

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

J SQUARED, INC. d/b/a UNIVERSITY LOFT COMPANY,
Petitioner,

v.

SAUDER MANUFACTURING COMPANY,
Patent Owner.

Case IPR2016-00413
Patent 8,960,787 B2

Before LINDA E. HORNER, JOSIAH C. COCKS, and
JAMES A. WORTH, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner, J Squared, Inc. d/b/a University Loft Company (“J Squared”), filed a Petition requesting institution of an *inter partes* review of claims 1–21 of U.S. Patent No. 8,960,787 B2 (“the ’787 patent,” Ex. 1001). Paper 4 (“Pet.”). Patent Owner, Sauder Manufacturing Company (“Sauder”), filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

The ’787 patent includes 21 claims. Claims 1, 14, and 16–20 are independent. We have reviewed the Petition, the evidence cited therein, and the Preliminary Response. For the reasons set forth *infra*, we determine that J Squared has not demonstrated a reasonable likelihood of prevailing with respect to any of the challenged claims of the ’787 patent.

A. Related Matters

Sauder has sued J Squared for infringing the ’787 patent and parent U.S. Patent 8,585,136 (“the ’136 patent”) in *Sauder Manufacturing Company v. J Squared, Inc. d/b/a University Loft Company*, Case No. 3:14-cv-00962-JZ, pending in the United States District Court for the Northern District of Ohio (“the infringement litigation”). Pet. 2; Prelim. Resp. 3. The district court issued a Markman Order in the infringement litigation on June 9, 2015 construing certain claim language of the claims of the ’136 patent. Ex. 2005.

U.S. Patent Application No. 14/596,623, filed January 14, 2015, is a continuation of U.S. Patent Application No. 14/057,781 (“the ’781 application”), filed October 18, 2013, now the ’787 patent, which J Squared challenges in the present matter. The ’787 patent is a continuation of U.S.

Patent Application No. 13/277,778, filed October 20, 2011, now the '136 patent, which is the subject of two related *inter partes* reviews.

J Squared challenged claims 1–14 of the '136 patent in a petition for *inter partes* review filed on February 19, 2015. *J Squared, Inc. v. Sauder Mfg. Co.*, Case IPR2015-00774 (“the '774 IPR”). J Squared also challenged claims 1, 2, and 4–14 of the '136 patent in a petition for *inter partes* review filed on March 27, 2015. *J Squared, Inc. v. Sauder Mfg. Co.*, Case IPR2015-00958 (“the '958 IPR”). We instituted reviews in both cases, and held a consolidated oral hearing on April 21, 2016. We have not yet issued a final written decision in either case.

B. The '787 Patent

The '787 patent is directed to “a chair with a coupling companion stool base.” Ex. 1001, 1:50. “The chair portion has a frame that may be supported above a generally horizontal surface by the base, which base releasably couples with the frame.” *Id.*, 1:59–61. The '787 describes:

When the frame is decoupled from the base, the frame forming the chair portion is adapted for use as casual floor rocker seating, and the base is adapted to provide a companion stool upon which a user may sit or, alternatively a side table which may be positioned adjacent to the chair portion.

Id., 2:18–23.

Figures 1 and 18 depict chair portion 100 and base portion 300 in coupled and uncoupled configurations, respectively. Ex. 1001, 4:21–23. Figures 1 and 18 are reproduced below.

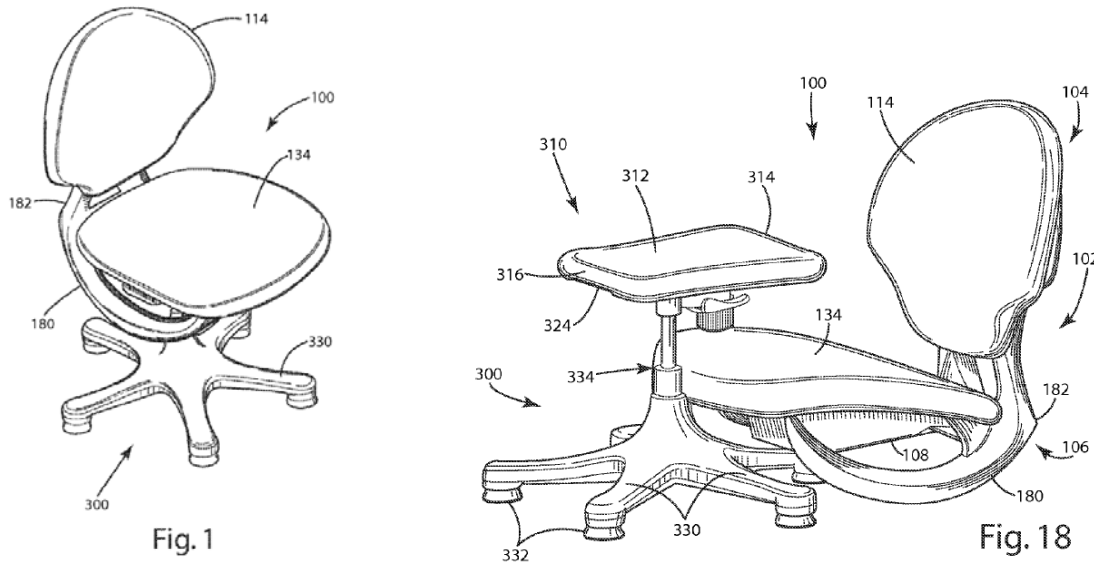
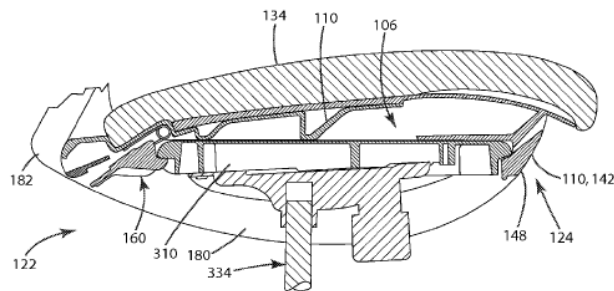
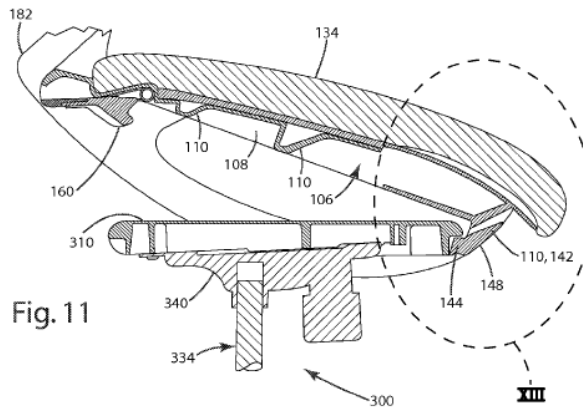


Figure 1 depicts a perspective view of a chair coupled to a companion stool base in a task chair configuration. Figure 18 depicts a perspective view of an uncoupled chair and companion stool base in a nested configuration.

