UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HARTMANN U.S., INC.

Petitioner

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IPR2024-01215
IPR2024-01216

U.S. Patent 11,225,365

DECLARATION OF THOMAS DUNN, BA MFS UNDER 37 C.F.R. § 1.68 IN SUPPORT OF PETITIONS FOR *INTER PARTES* REVIEW

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I, Thomas Dunn, do hereby declare as follows:

I. INTRODUCTION

1. I have been retained by counsel for Hartmann U.S., Inc. ("Hartmann") as an independent expert witness for the above-captioned Petitions for *Inter Partes* Review ("IPR") of U.S. Patent No. 11,225,365 ("the '365 Patent").

2. I am being compensated at my usual and customary rate for the time I spend in connection with this matter. I am also being reimbursed for reasonable and customary expenses associated with my work and testimony in this proceeding. My compensation is not affected by the outcome of this matter.

3. I have been asked to provide my opinions regarding whether the subject matter of claims 1-30 (the "Challenged Claims") of the '365 Patent would have been obvious to a person having ordinary skill in the art ("POSITA") at the time of the alleged invention (*i.e.*, as of the earliest priority date the '365 Patent attempts to claim), in light of the prior art. It is my opinion that the Challenged Claims would have been obvious to a POSITA after reviewing the prior art discussed below.

4. In preparing this Declaration, I have reviewed:

- Ex.1001, the '365 Patent;
- Ex.1002, the file history of the '365 Patent;
- the prior art references discussed below:

- Ex.1009, U.S. Patent Application Publication No. 2005/0238764 (Beese);
- Ex.1010, WO 2006/001696 (Post);
- Ex.1011, U.S. Patent No. 1,254,276 (Reifsnyder);
- Ex.1012, U.S. Patent No. 3,854,581 (Jones);
- Ex.1013, U.S. Patent No. 3,951,292 (Amberg);
- Ex.1014, EP 1 558 504 (Tietschert);
- Ex.1015, U.S. Patent No. 4,625,906 (Mangla);
- Ex.1016, WO 03/086905 (Buckley);
- Ex.1020, FR-A-2441549 (Boursier);
- Ex.1021, U.S. Patent No. 4,280,648 (English equivalent of Ex.1020);
- Ex.1029, U.S. Patent No. 3,285,491 (Bessett);
- Ex.1030, U.S. Patent No. 3,298,594 (Makowski);
- Ex.1033, U.S. Patent No. 4,986,414 (Ashley);
- Ex.1034, U.S. Patent No. 4,582,248 (Bixler);
- Ex.1035, U.S. Patent No. 5,860,528 (Emery); and
- Ex.1039, U.S. Patent No. 3,648,916 (Commisso).

- the following additional documents:

- Ex.1005, Prosecution History of U.S. 12/449,556;
- Ex.1006, WO 2008/098288;
- Ex.1007, AU 2007900654;
- Ex.1008, AU 2007902246;
- Ex.1018, U.S. Patent No. 10,287,070;
- Ex.1019, Prosecution History of U.S. Patent No. 10,287,070 (U.S. Patent Application No. 15/656,623);
- Ex.1031, definition of "unitary," American Heritage Dictionary (1985);
- Ex.1032, definition of "unitary," Merriam Webster Collegiate Dictionary (1995);
- 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; and
- Ex.1038, Comparison of claims 11-27 of the '365 Patent.

- any other document cited below.

5. I understand that the ’365 Patent issued on January 18, 2022, from U.S. Patent Application No. 16/360,964 (“the ’964 Application,” Ex.1002), filed March 21, 2019. I understand that the ’365 Patent is a continuation of U.S. Patent No. 10,287,070 (“the ’070 Patent”) (Ex.1018), which was filed on July 21, 2017 as U.S. Patent Application No. 15/656,623 (Ex.1019), and that the ’070 Patent is a continuation of U.S. Patent Application No. 12/449,556 (Ex.1005), which was filed on August 12, 2009 and later abandoned. The ’365 Patent also claims priority to PCT Application No. PCT/AU2008/000173 (Ex.1006), filed February 12, 2008, which in turn claims priority to (i) Australian Application No. 2007902246, filed April 30, 2007 (Ex.1008), and (ii) Australian Application No. 2007900654, filed February 12, 2007 (Ex.1007). The face of the ’365 Patent lists Maurice Joseph Paul Tabone as the inventor. I have been informed by counsel that, according to assignment records, Maurice Joseph Paul Tabone is the current assignee of the ’365 Patent.

6. As the prior art I rely upon in forming my opinions predate the earliest date to which the ’365 Patent attempts to claim priority by more than one year, I have considered the viewpoint of a POSITA, as of February 12, 2007, which I understand to be the earliest date to which the ’365 Patent attempts to claim priority.

7. In forming my opinions expressed in this Declaration, I have considered the following materials:

a) the documents listed above,

b) any additional documents and references cited in the analysis below,

c) the relevant legal standards, including the standard for obviousness, and

d) my knowledge and experience based upon my work in the field of packaging as described below.

8. Unless otherwise noted, all emphasis in any quoted material has been added. Claim terms are italicized.

II. BACKGROUND AND QUALIFICATIONS

9. My qualifications and professional experience are described in my *Curriculum Vitae*, a copy of which can be found in Exhibit 1004. The following is a brief summary of my relevant qualifications and professional experience.

10. Since January 2011, I have served as the Managing Director of Flexpacknology LLC. My responsibilities at Flexpacknology include: consulting with users and producers of flexible packaging regarding product, process and platform development, intellectual property management and food safety compliance; expert witness about product liability, flexible packaging for shelf stable acidic canned foods and pouch failure modes, tariff classification, and patent infringement; package development for MAP food product with Internet distribution

channel; trouble shooter for package failure from inadequate chemical resistance; market analyst of global variation of flexible packaging applications; and advisor on Good Manufacturing Practices for safe food packaging manufacturing.

11. I was inducted into National Packaging Hall of Fame in 2012 and was selected as Fellow in the Society of Plastics Engineers in 2016. In 2002, I received the Zweig Prize for Technical Contributions (Flexible Packaging Division-Technical Association of the Pulp and Paper Industry).

12. I received a M.F.S. degree in 1973 from the Yale School of Forestry and Environmental Studies. In 1971, I received a B.A. in combined science from Yale College.

13. I have over 45 years of experience in the packaging field including a 30-year career at Printpack, Inc. focused on product and process development. During my career at Printpack, Inc., I contributed to multiple +$10 million product platforms including: 1) extrusion laminated metallized OPP snack food packaging; 2) fully-coextruded forming/nonforming web for frozen boil-in-bag meals; 3) nitrogen flushed vertical form fill seal snack food packaging; 4) modified atmosphere packaging for fresh-cut produce; 5) High Moisture Barrier easy-open HDPE blown coex for dried food box liners; and 6) High barrier pre-made Stand-up Pouches.

14. I have served on several Advisory Committees including for the UN International Atomic Energy Commission and the USDA National Institute of Food and Agriculture, as well as served in leadership roles for several industry organizations including the Flexible Packaging Association, the Product Development Management Association, the Society of Plastics Engineers, ASTM, TAPPI, and RadTech North America.

15. I have served as an expert witness and technical consultant in litigation and IPR matters concerning packaging and packaging materials.

III. UNDERSTANDING OF PATENT LAW

16. I am not an attorney. For the purposes of this declaration, I have been informed about certain aspects of the law that are relevant to my opinions. My understanding of the law was provided to me by Petitioner's attorneys.

17. I understand that prior art to the '365 Patent includes patents and printed publications in the relevant art that predate the priority date of the '365 Patent. For purposes of this Declaration, I have applied the date of February 12, 2007, the earliest date to which the '365 Patent attempts to claim priority.

18. I have been asked to provide my opinions regarding whether the Challenged Claims would have been obvious to a POSITA at the time of the alleged invention in light of the prior art.

19. I understand that a claim is unpatentable if it would have been obvious. Obviousness of a claim requires that the claim would have been obvious from the perspective of a POSITA at the time the alleged invention was made. I understand that a claim could have been obvious from a single prior art reference or from a combination of two or more prior art references.

20. I understand that an obviousness analysis requires an understanding of the scope and content of the prior art, any differences between the alleged invention and the prior art, and the level of ordinary skill in evaluating the pertinent art.

21. I further understand that a claim would have been obvious if it unites old elements with no change to their respective functions, or alters prior art by mere substitution of one element for another known in the field and that combination yields predictable results. Also, I understand that obviousness does not require physical combination/bodily incorporation, but rather consideration of what the combined teachings would have suggested to persons of ordinary skill in the art at the time of the alleged invention. I understand that the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.

22. As mentioned above, I understand that a claim would have been obvious if it unites old elements with no change to their respective functions, or alters prior art by mere substitution of one element for another known in the field

and that combination yields predictable results. While it may be helpful to identify a reason for this combination, I understand that there is no rigid requirement of finding an express teaching, suggestion, or motivation to combine within the references. When a product is available, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a POSITA can implement a predictable variation, obviousness likely bars its patentability. For the same reason, if a technique has been used to improve one device and a POSITA would recognize that it would improve similar devices in the same way, using the technique would have been obvious. I understand that a claim would have been obvious if common sense directs one to combine multiple prior art references or add missing features to reproduce the alleged invention recited in the claims.

23. I further understand that certain factors may support or rebut the obviousness of a claim. I understand that such secondary considerations include, among other things, commercial success of the patented invention, skepticism of those having ordinary skill in the art at the time of invention, unexpected results of the invention, any long-felt but unsolved need in the art that was satisfied by the alleged invention, the failure of others to make the alleged invention, praise of the alleged invention by those having ordinary skill in the art, and copying of the alleged invention by others in the field. I understand that there must be a nexus—a connection—between any such secondary considerations and the alleged invention.

I also understand that contemporaneous and independent invention by others is a secondary consideration tending to show obviousness.

24. I am not aware of any allegations by the named inventor of the ’365 Patent that any secondary considerations tend to rebut the obviousness of the Challenged Claims of the ’365 Patent.

25. I understand that in considering obviousness, it is important not to determine obviousness using the benefit of hindsight derived from the patent being considered.

IV. TECHNICAL BACKGROUND

26. Since the time man first went hunting and gathering there was a recognized need for containers to store foodstuffs and/or to preserve freshness. While pottery and glass were adopted as early as 3500-7000 BC, paper/cardboard products began to surface in the 1800s and by the early 1900s cardboard cereal boxes were being used by Kellogg’s. Since then, companies worldwide have been offering packaging solutions and advancements, many of which have been recognized as being innovative as the USPTO has granted over 17,000 patents related to containers or packaging for foods since 1900.

27. There are central tenants ubiquitous amongst food packaging approaches including providing a practical means to protect and deliver foodstuffs at a reasonable cost. Although recent focus has shifted to issues like sustainability,

environmental impact reduction, and shelf-life extension, at its core the foundation remains providing packaging that has sufficient structure to accommodate the foodstuff and to protect the foodstuff from unwanted damage during shipping and storage.

28. By 2007, when the application to which the '365 Patent attempts to claim priority was filed, the concept of food packaging having a base and a lid hingedly connected to permit the container to move from an open to a closed state was not novel. *See, e.g.*, Ex.1001, 1:33-36) ("Thermoformed containers suitable for holding fresh food or produce are in common use. Traditionally, these have consisted of a base with a lid, the lid being hinged to the base or separate therefrom."). Further, application of adhesive labels to packaging was also not a novel concept in 2007. *See, e.g.*, U.S. Pat. No. 1,254,276 (1918), Ex.1011. Not even the idea of using tamper-proof labels was novel in 2007 as this concept dates back centuries. Indeed, since the days of royal courts affixing a seal to a letter, there was a long-recognized need to ensure that the recipient can tell whether the item it receives has been opened and the contents, thus, soiled. This concept has continued through many iterations over the years including pressure-sensitive adhesive labels. *See, e.g.,* U.S. Pat. No. 3,854,581 (1974) (Ex.1012) and hot-shrunk labels (*see, e.g.,* U.S. Pat. No. 3,951,292 (1976), Ex.1013).

29. All the features and functionality described in this section were well known before 2007, and a POSITA would have been familiar with them.

V. THE '365 PATENT

30. The '365 Patent is titled "Container Base and Lid with Planar Area for Flat Application of Adhesive Membrane." Ex.1001, cover at (54).

31. The '365 Patent "relates to containers intended to hold fresh food or produce," and is "especially concerned with containers in a form which can facilitate application of labels, such as tamper evident labels." Ex.1001, 1:21-26.

32. The '365 Patent explains that "containers suitable for holding fresh food or produce are in common use. Traditionally, these have consisted of a base with a lid, the lid being hinged to the base or separate therefrom." Ex.1001, 1:33-36. The '365 Patent indicates that "[i]n order to secure the lid to the base, these known containers require one or more labels to be adhered to both the lid and the base in a 'wrap around' fashion." Ex.1001, 1:36-39. However, the '365 Patent identifies a drawback to "wrap around" labels: "[i]n high output operations, there is a problem in applying a 'wrap around' (non-flat) label because automated equipment is generally designed for flat label application." Ex.1001, 1:39-42.

33. In view of these concerns, the '365 Patent explains that its "object" is "to provide a container configuration which permits flat application of labels." Ex.1001, 1:48-50. In addition, the '365 Patent explains that using "[a] flat, self-

adhesive label application provid[es] tamper evidence." Ex.1001, 7:62-65. In other words, if the flat label applied to the container is damaged or torn, the damaged or torn label is evidence of tampering with the container.

34. To this end, the '365 Patent "provides a container having a base and a lid moveable with respect to the base between an open position and a closed position, the lid having a first planar area and the base having a second planar area, wherein, in the closed position, the first and second planar areas include a substantially flat area suitable for receipt of an adhesive membrane, the substantially flat area including an edge of the first planar area and at least part of the second planar area." Ex.1001, 2:11-19.

35. The inventor of the '365 Patent did not find anything important or even novel about the structure of the container *per se* ("[i]t will be appreciated from the various embodiments described above that the container [of the invention] can be produced in a wide number of forms," Ex.1001, 7:35-38, where the "container of the invention can be adapted to any currently known container design," Ex.1001, 7:60-62). Rather, the inventor of the '365 Patent considered the important contribution of his invention to be the arrangement of the required first and second planar areas when the container is in a closed position such that these planar areas provide a "substantially flat area suitable for receipt of an adhesive membrane." Ex.1001, 2:15-19. The '365 Patent purports that this required feature allows "flat, self-

adhesive label application provid[es] tamper evidence," Ex.1001, 7:62-65, and "tamper evidence capabilities while maintaining minimal obstruction of vision through the container lid." Ex.1001, 7:66-8:1.

36. Notably, as I will demonstrate in this Declaration, neither tamper-evident labels nor the arrangement of two adjacent flat surfaces at a container enclosure permitting application of a tamper-evidence label were novel at the time the '365 Patent was filed. Further, as I will demonstrate in this Declaration, there is nothing novel about the claims of the '365 Patent as all the elements were taught in the prior art and it would have been obvious to combine the relevant teachings of the asserted prior art references as claimed.

VI. PROSECUTION HISTORY OF THE '365 PATENT

37. Application No. 16/360,964 (Ex.1002), which issued as the '365 Patent, was filed on March 21, 2019, with original claims 1-17. Ex.1002, 333-337. During prosecution, the applicant submitted a total of six preliminary amendments before

the Examiner issued an Office Action.[1] In the fourth preliminary amendment filed on October 30, 2020, the applicant cancelled prosecution claims 1-20 and added new prosecution claims 21-47. Ex.1002, 272-287. As discussed below, prosecution claims 21-47 were not rejected during prosecution. 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.

38. The applicant then added prosecution claim 48 in a fifth preliminary amendment filed on January 15, 2021 (Ex.1002, 139-158), and added prosecution claims 49 and 50 in a sixth preliminary amendment (Ex.1002, 114-133). The applicant amended prosecution claims 48-50 in response to a prior art rejection discussed below. Amended prosecution claims 48-50 correspond to issued claims 28-30 of the '365 Patent, respectively. Ex.1002, 16.

[1] The prosecution history of the '365 Patent includes six preliminary amendments, but the applicant named the sixth preliminary amendment as the "Fifth Preliminary Amendment." Ex.1002, 114-133. The numbering convention became offset when the second preliminary amendment was named a "Supplemental Preliminary Amendment" (Ex.1002, 304-313), and the third preliminary amendment was then named the "Second Supplemental Preliminary Amendment." Ex.1002, 289-296.

39. The Examiner issued one Office Action after the sixth preliminary amendment. Ex.1002, 82-89. In the Office Action, the Examiner indicated that prosecution claims 21-47 were allowed. Ex.1002, 87. The Examiner did not provide reasons for the allowance of prosecution claims 21-47. As noted above, issued claims 1-27 of the '365 Patent[2] correspond to prosecution claims 21-36, 39, 40, 37, 38, and 41-47, respectively. Ex.1002, 16.

40. The Examiner rejected prosecution claims 48-50 as being anticipated by U.S. Patent No. 4,986,414 to Ashley et al. (Ex.1033). Ex.1002, 84-87. In response, the applicant amended prosecution claim 48 to recite that "when the lid is in the closed position, … the first part of the first area of the lid surrounds the first part of the second area of the base extension." Ex.1002, 76 (amended claim), 78-79

[2] In response to the Office Action, the applicant amended prosecution claim 21 (issued claim 1) "to further clarify the meaning of 'extends obliquely.'" Ex.1002, 78. Specifically, the applicant amended prosecution claim 21 to recite that "the substantially planar front extension extends obliquely relative to the floor from the substantially flat lid top when the lid is in the closed position." Ex.1002, 59 (underlining shows additions). Issued claim 1 contains these amendments (limitation [1.5.4] below).

(explanatory remarks).[3] The applicant explained that allowed independent prosecution claim 21 (issued claim 1) and dependent prosecution claim 23 (issued claim 3) "recite a similar limitation," and that Ashley does not disclose this arrangement. Ex.1002, 78-79. The applicant also amended dependent claims 49 and 50 (issued claims 29 and 30) "to clarify the relationship of the features [of] the base and lid, and to specify the location or types of product in the container." Ex.1002, 78 (explanatory remarks), 76-77 (amendments to prosecution claims 49 and 50). In a "Supplemental Response to Non-Final Office Action," the applicant deleted the limitation "the material is a thermoformed structure forming the unitary construction of the base, lid, and hinge" from prosecution claim 49 (issued claim 29). Ex.1002, 52.

41. The Examiner then allowed the '964 Application. Ex.1002, 8-16 (Notice of Allowance). The Notice of Allowance did not include any reasons for allowance. Thus, the Examiner did provide reasons for allowance for any of the prosecution claims resulting in issued claims 1-30 of the '365 Patent.

[3] The applicant also made other clarifying amendments to respond to an indefiniteness rejection. Ex.1002, 75-76 (amended prosecution claim 48).

VII. LEVEL OF ORDINARY SKILL IN THE PERTINENT ART

42. I understand that the level of ordinary skill may be reflected by the prior art of record, and that a POSITA to which the claimed subject matter pertains would have the capability of understanding the scientific and engineering principles applicable to the pertinent art. I understand that one of ordinary skill in the art has ordinary creativity, and is not a robot.

43. I understand there are multiple factors relevant to determining the level of ordinary skill in the pertinent art, including (1) the levels of education and experience of persons working in the field at the time of the invention; (2) the sophistication of the technology; (3) the types of problems encountered in the field; and (4) the prior art solutions to those problems. There are likely a wide range of educational backgrounds in the technology fields pertinent to the ’365 Patent.

44. I am very familiar with the knowledge and capabilities that a person of ordinary skill in the art of ’365 Patent would have possessed at the time this application was filed. I am also aware of the state of the art at the time the application resulting in the ’365 Patent was filed. Based on the technologies disclosed in the ’365 Patent, it is my opinion that a POSITA would include someone who had a bachelor’s degree in packaging products, materials, process and platforms or equivalent, and two years of professional experience relating to packaging products,

materials, process and platforms. Additional work experience can substitute for specific educational background, and vice versa.

45. For purposes of this Declaration, in general, and unless otherwise noted, my statements and opinions, such as those regarding my own experience and what a POSITA would have understood or known generally (and specifically related to the references I consulted herein), reflect the knowledge that existed in the relevant field as of the earliest priority date that the '365 Patent attempts to claim (*i.e.*, February 12, 2007). I would have been a person with at least ordinary skill in the art at that time.

VIII. CLAIM CONSTRUCTION

46. It is my understanding that in order to properly evaluate the '365 Patent, the terms of the claims must first be interpreted. It is my understanding that for the purposes of this matter, the claims are to be construed under the so-called *Phillips* standard, under which claim terms are given their ordinary and customary meaning as would have been understood by a POSITA in light of the specification and prosecution history, unless the inventor has set forth a special meaning for a term. I have also been informed that claim terms only need to be construed to the extent necessary to resolve the obviousness inquiry.

47. In order to construe the Challenged Claims, I have reviewed the entirety of the '365 Patent, as well as its prosecution history. It is my opinion that for

purposes of applying the prior art presented herein to evaluate the patentability of the Challenged Claims that no term requires express construction. Accordingly, I have analyzed the Challenged Claims consistent with their ordinary and customary meaning as would have been understood by a POSITA. Where appropriate to understand a term or limitation in the claims, I have included a corresponding explanation of how the ordinary and customary meaning would have been understood by a POSITA.

IX. DETAILED INVALIDITY ANALYSIS[4]

48. I have been asked to provide my opinion as to whether the Challenged Claims of the ’365 Patent would have been obvious in view of the prior art. The discussion below provides a detailed analysis of how the prior art references I reviewed disclose, teach, or suggest the limitations of the Challenged Claims of the ’365 Patent.

49. As part of my analysis, I have considered, and discuss in detail, the scope and content of the prior art and any potential differences between the claimed subject matter and the prior art. I conducted my analysis as of the earliest date to

[4] Unless otherwise specified, all **bold** and ***bold italics*** emphasis below has been added. Text in *italics* is used to signify claim language

which the ’365 Patent attempts to claim priority: February 12, 2007. I have also considered the level of ordinary skill in the pertinent art as of that date.

50. It is my opinion that the alleged invention recited in the Challenged Claims would have been obvious in view of the teachings of the asserted prior art and the knowledge of a POSITA.

51. I will now describe, in the grounds below, on an element-by-element basis how the prior art discloses or teaches all elements of the Challenged Claims. Unless otherwise noted, all *italics* refers to claim language, and **bold** or ***bold italics*** is added for emphasis.

52. For reference, it is my opinion that the Challenged Claims are obvious for the following reasons:

Ground	**Claims**	**References**
Obviousness	1-6, 8-21, and 23-30	Post in view of Beese and Mangla
Obviousness	7 and 22	Post in view of Beese, Mangla, and Buckley
Obviousness	28-30	Post in view of Beese

A. Claims 1-6, 8-21, and 23-27 are obvious over Post in view of Beese and Mangla

53. It is my opinion that Post in view of Beese and Mangla would render obvious, to a POSITA, the subject matter of each and every element of claims 1-6, 8-21, and 23-27 of the ’365 Patent.

1. Summary of Post

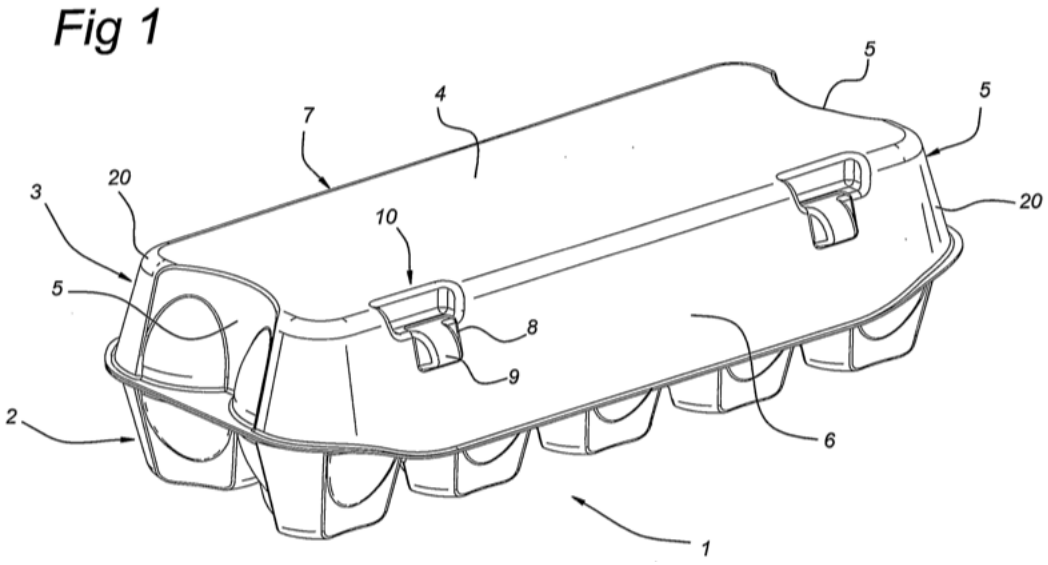
54. Post published as WO 2006/001696 on January 5, 2006, based on International (PCT) Application No. PCT/NL2005/000457, which was filed on June 28, 2005. Ex.1010, face at (10), (43), (21), and (22).

55. Post’s publication date (January 5, 2006) is more than one year prior to the earliest date to which the ’365 Patent attempts to claim priority (February 12, 2007).

56. Post is titled “Container for Packaging Foods.” Ex.1010, (54).

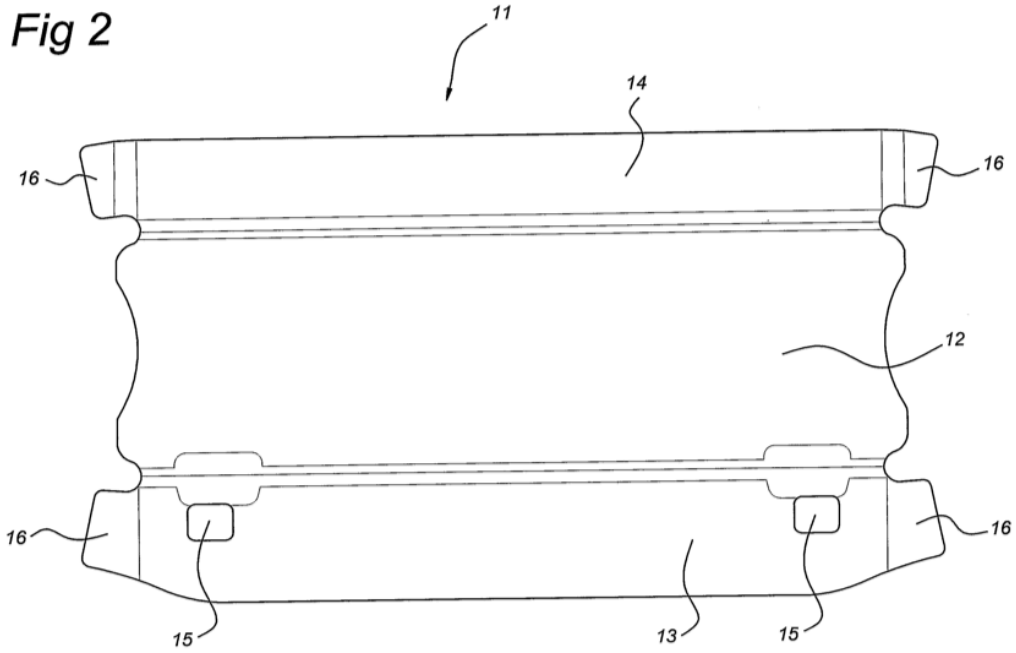
57. Post “relates to a container for packaging foods, comprising a bottom part and a hinged lid part joined thereto.” Ex.1010, 1. With reference to Fig. 1 below, Post discloses a container 1 that includes “a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically,” and “[a] hinged lid part 3 is joined” to the bottom part 2. Ex.1010, 3. As shown in Fig. 1, the lid part 3 includes “a top part 4” having “side walls [that] drop down from the top part 4,” where the “side walls are indicated by 5-7. 6 is the front wall, 7 the rear wall and 5 are the

linking transverse walls." Ex.1010, 3. "Transition parts 20 are arranged between each of the side walls." Ex.1010, 3.



Ex.1010, Fig. 1

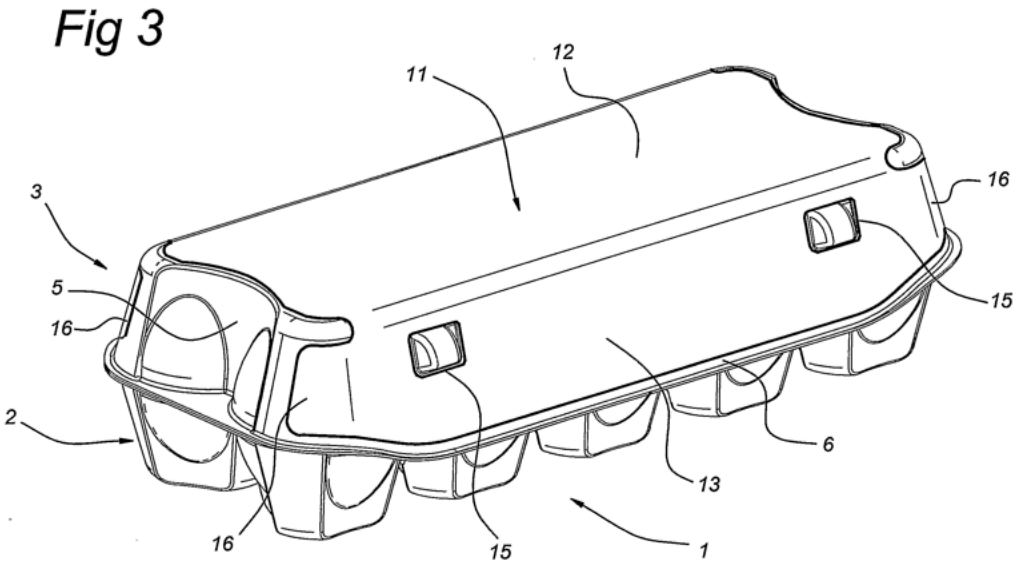
58. An objective of Post is to provide "[a] label that covers as a large as possible proportion of the lid part (3) is applied to the lid part (3). For this purpose the label (11) essentially covers the top part (4), two side parts (6, 7) located opposite one another and the transition parts (20) adjacent to these [side parts (6, 7)]." Ex.1010, Abstract. Fig. 2, below, illustrates "a flat sheet that [is] applied as [the] label to the lid part 3." Ex.1010, 3. The "flat sheet is indicated in its entirety by 11 and comprises a central part 12, a front flap 13 and a rear flap 14." Ex.1010, 3.



Ex.1010, Fig. 2

59. Post explains that using a flat sheet as a label advantageously "provide[s] a larger surface of the egg tray with printing and thus [] provide[s] more (advertising) information on the lid part." Ex.1010, 2. Fig. 3, below, illustrates the label 11 affixed to the lid part 3 of the container 1. Ex.1010, 3 ("Fig. 3 shows how this label 11 is applied to the lid part 3."). As shown in Fig. 3, below, the flat front flap 13 of the label 11 is applied to the front wall 6 of the lid part 3, the flat central part 12 of the label 11 is applied to the top part 4 of the lid part 3, and the flat rear flap 14 of the label 11 is applied to the rear wall 7 of the lid part 3. Ex.1010, 4 ("The flat sheet [of label 11] is then placed with the central part 12 thereof on the top part

4. With a brush or other pressure means, both the front flap 13 and the rear flap 14 are then positioned on the front wall 6 and the rear wall 7, respectively.").



Ex.1010, Fig. 3

60. Post is analogous art to the '365 Patent at least because Post is directed to the same field of endeavor as the '365 Patent. The '365 Patent "relates to containers intended to hold fresh food or produce." Ex.1001, 1:20-22. Likewise, Post is directed to "a container for packaging foods," such as "an egg tray." Ex.1010, 1. In addition, Post is analogous to the '365 patent because Post is reasonably pertinent to a problem allegedly solved by the '365 Patent. The '365 Patent is directed to solving the problem of providing flat labels on a flat surface of a food container. Ex.1001, 1:48-50 ("It is an object of the present embodiments, at least in some embodiments, to provide a container configuration which permits flat application of

labels."). Likewise, Post is directed to providing a flat label on at least one flat surface of the container. Specifically, as shown in Post's Fig. 3, above, the flat front flap 13 of the label 11 is applied to the front wall 6 of the lid part 3, the flat central part 12 of the label 11 is applied to the top part 4 of the lid part 3, and the flat rear flap 14 of the label 11 is applied to the rear wall 7 of the lid part 3. Ex.1010, 4. Therefore, Post is analogous art to the '365 Patent.

61. During examination of '365 Patent, the applicant recognized egg cartons to be analogous art to his invention citing EP1558504 (Ex.1014) in the Information Disclosure Statement filed on March 21, 2019. EP1558504, like Post, relates to packages "for receiving one or more frangible products, such as eggs." Ex.1014, [0009].

62. Post was not before the Examiner during prosecution of the '365 Patent.

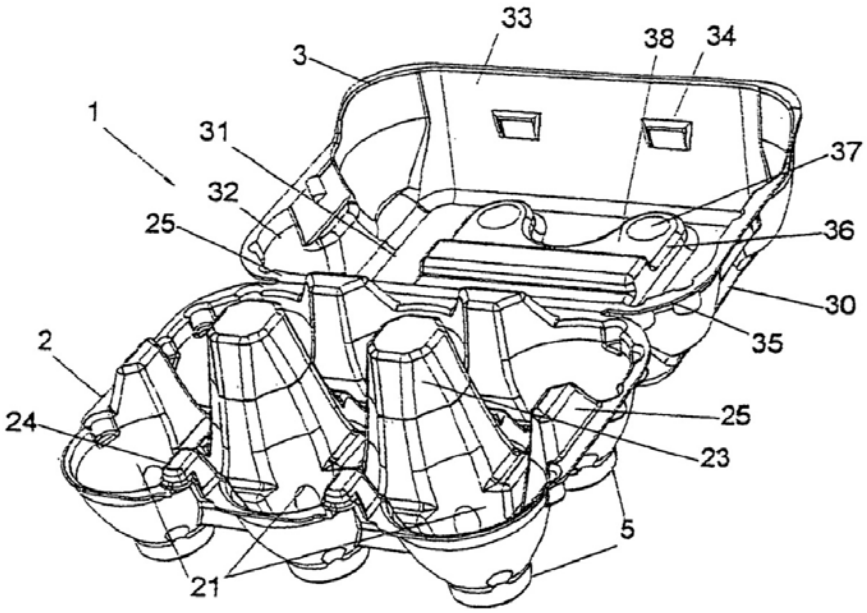
2. Summary of Beese

63. Beese published as U.S. 2005/0238764 on October 27, 2005, based on U.S. application No. 10/524,106 which was a National Stage (371) of PCT/EP03/09000 and, therefore, has a U.S. filing date of August 13, 2003. Ex.1009, face at (10), (43), (21), (22), and (86).

64. Beese's publication date (October 27, 2005) is more than one year prior to the earliest date to which the '365 Patent attempts to claim priority (February 12, 2007).

65. Beese is titled "Food Packaging Having a Shaped Lid Part." Ex.1009, (54).

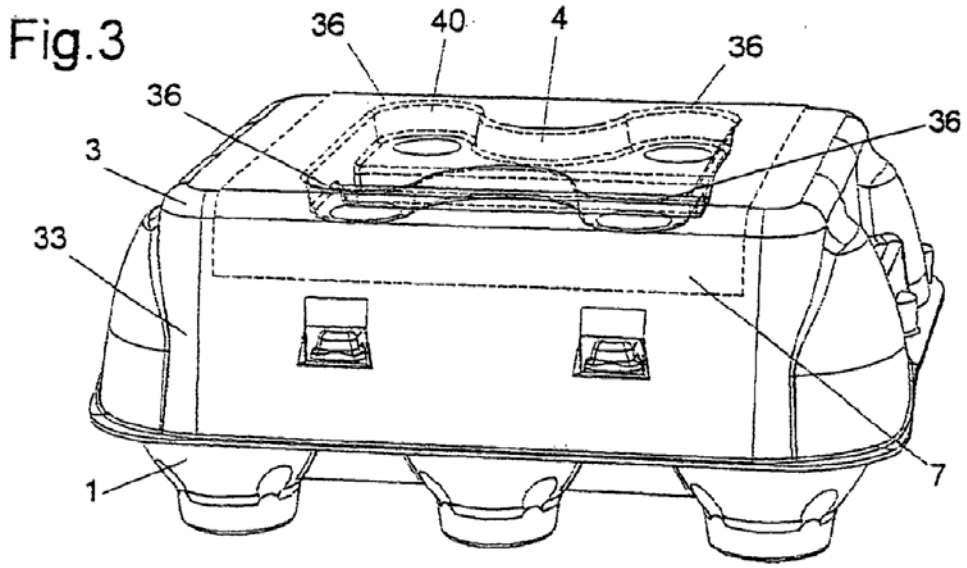
66. Beese discloses a foodstuffs packaging unit that has "a bottom part which has at least one row of shaped depressions for accommodating separate articles… and a lid part which is arranged for swing action on the bottom part." Ex. 1009, Abstract. Beese's foodstuffs packaging unit bounds an interior compartment when the lid is closed over the bottom part. Ex. 1009, [0001]. Fig. 1, below, depicts Beese's foodstuffs packaging unit in an open state. Ex.1009, [0025] ("An egg box according to the invention is illustrated in the swung-open state in FIG. 1.")



Ex.1009, Fig. 1

67. As shown in Fig. 1, above, the bottom part 2 includes retaining noses 24 that extend from the base to engage with openings 24 in the front part 33 of the lid part 3, to connect the lid part 3 to the bottom part 2 in the closed state (shown in Fig. 2). Ex.1009, [0026] ("In order to fix the lid part 3 in the closed state, two retaining noses 24 are arranged on a front side of the base part 2."), [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2.").

68. Like Post, Beese discloses applying a sticker or label 7 on the lid part of the container (egg box) 3, as shown in Fig. 3, below. Ex.1009, [0025] ("The egg box, which is designated 1 overall, comprises a bottom part 2 and a lid part 3, which is fastened for swing action on the bottom part 2 via a flexible hinge 25, and a sticker 7 fitted on said lid part (see FIG. 3)."). Beese explains that the sticker 7 "provides a printing surface which can be utilized for product information or advertising." Ex.1009, [0030]. Beese discloses that "[t]he sticker 7 shown in FIG. 3 may be of any desired size," such that the "front side [of the sticker 7] may thus be extended as far as the bottom edge of the front part 33 of the lid part 3." Ex.1009, [0030].



Ex.1009, Fig. 3

69. Beese is analogous art to the ’365 Patent at least because Beese relates to the same field of endeavor as the ’365 Patent. The ’365 Patent “relates to containers intended to hold fresh food or produce.” Ex.1001, 1:20-22. Likewise, Beese relates to containers for holding food products, e.g., eggs. Ex.1009, [0001] (“The invention relates to foodstuffs packaging, in particular an egg box….”). In addition, Beese is analogous to the ’365 patent because Beese is reasonably pertinent to a problem a problem allegedly solved by the ’365 Patent. The ’365 Patent is directed to addressing the problem of “provid[ing] a container configuration which permits flat application of labels.”). Ex.1001, 1:48-50. Likewise, Beese discloses applying a label (sticker 7) to the flat surface on the front part 33 of the bottom part

2. As discussed above, the sticker 7 may be "extended as far as the bottom edge of the front part 33 of the lid part 3." Ex.1009, [0030].

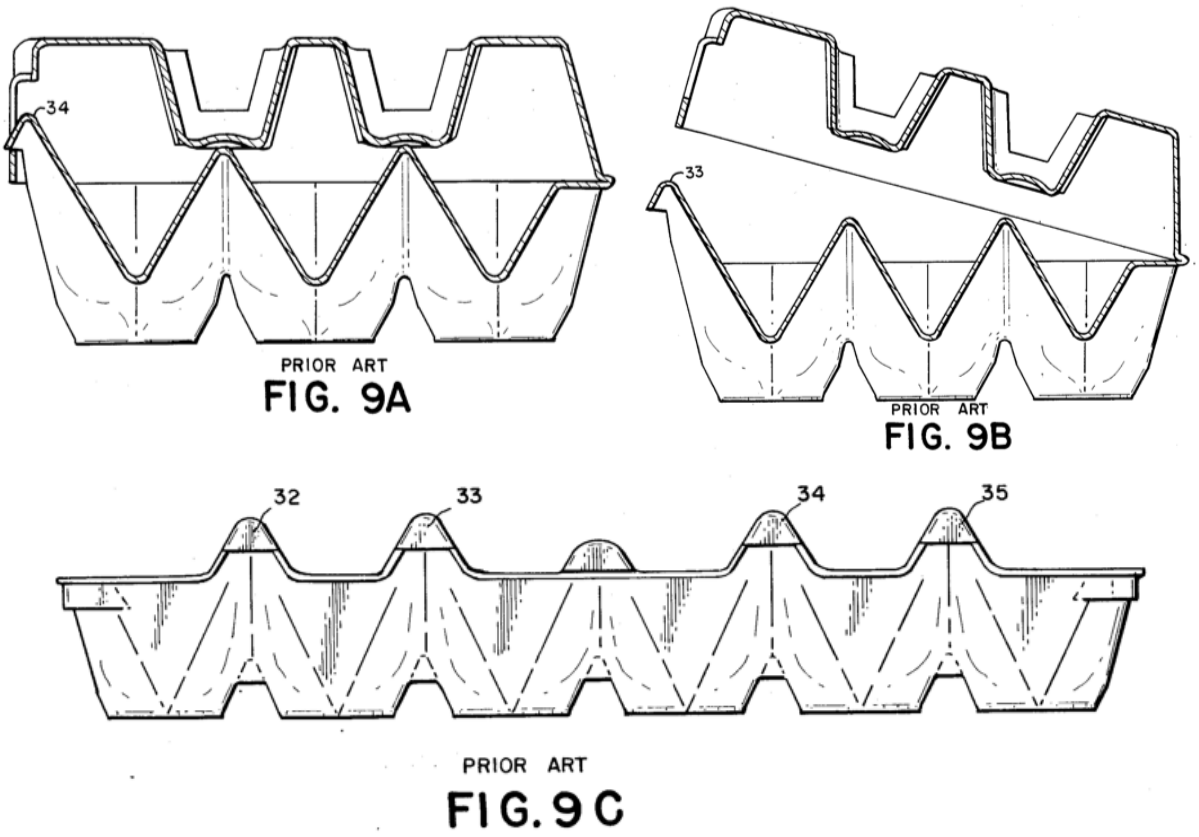
70. During examination of '365 Patent, the applicant recognized egg cartons to be analogous art to his invention citing EP1558504 (Ex.1014) in the Information Disclosure Statement filed on March 21, 2019. EP1558504, like Beese, relates to packages "for receiving one or more frangible products, such as eggs." Ex.1014, [0009].

71. Beese was not before the Examiner during prosecution of the '365 Patent.

3. Summary of Mangla

72. Mangla "relates to an improved egg carton, and to methods of making it." Ex.1015, 1:9-10. Mangla notes that some egg cartons may be designed to hold a dozen eggs, while other egg cartons may be designed to hold eighteen eggs. Ex.1015, 1:33-37, 1:48-56. Mangla explains that egg cartons designed to hold a dozen eggs or eighteen eggs may be made from molded pulp or thermoformed plastic. Ex.1015, 1:33-56. Figs. 9A-9C, below, illustrate a molded pulp carton having a hinged cover. "This pulp carton includes protrusions 32-35 on the cell section [bottom part]." Ex.1015, 4:3-4. Mangla explains that "[t]hese protrusions [32-35] have hooks which mate with holes in the cover to latch the carton [closed]." Ex.1015, 4:4-6. As shown

in Figs. 9A and 9B, below, the front, outward-facing surface of the protrusions 32-35 is flat (e.g., protrusion 34 in Fig. 9A and protrusion 33 in Fig. 9B).



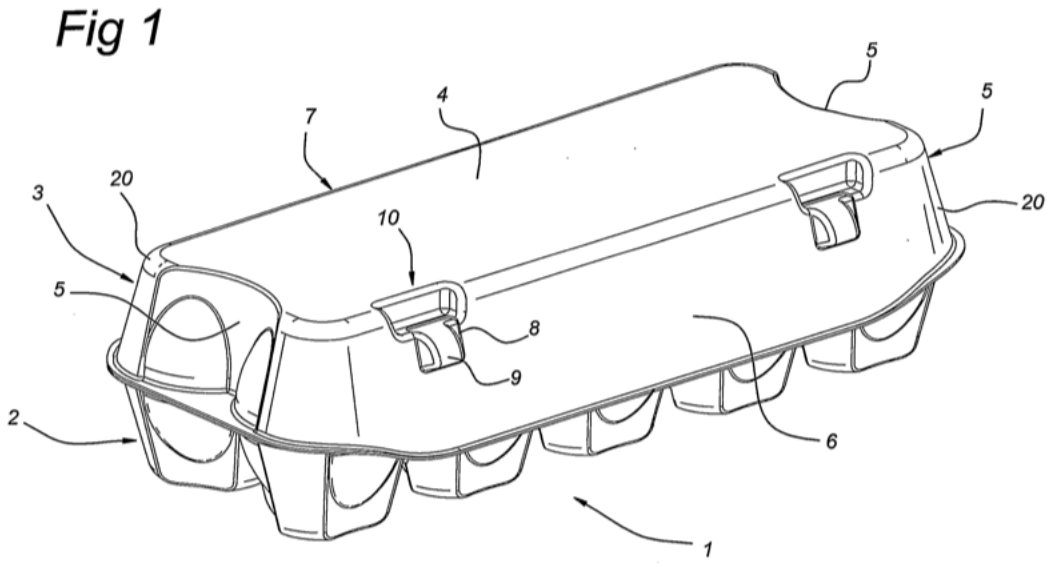
Ex.1015, Figs. 9A-9C

73. Mangla is analogous art to the '365 Patent at least because Mangla relates to the same field of endeavor as the '365 Patent. The '365 Patent "relates to containers intended to hold fresh food or produce." Ex.1001, 1:20-22. Likewise, Mangla relates to containers for holding food products, e.g., eggs. Ex.1015, 1:9-10 ("This invention relates to an improved egg carton, and to methods of making it.").

4. Reasons to Combine Post with Beese and Mangla

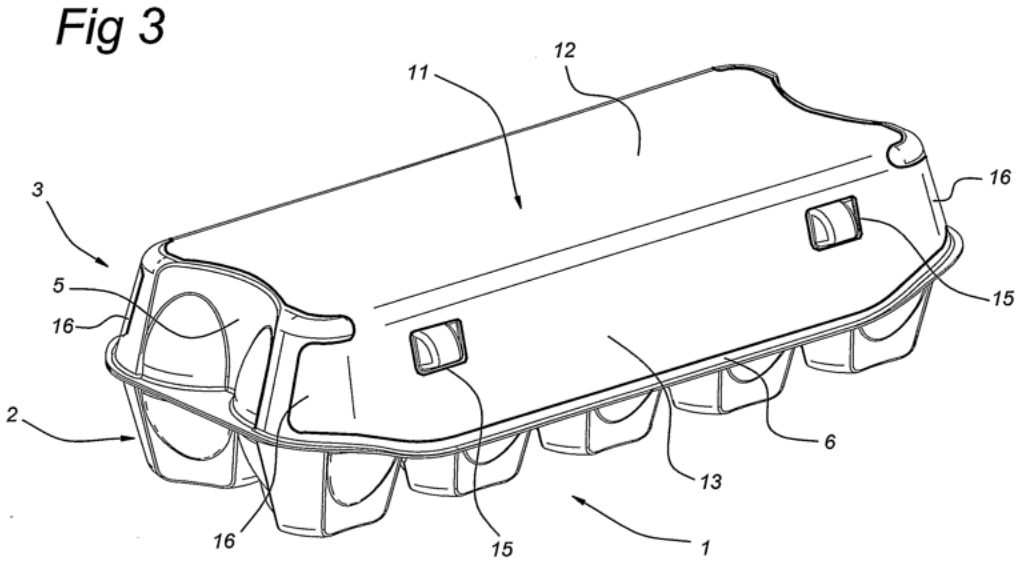
74. A POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1, in lieu of Post's closing projections 9 and corresponding openings 8. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 would advantageously permit Post's label 11 to entirely cover the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the 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 over the entirety of Post's front wall 6 would further Post's objective of "provid[ing] a larger surface of the egg tray with printing and thus [] provide more (advertising) information on the lid part." Ex.1010, 2.

75. As shown in Fig. 1, below, Post's container 1 includes a lid part 3 that has a flat top part 4 and a flat front wall 6 between the openings 8. Ex.1010, 3. Closing (locking) projections 9 of the bottom part 2 extend through the openings 8, as shown in Fig. 1, below. Ex.1010, 3 ("Closing projections 9, which are joined to the bottom part, can protrude through these openings for locking.").



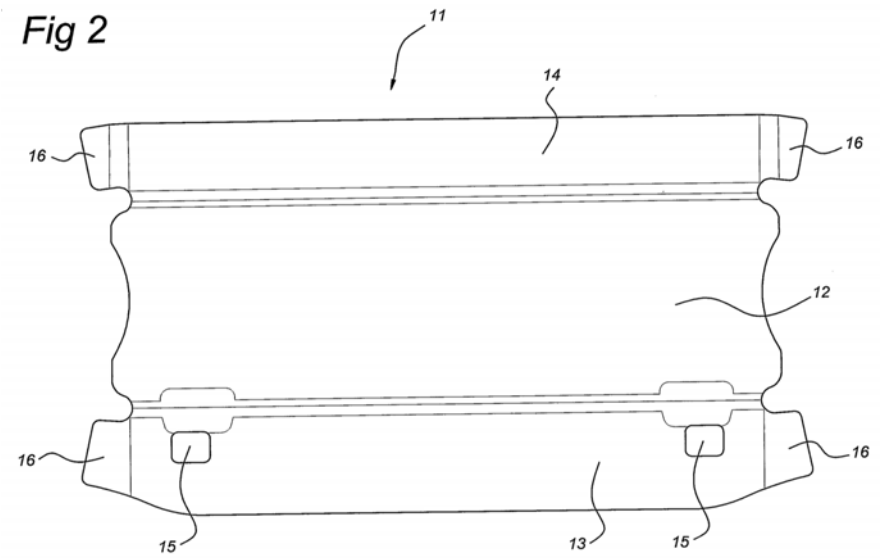
Ex.1010, Fig. 1

76. As shown in Fig. 3, below, the central part 12 of the label 11 extends flatly over the top part 4 the lid part 3, and the front flap 13 of the label 11 extends flatly over the front wall 6 of the lid part 3. Ex.1010, 3.



Ex.1010, Fig. 3

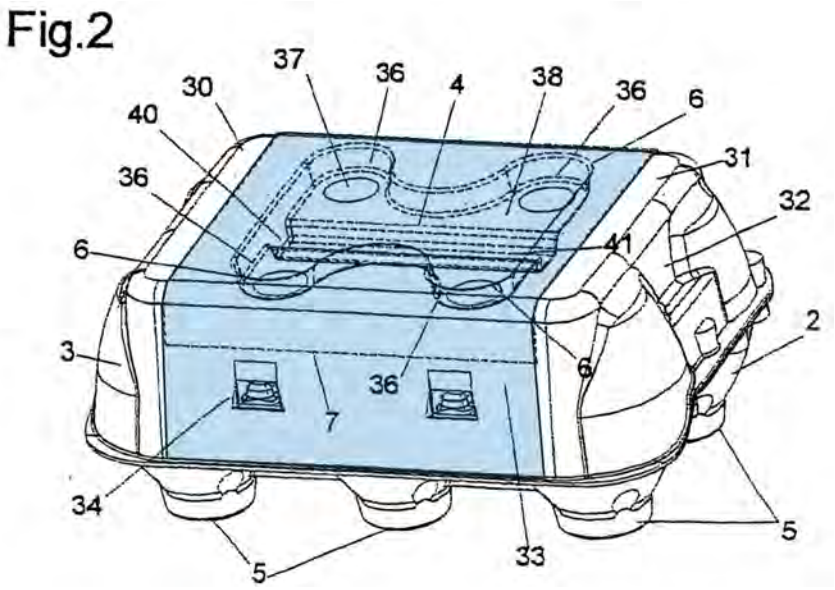
77. However, as shown in Fig. 3, above, and in Fig. 2, below, openings 15 are formed in the front flap 13, where the "openings 15 are precisely the same size as openings 8 [in the lid part 3]." Ex.1010, 3. The openings 15 in the front flap 13 of the label 11 create discontinuities in the label 11 that cannot accommodate printing. For example, advertising on the front flap 13 of the label 11 may extend between the openings 15, but such advertising would not extend over the openings 15 because the locking projections 9 extend through the openings 8 in the lid part 3 and the corresponding openings 15 in the front flap 13 of the label 11, as shown in Fig. 3, above.



Ex.1010, Fig. 2

78. As shown in annotated Fig. 2, below, Beese discloses that the sticker (label) 7 (**blue**) may extend continuously over the top part 31 of the lid part 3 all the

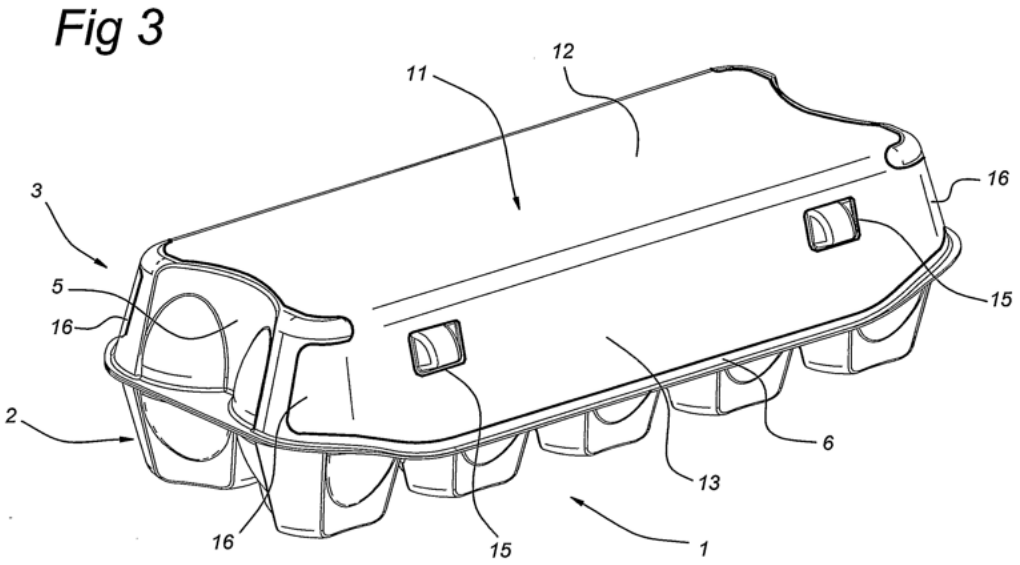
way to the bottom edge of the front part 33 of the lid part 3. Ex.1009, [0030] ("The sticker 7 shown in FIG. 3 may be of any desired size," such that "its front side may thus be extended as far as the bottom edge of the front part 33 of the lid part 3."). Like Post, Beese explains that the sticker 7 has the "advantage that it also provides a printing surface which can be utilized for product information or advertising." Ex.1009, [0030].



Ex.1009, Fig. 2 (annotated)

79. As shown in Fig. 2, above, Beese's sticker 7 covers the retaining noses 24 extending from the bottom part 2 (see Fig. 1) and the corresponding openings 34 in the lid part 3 when the sticker 7 extends to the bottom edge of the front part 33 of the lid part 3. Ex.1009, [0030].

80. A POSITA would have been motivated to apply Post's label 11 to extend all the way to the bottom edge of the front part 6 of Post's lid part 3, as shown in Beese's Fig. 2, above. Ex.1009, [0030]. Doing so would provide a larger area for printing and/or advertising, and would therefore further Post's objective of "provid[ing] a larger surface of the egg tray with printing and thus [] provide more (advertising) information on the lid part." Ex.1010, 2. As shown in Beese's Fig. 2, above, Beese's sticker 7 covers the retaining noses 24 and corresponding openings 34 in the lid part 3 when the sticker 7 extends to the bottom edge of the front part 33 of the lid part 3. Ex.1009, [0030], Fig. 2 (annotated above). Having the sticker 7 cover the retaining noses 24 and corresponding openings 34 provides a greater, continuous area for printing and/or advertising that is not interrupted by openings. On the other hand, as shown in Post's Fig. 3, below, there are openings 15 formed in the front flap 13 of the label 11 to accommodate the projections 9 of the bottom part 2 that extend through the openings 8 (labeled in Post's Fig. 1, above). Ex.1010, 3 (closing projections 9 of bottom part 2 protrude through the openings 8 for locking), Fig. 2 (openings 15 in front flap 13), 4 ("the openings 15 are accurately aligned with the openings 8."). As shown in Post's Fig. 3, below, the openings 15 in the label 11 create discontinuities in the front flap 13 of the label 11 and thus create a more limited printing and/or advertising area on the front flap 13 of the label 11.



Ex.1010, Fig. 3

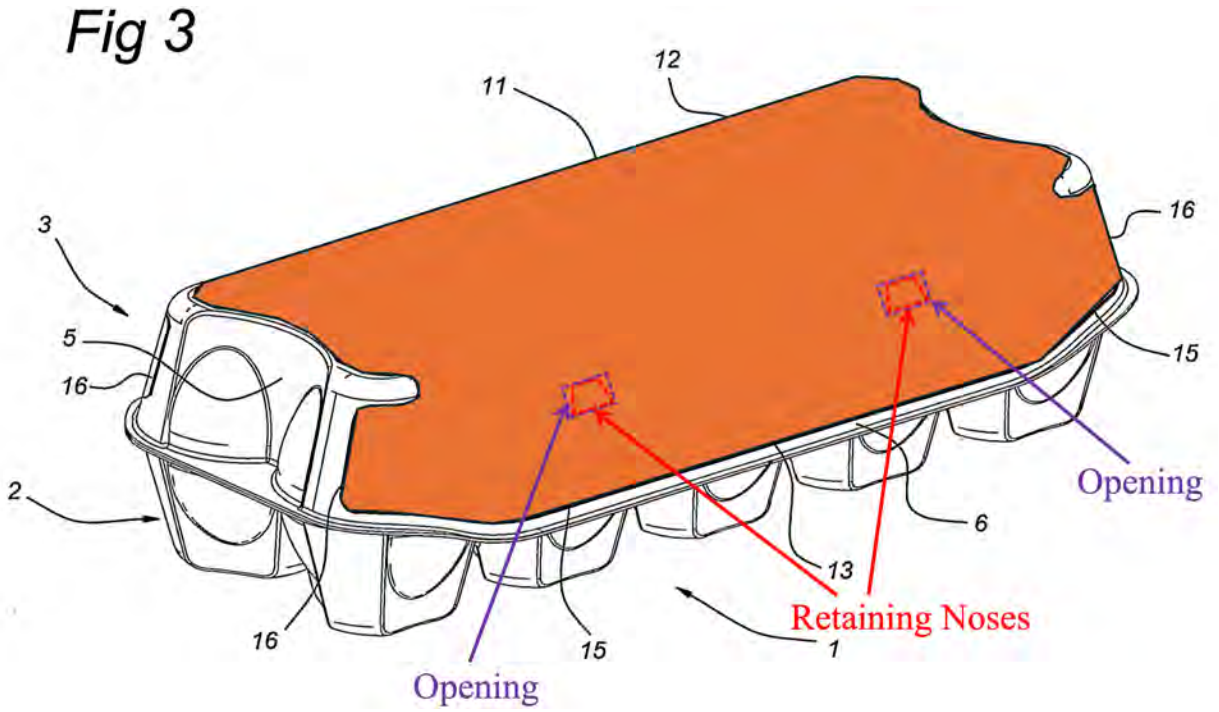
81. In view of Beese's teaching that the sticker (label) 7 may extend to the bottom edge of the front part 33 of the lid part 3, and "[t]he sticker 7…advantage[ously]…provides a printing surface which can be utilized for product information or advertising," a POSITA would have been motivated to modify Post's container 1 to include Beese's retaining noses 24 in Post's bottom part 2, in lieu of Post's projections 9, and corresponding openings in Post's lid part 3 to allow for Post's label 11 to extend entirely over the front wall 6 of Post's lid part 3 without interruptions for openings, as taught by Beese. Ex.1009, [0030]. Extending Post's label 11 over the entirety of Post's front wall 6 without interruptions for openings would further Post's objective of "provid[ing] a larger surface of the egg tray with

printing and thus [] provide more (advertising) information on the lid part." Ex.1010, 2.

82. Accordingly, a POSITA would have been motivated to modify Post's container 1 to include the configuration of Beese's retaining noses 24 extending from Post's bottom part 2 and correspondingly shaped openings (e.g., Beese's openings 34) in Post's lid part 3 to (1) provide a locking mechanism for closing Post's lid part 3 to the bottom part 2, and (2) allow Post's label 11 to extend all the way to the bottom edge of the front part of Post's lid part 3, as taught by Beese (Ex.1009, [0030]), without including interruptions (Post's openings 15) in the label 11. Including the configuration of Beese's retaining noses 24 and corresponding openings in the lid part 3 would avoid closing projections 9 from extending beyond the outer surface of the front wall 6 of Post's lid part 3, and would therefore allow Post's label 11 to extend all the way to the bottom edge of the front part 6 of Post's lid part 3 without interruptions for openings in the label 11, as taught by Beese. Ex.1009, [0030].

83. Post's Fig. 3 is modified below to show the label 11 (**orange**) extending to the bottom edge of the front part 6 of the lid part 3 when Post's container 1 is modified to include Beese's retaining noses 24 (**red** dotted lines) in the bottom part 2 and corresponding openings (**purple** dotted lines) in the lid part 3 to allow for the

label 11 to extend continuously over the front part 6 of the lid part 3 without interruptions for openings in the lid part 3, as taught by Beese. Ex.1009, [0030].

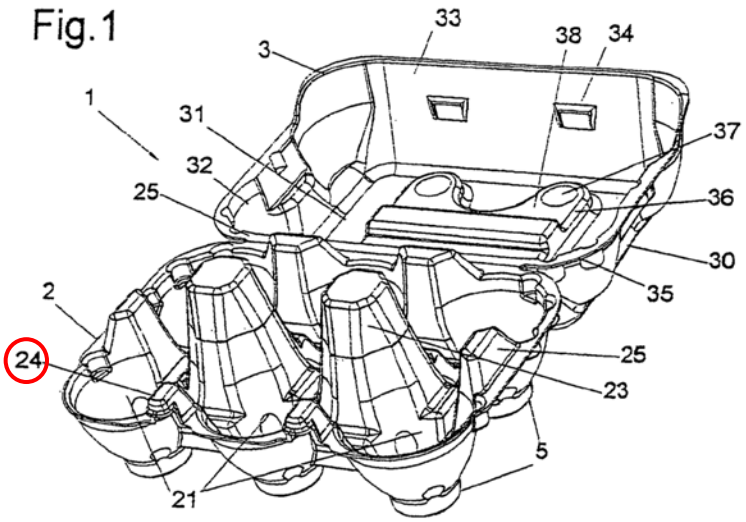


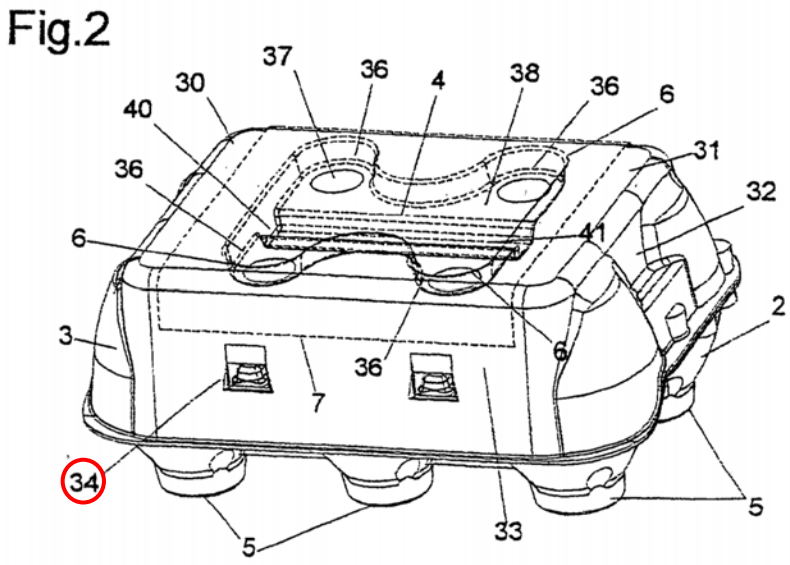
Ex.1010, Fig. 3 (annotated and modified)

84. This modification would have been 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) according known methods (extending Post's label 11 to the bottom edge of the front part 6 of Post's lid part 3 without interruptions for openings, as taught by Beese), to yield the predictable result of providing a locking mechanism (Beese's retaining noses 24 and corresponding openings in Post's lid part 3) for closing Post's

container and allowing the label to extend over the locking mechanism without interruption for openings, as taught by Beese. Ex.1009, [0030], Fig. 2.

85. A POSITA have had a reasonable expectation of success in making this modification because Beese shows it was known to provide a secure locking mechanism that does not extend beyond the outer surface of the lid part 3 to allow for a printing and/or advertising label to entirely cover the locking mechanism. Beese. Ex.1009, [0030], Fig. 2. Further, a POSITA would have had a reasonable expectation of success in modifying Post's container in this manner because Beese teaches that it is desirable to form retaining noses 24 in the bottom part 2 to interact with corresponding openings in the lid part to lock the food container, as shown in Fig. 1 (open state) and Fig. 2 (closed state) below. Ex.1009, [0026] ("In order to fix the lid part 3 in the closed state, two retaining noses 24 are arranged on a front side of the base part 2."), [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2."), [0025] ("An egg box according to the invention is illustrated in the swung-open state in FIG. 1 and in the closed state in FIG. 2.").



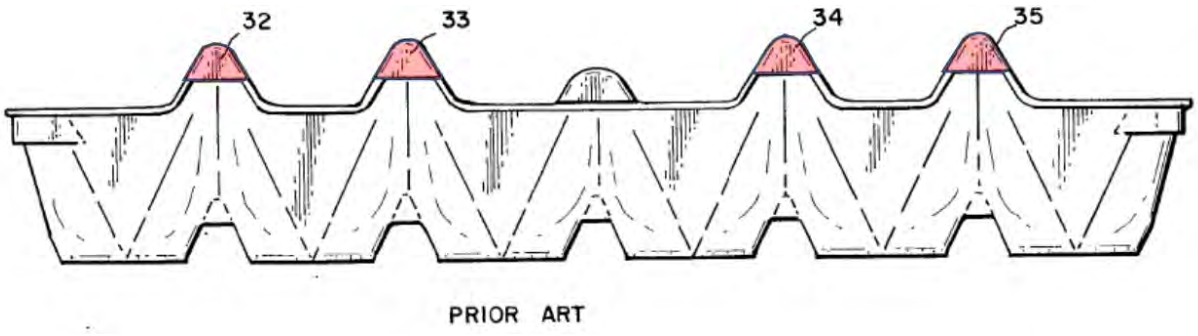


Ex.1009, Figs. 1 & 2

86. The front, outward facing surface of Beese's retaining noses 24 that interact with the openings 34 in the front flap 3 are shown with horizontal lines in Figs. 1 and 2, above. As a POSITA, I understand those horizontal lines to illustrate perspective dimensioning because the top end of the retaining noses 24 have a smaller width (left to right in Figs. 1 and 2) than the bottom end of the retaining

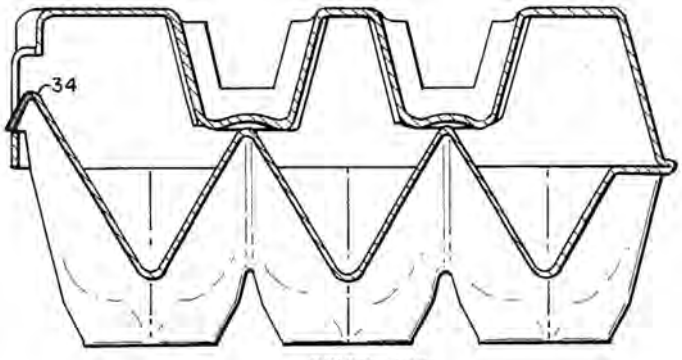
noses 24 (see, e.g., retaining noses 24 in Fig. 2). To the extent it is argued that the horizontal lines in Beese's retaining noses 24 designate ridges that would provide a non-continuous or non-flat surface, a POSITA would have been motivated to provide flat outer surfaces on the retaining noses 24 as incorporated in Post's container 11, because such flat outer surfaces on the retaining noses 24 would allow Post's label 11 to extend over the 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 the retaining noses 24.

87. Mangla shows that it was well-known to have continuous, flat outer surfaces in projections extending from the bottom part of a container as the locking mechanism. As shown in Fig. 9C, below, Mangla shows that it was known to create cartons with a hinged cover having a series of protrusions 32-35 that are located between the egg cavities and which, like Beese, extend from the inside sidewall of the base and operate to mate with holes in the cover to latch the carton. Ex.1015, 4:3-6 ("This pulp carton includes protrusions 32-35 on the cell section. These protrusions have hooks which mate with holes in the cover to latch the carton."). The protrusions 32-25 (red) are illustrated in Fig. 9C:

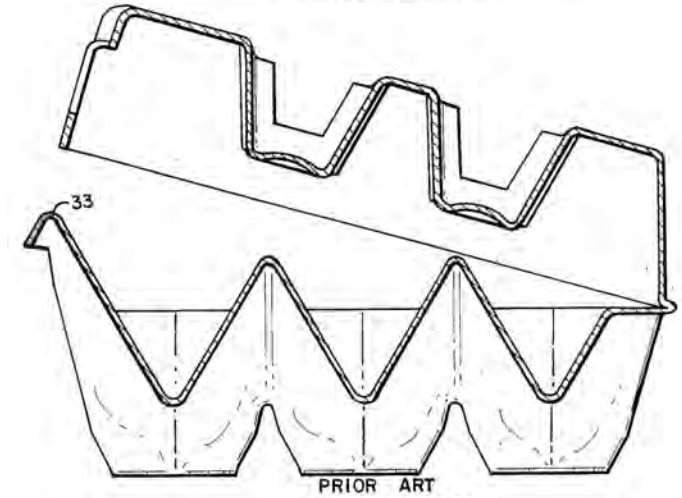


Ex. 1015, Fig. 9C (annotated)

88. As shown in Figs. 9B (protrusion 34) and 9C (protrusion 33), the protrusions have a flat outer surface that mates with corresponding openings in the cover to latch the carton. Ex.1015, 4:3-6 ("This pulp carton includes protrusions 32-35 on the cell section. These protrusions have hooks which mate with holes in the cover to latch the carton.").



PRIOR ART
FIG. 9A



PRIOR ART
FIG. 9B

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

89. A POSITA would have found it obvious and been motivated to configure Beese's retaining noses 24 in Post's container to have a flat outer surface, as suggested by Beese and as taught by Mangla, so that Post's label 11 would extend continuously over the retaining noses 24 without bumps caused by the retaining noses 24 having a non-flat configuration on their outer surface. This modification would have been desirable and more appealing to customers because the printing and/or advertisement on the label would not be impacted by portions of the retaining

noses 24 having different contoured outer surfaces that may be seen as bumps or other disruptions in Post's label 11.

90. A POSITA would have had a reasonable expectation of success in configuring the outer surface of the retaining noses 24 in Post's container to have a flat configuration, because, as shown by Mangla, it was known and desirable to have a flat, outer surface on the retaining nose / projection extending from the bottom part of the container. Ex.1015, 4:3-6, Figs. 9A-9C. Having a flat, outer surface on the retaining nose / projection advantageously would also provide for a smoother surface for the customer to interact with opening the container.

5. Analysis

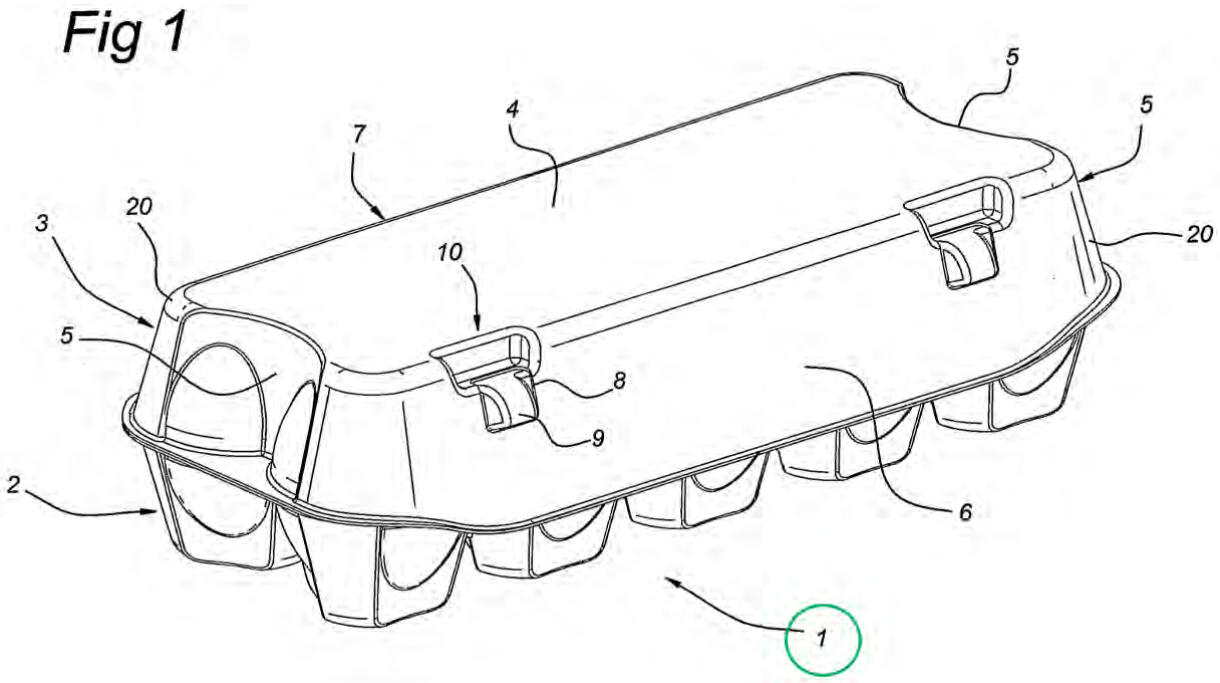
a) Claim 1

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

91. To the extent that the preamble is limiting, Post discloses it.

92. Post is directed to "a container for packaging foods." Ex.1010, 1. Post's container is illustrated as being configured to hold eggs, but Post indicates that its container may be configured to hold other food products. Ex.1010, 1 ("The present invention more particularly relates to an egg tray, but it must be understood that the invention can also be applied to other containers for packaging foods such as vegetables, fruit and the like."). Post's Figure 1, below, illustrates a container 1

configured to hold eggs. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1.").



Ex.1010, Fig. 1 (annotated)

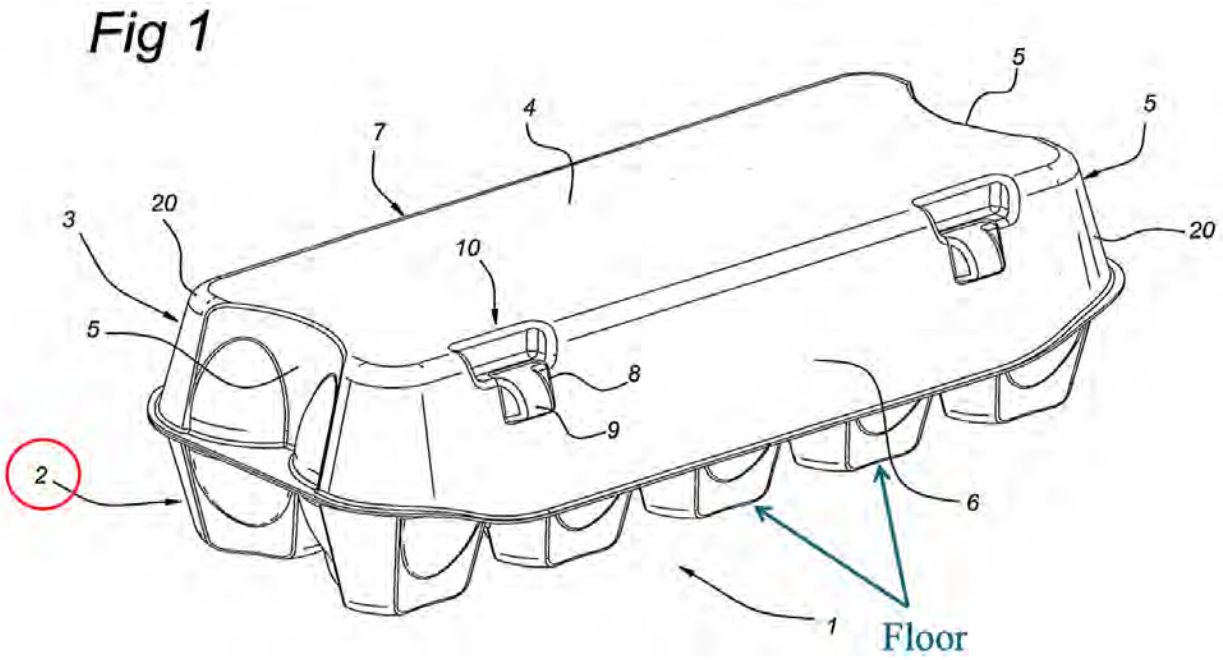
93. Thus, Post discloses *a container* (container 1) *for packaging a product* (e.g., eggs).

[1.1] a base having a floor;

94. Post discloses this limitation.

95. With reference to Fig. 1 below, Post's container 1 has a "bottom part 2" (the claimed *base*) having a bottom surface (the claimed *floor*) on which food products (e.g., eggs) would rest. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists

of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").



Ex.1010, Fig. 1 (annotated)

96. Thus, Post discloses *a base* (bottom part 2) *having a floor* (bottom surface of bottom part 2).

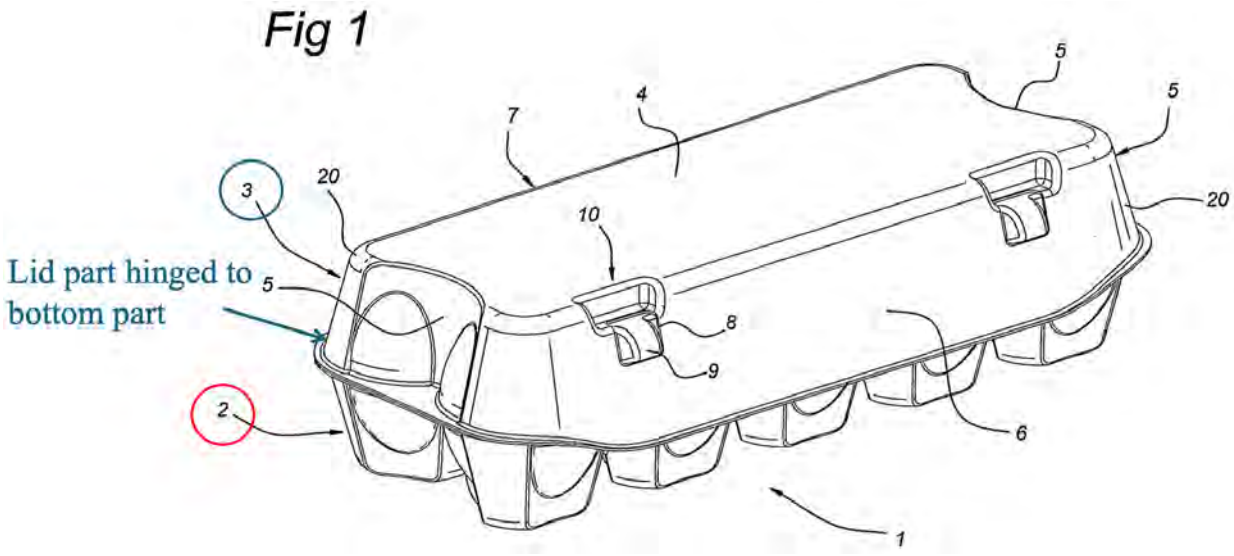
[1.2] a lid movable about a hinge with respect to the base from an open position to a closed position, wherein the closed position defines a cavity inside the container between the floor and the lid;

97. Post discloses or at least renders obvious this limitation.

98. **First**, Post discloses or at least renders obvious *a lid movable about a hinge with respect to the base from an open position to a closed position*.

99. With reference to Fig. 1, below, Post's container 1 includes a lid part 3 (the claimed *lid*) that is hinged to the bottom part 2 (the claimed *base*). Ex.1010, 3

("In fig. 1 a container for items, such as an egg tray…is indicated by 1. This [container] consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto.").



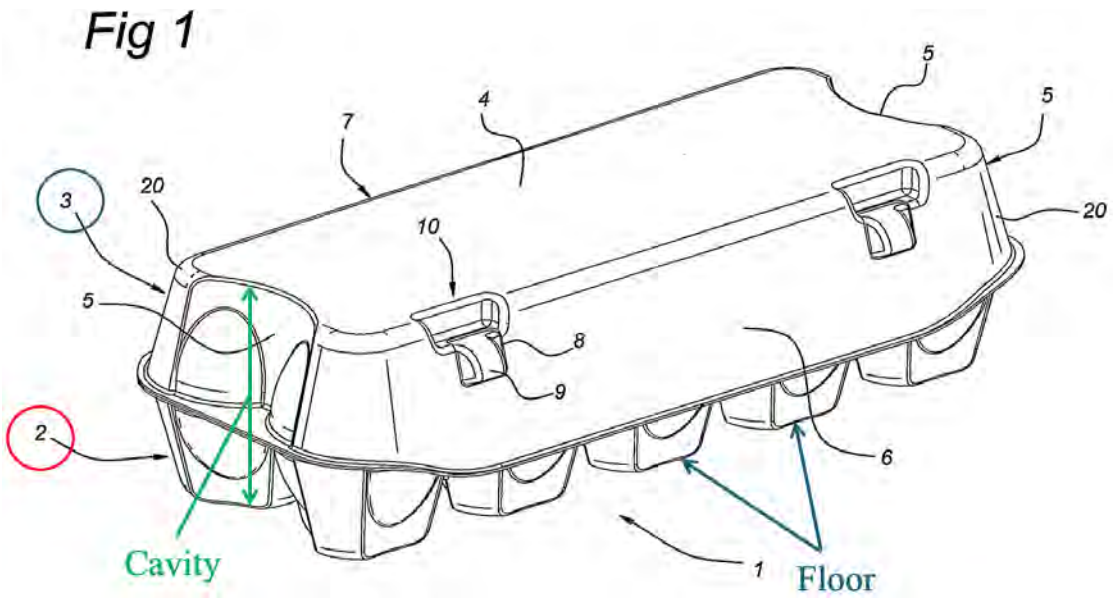
Ex.1010, Fig. 1 (annotated)

100. Fig. 1 illustrates the container 1 in a *closed position*. A POSITA would understand for at least two reasons that Post's container 1 is moved from the *closed position* shown in Fig. 1 to an *open position* to allow a person to access the food products (e.g., eggs) housed in the container 1. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray…is indicated by 1."). **First**, Post teaches that the lid part 3 is hinged to the bottom part 2, which allows the lid part 3 to be opened relative to the bottom part 2. Ex.1010, 3 ("A hinged lid part 3 is joined" to the bottom part 2), 1 ("The present invention relates to a container for packaging foods, comprising a

bottom part and a hinged lid part joined thereto."). **Second**, as shown in Figure 1, above, Post's container 1 has a locking mechanism including closing projections 9 on the bottom part 2, and openings 8 on the lid part 3. This locking mechanism is provided to enable a person to lock (close) the container and open the container by disengaging the closing projections 9 from the openings 8 and moving the front wall 6 of the lid part 3 outward. Ex.1010, 3 ("The lid part 3 can be unlocked from the bottom part 2 by depressing closing projections 9 and moving front wall 6 forwards."). Thus, Post discloses or at least renders obvious *a lid* (lid part 3) *movable about a hinge* (hinged lid part 3) *with respect to the base* (bottom part 2) *from an open position* (disengaging closing projections 9 from openings 8 to open container 1) *to a closed position* (container 1 in closed position in Fig. 1).

101. **Second**, Post discloses or at least renders obvious that *the closed position defines a cavity inside the container between the floor and the lid*. As described above with respect to limitations [1.1] and [1.2], Post's container 1 includes a *floor* (bottom surface of bottom part 2) and a *lid* (lid part 3). As shown in Fig. 1, below, which illustrates *the closed position*, Post's container 1 in *the closed position defines a cavity inside the container between the floor* (bottom surface of bottom part 2) *and the lid* (lid part 3), where the cavity is provided to hold food products (e.g., eggs). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray

produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which **cavities for accommodating eggs** are shown diagrammatically.").



Ex.1010, Fig. 1 (annotated)

102. Thus, Post discloses or at least renders obvious *a lid* (lid part 3) *movable about a hinge with respect to the base* (lid part 3 hinged to bottom part 2) *from an open position* (lid part 3 opened relative to bottom part 2) *to a closed position* (shown in Fig. 1)*, wherein the closed position defines a cavity inside the container between the floor and the lid* (cavity between bottom surface of bottom part 2 and lid part 3).

[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,

103. Post discloses or at least renders obvious this limitation. Alternatively, Post in view of Beese render obvious this limitation.

104. **First**, Post discloses that the *base* (bottom part 2), lid (lid part 3), and hinge connecting the bottom part 2 to the lid part 3 (*hinge*) have *a unitary construction* because the container 1 is made as one unit due to the lid part 3 being hinged to the bottom part 2. Ex.1010, 3 (container 1 "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically [, and a] hinged lid part 3 is joined thereto."). I note that the specification of the '365 Patent does not use or define the term "unitary." The term "unitary" appears only in claims 1 and 28. The American Heritage Dictionary (1985) defines "unitary" as "1. Of or pertaining to a unit. 2. Having the nature of a unit; whole." Ex.1031, 1322. Similarly, Merriam Webster's Collegiate Dictionary (1995) defines "unitary" as "of or relating to a unit" or "having the character of a unit: undivided, whole." Ex.1032, 1293. The bottom part 2 (*base*), lid part (*lid*), and hinge connecting the bottom part 2 to the lid part 3 (*hinge*) of Post's container 1 have a unitary construction because the bottom part 2 and hinged lid part 3 are formed as a unit and together constitute the whole container 1.

105. Post discloses that its container may be made of materials such as plastic, pulp (paper), or molded fiber material. Ex.1010, 1 (explaining that its "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**, that is to say of a water-paper/wood fibre mixture from which a container is produced

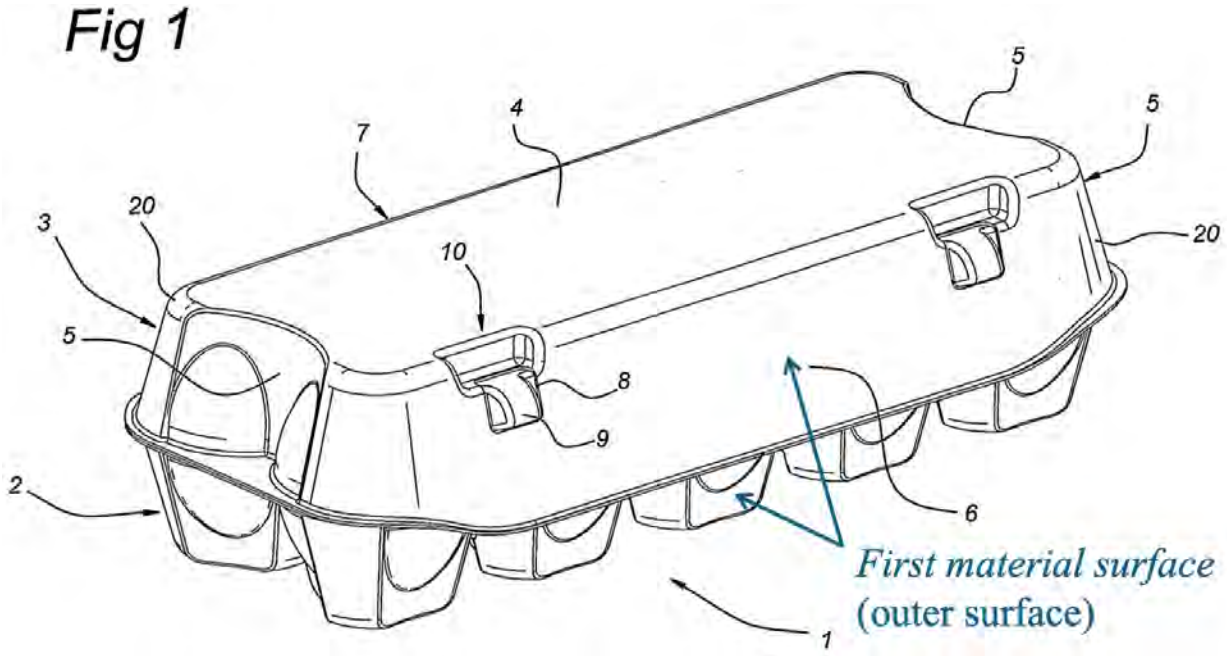
by forming and drying."). It was well known for containers made of plastic or moulded fibre material to have a unitary construction. Before the priority date of the '365 Patent, it was well known to form food containers (e.g., egg containers) from a molded material (e.g., pulp or plastic). For example, U.S. Patent No. 3,285,491 (Ex.1029), which issued in November 1966, explains that "[m]olded packaging cartons utilizing [] lug-locking principle[s] [were] widely used [ ] particularly in the packaging of eggs." Ex.1029, 1:13-15. As another example, in describing background art of known egg cartons having a bottom part and a hinged lid part, Beese cites FR-A-2441549 (Ex.1020) (Ex.1021, U.S. equivalent), which describes a "molded paper pulp container." Ex.1009, [0002] ("Egg boxes which comprise a bottom part, for accommodating the eggs, and a protective lid part, which is arranged for swing action on the bottom part via an element which is usually configured as a flexible hinge, are known from prior public use….Such an egg box is known, for example, from FR-A-2441549."); Ex.1021, Title ("Molded Paper Pulp Container"), Abstract ("A molded paper pulp container comprising a pocketed section mutually hinged to a flat bottom cover section….").

106. A POSITA would have understood that the egg container produced from this well-known molding process would have had a unitary construction. For example, Ex.1030 (U.S. 3,298,594) (Ex.1030), which issued in January 1967, shows that it was known for an egg carton made from a molded plastic material to have a

unitary structure. Ex.1030, 1:63-2:6 (describing an "egg carton [] formed from a molded plastic material" having a "unitary structure"). As a result, when Post's container is manufactured from a plastic or molded material, it has a unitary construction. Accordingly, Post discloses or at least renders obvious that the *base* (bottom part 2), *lid* (lid part 3), and hinge connecting the bottom part 2 to the lid part 3 (*hinge*) have *a unitary construction*.

107. **Second**, Post discloses or at least renders obvious that the bottom part 2 (*base*), lid part (*lid*), and hinge connecting the bottom part 2 to the lid part 3 (*hinge*) are made *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*. Post's container 1 may be "made of plastic material, paper or cardboard." Ex.1010, 1. For example, Post discloses that its container 1 may be "made of moulded fibre material, that is to say of a water-paper/wood fibre mixture from which a container is produced by forming and drying." Ex.1010, 1; *see also id*., 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1."). As shown in Fig. 1, below, Post's container 1 includes a *first material surface* on the outside surface of the container. Although not explicitly illustrated in Fig. 1, Post's container 1 would also include a *second material surface* on the inner surface of the container 1. The food products (e.g.,

eggs) would come in contact with the inner surface (*second material surface*) of the container 1.



Ex.1010, Fig. 1 (annotated)

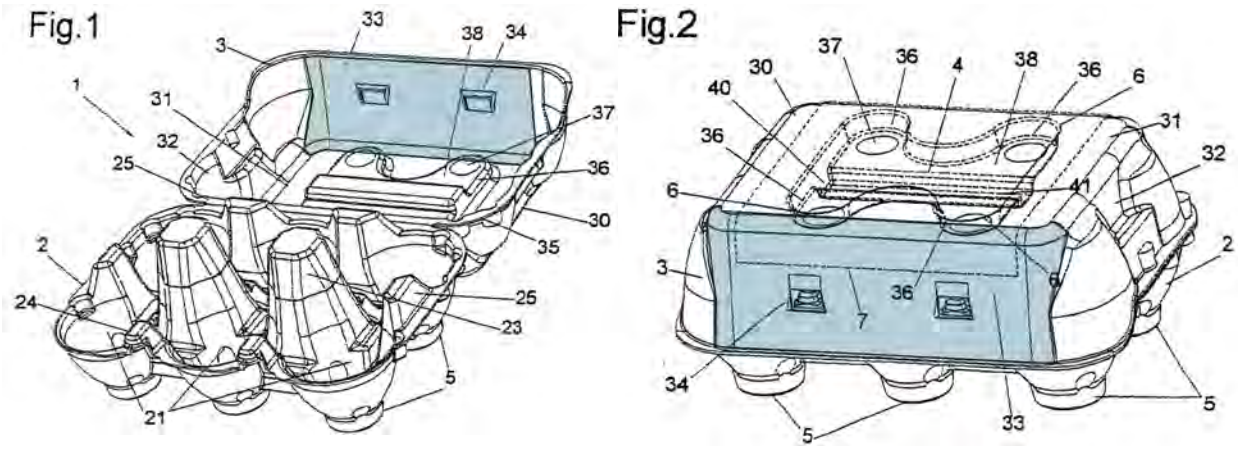
108. A POSITA would understand that the *first material surface* (outer surface) and *second material surface* (inner surface) are disposed on opposite surfaces of the material of the container (e.g., moulded fibre material) because the outer and inner surfaces are on opposite sides of the container, i.e., the outer surface of the container, and the inner surface of the container that is on the side of the cavity inside the container. Further, a POSITA would understand that the material of the container would have *a generally defined thickness* between the *first material surface* (outer surface) and *second material surface* (inner surface). The *generally*

defined thickness would be the thickness of the material container between the *first material surface* (outer surface) and *second material surface* (inner surface). For example, in the case where Post's container is "produced from moulded fibre material," the *generally defined thickness* would be the thickness of the moulded fibre material between the outer surface (*first material surface*) and the corresponding inner surface (*second material surface*). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1."). Post discloses that the container 1 may be made of other types of materials including "plastic material, paper or cardboard." Ex.1010, 1 ("Such a container can be made of plastic material, paper or cardboard."). In each of these examples, the *generally defined thickness* would be the thickness between the outer surface (*first material surface*) and the corresponding inner surface (*second material surface*) of the container (e.g., the outer surface of the lid part 3 and the corresponding, opposing inner surface of the lid part 3).

