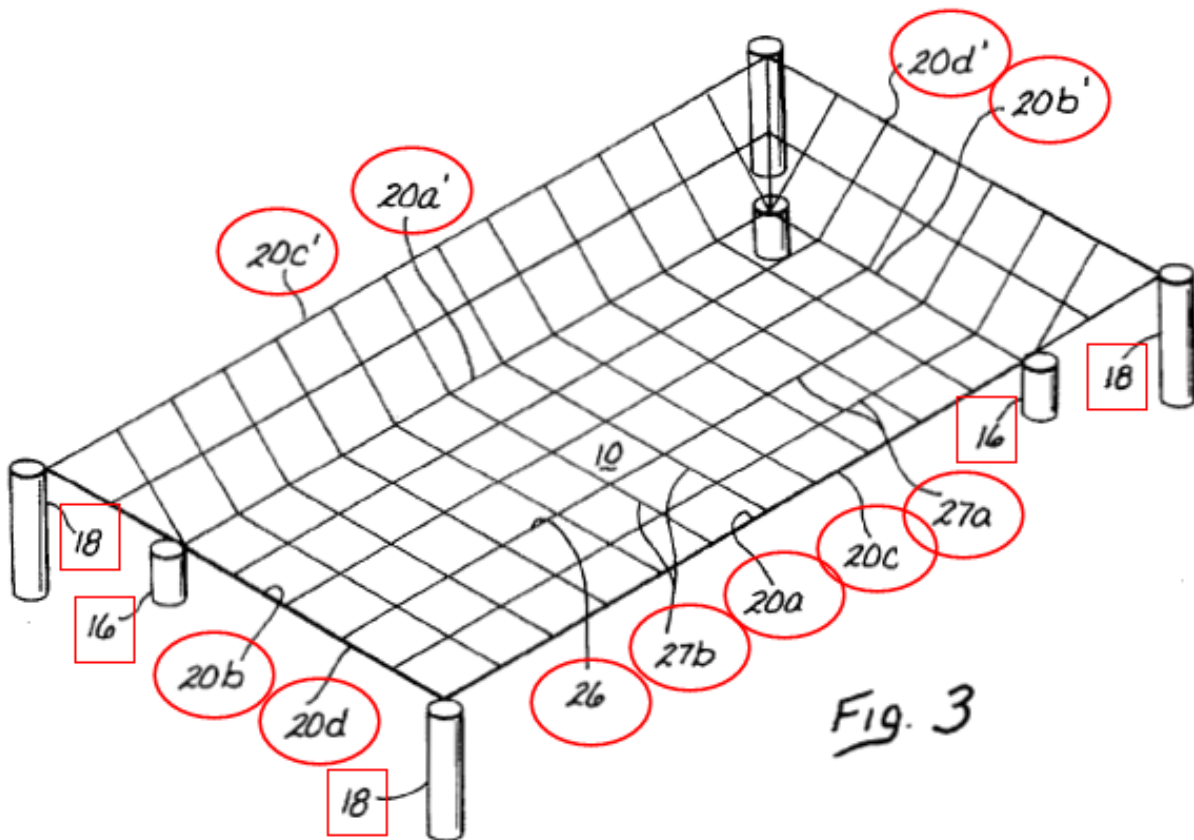
*Winkelhorn* was the primary reference cited during the prosecution of the Cherokee Patents. For example, the Examiner cited *Winkelhorn* under § 103 to reject broader independent claim 19 in the Office Action where claim 1 of the '575 Patent was allowed. *See supra* at § III(B)(3). *Winkelhorn* is assigned to one of the Petitioners, Sky Zone LLC.<sup>5</sup> Ex. 2008. *Winkelhorn* is titled “Sport Game and Field” and the Abstract describes a “facility having a raised planar playing field formed of a plurality of rectangular **trampoline-like channels held together edgewise by supporting cables** with all of the adjacent edges and cables being covered by padding.” Ex. 1009 at Abstract (emphasis added). “[U]nderfoot resiliency may be effected by providing a planar field constructed of adjacent rectangular **trampoline-type panels supported by and on crossing cables**, which cables themselves are

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<sup>5</sup> The trampoline of the *Winkelhorn* patent is referred to in the industry as the “bag of chains” design. It has not achieved any penetration in the industry and Sky Zone itself no longer uses it. Sky Zone nonetheless touted its “patented system” in the 2014 article, “Trampoline parks are ‘springing’ up everywhere!” Ex. 2007 at p.35.



*Id.* at 1:44-48 (emphasis added). This configuration of cables supported by posts is “best shown in FIG. 3, [in which] the configuration of the planar field 10 and its ends 12a, 12b and sides 14a, 14b, may be maintained by a grid of steel cables 20a, 20a', 20b, 20b' and 20c, 20c', 20d, 20d' secured to the upper ends of inner posts 16 and outer posts 18.” *Id.* at 3:59-64. “The arrangement of th[e] grid 26 of cables 27a, 27b may best be understood by a consideration of FIG. 3 of the drawings.” *Id.* at 4:2-4. FIG. 3 is depicted with reference numbers for posts indicated with squares and for cables indicated with ovals:



*Winkelhorn* does not disclose several elements of at least claim 1 of the ‘575

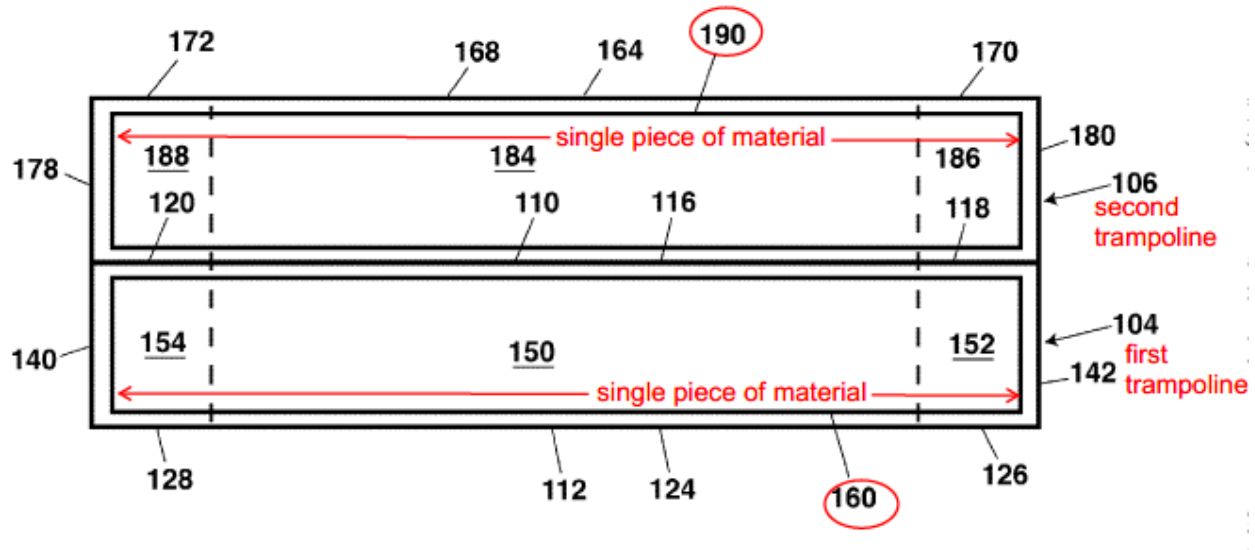
5. Crawford (U.S. Patent No. 8,128,534)

Diagram illustrating a bridge structure with various components and angles labeled:

- 104**: Top right support structure.
- 126**: Second portion of the bridge deck.
- 128**: Third portion of the bridge deck.
- 150**: Main horizontal bridge deck.
- 152**: Bridge deck section near the right support.
- 190**: Right vertical support member.
- 112**: Support member under the main deck.
- 124**: First portion of the bridge deck.
- 154**: Bridge deck section near the left support.
- $\theta_1$** : Angle at the right support joint.
- $\theta_2$** : Angle at the left support joint.
- third portion**: Label for the leftmost sloped section (128).
- second portion**: Label for the rightmost sloped section (126).
- first portion**: Label for the section under the first support (124).
- support member**: Label for the central vertical support (112).

According to *Crawford*, “[t]rampoline courts are created by placing a plurality of trampolines adjacent one another.” *Id.* at 1:28-29. An example of this is depicted

in *Crawford's* FIG. 2, in which a first trampoline 104 is placed next to a second trampoline 106 (*id.* at 1:50-53):



**FIG. 2**

Each of the trampolines 104 and 106 is constructed with a single piece of material 160 or 190, respectively. *Id.* at 2:31-34 (describing “a single piece of material 160” extending between the side support members and the ends); *id.* at 3:1-4 (describing “[a] single piece of second material 190” extending between the side support members and the ends). *Crawford's* single trampolines thus attach to single frames that are merely placed next to each other. *See id.* at FIG. 2. *Crawford* clearly does not disclose any single “outwardly sloping outer wall” that includes “a plurality of trampolines” installed along “peripheries” of “rigid angled members.”

#### **IV. THE CITED PRIMARY REFERENCES (*GUO* AND *WIDICH*)**

The Petition relies on two alternative primary references for its challenges to

the independent claims: *Guo*, Chinese Publication CN101259316A (original at Ex. 1010, translation at Ex. 1004); and *Widich*, U.S. Patent Publication No. 2007/0010374 (Ex. 1005). Petition, pp.19 and 58. Because this Preliminary Response addresses only the independent claims, only these references will be discussed.

**A. *Guo***

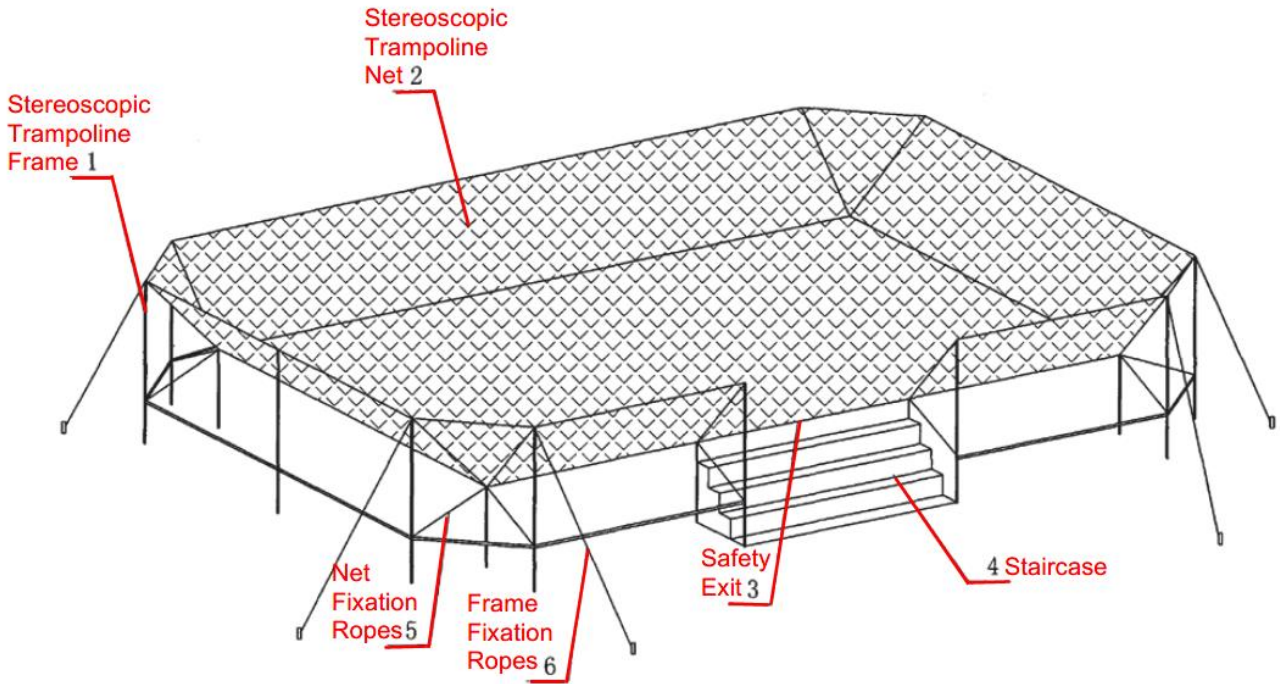
Petitioners argue that *Guo* anticipates all elements of Claim 1. Petition at pp.19-30; Ex. 1013 at ¶¶66-85. They additionally argue that “mountable to a floor” and “a plurality of pads at least partially overlying the angled members” would have been obvious to a POSITA. *See* Petition at p.22 (discussing “mountable to a floor”); Ex. 1013 at ¶¶74-75 (same); Petition at pp.29-30 (discussing “a plurality of pads at least partially overlying the angled members”); Ex. 1013 at ¶¶81-85 (same). Other than those two elements, Petitioners thus rely solely on *Guo* to anticipate all of the other elements of claim 1. *See* Petition at pp.19-30; Ex. 1013 at ¶¶66-73, 76-80.

1. Guo's Seven Depicted Items – “Stereoscopic Trampoline Frame 1,” “Stereoscopic Trampoline Net 2,” “Safety Exit 3,” “Staircase 4,” “Net Fixation Ropes 5,” “Frame Fixation Ropes 6,” and “Detachable Trampoline Net 7”

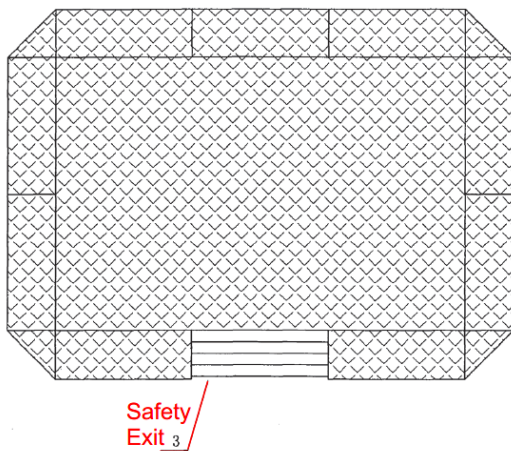
According to the *Guo* translation,<sup>6</sup> “[t]he present invention relates to . . . a trampoline with a stereoscopic trampoline net installed inside a stereoscopic trampoline frame.” Ex. 1004 at ¶[0001]. “The trampoline is structurally simple” (*id.*) and is depicted in three figures. *Id.* at ¶¶[0016]-[0019]; FIGS. 1-3. *Guo*'s figures depict seven reference numerals that correspond to “stereoscopic trampoline frame 1” (*id.* at ¶[0021]), “stereoscopic trampoline net 2” (*id.* at ¶¶[0021]-[0022]), “safety exit 3” (*id.* at ¶[0021]), “staircase 4” (*id.* at ¶[0021]), “net fixation ropes 5” (*id.* at ¶[0022]), “frame fixation ropes 6” (*id.* at ¶[0023]), and “detachable trampoline net 7” (*id.* at ¶[0036]). These enumerated items are depicted in annotated versions of FIGS. 1-3 (annotations in Red):

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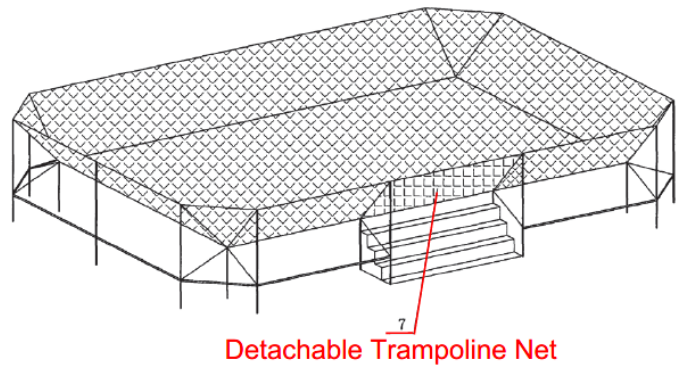
<sup>6</sup> For purposes of this Preliminary Response only, Cherokee does not challenge the accuracy of the *Guo* translation (Ex. 1004). Cherokee reserves the right to challenge the *Guo* translation if trial is instituted.



