

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ONTEL PRODUCTS CORPORATION,
Petitioners,

v.

HAPPY PRODUCTS, INC.,
Patent Owner.

Case IPR2025-01536
U.S. Patent No. RE48,479

**PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. RE48,479
UNDER 35 U.S.C. §§311-319 AND 37 C.F.R. §41.100 *ET SEQ***

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1015	Patent Owner’s and Petitioner’s Joint Claim Construction Statement in <i>Happy Products, Inc. v. Ontel Products Corporation</i> , Civil Action No. 2:24-cv-09819 (DNJ) dated September 22, 2025
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1026	Order Administratively Closing Proceeding until Resolution of <i>Happy Products, Inc. v. Ontel Products Corporation</i> , Civil Action No. 2:24-cv-09819 (DNJ) proceeding in <i>Happy Products, Inc. v. Ace Hardware Corp., et al</i> , Civil Action No. 4:24-cv-00915 (EDTX) dated February 21, 2025

LISTING OF CHALLENGED CLAIMS

Independent Claim 1	
1A	An apparatus comprising:
1B	three support sides, each support side comprising a back support and an edge support,
1C	wherein a top of each back support is in physical communication with an adjacent edge support clockwise about a central axis and each back support
1D	and each edge support is in physical communication with two ends of a solid interior,
1E	each edge support comprises an edge support width of 2 centimeters (cm) with an edge angle of 90 degrees to an adjacent back support,
1F	a face of each edge support width oriented clockwise about the central axis,
1G	a plane of a first back support is at a first plane angle of 60 degrees to a second virtual plane between the top of a second back support counterclockwise to the first back support and an outer edge of a second edge support counterclockwise to the first back support,
1H	a plane of the second back support is at a second plane angle of 80 degrees to a third virtual plane between the top of a third back support counterclockwise to the second back support and an outer edge of a third edge support counterclockwise to the second back support,
1I	a plane of a third back support is at a third plane angle of 40 degrees to a first virtual plane between the top of the first back support counterclockwise to the third back support and an outer edge of the first edge support counterclockwise to the third back support, and
1J	wherein each back support, each edge support, and each end is a surface of the solid interior,

1K	the solid interior is a pillow covered in fabric,
1L	a first viewing angle of the first back support is 36 degrees, a second viewing angle of the second back support is 74 degrees, and a third viewing angle of the third back support is 49 degrees.

Dependent Claim 2	
2	The apparatus of claim 1, wherein the first back support has a longitudinal length in the range of 12 to 26 centimeters (cm), the second back support has a longitudinal length in the range of 9 to 21 cm, and the third back support has a longitudinal length in the range of 10 to 22 cm.

Dependent Claim 8	
8	The apparatus of claim 1, wherein each edge support has an edge support width in the range of 1 to 5 centimeters (cm).

Dependent Claim 9	
9	The apparatus of claim 1, wherein a plane of each edge support forms an edge angle in the range of 85 to 120 degrees with an adjacent back support.

Dependent Claim 10	
10	The apparatus of claim 9, wherein the edge angle is 90 degrees.

Independent Claim 12	
12A	A media support apparatus comprising:
12B	a body having a first support back, a second support back, and a third support back disposed about a central axis;

Independent Claim 12	
12C	a first support edge disposed between the first support back and the second support back, the first support back and first support edge are configured to support a media device at a first support angle;
12D	a second support edge disposed between the second support back and third support back, the second support back and second support edge are configured to support a media device at a second support angle;
12E	a third support edge disposed between the third support back and first support back, the third support back and third support edge are configured to support a media device at a third support angle,
12F	wherein each edge support comprises an edge support width with an edge angle in the range of 85 to 120 degrees to an adjacent support back, a face of each edge support width oriented clockwise about the central axis;
12G	wherein the media support apparatus is configured to be rotated about the central axis so that the body can rest on a horizontal support in any one of three positions including on a first virtual plane between a top of the second support back and an outer edge of the second edge support, on a second virtual plane between a top of the third support back and an outer edge of the third edge support, and on a third virtual plane between a top of the first support back and an outer edge of the first edge support; and
12H	wherein the media support apparatus is configured to provide a first viewing angle of the media device when the media support apparatus body rests on the first virtual plane and the media device is supported at the first support angle, a second viewing angle when the media support apparatus body rests on the second virtual plane and the media device is supported at the second support angle, and a third viewing angle when the media support apparatus body rests on the third virtual plane and the media device is supported at the third support angle, wherein the first viewing angle, the second viewing angle, and the third viewing angle are different from one another.

Dependent Claim 13	
13	The apparatus of claim 12, wherein the first support angle is between 50 and 60 degrees to the second virtual plane, the second support angle is between 55 and 65 degrees to the third virtual plane, and the third support angle is between 50 and 75 degrees to the first virtual plane.

Dependent Claim 15	
15	The apparatus of claim of 12, wherein the edge support angle is 90 degrees.

Dependent Claim 16	
16	The apparatus of claim 15 wherein the edge support width is 2 cm.

Dependent Claim 17	
17	The apparatus of claim 12, wherein the body includes three solid corners, with each of the corners interposed between two adjacent support backs and including a respective edge support.

Dependent Claim 19	
19	The apparatus of claim 12, wherein the edge support width is in the range of 1 to 5 cm.

Independent Claim 20	
20A	An apparatus comprising:
20B	three support sides, each support side comprising a back support and an edge support,

Independent Claim 20	
20C	wherein a top of each back support is in physical communication with an adjacent edge support clockwise about a central axis and each back support and each edge support is in physical communication with two ends,
20D	wherein each edge support comprises an edge support width with an edge angle to an adjacent back support in the range of 85 to 120 degrees to an adjacent back support,
20E	wherein a face of each edge support width is oriented clockwise about the central axis,
20F	wherein a plane of a first back support is at a first plane angle to a second virtual plane between the top of a second back support counterclockwise to the first back support and an outer edge of a second edge support counterclockwise to the first back support,
20G	wherein a plane of the second back support is at a second plane angle to a third virtual plane between the top of a third back support counterclockwise to the second back support and an outer edge of a third edge support counterclockwise to the second back support,
20H	wherein a plane of a third back support is at a third plane angle to a first virtual plane between the top of the first back support counterclockwise to the third back support and an outer edge of the first edge support counterclockwise to the third back support,
20I	wherein the first plane angle, the second plane angle, and the third plane angle are different from one another and are configured to provide a first viewing angle, a second viewing angle, and a third viewing angle that are different from one another; and
20J	wherein each back support, each edge support, and each end is a surface of an interior.

Dependent Claim 21	
21	The apparatus of claim 20, wherein the first back support has a longitudinal length in the range of 12 to 26 centimeters (cm), the second back support has a longitudinal length in the range of 9 to 21 cm, and the third back support has a longitudinal length in the range of 10 to 22 cm.

Dependent Claim 27	
27	The apparatus of claim 20, wherein each edge support has an edge support width in the range of 1 to 5 centimeters (cm).

Dependent Claim 28	
28	The apparatus of claim 20, wherein a plane of each edge support forms an edge angle of 90 degrees with an adjacent back support.

Dependent Claim 29	
29	The apparatus of claim 28, wherein each edge support has an edge support width of 2 centimeters (cm).

I. INTRODUCTION

Ontel Products Corporation (“Petitioner”) requests inter partes review (“IPR”) under 35 U.S.C. §§311-319 and 37 C.F.R. §42 et seq., seeking cancellation of claims 1–2, 8–10, 12–13, 15–17, 19–21, and 27–29 (the “Challenged Claims”) of U.S. Patent No. RE48,479 (“RE’479 patent”) (Ex. 1001), assigned to Patent Owner, Happy Products, Inc. (“Patent Owner”).

II. MANDATORY NOTICES PURSUANT TO 37 C.F.R. §42.8(A)(1)

A. Real Party-In-Interest under 37 C.F.R. §42.8(b)(1)

Petitioner is the real party-in-interest. Petitioner’s customers and resellers, Boscov’s Department Store, LLC, BJ’S Wholesale Club, Inc., Unbeatable.com, The Kroger Company, Ace Hardware Corp., CVS Health Corp., Lowe’s Companies, Inc., Ollie’s Bargain Outlet Holdings, Inc., Target Corporation, Walgreens Co., and Walmart Inc., are also real parties-in-interest.¹ The Petitioner has the sole authority to direct all activities relating to this Petition or any future proceedings related to this Petition.

B. Related Matters under 37 C.F.R. §42.8(b)(2)

Pursuant to 37 C.F.R. §42.8(b)(2), Petitioner is aware of the following related matters:

¹ The customers and resellers are defendants in the cases stayed pending resolution of the Litigation.

Case Caption	Disposition
<i>Happy Products, Inc. v. Ontel Products Corporation</i> , 2:24-cv-09819 (DNJ) (the “Litigation”)	Pending
<i>Happy Products, Inc. v. Boscov’s Department Store, et. al</i> , 2:25-cv-11995 (DNJ)	Stayed
<i>Happy Products, Inc. v. The Kroger Co.</i> , 4:25-cv-00098 (EDTX)	Stayed
<i>Happy Products, Inc. v. Ace Hardware Corp., et al</i> , 4:24-cv-00915 (EDTX)	Stayed

C. Lead and Backup Counsel under 37 C.F.R. §42.8(b)(3)-(4)

Petitioner hereby identifies its lead and backup counsel as follows:

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Please address all correspondence to lead and back-up counsel at the addresses shown above. Petitioner also consents to service by email at: AFS-OntelLitTeam@afslaw.com.

D. Service Information under 37 C.F.R. §42.8(b)(4)

This Petition is being served by Federal Express Next Business Day Delivery to the correspondence address of record for the RE’479 patent:

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A Power of Attorney is being filed concurrently herewith.

III. REQUIREMENTS FOR IPR UNDER 37 C.F.R. §42.104

A. Grounds for Standing under 37 C.F.R. §42.104(a)

Petitioner certifies that the RE'479 patent is available for *inter partes* review, and that Petitioner is not barred or estopped from requesting this IPR on the grounds identified in this Petition because: (1) Patent Owner is patent owner of record; (2) Petitioner has not filed a civil action challenging the validity of any claim in the patent; (3) the estoppel provisions of 35 U.S.C. §315(e)(1) do not prohibit this IPR; and (4) the patent is not described in §3(n)(1) of the America Invents Act and so is

available for IPR under 37 C.F.R. §42.102(a)(2). Petitioner also certifies that this IPR is not barred under 35 U.S.C. §315(b) having been filed within one year after date on which Petitioner or any of the real parties-in-interest were served with a complaint alleging infringement of the RE'479 patent. (Ex-1018 - Ex-1021).

B. Identification of Challenge and Precise Relief Requested, 37 C.F.R. §42.104(b)

Petitioner contends there is a reasonable likelihood that at least one of the claims challenged in this Petition is unpatentable, and respectfully requests cancellation of claims 1–2, 8–10, 12–13, 15–17, 19–21, and 27–29 of the RE'479 patent on Grounds 1-3 below.

Ground	Claims	Basis for Unpatentability
1	1-2, 8-10, 12-13, 15-17, and 19	Obvious based on Cannon in view of Diebel and/or Barcalo and/or the knowledge of a POSA
2	12-13, 15-17, and 19	Obvious based on Klepar I in view of Barcalo and/or Dean and/or the knowledge of a POSA
3	20-21, and 27-29	Obvious based on Barcalo in view of Klepar I or Klepar II and/or Dean and/or the knowledge of a POSA

The prior art relied upon in this Petition includes:

U.S. Patent Application Publication No. 2015/0115124 A1, published April 30, 2015 (“Cannon,” Ex-1008).

U.S. Patent No. 1,928,806, issued October 3, 1933 (“Barcalo,” Ex-1009).

U.S. Patent No. 8,960,421, issued February 24, 2015, filed March 28, 2011 (“Diebel,” Ex-1010).

U.S. Patent No. 3,746,296, issued July 17, 1973 (“Dean,” Ex-1011).

U.S. Patent Application Publication No. 2015/0189781 A1, published July 2, 2015 (“Klepar I,” Ex-1012).

U.S. Design Patent No. D703,216, issued April 22, 2014 (“Klepar II,” Ex-1013).

IV. THE RE’479 PATENT

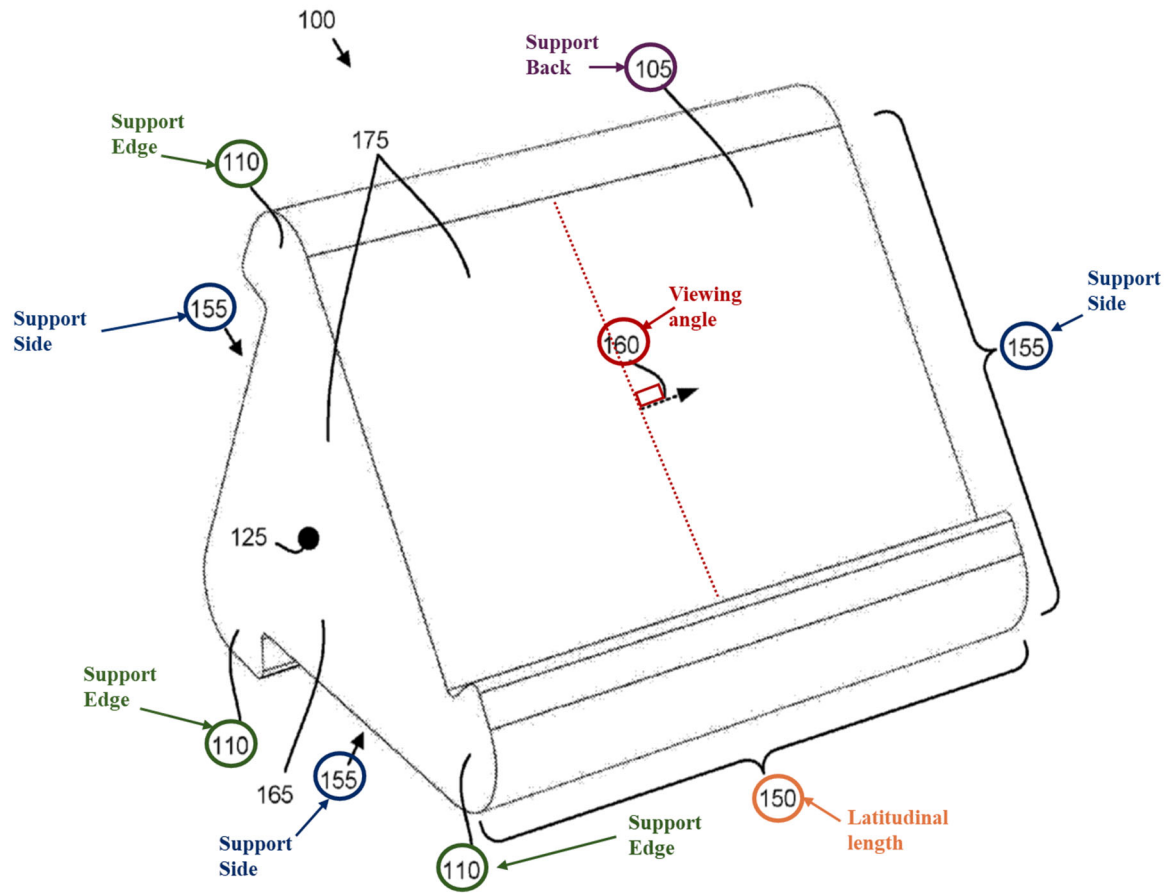
A. Overview

The RE’479 patent, titled “[m]ultiple viewing angle media support,” issued on March 23, 2021, from U.S. Application No. 16/262,797 (“the ’797 application,” Ex-1002) filed on January 30, 2019. The RE’479 Patent is a reissue of U.S. Patent No. 9,642,454 (“the ’454 patent”), which issued on May 9, 2017, from U.S. Application No. 15/192,737 (“the ’737 application,” Ex-1007), filed on June 24, 2016. The ’737 application is a continuation-in-part of U.S. Application No. 14/518,443 (“the ’443 application,” Ex-1006) filed on October 20, 2014 (now abandoned), claiming priority to U.S. Provisional Patent Application No. 61/896,540 (“the ’540 application,” Ex-1005) entitled “FLIPY EREADER PILLOW” filed on October 28, 2013.

B. Specification

The RE'479 patent states that the use of “traditional pillows may position the media at a less than advantageous angle.” Ex-1001, 2:34-35. Further, “the user may shift position, resulting in a need for a support with a different viewing angle.” *Id.*, 2:35-38. These alleged problems are solved by a media support apparatus that “provide[s] support for multiple viewing angles.” *Id.*, 2:41-42.

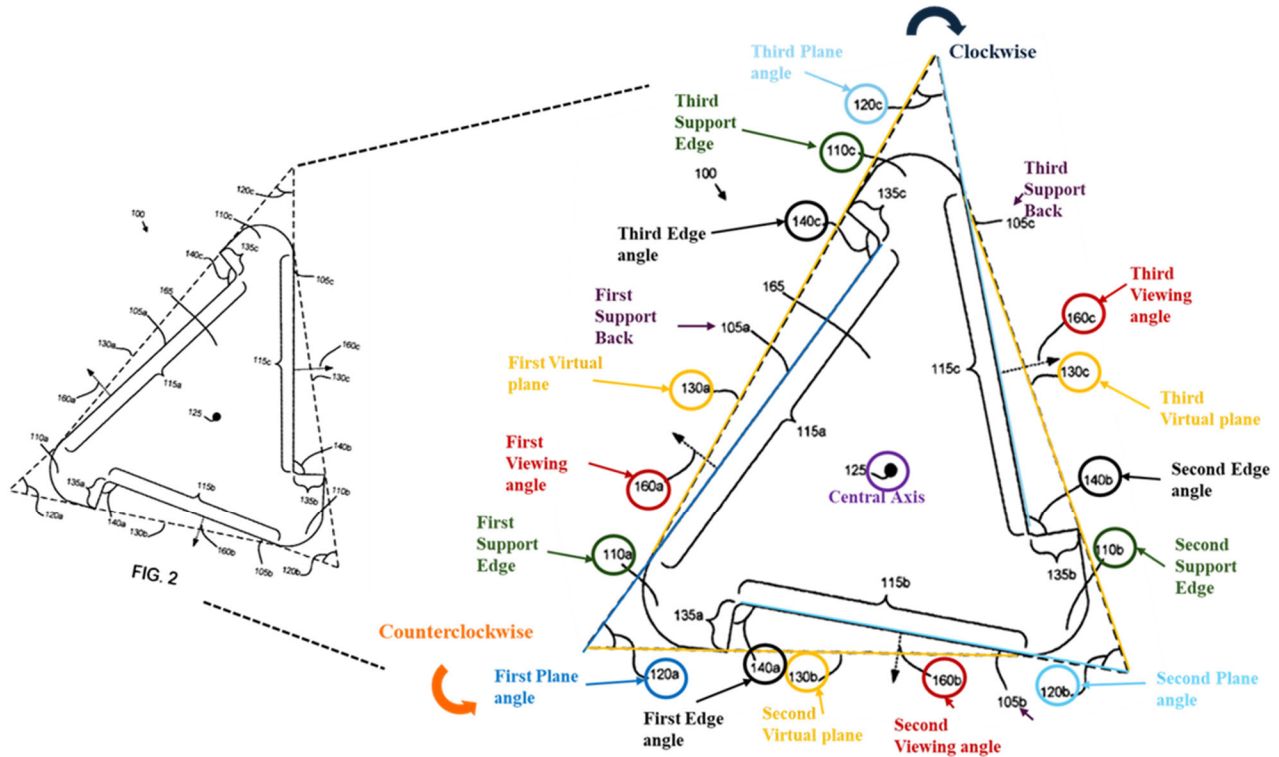
An embodiment of the allegedly inventive media support apparatus 100 includes three support sides 155 comprising a support back 105 and a support edge 110. The support sides 155 may be disposed about a central axis 125. *Id.*, 2:47-50, Figure 1. The support sides may be arranged to provide three different viewing angles 160 for three different user positions. Each viewing angle 160 is orthogonal to a support back 105). *Id.*, 2:63-66, Figure 1 (annotated below).



