

Petitioner's Demonstratives

Howard Industries, Inc.

v.

Capsa Solutions LLC

Case IPR2023-01274; IPR2023-01275
U.S. Patent Nos. 7,594,668 & 8,215,650

DEMONSTRATIVE EXHIBITS – NOT EVIDENCE

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Petitioner's Main Points



Patent Owner only disputes a single claim element across all challenged claims of the '668 and '650 patents



“compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction”



All of Patent Owner's arguments rely on an unduly narrowing claim construction



The Petitions demonstrate all challenged claims would have been obvious even under Patent Owner's unduly narrow constructions

The Alleged Points of Novelty – '668 Patent Prosecution

wherein the actuator is disposed above the compartments and on the portion of the work platform that projects in the forward direction.

1274 Proceeding, Ex. 1003, 91-92

24. (Currently Amended): A cart comprising:
a work platform including a work surface and compartments for containing items;
a base configured to be movable in at least a rearward direction; and
a height adjustment mechanism for adjusting the height of the work platform relative to the base
wherein the base includes a portion that projects from the height adjustment mechanism in a forward direction that is substantially opposite to the rearward direction,
wherein the work platform includes a portion that projects from the height adjustment mechanism in the forward direction, the compartments are disposed in the

the height adjustment
ments are configured to
ss an item within the
releasably lock the work

wherein the height adjustment mechanism comprises:
a stationary casing connected to the base;
a telescoping casing connected to the work platform and configured to move relative to the stationary casing;
at least two drawer slides disposed between the stationary casing and the telescoping casing;
a driver configured to releasably lock the telescoping casing relative to the stationary casing; and
an actuator for controlling the driver, and

The cart of claim 10,
wherein the actuator is disposed above the compartments and on the portion of the work platform that projects in the forward direction.

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1274 Proceeding, Paper 1 at 7, Paper 7 at 3-5

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The Alleged Points of Novelty – '668 Patent Prosecution

- First action allowance ('668 patent)
 - 1274 Proceeding, Ex. 1002, 84, 87-92
- Parent '030 application indicates actuator location (pending claim 24) was point of novelty
 - 1274 Proceeding, Ex. 1003, 91-92, 99, 267, 274
- Examiner refused to allow claim 43 with actuator merely recited “on” the work platform
 - 1274 Proceeding, Ex. 1003, 10-13, 60, 66, 267-275

24. (Currently Amended): A cart comprising:
a work platform including a work surface and compartments for containing items;
a base configured to be movable in at least a rearward direction; and
a height adjustment mechanism for adjusting the height of the work platform relative
to the base
wherein the base includes a portion that projects from the height adjustment
mechanism in a forward direction that is substantially opposite to the rearward
direction,
wherein the work platform includes a portion that projects from the height adjustment
mechanism in the forward direction, the compartments are disposed in the
portion of the work platform that projects from the height adjustment
mechanism in the forward direction, and the compartments are configured to
permit a user facing in the rearward direction to access an item within the
compartments.
wherein the height adjustment mechanism is configured to releasably lock the work
platform at a plurality of heights,
wherein the height adjustment mechanism comprises:
a stationary casing connected to the base;
a telescoping casing connected to the work platform and configured to move
relative to the stationary casing;
at least two drawer slides disposed between the stationary casing and the
telescoping casing;
a driver configured to releasably lock the telescoping casing relative to the
stationary casing; and
an actuator for controlling the driver, and
wherein the actuator is disposed above the compartments and on the portion of the
work platform that projects in the forward direction.

1274 Proceeding, Ex. 1003, 91-92

The Alleged Points of Novelty – '650 Patent Prosecution

- Movable work surface disposed above a top of a compartment

an item within the compartment, 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.

Listing of Claims:

1. (Currently Amended) 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.

1275 Proceeding, Ex. 1002 at 132

Capsa's Only Challenged Element In This Proceeding

3. A cart comprising:

...

wherein the work platform includes a portion that projects from the height adjustment mechanism in the forward direction, the **compartments** are disposed in the portion of the work platform that projects from the height adjustment mechanism in the forward direction, and the compartments are configured to permit a user facing in the rearward direction to access an item within the compartments....

4. A cart comprising:

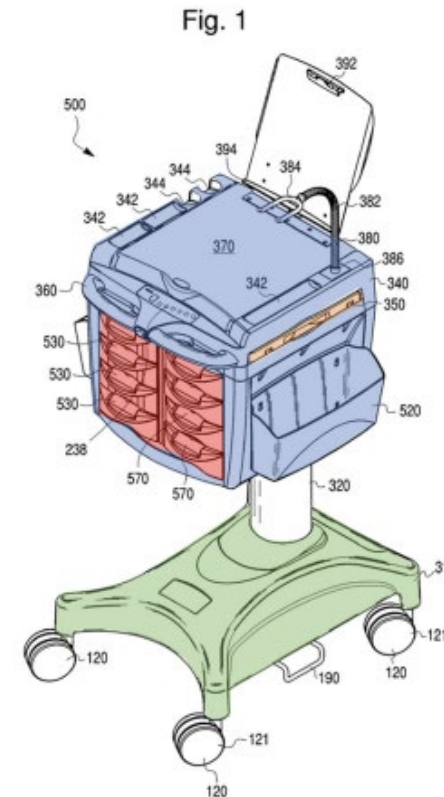
...

wherein the work platform includes a portion that projects from the height adjustment mechanism in the forward direction, the **compartment** is disposed in the portion of the work platform that projects from the height adjustment mechanism in the forward direction, and the compartment is configured to permit a user facing in the rearward direction to access an item within the compartment....

1. A cart comprising:

...

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....



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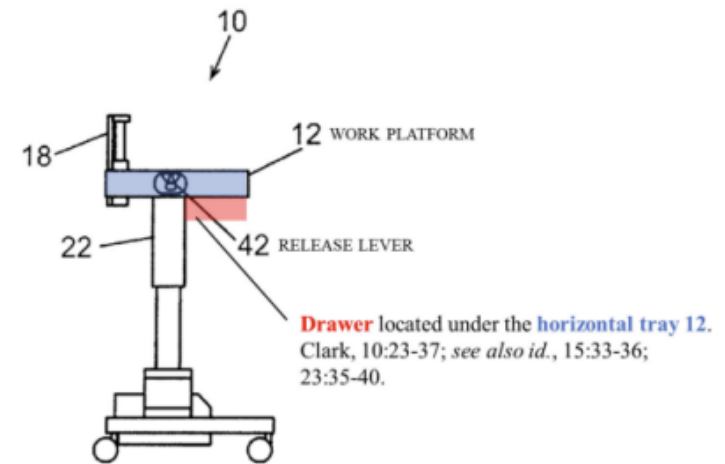
'668 Patent, Claims 3-4; '650 Patent, Claim 1

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Claim Construction

1. Compartments need not be enclosed
 - The Petitions demonstrate the challenged claims are obvious under either parties' construction
2. Compartments need not be disposed "entirely within" the forward projecting portion of the work platform
 - The Petitions demonstrate the challenged claims are obvious under either parties' construction



Clark, Fig. 2B (annotated)

Claim Construction | Compartment

The intrinsic record is clear:

- Plain and ordinary meaning should apply. No lexicography or disavowal.
- Compartments are “for containing [an] item[s]”
 - ’668 Patent, Claims 3 and 4, ’650 Patent, Claim 1
- Example drawer embodiment comports with the plain meaning

Dictionary definitions confirm:

- “one of the parts or spaces into which an area is subdivided”
 - *The American Heritage College dictionary*, Ex. 1046 at 3
- “a subdivision of three-dimensional space”
 - *Webster’s Third New International Dictionary*, Ex. 1047 at 3
- “a separate division or section”
 - *Merriam-Webster.com Dictionary*, Ex. 2014 at 1
- “a part or space marked or partitioned off”
 - <https://www.dictionary.com/browse/compartment>

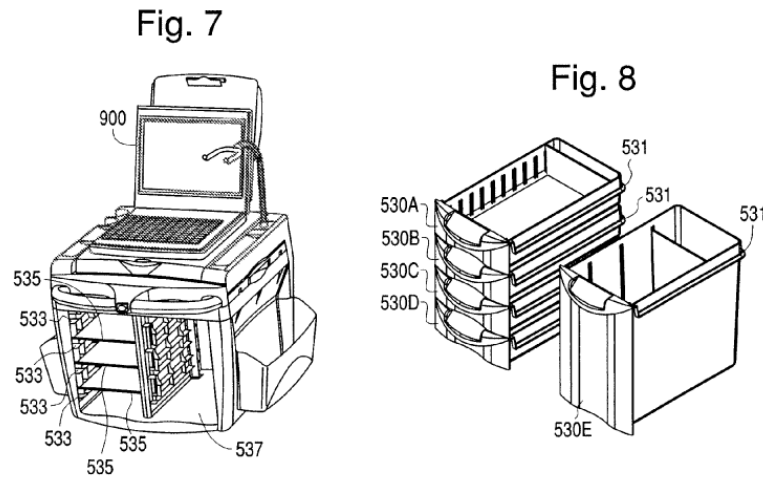
Claim Construction | Compartment

- No redefinition under *SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187 (Fed. Cir. 2013)
 - Issue: Does “culturing...cells in three-dimensions” exclude the use of beads? *Id.* at 1196.

<i>SkinMedica, Inc. v. Histogen Inc.</i> , 727 F.3d 1187 (Fed. Cir. 2013)	'668 and '650 Patents
“Cell lines grown as a monolayer or on beads, as opposed to cells grown in three-dimensions, lack the cell-cell and cell-matrix interactions characteristic of whole tissue in vivo.” <i>Id.</i> at 1197.	No comparison of drawers to alternative compartments
“Conventional conditioned cell culture medium, medium cultured by cell-lines grown as a monolayer or on beads, is usually discarded or occasionally used in culture manipulations such as reducing cell densities.” <i>Id.</i> at 1198.	No disparagement of alternative compartments
Prosecution Arguments: “To overcome an anticipation rejection, the patentees argued that ‘[c]ulturing cells in three-dimensions results in the production of a conditioned medium <i>having a different chemical composition</i> than that of cells cultured by <i>conventional</i> means.’” <i>Id.</i> at 1198.	No prosecution statements describing compartments
Words of redefinition (i.e.) – “The cells are cultured in monolayer; beads (<i>i.e.</i> , two-dimensions) or, preferably, in three-dimensions.” <i>Id.</i> at 1199.	No words of redefinition

Claim Construction | Compartment

- No redefinition under *SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187 (Fed. Cir. 2013)



'668 and '650 Patents, Figs. 7-8

'668 and '650 Patents

- **No comparison** of drawers to alternative compartments
- **No disparagement** of alternative compartments
- **No prosecution statements** describing compartments
- **No redefinition** words

Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

- Patent Owner's figures and construction contradict the claim language

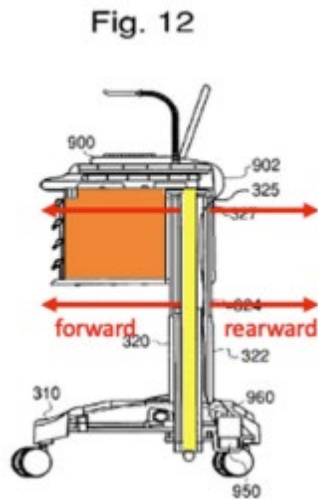


Fig. 12 showing compartments disposed in "forward" or front projecting portion which leads to a cart having a lower center of gravity than top mounted carts like Clark.

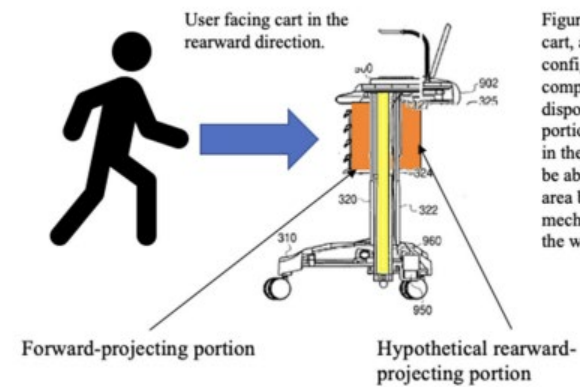


Figure 12, '650 Patent (side view of cart, altered to show impossible configuration). In other words, if the compartments (in orange) are disposed in a rearward-projecting portion here as shown, users facing in the rearward direction would not be able to access items stored in this area because the height adjustment mechanism (in yellow) would be in the way.

1274 Proceeding, Paper 14 (POR) at 9, 27, and 33

1275 Proceeding, Paper 14 (POR) at 9, 27, and 33

Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

- Patent Owner's figures and construction contradict the claim language

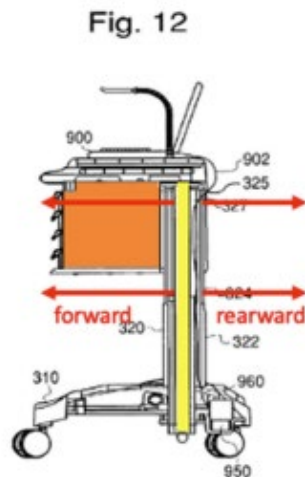


Fig. 12 showing compartments disposed in "forward" or front projecting portion which leads to a cart having a lower center of gravity than top mounted carts like Clark.

This area below the dotted box is also forward of the height adjustment mechanism, but it is not preferable to dispose compartments in this area as it is forward of the non-moving casing portion and the work platform would not be as compact.

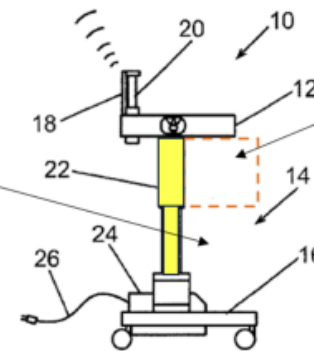


Figure 1, 2B of Clark (side view)

The dotted area illustrates an area of the cart of Clark that is "forward" of the height adjustment mechanism (in yellow) of one example embodiment. The keyboard tray cavity 12 of Clark is not in this forward projecting portion. The keyboard tray 12 of Clark is outside the forward portion because it is mounted on top of the height adjustment mechanism (thus Clark has a higher center of gravity as argued to the Patent Office by the '650 Applicant).

1274 Proceeding, Paper 14 (POR) at 9, 27, and 33

1275 Proceeding, Paper 14 (POR) at 9, 27, and 33

Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

- Intrinsic Evidence confirms no requirement in the claims for the compartment to be disposed “entirely within” the work platform

The plurality of compartments 530 face the user and move up and down with the work platform 340 (i.e., they remain in the same position relative to the laptop platform 370), which are ergonomically desirable features.

'668 Patent, 7:28-31; '650 Patent, 7:28-31

'668 Patent, Claims 3 and 4,

A cart comprising:

...

wherein the work platform includes a portion that projects from the height adjustment mechanism in the forward direction, the compartment[s] [is/are] disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction, and the compartments are configured to permit a user facing in the rearward direction to access an item within the compartments....

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

'650 Patent, Claim 1

...