**FIG. 1**



**FIG. 2**



**FIG. 3**

Other than different line weights (*e.g.*, heavier line weights for some vertical and horizontal lines on the periphery of FIGS. 1 and 3 vs. lighter line weights for the ropes and net) and different cross-hatching directions (*e.g.*, for the stereoscopic trampoline net 2 vs. detachable trampoline net 7), the Figures do not provide any

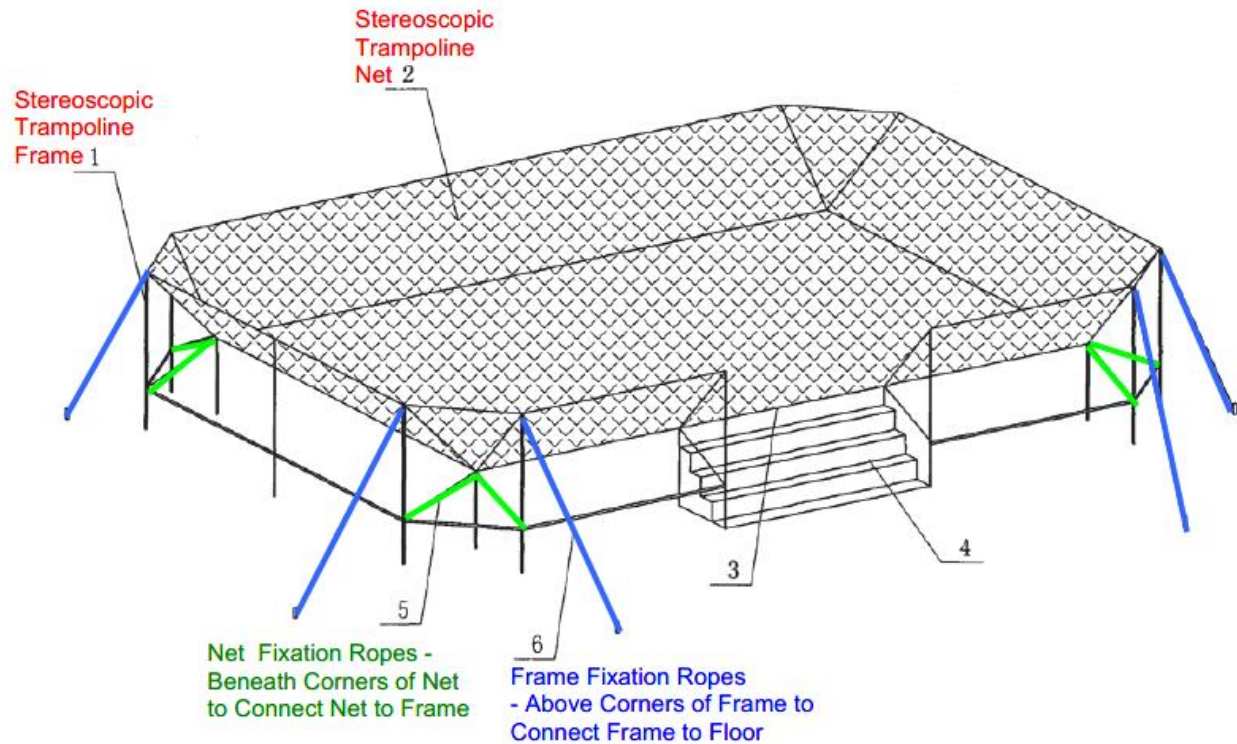
additional detail regarding what components comprise the enumerated elements or how those components connect to each other. *See id.* at FIGS. 1-3.

## 2. Guo's Stereoscopic Trampoline Frame 1

Reference numeral 1 of FIG. 1 connects to a thick vertical line at the upper-left-hand corner of that figure. *See id.* at FIG. 1. *Guo* does not provide any specific discussion of these thick peripheral lines, let alone which of these lines make up the stereoscopic trampoline frame 1. *See id.* at Abstract, Claims, and ¶¶[0001]-[0036] (*Guo* discussing the stereoscopic trampoline frame only generally, without describing any specific components thereof).

Whichever of these lines make up *Guo*'s "stereoscopic trampoline frame 1," *Guo* does discuss some connections of stereoscopic trampoline frame 1 to other components. For example, stereoscopic trampoline net 2 attaches to stereoscopic trampoline frame 1 via "net fixation ropes 5" that are beneath corners of the stereoscopic trampoline net 2 and fixed to stereoscopic trampoline frame 1 by "hasps, hooks, belts, nooses or springs." *Id.* at Claim 2, ¶[0005], and ¶[0022]. *Guo* also discusses attachment of stereoscopic trampoline frame 1 to the floor "by means of frame fixation ropes 6 disposed at the various corners there above." *Id.* at ¶[0023]; *see also* ¶[0006], Claim 3. These connections are *below*:





**FIG. 1**

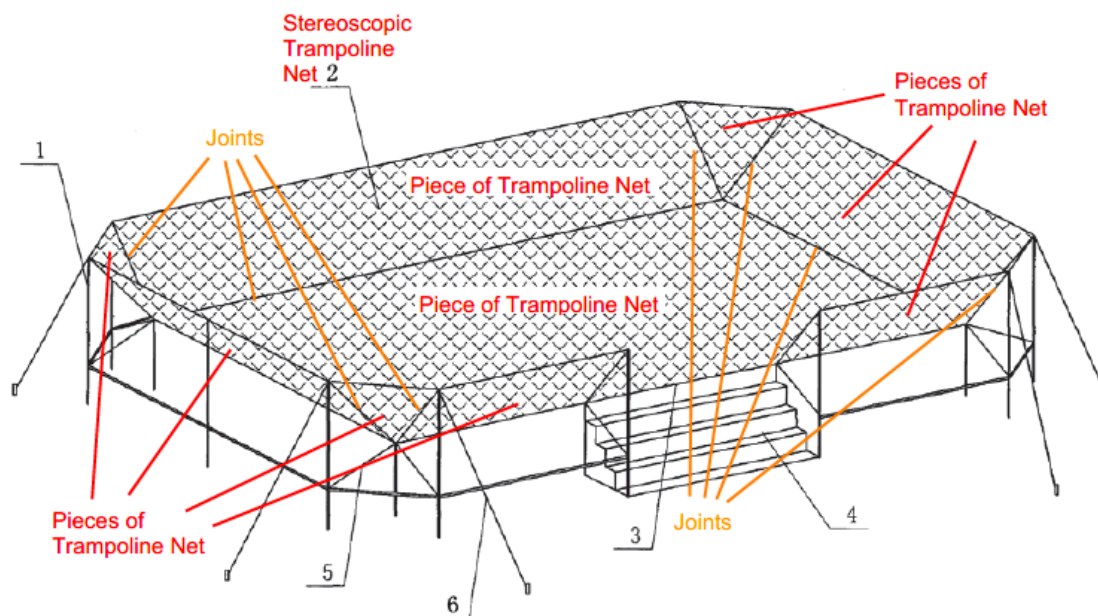
*Guo*'s net fixation ropes 5 "tighten the connection" of the trampoline net to the frame such that the "angle included between" the bottom and angled sides "of the stereoscopic trampoline net can also be adjusted." *Id.* at ¶[0022] (stating that "[t]he length of the net fixation ropes 5 can be adjusted to tighten the connection between the stereoscopic trampoline net and the stereoscopic trampoline frame" and that "[t]he angle included between the side wall of the stereoscopic trampoline net and the bottom of the stereoscopic trampoline net can also be adjusted"). *Guo*'s frame is not freestanding, but rather, requires numerous "frame fixation ropes 6" that "can be adjusted to tighten the connection between the stereoscopic trampoline frame and the floor." *Id.* at ¶[0023].



3. Guo's Stereoscopic Trampoline Net 2

Guo's "present invention adopts the design of a stereoscopic trampoline net such that the side walls of the stereoscopic trampoline net are also provided with trampoline net to form a three-dimensional spatial trampoline . . . ." *id.* at ¶[0015].

"The trampoline net is made from a plurality of trampoline nets pieced together, to achieve the goal of the trampoline net having a bigger usable area, with protective padding installed on each joint between adjacent trampoline nets, and the protective padding is made of cotton material." *Id.* at ¶[0025]. Based on the cross-hatching and lines of FIG. 1, the "pieced together" trampoline nets and the "joints" between those pieces of trampoline net are depicted below (*i.e.*, with cross-hatched portions corresponding to pieces of trampoline nets and lines where adjacent nets join together corresponding to joints):



**FIG. 1**

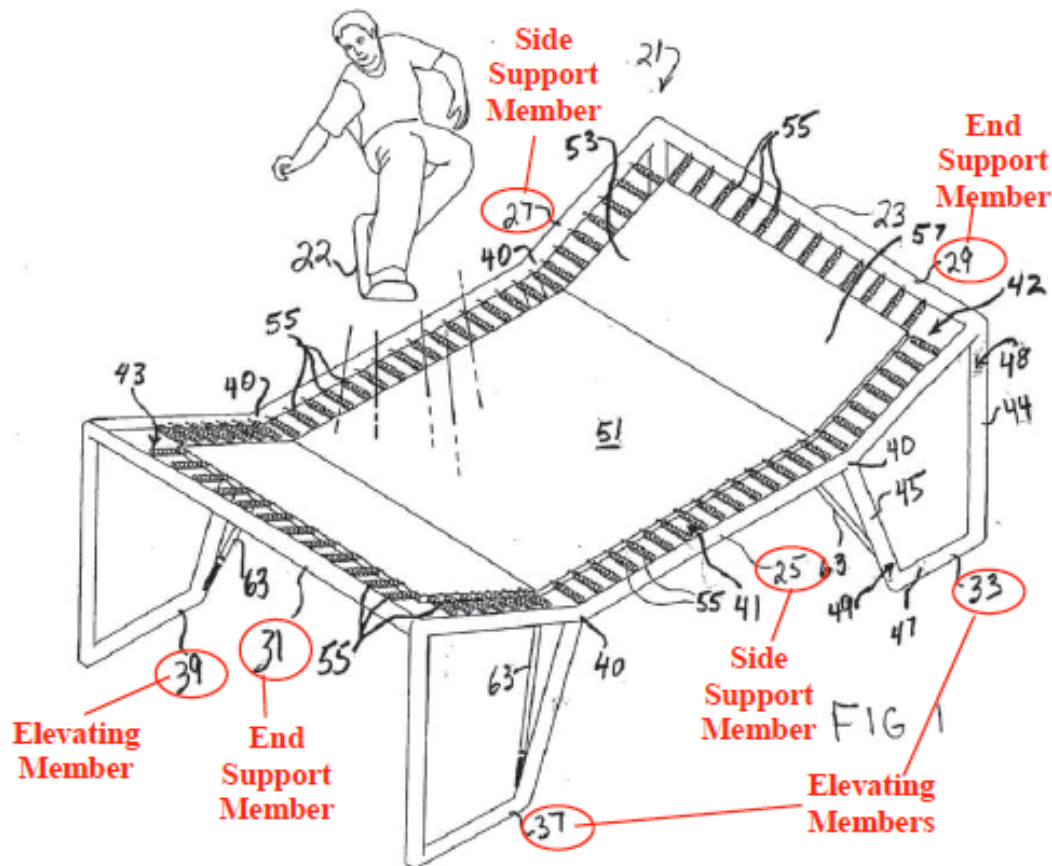
***Guo* does not include any other disclosure of how the “pieces of trampoline net” connect to each other at the “joints” or provide additional detail regarding these “joints.”** Compare *id.* at ¶[0025] (describing “plurality of trampoline nets pieced together” and “each joint between adjacent trampoline nets”) with *id.* at Claims, Abstract, and ¶¶[0001]-[0024], [0026]-[0036] (providing no discussion of how adjacent pieces of trampoline net attach to each other).

**B. *Widich***

Petitioners argue that *Widich* renders obvious independent claim 1. See Petition at pp.58-65; Ex. 1013 at ¶¶135-144. Specifically, they rely on *Widich* for all of the elements of Claim 1 except for “mountable to the floor,” which they argue would have been obvious based on *Widich* and the knowledge of a POSITA. Petition at pp.61-62; Ex. 1013 at ¶139.

**1. *Widich*’s Single Trampoline Net with Three Planar Surfaces**

*Widich* describes “the new activity of trampoline boarding” which combines “specially adapted trampoline-type structures” with “a sporting board adapted for the sport.” Ex. 1005 at ¶¶[0001], [0004]. A trampoline structure includes “spaced side support members 25 and 27, end support members 29 and 31, and elevating members 33, 35, 37 and 39.” *Id.* at ¶[0034]. This structure is depicted *below*:

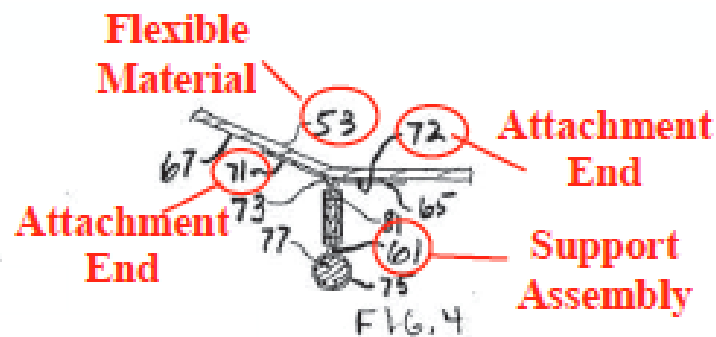
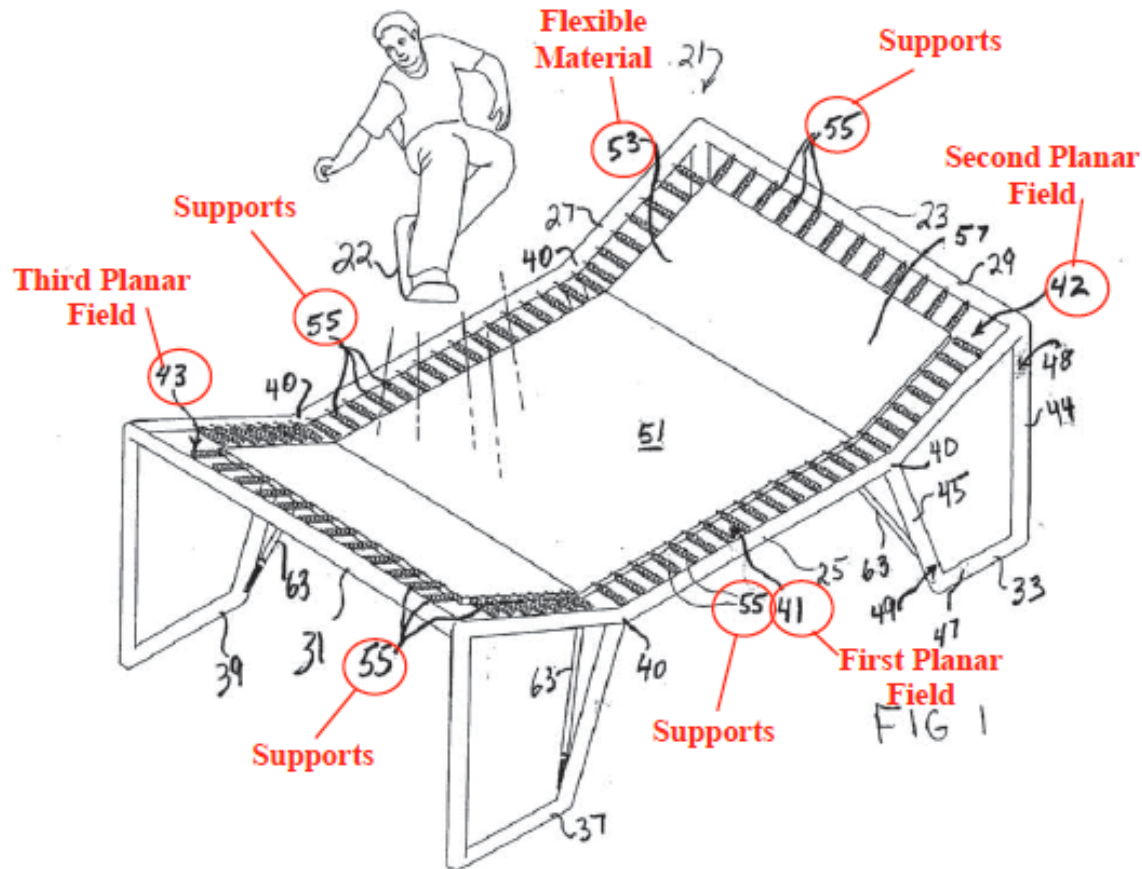


A “resilient continuous surface . . . is constructed so that the resilient surface provides plural surface engagement angles across the surface.” *Id.* at ¶[0005]; *see also id.* at ¶[0015] (similar). The resilient continuous surface is constructed of a “flexible material 53” that extends between the side support members and end support members. *See id.* at ¶[0038] (describing a “flexible material 53 having a length less than the linear measurement of a side support member 25/27 and width less than the linear measurement of an end support member 29/31”). “Flexible material 53 is made of any known material utilized for trampoline beds (porous nylon for example).” *Id.* “Multiple resilient supports 55 . . . are connected between

frame support members 25, 27, 29 and 31 and flexible material 53 utilizing known connection techniques . . . .” *Id.*

“When mounted, supported and tensioned (as discussed hereinafter), flexible material 53 provides, at upper surface 57 thereof, a resilient boarding surface having plural planar aspects meeting at selected boarding surface angels [*sic*] corresponding to the obtuse angles as defined by support members 25 and 27 of frame 23.” *Id.* These “plural planar aspects” correspond to “first, second and third planar fields 41, 42 and 43” with “fields 42 and 43 intersecting field 41 at obtuse angles” while “planar field 41 tends to the horizontal . . . .” *Id.* at ¶[0035].

