



United States Copyright Office

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August 28, 2019

Stanley D. Ference, III, Esq.
Ference & Associates LLC
409 Broad Street
Pittsburgh, PA 15143

**Re: Second Request for Reconsideration for Refusal to Register DRAFT
PATENT APPLICATION ENTITLED DEFECT ANALYSIS USING
CALIBRATED LENS; Correspondence ID: 1-300JDUL; SR 1-5227441611**

Dear Mr. Ference:

The Review Board of the United States Copyright Office (“Board”) has considered Ference & Associates LLC’s (“Ference”) second request for reconsideration of the Registration Program’s refusal to register a text and two-dimensional artwork claim in the work titled DRAFT PATENT APPLICATION ENTITLED DEFECT ANALYSIS USING CALIBRATED LENS (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s denial of registration.

The Work as initially submitted is a twenty-seven page patent application that is almost completely redacted. The only viewable content is the header of each application section and short phrases on pages 20, 22, and 24; Ference redacted everything else in the deposit. A reproduction of the Work is included as Appendix A. Ference also requested “special relief pursuant to Section 1508.8(b) . . . because [the Work] is a patent application that has not been published.” Application to U.S. Copyright Office (May 27, 2017).

In a September 13, 2017, letter, a Copyright Office registration specialist refused to register a claim in the Work because “the work deposited does not meet regulatory deposit requirements.” Letter from Examiner Ames, Registration Specialist, to Stanley Ference (Sept. 13, 2017) (“Initial Refusal”). In addition, the Office denied special relief because “the Office does not provide special regulatory [deposit] relief for literary works that are not computer programs.” *Id.*

Ference then requested that the Office reconsider its initial refusal to register the Work, and renewed its request for special relief. Letter from Stanley D. Ference III, Esq. to U.S. Copyright Office (Dec. 13, 2017) (“First Request”). The request also offered, in lieu of the initial deposit, a partially redacted version of the Work. This alternative deposit is reproduced in Exhibit B. After reviewing the Work in light of the points raised in the First Request, the Office

re-evaluated the application and again denied the request for special relief, stating “the Office must be able to view and examine the authorship in which copyright is being claimed. The submitted copy [of the Work] in no way meets this requirement.” Letter from Stephanie Mason, Attorney-Advisor, to Stanley D. Ference III (Apr. 27, 2018). The Office also denied the alternative partially redacted deposit on grounds that “the alternative copy . . . redacts all but very slight sections of each page, revealing only mere portions of words and short phrases.” *Id.*

In a letter dated July 27, 2018, Ference requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Letter from Stanley D. Ference III to U.S. Copyright Office (July 27, 2018) (“Second Request”). In that letter, Ference again renewed the request for special relief, asking that the Office accept either the entirely redacted or partially redacted copy of the Work. The Second Request asserts that “the presence of confidential/trade secret material and the pending AIA publication constitute a compelling reason to grant the Special Relief sought by the applicant.” *Id.* at 2.¹

The Review Board has considered Ference’s submissions but must deny the request for special relief from Office deposit requirements and also refuse to register the Work. Neither of the proposed deposits provide the Office with sufficient information to make a registration decision regarding the literary or two-dimensional artwork claimed in the Work as neither deposit displays copyrightable subject matter.

To register a Work with the Copyright Office, an applicant must submit a complete application, filing fee, and appropriate deposit. 17 U.S.C. § 408. Applicants must provide a complete copy of unpublished works, meaning a copy that contains all of the copyrightable authorship claimed on the application. *Id.* § 408(b)(1); 37 C.F.R. § 202.20(b)(2)(i). Nevertheless, the Office, based on its regulatory authority, may grant four types of special relief from the deposit requirements: (1) to permit a deposit of one copy or identifying material instead of two; (2) to permit incomplete copies or phonorecords, or copies of phonorecords other than those normally comprising the best edition; (3) to permit the deposit of actual copies rather than identifying material; and (4) to permit non-complying identifying material. 37 C.F.R. § 202.20(d).

Ference’s request for special relief asks the Office to accept a copy of the Work that is not just an “incomplete” copy but an entirely insubstantial copy to support a claim to copyright. Neither version offered by Ference reflects any of the copyrightable authorship claimed in the application. In the initial deposit, the Office is only able to view section headers and three

¹ In its Second Request for Reconsideration, Ference also asked that “review of its Second Request for Reconsideration be held in abeyance for a minimum of 6 months. At which time, if the subject of the application has been published, Applicant would deposit a complete copy with the Copyright Office for examination.” Second Request at 1. The Review Board sought to grant and clarify the request for extension of time, but did not receive a response to multiple communications. The originally requested six months having passed on January 27, 2019, the Board considers the matter ripe.

phrases: “CLAIMS / What is claimed is: / 1. A method, comprising;” “11. A system, comprising;” and “A product, comprising.” *See generally*, Appendix A. In the alternate deposit, the Office can only view dissociated words and a few simple shapes. *See generally*, Appendix B. The viewable material does not consist of copyrightable subject matter. Instead, it is merely composed of single words, short phrases, and a few simple shapes that are not subject to copyright protection. 37 C.F.R. § 202.1(a).