109. Thus, Post discloses or at least renders obvious that the bottom part 2 (*base*), lid part (*lid*), and hinge connecting the bottom part 2 to the lid part 3 (*hinge*) are made *from a material* (e.g., plastic material or "moulded fiber material") *having a generally defined thickness between a first material surface* (outer surface) *and a second material surface* (inner surface) *disposed on immediately opposite sides of the material*.

110. To the extent it is argued that Post does not expressly disclose that its container 1 has both a *first material surface* (outside surface) and a *second material surface* (inside surface) on opposite sides of the material of the container, this was a well-known configuration as shown by Beese.

111. As shown in Figs. 1 and 2, below, the front part 33 of the lid has a *first material surface* (outside surface) (**blue**) (Fig. 2) and a *second material surface* (inside surface) (**blue**) (Fig. 1) on opposite sides of the front part 33. A POSITA would understand that the other components of Beese's container (e.g., base part 2, top part 31, side parts 32, etc.) likewise have a *first material surface* (outside surface) and *second material surface* (inner surface) on opposite sides of that component, as shown in Figs. 1 and 2, below.



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

112. While Post does not explicitly illustrate an open position in Figs. 1-3, a POSITA would understand, in view of Beese's teachings, that Post's bottom part 2

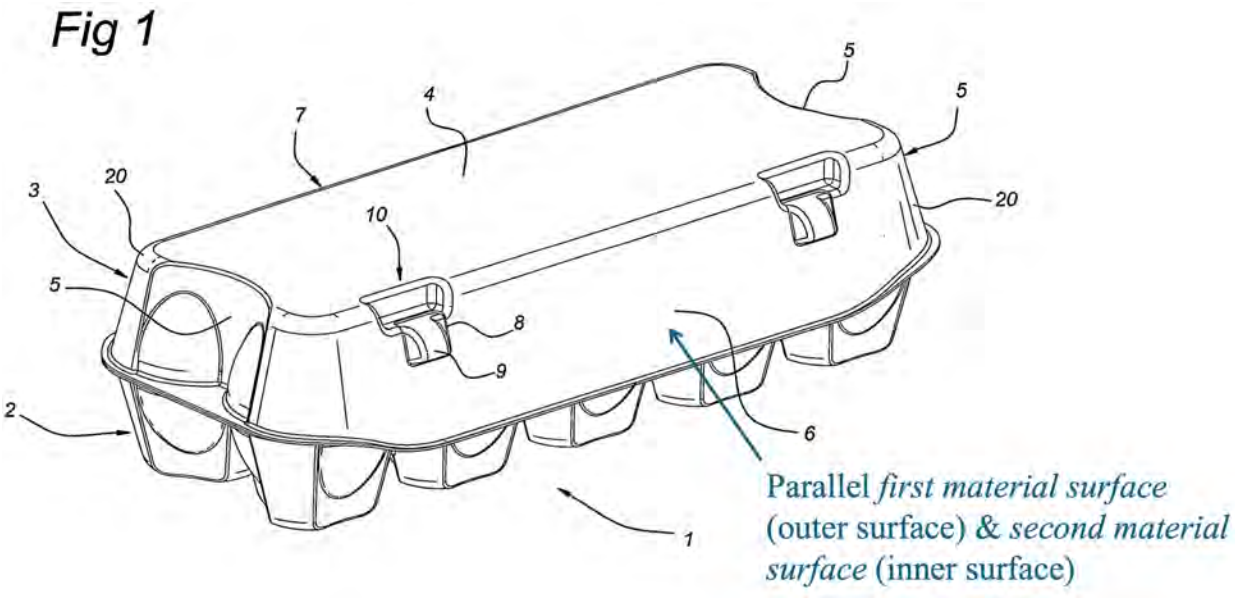
(*base*), lid part (*lid*), and hinge connecting the bottom part 2 to the lid part 3 (*hinge*) are made *from a material* (e.g., plastic material or "moulded fiber material") *having a generally defined thickness between a first material surface* (outer surface) *and a second material surface* (inner surface) *disposed on immediately opposite sides of the material*.

113. Accordingly, Post and Beese render obvious limitation [1.3.1].

[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;

114. Post in view of Beese render obvious this limitation. As described for limitation [1.3.1], Post discloses that its container includes a *first material surface* (outside surface) and a *second material surface* (inner surface). A POSITA would understand Post as rendering obvious that *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)*, because Post's container may be formed from a mold. Ex.1010, 1 ("[T]he container according to the present invention is made of **moulded fibre material**, that is to say of a water-paper/wood fibre mixture from which a container is produced by forming and drying."). A POSITA would have been motivated to make opposing outer and inner portions of Post's container parallel to each other in the molding process to fit the shape of the mold pattern. For example, as shown in Fig. 1, below, a POSITA would have found it obvious and

been motivated to make at least the outer and inner surfaces of the front wall 6 of the lid part 3 parallel to each other in the molding process. Likewise, a POSITA would have found it obvious and been motivated to make the outer and inner surfaces of the top part 4 of the lid part 3 parallel to each other in the molding process.

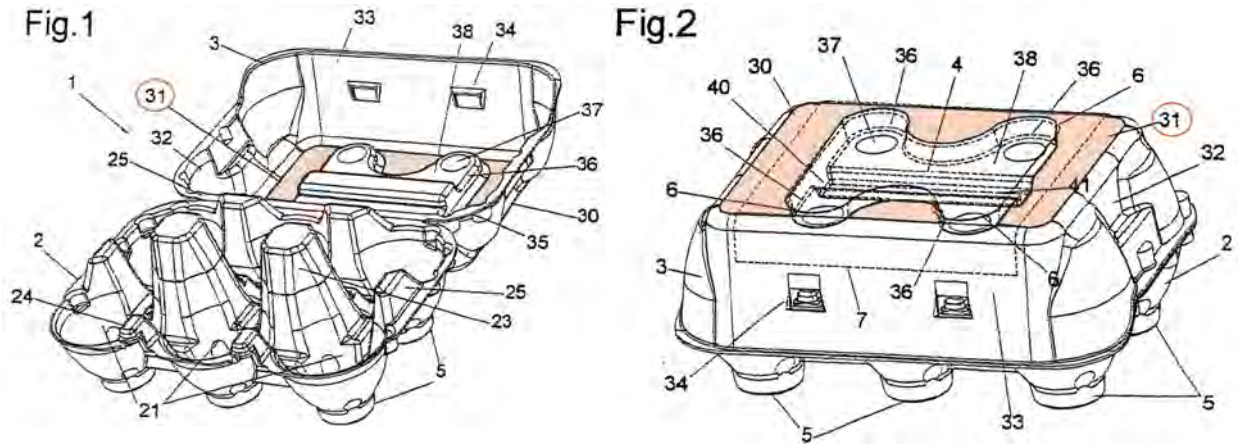


Ex.1010, Fig. 1 (annotated)

115. Thus, Post renders obvious that *at least a portion* (e.g., front wall 6 and/or top part 4 of lid part 3) *of the first material surface* (outer surface) *is parallel to an immediately opposite portion of the second material surface* (inner surface).

116. To the extent it is argued that Post does not explicitly teach that opposing portions of the container are *parallel* to each other, this is an obvious design choice as taught by Beese. As shown in Figs. 1 and 2, below, the top part 31 (**orange**) of the lid part 3 has an outer surface (*first material surface*) (Fig. 2) and an

inner surface (*second material surface*) (Fig. 1) that are parallel to each other because both surfaces extend in the horizontal direction when laid flat.



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

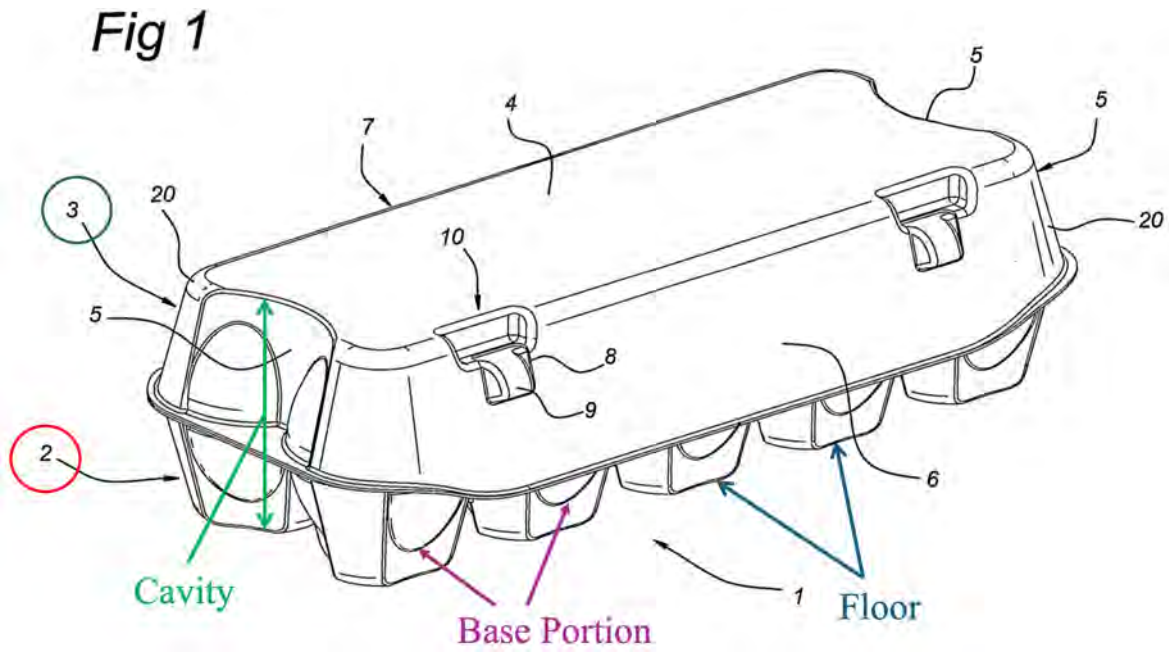
117. In view of Beese's teachings, a POSITA would have been motivated to make opposing outer and inner portions (*first and second material surfaces*) of at *least a portion* of Post's container parallel to each other in the molding process to fit the shape of the mold pattern.

118. Thus, Post and Beese render obvious *at least a portion* (e.g., front wall 6 and/or top part 4 of lid part 3) *of the first material surface* (outer surface) *is parallel to an immediately opposite portion of the second material surface* (inner surface).

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

119. Post discloses limitation [1.4.1]. As described above for limitation [1.2], Post's container in the closed position defines a cavity inside the container

between the floor of the bottom part 2 and the lid part 3, as shown in Fig. 1 below. The bottom part 2 is dimensioned with cavities to hold food products such as eggs. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which **cavities for accommodating eggs** are shown diagrammatically."). Thus, as shown in Fig. 1, below, *the cavity* in Post's container 1 has *a base portion* (cavities formed in bottom part 2) *dimensioned to contain a first portion of the product* (e.g., a portion of eggs) *in the base* (bottom part 2).



Ex.1010, Fig. 1 (annotated)

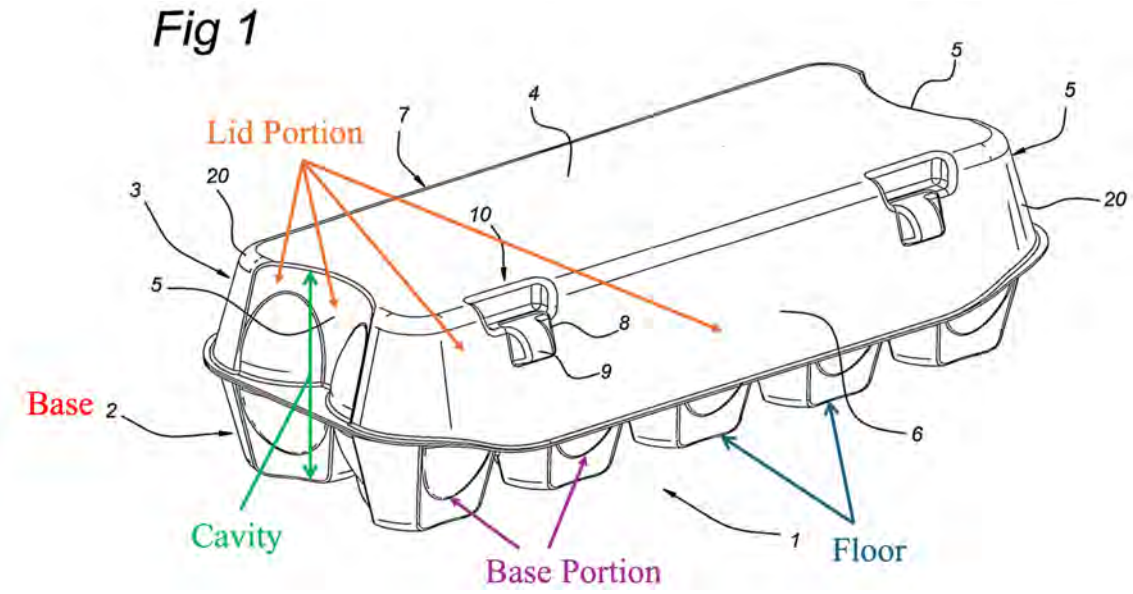
120. Accordingly, Post discloses limitation [1.4.1].

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

121. Post discloses limitation [1.4.2]. As shown in Fig. 1, below, Post's cavity has a *lid portion* (a portion of the lid part 3) (**orange**) *dimensioned to contain a second portion of the product* (e.g., eggs) *in the lid* (lid part 3). As shown in Fig. 1, the lid portions (e.g., side walls 5 and front wall 6) are dimensioned to accommodate a portion of the eggs in the container.

> In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto. The 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. 6 is the front wall, 7 the rear wall and 5 are the linking transverse walls. It can be seen from the drawing that the lid part is made essentially tray-shaped.

Ex.1010, 3.



Ex.1010, Fig. 1 (annotated)

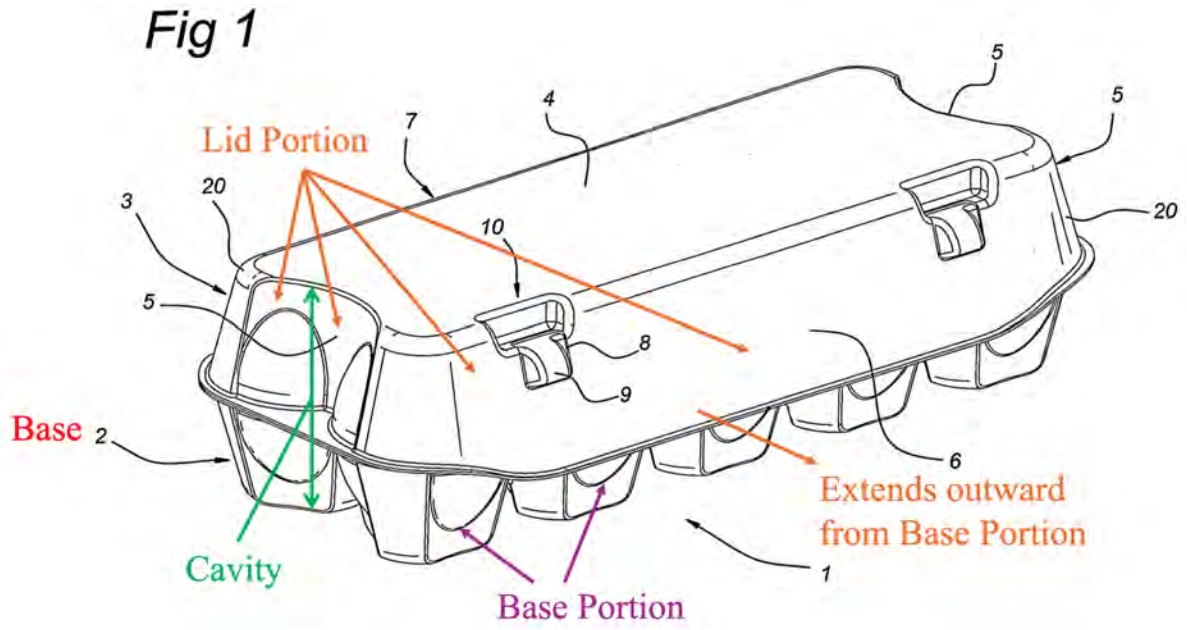
122. Thus, Post discloses limitation [1.4.2].

[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;

123. Post discloses limitation [1.4.3]. As discussed above, Post discloses the claimed *lid portion* (a portion of the lid part 3) (*see* limitation [1.4.2]), *base* (bottom part 2) (*see* limitation [1.1]), *base portion* (cavities formed in bottom part 2) (*see* limitation [1.4.1]), *cavity* (cavity between top part 4 of lid part 3 and floor of bottom part 2) (*see* limitation [1.2]), and *second material surface* (inner surface of container) (*see* limitation [1.3.1]).

124. As shown in Fig. 1, below, *the lid portion* (**orange**) *is disposed beyond the base* (bottom part 2) *and outward from the base portion* (cavities formed in bottom part 2), because the lid portion is disposed above the bottom part 2 (**red**)

(*disposed beyond the base*) and extends outwardly away from the base portion (**purple**) of the base (bottom part 2) (*outward from the base portion*).

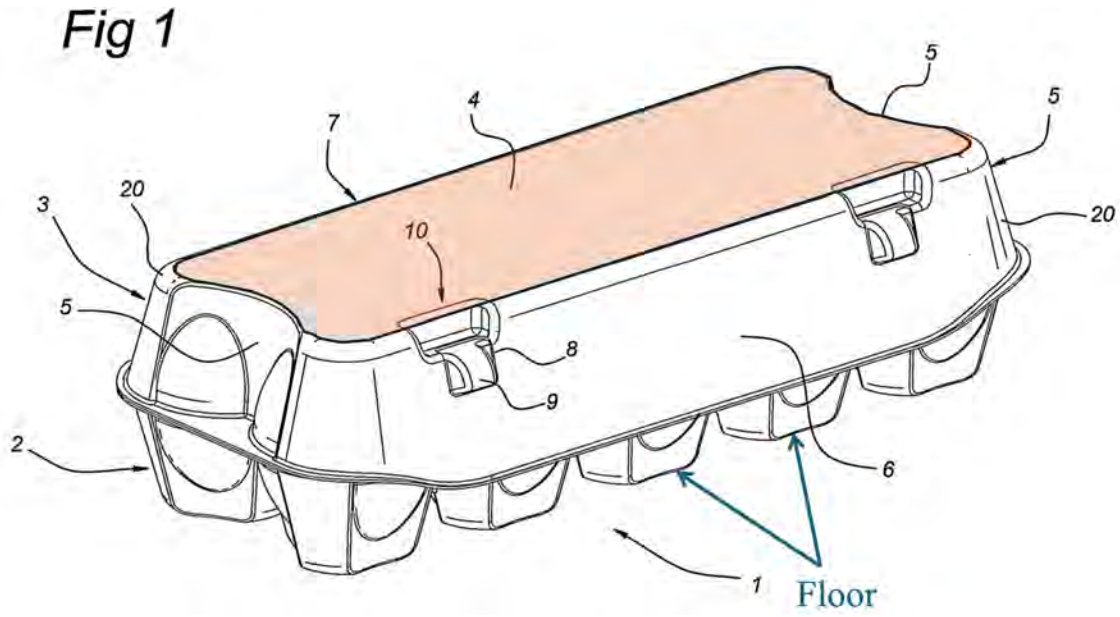


Ex.1010, Fig. 1 (annotated)

125. Thus, Post discloses limitation [1.4.3].

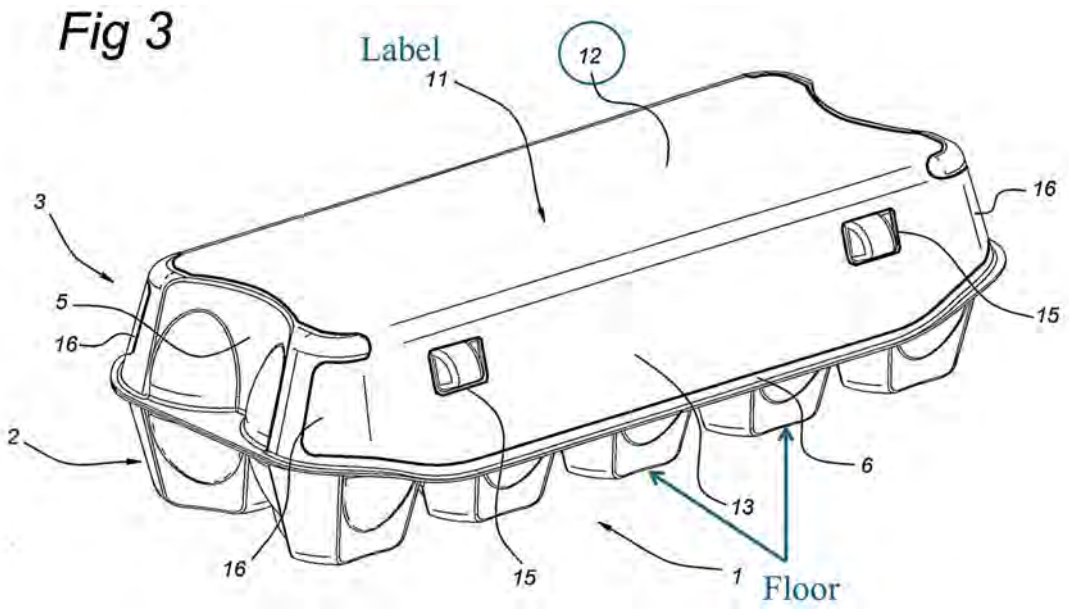
[1.5.1] the lid having a substantially flat top disposed parallel to the floor when the lid is in the closed position,

126. Post discloses limitation [1.5.1]. As shown in Fig. 1, below, *the lid* (lid part 3) *ha[s] a substantially flat top* (top part 4) (**orange**) *disposed parallel to the floor* (parallel to the bottom external surface of the bottom part 2) *when the lid* (lid part 3) *is in the closed position*. Ex.1010, 3 ("The lid part 3 consists of a top part 4.").



Ex.1010, Fig. 1 (annotated)

127. In addition to the top part 4 being shown to be *substantially flat* in Fig. 1, above, Post confirms that the top part 4 is *substantially flat* by disclosing that the central part 12 of the flat label 11 covers the top part 4, as shown in Fig. 3, below. Ex.1010, 3 ("A flat sheet that has to be applied as label to the lid part 3 is shown in Fig. 2…. Fig. 3 shows how this label 11 is applied to the lid part 3."), 4 ("The flat sheet is then placed with the central part 12 thereof on the top part 4.").

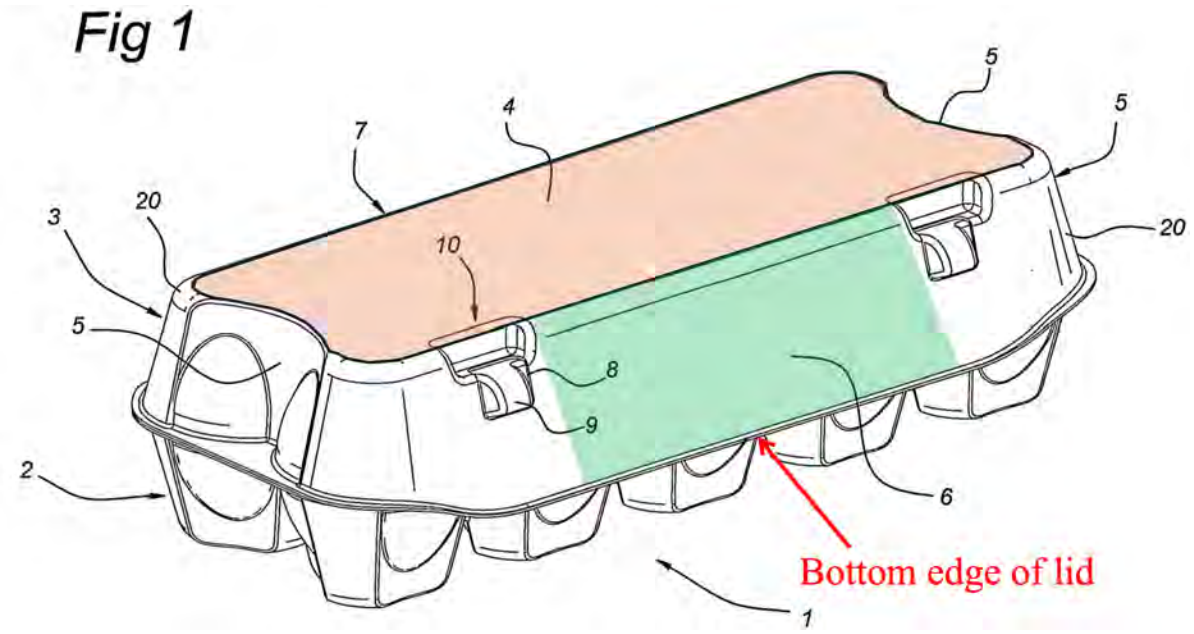


Ex.1010, Fig. 3 (annotated)

128. Thus, Post discloses that *the lid* (lid part 3) *ha[s] a substantially flat top* (top part 4) *disposed parallel to the floor* (parallel to the bottom external surface of the bottom part 2) *when the lid* (lid part 3) *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,

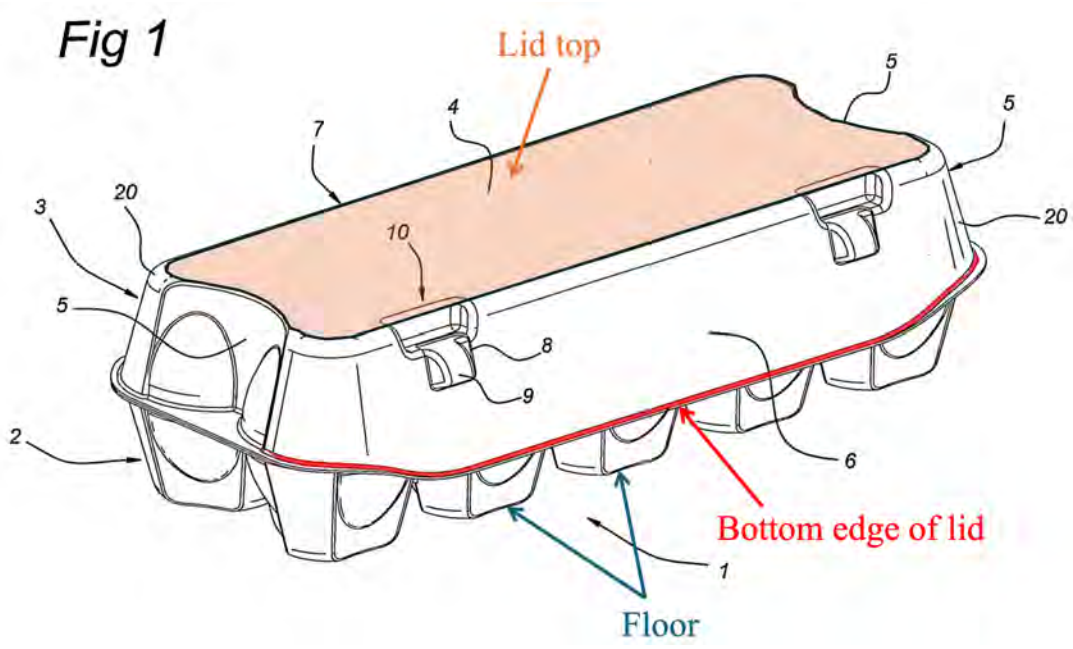
129. Post discloses limitation [1.5.2]. As shown in Fig. 1, below, Post's *lid* (lid part 3) has *a substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) (**green**) *extending from the substantially flat lid top* (top part 4) (**orange**) *to a bottom edge of the lid* (lid part 3) (**red**). Thus, Post discloses limitation [1.5.2].



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,

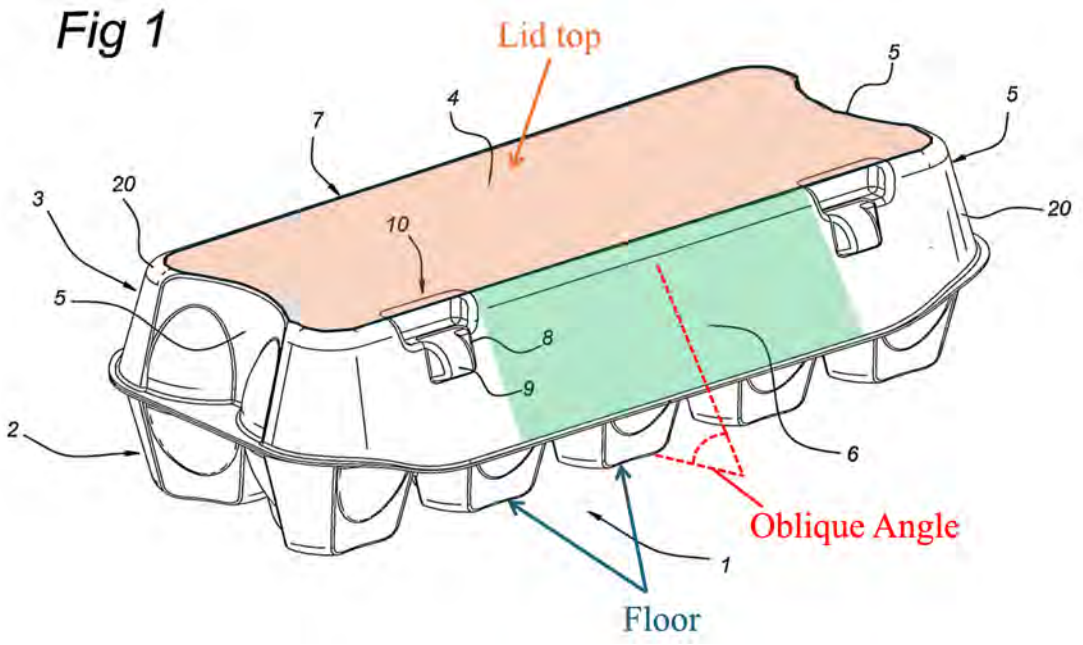
130. Post discloses limitation [1.5.3]. As shown in Fig. 1, below, *the bottom edge* (**red**) of the lid part 3 is *between, and outward* (i.e., extends away from) from both, *the substantially flat lid top* (top part 4) (**orange**) *and the floor* (bottom surface of bottom part 2) *when the lid is in the closed position* (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,

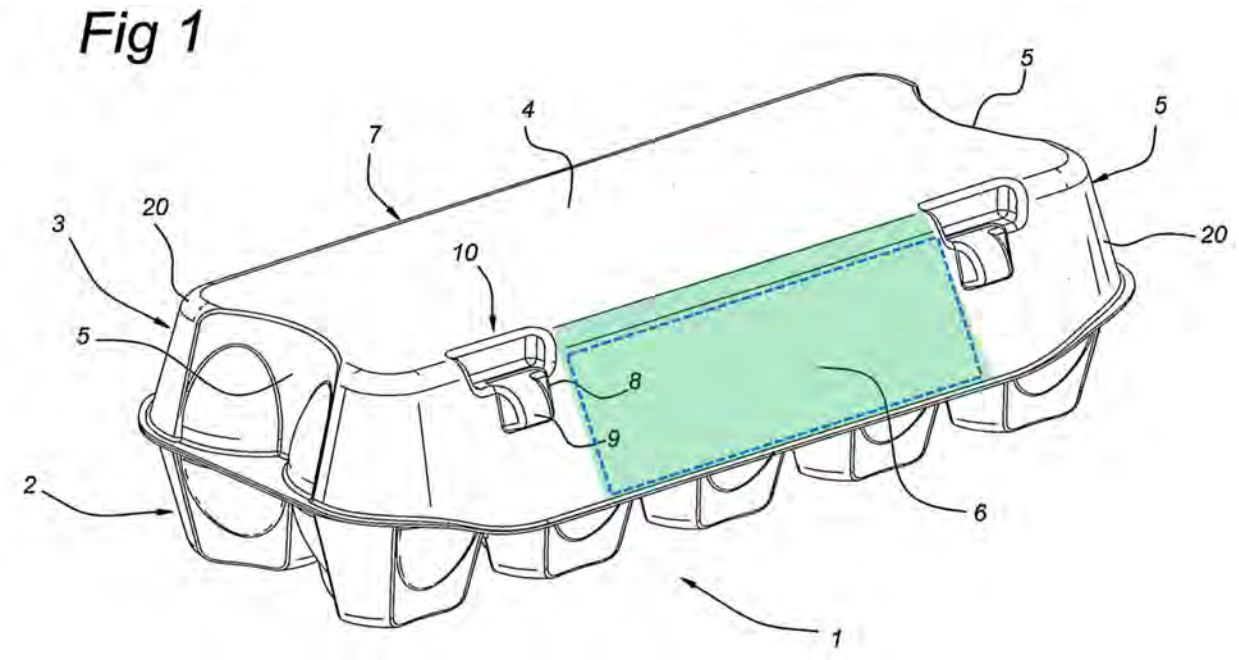
131. Beese discloses limitation [1.5.4]. As shown in Fig. 1, below, the *substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) (**green**) *extends obliquely* (i.e., at an angle that is not a right angle or a multiple of a right angle and is either (1) between 0° and 90° or (2) between 90° and 180°) *relative to the floor from the substantially flat lid top* (top part 4) (**orange**) *when the lid* (lid part 3) *is in the closed position*. As shown in Fig. 1, the angle at which the *substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) (**green**) *extends* is between 0° and 90° relative to a line extending from the floor.



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

132. Post discloses limitation [1.5.5]. As shown in Fig. 1, below, Post's *lid* (lid part 3) has a *first planar area* (**blue** rectangle) *on the substantially planar frontal extension's portion* (e.g., portion of front wall 6 between openings 8) (**green**) *of the first material surface* (outer surface).

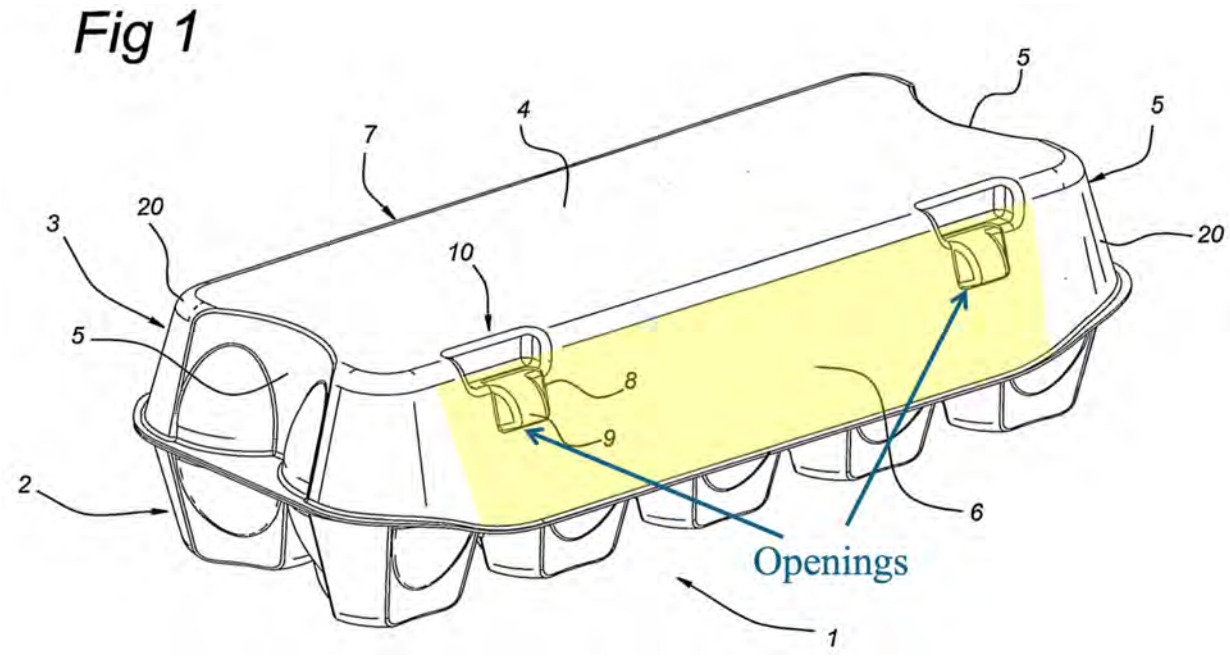


Ex.1010, Fig. 1 (annotated)

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

133. Post and Beese render obvious limitation [1.5.6]. **First**, Post discloses lid holes. As shown in Fig. 1, below, Post's *lid* (lid part 3) includes *a substantially planar lid area* (yellow). **Second**, as shown in Fig. 1, openings 8 (e.g., each a lid hole) are formed in the front wall 6 of the lid part 3. Ex.1010, 3 ("There are openings 8 in the front wall 6."). The closing projections 9 protrude through the openings 8. Ex.1010, 3. As shown in Fig. 1, below, the openings 8 (lid holes) are *fully encompassed within [the] substantially planar lid area* (yellow), because the openings 8 are formed below the indents 10 extending between the top part 4 and front wall 6 of the lid part 3. Ex.1010, 3 ("There is an indent 10 above the openings

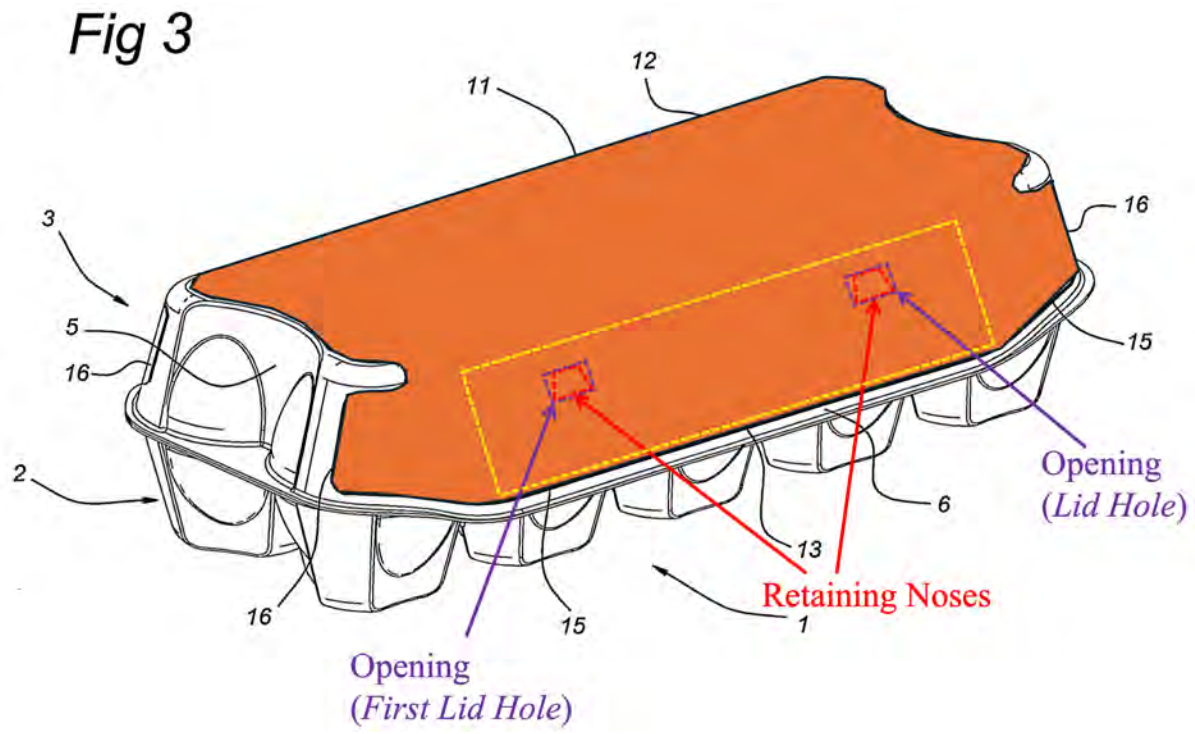
8."). Thus, Post discloses that the *lid* (lid part 3) has lid holes (opening 8) that are *fully encompassed within a substantially planar lid area* (yellow).



Ex.1010, Fig. 1 (annotated)

134. As described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3, in lieu of Post's closing projections 9 and corresponding openings 8 in the lid part 3, would advantageously permit Post's label 11 to entirely cover the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of

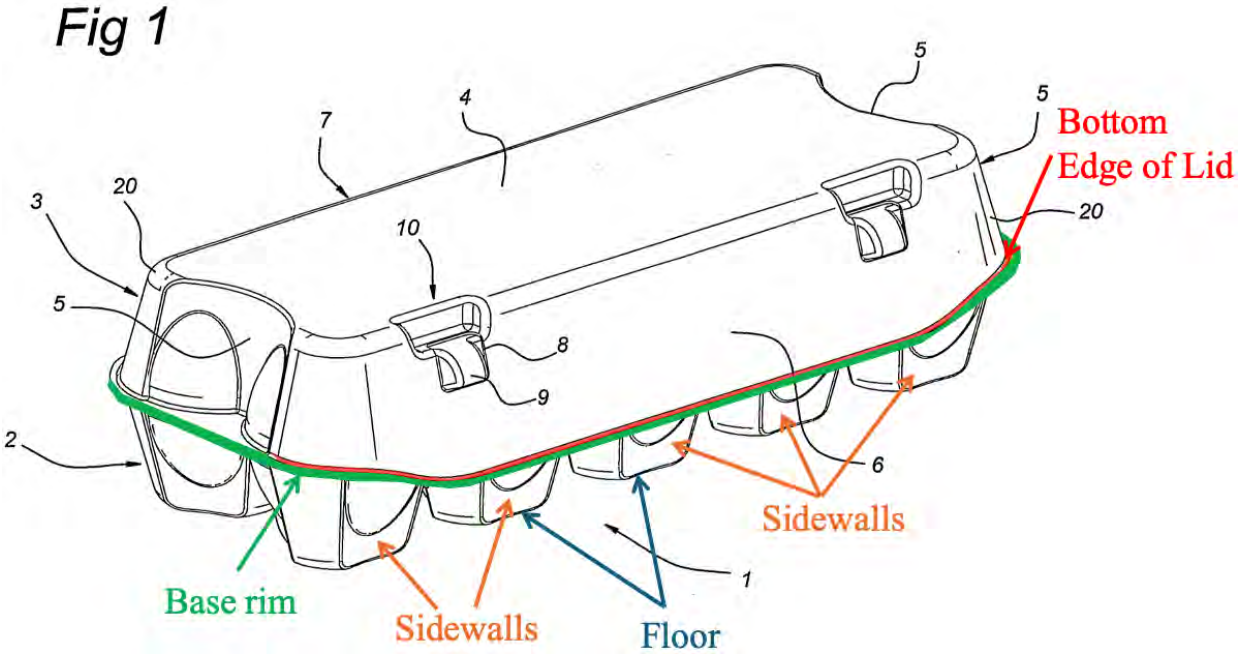
the lid part 3."). Post's Fig. 3 is annotated and modified below to show Post's label (**orange**) entirely covering the front wall 6 of Post's lid part 3 and extending to the bottom edge of Post's lid part 3, as taught by Beese. Ex.1009, [0030]. Beese discloses that the retaining noses 24 interact with openings (*first lid hole* and another lid hole) on the front part of the lid part. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2."). In the Post-Beese combination, the openings (**purple**) that interact with Beese's retaining noses (**red**) are each *a first lid hole fully encompassed within a substantially planar lid area* (yellow dotted rectangle), as shown in Post's Fig. 3, below. For example, the opening on the left side of the lid part 3 may be *a first lid hole*, as shown in Post's Fig. 3, below. Thus, the Post-Beese combination renders obvious *the lid* (Post's lid part 3) *having a first lid hole* (**opening**) *fully encompassed within a substantially planar lid area* (yellow dotted rectangle), as shown below.



Ex.1010, Fig. 3 (annotated and modified)

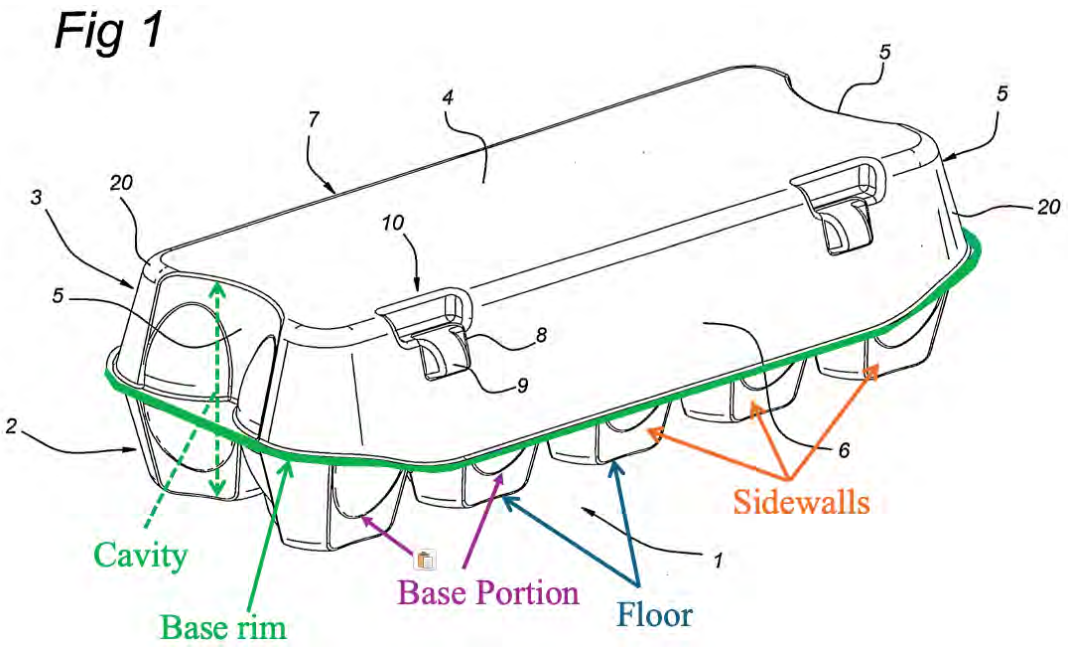
[1.6.1] the base having a sidewall extending from the floor to a base rim that generally defines an opening for the base portion of the cavity, wherein the sidewall and floor each includes portions of both the first and second material surfaces;

135. Post and Beese render obvious limitation [1.6.1]. **First**, as shown in Fig. 1, below, Post's bottom part 2 (*the base*) has *sidewall[s]* (**orange**) *extending from the floor* (**blue**) *to a base rim* (**green**) of the bottom part 2 on which the bottom edge (**red**) of the lid part 3 rests.



Ex.1010, Fig. 1 (annotated)

136. **Second**, as shown in Fig. 1, below, Post's *base rim* (**green**) *generally defines an opening for the base portion* (**purple**) *of the cavity* between the top part 4 of the lid part 3 and the floor of the bottom part 2, because the base rim defines the outer edge of the sidewalls in the bottom part 2, and the bottom part 2 has cavities in *the base portion* (**purple**) for receiving food products (e.g., eggs). As described above for limitations [1.4.1] and [1.4.3], Post discloses the *base portion* (**purple**) because the bottom part 2 is dimensioned with cavities to hold food products such as eggs. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which **cavities for accommodating eggs** are shown diagrammatically.").

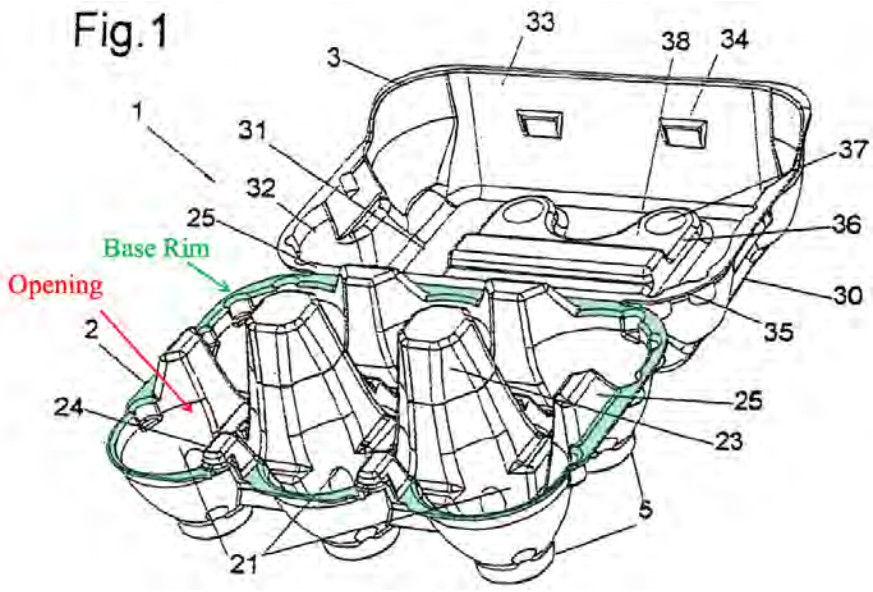


Ex.1010, Fig. 1 (annotated)

137. Thus, Post discloses *the base having a sidewall* (**orange**) *extending from the floor* (**blue**) *to a base rim* (**green**) *that generally defines an opening for the base portion* (**purple**) *of the cavity* (dotted **green**).

138. I note that Post does not explicitly illustrate the interior portion of the cavity between the top part 4 and the floor of the bottom part 2 when Post's container is in the open position. To the extent it is argued that Post does not explicitly disclose that the *base rim* (**green**) *generally defines an opening for the base portion* (**purple**) *of the cavity*, this is the conventional configuration of a food container that holds foods products such as eggs, as taught by Beese. As shown by Beese's Fig. 1, below, the bottom part 2 has a base rim on the outer edge of the bottom part 2, where the lid part 3 rests on the base rim, and the base rim defines an opening (e.g., depressions

21) in the container in which food products such as eggs are placed. Ex.1009, [0025] ("The egg box, which is designated 1 overall, comprises a bottom part 2 and a lid part 3….In the closed state, the lid part 3 rests on the bottom part 2 and covers over the latter completely."), [0026] ("The base part 2 has a plurality of shaped depressions 21 for accommodating eggs."). A POSITA would understand that, like Beese, Post's *base rim* (**green**) in Fig. 1, above, *generally defines an opening for the base portion* (**purple**) *of the cavity*, where the opening accommodates food products (e.g., eggs). Ex.1010, 3 (Post's container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.")

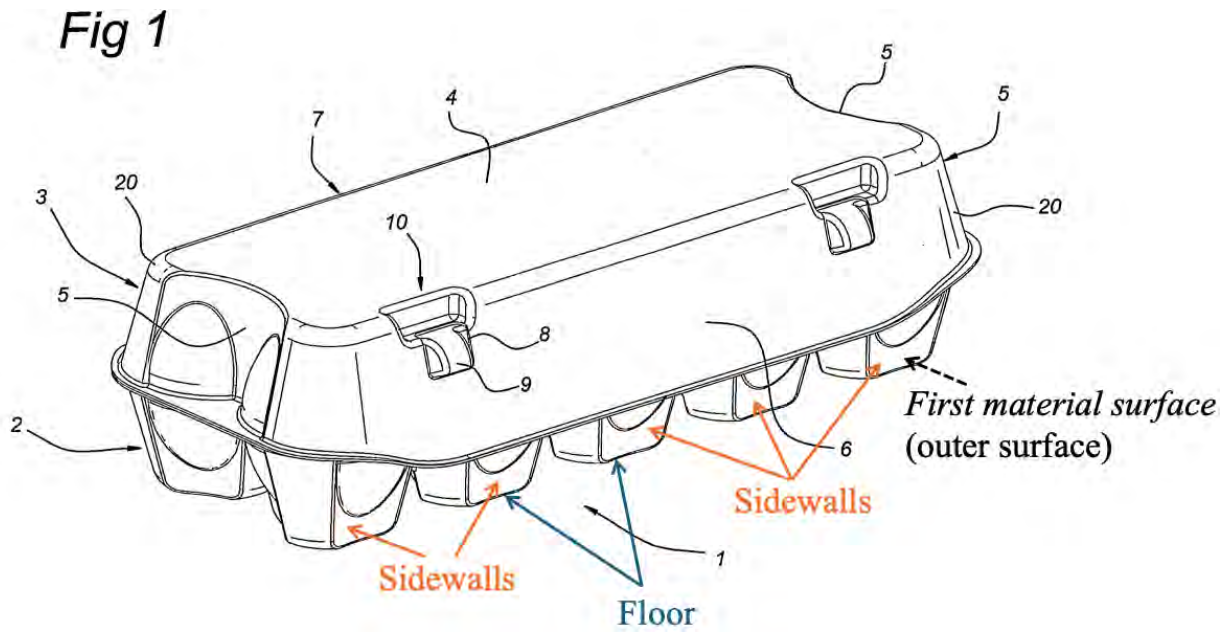


Ex.1009, Fig. 1 (annotated)

139. Thus, Post and Beese render obvious that Post's *base* (bottom part 2) *ha[s] a sidewall* (sidewalls of bottom part 2) (**orange**) *extending from the floor*

(**blue**) *to a base rim* (**green**) *that generally defines an opening for the base portion* (cavities in bottom part 2) (**purple**) *of the cavity* between the top part 4 and the floor of the bottom part 2).

140. **Third**, as shown in Fig. 1, below, Post discloses that the sidewall and floor each includes portions of both the first and second material surfaces. As described above for limitation [1.3.1], Post's container includes an outer surface (*first material surface*) and an inner surface (*second material surface*) on which the food products (e.g., eggs) would rest. Fig. 1, below, shows the sidewall and floor on the outer surface (first material surface) of the container.



Ex.1010, Fig. 1 (annotated)

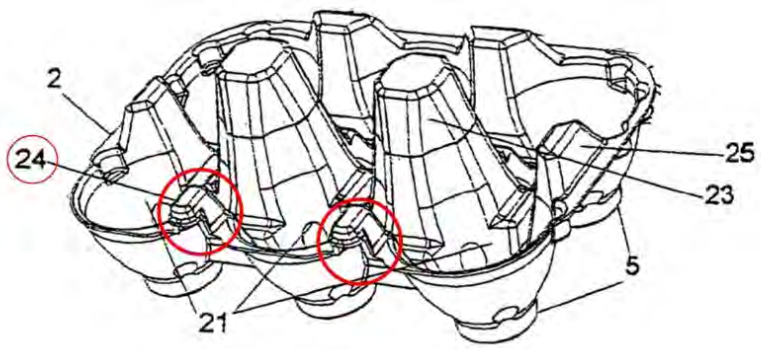
141. Thus, Post discloses that *the sidewall* (**orange**) *and floor* (**blue**) *each includes portions of both the first* (outer) *and second* (inner) *material surfaces*. Accordingly, Post and Beese render obvious limitation [1.6.1].

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

142. Post and Beese render obvious limitation [1.6.2]. As described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3, in lieu of Post's closing projections 9 and corresponding openings 8 in the lid part 3, would advantageously permit Post's label 11 to entirely cover the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3.").

143. As shown in Fig. 1, below, Beese's retaining noses 24 extend from the bottom (base) part 2 (Beese's base). Ex.1009, [0026] ("In order to fix the lid part 3

in the closed state, two retaining noses 24 are arranged on a front side of the base part 2.").[5]



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

144. Beese's retaining noses 24 in Post's container render obvious *[the base* (Post's bottom part 2) *having] a base extension* (Beese's retaining noses 24) *extending from the base* (Post's bottom part 2), because Beese's retaining noses 24 extend from Beese's bottom part 2 and would likewise extend from Post's bottom part 2. Ex.1009, [0026] ("In order to fix the lid part 3 in the closed state, two retaining noses 24 are arranged on a front side of the base part 2."), Fig. 1 (showing

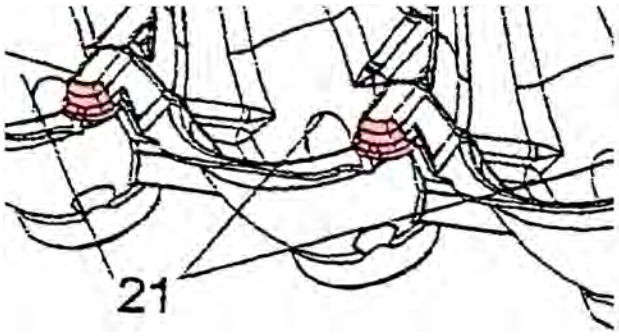
[5] Beese interchangeably refers to the base of the container as both a "bottom part 2" and a "base part 2." Ex.1009, [0025] ("The egg box, which is designated 1 overall, comprises a **bottom part 2** and a lid part 3…. [T]he lid part 3 is located approximately in the same plane as the **base part 2**.").

arrangement of retaining noses 24 extending from the upper end of the bottom part 2).

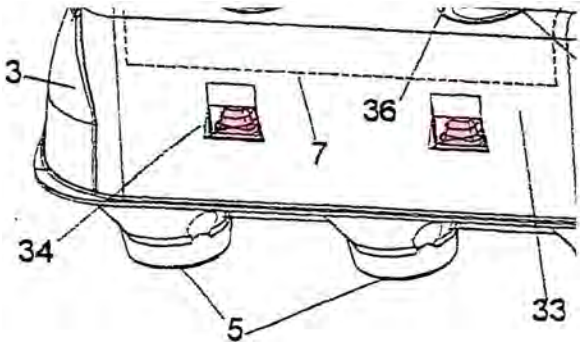
[1.6.3] [the base extension] having a primary surface area with a flat portion facing external to the cavity wherein the flat portion is bounded by a first boundary and a second boundary,

145. Post in view of Beese and Mangla render limitation [1.6.3] obvious. As described above for limitation [1.6.2], Beese's retaining noses 24 in Post's bottom part 2 render obvious the claimed *base extension*.

146. **First**, as shown in Fig. 1 (open state) and Fig. 2 (closed state), below, Beese's retaining noses 24 (*base extension*) have *a primary surface area with a flat portion* (**red**) on the external surface of the retaining noses 24 that is *external to the cavity* (i.e., the openings in which food products such as eggs are housed).



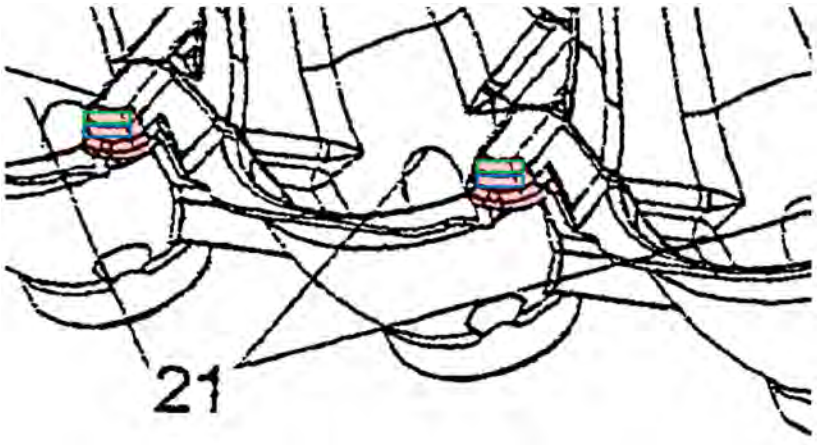
Ex.1009, Fig. 1
(annotated partial view)



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

147. Likewise, Beese's retaining noses 24 in Post's bottom part 2 would have *a primary surface area with a flat portion facing external to the cavity* between

Post's top part 4 and the floor of the bottom part 2 (*see* limitation [1.2] above for an explanation of Post's *cavity*). Any portion of the *primary surface area* on the external surface of Beese's retaining noses 24 in Figs. 1 and 2, above, is at least one *flat portion*. For example, as shown in the enlarged partial view of Fig. 1, below, the *primary surface area* on the external surface area has at least a first flat portion (**green**) and at least a second flat portion (**blue**).



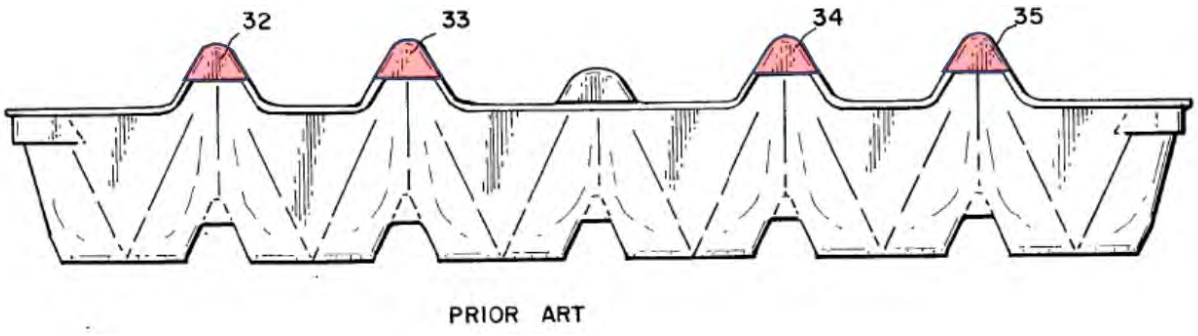
Ex.1009, Fig. 1 (annotated partial view)

148. Thus, Post and Beese renders obvious *the base extension* (Beese's retaining noses 24 in Post's bottom part 2) *having a primary surface area with a flat portion facing* (Beese's retaining noses 24 have an external surface with flat portions) *external to the cavity* (outward from the cavity between Post's top part 4 and floor of the bottom part 2).

149. The front, outward facing surface of Beese's retaining noses 24 (*primary surface area*) that interact with the openings 34 in the front flap 3 are shown

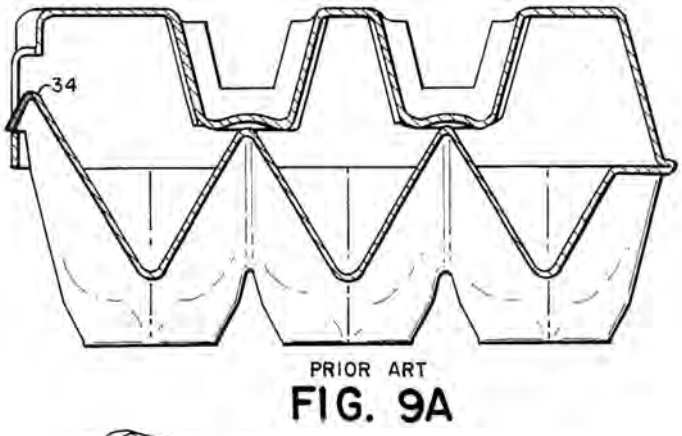
with horizontal lines in Figs. 1 and 2, above. I understand those horizontal lines to illustrate perspective dimensioning because the top end of the retaining noses 24 have a smaller width (left to right in Figs. 1 and 2) than the bottom end of the retaining noses 24 (see, e.g., retaining noses 24 in Fig. 2). To the extent it is argued that the horizontal lines in Beese's retaining noses 24 designate ridges that would provide a non-continuous or non-flat surface, a POSITA would have been motivated to provide flat outer surfaces on the retaining noses 24 as incorporated in Post's container 11, because such flat outer surfaces on the retaining noses 24 would allow Post's label 11 to extend over the retaining noses 24 in a smooth, continuous manner without bumps or projections caused by a non-continuous or non-flat surface in the retaining noses 24.

150. Mangla shows that it was well-known to have continuous, flat outer surfaces in projections extending from the bottom part of a container as the locking mechanism. As shown in Fig. 9C, below, Mangla shows that it was known to create cartons with a hinged cover having a series of protrusions 32-35 that are located between the egg cavities and which, like Beese, extend from the inside sidewall of the base and operate to mate with holes in the cover to latch the carton. Ex.1015, 4:3-6 ("This pulp carton includes protrusions 32-35 on the cell section. These protrusions have hooks which mate with holes in the cover to latch the carton."). The protrusions 32-25 (**red**) are illustrated in Fig. 9C:

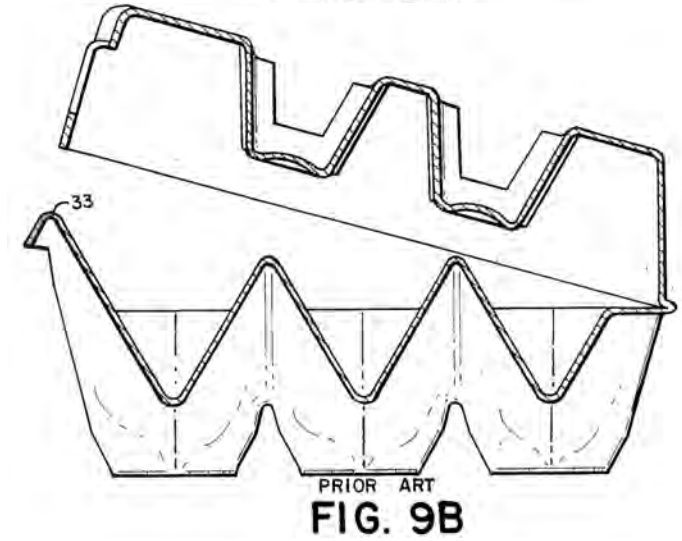


Ex. 1015, Fig. 9C (annotated)

151. As shown in Figs. 9B (protrusion 34) and 9C (protrusion 33), the protrusions have a flat outer surface that mates with corresponding openings in the cover to latch the carton. Ex.1015, 4:3-6 ("This pulp carton includes protrusions 32-35 on the cell section. These protrusions have hooks which mate with holes in the cover to latch the carton.").



PRIOR ART
FIG. 9A



PRIOR ART
FIG. 9B

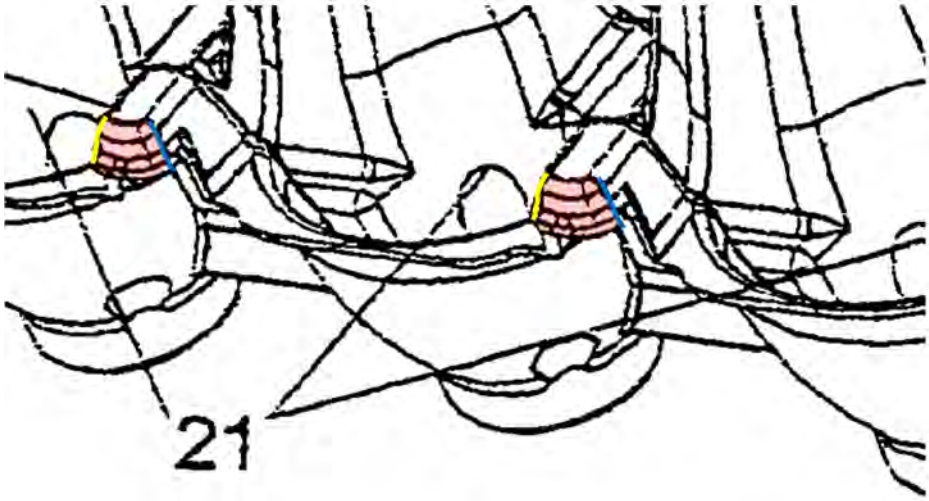
Ex. 1015, Figs. 9A-9B (annotated)

152. As described above in Section IX.A.4 (Reasons to Combine), a POSITA would have found it obvious and been motivated to configure Beese's retaining noses 24 in Post's container to have a flat outer surface, as suggested by Beese and as taught by Mangla, so that Post's label 11 would extend continuously over the retaining noses 24 without bumps caused by the retaining noses 24 having a non-flat configuration on their outer surface. This modification would have been desirable and more appealing to customers because the printing and/or advertisement

on the label would not be impacted by portions of the retaining noses 24 having different contoured outer surfaces that may be seen as bumps or other disruptions in Post's label 11.

153. Accordingly, Post in view of Beese and Mangla also render obvious *the base extension* (Beese's retaining noses 24 in Post's bottom part 2) *having a primary surface area with a flat portion facing* (Beese's retaining noses 24 have an external surface with flat portions, as taught by Mangla) *external to the cavity* (outward from the cavity between Post's top part 4 and floor of the bottom part 2).

154. **Second**, the *flat portion* of Beese's retaining noses 24 (*base extension*) is *bounded by a first boundary* (yellow boundary on left) *and a second boundary* (**blue** boundary on right), as shown in Fig. 1 below.



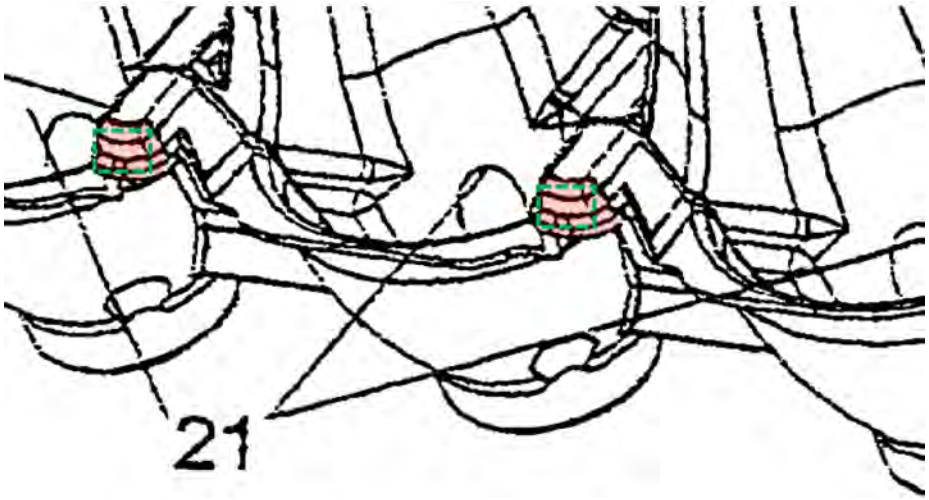
Ex.1009, Fig. 1 (annotated partial view)

155. Thus, Post and Beese render obvious that the retaining noses 24 in Post's bottom part 2 would have *the flat portion* of the primary surface area (**red**) being *bounded by a first boundary* (yellow) and *a second boundary* (**blue**), as shown in Beese's Fig. 1, above.

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

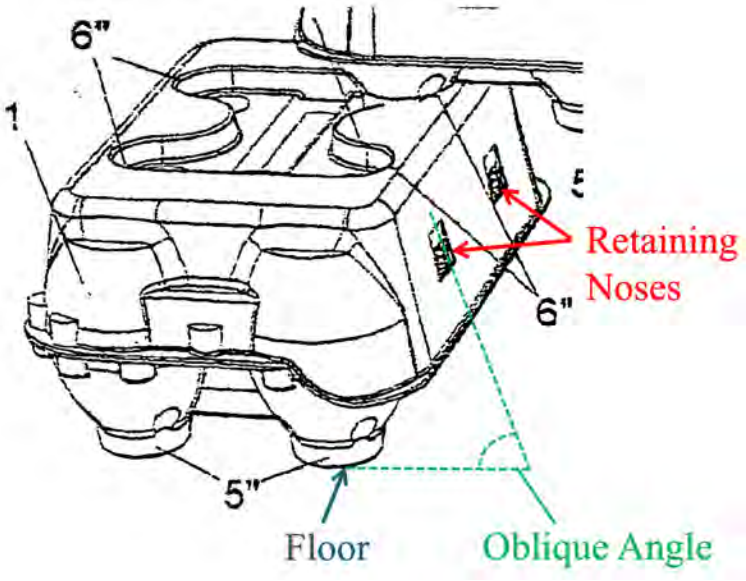
156. Post in view of Beese and Mangla render limitation [1.6.3] obvious. As described above for limitation [1.6.2], Beese's retaining noses 24 in Post's bottom part 2 render obvious the claimed *base extension*.

157. The *flat portion* on Beese's retaining noses 24 is illustrated in Fig. 1 below in **red**. The retaining noses 24 each have a *second planar area* (**green** dotted rectangle) *on the flat portion* (**red**), as shown in Fig. 1, below.



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

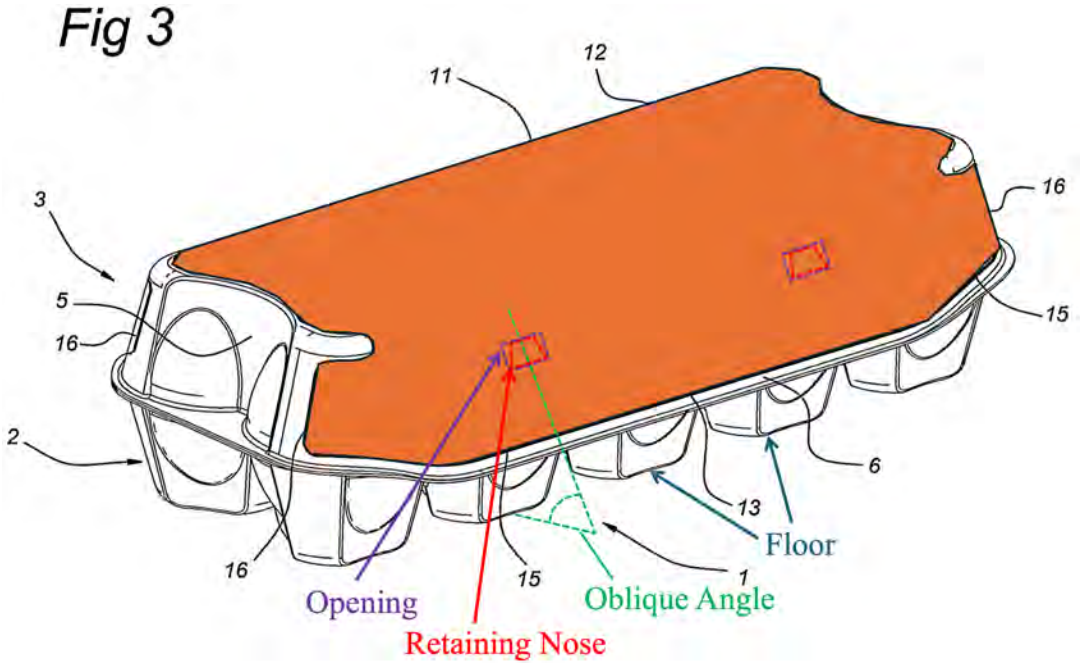
158. As shown in Beese's Fig. 4 below, the front-facing, flat portion (*second planar area*) of the retaining noses (**red**) is *disposed obliquely to the floor* (i.e., at an angle that is not a right angle or a multiple of a right angle and is either (1) between 0° and 90° or (2) between 90° and 180° relative to the *floor*).



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

159. Likewise, in the modification of Post's container to include Beese's retaining noses 24 (**red** dotted lines) and corresponding openings (**purple** dotted lines) in Post's front part 6 of the lid part 3 to allow the label 11 (**orange**) to extend all the way to the bottom edge of the front part 6 (*see* Section IX.A.4 above), the front-facing, flat portion (*second planar area*) of the retaining noses (**red** dotted lines) is *disposed obliquely to the floor* (i.e., 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*), as shown in Post's Fig. 3, below.



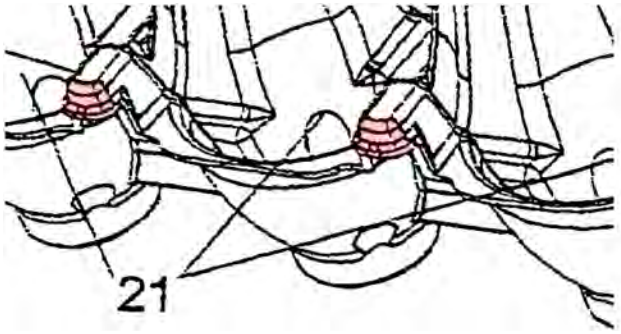
Ex.1010, Fig. 3 (annotated and modified)

160. Thus, Post and Beese render obvious *the base extension* (Beese's retaining noses 24 in Post's bottom part 2) *having a second planar area on the flat portion* (flat front portion of retaining noses 24) *disposed obliquely to the floor* (disposed obliquely to the floor, as shown in Post's modified Fig. 3 above).

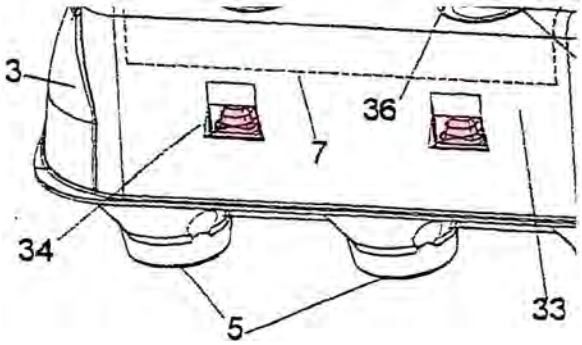
[1.6.5] [the base extension having] a secondary surface area that is on the direct opposite side of the material from the flat portion and is an extension of the sidewall's portion of the first material surface; and

161. Post in view of Beese render obvious limitation [1.6.5]. As described above for limitation [1.6.2], Beese's retaining noses 24 in Post's bottom part 2 render obvious the claimed *base extension*. Further, as described above for limitation

[1.6.3], Beese's retaining noses 24 (*base extension*) have a primary surface area with a *flat portion* (**red**) on the external surface of the retaining noses 24, as shown in Figs. 1 and 2, below.

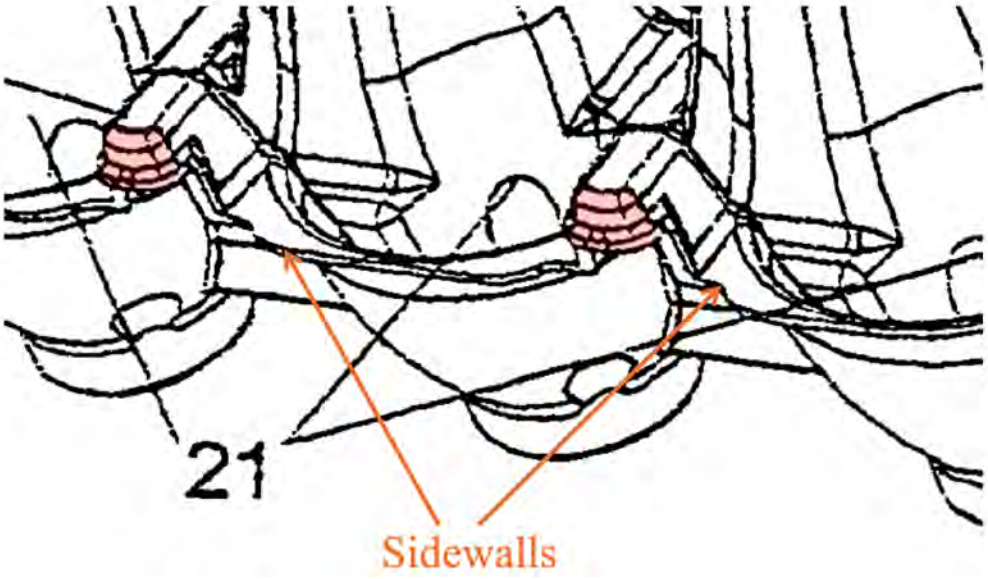


Ex.1009, Fig. 1
(annotated partial view)



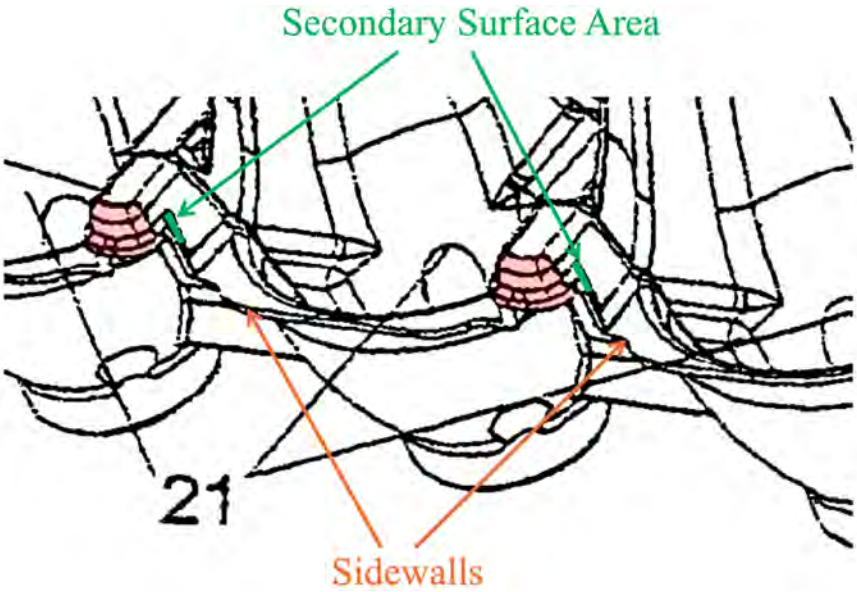
Ex.1009, Fig. 2
(annotated partial view)

162. In addition, as shown in Fig. 1, below, Beese's retaining noses 24 are an extension from the sidewalls of Beese's bottom part 2. Ex.1009, [0026] ("In order to fix the lid part 3 in the closed state, two retaining noses 24 are arranged on a front side of the base part 2."). Likewise, in Post's container, Beese's retaining nose 24 would be an extension of the sidewalls in Post's bottom part 2, in lieu of Post's closing projections 9. *See* Section IX.A.4 (Reasons to Combine) above. But like Post's closing projections 9, Beese's retaining noses 24 would likewise be an extension of the bottom part 2, including extending from the outside surface (first material surface). Ex.1010, 3 ("Closing projections 9[] are joined to the bottom part [2]….").



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

163. As shown in annotated Fig. 1, below, Beese's retaining noses 24 each have a *secondary surface area* (**green**) *that is* (1) *on the direct opposite side of the material from the flat portion* (**red**) (i.e., on the opposite side of the retaining nose 24 from the flat portion) and (2) *is an extension of the sidewall's* (**orange**) *portion of the first material surface* (outer surface). As shown in Fig. 1, below, 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 the retaining nose 24 that bridges the *flat portion* (**red**) and the *secondary surface area* (**green**).



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

164. Thus, Post in view of Beese render obvious *the base extension* (Beese's retaining nose 24 in Post's bottom part 2) *having a secondary surface area* (**green** surface of Beese's retaining nose 24 in Fig. 1 above) *that is on the direct opposite side of the material from the flat portion* (front-facing **red** surface in Fig. 1 above) *and is an extension of the sidewall's portion of the first material surface* (extension on outer surface of sidewall of Post's bottom part 2, as taught by Beese).

165. Alternatively, to the extent it is argued that the *base extension* has a hollow portion, despite not recited in limitation [1.6.5], this would be an obvious design choice, as shown by Mangla. As shown in Mangla's Fig. 9A below, it was known to configure a protrusion 34 (corresponding to Beese's retaining nose 24) to have a front surface (**red**) and a directly opposite rear surface (**blue**), where the front

surface (**red**) and directly opposite rear surface (**blue**) of the projection 34 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 ("Th[e] pulp carton includes protrusions 32-35 on the cell section [bottom part]. These protrusions have hooks which mate with holes in the cover to latch the carton.").[6]

166. Accordingly, it was known and would have been obvious to configure Beese's retaining noses 24 to have, as taught by Mangla, 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. This configuration would have been desirable because it would allow for Beese's retaining noses 24 to interact with and rest on the bottom portion of openings in Post's front part 6, as taught by

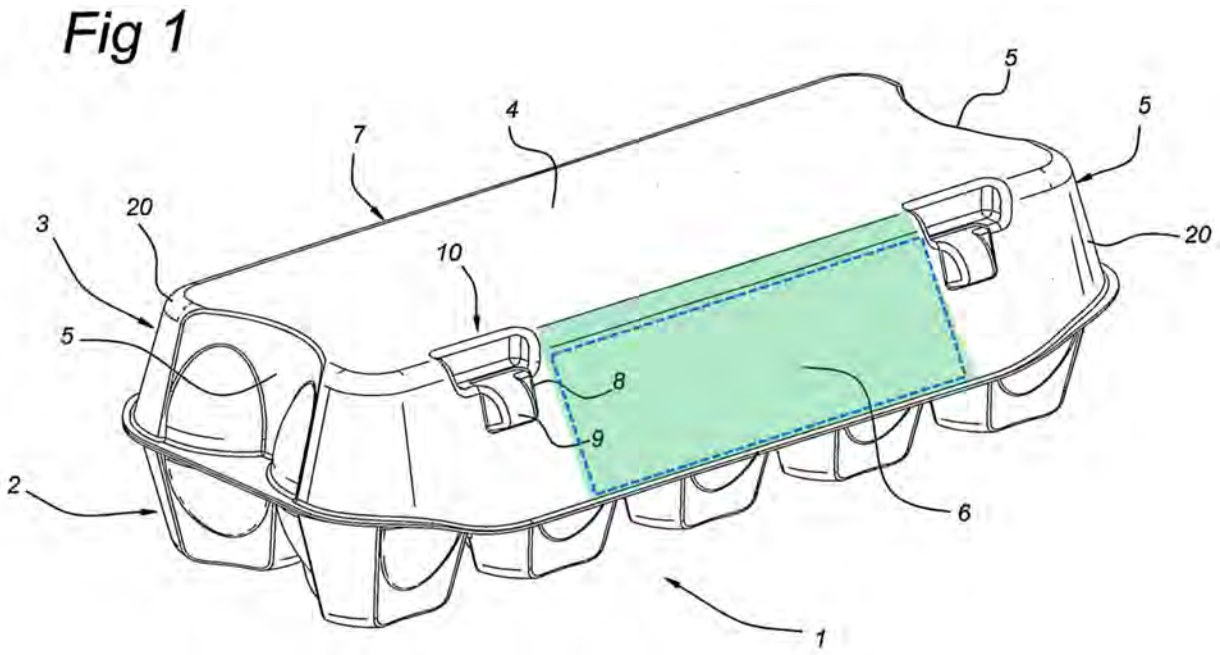
[6] It was known for an egg carton (container) to have projections with a hollow portion that extend from the base (bottom part). *See, e.g.,* Ex.1035 (Emery), Fig. 4 (showing locking posts 312 (projections) extending from the tray 300 (base) to engage with locking parts 215 of the cover, where the locking posts 312 have hollow portions that extend into the openings in the cover), 3:65-4:4 (describing container illustrated in Fig. 4), 1:6-8 ("The invention has application to the familiar folding egg carton which is the best known example of a moulded container with a hinged cover.").

Beese. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2.").

167. Therefore, Post in view of Beese and Mangla also render obvious *the base extension* (Beese's retaining nose 24 in Post's bottom part 2) *having a secondary surface area* (rear surface of the front of Beese's retaining nose 24 in Fig. 1 above) *that is on the direct opposite side of the material from the flat portion* (front-facing **red** surface in Fig. 1 above) *and is an extension of the sidewall's portion of the first material surface* (extension on outer surface of sidewall of Post's bottom part 2, as taught by Beese).

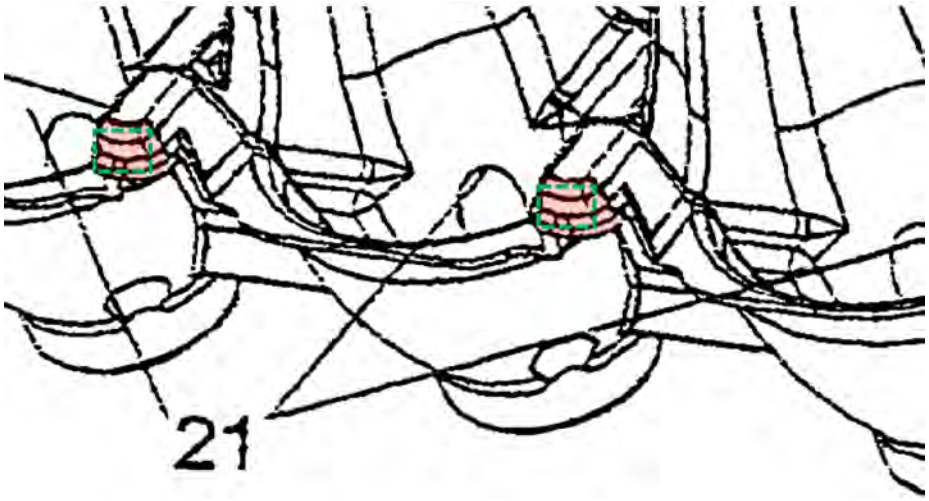
[1.7.1] wherein in the closed position the first planar area, the second planar area, and the first and second boundaries of the flat portion are all generally coplanar,

168. Post and Beese render obvious limitation [1.7.1]. **First**, as described above for limitation [1.5.5], Post discloses the claimed *first planar area* between the openings in the front part 6 of the lid part 3, as shown in Post's Fig. 1, below.



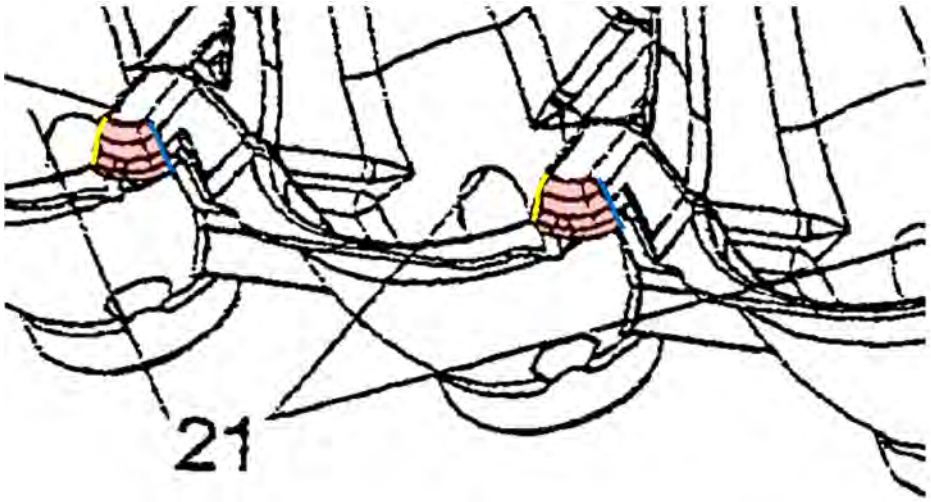
Ex.1010, Fig. 1 (annotated)

169. **Second**, as described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1, in lieu of Post's projections 9. As described above for limitation [1.6.4], Beese's retaining noses 24 each have a *second planar area* (**green** dotted rectangle) on *the flat portion* (**red**), as shown in Fig. 1, below.



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

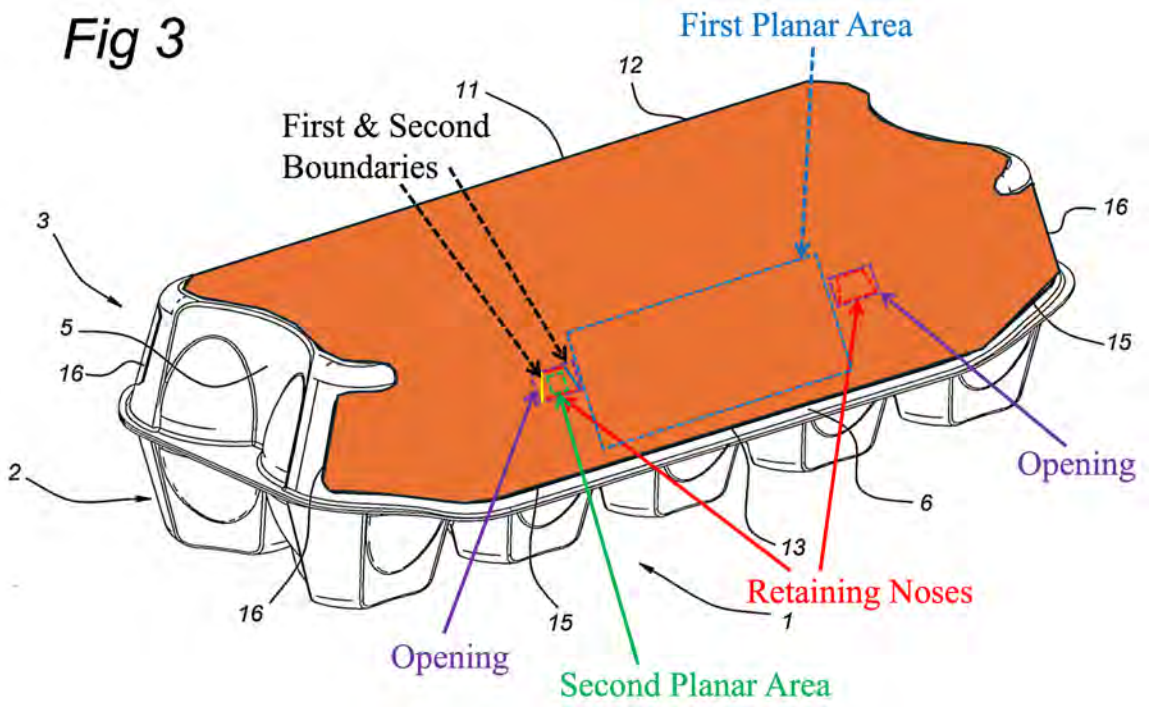
170. **Third**, as described above for limitation [1.6.3], the *flat portion* of Beese's retaining noses 24 is *bounded by a first boundary* (yellow boundary on left) *and a second boundary* (**blue** boundary on right), as shown in Fig. 1 below.



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

171. Post's Fig. 3, is modified below to illustrate the obvious combination of including Beese's retaining noses 24 in Post's bottom part 2, having

corresponding openings in Post's lid part 3, and having Post's label 11 extend to the bottom edge of the lid part 3. In this obvious combination, in *the closed position* shown in Fig. 3, *the first planar area* (**blue** dotted rectangle) on the front part 6 of the lid part 3, *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* (i.e., generally coplanar along the front part 6 of the lid part 3). Thus, Post and Beese render obvious limitation [1.7.1].

