

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HOWARD INDUSTRIES, INC.

Petitioner,

v.

CAPSA SOLUTIONS LLC

Patent Owner.

U.S. Patent No. 7,594,668

Filing Date: August 18, 2008

Issue Date: September 29, 2009

U.S Patent No. 8,215,650

Filing Date: July 20, 2011

Issue Date: July 10, 2012

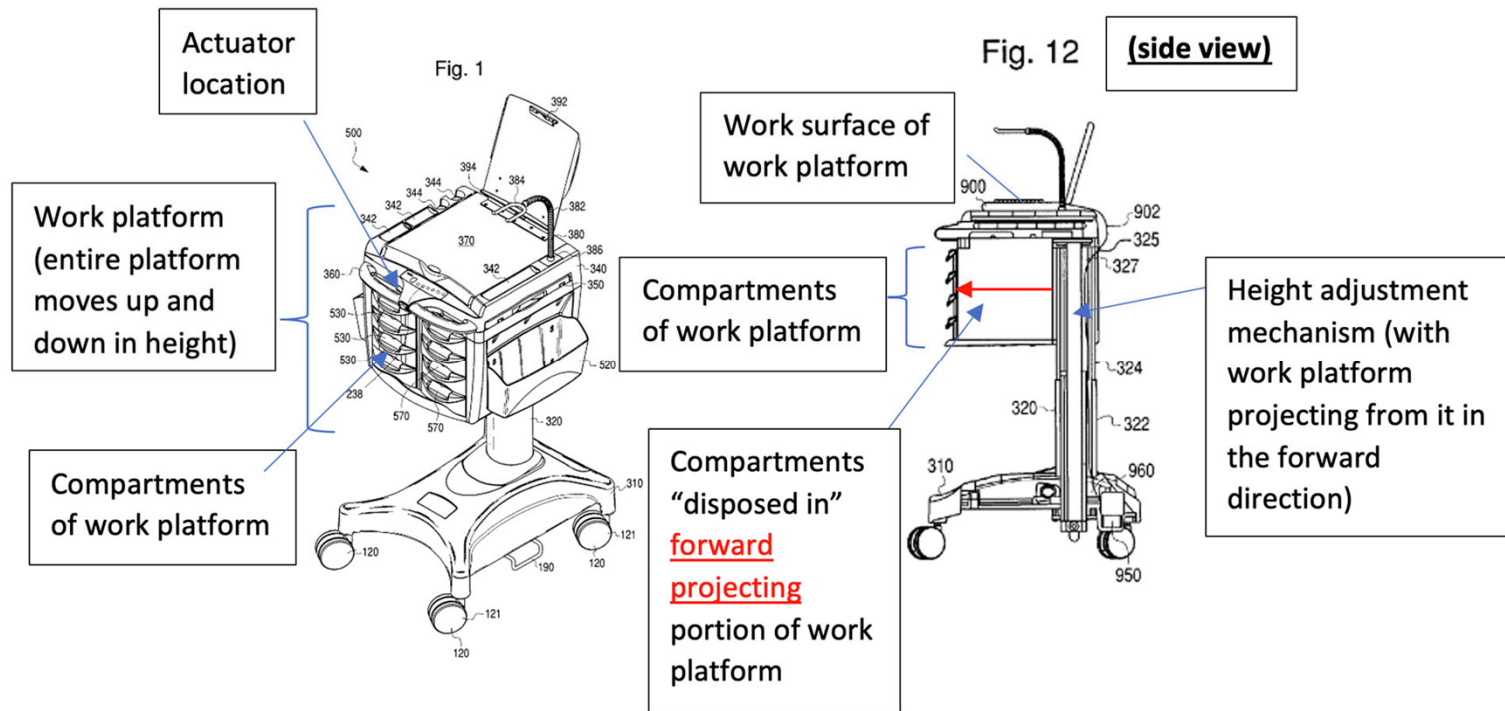
Case Nos. IPR2023-01274, IPR2023-01275

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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‘668, ‘650 Patents to Arceta et al.

Medical Cart, Medication Module, Height Adjustment Mechanism and Method of Medication Transport



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‘650 Patent, Figures 1, 12
(annotated)

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Background....

14. Capsa medical carts have a lower center of gravity and better weight distribution mostly due to the placement of drawer(s)/compartment(s) on the front/forward portion of the adjustable height mechanism, below the work surface of the cart, rather than placement on top of the height adjustment mechanism. Merely adding extra weight near the bottom of a cart to make it heavier or making the base wider, which were the conventional solutions prior to the invention of the '650 and '668 patents, may make it less inclined to tip but also makes the carts heavier to move and more difficult to maneuver. Instead of adding unnecessary weight, by distributing

Exhibit 2018, Rydingsward Declaration, para. 14.

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Background....

15. Moving the compartment(s)/drawer(s) forward of the height adjustment mechanism, as opposed to mounting them on top of the height adjustment mechanism, helps to lower the center of gravity, increase the stability of the carts and allows the drawers to be included in the height adjustable workstation. As noted above, this placement of the drawer(s)/compartments(s) in the front of the height adjustment mechanism is a major reason Capsa carts sell so well.

16. By having better weight distribution and a lower center of gravity the medical carts are less prone to tip when pushed across a floor or threshold.

Exhibit 2018, Rydingsward
Declaration, paras. 15-16.

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Background....