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

No Merit to Capsa's "Top Mounted" Argument

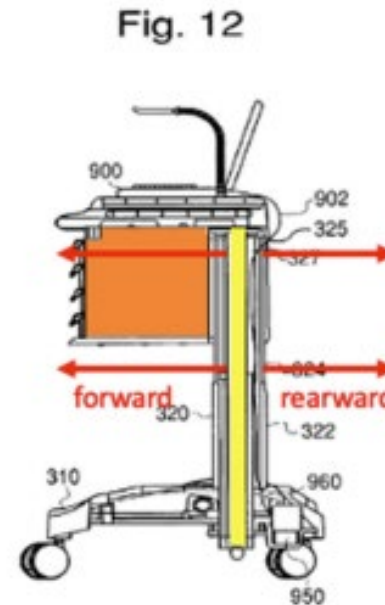
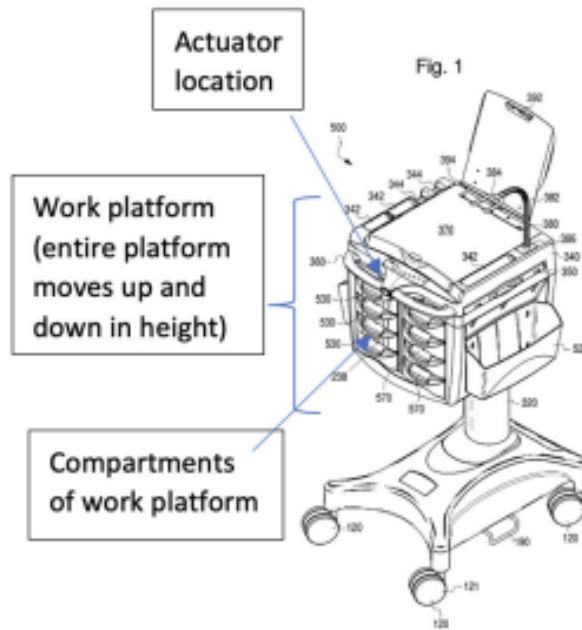


Fig. 12 showing compartments disposed in "forward" or front projecting portion which leads to a cart having a lower center of gravity than top mounted carts like Clark.

1274 Proceeding, Paper 14 (POR) at 7, 9
1275 Proceeding, Paper 14 (POR) at 7, 9

Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

It is not impossible for drawers to extend rearward of the height adjustment mechanism

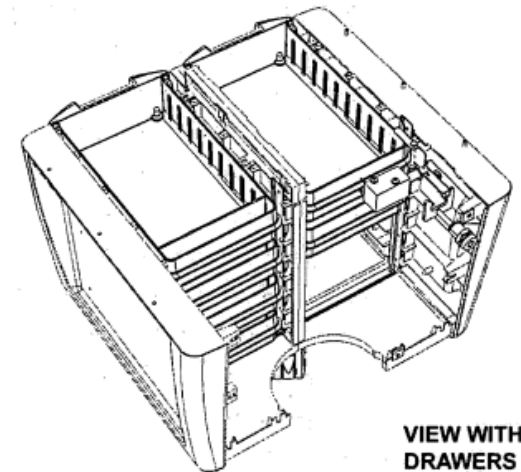
13 MR. KWAK: Okay. And in your opinion,
14 would it be possible for those drawers to be
15 extended rearward of the support member?

16 MR. YOUNG: Objection to form.

17 THE WITNESS: Well, that's a
18 hypothetical. But I think, is it possible? It
19 may be possible to have the drawers be shaped in
20 a way that they surround that column, which
21 reduces the size of them somewhat.

22 It's also possible to, as in Figure 7
23 and 7/8 -- 7 and 8, it shows the compartments
24 split down the middle so they only are half as
25 wide as the unit. And they could also be

1 configured to go around the column.



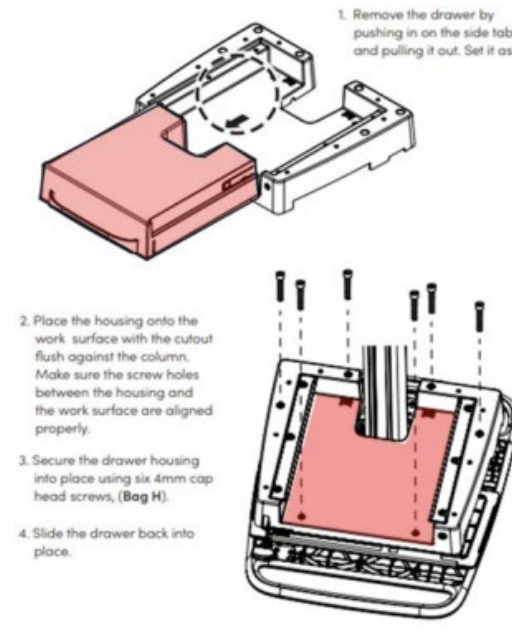
Ex. 1040 at 20

Kemnitzer Examination Tr., Ex. 2010 at 102:13-103:1.

Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

It is not impossible for drawers to extend rearward of the height adjustment mechanism

12	Q.	Looking at the drawer picture in the	10:02:21
13		middle of the page, it's fair to say the drawer has	10:02:23
14		a notch shape in its rear side that accommodates the	10:02:26
15		height adjustment mechanism, right?	10:02:30
16	A.	Yes, that's right.	10:02:32
17	Q.	And the drawer in the SlimCart is	10:02:35
18		functional, right?	10:02:37
19	A.	What do you mean by functional?	10:02:41
20	Q.	It works for its intended purpose, to hold	10:02:44
21		items, right?	10:02:47
22	A.	Yes, yes.	10:02:48
1	Q.	This picture shows it's not impossible for	10:02:51
2		a drawer to extend around the side of the height	10:02:53
3		adjustment mechanism, right?	10:02:58
4	A.	Yes.	10:03:00
5	Q.	And a user can access things placed in the	10:03:01
6		drawer of the SlimCart, right?	10:03:04
7	A.	Yes.	10:03:07



Ex. 1043, 17 (annotated)

Rydingward Examination Tr., Ex. 1045 at 42:12-43:7.

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1274 Proceeding, Paper 18 (Reply) at 5-7; 1275 Proceeding, Paper (Reply) 18 at 5-7

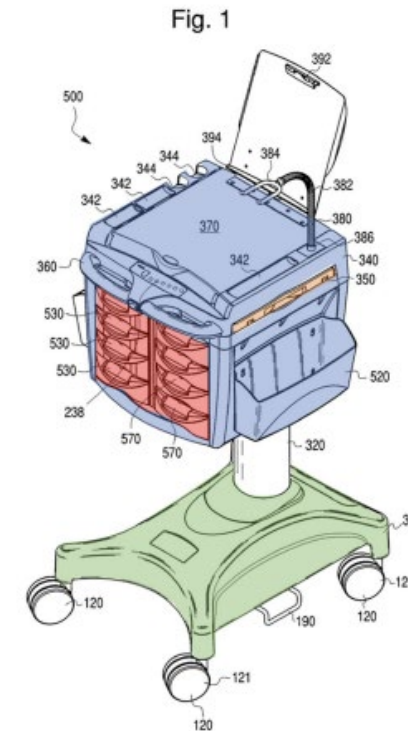
DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

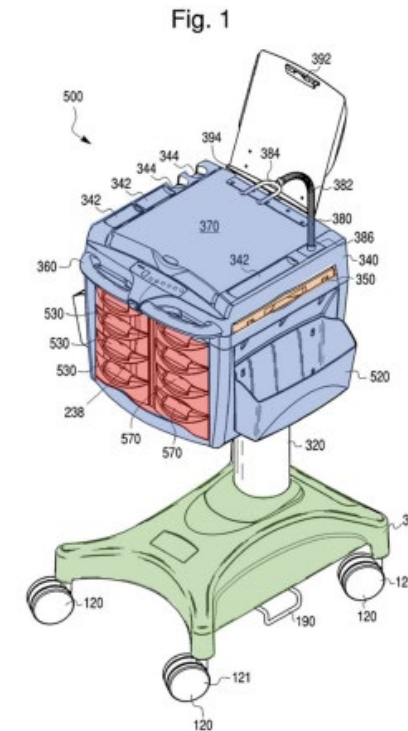
No lexicography or disavowal in the specification

- [W]e have repeatedly warned against confining the claims to [disclosed] embodiments....In particular, we have expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment.
 - *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005)



Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

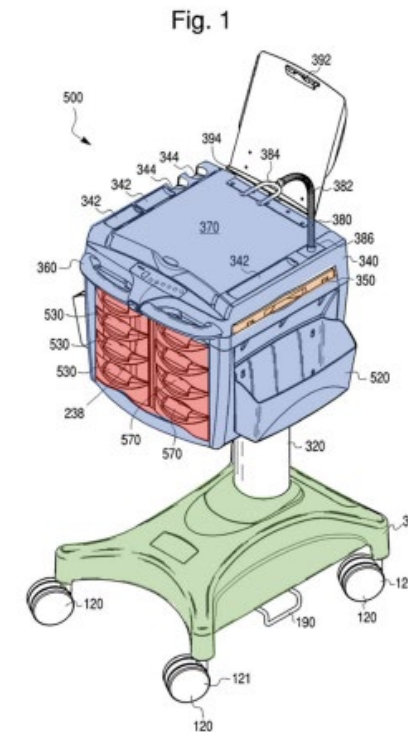
- No lexicography or disavowal in the '668 patent
 - Applicant remarks were made in the '650 patent, after the '668 patent issued
 - Challenged claims of the '668 patent have no movable work surface
- “We also note that for Georgia-Pacific to be bound by the statement made to the PTO in connection with a later prosecution of a different patent, the statement would have to be one that the examiner relied upon in allowing the claims in the patent at issue.”
 - *Georgia-Pac. Corp. v. U.S. Gypsum Co.*, 195 F.3d 1322, 1333 (Fed. Cir. 1999), opinion amended on reh'g, 204 F.3d 1359 (Fed. Cir. 2000)



Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

Georgia-Pac. Corp. v. U.S. Gypsum Co., 195 F.3d 1322, 1333 (Fed. Cir. 1999), opinion amended on reh'g, 204 F.3d 1359 (Fed. Cir. 2000)

- Citing *Mannesmann Demag Corp. v. Engineered Metal Prods. Co.*, 793 F.2d 1279, 1284–85, 230 USPQ 45, 48 (Fed. Cir. 1986)
- “In cases where a patentees amendments were not required in response to an examiners rejection or critical to the allowance of the claims, no estoppel has been found.”



No clear and unambiguous disclaimer

“[F]or prosecution disclaimer to attach, our precedent requires that the alleged disavowing actions or statements made during prosecution be both clear and unmistakable...[w]here the alleged disavowal is ambiguous, or even ‘amenable to multiple reasonable interpretations...we have declined to find prosecution disclaimer.’”

Avid Tech., Inc. v. Harmonic, Inc., 812 F.3d 1040, 1045
(Fed. Cir. 2016) (internal citations and quotations omitted)

No clear and unambiguous disclaimer

No disavowal when prosecution statements are (1) ambiguous or (2) subject to multiple interpretations

- “independent storage unit” — whether “systems with independent storage units cannot use a **central controller** to access data, and, in particular, *cannot use a central controller that identifies the storage unit on which data is stored in response to client requests.*”

<i>Avid Tech., Inc. v. Harmonic, Inc.</i> , 812 F.3d 1040 (Fed. Cir. 2016) – Alleged Disclaimer	Disclaimer?
“Avid stated that its system ‘avoids using a central controller to access data’ and that ‘ clients do not issue requests to a central controller that in turn [1] <u>identifies storage units</u> that store the data and [2] <u>issues requests to storage units</u> .’” <i>Id.</i> at 1046.	(1) No - Ambiguous “The language on its face does not exclude a central controller that performs only one or the other of the two stated functions....” <i>Id.</i> at 1046.
“Avid distinguished Boll, stating that ‘Boll’s assignment of a client to a server through a centralized interface for its <u>transaction</u> [is] contrary to the claim limitations noted above.’” <i>Id.</i> at 1046.	(2) No – Multiple Interpretations “Rather than disclaiming a system in which the central controller tells the client which storage unit contains a given segment, the language can easily be read to be distinguishing Boll on the ground that <u>each client application in Boll is connected to only one storage unit and conducts all of its transactions with that one storage unit.</u> ” <i>Id.</i> at 1046-47.

Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

The prosecution arguments in the '650 patent are directed to the movable work surface

Listing of Claims:

1. (Currently Amended) 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.

(1) **Ambiguous** – No statements unambiguously directed to claimed compartments

(2) **Multiple interpretations** - lack of statements implicating compartments and NOT the amended claimed work surface cautions against PO's construction

Clark does not teach or suggest the combination of features of claim 1. For example, Clark does not teach or suggest a cart with a height adjustment mechanism for adjusting a height of the work platform relative to the base, "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." These features contribute to the cart's ability to be made compact for better mobility and to be expanded for increased workable surface area when stationary. Also, the placement of the work surface above the compartment permits easier accessibility to the increased workable surface area than would be otherwise. In the rejection of claim 1, the space below the surface 86 and above the keyboard tray 70 of Clark is considered to be the compartment of claim 1. See Office Action at page 3. However, there is no movable work surface located above this space. Thus, Clark does not disclose the cart with a movable work surface of claim 1.

1274 Proceeding, Ex. 1002 at 132, 133, 133, 135, 137-143

1275 Proceeding, Ex. 1033 at 132, 133, 133, 135, 137-143

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1274 Proceeding, Paper 18 (Reply) at 5-9; 1275 Proceeding, Paper 18 (Reply) at 5-8

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

22

Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

The Examiner raised Ellefson for its pivotable work surface

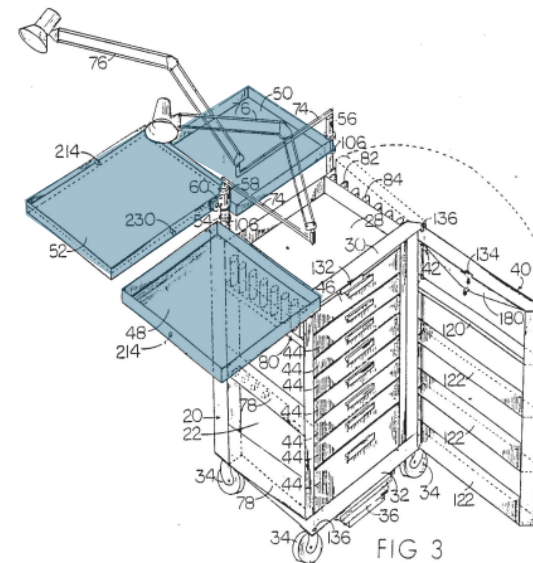
8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. in view of Rice et al. and Ellefson (US 4,976,450). The reference to Clark et al. as modified by Rice et al. is discussed above and fails to teach the provision of a work surface which can move in one of left and right directions along an arcuate path facing a forward direction. Ellefson teaches that it is well known in a cart structure to provide at least one work surface (one of 48, 50, 52) which surfaces travel in arcuate directions to left and/or right facing a forward direction (pivoting about selected pivot points 54, 56). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart taught by Clark et al. as modified by Rice et al. with at least one left-right movable work surface which follows an arcuate path as suggested by Ellefson for the purpose of providing a greater amount of surface area than is available on the platform initially taught by the base reference to Clark et al., facilitating a larger work-space for the user, and/or allowing more items to be placed on the cart.

1274 Proceeding, Ex. 1002 at 158

1275 Proceeding, Ex. 1033 at 158

(1) **Ambiguous** – No statements unambiguously directed to claimed compartments

(2) **Multiple interpretations** - lack of statements implicating compartments and NOT the amended claimed work surface cautions against PO's construction



Ellefson displays work surfaces that travel in arcuate directions

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1274 Proceeding, Paper 18 (Reply) at 5-9; 1275 Proceeding, Paper 18 (Reply) at 5-8

1275 Proceeding, Ex. 1030 at 4

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

23

Claim Construction | compartment[s] ... disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

The prosecution arguments in the '650 patent are directed to the movable work surface

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.

- (1) **Ambiguous** – No statements unambiguously directed to claimed compartments
- (2) **Multiple interpretations** - lack of statements implicating compartments and NOT the amended claimed work surface cautions against PO's construction

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.

1274 Proceeding, Ex. 1002 at 138-139

1275 Proceeding, Ex. 1033 at 138-139

Petition Grounds

'668 Patent Grounds

<i>Clark Obviousness Grounds</i>		
Ground 1A/B	Claim 3	Clark in view of Manner and Santoro (1A) or Clark in view of Manner, Santoro, and Gillis (1B) renders claim 3 obvious.
Ground 2A/B	Claim 4	Clark in view of Manner (2A) or Clark in view of Manner and Gillis (2B) renders claim 4 obvious.
<i>Reeder Obviousness Grounds</i>		
Ground 3A/B	Claim 3	Reeder in view of Manner and Santoro (3A) or Reeder in view of Manner, Santoro, and Gillis (3B) renders claim 3 obvious.
Ground 4A/B	Claim 4	Reeder in view of Manner (4A) or Reeder in view of Manner and Gillis (4B) renders claim 4 obvious.

