

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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**Charles Padgett**

Junior Party  
(Application 14/211,030),

v.

**Cybernet Systems Corporation**

(Inventors: Glenn J. Beach, James Burkowski, Amanda Christiana, Trevor Davey,  
Charles J. Jacobus, Joseph Long, Gary Moody, and Gary Siebert)

Senior Party  
(Application 13/835,352).

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Patent Interference No. 106,100 (DK)  
(Technology Center 3600)

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**Judgment**  
**37 C.F.R. § 41.127(a)**

Before SALLY GARDNER LANE, JAMES T. MOORE, and DEBORAH  
KATZ, *Administrative Patent Judges*.

KATZ, *Administrative Patent Judge*.

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1           We enter judgment under 35 U.S.C. § 102(g)<sup>1</sup> against Junior Party, Charles  
2 Padgett (“Padgett”) following the decision to deny Padgett Substantive Motion 2,  
3 arguing for priority (Paper 52). (*See* Decision on Motions, Paper 64.) In that  
4 decision we determined that Padgett failed to provide sufficient evidence of  
5 conception or reduction to practice of an embodiment of the Count earlier than the  
6 filing date of Senior Party’s application 13/835,352.

7           It is ORDERED that all of the involved claims of Padgett application  
8 14/211,030 (claims 1–9 and 12–20) are FINALLY REFUSED;

9           It is further ORDERED that a copy of this judgment shall be entered into the  
10 administrative record of application 14/211,030 and application 13/835,352;

11           It is further ORDERED that the parties are directed to 35 U.S.C. § 135(c)  
12 and to 37 C.F.R. § 41.205 regarding the filing of settlement agreements; and

13           It is further ORDERED that a party seeking judicial review timely serve  
14 notice on the Director of the United States Patent and Trademark Office (*see* 37  
15 C.F.R. §§ 90.1 and 104.2. *See also* 37 C.F.R. § 41.8(b). Attention is directed to  
16 *Biogen Idec MA, Inc., v. Japanese Foundation for Cancer Research*, 785 F.3d 648,  
17 654–57 (Fed. Cir. 2015) (determining that pre-AIA § 146 review was eliminated  
18 for interference proceedings declared after September 15, 2012).

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<sup>1</sup> Patent interferences continue under the relevant statutes in effect on 15 March 2013. *See* Pub. L. 112-29, § 3(n), 125 Stat. 284, 293 (2011).

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Patent Interference No. 106,100 (DK)  
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**Decision on Priority Motion**  
**37 C.F.R. § 41.125(a)**

Before SALLY GARDNER LANE, JAMES T. MOORE, and DEBORAH  
KATZ, *Administrative Patent Judges*.

KATZ, *Administrative Patent Judge*.

- 1 This interference is in a second phase. Previously, Junior Party, Charles
- 2 Padgett (“Padgett”), and Senior Party, Cybernet Systems Corporation
- 3 (“Cybernet”), filed motions asserting that the other named the wrong inventor(s)

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1 on its application. (*See* Padgett Substantive Motion 1, Paper 33; *see* Cybernet  
2 Systems Corporation Substantive Motion 1, Paper 31.) The parties' disagreement  
3 was about whether Charles Padgett is an inventor of the parties' claims, which are  
4 substantially the same.

5 We denied both parties' motions in the Decision on Motions. (*See* Decision  
6 on Motions ("Decision"), Paper 49, 18.) Specifically, we determined that Padgett  
7 failed to show that Mr. Padgett provided a definite and permanent idea contributing  
8 to the subject matter claimed by Cybernet. (*See* Decision, Paper 49, 15–17.) We  
9 also determined that Cybernet failed to show that the contributions of Cybernet  
10 personnel to the claimed invention were actually inventive. Thus, Cybernet failed  
11 to show that Mr. Padgett did not invent the subject matter Padgett claims. (*See*  
12 Decision, Paper 49, 12.)

