

EXHIBIT 2013

HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

HAPPY PRODUCTS, INC.,

Plaintiff,

v.

ONTEL PRODUCTS CORPORATION,

Defendant.

C.A. No. 2:24-cv-09819-EP-JRA

**Highly Confidential – Outside Attorneys’
Eyes Only**

**DEFENDANT ONTEL PRODUCTS CORPORATION’S INITIAL INVALIDITY
CONTENTIONS FOR U.S. PATENT NO. RE48,479**

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I. INTRODUCTION

Pursuant to the Pretrial Scheduling Order (ECF No. 54), Defendant Ontel Products Corporation (“Defendant” or “Ontel”) provides the following Invalidity Contentions (“Contentions”) pursuant to L. Pat. R. 3.3 as to U.S. Patent No. RE48,479 (“’479 patent” or “Asserted Patent”). Happy Products, Inc. (“HPI” or “Plaintiff”) currently asserts claims 1–2, 8–10, 12–13, 15–17, 19–21, and 27–29 against Ontel. HPI contends in its Disclosure of Asserted Claims and Infringement Contentions (“Infringement Contentions”), dated May 16, 2025, that it “cannot determine whether each Accused Product satisfies the requirements of claim 18 until it has received samples, specifications, and schematics of each Accused Product so that HPI can assess whether each Accused Product as designed and/or manufactured satisfies each element of such claims of the ’479 patent.” Pl.’s Infringement Conts., Ex. A, at 1. For the purpose of these contentions, therefore, the currently asserted claims (claims 1–2, 8–10, 12–13, 15–17, 19–21, and 27–29), with claim 18, are collectively referred to as the “Asserted Claims.” HPI has provided no contention that Ontel infringes claim 18 or the basis for that contention in its claim charts or disclosure of asserted claims. Accordingly, Ontel provides its invalidity contentions to claim 18 herein, reserving all rights to supplement and/or amend its non-infringement and invalidity defenses for claim 18, particularly should HPI supplement and/or amend its infringement contentions as it stated in its Infringement Contentions (*id.*).

Under L. Pat. R. 3.3(a) and (b), Ontel contends that the prior art discussed herein render the Asserted Claims of the Asserted Patent invalid under 35 U.S.C. §§ 102 and 103. Exemplary prior-art citations and statements explaining the invalidity of the asserted claims are specified in the following disclosure and claim charts provided under L. Pat. R. 3.3(c). Ontel also provides exemplary combinations of prior art and the motivation to combine such references for purposes of Ontel obviousness defenses under L. Pat. R. 3.3(b). Such combinations are exemplary, and

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Ontel reserves the right to rely on any combination or combinations of the prior art references cited or discussed in these disclosures. Under L. Pat. R. 3.4(b), Ontel also contemporaneously produces with these Contentions the prior art references.

Under L. Pat. R. 3.3(d), Ontel further contends that the Asserted Claims of the Asserted Patent invalid under 35 U.S.C. § 112 as being indefinite, and/or for lack of written description and/or enablement.

This written statement is based on information reasonably available to Ontel at this time. This written statement is necessarily preliminary and may require subsequent amendment, alteration, or supplementation. Ontel reserves the right to amend, alter, or supplement this statement based on further investigation, fact or expert discovery, any claim construction from the Court, or as a result of HPI seeking and/or being granted leave to amend and/or supplement its L. Pat. R. 3.1, 3.2 and 3.4A Disclosures. Ontel’s invalidity positions in these Contentions may be in the alternative and do not constitute any concession or admission by Ontel for purposes of invalidity, enforceability, claim construction, and/or infringement. *See, e.g., Vanmoor v. Wal-Mart Stores, Inc.*, 201 F.3d 1363, 1366 (Fed. Cir. 2000). For example, Ontel’s Section 112 arguments may be in the alternative to Ontel’s obviousness arguments and should not be viewed, in any way, to be concessions about the prior art or knowledge of a person of ordinary skill in the art (“POSA”).

These Contentions are designated HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY under paragraph IV of the Pretrial Scheduling Order (ECF No. 54) in view of HPI’s designation of its responses to Ontel’s Interrogatories with such designation, and will be treated accordingly, exclusively for the purposes of the above-captioned proceeding, while parties continue to meet and confer to attempt to reach an agreement regarding a proposed Discovery

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Confidentiality Order. Should HPI withdraw such confidentiality designation, Ontel will do the same as to these Contentions.

II. GENERAL STATEMENTS AND RESERVATION OF RIGHTS

Furthermore, this written statement is provided without prejudice to the rights of Ontel to introduce at trial any subsequently discovered evidence or expert opinions relating to currently-known facts and to produce and introduce at trial all evidence, whenever discovered, relating to the proof of subsequently-discovered facts. Moreover, facts, documents, and things now known may be imperfectly understood and, accordingly, such facts, documents, and things may not be included in the following statement. Ontel reserves the right to refer to, conduct discovery with reference to, or offer into evidence at the time of trial, any and all facts, expert opinion testimony, documents, and things notwithstanding the written statements herein. Ontel further reserves the right to refer to, conduct discovery with reference to, or offer into evidence at the time of trial, any and all facts, documents, and things that it does not currently recall but might recall at some time in the future.

Ontel objects to the disclosure of information that is protected by the attorney-client privilege, the attorney work-product immunity, the common interest privilege, or any other applicable privilege or immunity. To the extent Ontel inadvertently discloses information that may be protected from discovery under the attorney-client privilege, the attorney work-product immunity, the common interest privilege, or any other applicable privilege or immunity, such inadvertent disclosure does not constitute a waiver of any such privilege or immunity.

Regarding the prior art references discussed herein, Ontel has identified exemplary portions of the references that disclose the claimed limitations of each of the Asserted Claims, though such portions are not meant or intended to be exhaustive. The references may contain additional support for particular claim limitations. It should be recognized that a POSA would

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generally read a prior art reference as a whole and in the context of other publications, literature, and general knowledge in the field. To understand and interpret any specific statement or disclosure in a prior art reference, a POSA would rely upon other information including other publications and general knowledge relevant to the subject matter of the Asserted Patent. A POSA would have understood and interpreted the cited passages in the context of the prior art references as a whole, as well as in the context of the state of the art. In addition, the cited references may be combined and modified in a number of ways to achieve the claimed inventions recited in the Asserted Claims. Ontel reserves the right to rely on additional references that show the common structure, use and function of limitations to which the claims are directed. Ontel expressly reserves the right to rely on uncited portions of the prior art references, other documents, and expert testimony to provide further context or to aid in the understanding of the cited portions of the references. Ontel also reserves the right to rely upon other portions of the prior art references, other publications, and the testimony of experts to establish that the alleged inventions were inherently disclosed in the prior art and/or would have been obvious to a POSA, including on the basis of modifying or combining certain cited references.

Ontel does not have a comprehensive understanding of all the ways HPI may attempt to distinguish the prior art cited herein, and reserves the right to identify other references that would have supplied the allegedly missing elements to render the Asserted Claims obvious or to counter alleged evidence of secondary *indicia* of nonobviousness. For any claim limitation that HPI alleges is not disclosed in a prior art reference, Ontel reserves the right to assert that such limitation is either inherent in the reference or would have been obvious to one skilled in the art in light of the same, or that the limitation is disclosed in one or more prior art references and in combination

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would have rendered the Asserted Claims obvious. Additionally, the obviousness contentions set forth herein should not be construed to suggest that any reference is not anticipatory by itself.

Ontel incorporates by reference any rejections made by the Patent and Trademark Office (“PTO”) during the prosecution of the applications leading to the Asserted Patent. Ontel reserves the right to assert any art cited in the prosecution history of the Asserted Patent or related applications as a basis for contending that the Asserted Claims are invalid. Ontel further identifies as prior art upon which they may rely those references identified in Information Disclosure Statements during the prosecution of the Asserted Patent. Ontel also reserves the right to rely upon any admissions relating to prior art in the Asserted Patent, related applications or their respective prosecution histories. Ontel incorporates by reference as if set forth herein any and all contentions concerning the invalidity of the Asserted Claims of the Asserted Patent submitted in any other proceeding involving the Asserted Patent. Such contentions would constitute notice. Ontel additionally incorporates, in full, all prior art references cited in the Asserted Patent as well as any related patents and/or applications and their respective prosecution histories, whether the related patents and/or applications were filed in the United States or in a foreign country. Ontel further incorporates by reference any and all grounds for invalidity submitted by any party in any inter partes review or any other administrative proceeding, including before the USPTO or any foreign equivalent agency, including any and all references cited or relied upon therein.

These Contentions should not be interpreted as a statement of Ontel’s position with regard to the proper claim construction of any claim term. Instead, Ontel has made certain assumptions, to the extent necessary and appropriate, with respect to the meaning of claim terms for the purpose of these Contentions, including any claim terms that are indefinite. By making these assumptions, Ontel does not admit that any claim language satisfies 35 U.S.C. § 112. Likewise, the use of claim

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terms herein should not be understood to suggest or imply a common, usual, ordinary, customary, plain, or accepted meaning in the art for any such term. To the extent HPI has purported construction of claim limitations in its disclosures under L. Pat. R. 3.1 and its application of those apparent constructions, nothing in these Contentions should be construed as endorsing any position taken by HPI. To the extent Ontel determines that a different meaning is appropriate for any claim term, or that any claim term does not constitute a claim limitation, Ontel reserves the right to assert that meaning in connection with claim construction proceedings.

The information set forth below is provided without, in any manner, waiving: (1) the right to object to the use of any statement for any purpose, in this Action, or any other actions, on the grounds of privilege, relevance, materiality, or any other appropriate grounds; (2) the right to object to any request involving or relating to the subject matter of the statements herein; or (3) the right to revise, correct, supplement, or clarify any of the statements provided below at any time. Ontel specifically reserves the right to amend and/or supplement the written statements herein in accordance with the Federal Rules of Civil Procedure, the Local Patent Rules and the Rules of this Court.

Nothing in this statement of contentions should be construed as limiting Ontel’s statutory rights under 35 U.S.C. § 282 to provide notice of “the country, number, date, and name of the patentee of any patent, the title, date, and page numbers of any publication to be relied upon as anticipation of the patent in suit or, except in actions in the United States Court of Federal Claims, as showing the state of the art, and the name and address of any person who may be relied upon as the prior inventor or as having prior knowledge of or as having previously used or offered for sale the invention of the patent in suit” thirty days before trial. 35 U.S.C. § 282(c).

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HPI has the burden to establish that the Asserted Claims of the Asserted Patent are entitled to the priority date of any earlier-filed application. *See Dynamic Drinkware, LLC v. National Graphics, Inc.* 800 F.3d 1375, 1380 (Fed. Cir. 2015). To establish an earlier priority date, each earlier application in the chain must fully disclose the claimed invention by meeting all requirements of 35 U.S.C. §112. *In re NTP, Inc.*, 654 F.3d 1268, 1277 (Fed. Cir. 2011). Ontel reserves the right to (i) challenge the Asserted Patents’ entitlement to priority to previous applications, (ii) challenge any alleged date of conception or reduction to practice; and (iii) identify additional prior art thereto.

III. LEGAL FRAMEWORK

A. Anticipation

The law of anticipation denies patent protection for subject matter that is already known or disclosed to the public, and therefore not novel. A claim is invalid for anticipation if “a prior art reference discloses every limitation of the claimed invention, either explicitly or inherently.” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 481 F.3d 1371, 1381 (Fed. Cir. 2007). The Federal Circuit relies on the maxim “that which would literally infringe if later anticipates if earlier.” *Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc.*, 246 F.3d 1368, 1378 (Fed. Cir. 2001). Further, the question of anticipation is considered from the perspective of one of ordinary skill in the art, where a reference is considered anticipatory if “it discloses the claimed invention ‘such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention.’” *In re Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995) (quoting *In re Legrice*, 301 F.2d 929, 936 (CCPA 1962)).

Under 35 U.S.C. § 102(a)(1), a person is not entitled to a patent if the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention. 35 U.S.C. § 102(a)(1). Under

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35 U.S.C. § 102(a)(2), a person is not entitled to a patent if the claimed invention was described in a U.S. patent, a U.S. patent application publication, or an application for patent deemed published under 35 U.S.C. 122(b) (collectively referred to as “U.S. patent documents”), that names another inventor and was effectively filed before the effective filing date of the claimed invention. 35 U.S.C. § 102(a)(2).

Accordingly, under 35 U.S.C. § 102, a claim is considered to have been anticipated, and thus invalid, when a single prior art reference discloses each and every element of the claimed invention. *See Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715 (Fed Cir. 1984). An anticipatory reference does not need to explicitly describe each element as “anticipation can occur when a claimed limitation is ‘inherent’ or otherwise implicit in the relevant reference.” *Standard Havens Prods. Inc. v. Gencor Indus. Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991).

“[T]he discovery of a previously unappreciated property of a prior art composition, or a scientific explanation for the prior art’s functioning, does not render the old composition patentably new to the discoverer.” *Atlas Powder Co. v. IRECO Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999). Under the principles of inherency, the prior art anticipates the claimed limitations of a patent if it necessarily functions in accordance with, or includes, the claimed limitations. *See id.* at 1347; *see also Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc.*, 246 F.3d 1368, 1376 (Fed. Cir. 2001) (“[n]ewly discovered results of known processes directed to the same purpose are not patentable because such results are inherent”); *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1377 (Fed. Cir. 2005). “Insufficient prior understanding of the inherent properties of a known composition does not defeat a finding of anticipation.” *Atlas Powder*, 190 F. 3d at 1349. Furthermore, “inherent anticipation does not require that a person of ordinary skill in the art at the time would have recognized the inherent disclosure.” *Schering Corp. v. Geneva Pharms.*, 339 F.3d

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1373, 1377 (Fed. Cir. 2003).

Under 35 U.S.C. § 102(a)(1), a person shall not be entitled to a patent if “the claimed invention was . . . on sale . . . before the effective filing date of the claimed invention.” The “sale” must meet the two-step framework of *Pfaff v. Wells Electronics, Inc.*, 525 U.S. 55 (1998), that the claimed invention was (1) the subject of a commercial offer for sale; and (2) ready for patenting. *Medicines Co. v. Hospira, Inc.*, 827 F.3d 1363, 1368 (Fed. Cir. 2016); *see also Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.*, 586 U.S. 123, 130-132 (2019) (holding that Congress did not alter the meaning of “on sale” when it enacted the AIA). “The ready for patenting condition may be satisfied in at least two ways: by proof of reduction to practice before the critical date; or by proof that prior to the critical date the inventor had prepared drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention.” *Netscape Commc’ns Corp. v. Konrad*, 295 F.3d 1315, 1323 (Fed. Cir. 2002).

A sale or offer for sale that does not make the invention “available to the public,” and even those subject to confidentiality of the invention, constitute a “sale” or “offer for sale” under post-America Invents Act § 102. *Helsinn*, 586 U.S. at 130-132. “The intent behind the on-sale bar is to preclude an inventor’s attempt to profit from commercial exploitation of his invention for more than one year before seeking a patent.” *Celanese Int’l Corp. v. Int’l Trade Commission*, 111 F.4th 1338, 1343 (Fed. Cir. 2024) (explaining purpose of on-sale bar in the pre-AIA statutory provision); *see also Helsinn*, 586 U.S. at 132. “The “on-sale” bar prevents one from extending a patent monopoly beyond the statutory term by commercially exploiting an invention prior to seeking a patent.” *Celanese*, 111 F.4th at 1343; *Netscape*, 295 F.3d at 1323 (“The overriding concern of the on-sale bar is an inventor’s attempt to commercialize his invention beyond the statutory term.”).

B. Obviousness

Patent claims are invalid if the “differences between the subject matter sought to be

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patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” 35 U.S.C. § 103(a); *see Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161–62 (Fed. Cir. 2007); *TQ Delta, LLC v. DISH Network LLC*, 929 F.3d 1350, 1360 (Fed. Cir. 2019).

Invalidity under 35 U.S.C. § 103 is a legal conclusion based on the following factual inquiries: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the art at the time when the invention was made; and (4) any other evidence of obviousness or nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *see also TQ Delta*, 929 F.3d at 1360 (“Obviousness is a question of law based on underlying findings of fact.”) (internal citation and quotations removed).

To determine the level or ordinary skill in the art, the relevant field of art must be identified; courts accomplish this by looking to “the nature of the problem confronting the inventor.” *Verizon Servs. Corp. v. Cox Fibernet Va., Inc.*, 602 F.3d 1325, 1338 (Fed. Cir. 2010) (quoting *Bancorp Servs., L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1375 (Fed. Cir. 2004)); *see also Ruiz v. A.B. Chance Co.*, 234 F.3d 654 (Fed. Cir. 2000) (“The determination of the level of ordinary skill in the art is an integral part of the Graham analysis.”). A person of ordinary skill in the identified art is presumed to have knowledge of all pertinent prior art. *Custom Accessories*, 807 F.2d at 962. “A reference qualifies as prior art for an obviousness determination under § 103 only when it is analogous to the claimed invention.” *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011); *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986) (quoting *In re Wood*, 599 F.2d 1032, 1036 (C.C.P.A. 1979)); *see also In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992) (“A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to

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an inventor’s attention in considering his problem.”).

The legal test for obviousness is a flexible inquiry focused on the objective reach of the claims. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 415-16, 419 (2007) (“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”); *see also Indivior Inc. v. Dr. Reddy’s Labs., S.A.*, 930 F.3d 1325, 1352 (Fed. Cir. 2019) (“obviousness demands a more expansive and flexible approach”) (internal quotations and citation removed).

Importantly, obviousness must be evaluated as of the time of invention so as not to improperly inject hindsight bias into the inquiry. *See Graham*, 383 U.S. at 36 (instructing courts to “resist the temptation to read into the prior art the teachings of the invention in issue” and “guard against slipping into use of hindsight”) (quoting *Monroe Auto Equip. Co. v. Heckethorn Mfg. & Supply Co.*, 332 F.2d 406, 412 (6th Cir. 1964)); *Para- Ordnance Mfg., Inc. v. SGS Imps. Int’l, Inc.*, 73 F.3d 1085, 1087 (Fed. Cir. 1995) (“Obviousness may not be established using hindsight . . .”). A patent may be proved obvious under the “teaching, suggestion, or motivation” (“TSM”) test “if some motivation or suggestion to combine the prior art teachings can be found in the prior art, the nature of the problem, or the knowledge of a person having ordinary skill in the art.” *KSR*, 550 U.S. at 407 (internal citation and quotation marks omitted). Conversely, “when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.” *Id.* at 416 (citing *United States v. Adams*, 383 U.S. 39, 51–52 (1966)).

An obviousness determination, however, does not require application of the TSM test. Rather, the inquiry must also “take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418–19. Moreover, a patent may be

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found obvious when the combination of elements was obvious to try. *Id.* at 420. When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103. *Id.* at 421. Conversely, the obvious to try standard is not met when “the inventor would have had to try all possibilities in a field unreduced by direction of the prior art.” *Bayer Schering Pharma AG v. Barr Labs., Inc.*, 575 F.3d 1341, 1347 (Fed. Cir. 2009); *In re O’Farrell*, 853 F.2d 894, 903 (Fed. Cir. 1988) (foreclosing an obvious to try analysis when the patentee simply “var[ies] all parameters or tr[ies] each of numerous possible choices until [arriving] at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful”); *see also Allergan, Inc.*, 754 F.3d at 972–73.

Generally, where the limitations of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Applied Materials, Inc.*, 692 F.3d 1289, 1295 (Fed. Cir. 2012). Formulators routinely optimize such variables during development of a new formulation. *Id.*; *see also Titanium Metals Corp. v. Banner*, 778 F.2d 775, 783 (Fed. Cir. 1985). Discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art. *In re Boesch*, 617 F.2d 272, 276 (C.C.P.A. 1980).

A patentee may present objective evidence of nonobviousness such as commercial success, failure of others, long-felt need, unexpected results, and copying. *Graham*, 383 U.S. at 17. *See also Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1369 (Fed. Cir. 2007). Skepticism of the feasibility of the claimed invention, or belief that the invention would not perform its intended purpose, also

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constitutes a secondary consideration of nonobviousness. *Pressure Products Medical Supplies, Inc. v. Greatbatch Ltd.*, 599 F.3d 1308, 1319 (Fed. Cir. 2010). Secondary considerations “provide evidence of how the patented device is viewed by the interested public: not the inventor, but persons concerned with the product in the objective arena of the marketplace.” *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957 (Fed. Cir. 1997). Moreover, merely recognizing additional advantages or latent properties present in the prior art does not establish nonobviousness. *E.g.*, *In re Baxter Travenol Labs.*, 952 F.2d 388 (Fed. Cir. 1991); *Ex parte Obiaya*, 227 U.S.P.Q. 58 (Bd. Pat. App. & Inter. 1985).

To weigh against a finding of obviousness, “‘objective evidence of non-obviousness must be commensurate in scope with the claims which the evidence is offered to support.’” *Asyst Techs., Inc. v. Emtrak, Inc.*, 544 F.3d 1310, 1316 (Fed. Cir. 2008) (quoting *In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983)). “But there is a more fundamental requirement that must be met before secondary considerations can carry the day. ‘For objective evidence of secondary considerations to be accorded substantial weight, its proponent must establish a nexus between the evidence and the merits of the *claimed invention*.’” *In re Huai-Hung Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011) (quoting *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010)).

Secondary considerations of nonobviousness, moreover, cannot override a strong *prima facie* showing of obviousness. *See, e.g.*, *Agrizap, Inc. v. Woodstream Corp.*, 520 F.3d 1337, 1344 (Fed. Cir. 2008). “Where the inventions represent no more than ‘the predictable use of prior art elements according to their established functions,’ the secondary considerations are inadequate to establish nonobviousness as a matter of law.” *Stone Strong, LLC v. Del Zotto Prods. of Florida, Inc.*, 455 Fed. App’x 964, 971 (Fed. Cir. 2011) (quoting *Wyers*, 616 F.3d at 1246) (alterations omitted); *see also Ohio Willow Wood Co. v. Alps S., LLC*, 735 F.3d 1333, 1344 (Fed. Cir. 2013)

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(similar); *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (finding secondary considerations of nonobviousness insufficient to overcome obviousness finding “given the strength of the *prima facie* obviousness showing”); *Richardson-Vicks Inc. v. Upjohn Co.*, 122 F.3d 1476, 1483-84 (Fed. Cir. 1997) (similar). Still, the burden of production is shifted to require the patentee to produce evidence of nonobviousness, which may include objective evidence of nonobviousness, “after the challenger has successfully made his *prima facie* case demonstrating that the patent might be obvious.” *Novo Nordisk*, 719 F.3d at 1353. In some cases evidence of secondary considerations “simply cannot overcome a strong *prima facie* case of obviousness.” *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010).

C. Lack of Written Description and Lack of Enablement under 35 U.S.C. § 112

Section 112 of the Patent Act provides that the patent specification “shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same....” 35 U.S.C. § 112 (a).

The Federal Circuit sitting *en banc* reiterated that section 112 encompasses an “enablement” requirement and a separate “written description” requirement. *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (*en banc*). Both requirements serve to prevent patentee from overreaching, the former by requiring that the specification enable skilled artisans to make and use the full scope of the claims without undue experimentation, and the latter by ensuring that the claims cover only that which the patentee actually invented, and no more. *See id.* at 1348-49.

Enablement is a question of law based on underlying facts, and is judged from the perspective of a skilled artisan as of the patent’s relevant filing date. *ALZA Corp. v. Andrx Pharms.*, 603 F.3d 935, 940 (Fed. Cir. 2010). To be enabling, a patent specification “must teach those skilled

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in the art how to make and use the full scope of the claimed invention without undue experimentation.” *Id.*; see also *Sitrick v. Dreamworks*, 516 F.3d 993, 999 (Fed. Cir. 2008) (“A patentee who chooses broad claim language must make sure the broad claims are fully enabled.”)

The scope of the required enablement varies inversely with the degree of predictability involved, but even in unpredictable arts, a disclosure of every operable species is not required. M.P.E.P. § 2164.03. A single embodiment may provide broad enablement in cases involving predictable factors, such as mechanical or electrical elements. *Id.* (citing *In re Cook*, 439 F.2d 730, 734 (CCPA 1971)). But in applications directed to inventions in arts where the results are unpredictable, the disclosure of a single species usually does not provide an adequate basis to support generic claims. *Id.* (citing *In re Soll*, 97 F.2d 623, 624 (CCPA 1938)). In cases involving unpredictable factors, more may be required. *Id.* (citing *In re Fisher*, 427 F.2d 833, 839 (CCPA 1970)). This is because it is not obvious from the disclosure of one species, what other species will work. *Id.* Thus, while a single embodiment may be predictive in the mechanical or electrical arts, cases involving most chemical reactions and physiological activity are unpredictable and require more. *Ex Parte Hitzeman*, 9 USPQ 2d 1821, 1823 (PTO Bd App 1988).

The Federal Circuit has set forth several factors a court should consider when evaluating enablement of the construed claims, including: (1) the breadth of the claims; (2) the nature of the invention; (3) the amount of guidance presented, (4) predictability or unpredictability of the art; (5) the state of the prior art; (6) the relative skill of those in the art; (7) the presence or absence of working examples in the specification; and (8) the quantity of experimentation necessary to practice the full scope of the claims. *ALZA*, 603 F.3d at 940 (citing *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988)).

The Federal Circuit has repeatedly upheld summary judgment of invalidity where the full

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scope of the claims is not sufficiently enabled. For instance, in *Monsanto Co. v. Syngenta Seeds, Inc.*, 431 F.Supp.2d 482, 490 (D. Del. 2006), the district court held that claims directed to a gene that could function in any plant cell were invalid as a matter of law since the specification only enabled the gene to function in certain plant cells. The Federal Circuit agreed, holding that the state of the art of gene transformation at the time the patent was filed was too undeveloped to have enabled the full scope of the asserted claims. *See Monsanto Co. v. Syngenta Seeds, Inc.*, 503 F.3d 1352, 1361-62 (Fed. Cir. 2007) (citing cases). The Federal Circuit may find a lack of enablement if the specification merely provides a starting point for further iterative research in an unpredictable and poorly understood field, and wherein the specification provides no guidance or predictions about particular substitutions that might result in a pharmacological effect. *See Wyeth and Cordis Corp. v. Abbott Laboratories*, 720 F.3d 1380, 1386 (Fed. Cir. 2013).

Similarly, in *Pharmaceutical Resources, Inc. v. Roxane Laboratories, Inc.*, 2006 WL 3231427, at *15 (D.N.J. Nov. 8, 2006), the district court granted summary judgment of invalidity for claims “broadly claim[ing] any surfactant, in any amount, in combination with any of the recited wetting agents.” Rejecting the patentee’s argument that the specification included three working examples, the court noted that the point “is not that no subject matter within the claims is enabled, because some examples within the claims certainly are enabled. The point is that the specification does not enable the full scope of the claims as recited above.” *Id.* at * 16 (emphasis added). The Federal Circuit affirmed the grant of summary judgment, noting that “the broad scope of the claims and the highly unpredictable nature of the art” was sufficient to overcome any genuine issue of material fact. *Pharmaceutical Resources, Inc. v. Roxane Laboratories, Inc.*, 253 Fed. App’x. 26, 30, 2007 WL 3151692, *4 (Fed. Cir. 2007) (non-precedential); *accord Sitrick v. Dreamworks, LLC*, 516 F.3d 993, 1000-03 (Fed. Cir. 2008); *Ormco Corp. v. Align Technology*,

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Inc., 498 F.3d 1307, 1318-19 (Fed. Cir. 2007); *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1244-45 (Fed. Cir. 2003).

The specification of a patent must have a “written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same.” 35 U.S.C. § 112. “The written description is the technologic disclosure of the invention. It serves the fundamental patent purpose of making known what has been invented, including any variations and alternatives contemplated by the inventor.” *Space Systems/Loral, Inc. v. Lockheed Martin Corp.*, 405 F.3d 985, 987, 74 U.S.P.Q.2d 1534 (Fed. Cir. 2005).

A patent that claims priority to an earlier application can only properly do so if the earlier application provides written description support for the claims of the patents. *See Vas-Cath Inc. v. Mahurkar*, 935 F.2d. `1555, 1561 (Fed. Cir. 1991). Although the earlier application need not describe exactly the subject matter claimed, the description must allow a person of ordinary skill in the art to recognize that the applicant invented what is claimed. *See id.* at 1563. While the description requirement does not demand any particular form of disclosure, or that the earlier application recite the claimed invention in the exact claim terms used, a description that merely renders the invention obvious does not satisfy the requirement. *See Ariad Pharmaceuticals, Inc. v. Eli Lilly and Co.*, 598 F.3d 1336, 1352, 94 USPQ2d 1161 (Fed. Cir. 2010) (*en banc*).

“A claim encompassing two or more disclosed embodiments within its scope is a genus claim.” *Billups-Rothenberg, Inc. v. Associated Regional and University Pathologists, Inc.*, 642 F.3d 1031, 1037 (Fed. Cir. 2011). For genus claims, “an adequate written description of a claimed genus requires more than a generic statement of an invention's boundaries.” *Id.* (citing *Ariad*, 598 F.3d at 1349). Under *Ariad*, for claims to a genus having a common property or function, “the

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specification must demonstrate that the Applicant has made a generic invention that achieves the claimed result and do so by showing that the Applicant has invented species sufficient to support a claim to the functionally-defined genus.” *Ariad*, 598 F.3d at 1349.

D. Indefiniteness under 35 U.S.C. § 112

Under 35 U.S.C. § 112, the specification “shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112, ¶ 2. The Supreme Court held § 112(b) “to require that a patent’s claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2129 (2014). “In assessing definiteness, claims are to be read in light of the patent’s specification and prosecution history, and definiteness is measured from the viewpoint of a person skilled in [the] art at the time the patent was filed.” *Id.* at 2128. “Indefiniteness is a question of law that this court reviews de novo.” *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 789 F.3d 1335, 1341 (Fed. Cir. 2015).

IV. THE ASSERTED PATENT

The Asserted Patent, titled “Multiple viewing angle media support,” issued on March 23, 2021, from U.S. Application No. 16/262,797 (“’797 application”), which was filed on January 30, 2019. The Asserted Patent is a reissue of U.S. Patent No. 9,642,454 (“’454 patent”), issued on May 9, 2017, from U.S. Application No. 15/192,737 (“’737 application”), filed on June 24, 2016. The Asserted Patent and the ’454 patent state on the fact of the patents that the ’737 application is a continuation-in-part of and claims priority to U.S. Application No. 14/518,443 (“’443 application”) filed on October 20, 2014, which in turn claims priority to U.S. Provisional Patent Application No. 61/896,540 entitled “FLIPY EREADER PILLOW” which was filed on October 28, 2013.

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HPI contends that Asserted Claims 1-2, 8-10, 12-13, 15-17, 19-21, and 27-29 of the Asserted Patent are entitled to the priority date of Provisional Application No. 61/846,540 filed on October 28, 2013. *See* HPI’s May 16, 2025 Disclosure under L. Pat. R. 3.1(f).

A. Effective Filing Date

To provide written description support, a POSA must be able to recognize that the inventor was in possession of the claimed invention “with reasonable clarity.” *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1306-7 (Fed. Cir. 2008); *see also TurboCare Div. of Demag Delaval Turbomachinery Corp. v. GE*, 264 F.3d 1111, 1119 (Fed. Cir. 2001) (vague description that may render a claim element obvious not sufficient to provide written description support). An ambiguous disclosure does not provide written description support for a claim element. *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.”). Moreover, 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).

For any claim of the Asserted Patent to be entitled to an effective filing date of October 28, 2013, such claim will have to be supported under 35 U.S.C. §112 by the disclosures in the ’737 application,’443 application and U.S. Provisional Patent Application No. 61/896,540. *See* MPEP 2152.01. On the other hand, any claim of the Asserted Patent that is not supported under 35 U.S.C. §112 by the disclosures in U.S. Provisional Patent Application No. 61/896,540 but supported under 35 U.S.C. §112 by the disclosures in the ’443 application would be entitled to an effective filing date of October 20, 2014, the filing date of ’443 application. Further, any claim of the Asserted Patent that is not supported under 35 U.S.C. §112 by the disclosures in the ’443 application and

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U.S. Provisional Patent Application No. 61/896,540 would be entitled to an effective filing date of June 24, 2016, the filing date of the ’737 application. Further, any claim of the Asserted Patent that is not supported under 35 U.S.C. §112 by the disclosures in the ’737 application, ’443 application and U.S. Provisional Patent Application No. 61/896,540 would be entitled to an effective filing date of January 30, 2019, the filing date of the ’797 application. These are the relevant dates for the purposes of establishing prior art.