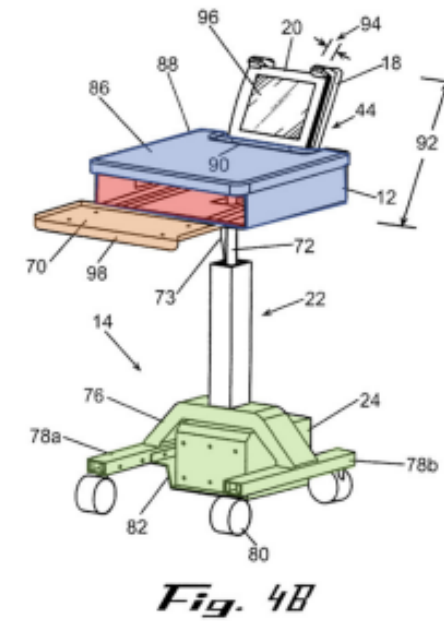
'650 Patent Grounds

<i>Clark Obviousness Grounds</i>	
Ground 1A/1B	Clark in view of Manner (1A) or Clark in view of Manner and Gillis (1B) renders obvious claims 1-3, 5, and 8.
Ground 2A/2B	Clark in view of Manner and Hartman (2A) or Clark in view of Manner, Hartman, and Gillis (2B) renders obvious claim 6.
<i>Reeder Obviousness Grounds</i>	
Ground 3A/3B	Reeder in view of Manner (3A) or Reeder in view of Manner and Gillis (1B) renders obvious claims 1-3, 5-6, and 8.

Clark's Compartments

Clark discloses compartments in two ways:

1. a cavity below the work surface 86 and above the pullout keyboard tray 70
2. a drawer or pull-out tray located above or under the horizontal tray 12.
 1. Clark, 10:23-27, 15:33-36, 23:35-40



Clark's Cavity Compartment disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction

Clark's cavity is disposed in the forward projecting portion

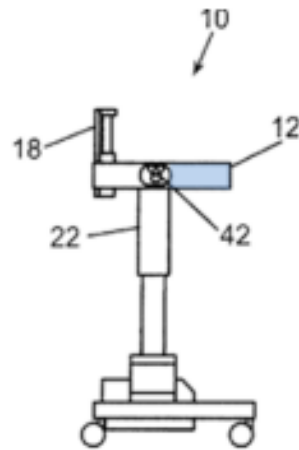


Fig. 2B

Clark, Fig. 2B (annotated)

The compartment shown below horizontal work surface 86 is disposed in the portion of the work platform that projects, relative to the height adjustment mechanism, in the forward direction, because it extends to the forward side of the height adjustment mechanism within the work platform.

1274 Proceeding, Kemnitzer Declaration, Ex. 1004 at ¶ 72.

Clark's keyboard tray is not “top mounted”

However, the alleged height-adjustment mechanism (vertical beam 22) of Clark extends through a middle portion of the alleged compartment (keyboard tray cavity 12), essentially dividing it in half. See e.g., Clark, figures 4A-4B.

An annotated version of figure 4B of Clark is reproduced below to illustrate this arrangement.

Ben-Tzvi Declaration, Ex. 2001 at ¶ 33.

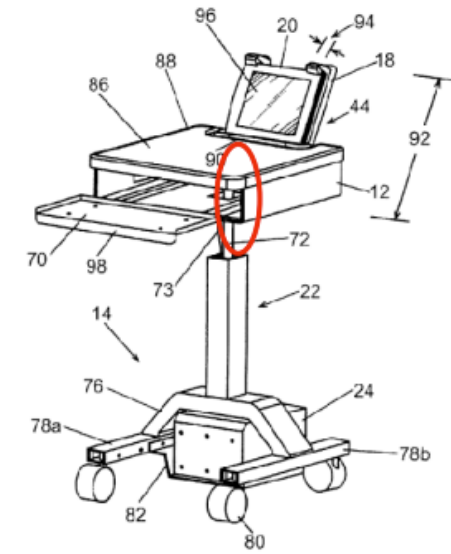


Fig. 4B

Clark, Fig. 4B (annotated by Patent Owner's Expert)

Clark's keyboard tray is not “top mounted”

3 A What I understand from looking at
4 Figure 4B is that this is a top-mounted
5 workstation for containing on top a work
6 surface and a cavity for keyboard. That's
7 what I see.
8 Q But the shaft extends through the
9 bottom of the horizontal tray 12 into the
10 tray, right?
11 A It's hard to see. Why would it do
12 that? What's the motivation?
13 A Again, this is not an engineering
14 drawing with sufficient detail to tell you
15 exactly. It's just a basic illustration.
16 There isn't enough detail, technical detail
17 here, to conclusively determine whether it's
18 going through any hole at the bottom of 12.

Tr. of Examination of Ben-Tzvi, Ex. 1039 at 120:3-18.

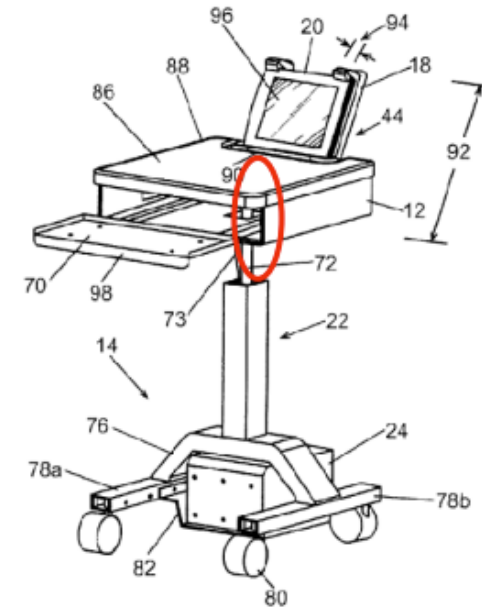


Fig. 4B

Clark, Fig. 4B (annotated by Patent Owner's Expert)

Clark's keyboard tray is not “top mounted”

19 Q Well, then, how have you
20 conclusively determined that Clark's tray is
21 top mounted?

22 A Because of the absence of such an
1 explanation in this patent. It didn't say
2 anything is going through anything, so it's
3 fully on top.

Tr. of Examination of Ben-Tzvi, Ex. 1039 at 120:19-121:3.

However, the alleged height-adjustment mechanism (vertical beam 22) of Clark extends through a middle portion of the alleged compartment (keyboard tray cavity 12), essentially dividing it in half. *See e.g.*, Clark, figures 4A-4B.

An annotated version of figure 4B of Clark is reproduced below to illustrate this arrangement.

Ben-Tzvi Declaration, Ex. 2001 at ¶ 33.

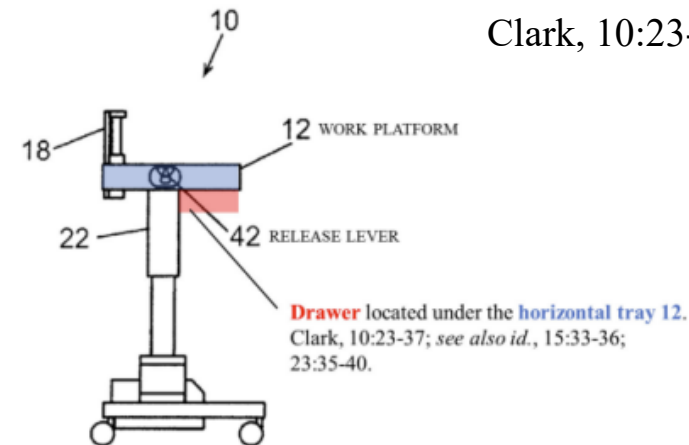
Clark's Compartments

Clark discloses compartments in two ways:

1. a cavity below the work surface 86 and above the pullout keyboard tray 70
2. a drawer or pull-out tray located above or under the horizontal tray 12.

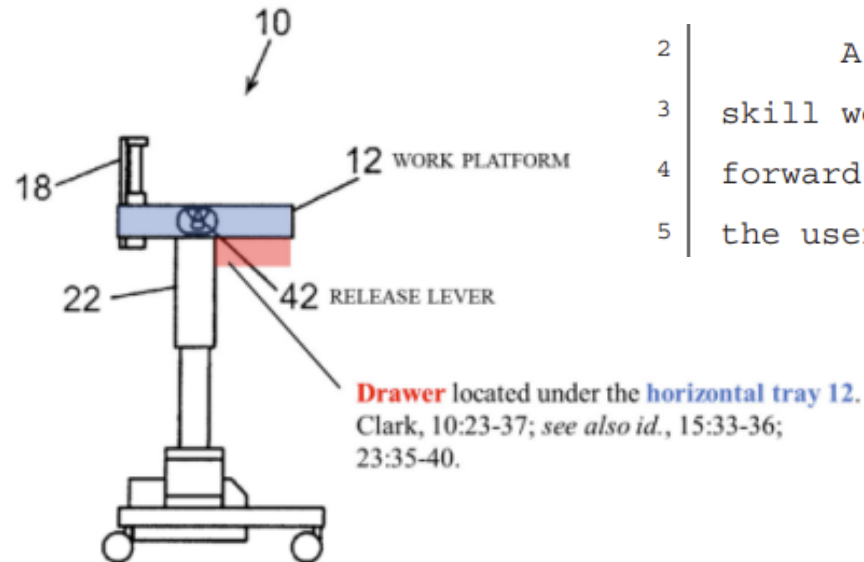
tions that include vertical components. Alternatively, the docking station 18 could be supported in a substantially horizontal position, for example by a drawer or pull-out tray located above or under the horizontal tray 12. Other locations for the docking station 18 may be preferred in certain environments. 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.

Clark, 10:23-37



Clark, Fig. 2B (annotated)

Clark's Compartments are disposed in the portion of the work platform [that] project[s] [from] the height adjustment mechanism in the forward direction



Clark, Fig. 2B (annotated)

2 A Well, I think any designer of ordinary
3 skill would understand that it would be in the
4 forward position, so it could be accessible by
5 the user of the platform.

Tr. of Examination of Kemnitzer, Ex. 2010,
135:2-5; *see also id.*, 131:8-25, 133:16-135:5.

Mr. Kemnitzer's Opinion is Supported in the Record

“Implementing multiple drawers in medical carts was routine. *Id.*; Reeder, Figs 30, 32; Ellman, 2:18-24, Figs 1-2. A POSITA would have been motivated to do so **to improve the ability to organize unlike items in separate storage compartments.**”

1274 Proceeding, Kemnitzer Declaration, Ex. 1004, ¶60;

1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶57.

“**[S]ecurity of health information** (medical histories, test results, prescriptions, etc.,) **as well as the medications themselves**, was a common concern in the medical cart industry. Ex. 1020 (“Phoon”), [0004]-[0005]; Ex. 1021 (“McDonald”), 1:35-55.”

1274 Proceeding, Kemnitzer Declaration, Ex. 1004 at ¶47;

1275 Proceeding, Kemnitzer Declaration, Ex. 1003 at ¶43.

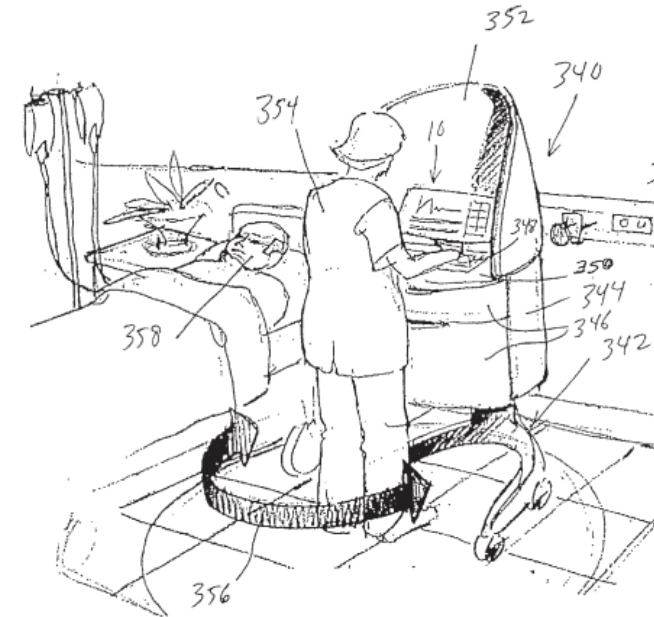


FIG. 30

Reeder, Fig. 30

Mr. Kemnitzer's Opinion is Supported in the Record

“Implementing multiple drawers in medical carts was routine. *Id.*; Reeder, Figs 30, 32; Ellman, 2:18-24, Figs 1-2. A POSITA would have been motivated to do so **to improve the ability to organize unlike items in separate storage compartments.**”

1274 Proceeding, Kemnitzer Declaration, Ex. 1004 at ¶60;

1275 Proceeding, Kemnitzer Declaration, Ex. 1003 at ¶57.

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1274 Proceeding, Kemnitzer Declaration, Ex. 1004 at ¶47;

1275 Proceeding, Kemnitzer Declaration, Ex. 1003 at ¶43.

Ellman

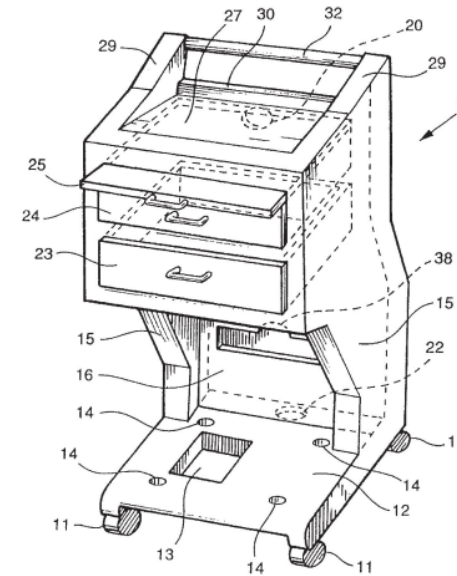
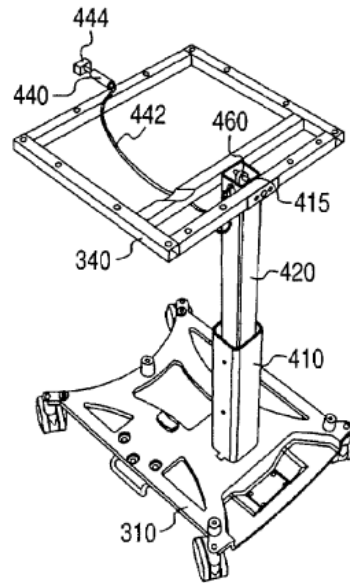


Fig. 1

Capsa's Top-Heavy Criticisms Lack Relevance and Merit

1. Clark is not “top mounted”

Fig. 10B



'668 and '650 patents, Fig. 10B

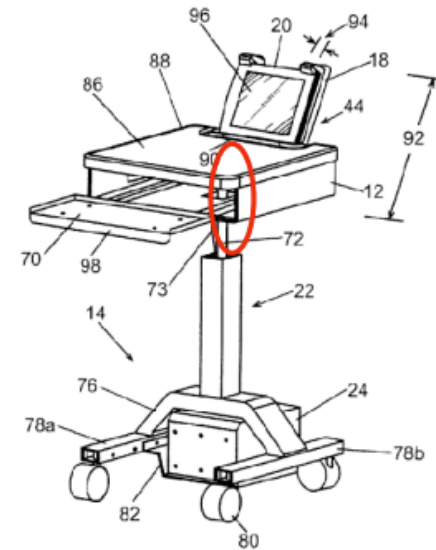


Fig. 4B

Clark, Fig. 4B (annotated by Patent Owner's Expert, Dr. Ben-Tzvi)

Capsa's Top-Heavy Criticisms Lack Relevance and Merit

2. Capsa ignores Clark's base and mass distribution, factors essential to a stability analysis

- “Stability is influenced by factors such as *the base area of the object, the mass distribution*, and the position of the COG.”
 - Ben-Tzvi Declaration, Ex. 2012, ¶81.
- “If an object is tilted, it will tip over if a vertical line from its COG *falls outside the base...*”
 - Tr. of Examination of Kemnitzer, Ex. 2010, 60:23-61:20.
- “In order for the unit to tilt, the center of gravity has to pass beyond that line, that perimeter line *of the base.*”
 - *Id.*, 57:24-59:4.

