

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CRYE PRECISION LLC,  
PETITIONER

v.

FIRSTSPEAR, LLC,  
PATENT OWNER

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Case No. IPR2019-01152  
Patent No. 9,974,379

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

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## **LIST OF EXHIBITS**

Exhibit 2001      File History of U.S. patent application 14/237,468

## I. INTRODUCTION

Petitioner asserts three grounds of rejection in its IPR Petition, yet all three grounds rely on the same individual prior art reference, Crye-436,<sup>1</sup> to teach slits defined and bounded by fused edges of laminated layers as recited in independent claims 1, 13 and 19. *See e.g.*, Ex. 1001 at 10:49-51, 11:49-51 and 12:34-37.

However, Crye-436, does not teach not teach slits defined and bound by fused edges of laminated or any manner of fused edges of laminated layers. The Petitioner does not assert that there is any disclosure in Crye-436 of fused edges but points to disclosure of laser cutting instead. Petition at 25. Yet, Petitioner never provides an explanation for how disclosure of laser cutting reads on the claim limitations of slits bounded by fused edges of laminated layers. In fact, Petitioner's entire analysis of this limitation consists of block quotes from Crye-436 and the '379 patent<sup>2</sup> followed by a single conclusory sentence that Crye-436 renders obvious the claim language. Petition at 24-25.

Moreover, Petitioner knew that this claimed feature was the reason for allowance during prosecution yet still did not address it. Indeed, during prosecution the Examiner expressly relied on, and Patent Owner did not dispute,

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<sup>1</sup> U.S. Patent Number 9,173,436. For consistency, Patent Owner will use Petitioner's short cite format of "Crye-436."

<sup>2</sup> U.S. Patent Number 9,974,379.

that laser cutting of fabric was known. In allowing the claims, the Examiner acknowledged that fusion hardened edges of laminated layers was a patentable feature over then existing knowledge of laser cutting fabric. Petitioner's failure to address this distinction between laser cutting and fusion hardened edges of laminated layers raised during prosecution, despite actual knowledge of this issue, further demonstrates the facial deficiencies in the Petition.

Finally, the Petition fails to provide any argument or evidence demonstrating a reasonable chance of success in using a laser cutter to create fusion hardened edges of the alleged laminated layers in Crye-436. This deficiency is underscored by the complete absence of teaching or suggestion in the record for using any laser cutter to fuse any edges of any laminated layers prior to the date of invention. Indeed, the only evidence the Petition cites to for the teaching of using a laser cutter to create fused edges of laminated layers prior to the date of invention. Indeed, the only evidence the Petition cites to for the teaching of using a laser cutter to create fused edges of laminated layers is the '379 patent itself. The Petitioner's attempt to use the teachings of the '379 patent to render obvious the claims of the '379 patent is an overt reliance on impermissible hindsight.

These deficiencies occur in all three proposed grounds of rejection and apply to all of the challenged claims. For these reasons, the Board should deny institution

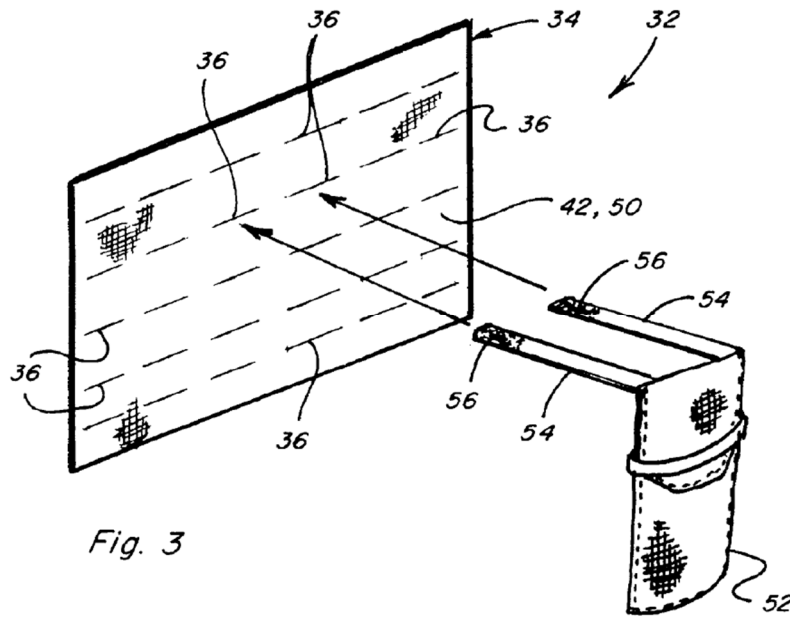
as the petition is not likely to prevail in showing unpatentability of any challenged claim in any proposed ground of rejection.

