

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CREATIVE CONSUMER CONCEPTS INC. and
STEAK N SHAKE OPERATIONS, INC.,
Petitioner,

v.

KID STUFF MARKETING, INC.,
Patent Owner.

Case IPR2015-01516
Patent 8,783,548 B2

Before JOSIAH C. COCKS, SUSAN L. C. MITCHELL, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Creative Consumer Concepts, Inc. and Steak n Shake Operations, Inc. (collectively, “Petitioner”) filed a Petition (Paper 3, “Pet.”) requesting *inter partes* review of claims 1–5 and 7–12 of U.S. Patent No. 8,783,548 B2 (“the ’548 patent”). Pet. 1. We issued a Decision to Institute an *inter partes* review of claims 1–5 and 7–12 of the ’548 patent on the following grounds: (1) claims 1–5 and 7–12 as unpatentable under 35 U.S.C. § 103(a) over Tesar¹ and the Red Sports Car²; and (2) claims 1–5, 7, 11, and 12 as unpatentable under 35 U.S.C. § 103(a) over Tesar, Billen,³ and in further view of the knowledge of a person having ordinary skill in the art. Paper 9, 31 (“Inst. Dec.”).

After institution of trial, Kid Stuff Marketing, Inc. (“Patent Owner”) filed a Patent Owner Response (Paper 17, “PO Resp.”), to which Petitioner replied (Paper 26, “Pet. Reply”).⁴ Patent Owner also filed a Patent Owner’s Contingent Motion to Amend (Paper 19, “Motion to Amend”) and Motion to Seal (Paper 21), which seeks to seal portions of Patent Owner’s exhibits, Patent Owner Response, and Motion to Amend (Paper 21, 1). Petitioner also filed a Motion to Seal (Paper 25) to protect Patent Owner’s confidential information that may be in Petitioner’s Reply. Paper 25, 1. The parties also file jointly a Protective Order seeking to protect certain confidential information. Ex. 2023.

¹ US Patent 5,622,256, issued Apr. 22, 1997 (“Tesar”) (Ex. 1003).

² Kid Stuff Marketing, Inc., *Steak ’n Shake Red Sports Car* (2010) (“the Red Sports Car”) (Ex. 1005).

³ William D. Billen, U.S. Patent No. 5,454,508, issued Oct. 3, 1995 (“Billen”) (Ex. 1007).

⁴ Parties filed several redacted and unredacted versions of their papers and exhibits, as well. See discussion *infra* Part III.

Oral argument was conducted on September 12, 2016, and a transcript of the hearing (“Tr.”) will be entered in due course.

We have jurisdiction under 35 U.S.C. § 318(a). After considering the evidence and arguments of both parties, and for the reasons set forth below, we determine that Petitioner has not met its burden of showing, by a preponderance of the evidence, that any of claims 1–5 and 7–12 of the ’548 patent are unpatentable.

A. Related Matters

The ’548 patent is the subject of Civil Action No. 2:15-cv-02620, filed by Patent Owner against Petitioner on February 15, 2015, in the U.S. District Court for the District of Kansas. Pet. 60 (citing Ex. 1011).

B. The ’548 Patent (Ex. 1001)

The ’548 patent is titled “SPORTS CAR CARTON.” Ex. 1001, Title. The carton described in the ’548 patent “is formed from side-by-side panels which, when assembled, present a sports car configuration having a cabin for receiving food or other items.” *Id.* 1:3–7.

To illustrate Patent Owner's invention, Figure 1 of the '548 patent is reproduced below:

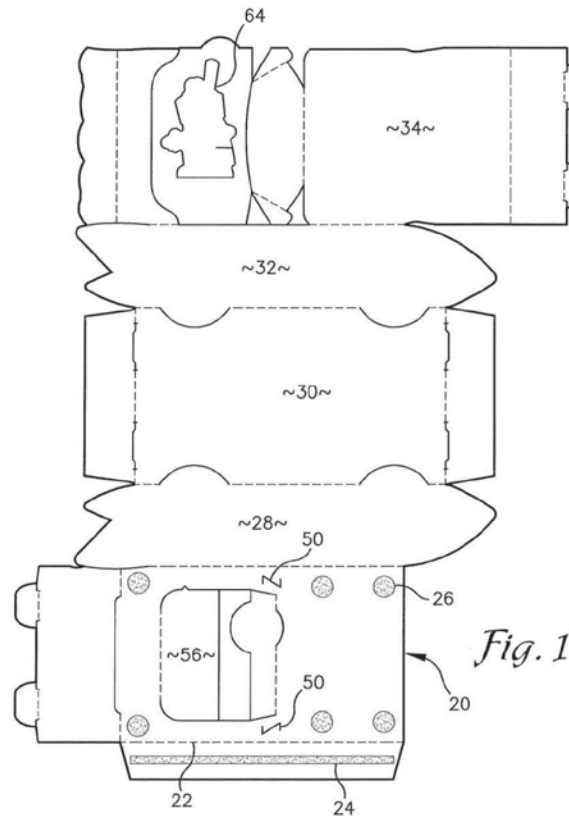


Figure 1 illustrates a sheet of paperboard including first upper panel 20, second upper panel 34, side panels 28, 32, and base panel 30, which are folded along the broken (unnumbered) fold lines. Ex. 1001, 2:26–3:11. Figure 1 depicts the paperboard from which the sports car carton of Figure 5 is formed.

