UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HARTMANN US INC. and THE HAPPY GROUP INC.
Petitioners

v.

MAURICE J.P. TABONE
Patent Owner

_____

IPR2024-01215
U.S. Patent No. 11,225,365

_____

PETITION FOR *INTER PARTES* REVIEW UNDER 35 U.S.C. §312 AND 37 C.F.R. §42.104

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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. 11,225,365
Ex.1002	Prosecution History of U.S. Appl. 11,225,365
Ex.1003	Declaration of Thomas Dunn under 37 C.F.R. §1.68
Ex.1004	*Curriculum Vitae* of Thomas Dunn
Ex.1005	Prosecution History of U.S. Appl. 12/449,556
Ex.1006	WO 2008/098288
Ex.1007	AU 2007900654
Ex.1008	AU 2007902246
Ex.1009	U.S. 2005/0238764
Ex.1010	WO 2006/001696
Ex.1011	U.S. 1,254,276
Ex.1012	U.S. 3,854,581
Ex.1013	U.S. 3,951,292
Ex.1014	EP 1 558 504
Ex.1015	U.S. 4,625,906
Ex.1016	WO 2003/086905
Ex.1017	Complaint in *Maurice J.P. Tabone v. Hartmann US Inc., et al.*, 4:23-cv-0986 (E.D. Mo.) (Aug. 8, 2023)
Ex.1018	U.S. 10,287,070
Ex.1019	Prosecution History of U.S. 10,287,070
Ex.1020	FR 2 441 549

Ex.1021	U.S. 4,280,648
Ex.1022	Reserved
Ex.1023	Reserved
Ex.1024	Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (June 21, 2022)
Ex.1025	Patent Owner's Infringement Contentions for U.S. 11,225,365, served in *Maurice J.P. Tabone v. Hartmann US Inc., et al.*, 4:23-cv-0986 (E.D. Mo.)
Ex.1026	Reserved
Ex.1027	Reserved
Ex.1028	Reserved
Ex.1029	U.S. 3,285,491
Ex.1030	U.S. 3,298,594
Ex.1031	Definition of "unitary," American Heritage Dictionary (1985)
Ex.1032	Definition of "unitary," Merriam Webster Collegiate Dictionary (1995)
Ex.1033	U.S. 4,986,414
Ex.1034	U.S. 4,582,248
Ex.1035	U.S. 5,860,528
Ex.1036	"What Are the Dimensions of an Egg?," Dimensions of Stuff, *available at*: https://dimensionofstuff.com/what-are-the-dimensions-of-an-egg/ (last accessed June 25, 2024)
Ex.1037	Comparison of claims 1-10 and 28-30 of the '365 patent
Ex.1038	Comparison of claims 11-27 of the '365 patent

Ex.1039	U.S. 3,648,916

I. INTRODUCTION

Pursuant to 35 U.S.C. §§311, 314(a), and 37 C.F.R. §42.100, Hartmann US, Inc. and The Happy Group Inc. ("Petitioners") respectfully request that the Board review and cancel as unpatentable under (pre-AIA) §103 claims 1-10 and 28-30 ("Challenged Claims") of U.S. 11,225,365 ("'365 patent," Ex.1001). Petitioners are concurrently filing a second Petition challenging the remaining claims 11-27 of the '365 patent (IPR2024-01216).

II. GROUNDS FOR STANDING PURSUANT TO 37 C.F.R. §42.104(A)

Petitioner certifies that the '365 patent is eligible for IPR and that Petitioners are not barred or estopped from requesting IPR of the Challenged Claims.

III. NOTE

Petitioners cite to exhibits' original page numbers. **Emphasis** in quoted material has been added. Claim terms are presented in *italics*.

IV. TECHNOLOGY BACKGROUND

The '365 patent relates to a food container that "permits flat application of labels" that "provid[e] tamper evidence." Ex.1001, 1:48-50, 7:62-65. The labels are attached to a "substantially flat area." Ex.1001, 2:11-19. But by 2007, when the Australian priority applications of the '365 patent were filed (see Section VII, *infra*), containers with tamper-evident labels and those that provide a flat area to attach such labels were not new. Ex.1011 (adhesive label); Ex.1012 (pressure sensitive adhesive

labels); Ex.1013 (hot-shrunk labels); Ex.1010, Fig. 1 (first planar surface); Ex.1009, Fig. 1 (second planar surface). Petitioners' expert Mr. Dunn describes relevant background predating the '365 patent. *See* Ex.1003, ¶¶26-29.

V. SUMMARY OF THE '365 PATENT

The '365 patent relates to containers "to hold fresh food or produce" that can "facilitate application of…tamper evident labels." Ex.1001, 1:21-26. Traditional containers used "wrap around" labels to "secure the lid to the base." Ex.1001, 1:36-39. But, according to the '365 patent, automated equipment used to attach labels were "generally designed for flat label application." Ex.1001, 1:39-42. The '365 patent thus proposes a container for "flat application of labels." Ex.1001, 1:48-50.

But even the inventor of the '365 patent found nothing novel about the design of the container itself. *See* Ex.1001, 7:35-38 ("[i]t will be appreciated…that the container of the invention can be produced in a wide number of forms"), 7:60-62 ("container [of the invention] can be adapted to any currently known container design"). Instead, it appears that the '365 patent considers its contribution to be an arrangement that provides a "substantially flat area" to which labels are attached. Ex.1001, 2:11-19. This, according to the '365 patent, allows "flat, self-adhesive label application" and "tamper evidence." Ex.1001, 7:62-65. As explained below, these concepts were well known before the earliest priority date. Ex.1003, ¶¶30-36.

VI. PROSECUTION HISTORY

The applicant submitted six preliminary amendments before the Examiner had issued a first Office Action. Ex.1003, ¶¶37-41. In the fourth preliminary amendment of October 30, 2020, the applicant cancelled pending claims 1-20 and added new claims 21-47. Ex.1002, 272-287. The applicant added prosecution claims 48-50 in the fifth and sixth preliminary amendments. Ex.1002, 139-158, 114-133. The first and only Office Action indicated that prosecution claims 21-47 were allowable. Ex.1002, 87. The Examiner did not provide reasons for allowance. Issued claims 1-27 of the '365 patent correspond to prosecution claims 21-36, 39, 40, 37, 38, and 41-47, respectively. Ex.1002, 16. The Examiner rejected prosecution claims 48-50 as anticipated. Ex.1002, 84-87. The applicant amended prosecution claim 48 (issued claim 28), Ex.1002, 76-79, which led to allowance without any stated reasons.

VII. EFFECTIVE PRIORITY DATE OF THE '365 PATENT

The '365 patent claims priority to U.S. Appl. 16/360,964, filed March 21, 2019, which is a continuation of U.S. Appl. 15/656,623, filed July 21, 2017, which is now U.S. 10,287,070. U.S. 10,287,070 is a continuation of U.S. Patent Appl. 12/449,556, filed August 12, 2009, now abandoned. The '365 patent also claims priority to PCT Appl. PCT/AU2008/000173, filed February 12, 2008, which claims priority to (i) Australian Appl. 2007902246, filed April 30, 2007, and (ii) Australian Appl. 2007900654, filed February 12, 2007. The cited and relied-upon prior art

predates February 12, 2007. Accordingly, Petitioners have not undertaken a priority date analysis in this Petition. Petitioners do not waive any right or opportunity to dispute the priority date in this or another forum where relevant.

VIII. LEVEL OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art ("POSITA") in February 2007 would have had a working knowledge of food packaging as is pertinent to the '365 patent. A POSITA would have had a bachelor's degree in packaging products, materials, process and platforms, or equivalent, and two years of work experience relating to packaging products, materials, and process and platforms. Lack of professional experience can be remedied by additional education, and vice versa. Ex.1003, ¶44.

IX. CLAIM CONSTRUCTION

Claim terms in IPR are construed according to their "ordinary and customary meaning" to those of skill in the art. 37 C.F.R. §42.100(b). Petitioners submit that, for the purposes of this proceeding and the grounds presented herein, no term requires express construction. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017); Ex.1003, ¶47.

X. RELIEF REQUESTED AND REASONS FOR THE RELIEF

Petitioners ask that the Board institute a trial for IPR and cancel the Challenged Claims in view of the analysis below.

XI. IDENTIFICATION OF HOW THE CLAIMS ARE UNPATENTABLE

A. Challenged Claims

Patent Owner has asserted claims 1-23 and 28-30 of the ’365 patent in a co-pending litigation. Finding the Challenged Claims unpatentable in this proceeding will resolve the parties’ dispute and obviate the need for a trial regarding the ’365 patent, substantially reducing the time and expense of that litigation for all parties.

B. Statutory Grounds for Challenges

Grounds	Claim(s)	Basis (Pre-AIA)
#1	1-6 and 8-10	§103 over Post, Beese, and Mangla
#2	7	§103 over Post, Beese, Mangla, and Buckley
#3	28-30	§103 over Post and Beese

WO 2006/001696 (Ex.1010, “**Post**”); published on Jan. 5, 2006.

U.S. 2005/0238764 (Ex.1009, “**Beese**”); published on Oct. 27, 2005.

U.S. 4,625,906 (Ex.1015, “**Mangla**”); issued on Dec. 2, 1986.

WO 2003/086905 (Ex.1016, “**Buckley**”); published on Oct. 23, 2003.

These references are pre-AIA §102(b) prior art that published or issued more than one year prior to the earliest non-provisional filing date (Feb. 12, 2008) and more than one year before the earliest foreign priority date (Feb. 12, 2007). If Patent Owner argues that the ’365 patent is an AIA patent, these references are AIA §102(a) prior art. None were before the Examiner during prosecution.

During prosecution, the inventor cited EP 1558504—disclosing egg cartons—in an IDS. Ex.1002, 328; Ex.1014, [0009] (package "for receiving one or more frangible products, such as eggs"); Ex.1003, ¶61. The inventor thus acknowledged that egg container art, like Post, Beese, Mangla, and Buckley, are within the field of endeavor of the '365 patent and therefore analogous. *See Apple Inc. v. Samsung Elecs. Co., Ltd.*, 816 F.3d 788, 803 n.8 (Fed. Cir. 2016), *vacated*, 839 F.3d 1034, 1050-58 (Fed. Cir. 2016) (*en banc*) ("[T]he nature of the prior art listed in an information disclosure statement can be informative as to the field of endeavor.").

Petitioners also cite to additional prior art (Exs.1011-1014, 1020-1021, 1029-1030, 1033-1036) as evidence of a POSITA's background knowledge and to provide contemporaneous context to support Petitioner's assertions regarding what a POSITA would have understood from the prior art in the grounds. This approach has been approved by the Federal Circuit. *Yeda Research v. Mylan Pharm. Inc.*, 906 F.3d 1031, 1041-1042 (Fed. Cir. 2018); 37 C.F.R. §42.104(b).

Petitioners' prior art analysis, below, is based at least in part on Petitioners' understanding of claim interpretations contained in Patent Owner's Infringement Contentions (Ex.1025) served in the co-pending district court litigation involving the same parties. Claim construction in the district court litigation has not yet occurred; however, Patent Owner's interpretation of terms can be derived from its application of the patent. Petitioners do not adopt Patent Owner's interpretations but

apply them here for judicial efficiency. *10X Genomics, Inc. v. Bio-Rad Labs., Inc.*, IPR2020-00087, Paper 9, 16-17 (Apr. 27, 2020) ("[J]udicial efficiency will be enhanced by allowing Petitioner to rely upon a claim construction that Patent Owner is relying upon in the related district court litigation to assert infringement of the challenged patent"); *Western Digital v. Spex Techs.*, IPR2018-00084, Paper 14, 11 (April 25, 2018) (Rule 42.104(b)(3) "does not require Petitioner to express its subjective agreement regarding correctness of its proffered claim constructions or to take ownership of those constructions.").

C. Ground 1: Claims 1-6 and 8-10 are obvious over Post, Beese, and Mangla

1. Post

Post relates to a food container "comprising a bottom part and a hinged lid part joined thereto." Ex.1010, 1. The bottom part includes "cavities" for holding "eggs." Ex.1010, 3. Post's label "provide[s] a larger surface of the egg tray with printing[.]" Ex.1010, 2; Ex.1003, ¶¶54-59. Post is analogous art at least because Post and the '365 patent are directed to the same field of endeavor. The '365 patent "relates to containers intended to hold fresh food or produce." Ex.1001, 1:20-22. Post is also directed to "a container for packaging foods," such as "an egg tray." Ex.1010, 1. Post is also reasonably pertinent to a problem with which the inventor of the '365 patent was involved. *Compare* Ex.1001, 1:48-50 ("provide a container

configuration which permits flat application of labels.") *with* Ex.1010, Fig. 3 (flat front flap 13 of label 11 applied to front wall 6 of lid part 3); Ex.1003, ¶60.

2. Beese

Beese discloses a foodstuffs package that has "a bottom part…and a lid part which is arranged for swing action on the bottom part." Ex. 1009, Abstract. Like Post, Beese teaches applying sticker 7 to the lid of the container. Ex.1009, [0025]; Ex.1003, ¶¶63-68. Beese is analogous art at least because Beese and the '365 patent are directed to the same field of endeavor. The '365 patent "relates to containers intended to hold fresh food or produce." Ex.1001, 1:20-22. Beese also relates to containers for holding eggs. Ex.1009, [0001] ("The invention relates to foodstuffs packaging, in particular an egg box[.]"). Beese is also reasonably pertinent to a problem with which the inventor of the '365 patent was involved. *Compare* Ex.1001, 1:48-50 ("container configuration which permits flat application of labels.") *with* Ex.1009, [0030] (sticker 7 may be "extended as far as the bottom edge of the front part 33 of the lid part 3."); Ex.1003, ¶69.

3. Mangla

Mangla explains that egg cartons may be made from molded pulp or thermoformed plastic. Ex.1015, 1:33-56. The carton "includes protrusions 32-35" that "have hooks which mate with holes in the cover to latch the carton [closed]." Ex.1015, 4:3-6. The front, outward-facing surface of the protrusions 32-35 is flat.

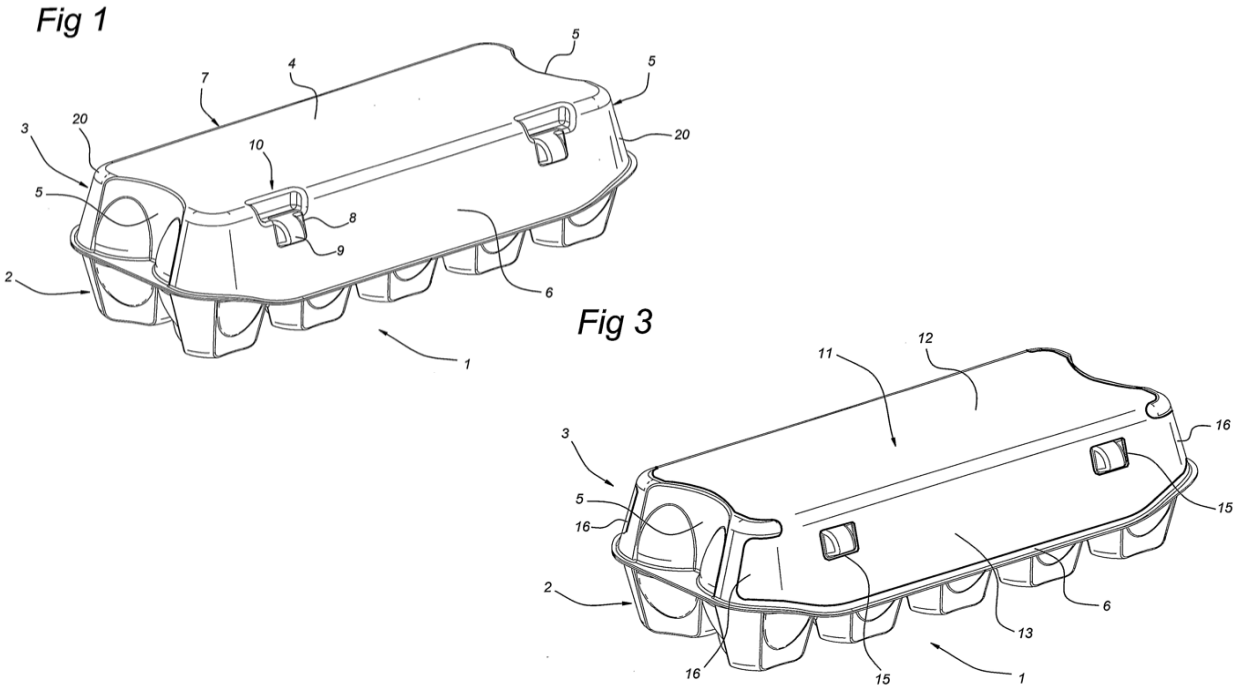
Ex.1003, ¶72. Mangla is analogous art at least because Mangla and the '365 patent are directed to the same field of endeavor. The '365 patent "relates to containers intended to hold fresh food or produce." Ex.1001, 1:20-22. Mangla also relates to containers for holding food. Ex.1015, 1:9-10 ("improved egg carton, and to methods of making it."); Ex.1003, ¶73.

4. Reasons to Combine Post with Beese and Mangla

Post and Beese: A POSITA would have been motivated to modify Post's container to use Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism. Using Beese's retaining noses 24 instead of Post's closing projections 9 would advantageously permit Post's label 11 to cover the entirety of front wall 6 of lid part 3 of Post's container, per Beese. Ex.1009, [0030] ("front side [of sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). Extending Post's label 11, per Beese, would further Post's objective of "provid[ing] a larger surface" for printing ads on the lid. Ex.1010, 2; Ex.1003, ¶74.

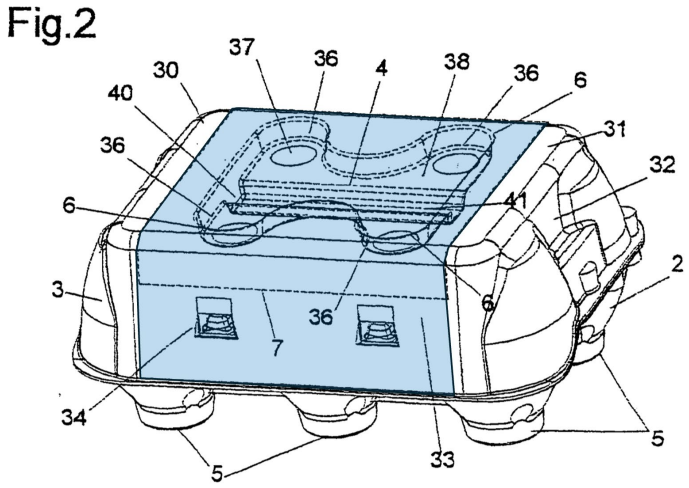
Post's container includes lid part 3 which has flat top part 4 and flat front wall 6 between openings 8. Ex.1010, 3. Closing projections 9 of bottom part 2 extend through openings 8. Ex.1010, 3. Openings 15 are formed in front flap 13 and are the "same size as openings 8" in lid part 3. Ex.1010, 3. Openings 15 create breaks (e.g., holes) in label 11 that cannot accommodate printing. As an example, content of ads

printed on front flap 13 may extend **between** openings 15 but would not extend **over** openings 15 because they are holes. Ex.1003, ¶¶75-77. See Figs. 1, 3:



Ex.1010, Figs. 1, 3

Beese, on the other hand, discloses sticker 7 (**blue**) extending continuously (e.g., without breaks or holes) over top part 31 of lid part 3 to the bottom edge of front part 33 of lid part 3. Ex.1009, [0030] ("sticker 7…may be of any desired size" and may "be extended as far as the bottom edge of the front part 33[.]"). Like Post, Beese sticker 7 has the "advantage that it also provides a printing surface" for ads. Ex.1009, [0030]. Sticker 7 covers retaining noses 24 and corresponding openings 34 in lid part 3. Ex.1009, [0030]; Ex.1003, ¶¶78-79. See Fig. 2:

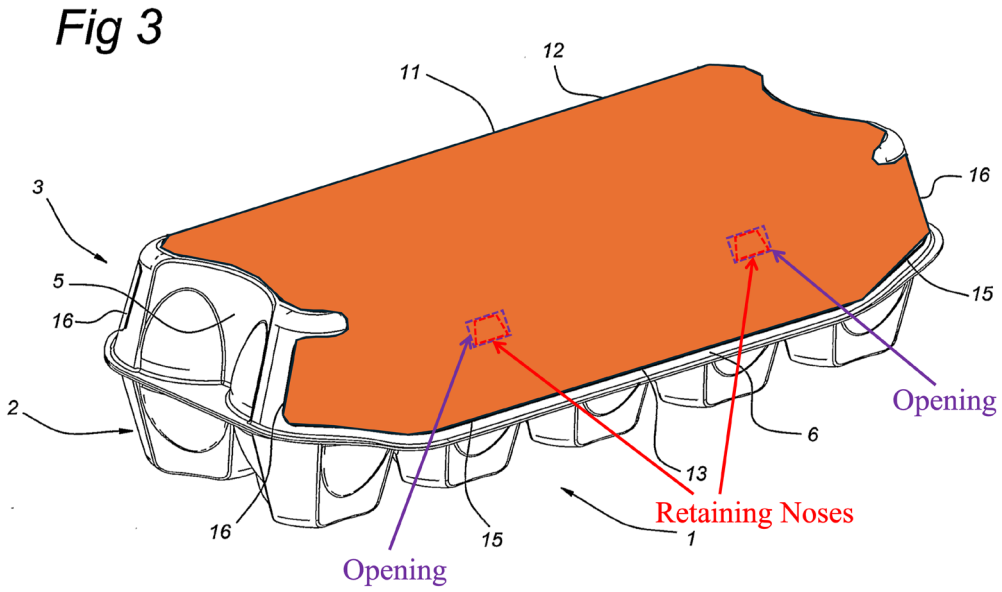


Ex.1009, Fig. 2 (annotated)

As a result, a POSITA would have been motivated to modify Post's label 11 so that it extends all the way to the bottom edge of front part 6 of Post's lid part 3, without interruption, per Beese. Ex.1009, [0030]. This would result in a larger area for printing ads and further Post's objective of "provid[ing] a larger" printing area. Ex.1010, 2. Having sticker 7 cover retaining noses 24 and corresponding openings 34, per Beese, would result in an **even greater**, continuous printing area without breaks or holes. Ex.1003, ¶80.

Moreover, modifying Post's container to use Beese's retaining noses 24 and corresponding openings in lid part 3 would avoid Post's closing projections 9 from extending beyond (e.g., sticking out) the outer surface of front wall 6 of Post's lid part 3. This would facilitate and permit Post's label 11 to extend all the way to the bottom edge of front part 6 of Post's lid part 3 without interruptions (e.g., without breaks of holes), per Beese. Ex.1009, [0030]; Ex.1003, ¶¶81-82.

Post's Fig. 3 shows label 11 (**orange**) extending to bottom edge of front part 6 of lid part 3, per Beese. It also shows how Post's container would be modified to accommodate Beese's retaining noses 24 (**red** lines) in bottom part 2 and corresponding openings (**purple** lines) in lid part 3 that would, together, allow label 11 to extend continuously, per Beese. Ex.1009, [0030]; Ex.1003, ¶83.



Ex.1010, Fig. 3 (annotated)

It should be noted that the front, outward facing surface of Beese's retaining noses 24 is shown with horizontal lines. Ex.1009, Fig. 1. A POSITA would have understood these lines to convey perspective dimensioning that the top of retaining noses 24 has a smaller width than the bottom. Ex.1003, ¶86.

To the extent these horizontal lines suggest ridges that could provide a non-continuous or non-flat surface, a POSITA would have been motivated to modify the front, outward facing surface of retaining noses 24 to provide a flat surface. This

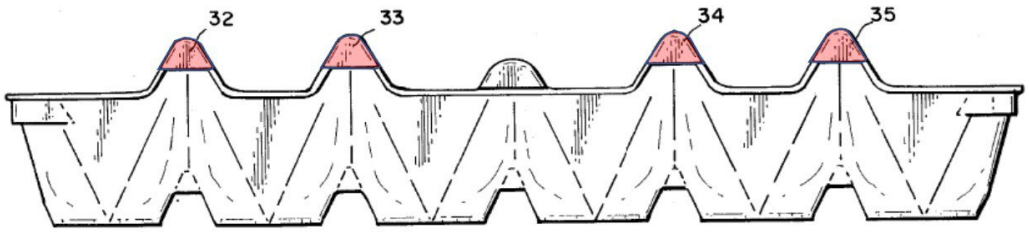
would allow Post's label 11 to extend over retaining noses 24 in a smooth, continuous manner without bumps or projections caused by a non-continuous or non-flat surface on the external facing portion of retaining noses 24. Ex.1003, ¶86.

The modification of Post, per Beese, would have been nothing more than a combination of prior art elements (Beese's retaining noses 24 extending from Post's bottom part 2 and corresponding openings in Post's lid part 3 to accommodate the retaining noses 24) according known methods (extending Post's label 11 to the bottom edge of front part 6 of Post's lid part 3 without interruptions, per Beese) to yield the predictable result of providing a locking mechanism (locking the container using Beese's retaining noses 24 and corresponding openings in Post's lid part 3) and allowing Post's label to extend over the locking mechanism without interruption, per Beese. Ex.1009, [0030], Fig. 2; Ex.1003, ¶84.

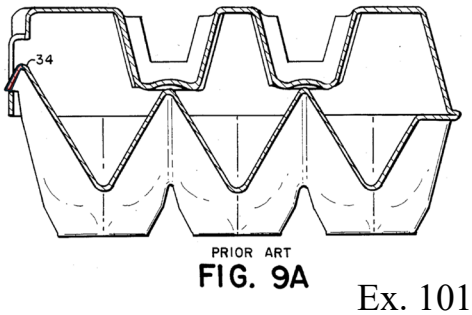
A POSITA would have had a reasonable expectation of success in the combination. **First**, Beese shows that it was well-known to provide a locking mechanism that does not extend beyond the outer surface of the lid. This would allow, per Beese, a label to cover the locking mechanism for continuous printing or ads. Ex.1009, [0030], Fig. 2. **Second**, Beese teaches that it was desirable for retaining noses 24 to interact with corresponding openings in the lid to lock the container. Ex.1009, [0026] ("two retaining noses 24 are arranged on a front side of

the base part 2" to lock the container), [0027] (substantively same); Ex.1003, ¶85. Such a modification would have been within a POSITA's skill-set.

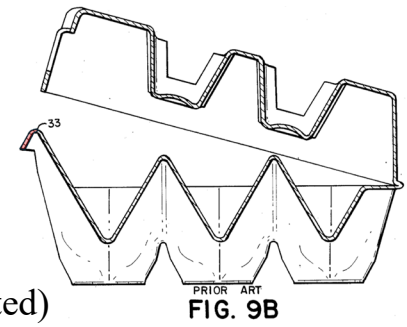
Post, Beese, and Mangla: Mangla teaches that it was well-known for projections extending from bottom part of a container (locking mechanism) to have a flat outward surface. Mangla's cartons have hinged cover having multiple protrusions 32-35, like those of Beese. These protrusions (**red**) extend from the inside sidewall of the base and mate with corresponding holes in the cover to lock the carton. Ex.1015, 4:3-6 ("protrusions 32-35…have hooks which mate with holes in the cover to latch the carton."). Mangla's protrusions (**red**) have a flat outward surface. Ex.1003, ¶¶87-88. See Figs. 9A-9C:



Ex. 1015, Fig. 9C (annotated)



Ex. 1015, Figs. 9A-9B (annotated)



A POSITA would have been motivated to configure Beese's retaining noses 24, as used in Post's container, to have a flat outward surface, as suggested by Beese

and taught by Mangla. In this way, Post's label 11 would extend continuously over retaining noses 24 without bumps that might be caused if retaining noses 24 were found to have a non-flat configuration on their outer surface. This modification would have been desirable and more appealing to customers. It would allow the printing of adds on the label without impact or bumps possibly caused by portions of retaining noses 24. Ex.1003, ¶89.

A POSITA would have had a reasonable expectation of success in configuring the outer surface of retaining noses 24 in Post's container to have a flat configuration. Mangla teaches that it was known and desirable to have a flat, outward surface on retaining nose / projection extending from the bottom part of the container. Ex.1015, 4:3-6, Figs. 9A-9C. Having a flat, outward surface on retaining nose / projection advantageously would also provide for a smoother surface for the customer to interact with opening the container. Ex.1003, ¶90. Such a modification would have been within a POSITA's skill-set. The combination relies on the combined teachings of the references as understood by a POSITA and not on a physical incorporation of elements from one into another. *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012).

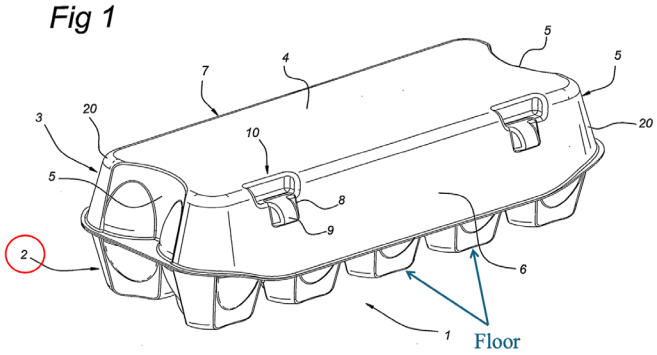
5. Claim 1

[1.0] ***A container for packaging a product, the container comprising:***

To the extent the preamble is limiting, Post discloses it. Post is directed to "a container for packaging foods." Ex.1010, 1; *see also* Ex.1010, 3 ("egg tray") (*container for packaging a product*). Ex.1003, ¶¶91-93.

[1.1] ***a base having a floor;***

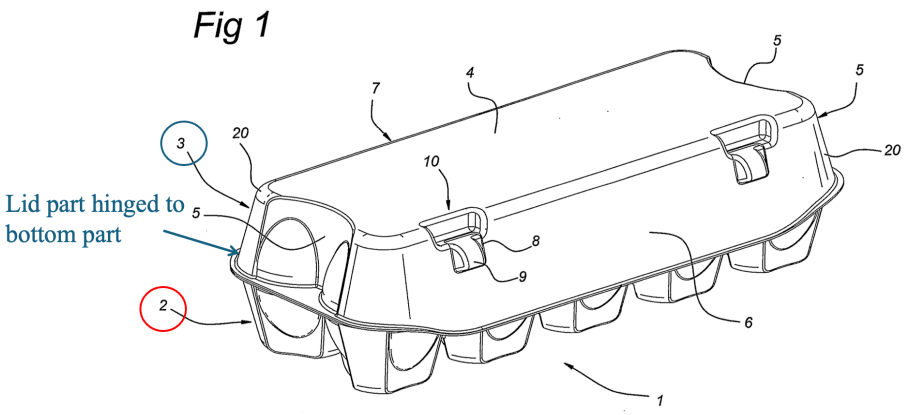
Post's container has a "bottom part 2" (*base*) having a bottom surface (*floor*) on which eggs would rest. Ex.1010, 3 (container "consists of a bottom part 2" with "cavities for accommodating eggs[.]"); Ex.1003, ¶¶94-96. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[1.2] ***a lid movable about a hinge with respect to the base from an open position to a closed position, wherein the closed position defines a cavity inside the container between the floor and the lid;***

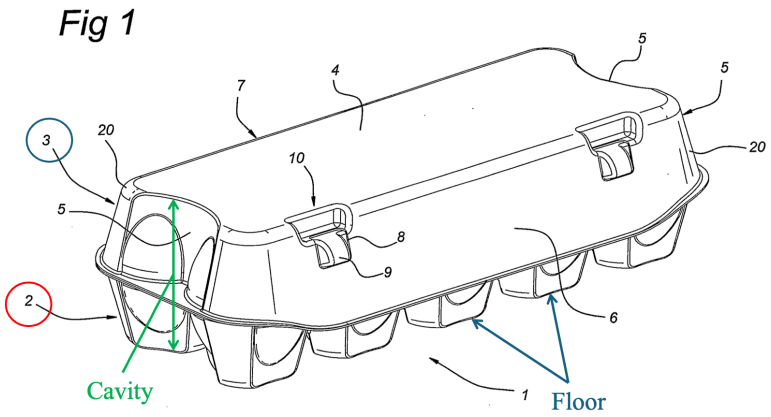
First, Post's container includes a lid part 3 (*lid*) that is hinged to the bottom part 2 (*base*). Ex.1010, 3 (container "consists of a bottom part 2…A hinged lid part 3 is joined thereto."); Ex.1003, ¶¶97-99. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

Fig. 1 shows the container in a *closed position*. A POSITA would have understood that the container could also be opened because (1) lid part 3 is hinged to bottom part 2 to allow lid part 3 to be opened relative to bottom part 2. Ex.1010, 3 ("hinged lid part 3 is joined" to bottom part 2); and (2) the container includes a locking mechanism that allows it to open by disengaging closing projections 9 from openings 8. Ex.1010, 3 ("lid part 3 can be unlocked…by depressing closing projections 9 and moving front wall 6 forwards."). Post discloses or at least renders obvious lid part 3 (*lid*) *movable about a hinge* (*hinged*) *with respect to* bottom part 2 (*base*) *from an open position to a closed position*. Ex.1003, ¶100.