As depicted in Figures 1 and 18, chair portion 100 includes frame 102, which has upper portion 104 and lower portion 106. *Id.*, 4:24–26. Legs 180 extend generally downward from lower portion 106 and are configured as rockers, so as to render the chair portion capable of use as a floor rocker when the chair is set upon a generally horizontal supporting surface. *Id.*, 6:36–39, 6:45–46. Upper portion 104 provides a back rest and lower portion 106 includes a sitting portion. *Id.*, 4:33, 4:61–62. Base portion 300 has saddle 310, which is connected via post 334 to five legs 330. *Id.*, 7:20–28.

Figures 11 and 12 depict coupling of chair portion 100 and base portion 300. Figures 11 and 12 are reproduced below.



Figures 11 and 12 depict side elevation views showing coupling and uncoupling of chair portion and companion stool base portion, with a portion chair portion and stool base portion in cross section.

As depicted in Figures 11 and 12, lower portion 106 includes claw 142 and clip clamp latch 160. *Id.*, 4:64–67. Claw 142 and clip clamp latch 160 function to engage releasably with saddle 310 of base 300. *Id.*, 5:24–26, 5:58–62. Claw 142 is a fixed member, and latch 160 is connected hingedly so as to be movable. *Id.*, 5:62–67. Lower portion 106 also includes receptacle 190 (not visible in the figures reproduced above) that has a generally trapezoidal geometry which corresponds with saddle 310 for unitary keying alignment of chair portion 100 with base portion 300. *Id.*,

6:63–7:5. In use, chair portion 100 and base portion 300 may be separate, with chair portion 100 providing casual rocker seating to a user, and base portion 300 engaged by the user or another user as a work surface, a writing surface, or a sitting surface. *Id.*, 8:12–19.

C. Illustrative Claim

J Squared challenges claims 1–21 of the '787 patent. Claims 1 are 14 are reproduced below.

1. A multifunction desk chair comprising:
 - a chair including a seat portion with a front, a rear and a bottom surface; a backrest portion and a frame interconnecting the seat and backrest portions and providing rocker rails under said seat portion;
 - a floor engaging base including a vertical support with a plurality of outwardly extending legs at one end and a generally flat tabletop of such height as to be accessible as a work surface to a user seated in said chair resting on said rails; said tabletop having front and rear edges and being affixed to the top of the vertical support;
 - the tabletop being configured to underlie said bottom surface between said rocker rails when the chair is coupled to the base; and
 - an attachment mechanism for releasably coupling the chair to the tabletop, said latch mechanism being operable to latch the chair and the base together only in the rotational orientation wherein the front edge of the tabletop generally underlies the front of the seat portion; wherein the attachment mechanism includes a spring-biased latch mechanism which is biased to latch the chair to the tabletop but configured to be manually operated to selectively release the chair from the tabletop.

Ex. 1001, 10:21–43.

14. A multifunction desk chair comprising:
- a floor rocker chair having a seat portion with an undersurface and a backrest portion with a rear surface and having a shaped periphery;
 - a pedestal base with legs and a top with a substantially flat upper surface with front, rear and opposite side edges;
- said chair including a substantially continuous frame structure forming spaced apart rocker members disposed directly beneath and attached to said undersurface, said frame structure extending upwardly from said frame members^[1] along and attached to the backrest rear surface generally along and parallel to the upper periphery thereof to structurally join said seat and backrest positions^[2];
- said rocker members being located beneath the plane of said undersurface and being spaced far enough apart to accommodate said top therebetween.

Id., 11:24–40.

D. The Prior Art

J Squared relies on the following U.S. Patents and U.S. Patent Application Publications (Pet. 5):

Reference	Patent Number or Publication Number	Issue Date or Publication Date	Exhibit No.
Yu	US 6,554,353 B1	April 29, 2003	1002
Clark	US 4,285,543	August 25, 1981	1003
Kassai	US 4,723,813	February 9, 1988	1004
Scharaga	US 2,435,290	February 3, 1948	1005
Mackey	US 794,461	July 11, 1905	1006

¹ The phrase “said frame members” lacks proper antecedent basis. We understand this phrase to refer to the rocker members that comprise part of the frame structure.

² The phrase “said seat and backrest positions” lacks proper antecedent basis. We understand this phrase to refer to the seat and backrest “portions” of the floor rocker chair.

Higgins	US 214,297	April 15, 1879	1007
Streit	US 125,767	April 16, 1872	1008
Wright	US Des. 139,241	October 24, 1944	1009
Myers	US 2003/0015903 A1	January 23, 2003	1010

E. Asserted Grounds of Unpatentability

J Squared challenges the patentability of claims 1–21 of the ’787 patent based on the following grounds (Pet. 5).

Ground	Reference(s)	Basis	Claims Challenged
1	Yu, Clark, Kassai, and Scharaga	§ 103	1–13 and 19–21
2	Mackey and Kassai	§ 103	1–11
3	Higgins	§ 102	14 and 15
4	Streit	§ 102	14 and 15
5	Yu and Clark	§ 103	14 and 15
6	Wright	§ 103	14 and 15
7	Wright, Kassai, and Myers	§ 103	16
8	Yu, Clark, and Kassai	§ 103	16–18

II. ANALYSIS

A. Claim Construction

The Board interprets a claim of an unexpired patent using the “broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs, LLC*, 793 F.3d 1268, 1277, 1279 (Fed. Cir. 2015), *cert. granted sub nom. Cuozzo Speed Techs, LLC v. Lee*, 136 S. Ct. 890 (mem.) (2016)

(inferring that “Congress [in enacting the AIA³] impliedly approved the existing rule of adopting the broadest reasonable construction” and holding that the PTO’s regulation is valid under the *Chevron* framework⁴).

J Squared proposes constructions for the preamble recitation of “desk chair” and for the claim terms “coupled” and “pedestal.” Pet. 8–9. Sauder contests several of J Squared’s proposed constructions for these claim terms and additionally proposes its own constructions for “floor rocker,” “frame” and “frame structure,” and “rails.” Prelim. Resp. 12–18.

We construe only those claim limitations necessary to reach our decision on institution. “[C]laim terms need only be construed ‘to the extent necessary to resolve the controversy.’” *Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

1. “pedestal”

Claim 14 calls for the desk chair to comprise “a pedestal base with legs and a top.” Ex. 1001, 11:28. J Squared asserts that the broadest

³ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011).