U.S. Patent No. 9,367,061 to Miller, another patent to a medical cart filed well after the '650 Patent, also discusses similar problems with medical carts tipping over when “maneuvered over uneven or slanted surfaces”, and how “a lower center of gravity” can “enhance the stability of the cart and reduce the likelihood of the cart tipping over”. Ex. 2017, col. 18:4-24; Ex. 2013, Kwak Decl., para. 4. One solution

Fig. 21a, Miller patent (filed well after the '650 and '668 Patents) showing compartments/drawers contained in front of the height adjustment column to lower COG and increase stability to prevent tipping of the cart when moving over uneven surfaces. Ex. 2017, col. 18:4-50.

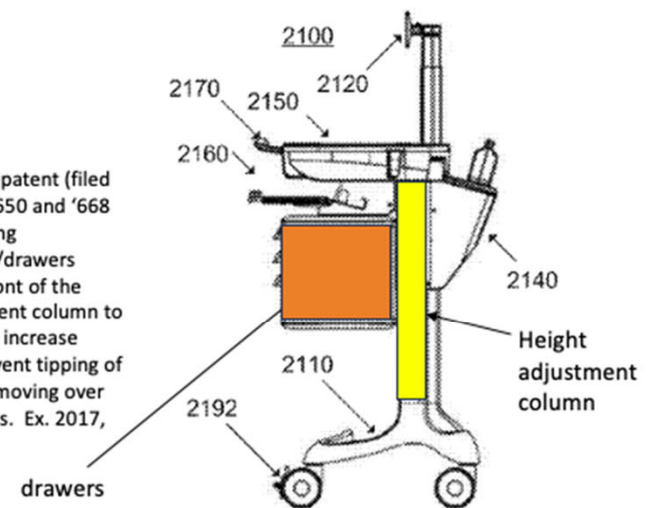


FIG. 21a

Exhibit 2017, Miller Patent, Fig. 21a.

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Background....stability and tipping angle

Stability: The stability of an object refers to its ability to resist tipping over (i.e., toppling/knocked over) when subjected to external forces or disturbances. Stability is influenced by factors such as the base area of the object, the mass distribution, and the position of the COG.

In essence, by lowering the COG, the lever arm through which gravity can exert a torque on the object is effectively decreased, making it more stable and resistant to tipping over.

I.e., Lowering the COG, increases the tipping angle, meaning the object can tilt further before it becomes unstable (tips over).

Patent Owner Response,
pgs. 42-45.

Background....'134 Patent to Kemnitzer

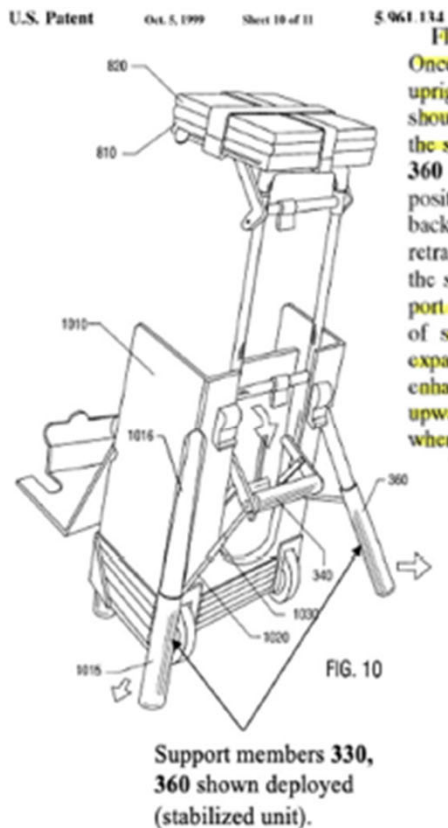
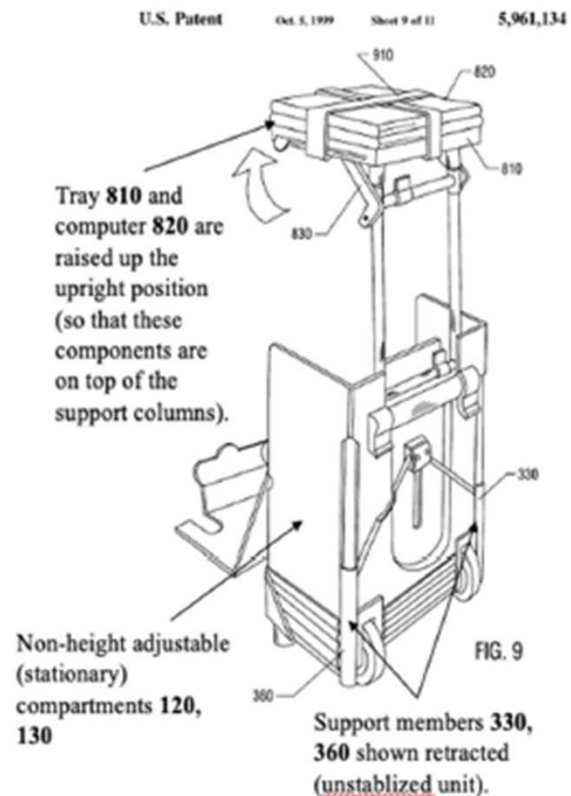


FIG. 10 shows the suitcase 100 in a stabilized position. Once the tray 810 and the computer 820 are secured into an upright position, a base portion 1010 of the suitcase 100 should be stabilized. The base portion 1010 is stabilized by the support members 330, 360. The support members 330, 360 can be pulled out from their storage location and positioned such that the suitcase 100 is stabilized. Referring back to FIG. 9, the support members 330, 360 are shown retracted into a storage location. Returning back to FIG. 10, the support members 330, 360 effectively expand the support provided by the base portion 1010. Essentially, the area of support at the bottom of the base portion 1010 is expanded due to the support members 330, 360. This enhanced support offsets the instability created by the upward movement of the center of mass of the entire unit when the portable computer 820 is deployed. The support

'134 Patent to Kemnitzer, Figs. 9, 10; col 5:28-50 (discussing instability of portable workstation of Fig. 9 and stabilized workstation of Fig. 10 – the workstation is stabilized by pulling out support members 330, 360 to “offset instability created by the upward movement of the center of mass of the entire unit when the portable computer is deployed” (or when it moved up to the “upright position”).