Second, Post's container includes a bottom surface of bottom part 2 (*floor*) and lid part 3 (*lid*). *See* [1.1]-[1.2]; Ex.1003, ¶101. In a *closed position*, the container *defines a cavity* between bottom surface of bottom part 2 and lid part 3 (*inside the container between the floor and lid*) that holds food, e.g., eggs. Ex.1010, 3 (container has "**cavities for accommodating eggs**"); Ex.1003, ¶¶101-102. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

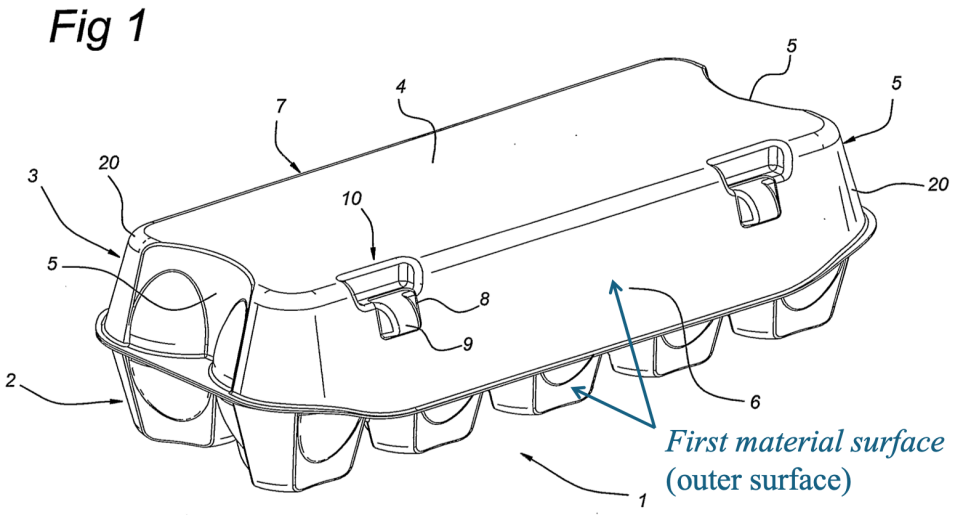
[1.3.1] ***the base, lid, and hinge having a unitary construction from a material having a generally defined thickness between a first material surface and a second material surface disposed on immediately opposite sides of the material,***

First, a POSITA would have understood the term "unitary" to mean "1. Of or pertaining to a unit. 2. Having the nature of a unit; whole" or "of or relating to a unit" or "having the character of a unit: undivided, whole." Ex.1031, 4; Ex.1032, 4. Post thus discloses that its container—including bottom part 2 (*base*), lid part 3 (*lid*), and hinge connecting bottom part 2 to lid part 3 (*hinge*)—has a *unitary construction*, or at least Post renders this element obvious. Ex.1003, ¶¶103-104.

As an initial matter, Post's container is made as one unit; lid part 3 is hinged to bottom part 2. Ex.1010, 3 (container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically[, and a] hinged lid part 3 is joined thereto."). The container is made from plastic, pulp (paper), or molded fiber material. Ex.1010, 1 ("container can be made of **plastic material, paper or cardboard**. In particular, the container according to the present invention is made

of **moulded fibre material**[.]"). Containers made from such materials would have a unitary construction. *See, e.g.*, Ex.1029, 1:13-15 ("[m]olded packaging cartons utilizing lug-locking principles [were] widely used [] particularly in the packaging of eggs."); Ex.1009, [0002] (citing FR-A-2441549 (Ex.1020) (Ex.1021, U.S. equivalent), describing a "molded paper pulp container."); Ex.1021, Abstract ("A molded paper pulp container comprising a pocketed section mutually hinged to a flat bottom cover section[.]"); Ex.1030, 1:63-2:6 ("egg carton [] formed from a molded plastic material" has a "unitary structure"); Ex.1003, ¶¶105-106.

Second, the container includes a *first material surface* on its outside surface. The container would also include a *second material surface* on its inner surface with which food would come in contact. Ex.1003, ¶107. See Fig. 1:



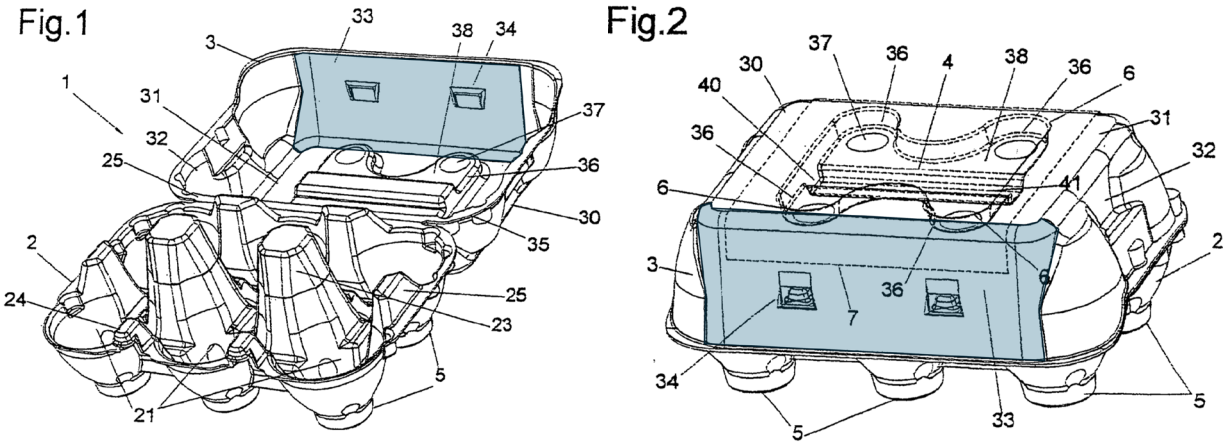
Ex.1010, Fig. 1 (annotated)

A POSITA would have understood that the outer surface (*first material surface*) and the inner surface (*second material surface*) of the container are *disposed*

on immediately opposite sides of the material of the container because the outer and inner surfaces are on opposite surfaces. A POSITA would have also understood that the material of the container would have *a generally defined thickness* between the outer surface (*first material surface*) and the inner surface (*second material surface*). Ex.1003, ¶¶108-109.

Third, a POSITA would have appreciated that the *generally defined thickness* is the thickness of the container between its outer and inner surface. For example, if the container were produced from moulded fibre material, its *generally defined thickness* would be the thickness of the moulded fibre material between the outer and inner surface. Ex.1010, 3 (container "produced from moulded fibre material"). The same analysis would apply to a container made from any other material. Ex.1003, ¶108.

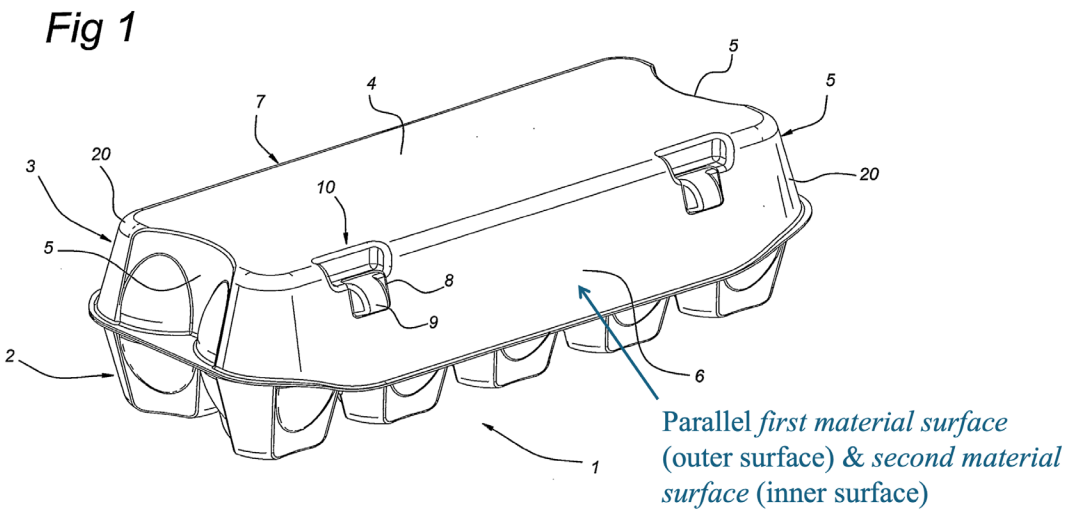
To the extent that Post does not expressly disclose that its container has both an outside and inside surface on opposite sides of the material of the container, this well-known configuration is shown in Beese. Ex.1003, ¶110. Beese discloses a container where the front part 33 of the lid has an outside surface (*first material surface*) and an inside surface (*second material surface*). Ex.1003, ¶¶111-113. See Figs. 1 and 2:



Ex.1009, Figs. 1 & 2 (annotated)

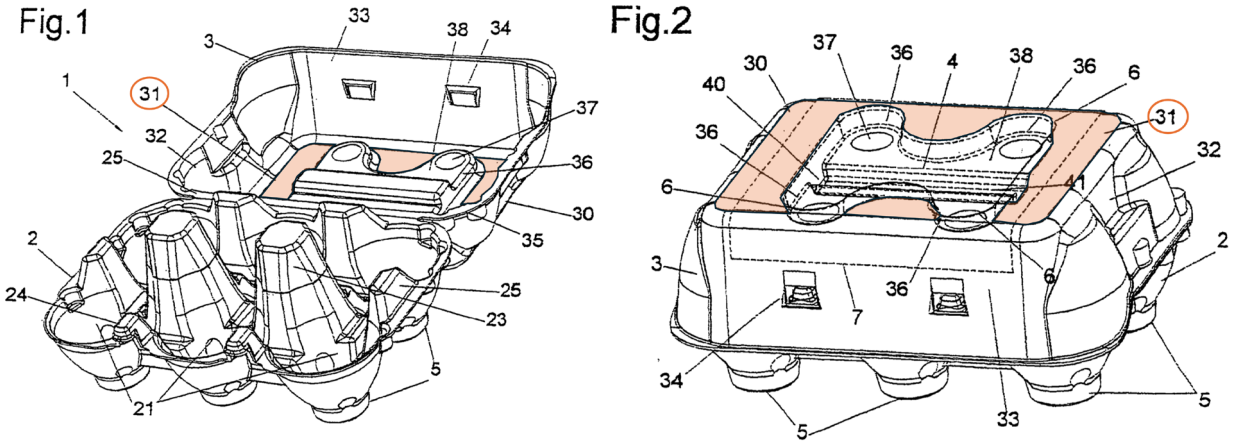
[1.3.2] ***wherein at least a portion of the first material surface is parallel to an immediately opposite portion of the second material surface;***

Post's container includes an outside surface (*first material surface*) and an inner surface (*second material surface*). *See* [1.3.1]; Ex.1003, ¶114. Post renders obvious *at least a portion of* the outside surface (*first material surface*) *is parallel to an immediately opposite portion of the* inner surface (*second material surface*). This is because the container may be formed from a mold. Ex.1010, 1 (container "made of **moulded fibre material**[.]"). A POSITA would have been motivated to make the outer and inner portions of the container—front wall 6 of lid part 3 **and** top part 4 of lid part 3—parallel to each other in the molding process to fit the shape of the mold pattern. Ex.1003, ¶¶114-115. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

To the extent that Post does not expressly disclose that opposing portions of its container are *parallel* to each other, this well-known configuration is shown in Beese. Beese's top part 31 (**orange**) of lid part 3 has an outside surface (*first material surface*) and an inner surface (*second material surface*). Ex.1003, ¶116. These two surfaces are parallel to each other because they extend in the horizontal direction when laid flat. Ex.1003, ¶116. See Figs. 1 and 2:

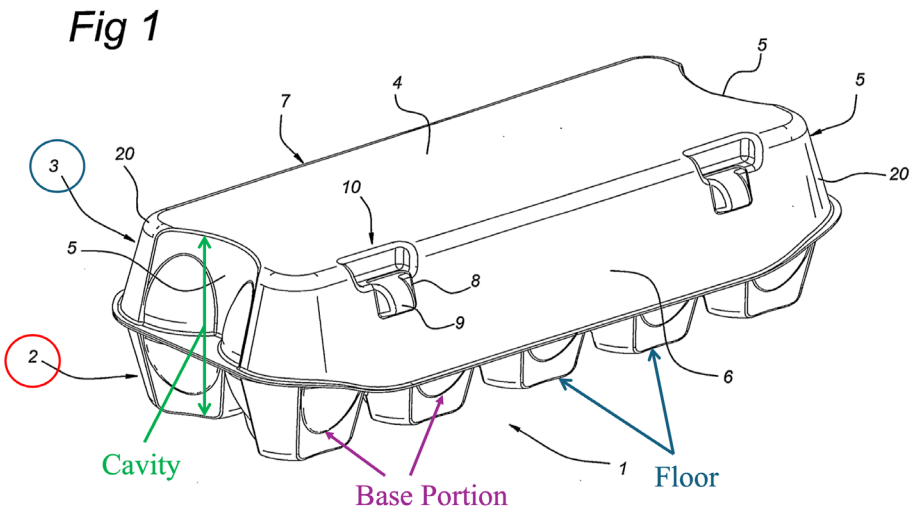


Ex.1009, Figs. 1 & 2 (annotated)

A POSITA would have been motivated to make opposing outer and inner portions (*first and second material surfaces*) of at *least a portion* of Post's container parallel to each other in the molding process to fit the shape of the mold pattern, per Beese. Ex.1003, ¶¶117-118.

[1.4.1] ***the cavity having a base portion dimensioned to contain a first portion of the product in the base and***

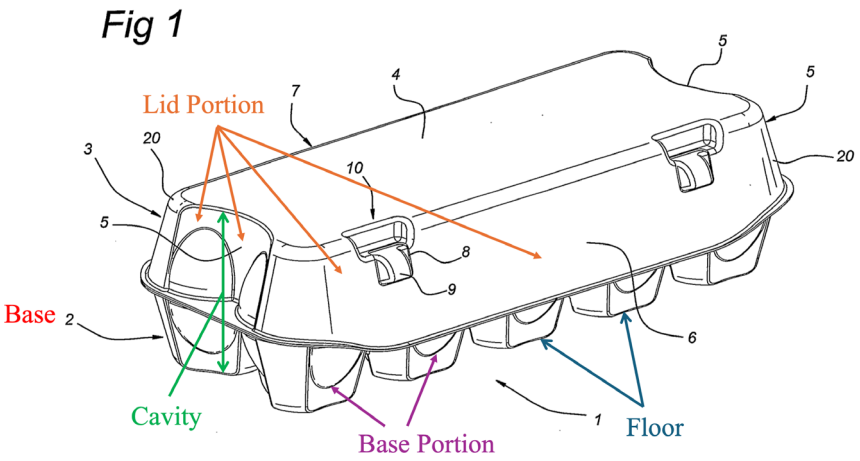
The inside of Post's container in a closed position has a cavity between the floor of bottom part 2 and lid part 3. *See* [1.2]. Bottom part 2 has cavities to hold food, e.g., eggs. Ex.1010, 3 (container "consists of a bottom part 2 in which cavities for accommodating eggs[.]"). The container's *cavity* has cavities formed in bottom part 2 (*base portion*) *dimensioned to contain* a portion of eggs (*first portion of the product*) in bottom part 2 (*base*). Ex.1003, ¶¶119-120. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[1.4.2] ***[the cavity having] a lid portion dimensioned to contain a second portion of the product in the lid, and***

The cavity in Post's container has a portion of lid part 3 (*lid portion*) (**orange**). This *lid portion* is *dimensioned to contain* a portion of eggs (*second portion of the product*) in lid part 3 (*lid*). The side walls 5 and front wall 6 of the lid are dimensioned to hold a portion of the eggs in the container. Ex.1010, 3 (container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically…lid part 3 consists of a top part 4. Side walls drop down from the top part 4. These side walls are indicated by 5-7…It can be seen from the drawing that the lid part is made essentially tray-shaped."); Ex.1003, ¶¶121-122. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[1.4.3] ***wherein the lid portion is disposed beyond the base and outward from the base portion, and the cavity is generally defined by the second material surface;***

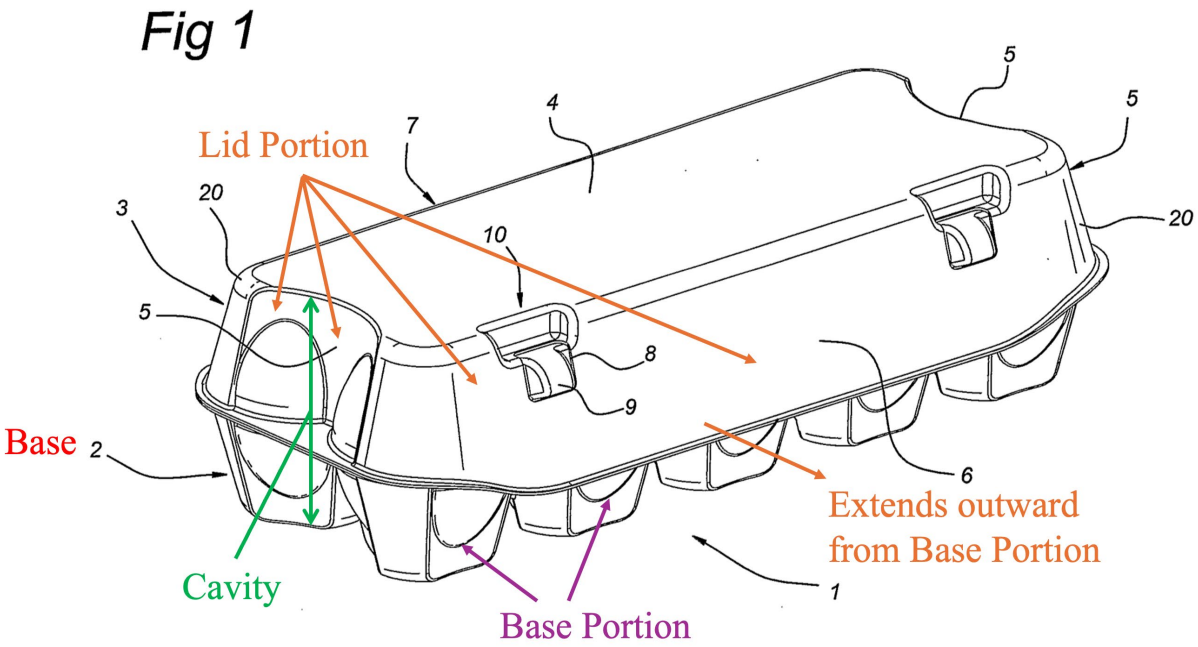
Post's container includes:

- portion of lid part 3 (*lid portion*) (*see* [1.4.2]);
- bottom part 2 (*base*) (*see* [1.1]);

- cavities formed in bottom part 2 (*base portion*) (*see* [1.4.1]);
- cavities between top part 4 of lid part 3 and floor of bottom part 2 (*cavity*) (*see* [1.2]); and
- an inner surface of the container (*second material surface*) (*see* [1.3.1]).

Ex.1003, ¶123.

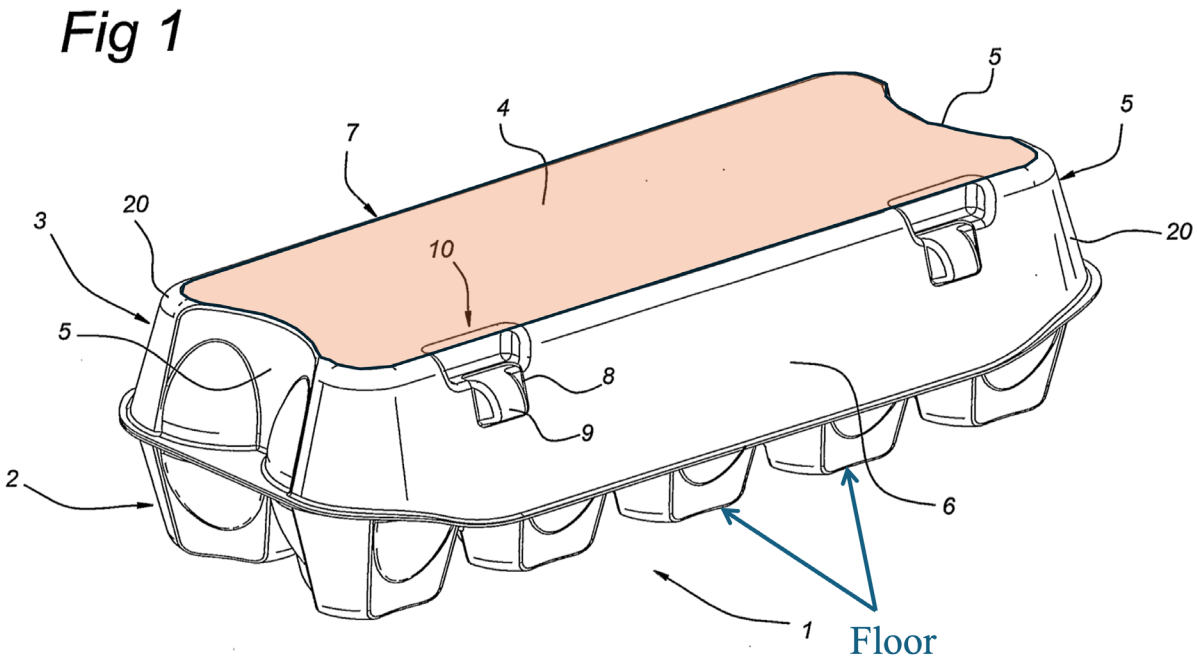
Post's lid part 3 (*lid portion*) (**orange**) *is disposed beyond* bottom part 2 (*base*) *and outward from* cavities formed in bottom part 2 (*base portion*). This is because lid part 3 (*lid portion*) is disposed above bottom part 2 (**red**) (*disposed beyond the base*) and extends outwardly away from the cavities formed in bottom part 2) (*base portion*) (**purple**) of the bottom part 2 (*base*) (*outward from the base portion*). Ex.1003, ¶¶124-125. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

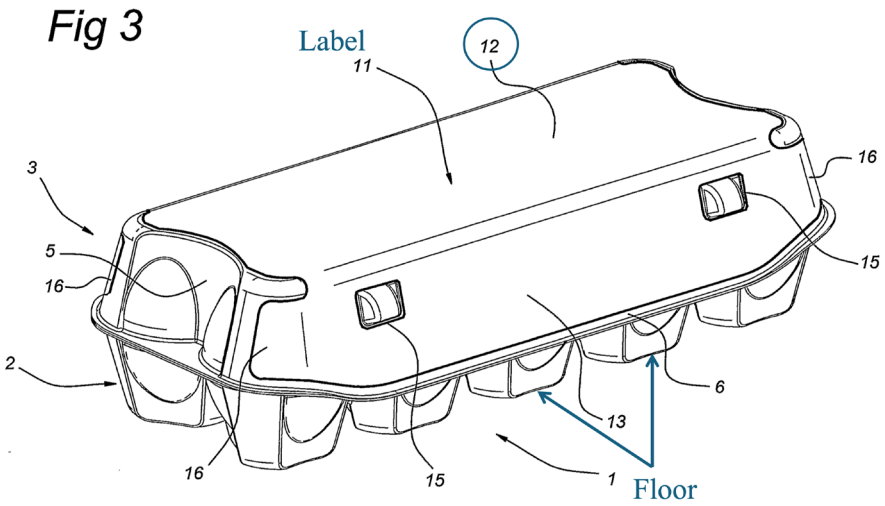
[1.5.1] ***the lid having a substantially flat top disposed parallel to the floor when the lid is in the closed position,***

Lid part 3 (*lid*) of Post's container has a top part 4 (*substantially flat top*) (**orange**) *disposed* parallel to the bottom external surface of bottom part 2 (*parallel to the floor*) when lid part 3 (*lid*) *is in the closed position*. Ex.1010, 3 ("lid part 3 consists of a top part 4."); Ex.1003, ¶126. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

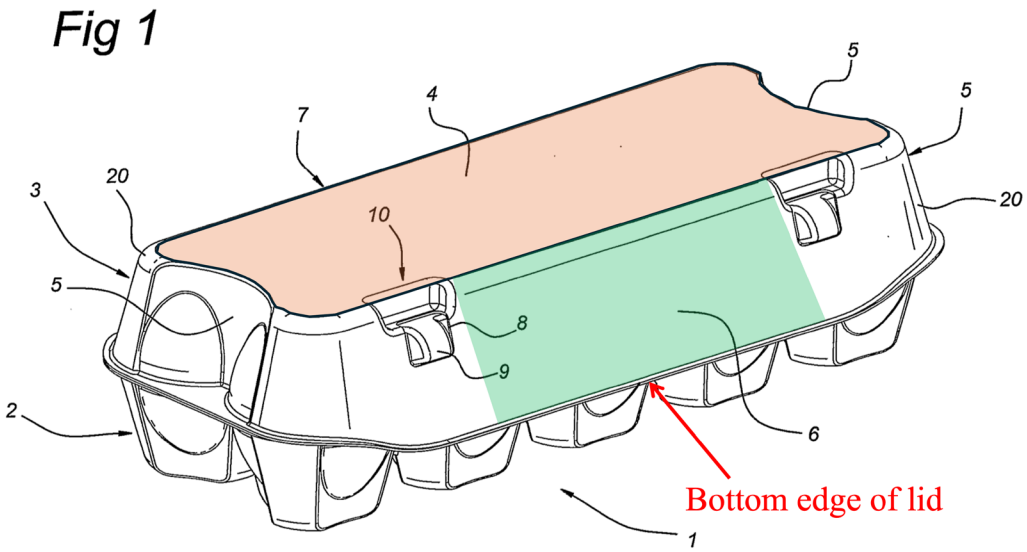
Post confirms that top part 4 is *substantially flat* when it teaches that central part 12 of flat label 11 covers top part 4. Ex.1010, 3 ("flat sheet that has to be applied as label to the lid part 3[.]"), 4 ("The flat sheet is then placed with the central part 12 thereof on the top part 4."); Fig. 1; Ex.1003, ¶¶127-128. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

[1.5.2] ***[the lid having] a substantially planar frontal extension extending from the substantially flat lid top to a bottom edge of the lid,***

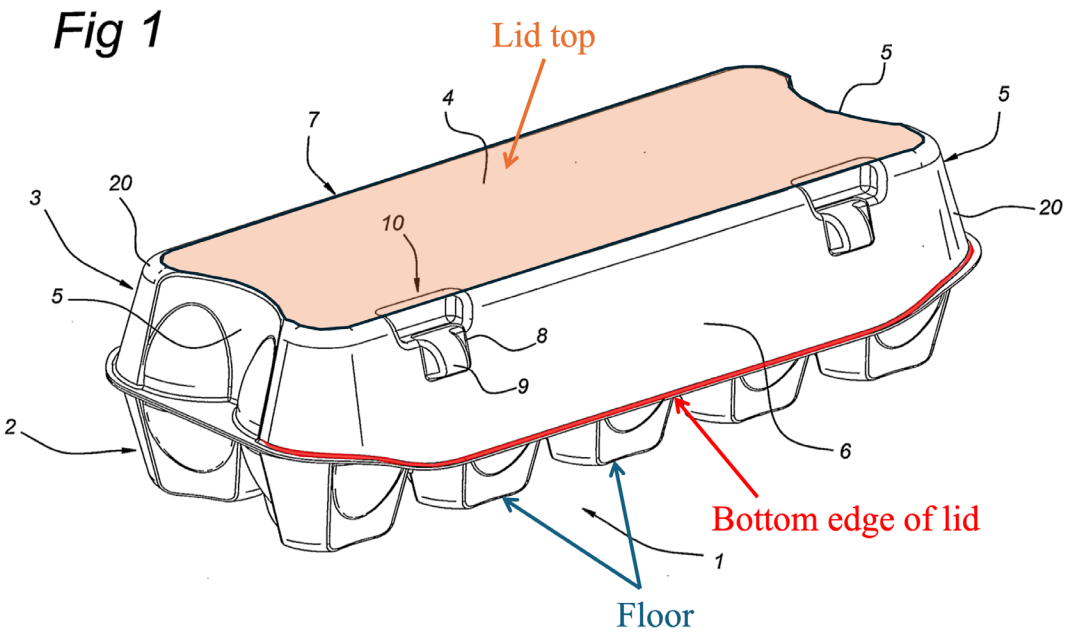
Post's lid part 3 (*lid*) has a portion of front wall 6 between openings 8 (*substantially planar frontal extension*) (**green**) *extending from* top part 4 (*substantially flat lid top*) (**orange**) *to a bottom edge* of lid part 3 (*lid*) (**red**). Ex.1003, ¶129. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[1.5.3] ***wherein the bottom edge is between, and outward from both, the substantially flat lid top and the floor when the lid is in the closed position,***

The *bottom edge* (**red**) of lid part 3 is *between, and outward* (i.e., extends away from) from both, top part 4 (*substantially flat lid top*) (**orange**) and the bottom surface of bottom part 2 (*floor*) *when the lid is in the closed position*. Ex.1003, ¶130. See Fig. 1:

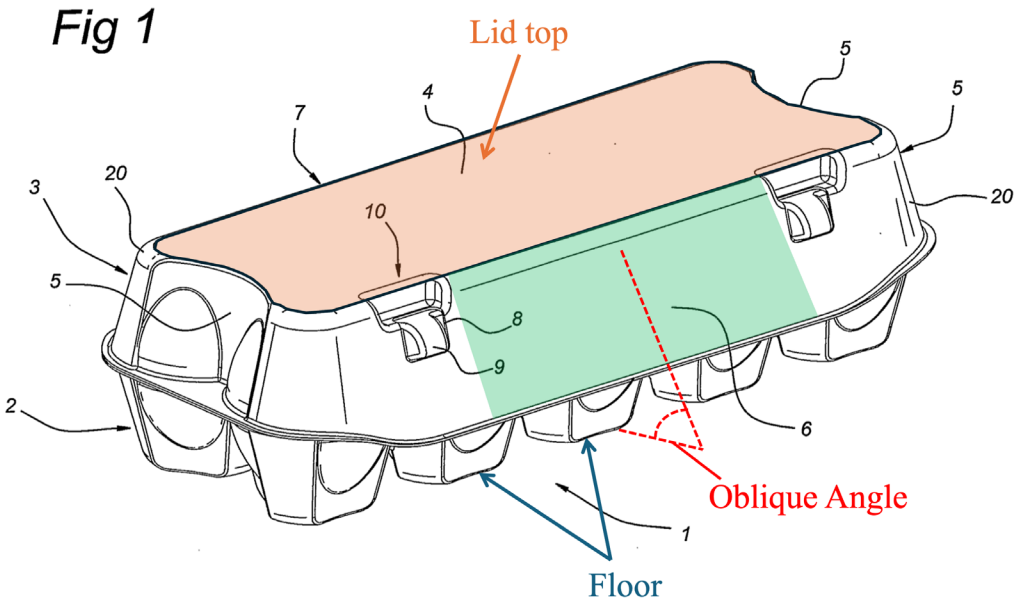


Ex.1010, Fig. 1 (annotated)