In reaching its decision, the Review Board looks to the areas where the Office has formally considered redaction in its registration regulations for secure test and computer programs. When registering these types of works the applicant must submit material sufficient for examination. In the case of secure tests, the applicant must submit an unredacted copy to the Office for in-person examination in addition to the redacted copy that remains on file. *Id.* § 202.13(c). For computer programs, the applicant is limited in when and how redaction can occur. Redaction is only appropriate when the computer program contains trade secrets, and then the redaction must be limited to only the trade secret portions. *Id.* § 202.20(c)(2)(vii)(A)(2). The Office can refuse registration if the computer program is overly redacted. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 1509.1(C)(4)(b) (3d ed. 2017).

By contrast, the deposits offered by Ference do not reveal any copyrightable authorship. Without content to support a claim in the application, the Office is unable to conclude that “the material deposited constitutes copyrightable subject matter and that all other legal and formal requirements of this title have been met.” 17 U.S.C. § 410(a). To allow a deposit of this nature would render the Office’s ability to examine the Work for copyrightable authorship impossible, something that is not supported by copyright law or Office regulations.²

² Ference’s citation to *Grundberg v. Upjohn Co.*, 137 F.R.D. 372 (D. Utah 1991), is unavailing because that decision invalidated a registration certificate for, among other things, masked samples of documents.

Because the proposed additional deposit does not provide sufficient material for review, the Board must reject the request for special relief. The Board further finds that the deposit and requested replacement deposit lack copyrightable authorship. Accordingly, the Review Board affirms the refusal to register the copyright claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.



U.S. Copyright Office Review Board

Karyn A. Temple, Register of Copyrights
and Director, U.S. Copyright Office

Regan A. Smith, General Counsel and
Associate Register of Copyrights

Catherine Zaller Rowland, Associate Register of
Copyrights and Director, Public Information and
Education

Appendix A

DEFECT ANALYSIS USING CALIBRATED LENS

BACKGROUND

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BRIEF SUMMARY

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867.020

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BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWINGS

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DETAILED DESCRIPTION

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CLAIMS

What is claimed is:

1. A method, comprising:

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REDACTED

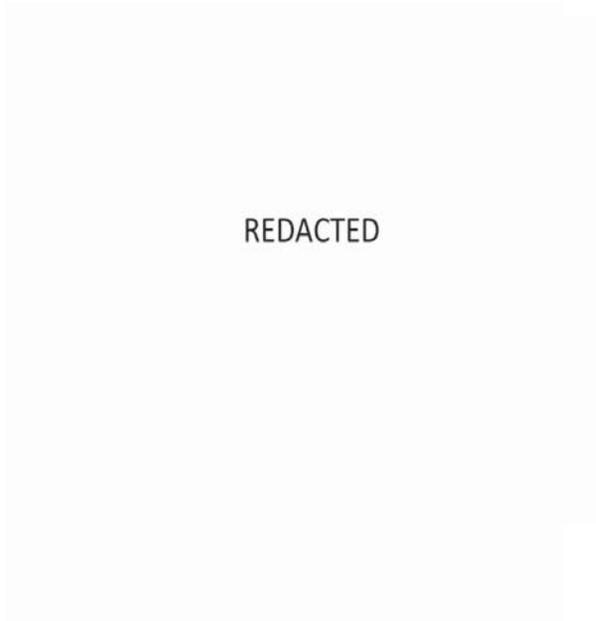
11. A system, comprising:

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20. A product, comprising:

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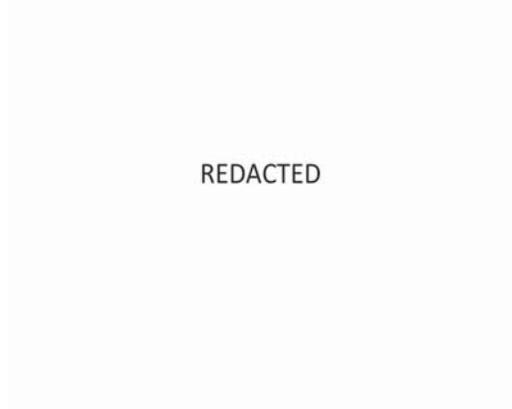


