

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

WHIRLPOOL CORPORATION,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC.,

Defendants.

Civil Action No. 2:25-cv-01042-JRG-RSP

PATENT CASE

JURY TRIAL DEMANDED

**DECLARATION OF EMAD TANBOUR, PH.D., IN REPLY TO THE EXPERT
DECLARATION OF DR. KIMBERLY K. CAMERON REGARDING NON-
INFRINGEMENT AND INVALIDITY OF THE ASSERTED PATENTS**

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1. My name is Emad Tanbour. I am a Professor of Mechanical Engineering at Gameabove College of Engineering and Technology at Eastern Michigan University in Ypsilanti, Michigan, where I have taught since 2016. I declare, under penalty of perjury, as follows:

2. I have been retained through Susman Godfrey LLP, counsel for Whirlpool Corporation (“Whirlpool” or “Plaintiff”) to assess infringement and validity of the Asserted Patents by Samsung Electronics Co., Ltd. (“SEC”) and Samsung Electronics America, Inc. (“Samsung America”) (collectively, “Samsung” or “Defendants”) in the above-captioned case. This declaration is based on my personal knowledge, education, expertise, and investigation. If called as a witness, I could and would testify competently to the contents herein.

3. I note that I previously submitted an expert declaration, dated October 10, 2025, in this matter (hereinafter “Initial Tanbour Declaration”) based on then-available information. Additional information—namely the Expert Declaration of Dr. Kimberly K. Cameron Regarding Non-Infringement and Invalidity of the Asserted Patents, served on December 12, 2025, and the associated Exhibits A–M (hereinafter the “Cameron Declaration”)—has now become available to me. As directed by the Court in this matter, I have considered the Cameron Declaration and associated documents and provide my response in this declaration.

4. This declaration incorporates by reference the Initial Tanbour Declaration. Among other things, my qualifications are described in the Initial Tanbour Declaration at Paragraphs 3–11 and in the Curriculum Vitae attached to that declaration as Exhibit A. My Curriculum Vitae has not changed in any material respect since the Initial Tanbour Declaration was executed.

5. I am being compensated for my time spent on the present matter at my typical rate of \$595 per hour. My compensation is not in any way contingent on my performance, the substance

of my opinions, or the outcome of this proceeding. I am also being reimbursed for expenses incurred as a result of activities performed.

6. This declaration reflects my analysis and opinions to date. If additional data, information, or testimony become available to me, I reserve the right to modify or update my opinions to include additional information received after the date of this declaration.

7. In this declaration, I am not offering an independent opinion regarding each cited reference beyond responding to the opinions and evidence identified by Dr. Cameron. Further, given the limitations of time, I have not responded to each and every assertion made by Dr. Cameron and instead have focused on what I consider to be the clearest faults in her arguments and proofs. My decision not to address an issue or argument should not be understood as an admission that I agree with Dr. Cameron's position.

8. I further note that, except where stated otherwise, I have assumed for purposes of my analysis that each reference actually constitutes prior art. I understand, however, that Plaintiff does not necessarily agree that each reference actually constitutes prior art.

A. Summary of Opinions

9. In addition to the opinions contained in my initial declaration, I make several additional opinions herein in response to the Cameron Declaration.

10. First, in her declaration, Dr. Cameron opined that the Samsung Accused Products do not infringe any of the Asserted Claims of the Asserted Patents. That opinion was based largely on her conclusion that the Accused Products do not satisfy the following limitations of the independent Asserted Claims. Cameron Decl. ¶ 10:

- U.S. Patent No. 10,512,385 (“the ’385 Patent”) (limitations below are in independent Claim 17 and incorporated in dependent Claims 18-21):
 - “an upwardly angled portion formed in the bottom wall ... and terminating at the side wall”;

- “a spray tube having nozzles”; and
- “a curved mounting portion adjacent which the spray tube is mounted.”
- U.S. Patent No. 12,232,681 (“the ’681 Patent”) (limitations below are in independent Claim 14 and incorporated in dependent claim 15):
 - “at the second end of the dishrack,¹ a second portion is angled with respect to the first portion and defining a depression.”

11. Second, in her declaration, Dr. Cameron concluded that various references invalidate prior art to the Asserted Claims of the ’681 and ’385 Patents under 35 U.S.C. §§ 102 (anticipation) and/or 103 (obviousness). Cameron Decl. ¶ 10.

12. In this declaration, I provide my opinions in response to the various allegations of non-infringement and invalidity made in the Cameron Declaration, as well as the bases for my opinions.

13. Based on my review of the ’681 and ’385 Patents, the relevant products, the Cameron Declaration, and the references addressed in that declaration, it is my opinion that: (1) Dr. Cameron’s non-infringement positions are incorrect and that Samsung infringes each and every limitation of Claims 17, 18, 19, 20, and 21 of the ’385 Patent and each and every limitation of Claims 14 and 15 of the ’681 Patent through manufacturing and selling dishwashers modeled after the KitchenAid design described in the Asserted Patents that include an enhanced top rack that can hold both drinkware as well as utensils and silverware (e.g., the Accused Products); and (2) Dr. Cameron has failed to overcome the presumption of validity for the Asserted Claims. Instead, Dr. Cameron’s arguments only further demonstrate that the Asserted Claims of the Asserted Patents are valid.

¹ This declaration uses the terms “dish rack” and “dishrack” interchangeably, as the words, which a POSITA would consider to have the same meaning, appear both with and without a space in various references.

14. My infringement opinions are supported by my analysis of the Asserted Patents, the Whirlpool products that practice the Asserted Patents, and the Samsung Accused Products.

15. My opinion that the Asserted Patents are valid is supported by the fact that purportedly anticipatory references cited by Dr. Cameron did not disclose every limitation of each of the Asserted Claims. *See* Cameron Decl. ¶¶ 101–198. In fact, I have found at least one limitation for each of the Asserted Claims for which Dr. Cameron has failed to show disclosure by each of the cited references. I identify those undisclosed limitations on a claim-by-claim, reference-by-reference basis below.

16. It is also my opinion that Dr. Cameron has failed to show that the Asserted Claims are obvious in view of any reference, combination of references, or general knowledge of one of ordinary skill in the art.

17. Because the Asserted Claims of the '681 and '385 Patents are neither anticipated nor rendered obvious by the purported “prior art” discussed by Dr. Cameron, they are valid.

B. High-Level Description of Materials Studied

18. Before writing this declaration, I studied the '681 and '385 Patents and their file histories. I also studied the Cameron Declaration and the references cited and linked therein. I further considered any additional material noted in this declaration.

19. As stated in the Initial Tanbour Declaration, I further understand that no claim construction order has issued in this case. As a result, I have used the plain and ordinary meaning that would be ascribed to any given term by a person of ordinary skill in the art (“POSITA”) as of the effective filing date of the application for the Patents at issue.

C. Relevant Legal Principles

20. While I am not an attorney, I have been advised of certain legal principles as they relate to forming opinions as to the issues of validity and infringement of the Asserted Claims. I have applied this law to the facts set forth in this declaration in rendering my opinions. This section of my declaration provides my understanding of the legal principles that I have used in forming my opinions.

1. Priority Date of the '385 Patent

21. Dr. Cameron contends that because Figures 8 and 9 of the '385 Patent are not in the '101 Provisional, the Asserted Claims of the '385 Patent are not entitled to the priority date of the '101 Provisional. *See* Cameron Decl. ¶ 13, n.1. But the relevant question is not whether there are new figures in the '385 Patent, but rather whether the '101 Provisional enables a POSITA to practice the Asserted Claims of the '385 Patent. *See Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 655 F.3d 1364, 1371 (Fed. Cir. 2011) (“[T]he written description of the provisional application must enable one of ordinary skill in the art to practice the invention claimed in the non-provisional application” (citation omitted)). Having examined the '101 Provisional, I believe it enables a POSITA to practice the Asserted Claims of the '385 Patent. The Asserted Claims of the '385 Patent are thus entitled to the '101 Provisional priority date. In any event, Dr. Cameron concedes that we need not resolve this issue now because all of her “prior art” predates the '101 Provisional. *See* Cameron Decl. ¶ 13 n.1.

2. Presumption of Validity

22. It is my understanding that an issued patent and the claims within it are presumed valid. It is further my understanding that the basis for that presumption of validity is the fact that the allowed claims went through a rigorous examination process at the U.S. Patent Office. I understand that the evidence to overcome the presumption of validity must be clear and

convincing. Defendants have the burden in this case of proving invalidity by clear and convincing evidence, and the burden of proof never shifts to Plaintiff to prove the validity of the Asserted Claims. I further understand that the “clear and convincing evidence” standard means evidence which produces in the mind of the Judge or the jury an abiding conviction that the truth of a factual contention is highly probable. It is also my understanding that the United States Supreme Court has confirmed this clear-and-convincing standard of proof in *Microsoft Corp. v. i4i L.P.*, 564 U.S. 91 (2011).

23. I understand that the burden of proving invalidity by clear and convincing evidence based on a prior art reference that was already submitted during prosecution and rejected by the USPTO Examiner is especially difficult since it is presumed that the USPTO Examiner considered the reference before allowing the claims. The same is true for a combination of references that was before the USPTO Examiner during the prosecution of the relevant application.

3. Anticipation

24. It is my understanding that “anticipation” under 35 U.S.C. § 102 exists only if a single prior art reference or product discloses or contains, expressly or inherently, each and every limitation of the claim at issue. In other words, every limitation of the claim must identically appear in a single prior art reference for the reference to anticipate that claim.

25. I also understand that all elements of the claim must be disclosed in the reference as they are arranged in the claim. I also understand that, to be considered anticipatory, the prior art reference must be enabling and must describe the patentee’s claimed invention sufficiently to have placed it in the possession of a person of ordinary skill in the field of invention. I further understand that the relevant standards for what constitutes “prior art,” for purposes of anticipation under the relevant paragraphs of §102, which are as follows (emphases added):

(1) 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;
or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

4. Obviousness

26. I understand that, in order to be considered as “prior art” for purposes of the § 103 obviousness inquiry, a reference must first qualify as “prior art” under one of the definitions stated above in the context of § 102.

27. In order to be considered as “prior art” for purposes of the § 103 obviousness inquiry, a reference must also be “analogous” to the Asserted Patents. I understand that a reference is “analogous” if (1) the reference is from the same field of endeavor as the claimed invention (even if it addresses a different problem); or (2) the reference is reasonably pertinent to the problem faced by the inventor (even if it is not in the same field of endeavor as the claimed invention).

28. I understand that the relevant standard for obviousness is as follows:

A patent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patentability shall not be negated by the manner in which the invention was made.

35 U.S.C. § 103.

29. Stated another way, to show that a patent is “obvious” based on an alleged prior art reference or a combination of such references, it must be shown that a POSITA would have been

motivated to combine the teachings of the prior art references to achieve the claimed invention, and that such person of ordinary skill in the art would have had a reasonable expectation of success in doing so. To make this showing, Defendants must show how and why a skilled artisan would have had a reason to combine the interrelated teachings of the prior art references.

30. Defendants may show that a claim is invalid for obviousness under 35 U.S.C. § 103 if they demonstrate that two or more prior art references in combination, disclose, expressly or inherently, every claim limitation so as to render the claim, as a whole, obvious. Alternatively, Defendants may show that a claim is invalid for obviousness under 35 U.S.C. § 103 if a single prior art reference combined with the knowledge of one of ordinary skill in the art discloses every claim limitation so as to render the claim, as a whole, obvious.

31. It is my understanding that in assessing the obviousness of claimed subject matter, one should evaluate obviousness over the prior art from the perspective of one of ordinary skill in the art at the time that invention was made (and not from the perspective of either a layman or a genius in that art). The question of obviousness is to be determined based on:

- The scope and content of the prior art;
- The difference or differences between the subject matter of the claim and the prior art (whereby in assessing the possibility of obviousness one should consider the manner in which a patentee and/or a Court has construed the scope of a claim);
- The level of ordinary skill in the art at the time of the alleged invention of the subject matter of the claim; and
- Any relevant objective factors (the “secondary considerations”) indicating non-obviousness. It is also my understanding that the United States Supreme Court clarified the law of obviousness in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007) (“*KSR*”). Based on *KSR*, it is my understanding that to determine whether it would have been obvious to combine known elements in a manner claimed in a patent, one may consider such things as the interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background knowledge of one with ordinary skill in the art. The secondary considerations at issue may include commercial success of a product using the

invention, if that commercial success is due to the invention; long-felt need for the invention; evidence of copying of the claimed invention; industry acceptance; initial skepticism; failure of others; and praise of the invention.

32. I also understand that while an analysis of any teaching, suggestion, or motivation to combine elements from different prior art references is useful in an obviousness analysis, the overall inquiry must be expansive and flexible.

33. I further understand that it is impermissible to use a hindsight reconstruction of references to reach the claimed invention without any explanation as to how or why the references would be combined to produce the claimed invention.

34. Moreover, I understand that a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. But multiple prior art references or elements may, in some circumstances, be combined to render a patent claim obvious. I understand that I should consider whether there is an “apparent reason” to combine the prior art references or elements in the way the Asserted Claim does. Requiring a reason for the prior art combination protects against distortion caused by hindsight. Along the same lines, one cannot use the Asserted Patents as a blueprint to piece together the prior art in order to combine the right ones in the right way as to create the claimed inventions.

35. To determine whether there is such an “apparent reason” to combine the prior art references or elements in the way that an Asserted Claim does, it may be necessary to look to the interrelated teaching of multiple references, to the effects of demands known to the design community or present in the marketplace, and to the background knowledge possessed by a person having ordinary skill in the art.

36. I also understand that when the prior art teaches away from combining prior art references or certain known elements, discovery of a successful means of combining them is more

likely to be non-obvious. A prior art reference may be said to teach away from a claim when a POSITA, upon reading the reference, would be discouraged from following the path set out in the claim or would be led in a direction divergent from the path that was taken by the claim. Additionally, a prior art reference may teach away from a claimed invention when substituting an element within that prior art reference for a claim element would render the claimed invention inoperable.

37. It is my further understanding that given the presumption that an allowed patent claim is valid, in order to assert that an allowed patent claim is invalidated by one or more prior art references, it is necessary to show that a reference (or an appropriate combination of references):

- Is (are) properly considered as being prior art to the patent containing the claim, and,
- Discloses (disclose) each and every limitation of that claim either expressly or inherently by clear and convincing evidence.

5. Prior Art Considered By the Examiner and Prior Art That is Cumulative to the Prior Art Considered by the Examiner

38. I understand that, when Defendants rely upon a prior art reference that was also before the USPTO Examiner for consideration, a reasonable jury may give weight to the Examiner's view of the reference, as not invalidating the patent, when the jury decides whether invalidity has been proved by clear and convincing evidence. The burden on Defendants—of proving invalidity by clear and convincing evidence—is particularly heavy when the prior art reference at issue was considered by the Examiner.

39. That heavy burden also applies when Defendants rely upon a prior art reference that is “cumulative” to the prior art references that were considered by the examiner. A prior art

reference is considered “cumulative” if it teaches no more than what a reasonable Examiner would consider to be taught by the prior art already before the Patent Office.

6. Secondary Considerations of Non-Obviousness

40. As noted above, I understand that certain “secondary considerations” may be relevant in determining whether or not an invention would have been obvious, and that these secondary considerations may include commercial success of a product using the invention, if that commercial success is due to the invention; long-felt need for the invention; evidence of copying of the claimed invention; industry acceptance; the taking of licenses under the patents by others; initial skepticism; failure of others; or praise of the invention. I understand that Whirlpool believes that “secondary considerations” evidence that the inventions are non-obvious. I acknowledge that such “secondary considerations” may exist to support my opinion that the Asserted Patents are valid; however, my opinion that the invention in the Asserted Patents is non-obvious does not depend on the existence of any secondary considerations.

7. Manner of Rebuttal

41. I also note again that, unlike the standard for proving infringement, to rebut an assertion of invalidity, it is necessary to show only that at least one of the limitations of an allowed claim has not been shown to be found in the prior art, and that is what I have done for each Asserted Claim and for each item of allegedly invalidating prior art, and for each combination of items of allegedly invalidating prior art which is addressed in Defendants’ declaration. In other words, in rebutting the allegations of invalidity made in the Cameron Declaration, it is not necessary to demonstrate that each and every limitation of an Asserted Claim is missing from the art and/or combinations of art cited in that declaration.

8. The Level of Ordinary Skill in the Art and Person of Ordinary Skill in the Art

42. When interpreting a patent, I understand that it is important to view the disclosure and claims of that patent from the level of a POSITA at the time of the invention. Accordingly, when I am referring to a POSITA, I am referring to one of ordinary skill in the art as of the effective filing dates for the Asserted Patents at issue.²

43. I further understand that the Court in this matter has not yet determined the meaning and scope of any potentially disputed claim terms of the '681 and the '385 Patents. And, given that reality, I have used the plain and ordinary meaning as understood by one skilled in the art in view of the associated specifications and prosecution histories.

44. My opinion of the level of ordinary skill in the art of the Asserted Patents is based on my personal experience working in the field of mechanical engineering, manufacturing, and design, including in the appliance industry. In particular, I have extensive knowledge of colleagues and others working in those fields as of and for several years prior to the applicable time frame applicable to each of those patents. It is also based on my study of the Asserted Patents and their file histories, and is rooted in my knowledge of:

- The level of education and experience of persons actively working in the above fields at the time the subject matter at issue was developed;
- The types of problems encountered in the art at the time the subject matter was developed;
- The rapidity with which innovations are made in those fields;
- Prior art patents and publications;
- The activities of others working in those fields;
- Prior art solutions to the problems addressed by the relevant art; and
- The sophistication of the technology at issue in this case.

² My opinion is that the '385 Patent claims priority to U.S. Provisional Pat. Appl. No. 61/946,101, which was filed on February 28, 2014, and the '681 Patent claims priority to U.S. Application No. 16/833,984 which was filed on March 30, 2020.

45. I have also been informed that these factors are not exhaustive and are merely a useful guide to determining the level of ordinary skill in the art.

46. I have likewise reviewed the legal standards set forth by Dr. Cameron. In Paragraph 77 of her declaration, Dr. Cameron offered her opinion regarding the level of skill of one of ordinary skill in the art of two Asserted Patents:

Based on my experience in the relevant field, and based on my review of the Asserted Patents' specifications, claims, file histories, and prior art, it is my opinion that one of ordinary skill in the art around the time of the alleged inventions of the Asserted Patents would have had at least a bachelor's degree in mechanical engineering or a related field, and 2 years of experience in the design or development of consumer appliances, including dishwashers or comparable fluid-delivery systems, with additional education substituting for experience and vice versa.

47. Taking the above factors into account and based on my review of the specifications of the '385 and '681 Patents and my knowledge and experience of the field, I believe that a POSITA would be an individual who has an undergraduate degree in mechanical engineering or a related field, or their equivalent, plus at least six years of experience working in appliance design. I disagree with Dr. Cameron's position taken in ¶ 77 of her declaration: While specific experience in the design or development of "dishwashers or comparable fluid-delivery systems" may be helpful, it is not necessary or required.

48. While Cameron's standards are not identical to mine, none of my opinions would be different under her standards. In fact, as her standards generally have a lower total experience and skill level than the standard I set forth, it would be even less plausible that such a POSITA would be able to leap the gap between the prior art and the Asserted Claims that would be necessary as disclosed in Cameron's invalidity theories.