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Exhibit 2011, Kemnitzer Patent,
PO Response, pg. 46.

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Background....

What is claimed is:

1. A cart comprising:

a work platform including a work surface and at least one compartment for containing an item within the compartment, wherein the work surface is disposed above a top of the at least one compartment;

a base configured to be movable in at least a rearward direction; and

a height adjustment mechanism for adjusting a height of the work platform relative to the base, wherein the height adjustment mechanism is configured to releasably position the work platform at a plurality of heights, the height adjustment mechanism comprising:

a driver configured to releasably position the work platform; and

an actuator for controlling the driver,

wherein the base includes a portion projecting, relative to the height adjustment mechanism, in a forward direction that is substantially opposite to the rearward direction,

wherein the work platform includes a portion projecting, relative to the height adjustment mechanism, in the forward direction, wherein the compartment is disposed in the portion of the work platform projecting in the forward direction, and the compartment is configured to permit a user facing in the rearward direction to access the item within the compartment,

wherein the actuator is disposed above the compartment and on the portion of the work platform projecting in the forward direction, and

wherein the work surface is movable relative to a remainder of the work platform from an extended position to a non-extended position.

'650 Patent, claim 1.

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Summary of '650 Patent

- **Nobody in the industry, prior to the '668 and '650 Patents thought of disposing the compartments of a mobile cart in the portion of the work platform projecting from the height adjustment mechanism in the forward direction in order to lower the COG and increase the stability of the cart.** PO Response, pgs. 6-8.
- **This unique configuration allows the patented cart to avoid the top-heavy issues inherent in prior art.** Patent Owner's Response, p. 3; Patent Owner's Sur-reply, pp. 2-3).

Claim Construction Summary....

- Petitioner’s primary reference is the Clark reference that was overcome during the prosecution of the ‘650 Patent.
- Petitioner fails to give weight to the “instability”, “top-heavy”, and structural “incompatability” arguments made by Applicant Rubbermaid – the most important intrinsic evidence in construing the claim terms and scope of disclaimer from statements made to overcome the prior art.
- Petitioner’s expert stated he failed to address these issues in his declaration supporting the Petition, and then fails to address it in Petitioner’s Reply by failing to provide an expert declaration. *Petitioner failed to submit any evidence of how a POSA would interpret these file history statements.*

‘650 Patent, claim 1.

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Claim construction...."disposed in"

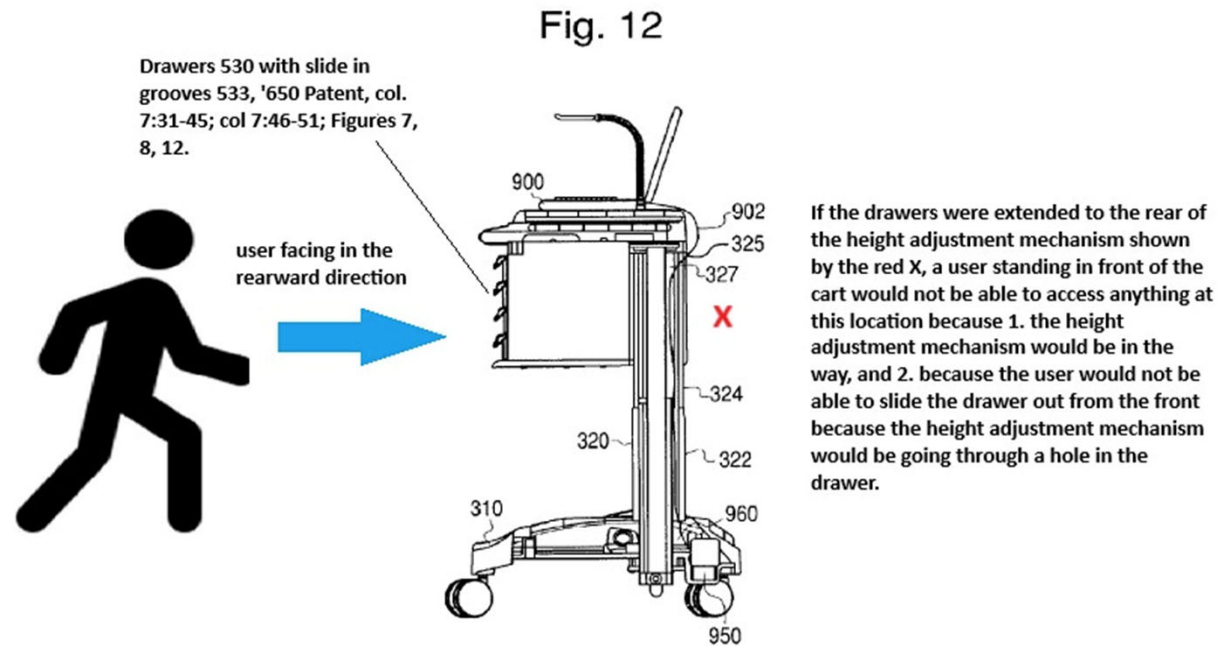
- "Disposed in," in the context of the claims and specification, means "entirely in" or "contained in" the forward-projecting portion of the work platform. PO Response, pg. 27.
- The specification does not describe, and the claim language does not permit, embodiments where any portion of a compartment extends outside the forward-projecting portion. PO Response, pgs. 24-28.

