

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BELDEN INC. and PPC BROADBAND, INC.

Petitioners,

v.

COMMSCOPE TECHNOLOGIES LLC

Patent Owner.

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IPR2025-01119  
U.S. Patent No. 10,996,417

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**PATENT OWNER'S REQUEST FOR  
DISCRETIONARY DENIAL**

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## PATENT OWNER'S EXHIBIT LIST

<b>Exhibit No.</b>	<b>Exhibit Description</b>
<b>2001</b>	U.S. Patent Publication No. 2006/0153516 (“Napiorkowski”)
<b>2002</b>	U.S. Patent No. 5,987,207 (“Hoke”)
<b>2003</b>	U.S. Patent No. 6,721,484 (“Blankenship”)
<b>2004</b>	U.S. Patent No. 7,493,003 (“Kowalczyk”)

## **I. Introduction**

Patent Owner respectfully requests that the Petition be denied because substantially the same prior art references were previously presented to the Patent Office. The Petition relies on three references: Hogan, Walters, and Abel. Both Walters and Abel were previously considered by the Examiner during the original prosecution, and Walters was extensively discussed. Hogan is cumulative and redundant of not just another reference considered by the Examiner but multiple other references considered by the Examiner. The Petition also relies on three references for an alleged motivation for the combination (Kline, Kewitsch, and Hendrickson). All three were also considered by the Examiner during the original prosecution. This is not a case that merits use of limited Board resources.

## **II. Discretionary Denial Is Appropriate Under 35 U.S.C. § 325(d)**

Section 325(d) provides: “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.”

*Advanced Bionics* provides a two-part framework for evaluating whether a Section 325(d) denial is warranted: (1) whether the same or substantially the same prior art or argument previously was presented to the Office; and (2) if the first part is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. *Advanced Bionics, LLC*

(P.T.A.B. Feb, 13, 2020).

**(1) *Advanced Bionics Part 1: The Same or Substantially the Same Prior Art or Argument Previously Was Presented to the Office***

The Petition relies on two Grounds, each based on Walters in combination with other references:

<b>Ground</b>	<b>Claims</b>	<b>Basis under 35 U.S.C. §103</b>
1	1-6, 22-25, 29-38	Obvious over Hogan and Walters
2	7, 9-12, 21, 26-28	Obvious over Hogan and Walters and Abel

*Advanced Bionics Part 1* is satisfied. The Petition asserts that Hogan discloses an enclosure with a hinged cover for housing fiber optic connections such as adapters that satisfies the claim elements except Hogan does not teach to include a rotating spool for paying out a length of fiber cable. The petition suggests modifying Hogan to include a rotating spool as taught by Walters. The Petition also relies on Kline (EX1015), Kewitsch (EX1016), and Hendrickson (EX1017) for the alleged motivation to makes these combinations.

During original prosecution, however, the Examiner extensively considered Walters, references that are redundant of Hogan and also considered each of Abel, Kline, Kewitsch, and Hendrickson. Although Petitioner has dressed up the Petition

to make Hogan the primary reference and Walters a secondary reference, there is nothing new in Hogan that had not been considered in the art before the examiner. Hogan is merely another example of an enclosure with a cover for housing optical fiber connections that lacks any disclosure of a rotating spool for paying out fiber. Such references had already been considered.

Walters was also already extensively considered during the original prosecution. Walters was the primary reference in two rejections of the pending claims under 35 U.S.C. § 103. *Id.* at 115-118, 167-170. The basis of those rejections was that Walters disclosed all of the elements of then pending claim 1<sup>1</sup>, except for disclosing that the cover is movable in order to selectively cover and uncover the opening in the housing. *Id.* at 169. The Examiner used Fuller (Ex-1011) as a secondary reference to teach this feature. The applicant's argument over the combination of Walters and Fuller (*id.*, 145-146) was unsuccessful, and the Examiner issued a final rejection. *Id.*, 115-118. In response, the applicant amended claim 1 to include certain additional features of the enclosure, as shown in this extract from the file history:<sup>2</sup>

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<sup>1</sup> Claim 1 would issue after amendment as claim 1 of the '417 patent.