[1.5.4] ***the substantially planar frontal extension extends obliquely relative to the floor from the substantially flat lid top when the lid is in the closed position,***

In Post's container, a portion of front wall 6 between openings 8 (*substantially planar frontal extension*) (**green**) *extends* at an angle that is not a right angle or a multiple of a right angle and is either (1) between 0° and 90° or (2) between 90° and 180° (*obliquely*) *relative to the floor* from top part 4 (*substantially flat lid top*)

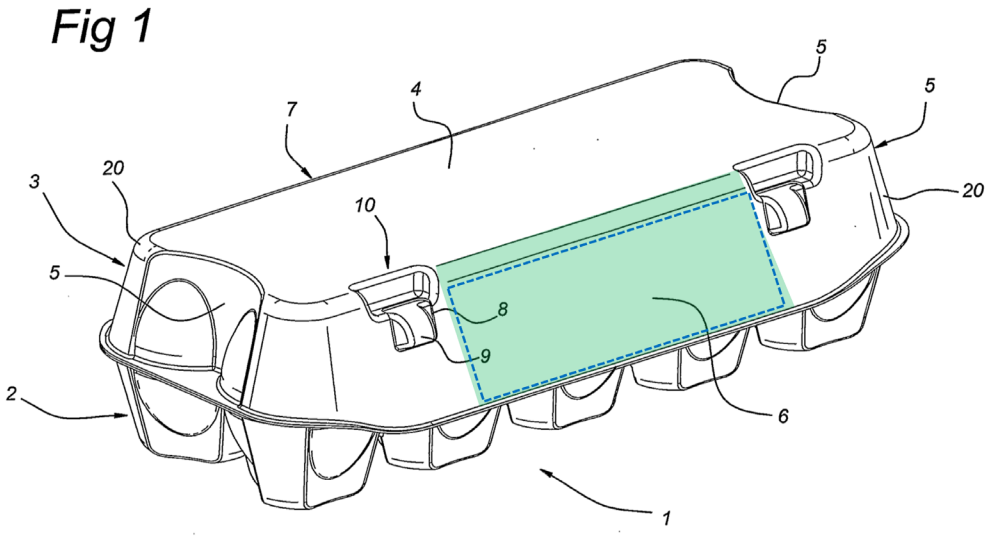
(**orange**) when lid part 3 (*lid*) *is in the closed position*. The angle at which the portion of front wall 6 between openings 8 (*substantially planar frontal extension*) (**green**) *extends* is between 0° and 90° relative to a line extending from the floor. Ex.1003, ¶131. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[1.5.5] ***[the lid] having a first planar area on the substantially planar frontal extension's portion of the first material surface, and***

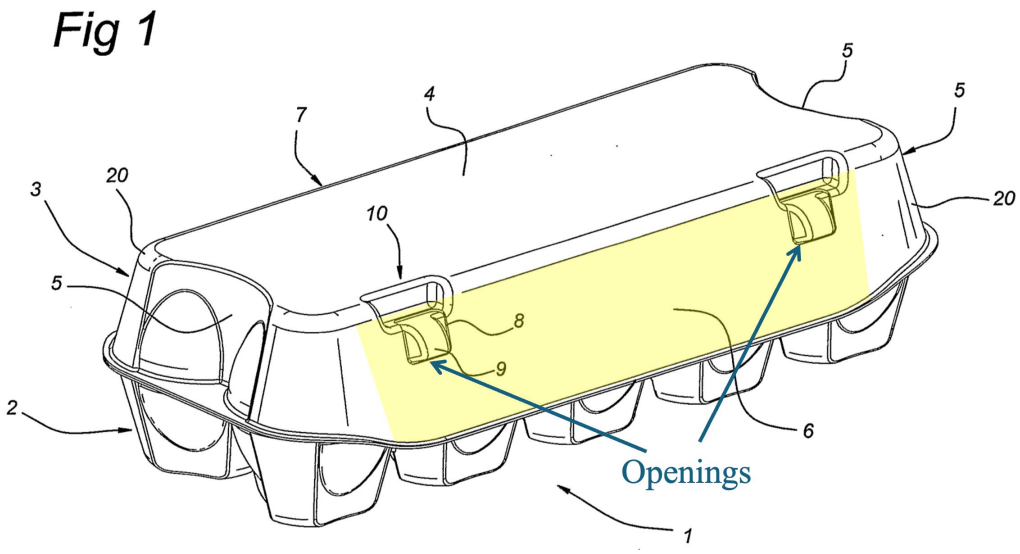
Post's lid part 3 (*lid*) has a *first planar area* (**blue** rectangle) on the portion of front wall 6 between openings 8 (*substantially planar frontal extension's portion*) (**green**) of the outer surface (*first material surface*). Ex.1003, ¶132. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[1.5.6] ***[the lid] having a first lid hole fully encompassed within a substantially planar lid area;***

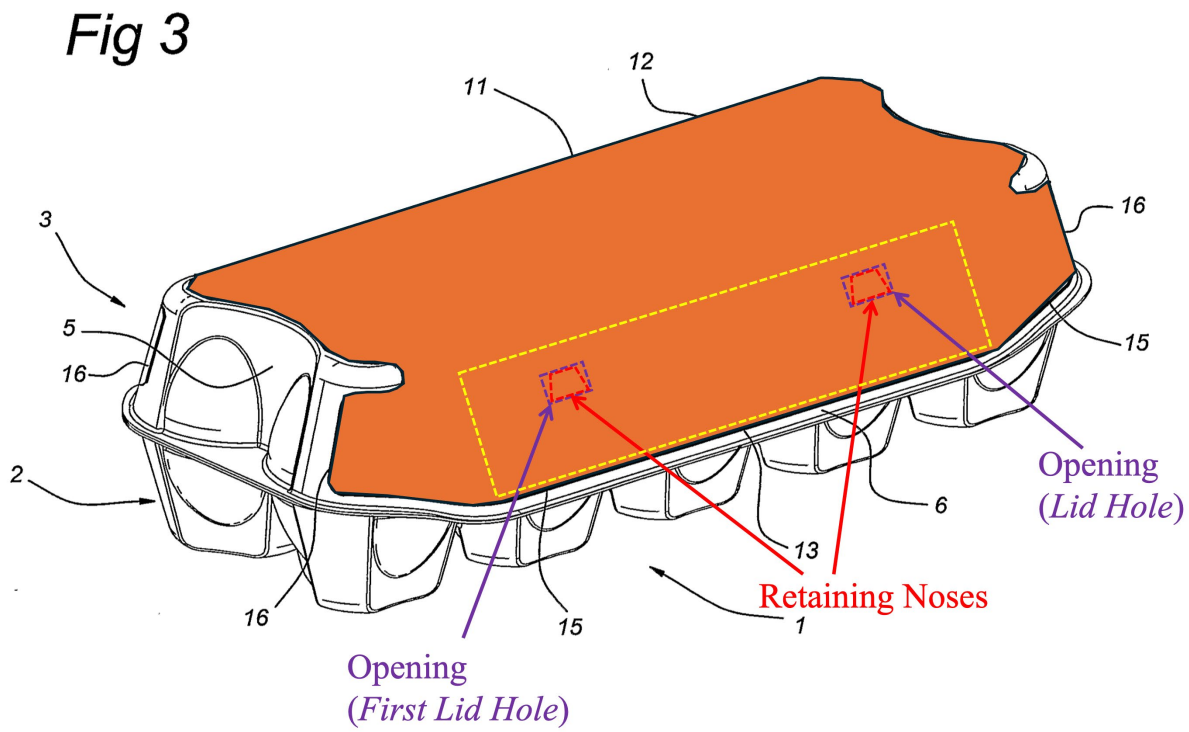
Post's container includes openings 8, i.e., lid holes, and lid part 3 (*lid*) includes *a substantially planar lid area* (yellow). Openings 8 are each formed in front wall 6 of lid part 3 of Post's container. Ex.1010, 3 ("openings 8 in the front wall 6."). The closing projections 9 protrude through openings 8 when the container is closed. Ex.1010, 3. Openings 8 are *fully encompassed within [the] substantially planar lid area* (yellow). This is because openings 8 are formed below indents 10 extending between top part 4 and front wall 6 of lid part 3. Ex.1010, 3 ("indent 10 above the openings 8."); Ex.1003, ¶133. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

A POSITA would have been motivated to modify Post's container to use Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism. Ex.1003, ¶134. A POSITA would have been motivated to modify Post in view of Beese. *See* Section XI.C.4; Ex.1003, ¶134.

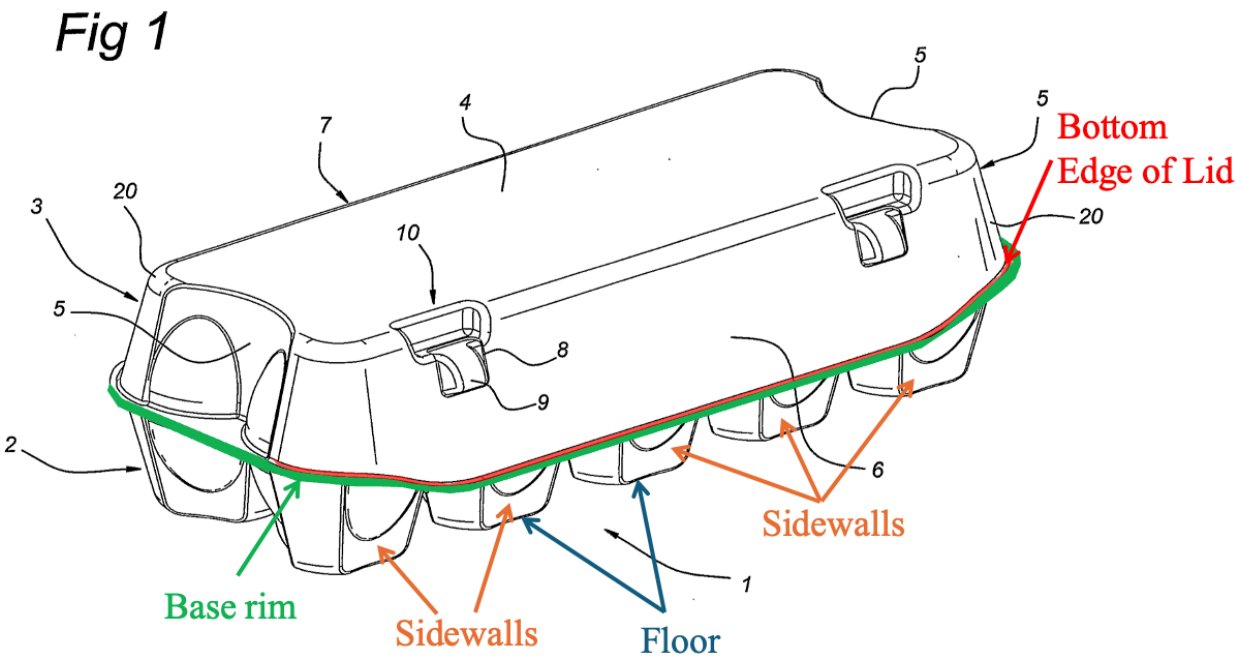
Post's *label* (**orange**) in the Post-Beese combination covers front wall 6 of lid part 3 and extends to the bottom edge of lid part 3, per Beese. Ex.1009, [0030]. In Beese, retaining noses 24 interact with openings 34 (*first lid hole*) and another lid hole) on front part 33 of lid part 3. Ex.1009, [0027] ("front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24[.]"). In the combination, the openings (**purple**) that interact with Beese's retaining noses (**red**) are each *a lid hole fully encompassed within a substantially planar lid area* (yellow dotted rectangle). Ex.1003, ¶134. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

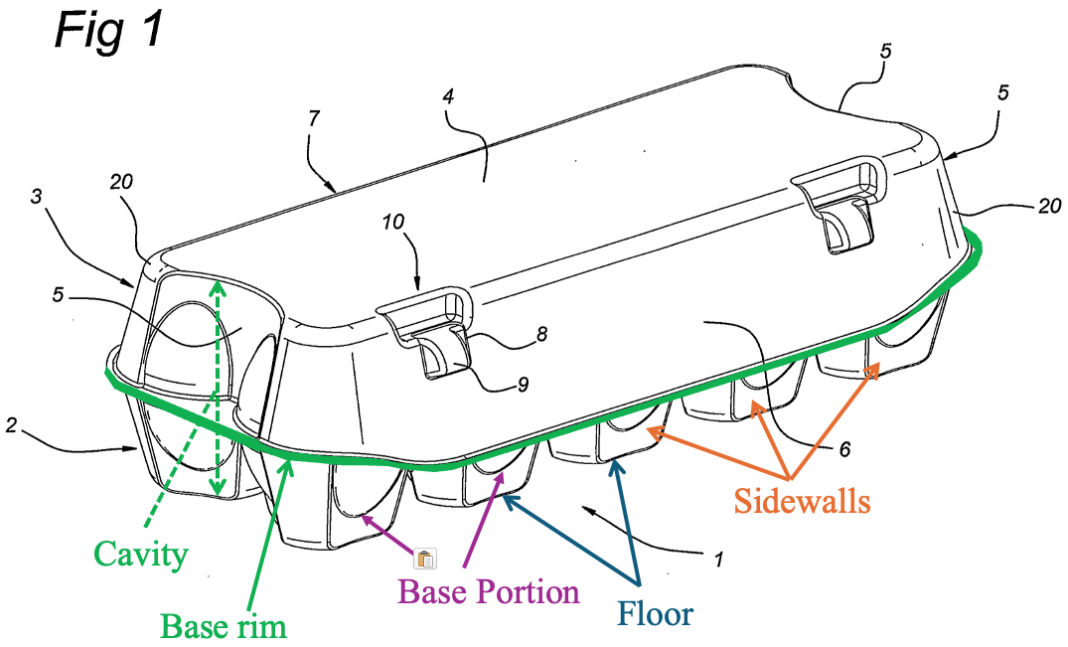
[1.6.1] ***the base having a sidewall extending from the floor to a base rim that generally defines an opening for the base portion of the cavity, wherein the sidewall and floor each includes portions of both the first and second material surfaces;***

First, Post's bottom part 2 (*base*) has *sidewall[s]* (**orange**) *extending from the floor* (**blue**) *to a base rim* (**green**) of bottom part 2 on which bottom edge (**red**) of lid part 3 rests when the container is in a closed position. Ex.1003, ¶135. See Fig. 1:



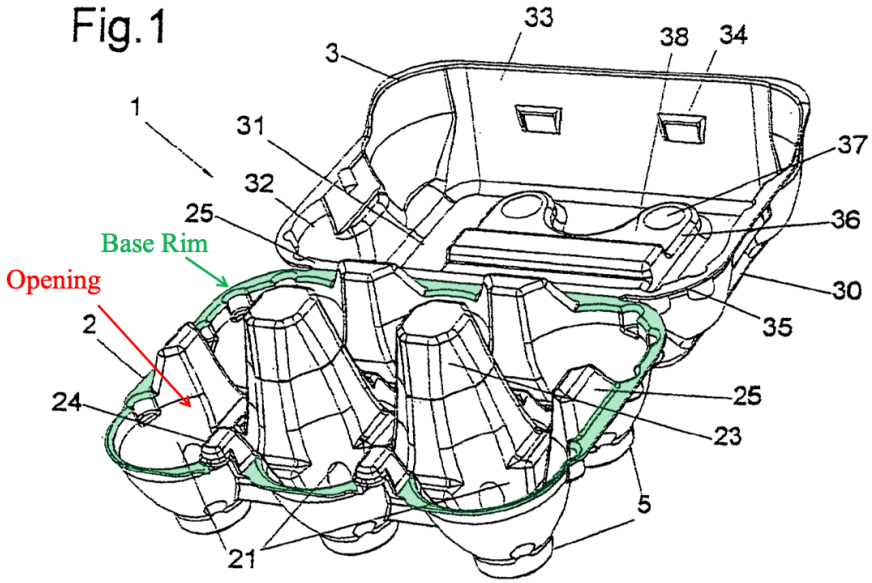
Ex.1010, Fig. 1 (annotated)

Second, Post's *base rim* (**green**) *generally defines an opening for the base portion* (**purple**) *of the cavity* (dotted **green**) between top part 4 of lid part 3 and the floor of bottom part 2. This is because the base rim defines the outer edge of the sidewalls in bottom part 2 and bottom part 2, in turn, has cavities in *the base portion* (**purple**) for holding food, e.g., eggs. Post's container also includes a *base portion* (**purple**) because bottom part 2 is dimensioned with cavities to hold food, e.g., eggs. Ex.1010, 3 (container "consists of a bottom part 2 in which **cavities for accommodating eggs** are shown diagrammatically."). *See* [1.4.1], [1.4.3]; Ex.1003, ¶¶136-137. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

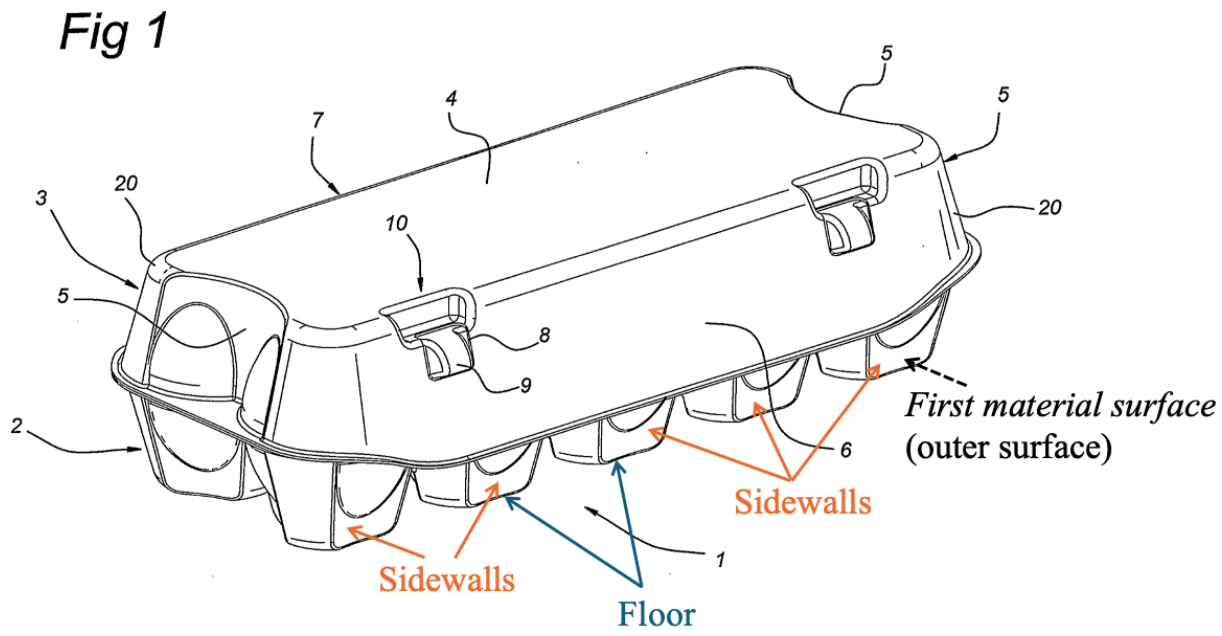
To the extent that Post does not expressly disclose its container having an interior portion, this well-known configuration is shown in Beese. Beese's bottom part 2 has a base rim on the outer edge of bottom part 2 where lid part 3 rests on the base rim. The base rim defines an opening in the container where food, e.g., eggs, are placed. Ex.1009, [0025] (in "closed state, the lid part 3 rests on the bottom part 2[.]"), [0026] ("base part 2 has a plurality of shaped depressions 21 for accommodating eggs."). A POSITA would have understood that, like Beese, Post's *base rim* (**green**) *generally defines an opening for the base portion* (**purple**) *of the cavity* where the opening accommodates food, e.g., eggs. Ex.1010, 3; Ex.1003, ¶¶138-139. See Fig. 1:



Ex.1009, Fig. 1 (annotated)

In the Post-Beese combination, Post's bottom part 2 (*base*) has sidewalls (*sidewall*) (**orange**) *extending from the floor* (**blue**) *to a base rim* (**green**) *that generally defines* cavities in bottom part 2 (*opening for the base portion*) (**purple**) *of the cavity*. Ex.1003, ¶139.

Third, Post discloses that the sidewall and floor of its container each includes portions of both the first and second material surfaces. Post's container includes an outer surface (*first material surface*) and an inner surface (*second material surface*) on which eggs would rest. *See* [1.3.1]; Ex.1003, ¶¶140-141. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[1.6.2] ***[the base having] a base extension extending from the base,***

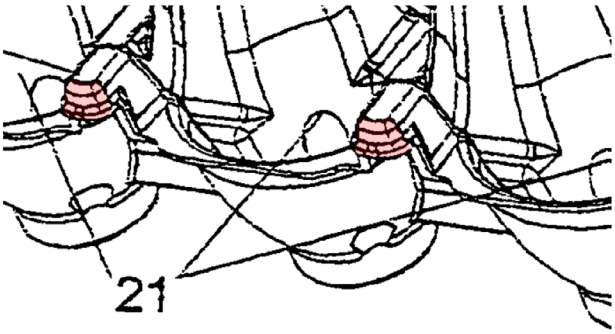
A POSITA would have been motivated to modify Post's container to use Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism. A POSITA would have been motivated to modify Post in view of Beese. *See* Section XI.C.4; Ex.1003, ¶142.

Beese's retaining noses 24 extend from bottom part 2 (Beese's base). Ex.1009, [0026] ("two retaining noses 24 are arranged on a front side of the base part 2."); Ex.1003, ¶143. The retaining noses 24 in the Post-Beese combination render obvious Post's bottom part 2 (*base*) having Beese's retaining noses 24 (*base extension*) *extending from* Post's bottom part 2 (*base*). Ex.1003, ¶144. This is because Beese's retaining noses 24 extend from Beese's bottom part 2 and would

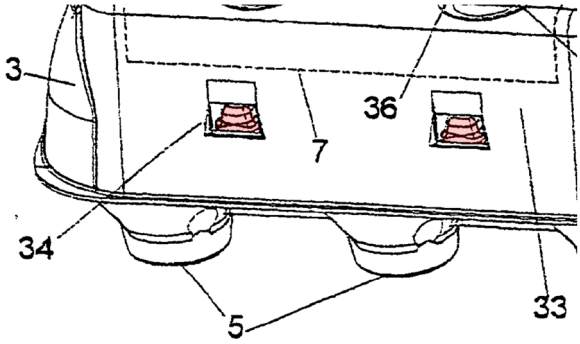
likewise extend from Post's bottom part 2 in the combination. Ex.1009, [0026] ("two retaining noses 24 are arranged on a front side of the base part 2."), Fig. 1 (retaining noses 24 extend from upper end of bottom part 2); Ex.1003, ¶144.

[1.6.3] ***[the base extension] having a primary surface area with a flat portion facing external to the cavity wherein the flat portion is bounded by a first boundary and a second boundary,***

Beese's retaining noses 24 in Post's bottom part 2 render obvious the claimed *base extension*. *See* [1.6.2]; Ex.1003, ¶145. **First**, Beese's retaining noses 24 (*base extension*) have *a primary surface area with a flat portion* (**red**) on the external surface of retaining noses 24 that is *external to the cavity*; the opening in the container where food, e.g., eggs, are stored. Ex.1003, ¶146. See Figs. 1 and 2:



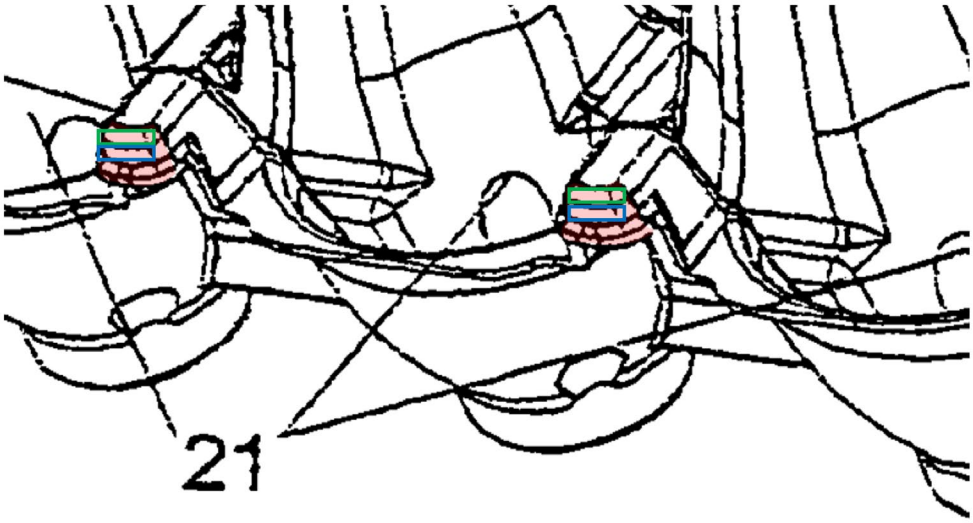
Ex.1009, Fig. 1
(annotated partial view)



Ex.1009, Fig. 2
(annotated partial view)

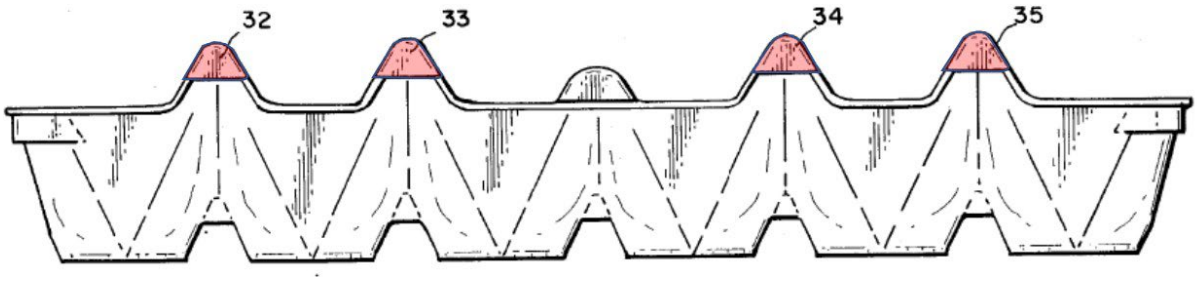
In the Post-Beese combination, Beese's retaining noses 24 in Post's bottom part 2 have *a primary surface area with a flat portion facing external to the cavity* between Post's top part 4 and the floor of bottom part 2. *See* [1.2]; Ex.1003, ¶147. Any portion of the *primary surface area* on the external surface of Beese's retaining

noses 24 is at least one flat portion (**green**) and any other portion is at least a second flat portion (**blue**). *See* Section XI.C.4 (discussion re horizontal lines on Beese's retaining noses 24); Ex.1003, ¶¶148-149. See Fig. 1:



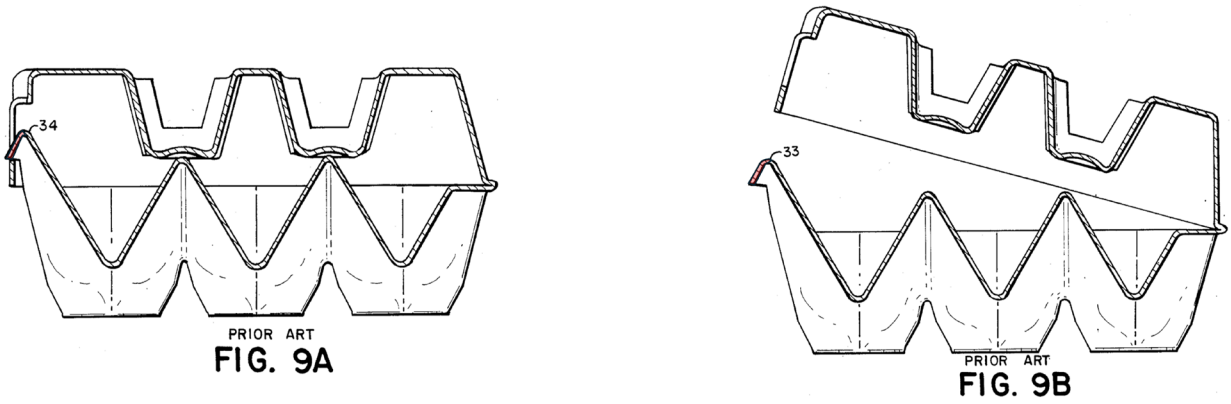
Ex.1009, Fig. 1 (annotated partial view)

Second, Mangla teaches that it was well-known for projections extending from the bottom part of a container (locking mechanism) to have a flat outward surface. Mangla's cartons were designed with a hinged cover having multiple protrusions 32-35, like those of Beese. Ex.1003, ¶150. These protrusions (**red**) extend from the inside sidewall of the base and operate to mate with corresponding holes in the cover to latch the carton. Ex.1015, 4:3-6 (carton "includes protrusions 32-35…[that] have hooks which mate with holes in the cover to latch the carton."). See Fig. 9C:



Ex. 1015, Fig. 9C (annotated)

Mangla's protrusions (**red**) have a flat outward surface, Ex.1003, ¶151, which is shown in Figs. 9B and 9C:



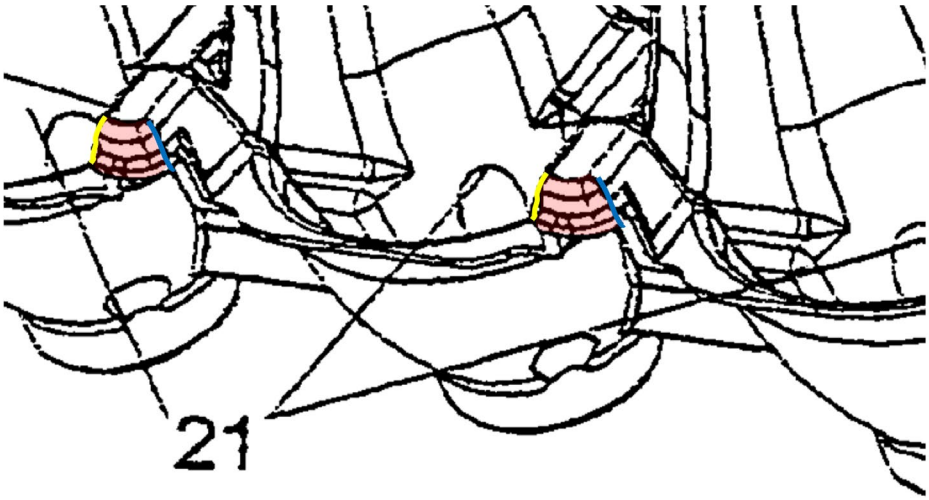
Ex. 1015, Figs. 9A-9B (annotated)

The Post-Beese-Mangla combination thus also render obvious Beese's retaining noses 24 in Post's bottom part 2 (*base extension*) where Beese's retaining noses 24 have an external surface with flat portions, per Mangla (*having a primary surface area with a flat portion facing*) facing outward from the cavity between Post's top part 4 and floor of bottom part 2 (*external to the cavity*). Ex.1003, ¶153.

