

EXHIBIT 3



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

WHIRLPOOL CORPORATION,

Plaintiff,

v.

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

Defendants.

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

JURY TRIAL DEMANDED



**EXPERT DECLARATION OF DR. KIMBERLY K. CAMERON REGARDING
NON-INFRINGEMENT AND INVALIDITY OF THE ASSERTED PATENTS**

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I. INTRODUCTION

1. My name is Dr. Kimberly K. Cameron. I have been retained to provide this declaration on behalf of Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung” or “Defendant”) in connection with the above-captioned case. If called to testify as to the contents of this declaration, I can and will testify truthfully and competently.

2. I understand that Whirlpool Corporation (“Whirlpool” or “Plaintiff”) has accused certain dishwashers manufactured by Samsung and including a top rack capable of holding both drinkware and silverware, specifically the Samsung 38 dBA Bespoke Smart Dishwasher with 3rd Rack Washing System, with model number DW90F89 (“Accused Product”), of infringing Claims 17-21 of U.S. Patent No. 10,512,385 (“the ’385 Patent”), Claims 14-15 of U.S. Patent No. 12,232,681 (“the ’681 Patent”), and Claims 1-4 and 7-25 of U.S. Patent No. 12,543,922 (“the ’922 Patent”) (collectively, the three patents are the “Asserted Patents” and the asserted claims among the patents shall be referred to as the “Asserted Claims”).

3. I further understand that Whirlpool filed a Motion for Preliminary Injunction, seeking to enjoin Samsung from offering the Accused Product for sale in the United States, while its case is pending. I understand that, with its Motion, Whirlpool filed an expert declaration by Dr. Emady Tanbour (“Tanbour Opening Declaration”), primarily addressing alleged infringement by the Accused Product.

4. I previously submitted a declaration in this matter responding to the Tanbour Opening Declaration and also providing my opinions regarding invalidity of Claims 17-21 of the ’385 Patent, and Claims 14-15 of the ’681 Patent in view of the prior art (“First Rebuttal Declaration”). At the time I submitted my First Rebuttal Declaration, the ’922 Patent had not yet issued. After the ’922 Patent issued, I understand that Whirlpool submitted an additional declaration by Dr. Tanbour (“Tanbour ’922 Declaration”), primarily addressing alleged

infringement of Claims 1-4 and 7-25 of the '922 Patent by the Accused Product. In response, I submitted a second declaration responding to the Tanbour '922 Declaration, and providing my opinions regarding invalidity of Claims 1-4 and 7-25 of the '922 Patent ("Second Rebuttal Declaration"). On March 10, 2026, Whirlpool submitted an additional rebuttal declaration from Dr. Tanbour responding to my Second Rebuttal Declaration regarding the '922 Patent ("Tanbour '922 Reply Declaration").

5. I further understand that, on January 16, 2025, Whirlpool submitted a declaration by Dr. Tanbour replying to my First Rebuttal Declaration ("Tanbour Reply Declaration"). This declaration responds to the Tanbour Reply Declaration and also the Tanbour '922 Reply Declaration.

6. Collectively, this declaration, my First Rebuttal Declaration, and my Second Rebuttal Declaration, set forth all of my opinions regarding non-infringement of the Asserted Claims by the Accused Product, and invalidity of the Asserted Claims.

A. Background And Qualifications

7. My First Rebuttal Declaration describes my qualifications. First Rebuttal Declaration at ¶¶ 4-6. Further details about my education and professional experience are found in my current curriculum vitae ("CV"), attached as Exhibit A to the above-referenced declaration.

B. Compensation

8. I am being compensated at my usual rate of \$590 per hour, for my analysis. My compensation does not depend on the outcome of this proceeding.

C. Materials Considered

9. In preparing this declaration, I have considered the Asserted Patents, including their specifications, claims, and figures; the references cited by the Asserted Patents; the prosecution histories of the Asserted Patents, the prior art references I identify in this declaration; documents

concerning the Accused Products; the Tanbour Opening Declaration (including all materials cited therein); the Tanbour Reply Declaration (including all materials cited therein); and the Tanbour '922 Reply Declaration (including all materials cited therein).

10. I also considered the CAD file for the Accused Product that has been produced by Samsung with production number SAMS404-0000014. I examined the file using the eDrawings Viewer, a standard industry tool for viewing and analyzing CAD models. Using the eDrawings Viewer, I inspected the three-dimensional structure of the Accused Product from multiple perspectives, rotated and sectioned the model as needed.

11. In addition, my opinions are further based on my education, training, experience, and knowledge in the relevant field.

II. LEGAL STANDARDS

12. I am not an attorney and offer no legal opinions. I have been informed about certain aspects of the law that are relevant to my analysis, as summarized below. I have applied these standards in forming my opinions regarding non-infringement and invalidity of the Asserted Patents, including as presented in my First Rebuttal Declaration, my Second Rebuttal Declaration, and herein.

A. Claim Interpretation

13. I have been informed that claim terms are interpreted as one of ordinary skill in the art would have interpreted them at the time of the alleged invention. I understand that the issued claims must be read and interpreted with reference to the intrinsic record (including the file history and statements made during any IPR proceedings) and to the state of the prior art; and claims that have been narrowed in order to obtain the issuance of a patent by distinguishing the prior art cannot be construed to cover that which was previously eliminated from the patent by limitation.

B. Infringement

14. I understand that an infringement analysis is a two-step process. First, one construes the claims of the patent. Then the construed claims are compared to the accused products.

15. I understand that independent claims are to be read separately to determine their scope. I understand that a dependent claim is based on the elements of another independent or dependent claim, and to determine its scope, it must be read together with the claim(s) from which it depends. I understand that a dependent claim cannot be infringed if the corresponding claim(s) from which it depends is not infringed.

1. Literal Infringement

16. I understand that a patent claim is literally infringed when the accused device contains components that are identical to each limitation of the asserted claim.

2. Doctrine of Equivalents

17. I understand that if an accused device does not literally infringe the patent, the device may still infringe under the doctrine of equivalents. If an element of an asserted claim is not literally present in an accused device, an equivalent component may be identified instead. A component is equivalent when there is an insubstantial difference between the component and the literal claim element. I also understand that one test for determining an insubstantial difference is whether the component and claim element perform substantially the same function, in substantially the same way, to achieve substantially the same result. I understand that an accused device does not infringe a patent claim if the device lacks even one claim element, either literally or under the doctrine of equivalents.

18. I understand that the doctrine of equivalents is limited by what is called prosecution history estoppel. I understand that during prosecution of a patent application, the patent applicant

may make arguments and amendments to define or narrow the meaning or scope of the claims in an attempt to convince the Patent and Trademark Office Examiner to grant the patent. I understand that once the patent applicant has done so, he or she is not entitled to patent coverage under the doctrine of equivalents that would be so broad that it would cover the same functionality that the applicant surrendered during the prosecution of the patent.

C. Invalidity

19. I understand that an issued patent claim is presumed valid and establishing a patent claim to be invalid requires proof by “clear and convincing evidence.” I have been informed that the “clear and convincing evidence” burden is a higher evidentiary burden than “preponderance of the evidence,” but a lower evidentiary burden than “beyond a reasonable doubt.”

20. I understand that a patent claim may be declared invalid if it is anticipated by, or rendered obvious in view of, prior art.

1. Anticipation

21. I have been informed that a patent claim may be invalid if it lacks novelty over the prior art, a concept known as “anticipation.” I also understand that a prior art reference anticipates a patent claim, therefore rendering it invalid, if all the elements of the challenged claim are disclosed within the prior art reference.

22. I understand that for patents in which at least one claim has an effective filing date on or after March 16, 2013, the AIA 35 U.S.C. code applies, under which the standard for anticipation is set forth in AIA § 102(a), reproduced below:

§ 102(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

(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.

23. I am informed that the disclosure within the prior art reference may be explicit or inherent, meaning it is necessarily present or implicitly present. I understand that an element of a patent claim is inherent in a prior art reference if the element must necessarily be present and such would be recognized by one of ordinary skill in the art. However, I understand that inherency cannot be established by mere probabilities or possibilities. I understand that the prior art reference need not use the same words as the challenged patent claim, however, all the requirements of the claim must be disclosed such that a POSITA could make and use the claimed subject matter.

2. Obviousness

24. I have been informed and understand that a patent claim is obvious under 35 U.S.C. § 103, and therefore invalid, if the claimed subject matter, as a whole, would have been obvious to a POSITA as of the priority date of the patent based on one or more prior art references and/or the knowledge of a POSITA.

25. I understand that an obviousness analysis must consider (1) the scope and content of the prior art, (2) the differences between the claims and the prior art, (3) the level of ordinary skill in the pertinent art, and (4) secondary considerations, if any, of non-obviousness (such as unexpected results, commercial success, long-felt but unmet need, failure of others, copying by others, and skepticism of experts).

26. I understand that a prior art reference may be combined with other references to disclose each element of the invention under 35 U.S.C. § 103. I understand that a reference may also be combined with the knowledge of a POSITA, and that this knowledge may be used to combine multiple references. I further understand that a POSITA is presumed to know the relevant

prior art. I understand that the obviousness analysis may take into account the inferences and creative steps that a POSITA would employ.

27. In determining whether a prior art reference would have been combined with other prior art or other information known to a POSITA, I understand that the following principles may be considered:

- a. whether the references to be combined involve non-analogous art;
- b. whether the references to be combined are in different fields of endeavor than the alleged invention in the Patent;
- c. whether the references to be combined are reasonably pertinent to the problems to which the inventions of the Patent are directed;
- d. whether the combination is of familiar elements according to known methods that yields predictable results;
- e. whether a combination involves the substitution of one known element for another that yields predictable results;
- f. whether the combination involves the use of a known technique to improve similar items or methods in the same way that yields predictable results;
- g. whether the combination involves the application of a known technique to a prior art reference that is ready for improvement, to yield predictable results;
- h. whether the combination is “obvious to try”;
- i. whether the combination involves the known work in one field of endeavor prompting variations of it for use in either the same field or a different one based on design incentives or other market forces, where the variations are predictable to a POSITA;
- j. whether there is some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill in the art to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention;
- k. whether the combination requires modifications that render the prior art unsatisfactory for its intended use;
- l. whether the combination requires modifications that change the principle of operation of the reference;
- m. whether the combination is reasonably expected to be a success; and

- n. whether the combination possesses the requisite degree of predictability at the time the invention was made.

28. I understand that in determining whether a combination of prior art references renders a claim obvious, it is helpful to consider whether there is some teaching, suggestion, or explicit motivation to combine the references and a reasonable expectation of success in doing so. I understand, however, that an explicit teaching, suggestion, or explicit motivation to combine is not required.

III. SUMMARY OF OPINIONS

29. This declaration sets forth the opinions I have formed, the conclusions I have reached, and the bases for each. The following is a summary of my opinions set forth in this declaration:

30. I disagree with each of the opinions Dr. Tanbour offers in rebuttal to my non-infringement analysis for the '385 Patent, and it remains my opinion that the Accused Product does not infringe the asserted claims of the '385 Patent because it does not include at least the following elements required by all asserted claims:

- “an upwardly angled portion formed in the bottom wall ... and terminating at the side wall”;
- “a spray tube having nozzles emitting spray along the angled portion”; and
- “a curved mounting portion adjacent which the spray tube is mounted.”

31. I disagree with each of the opinions Dr. Tanbour offers in rebuttal to my non-infringement analysis for the '681 Patent, and it remains my opinion that the Accused Product does not infringe the asserted claims of the '681 Patent because it does not include at least the following element required by all asserted claims: “at the second end of the dishrack, a second portion is angled with respect to the first portion.”

32. I disagree with each of the opinions Dr. Tanbour offers in rebuttal to my non-infringement analysis for the '922 Patent, and it remains my opinion that the Accused Product does not infringe the asserted claims of the '922 Patent because it does not include at least the following elements required by the asserted claims:

- “wherein the planar portion includes a plurality of utensil holders configured to horizontally support utensils” (as recited in Claim 1, and incorporated into dependent Claims 2-4, and 7-25); and
- “the upper dish rack defining a planar portion and a depression, wherein the depression includes a first angled wall and a second angled wall” (as recited in Claim 1, and incorporated into dependent Claims 2-4, and 7-25).
- “wherein the utensil caddy includes a diffuser that diffuses the spray of water emitted by the at least one sprayer” (Claim 13).

33. I disagree with each of the opinions Dr. Tanbour offers in rebuttal to my invalidity analysis for the '681 Patent, and it remains my opinion that the asserted claims of the '681 Patent are anticipated under 35 U.S.C. § 102, and/or would have been obvious under 35 U.S.C. § 103 on the following grounds:

- Claims 14 and 15 of the '681 Patent are anticipated by and/or obvious over Carr;
- Claims 14 and 15 of the '681 Patent are anticipated and/or obvious in view of the Bosch 800 Series Dishwasher; and
- Claims 14 and 15 of the '681 Patent are obvious over Mailander in view of Cao.

34. I disagree with each of the opinions Dr. Tanbour offers in rebuttal to my invalidity analysis for the '922 Patent, and it remains my opinion that the asserted claims of the '922 Patent are anticipated under 35 U.S.C. § 102, and/or would have been obvious under 35 U.S.C. § 103 on the following grounds:

- Claims 1-4 are anticipated by and/or obvious over Carr;
- Claims 1-4 are anticipated by and/or obvious over the Bosch 800 Series Dishwasher;
- Claims 1-3 are anticipated and/or obvious over Mailander; and
- Claims 1-4 and 7-26 are obvious over Andrew, in view of Carr.

35. I disagree with each of the opinions Dr. Tanbour offers in rebuttal to my invalidity analysis for the '385 Patent, and it remains my opinion that the asserted claims of the '385 Patent would have been obvious under 35 U.S.C. § 103 on the following grounds:

- Claims 17 and 21 of the '385 Patent are obvious over Bosch in view of Ochoa; and
- Claims 18-20 of the '385 Patent are obvious over Bosch in view of Ochoa and Schessl.

IV. NON-INFRINGEMENT OF THE ASSERTED PATENTS

A. **Samsung Does Not Infringe the '385 Patent**

36. As I explained in my First Rebuttal Declaration, the Samsung Accused Product does not infringe the asserted claims of the '385 Patent because it does not include at least the following elements required by all asserted claims:

- “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.”

First Rebuttal Decl., ¶¶ 79-97.

37. After reviewing Dr. Tanbour's Reply Declaration, it remains my opinion that the '385 Patent's claims are not infringed because the foregoing elements are not met by the Samsung Accused Product as explained in my First Rebuttal Report. I disagree with each of the criticisms raised by Dr. Tanbour regarding my non-infringement analysis for these three claim elements, and respond to each in detail, below.

1. Dr. Tanbour fails to establish that the Accused Product includes “an upwardly angled portion formed in the bottom wall ... and terminating at the side wall” (Claim 17)

38. In his Reply Declaration, Dr. Tanbour offers several opinions as to why the accused Samsung dish rack allegedly includes “an upwardly angled portion formed in the bottom wall ...

and terminating at the side wall,” despite the fact that, in the Accused Product, the upwardly angled portion terminates well short of the side wall. None has merit.

a. I disagree with Dr. Tanbour’s opinion that an upwardly angled portion of the bottom wall that terminates well short of the side wall literally infringes Claim 17.

39. Despite agreeing “that the spaced apart inclined portions of the bottom wall must terminate at the side wall” (Tanbour Reply Decl. ¶ 64 (internal quotations omitted)), Dr. Tanbour nevertheless argues that the fact that the upwardly angled portion of the bottom wall in the Accused Product terminates well short of the side wall still satisfies the claim language. Tanbour Reply Decl. ¶¶ 63-70. To do so, Dr. Tanbour relies on a strained reading of the relevant claim limitation, while ignoring its plain language.

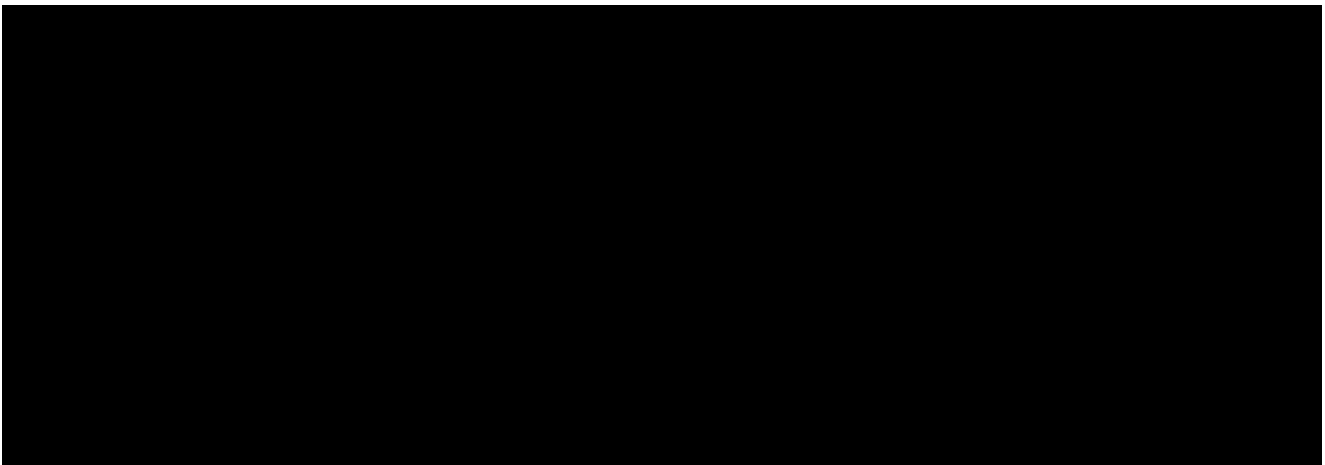
40. The relevant claim limitation recites: “an upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall.” ’385 Patent, Cl. 17. As written, this limitation first identifies a structural element—the “upwardly angled portion formed in the bottom wall.” It then explains the upwardly angled portion” is composed of “a plurality of spaced apart inclined portions forming the bottom wall.” And finally, it adds a requirement that those elements “terminat[e] at the side wall.” In my opinion, the most natural reading of this language is that both descriptive clauses are modifying the same identified structure—the “upwardly angled portion.” In particular, the phrase “comprising a plurality of spaced apart inclined portions” is defining the composition of the “upwardly angled portion,” while the phrase “terminating at the side wall” is defining the boundary of the “upwardly angled portion”.

41. Dr. Tanbour disagrees with this reading. He asserts that the phrase “terminating at the side wall” modifies “a plurality of spaced apart inclined portions,” rather than the “upwardly angled portion.” Tanbour Reply Decl., ¶ 67. And on that basis, Dr. Tanbour asserts that I omitted

“key” language that “is critical to the patented design,” and thereby arriving at an “incorrect conclusion” regarding Samsung’s non-infringement of this limitation. *Id.*, ¶¶ 66-68. But as I explained above, Dr. Tanbour’s reading of the claim language is incorrect.

42. But, even if I were to read the phrase “terminating at the side wall” as modifying the “plurality of spaced apart inclined portions,” rather than the “upwardly angled portion,” my non-infringement opinion would not change. Claim 17 expressly defines the “upwardly angled portion” as comprising those “spaced apart inclined portions.” Accordingly, if the “spaced apart inclined portions” must terminate at the side wall, then the “upwardly angled portion” that they constitute must also terminate at the side wall. Thus, under either my or Dr. Tanbour’s reading of the relevant claim language, the claim requires that the “inclined”/“upwardly angled” portion of the bottom wall extend all the way to and terminate at the side wall.

43. As I explained in my First Rebuttal Report, the accused Samsung dish racks do not meet this requirement. Since my First Rebuttal Report, Samsung has produced a CAD file for the Accused Product, which I used to view the three-dimensional structure of the rack. Below, is an image generated from that CAD file, and annotated to identify the relevant structural features. My review of the CAD file confirms my prior understanding of the physical structure of the Accused Product.



 As shown, a distinct horizontal portion separates the upwardly angled/inclined portion from the side wall. That horizontal portion interrupts the incline before it reaches the side wall, meaning that the upwardly angled portion—whether viewed as the portion itself or as the spaced apart inclined portions that compose it—does not terminate at the side wall as required by the claims.

44. Thus, while Dr. Tanbour contends that I ignore “critical” claim language (Tanbour Reply Decl., ¶¶ 67-68), in fact, I apply the claim language as written. It is Dr. Tanbour who departs from the clear language of the claim by redefining what constitutes an “inclined portion.” Specifically, Dr. Tanbour argues that a portion is “inclined” not based on its geometric slope, but based on whether it can function to hold a cup at an angle. *See* Tanbour Reply Decl., ¶ 68 (asserting that the “plurality of spaced apart inclined portions” “must be ‘configured to cradle a glass at an inclined angle and prevent the glass from rolling,’” and “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’”).¹ That argument is flawed.

45. The claim language recites “a plurality of spaced apart inclined portions forming the bottom wall.” The term “inclined” refers to geometric orientation—that is, a surface that is sloped relative to horizontal. The claim does not redefine “inclined” in functional terms. The later functional claim language—requiring that “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”—describes what those inclined portions must be capable of doing (i.e., capable of cradling a glass). But it does not redefine what makes a surface “inclined” in the first place.

¹ Notably, Dr. Tanbour’s Reply Declaration includes the following quote, which he attributes to Claim 17: “[The plurality of spaced apart inclined portions are] configured to prevent glasses from sliding down the inclined angle such that the angle is dictated based on the orientation of the cradled glasses.” Tanbour Reply Decl., ¶ 68. But that language does not appear in Claim 17.

46. While Dr. Tanbour emphasizes that, in the Accused Product, a cup may extend past the sloped surface and overhang the flat horizontal portion that extends to the side wall (Tanbour Reply Decl., ¶ 69), that does not transform the horizontal portion into an inclined one. The geometry of a surface does not change based on how an object is positioned above it. The fact remains that a flat horizontal portion intervenes between the accused upwardly angled portion and accused sidewall. Dr. Tanbour's functional recharacterization cannot rewrite that geometric requirement.

b. I disagree with Dr. Tanbour's opinion that the Accused Product infringes Claim 17 under the Doctrine of Equivalents.

47. Dr. Tanbour next contends that, even if the Accused Product does not literally meet the "terminating at the side wall" limitation, it nonetheless infringes under the doctrine of equivalents. I disagree.

48. It is my understanding that the doctrine of equivalents must be applied on a limitation-by-limitation basis and cannot be used to disregard or effectively eliminate a specific structural requirement recited in the claim. Here, the claim expressly requires that the angled/inclined portion of the bottom wall "terminat[e] at the side wall," thereby defining a specific geometric relationship between those elements. An angled/inclined portion that stops well short of the side wall does not maintain that structural relationship, and deeming it equivalent would effectively eliminate the "terminating at the side wall" requirement from the claim.

49. The prosecution history of the '385 Patent further confirms that the doctrine of equivalents should not be applied to disregard the "terminating at the side wall" requirement, as prosecution history estoppel applies to that limitation. As I explained in my First Rebuttal Report, the requirement that the upwardly angled/inclined portion of the bottom wall terminate at the side wall was added by the Applicant during prosecution to overcome prior art and obtain allowance.

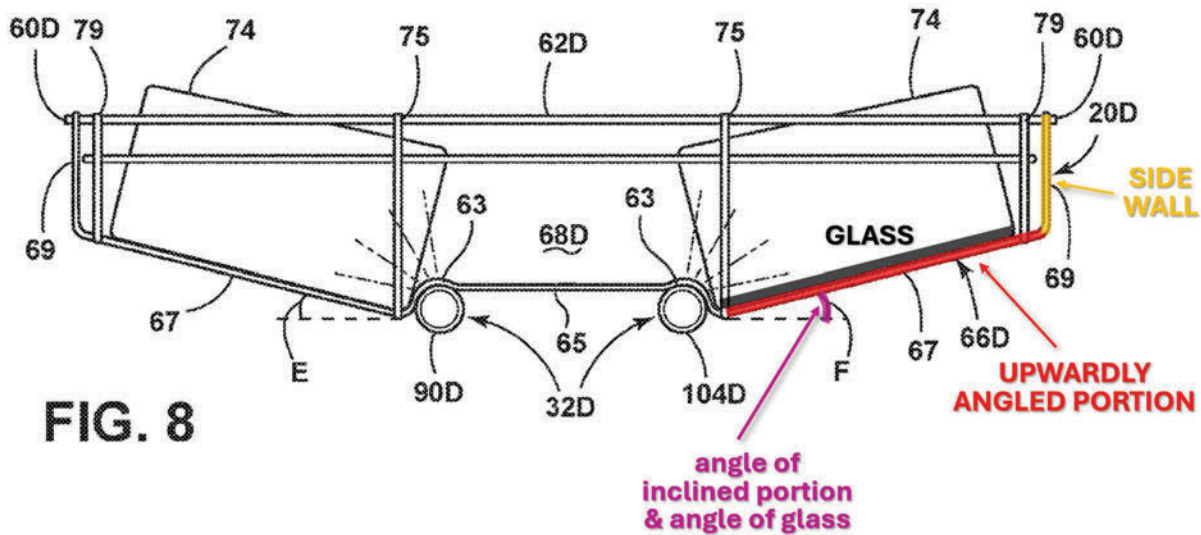
See First Rebuttal Decl., ¶¶ 24-25, 82. While Dr. Tanbour acknowledges that “to infringe under the Doctrine of Equivalents, the particular equivalent being asserted cannot have been surrendered during prosecution to acquire the patent” (Tanbour Reply Decl., ¶ 71), he fails to offer any meaningful rebuttal to the prosecution history analysis presented in my First Rebuttal Declaration. *See, e.g.*, First Rebuttal Decl., ¶ 82 (explaining that the claimed requirement that the upwardly angled portion of the bottom wall terminate at the side wall was a “key requirement” “added by the Applicant during prosecution to achieve allowance”). Instead, Dr. Tanbour merely states that he “do[es] not believe the prosecution history has resulted in forfeiture of this [DOE] argument,” without providing any analysis or support. Tanbour Reply Decl. ¶ 72.

50. Accordingly, it is my opinion that prosecution history estoppel should act to bar Dr. Tanbour’s attempted reliance on the Doctrine of Equivalents here. In particular, because the Applicant specifically limited the claimed dish rack to one in which the inclined portions of the bottom wall extend all the way up to (“terminat[e] at”) the side wall, rather than ending short of, or before reaching, the side wall, in order to achieve allowance, Whirlpool should not be permitted to recapture through equivalence what was surrendered to obtain the claim.