13 Because neither parties' claims were deemed unpatentable, a determination  
14 of priority under 35 U.S.C. § 102(g)<sup>1</sup> is necessary to ensure that only one party is  
15 awarded claims on the interfering subject matter. As explained in the order  
16 authorizing motions in this phase of the proceeding, Padgett's asserted date of  
17 conception, reduction to practice, and diligence (11 March 2011) is earlier than the  
18 filing date of Cybernet's involved application (15 March 2013). (*See* Order  
19 Authorizing Priority Motions and Setting Times, Paper 50, 2; *see also* Padgett's  
20 Priority Statement, Paper 32.) Accordingly, Padgett was given an opportunity to  
21 file a motion arguing for judgment against Cybernet based on priority.

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<sup>1</sup> Patent interferences continue under the relevant statutes in effect on 15 March 2013. *See* Pub. L. 112-29, § 3(n), 125 Stat. 284, 293 (2011).

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1            Padgett filed Padgett Substantive Motion 2 (“Padgett Motion 2”), asserting  
2 that it conceived and reduced the subject matter of the Count to practice before the  
3 dates asserted by Cybernet in its Priority Statement (Paper 45). (See Padgett  
4 Motion, Paper 52, 3:2–7.) Padgett will prevail if it provides sufficient evidence  
5 that it was the first party to reduce the invention to practice or that it was the first  
6 to conceive of the invention and exercised reasonable diligence in later reducing it  
7 to practice. See *Cooper v. Goldfarb*, 154 F.3d 1321, 1327 (Fed. Cir. 1998). Thus,  
8 Padgett may prevail if it can show that by 11 March 2011 it conceived of or  
9 reduced to practice an embodiment of Count 1. (See Padgett Motion 2, Paper 52,  
10 5:10–6:2; see also Padgett Priority Statement, Paper 32.)

11            Conception is “the ‘formation in the mind of the inventor, of a definite and  
12 permanent idea of the complete and operative invention, as it is hereafter to be  
13 applied in practice.’” *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d  
14 1367, 1376, 231 USPQ 81, 87 (Fed.Cir.1986) (citation omitted). “A conception  
15 must encompass all limitations of the claimed invention . . . .” *Singh v. Brake*, 222  
16 F.3d 1362, 1367 (Fed. Cir. 2000).

17            “In order to establish an actual reduction to practice, the inventor must prove  
18 that: (1) he constructed an embodiment or performed a process that met all the  
19 limitations of the interference count; and (2) he determined that the invention  
20 would work for its intended purpose.” *Cooper*, 154 F.3d at 1327. If the inventor  
21 establishes actual reduction to practice by providing his or her own testimony, the  
22 testimony must be corroborated to provide independent confirmation of the  
23 inventor's testimony and prevent fraud. (See *id.* at 1330; see *Kridl v. McCormick*,  
24 105 F.3d 1446, 1450 (Fed. Cir. 1997)).

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1           The Count in this interference is either claim 1 of Padgett application  
2 14/211,030 or claim 1 of Cybernet application 13/835,352. (*See* Declaration,  
3 Paper 1, 5:3–4.) Claim 1 of 14/211,030 recites:

4           A system for manufacturing polymer and metal ammunition,  
5 comprising:  
6           [1] a first feed station for delivery of lower case portions, each  
7 lower case portion including a metal head end;  
8           [2] at least one subsequent feed station for delivery of upper case  
9 portions, each upper case portion having an open top end;  
10          [3] wherein one or both of the upper and lower case portions are  
11 polymeric<sup>2</sup>;  
12          [4] a case assembly station to receive the lower and upper case  
13 portions and join the lower and upper case portions through gluing or  
14 plastic welding;  
15          [5] a case feeder for receiving and conveying the assembled cases;  
16          [6] a primer feed and insert station operative to receive primers and  
17 the assembled cases and insert one of the primers onto the head end of  
18 each case through the open end of that case;  
19          [7] a propellant fill station operative to receive the primed cases and  
20 propellant, and fill each case with the propellant through the open end of  
21 that case to provide propellant-filled cases;  
22          [8] a bullet feeder station operative to receive the propellant-filled  
23 cases and bullets, and insert one of the bullets into open end of each case,  
24 thereby closing off the open end thereof; and  
25          [9] a crimping station operative to attach each bullet to the case into  
26 which that bullet was inserted and output assembled rounds of ammunition.  
27