FIG. 1

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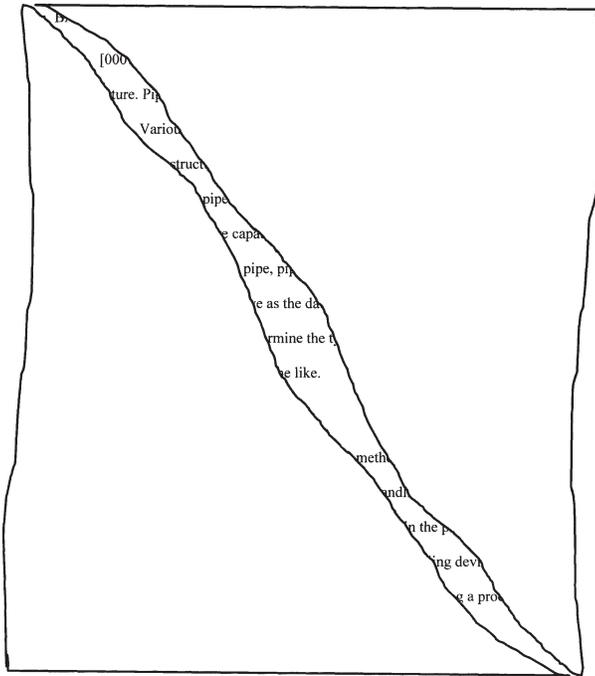
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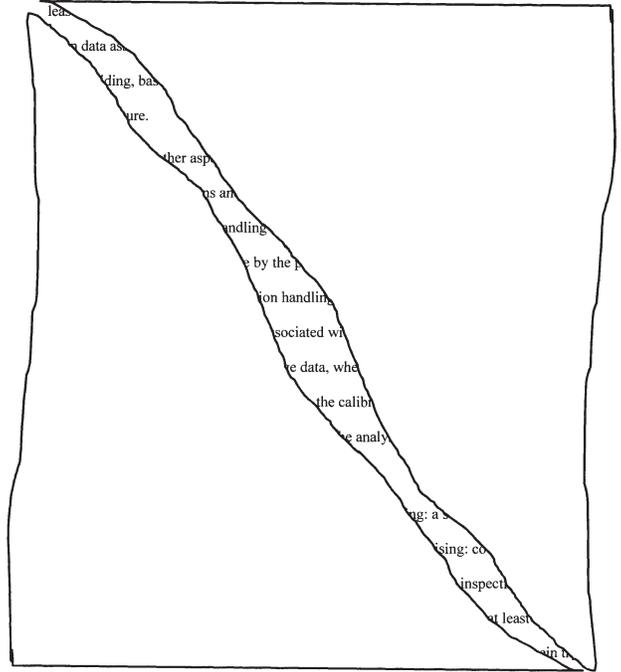
FIG. 2