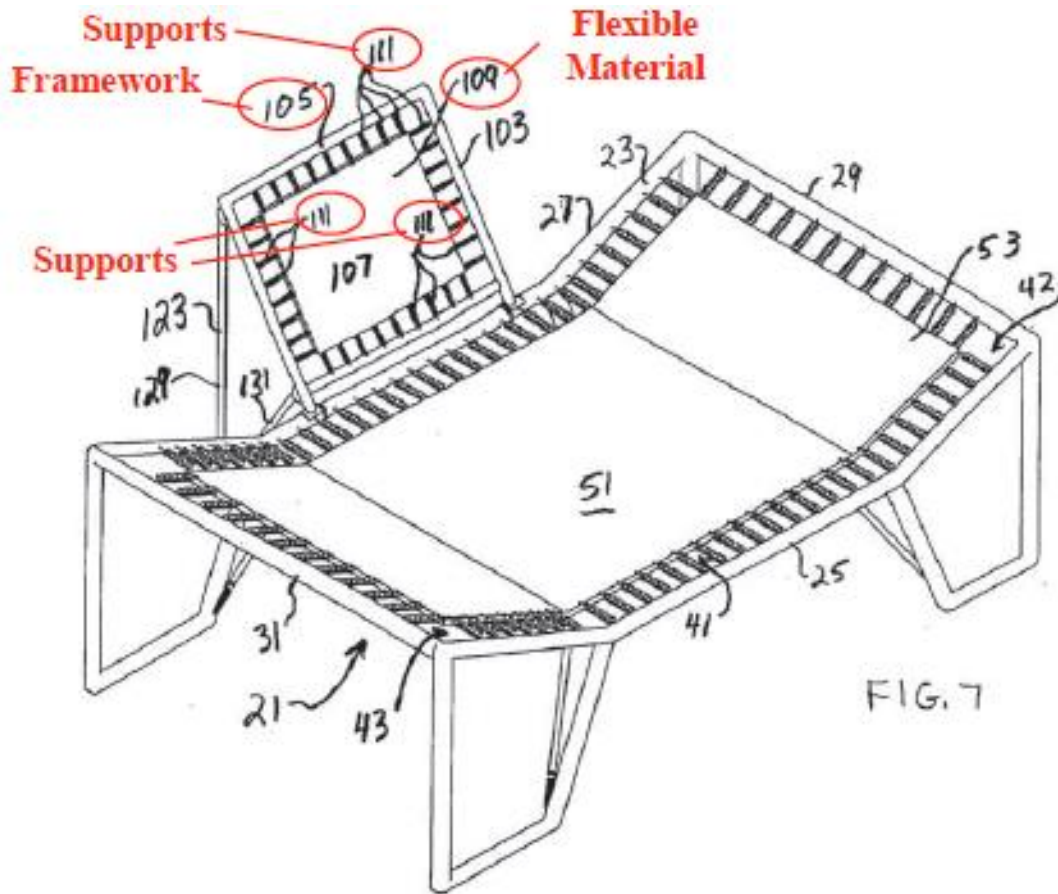
“Structure required to retain definition of the obtuse angles across flexible material 53, and thus define the boarding surface angles, includes support assembly 61 . . . includ[ing] elongated support flap 65 . . . .” *Id.* at ¶[0039]. “[S]upport flap 65 includes attachment ends 71 and 72 for attachment to flexible material 53 . . . .” *Id.* at ¶[0040]. The flexible material 53, supports 55, planar fields 41-43, support assembly 61, and first and second attachment ends 71-72 of support assembly 61 for retaining the angles at the corners of flexible material 53 are depicted in FIGS. 1 and 4:



2. Widich Attaches a Second Trampoline to the First Trampoline

*Widich* also describes an “ancillary resilient surface structure 103 . . . for releasable connection with frame 23 of apparatus 21.” *Id.* at ¶[0043]. The ancillary resilient structure 103 includes its own framework 105 surrounding flexible material 109, with the flexible material 109 attached to the framework 105 by supports 111.

*See id.* (“Framework 105 is shaped so that flexible material 109 of bed 107 (connected therein by resilient supports 111 of the type heretofore discussed) when mounted therein provides a suitably sized and shaped ancillary resilient boarding surface.”).



### 3. *Widich's* Frame Members Only Connect to One Trampoline Net

As can be seen from the drawings above, in no instance does any frame member (*i.e.*, side support members 25 and 27, end support members 29 and 31, or framework 105) connect to more than one trampoline net (*i.e.*, flexible material 53 or flexible material 109). Rather, **side support members 25 and 27, and end**

**support members 29 and 31, connect only to flexible material 53 (i.e., via supports 55).** *See, e.g., id.* at ¶[0006], ¶[0016] ¶¶[0038]-[0040]. Similarly, **framework 105 connects only to flexible material 109 (i.e., via supports 111).** *See id.* at ¶[0043].

## **V. CLAIM CONSTRUCTION AND THE PERSON OF ORDINARY SKILL IN THE ART**

The Petition was filed on November 15, 2018 – *i.e.*, after the transition from BRI to *Phillips* – and thus the present claims “shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b). Petitioners agree, and further assert “that no claim term requires explicit construction . . . .” Petition at p.5. Cherokee also does not believe that claim construction is necessary for any of the issues raised at this stage of these proceedings, but reserves the right to address claim construction issues at trial if *Inter Partes* Review is instituted. For purposes of this Preliminary Response only, Cherokee does not dispute Petitioners’ POSITA. Petition at p.6.

**VI. THE PRIMARY REFERENCES OF THE PETITION ARE DUPLICATIVE OF PRIOR ART FROM PROSECUTION—THE BOARD SHOULD EXERCISE ITS DISCRETION AND DECLINE TO INSTITUTE TRIAL**

35 U.S.C. § 314(a) “recites ‘may not’ when referring to authorization for *inter partes* review, and does not specify any particular circumstance in which review must be authorized.” *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357 *et al.*, Paper 19 at § II.B.4.i (Sept. 6, 2017) (precedential). 35 U.S.C. § 325(d) explicitly authorizes denial of institution based on prior consideration of the same or **substantially the same art or arguments** by the USPTO: “In determining whether to institute or order [*Inter Partes* Review], the Director may take into account whether, and reject the petition or request because, the same or **substantially the same prior art or arguments** previously were presented to the Office.” 35 U.S.C. § 325(d) (emphasis added); *see also Unified Patents Inc. v. Berman*, IPR2016-01571, Paper 10 at p.9 (Dec. 14, 2016) (informative).

Under the PTAB’s 6-factor framework for analyzing § 325(d), the following non-exclusive factors should be considered:

- 1) The similarity of the asserted art and the prior art involved during examination;
- 2) The extent to which the asserted art was considered during examination, including whether the prior art was the basis for rejection;
- 3) The cumulative nature of the asserted art and the prior art considered during examination;



- 4) Whether Petitioner has pointed out sufficiently how the Examiner erred in its consideration of the asserted prior art;
- 5) The extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or the applicant's arguments during examination; and
- 6) The extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art.

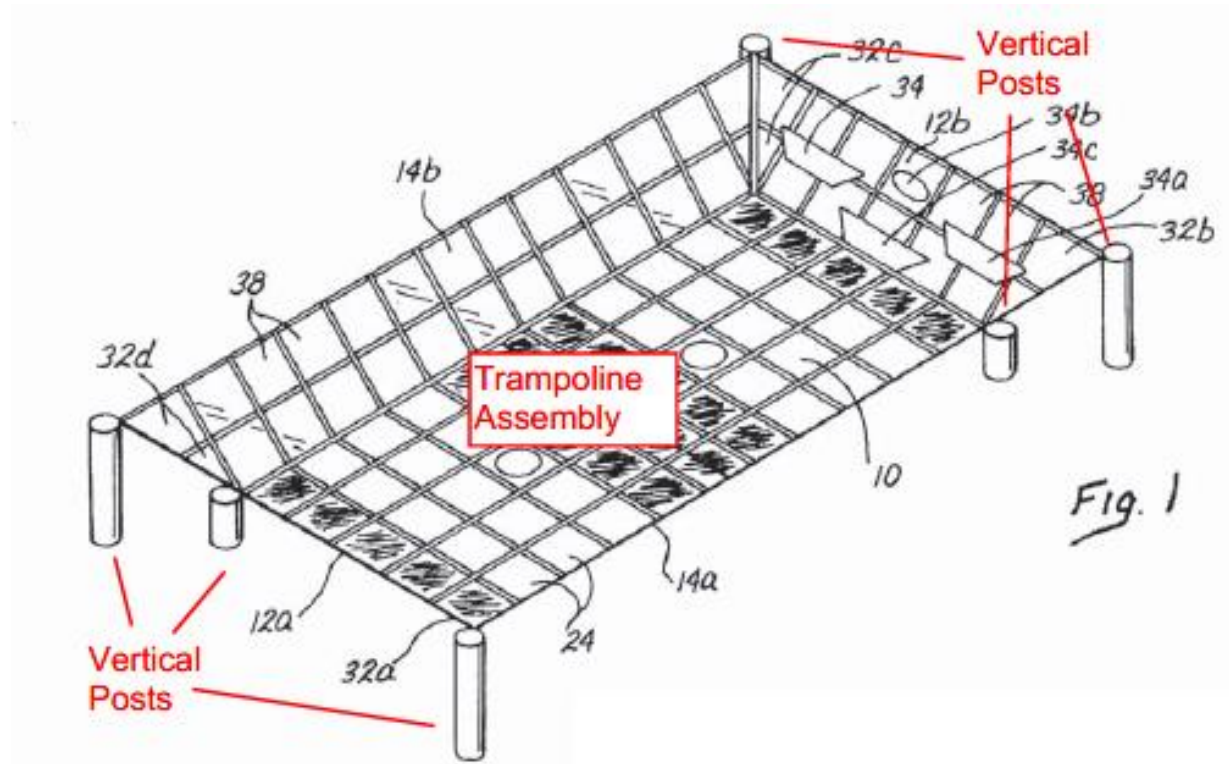
*Juniper Networks, Inc. v. Mobile Telecomms. Techs., LLC*, IPR2017-00642, Paper 24, at pp.8-9 (July 27, 2017); *see also Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 at pp.17-18 (Dec. 15, 2017) (informative). All of these factors support non-institution of trial for *Inter Partes* Review here.

**A. The Asserted Art and the Prior Art Involved During Examination Are Substantially the Same**

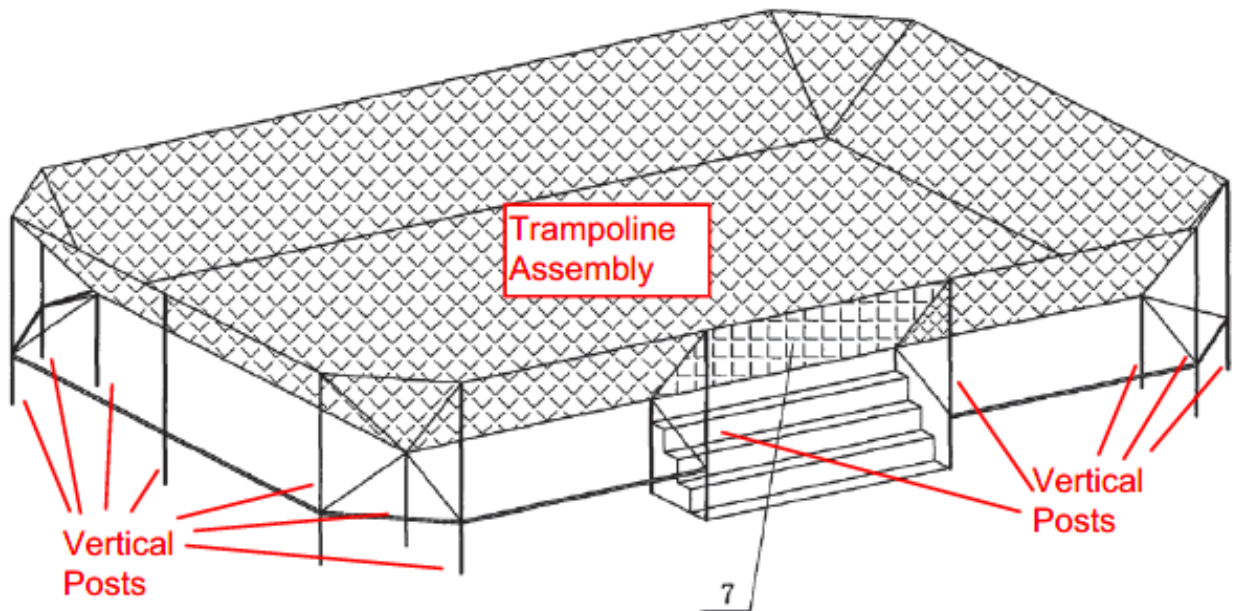
The two primary references, *Guo* and *Widich*, are substantially the same as the *Winkelhorn* and *Crawford* references that the Examiner considered during prosecution.

**1. Winkelhorn and Guo are Substantially the Same**

Both *Winkelhorn* and *Guo* depict vertical posts at upper and lower corners, with a trampoline assembly suspended from those posts:



*Winkelhorn*



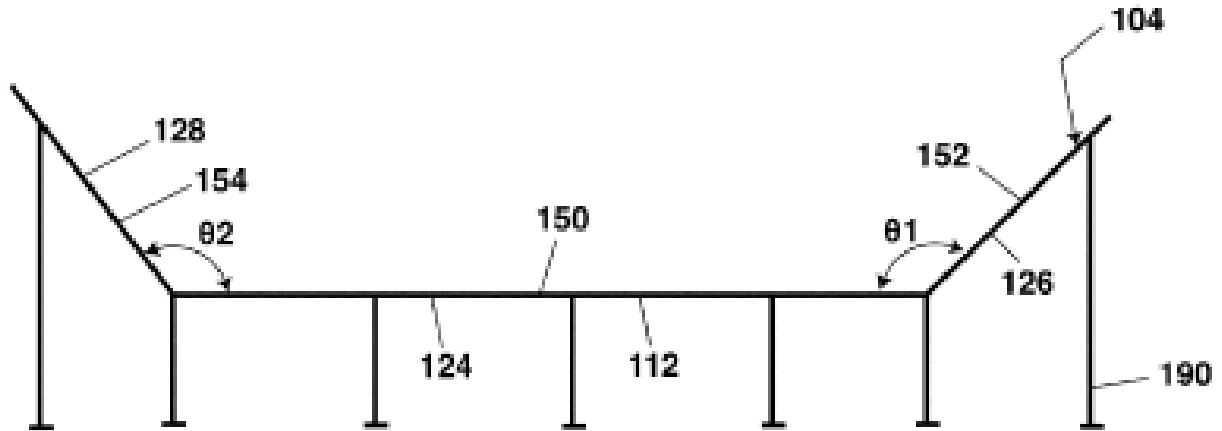
*Guo*

The main difference between the two is that *Winkelhorn's* trampoline

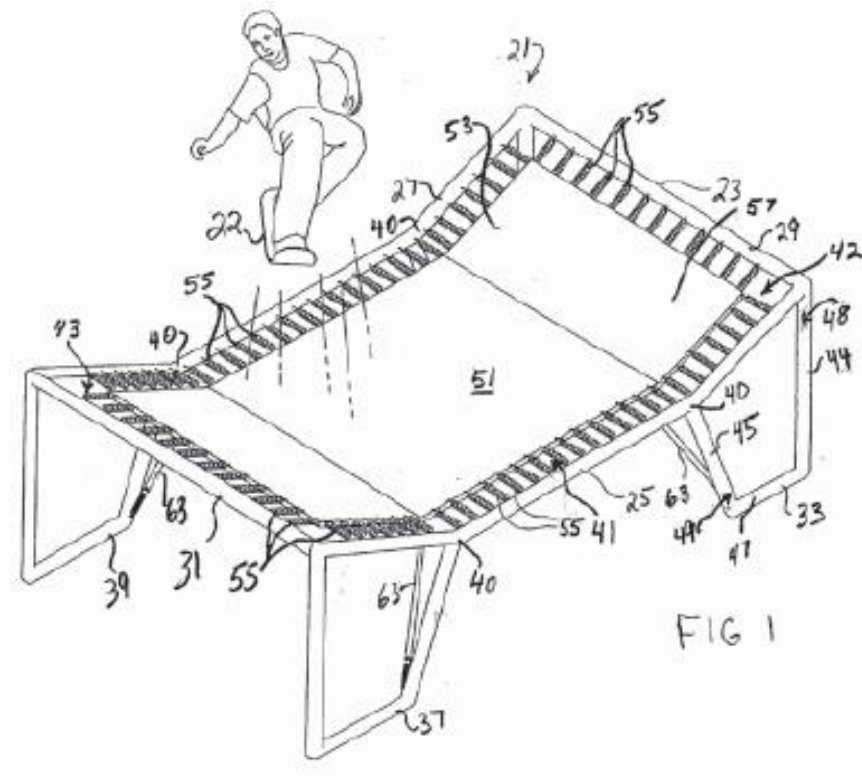
assembly is constructed of steel cables (*see supra* at § III(B)(4); *see also* Ex. 1009 at 2:8-10) while *Guo* has “joints” made of “pieced together” trampoline nets (*see supra* at § IV(A)(3); *see also* Ex. 1004 at ¶[0025]). As is explained in more detail *infra* at § VI(C), Petitioners have characterized the alleged disclosures of both references in virtually identical invalidity contentions in the Related Cases. They have repeated those characterizations of *Guo* in their Petition.