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<sup>2</sup> The recitation of claim 1 in Padgett’s Clean Copy of Claims uses the word “polymetric.” (*See* Padgett Clean Copy of Claims, Paper 6, 2.) Padgett uses the word “polymeric” in its Motion 2. (*See* Padgett Motion 2, Paper 52, 7, table.) We use the word “polymeric,” which seems appropriate given the polymer nature of the ammunition.

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1 (Padgett Clean Copy of Claims, Paper 6, 2 (bracketed numbers added to indicate  
2 separate elements, as provided in Padgett Motion 2, Paper 52, 7–8.)

3 Padgett argues that “[c]onception was complete when Padgett described in  
4 phone conversations and written correspondence to Cybernet elements of Padgett  
5 Claim 1 and was able to describe those elements to Cybernet so they could reduce  
6 it to practice.” (Padgett Motion 2, Paper 52, 6:14–16.) Padgett presents a  
7 declaration executed by Mr. Padgett in support of its argument. (*See* Declaration  
8 of Charles Padgett (“Padgett Decl.”), Ex. 2011.) Padgett also presents a table with  
9 the elements of an embodiment of the Count (Padgett claim 1) and corresponding  
10 “Corroborating Evidence of Conception as early as March 11, 2011.” (*See* Padgett  
11 Motion 2, Paper 52, 7–8.)

12 The table presented by Padgett on pages 7 and 8 of Motion 2 does not  
13 persuade us that Mr. Padgett either conceived of or reduced to practice each and  
14 every element of an embodiment of Count 1. Specifically, evidence of  
15 conception of every feature of the at least two “feed stations” required in the  
16 Count is insufficiently corroborated or explained.

17 Padgett points to Mr. Padgett’s Declaration at paragraphs 32 and 33,  
18 which refer to Exhibit 2005. (*See* Padgett Motion 2, Paper 52, 7–8.) Mr. Padgett  
19 testifies that Exhibit 2005 is an e-mail to Mr. Beach, a Cybernet employee, dated  
20 11 March 2011, with the subject line, in part, “Visual Metrology Device.” (*See*  
21 Padgett Decl., Ex. 2011, ¶ 32.) Mr. Padgett testifies:

22 Prior to this email, I do recall having a phone conversation with Mr. Beach  
23 to discuss polymer manufacturing systems, which is confirmed by Mr.  
24 Beach’s statement that he had “a question that I forgot to ask on the  
25 phone.” *Id.* I also recall that prior to this email in the phone call

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1           mentioned by Mr. Beach, I had explained in detailed desired assembly  
2           process at Mr. Beach's office as to the system that I conceived.

3  
4           (Padgett Decl., Ex. 2011, ¶ 32.) We are not persuaded that the e-mail of Exhibit  
5           2005 corroborates any communication other than the email itself. That is, the e-  
6           mail refers to an "assembly process," not a polymer manufacturing system. Mr.  
7           Beach's question about the process does not provide any information about Mr.  
8           Padgett's conception of a system as recited in the Count. (*Contra* Padgett  
9           Motion 2, Paper 52, 9:22–10:8.)

10           As we explained the prior Decision, Exhibit 2005 refers to a single step  
11           versus a three-step process, but the parties' claims, and therefore the Count, are  
12           directed to a system with identified parts. (*See* Decision, Paper 49, 15.) Padgett  
13           fails to explain how the discussion of the process of (*i.e.*, "First, put the bullet  
14           into the long part of the case. Second, put the head into the short part of the case.  
15           Finally, assemble the two halves of the case." (Ex. 2005)), relates to the elements  
16           of the system of the Count (*i.e.*, a first feed station, at least one subsequent feed  
17           station, a case assembly station, a case feeder, a primer feed and insert station, a  
18           propellant station, a bullet feeder station, and a crimping station). (*See* Decision,  
19           Paper 49, 15.)