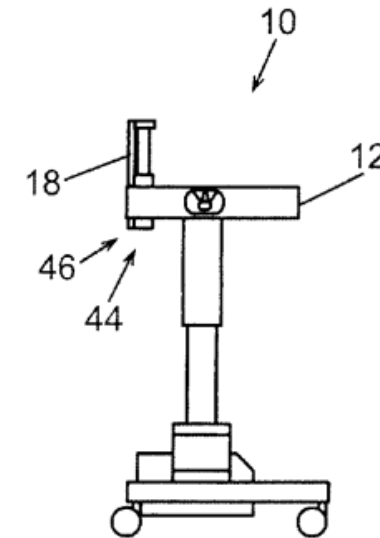


Fig. 2C

Clark, Fig. 2C

Capsa's Top-Heavy Criticisms Lack Relevance and Merit

2. Capsa ignores Clark's base and mass distribution

76. Again, as previously discussed and as successfully argued in the '650 file history in overcoming Clark, a PHOSITA would not be motivated to modify the carts of Clark to reach the claimed invention because the entire workstation of Clark is mounted on top of the height adjustment mechanism. Adding relatively heavy compartments to the workstation of Clark (with its higher COG) would render the cart more unstable and more prone to being knocked over (e.g., thus unsatisfactory for its intended purpose). In other words, a PHOSITA, concerned with cart stability, would side with

Ben-Tzvi Declaration, Ex. 2012, ¶ 76.

10 Q You have determined that adding a
11 drawer under the keyboard tray of Clark would
12 render that combination unstable, right?
13 MR. KWAK: Objection, form.
14 THE WITNESS: I didn't say anything
15 like that. What I was trying to explain
16 to you is that the common wisdom in the
17 time frame of 2003 and 2004 was that
18 these computer workstations, okay, were
19 designed in a way that the workstation is
20 on top of the height adjustment
21 mechanism, so they are as light and
22 unencumbered as possible, and that's it.

Tr. of Examination of Ben-Tzvi, 163:10-22.

Capsa's Top-Heavy Criticisms Lack Relevance and Merit

2. Capsa ignores Clark's base and mass distribution

7 Q Nope, I'm asking you did you
8 calculate the tipping angle for Clark?

9 A Tipping angle for Clark, how could
10 I? I don't have access to the product. I
11 didn't.

Tr. of Examination of Ben-Tzvi, 180:7-11.

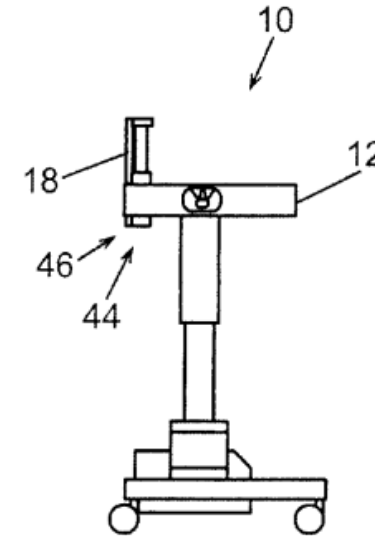


Fig. 2C

Clark, Fig. 2C

Capsa's Top-Heavy Criticisms Lack Relevance and Merit

2. Capsa ignores Clark's base and mass distribution

The vertical beam 22 includes a gas-spring height adjustment mechanism for adjusting the length of the beam and, thus, the height of the horizontal tray 12 above the dolly assembly 14. For example, the chassis 14 may be a model MPC2001 manufactured by JACO, Inc. with the standard tray replaced by the horizontal tray 12 shown in FIG. 1.

Clark, 8:63-9:1

Specifications			
Height	Platform	Casters	Weight
29" - 39"	15" x 15"	2 Swivel 2 Fixed	70 lbs.



Ex. 1037, 11

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1274 Proceeding, Paper 18 (Reply) at 16-21; 1275 Proceeding, Paper 18 (Reply) at 13-20

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Capsa's Top-Heavy Criticisms Lack Relevance and Merit

2. Capsa ignores Clark's base and mass distribution

Q It says, "For example, the chassis 14 may be a model MPC2001 manufactured by JACO, Inc., with the standard tray replaced by the horizontal tray 12 shown in FIG. 1."

Have you ever seen or evaluated MPC 2001 manufactured by Jaco, Inc.?

A I didn't evaluate any products in this case.

Tr. of Examination of Ben-Tzvi, 150:3-10.



Ex. 1037, 11

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1274 Proceeding, Paper 18 (Reply) at 16-21; 1275 Proceeding, Paper 18 (Reply) at 13-20

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

40

Capsa's Top-Heavy Criticisms Lack Relevance and Merit

3. Capsa's lower COG does not, alone, improve stability

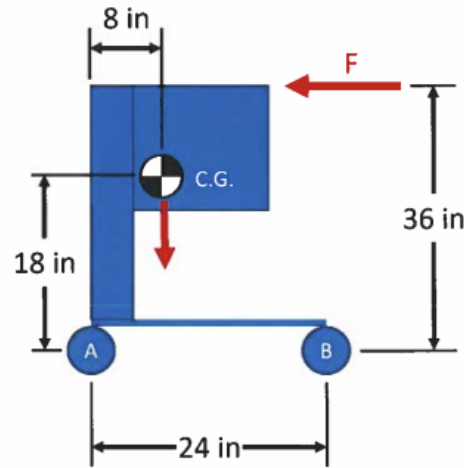


Figure 1

$$\sum M_A = 0 = F * (36 \text{ in}) - (50 \text{ lb}) * (8 \text{ in})$$

Solving for F gives

$$F = \frac{(50 \text{ lb}) * (8 \text{ in})}{36 \text{ in}} = 11.1 \text{ lb}$$

Ex. 1038, 1-2

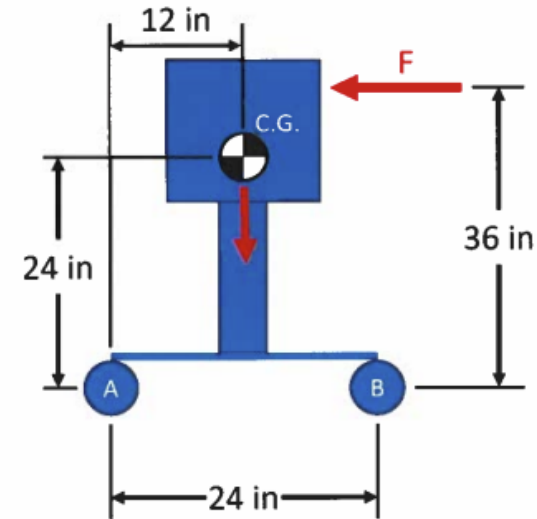


Figure 2

$$\sum M_A = 0 = F * (36 \text{ in}) - (50 \text{ lb}) * (12 \text{ in})$$

Solving for F gives

$$F = \frac{(50 \text{ lb}) * (12 \text{ in})}{36 \text{ in}} = 16.7 \text{ lb}$$

Thus, we see that the second cart requires a greater force to tip, and therefore is more stable.

Capsa's Top-Heavy Criticisms Lack Relevance and Merit

3. Capsa's lower COG does not, alone, improve stability

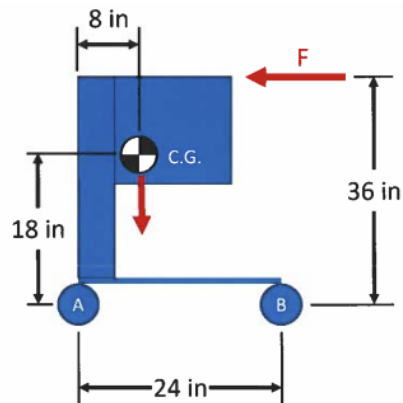


Figure 1

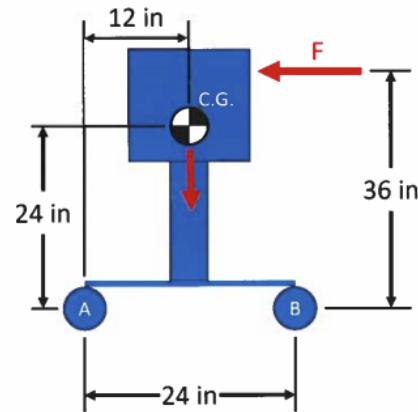


Figure 2

Ex. 1038, 1-2

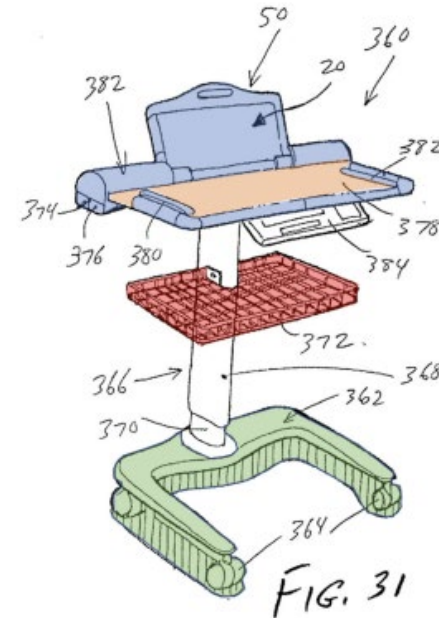
9 Q Okay. And so the cart in Figure 2
10 has a higher center of gravity than the cart
11 in Figure 1, right?
12 A Based on your hypothetical figures,
13 yes.
14 Q Okay. And the force required to tip
15 the cart in Figure 2 is more than the force
16 required to tip the cart in Figure 1, correct?
17 A Based on your distinct embodiments,
18 yes.

Tr. of Examination of Ben-Tzvi, 186:9-18.

Reeder's Compartments

Reeder discloses compartments in three ways:

1. wire tray 372
2. storage containers 718
3. drawers

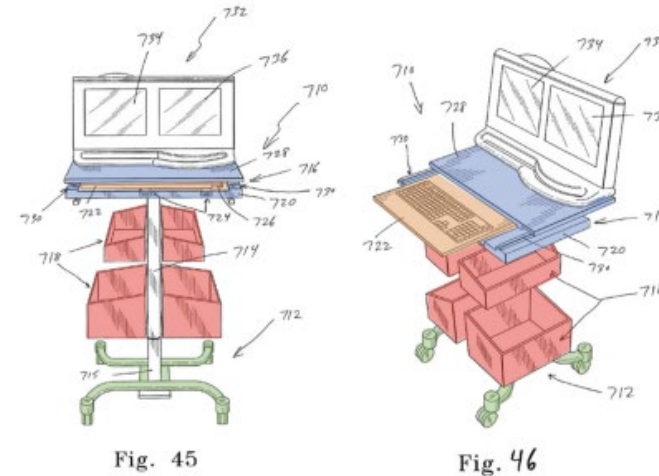


Reeder, Fig. 31 (annotated)

Reeder's Compartments

Reeder discloses compartments in three ways:

1. wire tray 372
2. storage containers 718
3. drawers 346, 394

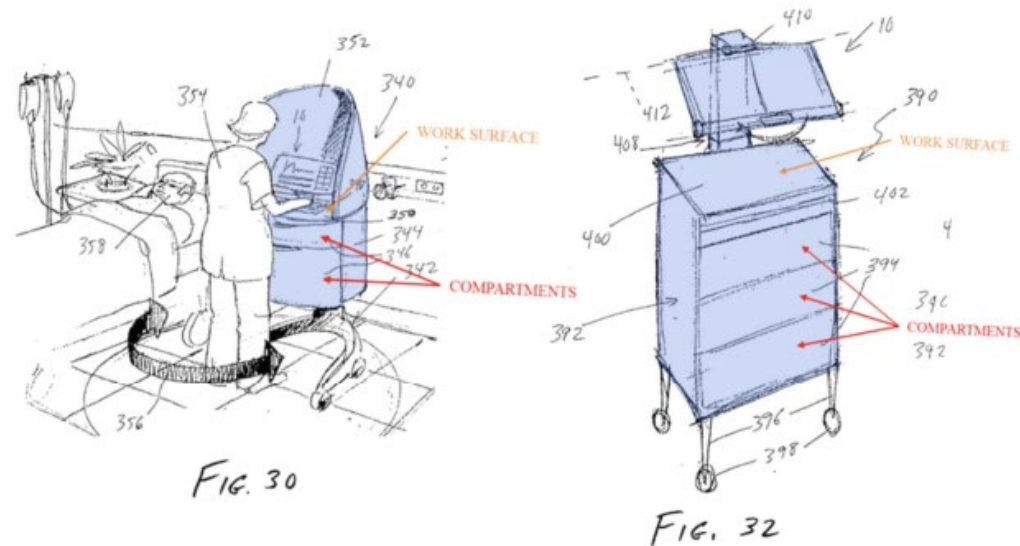


Reeder, Figs. 45-46 (annotated)

Reeder's Compartments

Reeder discloses compartments in three ways:

1. wire tray 372
2. storage containers 718
3. drawers 346, 394

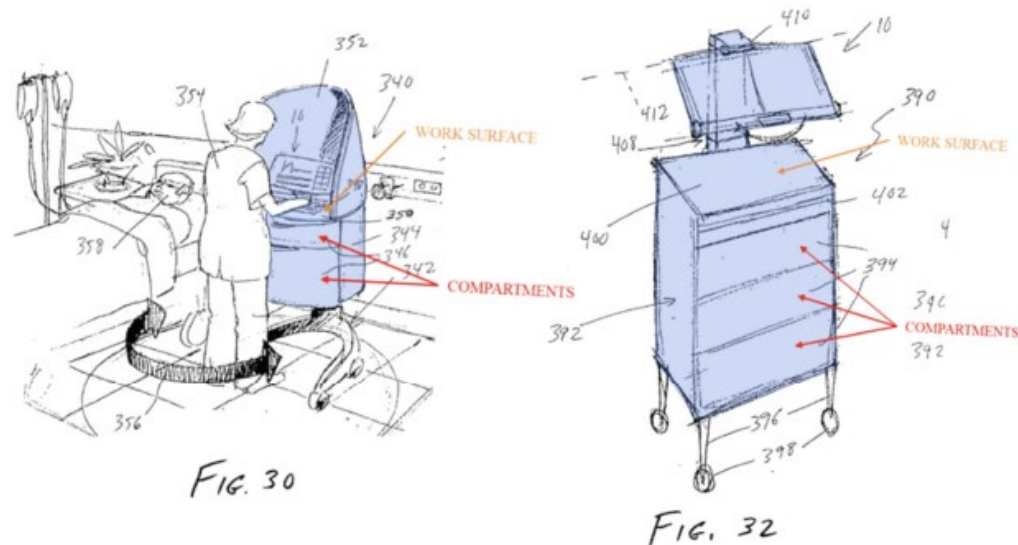


Reeder, Figs. 45-46 (annotated)

Reeder's Compartments

The Petition explains a POSITA would have modified Reeder's tray and container embodiments with Reeder's drawer embodiments

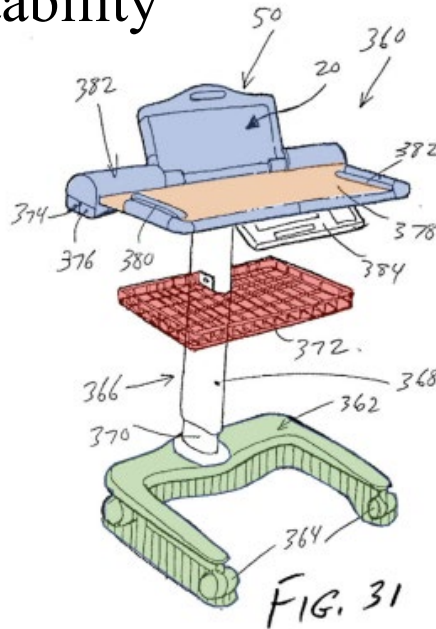
- A POSITA would have been motivated to install drawers “to provide secure storage on the height adjustable cart.”
 - 1274 Proceeding, Kemnitzer Declaration, Ex. 1004, ¶147 (citing Reeder & Ellman).
 - 1275 Proceeding, Kemnitzer Declaration, Ex. 1003 at ¶ 135-136.
- Implementing drawers in medical carts was well known and routine
 - 1274 Proceeding, Kemnitzer Declaration, Ex. 1004, ¶133 (citing Reeder & Ellman).
 - 1275 Proceeding, Kemnitzer Declaration, Ex. 1003 at ¶ 135-136.