'650 Patent, claim 1.

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Claim construction...."disposed in"



Patent Owner Sur-reply, pg. 5.

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Claim construction...."disposed in"

- Petitioner's expert also agreed that Figure 12 of the '650 Patent illustrates a cart where it would be impossible for a user to access items positioned rearward of the height adjustment mechanism as the height adjustment mechanism would be in the way. Ex. 2010 at pg. 103:19-104:6; 134:15-135:7 (Petitioner's expert also stating, in discussing the cart of Clark, that a PHOSITA would understand the drawers to be in the forward position in order to be accessible by the user). PO Response, pg. 27.

'650 Patent, claim 1.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Claim construction...."forward"

- Applicant submitted evidence that the plain and ordinary meaning of “forward” means “in front”. PO Response, pg. 28.
 - Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/forward>; “Forward” defined as “toward the front: or toward what is ahead or in front”.
 - The Britannica Dictionary, <https://www.britannica.com/dictionary/forward>. Ex. 2014 (dictionary excerpts); Ex. 2013.
 - Ex. 2010, at 105:7-21 (Petitioner’s expert agreeing that “forward” means “towards the front”).
- Petitioner did not address this argument at all, much less provide contrary evidence. PO Sur-reply, pg. 7.

’650 Patent, claim 1.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Claim construction (disclaimer)...."forward"

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The inventive cart was briefly discussed with a view to the specific elements constituting the various movable work surfaces at the top of the cart (elements 370 and 350). Further, applicant has tentatively proposed amending each of the independent claims to include:

- a. [claim 1]: "wherein the work surface is disposed above a top of the at least one compartment...wherein the work surface is movable relative to a remainder of the work platform from an extended position to a non-extended position"
- b. [claim 9]: "wherein the movable platform and the work surface are disposed above a top of the at least one compartment."
- c. [claim 16]: "wherein the secondary work surface and the movable platform are positioned above a top of the at least one compartment."

The examiner commented that as regards the proposed amendment to claim 1, that the combined base and modifying references (e.g., Clark et al. and Rice et al.) would not reasonably meet a claim with these further limitations. As regards the claims initially including some recitations directed to movable work surfaces (which claim 1 initially did not include), the examiner noted that currently the critical modifying reference would be the reference to Ellefson, and **there was some further discussion directed to the structural compatability of the Ellefson reference, with the examiner suggesting that in combination with the amendment, an argument directed to the structural issues associated with the combination of Clark et al. and Ellefson would likely be persuasive in overcoming the rejections as currently set forth.**

Ex. 1002, Interview Summary,
3/21/2012; PO Response, pgs.
11-12.

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Claim construction (disclaimer)...."forward"

Furthermore, one of ordinary skill in the art would not incorporate the teachings of Rice, Murphy, and Ellefson into the workstation of Clark so as to arrive at a height-adjustable work platform with a movable work surface located above a compartment. For example, if one of ordinary skill in the art had tried to incorporate the pivotal trays 48, 50, and 52 of Ellefson into the workstation of Clark, the resulting work station would be top heavy if the trays were deployed. The result is that the deployed trays would make the workstation of Clark unstable so that it would be easily knocked over. The reason that the pivotal trays can work in the tool chest of Ellefson is that a tool chest contains heavy tools so as to prevent the instability, a condition that is lacking in Clark. In other words, the overall design of the tool chest of Ellefson (including its lower center of gravity) permits the use of pivotal trays while the workstation of Clark (with its higher center of gravity) does not. Accordingly, one of ordinary skill in the art would not combine the teachings of Clark, Rice, and Ellefson so as to arrive at a height-adjustable work platform with a movable work surface located above a compartment. Thus, claim 1 is allowable over Clark, Rice, and Ellefson.

See e.g., Ex. 2003, OAR of 3/28/2012 in '650 Patent
File History at pgs. 8-12; PO Response, pgs. 12-13.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Claim construction (disclaimer)...."forward"

Similarly, one of ordinary skill in the art would not have had a reason to incorporate any particular feature on Murphy into the workstation of Clark because Murphy is designed to be low to the ground (that is, a lower center of gravity) and modifying the workstation of Clark (with its high center of gravity) based on the teachings of Murphy would likely make the resulting workstation top heavy such that it would be easily knocked over. Accordingly, one of ordinary skill in the art would not combine the teachings of Clark, Rice, and Murphy so as to arrive at a height-adjustable work platform with a movable work surface located above a compartment. Thus, claim 1 is allowable over Clark, Rice, and Murphy.

See e.g., Ex. 2003, OAR of 3/28/2012 in '650 Patent File History at pgs. 8-12; PO Response, pgs. 12-13.

Claim construction (disclaimer)...."forward"

- Top-heavy carts, like Clark, were disclaimed during the prosecution of the '650 patent. The Applicant disclaimed top-heavy carts like Clark because they cannot support the weight of any other feature (because doing would "likely make the resulting workstation top heavy such it would be easily knocked over"). PO Sur-reply, pg. 8 (citing to '650 file history statements);
- I.e, the original Applicant disclaimed adding "any particular feature" (e.g., compartments) to top-heavy workstations like Clark because they are intended to be higher from the ground with a higher COG and "modifying the workstation of Clark (with its higher center of gravity) based on the teachings of Murphy" would like result in a top-heavy workstation that would be easily knocked over. *Id.*
 - Expert Dr. Ben-Tzvi testified that a POSA, based on these disclaimers, would construe the term "forward" to mean "in front of". PO Response, pg. 28-31.
 - Any other construction would render the file history statements made by Applicant meaningless and would allow the claim limitations at-issue to be read upon the top-heavy cart like Clark that were disclaimed. PO Sur-reply, pg. 8 (citing to '650 file history statements).