2. *Crawford* and *Widich* are Substantially the Same

Both *Widich* and *Crawford* depict a single piece of trampoline material attached to a frame with opposite angled ends. As is explained in more detail *infra* at § VI(C), Petitioners have characterized the alleged disclosures of both references in virtually identical invalidity contentions in the Related Cases. They have repeated those characterizations of *Widich* in their Petition. Although these trampolines are depicted in different views—*i.e.*, top/side views for *Crawford* and a perspective view for *Widich*—both have virtually identical trampolines and angled frame shapes:



*Crawford*



*Widich*

3. The Substantial Similarity Between the Primary References and the Art Considered During Prosecution Weighs Strongly in Favor of Denying Institution

Trial should not be instituted when the “Petitioner’s Grounds . . . present

essentially the same question of patentability as was previously considered by the Examiner . . . .” *Dorco Co., Ltd. v. The Gillette Co., LLC*, IPR2017-00500, Paper 7 at p.15 (June 21, 2017). Even though the Board may “recognize that the prior art disclosures relied upon are somewhat different . . . [t]he statute, however, states that a petition may be rejected when ‘substantially the same prior art *or* arguments previously were presented to the Office.’” *Conopco, Inc. dba Unilever v. The Procter & Gamble Co.*, IPR2014-00628, Paper 21 at pp.9-10 (Oct. 20, 2014) (quoting § 325(d), emphasis in original). As depicted in the previous two subsections, and described in more detail *infra* at § VI(C), whatever minor differences may exist between *Winkelhorn* and *Guo* or *Crawford* and *Widich*, in all relevant respects their disclosures and Petitioners’ arguments are virtually identical to what the Examiner considered during prosecution. *See, e.g., Cultec, Inc. v. Stormtech LLC*, IPR2017-00777, Paper 7 at p.12 (Aug. 22, 2017) (informative) (finding that a newly cited reference’s “discontinuous grooves is substantially the same as the discontinuous slots” in the previously considered reference); *Becton*, IPR2017-01586, Paper 8 at p.21 (“We cannot reasonably consider such differences ‘material’ because, on one hand these structural differences do not appear to affect in any a meaningful manner, the functioning of the [relevant technology], and because Petitioner has not relied on, or substantively addressed, any particular differences between [the references’] structure as a basis for unpatentability in the

Petition.”).

**B. Although the Asserted Art Was Not Considered During Examination, the Substantially Similar Art Was Substantively Considered by the Examiner**

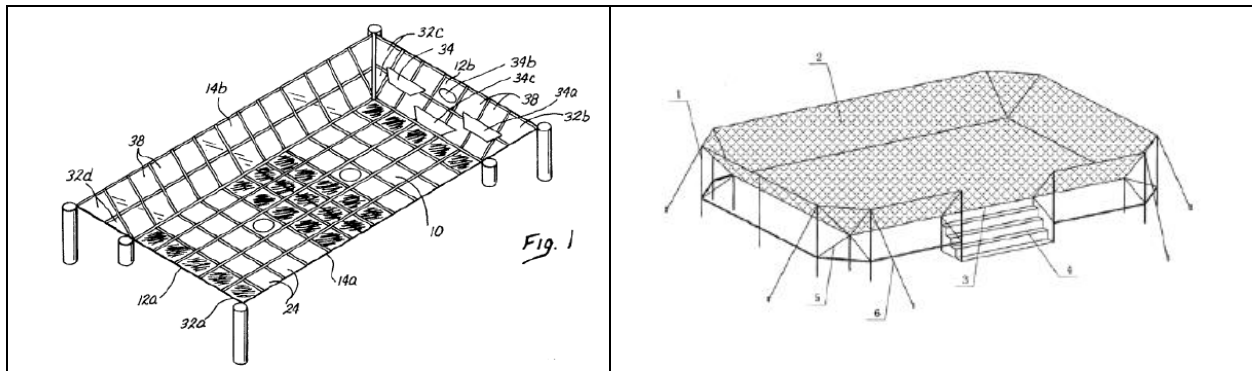
Although *Guo* and *Widich* were not considered during examination, the substantially similar art was considered during prosecution. *Winkelhorn* was the primary reference that was considered during prosecution of the ‘575 Patent. *See supra* at §§ III(B)(1),(3)-(4). In the Office Action where the current independent claims of the ‘575 Patent were allowed, the Examiner relied on *Winkelhorn* to reject independent claim 19 which lacked details regarding rigid angled members and the connections of the other components to the rigid angled members. Ex. 1002 at pp.53-54. *See Unified Patents*, IPR2016-01571, Paper 10 at p.11 (noting that a reference was “substantially considered by the Examiner during the prosecution” where “[a]lthough these issued claims were never rejected over [the prosecution art], they were added in Amendments” and “[t]he Examiner Interview Summary evidences consideration by the Examiner of [the prosecution art] for the newly added claims”); *see also Neil Ziegman, N.P.Z., Inc. v. Stephens*, IPR2015-01860, Paper 11 at pp.9-10 (Feb. 24, 2016) (“While the rejection where Ziegmann ’503 was cited was for a claim other than claims 12–15, claims 12–15 were rejected, albeit on another ground, in the same Office Action in which a claim was rejected as obvious over Ziegmann ’503.”).

Although the Examiner did not address *Crawford* in detail during prosecution of the ‘575 Patent, the Examiner expressly referenced *Crawford* during prosecution of the Grandparent to the ‘575 Patent. Ex. 1012 at p.67. *See Becton*, IPR2017-01586, Paper 8 at pp.22-23 (explaining that the previously considered Tauschinski reference was “considered by the examiner . . . during prosecution” and “[t]his is not a case where the prior art was simply listed [by the Applicant] in an IDS during prosecution”). In view of the similarity with *Widich* (*supra* at § VI(A), *infra* at § VI(C)) and the fact that both *Crawford* and *Widich* clearly lack numerous claim elements (*see infra* at § VII(B)), the Examiner’s citation and consideration of *Crawford* was more than adequate under the circumstances to demonstrate that it was substantively considered.

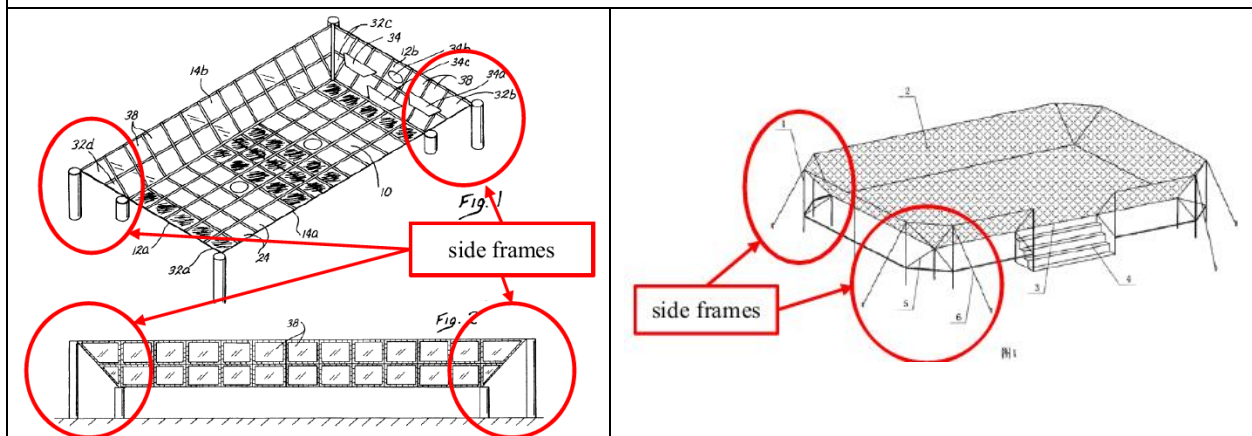
**C. *Guo* and *Widich* Are Cumulative To *Winkelhorn* and *Crawford***

The similarity of the asserted art to the art considered during prosecution is best demonstrated by Petitioners’ own invalidity contention claim charts in the Related Cases, in which virtually identical labeling is applied to virtually identical components. This comparison is depicted in the chart below for *Winkelhorn* (Ex. 2009 at left) vs. *Guo* (Ex. 2010 at right):

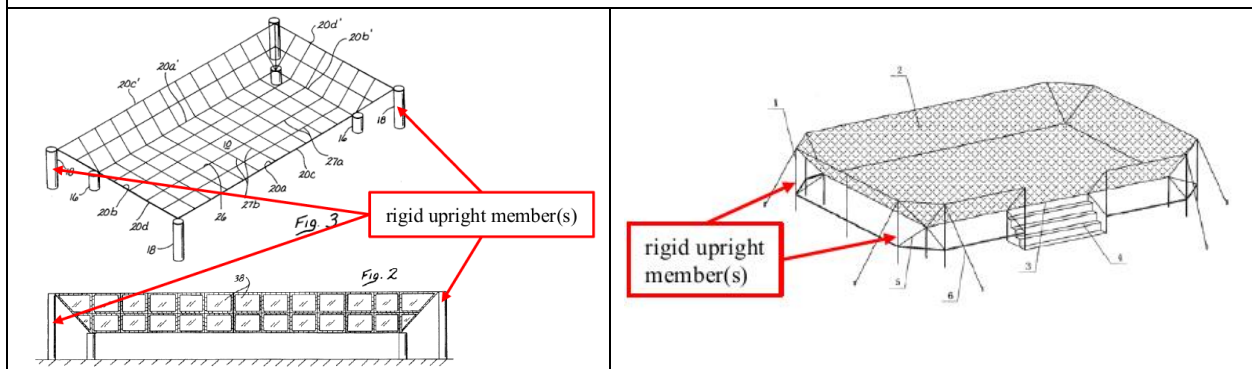
1.1 - A trampoline arena comprising: (Ex. 2009 at p.2 vs. Ex. 2010 at p.2)
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1.2 - a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including: (Ex. 2009 at p.2 vs. Ex. 2010 at p.2)

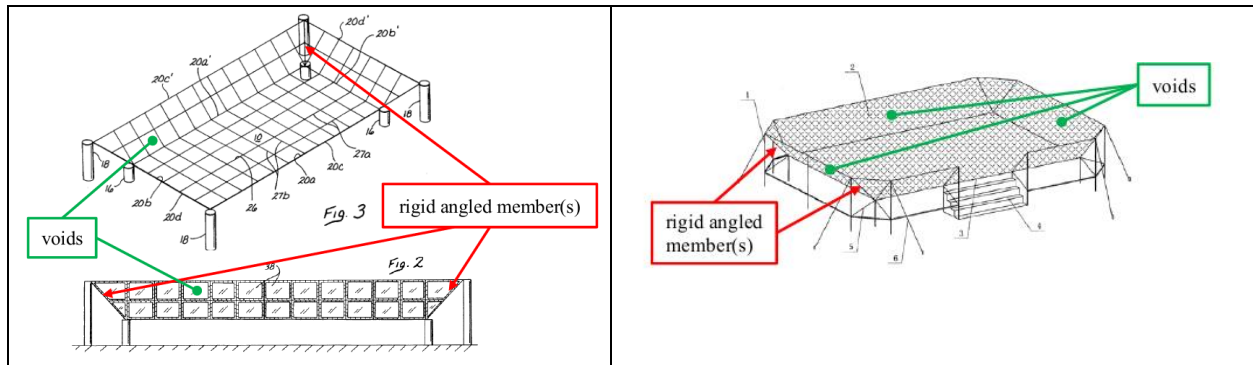


1.3 - a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor; and (Ex. 2009 at p.3 vs. Ex. 2010 at p.3)

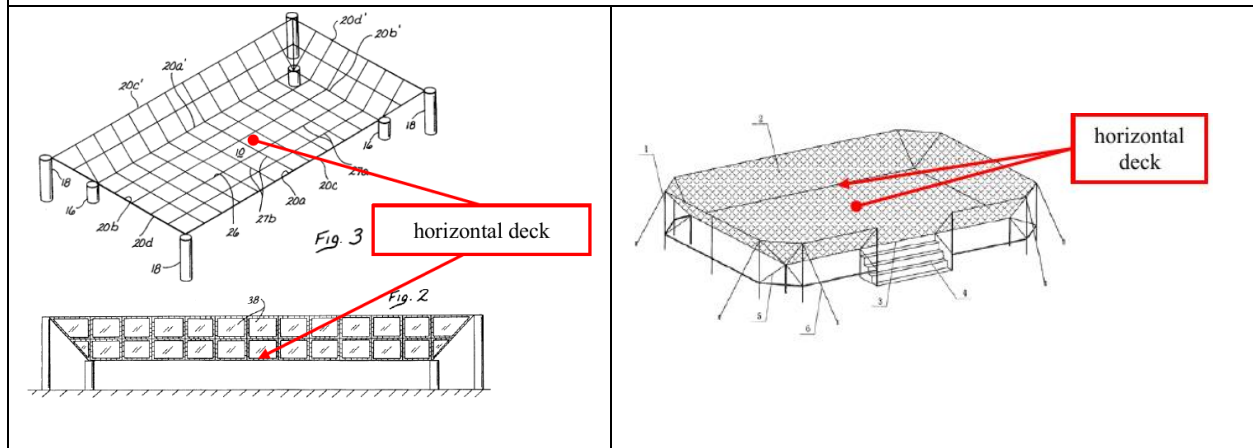


1.4 - a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members; (Ex. 2009 at p.4 vs. Ex. 2010 at p.4)

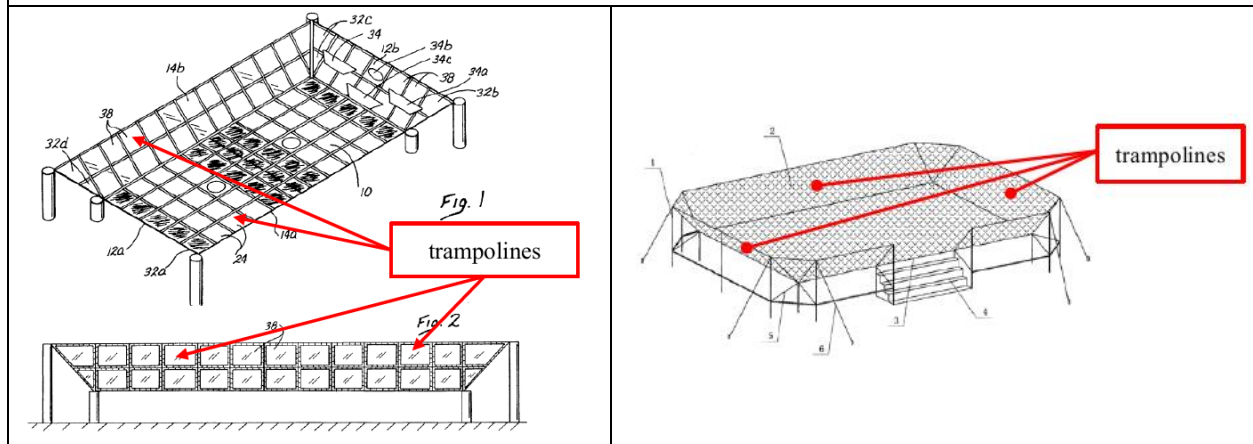




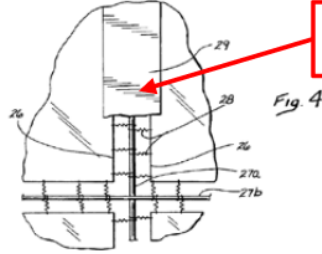
1.5 - a horizontally-extending deck connected to the lower angled member portions of the plurality of side frames; (Ex. 2009 at p.5 vs. Ex. 1010 at p.5)



1.6 - a plurality of trampolines connected to the angled members along peripheries thereof and extending across the plurality of voids; and (Ex. 2009 at p.6 vs. Ex. 2010 at p.6)