⁴ As stated in *Cuozzo*:

Under *Chevron*, the first question is “whether Congress has directly spoken to the precise question at issue.” *Chevron, U.S.A., [Inc.] v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984); accord *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1337 (Fed. Cir. 2008) (quoting *Hawkins v. United States*, 469 F.3d 993, 1000 (Fed. Cir. 2006)). If the statute is ambiguous, the second question is “whether the agency’s interpretation is based on a permissible construction of the statutory language at issue.” *Cooper*, 536 F.3d at 1338 (quoting *Hawkins*, 469 F.3d at 1000). *Cuozzo*, 793 F.3d at 1279.

reasonable construction of “pedestal” should include a four-legged base for a chair. Pet. 9. Sauder argues that “the term ‘pedestal’ is unambiguously and narrowly defined and distinguished from other types of bases in the [’]787 Patent.” Prelim. Resp. 17 (citing Ex. 1001, 7:9–19). Sauder further asserts that “a pedestal has a single columnar support.” *Id.* (citing Ex. 1001, Figs. 2–4, 22, 23, 7:1–44, 9:54–62).

The ’787 patent distinguishes a pedestal base from a legged base and a sled base. In particular, the ’787 patent describes that “[o]ne having ordinary skill in the art understands that a broad variety of adaptations of chair bases, including categories of legged, sled, and pedestal, are available to support a chair frame above the supporting surface.” Ex. 1001, 7:13–17. Based on this description in the specification, we find that one of ordinary skill in the art would understand that a pedestal base does not encompass a chair base that has four downwardly projecting legs.

For purposes of institution, we do not need to reach the question of whether a chair having more than one vertical columnar support (e.g., two vertical supports from which base legs extend) qualifies as a pedestal base.

2. “*frame structure*”

Claim 14 recites:

said chair including a substantially continuous frame structure forming spaced apart rocker members disposed directly beneath and attached to said undersurface [of the seat portion], said frame structure extending upwardly from said frame [sic, rocker] members along and attached to the backrest rear surface generally along and parallel to the upper periphery thereof to structurally join said seat and backrest positions [sic, portions].

Ex. 1001, 11:30–37.

Sauder asserts that “the frame is a rigid structure that, although attached to and/or integrated such as by molding into the seat and backrest, is separately identifiable from them, but is used to join them in creating the floor rocker unit. The frame forms the rocker rails.” Prelim. Resp. 15.

The ’787 patent describes that upper portion 104 of frame 102 “provides a back rest” and may be configured as “hard surface” seating or otherwise have an upholstered backrest, which comprises foundation 112 and upholstered covering 114, attached to the frame. Ex. 1001, 4:33–47. The ’787 patent also describes that lower portion 106 of frame 102 has left and right side rails 108 and 118 and cross ties 110 extending between the side rails. *Id.*, 4:54–61. The patent describes that the sitting portion of the frame can be configured as a “hard surface” chair or can have an upholstered seating portion, which comprises foundation 132 and upholstered covering 134, attached to the frame. *Id.*, 5:5–18. Thus, the ’787 patent describes two embodiments; in a “hard surface” chair embodiment the upper portion of the frame itself forms the backrest and the lower portion of the frame itself forms the sitting portions of the chair, and in an upholstered embodiment, separate upholstered backrest and sitting portions are attached to the frame.

The ’787 patent describes that frame lower portion 106 also includes two frame legs 180. *Id.*, 5:2–3, Figs. 17, 18, 19. Legs 180 extend generally downward from the frame lower portion 106 and are adapted to support the frame upon a generally horizontal supporting surface. *Id.*, 6:36–39. Legs 180 are configured as rockers. *Id.*, 6:45–46. The embodiment of frame 102 depicted in the ’787 patent shows a continuous frame structure in which the frame structure forms the rocker legs 180. *Id.*, Figs. 17, 18, 19.

The claim language of claim 14 calls for a “substantially continuous frame structure forming spaced apart rocker members.” Based upon the description of the frame as provided in the specification, and in light of the claim language recited in claim 14, one of ordinary skill in the art would understand claim 14 to call for the rocker members to be part of, “formed by,” the substantially continuous frame structure. The claim language of claim 14 also calls for the rocker members to be “attached to” the undersurface of the seat portion and for the frame structure to be “attached to” the backrest rear surface “to structurally join” the seat and backrest portions. Based upon the description of the frame as provided in the specification, and in light of the claim language recited in claim 14, one of ordinary skill in the art would understand claim 14 to call for the frame structure to be a separately identifiable member from, and “attached to,” the seat portion and the backrest portion.

B. Grounds of Unpatentability

1. Obviousness over Yu, Clark, Kassai, and Scharaga

Petitioner asserts that claims 1–13 and 19–21 are unpatentable under 35 U.S.C. § 103 over Yu (Ex. 1002), Clark (Ex. 1003), Kassai (Ex. 1004), and Scharaga (Ex. 1005). Pet. 10. Yu discloses a dual-purpose chair that serves as an office chair when seat structure 10 and base structure 20 are fastened together, and serves as a deck chair when the structures 10, 20 are unfastened. Ex. 1002, 2:22–27.

Figures 1 and 2 of Yu are reproduced below.

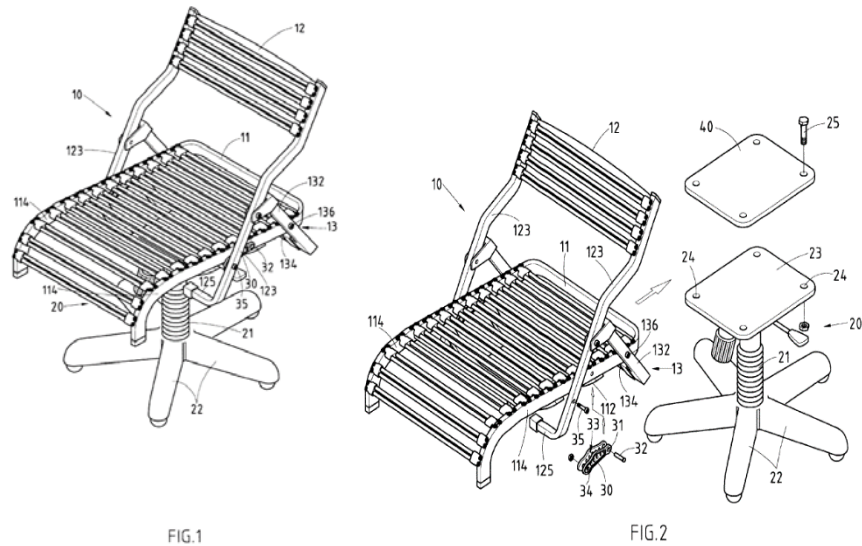


Figure 1 shows a perspective view of the chair being used as an office chair. Figure 2 shows an exploded view of the chair of Figure 1.

Yu discloses seat structure 10 formed of seat 11, backrest 12, and backrest support frame 13. Ex. 1002, 1:59–60. Two inverted U-shaped support rods 112 are provided on the underside of seat 11. *Id.*, 1:60–61. Seat structure 10 also includes two longitudinal side rods 114. *Id.*, 2:4.