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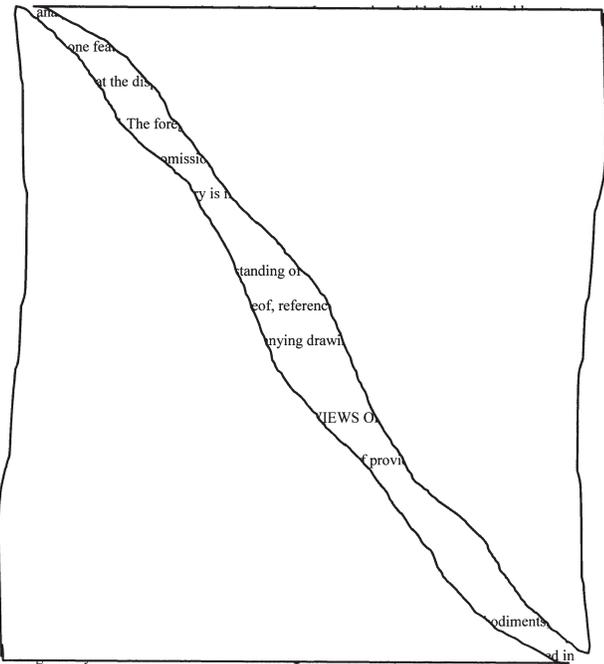
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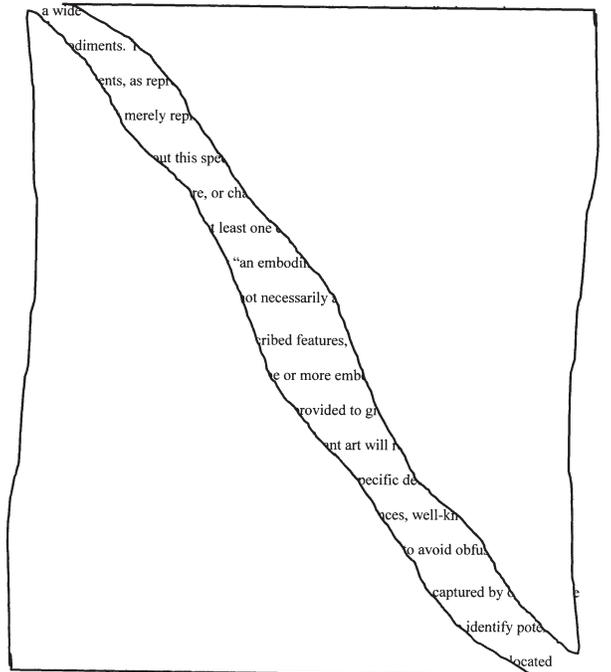
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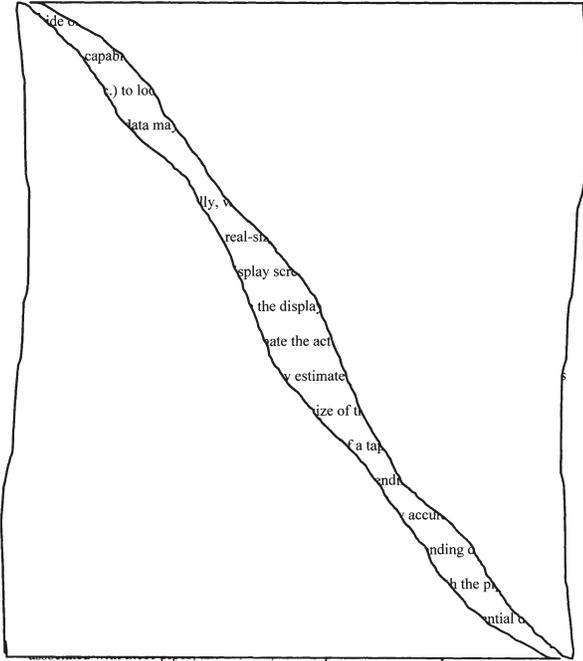
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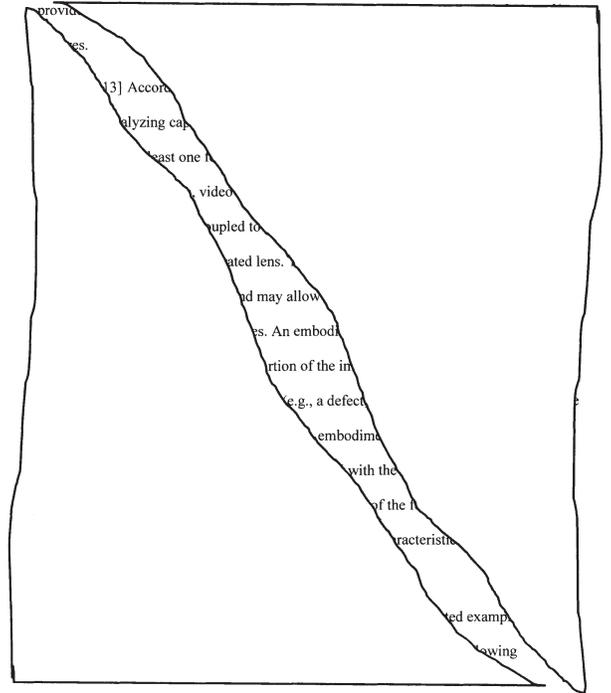
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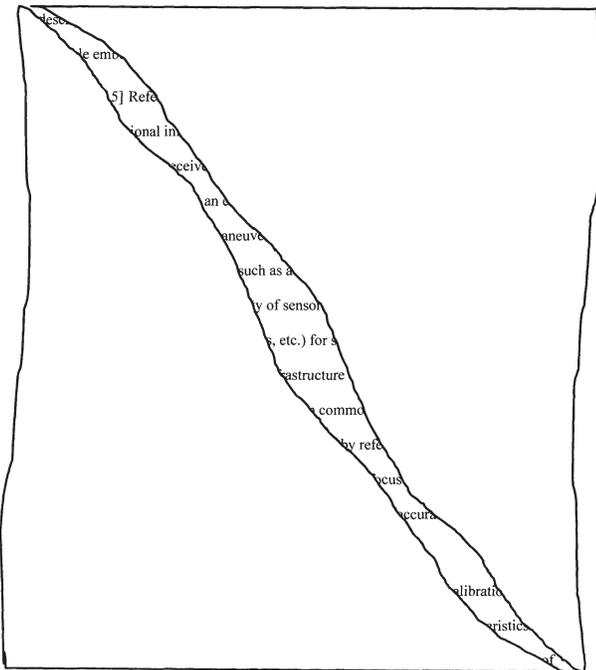