49. It is my further understanding that although the *KSR* decision discussed above has led to the elimination of the “teaching, suggestion or motivation” test as the sole test for judgment whether art can be combined for the purposes of an obviousness assertion, *KSR*, 550 U.S. at 407 (2007), the use of “impermissible hindsight” is still inappropriate when making such an assertion. Specifically, I note that § 2142 of the Manual of Patent Examining Procedure includes the direction to patent examiners that:

The tendency to resort to “hindsight” based upon applicant’s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

9. Requirements for Asserting Obviousness

50. It is my further understanding that when assertions of invalidity are based on a combination of references that allegedly disclose a given patent claim, such assertions must include a discussion of the likelihood that the proposed combinations can be made by those of ordinary skill and, if made, will have a likelihood of success. Section 2143.1 of the Manual of Patent Examining Procedure entitled “OBVIOUSNESS REQUIRES A REASONABLE EXPECTATION OF SUCCESS, as an example, states that:

Where there is a reason to modify or combine the prior art to achieve the claimed invention, the claims may be rejected as *prima facie* obvious provided there is also a reasonable expectation of success.

...

Obviousness does not require absolute predictability, however, at least some degree of predictability is required.

...

A person of ordinary skill [must have] good reason to pursue the known options within his or her technical grasp.

D. Technology Background

51. In the Initial Tanbour Declaration, I presented general background knowledge helpful in understanding the Asserted Claims, the operation of certain aspects of the Accused Products, and the evidence of infringement. I incorporate that text by reference here.

E. The References Addressed by Dr. Cameron

52. In her declaration, Dr. Cameron addressed the following references in making her assertions with respect to the '681 Patent:

- Carr (U.S. Patent Publication No. 2018/0220867), published August 9, 2018
- Bosch 800 (a dishwasher product (SHPM88Z75N) and its related brochure)³
- Mailander (U.S. Patent Publication No. 2008/0169009), published July 17, 2008
- Cao (CN 106343937)

53. In her declaration, Dr. Cameron addressed the following references in making her assertions with respect to the '385 Patent:

- Bosch (German Patent No. DE6810173U)
- Ochoa (U.S. Patent Publication No. 2003/0192578), published October 16, 2003
- Schessl (U.S. Patent No. 10,045,681), issued August 14, 2018

F. General Comments on Cameron Declaration

54. Having reviewed the assertions of obviousness made in the Cameron Declaration, it is my opinion that all of her assertions of obviousness suffer from the evident use of impermissible hindsight. In short, Dr. Cameron appears to have looked at the limitations of the Asserted Claims and then used them to search for unrelated disclosures in order to patch together

³ Dr. Cameron claims that the Bosch 800 dishwasher product was “publicly available by no later than February 2019.” Cameron Decl. ¶ 50. But the brochure that Dr. Cameron included as an attachment does not list that date. Moreover, none of the four “press releases” disclosed by Dr. Cameron refers to the MyWay rack, the feature of the Bosch 800 dishwasher that Dr. Cameron contends practices the claims of the '681 Patent. Cameron Decl. ¶¶ 53–54, 129–133.

a combination of references about dishwashers in general without accounting for the disparate parts and technologies at issue more specifically.

55. Aside from offering conclusory statements that a POSITA would have found it obvious to combine such references, Dr. Cameron offers no explanation of how any of her proposed combinations of references would have been able to function—either in theory or, more importantly, in practice. She never explains how any of those many proposed combinations actually could be implemented, or what likelihood of success would have been expected had a POSITA attempted to implement any of her proposed combinations. She also provides very little detail around the motivation that any person would have had to combine references beyond that two references, for example, are “both directed to a dish rack of a dishwasher.” *See* Cameron Decl. ¶ 167.

56. Further, it is my understanding that—when asserting invalidity based on a combination of references that allegedly disclose a given patent claim—such assertions must include a discussion of the likelihood that the proposed combinations can be made by those of ordinary skill and, if made, will have a likelihood of success. Nevertheless, Dr. Cameron engages in no such analysis and provides no explanation as to how such a combination even could operate.

57. Although my initial declaration arranged the presentation of the asserted patents according to the chronological order of filing dates, Cameron chose to present her alleged prior art in reverse order. *See generally* Cameron Decl. ¶¶ 101–198. I believe this reversal shows Cameron’s attempt to shift the focus of this case from infringement to validity. I further note that her presentation of the prior art references in reverse chronological order reflects her attempt to bolster that case through presentation of more recent references first. Nonetheless, I attempt to

respond to all key invalidity points asserted by Cameron and will show why her opinion does not satisfy the clear and convincing standard.

G. Rebuttal to Dr. Cameron's Opinions Regarding Non-Infringement

58. In this section of my rebuttal declaration, I state and explain my opinion that, based on my review of the '681 and '385 Patents, the relevant products, the Cameron Declaration, and the references addressed in that declaration, Dr. Cameron's non-infringement positions are incorrect and that Samsung infringes each and every limitation of Claims 17, 18, 19, 20, and 21 of the '385 Patent and each and every limitation of Claims 14 and 15 of the '681 Patent through manufacturing and selling dishwashers modeled after the KitchenAid design described in those patents that include an enhanced top rack that can hold both drinkware as well as utensils and silverware ("Accused Products").

10. Dr. Cameron's Opinion that Samsung Does Not Infringe the '385 Patent is Wrong.

59. I address each of Dr. Cameron's non-infringement arguments regarding the '385 Patent in turn. Beginning at Paragraph 79 of the Cameron Declaration, Dr. Cameron opines that the Accused Products do not infringe independent Claim 17 of the '385 Patent, which reads as follows (the Claim language that Dr. Cameron contends is not practiced by the Accused Products appears in red text while the Claim language that she does not dispute is practiced by the Accused Products appears in gray):

17. A dishwasher, comprising:

17[a] a tub defining a treating chamber receiving dishes for treatment;

17[b] a spray system providing treating liquid to the treating chamber; and

17[c] a dish rack located in the tub and selectively moveable into and out of the

tub, the dish rack having a bottom wall, a side wall extending upwardly from the bottom wall and terminating in an upper edge, with an upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall, wherein two adjacent inclined portions of the plurality of spaced apart inclined portions are configured to cradle a glass at an inclined angle and prevent the glass from rolling and a contoured portion formed in the bottom wall configured to prevent glasses from sliding down the inclined angle; and

17[d] a spray tube having nozzles emitting spray along the angled portion;

17[e] wherein the contoured portion is further configured to form a curved mounting portion adjacent which the spray tube is mounted such that the spray tube is carried with the dish rack.

60. I agree with Dr. Cameron that Asserted Claims 18 through 21 of the '385 Patent are dependent on Claim 17. *See* Cameron Decl. ¶ 97. A dependent claim is a claim that incorporates by reference all limitations of its independent claim and of any intervening claim. As a general guideline, the scope of a dependent claim is narrower than that of its independent claim. Thus, if the limitations of Claim 17 are not satisfied as Dr. Cameron contends, the Accused Products do not infringe the '385 Patent. *See* Cameron Decl. ¶ 97.

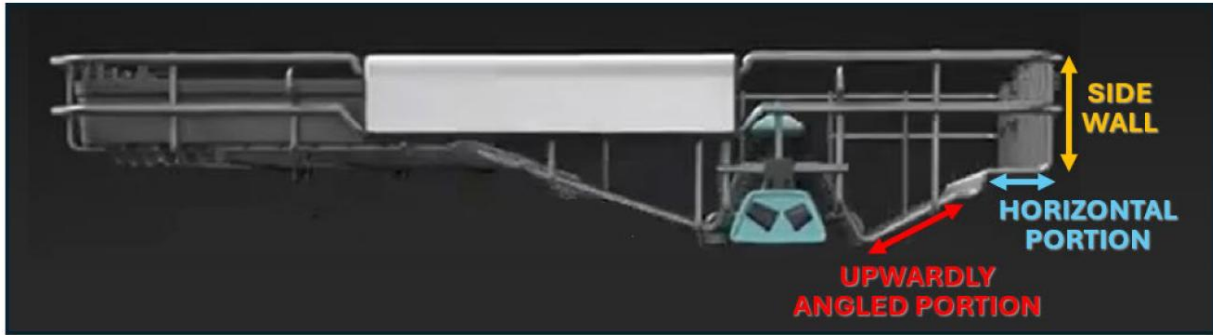
61. I also note Dr. Cameron's agreement with my position that Figures 8 and 9 in the '385 Patent present merely "two different views of the claimed 'dish rack' and 'spray tube'" within the Patent as merely exemplary embodiments. Cameron Decl. ¶ 18.

62. I disagree, however, with Dr. Cameron that Claim 17 is not infringed by the Accused Products. I stand by my infringement opinion for this Claim as stated in the Initial Tanbour Declaration at Paragraphs 52–60, which are incorporated here by reference. Below I address the specific criticisms leveled by Dr. Cameron against my initial analysis.

i. The Accused Products do include “an upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall”

63. First, in Paragraphs 79–82, Dr. Cameron opines that the Accused Products do not meet the limitation of Claim 17[c] requiring, among other things,⁴ “an upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall.” Specifically, Dr. Cameron argues that the Accused Products “end[] short of, or before reaching, the side wall,” Cameron Decl. ¶ 79, based on her view that the Accused Product contains a “horizontal portion of the bottom wall” extending “between the upwardly angled portion and the side wall,” *id.* ¶ 81. She illustrates that view in the following image at the top of page 36 of her declaration:

⁴ Importantly, Dr. Cameron does not contest that Accused Products meet the following limitations of Claim 17[c]: (1) “a dish rack located in the tub and selectively moveable into and out of the tub”; (2) “the dish rack having a bottom wall,”; (3) “a side wall extending upwardly from the bottom wall”; (4) “and terminating in an upper edge.” *See generally* Cameron Decl. ¶¶ 79–82. She also does not contest that the Accused Products satisfy the following language of Claim 17[c]: “wherein two adjacent inclined portions of the plurality of spaced apart inclined portions are configured to cradle a glass at an inclined angle and prevent the glass from rolling and a contoured portion formed in the bottom wall configured to prevent glasses from sliding down the inclined angle.” *Id.*



<https://www.samsung.com/us/home-appliances/dishwashers/rotary/38-dba-bespoke-auto-open-door-dishwasher-with-3rd-rack-washing-system-in-fingerprint-resistant-stainless-steel-dw90f89p0usraa/>

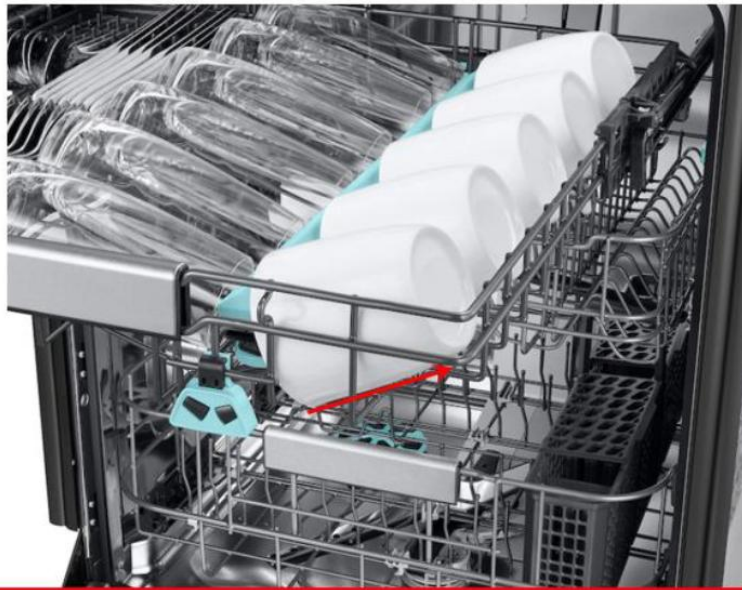
64. I agree with Dr. Cameron that the portion of the bottom wall of the Accused Product dishrack that she labels as the “Upwardly Angled Portion” is in fact clearly upwardly angled. I further agree with Dr. Cameron’s statement in Paragraph 79 of her declaration that the spaced apart “inclined portions of the bottom wall” must “terminat[e] at’ the side wall.” Specifically, they must do so in a manner “wherein two adjacent inclined portions of the plurality of spaced apart inclined portions are configured to cradle a glass at an inclined angle and prevent the glass from rolling and a contoured portion formed in the bottom wall configured to prevent glasses from sliding down the inclined angle.” Claim 17[c].

65. But I disagree with Dr. Cameron’s assessment that the Accused Products do not meet the requirements of Claim 17[c].

66. Dr. Cameron reaches this incorrect conclusion by failing to read Claim 17[c] as a whole. She instead exclusively focuses her analysis on whether the “upwardly angled portion” of the bottom wall (as labeled the “upwardly angled portion” in her photograph above) “terminates in the side wall.” *See id.* ¶ 80. But this conflates the first disputed portion of Claim 17[c] with the second disputed portion of Claim 17[c] when the disputed portion of the Claim requires the following: (1) “an upwardly angled portion formed in the bottom wall”; (2) “comprising a plurality of spaced apart inclined portions forming the bottom wall”; (3) “and terminating at the side wall.”

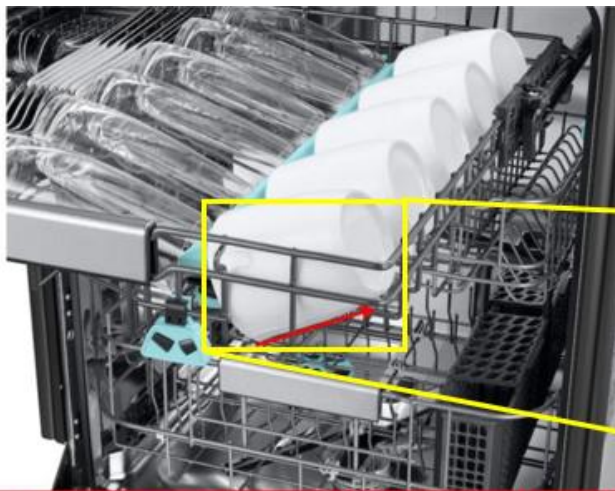
67. Dr. Cameron overlooks the middle (and most critical) disputed portion of the Claim language, concluding that the “upwardly angled portion formed in the bottom wall” must “terminat[e] at the side wall.” *Id.* ¶ 80. But that is incorrect; it is the “plurality of spaced apart ***inclined*** portions forming the bottom wall” that must “terminate[e] at the side wall” (emphasis added). Dr. Cameron’s ellipses in heading VII.A.1.a of her declaration entirely leaves out the key middle language.

68. The middle language requiring a “plurality of spaced apart inclined portions forming the bottom wall” is critical to the patented design. Those portions are, after all as stated later in the same sub-Claim, must be “configured to cradle a glass at an inclined angle and prevent the glass from rolling.” Claim 17[c]. They are also “configured to prevent glasses from sliding down the inclined angle such that the angle is dictated based on the orientation of the cradled glasses.” *Id.* Termination of the inclined spaced apart portions in the bottom wall at the side wall allows the glasses to be cradled to serve these purposes. This is shown from the following image in the Initial Tanbour Declaration ¶ 56:

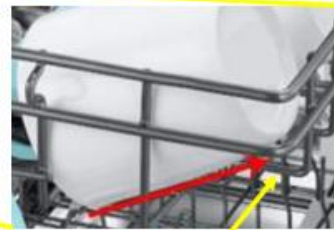


Bottom wall with an upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall, wherein two **adjacent inclined portions** of the plurality of spaced apart inclined portions are configured to cradle a glass at an inclined angle and prevent the glass from rolling

<https://www.samsung.com/us/home-appliances/dishwashers/rotary/38-dba-bespoke-auto-open-door-dishwasher-with-3rd-rack-washing-system-in-fingerprint-resistant-stainless-steel-dw90f89p0usraa/>



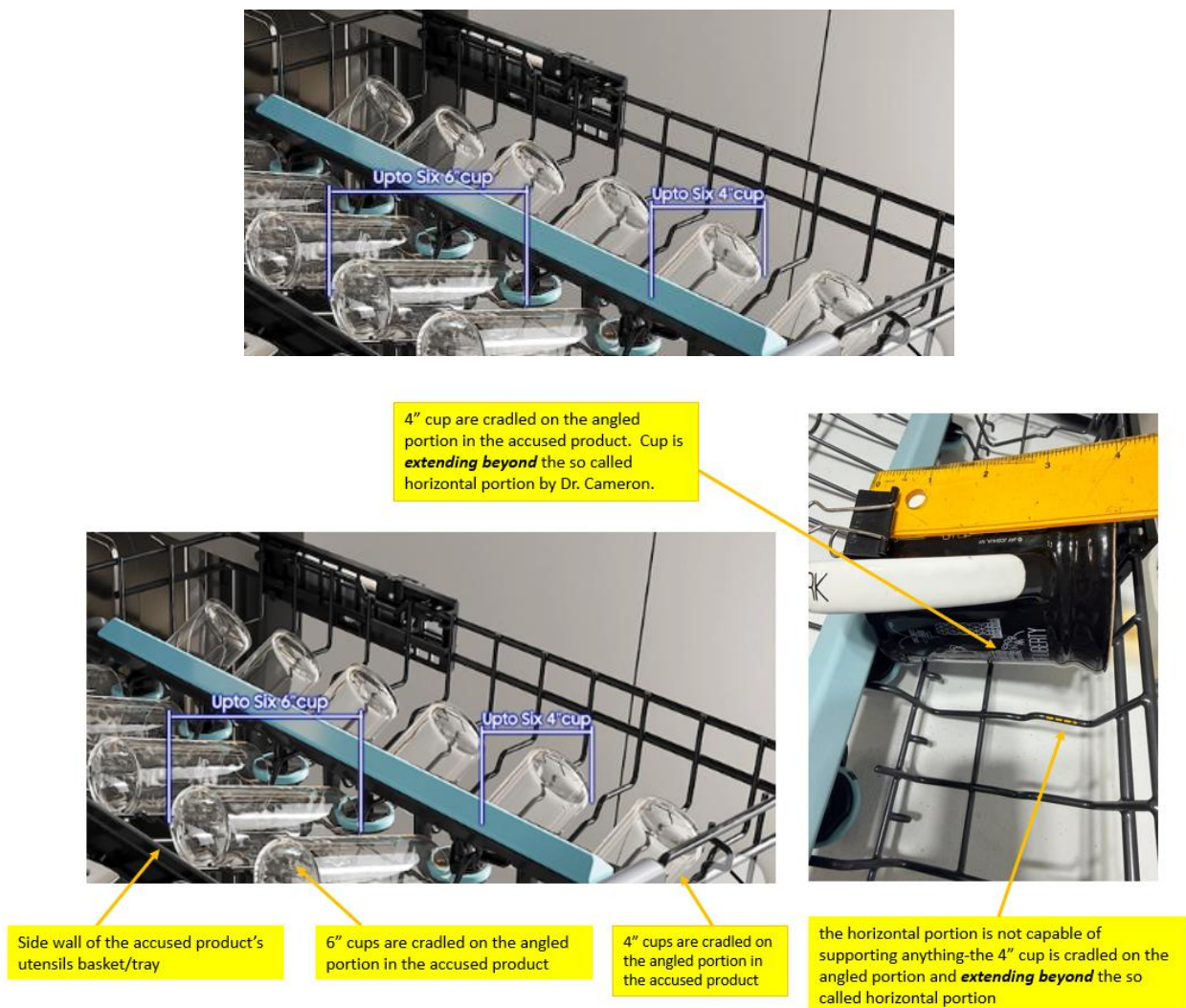
Bottom wall with an upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall, wherein two **adjacent inclined portions** of the plurality of spaced apart inclined portions are configured to cradle a glass at an inclined angle and prevent the glass from rolling