20           Similarly, we are not persuaded by Mr. Padgett's testimony that  
21           it is clear that Mr. Beach . . . was confused as to the number of steps that the  
22           system I had conceived of was to execute as evidence by his question to me  
23           that he "was under the impression that [the assembly process of the system]  
24           was a single step process."  
25

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1 (Padgett Decl., Ex. 2011 ¶ 33.) Mr. Beach’s statement does not reference a system  
2 with “a first feed station for delivery of lower case portions, each lower case  
3 portion including a metal head end” and “at least one subsequent feed station for  
4 delivery of upper case portions, each upper case portion having an open top end,”  
5 as recited in the Count. Mr. Beach’s statement merely refers to a 1-step process  
6 and a 3-step process. Thus, Mr. Beach’s statement fails to support conception of a  
7 system. Furthermore, the e-mail of Exhibit 2005 fails to support any of the details  
8 of the system of the Count, such as “a metal head end” and an “upper case portion  
9 having an open top end.”

10 An inventor's testimony requires corroboration. *See Price v. Symsek*, 988  
11 F.2d 1187, 1195 (Fed. Cir. 1993). “The purpose of this corroboration requirement  
12 is to prevent fraud, namely to ‘provide[ ] an additional safeguard against courts  
13 being deceived by inventors who may be tempted to mischaracterize the events of  
14 the past through their testimony.’” *Martek Biosciences Corp. v. Nutrinova, Inc.*,  
15 579 F.3d 1363, 1374–75 (Fed. Cir. 2009) (quoting *Medichem, S.A. v. Rolabo, S.L.*,  
16 437 F.3d 1157, 1170 (Fed.Cir.2006)).

17 Mr. Padgett’s testimony that he recalls a phone conversation with Mr. Beach  
18 to discuss polymer manufacturing systems and that Mr. Beach was confused about  
19 a system conceived by Mr. Padgett are not corroborated by the e-mail of Exhibit  
20 2005 because the testimony goes beyond the actual text of the e-mail. Mr. Padgett  
21 testifies that he recalls subsequent communications with Mr. Beach, but does not  
22 have any electronic or written evidence of them. (See Padgett Decl., Ex. 2011,  
23 ¶ 37.) Without supporting evidence, we have only Mr. Padgett’s uncorroborated  
24 testimony to consider.

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1           Furthermore, the e-mail fails to mention any of the specific elements of the  
2 Count, such as “feed stations,” a lower case portion with a “metal head end,” or an  
3 upper case portion with an “open top end.” Thus, even if the e-mail corroborates  
4 Mr. Padgett’s testimony about a system with feed stations in general, the text of  
5 Exhibit 2005 fails to corroborate Mr. Padgett’s testimony about conception or  
6 reduction to practice of these elements of the Count.

7           Padgett argues further that Exhibit 1009 at page 7 corroborates Mr. Padgett’s  
8 testimony regarding the first and subsequent feed stations of the Count. (*See*  
9 Padgett Motion 2, Paper 52, 7–8, table; *see also* Padgett Reply 2, Paper 62, 7:16–  
10 20.) Mr. Padgett testifies that page 7 of Exhibit 1009 is a copy of an e-mail from  
11 Mr. Padgett to Glenn Beach, dated 26 May 2011. (*See* Padgett Decl., Ex. 2011,  
12 ¶ 44.) The e-mail recites:

13           Per quote P117 Ammunition Assembly and Inspect, please make the  
14 following changes.

15  
16           1) Remove the case assembly portion and put in its own quote. I plan to have  
17 this machine located in Detroit so that I receive cases assembled and  
18 partially inspected for next operation in Orlando.