Figures 2–4 are reproduced below:

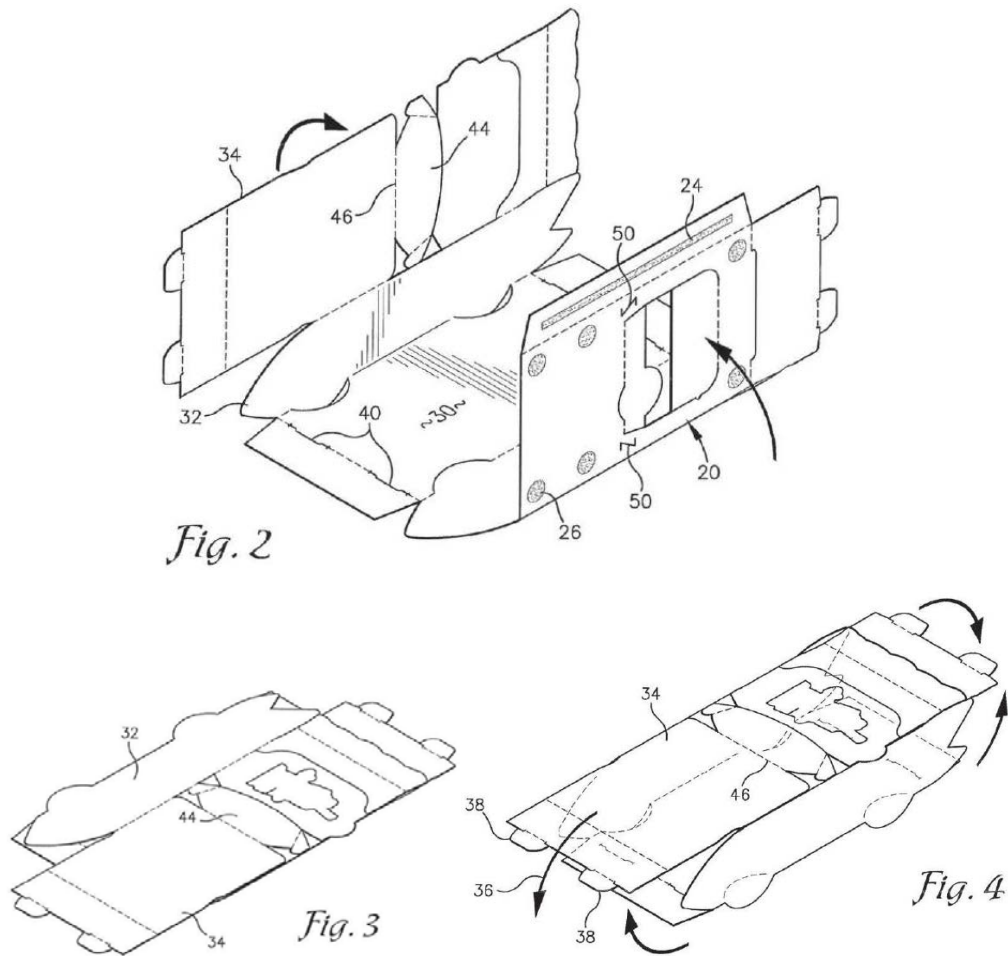


Figure 2 (top) depicts the initial folds of first upper panel 20 and second upper panel 34 (*id.* at 2:52–54) so that second upper panel 34 overlies the first upper panel, as shown in Figure 3 (bottom-left). *Id.* at 2:1–8, 52–58. The flat configuration shown in Figure 3 is then expanded, as shown in Figure 4 (bottom-right), and the front and rear ends of the paperboard are folded to arrive at the sports car carton of Figure 5. *See id.* at 2:68–67.

Figures 5 and 8 are also reproduced below:

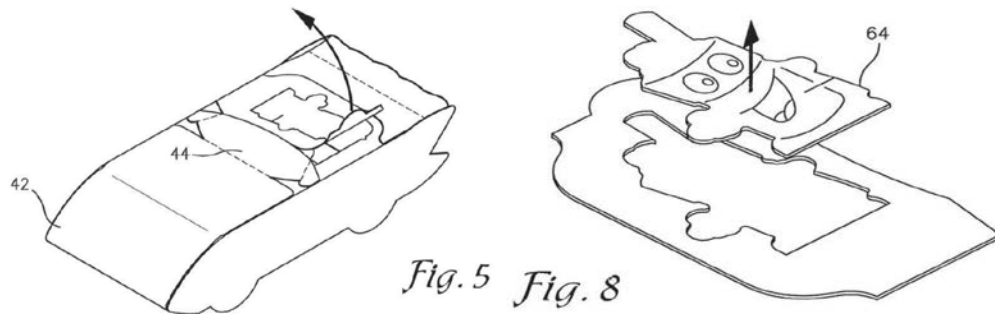


Figure 5 (left) depicts a sports car carton when the paperboard of Figure 1 is assembled. *Id.* at 2:52–54, 3:12–13. Figure 5 and Figure 8 (right) together illustrate character “Shaker” 64 being removed from the second upper panel 34 of the carton (see Figure 1), which may then be added to the car (*id.* at 3:28–31), as shown in Figure 9. Figure 9 is also reproduced below:

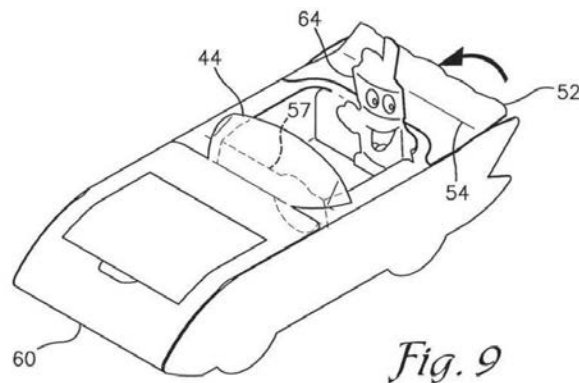


Figure 9 further depicts “Shaker” 64 “added to the back seat to add interest to the car, particularly for children.” *Id.* at 3:18–23.

Notably, both Figure 5 and Figure 9 depict an assembled carton. *See id.* at 2:53–54 (“upon assembly, a paperboard carton having a sports car configuration as seen in FIG. 5”; *see also id.* at 3:12 (“The assembled views of FIGS. 5, 6, 7 present a sports car carton . . .”); *see also id.* at 2:18 (“FIG. 9 shows the carton fully assembled”).

C. Illustrative Claim

Claim 1 is the sole independent claim, with claims 2–12 depending therefrom. Ex. 1001, 3:37–4:55.

Claim 1 is reproduced below, with emphases added to certain limitations addressed in this Decision:

1. A carton for food or other items presenting a sports car configuration having a body extending from front to rear, said carton comprising:

a sheet of semi-rigid material presenting a base panel having spaced, opposed lateral edges presenting generally parallel, first and second fold lines, a first side panel at one side of said base panel folded upwardly at said first fold line to present one side of the sports car body and presenting a third fold line generally parallel to said first fold line, a first upper panel folded at said third fold line to a position overlying and generally parallel to said base panel and having a free edge, a second side panel laterally spaced from said first side panel and folded upwardly at said second fold line to present the opposite side of the sports car body and presenting a fourth fold line generally parallel to said second fold line, a second upper panel folded at said fourth fold line to a position overlaying said first upper panel,

each of said first and second side panels having replicas of a front wheel and a rear wheel of the sports car thereon for supporting the carton on a surface upon which the sports car carton may be placed,

said *first upper panel* having a front portion, a middle portion behind said front portion having an opening to present a compartment for receiving food or other items, and a rear portion behind said middle portion,

said *second upper panel* having a hood portion, a center portion behind said hood portion and covering said opening of said first upper panel, and a rear portion, and

a rear end panel folded downwardly from said first upper panel rear portion to present a rear end of the sports car body, whereby to provide an assembled carton having a sports car configuration.

D. References Relied Upon

Petitioner relies on the following references:

Short Name	Reference Number	Date	Exhibit Number
Tesar	US 5,622,256	Apr. 22, 1997	Ex. 1003
Red Sports Car	N/A	Apr. 2011	Ex. 1005
Billen	US 5,454,508	Oct. 3, 1995	Ex. 1007

1. Overview of Tesar (Ex. 1003)

Tesar is titled Automobile Shaped Golf Ball Package (Ex. 1003, (54)) and discloses a package constructed of “folding paperboard . . . to hold a plurality of golf balls . . . [and] to simulate a vehicle and function as a toy” (*id.* at (57)).

Figure 1 of Tesar is reproduced below:

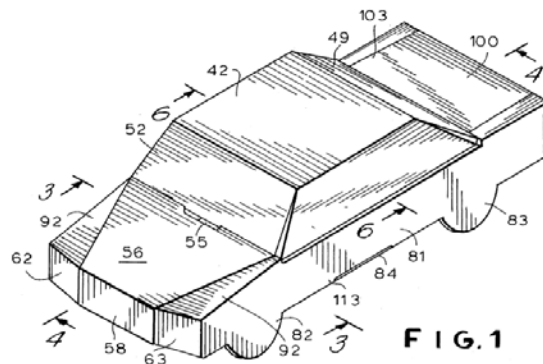


Figure 1 depicts Tesar’s vehicular shaped golf ball package (*id.* at 1:60–61), including roof panel 42, rear window panel 49, and front window panel 52 (*id.* at 3:2–6). The package of Figure 1 is formed in-part from the paperboard blank shown in Figure 8. See *id.* at 4:17–18 (“the golf ball package of FIG. 1 may be assembled from the blanks of FIGS. 7 and 8”).