## **II. OVERVIEW OF THE '379 PATENT**

### **A. Specification**

The invention of the '379 patent “relates generally to a system and method for removably attaching pouches and other accessories to a carrier, such as a vest or other garment, or other device, and more particularly, which is light weight, non-metallic, resists accumulation of, and degradation of operation from, particulates such as dirt dust and the like, is quiet in operation, and is compatible with some known systems.” Ex. 1001 at 1:13-19.

“According to a preferred aspect of the invention, the attachment system utilizes a platform having a front side, an opposite back side, and a plurality of slits through the platform arranged in a predetermined pattern of vertically aligned and spaced apart rows, configured for receiving elements for attaching at least one holder to the platform.” *Id.* at 2:27-32. The platform can comprise “layer 44 in a layered or laminated, fused, glued, or composite construction with a suitable face fabric layer 42, for example, but not limited to, a 500 denier nylon, on a front side 50 of platform 34.” *Id.* at 7:58:67. One example of the platform (34) with a pattern of slits (36) used to attach a holder (52) is illustrated in Figure 3, reproduced below. *Id.* at 5:25-27, 6:40-50 and 8:28-29.



In a preferred embodiment, “a back side of the platform faces and covers the outer surface of the carrier or backing element and includes a first fastening component of a hook and loop fastening system thereon adjacent to, e.g., around or beside, the slits, and disposed in opposing relation to the carrier or backing element surface. This forms a generally flat pocket or cavity between the opposing surface and the back side, into which a user can insert his or her fingers for attaching and detaching objects to/from the fastening component, and/or weaving straps through the slits” *Id.* at 2:46-56. One example of a user inserting his or her fingers (70) into a cavity (62) formed between a platform (34) and a carrier (58) is illustrated in Figure 7, reproduced below. *Id.* at 5:37-41 and 8:51-9:7.