Reeder, Figs. 45-46 (annotated)

Capsa's Top-Heavy Criticisms Lack Relevance and Merit

Capsa ignores Reeder's base and the how the base affects stability



9 Q So, in your opinion, does this -- in
10 your opinion, does this Figure 31 show a, a cart
11 that you believe is stable?
12 A Yes.
13 Q And why is that?
14 A It has a large footprint and all of
15 the items that I see that are suspended above it
16 appear to fall within that footprint.
17 Q All right. So, you're saying, with
18 "fall within that footprint, you're saying that,
19 because the tray 372 and the workstation portion,
20 pointed to as 378, that it's within the footprint
21 of the base; that you consider that stable?
22 A Yes.

Tr. of Examination of Kemnitzer, Ex. 2010, 138:9-22.

Reeder, Fig. 31 (annotated)

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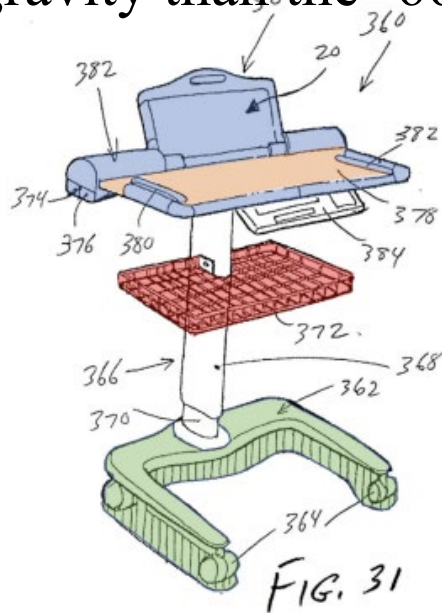
1274 Proceeding, Paper 18 (Reply) at 22-23; 1275 Proceeding, Paper 18 (Reply) at 9-20

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Capsa's Top-Heavy Criticisms Lack Relevance and Merit

Capsa's expert cannot determine if Reeder has a higher center of gravity than the '668 and '650 patents



3 Q Does the cart in Figure 31 of Reeder
4 have a higher center of gravity than the cart
5 in the '668 Patent?
6 MR. KWAK: Objection, form.
7 THE WITNESS: I need to know more
8 specifications to be able to determine
9 that.
10 If I had a CAD model of each of
11 those, then I would ask the computer to
12 calculate that for me, and then I would
13 be able to compare.

Tr. of Examination of Ben-Tzvi, Ex. 1039 at 167:3-13.

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Reeder, Fig. 31 (annotated)

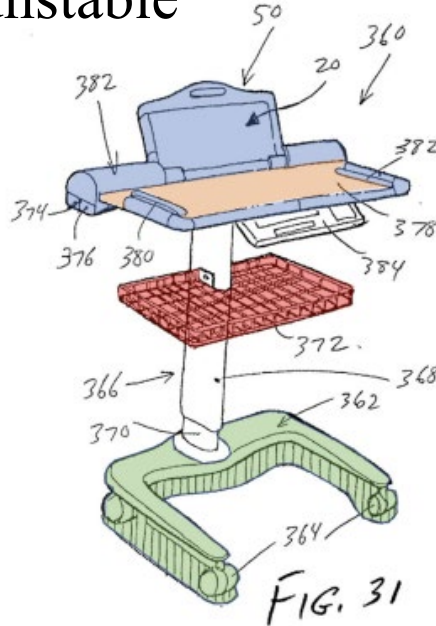
1274 Proceeding, Paper 18 (Reply) at 22-23; 1275
Proceeding, Paper 18 (Reply) at 9-20

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Capsa's Top-Heavy Criticisms Lack Relevance and Merit

Capsa's expert cannot determine if Reeder modified as proposed is unstable



12 Q Did you calculate the tipping angle
13 for Reeder?
14 A I know that there are -- as far as I
15 know, I know that they're not UL certified, so
16 I wouldn't know what is the tipping angle that
17 would make it unstable.

Tr. of Examination of Ben-Tzvi, Ex. 1039, 180:12-17.

Reeder, Fig. 31 (annotated)

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1274 Proceeding, Paper 18 (Reply) at 22-23; 1275
Proceeding, Paper 18 (Reply) at 9-20

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

1. No sales evidence demonstrating commercial success
2. Success attributed to unclaimed features
3. No nexus between claimed features and commercial success
4. No supporting evidence for long felt unmet need or copying

Appendix

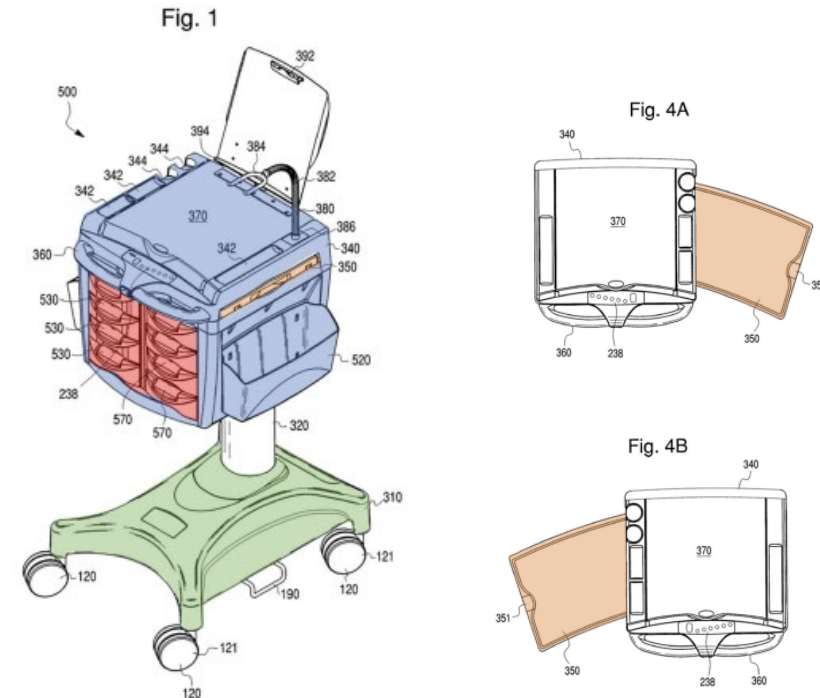
DEMONSTRATIVE EXHIBITS – NOT EVIDENCE

51

The '668 and '650 Patents

“An aspect of the present invention relates to a cart including a **work platform** having a **work surface** and at least one **compartment**, a **base**, and a height adjustment mechanism for adjusting the height of the work platform relative to the base. The compartment can be a drawer. The work platform can accommodate drawers of different sizes.”

'668 Patent, 2:11-16; '650 Patent, 2:12-17



'668 Patent Independent Claims 3 and 4

3. A cart comprising:

a work platform including a work surface and compartments for containing items;
a base configured to be movable in at least a rearward direction; and
a height adjustment mechanism for adjusting the height of the work platform relative to the base,
wherein the base includes a portion that projects from the height adjustment mechanism in a forward direction that is substantially opposite to the rearward direction,
wherein the work platform includes a portion that projects from the height adjustment mechanism in the forward direction, the compartments are disposed in the portion of the work platform that projects from the height adjustment mechanism in the forward direction, and the compartments are configured to permit a user facing in the rearward direction to access an item within the compartments,
wherein the height adjustment mechanism is configured to releasably lock the work platform at a plurality of heights,
wherein the height adjustment mechanism comprises:
a stationary casing connected to the base;
a telescoping casing connected to the work platform and configured to move relative to the stationary casing;
at least two drawer slides disposed between the stationary casing and the telescoping casing;
a driver configured to releasably lock the telescoping casing relative to the stationary casing; and
an actuator for controlling the driver, and
wherein the actuator is disposed above the compartments and on the portion of the work platform that projects in the forward direction.

4. A cart comprising:

a work platform including a work surface and at least one compartment for containing an item within the compartment;
a base configured to be movable in at least a rearward direction; and
a height adjustment mechanism for adjusting the height of the work platform relative to the base,
wherein the height adjustment mechanism is configured to releasably lock the work platform at a plurality of heights, the height adjustment mechanism comprising:
a stationary casing connected to the base;
a telescoping casing connected to the work platform and configured to move relative to the stationary casing;
a driver configured to releasably lock the telescoping casing relative to the stationary casing; and
an actuator for controlling the driver,
wherein the base includes a portion that projects from the height adjustment mechanism in a forward direction that is substantially opposite to the rearward direction,
wherein the work platform includes a portion that projects from the height adjustment mechanism in the forward direction, the compartment is disposed in the portion of the work platform that projects from the height adjustment mechanism in the forward direction, and the compartment is configured to permit a user facing in the rearward direction to access an item within the compartment,
wherein the actuator is disposed above the compartment and on the portion of the work platform that projects in the forward direction.

'650 Patent Independent Claim 1

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.

Fig. 4A

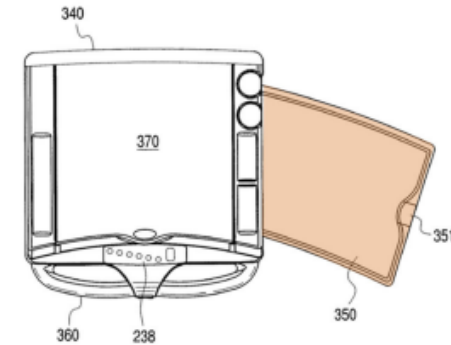
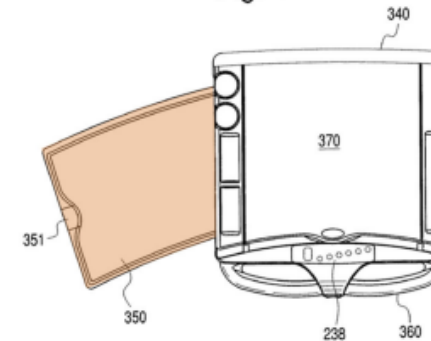


Fig. 4B

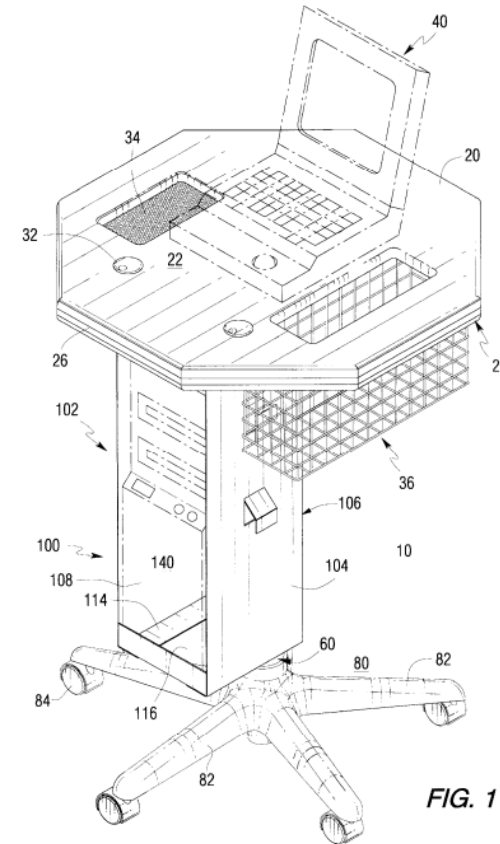


Capsa's predecessor did not invent height adjustable compartments

1. Field of the Invention

This invention relates to a mobile workstation and more particularly to a mobile workstation having a height adjustment capability wherein the height of the workstation can be adjusted from a seated position to a standing position therefore providing ease and versatility of use in hospital and other health related industries.

Dell, 1:6-11



Dell, Fig. 1

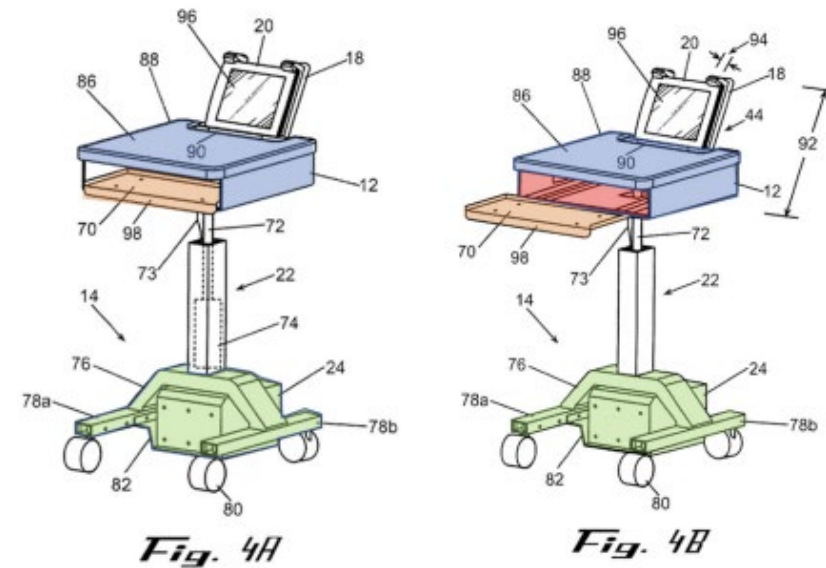
DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

55

Clark's Remaining Teachings are Undisputed

Clark teaches all remaining elements of the independent claims except the actuator location and drawer slides

- work platform (horizontal tray 12)
- work surface (pull-out keyboard tray 70)
- base configured to be movable in at least a rearward direction (arched cross-beam 76, runner beams 78, and casters 80)



Clark, Figs. 4A-B
(annotated)

Clark's Remaining Teachings are Undisputed

Clark teaches all remaining elements of the independent claims except the actuator location and drawer slides

- a height adjustment mechanism comprising:
 - a stationary casing
 - a telescoping casing (vertical beam 22)
 - a driver (gas spring 74 and shaft 72)
 - wherein the HAM is configured to releasably lock the work platform at a plurality of heights

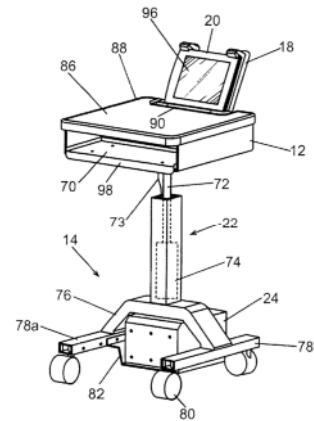


Fig. 4A

Clark, Fig. 4A

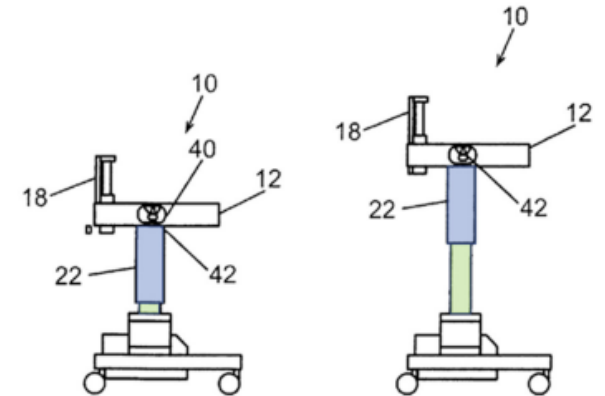


Fig. 2A

Fig. 2B

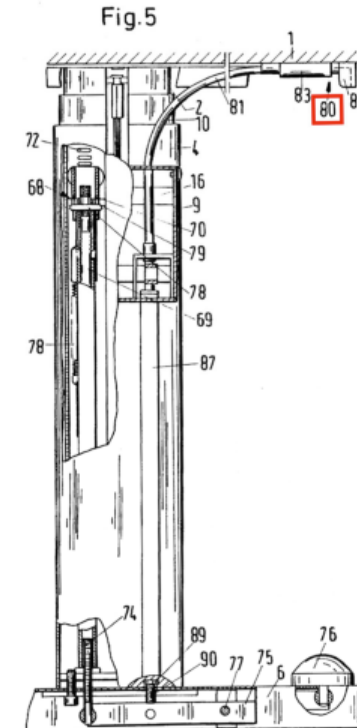
Clark, Figs. 2A-B (annotated)

Manner's Teachings

Capsa does not contest that Manner teaches the actuator location

The actuating device 80 comprises a Bowden pull 81 which according to FIG. 5 is guided to the edge of the table top 1 facing the user of the work table. The Bowden pull 81 is provided with a handle that is for example in the form of a pivotable grip 82 (FIG. 3). This grip 82 is fastened within a holder 83 that is connected to the underside of the table top 1 and is pivotable in the holder 83. The grip 82 is connected to the cable 84 of the Bowden pull 81. By pivoting the handle 82 relative to the holder 83 the cable 84 is displaced within the guide sleeve 85 of the Bowden pull 81. The holder 83 can be connected at any desired location to the table top 1 so that the actuating device 80 can be easily activated by the user.