Yu's backrest 12 is provided with two long side rods 123, which are connected with each other at the top end and provided at the bottom end with support portion 125. *Id.*, 1:63–67. Backrest support frame 13 has crown portion 134 located under one longitudinal end of seat 11. *Id.*, 2:4–6.

Base structure 20 is formed of upright rod 21, caster seat arms 22, support plate 23 mounted on the top end of upright rod 21, and cover plate 40. *Id.*, 2:7–12. Base structure 20 is fastened with support rods 112 of seat 11 by fastening bolts 25. *Id.*, 2:19–21.

Figure 5 is reproduced below.

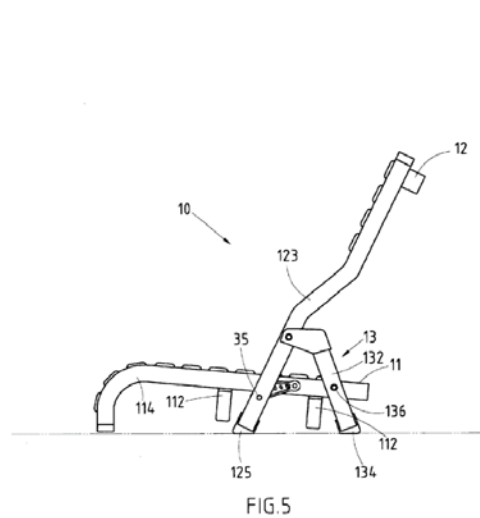


Figure 5 shows the seat structure in use as a deck chair.

As shown in Figure 5, when seat structure 10 is used as a deck chair, two support portions 125 and crown portion 134 rest on the floor surface. *Id.*, 2:26–31. Also, the forward ends of each longitudinal side rail 114 rest on the floor surface. *Id.*, Fig. 5. Two side rods 123 of backrest 12 are pivotally fastened longitudinal side rods 114 of seat 11 such that the backrest 12 can be swiveled in relation to seat 11, to fold the chair. *Id.*, 2:32–48, Figs. 4, 6.

Yu does not disclose rocker rails under the seat portion and a spring-biased latch mechanism being operable to latch the chair and the base together only in the rotational orientation wherein the front edge of the tabletop generally underlies the front of the seat portion, as called for in claim 1.⁵ J Squared relies on Clark to disclose rocker rails, Kassai to

⁵ Independent claim 19 similarly recites a floor rocker having a pair of spaced-apart rocker rails under the seat and a spring-biased latch mechanism

disclose a spring-biased latch mechanism, and Scharaga to disclose a convertible chair-table combination with a three-point latch mechanism that latches a chair onto a base in only one rotational orientation. *See, e.g.*, Pet. 11–12.

Clark discloses a rocker assembly for attachment to a stationary folding lawn chair. Ex. 1003, 1:6–10. Figure 1 of Clark is reproduced below.

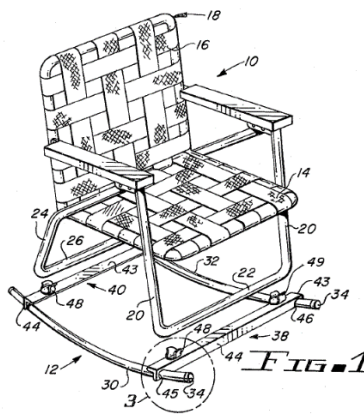


Figure 1 is an exploded perspective view of a folding lawn chair and a rocker attachment.

As shown in Figure 1 above, rocker attachment 12 includes a pair of rocker elements 30, 32, that are bowed into an arcuate configuration. Ex. 1003, 4:11–15. Rocker members 30, 32 are in spaced parallel relationship with each other and are transversely connected by front and rear beam means 38, 40. *Id.*, 4:17–22. Spring clips 48, 49 are mounted on the upwardly facing surface of beams 38, 40. *Id.*, 4:41–47.

to couple the floor rocker and the base. Ex. 1001, 12:26–28, 12:33–37. Independent claim 20 likewise recites a method of operating a convertible desk chair consisting essentially of a floor rocker having a pair of spaced-apart rocker rails under the seat portion and a spring-biased latch coupling the rocker to the base. *Id.*, 12:45–53.

J Squared asserts:

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Yu to have rocker rails as taught by Clark, because Yu discloses a folding chair and Clark discloses a clip-on rocker attachment that is designed specifically to attach to a folding chair.

Pet. 13. J Squared further asserts that “[t]he claimed invention is merely a combination of known prior art elements according to known methods to yield predictable results.” *Id.*, 14.

Kassai discloses high chair 10 having seat member 12, table support frames 14, 15, and 16, and table 17 disposed on the table support frames. Ex. 1004, 2:55–3:5, Fig. 1. Figure 1 of Kassai is reproduced below.

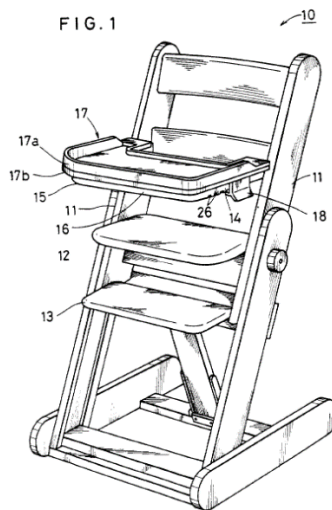


Figure 1 is a perspective view of a high chair with a table joined to the chair via operating levers.

On opposite sides of table 17 are operating levers 18 and 19, which are movable between first and second positions. *Id.*, 3:10–14, Fig. 1. Levers 18 and 19 include engaging projections 25 to embrace corresponding engaging recesses 26 on the table support frames so as to firmly fix table 17 in position. *Id.*, 3:37–42, 60–63, Figs. 1, 3.

J Squared asserts that Kassai's "downwardly depending, hinged levers are readily substituted for the bolted connection of the Yu chair" to obtain "the predictable result of a readily removable chair." Pet. 15. J Squared reasons that "[c]onsidering that chair 10 of Yu is designed to be detachably fastened to base 20, modifying Yu so as to enable easier, faster or more convenient conversion of the convertible chair is a matter of common sense." *Id.*, 15–16. J Squared also asserts that Kassai provides motivation because it "suggests using a latch to lock a chair part – a table or tray – on a support frame such that it is firmly secured but readily removable." *Id.*, 16. J Squared further argues that "the modification involves nothing more than the simple substitution of one known fastener element for another to obtain predictable results." *Id.*

Scharaga discloses a high chair comprising a table member 10 and a chair member 11, resting upon and removably interengaged with the table member. Ex. 1005, 2:1–5. Table member 10 has rails 14 that support sides 24 of horizontal runners of chair member 11. *Id.*, 2:40–53. Scharaga discloses that one of the rails 14 is provided with a pair of spaced apertures 27 and the opposed rail 14 is provided with preferably one aperture 28. *Id.*, 2:59–3:2. Scharaga further discloses that one of the runners 24 is provided with a pair of pins 29 arranged and spaced to engage within apertures 27, and the other runner 24 is provided with a pin 30 adapted to engage with aperture 28. *Id.*, 3:2–8.