Dr. Cameron's so called straight "horizontal portion"

<https://www.samsung.com/us/home-appliances/dishwashers/rotary/38-dba-bespoke-auto-open-door-dishwasher-with-3rd-rack-washing-system-in-fingerprint-resistant-stainless-steel-dw90f89p0usraa/>

69. As also demonstrated in the images above of the Accused Products, the “spaced apart inclined portions” terminate at the side wall in the manner described in the Claim language. Dr. Cameron’s purported “Horizontal Portion” of the bottom wall, barely visible below the cups but magnified in the second image, is a component of the “spaced apart inclined portions.” And it still satisfies the Claim language. As obvious from the above photographs, the glass(es) cradled at the inclined angle may overhang Dr. Cameron’s purported “Horizontal Portion.” And the purported “Horizontal Portion” cannot support or hold anything in a horizontal orientation. This is likewise shown in the photograph below containing smaller glassware:



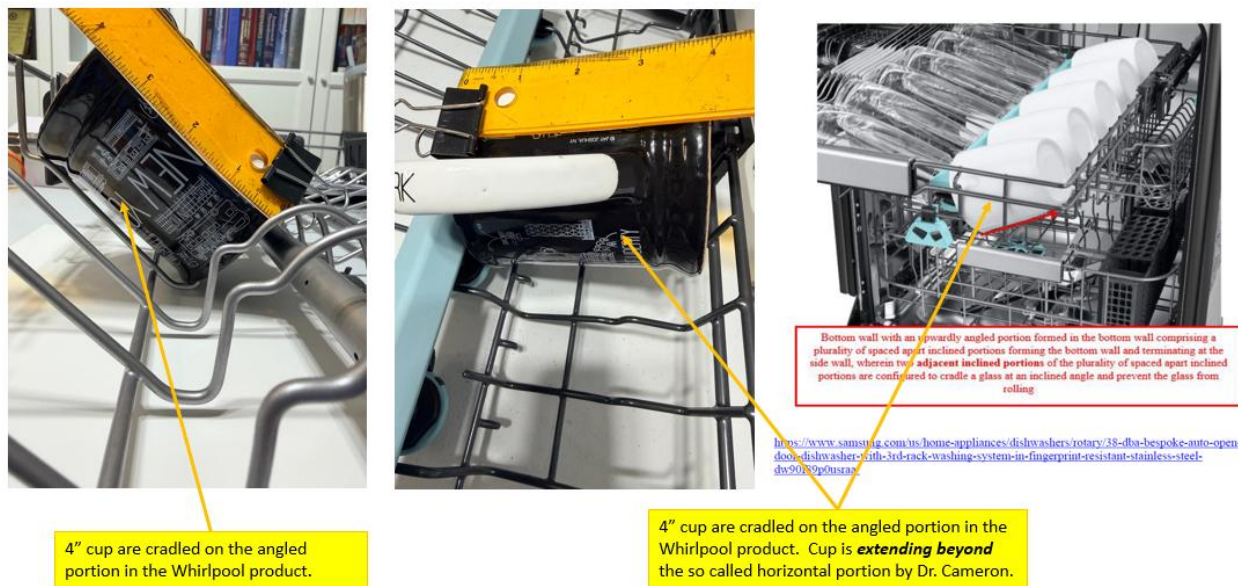
[38 dBA Bespoke Smart 3rd Rack Dishwasher in Stainless Steel | Samsung US](#)

70. Accordingly, despite Dr. Cameron's attempts to argue that the existence of the purported "Horizontal Portion" results in a lack of literal infringement, that is not the case. Applying the complete text of Claim 17[c] within the context of the rest of the Claim clearly shows that the Accused Products literally infringe the Claim since the "spaced apart inclined portions" "terminat[e]" at the side wall such the Accused Products practice the remainder of the Claim's functional elements, which Dr. Cameron does not dispute.

71. I further opine that this Claim is also infringed under the Doctrine of Equivalents. In assessing infringement under the Doctrine of Equivalents, I understand that the goal is to assess whether a POSITA would consider the differences between the claimed limitation and the element in the accused product to be "insubstantial." Substantiality is measured in several different ways. I understand that one way is to determine whether the element in the accused product performs substantially the same function in substantially the same way to achieve substantially the same result (the so-called function/way/result test). Known interchangeability weighs in favor of finding two structures or steps equivalent. I also understand that to infringe under the Doctrine of Equivalents, the particular equivalent being asserted cannot have been surrendered during prosecution to acquire the patent. Accordingly, if a particular element of a claim was the subject of argument or amendment during prosecution, the prosecution history needs to be scrutinized.

72. Here, the Samsung Accused Products perform substantially the same function in substantially the same way to achieve substantially the same result as the patented invention and therefore qualify under the function/way/result test. In the below image comparing the patented design as practiced by Whirlpool and the Accused Products, it is clear that both products have an inclined bottom wall ending in the side wall that allows for cups to be cradled to prevent rolling and sliding. This feature is substantially the same as the "spaced apart inclined portions"

terminating in the side wall in the claim language and achieves substantially the same result in substantially the same way. Dr. Cameron’s so-called “horizontal portion” serves no utilitarian or functional purpose, making the designs essentially interchangeable.



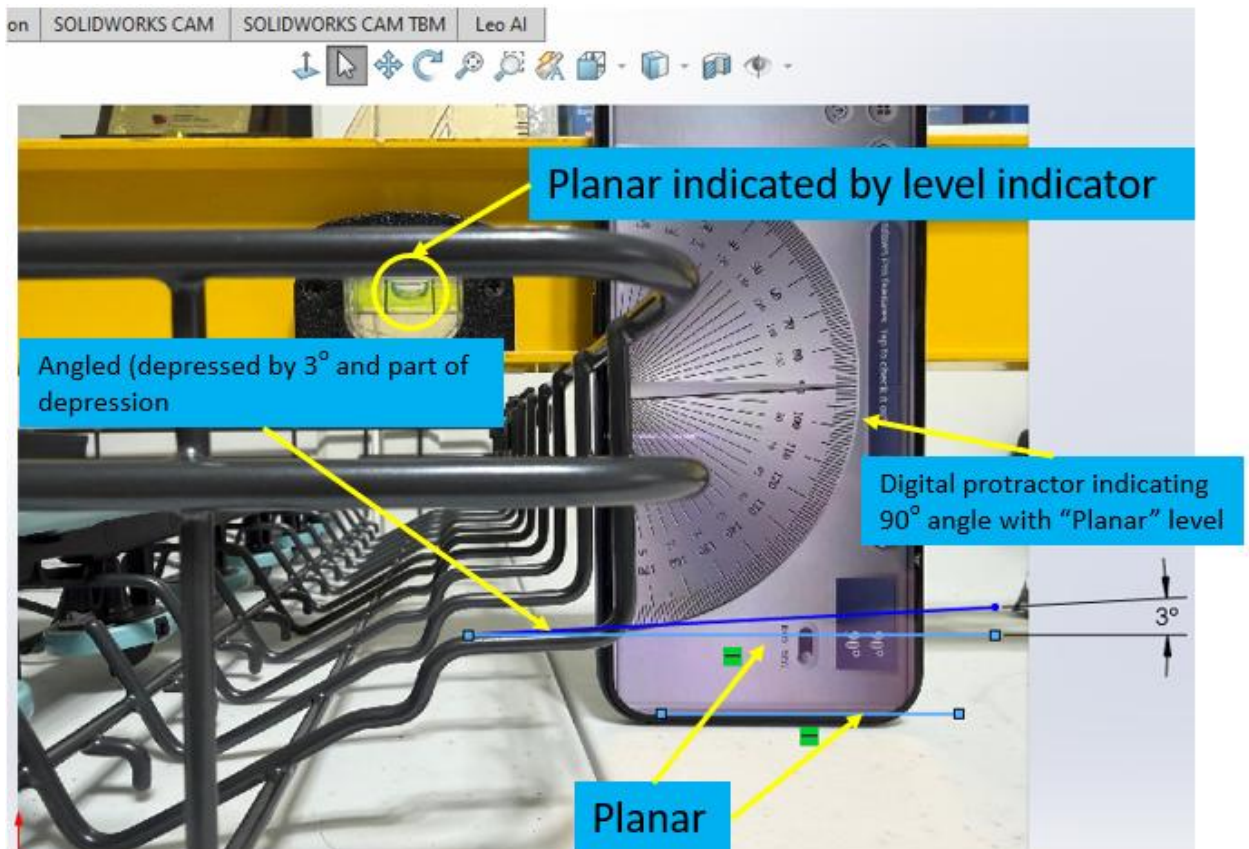
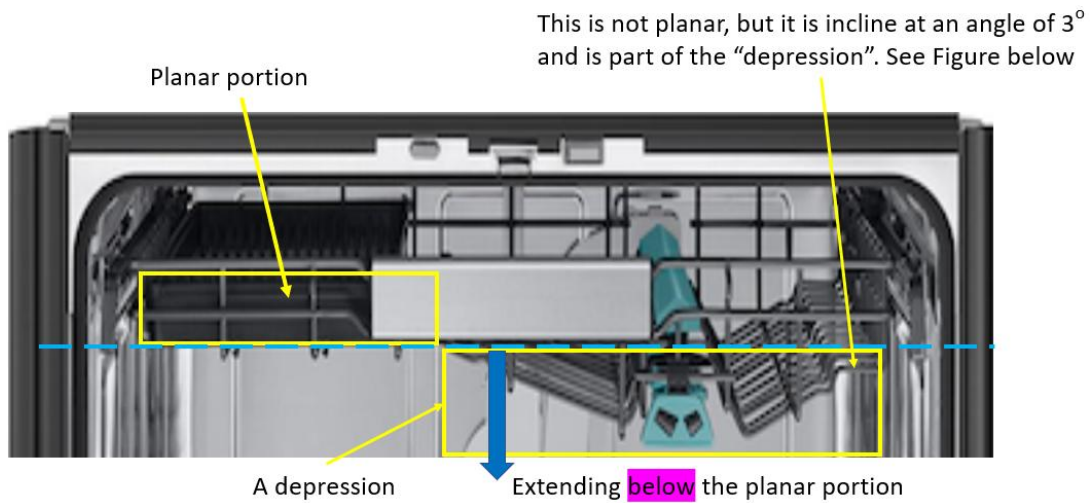
Further, even to the degree differences can be said to exist, they are insubstantial. The short purported “horizontal portion” that appears in the Accused Products is irrelevant to whether the dishrack can cradle a cup on inclined surface and at an upward angle. I do not believe the prosecution history has resulted in forfeiture of this argument.

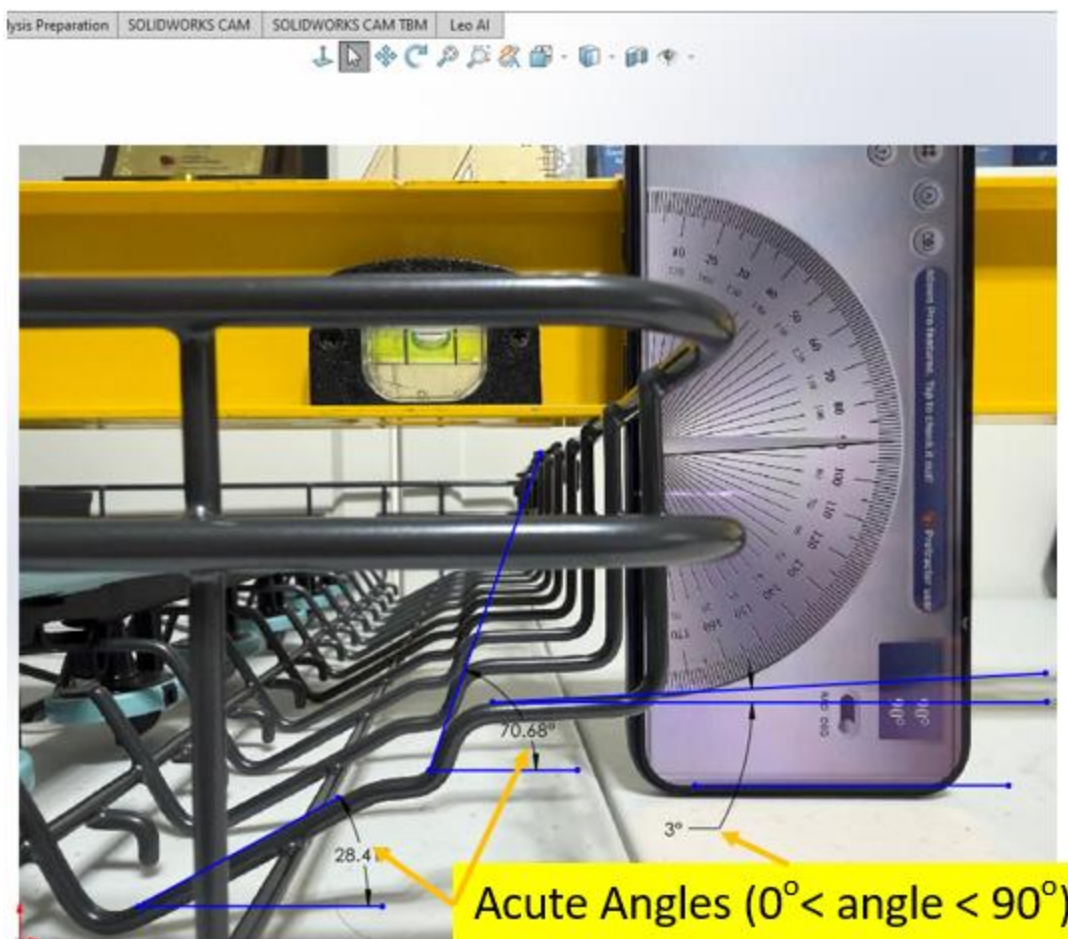
73. But even assuming *arguendo* that Dr. Cameron’s misreading of Claim limitation 17[c] is correct, the Accused Products still satisfy the Claim language.

74. Contrary to Dr. Cameron’s assertion, the so-called “Horizontal Portion” of the bottom wall that Dr. Cameron labels in blue in the image at the top of page 36 of her declaration is *not* in fact “horizontal.” Instead, it too is upwardly angled, at approximately 3 degrees, and therefore satisfies the Claim limitation 17[c] even under Dr. Cameron’s erroneous read of it.

75. The plain language meaning of “horizontal” means “flat or level; parallel with the ground.” See [HORIZONTAL | definition in the Cambridge English Dictionary](#) (last visited January

16, 2026). Stated differently, it means to be “at right angles to the vertical.” [HORIZONTAL Definition & Meaning | Dictionary.com](#) (last visited January 16, 2026). Therefore, for Dr. Cameron to be correct, the so-called “Horizontal Portion” of the bottom wall of the Accused Product dishrack would have to contain no upward slope. Yet it does contain an upward slope. As illustrated in the images below (and as shown by the inclusion of computer-aided sketch lines indicating the 3° angled portion in the Accused Products as part of the “depression”), the so-called “Horizontal Portion” is sloped at three degrees:





76. This slope demonstrates that even under Dr. Cameron’s reading of the Claim language, the area she labels as the “Horizontal Portion” is in fact “upwardly angled.” The Claim limitation does not require the bottom wall to be upwardly angled in a uniform manner, and it does not place any specific limitations on the upward slope. It only requires, as Dr. Cameron appears to acknowledge, that there is “an upwardly angled portion formed in the bottom wall . . . terminating at the side wall.” Accordingly, even if Dr. Cameron’s erroneous reading of the Claim language is accepted, the limitation is satisfied by the Accused Products.

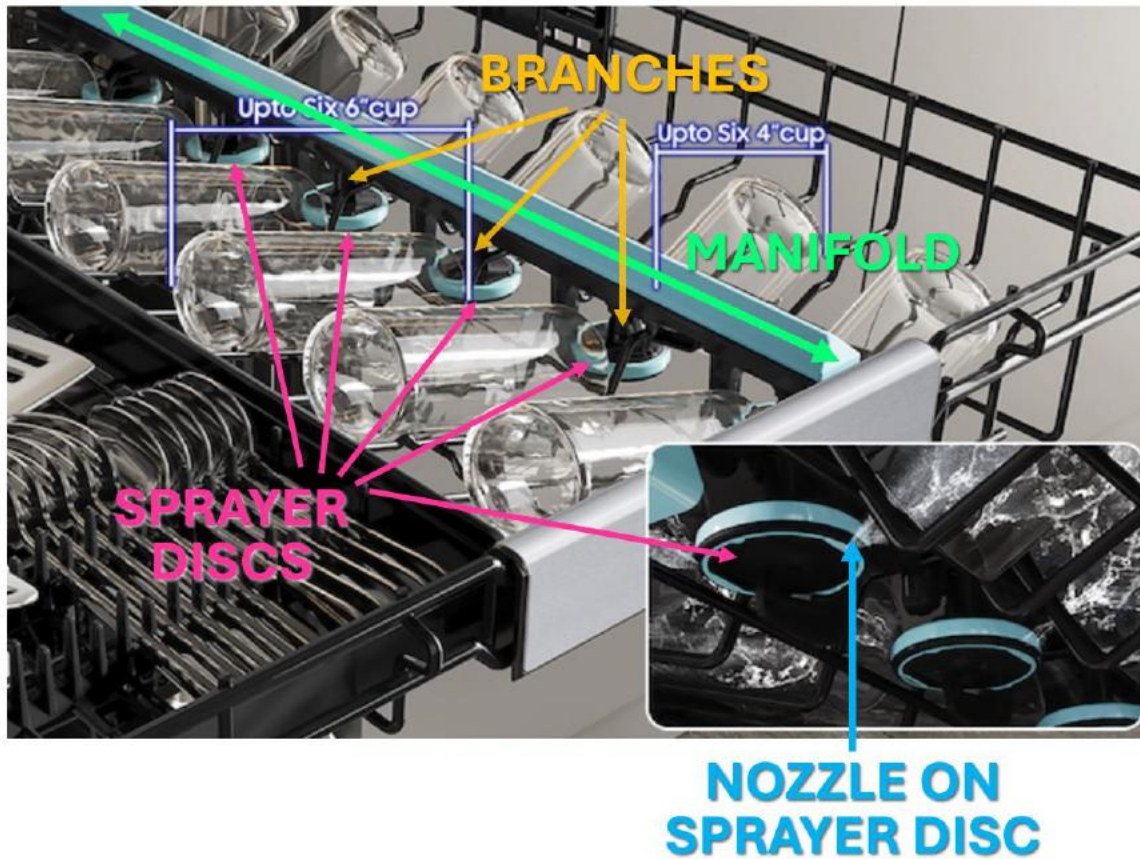
77. Dr. Cameron’s attempts to contrast the Accused Product with Figure 8 of the ’385 Patent are also unavailing. *See* Cameron Decl. ¶ 79. As Dr. Cameron herself acknowledges, Figure 8 is an illustration that serves as merely one exemplary embodiment. *Id.* ¶¶ 19, 79. It is therefore

only one of many possible ways a product may satisfy the controlling claim limitation language requiring the inclined portions to terminate at the side wall. *See id.* ¶ 79. The embodiment depicted in the figure does not, as Dr. Cameron seems to suggest, dictate or specify the manner or mode of the incline; instead, the claim limitation language controls.

ii. The Accused Products do include “a spray tube having nozzles”

78. Next, in Paragraphs 83–89, Dr. Cameron opines that the Accused Products do not meet the limitation of Claim 17[d] requiring “a spray tube having nozzles emitting spray along the angled portion.” Importantly, Dr. Cameron appears to concede (or at least does not dispute) that the Accused Products “emit[] spray along the angled portion.” Instead, she attempts to distinguish the Accused Products from the patent Claim by arguing that the Accused Product spray tube does not “hav[e] nozzles.” *See* Cameron Decl. ¶¶ 83–85.