19  
20           a. *I would like to have the two components, upper and lower, bulk fed into*  
21 *the machine which will assemble and laser weld the two components*  
22 *together.* I would like a basic inspection to verify that the parts were  
23 assembled properly. I would assume that this would essentially consist of  
24 over height to make sure they were completely together when welded. The  
25 individual upper and lower should be prior inspected when coming off the  
26 molding machine so they should be fine.

27  
28           b. Use a laser such as the one in the previous quote as the basis, but will

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1 probably need more than one head and to weld multiple parts to keep the  
2 cyclic rate up.

3  
4 2) Please incorporate a sealing machine of cybernet's design in place of the  
5 Herson machine. Henkel Loc-Tite has the preferred sealant and can provide  
6 all the dispensing equipment. I need to have both case mouth and primer  
7 sealant applied. I have attached a video link of a similar machine. The rate  
8 should match the throughput of the total system, minimum of 1 part per  
9 second on the 308 case is desired.

10  
11 <http://www.youtube.com/watch?v=8sOMpYD24dk&feature=related>

12  
13 3) Include the accuracy expectation for the powder drop system. It is  
14 important that each case is loaded as close as possible so maintain low  
15 standard deviation in velocity.

16  
17 (Ex. 1009, 7 (emphasis added.)).

18 Mr. Padgett testifies that the reference on page 7 of Exhibit 1009 to “upper  
19 and lower” components that were to be “fed into the machine” to be assembled and  
20 welded together indicate that each upper and lower component would have  
21 necessarily had its own feed station prior to assembly and welding. (Padgett Decl.,  
22 Ex. 2011, ¶ 45.) We agree that Exhibit 1009 corroborates that Mr. Padgett  
23 conceived of the elements of a “first feed station for delivery of lower case  
24 portions” and “at least one subsequent fee station for delivery of upper case  
25 portions” of the Count.

26 We are not persuaded, though, that page 7 of Exhibit 1009 corroborates  
27 other aspects of Mr. Padgett's testimony. For example, Mr. Padgett states:

28 In my discussions with Mr. Beach up to that point, I had explained in great  
29 detail to Mr. Beach that our ammunition casings produced by the system of  
30 Padgett Claim I would have had a metal base on one end with a polymer

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1           portion adjacent the open, upper end of the casing. This is relevant since it  
2           means that Mr. Beach would have understood my requested in Ex. 1009 at p.  
3           7 related to the upper and lower components as one involving “a metal head”  
4           while the other component with the open upper end not necessarily being  
5           metal.

6  
7           (Padgett Decl., Ex. 2011, ¶ 46.) Page 7 of Exhibit 1009 does not mention a casing  
8           with a metal base on one end or a polymer portion adjacent the open, upper end of  
9           the casing. Thus, this page does not support Mr. Padgett’s statements about  
10          “possession” or conception of elements [1] and [2] of the Count in their entirety.  
11          (See Padgett Decl., Ex. 2011, ¶ 47.) Although the evidence supports conception of  
12          first and subsequent feed stations, Mr. Padgett’s testimony about all the features of  
13          these feed stations is not corroborated.

14          Similarly, Padgett relies on Mr. Padgett’s testimony at paragraphs 32–33 and  
15          38–39 of his declaration to support the argument that he conceived of a system  
16          with one of both of the upper and lower case portions are polymeric, as recited in  
17          the Count. (See Padgett Motion 2, Paper 52, 7, table.) As discussed above,  
18          paragraphs 32–33 refer to the e-mail reproduced in Exhibit 2005, which provides  
19          discussion of an assembly process, but not a system. (See Padgett Decl. Ex. 2011,  
20          ¶¶ 32–33.) Neither paragraphs 32–33 of Mr. Padgett’s declaration, nor Exhibit  
21          2005, mention either an upper or a lower polymeric case portion. (See Ex. 2005.)  
22          Thus, neither paragraphs 32–33 of Mr. Padgett’s declaration nor Exhibit 2005  
23          support Padgett’s argument that Mr. Padgett conceived of a system having one or  
24          both of the upper and lower case portions that is polymeric.