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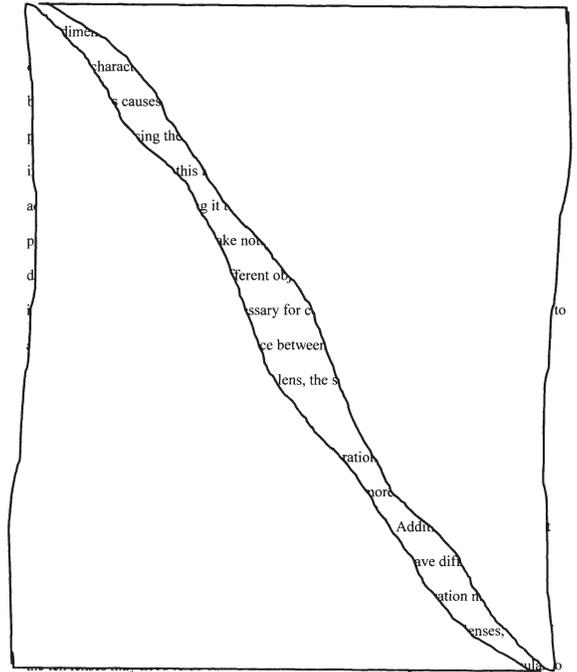
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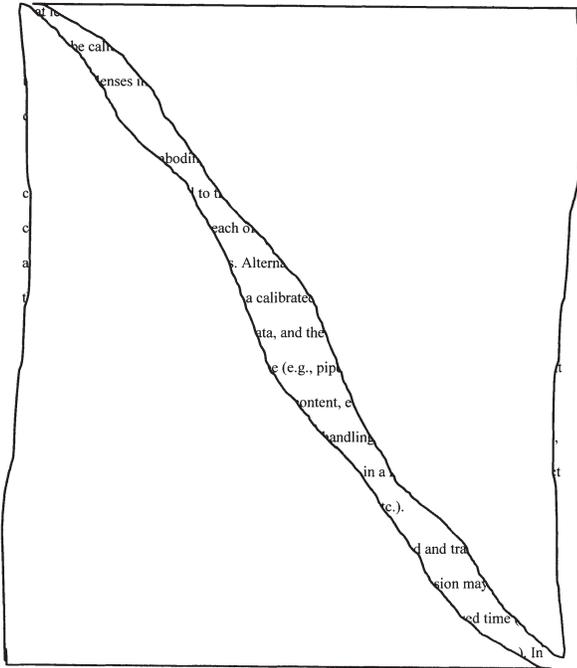
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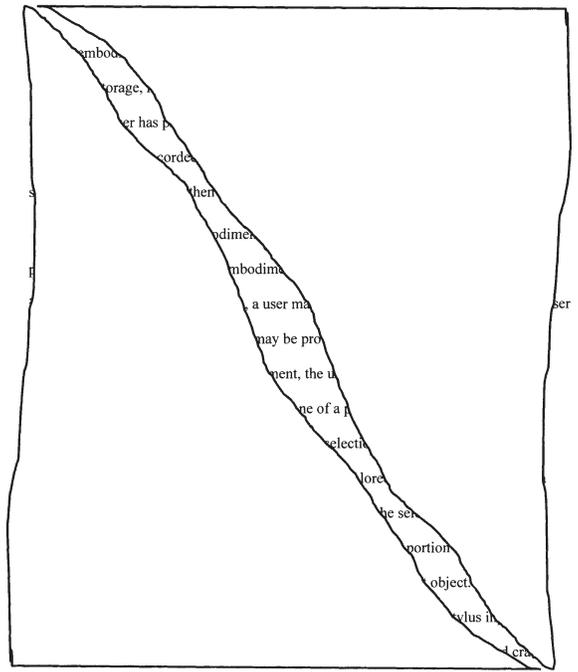
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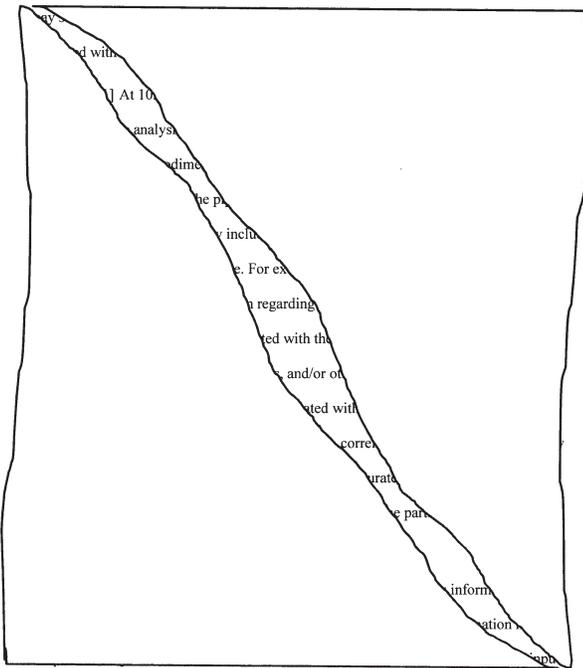
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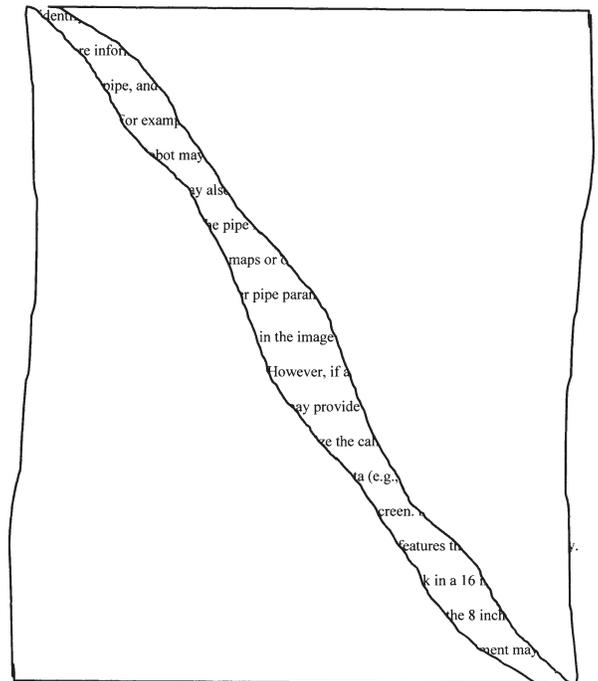