'650 Patent, claim 1.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Claim construction...."forward"

- The public should be able rely on these statements of disclaimer for determining the scope of the invention. PO Response, pg. 2
- The public notice function of the intrinsic evidence should be respected and upheld (e.g., statements in the file history made in arguing around the prior art should provide notice as to the scope of the claims and what the inventor believed was the invention, and to provide notice as to the scope of the subject matter disclaimed). *Id.*
- Finding the '668 and '650 patents invalid based on the same reference (Clark) that was overcome 12 years ago during original prosecution, while giving no weight to the Applicant's disclaimers of Clark and its teachings, undermines the public notice function of the patent descriptions and file history statements. *Id.*

'650 Patent, claim 1.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Claim construction...."forward"

- Petitioner does not consider and give weight to the *full scope* of the disclaimers (and the “structural incompatibility” arguments) in the intrinsic evidence and attempts to invalidate the ‘650 and ‘668 Patents based on the same prior art and arguments overcome during the original prosecution.

PO Sur-reply, pgs. 7-8.

- Petitioner’s expert admitted he did not address these in his declaration and he failed to provide a declaration in support of Petitioner’s Reply. Petitioner did not provide any evidence of how a POSA would interpret these file history statements.

Patent Owner Sur-reply, pgs. 9-10; PO Response, fn. 7.

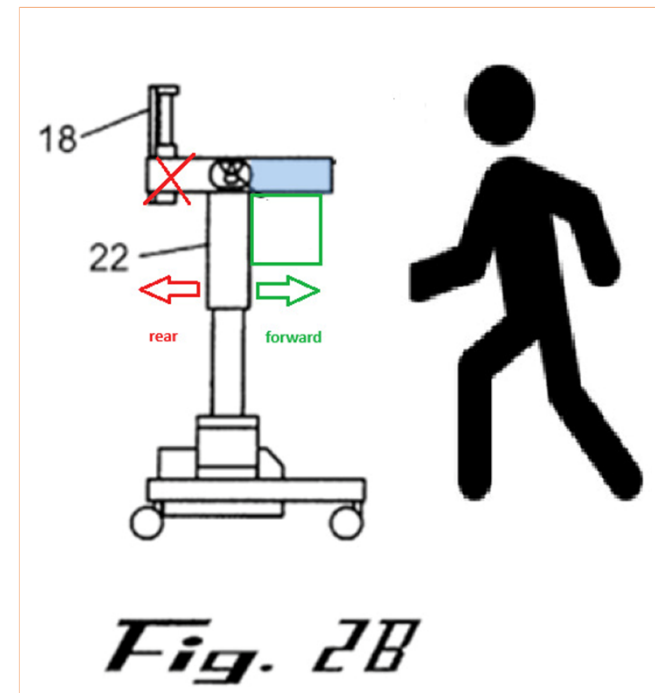
‘650 Patent, claim 1.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Grounds 1, 2: Petitioner has failed to meet its burden to prove prima facie obviousness...(with respect to Clark)

- Petitioner has failed to provide evidence that any of the cited references teach or suggest the placement of compartment(s) at the specific location claimed (disposed in the portion of the work platform projecting from the HAM in the forward direction).



PO Sur-reply, pg. 12.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

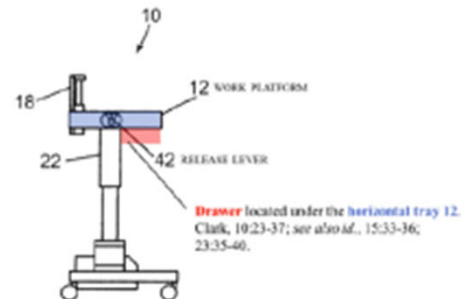
21

Grounds 1, 2 : Petitioner has failed to meet its burden to prove prima facie obviousness ...(with respect to Clark)

2. The vague, one-sentence, mention of a “drawer” in Clark does not specify that it is “disposed in the portion of the work platform projecting [relative to the height adjustment mechanism] in the forward direction”

Clark does not teach the placement of compartments at this very specific location claimed. Petitioner merely relies on conclusory attorney argument to fill in the gaps left by Clark (and now Reeder). For example,

in the Reply brief, Petitioner *draws in* a red drawer disposed in front of the height adjustment mechanism of Clark even though Clark never specifically states that the drawer should be placed in this specific



Clark, Fig. 2B (annotated)

location. See Petitioner Reply, pg. 12 (Figure 2b of Clark with red drawer annotated by Petitioner reproduced above).

PO Sur-reply, pg. 13.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Grounds 1, 2 : Petitioner has failed to meet its burden to prove prima facie obviousness...(with respect to Clark)

30 tions that include vertical components. Alternatively, the
docking station 18 could be supported in a substantially
horizontal position, for example by a drawer or pull-out tray
located above or under the horizontal tray 12. Other loca-
tions for the docking station 18 may be preferred in certain
35 environments. For example, the docking station could be
mounted to the side of the horizontal tray 12, to the
underside of the horizontal tray 12, to the dolly assembly 16,
to the vertical beam 22, and so forth.