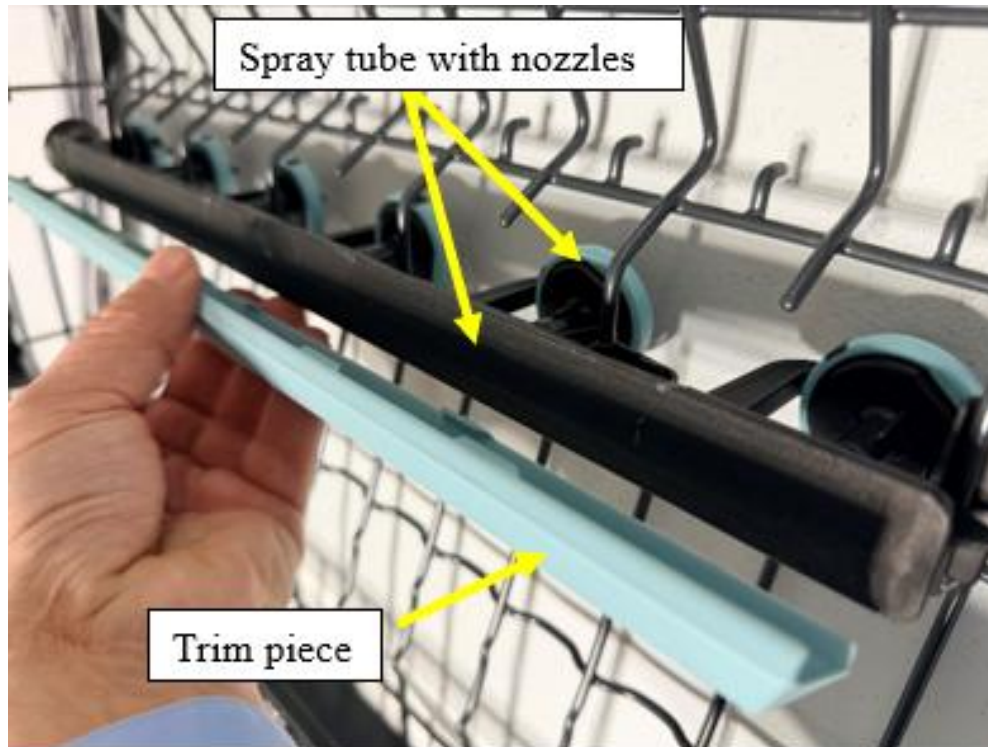
79. Dr. Cameron and I agree that the Accused Products contain “nozzles” that “emit[] spray along the angled portion.” Her opinion diverges from mine, however, in her opinion that the rotating, nozzle-containing sprayer discs that “emit[] spray along the angled portion” in the Accused Products, *id.* ¶ 85, “are separate from the accused ‘spray tube’” and are not part of it, meaning that the claim limitation is not satisfied in her view since the sprayer discs rather than the spray tube (which she incorrectly defines as only the manifold) itself contains the “nozzles,” *id.* ¶ 86. This is illustrated by the image she produces at the top of page 40 of her declaration:



<https://www.samsung.com/us/home-appliances/dishwashers/rotary/38-dba-bespoke-auto-open-door-dishwasher-with-3rd-rack-washing-system-in-fingerprint-resistant-stainless-steel-dw90f89p0usraa/>

80. Stated differently, Dr. Cameron’s position appears to be that to be a “spray tube having nozzles,” the “nozzles through which liquid is sprayed” in the required manner must be carved or created directly within the “tubular member” of the spray tube that “itself” must define the nozzles. Cameron Decl. ¶ 83.

81. But this opinion cannot hold. What Dr. Cameron marked as the “Manifold” in the above picture is not actually the manifold of the spray tube in the actual construction of the Accused Products. The light-colored skin she marked as the “manifold” is actually a trim cover to the spray tube (and thus, part of it); the manifold is the portion directly underneath that trim. The picture below shows the trim piece removed and shows the spray-tube manifold with the spray nozzles underneath it.



82. The “nozzle on sprayer disc” identified in Dr. Cameron’s figure on page 40 of the Cameron Declaration is also an incorrect presentation of the factual details of the Accused Products (see her picture below):



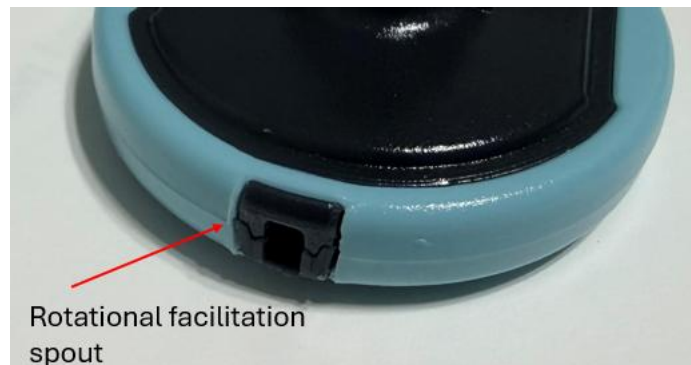
NOZZLE ON SPRAYER DISC

83. Unlike in the above image, where Dr. Cameron identified the “nozzles” on the underside of the spray discs, the image below taken of the Accused Products actually demonstrates that the nozzles in the Accused Products reside on the top side of the spray discs:



84. Although it is not clear, the so-called “nozzle” that Dr. Cameron appears to be pointing to located on the underside of the spray disc could be the second water spout on the spray disc located in the side (turquoise) portion. This spout, which could also be fairly characterized as

a “nozzle,” exists to generate partly tangential force to facilitate rotation of the disc. In any event, it is not designed to “spray along the angled portion.” I depict a picture of that spout below:



85. Dr. Cameron is also wrong in asserting that other types of sprayer nozzles cannot be used in conjunction with the spray tube design. She relies on this read to conclude that, because the Accused Products contain nozzles from rotating spray discs, the claim limitation is not satisfied.

86. At the outset, Dr. Cameron’s read of the ’385 Patent is incorrect and results in her manufacturing and applying claim limitations that do not exist. For example, she states in Paragraph 22 of the Cameron Declaration that “[t]he ’385 Patent distinguishes its nozzle-containing spray tube from ‘other types of sprayers,’ such as ‘rotating spray arms, individual spray nozzles, stationary spray heads with multiple spray nozzles, spray discs, flexible spray tubes, translating front to back sprayers, etc.’” (citing ’385 Patent 10:49–53). But that misrepresents the text of the patent itself, which does not require a “nozzle-containing spray tube.” That is a term constructed by Dr. Cameron and is not supported by the Patent. To the contrary, the ’385 Patent includes all types of spray tubes and nozzles and does not “distinguish” “other types of sprayers.” It states the following:

The rack spray assembly 32 has been shown and described as having stationary and rotating spray tubes with spray nozzles, and other numbers of spray tubes, such as up to five spray tubes, or other types of sprayers are *acceptable* for use with the rack spray assembly 32.

Examples of other types of sprayers include, but are not limited to, rotating spray arms, individual spray nozzles, stationary spray heads with multiple spray nozzles, spray discs, flexible spray tubes, translating front to back sprayers, etc.

'385 Patent at 10:49–53 (emphasis added). The use of the word “acceptable” makes clear that the '385 Patent allows “other numbers of spray tubes, such as up to five spray tubes, or other types of sprayers are *acceptable* for use with the rack spray assembly 32.” A POSITA would understand the term “flexible spray tube” to be used as an example of “other types of sprayers,” meaning it is not distinct from some separate term “spray tube.” Rather, it is a spray tube that could incorporate any number of the examples in the paragraph above. Dr. Cameron’s strained efforts to distinguish Samsung’s products from the Patent further rely on illustrative embodiments, like Figure 9, that are mere examples of how the Patent language might be put into practice. *Id.* ¶¶ 19, 20. Dr. Cameron’s act of pointing to the fact that Figure 9 shows the nozzles as directly embedded in the spray tube manifold is of no import, particularly given the patent language quoted above:

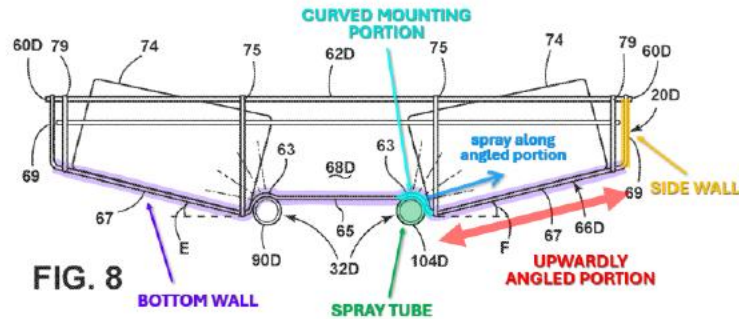


FIG. 8

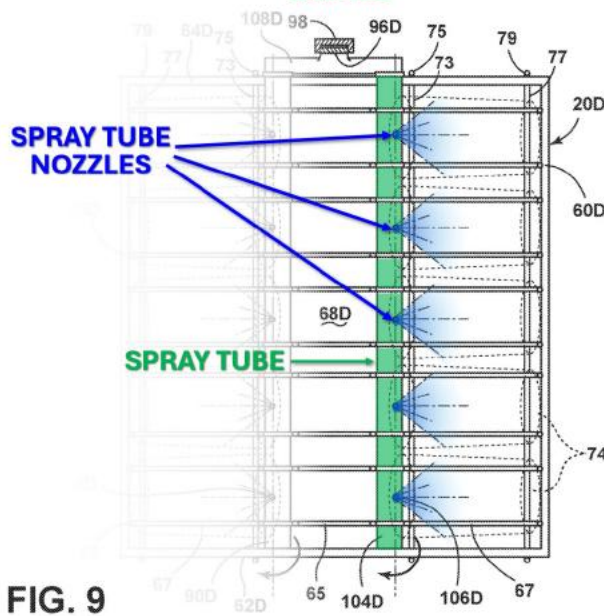


FIG. 9

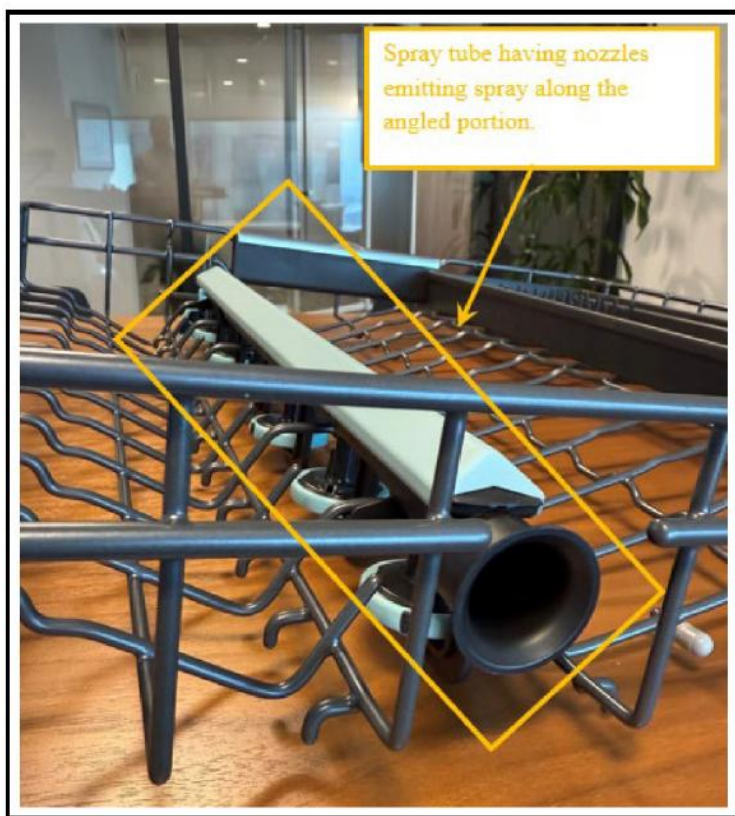
17. A dishwasher, comprising: ...
a spray tube having nozzles
emitting spray along the angled
portion ...

Cameron Decl. ¶ 22. The claim limitation language of 17[d] does not require the spray tube manifold itself to contain the nozzles within it. It requires only that the spray tube component as a whole “has” nozzles.

87. The plain and ordinary meaning of the word “nozzle” is “a projecting spout, terminal discharging pipe, or the like, as of a hose or bellows.” [NOZZLE Definition & Meaning | Dictionary.com](#) (last visited January 16, 2026); *see also* [Nozzle - Definition, Meaning & Synonyms | Vocabulary.com](#) (last visited January 16, 2026) (defining “nozzle” as “the spout at the end of a hose that water flows through”). A POSITA would understand that a nozzle must discharge fluid. This discharge generally creates water pressure. However, a POSITA would also

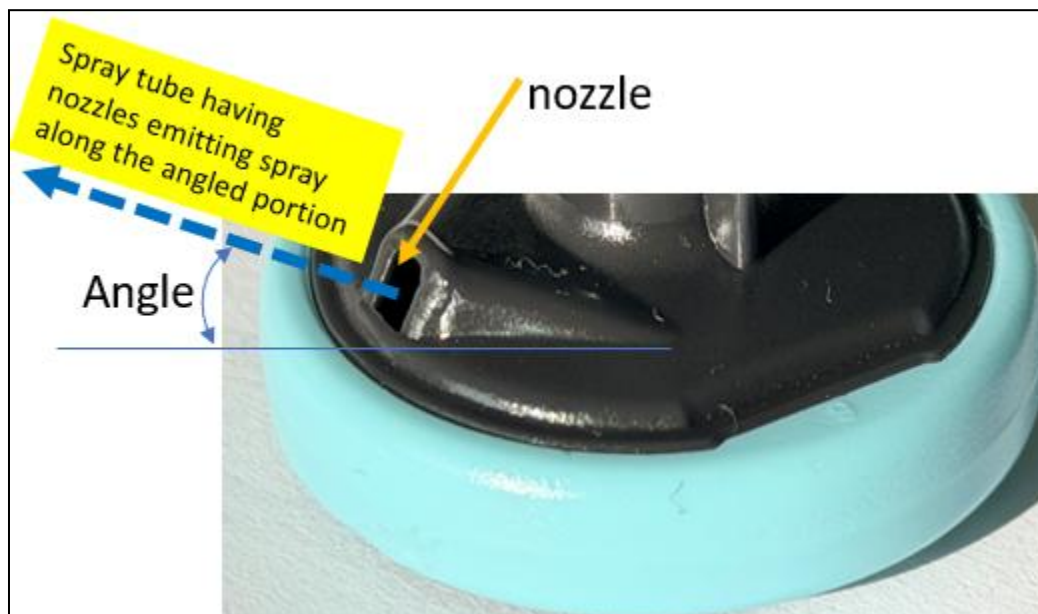
understand that a nozzle does not have to be located at the end or termination of a broader system and can be as simple as a narrowing hole that directs water.

88. Applying these principles exposes the fundamental flaw with Dr. Cameron's analysis: She is incorrect that the spray discs that she admits contain nozzles that spray along the angled portion are not part of the spray tube. Cameron Decl. ¶ 83. As I noted in the Initial Tanbour Declaration at Paragraph 58, the sprayer discs are part of a single spray tube component and the spray tube component *requires nozzles*. Initial Tanbour Decl. ¶ 58:



89. A POSITA looking at the Accused Products would understand the plain and ordinary meaning of a spray tube to include both the tube and the nozzles. The spray tube cannot perform the function and duty of "spraying" without inclusion of the nozzles. Therefore, the spray tube in the Accused Products includes the nozzles. The nozzles on the Accused Products practice the exact claim element of "spray tube having nozzles emitting spray along the angled portion."

As shown in the illustration below, the nozzles of the Accused Products are spraying along the angled direction, contrary to Cameron’s misunderstanding.



iii. The Accused Products do include “a curved mounting portion adjacent which the spray tube is mounted”

90. Next, in Paragraphs 90–96, Dr. Cameron opines that the Accused Products do not meet the limitation of Claim 17[e] requiring “a curved mounting portion adjacent which the spray tube is mounted.” Importantly, Dr. Cameron appears to concede that the spray tube is mounted to a portion of the bottom wall that at each end has “connecting curves.” *See* Cameron Decl. ¶¶ 93, 94. The difference in our opinions instead addresses whether the section of the bottom wall to which the spray tube is mounted can be considered a singular “curved mounting portion” or whether, in contrast, it is three separate flat portions.

91. I opine in Paragraph 60 of the Initial Tanbour Declaration that it is a single curved mounting portion. The curves can be seen in the below picture:

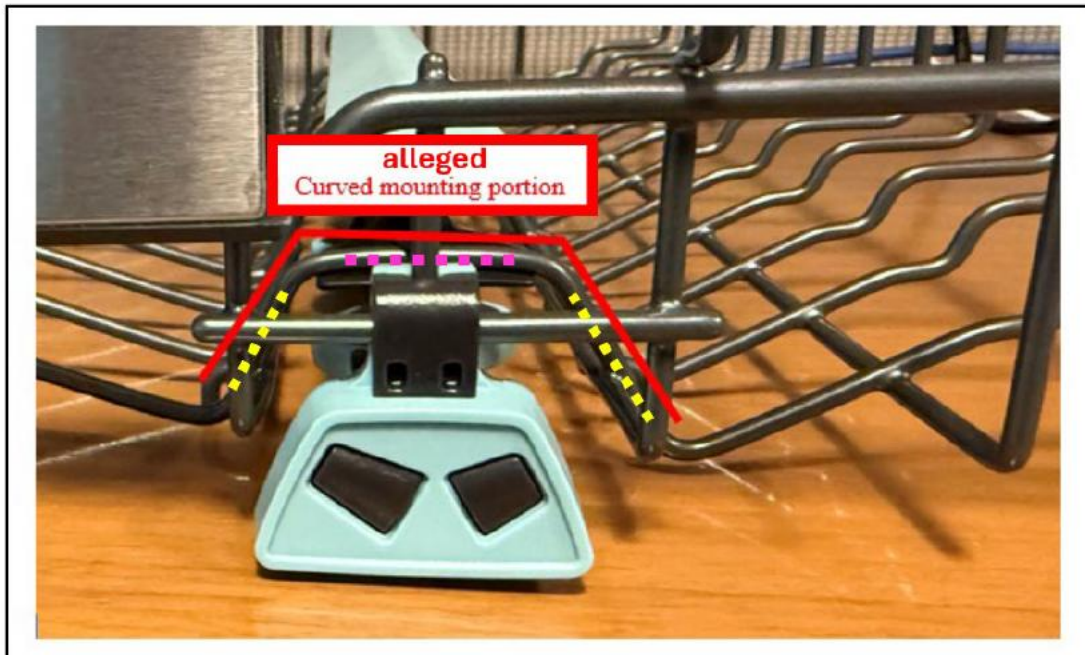


92. It is also seen here from other angles:





93. To the contrary, Dr. Cameron opines that this is “three flat segments . . . connected to one another by short curved portions” that do not constitute a “curved portion” as a whole. Cameron Decl. ¶¶ 93, 94. Specifically, she notes that “[o]nly the areas that are actually curved can properly be described as curved portions” and that the spray tube is mounted only to the “middle flat segment” represented by the pink dashed line below. *Id.* Accordingly, she concludes that portion is not adjacent either curved connecting portion.