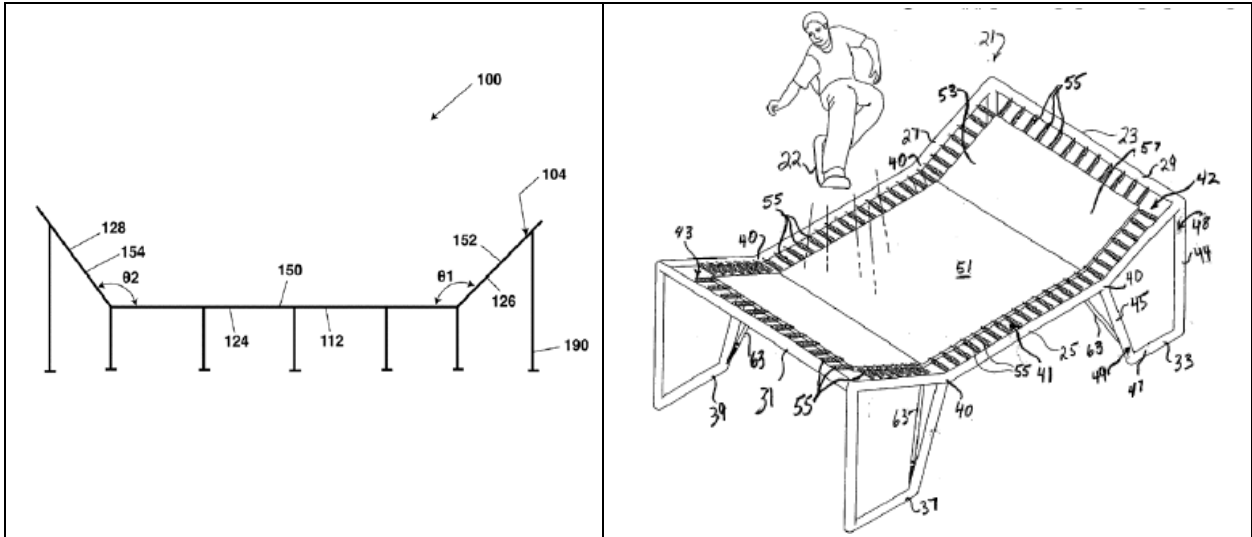
1.7 - a padding assembly including a plurality of pads at least partially overlying the angled members and the peripheries of the trampolines. (Ex. 2009 at p.6 vs. Ex. 2010 at p.7)

 <p>padding</p> <p>Fig. 4</p>	<p>See, e.g., Guo [0025] (“[P]rotective padding [is] installed on each joint between adjacent trampoline nets, and the protective padding is made of cotton material”).</p>
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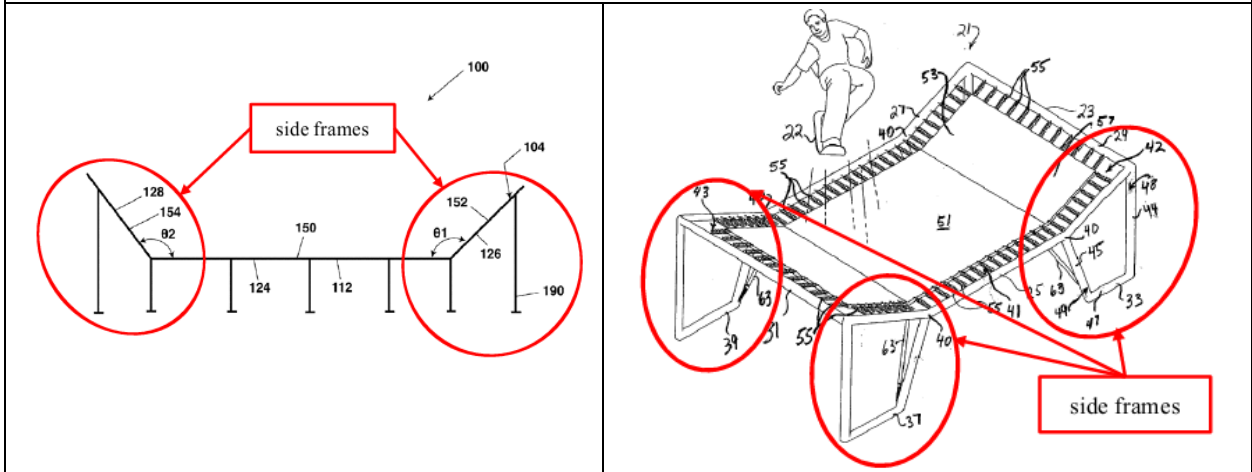
The main substantive differences between Petitioners’ positions on *Guo* and *Winkelhorn* are: (1) for the claimed “rigid angled member[s]” of element 1.4 Petitioners point to *Winkelhorn*’s “steel cables” versus *Guo*’s “joints” made of “pieced together trampolines”; and (2) for the claimed “padding assembly” of element 1.7, Petitioners rely on *Winkelhorn*’s padding overlying steel cables versus *Guo*’s discussion of “protective padding installed on each joint between adjacent trampoline nets.”

Petitioners’ charting for *Crawford* (Ex. 2011 at left) *vs.* *Widich* (Ex. 2012 at right) in the Related Cases is also virtually identical:

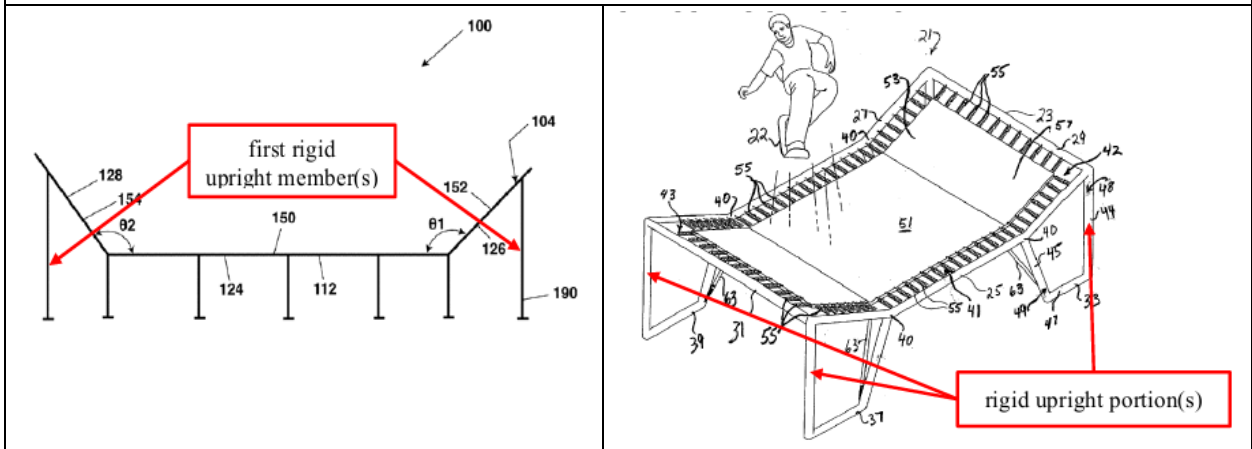
1.1 - A trampoline arena comprising: (Ex. 2011 at p.2 vs. Ex. 2012 at p.2)
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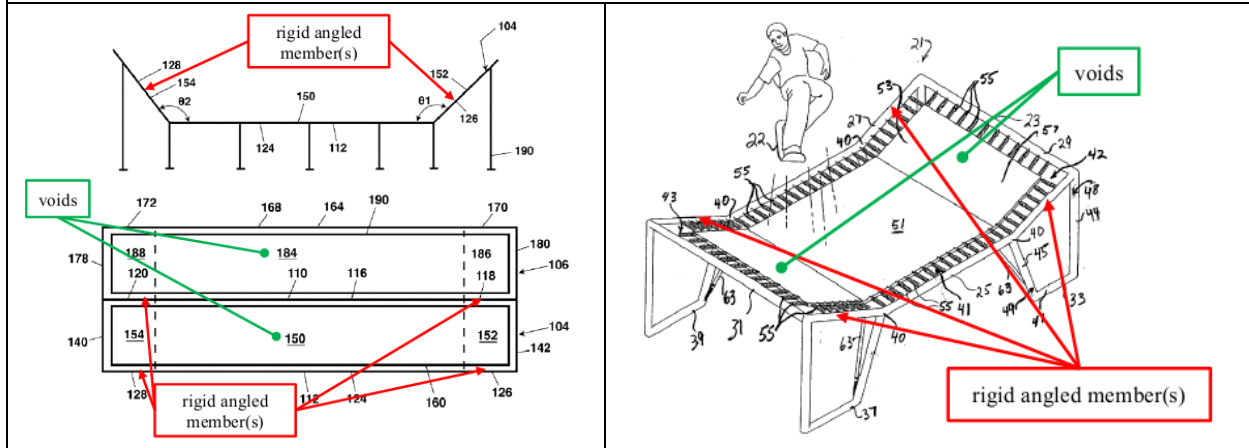
1.2 - a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including: (Ex. 2011 at p.3 vs. Ex. 2012 at p.3)



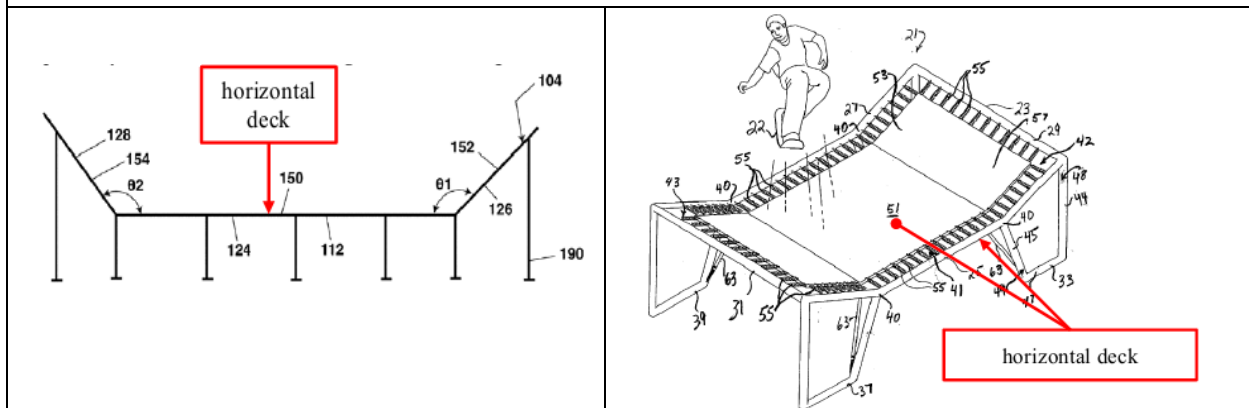
1.3 - a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor; and (Ex. 2011 at p.4 vs. Ex. 2012 at p.4)



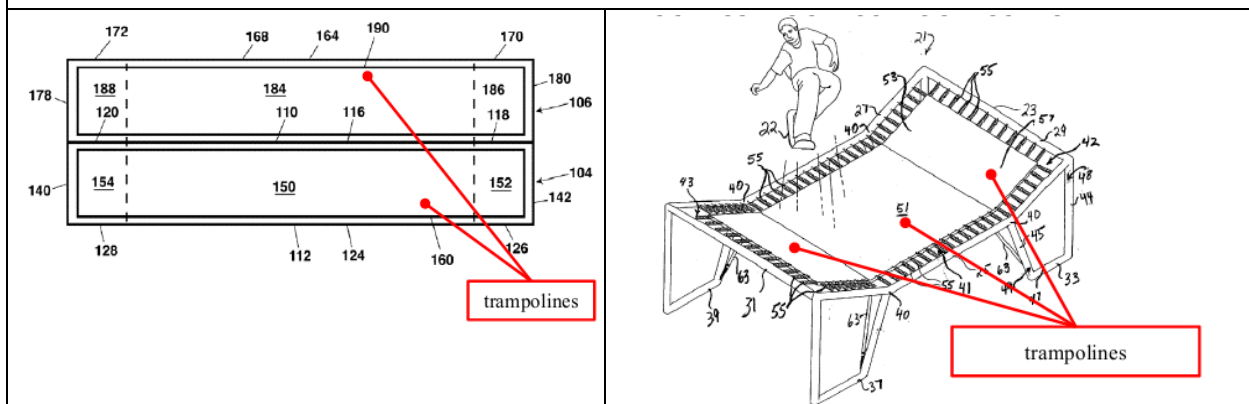
1.4 - a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members; (Ex. 2011 at p.5 vs. Ex. 2012 at p.5)



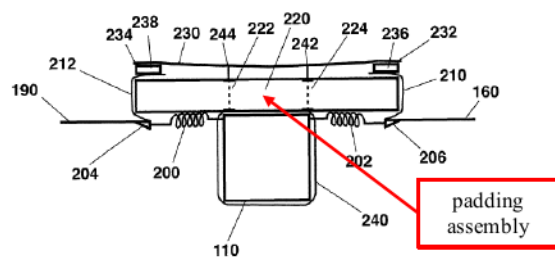
1.5 - a horizontally-extending deck connected to the second angled member portions of the plurality of side frames; (Ex. 2011 at p.6 vs. Ex. 2012 at p.6)



1.6 - a plurality of trampolines connected to the angled members along peripheries thereof and extending across the plurality of voids; and (Ex. 2011 at p.7 vs. Ex. 2012 at p.7)



1.7 - a padding assembly including a plurality of pads at least partially overlying the angled members and the peripheries of the trampolines. (Ex. 2011 at p.8 vs. Ex. 2012 at p.8)



“See, e.g., Widich ¶¶ [0037] (‘safety padding may be deployed over selected exposed frame members as would be deemed prudent.’).”

Petitioners rely on the same characterizations of *Widich* in their Petition as they do in their contentions, except that in their contentions Petitioners rely on the three planar fields 41-43 of the piece of flexible material 53 as the “plurality of trampolines” for element [1.6] and do not cite, as Petitioners do in their Petition, to the ancillary detachable trampoline of FIG. 7 or FIG. 8 of *Widich*. See Ex. 2012 at element 1.6, p.7 (depicting FIG. 1 and citing to FIGS. 1-3 and related paragraphs, while ignoring FIGS. 7-8 and ¶¶[0043]-[0045]). Between service of their contentions and filing of this Petition, Petitioners may well have concluded that a single piece of flexible material 53 is not “a plurality of trampolines” and thereby elected to rely on the detachable trampolines of FIGS. 7 and 8 of *Widich*. However, as Cherokee explains *infra* at § VII(B), attaching two trampolines next to each other nonetheless fails to disclose multiple elements of the challenged claims.

In any event, for purposes of the § 325(d) cumulative art analysis, *Widich*’s placing two trampolines next to each other is also described in *Crawford*, as depicted

for claim element 1.6 in Petitioners' invalidity contentions and discussed *supra* at § III(B)(5). *See also* Ex. 2006 at FIG. 2.

Because virtually identical elements of *Guo* and *Widich* are cited in exactly the same way respectively for *Winkelhorn* and *Crawford*, the primary references are cumulative to the references considered during prosecution. *See Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, IPR2013-00324, Paper 19 at p.6 (Nov. 21, 2013) (finding the art to be substantially the same where the Petitioner “describes [the new reference] using exactly the same language” and “the claim charts presented . . . contain similar disclosures from each of [the new and previously considered references]”); *see also Praxair Dist., Inc. et al. v. INO Therapeutics LLC*, IPR2016-00781, Paper 10 at p.12 (Aug. 25, 2016) (“Although Petitioner now relies on [newly cited references], its underlying argument—that the prior art taught or suggested the [particular elements]—is essentially the same as that raised [previously].”).

Moreover, Petitioners have not identified any differences relevant to patentability (*see infra* at § VI(D)) and the actual differences (*e.g.*, *Winkelhorn*'s cables vs. *Guo*'s joints where trampolines are pieced together, and *Crawford*'s two trampolines vs. *Widich*'s ancillary trampoline) are not relevant to the challenged claims. *See infra* at § VII(A)(1)-(2) (discussing *Guo*); *infra* at § VII(B)(1)-(3) (discussing *Widich*). As the Board explained in *Becton*, a Petition must cite “new” references that actually raise substantive distinctions vis-à-vis the prosecution art:

Further, the asserted combination of [the Petition references] are mostly similar and cumulative in the evidentiary context of disclosure when compared to [the prosecution combination] that was evaluated by the Examiner. Indeed, we are also not apprised of any probative differences between the Examiner's obviousness evaluation over [another prosecution combination], and the current assertion of [the Petition references]. Also, Petitioner has not articulated any substantive differences between the prior art alone or in combination, nor do we discern any significant disparity based on our review of these references.

*Becton*, IPR2017-01586, Paper 8 at p.21

**D. Petitioners Never Explain How the Examiner Allegedly Erred, and Instead Mischaracterize the Prosecution History**

Despite Petitioners' virtually identical claim charts and the Examiner's consideration of *Winkelhorn* and *Crawford* during prosecution, **Petitioners make no attempt to distinguish *Guo* and *Widich* from these previously considered references.** See Petition at pp.8-10 (discussing *Winkelhorn* and "the references uncovered during prosecution," but failing to identify any purported differences between the asserted art and *Winkelhorn* or *Crawford*); Ex. 1013 at ¶¶26, 31, and 82 (Petitioners' expert, doing the same). This failure alone strongly favors non-institution. See *Unified Patents*, IPR2016-01571, Paper 10 at p.12 ("Petitioner fails to present any argument distinguishing the Examiner's prior consideration of [the prosecution art] or to provide a compelling reason why we should readjudicate substantially the same prior art and arguments as those presented during prosecution

and considered by the Examiner.”).