In one embodiment, each back support 105 and each edge support 110 is a surface 175 of a solid. The solid media support 110 may have one or more ends 165. Each back support 105 and each edge support 110 is disclosed as being in physical communication with two ends 165 of a solid interior.” *Id.*, 3:1-5, Figures 1, 2.

Figure 2 discloses “a plane of a first back support 105a may be at a first plane angle 120a in a range of 50 to 60 degrees to a second virtual plane 130b between the top of a second back support 105b counterclockwise to the first back support 105a

and an outer edge of a second edge support 110b counterclockwise to the first back support 105a. In addition, a plane of the second back support 105b may be at a second plane angle 120b in a range of 55 to 65 degrees to a third virtual plane 130c) between the top of a third back support 105c counterclockwise to the second back support 105b and an outer edge of a third edge support 110c counterclockwise to the second back support 110b. A plane of a third back support 105c may be at a third plane angle 120c in a range of 50 to 75 degrees to a first virtual plane 130a between the top of the first back support 105a counterclockwise to the third back support 105c and an outer edge of the first edge support 110a counterclockwise to the third back support 105c.” *Id.*, 3:26-48, Figure 2 (annotated below).

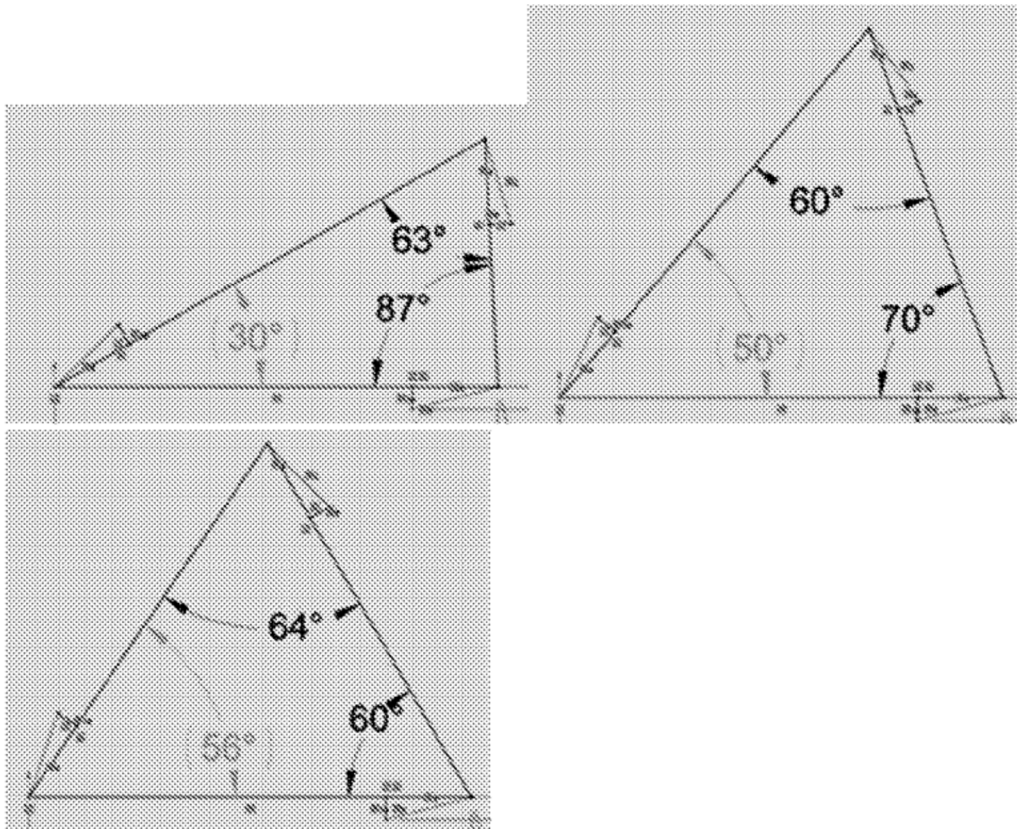


C. Prosecution History

The following provides excerpts of the prosecution history. Petitioner reserves all rights to rely upon the entirety of the prosecution history of the RE'479 patent and its family for purposes of this Petition.

1. The '540 Application

The '540 Application contained disclosed four claims. Ex-1005, 3-4; Ex-1003, ¶¶ 51-53. The specification had an appendix with the below figures:



Ex-1005, 5; Ex-1003, ¶53.

2. The '443 Application

The '443 Application was filed with 14 claims, including independent claim

1:

“1. An apparatus comprising:

three support sides, each support side comprising a back support and an edge support, wherein a top of each back support is in physical communication with an adjacent edge support clockwise about a central axis, a plane of a first back support is at a first plane angle in a range of 50 to 60 degrees to a second virtual plane between the top of a second back support counterclockwise to the first back support and an outer edge of a second edge support

counterclockwise to the first back support, a plane of the second back support is at a second plane angle in a range of 55 to 65 degrees to a third virtual plane between the top of a third back support counterclockwise to the second back support and an outer edge of a third edge support counterclockwise to the second back support, a plane of a third back support is at a third plane angle in a range of 50 to 75 degrees to a first virtual plane between the top of the first back support counterclockwise to the third back support and an outer edge of the first edge support counterclockwise to the third back support.” Ex-1006, 23.

In response to a Non-Final Rejection under 35 U.S.C. §103 over U.S. Patent Publication 2003/0001063 A1 (“Halpin,” Ex-1014) in view of Klepar II, and after an Interview where the Examiner maintained the obviousness rejection, applicants amended claim 1 to add limitations, *inter alia*, “each edge support comprises an edge support width with an edge angle of 90 degrees to an adjacent back support, a face of each edge support width oriented clockwise about the central axis,” and “wherein a first viewing angle of the first back support is 36 degrees, a second viewing angle of the second back support is 74 degrees, and a third viewing angle of the third back support is 49 degrees.” Ex-1006, 69-70; Ex-1003, ¶¶54-62. Applicants argued, *inter alia*, that “the claimed invention provides three distinct viewing angles of 36, 74, and 49 degrees. In contrast, Halpin and Klepar II only support one and two distinct viewing angles respectively as they lack all the multiple support edges oriented clockwise around a central axis.” *Id.*, 77.

On February 11, 2016, the Examiner, while maintaining the obviousness rejection, rejected claim 1 under 35 U.S.C. §112(a) because there was no “prior disclosure of these specific angle properties in this application. There is not disclosure of the criticality of the angles being of these specific angular values in the specification.” *Id.*, 83-84.

After an Interview on June 16, 2016, the Examiner wrote “[the] Applicant will submit a CIP to provide further disclosure of the materials and structural limitations of the invention to overcome the prior art references cited. Specifically, the limitations regarding the solid structure of the display device and the material composition of the solid structure: further disclosing the criticality of the structure and material will overcome the prior art references cited. Since these limitations are not disclosed in this application, the details will be disclosed in the CIP.” *Id.*, 92. On August 25, 2016 the application was abandoned. *Id.*, 95.

3. The ’737 Application

On June 24, 2016, the ’737 Application was filed with 10 claims and an amended specification. Ex-1007, 36-38, Figure 1; Ex-1003, ¶¶63-64. The Examiner allowed the ’737 Application noting that “[t]he prior art does not disclose the three sided support for media device that is a solid form covered in fabric like a pillow; wherein each support side has an edge support with the width of 2 centimeters that

protrudes from the face of the support side to facilitate the support of the media device from the bottom of the media device; each side allows for three distinct display angles for the media device. *Id.*, 65. The '454 patent issued on May 9, 2017.

4. The '797 Application

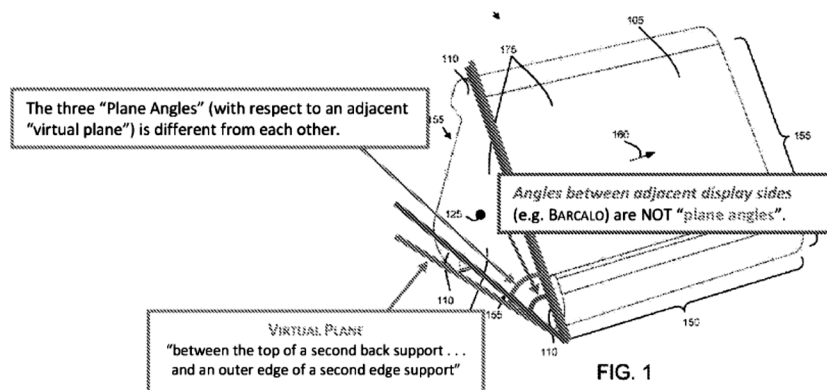
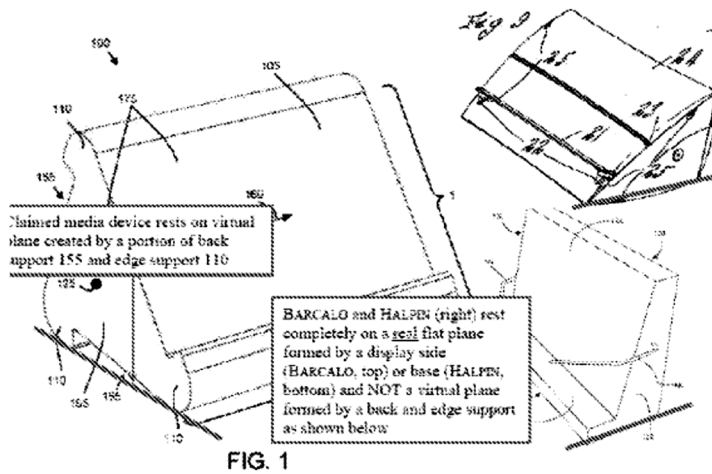
On January 30, 2019, the '797 Application was filed as a “broadening reissue” of the '454 patent. Ex-1002, 47.

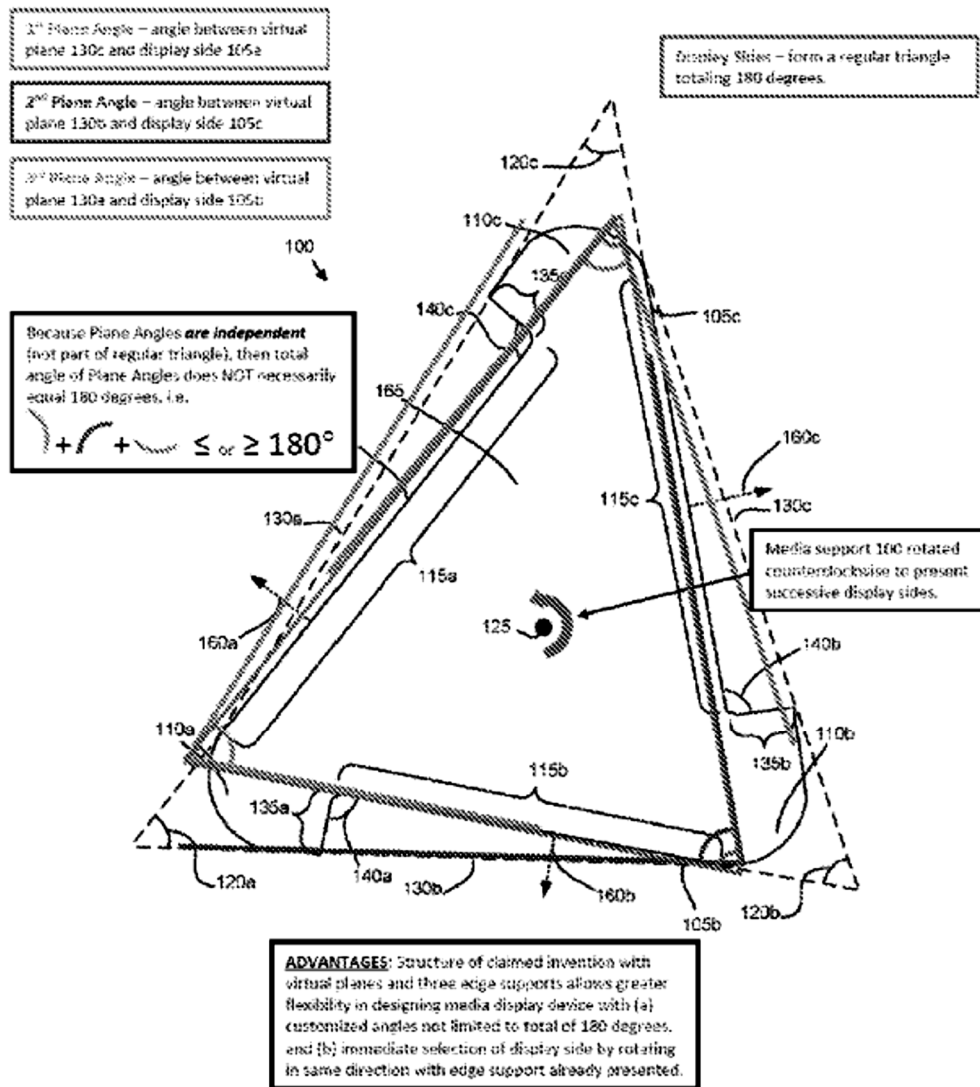
Reissue claim 1 deleted the measurement limitations that were contained in claim 1 of the '454 patent. *Id.*, 43. The proposed reissue claims were rejected as an improper reissue being beyond the scope of the original, issued claims. *See id.*, 57-64, 124-130, 233-244; *see also* Ex-1003, ¶¶65-79. The proposed reissue claims were also rejected as being obvious in view of the combination: Barcalo in view of Halpin. *Id.*, 64-67. In response, applicants argued, with respect to Barcalo, “[i]t would NOT be obvious to form BARCALO of a one piece block as with HALPIN, and even if you did it would not result in the structure set forth in the claims.” *Id.*, 105. Applicants amended the claims to overcome recapture rejections, retaining original claims 1-10, and proposing new claims 21-39. Independent claim 22 purportedly “add[ed] ‘different’ viewing angles [], and ‘edge angle range of 85 to 120 degrees to an adjacent support back, a face of each edge support width oriented clockwise about the central axis.’” *Id.*, 254. “Examiner indicated that this edge angle range is

a material narrowing of the claim and, together with the ‘different viewing angles’ feature, would avoid recapture and make the claim allowable in reissue.” *Id.* Applicants argued that new claim 29 “adds ‘different viewing angles’ feature (which further clarifies the different ‘virtual plane angles’ feature) and, further, adds the ‘edge angle’ feature as being within a range of between 85 and 120 degrees.” *Id.*

Applicants appealed from the Final Office Action and, in order to overcome a recapture rejection regarding the claim limitation “wherein the first plane angle, the second plane angle, and the third plane angle are *different* from one another,” argued that “[t]he claimed viewing angles are not simply between three viewing angle sides as in Barcalo (which, by having a purely triangular cross-section, would add up to 180 degrees). Instead, the plane angles dictating the viewing angles are between support sides on ‘virtual planes’ and adjacent display sides, a relationship that does not require the cumulative support angles of the sides to equal 180 degrees. For instance, the very specific support angles listed in claim 1 of the ’454 patent are 36 degrees, 74 degrees, and 49 degrees, which combine to equal a total of 159 degrees.” *Id.*, 189. Applicants further argued that the “added limitation in reissue related to the display angles or plane angles as being ‘different’ is therefore NOT well known in the prior art and is a material narrowing of the original claim sufficient to avoid recapture.” *Id.*, 190-191. Further, “[t]he ‘different plane angles’ limitation

of claims 30-38 (or ‘different’ viewing angles with respect to virtual planes in claim 29) is not well known in the prior art. Instead, the added reissue claims refer to different angles with respect to ‘virtual planes’ on the media support apparatus. This distinguishes from the newly cited Barcalo reference where viewing angles are with respect to real sides of the apparatus. This difference yields very real results in that the combination of viewing angles in the present device need not equal 180 degrees (as with the purely triangular Barcalo) and are therefore much more configurable.”
Id., 192, 200.





Id., 189-191.²

Following further amendments regarding “viewing angles” and “edge angle,” the Examiner allowed the ’797 Application stating that “[t]he prior art of record does not disclose or fairly suggest an apparatus having three support sides each

² The published prosecution history of the ’797 Application does not preserve the colors referred to by Patent Owner.

comprising a back support and an edge support with an edge angle of between 85 and 120 degrees to an adjacent support back, wherein the apparatus configured to provide first, second and third viewing angles of the first, second and third support backs that are different from one another.” *Id.*, 269; *see also* Ex-1003, ¶¶65-79.

D. The Challenged Claims

The challenged claims are 1–2, 8–10, 12–13, 15–17, 19–21, and 27–29, which have substantial overlap.

V. LEVEL OF ORDINARY SKILL IN THE ART

A Person of Ordinary Skill (“POSA”) is a hypothetical person who is presumed to have known the relevant art at the time of the invention. *See* MPEP §2141.03. A POSA has ordinary creativity, is not an automaton, and is capable of combining the teachings of the prior art. *See, e.g., KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 420–21 (2007). The relevant art is the development of support apparatus and stands, particularly multiple viewing angle structures.

A POSA with respect to the RE’479 Patent would have been educated in mechanical engineering with a bachelor’s degree and one or two years of experience in the development and construction of support structures, or an associate’s degree and at least three to five years of experience in the development of support structures. A POSA would be aware of developments in the field of support structures,

particularly portable structures, for example by attending trade shows, and by reading patents and trade journals, and could work in a team with machinists.

VI. CLAIM CONSTRUCTION

Claim terms generally have their ordinary and customary meaning, as would have been understood by a POSA at the time of the invention, having taken into consideration the language of the claims, the specification, and the prosecution history of record. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-16 (Fed. Cir. 2005) (*en banc*). The plain and ordinary meaning of a claim term *only* controls if the patentee has not explicitly redefined the term via lexicography. *See 3M Innovative Props. Co. v. Avery Dennison Corp.*, 350 F.3d 1365, 1371 (Fed. Cir. 2003); *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

Terms that may be relevant to this Petition are as follows:

A. “plane angle” (Claims 1–2, 8–10, 20–21, and 27–29)

In the Litigation, the Patent Owner proposed construing this term as “the angle between a back support positioned to support a media device and the virtual plane or adjacent back support on which the media stand is resting.” Ex-1015, 6 (Term 3a). Petitioner contended indefiniteness and alternatively, proposed construing this term as “the angle formed where the plane of a back support and a virtual plane intersect.” *Id.* For the purpose of this proceeding only, Petitioner puts forth the Patent

Owner's construction "the angle between a back support positioned to support a media device and the virtual plane on which the media stand is resting" (but removing the "or adjacent back support" portion of the proposed construction to align more with the plain language of the claims and the intrinsic record). Ex-1001, 3:31-48, Figure 2; Ex-1002, 192, 200; Ex-1003, ¶¶87-89.