Figure 8 of Tesar is reproduced below:

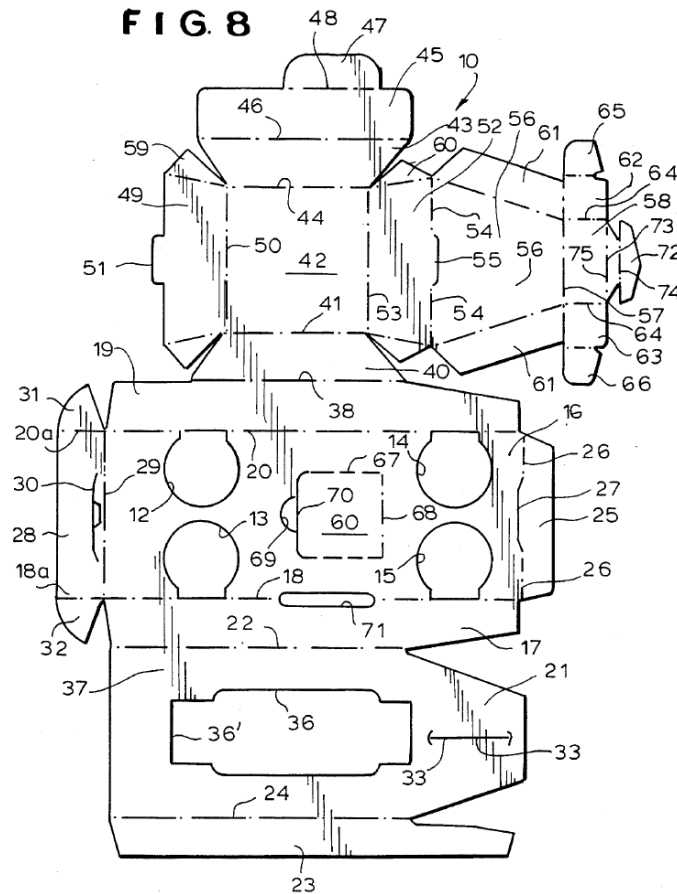
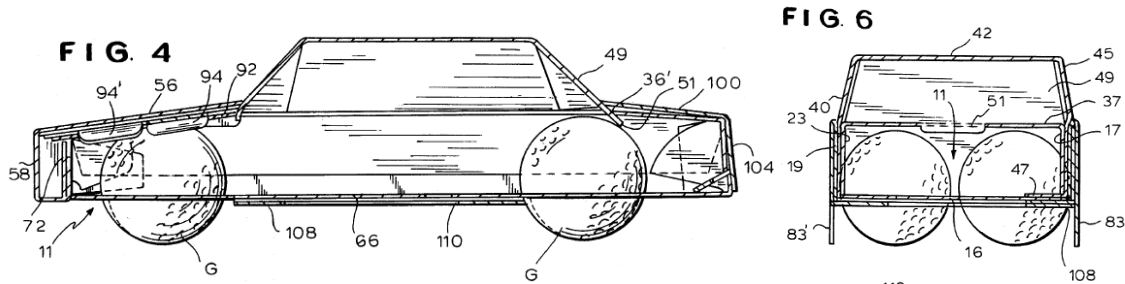


Figure 8 depicts the paperboard blank for the chassis of Tesar's golf ball package. *Id.* at 2:7–8. Bottom wall panel 16 includes four golf ball receiving cutouts 12, 13, 14, and 15, and door 66 (misabeled as reference numeral 68) for ball removal. *See id.* at 2:19–20, 3:19–20; *see also* Fig. 5 (depicting door 66); Tr. p. 7, ll. 7–14, and p. 53, l. 20–p. 54, l. 2. Chassis blank 10 further includes top panel 21, first side wall panel 17, second side wall panel 19, and vehicle roof panel 42. *See id.* at 2:23–65. Roof panel 42 includes rear window panel 49, which itself includes assembly tab 51. *Id.* at 3:2–5. When assembled, tab 51 is inserted into opening 36 against edge 36'. *See id.* at 4:44–49; *id.* at Figs. 4, 6.

Figures 4 and 6 of Tesar are reproduced below:



Figures 4 and 6 depict assembly tab 51 inserted into opening 36 at edge 36' to help complete the top structure assembly. *See id.* at 4:44–49.

2. Overview of the Red Sports Car (Ex. 1005)

According to Petitioner, the Red Sports Car “is a folding paperboard sports-car shaped carton” that is “intended for children.” Pet. 10, 12 (citing Ex. 1005).

Pages 2 and 3 of the Red Sports Car are reproduced below:



Page 2 (left) and page 3 (right) depict the Red Sports Car, unassembled.