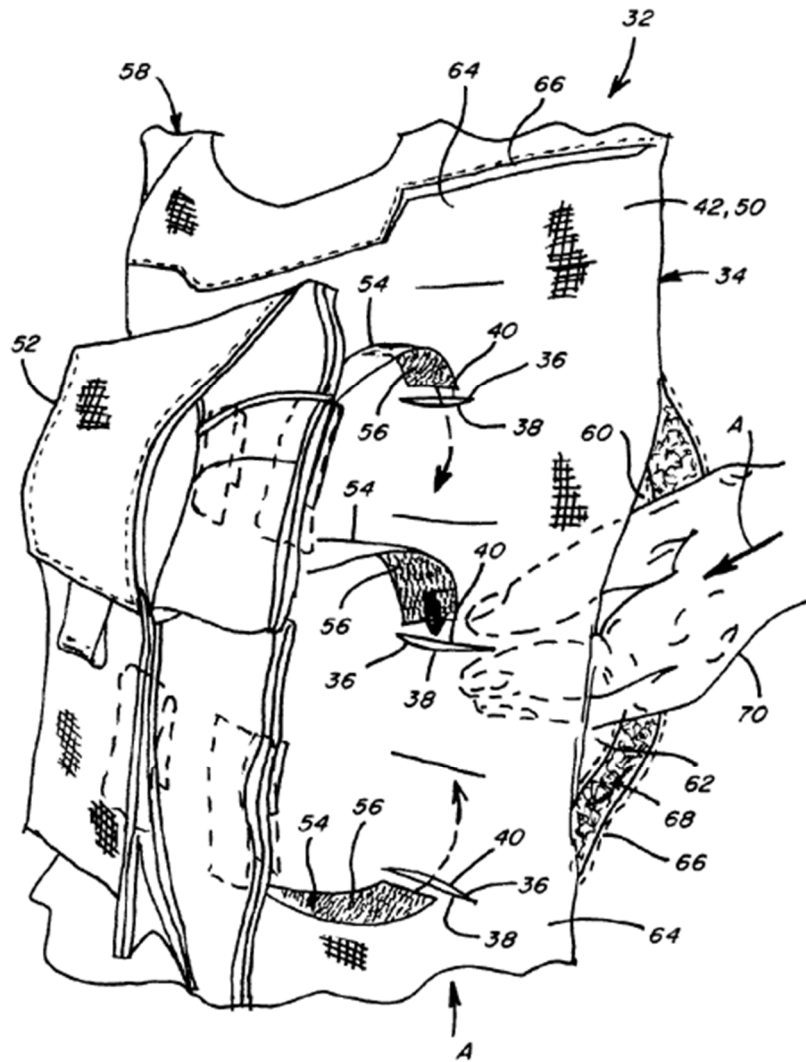


Fig. 7

Perhaps most relevant to this preliminary response is that in a “preferred aspect, the fabric layers comprising the edges bounding the slits are fused together, e.g., using a laser cutting process for forming the slits, so as to be hardened but at least semi-flexible to allow insertion of flat straps and tabs through the slits, and such that the edges will not fray or wear significantly under expected use.” *Id.* at 3:32-37. “In regard to laser cutting, an advantage achieved is that the edges 38 and



40 (FIG. 7) [reproduced above] of the laminated layers bounding and defining the slits 36 can be fused together, to increase stiffness and reduce sagging, reduce or eliminate fraying, and increase wear and abrasion resistance at that location, while still being sufficiently pliable or bendable to facilitate opening and insertion of a strap, or a tab of the invention to be discussed, therethrough.” *Id.* at 7:36-43.

## **B. Prosecution History**

The ’379 patent issued from U.S. patent application 15/431,377 (the ’377 application). The Examiner in the ’377 application allowed all claims without issuing any rejections as the claims submitted in the ’377 application included limitations that had been previously found by the Examiner to be patentable in the parent application, 14/237,468 (the ’468 application).<sup>3</sup> *See* Ex. 1002 (prosecution history of the ’377 application). Thus, the ’468 application provides essential context for the ’377 application and directly addressed the issue of whether laser cutting renders obvious slits bounded by fusion hardened edges of laminated layers.

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<sup>3</sup> The ’468 application issued as U.S. Patent No. 9,565,922. The ’922 patent is the subject of IPR2019-01153 that was filed by the same Petitioner and relies on same prior art as the instant IPR proceeding.

In the '468 application the Examiner initially rejected all pending claims over a combination of McBride<sup>4</sup> and Talavera.<sup>5</sup> As part of the rejections, the Examiner contended that “[a]s for laser cutting of Velcro or of fabric, that technique was a well-known technique in the clothing industry at the time of the invention” and that the then pending claims would have been obvious over the cited prior art in light of such. Ex. 2001 at 183.

Patent Owner did not dispute that laser cutting of fabric was known, but argued that “there is no indication or suggestion that laminated layers can be fused to form a hardened edge” and that the “grounds of rejection are wholly speculative absent hind sight benefit of the teachings of the present invention, and that one skilled in the art would otherwise not be aware of and would be surprised to discover that a lamination of layers could be fused together to form a hardened edge.” *Id.* at 204-205.

Specifically with respect to using a laser cutter to fuse edges, Patent Owner pointed out that there was no evidence at the time of invention that one of skill in the art would have any knowledge that it would be possible to successfully use laser cutters to fuse edges of overlaying layers:

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<sup>4</sup> WO 2009/051619 to McBride et al.

<sup>5</sup> U.S. Patent No. 5,263,618 to Talavera.