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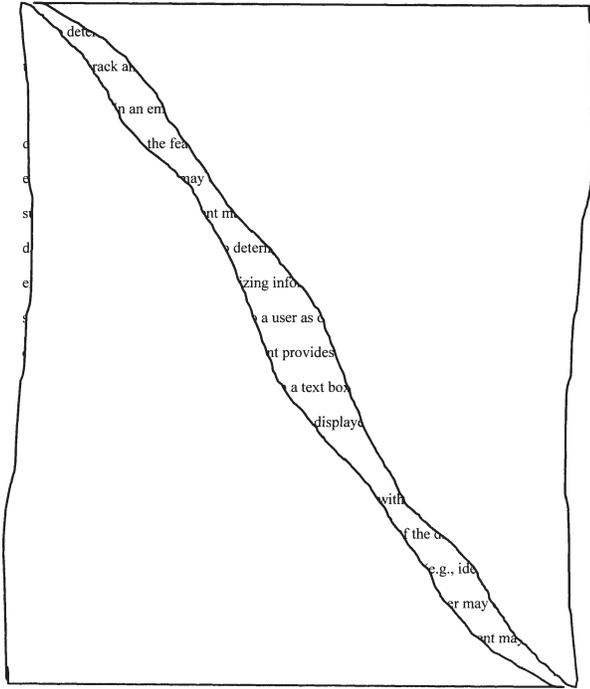
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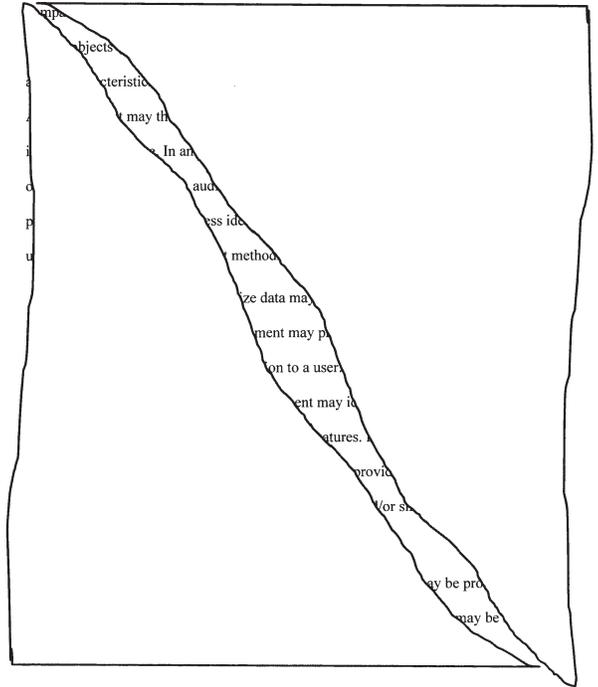
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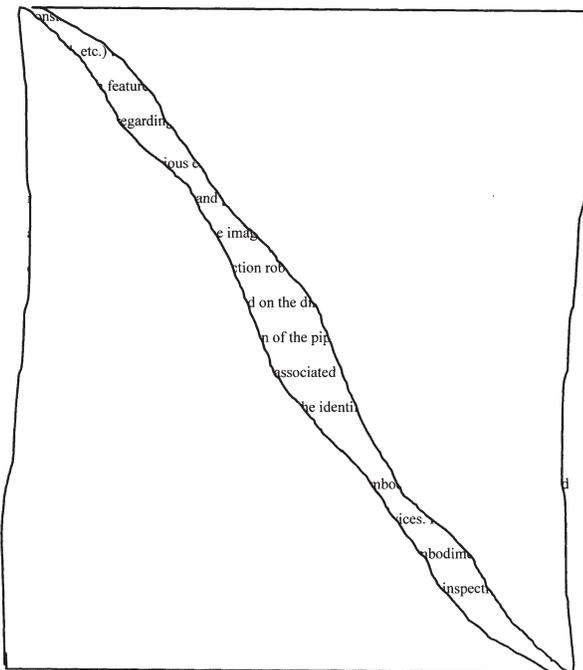
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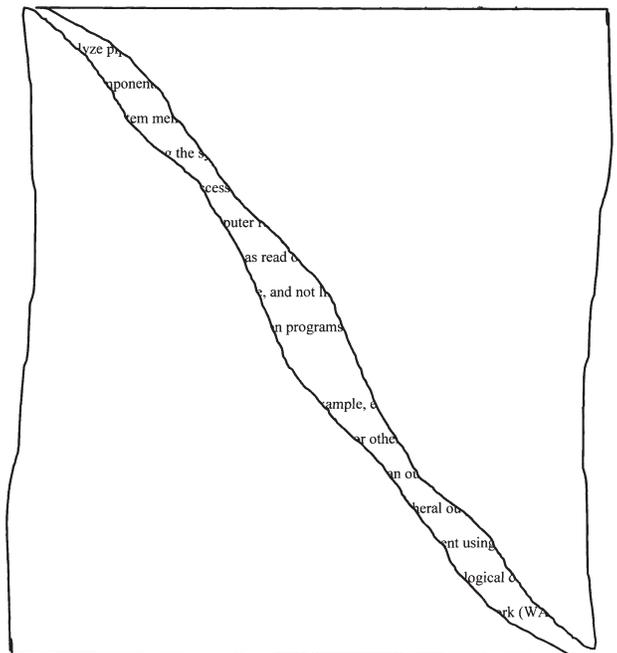
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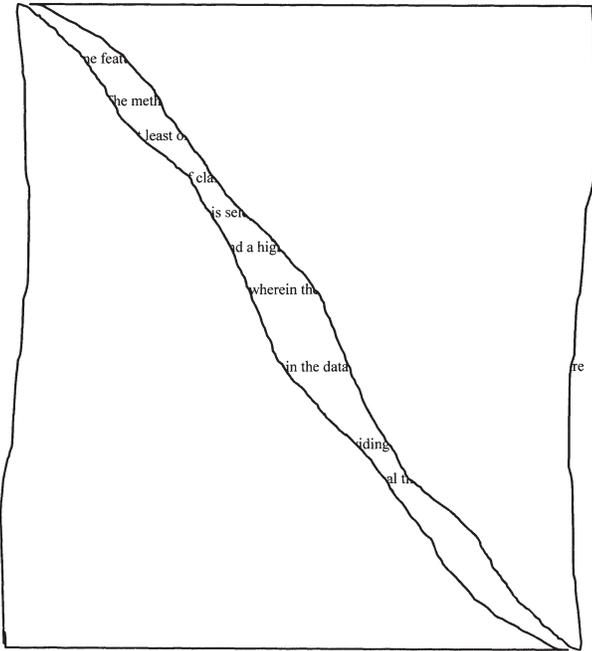
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CLAIMS