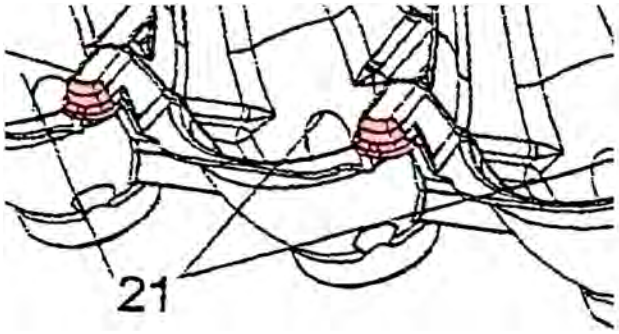


Ex.1010, Fig. 3 (annotated and modified)

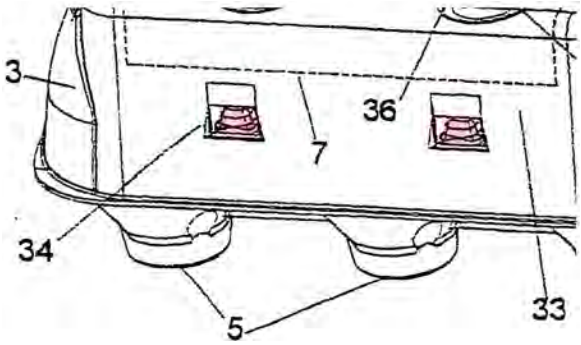
[1.7.2] [wherein in the closed position] a first flat portion of a label covers both the primary surface area of the base extension and the substantially planar lid area of the substantially planar frontal extension, and

172. Post and Beese render limitation [1.7.2] obvious. **First**, as described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post to include Beese's retaining noses 24 (*base extension*) in Post's bottom part 2 so as to extend Post's label 11 to entirely cover the front part 6 of Post's lid part 3 without having to provide openings for Post's projections 9. Post's label 11 teaches the claimed *label*. As explained below, Post's label 11 would cover both the *primary surface area of the base extension and the substantially planar lid area of the substantially planar frontal extension*.

173. **Second**, as described above for limitation [1.6.3], Beese's retaining noses 24 (*base extension*) have *a primary surface area with a flat portion* (**red**) on the external surface of the retaining noses 24, as shown in Fig. 1 (open state) and Fig. 2 (closed state), below.

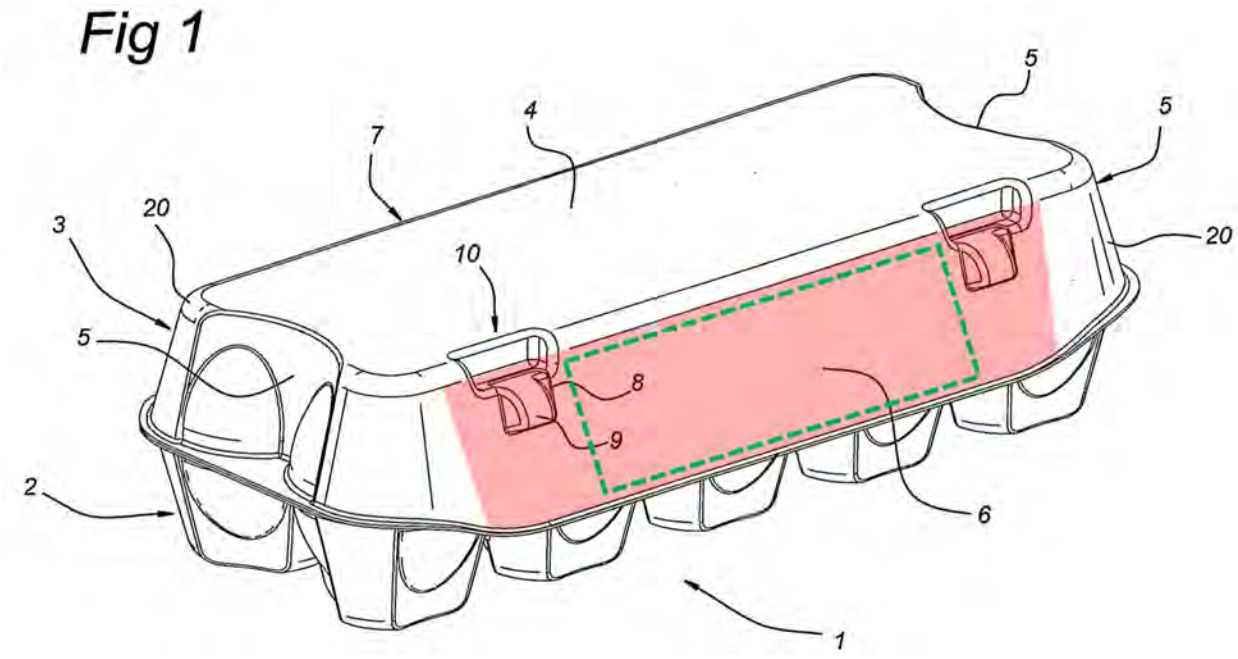


Ex.1009, Fig. 1
(annotated partial view)



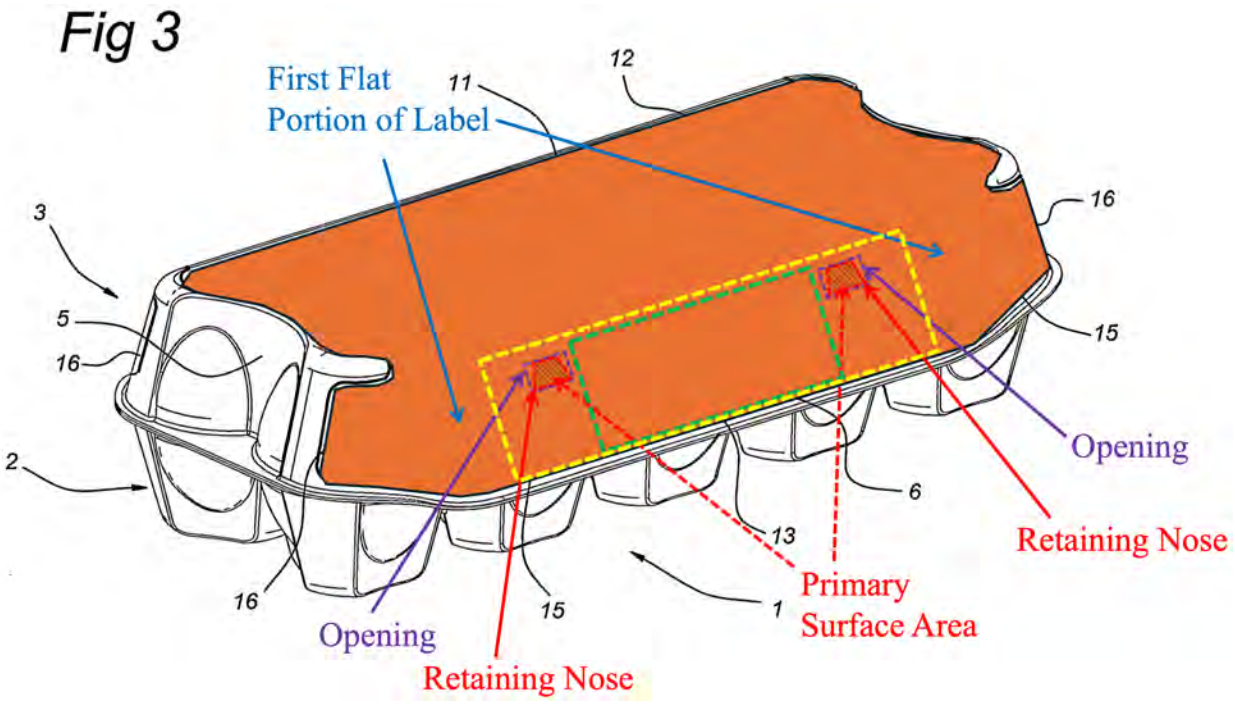
Ex.1009, Fig. 2
(annotated partial view)

174. **Third**, as described above for limitation [1.5.6], Post's lid part 3 includes *a substantially planar lid area* (**red**), as shown in Fig. 1, below. Further, as described above for limitations [1.5.2] and [1.5.4], Post's lid part 3 includes a *substantially planar frontal extension* (**green** dotted line).



Ex.1010, Fig. 1 (annotated)

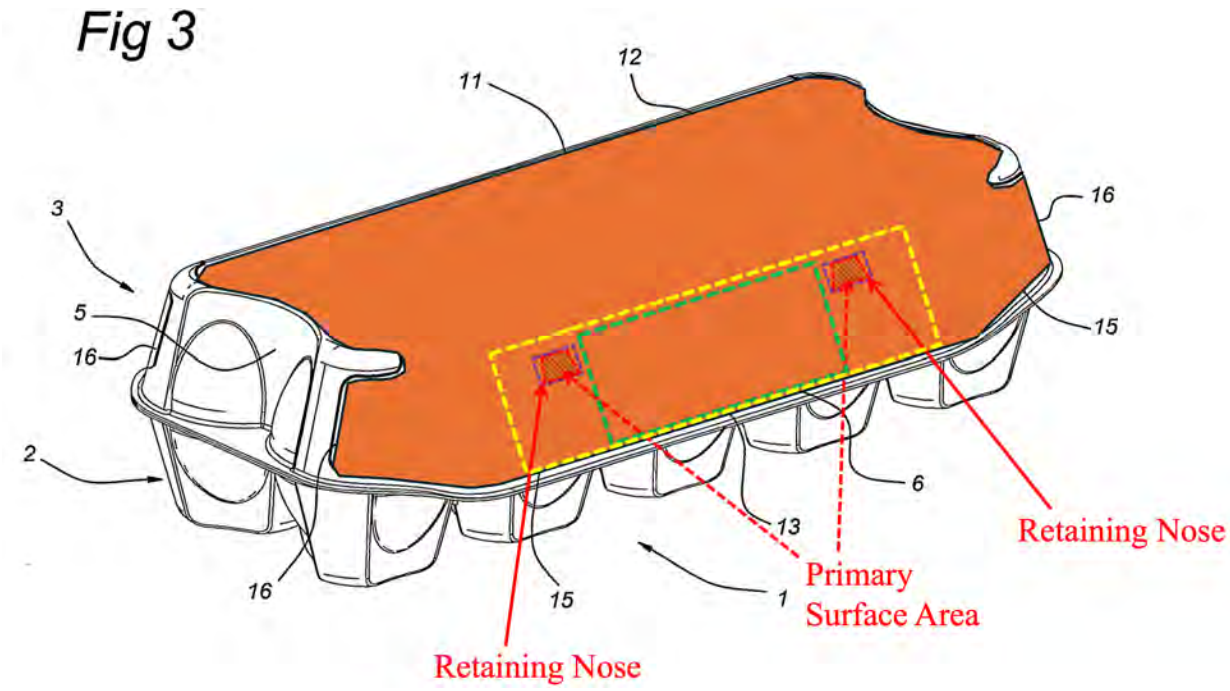
175. In the Post-Beese combination, Post's *label* 11 has *a first flat portion* (portion that covers front part 6 of lid part 3) (**blue**) that *covers both* (1) *the primary surface area of the base extension* (front-facing, flat portion of Beese's retaining noses 24 in Post's bottom part 2) (**orange** dashed surface area beneath label 11) *and the substantially planar lid area* (yellow dotted rectangle) *of the substantially planar frontal extension* (**green** dotted rectangle), as shown in Post's Fig. 3, below. Thus, Post and Beese render obvious limitation [1.7.2].



Ex.1010, Fig. 3 (annotated and modified)

[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.

176. Post and Beese render obvious limitation [1.7.3]. In the Post-Beese combination, as shown in Post's Fig. 3 (closed position), below, *the primary surface area* (front-facing, flat portion of Beese's retaining noses 24 in Post's bottom part 2) (**orange** dashed surface area beneath label 11) *is adjacent* (arranged in close proximity, as shown in Fig. 3) *to the substantially planar lid area* (yellow dotted rectangle) *of the substantially planar frontal extension* (**green** dotted rectangle).



Ex.1010, Fig. 3 (annotated and modified)

177. Accordingly, for at least the foregoing reasons, all the limitations of claim 1 are well-known, conventional features, as taught by Post, Beese, and Mangla.

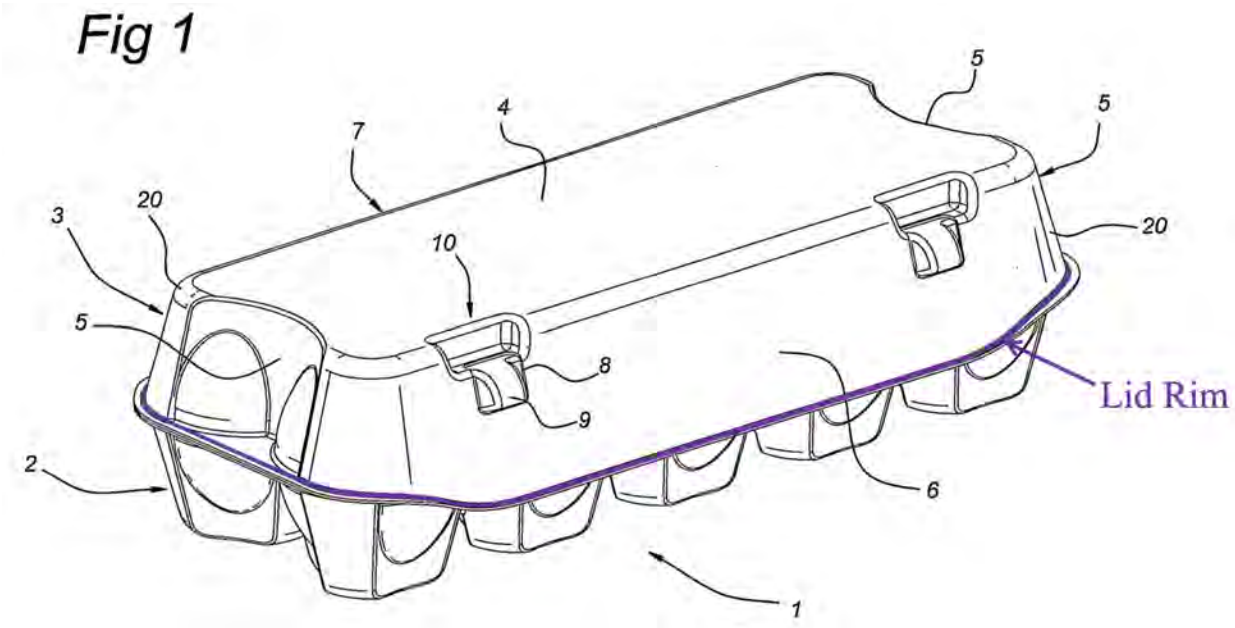
b) Claim 2

[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,

178. As discussed above, the container of claim 1 is obvious over Post in view of Beese and Mangla. For the following reasons, Post renders obvious limitation [2.0].

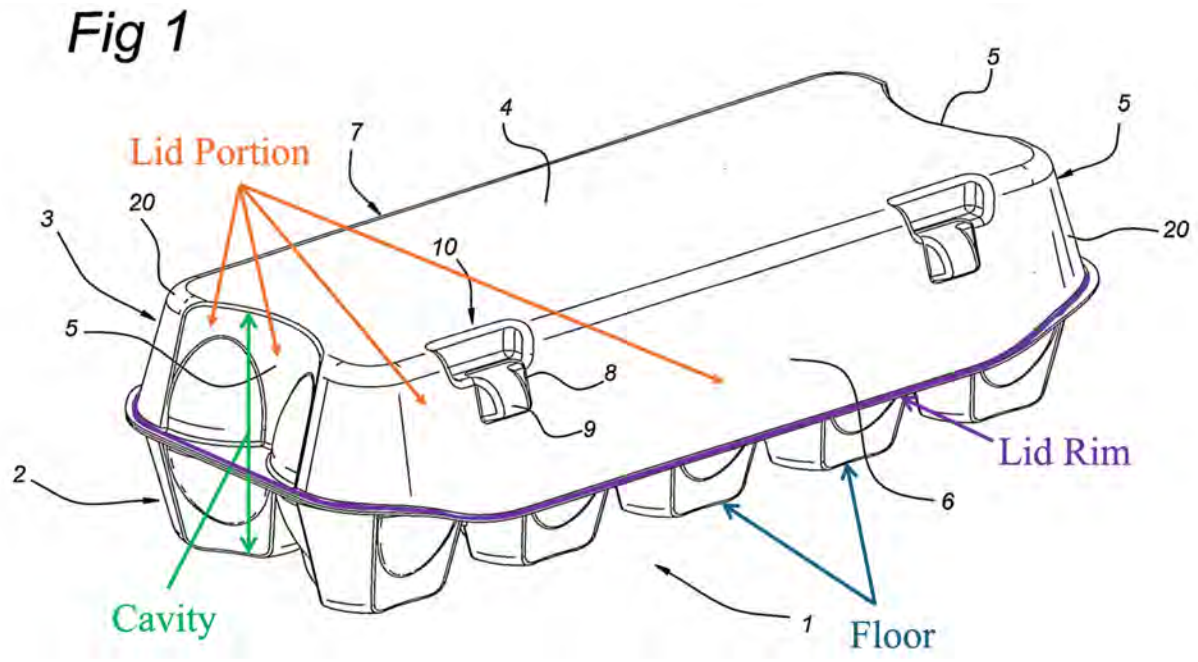
179. As described above for limitation [1.2], Post's lid part 3 discloses the claimed *lid*. Further, as described above for limitation [1.2], a POSITA would understand that Post's container may be transitioned from the closed position (shown in Post's Figs. 1 and 3) to an open position in which a consumer may obtain food products (e.g., eggs) housed in the container. Ex.1010, 1 ("The present invention relates to a container for packaging foods, comprising a bottom part and a hinged lid part joined thereto."), 3 ("The lid part 3 can be unlocked from the bottom part 2 by depressing closing projections 9 and moving front wall 6 forwards.").

180. As shown in Fig. 1, below, Post's lid part 3 (lid) has a *lid rim* (**purple**) at the lower end of the lid part 3. The *lid rim* (**purple**) is at the lower end of the front part (wall) 6, side walls 5, and rear wall 7 of the lid part 3. Ex.1010, 3 ("The 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. 6 is the front wall, 7 the rear wall and 5 are the linking transverse walls."). The *lid rim* (**purple**) rests on the upper end of the bottom part 2.



Ex.1010, Fig. 1 (annotated)

181. As shown in Fig. 1, below, a POSITA would understand that the *lid rim* (**purple**) *generally defines an opening for the lid portion* (**orange**) *of the cavity* (**green**) between the floor of the bottom part 2 and the top part 4 of the lid part 3 (*see* limitation [1.4.2] above for *lid portion* and *cavity*), because the *lid rim* is the outer edge of the lid portion 3 and thus the outer edge of the opening in the lid part 3 when the container is in the open position.

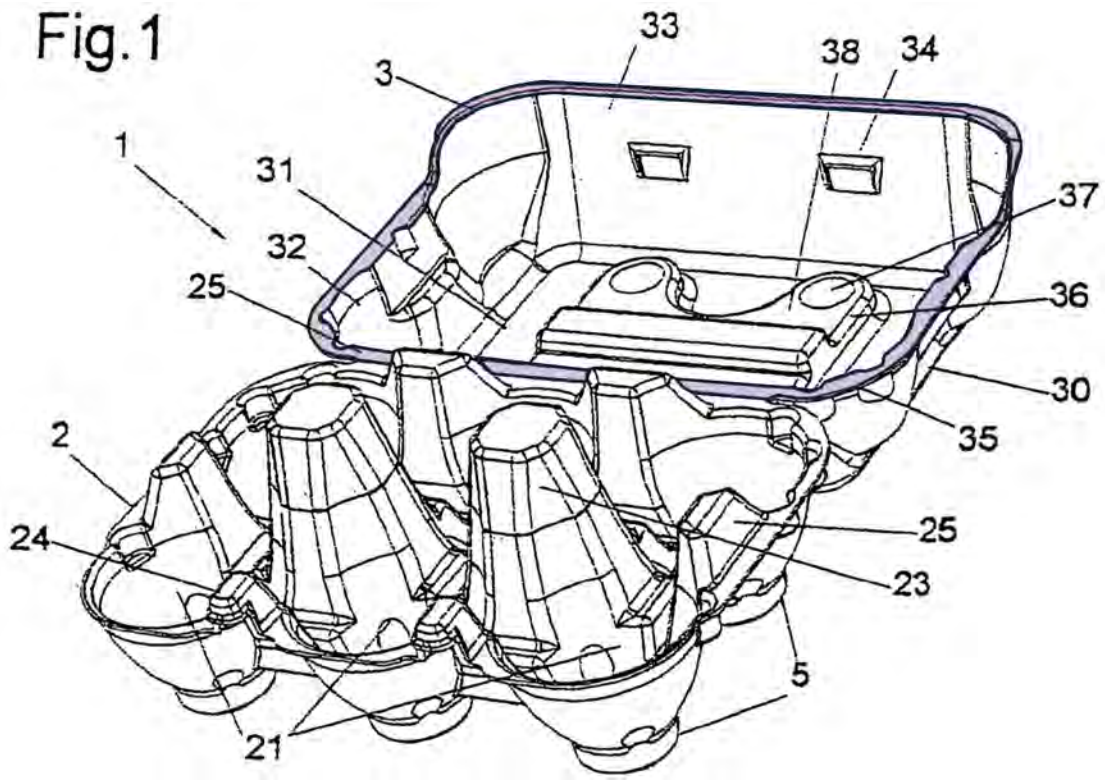


Ex.1010, Fig. 1 (annotated)

182. Thus, Post discloses that *the lid* (lid part 3) *has a lid rim* (**purple**) *that generally defines an opening for the lid portion* (**orange**) *of the cavity* (**green**).

183. To the extent it is argued that Post does not explicitly disclose that the *lid rim* (**purple**) generally defines an opening for the lid portion, this is a conventional implementation detail as shown by Beese's Fig. 1 (open position), below. As shown in Fig. 1, the lid part 3 has a *lid rim* (**purple**) on the outer edge of the lid part 3 that (1) defines an opening in the lid part 3 in the open position (Fig. 1) and (2) rests on the bottom part 2 in the closed position. Ex.1009, [0025] ("An egg box according to the invention is illustrated in the swung-open state in FIG. 1….In the closed state, the lid part 3 rests on the bottom part 2 and covers over the

latter completely. Pivoting the lid part 3 through approximately 180° about the axis of the flexible hinge 25 moves the lid part 3 into its open position.").



Ex.1009, Fig. 1 (annotated)

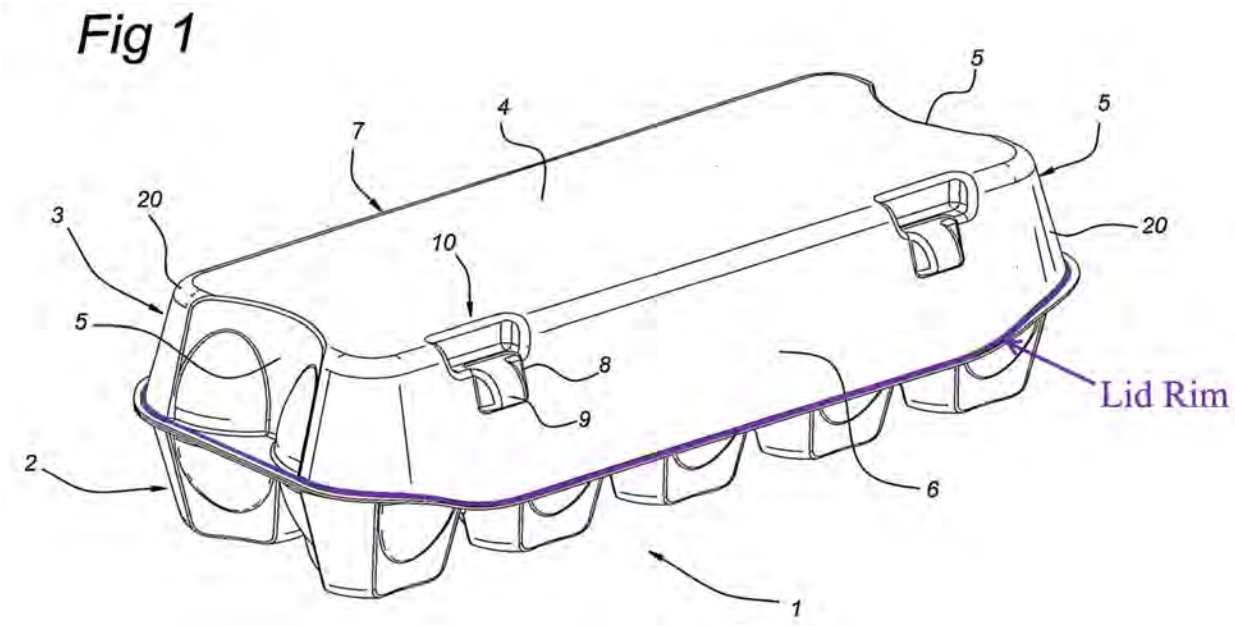
184. A POSITA would understand that the *lid rim* (**purple**) of Post's lid part 3 would, like Beese's lid part 3 shown in in Fig. 1, above, *generally define[] an opening for the lid portion of the cavity*, because Post's *lid rim* is the outer edge of the lid part 3 and defines the outer edge of the opening formed in the lid portion (**orange**) for accommodating food products (e.g., eggs). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is

indicated by 1. This consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto.").

185. Thus, Post and Beese render obvious that Post's *lid* (lid part 3) *has a lid rim* (**purple**) *that generally defines an opening for the lid portion* (**orange**) *of the cavity* (**green**), as shown in Post's Fig. 1, above.

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

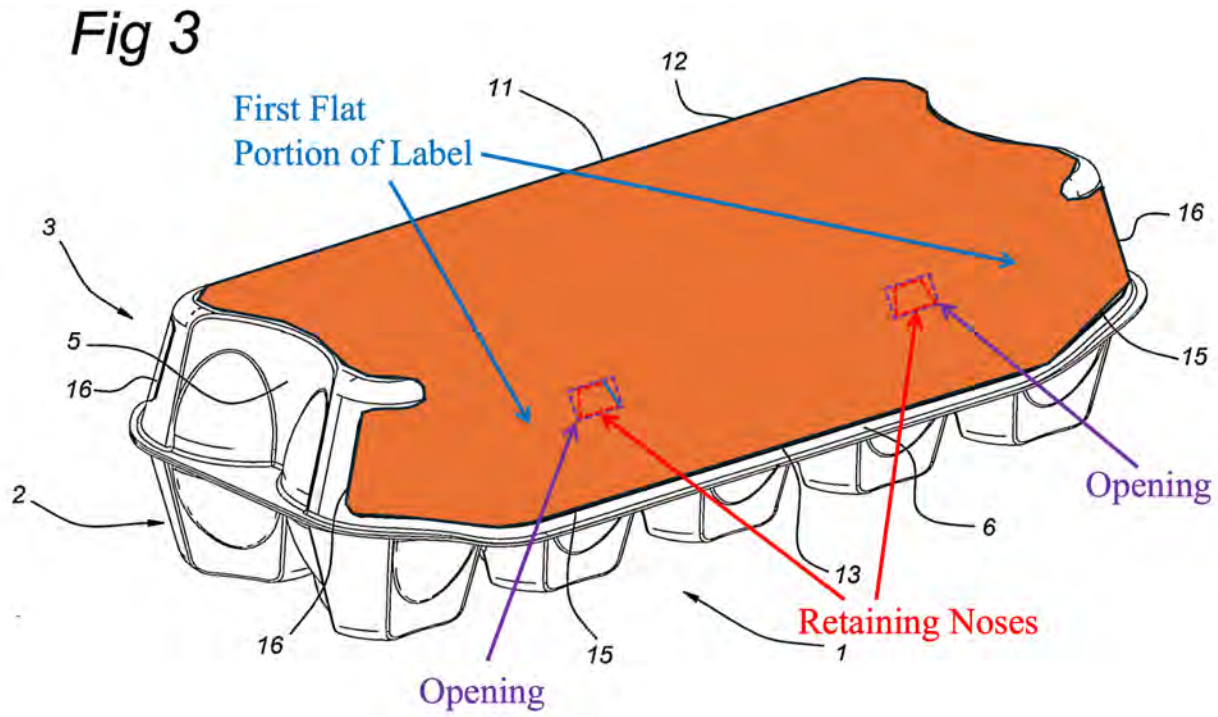
186. Post discloses limitation [2.1]. As shown in Fig. 1, below, the bottom edge of the lid part 3 (*bottom edge of the lid*) is located on the *lid rim* (**purple**).



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.

187. Post and Beese render obvious limitation [2.2]. As described above for limitation [1.7.2], Post's *label* (**orange**) in the Post-Beese combination has *a first flat portion* (portion that covers front part 6 of lid part 3) (**blue**), as shown in Post's Fig. 3, below. As also shown in Fig. 3, below, the *label* (**orange**) would *fully extend[] from adjacent the substantially flat top* (flat top 4 of lid part 3) *to the bottom edge of the lid* (bottom edge of lid part 3), because Beese teaches that the label "may [] be extended as far as the bottom edge of the front part 33 of the lid part 3." Ex.1009, [0030].



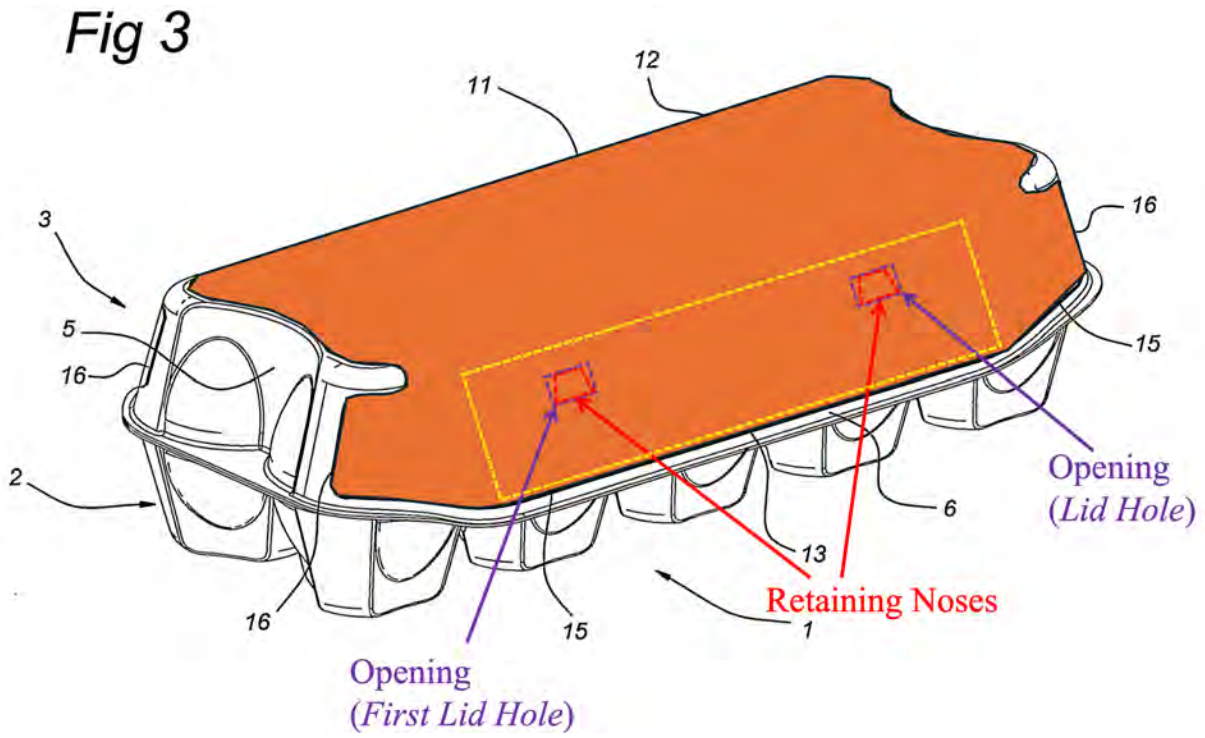
Ex.1010, Fig. 3 (annotated and modified)

188. Thus, Post and Beese render obvious that *the first flat portion of the label* (flat portion of label on front part 6 of Post's lid part 3) *fully extends from adjacent the substantially flat top* (label extends from flat top of lid part (at central part 12 of label 11)) *to the bottom edge of the lid* (label extends to bottom edge of Post's lid part 3, as taught by Beese).

c) Claim 3

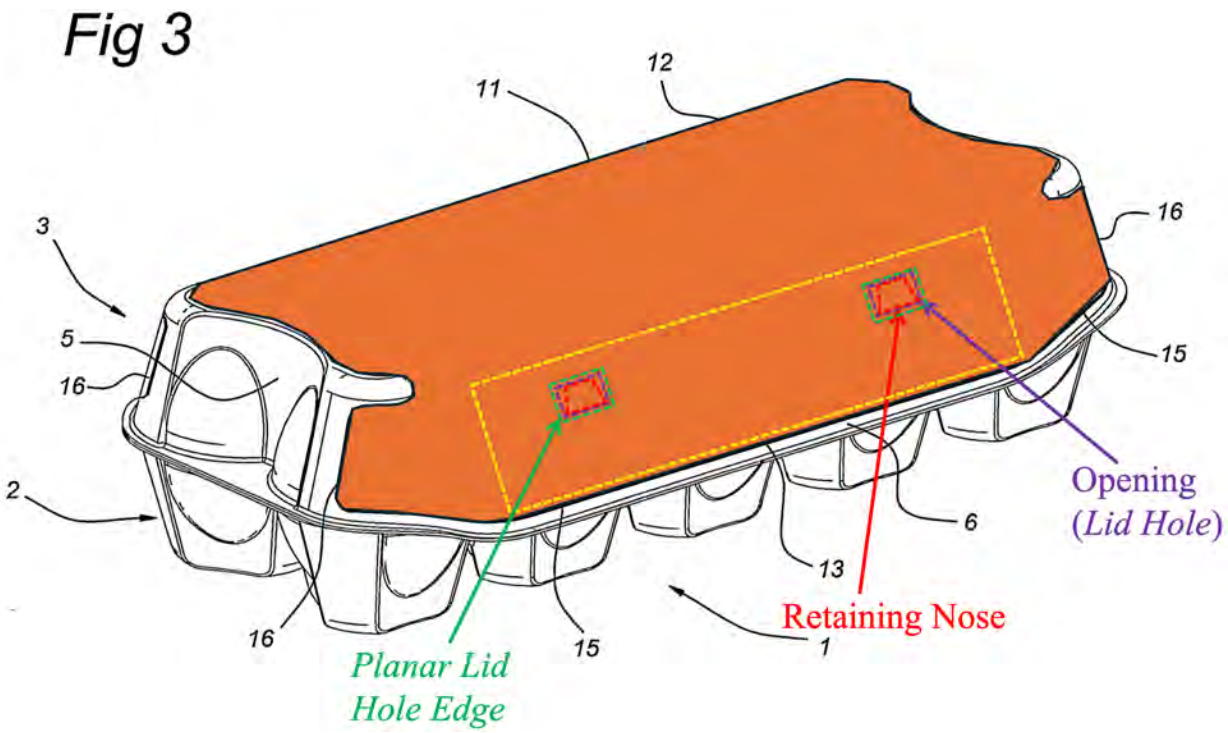
[3.0] The container of claim 1 wherein the first lid hole is fully circumscribed by a planar lid hole edge of the substantially planar lid area.

189. Post and Beese render obvious limitation [3.0]. As described above for limitation [1.5.6], the Post-Beese combination includes openings (**purple**) (*first lid hole*, e.g., opening on left) that interact with Beese's retaining noses (**red**). In the Post-Beese combination, the openings (each a *lid hole*) are *fully circumscribed by a substantially planar lid area* (yellow dotted rectangle), as shown in Post's Fig. 3, below.



Ex.1010, Fig. 3 (annotated and modified)

190. Post's Fig. 3 is further annotated below to show that the openings (**purple**) (each a *lid hole*) are *fully circumscribed by a planar lid hole edge* (**green** dotted rectangle surrounding the openings (**purple**)) *of the substantially planar lid area* (yellow dotted rectangle). Thus, the opening on the left (*first lid hole*), for example, *is fully circumscribed by a planar lid hole edge* (**green** dotted rectangle surrounding the openings (**purple**)) *of the substantially planar lid area* (yellow dotted rectangle), as shown in Post's Fig. 3, below.



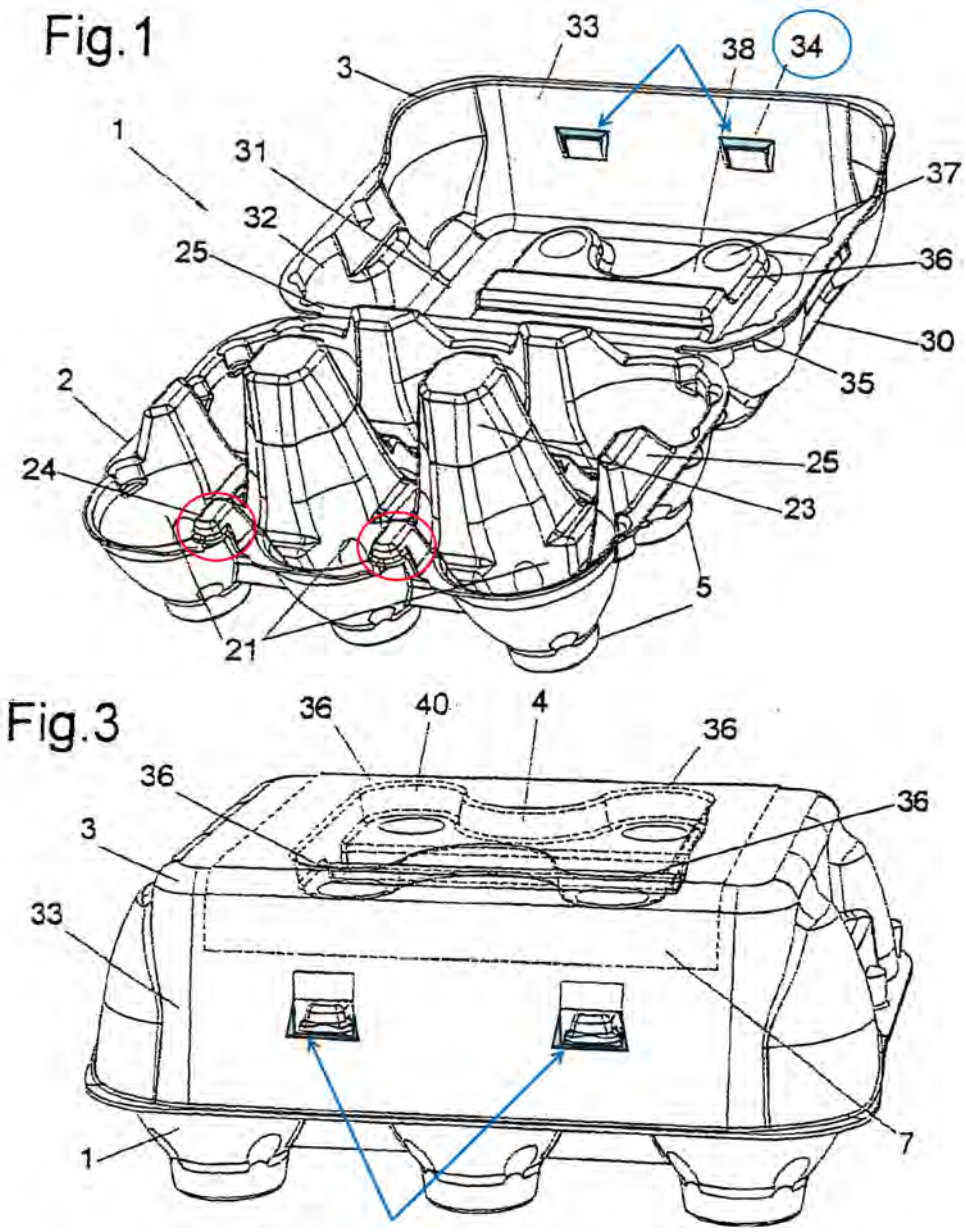
Ex.1010, Fig. 3 (annotated and modified)

d) 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

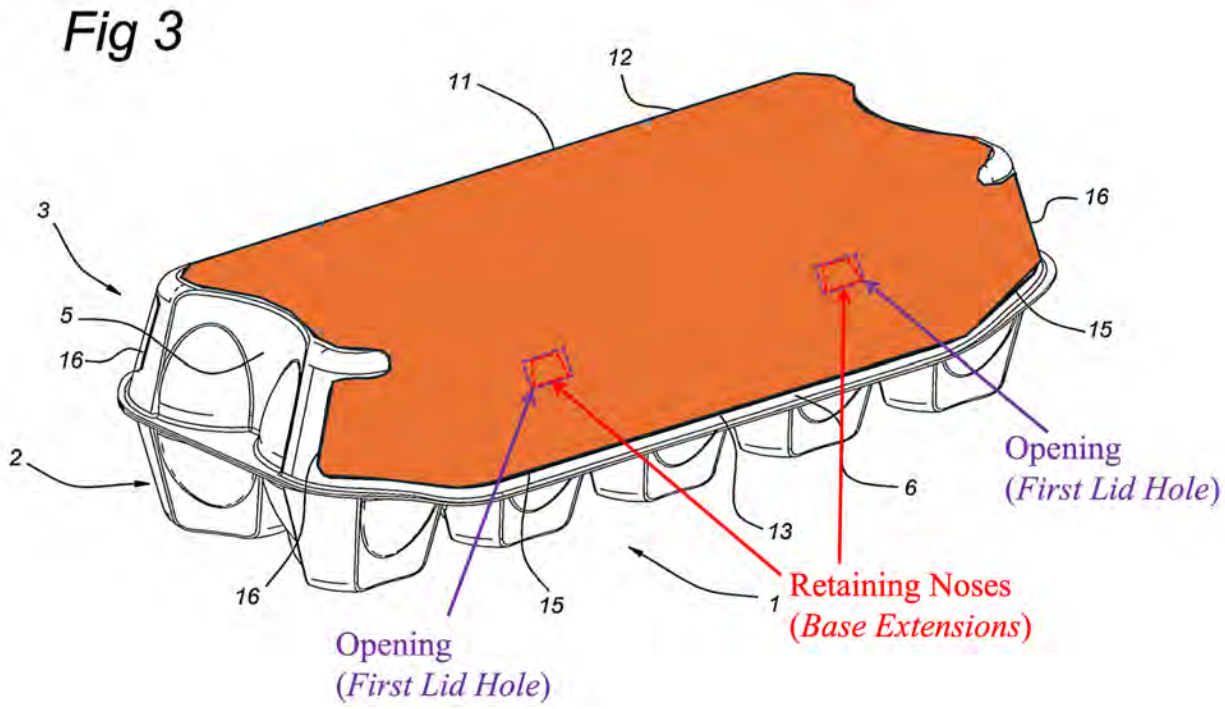
191. Post and Beese render obvious limitation [4.0]. As described above for limitation [1.6.2], Beese's retaining noses 24 in Post's container 1 render obvious the claimed *base extension*. Further, as described above for limitation [1.5.6], Beese's openings in the front part 6 of Post's lid part 3 render obvious the claimed *first lid hole*, as shown in modified Post Fig. 3 below (Post-Beese combination). Beese discloses that the retaining noses 24 interact with openings on the front part of the lid part. Ex.1009, [0027] ("The front part 33 contains two openings 34, which

are intended for interacting with the [retaining] noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2."). As shown in Beese's Figs. 1 and 3, below, the retaining noses 24 (red) have a front portion that extends away from the bottom part 2 and interacts with openings 34 in the front part 33 of the lid part 3 by resting on a ledge (**blue**) at the base of the opening 34 when the container is in the closed position (Fig. 3). Thus, Beese's retaining noses 24 each respectively extend through one of the openings 34 and rest on the ledge (**blue**) at the base of the opening 34 to lock the container, as shown in Fig. 3 (*see also* Beese's Figs. 2 and 4 showing the retaining noses 24 interacting with the openings 34 when the container is in the closed position).



Ex.1009, Figs. 1 & 3 (annotated)

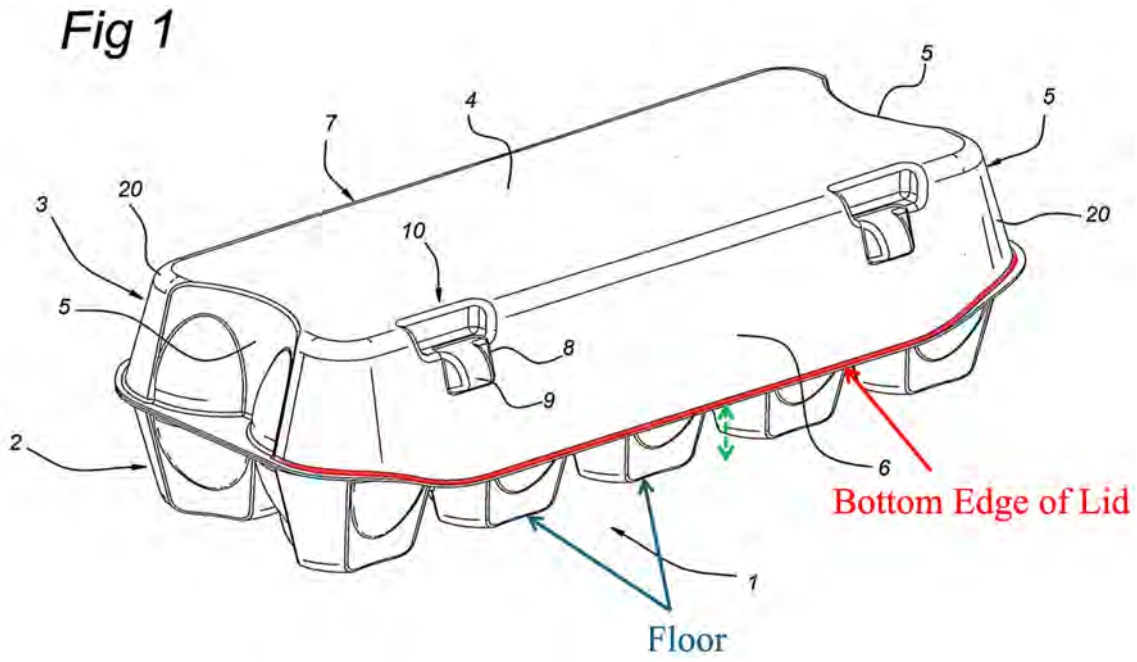
192. Likewise, in the Post-Beese combination, Beese's *base extension* (retaining noses 24) (**red**) *extends into the first lid hole* (openings) (**purple**) *when the lid is in the closed position*, as shown in Post's annotated Fig. 3 below.



Ex.1010, Fig. 3 (annotated and modified)

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

193. Post discloses limitation [4.1]. As shown in Fig. 1, below, *the bottom edge* of Post's *lid* (bottom edge of lid part 3) (**red**) *is distant from* (i.e., displaced from) (**green** arrow) *the floor* (**blue**) *when the lid* (lid part 3) *is in the closed position*.

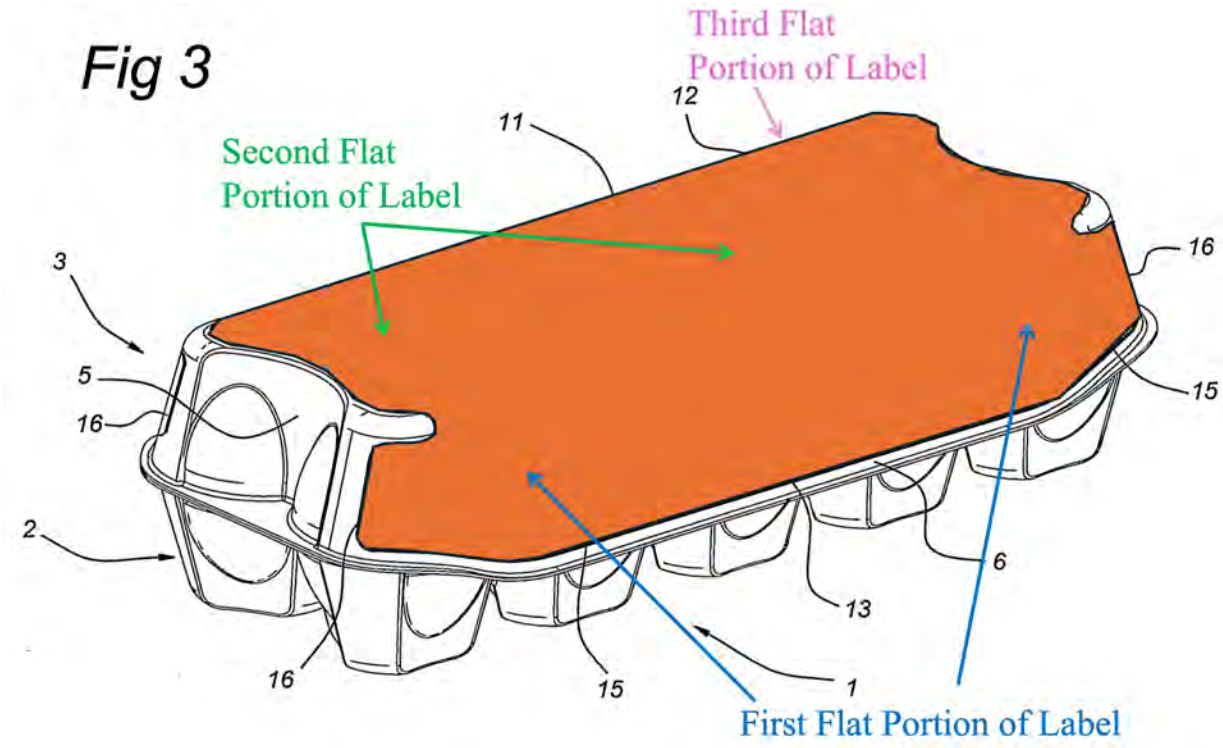


Ex.1010, Fig. 1 (annotated)

e) 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,

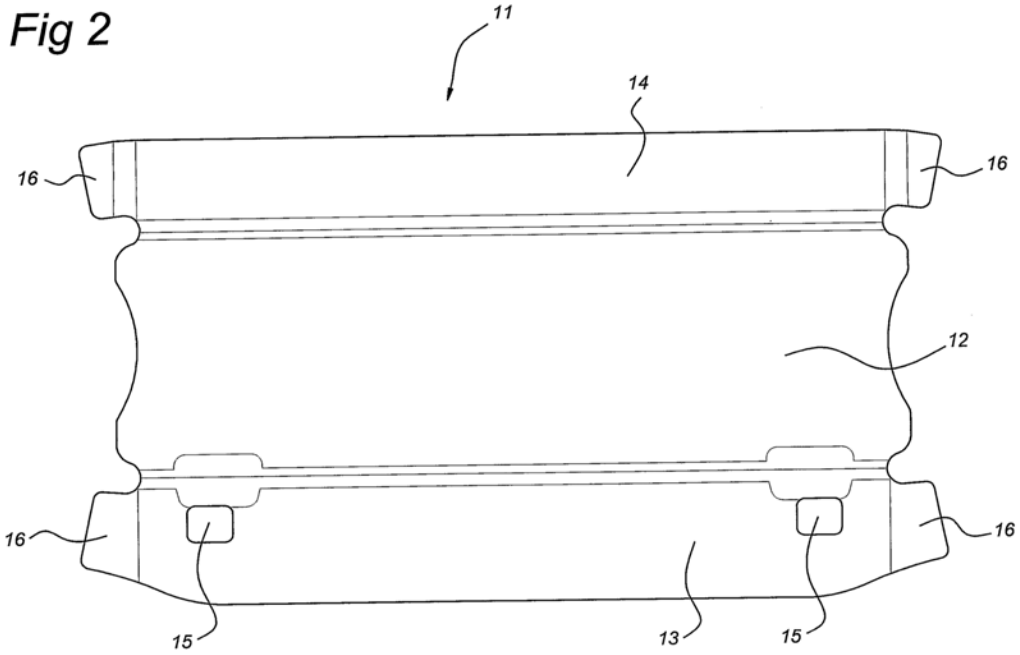
194. Post and Beese render obvious limitation [5.0]. As described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post in view of Beese so that Post's label entirely covers the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). As described above for limitation [1.7.2], Post's label (**orange**) in the Post-Beese combination has *a first flat portion* (portion that covers front part 6 of lid part 3) (**blue**), as shown in Post's Fig. 3, below.



Ex.1010, Fig. 3 (annotated and modified)

195. As shown in Post's Fig. 3, above, the *label* in the Post-Beese combination also has *a second flat portion* (**green**) *located between a third flat portion* (**pink**) *and the first flat portion of the label* (**blue**). As shown in Fig. 2, below, Post's label 11 includes a front flap 13 (*first flat portion of the label*) that covers the front part 6 of the lid part 3, a central part 12 (*second flat portion of label*) that covers the flat top part 4 of the lid part 3, and a rear flap 14 (*third flat portion of label*) that covers the rear wall 7 of the lid part 3 (rear wall 7 labeled in Post's Fig. 1). Ex.1010, 3 ("A flat sheet that has to be applied as label to the lid part 3 is shown in Fig. 2. This 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 ("The 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….").



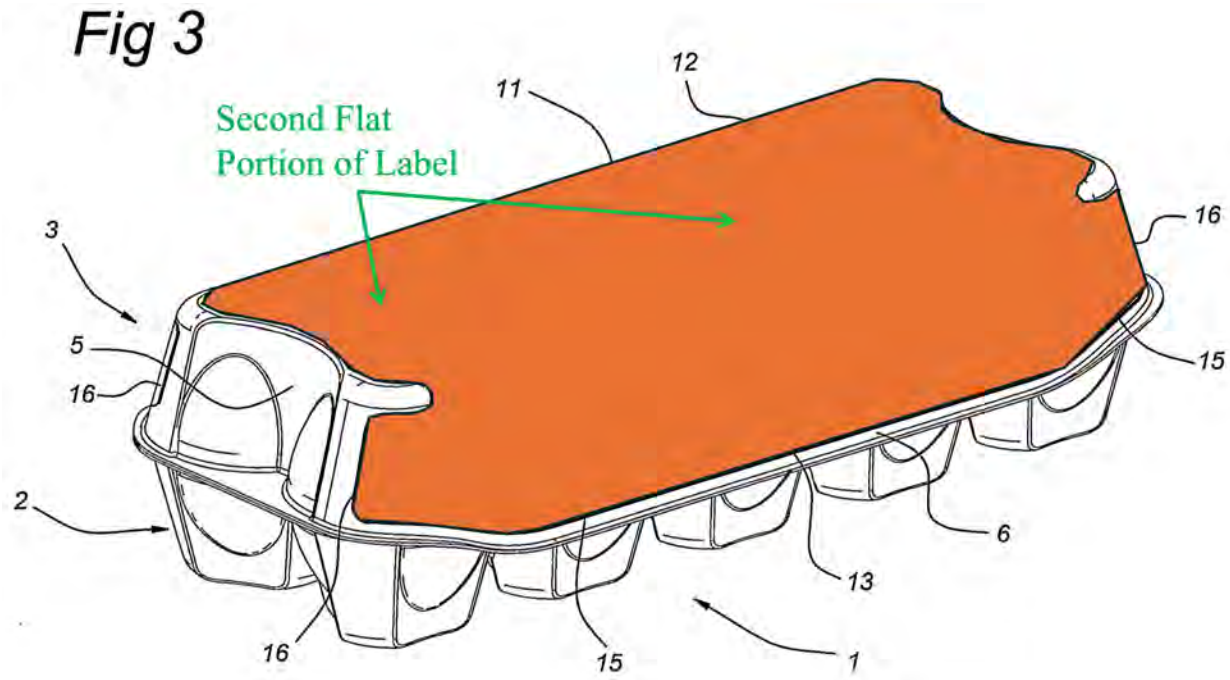
Ex.1010, Fig. 2

196. Thus, in the Post-Beese combination where Post's label is extended to the bottom edge of the front part 6 of the lid part 3, *the label* (**orange**) *has a second flat portion* (**green**) *located between a third flat portion* (**pink**) *and the first flat portion* (**blue**) *of the label*, as shown in Post's Fig. 3 above.

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

197. Limitation [5.1] is rendered obvious by the Post-Beese combination. As shown in Post's Fig. 3, below, in the Post-Beese combination, *the second flat portion*

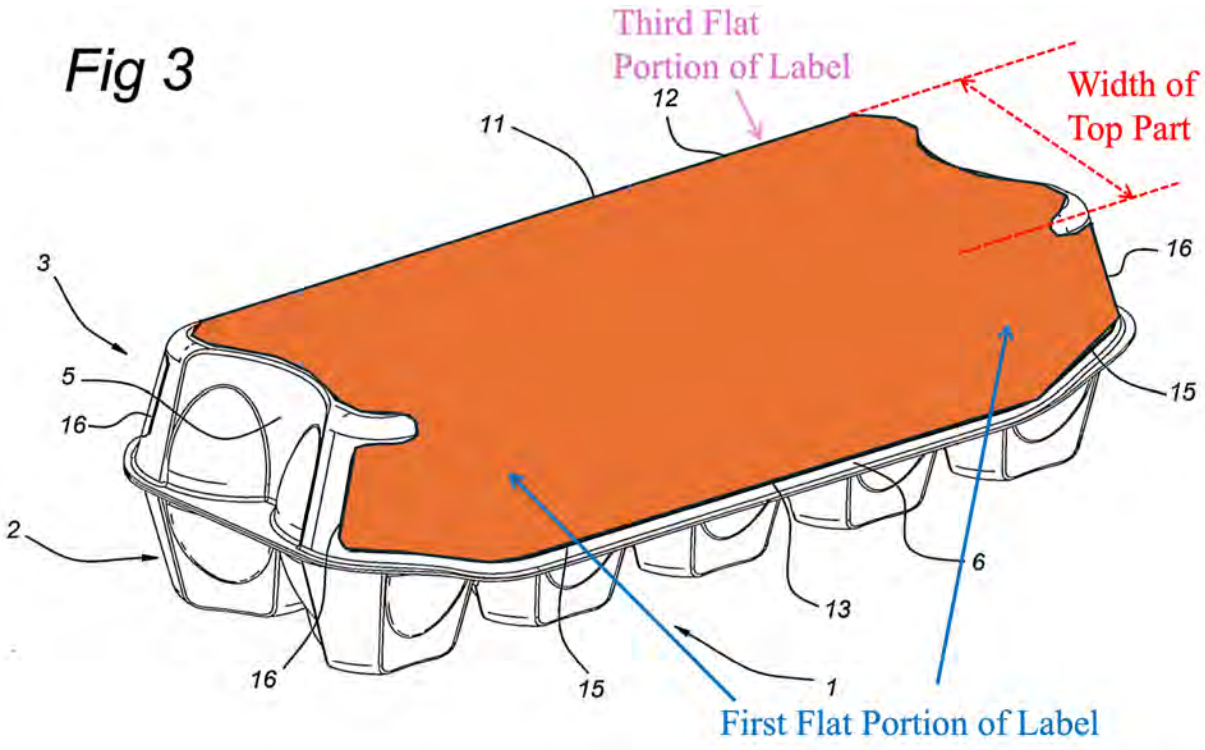
(**green**) *is located on the substantially flat top* (top part 4, labeled in Post's Fig. 1) *of the lid* (lid part 3). Thus, the Post-Beese combination renders obvious limitation [5.1].



Ex.1010, Fig. 3 (annotated and modified)

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

198. Limitation [5.2] is rendered obvious by the Post-Beese combination. As shown in Post's Fig. 3, below, *the first flat portion* (**blue**) of the label *is separated from the third flat portion* (**pink**) *by the width of the substantially flat top* (flat top part 4) *of the lid* (width from front side to rear side of top part 4 of lid part 3).



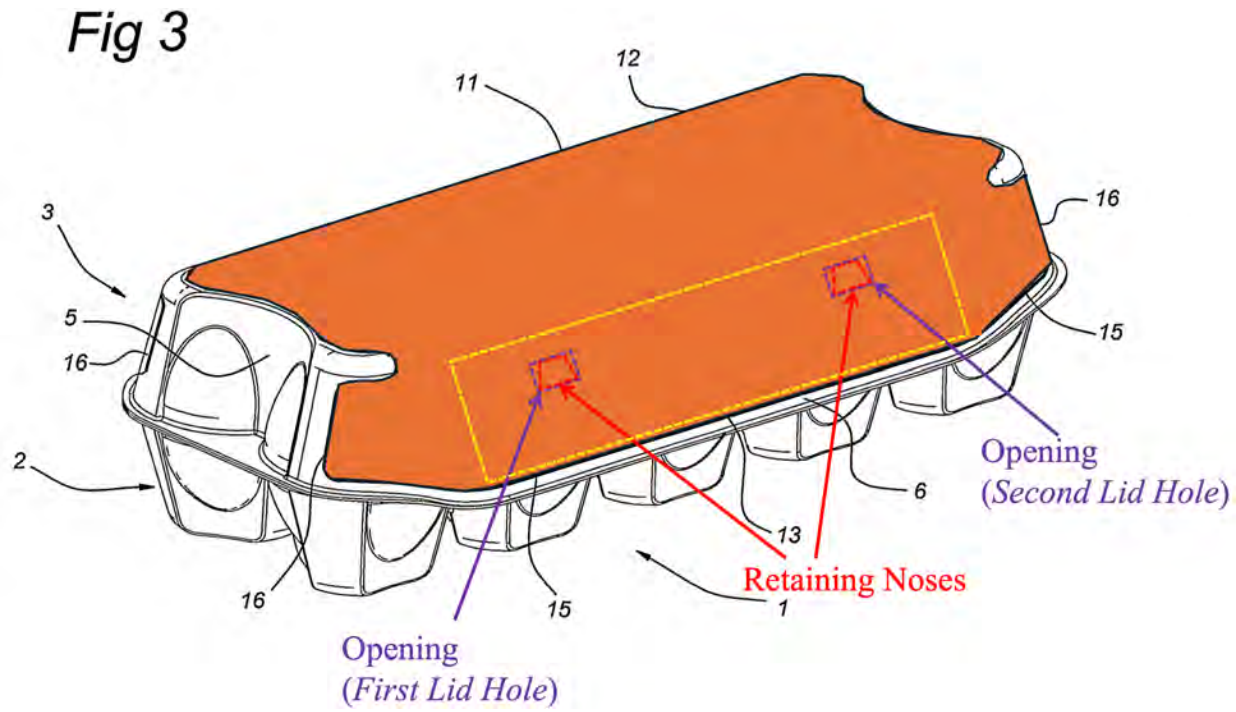
Ex.1010, Fig. 3 (annotated and modified)

f) 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.

199. The Post-Beese combination renders obvious limitation [6.0]. **First**, as described above for limitation [1.5.6], the openings in Post's lid part 3 in the Post-Beese combination are each a *lid hole*. Thus, as shown in Fig. 3, below, the opening (**purple**) on the left side is the *first lid hole* and the opening (**purple**) on the right side is a *second lid hole*. The first and second lid holes (openings on left and right)

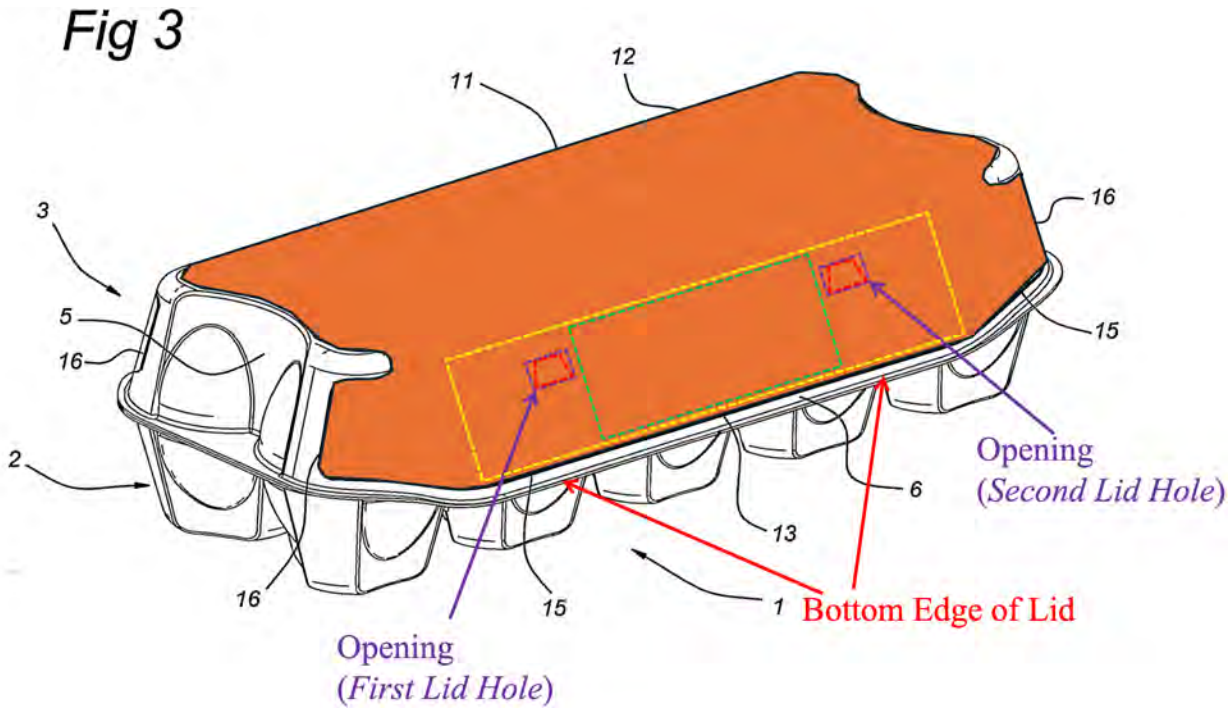
(**purple**) are each within *the substantially planar lid area* (yellow dotted rectangle), as shown in Post's Fig. 3, below.



Ex.1010, Fig. 3 (annotated and modified)

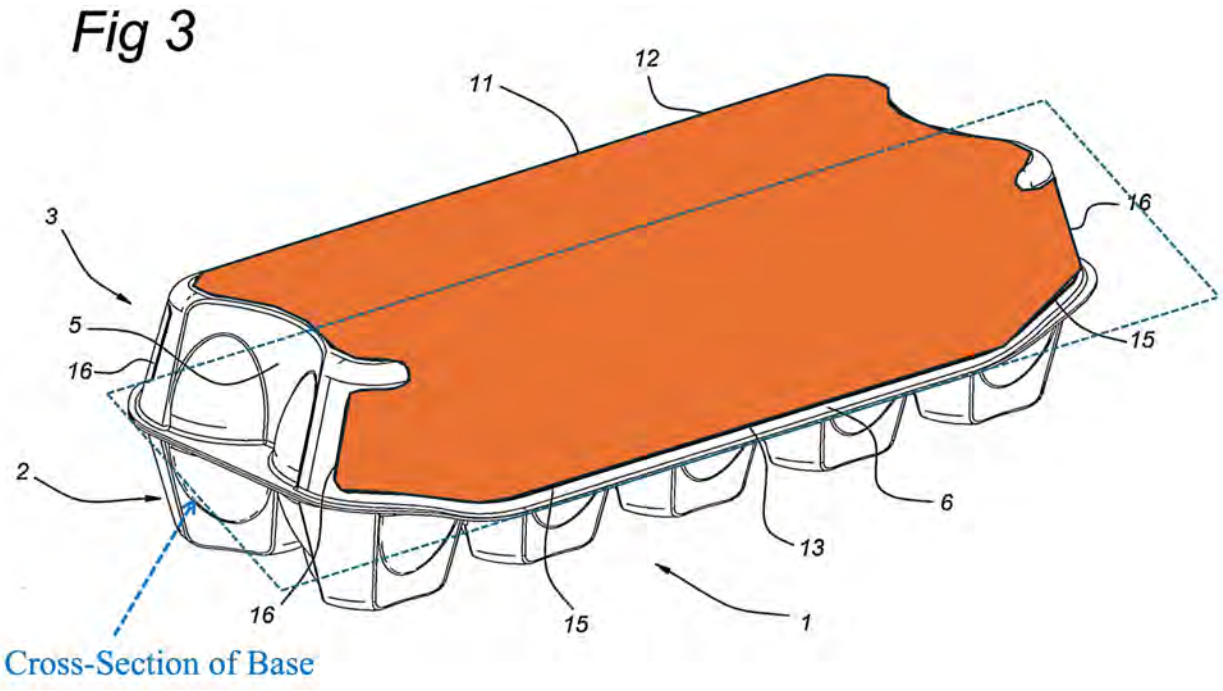
200. **Second**, as shown in Fig. 3, below, *the bottom edge of the lid* (**red**) *extends from nearly adjacent the first lid hole* (opening on left) (**purple**) *to nearly adjacent [the] second lid hole* (opening on right) (**purple**) *in the substantially planar lid area* (yellow dotted rectangle) *of the substantially planar frontal extension* (**green** dotted rectangle). As described above for limitations [1.5.2] and [1.5.4], the *substantially planar frontal extension* (**green** dotted rectangle) is the portion of Post's front part 6 that extends between the openings in the front part 6 (**purple** openings in the Post-Beese combination). As shown in Fig. 3, *the bottom edge of the*

lid extends from nearly adjacent the first lid hole (opening on left) (**purple**) *to nearly adjacent [the] second lid hole* (opening on right) (**purple**), because the bottom edge of the lid (**red**) is below and therefore *nearly adjacent* the openings (**purple**).



Ex.1010, Fig. 3 (annotated and modified)

201. **Third**, in the Post-Beese combination, Post's *base* (bottom part 2) *has a rectangular cross section*, as shown in Fig. 3, below, because the bottom part 2 is designed in a rectangular shape with cavities to hold food products (e.g., eggs) in a tray-like configuration. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").

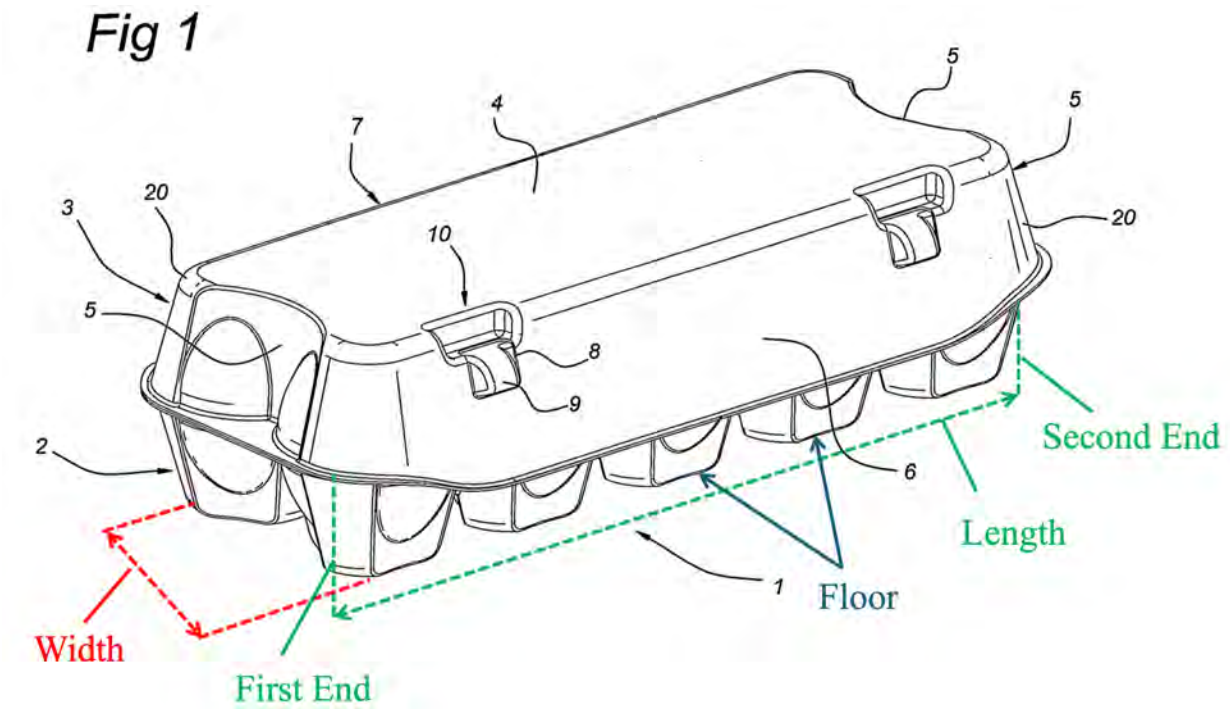


Ex.1010, Fig. 3 (annotated and modified)

g) 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

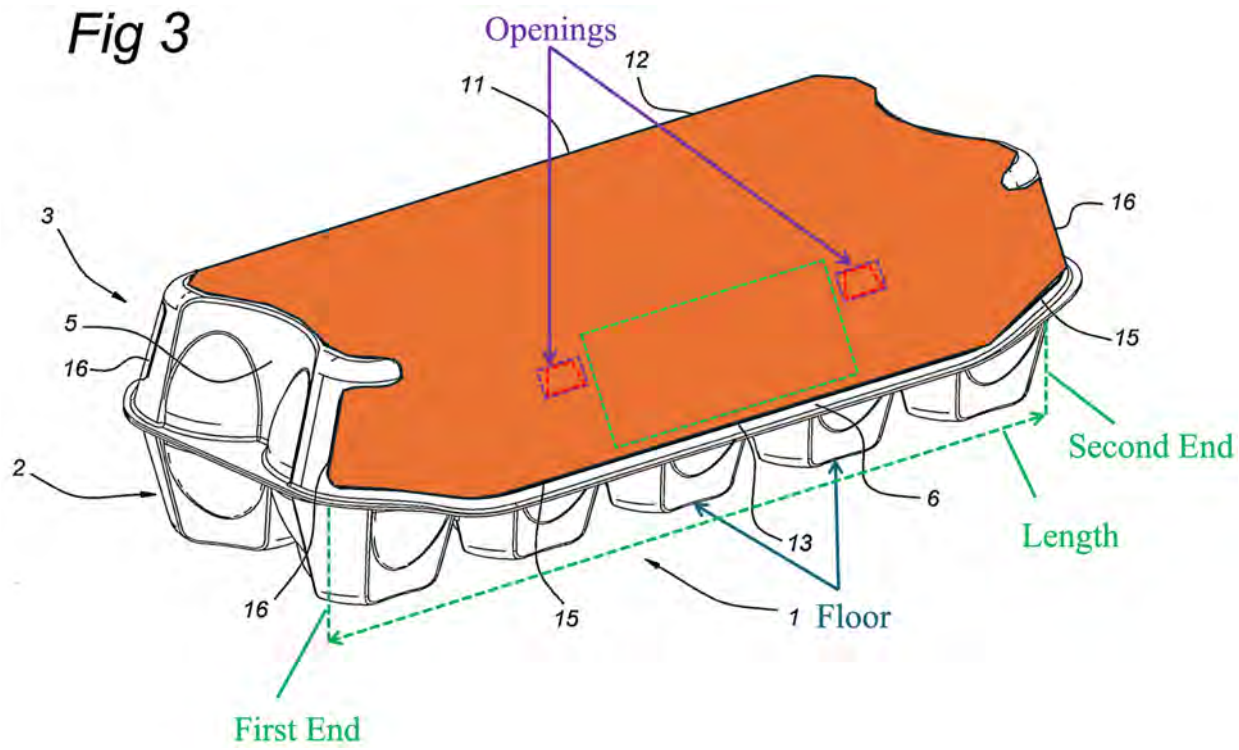
202. Post discloses limitation [8.0]. As shown in Fig. 1, below, *the floor of the base* (floor of bottom part 2) *has a length* (**green**) *and a width* (**red**), *wherein the length of the floor is bounded by a first end* (e.g., end on left) *and a second end* (e.g., end on right).



Ex.1010, Fig. 1 (annotated)

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

203. The Post-Beese combination renders obvious limitation [8.1]. As described above for limitations [1.5.2] and [1.5.4], the *substantially planar frontal extension* (**green** dotted rectangle) is the portion of Post's front part 6 that extends between the openings in the front part 6 (**purple** openings in the Post-Beese combination), as shown in Fig. 3, below. With reference to Fig. 3, below, *the substantially planar front extension* (**green** dotted rectangle) *fully extends the length of the floor*, because the *substantially planar front extension* (**green** dotted rectangle) is entirely between the first end and the second end of the length of the floor.



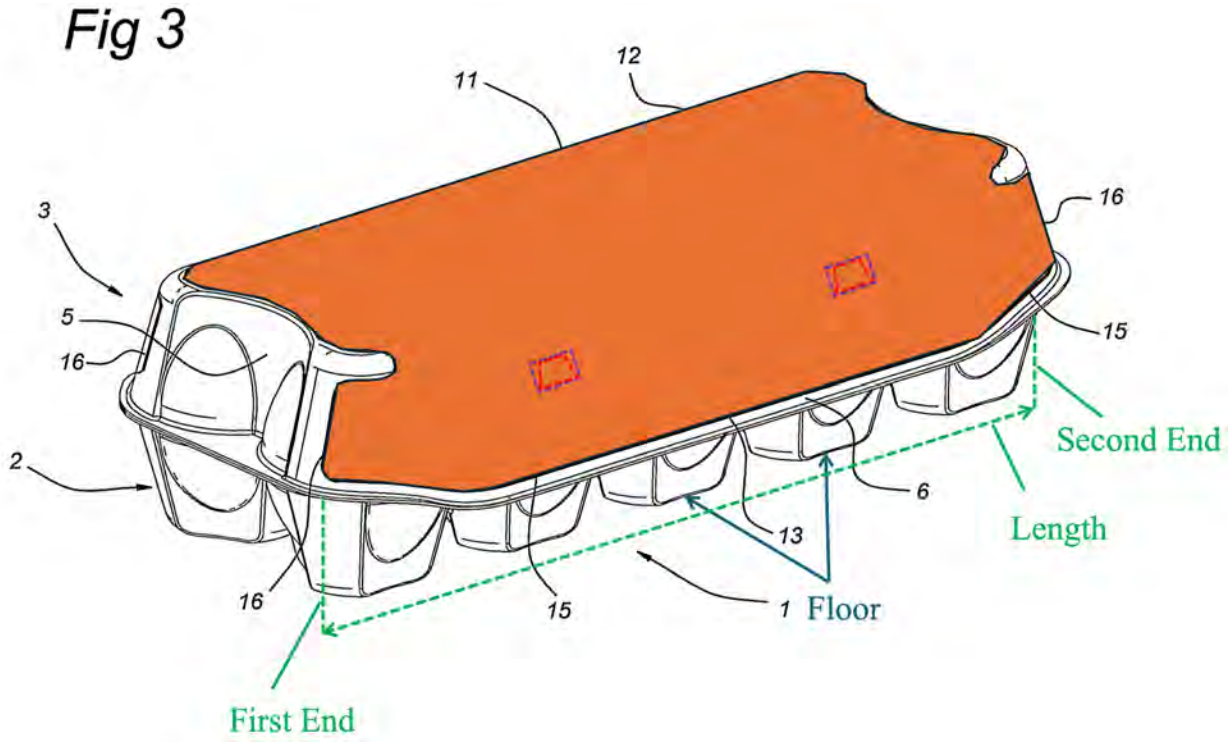
Ex.1010, Fig. 3 (annotated and modified)

h) Claim 9

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

204. The Post-Beese combination renders obvious limitation [9.0]. As shown in Post's Fig. 3, below, *the label* (**orange**) in the Post-Beese combination *fully extends the length of the floor* (**green** length) because the label is entirely between the outer edges of lips 16 of the label, which are between the first and second ends of the length of the floor. Ex.1010, 3 ("Lips 16 extend on either side from the front flap 13 and from the rear flap 14."). While the right lip 16 is somewhat obscured in Post's Fig. 3, a POSITA would understand that the right lip 16 would

be placed in the same position as the left lip 16, which terminates before the first end of the length of the floor, as shown in Fig. 3. Thus, the right lip 16 ends before the second end of the length of the floor.



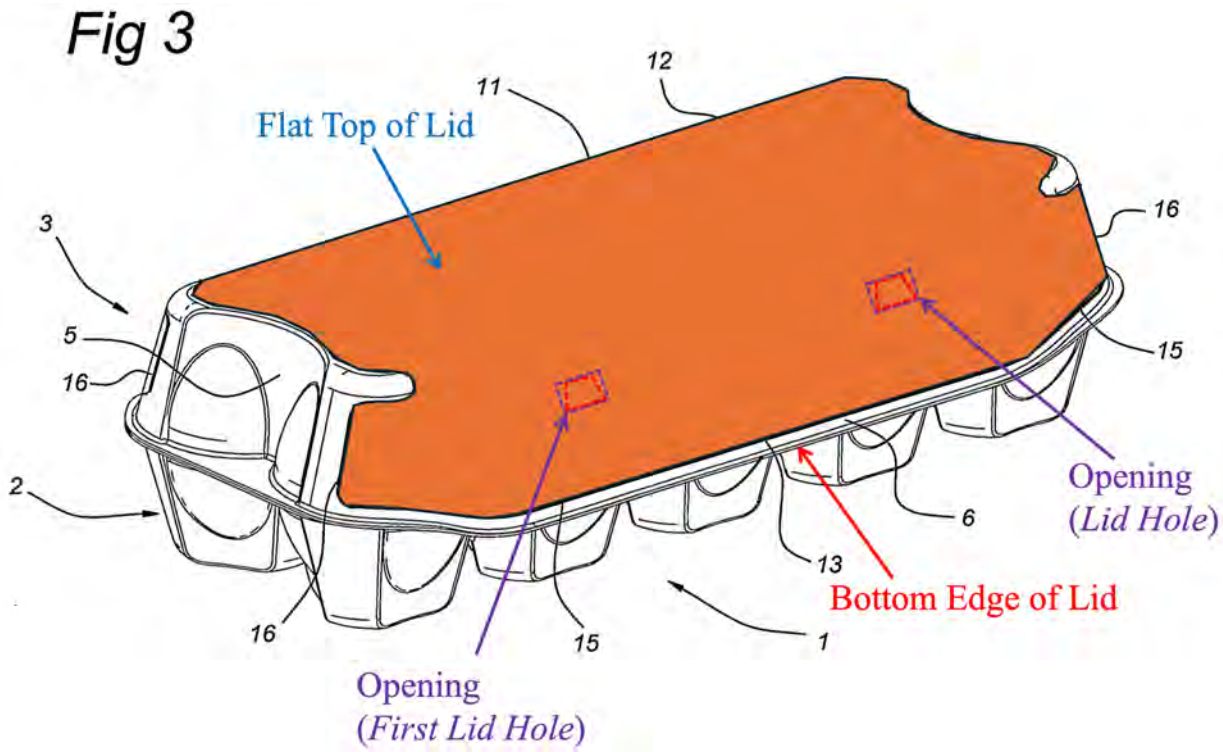
Ex.1010, Fig. 3 (annotated and modified)

i) 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

205. The Post-Beese combination renders obvious limitation [10.0]. **First**, as described above for limitation [1.5.6], the openings in Post's lid part 3 in the Post-Beese combination are each a *lid hole*. Thus, as shown in Fig. 3, below, the opening (**purple**) on the left side is the *first lid hole*, as discussed above for limitations [1.5.6]

and [6.0]. As shown in Fig. 3, *the first lid hole* (**purple** opening) *is entirely located between the bottom edge of the lid* (**red**) *and the substantially flat top of the lid* (**blue**) (top part 4, shown in Fig. 1).

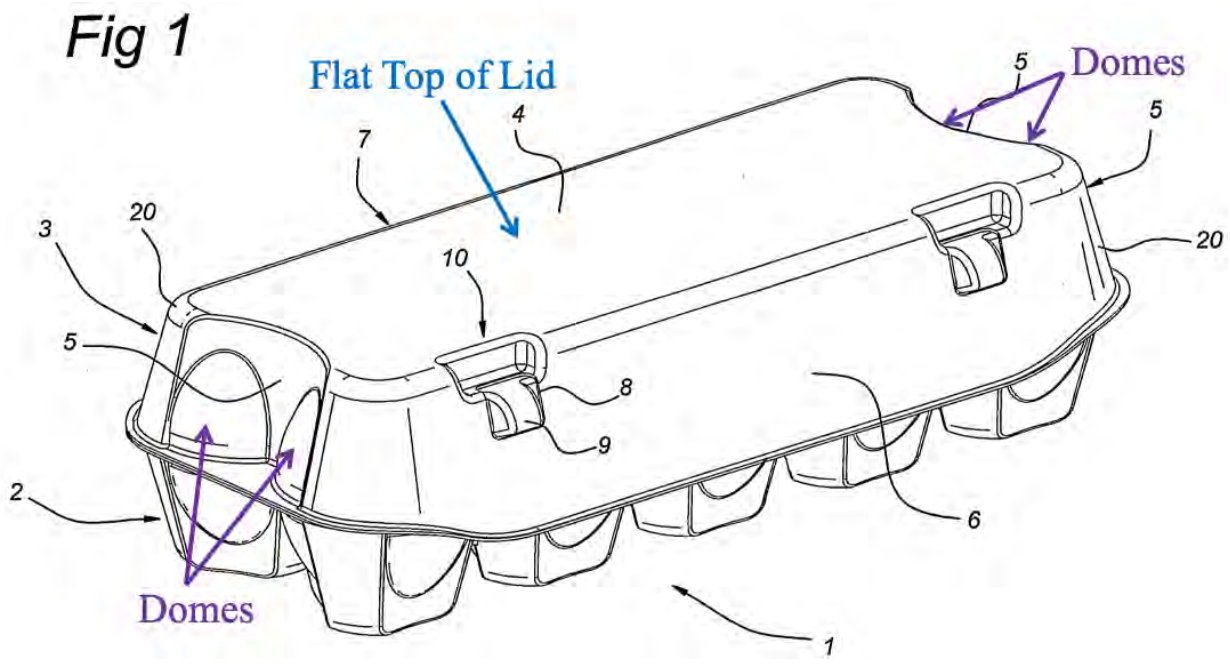


Ex.1010, Fig. 3 (annotated and modified)

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

206. Post discloses limitation [10.1]. As shown in Fig. 1, below, Post's *lid* (lid part 3) *includes a plurality of domes* (**purple**) *adjacent to and flanking the substantially flat top* (top part 4) *of the lid part 3*, because the lid part 3 includes cavities for holding eggs that respectively correspond to the cavities in the bottom part 2. The domes (**purple**) are illustrated on the left side of the lid part 3 in Fig. 1.

A POSITA would understand that there are also domes on the right side of the lid part 3 that correspond to the domes in the bottom part 2. As shown in Fig. 1, the rightmost cavity in the bottom part 2 includes a cavity for holding eggs. Accordingly, a POSITA would understand that there are also domes on the right side of the lid part 3, i.e., both sides of the lid part 3. Therefore, Post teaches *a plurality of domes adjacent to and flanking* (on both sides of) *the substantially flat top* (top part 4) (**blue**).



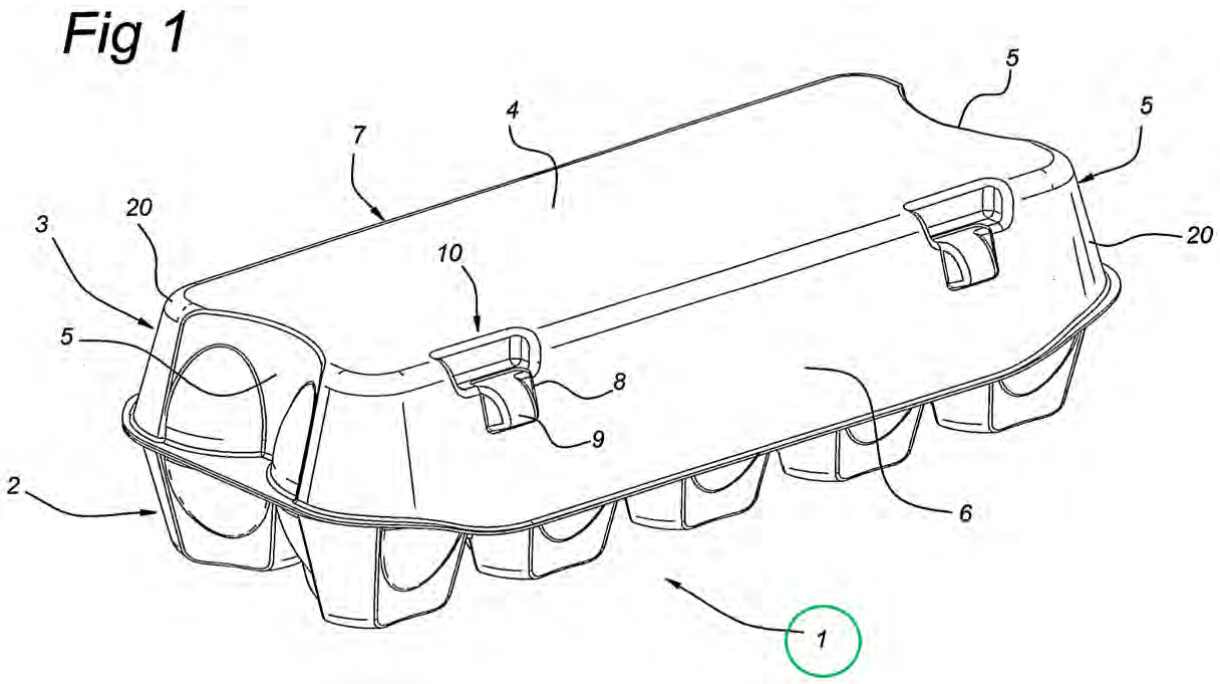
Ex.1010, Fig. 1 (annotated)

j) Claim 11

[11.0] A container for packaging a product,

207. To the extent that the preamble is limiting, Post discloses it.

208. Post is directed to "a container for packaging foods." Ex.1010, 1. Post's container is illustrated as being configured to hold eggs, but Post indicates that its container may be configured to hold other food products. Ex.1010, 1 ("The present invention more particularly relates to an egg tray, but it must be understood that the invention can also be applied to other containers for packaging foods such as vegetables, fruit and the like."). Post's Fig. 1, below, illustrates a container 1 configured to hold eggs. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1.").

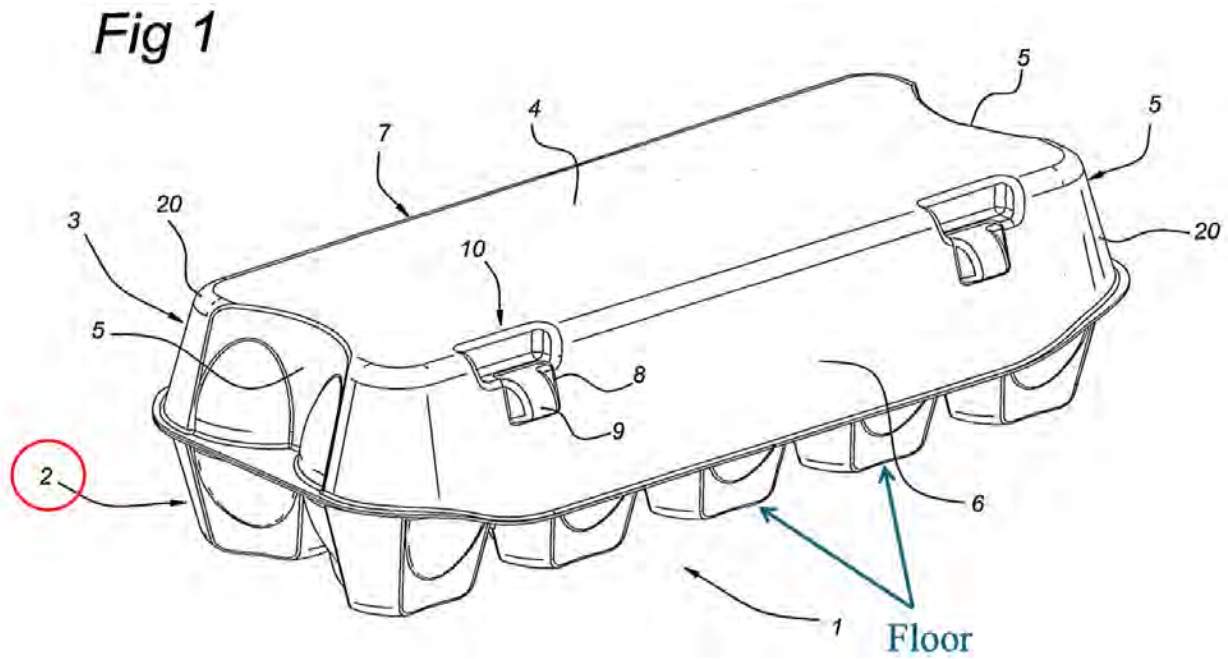


Ex.1010, Fig. 1 (annotated)

209. Thus, Post discloses *a container* (container 1) *for packaging a product* (e.g., eggs).

[11.1] the container comprising: a base having a floor;

210. With reference to Fig. 1 below, Post's container 1 has a "bottom part 2" (the claimed *base*) having a bottom surface (the claimed *floor*) on which food products (e.g., eggs) would rest. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").



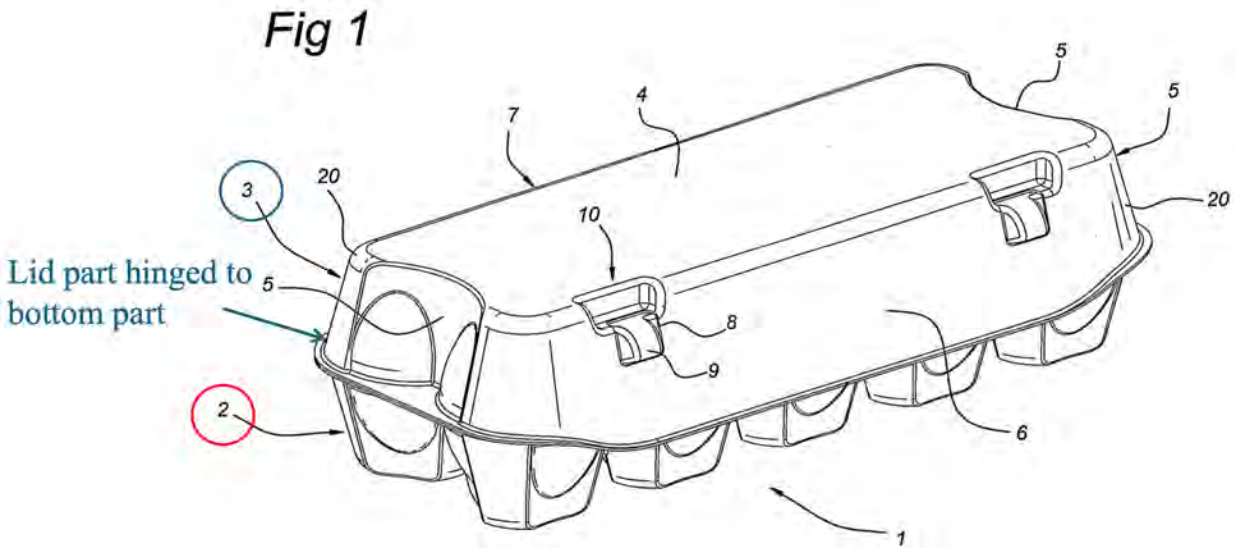
Ex.1010, Fig. 1 (annotated)

211. Thus, Post discloses the container comprising: *a base* (bottom part 2) *having a floor* (bottom surface of bottom part 2).