Claims 1–2 and 8–10 of the Asserted Patent are not entitled to an effective file date earlier than June 24, 2016, because new matter that was added which was not disclosed in the ’443 application and U.S. Provisional Patent Application No. 61/896,540. 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” is not disclosed and therefore, claims 1–2 and 8–10 of the Asserted Patent cannot be entitled to an effective file date earlier than June 24, 2016, the filing date of the ’737 application. *See TurboCare*, 264 F.3d at 1119 (disclosure must “necessarily be present”); *Hyatt*, 146 F.3d at 1353-54 (application must “necessarily” disclose the later-claimed device).

HPI contends that claim 18 of the Asserted Patent is entitled to an effective file date of June 24, 2016, the filing date of the ’737 application. *See* HPI’s May 16, 2025 Disclosure under L. Pat. R. 3.1(f).

Claims 12-13, 15-17, 19–21, and 27–29 of the Asserted Patent are not entitled to an effective file date earlier than January 30, 2019, because new matter was added which was not disclosed in the ’737 application, ’443 application and U.S. Provisional Patent Application No. 61/896,540, Specifically, the claim limitation “support angle,” was not disclosed in any of these applications and therefore, claims 12-13, 15-17, 19–21, and 27–29 of the Asserted Patent cannot

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be entitled to an effective file date earlier than January 30, 2019, the filing date of the ’797 application. *See TurboCare*, 264 F.3d at 1119 (disclosure must “necessarily be present”); *Hyatt*, 146 F.3d at 1353-54 (application must “necessarily” disclose the later-claimed device). To the extent HPI contends that the term “support angle,” is supported under 35 U.S.C. §112 by the disclosure in the ’797 application, claims 12-13, 15-17, 19–21, and 27–29 of the Asserted Patent are not entitled to an effective file date earlier than October 20, 2014, because new matter that was added which was not disclosed in the ’443 application and U.S. Provisional Patent Application No. 61/896,540. 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,” is not disclosed in U.S. Provisional Application No. 61/896,540. Thus, the earliest effective filing date to which claims 12-13, 15-17, 19–21, and 27–29 of the Asserted Patent are entitled to is the filing date of the ’443 application, October 20, 2014. *See TurboCare*, 264 F.3d at 1119 (disclosure must “necessarily be present”); *Hyatt*, 146 F.3d at 1353-54 (application must “necessarily” disclose the later-claimed device).

Ontel disagrees with HPI’s contention that the Asserted Claims are entitled to the October 28, 2013 filing date of U.S. Provisional Patent Application No. 61/896,540 for at least the reasons as set forth above. Further, Ontel contends that for the reasons set forth below in Section VII, all of the Asserted Claims are invalid in light of the prior art irrespective of an effective filing date of October 28, 2013 or October 20, 2014 or June 24, 2016 or January 30, 2019. While it is HPI’s burden to establish the claims’ entitlement of priority to earlier filings, Ontel asserts that it will not be able to show that the Asserted Claims are entitled to any effective filing date earlier than those that set forth above. Ontel reserves the right to address and challenge any arguments by HPI as to

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the effective filing date of each of the Asserted Claims of the Asserted Patent, and also identify additional prior art. In any event, the Asserted Claims of the Asserted Patent are invalid, irrespective of which effective filing date applies.

B. The Asserted Claims

On May 16, 2025, HPI provided its Disclosure of Asserted Claims and Patent Infringement Contentions and Claims Charts alleging that the Ontel’s tri-ledge Pillow Pad product infringes the following claims of the Asserted Patent. Claim 18, not yet asserted but addressed as discussed above at page 1, is reproduced below as well:

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 and each back support and each edge support is in physical communication with two ends of a solid interior, each edge support comprises an edge support width of 2 centimeters (cm) 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, 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, 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, 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 wherein each back support, each edge support, and each end is a surface of the solid interior, the solid interior is a pillow covered in fabric, 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.

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.

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8. The apparatus of claim 1, wherein each edge support has an edge support width in the range of 1 to 5 centimeters (cm).
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.
10. The apparatus of claim 9, wherein the edge angle is 90 degrees.
12. A media support apparatus comprising:
 - a body having a first support back, a second support back, and a third support back disposed about a central axis;
 - 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;
 - 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;
 - 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, 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;

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

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.

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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.
15. The apparatus of claim of 12, wherein the edge support angle is 90 degrees.
16. The apparatus of claim 15 wherein the edge support width is 2 cm.
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.
18. The apparatus of claim 12, wherein the body is foam having an indentation force deflection (IFD) in the range of 15-30 kilograms at 25% indentation.
19. The apparatus of claim 12, wherein the edge support width is in the range of 1 to 5 cm.
20. 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 and each back support and each edge support is in physical communication with two ends,
 - 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,
 - wherein a face of each edge support width is oriented clockwise about the central axis,
 - 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,
 - 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,
 - 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,
 - 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

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angle, a second viewing angle, and a third viewing angle that are different from one another; and wherein each back support, each edge support, and each end is a surface of an interior.

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.
27. The apparatus of claim 20, wherein each edge support has an edge support width in the range of 1 to 5 centimeters (cm).
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.
29. The apparatus of claim 28, wherein each edge support has an edge support width of 2 centimeters (cm).

C. The Prosecution History

Ontel incorporates by reference the prosecution histories of the '443 application, '443 application, '443 application and U.S. Provisional Patent Application No. 61/896,540. [CITE Bates]. Further, a summary of the prosecution history for each of these applications is provided in Ontel's Non-Infringement Contentions under L. Pat. R. 3.2A provided contemporaneously, and are incorporated by reference herein. *See* Ontel's June 30, 2025 Non-Infringement Contentions.

V. PERSON OF ORDINARY SKILL IN THE ART (“POSA”)

A 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 media support apparatus and devices, particularly multiple viewing angle media support.

A POSA with respect to the Asserted Patent would have been an individual educated in mechanical engineering with a bachelor's degree and one or two years of experience in the

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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 typically work in a team with machinists and 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.

VI. **LISTING AND SUMMARY OF THE PRIOR ART PURSUANT TO L. PAT. R. 3.3(a)**

Pursuant to L. Pat. R. 3.3(a), Ontel identifies herein the prior art known at this time that it asserts invalidates, alone or in combination, each of the Asserted Claims of the Asserted Patent from the perspective of a POSA. To the extent that any of the elements of the Asserted Claims are deemed missing from the references, such elements would have been known or obvious to a POSA at the time of the invention. *See KSR, Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). Ontel also incorporates by reference its statements at the outset of these contentions concerning the supplementation or amendment of these contentions.

For any prior art patents and publications identified in these Contentions, Ontel reserves the right to rely on inherency, public use, offer for sale, and/or sale of the products described in those prior art patents or publications once Ontel has had an opportunity to take discovery on these subjects.

Without limiting the contents of the prior art references on which Ontel relies, Ontel sets forth a summary of each prior art reference below. Where elements are disclosed at multiple locations within a single prior art reference, Ontel has not necessarily identified every location in that reference. Likewise, where a reference is listed for one or more claim elements, Ontel has not necessarily identified every element of that claim, or claim in that patent, to which that reference applies. Ontel may rely on uncited portions of the identified prior art, references identified in the

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prior art disclosed herein, other documents, and expert testimony. The citations to a particular Example, Table, or Figure from a reference include the caption and description and any text relating to the same. Similarly, citations to particular text referring to an Example, Table, or Figure also include the Example, Table, or Figure and caption.

Under 35 U.S.C. § 102(a)(1):

On-Sale Product	Date of offer/sale	Identity of person who made the information known and to whom it was made known
Flipy	Oct. 21, 2013	Trademark Reg. No. 4551826 to Happy Products, Inc. [ONTEL_000167- ONTEL_000169]
Flippy	July 29, 2012	Juliette Fassett showed Flippy to Lori Wilkinson

Under other statutory provisions:

Citation	Date Published or Issued	Statutory Basis
AU 2010/100703 (“Preece”) [ONTEL_000253- ONTEL_000259]	July 29, 2010	35 U.S.C. § 102(a)(1)
FACET Pyramid iPad Stand Kickstarter (“Facet Pyramid”) [ONTEL_000108- ONTEL_000163]	September 4, 2012	35 U.S.C. § 102(a)(1)
Amazon Listing for IPEVO PadPillow Pillow Stand for iPad Mini & iPad 4 & iPad 3 & iPad 2 & iPad 1 & Kindle & Nexus & Galaxy – Charcoal Gray (“PadPillow”) [ONTEL_000273-ONTEL_000277]	July 8, 2013 (date first available on Amazon, August 17, 2011)	35 U.S.C. § 102(a)(1)
South Korean Patent No. KR2013/0005409A (“Baek”) [ONTEL_000001-ONTEL_000013 ONTEL_000497- ONTEL_000509]	January 16, 2013	35 U.S.C. § 102(a)(1)
Taiwanese Patent No. TWD144562S1 (“Hong”) [ONTEL_000177-ONTEL_000187, ONTEL_000510 - ONTEL_000520]	December 21, 2011	35 U.S.C. § 102(a)(1)
Taiwanese Patent No. TWM419,961U (“Huang”) [ONTEL_000188-ONTEL_000205, ONTEL_000521- ONTEL_000538]	January 1, 2012	35 U.S.C. § 102(a)(1)
U.S. Patent No. 1,928,806 (“Barcalo”)	October 2, 1933	35 U.S.C. § 102(a)(1)

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Citation	Date Published or Issued	Statutory Basis
[ONTEL 000014-ONTEL 000018]		
U.S. Patent No. 3,746,296 (“Dean”) [ONTEL 000027-ONTEL 000030]	July 17, 1973	35 U.S.C. § 102(a)(1)
U.S. Patent No. 4,274,616 (“Radtke”) [ONTEL 000260-ONTEL 000263]	June 23, 1981	35 U.S.C. § 102(a)(1)
U.S. Patent No. 8,424,831 (“Lin”) [ONTEL 000221-ONTEL 000227]	April 23, 2013	35 U.S.C. § 102(a)(1)
U.S. Patent No. 8,960,421 (“Diebel 2011”) [ONTEL_000031-ONTEL_000072]	February 24, 2015; filed March 28, 2011	35 U.S.C. § 102(a)(1)–(2)
U.S. Patent No. 9,226,559 (“Diebel 2013”) [ONTEL_000073-ONTEL_000107]	January 5, 2016; filed March 15, 2013	35 U.S.C. § 102(a)(1)–(2)
U.S. Patent Application Publication No. 2015/0115124 A1 (“Cannon”) [ONTEL 000019-ONTEL 000026]	April 30, 2015	35 U.S.C. § 102(a)(1)
U.S. Patent Application Publication No. 2015/0189781 A1 (“Klepar 2013”) [ONTEL 000211-ONTEL 000220]	July 2, 2015; filed December 27, 2013	35 U.S.C. § 102(a)(1)–(2)
U.S. Design Patent No. D703,216 S (“Klepar 2014”) [ONTEL 000206-ONTEL 000210]	April 22, 2014	35 U.S.C. § 102(a)(1)–(2)
U.S. Design Patent No. D696,258 (“Padilla 2013”) [ONTEL 000228-ONTEL 000235]	December 24, 2013	35 U.S.C. § 102(a)(1)
U.S. Patent Application Publication No. 2003/0001063 (“Halpin”) [ONTEL 000170-ONTEL 000176]	January 2, 2003	35 U.S.C. § 102(a)(1)
U.S. Patent No. 6,196,512 B1 (“Ure”) [ONTEL 000266-ONTEL 000272]	March 6, 2001	35 U.S.C. § 102(a)(1)
U.S. Design Patent No. 365,461 (“Falter”) [ONTEL 000164-ONTEL 000166]	December 26, 1995	35 U.S.C. § 102(a)(1)
U.S. Design Patent No. 362,565 (“Tubbs”) [ONTEL 000264-ONTEL 000265]	September 26, 1995	35 U.S.C. § 102(a)(1)
U.S. Patent Application No. 2014/0076748 (“Padilla 2014”) [ONTEL 000236-ONTEL 000247]	March 20, 2014	35 U.S.C. § 102(a)(1)–(2)
Nigel J. Mills, POLYMER FOAMS HANDBOOK: ENGINEERING AND BIOMECHANICS APPLICATIONS AND DESIGN GUIDE, Chapter 9 (Butterworth-Heinemann, 1st ed. 2007) (“Mills”) [ONTEL 000414-ONTEL 000494]	March 23, 2007	35 U.S.C. § 102(a)(1)

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To the extent Ontel does not specifically apply any printed publication in the above table to Asserted Claims of the Asserted Patent, Ontel reserves the right to rely on it to demonstrate the background knowledge in the art, level of ordinary skill in the art, a prior art solution to a prior art problem, to show motivation to combine references or to modify a particular reference, or for any other purpose permitted under the Local Patent Rules and the Federal Rules of Civil Procedure.

A. Summaries of the Prior Art

1. **AU 2010/100703 A4, dated July 29, 2010 (“Preece”) [ONTEL_000253-ONTEL_000259]**

Preece was published on July 29, 2010, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Preece is an invention which enables the use of the device on the user’s lap while sitting on a chair or sitting in a bed, and can also be used on a desk or table. Preece at Abstract, 1. Preece notes that “[h]aving the tablet computer sitting directly on the lap puts strain on the neck while looking at the screen, and makes it difficult to keep the device stable while typing or using the device with both hands.” *Id.* at Abstract, 1.

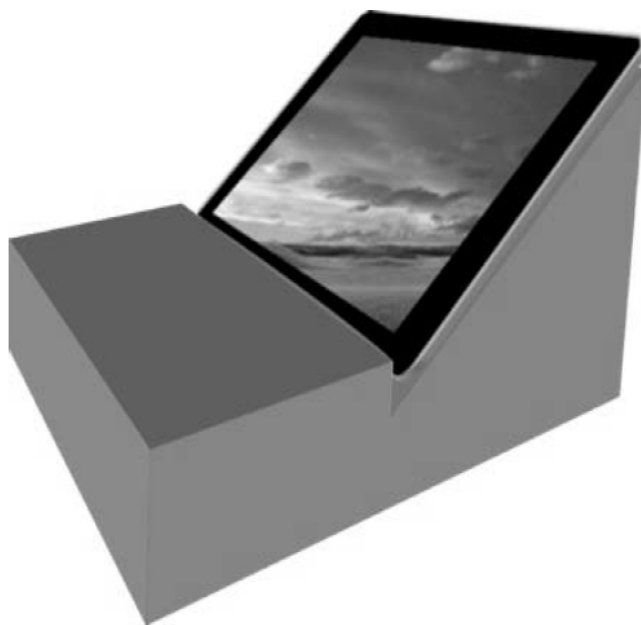
Preece discloses an iPad stand that “supports the device on the lap without the need to support it with the hands, lifts and tilts the screen to a more comfortable 35 degrees for easier viewing and less neck strain.” *Id.* at Abstract, 1.

Preece discloses an iPad stand “is constructed of closed-cell Polyethylene or Ethylene Vinyl Acetate (EVA) foam, giving it a non-slip surface that will not scratch the device, is comfortable on both the arms and thighs, and will not be cold, even on bare skin such as the thighs unlike the device itself.” *Id.* at Abstract, 1.

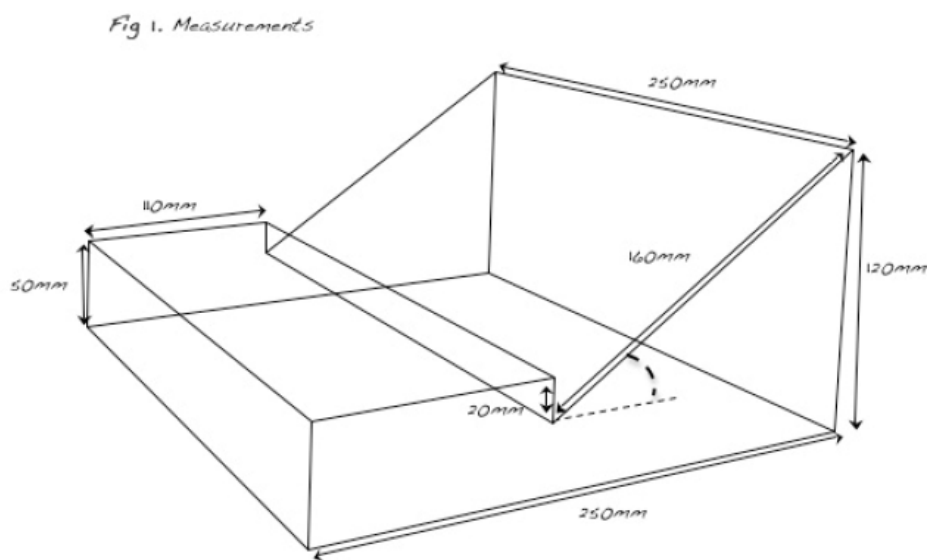
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Preece discloses that the “device can be supported in both landscape or portrait mode, and can accommodate a wide range of protective covers that may be covering the tablet device.” *Id.* at Abstract, 1.

Figures from Preece are depicted below.



Id. at 5.



Id. at 6.

2. FACET Pyramid iPad Stand, first posted on Kickstarter on September 4, 2012 (“Facet Pyramid”) [ONTEL_000108- ONTEL_000163]¹

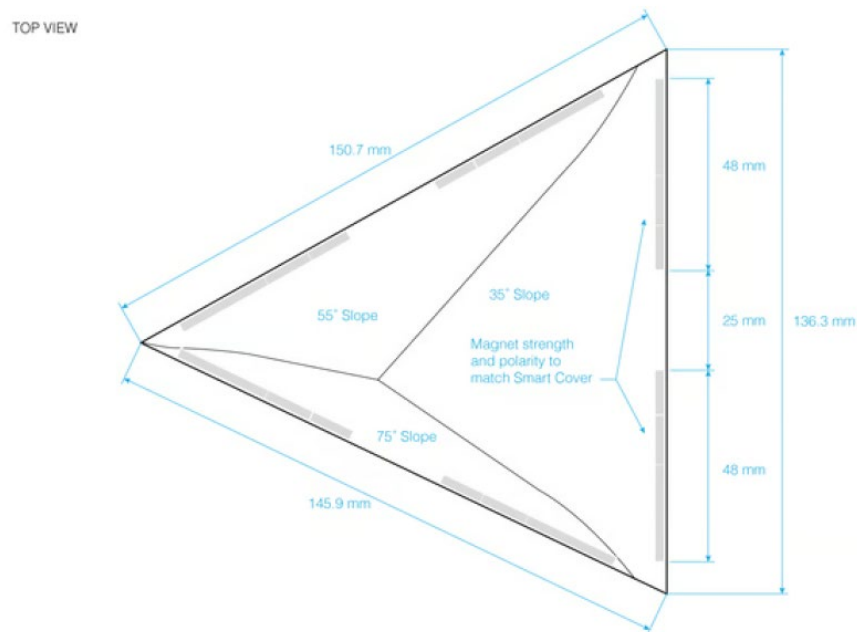
Facet Pyramid was published on or around September 4, 2012, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

The Facet Pyramid is “a multi-angle magnetic iPad stand.” ONTEL_000110. Facet Pyramid discloses a triangular-prism support that allows for a tablet to be propped in three preset viewing positions which can be accessed by rotating the stand. *Id.* Each face is a different angle (35°, 55°, and 75°) and provides for a stable, hands-free tilt for typing, watching, or drawing. *Id.* Magnets hold the device in place to the stand. *Id.*; *see also* ONTEL_000113.



ONTEL_000109, ONTEL_000133.

¹ FACET Pyramid iPad Stand includes the physical product.



Id. at 7.

Facet Pyramid discloses the product’s intended use on surfaces which include soft surfaces, such as couches or beds. *Id.* at 6.

The comments for the Facet Pyramid Kickstarter disclose perspectives on what modifications were desirable to the proposed iPad holder product, expressed the need for a product serving a hands-free tablet-holding function (commenter finding it “extremely useful” and currently “struggl[ing] to get [] iPad cover in the right angle to have a comfortable read of the screen”), and noted features important to the consumer, such as “use[] [when] on bed” and preventing “scratch[es] or ding[s] to the iPad aluminum back”:

Creator [John Uytendaal](#) on September 4

so simple but extremely useful. I still struggle to get my iPad cover in the right angle to have a comfortable read of the screen. The FACET will solve all my iPad cover issues..... hope you get a lot of backers to make this reality

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Creator [Nancy You + WEGRIP](#) 6 days ago

Nice execution. Just curious about the possibility and consequence of lying down on it when using on bed.

Creator [Steve Lyb](#) on September 14

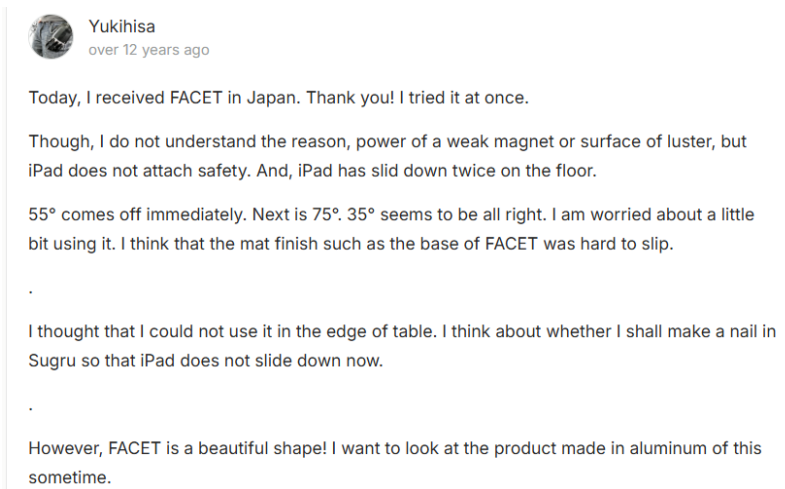
Pumped for this. One small concern - what kind of finish will the pyramid be? Wouldn't want to scratch or ding the iPad aluminum back.

Id. at 21-22. The creator, “iLoveHandles” confirmed that the aluminum finish of the product was intended to “not scratch the aluminum finish of the iPad.”

Creator [iLoveHandles](#) on September 14

FACET is made of ABS plastic and all of the edges have been ever so slightly rounded. It will not scratch the aluminum finish of the iPad.

Id. at 21. Users also noted potential modifications that would prevent the iPad slipping from the stand, including adding a ledge.



Id. at 48.

Multiple “updates” were published for the Facet Pyramid disclosing photos showing its triangular shape and application:

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Id. at 30-31 (Update 1). Facet Pyramid was made, offered for sale on and around November, 2012. ONTEL_000146. The updates further disclosed the popularity of the product, as evinced in the comments excerpted above for Facet Pyramid.



Id. at 44 (Update 7).

3. **Amazon Listing for IPEVO PadPillow Pillow Stand for iPad Mini & iPad 4 & iPad 3 & iPad 2 & iPad 1 & Kindle & Nexus & Galaxy – Charcoal Gray, dated July 8, 2013 (“PadPillow”) [ONTEL_000273-ONTEL_000277]**

PadPillow was accessible as of July 8, 2013, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

PadPillow is an Amazon listing of the tablet holder, PadPillow:



Id. at 1. PadPillow discloses that the tablet-holder is “[a] soft, huggable pillow” which “lets you rest any generation of your iPad on your lap or stomach,” and can be adjusted for the floor, a chair,

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or lying in bed. *Id.* at 2. The viewing angle can be controlled by when using the tablet holder on your knees by bending them to achieve the desired view. *Id.*

The pillow is “comprised of two triangular sections connected with a soft hinge.” *Id.* When the sections of the tablet-holder are folded together, as pictured above, the raised leather label “acts as a simple stopper” for the iPad, which “rests at an ideal angle for all [] multimedia applications.” *Id.* The tablet-holder is made of a “soft foam.” *Id.*

Perspectives on PadPillow in the comments disclose a desire for increased confidence that the tablet would not slip from the holder (*see id.* at 3) and implementing different nuances to adjust the viewing angle.

Great but could be even greater February 12, 2012

By [MST55](#)

Color Name: [Blue Denim](#) | [Amazon Verified Purchase](#)

This is a must for anyone who sits with an iPad on their lap. It's lightweight and comfortable and the fabric appears to be a good quality and durable. I like that I can use my iPad with or without an external keyboard. Why only 4 stars? I think the price is a bit high and there are two improvements that could be made to the product. 1) It could use velcro straps on the sides when the pillow is in the closed position and 2) the little strip that holds the iPad in place could be a bit thicker so i could be more confident that my iPad will stay in place.

Just what I wanted! January 3, 2012

By [SMS](#)

Color Name: [Blue Denim](#)

I received the Cushi pillow stand as a Christmas gift, and it was everything I had hoped for and more. I spend hours each day with my iPad, and this stand is SO much better than holding the iPad in my hands for that length of time. I had tried propping my iPad on an ordinary pillow or box with unsatisfactory results. The Cushi stand is stable in my lap and very comfortable to use. Sometimes I like a higher position for extended reading, and I can put an empty shoebox in my lap underneath the Cushi stand to further elevate my iPad. I do not use a separate keyboard, but was surprised to see how much easier it is to type on the iPad's own keyboard when the unit is mounted on the Cushi stand in my lap. The Cushi stand is lightweight, but fairly bulky. I wouldn't want to carry it around away from home, but that isn't why I wanted this stand. I have a different, more portable stand for tabletop or counter use that I can carry with me when I'm out and about, but it isn't meant to support my iPad in my lap, which is how I mainly use it at home.

Love, love, LOVE it!!! May 2, 2012

By [See_Shel](#)

Color Name: [Blue Denim](#) | [Amazon Verified Purchase](#)

I know what you're thinking: this sure is a glowing review so she must work for the company. Well, set your mind at ease. I am simply another iPad user just like many of you here, shopping

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for the most comfy way to sit back, relax and enjoy our new tablets.

I originally found the PadPillow on the manufacturer's site but thought I'd check with Amazon for a better price. Boy, am I glad I did! I've only had my iPad for just over a month but have had my Kindle Fire since Christmas. All this time I have constructed a series of pillows and blankets arranged to prop up my devices and make it easier to read e-books, watch movies and type emails. All attempts were frustrating and left kinks in my neck but strengthened my resolved that there MUST be something else better out there! I had a good feeling, based on reviews, that this would be a great product so I eagerly anticipated its shipment. Now that I've been using it for about 3 days I am in LOVE! I want to shout the name of this glorious invention from the mountaintops! It might not be the prettiest pillow on the market (especially my denim blue one) but who cares when using both my iPad and Kindle have never been more comfortable?! I'm even writing this entire review from my PadPillow.

The only thing I would recommend is perhaps a tiny strip of Velcro to keep the cone pillow in place so that it doesn't flop all over when you're moving it out of position. However, this is a quick do-it-yourself fix that I plan on completing with materials from Walgreens.

And, as another reviewer has so eloquently stated, the pillow needs a tad bit of assistance if you are laying flat in bed trying to read. Just grab a tiny throw pillow and prop it under the back of your PadPillow and voila!... [Read more >](#)

I love my Ipevo but..... December 25, 2012

By [Pezmom](#)

Color Name: **Blue Denim** | **Amazon Verified Purchase**

I am happy that I discovered this product. I Never use my iPad without it. I still think it was about \$10.00 too much, so I wouldn't invest in a second as a gift, etc. Now that I've had it for a few months, I've had to make some improvements on it. I sewed a strap on one side to hold a stylist. I put velcro on each side to keep it closed. I put stuffing inside the front ledge to build it up, so my iPad will stop slipping off. I put a pocket on the back to hold a screen cleaning cloth. This is a great idea but it is way overpriced. If the manufacturer added the above improvements, then it would be a lot more practical.

great idea!

it's absolutely perfect for sitting in a chair and comfortably using my iPad. Used to use a pillow but this is so much better, the iPad doesn't slide around, much more secure. [Read more](#)

Published 17 days ago by Joan B.

Id. at 3-4 (highlighting added). Further improvements were also suggested in the comments.

OK - but could use some improvements

This works ok, and is soft, however, it could use some improvements. The back piece tends to roll backward and then the iPad loses its support.

[Read more](#)

Published 11 days ago by S. Stevens

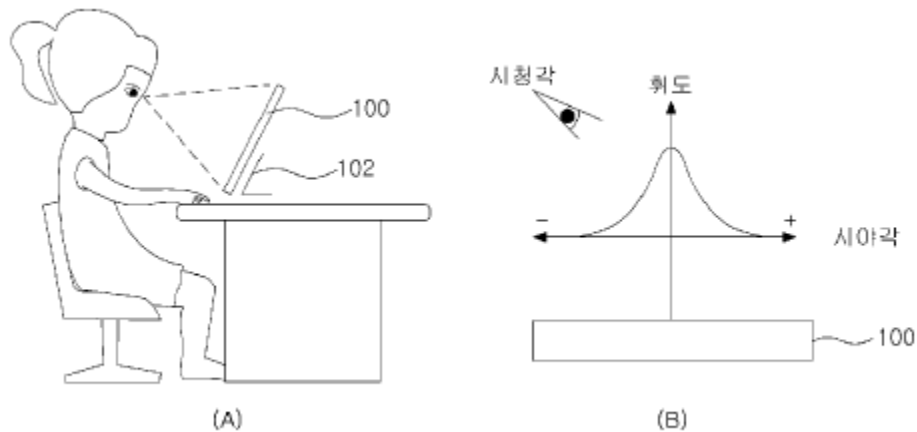
Id. at 4.

4. **South Korean Patent No. KR2013/0005409A, published October 7, 2013 (“Baek”) [ONTEL_000001-ONTEL_000013, ONTEL_000497-ONTEL_000509]**

Baek was published on October 7, 2013, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

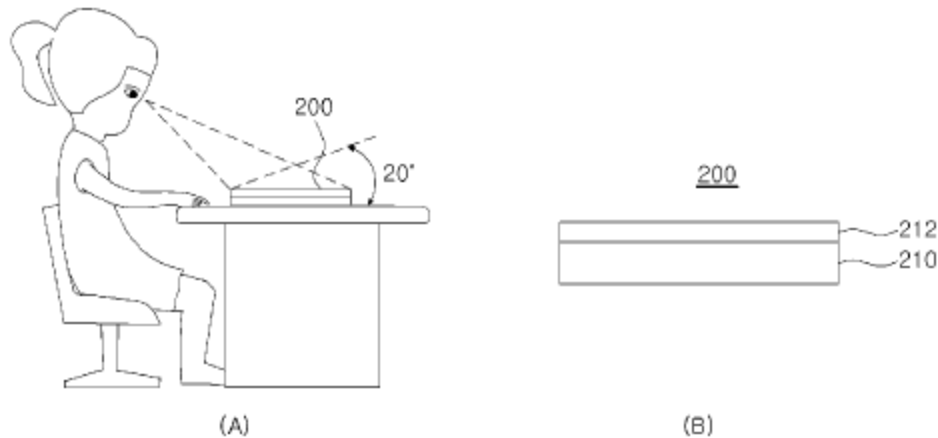
Baek is directed to a “viewing angle control sheet” which enables viewing of a surface at a viewing angle of 40 degrees or more, depending on the incline from the ground (i.e. 20 degrees inclination from the ground or less enables a viewing angle of 40 degrees or more). Baek at Abstract.

Baek discloses that when used as shown in Figure 1 (A), the luminance distribution is as shown in Figure 1 (B), making it difficult for a user to sit comfortably and watch a screen, and to sharpen the screen only when the waist is upright. *Id.* at [0003]; [0005]; [0010]-[0011]; [0016]-[0017].