- This portion of Clark of Clark relied upon by Petitioner does not teach the placement of the alleged drawer at the specific location claimed (**disposed in the portion of the work platform projecting from the height adjustment mechanism in the forward direction**). PO Response, pgs. 34-36.
- On the contrary, Clark states that the docking station 18 (without the drawer) can be mounted to the underside of the horizontal tray, but says nothing about the specific location of the alleged drawer. Clark at col. 10: 34-38. By explicitly stating that the docking station 18 (with attached computer terminal 20) can be mounted to the underside of the tray, but not a drawer, indicates that the inventors of Clark also appreciated that adding a drawer to the computer workstation of Clark was not feasible or desired. *Id.*

PO Response, pgs. 34-35; Sur-reply, pg. 13.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Grounds 1, 2 : Petitioner has failed to meet its burden to prove prima facie obviousness...(with respect to Clark)

- Instead, this one sentence in Clark vaguely states that such a *drawer could be located above or under the tray 12* (in other words “somewhere on the cart”). E.g., '650 IPR Petition at pg. 22 (citing col. 10, ll. 30-33 of Clark).
 - Patent Owner Dr. Ben-Tzvi testified that Clark does not teach or suggest the recited limitations of the specific location of the compartments. Ex. 2012, para. 67-70, PO Response, pgs. 34-37.
 - Petitioner’s expert testified that the one sentence fails to explicitly state the recited location of the compartment(s). Ex. 2010 at 132:1-135:7 (e.g., admitting that the battery at the base of Clark described is “under” the tray 12 and that “under” can mean there is space in between the drawer and the horizontal tray). PO Response, pg. 36.

PO Sur-reply, pg. 13.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Grounds 1, 2 : Petitioner has failed to meet its burden to prove prima facie obviousness...(with respect to Clark)

Clark does not teach the placement of a drawer at the specific location recited in the claims and Petitioner improperly relies on attorney argument and conclusory statements from its expert to fill in the gaps of Clark. *Osram Sylvania, Inc. v. Am. Induction Techs., Inc.*, 701 F.3d 698, 705-06 (Fed. Cir. 2012)(reversing anticipation decision because Defendant failed to rebut Patentee's expert or provide specific factual evidence of how a PHOSITA would interpret the vague, generic disclosure).

Just because Clark states that the alleged drawer can be located somewhere under the cart, does not necessarily mean the specific location recited in the claim (disposed in the front projecting portion) is taught. At the very least this is a factual determinations that requires evidentiary factual findings- evidence that Petitioner or its expert failed to provide. *Id.*

PO Sur-reply, pg. 15

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Grounds 1, 2 : Petitioner has failed to meet its burden to prove prima facie obviousness...(with respect to Clark)

- Petitioner now argues that the workstation of Clark is not “top mounted”.
- Contrary to Petitioner’s allegations, the keyboard tray 12 is mounted to the top of the HAM. The tray 12 is mounted to the telescoping cover portion 22 or 226 of the HAM. Clark, Ex. 1010 at 8:60-66; 13:50-59. PO Sur-reply, fn. 8.

screen. The chassis **14** includes a vertical beam **22** connecting the horizontal tray **12** to the dolly assembly **16**.

Clark, Ex. 1010 at 8:60-66.

The chassis **214** includes a vertical beam **226** connecting the horizontal tray **212** to the dolly assembly **216**. The vertical beam **226** includes a gas-spring height adjustment mechanism (not shown) and a release lever **228** for adjusting the length of the beam **226** and, thus, the height of the horizontal tray **212** above the dolly assembly **216**. For example, the chassis **214** may be a model MPC2001 manufactured by JACO, Inc. with the standard tray replaced by the horizontal tray **212** shown in FIG. 8. Those skilled in the

Clark, Ex. 1010 at 13:50-59.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

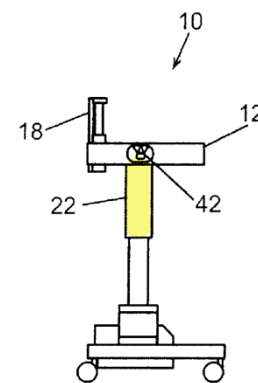


Fig. 2B

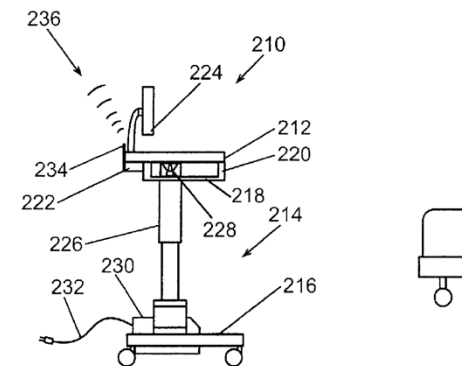


Fig. 8

PO Sur-reply, fn. 8.

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Grounds 1, 2 : Petitioner has failed to meet its burden to prove prima facie obviousness...(with respect to Clark)

Further, the only portion that goes through the hole in the keyboard cavity is inner shaft 72 (inside of component 22) that is pushed to move the HAM up and down. Clark, Ex. 1010, col. 11:50-59; 12:20-29. The keyboard cavity (alleged compartment) does not project from this inner shaft portion.