<sup>2</sup> Claim 1 was also amended to include the limitation that the fiber optic adapter is "spaced inwardly from the sidewalls" of the enclosure. *Id.*

1. (Currently Amended) A fiber optic enclosure comprising:  
a housing-wall mountable enclosure arrangement including a base, sidewalls that project forwardly from the base, and a cover-at a front of the housing, the sidewalls defining an access opening and defining a cable opening separate from the access opening, the cover being movable pivotal relative to the base about a pivot axis between an open position providing access to the access opening and a closed position covering the access opening, the cover contacting the sidewalls when disposed in the closed position;

the housing defining a cable opening for routing a first cable into the housing;

a spool mountable to the housing and positionable within the housing;

a second fiber optic cable spooled about a spooling portion of the spool, the second fiber optic cable including at least one optical fiber;

a fiber optic connector coupled to the at least one optical fiber of the second fiber optic cable;

...

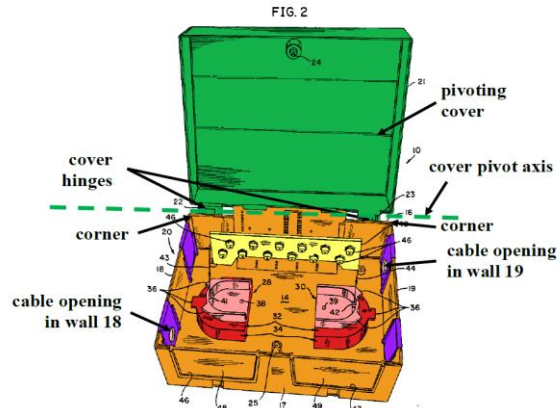
*Id.* at 91 (underlining in the original). Claim 1 was allowed following this amendment. *Id.* at 55.

It is important to note that the Examiner did consider several references showing the features that the Petitioner is now trying to introduce via Hogan, including a fiber optic cable enclosure that is “wall mountable” and that has sidewalls defining an access opening and a cable opening separate from the access opening, or where the cover is pivotable relative to the base about a pivot axis and provides access to the access opening when open and covering the access opening when closed.

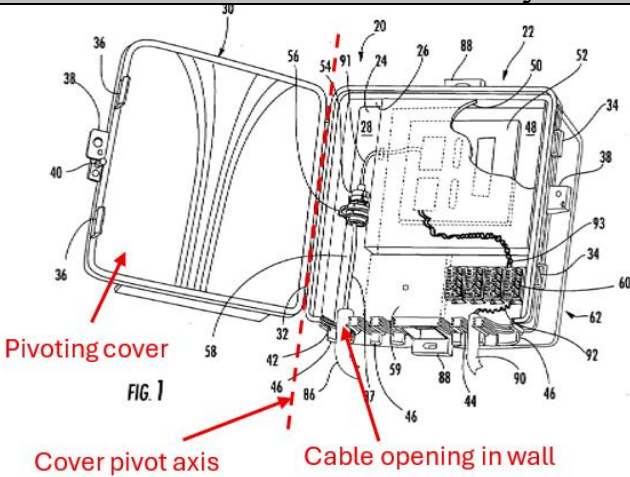
The Examiner acknowledged that Napiorkowski, Hoke, Blankenship, and Kowalczyk had been considered during prosecution of the '417 patent. *See Ex-*

1005 at 182, 246. The enclosures taught by Napiorskowski, Hoke, Blankenship, and Kowalczyk are compared with that of Hogan below, showing that the pivoting cover, the cover pivot axis, the hinges, adapters, non-rotating cable guides, and the cable openings are all present in references considered during prosecution. See Petition at 33, Napiorskowski FIG. 1, Hoke FIG. 2, Blankenship FIG. 2 and Kowalczyk FIG. 4.