51. Separately, I disagree with Dr. Tanbour’s application of the function/way/result test, which he presented as support for his opinion that the portion of the accused bottom wall encompassing both the upwardly angled portion and the horizontal portion “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.” Tanbour Reply Decl. ¶ 72.

52. According to Claim 17 of the ’385 Patent, two adjacent inclined portions are configured to cradle a glass along their lengths, to prevent it from rolling. ’385 Patent, Cl. 17 (“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”). As illustrated in annotated Figure 8, below, the inclined portions are arranged so that the side of a glass will rest directly against, and be supported along, the lengths of two adjacent inclined portions:

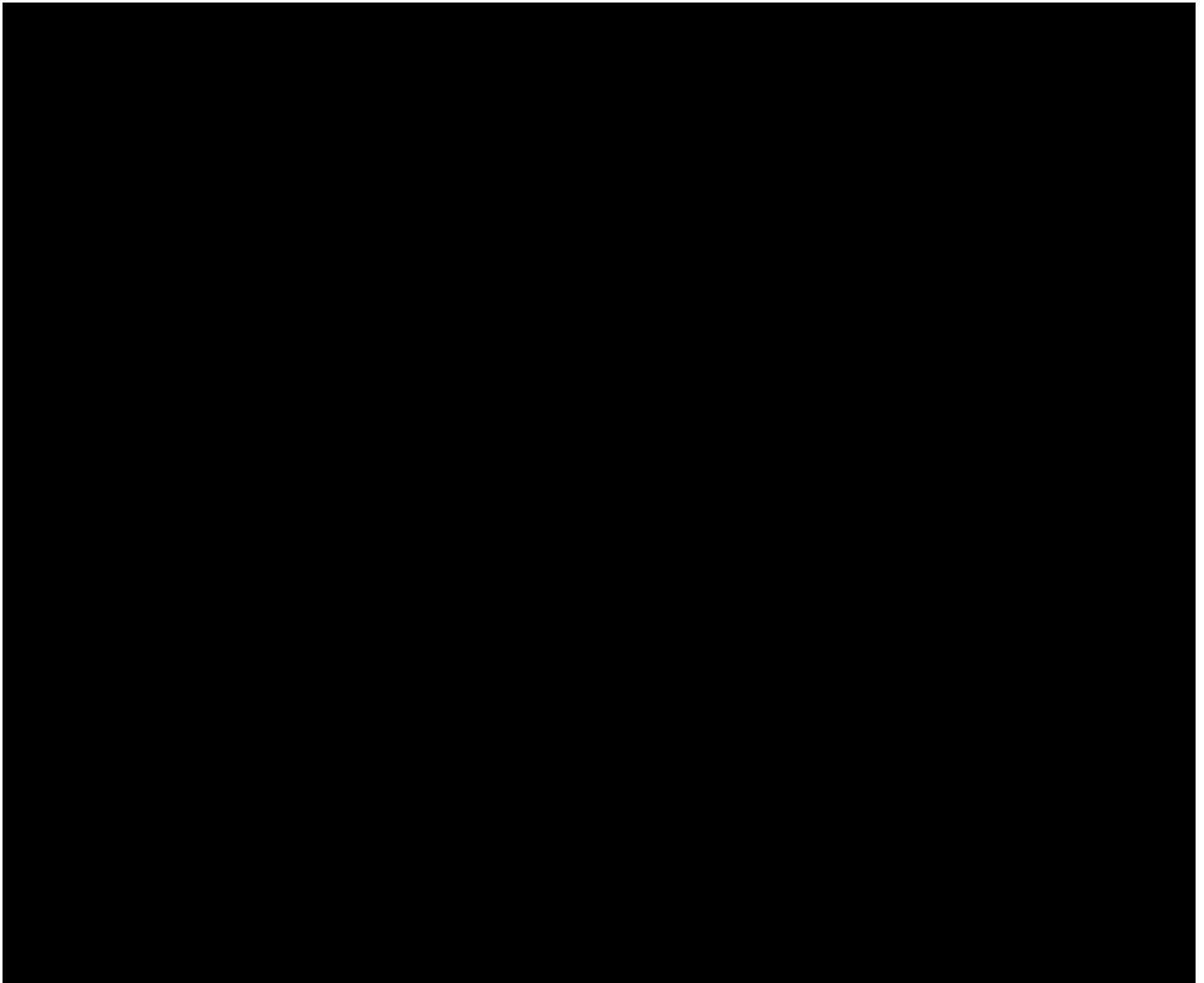


In this configuration, the glass is held at an angle that corresponds to—and is dictated by—the angle of the inclined portions. *See, e.g.*, ’385 Patent, 8:33-39 (“The opposing inclined portions 67 may be configured to position the glasses 74 at angles E, F less than about 45 degrees relative to the horizontal. ... The angle E, F may be defined as the angle between the inclined portions 67 and horizontal or the side wall of the glass and horizontal.”). In particular, the support provided by the inclined portions is continuous along the sidewall of the glass. And it is that continuous contact that enables the inclined portions to “cradle” the glass and prevent rolling, as claimed. *See, e.g.*, ’385 Patent, 8:62-65 (“[T]he plurality of opposing inclined portions 67 are spaced apart to allow the glasses 74 to rest on two adjacent inclined portions 67 in order to prevent the glasses 74 from rolling.”).

53. Dr. Tanbour asserts that the portion of the accused bottom wall encompassing both the upwardly angled portion and the horizontal portion is substantially the same, because a glass

placed on the upwardly angled portion of the accused rack will also be held at an angle and will overhang the horizontal portion. Tanbour Reply Decl., ¶ 72 (“Cup is *extending beyond* the so called horizontal portion by Dr. Cameron.”). From this, Dr. Tanbour concludes that the “so-called ‘horizontal portion’ serves no utilitarian or functional purpose, making the designs essentially interchangeable.” *Id.*

54. That reasoning is incorrect. A glass placed on the inclined portion of the accused rack will not be supported along its length by two adjacent inclined portions. Instead, as illustrated in the figures below, the glass will be supported at distinct, point locations:



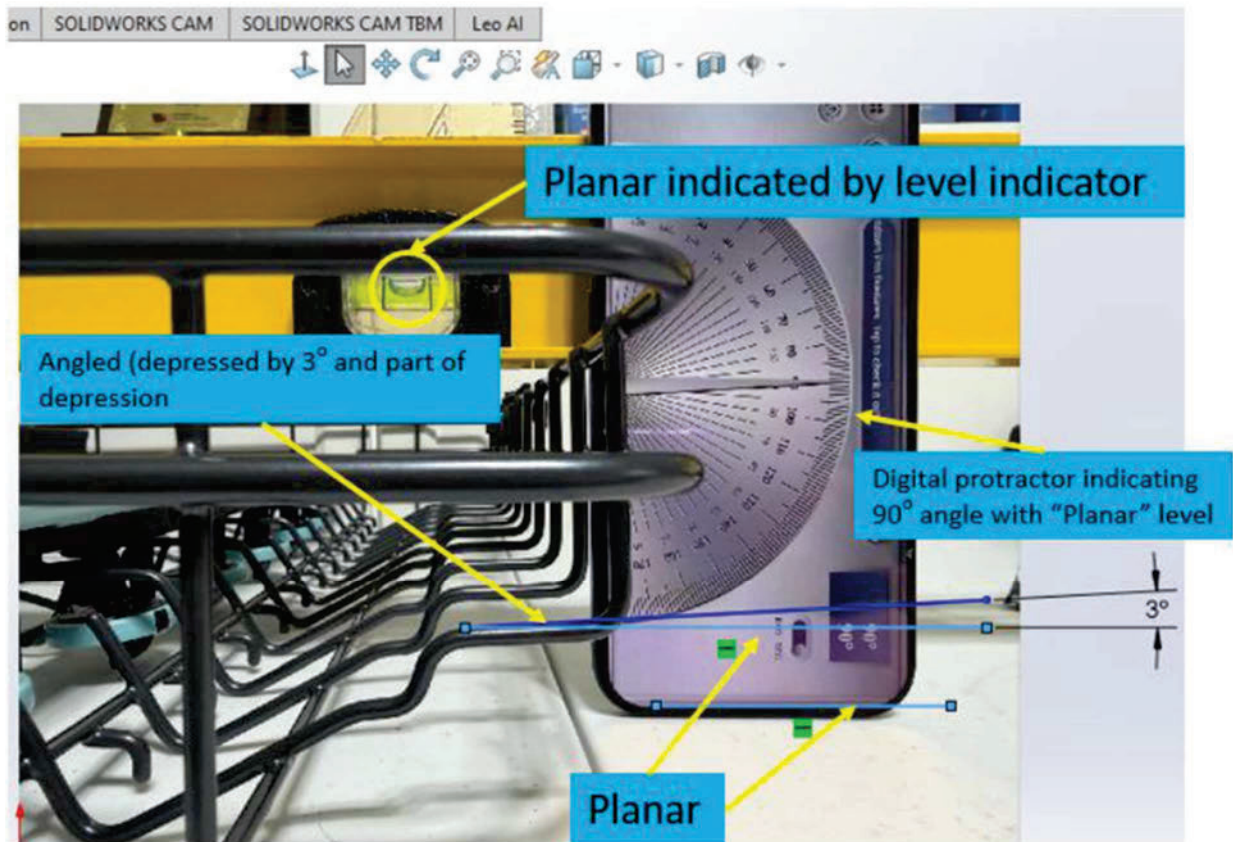
 In particular, assuming the blue line represents the sidewall of a glass positioned in the inclined portion, near its lower end, the glass will be in contact with the lower region of the inclined surface, as illustrated above. Near its upper end, however, the glass will be supported not by the inclined portion of the bottom wall, but by the transition point where the horizontal portion begins.

55. This difference is meaningful. As illustrated above, because the transition point is not located in the same plane as the lower inclined portion, a glass positioned in this region will effectively be held at a greater angle than the angle of the inclined portion itself. That is fundamentally different from the '385 Patent's configuration, in which the glass's orientation is dictated by the angle of the inclined portions along which it is supported.

56. Accordingly, the function/way/result test is not satisfied. While both designs may generally hold a glass at an incline, and prevent the glass from rolling, they do so in materially different ways. The claimed invention cradles the glass by supporting it along two inclined surfaces that extend to and terminate at the side wall, thereby dictating the glass's orientation. The accused design relies on a combination of an inclined portion and a horizontal portion, resulting in two-point support, rather than continuous sidewall cradling. Because the accused configuration achieves stability through a different structural mechanism, it does not perform the claimed function in substantially the same way. Further, because the accused configuration results in a glass positioned on the rack at an angle greater than the angle of the inclined portion, it does not achieve the same result as the claimed inclined portion, which is configured to support a glass at its same angle.

c. **Dr. Tanbour's opinion that the horizontal portion of the Accused Product is actually tilted by 3 degrees is demonstrably false**

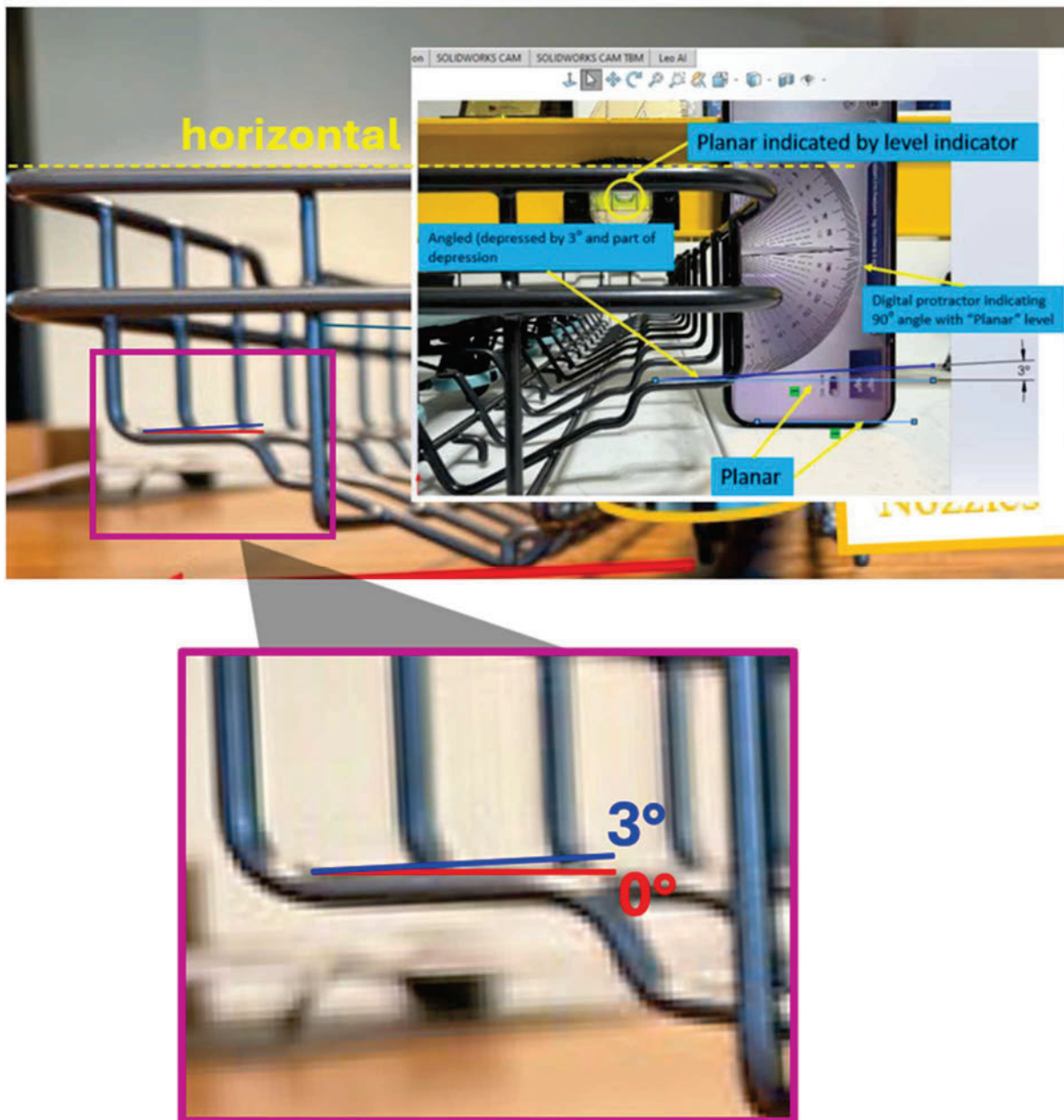
57. Finally, Dr. Tanbour attempts to avoid the horizontal portion of the accused Samsung rack by arguing that it is “*not* in fact ‘horizontal’” but is instead “upwardly angled, at approximately 3 degrees.” Tanbour Reply Decl., ¶ 74. To support this opinion, Dr. Tanbour relies on measurements made using the below photograph:



Tanbour Reply Decl. ¶ 75.

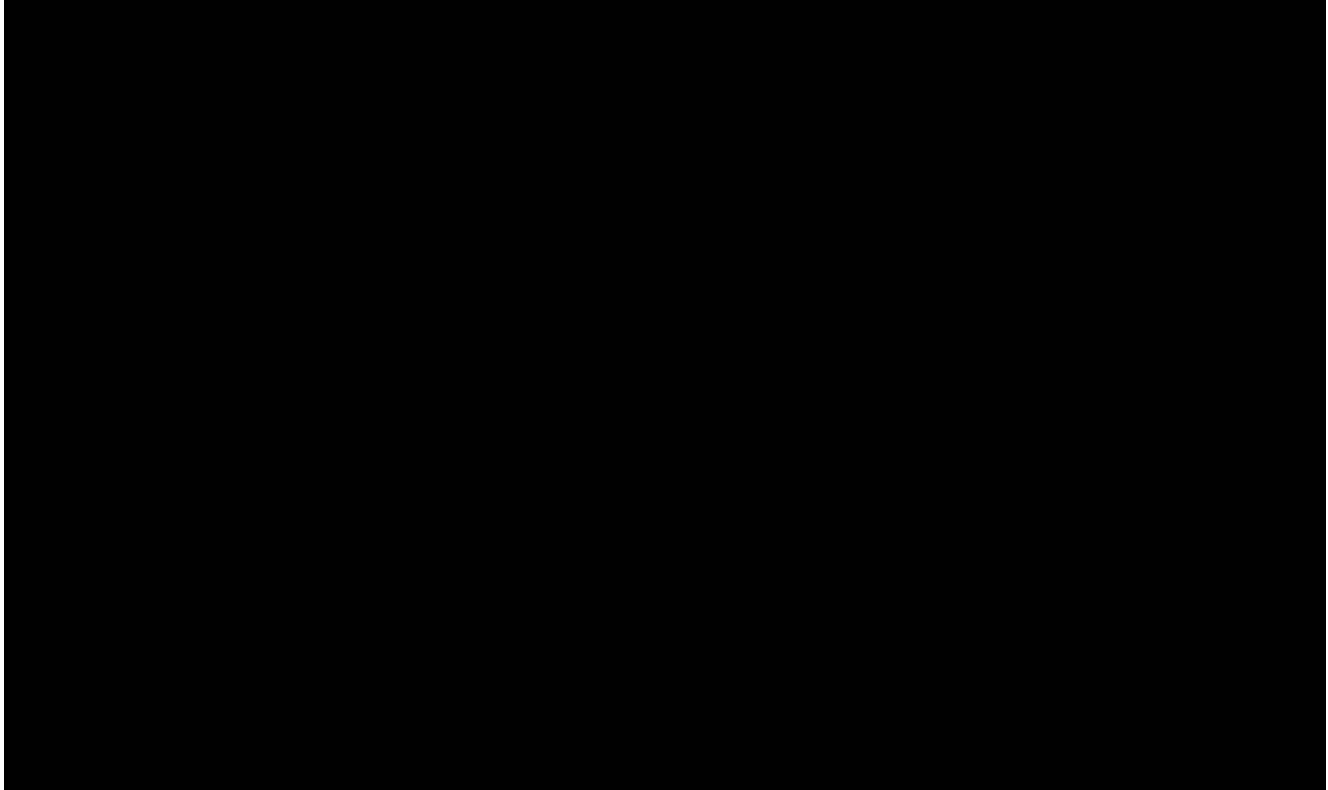
58. In my opinion, Dr. Tanbour's conclusion is unreliable. As can be seen, the photograph on which Dr. Tanbour relies was taken at an off-axis camera angle. A POSITA would understand that this, as well as a variety of other issues/effects, such as perspective, lens distortion, and parallax, can easily create the appearance of a slight tilt in a structure that is actually level—

particularly when the alleged tilt is only a few degrees. Indeed, other photographs of the accused dish rack presented by Dr. Tanbour do not depict any incline. For instance, I prepared the below image using a photograph of the accused dish rack presented in paragraph 67 of Dr. Tanbour's Opening Report:



As can be seen, this photograph does not illustrate the horizontal portion of the accused dish rack being angled at 3 degrees as Dr. Tanbor contends it is.

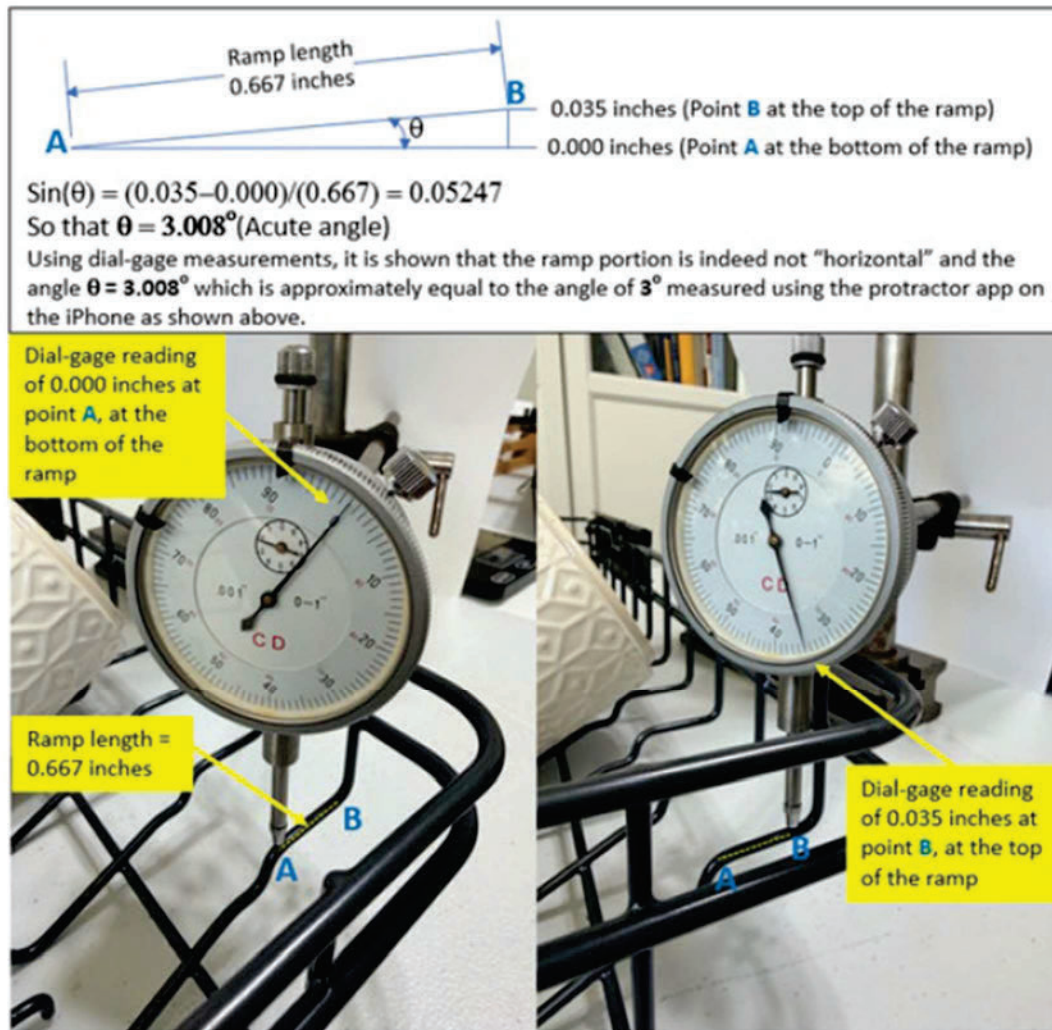
59. Contrary to Dr. Tanbour's assertion, the horizontal portion of the accused dish racks that terminates at the side wall is in fact horizontal. The CAD file for the accused design definitively establishes this fact, as illustrated below:



Unlike photographs subject to various distortions, the CAD model reflects the actual, engineered geometry of the accused Samsung rack. It shows no upward slope in the horizontal portion of the rack that terminates at the side wall. In particular, as the above image depicts, between the two endpoints of the red line extending across the horizontal portion, there is a "Delta Z: 0mm"—i.e., the red line lies entirely in the horizontal plane.

60. Nor do any of the additional "tests" Dr. Tanbour presents in his '922 Declaration change my opinion. See Tanbour '922 Declaration, ¶¶ 59-60. For instance, Dr. Tanbour presents

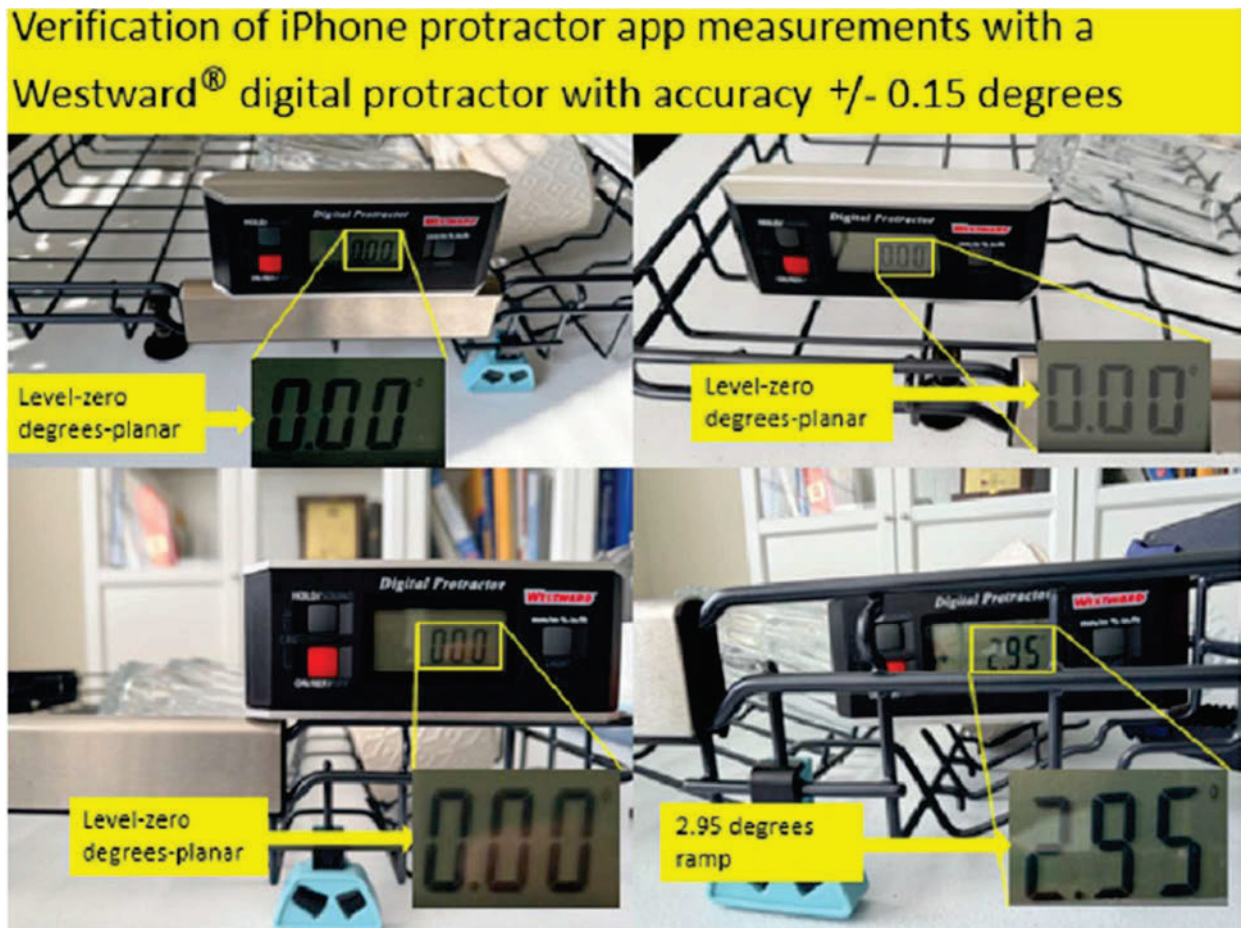
the below image depicting his “use of dial-gage measurements” to determine that the horizontal portion abutting the side wall of the accused rack is allegedly “approximately 3 degrees relative to the planar portion:



But, Dr. Tanbour computes this alleged angle using only two measurements taken from the rack—at positions labeled A and B in the above image. As is clear from the image, position A is plainly located on the portion of the rack corresponding to the transition from the horizontal portion to a portion angled downward. It is thus unsurprising that Dr. Tanbour’s measurements indicated that position A is lower than position B. Dr. Tanbour easily could have used the dial-gage to measure

elevations all along the length of the segment of rack between points A and B, to determine whether the segment is actually horizontal. That he chose not to do so is telling.