A POSITA would have been motivated to configure Beese's retaining noses 24, in Post's container, to have a flat outward surface, as suggested by Beese and

taught by Mangla. Ex.1003, ¶152. A POSITA would have been motivated to modify the Post-Beese container in view of Mangla. *See* Section XI.C.4; Ex.1003, ¶152.

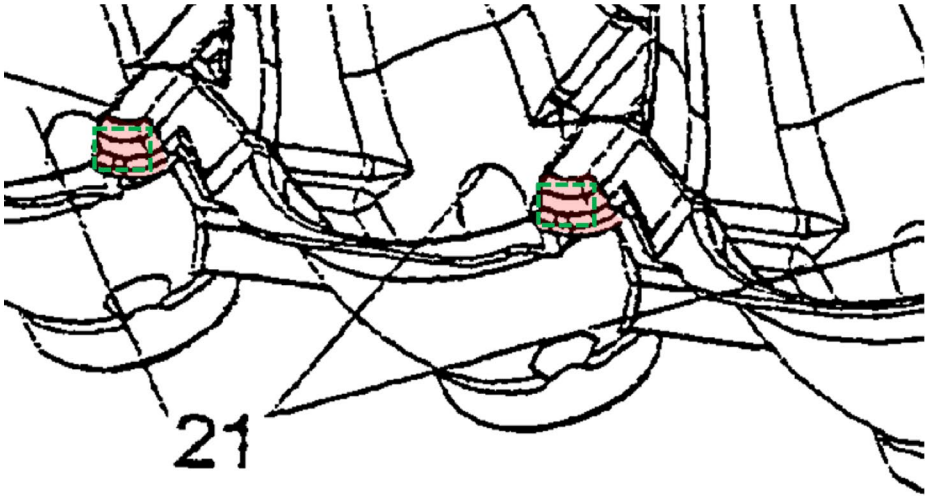
Third, the *flat portion* of Beese's retaining noses 24 (*base extension*) (**red**) is *bounded by a first boundary* (yellow boundary on left) *and a second boundary* (**blue** boundary on right). Ex.1003, ¶¶154-155. See Fig. 1:



Ex.1009, Fig. 1 (annotated partial view)

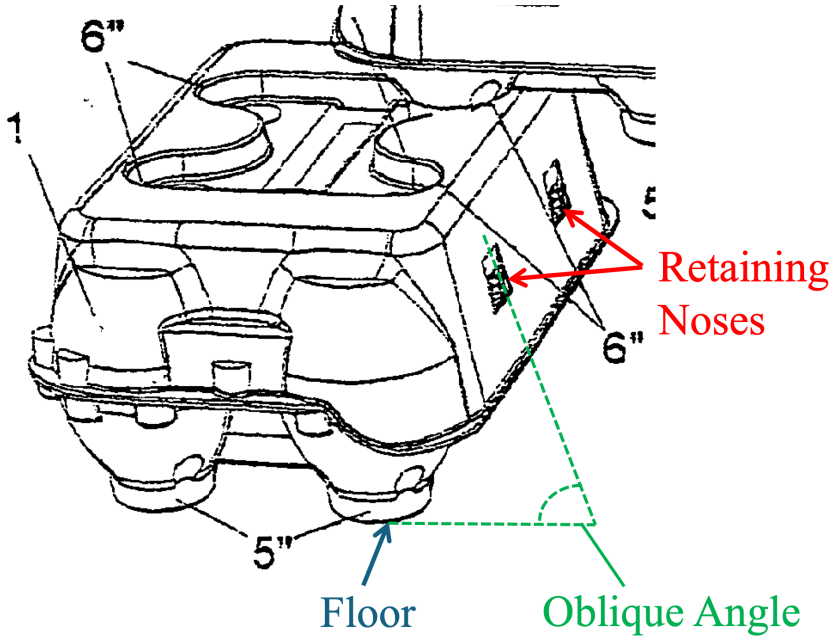
[1.6.4] ***[the base extension having] a second planar area on the flat portion disposed obliquely to the floor, and***

Beese's retaining noses 24 in Post's bottom part 2 render obvious the *base extension*. *See* [1.6.2]; Ex.1003, ¶156. Beese's retaining noses 24 each have a *second planar area* (**green** rectangle) *on the flat portion* (**red**). Ex.1003, ¶157. See Fig. 1:



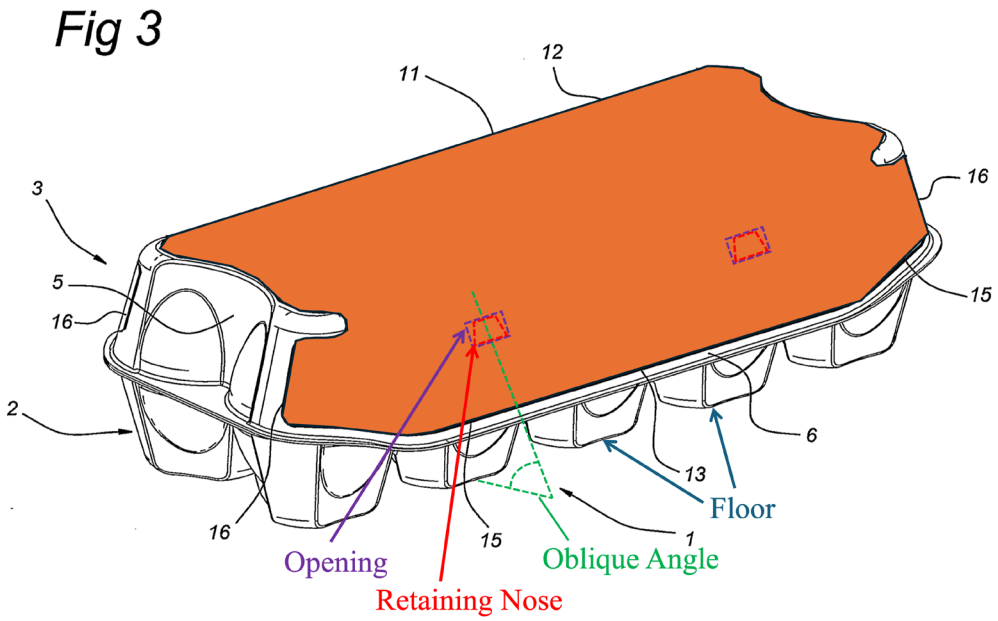
Ex.1009, Fig. 1 (annotated partial view)

The front-facing, flat portion (*second planar area*) of retaining noses 24 (**red**) is *disposed* at an angle that is not a right angle or a multiple of a right angle and is either (1) between 0° and 90° or (2) between 90° and 180° relative to the *floor* (*obliquely to the floor*). Ex.1003, ¶158. See Fig. 4:



Ex.1009, Fig. 4 (annotated partial view)

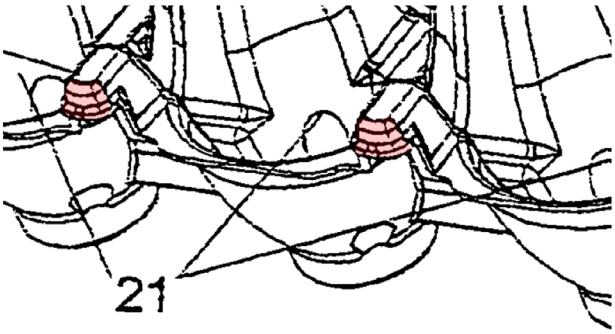
In the Post-Beese combination, Post's container includes Beese's retaining noses 24 (**red** dotted lines) and corresponding openings (**purple** dotted lines) in Post's front part 6 of lid part 3. This allows Post's label 11 (**orange**) to extend all the way to the bottom edge of front part 6. In turn, the front-facing, flat portion (*second planar area*) of retaining noses 24 (**red** dotted lines) is *disposed obliquely to the floor*. Ex.1003, ¶¶159-160. See Fig. 3:



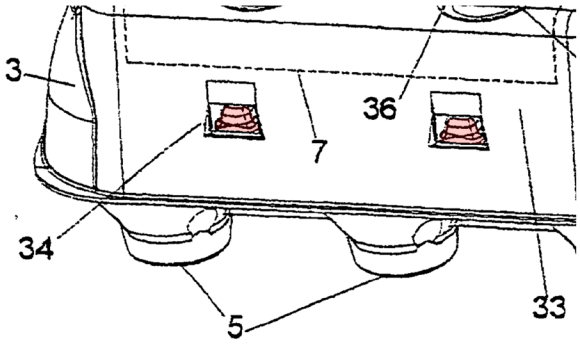
Ex.1010, Fig. 3 (annotated)

[1.6.5] ***[the base extension having] a secondary surface area that is on the direct opposite side of the material from the flat portion and is an extension of the sidewall's portion of the first material surface; and***

Beese's retaining noses 24 in Post's bottom part 2 render obvious the claimed *base extension*. *See* [1.6.2]; Beese's retaining noses 24 each have a primary surface area with a *flat portion* (**red**) on the external surface of retaining noses 24. *See* [1.6.3]; Ex.1003, ¶161. See Figs. 1 and 2:

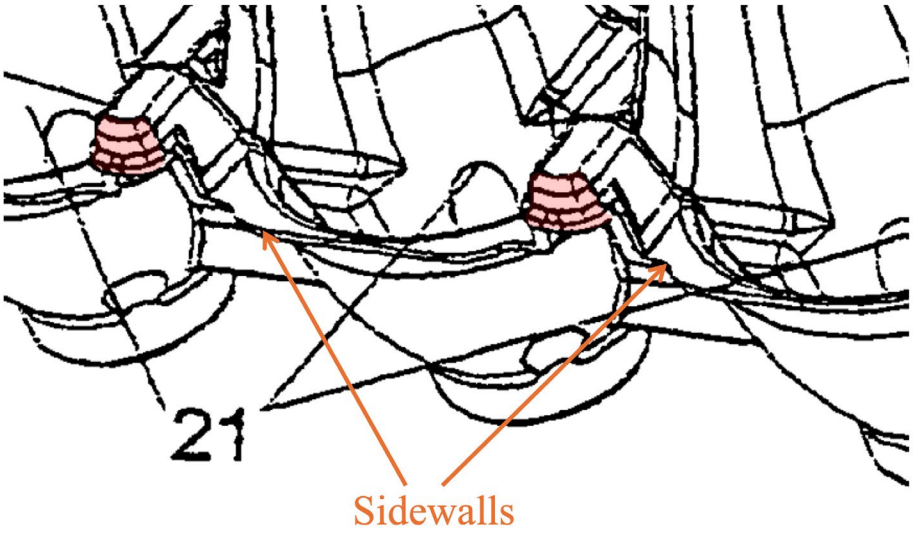


Ex.1009, Fig. 1
(annotated partial view)



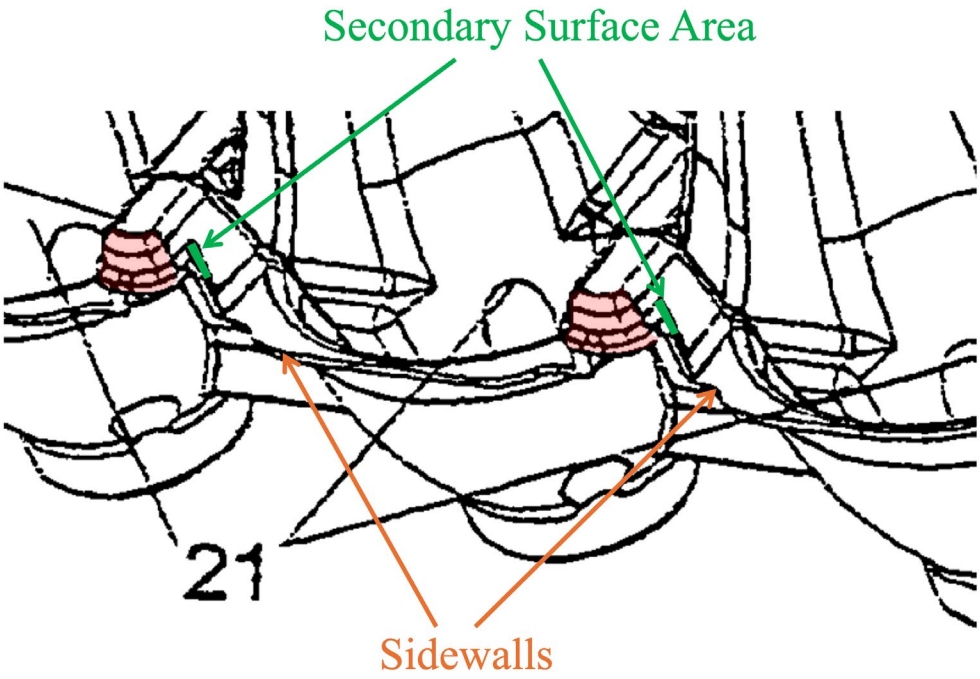
Ex.1009, Fig. 2
(annotated partial view)

Beese's retaining noses 24 are an extension from the sidewalls of bottom part 2. Ex.1009, [0026] ("retaining noses 24 are arranged on a front side of the base part 2."). In the Post-Beese combination, Beese's retaining nose 24 would be an extension of the sidewalls in Post's bottom part 2, including extending from the outside surface (*first material surface*). *See* Section XI.C.4; Ex.1010, 3 ("Closing projections 9…are joined to the bottom part [2][.]"); Ex.1003, ¶162. *See* Fig. 1:



Ex.1009, Fig. 1 (annotated partial view)

Beese's retaining noses 24 each have a *secondary surface area* (**green**) *that is* (1) on the opposite side of retaining nose 24 from the flat portion (*on the direct opposite side of the material from the flat portion*) (**red**) and (2) *an extension of the sidewall's* (**orange**) *portion of the* outer surface (*first material surface*). The *secondary surface area* (**green**) is an *extension of the sidewall's portion of the first material surface* because the *secondary surface area* extends from the outer surface of the sidewall (**orange**) to the portion on the underside of retaining nose 24 that bridges the *flat portion* (**red**) and the *secondary surface area* (**green**). Ex.1003, ¶163. See Fig. 1:



Ex.1009, Fig. 1 (annotated partial view)

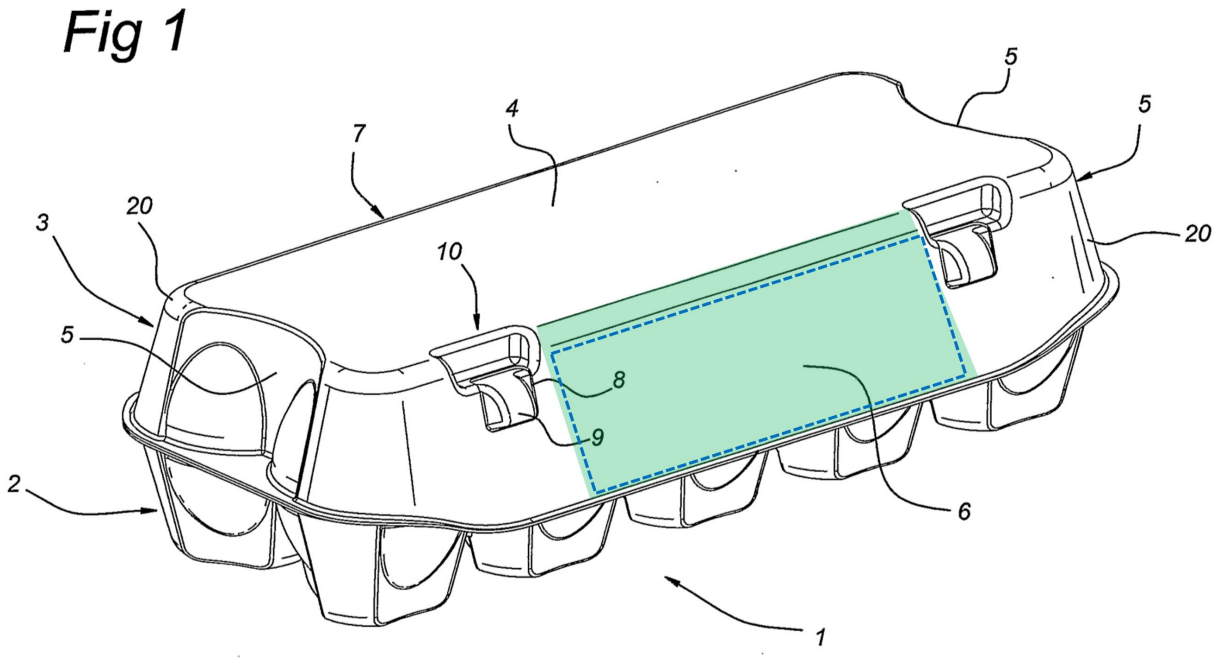
In the Post-Beese combination, Beese's retaining nose 24 in Post's bottom part 2 (*base extension*) have a *secondary surface area* (**green** surface) *that is on the*

direct opposite side of the material from the flat portion (front-facing **red** surface) and it an extension on outer surface of sidewall of Post's bottom part 2, per Beese (*extension of the sidewall's portion of the first material surface*). Ex.1003, ¶164.

To the extent that the *base extension* has a hollow portion (a limitation that might be argued but is not recited in [1.6.5]), this well-known configuration is shown in Mangla. Ex.1003, ¶165. Mangla teaches that it was known to configure a protrusion 34 to have a front surface (**red**) and a directly opposite rear surface (**blue**), where the front surface (**red**) and directly opposite rear surface (**blue**) each extend from the outer surface (first material surface) of the sidewall of the bottom part and serve to lock the bottom part to the lid. Ex.1015, 4:4-6; Ex.1003, ¶165. It would therefore have been obvious to a POSITA to configure Beese's retaining noses 24 to have a front flat portion (*primary surface area*) and a directly opposite rear portion (*secondary surface area*) to engage corresponding holes in the front part 6 of Post's lid part 3, per Mangla. Ex.1003, ¶166. The Post-Beese-Mangla combination also renders obvious Beese's retaining nose 24 in Post's bottom part 2 (*base extension*) having a rear surface of the front of Beese's retaining nose 24 (*having a secondary surface area*) *that is on the direct opposite side of the material from the flat portion* (front-facing **red** surface) and is an extension on outer surface of sidewall of Post's bottom part 2, per Beese (*extension of the sidewall's portion of the first material surface*). Ex.1003, ¶167.

[1.7.1] ***wherein in the closed position the first planar area, the second planar area, and the first and second boundaries of the flat portion are all generally coplanar,***

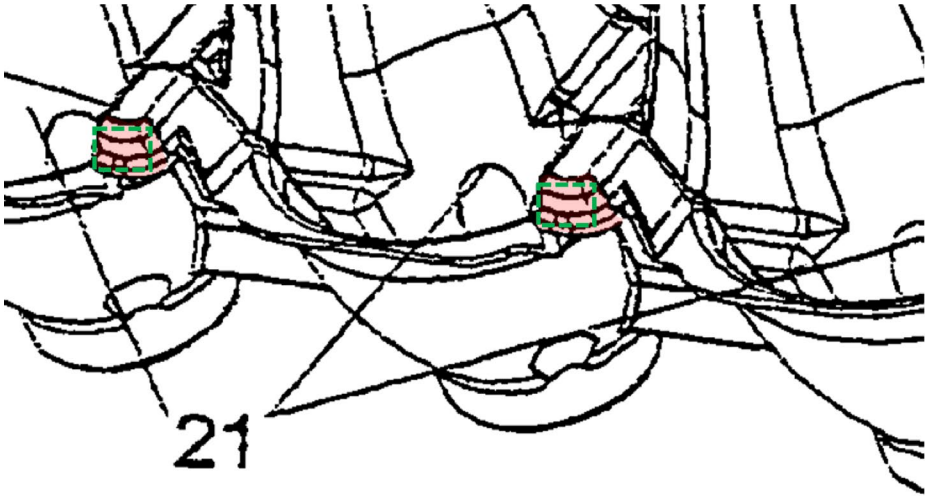
Post's container includes a *first planar area* between openings 8 in front part 6 of lid part 3. *See* [1.5.5]; Ex.1003, ¶168. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

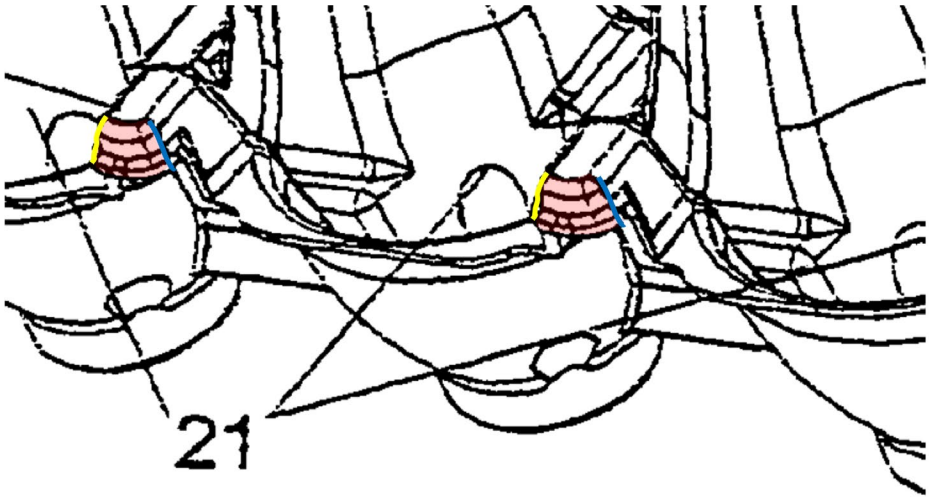
A POSITA would have been motivated to modify Post's container to use Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism. Ex.1003, ¶169. A POSITA would have been motivated to modify Post in view of Beese. *See* Section XI.C.4; Ex.1003, ¶169.

Beese's retaining noses 24 each have a *second planar area* (**green** dotted rectangle) *on the flat portion* (**red**). *See* [1.6.4]; Ex.1003, ¶169. See Fig. 1:



Ex.1009, Fig. 1 (annotated partial view)

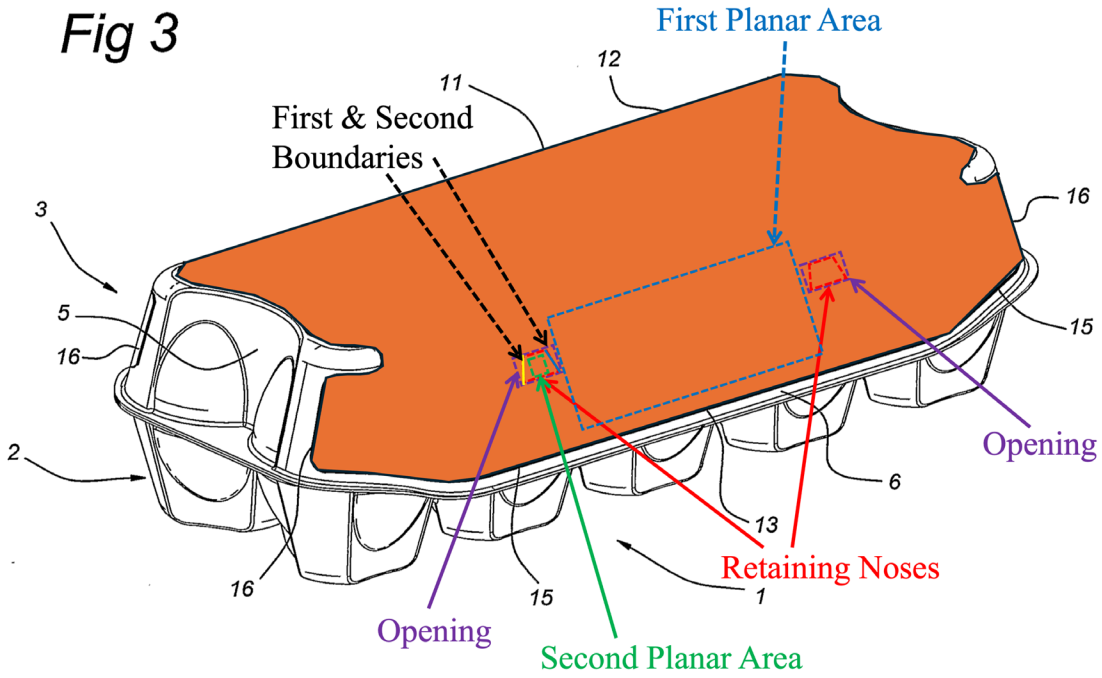
The *flat portion* of Beese's retaining noses 24 is *bounded by a first boundary* (yellow boundary on left) *and a second boundary* (**blue** boundary on right). *See* [1.6.3]; Ex.1003, ¶170. See Fig. 1:



Ex.1009, Fig. 1 (annotated partial view)

Beese's retaining noses 24 are identified in Post's bottom part 2, below, with corresponding openings in Post's lid part 3. Post's label 11 is shown to extend to the bottom edge of lid part 3. In the Post-Beese combination, *the first planar area* (**blue**

dotted rectangle), *the second planar area* (**green** dotted rectangle on the front-facing, flat portion of Beese's retaining noses), *and the first and second boundaries* (yellow and **blue**) *of the flat portion* (of Beese's retaining noses) *are all generally coplanar* along the front part 6 of the lid part 3 when the container is in the *closed position*. Ex.1003, ¶171.

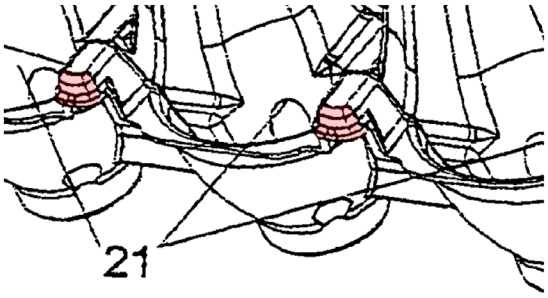


Ex.1010, Fig. 3 (annotated)

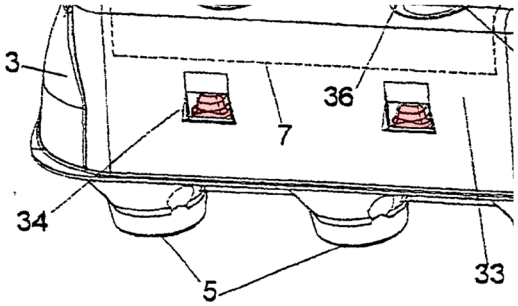
[1.7.2] ***[wherein in the closed position] a first flat portion of a label covers both the primary surface area of the base extension and the substantially planar lid area of the substantially planar frontal extension, and***

A POSITA would have been motivated to modify Post's container to use Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism. Ex.1003, ¶172. A POSITA would have been motivated to modify Post in view of Beese. *See* Section XI.C.4; Ex.1003, ¶172.

In the Post-Beese combination, Beese's retaining noses 24 (*base extension*) in Post's bottom part 2 allows Post's label 11 (*label*) to cover entirely front part 6 of Post's lid part 3 without having to provide openings for Post's projections 9. Beese's retaining noses 24 (*base extensions*) have *a primary surface area with a flat portion* (**red**) on the external surface of retaining noses 24. *See* [1.6.3]; Ex.1003, ¶173. See Figs. 1 and 2:

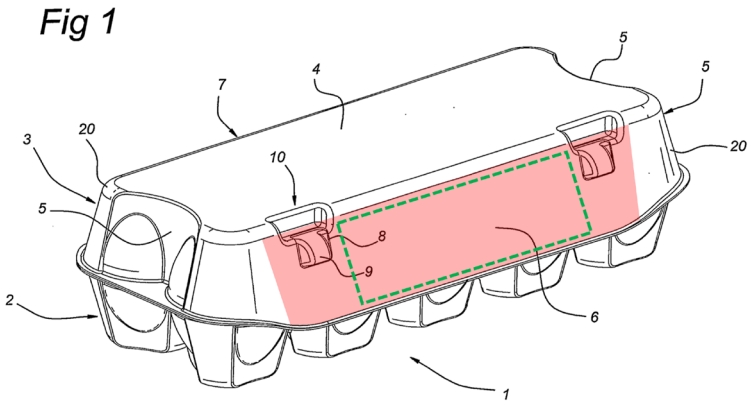


Ex.1009, Fig. 1
(annotated partial view)



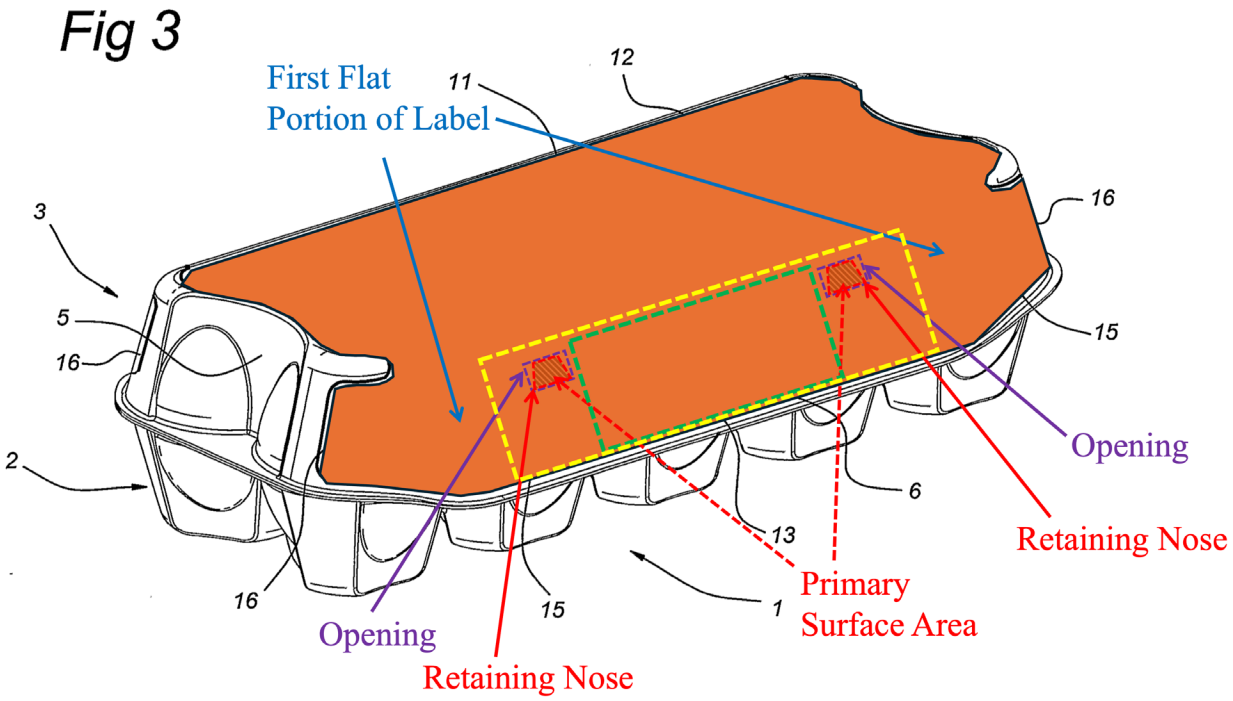
Ex.1009, Fig. 2
(annotated partial view)

Post's lid part 3 also includes *a substantially planar lid area* (**red**), *see* [1.5.6] and a *substantially planar frontal extension* (**green** dotted line). *See* [1.5.2], [1.5.4]; Ex.1003, ¶174. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

In the Post-Beese combination, Post's label 11 (*label*) has a portion that covers front part 6 of lid part 3 (*first flat portion*) (**blue**). This, in turn, *covers both* a front-facing, flat portion of Beese's retaining noses 24 in Post's bottom part 2 (*primary surface area of the base extension*) (**orange** dashed surface) ***and*** *the substantially planar lid area* (yellow dotted rectangle) *of the substantially planar frontal extension* (**green** dotted rectangle). Ex.1003, ¶175. See Fig. 3:

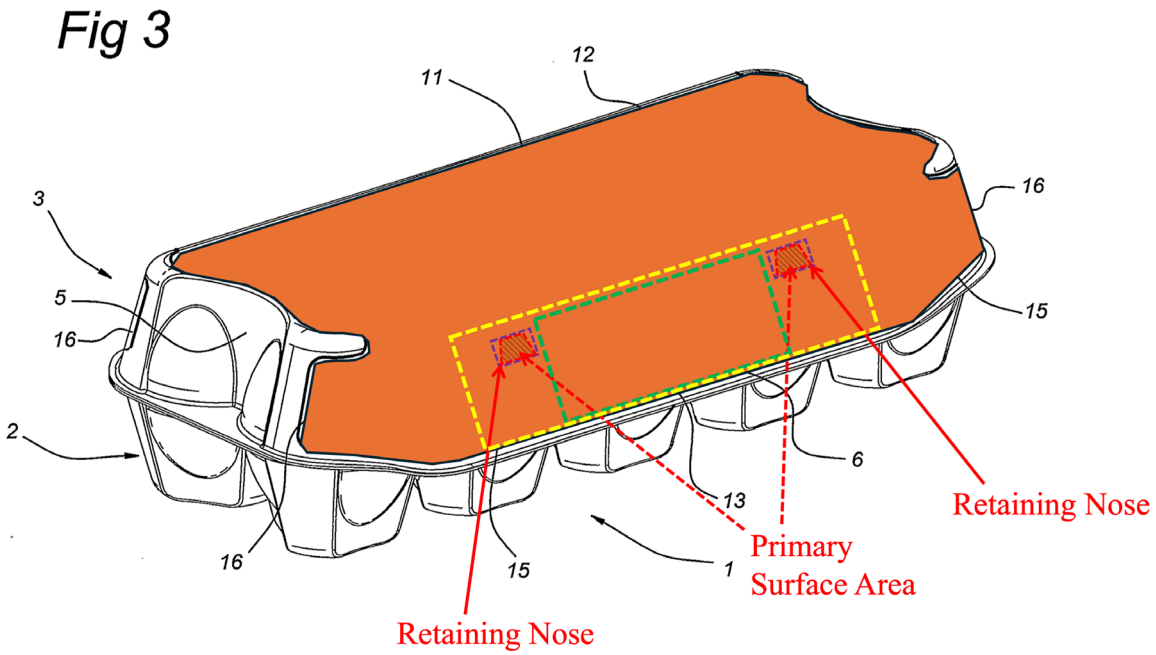


Ex.1010, Fig. 3 (annotated)

[1.7.3] ***[wherein in the closed position] the primary surface area is adjacent to the substantially planar lid area of the substantially planar frontal extension.***

When the container in the Post-Beese combination is *in a closed position*, front-facing, flat portion of Beese's retaining noses 24 in Post's bottom part 2 (*primary surface area*) (**orange** dashed surface area beneath label 11) is arranged in

close proximity (*is adjacent*) *to the substantially planar lid area* (yellow dotted rectangle) *of the substantially planar frontal extension* (**green** dotted rectangle). Ex.1003, ¶¶176-177. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

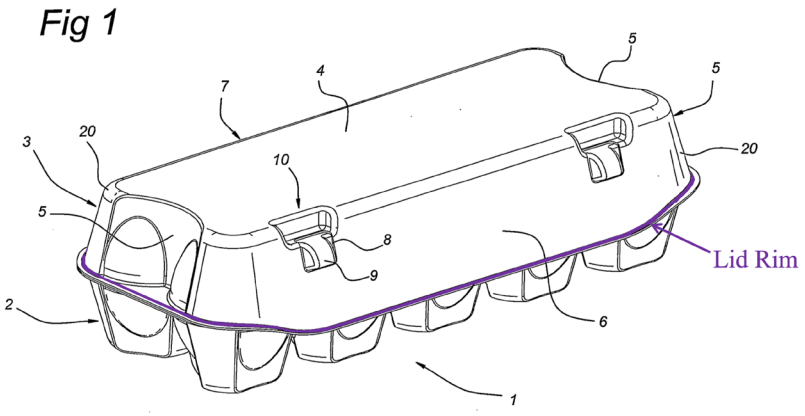
6. Claim 2

[2.0] ***The container of claim 1 wherein the lid has a lid rim that generally defines an opening for the lid portion of the cavity,***

First, Post's lid part 3 is the claimed *lid* and the container can be open or closed. *See* [1.2]; Ex.1010, 1 (container has "bottom part and a hinged lid part joined thereto."), 3 ("lid part 3 can be unlocked from the bottom part 2[.]"); Ex.1003, ¶179.