J Squared asserts that "[i]t would have been obvious in view of Scharaga . . . to further modify Yu as modified by Kassai to make the attachment a one-way attachment" and that "[i]t would have been obvious to make the mating parts of Yu mate in only one rotational orientation, . . . to

ensure that seat 11 is reclined as shown in Fig. 3 (due to plate 23 being inclined toward the front)” and “to ensure proper operation of the tilt mechanism on Yu’s office chair.” Pet. 17–18.

As noted *supra*, Kassai’s spring-biased latch mechanism is disclosed for attaching a tray table to a child’s high chair. We find no explicit suggestion in Kassai itself to use such a latch mechanism for coupling other parts of a chair, such as a chair and base. Further, J Squared’s articulated reasons to modify Yu’s deck chair, as modified by Clark, to substitute Kassai’s latch mechanism in place of Yu’s bolts, based on simple substitution of one known fastener element for another to obtain predictable results and as a matter of common sense to enable easier, faster or more convenient conversion of the convertible chair, are not supported by adequate evidence to demonstrate a reasonable likelihood of unpatentability. In particular, J Squared has not provided adequate explanation or evidence to persuade us that one having ordinary skill in the art would have been led to use the latch mechanism of Kassai to attach the deck chair to the base of Yu. J Squared provides insufficient evidence or reasoning to show that one of ordinary skill in the art, aware of the safety considerations involved with coupling a chair to a base, would have been motivated to replace the bolts of Yu with such a latch mechanism. See Ex. 1001, 5:48–54 (describing user safety considerations to ensure that the chair portion will not tilt or rotate backward apart from the base); Ex. 2008, 18–19 (Mr. Warncke testifying that “vital elements of a well-designed and effective releasable coupling system include safety, error-proofing, and ease of use” and that safety for releasably coupled components “means that when coupled, it cannot be decoupled without intentional manual interaction with the chair”). Further,

J Squared provides no declaratory evidence from one having ordinary skill in the art to demonstrate that the modification would have been a matter of common sense or would have led to a predictable result.

In addition, J Squared's reasons for the further modification of Yu's chair based on the teaching of Scharaga, i.e., to ensure that seat 11 is reclined as shown in Figure 3 of Yu and to ensure proper operation of the tilt mechanism (Pet. 17–18), are based on unsupported speculation. Yu provides inadequate disclosure of how its seat reclines or tilts, so that we have no basis in the evidence provided to substantiate J Squared's assertion that the chair must be oriented on the base in a particular orientation to ensure proper reclining or tilting of the chair when coupled to the base. For these reasons, J Squared fails to articulate adequate reasoning for the further proposed modification of Yu with Scharaga.

For these reasons, Petitioner has failed to show by a reasonable likelihood that Yu in combination with Clark, Kassai, and Scharaga renders unpatentable claims 1–13 and 19–21. Accordingly, we decline to institute a review of claims 1–13 and 19–21 under 35 U.S.C. § 103 as unpatentable over Yu, Clark, Kassai, and Scharaga.

2. Obviousness over Mackey and Kassai

J Squared asserts that claims 1–11 are unpatentable under 35 U.S.C. § 103 over Mackey (Ex. 1006) and Kassai (Ex. 1004). Pet. 26. Mackey discloses a combination of upper and lower parts forming a child's high chair. Ex. 1006, 1:8–13.

Figures 1–3 of Mackey are reproduced below.

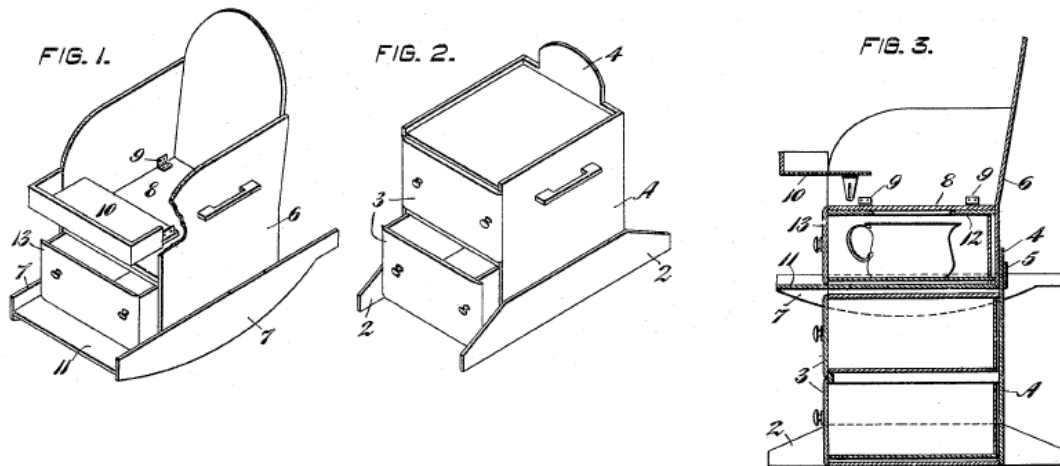


Figure 1 shows a perspective view of an upper part of the chair. Figure 2 shows a perspective view of a lower part of the chair. Figure 3 shows a sectional view of the combined upper and lower parts forming a high chair.

Mackey discloses a first and lower section or base (shown in Figure 2). Ex. 1006, 1:15. The base has a back 4 extended upwardly from the base, which is shaped to be engaged by a slotted cleat 5, fixed upon the back of the upper and second section 6 to “lock the two parts together.” *Id.*, 1:31–41, Fig. 3. The upper section 6 has side cleats 7, fixed so as to project below the bottom, and when the upper and lower parts are put together, these sides cleats clasp over the top of the lower section, and “in conjunction with the engagement at the back they serve to hold the two parts rigidly together.” *Id.*, 1:42–48. Mackey discloses that when upper part 6 is removed, the lower part “serves as an ordinary seat” and when the upper and lower parts are united, the upper part forms a high chair or seat for a child. *Id.*, 1:49–54. Mackey discloses that “[t]he side cleats 7 may have the lower edges curved into such an arc as to form a rocking-chair, so that by lifting the upper section off the lower section and placing it upon the floor the child will then have a rocker.” *Id.*, 1:66–71. Mackey does not disclose a spring-biased

latch mechanism which is biased to latch the chair to the tabletop but configured to be manually operated to selectively release the chair from the tabletop, as called for in claim 1.