61. The measurement Dr. Tanbour performed using “a Westward digital protractor” (Tanbour ’922 Decl., ¶ 60) is equally flawed. As illustrated in Dr. Tanbour’s image below, the digital protractor used by Dr. Tanbour is significantly longer than the horizontal segment of rack he is allegedly measuring, such that the majority of the protractor is unsupported.



62. A POSITA would not expect an accurate measurement to result from such a configuration, understanding that the unsupported end of the protractor would result in it tilting downward.

2. Dr. Tanbour fails to establish that the Accused Product includes “a spray tube having nozzles emitting spray along the angled portion” (Claim 17)

63. As I explained in my First Rebuttal Report, the ’385 Patent expressly distinguishes its “spray tube having nozzles” 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.” First Rebuttal Decl., ¶ 88 (quoting ’385 Patent, 10:45-53). The patent thus draws a structural distinction between the claimed “spray tube” configuration and these alternative sprayer types. Based on this disclosure, a POSITA would understand that a spray disc is not a “spray tube having nozzles,” and that the claim does not encompass any sprayer system that merely includes a tubular component somewhere within a larger fluid delivery system.

64. Dr. Tanbour removes any such distinction in opining on infringement. He argues that any sprayer system that includes a tube necessarily includes “nozzles,” and therefore satisfies the claim language requiring “a spray tube having nozzles.” See Tanbour Reply Decl., ¶¶ 88-89 (“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*. [] 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.”)

65. But the claim requires a particular structure—“a spray tube having nozzles.” The claim is not met merely by a sprayer system that includes a tube somewhere in its fluid path and also includes nozzles somewhere else. Dr. Tanbour’s interpretation transforms a meaningful structural limitation into something far broader: any sprayer system that contains tubing and spray

outlets in any configuration, even if they are physically and functionally separate components. That is not what the claim requires. If Dr. Tanbour's approach were accepted, the limitation would be met by virtually any dishwasher sprayer configuration. Every dishwasher necessarily includes tubing to convey water from the supply or pump to the spray component. Under Dr. Tanbour's reasoning, the mere presence of tubing anywhere in that fluid path, combined with spray outlets elsewhere (for example, on a spray disc), would suffice to meet the limitation of "a spray tube having nozzles." That interpretation would render the claim language effectively meaningless.

66. To support his expansive interpretation of the term "spray tube having nozzles," Dr. Tanbour relies on an incorrect reading of the same specification disclosure that I previously cited as expressly distinguishing "spray tubes" from "spray discs." *Compare* Tanbour Reply Decl., ¶ 86 with First Rebuttal Report, ¶ 88. The relevant disclosure provides:

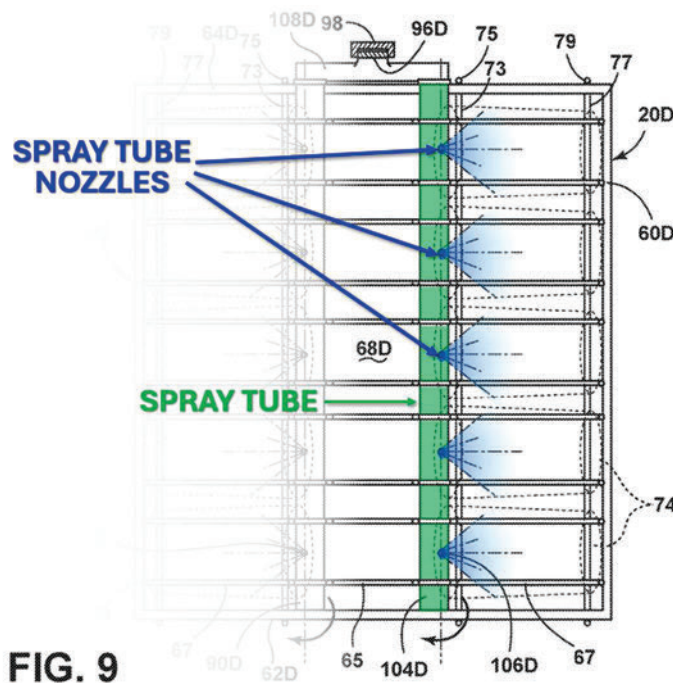
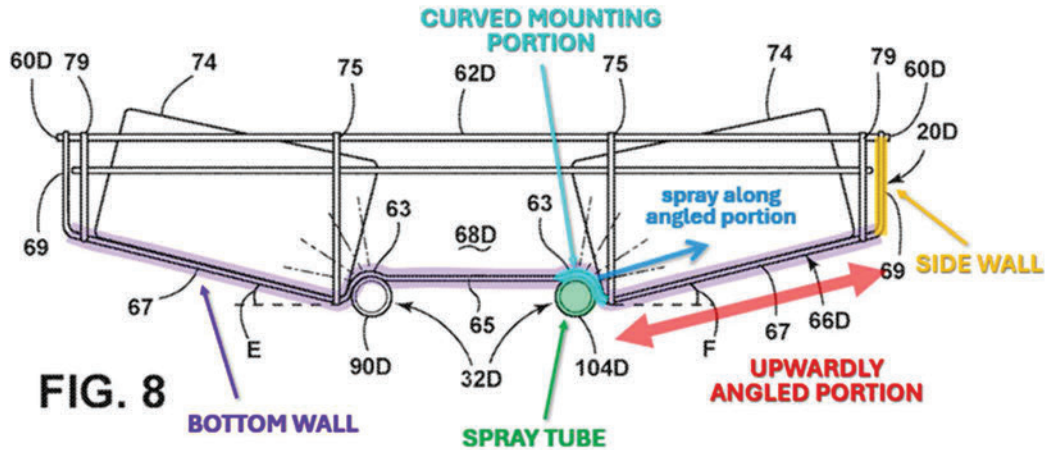
The rack spray assembly 32 has been shown and described as ***having stationary and rotating spray tubes with spray nozzles***. ... ***[O]ther types of sprayers*** are acceptable for use with the rack spray assembly 32. Examples of other types of sprayers include, but are not limited to, rotating spray arms, individual spray nozzles, stationary spray heads with multiple spray nozzles, ***spray discs***, flexible spray tubes, translating front to back sprayers, etc.

'385 Patent, 10:45-53 (emphasis added). According to Dr. Tanbour, the use of the word "acceptable" in this passage means that "the '385 Patent includes all types of spray tubes and nozzles and does not distinguish 'other types of sprayers.'" Tanbour Reply Decl., ¶ 86.

67. While I agree with Dr. Tanbour that the specification permits a variety of spray systems that may be used with the disclosed dish rack, the specification does not suggest that "spray discs" are equivalent to, or a subset of, "spray tubes with spray nozzles." To the contrary, the specification enumerates "spray discs" as separate from "spray nozzles" and even uses the phrase "other types of sprayers."

68. Further, it is the claims—not the broad disclosures included within the specification—that define the scope of the claims for infringement purposes. The claims at issue do not recite a generic sprayer or “spray assembly” that could encompass any of the “acceptable” forms of sprayers listed in the specification. Rather, the patentee specifically chose to claim a “spray tube having nozzles,” thereby limiting the scope to that particular type of spray assembly. In doing so, the patentee did not somehow redefine “spray tube” to mean any type of sprayer system; instead, the patentee confined the claims to just one of the many “acceptable” types of spray systems described in the specification.

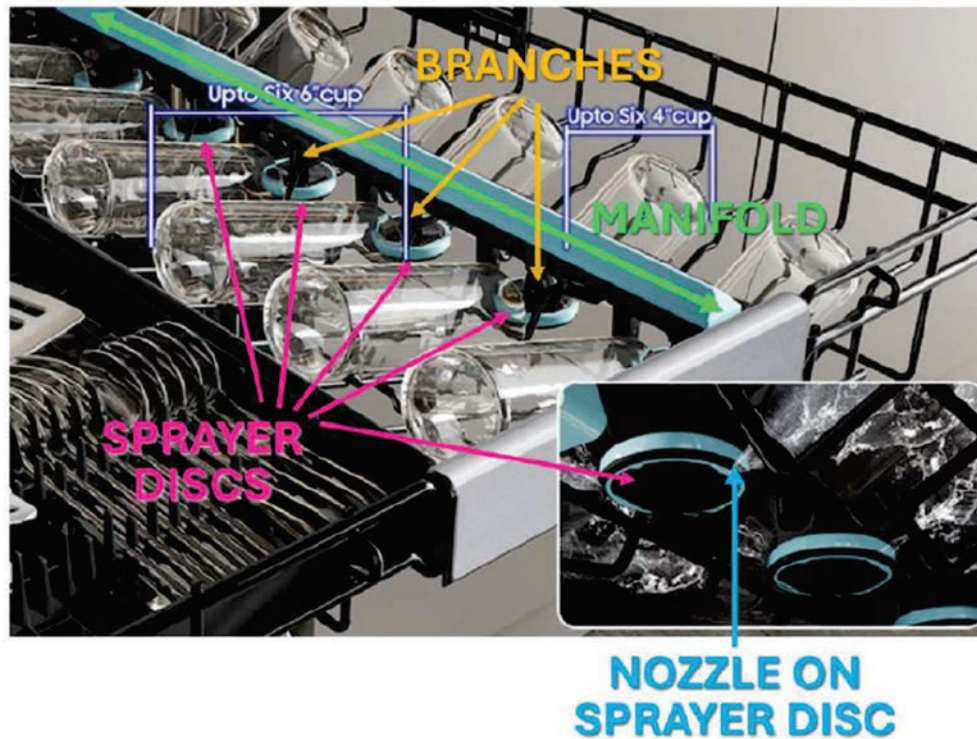
69. Dr. Tanbour also asserts that by referencing “flexible spray tubes,” the specification teaches a spray tube capable of incorporating any of the “acceptable” sprayer types identified. Tanbour Reply Decl., ¶ 86. I disagree. A POSITA would understand the specification’s reference to “flexible spray tubes” as simply identifying a different type of sprayer, listed alongside other physically distinct sprayer types such as “rotating spray arms” and “spray discs.” In this context, a POSITA would recognize that “flexible” is used in its ordinary mechanical sense—meaning bendable or pliable—not as a reference to functional adaptability. Nothing in the specification suggests that “flexible” refers to the ability of a tube to accommodate different sprayer designs. Rather, “flexible spray tube” simply describes another type of spray tube—one capable of bending—in contrast to the rigid, stationary and rotating spray tubes shown in the figures. ’385 Patent, 10:45-53 (“The rack spray assembly 32 has been shown and described as having *stationary and rotating spray tubes* with spray nozzles.”); *see also id.*, FIGS. 8-9, reproduced below.



70. The remaining points in Dr. Tanbour’s report are immaterial to my non-infringement opinion and do not cure Dr. Tanbour’s failure to identify “a spray tube having nozzles,” as required by the claims.

71. For instance, Dr. Tanbour criticizes the below image from my First Rebuttal Report asserting that “[w]hat Dr. Cameron marked as the ‘Manifold’ in [this] picture is not actually the manifold of the spray tube in the actual construction of the Accused Products,” because “[t]he

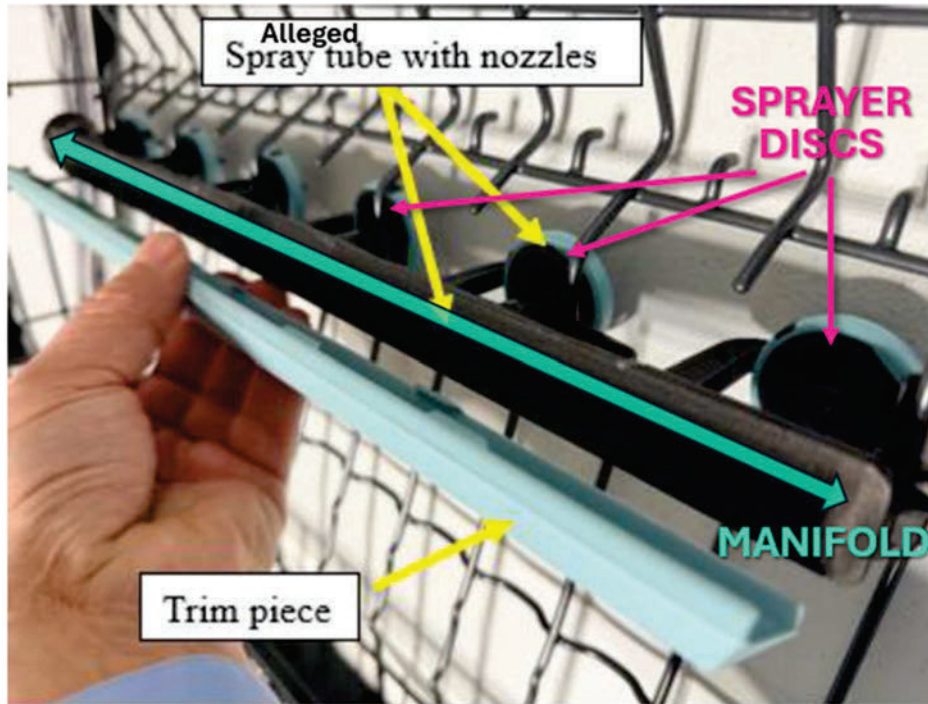
light-colored skin she marked as the ‘manifold’ is actually a trim cover to the spray tube.” Tanbour Reply Decl., ¶ 81.



<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/>

Id. (reproducing the image displayed below paragraph 85 of my First Rebuttal Declaration).

72. But, the fact that I did not explicitly call out the trim cover as distinct from the manifold underneath it, in no way undermines my opinion that “the nozzles in the Accused Products are part of the sprayer discs indirectly connected to the manifold, not part of the manifold itself.” First Rebuttal Decl., ¶ 85. Indeed, as Dr. Tanbour’s own image shows, the manifold located beneath the trim covering is plainly distinct from the sprayer discs that are indirectly connected to it:



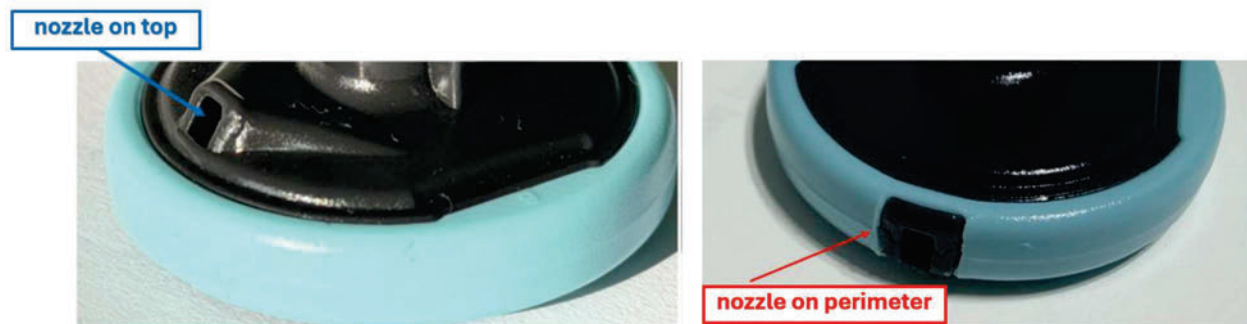
Tanbour Reply Decl., ¶ 79 (annotated to identify the manifold and the sprayer discs).

73. As another example, Dr. Tanbour criticizes the below image from my First Rebuttal Report. Tanbour Reply Decl., ¶¶ 82-84.²

² Notably, Dr. Tanbour ignores the fact that, in his Opening Declaration, he pointed to the same nozzle, in the same image, in mapping the claimed “nozzle” to the Accused Product. See Tanbour Opening Decl., ¶ 67.



Tanbour Reply Decl., ¶ 82. In particular, Dr. Tanbour describes it as “an incorrect presentation of the factual details of the Accused Product,” allegedly because it identifies only one of the nozzles on the disc sprayer (located on the outer perimeter of the disc; below, right), rather than the other nozzle (located on the upper surface of the disc; below, left).

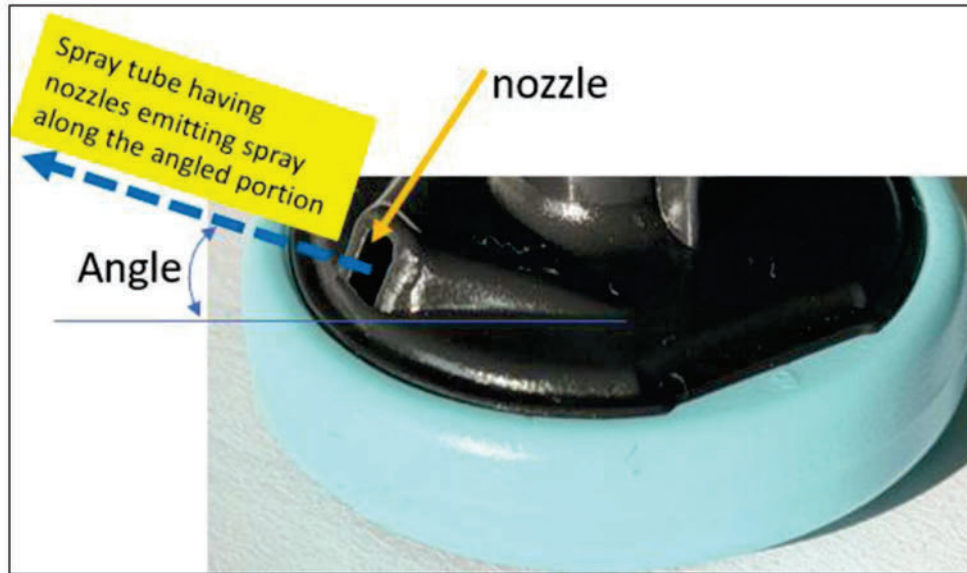


See Tanbour Reply Decl., ¶¶ 83-84 (annotated).

74. However, it does not matter to which of these two nozzles Whirlpool is mapping the claimed “nozzles.” My opinion is the same under either mapping: the Accused Product does not include the claimed “spray tube having nozzles,” because the nozzles in the Accused Product are part of sprayer discs, not part of the manifold. See First Rebuttal Declaration, ¶ 85.

75. At the same time, I identified the perimeter disc nozzle in my First Rebuttal Report because that is the nozzle that Dr. Tanbour pointed to in his Opening Declaration. *See* Tanbour Opening Decl., ¶ 67. Rather than reflecting any genuine criticism with my non-infringement analysis, Dr. Tanbour’s discussion of the disc sprayer nozzles in his Reply Declaration appears to have been for the purpose of changing his mapping for the claimed “nozzles.”

76. In particular, Dr. Tanbour appears to have changed his mapping for the claimed “nozzles,” based on a recognition that the nozzles located on the circumference of the spray discs are configured to emit spray in a horizontal direction. *See* Tanbour Reply Decl., ¶ 84 (referring to the nozzle located on the circumference of the disc as “the second water spout on the spray disc located in the side (turquoise) portion,” and stating that it “*exists to generate partly tangential force to facilitate rotation of the disc,*” in the horizontal plane). Indeed, Dr. Tanbour expressly states that the perimeter nozzle cannot correspond to one of the claimed “nozzles,” because “it is not designed to ‘spray along the angled portion,’” as required by the claims. *Id.* Dr. Tanbour presents the following image, depicting the other nozzle located on the upper surface of the spray disc, to support his opinion that “the nozzles of the Accused Products are spraying along the angled direction”:



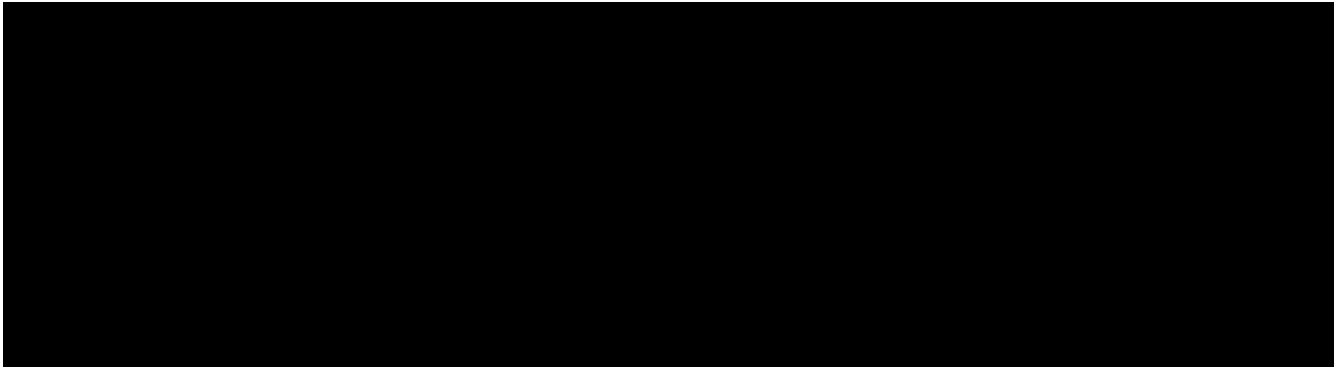
Tanbour Reply Decl., ¶ 89.

77. But, the Asserted Claims do not merely require that the claimed “nozzles” emit spray along *any* angled direction. Rather, they require that the nozzles emit “spray along *the* angled portion,” which corresponds, and finds antecedent basis in, a limitation appearing earlier in the claim reciting “an upwardly angled portion formed in the bottom wall.” Dr. Tanbour has not presented any evidence to support that the nozzles located on the upper surface of the spray disc emit spray along this specific direction. Nor does it appear to be so configured.

78. To the contrary, based on my review of videos of the disc sprayers in operation,³ it appears that the perimeter nozzle is configured to emit spray that impacts the lower inner surface of a glass positioned on the rack (i.e., it is emitted at an angle less than the angle of the glass, as positioned on the rack), while the nozzle on the top of the disc is configured to emit spray that impacts the upper inner surface of a glass positioned on the rack (i.e., it is emitted at an angle

³ See, e.g., <https://images.samsung.com/is/content/samsung/p6pim/us/feature/166669398/us-feature-dw90f24t-dw90f89p0usraa-550411969.mp4> (video at 0:35-0:40).

greater than the angle of the glass, as positioned on the rack). I have illustrated these angular relationships in the image below:



79. Thus, it is my opinion that the spray emitted by the nozzle on the upper surface of the spray disc is likely not directed “along the angled portion,” as required by the claim. Moreover, as I have illustrated above, the spray emitted by this nozzle may not be any closer to being “along the angled portion” than the spray emitted by the nozzle located on the circumference of the spray disc, which Dr. Tanbour expressly acknowledges does not meet the claim requirements, because it is “not designed to ‘spray along the angled portion.’” Tanbour Reply Decl., ¶ 84.

3. Dr. Tanbour fails to establish that the Accused Product includes “a curved mounting portion adjacent which the spray tube is mounted” (Claim 17)

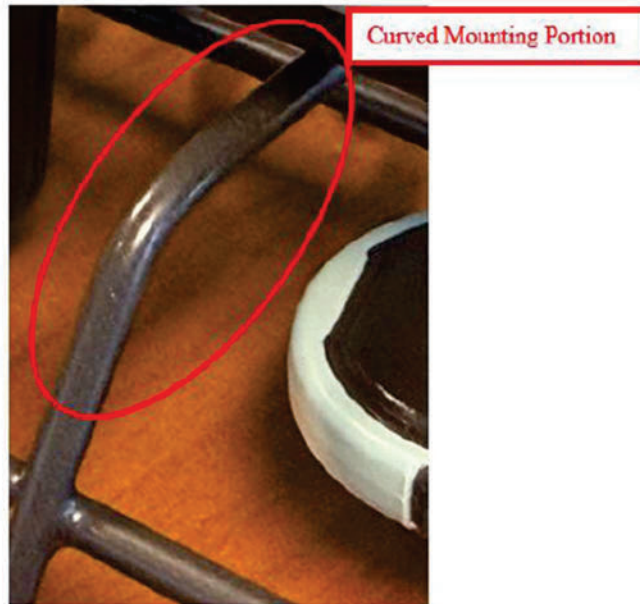
80. The Asserted Claims of the ’385 Patent do not merely recite a “curved mounting portion.” Rather, they require a “curved mounting portion” that is formed from “a contoured portion formed in the bottom wall configured to prevent glasses from sliding down the inclined angle.” Therefore, not only must the “curved mounting portion” be located “adjacent” to where the spray tube is mounted, but it also must be formed from the “contoured portion formed in the bottom wall [and] configured to prevent glasses from sliding down the inclined angle.”