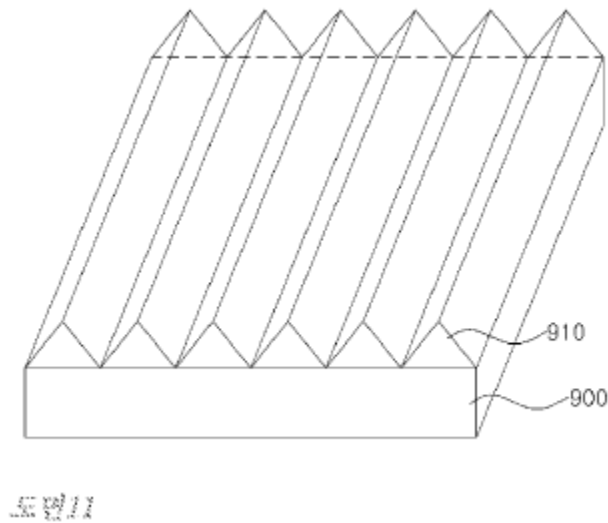
Id. at Fig. 1.

The invention as disclosed in Figure 2 shows the implementation of a viewing angle control sheet:



Id. at Fig. 2.

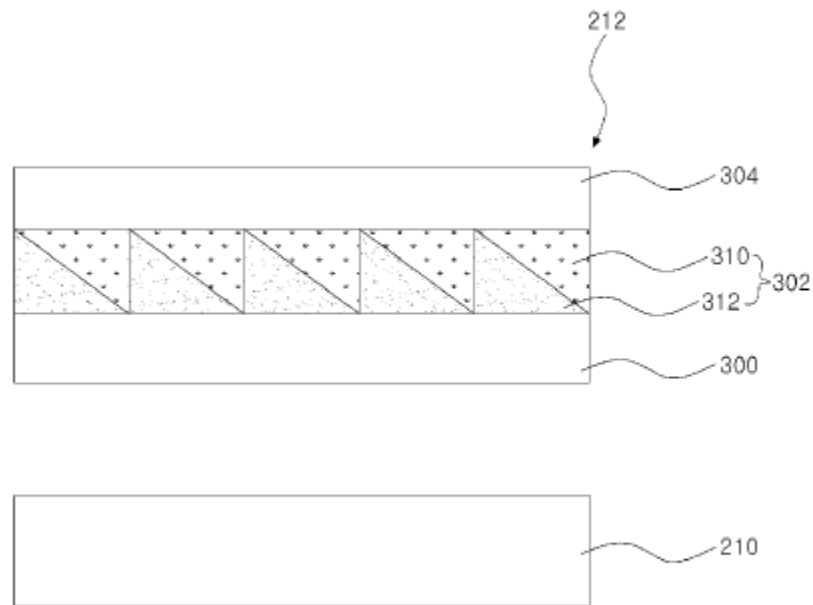
Baek discloses that “[t]he present invention [] provides a viewing angle control sheet that enables clear viewing of the display device from a side angle.” *Id.* at [0006]. In one embodiment, this is achieved by “a sheet base and a prism portion formed on the sheet base. . . . The prism portion includes prism patterns having different refractive indices, and a refractive index between the prism patterns is implemented in a range of 0.08 to 0.31, thereby achieving a viewing angle of 40 degrees or greater when the display device is arranged at an inclination angle of 20 degrees or less relatively to the ground.” *Id.* at [0008]. In another embodiment, “a viewing angle control sheet formed on a display device includes a sheet base and a prism portion having a first prism pattern formed on the sheet base and a second prism pattern formed on the first prism pattern. Here, the refractive index difference between the prism patterns is implemented in a range of 0.08 to 0.31.” *Id.* at [0009]. The viewing angle control sheet is depicted from a perspective view in Fig. 10:



Baek further discloses that the viewing angle can be adjusted. “When the viewing angle control sheet according to the present invention is formed on a display device and used, the viewing angle of the display device can be adjusted to a desired angle by using the viewing angle control sheet. As a result, a user can clearly view the screen of the display device from a desired position.” *Id.* at [0010].; *see also id.* at Effect of Invention, generally. Baek specifically discloses an embodiment with a viewing angle of 49 degrees and 41 degrees (Figs. 12 and 13, [0062]-[0064], [0068]-[0070]).

Figure 3 shows a viewing angle control sheet 212 of the present embodiment which includes a seat base 300, a prism portion 302, and a protection portion 304.

FIG. 3

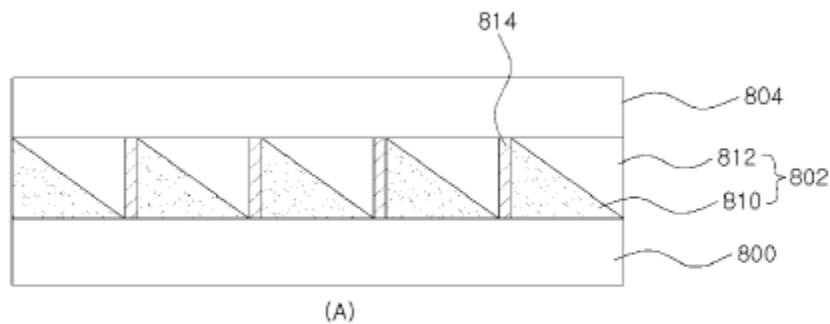


Id. at Fig. 3.

The prism portion 302 functions to adjust the path of the light emitted from the display device (210), and includes first prism patterns (310) and second prism patterns (312). The first prism patterns (310) are formed on the sheet base (300) and may have, for example, a right triangular shape. *Id.* at [0022]-[0023]. Baek further discloses “the viewing angle control sheet 212 of the present embodiment controls the light path of the display element 200 to ensure a desired.” *Id.* at [0032].

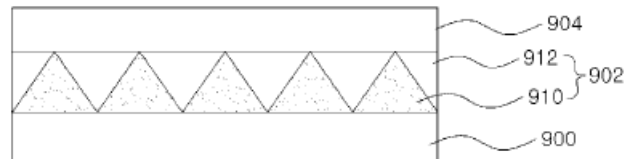
Figure 8 depicts another configuration of the Baek invention.

도 8



Id. at Fig. 8. Figure 8 is a cross-sectional view showing a viewing angle control sheet according to a fifth embodiment of the present invention. *Id.* at [0046]. The first prism pattern 810 of Figure 8 may have a right angle shape (pictured). *Id.* at [0050].

도 9



Id. at Fig. 9. Figure 9 is a cross-sectional view illustrating a viewing angle control sheet according to a sixth embodiment of the present invention, and Fig. 10 (above) is a perspective view of the Figure 9 cross-section. In Figure 9, the first prism pattern (910) has an isosceles triangle shape or a triangle shape in which all vertices are acute. *Id.* at [0056].

Baek discloses shortcomings of current attempts in the art for holding devices: “In the prior art, in order to ensure sufficient visibility for the user, the display device must be placed on a support such as a desk pad and tilted to close to 90 degrees, which results in an uncomfortable user

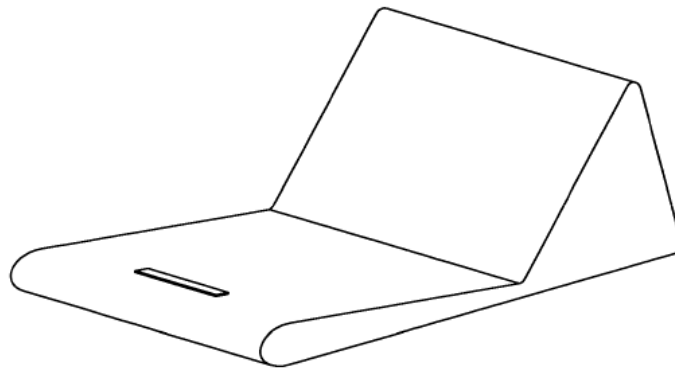
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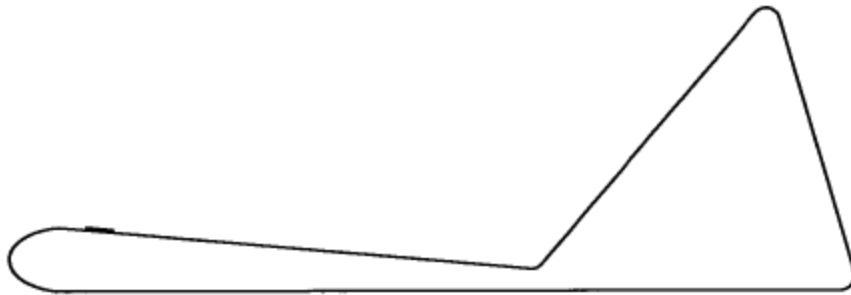
posture and makes it difficult to touch the keyboard or perform input operations, thereby causing significant inconvenience in use.” *Id.* at [0017]. . Throughout, Baek emphasizes the use of the invention to enable comfort for the user. *See, e.g.,* Baek *generally*.

5. Taiwanese Patent No. TWD144562S1, published December 21, 2011 (“Hong”) [ONTEL_000177-ONTEL_000187, ONTEL_000510-ONTEL_000520]

Hong was published on December 21, 2011, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

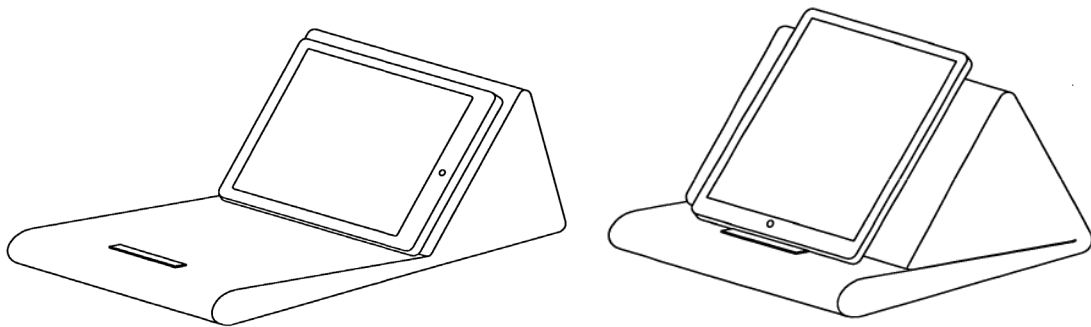
Hong discloses a pillow for use for a tablet computer. Hong at Design Features. Hong discloses that the pillow “can be placed on the user’s lap or on the ground.” *Id.* Further, Hong describes the shape of the pillow, where one side of the pillow is a triangular prism, and the other side is an inclined surface. *Id.* A few visuals of the Hong invention from different perspectives are shown below.





Id. at 5, 7.

Hong discloses that the pillow has the feature of “plac[ing] the tablet computer against one face of the triangular prism” and “[a] strip of coarse material [] provided at the end of the inclined surface to prevent the tablet computer from sliding off.” *Id.* A demonstration of these features is depicted in the below Figure.

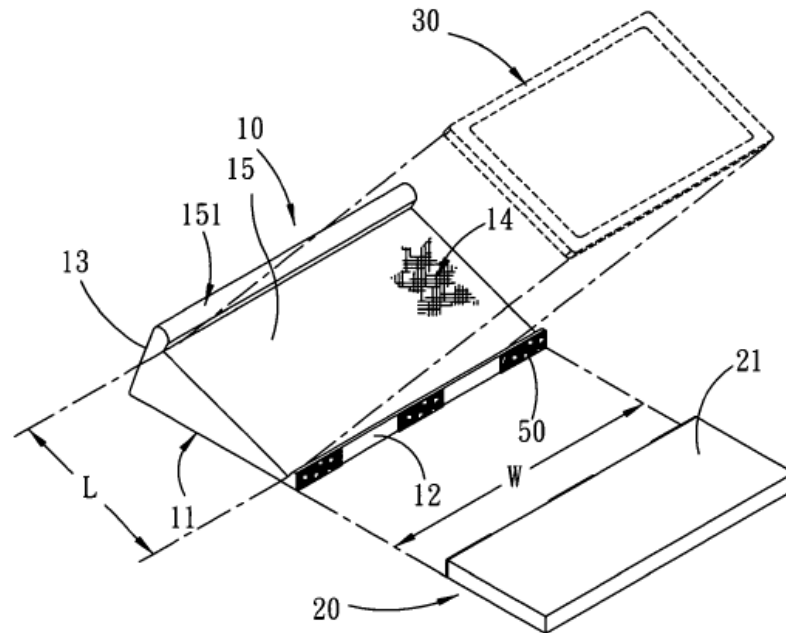


Id. at 11-12.

6. **Taiwanese Patent No. TWM419,961U, published January 1, 2012 (“Huang”) [ONTEL_000188-ONTEL_000205, ONTEL_000521-ONTEL_000538]**

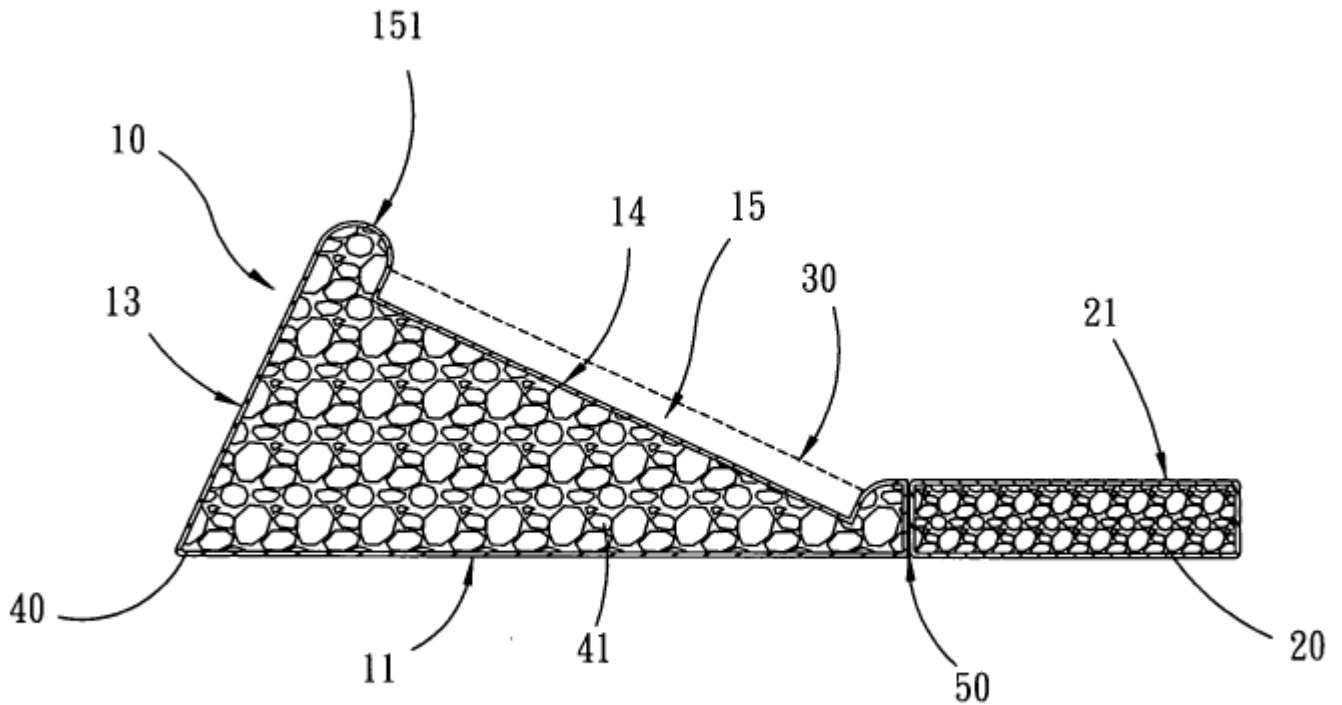
Huang was published on January 1, 2012, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Huang discloses a tablet support pad that can support a tablet at a desired viewing angle. Huang at Abstract. Huang discloses that “The bearing surface and the bottom surface are maintained at an oblique angle relative to each other. The bearing surface features a receiving groove, the transverse width of which is relatively greater than its longitudinal width, allowing a tablet computer to be placed horizontally into the receiving groove. At a location in the receiving groove near the rear side, there is a pillow portion that protrudes from the bearing surface. When the tablet computer is placed vertically in the receiving groove, the pillow portion can be used to elevate the tablet computer’s tilt angle to reduce glare.” *Id.* at 4. “When the tablet computer 30 is placed vertically in the receiving groove (see “Fig. 3”), the pillow portion 151 can be used to elevate the tilt angle of the tablet computer 30, which can address the issue of screen glare on the tablet computer 30.” *Id.* at 5.



第1圖

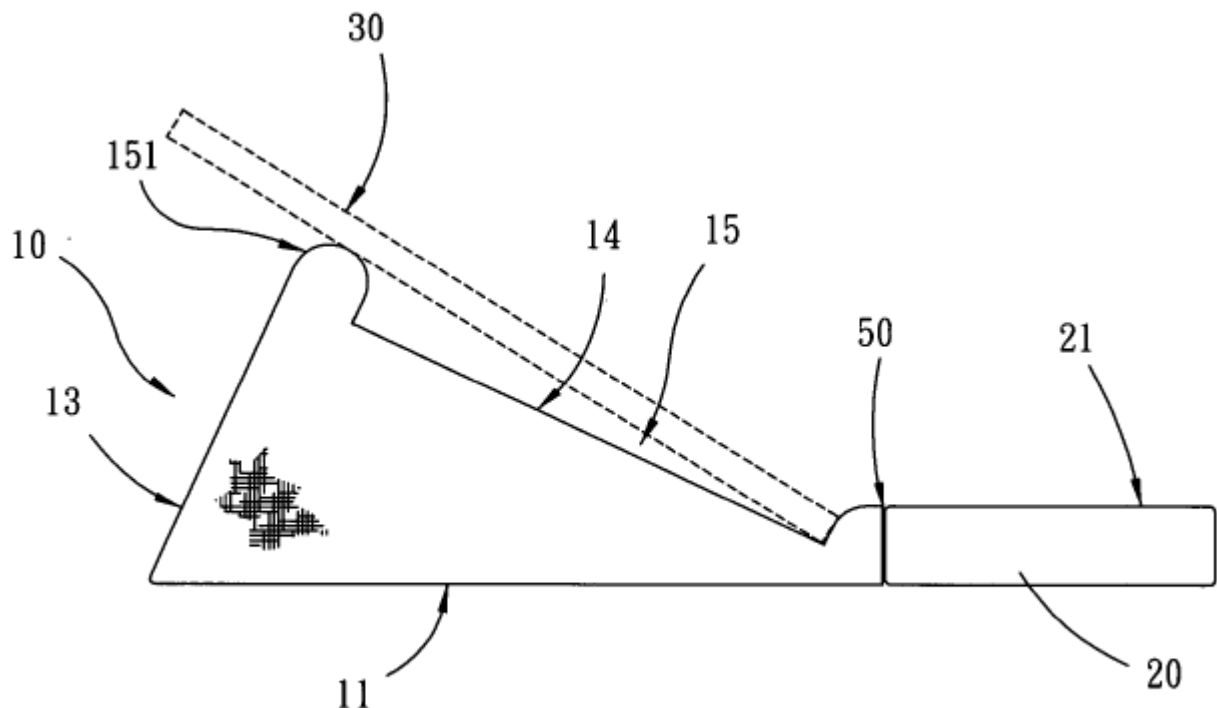
Id. at Fig. 1. The tablet is based on the bearing surface (14) which extends rearward and upward along the longitudinal direction of the front side surface (12), toward the rear side surface (13), such that the rear side surface and the bearing surface are at an oblique angle. *See also* Fig. 2 (below).



第2圖

The bearing surface (14) has a receiving groove (15) which is a groove that is immersed in the bearing surface. The lateral width of the receiving groove (15) is larger than the longitudinal width (L) so that the tablet (30) can be placed laterally. “The tablet computer support pad according to the present invention can support a table computer at an angle suitable for viewing or reading. . . . The receiving groove used to hold the tablet computer also allows the tablet to be placed either horizontally or vertically without affecting the tablet computer’s normal use functions.” *Id.* at 4.

A depiction of the use of the invention with the tablet being placed in the accommodating groove is depicted in Figure 3 (below).



第3圖

Huang discloses that existing support devices “are made of relatively hard materials, which feel firm to the touch and offer insufficient comfort” and that the apparatus of Huang seeks to “propose[] a tablet computer support pad that can support a table computer at an angle suitable for viewing or reading and provide a comfortable use function for the wrists.” *Id.* at 3-4.

Huang further discloses “the main support pad 10 and the wrist rest 20 can be manufactured using soft materials. An embodiment of the material structure of the main support pad 10, as shown in “Fig. 2,” includes: a fabric 40 and a padding material 41 enveloped by the fabric 40. The fabric 40 may be selected from, for example, synthetic fiber fabric or natural fiber fabric. As for the padding material 41, it may be selected from either form or latex. In one embodiment of the present invention, the padding material 41 of the main support pad 10 is made from foam that normally

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has a fixed shape. This type of material makes it easier to form the aforementioned receiving groove 15 to accommodate the tablet computer 30 and can provide the main support pad 10 with better comfort.” *Id.* at 6.

**7. U.S. Patent No. 1,928,806, issued October 3, 1933 (“Barcalo”)
[ONTEL_000014-ONTEL_000018]**

Barcalo was issued on October 3, 1933, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Barcalo discloses an invention that “relates to pillows or cushions such as may be used on beds or lounges, and also to support books, magazines, and the like in convenient reading positions.” Barcalo at 1:1-4. Barcalo discloses pillows or cushions to support books or magazines “adjustably” for convenient reading positions. *Id.* at 1:5-8. The support can be used at “in an inclined position” which is “convenient for reading, when the pillow or cushion is disposed upon the lap of, or in front of, the reader; with which the inclination of the articles so supported may be varied” *See id.* at 1:9-18; *see also id.* at 2:18-22. Barcalo notes:

Different people, because of different personal eye conditions, or because of particular eye glasses used, find it desirable, and often necessary, when reading to have the book or magazine being read, supported at just the proper position and inclination in front of them. This position or inclination of the book or magazine must frequently be changed when the reader changes his position. For example, if a person is propped up in bed and attempting to read, the position or inclination of the book or magazine being read will change with the changes in the position of the reader. If the reader slides down into the bed somewhat, the inclination of the book or magazine should be increased, and if the reader sits up more erectly, then the inclination of the book or magazine can be, and often should be, decreased. The position of the book or magazine often is dependent upon whether the reader is using multi-focal eyeglasses or eyeglasses of different strengths.

Id. at 3:25-49.

Barcalo further discloses that an object of the invention is to enable the user to have comfortable positions or postures. *Id.* at 1:9-16. The pillow or cushion may be used on the lap of the reader, and is accordingly soft and light, not causing discomfort. *Id.* at 3:50-61. Specific

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benefits of the pillow include stability when positioned on the lap and softness which will prevent slipping. *Id.* at 3:56-61.

Barcalo discloses a pillow for use of propping materials for reading which is triangular in shape. “The ends 12 of the case or sack are triangular in shape, being preferably obtuse angled triangles . . . [with] the 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.” *Id.* at 1:79-91. *See, e.g.,* Fig. 1.

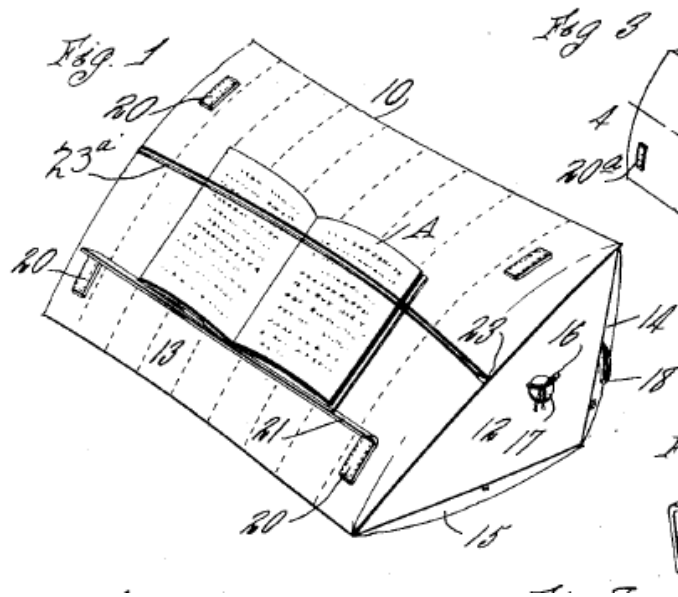


Figure 5 shows an end elevation of the pillow in Figs. 1-4, showing the small pockets on all three faces.



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. For example, in Fig. 1, this rest or bar 21 is adjacent the lower edge portion of the face 13 when the pillow is resting upon the side face 15” (see above). *Id.* at 2:38-44.

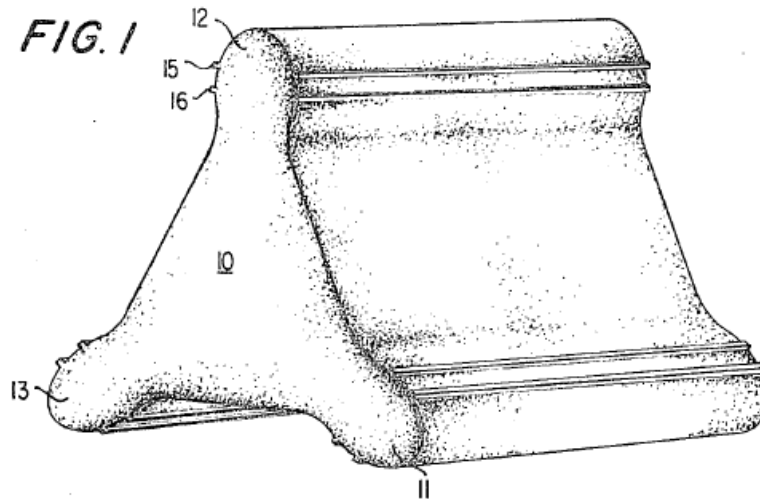
Barcalo discloses that the embodiments shown in Figs. 1 to 8 have a pillow which “includes a sack or case 10 of flexible sheet material, such as textile fabric, or leather, which is completely filled with a soft, loose, yielding or elastic filling or stuffing 11, such as hair, cotton, wool, kapok, feathers or any other suitable soft and more or less pliable or resilient filling material.” *Id.* at 1:66-73.

8. **U.S. Patent No. 3,746,296, issued July 17, 1973 (“Dean”)
[ONTEL_000027-ONTEL_000030]**

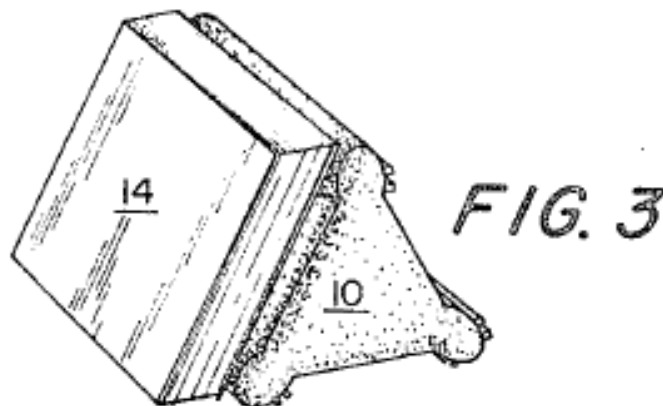
Dean was issued on July 17, 1973, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

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Dean discloses a triangular portable support for maintaining objects in an upright manner. Dean at Abstract. “The support is generally triangular cross section . . . and provided with plural raised projections near each apex.” *Id.*; *see also id.* at Fig. 1.



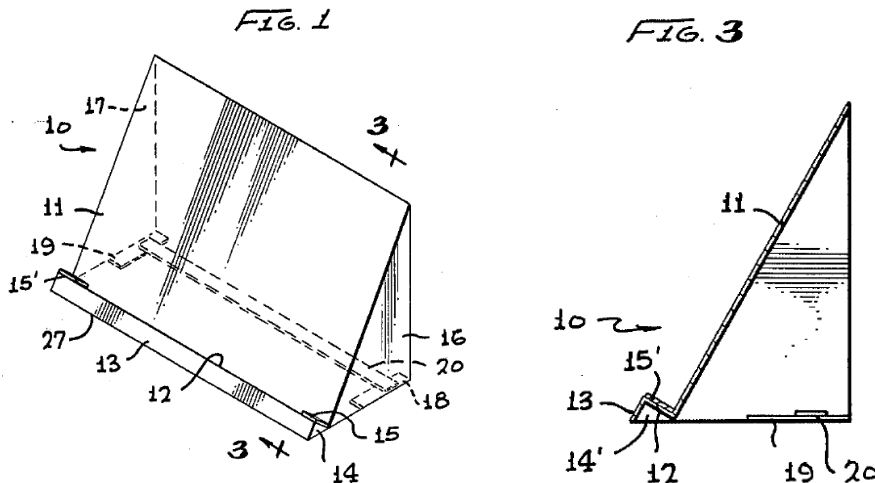
Dean discloses that the “apex portions 11, 12, and 13 provided at the three ends of member 10 are preferably bulbous and enlarged.” *Id.* at 1:66-68. Dean discloses that these regions assist in preventing slipping of the object (e.g. cards) propped against the supportive member 10 by having projections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



9. U.S. Patent No. 4,274,616, issued June 23, 1981 (“Radtke”) [ONTEL_000260-ONTEL_000263]

Radtke was published on June 23, 1981, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Radtke discloses “[a] stand or supporting books, magazines, pamphlets or other reading material . . . having triangular side pieces serving as braces with lateral base strips forming a stabilized bottom.” Radtke at Abstract. Radtke discloses that “[t]he front or lower edge or back member includes a forwardly angled lip on which the book or other reading material rests and further includes a downwardly angled front support member engaging the support surface for stabilizing the lip.” *Id.*; *see also id.* at 1:36-48; 1:63-68 (“[a] further object of the present invention is to provide a novel book stand which is portable and comprises a rearwardly sloping or angled back member having a reinforced lip at its lower end and lateral brace means on opposite sides thereof as well as a base support means to rigidize the construction.”). The stands of Radtke are “portable.” *Id.* at 1:6-11. Fig. 1 is a perspective view of the stand and Fig. 3 is a cross sectional view of the stand.



The back member **11** supports the back of the reading material, and extends or slopes rearwardly from the front of the device. The lower end of the back member **11** forms a lip **12** which

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slopes forwardly from the back member at an angle “so as to support the bottom of the reading material.” *Id.* at 2:30-37. The lip **12** is supported by a forward element **13** which includes triangular pieces **14** on each side of the lip or tray like construction. Reinforcing tabs **15** are also provided adjacent to each of the triangular section **15**. *Id.* at 2:37-41. “It can be seen that the combined structure of the angled lip **12** and the sloping back member **11** serves as a tray like support for the reading material carried therein. The reading material is at a preferred and predetermined angle with respect to the viewers eye so that the reading procedure is augmented.” *Id.* at 2:56-61.

Radtko further describes the benefits of stands of this type: “it has been the conventional practice to employ a variety of angled support members for holding books and other reading material at an angle to the readers view. Such devices permit the readers hands to be free for the taking of notes or for performing other projects such as knitting or the like. Also, the use of book stands is less tiring to the reader.” *Id.* at 1:13-19. Drawbacks of stands included the rigid material, heaviness, and lack of portability. “[P]rior book stands have been made of rigid material which is heavy, cumbersome, and occupies a substantial volume of space so that storage is difficult. Also, the weight of the stand is generally heavy and does not lend itself to portability because of the weight and because of the large volume occupied by the construction.” *Id.* at 1:19-25.

10. U.S. Patent No. 9,424,831 B2, issued April 23, 2013 (“Lin”) [ONTEL_000221-ONTEL_000227]

Lin was issued on April 23, 2013, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Lin discloses a “one-piece support stand . . . for slantingly supporting an object on a work surface, and the support stand includes a central folding line for dividing the support stand into a left support panel and a right support panel interconnected with each other, and each of the support panels being substantially in a triangular shape and having a bottom edge and a bevel edge, and an

inverted hook portion being formed at an intersection of the bottom edge and the bevel edge and bent towards the bevel edge . . . the two bevel edges and the two inverted hook portions being provided for supporting the object.” Lin at Abstract; *see also id.* at 1:44-57. Lin summarizes this shape as “substantially in a triangular shape, and both interconnected support panels are provided for slantingly supporting an object on a work surface.” *Id.* at 2:1-4. This is described in detail in the below Fig. 4.