Petitioners instead argue that the Examiner erred in considering the prosecution art, based on purported similarities between the as-filed and issued claim 1 of the ‘575 Patent and as-filed claim 19:

Third, even if Guo and Widich were considered “substantially the same” as the references uncovered during prosecution, the Examiner should not have issued the claims over those references, including Winkelhorn. The Examiner allowed the claims without explanation, even though the Examiner also found that Winkelhorn broadly disclosed the elements of original claim 19.

Petition at pp.10-11. Petitioners thus imply that as-filed claims 1 and 19 of the ‘575 Patent were similar. This mischaracterizes the prosecution history and the claims. Rather, the differences between as-filed and now issued claim 1 and as-filed claim 19 are substantial (~~strikeout~~ included in as-filed claim 19 but not as-filed claim 1, underline included in as-filed claim 1 but not as-filed claim 19):



1. A trampoline arena comprising:

a plurality of ~~rigid~~ side frames defining ~~a wall~~ an outwardly sloping outer wall, each of the plurality of side frames including:

a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor; and

a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of ~~side frames~~, each of the plurality of rigid side frames comprising an upper bracket and a angled members;

a horizontally-extending deck bracket, connected to the second angled member portions of the plurality of side frames ~~interconnected at the upper brackets by a plurality of upper frame members;~~

a plurality of trampolines connected to the ~~side frames~~ angled members along peripheries thereof and extending across the plurality of voids; and

a padding assembly including a plurality of pads at least partially overlying the ~~side frames~~ angled members and the peripheries of the trampolines.

When the actual differences in language of the two claims are considered it is clear that the numerous differences in claim scope – particularly those related to the rigid angled members of the outwardly sloping wall and the other components that connect to the rigid angled members – provide ample explanation for why the Examiner allowed claim 1 of the ‘575 Patent over *Winkelhorn* and the other art considered during prosecution, but rejected claim 19 until it was amended to include other claim elements.

Because Petitioners’ attacks on the Examiner’s consideration of the prosecution art are unfounded, trial should not be instituted. *See Dorco*, IPR2017-00500, Paper 7 at p.18 (“Despite the close similarity of the prior art and arguments raised by the Petition and the prior art and arguments presented to the Office during prosecution, Petitioner does not specifically identify any errors by the

Office in allowing the '513 patent and makes little attempt to explain why the Board should revisit the patentability issues considered by the Examiner.”).

**E. The Petition Raises the Same Issues that the Examiner Considered and Rejected During Prosecution**

As discussed *supra* at §§ VI(A) and VI(C), Petitioners’ *Guo* arguments match their *Winkelhorn* arguments almost exactly. Petitioners’ claim chart for *Winkelhorn*, in turn, matches the Examiner’s arguments during prosecution. For example, both the Examiner’s rejection and Petitioners’ invalidity contentions cite to *Winkelhorn*’s vertical posts 18 as the claimed rigid upright members, trampolines 24 as the claimed trampolines, and padding 29 as the claimed padding. *Compare* Ex. 2009 at element 1.3 (Petitioners pointing to posts 18 as “rigid upright members”) *with* Ex. 1002 at p.53 (the Examiner citing to “a plurality of rigid side frames (18) defining a wall”); *compare* Ex. 2009 at element 1.6 (Petitioners citing “a plurality of trampolines [24, 38]” and pointing to trampolines 24 and 38) *with* Ex. 1002 at p.53 (the Examiner citing “a plurality of trampolines (24)”); *and compare* Ex. 2009 at element 1.7 (Petitioners citing “a padding assembly [29]” and pointing to item 29 in the drawings) *with* Ex. 1002 at p.53 (the Examiner citing to “a padding assembly (29) including a plurality of pads”). As for other claim elements that the Examiner did not find in *Winkelhorn* (e.g., rigid angled members and the structures made therefrom and attached thereto), these are not disclosed in *Guo* either. *See infra* at §§ VII(A)(1)-(2) (explaining that “joints” made of trampoline nets that are “pieced

together” are not rigid angled members, nor do they have “peripheries” for attachment of trampoline nets).

Further, as demonstrated *supra* at § VI(C), Petitioners’ arguments for *Widich* mirror their arguments for *Crawford*. *See also* Petition at p.10 (failing to identify any unique aspects of *Widich*, arguing instead that “even if Guo and *Widich* were considered ‘substantially the same’ as the references uncovered during prosecution, the Examiner should not have issued the claims over those references”).

Because the Petitioners’ arguments have significant overlap with the Examiner’s arguments and considerations during prosecution, this factor strongly favors non-institution. *See Dorco*, IPR2017-00500, Paper 7 at p.15 (declining to institute where “Petitioner’s Grounds I and II present essentially the same question of patentability as was previously considered by the Examiner”); *Becton*, IPR2017-01586, Paper 8 at p.23 (explaining that while “[w]e appreciate, as Petitioner argues that, ‘[t]he Ground presents a new combination of references that has not previously been considered’ . . . Petitioner has not persuasively explained why the ‘new combination’ leads to any different argument or reasoning then [*sic*] that previously advanced by the Examiner”).

**F. Petitioners’ “Additional Evidence” Does Not Warrant Reconsideration of the Art**

Having failed to identify any differences between the asserted art and prosecution art, Petitioners argue that the references themselves and the declaration

of their expert warrant reconsideration of the prior art:

Finally, § 325(d) does not apply because the additional facts and evidence included in the instant Petition, including the expert declaration of Dr. Cameron and multiple prior art references that were not uncovered during prosecution, warrant reconsideration of the prior art.

As explained *supra* at §§ VI(A)-(E), the *Guo* and *Widich* references are duplicative of the previously considered prior art and arguments from prosecution. **Nor do Petitioners point to any portion of Petitioners' expert's declaration that compels consideration of substantially the same art.**

Where Petitioners' expert notably fails is in addressing the transparent holes in the disclosures of the asserted references – *i.e.*, the same holes the Examiner found in *Winkelhorn* and *Crawford* during prosecution. As one example, Petitioners' expert draws red lines on the “joints” made of “pieced together” trampolines in *Guo* and proclaims these to be “rigid angled members.” *See* Ex. 1013 at ¶76 (“As can be seen in my Figure 18 and Figure 19, I have highlighted the rigid angled members in red . . . .”); *see also id.* at p.39 (depicting a red portion in a figure (Figure 18) created by Petitioners); *id.* at p.40 (depicting red lines on what *Guo* describes as “joints” between “pieced together” trampolines). This is rank speculation. Petitioners' expert has pointed to no evidence as to why the red highlighted lines are rigid, and never acknowledges that these lines are disclosed merely as joints of trampoline net

pieced together and tightened with ropes. *See id.* at ¶76 (discussing the “rigid angled member” claim element in a single paragraph without addressing *Guo*’s ¶[0025] discussing pieced together trampolines or *Guo*’s ¶[0022] discussing tightening the trampoline net with a rope to adjust the angle between the top and bottom of the trampoline net).

As another example, Petitioners’ expert fails to consider which components of *Widich* purportedly make up the claimed “outwardly sloping outer wall” that is defined by the plurality of side frames. *See* Ex. 1013 at ¶¶135–140 (combining the “outwardly sloping outer wall” claim element with multiple other elements, and failing to identify any disclosure of *Widich* for that element). Indeed, while this claim element is addressed separately for *Guo*, Petitioners’ expert analyzes multiple claim elements together for *Widich*. *Compare id.* at ¶¶67-68 (specifically addressing “a plurality of side frames defining an outwardly sloping wall” for *Guo*) *with id.* at ¶¶136-140 (discussing numerous lengthy claim elements together without addressing “an outwardly sloping outer wall” for *Widich*). As discussed in more detail *infra* at § VII(B)(1), Petitioner and Petitioners’ expert ignore the claimed requirement for “an outwardly sloping wall.”

“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.” *Becton*, IPR2017-01586, Paper 8 at p.28 (citing 37 C.F.R. § 42.65(a)). In this case, Petitioners point to their expert’s

testimony but do not attempt to show any particular “additional evidence and facts” that justify reconsideration of the substantially similar art and arguments considered during prosecution. As described above and in more detail *infra* at § VII, to the extent that Petitioners’ expert addresses various elements of the challenged claims, the report fails to consider key evidence and ignores claim elements. *Becton*, IPR2017-01586, Paper 8 at p.27 (“[The expert’s] testimony was not considered by the Examiner, this much is true. However, besides the generalized analogy to [a prior art reference], [the expert’s] testimony presents little persuasive technical evidence or explanation as to why one of ordinary skill in the art would [have combined references]”); *id.* at p.28 (“[The expert’s] declaration does not provide persuasive facts, data, or analysis to support the stated opinion.”).

**VII. THERE IS NO REASONABLE LIKELIHOOD THAT PETITIONERS WILL PREVAIL ON ANY OF THE CHALLENGED CLAIMS**

*Inter Partes* Review may only be instituted after determining “that the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Although there are numerous additional claim elements that Cherokee will ultimately demonstrate are not disclosed by the cited art should this case proceed to trial, for purposes of this Preliminary Response Cherokee will focus solely on selected elements of the independent claims.

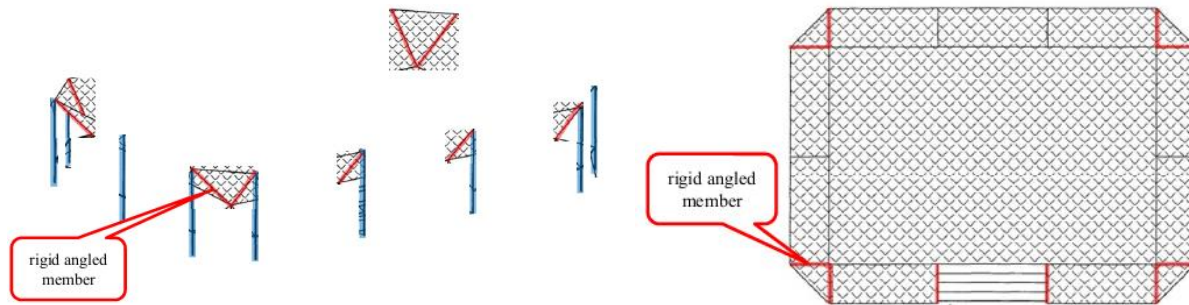
**A. Grounds 1-4—Petitioners Fail to Demonstrate a Reasonable Likelihood of Prevailing on Anticipation or Obviousness Based on *Guo***

Petitioners rely on *Guo* as teaching all elements of independent claim 1 and all elements of independent claim 19 except for “additional bracket limitations” of that claim. Petition at p.46 (“Claim 19 is essentially the same scope as claim 1, except that it includes additional bracket limitations for connecting the upper frame members and for connecting the deck.”). Claims 2-18 depend from claim 1, and all other references are cited for elements of the dependent claims or the bracket limitations of claim 19. *See id.* (relying on *Publicover* for the “additional bracket limitations” of claim 19); *id.* at pp.42-46 (relying on *Guo* in view of *Publicover* for claims 8 and 10); *id.* at pp.47-54 (relying on *Guo* in view of *Publicover* and in further view of *Grelle* for claims 11-15); *and id.* at pp.55-58 (relying on *Guo* in view of *Nissen* for claims 16-17). Because Petitioners have failed to demonstrate the required reasonable likelihood of prevailing as to the independent claims based on *Guo* as demonstrated below, all of Grounds 1-4 also fail.

**1. *Guo* Fails to Disclose a “rigid angled member”**

Petitioners argue that this claim element is anticipated by *Guo*. Petition at pp.23-25. Petitioners rely upon their color-coded annotation of *Guo* to identify the “rigid angled member.” *See* Petition at p.23 (“*Guo* discloses a side frame that includes a rigid angled member (highlighted in red, below).”). Petitioners’

annotation of *Guo* is reproduced *below* (*see id.* at p.24):



For the proposition that the red-highlighted lines are “rigid,” Petitioners assume that the red-highlighted lines are components of *Guo*’s frame: “As explained above [for the upright frame members], *Guo*’s frame is rigid, so the angled members are also rigid.” Petition at p.24 (citing to “Section VI.A.1.b.i above”). **However, neither Petitioners nor their expert cite any evidence that the locations where they draw red lines are part of *Guo*’s frame.** The Petition’s cited “Section VI.A.1.b.1 above” does not include any discussion of the red-highlighted lines as part of *Guo*’s frame, or any citation to any such disclosure in *Guo*. Compare *id.* at pp.19-22 (discussing blue-shaded upright posts as corresponding to *Guo*’s “stereoscopic trampoline frame 1”) with Ex. 1004 at FIG. 1 & ¶¶[0021]-[0022] (*Guo* describing and depicting the upright posts as “stereoscopic trampoline frame 1” and the cross-hatched trampolines including the Petitioners’ expert’s red lines as “stereoscopic trampoline net 2”).

Perhaps recognizing that nothing in *Guo* describes the red-highlighted lines as part of its frame, Petitioners adopt a second tack, arguing that “[a]s with the



vertical members of Guo's frame, if the angled members of Guo's frame were not rigid, they could not maintain the obtuse angle and shape of the side wall and would collapse with a compressive load." Petition at pp.24-25. This misses the point. It again assumes (without support) that the red-highlighted portions are components of Guo's frame. But there is no disclosure that the red-highlighted lines are part of *Guo's* stereoscopic trampoline frame 1. Accordingly, there is no reason that completely different materials (*i.e.*, joints between trampolines vs. upright posts) would behave in the same manner. *See* Petition at pp.20-25 (failing to cite any evidence that the red-highlighted lines are part of the frame).

The Petition also cites to ¶¶74-76 of Petitioners' expert's report for the proposition that the red lines are rigid angled members. Petition at p.25. Petitioners' reliance is misplaced. Paragraphs 74-75 discuss the "mountable to a floor" element for the "upright members," but not the red-highlighted lines. Ex. 1013 at ¶¶74-75. Paragraph 76 does address rigid angled members but does so without citation to *Guo's* specification. *Id.* at ¶76. Paragraph 76 also discusses drawings with red lines in FIGS. 18-19 of the report, but neither of those figures nor any related discussions of those figures cite to any evidence from *Guo* that the red-highlighted lines are part of the frame 1 or that they are rigid. *See id.* at FIGS. 18-19, ¶¶67-73 (failing to cite any such evidence).

Petitioners' expert also makes the following statement in ¶76 regarding the

red-highlighted lines:

In Guo, trampoline nets are secured to the red angled members that comprise the side (outer) walls and a POSITA would understand that these angled members must be rigid to safely support the trampoline net. When a person jumps on the side angled trampoline net, a bending force is applied on the angled members. A non-rigid member would not be as safe under bending loads and a POSITA would understand the angled members to be rigid.

Ex. 1013 at ¶76.

Petitioners' expert provides no citation to *Guo* for the proposition that “trampoline nets are secured to the red angled members that comprise the side (outer) walls” or that the red-highlighted lines “must be rigid.” Ex. 1013 at ¶76; *see also*, *e.g.*, *id.* at ¶56 & FIG. 13 (depicting the red-highlighted lines, but not discussing any purported attachment to the red-highlighted lines); ¶¶67-68 & FIGS. 18-19 (same); ¶77 & FIG. 20 (same).