81. In his Reply Declaration, Dr. Tanbour acknowledges that, in the Accused Product, the sprayer system is mounted to a horizontal portion of the bottom wall. *See* Tanbour Reply Decl., ¶ 95 (opining that the “‘middle flat segment’ of the structure identified by Dr. Cameron

servers one function in the Accused Product—to mount the spray tube”). He then attempts to map the claimed “curved mounting portion” to the upper curved transitions located on either side of that horizontal section. *See* Tanbour Reply Decl., ¶ 94 (“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.”). Dr. Tanbour illustrates these “curved portions” in the below annotated figures from his Reply Declaration:

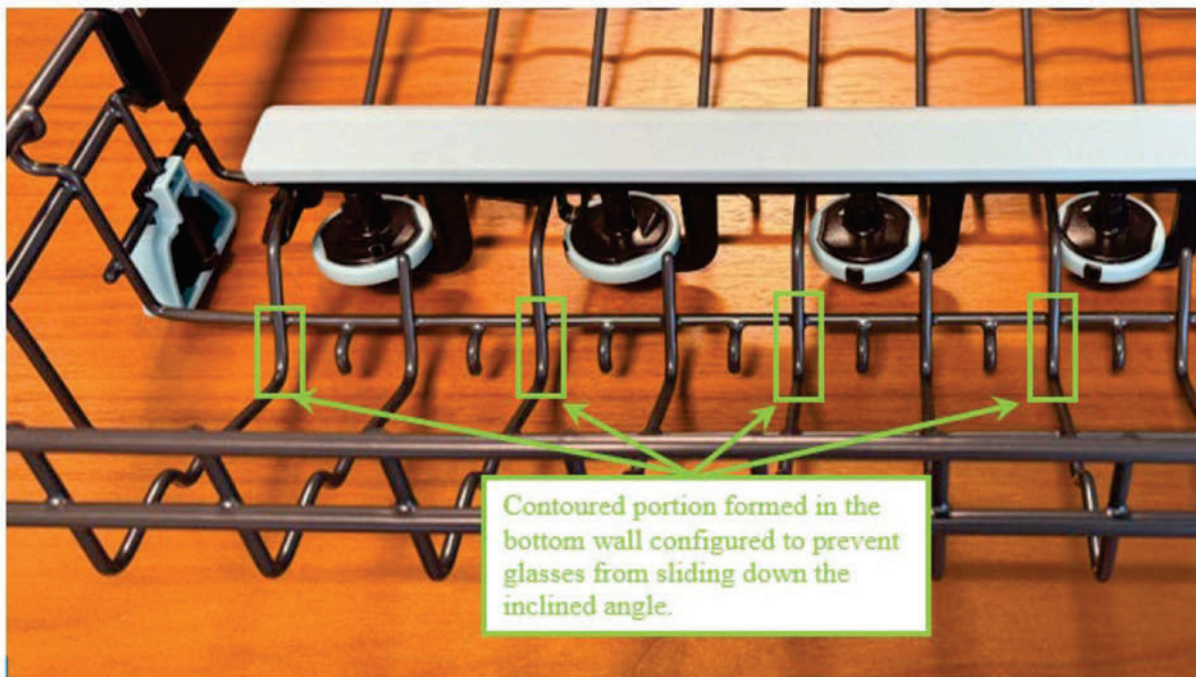


Tanbour Reply Decl., ¶ 91.



Tanbour Reply Decl., ¶ 92.

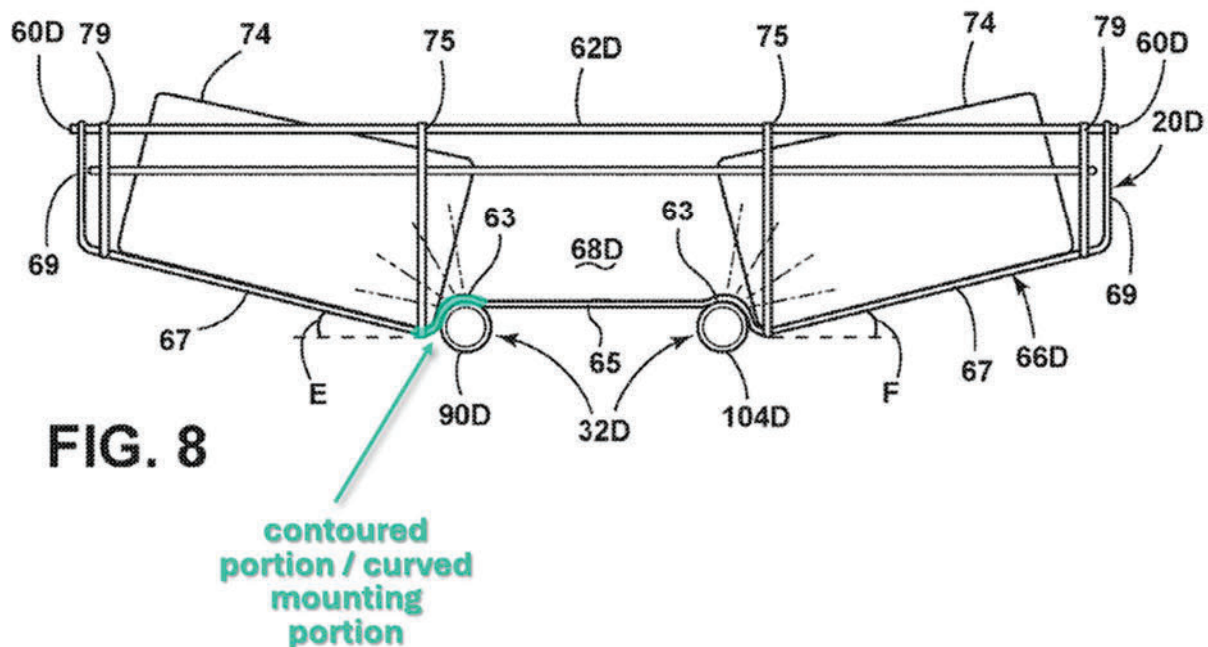
82. But, these upper curved portions do not prevent glasses from sliding down the incline. Instead, in the Accused Product, a lower curve—at the base of the incline—performs the anti-sliding function, as Dr. Tanbour recognized in his Opening Declaration:



Tanbour Opening Decl., ¶ 56. That lower curved portion is separated from the upper curved portion by a straight angled portion. Thus, in the Accused Product, there are two distinct curved portions serving two distinct functions:

- a lower curve that prevents glasses from sliding; and
- an upper curve that transitions into the flat mounting portion.

In contrast, the '385 Patent describes a single curved mounting portion that is part of the contoured bottom wall and that performs both functions—preventing glasses from sliding and acting as a mounting portion. Figure 8 illustrates this structure:



83. Dr. Tanbour's approach improperly isolates only the upper curved transitions in the accused products and ignores the claim's requirement that the curved mounting portion be part of the contoured structure that prevents sliding. However, because these upper curved transitions do not perform the retaining function, they cannot satisfy the claim limitation.

84. As he did in his Opening Declaration, Dr. Tanbour attempts to overcome this issue by redefining the entire region that includes the curved portions and the horizontal portion as

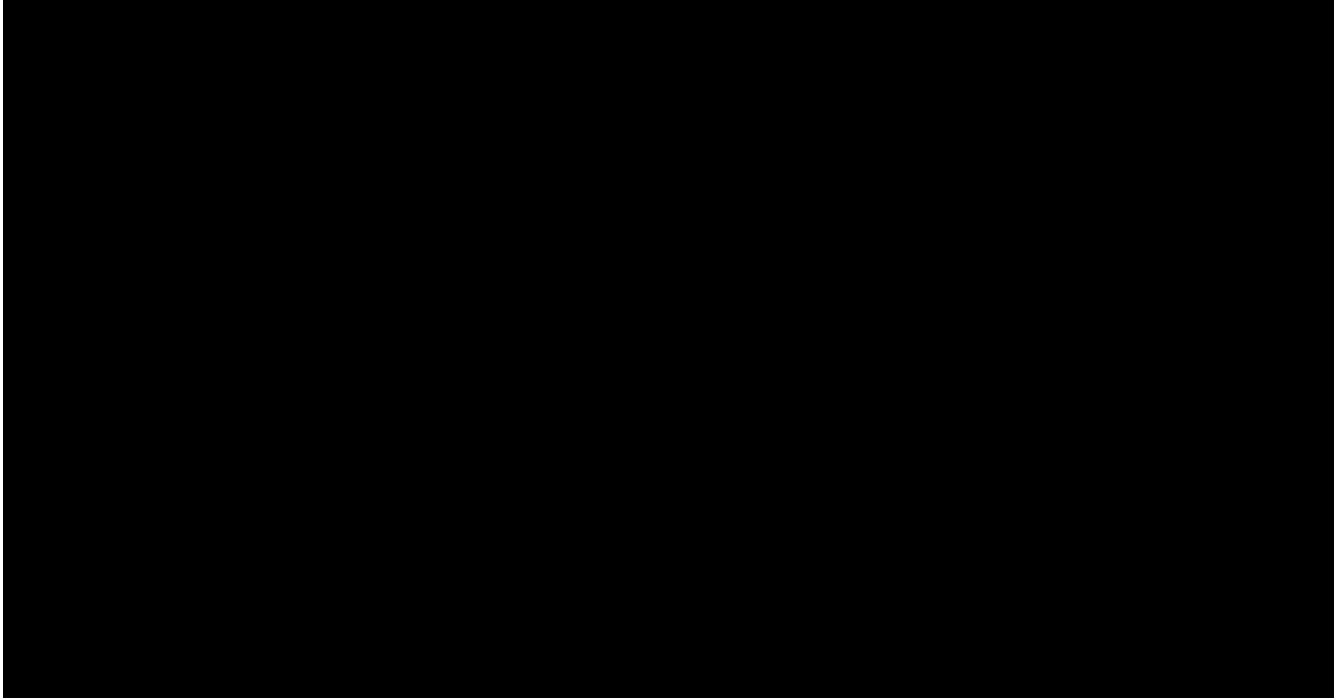
corresponding to the claimed “curved mounting portion.” Tanbour Reply Decl., ¶¶ 95-96. As I explained in my First Rebuttal Report, this mapping is inconsistent not only with the plain meaning of the term “curved mounting portion,” but also with the express disclosure of the ’385 Patent, which makes clear that the flat central portion (labeled 65 in Figure 8, above) is not part of, and is distinct from, the “curved mounting portion” (labeled 63). First Rebuttal Decl., ¶ 95.

85. In his Reply Declaration, Dr. Tanbour attempts to distinguish the “middle flat segment” of the Accused Product—which he contends is part of the claimed “curved mounting portion”—from the “flat central portion” shown in Figure 8 of the ’385 Patent as located adjacent to the curved mounting portion of the disclosed rack, and which the patent identifies as *distinct from* the curved mounting portion. Tanbour Reply Decl., ¶ 95. In particular, Dr. Tanbour notes that the patent describes the Figure 8 “flat central portion” as being used to hold silverware, whereas the “middle flat segment” of the Accused Product serves only as a mounting surface for the sprayer system. *Id.* From this, he argues that the Accused Product’s “middle flat segment” is not equivalent to the Figure 8’s “flat central portion.” *Id.*

86. That distinction misses the point. The patent consistently differentiates between a curved mounting portion and an adjacent flat portion as separate structural features. For instance, Claim 13 likewise recites “a flat central portion” and “curved mounting portions at opposing ends of the flat central portion,” without imposing any functional limitation on the flat central portion. Dr. Tanbour’s analysis improperly collapses this structural distinction by mapping both a curved region and an adjoining flat region in the Accused Product to the claimed “curved mounting portion,” contrary to the patent’s own description of those features as distinct.

87. Finally, Dr. Tanbour asserts that the middle flat segment is not actually flat, but rather “slightly bowed (concaved downwards),” the implication being that it is not equivalent to

the “flat central portion” described by the patent. Tanbour Reply Decl., ¶ 95. But Dr. Tanbour’s assertion is demonstrably wrong. The CAD file for the accused design definitively establishes that this segment of the accused rack is flat, as illustrated below:



B. The Accused Product Does Not Infringe the '681 Patent

88. As I explained in my First Rebuttal Declaration, the accused Samsung dish rack does not infringe the asserted claims of the '681 Patent because it does not include at least the following element required by all asserted claims: “at the second end of the dishrack, a second portion is angled with respect to the first portion.” First Rebuttal Decl., ¶¶ 98-99. In particular, the Samsung dish rack has a horizontal segment that terminates at the accused “second end of the dishrack,” not a “second portion [that] is angled.”

89. Dr. Tanbour’s only response is to contend that the horizontal segment “is angled upward at three degrees.” Tanbour Reply Decl., ¶ 99). Dr. Tanbour is factually wrong in his contention for the reasons I explained in Section IV.A.1.

C. The Accused Product Does Not Infringe the '922 Patent

90. As I explained in my Second Rebuttal Declaration, the Accused Product does not infringe the asserted claims of the '922 Patent because it does not include at least the following elements:

- “wherein the planar portion includes a plurality of utensil holders configured to horizontally support utensils” (as recited in Claim 1, and incorporated into dependent Claims 2-4, and 7-25); and
- “the upper dish rack defining a planar portion and a depression, wherein the depression includes a first angled wall and a second angled wall” (as recited in Claim 1, and incorporated into dependent Claims 2-4, and 7-25).
- “wherein the utensil caddy includes a diffuser that diffuses the spray of water emitted by the at least one sprayer” (Claim 13).

Second Rebuttal Decl., ¶¶ 58-75.

91. After reviewing Dr. Tanbour’s '922 Reply Declaration, it remains my opinion that the '922 Patent’s claims are not infringed because the foregoing elements are not met by the Samsung Accused Product as explained in my Second Rebuttal Report. I disagree with each of the criticisms raised by Dr. Tanbour regarding my non-infringement analysis for these three claim elements, and respond to each in detail, below.

1. Dr. Tanbour fails to establish that the Accused Product includes a “planar portion [that] includes a plurality of utensil holders”

92. In his '922 Reply Declaration, Dr. Tanbour offers several opinions as to why the Accused Product allegedly includes a “planar portion [that] includes a plurality of utensil holders,” despite the fact that, in the Accused Product, the utensil holders are included in a separate utensil tray that rests on top of—and thus is not included within—the planar portion of the dish rack. None has merit.

a. Dr. Tanbour’s accusation that, by explaining the plain meaning of the term “includes,” I am impermissibly reading additional elements into the claims is disingenuous

93. In my Second Rebuttal Declaration, I explained that the plain meaning of the claim term “the planar portion includes a plurality of utensil holders” “requires “that the utensil holders are integrated into the planar portion structure.” Second Rebuttal Decl., ¶ 58. According to Dr. Tanbour, by doing so, I am “read[ing] into the word ‘includes’ a claim limitation that isn’t there.” Tanbour ’922 Reply Decl., ¶ 63. I disagree.

94. As I explained in my Second Rebuttal Declaration regarding the ’922 Patent, the asserted claims of the ’922 Patent differ materially from the asserted claims of the ’681 Patent in their treatment of the claimed “utensil holders.” Second Rebuttal Decl. ¶ 14. In particular, while the asserted claims of the ’681 Patent recite “the first [substantially horizontal planar] portion *supporting* a first set of utensil holders,” ’681 Patent, Cl. 14, the asserted claims of the ’922 Patent recite “wherein the planar portion *includes* a plurality of utensil holders,” 922 Patent, Cl. 1. A POSITA would view this difference as meaningful. Dr. Tanbour’s analysis, however, treats both of these limitations the same, without providing any explanation for the difference in language.

95. In my Second Rebuttal Report, I offered my opinion as to how a POSITA would view the differing language, explaining that “by its plain language, Claim 1 requires that the planar portion of the dish rack not merely *support* a set of utensil holders (i.e., a set of utensil holders that is separate from, and rests on the dish rack), but rather *include* the utensil holders within the planar portion itself (i.e., meaning the utensil holders are integrated into the planar portion structure.” Second Declaration, ¶ 58. Thus, I explained that the phrase “supporting a first set of utensil holders” means that “[the] set of utensils holders [] is separate from, and rests on the dish rack,” and I explained that the phrase “includes a plurality of utensil holders” means that “the utensil holders are integrated into the planar portion structure.” Contrary to Dr. Tanbour’s accusation, by

providing such an explanation—i.e., what the two different phrases would mean to a POSITA—I was in no way “mandating additional elements not considered by the Patent and Trademark Office” (Tanbour ’922 Rebuttal Decl., ¶ 64).

96. I find this criticism of my opinion by Dr. Tanbour to be especially perplexing since in his earlier Rebuttal Report regarding the ’681 and ’385 Patents, Dr. Tanbour offered a very similar opinion as to the plain meaning of the claim language of the ’681 Patent. In criticizing my reliance on the Mailander prior art reference, in explaining that the asserted claims of the ’681 Patent are invalid, Dr. Tanbour argues that Mailander does not teach the claimed “bottom wall” of the dish rack, because:

- “[Mailander’s] 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...” Tanbour ’922 Reply Decl., ¶ 123.
- “Mailander’s wedge-shaped ‘washing items holders’ are not integrated into the bottom wall of the Mailander rack.” *Id.*, ¶ 124; *see also id.*, ¶ 168 (similar).
- “A POSITA looking at the washing items holders of Mailander would understand that these components are add-on components are not generated by forming the bottom wall. Also, Mailander does not disclose first and second angled portions formed in the bottom rack.” *Id.*, ¶ 124.

The asserted claims of the ’681 Patent require that the claimed “dish rack” “compris[es] a bottom wall,” and that “the bottom wall has a first portion ...[and] a second portion [that] is angled with respect to the first portion.” ’681 Patent, Cl. 14. Thus, in offering his opinion that Mailander does not teach the claimed “bottom wall,” Dr. Tanbour is setting forth his opinion of the meaning of the claim term *has*, requiring that, in order for a bottom wall to meet the requirement that it “has ... a second portion [that] is angled,” that angled portion must be: “part of the [] rack” (Tanbour First Rebuttal Decl., ¶123), “integrated into the bottom wall of the [] rack” (*id.*, ¶ 124), and “formed in the bottom rack” (*id.*).

97. But, if a bottom wall that “*has* ... a second [angled] portion” requires the angled portion to be *part of* the bottom wall and *integrated into* the bottom wall, as Dr. Tanbour opines, then a planar portion that “*includes* a plurality of utensil holders” likewise requires those utensil holders to be part of the planar portion such that they are integrated into the planar portion, as I opined in my Second Rebuttal Report. Indeed, it is Dr. Tanbour’s opinion that the “plain language” of the term “the planar portion *includes* a plurality of utensil holders” “simply requires that the planar portion *has* or contains a plurality of utensil holders”—i.e., it is Dr. Tanbour’s opinion that the terms “*includes*” and “*has*” carry the same meaning. Tanbour ’922 Reply Report, ¶ 65. Dr. Tanbour cannot credibly insist that “ha[ving]” requires structural integration while simultaneously arguing that “includ[ing]” permits entirely separate structures that are merely supported by the bottom wall.

b. Dr. Tanbour is wrong that my plain meaning interpretation of Claim 1 renders satisfaction of Claim 3 “impossible”

98. Dr. Tanbour also argues that my interpretation of the claim language, “includes a plurality of utensil holders,” “would necessitate that the utensil holders could not be removable,” allegedly because “a removable utensil holder would not satisfy the made up ‘integration’ into the bottom wall requirement manufactured by Dr. Cameron.”⁴ Tanbour ’922 Rebuttal Decl., ¶ 66. On that basis, Dr. Tanbour asserts that my opinion regarding the plain meaning of the claim term “includes” in Claim 1 “cannot be correct,” because it “would inappropriately render satisfaction of Claim 3 impossible.” *Id.*, ¶ 67. I do not agree.

⁴ Dr. Tanbour offers no explanation as to how, as explained above, he can opine that the claim term “includes” has the same meaning as the term “has” (Tanbour ’922 Reply Decl., ¶ 65), and that the term “has” requires integration (Tanbour Reply Decl., ¶ 124), while simultaneously accusing me of “manufactur[ing]” a “made up ‘integration’” requirement for the term “includes.” Tanbour ’922 Reply Decl., ¶ 66.

99. Claim 2 of the '922 Patent recites “[t]he dishwasher of claim 1, wherein the plurality of utensil holders is disposed in a utensil caddy operably coupled to the planar portion,” and Claim 3 adds onto Claim 2 the requirement that “the utensil caddy includes a basket that is removably coupled with a bottom wall of the planar portion.” '922 Patent, Cls. 2-3. My opinion regarding the plain language meaning of Claim 1 is entirely consistent with these dependent claims.

100. As I explained in my Second Rebuttal Declaration, the '922 Patent describes multiple possible configuration of its disclosed dish rack and utensil caddy. For instance, the patent variously states that the disclosed utensil caddy can:

- “rest on” a portion of the bottom wall of the dish rack ('922 Patent, 6:51-53);
- “be directly coupled to” a portion of the bottom wall (*id.*);
- “form a portion of the bottom wall 104 of the dish rack 102” (*id.*);
- “be integrally formed with the planar portion 106” of the bottom wall (*id.*, 6:8-10);
- “be received within a region of the dish rack 102 adjacent to a portion of the bottom wall 104” (*id.*, 6:1-3); and
- “be removably mounted to a portion of the dish rack 102” (*id.*, 6:3-6).

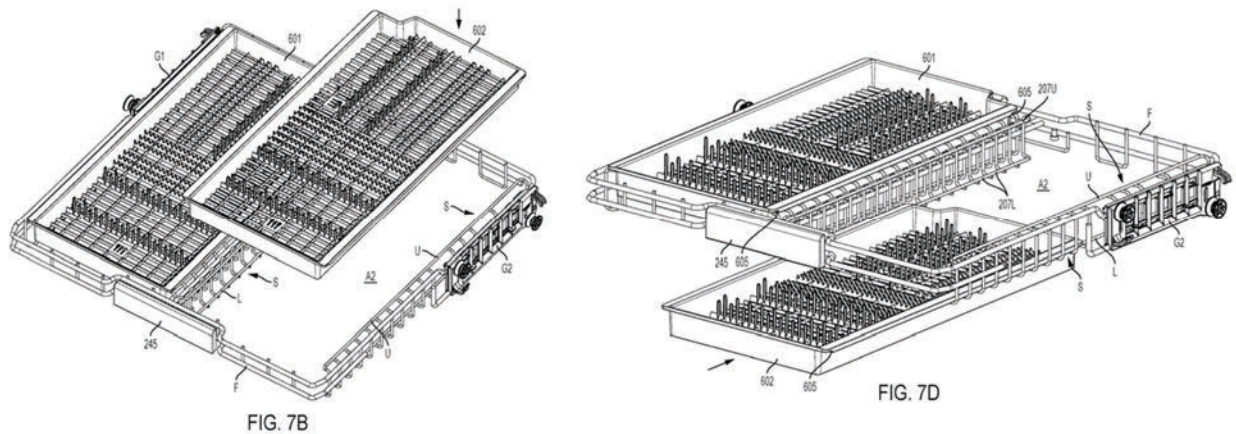
Accordingly, in addition to the illustrated embodiments of the '922 Patent, in which the utensil caddy is *supported* by the planar portion of the bottom wall of the dish rack, the '922 Patent contemplates that the utensil caddy may “form a portion of the bottom wall 104 of the dish rack” ('922 Patent, 6:51-53) and “be removably mounted to a portion of the dish rack” (*id.*, 6:3-6).

101. Dish racks with utensil baskets meeting both of these requirements would have been well-known to a POSITA at the time of the alleged invention. In particular, a POSITA would have recognized that a modular rack construction with a utensil basket implemented as a

removeable insert would satisfy both of these characteristics. As an example, U.S. Patent Pub. No. 2019/0298146 to Gutowski discloses:

A modular washware rack for a dishwasher, including an open frame having an upper level support structure that is configured to accept at least one basket insert from above and support the at least one basket insert at an upper level, the open frame having a lower level support structure, the at least one basket insert being adjustable in height by lifting and removing the at least one basket insert from the upper level support structure of the open frame and then sliding the at least one basket insert along the lower level support structure to support the at least one basket at a lower level.”

Ex. Q (US 2019/0298146 (“Gutowski”)) at Abstract. Gutowski’s modular rack is illustrated in Figures 7B and 7D, below:



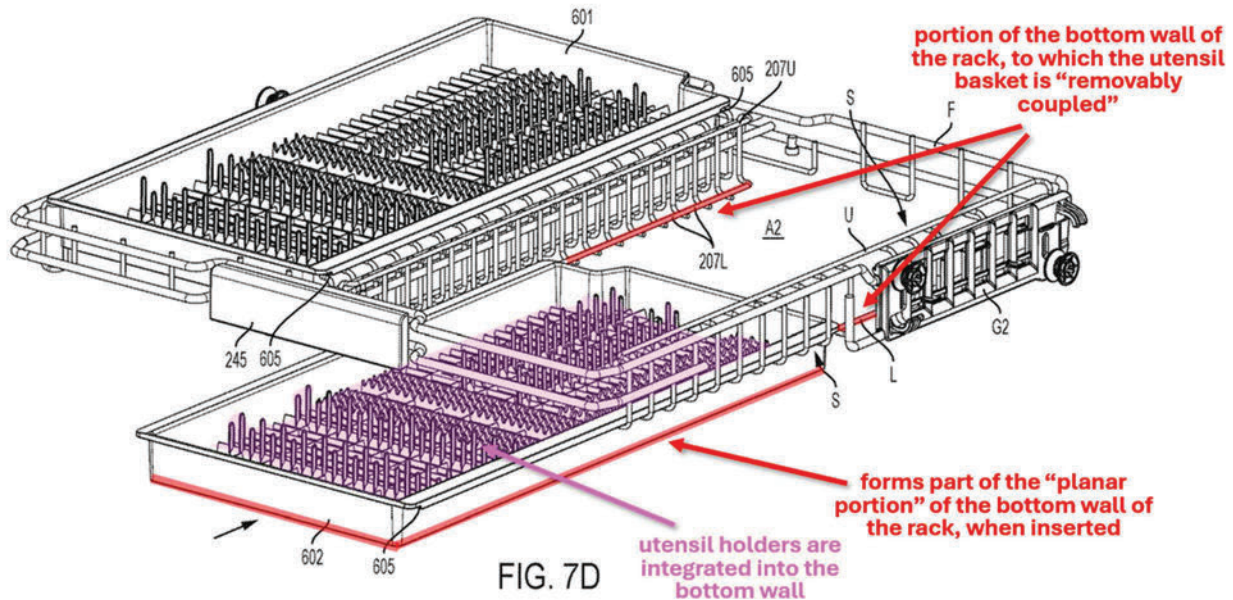
102. Figure 1 of Gutowski (reproduced below) illustrates this modular dish rack positioned within a dishwasher, in a configuration in which both inserts are coupled to the upper level support structure, thereby creating additional space for items (such as the illustrated wine glasses) positioned on the rack below:

103. Gutowski explains that, through the use of its adjustable inserts, the disclosed dish rack “increases the capacity, flexibility, and versatility of a dishwasher.” Ex. Q, ¶ 6. In particular, the disclosed rack “allows the user/consumer to lift and remove the basket inserts in order to adjust the height level of the basket inserts in the third, top rack, or allows the user/consumer to completely remove the basket inserts from the modular washware rack if desired to facilitate the unloading process.” *Id.*, ¶ 8.