3. Overview of Billen (Ex. 1007)

Billen is titled One Piece Vehicle Replica Container (Ex. 1007, (54)) and discloses “a one-piece planar foldable cardboard-like vehicle having artwork thereon and capable of being easily assembled into a vehicle replica” (*id.* at (57)). Figures 1 and 3 of Billen are reproduced below:

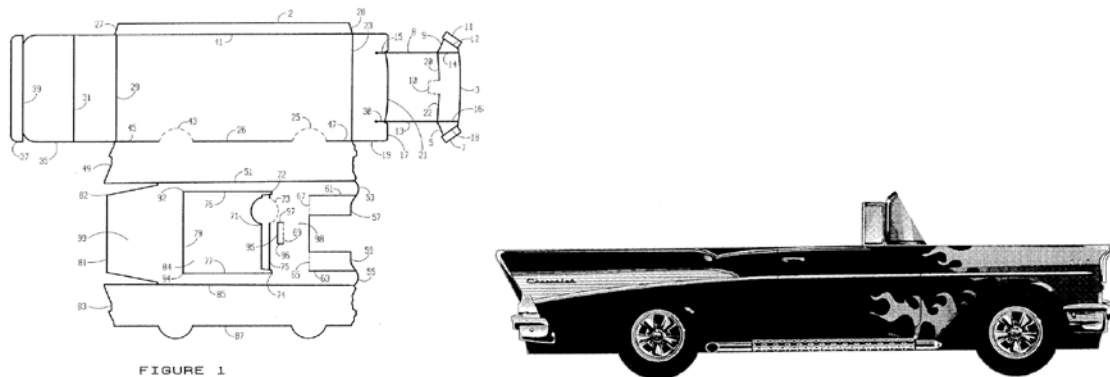


Figure 1 (left) depicts Billen’s bottom segment 27, left side 49, right side 83, and top portion 82, which folds along lines 85, 51, 45, 26, 47, and 41, to create the vehicle-shaped container, a side view of which is depicted as Figure 3 (right). *Id.* at 2:29–36, 41–64.

E. Alleged Grounds of Unpatentability

Petitioner contends that claims 1–5 and 7–12 of the ’548 patent are unpatentable under 35 U.S.C. § 103 on the following grounds:

Asserted Ground	Claims Challenged
Tesar and Red Sports Car	1–5 and 7–12
Tesar, Billen, and “knowledge of a person having ordinary skill”	1–5, 7, 11, and 12

Pet. 6.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs. LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). A presumption exists that a claim term should be construed in light of its ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). Under the broadest reasonable construction standard, claim terms are generally given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

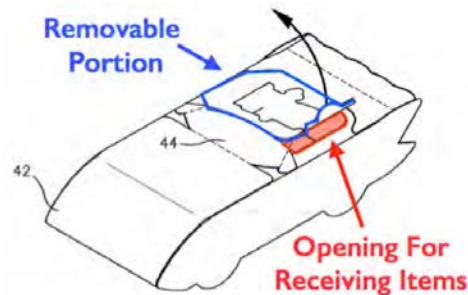
1. “A carton for food presenting a sports car configuration . . . comprising . . . [a] first upper panel . . . having an opening to present a compartment for receiving food or other items . . . [a] second upper panel . . . covering said opening . . . whereby to provide an assembled carton having a sports car configuration”

In our decision instituting trial, we interpreted the claimed phrase “first upper panel having . . . a middle portion . . . having an opening to present a compartment for receiving food or other items [and a] second upper panel having . . . a center portion . . . covering said opening of said first upper panel.” Inst. Dec. 6–9. Although Petitioner did not propose a specific construction for this claimed phrase beyond its “broadest reasonable interpretation[] consistent with the specification” (Pet. 6), Patent Owner argued in its Preliminary Response that the compartment must be *visible* when the carton is assembled in order to “receive food or other items” (*see*

Prelim. Resp. 31). We disagreed with Patent Owner's proposed construction, as Patent Owner did not reconcile its proposed claim construction with the requirement that the second upper panel covers the opening. Inst. Dec. 8. Accordingly, we concluded that the claimed "opening to present a compartment" includes "openings and compartments that are fully covered and not visible when the carton is assembled." *Id.* at 8–9.

In its Patent Owner's Response, Patent Owner does not dispute the Board's construction that the claimed opening may include fully covered and concealed openings. *See* PO Resp. 28 ("Kid Stuff's argument regarding the 'receiving' limitation of claim 1 is consistent with [the Board's construction]."). Nevertheless, Patent Owner argues that "[t]he fact that claim 1's 'opening' need not be visible does not eviscerate the claim's requirement that the opening 'present a compartment for receiving' items in an assembled carton." *Id.* Patent Owner further proposes that in order for a fully covered or concealed opening to satisfy the claimed limitation, "present a compartment for receiving food or other items," the covering must be, *for example*, "removable or replaceable," or include a "flap through which items can be passed." *See id.* (citing Ex. 1001, Fig. 5; Ex. 2010 ¶ 62).

In support of this argument, Patent Owner provides an annotated copy of Figure 5 of the '548 patent, which we reproduce below:



According to Patent Owner, the above-figure is an example of how the removable portion of the “second upper panel” can “cover” the claimed “opening” of the “first upper panel,” while allowing the “opening to present a compartment for receiving food or other items,” as recited in claim 1. *See id.*; *see also, supra*, discussion regarding Figures 5, 8, and 9 of the '548 patent (describing how “Shaker” is removed from the second upper panel and inserted into the back seat of the assembled carton’s opening).

Accordingly, Patent Owner proposes that the claimed opening may be covered or fully concealed, so long as “food or other items can enter the carton” *without disassembling the carton*. *See id.* at 25 (arguing that “broadest reasonable interpretation of an ‘opening . . . to present a compartment for receiving food or other items’ is any opening that food or other items can enter the *assembled carton* through” (emphasis added) (citing Ex. 2010 ¶ 59)).