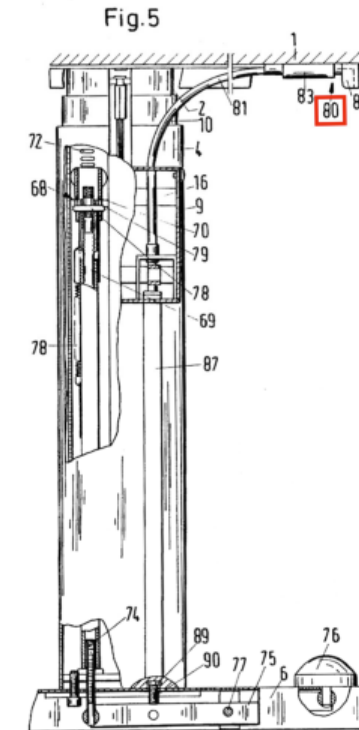
Manner, 9:24-36



Manner, Fig. 5 (annotated)

The Combination of Clark and Manner is Undisputed

- Clark's actuator may be substituted with Manner's actuator
 - Manner, 9:17-31
- The combination “provide[s] flexibility in locating the actuator and to ensure operation of Clark's drawer embodiments”
 - 1274 Proceeding, Kemnitzer Declaration, Ex. 1004, ¶95 (citing evidence).
 - 1275 Proceeding, Kemnitzer Declaration, Ex. 1003 at ¶ 86.
- Manner provides a motivation: “so that the actuating device 80 can be easily activated by the user”
 - Manner, 9:33-35
- It was routine and well understood by a POSITA to position an actuator at the front of a work platform for ease of access by the user
 - 1274 Proceeding, Kemnitzer Declaration, Ex. 1004, ¶95 (citing evidence).
 - 1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶ 86 (citing evidence).

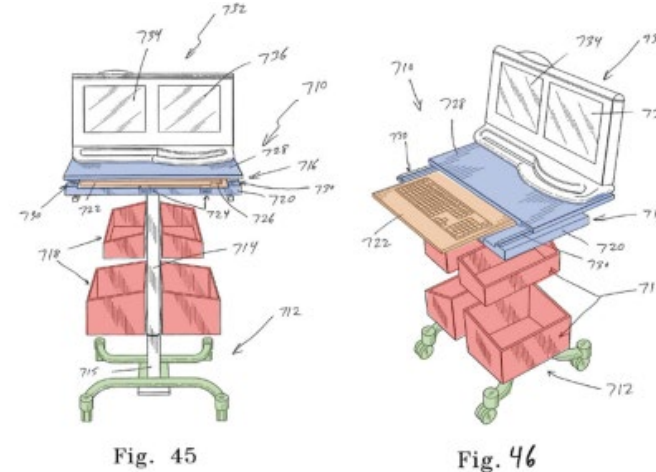


Manner, Fig. 5 (annotated)

Reeder's Teachings

It is undisputed Reeder teaches:

- work platform (upper support 716 and base frame 720)
- work surface (keyboard 722)
- base configured to be movable in at least a rearward direction (base 712)
 - 1274 Proceeding, Paper 1 at 55-62
 - 1275 Proceeding, Paper 1 at 49-82



Reeder, Figs. 45-46 (annotated)

Reeder's Teachings

It is undisputed Reeder teaches:

- a height adjustment mechanism comprising:
 - a stationary casing (bottom support member 715)
 - a telescoping casing (top vertical support member 714)
 - 1274 Proceeding, Paper 1 (Pet.) at 54-64, 73-75; 84-86
 - 1274 Proceeding, Paper 1 (Pet.) at 49-82

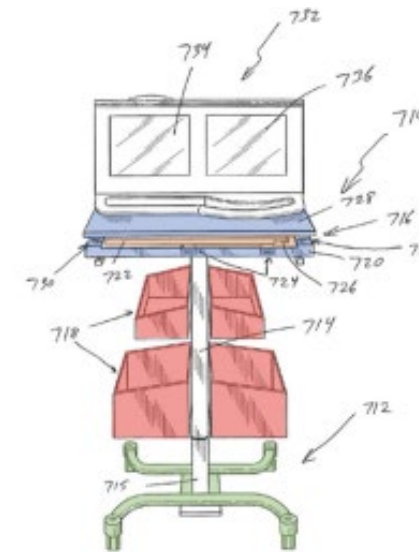


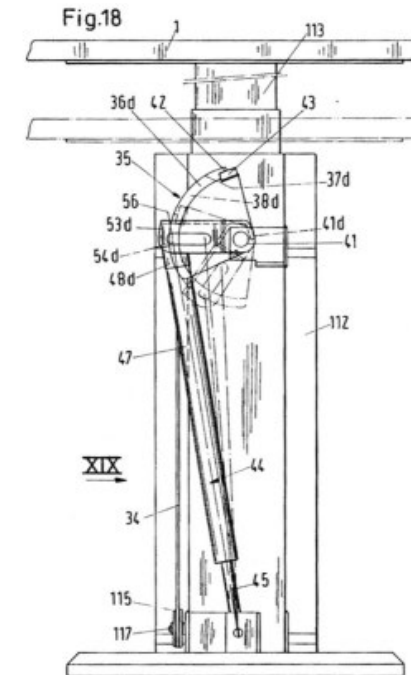
Fig. 45

Reeder, Fig. 45 (annotated)

Manner provides the remaining elements of the height adjustment mechanism and the actuator location

It is undisputed Manner teaches:

- A height adjustment mechanism comprising:
 - a driver configured to releasably lock...(piston rod 45 and gas spring 44)
 - an actuator disposed above the compartment and on the portion of the work platform that projects in the forward direction (actuating device 80)

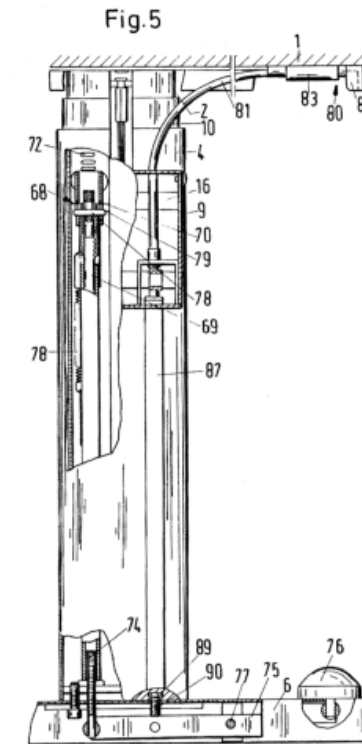


Manner, Fig. 18

Manner provides the remaining elements of the height adjustment mechanism and the actuator location

Capsa does not contest that Manner teaches the actuator location and details of the driver

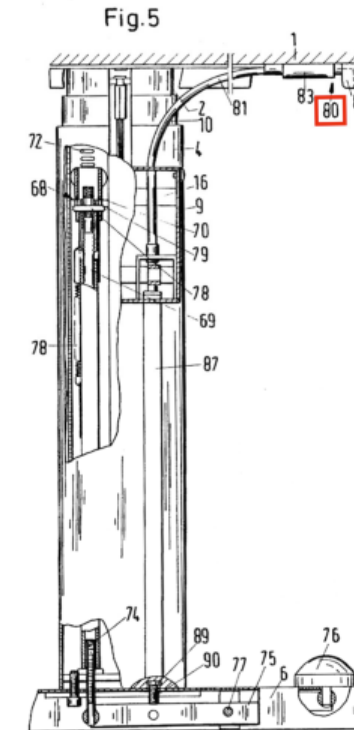
- A height adjustment mechanism comprising:
 - a driver configured to releasably lock...(piston rod 45 and gas spring 44)
 - an actuator disposed above the compartment and on the portion of the work platform that projects in the forward direction (actuating device 80)



Manner, Fig. 5

The Combination of Reeder and Manner is Undisputed

- Manner provides a motivation for the actuator location: “so that the actuating device 80 can be easily activated by the user”
 - Manner, 9:33-35
- Manner’s driver and actuator provide the necessary details to implement Reeder’s height adjustment mechanism
 - 1274 Proceeding, Kemnitzer Declaration, Ex. 1004 ¶¶118-121.
 - 1275 Proceeding, Kemnitzer Declaration, Ex. 1003 ¶¶157-158.
- Gas springs were ubiquitous in the art. A POSITA would have understood the combination of Reeder and Manner would allow for easy adjustment of the height of the work platform.
 - 1274 Proceeding, Kemnitzer Declaration, Ex. 1004 ¶120 (citing Hartman and Dell).
 - 1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶125 (citing Hartman and Dell)z.
- It was routine and well understood by a POSITA to position an actuator at the front of a work platform for ease of access by the user
 - 1274 Proceeding, Kemnitzer Declaration, Ex. 1004, ¶176 (citing evidence).
 - 1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶173 (citing evidence).



Manner, Fig. 5 (annotated)

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1274 Proceeding, Paper 1 (Pet.) at 17-18, 37-38, 43; 1275 Proceeding, Paper 1 (Pet.) at 49-56, 70-81

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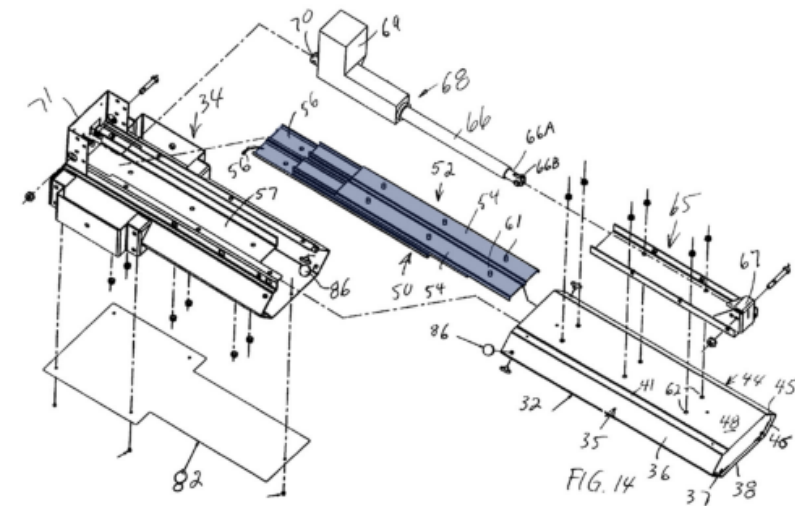
64

Santoro's Teachings

Capsa does not contest Santoro teaches the drawer slides

[0036] A pair of conventional slide mechanisms generally designated respectively 50 and 52 in FIG. 6 are operationally mounted between the inner leg 32 and the outer leg 34. Each of the slide mechanisms 50, 52 is similar in shape so that only one need be described further for a complete understanding of the invention. The slide mechanisms 50, 52 each include a first side member 54, a central member 55, and a second side member 56, all of which are elongated in a vertical direction. As is known in the art, each of the slide mechanisms includes rows of ball bearings between the respective side members and the center member so that the slides freely extend as shown partially in FIG. 14. The bearings are shown at 59 in FIG. 8, and are well known to those skilled in the art of drawer slides, for example.

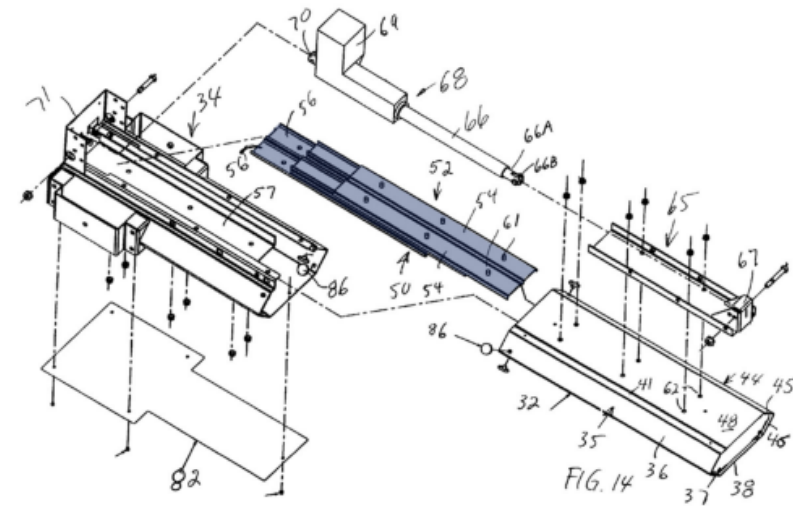
Santoro, ¶ 36



Santoro, Fig. 14 (annotated)

The Combination of Clark/Reeder and Santoro is Undisputed

- Santoro provides “conventional slide mechanism...well known to those skilled in the art of drawer slides.”
 - Santoro, ¶ 36
- A POSITA would have recognized the importance of reducing friction and enable free movement between telescoping sections of Clark’s height adjustment mechanism
 - 1274 Proceeding, Kemnitzer Declaration, Ex. 1004 ¶¶ 82, 50 (citing evidence).



Santoro, Fig. 14 (annotated)

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

1. No sales evidence demonstrating commercial success

9	Q.	It's fair to say you did not provide any	09:31:44
10		sales data in your declaration, right?	09:31:46
11	A.	No, I did not.	09:31:51

Tr. of Examination of Rydingsward, Ex. 1045, 26:9-11.

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

2. Success attributed to unclaimed features

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.

Rydingsward Declaration, Ex. 2018, ¶ 14.

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.

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

2. Success attributed to unclaimed features

4	Q.	Is it fair to say you do not have an	09:11:38
5		engineering degree, right?	09:11:40
6	A.	Yeah, that's correct.	09:11:43
20	A.	Okay. No. I mean, I wouldn't consider	09:12:30
21		myself an expert in the design of medical carts,	09:12:36
22		given I'm not an engineer.	09:12:40

Tr. of Examination of Rydingsward, Ex. 1045, 14:1-22.

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

3. No nexus between claimed features and commercial success

1	Q.	And you're not an expert in patent law,	09:12:42
2		correct?	09:12:43
3	A.	That is correct. I am not.	09:12:46
4	Q.	And it's fair to say you don't really know	09:12:50
5		what the claims of the '668 patent require, right?	09:12:51
6	A.	That is correct, no.	09:12:57
7	Q.	And also fair to say you don't really know	09:12:59
8		what the claims of the '650 patent require, right?	09:13:01
9	A.	Yes, that's correct.	09:13:05

Capsa cart sales are driven by aesthetics, touch screens, and fleet management software.