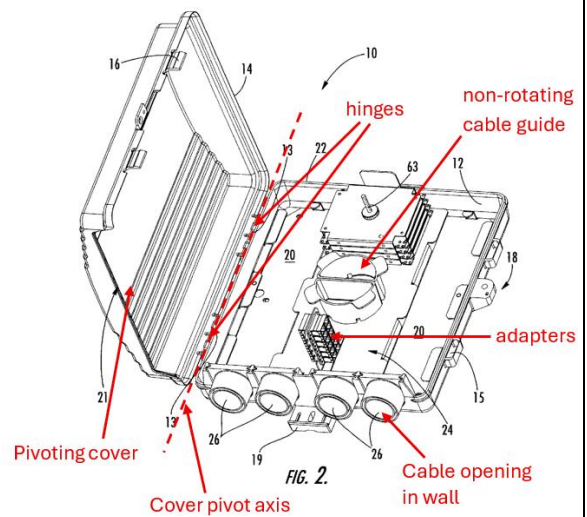
Hogan  
Petition's Primary Reference (see Petition at 33)



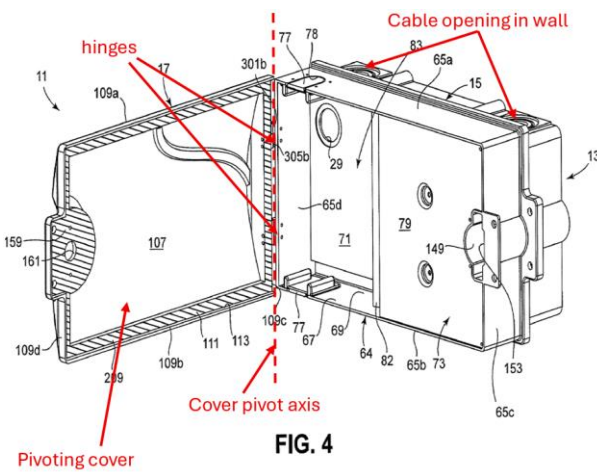
References Already Considered by the Examiner



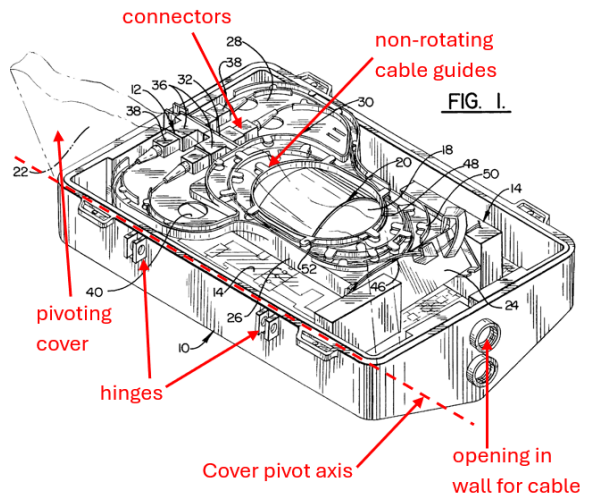
Napiorskowski FIG. 1



Blankenship Fig. 2



Kowalczyk Fig. 4



Hoke FIG. 2

Accordingly, the features Petitioner attempts to introduce via Hogan as having not been previously considered were, in fact, considered by the Examiner. The Examiner already had wall mountable enclosures for housing fiber optic cable connections that included hinged covers that selectively closed an access opening, including enclosures that housed connection locations and non-rotating cable guides for routing fiber cables in the enclosures. The Petitioner has not identified anything new in the Hogan reference that was not considered by the Examiner in these previously considered references. But these references, like Hogan, lack a rotating spool for paying out fiber cable from the enclosure. The Petition tries to solve that problem by combining with Walters, but the Examiner was also well aware of Walters' teachings regarding a rotating spool and based multiple rejections based on Walters, which were all eventually overcome during original prosecution. Therefore, the Petitioner's proposed combination of references is merely cumulative to the prior art considered during prosecution.

Relevant portions of the disclosures of each example of cumulative art is pointed out below.

First Example: The Examiner considered U.S. Publication No. 2006/0153516 ("Napiorkowski," Ex-2001) during prosecution. Napiorkowski describes a network interface device (NID) for housing optical connections having an integral slack storage compartment. *See* Ex-2001, Abstract. The NID 20 has a

first base 22 comprised of a first floor 24 and a continuous sidewall 26 that extends out from the floor to form an outer compartment 28. *Id.* ¶[0028], FIG. 1. The NID is provided with a cover 30 attached to the first base by one or more hinges 32 that allow the cover to pivot between an open position, granting access to the first base, and a closed position, denying access to the first base. *Id.* ¶[0029], FIG. 1. A network drop cable 86 from a fiber optic communications network passes through the drop cable entry port 42 provided through the sidewall 26. *Id.* ¶[0031], FIG. 1. One or more fibers from the drop cable are connected to one or more fiber optic pigtailed 91 at a fiber optic connection 54 mounted to the floor via a bracket 56. *Id.* ¶[0035], FIG. 1. Thus, access to the fiber optic connection in the outer compartment is denied when the cover is in the closed position.