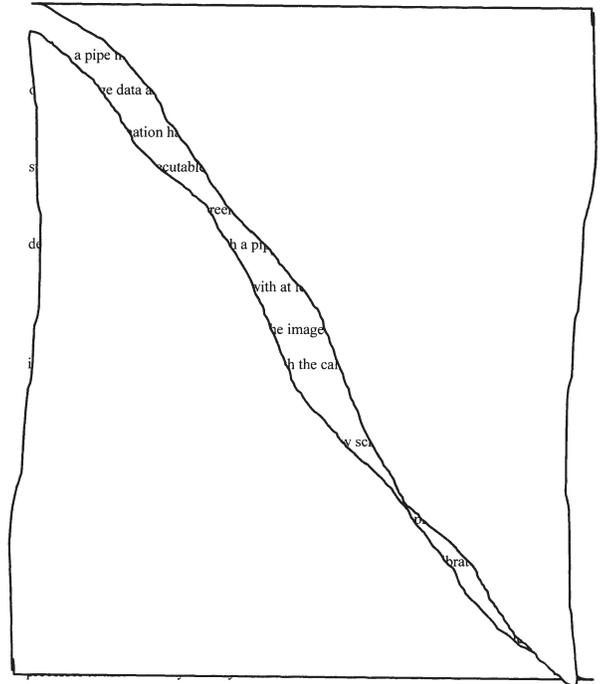
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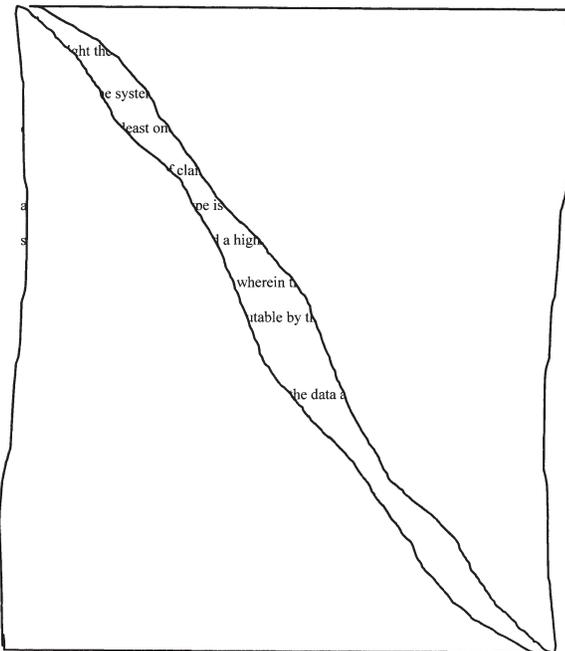
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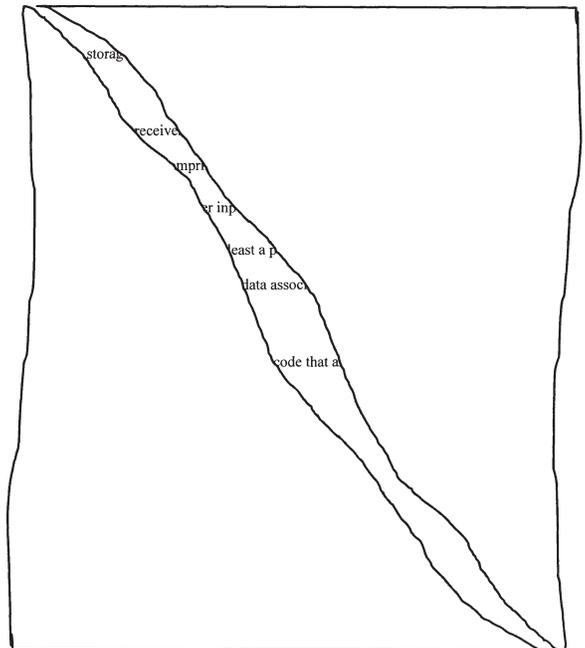
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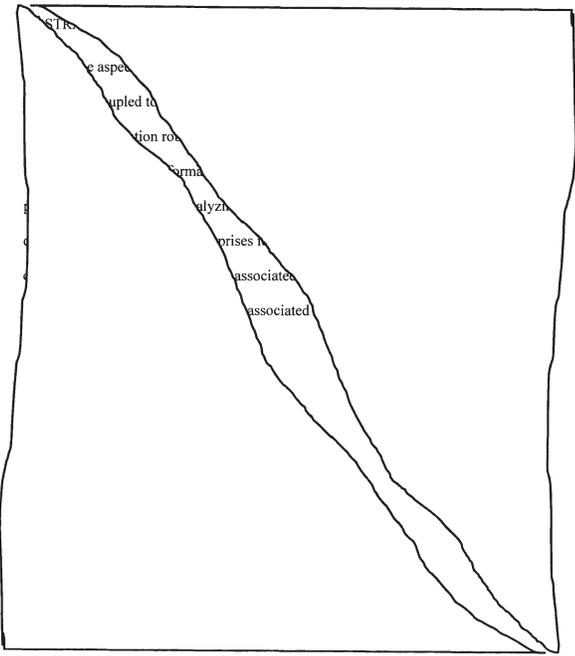