94. Dr. Cameron’s parsing of the single “curved mounting portion” into three separate pieces is a blatant attempt to evade the claim limitation and overlooks the clear curvature of the portion. Moreover, even under Dr. Cameron’s read, the claim language is still satisfied. The areas Dr. Cameron admits are “actually curved [and] can properly be described as curved portions” are certainly “adjacent” to the area to which the spray tube is mounted. A POSITA would understand the word “adjacent” to mean “nearby” or “not distant,” including but not limited to “having a common endpoint or border.” [ADJACENT Definition & Meaning - Merriam-Webster](#) (last visited January 16, 2026). Indeed, although being “directly adjacent”—a term used in other claims of the ’385 Patent—may require touching, being merely “adjacent” would not. The curved mounting portions are sufficiently nearby to make them “adjacent” and satisfy the claim language. The Accused Products use these “curved mounting portions” to “mount” the spray tube as is evident in the pictures marked by Dr. Cameron above. The Accused Product mounting portion does not have sharp angles as marked in the above picture. The Accused Product mounting portion is rounded at the bottom where it starts to ramp up from both sides; then it is again rounded generously when the ramping transitions to form the mounting portion. A POSITA looking at how the spray tube is mounted on the Accused Products would understand that the Accused Products practice the claim element perfectly.

95. Further, Dr. Cameron’s assertion that the “middle flat segment” in the Samsung Accused Products between the two curved portions breaks up the “mounting portion” into two separate curved portions connecting three flat segments also conflicts with Figure 8 of the ’385 Patent and its accompanying text. Figure 8 teaches that when a “flat central portion” serves to separate two curved portions, its shape is distinct from the curves and it is utilized to hold silverware. *See also* ’385 Patent at 9:14–22 (“The flat central portions provide an area between the

first and second rows defined by the inclined portions to define a third row to provide a location to place additional items to be cleaned such as glasses, cutlery, cooking utensils, dishes, plates, pots, bowls, pans, lids, containers, glassware, and silverware. The items to be cleaned in the third row are supported by the adjacent flat central portions of the bottom walls 66D. The rack can also be used to wash items other than glasses by placing the items on surfaces.” (internal references omitted)). Here, the supposedly “middle flat segment” of the structure identified by Dr. Cameron serves one function in the Accused Product—to mount the spray tube, not to hold anything—and is not architecturally distinct from the curved portions on either side of it. In fact, the “middle flat segment” is slightly bowed (concaved downwards) in the Accused Product. Further, given the mounting position of the spray tube in the Accused Products and the size of the “middle flat segment” relative to the spray tube, it is impossible for what Dr. Cameron calls the “middle flat segment” to do anything *other* than serve in a mounting function. As such, the entire structure I have identified should be considered the “curved mounting portion.”

96. Finally, any argument by Dr. Cameron that the areas that even she concedes are “curved portions” nonetheless cannot be “mounting portions” must also be rejected. The curved portions indisputably connect the area to which the spray tube is mounted to the rest of the bottom wall, and this section serves to structurally support or “mount” the spray tube apparatus to the bottom wall.

11. Dr. Cameron’s Opinion that Samsung Does Not Infringe the ’681 Patent is Wrong.

97. I address each of Dr. Cameron’s non-infringement arguments regarding the ’681 Patent in turn. Beginning at Paragraph 97 of the Cameron Declaration, Dr. Cameron opines that the Accused Products do not infringe independent Claim 14 of the ’681 Patent, which reads (the Claim language that Dr. Cameron contends is not practiced by the Accused Products appears in

red text while the Claim language that she does not dispute is practiced by the Accused Products appears in gray):

14. An automatic dishwasher configured to implement an automatic treating cycle of operation, comprising:

14[a] a tub defining a dish treating chamber; and

14[b] a dish rack located within the dish treating chamber having a first end spaced from a second end and comprising a bottom wall from which extends a peripheral wall defining side walls of the dish rack, at the first end of the dish rack, the bottom wall has a first portion defined by a first substantially horizontal planar portion extending across a first portion of the bottom wall and **at the second end of the dishrack, a second portion is angled with respect to the first portion and defining a depression;** the depression extending lower than the first portion relative to the peripheral wall;

14[c] the first portion supporting a first set of utensil holders for supporting one or more utensils and the second portion defining a

98. I agree with Dr. Cameron that Asserted Claim 15 of the '681 Patent is dependent on Claim 14. Cameron Decl. ¶ 10. Thus, if the limitations of Claim 14 are not satisfied, the Accused Products do not infringe the '681 Patent.

i. The Accused Products do infringe Claim 14 of the '681 Patent because they do, among other things, include “a bottom wall” where, “at the second end of the dishrack, a second portion” of the bottom wall “is angled with respect to the first portion”

99. Dr. Cameron contends in Paragraphs 98–99 of her Declaration that the Accused Products do not meet the limitation of Claim 14[b] of the '681 Patent because they do not include “a bottom wall” where “at the second end of the dishrack, a second portion” of the bottom wall “is angled with respect to the first portion.” This again relies on Dr. Cameron’s argument, discussed above in the context of Claim 17 for the '385 Patent, that there is a purported “Horizontal Portion”

of the bottom wall that connects to the second end side wall, leading Dr. Cameron to conclude that the “upwardly angled portion of the bottom wall terminates well short of the side wall.” *See* Cameron Decl. ¶ 99. Specifically, she states that the requirement that the second portion of the bottom wall “is angled” “at the second end of the dishrack” is not satisfied. But, as noted above, Dr. Cameron ignores that the so-called Horizontal Portion *is angled upward at three degrees*. Accordingly, the claim limitation is satisfied; the second portion “is angled with respect to the first portion.” Thus, Dr. Cameron’s analysis should be rejected for the same reasons noted previously.

ii. The Accused Products do infringe Claim 15 of the ’681 Patent

100. Dr. Cameron relies exclusively on the dependency of Claim 15 on Claim 14 and the asserted failure of the Accused Products to practice Claim 14 to conclude that Claim 15 is likewise not infringed. But, as stated above, Claim 14 is infringed by the Accused Products.

H. Rebuttal to Dr. Cameron’s Opinion Regarding Invalidity

101. In this section of my rebuttal declaration, I state and explain my opinion that Dr. Cameron failed to show that the prior art addressed in her declaration invalidates any of the Asserted Claims of either the ’385 or ’681 Patents, as well as providing the bases for my opinions.

12. Overview of the Asserted References

i. German Patent No. DE6810173U (“Bosch”)

102. Bosch discloses dishwashers with a dish rack such that “the hollow vessels” are “placed in the dish rack at least approximately horizontally” Ex. K at 004. Bosch explains that prior to its teaching, “the device for spraying the dishes [wa]s usually located under the dish rack,” which was “disadvantageous” because “the spray jets are trapped in hollow containers and may cause light items such as cups and glasses to be lifted.” Ex. K at 003-004. Bosch further explained that “[t]hese items can easily be damaged when they subsequently drop back onto the dish rack.” *Id.* at 004. Bosch teaches designing and arranging the dish rack and spraying device of the

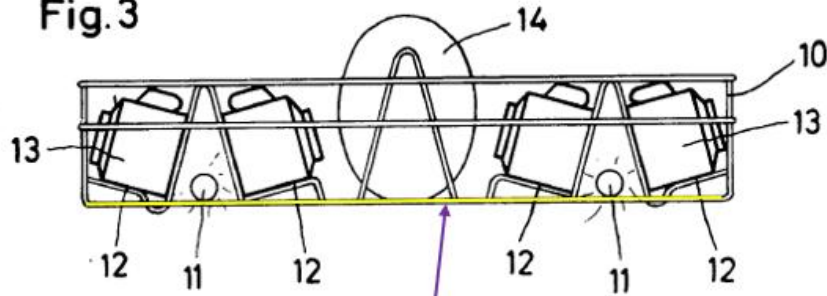
dishwasher to avoid this lifting and damage of the “lightweight hollow vessels” such that “the spray jets hit the inside of the hollow vessels placed in the dish rack at least approximately horizontally.” *Id.* at 004.

103. None of Bosch’s five claims includes a claim element that references inclined or angled portions, which is a key innovation disclosed repeatedly in Claim 17 of the ’385 Patent. In fact, Bosch’s first three claims teach that the “spray jets” “hit the inside of the hollow vessels placed on the dish rack at least approximately horizontally.” Ex. K at 008. The remaining two claims are focused on the spray tube. *Id.* at 009.

104. The bottom walls of the dish racks disclosed in the ’385 Patent and Bosch are also fundamentally different. The ’385 Patent discloses that “the angled portions” are “formed in the bottom wall,” 1:46–47, and are thus an integral part of the bottom wall. Put differently, the angled portions are not added or welded to the bottom wall. Rather, the bottom wall disclosed in the ’385 Patent is itself predominantly made of integrally formed angled or inclined portions.

105. By contrast, the bottom wall of Bosch’s dish rack is flat with no angled or inclined portions. A POSITA would understand that the portions to form the dish holders 12 in Figure 3 of Bosch are added-on or welded L shapes and are not formed as part of the bottom wall:

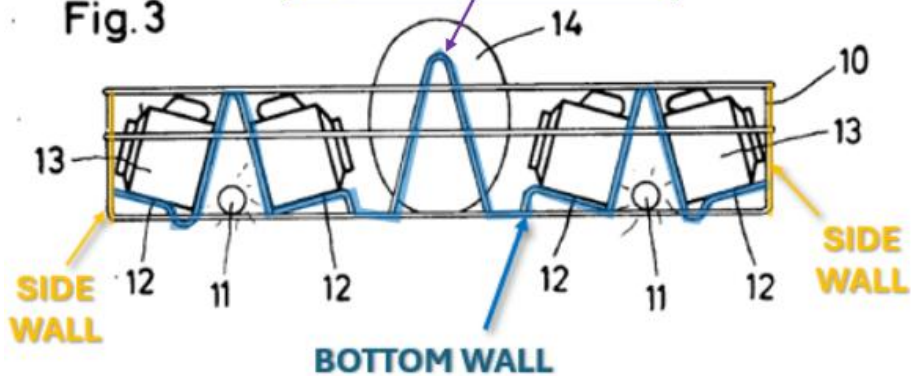
Fig.3



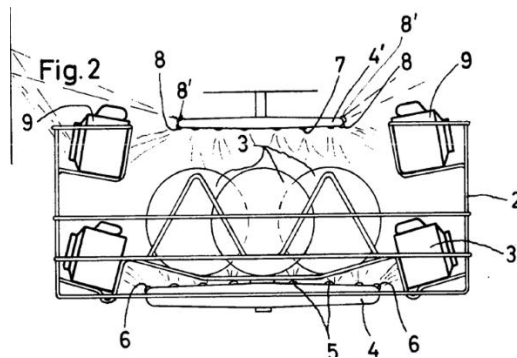
The yellow highlighted is what a POSITA would consider the bottom wall in Bosch's dish rack of Ex. K at 008

The blue highlighted is what Dr. Cameron calls a bottom wall. Bosch's dish rack of Ex. K at 008. A POSITA would strongly disagree with Dr. Cameron

Fig.3



106. Indeed, a POSITA examining FIG. 2 in Bosch will realize that the cup 9 is also mounted on the side of rack 2 (as shown below in FIG. 2) as a welded or add-on piece. The patent refers to that piece as “dish holder” 12 in rack 10 in FIG. 3 (also shown above), and none of the claims lists “dish holder” 12 in the elements.



ii. U.S. Patent Publication No. 2003/0192578 (“Ochoa”)

107. Ochoa focuses on a water spray system for a dishwasher. *See* Ochoa at 1:5–7 (disclosing, “in particular, []a dishwasher water spray system for more thoroughly washing and rinsing items in the lateral sides and corners of the dishwasher”). Ochoa does not reference any inclined or angled portions of a dish rack at all.

108. As Dr. Cameron acknowledges, the Examiner was aware of Ochoa during the prosecution of the ’385 Patent and specifically issued Independent Claim 17 over that reference. Cameron Decl. ¶¶ 23–26. The Examiner accepted Whirlpool’s statement that Ochoa does not “teach the details of upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall, wherein two adjacent inclined portions of the plurality of spaced apart inclined portions are configured to cradle a glass at an inclined angle and contoured portion.” *Id.* at ¶ 24.

109. Dr. Cameron erroneously states that Ochoa “teaches a curved mounting portion adjacent to which the spray tube is mounted.” Cameron Decl. at ¶ 170. Ochoa, however, has no disclosure on any curved mounting portion. To the extent that Dr. Cameron bases her opinion solely on what appears to be protrusions projecting upwards in FIG. 4, those protrusions are not disclosed as such in Ochoa’s claims. In fact, a POSITA would understand that the purpose of the protrusions is merely to create room for the spray tubes, not to cradle any cups. Both FIG. 3 (which is a plan view at line 3–3 of FIG. 2) and FIG. 4 (which is a front elevation view of the upper dish rack shown in FIG. 3) appear to confirm my understanding that the protrusions simply make space for the spray tubes. I note, however, that a POSITA would not even look to FIG. 3 and FIG. 4 in the first place because they are incomplete. FIG. 3, for instance, has unexplained missing lines.

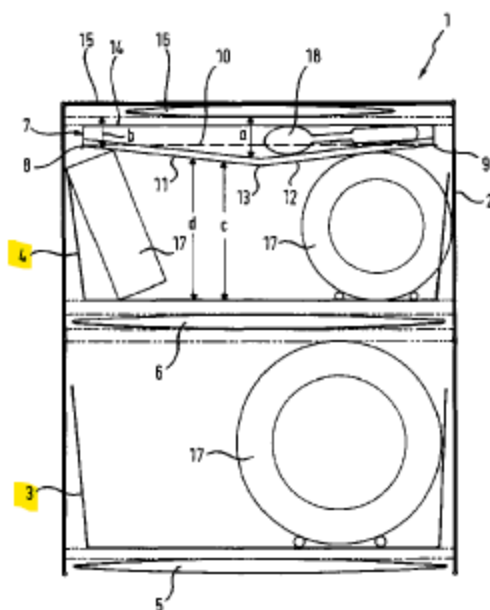
110. Dr. Cameron also emphasizes that Ochoa “teaches a dish rack comprising of a ‘wire basket constructed in a conventional manner with a plurality of crisscrossing and encircling wire segments connected to each other to provide space for supporting cups, glasses, small dishware, long utensils and the like **in the usual manner**.’” *Id.* at ¶ 169 (quoting Ochoa 3:2–9). This quote ending in the term “**in the usual manner**” emphasizes that the core teaching of Ochoa is not the dish rack but rather the water spray system. As to the dish rack, Ochoa merely notes that it is “conventional” and allows dishware and utensil to be loaded “in the usual manner.” It notes that the dish rack has “crisscrossing and encircling wire segments” without disclosing any manner in which the wire segments should “crisscross[] and encircl[e]” in order to create “inclined portions” that “cradle a glass at an inclined angle and prevent the glass from rolling and a contoured portion formed in the bottom wall configured to prevent glasses from sliding down the inclined angle.” ’385 Patent at 12:48–52. Ochoa discloses no invention to prevent rolling and sliding of glasses, and it discloses no inclined or angled portions of the dish rack on which to mount glasses.

iii. U.S. Patent No. 10,045,681 (“Schessl”)

111. Schessl teaches a “cutlery basket for holding items of cutlery in a horizontal position for use in a dishwasher” to optimize “utilization of space in the washing compartment” by “accept[ing] items of cutlery with larger dimensions.” Schessl at 1:28–33.

112. Schessl’s teachings about the cutlery baskets specifically contemplate that cutlery is loaded by itself in its own basket without other types of dishware. Schessl’s figure and specification expressly separate the “crockery basket” from the “cutlery basket” portions of the dishwasher. A POSITA would understand “crockery” as including cups and glasses contrary to “cutlery” that does not include cups or glasses.

LIST OF REFERENCE SYMBOLS



- 1 Dishwasher
- 2 Dishwasher compartment
- 3 Crockery basket
- 4 Crockery basket
- 5 Spray arm
- 6 Spray arm
- 7 Cutlery basket
- 8 Side edge
- 9 Side edge
- 10 Horizontal plane
- 11 Part area
- 12 Part area
- 13 Connecting edge
- 14 Upper edge of cutlery basket
- 15 Compartment roof
- 16 Spray arm
- 17 Dishes
- 18 Cutlery item (spoon)
- a Cutlery basket clearance height
- b Cutlery basket clearance height
- c Crockery basket clearance height
- d Crockery basket clearance height

113. A POSITA looking at Schessl would understand that the cutlery basket 7 is home for only cutlery, and although the center part of the basket has larger dimension a compared to side height b, the disclosed basket height b is not capable of accommodating cups or glasses. A POSITA would understand the fact that a is larger than b is to make room for the wider side of a typical cutlery such as spoon or a ladle, 18, disclosed in Schessl at 3:16–23.

114. I further note that Schessl does not teach a central spray tube for the cutlery basket. Indeed, Schessl does not show any specific location of any spray tube. Although Schessl does mention “spray arms,” labeled as Nos. 5, 6 and 16 in the lone figure, and to a POSITA, those would appear to be generic spray arms that are a component of any dishwasher. A POSITA thinking about innovative spray arm positioning (such as the spray tube positioned along the angled portion in the '385 Patent) would have no reason to look at Schessl, which is specifically about the cutlery basket and not a spray tube and angled portion arrangement. Likewise, a POSITA thinking about a dish rack for glasses would have no reason to look at Schessl, which is specifically about cutlery.