Where a Petition and expert declaration merely make conclusory statements without citation to any evidence, the Petitioners have not carried their burden and trial should not be instituted. *See* 35 U.S.C. § 316(e) (“In an inter partes review... the petitioner shall have the burden of providing a proposition of unpatentability by a preponderance of the evidence.”); *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (“To satisfy its burden of proving [invalidity], a petitioner cannot employ mere conclusory statements. The petitioner must instead

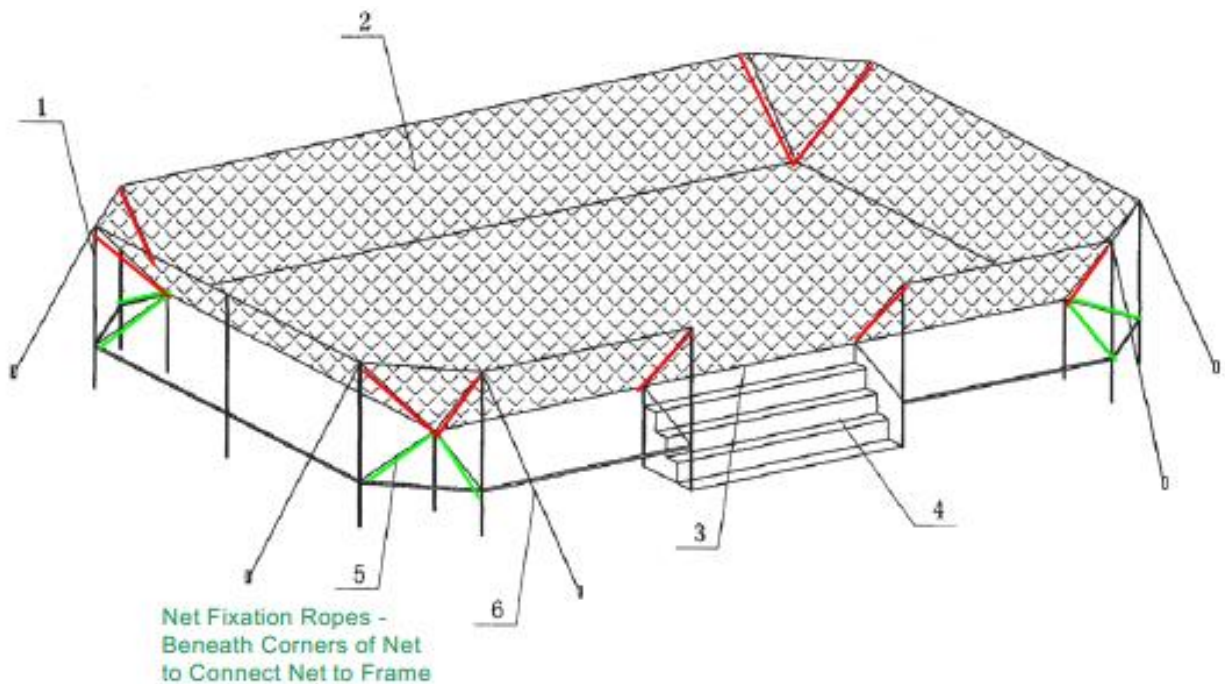
articulate specific reasoning, based on evidence of record, to support the legal conclusion of [invalidity].”).

Not only do Petitioners and their expert fail to cite evidence that the red-highlighted lines are part of *Guo*’s frame or are rigid, *Guo*’s disclosure directly contradicts their unsupported conclusions. **According to *Guo*, the red-highlighted lines are “joints” made of “pieced together” trampoline nets, i.e., they specifically are not part of *Guo*’s frame:**

The trampoline net is made from a plurality of trampoline nets pieced together, to achieve the goal of the trampoline net having a bigger usable area, with protective padding installed on each joint between adjacent trampoline nets, and the protective padding is made of cotton material.

Ex. 1004 at ¶[0025]; *see also supra* at § IV(A) (discussing *Guo* in detail). Indeed, when components of *Guo*’s trampoline net connect to its frame, they do not do so at the red-highlighted lines. Rather *Guo* describes net fixation ropes 5 that attach its net to its frame. Ex. 1004 at ¶[0022] (“The stereoscopic trampoline net 2 is connected and fixed to the stereoscopic trampoline frame 1 by means of net fixation ropes 5 disposed at the various corners there beneath.”); *see also* Claim 2 (similar). These net fixation ropes 5 are depicted in green below as connecting the base of the corner pieces of stereoscopic trampoline net 2 (including the red-highlighted lines) to the stereoscopic frame 1, not as connecting trampoline nets to the red-highlighted

lines:



Furthermore, these red-highlighted lines are not rigid, “[a]s the material used for the trampoline net is very soft[.]” Ex. 1004 at ¶[0022]). Rather, the trampoline net can be “tightened” and the angle of the red-highlighted lines can be “adjusted” by pulling on the net fixation ropes:

The length of the net fixation ropes 5 can be adjusted to tighten the connection between the stereoscopic trampoline net and the stereoscopic trampoline frame. The angle included between the side wall of the stereoscopic trampoline net and the bottom of the stereoscopic trampoline net can also be adjusted.

Ex. 1004 at ¶[0022]. Petitioners’ expert completely ignores this disclosure. Ex. 1013 at ¶76 (proclaiming that the red-highlighted lines “must be rigid” without citing

any evidence, discussing the “very soft” material of the trampoline nets of the joints, or discussing the tightening of the net fixation ropes 5).

That these red-highlighted lines are not rigid is further demonstrated by *Guo*’s requirement of frame fixation ropes 6. Whereas the rigid angled members claimed in the ‘575 patent facilitate a completely free standing trampoline arena (Ex. 1001 at 2:51-53, 4:8-12), *Guo* requires tightened frame fixation ropes 6 to remain standing. *E.g.*, Ex. 1004 at ¶[0023] (“The length of the frame fixation ropes can be adjusted to tighten the connection between the stereoscopic trampoline frame and the floor.”). Petitioners’ expert makes no attempt to explain why, if the red-highlighted lines “must be rigid,” it is also necessary to have frame fixation ropes to tighten the frame to the floor. Ex. 1013 at ¶76 (proclaiming that the red-highlighted lines “must be rigid” without citing any evidence or discussing frame fixation ropes 6).

Petitioners’ expert’s only support for the argument that the red-highlighted lines “must be rigid” appears to be speculation that *Guo*’s design “would not be safe” if they are not. Ex. 1013 at ¶76 (arguing that the red-highlighted lines “must be rigid to safely support the trampoline net” and that they “would not be as safe under bending loads”). Petitioners’ expert may be correct that non-rigid joints made of a very soft material would not be as safe as rigid members, but that doesn’t change the fact that what *Guo* actually discloses is stretching a large pieced-together trampoline tight with ropes—*i.e.*, exactly the sort of large and unsafe trampoline design that

prevented growth of the trampoline industry prior to Mr. Gurley's invention. Ex. 1001 at 1:23-25 ("However, trampolines, and particularly large trampolines, have also been viewed as a considerable safety risk."). Indeed, *Guo* states that its "trampoline is structurally simple and has a big jumping area . . . ." Ex. 1004 at ¶[0001]. Just because *Guo*'s "simple" design may be unsafe does not mean that *Guo* discloses something that it clearly does not. *See, e.g., Ex. 2015 - Polygroup Limited MCO v. Willis Elec. Co.*, Appeals No. 2018-1748, 2018-1749, 2018-1750 at pp.10-11 (Fed. Cir. 2019) (overturning the Board's finding of invalidity where "[the expert's] statement is a conclusory and unsupported assertion, and we find it to be inconsistent with the intrinsic record").

In sum, Petitioners and Petitioners' expert provide only conclusory statements to support their claim that their red-highlighted lines are rigid angled members and part of the frame. *See C.R. Bard, Inc., v. Medical Components, Inc.*, IPR2015-01660, Paper 9 at p.11 (Feb. 9, 2016) ("This assertion, however, is conclusory, and relies exclusively on [Petitioner's expert]'s declaration testimony, which merely repeats the conclusory statements in the Petition without citation to the asserted prior art references or any other evidence.... Accordingly, his testimony has little, if any, probative value."). Where as here, those conclusory statements are directly contrary to the evidence on the face of the purported prior art, the statements should be given no weight. *Apple Inc. v. VirnetX Inc.*, IPR2015-00813, Paper 8 at p.8 (Sept. 16, 2015)

(denying Institution despite Petitioner’s statements regarding the prior art, noting that the Petitioner’s “statement, however, appears contrary to [the reference’s] only disclosure related to [the technical subject matter]”). Accordingly, Petitioners have not met their burden on Grounds 1-4.

2. *Guo* Fails to Disclose “a plurality of trampolines connected to the angled members along peripheries thereof”

Petitioners argue that this claim element is anticipated by *Guo*. Petition at pp.27-28. As discussed *above*, *Guo* fails to disclose rigid angled members, but rather, discloses joints where trampoline nets are pieced together. Because *Guo*’s trampoline nets are pieced together with each other, and because there are no rigid angled members but only joints between trampoline nets, *Guo* fails to disclose anything (let alone a plurality of trampolines) “connected to the angled members along peripheries thereof.”

For this claim element Petitioners rely in part upon the same evidence discussed above, *i.e.*: (1) a general statement from the Abstract regarding “a stereoscopic trampoline net installed inside the stereoscopic trampoline frame”; (2) a depiction of trampolines connecting to each other at the red-highlighted lines; and (3) a citation to the fact that the “[t]he trampoline net is made from a plurality of trampoline nets pieced together . . . .” Petition at pp.27-28.

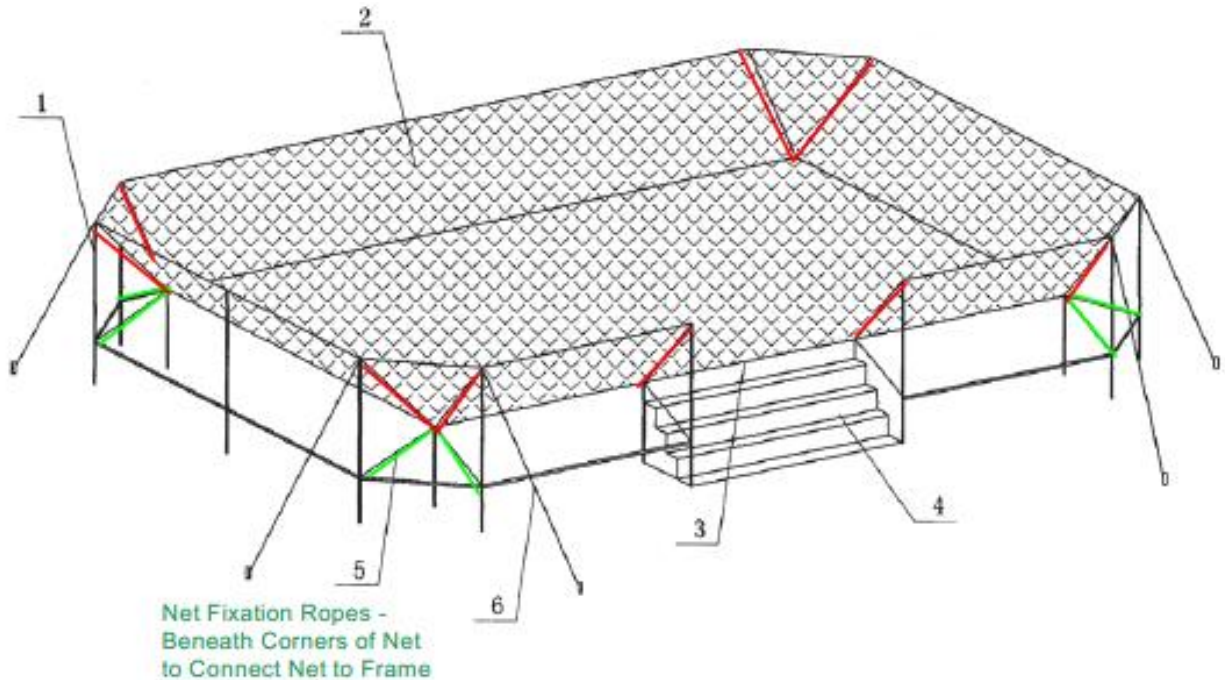
Statement (1) is a general statement without any detail and the annotated figure of (2) is simply the drawing that shows pieces of trampoline attached to each

other at joints. *See supra* at § IV(A)(3) and § VII(A)(1). The citation of (3) recites a selected portion of ¶[0025] of *Guo*, but that paragraph’s discussion of “trampolines pieced together” does not mention rigid angled members and instead refers to joints of adjacent trampolines. *See id.*

Perhaps because these statements fail to support *any* attachment of trampolines to rigid angled members, let alone attachments along peripheries thereof, Petitioners’ make an additional argument that fundamentally misunderstands *Guo*: “*Guo* explains that trampoline fixation ropes are used to fix the trampoline netting to the frame at the peripheries of the angled members.” Petition at p.27. For this proposition Petitioners quote *Guo*’s discussion of net fixation ropes: “The stereoscopic trampoline net is connected and fixed to the stereoscopic trampoline frame **by means of net fixation ropes** disposed at the various corners there beneath.” *Id.* (quoting *Guo* at ¶[0005]) (emphasis added). Thus, Petitioners imply that *Guo*’s “net fixation ropes” are used to attach trampoline nets to the red-highlighted lines that Petitioners refer to as rigid angled members.

Petitioners are flat wrong. As discussed in detail and depicted *supra* at § IV(A)(3) and § VII(A)(1), the net fixation ropes 5 do not attach *Guo*’s trampoline nets to Petitioners’ red-highlighted lines. Rather, the net fixation ropes 5 connect corners below the red-highlighted lines of the trampoline net 2 to the trampoline frame 1:





Notably, Petitioners' expert does not repeat Petitioners' claim that the net fixation ropes 5 connect *Guo's* pieces of trampoline net to Petitioners' red-highlighted lines. Ex. 1013 at ¶79. Petitioners' expert instead quotes to a portion of *Guo's* Abstract discussing, *inter alia*, "a stereoscopic safe trampoline whose side walls are installed with trampoline net" and "a stereoscopic trampoline net where the side walls of stereoscopic trampoline net are also provided with trampoline net to form a three-dimensional spatial trampoline . . . ." Ex. 1013 at ¶79 (citing Ex. 1004 at Abstract). These general statements do not support attachment of anything to Petitioners' red-highlighted lines.

Petitioners' expert also points to annotated FIG. 20 from the expert report, in which Petitioners' expert draws red-highlighted lines over the joints between

trampoline nets and shades the individual side pieces of trampoline net 2 grey:

In my Figure 20, . . . the angled members are highlighted in red and the voids between the angled members are shaded grey. The trampoline nets are installed across the voids and are connected to the angled members.

Ex. 1013 at ¶79.

However, nothing in annotated FIG. 20 explains how the trampoline nets are installed or contradicts the disclosure of ¶[0025] of *Guo* that Petitioners and their expert ignore—*i.e.*, that the trampoline nets are pieced together at joints between adjacent trampoline nets. Ex. 1004 at ¶[0025].

Perhaps because it is difficult to identify “peripheries” of red-highlighted lines, and because the net fixation ropes 5 are irrelevant to the piecing together of *Guo*’s trampoline net, Petitioners’ expert does not attempt to explain how *Guo*’s pieces of trampoline net are “connected to the angled members **along peripheries thereof**” as required by the claim language. Rather, after quoting the general statement from *Guo*’s Abstract and referencing the red-highlighted lines and grey-shaded trampoline nets, Petitioners’ expert declares without further support: “Therefore, *Guo* meets the claim 1 element ‘a plurality of trampolines connected to the angled members along peripheries thereof and extending across the plurality of voids.’” Ex. 1013 at ¶79.

In sum, Petitioners and their expert fail to cite to any evidence that supports

“a plurality of trampolines connected to the angled members[,]” Petitioners’ expert does not address (at all) that these connections must be “along peripheries” of the rigid angled members, and Petitioners mischaracterize *Guo*’s net fixation ropes 5 in a misguided attempt to make this showing. Because Petitioners have failed to cite any evidence that supports anticipation of these claim elements, Petitioners have not met their burden on Grounds 1-4. *See supra* at § VII(A)(1) (discussing cases holding that a Petitioner must cite evidence and cannot contradict the evidence to meet their burden); *see also Athena Automation Ltd. v. Husky Injection Molding Systems Ltd.*, IPR2013-00290, Paper 18 at p.26 (Oct. 25, 2013) (precedential) (“The only supporting evidence in [the cited art] pointed to by [Petitioner] is [certain figures], which do not label [the purported disclosure], and the following language: . . . . We are not persuaded that the cited language supports [the Petitioner’s] assertion. Nor are we persuaded that the drawings are detailed enough to be relied upon for the disclosure of the [claim] limitation.”).

**B. Grounds 5-7—Petitioners Fail to Demonstrate a Likelihood of Prevailing for Obviousness Based on *Widich***

Petitioners rely on *Widich* as teaching or rendering obvious all elements of independent claims 1 and 19. Petition at pp.58-76 (relying on *Widich* for claims 1-10 and 19). All other references are cited for elements of the dependent claims. *See id.* at pp.76-82 (relying on *Widich* in view of *Grelle* for claims 11-15); *and id.* at pp.82-86 (relying on *Widich* in view of *Nissen* for claims 16-17). Because

Petitioners have failed to demonstrate a likelihood of prevailing as to the independent claims based on *Widich*, all of Grounds 5-7 fail.

1. *Widich* Fails to Disclose “an outwardly sloping outer wall”

This is not an element of the independent claims for which Petitioners argue obviousness. *See* Petition at pp.61-62 (arguing obviousness only for “mountable to the floor”).