Tr. of Examination of Rydingsward, Ex. 1045, 23:7-24:1; 25:1-26:1.

Tr. of Examination of Rydingsward, Ex. 1045, 15:1-9

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

3. No nexus between claimed features and commercial success

“[I]f the commercial success is due to an unclaimed feature of the device, the commercial success is irrelevant.”

Ormco Corp. v. Align Tech., Inc., 463 F.3d 1299, 1312 (Fed. Cir. 2006)

Capsa cart sales are driven by aesthetics, touch screens, and fleet management software.

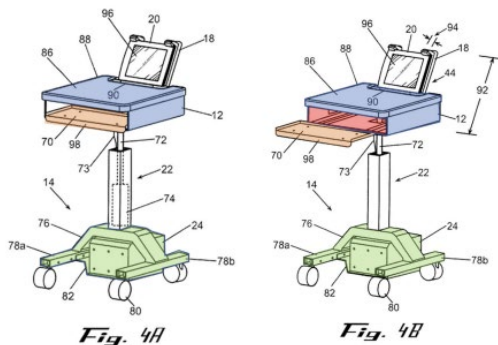
Tr. of Examination of Rydingsward, Ex. 1045, 23:7-24:1; 25:1-26:1.

Capsa's Secondary Considerations Fall Short

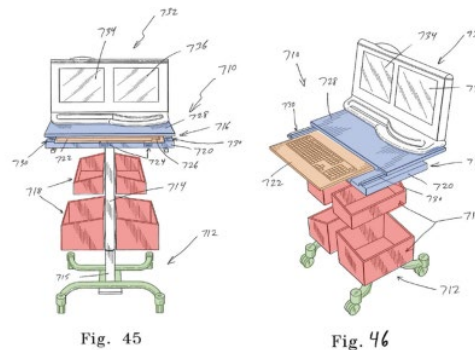
Capsa's secondary considerations argument faces critical shortcomings

3. No nexus between claimed features and commercial success

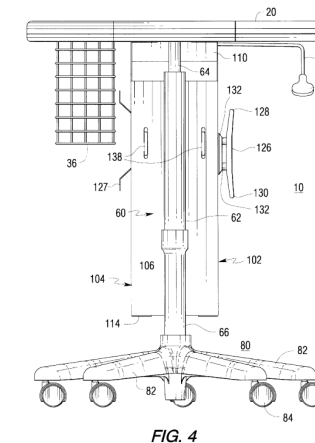
Height adjustable carts with compartments are known in the art.



Clark, Figs. 4A-B (annotated)



Reeder, Figs. 45-46 (annotated)



Dell, Fig. 4

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

3. No nexus between claimed features and commercial success

Height adjustable carts with compartments are known in the art.

“So too if the feature that creates the commercial success was known in the prior art, the success is not pertinent.”

Ormco Corp. v. Align Tech., Inc., 463 F.3d 1299, 1312 (Fed. Cir. 2006)

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

3. No nexus between claimed features and commercial success

No evidence commercial success comes from claimed drawers.

Capsa sells the same carts without drawers with no modifications to their frame for stability

Model Options



Ex. 1041 at 2



Ex. 1042 at 2

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

3. No nexus between claimed features and commercial success

Capsa sells the same carts without drawers with no modifications to their frame for stability

Model Options



Ex. 1041 at 2

17	Q.	Does the M38e Document model meet UL60601	09:48:06
18		standard?	09:48:11
19	A.	Yes, it is part of an overall platform	09:48:15
20		that meets the UL60601 standards, the platform being	09:48:17
21		the M38.	09:48:27
22	Q.	Do you know if the base of the M38e	09:48:44
1		Document model is different than the base of the	09:48:47
2		other M38 models shown on page 2 of this Document?	09:48:50
3	A.	I do, yes. It is the same base.	09:48:59
4	Q.	Is the height of the M38e Document model	09:49:02
5		different than the height of the other M38 models	09:49:05
6		listed on this sheet?	09:49:08
7	A.	No. The standard configuration uses the	09:49:12
8		exact same casters, so it is the same height.	09:49:17

Tr. of Examination of Rydingsward, Ex. 1045, 34:17-35:8.

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1274 Proceeding, Paper 18 (Reply) at 24-27; 1275 Proceeding, Paper 18 (Reply) at 23-26

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE

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Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

3. No nexus between claimed features and commercial success

Capsa sells the same carts without drawers with no modifications to their frame for stability



Ex. 1042 at 2

20	Q.	Does the Carelink Document model without	09:54:03
21		compartments meet UL60601?	09:54:06
22	A.	Again, it's the entire platform of	09:54:11
1		Carelink, which meets the UL60601 standards.	09:54:13
2	Q.	It's fair to say that the base of the	09:54:24
3		Carelink Document model is the same as the base of	09:54:25
4		the other Carelink models on this sheet?	09:54:28
5	A.	It is, yes.	09:54:33

Tr. of Examination of Rydingsward, Ex. 1045, 37:20-38:5.

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

3. No nexus between claimed features and commercial success

No evidence commercial success comes from claimed drawers

“[I]f the commercial success is due to an unclaimed feature of the device, the commercial success is irrelevant.”

Ormco Corp. v. Align Tech., Inc., 463 F.3d 1299, 1312 (Fed. Cir. 2006)

“[w]hen the thing that is commercially successful is not coextensive with the patented invention...the patentee is not entitled to a presumption of nexus.”

Fox Factory, Inc. v. SRAM, LLC, 944 F.3d 1366, 1373 (Fed. Cir. 2019)

Capsa's Secondary Considerations Fall Short

Capsa's secondary considerations argument faces critical shortcomings

4. No supporting evidence for long felt unmet need or copying

9 Q Can you list for me any medical cart
10 manufacturers that sold carts in 2003?
11 A I don't know.

Tr. of Examination of Ben-Tzvi, Ex.
1039, 21:9-11.

7 Q. When did you graduate college? 09:08:52
8 A. I graduated in 2003. 09:08:54
9 Q. Do you recall the month? 09:09:04
10 A. Yes. So I guess it would have been in 09:09:10
11 May. Yes, I believe it was May. 09:09:12
12 Q. And your -- your first job in the medical 09:09:18
13 cart industry was after you graduated college, 09:09:20
14 right? 09:09:23
15 A. Yes, it was certainly after college, yes. 09:09:24

Tr. of Examination of Rydingsward, Ex. 1045, 12:4-15.

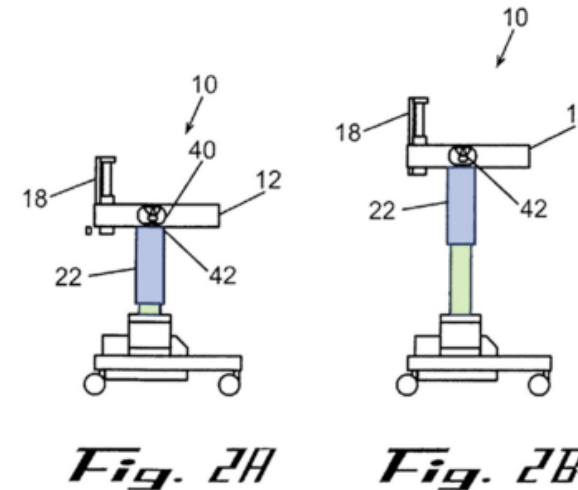
The Dependent Claims in the '650 Patent are Obvious

2. The cart of claim 1, wherein the height adjustment mechanism comprises a first telescoping portion connected to the base, and a second telescoping portion connected to the work platform and configured to move relative to the first telescoping portion, and wherein the driver is configured to releasably position the second telescoping portion relative to the first telescoping portion.

'650 Patent, Claim 2

a height adjustment mechanism comprising:

- a stationary casing
- a telescoping casing (vertical beam 22)
- releasable lock mechanism
 - Clark, 9:53-10:8 (“the operator releases the lever 42, which locks the tray at the desired height”)



Clark, Figs. 2A-B (annotated)

The Dependent Claims in the '650 Patent are Obvious

2. The cart of claim 1, wherein the height adjustment mechanism comprises a first telescoping portion connected to the base, and a second telescoping portion connected to the work platform and configured to move relative to the first telescoping portion, and wherein the driver is configured to releasably position the second telescoping portion relative to the first telescoping portion.

'650 Patent, Claim 2

a height adjustment mechanism comprising:

- a stationary casing (bottom support member 715)
- a telescoping casing (top vertical support member 714)
- a driver configured to releasably lock...(piston rod 45 and gas spring 44)

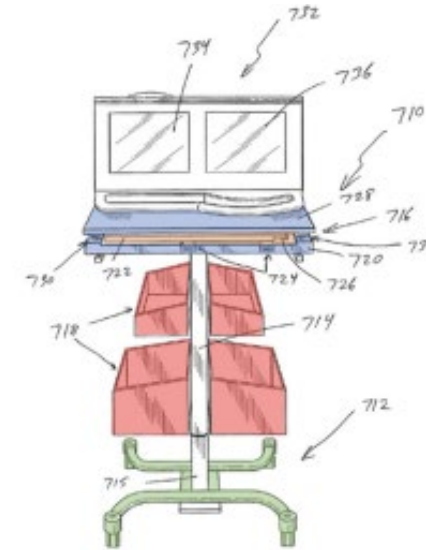


Fig. 45

Reeder, Fig. 45 (annotated)

The Dependent Claims in the '650 Patent are Obvious

3. The cart of claim 2, wherein the first telescoping portion is a stationary outer casing, and the second telescoping portion is a movable inner casing.

'650 Patent, Claim 3

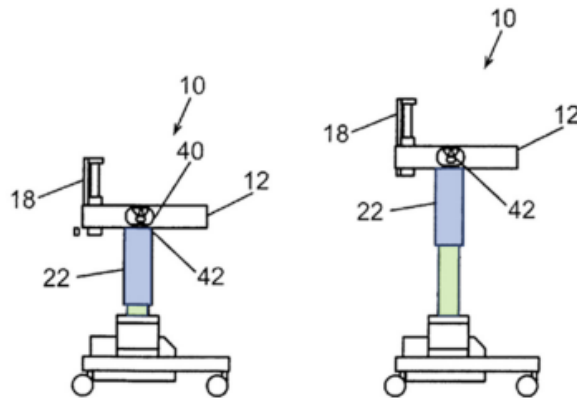
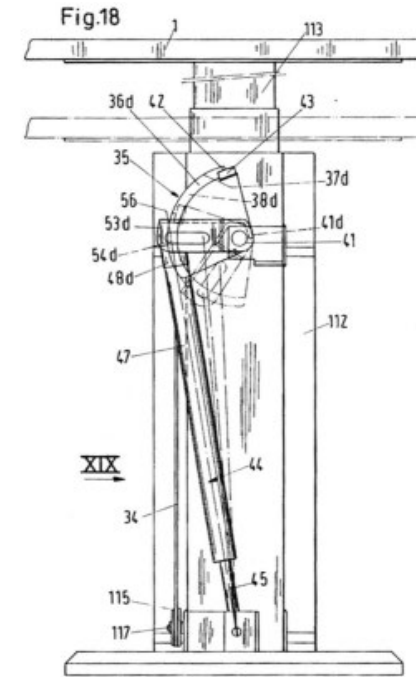


Fig. 2A

Fig. 2B

Clark, Figs. 2A-B (annotated)



Manner, Fig. 18

The Dependent Claims in the '650 Patent are Obvious

3. The cart of claim 2, wherein the first telescoping portion is a stationary outer casing, and the second telescoping portion is a movable inner casing.

'650 Patent, Claim 3

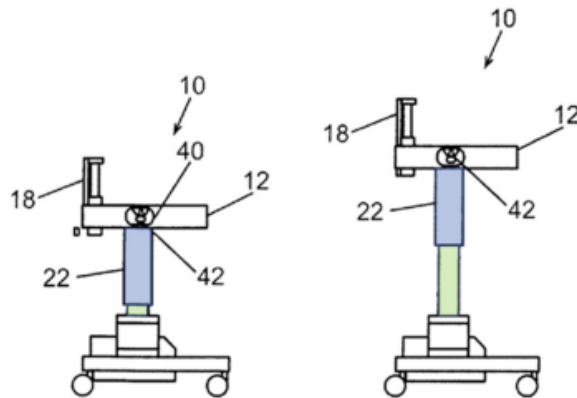


Fig. 2A

Fig. 2B

Clark, Figs. 2A-B (annotated)

Accordingly, reversing the orientation of the casings of the height-adjustment mechanism was a known method to yield predictable results. Such an arrangement would have been a mere design choice well within the ordinary skill of a POSITA. For example, Dell shows such an arrangement with telescoping columns 62 and 66, indicating such features were well known. Dell, 2:57-3:6, Fig. 4.

1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶102.

The Dependent Claims in the '650 Patent are Obvious

3. The cart of claim 2, wherein the first telescoping portion is a stationary outer casing, and the second telescoping portion is a movable inner casing.

'650 Patent, Claim 3

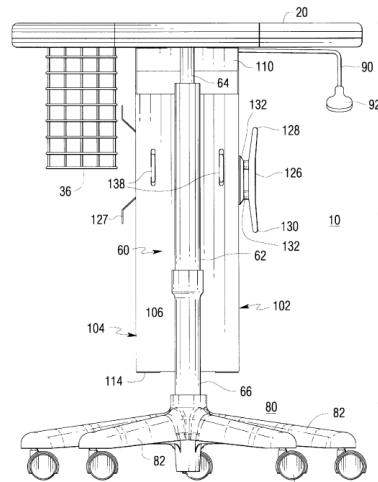


FIG. 4

Dell, Fig. 4

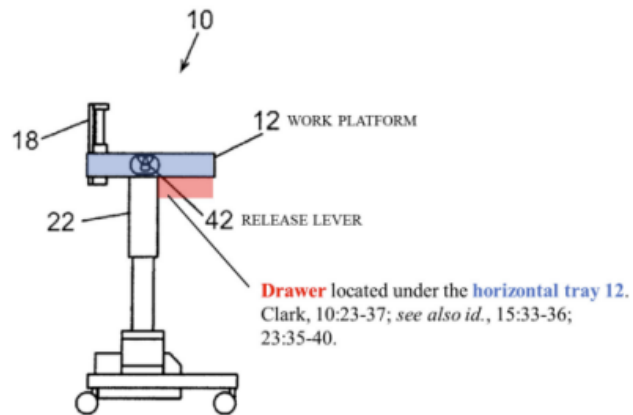
Accordingly, reversing the orientation of the casings of the height-adjustment mechanism was a known method to yield predictable results. Such an arrangement would have been a mere design choice well within the ordinary skill of a POSITA. For example, Dell shows such an arrangement with telescoping columns 62 and 66, indicating such features were well known. Dell, 2:57-3:6, Fig. 4.

1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶102.

The Dependent Claims in the '650 Patent are Obvious

5. The cart of claim 1, wherein the actuator is disposed at a spaced vertical distance above the compartment.

'650 Patent, Claim 5



Clark, Fig. 2B (annotated)

It would have been obvious to position Clark's actuator on the front edge of the work platform as depicted in Manner and including a drawer located below the work platform (horizontal tray 12) as taught by Clark. Such an arrangement would result in the actuator disposed at a spaced vertical distance above the compartment because the dimension of the work platform and work surface would be between the actuator and the compartment.

1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶104.