In its Petitioner’s Reply, Petitioner argues that “[b]y referring to the embodiments of the specification, including the [annotated Figure 5, reproduced] above, PO’s proposed construction impermissibly adds limitations that are not recited in the claim.” Pet. Reply Br. 3 (citing *In re Prater*, 415 F.2d 1393, 1404–05 (CCPA 1969)).

We find unpersuasive Petitioner’s argument that Patent Owner’s proposed construction impermissibly adds limitations not recited in the claims (*id.*), and note that the claims do not recite simply a panel with an opening, but rather a panel with an opening “to present a compartment for receiving food or other items.” Ex. 1001, 4:3–6.

‘[R]eading a claim in the light of the specification,’ to thereby *interpret limitations explicitly recited in the claim*, is a quite different thing from ‘reading limitations of the specification into a claim,’ to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim.

In re Prater, 415 F.2d at 1404 (emphasis added); *see also Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (stating that “claims are interpreted with an eye toward giving effect to all terms in the claim”); *Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007) (denouncing claim constructions that render phrases in claims superfluous).

In the present case, we agree with Patent Owner’s proposed claim construction; one of ordinary skill in the art, when interpreting the claim in light of the specification, would understand that the claimed carton’s “opening to present a compartment for receiving food or other items” excludes openings that require disassembly of an assembled carton. *See* PO Resp. 25; *see also, e.g., In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010) (“claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art”). We also note that this interpretation is consistent with and does not change the interpretation provided in our Decision to Institute (Inst. Dec. 9), as this additional construction merely supplements the initial construction. *See SAS Institute*,

Inc., v. ComplementSoft, LLC, 825 F.3d 1341, 1351 (Fed. Circ. 2016) (“What concerns us is not that the Board adopted a construction in its final written decision, as the Board is free to do, but that the Board ‘change[d] theories in midstream.’”) (citing *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1080 (Fed. Cir. 2015). Furthermore, *even if* we changed our initial construction by supplementing it in this final written decision, Petitioner had the opportunity and did present arguments in its Reply Brief to contest Patent Owner’s supplemented claim construction, and we considered Petitioner’s arguments in this Decision. *See* Pet. Reply Br. 1–3; *see also* SAS, 825 F.3d at 1351 (“‘[A]n agency may not change theories in midstream without giving respondents reasonable notice of the change’ and ‘the opportunity to present argument under the new theory.’”) (internal citations omitted).

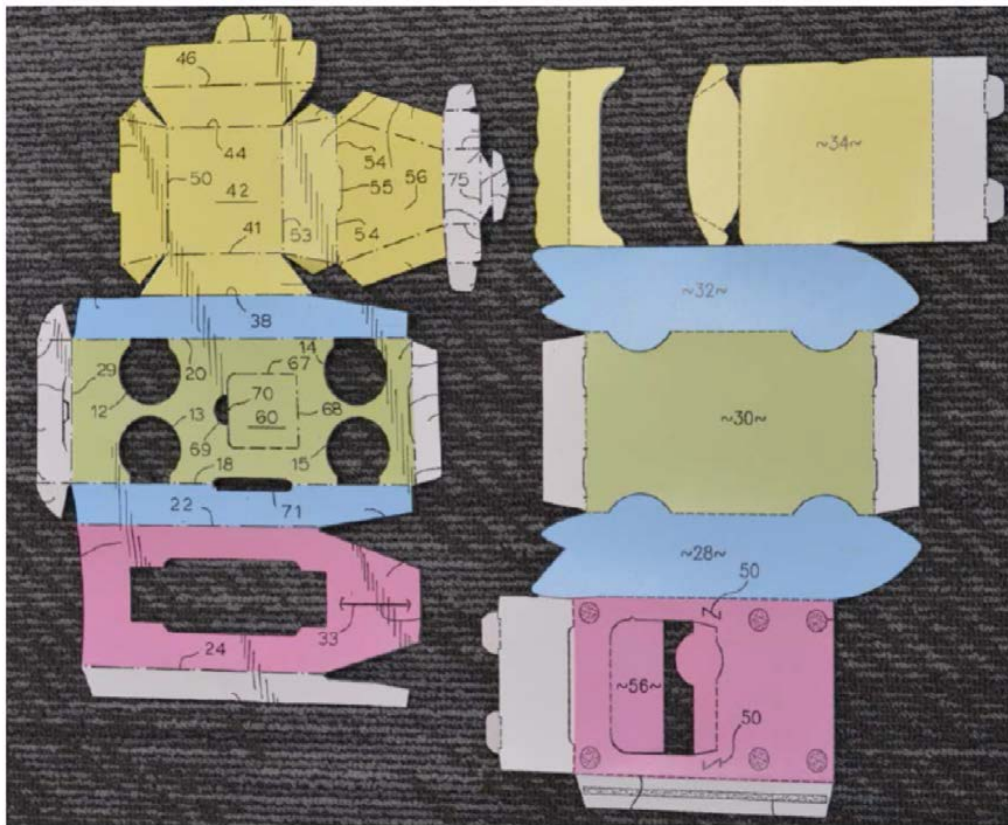
For the foregoing reasons, we conclude that the correct construction of the claimed “carton for food . . . presenting a sports car configuration . . . comprising . . . [a] first upper panel . . . having an opening to present a compartment for receiving food or other items . . . [and a] second upper panel . . . covering said opening . . . whereby to provide an assembled carton having a sports car configuration,” includes openings and compartments “that are fully covered and not visible when the carton is assembled,” as set forth in the Decision to Institute (Inst. Dec. 9), and requires that the claimed opening and compartment be capable of “receiving food or other items” without any disassembly of the assembled carton.