[11.2.1] [the container comprising:] a lid moveable about a hinge with respect to the base from: a substantially open position to a substantially closed position,

212. Post discloses or at least renders obvious limitation [11.2.1].

213. **First**, as shown in Fig. 1, below, Post's container 1 includes a lid part 3 (the claimed *lid*) that is hinged to the bottom part 2 (the claimed *base*). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray…is indicated by 1. This [container] consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto."). Thus, Post discloses that the container comprises *a lid* (lid part 3) *movable about a hinge* (hinge joining lid part 3 to bottom part 2) *with respect to the base* (bottom part 2).



Ex.1010, Fig. 1 (annotated)

214. **Second**, Post discloses or at least renders obvious that the *lid* (lid part 3) is *movable about a hinge* (hinge joining lid part 3 to bottom part 2)…*from[] a*

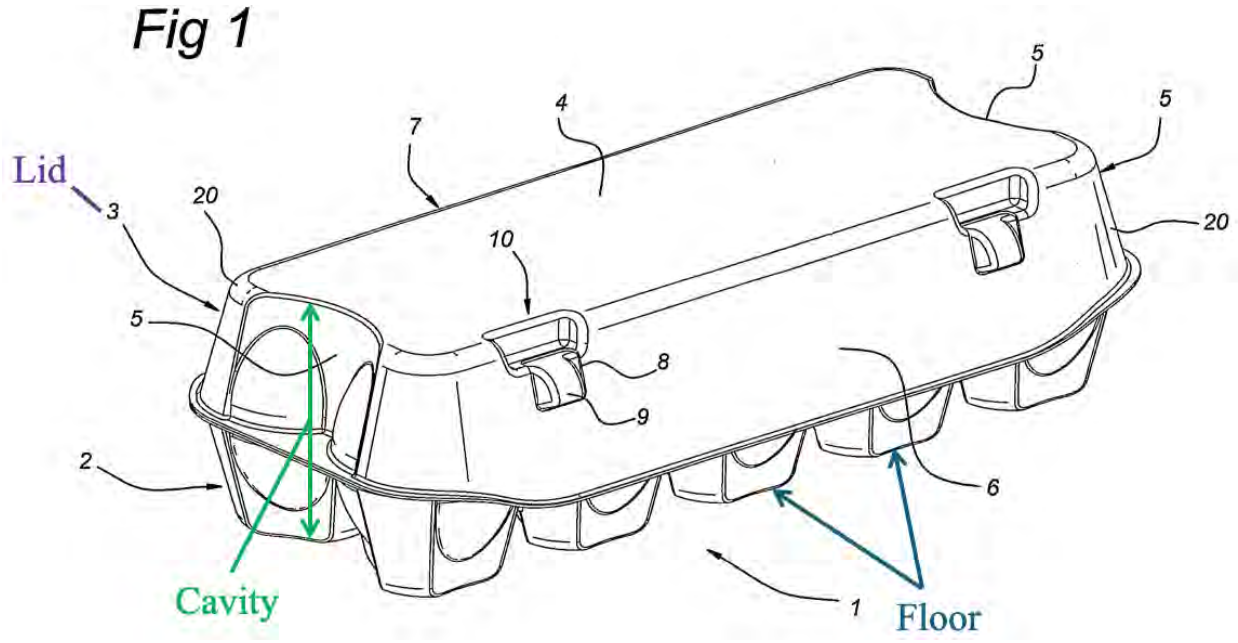
substantially open position to a substantially closed position. Fig. 1 illustrates the container 1 in a *closed position*. A POSITA would understand for at least two reasons that Post's container 1 is moved from the *closed position* shown in Fig. 1 to an *open position*, and vice versa, to allow a person to access the food products (e.g., eggs) housed in the container 1. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray…is indicated by 1."). First, as noted above, Post teaches that the lid part 3 is hinged to the bottom part 2, which allows the lid part 3 to be opened relative to the bottom part 2. Ex.1010, 3 ("A hinged lid part 3 is joined" to the bottom part 2), 1 ("The present invention relates to a container for packaging foods, comprising a bottom part and a hinged lid part joined thereto."). Second, as shown in Figure 1, above, Post's container 1 has a locking mechanism including closing projections 9 on the bottom part 2, and openings 8 on the lid part 3. This locking mechanism is provided to enable a person to lock (close) the container and open the container by disengaging the closing projections 9 from the openings 8 and moving the front wall 6 of the lid part 3 outward. Ex.1010, 3 ("The lid part 3 can be unlocked from the bottom part 2 by depressing closing projections 9 and moving front wall 6 forwards."). Thus, Post discloses or at least renders obvious *a lid* (lid part 3) *moveable about a hinge* (hinged lid part 3) *with respect to the base* (bottom part 2) *from: a substantially open position* (disengaging closing projections 9 from openings

8 to open container 1) *to a substantially closed position* (container 1 in closed position in Fig. 1).

[11.2.2] wherein the substantially closed position substantially defines a cavity disposed substantially inside the container between the floor and the lid,

215. Post discloses limitation [11.2.2]. As described above for limitation [11.2.1], Post's container is illustrated in the *substantially closed position*. As described above with respect to limitations [11.1] and [11.2.1], Post's container 1 includes a *floor* (bottom surface of bottom part 2) and a *lid* (lid part 3).

216. As shown in Fig. 1, below, the *substantially closed position* (Fig. 1) *defines a cavity* (**green**) *disposed substantially inside the container between the floor* (bottom of bottom part 2) (**blue**) *and the lid* (lid part 3). The *cavity… between the floor* (bottom of bottom part 2) (**blue**) *and the lid* (**purple**) (lid part 3) is provided to hold food products (e.g., eggs). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which **cavities for accommodating eggs** are shown diagrammatically.").



Ex.1010, Fig. 1 (annotated)

217. Thus, Post discloses that *the substantially closed position* (Fig. 1) *substantially defines a cavity* (**green**) *disposed substantially inside the container between the floor* (bottom of bottom part 2) (**blue**) *and the lid* (lid part 3).

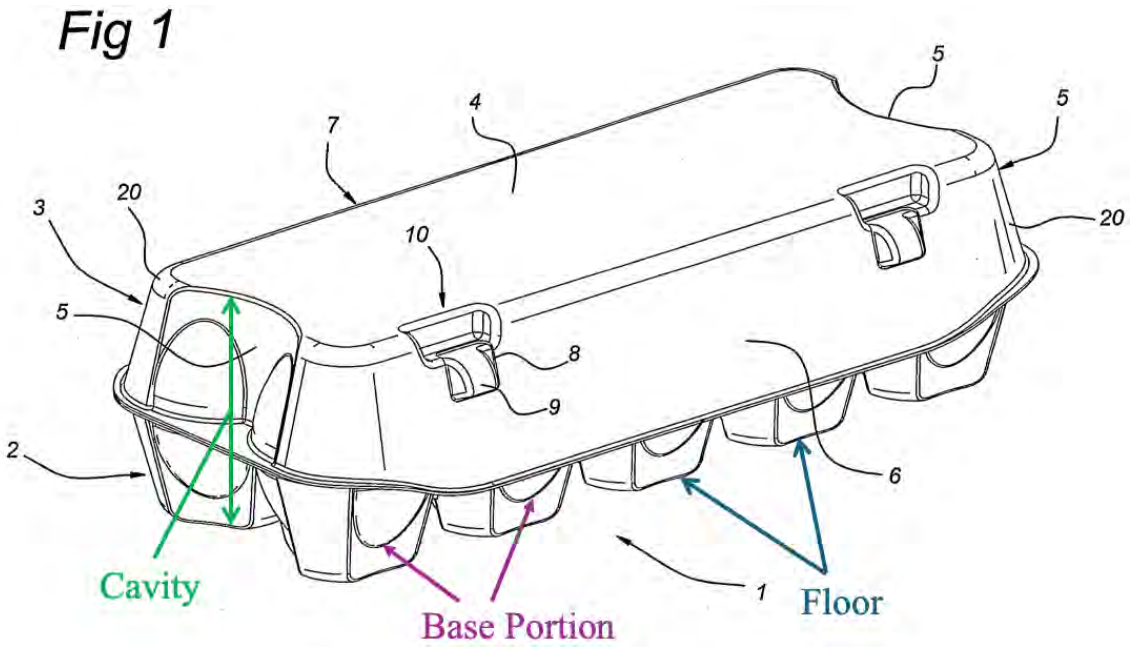
[11.2.3] the base and lid both formed from a container material;

218. Post discloses limitation [11.2.3]. Post discloses that its container 1, including the lid part 3 and bottom part 2, may be "made of moulded fibre material, that is to say of a water-paper/wood fibre mixture from which a container is produced by forming and drying." Ex.1010, 1; *see also id*., 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1."). Alternatively, Post's container 1 may be "made of plastic material, paper or

cardboard." Ex.1010, 1.Thus, Post discloses that *the base* (bottom part 2) *and lid* (lid part 3) *[are] both formed from a container material* (e.g., moulded fibre material).

[11.3.1] the cavity having a base portion of the cavity dimensioned to contain at least a first portion of the product disposed substantially inside the base, and

219. Post discloses limitation [11.3.1]. As discussed above for limitation [11.2.3], Post's container includes a *cavity* between the lid part 3 and the floor of the bottom part 2. The bottom part 2 is dimensioned with cavities to hold food products such as eggs. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which **cavities for accommodating eggs** are shown diagrammatically."). Thus, as shown in Fig. 1, below, *the cavity* (**green**) *ha[s] a base portion* (cavities formed in bottom part 2) (**purple**) *of the cavity* (**green**) *dimensioned to contain at least a first portion of the product* (e.g., bottom half of eggs housed in cavities) *disposed substantially inside the base* (bottom part 2).



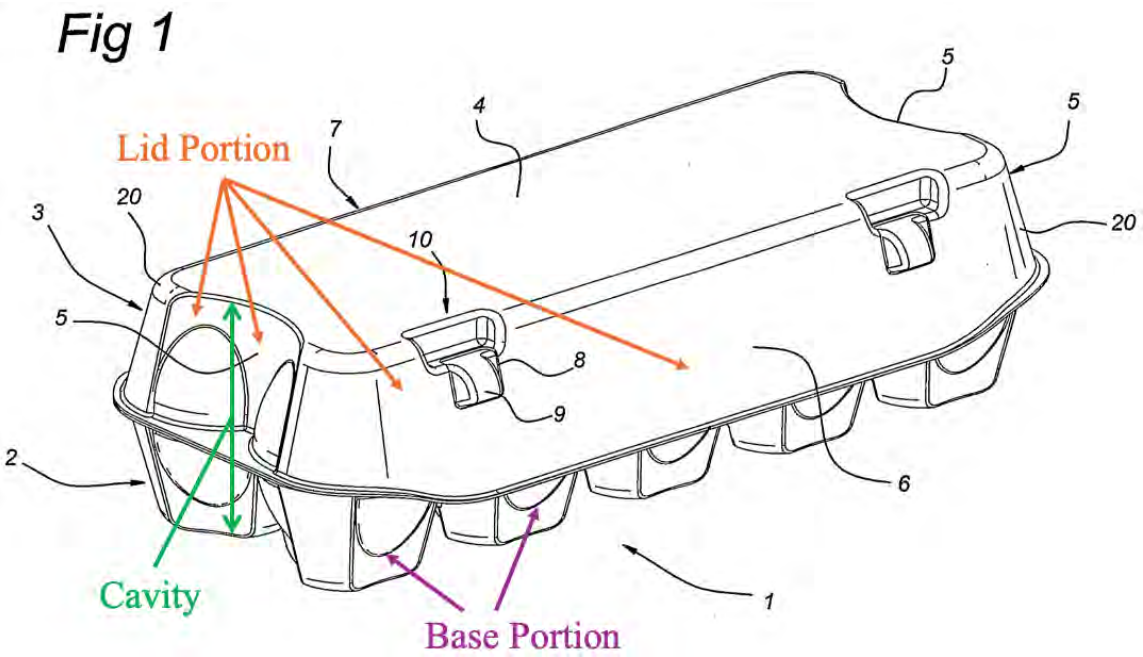
Ex.1010, Fig. 1 (annotated)

[11.3.2] [the cavity having] a lid portion of the cavity having a shape suitable to contain at least a second portion of the product disposed outside the base portion of the cavity when the lid is in the substantially closed position,

220. Post discloses limitation [11.3.2]. As shown in Fig. 1, below, Post's *cavity* (**green**) has a *lid portion* (a portion of the lid part 3) (**orange**) *having a shape suitable to contain at least a second portion of the product* (e.g., upper half of eggs housed in cavities) *disposed outside the base portion of the cavity when the lid* (lid part 3) *is in the substantially closed position* (Fig. 1). As shown in Fig. 1, the lid portions (e.g., side walls 5 and front wall 6) are dimensioned to accommodate a portion of the eggs in the container *outside the base portion* (i.e., above the base portion).

> In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto. The 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. 6 is the front wall, 7 the rear wall and 5 are the linking transverse walls. It can be seen from the drawing that the lid part is made essentially tray-shaped.

Ex.1010, 3.



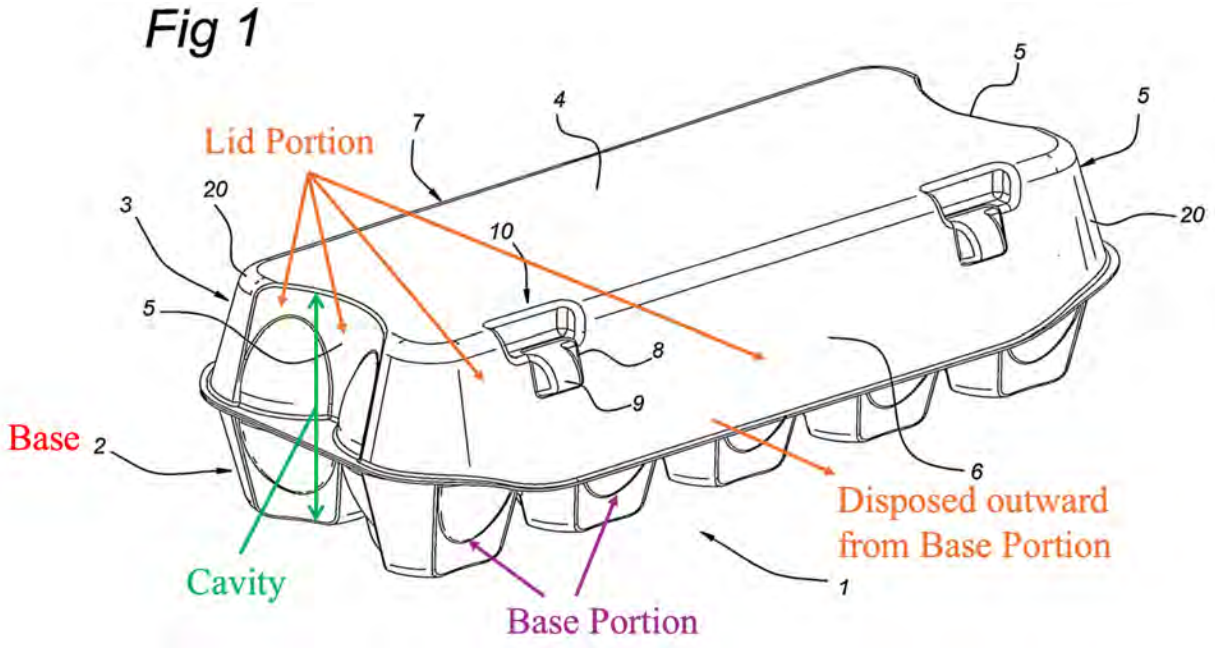
Ex.1010, Fig. 1 (annotated)

221. Thus, Post discloses limitation [11.3.2].

[11.3.3] wherein the lid portion of the cavity is disposed at least generally beyond the base and generally outward from the base portion of the cavity;

222. Post discloses limitation [11.3.3]. As shown in Fig. 1, below, *the lid portion* (**orange**) *of the cavity is disposed at least generally beyond the base* (bottom

part 2) (**red**) *and generally outward from the base portion of the cavity*, because the lid portion 3 is disposed above the bottom part 2 (**red**) (*disposed at least generally beyond the base*) and extends outwardly away from the base portion (**purple**) of the base (bottom part 2) (*generally outward from the base portion of the cavity*).



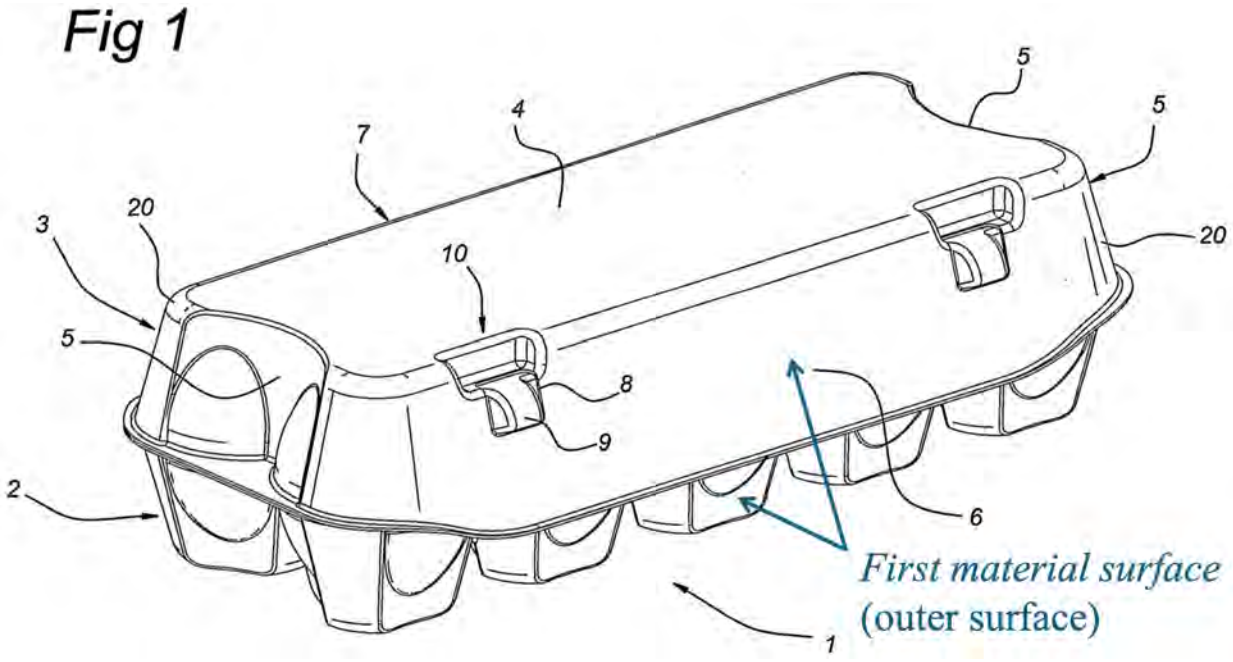
Ex.1010, Fig. 1 (annotated)

223. Thus, Post discloses limitation [11.3.3].

[11.4.1] the container material having a material thickness generally defined by a first material surface disposed on an immediately opposite side of the container material to a second material surface, and

224. Post discloses or at least renders obvious this limitation. **First**, as described above for limitation [11.2.3], Post's container (including the lid part 3 and bottom part 2) is made of a *container material* (e.g., moulded fibre material, plastic material, etc.).

225. **Second**, Post discloses that *the container material* (e.g., moulded fibre material, plastic material, etc.) *ha[s] a material thickness generally defined by a first material surface* (outer surface) *disposed on an immediately opposite side of the container material to a second material surface* (inner surface). As shown in Fig. 1, below, Post's container 1 includes a *first material surface* on the outside surface of the container. Although not explicitly illustrated in Fig. 1, Post's container 1 would also include a *second material surface* on the inner surface of the container 1. The food products (e.g., eggs) would come in contact with the inner surface (*second material surface*) of the container 1.



Ex.1010, Fig. 1 (annotated)

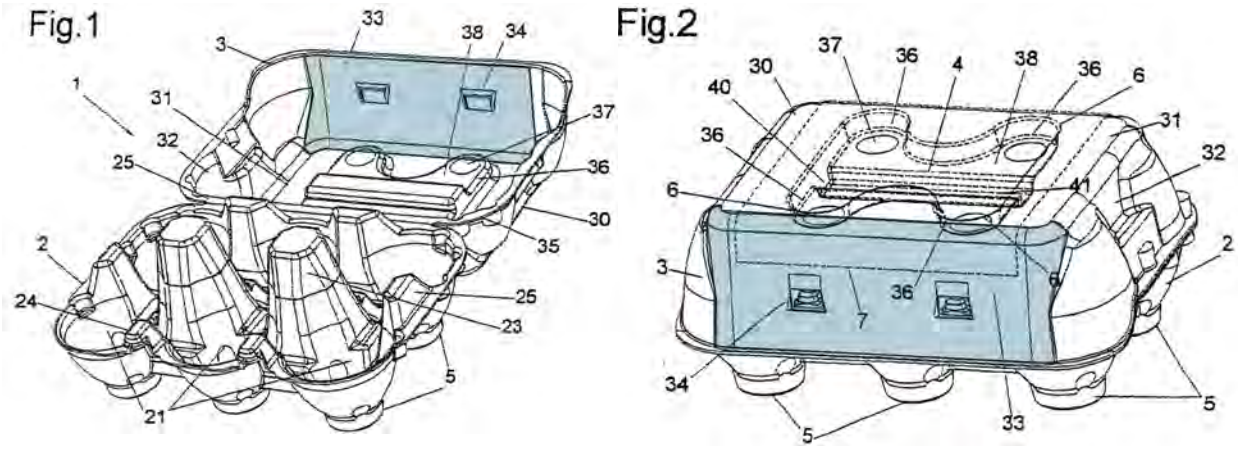
226. A POSITA would understand that the *first material surface* (outer surface) and *second material surface* (inner surface) are disposed on immediately

opposite surfaces of the material of the container (e.g., moulded fibre material, plastic) because the outer and inner surfaces are on opposite sides of the container, i.e., the outer surface of the container, and the inner surface of the container that is on the side of the cavity inside the container. Further, a POSITA would understand that the material of the container would have *a material thickness generally defined* between the *first material surface* (outer surface) and *second material surface* (inner surface). The *material thickness* would be the thickness of the material container between the *first material surface* (outer surface) and *second material surface* (inner surface). For example, in the case where Post's container is "produced from moulded fibre material," the *material thickness* would be the thickness of the moulded fibre material between the outer surface (*first material surface*) and the corresponding inner surface (*second material surface*). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1."). Post discloses that the container 1 may be made of other types of materials including "plastic material, paper or cardboard." Ex.1010, 1 ("Such a container can be made of plastic material, paper or cardboard."). In each of these examples, the *material thickness* would be the thickness between the outer surface (*first material surface*) and the corresponding inner surface (*second material surface*) of the container (e.g., the outer surface of the lid part 3 and the corresponding, opposing inner surface of the lid part 3).

227. Thus, Post discloses or at least renders obvious that *the container material* (e.g., plastic material or "moulded fiber material") *ha[s] a material thickness generally defined by a first material surface* (outer surface) *disposed on an immediately opposite side of the container material to a second material surface* (inner surface).

228. To the extent it is argued that Post does not expressly disclose that its container 1 has both a *first material surface* (outside surface) and a *second material surface* (inside surface) on immediately opposite sides of the container material, this was a well-known configuration as shown by Beese.

229. As shown in Figs. 1 and 2, below, the front part 33 of the lid has a *first material surface* (outside surface) (**blue**) (Fig. 2) and a *second material surface* (inside surface) (**blue**) (Fig. 1) on opposite sides of the front part 33. A POSITA would understand that the other components of Beese's container (e.g., base part 2, top part 31, side parts 32, etc.) likewise have a *first material surface* (outside surface) and second material surface (inner surface) on opposite sides of that component, as shown in Figs. 1 and 2, below.



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

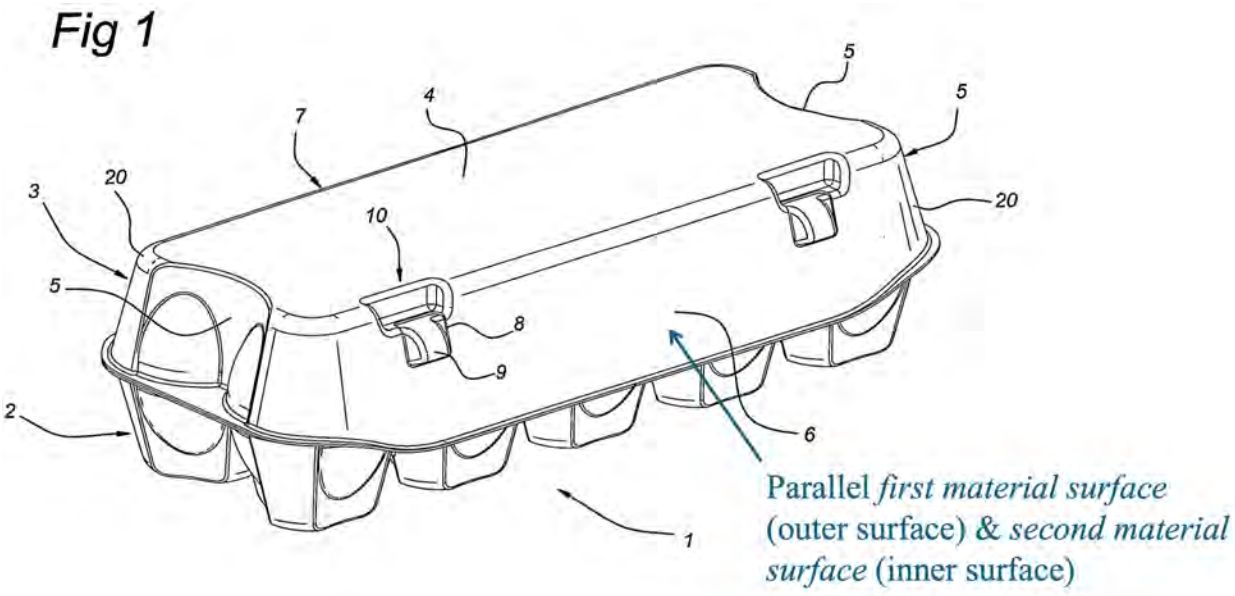
230. While Post does not explicitly illustrate an open position in Figs. 1-3, a POSITA would understand, in view of Beese's teachings, that Post's bottom part 2 (*base*), lid part (*lid*), and hinge connecting the bottom part 2 to the lid part 3 (*hinge*) are made *from a container material* (e.g., plastic material or "moulded fiber material") *ha[s] a material thickness generally defined by a first material surface* (outer surface) *disposed on an immediately opposite side of the container material to a second material surface* (inner surface).

231. Thus, Post and Beese render obvious limitation [11.4.1].

[11.4.2] wherein a portion of the first material surface is substantially parallel with respect to an immediately opposite portion of the second material surface;

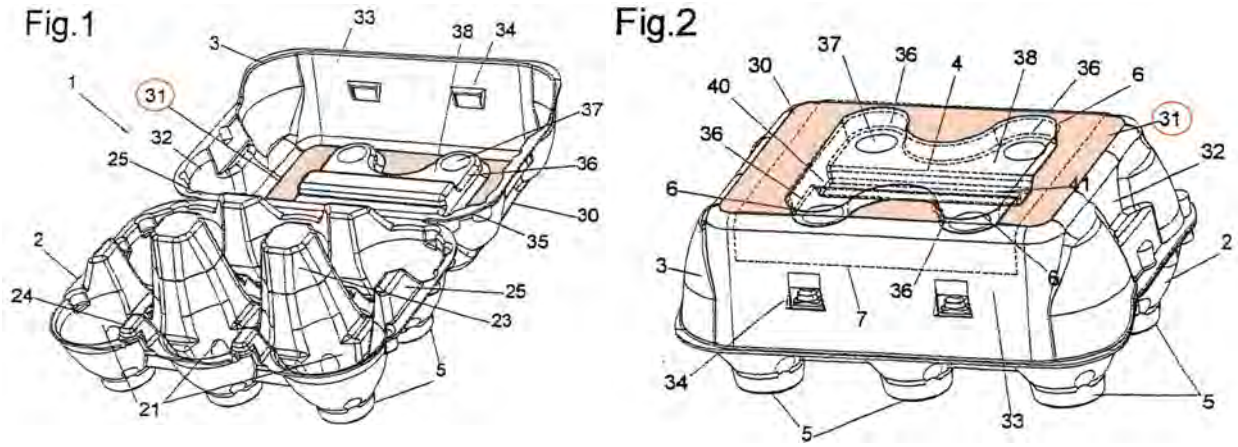
232. Post in view of Beese render obvious limitation [11.4.2]. As described for limitation [11.4.1], Post discloses that its container includes a *first material surface* (outside surface) and a *second material surface* (inner surface). A POSITA

would understand Post as rendering obvious that *at least a portion of* the outside surface (*first material surface*) *is substantially parallel to an immediately opposite portion of the second material surface* (inner surface), because Post's container may be formed from a mold. Ex.1010, 1 ("[T]he container according to the present invention is made of **moulded fibre material**, that is to say of a water-paper/wood fibre mixture from which a container is produced by forming and drying."). A POSITA would have been motivated to make opposing outer and inner portions of Post's container parallel to each other in the molding process to fit the shape of the mold pattern. For example, as shown in Fig. 1, below, a POSITA would have found it obvious and been motivated to make at least the outer and inner surfaces of the front wall 6 of the lid part 3 parallel to each other in the molding process. Likewise, a POSITA would have found it obvious and been motivated to make the outer and inner surfaces of the top part 4 of the lid part 3 parallel to each other in the molding process.



Ex.1010, Fig. 1 (annotated)

233. To the extent it is argued that Post does not explicitly teach that immediately opposing portions of the container are *substantially parallel* to each other, this is an obvious design choice as taught by Beese. As shown in Figs. 1 and 2, below, the top part 31 (**orange**) of the lid part 3 has an outer surface (*first material surface*) (Fig. 2) and an inner surface (*second material surface*) (Fig. 1) that are substantially parallel to each other because both surfaces extend in the horizontal direction when laid flat.



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

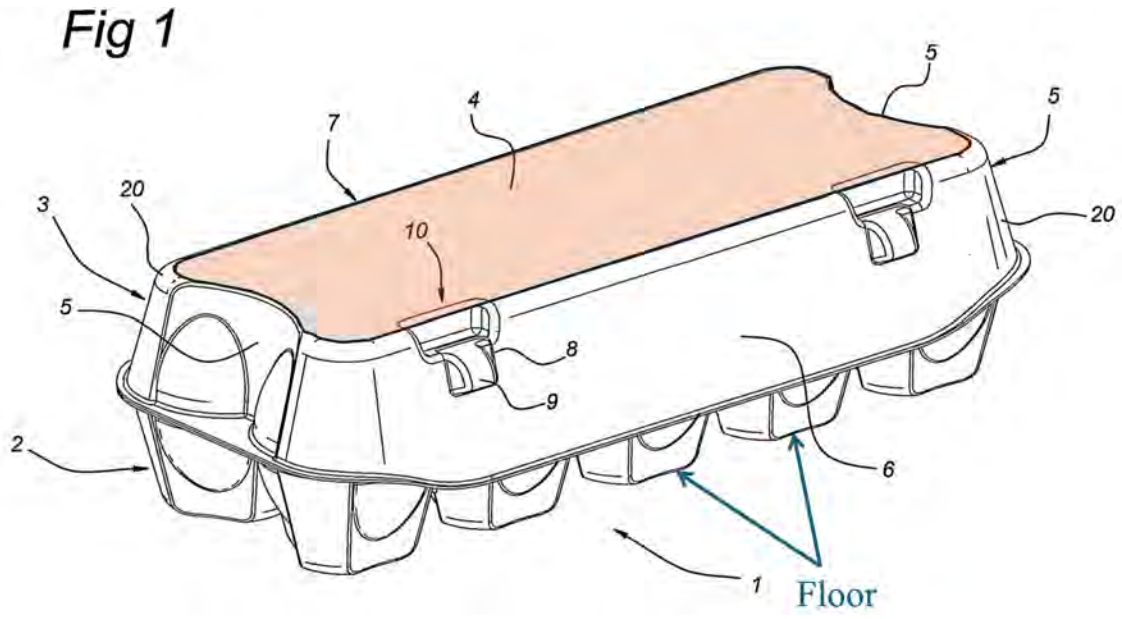
234. In view of Beese's teachings, a POSITA would have been motivated to make immediately opposing outer and inner portions (*first and second material surfaces*) of at *least a portion* of Post's container substantially parallel to each other in the molding process to fit the shape of the mold pattern.

235. Thus, Post and Beese render obvious that *a portion* (e.g., front wall 6 and/or top part 4 of lid part 3) *of the first material surface* (outer surface) *is substantially parallel with respect to an immediately opposite portion of the second material surface* (inner surface).

[11.5.1] the lid having a substantially flat lid top area disposed at least generally parallel to the floor when the lid is in the substantially closed position and including a lid top portion of the first material surface disposed on a first predominantly external lid surface area,

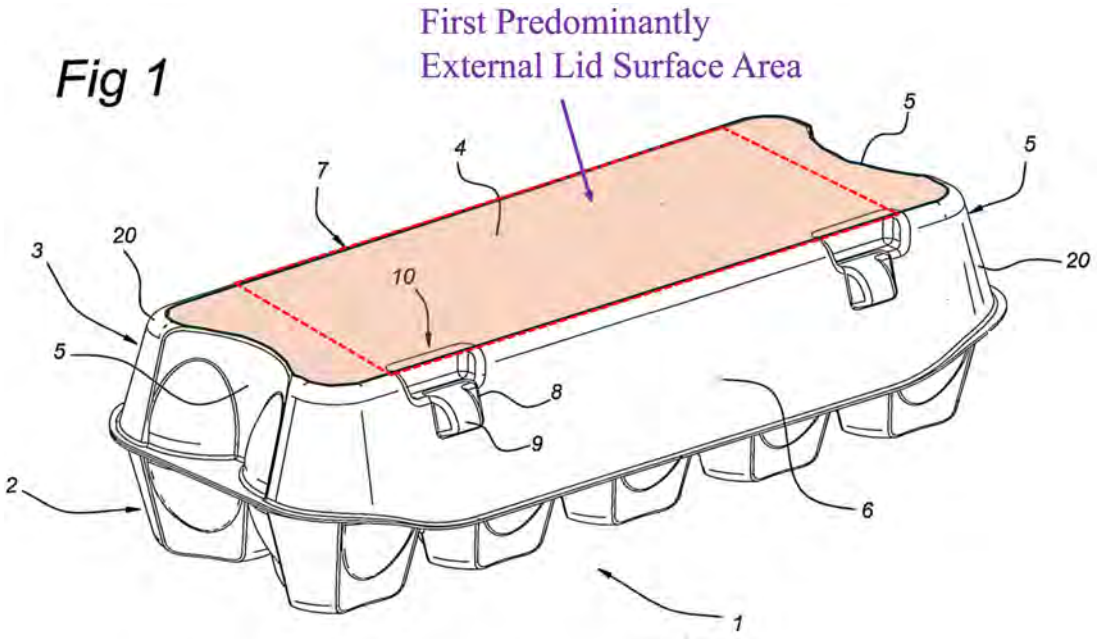
236. Post discloses limitation [11.5.1]. **First**, as shown in Fig. 1, below, *the lid* (lid part 3) *ha[s] a substantially flat lid top area* (top part 4 of lid part 3) (**orange**)

disposed at least generally parallel to the floor (generally parallel to the bottom external surface of the bottom part 2) *when the lid* (lid part 3) *is in the substantially closed position* (Fig. 1). Ex.1010, 3 ("The lid part 3 consists of a top part 4.").



Ex.1010, Fig. 1 (annotated)

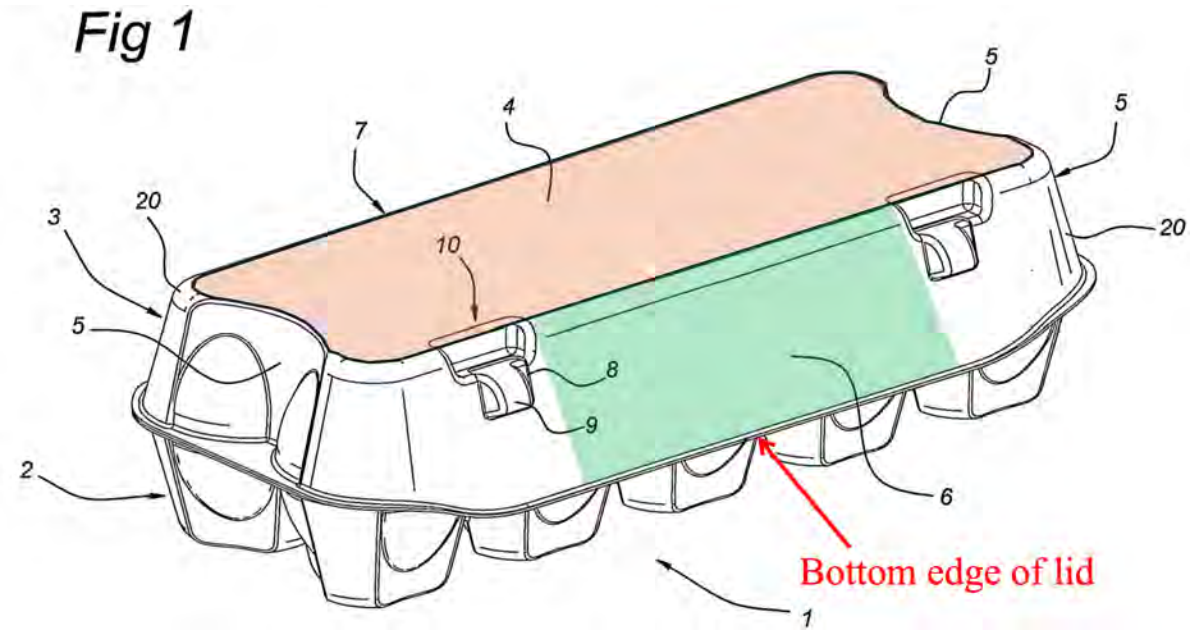
237. **Second**, as shown in Fig. 1, below, Post discloses that the *substantially flat lid top area* (top part 4) (**orange**)…*include[es] a lid top portion* (**red** dotted rectangle) *of the first material surface* (outer surface) *disposed on a first predominantly external lid surface area* (**purple**).



Ex.1010, Fig. 1 (annotated)

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

238. Post discloses limitation [11.5.2]. As shown in Fig. 1, below, Post's *lid* (lid part 3) has *a substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) (**green**) *extending from the substantially flat lid top area* (top part 4) (**orange**) *to a bottom edge of the lid* (lid part 3) (**red**). Thus, Post discloses limitation [11.5.2].



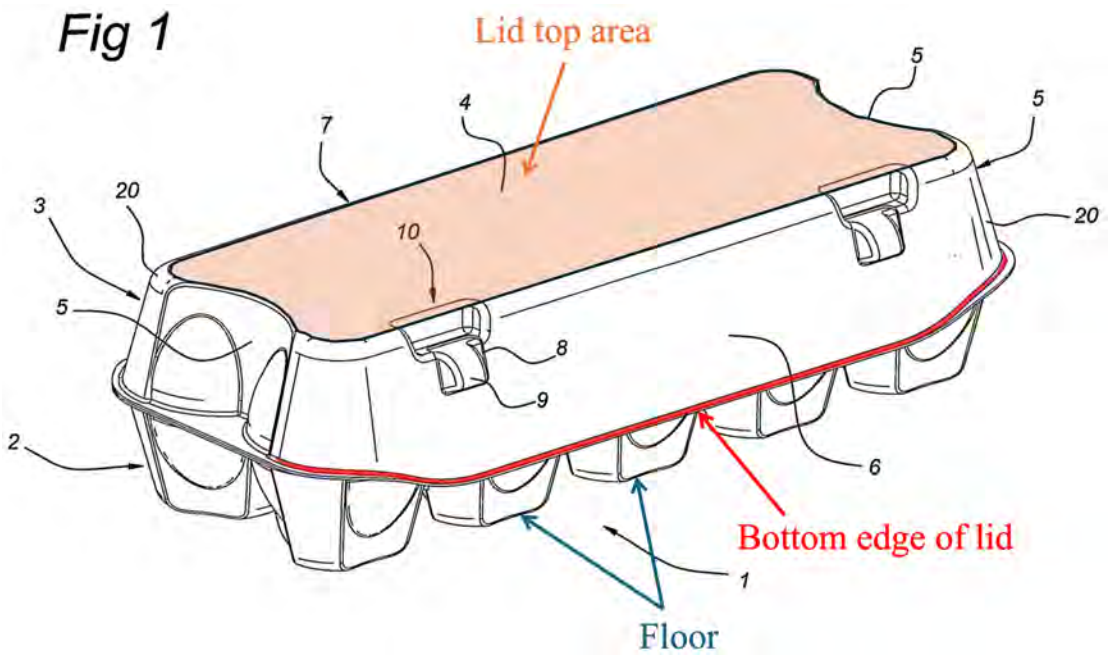
Ex.1010, Fig. 1 (annotated)

239. For ease of illustration, the *substantially planar frontal extension* is shown in Post's Fig. 1 above as being between openings 8 (**green**) in the front part 6 of the lid part 3. The *substantially planar frontal extension* alternatively may be extended to encompass the area of the front part 6 that goes beyond the openings 8 toward the lateral ends of the lid part 3 (toward the "linking transverse walls" 5 (Ex.1010, 3)), because this area of the lid part 3 extending beyond the openings 8 likewise is a planar extension of the lid part 3. I note that the specification of the '365 Patent does not use the term "s*ubstantially planar frontal extension*" (or "planar frontal extension") to describe any embodiment. Rather, the term "*substantially planar frontal extension*" appears only in the claims. Any planar area on the lid part

3 that is an extension from the top part 4 may be the claimed *substantially planar frontal extension*.

[11.5.3] wherein the bottom edge of the lid is between the substantially flat lid top area and the floor when the lid is in the substantially closed position and

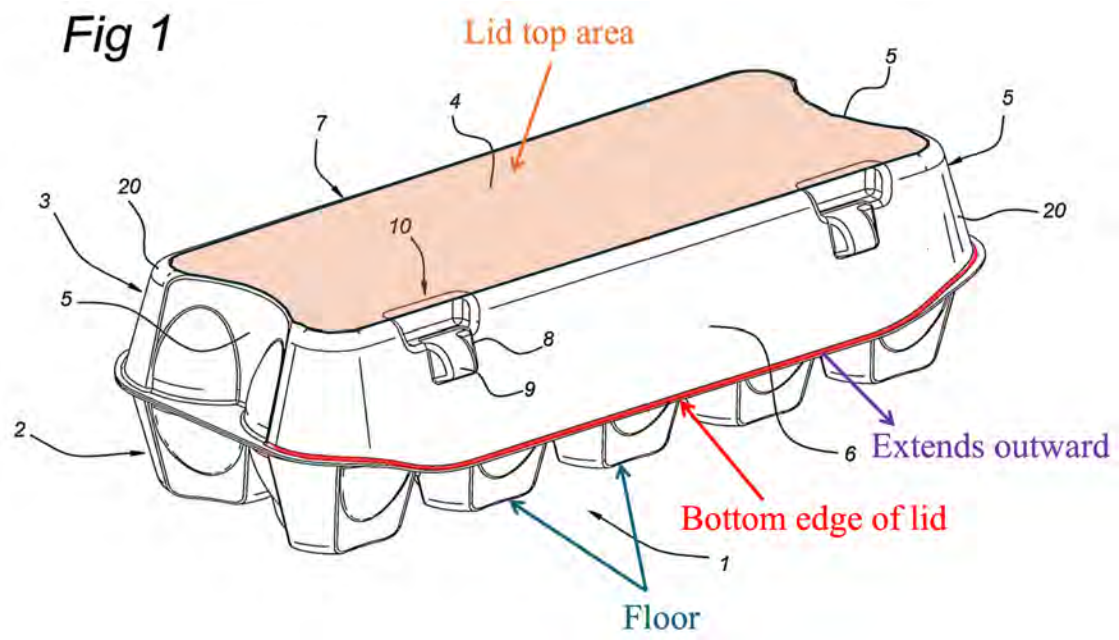
240. Post discloses limitation [11.5.3]. As shown in Fig. 1, below, *the bottom edge* (**red**) *of the lid* (lid part 3) *is between the substantially flat lid top area* (top part 4) (**orange**) *and the floor* (bottom surface of bottom part 2) *when the lid is in the substantially closed position* (Fig. 1).



Ex.1010, Fig. 1 (annotated)

[11.5.4] [wherein the bottom edge of the lid is] beyond an area directly between the substantially flat lid top area and floor when the lid is in the substantially closed position, and

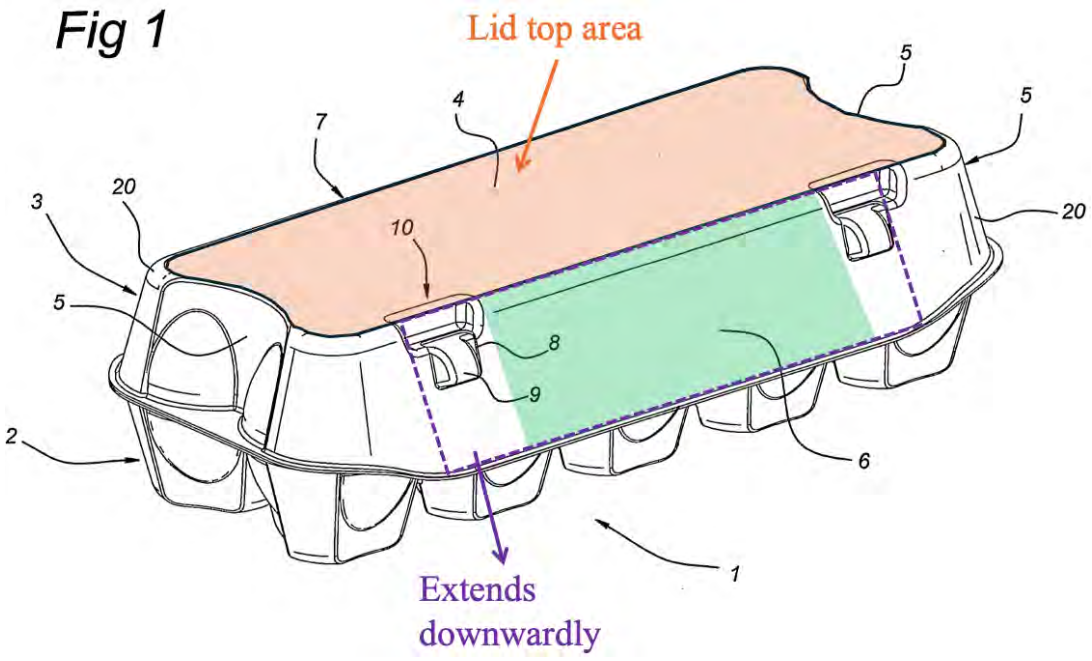
241. Post discloses limitation [11.5.4]. As shown in Fig. 1, below, *the bottom edge of the lid* (**red**) *is beyond* (i.e., extends outward from) (**purple** arrow) *an area directly between the substantially flat lid top area* (**orange**) *and floor* (**blue**) *when the lid is in the substantially closed position* (Fig. 1). The *bottom edge of the lid* (**red**) is *between the substantially flat lid top area* (**orange**) *and floor* (**blue**) and thus is *beyond an area directly between the substantially flat lid top area* (**orange**) *and floor* (**blue**).



Ex.1010, Fig. 1 (annotated)

[11.5.5] [the lid] having a lid front portion of the first material surface disposed on a second predominantly external lid surface area extending generally downwardly from the substantially flat lid top area when the lid is in the substantially closed position and

242. Post discloses limitation [11.5.5]. As shown in Fig. 1, below, Post's *lid* (lid part 3) *ha[s] a lid front portion* (**green** portion on front part 6) *of the first material surface* (outer surface) *disposed on a second predominantly external lid surface area* (**purple** dotted rectangle showing area on front part 6 of the lid part 3) *extending generally downwardly* (extends toward floor) *from the substantially flat lid top area* (**orange**) *when the lid is in the substantially closed position* (Fig. 1).

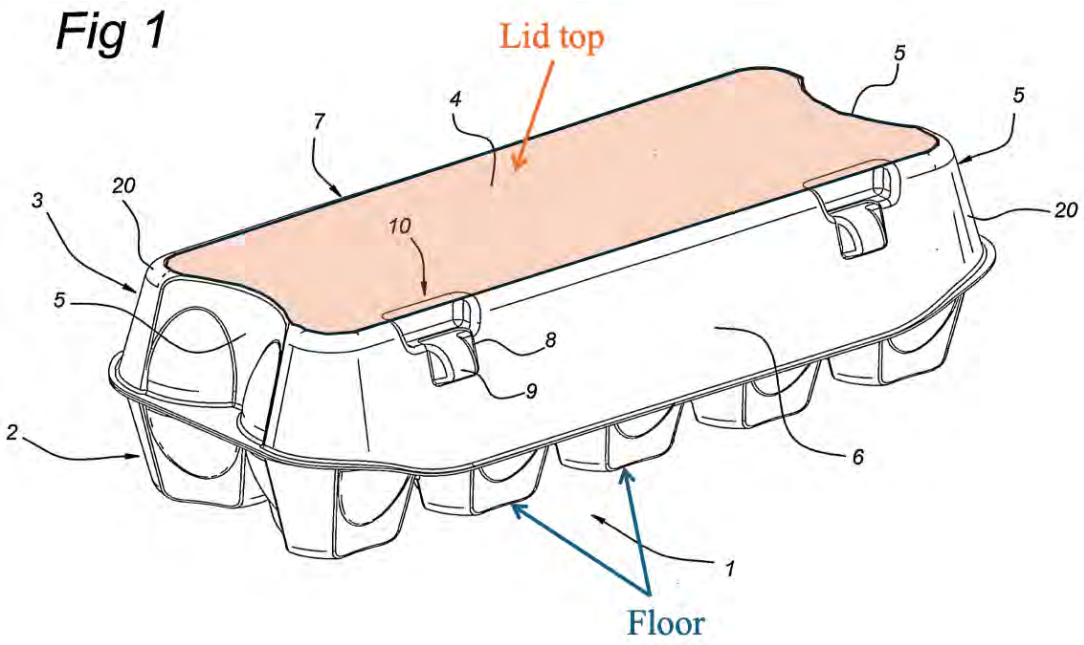


Ex.1010, Fig. 1 (annotated)

243. Thus, Post discloses limitation [11.5.5].

[11.5.6] the floor is positioned substantially horizontal with the substantially flat lid top area located above the floor,

244. Post discloses limitation [11.5.6]. As shown in Fig. 1, below, *the floor* (bottom surface of bottom part 2) (**blue**) *is positioned substantially horizontal* (horizontally disposed to rest on a surface) *with the substantially flat lid top area* (**orange**) *located above the floor*.

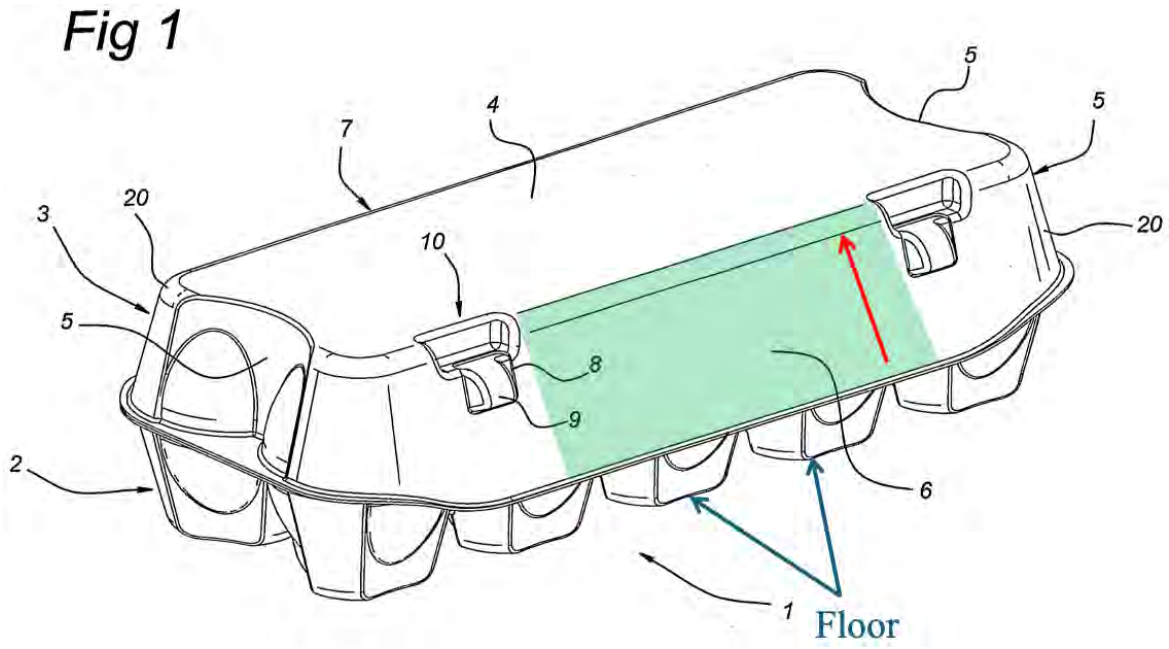


Ex.1010, Fig. 1 (annotated)

[11.5.7] wherein the substantially planar frontal extension is disposed facing substantially upwardly with respect to the floor, and

245. Post discloses limitation [11.5.7]. As described above for limitation [11.5.2], and as shown in Fig. 1, below, Post's *lid* (lid part 3) has *a substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) (**green**). The *substantially planar frontal extension* (**green**) *is disposed facing substantially*

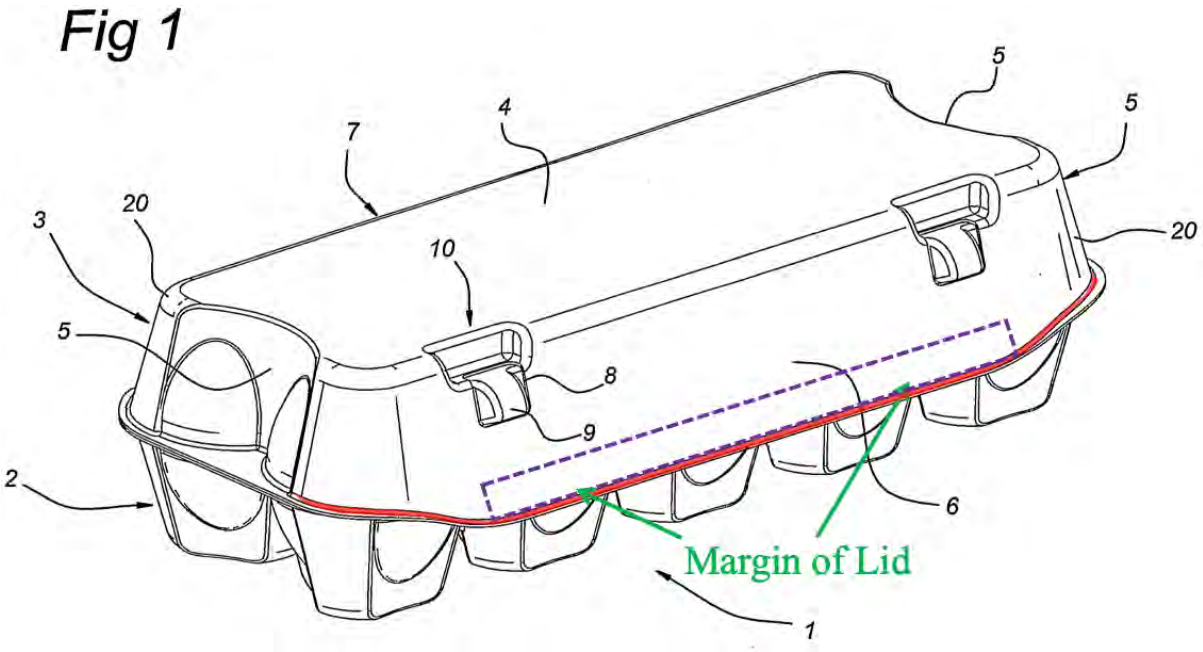
upwardly (in direction of substantially upward facing **red** arrow) *with respect to the floor* (**blue**), as shown in Fig. 1.



Ex.1010, Fig. 1 (annotated)

[11.5.8] [the lid having] a lid end portion defined generally at a margin of the lid, and

246. Post discloses limitation [11.5.8]. As shown in Fig. 1, below, Post's *lid* (lid part 3) has *a lid end portion* (**purple** dotted rectangle) *defined generally at a margin of the lid* (**green**) (near bottom edge of the lid) (**red**).

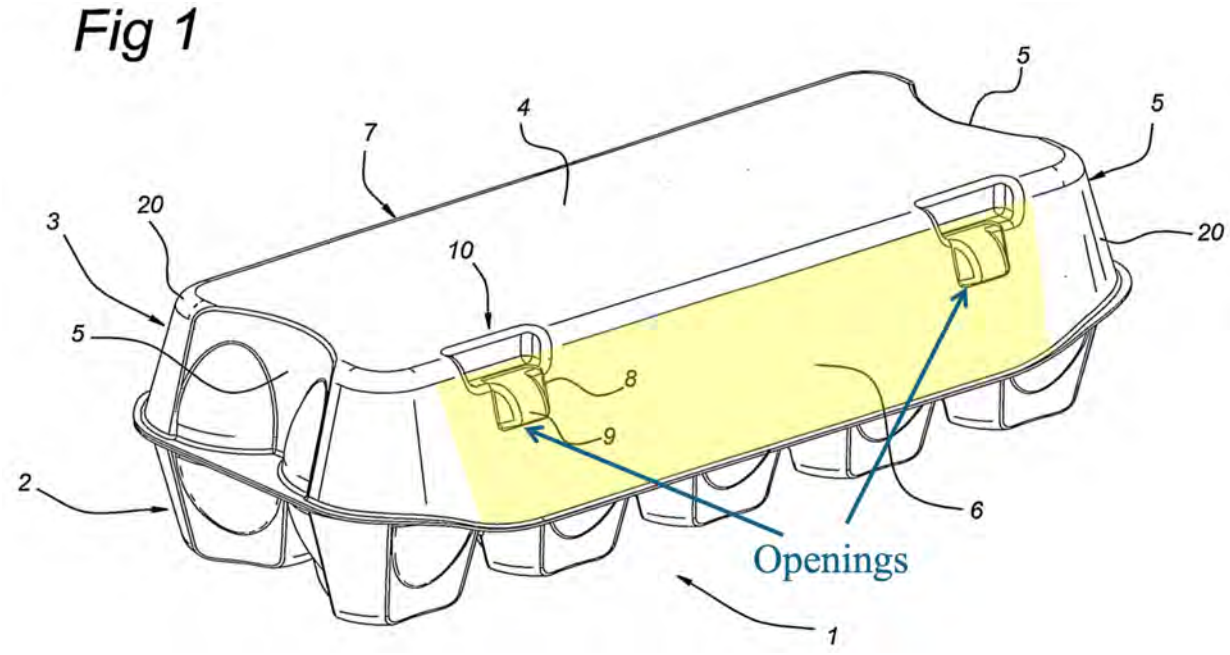


Ex.1010, Fig. 1 (annotated)

[11.5.9] a lid hole substantially defined in the container material by a lid hole edge and fully encompassed within a substantially planar lid area,

247. Post and Beese render obvious limitation [11.5.9]. **First**, Post discloses openings 8, which are lid holes. As shown in Fig. 1, below, Post's *lid* (lid part 3) includes *a substantially planar lid area* (yellow). **Second**, as shown in Fig. 1, openings 8 are formed in the front wall 6 of the lid part 3 and thus are *defined in the container material* (formed in the material of the front wall 6). Ex.1010, 3 ("There are openings 8 in the front wall 6."). The closing projections 9 protrude through the openings 8. Ex.1010, 3. As shown in Fig. 1, below, the openings 8 are *defined in the container material…and fully encompassed within a substantially planar lid area* (yellow), because the openings 8 are formed in the front wall 6 below the indents 10

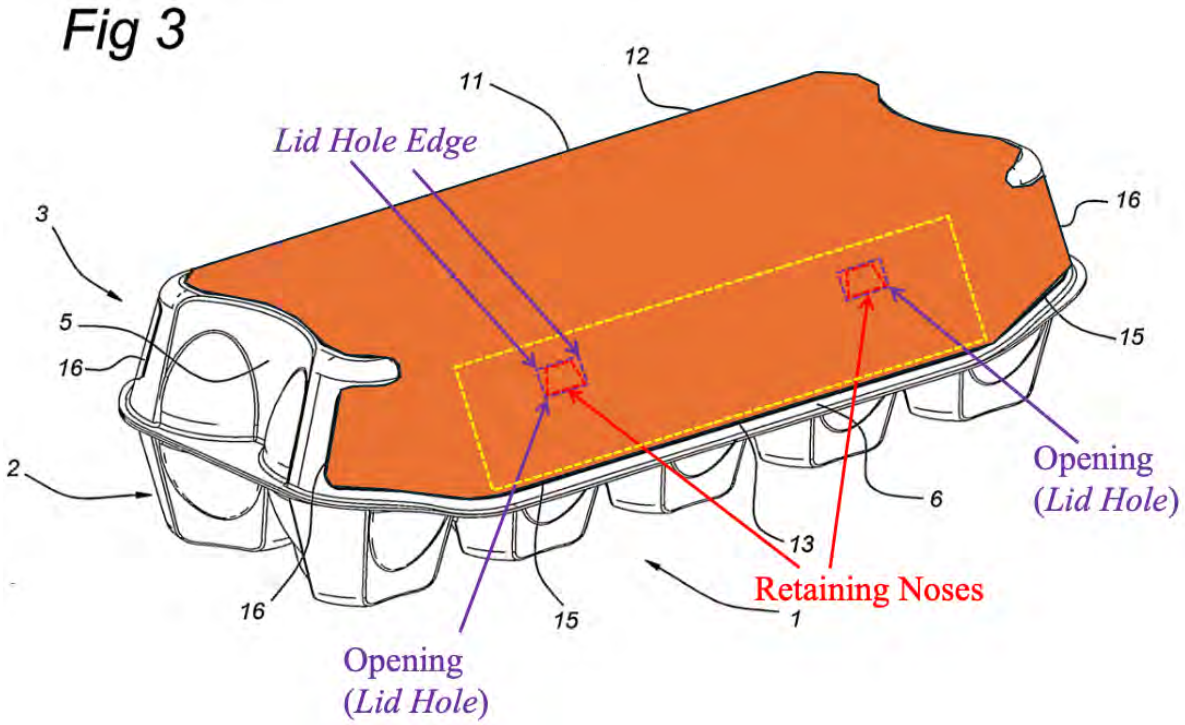
extending between the top part 4 and front wall 6 of the lid part 3. Ex.1010, 3 ("There is an indent 10 above the openings 8."). Thus, Post discloses that the *lid* (lid part 3) has openings 8 *defined in the container material…and fully encompassed within a substantially planar lid area* (yellow).



Ex.1010, Fig. 1 (annotated)

248. As described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3, in lieu of Post's closing projections 9 and corresponding openings 8 in the lid part 3, would advantageously permit Post's label 11 to entirely cover the front wall 6 of

Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). Post's Fig. 3 is annotated and modified below to show Post's label (**orange**) entirely covering the front wall 6 of Post's lid part 3 and extending to the bottom edge of Post's lid part 3, as taught by Beese. Ex.1009, [0030]. Beese discloses that the retaining noses 24 interact with openings on the front part of the lid part. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2."). In the Post-Beese combination, the openings (**purple**) that interact with Beese's retaining noses (**red**) are each *a lid hole substantially defined in the container material* (formed in material of front wall 6) *by a lid hole edge* (edge of lid hole; two lid hole edges are shown with **purple** arrows) *and fully encompassed within a substantially planar lid area* (yellow dotted rectangle), as shown in Post's Fig. 3, below.

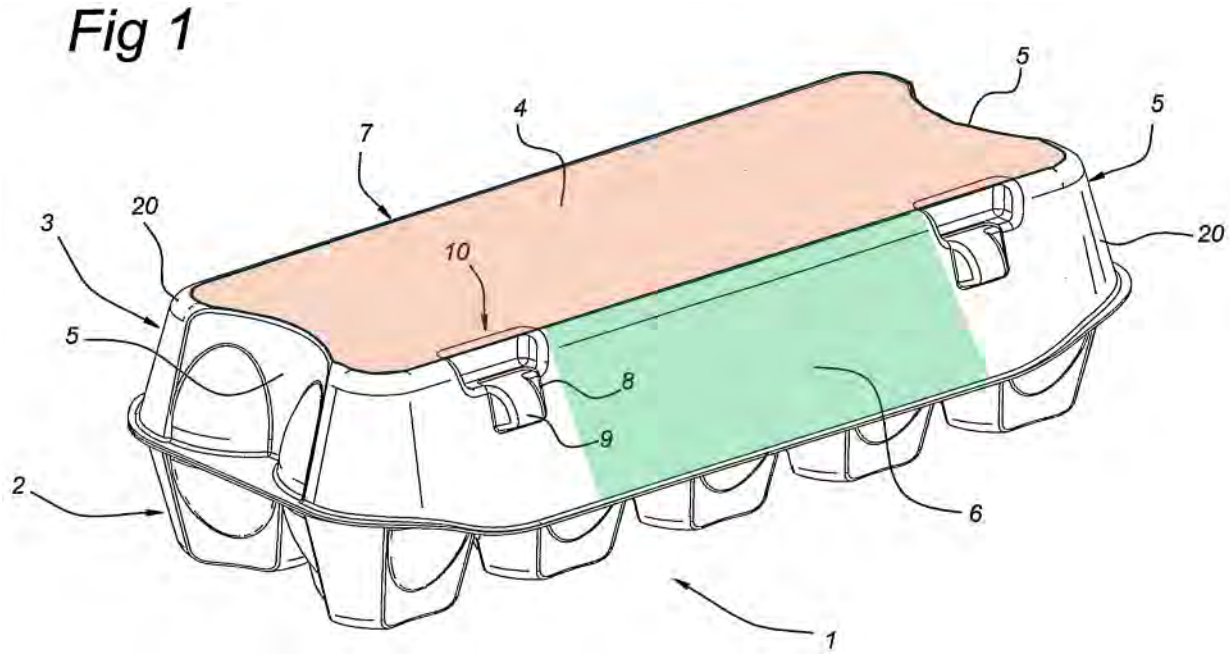


Ex.1010, Fig. 3 (annotated and modified)

[11.5.10] wherein the second material surface of the substantially flat lid top area and the second material surface of the substantially planar frontal extension intersect at an obtuse angle;

249. Post and Beese render obvious limitation [11.5.10]. As described above for limitation [11.4.1], the inner surface of Post's container is a *second material surface*. Further, a POSITA would understand that the *first material surface* (outer surface) and *second material surface* (inner surface) are disposed on immediately opposite surfaces of the material of the container (e.g., moulded fibre material, plastic) because the outer and inner surfaces are on opposite sides of the container, i.e., the outer surface of the container, and the inner surface of the container that is on the side of the cavity inside the container.

250. As described above for limitations [11.5.1] and [11.5.2], Post's container includes *the substantially flat lid top area* (top part 4) (**orange**) and *the substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) (**green**), as shown in Fig. 1, below.

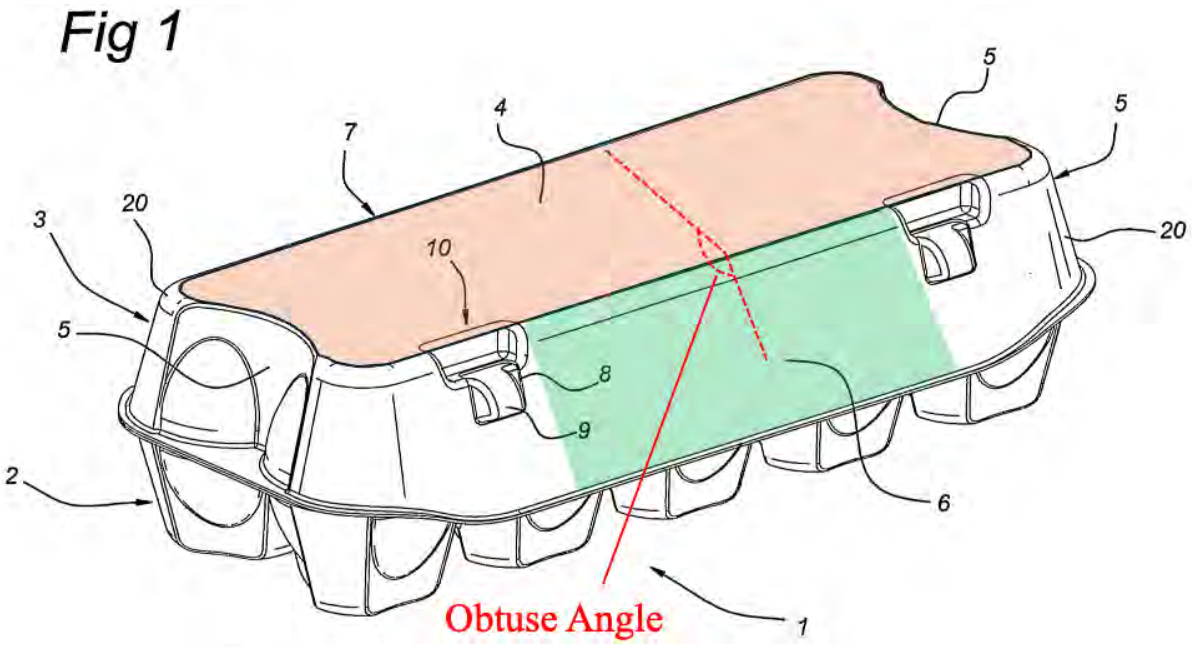


Ex.1010, Fig. 1 (annotated)

251. As described above for limitation [11.4.2], a POSITA would understand Post as rendering obvious that the outside surface (*first material surface*) in Post's container *is substantially parallel to an immediately opposite portion of the* inner surface (*second material surface)*, because Post's container may be formed from a mold. Ex.1010, 1 ("[T]he container according to the present invention is made of **moulded fibre material**, that is to say of a water-paper/wood fibre mixture from

which a container is produced by forming and drying."). A POSITA would have been motivated to make opposing outer and inner portions of Post's container parallel to each other in the molding process to fit the shape of the mold pattern. For example, with reference to Fig. 1, above, a POSITA would have found it obvious and been motivated to make at least the outer and inner surfaces of the front wall 6 of the lid part 3 parallel to each other in the molding process. Likewise, a POSITA would have found it obvious and been motivated to make the outer and inner surfaces of the top part 4 of the lid part 3 (including the *substantially flat lit top area*) (**orange**) parallel to each other in the molding process. As shown in Fig. 1, below, the *first material surface* (outer surface) of *the substantially flat lid top area* (**orange**) and the *first material surface* (outer surface) of *the substantially planar frontal extension* (**green**) *intersect at an obtuse angle* (i.e., at an angle between 90° and 180°). A POSITA would understand that the *second material surface* (inner surface) of *the substantially flat lid top area* (**orange**) and the *second material surface* (inner surface) of *the substantially planar frontal extension* (**green**) likewise *intersect at an obtuse angle* (i.e., at an angle between 90° and 180°), because (1) the outer surface (*first material surface*) and inner surface (*second material surface*) of *the substantially planar frontal extension* (**green**) are substantially parallel to each other, and (2) the outer surface (*first material surface*) and inner surface (*second material*

surface) of *the substantially flat lid top area* (**orange**) are substantially parallel to each other.



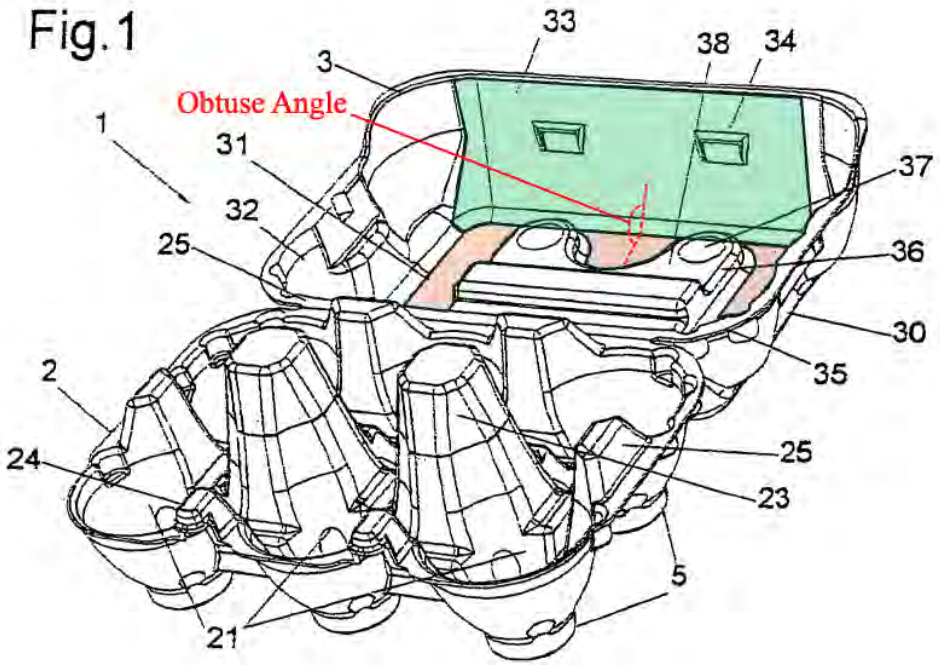
Ex.1010, Fig. 1 (annotated)

252. Thus, Post renders obvious that *the second material surface* (inner surface) *of the substantially flat lid top area* (**orange** in Fig. 1 above) *and the second material surface* (inner surface) *of the substantially planar frontal extension* (**green** in Fig. 1 above) *intersect at an obtuse angle* (i.e., at an angle between 90° and 180°).

253. To the extent it is argued that Post does not explicitly teach that the respective inner surfaces of *the substantially flat lid top area* (**orange** in Fig. 1 above) *and the second material surface* (inner surface) *of the substantially planar frontal extension* (**green** in Fig. 1 above) *intersect at an obtuse angle* (i.e., at an angle

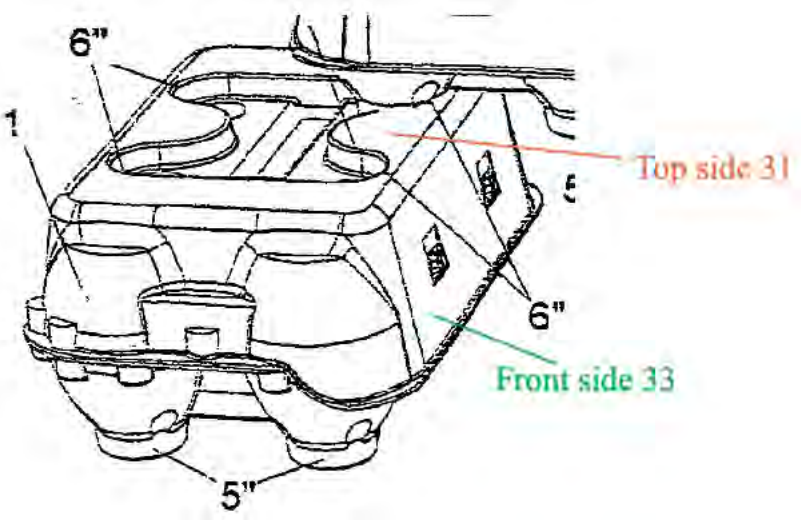
between 90° and 180°), this is a conventional implementation detail as taught by Beese.

254. As shown in Beese's Fig. 1, below, the inner surface (*second material surface*) of the top part 31 of the lid (*lid top area*) (**orange**) intersects with the inner surface (*second material surface*) of the front part 33 (*frontal extension*) (**green**) intersects at an obtuse angle (i.e., at an angle between 90° and 180°).



Ex.1009, Fig. 1 (annotated)

255. Beese's Fig. 4, below, confirms the front part 33 of Beese's lid extends outward from the bottom part 2 (base). Therefore, the front part 33 intersects at an obtuse angle with the top part 31 of the lid.

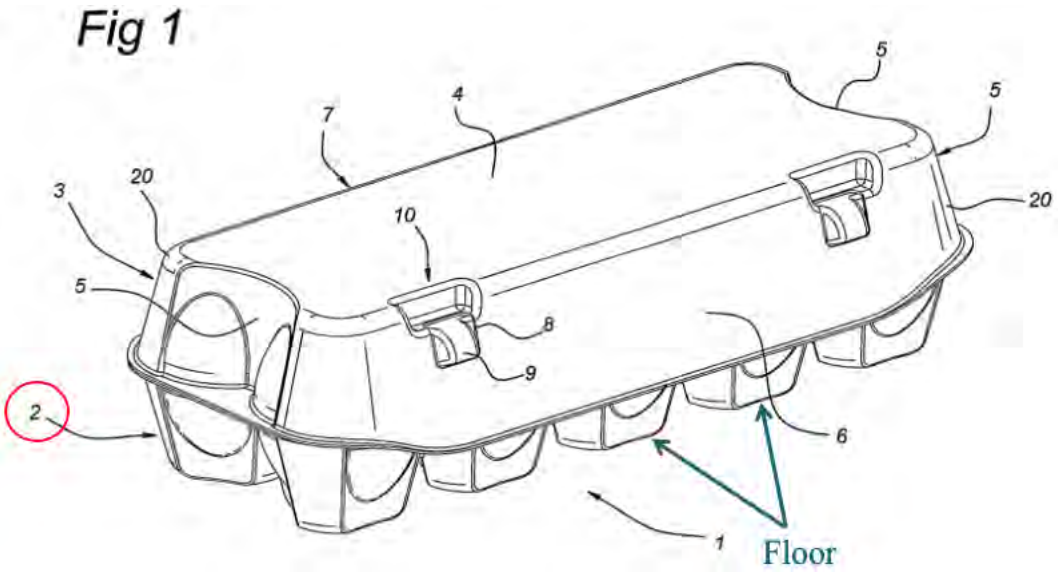


Ex.1009, Fig. 4 (partial and annotated)

256. A POSITA likewise would have been motivated to configure Post's container so that *the second material surface* (inner surface) *of the substantially flat lid top area* (**orange** in Post's Fig. 1 above) *and the second material surface* (inner surface) *of the substantially planar frontal extension* (**green** in Post's Fig. 1 above) *intersect at an obtuse angle* (i.e., at an angle between 90° and 180°), so that the front wall 6 of the lid part 3 would extend, as shown in Fig. 1, outward from the bottom part 2. Therefore, Post and Beese render obvious limitation [11.5.10].

[11.6.1] the base having the floor

257. Post discloses limitation [11.6.1]. As shown in Fig. 1, below, Post's *base* (bottom part 2) (**red**) *ha[s] the floor* (**blue**).

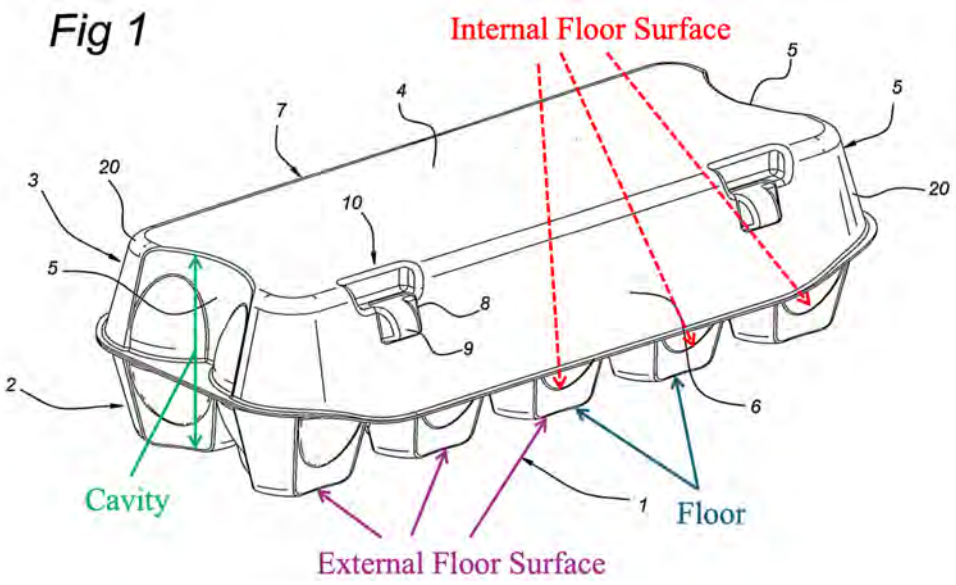


Ex.1010, Fig. 1 (annotated)

[11.6.2] wherein, with respect to the cavity, the floor comprises an external floor surface area disposed on the first material surface and an internal floor surface area disposed on the second material surface,

258. Post discloses limitation [11.6.2]. As described above for limitation [11.2.2], Post discloses *the cavity* (**green**) *inside the container between the floor* (bottom of bottom part 2) (**blue**) *and the lid* (lid part 3), as shown in Fig. 1, below. As described above for limitation [11.4.1], Post discloses or at least renders obvious that the container has a *first material surface* (outer surface) *disposed on an immediately opposite side of the container material to a second material surface* (inner surface). As shown in Fig. 1, below, Post's container includes *an external floor surface* (**purple**) *disposed on the first material surface* (outside surface) and *an internal floor surface area* (internal surface of individual cavities for holding

eggs, as shown by dotted **red** arrows) *disposed on the second material surface* (inside surface) of the container. Post's container includes *an internal floor surface area* on the inside surface of the bottom part 2 because food products (e.g., eggs) are housed in the cavities of the bottom part 2, i.e., on the *internal floor surface area*. Ex.1010, 3 (explaining that the container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").

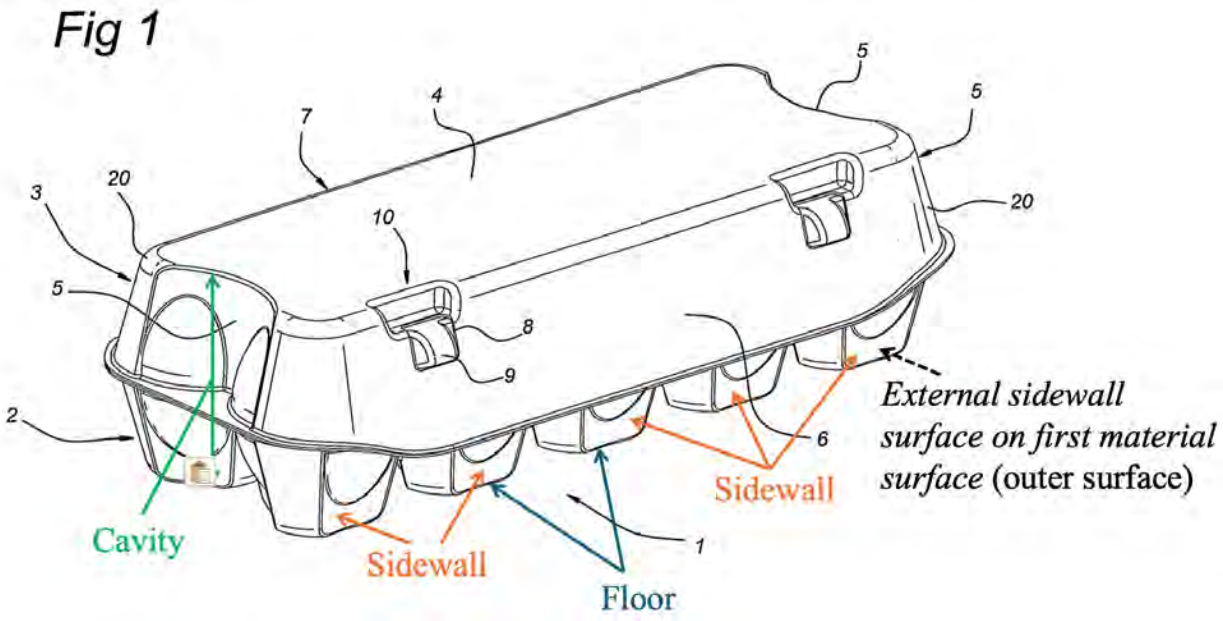


Ex.1010, Fig. 1 (annotated)

[11.6.3] [the base having] a sidewall extending generally upwardly from the floor having, with respect to the cavity, a predominantly external sidewall surface area disposed on the first material surface and a predominantly internal sidewall surface area disposed on the second material surface,

259. Post and Beese render obvious limitation [11.6.3]. **First**, as shown in Fig. 1, below, Post discloses that *the base* (bottom part 2) has *a sidewall* (shown by **orange** arrows) *extending generally upwardly from the floor* (**blue**) *having, with*

respect to the cavity (**green**), *a predominantly external sidewall surface area disposed on the first material surface* (i.e., external-facing outer surface of sidewall).

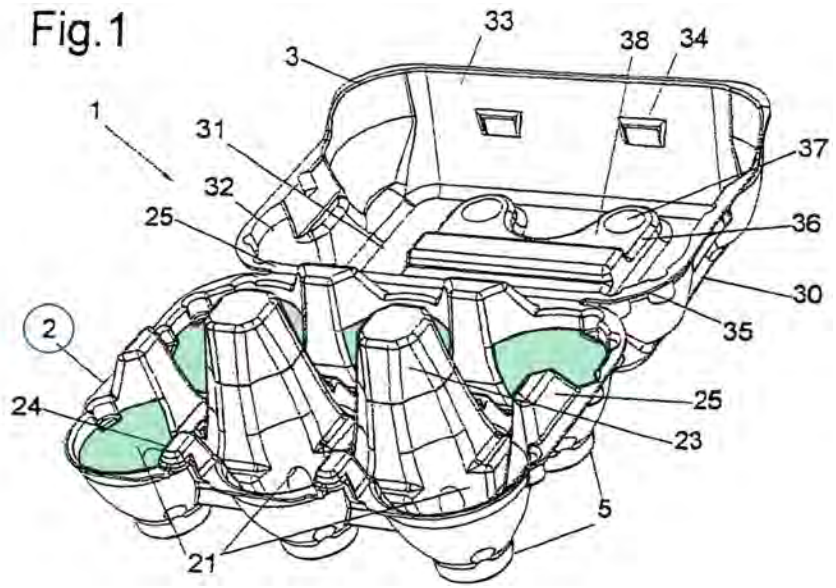


Ex.1010, Fig. 1 (annotated)

260. **Second**, Post suggests that its container also has *a predominantly internal sidewall surface area* (internal surface of sidewalls) *disposed on the second material surface* (disposed on the inner surface of the container), because the bottom part 2 of the container includes cavities for holding food products (e.g., eggs). Ex.1010, 3 (explaining that the container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").

261. To the extent it is argued that Post does not explicitly disclose that the bottom part 2 has *a predominantly internal sidewall surface area disposed on the second material surface*, this is a conventional implementation detail as shown by

Beese. As shown in Beese's Fig. 1, below, the bottom part 2 of Beese's container includes *a predominantly internal sidewall surface area* (internal sidewall surfaces of shaped depressions 21) (**green**) *disposed on the second material surface* (internal surface). Ex.1009, [0026] ("The base part 2 has a plurality of shaped depressions 21 for accommodating eggs.").

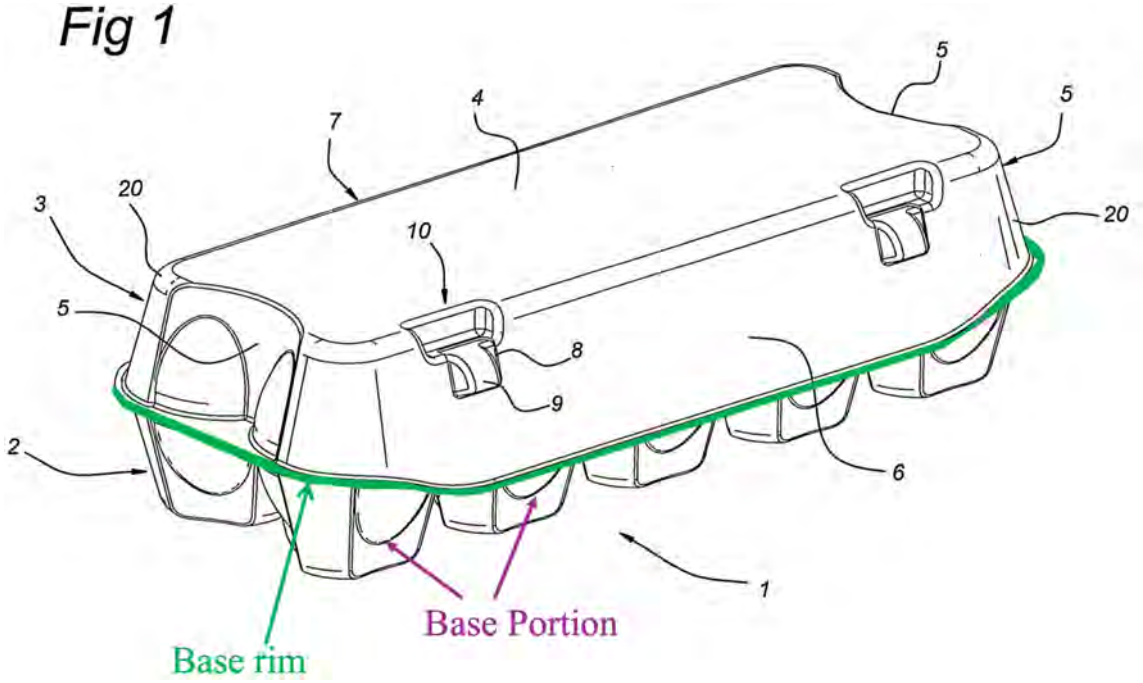


Ex.1009, Fig. 1 (annotated)

262. Because Post's bottom part 2 is configured with cavities for holding food products (Ex.1010, 3), a POSITA would have been motivated to configure Post's container so that it, like Beese's container, has *a predominantly internal sidewall surface area* (internal surface of sidewalls shown in Post's Fig. 1 above) *disposed on the second material surface* (disposed on the inner surface of the container). Accordingly, Post and Beese render obvious limitation [11.6.3].

[11.6.4] [the base having] a rim wherein, a portion of the rim partially defines a base opening suitable for at least partial receipt of the product into the base portion of the cavity, and

263. Post and Beese render obvious limitation [11.6.4]. **First**, as shown in Fig. 1, below, Post's bottom part 2 (the *base*) has *a rim* (**green**) that is the outer edge of the bottom part 2 on which the lid part 3 rests in the closed position (Fig. 1). As described above for limitation [11.3.1], Post's container has *the base portion* (**purple**) (cavities formed in bottom part 2), as show in Fig. 1, below.



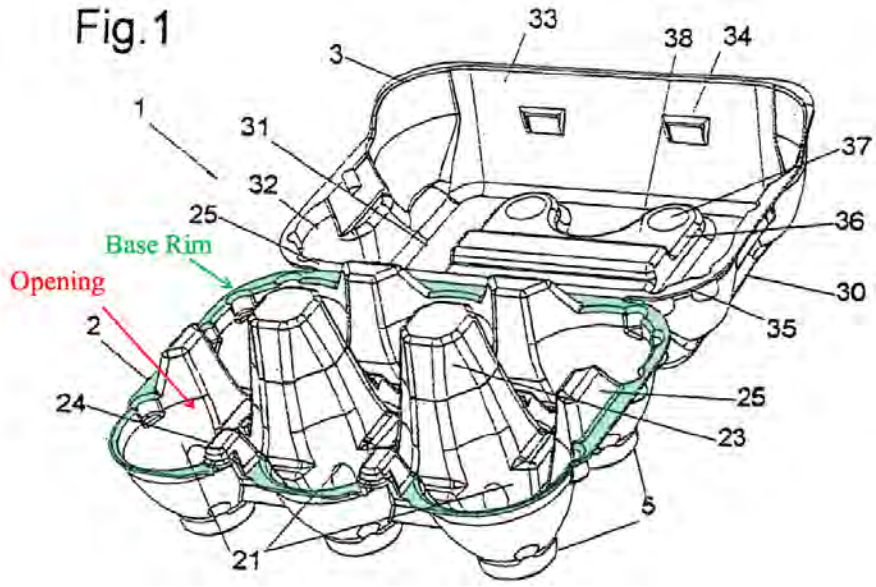
Ex.1010, Fig. 1 (annotated)

264. Post teaches that the base *rim* (**green**) has *a portion [that] partially defines a base opening* (opening in bottom part 2 for receiving eggs) *suitable for at least partial receipt of the product* (food products such as eggs) *into the base portion*

(**purple**) *of the cavity* (between lid part 3 and bottom part 2, *see* limitation [11.2.2]), because (1) the bottom part 2 is for holding food products such as eggs, and (3) the container is opened to access the food products. Ex.1010, 3 (explaining that the container "consists of a bottom part 2 in which **cavities for accommodating eggs** are shown diagrammatically…. The lid part 3 can be unlocked [i.e., opened] from the bottom part 2 by depressing closing projections 9 and moving front wall 6 forwards."). As described above for limitation [11.6.3], the *sidewall* accommodates eggs, and the base *rim* (**green**) is the outer edge of the bottom part 2 and the beginning of the opening (cavities) to access eggs in the bottom part 2.

265. I note that Post does not explicitly illustrate the interior portion of the cavity between the top part 4 and the floor of the bottom part 2 when Post's container is in the open position. To the extent it is argued that Post does not explicitly disclose that the base *rim* (**green**) has *a portion [that] partially defines a base opening* (opening in bottom part 2 for receiving eggs) *suitable for at least partial receipt of the product* (food products such as eggs) *into the base portion* (**purple**) *of the cavity*, this is the conventional configuration of a food container that holds foods products such as eggs, as taught by Beese. As shown by Beese's Fig. 1, below, the bottom part 2 has a base rim on the outer edge of the bottom part 2, where the lid part 3 rests on the base rim, and the base rim defines an opening (e.g., depressions 21) in the container in which food products such as eggs are placed. Ex.1009, [0025] ("The

egg box, which is designated 1 overall, comprises a bottom part 2 and a lid part 3….In the closed state, the lid part 3 rests on the bottom part 2 and covers over the latter completely."), [0026] ("The base part 2 has a plurality of shaped depressions 21 for accommodating eggs.").