25          Padgett also cites to paragraphs 38–39 of Mr. Padgett’s declaration. (See  
26          Padgett Motion 2, Paper 52, 7, table; *see also* Padgett Reply 2, Paper 62, 8:20–

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1 9:12.) Paragraph 38 refers only generally to the elements of Count 1 and, thus,  
2 does not support Padgett's argument about conception of a system wherein one or  
3 both of the upper and lower case portions in polymeric. (*See* Padgett Decl., Ex.  
4 2011, ¶ 38.) In paragraph 39, Mr. Padgett states:

5 For example, I begin my email dated April 4, 2011 stating my desire for  
6 Cybernet to manufacture my company's "two piece case components,"  
7 which I understand to mean two polymer sections, one with a metal inser,t to  
8 form an ammunition casing just as recited in element 3 ("wherein one or  
9 both of the upper and lower case portions are polymetric.") of Padgett Claim  
10 1. *See* Ex. 1009.

11  
12 (Padgett Decl., Ex. 2011, ¶ 39.) We are not persuaded that the phrase "two piece  
13 case components" indicates anything about the composition of the upper or lower  
14 case portions as required in the Count.

15 The first page of Exhibit 1009 refers to a machine to make "two piece  
16 components" with the following actions:

17 Please quote a machine to take our two piece case components and do the  
18 following:

19  
20 Assemble and Bond or Weld

21  
22 Handoff to loading machine for priming and loading

23  
24 Handoff to sealing machine

25  
26 Handoff to modified ATAC for inspection to include but not limit to the  
27 following

28 Cartridge dimensions

29 Concentricity

30  
31 Primer seating

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1 (Exhibit 1009, 1.) The first page of Exhibit 1009 does not include the word  
2 “polymeric.” Mr. Padgett does not provide any further explanation why referring  
3 to “two piece components” necessarily means a polymeric component. Thus, we  
4 are not persuaded that the first page of Exhibit 1009 corroborates Mr. Padgett’s  
5 testimony regarding polymeric case portions.

6 In summary, the evidence cited in the table of Padgett Motion 2 for the first  
7 three elements of Padgett claim 1 and the Count does not persuade us that Mr.  
8 Padgett conceived or reduced to practice. Although Mr. Padgett may have  
9 conceived of a system with feed stations, Padgett fails to direct us to evidence of  
10 conception or reduction to practice of a system with feed stations for a “lower case  
11 portion including a metal head,” an “upper case portion having an open top end,”  
12 “wherein one or both of the upper and lower case portions are polymeric.”  
13 (Padgett Clean Copy of Claims, Paper 6, 2.)

14 Padgett cites other evidence to show that “Mr. Padgett had essentially  
15 conceived of most elements of Padgett Claim 1 by February of 2011.” (*See*  
16 *Padgett Motion 2, Paper 52, 8:5–6.*) Padgett asserts that “an email dated January  
17 27, 2011 from Mr. Beach of Cybernet evidences that Mr. Padgett had recently  
18 discussed with another employee at Cybernet as to his conceived system and  
19 working with Cybernet to reduce his system to practice.” (*See Padgett Motion 2,*  
20 *Paper 52, 8:7–10.*) Padgett cites to paragraph 14 of Mr. Padgett’s declaration,  
21 which cites to Exhibit 2008, a copy of an alleged e-mail dated 27 January 2011  
22 from Mr. Beach to Mr. Padgett. (*See Padgett Decl., Ex. 2011, ¶ 14.*)

23 Exhibit 2008 does not persuade us of any conception or reduction to practice  
24 by Mr. Padgett. Mr. Padgett testifies only that the e-mail demonstrates “that

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1 Cybernet was generally interested in exploring a potential relationship between our  
2 companies. After some follow-up conversations, Mr. Beach and I negotiated the  
3 aforementioned NDA of Ex. 2004.” (Padgett Decl., Ex. 2011, ¶ 14.) This  
4 evidence of a “potential relationship” and the eventual negotiation of a non-  
5 disclosure agreement reveal nothing about conception, reduction to practice, or any  
6 other activity by Mr. Padgett. Padgett argues that Exhibit 2008 was “used to lay  
7 the foundation in Padgett’s testimony as to the context of certain facts and nature  
8 and history between the parties . . . ,” but the e-mail provides no support for  
9 Padgett’s arguments. (Padgett Reply 2, Paper 62, 2:15–16.) Furthermore, because  
10 the e-mail is authored by Mr. Beach and was sent to Mr. Padgett, it seems that  
11 whatever is disclosed would refute Padgett’s argument about conception by Mr.  
12 Padgett.