2. *Other claim terms*

We further determine that no other terms require express construction for the purposes of this Decision.

B. Grounds Based on Tesar

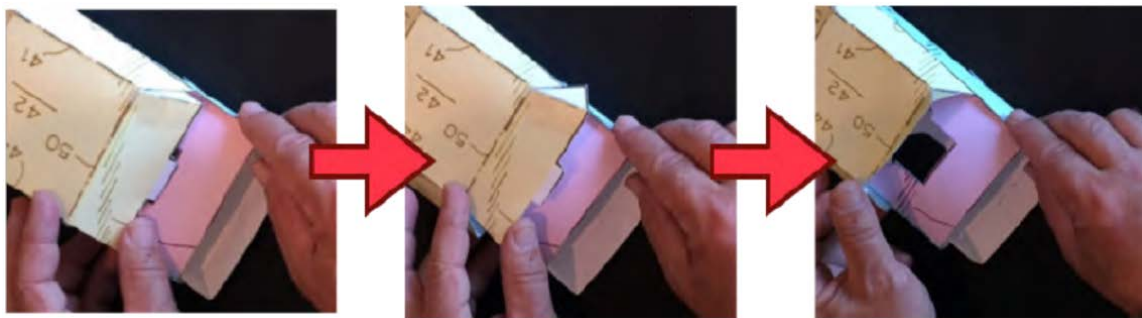
Petitioner argues that claims 1–5 and 7–12 are unpatentable in view of Tesar and the Red Sports Car and that claims 1–5, 7, 11, and 12 are unpatentable in view of Tesar, Billen, and “knowledge of a person having ordinary skill.” Pet. 6. In asserting each of these two grounds of unpatentability, Petitioner submits an illustration depicting the similarities between Figure 8 of Tesar and Figure 1 of the ’548 patent, asserting that Figure 8 of Tesar discloses substantially the claimed five-panel configuration. *Id.* at 9. A copy of Petitioner’s illustration comparing Figure 8 of Tesar (left side) and Figure 1 of the ’548 patent (right side) is reproduced below:



As explained by Petitioner, the green panels represent the claimed base panel, the blue panels represent the left and right side panels, the pink

assembled, there is no way for opening 36 to ‘receive’ an item from outside the carton because there is no path for the object to reach opening 36”).

In response to Patent Owner’s argument, Petitioner explains that “Panel 49 is a ‘removable or replaceable’ flap that reveals opening 36,” which satisfies the claimed “‘opening . . . to present a compartment for receiving’ even under [Patent Owner]’s unduly narrow interpretation.” Pet. Reply 13–14. To illustrate this point, Petitioner submits the following depiction:



According to Petitioner, Tesar’s second upper panel includes panel 49 “that is a flap that can be used to reveal the opening 36 of the first upper panel.” *Id.* at 14.

Notwithstanding Petitioner’s explanation, Patent Owner’s argument is persuasive. As discussed *supra* in our claim construction, the claimed phrase requires that the claimed opening and compartment be capable of “receiving food or other items” *without any disassembly of the assembled carton*. Because accessing Tesar’s opening 36 requires partial disassembly of Tesar’s carton, namely, by removing tab 51 from opening 36, Tesar does not satisfy the claimed “opening to present a compartment for receiving food or other items.” See Ex. 1003, Figs 4, 6, 8 (depicting assembly tab 51 inserted into opening 36 at edge 36’ to help complete the top structure assembly); see also *id.* at 4:41–49 (disclosing that the “entire assembly is

then completed” by, among other steps, inserting tab 51 into the opening 36 against the edge 36’).⁵ In other words, that the assembly is only “completed” upon insertion of tab 51 into opening 36 means that de-insertion of the tab is a step of disassembly resulting in a structure that is other than complete.

For at least this reason, we are not persuaded that Petitioner has established by a preponderance of the evidence that the claims are unpatentable over Tesar and the other cited art.

C. Secondary Considerations

Because Petitioner has failed to establish by a preponderance of the evidence that the cited art discloses the claimed “opening,” we decline to consider as unnecessary whether Patent Owner’s arguments and evidence of secondary considerations is sufficiently persuasive to show that the claims are nonobvious.