B. "viewing angle" (Claims 1–2, 8–10, 12–13, 15–17, 19–21, and 27–29)

In the Litigation, the Patent Owner proposed construing this term as "the angle of a vector normal to a back support or support back (whichever is recited in the claim) positioned to support a media device as defined in relation to the plane on which the media stand is resting." Ex-1015, 6 (Term 5a). Petitioner in the Litigation contended indefiniteness and alternatively, proposed construing this term as "an angle that is orthogonal (90 degrees) to the back support for a user," as it is the patentee's own lexicography. *Id.*; Ex.1001, 2:65-66, Figures 1, 2; *see Vitronics*, 90 F.3d at 1582.

But because claims cannot be challenged under §112 here, Petitioner, for the purpose of this proceeding only, will put forth Patent Owner's construction that "viewing angle" is an "angle of a vector normal to a back support or support back (whichever is recited in the claim) positioned to support a media device as defined in relation to the plane on which the media stand is resting." Ex-1003, ¶ 90. However,

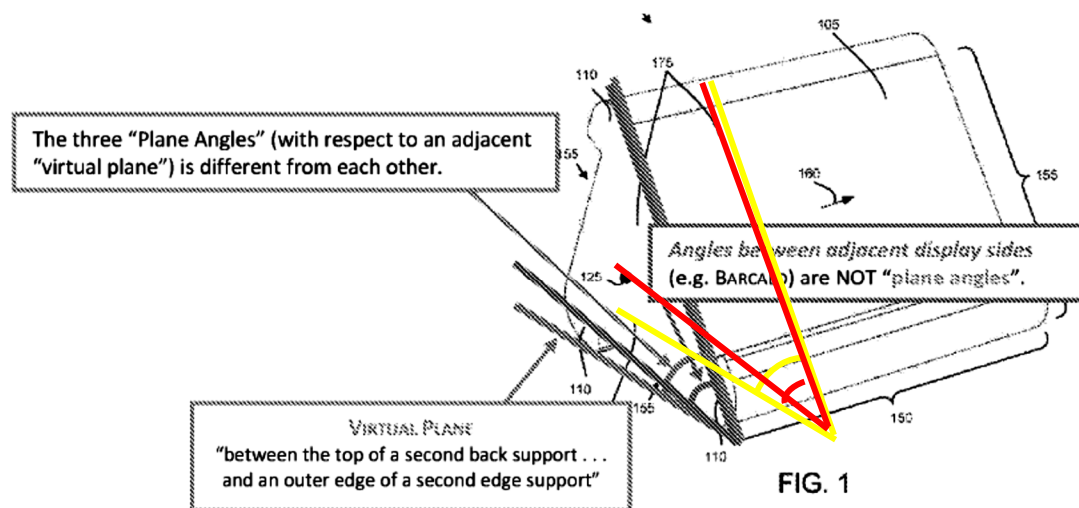
the claims are obvious under Patent Owner's or Petitioner's proposed construction. *See* Ex-1003, ¶ 90.

C. “support angle” (Claims 12–13, 15–17, 19)

In the Litigation, the Patent Owner proposed construing this term the same as “plane angle.” *Compare* Ex-1015, at 6 (Term 4), *with, id.* (Term 3a). Petitioner disagrees and contends indefiniteness. *Id.* As discussed below, the term “support angle” is not defined in the specification or '540, '443, or '737 applications, nor was it discussed during prosecution. *See* Section VII, *infra*; Ex-1003, ¶92. Moreover, different claim terms are presumed to have different meanings. *See CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) (“[i]n the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.”). However, the plain language of claim 12 for “support angle,” is that “the [] support back and [] support edge are configured to support a media device at a first support angle[.]” Ex. 1001, 5:49-51, *Phillips*, 415 F.3d at 1312–13 (claim construction should begin with the words of the claim).

Further, the specification discloses that a plane angle is not the angle between a back support and an adjacent edge support. It is, rather, the angle between a back support and an adjacent virtual plane. This is consistent with the prosecution history.

Ex.1002, 189 (arguing that “claimed viewing angles are not simply between three viewing angle sides as in Barcalo (which, by having a purely triangular cross-section, would add up to 180 degrees); Ex-1003, ¶¶91-93. Instead, the plane angles dictating the viewing angles are between support sides on ‘virtual planes’ and adjacent display sides, a relationship that does not require the cumulative support angles of the sides to equal 180 degrees.”); *see also Aspex Eyewear, Inc. v. Marchon Eyewear, Inc.*, 672 F.3d 1335, 1349 (Fed. Cir. 2012) (“The fact that the two adjacent claims use different terms in parallel settings supports the [] conclusion that the two terms were not meant to have the same meaning”).



Id. (Figure 1, annotated).

Petitioner does not agree with Patent Owner’s representations regarding the Barcalo and Halpin references, but because claims cannot be challenged under §112 here, Petitioner respectfully submits that “support angle” be construed, as “the angle

formed between the support back and support edge that are configured to support a media device.”

VII. THE EFFECTIVE FILING DATE

A. Effective Filing Date for claims 1–2 and 8–10

Claims 1–2 and 8–10 are not entitled to an effective filing date earlier than June 24, 2016, because new matter was added but not disclosed in the prior applications. Specifically, the claim limitation “a first viewing angle of the first back support is 36 degrees, a second viewing angle of the second back support is 74 degrees, and a third viewing angle of the third back support is 49 degrees” was not disclosed. *See* 37 CFR §1.71(b) (“The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old.”); *TurboCare Div. of Demag Delaval Turbomachinery Corp. v. GE*, 264 F.3d 1111, 1119 (Fed. Cir. 2001) (disclosure must “necessarily be present”); *Hyatt v. Boone*, 146 F.3d 1348, 1354 (Fed. Cir. 1998) (“It is insufficient as written description, for purposes of establishing priority of invention, to provide a specification that does not unambiguously describe all limitations of the count.”). The specification of the ’737 application included additional disclosures that were not disclosed in the ’443 and ’540 applications. *See* Ex-1007, ¶¶[0018], [0019], [0023], Figure 1. Further, the ’540 application did not

disclose “a top of each back support is in physical communication with an adjacent edge support clockwise about a central axis,” or “each edge support comprises an edge support width of 2 centimeters (cm) with an edge angle of 90 degrees to an adjacent back support,” or a “plane angle,” or a “virtual plane,” or “viewing angles.”

In the Litigation, Patent Owner contends “HPI’s first non-provisional application discloses the different viewing angles recited in claim 1 based on its description and the corresponding example shown in Figure 2, [], as well as all the other limitations of claims 1-2 and 8-10.” Ex-1017, 7. This is incorrect. *See* Ex-1003, ¶¶95-97. During prosecution of the ’443 application the Examiner rejected amended claim 1 (adding specific angles limitation) under 35 U.S.C. §112(a) because “[t]here have not been prior disclosure of these specific angle properties in this application. There is not disclosure of the criticality of the angles being of these specific angular values in the specification.” Ex-1006, 83-84. Applicants acquiesced and agreed to file a CIP for “disclosure of the materials and structural limitations of the invention to overcome the prior art references cited.” *Id.*, 92. The new disclosure led to the allowance of the ’454 patent. Ex-1007, 65 (noting that “each side allows for three distinct display angles for the media device”); Ex-1002, 127-128. Patent Owner admits in the Litigation that this was the prosecuting attorney’s “error,” and that “[t]he previous introduction of the specific viewing angles was” Ex-1017, 64.

Based on the disclosure of the '443 and '540 applications, a POSA would not conclude that the inventor necessarily possessed the specific viewing angles and the support for these angles was only provided in the '737 application. *See* Ex-1003, ¶¶95-97. Therefore, the effective filing date of claims 1–2 and 8–10 is the June 24, 2016 filing date of the '737 application.

B. Effective Filing Date for claims 12-13, 15-17, 19

Claims 12-13, 15-17, 19 of the RE'479 patent are not entitled to an effective filing date earlier than January 30, 2019, because new matter was added but not disclosed in the prior applications. Specifically, the claim limitation “support angle,” was not disclosed in any of these applications, including in the figures. Neither Figure 1 nor 4 disclose such angle, and Patent Owner improperly conflates “plane angle” with “support angle.” Therefore, the effective filing date is the January 30, 2019 filing date of the '797 application.

It is not sufficient that a POSA reading a later application can find similar disclosure in an earlier application; rather, a POSA must understand from the earlier application *alone* that the inventor had possession of the later-claimed subject matter. *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1333-34 (Fed. Cir. 2008); 37 CFR §1.71(b); 37 CFR §1.83(a) (“The drawing in a nonprovisional application must show every feature of the invention specified in the claims.”). Here,

no specification discloses the term “support angle.” While in the Litigation, Patent Owner contends that a POSA “would have understood the use of ‘support angle’ based on its plain English meaning and the disclosures of the previous application,” (Ex-1017, 8), a POSA’s knowledge cannot make up for the absence of a disclosure. *See Viking Drill & Tool, Inc. v. Hongjia Wang*, IPR2023-00473, Paper 82, 25 (P.T.A.B. July 5, 2024)(citing *Lockwood v. Am. Airline, Inc.*, 107 F.3d 1565, 1571–72 (Fed. Cir. 1997) (“Entitlement to a filing date does not extend to subject matter which is not disclosed, but would be obvious over what is expressly disclosed. It extends only to that which is disclosed.”))).

A POSA trying to decipher what is meant by the “support angle” would read the claim language of claim 12 in conjunction with the remainder of the specification, including the figures. And, a POSA would conclude that because the claim limitation is not disclosed in any of the applications or the RE’479 specification, it is a feature shown in the prosecution history as being different from a “plane angle.” *See* Ex-1003, ¶¶98-101.

Further, ’540 application did not disclose “a top of each back support is in physical communication with an adjacent edge support clockwise about a central axis,” or a “virtual plane,” or “viewing angle.” Because of the lack of disclosure in the prior applications, a POSA would not conclude from that disclosure that the

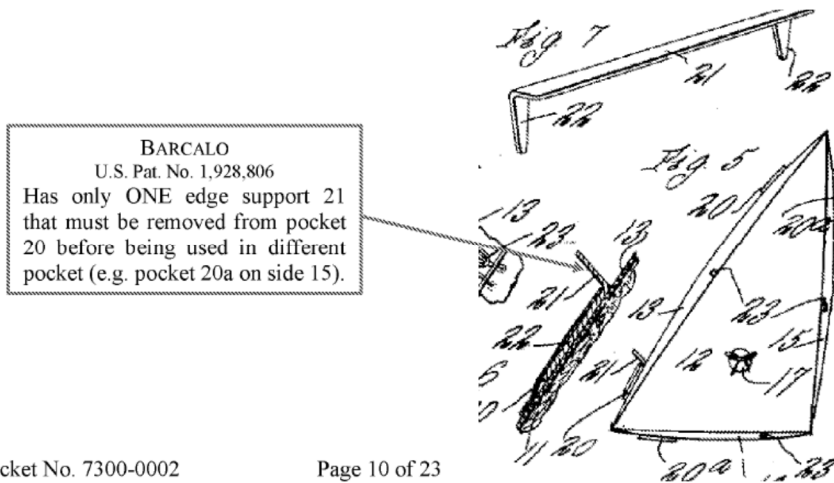
inventor necessarily possessed the later-disclosed and claimed “support angle” limitation. Therefore, the effective filing date of the challenged claims 12-13, 15-17, 19 is the January 30, 2019 filing date of the ’797 application.

C. Effective Filing Date for claims 20–21, and 27–29

Claims 20–21, and 27–29 of the RE’479 patent are not entitled to an effective filing date earlier than October 20, 2014, because new matter was added which was not disclosed in the ’540 application. Specifically, the claim limitation “each edge support comprises an edge support width with an edge angle in the range of 85 to 120 degrees to an adjacent support back, a face of each edge support width oriented clockwise about the central axis,” was not disclosed in the ’540 application.

In the Litigation, Patent Owner asserts that “[t]he provisional application describes a ‘ledge that helps hold and stabilize’ a tablet or book, which has a width and is oriented clockwise about a central axis; this is the recited ‘edge support.’” Ex-1017, 9-10. But the Figures in the ’540 application would not convey to a POSA that this was the claimed invention of claims 20–21, and 27–29, let alone “each edge support comprises an edge support width with an edge angle in the range of 85 to 120 degrees to an adjacent support back, a face of each edge support width oriented clockwise about the central axis.” *See* Ex-1003, ¶¶102-103. Further, that ’540 application did not disclose “a top of each back support is in physical communication

with an adjacent edge support clockwise about a central axis,” or a “plane angle,” or a “virtual plane,” or “viewing angle.” Ex-1005, 5. These “ledges” are the same as disclosed in Barcalo, which the applicants admitted to, albeit distinguishing Barcalo as having “ONE edge support.” Ex-1002, 94.



Id.

Therefore, the '540 provisional application does not provide support for claims 20–21, and 27–29, and these claims cannot claim priority earlier than October 20, 2014.

VIII. OVERVIEW OF THE PRIOR ART

A. Cannon

Cannon published on April 30, 2015, and is prior art under 35 U.S.C. §102(a)(1) to claims 1, 2, 8–10, 12, 13, 15–17, 19.

Like the '443 application discussed in Section VII.A., Cannon discloses a “multiple viewing angle media support, and apparatus” which “includes three

support sides” where “each support side includes a back support and an edge support.” Ex-1008, Abstract, ¶[0004]; *see* Figs. 1, 2.

Cannon discloses each edge support **110** may have an edge support width **135**, in the range of 1-5 cm. *Id.*, ¶[0024]. Cannon also discloses that “each edge support **110** forms an edge angle **140** with an adjacent back support **105**. The edge angle **140** may be in the range of 85 to 120 degrees. The edge angle **140** may be 90 degrees.”). Cannon discloses in Figure 2 the face of each edge support width as oriented clockwise about the central axis.

Cannon discloses angles between the plane of a back support and a virtual plane, formed from the top of a back support and the other edge of an edge support, of 50-60 degrees, 55-65 degrees, and 50 to 75 degrees. *Id.*, ¶¶[0004], [0021].

Cannon discloses an embodiment with three support sides **155**, three plane angles **120** that generate viewing angles **160**. *Id.*, ¶¶[0021], [0023], [0027].

Cannon discloses an embodiment wherein the back supports have longitudinal lengths in the range of 12 to 26 cm, 9 to 21 cm, and 10 to 22 cm. *Id.*, ¶[0022].

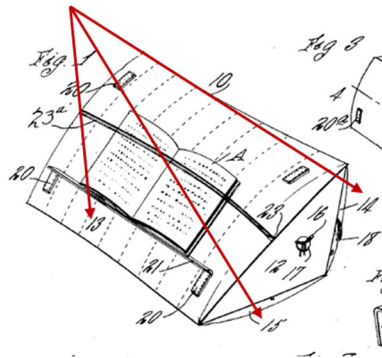
B. Barcalo

Barcalo issued on October 3, 1933 and is prior art under 35 U.S.C. §102(a)(1) to claims 1, 2, 8–10, 12, 13, 15–17, 19–21, and 27–29.

Barcalo discloses pillows or cushions to support books or magazines “adjustably.” Ex-1009, 1:5-8; 1:66-76. The support can be used at “in an inclined position,” “with which the inclination of the articles so supported may be varied” *Id.*, 1:9-18; *see also id.*, 2:18-22.

Barcalo discloses a pillow for use of propping materials for reading which is triangular in shape. “The edges of the triangular ends are preferably nearly, but not equal in length, and all the angles of the triangle also are preferably unequal, so that when the pillow is supported upon *different side faces*, the other side faces *will make different inclinations to the supporting surface.*” *Id.*, 1:86-91 (emphasis added).

Three different faces (13, 14,
15) with three different
inclinations

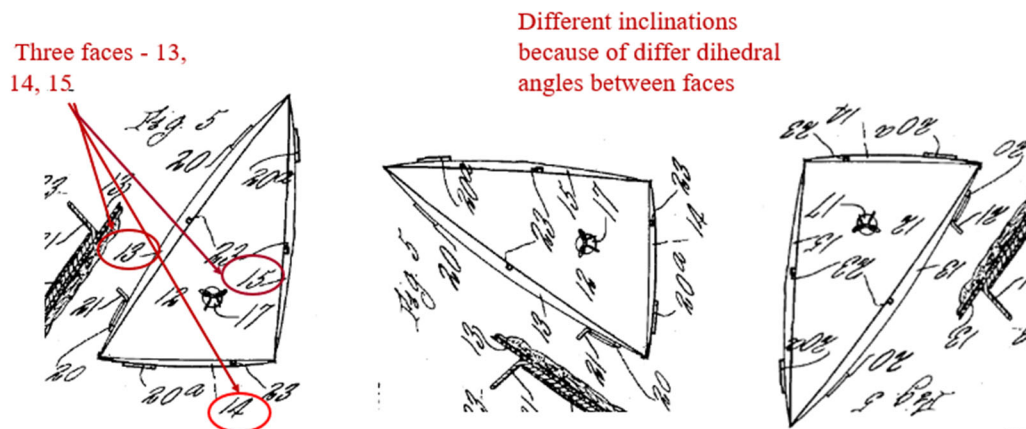


Id., Figure 1 (annotated).

Barcalo further discloses that “[a] bar 21 serves as the rest and is provided with depending angular feet 22 which are received in the pockets 20 along either side edge of a side face of the pillow, as shown in Fig. 1. The bar or rest 21 thus

forms a flange or ledge extending away from the side face of the pillow against which it is placed, and holds a book or magazine or other article A, that may rest upon this inclined face of the pillow, from sliding down this inclined face.” (see above). *Id.*, 2:32-41.

It further discloses that “[b]y turning the pillow over upon another side face, the side face 13 will make a different inclination to the horizontal or to a supporting surface for the pillow, because the dihedral angle between the faces 13 and 14 is different than the dihedral angle between the faces 13 and 15.” *Id.*, 45-50.



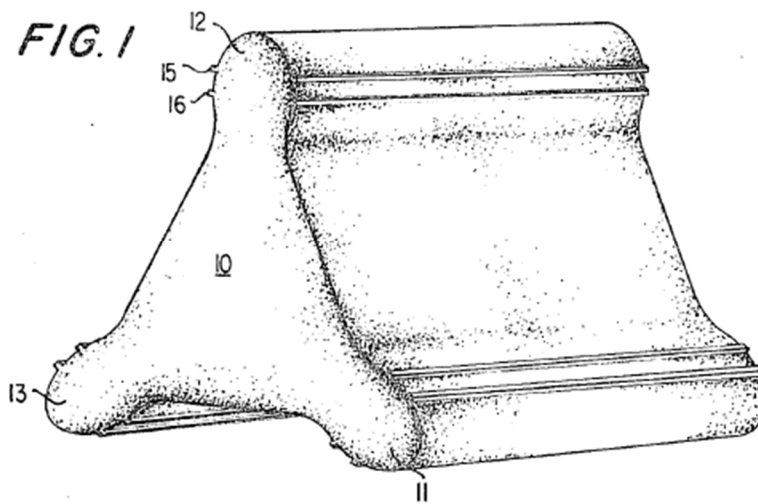
Id., Figure 5 (annotated).