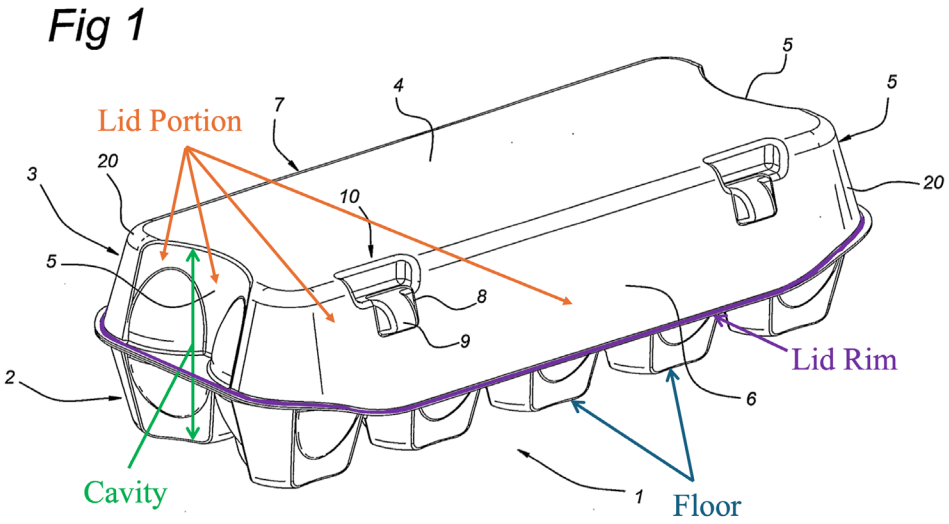
Second, Post's lid part 3 (*lid*) has a *lid rim* (**purple**). The *lid rim* is at the lower end of front part 6, side walls 5, and rear wall 7 of lid part 3. Ex.1010, 3 ("lid part 3 consists of a top part 4…6 is the front wall, 7 the rear wall and 5 are the linking

transverse walls."). The *lid rim* rests on the upper end of bottom part 2. Ex.1003, ¶180. See Fig. 1:



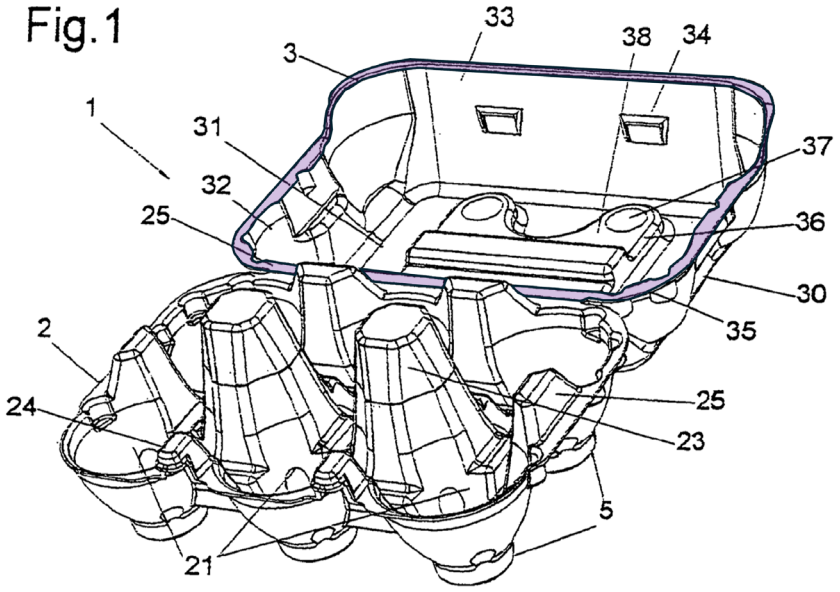
Ex.1010, Fig. 1 (annotated)

A POSITA would have understood that the *lid rim* (**purple**) *generally defines an opening for the lid portion* (**orange**) *of the cavity* (**green**) between the floor of bottom part 2 and top part 4 of lid part 3. *See* [1.4.2]; Ex.1003, ¶181. The *lid rim* is the outer edge of the opening in lid part 3 when the container is opened, and thus defines the opening. Ex.1003, ¶¶181-182. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

To the extent that Post does not expressly disclose that the *lid rim* generally defines an opening for the lid portion, this well-known configuration is shown in Beese. Lid part 3 of Beese's container has a *lid rim* (**purple**) on the outer edge of lid part 3. Beese's *lid rim* defines an opening in lid part 3 when the container is open and rests on bottom part 2 when the container is closed. Ex.1009, [0025]; Ex.1003, ¶183. See Fig. 1:

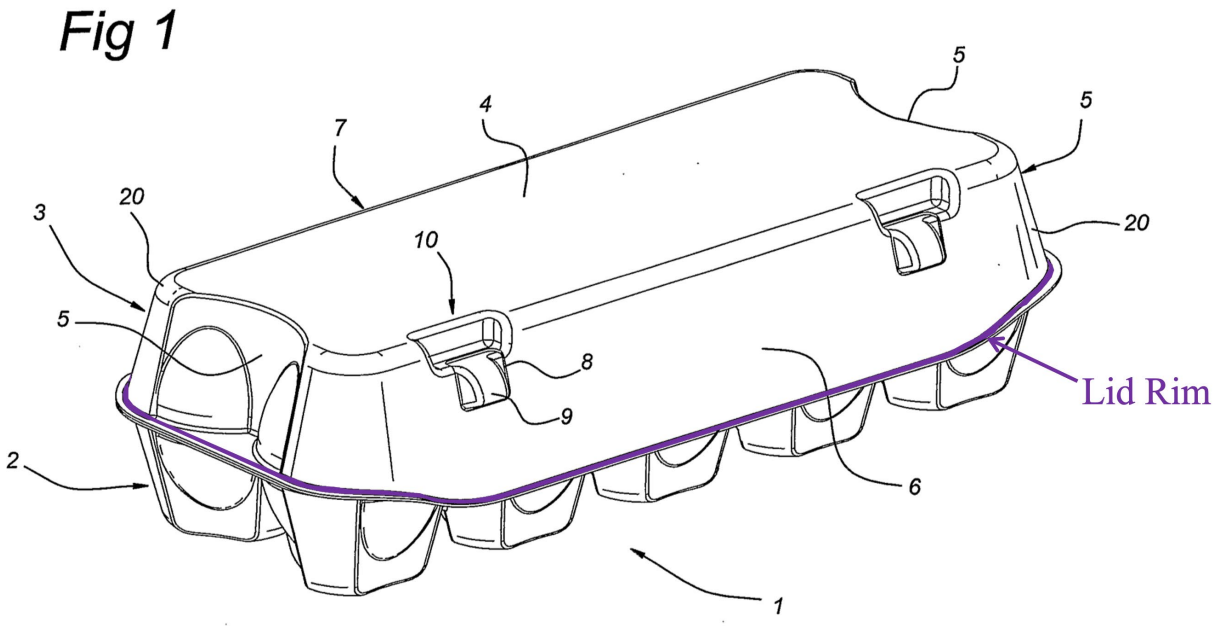


Ex.1009, Fig. 1 (annotated)

A POSITA would have understood that Post's *lid rim generally define[] an opening for the lid portion of the cavity*, because, like Beese, Post's *lid rim* is the outer edge of lid part 3 and defines the outer edge of the opening. Ex.1010, 3 (container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto."); Ex.1003, ¶¶184-185.

[2.1] ***the bottom edge of the lid is located on the lid rim, and***

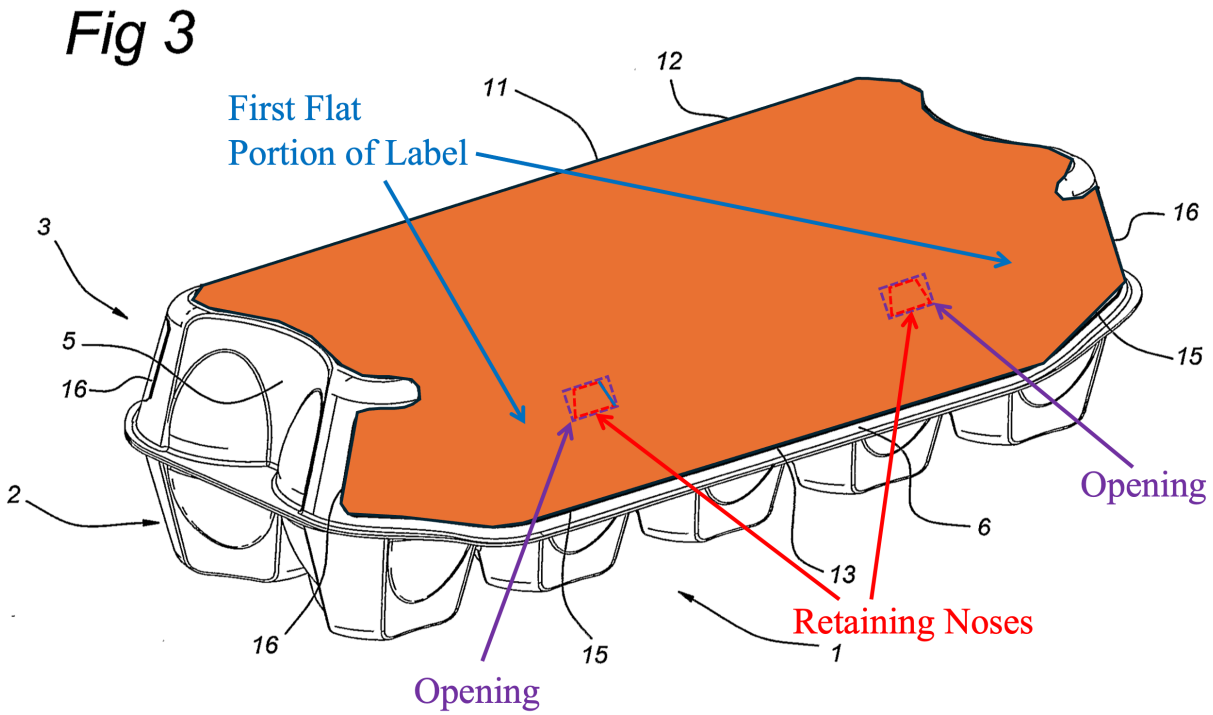
The bottom edge of lid part 3 (*bottom edge of lid*) of Post's container is located on the *lid rim* (**purple**). Ex.1003, ¶186. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[2.2] ***the first flat portion of the label fully extends from adjacent the substantially flat top to the bottom edge of the lid.***

Post's *label* (**orange**) in the Post-Beese combination has a portion that covers front part 6 of lid part 3 (*first flat portion*) (**blue**). *See* [1.7.2]. The label (**orange**) would *fully extend from adjacent* flat top 4 of lid part 3 (*substantially flat top*) to the bottom edge of lid part 3 (*bottom edge of lid*), per Beese. This is because Beese's label "may [] be extended as far as the bottom edge of the front part 33 of the lid part 3." Ex.1009, [0030]; Ex.1003, ¶¶187-188. See Fig. 3:

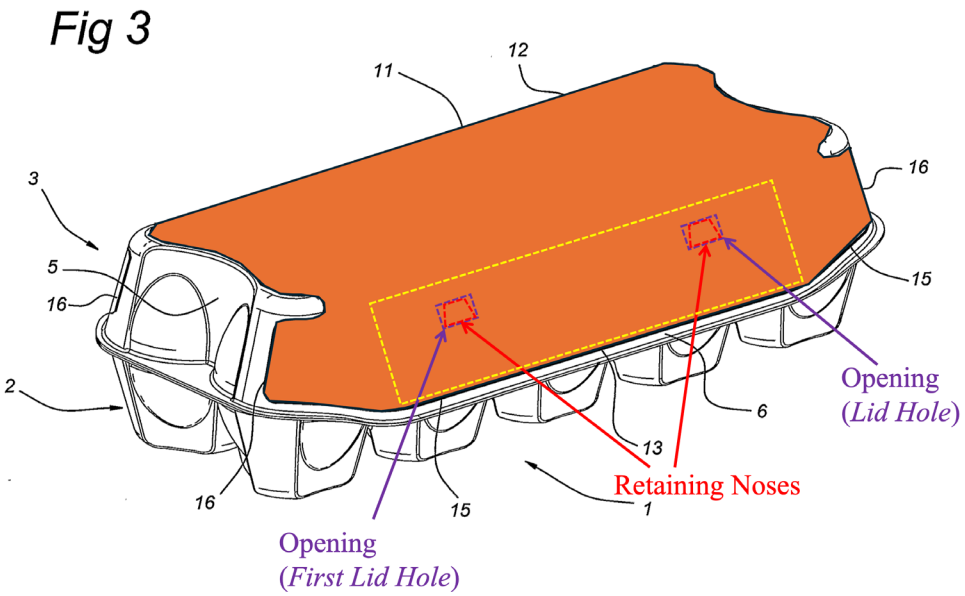


Ex.1010, Fig. 3 (annotated)

7. Claim 3

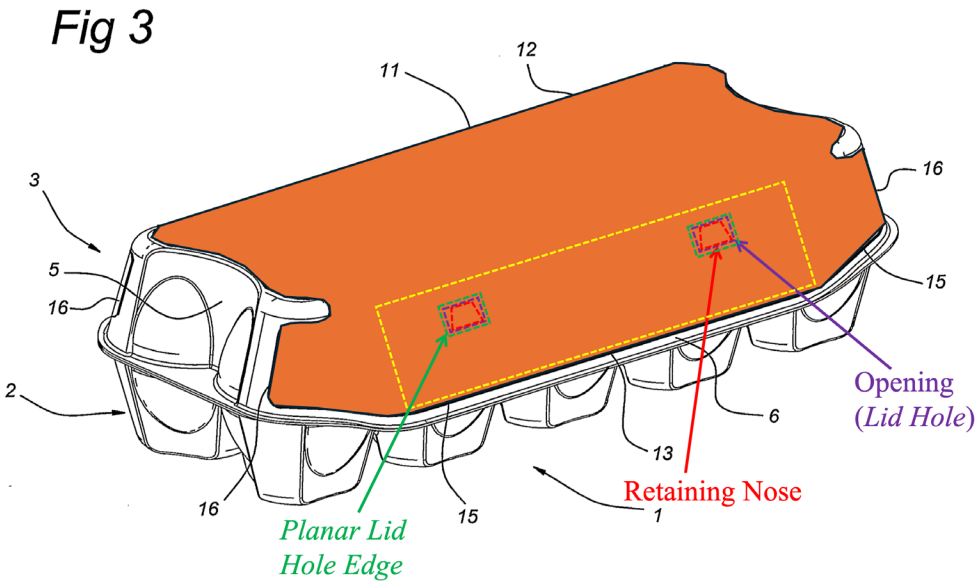
[3.0] ***The container of claim 1 wherein the first lid hole is fully circumscribed by a planar lid hole edge of the substantially planar lid area.***

First, in the Post-Beese combination, the container includes openings (**purple**) (*first lid hole*) that interact with Beese's retaining noses (**red**). *See* [1.5.6]. The openings (each a *lid hole*) are *fully encompassed within a substantially planar lid area* (yellow dotted rectangle). Ex.1003, ¶189. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

Second, the openings (**purple**) (each a *lid hole*) are surrounded by an edge (*fully circumscribed by a planar lid hole edge*) (**green** dotted rectangle) *of the substantially planar lid area* (yellow dotted rectangle). Ex.1003, ¶190. This applies to, for example, the opening on the left (*first lid hole*). See Fig. 3:



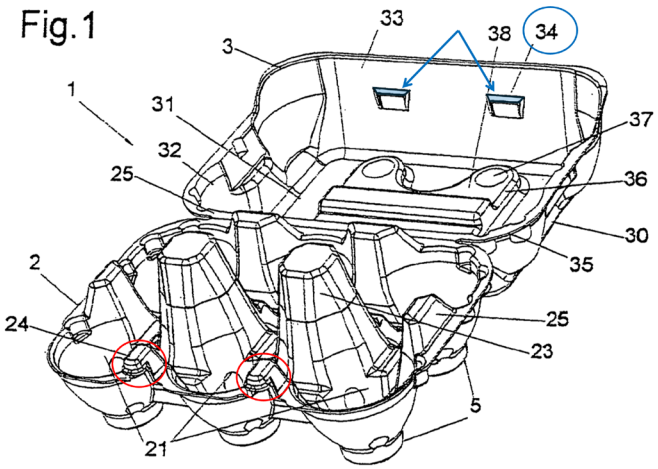
Ex.1010, Fig. 3 (annotated)

8. Claim 4

[4.0] ***The container of claim 3 wherein the base extension extends into the first lid hole when the lid is in the closed position, and***

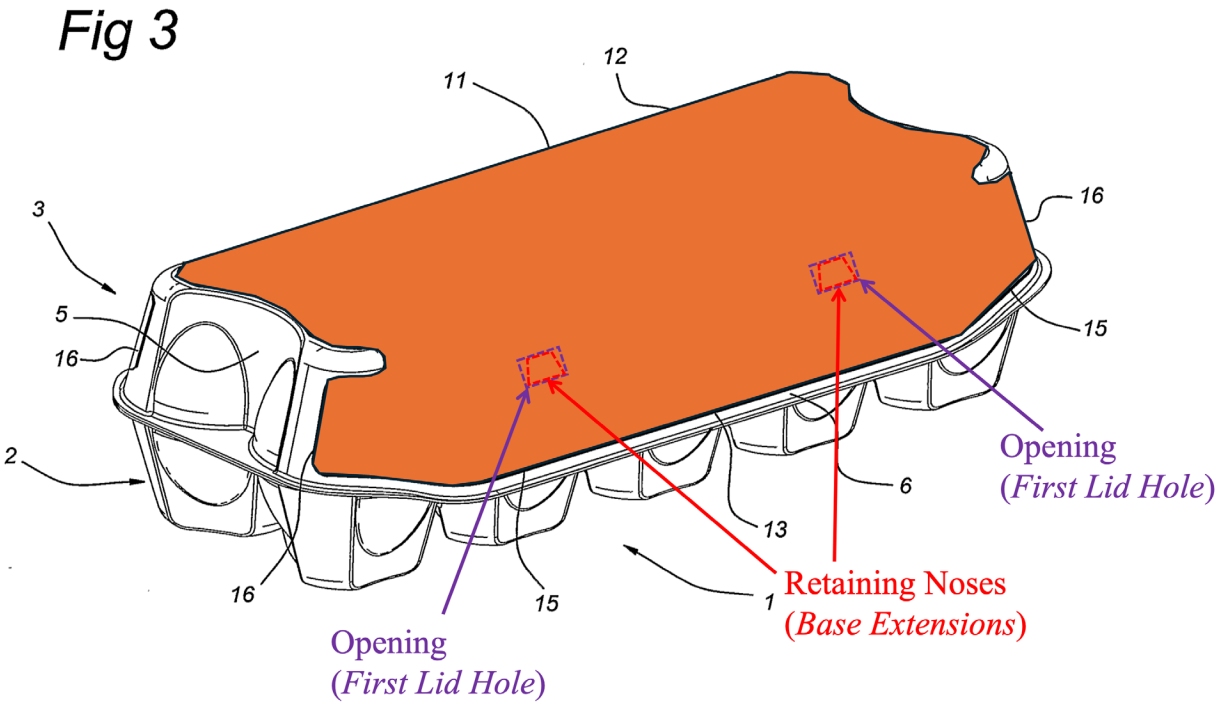
First, in the Post-Beese combination, Beese's retaining noses 24 in Post's container render obvious the claimed *base extension*. *See* [1.6.2]. Beese's openings 34 in front part 33 of lid part 3 in the Post-Beese combination render obvious the claimed *first lid hole*. *See* [1.5.6]. Beese's retaining noses 24 interact with openings 34. Ex.1009, [0027] ("front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24 for the base part 2[.]"); Ex.1003, ¶191.

Second, Beese's retaining noses 24 (**red**) have a front portion that extends away from bottom part 2. The front portion *extends into* and interacts with openings 34 when the container is closed by resting on a ledge (**blue**) at the base of the opening 34. Ex.1003, ¶191. See Fig. 1:



Ex.1009, Fig. 1 (annotated)

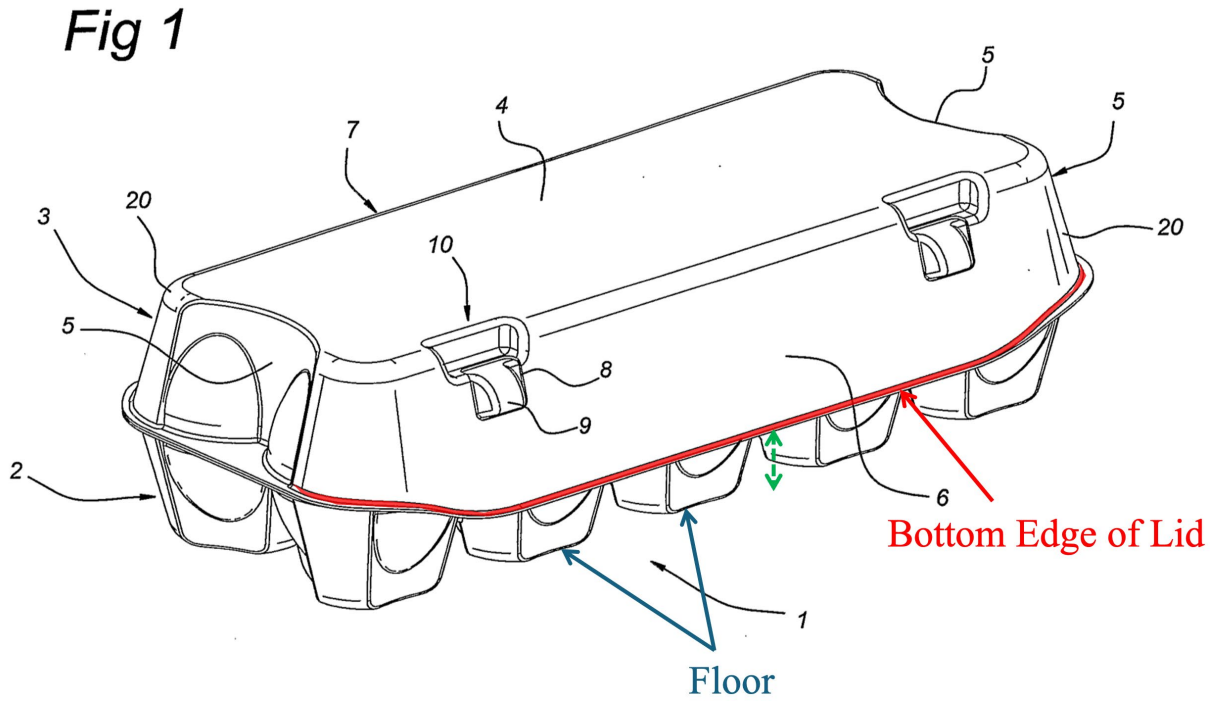
In the Post-Beese combination, Beese's retaining noses 24 (*base extension*) (**red**) *extends into* openings (*first lid hole*) (**purple**) *when the lid is in the closed position*. Ex.1003, ¶192. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

[4.1] ***the bottom edge of the lid is distant from the floor when the lid is in the closed position.***

The *bottom edge* of Post's lid part 3 (*lid*) (**red**) is displaced from (*is distant from*) (**green** arrow) *the floor* (**blue**) when lid part 3 (*lid*) of the container *is in the closed position*. Ex.1003, ¶193. See Fig. 1:

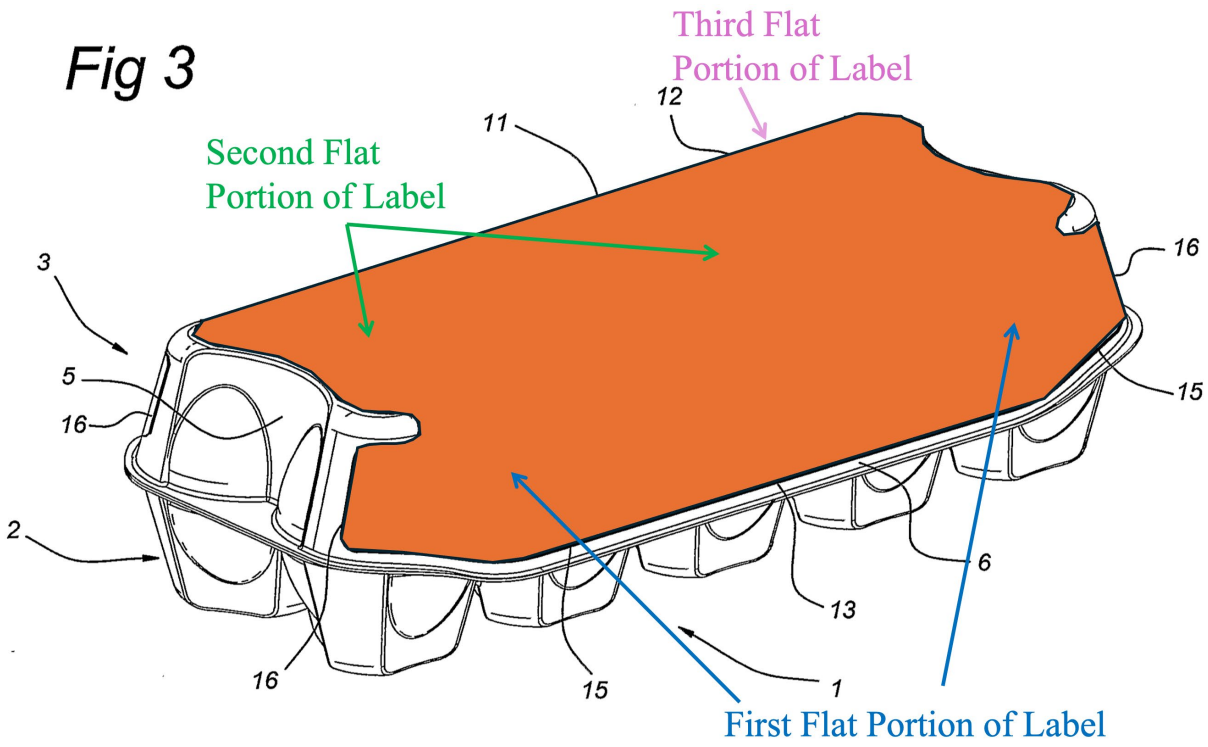


Ex.1010, Fig. 1 (annotated)

9. Claim 5

[5.0] ***The container of claim 1 wherein the label has a second flat portion located between a third flat portion and the first flat portion of the label,***

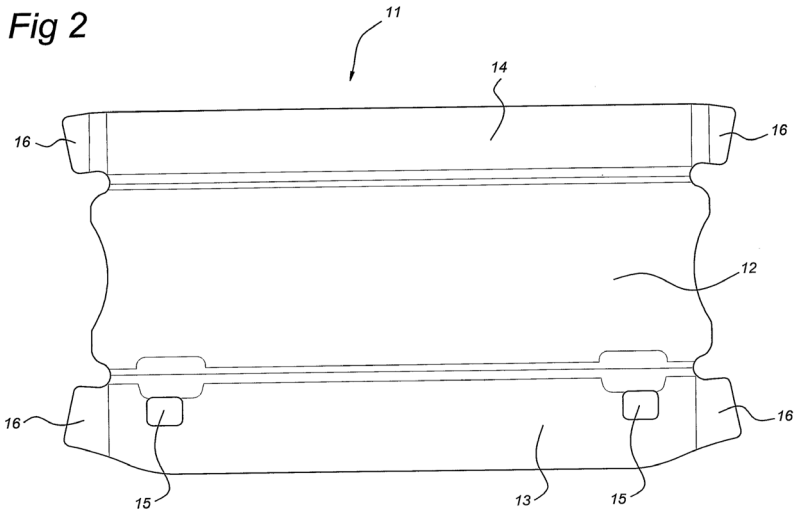
First, a POSITA would have been motivated to modify Post's container, in view of Beese, so that Post's label covers the entirety of front wall 6 of lid part 3. Ex.1009, [0030] ("front side [of sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."); Ex.1003, ¶194. A POSITA would have been motivated to modify Post in view of Beese. *See* Section XI.C.4; Ex.1003, ¶194. Post's label (**orange**) in the Post-Beese combination has a portion that covers front part 6 of lid part 3 (*first flat portion*) (**blue**). See Fig. 3:



Ex.1010, Fig. 3 (annotated)

Second, in the Post-Beese combination, Post's label 11 includes a front flap 13 (*first flat portion of label*) (**blue**) that covers front part 6 of lid part 3, a central part 12 (*second flat portion of label*) (**green**) that covers flat top part 4 of lid part 3, and a rear flap 14 (*third flat portion of label*) (**pink**) that covers rear wall 7 of lid part 3. Ex.1010, 3 ("flat sheet that has to be applied as label to the lid part 3…comprises a central part 12, a front flap 13 and a rear flap 14."), 4 ("flat sheet is then placed with the central part 12 thereof on the top part 4….[B]oth the front flap 13 and the rear flap 14 are then positioned on the front wall 6 and the rear wall 7, respectively[.]"); Ex.1003, ¶195. A POSITA would have understood that Post's *second flat portion* is *located between the third flat portion* and *the first flat portion*

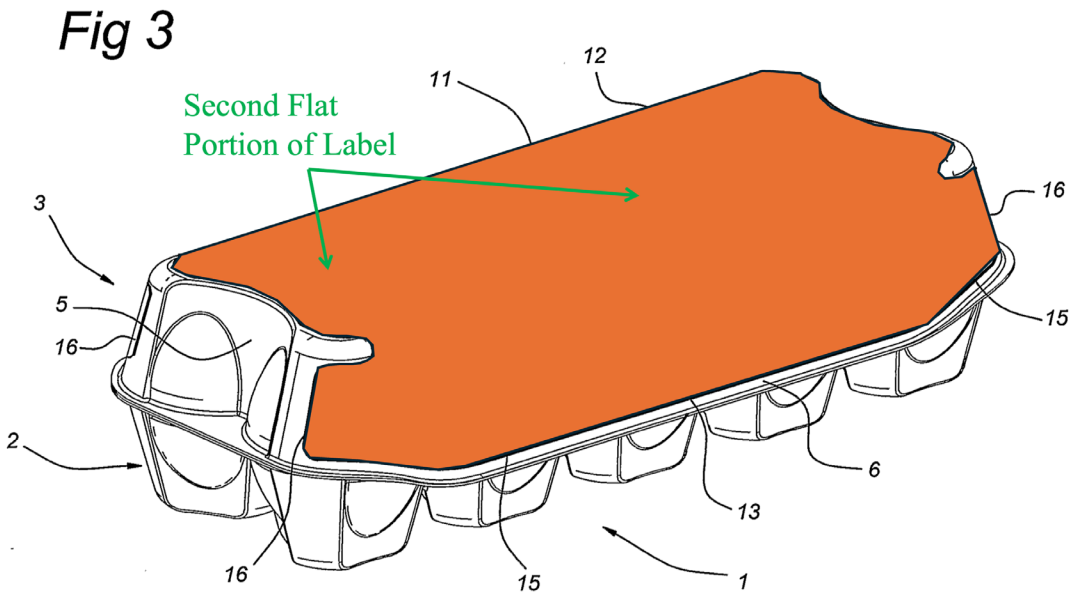
of the label. Ex.1003, ¶¶195-196. See Fig. 2:



Ex.1010, Fig. 2

[5.1] ***wherein the second flat portion is located on the substantially flat top of the lid, and***

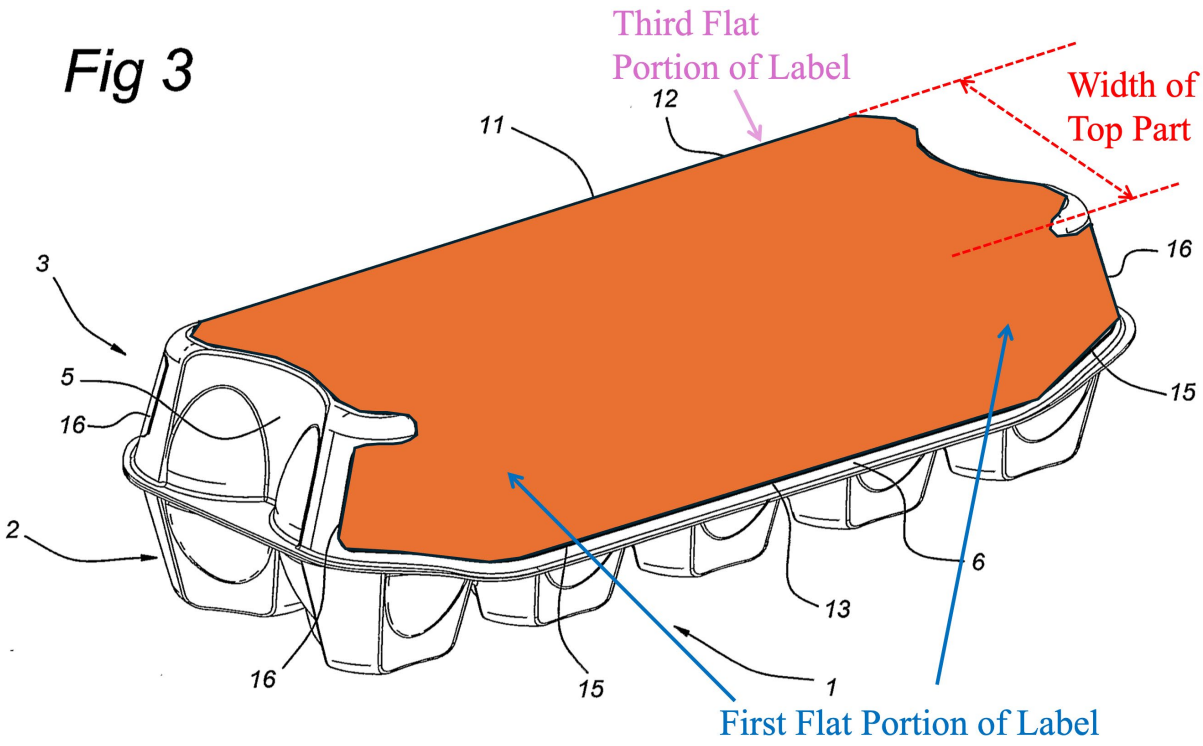
Post's *second flat portion* (**green**) is *located on* top part 4 (*substantially flat top*) of lid part 3 (*lid*). *See* [5.0]; Ex.1003, ¶197. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

[5.2] ***the first flat portion is separated from the third flat portion by the width of the substantially flat top of the lid.***

Post's *first flat portion* (**blue**) of the label is *separated from the third flat portion* (**pink**) *by the width of* top part 4 (*substantially flat top*) *of the lid*. Ex.1003, ¶198. See Fig. 3:



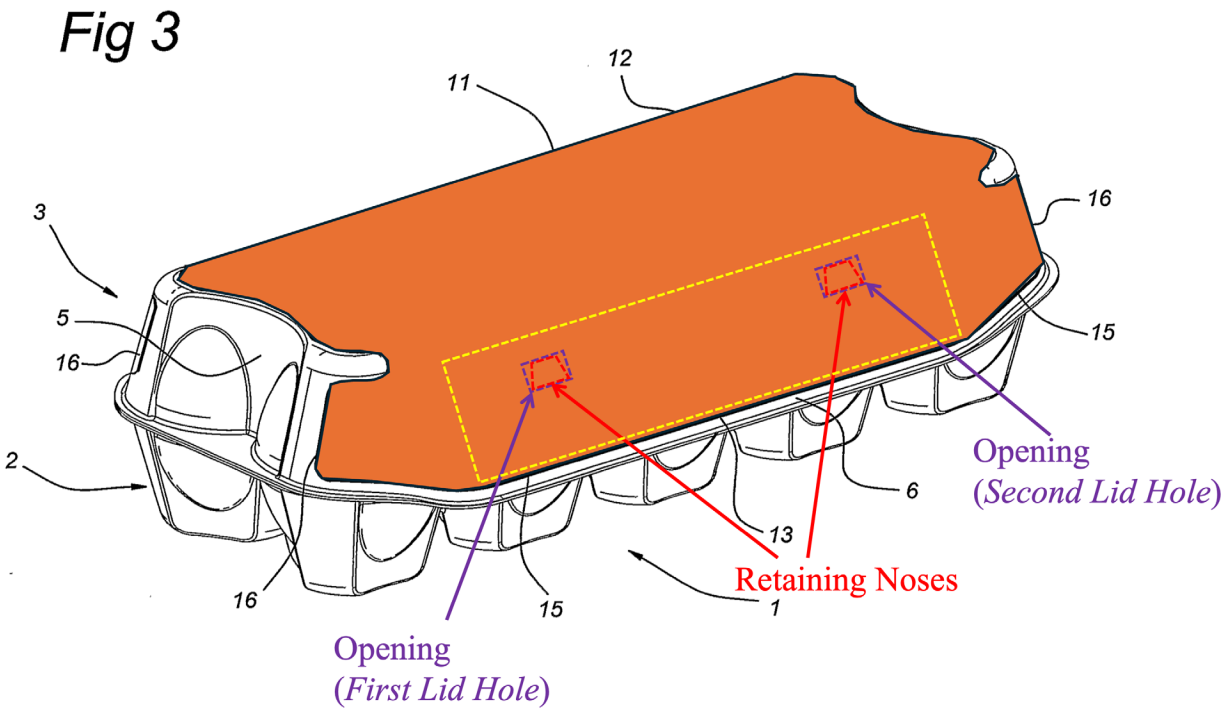
Ex.1010, Fig. 3 (annotated)

10. Claim 6

[6.0] ***The container of claim 1 wherein the bottom edge of the lid extends from nearly adjacent the first lid hole to nearly adjacent a second lid hole in the substantially planar lid area of the substantially planar frontal extension, and the base has a rectangular cross section.***

First, Beese's openings 34 in front part 33 of lid part 3 in the Post-Beese combination render obvious the claimed *lid hole*. *See* [1.5.6]. The opening (**purple**)

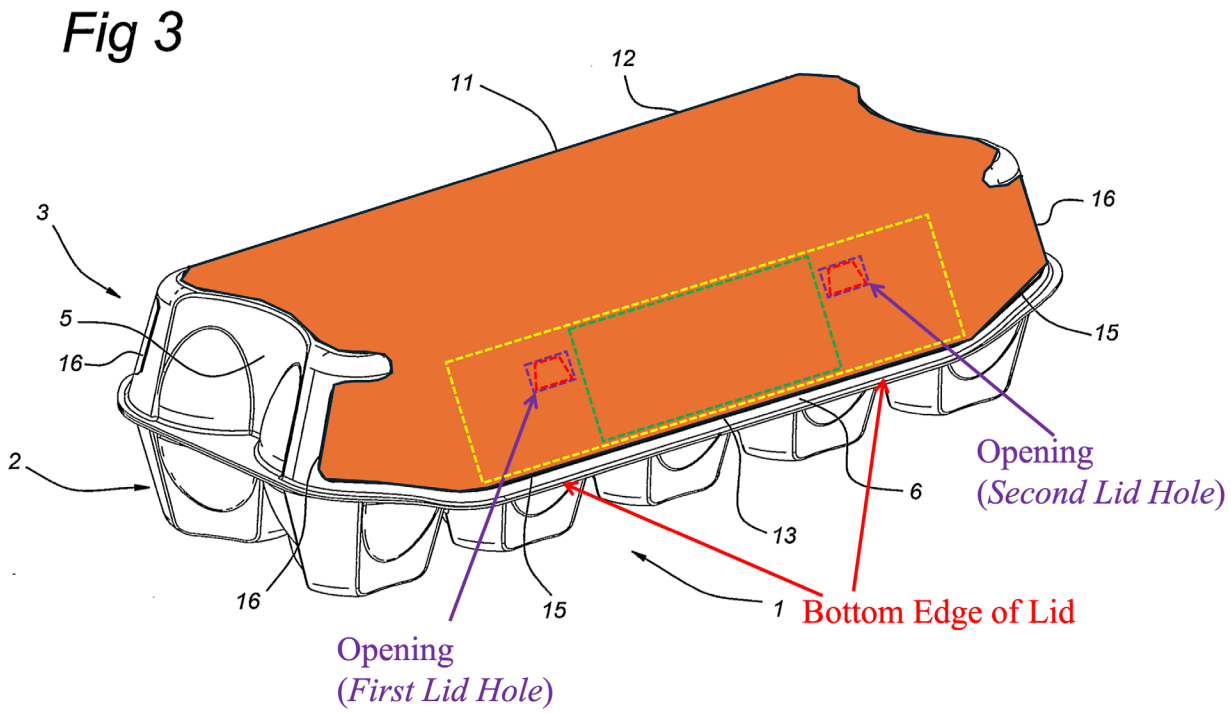
on the left is the *first lid hole* and the opening (**purple**) on the right is a *second lid hole*. The *first* and *second lid holes* are each within *the substantially planar lid area* (yellow rectangle). Ex.1003, ¶199. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

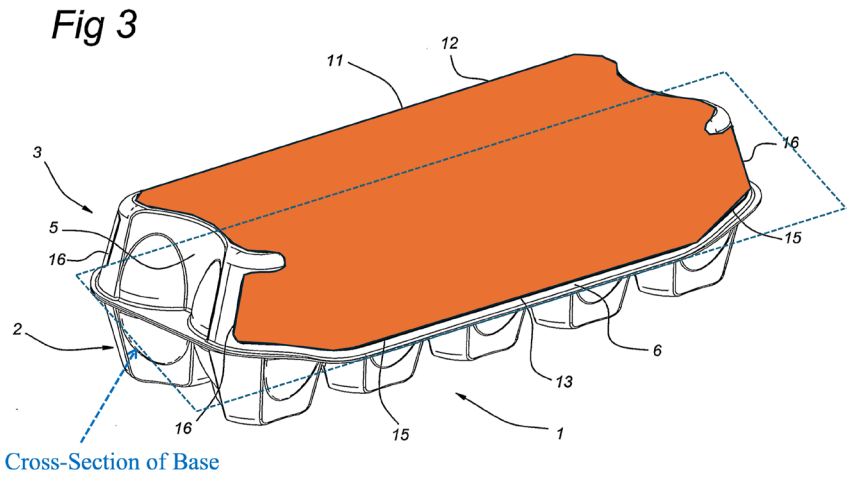
Second, *the bottom edge of the lid* (**red**) *extends from* the opening on the left (*nearly adjacent the first lid hole*) (**purple**) to another opening on the right (*nearly adjacent [the] second lid hole*) (**purple**) *in the substantially planar lid area* (yellow dotted rectangle) *of the substantially planar frontal extension* (**green** dotted rectangle). Post's the *substantially planar frontal extension* (**green** dotted rectangle) is the portion of front part 6 that extends between the openings in front part 6 (**purple** openings). *See* [1.5.2], [1.5.4]. And *the bottom edge of the lid extends from* the

opening on the left (*nearly adjacent the first lid hole*) (**purple**) to another opening on the right (*to nearly adjacent [the] second lid hole*) (**purple**) because the bottom edge of the lid (**red**) is below and thus *nearly adjacent* the openings (**purple**). Ex.1003, ¶200. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

Third, Post's bottom part 2 (*base*) has a *rectangular cross section* because bottom part 2 is designed in a rectangular shape in a tray-like configuration. Ex.1010, 3 (container is "an egg tray[.]"); Ex.1003, ¶201. See Fig. 3:

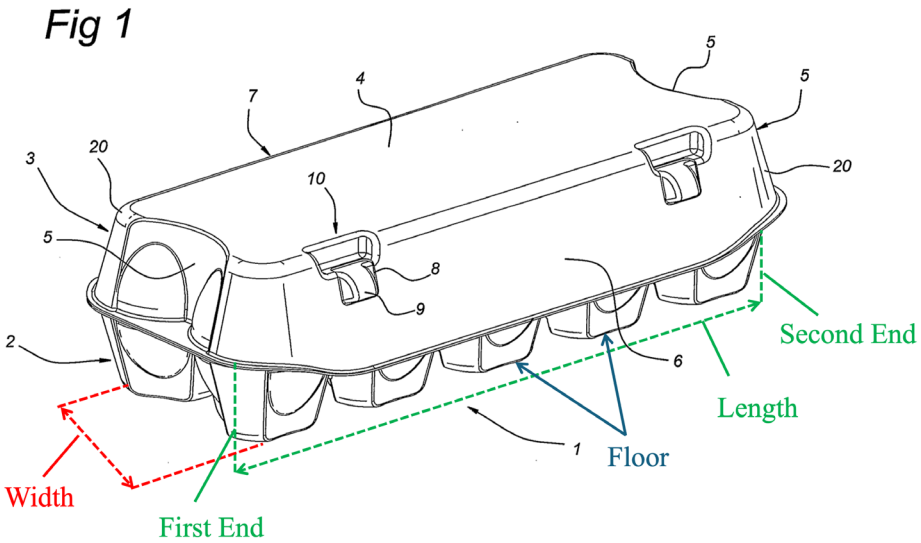


Ex.1010, Fig. 3 (annotated)

11. Claim 8

[8.0] ***The container of claim 1 wherein the floor of the base has a length and a width, wherein the length of the floor is bounded by a first end and a second end, and***

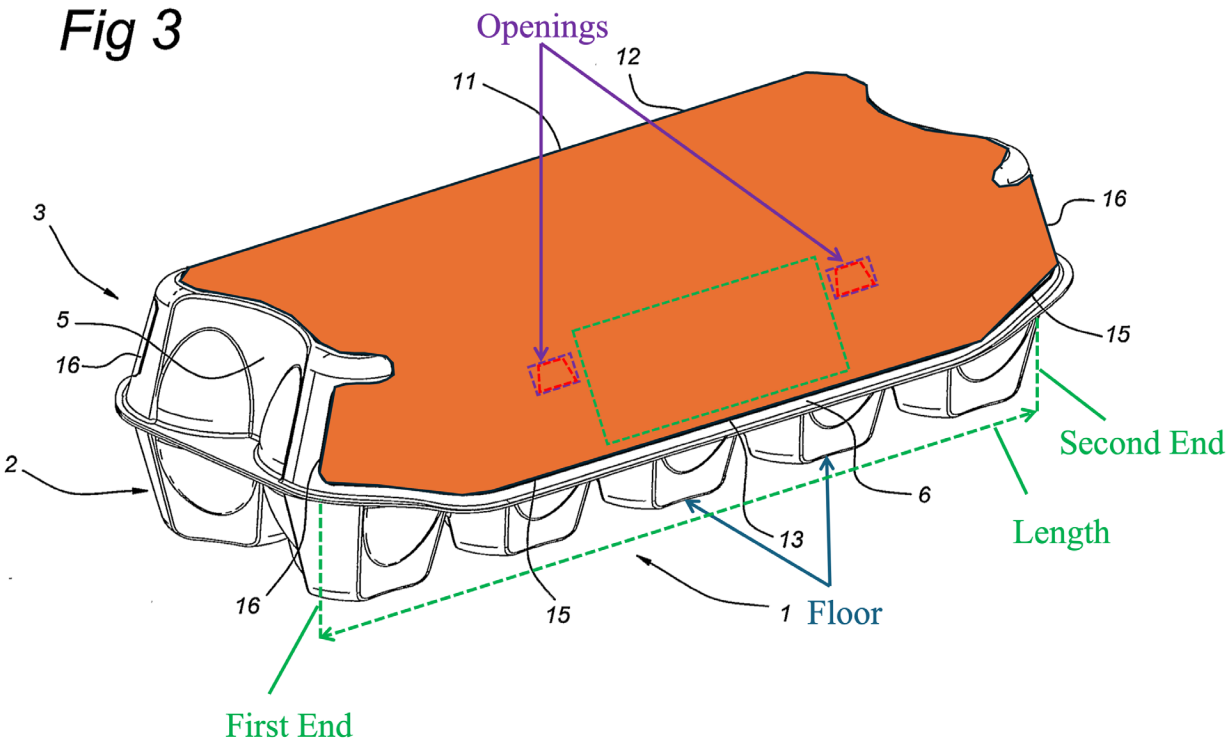
The floor of bottom part 2 of Post's container (*floor of base*) *has a length* (**green**) *and a width* (**red**). The *length* is *bounded by* an end on the left (*first end*) and an end on the right (*second end*). Ex.1003, ¶202. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[8.1] ***the substantially planar frontal extension fully extends the length of the floor.***

The *substantially planar frontal extension* (**green** dotted rectangle) of Post's container is a portion of front part 6. Front part 6 extends between the openings in front part 6 (**purple** openings) in the Post-Beese combination. *See* [1.5.2], [1.5.4]; Ex.1003, ¶203. See Fig. 3:



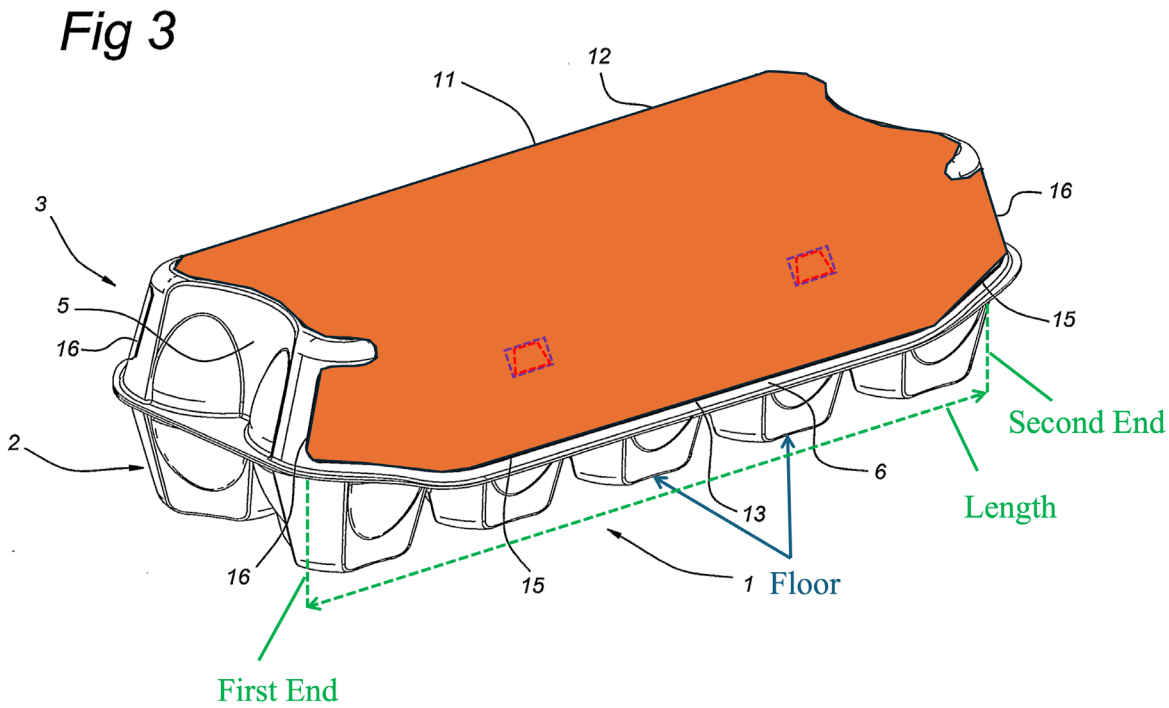
Ex.1010, Fig. 3 (annotated)

The *substantially planar frontal extension* (**green** dotted rectangle) *fully extends the length of the floor*. This is because the *substantially planar front extension* (**green** dotted rectangle) is situated entirely between the *first end* and the *second end* of the length of the floor. Ex.1003, ¶203.

12. Claim 9

[9.0] ***The container of claim 8 wherein the label fully extends the length of the floor.***

In the Post-Beese combination, *the label* (**orange**) *fully extends the length of the floor* (**green** length). This is because *the label* is positioned entirely between the outer edges of lips 16 of the label, which are, in turn, between the first and second ends of the length of the floor. Ex.1010, 3. A POSITA would have understood that right lip 16 would be placed in the same position as left lip 16, which terminates before the first end of the length of the floor. Based on this, a POSITA would have appreciated that right lip 16 ends before the second end of the length of the floor. Ex.1003, ¶204. See Fig. 3:

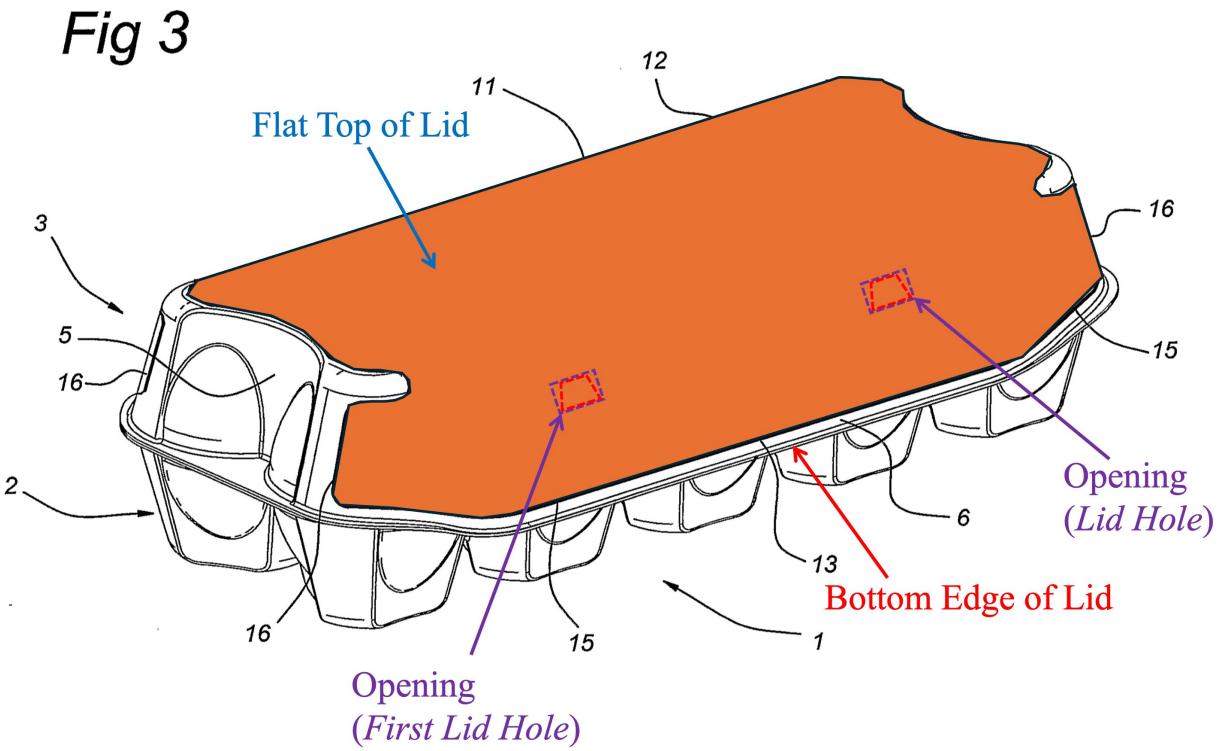


Ex.1010, Fig. 3 (annotated)

13. Claim 10

[10.0] ***The container of claim 1 wherein the first lid hole is entirely located between the bottom edge of the lid and the substantially flat top of the lid, and***

The openings in lid part 3 in the Post-Beese combination are each a *lid hole*. *See* [1.5.6]. As such, the opening on the left side is the *first lid hole* (**purple**). *See* [1.5.6], [6.0]. The *first lid hold* (**purple**) is *entirely located between the bottom edge of the lid* (**red**) *and* top part 4 (*substantially flat top of lid*) (**blue**). Ex.1003, ¶205. See Fig. 3:

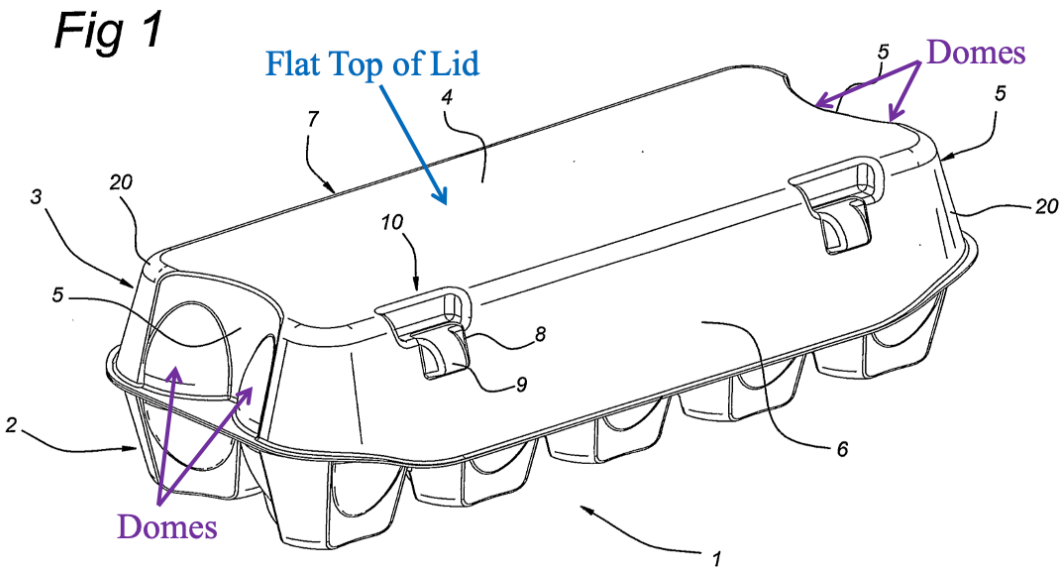


Ex.1010, Fig. 3 (annotated)

[10.1] ***the lid includes a plurality of domes adjacent to and flanking the substantially flat top.***

Post's lid part 3 (*lid*) *includes a plurality of domes* (**purple**) *adjacent to and*

flanking top part 4 (*substantially flat top*) (**blue**) of the lid part 3. This is so because lid part 3 includes cavities for holding eggs that correspond to the cavities in bottom part 2. Ex.1003, ¶206. Post's *domes* (**purple**) on the left side of lid part 3 are shown in Fig. 1:



Ex.1010, Fig. 1 (annotated)

As shown in Fig. 1, above, the cavity on the right side of bottom part 2 includes a cavity for holding eggs. As such, a POSITA would have understood that there are also *domes* on the right side of lid part 3, that is, there are corresponding *domes* on both sides of lid part 3. Ex.1003, ¶206.