The Dependent Claims in the '650 Patent are Obvious

5. The cart of claim 1, wherein the actuator is disposed at a spaced vertical distance above the compartment.

'650 Patent, Claim 5

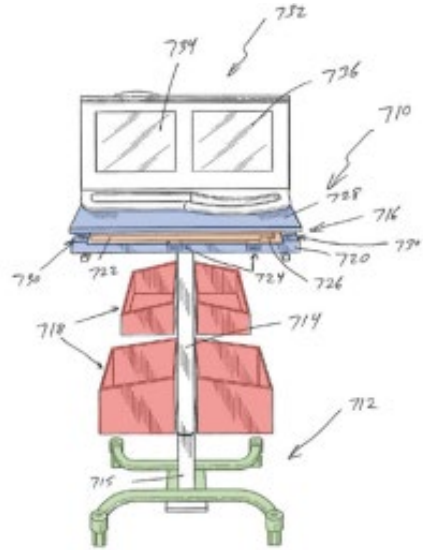


Fig. 45

Reeder, Fig. 45 (annotated)

It would

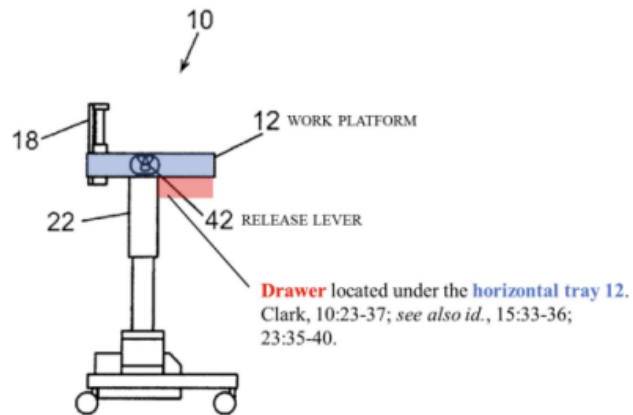
have been obvious for a POSITA to recognize that when a user of the cart raised or lowered the work platform they would likely grasp the forward projection of the work surface and apply appropriate upward or downward pressure on the work surface. In order to facilitate the height-adjustment process, it would be logical to locate the actuator at or near the front of the top surface where the user's hands would be positioned.

1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶188-189.

The Dependent Claims in the '650 Patent are Obvious

8. The cart of claim 1, wherein the driver includes a piston that, in response to the user's actuation of the actuator, permits gas to flow out of the piston during lowering of the height of the work platform, and that, in response to the user's actuation of the actuator, permits gas to flow into the piston during increasing of the height of the work platform.

'650 Patent, Claim 8



Clark, Fig. 2B (annotated)

As explained in element [1e], Section VI.C.6, Clark discloses a driver in the form of "a gas-spring height adjustment mechanism for adjusting the length of the beam and, thus, the height of the horizontal tray 12 above the dolly assembly 14." Clark 8:63-9:10. A POSITA would have understood Clark's disclosure of a driver in the form of a gas spring height adjustment mechanism to include a piston, which are well known components of gas springs.

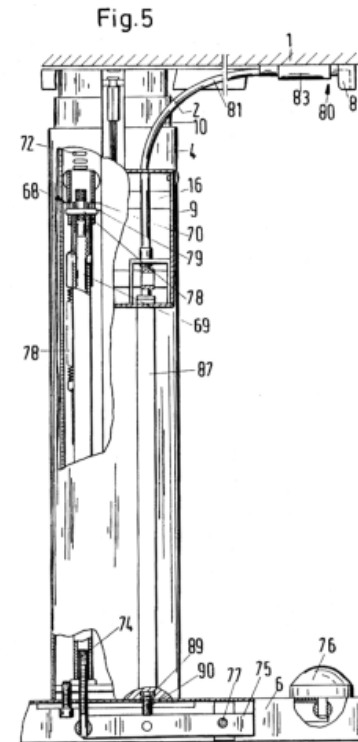
1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶107.

The Dependent Claims in the '650 Patent are Obvious

8. The cart of claim 1, wherein the driver includes a piston that, in response to the user's actuation of the actuator, permits gas to flow out of the piston during lowering of the height of the work platform, and that, in response to the user's actuation of the actuator, permits gas to flow into the piston during increasing of the height of the work platform.

'650 Patent, Claim 8

a driver configured to releasably locked...(piston rod 45 and gas spring 44)



Manner, Fig. 5

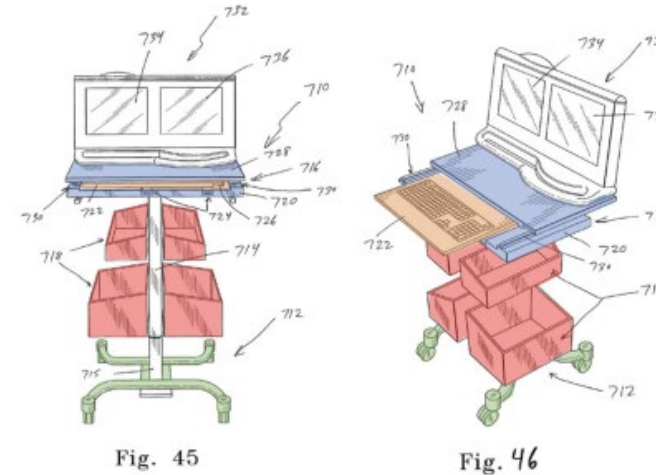
The Dependent Claims in the '650 Patent are Obvious

6. The cart of claim 1, wherein the work platform further comprises a movable platform configured to move in at least one of the forward direction and the rearward direction.

'650 Patent, Claim 6

Top surface 728 is moveable from a retracted position to an extended position relative to base frame 720

- Reeder, ¶ 0148



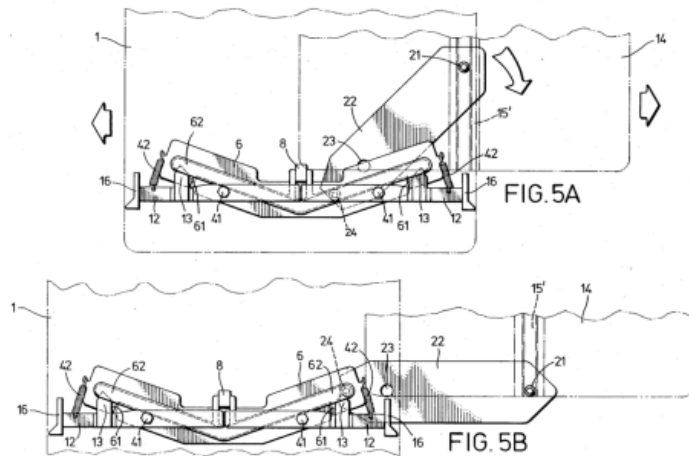
Reeder, Figs. 45-46 (annotated)

The Dependent Claims in the '650 Patent are Obvious

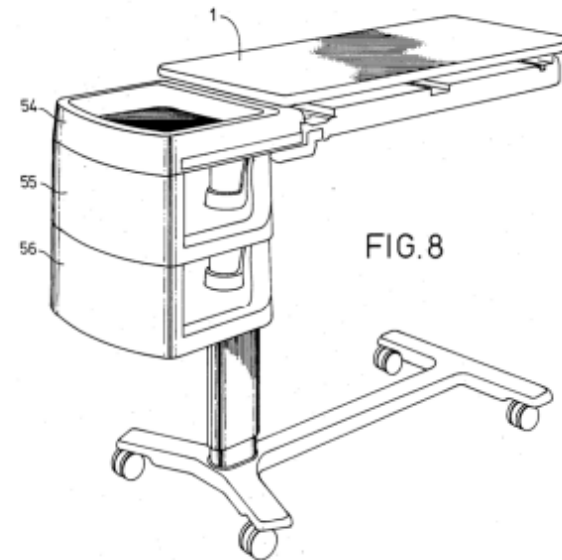
The Combination of Clark with Hartman is undisputed

6. The cart of claim 1, wherein the work platform further comprises a movable platform configured to move in at least one of the forward direction and the rearward direction.

'650 Patent, Claim 6



Hartman, Figs. 5A, 5B



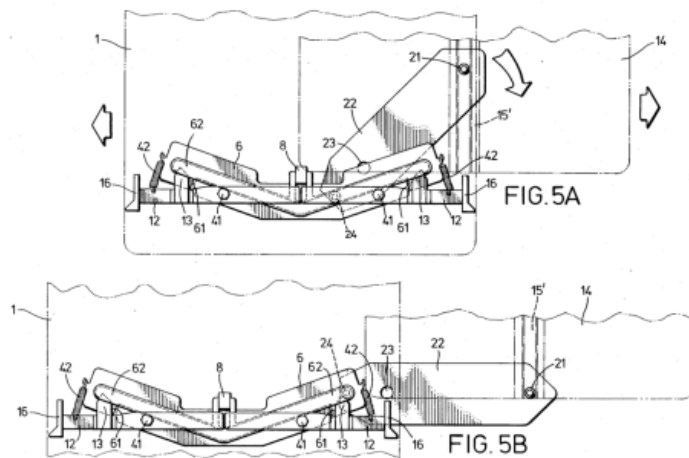
Hartman, Fig. 8

The Dependent Claims in the '650 Patent are Obvious

The Combination of Clark with Hartman is undisputed

6. The cart of claim 1, wherein the work platform further comprises a movable platform configured to move in at least one of the forward direction and the rearward direction.

'650 Patent, Claim 6



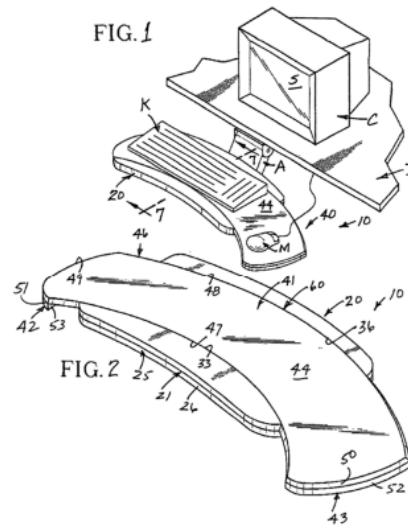
Hartman, Figs. 5A, 5B

Hartman. Hartman, 3:44-51, Fig. 1A; Such a combination would have involved combining known elements, (Hartman's slideable top tray 1 and slide pivots 2) with Clark's platform (work surface 86 on horizontal tray 12) according to known methods to yield the predictable result of a movable platform configured to move in at least one of the forward direction and the rearward direction. A POSITA would have been motivated to combine Hartman and Clark to "provide[] sufficient horizontal surface for use by medical personnel...without rearranging or relocating items already placed on the [surface.]" Hartman, 1:51-59. Such a modification would have enabled a medical professional to, for example, place a computer on Clark's docking station 18 and slide the work surface 86 in a rearward direction to access a lower surface for writing or placement of objects without relocating the computer.

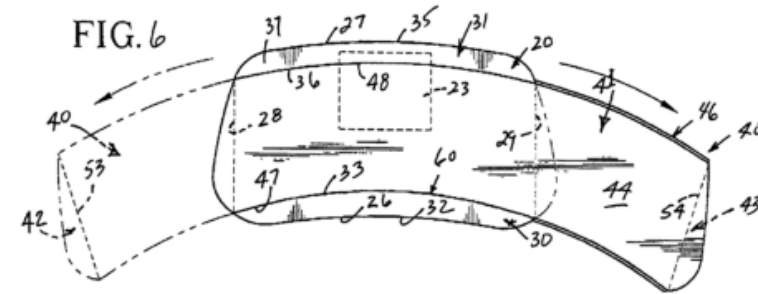
1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶ 113.

Gillis's sliding keyboard tray

Work surface - a curved surface at the top of a cart large enough to dispense medication or hold work papers.



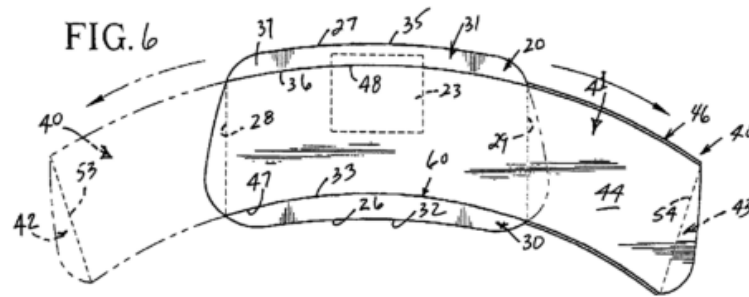
Gillis, Figs. 1-2



Gillis, Fig. 6

Gillis's sliding keyboard tray

Work surface - a curved surface at the top of a cart large enough to dispense medication or hold work papers.



Gillis, Fig. 6

The modification would involve the simple substitution of the slidable member 40 and groove 60 of Gillis's keyboard tray 10 with Clark's keyboard tray to obtain the predictable result of a keyboard that could extend toward the user and then slide in either a rightward or leftward direction along an arcuate path. In such a combination, Gillis's slideable member 40 would have fit within Clark's cavity below the work surface 86. It would have been well within the ordinary skill of a POSITA to size Clark's cavity below the work surface 86 of Clark to implement the slideable member 40 in place of Clark's pull-out keyboard tray 70. A POSITA would have been motivated to incorporate Gillis's slideable tray "for accommodating both left-handed and right-handed people" who may use a computer mouse in either a left or right hand. Gillis, [0001].

1275 Proceeding, Kemnitzer Declaration, Ex. 1003, ¶ 63.

Capsa's Claim Construction is unduly limiting

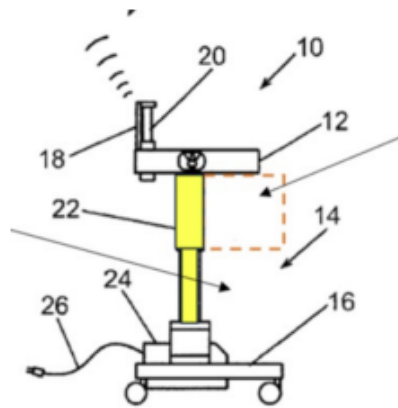


Figure 1, 2B of Clark
(side view)

Clark, Fig. 1 (as annotated in POR)

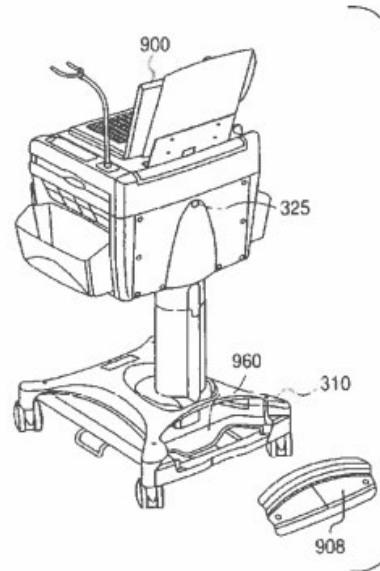


Fig. 11

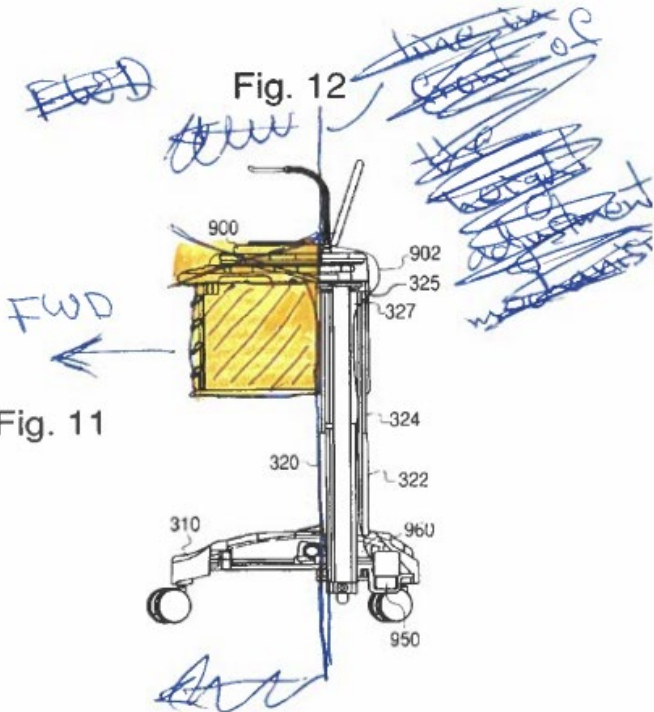


Fig. 12

Ex. 1036; *see also* Tr. of Examination of Ben-Tzvi, Ex. 1039, 88:6-89:21, 96:20-102:4.