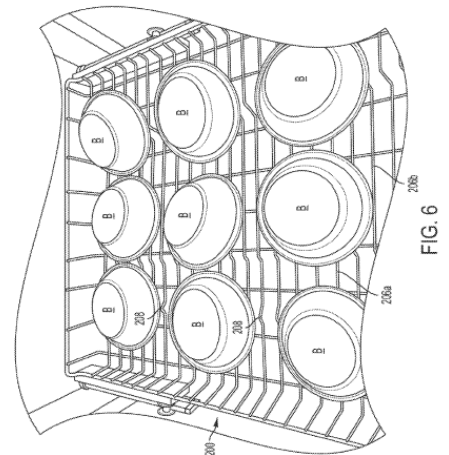
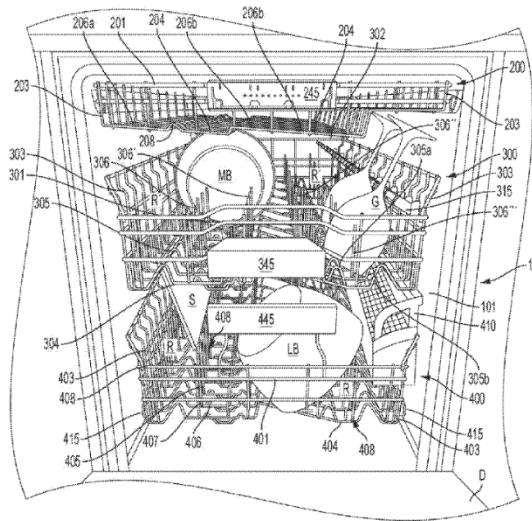
iv. U.S. Patent Appl. No. 15/423,617 (“Carr”)

115. Carr discloses a wire dishware and cutlery rack with “at least one angled portion that is configured to hold bowls.” Carr at 5:10. Carr teaches this angled portion to assist with draining water from the bowls. *Id.* at [0009]. Unlike the ’681 Patent, Carr does not teach an angle designed to accommodate tall cups in its top rack. Indeed, Dr. Cameron acknowledges that Carr is “configured to hold bowls.” Cameron Decl. ¶ 113.

116. Carr also teaches a notch section of the “third[] top washware rack” for utensils, which permits “stemmed wine glasses having a height of approximately 9 inches” to be stored directly below the third rack. Carr at [0009]. While glasses may fit below Carr’s top rack, unlike the ’681 Patent, Carr does not teach a top rack capable of accommodating glasses with ordinary dimensions.

117. The bottom walls of the dish racks disclosed in the ’681 Patent and Carr are also fundamentally different. The ’681 Patent discloses a bottom wall that creates cup seats. Carr does not teach an angled portion of the cutlery rack specifically designed to be a cup seat.

118. Carr also does not disclose two angled portions forming the opposing two angled portions disclosed in the ’681 Patent.



iv. Bosch 800 Series Brochure (“Bosch 800”)

119. As a preliminary matter, Dr. Cameron has failed to establish Bosch 800 as prior art to the claims in the '681 Patent. The Bosch 800 brochure referenced by Dr. Cameron depicts a third rack called a “MyWay rack” of the same configuration as Carr. Dr. Cameron implies that the MyWay rack was “available for purchase at least as early as May 2013” and “publicly available by no later than February 2019.” *See* Cameron Decl. ¶ 50. But, as discussed, she provides no evidence for this assertion. *See supra* note 3 (citing Cameron Decl. ¶ 50). Accordingly, it is my opinion that Dr. Cameron has failed to establish Bosch 800 as prior art to the claims in the '681 Patent.

120. Like Carr, Bosch 800's MyWay rack does not teach an angle that forms a cup seat in its top rack. Instead, Bosch 800 teaches a top rack devoid of cup seats that purports to be able to hold "cereal bowls, whisks, tongs, and large measuring cups."



17 Bosch Dishwashers

Load your way with the MyWay™ rack.

No matter how you like to load the dishes, MyWay™ helps you to do it your way. The Largest 3rd rack Bosch offers, the MyWay™ rack easily fits those hard-to-place items like cereal bowls, and large utensils. And for even more versatility, it also features a removable insert that holds up to 18 pieces of flatware. But that's only half the story.

Unlike traditional 3rd racks, the MyWay™ rack offers more room for more kinds of items, such as cereal bowls, whisks, tongs, and large measuring cups, creating more freedom in loading below. It opens up a whole new range of loading possibilities throughout the dishwasher. By putting things like bowls and tids up top instead of in the bottom rack, it frees up more space for your larger pots and pans. With MyWay™, you can load your dishes the way you see fit.

121. Like Carr, Bosch 800 includes a notch section of the MyWay rack for utensils which allows for taller items like glasses to be stored below the rack. Here, too, unlike the '681 Patent, Bosch 800's MyWay rack is not configured to accommodate cups and glasses of ordinary dimensions being stored in its top rack.



MyWay™ rack

MyWay™ offers more room for more kinds of items in the top rack, such as cereal bowls, whisks, tongs, and large measuring cups, creating more loading freedom below.

122. Further, the bottom walls of the dish racks disclosed in the '681 Patent and Bosch 800 are different. Bosch 800's MyWay rack does not include an angled portion of the rack

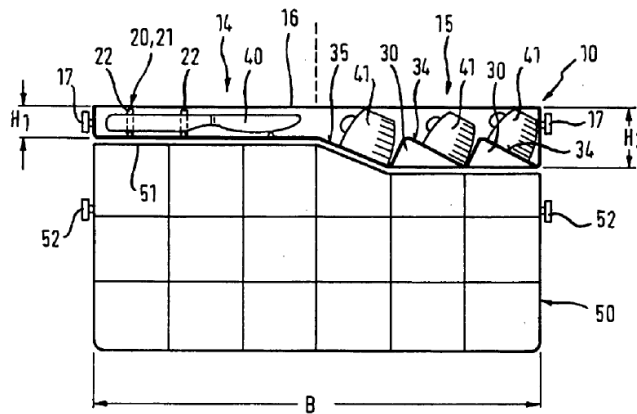
specifically designed to be a cup seat which supports glasses and cups of ordinary dimension along their cylindrical edge.

iv. U.S. Patent Appl. No. 11/667,718 (“Mailander”)

123. Mailander discloses a “washing items support.” Unlike the ’681 Patent’s three portion structure, Mailander has only two regions: (1) a cutlery container region, and (2) a region with wedge shaped incline to support surfaces referred to as “washing items holders” which are inclined. Mailander at [0011]. Furthermore, “the washing items holders” are wedge or L-shaped add-on components that are not part of the wire rack but rather “designed as inserts” and “releasably inserted” and placed on the bottom wall of the dish rack contrary to the “formed angled portions” built into the bottom wall of the dish rack disclosed in the ’681 Patent and practiced by the Accused Products. *See id.* at [0028]. Mailander also does not disclose a spray tube mounted on the dish rack.

124. Unlike the depression disclosed in the ’681 Patent, Mailander’s wedge-shaped “washing items holders” are not integrated into the bottom wall of the Mailander rack. Instead, they sit atop the bottom wall. A POSITA looking at the washing items holders of Mailander would understand that these components are add-on components and not generated by forming the bottom wall. Also, Mailander does not disclose first and second angled portions formed in the bottom rack. *See id.*

125. Because Mailander’s “washing items holders” are not integrated into the bottom wall, there is wasted space within Mailander’s “washing items support” triangular areas trapped under the L-shaped components and the horizontal bottom wall. As a result, unlike the rack disclosed in the ’681 Patent, Mailander cannot accommodate glasses or cups having ordinary dimensions:



v. China Patent Appl. No. 201610943203.3 (“Cao”)

126. Cao discloses a reconfigurable knife-and-fork tray assembly for a dishwasher. *See* Cao at [0001]. The assembly consists of a tray body with a static portion and a portion with a connecting-rod bracket and crank bracket over an opening in the tray. *See id.* at [0005].

127. Cao further discloses that these components can switch between defined positions to either (1) close the opening like a traditional utensil tray or (2) jointly define a recessed cavity. *See id.* at [0006]. But unlike the ’681 Patent, Cao does not disclose angled portions defining a depression that is formed into the structure of a dish rack. *Id.*

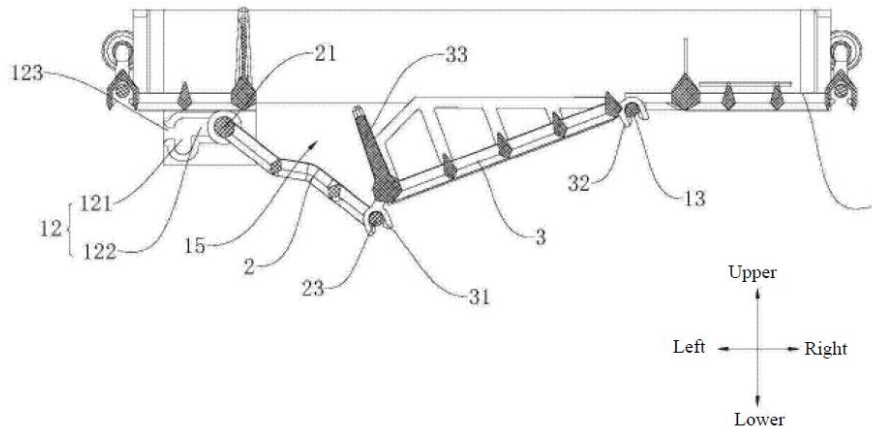
128. Cao teaches that when the cavity is formed, the tray assembly can accommodate items having slightly greater volumes than knives and forks, and spoons, such as eggbeaters or teacups. *Id.* But unlike the ’681 Patent, Cao does not disclose cup seats with the ability to accommodate full-sized cups and glasses supported on their cylindrical edge. The cavity in Cao is a result of reconfiguration of the rack using moving parts. *See id.* In the ’681 Patent, all angled portions are permanent formations in the bottom wall with much larger volumes to accommodate tall glasses.

129. A POSITA would understand that Cao’s reconfigurable rack is made from injection-molded plastic components. A POSITA looking at Cao’s injection-molded plastic rack

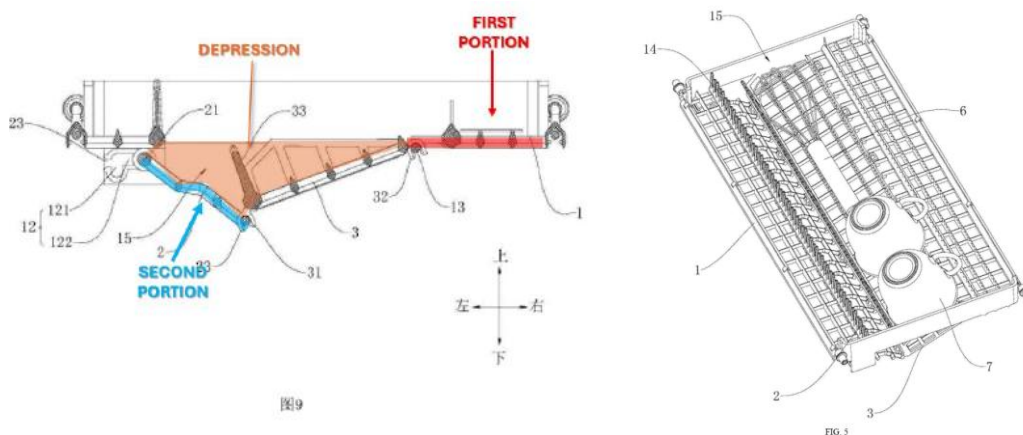
with many moving parts will be discouraged to consider Cao's disclosed design. In addition, a POSITA would be discouraged to use a plastic component for a structural function like the bottom wall of the dish rack compared to using stronger steel wire. A POSITA would know that a plastic dish rack bottom wall may sag and deform due to hot water, steam, and drying heat, all of which are indications of unfavorable use of plastic. A POSITA would use plastic components for trays, inserts, and add-on items that are supported by steel or metallic alloy bottom walls. But a POSITA would not consider combining Cao's injection-molded plastic design with Dr. Cameron's Asserted References because such combination would perform poorly or be inoperable.

130. The '681 Patent and Cao are fundamentally different in structure. As discussed, the '681 Patent discloses a bottom wall that creates cup seats. Cao does not disclose an angled portion of the rack specifically designed to be a cup seat which supports cups along their cylindrical edge.

131. Cao also does not disclose a spray tube integrated with the rack that resides within the bottom of the depression. Unlike Cao, the '681 Patent discloses a spray tube that is mounted on the rack and able to move with the rack during pulling and pushing the rack on its side rails in the longitudinal direction. A POSITA looking at the moving parts to reconfigure Cao's rack would understand that it is highly impractical and not feasible to mount a spray tube on a rotating and sliding "connecting rod bracket" part or rotating "crank bracket" within the dishwasher. Cao at [0005].



132. Finally, Cao does not teach a second portion defining a cup seat. Indeed, the “second portion” identified in Dr. Cameron’s declaration is the shorter part of Cao’s reconfigurable recess mechanism, not the lengthier part along which teacups can be placed face down—as opposed to along their cylindrical edge. Thus, even if Cao had a cup seat, that cup seat would not be defined by its second portion as in the ’681 Patent.



13. Dr. Cameron’s Opinion that the ’385 Patent is Invalid is Wrong.

i. Bosch in view of Ochoa does not render obvious Claims 17 and 21

a. No Motivation to Combine Bosch and Ochoa

133. I disagree with Dr. Cameron that a POSITA would have had motivation to combine the teachings of Bosch and Ochoa. Dr. Cameron writes that both of these references are generally

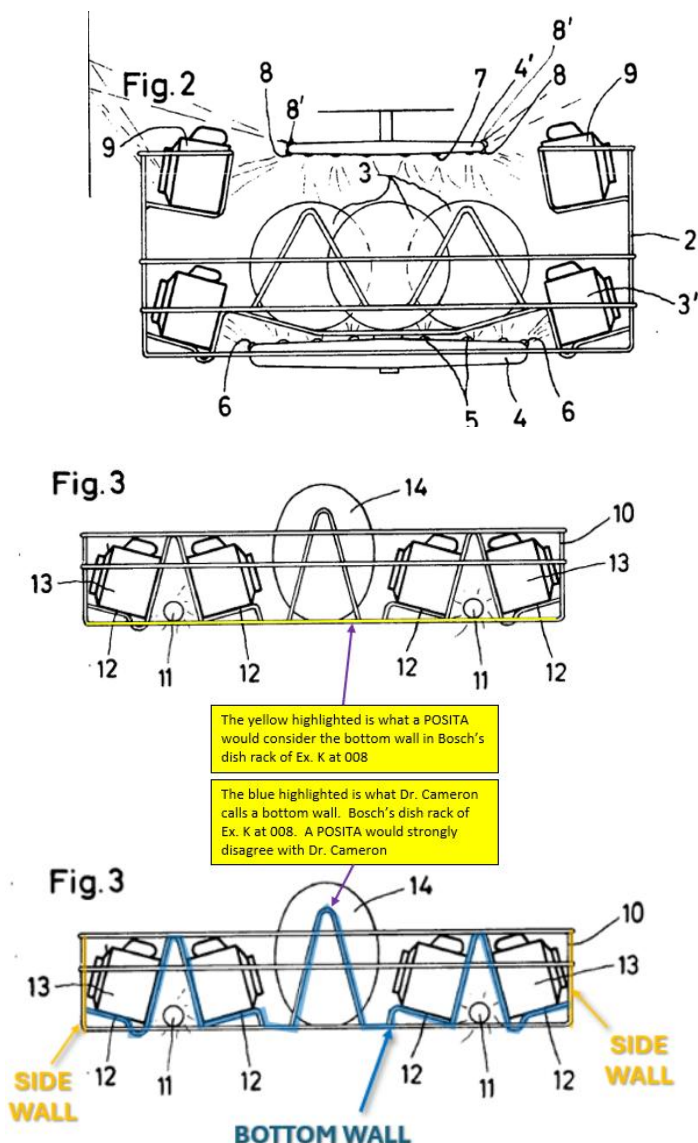
directed to a dish rack of a dishwasher. However, Ochoa is directed specifically to a water spray system for a dishwasher. Further, the core teaching disclosed in Bosch does not solve the problems addressed by the '385 Patent (including but not limited to the problem of the rolling and sliding of glasses on a dish rack, the problem of most space in household dishwasher tubs being taken up by two racks or, at most, two racks and a third shallow rack for only silverware and other low-profile utensils, etc.). A POSITA would not have looked to two references, neither of which solve the problems addressed by the '385 Patent, for the innovations disclosed in that Patent. Dr. Cameron's use of Bosch and Ochoa is the antithesis of a proper obviousness analysis; using impermissible hindsight, she searches the prior art to retroactively piece together isolated features. Even if a POSITA would have had motivation to combine Bosch and Ochoa (which he would not have), the combination does not address the problem that the '385 Patent addresses for the reasons below.

b. Claim 17[C(iii)]: with an upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall

134. Bosch's dish rack does not include an upwardly angled portion formed in the bottom wall. As discussed above, Bosch focuses on the spray jets of the dishwasher and the fact that the liquid from the jets "hit the inside of the hollow vessels placed on the dish rack at least approximately horizontally." Ex. K at 008. Further, the "dish holders" in Bosch's dish rack are not "formed in the bottom wall," but rather are added-on or welded L shapes that are distinct from the bottom wall. Thus, even if Bosch has "upwardly angled portions" or "a plurality of spaced apart inclined portions," they are not integrally formed in the bottom wall.⁵

⁵ As noted above, a POSITA examining FIG. 2 in Bosch will realize that the cup 9 is also mounted on the side of rack 2 (as shown above in FIG. 2) as a welded or add-on piece. The

135. As illustrated in the annotated FIG. 3 below, the yellow highlighted—not the zig-zag line annotated in Dr. Cameron’s report—is what a POSITA would consider the bottom wall in the Bosch dish rack. Ex. K at 008.



136. Dr. Cameron acknowledges that the figures in Bosch do not make visible “a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall.” See Cameron Decl. ¶ 180. Nonetheless, she opines that a POSITA would have been

patent refers to that piece as “dish holder” 12 in rack 10 in FIG. 3 and none of the claims lists “dish holder” 12 in the elements.

motivated to look to Ochoa for this disclosure not found in Bosch. I disagree. Once again, the core teaching in Ochoa is not a dish rack but rather a water spray system. Ochoa discloses a “wire basket constructed in a conventional matter with a plurality of crisscrossing and encircling wire segments connected to each other” “*in the usual manner.*” Ochoa at 3:2-9. However, this “conventional” or “usual” disclosure nowhere teaches that the bottom wall comprises a plurality of spaced apart *inclined* portions,” as required by Claim 17. Indeed, the last sentence of Paragraph 180 of Dr. Cameron’s declaration notes only that “Ochoa’s wire basket shows a plurality of spaced apart portions forming the bottom wall (red) and terminating at the side wall (yellow)” with no mention of the required plurality of space apart *inclined* portions. FIG. 19 of Ochoa likewise does not disclose this claim limitation because the sloped portion of the bottom wall that terminates at the side wall in that figure is at a *decline*, not an *incline*, as they terminate at the side wall. In other words, Ochoa discloses a plurality of spaced apart *declined* portions and terminating at the side wall. FIG. 19 confirms that the sloped portions are not *upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall.*

- b. *Claim 17 [C(iv)]: wherein two adjacent inclined portions of the plurality of spaced apart inclined portions are configured to cradle a glass at an inclined angle and prevent the glass from rolling*

137. Bosch does not teach that “two adjacent inclined portions are configured to cradle a glass at an angle and prevent the glass from rolling.” As discussed above, Bosch focuses on the spray jets of the dishwasher and the fact that the liquid from the jets “hit the inside of the hollow vessels placed on the dish rack at least approximately horizontally.” Ex. K at 008. Further, the protrusions in Bosch’s dish rack are not “formed in the bottom wall,” but rather are added-on or

welded L shapes to the bottom wall. Not only do the welded protrusions not form the bottom wall, but they also do not cradle a glass to prevent it from rolling.