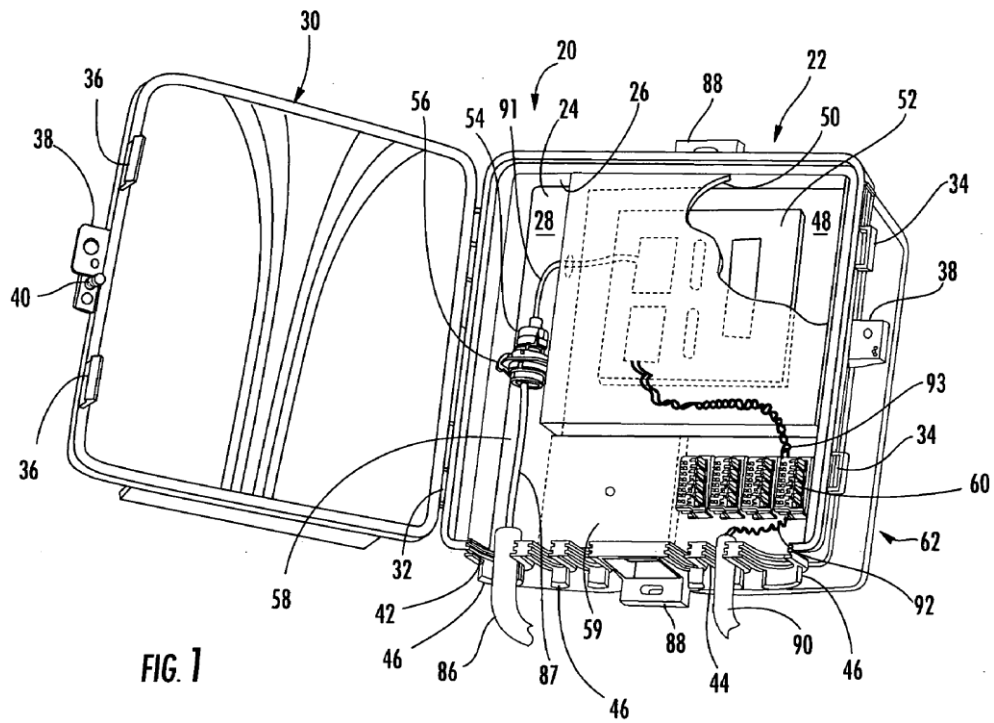


FIG. 1

Ex-2001, FIG. 1

Napiorkowski further teaches that the NID is wall-mountable.

Napiorkowski teaches that the floor 66 of the inner compartment 70 preferably includes slotted openings 76 for mounting the NID to the wall of a structure. *Id.*,

¶[0039], FIG. 2.