104. Numerous other examples of such modular dish racks exist in the prior art. *See, e.g.*, Ex. R (U.S. Patent No. 9,516,990), 1:44-49, FIGs. 5-8; Ex. S (U.S. Patent No. 9,532,702), Abstract, FIGs. 5a, 8. I have focused specifically on Gutowski’s modular rack, however, because the ’922 Patent explicitly identifies Gutowski as known prior art. ’922 Patent, Cover. I understand that the prior art references cited on the face of a patent form part of the patent’s prosecution history, and are considered intrinsic evidence that may be relied upon in interpreting the plain meaning of a patent’s claim terms. Moreover, I understand that Gutowski was identified by Whirlpool during prosecution of U.S. Patent Application No. 16/833,984, which issued as U.S. Patent No. 11,375,874, and is the great-great-grandparent of the ’922 Patent and the first-filed member of the ’922 Patent’s family. Ex. T (Information Disclosure Statement identifying Gutowski); ’922 Patent, Cover. This strongly suggests to me that the inventors of the ’922 Patent were well-aware of modular dish racks, such as the one disclosed by Gutowski, at the time the ’922 Patent’s specification was drafted.

105. As I have illustrated in annotated Figure 7D, below, when Gutowski’s utensil basket—which includes integrated utensil holders—is coupled to the lower level support structure of Gutowski’s modular dish rack, the rack plainly meets the requirements of Claim 3 of the ’922

Patent, despite Dr. Tanbour’s assertion that such configuration would be “impossible” (Tanbour ’922 Reply Decl., ¶ 67).



c. Contrary to Dr. Tanbour’s assertions, the specification of the ’922 Patent plainly supports my opinion

106. In his ’922 Reply Declaration, Dr. Tanbour states that “the patent language does not support (but rather contradicts) Dr. Cameron’s argument that for the planar portion to ‘include’ a plurality of utensil holders, the utensil holders must be ‘integrated’ into the planar portion and structurally ‘form part of the bottom wall.’” Tanbour ’922 Reply Decl., ¶ 68. In support of this opinion, Dr. Tanbour points to the portion of the Abstract of the ’922 Patent that states: “A dishwasher includes a tub that defines a dish treating chamber. A first lower dish rack and a second lower dish rack are located in the dish treating chamber.” *Id.* (quoting ’922 Patent, Abstract). According to Dr. Tanbour, under my understanding of the plain meaning of the word “includes,” this passage within the Abstract would require that “the dishracks are formed as ‘*integral*’ parts of the dishwasher tub.” *Id.* I cannot see how that could possibly follow.

107. A POSITA would plainly recognize that the asserted claims of the '922 Patent use “includes” in referring to the properties of a planar surface, rather than a 3D enclosure. Clearly, a 3D enclosure can “include” items within it, without those items being integrated into the structure itself. The same is not true of a surface, as Dr. Tanbour himself recognized in his earlier Rebuttal Declaration, as I have addressed above. *See also* Tanbour Reply Decl., ¶ 124; Tanbour '922 Reply Decl., ¶¶ 65-66.

108. Dr. Tanbour also argues that my reliance on the specification's statement that “[a]lternatively, at least a portion of the utensil caddy 70 can be integrally formed within the planar portion 106 and hence the dish rack 102,” somehow also undermines my position. Tanbour '922 Reply Decl., ¶ 68. In particular, Dr. Tanbour appears to misrepresent my opinion, implying that it is my understanding that the '922 Patent discloses *only* embodiments in which the utensil holders are integrated into the planar portion of the rack. *Id.* (stating that my opinion “completely ignores that the specification sentence starts with the work ‘[a]lternatively’ and uses the phrase ‘*can be* integrally formed’”). Once again, Dr. Tanbour is incorrect.

109. As I explained in my Second Rebuttal Report, I agree that the '922 Patent discloses embodiments in which the utensil holders are supported on top of the planar portion of the rack—including the embodiments illustrated in the figures. Second Rebuttal Decl., ¶ 18. My opinion is that, *in addition to* such embodiments, the '922 Patent also discloses embodiments in which the utensil holders are integrated into the planar portion. *Id.*, ¶ 19. Clearly, it does. *Id.* (quoting '922 Patent, 6:51-53 (stating that the disclosed utensil caddy may “form a portion of the bottom wall 104 of the dish rack 102, specifically, the planar portion 106”).

110. Contrary to Dr. Tanbour's assertion, Tanbour '922 Reply Decl., ¶ 69, there is no requirement in patent law that the illustrated embodiments must be covered by the claims, when

the claimed embodiments are otherwise disclosed as alternative embodiments. Notably, the '922 Patent was filed as the fifth member of a family of continuation applications claiming priority back to Appl. No. 16/833984. '922 Patent, Cover. Continuation practice exists precisely so that applicants may pursue additional claim scope based on the disclosure of the earlier application. And it makes sense that, while earlier patents in the family may cover the illustrated embodiments, later-filed patents include claims directed to the alternative embodiments disclosed, but not necessarily illustrated.

111. Nor is there any requirement that a company's patents must necessarily cover their own products. A self-serving assertion by Whirlpool that its dish rack—with a utensil basket *supported* by, but not *included* within the rack—practices the claims of the '922 Patent cannot change the plain meaning of its claim terms.

2. Dr. Tanbour fails to establish that the dish rack of the Accused Product defines “a planar portion and a depression, wherein the depression includes a first angled wall and a second angled wall,” with both angled walls defining “cup seats”

112. Dr. Tanbour disagrees with my opinion that the Accused Product does not meet the requirements of Claim 1 of the '922 Patent at least because its dish rack “does not include a single depression that defines two sets of cup seats,” but rather “includes two separate depressions separate by a planar portion where each depression defines a single set of cup seats.” Tanbour '922 Reply Decl., ¶ 76. But the evidence Dr. Tanbour cites in support—namely, a dictionary definition of the term “depression”—supports rather than undermines my opinion.

113. As Dr. Tanbour's dictionary definition states, a “depression” is defined as “a place or part that is lower than the surrounding area.” *Id.* (quoting Merriam-Webster). But that is exactly my point. The dish rack in the Accused Product includes three horizontal planar portions together

with two depressions, defined in relation to the *surrounding area*—i.e., the two planar portions on either side of the depression.

114. Dr. Tanbour argues that the depression must be understood as any region lower than the utensil-supporting portion of the rack (which Dr. Tanbour incorrectly maps to the utensil-including portion of the rack recited in the claims). *See* Tanbour '922 Reply Decl., ¶¶ 76-77. But that would encompass a mere step down from an upper planar portion to a lower planar portion—a fundamentally different geometry than a “depression.”

115. Dr. Tanbour also relies on Figure 3 of the '922 Patent to argue against my opinion, effectively treating the raised portion between the two sets of cup seats in Figure 3's rack as equivalent to the distinct planar portion that is located between two separate depressions in the accused dish rack. But, in the illustrated embodiment of Figure 3, the raised portion within the depression is not a horizontal planar surface. Instead, it is entirely curved, forming part of a continuous curved profile that defines the depression. The surface of the rack transitions smoothly down into the depression and then smoothly back upward through the raised curved portion, without introducing a separate raised planar region. A POSITA would recognize that this type of geometry—continuous curvature forming both the depression and the raised feature—is fundamentally different from a structure that includes *distinct* horizontal planar portions separated by pairs of walls that are angled downwards, with each such pair of angled walls defining its own depression..

3. Dr. Tanbour fails to establish that the utensil caddy includes “a diffuser”

116. According to Dr. Tanbour, “[his] testing of the Accused Products show that the side walls [of the utensil basket] deflected water that formed a fan pattern covering a larger area than

[a] straight-line stream,” such that the side walls of the basket meet the requirements of the claimed “diffuser.” I disagree.

117. Notably, Dr. Tanbour has not presented any results of his alleged “testing” in any of his Declarations. He merely annotated an image of the Accused Product with dotted lines purportedly illustrating a “[d]iffused stream of water.” Tanbour ’922 Reply Decl., p. 33. Nor has he provided any information about the test setup he allegedly used, or how he measured the alleged “fan pattern.” More fundamentally, as I explained in my Second Rebuttal Declaration, under Dr. Tanbour’s interpretation of the claimed “diffuser,” any surface located within the rack could thereby qualify as the claimed “diffuser,” effectively reading this limitation out of the claim. Dr. Tanbour’s position simply does not make any sense.

V. INVALIDITY OF THE ASSERTED PATENTS

A. The Asserted Claims of the ’681 Patent are Invalid

1. There is no “ordinary dimensions” requirement in the Asserted Claims

118. Throughout his Reply Declaration, Dr. Tanbour repeatedly argues that the prior art references relied upon in my First Rebuttal Declaration do not render the Asserted Claims of the ’681 Patent obvious, because they do not teach a dish rack “capable of accommodating glasses *with ordinary dimensions*.” See Tanbour Reply Decl., ¶¶ 116 (“Carr does not teach a top rack capable of accommodating glasses with ordinary dimensions.”), 121 (“[U]nlike 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.”), 125 (“Mailander cannot accommodate glasses or cups having ordinary dimensions.”), 155 (“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.”), 164 (“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 [of] ordinary dimensions.”).

119. But the Asserted Claims include no such requirement relating to the dimensions of the glasses or “cups.” Independent Claim 14 merely recites that the claimed “dish rack” defines “a cup seat *for supporting one or more cups* in [a] depression” formed in the bottom wall of the rack by a “second portion” of the bottom wall of the rack, which is “angled” relative to a “first substantially horizontal planar portion” of the bottom wall. '681 Patent, Cl. 14. Thus, the claim contains no limitation requiring that the recited “cup seat” accommodate glasses or cups of any particular size, dimension, or configuration, only that the cup seat is capable of “supporting one or more cups.”

2. Dr. Tanbour’s construction of “cup seat” is unduly narrow

120. Dr. Tanbour also argues that each of the prior art grounds for the '681 Patent fails to teach the claimed “cup seat,” because neither Carr, Bosch 800, nor Cao teaches an angled portion of the bottom wall that is specifically designed to be a cup seat that supports cups “along their cylindrical edge.” Tanbour Reply Decl., ¶ 122 (“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.”); *see also id.*, ¶ 155 (“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.”), ¶ 130 (“Cao does not disclose an angled portion of the rack specifically designed to be a cup seat which supports cups along their cylindrical edge.”).

121. But, like Dr. Tanbour’s “ordinary dimensions” requirement, nothing in the asserted claims suggests that the claimed “cup seat” must be designed to support cups along their cylindrical edge. The claim merely recites “a cup seat” that is defined by a “second portion” of the bottom

wall of the rack that “is angled with respect to the first portion and defining a depression.” Nor does the specification place any of the requirements on “cup seat” that Dr. Tanbour suggests.

122. Based on the language of the claim and the disclosure within the specification, a POSITA would understand that a “cup seat,” as used in the ’681 Patent, is simply a location in a depression formed by an angled portion of the rack where a cup can be supported for washing. As I explained in my First Rebuttal Declaration, Carr, Bosch 800, Mailander, and Cao all teach such as cup seat. First Rebuttal Decl., ¶¶ 119-121 (Carr), 134-135 (Bosch 800), 161 (Mailander), 64 (Cao).

3. Bosch 800 is prior art

123. Dr. Tanbour contends that I “failed to establish Bosch 800 as prior art to the claims in the ’681 Patent.” Tanbour Reply Decl., ¶ 119. But, the customer brochure that I relied upon in my First Rebuttal Report was published in 2019. *See* Ex. F at 26 (identifying a copyright date of 2019). And, as I explained in my Second Rebuttal Report, the Bosch 800 dishwasher itself was available in 2013, and the specific MyWay Rack relied upon in the Bosch 800 invalidity ground was available for purchase as early as May 2017. Second Rebuttal Decl., ¶ 34. Bosch 800 clearly qualifies as prior art to the ’681 Patent, which claims priority to March 30, 2020. ’681 Patent, Cover.

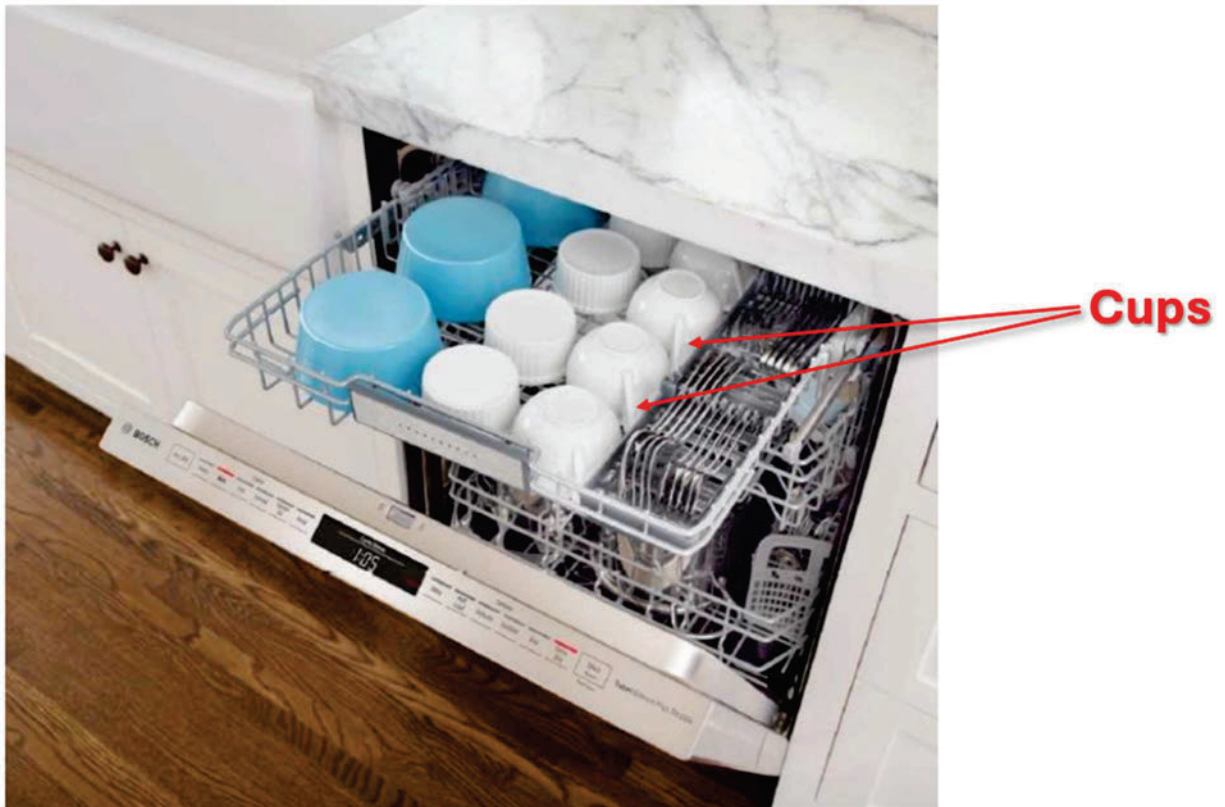
4. Dr. Tanbour fails to rebut that Carr and Bosch 800 each anticipates or renders obvious independent Claim 14 and dependent Claim 15

a. Carr and Bosch 800 both teach an inclined second portion “defining a cup seat”

124. As I explained in my First Rebuttal Declaration, each of Carr and Bosch 800 anticipates and/or renders obvious Claim 14 of the ’681 Patent. First Rebuttal Decl., ¶¶ 101-121 (Carr), 125-135 (Bosch 800). In his Reply Declaration, Dr. Tanbour disputes only one aspect of my analysis for these two invalidity grounds—namely, Dr. Tanbour disagrees that either reference

teaches the claimed “cup seat.” *See* Tanbour Reply Decl., ¶¶ 154-155 (“Carr does not teach a cup seat.”), ¶¶ 160-161 (“Bosch 800 does not teach a cup seat.”).

125. As I explained above, Dr. Tanbour’s opinion that neither Carr nor Bosch 800 teaches the claimed “cup seat” is based on an unduly narrow construction of that term. Under the plain meaning of that term—which a POSITA would understand to simply be a location in a depression formed by an angled portion of the rack where a cup can be supported for washing—both Carr and Bosch 800 plainly teach the claimed “cup seat.” *See* First Rebuttal Decl., ¶¶ 101-121 (Carr), 125-135 (Bosch 800). Indeed, Dr. Tanbour’s Reply Declaration acknowledges as much. In particular, in paragraph 155, Dr. Tanbour acknowledges that Carr discloses that its rack is configured to hold “cups.” Tanbour Reply Decl., ¶ 155. And, below paragraph 161 of his Reply Declaration, Dr. Tanbour reproduces an image of the Bosch 800 dish rack on which a set of cups are clearly positioned:



Id., ¶ 161 (annotated).

b. Dr. Tanbour improperly imports a functional requirement for the “third portion” into Claim 15

126. For the Carr and Bosch 800 invalidity grounds presented in my First Rebuttal Declaration, Dr. Tanbour argues that neither reference teaches the “third portion” of the bottom wall of the rack, as recited in dependent Claim 15, because the portion of Carr’s and Bosch 800’s racks that I have mapped to the claimed “third portion” cannot “securely hold items for washing.” Tanbour Reply Decl., ¶ 157 (arguing that Carr does not teach the claimed “third portion,” because it is not “designed to be able to securely hold items for washing”), ¶ 162 (same for Bosch 800).

127. But there is no such requirement in Claim 15, that the “third portion” hold any items. All Claim 15 requires of the claimed “third portion” is that it is “angled” relative to the horizontal planar portion, it “extend[s] across a third portion of the bottom wall,” and it is “connected to and extending from the first portion and angled away from the first portion.” Each of Carr’s and Bosch 800’s “third portion” meets all of these requirements. *See* First Rebuttal Decl., ¶¶ 122-124 (Carr), 136-138 (Bosch 800).

c. Carr’s “third portion” extends across a portion of the bottom wall

128. As an additional reason he asserts that Carr fails to anticipate or render obvious the Asserted Claims, Dr. Tanbour contends that “Dr. Cameron’s purported third portion plainly does not ‘extend[] across’ part of the bottom wall as required by Claim 15.” Tanbour Reply Decl., ¶ 157. But Dr. Tanbour provides no analysis to support his assertion. Moreover, contrary to that assertion, the third portion of Carr’s bottom wall plainly *does* extend across part of the bottom wall, as illustrated in annotated Figure 4, below:



a. It would have been straightforward to combine Mailander and Cao

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130. First, to the extent Dr. Tanbour is implying that Mailander’s “washing items support” does not correspond to a dish rack, that implication is contrary to the express disclosures of the reference. Mailander repeatedly describes its washing items support as mounted within the dishwasher washing space, and arranged above a crockery basket in the manner of a rack or drawer for holding dishes like cutlery. *See, e.g.*, Mailander, ¶ 12 (“The washing items support therefore represents a kind of cutlery drawer which is arranged in addition to the crockery baskets provided in the dishwasher.”). Moreover, Mailander plainly discloses that its washing items support may be a top dish rack. *See, e.g., id.*, ¶ 22 (“FIG. 1 shows a washing items support arranged above a cutlery basket in a sectional representation.”).

131. Second, contrary to Dr. Tanbour’s assertion, Mailander and Cao teach similar rack designs. For instance, both Cao and Mailander teach rack designs in which utensils may be positioned on upper surfaces, above depressions into which larger items may be placed. *See, e.g.*, Mailander, ¶¶ 12 (“Whilst the first container region is classically designed for the ordered receiving of pieces of cutlery, [the] design of the second container region enables both pieces of cutlery and other pieces of crockery to be placed in it.”), 14 (“Because of the provision of upper sections in each washing items holder support points are created for pieces of cutlery placed in the second container region.”); Cao, ¶ 49 (explaining that “tableware having greater volumes than [] knives and forks 5 and spoons, such as eggbeaters 6 or tea cups 7 or the like” can be placed within the depression/cavity, but “the user may stretch a hand into the accommodating cavity 15 and pick up the knives and forks 5” resting on the surface above the depression/cavity, “thereby facilitating the collection”). And, like Cao, Mailander also teaches that its inclined walls may be adjustable: “The inclination of support surface 34 of washing goods holder 30 may also be adjustable, e.g. in that

washing items holder 30 can be swivelled and stopped about a horizontal axis (not shown).” Mailander, ¶ 27.

b. Mailander teaches the claimed angled portions and depression

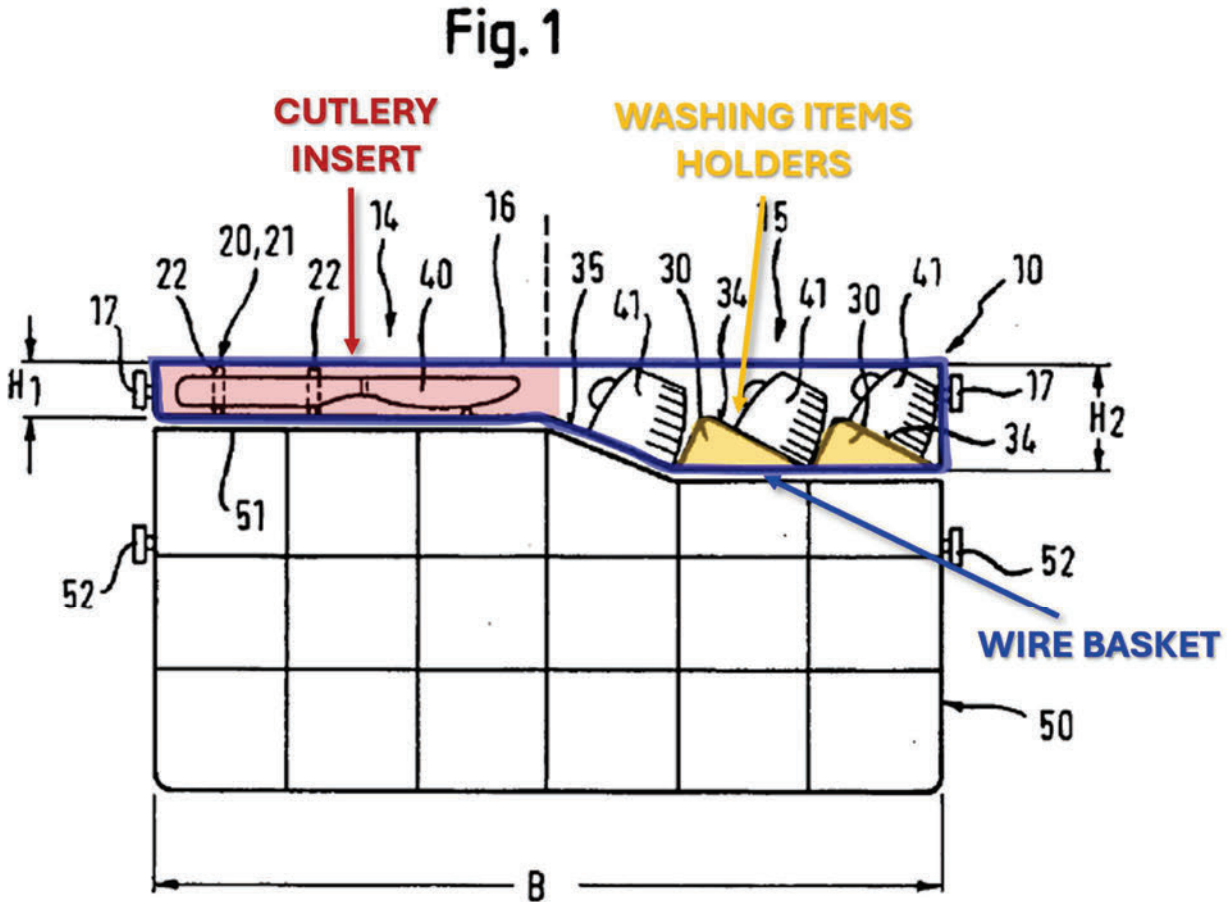
132. With regard to the specific limitations of Claims 14 and 15, Dr. Tanbour primarily argues that they are not taught by the Mailander-Cao combination because Mailander allegedly fails to teach the claimed “angled” portions of the bottom wall, defining a “depression.” *See, e.g.*, Tanbour Reply Decl., ¶¶ 165 (arguing, with regard to Claim 14[B(ii)], that “Dr. Cameron has not established that Mailander teaches a depression”), 167 (same for Claim 14[B(iv)]), 168 (arguing, with regard to Claim 14[B(vi)], that “Mailander does not teach a second portion defining a cup seat”), 169 (arguing, with regard to Claim 15[A], that “Mailander does not teach a third portion formed in its bottom wall”), 172 (arguing, with regard to Claim 15[B], that “Mailander and Cao do not teach a third portion connected to and extending from the first portion and angled away from the first portion”).

133. According to Dr. Tanbour, Mailander’s inclined “washing items holders” “are ‘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.” Tanbour Reply Decl., ¶ 123. On that purported basis, Dr. Tanbour argues that “Mailander does not disclose first and second angled portions formed in the bottom rack.” *Id.*, ¶ 124. I disagree.