Barcalo discloses that the embodiments shown in Figs. 1 to 8 have a pillow which “includes a sack or case 10 of flexible sheet material, such as textile fabric, or leather, which is completely filled with ... any other suitable soft and more or less pliable or resilient filling material.” *Id.*, 1:67-73.

C. Dean

Dean issued on July 17, 1973 and is prior art under 35 U.S.C. §102(a)(1) to claims 1, 2, 8–10, 12, 13, 15–17, 19–21, and 27–29.

Dean discloses a triangular support for maintaining objects upright. Ex-1011, Abstract. “The support is of generally triangular cross section . . . and provided with plural raised projections near each apex.” *Id.*; *see also id.*, Fig. 1.

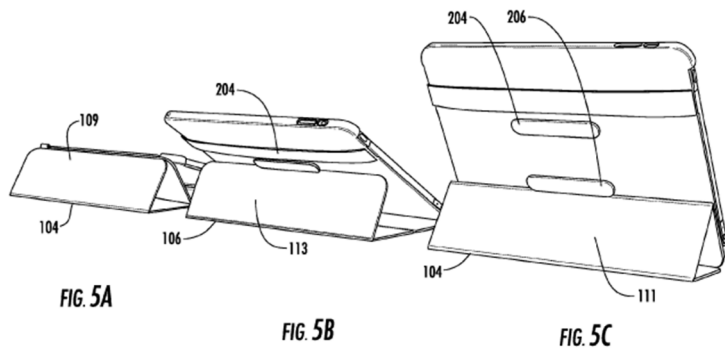


Dean discloses that the “apex portions **11**, **12**, and **13** provided at the three ends of member **10** are preferably bulbous and enlarged.” *Id.*, 1:66-68. Dean discloses that these regions assist in preventing slipping of the object propped against the supportive member **10** by having projections **15** and **16** to engage. These are “spaced apart ridges or ribs having a rectangular cross section with abrupt edges.” *Id.*, 2:9-14; *see, e.g., id.*, Fig. 3.

D. Diebel

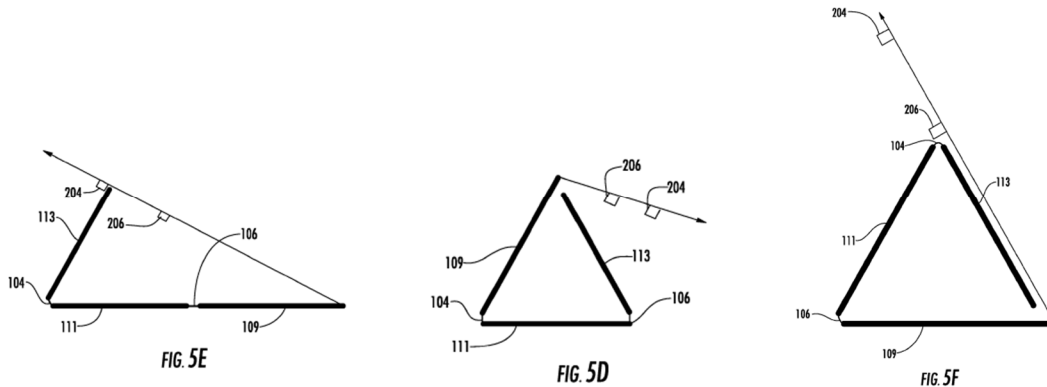
Diebel was filed on March 28, 2011, and issued February 24, 2015, and is prior art under 35 U.S.C. §102(a)(1)–(2) to claims 1, 2, 8–10, 12, 13, 15–17, 19–21, and 27–29.

Diebel discloses a foldable cover with panels or sections and hinges that allow the cover to be folded into a stand for, e.g., an electronic tablet. Ex. 1010, Abstract; 1:59-61; *see also id.* at 5:4-14. A configuration achievable by the foldable cover is a triangular cross-sectional shape. *Id.*, 6:32-33; 6:35-37.



Id., Figs 5A–5C; 8:14-60; *see also* Fig. 10.

In various implementations of the Diebel tablet cover, the case may have varying viewing angles. *Id.*, Abstract; 1:62-64. Diebel discloses a specific implementation where the angle from the table can be varied in a range from about 15 degrees to about 60 degrees by adjusting the length of panel 113 and position of bump 204 (*see* Fig 5B, above). *Id.*, 6:47-50; 8:47-50.



See id. at Figs. 5D–5E.

“In various implementations of a case according to the invention, there can be more angles (e.g., more than three different angles) than described here, and different angles (e.g., 8, 20, 35, 40, 50, 55, 65 degrees, and others)” by varying the number of bumps, panels, and hinges. *Id.* at 9:7-17.

E. Klepar I

Klepar I was published on July 2, 2015, and filed on December 27, 2013 and is prior art under 35 U.S.C. §102(a)(1)-(2) to claims 1, 2, 8–10, 12, 13, 15–17, 19–21, and 27–29. As claims 1, 2, and 8–10 have an effective filing date of June 24, 2016 and claims 20–21, and 27–29 have an effective filing date of October 20, 2014, Klepar I is prior art under 35 U.S.C. §§102(a)(1)-(2) as to these claims. As claims 12, 13, 15–17, and 19 have an effective filing date of January 30, 2019, Klepar I is prior art under 35 U.S.C. §102(a)(1).

Klepar I discloses that a multi-position stand that may have “a first receiving panel having an L-channel configured to support a first electronic display; a second receiving panel attached to the first receiving panel, the second receiving panel having a support channel configured to support a second electronic display; and a base panel attached to the first receiving panel and to the second receiving panel, the base panel forming a structure with the first receiving panel and the second receiving panel, the structure having the shape of a substantially triangular cylinder.” *Id.*, Abstract, ¶¶[0001], [0012]-[0014]. Fig. 1 shows a perspective view of a multi-position stand, *see also* Fig. 6, Fig. 3 and Fig. 2 shows a computer display device supported by the multi-position stand of Fig. 1.

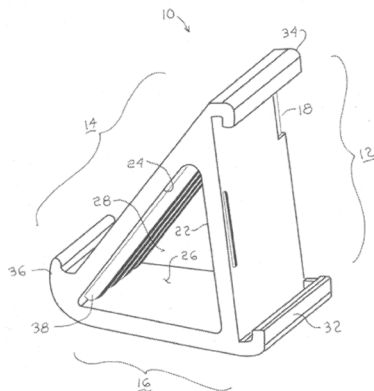


Fig. 1

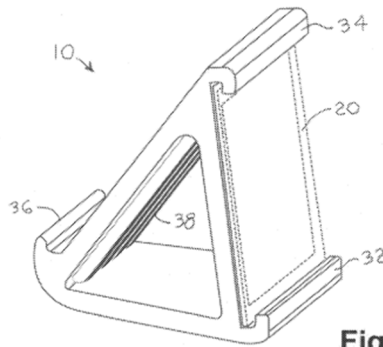


Fig. 2

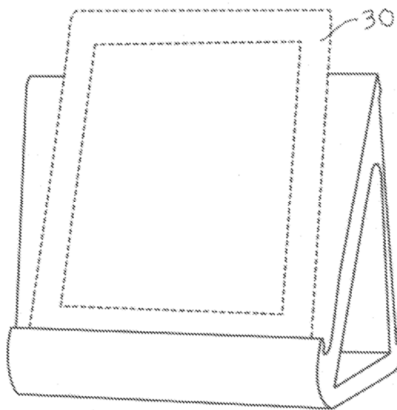


Fig. 3

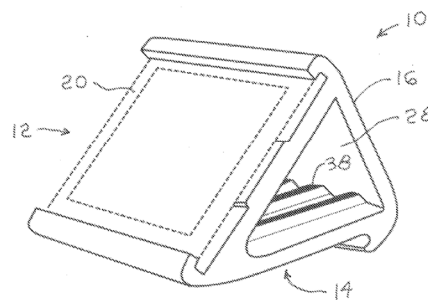


Fig. 6

Klepar I discloses a stand that “help[s] users quickly change the viewing angle and orientation of the tablet computers in one of several positions.” *Id.*, ¶[0010]. Klepar I discloses that the device is intended to securely hold the tablet during use. *Id.*, ¶¶[0001], [0006]. Klepar I also discloses that “[t]he user is enabled to flip over the stand holding the tablet computer in one of three ‘flip’ positions to get a specific viewing angle or use the tablet as a simple stand.” *Id.*, ¶[0029].

F. Klepar II

Klepar II issued on April 22, 2014, and is prior art under 35 U.S.C. §102(a)(1)-(2) to claims 1, 2, 8–10, 12, 13, 15–17, 19–21, and 27–29.

Klepar II is an ornamental design dual-positioning tablet pillow stand. Some illustrative, non-limiting figures from the patent are set forth below.

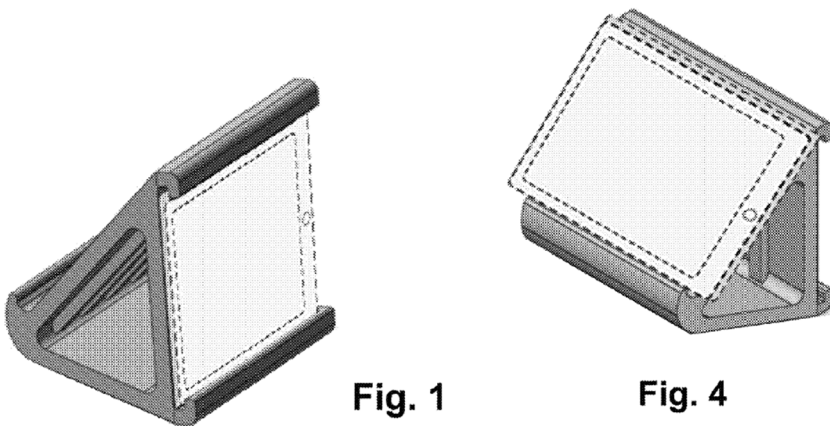
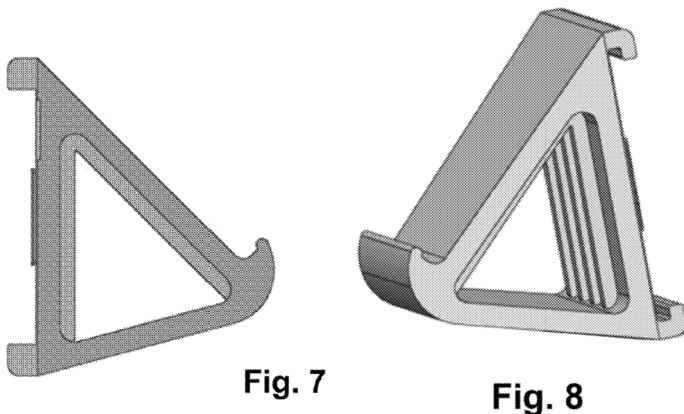


Fig. 4 is a perspective view of the dual-positioning tablet pillow stand of Fig. 1 to support an image display device in a second viewing position, in accordance with the claimed design.



Figures 7 and 8 are side views of the dual-positioning tablet pillow stand of Fig. 1. Klepar II is capable of providing three different viewing **angles**.

IX. GROUNDS FOR UNPATENTABILITY

A. Ground 1: Claims 1, 2, 8–10, 12, 13, 15–17, and 19 Would Have Been Obvious Based on Cannon in view of Diebel or Barcalo and/or the knowledge of a POSA

1. Independent Claim 1

a. Elements 1A: “An apparatus comprising...” (“the Preamble”)

The preamble is not limiting. But, even if limiting, it is met by Cannon. Cannon refers to “[a]n apparatus for multiple viewing angle media support is disclosed.” *See* Ex-1008, Abstract and ¶¶[0002], [0004], Figures 1-4; *see also* Ex-1003, ¶¶142-143.

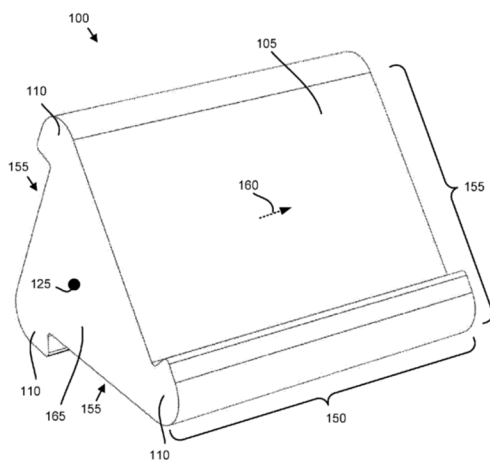
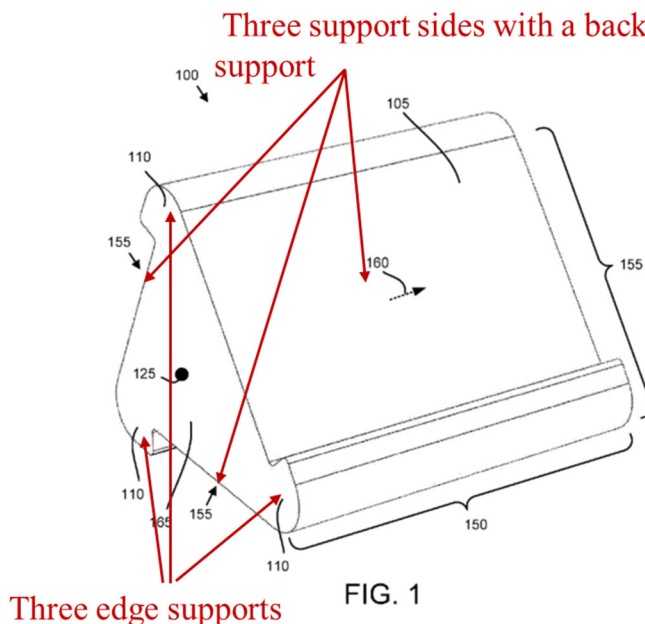


FIG. 1

b. Element 1B: “three support sides, each support side comprising a back support and an edge support,”

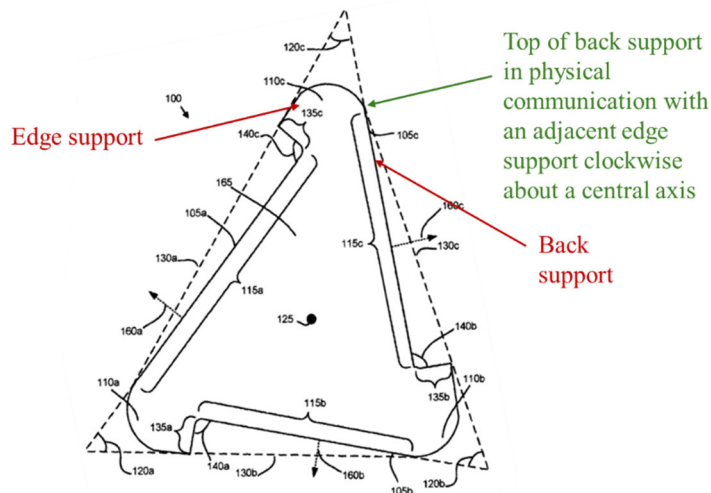
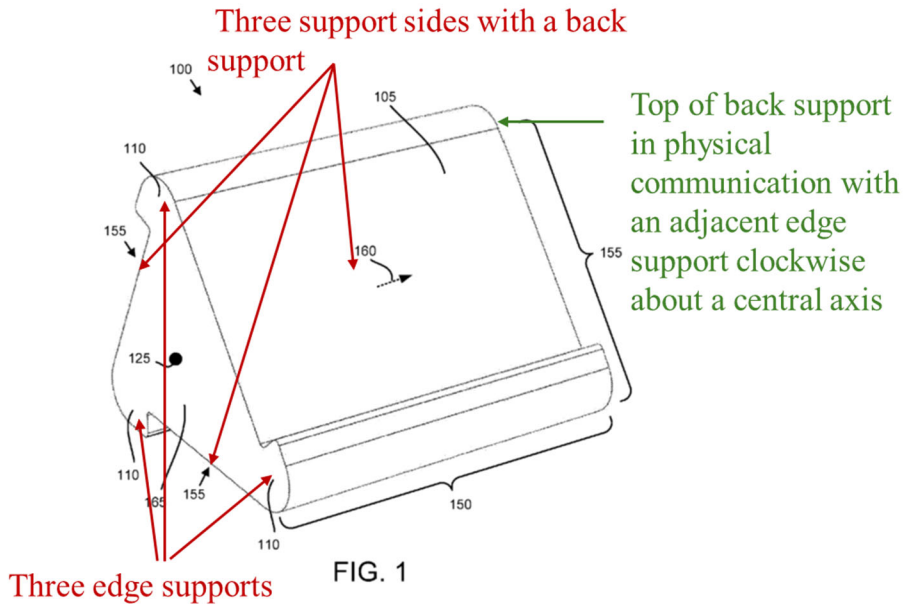
The Cannon apparatus is a multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support. Ex-1008, Abstract, ¶[0004]; *see* Fig. 1 (annotated below) ; *see also* Ex-1003, ¶¶144-145.



c. Element 1C: “wherein a top of each back support is in physical communication with an adjacent edge support clockwise about a central axis and each back support”

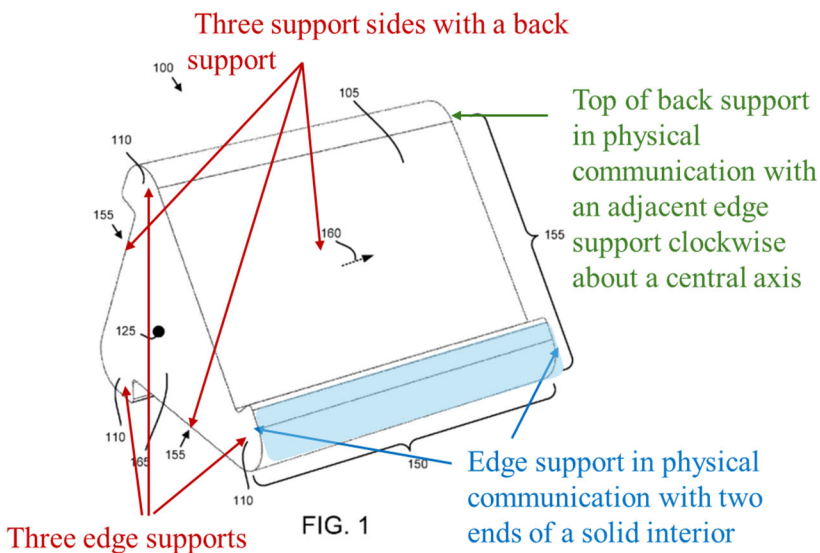
Cannon discloses support sides of the multiple viewing angle media support may be disposed about a central axis. Ex-1008, ¶[0016]; *see also* ¶[0004]. Cannon discloses the top of each back support is in communication with an adjacent edge support 100 about the central axis with an adjacent edge support clockwise about a

central axis and each back support as shown in Figures 1 and 2. *Id.*, ¶[0021]; *see also* ¶[0004], Figs. 1 and 2 (annotated below counterclockwise). *See* Ex-1003, ¶¶146-147.



d. Element 1D: “and each edge support is in physical communication with two ends of a solid interior,”

Cannon discloses an embodiment, wherein each back support and each edge support is a surface of a solid. The solid media surface support may have one or more ends. In addition, the solid media support may be a pillow. Ex-1008, ¶[0019]; see Fig. 1 (annotated below). A POSA would understand that each edge support is in physical communication with two ends of a solid interior. See Ex-1003, ¶¶148-149.