[I]t was not known prior to disclosure of the present invention that laminated layers could be laser fused to create useful hardened edges. Further in this regard, when cutting fabric with lasers, it is known that the fabric can be scorched or burned, melted, etc., and many fabrics will melt away from a laser cut. It is also known that there are a large number of possible combinations of laser power level, beam width, pulse width, duty cycle, etc., that can be employed when laser cutting material, and that multiple layers of fabric can be cut with a beam. However, it is also known that when cutting multiple layers, this is typically done to optimize or increase productivity of the cutting operation, not to create any type of fused joinder or closure of laminated layers, and it would likely have been presumed to be counterproductive and undesirable to apply the above parameters such that fusion of adjacent layers were to occur. To summarize, there is no evidence that it was known prior to the invention to fuse laminated edges, or any adjacent overlaying layers of laser cut material to form a hardened joint edge, as that would typically be undesirable, and an unintended consequence.

*Id.* at 206.

Upon consideration of these arguments, the Examiner agreed that then pending claim 1 of the '468 application (which issued as claim 1 of the '922 patent) was patentable as the prior art did not disclose or suggest "wherein each of the edges bounding the slots comprises a hardened fusion of the laminated layers."

*Id.* at 226. In sum, the Examiner determined that forming a plurality of slits bounded by hardened fused edges of laminated layers was patentable and not

obvious over applications of laser cutting fabrics known at the time of the invention.

All the independent claims of the '377 application recite slits bounded by fusion hardened edges of laminated layers, in similar manner as the allowed claim 1 of the '468 application. As the Examiner had previously considered and found this feature to be patentable over the prior art in the '468 application, the '377 application matured into the '379 patent without any rejections during examination.

### **III. NO GROUND OF REJECTION IS LIKELY TO PREVAIL**

#### **A. Ground 1 – Crye-436 Does Not Render Obvious Claims 1, 3-7, 10-11, 13-14, 17-19 and 21-23**

The '379 patent has three independent claims: 1, 13 and 19. Crye-436 does not render any of these independent claims obvious and hence does not render obvious any of the challenged dependent claims. In particular, Crye-436 does not render obvious the limitations of each independent claims reciting slits bounded by fusion hardened edges of laminated layers, which are reproduced below (numbers next to each limitation are set forth Petition).

**Claim 1**

[1b] the platform comprising laminated layers including at least one fabric layer,

[1c] the platform having a plurality of slits therethrough defined and bound by edges of the layers fused together to have increased wear and abrasion resistance

**Claim 13**

[13d] a plurality of slits defined and bound by fusion hardened edges of the laminated layers

**Claim 19**

[19d] being defined and bounded by hardened fused edges of the laminated layers

Ex. 1001 at 10:50-52, 11:50-51 and 12:35-37.

The Petition does not present separate arguments for limitations 13d or 19d, but for both merely refers back to its argument for limitation 1c. Petition at 46 (discussion of limitation 13d)<sup>6</sup> and 49 (discussion of limitation 19d). Hence, the likelihood of success of Ground 1 for all claims rests on the Petitioner's argument of claim limitation 1c.

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<sup>6</sup> For limitation 13d, the Petition also cites to the argument for claim 6, but the Petition's argument for claim 6 likewise refers back to Petition's argument for limitation 1c. Pet. at 37.

However, Petitioner’s analysis of limitation 1c is deficient for multiple reasons. It fails to point out how the cited disclosure in Crye-436 renders obvious limitation 1c. Additionally, it fails to provide any evidence that one of skill in the art would have known that laser cutting the alleged laminated layers of Crye-436 would result in fused edges or any evidence of a reasonable chance of success of using laser cutting to create fused edges in the alleged laminated layers of Crye-436.

1. *Petition does not show with particularity why limitation 1c is unpatentable*

“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016).”) (citing 35 U.S.C. §312(a)(3); *see also Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’”).

Here, Petitioner’s entire analysis of limitation 1c consists of block quotes from Crye-436 and the ’379 patent followed by a single conclusory sentence that the block quotes render the claim limitation obvious. *See e.g.*, Petition at 24-25. Providing block quotes without any analysis does not show with particularity how

the claims are unpatenable. Indeed, with the block quotes removed, the entirety of Petitioner's argument for limitation 1c is easily reproduced below demonstrating the lack of any analysis attempting to point out how the laser cutting in Crye-436 teaches fusing edges of laminated layers as recited in all independent claims.