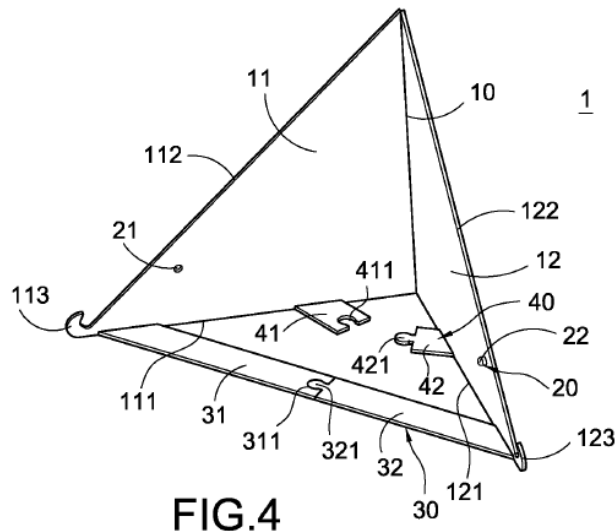
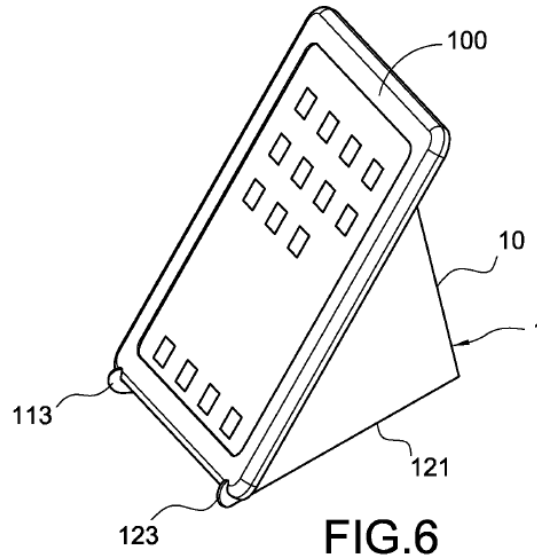


FIG.4

The support panels are demonstrated at **11** and **12**. The left bevel edge **112** and right bevel edge **122** end in inverted hook portions **113** and **123** for supporting the object **100** (demonstrated in Fig. 6, below). *See generally id.* at cols. 2-4; *see also id.* at 3:3-9; 3:25-44.

A feature of the invention is an angle “between the bottom edges of the two support panels” which “can be adjusted appropriately to control the inclination of the support stand and the spreading range of the two support panels, so that users may change the inclination of supporting the object according to their preference.” *Id.* at 2:13-20. Adjustments can be made by altering the angle between the left bottom edge **111** of the left support panel **11** and the right bottom edge **121**

of the right support panel **12** to control the extent of spreading, allowing users to change the inclination of supporting the object. *Id.* at 4:45-54.



The stand is disclosed as being firm, foldable, convenient to carry, simple to manufacture, and manufacturable at a low cost. *Id.* at Abstract; *see also id.* at 1:38-43; 1:60-67. Lin discloses that this is achievable by being “one-piece injection molding.” *Id.* at 4:29-33. The support is usable for placing a “thin electronic device or a book” on. *Id.* at 1:5-7.

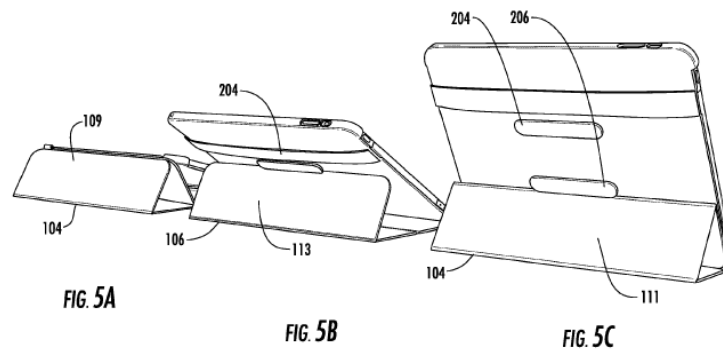
Lin discloses shortcomings in existing support stands, describing while users would “put a thin electronic device on a support stand, such that the electronic device can be tilted and supported on the table top to facilitate the users to view information displayed on a screen of the thin electronic device” (*id.* at 1:15-20) the conventional stands “ha[d] complicated structure . . . without any one-piece support stand,” could be “placed on tables only” and not “easily carried by users,” among other limitations. *Id.* at 1:21-31.

11. **U.S. Patent No. 8,960,421, issued February 24, 2015, filed March 28, 2011 (“Diebel 2011”) [ONTEL 000031-ONTEL 000072]**

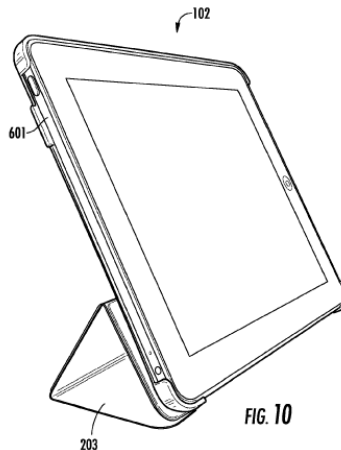
Diebel 2011 was issued on February 24, 2015 and is therefore prior art under 35 U.S.C. § 102(a)(1) to the Asserted Claims. To the extent the claims of the Asserted Patent are entitled to an

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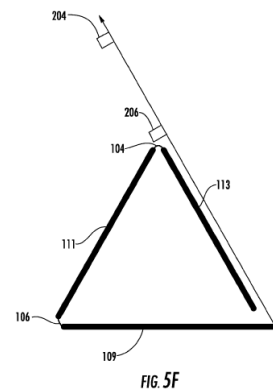
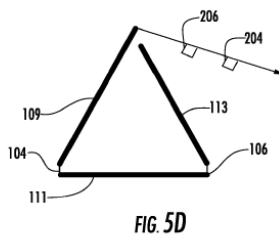
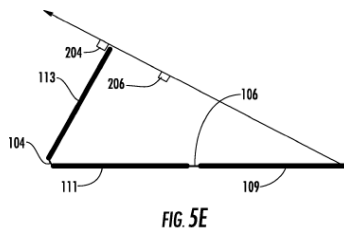
earlier effective filing date, Diebel 2011 is also prior art under AIA 35 U.S.C. § 102(a)(2) to the Asserted Claims. Diebel 2011 was filed on March 28, 2011, and is a patent which issued under Section 151, naming an inventor not named on the Asserted Patent, which was effectively filed before the effective filing date of the alleged invention (June 24, 2016, October 20, 2014, and October 28, 2013, see above at Section IV.A). None of the exceptions of 35 U.S.C. § 102(b)(2) apply to Diebel 2011. Diebel 2011 discloses a foldable cover with panels or sections and hinges that allow the cover to be folded into a stand for an electronic tablet or other electric device. Diebel 2011 at Abstract; 1:59-61; *see also id.* at 5:4-14 (listing numerous media devices which may be used with the disclosures of the patent). A configuration achievable by the foldable cover is a triangular cross-sectional shape. *Id.* at 6:32-33; 6:35-37.



Id. at Figs 5A–5C (depicting triangular stand providing different angles); 8:14-60 (Figs. 5A, 5B, and 5C depicting angles from the table of about 15 degrees, 30 degrees, and 60 degrees, respectively, allowing for typing on the device, with 60 degrees regarded as a “viewing angle”); *see also* Fig. 10 (perspective of stand at viewing angle, 60 degrees).



It can be made of any combination of panels having different dimensions. For example, the triangular cross-section can have at least two sides of equal length (i.e. an isosceles triangle) or three sides having equal length (i.e. an equilateral triangle). *Id.* at 3:64-67; 6:47-53. In various implementations of the Diebel 2011 tablet cover, the case may have varying viewing angles. *Id.* at Abstract (“[t]he front cover can be folded into a stand to provide multiple viewing angles for the tablet.”); 1:62-64. Diebel 2011 discloses a specific implementation where each panel is approximately the same length, forming an equilateral triangle, and the angle provided is about 60 degrees. *Id.* at 6:47-50. 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.* at 8:47-50.



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See id. at 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.* at 8:64-9:4. This angle can be varied in a range from about 30 degrees to 75 degrees. *Id.* at 9:5-6. “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)” but varying the number of bumps, panels, and hinges. *Id.* at 9:7-17.

Diebel 2011 further discloses that a case which provides a stand that enables hands-free viewing of the device on a table. *Id.* at 5:33-36. The issue is described the following way:

When using the portable electronic device, a person would at different times need to hold or set the electronic device onto a surface to work on. When the electronic device is set on a surface, it is difficult to view the electronic device if it is laying flush on top of a table. Also, for electronic devices that allow the person to input into the electronic device, it is difficult for a person to manipulate the electronic device if it is flush on a table. Thus, the device allows the person to manipulate the positioning of the electronic device when placed on a table and adjust the angle the electronic device is positioned with respect to the table, to allow easier viewing and working access to the electronic device.

Id. at 5:63-6:7.

Diebel 2011 further discloses the possibility of damage to electronic devices such as iPads from being dropped, hit, or scratched. *Id.* at 1:39-31. “Typically, these devices are intended to be carried or moved about. As such, these devices are more vulnerable to damage as compared to nonportable devices.” *Id.* at 1:37-39. Diebel 2011 discloses that a material for the case may be a foam (e.g., material having trapped bubbles). *Id.* at 12:42-44.

12. U.S. Patent No. 9,226,559, issued January 5, 2016, filed March 15, 2013 (“Diebel 2013”) [ONTEL_000073-ONTEL_000107]

Diebel 2013 was issued on January 5, 2016, and is therefore prior art under 35 U.S.C. § 102(a)(1) to the Asserted Claims. To the extent the claims of the Asserted Patent are entitled to an earlier effective filing date, Diebel 2013 is also prior art under AIA 35 U.S.C. § 102(a)(2) to the Asserted Claims. Diebel 2013 was filed on March 25, 2013 and is a patent issued under Section 151, naming an inventor not named on the Asserted Patent, which was effectively filed before the effective filing date of the alleged invention (June 24, 2016 October 20, 2014, and October 28, 2013 see above at Section IV.A). None of the exceptions of 35 U.S.C. § 102(b)(2) apply to Diebel 2013.

Diebel 2013 discloses a cover for a portable electronic device, such as a tablet computer, which “includes a plurality of panel sections and a plurality of hinges” to be “folded along the hinges to act as stand for the portable electronic device.” Diebel 2013 at Abstract. Using the foldable hinges, the “stand can support the device in various working and viewing angles, for both portrait and landscape orientations.” *Id.* at Abstract. Diebel discloses that the stand “permits the user to interface with the electronic device housed in the case at different viewing and working angles.” *Id.* at 1:59-61. A feature disclosed of the invention is “the ability to stand in a portrait orientation at a working angle” “permit[ting] the user to interact with certain websites and applications that may only be available in portrait orientation.” *Id.* at 1:61-65. Diebel discloses that “When using the portable electronic device, a person would at different times need to hold or set the electronic device onto a surface to work on. When the electronic device is set on a surface, it is difficult to view the electronic device if it is laying flush on top of a table. Also, for electronic devices that allow the person to input into the electronic device, it is difficult for a person to manipulate the electronic device if it is flush on a table. Thus, the device allows the person to

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manipulate the positioning of the electronic device when placed on a table (or on the user’s lap) and adjust the angle when the electronic device is positioned with respect to the table, to allow easier viewing and working access to the electronic device.” *Id.* at 5:17-22.

The front cover can be folded and positioned in various orientations to achieve multiple viewing angles: (a) a first working angle; (2) a second working angle; (3) a third working angle; (4) a first viewing angle; (5) a fourth working angle; and (6) a second viewing angle. *Id.* at 5:57-67. These are listed in Table A, and described further in the specification as well.

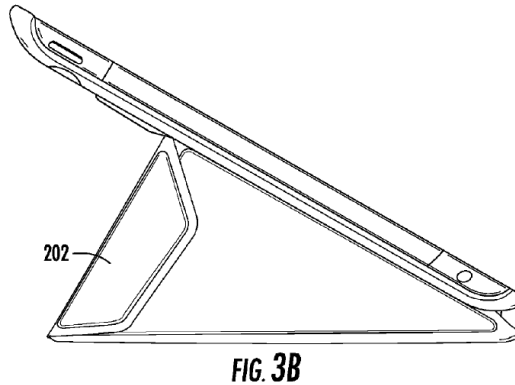
TABLE A

Stand Position	Angle Name	Angles (Degrees)	Angle Range (Degrees)
1	First working angle	8, 9, 10	7-12
2	Second working angle	31, 32, 33	30-38
3	Third working angle	41, 42, 43	40-48
4	First viewing angle	45, 46, 47	43-50
5	Fourth working angle	24, 25, 26	20-30
6	Second viewing angle	74, 75, 76	70-80

Diebel 2013 discloses that “[w]hen the front cover is opened, folded under the back cover to lie flat, and the back cover is angled in a first position (first working angle, about 7 to 12 degrees) a side view will be triangular in shape.” *Id.* at 2:15-18. Diebel discloses a second working angle from about 30 to 38 degrees (*id.* at 2:29-30), a third working angle from about 40 to 48 degrees (*id.* at 2:39-40), and a fourth working angle from about 20 to 30 degrees (*id.* at 2:60-61). *See also id.* at Figs. 2, 3A-3B, 4A-4B, 6A-6B; 6:40-64; 7:8-21. One figure is reproduced below for context.

Diebel discloses a first viewing angle from about 43 to 50 degrees (*id.* at 2:47-48), and a second viewing angle from about 170 to 180 degrees (*id.* at 2:66-67). *See also id.* at Figs. 5A-5B, 7A-7D; 6:65-7:7; 7:22-29.

Figures 3B is illustrative of the second working angles.



Diebel 2013 further discloses the possibility of damage to electronic devices such as iPads from being dropped, hit, or scratched. *Id.* at 1:33-34. “Typically, these devices are intended to be carried or moved about. As such, these devices are more vulnerable to damage as compared to nonportable devices.” *Id.* at 1:31-33.

13. **U.S. Patent Application Publication No. 2015/0115124 A1, published April 30, 2015 (“Canon”) [ONTEL_000019-ONTEL_000026]**

Canon was published on April 30, 2015, and is therefore prior art under 35 U.S.C. § 102(a)(1) to all Asserted Claims should they be entitled to an effective filing date of January 30, 2019. To the extent the Asserted Claims are entitled to an earlier effective filing date of June 24, 2016, Canon is prior art under 35 U.S.C. § 102(a)(1).

Canon 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.” Canon at Abstract, [0004]; *see* Fig. 1. Canon discloses an embodiment where each back support **105** and each edge support **110** is a surface of a solid. The solid media support **100** may have one or more ends **165**. *Id.* at [0019]. Canon discloses that the solid media support **100** may be a pillow. In one embodiment, the surface of the solid is ultra suede. Canon at [0019].

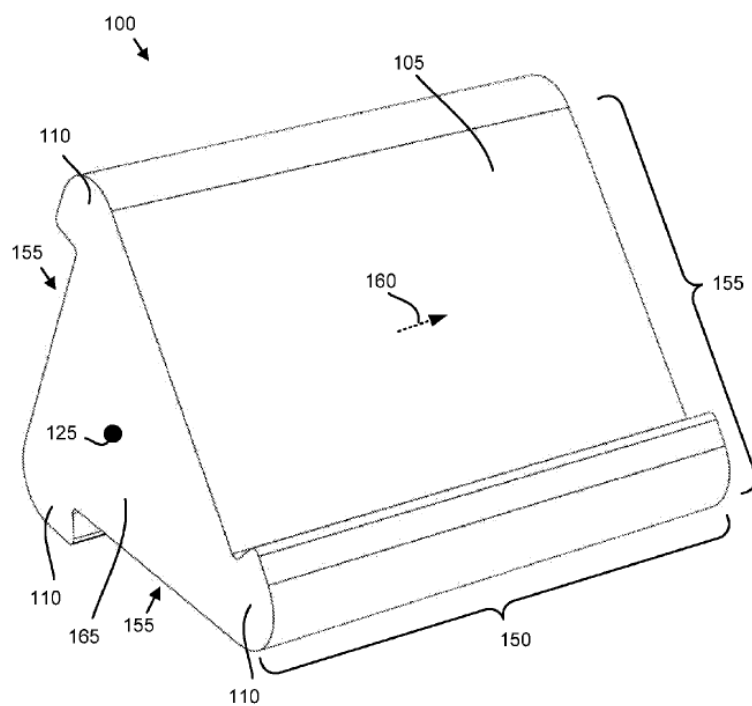


FIG. 1

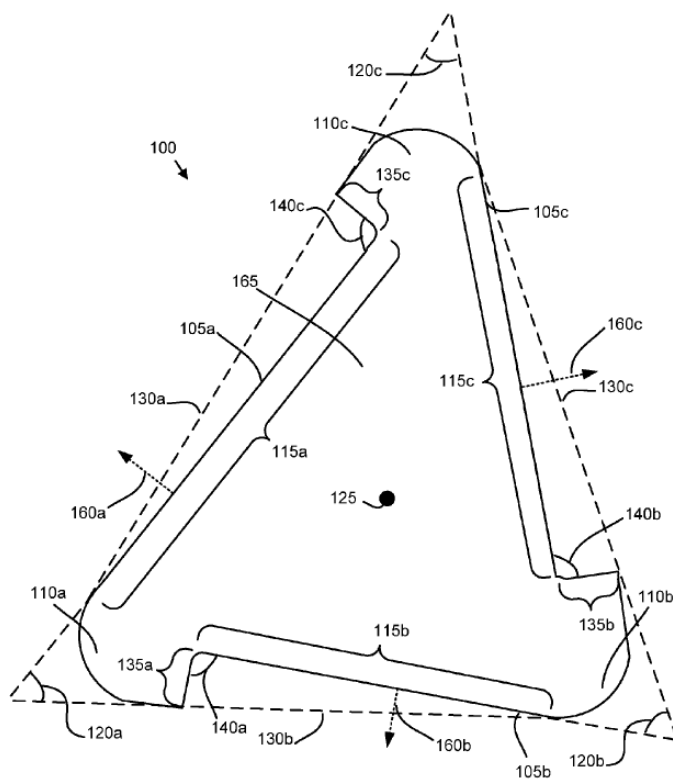


FIG. 2

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Cannon discloses that it is “comfortable to support media such as electronic readers, tablet computers, magazines, and books while viewing the media.”

Cannon discloses an apparatus for multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support. Cannon at Abstract, [0004]; *see* Fig. 1.

Cannon discloses each edge support **110** may have an edge support width **135**. The edge support width **135** may be in the range of 1 to 5 cm. In a certain embodiment, the edge support width **135** is 2 cm. Cannon at [0024].

Cannon also discloses an edge angle of 90 degrees to an adjacent back support. *Id.* at [0024] (“In on embodiment, 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. *See* Cannon at Fig. 2.

Cannon discloses a plane of a first back support 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 at [0004], [0021] (“A plane of a first back support **105a** 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**”).

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

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support counterclockwise to the second back support **105b** and an outer edge of a third edge support **110c** counterclockwise to the second back support **110b**. Cannon at [0021].

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**. Cannon at [0021].

Cannon further discloses that the arrangement of the longitudinal lengths **115** and the plane angles **120** generate three distinct viewing angles **160**. *Id.* at [0023].

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first viewing angle **160a** may be employed when the media support **100** and the media is disposed in the user’s lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. Cannon at [0027]; *see* Fig 2.

Cannon discloses an embodiment wherein the first back support **105a** has a longitudinal length **115a** in the range of 12 to 26 centimeters (cm). Cannon at [0022]. Cannon discloses the second support back **105b** has a longitudinal length **115b** in the range of 9 to 21 cm. Cannon at [0022]. Cannon discloses the third support back **105c** has a longitudinal length **115c** in the range of 10 to 22 cm. *Id.* at [0022].

14. U.S. Patent Application Publication No. 2015/0189781 A1, published July 2, 2015 (“Klepar 2013”) [ONTEL_000211-ONTEL_000220]

Klepar 2013 was published on July 2, 2015, and is therefore prior art under 35 U.S.C. § 102(a)(1) to the Asserted Claims. To the extent the claims of the Asserted Patent are entitled to an

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earlier effective filing date, Klepar 2013 is also prior art under AIA 35 U.S.C. § 102(a)(2) to claims having an effective filing date of June 24, 2016 or October 20, 2014. Klepar 2013 was filed on December 27, 2013, as an application for patent published or deemed published under section 122(b), naming an inventor not named on the Asserted Patent, and which was effectively filed before the effective filing date of the alleged invention (June 24, 2016 and October 20, 2014 see above at Section IV.A). None of the exceptions of 35 U.S.C. § 102(b)(2) apply to Klepar 2013. To the extent HPI asserts that 35 U.S.C. § 102(b)(2)(B) renders Klepar 2013 not prior art, Ontel disagrees. HPI expressly distinguished its alleged invention from U.S. Design Patent D703,216 S (“Klepar 2014”) during prosecution (*see, e.g.*, ’797 Application, Applicant Arguments/Remarks Made in an Amendment, dated Jan. 23, 2020, at 17; ’797 Application, Applicant Arguments/Remarks Made in an Amendment, dated May 19, 2020, at 12, 14; ’797 Application, Applicant’s Appeal Brief, dated Aug. 24, 2020, at 11-12, 16, 18). Klepar 2014 is a design patent sharing the same inventor and similar figures, depicting the same shape of a multi-position stand, as Klepar 2013. Therefore, HPI cannot now say that disclosure of the Flippy in 2013 constitutes “subject matter disclosure” under 35 U.S.C. § 102(b)(2)(B).

Klepar 2013 discloses a “multi-position stand for supporting an electronic display device in one or more use configurations and comprises: a first receiving panel configured to support the electronic display; a second receiving panel attached to the 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 to form a substantially triangular cylinder.” Klepar 2013 at Abstract; *see also id.* at [0001], [0012]. The invention is designed to hold a variety of electronic display devices, described at paragraph [0028].

Klepar 2013 discloses that the invention 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.* at [0013]; *see also* [0014]. Fig. 1 shows a perspective view of a multi-position stand according to the present invention, and Fig. 2 shows a computer display device supported by the multi-position stand of Fig. 1.

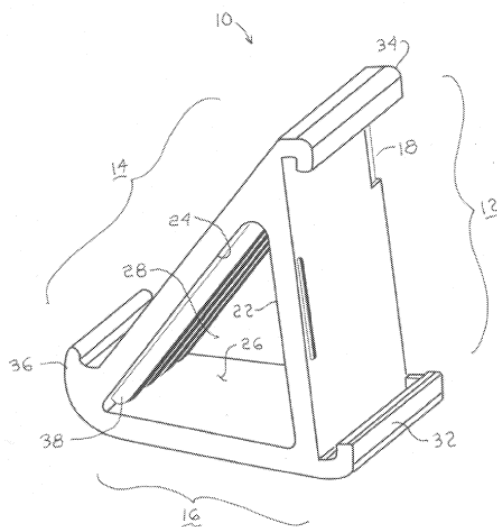


Fig. 1

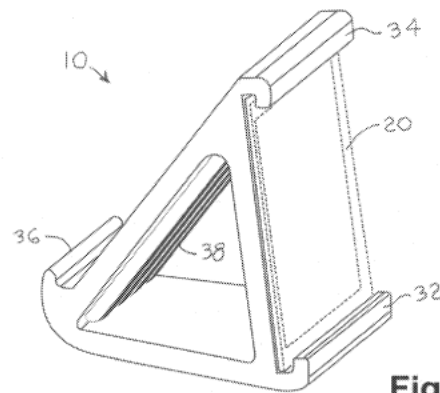


Fig. 2

Fig. 6 demonstrates the use the of the stand in a different orientation.

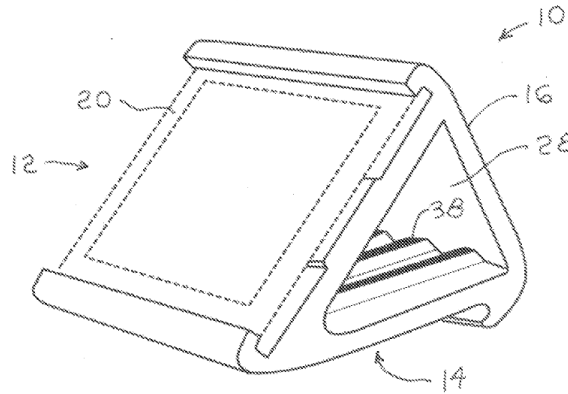


Fig. 6

The multi-position stand **10** has a first receiving panel **12**, a second receiving panel **14**, and a base panel **16**. *Id.* at [0030]. Each of the first receiving panel **12**, the second receiving panel **14**, and the base panel **16** comprise substantially rectangular and planar surfaces, and are interconnected to form a structure having the shape of an open, substantially triangular cylinder. *Id.* at [0031]. As seen in Figs. **1** and **2**, the first receiving panel **12** includes a first L-channel **32** and a second L-channel **34** disposed on two opposing sides of the first receiving panel **12**, for securely holding the first electronic display device **20**. *Id.* at [0032]. The first electronic display device **20** may then be emplaced so as to engage either or both the first L-channel **32** and the second L-channel **34**. *Id.*; *see also id.* at [0033].

Klepar 2013 discloses that “[s]tands especially designed for tablet computers are well-known in the relevant art” but that they have limitations such as “being able to be used only while a user is seated or standing near a table” with receiving portions of the stand which hold the tablet that enable multiple viewing angles but that are “slideable.” *Id.* at [0002]. Klepar 2013 describes the stand disclosed in U.S. Patent Application publication No. 213/0119225 as having an engagement portion and a support portion, where the support portion includes “a deformable mass conforming substantially to a smooth support surface in order to allow adjustment of the

inclination of the display device to a desired inclination.” *Id.* at [0004]. But it required the application of force in order to adjust to the desired orientation. *Id.*

Klepar 2013 discloses a stand that “help[s] users quickly change the viewing angle and orientation of the tablet computers in one of several positions without having to apply any force or make any technical changes to the stand holding the tablet device.” *Id.* at [0010]. Klepar 2013 discloses that the device is intended to enhance the comfort level for the tablet user, which further securely holds the tablet during use. *Id.* at [0001], [0006]. Klepar 2013 also discloses that the invention allows for the user to “easily flip over the multi-position stand in one or more usage configurations.” *Id.* at [0008]. “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.” *Id.* at [0029].

Another aspect of the Klepar 2013 invention is “to provide a multi-position stand suitably designed and sized to be locatable on a user’s lap, thigh, or any other surfaces at home or at work stations enabling easy and extended use of the tablet computers in various locations.” *Id.* at [0011].

Fig. 7 demonstrates the stand being used in a lap orientation. *See also id.* at [0036].

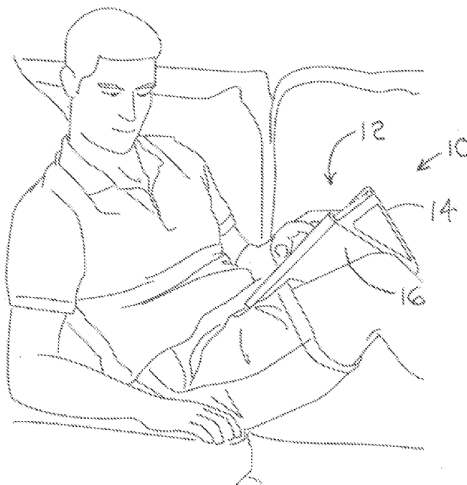


Fig. 7

15. U.S. Design Patent No. D703,216 S, issued April 22, 2014 (“Klepar 2014”) [ONTEL_000206-ONTEL_000210]

Klepar 2014 was issued on April 22, 2014, and is therefore prior art under 35 U.S.C. § 102(a)(1) to the Asserted Claims. To the extent the claims of the Asserted Patent are entitled to an earlier effective filing date, Klepar 2014 is also prior art under AIA 35 U.S.C. § 102(a)(2) to the Asserted Claims. Klepar 2014 was filed on August 2, 2013 and is a patent issued under Section 151, naming an inventor not named on the Asserted Patent, which was effectively filed before the effective filing date of the alleged invention (June 24, 2016 October 20, 2014, and October 28, 2013 see above at Section IV.A). None of the exceptions of 35 U.S.C. § 102(b)(2) apply to Klepar 2014. To the extent HPI asserts that 35 U.S.C. § 102(b)(2)(B) renders Klepar 2014 not prior art, Ontel disagrees. HPI expressly distinguished its alleged invention from Klepar 2014 during prosecution (*see, e.g.*, ’797 Application, Applicant Arguments/Remarks Made in an Amendment, dated Jan. 23, 2020, at 17; ’797 Application, Applicant Arguments/Remarks Made in an Amendment, dated May 19, 2020, at 12, 14; ’797 Application, Applicant’s Appeal Brief, dated Aug. 24, 2020, at 11-12, 16, 18). Therefore, HPI cannot now say that disclosure of the Flippy in 2013 constitutes “subject matter disclosure” under 35 U.S.C. § 102(b)(2)(B).

Klepar 2014 discloses a duel-positioning tablet pillow stand. Some illustrative, non-limiting figures from the patent are set forth below.

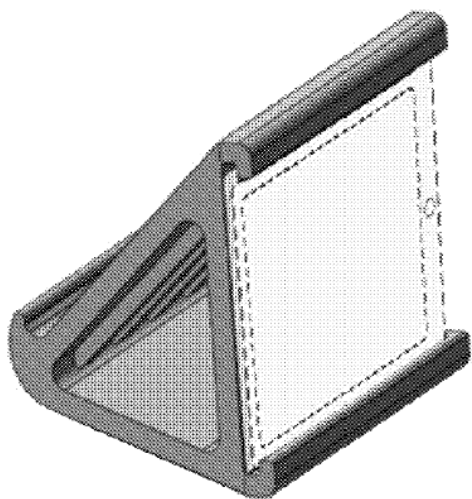


Fig. 1

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

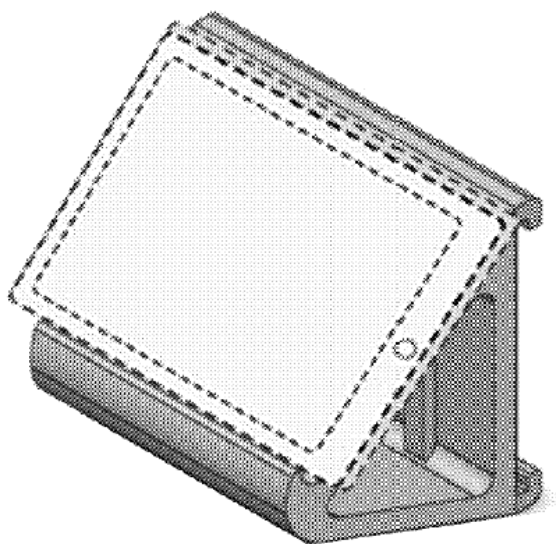


Fig. 4

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

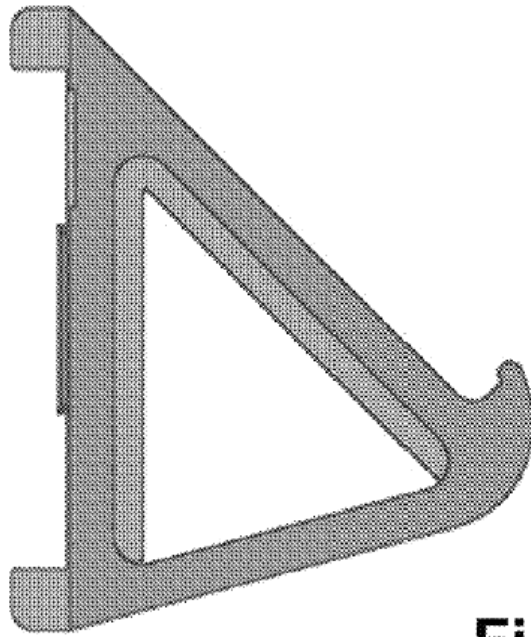
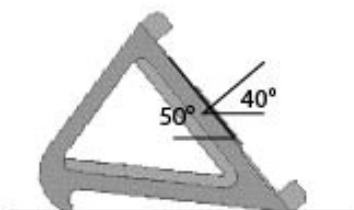
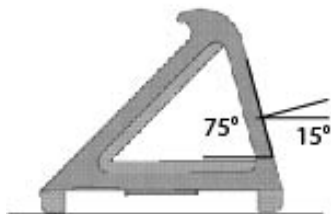
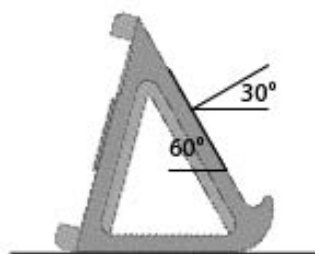


Fig. 7

Fig. 7 is a side view of the dual-positioning tablet pillow stand of Fig. 1. Klepar 2014 has viewing angles of 30 degrees, 15 degrees, and 40 degrees, as demonstrated by the annotated figures of Klepar 2014 below.