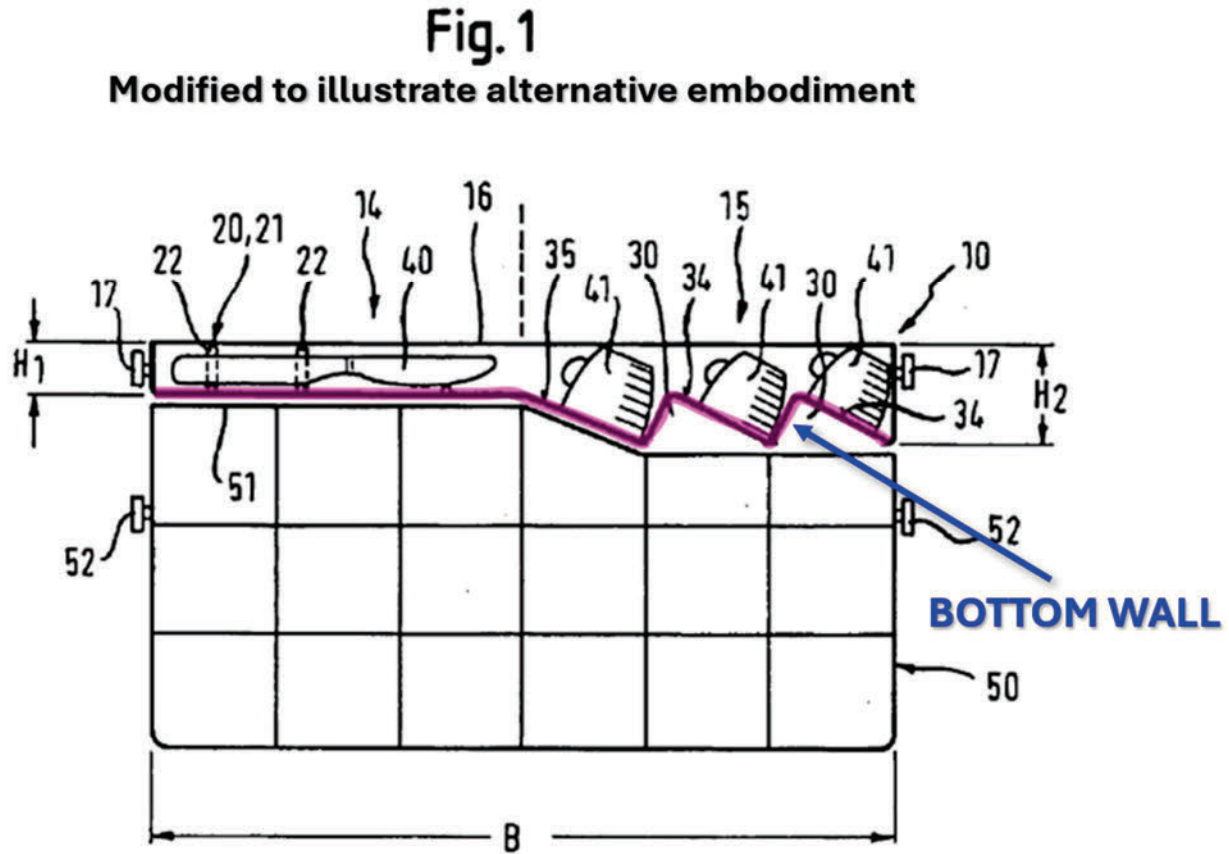
134. As a preliminary matter, while Mailander does disclose *some embodiments* in which the angled cup seats of Mailander’s rack are formed from “washing items holders 30” in the form of inserts that sit atop a wire frame, these are not the only embodiments disclosed.

135. The embodiments with inserts include the embodiment depicted in Figure 1, below, which shows Mailander’s washing items support 10 in the form of “a base basket 11” on which

“cutlery insert 20” and “washing items holders 30”—either provided “as separate inserts” or “formed integrally together” (Mailander, ¶ 27)—are positioned. *Id.*, ¶¶ 26-28.



136. But Mailander also teaches *additional embodiments* in which washing item holders 30 form part of the bottom wall itself, explaining that, while in the illustrated embodiment, “[w]ashing items support 10 [] consist[s] of a base basket 11 and a washing items holder 30 of plastic,” “[i]n a further embodiment, not shown, washing items support 10 may consist of only one material, e.g. a plastic, i.e. without base basket 11.” Mailander, ¶ 28. A POSITA would have understood that, in such alternative embodiment, the inclined surfaces of each of Mailander’s washing items support 30 would indeed correspond to the bottom wall of Mailander’s rack, as I have illustrated below:



c. Dr. Tanbour's criticisms of Cao lack merit

(1) A POSITA would not have been discouraged by Cao's plastic components

137. According to Dr. Tanbour, a POSITA would have been discouraged from combining Cao with other references because “Cao’s reconfigurable rack is made from injection-molded plastic components,” and “[a] POSITA would know that a plastic dish rack bottom wall may sag and deform due to hot water, steam, and drying heat.” Tanbour Reply Decl. ¶ 129. I disagree.

138. As a preliminary matter, Dr. Tanbour offers nothing to substantiate this conclusory opinion. He cites no experimental data, technical analysis, or contemporaneous evidence showing that plastic racks used in dishwashers would in fact be unsuitable or prone to deformation under typical operating conditions. At the same time, his unsupported assertion is undermined by the

'681 Patent itself, which expressly contemplates the use of plastic racks. In particular, the '681 Patent states: “although the present disclosure is described for use with a wire dish rack,” the patent explicitly notes that “various rack constructions, including molded racks, such as *racks molded of plastic*, may be used.” '681 Patent, 10:15-19.

139. It would have been well-known to a POSITA that dishwasher racks were often made from plastic. Indeed, in addition to Cao, Mailander, and Carr all teach dish racks formed out of plastic. *See, e.g.*, Mailander, ¶ 28 (“In a further embodiment, not shown, washing items support 10 may consist of only one material, e.g. plastic, i.e. without base basket 11.”); Carr, ¶ 40 (explaining that dish racks “may be formed of solid plastic, metal wire coated with plastic or rubber, or composite materials.”).

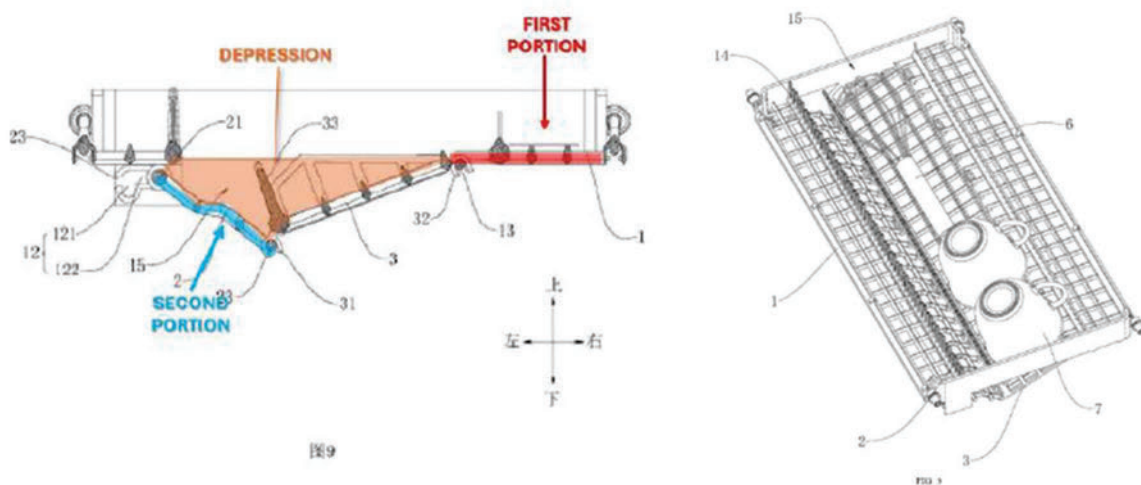
(2) Like Mailander, Cao also teaches a second portion defining a cup seat

140. Like he does for the other asserted prior art references, Dr. Tanbour also asserts that Cao fails to teach the claimed “second portion” that “defin[es] a cup seat for supporting one or more cups in the depression.” *See, e.g.*, Tanbour Reply Decl., ¶¶ 132 (“Cao does not teach a second portion defining a cup seat.”), 166 (“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.”). As a preliminary matter, while Cao bolsters Mailander’s disclosure of the claimed “second portion,” on its own, Mailander teaches the claimed “second portion” defining a cup seat, as explained above. Moreover, I disagree with Dr. Tanbour that Cao fails to teach the claimed “second portion” defining a “cup seat.”

141. Once again, Dr. Tanbour relies on his unduly narrow construction of the term “cup seat” to argue that Cao fails to teach this limitation. *See* Tanbour Reply Decl., ¶ 132 (arguing that Cao fails to disclose a cup seat because it does not include express disclosure of cups being placed

on the rack along their cylindrical edge). For the reasons explained above, this argument lacks merit.

142. Dr. Tanbour also argues against Cao’s disclosure of a “cup seat” because “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 illustrated in Figure 5 of Cao, reproduced below. Tanbour Reply Decl. ¶ 132.



143. But nothing in Cao limits the placement of cups to one angled wall of the depression rather than the other. Instead, Cao discloses that both angled portions “jointly define an accommodating cavity 15 recessing downwards” (Cao, ¶ 44), and that “the accommodating cavity 15 may be suitable for placing ... tableware having greater volumes than the knives and forks 5, and spoons, such as eggbeaters 6 or *tea cups* 7 or the like.” *Id.*, ¶ 47. Based on these broad disclosures, a POSITA would have understood that cups could be placed on either portion, and that Figure 5 merely illustrates one example embodiment. Indeed, elsewhere in his Reply Declaration, Dr. Tanbour himself acknowledges that figures, such as Cao’s Figure 5, “are mere examples” of how disclosures “might be put into practice.” Tanbour Reply Decl., ¶ 86.

(3) The claims of the '681 Patent do not exclude reconfigurable racks

144. Dr. Tanbour also criticizes the reconfigurable nature of Cao's rack. In particular, Dr. Tanbour asserts that "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." Tanbour Reply Decl., ¶ 172; *see also id.*, ¶ 128 (asserting that, "[i]n the '681 Patent, all angled portions are permanent formations in the bottom wall," while "[t]he cavity in Cao is a result of reconfiguration of the rack using moving parts"), ¶ 171 ("Cao fails to disclose a permanent depression due to its reconfigurable bottom wall.").

145. But there is no language in the Asserted Claims of the '681 Patent that would exclude a reconfigurable rack. Indeed, the rack disclosed in the '681 Patent is itself reconfigurable, including a utensil caddy with a hinged wall that can be opened to provide additional utensil holders at the expense of cup seats. *See* '681 Patent, 9:54-61 ("For example, if a large amount of cups or mugs are desired to be treated, the utensil caddy can be positioned in the first position such that all the cup seats are opened. If, on the other hand, it is desired to treat a large amount of utensils, the utensil caddy can be positioned in the second position and allow for a larger amount of utensils to be secured by the first and second side walls.").

146. Finally, Dr. Tanbour criticizes the reconfigurable nature of Cao's rack as rendering it unsuitable for accommodating a spray tube: "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.... 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." Tanbour Reply

Decl., ¶ 131. But, neither Claim 14 nor Claim 15 of the '681 Patent recites a spray tube. This argument from Dr. Tanbour is thus irrelevant to whether the Mailander-Cao combination teaches the Asserted Claims of the '681 Patent.

B. The Asserted Claims of the '385 Patent are Invalid

1. Dr. Tanbour fails to rebut that Bosch in view of Ochoa renders obvious independent Claim 17 and dependent Claim 21

147. Before responding to Dr. Tanbour's opinions, I note that throughout his invalidity and prior art analysis, Dr. Tanbour relies on the claims of the prior art references rather than on the text and figures of the patents as a whole. *See, e.g.*, Tanbour Reply Decl., ¶ 103 ("None of Bosch's five claims includes a claim element that references inclined or angled portions."), ¶ 106 ("none of the claims list 'dish holder' 12 in the elements"), ¶ 109 ("[t]o the extent that Dr. Cameron bases her opinions solely on what appears to be protrusions projecting upwards in FIG. 4, those protrusions are not disclosed as such in Ochoa's claim.").

148. It is my understanding that for the purposes of this invalidity analysis, the relevant disclosures of Bosch and Ochoa should not be limited to their claims, but rather the entirety of the patents—including their specifications, written descriptions, and figures. As detailed below, considering the references in their entirety resolves many of the rebuttal validity opinions that Dr. Tanbour raises.

a. There Is Motivation To Combine Bosch and Ochoa

149. In my initial report, I opine that a POSITA would have been motivated to combine Bosch and Ochoa because while Bosch's dish rack includes dish holders for accommodating cups or glasses, Bosch leaves implementation details of its "spaced apart" accommodations to a POSITA. First Rebuttal Decl., ¶¶ 166-172. I opine that Ochoa would be a reference that a POSITA would consider to teach such implementation details. Specifically, Ochoa teaches an "upper dish

rack, generally designated 16, is comprised of a wire basket constructed in a conventional manner with a plurality of crisscrossing and encircling wire segments 18 connected to each other to provide a space for supporting cups [and] glasses.” First Rebuttal Decl., ¶ 169 (citing Ex-L (Ochoa), 3:3-7). The details of Ochoa would have been used by a POSITA to implement the wire basket of Bosch.

150. Dr. Tanbour disagrees with my opinion for several reasons. First, he states that Ochoa “is directed specifically to a water spray system for a dishwasher” rather than a dish rack. Tanbour Reply Decl., ¶133. Second, he argues that the combination fails because “the core teaching disclosed in Bosch does not solve the problems addressed by the ’385 Patent,” which he identifies as “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.” *Id.* Third, Dr. Tanbour further characterizes the combination as the product of “impermissible hindsight,” contending that I “searche[d] the prior art to retroactively piece together isolated features.” *Id.* I disagree with all three of these points.

151. *First*, contrary to Dr. Tanbour’s assertion, Ochoa provides teachings that go beyond a simple “water spray system,” including the physical structure and composition of an upper dish rack with a wire basket construction. *See, e.g.*, Ex-L (Ochoa), 3:3-7 (“[A]n upper dish rack, generally designated 16, is comprised of a wire basket constructed in a conventional manner with a plurality of crisscrossing and encircling wire segments 18 connected to each other to provide a space for supporting cups [and] glasses”). Therefore, Ochoa teaches a dish rack capable of holding vessels, thereby disclosing more than a simple water spray system.

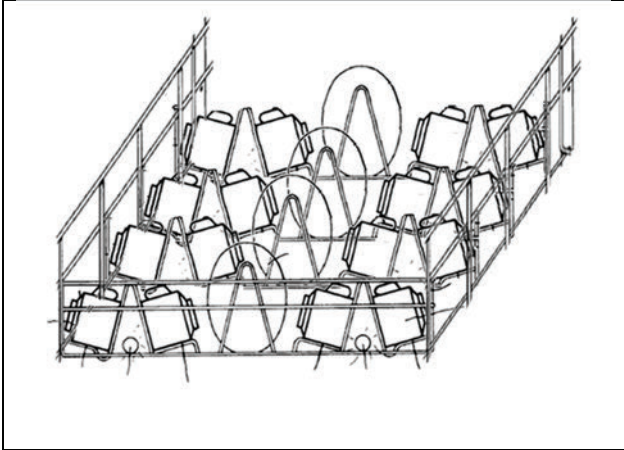
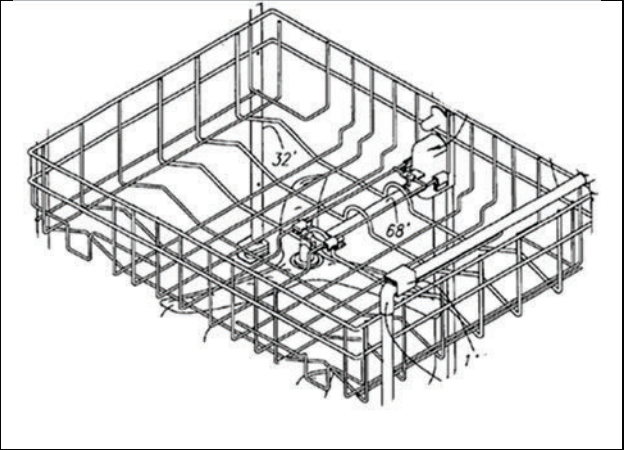
152. *Second*, contrary to Dr. Tanbour’s assertion, there is no need for either Bosch or Ochoa to independently address the same objectives as the ’385 Patent. As I state above in Section II.C.2, for obviousness, each cited reference need not independently solve every problem identified in the patent at issue. Instead, the relevant inquiry is whether the references, taken together, render obvious the specific claim language—not whether they independently and expressly state that they solve what Dr. Tanbour characterizes as the ’385 Patent’s objectives. Bosch teaches a dish rack designed to accommodate hollow vessels while Ochoa teaches a wire basket with a plurality of spaced apart portions forming the bottom wall. Therefore, the Bosch-Ochoa combination addresses each element of the asserted claims, regardless of whether they expressly state an intention to solve every problem contemplated by the ’385 Patent.

153. Moreover, Dr. Tanbour’s assertion that Bosch does not address the problem of rolling and sliding glasses on a dish rack is factually incorrect. For example, Bosch teaches designing a dish rack and spraying device such that the spray “hits the inside of the hollow vessels placed in the dish rack at least approximately horizontally. This ensures that these dish items are no longer lifted by the spray jets and therefore also cannot drop back into the dish rack.” Ex-K (Bosch, translated). Therefore, Bosch contemplates positioning glasses in a dish rack so as to secure them during a cleaning cycle, just as the ’385 Patent does.

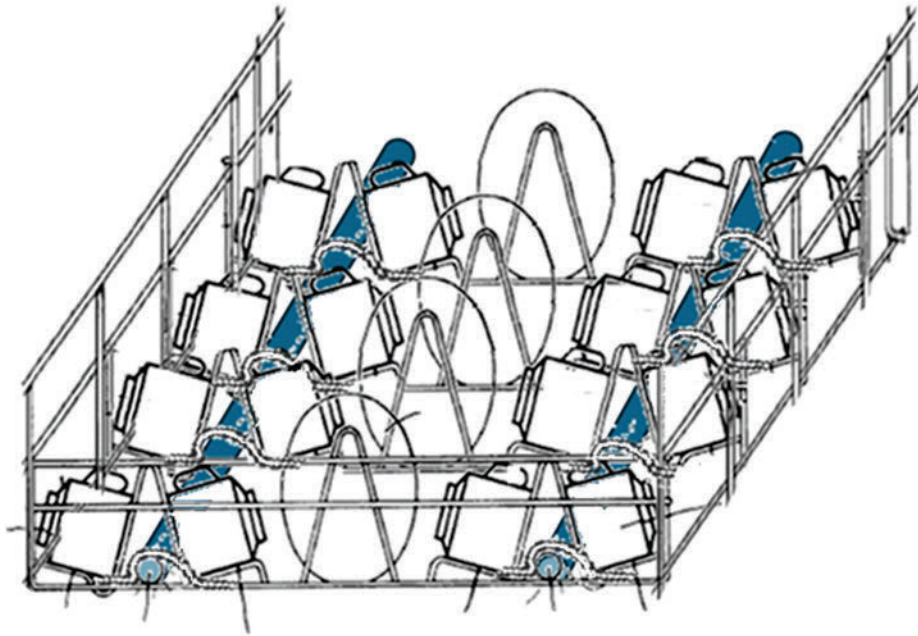
154. *Third*, as I explained previously, the motivation to combine the teachings of Bosch and Ochoa is grounded in the overlapping technical objectives of the references. Both references address dishwashing performance at a dish rack’s lateral regions using spray streams that reach the interiors of cups and glasses, while seeking to deliver thorough coverage. *See, e.g.*, Ex-L, Abstract (teaching “a water spray system for [a] dishwasher ...[and] spray tubes provid[ing] a thorough spray at the lateral sides that the spinners may not reach in a very wide dishwasher.”) *see*

also, e.g., Ex-K, 3-4 (teaching “a design and arrangement of the dish rack and of the spraying device such that the spray jets hit the inside of the hollow vessels placed in the dish rack at least approximately horizontally. This ensures that these dish items are no longer lifted by the spray jets and therefore also cannot drop back into the dish rack.”). Therefore, a POSITA would be motivated to combine the teachings of Bosch and Ochoa due to their shared focus on improving spray coverage for vessels.

155. Furthermore, in my opinion, a POSITA would have readily combined the teachings of Bosch and Ochoa because a POSITA would have understood that Bosch’s front-view Figure 3 would have had in an actual 3-dimensional depth when implemented as a physical system, with wires forming the bottom of the rack as shown in Ochoa’s Figure 19. Additionally, in my opinion, a POSITA would have been motivated to use Ochoa’s curved wires, forming the bottom of the rack, to mount Bosch’s curved spray tubes 11, as shown in Ochoa. Bosch’s spray tubes (blue) and curved mounting portions (from Ochoa) are added below to show the Bosch-Ochoa combination in modified Figure 3’.

Bosch Figure 3 (expanded into 3-D isometric view)	Ochoa Figure 19 (rack excerpted)
	

Bosch-Ochoa
Combination
Figure 3'



156. Therefore, it is my opinion that a POSITA would have been motivated to combine the teachings of Bosch and Ochoa, contrary to Dr. Tanbour's position.

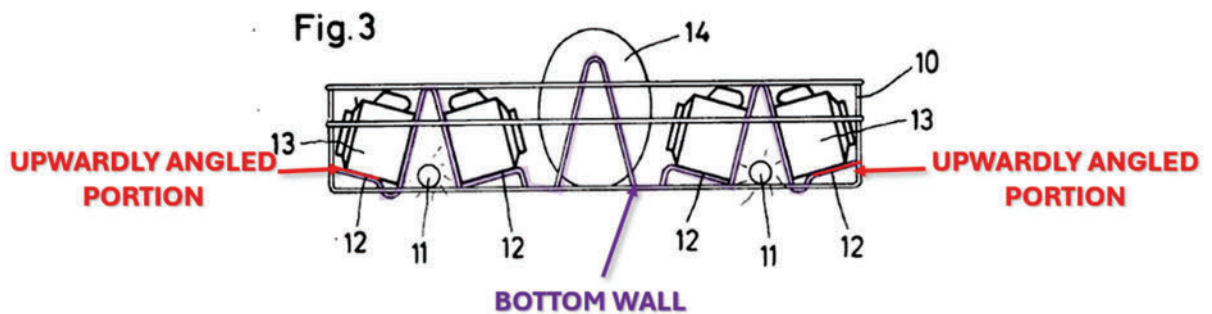
b. Bosch in view of Ochoa teaches Claim 17[C(iii)]: with an upwardly angled portion formed in the bottom wall comprising a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall

157. In my initial report, I opine that Bosch in view of Ochoa teaches Claim 17[C(iii)]. First Rebuttal Decl., ¶¶ 179-180. Specifically, I describe that Bosch teaches “upwardly angled portions formed in the bottom wall” in the form of “dish holders 12” for accommodating cups and glasses. *Id.*, ¶ 179 (citing Ex-K, 6). I add that Ochoa teaches “a plurality of spaced apart inclined portions forming the bottom wall and terminating at the side wall” through its wire basket that

contains “a plurality of crisscrossing and encircling wire segments connected to each other to provide space for supporting cups [and] glasses.” *Id.*, 180 (citing Ex-L, 3:2-9).

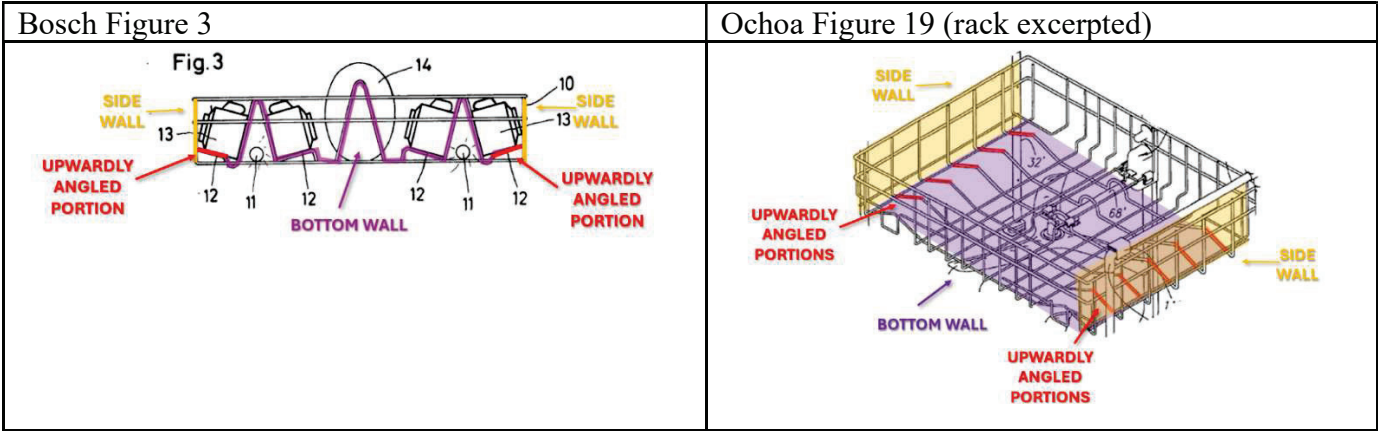
158. Dr. Tanbour disagrees with my opinion for several reasons. First, he characterizes Bosch’s teachings as focusing on the configuration of spray jets and hollow vessels. Tanbour Reply Decl., ¶ 134 (“Bosch focuses on the spray jets of the dishwasher and the fact that the liquid from the jets ‘hit the inside of the hollow vessels placed on the dish rack at least approximately horizontally.’”). Second, he states that Bosch’s dish holders are not formed in the bottom wall as Claim 17 requires because they are “added-on or welded L shapes ... distinct from the bottom wall.” *Id.* ¶¶ 134-135. Third, Dr. Tanbour argues that a POSITA would not have looked to Ochoa to teach “a plurality of spaced apart inclined portions,” because Ochoa teaches sloped portions that resemble declines rather than inclines. *Id.*, ¶136. I disagree with all three of these points.

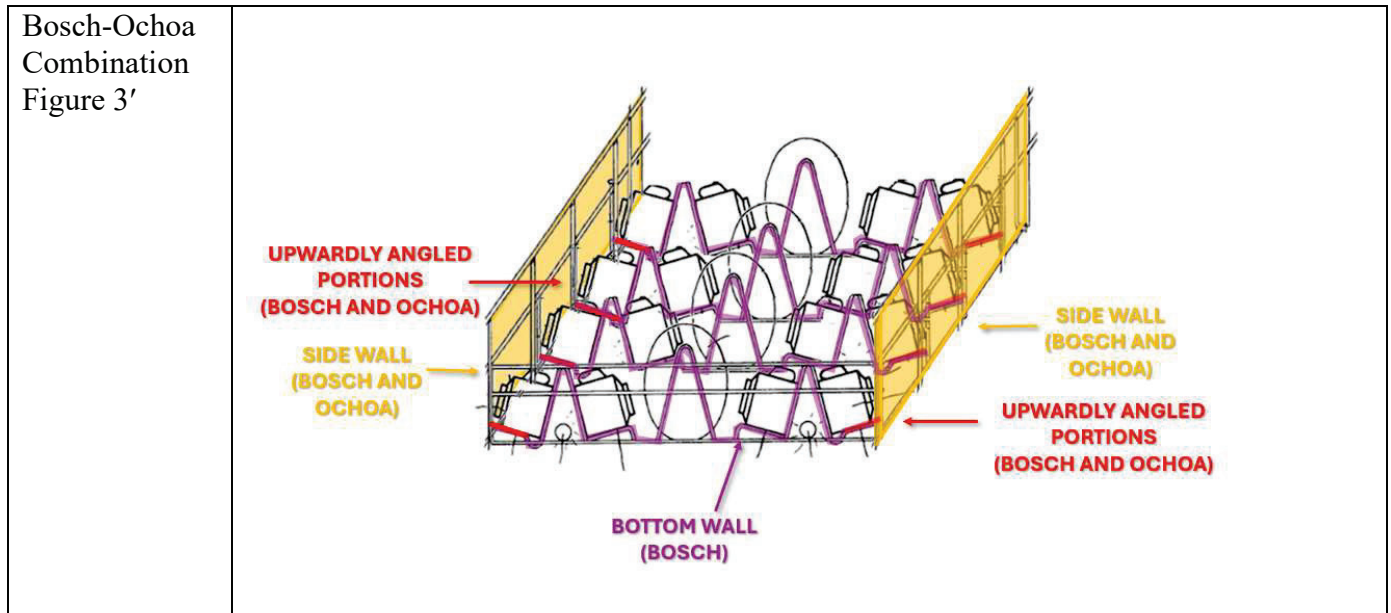
159. *First*, contrary to Dr. Tanbour’s assertion, Bosch clearly teaches an “upwardly angled portion formed in the bottom wall.” For example, Bosch teaches that “spray tubes are arranged within the dish rack between dish holders 12 for accommodating hollow vessels 13.” Ex-K, 6. As shown in Fig. 3 below, the dish holders of Bosch (red) are “upwardly angled portion[s],” and are “formed in the bottom wall” (purple). Therefore, in my opinion Bosch’s dish rack does include an upwardly angled portion formed in the bottom wall.