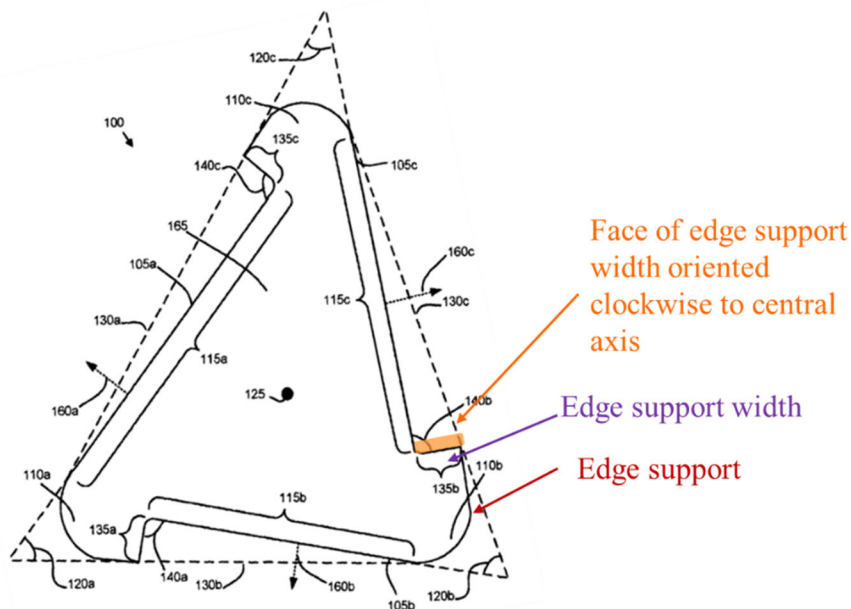


e. Element 1E: “each edge support comprises an edge support width of 2 centimeters (cm) with an edge angle of 90 degrees to an adjacent back support,”

Cannon discloses that each edge support has an edge support width of 2 cm. *Id.*, claim 9, ¶[0024]. Cannon also discloses an edge angle of 90 degrees to an adjacent back support. *Id.*; see also Ex-1003, ¶150.

f. Element 1F: “a face of each edge support width oriented clockwise about the central axis,”

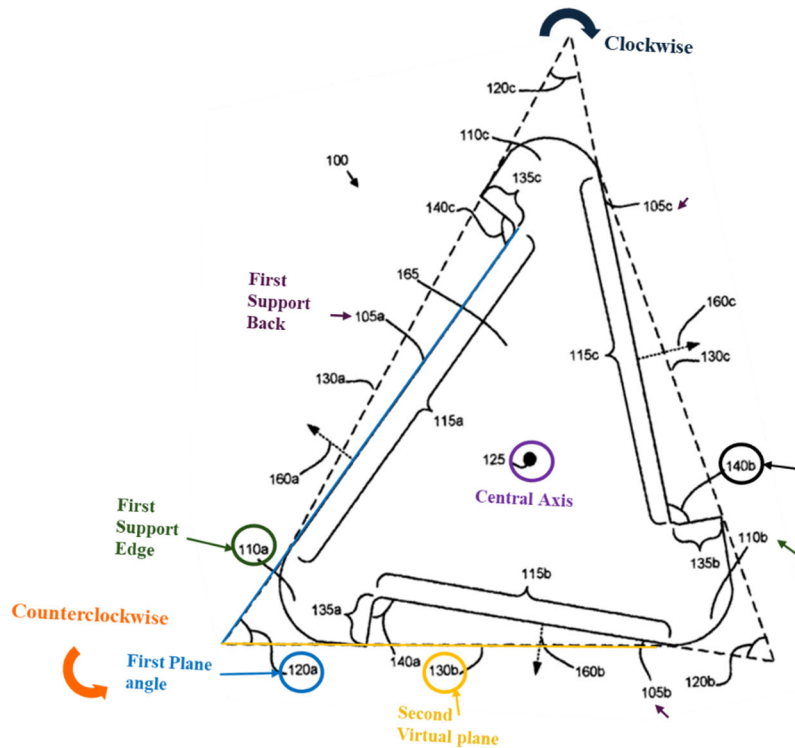
Cannon discloses the face of each edge support width as oriented clockwise about the central axis. *Id.*, Figs. 1, 2 (annotated below), ¶[0004]; *see also* Ex-1003, ¶151.



g. Element 1G: “a plane of a first back support is at a first plane angle of 60 degrees to a second virtual plane between the top of a second back support counterclockwise to the first back support and an outer edge of a second edge support counterclockwise to the first back support,”

Cannon discloses “[a] plane of a first back support 105a may be at a first plane angle 120a in a range of 50 to 60 degrees to a second virtual plane 130b between the top of a second back support 105b counterclockwise to the first back support 105a

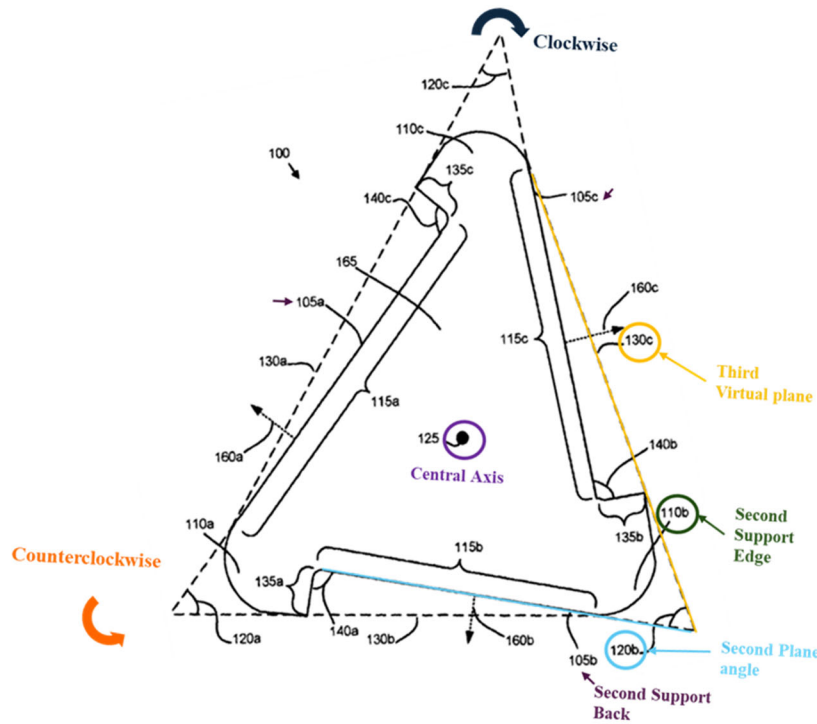
and an outer edge of a second edge support 110b counterclockwise to the first back support 105a[.]” Ex-1008, ¶¶[0004], [0021], Fig. 2 (annotated below). In an embodiment, the first plane angle is 60 degrees. *Id.*, ¶[0022]; see Ex-1003, ¶152.



- h. Element 1H: “a plane of the second back support is at a second plane angle of 80 degrees to a third virtual plane between the top of a third back support counterclockwise to the second back support and an outer edge of a third edge support counterclockwise to the second back support,”**

Cannon discloses “a plane of the second back support 105b may be at a second plane angle 120b in a range of 55 to 65 degrees to a third virtual plane 130c between the top of a third back support 105c counterclockwise to the second back support 105b and an outer edge of a third edge support 110c counterclockwise to the second

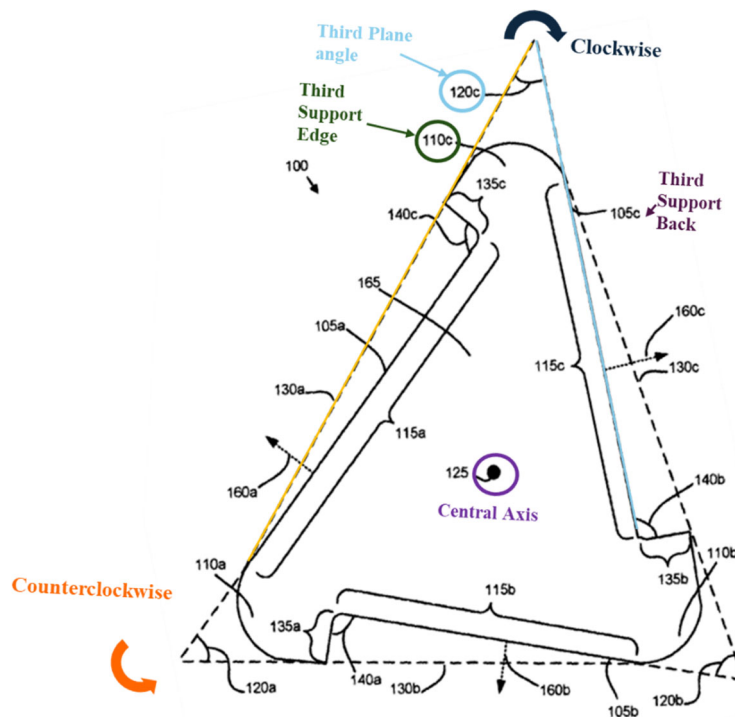
back support 110b.” Ex-1008, ¶¶[0004], [0021], Figure 2 (annotated below). In an embodiment, the second plane angle is 68 degrees. *Id.*, ¶[0022].



Cannon does not disclose “a second plane angle of 80 degrees to a third virtual plane,” but as noted during prosecution of the ’443 application, there is no criticality of this angle. It would have been obvious to a POSA to calibrate the back support relative to a virtual plane on which the apparatus rests such that a second plane angle is 80 degrees in view of the disclosures in Diebel and Barcalo. *See* Ex-1003, ¶¶153-158.

- i. **Element 1I: “a plane of a third back support is at a third plane angle of 40 degrees to a first virtual plane between the top of the first back support counterclockwise to the third back support and an outer edge of the first edge support counterclockwise to the third back support; and,”**

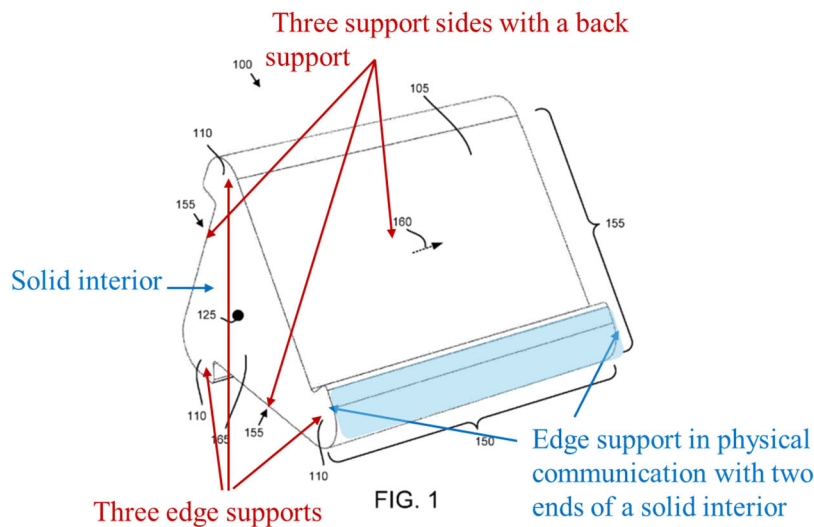
Cannon discloses “[a] plane of a third back support 105c may be at a third plane angle 120c in the range of 50 to 75 degrees to a first virtual plane 130a between the top of the first support back 105a counterclockwise to the third support back support 105c and an outer edge of the first edge support 110a counterclockwise to the third back support 105c[.]” Ex-1008, ¶¶[0004], [0021], Figure 2 (annotated below).



Cannon does not disclose “a third plane angle of 40 degrees to a first virtual plane, but as noted during prosecution of the ’443 application, there is no criticality of this angle. For the same reasons as Element 1H, it would have been obvious to a POSA to calibrate the back support relative to a virtual plane on which the apparatus rests such that a third plane angle is 40 degrees. *See* Ex-1003, ¶¶159-164.

j. Element 1J: “wherein each back support, each edge support, and each end is a surface of the solid interior,”

Cannon discloses an embodiment where each back support and each edge support is a surface of a solid. Ex-1008, ¶[0019], Figs. 1, 4. A POSA would understand each back support, each edge support, and each end is a surface of a solid interior. *See* Ex-1003, ¶165.



k. Element 1K: “the solid interior is a pillow covered in fabric,”

Cannon discloses that the solid media support may be a pillow. In one embodiment, the surface of the solid is ultra suede. Ex-1008, ¶[0019]; Figs. 1, 4 (depicting the appearance of a solid interior); *see also* Ex-1003, ¶166.

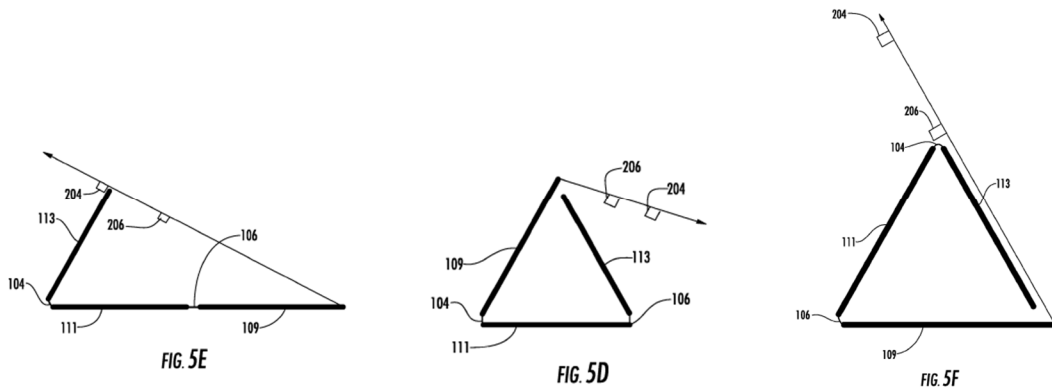
I. Element 1L: “a first viewing angle of the first back support is 36 degrees, a second viewing angle of the second back support is 74 degrees, and a third viewing angle of the third back support is 49 degrees.”

Cannon disclosed three support sides which generate three different viewing angles for three different viewer positions. Ex-1008, ¶¶[0018], [0027]. Cannon does not teach the specific claimed viewing angles. *Id.*, ¶[0023]; *see also* Ex-1006, 92, 95; Ex-1007, 65.

However, it would have been obvious to a POSA design choices to modify the plane angles in Cannon and then estimate and optimize for the viewing angles. The “viewing angle is construed as the “angle of a vector normal to a back support or support back (whichever is recited in the claim) positioned to support a media device as defined in relation to the plane on which the media stand is resting,”. *See supra* Section VI.B. a POSA would know how to determine the viewing angle based on the design choice and would generate the claimed viewing angles. *See* Ex-1003, ¶¶167-171.

This was known in the art. Diebel discloses supporting a media device where the angle from the table on which the panel rests can be varied in a range from about

15 degrees to about 60 degrees by adjusting the length of panel 113 and position of bump 204. *Id.*, 8:47-50.

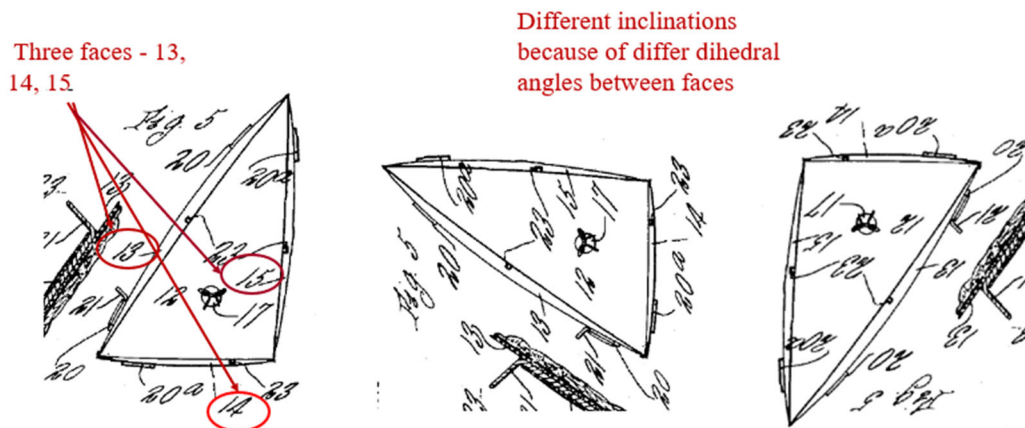


See Ex-1010, Figs. 5D–5E (depicting cross-sectional views of Figs. 5A, B, and C, respectively, as viewed from the left side of the case).

The internal angle is about 60 degrees and is regarded as useful for “viewing media (e.g., watching a movie) on an electronic tablet)” and can be adjusted to more or less than 60 degrees by lengthening or shortening the panel. *Id.*, 8:64-9:4. This angle can be varied in a range from about 30 degrees to 75 degrees. *Id.*, 9:5-6. Diebel discloses that “[i]n various implementations of a case according to the invention, there can be more angles (e.g., more than three different angles) than described here, and different angles (e.g., 8, 20, 35, 40, 50, 55, 65 degrees, and others)” but varying the number of bumps, panels, and hinges. *Id.*, 9:7-17.

A POSA would have been motivated to provide a back support in Cannon with a plane angle such that it incorporates the advantage of having different viewing

angles discussed by Diebel. *See* Ex-1003, ¶¶167-171. Indeed, Barcalo disclosed a pillow for use of propping materials for reading which is triangular in shape having side faces wherein “when the pillow is supported upon different side faces, the other side faces will make different inclinations to the supporting surface.” Ex-1009, 1:89-91, Figs. 1, 5.



Ex-1009, Fig. 5.

This was a common and well-known design approach, so a POSA would have a reasonable expectation of success in achieving “a first viewing angle of the first back support is 36 degrees, a second viewing angle of the second back support is 74 degrees, and a third viewing angle of the third back support is 49 degrees.” *See* Ex-1003, ¶¶167-171.

Because Cannon, in combination with Diebel or Barcalo, discloses all of the elements of claim 1, this claim would have been obvious to a POSA. *See* Ex-1003, ¶172.