16. **U.S. Design Patent No. D696,258, issued December 24, 2013 (“Padilla 2013”) [ONTEL_000228-ONTEL_000235]**

Padilla 2013 was issued on December 24, 2013, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Padilla 2013 discloses an ornamental tablet stand. Illustrative, non-limiting examples are set forth below.

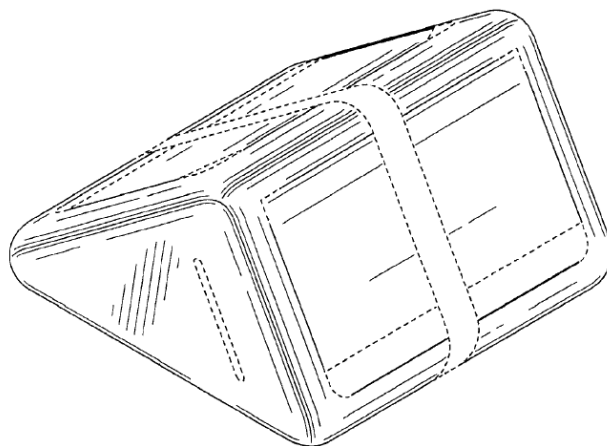


FIG. 2

Fig. 2 is a perspective view of the tablet stand.

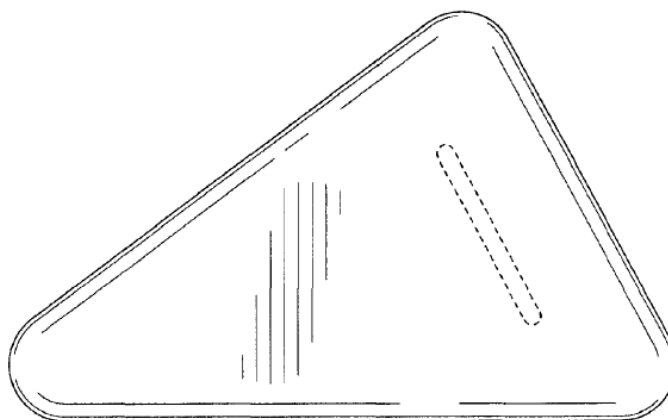


FIG. 6

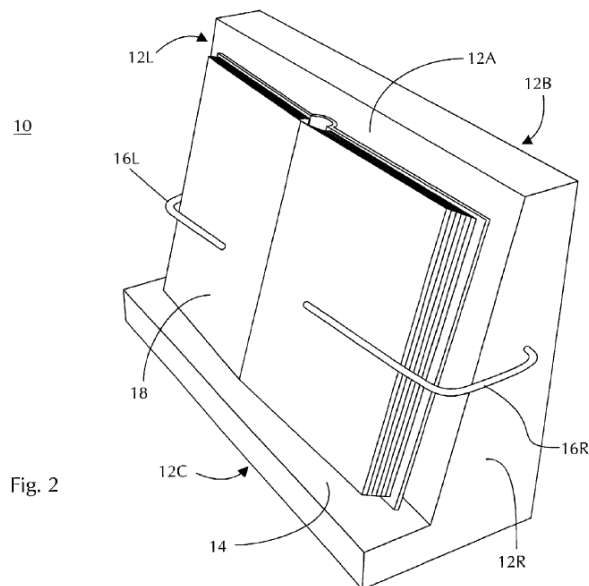
Fig. 6 is a side view of one side thereof.

17. **U.S. Patent Application Publication No. 2003/0001063, published January 2, 2003 (“Halpin”) [ONTEL_000170-ONTEL_000176]**

Halpin was published on January 2, 2003, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

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Halpin discloses a “book-holding device constructed from a block of semi-rigid foam, including a cut-out which forms a frontal ledge.” Halpin at Abstract; [0002], [0027], [0029]. The structure is pliable allowing for books of a variety of sizes and thickness to fit within the book holder. *Id.* at [0027]. Halpin discloses that the invention allows for “hands-free reading in an effective and convenient manner” and is effective for persons who are utilizing their hands for other applications, such as cooking or typing” and “may also be used to display an open book for the purposes of decoration or design.” *Id.* at Abstract; [0030], [0031]-[0033], [0038] (discloses a device that may hold a variety of sizes of books, magazines, and other reading materials, for “utmost versatility”), [0059] (for those who have impaired arms or wrists this would be particularly helpful). Halpin discloses numerous prior art book displays and their limitation as not being a “soft, lightweight support structure” among others. *Id.* at [0025]. The use of foam for the structure enables “low manufacturing costs, ease of production and shipping, and lighter overall weight of the product.” *Id.* at [0027], [0034]-[0036] (enabling easier transport and manufacture in a variety of shapes and sizes).



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Fig. 2 is a front, three-quarter perspective view of the present invention, illustrating the holder with reading materials placed thereon, and held by left and right wire members.

18. **U.S. Patent No. 6,196,512 B1, issued March 6, 2001 (“Ure”)**
[ONTEL_000266-ONTEL_000272]

Ure was issued on March 6, 2001, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Ure discloses a “portable book stand” “adapted for attachment to the back of a pew, bench, chair, or similar item, as well as free-standing use on a flat surface such as a table.” Ure at Abstract; *see also id.* at 1:4-7. Ure discloses that “[t]he angle of the platform relative to the reader can be varied by placing the end of one of the folding arms into a selected one of a plurality of grooves in the other folding arm.” *Id.* at Abstract; *see also id.* at 1:41-44.

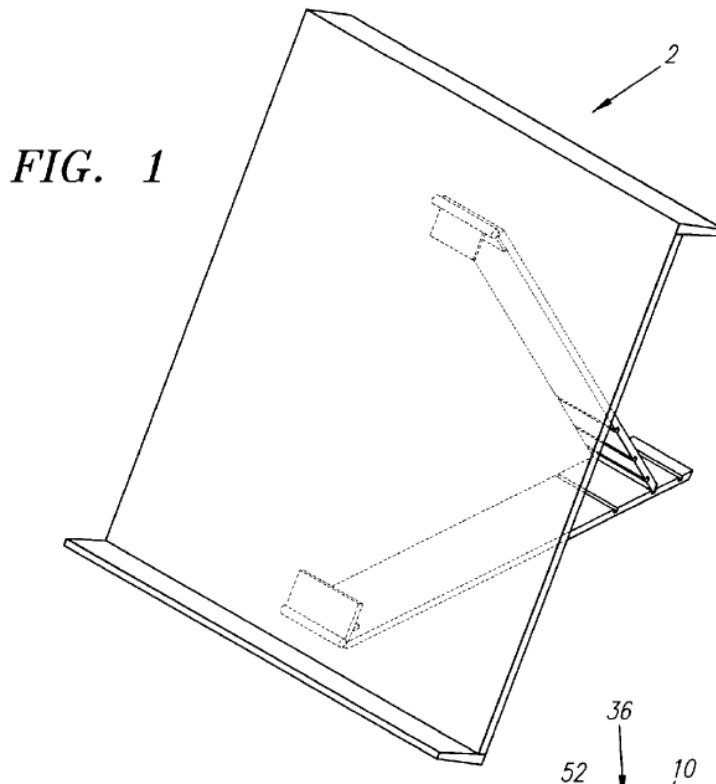
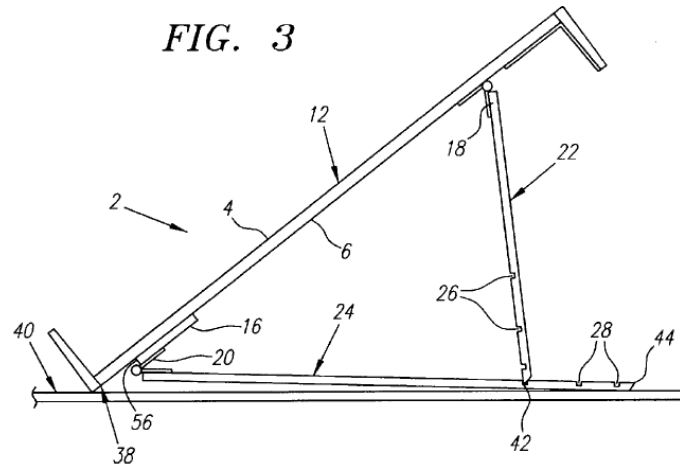


Fig. 1 (above) is a perspective view of the preferred embodiment. Fig. 3 (below) is a side view of the preferred embodiment.



As shown in Fig. 3, the book stand 2 is capable of being placed on a table 40, or other surface. By inserting the first tip 42 into a selected one of the plurality of second transverse grooves 28 on the second folding arm 24, the platform 12 of the book stand 2 can be elevated to various angles for the user's convenience. *Id.* at 4:56-5:13.

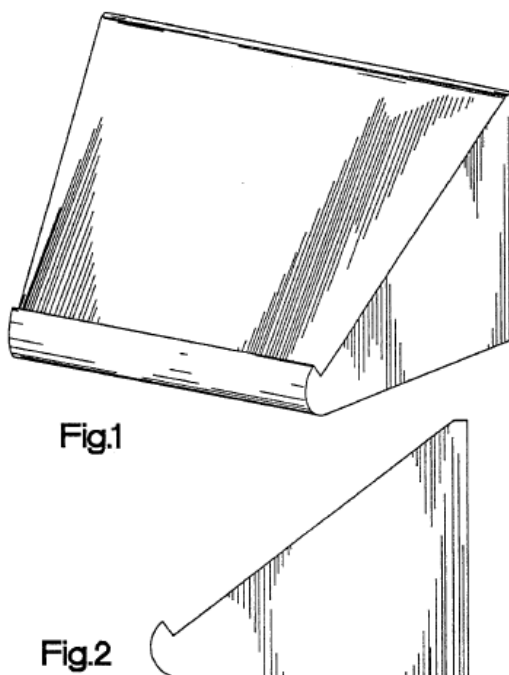
Ure discloses that “[i]t is often convenient for a reader to set a book down at an angle so that it may easily be read, thereby freeing the reader's hands. It is especially convenient for the elderly and the infirm to be able to read a book without having to hold it, especially if the book is a particularly heavy hardcover volume.” *Id.* at 1:9-14. Ure notes that existing book stands were capable of supporting books at various angles, but had disadvantages, such as being bulky or complicated mechanisms for holding a book at an angle, and requiring use in conjunction with a flat surface, such as a table or desk. *Id.* at 1:13-25.

19. **U.S. Design Patent No. 365,461, dated Dec. 26, 1995 (“Falter”)**
[ONTEL_000164-ONTEL_000166]

Falter was issued on December 26, 1995, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

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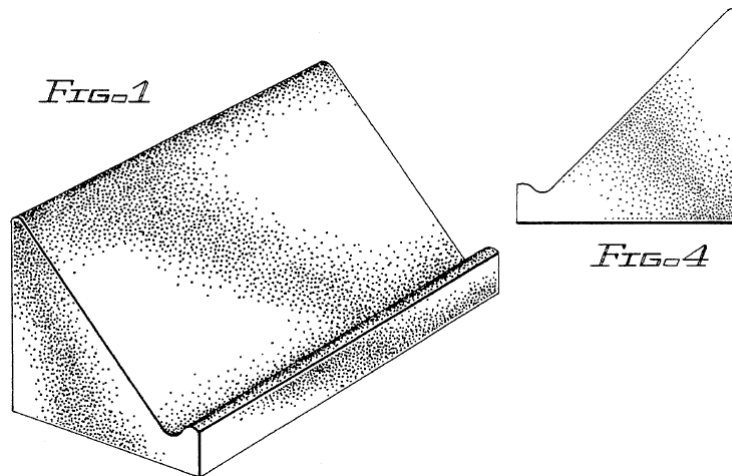
Falter discloses a lap desk. Fig. 1 is a perspective view of the lap desk, and Fig. 2 is a side view of the lap desk.



**20. U.S. Design Patent No. 362,565, dated September 26, 1995 (“Tubbs”)
[ONTEL_000264-ONTEL_000265]**

Tubbs was published on September 26, 1995, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Tubbs discloses a reading stand. Fig. 1 shows a perspective view of the reading stand, and Fig. 4 shows a side elevation view thereof.



21. **U.S. Patent Application No. 2014/0076748 A1, dated March 20, 2014 (“Padilla 2014”) [ONTEL_000236-ONTEL_000247]**

Padilla 2014 was published on March 20, 2014, and is therefore prior art under 35 U.S.C. § 102(a)(1) to the Asserted Claims. To the extent the claims of the Asserted Patent are entitled to an earlier effective filing date, Padilla 2014 is also prior art under AIA 35 U.S.C. § 102(a)(2) to the Asserted Claims. Padilla 2014 was filed on September 19, 2013, is an application for patent published or deemed published under section 122(b), naming an inventor not named on the Asserted Patent, which was effectively filed before the effective filing date of the alleged invention (June 24, 2016 October 20, 2014, and October 28, 2013 see above at Section IV.A). None of the exceptions of 35 U.S.C. § 102(b)(2) apply to Padilla 2014.

Padilla 2014 discloses a “case for a tablet computer” that is “configurable to several positions” where “[a]t each position, the tablet computer may be supported in a variety of angles.” Padilla 2014 at Abstract; [0001]; [0003] (“at least two standing positions”); [0007]. Padilla 2014 discloses that “[i]n a low stand position, the case provides support and optimal viewing angles for activities such as typing on the tablet computer. In a high loft position, the tablet computer is raised to eye level for ergonomic comfort and ease of use for activities such as viewing videos on the tablet.” *Id.* at Abstract; *see also id.* at [0008], [0021]. Padilla 2014 further discloses that the case

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has mechanisms to allow it to be “configurable” and which “provide stability.” *Id.* at Abstract; [0021].

Padilla 2014 further discloses a shortcoming of the prior art cases which enabled folding into an “easel configuration” for an open and angled position of the tablet included “only offer[ing] a limited variety of configurations.” *Id.* at [0006].

Figure 3 is a side perspective view of a case in a low stand configuration. *Id.* at [0014]. In this mode it can be configured for a variety of activities and may be adjusted to several angled positions. *Id.* at [0028].

Figure 3

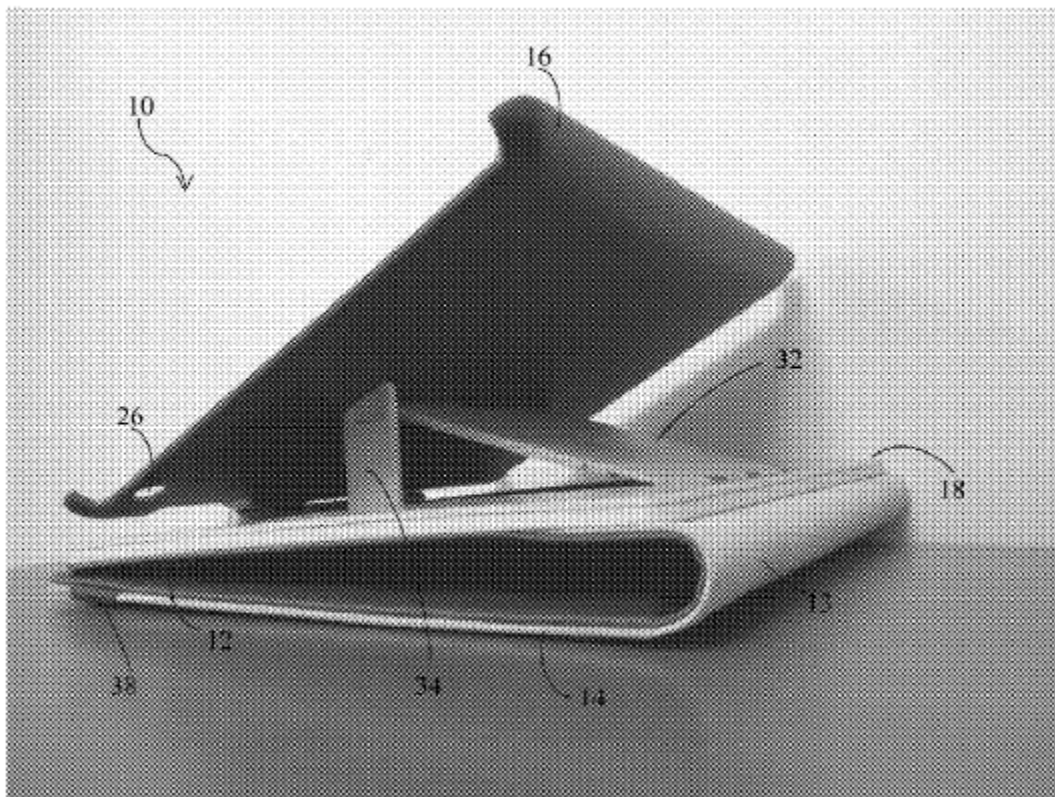


Figure 4 is a top perspective view of an attachment part when a tablet holder is in an angled position. *Id.* at [0015].

Figure 4

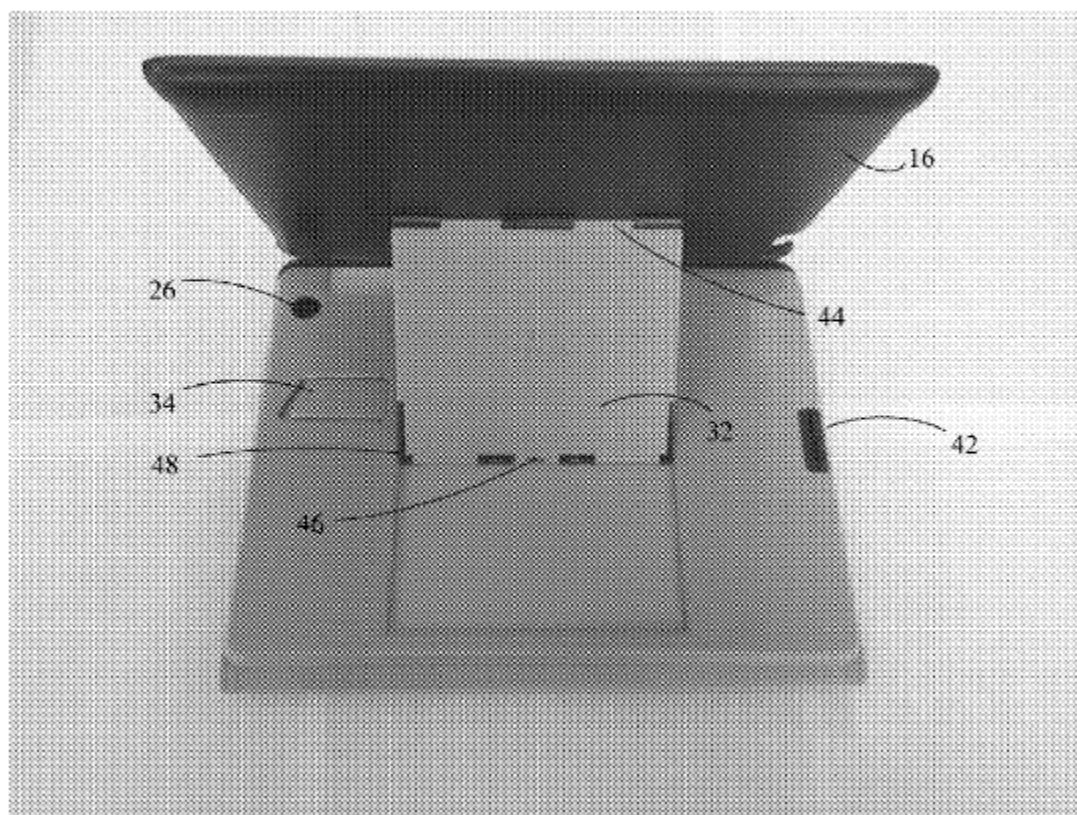
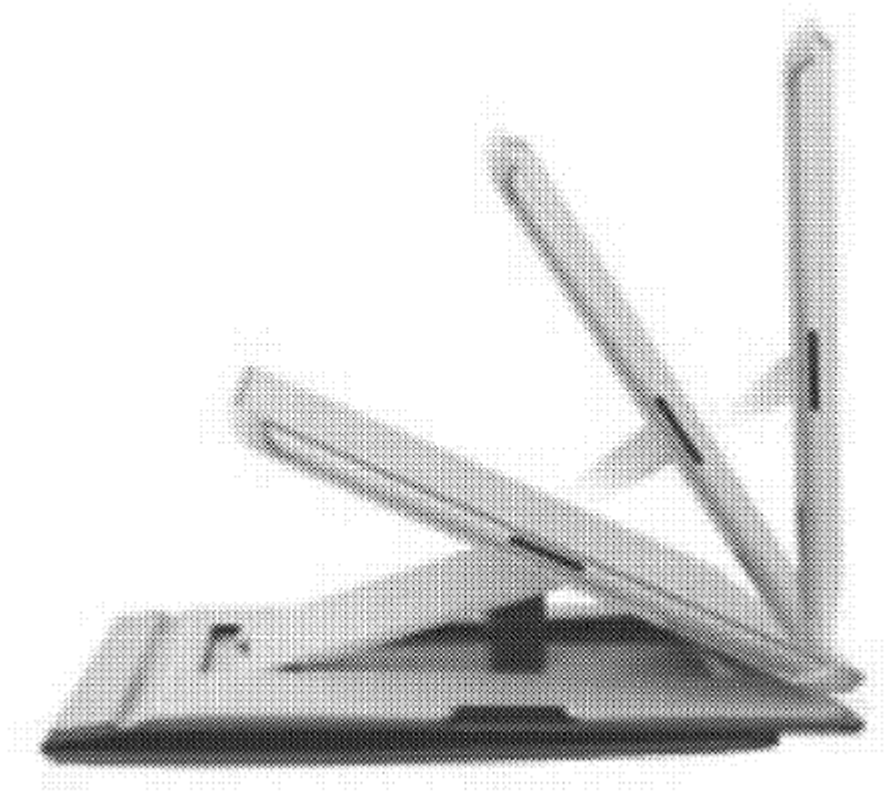


Figure 6 is a side perspective view of a case showing different positions of the holder while the case is in a low stand configuration. *Id.* at [0017]. In high loft position (Fig. 7) multiple angles can be achieved such as when in low stand configuration. *Id.* at [0035].

Figure 6



22. **Nigel J. Mills, POLYMER FOAMS HANDBOOK: ENGINEERING AND BIOMECHANICS APPLICATIONS AND DESIGN GUIDE, Chapter 9 (Butterworth-Heinemann, 1st ed. 2007) (“Mills”) [ONTEL_000414-ONTEL_000494]**

Mills was published on March 23, 2007, and therefore qualifies as prior art at least under AIA 35 U.S.C. § 102(a)(1) to the Asserted Claims of the Asserted Patent.

Mills discloses that:

The flexible foam industry uses an indentation force-deflection (IFD) test, in which a circular flat indenter of area $A = 323 \text{ cm}^2$ (50 in.²) presses on a slab of foam, typically of thickness 100 mm and area 500 mm by 500 mm (ASTM D3574) supported on a flat table. The table is perforated with small holes to allow easy air flow. The foam is preconditioned by compressing it twice to 75% strain, then waiting for 6 min. The force is measured 60 s after a 25% indentation strain is applied, during which time there will be stress relaxation. . . The PFA

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(www.pfa.org) indicates suitable IFD values (in pounds force for 25% compression) for various applications.

Mills at 217. Mills further discloses the IFD ranges for different applications, set forth in Table 9.2.

Table 9.2 IFD range suitable for particular applications

25% IFD (N)	25% IFD (lb force)	Typical use
27–53	6–12	Bed pillows, thick back pillows
53–80	12–18	Back pillows, upholstery padding
80–107	18–24	Thin back pillows, very thick seat cushions
107–133	24–30	Average seat cushions, upholstery padding
133–160	30–36	Firm seat cushions, mattresses
160–200	36–45	Thin seat cushions, firm mattresses
>200	>45	Shock absorbing and packaging, carpet pads

Id. at 218.

VII. WRITTEN BASES FOR INVALIDITY

A. Anticipation Under L. Pat. R. 3.3(b)

1. **Anticipation of All Asserted Claims Based on Prior Use, Sale or Otherwise Available to the Public of Flipy/Flippy**

On information and belief, HPI has marketed its Flipy/Flippy product(s) at least as early as 2012² and made/offered for sale its Flipy/Flippy product(s) before October 21, 2013.³ On information and belief, the Flipy/Flippy product(s) were also otherwise available to the public at least as early as 2012 and throughout 2013.⁴ Since these dates are more than one year prior to June 24, 2016, and October 20, 2014, and over a year before Plaintiff’s alleged priority date of October

² See HPI’s June 23, 2025 Response to Ontel’s Interrogatory No. 1. Ontel reserves all rights to seek additional discovery based on HPI’s disclosure.

³ See ONTEL_000167-ONTEL_000169 at ONTEL_000167.

⁴ See *supra* note 2; ECF No. 35-1, ¶ 336.

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28, 2013, these Flipy/Flippy product(s) are prior art to the Asserted Patents under 35 U.S.C. § 102(a)(1). HPI alleges that its Flipy/Flippy product(s) for sale prior to the critical dates for both sets of claims for the Asserted Patent (set forth above at Section IV.AIV).

As stated above in Section IV.A, Claims 1–2 and 8–10 and 18 of the Asserted Patent are not entitled to an effective file date earlier than June 24, 2016, and claims 12-13, 15-17, 19–21, and 27–29 of the Asserted Patent are not entitled to an effective file date earlier than January 30, 2019 (to the extent HPI contends that the term “support angle,” is supported under 35 U.S.C. §112 by the disclosure in the ’797 application, claims 12-13, 15-17, 19–21, and 27–29 of the Asserted Patent are not entitled to an effective file date earlier than October 20, 2014).

On information and belief, on July 29, 2012, which is prior to January 30, 2019, June 24, 2016, and October 20, 2014, and over a year before HPI’s alleged priority date of October 28, 2013, Ms. Fassett showed Flippy to potential buyer Lori Wilkinson at Sahalie, after correspondence regarding the tablet stand concept. HPI’s Responses and Objections to Ontel’s First Set of Interrogatories (Nos. 1-28), dated June 18, 2025, at 9. Ms. Fassett thus offered the invention, reduced to practice (i.e. “ready for patenting”), in a commercial offer for sale. Accordingly, the on-sale bar applies. *See Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc.*, 586 U.S. 123 (2019); *Celanese Int’l Corp. v. Int’l Trade Comm’n*, 111 F.4th 1338 (Fed. Cir. 2024).

While the offer for sale which HPI admitted to in July 2012 governs, HPI continued to sell Flippy throughout 2013, at least one year prior to the effective filing dates for the Asserted Claims. For this additional reason, the on-sale bar renders these claims invalid. HPI’s Amended Complaint further states that “Plaintiff has exclusively used this trade dress since 2013” (ECF No. 35-1, ¶ 336). Taking this allegation as true, the use of the trade dress from 2013 renders the Asserted

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Claims invalid under the on-sale bar. Happy Products Inc.’s application for trademark for “flipy” supports a 2013 first use, identifying the first use of the mark and its first use in commerce as October 21, 2013. U.S. Reg. No. 4551826 (now dead), at 1 under “Goods and Services” ; *see also* ECF No. 35-1 at ¶ 114; *see also* U.S. Patent Application No. 2015/0115124 A1, dated April 30, 2015 (“Cannon”), at [0029] (“The media support **100** has been marketed as the “flipy Tablet Pillow” since 2013 at a retail price of \$49.98. . . . 800 units sold in 2013.”). The reduction of the invention to practice (Flippy or flipy Tablet Pillow) was offered for commercial sale more than one year prior to the effective filing date for these claims, rendering them invalid.

The foregoing offers and use in commerce of the Flippy/Flipy Tablet Pillow renders the claims invalid as anticipated under the on-sale bar under 35 U.S.C. § 102(a)(1).

2. Anticipation of Asserted Claims of the Asserted Patent by Cannon

As discussed above, and for the reasons set forth at, at Section IV.A, claims 1–2, 8 10 and 18 of the Asserted Patent are not entitled to the priority date of U.S. Provisional No. 61/896,540. These claims are entitled to a priority date no earlier than June 24, 2016. Accordingly, Cannon is prior art to the Asserted Patent, and for the foregoing reasons, renders claims 1–2, 8–10, and 18 of the Asserted Patent invalid as anticipated under 35 U.S.C. § 102.

Figure 2 of Cannon is annotated in the patent to describe the features disclosed therein. Reference is made to these annotations throughout the anticipation analysis, and Figure 2 is reproduced below.

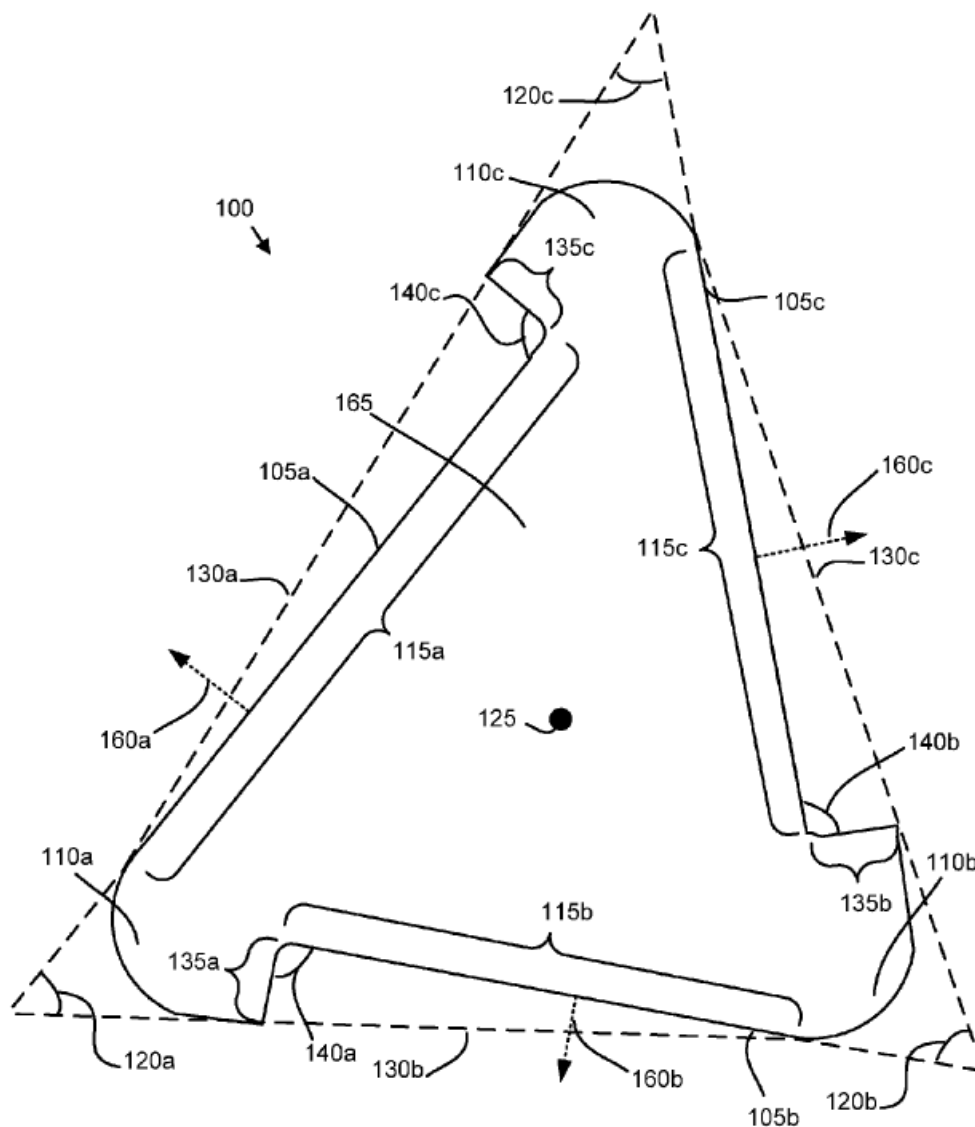


FIG. 2

a. Claim 1

Claim 1 of the Asserted Patent recites the following:

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 and each back support and each edge support is in physical communication with two ends of a solid interior, each edge support comprises an edge support width of 2 centimeters (cm) with an edge angle

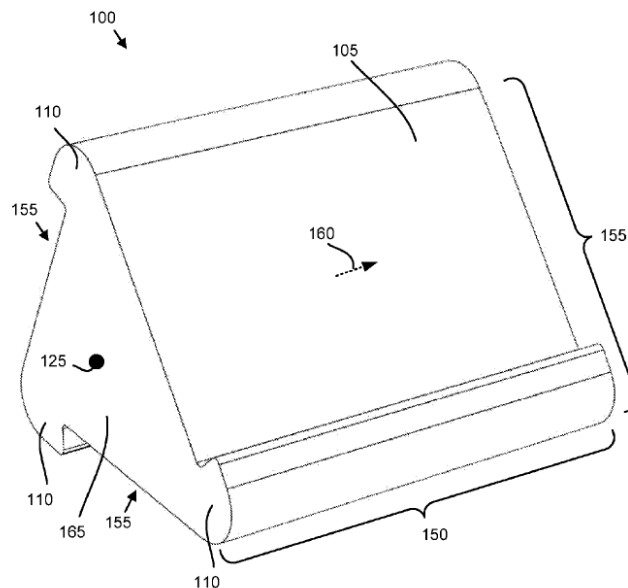
of 90 degrees to an adjacent back support, a face of each edge support width oriented clockwise about the central axis, a plane of a first back support is at a first plane angle of 60 degrees to a second virtual plane between the top of a second back support counterclockwise to the first back support and an outer edge of a second edge support counterclockwise to the first back support, 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, 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 wherein each back support, each edge support, and each end is a surface of the solid interior, the solid interior is a pillow covered in fabric, 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.