Ex.1009, Fig. 1 (annotated)

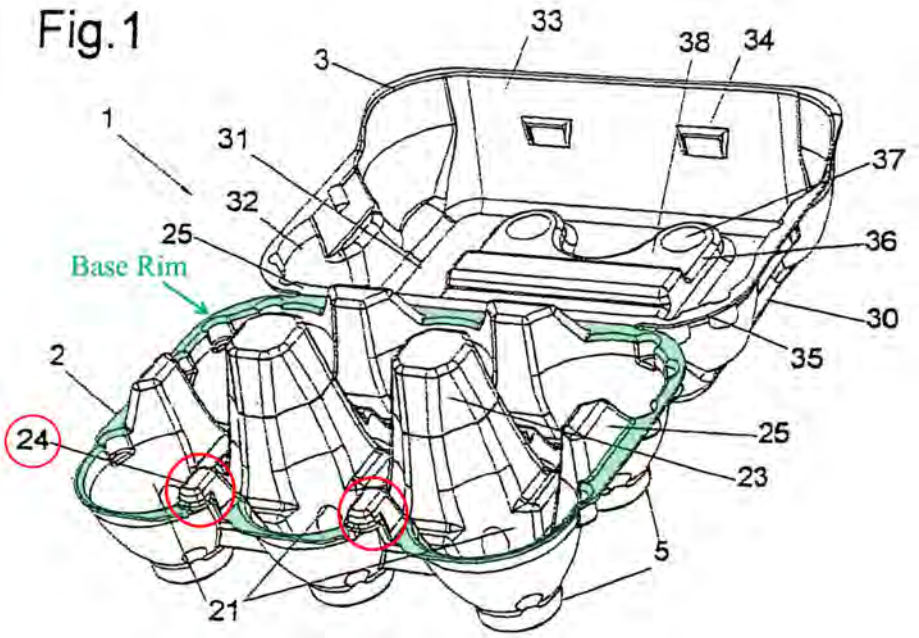
266. A POSITA would understand that, like Beese, Post's base *rim* (**green**) in Fig. 1, above, has *a portion [that] partially defines a base opening* (opening in bottom part 2 for receiving eggs) *suitable for at least partial receipt of the product* (food products such as eggs) *into the base portion* (**purple**) *of the cavity*, where the opening accommodates food products (e.g., eggs). Ex.1010, 3 (Post's container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").

[11.6.5] [the base having] a base extension generally extending from the rim,

267. Post and Beese render obvious limitation [11.6.5]. **First**, as described above for limitation [11.6.4], Post discloses a base *rim* (outer edge of the bottom part 2 on which the lid part 3 rests in the closed position (Fig. 1)).

268. **Second**, as described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3, in lieu of Post's closing projections 9 and corresponding openings 8 in the lid part 3, would advantageously permit Post's label 11 to entirely cover the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). As shown in Fig. 1, below, Beese's retaining noses 24 extend from rim (**green**) the bottom (base) part 2 (Beese's base). Ex.1009, [0026] ("In order to

fix the lid part 3 in the closed state, two retaining noses 24 are arranged on a front side of the base part 2.").[7]



Ex.1009, Fig. 1 (annotated)

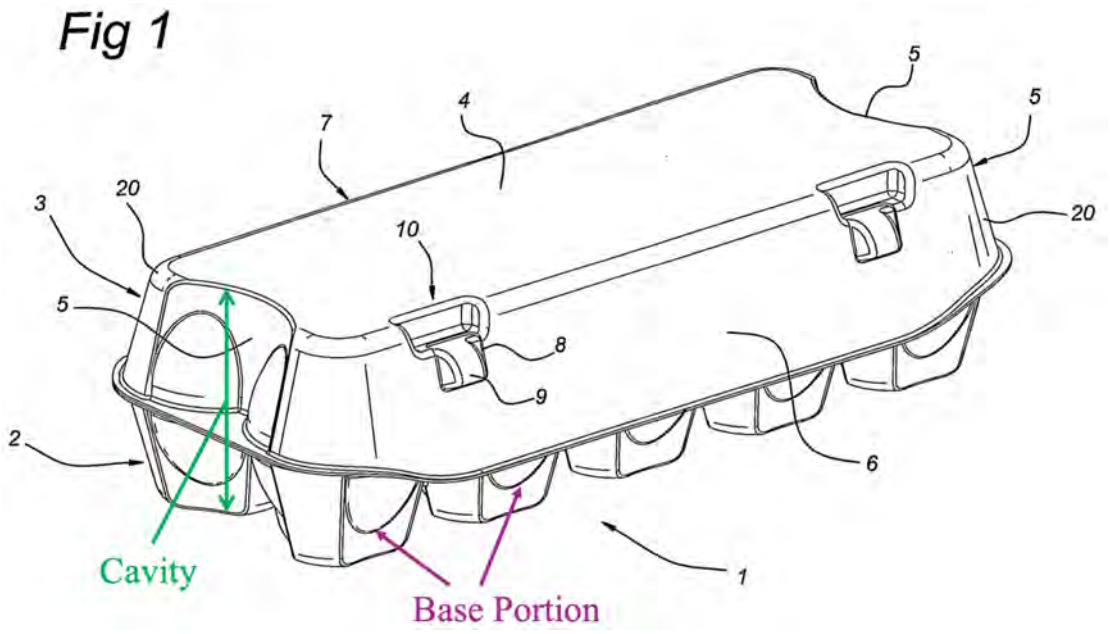
269. Beese's retaining noses 24 in Post's container render obvious *[the base* (Post's bottom part 2) *having] a base extension* (Beese's retaining noses 24) *generally extending from the rim* (outer edge of the bottom part 2 on which the lid part 3 rests in the closed position), because Beese's retaining noses 24 extend from

[7] Beese interchangeably refers to the base of the container as both a "bottom part 2" and a "base part 2." Ex.1009, [0025] ("The egg box, which is designated 1 overall, comprises a **bottom part 2** and a lid part 3…. [T]he lid part 3 is located approximately in the same plane as the **base part 2**."),

the rim of Beese's bottom part 2 and would likewise extend from the rim of Post's bottom part 2. Ex.1009, [0026] ("In order to fix the lid part 3 in the closed state, two retaining noses 24 are arranged on a front side of the base part 2."), Fig. 1 (showing arrangement of retaining noses 24 extending from the upper end of the rim of the bottom part 2).

[11.6.6] the base extension comprising a primary surface area disposed facing substantially externally with respect to the base portion of the cavity,

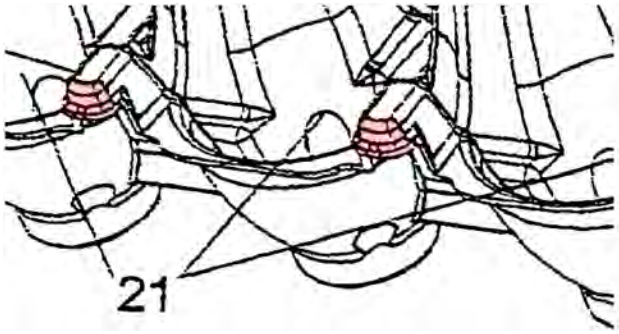
270. Post in view of Beese render obvious limitation [11.6.6]. **First**, as described above for limitation [11.3.1.], Post discloses that *the cavity* (**green**) has the *base portion* (cavities formed in bottom part 2) (**purple**), as shown in Post's Fig. 1, below.



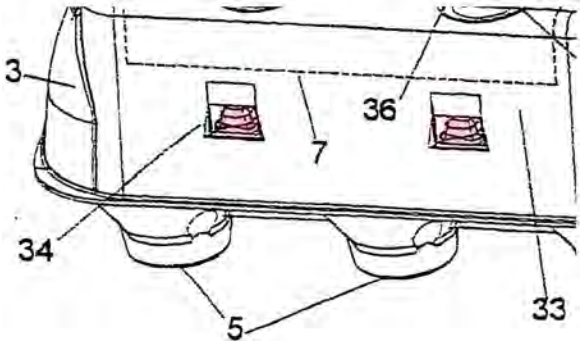
Ex.1010, Fig. 1 (annotated)

271. **Second**, as described above for limitation [11.6.2], Beese's retaining noses 24 in the rim of Post's bottom part 2 render obvious the claimed *base extension*.

272. **Third**, as shown in Fig. 1 (open state) and Fig. 2 (closed state), below, Beese's retaining noses 24 (*base extension*) have *a primary surface area* (front, external-facing surface) (**red**) *disposed facing substantially externally with respect to the base portion of the cavity* (cavities with opening in which food products such as eggs are housed).



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

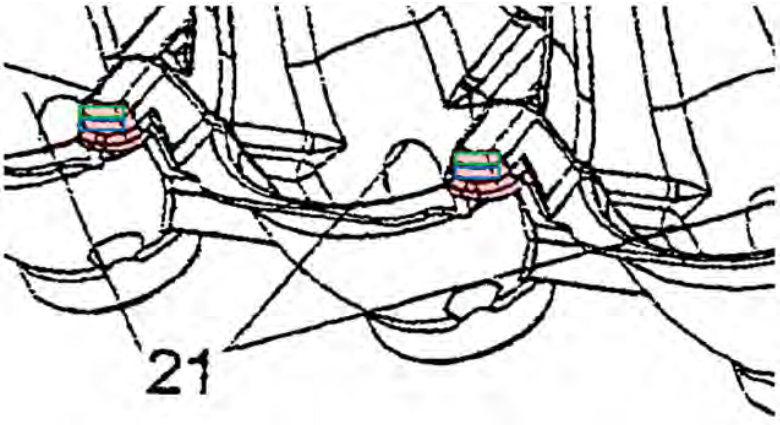


Ex.1009, Fig. 2
(annotated partial view)

273. Likewise, Beese's retaining noses 24 in Post's bottom part 2 would have *a primary surface area* (external-facing surface) (**red**) *disposed facing substantially externally with respect to the base portion of the cavity* (cavities formed in bottom part 2) (**purple**), as shown in Post's Fig. 1 above.

[11.6.7] wherein the primary surface area comprising a flat portion disposed on an extension of the predominantly internal sidewall surface area of the second material surface, and

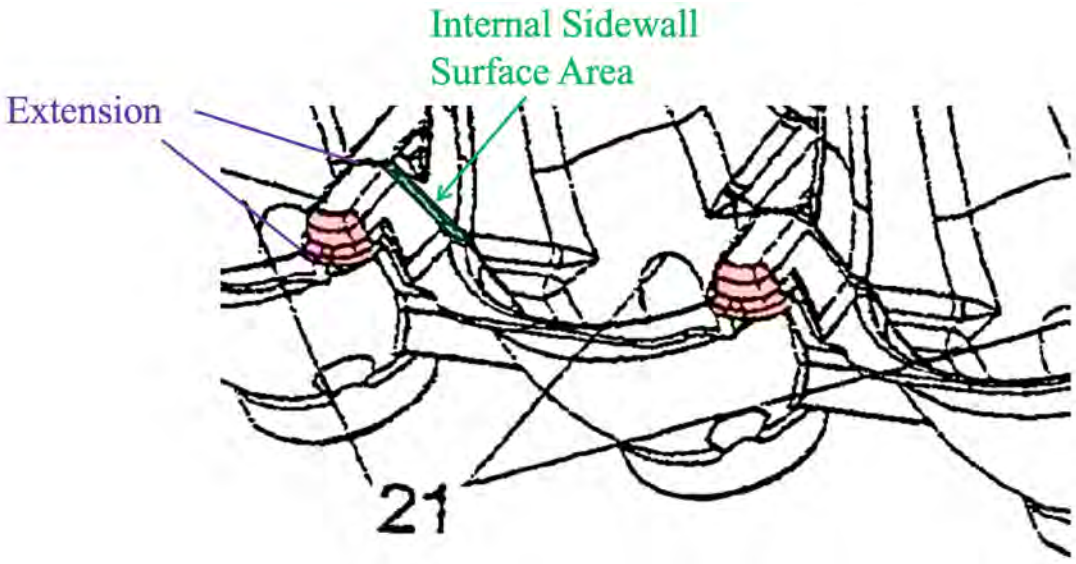
274. Post in view of Beese and Mangla render obvious limitation [11.6.7]. As described above for limitation [11.6.6], Beese's retaining nose 24 in Post's bottom part 2 renders obvious the *base extension* having *the primary surface area* (front, external-facing surface) (**red**). **First**, any portion of the *primary surface area* on the external surface of Beese's retaining noses 24 in Figs. 1 and 2 above in limitation [11.6.6], is *a flat portion*. For example, as shown in the enlarged partial view of Fig. 1, below, the *primary surface area* (**red**) on the external surface area of the retaining nose 24 has at least a first *flat portion* (**green**) and at least a second *flat portion* (**blue**).



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

275. **Second**, as shown in Fig. 1, below, Beese discloses that the *flat portion* (any externally facing portion of primary surface area) (**red**) is *disposed on an*

extension (outward facing portion of retaining nose 24) (**purple**) *of the predominantly internal sidewall surface area* (**green**) *of the second material surface* (internal surface), because the retaining noses 24 extend outward from the internal surface of the bottom part 2.



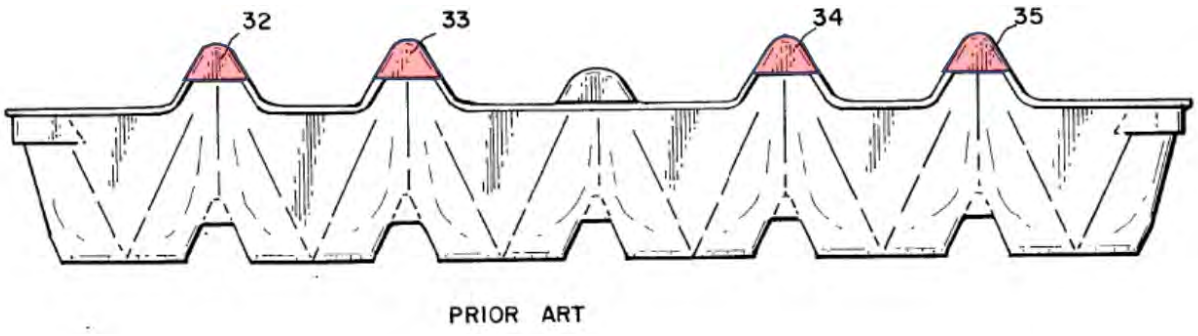
Ex.1009, Fig. 1 (annotated partial view)

276. Thus, Beese's retaining noses 24 in Post's container render obvious *the primary surface area comprising a flat portion* (Beese's retaining noses 24 have an external surface with a flat portion) (**red**) *disposed on an extension of the predominantly internal sidewall surface area* (internal sidewall surface extending from Beese's bottom part 2) (**green**) *of the second material surface* (inner surface).

277. The front, outward facing surface of Beese's retaining noses 24 (*primary surface area*) that interact with the openings 34 in the front flap 3 are shown with horizontal lines in Beese's Figs. 1 and 2, above (Fig. 2 is shown in limitation

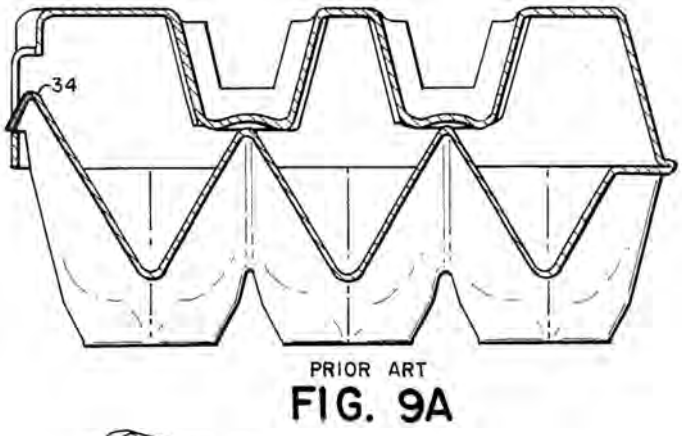
[11.6.6]). I understand those horizontal lines to illustrate perspective dimensioning because the top end of the retaining noses 24 have a smaller width (left to right in Figs. 1 and 2) than the bottom end of the retaining noses 24 (see, e.g., retaining noses 24 in Fig. 2). To the extent it is argued that the horizontal lines in Beese's retaining noses 24 designate ridges that would provide a non-continuous or non-flat surface, a POSITA would have been motivated to provide a flat outer surface on the retaining noses 24 as incorporated in Post's container 11, because such a flat outer surface on the retaining noses 24 would allow Post's label 11 to extend over the retaining noses 24 in a smooth, continuous manner without bumps or projections caused by a non-continuous or non-flat surface in the retaining noses 24.

278. Mangla shows that it was well-known to have a continuous, flat outer surface in projections extending from the bottom part of a container as the locking mechanism. As shown in Fig. 9C, below, Mangla shows that it was known to create cartons with a hinged cover having a series of protrusions 32-35 that are located between the egg cavities and which, like Beese, extend from the inside sidewall of the base and operate to mate with holes in the cover to latch the carton. Ex.1015, 4:3-6 ("This pulp carton includes protrusions 32-35 on the cell section. These protrusions have hooks which mate with holes in the cover to latch the carton."). The protrusions 32-25 (**red**) are illustrated in Fig. 9C:

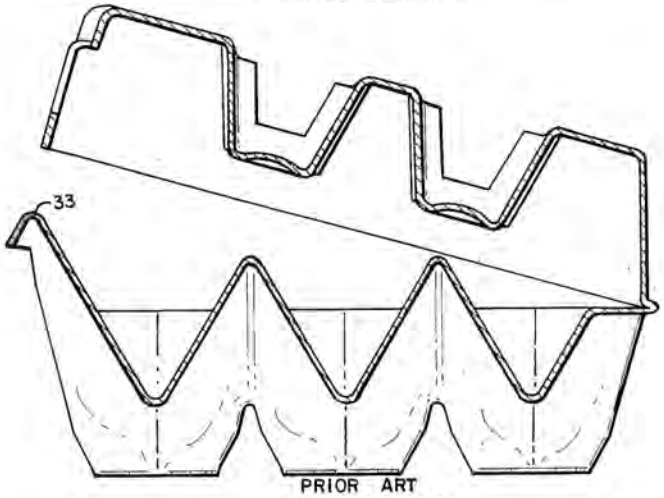


Ex. 1015, Fig. 9C (annotated)

279. As shown in Figs. 9B (protrusion 34) and 9C (protrusion 33), the protrusions have a flat outer surface that mates with corresponding openings in the cover to latch the carton. Ex.1015, 4:3-6 ("This pulp carton includes protrusions 32-35 on the cell section. These protrusions have hooks which mate with holes in the cover to latch the carton.").



PRIOR ART
FIG. 9A



PRIOR ART
FIG. 9B

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

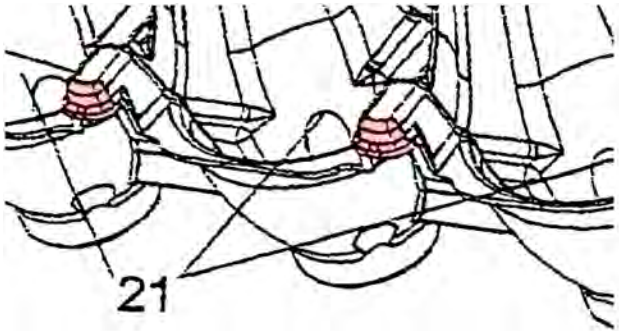
280. As described above in Section IX.A.4 (Reasons to Combine), a POSITA would have found it obvious and been motivated to configure Beese's retaining noses 24 in Post's container to have a flat outer surface, as suggested by Beese and as taught by Mangla, so that Post's label 11 would extend continuously over the retaining noses 24 without bumps caused by the retaining noses 24 having a non-flat configuration on their outer surface. This modification would have been desirable and more appealing to customers because the printing and/or advertisement

on the label would not be impacted by portions of the retaining noses 24 having different contoured outer surfaces that may be seen as bumps or other disruptions in Post's label 11.

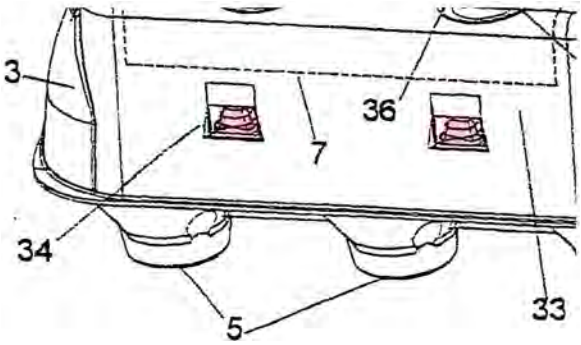
281. Accordingly, Post in view of Beese and Mangla also render obvious the *base extension* (Beese's retaining noses 24 in Post's bottom part 2) *comprising a flat portion* (Beese's retaining noses 24 have an external surface with a flat portion, as taught by Mangla) *disposed on an extension of the predominantly internal sidewall surface area* (internal sidewall surface extending from Beese's bottom part 2) *of the second material surface* (inner surface).

[11.6.8] wherein the base extension having a secondary surface area on an immediately opposite side of the container material to the flat portion of primary surface area, the secondary surface area disposed on an extension of the predominantly external sidewall surface area of the first material surface

282. Post in view of Beese and Mangla render obvious limitation [11.6.8]. As described above for limitation [11.6.6], Beese's retaining nose 24 in Post's bottom part 2 renders obvious the *base extension* having *the flat portion of [the] primary surface area* (front, external-facing surface) (**red**), as shown in Figs. 1 and 2, below.

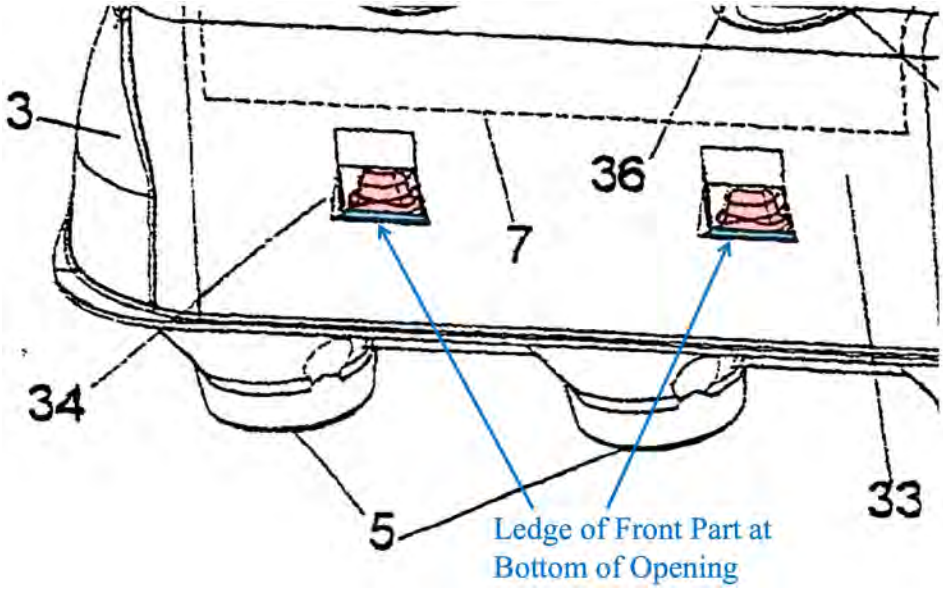


Ex.1009, Fig. 1
(annotated partial view)



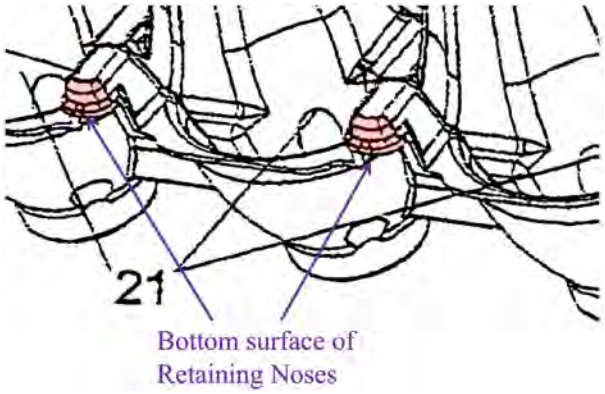
Ex.1009, Fig. 2
(annotated partial view)

283. As shown in Fig. 2, below, the retaining nose 24 interacts with the opening 34 in the front part 33 of the bottom part 2 by extending through the opening 34 and resting on top of a ledge (**blue**) of the front part 33 at the base of the opening 34 when the container is in the closed position. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2.").

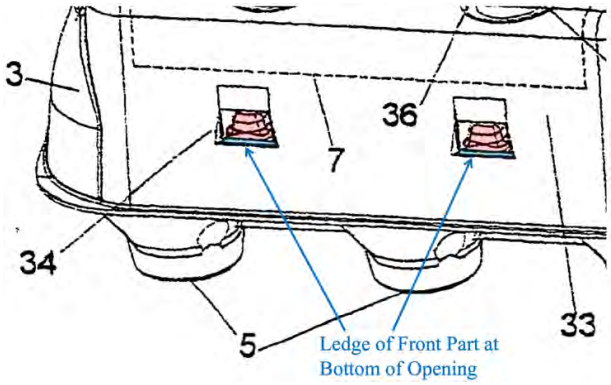


Ex.1009, Fig. 2 (annotated partial view)

284. Thus, as shown in Figs. 1 and 2 below, when Beese's container is closed (Fig. 2), the bottom surface (**purple** arrows shown in Fig. 1) of the retaining noses 24 rest on top of a ledge (**blue**) of the front part 33 of the lid part 3 at the base of the opening 34 when the container is in the closed position. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2.").



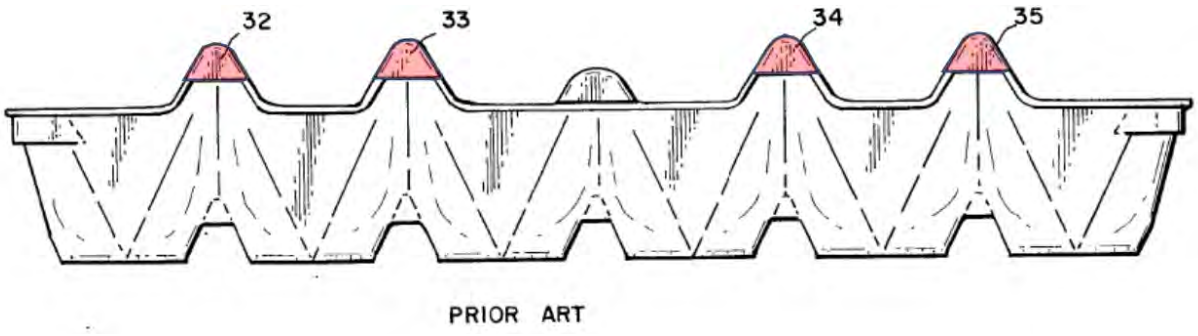
Ex.1009, Fig. 1
(annotated partial view)



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

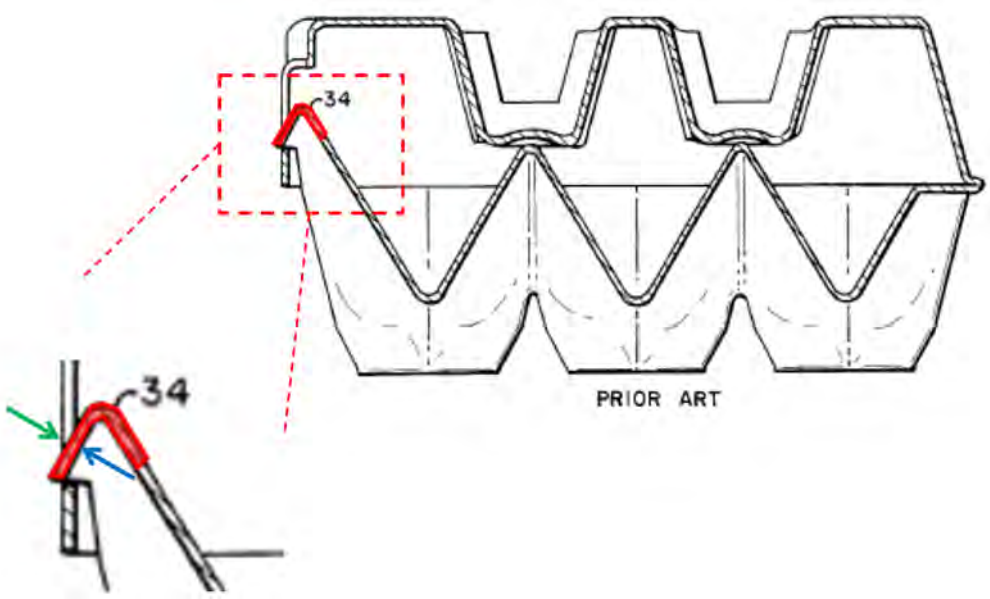
285. It was a known design choice to configure a projection or retaining nose to have a hook-like structure on the bottom surface of the projection / retaining nose to engage a ledge at the bottom side of an opening in the lid part when the container is in the closed position. For example, in describing prior art configurations, Mangla discloses that it was known to configure a projection / retaining nose to have a "hook" structure comprising to opposing sides with respect to each other, as explained below.

286. Mangla illustrates that it was known prior to April 1, 1983 to create pulp cartons with a hinged cover having a series of protrusions 32-35 that are located between the egg cavities and which extend from the inside sidewall of the base and operate to mate with holes in the cover to latch the carton. Ex.1015, 3:67-4:6. The protrusions (**red**) are illustrated in Fig. 9C:

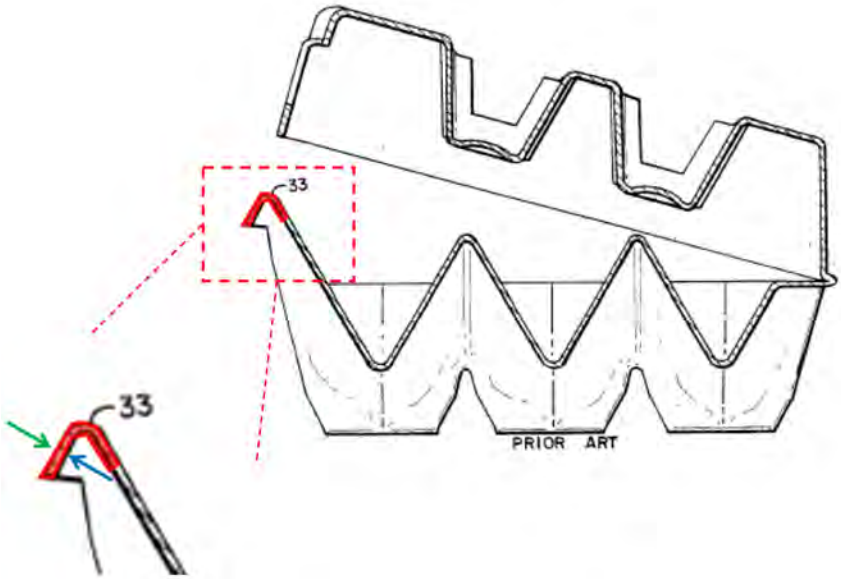


Ex. 1015, Fig. 9C (annotated)

287. As shown in Figs. 9A and 9B, below, protrusions 33 (Fig. 9A) and 34 (Fig. 9B) "have hooks which mate with holes in the cover to latch the carton." Ex.1016, 4:4-6. In cross-section views of Fig. 9A (closed) and Fig. 9B (open), the hooks forming these protrusions are highlighted in **red**, the inner surface (rearward facing; **blue** arrow in expanded view) of the protrusion 33, 34 is directly opposite of the flat, front-facing surface (**green** arrow in expanded view) of the base that engages with a ledge of the base above the bottom of holes in the cover:



Ex. 1015, Fig. 9A (annotated with expanded view)



Ex. 1015, Fig. 9B (annotated with expanded view)

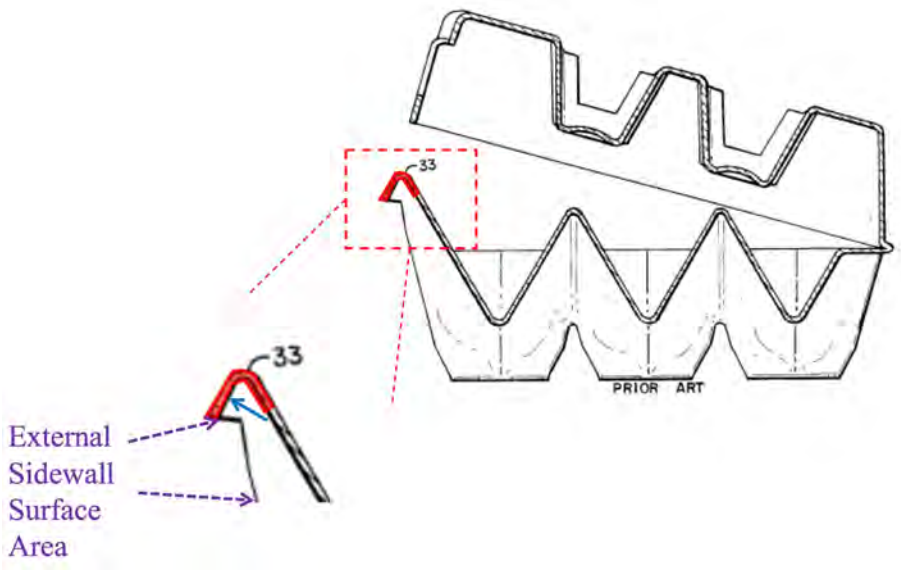
288. As shown in Mangla's Figs. 9A and 9B, above, it was known to configure a *base extension* (e.g., projections 33 and 34) *having a secondary surface*

area (rearward facing; **blue** arrow in expanded view) *on an immediately opposite side of the container material to the flat portion of primary surface area* (flat, front-facing surface; **green** arrow in expanded view).

289. A POSITA would have found it obvious to construct Beese's retaining nose 24 in Post's bottom part 2 to have, as taught by Mangla, at least a partially hollow structure at the front-facing *primary surface area* such that the *secondary surface area* (rearward facing; **blue** arrow in expanded view of Mangla's Figs. 9A and 9B above) are *on an immediately opposite side of the container material to the flat portion of primary surface area* (Beese's flat, front-facing *primary surface area*; shown in Beese's Figs. 1 and 2, above), as taught by Mangla. Configuring Beese's retaining noses 24 in Post's bottom part 2 in this manner would improve the latching security when the container is in a closed configuration, because the *secondary surface area* (rearward facing) would engage (latch onto) the ledge at the bottom side of an opening in the lid part when the container is in the closed position, as shown in Beese's Figs. 1 and 2, above. A POSITA would likewise configure openings in Post's side part 6 to permit a *secondary surface area* (rearward facing) on an immediately opposite side of…the flat portion of primary surface area of Beese's retaining noses 24 to latch onto a ledge at the bottom side of the openings in Post's lid part 3, as taught by Beese and Mangla.

290. Accordingly, Post in view of Beese and Mangla render obvious *the base extension* (Beese's retaining nose 24 in Post's container) *having a secondary surface area* (rearward-facing, internal surface, as taught by Mangla) *on an immediately opposite side of the container material to the flat portion of primary surface area* (flat, external-facing, front surface of Beese's retaining nose 24).

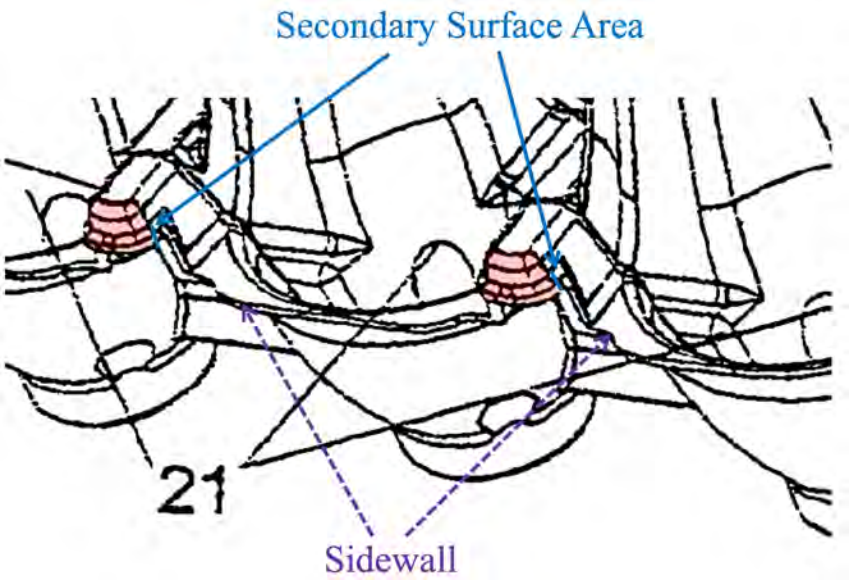
291. Further, as shown in Mangla's Fig. 9B, below, the *secondary surface area* (rearward facing; **blue** arrow in expanded view of Mangla's Fig. 9B) (same configuration in Mangla's Fig. 9A) is *disposed on an extension of the predominantly external sidewall surface area of the first material surface* (outer surface) (**purple** dotted arrows).



Ex. 1015, Fig. 9B (annotated with expanded view)

292. In view of Mangla's teachings about the advantage of having a "hook" configuration for projections (retaining noses), a POSITA would have been

motivated to configure Beese's retaining noses 24 in Post's container so that the *secondary surface area* (rearward facing surface; **blue** arrow in Beese's Fig. 1, below) is *disposed on an extension of the predominantly external sidewall surface area of the first material surface* (outer surface) (**purple** dotted arrows).



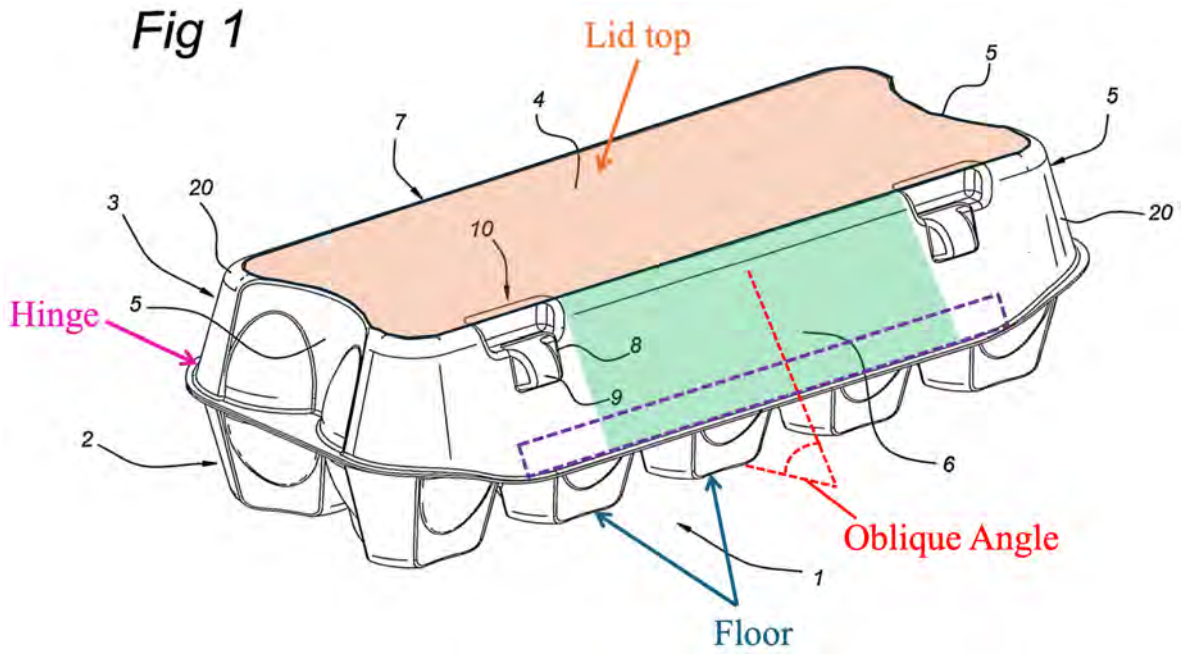
Ex.1009, Fig. 1 (annotated partial view)

293. Thus, Post in view of Beese and Mangla render obvious limitation [11.6.8].

[11.6.9] wherein when the lid is in the substantially closed position, the substantially planar frontal extension is disposed obliquely to the floor and projects generally away from the hinge from, the substantially flat lid top area to, the lid end portion,

294. Post discloses limitation [11.6.9]. As shown in Fig. 1, below, Post discloses that *when the lid is in the substantially closed position* (Fig. 1), *the substantially planar frontal extension* (**green**; *see* limitation [11.5.2]) *is disposed*

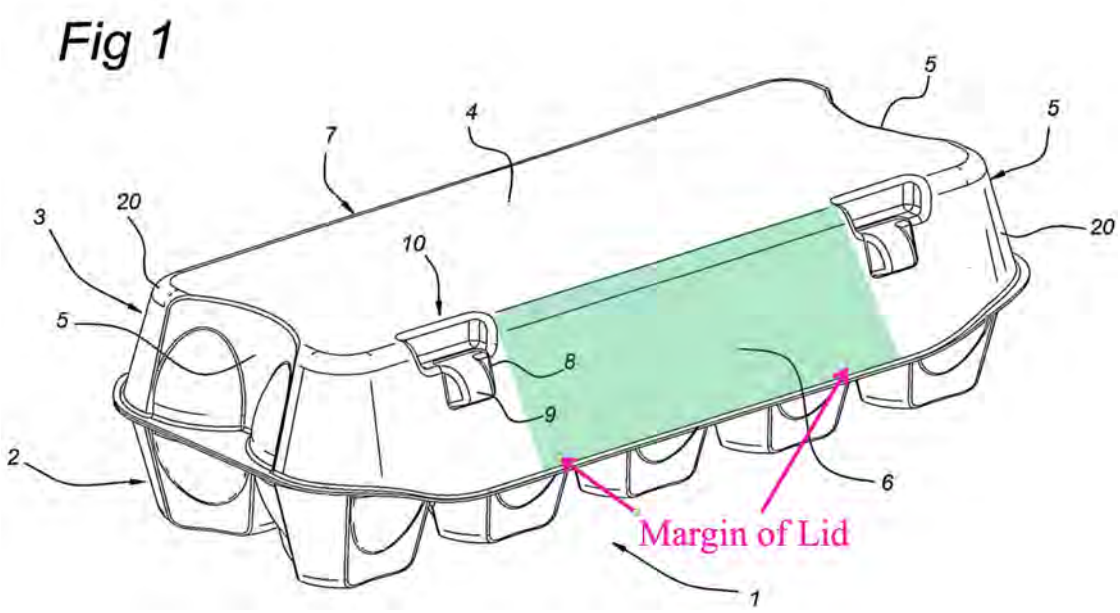
obliquely (**red** oblique angle) *to the floor* (**blue**; see limitation [11.1]) *and projects generally away* (projects toward front of container) *from the hinge* (*see* limitation [11.2.1]) *from, the substantially flat lid top area* (**orange**; *see* limitation [11.5.1]) *to, the lid end portion* (**purple** dotted rectangle; *see* limitation [11.5.8]).



Ex.1010, Fig. 1 (annotated)

[11.6.10] wherein the substantially planar frontal extension terminates substantially at the margin;

295. Post discloses limitation [11.6.10]. As shown in Fig. 1, below, Post discloses that *the substantially planar frontal extension* (**green**; *see* limitation [11.5.2]) *terminates substantially at the margin* of the lid (**pink**; *see* limitation [11.5.8]).

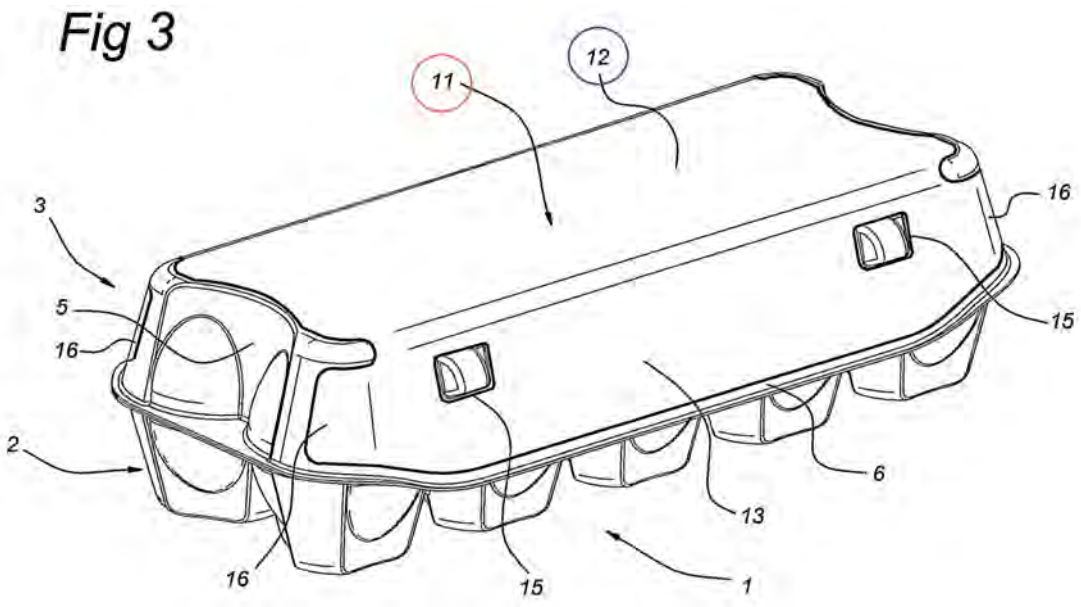


Ex.1010, Fig. 1 (annotated)

[11.7.1] [the container comprising:] a label covering the substantially flat lid top area of the lid,

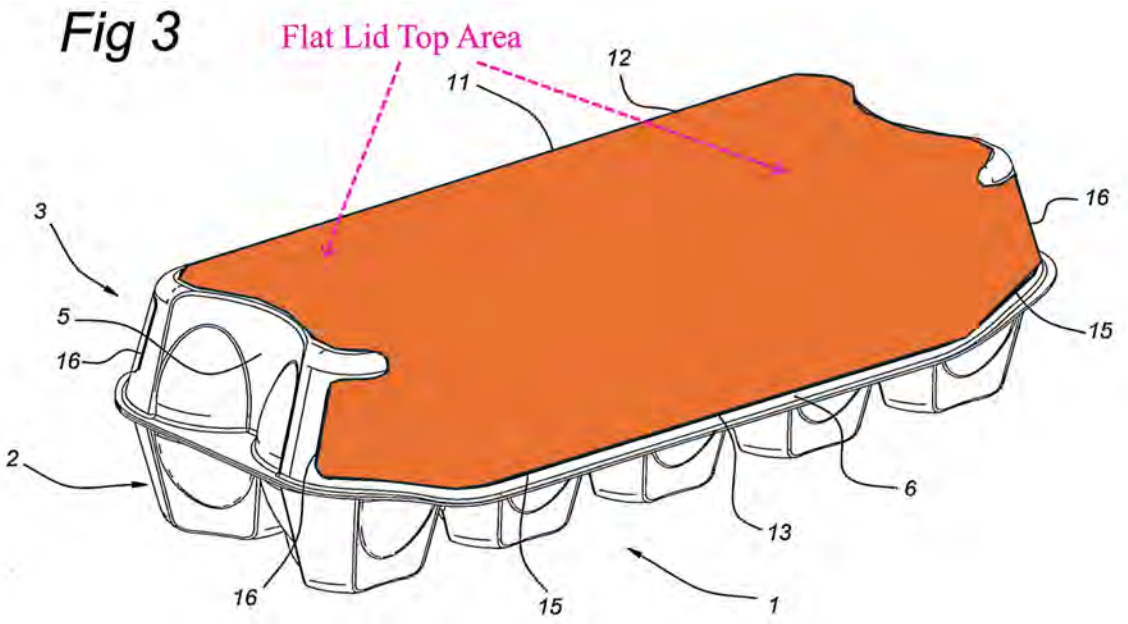
296. Post and Beese render obvious limitation [11.7.1]. As described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post to include Beese's retaining noses 24 (*base extension*) in Post's bottom part 2 so as to extend Post's label 11 to entirely cover the front part 6 of Post's lid part 3, as taught by Beese, without having to provide openings for Post's projections 9. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). Post's label 11 teaches the claimed *label*.

297. Post discloses the arrangement of the *label* as recited in limitation [11.7.1]. As shown in Fig. 3, below, Post's *label* 11 (**orange**) *cover[s] the substantially flat lid top area of the lid* (top part 4 of the lid part 3; *see* limitation [11.5.1] above), because Post teaches that the central part 12 (**purple**) of the label 11 (**orange**) covers the top part 4 of the lid part 3. Ex.1010, 3 ("A flat sheet that has to be applied as label to the lid part 3 is shown in Fig. 2. This flat sheet [label] is indicated in its entirety by 11 and comprises a central part 12, a front flap 13 and a rear flap 14."), 4 ("Fig. 3 shows how this label 11 is applied to the lid part 3….The flat sheet is then placed with the central part 12 thereof on the top part 4.").



Ex.1010, Fig. 3 (annotated)

298. In the Post-Beese combination shown below, the modified *label* (**orange**) likewise *cover[s] the substantially flat lid top area of the lid* (dotted **pink** arrows) (top part 4 of lid part 3).

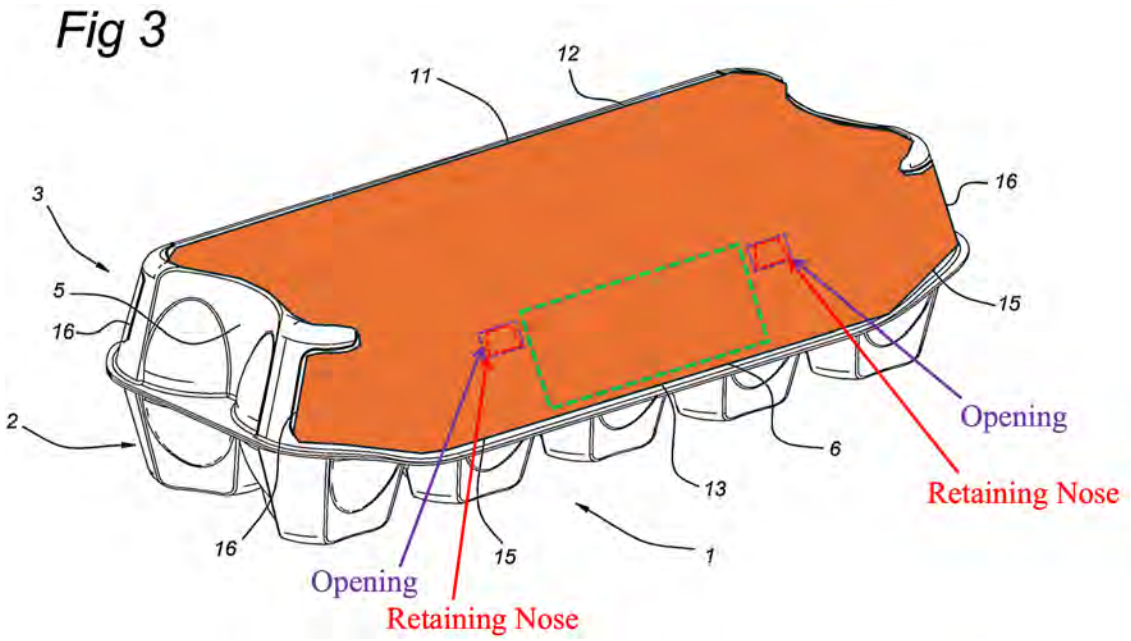


Ex.1010, Fig. 3 (annotated and modified)

[11.7.2] [the label] having a substantially flat portion covering the substantially planar frontal extension,

299. Post and Beese render obvious limitation [11.7.2]. As described above for limitation [11.5.2], the front part 6 of Post's lid part 3 comprises *the substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8). Post's Fig. 3 is modified below to show the label 11 (**orange**) extending to the bottom edge of the front part 6 of the lid part 3 when Post's container 1 is modified to include Beese's retaining noses 24 (**red** dotted lines) in the bottom part 2 and corresponding

openings (**purple** dotted lines) in the lid part 3 to allow for the label 11 to extend continuously over the front part 6 of the lid part 3 without interruptions for openings in the lid part 3, as taught by Beese. Ex.1009, [0030]. As shown in modified Fig. 3, the label *ha[s] a substantially flat portion* (front flap 13) *covering the substantially planar frontal extension* (**green** dotted rectangle between openings (**purple**)). Ex.1010, 4 (explaining that "the front flap 13" of label 11 is "positioned on the front wall 6" of the lid part 3). Thus, Post and Beese render obvious limitation [11.7.2].

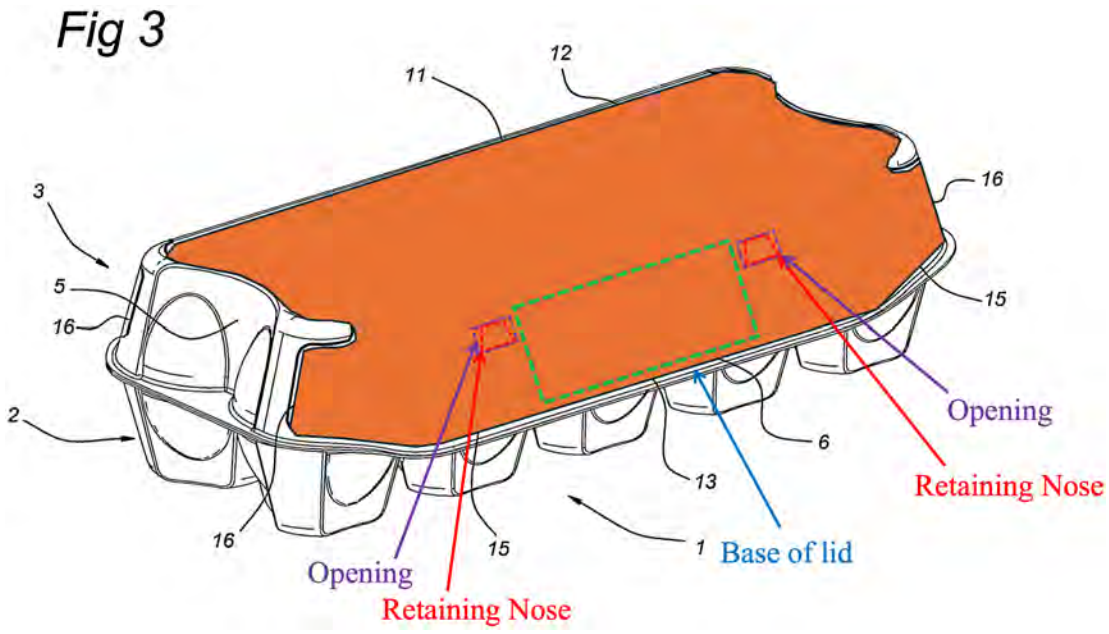


Ex.1010, Fig. 3 (annotated and modified)

[11.7.3] wherein the label extends beyond the substantially planar frontal extension,

300. Post and Beese render obvious limitation [11.7.3]. The Post-Beese combination renders obvious limitation [11.7.3] in two different ways. **First**, as

shown in Fig. 3, below, Post's label 11 is modified to extend to entirely cover the front part 6 of the lip part 3 and extend downward until the base (edge) of the lid (**blue**), as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the label] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). Thus, *the label* (**orange**) *extends beyond the substantially planar frontal extension* (**green** dotted rectangle between openings (**purple**)), because the label extends to the base of the lid and past (beyond) *the substantially planar frontal extension* (**green** dotted rectangle).



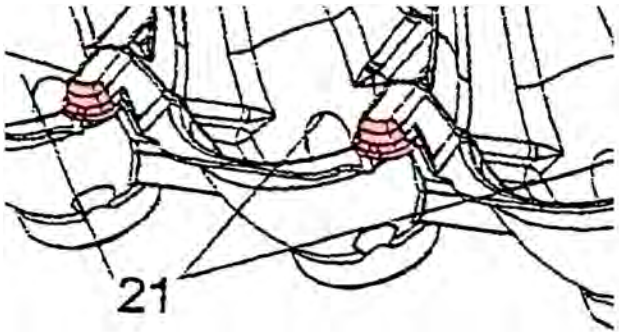
Ex.1010, Fig. 3 (annotated and modified)

301. Second, as shown in Fig. 3, above, the label (**orange**) extends *beyond the substantially planar frontal extension* (**green** dotted rectangle), because the label (**orange**) extends over the entirety of *the substantially planar frontal extension* and

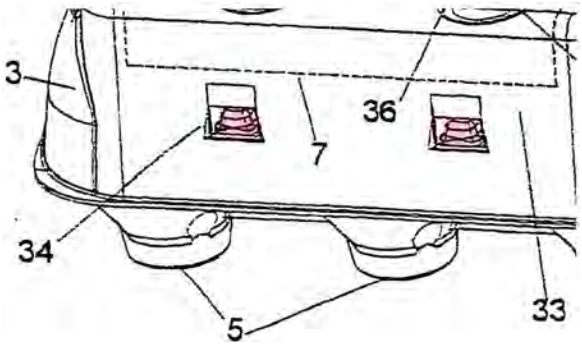
extends past (beyond) *the substantially planar frontal extension* in the left-right direction and above and below *the substantially planar frontal extension*. Thus, the Post-Beese combination renders obvious limitation [11.7.3].

[11.7.4] when the lid is in the substantially closed position, the label covers the flat portion of the base extension; and

302. Post and Beese render obvious limitation [11.7.4]. **First**, as described above for limitation [11.6.7], Beese's retaining noses 24 (*base extension*) have *the primary surface area* that comprises *a flat portion* (**red**) on the external surface of the retaining noses 24, as shown in Fig. 1 (open state) and Fig. 2 (closed state), below.



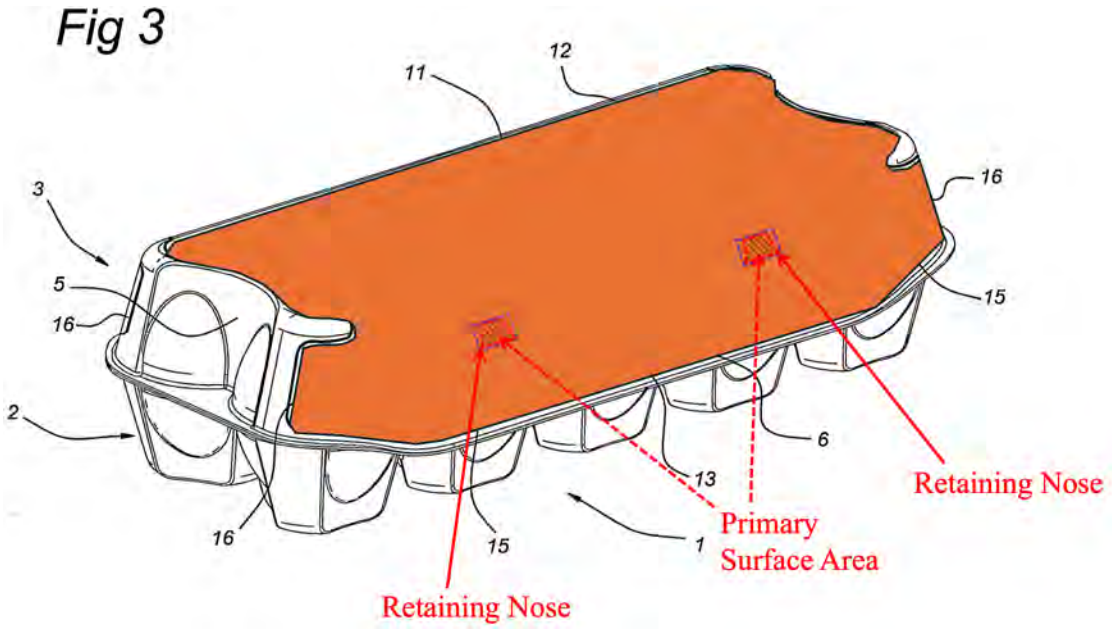
Ex.1009, Fig. 1
(annotated partial view)



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

303. In the Post-Beese combination, when Post's *label* 11 (**orange**) *is in the substantially closed position* (Fig. 3), *the label* (**orange**) *covers the flat portion* (**orange** dashed surface area beneath label 11) on the front of the primary surface

area (**red** dotted arrows) *of the base extension* (retaining nose) (**red**), as shown in Post's Fig. 3, below.

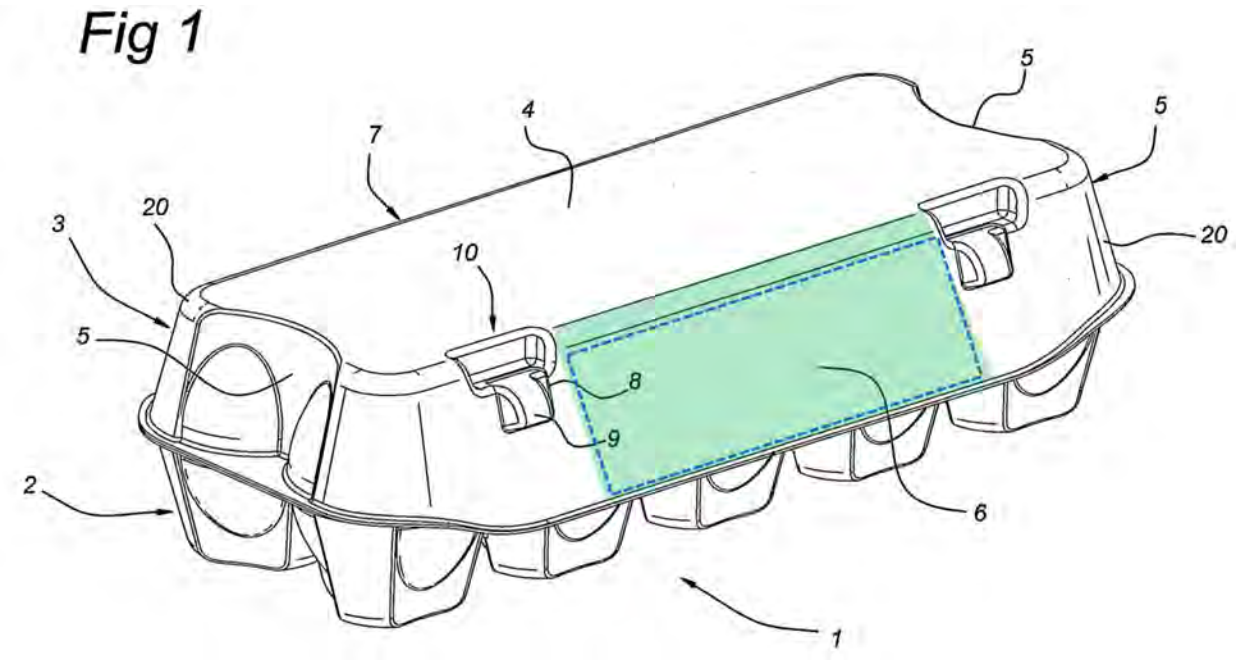


Ex.1010, Fig. 3 (annotated and modified)

304. Thus, Post and Beese render obvious limitation [11.7.4].

[11.7.5] the lid having a first planar area disposed on the substantially planar frontal extension,

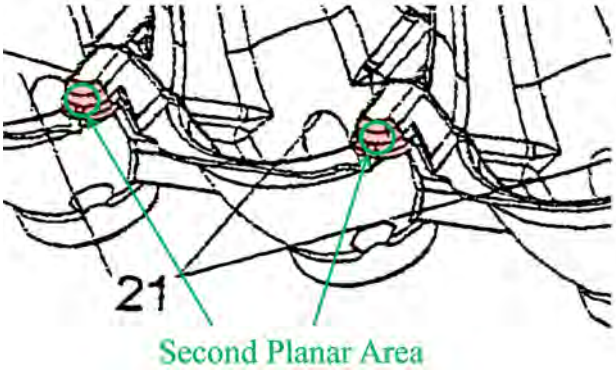
305. Post discloses limitation [11.7.5]. As shown in Fig. 1, below, Post's *lid* (lid part 3) *ha[s]* a *first planar area* (**blue** rectangle) *on the substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8; *see* limitation [11.5.2] above) (**green**).



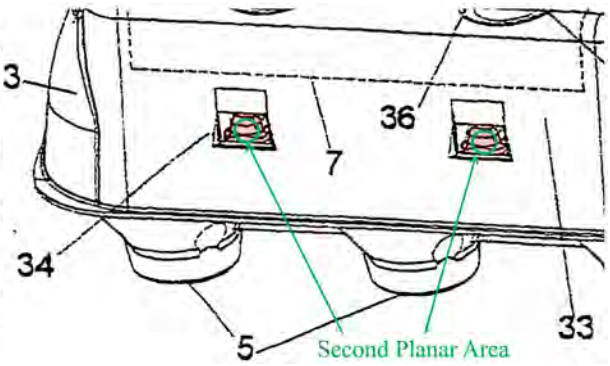
Ex.1010, Fig. 1 (annotated)

[11.7.6] the base having a second planar area disposed on the flat portion of the primary surface disposed obliquely to the floor,

306. Post and Beese render obvious limitation [11.7.6]. **First**, as described above for limitation [11.6.5], *the base* in the Post-Beese combination comprises a *base extension* (Beese's retaining noses 24 in Post's bottom part 2). **Second**, as described above for limitation [11.6.7], Beese's retaining noses 24 (*base extension*) have *the primary surface* with *the flat portion* (**red**) on the external surface of the retaining noses 24, as shown in Fig. 1 (open state) and Fig. 2 (closed state), below. As also shown in Figs. 1 and 2, the base extension (retaining noses) of *the base ha[s] a second planar area* (**green** circle) *disposed on the flat portion of the primary surface area* (**red**).

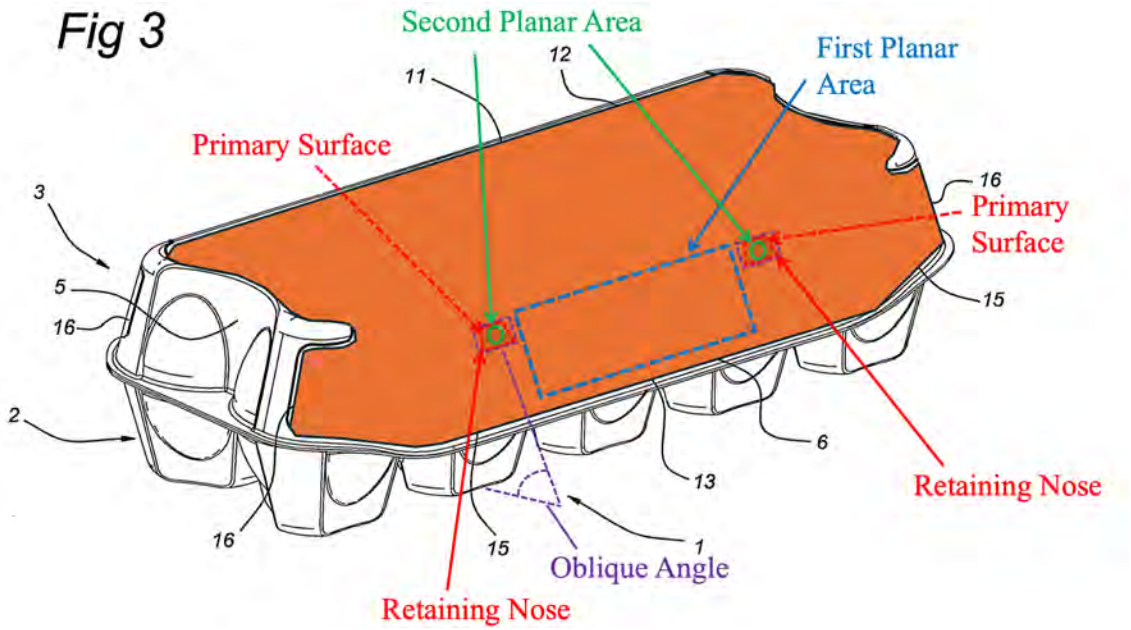


Ex.1009, Fig. 1
(annotated partial view)



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

307. In the Post-Beese combination shown in modified Fig. 3 below, the base extension (retaining noses) of *the base ha[s] a second planar area* (**green** circle) *disposed on the flat portion of the primary surface* (**red**) *disposed obliquely to the floor* (**purple** oblique angle relative to the floor).

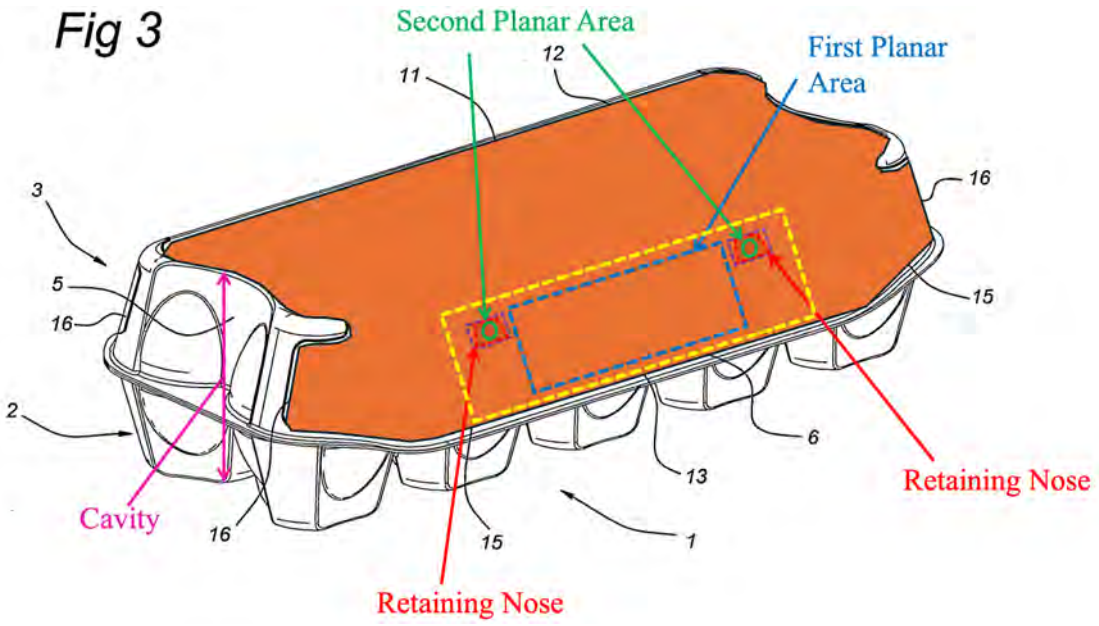


Ex.1010, Fig. 3 (annotated and modified)

308. Thus, Post and Beese render obvious limitation [11.7.6].

[11.7.7] wherein the first planar area and the second planar area are generally coplanar and disposed facing externally with respect to the cavity when the lid is in the substantially closed position.

309. Post and Beese render obvious limitation [11.7.7]. In the Post-Beese combination shown in modified Fig. 3 below, *the first planar area* (**blue** dotted rectangle) *and the second planar area* (**green** circle on flat portion of primary surface area of retaining nose) (**red**) *are generally coplanar* (coplanar in plane shown by yellow dotted rectangle) *and disposed facing externally with respect to the cavity* (facing externally toward front of container away from cavity between top part 4 of lid part 3 and the bottom surface of the bottom part 2) *when the lid* (lid part 3) *is in the substantially closed position* (Fig. 3).



Ex.1010, Fig. 3 (annotated and modified)

310. Thus, Post and Beese render obvious limitation [11.7.7].

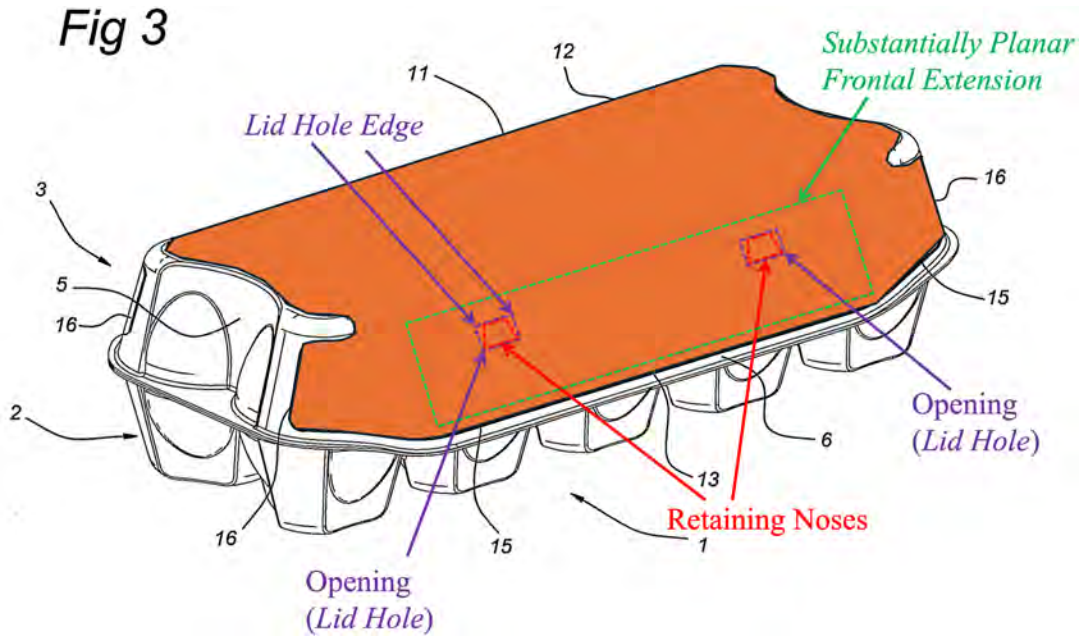
311. Accordingly, for at least the foregoing reasons, all the limitations of claim 11 are well-known, conventional features, as taught by Post, Beese, and Mangla.

k) Claim 12

[12.0] The container of claim 11 wherein, in the substantially closed position, both, the lid hole and the lid hole edge are entirely encompassed within the substantially planar frontal extension, and

312. Post and Beese render obvious limitation [12.0]. As described above for limitation [11.5.2], Post's lid part 3 includes *the substantially planar frontal extension*. As explained for limitation [11.5.9], *the substantially planar frontal extension* may be any area of the front part 6 of the lid part 3 that extends *from the substantially flat lid top area* (top part 4) to the bottom edge of the lid. For example, as explained above in limitation [11.5.2], *the substantially planar frontal extension* may include any planar area of the front part 6, such as an area between openings 8 in the front part 6 of Post's lid part 3, or an area on the front part 6 that goes beyond the openings 8 toward the lateral ends of the lid part 3 (toward the "linking transverse walls" 5 (Ex.1010, 3)). Post's Fig. 3 is annotated below to illustrate the Post-Beese combination, where Post's label 11 is extended to the base of the lid part 3 and Post is modified to include Beese's retaining noses 24 and corresponding openings in Post's lid part 3, in lieu of Post's projections 9 and openings 8 (*see* Section IX.A.4

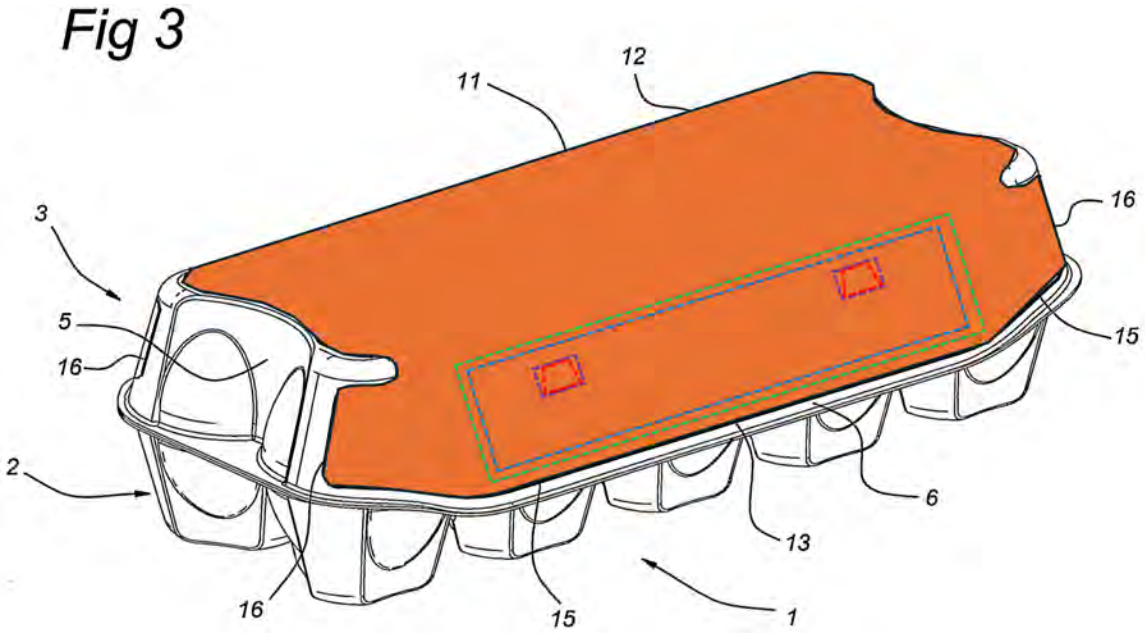
above). In the Post-Beese combination illustrated below, when the container is *in the substantially closed position* (Fig. 3), *both[] the lid hole* (**purple**) *and the lid hole edge* (**purple**) (*see* limitation [11.5.9]) *are entirely encompassed within the substantially planar frontal extension* (**green** dotted rectangle). Thus, Post and Beese render obvious limitation [12.0].



Ex.1010, Fig. 3 (annotated and modified)

[12.1] the first planar area has a surface area greater than 5 cm^2.

313. The Post-Beese combination renders obvious limitation [12.1]. As described above for limitation [11.7.5], Post discloses that the *lid* (lid part 3) has *the first planar area* (**blue** dotted rectangle) *on the substantially planar frontal extension* (**green** dotted rectangle), as shown in the Post-Beese combination below.



Ex.1010, Fig. 3 (annotated and modified)

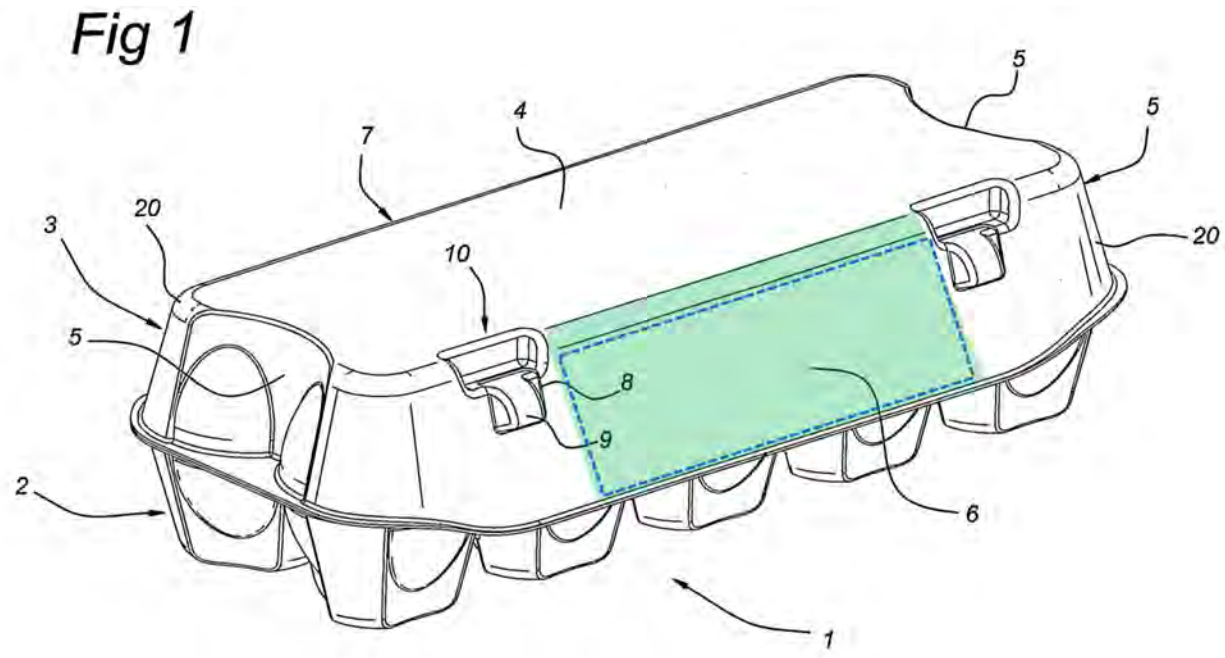
314. Configuring *the first planar area* (**blue** dotted rectangle) to have a surface area greater than 5 cm^2 is an obvious design choice to accommodate food products such as eggs. As shown in Fig. 3, above, Post's container has five cavities for holding eggs in the front half of the container (a POSITA would also understand Post's container to have five cavities for holding eggs in the rear half of the container). Post discloses that its container holds eggs. Ex.1010, 1. On average, large chicken eggs—a common food product sold to consumers—have a length of 55 mm (5.5 cm) and a diameter of 39 mm (3.9 cm), as shown below. Ex.1036, 6-7 (dimensions of "Large Hen Eggs"). Two such eggs, positioned side-by-side with no separation between the two eggs, must have width of at least 7.8 cm (3.9 cm x 2 =

7. 8 cm).[8] For this rectangle of 7.8 cm width to have an area of less than 5cm^2, its height must be less than 0.641 cm (about ¼ inch), or 0.12% of the height of the 55 mm average "Large Hen Eggs" (0.641cm/5.5 cm x100). This is equivalent to one-eighth of percent of that height. As discussed above with respect to limitation [11.7.5] and as shown in annotated Fig. 1 below, Post's *lid* (lid part 3) has *the first planar area* (**blue** dotted rectangle) *on the substantially planar frontal extension portion* (e.g., portion of front wall 6 between openings 8; *see* limitation [11.5.2] above) (**green**). The cavities for accommodating eggs as shown diagrammatically in Post's bottom part 2 teach egg heights greater than 0.641 cm (e.g., diameter of two eggs = 7.8 x 7.8 = 60.84 cm^2).

[8] Egg containers (cartons) commonly separate eggs from one another (e.g., by cavities such as Post's cavities in the bottom part 2 (Ex.1009, 3), or posts such as Beese's supports 23 (Ex.1010, Fig. 1) or Buckley's posts 5 (Ex.1016, Fig. 1)).

Peewee	Length: 40mm (1.6 in)Diameter: 27mm (1 in)
Small	Length: 42mm (1.6 in)Diameter: 29mm (1 in)
Medium	Length: 52mm (2 in)Diameter: 38mm (1.4 in)
Large	Length: 55mm (2.1 in)Diameter: 39mm (1.5 in)
Extra-large	Length: 62mm (2.4 in)Diameter: 43mm (1.6 in)
Jumbo	Length: 63mm (2.5 in)Diameter: 43mm (1.6 in)

Ex.1036, 7 (annotated).



Ex.1010, Fig. 1 (annotated)

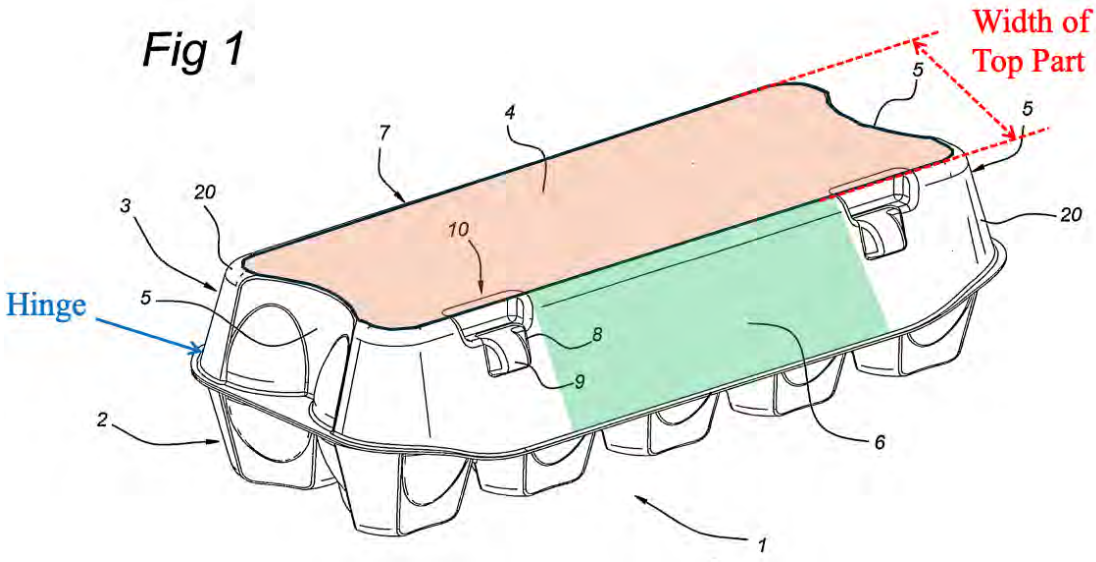
315. Thus, in view of the size of large chicken eggs,[9] the Post-Beese combination renders obvious *the first planar area* (**blue** dotted rectangle in Post-Beese combination) *has a surface area greater than 5 cm^2*.

l) Claim 13

[13.0] The container of claim 11 wherein the substantially flat lid top area has a width disposed generally between the hinge and the substantially planar frontal extension;

316. Post discloses limitation [13.0]. As shown in Fig. 1 below, Post discloses that *the substantially flat lid top area* (top part 4 of lid part 3) (**orange**) (*see* limitation [11.5.1]) has a width (**red**) disposed generally *between the hinge* (**blue**) (*see* limitation [11.2.1]) and *the substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) (**green**) (*see* limitation [11.5.2]).

[9] The *first planar area* in the Post-Beese combination would also have *a surface area greater than 5 cm^2* based on the diameters of two peewee, small, and medium chicken eggs.

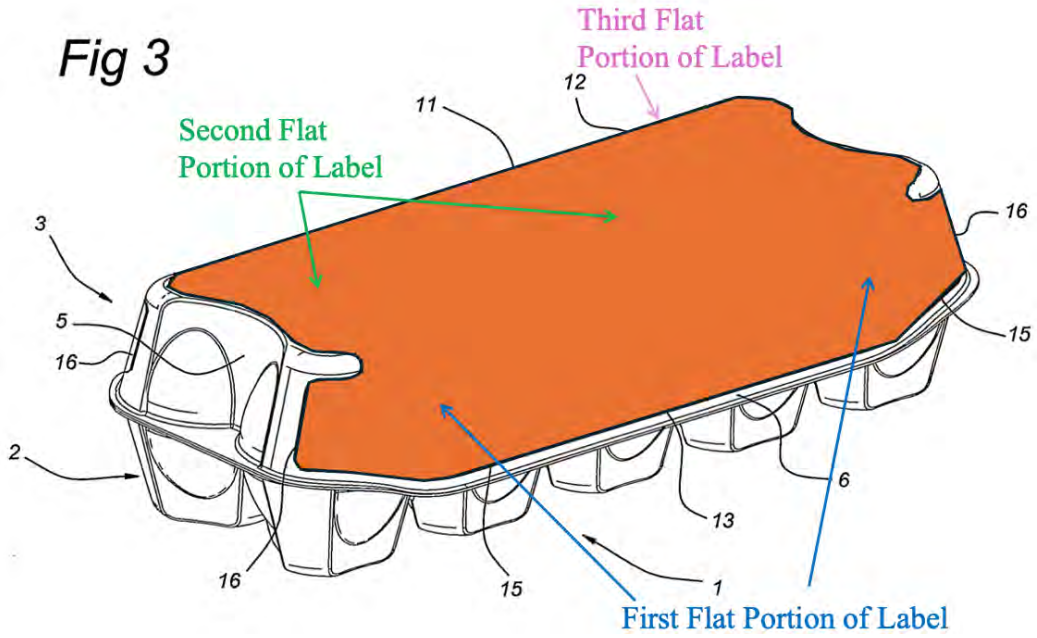


Ex.1010, Fig. 1 (annotated)

[13.1] the label has a first flat portion encompassing the substantially flat portion, a second flat portion covering the substantially flat lid top area, and a third flat portion,

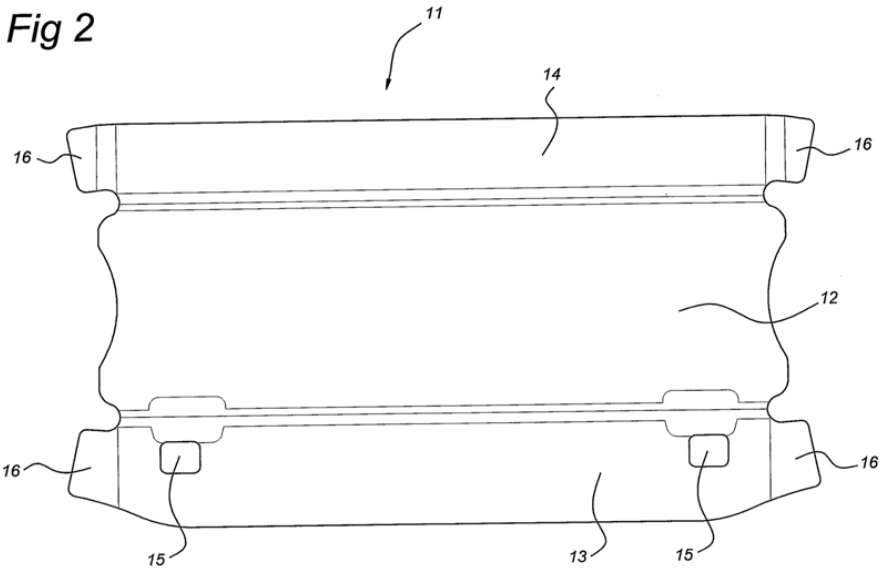
317. Post and Beese render obvious limitation [13.1]. **First**, in the Post-Beese combination shown below, *the label* (**orange**) *has*:

- *a first flat portion* (**blue**) *encompassing the substantially flat portion* (*see* limitation [11.7.2]) that covers *the substantially planar frontal extension* (front part 6 of lid part 3),
- *a second flat portion* (**green**) *covering the substantially flat lid top area* (top part 4 of lid part 3) (*see* limitation [11.5.1]), and
- *a third flat portion* (**pink**).



Ex.1010, Fig. 3 (annotated and modified)

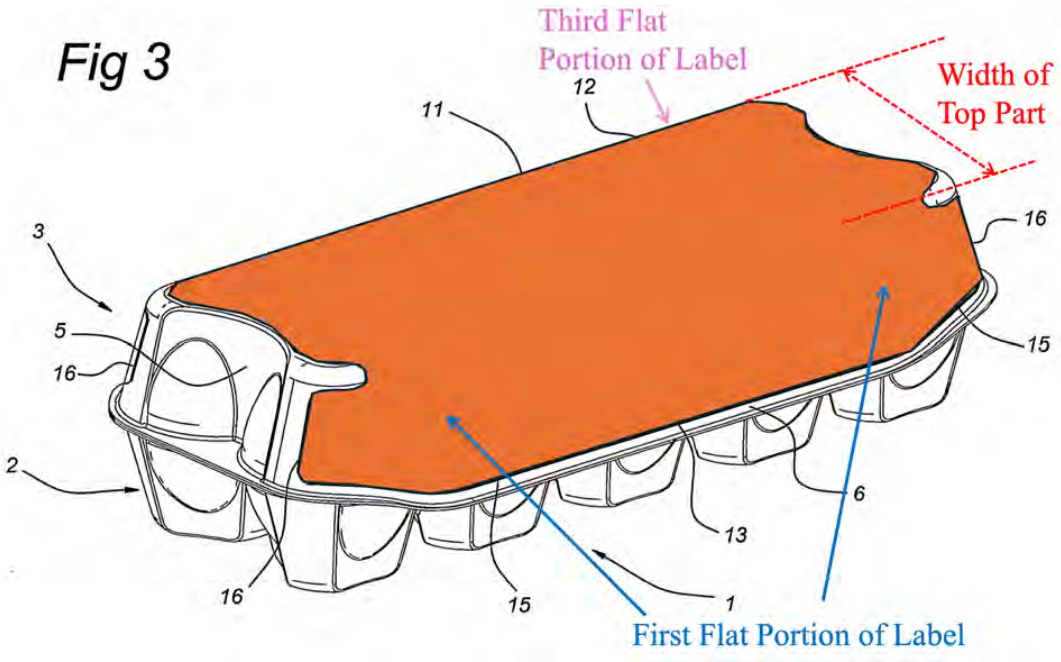
318. As shown in Fig. 2, below, Post's label 11 includes a front flap 13 (*first flat portion*) that covers the front part 6 of the lid part 3, a central part 12 (*second flat portion*) that covers the flat top part 4 of the lid part 3, and a rear flap 14 (*third flat portion*) that covers the rear wall 7 of the lid part 3 (rear wall 7 labeled in Post's Fig. 1). Ex.1010, 3 ("A flat sheet that has to be applied as label to the lid part 3 is shown in Fig. 2. This 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 ("The 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.1010, Fig. 2

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

319. Limitation [13.2] is rendered obvious by the Post-Beese combination. As shown in Post's Fig. 3, below, *the first flat portion* (**blue**) of the label *is separated from the third flat portion* (**pink**) *by the width of the substantially flat lid top area* (flat top part 4) (width from front side to rear side of top part 4 of lid part 3).



Ex.1010, Fig. 3 (annotated and modified)

m) Claim 14

320. Claim 14 contains limitations that are identical or substantially similar to limitations of claim 11. *See* Ex.1038, 1-8 (comparing claims 11 and 14). My analysis of claim 14 below focuses on limitations that are different than limitations of claim 11.

[14.0] A container for packaging contents intended for sale wherein, the contents comprising a product, the container comprising:

321. Limitation [14.0] is generally similar to limitation [11.0] as both recite "[a] container for packaging" a "product," but limitation [14.0] additionally requires packaging "contents intended for sale," where "the contents compris[e] a product." Like limitation [11.0], Post discloses limitation [14.0]. Post is directed to "a

container for packaging foods." Ex.1010, 1. Post's container is illustrated as being configured to hold eggs, but Post indicates that its container may be configured to hold other food products. Ex.1010, 1 ("The present invention more particularly relates to an egg tray, but it must be understood that the invention can also be applied to other containers for packaging foods such as vegetables, fruit and the like."). Products such as "eggs" and "packaging foods such as vegetables, fruit and the like" are *contents intended for sale*.