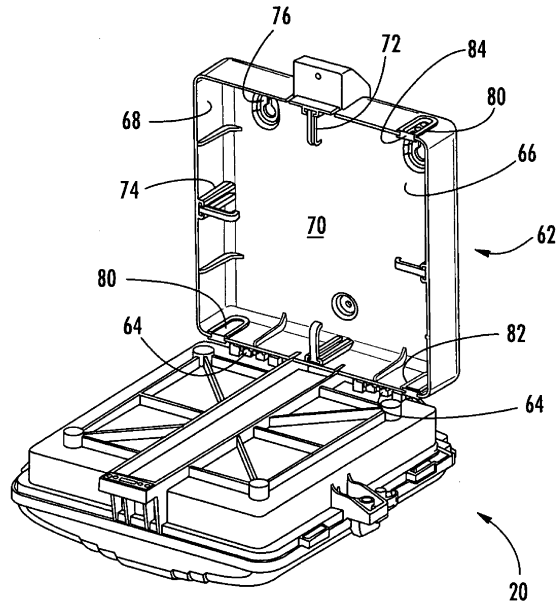
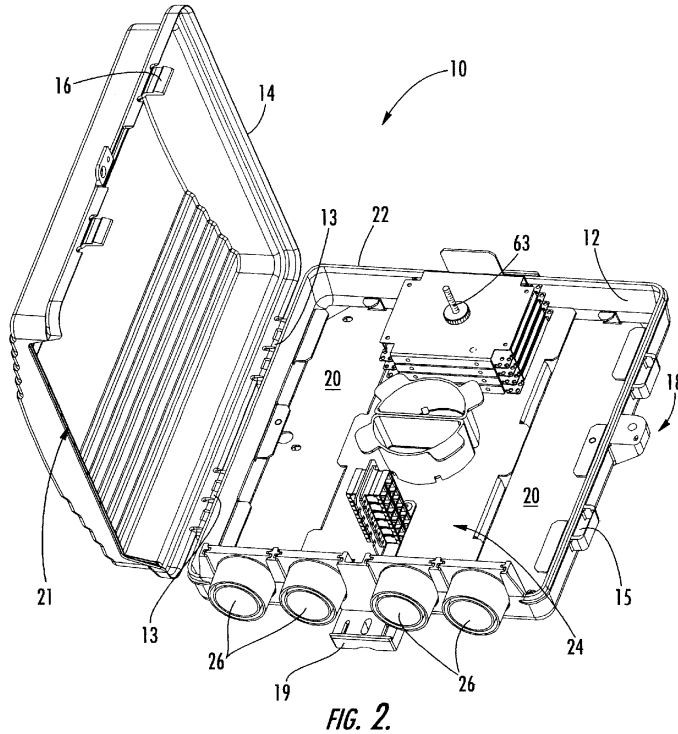


FIG. 2

Ex-2001, FIG. 2

Second Example: The Examiner considered U.S. Patent No. 6,721,484 (“Blankenship”, Ex-2003) during prosecution. Blankenship discloses a fiber optic network interface device (NID) 10 having a base 12, defining an interior cavity, and a protective cover 14 movably attached to the base. *See* Ex-2003, Abstract, 2:32-36, FIG. 2. The cover is movable between a closed position and an opened position. *Id.* 2:39-41. The cover is preferably attached to the base by a series of hinges 13 located along one side of the base. *Id.* 2:41-44. The base comprises one or more feet 19 for mounting the NID to a wall or other building structure at the subscriber premises. *Id.* 2:57-60. The NID includes a floor 20 and sidewall 22 that depends up from the floor to define an interior cavity 24 and includes adapters 67

and a circular cable guide 68 for guiding cables and slack storage inside the interior. The sidewall includes a plurality of entry ports 26, each entry port being in communication with the interior cavity to permit fiber cables to be routed into the NID.