Crye-436 discloses this limitation. Specifically, Crye-436 discloses UBFA (58), which is a platform with slits therethrough (highlighted blue in FIG. 4): [Figure 4 and block quote of Ex. 1004 at 2:25-62].

The Crye-436 slits may be produced by, for instance, laser cutting of the UBFA: [block quote of Ex. 1004 at 3:17-26].

The slits of the '379 patent may be made in an identical manner: [block quote of Ex. 1001 at 10:5-10 and 3:32-37].

Thus, when using laser cutting to make slits in the Crye-436 UBFA (platform), those slits would be "defined and bound by edges of the layers fused together to have increased wear and abrasion resistance," as confirmed by the '379 patent itself. (*See also* Ex. 1003-Pastore at ¶¶73-76.).

Petition at 24-25.

At best, the Petition alleges the unitary bearing frame assembly (UBFA) in Crye-436 may be "laser cut" to make slits. Petition at 25 (quoting Ex. 1004 at 3:17-26). Even accepting that as true for the sake of argument, it fails to explain how the bare mention of laser cutting in Crye-436 applies to limitation 1c, 13d or 19d

which requires the slits to be “bound by edges of the [laminated] layers fused together to have increased wear and abrasion resistance” (claim 1) “bound by fusion hardened edges of the laminated layers” (claim 13) or “bounded by hardened fused edges of the laminated layers” (claim 19). Ex. 1001 at 10:50-52, 11:50-51 and 12:35-37. Indeed, the lack of analysis makes it impossible to even determine if Petitioner’s legal theory is that laser cutting renders obvious the claim limitation or if laser cutting inherently discloses the claim limitation.

Crye-436 does not expressly state that laser cutting would result in Crye-436’s exterior and substrate layers being fused together (the alleged laminated layers). Hence, Petitioner is obligated to explain how the “laser cut” disclosure in Crye-436 teaches (or inherently discloses) the claim limitation. It is not for the Patent Owner or the Board to try and discern what Petitioner’s argument might be. *DeSilva v. DiLeonardi*, 181 F.3d 865, 866-67 (Fed. Cir. 1999) (“A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record.”); *Gross v. Town of Cicero*, 619 F.3d 697, 702 (7th Cir. 2010) (“Judges are not like pigs, hunting for truffles buried in [the record].”).

Therefore, the Board should deny institution as Petitioner’s analysis of limitation 1c, 13d, and 19d fails to particularly point out how the disclosure of “laser cut” in Crye-436 renders the claims unpatentable



2. *Petition does not show that laser cutting renders obvious or inherently discloses fusing edges of laminated layers*

Rather than present any analysis to explain its assertion that the laser cut disclosed in Crye-436 teaches fused and hardened edges, the Petitioner inexplicably cites to the '379 patent itself for the teaching of “a laser cutting process for forming the slits, so as to be hardened.” Petition at 25 (quoting Ex. 1001 at 3:32-37). Although, reliance on the teaching of the '379 patent to show obviousness is wholly improper hindsight as discussed below, even if it were proper the Petition fails to explain how the teaching in the '379 patent applies to the disclosure in Crye-436.

To the extent Petitioner's theory is that because the '379 patent discloses a process that uses a laser to create a fused hardened edge of laminated layers that the same process would be obvious to use in the Crye-436, then Petition failed to explain why. Perhaps most importantly, the teaching of the '379 patent is not available as prior art to be combined with the teachings Crye-436. Even if it were, there is no comparison of the materials, fabrication, or purpose of the platform in the '379 patent relative to materials, fabrication, or purpose of the UBFA of Crye-436 to suggest to a person of ordinary skill in the art that a laser cutting process to fused edges of laminated layer for the platform of the '379 patent would produce the same result for the exterior and substrate layers attached by an adhesive of Crye-436. Petition at 23 (alleging Crye-436 discloses the claimed laminated layers

“by applying an adhesive between the substrate material and the exterior layer, and then heating, a laminate of the two materials is formed.”)