J Squared relies on Kassai for teaching a spring-biased latch. Pet. 26. J Squared asserts that “[a] hinged latch as in Kassai would readily mount on the back of chair 6 [of Mackey] and would be pushed open by extension 4 when [the] chair is set upon the base.” *Id.*, 27. J Squared asserts that “[o]ne of ordinary skill in the art at the time of the invention would have been motivated to so modify the chair of Mackey to provide a more secure connection” and that “the modification is merely a combination of known prior art elements according to known methods to yield predictable results.” *Id.*

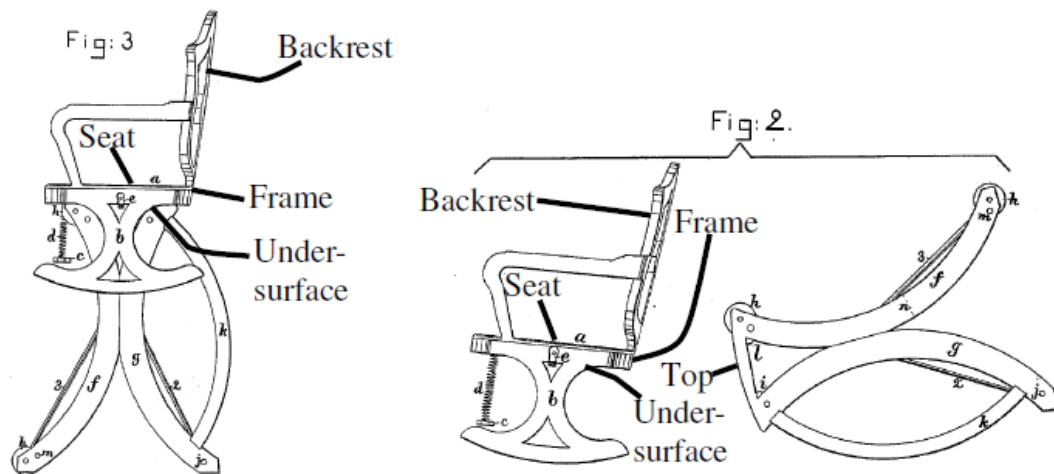
As noted *supra*, Kassai’s spring-biased latch mechanism is disclosed for attaching a tray table to a child’s high chair. We find no explicit suggestion in Kassai itself to use such a latch mechanism for coupling other parts of a chair, such as a chair and base. Further, J Squared’s proffered reasons to modify Mackey’s chair to add Kassai’s latch mechanism, to provide a more secure connection and as a combination of known elements to yield predictable results, are not supported by adequate evidence to demonstrate a reasonable likelihood of unpatentability. In particular, J Squared has not provided adequate explanation or evidence to demonstrate that one having ordinary skill in the art would have been led to use the latch mechanism of Kassai to attach the chair to the base of Mackey. J Squared provides insufficient evidence or reasoning to show that one of ordinary skill in the art, would have seen a need to change the locking mechanism of Mackey to make it more secure, or that by adding Kassai’s latch to the back

of Mackey's chair, a more secure connection would be achieved. For instance, adding a latch on only the back of Mackey's chair does not prevent a user from tilting back in the upper chair. Further, J Squared provides insufficient evidence or reasoning to show that one of ordinary skill in the art would have been led to modify Mackey's chair in the manner as speculated in the Petition. J Squared provides no declaratory evidence from one having ordinary skill in the art to demonstrate that the modification would have been implemented in the manner claimed or would have led to a predictable result.

For these reasons, J Squared has failed to show by a reasonable likelihood that Mackey in combination with Kassai renders unpatentable claims 1–11. Accordingly, we decline to institute a review of claims 1–11 under 35 U.S.C. § 103 as unpatentable over Mackey and Kassai.

3. Anticipation by Higgins

J Squared asserts that claims 14 and 15 are anticipated under 35 U.S.C. § 102(b) by Higgins (Ex. 1007). Pet. 30. Higgins discloses a combination chair comprised of an upper seat and a lower base that can be used together as a high chair, and can be separated so that the upper seat can be used as a rocking chair. J Squared relies almost entirely on annotated versions of Figures 2 and 3 of Higgins to demonstrate where the elements of claim 14 allegedly are found in the combination chair. Copies of these annotated figures are reproduced below.



Annotated Figures 2 and 3 of Higgins as labeled by Petitioner to show a backrest, seat, frame, undersurface, and top. Figure 2 shows an upper part of the combination chair removed from the lower part. Figure 3 shows the combined upper and lower parts forming a high chair.

Higgins discloses that an upper part of the combination chair is composed of seat *a* having a back and arms and seat rocker supports *b* depending from the seat. Ex. 1007, 2 (first column). Higgins discloses that when the upper part is removed from the base, the base may be used as a reclining rocking chair or crib. *Id.*

The Figures of Higgins show only a side view of the child's rocker chair portion. Higgins does not describe in the patent the method of construction of the frame and rocker supports, or describe that the rocker supports are "directly beneath and attached to" the undersurface of a seat portion of the chair, as recited in claim 14. We cannot discern with any reasonable likelihood that the rocker supports of Higgins are disposed directly beneath, as opposed to being below, but to the outside of, the undersurface of a seat portion of the chair. Further, J Squared has not provided adequate evidence to demonstrate that the frame structure of Higgins's chair extends upwardly from the rocker members along and

“attached to” the rear surface of the backrest or that the frame structure “structurally join[s]” the seat and backrest portions, as recited in claim 14. *Id.*; see also Prelim. Resp. 29 (“*Higgins*[] has no separate frame joining the seat and backrest”).

For these reasons, J Squared has failed to show by a reasonable likelihood that Higgins anticipates independent claim 14 and its dependent claim 15. Accordingly, we decline to institute a review of claims 14 and 15 under 35 U.S.C. § 102(b) as anticipated by Higgins.

4. Anticipation by Streit

J Squared asserts that claims 14 and 15 are anticipated under 35 U.S.C. § 102(b) by Streit (Ex. 1008). Pet. 33. Streit discloses a rocking chair mounted on a base. Figures 1 and 2 of Streit are reproduced below.