D. Summary

We determine that Petitioner has not shown by a preponderance of the evidence that: (1) claims 1–5 and 7–12 of the ’548 patent are unpatentable under 35 U.S.C. § 103(a) as obvious over Tesar and the Red Sports Car; and (2) claims 1–5, 7, 11, and 12 are unpatentable under 35 U.S.C. § 103(a) as obvious over Tesar, Billen, and in further view of the knowledge of a person having ordinary skill in the art.

⁵ Although the cited portion of Tesar refers to tab 55 as being inserted in opening 36, we find that this is a typographical error, and tab 51 is instead inserted into opening 36 against edge 36’. See, e.g., Ex. 1003, Figs. 4, 6, 8; see also *id.* at 3:2–6 (“roof panel 42 has a rear window panel 49 . . . including an assembly tab 51 on its outer edge”).

III. MOTIONS TO SEAL AND MOTION FOR LEAVE TO FILE AND SEAL NOTICES OF ERRATA

In seeking to keep confidential certain business information of Patent Owner, Patent Owner filed an unopposed Motion to Seal (Paper 21) and an unopposed Motion for Leave to File and Seal Notices of Errata (Paper 31). These Motions relate to the following papers:

1. Unredacted (Paper 22) and redacted (Paper 17) versions of a Response;
2. Redacted (Paper 19) and unredacted (Paper 23) versions of a Motion to Amend;
3. Redacted and unredacted versions of Mr. Woodward's Declaration (both identified as Ex. 2012);
4. E-mails from Joe Tindall, CEO of Kid Stuff Marketing, labeled as "Protective Order Material" (Exs. 2014, 2015);
5. Unredacted (Ex. 2027) and redacted (Ex. 2027R) versions of a Notice of Errata for Patent Owner's Response and Contingent Motion to Amend; and
6. Redacted (Ex. 2028R) and unredacted (Ex. 2028) versions of a Notice of Errata for Declaration of John Woodward in Support of Patent Owner's Response.

Petitioner also filed redacted (Paper 26) and unredacted (Paper 27) versions of its Reply along with an unopposed Motion to Seal (Paper 25). Parties also submit a stipulated Default Protective Order. Ex. 2023; *see also* Paper 21, 1 (identifying Exhibit 2023 as the Board's Default Protective Order).

In filing their respective Motions, Patent Owner seeks to seal certain non-public "sales and financial data and information regarding [its] internal

evaluations of the market benefits of and plans for products covered by the patent” (Paper 21, 1; *see also* Paper 31, 1), while Petitioner seeks similarly to seal Patent Owner’s “confidential information, designated Protective Order Material” (Paper 25, 1).

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; however, a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012). The standard for granting a motion to seal is “for good cause.” 37 C.F.R. § 42.54(a). The party moving to seal bears the burden of proof in showing entitlement to the requested relief, and must explain why the information sought to be sealed constitutes confidential information. 37 C.F.R. § 42.20(c). As set forth in the Office Patent Trial Practice Guide, there is an expectation that information will be made public if identified in this Final Written Decision. 77 Fed. Reg. at 48,761.

We have reviewed the material labeled “Protective Order Material,” namely; Paper 22 (Patent Owner’s Response), Paper 23 (Patent Owner’s Contingent Motion to Amend), Exhibit 2012 (Declaration of John Woodward in Support of Patent Owner’s Response, *the version labeled as “Protective Order Material”*), Exhibit 2014 (April 24, 2014, e-mail from

Mr. Tindall), Exhibit 2015 (July 22, 2014, e-mail from Mr. Tindall), Exhibit 2027 (Notice of Errata for Patent Owner's Response and Contingent Motion to Amend), Exhibit 2028 (Notice of Errata for Declaration of John Woodward), and Paper 27 (Petitioner's Reply to Patent Owner's Response). We find that these documents contain confidential business information. In this Final Written Decision, however, and in reaching a determination with respect to the claims of the '548 patent, we have not cited to any of the information identified as "Protective Order Material." We are persuaded that good cause exists to have these documents under seal and we grant the parties' unopposed Motions to Seal (Papers 21 and 25), and we grant Patent Owner's unopposed Motion for Leave to File and Seal Notices of Errata (Paper 31). We also enter the default protective order agreed to by the parties and order that it shall govern the conduct of this proceeding.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that (1) claims 1–5 and 7–12 of the '548 patent have not been shown to be unpatentable as obvious over Tesar and the Red Sports Car, and (2) claims 1–5, 7, 11, and 12 of the '548 patent have not been shown to be unpatentable as obvious over Tesar, Billen, and in further view of the knowledge of a person having ordinary skill in the art;

FURTHER ORDERED that Patent Owner's Motion to Seal is granted and that Paper 22, Paper 23, Exhibit 2012 (*the version identified as "Protective Order Material"*), Exhibit 2014, Exhibit 2015, Exhibit 2027, and Exhibit 2028 will be kept under seal;

FURTHER ORDERED that Petitioner's Motion to Seal is granted and that Paper 27 will be kept under seal;

FURTHER ORDERED that Patent Owner's Motion for Leave to File and Seal Notices of Errata is granted;

FURTHER ORDERED that the default protective order, agreed to by the parties, is entered; and

FURTHER ORDERED that this is a Final Written Decision. Parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

IPR2015-01516
Patent 8,783,548 B2

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