

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SHIELDMARK, INC.  
Petitioner,

v.

CLIFFORD A. LOWE  
Patent Owner.

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PGR2019-00058  
Patent 10,214,664 B2

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Before CHRISTOPHER L. CRUMBLEY, JO-ANNE M. KOKOSKI, and  
SHELDON M. McGEE, *Administrative Patent Judges*.

McGEE, *Administrative Patent Judge*.

DECISION  
Denying Institution of Post-Grant Review  
35 U.S.C. § 324(a)

## I. INTRODUCTION

ShieldMark, Inc. (“Petitioner”) filed a Petition for post-grant review of claims 1–6, 10–16, and 20–22 of U.S. Patent No. 10,214,664 B2 (Ex. 1001, “the ’664 patent”). Paper 2 (“Pet.”). Clifford A. Lowe (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 7 (“Prelim. Resp.”).

Pursuant to 35 U.S.C. § 324(a), a post-grant review may be instituted only if “the information presented in the petition . . . demonstrate[s] that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.”

Petitioner challenges the patentability of claims 1–6, 10–16, and 20–22 under 35 U.S.C. § 112 as lacking written description support and enablement, and under 35 U.S.C. § 102 as anticipated by prior sales of certain tape products. Pet. 5.

Upon considering the Petition and the Preliminary Response, we determine that the Petition fails to demonstrate that it is more likely than not that the ’664 patent is eligible for post-grant review. Accordingly, we deny institution of trial.

## II. BACKGROUND

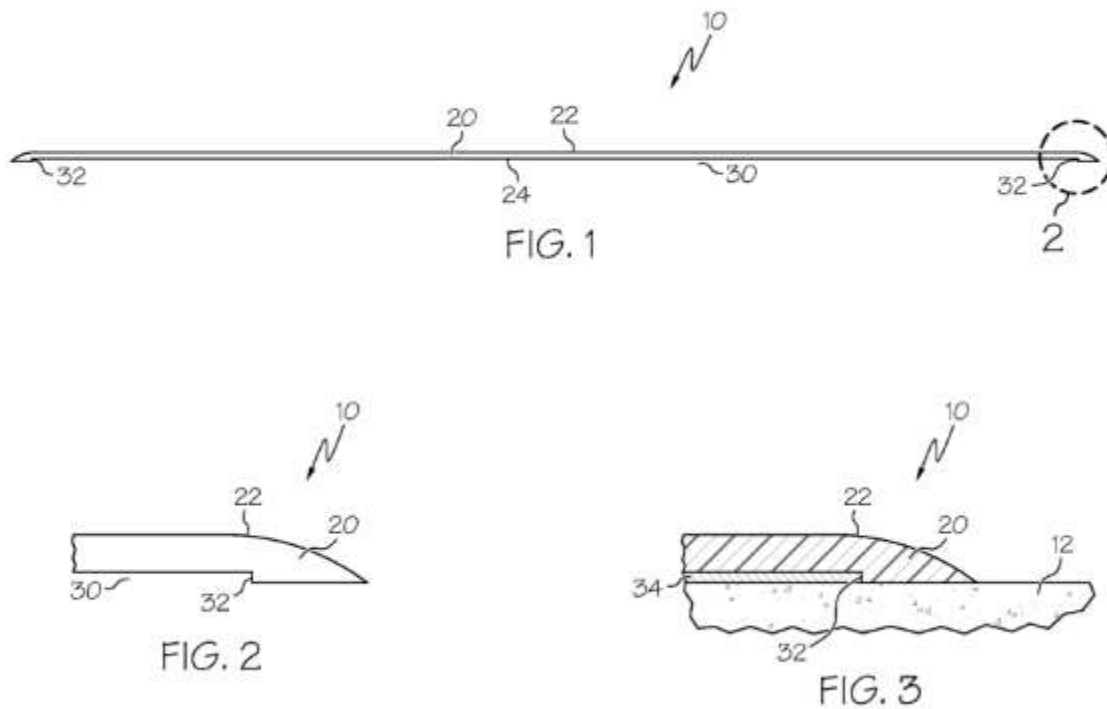
### A. *Related Proceedings*

Both parties identify the following district court proceeding as related to the ’664 patent: *Lowe et al. v. ShieldMark, Inc.*, 1:19-cv-00748, in the United States District Court for the Northern District of Ohio (N.D. Ohio). Pet. 2; Paper 5, 2.