[14.1.1] a container material substantially comprising a base, a floor and

322. Limitation [14.1.1] is substantively identical to limitation [11.1]. I address below phrases that might differ between the two limitations but which do not impact claim scope, in my opinion. Limitation [14.1.1] recites "a container material substantially comprising a base [and] a floor," whereas limitation [11.1] recites "the container comprising: a base having a floor." Post's container is made of a material such as plastic or molded fiber material. Ex.1010, 1 (Post explaining that its "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, that is to say of a water-paper/wood fibre mixture from which a container is produced by forming and drying."), 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1."). Thus, Post discloses *a*

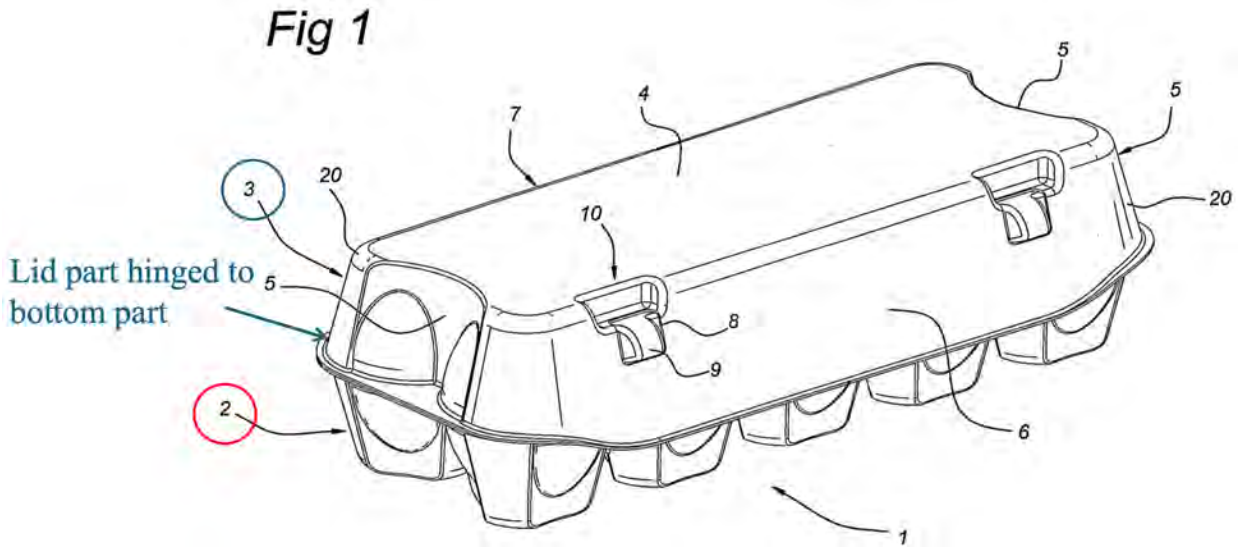
container material (e.g., paper, plastic, etc.) *substantially comprising a base [and] a floor* (see limitation [11.1]).

323. Several limitations of claim 14 recite the "container material" instead of the "container" as recited in claim 11. *See* limitations [14.1.2] and [14.2.2]. My discussion of limitations [14.1.2] and [14.2.2] incorporates my analysis of "the container" as recited in claim 11, because Post's container is made of a material such as plastic, paper, molded fiber material, etc., as noted above.

[14.1.2] [the container material substantially comprising:] a lid moveable with respect to the base from, at least one substantially open position to, at least one substantially closed position

324. Post discloses or at least renders obvious limitation [14.1.2] for the same reasons I provided for limitation [11.2.1], and as explained below.

325. **First**, as shown in Fig. 1, below, Post's container 1 includes a lid part 3 (the claimed *lid*) that is hinged to the bottom part 2 (the claimed *base*). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray…is indicated by 1. This [container] consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto."). Thus, Post discloses that *the container material substantially compris[es]…a lid* (lid part 3) *movable with respect to the base* (hinge joining lid part 3 to bottom part 2).



Ex.1010, Fig. 1 (annotated)

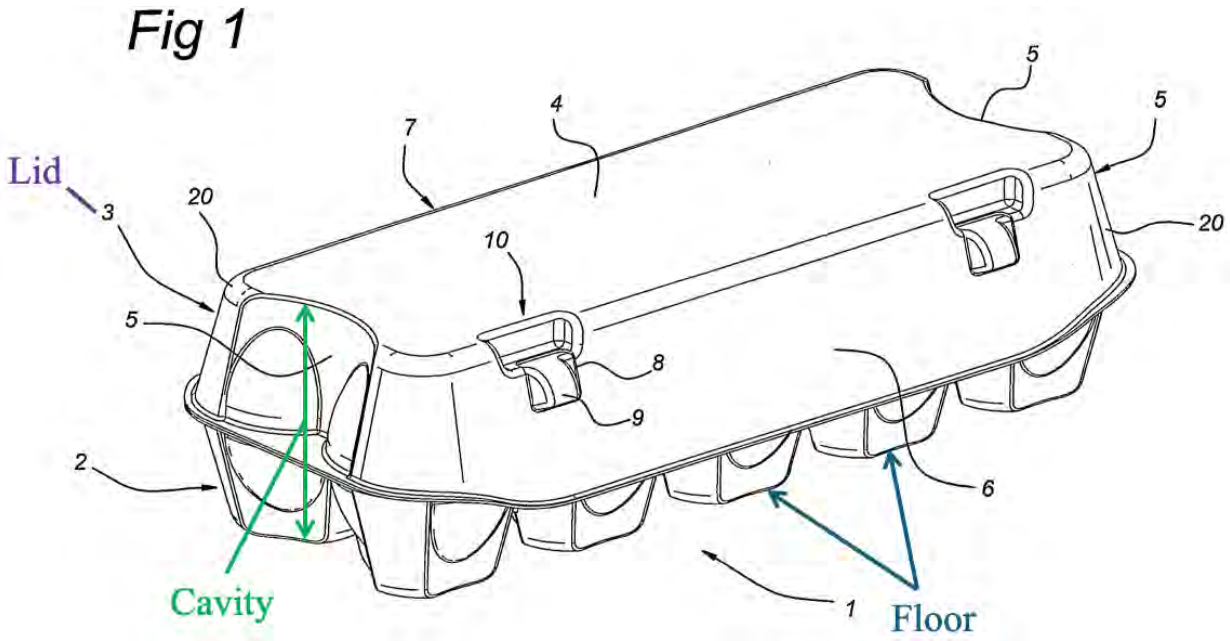
326. **Second**, Post discloses or at least renders obvious that the *lid* (lid part 3) is *movable with respect to the base* (hinge joining lid part 3 to bottom part 2) *from[] at least one substantially open position to[] at least one substantially closed position*. Fig. 1 illustrates the container 1 in a *closed position*. A POSITA would understand for at least two reasons that Post's container 1 is moved from the *closed position* shown in Fig. 1 to an *open position*, and vice versa, to allow a person to access the food products (e.g., eggs) housed in the container 1. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray…is indicated by 1."). First, as noted above, Post teaches that the lid part 3 is hinged to the bottom part 2, which allows the lid part 3 to be opened relative to the bottom part 2. Ex.1010, 3 ("A hinged lid part 3 is joined" to the bottom part 2"), 1 ("The present invention relates to a container for packaging foods, comprising a bottom part and a hinged lid part joined

thereto."). Second, as shown in Figure 1, above, Post's container 1 has a locking mechanism including closing projections 9 on the bottom part 2, and openings 8 on the lid part 3. This locking mechanism is provided to enable a person to lock (close) the container and open the container by disengaging the closing projections 9 from the openings 8 and moving the front wall 6 of the lid part 3 outward. Ex.1010, 3 ("The lid part 3 can be unlocked from the bottom part 2 by depressing closing projections 9 and moving front wall 6 forwards."). Thus, Post discloses or at least renders obvious *a lid* (lid part 3) *moveable with respect to the base* (hinge joining lid part 3 to bottom part 2) *from, at least one substantially open position* (disengaging closing projections 9 from openings 8 to open container 1) *to, at least one substantially closed position* (container 1 in closed position in Fig. 1).

[14.1.3] wherein, the at least one substantially closed position substantially defining a cavity disposed substantially inside the container between the floor and the lid;

327. Post discloses limitation [14.1.3] for the same reasons presented above for limitation [11.2.2]. As shown in Fig. 1, below, *the at least one substantially closed position* (Fig. 1) *defin[es] a cavity* (**green**) *disposed substantially inside the container between the floor* (bottom of bottom part 2) (**blue**) *and the lid* (lid part 3). The *cavity… between the floor* (bottom of bottom part 2) (**blue**) *and the lid* (**purple**) (lid part 3) is provided to hold food products (e.g., eggs). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is

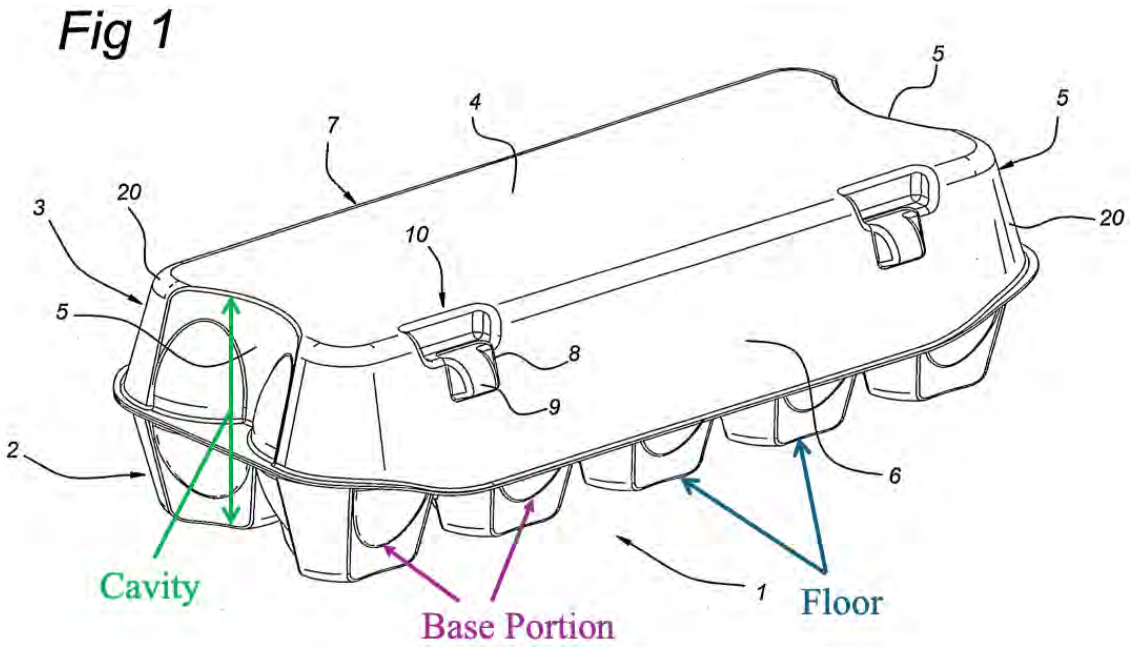
indicated by 1. This consists of a bottom part 2 in which **cavities for accommodating eggs** are shown diagrammatically.").



Ex.1010, Fig. 1 (annotated)

[14.1.4] the cavity comprising: a base portion of the cavity to contain at least a first portion of the product disposed substantially inside the base; and

328. Limitation [14.1.4] is disclosed by Post for the same reasons presented above for limitation [11.3.1]. Limitation [14.1.4] has non-substantive differences in wording, but the limitations are substantially similar. As shown in Fig. 1, below, *the cavity* (**green**) in Post's container *compris[es] a base portion* (cavities formed in bottom part 2) (**purple**) *of the cavity to contain at least a first portion of the product* (e.g., bottom half of eggs housed in cavities) *disposed substantially inside the base* (bottom part 2).



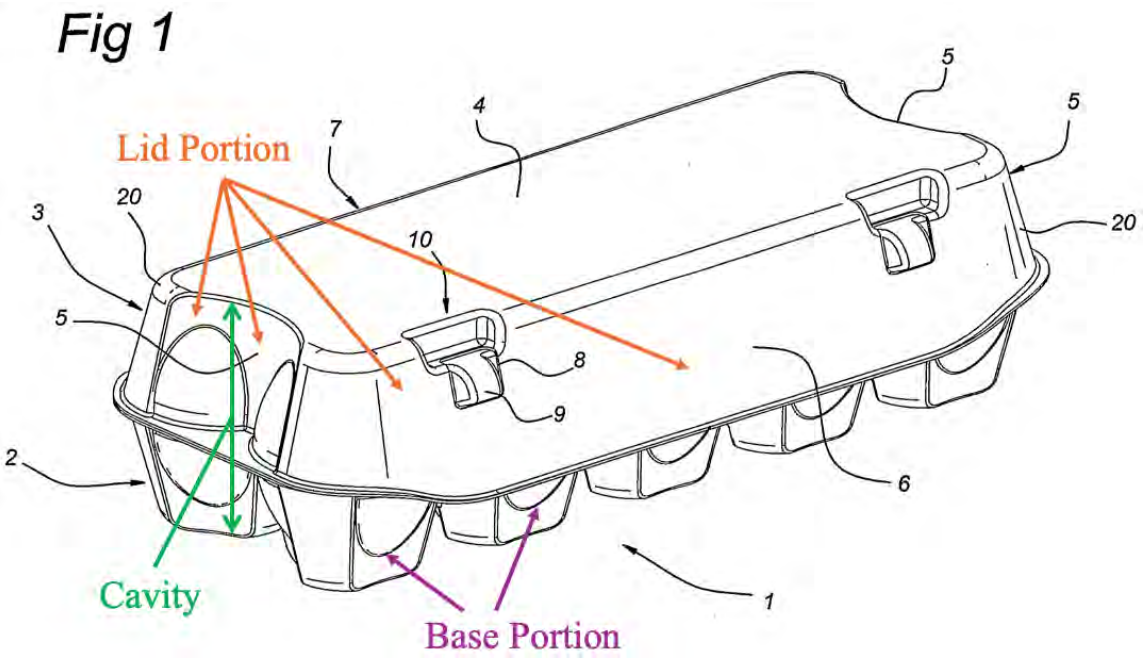
Ex.1010, Fig. 1 (annotated)

[14.2.1] [the cavity comprising:] a lid portion of the cavity modified to contain at least a second portion of the product disposed substantially outside the base portion of the cavity

329. Limitation [14.2.1] is substantially similar to limitation [11.3.2] and is disclosed by Post for the same reasons presented above for limitation [11.3.2]. As shown in Fig. 1, below, Post's *cavity* (**green**) has a *lid portion* (a portion of the lid part 3) (**orange**) *modified to contain at least a second portion of the product* (e.g., upper half of eggs housed in cavities) *disposed substantially outside the base portion of the cavity*. As shown in Fig. 1, the *lid portion* (e.g., side walls 5 and front wall 6) is dimensioned to accommodate a portion of the eggs in the container *outside the base portion of the cavity* (i.e., above the base portion).

In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1. This consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto. The 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. 6 is the front wall, 7 the rear wall and 5 are the linking transverse walls. It can be seen from the drawing that the lid part is made essentially tray-shaped.

Ex.1010, 3.

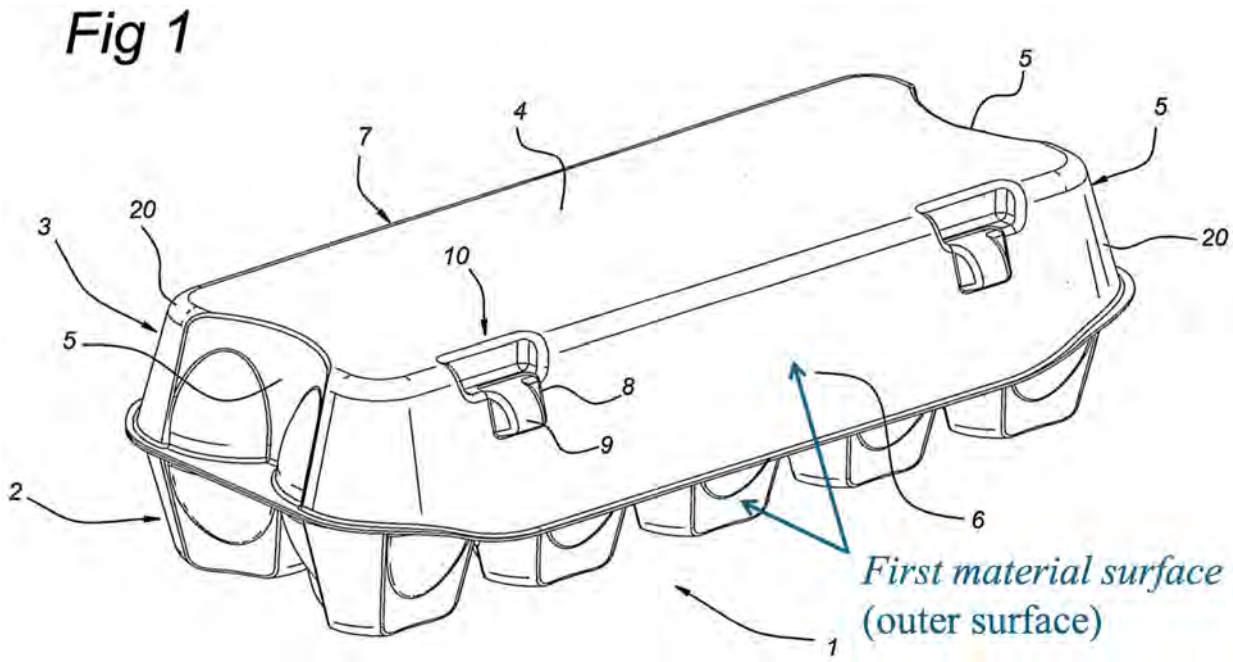


Ex.1010, Fig. 1 (annotated)

[14.2.2] wherein, the container material further comprising: a material thickness having a dimension generally defined by two material surfaces wherein, a first of the two material surfaces is disposed on an immediately opposite side of the container material with respect to a second of the two material surfaces and

330. Limitation [14.2.2] is substantially similar to limitation [11.4.1] and is disclosed or at least rendered obvious by Post for the same reasons presented above for limitation [11.4.1]. **First**, as described above for limitations [11.2.3] and [14.1.1], Post's container (including the lid part 3 and bottom part 2) is made of a *container material* (e.g., moulded fibre material, plastic material, etc.).

331. **Second**, Post discloses that the *container material* (e.g., moulded fibre material, plastic material, etc.) has *a material thickness … generally defined by two material surfaces* (outer surface facing external to the container, and internal surface facing toward the internal cavity of the container). As shown in Fig. 1, below, Post's container 1 includes a *first of the two material surfaces* on the outside surface of the container. Although not explicitly illustrated in Fig. 1, Post's container 1 would also include a *second of the two material surfaces* on the inner surface of the container 1. The food products (e.g., eggs) would come in contact with the inner surface (*second of the two material surfaces*) of the container 1.



Ex.1010, Fig. 1 (annotated)

332. A POSITA would understand that the *first of the two material surfaces* (outer surface) and *second of the two material surfaces* (inner surface) are disposed on immediately opposite surfaces of the material of the container (e.g., moulded fibre material, plastic) because the outer and inner surfaces are on opposite sides of the container, i.e., the outer surface of the container, and the inner surface of the container that is on the side of the cavity inside the container. Further, a POSITA would understand that the material of the container would have *a material thickness having a dimension generally defined* between the *first of the two material surfaces* (outer surface) and *second of the two material surfaces* (inner surface). The *material thickness* would be the thickness of the material container between the *first of the two material surfaces* (outer surface) and *second of the two material surfaces* (inner

surface). For example, in the case where Post's container is "produced from moulded fibre material," the *material thickness* would be the thickness of the moulded fibre material between the outer surface (*first of the two material surfaces*) and the corresponding inner surface (*second of the two material surfaces*). Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray produced from moulded fibre material, is indicated by 1."). Post discloses that the container 1 may be made of other types of materials including "plastic material, paper or cardboard." Ex.1010, 1 ("Such a container can be made of plastic material, paper or cardboard."). In each of these examples, the *material thickness* would be the thickness between the outer surface (*first of the two material surfaces*) and the corresponding inner surface (*second of the two material surfaces*) of the container (e.g., the outer surface of the lid part 3 and the corresponding, opposing inner surface of the lid part 3).

333. Thus, Post discloses or at least renders obvious that *the container material* (e.g., plastic material or "moulded fiber material") *compris[es] a material thickness having a dimension generally defined by two material surfaces* (outer surface and inner surface) *wherein, a first of the two material surfaces* (outer surface) *is disposed on an immediately opposite side of the container material with respect to a second of the two material surfaces* (inner surface).

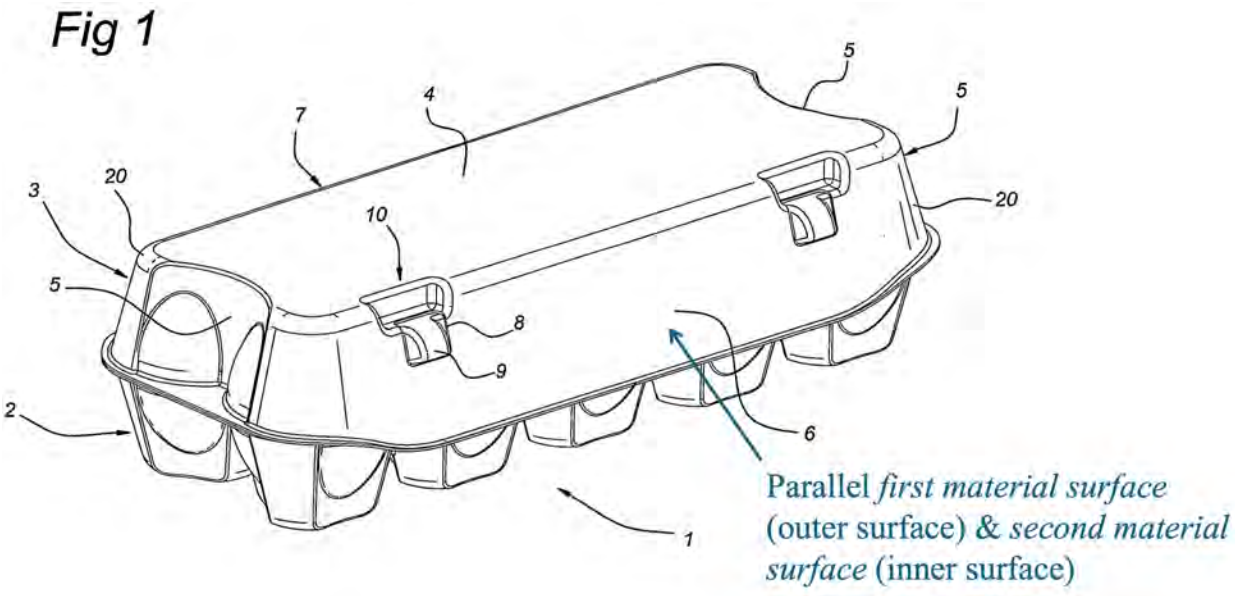
334. To the extent it is argued that Post does not expressly disclose that its container 1 has both a *first of the two material surfaces* (outer surface) and a *second*

of the two material surfaces (inner surface) on immediately opposite sides of the container material, this was a well-known configuration as shown by Beese, as I discussed above in limitation [11.4.1], which I incorporate here for limitation [14.2.2]. Thus, Post and Beese render limitation [14.2.2] for the same reasons presented above for limitation [11.4.1].

[14.2.3] wherein, at least one portion of the first of the two material surfaces is disposed substantially parallel with respect to an immediately opposite portion of the second of the two material surfaces;

335. Limitation [14.2.3] is substantially similar to limitation [11.4.2] and is rendered obvious by Post and Beese for the same reasons presented above for limitation [11.4.2]. As described for limitation [14.2.2], Post discloses that its container includes a *first of the two material surfaces* (outside surface) and a *second of the two material surfaces* (inner surface). A POSITA would understand Post as rendering obvious that *at least one portion of* the outside surface (*first of the two material surfaces*) *is disposed substantially parallel with respect to an immediately opposite portion of the second of the two material surfaces* (inner surface), because Post's container may be formed from a mold. Ex.1010, 1 ("[T]he container according to the present invention is made of **moulded fibre material**, that is to say of a water-paper/wood fibre mixture from which a container is produced by forming and drying."). A POSITA would have been motivated to make opposing outer and inner portions of Post's container parallel to each other in the molding process to fit

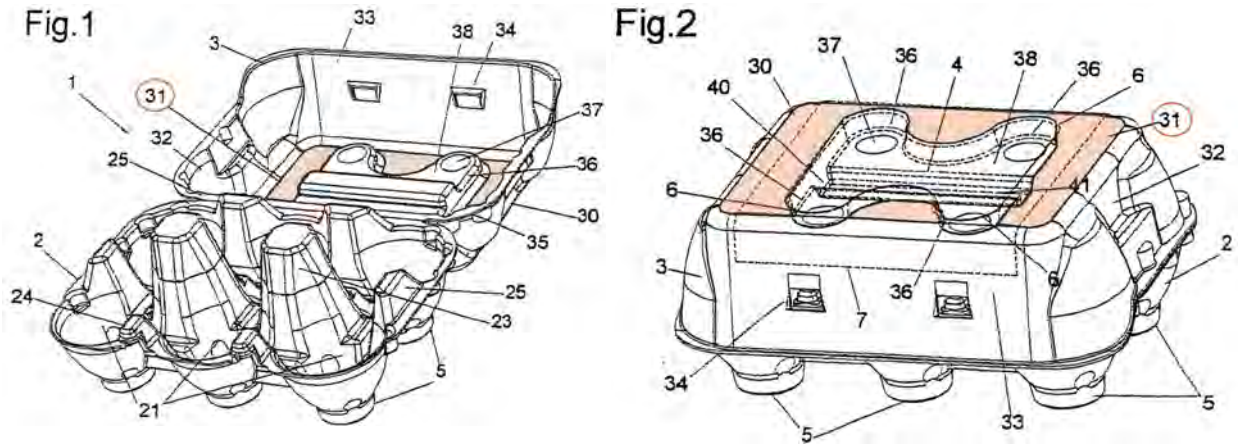
the shape of the mold pattern. For example, as shown in Fig. 1, below, a POSITA would have found it obvious and been motivated to make at least the outer and inner surfaces of the front wall 6 of the lid part 3 parallel to each other in the molding process. Likewise, a POSITA would have found it obvious and been motivated to make the outer and inner surfaces of the top part 4 of the lid part 3 parallel to each other in the molding process.



Ex.1010, Fig. 1 (annotated)

336. To the extent it is argued that Post does not explicitly teach that immediately opposing portions of the container are *substantially parallel* to each other, this is an obvious design choice as taught by Beese. As shown in Figs. 1 and 2, below, the top part 31 (**orange**) of the lid part 3 has an outer surface (*first material surface*) (Fig. 2) and an inner surface (*second material surface*) (Fig. 1) that are

substantially parallel to each other because both surfaces extend in the horizontal direction when laid flat.



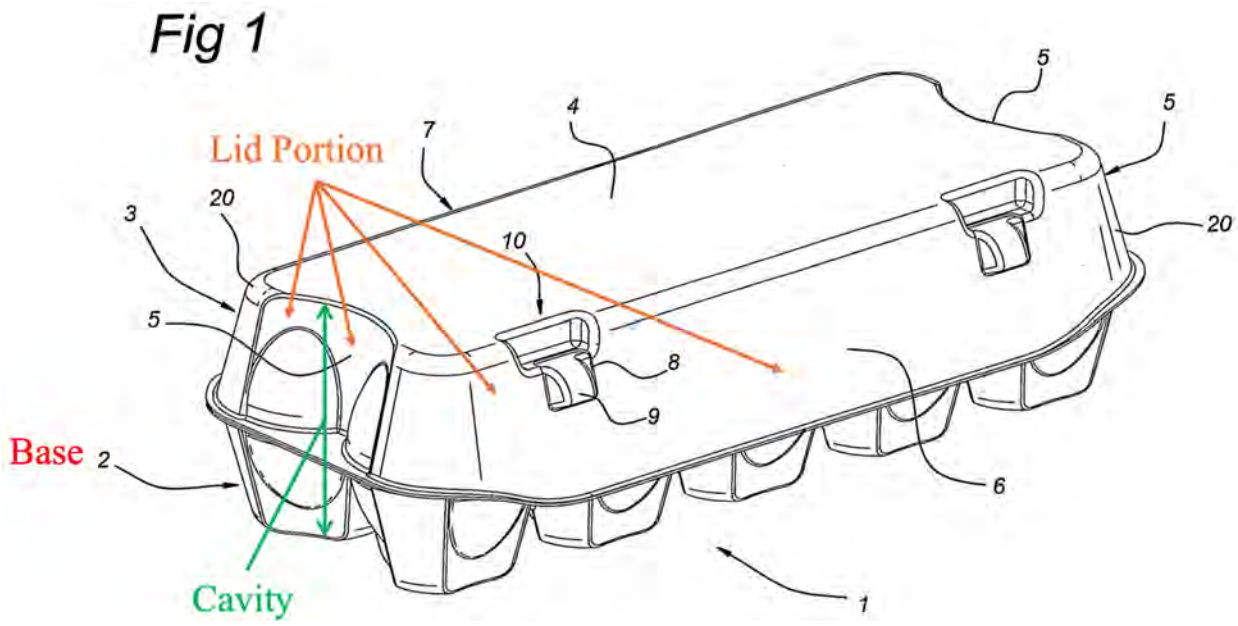
Ex.1009, Figs. 1 & 2 (annotated)

337. In view of Beese's teachings, a POSITA would have been motivated to make immediately opposing outer and inner portions (*first and second material surfaces*) of at *least a portion* of Post's container substantially parallel to each other in the molding process to fit the shape of the mold pattern.

338. Thus, Post and Beese render obvious *at least one portion* (e.g., front wall 6 and/or top part 4 of lid part 3) *of the first of the two material surfaces* (outer surface) *is disposed substantially parallel with respect to an immediately opposite portion of the second of the two material surfaces* (inner surface).

[14.3.1] the lid comprising: the lid portion of the cavity comprising a shape suitable to contain at least the second portion of the product disposed outside the base when the lid is in the at least one substantially closed position

339. Limitation [14.3.1] is substantially similar to limitation [11.3.2] and is disclosed by Post for the same reasons presented above for limitation [11.3.2]. As described above for limitation [14.2.1], Post's container comprises *the lid portion* (**orange**) *contain[ing] at least a second portion of the product* (e.g., upper half of eggs housed in cavities in bottom part 2). As shown in Fig. 1, below, *the lid portion* (**orange**) *compris[es] a shape* (egg-shaped cavities) *suitable to contain at least the second portion of the product* (e.g., upper half of eggs housed in cavities in bottom part 2) *disposed outside the base* (disposed above the cavities in the bottom part 2) *when the lid is in the at least one substantially closed position* (Fig. 1).



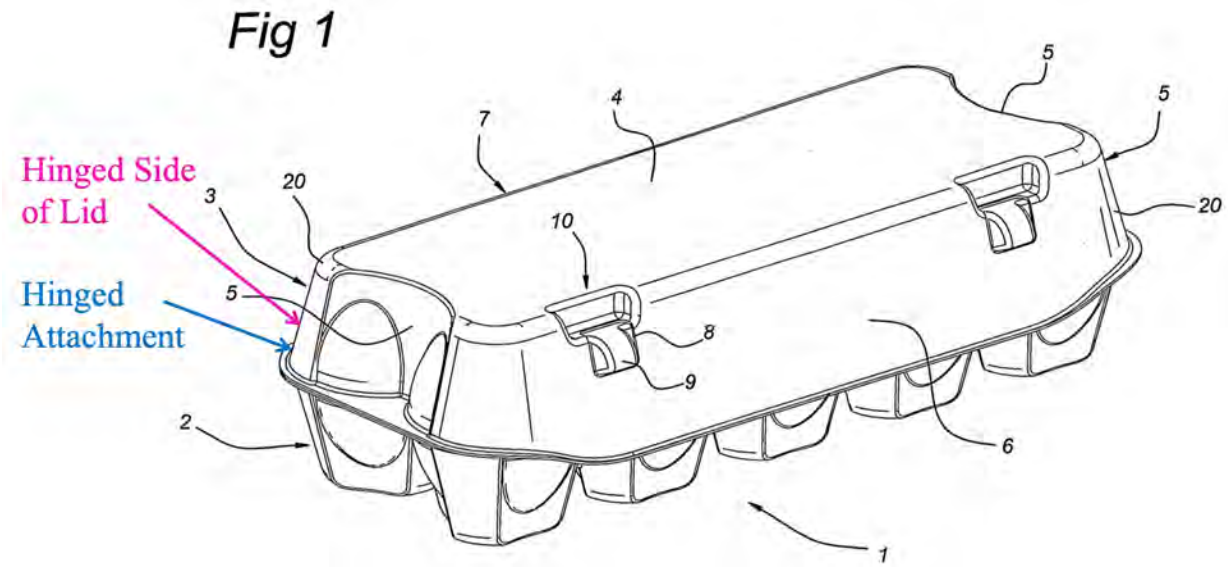
Ex.1010, Fig. 1 (annotated)

[14.3.2] wherein, the lid portion of the cavity is disposed at least generally beyond the base and generally outwardly with respect to the base portion of the cavity;

340. Limitation [14.3.2] is disclosed by Post for the same reasons presented above for limitation [11.3.3]. Limitation [14.3.2] has non-substantive differences in wording, but the limitations are substantively identical.

[14.3.3] [the lid comprising:] a hinged attachment to the base disposed generally adjacent to a hinged side of the lid

341. Post discloses limitation [14.3.3]. As shown in Fig. 1, below, Post's container includes *a hinged attachment* (blue) *to the base* (bottom part 2) *disposed generally adjacent to a hinged side of the lid* (**pink**) (lid part 3 is hinged to bottom part 2). Ex.1010, 3 (explaining that the 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.1010, Fig. 1 (annotated)

[14.3.4] wherein, the lid is movable about the hinged attachment between, the at least one substantially open position and, the at least one substantially closed position;

342. Post discloses or at least renders obvious limitation [14.3.4]. Post's lid part 3 is hinged to the bottom part 3 to permit a consumer to open the lid part 3 and access the food products housed in the container. Ex.1010, 3 (explaining that the container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically. A hinged lid part 3 is joined thereto."). Thus, Post discloses or at least renders obvious that *the lid is movable about the hinged attachment* (*see* limitation [14.3.3]).

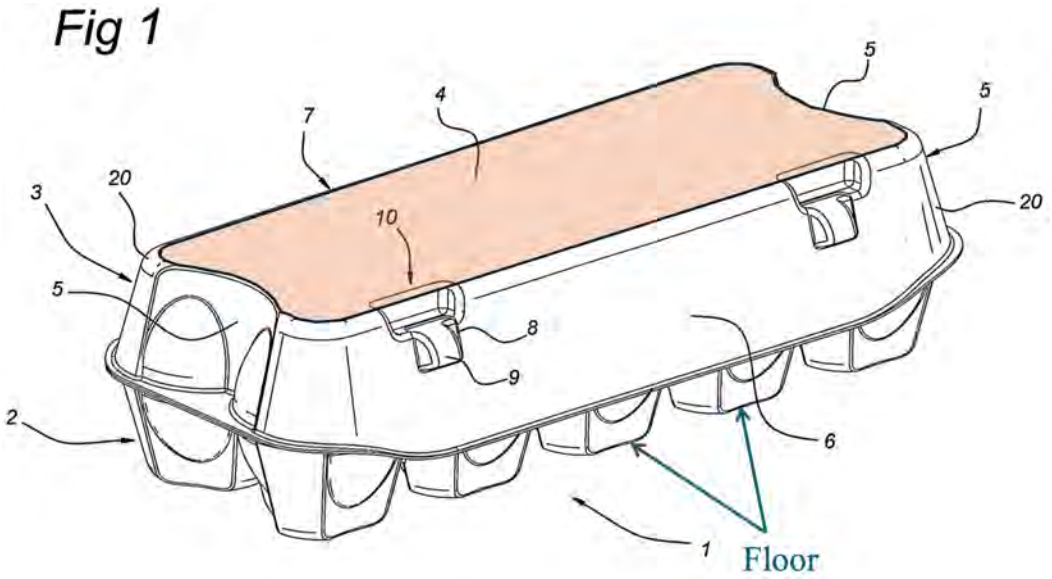
343. Post discloses or at least renders obvious that the *lid* (lid part 3) is *movable about the hinged attachment* (hinge joining lid part 3 to bottom part 2) *between[] the at least one substantially open position and [] the at least one*

substantially closed position. Fig. 1 illustrates the container 1 in a *closed position*. A POSITA would understand for at least two reasons that Post's container 1 is moved from the *closed position* shown in Fig. 1 to an *open position*, and vice versa, to allow a person to access the food products (e.g., eggs) housed in the container 1. Ex.1010, 3 ("In fig. 1 a container for items, such as an egg tray…is indicated by 1."). First, as noted above, Post teaches that the lid part 3 is hinged to the bottom part 2, which allows the lid part 3 to be opened relative to the bottom part 2. Ex.1010, 3 ("A hinged lid part 3 is joined" to the bottom part 2"), 1 ("The present invention relates to a container for packaging foods, comprising a bottom part and a hinged lid part joined thereto."). Second, as shown in Figure 1, above, Post's container 1 has a locking mechanism including closing projections 9 on the bottom part 2, and openings 8 on the lid part 3. This locking mechanism is provided to enable a person to lock (close) the container and open the container by disengaging the closing projections 9 from the openings 8 and moving the front wall 6 of the lid part 3 outward. Ex.1010, 3 ("The lid part 3 can be unlocked from the bottom part 2 by depressing closing projections 9 and moving front wall 6 forwards."). Thus, Post discloses or at least renders obvious that the *lid* (lid part 3) is *movable about the hinged attachment* (hinge joining lid part 3 to bottom part 2) *between[] the at least one substantially open position* (disengaging closing projections 9 from openings 8

to open container 1) *and [] the at least one substantially closed position* (container 1 in closed position in Fig. 1).

[14.3.5] [the lid comprising:] a substantially flat lid top area disposed at least generally parallel to the floor when the lid is in the at least one substantially closed position

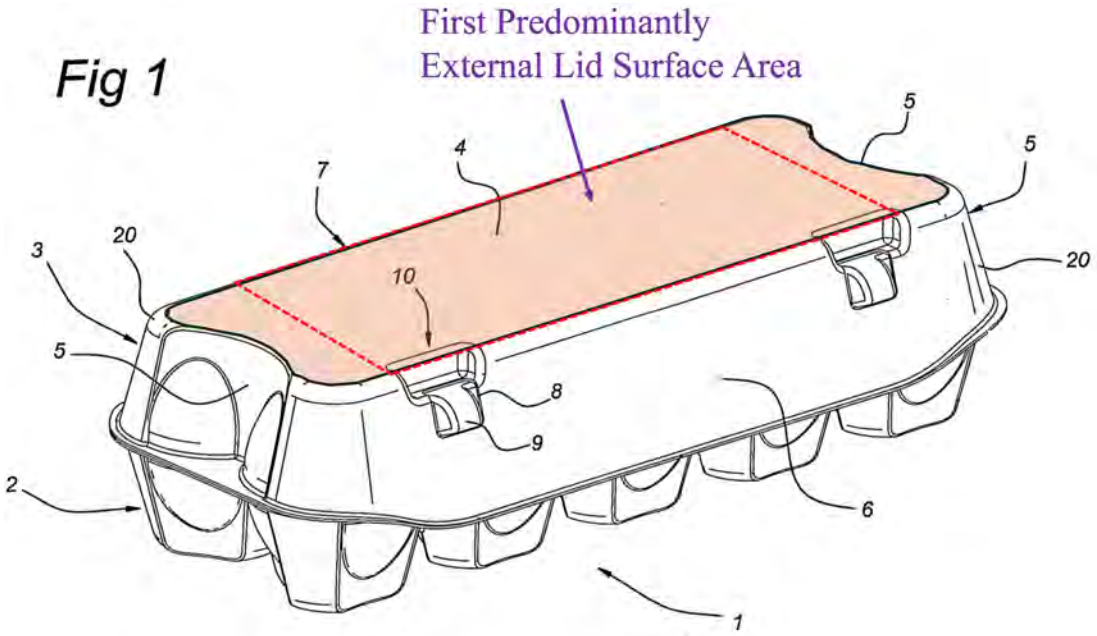
344. Limitation [14.3.5] is disclosed by Post for the same reasons as limitation [11.5.1]. *See* my analysis for limitation [11.5.1] above. As shown in Fig. 1, below, Post discloses that *the lid* (lid part 3) comprises *a substantially flat lid top area* (top part 4) (**orange**) *disposed at least generally parallel to the floor* (**blue**) *when the lid* (lid part 3) *is in the at least one substantially closed position* (Fig. 1).



Ex.1010, Fig. 1 (annotated)

[14.3.6] wherein, the substantially flat lid top area comprising a lid top portion of the first of the two material surfaces disposed on a first predominantly external lid surface area;

345. Limitation [14.3.6] is disclosed by Post for the same reasons as limitation [11.5.1]. *See* my analysis for limitation [11.5.1] above. As shown in Fig. 1, below, the *substantially flat lid top area* (top part 4) (**orange**) *compris[es] a lid top portion* (**red** dotted rectangle) *of the first of the two material surfaces* (outer surface) *disposed on a first predominantly external lid surface area* (**purple**).

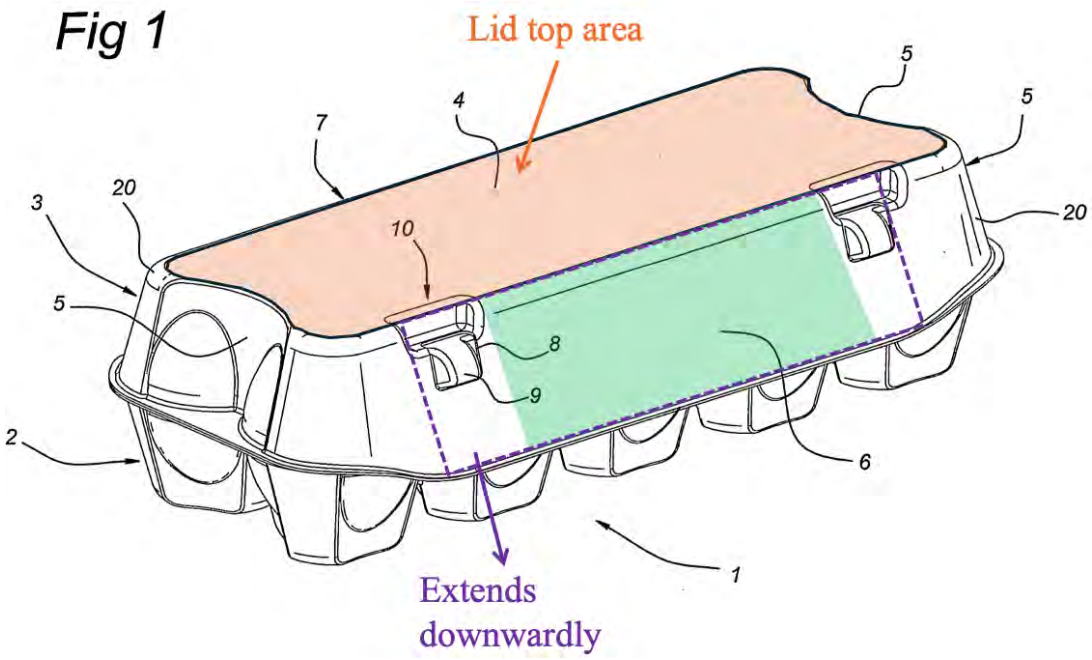


Ex.1010, Fig. 1 (annotated)

[14.3.7] [the lid comprising:] a substantially planar frontal extension comprising a lid front portion of the first of the two material surfaces disposed on a second predominantly external lid surface area extending generally downwardly from the substantially flat lid top area

346. Post discloses limitation [14.3.7] for the same reasons as limitations [11.5.2] and [11.5.5]. See my analysis of limitations [11.5.2] and [11.5.5]. As shown

in Fig. 1, below, Post's *lid* (lid part 3) comprises *a substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) *comprising a lid front portion* (**green** portion on front part 6 of the lid part 3) *of the first of the two material surfaces* (outside surface) *disposed on a second predominantly external lid surface area* (**purple** dotted rectangle showing area on front part 6 of the lid part 3) *extending generally downwardly* (extends toward floor) *from the substantially flat lid top area* (top part 4) (**orange**). The claimed *substantially planar frontal extension* is also represented by the **green** portion on front part 6 of the lid part 3 below. The *lid front portion* is part of the *substantially planar frontal extension*.



Ex.1010, Fig. 1 (annotated)

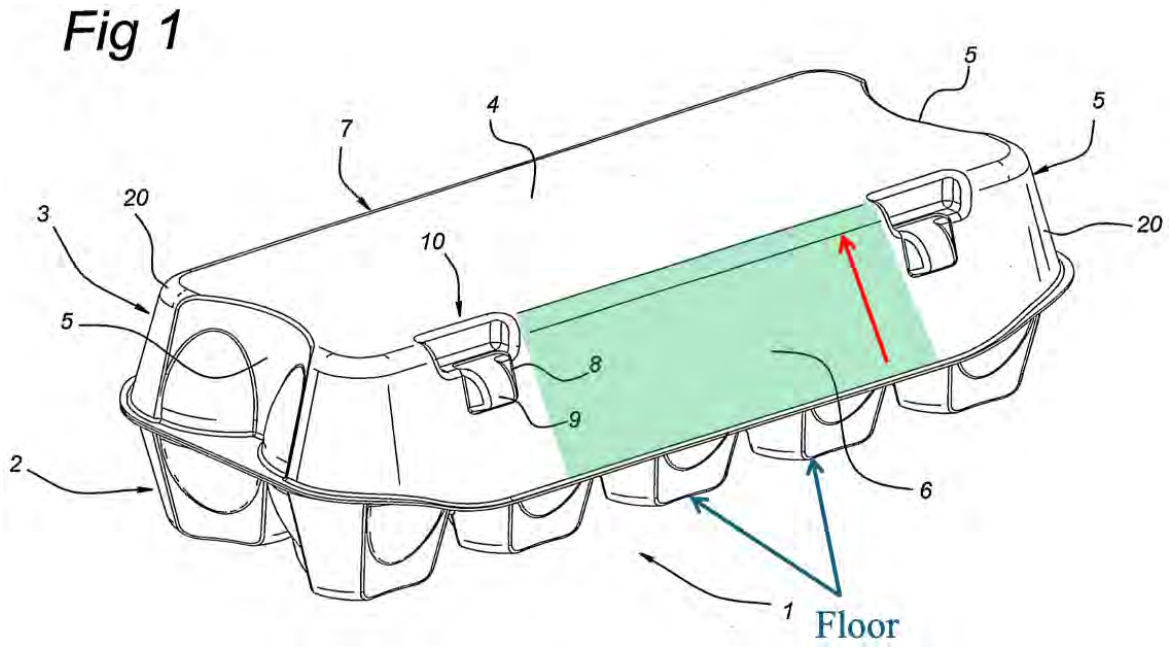
347. As described above for limitation [11.5.2], for ease of illustration, the *substantially planar frontal extension* is shown in Post's Fig. 1 above as being

between openings 8 (**green**) in the front part 6 of the lid part 3. The *substantially planar frontal extension* alternatively may be extended to encompass the area of the front part 6 that goes beyond the openings 8 toward the lateral ends of the lid part 3 (toward the "linking transverse walls" 5 (Ex.1010, 3)), because this area of the lid part 3 extending beyond the openings 8 likewise is a planar extension of the lid part 3. I note that the specification of the '365 Patent does not use the term "s*ubstantially planar frontal extension*" (or "planar frontal extension") to describe any embodiment. Rather, the term "*substantially planar frontal extension*" appears only in the claims. Any planar area on the lid part 3 that is an extension from the top part 4 may be the claimed *substantially planar frontal extension*.

[14.3.8] wherein, when the lid is in the at least one substantially closed position and the floor is positioned substantially horizontally, the substantially planar frontal extension is disposed facing substantially upwardly with respect to the floor and,

348. Limitation [14.3.8] is substantially similar to limitation [11.5.7] and is disclosed by Post for the same reasons presented above for limitation [11.5.7]. As shown in Fig. 1, below, Post discloses that *when the lid* (lid part 3) *is in the at least one substantially closed position* (Fig. 1) *and the floor* (**blue**) *is positioned substantially horizontally* (floor is substantially horizontal in Fig. 1)*, the substantially planar frontal extension* (**green**) *is disposed facing substantially*

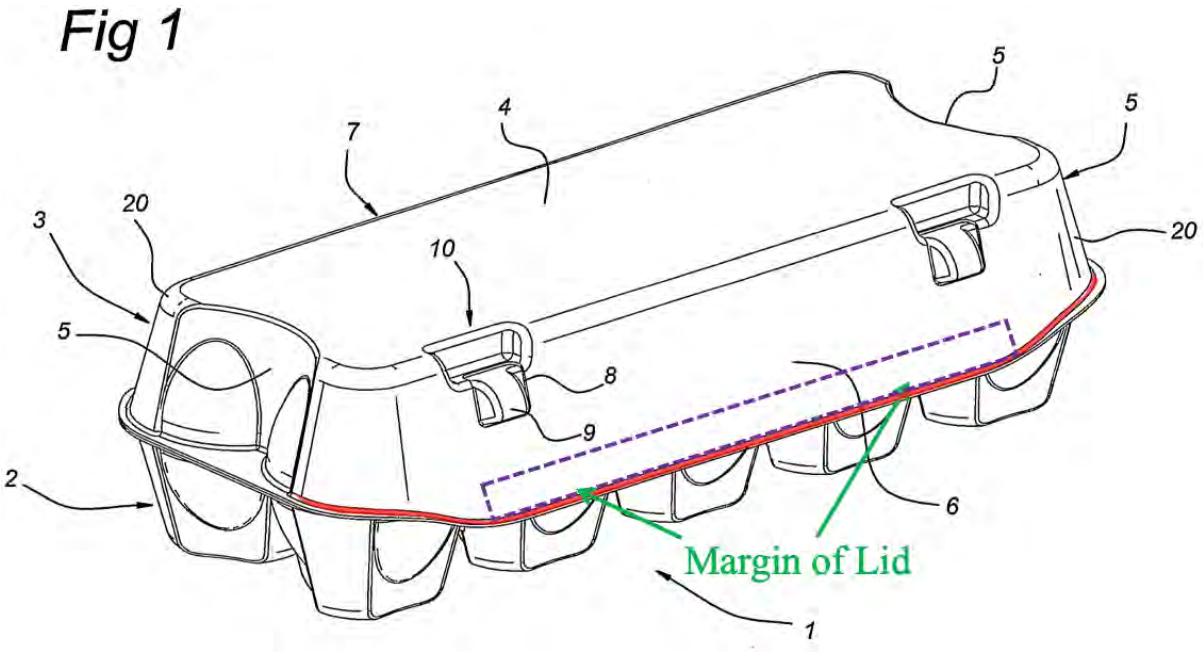
upwardly (in direction of substantially upward facing **red** arrow) *with respect to the floor* (**blue**).



Ex.1010, Fig. 1 (annotated)

[14.3.9] wherein [the lid] comprising a lid end portion defined generally at a margin of the lid

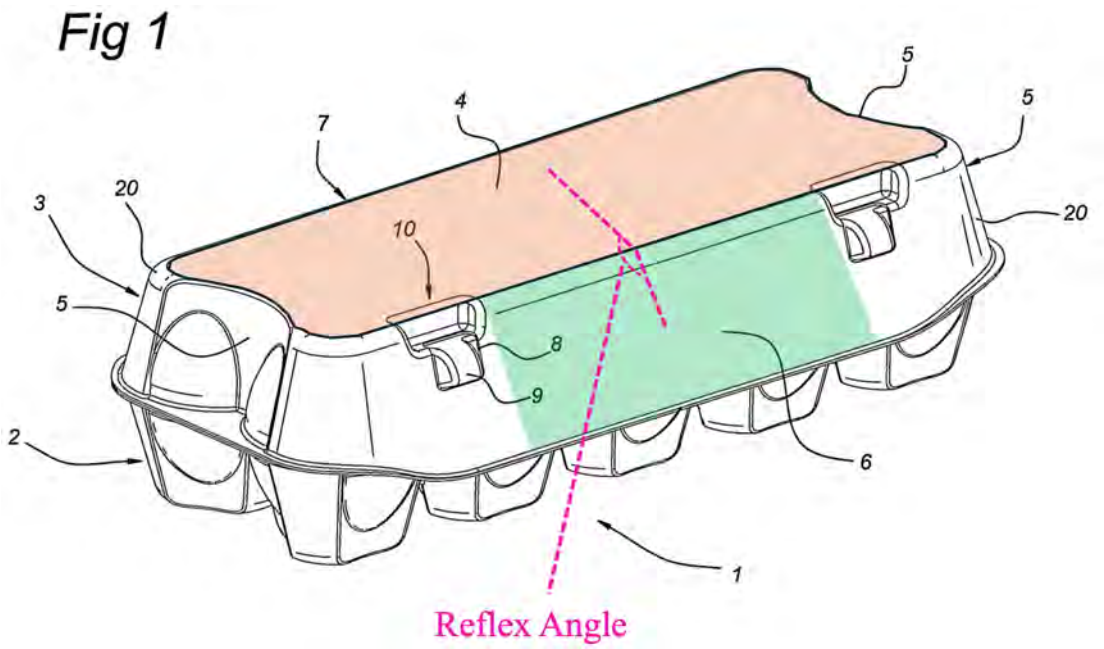
349. Limitation [14.3.9] is substantially similar to limitation [11.5.8] and is disclosed by Post for the same reasons presented above for limitation [11.5.8]. As shown in Fig. 1, below, Post's *lid* (lid part 3) *compris[es] a lid end portion* (**purple** dotted rectangle) *defined generally at a margin of the lid* (**green**) (near bottom edge of the lid) (**red**).



Ex.1010, Fig. 1 (annotated)

[14.3.10] wherein, the substantially planar frontal extension is inclined at a reflex angle of less than 270 degrees with respect to the substantially flat lid top area; and

350. Post discloses limitation [14.3.10]. As shown in Fig. 1, below, *the substantially planar frontal extension* (**green**) *is inclined at a reflex angle* (**pink**) *of less than 270 degrees with respect to the substantially flat lid top area* (**orange**). The reflex angle (**pink**) is less than 180 degrees and is therefore *less than 270 degrees*.



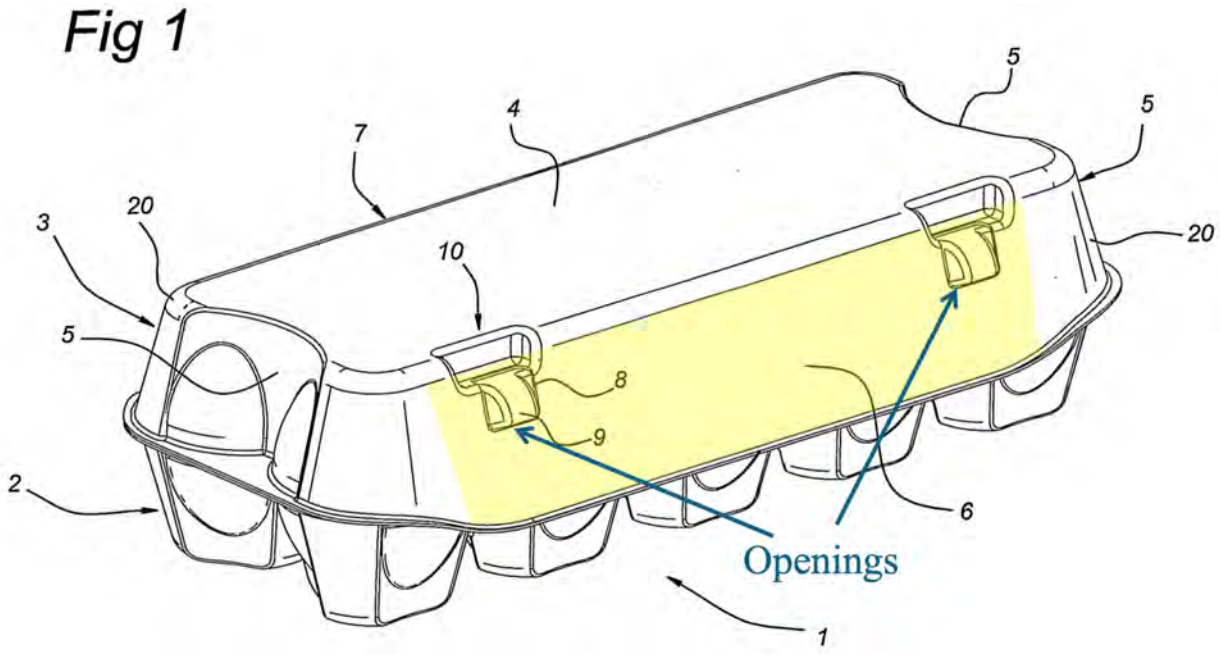
Ex.1010, Fig. 1 (annotated)

[14.3.11] [the lid comprising:] at least one lid hole comprising an opening substantially defined in the container material by a lid hole edge wherein, the at least one lid hole is fully encompassed within a substantially planar lid area having the lid hole edge;

351. The Post-Beese combination renders obvious limitation [14.3.11]. Initially, I note that limitation [14.3.11] is substantively similar to limitation [11.5.9], which I addressed above. I address below phrases that might differ between the two limitations, but which do not impact claim scope, in my opinion.

352. **First**, Post discloses *at least one lid hole*. As shown in Fig. 1, below, Post's *lid* (lid part 3) includes *a substantially planar lid area* (yellow). **Second**, as shown in Fig. 1, openings 8 (*at least one lid hole*) are formed in the front wall 6 of the lid part 3 and thus are *defined in the container material* (formed in the material

of the front wall 6). Ex.1010, 3 ("There are openings 8 in the front wall 6."). The closing projections 9 protrude through the openings 8. Ex.1010, 3. As shown in Fig. 1, below, the openings 8 (*at least one lid hole*) are *defined in the container material…and fully encompassed within a substantially planar lid area* (yellow), because the openings 8 are formed in the front wall 6 below the indents 10 extending between the top part 4 and front wall 6 of the lid part 3. Ex.1010, 3 ("There is an indent 10 above the openings 8."). Thus, Post discloses that the *lid* (lid part 3) has *at least one lid hole* (opening 8) *defined in the container material…and fully encompassed within a substantially planar lid area* (yellow).

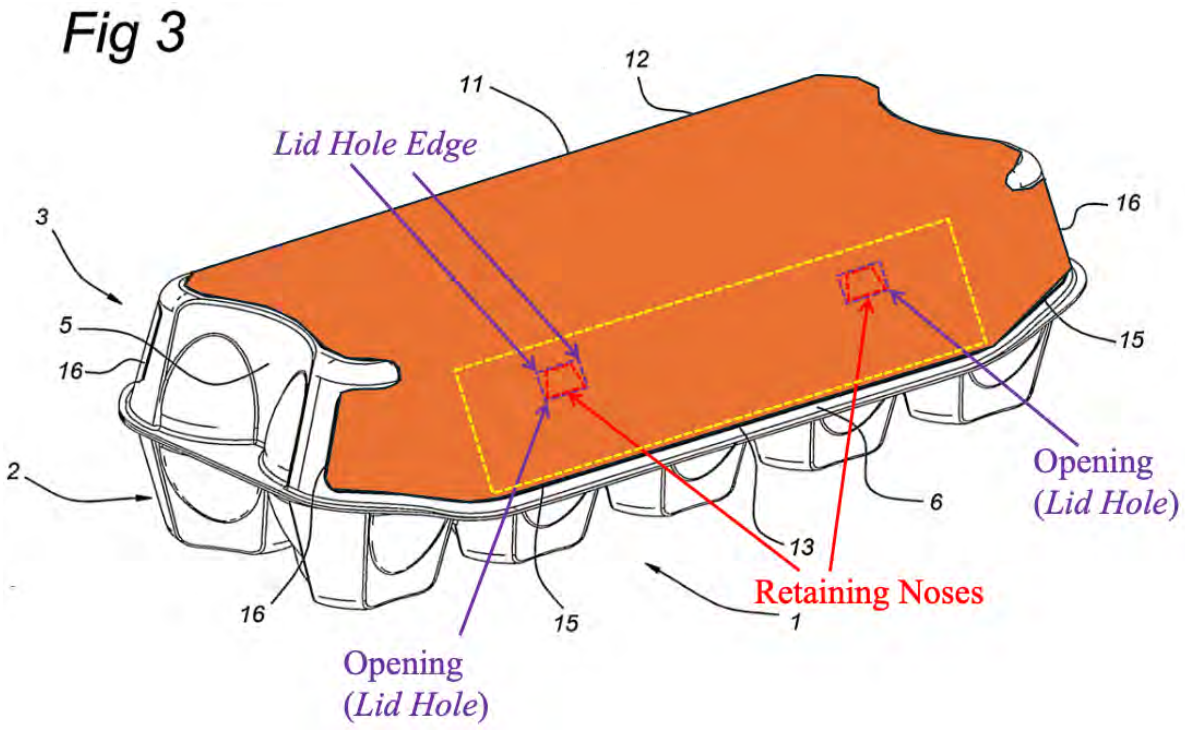


Ex.1010, Fig. 1 (annotated)

353. **Third**, as described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post's container 1 to utilize the

configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3, in lieu of Post's closing projections 9 and corresponding openings 8 in the lid part 3, would advantageously permit Post's label 11 to entirely cover the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). Post's Fig. 3 is annotated and modified below to show Post's label (**orange**) entirely covering the front wall 6 of Post's lid part 3 and extending to the bottom edge of Post's lid part 3, as taught by Beese. Ex.1009, [0030]. Beese discloses that the retaining noses 24 interact with openings on the front part of the lid part. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2."). In the Post-Beese combination, the openings (**purple**) that interact with Beese's retaining noses (**red**) are each *at least one lid hole comprising an opening* (opening of lid hole) *substantially defined in the container material* (formed in the material of front wall 6) *by a lid hole edge* (edge of lid hole; two lid hole edges are shown with **purple** arrows), *wherein the at least one lid hole is fully encompassed within a substantially*

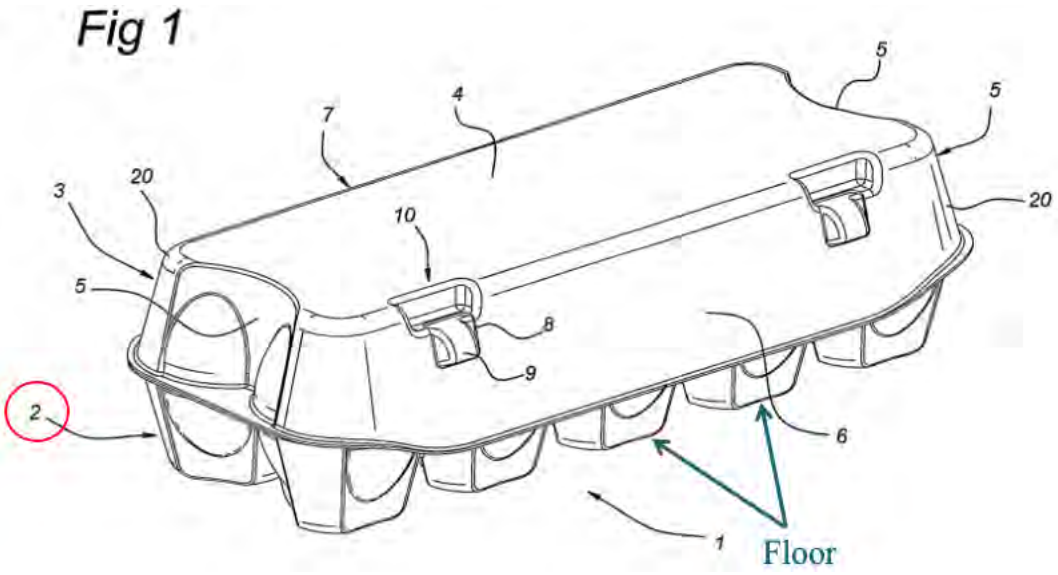
planar lid area (yellow dotted rectangle) *having the lid hole edge* (edges of lid hole shown with **purple** arrows), as shown in Post's Fig. 3, below.



Ex.1010, Fig. 3 (annotated and modified)

[14.4.1] the base comprising: the floor

354. Limitation [14.4.1] is disclosed by Post for the same reasons as limitation [11.6.1]. As shown in Fig. 1, below, Post's *base* (bottom part 2) (**red**) *comprise[s] the floor* (**blue**).

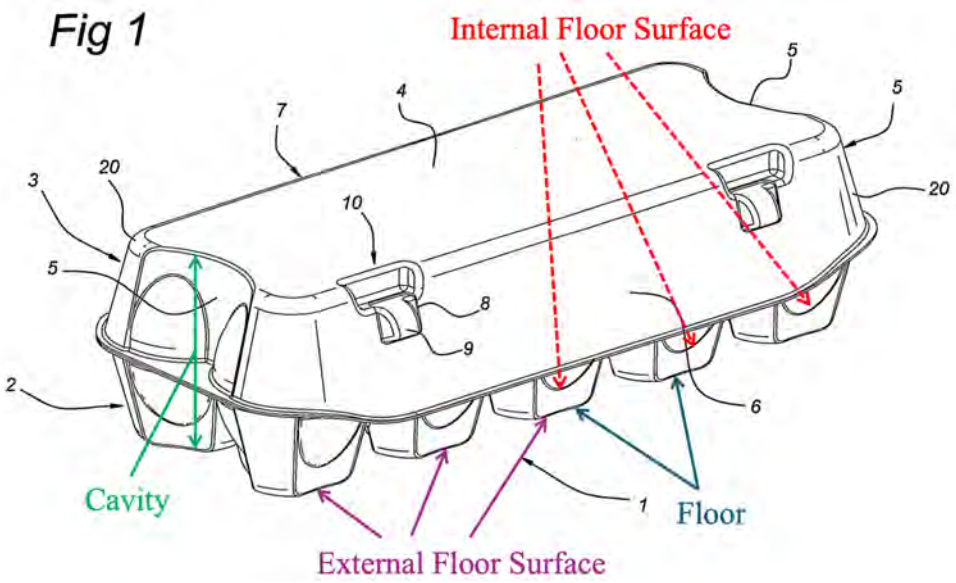


Ex.1010, Fig. 1 (annotated)

[14.4.2] wherein, with respect to the cavity, the floor comprising, at least one external floor surface area disposed on the first of the two material surfaces and at least one internal floor surface area disposed on the second of the two material surfaces;

355. Limitation [14.4.2] is substantially similar to limitation [11.6.2] and is disclosed by Post for the same reasons presented above for limitation [11.6.2]. As described above for limitation [14.1.3], Post discloses *[the] cavity* (**green**) *disposed substantially inside the container between the floor* (bottom of bottom part 2) (**blue**) *and the lid* (lid part 3), as shown in Fig. 1, below. As described above for limitation [14.2.2], Post discloses or at least renders obvious that the container has *the first of the two material surfaces* (outer surface) *disposed on an immediately opposite side of the container material… to the second of the two material surfaces* (inner surface).

356. As shown in Fig. 1, below, Post's container includes *at least one external floor surface* (**purple**) *disposed on the first of the two material surfaces* (outside surface) *and at least one internal floor surface area* (internal surface of individual cavities for holding eggs, as shown by dotted **red** arrows) *disposed on the second of the two material surfaces* (inside surface) of the container. Post's container includes *an internal floor surface area* on the inside surface of the bottom part 2 because food products (e.g., eggs) are housed in the cavities of the bottom part 2, i.e., on the *internal floor surface area*. Ex.1010, 3 (explaining that the container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").

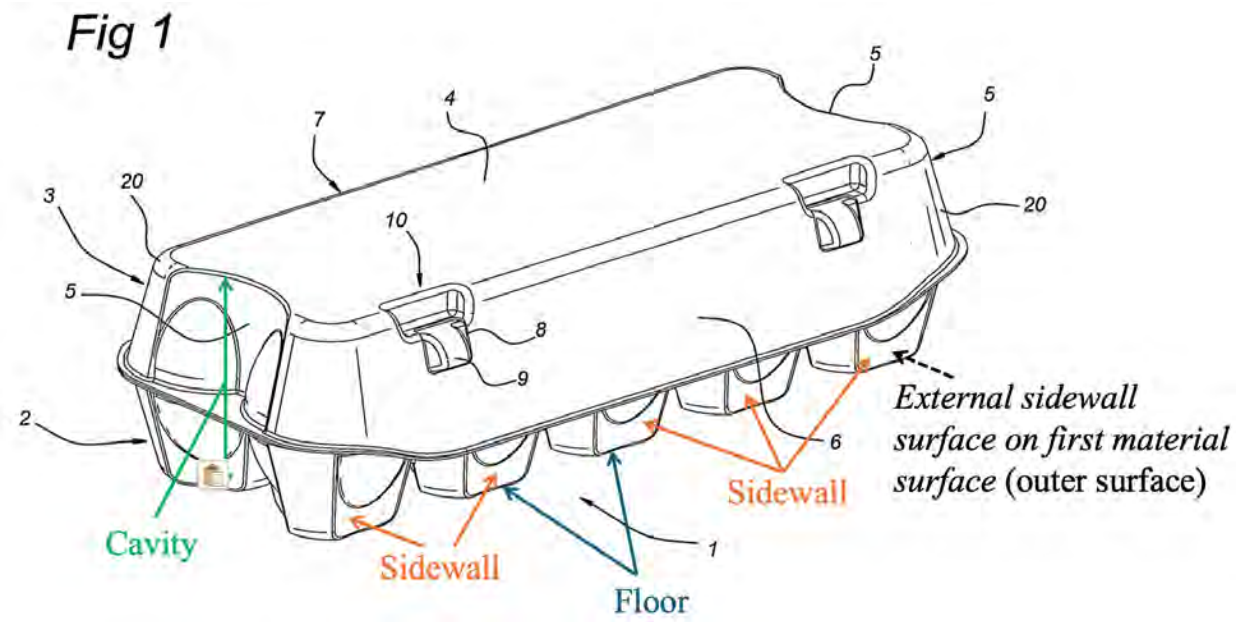


Ex.1010, Fig. 1 (annotated)

[14.4.3] [the base comprising:] at least one sidewall extending generally upwardly from the floor and comprising, with respect to the cavity, a predominantly external sidewall surface area disposed on the first of the two material surfaces and a predominantly internal sidewall surface area disposed on the second of the two material surfaces;

357. Limitation [14.4.3] is substantially similar to limitation [11.6.3] and is rendered obvious by Post and Beese for the same reasons presented above for limitation [11.6.3].

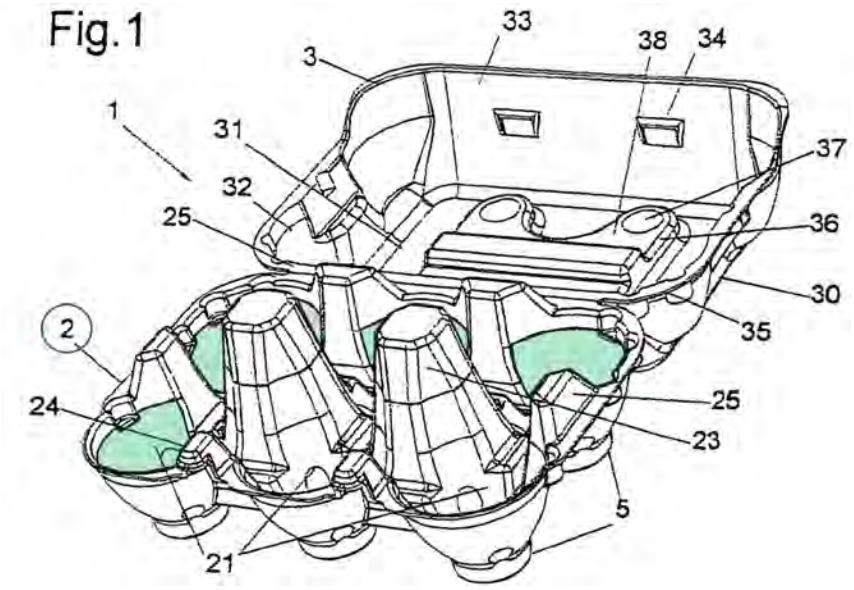
358. **First**, as shown in Fig. 1, below, Post discloses that *the base* (bottom part 2) comprises *at least one sidewall* (shown by **orange** arrows) *extending generally upwardly from the floor* (**blue**) *and comprising, with respect to the cavity* (**green**)*, a predominantly external sidewall surface area disposed on the first… material surface* (i.e., external-facing outer surface of sidewall).



Ex.1010, Fig. 1 (annotated)

359. **Second**, Post suggests that its container also has *a predominantly internal sidewall surface area* (internal surface of sidewalls) *disposed on the second of the two material surfaces* (disposed on the inner surface of the container), because the bottom part 2 of the container includes cavities for holding food products (e.g., eggs). Ex.1010, 3 (explaining that the container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").

360. To the extent it is argued that Post does not explicitly disclose that the bottom part 2 has *a predominantly internal sidewall surface area disposed on the second of the two material surfaces*, this is a conventional implementation detail as shown by Beese. As shown in Beese's Fig. 1, below, the bottom part 2 of Beese's container includes *a predominantly internal sidewall surface area* (internal sidewall surfaces of shaped depressions 21) (**green**) *disposed on the second of the two material surfaces* (internal surface). Ex.1009, [0026] ("The base part 2 has a plurality of shaped depressions 21 for accommodating eggs.").



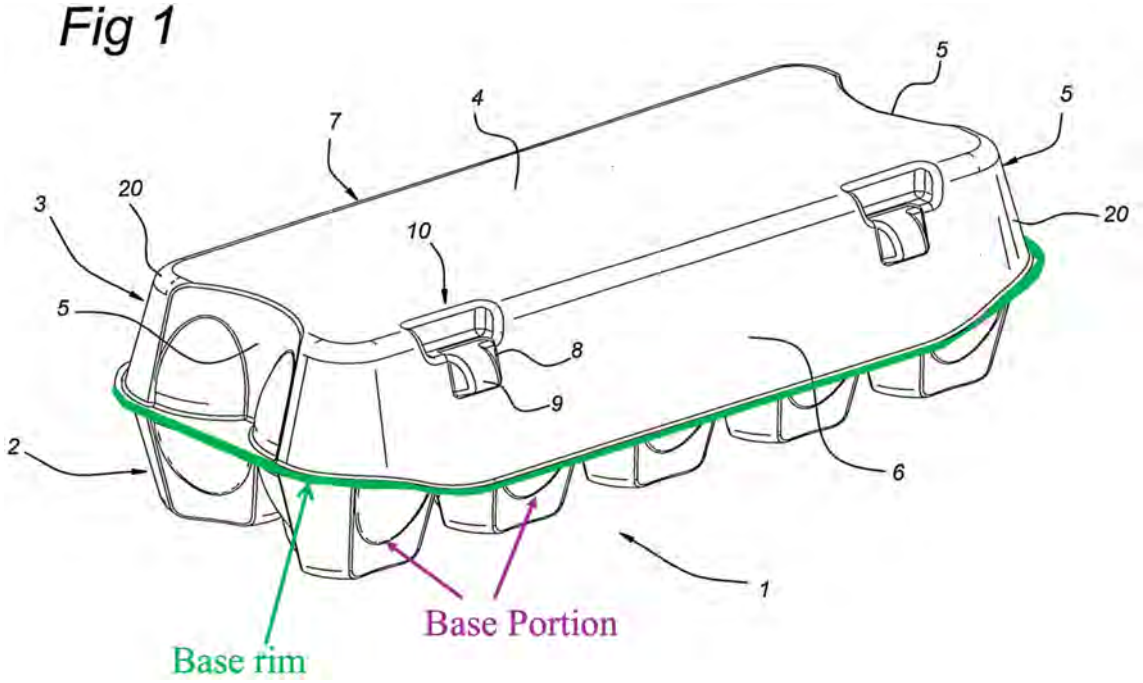
Ex.1009, Fig. 1 (annotated)

361. Because Post's bottom part 2 is configured with cavities for holding food products (Ex.1010, 3), a POSITA would have been motivated to configure Post's container so that it, like Beese's container, has *a predominantly internal sidewall surface area* (internal surface of sidewalls shown in Post's Fig. 1 above) *disposed on the second of the two material surfaces* (disposed on the inner surface of the container). Accordingly, Post and Beese render obvious limitation [14.4.3].

[14.4.4] [the base comprising:] a rim wherein, at least one portion of the rim partially defines a base opening suitable for at least partial receipt of the product into the base portion of the cavity; and

362. Limitation [14.4.4] is obvious over Post and Beese for the same reasons presented above for limitation [11.6.4]. As shown in Fig. 1, below, Post's bottom part 2 (the *base*) has *a rim* (**green**) that is the outer edge of the bottom part 2 on

which the lid part 3 rests in the closed position (Fig. 1). As described above for limitation [14.1.4], Post's container has *the base portion* (**purple**) (cavities formed in bottom part 2), as show in Fig. 1, below.



Ex.1010, Fig. 1 (annotated)

363. Post teaches that the base *rim* (**green**) has *at least one portion [that] partially defines a base opening* (opening in bottom part 2 for receiving eggs) *suitable for at least partial receipt of the product* (food products such as eggs) *into the base portion* (**purple**) *of the cavity* (between lid part 3 and bottom part 2, *see* limitation [14.1.3]), because (1) the bottom part 2 is for holding food products such as eggs, and (2) the container is opened to access the food products. Ex.1010, 3 (explaining that the container "consists of a bottom part 2 in which **cavities for**

accommodating eggs are shown diagrammatically…. The lid part 3 can be unlocked [i.e., opened] from the bottom part 2 by depressing closing projections 9 and moving front wall 6 forwards."). As described above for limitation [11.6.3], the *sidewall* accommodates eggs, and the base *rim* (**green**) is the outer edge of the bottom part 2 and is the beginning of the opening (cavities) to access eggs in the bottom part 2.

364. To the extent it is argued that Post does not explicitly disclose that the base *rim* (**green**) has *at least one portion [that] partially defines a base opening* (opening in bottom part 2 for receiving eggs) *suitable for at least partial receipt of the product* (food products such as eggs) *into the base portion* (**purple**) *of the cavity*, this is the conventional configuration of a food container that holds foods products such as eggs, as taught by Beese, and as discussed above for limitation [11.6.4]. For limitation [14.4.4], I incorporate my prior discussion of the conventional teachings of Beese for limitation [11.6.4].

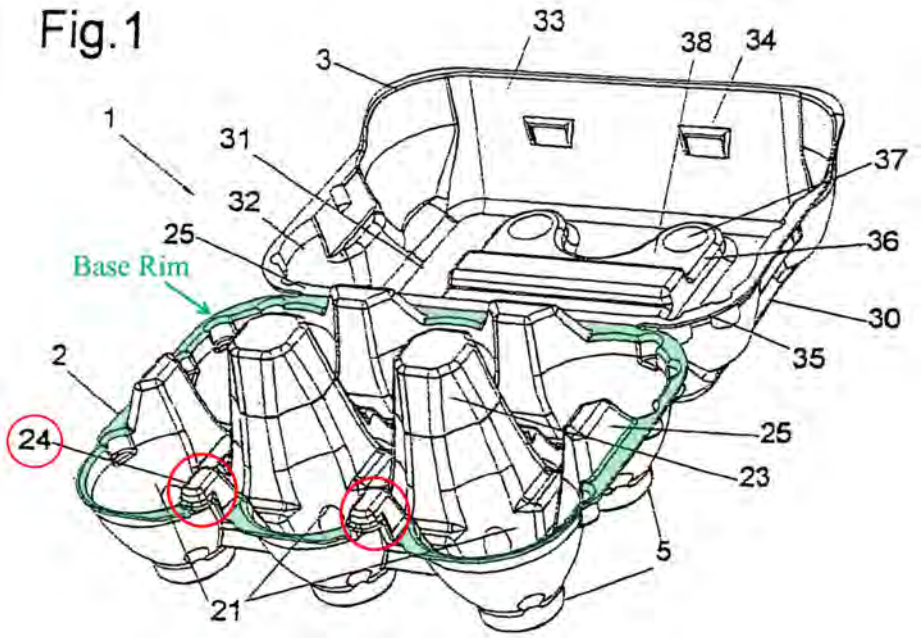
[14.4.5] [the base comprising:] at least one base extension generally extending from the at least one portion of the rim,

365. Post and Beese render obvious limitation [14.4.5]. Initially, I note that limitation [14.4.5] is substantively similar to limitation [11.6.5], which I addressed above. I address below phrases that might differ between the two limitations, but which do not impact claim scope, in my opinion.

366. **First**, as described above for limitation [14.4.4], Post discloses a base having *at least one portion of the rim* (outer edge of the bottom part 2 on which the lid part 3 rests in the closed position (Fig. 1)).

367. **Second**, as described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3, in lieu of Post's closing projections 9 and corresponding openings 8 in the lid part 3, would advantageously permit Post's label 11 to entirely cover the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). As shown in Fig. 1, below, Beese's retaining noses 24 extend from rim (**green**) the bottom (base) part 2 (Beese's base). Ex.1009, [0026] ("In order to

fix the lid part 3 in the closed state, two retaining noses 24 are arranged on a front side of the base part 2.").[10]



Ex.1009, Fig. 1 (annotated)

368. Beese's retaining noses 24 in Post's container render obvious *[the base* (Post's bottom part 2) *comprising:] at least one base extension* (Beese's retaining noses 24) *generally extending from the at least one portion of the rim* (outer edge of the bottom part 2 on which the lid part 3 rests in the closed position), because Beese's

[10] Beese interchangeably refers to the base of the container as both a "bottom part 2" and a "base part 2." Ex.1009, [0025] ("The egg box, which is designated 1 overall, comprises a **bottom part 2** and a lid part 3…. [T]he lid part 3 is located approximately in the same plane as the **base part 2**."),

retaining noses 24 extend from the rim of Beese's bottom part 2 and would likewise extend from the rim of Post's bottom part 2. Ex.1009, [0026] ("In order to fix the lid part 3 in the closed state, two retaining noses 24 are arranged on a front side of the base part 2."), Fig. 1 (showing arrangement of retaining noses 24 extending from the upper end of the rim of the bottom part 2).

[14.4.6] the at least one base extension comprising a primary surface area disposed facing substantially externally with respect to the base portion of the cavity

369. Limitation [14.4.6] is obvious over Post and Beese for the same reasons as limitation [11.6.6] above. Limitation [14.4.6] recites "*the at least one base extension*…" whereas limitation [11.6.6] recites "*the base extension*." As described above for limitation [14.4.5], Post and Beese render obvious *the at least one base extension*, and *the at least one base extension* comprises the features of limitation [14.4.6] for the same reasons as presented above for limitation [11.6.6].

[14.4.7] wherein, the primary surface area comprising a flat portion disposed on an extension of the predominantly internal sidewall surface area of the second of the two material surfaces and,

370. Limitation [14.4.7] is obvious over Post in view of Beese and Mangla for the same reasons as limitation [11.6.7] above. Limitation [14.4.7] recites "…*the second of the two material surfaces*" (inner surface of container), whereas limitation [11.6.7] recites "*the second material surface*" (inner surface of container). Thus,

limitation [14.4.7] is substantially the same as limitation [11.6.7] and is rendered obvious for the same reasons as limitation [11.6.7].

[14.4.8] wherein, the at least one base extension comprising a secondary surface area on an immediately opposite side of the container material to the flat portion of primary surface area, the secondary surface area disposed on an extension of the predominantly external sidewall surface area of the first of the two material surfaces

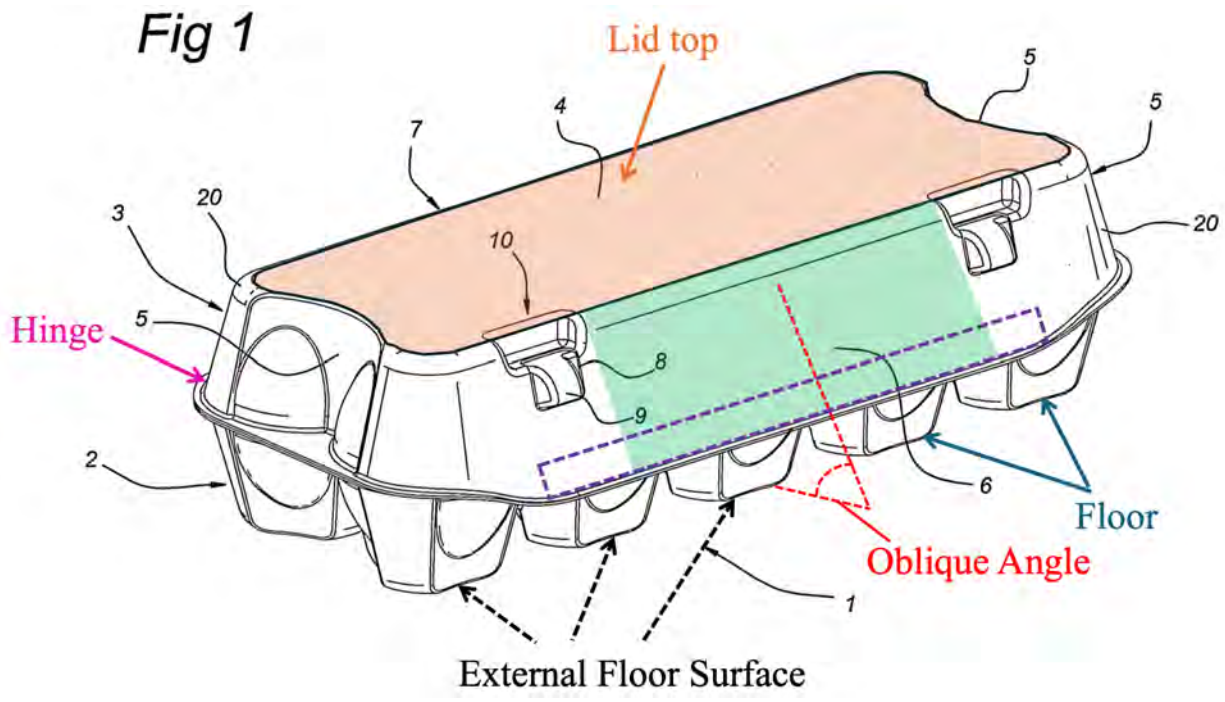
371. Limitation [14.4.8] is obvious over Post in view of Beese and Mangla for the same reasons as limitation [11.6.8] above. Limitations [11.6.8] and [14.4.8] have the following slight differences in language:

- "the base extension having…" (limitation [11.6.8]);
- "the at least one base extension comprising…" (limitation [14.4.8);
- "…surface area of the first material surface" (limitation [11.6.8]); and
- "…surface area of the first of the two material surfaces" (limitation [14.4.8).

Other than these slight differences, limitations [11.6.8] and [14.4.8] are identical to each other. Therefore, limitation [14.4.8] is rendered obvious by Post, Beese, and Mangla for the same reasons as limitation [11.6.8].

[14.4.9] wherein, when the lid is in the at least one substantially closed position and the container is orientated wherein the floor is substantially horizontal and the at least one external floor surface area faces substantially downwardly, the substantially planar frontal extension is disposed obliquely to the floor and projects generally downwardly in a direction generally away from the hinged side of the lid from, the substantially flat lid top area to, the lid end portion

372. Post discloses limitation [14.4.9]. As shown in Fig. 1, below, Post discloses that *when the lid is in the at least one substantially closed position* (Fig. 1) *and the container is orientated wherein the floor* (**blue**) *is substantially horizontal* (floor is horizontal in Fig. 1) *and the at least one external floor surface area* (**black** dotted arrows; see limitation [14.4.2]) *faces substantially downwardly* (facing downward in Fig. 1)*, the substantially planar frontal extension* (**green**; *see* limitation [14.3.7]) *is disposed obliquely* (**red** oblique angle) *to the floor* (**blue**; see limitation [14.1.1]) *and projects generally away* (projects toward front of container) *from the hinged side of the lid* (**pink**; *see* limitation [14.3.3]) *from, the substantially flat lid top area* (**orange**; *see* limitation [14.3.5]) *to, the lid end portion* (**purple** dotted rectangle; *see* limitation [14.3.9]).



Ex.1010, Fig. 1 (annotated)

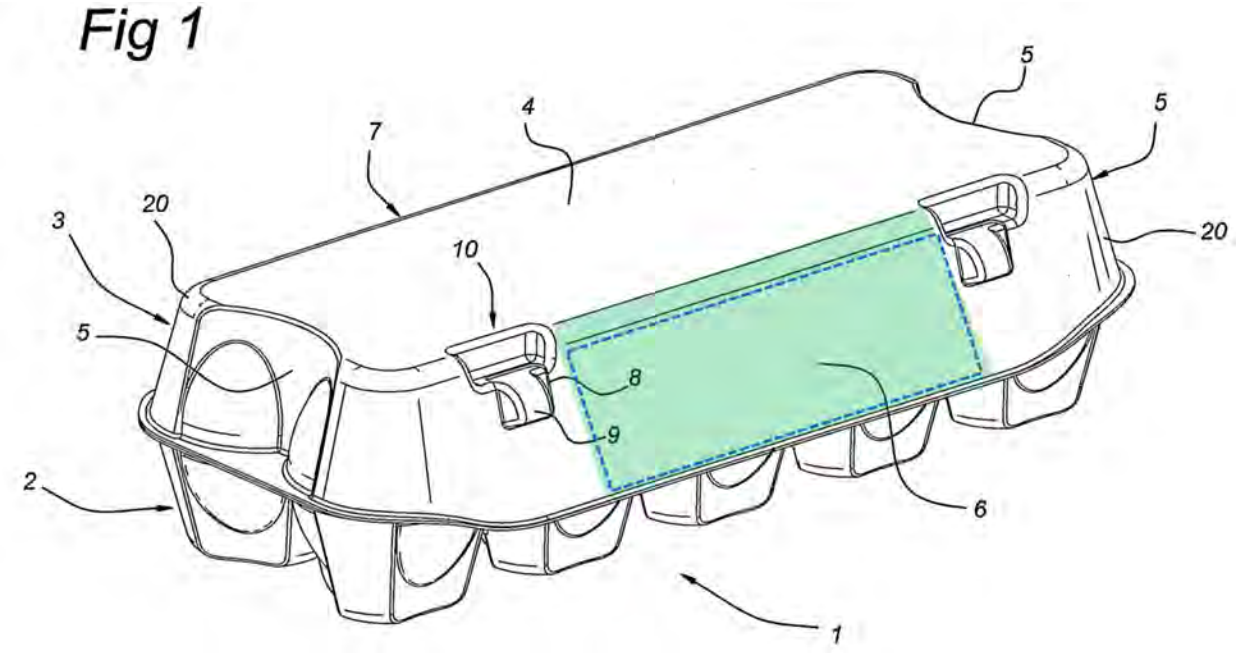
[14.4.10] wherein the substantially planar frontal extension terminates substantially at the margin;

373. Limitation [14.4.10] is identical to limitation [11.6.10]. Limitation [14.4.10] is disclosed by Post for the same reasons presented above for limitation [11.6.10].

[14.5.1] the container further comprising: a first planar area disposed on the lid, within the bounds of the substantially planar frontal extension; and

374. Post discloses limitation [14.5.1]. Initially, I note that limitation [14.5.1] is substantively similar to limitation [11.7.5], which I addressed above. I address below phrases that might differ between the two limitations, but which do not impact claim scope, in my opinion. As shown in Fig. 1, below, the lid part 3 of

Post's *container further compris[es] a first planar area* (**blue** rectangle) *disposed on the lid* (lid part 3), *within the bounds* of *the substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8; *see* limitation [14.3.7] above) (**green**).



Ex.1010, Fig. 1 (annotated)

[14.5.2] [the container further comprising:] a second planar area disposed on the flat portion of the primary surface, disposed obliquely with respect to the floor

375. Limitation [14.5.2] is obvious over Post and Beese for the same reasons presented above for limitation [11.7.6]. Limitation [14.5.2] contains slight wording differences than limitation [11.7.6]. **First**, limitation [11.7.6] recites "*the base having a second planar area…*" but limitation [14.5.2] recites "*[the container further comprising:] a second planar area….*" This difference is immaterial because

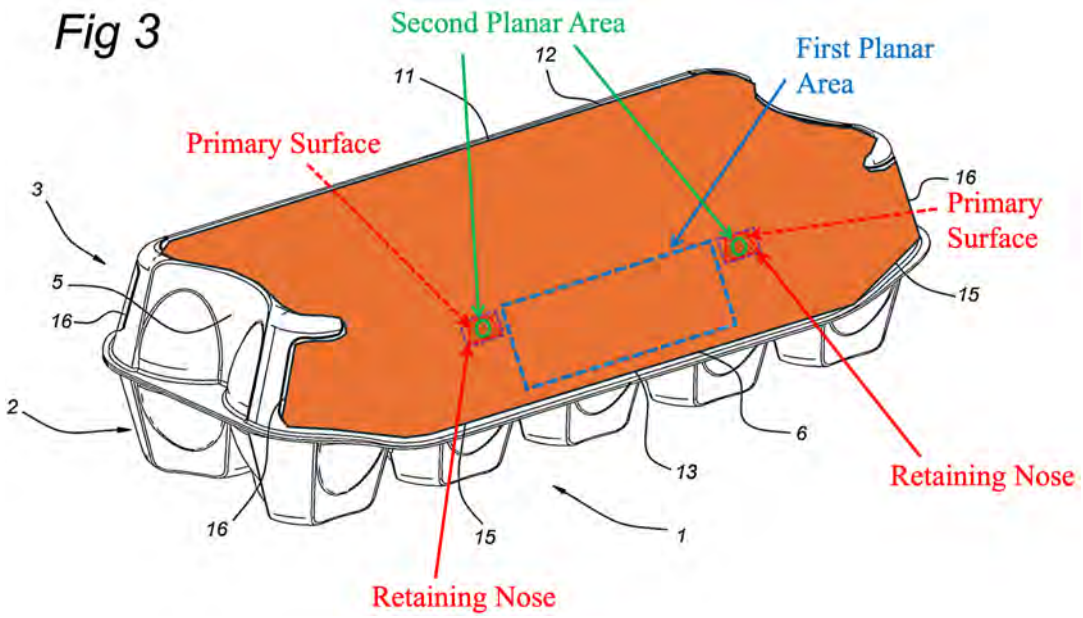
the base is part of the container, so there is no difference between *the base having a second planar area* (limitation [11.7.6]) and "*[the container further comprising:] a second planar area*…." (limitation [14.5.2]). **Second**, limitations [11.7.6] and [14.5.2] have the following slight wording differences:

- "…*second planar area disposed on the flat portion of the primary surface disposed obliquely to the floor*" (limitation [11.7.6]); and
- "…*second planar area disposed on the flat portion of the primary surface, disposed obliquely with respect to the floor*" (limitation [14.5.2]).