In their discussion of *Guo*, Petitioners and their expert separately address the element of “a plurality of side frames defining an outwardly sloping outer wall . . . .” Petition at pp.19-20; Ex. 1013 at ¶¶67-68. For *Widich*, Petitioners and their expert take a different tack, combining their discussion of the outwardly sloping outer wall element with numerous other elements of the challenged claims:

<b>Petitioners on <i>Widich</i> (Petition at p.59):</b>	<b>Petitioners’ Expert on <i>Widich</i> (Ex. 1013 at p.80)</b>
<p>b. a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including:</p> <p>i. a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor</p> <p>ii. a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members</p>	<p><i>a plurality of side frames defining an outwardly sloping outer wall, each of the plurality of side frames including:</i></p> <p><i>a rigid first upright member having a top first upright member portion and a bottom first upright member portion mountable to a floor</i></p> <p><i>a rigid angled member connected at an upper angled member portion to the top first upright member portion and extending at a downward angle therefrom to a lower angled member portion, a plurality of voids being defined between the plurality of angled members</i></p>

Indeed, neither Petitioners nor their expert attempt to explain which portions of *Widich* correspond to an “outwardly sloping outer wall.” The closest each comes is a brief mention of “angled side walls” without citation when discussing other elements of the claims. *See* Petition at p.59 (“*Widich* discloses a plurality of rigid

side frame frames [*sic*] that define and stably maintain the shape of the trampoline’s horizontal frame and angled side walls.”); Ex. 1013 at ¶136 (identical language).

The elements of a claim are not mere technicalities that can be ignored or overlooked; rather, “Petitioner bears the burden of addressing **all words** in the challenged claims.” *Choirock Contents Factory Co., Ltd. v. Spin Master, Ltd.*, IRP2017-00030, Paper 45 at p.27 (Oct. 25, 2018) (emphasis added). *See also In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) (“All words in a claim must be considered in judging the patentability of that claim against the prior art.”); *Choirock* at pp.26-27 (quoting *In re Wilson* and finding claims not unpatentable while explaining that “[s]eemingly small differences like these matter”).

Had Petitioners performed a proper analysis, they would have had to acknowledge that *Widich* does not refer to *any* of its trampoline components as “walls.” *See generally* Ex. 1005 (failing to mention any walls while discussing the trampolines and frameworks of FIGS. 1-9). The only mention of a “wall” in *Widich* is “shoe retaining side walls” for the “trampboard” of FIGS. 10-13. *Id.* at ¶[0051].

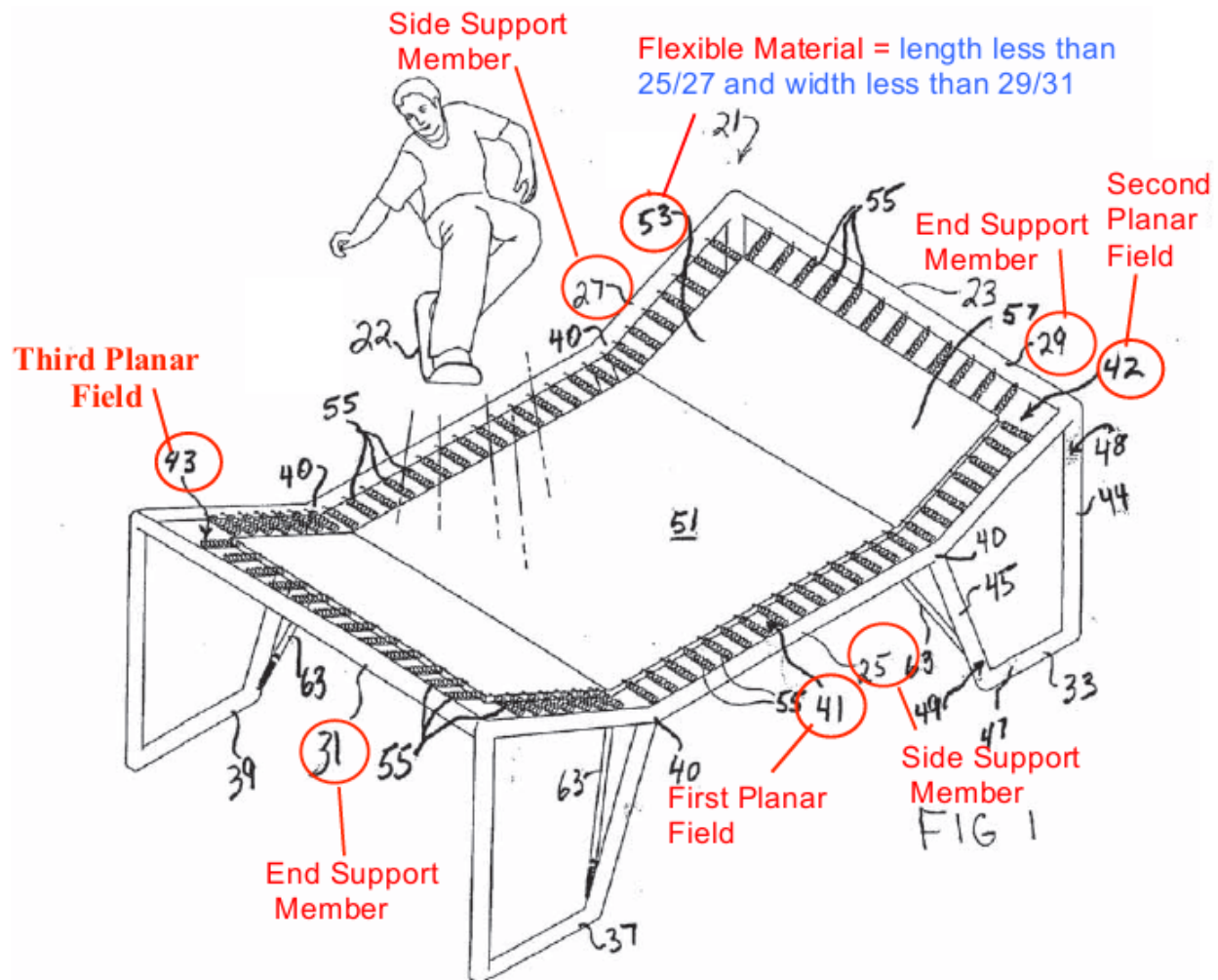
Because Petitioners do not attempt to make any showing that the “outwardly sloping outer wall” claim element is disclosed by *Widich*, Petitioners have not met their burden on Grounds 5-7. *See supra* at § VII(A)(1) (discussing cases holding that a Petitioner must cite evidence to meet their burden).

2. *Widich* Fails to Disclose “a plurality of voids being defined between the plurality of angled members”

Petitioners argue that this claim element is anticipated by *Widich*. Petition at pp.62-63. It is not. Both Petitioners and their expert state that “voids” are “areas where there are no frame members.” See Petition at p.62 (“[T]he angled frame members are spaced apart to form voids (*i.e.*, areas where there are no frame members, shown by yellow arrows below)”; Ex. 1013 at ¶¶63, 140 (similar). They then depict the word “void” with yellow arrows associated with each of planar field 42 and planar field 43 of *Widich*. Petition at p.62; Ex. 1013 at ¶¶61, 140, FIG. 15.

The arrow-drawing of Petitioners and their expert, however, ignores their own description of a void as an “area where there are no frame members.” Petitioners and their expert do not address which “frame members” of *Widich* purportedly define the plurality of voids in the manner depicted by their “void” arrows. See Petition at p.62 (depicting arrows for “voids” without identifying any intervening frame members to define the voids as depicted); Ex. 1013 at ¶¶61, 63, 140, FIG. 15 (same). To the contrary, *Widich* at best describes a single void. It discloses that a single piece of “flexible material 53 having a length less than the linear measurement of a side support member 25/27 and width less than the linear measurement of an end support member 29/31.” Ex. 1005 at ¶[0038]. In other words, the flexible material extends 53 across an area without intervening frame members that includes planar field 42 and planar field 43 (**as well as planar field 41**), as depicted in

annotated FIG. 1 of *Widich* below:



Thus, by Petitioners' own definition *Widich's* flexible material 53 covers a single void defined by the side support members 25/27 and end support members 29/31, not a plurality of voids as required by the claims.

Moreover, Petitioners' arguments also fail because they have failed to identify a plurality of voids associated with and defining an "outwardly sloping outer wall" as required by the claims. Claim 1 requires "a plurality of side frames defining an outwardly sloping outer wall [*i.e.*, singular], each of the side frames including . . ."

a “rigid first upright member” and a “rigid angled member.” Ex. 1001 at Claim 1.

The claimed “plurality of voids” are “defined between the plurality of angled members” of that single outwardly sloping outer wall. *Id.*

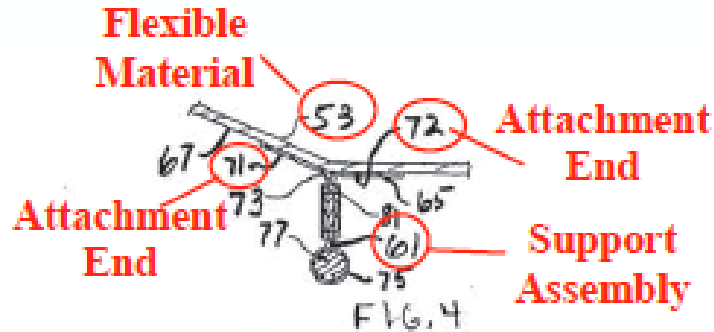
Petitioners’ arrows, however, are drawn over second planar field 42 and third planar field 43 [*i.e.*, plural planar fields]—which are separated by first planar field 41. Petition at p.62; Ex. 1013 at ¶¶63, 140, FIG. 15. Two physically separated planar fields cannot be part of the same outwardly sloping outer wall as claimed. *Compare Widich* at FIGS. 1, 2, & 7 (depicting second planar field 42 and third planar field 43 separated by first planar field 41) *with* Petition at p.62 (depicting a first “void” arrow over second planar field 42 and a second “void” arrow over third planar field 43) *and* Ex. 1013 at ¶61, FIG. 15 (same). Because Petitioners have not identified a plurality of voids for any single planar field of *Widich*, they have failed to meet their burden on Grounds 5-7. *See supra* at § VII(A)(1) (discussing cases holding that a Petitioner must cite evidence and cannot contradict the evidence to meet their burden); *see also Synopsys, Inc. v. Mentor Graphics Corp.*, IPR2012-00041, Paper 16 at p.12 (Feb. 22, 2013) (“As pointed out by the Patent Owner, anticipation requires more than simply disclosing every element of the challenged claims, it also requires that the anticipatory reference disclose those elements ‘arranged as in the claim[,]’” *quoting Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369-70 (Fed. Cir. 2008)).



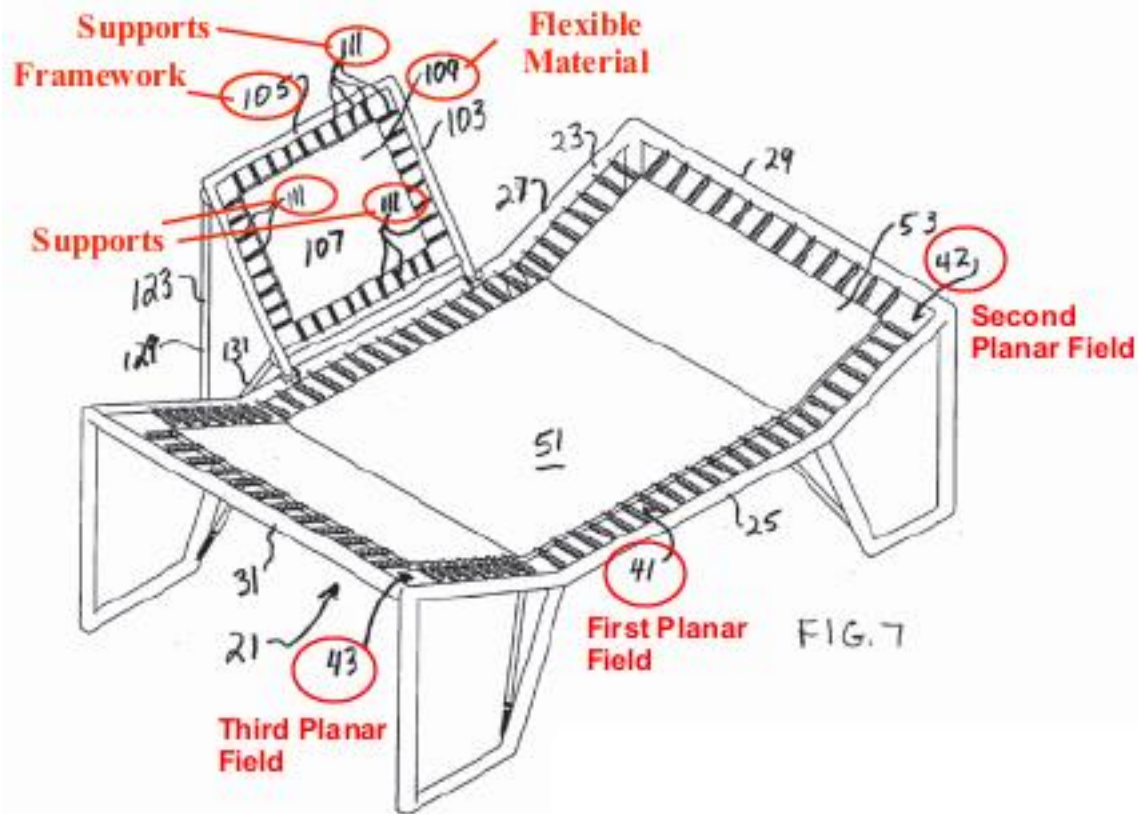
3. Widich Fails to Disclose “a plurality of trampolines connected to the angled members along peripheries thereof”

Petitioners argue that this claim element is anticipated by *Widich*. Petition at p.64. It is not. Petitioners again point to arrows on annotated figures to support their conclusion. *Id.*; Ex. 1013 at ¶¶64, 143, FIG. 16. This selective arrow-drawing fails for a number of reasons.

First, Petitioners and their expert arbitrarily split portions of a single piece of flexible material 53 – *i.e.*, those overlying second planar field 42 and third planar field 43, but not first planar field 41– into multiple trampolines. As discussed in the previous section, the length and width of flexible material 53 are described as covering the opening between side support members 25/27 and end support members 29/31, *i.e.*, a single trampoline. Ex. 1005 at ¶[0038]. The lines of *Widich* where the second and third planar fields 42/43 meet the first planar field 41 are not separate sections of flexible material, but rather are locations where the flexible material 53 is secured to a support flap 65 at attachment ends 71 and 72 of the support flap (Ex. 1005 at ¶40 & FIG. 4):



Second, perhaps acknowledging that flexible material 53 does not define a plurality of trampolines, Petitioners for the first time rely upon the flexible material bed 107 of the releasably connected ancillary resilient structure 103 in *Widich's* FIGS. 7-8. Petition at p.64; Ex. 1013 at ¶¶64, 143; *see also supra* at § IV(B)(2) (depicting and discussing FIG. 7 and related disclosure of *Widich*). However, Petitioners never demonstrate that the releasably connected ancillary resilient structure 103 satisfies the other claim elements—*e.g.*, that the components that make up the ancillary resilient structure 103 are among the “plurality of side frames defining an outwardly sloping outer wall.” *See* Petition at pp.59-63 (discussing how the trampoline of FIG. 1 and the second and third planar fields 42/43 purportedly satisfy these claim elements, but not discussing ancillary resilient structure 103); Ex. 1013 at ¶¶135-140 (same). Indeed, the ancillary resilient structure 103 is separated from second planar field 42 and third planar field 43 by (horizontal) first planar field 41 (Ex. 1005 at FIG. 7):



Because Petitioners have failed to provide any actual evidence of “a plurality of trampolines connected to the [previously claimed] angled members along peripheries thereof,” and because they fail to explain how the ancillary resilient structure is part of the claimed “outwardly sloping outer wall,” Petitioners have not met their burden on Grounds 5-7. *See supra* at § VII(A)(1) (discussing cases holding that a Petitioner must cite evidence and cannot contradict the evidence to meet their burden); *Synopsys*, IPR2012-00041, Paper 16 at p.12 (noting the requirement that “the anticipatory reference disclose those elements arranged as in the claim” (internal quotation omitted)).

## VIII. CONCLUSION

For the foregoing reasons, there is no reasonable likelihood that Petitioner will prevail with respect to any of the challenged claims. Accordingly, trial should not be instituted, including pursuant to 35 U.S.C. § 314(a) and § 325(d).

Dated: February 27, 2019

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume elements of 37 C.F.R. § 42.24, because it contains 13,692 words (13,392 words as determined by the Microsoft Word word-processing system used to prepare the brief, plus an additional 148 words for the compare excerpt on p.14 and 152 words for the compare excerpt on p.49), and excluding the parts of the brief exempted by 37 C.F.R. § 42.24.

Dated: February 27, 2019

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE UNDER 37 C.F.R. § 42.107 and all supporting materials (Exhibits 2001-2015) have been served in their entirety by filing this document through the Patent Trial and Appeal Board End to End (PTAB E2E), as well as providing a courtesy copy via e-mail (mchu@mwe.com, bajones@mwe.com, jiazhang@mwe.com) to the following attorneys of record:

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