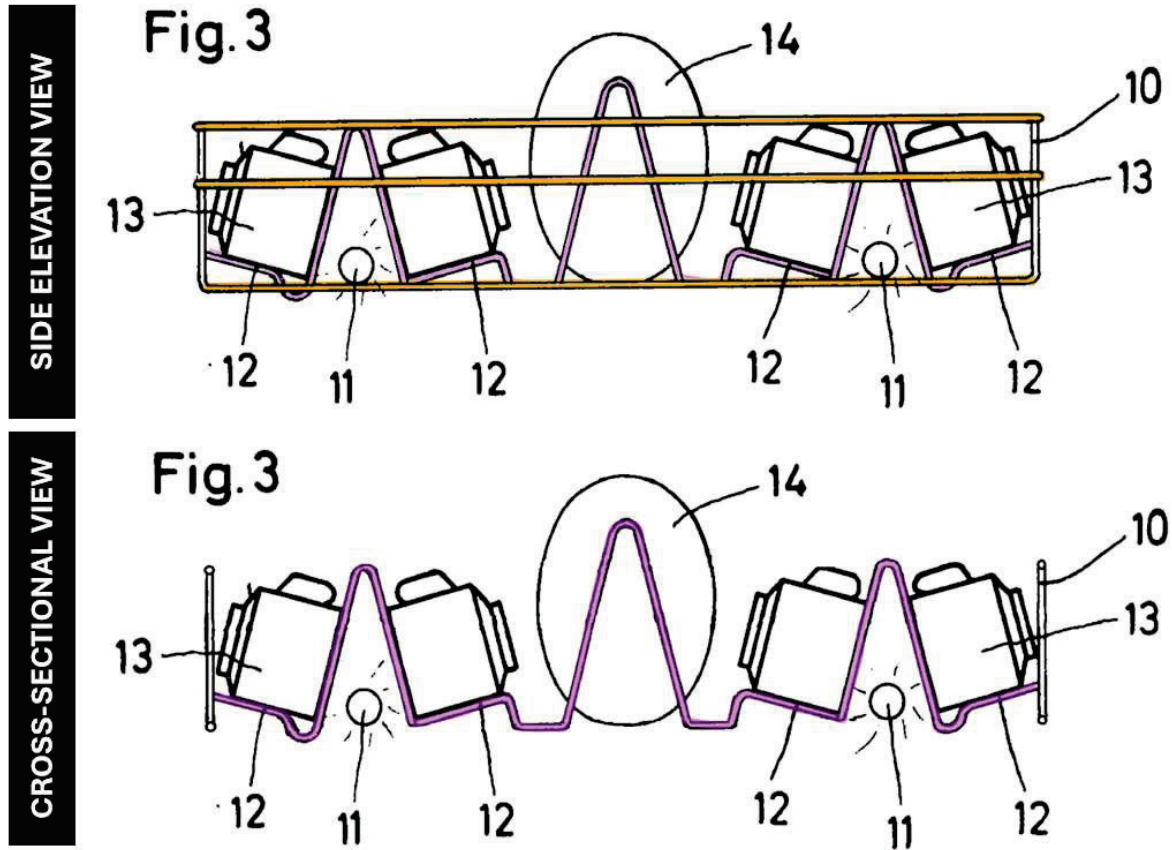
160. Notably, Bosch uses the term “substantially horizontal” to describe the positioning of its “lightweight hollow vessels” on the upwardly angled portions of its rack. In this context, a POSITA would understand that “approximately horizontal” is not a qualifier intended to account for manufacturing tolerances or minor dimensional variations. Instead, Bosch employs “approximately horizontal” descriptively, to refer to a deliberate and functional inclined configuration, which positions hollow vessels at a tilt, thereby improving spray access and drainage. Accordingly, a POSITA would recognize that when Bosch states, “all dish items are arranged with their vertical axis approximately horizontally, allowing the washing liquid to drain from the inside ... of the items,” Bosch is teaching that its rack is designed to support dishes at an incline. *See* Ex-K, 3-4.

161. *Second*, I disagree with Dr. Tanbour’s assertion that Bosch’s dish holders are added or welded-on to the bottom wall. Bosch’s dish holders are segments that form part of the bottom wall. For example, as shown in Fig. 3 of Bosch, Fig. 19 of Ochoa, and Fig. 3’ below, upwardly angled portions (red) form segments of the overall bottom wall (purple). Bosch does not disclose the dish holders to be welded to the bottom wall on as Dr. Tanbour argues or any such intent to do so. Therefore, Bosch teaches “upwardly angled portion[s] formed in the bottom wall” in my opinion.

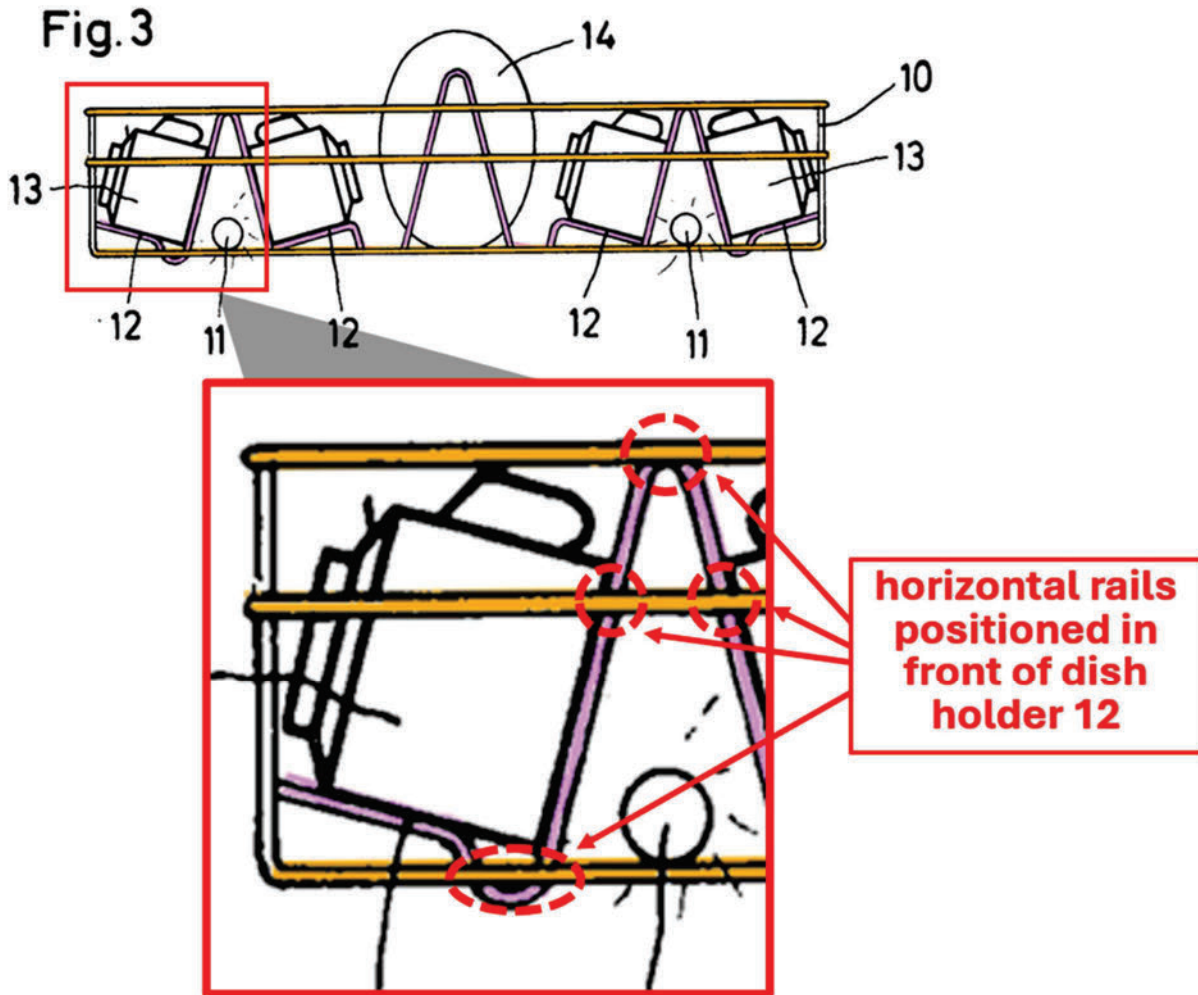




162. Specifically, a POSITA would recognize that Figure 3 of Bosch depicts a side elevation view of the rack—that is, a view looking directly at one of the rack’s sidewalls (e.g., the front sidewall)—rather than a cross-sectional view through the interior of the rack. From that perspective, a POSITA would understand the horizontal wires shown in Figure 3 to be part of the sidewall frame, and inclined dish holder 12 to be part of the bottom-wall structure. This distinction is illustrated in the below image, which presents a comparison between the side elevation view presented in Figure 3 and what a POSITA would expect from a cross-sectional view through the rack interior:



163. This understanding is supported by the figure itself. Figure 3 depicts the three horizontal wires as being positioned in front of the inclined dish holder 12 structure, consistent with perimeter frame rails defining the outer boundary of the rack:

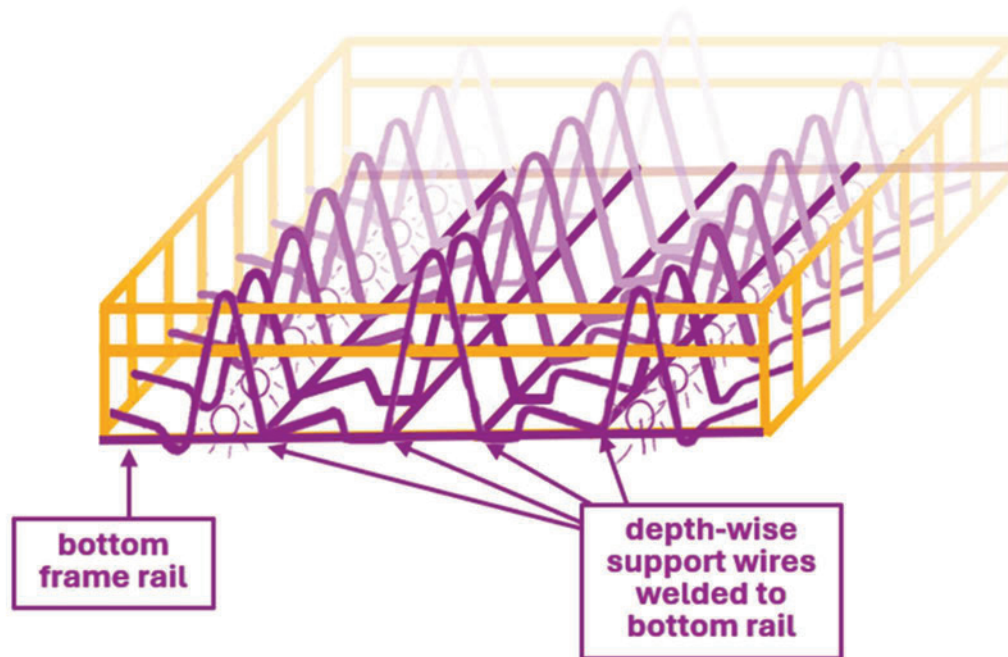


164. At the same time, it would be readily apparent to a POSITA that the intermediate and top horizontal wires shown in Figure 3 exist only on the rack perimeter, and do not extend across the depth of the rack; otherwise, they would obstruct the placement of cups and other large items on the rack. Because the lowermost horizontal wire is depicted in the same manner, a POSITA would understand it to serve the same perimeter framing function.

165. This interpretation is further reinforced by the way wire dish racks are conventionally constructed. A POSITA would understand that the bottom wall of such a rack consists of two intersection sets of wires arranged perpendicular to one another. One set runs parallel to one pair of opposing sidewalls (e.g., the front and back sidewalls of the rack), and the other set runs perpendicular to that pair—that is, into and out of the page in a side elevation. Both

sets are necessary. Without the perpendicular, depth-wise wires, the bottom wall would consist only of parallel members spaced apart from one another, such that thin items—e.g., utensils, plates, or other narrow items thinner than the spacing between the parallel wires—would simply fall through the rack. The perpendicular wires therefore provide not only structural rigidity, but also functional support across the grid.

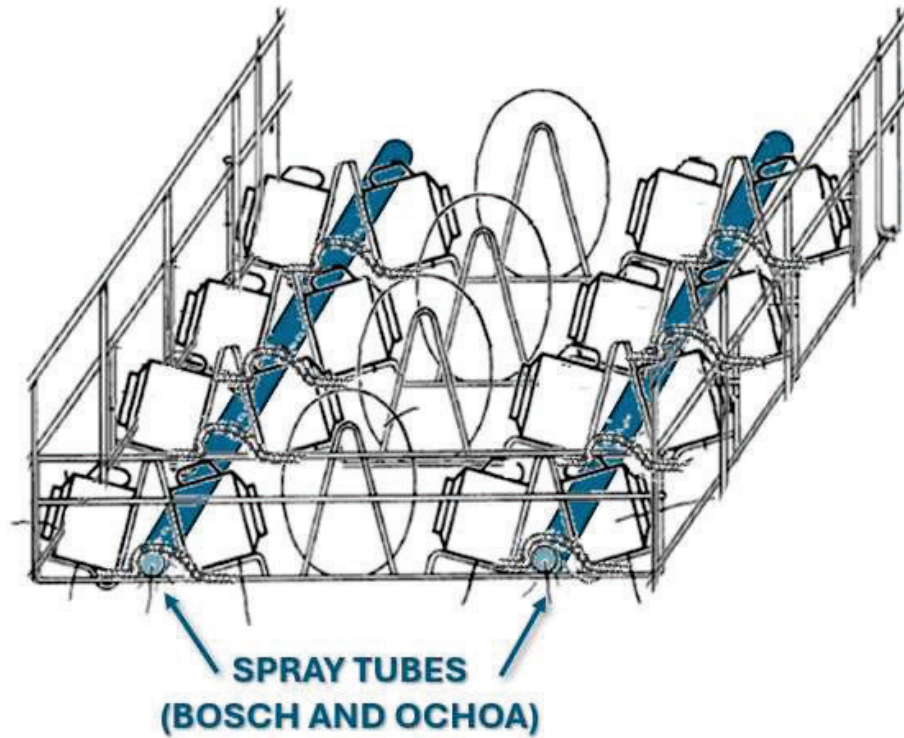
166. In light of that conventional rack construction, a POSITA would have understood that the inclined dish holder 12 (purple, below)—which runs generally parallel to the depicted sidewall—would be welded at discrete points to the perpendicular, depth-wise bottom-wall wires, as illustrated below:



167. Welding to those perpendicular wires would provide the necessary cross-support to stabilize the inclined dish holders 12 along their lengths. By contrast, welding each dish holder 12 to another wire running horizontally in the same direction would not meaningfully increase structural rigidity, as parallel wires do not brace one another against deflection in the same way

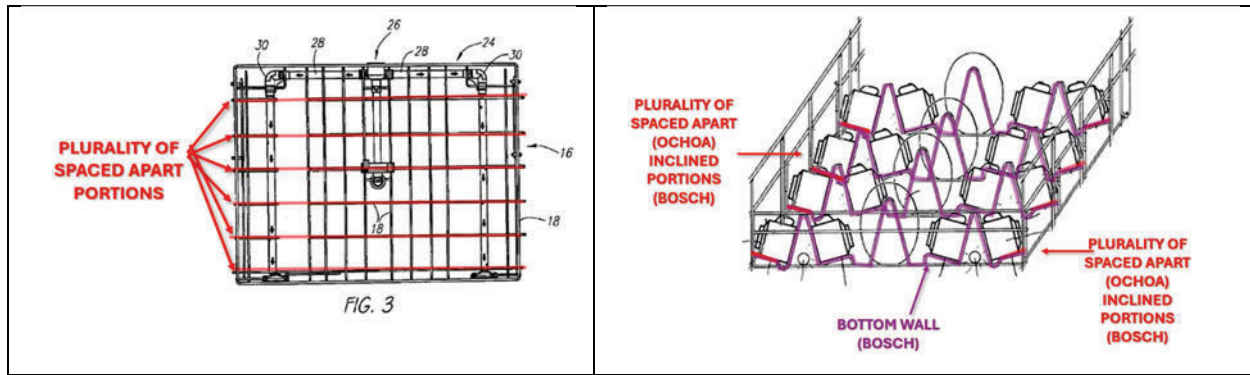
that intersecting members do. Thus, a POSITA familiar with this conventional grid construction—including as depicted in Ochoa—would have understood that, together, dish holders 12 and the perpendicular wires onto which they are welded would form the bottom wall of the rack.

168. *Third*, contrary to Dr. Tanbour’s statements, a POSITA would be motivated to combine the teachings of Bosch with Ochoa in order to ensure complete water spray coverage during a dishwashing cycle. As I mention above, both references address dishwashing performance at a dish rack’s lateral regions using spray streams that reach the interiors of cups and glasses, delivering thorough coverage. *See supra* Section V.B.1.a. In my opinion, a POSITA would want to integrated Ochoa’s rotating spray tubes into a rack designed with Bosch’s dish holders design to accommodate such spray tubes, in order to spray hard-to-reach corners of cups and glasses. *See* Ex-L, 1:53-57 (“A more detailed object of this invention is to provide such a dishwasher which [sic] the rotating spray tubes are mounted horizontally, vertically, or at an appropriate angle for accomplishing the most effective dishwashing and rinsing.”); *see also* Ex-K, 6 (“The spray tubes are arranged within the dish rack between dish holders 12 for accommodating hollow vessels 13, such as cups of glasses.”). The spray tubes of Bosch and Ochoa are depicted below in blue in Fig. 3’. Therefore, it is my opinion that a POSITA would have sufficient motivation to combine the teachings of these two references.



169. Moreover, it is my opinion that a POSITA would be motivated to look to Bosch for its teachings regarding “inclined portions,” for the reasons I described above, and to Ochoa for its teachings on a “plurality of spaced apart” portions that define the bottom wall. For example, Ochoa teaches 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 [and] glasses” Ex-L, 3:2-9. Such a wire basket teaches a plurality of spaced apart portions, as shown in red in Fig. 3 of Ochoa and Fig. 3’ below. The red portion of Fig. 3’ further depicts how a POSITA would combine Ochoa’s teachings on a plurality of spaced apart portions with Bosch’s inclined portions. Thus, a POSITA would be motivated to combine the spaced apart portions of Ochoa with the inclined portions of Bosch, leading to a plurality of inclined spaced apart portions as recited in Claim 17[C(iii)] that form the bottom wall of the rack.

Ochoa (Fig. 3)	Bosch and Ochoa (Fig. 3’)
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170. Therefore, it is my opinion that Bosch in view of Ochoa teaches Claim 17[C(iii)], contrary to Dr. Tanbour's position.

c. Bosch in view of Ochoa teaches 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

171. In my initial report, I opine that Bosch in view of Ochoa teaches Claim 17[C(iv)]. First Rebuttal Decl., ¶¶ 181-182. Specifically, I describe that Bosch teaches “adjacent inclined portions ... configured to cradle a glass at an inclined angle and prevent the glass from rolling” through its dish holders that hold cups or glasses at an angle. *Id.*, ¶ 181. I also state that Bosch recognizes the disadvantages cups and glasses lifting from being cleaned with spray jets, ultimately damaging them, and is therefore designed to prevent this. *Id.* Finally, I describe that where Bosch's teachings do not disclose a “plurality of spaced apart portions,” Ochoa's teachings fill in the gaps. *Id.*, ¶ 182.

172. Dr. Tanbour disagrees with my opinion for the same reasons as he did for Claim 17[C(iii)]. Namely, he characterizes Bosch's teachings as focusing on the configuration of spray jets and hollow vessels, states that Bosch's dish holders are not formed in the bottom wall because they are “added-on or welded L shapes,” and argues that Ochoa teaches sloped portions that resemble declines rather than inclines. Tanbour Reply Decl., ¶¶ 137-139.

173. Because Dr. Tanbour’s criticisms are the same as for Claim 17[C(iii)], I disagree with these criticisms for the same reasons I describe above for Claim 17[C(iii)]. *See supra* Section V.B.1.b.

174. Therefore, it is my opinion that Bosch in view of Ochoa teaches Claim 17[C(iv)], contrary to Dr. Tanbour’s position.

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

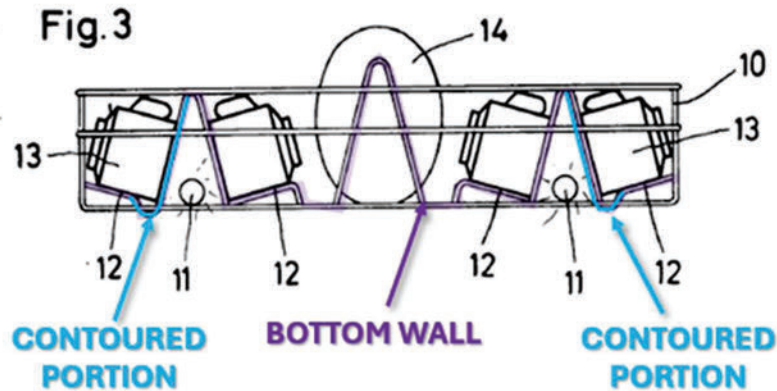
175. In my initial report, I opine that Bosch in view of Ochoa teaches Claim 17[C(v)]. First Rebuttal Decl., ¶ 183. Specifically, I describe that Bosch teaches “a contoured portion formed in the bottom wall ” through another portion of its dish holders. *Id.* I then state that Bosch recognizes the disadvantages cups and glasses lifting from being cleaned with spray jets, ultimately damaging them, and is therefore designed to prevent this. *Id.*

176. Dr. Tanbour disagrees with my opinion for three reasons. First, he again characterizes Bosch’s teachings as focusing on the configuration of spray jets and hollow vessels. Tanbour Reply Decl., ¶ 140. Second, he argues again that Bosch’s dish holders are not formed in the bottom wall because they are “added-on or welded L shapes.” *Id.* Third, he states that the protrusions in Bosch are not contoured portions. *Id.*

177. Because Dr. Tanbour’s first two criticisms are the same as for Claim 17[C(iii)], I disagree with these criticisms for the same reasons I describe above for Claim 17[C(iii)]. *See supra* Section V.B.1.b.

178. I also disagree with Dr. Tanbour’s third point based on the teachings of Bosch. Specifically, I disagree with Dr. Tanbour’s statement that the protrusions in Bosch are not contoured portions. For example, as shown in Fig. 3 of Bosch below, Bosch teaches dish holders (12) that act as “contoured portion[s]” (blue) “formed in the bottom wall” (purple). The blue

annotated lines have a contoured shape and they are formed using the same wireframe as the bottom wall. Bosch thus teaches “contoured portions.”



179. Therefore, it is my opinion that Bosch in view of Ochoa teaches Claim 17[C(v)], contrary to Dr. Tanbour’s position.

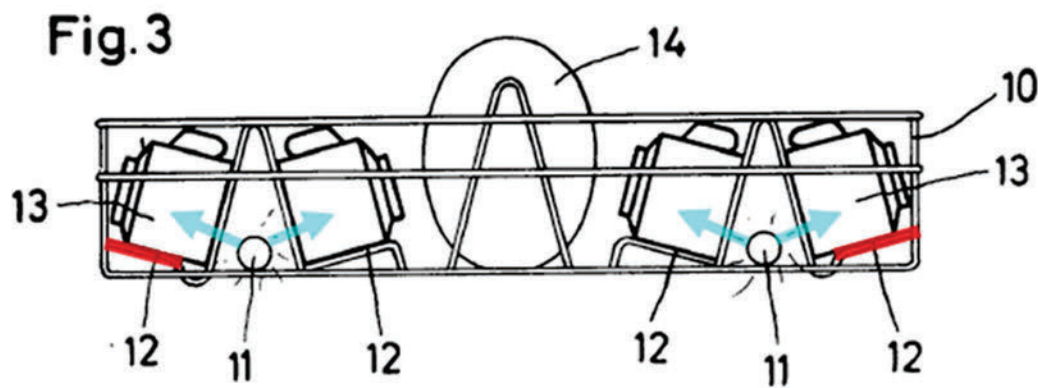
e. Bosch in view of Ochoa teaches Claim 17[D]: a spray tube having nozzles emitting spray along the angled portion;

180. In my initial report, I opine that Bosch in view of Ochoa teaches Claim 17[D]. First Rebuttal Decl., ¶ 184. Specifically, I describe that Bosch teaches “a spray tube having nozzles emitting spray along the angled portion” in the form of two spray tubes that may be “fixed or ... rotate about their longitudinal axis.” *Id.* (citing Ex-K, 6).

181. Dr. Tanbour disagrees with my characterization based on his understanding that, Bosch does not contain an angled portion for Bosch’s spray tubes to emit water along. Tanbour Reply Decl., ¶ 141. As I explained above, a POSITA would have understood that the bottom wall of Bosch’s rack includes dish holders 12.