Despite these slight wording differences, limitations [11.7.6] and [14.5.2] are substantively identical in scope. Thus, limitation [14.5.2] is obvious over Post and Beese for the same reasons presented above for limitation [11.7.6].

[14.5.3] wherein, when the lid is in the at least one substantially closed position, the first planar area and the second planar area face substantially in the same direction

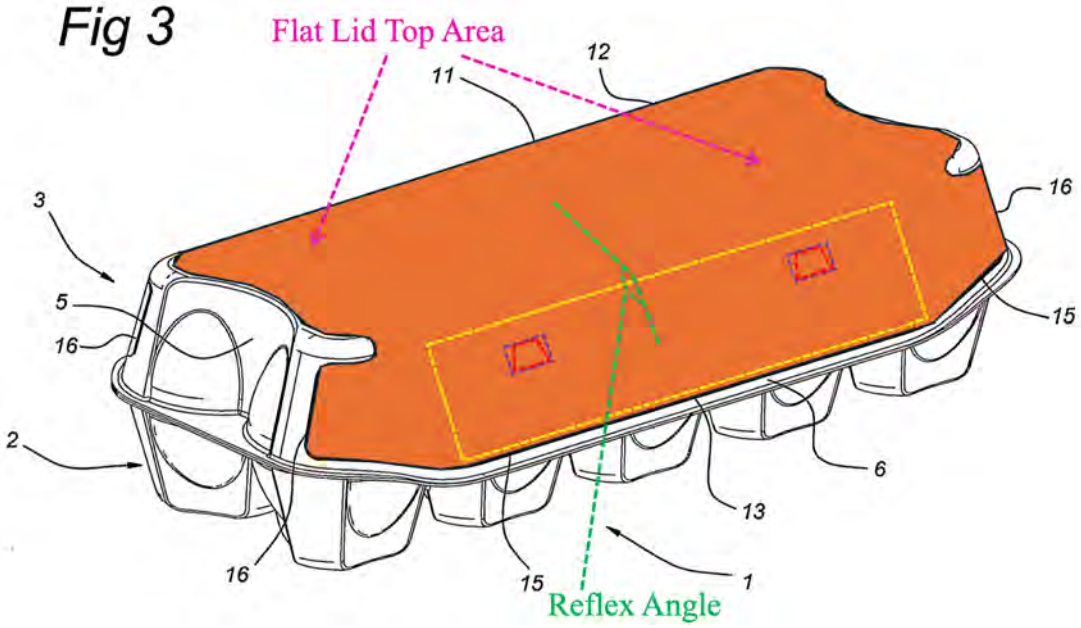
376. Post and Beese render obvious limitation [14.5.3]. As shown in modified Post Fig. 3, below, *when the lid is in the at least one substantially closed position* (Fig. 3), *the first planar area* (**blue** dotted rectangle) *and the second planar area* (**green** oval *disposed on the flat portion of the primary surface area* (**red**) of the retaining nose) *face substantially in the same direction* (facing externally away from the cavity inside the container).



Ex.1010, Fig. 3 (annotated and modified)

[14.6.1] wherein, the container comprising; a substantially flat area, inclined at a reflex angle of less than 270 degrees with respect to the substantially flat lid top area

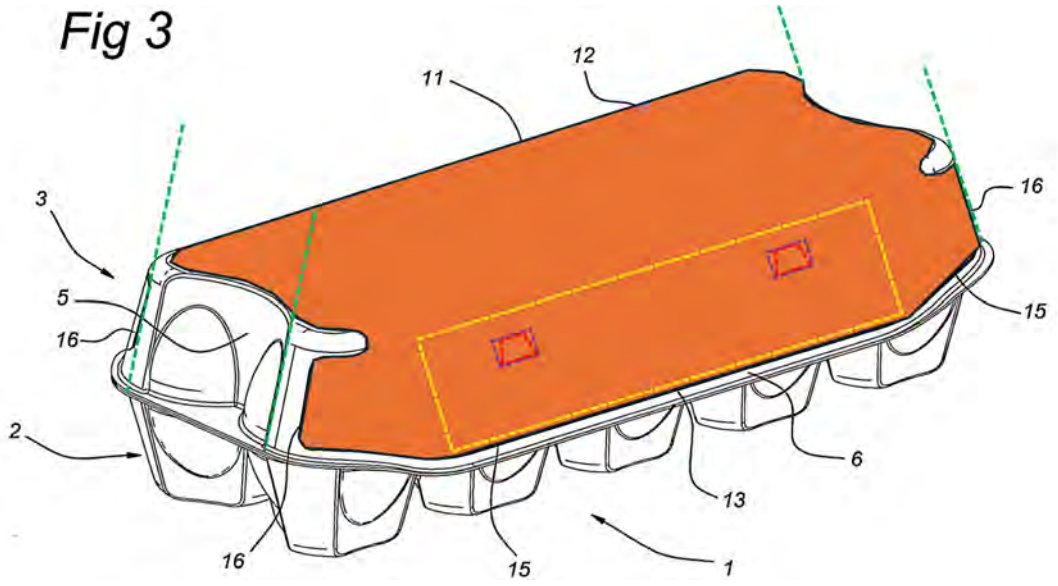
377. Post discloses limitation [14.6.1]. Because the claimed *substantially flat area* is described in additional limitations below, I have shown the *substantially flat area* (yellow dotted rectangle) in the Post-Beese combination below (modified Post Fig. 3). In the Post-Beese combination, *the container compris[es] a substantially flat area* (yellow dotted rectangle) which is *inclined at a reflex angle* (**green**) *of less than 270 degrees with respect to the substantially flat lid top area* (**pink**). The *reflex angle* (**green**) is less than 180 degrees and is therefore *less than 270 degrees with respect to the substantially flat lid top area* (**pink**).



Ex.1010, Fig. 3 (annotated and modified)

[14.6.2] wherein, the substantially flat area comprising: a circumferential dimension which is substantially less than each of, a largest internal perimeter of the base opening and an outermost perimeter of the lid;

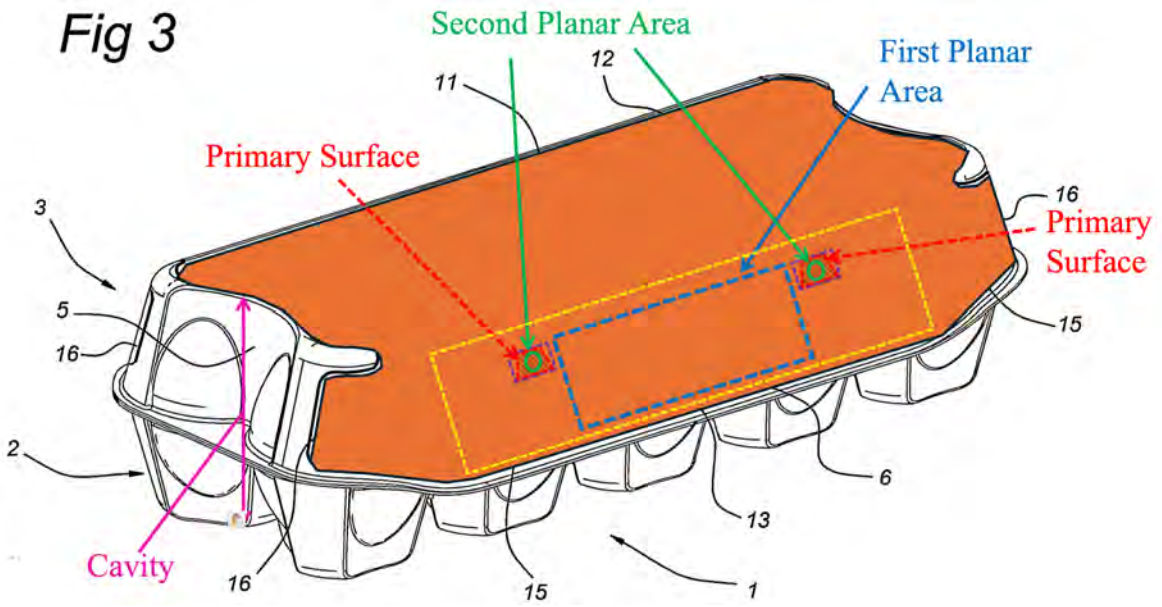
378. The Post-Beese combination renders obvious limitation [14.6.2]. As shown in the Post-Beese combination below (modified Post Fig. 3), *the substantially flat area* (yellow dotted rectangle) *compris[es]: a circumferential dimension* (circumferential dimension of yellow dotted rectangle) *which is substantially less than each of, a largest internal perimeter of the base opening* (internal perimeter between **green** dotted lines) *and an outermost perimeter of the lid* (outermost perimeter around the entirety of the lid portion 3, e.g., measured at the edge of the lid part 3 that rests on the bottom part). Thus, Post and Beese render obvious limitation [14.6.2].



Ex.1010, Fig. 3 (annotated and modified)

[14.6.3] [wherein, the substantially flat area comprising:] an edge of the first planar area and at least part of the second planar area, disposed facing at least substantially externally with respect to the cavity; and

379. The Post-Beese combination renders obvious limitation [14.6.3]. As shown in modified Post Fig. 3, below (the Post-Beese combination), *the substantially flat area* (yellow dotted rectangle) *compris[es] an edge of the first planar area* (edge of **blue** dotted rectangle, *the first planar area*) *and at least part of the second planar area* (**green** circle *disposed on the flat portion of the primary surface area* (**red**) of the retaining nose), *disposed facing at least substantially externally with respect to the cavity* (**pink**) (disposed external to the cavity between the top part 4 and bottom surface of the bottom part 2).



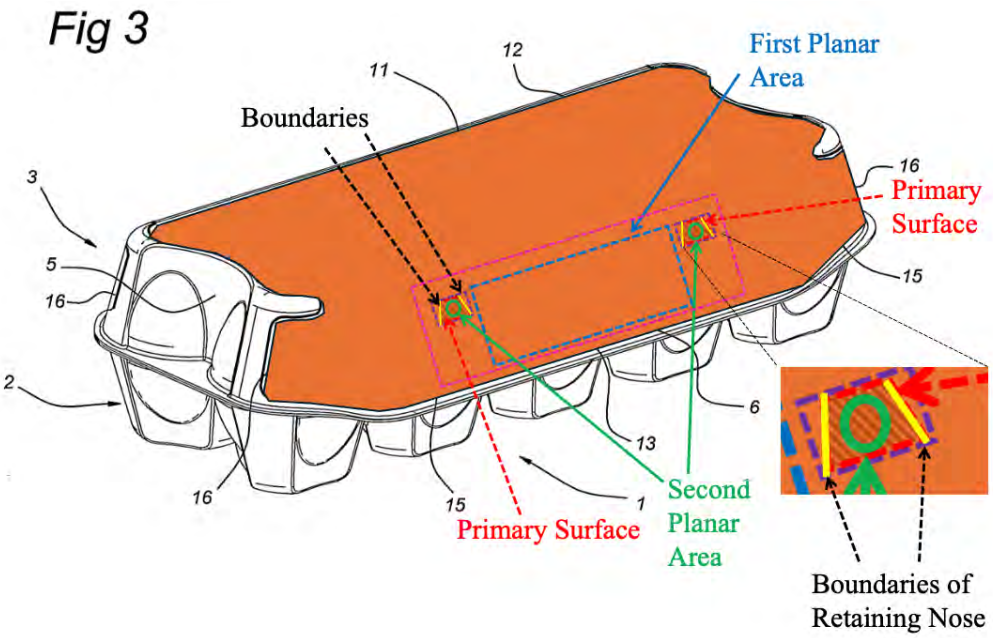
Ex.1010, Fig. 3 (annotated and modified)

[14.7.1] [the container comprising:] at least one surface configuration between the lid and the base comprising, at least, the first planar area of the lid, at least two distinct boundary portions of the flat portion of the primary surface area and, the flat portion of the primary surface area of the at least one base extension

380. The Post-Beese combination renders obvious limitation [14.7.1]. As shown in modified Post Fig. 3 below (Post-Beese combination), the container comprises *at least one surface configuration* (**pink** dotted rectangle) *between the lid and the base*. I note that the specification of the '365 Patent does not define the term "surface configuration." The term "surface configuration" is used only in claim 14 and dependent claim 15. Any configuration on the surface of the container that is between the lid and base may be the *at least one surface configuration*. As shown in

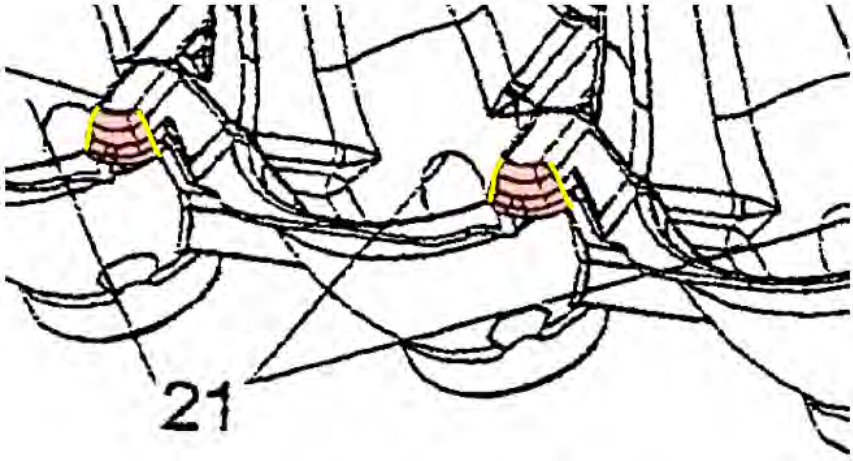
modified Post Fig. 3 below, the *at least one surface configuration* (**pink** dotted rectangle) *compris[es] at least* the following features:

- *the first planar area of the lid* (**blue** dotted rectangle);
- *at least two distinct boundary portions* (yellow lines on lateral sides of Beese's retaining noses 24 shown in corresponding openings in Post's lid part 3) *of the flat portion of the primary surface area* (flat portion of the primary surface area, shown as **brown** dashed surface area on front of retaining nose 24 (**red**)); and
- *the flat portion of the primary surface area of the at least one base extension* (flat portion of the primary surface area, shown as **brown** dashed surface area on front of retaining nose 24 (**red**)).



Ex.1010, Fig. 3 (annotated and modified)

381. In modified Post Fig. 3 above, I added an expanded zoom area to show that there are boundaries (yellow lines) at least on the lateral sides (on left and right sides in modified Fig. 3 above) of Beese's retaining noses 24 in Post's container. As shown in Fig. 1 below, the *flat portion* of Beese's retaining noses 24 (*base extension*) has a first *boundary* (yellow boundary on left) and a second *boundary* (yellow boundary on right). Beese's retaining noses 24 would likewise have boundaries (yellow) on their lateral sides in Post's container, as shown in modified Post Fig. 3 above (Post-Beese combination).

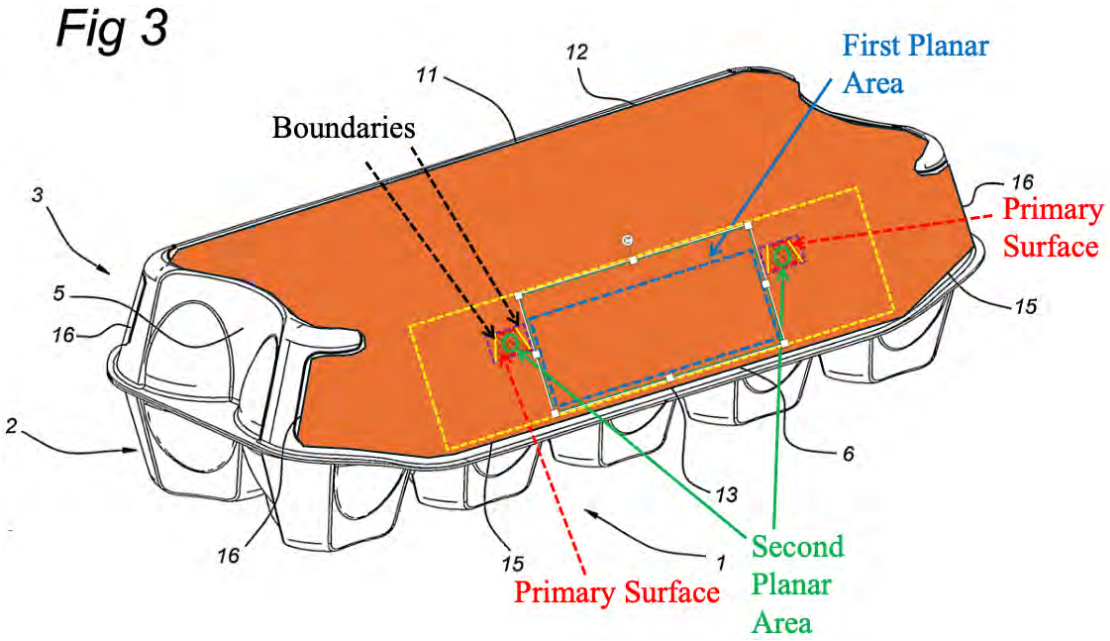


Ex.1009, Fig. 1 (annotated partial view)

382. Thus, Post and Beese render obvious limitation [14.7.1].

[14.7.2] wherein, the flat portion comprising the second planar area disposed substantially co-planar with respect to, both, the lid front portion of the first of the two material surfaces, and the at least two distinct boundary portions, to comprise the substantially flat area,

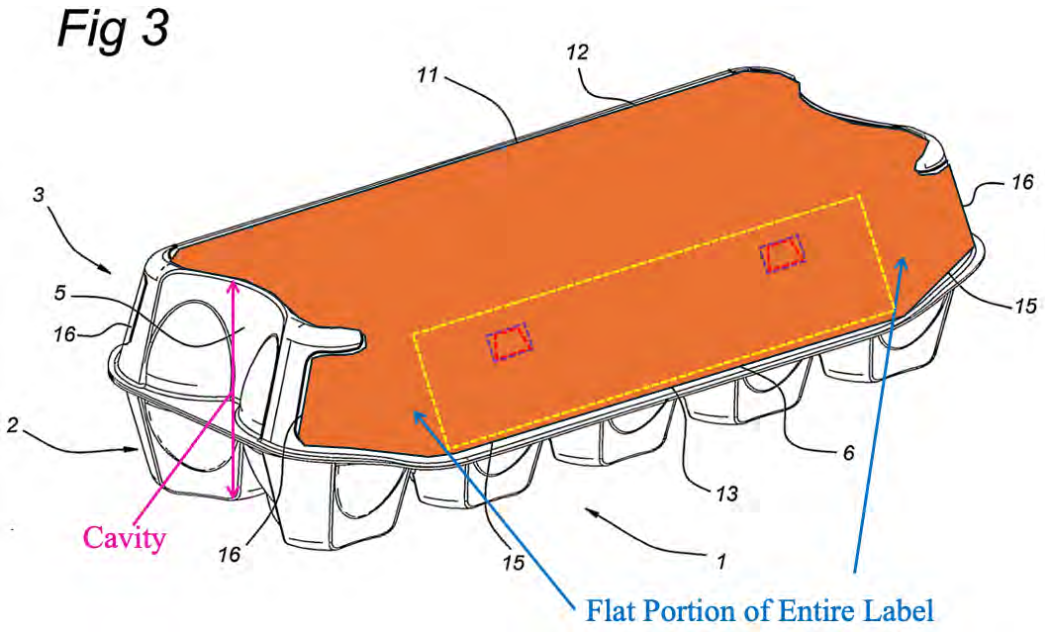
383. The Post-Beese combination renders obvious limitation [14.7.2]. As shown in modified Post Fig. 3 below, *the flat portion* (hashed surface on primary surface area (**red**) on front of retaining noses) *compris[es] the second planar area* (**green** oval) *disposed substantially co-planar* (in same plane on front of container) *with respect to, both, the lid front portion* (**green** dotted rectangle; see limitation [14.3.7]) *of the first of the two material surfaces* (outer surface), *and the at least two distinct boundary portions* (yellow boundaries on lateral sides of retaining noses; see limitation [14.7.1]), *to comprise the substantially flat area* (yellow dotted rectangle; *see* limitation [14.6.1]).



Ex.1010, Fig. 3 (annotated and modified)

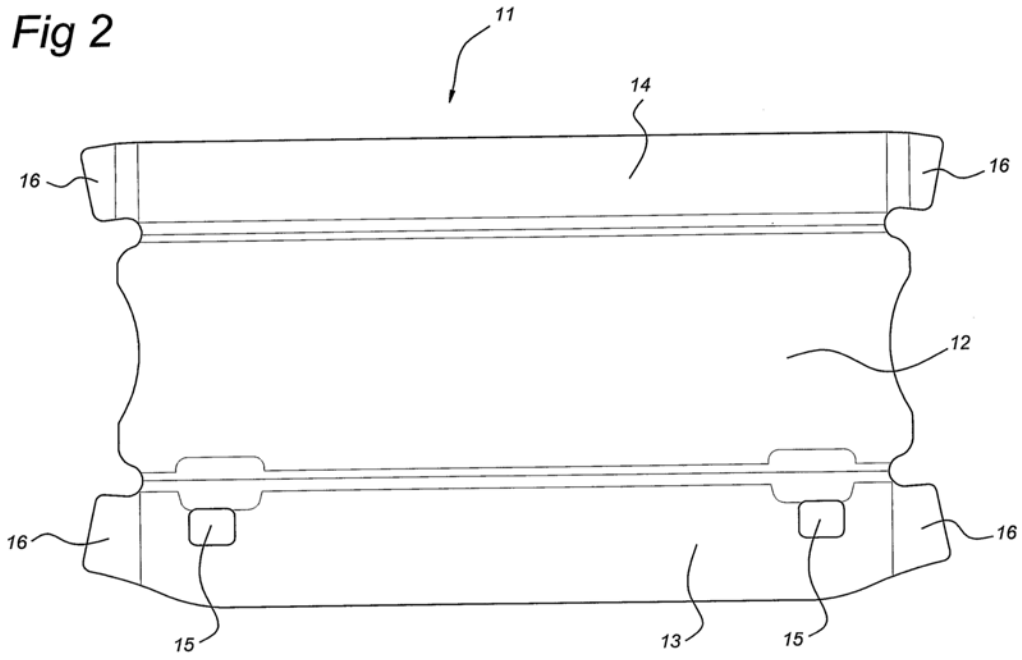
[14.8.1] wherein, the substantially flat area is disposed substantially outside of the cavity of the container and is suitable to be covered in a generally flat fashion by a substantially flat portion of an entire label

384. The Post-Beese combination renders obvious limitation [14.8.1]. As shown in modified Post Fig. 3 below, *the substantially flat area* (yellow dotted rectangle) *is disposed substantially outside of the cavity* (**pink** cavity between top part 4 of lid part 3 and bottom surface of bottom part 2) *of the container and is suitable to be covered in a generally flat fashion by a substantially flat portion of an entire label* (flat portion of label 11 between **blue** arrows).



Ex.1010, Fig. 3 (annotated and modified)

385. Post discloses that the portion of the label that covers the front part 6 of the lid part 3 is a flat portion. As shown in Fig. 2, below, the front flap 13 of the label 11, which is a "flat sheet," is placed over the front part 6 (front wall 6) of the lid part 3. Ex.1010, 3 ("A flat sheet that has to be applied as label to the lid part 3 is shown in Fig. 2. This 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 ("The 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….").

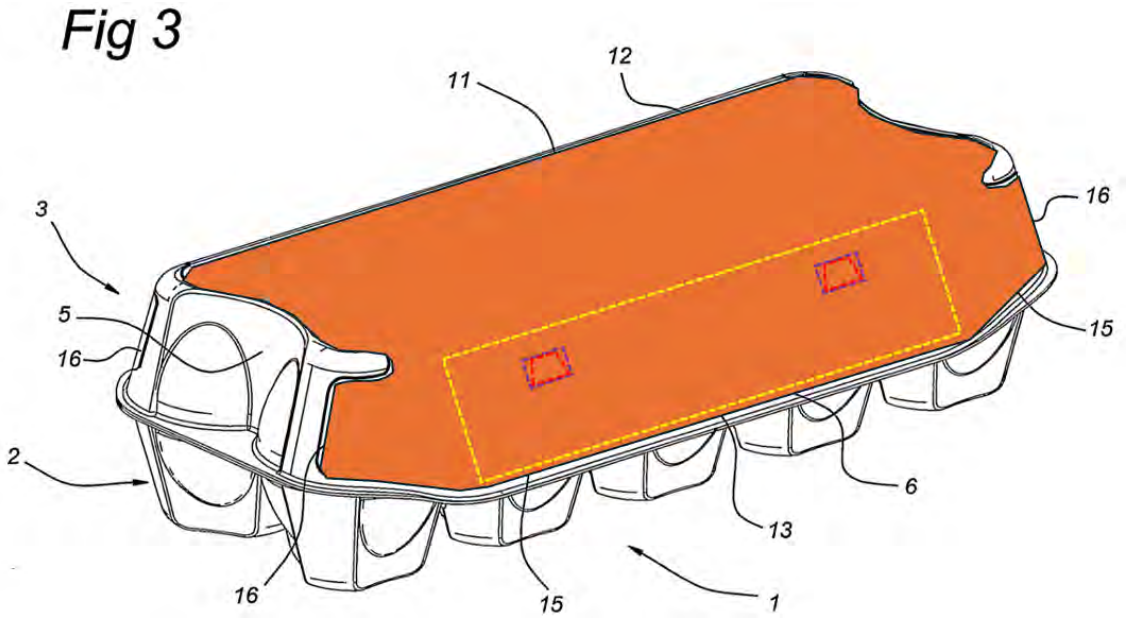


Ex.1010, Fig. 2

[14.8.2] wherein, the entire label is proposed to be received by the container wherein the entire label is larger than the substantially flat area and

386. The Post-Beese combination renders obvious limitation [14.8.2]. As shown in modified Post Fig. 3 below (Post-Beese combination), *the entire label* (entirety of label (**orange**) covering the container) *is proposed to be received by the container wherein the entire label is larger than the substantially flat area* (entirety of label (**orange**) covering the container is larger than the substantially flat area (yellow dotted rectangle)). As shown, *the entire label is larger than the substantially flat area* (yellow dotted rectangle) because the central part 12 of the label (**orange**) covers the top part 3 of the lid part 3 and the lips 16 of the label cover the lateral

transition parts 20 (see Fig. 1) on the sides of the container.[11] Ex.1010, 4 ("The flat sheet [of the label] 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, followed by applying the lips to the relevant transition parts 20.").

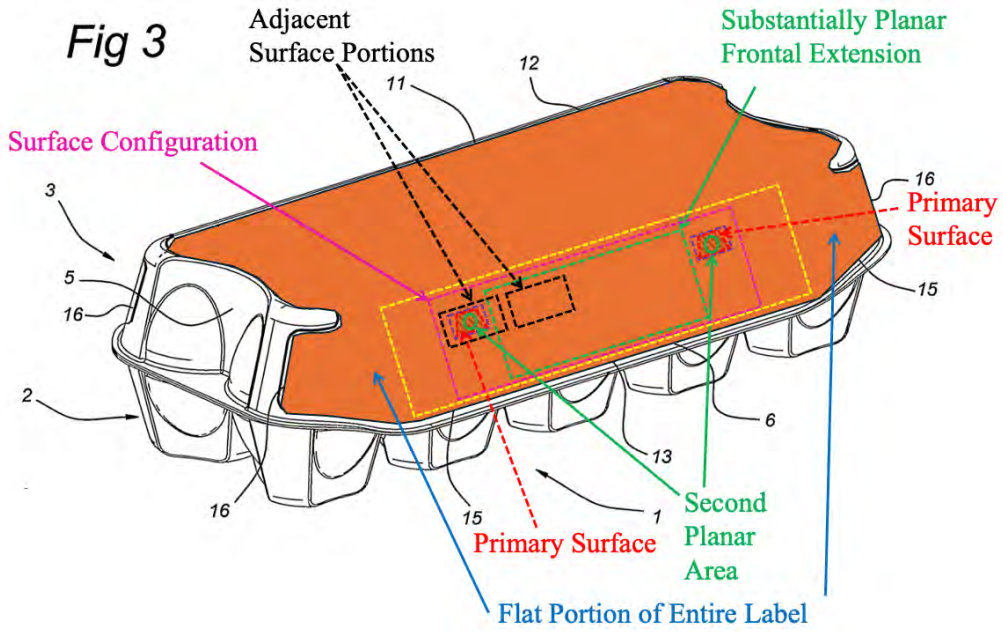


Ex.1010, Fig. 3 (annotated and modified)

[11] While not shown in modified Fig. 3, Post discloses that the rear flap 14 of the label (Fig. 2) covers the rear wall 7 of the lid part 3 (Fig. 1). Ex.1010, 4 ("[B]oth the front flap 13 and the rear flap 14 [of the label] are then positioned on the front wall 6 and the rear wall 7, respectively, followed by applying the lips to the relevant transition parts 20.").

[14.8.3] wherein, the substantially flat portion of the entire label is proposed to contour substantially to the substantially flat area, in the generally flat fashion, to cover at least two immediately adjacent surface portions of the container with respect to the at least one surface configuration

387. The Post-Beese combination renders obvious limitation [14.8.3]. As shown in modified Post Fig. 3 below, *the substantially flat portion of the entire label* (flat portion of label 11 between **blue** arrows; *see* limitation [14.8.1]) *is proposed to contour substantially to the substantially flat area, in the generally flat fashion, to cover at least two immediately adjacent surface portions* (**black** dotted rectangles; discussed in limitation [14.8.4] below) *of the container with respect to the at least one surface configuration* (**pink** dotted rectangle; *see* limitation [14.7.1]).



Ex.1010, Fig. 3 (annotated and modified)

[14.8.4] wherein, a first of the at least two immediately adjacent surface portions is the entire flat portion of the primary surface area of the at least one base extension and, a second of the at least two immediately adjacent surface portions is disposed on the substantially planar frontal extension

388. The Post-Beese combination renders obvious limitation [14.8.4]. As shown in modified Post Fig. 3 below (Post-Beese combination), *a first of the at least two immediately adjacent surface portions* (**black** dotted rectangle on left) *is the entire flat portion of the primary surface area* (flat portion of the primary surface area, shown as **brown** dashed surface area on front of retaining nose 24 (**red**)) *of the at least one base extension* (retaining nose) a*nd, a second of the at least two immediately adjacent surface portions* (**black** dotted rectangle on right) *is disposed on the substantially planar frontal extension* (**green** dotted rectangle) (e.g., portion of front wall 6 between openings; see limitation [14.3.7]).

[14.9.1] wherein, when contouring to the substantially flat area and covering the at least two immediately adjacent surface portions in the generally flat fashion, the substantially flat portion of the entire label is proposed to at least generally contour to an outermost shape of the container including, at least each of, [i] the lid front portion of the first of the two material surfaces of the substantially planar frontal extension, [ii] the second planar area and, [iii] the at least two distinct boundary portions of the flat portion of the primary surface area of the at least one base extension.

389. The Post-Beese combination renders obvious limitation [14.9.1]. **First**, as described above for limitations [14.8.3] and [14.8.4], the Post-Beese combination renders obvious that *the substantially flat portion of the entire label* (flat portion of label 11 between **blue** arrows; *see* limitation [14.8.1])*...contour[s] to the*

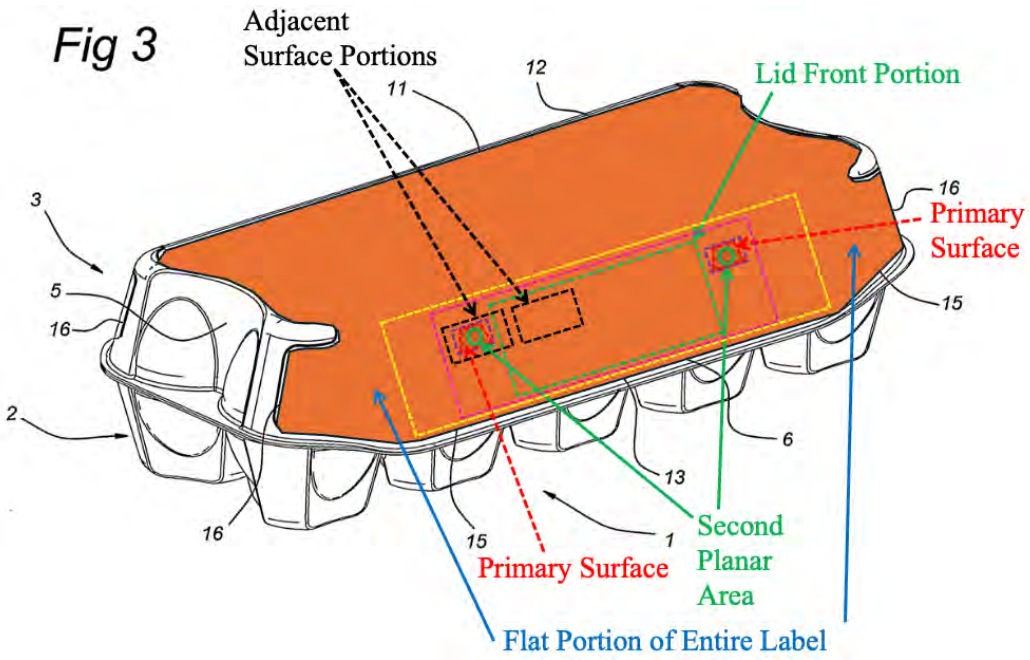
substantially flat area (yellow dotted rectangle) *and covering the at least two immediately adjacent surface portions* (**black** dotted rectangles) *in the generally flat fashion*.

390. **Second**, in this placement of the label, as shown in modified Post Fig. 3 below, *the substantially flat portion of the entire label is proposed to at least generally contour to an outermost shape of the container* (shape on outer surface of container) *including, at least each of*:

i. *the lid front portion* (**green** dotted rectangle on front part 6 of the lid part 3; *see* limitation [14.3.7]);

ii. *the second planar area* (**green** oval *disposed on the flat portion of the primary surface area* (**red**) of the retaining nose; see limitations [14.5.2] and [14.5.3]); and

391. The at least two distinct boundary portions (yellow boundary lines (on lateral sides of retaining noses; *see* limitation [14.7.1])) *of the flat portion* (hashed surface area on front of retaining nose) *of the primary surface area* (**red**) *of the at least one base extension* (retaining nose).



Ex.1010, Fig. 3 (annotated and modified)

392. Thus, Post and Beese render obvious limitation [14.9.1].

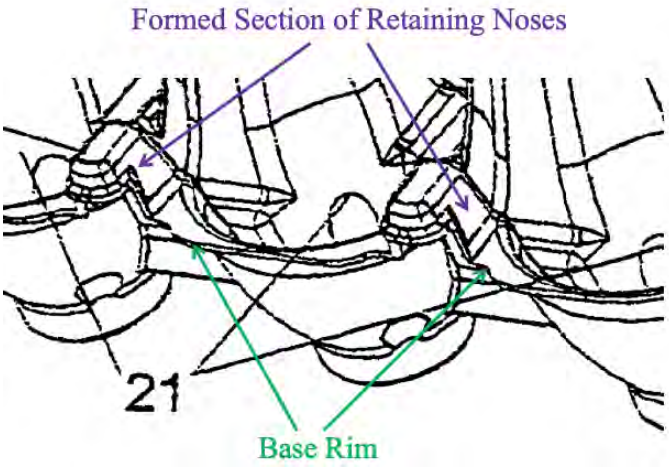
393. Accordingly, for at least the foregoing reasons, all the limitations of claim 14 are well-known, conventional features, as taught by Post, Beese, and Mangla.

n) Claim 15

[15.0] The container of claim 14 wherein, the at least one base extension comprising a formed section wherein, the formed section stands proud of the at least one portion of the rim

394. Post and Beese render obvious limitation [15.0]. As described above for limitation [14.4.5], Beese's retaining noses 24 in Post's container render obvious *the at least one base extension generally extending from the at least one portion of the rim* (see limitation [14.4.4] for *the at least one portion of the rim*).

395. As shown in Fig. 1, below, Beese's retaining noses 24 (the at least one base extension) *compris[e] a formed section* (structural extensions (denoted with **purple** arrows) protruding from the rim) [that] *stands proud of the at least one portion of the rim* (**green**). The *formed section* (denoted with **purple** arrows) of Beese's *at least one base extension* (retaining noses 24) *stands proud of the at least one portion of the rim* (**green**) because the *formed section* extends upward and away from the base rim (green).

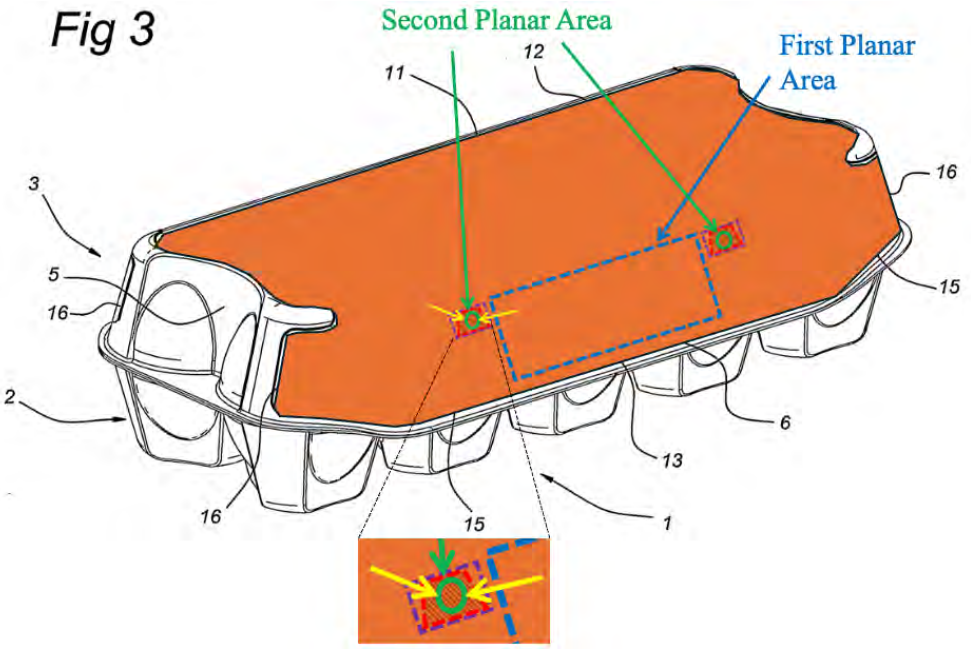


Ex.1009, Fig. 1 (annotated partial view)

396. As described above for limitation [14.4.5], Beese's retaining noses 24 would extend from the rim of Post's bottom part 2. Therefore, Post and Beese render obvious *the at least one base extension comprising a formed section* (extension of Beese's retaining noses) (**purple**) *wherein, the formed section stands proud* (extends upward and way from) *of the at least one portion of the rim* (Post's rim; *see* limitation [14.4.4]).

[15.1] wherein, the second planar area comprising a planar perimeter wherein, a portion of the planar perimeter defines at least two distinct sides of the second planar area and

397. Post and Beese render obvious limitation [15.1]. As shown in modified Post Fig. 3 below (Post-Beese combination), *the second planar area* (**green** surface on front of retaining noses 24) *compris[es] a planar perimeter* (perimeter of **green** oval) *wherein, a portion of the planar perimeter defines at least two distinct sides* (denoted by yellow arrows) *of the second planar area*.

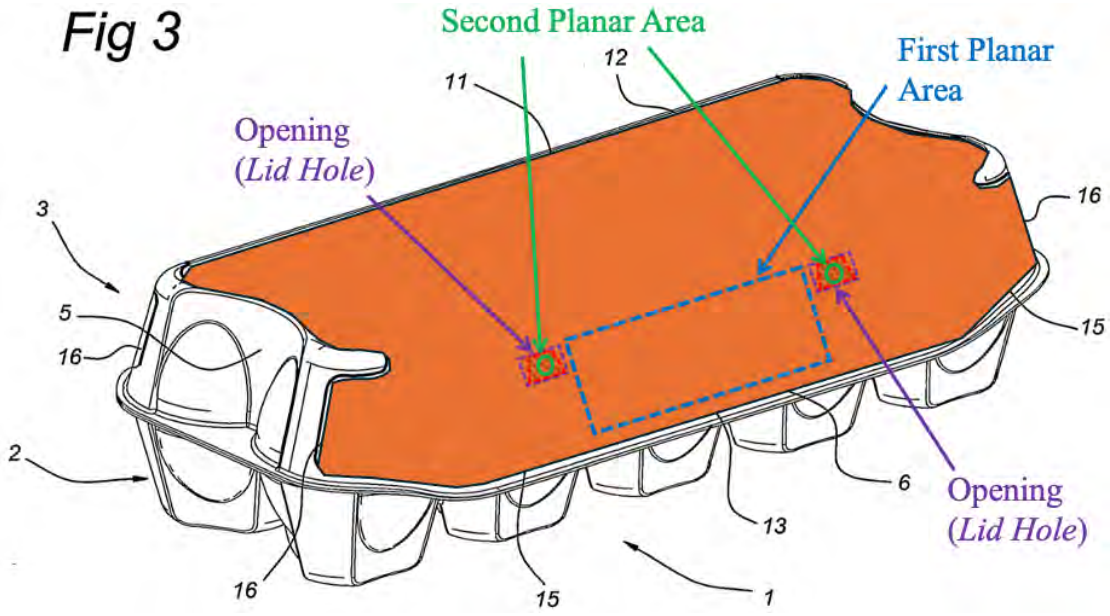


Ex.1010, Fig. 3 (annotated and modified)

[15.2] wherein, the at least one lid hole is disposed at least generally adjacent to the first planar area

398. Post and Beese render obvious limitation [15.2]. As shown in modified Post Fig. 3 below (Post-Beese combination), *the at least one lid hole* (opening in lid

part 3 denoted by **purple** dotted rectangle; *see* limitation [14.3.11]) *is disposed at least generally adjacent to the first planar area* (blue dotted rectangle; see limitation [14.5.1]).

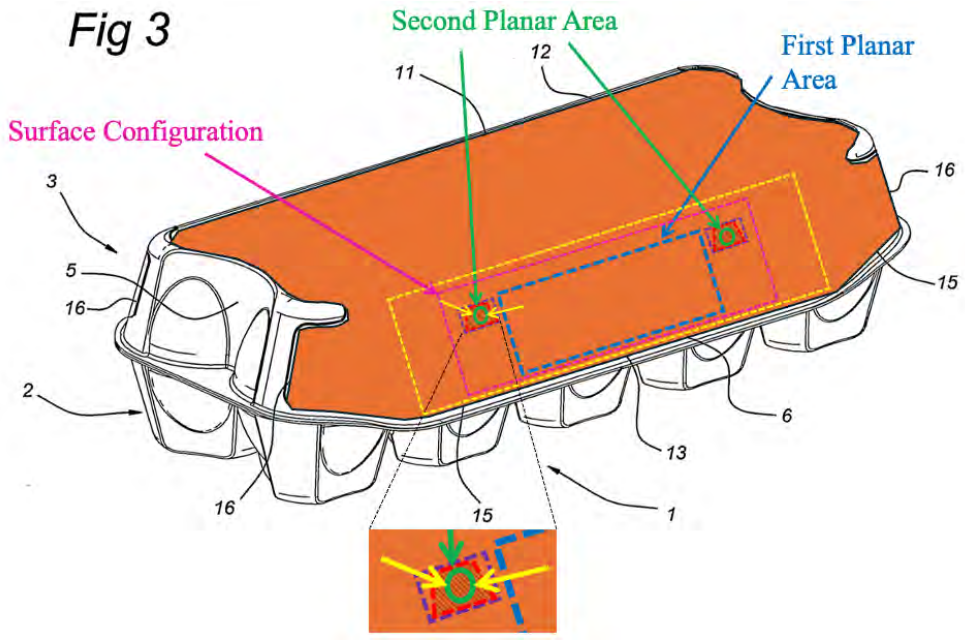


Ex.1010, Fig. 3 (annotated and modified)

[15.3] wherein, when the lid is in the at least one substantially closed position, the at least one lid hole corresponds to and mates with the at least two distinct sides of the second planar area, to expose the second planar area wherein, facilitating the at least one surface configuration, to provide the substantially flat area.

399. Post and Beese render obvious limitation [15.3]. As shown in modified Post Fig. 3 below (Post-Beese combination), *when the lid is in the at least one substantially closed position* (Fig. 3), *the at least one lid hole* (opening in lid part 3 denoted by **purple** dotted rectangle) *corresponds to and mates with the at least two distinct sides* (denoted by yellow arrows) *of the second planar area* (**green** surface

on front of retaining noses 24), *to expose the second planar area* (**green**) *wherein, facilitating the at least one surface configuration* (pink dotted rectangle), *to provide the substantially flat area* (yellow dotted rectangle). As shown in modified Fig. 3 below, *the at least one lid hole* (opening in lid part 3 denoted by **purple** dotted rectangle) *corresponds to and mates with the at least two distinct sides* (denoted by yellow arrows) *of the second planar area* (**green** surface on front of retaining noses 24), because the front surface of the retaining noses (*second planar area*) extend through and mate with the openings (*the at least one lid hole*) in the lid part 3 of Post's container.

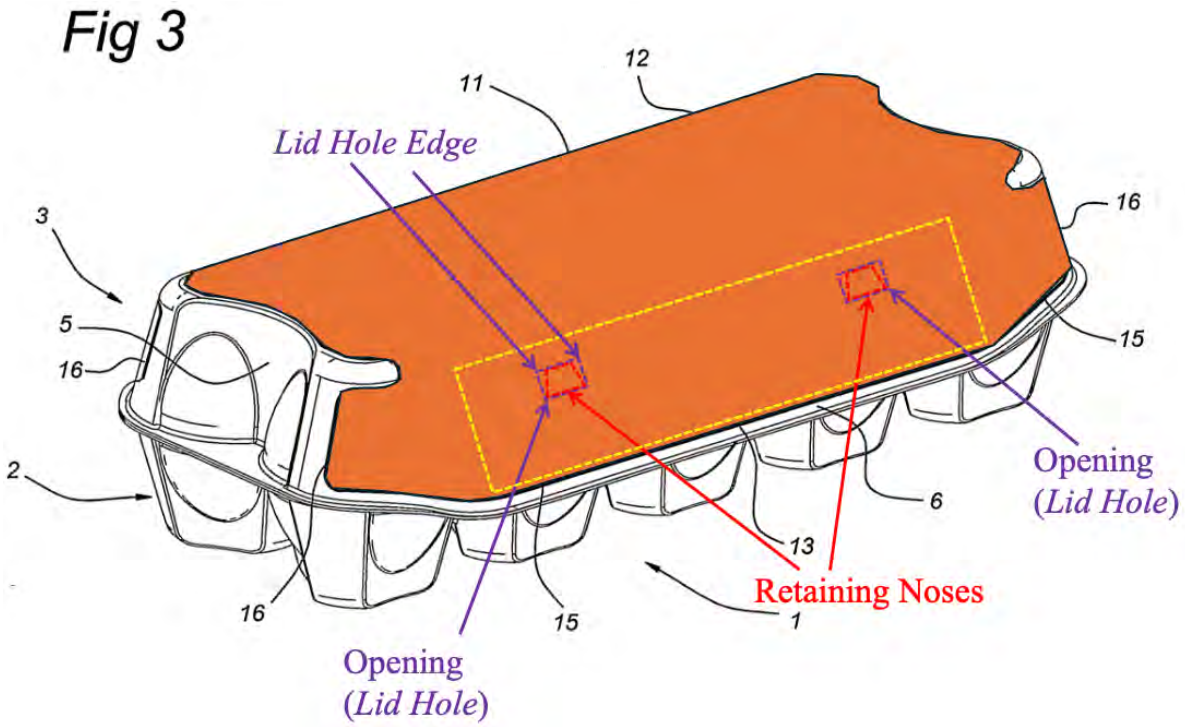


Ex.1010, Fig. 3 (annotated and modified)

o) Claim 16

[16.0] The container of claim 15 wherein, the lid hole edge is substantially planar and

400. Post and Beese render obvious limitation [16.0]. As described above for limitation [14.3.11], Post and Beese render obvious *the lid hole edge*. As shown in modified Post Fig. 3 (Post-Beese combination), *the lid hole edge is substantially planar* (i.e., in a plane on the front surface of the lid part 3).



Ex.1010, Fig. 3 (annotated and modified)

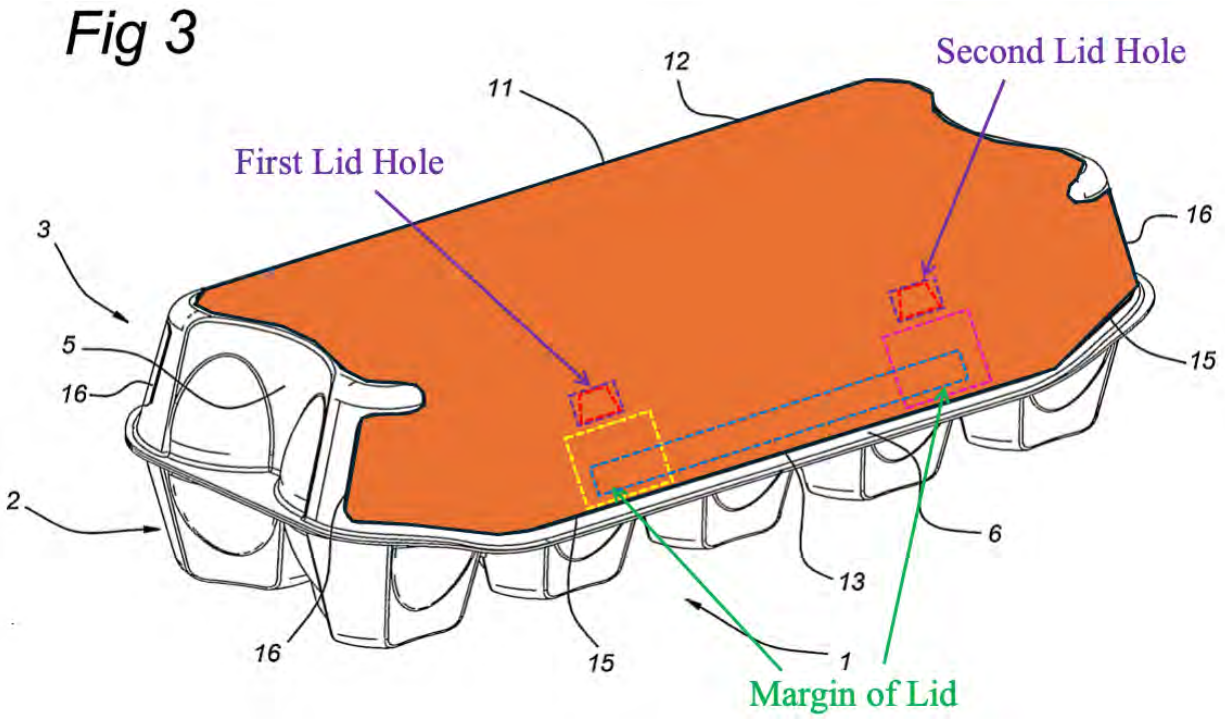
[16.1] wherein, when the lid is in the at least one substantially closed position, the lid hole edge and the at least one lid hole are entirely encompassed within a perimeter of the substantially flat area.

401. The Post-Beese combination renders obvious limitation [16.1]. As shown in modified Post Fig. 3 above for limitation [16.0], when the lid is in the at least one substantially closed position (Fig. 3), *the lid hole edge* (edge of openings denoted in **purple**) *and the at least one lid hole* (openings denoted in **purple**) *are entirely encompassed within a perimeter of the substantially flat area* (yellow dotted rectangle).

p) Claim 17

[17.0] The container of claim 16 wherein, a portion of the margin of the lid extends from, a first opening area adjacent to a first of the at least one lid hole to, a second opening area adjacent to a second of the at least one lid hole

402. Post and Beese render obvious limitation [17.0]. As described above for limitation [14.3.9], Post discloses *the margin of the lid* (**green**) (near bottom edge of the lid). As shown in modified Post Fig. 3 below (Post-Beese combination), *a portion of the margin* (portion at the bottom of the lid) (denoted by **blue** dotted rectangle) *of the lid* (lid part 3) e*xtends from, a first opening area* (yellow dotted rectangle) *adjacent to a first of the at least one lid hole* (**lid hole** on left) *to[] a second opening area* (**pink** dotted rectangle) *adjacent to a second of the at least one lid hole* (**lid hole** on right).



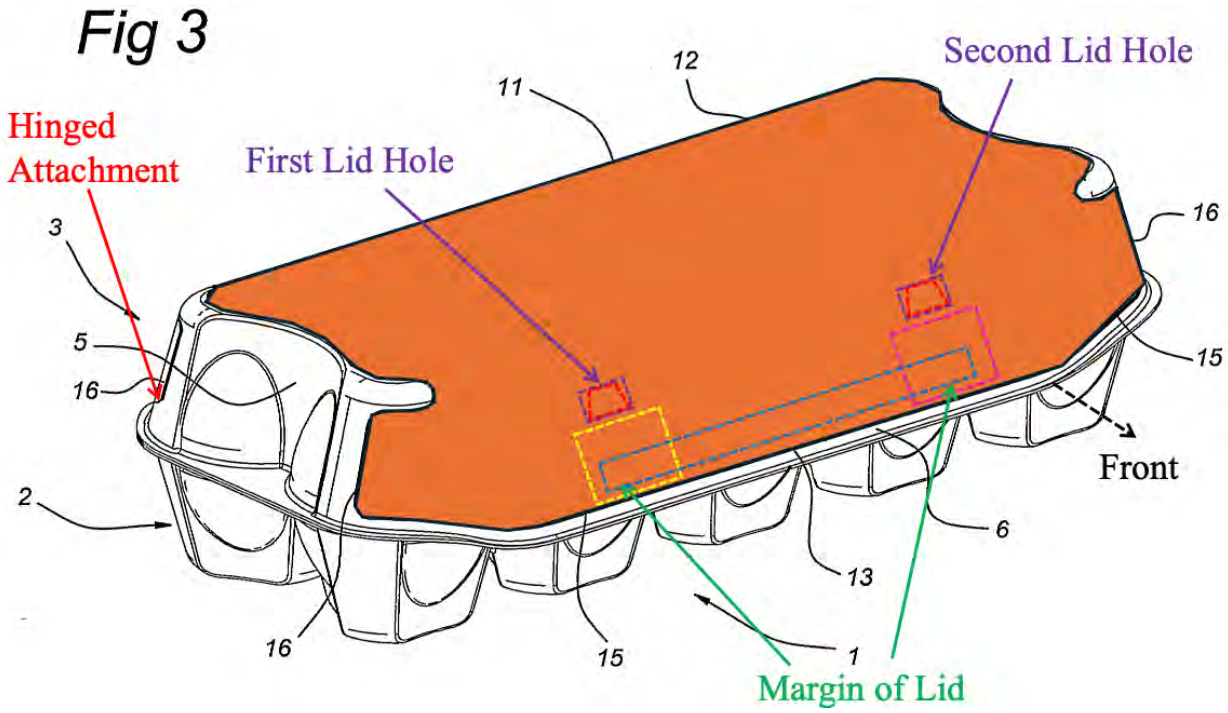
Ex.1010, Fig. 3 (annotated and modified)

[17.1] wherein, the portion of the margin includes a most forwardly extended point of the lid when the lid is in the at least one substantially closed position

403. Post and Beese render obvious limitation [17.1]. As shown in modified Post Fig. 3 above for limitation [17.0], *the portion of the margin* (portion at the bottom of the lid, denoted by **blue** dotted rectangle) *includes a most forwardly extended point of the lid when the lid is in the at least one substantially closed position* (the portion is at the bottom of the lid part 3 and is therefore in the most forwardly extended point of the lid when the container is closed, as shown in Fig. 3).

[17.2] wherein, the most forwardly extended point of the lid is generally disposed at the front of the container, on a directly opposite side of the container to the hinged attachment.

404. Post and Beese render obvious limitation [17.2]. As shown in modified Post Fig. 3 below (Post-Beese combination), *the most forwardly extended point* (most forwardly extended point in portion (**blue** dotted rectangle) at the bottom of the lid) *of the lid is generally disposed at the front* (front shown with dotted arrow) *of the container, on a directly opposite side of the container to the hinged attachment* (**red**) at the rear side of the container.

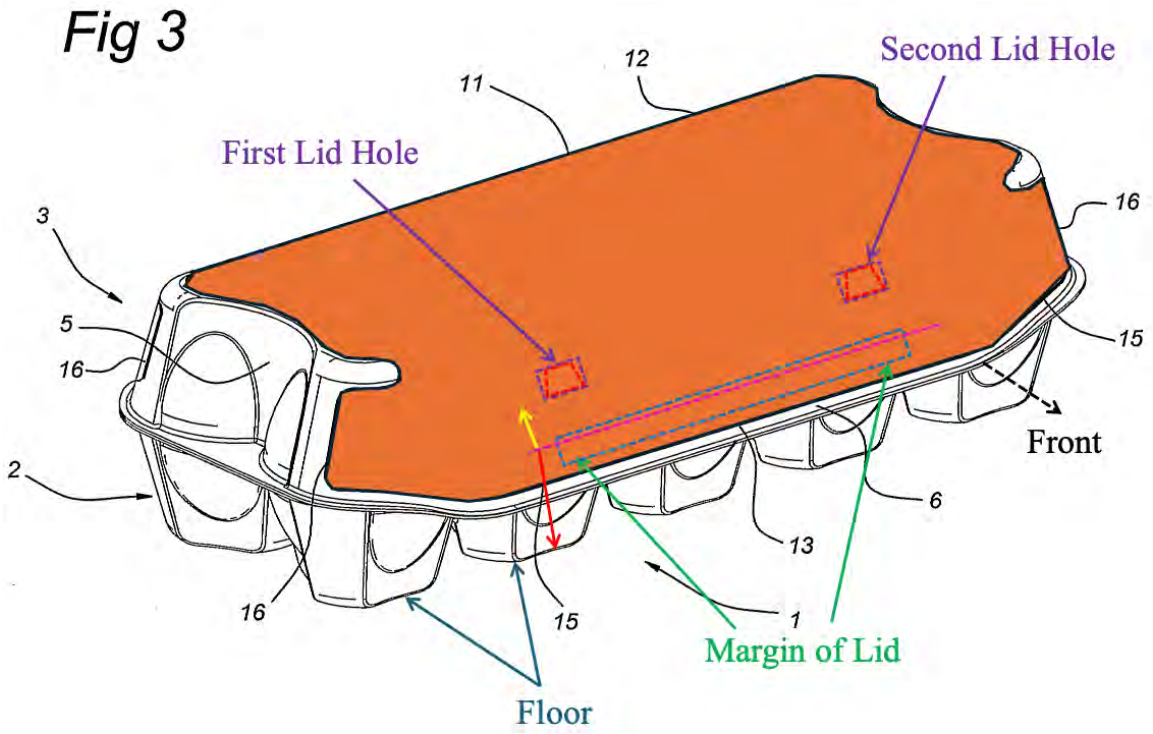


Ex.1010, Fig. 3 (annotated and modified)

q) Claim 18

[18.0] The container of claim 17 wherein, when the lid is in the at least one substantially closed position, the portion of the margin includes at least one point which is closer, to either of, the first lid hole and the second lid hole, than to the floor of the base.

405. Post and Beese render obvious limitation [18.0]. As shown in modified Post Fig. 3 below (Post-Beese combination), *when the lid is in the at least one substantially closed position*, the portion of the margin (portion at the bottom of the lid, denoted by **blue** dotted rectangle) *includes at least one point* (e.g., points along dotted **pink** line) *which is closer, to either of, the first lid hole* (**purple**) *and the second lid hole* (**purple**), *than to the floor* (**blue**) *of the base* (bottom part 2). As shown by the yellow arrow, the points along the dotted **pink** line are dimensionally closer to either of the lid holes (**purple**) than to the floor (shown with **red** arrow).

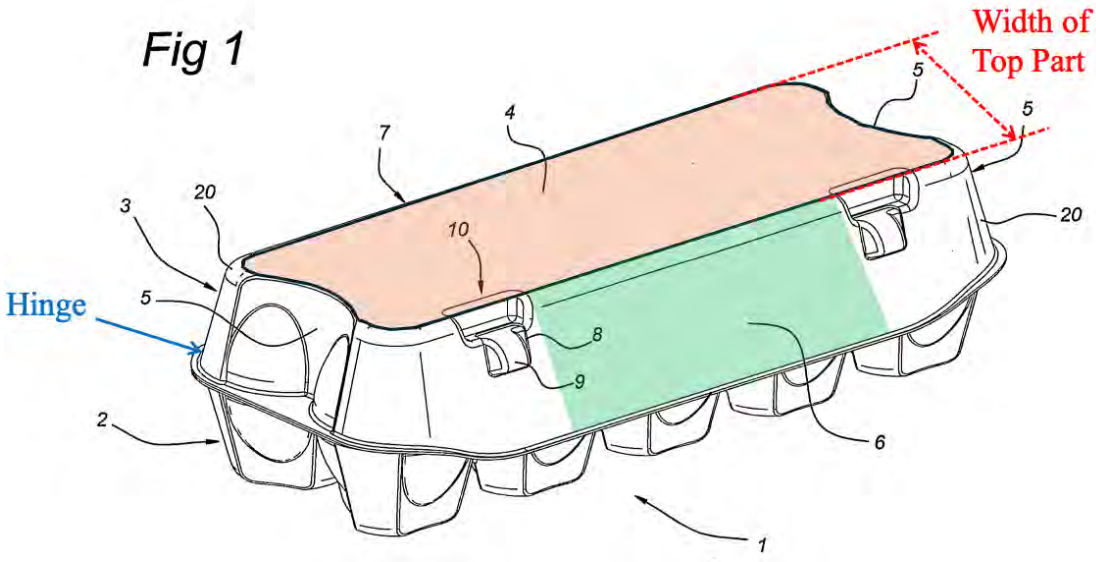


Ex.1010, Fig. 3 (annotated and modified)

r) Claim 19

[19.0] The container of claim 15 wherein, the substantially flat lid top area has a width disposed generally between the hinged side of the lid and the substantially planar frontal extension;

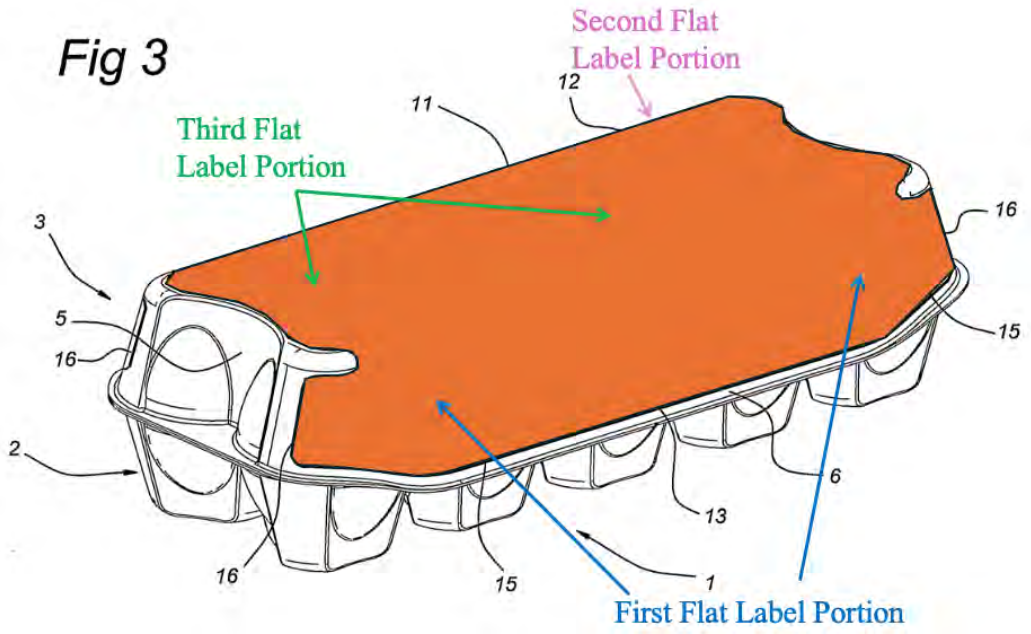
406. Post discloses limitation [19.0]. As shown in Fig. 1 below, Post discloses that *the substantially flat lid top area* (top part 4 of lid part 3) (**orange**) (*see* limitation [11.5.1]) has a width (**red**) disposed generally between *the hinged side* (**blue**) (*see* limitation [11.2.1]) *of the lid and the substantially planar frontal extension* (e.g., portion of front wall 6 between openings 8) (**green**) (*see* limitation [11.5.2]).



Ex.1010, Fig. 1 (annotated)

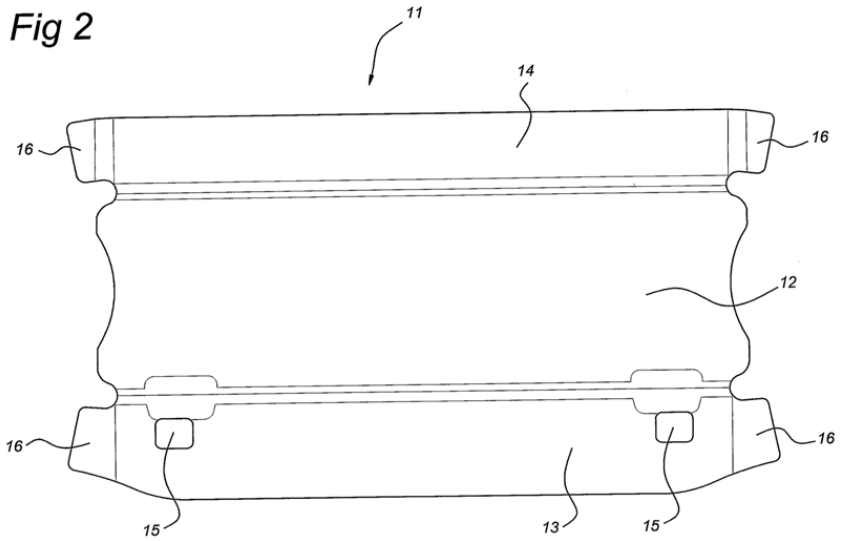
[19.1] the entire label having a first flat label portion, a second flat label portion, and a third flat label portion located between the first and second flat label portions,

407. The Post-Beese combination renders obvious limitation [19.1]. As shown in modified Post Fig. 3 below, the label (**orange**) in the Post-Beese combination is *the entire label*. The *entire label ha[s] a first flat label portion* (**blue**), *a second flat label portion* (**pink**), *and a third flat label portion* (**green**) *located between the firs*t (**blue**) *and second* (**pink**) *flat label portions*.



Ex.1010, Fig. 3 (annotated and modified)

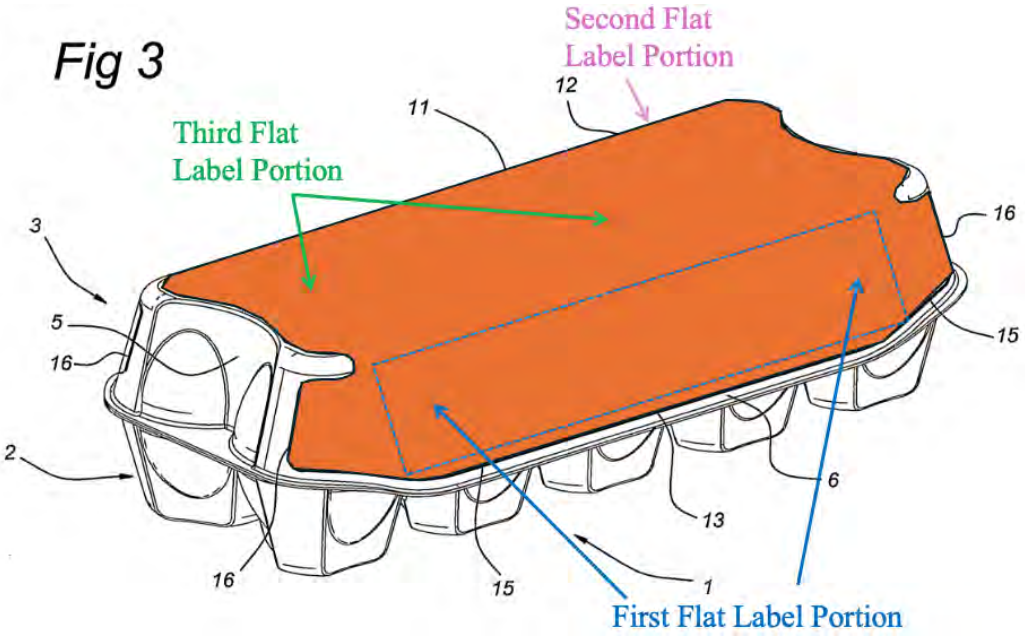
408. As shown in Fig. 2, below, Post's label 11 includes a front flap 13 (*first flat label portion*) that covers the front part 6 of the lid part 3, a central part 12 (*third flat label portion*) that covers the flat top part 4 of the lid part 3, and a rear flap 14 (*second flat label portion*) that covers the rear wall 7 of the lid part 3 (rear wall 7 labeled in Post's Fig. 1). Ex.1010, 3 ("A flat sheet that has to be applied as label to the lid part 3 is shown in Fig. 2. This 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 ("The 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.1010, Fig. 2

[19.2] wherein the first flat label portion comprising the substantially flat portion of the entire label;

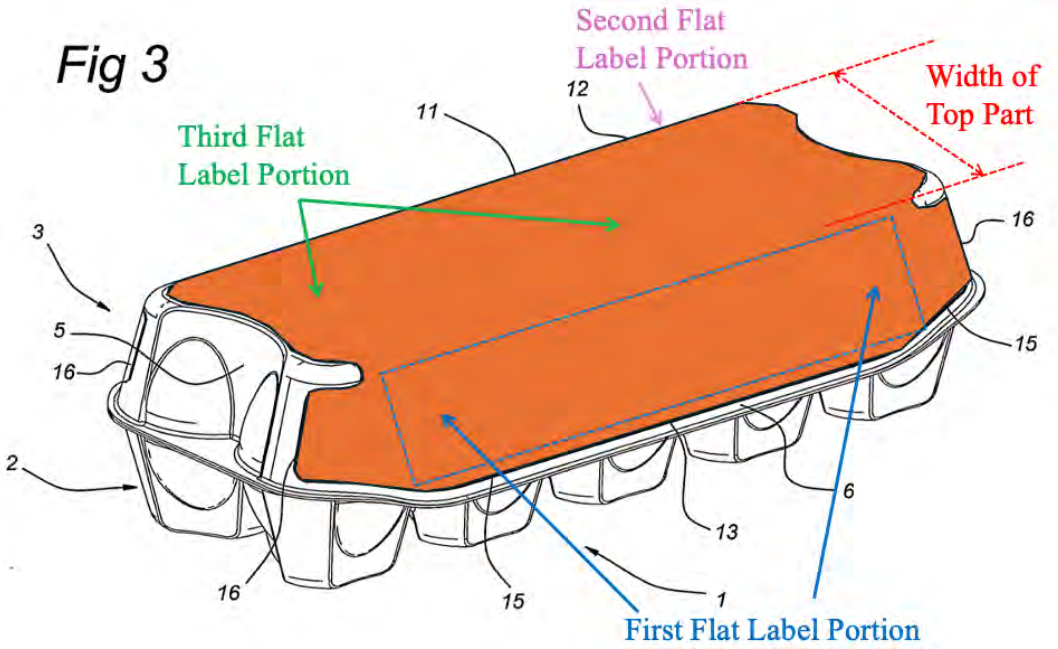
409. The Post-Beese combination renders obvious limitation [19.2]. As described above for limitation [14.8.1], the Post-Beese combination teaches that *the substantially flat portion of the entire label* extends on the front part 6 of the lid part 3. As shown in the annotation of Post's Fig. 3 for limitation [19.2] below, *the first flat label portion* (denoted by **blue** arrows) *compris[es] the substantially flat portion of the entire label* (**blue** dotted rectangle).



Ex.1010, Fig. 3 (annotated and modified)

[19.3] wherein, when the lid is in the at least one substantially closed position and the entire label is received by the container, the third flat label portion substantially spans the width of the substantially flat lid top area and is located directly above the floor,

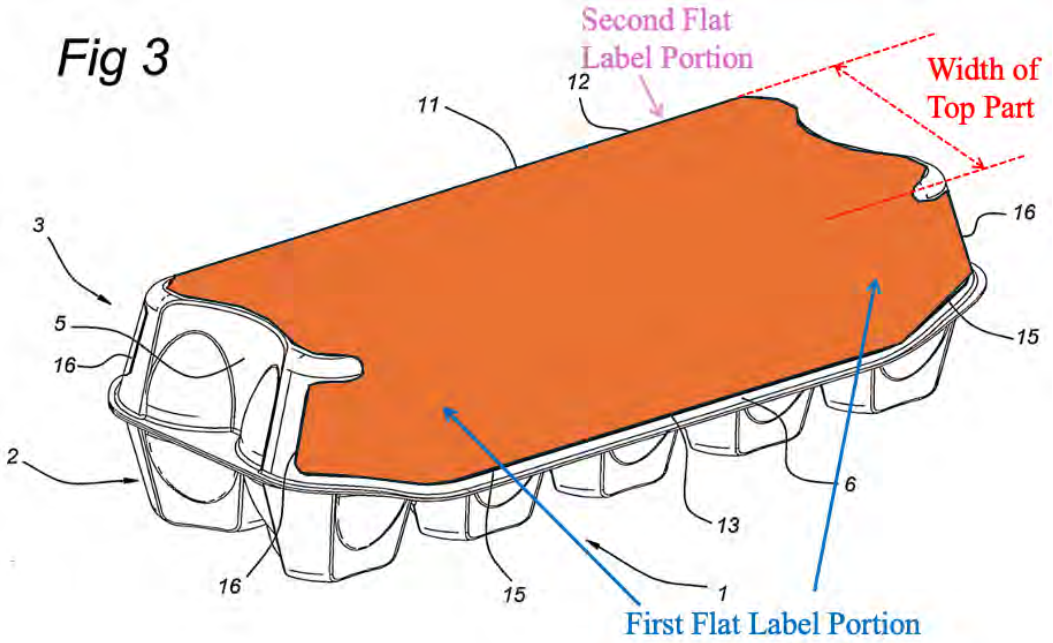
410. The Post-Beese combination renders obvious limitation [19.3]. As shown in modified Post Fig. 3 below (Post-Beese combination), *when the lid is in the at least one substantially closed position* (Fig. 3) *and the entire label is received by the container* (label applied on container), *the third flat label portion* (**green**) *substantially spans* (**green** dotted arrow) *the width of the substantially flat lid top area* (width shown in **red**) *and is located directly above the floor* (**purple**).



Ex.1010, Fig. 3 (annotated and modified)

[19.4] the first flat label portion is separated from the second flat label portion by the width of the substantially flat lid top area, and

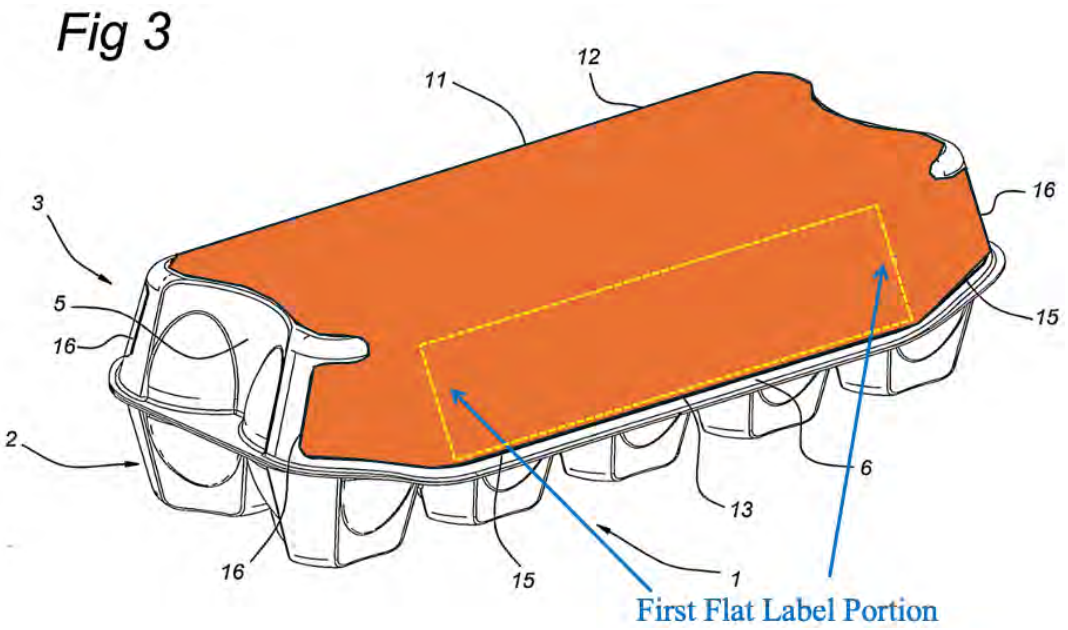
411. The Post-Beese combination renders obvious limitation [19.4]. As shown in modified Post Fig. 3 below (Post-Beese combination), *the first flat label portion* (**blue**) *is separated from the second flat label portion* (**pink**) *by the width of the substantially flat lid top area* (width shown in **red**).



Ex.1010, Fig. 3 (annotated and modified)

[19.5] the substantially flat area is both, substantially parallel and immediately adjacent with respect to the first flat label portion.

412. The Post-Beese combination renders obvious limitation [19.5]. As show in modified Post Fig. 3 below (Post-Beese combination), *the substantially flat area* (yellow dotted rectangle) *is both[] substantially parallel and immediately adjacent with respect to the first flat label portion* (denoted by **blue** arrows) because *the substantially flat area* (yellow dotted rectangle) and *the first flat label portion* (denoted by **blue** arrows) are both on the front part 6 of the lid part 3.

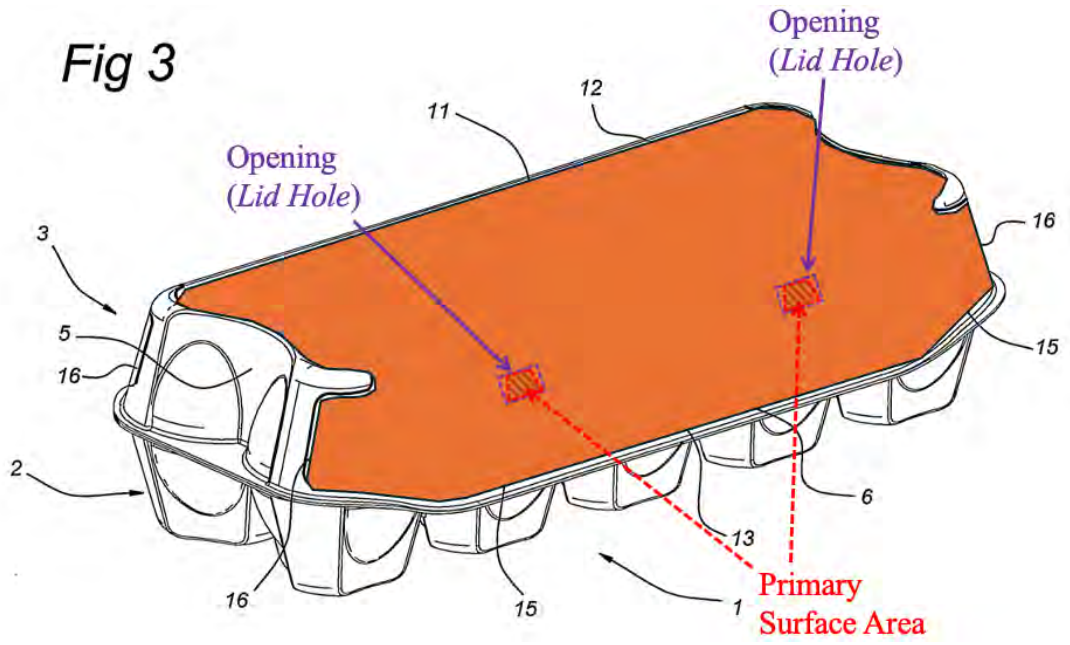


Ex.1010, Fig. 3 (annotated and modified)

s) Claim 20

[20.0] The container of claim 15 wherein, when the lid is in the at least one substantially closed position, the at least one lid hole corresponds with the flat portion of the primary surface area

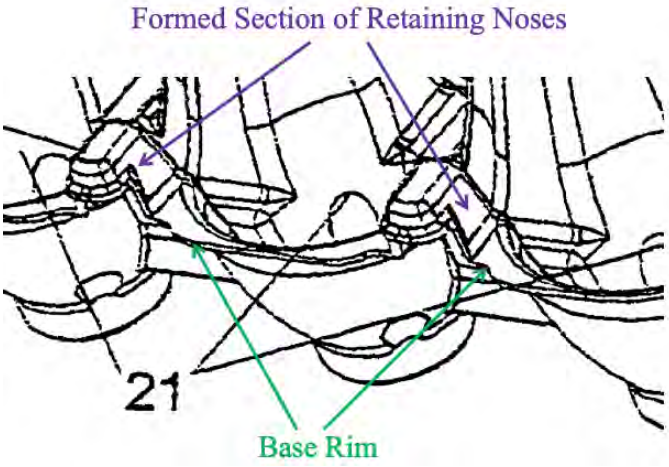
413. The Post-Beese combination renders obvious limitation [20.0]. As show in modified Post Fig. 3 below (Post-Beese combination), *when the lid* (lid part 3) *is in the at least one substantially closed position* (Fig. 3), *the at least one lid hole* (opening) (**purple**) *corresponds with* (mates with) *the flat portion* (hashed surface area on front of retaining nose) *of the primary surface area* (**red**).



Ex.1010, Fig. 3 (annotated and modified)

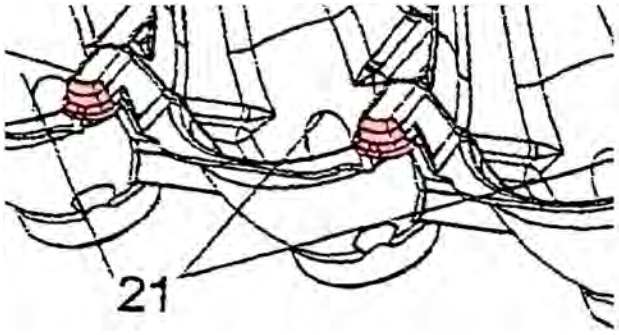
[20.1] wherein, the formed section of the at least one base extension protrudes from the base, generally into the at least one lid hole, to provide the substantially flat area

414. The Post-Beese combination renders obvious limitation [20.1]. As described above for limitation [15.0], Beese discloses that *the formed section of the at least one base extension protrudes from the base*, as shown in Fig. 1 below.

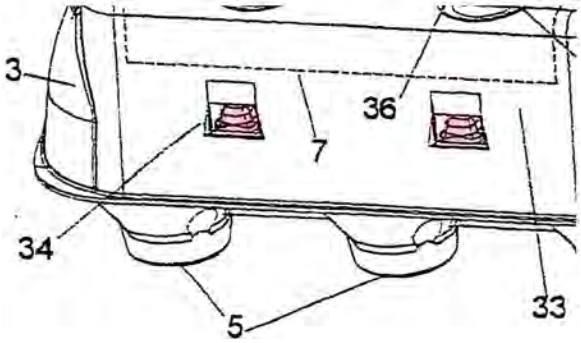


Ex.1009, Fig. 1 (annotated partial view)

415. As shown in Figs. 1 and 2 below, the formed section (see Fig. 1 above) of Beese's retaining noses 24 protrude from the base, generally into the at least one lid hole (opening), to provide the substantially flat area (**red**) on the front, external-facing surface of the retaining nose. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2.").

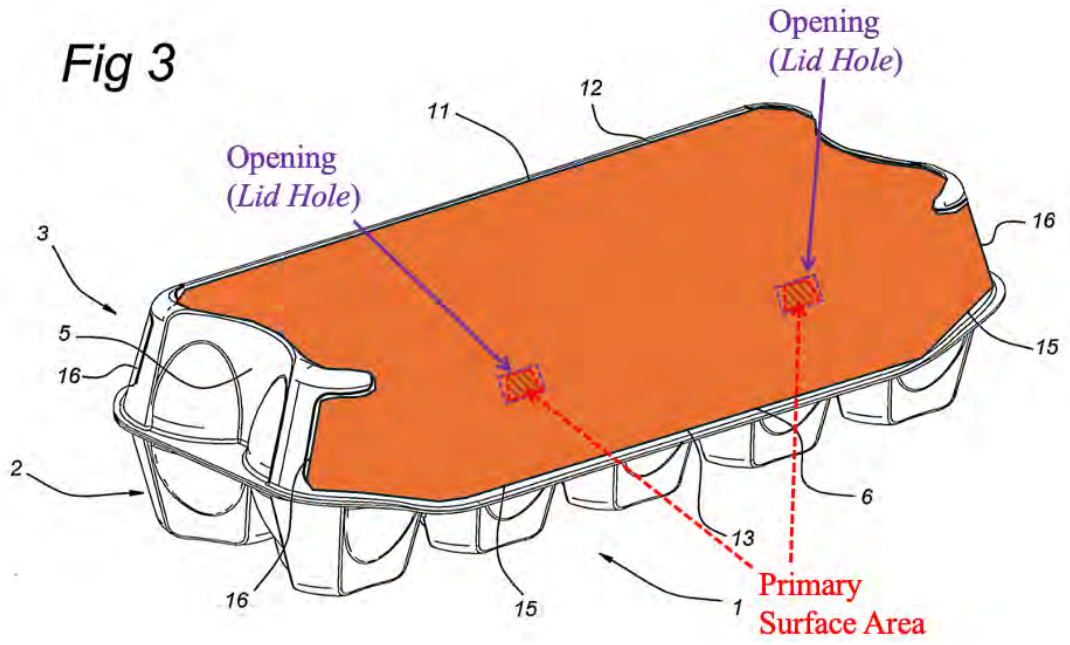


Ex.1009, Fig. 1 (annotated partial view)



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

416. In the Post-Beese combination, Beese's retaining nose(s) *protrudes from the base, generally into the at least one lid hole* (**purple** openings)*, to provide the substantially flat area* (hashed surface area on front of retaining nose) of the primary surface area (**red**).

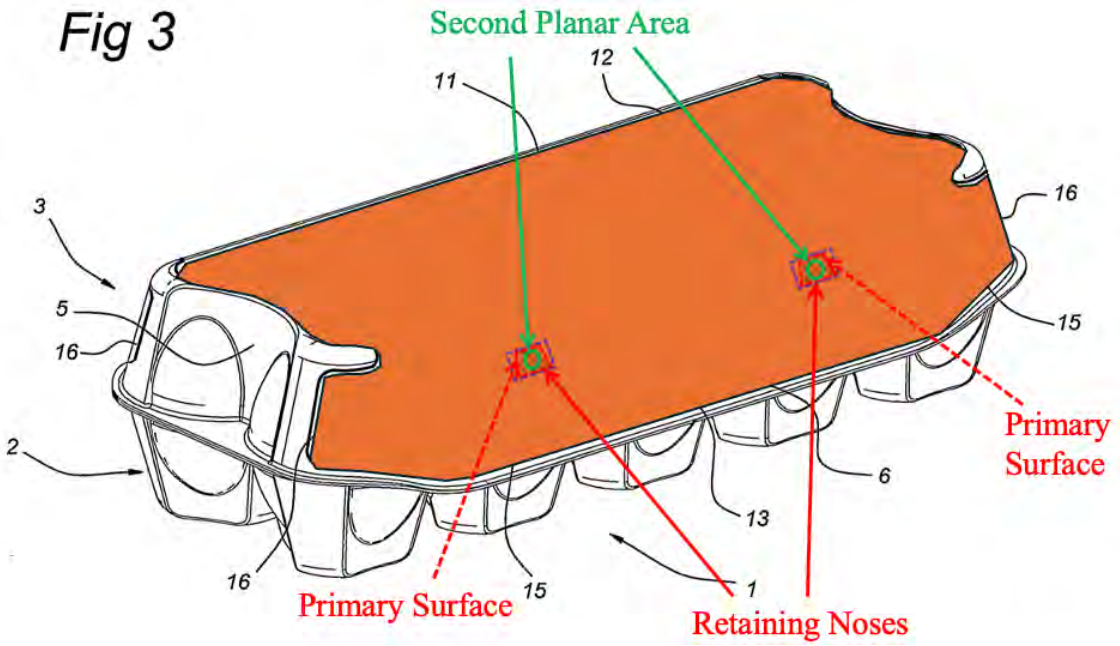


Ex.1010, Fig. 3 (annotated and modified)

[20.2] wherein, the substantially flat area is substantially coplanar with the planar perimeter of the flat portion.

417. The Post-Beese combination renders obvious limitation [20.2]. As described above for limitation [15.1], Post and Beese render obvious that *the second planar area* (**green** surface on front of retaining noses 24) *compris[es] a planar perimeter* (perimeter of **green** oval). As shown in modified Post Fig. 3 below (Post-Beese combination), *the substantially flat area* (hashed surface area on front of

retaining noses) *is substantially coplanar* (i.e., in the same plane) *with the planar perimeter of the flat portion* (perimeter of **green** oval) because both *the substantially flat area* and *the planar perimeter of the flat portion* are on the front, external-facing surface of the retaining noses.



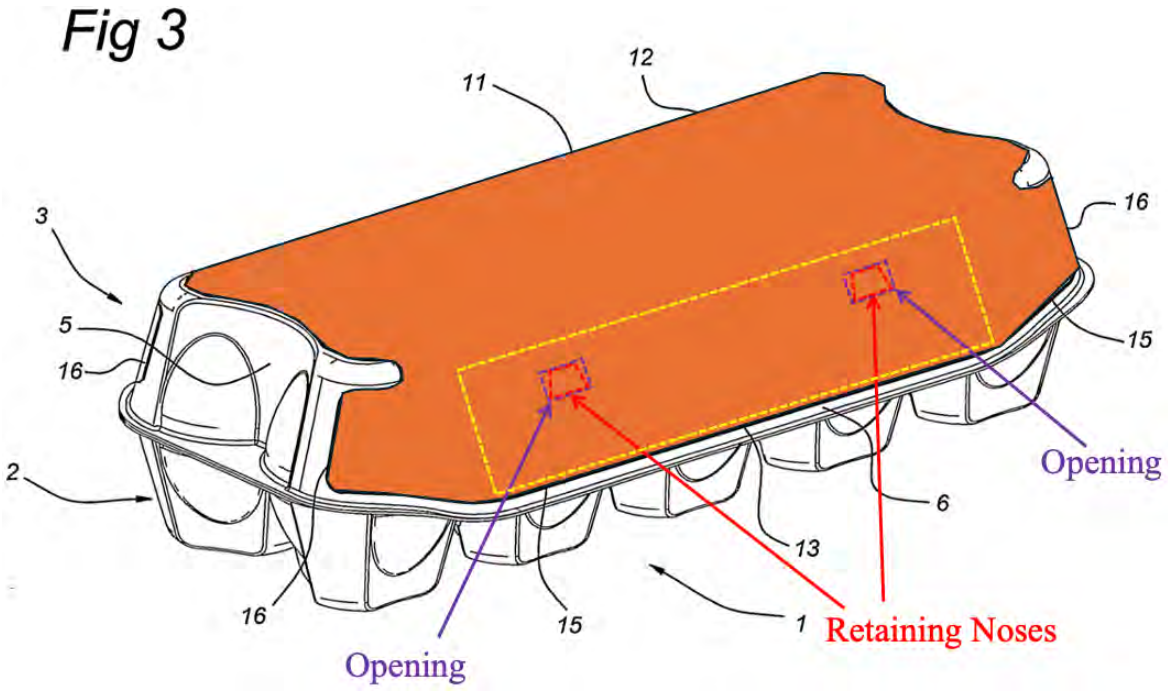
Ex.1010, Fig. 3 (annotated and modified)

t) Claim 21

[21.0] The container of claim 14 wherein, the container comprising at least one mechanical locking mechanism disposed within the perimeter of the substantially flat area, to lock the lid to the base when the lid is in the at least one substantially closed position.

418. Post in view of Beese and Mangla render obvious limitation [21.0]. In the Post-Beese-Mangla combination, the arrangement of Beese's retaining noses 24 in Post's bottom part 2 interfacing with corresponding openings in Post's lid part 3

teach the claimed *at least one mechanical locking mechanism*, because the retaining noses interact with openings to lock the lid part. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2."). In the Post-Beese-Mangla combination shown in Post's modified Fig. 3 below, there are two *mechanical locking mechanism*(s) including (1) the retaining nose (**red**) and corresponding opening (**purple**) on the left, and (2) the retaining nose (**red**) and corresponding opening (**purple**) on the right. As shown, the *mechanical locking mechanism*(s) are *disposed within the perimeter of the substantially flat area* (yellow dotted rectangle) (*see* limitation [14.6.1]).