138. Ochoa does not disclose the “concept” of having a plurality of spaced apart inclined portions making up the bottom wall. Once again, Dr. Cameron conspicuously omits reference to Claim 17’s requirement that spaced apart portions be inclined portions. Dr. Cameron’s omission of Claim 17’s requirement that spaced apart portions be inclined lacks rigor and disregards the claims of the Asserted Patent. Figure 19 likewise does not disclose a plurality of spaced apart inclined portions terminating at the side wall.

139. Further, Dr. Cameron posits that a “POSITA would not expect a cup such as that seen in Fig. 3 to be able to perfectly balance on only one wire but rather would understand the cup to rest on multiple inclined wire structures.” Cameron Decl. ¶ 182. But even if Dr. Cameron were correct that a POSITA would not expect a cup to balance on a single wire, she does not explain why balancing on two or more wires would necessarily dictate that those wires also be inclined. Dr. Cameron’s renaming of “dish holders” disclosed in Bosch as “cup holders” is not supported by proper disclosure references but appear to be her own descriptions. Furthermore, the “dish holders” of Bosch are not formed angled portions of the bottom wall but rather added-on L shapes as discussed above. By contrast, the spaced apart inclined portions disclosed and claimed in the Asserted Patent are a series of angled portions formed in the bottom wall and terminating at the side wall making the spaced apart angled portions to cradle the glasses and prevent them from rolling. That feature is not disclosed in either Bosch or Ochoa.

c. Claim 17[C(v)]: a contoured portion formed in the bottom wall configured to prevent glasses from sliding down the inclined angle; and

140. Bosch does not teach “a contoured portion formed in the bottom wall configured to prevent glasses from sliding down the inclined angle.” As discussed above, Bosch focuses on the

spray jets of the dishwasher and the fact that the liquid from the jets “hit the inside of the hollow vessels placed on the dish rack at least approximately horizontally.” Ex. K at 008. Further, the protrusions in Bosch’s dish rack are not “formed in the bottom wall,” but rather are added-on or welded L shapes to the bottom wall. These protrusions are not contoured portions.

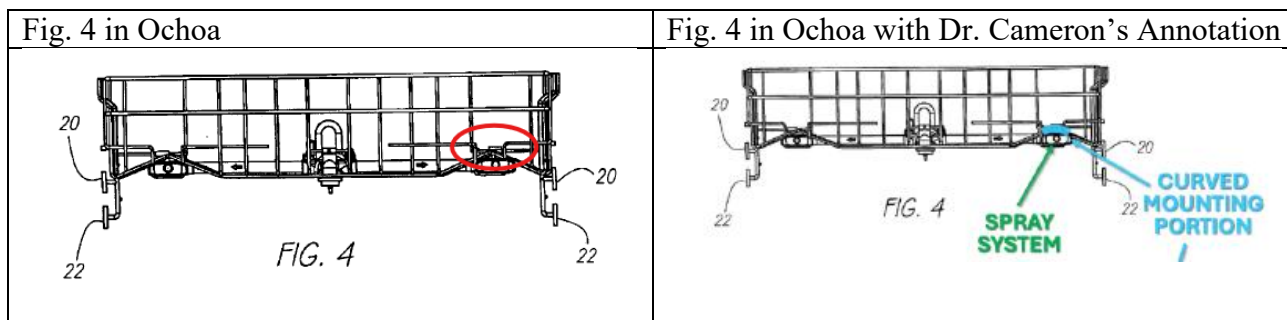
d. Claim 17[D]: a spray tube having nozzles emitting spray along the angled portion;

141. Although Bosch discloses two spray tubes, it does not disclose that there is an angled portion formed in the bottom wall of the dish rack for the reasons discussed above. For this reason, it does not teach a spray tube having nozzles emitting spray along the angled portion. A POSITA looking at Bosch lacking angled portions formed in the bottom wall, and Ochoa lacking a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall, would not be motivated or able to combine Bosch and Ochoa to arrive at the teaching of this asserted claim.

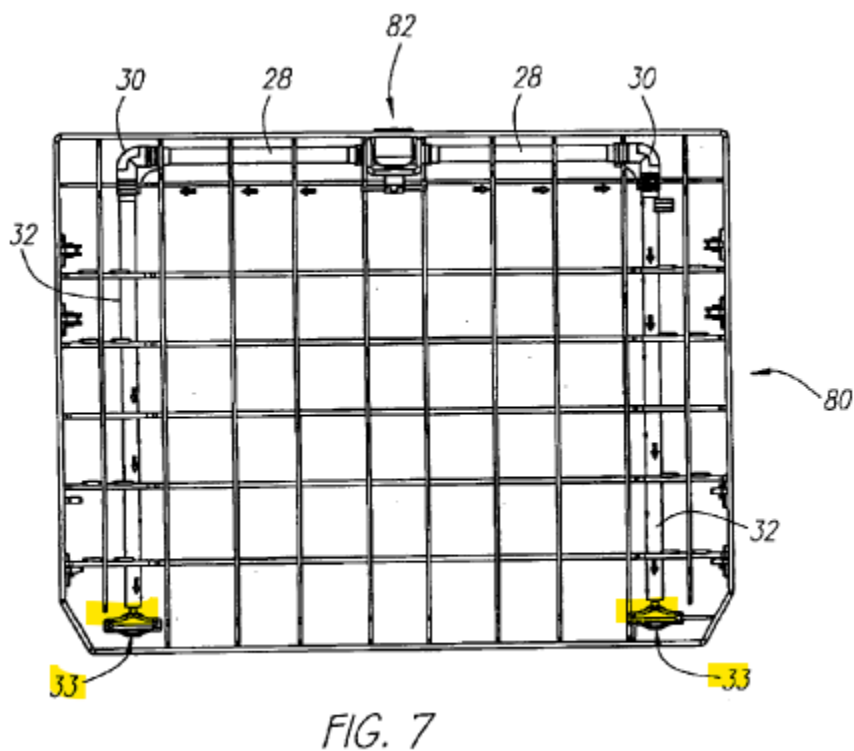
e. Claim 17[E]: wherein the contoured portion is further configured to form a curved mounting portion adjacent which the spray tube is mounted such that the spray tube is carried with the dish rack.

142. Bosch in view of Ochoa does not teach this claim element. I agree that Bosch discloses spray tubes that are arranged “fixedly” within the dish rack, but those tubes are mounted to the flat bottom wall, not to any curvature. Ochoa also does not teach a “curved mounting portion.” Dr. Cameron relies on FIG. 4 of Ochoa to say that Ochoa discloses this claim element, but that figure shows no curved mounting portion. Rather, it shows a protrusion to create space for the spray tube. Dr. Cameron appears to have drawn in a curved portion to the figure when the figure itself does not show curves. Furthermore, a POSITA looking at Figure 4 of Ochoa will have a hard time imagining mounting a cup or a glass in the space between the protrusion and the side wall. A POSITA looking at Figure 4 of Ochoa would understand the protrusion is in the

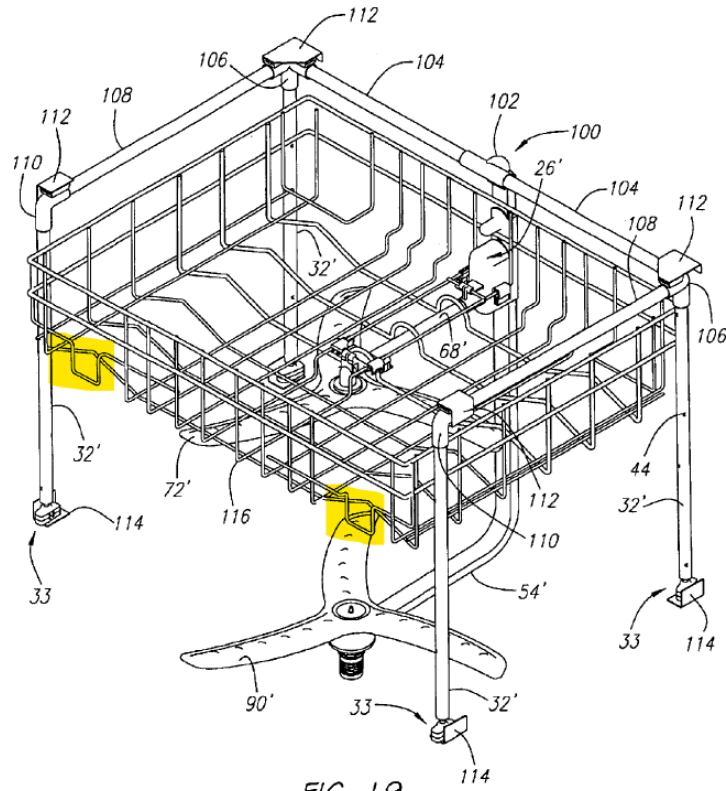
bottom wall to house the spray tube and has no function similar to the curved mounting portion of preventing glasses (absent from Ochoa) from sliding as required by the asserted Claim 17.



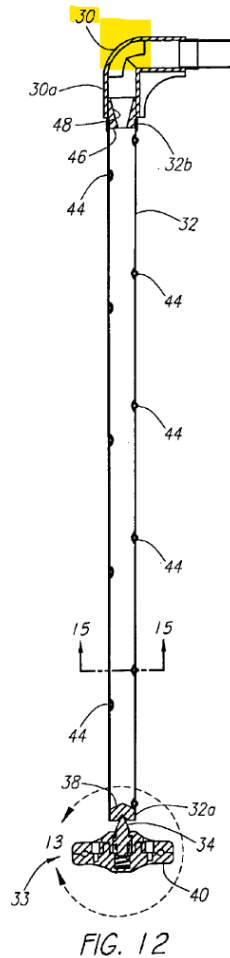
143. Even if Ochoa discloses a curved mounting portion, which it does not, the sprayer in Ochoa is not mounted to such a portion. As shown in FIG. 7 of Ochoa, the sprayer is mounted to the front at “support mechanism 33”:



This mounting placement is also visible in Figure 19 of Ochoa, which discloses wire drop-downs for holding sprayers at the front of the rack:



At the back of the rack, the sprayers are held by “elbow 30” as shown in Figure 12:



Nothing in Ochoa discloses or even suggests that the sprayer is mounted from above.

- a. Dependent Claim 21: The dishwasher of claim 17 wherein at least one of the nozzles is located above a portion of the angled portion.

144. Bosch in view of Ochoa does not teach this dependent claim at least because, for the reasons discussed above, they do not teach every element of Independent Claim 17.

ii. Bosch in view of Ochoa and Schessl does not render obvious Claims 18 through 20

- a. No Motivation to Combine Bosch, Ochoa, and Schessl

145. I disagree with Dr. Cameron that a POSITA would have had motivation to combine the teachings of Bosch, Ochoa, and Schessl. Dr. Cameron writes that a POSITA would have been motivated to combine Bosch and Ochoa because they are both generally directed to a dish rack

of a dishwasher. However, Ochoa is focused on a water spray system for a dishwasher. Further, the core teaching of Bosch does not solve the problems addressed by the '385 Patent (including but not limited to the problem of the rolling and sliding of glasses on a dish rack, the problem of most space in household dishwasher tubs being taken up by two racks or, at most, two racks and a third shallow rack for only silverware and other low-profile utensils, etc.). A POSITA would not have looked to two references, neither of which solve the problems addressed by the '385 Patent, for the innovations disclosed in that Patent.

146. Furthermore, Claims 18 through 20 of the '385 Patent are directed to a low-profile dish rack. Neither Bosch nor Ochoa have anything to do with low-profile dishracks. In fact, even FIG.3 of Bosch, which portrays the lowest-profile view of the dishrack, still shows a standing large plate 14, indicating it is not meant to be a low profile rack.

147. Next, a POSITA would also have had no motivation to combine either Bosch or Ochoa with Schessl. As discussed above, Schessl discloses specifically a “cutlery basket” within a dishwasher that maximizes utilization of space for the cutlery basket. As Dr. Cameron acknowledges, Schessl nowhere discloses that one rack or basket can be used for both cutlery and crockery. Instead, it contemplates a crockery basket “arranged below” the cutlery basket. While Bosch, Ochoa, and Schessl relate to dishwashers at a high level, they are each directed at different components or problems of a dishwasher: Bosch is directed at the problem of the lifting and damaging of lightweight hollow vessels, Ochoa is directed at the water spray system, while Schessl is directed at the cutlery basket of a dishwasher. Dr. Cameron offers no opinion or reason at all on why a POSITA would be motivated to combine these three *specific* references.

- b. Dependent Claim 18: The dishwasher of claim 17 wherein the dish rack is a low profile dish rack where the length of the angled portion is greater than a shortest height of an upstanding portion of the side wall.

148. Bosch in view of Ochoa and Schessl does not render Claim 18 obvious. Neither Bosch nor Ochoa teach a low-profile dish rack where the length of an angled portion (absent in Ochoa and not formed in the bottom wall in Bosch) is greater than the shortest height of an upstanding portion of the side wall. To the contrary, the add-on L-shaped components in Bosch are shorter than the side wall in Bosch. As for Schessl, I agree that Schessl teaches a low-profile dish rack but specifically for cutlery, not for dishes and glasses, or what it calls “crockery.” Likewise, the design of Schessl is such that the length of the angled portion is greater than the length of the side wall, but this design is possible only because Schessl’s dish rack is for cutlery and because cutlery is shallow. Put differently, someone could not load a cup into Schessl’s cutlery basket and maintain both its design as a low-profile dish rack and its design where the length of the angled portion is greater than the length of the side wall. In order to accommodate a glass, the dish rack would necessarily require greater depth in the middle (a deeper V shape), which means that the Schessl cutlery basket would lose its low profile nature. Alternatively, the sloped portion would have to be repositioned (e.g., such as in Figure 4 of Ochoa) such that the length of a formed-in-bottom-wall angled portions, absent in both Ochoa and Bosch, would no longer be shorter than the length of the side wall. Furthermore, a POSITA would not be able to view Ochoa and Schessl and Bosch lacking all claim elements of dependent claim 18 while keeping Schessl’s low profile.

149. Given that Schessl is specifically directed toward cutlery or utensils, a POSITA looking to design a dish rack for glasses would have had no motivation to look to Schessl, let alone to combine Schessl with other references.

- c. Dependent Claim 19: The dishwasher of claim 18 wherein at least one of the nozzles is located above a portion of the angled portion.

150. Bosch in view of Ochoa and Schessl does not teach this dependent Claim 19 because none of these references teaches a nozzle located above a portion of the angled portion. First, Schessl does not disclose any spray tube or nozzle for its cutlery basket. Second, for the reasons discussed above, neither Bosch nor Ochoa, separately or in combination, teaches an angled portion specifically and integrally formed in the bottom wall. Specifically, to the extent that Dr. Cameron opines that the protrusions projecting upwards in Figure 4 of Ochoa are “curved mounting portions,” those protrusions are not disclosed as such in Ochoa itself. Further, a POSITA would understand that the purpose of the protrusions is merely to create room for the spray tubes. Even assuming that the protrusions in Figure 4 of Ochoa are curved mounting portions, which they are not, the spray tube (and the nozzles conceivably on that tube) cannot be located above the already absent angled portions in Ochoa.

- a. Dependent Claim 20: The dishwasher of claim 18 wherein the shortest height is located along a portion of the side wall transverse to the angled portion.

151. Bosch in view of Ochoa and Schessl does not teach this dependent claim at least because, for the reasons discussed above, they do not teach Claim 18. In addition, neither Bosch nor Ochoa disclose a dishwasher whose shortest height is located along a portion of the side wall transverse to the angled portion. As to Schessl, as discussed above, Schessl is specifically directed to a cutlery basket, and a POSITA looking to design a dish rack for glasses would have had no motivation to look to Schessl, let alone to combine Schessl with other references. The shallow cutlery basket in Schessl has its shortest height located along a portion of the side wall transverse to the cutlery accommodating angled portion. However, this design is possible only because Schessl’s dish rack is for cutlery and because cutlery is shallow. Put differently, someone could

not load a cup into Schessl's cutlery basket and maintain its design where the shortest height is located along a portion of the side wall transverse to the angled portion. Additionally, the center height a being larger than the shallow side wall height b is disclosed in Schessl to make room for large heads of spoons and ladles. Therefore, Schessl does not disclose mounting cups or glasses or crockery in its shallow basket. In other words, the apparent incline in Schessl is making room for spoons and ladles not adequate for glasses and cups.

14. Dr. Cameron's Opinion that the '681 Patent is Invalid is Wrong.

152. For the reasons stated below, none of the references cited by Dr. Cameron, whether alone or in combination, render invalid the '681 Patent.

i. Carr does not anticipate or render obvious Claims 14 and 15

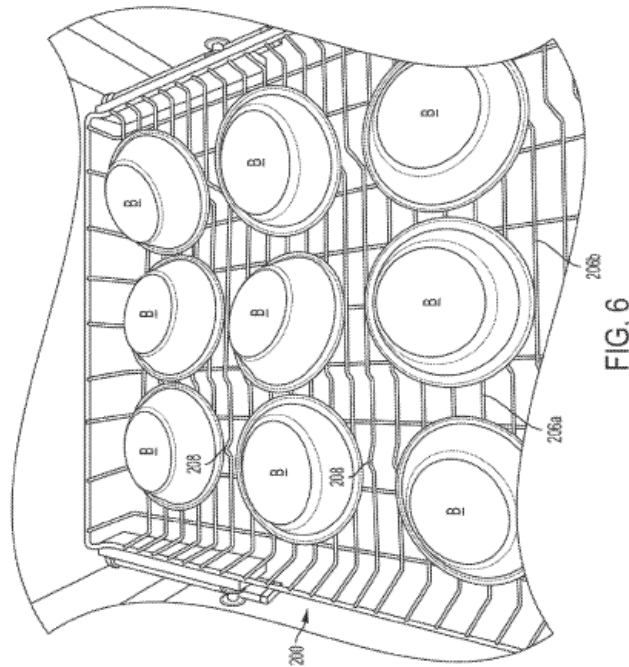
153. Dr. Cameron opines that Carr anticipates or renders obvious Claims 14 and 15 of the '681 Patent. I disagree because Carr does not disclose the limitations of those claims alone or in combination.

a. Claim 14[B(vi)]: the second portion defining a cup seat for supporting one or more cups in the depression.

154. Carr does not teach a cup seat. Instead, Carr discloses a wire dishware and cutlery rack which includes "an angled portion to hold bowls"—critically distinct from the "cup seat for supporting one or more cups" that is disclosed in Claim 14 of the '681 Patent. Indeed, Dr. Cameron and I agree that Carr's dish rack is "configured to hold bowls." Cameron Decl. ¶ 48.

155. Dr. Cameron presses that while Carr uses bowls, its top rack can also hold cups. *See* Cameron Decl. ¶ 120. Dr. Cameron's reliance on Carr's singular mention of "cups" is unavailing. Even if cups could be placed on Carr's third rack, Carr does not teach a third rack containing "cup seat[s]" as disclosed in Claim 14 of the '681 Patent. The cup seat disclosed in Claim 14 of the '681 Patent is capable of securely supporting glasses and cups of ordinary dimension along their cylindrical side. There is nothing analogous in Carr. Indeed, a POSITA

would not consider Carr's bowl-based top rack design to teach a cup seat as disclosed in the '681 Patent.