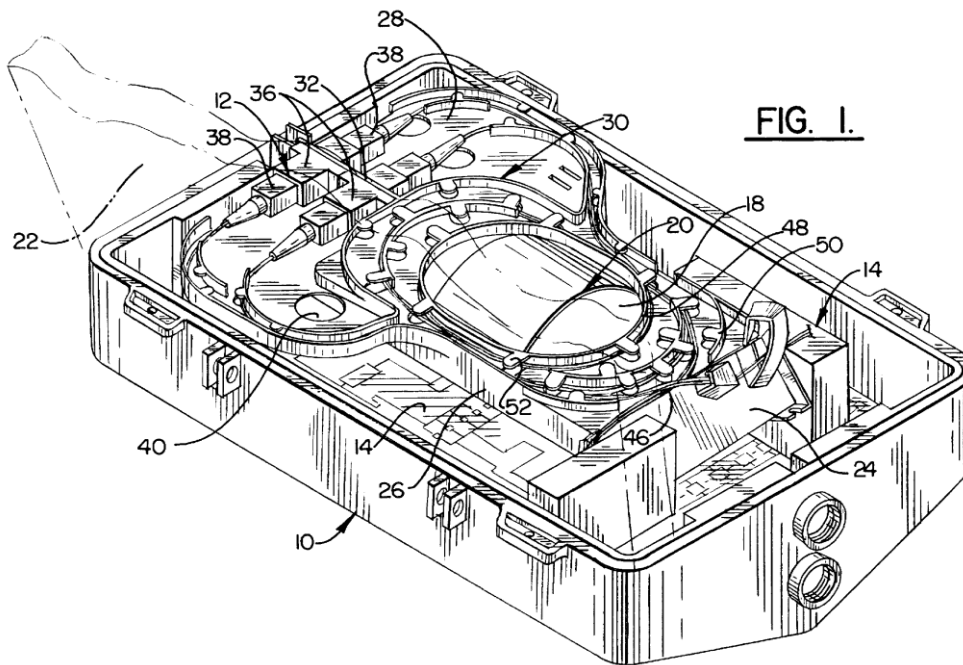


Ex-2003, FIG. 2

The optical fiber of the feeder cable is connected to the optical fiber of the distribution cable in the fiber connecting area 60. In particular, the optical fiber of the feeder cable is optically joined to a first connector, and the first connector is then routed to an adapter. Similarly, the optical fiber of the distribution cable is first optically joined to a second connector, and the second connector is then routed



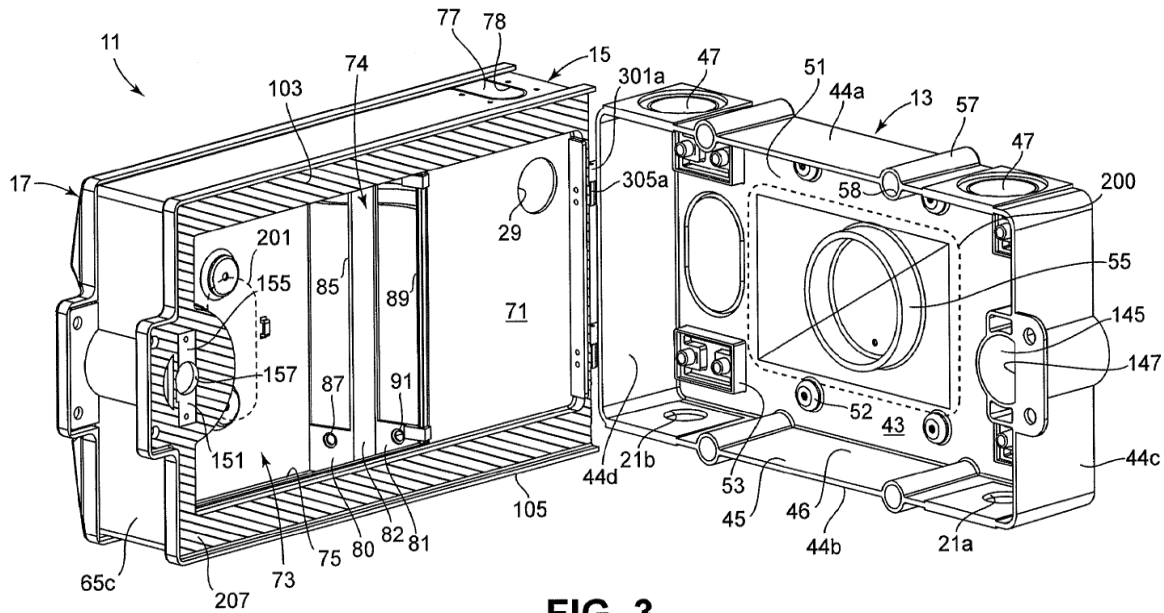
2002, Abstract. The node 10 includes a housing (un-numbered). A first optical fiber enters the node from the exterior. *Id.* 5:8-9, FIG. 1. The connector portion 28 of the node includes connector sleeves 36 and a pair of connectors 38 can be mated within the sleeves to connect the first fiber to a second fiber. *Id.* 5:19-26, FIG. 1. The housing includes a lid 22 (shown in ghost lines in an open position) which can be hinged to a closed position. *Id.* 4:64-65, FIG. 1.



Ex-2002, FIG. 2.