In FIGS. 4A–4B, the top portion of a rectangular cover for the vertical beam 22 has been removed, showing an underlying shaft 72 and a power cable 73 connecting the power unit 24 to the docking station 18. This shaft 72 connects to the gas-spring height adjustment mechanism 74 that allows adjustment of the height of the horizontal tray 12. The gas-spring height adjustment mechanism 74, which is located at the bottom of the vertical beam 22, sits on top of the dolly assembly 16. This dolly assembly includes an

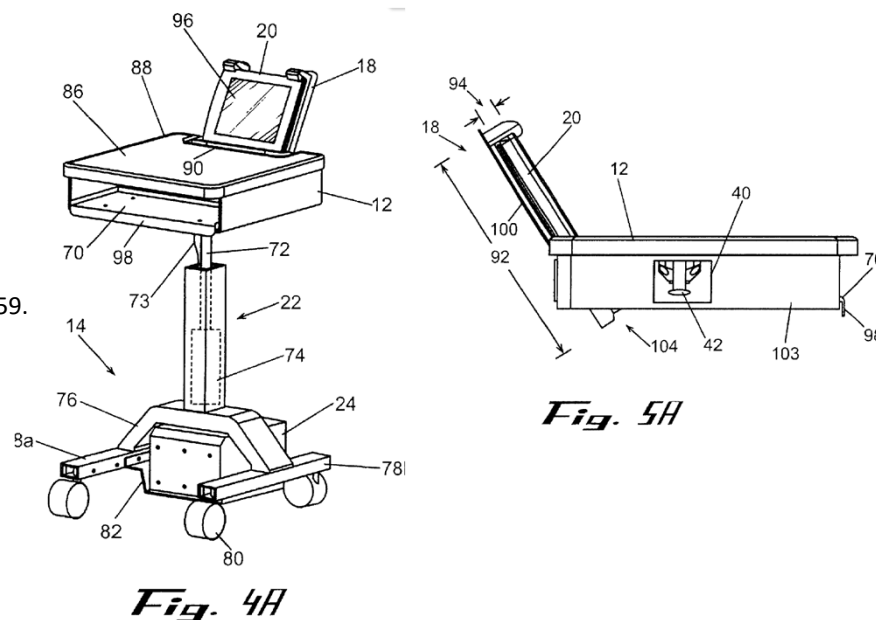
Clark, Ex. 1010 at 11:50-59.

FIG. 5A is a side view of the horizontal tray 12 showing the access hole 40 and the release lever 42 for raising and lowering the horizontal tray 12. The release lever 42 operates the gas-spring height adjustment lever, which is shown best in FIG. 4A. FIG. 5A also shows the end of the pull-out keyboard tray 70, which includes a lip 98 to aid in pulling the keyboard tray out and pushing it back in.

FIG. 5B is a perspective view of the horizontal tray 12 showing the access hole 40 and the release lever 42 for raising and lowering the horizontal tray 12. FIG. 5B also shows the top surface 86, the edge guard 88, and the recess

Clark, Ex. 1010 at 12:20-29.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE



PO Sur-reply, fn. 8.

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Grounds 1, 2 : Petitioner has failed to meet its burden to prove prima facie obviousness...(with respect to Clark)

- Petitioner also improperly cites to portions of Patent Owner's Preliminary Response for support of its argument that the tray 12 of Clark is not top mounted. (Petitioner citing to Exhibits 2001, Declaration attached to the Preliminary Response). Patent Owner clarified its argument and set forth a correct reading of the Clark patent in the filed Patent Owner Response and Sur-reply. See Patent Owner Sur-reply, footnote 8.
- As discussed above, the *vertical beam 22 is the cover and the portion that mounts to the tray 12*. As explained above, it is the *inner shaft 72 that is the component that goes through the hole in tray 12* and that is used to actuate the driver to raise the HAM up or down.

PO Sur-reply, fn. 8.

Grounds 1, 2 : Petitioner has failed to provide a motivation to modify/combine Clark to reach the claimed invention...

- Petitioner fails to provide any argument for why a PHOSITA would be motivated to modify the cart of Clark to include compartment(s) in the *specific location recited*: “disposed in the portion of the work platform projecting [relative to the height adjustment mechanism] in the forward direction” as claimed. PO Response, pgs. 37-38.
- Petitioner’s only argument relating motivation to combine/modify the references amounts to conclusory statements from its expert that, in general, the use of drawers was desired and obvious and that “such modifications were routine and with the level of ordinary skill”. Reply at 14-15. PO Response, pgs. 15-17.

“Conclusory expert testimony and attorney argument cannot constitute substantial evidence of a motivation to combine... We have found expert testimony insufficient where, for example, the testimony consisted of conclusory statements that a skilled artisan *could* [**19] combine the references, not that they *would* have been motivated to do so.

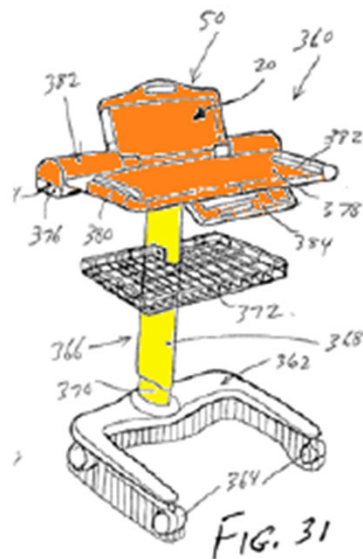
PO Sur-reply, pg. 16 (citing to the *Itron Networked Sols.* case.

Grounds 1, 2 : PO provided evidence that a POSA would not be motivated to modify Clark to reach the claimed invention...

- Patent Owner provided evidence that a POSA at the time, concerned with cart stability, would have been motivated to keep the workstation as light and unencumbered as possible (would not be motivated to add additional features to the already top-heavy cart of Clark). Patent Owner's Response, pgs. 38-41; Sur-reply, pgs. 18, 23.
- Mr. Kemnitzer's (Petitioner's expert) own'134 patent recognizes that in order to keep the portable workstation more stable, the compartments should be located at the stationary base portion (like Reeder) while keeping the top-mounted workstation as light and unencumbered as possible. Id. at 60.
- Mr. Kemnitzer also opined that from a design perspective, it is desirable to keep the COG of a portable computer workstation lower in order to increase the stability of the cart. Ex. 2010, pg. 70:15- 25; 72:1-17; 75:4-76-3.