Each of these limitations will be addressed individually below.

(1) An apparatus comprising:

Cannon discloses an apparatus for multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support.

Cannon at Abstract, [0004]; *see* Fig. 1.



- (2) three support sides, each support side comprising a back support and an edge support,

As described above, the apparatus disclosed in Cannon has multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support. *Id.* at Abstract, [0004]; *see* Fig. 1 (reproduced above at Section VII.A.2.a(1)).

- (3) 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 of a solid interior,

Cannon discloses that the support sides **155** of the multiple viewing angle media support may be disposed about a central axis **125**. *Id.* at [0016]; *see also id.* at [0004]. Cannon discloses that the top of each back support **105** is in communication with an adjacent edge support **100** about the central axis **125** as shown in Fig. 2. *Id.* at [0021]; *see also id.* at [0004].

Cannon further discloses that in one embodiment, each back support **105** and each edge support **110** is a surface of a solid. The solid media surface support **100** may have one or more ends **165**. In addition, the solid media support **100** may be a pillow. *Id.* at [0019].

- (4) 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 further discloses that each edge support has an edge support width of 2 cm. *Id.* at claim 9, [0024] (“Each edge support **110** may have an edge support width **135**. The edge support width **135** may be in the range of 1 to 5 cm. In a certain embodiment, the edge support width **135** is 2 cm”). Cannon also discloses an edge angle of 90 degrees to an adjacent back support. *Id.* at [0024] (“In on embodiment, 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.”).

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- (5) 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. *See* Cannon at Fig. 2, [0004].

- (6) 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 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. *Id.* at [0004], [0021] (“A plane of a first back support **105a** 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**”). Cannon further discloses that the arrangement of the longitudinal lengths **115** and the plane angles **120** generate three distinct viewing angles **160**. *Id.* at [0023].

- (7) 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 counterclockwise to the second back support **105b** and an outer edge of a third edge support **110c** counterclockwise to the second back support **110b**. *Id.* at [0021]. Cannon further discloses that the arrangement of the longitudinal lengths **115** and the plane angles **120** generate three distinct viewing angles **160**. *Id.* at [0023].

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- (8) 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**. *Id.* at [0021]. Cannon further discloses that the arrangement of the longitudinal lengths **115** and the plane angles **120** generate three distinct viewing angles **160**. *Id.* at [0023].

- (9) 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 **105** and each edge support **110** is a surface of a solid. The solid media support **100** may have one or more ends **165**. *Id.* at [0019].

- (10) the solid interior is a pillow covered in fabric,

Cannon discloses that the solid media support **100** may be a pillow. In one embodiment, the surface of the solid is ultra suede. *Id.* at [0019]; *see also* Fig. 4 (depicting the appearance of a solid interior).

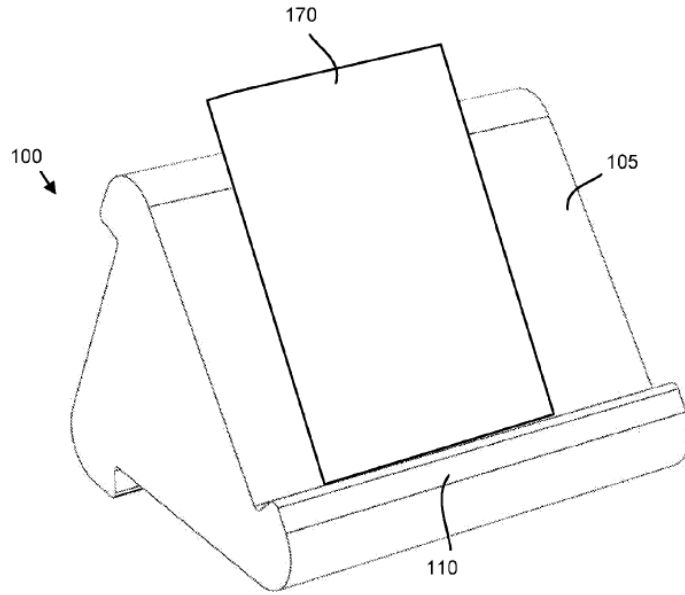


FIG. 4

(11) a first viewing angle of the first back support is 36 degrees,

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first viewing angle **160a** may be employed when the media support **100** and the media is disposed in the user's lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. *Id.* at [0027]; *see* Fig 2.

(12) a second viewing angle of the second back support is 74 degrees, and

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first viewing angle **160a** may be employed when the media support **100** and the media is disposed in

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the user’s lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. *Id.* at [0027]; *see* Fig 2.

(13) a third viewing angle of the third back support is 49 degrees.

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first viewing angle **160a** may be employed when the media support **100** and the media is disposed in the user’s lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. *Id.* at [0027]; *see* Fig 2.

(14) Conclusion

Accordingly, claim 1 of the Asserted Patent is invalid as anticipated by Cannon.

b. Claim 2

Claim 2 of the Asserted Patent recites the following:

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.

Cannon discloses an apparatus of claim 1 as set forth above at Sections VII.A.2.a(1)-VII.A.2.a(13). Cannon further discloses an embodiment wherein the first back support **105a** has a longitudinal length **115a** in the range of 12 to 26 centimeters (cm). *Id.* at [0022]. Cannon further discloses the second support back **105b** has a longitudinal length **115b** in the range of 9 to 21 cm. *Id.* at [0022]. Cannon further discloses the third support back **105c** has a longitudinal length **115c**

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in the range of 10 to 22 cm. *Id.* at [0022]. Accordingly, claim 2 of the Asserted Patent is invalid as anticipated.

c. Claim 8

Claim 8 of the Asserted Patent recites the following:

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

Cannon discloses an apparatus of claim 1 as set forth above at Sections VII.A.2.a(1)-VII.A.2.a(13). Cannon discloses each edge support **110** may have an edge support width **135**. The edge support width **135** may be in the range of 1 to 5 cm. In a certain embodiment, the edge support width **135** is 2 cm. *Id.* at [0024]. Accordingly, claim 8 of the Asserted Patent is invalid as anticipated.

d. Claim 9

Claim 9 of the Asserted Patent recites the following:

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.

Cannon discloses an apparatus of claim 1 as set forth above at Sections VII.A.2.a(1)-VII.A.2.a(13). Cannon discloses each edge support **110** may have an edge support width **135**. Cannon discloses 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. *Id.* at [0024]. Accordingly, claim 9 of the Asserted Patent is invalid as anticipated.

e. Claim 10

Claim 10 of the Asserted Patent recites the following:

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

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Cannon discloses an apparatus of claims 1 and 9 as set forth above at Sections VII.A.2.a(1)-VII.A.2.a(13) and VII.A.2.d. Cannon discloses that the edge angle **140** may be 90 degrees. *Id.* at [0024]. Accordingly, claim 10 of the Asserted Patent is invalid as anticipated.

a. Claim 12⁵

12. A media support apparatus comprising:

a body having a first support back, a second support back, and a third support back disposed about a central axis;

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;

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;

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, 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;

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

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

⁵ As discussed above, and for the reasons set forth at, at Section IV.A, 12-13, 15-17, and 19 of the Asserted Patent cannot be entitled to an effective file date earlier than January 30, 2019, the filing date of the '797 application. Accordingly, Cannon is prior art to the Asserted Patent, and for the foregoing reasons, renders claims 12-13, 15-17, and 19 of the Asserted Patent invalid as anticipated.

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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.

Each of these limitations will be addressed individually below.

- (1) A media support apparatus comprising:

Cannon discloses an apparatus for multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support. Cannon at Abstract, [0004]; *see* Fig. 1.

- (2) a body having a first support back, a second support back, and a third support back disposed about a central axis,

As described above, the apparatus disclosed in Cannon has multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support. *Id.* at Abstract, [0004]; *see* Fig. 1 (reproduced above at Section VII.A.2.a(1)). Cannon discloses that the support sides **155** of the multiple viewing angle media support may be disposed about a central axis **125**. *Id.* at [0016]; *see also id.* at [0004].

- (3) 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;

Cannon discloses three support edges, 110a-c, disposed between support backs, e.g., between the first support back and the second support back, where the first support back and first support edge are configured to support a media device at a first support angle. *See* Cannon at [0016], [0021].

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- (4) 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;

Cannon discloses three support edges, 110a-c, disposed between support backs, e.g., between the second support back and the third support back, where the second support back and second support edge are configured to support a media device at a second support angle. *See* Cannon at [0016], [0021].

- (5) 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 a third support angle,

Cannon discloses three support edges, 110a-c, disposed between support backs, e.g., between the third support back and the first support back, where the third support back and third support edge are configured to support a media device at a third support angle. *See* Cannon at [0016], [0021].

- (6) 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 an apparatus of claim 1 as set forth above at Sections VII.A.2.a(1)-VII.A.2.a(13). Cannon discloses each edge support **110** may have an edge support width **135**. Cannon discloses 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. *Id.* at [0024]. Cannon discloses that the edge supports are clockwise oriented around a central axis. *Id.* at [0024].

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- (7) 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

Cannon discloses that the media support 100 can be rotated to select a back support 105 with a comfortable viewing angle 160. Cannon at [0020]; *see also id.* at [0028]. The support sides are disposed about a central axis. *See, e.g., id.* at [0016].

- (8) on a first virtual plane between a top of the second support back and an outer edge of the second edge support,

Cannon discloses virtual planes 103a-c which are oriented between the support backs and the outer edge of the edge supports, e.g. between the top of the second support back and an outer edge of the second edge support. Cannon at [0021].

- (9) on a second virtual plane between a top of the third support back and an outer edge of the third edge support, and

Cannon discloses virtual planes 103a-c which are oriented between the support backs and the outer edge of the edge supports, e.g. between the top of the third support back and an outer edge of the third edge support. Cannon at [0021].

- (10) 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 virtual planes 103a-c which are oriented between the support backs and the outer edge of the edge supports, e.g. between the top of the first support back and an outer edge of the first edge support. Cannon at [0021].

- (11) 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,

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first

viewing angle **160a** may be employed when the media support **100** and the media is disposed in the user’s lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. *Id.* at [0027]; *see* Fig 2.

- (12) 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

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first viewing angle **160a** may be employed when the media support **100** and the media is disposed in the user’s lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. *Id.* at [0027]; *see* Fig 2.

- (13) 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,

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first viewing angle **160a** may be employed when the media support **100** and the media is disposed in the user’s lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. *Id.* at [0027]; *see* Fig 2.

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- (14) wherein the first viewing angle, the second viewing angle, and the third viewing angle are different from one another.

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first viewing angle **160a** may be employed when the media support **100** and the media is disposed in the user’s lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. *Id.* at [0027]; *see* Fig 2.

b. Claim 13

Claim 13 of the Asserted Patent recites the following:

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.

Cannon discloses three support edges, 110a-c, disposed between support backs, e.g., between the first support back and the second support back, where the first support back and first support edge are configured to support a media device at three support angles. *See* Cannon at [0016], [0021]. Cannon discloses that 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. *Id.* at [0021]. Accordingly, claim 13 is invalid as anticipated.

c. Claim 15

Claim 15 of the Asserted Patent recites the following:

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

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Cannon discloses an edge angle of 90 degrees to an adjacent back support. *Id.* at [0024] (“In on embodiment, 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.”). Accordingly, claim 15 is invalid as anticipated.

(1) Claim 16

Claim 16 of the Asserted Patent recites the following:

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

Cannon discloses an edge support width is 1-5 cms, or 2 cm. Cannon at [0024]. Accordingly, claim 16 is invalid as anticipated.

d. Claim 17

Claim 17 of the Asserted Patent recites the following:

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.

Cannon discloses an embodiment where each back support 105 and each edge support 101 is a surface of a solid. Cannon at [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]. Accordingly, claim 17 is invalid as anticipated.

e. Claim 18

Claim 18 of the Asserted Patent recites the following:

18. The apparatus of claim 12, wherein the body is foam having an indentation force deflection (IFD) in the range of 15-30 kilograms at 25% indentation.

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The POSA would know that the range of 15-30 kilograms for an indentation force deflection (IFD) is broad, and included with that range is the typical IFD of a soft object, such as a pillow. *See, e.g.*, Mills 217-18. Cannon discloses that the solid media support **100** may be a pillow, and that the surface may be ultra suede. *Id.* at [0019]; *see also id.* at [0029] (describing the media support **100** as marketed as the “flipy Tablet Pillow”). Accordingly, claim 18 of the Asserted Patent is invalid as anticipated.

f. Claim 19

Claim 19 of the Asserted Patent recites the following:

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

Cannon further discloses that each edge support has an edge support width of 1 to 5 cm. *Id.* at claim 9, [0024] (“Each edge support **110** may have an edge support width **135**. The edge support width **135** may be in the range of 1 to 5 cm. In a certain embodiment, the edge support width **135** is 2 cm”). Accordingly, claim 19 is invalid as anticipated.

g. Claim 20⁶

20. 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 and each back support and each edge support is in physical communication with two ends,

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,

⁶ As discussed above, and for the reasons set forth at, at Section IV.A, 20-21 and 27-29 of the Asserted Patent cannot be entitled to an effective file date earlier than January 30, 2019, the filing date of the ’797 application. Accordingly, Cannon is prior art to the Asserted Patent, and for the foregoing reasons, renders claims 20-21 and 27-29 of the Asserted Patent invalid as anticipated.

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wherein a face of each edge support width is oriented clockwise about the central axis,

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,

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,

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,

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

wherein each back support, each edge support, and each end is a surface of an interior.

Each of these limitations will be addressed individually below.

(1) An apparatus comprising:

Cannon discloses an apparatus for multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support. Cannon at Abstract, [0004]; *see* Fig. 1.

(2) three support sides, each support side comprising a back support and an edge support,

As described above, the apparatus disclosed in Cannon has multiple viewing angle media support, which includes three support sides, and where each support side includes a back support and an edge support. *Id.* at Abstract, [0004]; *see* Fig. 1 (reproduced above at Section VII.A.2.a(1)).

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- (3) 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,

Cannon discloses that the support sides **155** of the multiple viewing angle media support may be disposed about a central axis **125**. *Id.* at [0016]; *see also id.* at [0004]. Cannon discloses that the top of each back support **105** is in communication with an adjacent edge support **100** about the central axis **125** as shown in Fig. 2. *Id.* at [0021]; *see also id.* at [0004].

Cannon further discloses that in one embodiment, each back support **105** and each edge support **110** is a surface of a solid. The solid media surface support **100** may have one or more ends **165**. In addition, the solid media support **100** may be a pillow. *Id.* at [0019].

- (4) 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,

Cannon discloses an apparatus of claim 1 as set forth above at Sections VII.A.2.a(1)-VII.A.2.a(13). Cannon discloses each edge support **110** may have an edge support width **135**. Cannon discloses 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. *Id.* at [0024].

- (5) wherein a face of each edge support width is oriented clockwise about the central axis,

Cannon discloses the face of each edge support width as oriented clockwise about the central axis. *See Cannon* at Fig. 2, [0004].

- (6) 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,

Cannon discloses a plane of a first back support 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

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outer edge of a second edge support counterclockwise to the first back support. *Id.* at [0004], [0021] (“A plane of a first back support **105a** 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**”). Cannon further discloses that the arrangement of the longitudinal lengths **115** and the plane angles **120** generate three distinct viewing angles **160**. *Id.* at [0023].

- (7) 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,

Cannon discloses a plane of the second back support **105b** may be at a second plane angle **120b** to a third virtual plane **130c** between the top of a third back support counterclockwise to the second back support **105b** and an outer edge of a third edge support **110c** counterclockwise to the second back support **110b**. *Id.* at [0021]. Cannon further discloses that the arrangement of the longitudinal lengths **115** and the plane angles **120** generate three distinct viewing angles **160**. *Id.* at [0023].

- (8) 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,

Cannon discloses a plane of a third back support **105c** may be at a third plane angle **120c** 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**. *Id.* at [0021]. Cannon further discloses that the arrangement of the longitudinal lengths **115** and the plane angles **120** generate three distinct viewing angles **160**. *Id.* at [0023].

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- (9) wherein the first plane angle, the second plane angle, and the third plane angle are different from one another,

Cannon discloses an embodiment wherein the first, second, and third plane angles are different from one another. *See, e.g.*, Cannon at [0022] (first plane angle of 60 degrees, second plane angle of 68 degrees, and a third plane angle of 52 degrees).

- (10) and are configured to provide a first viewing angle, a second viewing angle, and a third viewing angle that are different from one another;

Cannon discloses an embodiment with three support sides **155** to generate three distinct viewing angles **160**. Each viewing angle **160** is chosen for a specific viewing orientation. The first viewing angle **160a** may be employed when the media support **100** and the media is disposed in the user’s lap. The second viewing angle **160b** may be used when the media support **100** 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 **100** is disposed on the user. *Id.* at [0027]; *see* Fig 2.

- (11) and wherein each back support, each edge support, and each end is a surface of an interior.

Cannon discloses an embodiment where each back support **105** and each edge support **110** is a surface of a solid. The solid media support **100** may have one or more ends **165**. *Id.* at [0019].

h. Claim 21

Claim 21 of the Asserted Patent recites the following:

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.

Cannon discloses an apparatus of claim 20 as set forth above. Cannon further discloses an embodiment wherein the first back support **105a** has a longitudinal length **115a** in the range of 12

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to 26 centimeters (cm). *Id.* at [0022]. Cannon further discloses the second support back **105b** has a longitudinal length **115b** in the range of 9 to 21 cm. *Id.* at [0022]. Cannon further discloses the third support back **105c** has a longitudinal length **115c** in the range of 10 to 22 cm. *Id.* at [0022]. Accordingly, claim 21 of the Asserted Patent is invalid as anticipated.

i. Claim 27

Claim 27 of the Asserted Patent recites the following:

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

Cannon further discloses that each edge support has an edge support width of 1 to 5 cm. *Id.* at claim 9, [0024] (“Each edge support **110** may have an edge support width **135**. The edge support width **135** may be in the range of 1 to 5 cm. In a certain embodiment, the edge support width **135** is 2 cm”). Accordingly, claim 27 is invalid as anticipated.

j. Claim 28

Claim 28 of the Asserted Patent recites the following:

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.

Cannon discloses an edge angle of 90 degrees to an adjacent back support. *Id.* at [0024] (“In on embodiment, 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.”). Accordingly, claim 28 is invalid as anticipated.

k. Claim 29

Claim 29 of the Asserted Patent recites the following:

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

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Cannon further discloses that each edge support has an edge support width of 2 cm. *Id.* at claim 9, [0024] (“Each edge support **110** may have an edge support width **135**. The edge support width **135** may be in the range of 1 to 5 cm. In a certain embodiment, the edge support width **135** is 2 cm”). Accordingly, claim 29 is invalid as anticipated.

1. Conclusion

The Asserted Claims are invalid as anticipated by Cannon under 35 U.S.C. § 102.

B. Obviousness under L. Pat. R. 3.3(b)

To the extent claims 1–2, 8–10, 12–13, 15–821, and 27–29 are definite, enabled, and described by the specification of the Asserted Patent (which Ontel does not concede), and to the extent , , and 18the Asserted Claims are not invalid as anticipated, claims 1–2, 8–10, 12–13, 15–821, and 27–29 are invalid for obviousness under 35 U.S.C. § 103.

1. The Level of Ordinary Skill in the Art

a. Knowledge and Motivation of a POSA Regarding Media Support Stands

- (1) The POSA would have known that stands for holding media existed in the prior art and the benefits of such stands.

Media support stands had long existed in the art to serve the purpose of propping an object—be it a book, papers, a tablet, etc. Many media support stands in the prior art were meant to enable use on various surfaces, such as while the user sat in a chair or bed, or to rest on a table. Preece at Abstract, 1; Facet Pyramid at 6; PadPillow at 1-2; Hong at Design Features; Barcalo at 1:1-4, 1:9-16, 3:50-61; Lin at Abstract, 1:44-57, 2:1-4; Diebel 2011 at 5:33-36; Diebel 2013 at 5:17-22; Ure at 4:56-5:13. The prior art disclosed significant success of these stands (*see, e.g.*, Facet Pyramid at 44, Update 7), demonstrating the popularity of an apparatus with this ability and utility. The various places and iterations of use of the product were viewed as valuable by consumers and as an improvement over what had existed previously. *See* Facet Pyramid, (noting

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“use[] [when] on bed” as a consideration); Baek at [0017] (“In the prior art, in order to ensure sufficient visibility for the user, the display device must be placed on a support such as a desk pad and tilted to close to 90 degrees, which results in an uncomfortable user posture and makes it difficult to touch the keyboard or perform input operations, thereby causing significant inconvenience in use.”).

The POSA would have known, and the prior art taught, that these media support stands enabled more comfortable viewing and hands-free ability to view the media (book, tablet, etc.) by propping and holding the media at a comfortable angle for viewing. Preece at Abstract, 1; PadPillow at 2; Baek at Figs. 1 and 2, Description, *generally*; Huang at Abstract, 4; Barcalo at 1:1-4; Radtke at 1:13-19, 2:56-61; Diebel 2011 at 5:33-36; Halpin at Abstract, [0030], [0031]-[0033], [0038]. Not only comfort is implicated by the hands-free capability of media support stands. The prior art disclosed the expectation that these would be helpful for people with impaired arms or wrists, and for the elderly and infirm. *See, e.g.*, Halpin at [0059]; Ure at 1:9-14.

Versatile viewing angles for the products were also disclosed in the prior art. *See, e.g.*, Facet Pyramid at 3 (with faces angled 35°, 55°, and 75°); PadPillow at 2 (change of viewing angle can be controlled by the user bending their knees to achieve the desired view); Baek at Abstract; Huang at Abstract, 4 (noting, “When the tablet computer is placed vertically in the receiving groove, the pillow portion can be used to elevate the tablet computer’s tilt to reduce glare.”); Barcalo at 1:9-18; *see also id.* at 2:18-22; Lin at 2:13-20, 4:45-54; Diebel 2011 at Figs. 5A-5C, 9:7-17; Diebel 2013 at 1:59-61, 5:17-22, Table 5; Klepar 2014 at Figs. 1 and 4; Ure at 1:41-44.

The prior art taught both apparatuses which multiple viewing angles, and the need for them. For individuals with different eye conditions or eye glasses, for example, the position or inclination of the media is particular, and even a slight shift in movement can disrupt the optimal angle for

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viewing the device. Barcalo at 3:25-49. This is also especially convenient for the elderly and infirm, especially if the media device or book is large and heavy. Ure at 1:9-14.

The POSA would have known that physical comfort while using the product was also a consideration. For example, Preece disclosed an iPad stand constructed of materials “which [were] comfortable on both the arms and thighs, and will not be cold, even on bare skin such as the thighs.” Preece at Abstract, 1; *see also* PadPillow at 2 (made of “soft foam”); Hong at Design Features (used a pillow); Huang at 6 (an inner material made of cloth or foam); Barcalo at 3:50-61, 1:66-73 (pillow or cushion, “soft and light,” “not causing discomfort”); Halpin at [0025], [0027], [0034]-[0036]. This was particularly in contrast to “hard” and uncomfortable materials that were used for existing support devices, and could be heavy, cumbersome, and bulky. Huang at 2; Radtke at 1:19-25; Lin at 1:21-31; Ure at 1:13-25. Pliable structures also allowed for “books of a variety of sizes and thickness” to fit with a holder in the prior art. Halpin at [0027].

Using comfortable material served the dual purpose of protecting the finish of the electronic media device, a consideration expressed as important by consumers. Preece at Abstract, 1 (“non-slip surface that will not scratch the device”); Facet Pyramid at 2-3 (Q: “One small concern – what kind of finish will the pyramid be? Wouldn’t want to scratch or ding the iPad aluminum back.” A: “FACET is made of ABS plastic and all of the edges have been ever so slightly rounded. It will not scratch the aluminum finish of the iPad.”). The prior art further disclosed that electronic devices, such as iPads, were “more vulnerable to damage as compared to nonportable devices.” Diebel 2011 at 1:37-39; Diebel 2013 at 1:31-34.

- (2) The prior art taught and the POSA would know that multiple viewing angles were achievable by triangular shaped apparatuses.

Numerous products forming a triangular shape had the benefit of multiple-angle viewing for a media device on a support stand. *See, e.g.*, Baek at [0004]; *see also id.* at Description,

generally; Facet Pyramid at 3, 30 (Update 1) (achieving similar function with a pyramidal shape); Barcalo at 1:79-91, Fig. 1; Diebel 2011 at Abstract, 1:62-64. Multiple faces were realized by the triangular shape, enabling propping up and viewing the media at various angles. *See, e.g.*, Barcalo at 1:79-91 (disclosing the use of faces making different inclinations to the supporting surface, and small pockets on all three faces (Fig. 5)); Klepar 2014 at Figs. 1 and 4; Padilla 2013 at Figs. 2, 6.

- (3) The POSA would have realized that shortcomings still existed in the prior art and would have attempted to create an optimal stand.

The prior art expressed modifications which would be valuable for media support stands. The prior art implemented different strategies for preventing the slippage of the media and maintaining its safety, a recognized problem with apparatuses of this nature. Klepar 2013 at [0002] (“StandesStands especially designed for tablet computers are well-known in the relevant art. . . . [I]n most of such stands the receiving portions that hold the tablet are slidable.”), *see also id.* at [0006]; *see, e.g.*, Facet Pyramid at 3, 6; PadPillow at 2; Hong at 5, 7; Barcalo at 3:56-61; Halpin at Abstract, [0002], [0027], [0029]; Klepar 2013 at [0004]; [0013]. However, small ledges or the use of magnets were not satisfactory solutions. While the prior art disclosed stands that sought to hold the product stable (*see, e.g.*, Facet Pyramid used magnets to provide three viewing angles on sides which could be accessed by rotating the stand. Facet Pyramid at 3, 6), there are disclosures evidencing the failure of these elements. *See* Facet Pyramid, (“iPad does not attach safely. And, iPad has slide down twice on the floor” fearing it “cold not [be] use[d] [on] the edge of table” and adding a nail so the iPad does not slide down); *see* PadPillow at 2 (raised leather label “acts as a simple stopper”, a consumer commenting “the little strip that holds the iPad in place could be a bit thicker so I could be more confident that my iPad will stay in place” and “I put stuffing inside the front ledge to build it up, so my iPad will stop slipping off” and “it could use some improvements. The back piece tends to roll backward and then the iPad loses its support”).

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Another tactic for stabilizing the support system was the use of a “bar” to form a “flange or ledge” from the pillow to hold the media and prevent it sliding down the inclined face. Barcalo at 2:38-44; *see also* Dean at Abstract, Fig. 1 (apex regions assist in preventing slipping of the object propped against the supportive member by having projects to engage the cards). Similarly, hooked lips at the end of the structure were disclosed for stabilizing the book, etc., being propped. Ratke at Abstract, 1:36-48, 1:63-68; Lin at Abstract, 1:44-57; Klepar 2014 at Fig. 7; Klepar 2013 at [0013].

The same is true for the viewing angle. Even though products existed with multiple viewing angles, people still sought to create diversity when there was only one option. *See, e.g.*, PillowPad at 3-4 (individuals commenting on using pillows, blankets, etc. to prop the PillowPad at a desired angle). The prior art taught that the viewing angle could be altered by adjusting the angle of inclination of the apparatus. *See, e.g.*, Baek at Description, 2[0010]; *see also id.* at Effect of Invention, *generally*.

While the prior art disclosed multi-sided media support apparatuses such as Dean, Klepar 2013, Klepar 2014, and Facet Pyramid, the POSA would have had a motivation to modify these disclosures to achieve optimal viewing angles, i.e. by using all sides of the apparatus, and would have implemented ledges to hold the media in place.

The POSA also would have had a motivation to combine these references in view of the teachings of the art that stable, multi-angle viewing, using a comfortable apparatus, were primary factors for developing a media support apparatus, in order to overcome the various shortcomings of the prior art.

2. Differences Between the Prior Art and the Claimed Invention

(1) Claim 1

Claim 1 of the Asserted Patent recites the following:

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 and each back support and each edge support is in physical communication with two ends of a solid interior, each edge support comprises an edge support width of 2 centimeters (cm) 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, 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, 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, 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 wherein each back support, each edge support, and each end is a surface of the solid interior, the solid interior is a pillow covered in fabric, 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.

For the foregoing reasons, a POSA would have been motivated to design and develop, and could have designed, a three sided apparatus, each side having a back support and edge support, oriented about a central axis, with each back support and edge support in physical communication with the ends of a solid interior, having the claimed edge support width and angles, which is made of fabric, and had a variety of angles. Cannon disclosed such an apparatus specifically, and the teachings from Cannon set forth in the anticipation section are incorporated here. *See* Section VII.A.2.