Fourth Example: The Examiner considered U.S. Patent No. 7,493,003 (“Kowalczyk,” Ex-2004) during prosecution. Kowalczyk discloses a fiber optic enclosure that includes a base housing module with a plurality of sides wherein the base and sides define an interior region. *See* Ex-2004, Abstract, FIG. 3. The

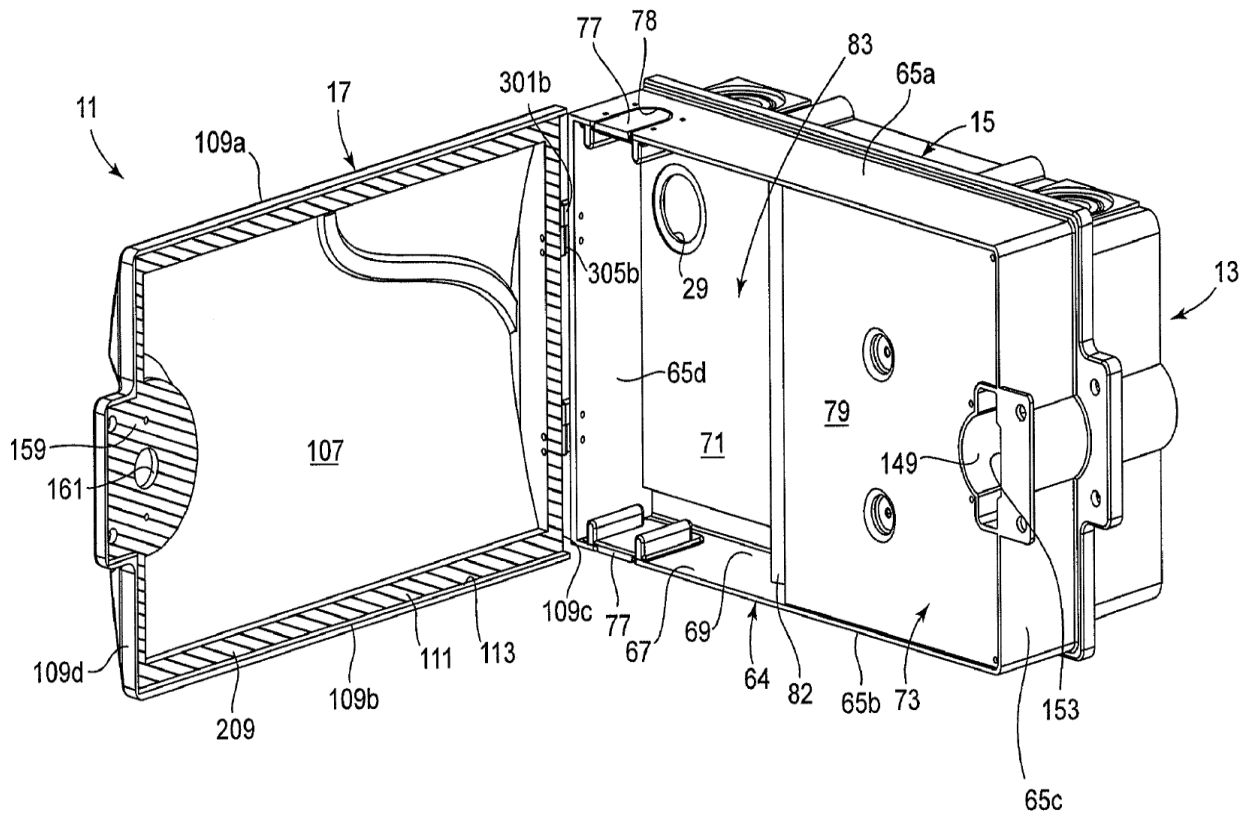
enclosure 11 includes a base housing module 13, a termination module 15 and a cover 17 that is pivotally engaged with the termination module and selectively moveable between an open position and a closed position. *Id.*, 3:3-6. The base housing module 13 provides access, storage and mounting functionality. *Id.* 3:61-64. The base housing module serves as the point of entry into the enclosure for the feeder cable 19 (shown in FIG. 2) and the subscriber cables (shown schematically in FIG. 2). *Id.* 3:64-4:1. The base housing module includes a base 43 and a plurality of sides 44a, 4b, 44c, 44d. *Id.* 4:1-4. At least one “punch-out” area 47 is defined by at least one of the plurality of sides. The punch-out areas are designed to be removed, or “punched out,” as needed. With the punch-out areas removed, the cable ports 21 are exposed. The feeder and subscriber cables are fed through the cable ports 21a, 21b, respectively, so as to provide a point of entry for the feeder and subscriber cables into the base housing module. *Id.* 4:10-16. The base housing module also provides storage for excess lengths of the feeder and subscriber cables. *Id.* 4:17-19. The base housing module also includes a plurality of wall mounts 57 that can receive a plurality of retainers (not shown), such as nails, bolts, or screws, for fastening the enclosure to a wall. *Id.* 45:8-5:2