D. Ground 2: Claim 7 is obvious over Post, Beese, Mangla, and Buckley

1. Buckley

Buckley discloses a "packaging unit for…eggs." Ex.1016, Abstract. In one embodiment, the unit includes two openings 9 on opposite ends of front face 14 and

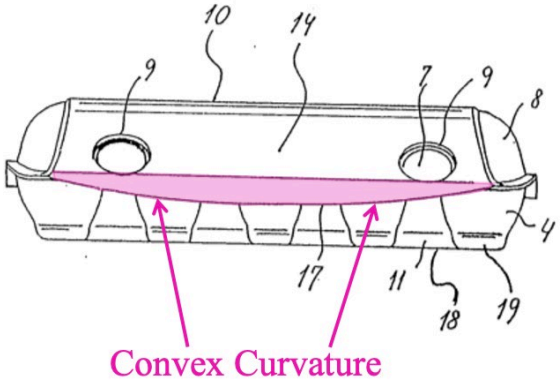
a "downwardly curved shape" 17. Ex.1016, 9, 11; Ex.1003, ¶¶433-439. Buckley is analogous art at least because Buckley and the '365 patent are directed to the same field of endeavor. Ex.1003, ¶440. The '365 patent "relates to containers intended to hold fresh food or produce." Ex.1001, 1:20-22. Buckley is also directed to unit "formed to accommodate six eggs." Ex.1016, 8. Buckley is also reasonably pertinent to a problem with which the inventor of the '365 patent was involved. *Compare* Ex.1001, 1:48-50 ("container configuration which permits flat application of labels.") *with* Ex.1016, 11 ("extending the front face 14" increases printable surface area and "makes the [unit] easier to open."); Ex.1003, ¶440.

2. Reasons to Combine Post-Beese-Mangla with Buckley

A POSITA would have been motivated to modify Post's container to use Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism. Ex.1003, ¶441. A POSITA would have been motivated to modify Post in view of Beese. *See* Section XI.C.4; Ex.1003, ¶441.

A POSITA would have further been motivated to modify front wall 6 of lid part 3 in the Post-Beese-Mangla combination container so that the bottom edge of the lid includes a convex curvature—Buckley's downwardly curved shape 17—between the lid openings, per Buckley. Ex.1016, Fig. 3c (showing front face 14 of cover part 3 having a "downwardly curved shape" 17 between two openings 9 on opposite ends of front face 14); Ex.1003, ¶442.

Buckley explains that its "downwardly curved shape [17] of the front face 14" together with the protrusions through openings 9 on cover part 3 "make it easy for the user to open the unit." Ex.1016, 9. A POSITA would thus have been motivated to modify front wall 6, per Buckley, to make it easier for the consumer to open lid part 3 and access the eggs. Ex.1003, ¶443. Buckley also explains that extending flap 14 to have a "downwardly curved edge portion 17" increases "the frontal area which can be used for graphical and/or pictorial information[.]" Ex.1016, 11. A POSITA would have therefore been motivated to modify front wall 6, per Buckley, so that the bottom edge of the lid has a convex curvature to provide a larger area for "graphical and/or pictorial information" on the portion of the label that would cover the extended lid part 3. Ex.1003, ¶443. See Fig. 3c:



Ex.1016, Fig. 3c (partial and annotated)

The Post-Beese-Mangla-Buckley combination is nothing more than the combination of prior art elements (Beese's retaining noses 24 extending from Post's bottom part 2 with corresponding openings in Post's lid part 3 to accommodate

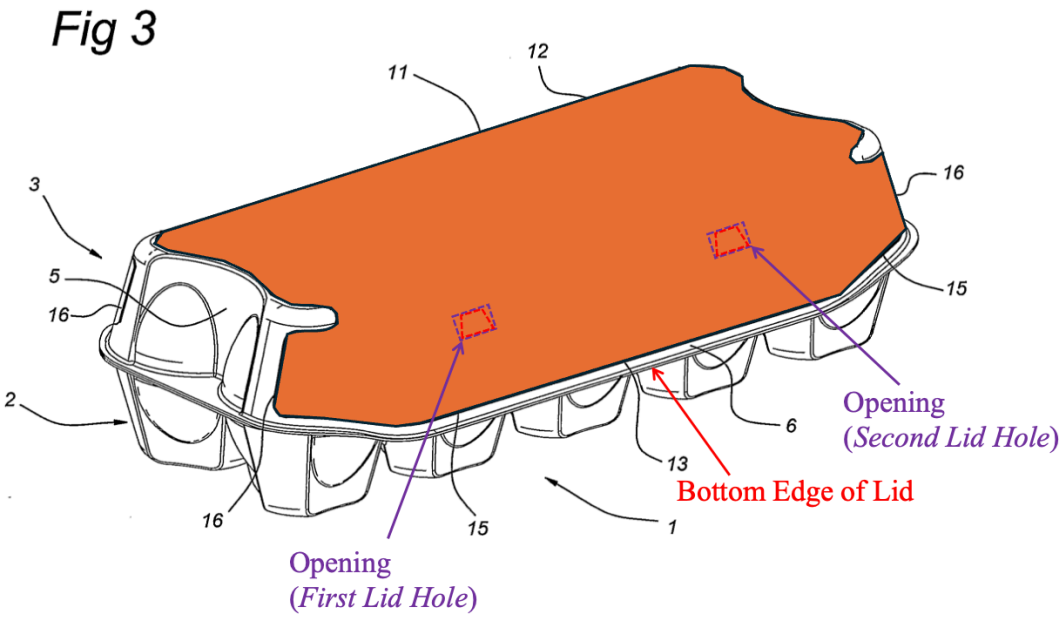
Beese's retaining noses 24, and the bottom edge of Post's lid part 3 extending downward with a convex curvature between the openings) according known methods (extending Post's label 11 to the bottom edge of front part 6 of Post's lid part 3 without interruptions for openings, per Beese, and extending the bottom edge of Post's lid part to have a convex curvature, per Buckley), to yield the predictable result (extending front wall 6 of Post's lid part 3 in the Post-Beese-Mangla combination container so that the bottom edge of the lid has a convex curvature to make it easier for the user to open the lid part). Ex.1016, 9, 11; Ex.1003, ¶444.

A POSITA would have had a reasonable expectation of success in the combination. This is because, as shown in Buckley, it was known and desirable to have a convex curvature at the base of the lid between the openings in the front wall of the lid to make it easier for the consumer to open the container, and increase the area for printing and/or labeling. Ex.1016, 9, 11; Ex.1003, ¶445. This combination relies on the combined teachings of Post, Beese, Mangla, and Buckley as understood by a POSITA and not on a physical incorporation of elements from one into another. *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012).

3. Claim 7

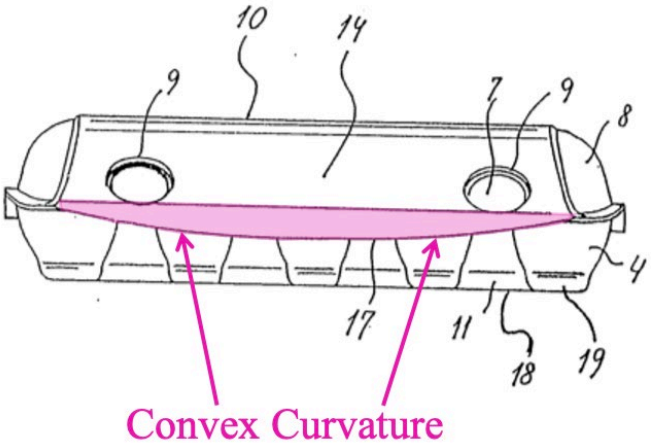
[7.0] ***The container of claim 6 wherein between the first lid hole and the second lid hole the bottom edge of the lid has a convex curvature, and***

The Post-Beese combination renders obvious *the first lid hole and the second lid hole* (**purple**). *See* [1.5.6], [6.0]. The *bottom edge of the lid* (**red**) is located at the lower edge of lid part 3 that is in contact with bottom part 2. *See* [1.5.2]; Ex.1003, ¶448. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

Buckley discloses that the base of front face 14 of cover part 3 (*bottom edge of lid*) has a downwardly curved edge portion 17 (*convex curvature*) (**pink**) between openings 9 in front face 14. Ex.1016, 11; Ex.1003, ¶449. See Fig. 3c:



Ex.1016, Fig. 3c (partial and annotated)

A POSITA would have been motivated to modify the Post-Beese-Mangla in view of Buckley. *See* Section XI.D.2; Ex.1003, ¶450.

[7.1] ***the base and lid are thermoformed from the material.***

Mangla explains that it was well-known to make egg cartons from thermoformed plastic due to efficiencies in production. Ex.1015, 1:43-47 ("thermoformed plastic cartons" have "improved appearance and economies of production over molded pulp cartons."); Ex.1003, ¶452. Post teaches that its container may be made of plastic. Ex.1010, 1 ("container can be made of plastic[.]"); Ex.1003, ¶451. A POSITA would have been motivated to make Post's container (including bottom part 2 (*base*) and lid part 3 (*lid*)) from plastic, because Mangla teaches advantages of doing so: "improved appearance and economies of production over molded pulp cartons." Ex.1015, 1:44-47; Ex.1003, ¶¶453-454.

E. Ground 3: Claims 28-30 are obvious over Post and Beese

1. Reasons to Combine Post and Beese

A POSITA would have been motivated to modify Post's container to use Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism. Ex.1003, ¶461. A POSITA would have been motivated to modify Post in view of Beese. *See* Section XI.C.4; Ex.1003, ¶461.

2. Claim 28

The following limitations of claim 28 are identical to limitations of claim 1. Ex.1037, 1-4 (comparing claims 1 and 28); Ex.1003, ¶462. The analysis of claim 1 above applies equally here to claim 28. Ex.1003, ¶462-469, 474-475.

Identical Limitations	
[28.0]	[1.0]
[28.1]	[1.1]
[28.2]	[1.2]
[28.3.1]	[1.3.1]
[28.3.2]	[1.3.2]
[28.4.1]	[1.4.1]
[28.4.2]	[1.4.2]
[28.6.1]	[1.6.1]
[28.6.2]	[1.6.2]

The analysis below addresses limitations that are different.

[28.4.3] ***wherein, when the lid is in the closed position, the lid portion of the cavity is disposed beyond the base and adjacent to the base portion of the cavity, and the cavity is generally defined by the second material surface;***

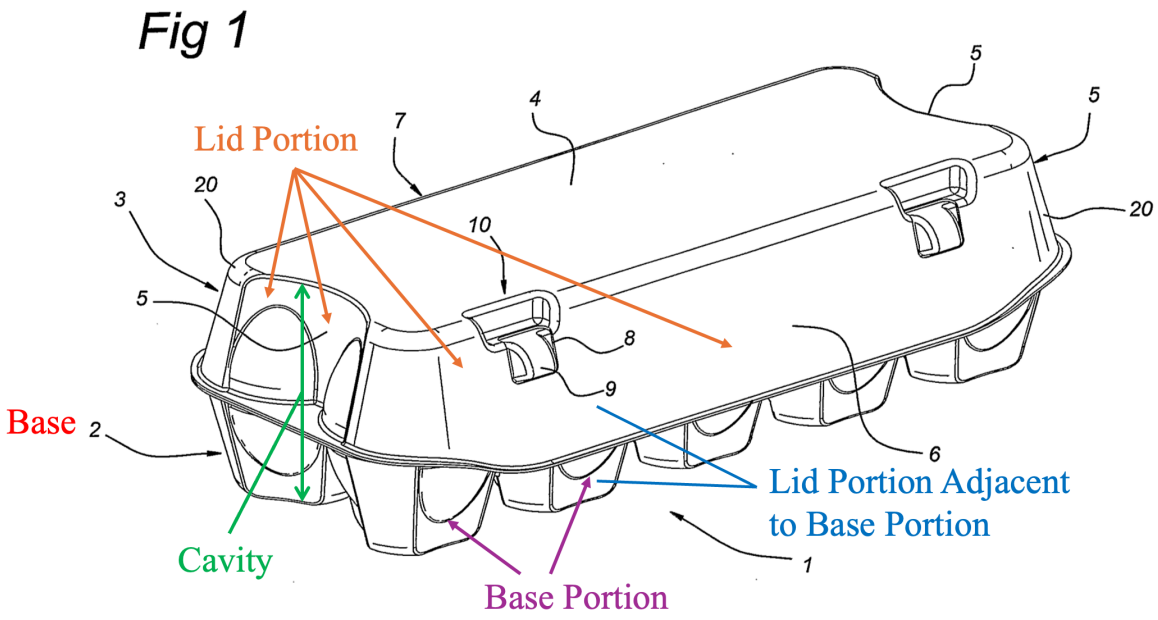
Post's container includes:[1]

- portion of lid part 3 (*lid portion*) (*see* [1.4.2]);
- bottom part 2 (*base*) (*see* [1.1]);
- cavities formed in bottom part 2 (*base portion*) (*see* [1.4.1]);
- cavities between top part 4 of lid part 3 and floor of bottom part 2 (*cavity*) (*see* [1.2]); and
- an inner surface of the container (*second material surface*) (*see* [1.3.1]).

Ex.1003, ¶471.

When the *lid* of Post's container is in the *closed position*, the *lid portion* (**orange**) of the *cavity* is *disposed beyond the base* and *adjacent to* the *base portion* (**purple**) *of the cavity*, and *the cavity* (**green**) *is generally defined by the second material surface*. Ex.1010, 3 (container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically."); Ex.1003, ¶472. See Fig. 1:

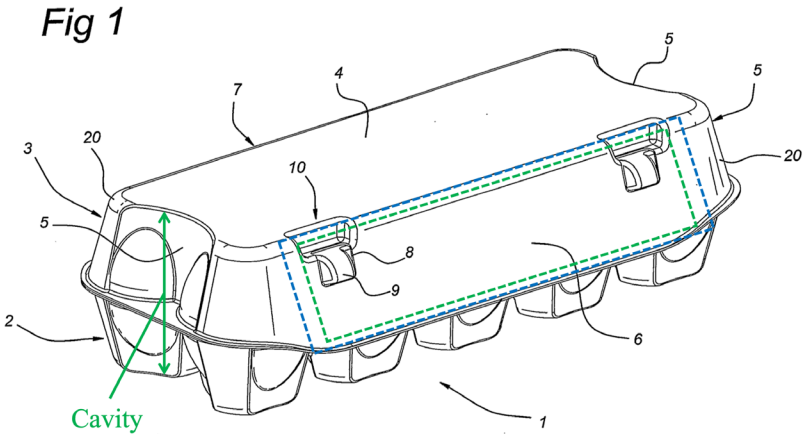
[1] Limitation [28.4.3] is generally similar to limitation [1.4.3]. Ex.1003, ¶470.



Ex.1010, Fig. 1 (annotated)

[28.5] ***the lid having a lid area comprising a first area disposed on the first material surface to face substantially externally with respect to the cavity when the lid is in the closed position;***

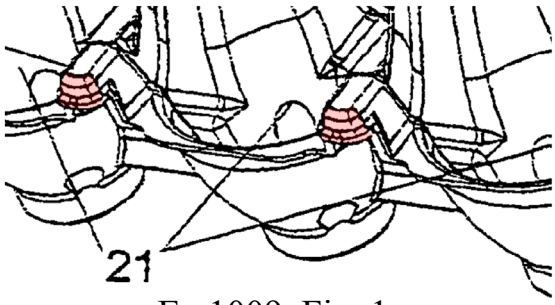
Lid part 3 (*lid*) of Post's container *ha[s] a lid area* (**blue** rectangle) *comprising* a portion of front part 6 of lid part 3 encompassing openings 8 (*first area*) (**green** rectangle). The *first area* is *disposed on* the outer surface of the container (*first material surface*) and faces externally (*to face substantially externally*) *with respect to* the cavity between top part 4 of lid part 3 and bottom surface of bottom part 2 (*cavity*). Ex.1003, ¶473. See Fig. 1:



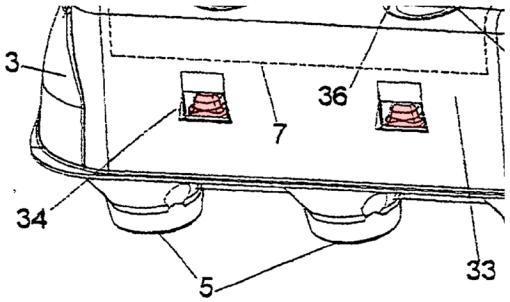
Ex.1010, Fig. 1 (annotated)

[28.6.3] ***[the base extension] comprising a base area having a second area configured to face substantially externally with respect to the cavity when the lid is in the closed position;***

Beese's retaining noses 24 in Post's bottom part 2 render obvious the claimed *base extension*. *See* [1.6.2], [28.6.2]; Ex.1003, ¶476. The *base extension compris[e] a base area having a second area* (**red**) on the external surface of the retaining noses 24 that is *external[] with respect to* the openings in which food, e.g., eggs, are housed (*cavity*). Ex.1003, ¶477. See Figs. 1 and 2:



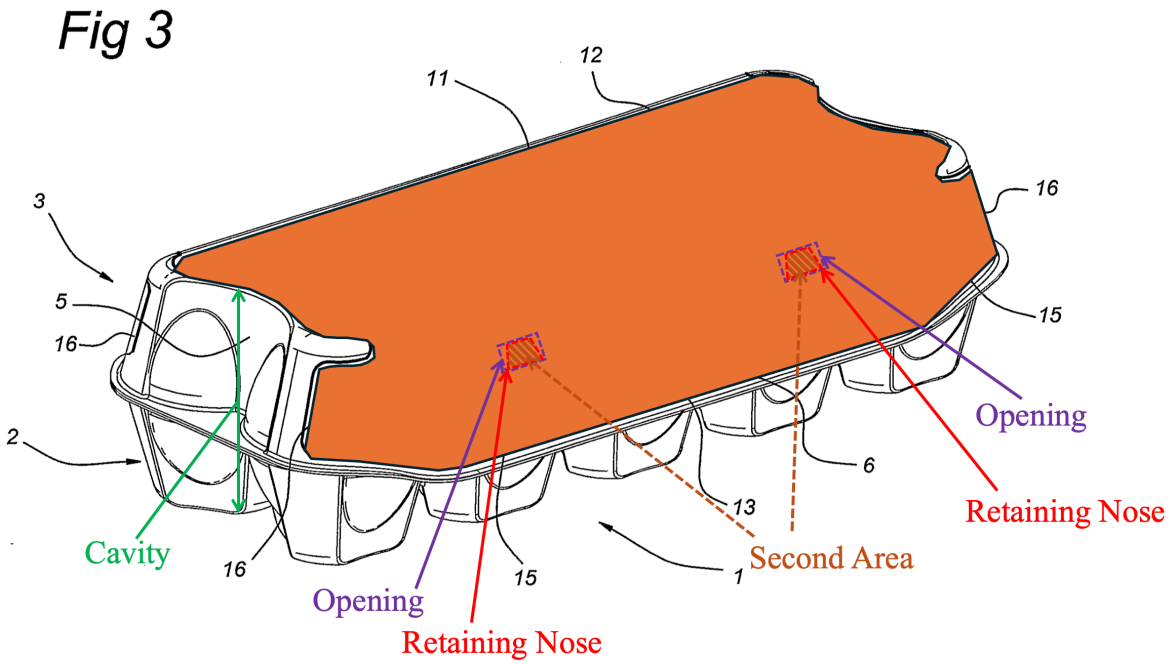
Ex.1009, Fig. 1
(annotated partial view)



Ex.1009, Fig. 2
(annotated partial view)

Beese's retaining noses 24 (**red**) in Post's bottom part 2 *compris[e]* an area on front-facing portion of retaining noses (*base area*) *having* a surface area beneath

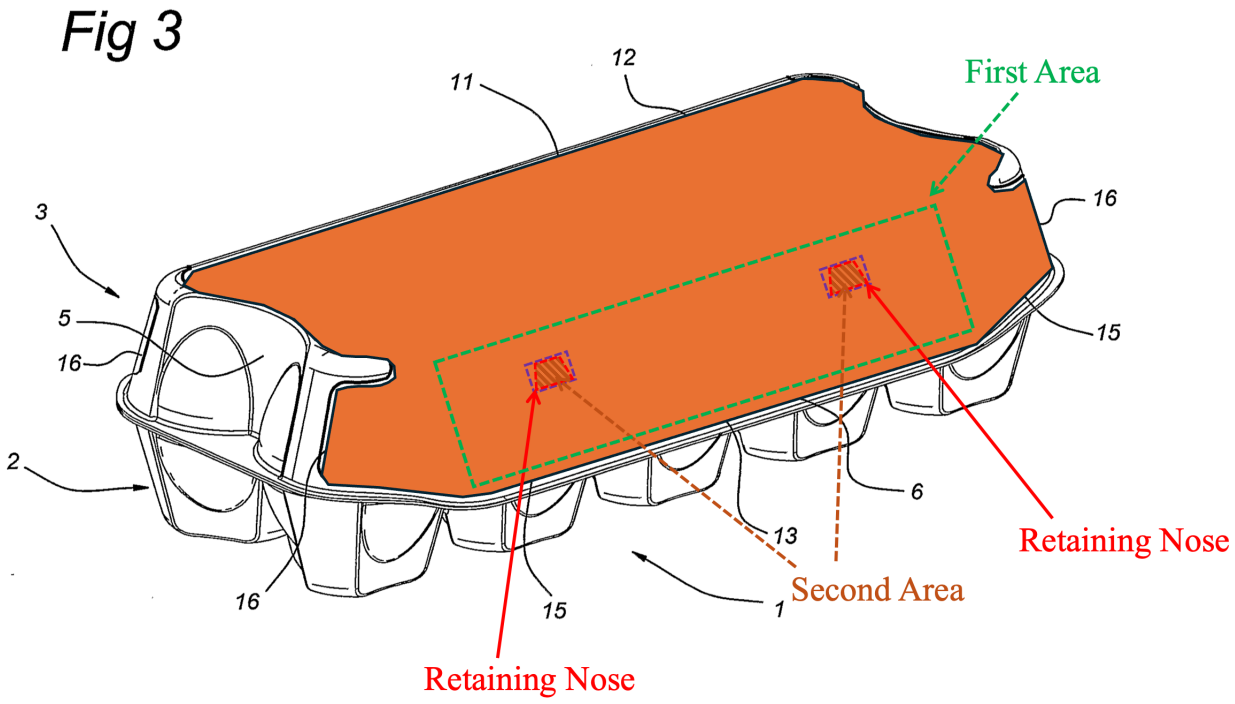
label 11 (*second area*) (**brown** surface) *configured to face substantially externally with respect to the cavity* (**green**) *when the lid is in the closed position*. Ex.1003, ¶478. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

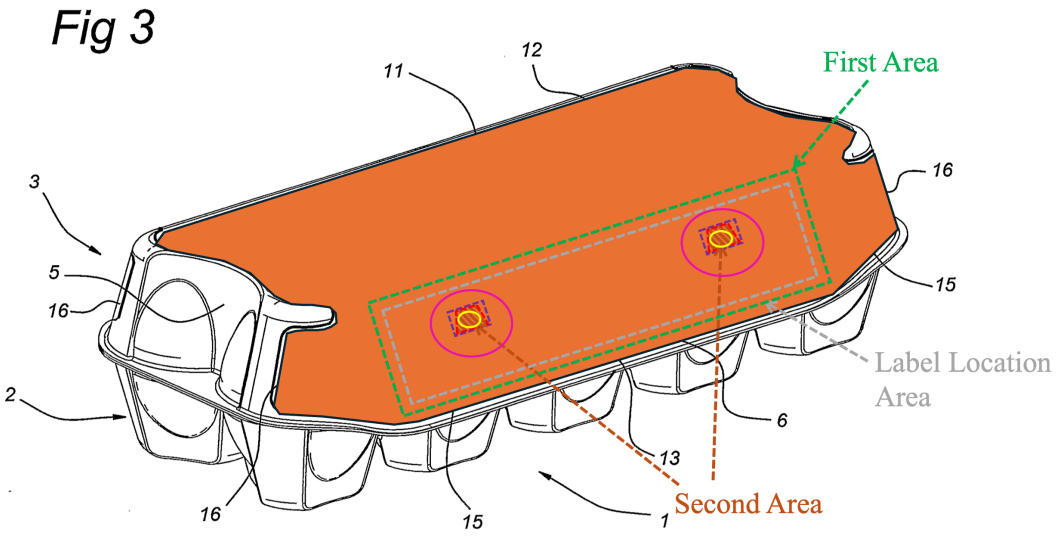
[28.7.1] ***wherein, when the lid is in the closed position, a label location area is disposed substantially on a first part of the first area of the lid and a first part of the second area of the base extension,***

Post discloses *the first area of the lid* (**green** rectangle) (*see* [28.5]) and the Post-Beese combination teaches *the second area of the base extension* (**brown** dashed surface) (*see* [28.6.3]). Ex.1003, ¶¶479-480. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

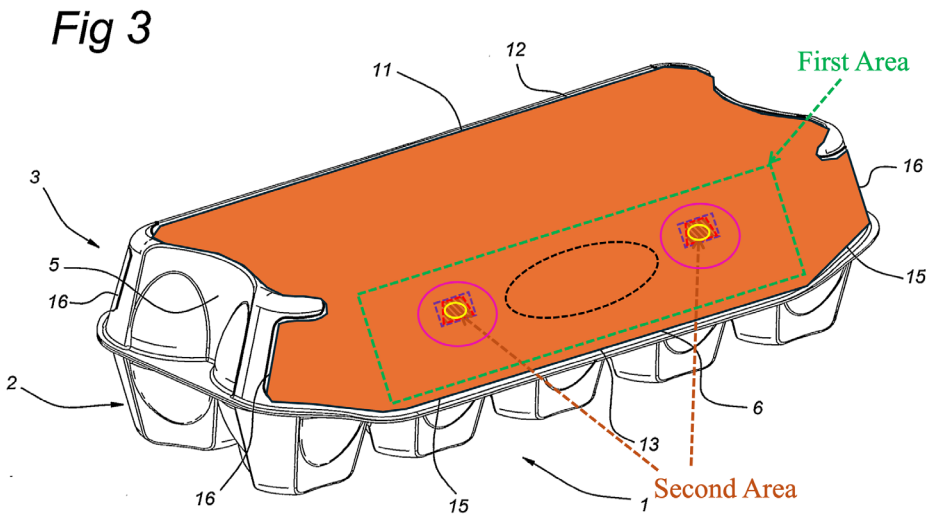
When lid part 3 (*lid*) of the container is in the *closed position* in the Post-Beese combination, *a label location area* (**silver** dotted rectangle) is *disposed substantially* on *a first part* (**pink** oval) *of the first area* (**green** dotted rectangle) *of* lid part 3 (*lid*) *and a first part* (yellow oval) *of the second area* (**brown** dashed surface) *of the* retaining nose (*base extension*) (**red**). Ex.1003, ¶481. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

[28.7.2] ***the first part of the first area is adjacent to the first part of the second area and substantially coplanar to an adjacent flat part of the lid area, and***

In the Post-Beese combination, the *first part* (**pink** oval) *of the first area* (**green** rectangle) *is adjacent to* (nearby or next to) *the first part* (yellow oval) *of the second area* (**brown** surface) *and substantially coplanar* (in the same plane) *to an adjacent flat part* (**black** oval) *of the lid area*. *See* [28.5]; Ex.1003, ¶482. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

[28.7.3] ***the first part of the first area of the lid surrounds the first part of the second area of the base extension,***

The *first part* (**pink** oval) *of the first area* (**green** dotted rectangle) *of* lid part 3 (*lid*) of the container in the Post-Beese combination *surrounds the first part* (yellow oval) *of the second area* (**brown** dashed surface) *of the base extension* (retaining nose) (**red**). *See* [28.7.2]; Ex.1003, ¶483.

[28.7.4] ***the label location area is configured to receive, on an outermost part of the container, a flat portion of a label that is [i] substantially coplanar to the adjacent flat part of the lid area, [ii] covers the first part of the first area and the first part of the second area, and [iii] transverses the label location area.***

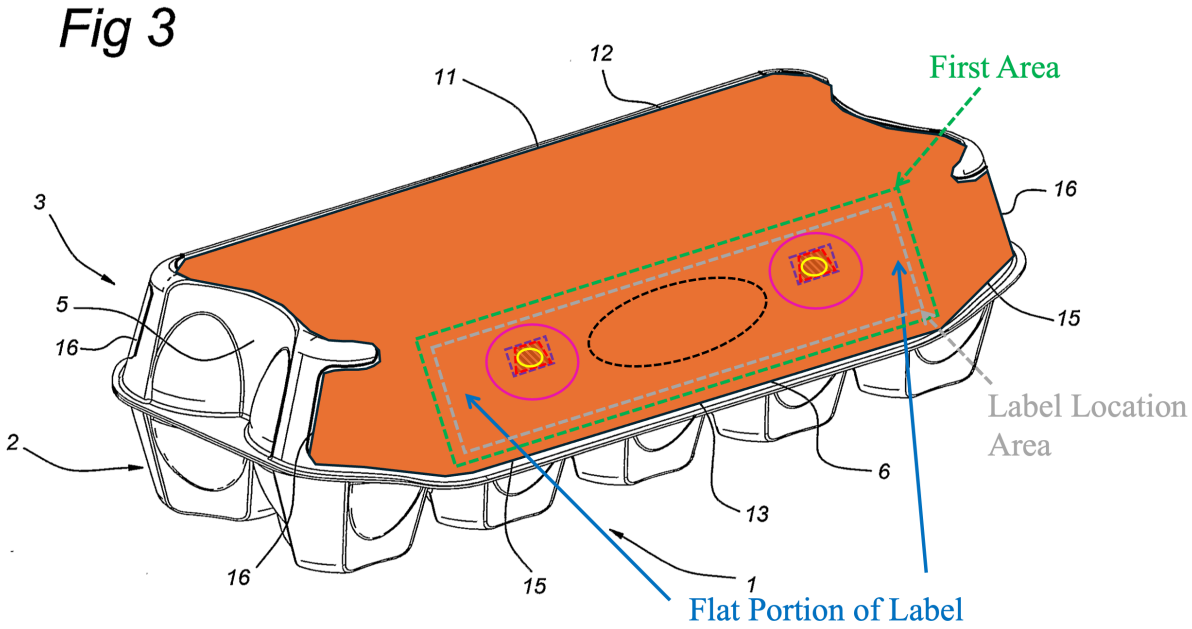
First, a POSITA would have been motivated to modify Post in view of Beese so that Post's label covers front wall 6 of Post's lid part 3 in its entirety, per Beese. *See* Section XI.C.4; Ex.1009, [0030] ("front side [of sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."); Ex.1003, ¶484.

Second, the *label location area* (**silver** dotted rectangle) in the Post-Beese combination *is configured to receive,* on the external surface of the container (*on an outermost part of the container*), a flat portion of **orange** label shown between **blue** arrows (*flat portion of a label*). Ex.1003, ¶485. This flat portion is:

- *[i] substantially coplanar to the adjacent flat part* (**black** dotted oval) *of the lid area*;
- *[ii] covers the first part* (**pink** oval) *of the first area* (**green** rectangle) *and the first part* (yellow oval) *of the second area* (**brown** dashed surface); and

- *[iii] transverses the* flat portion of the label (**orange**) covers the label location area (**silver** dotted rectangle) (*label location area*).

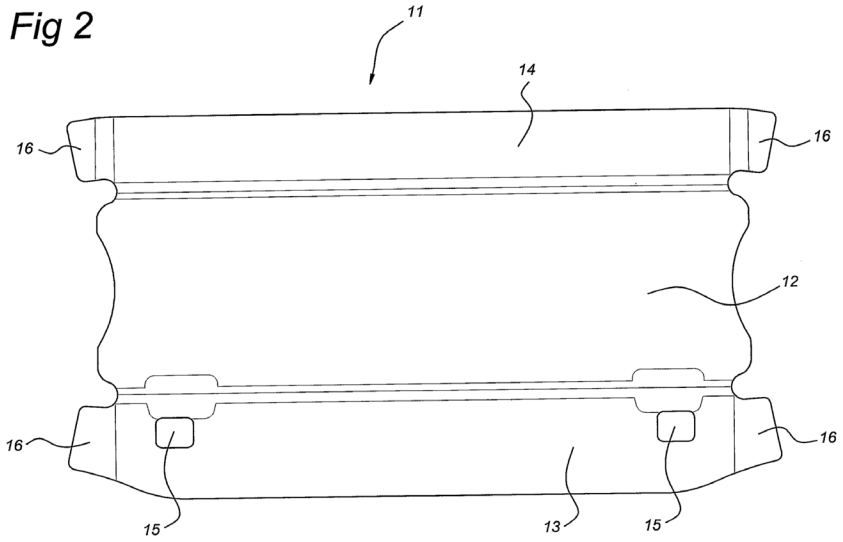
Ex.1003, ¶485; See Fig. 3:



Ex.1010, Fig. 3 (annotated)

Third, a portion of the label that covers front part 6 of lid part 3 is a *flat portion*. Ex.1003, ¶¶486-487. Post's front flap 13 of label 11 is placed over front part 6 (front wall 6) of lid part 3. Ex.1010, 3 ("flat sheet that has to be applied as label to the lid part 3…flat sheet is indicated in its entirety by 11 and comprises a central part 12, a front flap 13 and a rear flap 14."), 4 ("flat sheet is then placed with the central part 12 thereof on the top part 4….[B]oth the front flap 13 and the rear flap 14 are then positioned on the front wall 6 and the rear wall 7, respectively….").