To the extent Petitioner’s theory is that fusion hardened edges are an inherent result of using a laser cutter on laminated layers, the Petition again failed to explain why. At most, the ’379 patent discloses the possibility of using a laser cutter to provide fusion hardened edges of laminated layers within the context of materials, purpose, and design of the ’379 patent. *PAR Pharm., Inc. v. TWI Pharm., Inc.*, 773 F.3d 1186, 1195 (Fed. Cir. 2014) (“Inherency ... may not be established by probabilities or possibilities”). “The mere fact that a certain thing [i.e., fusion hardened edges of laminated layers] may result from a given set of circumstances [i.e., laser cutting] is not sufficient” to show inherency. *Id.*

The ’379 patent itself indicates the claim limitation is not inherent by stating that a laser cutting “can” result in fusion hardened edges of laminated layers rather than must or will result in such. Ex. 1001 at 7:36-41 (“In regard to laser cutting, an advantage achieved is that the edges 38 and 40 (FIG. 7) of the laminated layers bounding and defining the slits 36 **can** be fused together, to increase stiffness and reduce sagging, reduce or eliminate fraying, and increase wear and abrasion resistance...”)(emphasis added). As noted by Patent Owner in the prosecution history, there are a number of materials that would scorch or burn instead of fusing into hardened edges as well as a number of laser parameters to properly adjust

(power level, beam width, pulse width, etc.) when trying to fuse layers to create a hardened edge. Ex. 2001 at 206. Petitioner has provided no evidence that it is inherent that any laser will cut any laminated layers to always fuse the layers together to form a hardened edge.

Therefore, the Board should deny institution as Petitioner's analysis of limitation 1c, 13d, and 19d fails to particularly point out how the disclosure of "laser cut" in Crye-436 renders the claims unpatentable.

3. *Examiner considered teaching of laser cutting alone to be insufficient and Petitioner failed to address that adverse finding*

As discussed in Section II(B), the Examiner determined in the parent '468 application that the prior art did not disclose or suggest "wherein each of the edges bounding the slots comprises a hardened fusion of the laminated layers" even in light of knowledge that "laser cutting of Velcro or of fabric, that technique was a well-known technique in the clothing industry at the time of the invention." Ex. 2001 at 183 and 226. In the instant IPR, the Petition argues that Crye-436 discloses "[t]he material may be die cut or laser cut" without any further elaboration of the laser cutting. Petition at 25. This teaching is the same as the teaching the Examiner already considered –that it was well-known that fabric can be laser cut.

Petitioner had actual knowledge of the Examiner's determination in the '468 application that laser cutting by itself did not teach hardened fusion edges of laminated layers, yet Petitioner did not even attempt to address this known

deficiency in its IPR petition. *See* IPR2019-01153, Paper #1, Petition at 5 (Petitioner’s discussion of the ’468 application states, “In response, claim 1 was amended to require, inter alia, laminated layers and slits comprising a hardened fusion of the laminated layers. A notice of allowance was subsequently mailed.”) (internal citations omitted).

In fact, Patent Owner did not dispute that laser cutting was known during prosecution, but argued that “there is no indication or suggestion that laminated layers can be fused to form a hardened edge” and that the “grounds of rejection are wholly speculative absent hind sight benefit of the teachings of the present invention, and that one skilled in the art would otherwise not be aware of and would be surprised to discover that a lamination of layers could be fused together to form a hardened edge.” *Id.* at 204-205; *see also id.* at 206 (identifying numerous issues reasons why laser cutting may not fused edges of laminated layers including certain fabrics scorched or burned from a laser cut, a large number of possible combinations of laser power level, beam width, pulse width, duty cycle, etc., and the undesirability of fusing layers together in typical laser cutting contexts).

Given Petitioner’s failure to addresses any of these known deficiencies in the teaching of laser cutting, these same deficiencies are present in the instant IPR. The IPR petition merely cites to the existence of laser cutting without further argument or evidence for that disclosure would render obvious fusion hardened edges of

laminated layers. Petitioner's silence in even attempting to overcome these known deficiencies in the prior art speaks volumes.

Therefore, the Board should deny institution as Petitioner's analysis of limitation 1c, 13d, and 19d fails to overcome the known deficiencies in prior art as determined by the Examiner.