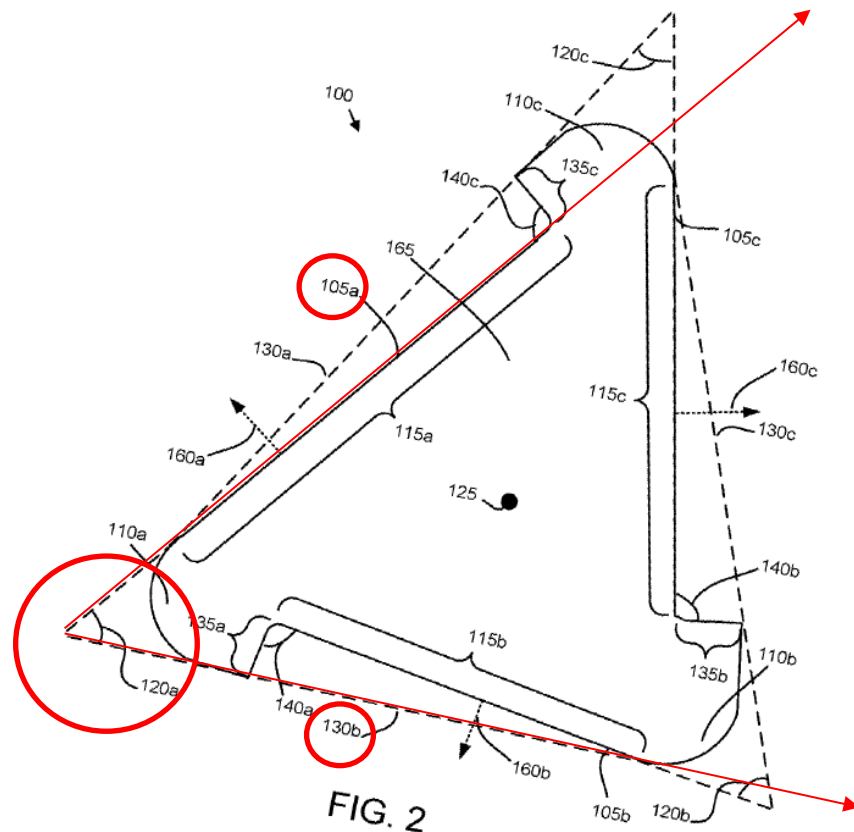
Numerous prior art references also taught the claimed design. For example, Klepar 2013 teaches two receiving panels configured to receive each of two different electronic displays, having an “L-channel.” Cannon, Barcalo, Facet Pyramid, Klepar 2014 and Klepar 2013 all taught using

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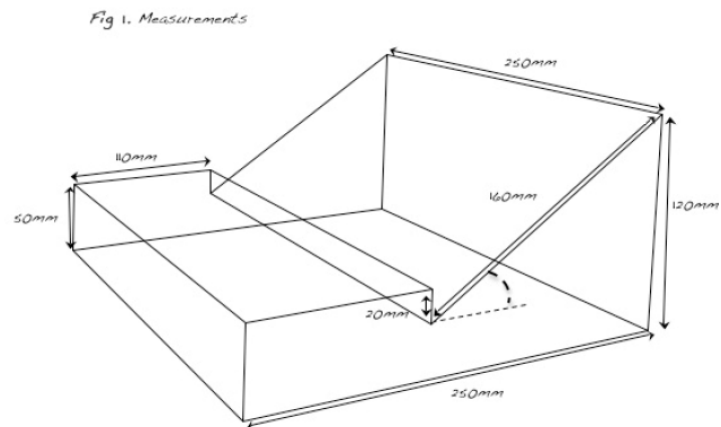
multiple faces of the stand for viewing, and enabling different angles by doing so. A benefit of this design is disclosed in Klepar: “help[s] users quickly change the viewing angle and orientation of the tablet computers in one of several positions without having to apply any force or make any technical changes to the stand holding the tablet device,” and “easily flip over the multi-position stand in one or more usage configurations,” “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.” Klepar 2013 at [0010]. Klepar 2013 also discloses up to three support backs if the panel without the L-channels is used to lean a media device against, which a POSA would understand was an option based on the shape of Klepar 2013.

These same prior art references, as well as those set forth above, also taught that apparatuses with multiple viewing angles and plane angles. It would have been the routine work of a POSA to measure these angles and to adjust them to achieve optimal viewing, comfort, and function for the user.

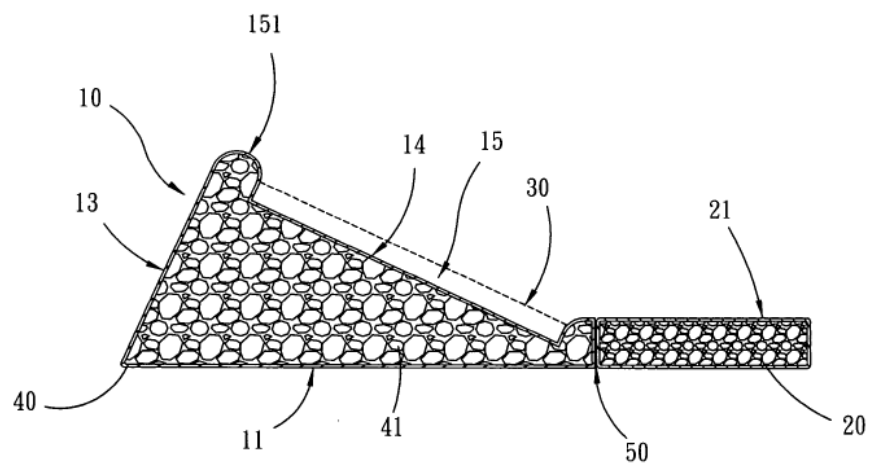
The Asserted Patent discloses plane angles as “a plane of a first back support **105a** may be at a first plane angle **120a** . . . to a second virtual plane **130b** between the top of a second back support **105b** counterclockwise to the first back support **105a** and an outer edge of a second edge support **110b** counterclockwise to the first back support **105a**. . .” etc. for each of the first, second, and third plane angles claimed. *See, e.g.,* Fig. 2, below (annotated).



Media support apparatuses with at least one support back and an edge disclose a plane angle (to the extent this term is definite, which Ontel does not concede) of the apparatus according to the Asserted Patent. The POSA would be motivated to increase the number of plane angles to enable more viewing angles, as explained above at Section VII.B.1.a. The prior art disclosed both apparatuses with a single plane angle and multiple plane angles. To the extent the apparatus has multiple faces and edges, its number of plane angles increases. *See, e.g.:*



Preece at 6.

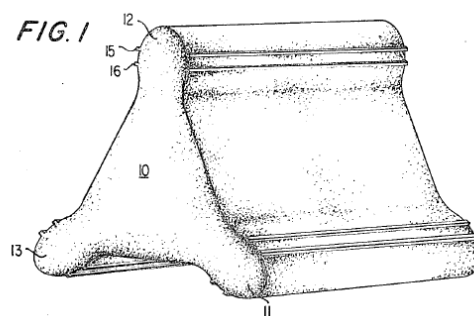


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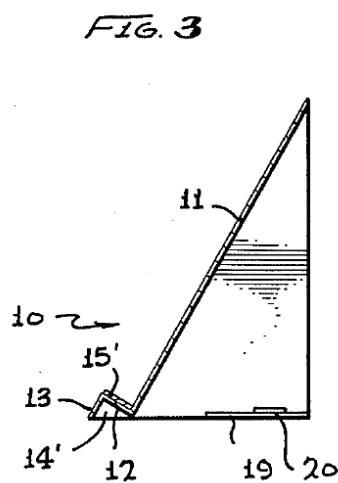
Huang at 2.



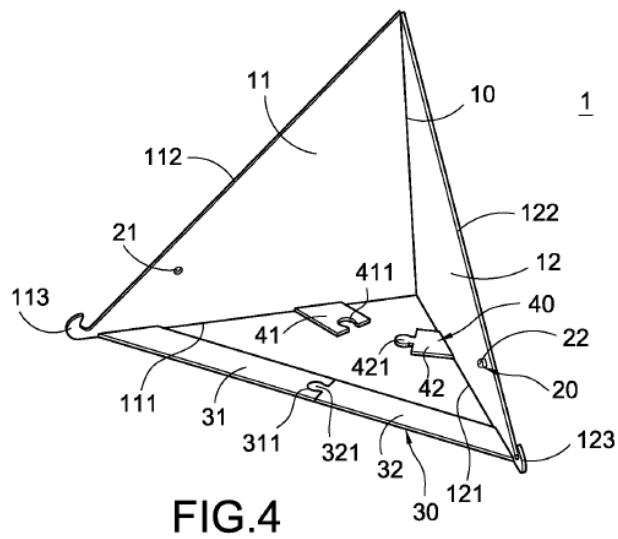
Barcalo at Fig. 5.



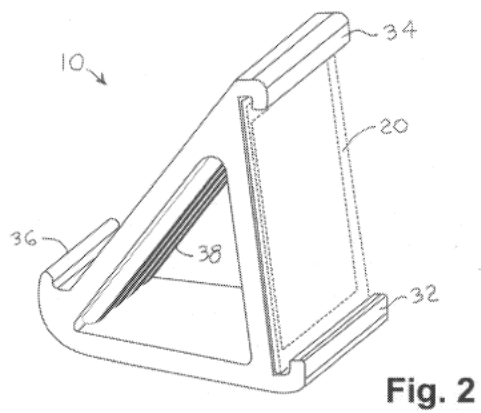
Dean at Fig. 1.



Radtke at Fig. 3.



Lin at Fig. 4.



Klepar 2013 at Fig. 2.

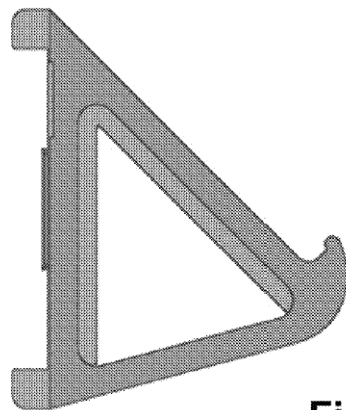
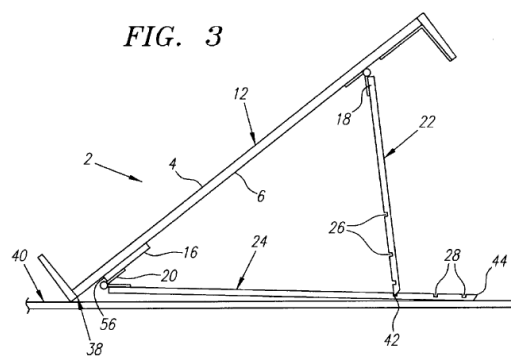
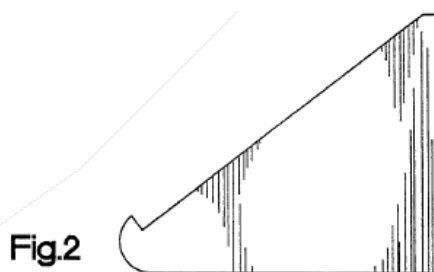


Fig. 7

Klepar 2014 at Fig. 7.



Ure at Fig. 3.



Falter at Fig. 2.



FIG. 4

Tubbs at Fig. 4.

It appears that this definition, when visually represented on the annotated Fig. 2, could more broadly correspond to the angle of inclination, i.e. the angle between the table top and the support back, regardless of whether the apparatus has an edge support. Under this interpretation, additional prior art disclosed plane angles. *See, e.g.*, Facet Pyramid, PadPillow, Baek, Hong, Diebel 2011, Diebel 2013, Padilla 2013, Halpin, Padilla 2014.

Cannon, PadPillow, Preece, Hong, Huang, Barcalo, Radtke, Lin, Klepar 2014 and Klepar 2013 all also disclosed using a hook or ledge designed to hold the media device, book, magazine, etc. securely in place. The POSA would be motivated to incorporate the teachings of a ledge into the multi-face media support product for the reasons discussed above, given that stability is a primary consideration for the use of the product.

The length and angle of the edge support would have been a matter of routine for the POSA to measure. However, the prior art taught the concern about materials slipping (Preece, Hong, Barcalo, Dean) and the requirement that the stand have a ledge thick enough to prop the desired material (Halpin). Therefore it would have been obvious to the POSA to use a ledge deep enough to accommodate multiple viewing devices, such as the 2 to 5 centimeter (5) range claimed in certain claims of the Asserted Patent (encompassing the 2 cm range in claim 1). The prior art also disclosed media support stands with edge angles of 90 degrees (Huang, Barcalo, Radtke, Klepar

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2013, Klepar 2014, Halpin). The applicants did not dispute that the prior art (Halpin and Klepar) disclosed an edge angle of 90 degrees. *See* ’443 Application Prosecution History, Non Final Rejection dated August 14, 2025 at 4; Final Rejection dated February 11, 2016 at 5. This is the same as the value in the claim 1 and falls within the range of angles (85 to 120 degrees) in other claims of the Asserted Patent.

The POSA would have been motivated to use a soft material for the product based on the teachings described above in Preece, Barcala, Hong, and Huang. The prior art taught that comfort for viewing angles and for the user while interacting with the media device was another primary consideration for the use of the product.

The POSA would have combined these teachings because they each relate to apparatuses for the hands-free and holding upright and at an angle media supports, in view of the motivations set forth above to modify the existing art and combine these teachings.

The POSA would have had a reasonable expectation of success that combining these references would produce a functional media stand with a versatility of angles and stability for the device, book, magazine, etc.

(2) Claim 2

Claim 2 of the Asserted Patent recites the following:

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.

It would have been within the routine work of the POSA to measure the back support longitudinal length, and the POSA would be aware that it would need to be long enough to accommodate the media they sought to support. Cannon discloses a first, second, and third back support with the recited longitudinal lengths, and that analysis from Section VII.A.2.b is

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incorporated here. Facet Pyramid also disclosed a multi-sided media stand apparatus with sides having longitudinal lengths within the claimed ranges. Facet Pyramid at 7. Therefore, this claim would have been obvious over the combination of these teachings with the motivation in the prior art, and a POSA would have a reasonable expectation of success in achieving it.

(3) Claim 8

Claim 8 of the Asserted Patent recites the following:

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

Claim 8 of the Asserted Patent recites a range for the edge support width which encompasses the 2 centimeter (cm) width listed in claim 1 of the Asserted Patent. Claim 8 is thus obvious for the same reasons as claim 1 of the Asserted Patent. *See* Section VII.B.2(1).

(4) Claim 9

Claim 9 of the Asserted Patent recites the following:

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.

Claim 9 of the Asserted Patent recites a range for the edge angle which encompasses the 90 degrees for the edge angle listed in claim 1 of the Asserted Patent. Claim 9 is thus obvious for the same reason as claim 1 of the Asserted Patent. *See* Section VII.B.2(1).

(5) Claim 10

Claim 10 of the Asserted Patent recites the following:

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

Claim 10 of the Asserted Patent recites the same value for the edge angle as listed in claim 1 of the Asserted Patent (90 degrees). Claim 10 is thus obvious for the same reason as claim 1 of the Asserted Patent. *See* Section VII.B.2(1).

(6) 8Claim 12

Claim 12 of the Asserted Patent recites the following:

12. A media support apparatus comprising:

a body having a first support back, a second support back, and a third support back disposed about a central axis;

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;

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;

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, 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;

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

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.

For the foregoing reasons, a POSA would have been motivated to design and develop, and could have designed, a three sided apparatus, each side having a back support and edge support, oriented about a central axis, with each back support and edge support in physical communication

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with the ends of a solid interior, having the claimed edge support width and angles, which is made of fabric, and had a variety of angles. Cannon disclosed such an apparatus specifically, and the teachings from Cannon set forth in the anticipation section are incorporated here. *See* Section VII.A.2.

Numerous prior art references also taught the claimed design. Cannon, Barcalo, Facet Pyramid, Klepar 2013 and Klepar 2014 all taught using multiple faces of the stand for viewing, and enabling different angles by doing so. A benefit of this design is disclosed in Klepar: “help[s] users quickly change the viewing angle and orientation of the tablet computers in one of several positions without having to apply any force or make any technical changes to the stand holding the tablet device,” and “easily flip over the multi-position stand in one or more usage configurations,” “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.” Klepar 2013 at [0010]. Klepar 2013 also discloses up to three support backs if the panel without the L-channels is used to lean a media device against, which a POSA would understand was an option based on the shape of Klepar 2013.

These same prior art references, as well as those set forth above, also taught that apparatuses with multiple viewing angles, plane angles, and support angles. It would have been the routine work of a POSA to measure these angles and to adjust them to achieve optimal viewing, comfort, and function for the user.

The Asserted Patent defines plane angles as “a plane of a first back support **105a** may be at a first plane angle **120a** . . . 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

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support **110b** counterclockwise to the first back support **105a**. . .” etc. for each of the first, second, and third plane angles claimed. *See, e.g.*, Fig. 2, above at page 113 (annotated).

Media support apparatuses with at least one support back and an edge disclose a plane angle (to the extent this term is definite, which Ontel does not concede) of the apparatus according to the Asserted Patent. The POSA would be motivated to increase the number of plane angles to enable more viewing angles, as explained above at Section VII.B.1.a. The prior art disclosed both apparatuses with a single plane angle and multiple plane angles. To the extent the apparatus has multiple faces and edges, its number of plane angles increases. *See, e.g.* Cannon, Preece, Huang, Barcalo, Dean, Radtke, Lin, Klepar 2013, Klepar 2014, Ure, Falter, Tubbs (above at Section VII.B.2(1)).

It appears that this definition, when visually represented on the annotated Fig. 2, could more broadly correspond to the angle of inclination, i.e. the angle between the table top and the support back, regardless of whether the apparatus has an edge support. Under this interpretation, additional prior art disclosed plane angles. *See, e.g.*, Facet Pyramid, PadPillow, Baek, Hong, Diebel 2011, Diebel 2013, Padilla 2013, Halpin, Padilla 2014.

To POSA also would have known that all of the prior art disclosed a support angle (to the extent this term is definite, enabled, and described which Ontel does not concede), by supporting media on a back or face. *See, e.g.*, Klepar 2013, Klepar 2014, Padilla 2013, Padilla 2014, PadPillow, Preece, Facet Pyramid, Cannon, Lin, Tubbs, Dean, Halpin, Baek, Hong, Huang, Radtke, Barcalo.

Cannon, PadPillow, Preece, Hong, Huang, Barcalo, Radtke, Lin, Klepar 2013 and Klepar 2014 all also disclosed using a hook or ledge designed to hold the media device, book, magazine, etc. securely in place. The POSA would be motivated to incorporate the teachings of a ledge into

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the multi-face media support product for the reasons discussed above, given that stability is a primary consideration for the use of the product.

The length and angle of the edge support would have been a matter of routine for the POSA to measure. However, the prior art taught the concern about materials slipping (Preece, Hong, Barcalo, Dean) and the requirement that the stand have a ledge thick enough to prop the desired material (Halpin). Therefore it would have been obvious to the POSA to use a ledge deep enough to accommodate multiple viewing devices, such as the 2 to 5 centimeter (5) range claimed in certain claims of the Asserted Patent (encompassing the 2 cm range in certain claims of the Asserted Patent). The prior art also disclosed media support stands with edge angles or support angles (to the extent that term is definite, which Ontel does not concede) of 90 degrees (Cannon, Huang, Barcalo, Radtke, Klepar 2014, Klepar 2013, Halpin). The applicants did not dispute that the prior art (Halpin and Klepar) disclosed an edge angle of 90 degrees. *See* ’443 Application Prosecution History, Non Final Rejection dated August 14, 2025 at 4; Final Rejection dated February 11, 2016 at 5. This is the same as the value in certain claims of the Asserted Patent and falls within the range of angles (85 to 120 degrees) of claim 12 of the Asserted Patent.

The POSA would have been motivated to use a soft material for the product based on the teachings described above in Cannon, Preece, Barcala, Hong, and Huang. The prior art taught that comfort for viewing angles and for the user while interacting with the media device was another primary consideration for the use of the product.

The POSA would have combined these teachings because they each relate to apparatuses for the hands-free and holding upright and at an angle media supports, in view of the motivations set forth above to modify the existing art and combine these teachings.

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The POSA would have had a reasonable expectation of success that combining these references would produce a functional media stand with a versatility of angles and stability for the device, book, magazine, etc.

(7) Claim 13

Claim 13 of the Asserted Patent recites the following:

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.

The prior art disclosed media support apparatuses with multiple support angles which fall within the claimed ranges set forth in claim 13. For example, at least PadPillow, Hong, Barcalo, Klepar 2014, and Padilla 2013, appear to have support angles in the claimed ranges (to the extent this term is definite, which Ontel does not concede). Further, it would have been the routine work of a POSA to measure these angles and to adjust them to achieve optimal viewing, comfort, and function for the user. Therefore claim 13 is also obvious in view of the prior art.

(8) Claim 15

Claim 15 of the Asserted Patent recites the following:

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

Claim 15 of the Asserted Patent recites an edge angle within the range for the edge or support angle (85-120 degrees) listed in claim 12 of the Asserted Patent. Claim 15 is thus obvious for the same reason as claim 12 of the Asserted Patent. *See* Section VII.B.2(6).

(9) Claim 16

Claim 16 of the Asserted Patent recites the following:

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

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The prior art taught the concern about materials slipping (Preece, Hong, Barcalo, Dean) and the requirement that the stand have a ledge thick enough to prop the desired material (Lin). Therefore it would have been obvious to the POSA to use a ledge deep enough to accommodate multiple viewing devices, such as the 2 to 5 centimeter (5) range claimed in certain claims of the Asserted Patent (encompassing the 2 cm range in of claim 16 of the Asserted Patent), rendering an edge support width of 2 cm obvious.

(10) Claim 17

Claim 17 of the Asserted Patent recites the following:

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.

The prior art taught media support devices with three corners having edge supports at each corner (*see, e.g.*, Dean, Klepar 2014, Klepar 2013). Therefore it would have been obvious to use three corners and to have edge supports at the corners between support backs.

(11) Claim 18

Claim 18 of the Asserted Patent recites the following:

18. The apparatus of claim 12, wherein the body is foam having an indentation force deflection (IFD) in the range of 15-30 kilograms at 25% indentation.

The POSA would know that the IFD is an assessment of the stiffness of an object by measuring its firmness. *See* Mills at 217. The POSA would also know that the range of 15-30 kilograms is a wide range for an IFD, ultra soft to medium, and includes within it softer objects such as soft foam, pillows, fabric-covered pillows, etc. *Id.* at 218. The prior art disclosed pillow and foam apparatuses for supporting media devices, books, etc. and the motivation to use this material, and a POSA would understand that these apparatuses would have an IFD within this

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range, at this indentation. *See, e.g.*, PadPillow at 2; Klepar 2014 at Figs. 1 and 4; Barcalo at 1:66-73; Cannon at [0019]; Huang at 26. Therefore, claim 18 is invalid as obvious over the prior art.

(12) Claim 19

Claim 19 of the Asserted Patent recites the following:

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

Claim 19 of the Asserted Patent recites a range for the edge support width which encompasses the 2 centimeter (cm) width listed in claim 16 of the Asserted Patent. Claim 19 is thus obvious for the same reason as claim 16 of the Asserted Patent. *See* Section VII.B.2(9).

(13) Claim 20

Claim 20 of the Asserted Patent recites the following:

20. 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 and each back support and each edge support is in physical communication with two ends,

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,

wherein a face of each edge support width is oriented clockwise about the central axis,

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,

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,

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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,

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

wherein each back support, each edge support, and each end is a surface of an interior.

For the foregoing reasons, a POSA would have been motivated to design and develop, and could have designed, a three sided apparatus, each side having a back support and edge support, oriented about a central axis, with each back support and edge support in physical communication with the ends of a solid interior, having the claimed edge support width and angles, which is made of fabric, and had a variety of angles. Cannon disclosed such an apparatus specifically, and the teachings from Cannon set forth in the anticipation section are incorporated here. *See* Section VII.A.2.

Numerous prior art references also taught the claimed design. Cannon, Barcalo, Facet Pyramid, Klepar 2014, and Klepar 2013, all taught using multiple faces of the stand for viewing, and enabling different angles by doing so. A benefit of this design is disclosed in Klepar: “help[s] users quickly change the viewing angle and orientation of the tablet computers in one of several positions without having to apply any force or make any technical changes to the stand holding the tablet device,” and “easily flip over the multi-position stand in one or more usage configurations,” “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.” Klepar 2013 at [0010]. Klepar 2013 also discloses up to three support backs if the panel without the L-

channels is used to lean a media device against, which a POSA would understand was an option based on the shape of Klepar 2013.

These same prior art references, as well as those set forth above, also taught that apparatuses with multiple viewing angles, plane angles, and support angles. It would have been the routine work of a POSA to measure these angles and to adjust them to achieve optimal viewing, comfort, and function for the user.

The Asserted Patent defines plane angles as “a plane of a first back support **105a** may be at a first plane angle **120a** . . . 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**. . .” etc. for each of the first, second, and third plane angles claimed. *See, e.g.*, Fig. 2, above at page 113 (annotated).

Media support apparatuses with at least one support back and an edge disclose a plane angle (to the extent this term is definite, which Ontel does not concede) of the apparatus according to the Asserted Patent. The POSA would be motivated to increase the number of plane angles to enable more viewing angles, as explained above at Section VII.B.1.a. The prior art disclosed both apparatuses with a single plane angle and multiple plane angles. To the extent the apparatus has multiple faces and edges, its number of plane angles increases. *See, e.g.* Cannon, Preece, Huang, Barcalo, Dean, Radtke, Lin, Klepar 2013, Klepar 2014, Ure, Falter, Tubbs (annotated above at Section VII.B.2(1)).

It appears that this definition, when visually represented on the annotated Fig. 2, could more broadly correspond to the angle of inclination, i.e. the angle between the table top and the support back, regardless of whether the apparatus has an edge support. Under this interpretation,

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additional prior art disclosed plane angles. *See, e.g.*, Facet Pyramid, PadPillow, Baek, Hong, Diebel 2011, Diebel 2013, Padilla 2013, Halpin, Padilla 2014.

To POSA also would have known that all of the prior art disclosed a support angle (to the extent this term is definite, enabled, and described which Ontel does not concede), by supporting media on a back or face. *See, e.g.*, Klepar 2013, Klepar 2014, Padilla 2013, Padilla 2014, PadPillow, Preece, Facet Pyramid, Cannon, Lin, Tubbs, Dean, Halpin, Baek, Hong, Huang, Radtke, Barcalo.

Cannon, PadPillow, Preece, Hong, Huang, Barcalo, Radtke, Lin, and Klepar 2014 all also disclosed using a hook or ledge designed to hold the media device, book, magazine, etc. securely in place. The POSA would be motivated to incorporate the teachings of a ledge into the multi-face media support product for the reasons discussed above, given that stability is a primary consideration for the use of the product.

The length and angle of the edge support would have been a matter of routine for the POSA to measure. However, the prior art taught the concern about materials slipping (Preece, Hong, Barcalo, Dean) and the requirement that the stand have a ledge thick enough to prop the desired material (Halpin). Therefore it would have been obvious to the POSA to use a ledge deep enough to accommodate multiple viewing devices, such as the 2 to 5 centimeter (5) range claimed in certain claims of the Asserted Patent (encompassing the 2 cm range in certain claims of the Asserted Patent). The prior art also disclosed media support stands with edge angles of 90 degrees (Cannon, Huang, Barcalo, Radtke, Klepar 2014, Halpin). The applicants did not dispute that the prior art (Halpin and Klepar) disclosed an edge angle of 90 degrees. *See* '443 Application Prosecution History, Non Final Rejection dated August 14, 2025 at 4; Final Rejection dated

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February 11, 2016 at 5. This is the same as the value as in certain claims of the Asserted Patent and falls within the range of angles (85 to 120 degrees) of claim 12 of the Asserted Patent.

The POSA would have been motivated to use a soft material for the product based on the teachings described above in Preece, Barcala, Hong, and Huang. The prior art taught that comfort for viewing angles and for the user while interacting with the media device was another primary consideration for the use of the product.

The POSA would have combined these teachings because they each relate to apparatuses for the hands-free and holding upright and at an angle media supports, in view of the motivations set forth above to modify the existing art and combine these teachings.

The POSA would have had a reasonable expectation of success that combining these references would produce a functional media stand with a versatility of angles and stability for the device, book, magazine, etc.

(14) Claim 21

Claim 21 of the Asserted Patent recites the following:

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.

It would have been within the routine work of the POSA to measure the back support longitudinal length, and the POSA would be aware that it would need to be long enough to accommodate the media they sought to support. Facet Pyramid disclosed a multi-sided media stand apparatus with sides having longitudinal lengths within the claimed ranges. Facet Pyramid at 7. Therefore, this claim would have been obvious over the combination of these teachings with the motivation in the prior art, and a POSA would have a reasonable expectation of success in achieving it.

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(15) Claim 27

Claim 27 of the Asserted Patent recites the following:

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

Claim 27 of the Asserted Patent recites the same range for the edge support width as that listed in claim 19 of the Asserted Patent. Claim 27 is thus obvious for the same reason as claim 19 of the Asserted Patent. *See* Section VII.B.2(12).

(16) Claim 28

Claim 28 of the Asserted Patent recites the following:

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.

Claim 28 of the Asserted Patent recites an edge angle within the range for the edge angle (85-120 degrees) listed in claim 20 of the Asserted Patent. Claim 28 is thus obvious for the same reason as claim 20 of the Asserted Patent. *See* Section VII.B.2(13).

(17) Claim 29

Claim 29 of the Asserted Patent recites the following:

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

Claim 29 of the Asserted Patent recites a range for the edge support width which encompasses the 2 centimeter (cm) width listed in claim 16 of the Asserted Patent. Claim 29 is thus obvious for the same reason as claim 16 of the Asserted Patent. *See* Section VII.B.2(9).

(18) Conclusion

For the foregoing reasons, to the extent they are definite, described, enabled, and not anticipated (which Ontel does not concede), claims 1–2, 8–10, 12–13, 15–17, 18–21 and 27–29 of the Asserted Patent are invalid as obvious.

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(19) Obviousness Combinations

By way of non-limiting, illustrative example, claims 1–2, 8–10, 12–13, 15–21, and 27–29 of the Asserted Patent are obvious over one or more of Barcalo, Cannon⁷, Dean, Facet Pyramid, Klepar 2013, Klepar 2014, Padilla 2013 (“Group I References”), alone or in further view of Baek, Diebel 2011, Diebel 2013, Padilla 2014, PadPillow, Ure (“Group II References”) and/or Falter, Hong, Huang, Lin, Preece, Radtke, Tubbs (“Group III References”) and/or Halpin (“Group IV References”), further in view of the knowledge of the POSA.

A POSA would be motivated to create a media viewing apparatus which could be hands-free and allowed for multiple viewing angles for the comfort and convenience of the user (Barcalo, Dean, Facet Pyramid, Klepar 2013, Klepar 2014, Baek, Diebel 2011, Diebel 2013, Padilla 2014, PadPillow, Ure) and would know that this could be achieved by using multiple faces of a geometric shape, including optimally achieved in the shape of a triangle (Barcalo, Cannon, Dean, Facet Pyramid, Klepar 2013, Klepar 2014, Padilla 2013). However, the POSA would know that the media would risk slipping when propped on an incline (to achieve various viewing angles) and thus would be motivated to incorporate a support on the ledge to stabilize the media (Falter, Hong, Huang, Lin, Preece, Radtke, Tubbs). The POSA would be further motivated to ensure the comfort of the person using the product by using a suitably soft and pliable material (Cannon, PadPillow, Huang, Hong, Barcalo, Padilla 2013, Preece, Klepar 2013). A POSA would have had a reasonable expectation of success of developing a multi-angle viewing apparatus with edges and oriented to achieve various angles as a result of his or her general knowledge, as well as the knowledge reflected in the Groups I-IV References. For example, a POSA would be well aware of how to

⁷ Combinations below which render the alleged invention of the claims invalid as obvious which include Cannon are solely applicable to claims 1–2, 8–10, and 18.

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calculate viewing angles, plane angles, and angles of inclination, and how to assess the stiffness of the apparatus by measuring its firmness (*see, e.g.*, Mills).

- Cannon in view of the knowledge of a POSA
- Dean in view of Klepar 2013, Klepar 2014 and/or Facet Pyramid, and the knowledge of a POSA
- Facet Pyramid in view of Cannon and/or Klepar 2013, Klepar 2014, and the knowledge of a POSA
- Klepar 2013, Klepar 2014, and/or Barcalo in view of the knowledge of a POSA
- Cannon, and/or one or multiple Group II References, and/or one or multiple Group III References, and/or Halpin, in further view of the knowledge of a POSA
- Dean in view of Klepar 2013, Klepar 2014 and/or Facet Pyramid, and/or one or multiple Group II References, and/or one or multiple Group III References, and/or Halpin, in further view of the knowledge of a POSA
- Facet Pyramid in view of Cannon and/or Klepar 2013, Klepar 2014, and/or one or multiple Group II References, and/or one or multiple Group III References, and/or Halpin, in further view of the knowledge of a POSA
- Klepar 2013, Klepar 2014, and/or Barcalo, and/or one or multiple Group II References, and/or one or multiple Group III References, and/or Halpin, in further view of the knowledge of a POSA

3. Claim Chart Pursuant to L. Pat. R. 3.3(c)

A claim chart, which identifies where specifically in each alleged item of prior art each limitation of each claim of the Asserted Patent is found, is provided in **Appendix A**.