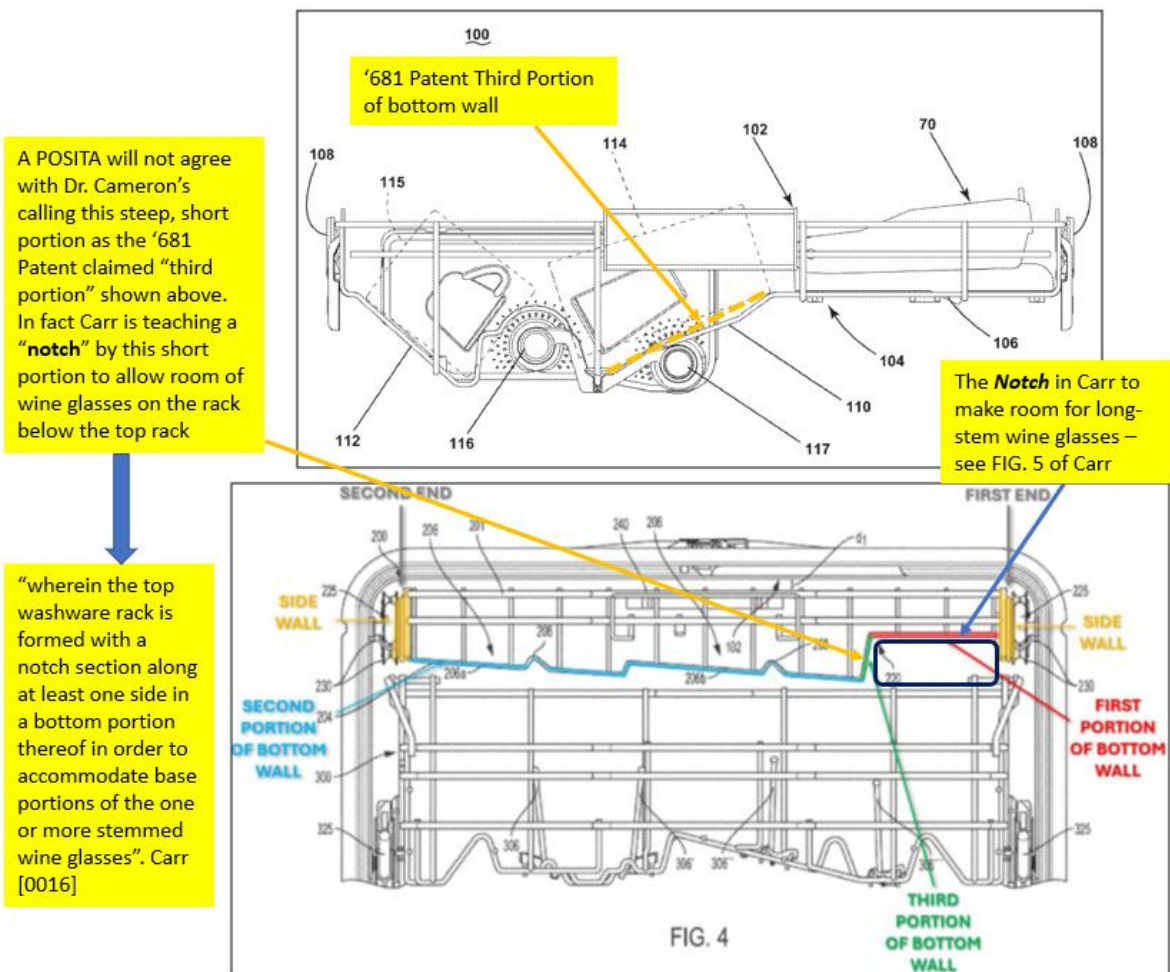


b. Dependent Claim 15 [A]: The automatic dishwasher of claim 14, further comprising a third portion of the bottom wall defined by an angled third planar portion relative to the substantially horizontal first portion and extending across a third portion of the bottom wall;

156. Carr does not teach a third portion in the bottom wall of its top rack. Instead, Carr discloses a top rack to two portions: (1) a “notch section” for cutlery and utensils, and (2) an “angled portion that is configured to hold bowls.” Carr at [0018] - [0019]. By contrast, Claim 15 of the '681 Patent disclose a minimum of three portions of the top rack: (1) “the first portion supporting a first set of utensil holders,” (2) a “second [angled] portion defining a cup seat for supporting one [or] more cups in the depression,” and (3) an “angled third planar portion . . . extending across a third portion of the bottom wall . . . and extending from the first portion and

angled away from the first portion.” ’681 Patent at 13:4-14. Carr does not teach a third angled portion.

157. Dr. Cameron construes the short substantially vertical wall between the “notch section” and the remainder of the bottom wall in Carr as an angled “third portion.” But that characterization is misleading and belied by the text of Carr. As shown in the figures of the ’681 Patent, each “portion” disclosed in the Asserted Claims is designed to be able to securely hold items for washing. Dr. Cameron’s purported third portion in Carr’s third rack cannot. Moreover, Dr. Cameron’s purported third portion plainly does not “extend[] across” part of the bottom wall as required in Claim 15. Thus, Carr does not teach the third angled portion limitation in Claim 15 of the ’681 Patent.



c. Claim 15 [B]: the third portion connected to and extending from the first portion and angled away from the first portion;

158. Carr does not teach a third portion connected to and extending from the first portion and angled away from the first portion. Dr. Cameron presses a purported short substantially vertical “third portion” in Carr extends from the first portion and is angled away from the first portion. But as discussed above, Carr discloses no functional third portion as disclosed in the ’681 Patent. Thus, this claim limitation is not met.

*ii. **Bosch 800 Series does not anticipate or render obvious Claims 14 and 15***

159. The Bosch 800 brochure referenced by Dr. Cameron depicts a third rack called a “MyWay rack” of the same configuration as Carr. Dr. Cameron opines that Bosch 800 anticipates or renders obvious Claims 14 and 15 of the ’681 Patent. I disagree because Bosch 800 fails to disclose many of the limitations of those claims alone or in combination.

a. Claim 14[B(vi)]: the second portion defining a cup seat for supporting one or more cups in the depression;

160. Bosch 800 does not teach a cup seat. Like Carr, the Bosch 800’s MyWay rack teaches a wire dishware and cutlery rack that includes a slightly angled (substantially horizontal) portion which does not have a “cup seat for supporting one or more cups” as disclosed in Claims 14 of the ’681 Patent. Instead, Bosch 800 purports to be able to hold “cereal bowls, whisks, tongs, and large measuring cups.”



MyWay™ rack

MyWay™ offers more room for more kinds of items in the top rack, such as cereal bowls, whisks, tongs, and large measuring cups, creating more loading freedom below.

161. Dr. Cameron makes much of the fact that Bosch 800 purports to be able to hold *measuring cups*” in its MyWay rack. But shallow measuring cups are not at the same height and depth as regular cups. Indeed, Bosch 800 shows taller glass cups on a rack below the third rack. Regardless, even if “measuring cups”—fit in the Bosch 800 MyWay rack, Bosch 800 **does not** teach a third rack containing “cup seat[s]” as disclosed in Claims 14 of the ’681 Patent. Bosch 800 discloses an even more remote arrangement to the purpose of the angled portions in the asserted patent. A POSITA looking at all disclosed pictures in Bosch 800 will notice that all bowls are mounted face down on the single slightly angled portion, a contrast to the way the angled portion in Claim 14 of the ’681 Patent is meant to mount glasses and cups on their cylindrical sides with opening facing downward in the formed-in-bottom-wall angled portions. *See*, e.g., FIG. 3 of the ’681 Patent. Bosch 800 does not contain an angled portion designed to be a cup seat which supports glasses and cups along their cylindrical edge. Thus, a POSITA would not consider Bosch 800’s top rack design to teach a cup seat as disclosed in the ’681 Patent.



- b. Claim 15 [A]: The automatic dishwasher of claim 14, further comprising a third portion of the bottom wall defined by an angled third planar portion relative to the substantially horizontal first portion and extending across a third portion of the bottom wall;

162. Like Carr, Bosch does not disclose a third portion in its MyWay rack. As discussed, the '681 Patent disclose a minimum of three portions of the top rack: (1) “the first portion supporting a first set of utensil holders,” (2) a “second [angled] portion defining a cup seat for supporting one of more cups in the depression,” and (3) an “angled third planar portion . . . extending across a third portion of the bottom wall . . . and extending from the first portion and angled away from the first portion.” '681 Patent at 13:4-14.

163. As in Carr, Dr. Cameron construes the short substantially vertical wall between the MyWay rack’s “flatware section” and the remainder of the rack’s loading area as an angled “third portion.” And just as in Carr, that characterization is belied by the structure of the Bosch 800 MyWay Rack. As discussed, each “portion” disclosed in the Asserted Claims of the '681 Patent can hold items for washing. Dr. Cameron’s purported third portion in the Bosch 800 MyWay rack cannot. Thus, Dr. Cameron’s third-portion argument finds no support in the design of Bosch 800.

iii. Mailander in view of Cao does not render obvious Claims 14 and 15

a. No Motivation to Combine Mailander and Cao

164. Dr. Cameron opines that Mailander in view of Cao renders obvious Claims 14 and 15 of the '681 Patent. I disagree with Dr. Cameron that a POSITA would have been motivated to combine the teachings of Mailander and Cao. Dr. Cameron writes that both of these references are directed to a top dish rack of a dishwasher. Not so. Mailander does not specifically depict a top dish rack. Instead, it describes a “washing items support,” which is not necessarily positioned at the top of a dishwasher. Further, Mailander teaches a “washing items support” with a flat bottom wall that can hold only small cups due to poor space optimization. Cao discloses a dishwasher

cutlery tray with a bottom wall that can be reconfigured to create a cavity to accommodate “teacups” and other items. Critically, even if combined, neither Mailander nor Cao discloses the core innovation of the ’681 Patent: a top rack with an angled bottom wall with cup seats optimized for cups ordinary dimensions. A POSITA would not have looked to two references, neither of which solves the problem of optimally holding cups of ordinary dimensions in the top rack of a dishwasher, to solve that problem. Further, as a practical matter, Mailander and Cao could not be physically combined because the result would be inoperable. Cao teaches a mechanism to selectively increase the space within a tray, whereas Mailander’s inserts squander space within a top rack. Thus, Cao’s configurable-recess mechanism is fundamentally incompatible with Mailander’s affixed-inserts design. A POSITA would not be motivated to combine these clashing teachings.

b. Claim 14[B(ii)]: at the second end of the dishrack, a second portion is angled with respect to the first portion and defining a depression

165. 165. Dr. Cameron has not established that Mailander teaches a depression. Dr. Cameron presses that Mailander discloses a second portion which is angled with respect to the first portion and defines a depression. But Dr. Cameron erroneously concludes that a depression is created by the space above two wedges—described as “washing items holders”—placed along the bottom wall. That misses the mark. Claim 14 of the ’681 Patent discloses that a depression is properly defined by the bottom wall itself, not structures placed along the bottom wall. Dr. Cameron’s assertion that a POSITA would have understood Mailander’s bottom wall to form these wedges without requiring inserts is unsupported and unavailing. *See* Cameron Decl. ¶ 156.

166. Cao does not salvage Dr. Cameron’s argument. Dr. Cameron contends that because Cao contains a mechanism to “recess downwards to form the accommodating cavity,” a POSITA “would have been motivated for Mailander’s second portion to thus be angled with respect to the

first portion and define a depression, without being an insert.” Cameron Decl. ¶ 157. But Dr. Cameron does not establish that Mailander or Cao—alone or in combination—teach a bottom wall with a depression as disclosed in Claim 14 of the ’681 Patent.

c. Claim 14[B(iv)]: the depression extending lower than the first portion relative to the peripheral wall

167. Mailander does not teach a depression extending lower than the first portion relative to the peripheral wall. As discussed, Dr. Cameron fails to establish that Mailander teaches a depression. Thus, this claim limitation is not met.

d. Claim 14[B(vi)]: the second portion defining a cup seat for supporting one or more cups in the depression

168. Mailander does not teach a second portion defining a cup seat. Dr. Cameron erroneously concludes that a cup seat is created by the two wedges—described as “washing items holders”—placed along the bottom wall. But Claim 14 includes a limitation that “the second portion” of the bottom wall defines the cup seat. Mailander’s wedge shaped holders are not integrated into the bottom wall. Moreover, even if they were, Mailander’s “washing items holders” do not teach a “cup seat” as understood in Claim 14. The ’681 Patent’s innovative cup seats are not only integrated into the structure of the rack but also oriented to cradle larger cups along their cylindrical side—as opposed to on their top—for security during a wash cycle and to optimize for space. As discussed earlier, the first and second angled portions in the asserted patent are formed in the bottom wall and are integral to the bottom wall.

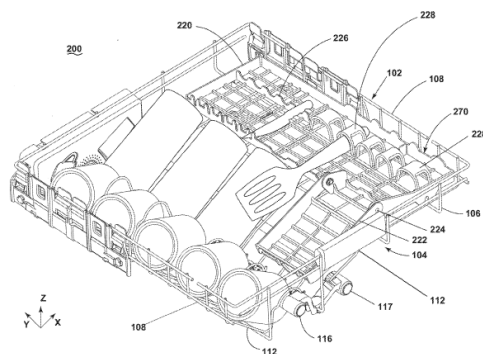


FIG. 7

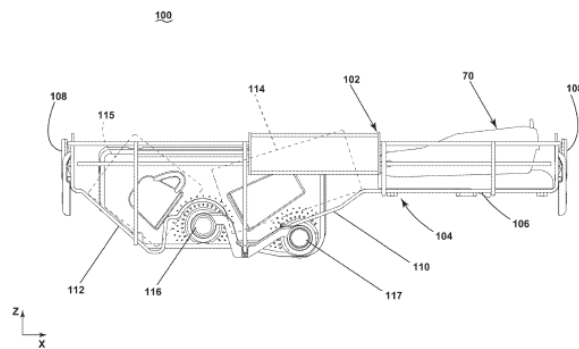


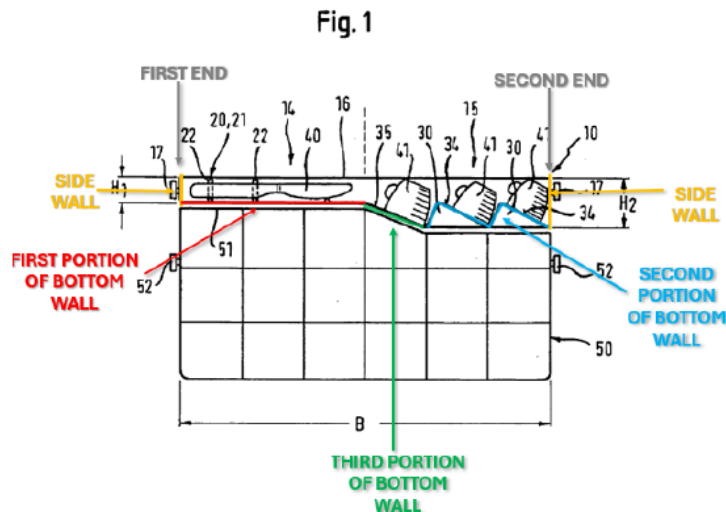
FIG. 3

- e. Dependent Claim 15[A]: The automatic dishwasher of claim 14, further comprising a third portion of the bottom wall defined by an angled third planar portion relative to the substantially horizontal first portion and extending across a third portion of the bottom wall;

169. Mailander does not teach a third portion formed in its bottom wall. Dr. Cameron states that Mailander's angled "transition region" constitutes the third portion of the bottom wall. But this cannot be true. But even if the "transition region" is considered as the second angled portion of the '681 Patent, the cup holders in Mailander are not formed angled portions in the bottom wall but rather added-on/welded L-shapes that trap wasted space underneath them contrary to the third angled portion of the '681 Patent.

170. To have a third portion as taught by dependent Claim 15, Mailander must have a first and second portion as taught by independent Claim 14. Under Claim 14, a "second portion" must be "angled with respect to the first portion." When the wedges (L-Shapes) that Dr. Cameron erroneously designated as the second portion in her drawing below are properly excluded for the reasons described above, that leaves only the "transition region" in Mailander as a possible second portion because that is the only part of the bottom wall that is angled with respect to the first portion. But Dr. Cameron erroneously claims that this transition region is actually the third portion. The transition region cannot be both the second and third portion. Because a second portion is a

prerequisite to a third portion, and because Mailander's bottom wall only contains one angled portion which could be the second portion or the third portion (but not both), Mailander does not teach a third portion as disclosed in Claim 15.



171. Cao does not assist in teaching a third portion of the bottom wall as disclosed in Claim 15. Claim 15 discloses “a third portion of the bottom wall defined by an angled third planar portion.” ’681 Patent at 13:15. Dr. Cameron argues that “Cao teaches that the third portion may be at an angle that is different than the second portion’s angle, to create a cavity.” Cameron Decl. ¶163. But the reconfigurable-recess mechanism in Cao is neither a bottom wall nor necessarily angled as limited in Claim 15. All angled portions in the asserted ’681 Patent refers to those formed in the bottom wall integrally. Cao fails to disclose a permanent depression due to its reconfigurable bottom wall.

FIG. 7

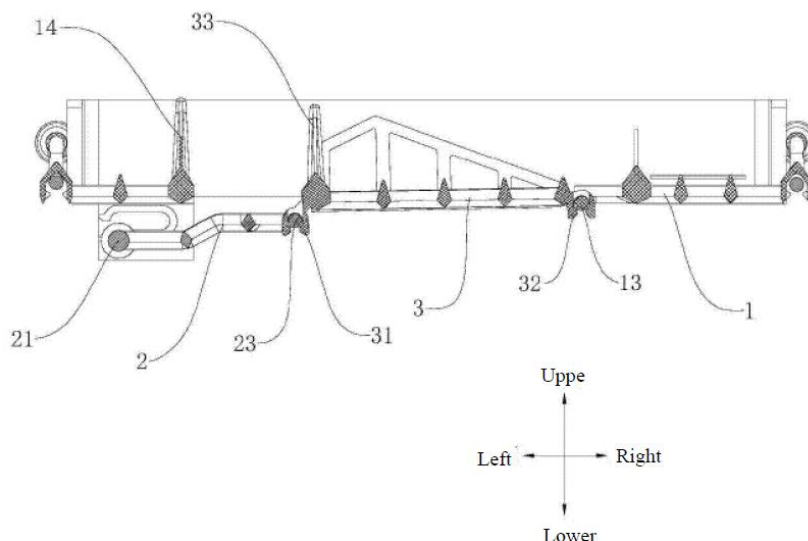


FIG. 8

- f. Dependent Claim 15[B]: the third portion connected to and extending from the first portion and angled away from the first portion;

172. Mailander and Cao do not teach a third portion connected to and extending from the first portion and angled away from the first portion. For the reasons expressed above, Mailander and Cao do not teach a third portion at all. Even if they did, Cao's reconfigurable-recess mechanism would not teach a third portion necessarily angled away from the first portion due to its moving mechanism which permits the reconfiguration of angles of the components of the tray.

I declare under penalty of perjury under the laws of the United States of America and the States of Michigan and Texas that the foregoing is true and correct.

Executed on: January 16, 2026

Emad Tanbour, PhD