2. Dependent Claim 2

Dependent claim 2 further requires “the first back support has a longitudinal length in the range of 12 to 26 centimeters (cm), the second back support has a longitudinal length in the range of 9 to 21 cm, and the third back support has a longitudinal length in the range of 10 to 22 cm.” Cannon discloses an embodiment with the claimed longitudinal lengths and renders this claim obvious. Ex-1008, ¶[0022]; *see also* Ex-1003, ¶173.

3. Dependent Claim 8

Dependent claim 2 adds the same limitation as element 1D of claim 1, requiring “each edge support has an edge support width in the range of 1 to 5 centimeters (cm).” Cannon discloses an edge support width in the range of 1 to 5 cm and renders this claim obvious. Ex-1008, ¶[0024]; *see also* Ex-1003, ¶174.

4. Dependent Claim 9

Dependent claim 9 adds the same limitation as element 1D of claim 1, requiring “a plane of each edge support forms an edge angle in the range of 85 to 120 degrees with an adjacent back support.” Cannon discloses an edge angle with an adjacent back support in the range of 85 to 120 degrees and renders this claim obvious. Ex-1008, ¶[0024]; *see also* Ex-1003, ¶175.

5. Dependent Claim 10

Dependent claim 10 adds the same limitation as element 1D of claims 1 and 9, requiring “the edge angle is 90 degrees.” Cannon discloses that the edge angle may be 90 degrees and renders this claim obvious. Ex-1008, ¶[0024]; *see also* Ex-1003, ¶176.

6. Independent Claim 12

a. Element 12A: “A media support apparatus comprising:...” (“the Preamble”)

For the same reasons as discussed for element 1A, Cannon discloses a media support apparatus. *See* Ex-1008, Abstract and ¶¶[0002], [0004], Figures 1-4; *see also* Ex-1003, ¶178.

b. Element 12B: “a body having a first support back, a second support back, and a third support back disposed about a central axis;”

For the same reasons as discussed for element 1B, Cannon’s apparatus has multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support disposed about a central axis. Ex-1008, ¶¶[0016], [0004]; *see also* Ex-1003, ¶179.

- c. **Element 12C: “a first support edge disposed between the first support back and the second support back, the first support back and first support edge are configured to support a media device at a first support angle,”**

As discussed above (*see* Section VI.C), the ’737, ’443 and ’450 applications do not disclose a “support angle.” Therefore, Cannon does not explicitly or implicitly disclose an “angle formed between the support back and support edge that are configured to support a media device.”

It would have been obvious to a POSA to configure a media support apparatus having a support back and support edge that are configured to support a media device at a support angle, i.e. the angle formed between the support back and support edge that are configured to support a media device. Barcalo which discloses that the pillow has edges of the triangular ends are preferably nearly, but not equal in length, and all the angles of the triangle also are preferably unequal, so that when the pillow is supported upon different side faces, the other side faces will make different inclinations to the supporting surface.” Ex-1009, 1:79-91. *See, e.g.*, Fig. 5. Diebel discloses a configuration achievable by the foldable cover is a triangular cross-sectional shape. Ex-1010, 6:32-33; 6:35-37, Figs. 5A–5C. A POSA would have been motivated to provide a support back and support edge that are configured to support a media device taught in Cannon at an angle as discussed by Diebel and Barcalo, i.e.

at an inclination that would facilitate supporting a media device. *See* Ex-1003, ¶¶180-183. A POSA would have a reasonable expectation that this would be successful at providing a support angle.

- d. Element 12D: “a second support edge disposed between the second support back and third support back, the second support back and second support edge are configured to support a media device at a second support angle;”**

For the same reasons as discussed regarding element 12C, a POSA would have been motivated to provide a second support back and support edge that are configured to support a media device taught in Cannon at an angle as discussed by Diebel and Barcalo, and have a reasonable expectation that this would be successful at providing a support angle. *See* Ex-1003, ¶184.

- e. Element 12E: “a third support edge disposed between the third support back and first support back, the third support back and third support edge are configured to support a media device at a third support angle,”**

For the same reasons as discussed regarding element 12C, a POSA would have been motivated to provide a third support back and support edge that are configured to support a media device taught in Cannon at an angle as discussed by Diebel and Barcalo and have a reasonable expectation that this would be successful at providing a support angle. *See* Ex-1003, ¶185.

- f. Element 12F: “wherein each edge support comprises an edge support width with an edge angle in the range of 85 to 120 degrees to an adjacent support back, a face of each edge support width oriented clockwise about the central axis;”**

Cannon discloses each edge support may have an edge support width which forms an edge angle with an adjacent back support in the range of 85 to 120 degrees. Ex-1008, ¶[0024]. Cannon discloses that the edge supports are clockwise oriented around a central axis. *Id.*; *see also* Ex-1003, ¶186.

- g. Element 12G: “wherein the media support apparatus is configured to be rotated about the central axis so that the body can rest on a horizontal support in any one of three positions including on a first virtual plane between a top of the second support back and an outer edge of the second edge support, on a second virtual plane between a top of the third support back and an outer edge of the third edge support, and on a third virtual plane between a top of the first support back and an outer edge of the first edge support; and”**

Cannon discloses that the media support 100 can be rotated to select a back support 105 with a comfortable viewing angle 160. Ex-1008, ¶¶[0020],[0028]. The support sides are disposed about a central axis. *Id.*, ¶[0016]. Cannon discloses virtual planes on which the apparatus can rest on a horizontal support in any one of three positions. *Id.*, ¶[0021]; *see also* Ex-1003, ¶187.

- h. Element 12H: “wherein the media support apparatus is configured to provide a first viewing angle of the media device when the media support apparatus body**

rests on the first virtual plane and the media device is supported at the first support angle, a second viewing angle when the media support apparatus body rests on the second virtual plane and the media device is supported at the second support angle, and a third viewing angle when the media support apparatus body rests on the third virtual plane and the media device is supported at the third support angle, wherein the first viewing angle, the second viewing angle, and the third viewing angle are different from one another.”

Cannon discloses an embodiment having three support sides which generate three different viewing angles for three different viewer positions. Ex-1008, ¶¶[0018], [0027] (“The first viewing angle 160a may be employed when the media support and the media is disposed in the user’s lap. The second viewing angle 160b may be used when the media support and the media is disposed on a table and the user is sitting upright. In addition, the 3rd viewing angle 160c may be used when the user is lying down and the media support is disposed on the user.”). These configurations are described in Cannon as virtual planes. *Id.*, ¶[0021]. Further, for the same reasons as discussed in elements 12C-12E, a POSA would provide a support back and support edge that are configured to support a media device taught in Cannon at an angle as discussed by Diebel and Barcalo to support a media device when the apparatus is disposed on such virtual planes. *See* Ex-1003, ¶¶188-189.

Because Cannon, in combination with Diebel or Barcalo, discloses all of the elements of claim 12, this claim would have been obvious to a POSA. *See* Ex-1003, ¶190.

7. Dependent Claim 13

Dependent claim 13 adds the same limitation as element 12C-12E of claim 12, requiring “the first support angle is between 50 and 60 degrees to the second virtual plane, the second support angle is between 55 and 65 degrees to the third virtual plane, and the third support angle is between 50 and 75 degrees to the first virtual plane.” Diebel and Barcalo disclose varying support angles. Determining the support angle would be a matter of routine for a POSA. *See* Ex-1003, ¶¶191-192. Thus, claim 13 also would have been obvious over Cannon in view of Diebel and/or Barcalo.

8. Dependent Claim 15

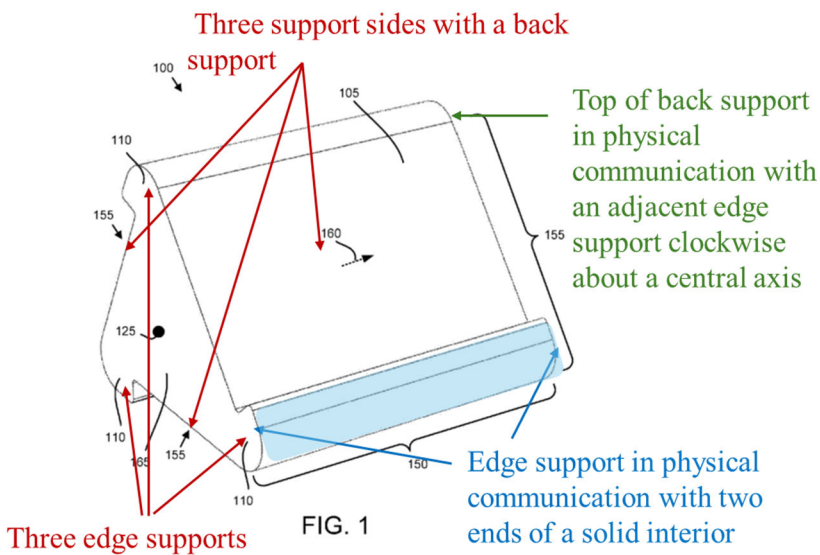
Dependent claim 15 requires “the edge support angle is 90 degrees,” which disclosed in Cannon and renders this claim obvious. Ex-1008, ¶[0024]; *see also* Ex-1003, ¶193.

9. Dependent Claim 16

Dependent claim 16 requires “the edge support width is 2 cm,” which disclosed in Cannon and renders this claim obvious. Ex-1008, ¶[0024]; *see also* Ex-1003, ¶194.

10. Dependent Claim 17

Dependent claim 17 requires “the body includes three solid corners, with each of the corners interposed between two adjacent support backs and including a respective edge support.” Cannon discloses an embodiment where each back support and each edge support is a surface of a solid. Ex-1008, ¶[0019]. Cannon further discloses that a top of each back support 105 is in physical communication with an adjacent edge support 110 about the central axis 125. *Id.* at ¶[0021]; *see also id.* at ¶[0004] (“[a] top of each back support is in physical communication with an adjacent edge support clockwise about a central axis.”), ¶[0024].



Thus, claim 17 also would have been obvious to a POSA. *See* Ex-1003, ¶¶195-196.

11. Dependent Claim 19

Dependent claim 16 requires “the edge support width is 2 cm,” which disclosed in Cannon and renders this claim obvious. Ex-1008, ¶[0024]; *see* Ex-1003, ¶197.

B. Ground 2: Claims 12, 13, 15–17, and 19 Would Have Been Obvious Based on Klepar I in view of Barcalo or Dean and/or the knowledge of a POSA

1. Independent Claim 12³

a. Element 12A:

Petitioner asserts the preamble is not limiting. But limiting or not, Klepar I discloses multi-position stand for supporting an electronic display device in one or more usage configurations. *See* Ex-1012, Abstract and ¶¶[0012], Figures 1-6; *see also* Ex-1003, ¶199.

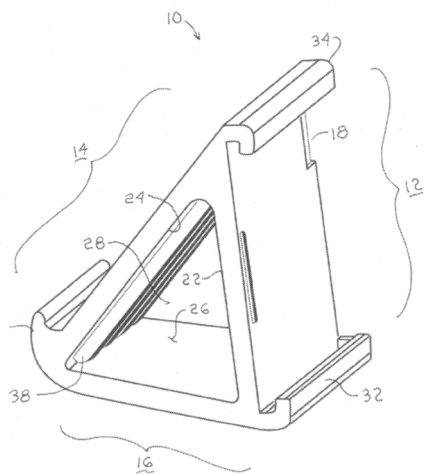


Fig. 1

³ *See* Section IX.A.6. for Petitioner’s identification of claim 12 elements.

b. Element 12B:

Klepar I discloses having a “first receiving panel, the second receiving panel configured to support a second electronic display; and a base panel attached to the first receiving panel and to the second receiving panel, the base panel forming a structure with the first receiving panel and the second receiving panel, the structure having the shape of a substantially triangular cylinder. Ex-1012, ¶¶[0012]; [0031]. It discloses three alternate configuration. *Id.*, Figs. 2, 3, 6.

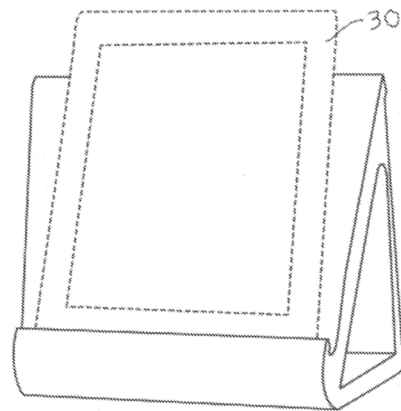
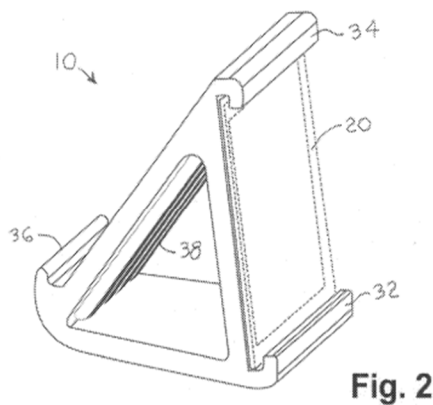


Fig. 3

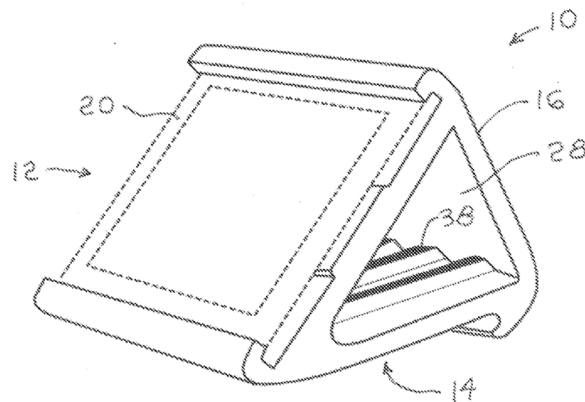
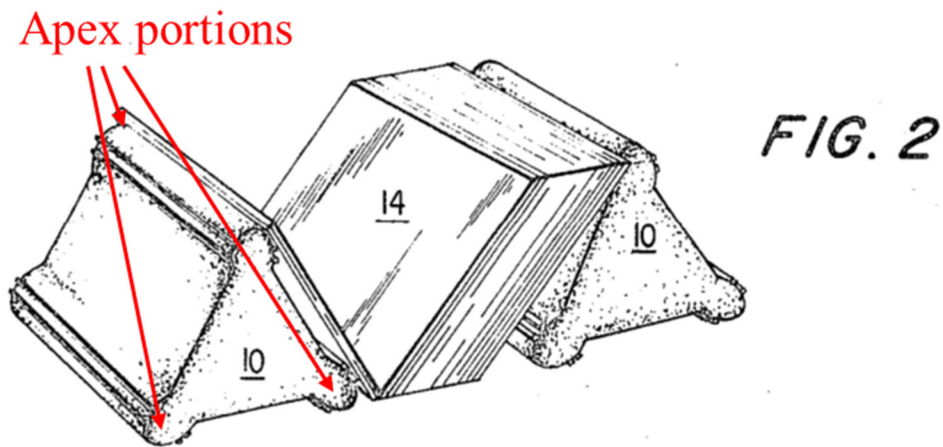
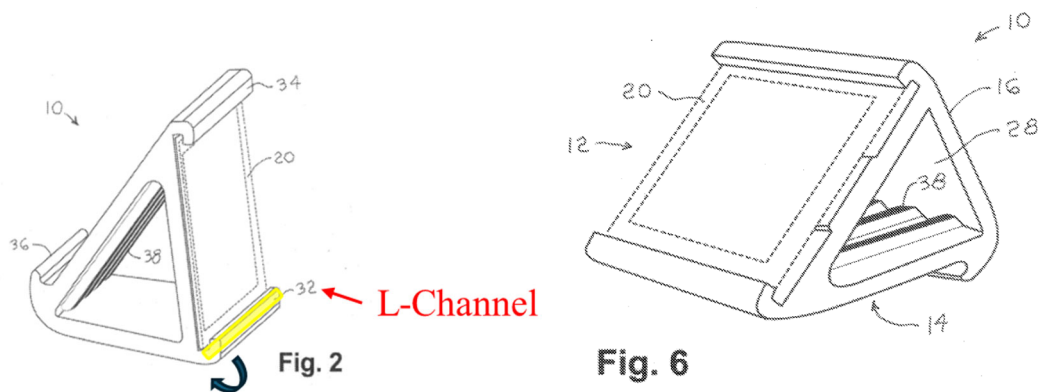


Fig. 6

The three disclosed orientations of the multi-position stand in Klepar I, would motivate a POSA to change the orientation of L-channel (32) such that it generates three support backs having orientation similar to Figure 6 in Klepar. A POSA would recognize that providing a third support back would be useful in view of Barcalo. Moreover, this would be a straightforward design choice because Dean discloses such support structures. *See* Ex-1003, ¶¶200-204.



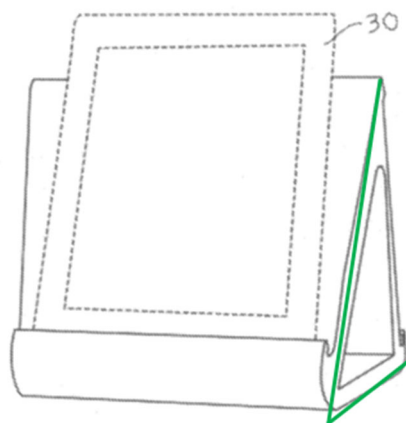
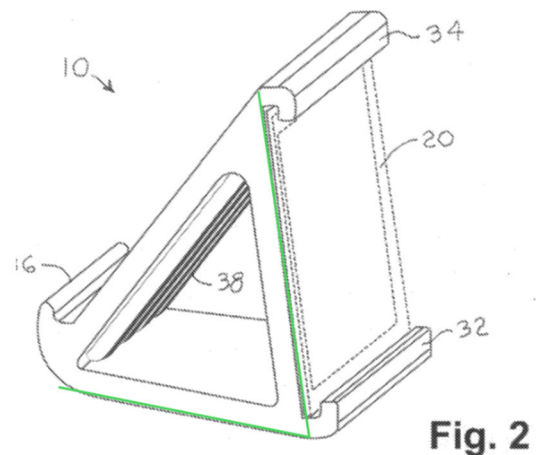
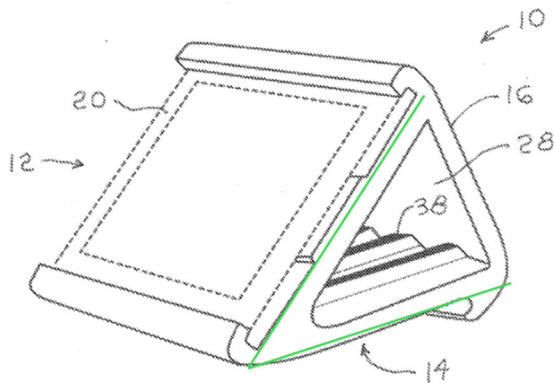
Ex-1011, Figure 2 (annotated).



Ex-1012, Figs. 2, 6 (orientation changed).

c. Element 12C:

Klepar I discloses that the two receiving panels “are dimensioned and oriented with respect to one another such that the multi-position stand **10** is shaped and angled to maintain a first electronic display device **20** at a comfortable angle relative to the body and line of vision of the user....” Ex-1012, ¶[00231]. A POSA would understand that Klepar I provides three different configurations wherein the support back and support edge support a media device at a support angle. *Id.*, Figs. 2,3,6 (annotated); *see also* Ex-1003, ¶¶205-208.