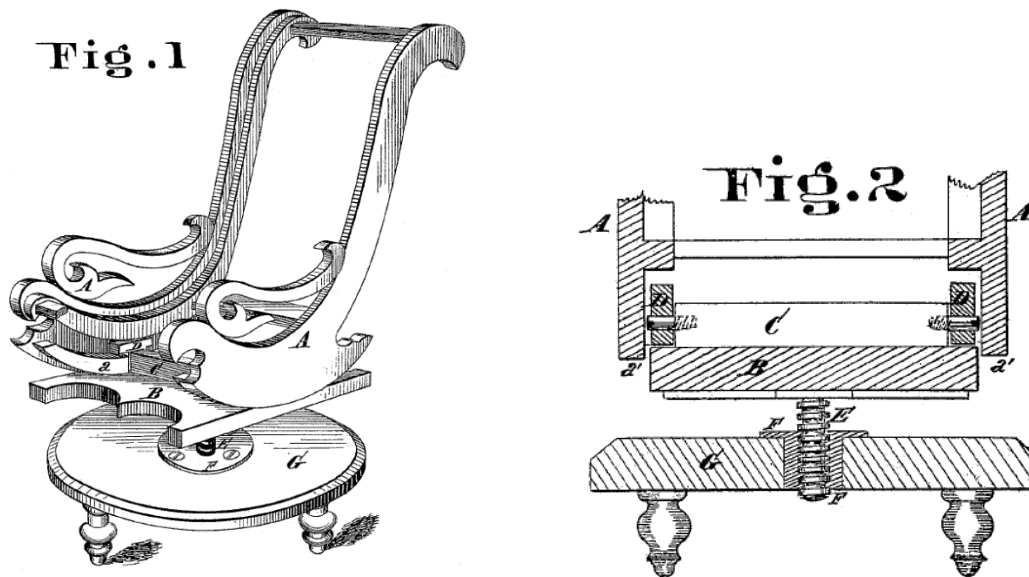


Figure 1 shows a perspective view of a rocking and revolving chair. Figure 2 shows a section of a portion of the chair of Figure 1 in a vertical plane through the central swiveling screw.

Streit discloses chair A, shown in the drawings as a frame only, not upholstered, provided with rockers *a, a* and platform B upon which the chair

rests. Ex. 1008, 2 (first column). Streit discloses that the sides *a'* of the chair may extend below the face of platform B. *Id.* A strip C is secured to platform B and blocks D, D are attached to strip C. *Id.* Streit discloses that the sides of blocks D, D fit loosely in notches cut in the center of rockers *a*, *a*, and the heads of blocks D, D fit over the rockers to permit rocking of the chair before they stop the motion by coming into contact. *Id.* (first and second columns). Streit further discloses a base G. *Id.* (second column). A screw E is firmly secured to the bottom of platform B and rotates in a nut F, which is firmly secured in base G. *Id.* Screw E allows for rotation and raising and lowering of chair A relative to base G. *Id.*

Streit does not describe in the patent the method of construction of the frame and rocker members, or describe that the rocker members are “directly beneath and attached to” the undersurface of a seat portion of the chair, as recited in claim 14. We agree with J Squared that the reference in Streit to upholstery, teaches an upholstered seat portion and an upholstered backrest portion and that seat portion would be understood to be supported on the inwardly flanged portion of the frame shown in Figure 1. Pet. 33–34. In light of this understanding, Figure 2 of Streit appears to show that the rocker members *a*, *a* are disposed below, but to the outsides of, the undersurface of a seat portion of the chair. Ex. 1008, Fig. 2; *see also* Prelim. Resp. 31 (arguing that Streit’s “rocker members are beside location of seat (not shown)”). Further, J Squared has not provided adequate evidence to demonstrate that the frame structure of Streit’s chair extends upwardly from the rocker members along and “attached to the backrest rear surface generally along and parallel to the upper periphery thereof to structurally join said seat and backrest [portions],” as recited in claim 14. Prelim. Resp.

31 (arguing that “[n]o backrest is shown [in Streit], so [the] location of a ‘periphery’ is a matter of conjecture”).

For these reasons, J Squared has failed to show by a reasonable likelihood that Streit anticipates independent claim 14 or its dependent claim 15. Accordingly, we decline to institute a review of claims 14 and 15 under 35 U.S.C. § 102(b) as anticipated by Streit.

5. *Obviousness over Yu and Clark*

J Squared asserts that claims 14 and 15 are unpatentable under 35 U.S.C. § 103 over Yu (Ex. 1002) and Clark (Ex. 1003). Pet. 35. J Squared alleges that Yu, as modified to add Clark’s rocker rails discussed in the first asserted ground with respect to claim 1, discloses the chair of claim 14. *Id.*, 35–36. With regard to the claimed “frame structure,” J Squared asserts that “Yu’s frame includes members 114 and 123 constituting a substantially continuous frame structure shown in Fig. 1.” *Id.*, 35. J Squared explains that “[t]he term ‘substantially continuous’ has an ordinary meaning of largely or mostly continuous, i.e., not necessarily entirely continuous, and thus allows for some discontinuity.” *Id.*

J Squared has failed to articulate adequately how the combined teachings of Yu and Clark would result in the substantially continuous frame structure called for in claim 14. In particular, we disagree with J Squared that the broadest reasonable interpretation of “substantially continuous” is so broad as to encompass discontinuous frame structures, such as shown in Yu, that are pivotally attached to one another. Further, J Squared proposes to modify Yu by clipping Clark’s clip-on rocker attachments to Yu’s chair. Pet. 13. J Squared has not demonstrated that such a modification would result in “a substantially continuous frame structure forming spaced apart

rocker members” where the frame structure is also “attached to the backrest rear surface” and “structurally join[s] said seat and backrest [portions].” Instead, the frame resulting from the proposed modified Yu chair is likely to be comprised of three discontinuous frame members, *viz.*, Yu’s seat frame member 114, Yu’s backrest frame member 123, and Clark’s clip-on rocker attachment 12.

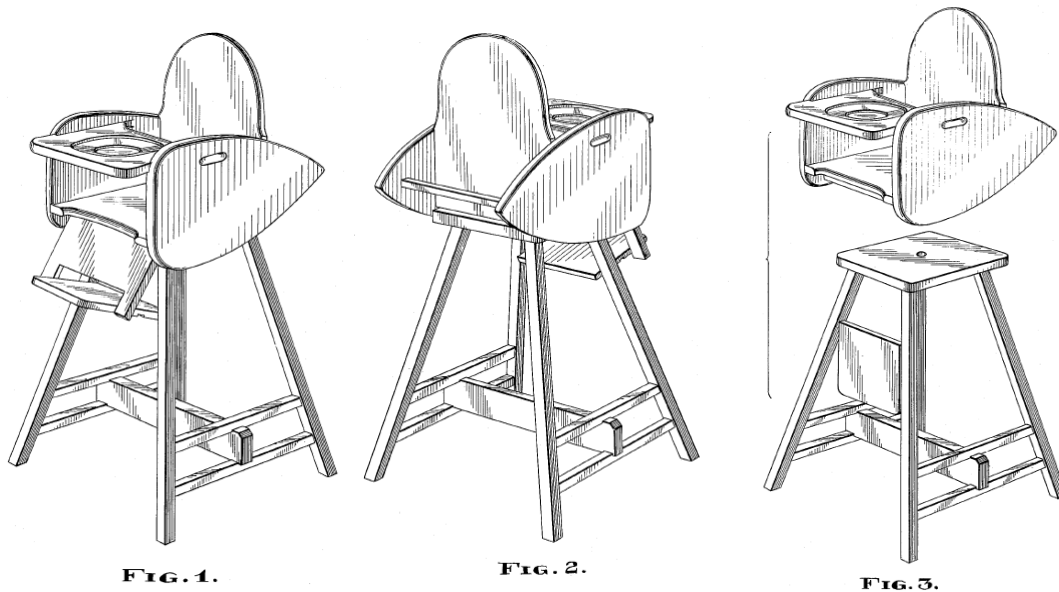
Further, J Squared has failed to explain adequately how the chair of Yu, as modified with the rocker attachment of Clark, would result in rocker members that are “directly beneath and attached to” the undersurface of the seat portion of Yu’s chair, as recited in claim 14. J Squared asserts only that “Yu’s frame includes members 114 and 123 constituting a substantially continuous frame structure shown in Fig. 1” and that “Yu’s rails 114 are beneath the undersurface of the seat portion (SP), as shown in annotated Figs. 2 and 3 of Yu in Ground 1 above.” Pet. 35. Clark’s rocker attachment, however, includes rocker rails that appear to be disposed below, but to the outsides of the undersurface of the seat portion of Clark’s chair. Ex. 1003, Fig. 1. Petitioner fails to provide an adequate explanation of how the modified chair of Yu would result in rocker members “directly beneath and attached to” the undersurface of the seat portion of Yu’s chair.