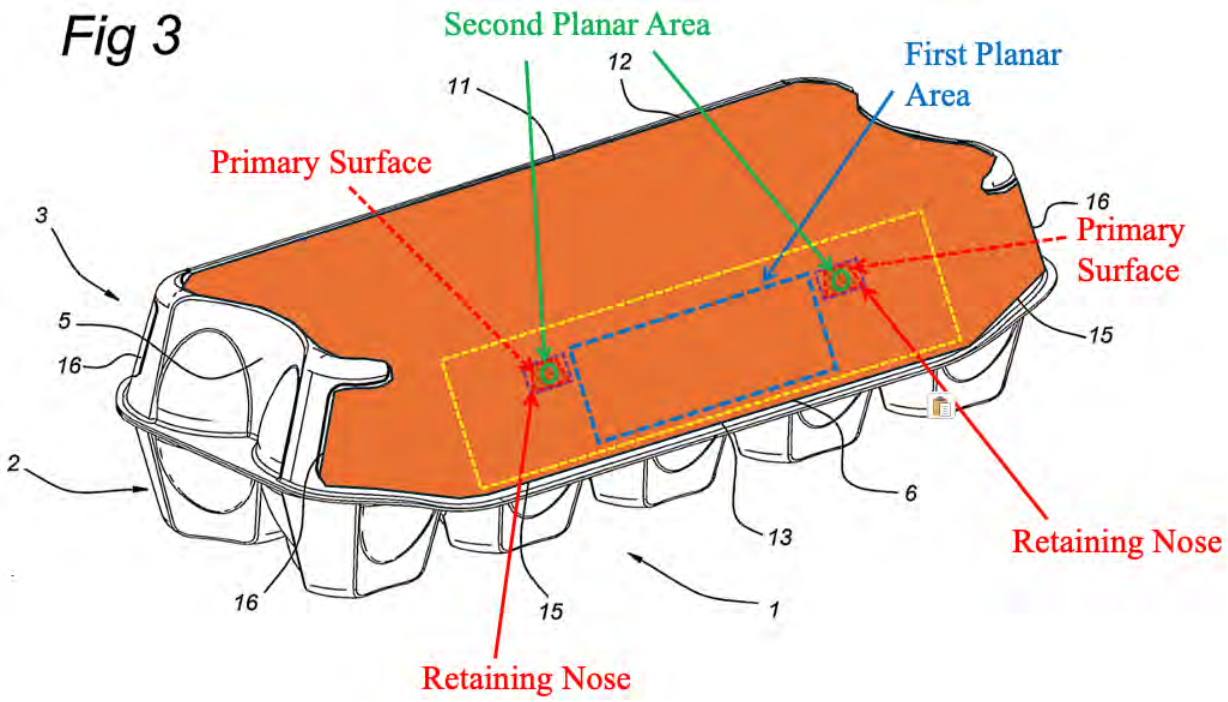
Ex.1010, Fig. 3 (annotated and modified)

419. Thus, as shown in modified Fig. 3 above (Post-Beese-Mangla combination), *the container compris[es] at least one mechanical locking mechanism* (**retaining nose** and corresponding **opening** on left, and **retaining nose** and corresponding **opening** on right) *disposed within the perimeter of the substantially flat area* (yellow dotted rectangle)*, to lock the lid* (lid part 3) *to the base* (bottom part 2) *when the lid* (lid part 3) *is in the at least one substantially closed position* (Fig. 3).

u) Claim 23

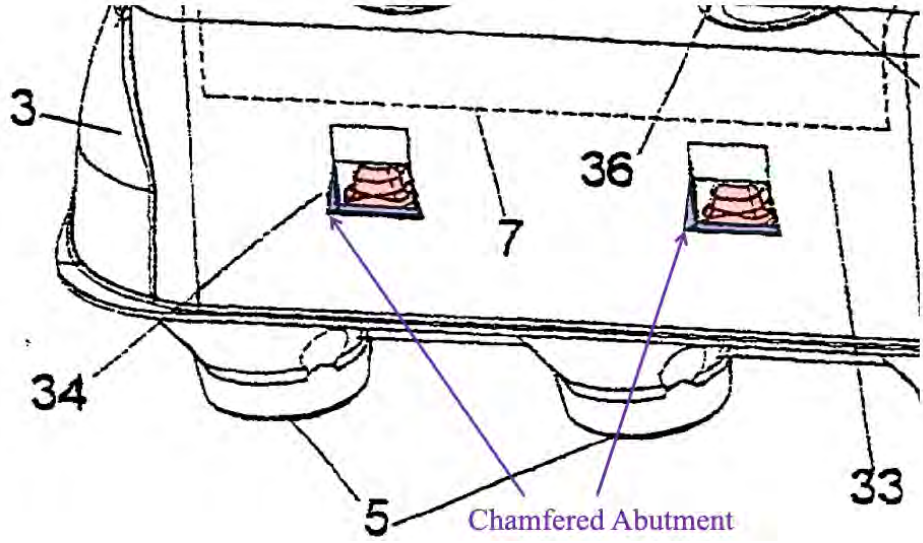
[23.0] The container of claim 21 further comprising a chamfered abutment of an edge of the first planar area and at least a part of the second planar area disposed within the perimeter of the substantially flat area.

420. The Post-Beese combination renders obvious limitation [23.0]. As shown in modified Post Fig. 3 (Post-Beese combination), *the first planar area* (**blue** dotted rectangle) *and…the second planar area* (**green** oval on front of *primary surface* of retaining nose) [are] *disposed within the perimeter of the substantially flat area* (yellow dotted rectangle). The *first planar area* (**blue** dotted rectangle) *and…the second planar area* (**green** oval on front of *primary surface* of retaining nose) abut each other, as shown.



Ex.1010, Fig. 3 (annotated and modified)

421. As shown in Fig. 2, below, Beese shows that it was known to provide a *chamfered abutment* (**purple**) at the junction between the front part of the lid and the opening through which the retaining nose extends (front surface shown in **red**).



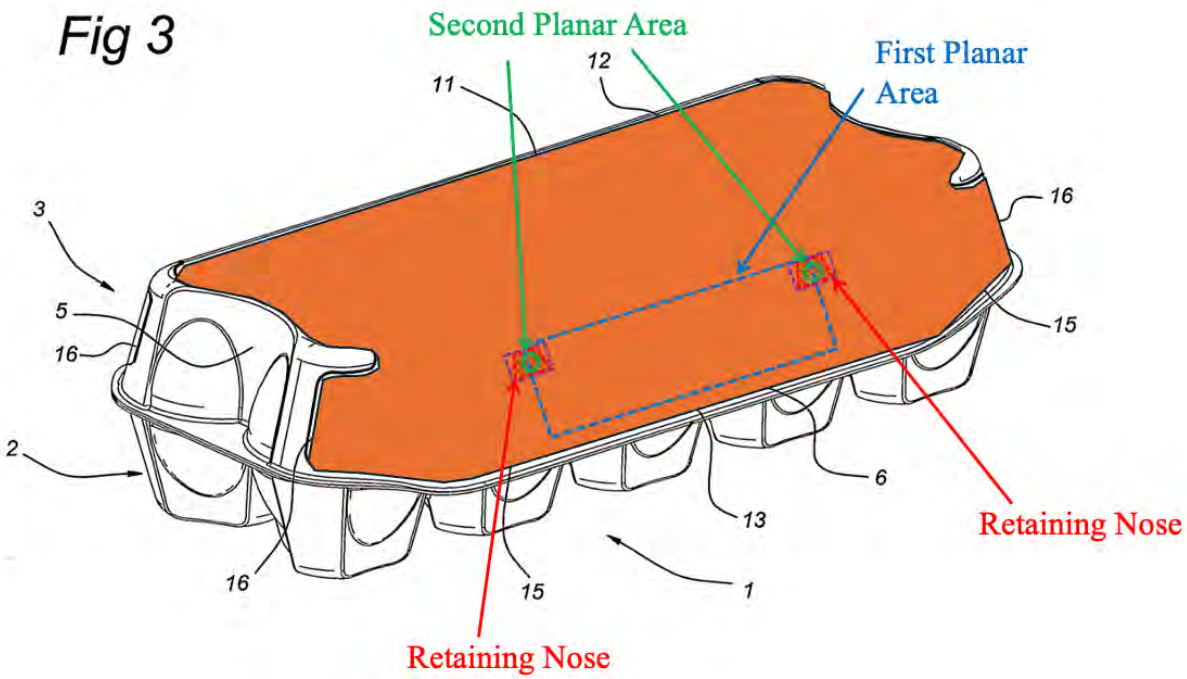
Ex.1009, Fig. 2 (annotated partial view)

422. In the Post-Beese combination, a POSITA would have been motivated to configure Post's container to *compris[e] a chamfered abutment* (**purple** shown in Beese's Fig. 2) *of an edge of the first planar area* (**blue** in Post's Fig. 3) *and at least a part of the second planar area* (**green** in Post's Fig. 3) *disposed within the perimeter of the substantially flat area* (yellow dotted rectangle). This configuration would have been desirable to provide the retaining noses an amount of movement tolerance as the retaining noses interact with the openings in the lid part. Ex.1009, [0027] ("The front part 33 contains two openings 34, which are intended for interacting with the [retaining] noses 24 for the base part 2 in order to lock the lid part 3, in the closed state, to the base part 2.").

v) Claim 24

[24.0] The container of claim 21 wherein, the first planar area and the second planar area partially overlap when the lid is in the at least one substantially closed position;

423. The Post-Beese combination renders obvious limitation [24.0]. As shown in modified Post Fig. 3 below (Post-Beese combination), *the first planar area* (**blue** dotted rectangle) *and the second planar area* (**green** oval on front surface of retaining noses) *partially overlap* (overlap shown in Fig. 3 below) *when the lid is in the at least one substantially closed position* (Fig. 3).



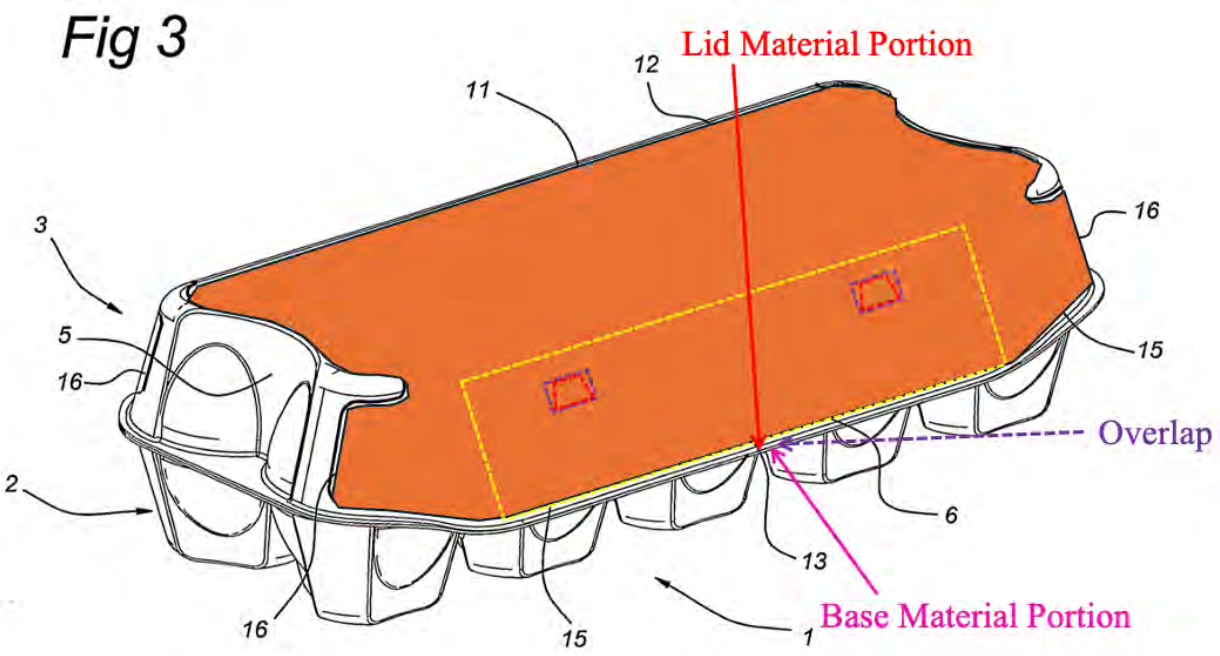
Ex.1010, Fig. 3 (annotated and modified)

424. I note that there may be overlap between *the first planar area* and *the second planar area*. The '365 patent does not provide specifications on the

dimensions or size of *the first planar area*. Thus, a POSITA would understand that *the first planar area* (**blue** dotted rectangle) may *partially overlap* with *the second planar area* (**green** oval on front surface of retaining noses) *when the lid is in the at least one substantially closed position*.

[24.1] further comprising an overlap of a lid material portion and a base material portion, disposed within the perimeter of the substantially flat area when the lid is in the at least one substantially closed position.

425. The Post-Beese combination renders obvious limitation [24.1]. As shown in modified Post Fig. 3 below (Post-Beese combination), there is *an overlap* (**purple**) *of a lid material portion* (**red**) *and a base material portion* (**pink**), *disposed within the perimeter of the substantially flat area* (yellow dotted rectangle) *when the lid is in the at least one substantially closed position* (Fig. 3). The *overlap* (**purple**) occurs *when the lid is in the at least one substantially closed position* because the *lid material portion* (**red**) at the edge of the lid part 3 rests on the *base material portion* (**pink**) of the bottom part 2 when the lid part 3 rests on the bottom part 2, as shown in Fig. 3.



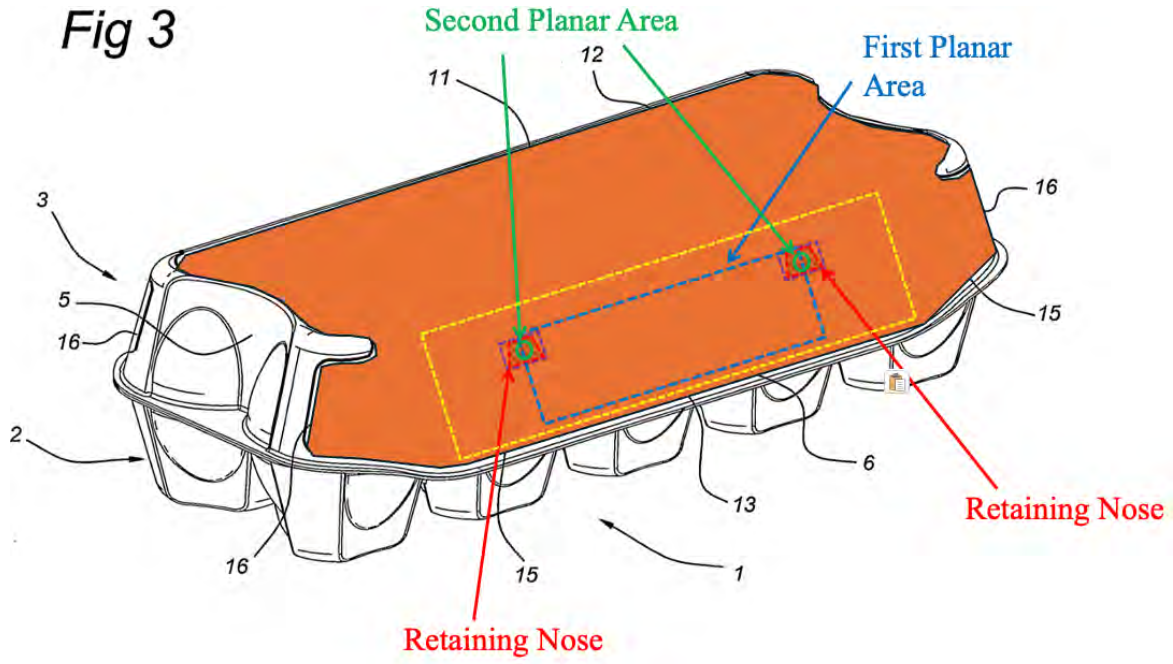
Ex.1010, Fig. 3 (annotated and modified)

w) Claim 25

[25.0] The container of claim 24 wherein, the overlap includes the first planar area located adjacent to the second planar area and disposed within the perimeter of the substantially flat area.

426. The Post-Beese combination renders obvious limitation [25.0]. Initially, I note that claim 25 recites "the overlap." Claim 25 depends from claim 24. Claim 24 recites two different instances of "overlap" (limitations [24.0] and [24.1]). I have interpreted the term "the overlap" in claim 25 to refer to the "overlap" recited in limitation [24.0], because the "overlap" recited in limitation [24.1] does not include "the first planar area" and "the second planar area."

427. As shown in modified Post Fig. 3 below (Post-Beese combination), *the overlap* (*see* limitation [24.0]) *includes the first planar area* (**blue** dotted rectangle) *located adjacent to the second planar area* (**green** oval on front surface of retaining nose) *and disposed within the perimeter of the substantially flat area* (perimeter of yellow dotted rectangle).



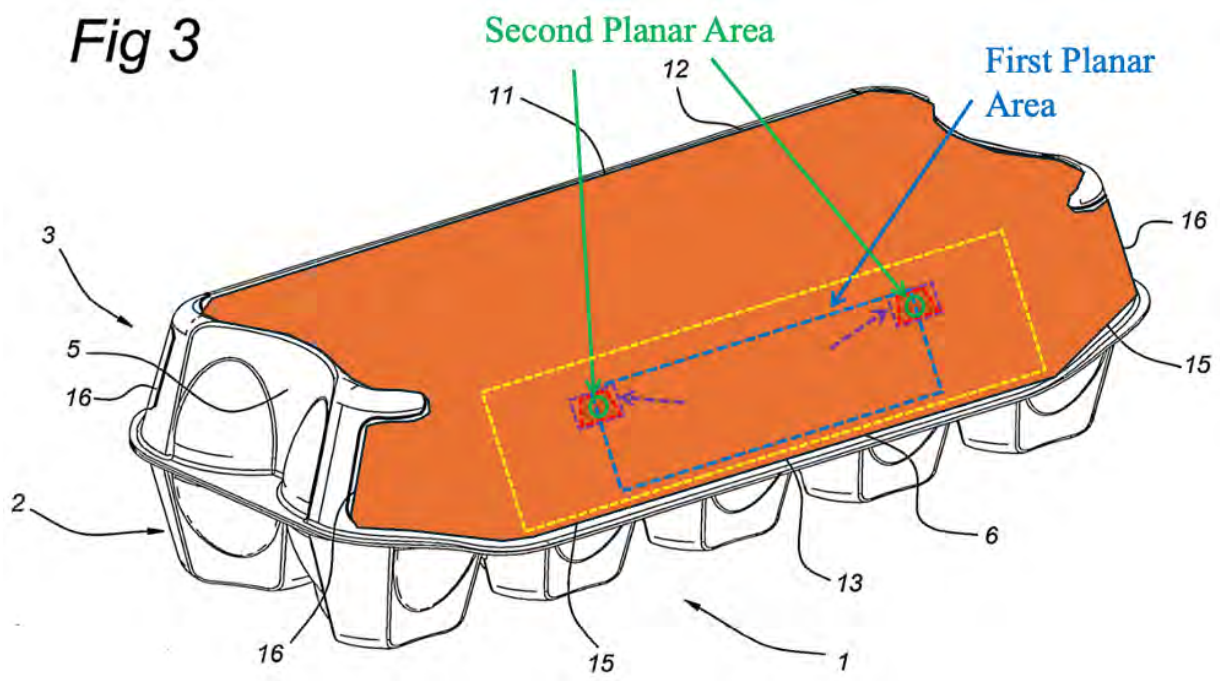
Ex.1010, Fig. 3 (annotated and modified)

x) Claim 26

[26.0] The container of claim 25 wherein, first planar area of the overlap is separated from the second planar area of the overlap by the dimension of the material thickness.

428. The Post-Beese combination renders obvious limitation [26.0]. Similar to claim 25, I have interpreted the term "the overlap" in claim 26 to refer to the "overlap" recited in limitation [24.0].

429. As shown in modified Post Fig. 3 below (Post-Beese combination), [the] *first planar area of the overlap* (*between the first planar area* (**blue** dotted rectangle) *and the second planar area* (**green** oval on front surface of retaining noses) (*see* limitation [24.0])) *is separated from the second planar area of the overlap by the dimension of the material thickness* (i.e., the thickness of the material of the container). This is because the area between the retaining nose (**red**) and the lid edge area (denoted by **purple** dotted arrows) has the thickness of the material of the container, and this area is within the overlap *between the first planar area* (**blue** dotted rectangle) *and the second planar area* (**green** oval on front surface of retaining noses) (*see* limitation [24.0]).



Ex.1010, Fig. 3 (annotated and modified)

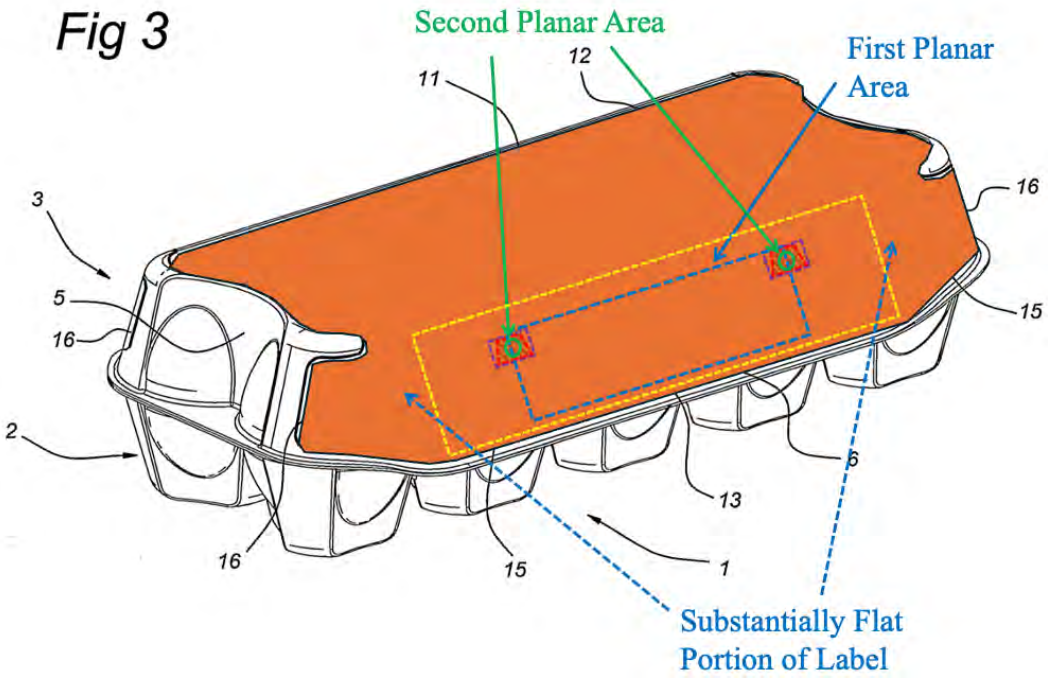
y) Claim 27

[27.0] The container of claim 25 wherein, the substantially flat area is covered with the substantially flat portion of the entire label in the generally flat fashion, to span the overlap.

430. The Post-Beese combination renders obvious limitation [27.0]. Similar to claim 25, I have interpreted the term "the overlap" in claim 27 to refer to the "overlap" recited in limitation [24.0].

431. As shown in modified Post Fig. 3 below (Post-Beese combination), the substantially flat area (yellow dotted rectangle) *is covered with the substantially flat portion of the entire label* (between **blue** dotted arrows) *in the generally flat fashion, to span the overlap [between the first planar area]* (**blue** dotted rectangle) *and the*

second planar area (**green** oval on front surface of retaining noses) (*see* limitation [24.0]).



Ex.1010, Fig. 3 (annotated and modified)

B. Claims 7 and 22 are obvious over Post in view of Beese, Mangla, and Buckley

432. It is my opinion that Post in view of Beese, Mangla, and Buckley would render obvious, to a POSITA, the subject matter of each and every element of claims 7 and 22 of the ’365 Patent.

1. Summary of Buckley

433. Buckley published as WO 03/086905 on October 23, 2003, based on International (PCT) Application No. PCT/DK02/00891, which was filed on December 20, 2002. Ex.1016, face at (10), (21), (43), and (22).

434. Buckley's publication date (October 23, 2003) is more than one year prior to the earliest date to which the '365 Patent attempts to claim priority (February 12, 2007).

435. Buckley is titled "Display Package." Ex.1016, (54).

436. Buckley "relates to a display and distribution packaging unit for fragile articles, especially for eggs." Ex.1016, Abstract, 1 (similar). With reference to Fig. 1 below, Buckley discloses "a display and distribution packaging unit [1]…formed to accommodate six eggs." Ex.1016, 8. For brevity, I will refer to Buckley's "display and distribution unit" as a "container." Buckley's container "comprises a bottom part 2 and a cover part 3 connected to each other along one edge by means of a flexible connection 12, [which is] referred to as a hinge." Ex.1016, 8.

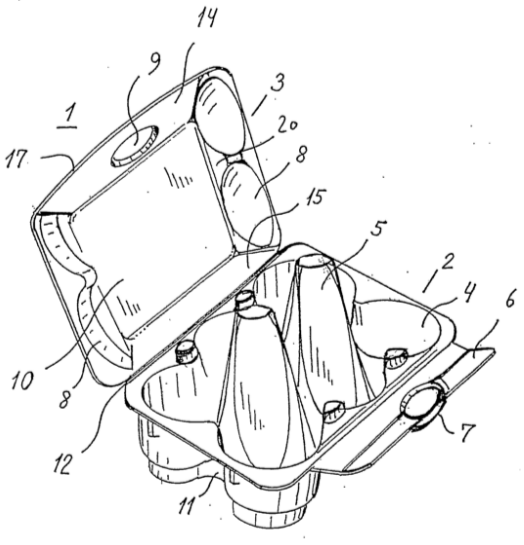
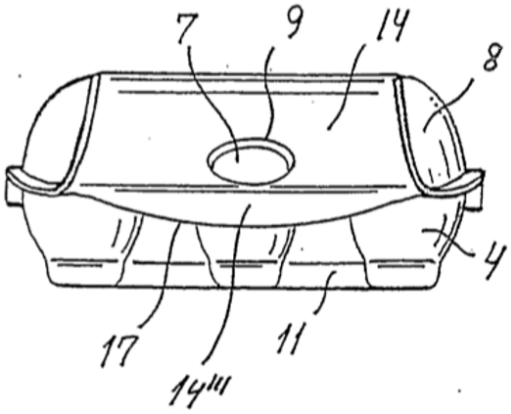


Fig. 1

Ex.1016, Fig. 1

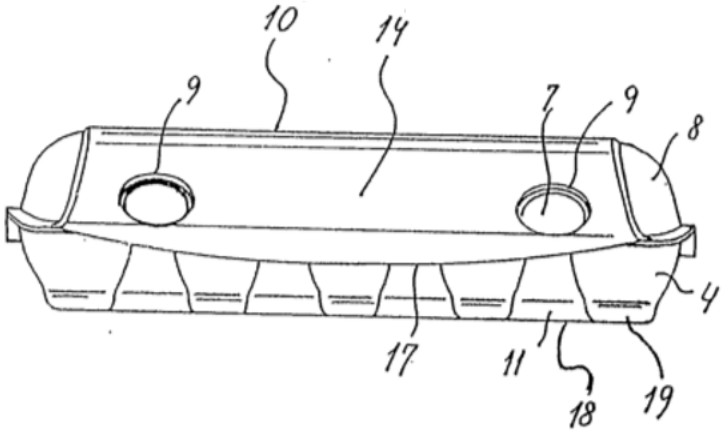
437. As shown in Fig. 1, above, Buckley's container includes "an outwardly extending protrusion 7" along an "upper edge portion of the bottom part 2." Ex.1016, 8. The cover part 3 includes, in part, "a substantially planar top face 10," an "aperture 9 [whose] position, shape and size [] corresponds to the protrusion 7…of the bottom part 2," and a "substantially planer front [] face[] 14" that has a "downwardly curved shape" 17. Ex.1016, 8-9.

438. Fig. 3a, below, illustrates an embodiment of Buckley's container in which "the lower portion of the front face 14 of the cover part 3 is…extended by a flap 14'" exhibiting a downwardly curved edge portion 17." Ex.1016, 11. Buckley explains that "[b]y extending the front face 14 with this flap 14'", the frontal area which can be used for graphical and/or pictorial information is increased and the presence of the flap 14'" furthermore makes the [container] easier to open." Ex.1016, 11.



Ex.1016, Fig. 3a (partial)

439. Fig. 3c, below, illustrates an embodiment of Buckley's container having two openings (apertures) 9 on opposite ends of the front face 14, and the "downwardly curved shape" 17 (i.e., a convex curvature) (described as "downwardly curved edge portion 17" in Fig. 3a above) between the two openings 9. Buckley explains that having the downwardly curved shape at the lower end of the front face 14 "increases the area of the front face 14 of the cover part 3, thus increasing the possibility to attach for instance labels etc. to this and in the open state of the [container]." Ex.1016, 11.



Ex.1016, Fig. 3c (partial)

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

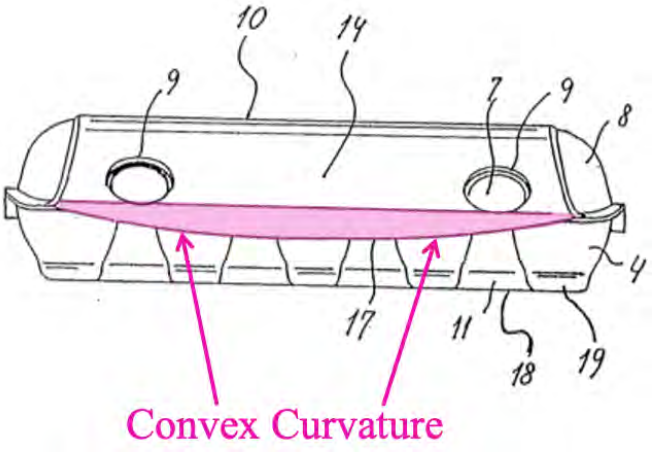
440. Initially, Buckley is analogous art to the '365 patent. Buckley is analogous art at least because Buckley and the '365 patent are directed to the same field of endeavor. The '365 patent "relates to containers intended to hold fresh food

or produce." Ex.1001, 1:20-22. 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.").

441. As described above in Section IX.A.4, a POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3, in lieu of Post's closing projections 9 and corresponding openings 8 in the lid part 3, would advantageously permit Post's label 11 to entirely cover the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030].

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

front face 14), 8-9 (describing Buckley's container and embodiment illustrated in Fig. 3c).



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

443. A POSITA would have been motivated to modify the front wall 6 of Post's lid part 3 in the Post-Beese-Mangla combination so that the bottom edge of the lid has a convex curvature to make it easier for the consumer to open the lid part 3 and access the food products (e.g., eggs) housed in the container. Buckley explains that "the downwardly curved shape [17] of the front face 14" in combination with the protrusions through the openings 9 on the cover part 3 "make it easy for the user to open the unit [i.e., container]." Further, Buckley explains that by extending the flap 14 to have a "downwardly curved edge portion 17, …. the frontal area which can be used for graphical and/or pictorial information is increased and the presence of the flap 14[] furthermore makes the unit easier to open." Ex.1016, 11, 9. Thus, a POSITA would have been motivated to modify the front wall 6 of Post's lid part 3

in the Post-Beese-Mangla combination 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 portion of the Post's extended lid part 3 having a convex curvature.

444. This modification would have been 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 the front part 6 of Post's lid part 3 without interruptions for openings, as taught by Beese, and extending the bottom edge of Post's lid part to have a convex curvature, as taught by Buckley), to yield the predictable result of extending the front wall 6 of Post's lid part 3 in the Post-Beese-Mangla combination 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.

445. A POSITA would have had a reasonable expectation of success in extending the bottom edge of Post's lid part 3 in the Post-Beese-Mangla combination to have a downwardly extending convex curvature, because, as shown by 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 (1) make it easier for the consumer to open the container, and (2) increase the area for printing and/or labeling. Ex.1016, 9, 11.

3. Analysis

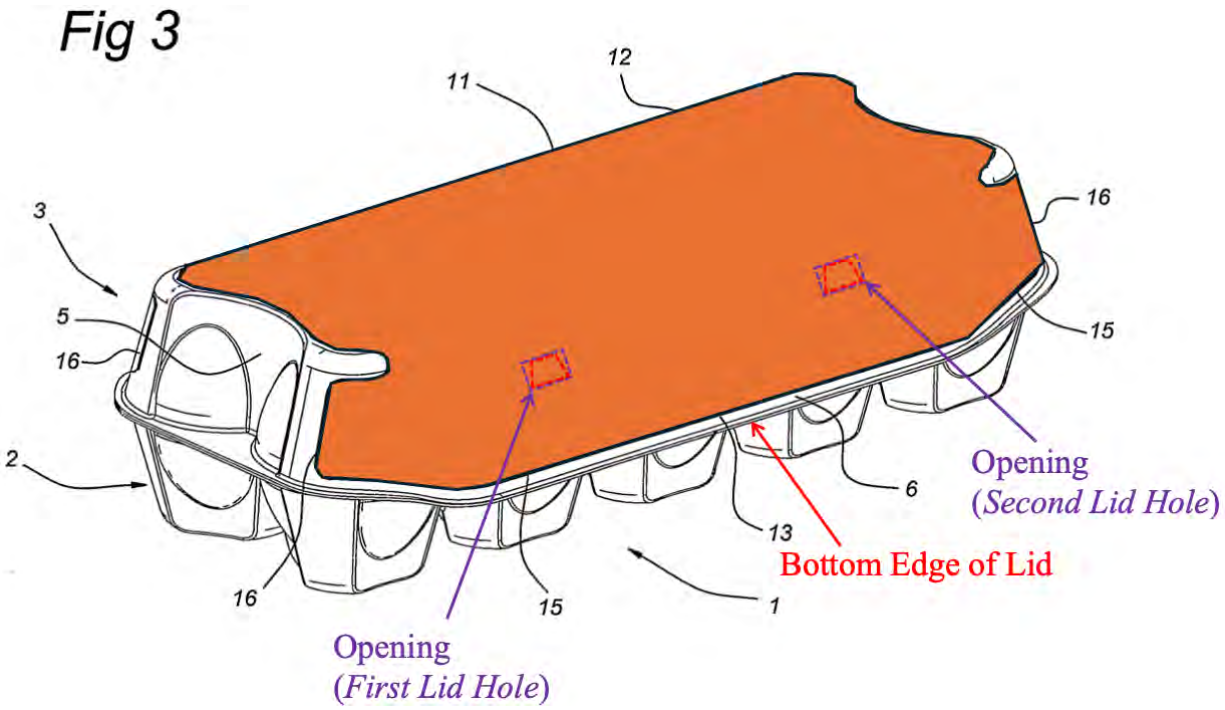
446. Claim 7 depends from claim 6. Claim 22 depends from claim 21. As shown above, claims 6 and 21 are each obvious Post in view of Beese and Mangla. *See* my analysis of claim 6 and claim 21 above.

447. As discussed below, Buckley teaches conventional implementation details recited in claims 7 and 22.

a) Claim 7

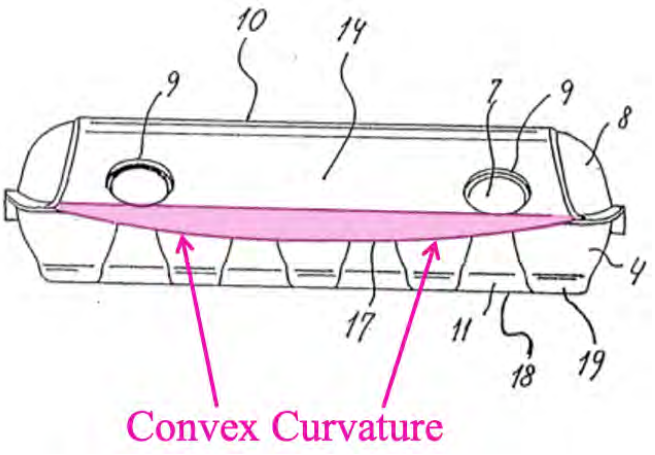
[7.0] The container of claim 6 wherein between the first lid hole and the second lid hole the bottom edge of the lid has a convex curvature, and

448. Limitation [7.0] is rendered obvious by Post in view of, Beese, Mangla, and Buckley. As described above for limitations [1.5.6] and [6.0], the Post-Beese combination renders obvious *the first lid hole and the second hole* (**purple**), as shown below. In the Post-Beese combination, *the bottom edge of the lid* (**red**) is located at the lower edge of the lid part (3) that comes into contact with the bottom part 2 (*see* limitation [1.5.2]).



Ex.1010, Fig. 3 (annotated and modified)

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



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

450. A POSITA would have been motivated to modify the Post-Beese-Mangla combination with Buckley for the reasons presented above in Section IX.B.2. Accordingly, the Post-Beese-Mangla-Buckley combination renders obvious *between the first lid hole and the second lid hole* (lid holes shown in **purple** in modified Post's Fig. 3 above) *the bottom edge of the lid* (**red**) *has a convex curvature* (bottom edge of Post-Beese-Mangla's container having a convex curvature, as shown in Buckley's Fig. 3c above) (**pink**), as recited in limitation [7.0].

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

451. Post discloses that *the base and lid* are formed from materials such as plastic. Ex.1010, 1 ("The present invention relates to a container for packaging foods, comprising a bottom part and a hinged lid part joined thereto….Such a container can be made of plastic material….").

452. It was well known in the art to thermoform a container (e.g., an egg carton) from a material such as plastic. For example, Mangla is directed to an "Eighteen Cell Hinged-Cover Carbon Thermoformed from Plastic Sheet." Ex.1015, Title, Abstract ("An egg carton thermoformed from a plastic sheet…."). In describing prior art, Mangla explains that egg "cartons are easily produced in large quantities by thermoforming a sheet of preheated polystyrene foam," which is a type of plastic. Ex.1015, 1:35-37 (describing U.S. Patent No. 3,648,916 to Commisso) (Ex.1039)).

453. Mangla explains that it was known to make egg cartons from pulp material and from thermoformed plastic, and that it was becoming more common to make egg cartons out of thermoformed plastic due to efficiencies in production. Ex.1015, 1:43-47 ("Pulp cartons have been extensively and successfully used. However, the recent trend has been toward thermoformed plastic cartons because of improved appearance and economies of production over molded pulp cartons."). Post discloses that its container may be made of molded paper or plastic, for example. Ex.1010, 1 (Post explaining that its "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, that is to say of a water-paper/wood fibre mixture from which a container is produced by forming and drying."). In view of Post's teaching that its container may be made of plastic, a POSITA would have

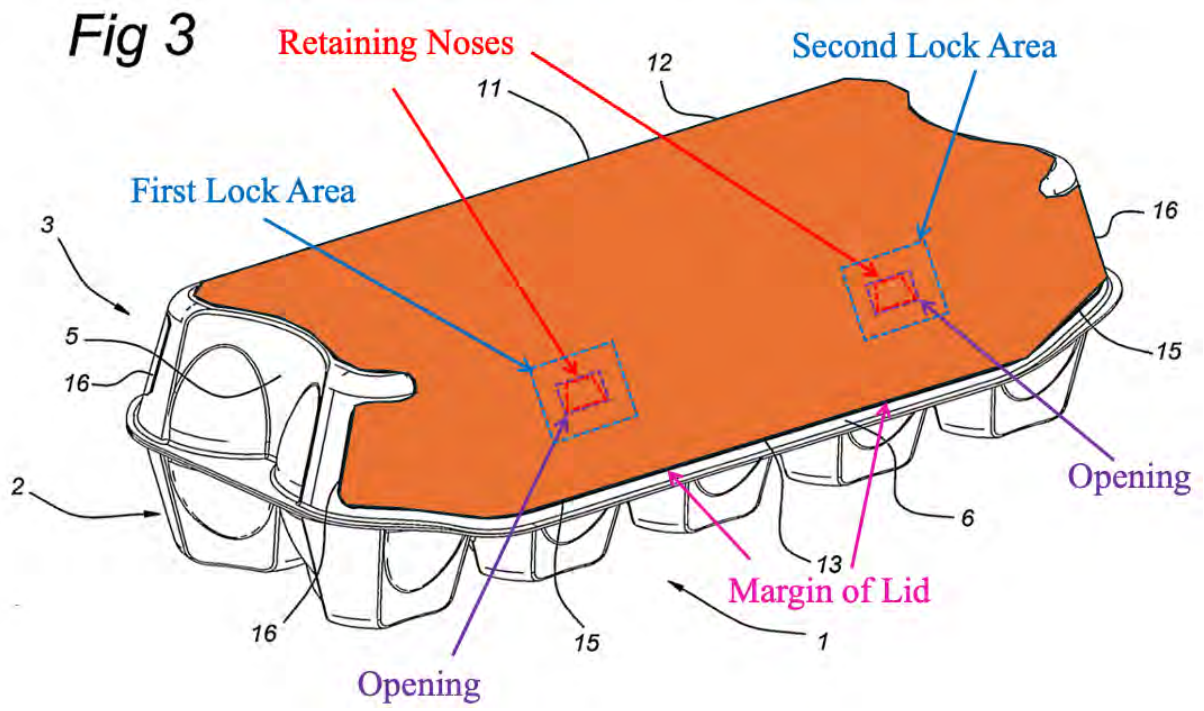
been motivated to make Post's container (including the bottom part 2 and lid part 3) from thermoformed plastic, because Mangla teaches that it is advantageous to make containers "from thermoformed plastic cartons because of improved appearance and economies of production over molded pulp cartons." Ex.1015, 1:44-47.

454. Thus, Post and Mangla render obvious *the base* (bottom part 2) *and lid* (lid part 3) *are thermoformed from the material* (thermoformed from plastic material).

b) Claim 22

[22.0] The container of claim 21 wherein, when the lid is in the at least one substantially closed position, the margin of the lid extends from a first lock area adjacent to a first of the at least one mechanical locking mechanism to a second lock area adjacent to a second of the at least one mechanical locking mechanism;

455. Limitation [22.0] is rendered obvious by Post in view of Beese and Mangla. As shown in modified Fig. 3 below (Post-Beese-Mangla combination), *when the lid is in the at least one substantially closed position* (Fig. 3), *the margin of the lid* (**pink**) *extends* (left to right in Fig. 3) *from a first lock area* (**blue** dotted rectangle on left) *adjacent to a first of the at least one mechanical locking mechanism* (**retaining nose** and **opening** on left) *to a second lock area* (**blue** dotted rectangle on right) *adjacent to a second of the at least one mechanical locking mechanism* (**retaining nose** and **opening** on right).



Ex.1010, Fig. 3 (annotated and modified)

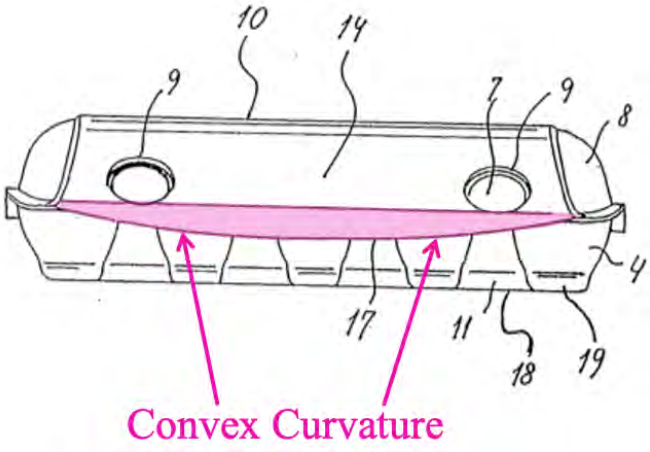
[22.1] wherein between the first lock area and the second lock area, the margin has at least one convex curvature portion.

456. Limitation [22.1] is rendered obvious by Post in view of Beese, Mangla, and Buckley.

457. The Post-Beese-Mangla combination teaches the claimed *the first lock area and the second lock area*, and *the margin* of the lid, as shown in modified Post's Fig. 3 above for limitation [22.0].

458. As shown in Fig. 3c, below, Buckley discloses that the bottom edge of the lid (base of the front face 14 of the cover part 3) *has a convex curvature*

(downwardly curved edge portion 17) (**pink**) between the openings 9 in the front face 14. Ex.1016, 11.



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

459. A POSITA would have been motivated to modify the Post-Beese-Mangla combination with Buckley for the reasons presented above in Section IX.B.2. Accordingly, the Post-Beese-Mangla-Buckley combination renders obvious *between the first lock area* (**blue** dotted rectangle on left) *and the second lock area* (**blue** dotted rectangle on right), *the margin* (denoted with **pink** arrows in Post's modified Fig. 3 for limitation [22.0]) *has at least one convex curvature portion* (bottom edge of Post-Beese-Mangla's container having a convex curvature, as shown in Buckley's Fig. 3c above) (**pink** in Buckley's Fig. 3c).

C. Claims 28-30 are obvious over Post in view of Beese.

460. It is my opinion that Post in view of Beese would render obvious, to a POSITA, the subject matter of each and every element of claims 28-30 of the '365 Patent.

461. As described above in Section IX.A.4 (Reasons to Combine), a POSITA would have been motivated to modify Post's container 1 to utilize the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3 as the locking mechanism in Post's container 1. Utilizing the configuration of Beese's retaining noses 24 with corresponding openings in Post's lid part 3, in lieu of Post's closing projections 9 and corresponding openings 8 in the lid part 3, would advantageously permit Post's label 11 to entirely cover the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). For claims 28-30 addressed below, a POSITA would have been motivated to modify Post in view of Beese for the same reasons presented above in Section IX.A.4 (Reasons to Combine).

1. Analysis

a) Claim 28

462. Claim 28 contains limitations that are identical or substantially similar to limitations of claim 1. *See* Ex.1037, 1-4 (comparing claims 1 and 28). My analysis

of claim 28 below focuses on limitations that are different than limitations of claim 1.

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

463. Limitation [28.0] is identical to limitation [1.0]. *See* my analysis of limitation [1.0] above.

[28.1] a base having a floor;

464. Limitation [28.1] is identical to limitation [1.1]. *See* my analysis of limitation [1.1] above.

[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;

465. Limitation [28.2] is identical to limitation [1.2]. *See* my analysis of limitation [1.2] above.

[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,

466. Limitation [28.3.1] is identical to limitation [1.3.1]. *See* my analysis of limitation [1.3.1] above.

[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;

467. Limitation [28.3.2] is identical to limitation [1.3.2]. *See* my analysis of limitation [1.3.2] above.

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

468. Limitation [28.4.1] is identical to limitation [1.4.1]. *See* my analysis of limitation [1.4.1] above.

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

469. Limitation [28.4.2] is identical to limitation [1.4.2]. *See* my analysis of limitation [1.4.2] above.

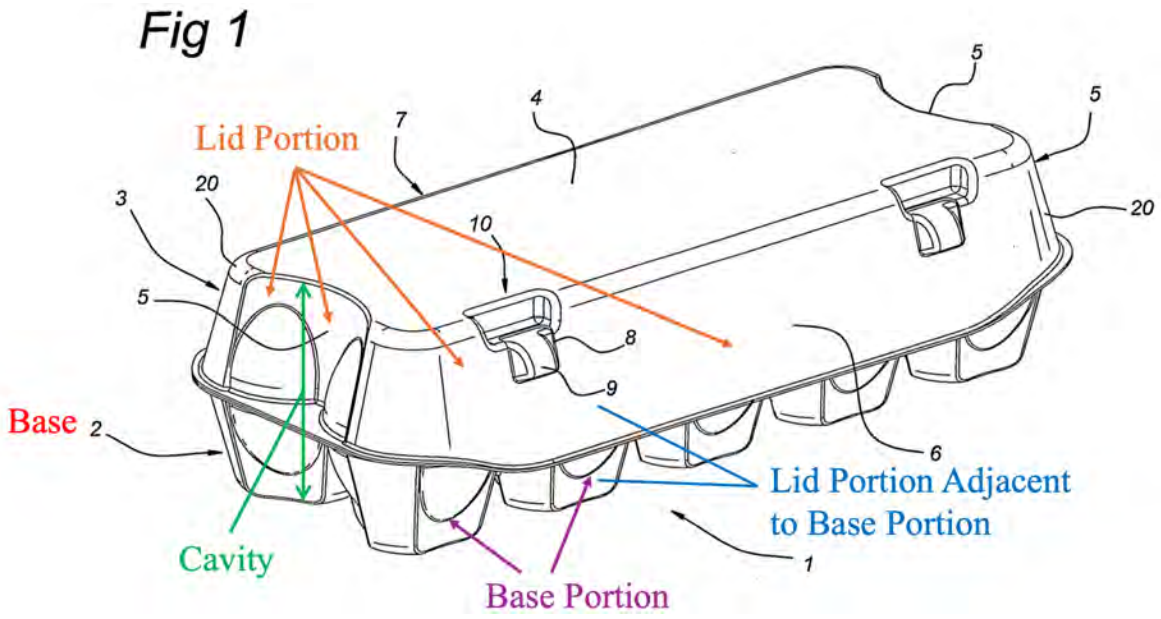
[28.4.3] wherein, when the lid is in the closed position, the lid portion of the cavity is disposed beyond the base and adjacent to the base portion of the cavity, and the cavity is generally defined by the second material surface;

470. Limitation [28.4.3] is generally similar to limitation [1.4.3]. Limitation [28.4.3] is disclosed by Post.

471. Post discloses the claimed *lid portion* (a portion of the lid part 3) (*see* limitation [1.4.2]), *base* (bottom part 2) (*see* limitation [1.1]), *base portion* (cavities formed in bottom part 2) (*see* limitation [1.4.1]), *cavity* (cavity between top part 4 of lid part 3 and floor of bottom part 2) (*see* limitation [1.2]), and *second material surface* (inner surface of container) (*see* limitation [1.3.1]).

472. As shown in Fig. 1, below, when the lid is in the closed position (Fig. 1), *the lid portion* (**orange**) *of the cavity is disposed beyond the base* (bottom part 2) *and adjacent to the base portion* (**purple**) (lid portion is adjacent to base portion) *of the cavity, and the cavity* (**green**) *is generally defined by the second material surface*

(cavity on internal surface of container for accommodating eggs). Ex.1010, 3 (container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").

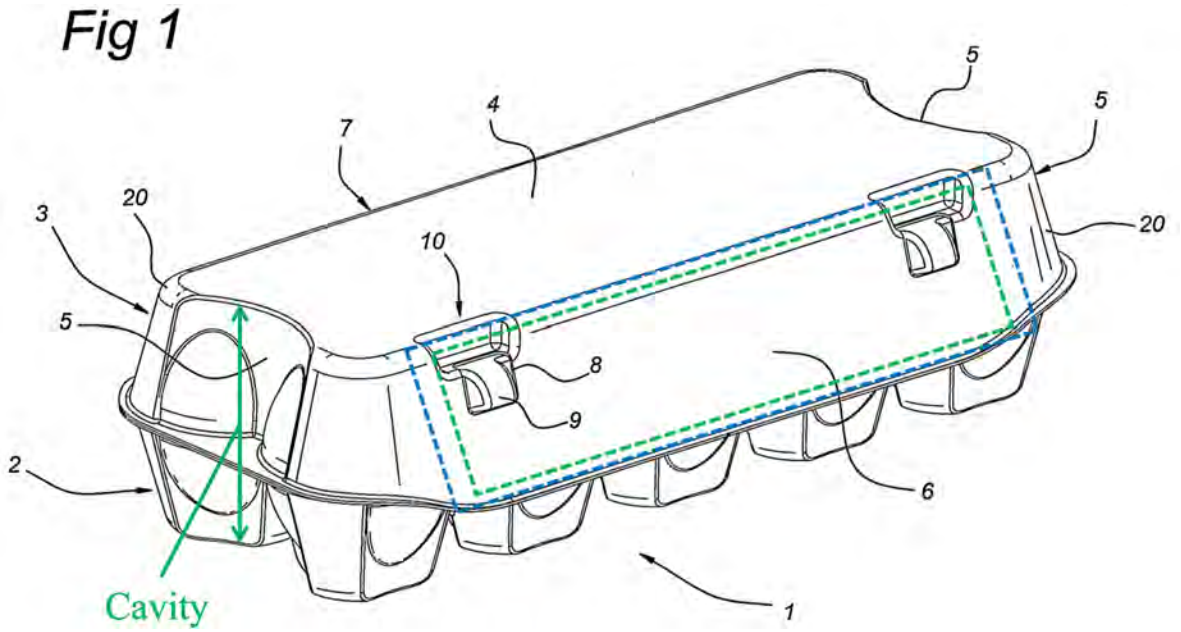


Ex.1010, Fig. 1 (annotated)

[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;

473. Post discloses limitation [28.5]. As shown in Fig. 1, below, Post's lid (lid part 3) *ha[s] a lid area* (**blue** dotted rectangle) *comprising a first area* (**green** dotted rectangle) (e.g., portion of front part 6 of lid part 3 encompassing openings 8) *disposed on the first material surface* (outer surface of container) *to face substantially externally* (faces externally) *with respect to the cavity* (cavity between

top part 4 of lid part 3 and bottom surface of bottom part 2) *when the lid is in the closed position* (Fig. 1).



Ex.1010, Fig. 1 (annotated)

[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

474. Limitation [28.6.1] is identical to limitation [1.6.1]. *See* my analysis of limitation [1.6.1] above.

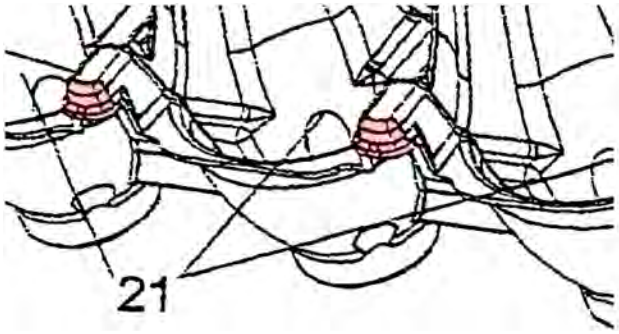
[28.6.2] [the base having] a base extension extending from the base,

475. Limitation [28.6.2] is identical to limitation [1.6.2]. *See* my analysis of limitation [1.6.2] above.

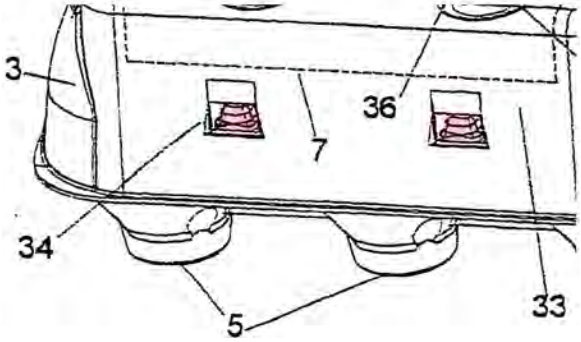
[28.6.3] [the base extension] comprising a base area having a second area configured to face substantially externally with respect to the cavity when the lid is in the closed position;

476. Post and Beese render obvious limitation [28.6.3]. As described for limitation [1.6.2] above (identical to limitation [28.6.2]), Beese's retaining noses 24 in Post's bottom part 2 render obvious the claimed *base extension*.

477. **First**, as shown in Fig. 1 (open state) and Fig. 2 (closed state), below, Beese's retaining noses 24 (*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 cavity* (i.e., the openings in which food products such as eggs are housed).



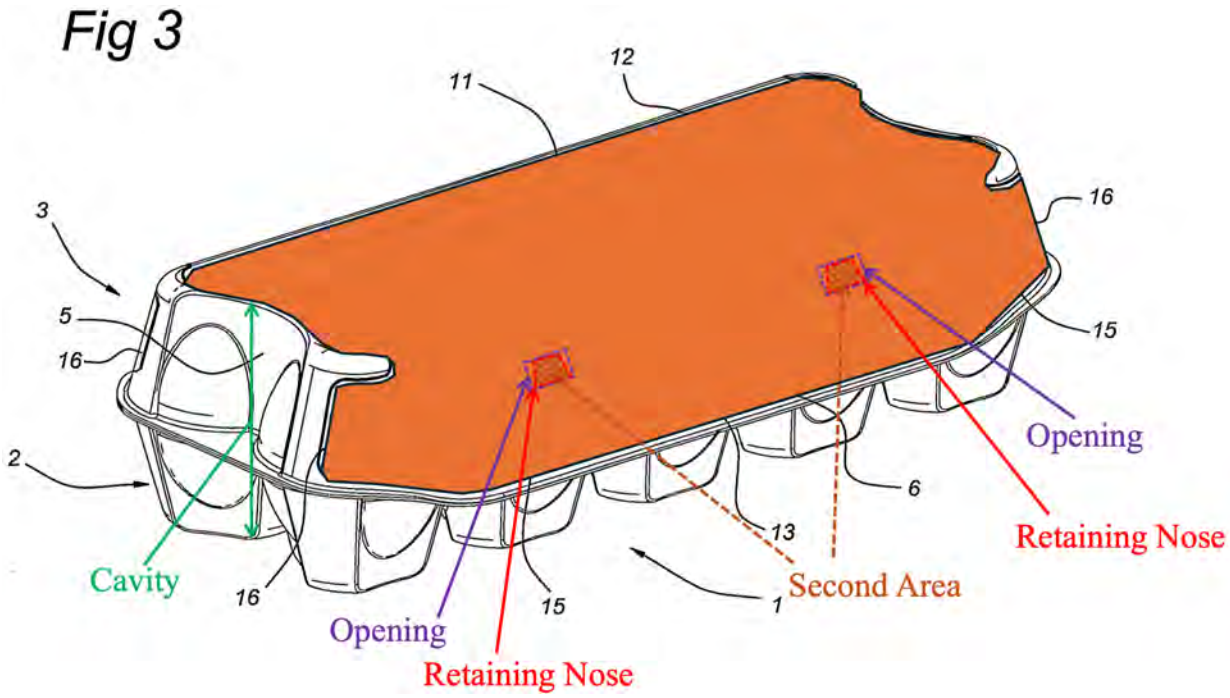
Ex.1009, Fig. 1
(annotated partial view)



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

478. **Second**, Beese's retaining noses 24 (**red**) in Post's bottom part 2 would *compris[e] a base area* (area on front-facing portion of retaining noses) *having a second area* (**brown** dashed surface area beneath label 11) *configured to face*

substantially externally with respect to the cavity (**green**) *when the lid is in the closed position* (Fig. 3), as shown in the Post-Beese combination below (modified Post Fig. 3). A POSITA would have been motivated to modify Post in view of Beese for the reasons provided above in Section IX.A.4 (Reasons to Combine).



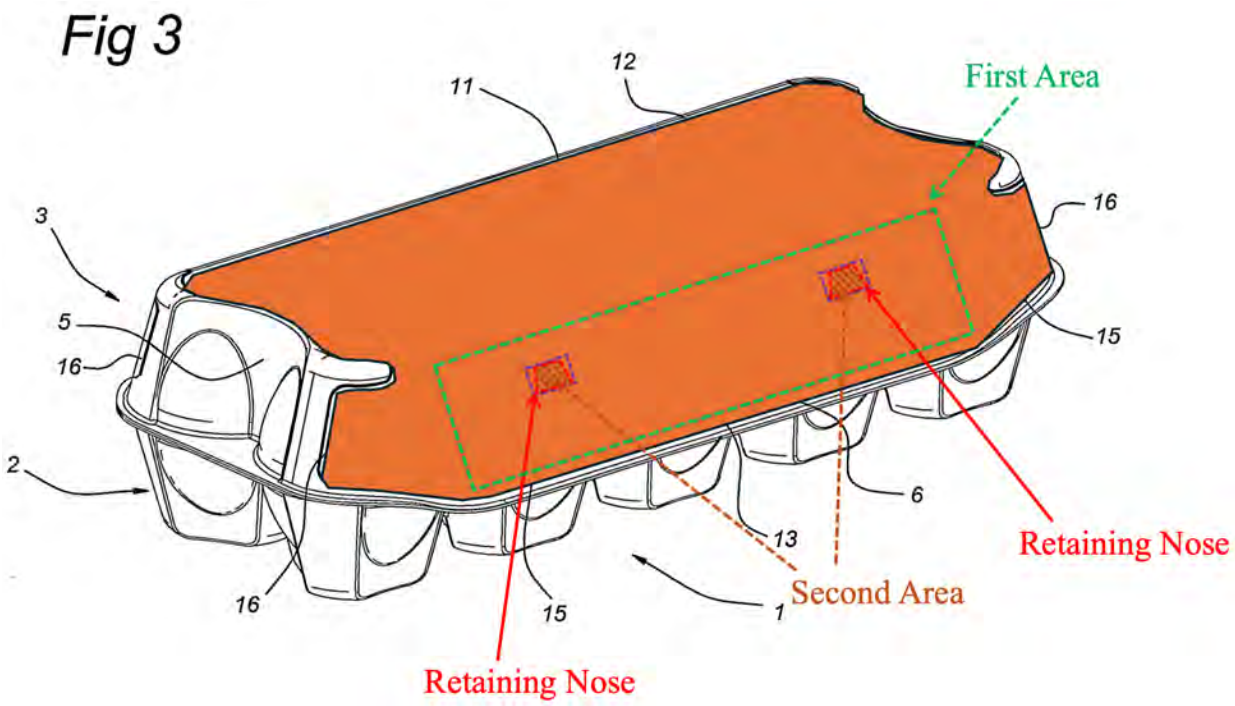
Ex.1010, Fig. 3 (annotated and modified)

[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,

479. The Post-Beese combination renders obvious limitation [28.7.1].

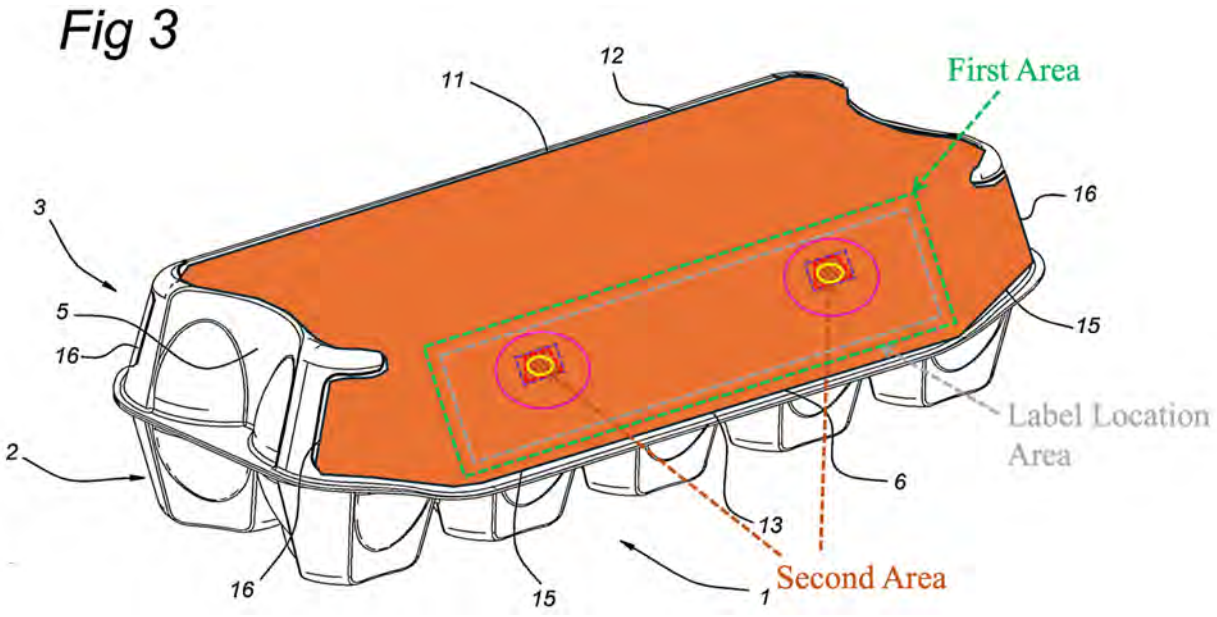
480. **First**, Post discloses *the first area of the lid* (see limitation [28.5] above), and the Post-Beese combination teaches *the second area of the base extension* (*see* limitation [28.6.3] above). Post's Fig. 3 is modified below to illustrate

the first area of the lid (**green** dotted rectangle) and *the second area of the base extension* (**brown** dashed surface area beneath label 11) in the Post-Beese combination.



Ex.1010, Fig. 3 (annotated and modified)

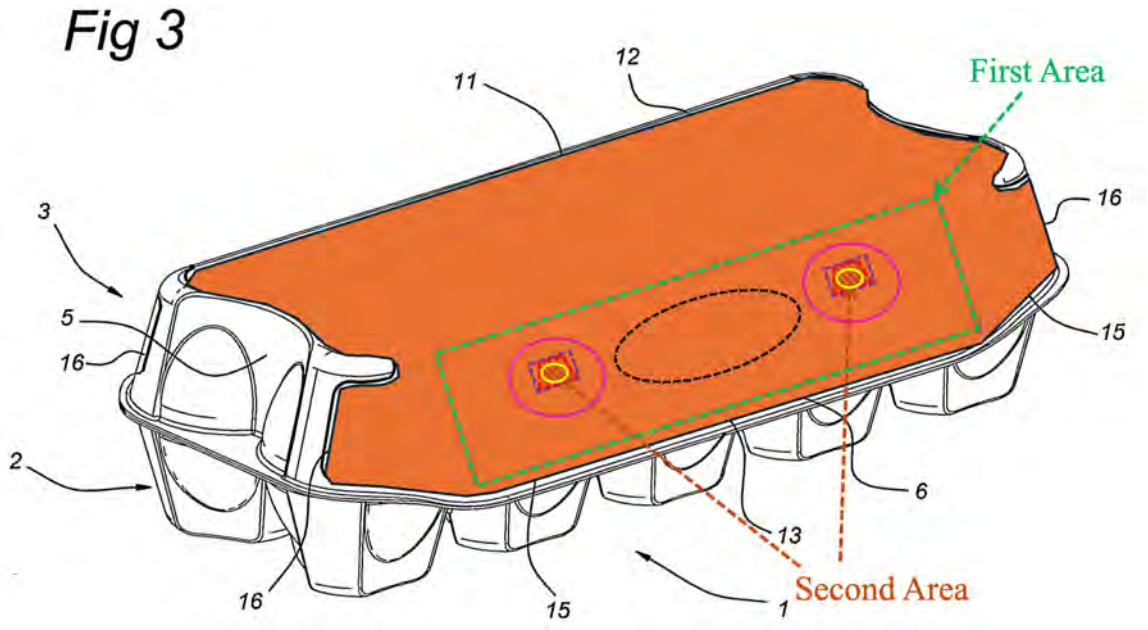
481. Post's Fig. 3 is further annotated below to show that, *when the lid* (lid part 3) *is in the closed position* (Fig. 3) in the Post-Beese combination, *a label location area* (**silver** dotted rectangle) is disposed substantially on *a first part* (**pink** oval) *of the first area* (**green** dotted rectangle) *of the lid* (lid part 3) *and a first part* (yellow oval) *of the second area* (**brown** dashed surface area beneath label 11) *of the base extension* (retaining nose) (**red**).



Ex.1010, Fig. 3 (annotated and modified)

[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

482. The Post-Beese combination renders obvious limitation [28.7.2]. As shown in modified Post Fig. 3 below, *the first part* (**pink** oval) *of the first area* (**green** dotted rectangle) *is adjacent* (i.e., nearby or next to) *to the first part* (yellow oval) *of the second area* (**brown** dashed surface area beneath label 11) *and substantially coplanar* (i.e., in the same plane) *to an adjacent flat part* (**black** dotted oval) *of the lid area* (*see* limitation [28.5]).



Ex.1010, Fig. 3 (annotated and modified)

[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,

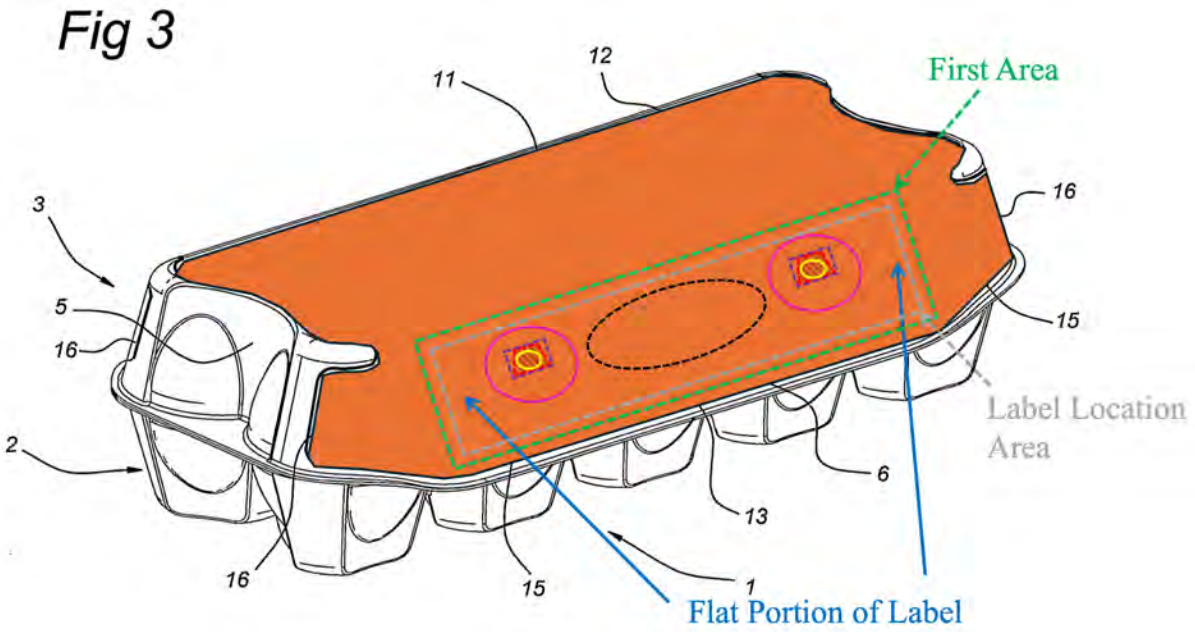
483. The Post-Beese combination renders obvious limitation [28.7.3]. As shown in modified Post Fig. 3 for limitation [28.7.2] above, *the first part* (**pink** oval) *of the first area* (**green** dotted rectangle) *of the lid* (lid part 3) *surrounds the first part* (yellow oval) *of the second area* (**brown** dashed surface area beneath label 11) *of the base extension* (retaining nose) (**red**).

[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.

484. The Post-Beese combination renders obvious limitation [28.7.4]. **First**, as described above in Section IX.A.4 (Reasons to Combine), a POSITA would have

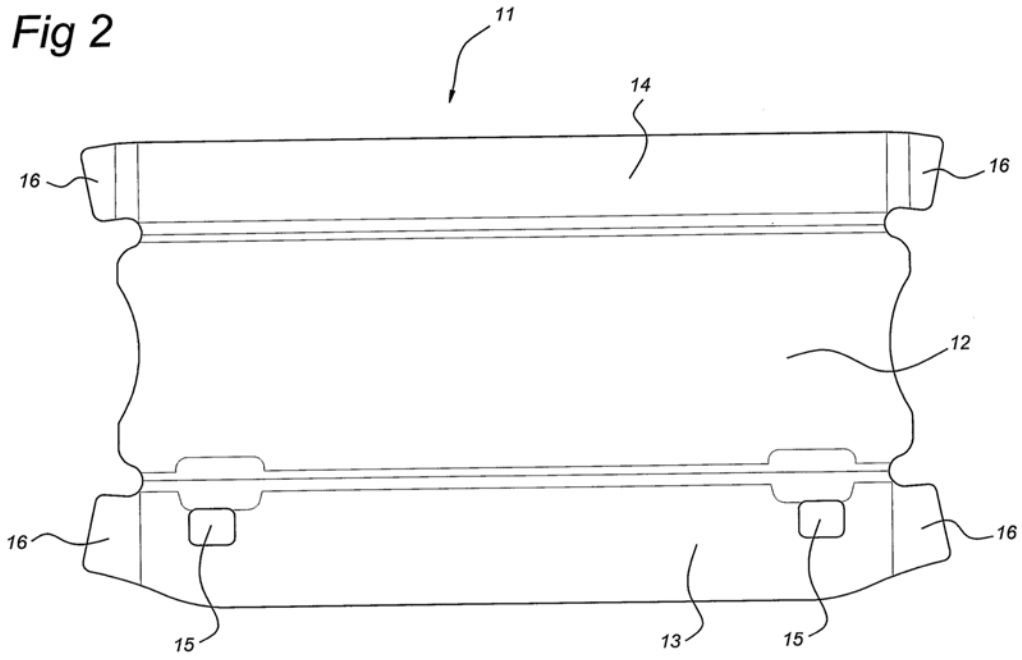
been motivated to modify Post in view of Beese so that Post's label entirely covers the front wall 6 of Post's lid part 3, as taught by Beese. Ex.1009, [0030] (explaining that the "front side [of the sticker 7] may [] be extended as far as the bottom edge of the front part 33 of the lid part 3."). Post's label (**orange**) in the Post-Beese combination renders obvious the claimed *label*, as shown below.

485. As shown in modified Post Fig. 3, below, *the label location area* (silver dotted rectangle) *is configured to receive, on an outermost part of the container* (on the external surface of the container)*, a flat portion of a label* (flat portion of **orange** label shown between **blue** arrows) *that 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** dotted rectangle) *and the first part* (yellow oval) *of the second area* (**brown** dashed surface area beneath label 11)*, and [iii] transverses the label location area* (flat portion of the label (**orange**) covers the label location area (**silver** dotted rectangle)).



Ex.1010, Fig. 3 (annotated and modified)

486. Post discloses that the portion of the label that covers the front part 6 of the lid part 3 is a flat portion. As shown in Fig. 2, below, the front flap 13 of the label 11, which is a "flat sheet," is placed over the front part 6 (front wall 6) of the lid part 3. Ex.1010, 3 ("A flat sheet that has to be applied as label to the lid part 3 is shown in Fig. 2. This 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 ("The 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.1010, Fig. 2

487. Accordingly, for at least the foregoing reasons, all the limitations of claim 28 are well-known, conventional features, as taught by Post and Beese.

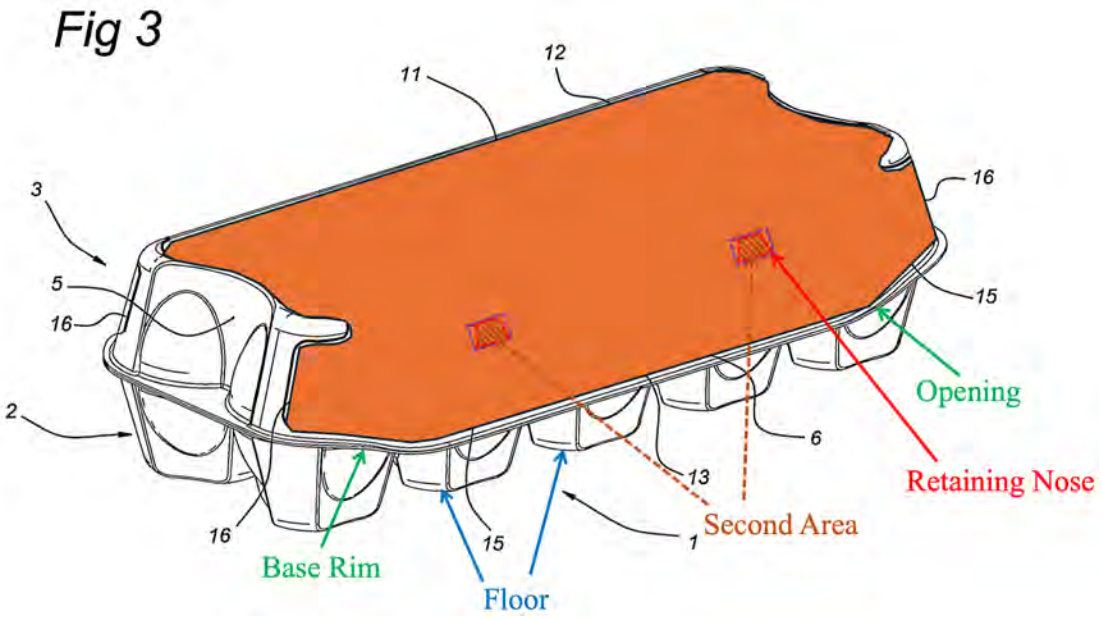
b) Claim 29

[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;

488. Post and Beese render obvious limitation [29.0]. **First**, as described above for limitation [1.6.1] (identical to limitation [28.6.1]), Post discloses *the base rim* (outer edge of the bottom part 2 on which the bottom edge of the lid part 3 rests).

489. **Second**, as shown in modified Fig. 3 of Post, below, *when the lid is in the closed position* (Fig. 3), *the base rim* (denoted by **green** arrows) *is located between the second area* (**brown** dashed surface area beneath label 11) *of the base*

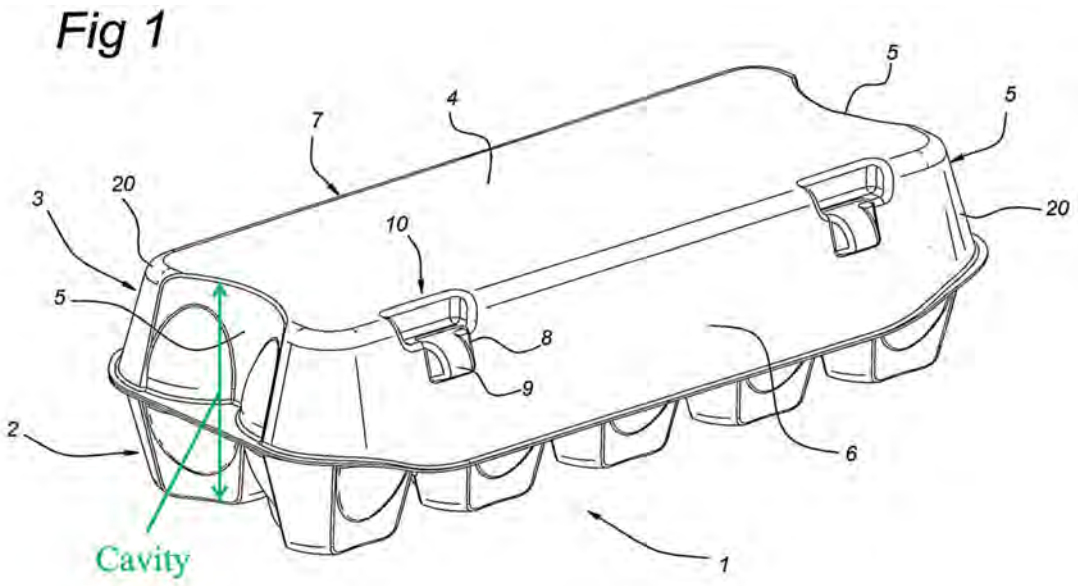
extension (Beese's retaining noses 24) (**red**) *and the floor* (**blue**) *of the base* (bottom part 2).



Ex.1010, Fig. 3 (annotated and modified)

[29.1] the product is located within the cavity;

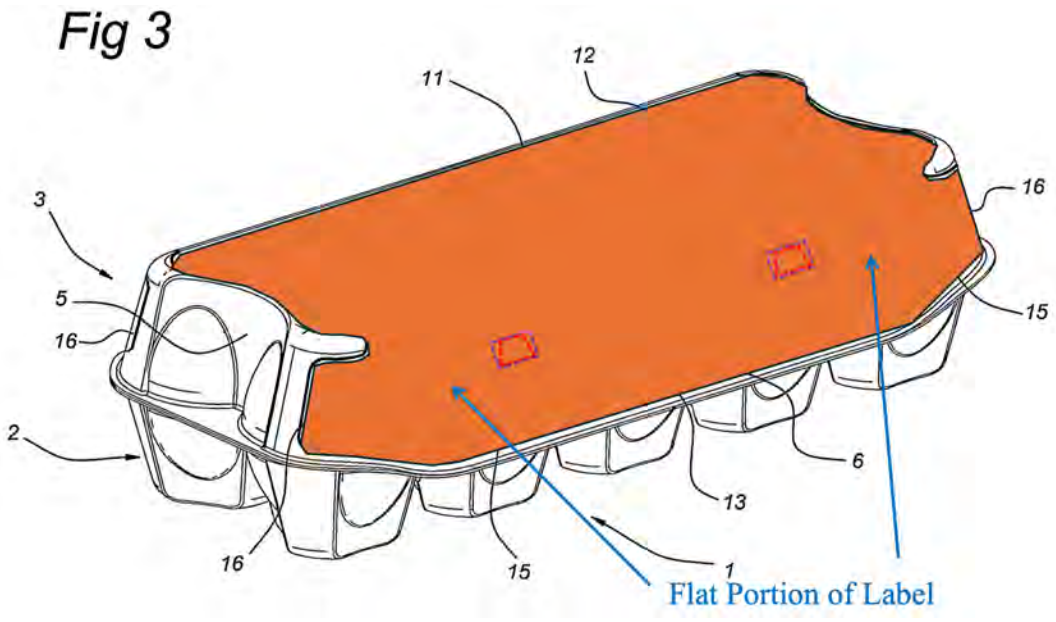
490. Post discloses limitation [29.1]. Post discloses that *the product* (e.g., eggs) *is located within the cavity* (**green**) between the top part 4 of the lid part 3 and the bottom surface of the bottom part 2, as shown in Fig. 1, below. Ex.1010, 3 (explaining that Post's container "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically.").



Ex.1010, Fig. 1 (annotated)

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

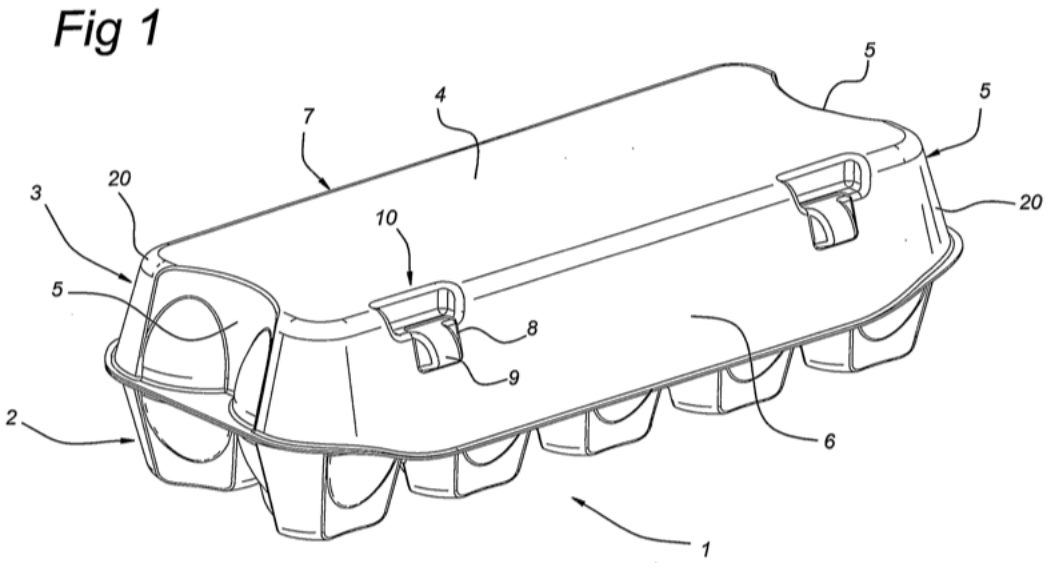
491. The Post-Beese combination renders obvious limitation [29.2]. As shown in the Post-Beese combination below, *the container includes the flat portion of the label* (flat portion of **orange** label shown between **blue** arrows) (*see* limitation [28.7.4]).



Ex.1010, Fig. 3 (annotated and modified)

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

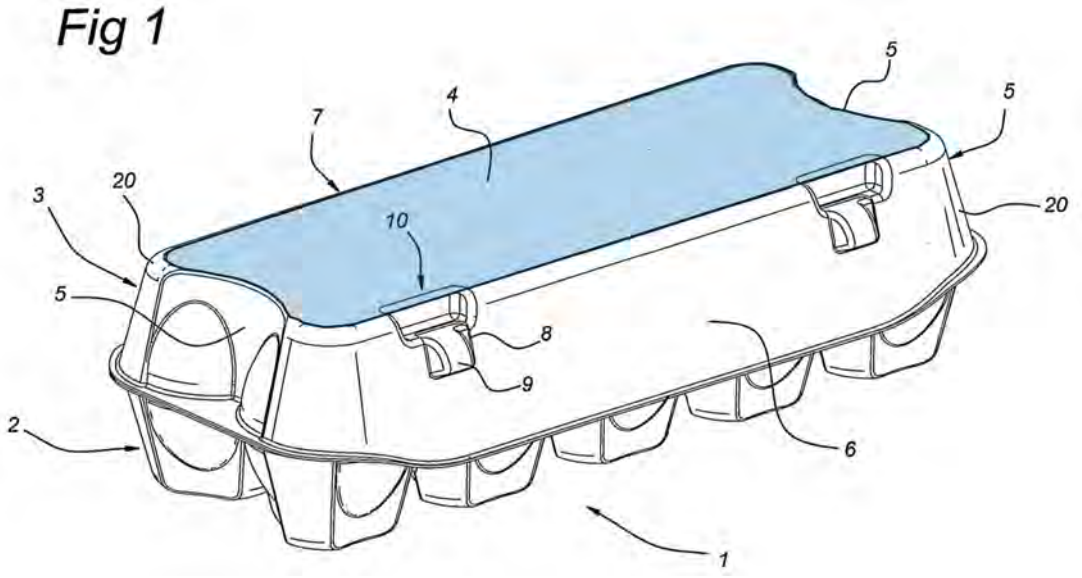
492. Post discloses limitation [29.3]. Post discloses that *the base* (bottom part 2) *includes ribs* (cavities formed to hold the shape of an egg) *adapted to hold the product* (e.g., eggs), as shown in Fig. 1, below.



Ex.1010, Fig. 1

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

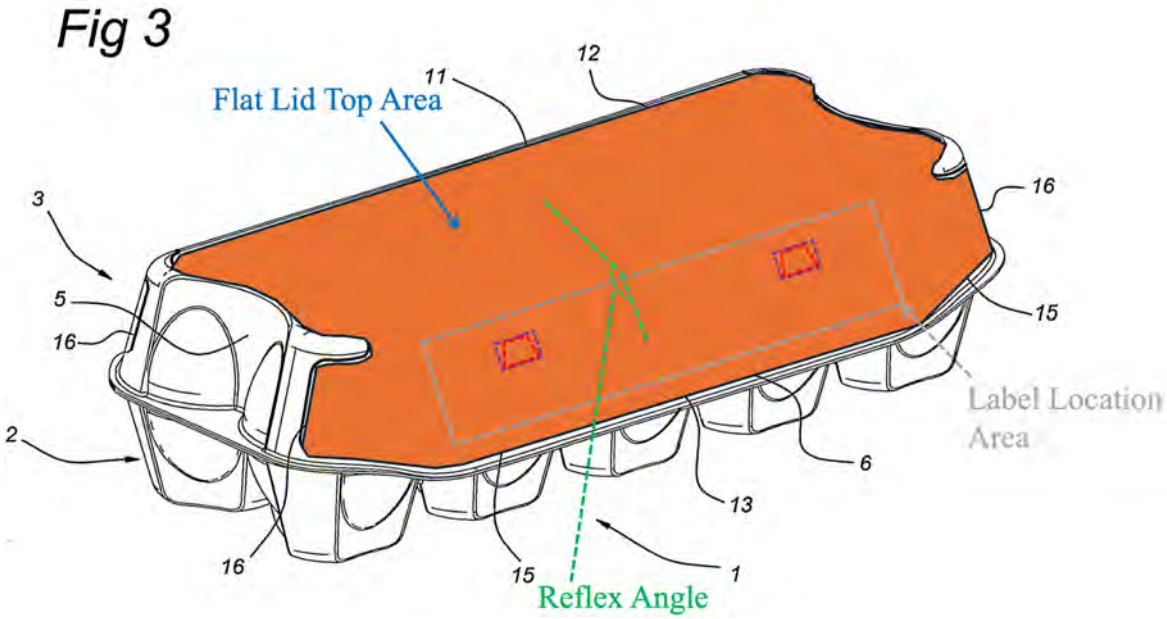
493. Post discloses limitation [29.4]. As shown in Fig. 1, below, Post discloses that *the lid* (lid part 3) *further includes a substantially flat lid top area* (**blue**) (lid part 3 includes top part 4, which is shown to be flat in Fig. 1). Ex.1010, 3 ("The lid part 3 consists of a top part 4.").



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.

494. The Post-Beese combination renders obvious limitation [29.5]. As shown in modified Post Fig. 3, below, *when the lid is in the closed position* (Fig. 3), *the label location area* (**silver** dotted rectangle) *is inclined at a reflex angle* (**green** angle) *of less than 270 degrees with respect to the substantially flat lid top area* (top part 4) (**blue**). The reflex angle (**green**) is less than 180 degrees and is therefore *less than 270 degrees*.



Ex.1010, Fig. 3 (annotated and modified)

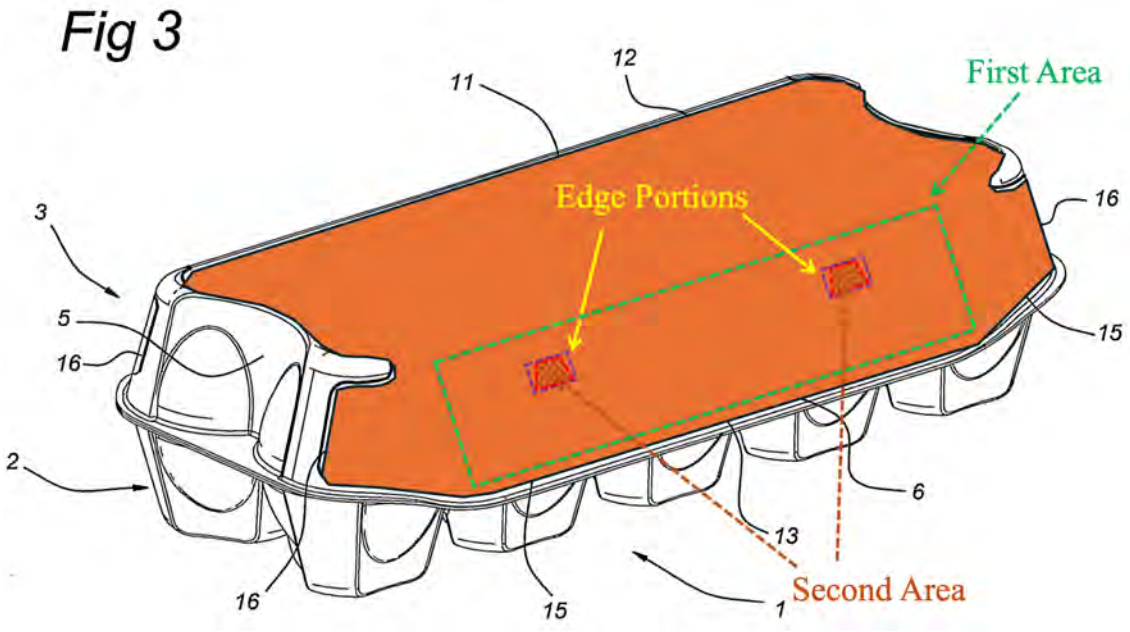
c) Claim 30

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

495. Post discloses limitation [30.0]. Post discloses that *the product is fresh retail produce* (e.g., eggs or other produce such as fruit and vegetables). Ex.1010, 3 (explaining that the container 1 "consists of a bottom part 2 in which cavities for accommodating eggs are shown diagrammatically."). In addition to holding eggs, Post's container may also be configured to hold other fresh produce such as fruit or vegetables. Ex.1010, 1 ("The present invention more particularly relates to an egg tray, but it must be understood that the invention can also be applied to other containers for packaging foods such as vegetables, fruit and the like.").

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

496. The Post-Beese combination renders obvious limitation [30.1]. As described above for limitation [28.5], Post's *lid* (lid part 3) in the Post-Beese combination includes *the first area* (**green** dotted rectangle) (*see* limitation [28.5]) *includes an edge portion* (yellow) (edges formed by openings (**purple** dotted rectangles)) to accommodate retaining noses (**red**), as shown below.



Ex.1010, Fig. 3 (annotated and modified)

[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

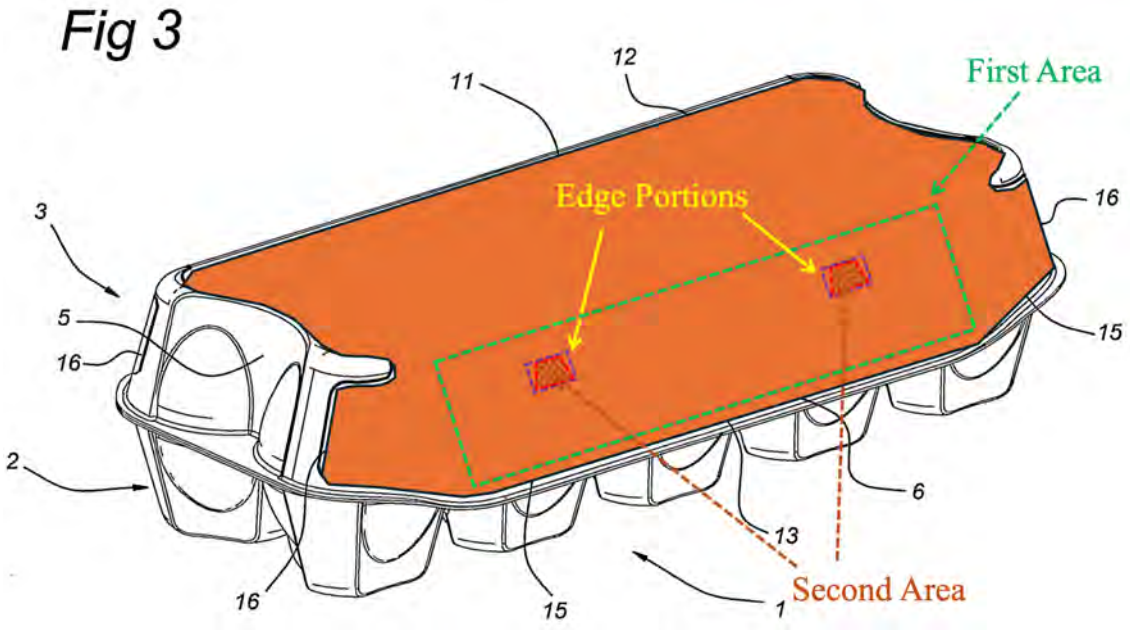
497. The Post-Beese combination renders obvious limitation [30.2]. As shown in modified Post Fig. 3 for limitation [30.1] above, *when the lid is in the closed position* (Fig. 3) *the second area* (**brown** dashed surface area beneath label

11) *of the base extension* (Beese's retaining noses 24) (**red**) *and the first area* (**green** dotted rectangle) *of the lid face substantially in the same direction* (facing externally away from the cavity on the inside of the container).

[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.

498. The Post-Beese combination renders obvious limitation [30.3]. As shown below, *when the lid is in the closed position… the second area* (**brown** dashed surface area beneath label 11) *is disposed substantially adjacent to* (next to) the edge portion (yellow) (edges formed by openings (**purple** dotted rectangles)) *of the first area of the lid* (**green** dotted rectangle).

499.



Ex.1010, Fig. 3 (annotated and modified)

X. AVAILABILITY FOR CROSS-EXAMINATION

500. In signing this declaration, I recognize that the declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross examination in the case and that cross examination will take place within the United States. If cross examination is required of me, I will appear for cross examination within the United States during the time allotted for cross examination.

XI. CONCLUSION

501. I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true. I understand that willful false statements are punishable by fine or imprisonment or both. *See* 18 U.S.C. § 1001.

Date: July 26, 2024

Respectfully submitted,



Thomas Dunn, BA MFS