See Fig. 2:

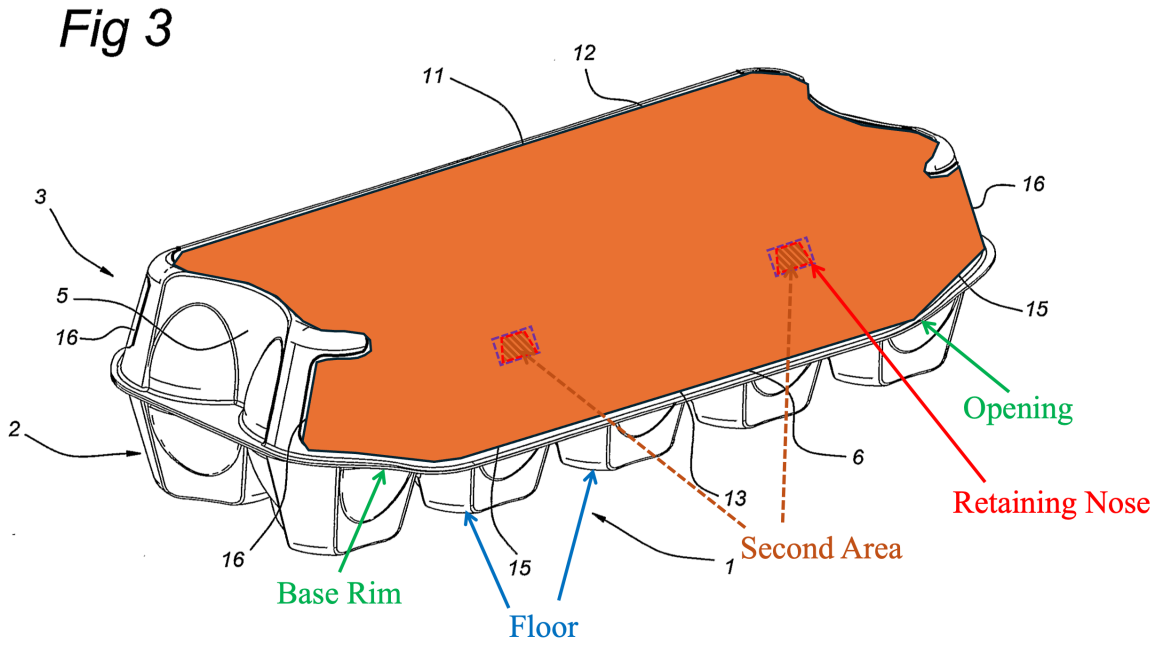


Ex.1010, Fig. 2

3. Claim 29

[29.0] ***The container of claim 28 wherein, when the lid is in the closed position the base rim is located between the second area of the base extension and the floor of the base;***

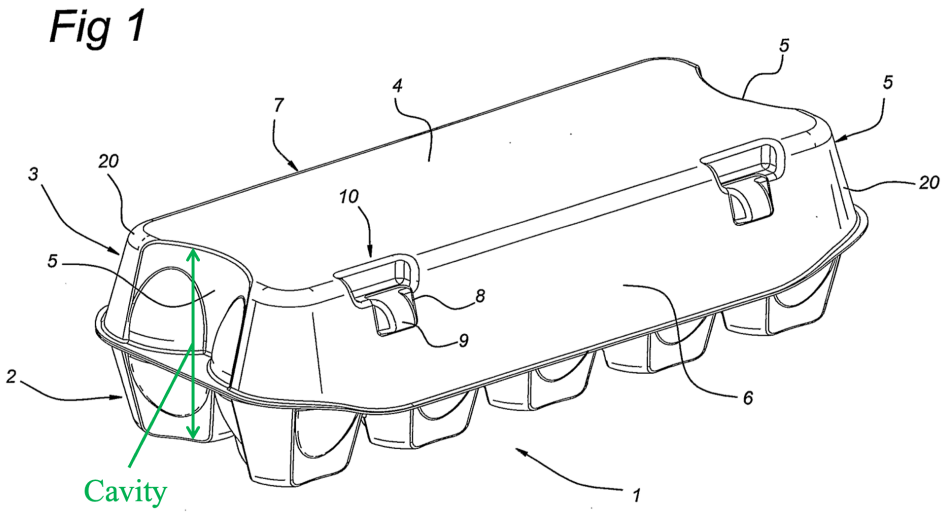
Post discloses an outer edge of bottom part 2 on which the bottom edge of lid part 3 rests (*base rim*). *See* [1.6.1], [28.6.1]; Ex.1003, ¶488. When the *lid* of Post's container is in the *closed position* in the Post-Beese combination, the bottom edge of lid part 3 (*base rim*) (**green** arrows) is *located between* the surface area beneath label 11 (*second area*) (**brown** surface area) of Beese's retaining noses 24 (*base extension*) (**red**) and bottom part 2 (*floor of base*) (**blue**). Ex.1003, ¶489. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

[29.1] ***the product is located within the cavity;***

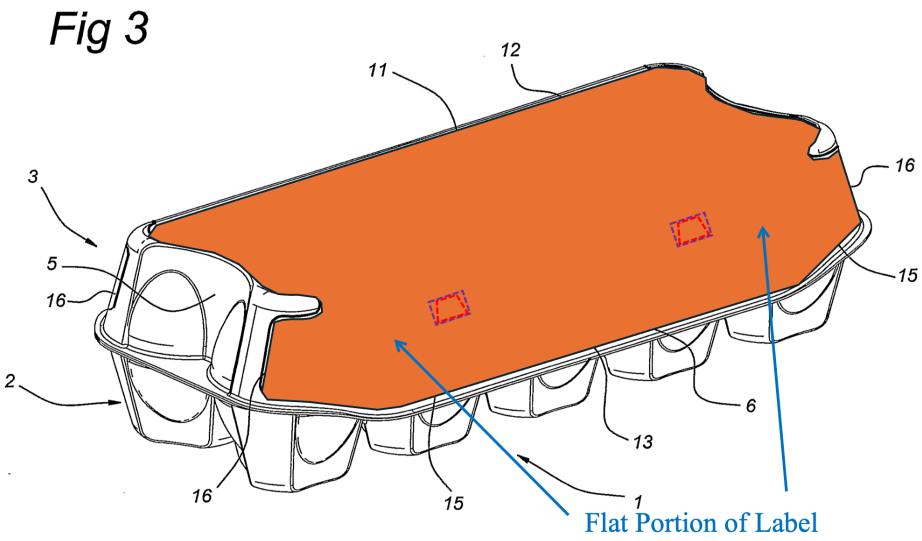
Eggs (*product*) are *located within the cavity*—between top part 4 **and** bottom surface of bottom part 2—of Post's container. Ex.1010, 3 (container "consists of a bottom part 2" for "accommodating eggs[.]"); Ex.1003, ¶490. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[29.2] ***the container includes the flat portion of the label;***

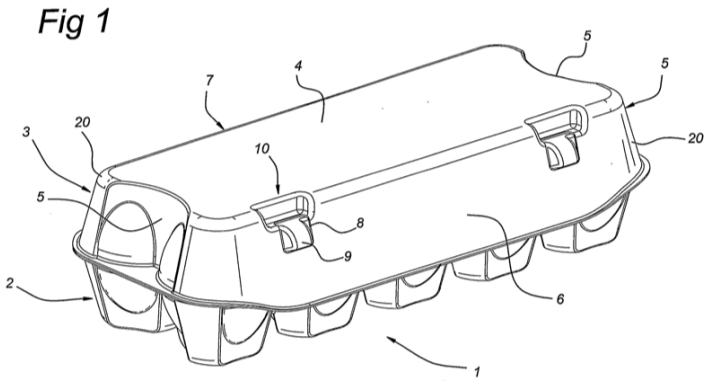
The *container* in the Post-Beese combination *includes a flat portion of the label* (**orange** label between **blue** arrows). *See* [28.7.4]; Ex.1003, ¶491. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

[29.3] ***the base includes ribs adapted hold the product;***

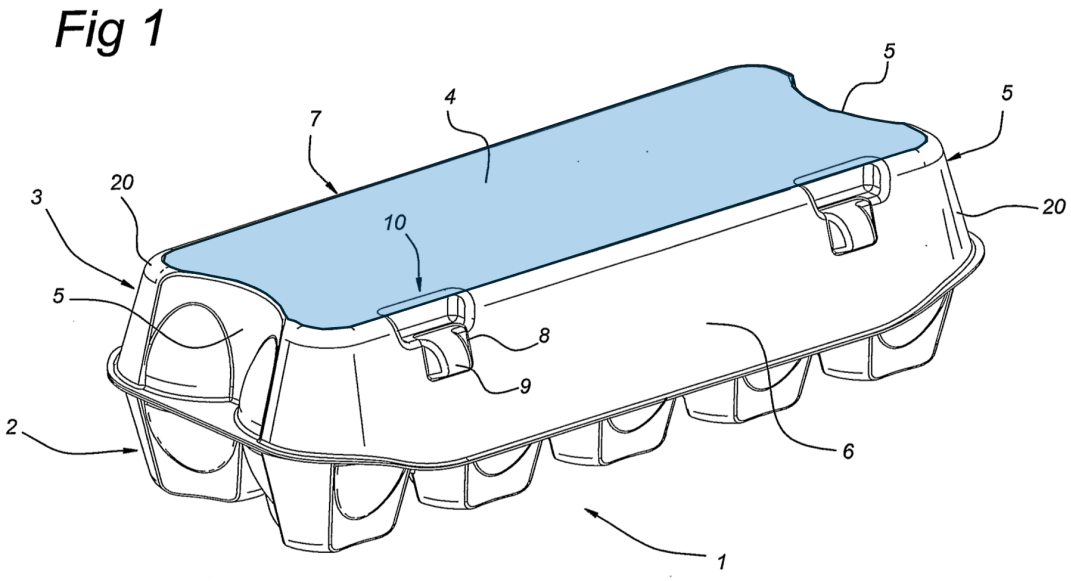
The bottom part 2 (*base*) of Post's container *includes* cavities formed to hold the shape of an egg (*ribs*). These ribs are *adapted to hold* eggs (*product*). Ex.1003, ¶492. See Fig. 1:



Ex.1010, Fig. 1

[29.4] ***the lid further includes a substantially flat lid top area and,***

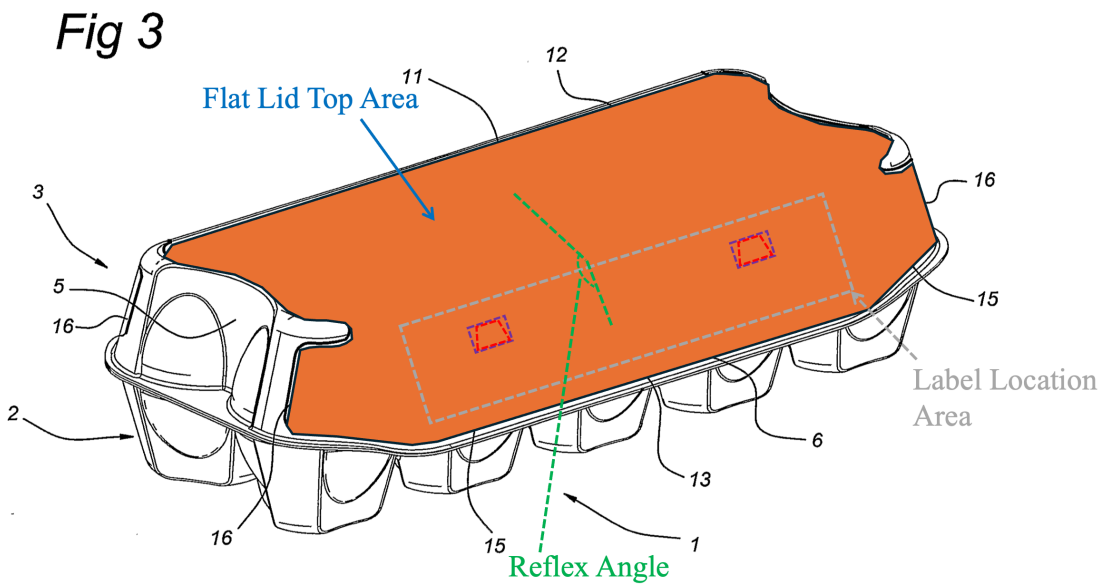
Lid part 3 (*lid*) of Post's container *further includes* top part 4, which is shown to be flat (*substantially flat lid top area*) (**blue**). Ex.1010, 3 ("lid part 3 consists of a top part 4."); Ex.1003, ¶493. See Fig. 1:



Ex.1010, Fig. 1 (annotated)

[29.5] ***when the lid is in the closed position, the label location area is inclined at a reflex angle of less than 270 degrees with respect to the substantially flat lid top area.***

In Post, *when the lid is in the closed position*, the *label location area* (**silver** rectangle) is *inclined at a reflex angle* (**green** angle) *of less than 270 degrees with respect to* top part 4 (*substantially flat lid top area*) (**blue**). The reflex angle (**green** angle) is less than 180 degrees and is therefore *less than 270 degrees*. Ex.1003, ¶494. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

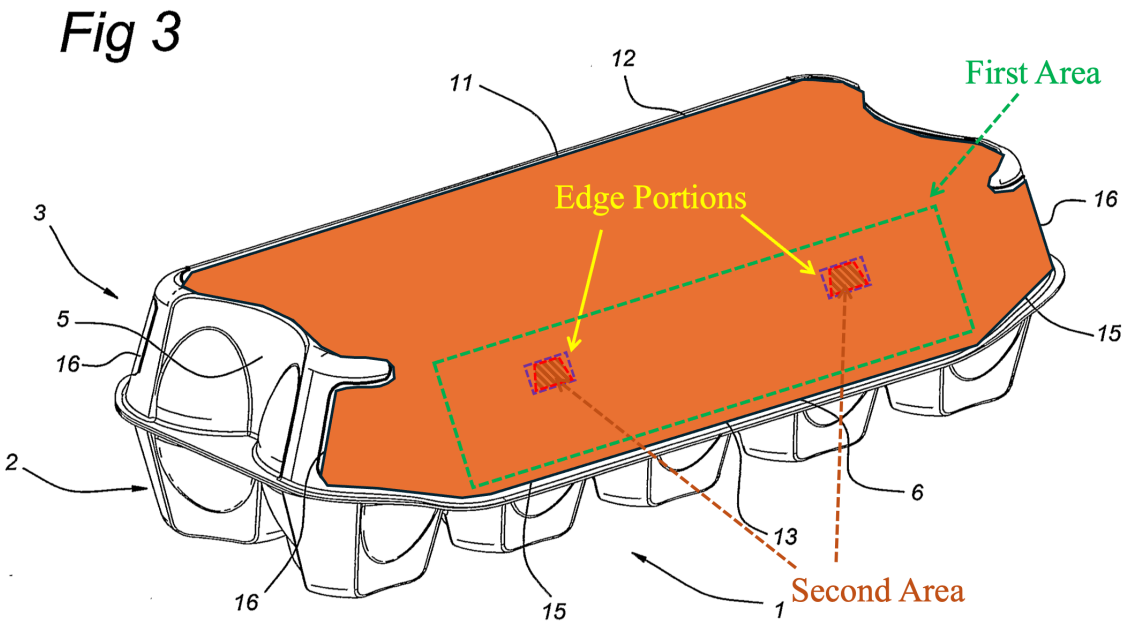
4. Claim 30

[30.0] ***The container for packaging the product of claim 29 wherein the product is fresh retail produce;***

Post's container holds *product*, such as eggs, vegetables, fruits and the like. Ex.1010, 3 (container for "eggs."), 1 (container for "packaging foods such as vegetables, fruit and the like."). A POSITA would have understood that eggs, vegetables, fruits, etc., are examples of *fresh retail produce*. Ex.1003, ¶495.

[30.1] ***the first area includes an edge portion comprising an edge of the material; and***

Post's lid part 3 (*lid*) in the Post-Beese combination includes *the first area* (**green** dotted rectangle). *See* [28.5]. The *first area* further *includes* edges formed by openings (**purple** dotted rectangles) (*edge portion*) (yellow) to accommodate retaining noses (**red**); Ex.1003, ¶496. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

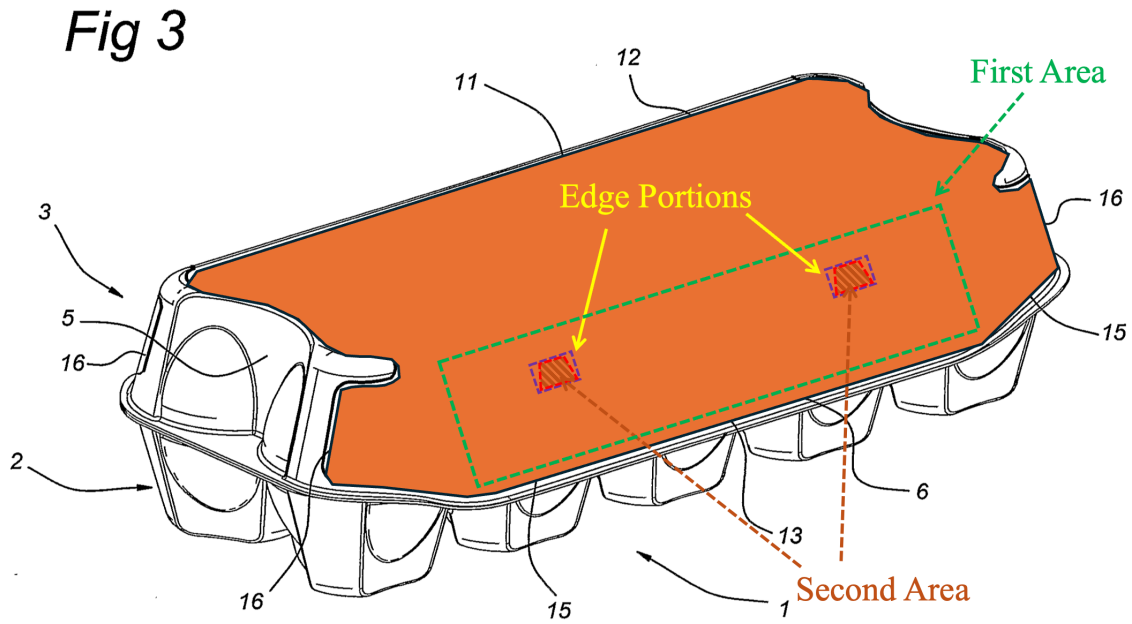
[30.2] ***when the lid is in the closed position the second area of the base extension and the first area of the lid face substantially in the same direction, and***

When the *lid* of Post's container is in the *closed position* in the Post-Beese combination, as shown in Fig. 3, above, the surface area beneath label 11 (*second area*) (**brown** surface area) of Beese's retaining noses 24 (*base extension*) (**red**) and the portion of Post's lid part 3 (*first area*) (**green** rectangle) face externally away from the cavity of the inside of the container, that is, they *face substantially in the same direction*. Ex.1003, ¶497.

[30.3] ***[when the lid is in the closed position] the second area is disposed substantially adjacent to the edge portion of the first area of the lid.***

When the *lid* of Post's container is in the *closed position*, the surface area beneath label 11 (*second area*) (**brown** surface area) is next to (*disposed*

substantially adjacent to) the edges formed by openings (**purple** rectangles) (*edge portion*) (yellow) of the portion of Post's lid part 3 (*first area*) (**green** rectangle). Ex.1003, ¶498. See Fig. 3:



Ex.1010, Fig. 3 (annotated)

XII. DISCRETIONARY DENIAL IS NOT APPROPRIATE

A. No Basis for 35 U.S.C. §325(d) Denial

Post, Beese, Mangla, and Buckley were not cited or considered during prosecution of the '365 patent. Discretionary denial under §325(d) is inappropriate at least because the first part of the *Advanced Bionics* framework is not met. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (Feb. 13, 2020) (precedential).

B. No Basis for 35 U.S.C. §314/*Fintiv* Denial

The Board should not discretionarily deny institution based on the co-pending district court litigation involving Patent Owner and Petitioners (*Maurice J.P. Tabone v. Hartmann US Inc., et al.*, 4:23-cv-0986 (E.D. Mo.)). To reduce overlap between the two proceedings, if the Board institutes an IPR trial on this Petition, Petitioners hereby stipulate that Petitioners will not pursue in the co-pending litigation the specific grounds asserted in this petition, or any other ground that could have been reasonably raised in an IPR (i.e., grounds that could have been raised under §§102 or 103 on the basis of prior art patent or printed publications). *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-00109, Paper 12, 18-19 (Dec. 1, 2020). Pursuant to the Director's "Interim Procedure for Discretionary Denials," the Board should not discretionarily deny institution in view of Petitioner's *Sotera* stipulation. EX1024, 3 ("Consistent with *Sotera Wireless, Inc*., the PTAB will not discretionarily deny institution in view of parallel district court litigation where a petitioner presents a stipulation not to pursue in a parallel proceeding the same grounds or any grounds that could have reasonably been raised before the PTAB."), 7 (similar).

C. Discretionary Denial under *General Plastic* is Not Appropriate

The '365 patent has not been challenged in any prior IPR petition, so none of the *General Plastic* discretionary institution factors apply. *See General Plastic*

Indus. Co., Ltd. v. Canon Kabushiki Kaisha, IPR2016-01357, Paper 19, 16 (Sept. 6, 2016) (Section II.B.4.i. precedential).

XIII. CONCLUSION

Petitioners have established a reasonable likelihood that the Challenged Claims are unpatentable.

Respectfully submitted,

Dated: August 1, 2024

/Eugene Goryunov/

Eugene Goryunov
Lead Counsel for Petitioner
Registration No. 61,579

HAYNES AND BOONE, LLP
2801 N. Harwood Street, Suite 2300
Dallas, TX 75201
Customer No. 27683

XIV. MANDATORY NOTICES UNDER 37 C.F.R. §42.8

A. Real Party-in-Interest

Brødrene Hartmann A/S, Hartmann US, Inc., and The Happy Group Inc. are the real parties-in-interest.

B. Related Matters

The '365 patent is involved in: *Maurice J.P. Tabone v. Hartmann US Inc., et al.*, 4:23-cv-0986 (E.D. Mo.) (filed Aug. 8, 2023) (Ex.1017).

Petitioners challenged claims 11-27 of the '365 patent in IPR2024-01216 (filed concurrently).

C. Lead and Back-up Counsel and Service Information

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Please address all correspondence to lead and back-up counsel. Petitioner consents to email service as noted above and asks Patent Owner to do the same.

CLAIM APPENDIX

[1.0] A container for packaging a product, the container comprising:

[1.1] a base having a floor;

[1.2] a lid movable about a hinge with respect to the base from an open position to a closed position, wherein the closed position defines a cavity inside the container between the floor and the lid;

[1.3.1] the base, lid, and hinge having a unitary construction from a material having a generally defined thickness between a first material surface and a second material surface disposed on immediately opposite sides of the material,

[1.3.2] wherein at least a portion of the first material surface is parallel to an immediately opposite portion of the second material surface;

[1.4.1] the cavity having a base portion dimensioned to contain a first portion of the product in the base and

[1.4.2] [the cavity having] a lid portion dimensioned to contain a second portion of the product in the lid, and

[1.4.3] wherein the lid portion is disposed beyond the base and outward from the base portion, and the cavity is generally defined by the second material surface;

[1.5.1] the lid having a substantially flat top disposed parallel to the floor when the lid is in the closed position,

[1.5.2] [the lid having] a substantially planar frontal extension extending from the substantially flat lid top to a bottom edge of the lid,

[1.5.3] wherein the bottom edge is between, and outward from both, the substantially flat lid top and the floor when the lid is in the closed position,

[1.5.4] the substantially planar frontal extension extends obliquely relative to the floor from the substantially flat lid top when the lid is in the closed position,

[1.5.5] [the lid] having a first planar area on the substantially planar frontal extension's portion of the first material surface, and

[1.5.6] [the lid] having a first lid hole fully encompassed within a substantially planar lid area;

[1.6.1] the base having a sidewall extending from the floor to a base rim that generally defines an opening for the base portion of the cavity, wherein the sidewall and floor each includes portions of both the first and second material surfaces;

[1.6.2] [the base having] a base extension extending from the base,

[1.6.3] [the base extension] having a primary surface area with a flat portion facing external to the cavity wherein the flat portion is bounded by a first boundary and a second boundary,

[1.6.4] [the base extension having] a second planar area on the flat portion disposed obliquely to the floor, and

[1.6.5] [the base extension having] a secondary surface area that is on the direct opposite side of the material from the flat portion and is an extension of the sidewall's portion of the first material surface; and

[1.7.1] wherein in the closed position the first planar area, the second planar area, and the first and second boundaries of the flat portion are all generally coplanar,

[1.7.2] [wherein in the closed position] a first flat portion of a label covers both the primary surface area of the base extension and the substantially planar lid area of the substantially planar frontal extension, and

[1.7.3] [wherein in the closed position] the primary surface area is adjacent to the substantially planar lid area of the substantially planar frontal extension.

[2.0] The container of claim 1 wherein the lid has a lid rim that generally defines an opening for the lid portion of the cavity,

[2.1] the bottom edge of the lid is located on the lid rim, and

[2.2] the first flat portion of the label fully extends from adjacent the substantially flat top to the bottom edge of the lid.

[3.0] The container of claim 1 wherein the first lid hole is fully circumscribed by a planar lid hole edge of the substantially planar lid area.

[4.0] The container of claim 3 wherein the base extension extends into the first lid hole when the lid is in the closed position, and

[4.1] the bottom edge of the lid is distant from the floor when the lid is in the closed position.

[5.0] The container of claim 1 wherein the label has a second flat portion located between a third flat portion and the first flat portion of the label,

[5.1] wherein the second flat portion is located on the substantially flat top of the lid, and

[5.2] the first flat portion is separated from the third flat portion by the width of the substantially flat top of the lid.

[6.0] The container of claim 1 wherein the bottom edge of the lid extends from nearly adjacent the first lid hole to nearly adjacent a second lid hole in the substantially planar lid area of the substantially planar frontal extension, and the base has a rectangular cross section.

[7.0] The container of claim 6 wherein between the first lid hole and the second lid hole the bottom edge of the lid has a convex curvature, and

[7.1] the base and lid are thermoformed from the material.

[8.0] The container of claim 1 wherein the floor of the base has a length and a width, wherein the length of the floor is bounded by a first end and a second end, and

[8.1] the substantially planar frontal extension fully extends the length of the floor.

[9.0] The container of claim 8 wherein the label fully extends the length of the floor.

[10.0] The container of claim 1 wherein the first lid hole is entirely located between the bottom edge of the lid and the substantially flat top of the lid, and

[10.1] the lid includes a plurality of domes adjacent to and flanking the substantially flat top.

[28.0] A container for packaging a product, the container comprising:

[28.1] a base having a floor;

[28.2] a lid movable about a hinge with respect to the base from an open position to a closed position, wherein the closed position defines a cavity inside the container between the floor and the lid;

[28.3.1] the base, lid, and hinge having a unitary construction from a material having a generally defined thickness between a first material surface and a second material surface disposed on immediately opposite sides of the material,

[28.3.2] wherein at least a portion of the first material surface is parallel to an immediately opposite portion of the second material surface;

[28.4.1] the cavity having a base portion dimensioned to contain a first portion of the product in the base and

[28.4.2] [the cavity having] a lid portion dimensioned to contain a second portion of the product in the lid, and

[28.4.3] wherein, when the lid is in the closed position, the lid portion of the cavity is disposed beyond the base and adjacent to the base portion of the cavity, and the cavity is generally defined by the second material surface;

[28.5] the lid having a lid area comprising a first area disposed on the first material surface to face substantially externally with respect to the cavity when the lid is in the closed position;

[28.6.1] the base having a sidewall extending from the floor to a base rim that generally defines an opening for the base portion of the cavity, wherein the sidewall and floor each includes portions of both the first and second material surfaces; and

[28.6.2] [the base having] a base extension extending from the base,

[28.6.3] [the base extension] comprising a base area having a second area configured to face substantially externally with respect to the cavity when the lid is in the closed position;

[28.7.1] wherein, when the lid is in the closed position, a label location area is disposed substantially on a first part of the first area of the lid and a first part of the second area of the base extension,

[28.7.2] the first part of the first area is adjacent to the first part of the second area and substantially coplanar to an adjacent flat part of the lid area, and

[28.7.3] the first part of the first area of the lid surrounds the first part of the second area of the base extension,

[28.7.4] the label location area is configured to receive, on an outermost part of the container, a flat portion of a label that is [i] substantially coplanar to the adjacent flat part of the lid area, [ii] covers the first part of the first area and the first part of the second area, and [iii] transverses the label location area.

[29.0] The container of claim 28 wherein, when the lid is in the closed position the base rim is located between the second area of the base extension and the floor of the base;

[29.1] the product is located within the cavity;

[29.2] the container includes the flat portion of the label;

[29.3] the base includes ribs adapted hold the product;

[29.4] the lid further includes a substantially flat lid top area and,

[29.5] when the lid is in the closed position, the label location area is inclined at a reflex angle of less than 270 degrees with respect to the substantially flat lid top area.

[30.0] The container for packaging the product of claim 29 wherein the product is fresh retail produce;

[30.1] the first area includes an edge portion comprising an edge of the material; and

[30.2] when the lid is in the closed position the second area of the base extension and the first area of the lid face substantially in the same direction, and

[30.3] [when the lid is in the closed position] the second area is disposed substantially adjacent to the edge portion of the first area of the lid.

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. §42.24(d), Petitioner hereby certifies, in accordance with and reliance on the word count provided by the word-processing system used to prepare this Petition, that the number of words in this paper is 13,597. Pursuant to 37 C.F.R. §42.24(d), this word count excludes the table of contents, table of authorities, mandatory notices under §42.8, certificate of service, certificate of word count, appendix of exhibits, and any claim listing.

Dated: August 1, 2024

/Eugene Goryunov/
Eugene Goryunov
Lead Counsel for Petitioner
Registration No. 61,579

CERTIFICATE OF SERVICE

The undersigned certifies that, in accordance with 37 C.F.R. §42.6(e) and 37 C.F.R. §42.105, service was made on Patent Owner as detailed below.

Date of service	August 1, 2024
Manner of service	FEDERAL EXPRESS
Documents served	Petition for *Inter Partes* Review Under 35 U.S.C. §312 and 37 C.F.R. §42.104 of U.S. 11,225,365; Petitioner's Exhibit List; Exhibits Ex.1001-Ex.1021; Ex.1024-Ex.1025; and Ex.1029-Ex.1039; Powers of Attorney; and Petitioners' Ranking of Petitions and Explanation of Material Differences Between Petitions.
Persons served	Niro McAndrews, LLP 12 Beach Lane Ogden Dunes, IN 46368 Niro McAndrews, LLP 21660 West Field Parkway, Suite 118 Deer Park, IL 60010

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