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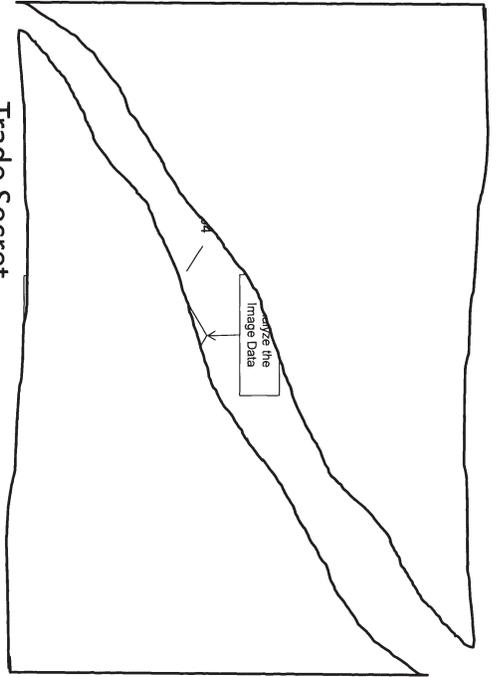
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FIG. 1



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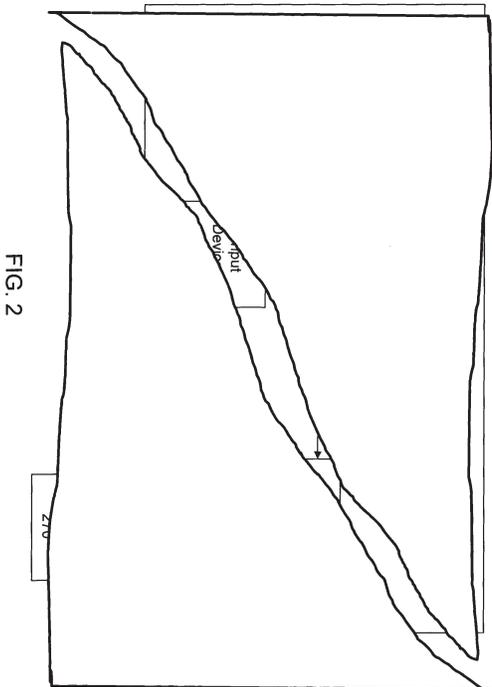


FIG. 2