C. Improper Recapture Under 35 U.S.C. 251(d)

Under 35 U.S.C. 251(d) “[n]o reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent. *See* 35 U.S.C. 251(d).

During prosecution of the ‘443 Application, the applicants filed a Request for Reconsideration and amended claim 1 to add “wherein a first viewing angle of the first back

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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.” ’443 Application File History, Applicant’s Response dated November 13, 2015 at 2. The applicants argued that “claim 1 is patentably distinguished from the combination of Halpin and Klepar by reciting the distinguishing elements ‘ ... 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’” *Id.* at 9. The applicants further argued that “[b]ecause of the clockwise orientation of the edge supports, the apparatus includes back supports with three different viewing angles of 36, 74, and 49 degrees. In contrast, Klepar teaches that one of the three edge supports is counterclockwise to the central axis. As a result, Klepar is only able to position a tablet on back supports with two different angles. The unique orientation of the edge supports of the present invention clockwise around the central axis supports a third viewing angle, a result that is not obtained by Klepar.” *Id.* at 9-10.

In response to a written description rejection, the applicants abandoned the ’443 Application and stated that they “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.* at Applicant-Initiated Interview Summary dated June 16, 2016.

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On June 24, 2016, the ’737 Application was filed with 10 claims and proceeded to grant without any substantive prosecution as the ’454 patent. Claim 1 now read:

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 and each back support and each edge support is in physical communication with two ends of a solid interior, each edge support comprises an edge support width of 2 centimeters (cm) 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, 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, 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, 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 wherein each back support, each edge support, and each end is a surface of the solid interior, the solid interior is a pillow covered in fabric, 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.

’737 Application File History, June 24, 2016 Application at Claims.

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During prosecution of the ’797 Application, applicants removed the “solid interior” and specific viewing angle limitations:

22. (New, amended) A media support apparatus comprising:
a body having a first support back, a second support back, and a third support back disposed about a central axis;
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;
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;
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, 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;
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
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.

’797 Application, December 16, 202 Response to Office Action at Claims.

The Examiner repeatedly rejected the claims as being beyond the scope of the original, issued claims. *See id.* at Non-Final Rejection dated October 18, 2019; Final Rejection dated

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March 30, 2020. The applicants amended the claims to overcome recapture rejections noting that amendment to pending claim 22 “adds ‘different’ viewing angles feature from claim 29, 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.’ The 85-120 degree range is disclosed in the original applications 14/518,443 and 61/896,540 for U.S. Patent No. 9,642,454 (col. 3, line 57) from which the reissue is taken. 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.*, Applicant Response and Arguments dated December 16, 2020 at 9. The applicants also noted that amendment to pending 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. As with claim 22, the Examiner indicated that the claim is now in condition for allowance and reissue.” *Id.*

The applicants filed an appeal from the Final Office Action on August 24, 2020 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,” the applicants 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.” ’797 Application Prosecution History, Applicant’s Appeal Brief

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dated August 24, 2020 at 10. The 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.* at 12. The applicants also argued that “[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.* at 13; *see also id.* at 22.

The applicants specifically amended the claims from the ’443 Application to require a “solid interior” and “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” in the ’737 Application which issued as the ’454 patent. The applicants also argued that the prior art was overcome because “the newly cited Barcalo reference where viewing angles are with respect to *real sides of the apparatus*.” ’737 Application File History, Applicant’s Appeal Brief dated August 24, 2020 at 13 (emphasis). In alleging infringement however, HPI asserts that Ontel’s Tri-Ledge Pillow Pad product infringes claims 12-13, 15-19, 19-21 and 27-29 by annotating the “viewing angle” with respect to the real sides of the product. *See* May 16, 2025 Contentions, Ex. A at 34. For at least these reasons, HPI is in contravention of 35 U.S.C. 251(d). is a violation of the rule of recapture.

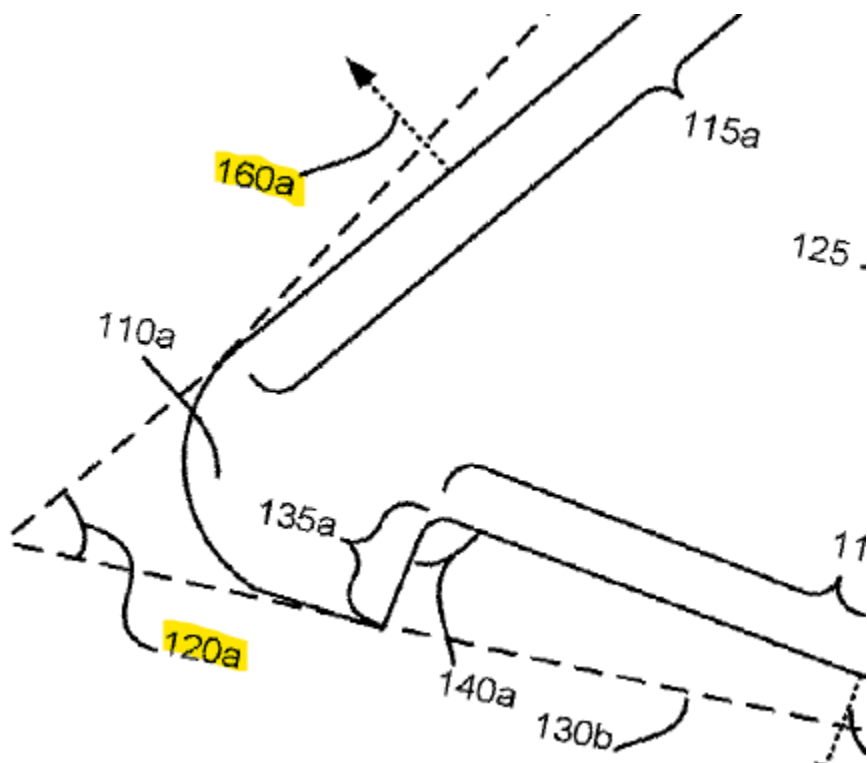
D. Invalidity under L. Pat. R. 3.3(d)

1. Indefiniteness

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To the extent the Asserted Claims are not invalid as obvious or anticipated, and that they are enabled and sufficiently described (which Ontel does not concede), independent claims 1, 12, and 20, and dependent claims 2, 8–10, 12–13, 15–19, 21 and 27–29 are invalid for indefiniteness.

Independent claims 1, 12, and 20, and the claims that depend therefrom, are indefinite as the term “viewing angle” has no clear definition or scope from the specification and fail to inform a POSA of the scope of the claimed invention with reasonable certainty. The term “viewing angle” first appears in the specification at column 4, and is described in relation to the side supports: “The side supports **155** 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**.” Asserted Patent at 2:63-66. In multiple places, the patent refers to the viewing angle as designated by **160** in Figure 2 of the patent (*see, e.g., id.* at 3:19-21, 3:59-60, 4:18-27). Viewing angle **160**, however is shown as a vector rather than an angle. Furthermore, the specification later refers to the “viewing angle” as denoted by **120a-c** in Figure 2, yet **120a-c** were previously defined as plane angles. *Compare* “A plane of a first back support 105a may be at a first plane angle **120a** . . .” with “In one embodiment, the first viewing angle **120a** may be 36 degrees, the second viewing angle **120b** may be 74 degrees, and the third viewing angle **120C** may be 49 degrees.” *Id.* at 3: 31-32 and 59-63. As shown below in the expanded and annotated Fig. 2, **120** and **160** refer to different measurements of the alleged invention. It is unclear to the POSA which refers to the viewing angle, thereby rendering the claim indefinite.



The term “viewing angle” is further rendered indefinite because the definition set forth in the specification is that it is “orthogonal” i.e. 90 degrees, yet in multiple places in the specification the viewing angle is referred to as having “three distinct viewing angles” (*id.* at 3:59-63) and a first, second, and third viewing angle when used in various positions by the user (*id.* at 4:19-27). This inconsistency further obscures the scope of the claims, such that a POSA would not know with reasonable certainty which angle is the “viewing angle,” and what value it should have, from the specification.

The term “viewing angle” is rendered indefinite for the additional reason that the claims describe an apparatus having “three support sides” where “each back support . . . is in physical communication with two ends of a solid interior” and “wherein each back support, each edge support, and each end is a surface of the solid interior,” i.e., a triangle, while also claiming viewing angles of 36 degrees, 74 degrees, and 49 degrees. *See id.* at Claim 1. However, when these viewing angles are applied, the resultant shape is not practical for the asserted purpose of

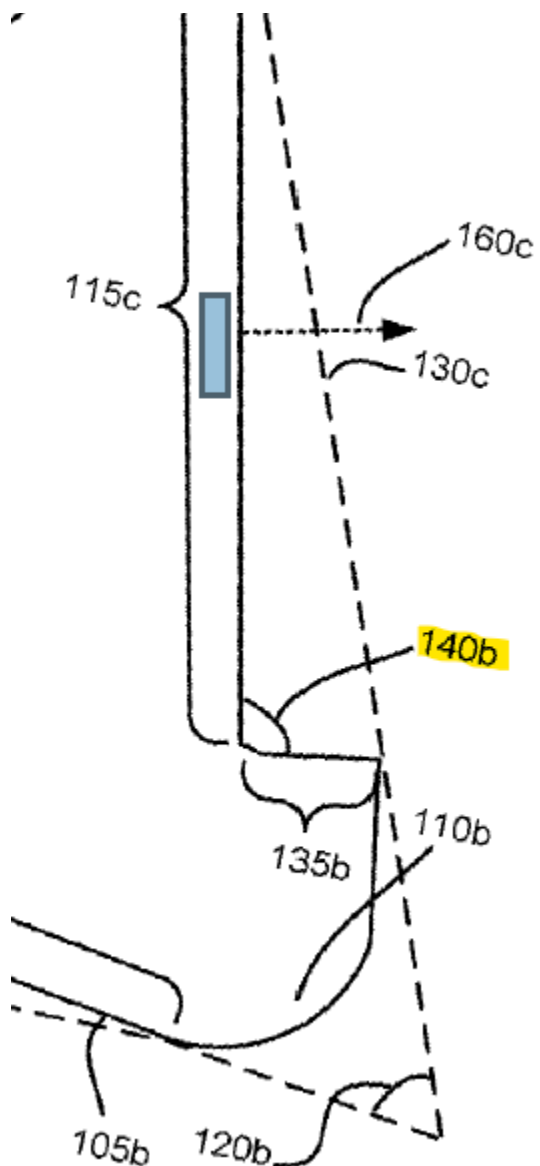
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“provid[ing]”support for multiple view angles. . . [Where] [t]he media support **100** provides a comfortable support at an *appropriate angle* for the *most common viewing positions*.” *Id.* at 2:41-46 (emphasis added). This is demonstrated with the below drawing:



This inconsistency further renders the claims indefinite.

Independent claim 12, and the claims that depend therefrom are indefinite as the term “edge angle,” has no clear definition or scope from the specification and fails to inform a POSA of the scope of the claimed invention with reasonable certainty. The edge angle is denoted by **140** in Figure 2 of the patent, and is formed between the edge support **110** and an adjacent back support **105**. *Id.* at 3:64-65. The specification provides a range for the potential value of the edge angle (from 85 to 120 degrees, and specifically, 90 degrees). *Id.* at 3:65-67. However, neither the detailed description nor the figures describe how the edge angle is to be measured, and different patent figures suggest different positions. Figure 2 shows an “L” shaped angle for measurement, annotated below.



While Figures 1, 3, and 4 (annotated below) demonstrate a divot at the **140** position, which is not represented in Figure 2.

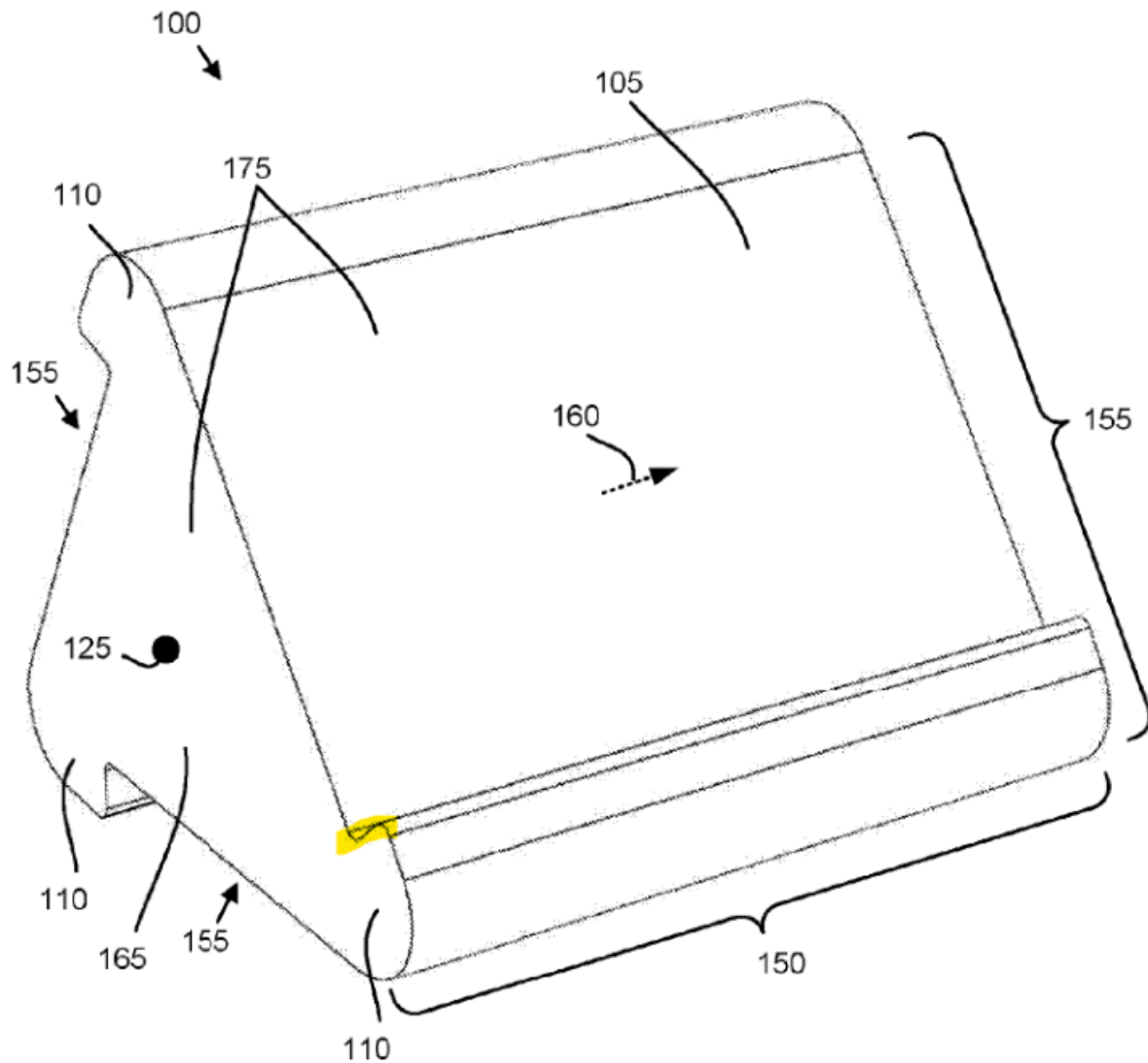


FIG. 1

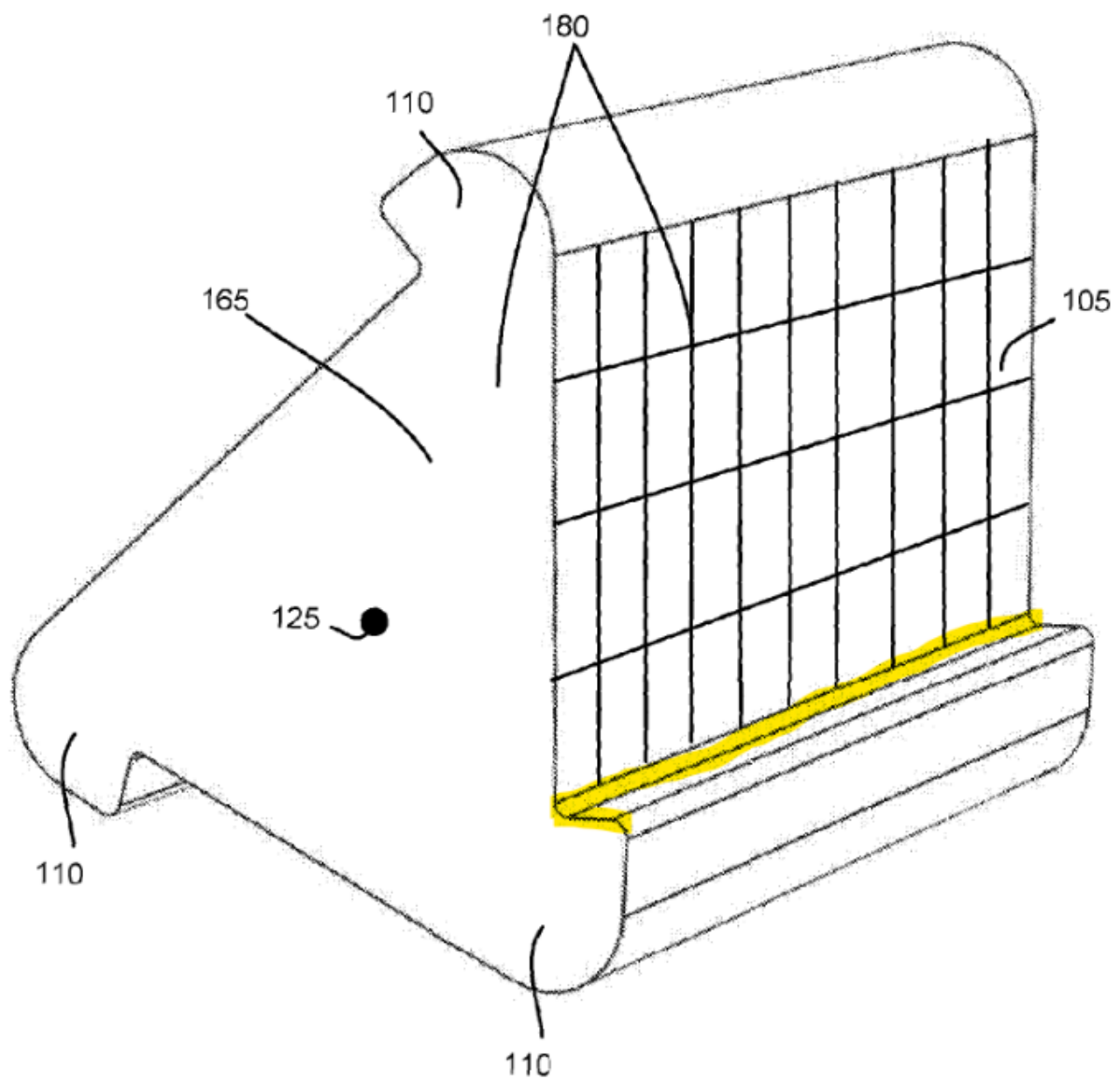


FIG. 3

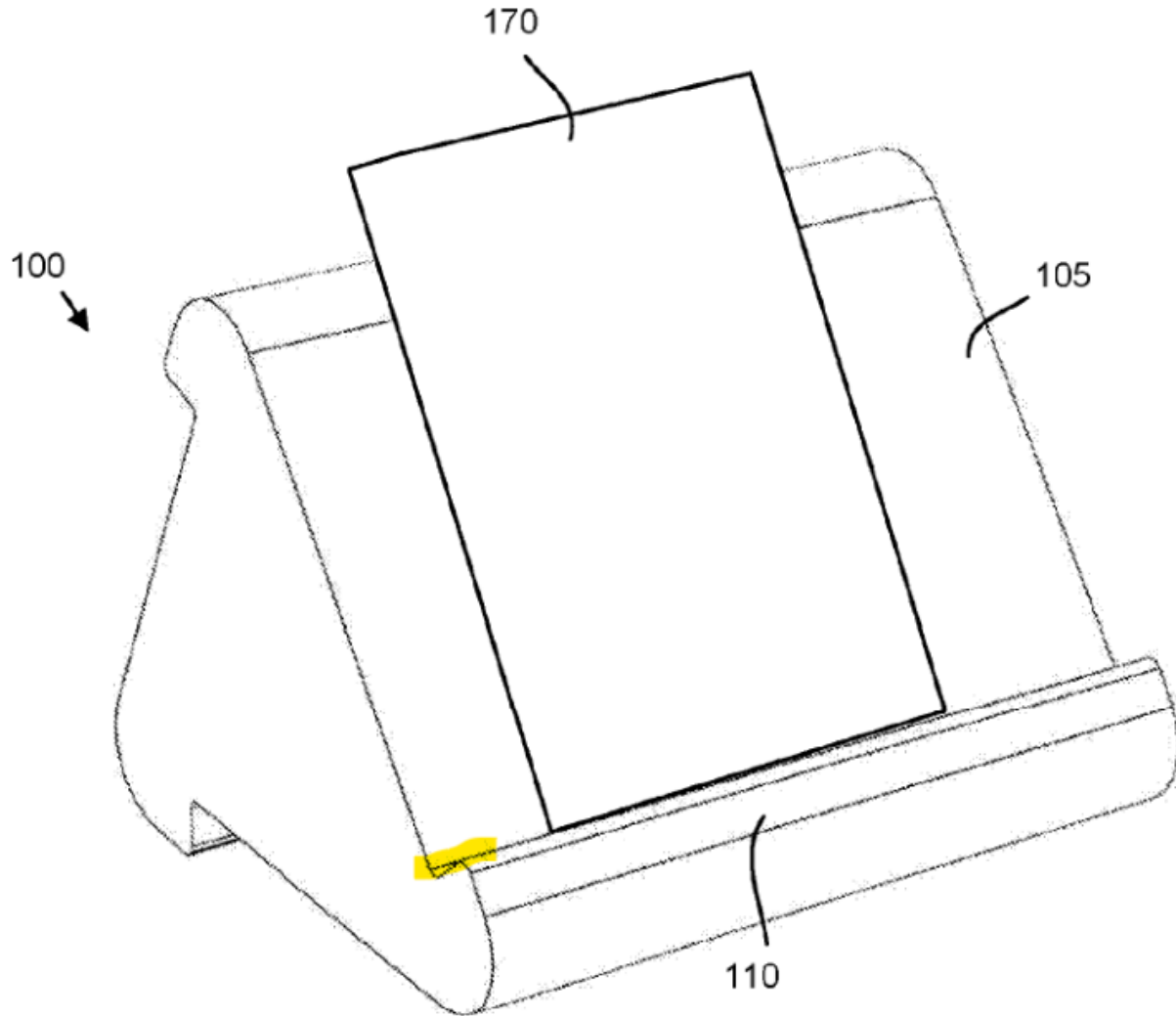


FIG. 4

The edge angle could be measured at the top of the ledge, or at its lowest point in the divot, based on Figure 2. However, the specification does not describe where in this downward incline the edge angle should be measured, and measurements at different points while yield different results, rendering the scope of the claim indefinite. Claims 1 and the claims that depend therefrom are indefinite as the term “plane angle” has no clear definition or scope from the specification and fail to inform a POSA of the scope of the claimed invention with reasonable certainty. The

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specification states that “[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**.” Asserted Patent at 3:31-48.

A POSA would not know how to measure a “plane angle” because it has a range that is dependent on an undefined “virtual plane.” Moreover, the specification conflates viewing angle as “120” [what is previously identified as “plane angle”] and disclosed that “[t]he arrangement of the longitudinal lengths 115 and the *plane angles 120* generate three distinct *viewing angles 160*. In one embodiment, the *first viewing angle 120a* may be 36 degrees, the *second viewing angle 120b* may be 74 degrees, and the *third viewing angle 120C* (*sic*) may be 49 degrees.” *Id.* at 3:50-54; *see also* Asserted Patent at 3:59-63. A POSA would not know with any reasonable certainty what a virtual plane is and how it is configured, without any guidance in the specification of the relevant angle to be measured, rendering these claims indefinite for this reason.

Independent claim 12, and the claims that depend therefrom are indefinite as the term “support angle,” has no definition or scope from the specification and fail to inform a POSA of the scope of the claimed invention with reasonable certainty. Claim 12, and claims 13–15 use the terms

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“first support angle,” “second support angle,” and “third support angle.” “Support angle” is not defined in the patent specification or figures. Claim 12 requires that a support back and a support edge (in different iterations in the claim limitations) “are configured to support a media device at a first support angle.” The term “support angle” is not disclosed in the specification. And the ’454 patent specification contained an error, which carried over to the Asserted Patent. While Figure 2 and the specification identified that “[e]ach viewing angle **160** is orthogonal to a support back **105**,” the specification at a later section misnumbered the viewing angle as “120” and disclosed that “[t]he arrangement of the longitudinal lengths 115 and the *plane angles 120* generate three distinct *viewing angles 160*. In one embodiment, the *first viewing angle 120a* may be 36 degrees, the *second viewing angle 120b* may be 74 degrees, and the *third viewing angle 120C* (*sic*) may be 49 degrees.” Compare ’454 patent at Fig. 2, 2:56-57, with 3:50-54; see also Asserted Patent at 3:59-63. In view of this error in the ’454 patent specification, there is no support for the claimed “viewing angles” in claim 1 of the ’454 patent (and the Asserted Patent). Further, the applicants did not correct this during prosecution of the reissue ’797 Application, and in fact, conflated “viewing angles” of claim 1 of the ’454 patent were in fact “support angles.” ’797 Application Prosecution History, Applicant’s Appeal Brief dated August 24, 2020 at 10. A POSA would not know with any reasonable certainty how to configure the support back and support edge to achieve this angle without any guidance in the specification of the relevant angle to be measured, rendering these claims indefinite for this additional reason as well.

Independent claim 1, and dependent claims 2 and 8–10 are further indefinite because claim 1 includes the following limitations: “**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, 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, 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.” (emphasis added). The specification in Figure 2 describes an embodiment of the invention having a first plane angle, second plane angle, and third plane angle in ranges; the first plane angle may be 50 to 60 degrees (*id.* at 3:31-37), the second plane angle may be 55 to 65 degrees (*id.* at 3:37-42), and the third plane angle may be 50 to 75 degrees (*id.* at 3:42-48). These claimed plane angles are outside of the ranges for the second and third plane angles. Therefore, the POSA would not know which set of angles are included in the scope of the invention, and these claims are invalid as indefinite.

2. Lack of Enablement

To the extent the Asserted Claims are not invalid as obvious or anticipated, and are sufficiently definite, and described (which Ontel does not concede), the Asserted Claims are invalid for lack of enablement. For at least the reasons set forth at Section VII.C, independent claims 1, 12, and 20 and dependent claims 2, 8–10, 13, 15–19, 21, and 27–29 are invalid for lack of enablement. The POSA would not be able to practice the claims, and “make and use the same” without undue experimentation.

There is no teaching that renders the scope of the limitation of claims 1, 12, and 20 of a “viewing angle” clear, and therefore possible to be enabled. Further, under the only definition provided in the specification that “[e]ach viewing angle **160** is orthogonal to a support back **105**” (Asserted Patent at 2:63-67) and generally that “[e]ach viewing angle **160** is chosen for a specific viewing orientation” (*id.* at 4:19-20) there is no disclosure of how to achieve the specific angles in

claim 1 (even if that were possible, in spite of the teaching that they are “orthogonal”). The description in the specification that “[t]he first viewing angle 160a may be employed when the media support 100 and the media is disposed in the user’s lap. The second viewing angle 160b may be used when the media support 100 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 100 is disposed on the user” (*id.* at 4:20-27) are too general to render this claim enabled.

There is also no teaching that renders the scope of the limitation “edge angle” of claims 1, 12, and 20, “support angle” or “plane angle” clear such that they may be enabled. The numerous angles implicated by the number of sides and edges of the claims would force the POSA to undertake the burden of numerous iterations, essentially shooting in the dark, to understand and practice the claims.

3. Lack of Written Description

To the extent the Asserted Claims are not invalid as obvious or anticipated, and are sufficiently definite, and enabled (which Ontel does not concede), the Asserted Claims are invalid for lack of written description. For at least the reasons set forth above, the Asserted claims fail to have sufficient written description. In particular, the term “support angle” is not disclosed in the specification. Moreover, for the reasons stated above, the term “viewing angle” and “plane angle” are unclear because the ’454 patent specification contained an error, which carried over to the Asserted Patent. As described in detail with regard to indefiniteness, the patent provides no discussion of how to achieve three distinct viewing angles, no explanation as to where the edge angle is measured (or what angle the edge angle refers to), and no explanation for what a “support angle” is or a range for “plane angle” which encompasses the claimed plane angles of Claim 1. None of the Asserted Claims define the patentable subject matter with the required degree of

particularity and distinctness. For these reasons, the Asserted Claims are invalid for lack of written description.

VIII. SECONDARY CONSIDERATIONS OF NON-OBVIOUSNESS

A. Absence of Nexus

It is HPI’s burden to show nexus between evidence of secondary considerations and the merits of the claimed invention. *In re Huai-Hung Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011); *In re GPAC*, 57 F.3d 1573, 1580 (Fed. Cir. 1995). HPI’s must further show that a product embodies the claim features and is “coextensive with the claims” for a presumption of nexus to apply. *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1289, 1299 (Fed. Cir. 2010). It is Ontel’s position that HPI cannot fulfill its burden to show that it is entitled to the presumption of nexus, and to the extent claims 1–2 and 8–10 are not invalid as anticipated, then there is no nexus between the limitations of any of the Asserted Claims and any alleged evidence of secondary considerations, and “Flippy” is not coextensive with the claim limitations.

B. No Secondary Considerations Weigh in Favor of Nonobviousness

HPI has not identified any evidence of secondary considerations which weight in favor of the nonobviousness of the Asserted Claims. Ontel reserves the right to amend and/or supplement its response, including in that case that HPI later identifies alleged secondary considerations of nonobviousness. Ontel is not aware of any secondary considerations, such as long-felt but unmet need, failure of others, copying or skepticism of the alleged invention of the claims.

To the extent that HPI alleges that the allegations in its Amended Complaint that “[i]n November of 2018, Flippy sold out on QVC in a single airing: \$500,000 worth of product in 12.5 minutes. The product was a hit. HPI’s revenues in 2019 totaled \$7,000,000—all from sales of Flippy” and “[s]ince selling out on QVC, HPI has offered for sale and sold the Flippy continuously, including on Amazon, Etsy, Grommet, and direct-to-consumer on its own website, getflippy.com”

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(ECF No. 35-1, ¶¶118, 120; *see also* ¶ 124 (alleging selling well on Amazon, and a “hot product”)) demonstrates commercial success of the allegedly inventive feature of the asserted claims, Ontel disagrees. Further, to the extent that HPI alleges that the allegation in its Amended Complaint that Flippy “sold well on Amazon, showing up as a hot product thanks in large part to an overwhelming number of five-star reviews” shows industry praise for the allegedly inventive feature of the asserted claims, Ontel disagrees.

IX. CLAIM CHARTS UNDER L. PAT. R. 3.3(c)

Ontel attaches, as **Appendix A**, the claim chart for the Asserted Claims of the Asserted Patent.

X. PRODUCTION OF DOCUMENTS UNDER L. PAT. R. 3.4

Ontel is producing documents in support of its Invalidity Contentions, bearing Bates numbers ONTEL_000001 - ONTEL_000398, ONTEL_000414 - ONTEL_000494, and ONTEL_000497 - ONTEL_000538 at this time. Ontel will in make available a FACET Pyramid for inspection at the offices of its outside counsel. Ontel reserves the right to rely on additional relevant documents and supplement its production(s) as necessary and appropriate, after the date these Contentions are served.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing “**DEFENDANT ONTEL PRODUCTS CORPORATION’S INITIAL INVALIDITY CONTENTIONS FOR U.S. PATENT NO. RE48,479**” was served on this day of June 30, 2025, via electronic means to the counsel below:

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