*B. The '664 Patent (Ex. 1001)*

The '664 patent issued on February 26, 2019 from application number 14/747,905 (“the '905 application”), with Clifford A. Lowe as the listed inventor. Ex. 1001, codes (21), (71). The '664 patent relates to “[a] floor marking tape [that] has a structure that retains the adhesive under the tape to prevent the adhesive from being squeezed out from under the tape when the tape is in use on a floor.” *Id.* at code (57).

Figures 1–3 of the '664 patent are illustrative:



In the '664 patent, Figure 1 depicts “a cross section of the tape of the invention,” Figure 2 depicts “an enlarged view of the encircled portion of [Figure] 1,” and Figure 3 “is a cross section of the edge of the tape applied to a floor surface.” Ex. 1001, 2:8–12.

“Tape 10 is used to mark areas of a floor 12 such as the areas around machines or aisles from forklifts.” *Id.* at 2:21–23. Figure 1 illustrates tape 10 that includes body 20 having upper surface 22 and lower surface 24,

where “[a]t least the lateral edges of upper surface 22 are smoothly beveled as shown in [Figure] 2,” which “helps to prevent tape 10 from being unintentionally lifted,” e.g., by a forklift. *Id.* at 2:23–27. “Lower surface 24 defines [] recess 30 bounded by a pair of shoulders 32. Recess 30 may be centered with respect to body 20,” and “is designed to receive the adhesive 34 that holds tape 10 to floor 12.” *Id.* at 2:28–31. The “[s]houlders 32 prevent adhesive 34 from flowing out past the lateral edges of tape 10 where it collects dirt.” *Id.* at 2:31–33.

### C. *Illustrative Claim*

Independent claims 1 and 11 are illustrative, and are reproduced below:

1. A floor marking tape adhered to a floor wherein the floor marking tape establishes a boundary on the floor; the combination comprising:

a floor having an uppermost surface; the uppermost surface of the floor configured to support personnel and equipment thereupon;

a floor marking tape having a body that has an upper surface and a lower surface; the lower surface facing the uppermost surface of the floor to which the floor marking tape is adhered such that the body of the floor marking tape is disposed above the uppermost surface of the floor;

the body of the floor marking tape having a longitudinal direction;

the body of the floor marking tape having first and second lateral edge portions disposed in the longitudinal direction; each of the first and second lateral edge portions having an upper surface and a lower surface;

each of the first and second lateral edge portions having a width defined in a direction perpendicular to the longitudinal direction;

the upper surface of each lateral edge portion comprising an extension of the upper surface of the body;

the lower surface of each lateral edge portion being a flat coplanar extension of the lower surface of the body;

the entire body of each lateral edge portion being tapered with the upper surface of the first lateral edge portion extending to the lower surface of the first lateral edge portion and the upper surface of the second lateral edge portion extending to the lower surface of the second lateral edge portion;

each of the first and second lateral edge portions having a maximum height that is less than its width; and

an adhesive securing the lower surface of the body to the uppermost surface of the floor to establish a boundary.

11. A floor marking tape adhered to a floor wherein the floor marking tape establishes a boundary on the floor; the combination comprising:

a floor having an uppermost surface; the uppermost surface of the floor configured to support personnel and equipment thereupon;

a floor marking tape having a body that has an upper surface and a lower surface; the lower surface facing the uppermost surface of the floor to which the floor marking tape is adhered such that the body of the floor marking tape is disposed above the uppermost surface of the floor;

the body of the floor marking tape having a longitudinal direction;

the body of the floor marking tape having first and second lateral edge portions disposed in the longitudinal direction; each of the first and second lateral edge portions having an upper surface and a lower surface;

each of the first and second lateral edge portions having a width defined in a direction perpendicular to the longitudinal direction;

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