For these reasons, J Squared has failed to show by a reasonable likelihood that Yu in combination with Clark renders unpatentable claims 14 and 15. Accordingly, we decline to institute a review of claims 14 and 15 under 35 U.S.C. § 103 as unpatentable over Yu and Clark.

6. Obviousness over Wright

J Squared asserts that claims 14 and 15 are unpatentable under 35 U.S.C. § 103 over Wright (Ex. 1009). Pet. 37. Wright is a design patent

directed to the ornamental appearance of a combination high chair, rocking chair, and stool. Ex. 1002, Figs. 1–3. Figures 1, 2, and 3 of Wright are reproduced below.



Figures 1 and 2 depict front and rear perspective views of the rocking chair and stool joined to form a high chair. Figure 3 shows the rocking chair and stool separated into separate components.

As shown above in Figures 1–3, Wright’s stool has four legs extending downwardly from the stool top surface to the floor. Based on our claim interpretation of “pedestal” discussed *supra*, J Squared has failed to show where Wright discloses or renders obvious the claimed “pedestal base with legs and a top” recited in claim 14. J Squared asserts only that “[t]he stool of Wright has a flat top on four legs.” Pet. 37. As we discussed *supra*, the term “pedestal,” when read in light of the specification of the ’787 patent, does not encompass a legged base as disclosed in Wright. For this reason, J Squared has failed to show by a reasonable likelihood that Wright renders unpatentable claims 14 and 15. Accordingly, we decline to institute

a review of claims 14 and 15 under 35 U.S.C. § 103 as unpatentable over Wright.

7. *Obviousness over Wright, Kassai, and Myers*

J Squared asserts that claim 16⁶ is unpatentable under 35 U.S.C. § 103 over Wright (Ex. 1009), Kassai (Ex. 1004), and Myers (Ex. 1010). Pet. 39. J Squared proposes to modify Wright to add the pivoting latch, as disclosed in Kassai. *Id.* J Squared alleges that “Wright clearly teaches the desirability of holding the rocking chair and stool together when in the high chair mode.” Pet. 40. J Squared fails to provide adequate evidentiary support for this argument, and we do not discern such a desirability based on the design patent drawings of Wright.

J Squared further asserts:

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chair of Wright to include a pivoting latch as taught by Kassai . . . to provide a more secure connection and lock the rocking chair and stool together, and yet enable the chair to be readily removed.

Pet. 40 (alleging that as a matter of “common sense” using Kassai’s latch “would prevent accidental dislodgement due to upward force and would allow the chair and stool to be lifted as a unit”). J Squared also contends that the modification is “merely a combination of known prior art elements according to known methods to yield predictable results.” *Id.*

As noted *supra*, Kassai’s spring-biased latch mechanism is disclosed for attaching a tray table to a child’s high chair. We find no explicit

⁶ Unlike independent claim 14, independent claim 16 does not recite a “pedestal base.” Ex. 1001, 11:52 (reciting “a base comprising a generally planar top and legs”).

suggestion in Kassai itself to use such a latch mechanism for coupling other parts of a chair, such as a chair and base. Further, J Squared's articulated reasons to modify Wright's chair to add Kassai's latch mechanism, i.e., to provide a more secure connection, as a matter of common sense, and as a combination of known elements to yield predictable results, are not supported by adequate evidence or reasoning to demonstrate a reasonable likelihood of unpatentability. In particular, J Squared has not provided adequate explanation that one having ordinary skill in the art would have been led to use the latch mechanism of Kassai to attach the chair to the base of Wright. J Squared provides insufficient reasoning as to how one of ordinary skill in the art would have added the latching mechanism of Kassai to the chair of Wright or why one having ordinary skill in the art, seeing a need for a more secure connection between the chair and stool of Wright, would have been led to use a latching mechanism for a tray table as disclosed in Kassai. J Squared provides no declaratory evidence from one having ordinary skill in the art to demonstrate that the modification would have been implemented in the manner claimed or would have led to a predictable result.

For these reasons, J Squared has failed to show by a reasonable likelihood that Wright, in combination with Kassai and Myers, renders unpatentable claim 16. Accordingly, we decline to institute a review of claim 16 under 35 U.S.C. § 103 as unpatentable over Wright, Kassai, and Myers.

8. Obviousness over Yu, Clark, and Kassai

J Squared asserts that claims 16–18 are unpatentable under 35 U.S.C. § 103 over Yu (Ex. 1002), Clark (Ex. 1003), and Kassai (Ex. 1004).

Pet. 42–45. J Squared proposes to modify Yu to add the clip-on rocker attachment of Clark and the pivoting latch of Kassai, based on the same reasoning provided with reference to the first ground challenging claim 1. *Id.* For the same reasons discussed *supra* in our analysis of the first ground, we find that J Squared has failed to show by a reasonable likelihood that Yu, in combination with Clark and Kassai, renders unpatentable claims 16–18. Accordingly, we decline to institute a review of claims 16–18 under 35 U.S.C. § 103 as unpatentable over Yu, Clark, and Kassai.

III. CONCLUSION

For the foregoing reasons, we determine that the information presented in the Petition fails to establish a reasonable likelihood of prevailing in showing that claims 1–21 are unpatentable.

IV. ORDER

After due consideration of the record before us, it is:

ORDERED that no *inter partes* review of the '787 patent is instituted and that all grounds set forth in the Petition challenging the '787 patent are *denied*.

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