Ground 3 : Petitioner has failed to meet its burden to prove prima facie obviousness ...(with respect to Reeder)

- Reeder, like Clark, is also a top-heavy cart having the entire height adjustable workstation mounted on top of the HAM. PO Response, pgs. 48, 52-56.
- Reeder only teaches wire trays, and bins hanging off the support column and not disposed in the work platform at all. Even assuming these are "compartments" there is no teaching of **disposing them in** the portion of the work platform projecting from the a HAM in the **forward direction**. *Id.*



DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

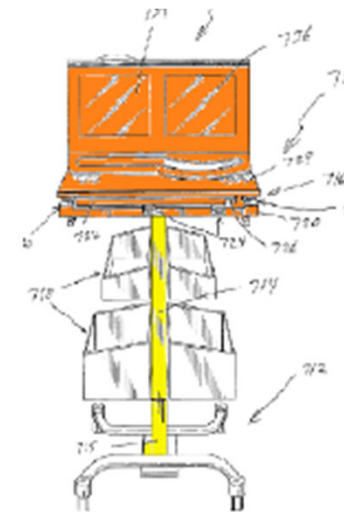
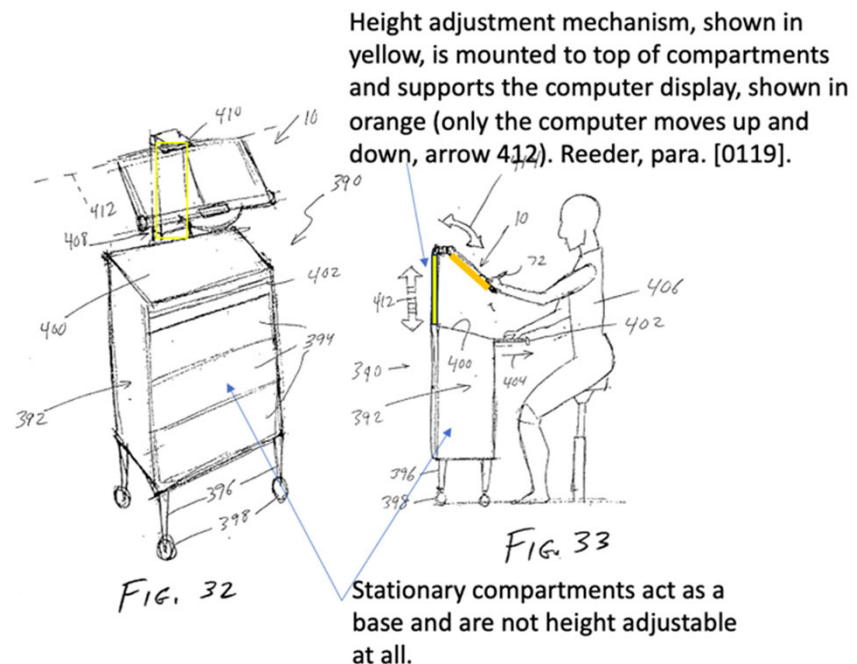


Fig. 45

PO Response, pg. 49.

Ground 3 : Petitioner has failed to meet its burden to prove prima facie obviousness ...(with respect to Reeder)

Reeder teaches the opposite of the '668, '650 inventions: The only carts with enclosed compartments described in Reeder (embodiments of Figures 32, 33 of Reeder reproduced here) utilize the compartments as the stationary base of the cart that does not adjust up and down in height at all (the drawers in this embodiment of Reeder do not project from a height adjustment mechanism at all as required by the claims of the '650 Patent). Ex. 2010 at 142:15-143:20 (Petitioner's expert admitting this embodiment of Reeder disposes the compartments in a stationary base portion that is not height adjustable). PO Response, pg. 50.



PO Response, pg. 51.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Ground 3 : Petitioner has failed to provide evidence of a motivation to modify/combine...(with respect to Reeder)

- Petitioner fails to provide any argument whatsoever that a POSA would be motivated to add compartments/drawers at the very specific location claimed (contained in the portion of the work platform projecting in front of the HAM). Petitioner merely cites to evidence that drawers, in general, are desired in mobile carts (and then in conclusory fashion opines that one could place the drawers below/under the workstation);
- Reeder actually teaches the opposite (e.g., Reeder places the drawers at the stationary base as far from the top mounted workstation as possible – again providing evidence that at the time of the ‘668, ‘650 invention, a POSA would want to keep the top workstation as light and unencumbered as possible). PO Sur-reply, pgs. 24-25.

PO Response, pg. 51.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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Secondary considerations of nonobviousness

- Because Petitioner has failed to meet its burden to prove obviousness, resort to secondary considerations is not needed. However, PO provided this evidence in Response, and the evidence does confirm the nonobviousness of the patents-at-issue. PO Sur-reply, pg. 26.
- Contrary to Petitioner's allegations, PO did provide evidence of a nexus between the success of the patented cart and the claims of the patents-in-suit. Ex. 2018, Rydingsward dec., paras. 1-17 (stating that the placement of the drawers in front of the HAM is a major reason the Capsa carts have a lower COG, are stable, and sell so well). *Id.*
- The commercial success of carts embodying the '650 Patent is directly attributable to the placement of compartments in the forward-projecting portion, achieving improved stability and ergonomics. *Id.*
- Mr. Rydingsward also provided evidence that many competitors, including Capsa, copied the inventions of the patents-in-suit after Rubbermaid, the original Patentee, came out with their invention. Petitioner fails to rebut this evidence of copying with contrary evidence. *Id.*

'650 Patent, claim 1.

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

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