**FIG. 3**

Ex-2004, FIG. 3

A hinge is formed by at least one hinge component 305b, attached to the outer surface of the cover 17 and at least one hinge component 301b, attached to outer surface of sidewall 65d of the termination module 15. When the cover is engaged with the termination module 15, which is also engaged with the base housing module, the outer surfaces of the cover, the termination module, and the base housing module cooperate to form the exterior surfaces of the modular fiber optic enclosure. *Id.* 7:11-24. The enclosure can be secured to prevent unauthorized access using a latch as described at 7:24-32, and FIGs. 3, 4, 9, and 10.



**FIG. 4**

***(2) Advanced Bionics Part 2: Petitioner Has Not Demonstrated that the Office Materially Erred***

The Petitioner did not demonstrate that the Patent Office erred during prosecution in a way that is material to the patentability of the challenged claims.

In fact, the Petition completely fails to address 35 U.S.C. § 325(d).

There are two further points. First, the Patent Office’s examination was thorough. The Examiner issued prior art rejections and applied obviousness. The Patent Office identified and thoroughly considered the core reference (Walters) proposed by Petitioner as teaching a rotating spool. Second, this is not an instance where the Examiner failed to properly search the prior art. The Examiner extensively searched the prior art and was aware of and considered multiple references similar to Hogan.<sup>3</sup> The mere fact that the Patent Office did not make the particular obviousness combination proposed by the Petitioner (Hogan + Walters) does not mean the Examiner made an error. That the Examiner refused to make a 103 rejection combining the wall-mountable enclosures of the references in the file with the rotating spool of Walters (which the Examiner had already used to reject the claims multiple times) does not mean the Examiner made an error. The Examiner is supposed to guard against improper hindsight, which necessarily means not reflexively making every possible combination. *See* Manual of Patent Examining Procedure §2142 (“However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the

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<sup>3</sup> Examples of such references include Blankenship Ex-2003, Napiorkowski Ex-2001, Hoke Ex-2002, and Kowalczyk. Each of these four references is listed at the front of the ’417 patent. Ex. 1001. The Examiner marked as “considered” the IDS listing of each of Blankenship, Napiorkowski, Hoke and Kowalczyk. *See* EX1005 at 262, 182, 246, and 181 respectively. Additionally, the Examiner’s search strategies featured the document numbers of each of Blankenship, Napiorkowski and Kowalczyk. *Id.* at 72, 73, and 72 respectively.

prior art.” Petitioner fails to account for the Patent Office simply not agreeing with the Petitioner on Petitioner’s hindsight-based combination.

Accordingly, the Petitioner has failed to explain how the Examiner erred in overlooking the prior art, even if “the Examiner did not apply the reference.” *Ecto World, LLC v. Rai Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 (P.T.A.B. May 19, 2025).

### **III. Conclusion**

For the foregoing reasons, Petitioner submits that institution of review would not be an efficient or appropriate use of Board resources and respectfully requests that the Petition be denied.

Dated: September 2, 2025

Respectfully submitted,

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**Certification under 37 CFR § 42.24(d)**

Under the provisions of 37 CFR § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Patent Owner's Request for Discretionary Denial totals 2482 words per Microsoft Word 365, which complies with the requirement of 14,000 words allowed under 37 CFR § 42.24(c)(i).

Dated: September 2, 2025

Respectfully submitted,

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**CERTIFICATION OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e) and the agreement of the parties, the undersigned certifies that on September 2, 2025, a true and correct copy of the foregoing *Patent Owner's Request for Discretionary Denial* was served via electronic mail upon the following:

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