4. *Petition does not provide evidence of reasonable expectation of success using a laser cutter to fuse edges of the alleged laminated layers in Crye-436*

To prevail on obviousness, the Petition must show that at the time of the invention, one of skill in the art would have a "reasonable expectation of success" in achieving the claimed invention. *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367–68 (Fed. Cir. 2016). Thus even assuming one of skill in the art wanted to create fusion hardened edges laminated layers prior to the date of invention (the Petition provides no basis to conclude they would have), the Petition provided no evidence that one of skill in the art would have reasonably expected using a laser cutter to make an opening in Crye-436's UBFA would have achieved that result.

Indeed, the Petition failed to provide any evidence of a laser cutter used to fuse edges of any laminated layers prior to the time of the invention. More specifically, the Petitioner failed to demonstrate why one of skill in the art would have reasonably expected success in using a laser cutter to form fusion hardened

edges when cutting the alleged laminated layers in Crye-436. Petition at 23 (“by applying an adhesives between the substrate material and the exterior layer, and then heating, a laminate of the two materials is formed”). Indeed, neither the Petitioner nor its expert even attempted to address what effect a laser cutter would have on a layer of substrate materials attached to a layer of exterior materials disclosed in Crye-436. *See e.g.*, Ex. 1004 at 2:64-3:5 (substrate layer materials) and 3:5-8 (exterior layer materials).

In short, there is no evidence that the feature claimed in limitation 1c had ever been successful prior to the time of the invention and there is not even an attempt by Petitioner to explain why a person of skill in the art would have had a reasonable expectation of success in applying a then unknown process of using a laser cutter to create fusion hardened edges of laminated layers to the specific materials and garment construction disclosed in Crye-436. Nor can the mere fact that laser cutting of fabric was known prior to the invention provide the necessary evidence, since there is no suggestion in the prior art that laser fusion of laminated layers was even possible.

“[T]o have a reasonable expectation of success, one must be motivated to do more than merely to vary all parameters or try each of numerous possible choices until one possibly arrived at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many

possible choices is likely to be successful.” *Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1165 (Fed.Cir.2006) (internal quotations omitted). Here, the prior art gives no indication, direction or guidance for using a laser cutter to create fusion hardened edges of laminated layers.

Therefore, the Board should deny institution as Petitioner’s analysis of limitation 1c, 13d, and 19d fails to provide any evidence that a person of ordinary skill in the art would have a reasonable expectation of success in using a laser cutter to produce a fusion hardened edge when cutting the alleged laminated layers of Crye-436.

5. *The Petition’s purported evidence for using a laser cutter to fuse edges of a laminated layer is entitled to no or little weight*

The only evidence submitted with the Petition that discloses or suggests using a laser cutter to fuse edges of laminated layers is the ’379 patent itself. Petitioner’s attempt to use the teachings of the ’379 patent to render obvious the claims of the ’379 patent is an impermissible reliance on hindsight. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983) (“To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.”).

Importantly, the sections of the '379 cited by Petitioner are not purporting to discuss the state of technology, the background of the invention, the prior art or any other type of knowledge that may have been known to those of ordinary skill in the art prior to the time of invention. Petition at 25 (citing Ex. 1001 at 3:32-37, 7:33-36 and 10:5-10). When the teachings of the '379 patent are removed from Petitioner's argument for limitation 1c, the Petition simply provides a block quote from Crye-436 that recites "laser cut" and then asserts the unsupported conclusory statement that "when using laser cutting to make slits in the Crye-436 UBFA, those slits would be 'defined and bound by the edges of the layers fused together to have increased wear and abrasion resistance.'" *See* Petition at 24-25.

While the Petition also cites to the Pastore declaration, the declaration repeats verbatim what is provided in the Petition. Petition at 25 (citing Ex. 1003 at ¶¶73-76). Thus the declaration testimony should be accorded little to no weight since it provides the same conclusory statement as the Petition without any analysis of the block quotes from Crye-436, laser cutting, or fusing hardened edges of laminated layers to explain how the conclusion was reached. *See Verlander v. Garner*, 348 F.3d 1359, 1371 (Fed. Cir. 2003) (Board has discretion to accord little



weight to broad conclusory statements from expert witness); *Yorkey v. Diab*, 601 F.3d 1279, 1284 (Fed. Cir. 2010).<sup>7</sup>