13 Padgett argues further:

14 Following simultaneous conversations between Mr. Padgett with another  
15 company, Advanced Engineered Systems, Inc. (“AES”), AES on February  
16 11, 2011 (Ex. 2009) sent Mr. Padgett, a detailed letter related to technical  
17 specifications, costs, and deliverable timeline for an ammunition  
18 manufacturing system. Mr. Padgett sent this letter to Mr. Beach on May 4,  
19 2011 to clarify some questions that Mr. Beach had raised as to how the  
20 system of Padgett Claim 1 worked. Ex. 2011 at para. 15

21  
22 (Padgett Motion 2, Paper 52, 9:1–7.) On its face, Exhibit 2009 provides a  
23 “SYSTEM OVERVIEW” for an “intermittent motion machine,” and recites  
24 features including:

- 25 1. Load cartridge case  
26 2. Case present check  
27 3. A primer present check

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- 1           4. Powder fill
- 2           5. Powder probe
- 3           6. Projectile load and pre-seat
- 4           7. Seat
- 5           8. Height check
- 6           9. Unload
- 7

8 (Ex. 2009, 2.) This list, which is presumed to be components of the system  
9 overviewed, does not expressly recite the first three elements of the Count:

- 10           [1] a first feed station for delivery of lower case portions, each  
11           lower case portion including a metal head end;
- 12           [2] at least one subsequent feed station for delivery of upper case  
13           portions, each upper case portion having an open top end;
- 14           [3] wherein one or both of the upper and lower case portions are  
15           polymetric.
- 16

17 (Padgett Clean Copy of Claims, Paper 6, 2.)

18           Mr. Padgett points to other portions of Exhibit 2009 in his testimony  
19 regarding conception and reduction to practice. For example, Mr. Padgett quotes  
20 Exhibit 2009:

- 21           1. The cartridge case would be bowl fed and introduced into the inline  
22           transfer assembly, neck side up, by a feeder bowl and drop tube assembly.  
23           The case is then transferred to the next station.
- 24

25 (See Padgett Decl., Ex. 2011, ¶ 17.) According to Mr. Padgett, this portion means  
26 that each part of the cartridge would be fed from its own respective feed station  
27 and that the case would then be transferred to an in-line transfer assembly station.

28 (See Padgett Decl. Ex. 2011, ¶ 18.) (See Padgett Reply 2, paper 62, 7:5–15.)

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1           The quoted text of Exhibit 2009 does not support Mr. Padgett’s testimony.  
2           The text refers only to “[t]he cartridge case” and does not mention more than one  
3           part. No details of the “cartridge case” or any “case portions” that might be  
4           involved are provided. That is, neither a “lower case portion including a metal  
5           head end,” nor an “upper case portions, each upper case portion having an open top  
6           end” is mentioned. Thus, this portion of Exhibit 2009 does not corroborate Mr.  
7           Padgett’s testimony regarding at least the first two elements of the Count.

8           Mr. Padgett also quotes Exhibit 2009 regarding “inline inspection for the  
9           presence of the primer. . . .” (*See* Padgett Decl., Ex. 2011, ¶ 19.) Mr. Padgett  
10          testifies that this portion indicates that the system he conceived would add primer  
11          prior to inspection for primer. (*See* Padgett Decl., Ex. 2011, ¶ 20.) Whether or not  
12          this portion of Exhibit 2009 corroborates Mr. Padgett’s testimony about conception  
13          of other elements of the Count, it does not corroborate testimony about conception  
14          of the features of lower and upper case portions as required in the Count.