Moreover, Barcalo contemplates different inclinations to the supporting surface, and therefore a POSA would have been motivated to provide three support backs and support edges that are configured to support a media device taught in Klepar I/II applying the disclosures of Barcalo, i.e. at an inclination that would facilitate supporting a media device. A POSA would have a reasonable expectation that this would be successful at providing a support angle. *See* Ex-1003, ¶¶205-208.

d. Element 12D:

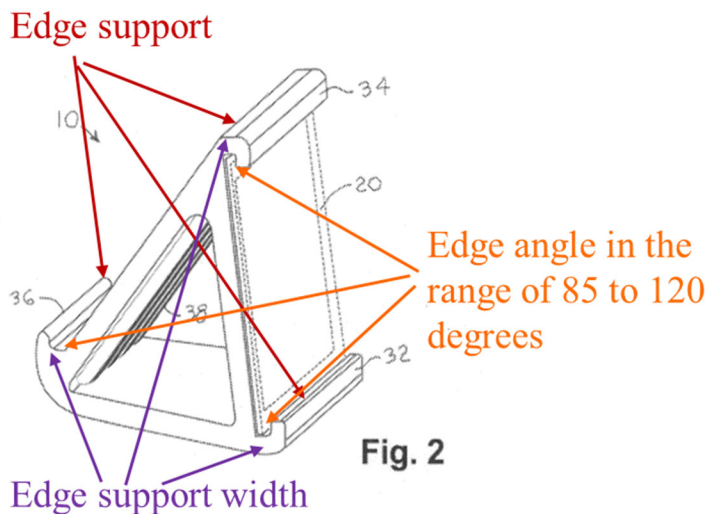
For the same reasons as Element 12C, a POSA would have been motivated to provide a support back and support edge that are configured to support multi-position stand taught in Klepar I to have a second support back configured to support a media device at a second support angle as disclosed in Barcalo with a reasonable expectation of success. *See* Ex-1003, ¶209.

e. Element 12E:

For the same reasons as Element 12C and 12D, a POSA would have been motivated to provide a support back and support edge that are configured to support multi-position stand taught in Klepar I to have a third support back configured to support a media device at a third support angle as disclosed in Barcalo with a reasonable expectation of success. *See* Ex-1003, ¶210.

f. Element 12F:

Klepar I discloses three edge supports which would support an electronic display device, such as tablet computers, in one or more usage configurations accessible. A POSA would know from the Figures in Klepar I that it discloses edge angles in the range of 85 to 120 degrees to an adjacent support back. *See* Fig. 2 (annotated). *See* Ex-1003, ¶¶211-213.



Klepar I also discloses two edge supports that are clockwise oriented around a central axis. Similar to Figure 2 in the RE'479 Patent, Figure 2 in Klepar I shows one side of the multi-position stand which appears to show a counterclockwise orientation. Figure 5 is the view from the other side and these edge supports would have a clockwise orientation about the central axis.

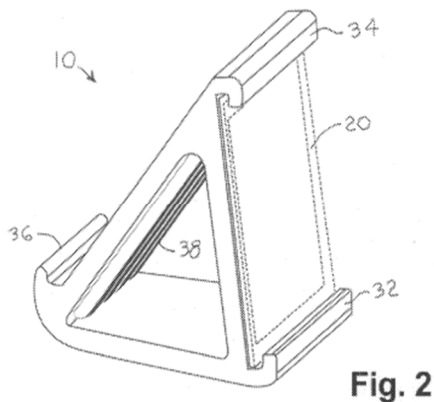
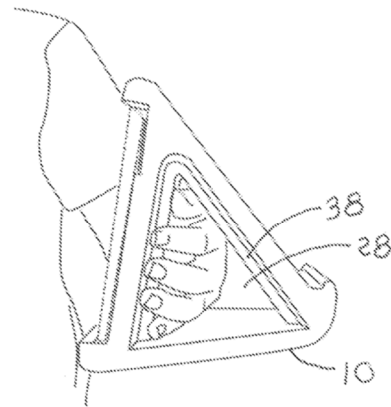


Fig. 5



As discussed above regarding Elements 12B-12D, it would have been obvious to a POSA modify the third edge support orientation of Klepar I to also be clockwise oriented around a central axis. *See* Ex-1003, ¶¶211-213.

g. Element 12G

For the same reasons as 12A-G, Klepar I disclose a multi-position stand that can support media devices in different positions. Klepar I further discloses that an “[e]xemplary embodiment of the present invention is directed towards a multi-position stand for securely holding an electronic display device, such as tablet computers, in one or more usage configurations accessible by: (i) flipping the stand relative to a user, or (ii) using the stand in substantially flat position, or (iii) using the stand as vertical or horizontal stand. The user is enabled to flip over the stand holding the tablet computer in one of three 'flip' positions to get a specific viewing angle or use the tablet as a simple stand preferably like the e-reader. The user as desired can place the tablet computer in the stand either in portrait or landscape

orientation.” Ex-1012, ¶[0029].

Further, Klepar I discloses that a POSA would “appreciate[] that the multi-position stand [] can be used in any of the three positions shown in FIGS. 2, 4, and 6.” *Id.*, ¶[0035]. In Figure 6, Klepar I discloses the multi-position stand resting on at least one horizontal support along a virtual plane. A POSA would following the design change be aware that Klepar I would provide three virtual planes. See Ex-1003, ¶¶214-216.

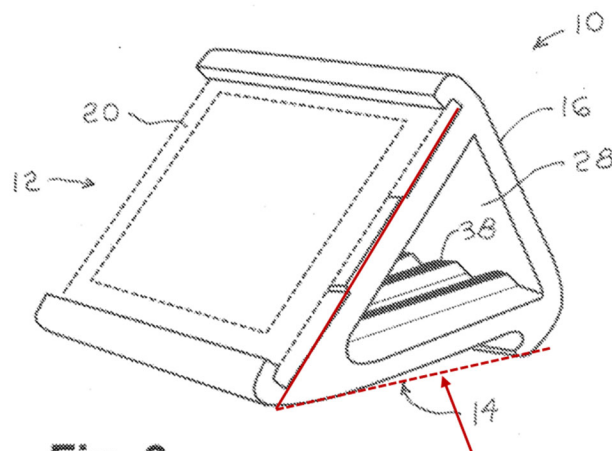


Fig. 6

Stand resting on a horizontal
virtual plane between the top
of a back support and outer
edge of an edge support

h. Element 12H:

During prosecution of the '443 application and the '797 application, the applicants conceded that Klepar II discloses two viewing angles. Ex-1002, 195. As shown above under Element 12C, Klepar I discloses three potential configurations,

each of which generates a different viewing angle when the media device is supported at three different support angles. This reflects that the Applicants' argument that Klepar II "must be spun about a horizontal plane in order to properly display at least one of its sides. [] Klepar has two," is incorrect. Ex-1002 at 101; Ex-1003, ¶¶217-219. A POSA would by modifying a third edge support orientation of Klepar I to also be clockwise oriented around a central axis, would know that the multi-position stand of Klepar I meets all the elements of this claim limitation. *See* Ex-1003, ¶¶217-219.

Because Klepar I, in view of Barcalo and/or Dean, discloses all of the elements of claim 12, this claim would have been obvious to a POSA. *See* Ex-1003, ¶ 220.

2. Dependent Claim 13

As discussed in Element 12C, determining the support angle would be a matter of routine for a POSA in Klepar I and therefore claim 13 would have been obvious over Klepar I in view of Barcalo or Dean. *See* Ex-1003, ¶ 221.

3. Dependent Claim 15

Dependent claim 15 further requires "the edge support angle is 90 degrees," and a POSA would know that this was disclosed in Klepar I and renders this claim obvious. Ex-1012, ¶¶[0024]-[0025], Figs. 1-9; *see also* Ex-1003, ¶ 222.

4. Dependent Claim 16

Dependent claim 16 further requires “the edge support width is 2 cm,” and a POSA would know that Klepar I discloses each edge support that would be suited to hold a tablet, electronic device or book such that the edge support width would be rendered obvious. Ex-1012, ¶[0028]; *see also* Ex-1003, ¶ 223.

5. Dependent Claim 17

Dependent claim 17 further requires “the body includes three solid corners, with each of the corners interposed between two adjacent support backs and including a respective edge support.” As discussed in Element 12F, Klepar I discloses such configuration and renders this claim obvious. *See* Ex-1003, ¶ 224.

6. Dependent Claim 19

Dependent claim 19 further requires “the edge support width is in the range of 1 to 5 cm.” For the same reasons as claim 16, Klepar I renders this claim obvious. *See* Ex-1003, ¶ 225.

X. GROUND 3: CLAIMS 20-21, AND 27-29 WOULD HAVE BEEN OBVIOUS BASED ON BARCALO IN VIEW OF KLEPAR I/II AND/OR THE KNOWLEDGE OF A POSA

1. Independent Claim 20

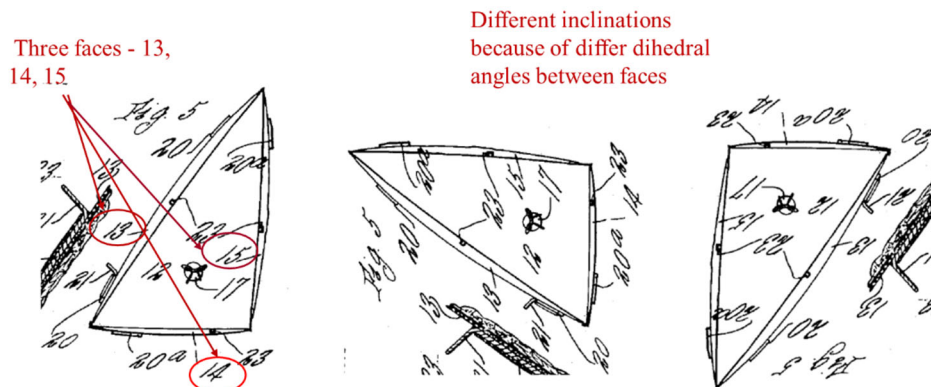
a. Element 20A: “An apparatus comprising:...” (“the Preamble”)

Petitioner asserts the preamble is not limiting. However, even assuming the preamble is limiting Barcalo discloses pillows or cushions to support books or

magazines “adjustably” for convenient reading positions. Ex-1009, 1:1-4. The support can be used at “varied inclinations” which are “convenient for reading.” *Id.*, 1:9-22; *see also* Ex-1003, ¶ 227.

b. Element 20B: “three support sides, each support side comprising a back support and an edge support,”

Barcalo discloses a pillow for use of propping materials for reading which is triangular in shape. “[t]he ends 12 of the case or sack are triangular in shape, being preferably obtuse angled triangles . . . [with] these triangular ends [] . . . connected by rectangular faces 13, 14 and 15. Such a pillow is, therefore, triangular in transverse cross section. The edges of the triangular ends are preferably nearly, but not equal in length, and all the angles of the triangle also are preferably unequal, so that when the pillow is supported upon different side faces, the other side faces will make different inclinations to the supporting surface.” Ex-1009, 1:89-91, Fig. 1 (annotated below).



Contrary to the Applicants' arguments during prosecution of the '797 Application, a POSA would have been motivated to combine the disclosures of Barcalo with Klepar I and Klepar II. *See* Ex-1003, ¶¶228-235. The multi-position stand disclosed in Klepar I discloses having a "first receiving panel, the second receiving panel configured to support a second electronic display; and a base panel attached to the first receiving panel and to the second receiving panel, the base panel forming a structure with the first receiving panel and the second receiving panel, the structure having the shape of a substantially triangular cylinder. Ex-1012, ¶¶[0012]; [0031]. Klepar discloses three alternate orientations of the multi-position stand, each oriented along a central axis. *Id.*, Figs. 2, 3, 6.

Klepar II similarly discloses a dual-positioning tablet pillow stand with Figure 1 showing a perspective view supporting an image display device in a first viewing position and Figure 4 showing a perspective view supporting an image display device in a second viewing position. *See* Ex-1013.

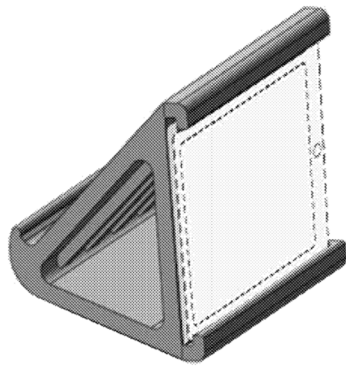


Fig. 1

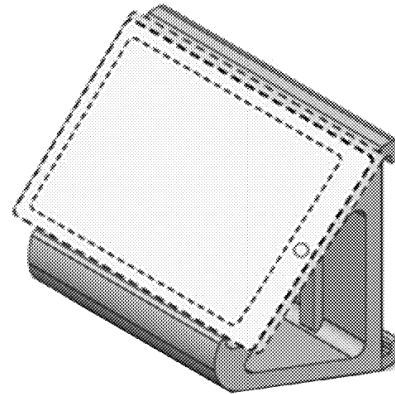
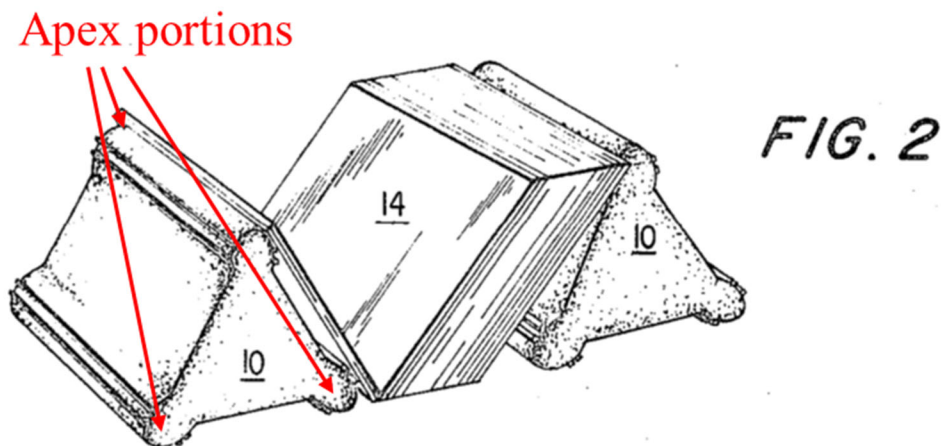


Fig. 4

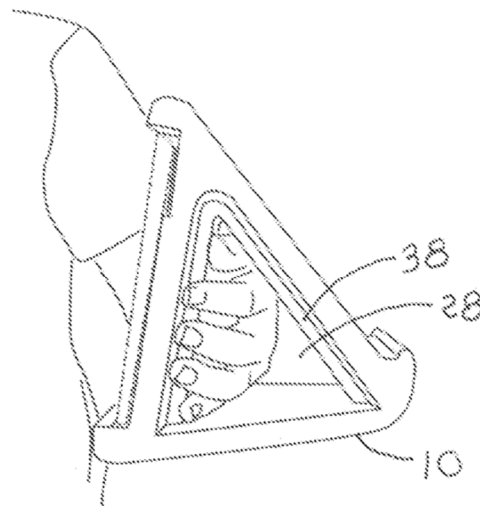
It would have been obvious to a POSA to modify the triangular pillow in Barcalo to have fixed edge supports as disclosed in Klepar I and Klepar II in order to take advantage of the benefits of Barcalo. *See* Ex-1003, ¶¶228-235. Such devices were known in the art, such as in Dean. Ex-1011 at 1:55-65, Figure 2.



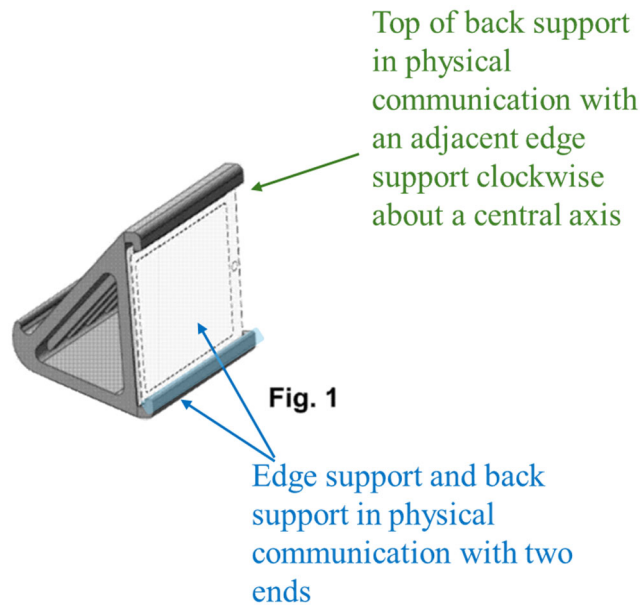
- c. **Element 20C: “wherein a top of each back support is in physical communication with an adjacent edge support clockwise about a central axis and each back support and each edge support is in physical communication with two ends,”**

As discussed in Element 20B, a POSA would understand that Klepar I and Klepar II provide at least two back supports that are in physical communication with an adjacent edge support clockwise about a central axis. Klepar I and Klepar II also show each back support and each edge support is in physical communication with two ends. *See* Ex-1003, ¶¶236-240.

Fig. 5



Ex-1012, Figure 5.



Ex-1013, Figure 1 (annotations added).

A POSA would have been motivated to a straightforward design choice to provide three support backs and support edges that are configured to support a media device from Klepar I and Klepar II in the pillow disclosed in Barcalo. *See* Ex-1003, ¶¶236-240.

Further, Klepar I shows that the electronic display device can be used in any of the three positions shown in FIGS. 2, 4, and 6.” Ex-1012 at ¶[0035]. In Figure 6, Klepar I discloses the multi-position stand resting on at least one horizontal support along a virtual plane.

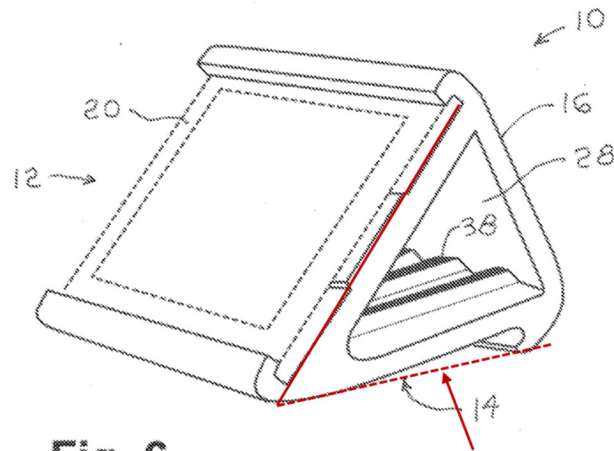


Fig. 6

Stand resting on a horizontal
virtual plane between the top
of a back support and outer
edge of an edge support

Ex-1012 at Figure 6 (annotations added).

A POSA would also understand that Klepar II a third orientation where the image display device has a third viewing position (similar to Figure 6 in Klepar I).

See Ex-1003, ¶¶ 236-240.