Therefore, the Board should deny institution as Petitioner's only evidence in support of the argument that the disclosure of "laser cut" in Crye-436 teaches limitation 1c, 13d, and 19d should be given little to no weight

**B. Grounds 2 and 3 Do Not Render Obvious Claims 1-11 for the Same Reason as Ground 1**

Ground 2 asserts Crye-436 in view of Bennett-237 and Ground 3 asserts on Crye-436 in view of Asher-149. However, Grounds 2 and 3 rely solely on the disclosure of Crye-436 to teach limitation 1c. *See* Petition at 53 (Ground 2) and 65 (Ground 3). Bennett-237 and Asher-149 are each only asserted to teach the limitation of claim limitation 1g. *Id.*

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<sup>7</sup> In a related IPRs involving the same parties, Petitioner asserts that a declaration which "comprises text that is copied-and-pasted from the Petition...is routinely disregarded" by the PTAB. *See e.g.*, IPR2019-01170, Preliminary Response, Paper #9 at 35-36. If that were true, then Petitioner has conceded that the PTAB should disregard the Petitioner's declaration in this proceeding which substantially "comprises text that is copied-and-pasted from the Petition." *Compare* Petition at 24-25 *with* Ex. 1003 at ¶¶73-76. However, the weight the PTAB gives a declaration is not undermined by its similarity with the Petition but rather based on how conclusory in nature the statements provided in the declaration are.

As neither Bennett-237 nor Asher-149 are alleged to teach the deficiencies of Crye-436 with respect to limitation 1c, Grounds 2 and 3 are not likely to prevail for the same reason as Ground 1. Therefore the Board should deny institution.

#### **IV. CONCLUSION**

The Petition fails to provide any basis conclude that Crye-436's bare disclosure of "laser cut" renders obvious the claim limitations regarding fusion hardened edges of laminated layers found in each independent claim. It is unclear what legal theory Petitioner is relying on (obviousness or inherency) but either theory would fail as Petition does not provide evidence that would support either theory. These deficiencies apply to every proposed ground of rejection and for every challenged claim.<sup>8</sup>

For these reasons the Board should deny institution of this IPR.

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<sup>8</sup> The asserted grounds do not render the claims unpatentable for other reasons as well, but those reasons are not necessary to address in this preliminary response since the facial deficiencies in the Petition addressed above negate every proposed ground of rejection.

Dated: September 19, 2019

Respectfully submitted,

/James P. Murphy/

James P. Murphy, Reg. No. 55,474  
Margaux A. Savee, Reg. No. 62,940  
POLSINELLI PC  
1000 Louisiana Street, Suite 6400  
Houston, Texas 77002

*Attorneys for Patent Owner*

### **CERTIFICATE OF COMPLIANCE**

I, the undersigned, certify that the above Patent Owner Preliminary Response complies with the applicable type-volume limitations of 37 C.F.R. § 42.24(b)(1). Exclusive of the portions exempted by 37 C.F.R. §42.24(a)(1), this Patent Owner Preliminary Response, including footnotes, is less than the limit of 14,000 words as specified by 37 C.F.R. §42.24(b)(1) as counted by the word count function of Microsoft Word.

Dated: September 19, 2019

Respectfully submitted,

/James P. Murphy/

James P. Murphy, Reg. No. 55,474

Margaux A. Savee, Reg. No. 62,940

POLSINELLI PC

1000 Louisiana Street, Suite 6400

Houston, Texas 77002

*Attorneys for Patent Owner*

**CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6(e)(4)**

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE AND ACCOMPANYING EXHIBITS** have been served via Electronic Mail on September 19, 2019 upon the following:

Heath J. Briggs  
BriggsH@gtlaw.com

Barry J. Schindler  
SchindlerB@gtlaw.com

Stephen M. Ullmer  
UllmerS@gtlaw.com

Crye-iprs@gtlaw.com

/Sonia Ramirez/  
Sonia Ramirez  
POL SINELLI PC  
1000 Louisiana, Fifty-Third Floor  
Houston, Texas 77002  
Tele: (713) 374-1600  
Fax: (713) 374-1601