

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNITED INDUSTRIES CORPORATION,  
Petitioner,

v.

SUSAN McKNIGHT, INC.,  
Patent Owner.

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Case IPR2017-01687  
Patent 9,066,511 B2

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Before JAMES A. TARTAL, TIMOTHY J. GOODSON, and  
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

DECISION  
Institution of *Inter Partes* Review  
37 C.F.R. § 42.108

## I. INTRODUCTION

United Industries Corporation (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting institution of *inter partes* review of claims 1–12 of U.S. Patent No. 9,066,511 B2 (Ex. 1001, “the ’511 patent”). Susan McKnight, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”). We have authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . 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.”

Upon consideration of the Petition and the Preliminary Response, we conclude the information presented shows there is a reasonable likelihood that Petitioner would prevail in showing the unpatentability of challenged claims 1–12.

Accordingly, we authorize an *inter partes* review to be instituted as to claims 1–12 of the ’511 patent. Our factual findings and conclusions at this stage of the proceeding are based on the evidentiary record developed thus far (prior to Patent Owner’s Response). This is not a final decision as to patentability of claims for which *inter partes* review is instituted. Any final decision will be based on the record, as fully developed during trial.

## II. BACKGROUND

### A. *The ’511 Patent*

The ’511 patent, titled “Crawling Arthropod Intercepting Device and Method,” issued June 30, 2015, from U.S. Application No. 13/134,150, filed May 31, 2011. Ex. 1001. The ’511 patent generally relates to the use of a device to intercept crawling arthropods and other crawling pests that

includes “pitfall trap surfaces that form multiple pitfall traps.” *Id.* at Abstract. In one embodiment, the ’511 patent describes “an intercepting device comprising an exterior, upstanding clim[b]able surface that crawling arthropods . . . can climb and first and second pitfall traps disposed inwardly of the clim[b]able exterior surface for trapping crawling arthropods.” *Id.* at 3:45–50. “[T]he first pitfall trap comprises an inner receptacle that receives a leg of furniture or other object and the second pitfall trap comprises an outer receptacle.” *Id.* at 3:50–54. “[C]rawling arthropods are trapped in the inner receptacle and/or outer receptacle as a result of being unable to climb out, preventing crawling arthropods from moving between the furniture (or other object) and the floor.” *Id.* at 3:53–56.

Figure 1a of the ’511 patent is reproduced below:

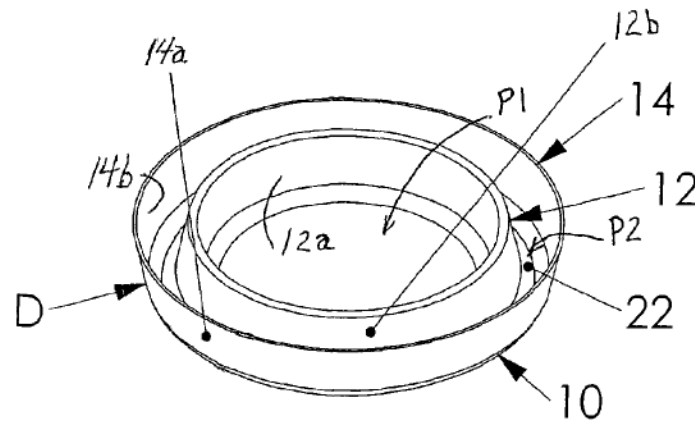


Fig. 1a

Figure 1a illustrates a perspective view of one-piece intercepting device D with first pitfall trap P1 and second pitfall trap P2. *Id.* at 4:15–17, 4:50–57. Patent Owner explains that “[t]he exterior climbable surface 14a has a surface texture rough enough to be readily climbable by crawling arthropods,” (Ex. 1001, 5:30–34), and “surfaces 12a, 12b, 14b are slippery so that crawling arthropods cannot climb or have difficulty climbing the

surfaces thereby trapping the arthropods in either receptacle” (*id.* at 5:36–42). Prelim. Resp. 3. “Humans are effectively acting as bait for a trap.” Ex. 1001, 4:6–7. According to Patent Owner, a novel feature of the device is that it discriminates between bed bugs approaching and departing the bed, sofa, or other object and serves “to monitor the efficacy of extermination efforts.” Prelim. Resp. 2 (quoting Ex. 1001, 4:4, 7:11).

*B. Illustrative Claim*

Claims 1 and 7 of the ’511 patent are independent. Claims 2–6 depend from claim 1 and claims 8–12 depend from claim 7. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A method of intercepting bed bugs between a leg of a bed, an upholstered sofa, or an upholstered chair and a floor, comprising

placing a bed bug intercepting device on the floor under the leg of the bed, upholstered sofa, or the upholstered chair with a lower end of the leg received on a bottom wall of an inner most receptacle to provide a path for bed bugs departing from the bed, upholstered sofa, or upholstered chair to enter the innermost receptacle,

wherein the innermost receptacle is formed by an upstanding peripheral surface that is slippery to prevent bed bugs from climbing out of the innermost receptacle,

wherein the innermost receptacle provides a liquid-free inner pitfall trap of the intercepting device and with an underside of the bottom wall resting directly on the floor, and

surrounding the inner pitfall trap by a second liquid free outer pitfall trap formed by multiple upstanding pitfall trap surfaces disposed between the inner pitfall trap and an upstanding, exterior bed bug-climbable surface of the intercepting device,

the second outer pitfall trap comprising an upwardly directed receptacle open at a top thereof, and

using a human on the bed, the upholstered sofa, or the upholstered chair as a bed bug bait in capturing bed bugs in one of more of the inner or outer pitfall traps as a result of the upstanding peripheral surface and the pitfall trap surfaces being slippery so that bed bugs cannot climb the upstanding peripheral surface and the pitfall trap surfaces, including capturing any bed bugs departing from the bed, the upholstered sofa, or the upholstered chair in the inner pitfall trap and

capturing any bed bugs approaching the bed, the upholstered sofa, or the upholstered chair, from the floor in the outer pitfall trap,

whereby an individual can determine whether bed bugs are departing from the bed, upholstered sofa or upholstered chair, or approaching the bed, upholstered sofa or upholstered chair, or both, by visual inspection of the intercepting device.

Ex. 1001, 11:13–45 (additional indentations added).

#### *C. Related Proceedings*

The parties indicate that the '511 patent is asserted in a case captioned *Susan McKnight, Inc. v. United Industries Corp.*, No. 2:16-cv-02534-JPM-tmp (W.D. Tenn.). Pet. 1; Paper 4, 2. Petitioner filed a petition challenging a related patent in IPR2017-01686.

#### *D. Real Parties in Interest*

Petitioner identifies United Industries Corporation and Spectrum Brands, Inc. as real parties in interest. Pet. 1. Patent Owner identifies only itself as a real party in interest. Paper 4, 2

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