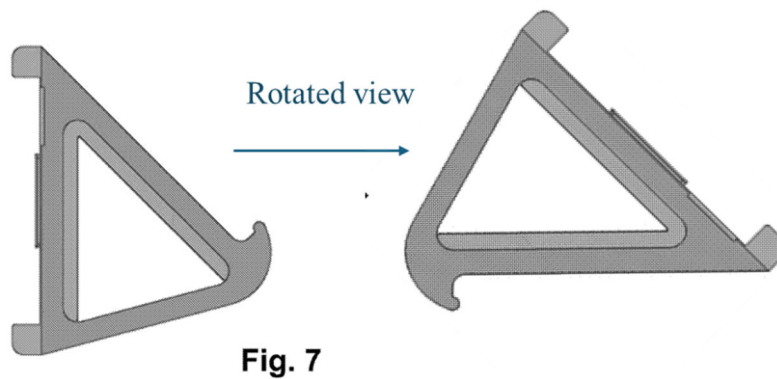


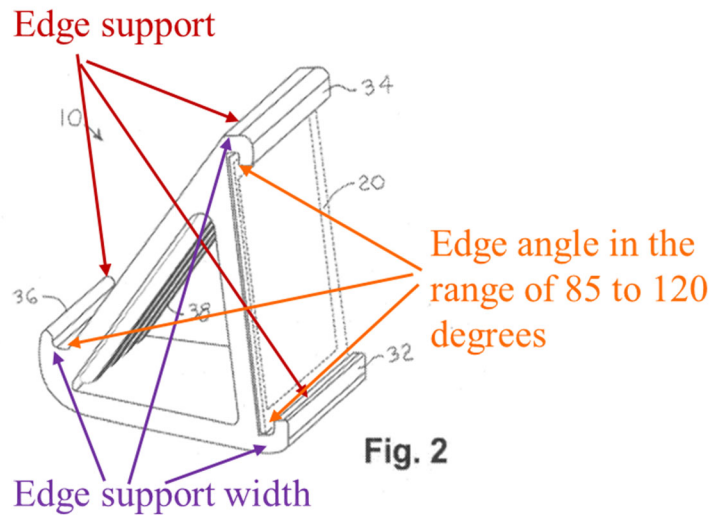
Fig. 7

Ex-1013 at Figure 7.

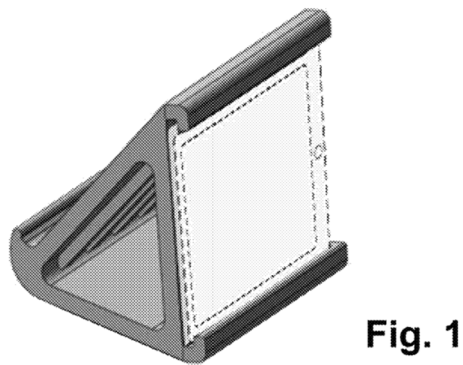
In adapting the Klepar I and Klepar II configuration to Barcalo, a POSA would orient each edge support in the clockwise direction. *See* Ex-1003, ¶¶236-240.

- d. Element 20D: “wherein each edge support comprises an edge support width with an edge angle to an adjacent back support in the range of 85 to 120 degrees to an adjacent back support,”**

As discussed above, determining width and angle of the edge support in Barcalo would be the routine work of the POSA because Barcalo is configured to support a book on “[a] bar 21 serves as the rest and is provided with depending angular feet 22 which are received in the pockets 20 along either side edge of a side face of the pillow, as shown in Fig. 1.” Ex-1009 at 2:38-44. As shown below, a POSA would have understood that Barcalo, Klepar I and Klepar II disclosed edge angles within 85 to 120 degrees, and taught that the width should be stable enough to hold the media disposed on it, and the POSA would know an element of which is thickness (width).



Ex-1012 at Figure 2 (annotations added).



Ex-1013 at Figure 1

Therefore, a POSA would have a reasonable expectation that the edge supports that would be configured as to Barcalo would be in the range of 85 to 120 degrees. See Ex-1003, ¶¶241-243.

- e. **Element 20E: “wherein a face of each edge support width is oriented clockwise about the central axis”**

A POSA would, for the reasons discussed as to Element 20C, that Klepar I and Klepar II have at least two back supports that are in physical communication with an adjacent edge support clockwise about a central axis. The face of the edge supports are accordingly also oriented clockwise about the central axis. A POSA would be motivated to provide the same orientation along all three sides of Barcalo. *See* Ex-1003, ¶244.

- f. Element 20F: “wherein a plane of a first back support is at a first plane angle to a second virtual plane between the top of a second back support counterclockwise to the first back support and an outer edge of a second edge support counterclockwise to the first back support,”**

As shown below, Klepar I and Klepar II have an orientation wherein a plane of a back support is at a plane angle to a virtual plane between the top of a second back support counterclockwise to the first back support and an outer edge of a second edge support counterclockwise to the first back support. A POSA would be motivated to modify the triangular pillow of Barcalo to provide a plane of a first back support is at a first plane angle to a second virtual plane in view of these disclosures in Klepar I and Klepar II. *See* Ex-1003, ¶¶245-247.

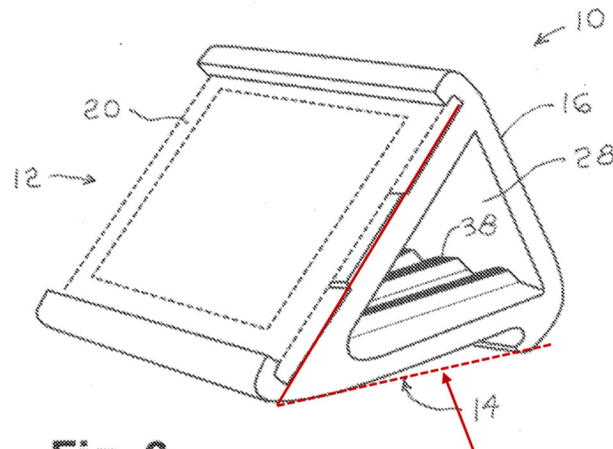


Fig. 6

Stand resting on a horizontal
virtual plane between the top
of a back support and outer
edge of an edge support

Ex-1012 at Figure 6 (annotations added).

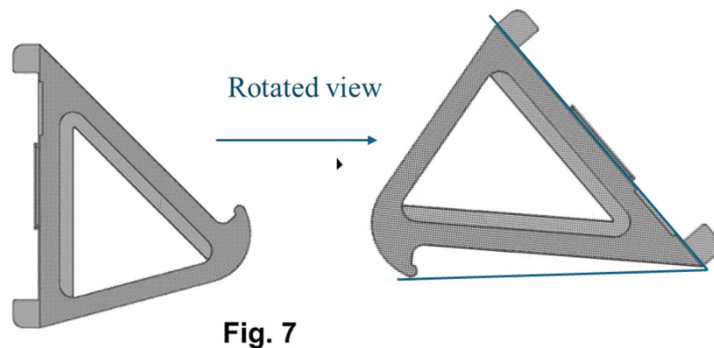


Fig. 7

Ex-1013 at Figure 7 (annotated).

It would have been obvious for a POSA to modify Barcalo based on the disclosures in Klepar I and as shown in Klepar II design and in adapting such configuration to Barcalo, it would be obvious to a POSA to orient each edge support in the clockwise direction so as to retain the benefits of the Barcalo pillow. *See* Ex-1003, ¶¶245-247.

- g. Element 20G: “wherein a plane of the second back support is at a second plane angle to a third virtual plane between the top of a third back support counterclockwise to the second back support and an outer edge of a third edge support counterclockwise to the second back support,”**

As discussed above as to Element 20A, Barcalo and Klepar I/II disclose a multi-position stand that can support media devices in different positions. For the same reasons, a plane angle would be routinely measured by a POSA. Further, for the same reasons as discussed for Element 20H, a POSA would be motivated to modify Barcalo to provide a plane of a second back support is at a second plane angle to a third virtual plane in view of the disclosures in Klepar I and Klepar II. *See* Ex-1003, ¶248.

- h. Element 20H: “wherein a plane of a third back support is at a third plane angle to a first virtual plane between the top of the first back support counterclockwise to the third back support and an outer edge of the first edge support counterclockwise to the third back support,”**

A POSA would apply the same motivation to modify Barcalo to provide a plane of a third back support is at a third plane angle to a first virtual plane in view of the disclosures in Klepar I and Klepar II. *See* Ex-1003, ¶249.

- i. Element 20I: “wherein the first plane angle, the second plane angle, and the third plane angle are different from one another and are configured to provide a first viewing angle, a second viewing angle, and a third**

**viewing angle that are different from one another;
and”**

It was known that Klepar II discloses two viewing angles. *See* Ex-1006, Ex-1002. Klepar I and Klepar II have three alternate orientations of the multi-position stand, each oriented along a central axis. Ex-1012 at Figures 2, 3, 6; Ex-1013 at Figures 1, 4, 7. Moreover, a POSA would have been aware of the benefits of Barcalo which would provide for a pillow that facilitates viewing “adjustably in various convenient reading positions.” Ex-1009 at 1:5-8. Further, a POSA would have been motivated to provide a support back and support edge from Klepar I and Klepar II to the different inclinations of Barcalo such that a POSA would reasonably succeed in configuring a structure having the first plane angle, the second plane angle, and the third plane angle are different from one another and are configured to provide a first viewing angle, a second viewing angle, and a third viewing angle that are different from one another. *See* Ex-1003, ¶250.

j. Element 20J: “wherein each back support, each edge support, and each end is a surface of an interior”

As stated above in connection with element 20B, it would have been obvious to modify the triangular pillow in Barcalo to have three back supports and three edge supports which are disclosed in Klepar I and Klepar II. *See* Ex-1003, ¶251. Barcalo discloses that “[t]he edges of the triangular ends are preferably nearly, but not equal in length, and all the angles of the triangle also are preferably unequal, so that when the pillow is supported upon different side faces, the other side faces will make different inclinations to the supporting surface.” Ex-1009 at 1:86-91, Figure 1. Further, Klepar I discloses three back supports, three edge supports and two ends which form the surface of an interior. This is also shown the figures in Klepar I and Klepar II.

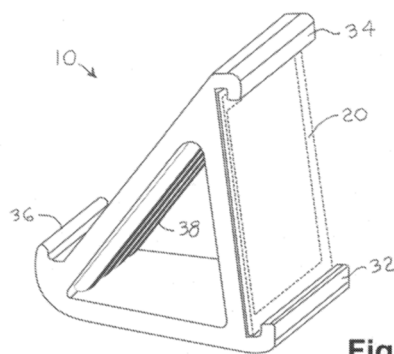


Fig. 2

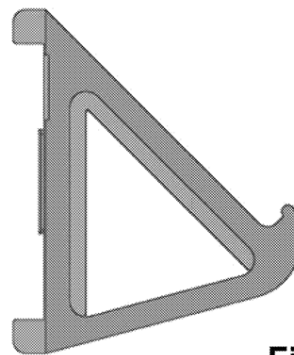


Fig. 7

Ex-1012 at Figure 2; Ex-1013 at Figure 7.

Because Barcalo, in combination with Klepar I/II, discloses all of the elements of claim 20, this claim would have been obvious to a POSA. *See* Ex-1003, ¶ 252.

2. Dependent Claim 21

Dependent claim 21 adds the same limitations as claim 20, and further requires “the first back support has a longitudinal length in the range of 12 to 26 centimeters (cm), the second back support has a longitudinal length in the range of 9 to 21 cm, and the third back support has a longitudinal length in the range of 10 to 22 cm.” Determining the longitudinal lengths would be a matter of routine for a POSA in view of disclosures in Barcalo, Klepar I and Klepar II. *See* Ex-1003, ¶ 253. Thus, claim 21 would have been obvious to a POSA.

3. Dependent Claim 27

Dependent claim 27 further requires “the edge support width is in the range of 1 to 5 cm,” which would be obvious from the disclosures in Barcalo, Klepar I and Klepar II, and thus renders the claims obvious. *See* Ex-1003, ¶ 254.

4. Dependent Claim 28

Dependent claim 28 further requires that “the edge support angle is 90 degrees” which is disclosed in Klepar I and Klepar II and thus renders the claim obvious. Ex-1009, Ex-1012, ¶¶[0024]-[0025]; Ex-1012, Figures 2, 3, 6; Ex-1013, Figures 1, 7 Figs. 1-9. *See* Ex-1003, ¶ 255.

5. Dependent Claim 29

Dependent claim 29 further requires “the edge support width is 2 cm,” which would be obvious from the disclosures in Barcalo, Klepar I and Klepar II, and thus renders the claims obvious. *See* Ex-1003, ¶256.

XI. THERE ARE NO SECONDARY CONSIDERATIONS OF NON-OBVIOUSNESS

The RE’479 patent specification states that “[t]he media support **100** has been marketed as the ‘Flipy Tablet Pillow’ since 2013 at a retail price of \$49.98. Because of the media support’s unique properties, it has enjoyed significant commercial success, with 800 units sold in 2013, 2,233 units in 2014, 925 units in 2015 and 997 units year-to-date in 2016.” Ex-1001, 4:35-40. Patent Owner has not demonstrated nexus between the Flipy Tablet Pillow and any claims. Further in the Litigation, Patent Owner has not set forth any evidence of secondary considerations. Ex-1017 at 78.

XII. THE BOARD SHOULD NOT DECLINE TO INSTITUTE BASED ON ITS DISCRETIONARY AUTHORITY §314(a) OR 315(d)

The Board should not decline to institute the IPR under 35 U.S.C. §§314(a) and 315(c) due to the Litigation. Petitioner understands that any discretionary denial issues, if raised by Patent Owner, shall be in a separate brief. If Patent owner files such brief, Petition intends to respond in an opposition brief.

In an effort to avoid unnecessary briefing on discretionary denial (while reserving the right to respond to Patent Owner’s brief requesting discretionary denial), the Board should not exercise its authority to discretionarily deny this petition under 35 U.S.C. §314(a). First, no trial date has been set and the median time to trial is 63.4 months.⁴ The Pretrial Scheduling Order in the Litigation states the Final Pretrial Conference will take place “at a time and date to be assigned.” Ex-1023 at 5. Second, there has not been significant investment by the parties in the Litigation. While the parties have exchange contentions on infringement and invalidity, claim construction briefing has not been filed, no fact witness depositions have been noticed or taken, and no expert reports have been submitted. On claim construction, the Pretrial Scheduling Order states that a *Markman* hearing will be scheduled until after January 13, 2026, and fact discovery will not close until 45 days after the Court’s *Markman* decision is rendered. Ex-1023. Third, in Grounds 1 to 3, Petitioner has explained why Cannon, Diebel, Klepar I, Klepar II, Barcalo, and Dean render the challenged claims of the RE’479 patent obvious, presenting a compelling case for invalidity that was not considered during prosecution. Fourth, Patent Owner does not have a reasonable claim to settled expectations. The RE’479

⁴ See U.S. District Courts–Combined Civil and Criminal Federal Court Management Statistics (June 30, 2025).

patent issued March 23, 2021, less than five years ago. The reissue constitutes a change in circumstances cancelling any settled expectations in exclusivity under the '454 patent since 2017. *See* 37 CFR §1.178 (“The application for reissue of a patent shall constitute an offer to surrender that patent, and the surrender shall take effect upon reissue of the patent....”). Moreover, Patent Owner admitted in the Litigation that the '454 patent claims were prosecution attorney “error” that was “rectified” by the RE'479 reissue. Ex-1017, 64. The RE'479 patent has not been in existence for a long period of time and there are no settled expectations of validity and enforceability. Moreover, Petitioner has had its own settled expectations as to non-infringement of the challenged claims, and other real parties-in-interest have stipulated to any decision concerning the validity of the RE'479 patent and their interests weigh against the presumption that the public has developed settled expectations regarding its validity. Fifth, Petitioner's expert, Dr. Steven R. Schmid's opinions merely to reinforce the merits of Grounds 1-3, relying on the explicit disclosures of the prior art references for each and every limitation.

The Board should not discretionarily deny this petition under 35 U.S.C. §325(d). The considerations under §325(d) are: (1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if

either condition of the first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of the challenged claims. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (P.T.A.B. Feb. 13, 2020) (precedential). A material error under prong two of the Board’s framework may include misapprehending or overlooking specific teachings of the relevant prior art where those teachings impact patentability of the challenged claims, or misconstruing a claim term where that claim term impacts patentability of the challenged claims. *Id.* at 8-9, n.9.

There is no indication the Examiner appreciated the fact that there is a priority date issue that would render Cannon as prior art. The Board has instituted IPRs based on similar unrecognized priority date issues. *See, e.g., Dr. Reddy’s Lab’ys S.A. v. Indivior UK Ltd.*, IPR2019-00329, Paper 21 (P.T.A.B. June 3, 2019); *SAP Am., Inc. v. Pi-Net Int’l, Inc.*, IPR2014-00414, Paper 11 (P.T.A.B. Aug. 18, 2014). Further, the Examiner never substantively evaluated the other prior art cited herein in view of Barcalo during prosecution of the ’797 Application.

The Examiner were also not aware of Patent Owner’s Litigation position that “support angle” is the same as “plane angle” and required nothing more than the inclination of the back support that supports the media device against the edge

support. *See supra* Section VI.C., The Examiner also did not have the expert evidence submitted herewith explaining the reasons why a POSA would have been motivated to modify Klepar II to have a third support back in view of Barcalo or Diebel. As explained above, however, Klepar I and Klepar II are highly-relevant references that include three edge support and admittedly, viewing angles. Again, the Board has instituted IPRs in similar circumstances involving such overlooked prior art. *See, e.g., Trend Micro Inc. v. Cupp Comput. AS.*, IPR2021-01237, Paper 16 (P.T.A.B. Jan. 19, 2022).

XIII. PAYMENT OF FEES UNDER 37 C.F.R. §§42.15(A) AND 42.103

The requisite filing fee is submitted herewith. Claims 1–2, 8–10, 12–13, 15–17, 19–21, and 27–29 are requested for review as part of this Petition. If any additional fees are due during this proceeding, the Office is authorized to charge such fees to Deposit Account No. D506990. Any overpayment or refund of fees may also be deposited in this Deposit Account.

XIV. CONCLUSION

For the foregoing reasons, Petitioner has established a reasonable likelihood that claims 1–2, 8–10, 12–13, 15–17, 19–21, and 27–29 are unpatentable. Petitioner therefore respectfully requests the *inter partes* review of the RE'479 patent be granted.

Dated: October 16, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. §42.24(a) and (d), the undersigned hereby certify that the foregoing Petition for *Inter Partes* Review of U.S. Patent No. RE48,479 complies with the type-volume limitation of 37 C.F.R. §42.24(a)(1)(i) and (b)(1)(i) permitting a petition of up to 14,000 words because, exclusive of the exempted portions, it contains 13,897 words as counted by the word processing program used to prepare the paper.

Date: October 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned certifies that on October 16, 2025, a complete and entire copy of this Petition for *Inter Partes* Review of U.S. Patent No. RE48,479, all supporting exhibits and Power of Attorney, were provided to the Patent Owner at the correspondence address of record as follows:

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