15          Other evidence cited by Padgett is similarly unpersuasive of Mr. Padgett’s  
16          conception and fails to corroborate his testimony. Exhibit 2010, which Mr. Padgett  
17          testifies is evidence of his communications with others about the system he  
18          conceived, provides information only about a quote and availability for a  
19          conference call. (*See* Ex. 2010; *see* Padgett Decl., Ex. 2011, ¶ 15; *see* Padgett  
20          Motion 2, Paper 52, 10:15–21.) No details of a system are provided.

21          After reviewing the evidence cited by Padgett in Table 1 and elsewhere in  
22          Motion 2, we are not persuaded that Mr. Padgett conceived of or reduced to  
23          practice each and every element of the Count by 11 March 2011. *See Brown v.*  
24          *Barbacid*, 276 F.3d 1327, 1336 (Fed. Cir. 2002) (“A conception must encompass

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1 all limitations of the claimed invention . . . and ‘is complete only when the idea is  
2 so clearly defined in the inventor's mind that only ordinary skill would be  
3 necessary to reduce the invention to practice, without extensive research or  
4 experimentation’ . . . .” (quoting *Singh v. Brake*, 317 F.3d 1334, 1367 (Fed. Cir.  
5 2003).) Padgett fails to present evidence that sufficiently corroborates Mr.  
6 Padgett’s testimony regarding at least elements [1], [2], and [3] of the Count.

7 We agree with Cybernet that Padgett’s arguments about what Mr. Padgett  
8 must have understood because he could have or did contract with others is not  
9 proof of conception of the elements of the Count. (*See* Cybernet Opp. 2, Paper 61,  
10 3:3–4.) We also agree that the evidence Padgett cites is not documentation or  
11 testimony of a non-inventor that supports actual design work with the details of the  
12 claimed system required in the Count. (*See* Cybernet Opp. 2, Paper 61, 3:8–9.)

13 Padgett argues that Cybernet’s arguments fail because Cybernet failed to  
14 depose Mr. Padgett about his testimony and failed to present its own witness. (*See*  
15 Padgett Reply 2, Paper 62, 5:11–17 and 17:19–18:2.) As the moving party,  
16 Padgett bears the burden of proving priority. *See* 37 C.F.R. § 41.208(b) (“To be  
17 sufficient, a motion must provide a showing, supported with appropriate evidence,  
18 such that, if un rebutted, it would justify the relief sought. The burden of proof is on  
19 the movant.”). Thus, Cybernet’s choice of strategy is irrelevant to the sufficiency  
20 of Padgett’s evidence.

21 Because Padgett has not proven that Mr. Padgett conceived of or reduced to  
22 practice the subject matter of the Count before the earlier than the benefit date

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1 accorded to Cybernet, 15 March 2013, the date that Cybernet filed its involved  
2 application, we DENY<sup>3</sup> Padgett Motion 2.

cc (via e-mail):

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<sup>3</sup> Padgett states that it would not oppose a decision for Mr. Padgett to be listed as co-inventor with one or more the Cybernet inventors because “at the very least Padgett should either be a co-inventor with the Cybernet inventors and/or entitled to a priority date of March 15, 2013 since absence of evidence is insufficient to remove Mr. Padgett as an inventor and evidence ceases to exist establishing by a preponderance be that the filing date of the Padgett application, U.S. Prov. 61/791,236 was filed on March 15, 2013. Padgett Motion 1, Paper 33, 2:23–3:4.” (Padgett Motion 2, Paper 52, 11:11–18.) Padgett was authorized to argue, and does argue, that judgment be entered against Cybernet based on priority. (*See* Padgett Motion 2, Paper 52, 3:2–4; *see also* Order, Paper 50, 3 (“It is ORDERED that Padgett is authorized to file one motion arguing priority of invention . . . .”).) Questions of co-inventorship are not before us now and we make no decision on them based on the current motion.

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