182. In my opinion, a POSITA would have recognized that each of Bosch’s spray tubes “emit[s] spray along the angled portion.” In particular, as explained above, a POSITA would have understood the term “approximately horizontal” to encompass an intentionally inclined

orientation, in the context of Bosch's disclosure. Thus, a POSITA would have understood Bosch's disclosure that "all dish items are arranged with their vertical axis approximately horizontally" (Bosch, 3-4), as teaching that Bosch's dish items are positioned on the inclined rack. And such a POSITA would also have understood Bosch's disclosure that "the spray jets hit the inside of the hollow vessels placed in the dish rack at least approximately horizontally," as teaching that Bosch's spray tubes are configured to emit spray along the incline of the rack. Bosch, 3. Indeed, Figure 3 of Bosch (highlighted below) clearly illustrates Bosch's spray tubes emitting spray (blue) along the incline of the rack (red):

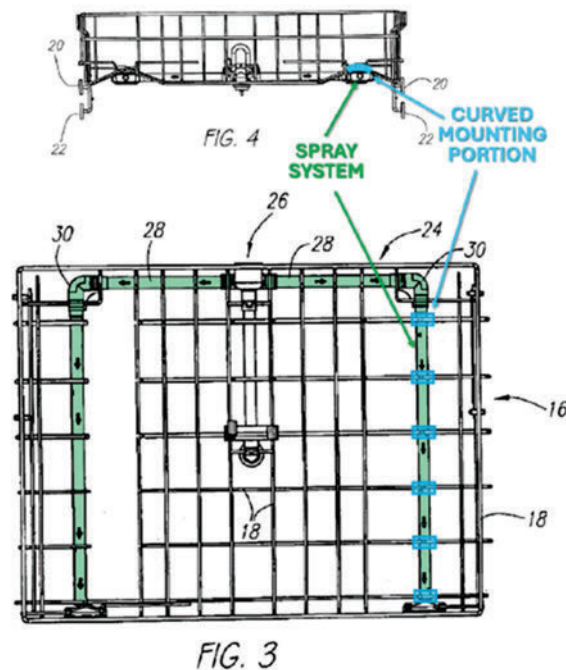


183. Therefore, it is my opinion that Bosch in view of Ochoa teaches Claim 17[D], contrary to Dr. Tanbour's position.

f. Bosch in view of Ochoa teaches 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.

184. In my initial report, I opine that Bosch in view of Ochoa teaches Claim 17[E]. First Rebuttal Decl., ¶¶ 185-186. Specifically, I describe that Bosch teaches a "spray tube that is mounted such that the spray tube is carried with the dish rack" in the form of spray tubes arranged "fixedly" within the dish rack. *Id.*, ¶ 185 (citing Ex-K, 6, 8, Cl. 4). I also describe that Ochoa renders it obvious to mount Bosch's spray tubes adjacent to a curved mounting portion. *Id.*, ¶ 186.

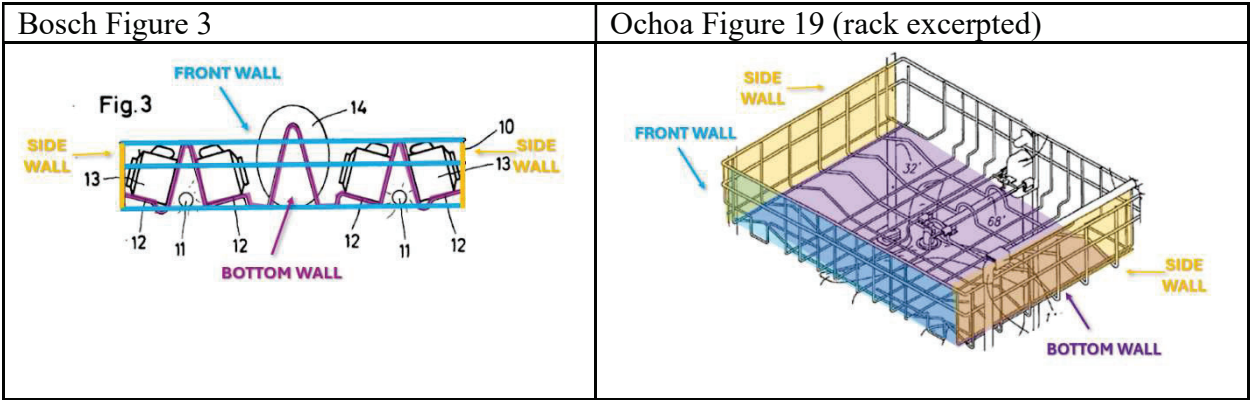
More specifically, I describe that Ochoa teaches such a curved mounting portion in an upper rack 12 that includes a “water spraying system ... that is mounted on the underside of the rack 6 and moves into and out of the front of the dishwasher 10 with the rack 16.” *Id.* (citing Ex-L, 3:15-19). Finally, I included Figures 3 and 4 of Ochoa to show the curved mounting portion of Ochoa. *See* Figs. 3 and 4 of Ochoa (as used in First Rebuttal Decl., 105).



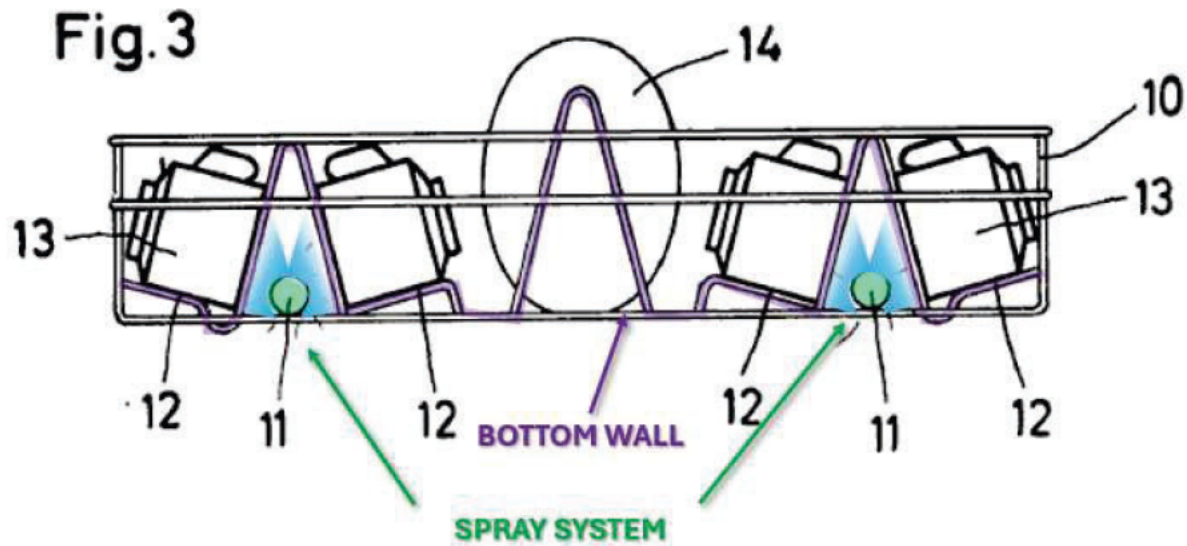
185. Dr. Tanbour disagrees with my opinion for several reasons. First, he states that Bosch’s spray tubes are mounted to a flat bottom wall, rather than to any curvature. Tanbour Reply Decl., ¶ 142. Second, Dr. Tanbour states that Ochoa does not contain a curved mounting portion, but rather contains “a protrusion to create space for the spray tube,” and that I drew in a curved portion where one does not exist. *Id.* Third, Dr. Tanbour argues that even if Ochoa discloses a curved mounting portion, Ochoa’s sprayer is mounted to a front “support mechanism 33” rather than a curved mounting portion. *Id.*, ¶ 143.

186. First, contrary to Dr. Tanbour’s assertion, in my opinion, Bosch does not contain a flat bottom wall, but rather an angled one. For example, as shown in Fig. 3 of Bosch and Fig. 19 of Ochoa below, the bottom wall (purple) has an angled configuration.

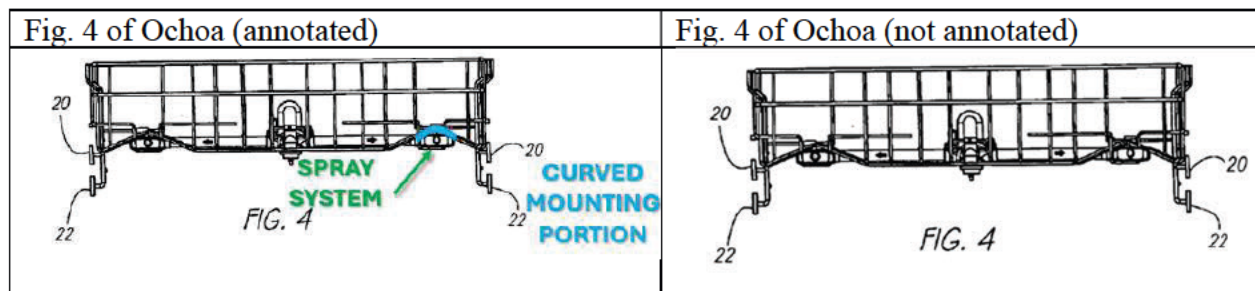
187. Figure 3 of Bosch is only a front view of a dish rack. The 3 horizontal lines in the front view define a front most wall of the rack (below, blue), where those 3 horizontal lines do not define the bottom wall through the width (into the page in Figure 3) of the dishwasher. The bottom wall of the rack is formed with a repeating patterns of the purple wires, repeating into the page as shown in Ochoa’s Figure 19 on the right. Bosch’s Figure 3 is not an isometric view of the rack, but such an isometric view of a similar wire rack, with wires forming the bottom (purple), is shown in Ochoa’s figure 19.



188. Moreover, as also shown in Fig. 3 of Bosch, the spray system (green) is not mounted along this bottom wall (purple). Therefore, I disagree with Dr. Tanbour’s characterization of Bosch’s spray tubes being mounted to a flat bottom wall.



189. *Second*, and moreover, as I described in my initial report, Bosch’s spray tubes are *adjacent* to the curved mounting portion element taught by Ochoa, when the two references’ teachings are combined, with the spray tubes directly under the curved mounting. I disagree with Dr. Tanbour’s characterization that Ochoa does not contain a curved mounting portion. In my initial report, I pointed to the blue portion of Fig. 4 of Ochoa (annotated) below to show a curved mounting portion. The curved mounting portion of Ochoa in Fig. 4 can be seen without the annotations. Therefore, in my opinion, Fig. 4 of Ochoa shows a curved mounting portion.



190. *Third*, contrary to Dr. Tanbour’s assertion, Ochoa’s sprayer is not necessarily limited to being mounted onto a front support mechanism. For example, Ochoa teaches that a “forward end 32a of spray tube 32 is rotatably supported by any convenient support mechanism 33, such as a pointed pin ... fixedly mounted in the front end 32a of the spray tube 32.” Ex-L,

3:30-33. Therefore, Ochoa teaches multiple configurations for a spray tube, rather than limiting it being mounted to a front support mechanism. Ochoa's sprayer thus is not required to be mounted to a front support mechanism rather than a curved mounting portion.

191. Therefore, it is my opinion that Bosch in view of Ochoa teaches Claim 17[E], contrary to Dr. Tanbour's position.

g. Bosch in view of Ochoa teaches Claim 21: The dishwasher of claim 17 wherein at least one of the nozzles is located above a portion of the angled portion.

192. Dr. Tanbour disagrees that Bosch in view of Ochoa teaches dependent Claim 21, only because he disagrees whether they teach every element of base, independent Claim 17. Tanbour Reply Decl., ¶ 144. I disagree with this for all the reasons I have stated above for Claim 17. *See supra* Sections V.B.1.b.-V.b.1.f.

193. Therefore, it is my opinion that Bosch in view of Ochoa teaches Claim 21, contrary to Dr. Tanbour's position.

2. Dr. Tanbour fails to rebut that Bosch-Ochoa in further view of Schessl renders obvious dependent Claims 18-20

a. There Is Motivation To Combine Bosch, Ochoa, and Schessl

194. In my initial report, I opine that a POSITA would have been motivated to combine Bosch, Ochoa, and Schessl and would have had success in doing so. First Rebuttal Decl., ¶¶ 188-192. For example, I indicate that a POSITA would have at least been motivated to combine Bosch and Ochoa because they are directed to a dishwasher rack and share teachings related to both spraying and supporting dishes. *Id.*, ¶ 189. I then state that Schessl teaches angled portions of a dishwasher with varying clearance heights, thereby providing more nuance and details to the shapes and angles of the compartments in the dishwashers disclosed by Bosch and Ochoa. *Id.*, ¶¶ 190-192. Therefore, in my opinion, the implementation details of Schessl's low-profile dish rack

would have been used by a POSITA to create more flexible configurations of the dishwasher racks of Bosch-Ochoa.

195. Dr. Tanbour disagrees with my opinion for several reasons. First, he states that Ochoa is “focused on a water spray system for a dishwasher” rather than a dish rack. Tanbour Reply Decl., ¶ 145. Second, he states that “Bosch does not solve the problems addressed by the ’385 Patent” that he describes as “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.” *Id.* Third, he argues that I offered no opinion for why Bosch and Ochoa should be combined, as Claims 18-20 are “directed to a low-profile dish rack [and] [n]either Bosch nor Ochoa have anything to do with low-profile dishracks.” *Id.*, ¶¶ 146-147.

196. Because Dr. Tanbour’s first two criticisms are the same as for combining Bosch and Ochoa alone, I disagree with these criticisms for the same reasons I describe in my “Motivation to Combine” section above. *See supra* Section V.B.1.a.

197. I disagree with Dr. Tanbour’s third and final point that a POSITA would not combine the teachings of Bosch, Ochoa, and Schessl, merely because neither Bosch nor Ochoa have anything to do with low-profile dish racks. As I state above in Section II.C.2, the relevant inquiry for obviousness is whether the references, taken together, render obvious the specific claim language—not whether they each contain the same subject matter. Therefore, the fact that neither Bosch nor Ochoa specifically address low-profile dish racks does not preclude their teachings from being combined with those of Schessl. Bosch teaches a dish rack designed to accommodate hollow vessels while Ochoa teaches a wire basket with a plurality of spaced apart portions forming the bottom wall. Schessl fills in any gaps related to re-configuring the shapes and angles of dish racks

within the Bosch-Ochoa dishwasher. Therefore, the Bosch-Ochoa-Schessl combination renders obvious all requirements of Claims 18-20, regardless of whether they are all about low-profile dish racks.

198. Furthermore, the motivation to combine the teachings of Schessl with those of Bosch and Ochoa is grounded in each reference's shared objective for efficiently and completely cleansing dishwasher items. As I explain above, the teachings of Bosch and Ochoa are similar insofar as they focus on efficiently cleaning hard-to-reach parts of cups and glasses, ensuring full coverage. *See supra* Section V.B.1.a. Similarly, Schessl teaches space optimization within a dishwasher, such as the one taught by Bosch-Ochoa. For example, Schessl teaches a dishwasher with dish rack sections of "different clearance heights, which guarantee an optimized utilization of space," and specifically a low-profile configuration to accommodate dishwasher items "while simultaneously providing maximum space utilization." Ex-M (Schessl), 1:38-48. Thus in my opinion, a POSITA would be motivated to combine the teachings of Bosch, Ochoa, and Schessl due to their shared focus on efficiently and thoroughly cleaning items in a dishwasher.

199. Therefore, it is my opinion that a POSITA would have been motivated to combine the teachings of Bosch, Ochoa, and Schessl.

b. Bosch-Ochoa in further view of Schessl teaches 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.

200. In my initial report, I opine that Bosch-Ochoa in further view of Schessl teaches Claim 18. First Rebuttal Decl., ¶¶ 193-194. Specifically, I state that a POSITA would rely on Schessl to provide the sizing details of a low profile dishwasher rack for implementing into the teachings of Bosch-Ochoa. *Id.*, ¶ 193.

201. Dr. Tanbour disagrees with my opinion for two reasons. First, he states that neither Bosch nor Ochoa teach a low-profile dish rack with the metrics provided in Claim 18. Tanbour Reply Decl., ¶ 148. Second, although he agrees that Schessl teaches a low-profile dish rack whether a length of the angled portion that is greater than the length of the side wall, he argues that Schessl's teaching is because the reference is directed to a cutlery rack. *Id.* I disagree with both of these points for the same reason.

202. I disagree with both of Dr. Tanbour's points regarding the subject matter of Bosch, Ochoa, and Schessl precluding a POSITA from combining their teachings. As I state above in Section II.C.2, the relevant inquiry for obviousness is whether the references, taken together, render obvious the specific claim language—not whether they each contain the same subject matter. Therefore, in my opinion, the fact that Bosch and Ochoa are not directed to a low-profile dish rack would not preclude a POSITA from relying on their teachings for Claim 18, because as described above, Bosch and Ochoa teach the elements of Claim 17. *See supra* Sections V.B.1.b-V.B.1.g. Moreover, although Bosch and Ochoa do not teach a low-profile dishwasher rack, a POSITA would rely on Schessl for such teachings as I describe above. *See supra* Section V.B.2.a. Finally, in my opinion, the fact that Schessl's low-profile dish rack is deemed a "cutlery rack," does not preclude its teachings from being used for other dishwasher racks. Therefore, the Bosch-Ochoa-Schessl combination addresses Claims 18-20, regardless of whether they are all about low-profile dish racks.

203. Therefore, it is my opinion that Bosch-Ochoa in further view of Schessl teaches Claim 18, contrary to Dr. Tanbour's position.

c. Bosch-Ochoa in further view of Schessl teaches Claim 19: The dishwasher of claim 18 wherein at least one of the nozzles is located above a portion of the angled portion.

204. In my initial report, I opine that Bosch-Ochoa in further view of Schessl teaches Claim 19 for the same reasons I described with regards to Claim 21. First Rebuttal Decl., ¶ 195; *see also supra* Section V.B.1.g.

205. Dr. Tanbour disagrees with my opinion because in his opinion, none of the references, separately or in combination, teach “an angled portion specifically and integrally formed in the bottom wall.” Tanbour Reply Decl., ¶ 150

206. I disagree with Dr. Tanbour because Claim 18 does not require an angled portion to be “specifically and integrally formed in the bottom wall.” *Id.*

207. Therefore, it is my opinion that Bosch-Ochoa in further view of Schessl teaches Claim 19, contrary to Dr. Tanbour’s position.

d. Bosch-Ochoa in further view of Schessl teaches 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.

208. In my initial report, I opine that Bosch-Ochoa in further view of Schessl teaches Claim 20. First Rebuttal Decl., ¶¶ 196-198.

209. Dr. Tanbour disagrees with my opinion because Schessl is directed to a cutlery basket and in his opinion, “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.” Tanbour Reply Decl., ¶ 151. Similarly, Dr. Tanbour argues that Schessl teaches the necessary dimensions of Claim 20 because Schessl must “make room for large heads of spoons and ladles. Therefore, Schessl does not disclose mounting cups or glasses or crockery in its shallow basket.” *Id.* I disagree with Dr. Tanbour on this point.

210. I disagree with Dr. Tanbour regarding Schessl's crockery basket precluding a POSITA from relying on its teachings for the same reasons I state above for Claims 18-19. *See supra* Sections V.B.2.b.-V.B.2.c.

211. Therefore, it is my opinion that Bosch-Ochoa in further view of Schessl teaches Claim 20, contrary to Dr. Tanbour's position.

C. The Asserted Claims of the '922 Patent are Invalid

1. Overview of Prior Art Relevant to the '922 Patent

212. In his Second Rebuttal Declaration, Dr. Tanbour criticizes the prior art analyzed for the purposes of invalidity. I disagree with Dr. Tanbour's assessment that "Carr does not teach two angled walls defining two separate sets of cup seats in its top rack. Tanbour '922 Reply Decl., ¶ 91. Dr. Tanbour states that I acknowledge the dishware rack of Carr may support bowls, but he ignores my statement and the disclosure of Carr, which acknowledges "the third, top washware rack 200 is configured to hold cutlery and washware . . . such as, but not limited to, small dishes, bowls, *cups*, as well as cooking utensils." Second Rebuttal Decl., ¶ 86; Carr, [0041]. Dr. Tanbour also argues that Carr asserts that the middle washware rack of Carr may store "stemmed wine glasses." Tanbour '922 Reply Decl., ¶ 92. This is an accurate representation of Carr's teachings; however, this disclosure is not relied upon to establish the cup seats of the third, upper washware rack.

213. Dr. Tanbour makes similar arguments for the Bosch 800 dishwasher. *See* Tanbour '922 Reply Decl., ¶¶ 94-96. As I explained above, Bosch 800 does disclose the angled portions of the upper rack having cup seats. *See supra* Section V.A.4.a.



Tanbour Reply Decl., ¶ 161 (annotated). Additionally, as I previously explained, there is no requirement that the recited cup seats support a glass or cup on its cylindrical edge. *See supra* Section V.A.2.

214. Dr. Tanbour’s opinions regarding the teachings of Andrew are further unavailing. Dr. Tanbour claims the “flat support section” does not terminate at the side walls and is too narrow for the utensil caddy of certain embodiments of the ’922 patent. Tanbour ’922 Reply Decl., ¶ 99. However, these opinions are based on exemplary embodiments and are not reflected in the claim requirements of the ’922 patent. The ’922 patent claims do not require the planar portion to terminate in the side wall and they do not require a specific dimension of the utensil caddy. Further, Dr. Tanbour admits that Andrew illustrates a long knife held in the flat support section of Andrew. *Id.* The opinion that the “flat support” section could not accommodate a utensil caddy is presented without support. *Id.*

215. Dr. Tanbour also opines that Mailander fails to disclose two angled walls defining two sets of cup seats. Tanbour '922 Reply Decl., ¶ 100. Dr. Tanbour asserts that “the washing items holders” of Mailander are removable inserts rather than being “acutely ‘angled wall[s]’ that form the ‘depression.’” *Id.* As I previously established, this ignores that Mailander also teaches *additional embodiments* in which washing item holders 30 form part of the bottom wall itself, explaining that, while in the illustrated embodiment, “[w]ashing items support 10 [] consist[s] of a base basket 11 and a washing items holder 30 of plastic,” “[i]n a further embodiment, not shown, washing items support 10 may consist of only one material, e.g. a plastic, i.e. without base basket 11.” *See* Section V.A.5.b.; Mailander, ¶ 28. Additionally, the '922 patent claims do not require the angled walls to “form” the depression, as stated by Dr. Tanbour. The '922 patent recites a depression wherein the depression “includes a first angled wall and a second angled wall.” This is contrary to the '681 patent, which additionally recites a bottom wall. Dr. Tanbour also states that the rack of Mailander “cannot accommodate glasses or cups having ordinary dimensions.” Tanbour '922 Reply Decl., ¶ 102. As I previously opined, there are no requirements of glasses “having ordinary dimensions” in '681 or the '922 patent. *See supra* Section V.A.1.

2. Dr. Tanbour fails to rebut that Carr renders obvious Independent Claim 1 and Dependent Claims 2-4

a. Carr discloses angled walls which form a first and second set of cup seats

216. Dr. Tanbour opines that Carr’s upper rack has one “bottom portion” with “at least one angled portion.” Tanbour '922 Reply Decl., ¶ 105. As Dr. Tanbour admits, Carr’s embodiment teaches “*at least one* angled portion.” Carr, [0019]. In one of its illustrated embodiments, Carr depicts “*two* angled portions 206a and 206b.” *Id.*, [0043], Fig. 1. These two angled portions correspond to the recited angled walls.

217. Dr. Tanbour further asserts that Carr fails to disclose a first and second set of cup seats. Tanbour '922 Reply Decl., ¶ 107. As I previously stated, Carr clearly recognizes that the third washware rack can hold cups. Second Rebuttal Decl., ¶ 86; Carr, [0041] (“the third, top washware rack 200 is configured to hold cutlery and washware . . . such as, but not limited to, small dishes, bowls, *cups*, as well as cooking utensils.”). Dr. Tanbour again repeats his opinion that the '922 patent requires cups to be held on their cylindrical side. Tanbour '922 Reply Decl., ¶ 108. However, this is not required by the claims of the patent. *See supra* Section V.A.2.

b. Carr discloses a utensil caddy which meets the claim requirements of the '922 patent

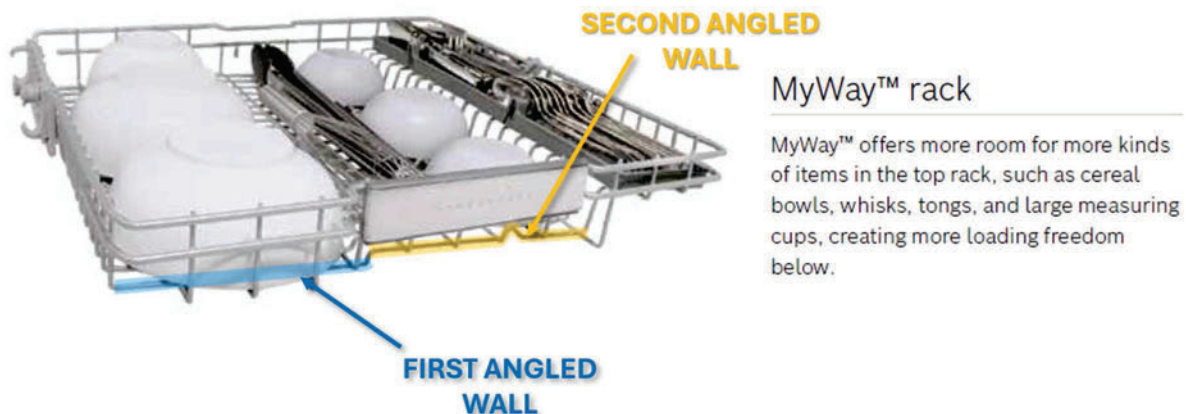
218. Dr. Tanbour also argues that Carr fails to render obvious claims 3 and 4, as the utensil caddy is not operably coupled to the planar portion, or removably coupled with the bottom wall. Tanbour '922 Reply Decl., ¶¶ 109, 115. Dr. Tanbour admits that Carr discloses a cutlery/utensil insert above the notch section (planar portion) of Carr, but contends this is not “operably coupled.” Dr. Tanbour believes a POSITA would understand claim 2 to require the utensil caddy to be fastened to the planar portion; however, I disagree with this understanding. The '922 patent does not sufficiently disclose how its utensil caddy would be fastened to the upper dish rack. Therefore, a POSITA would not understand the '922 patent to require fastening to the planar portion.

219. I also understand Carr to teach its utensil caddy is removable from the upper washware rack. Carr describes its utensil caddy as an “insert.” Carr additionally depicts figures with the utensil caddy inserted and removed. Carr, Figs. 2, 3. A POSITA reviewing Carr would understand its caddy to be removable, satisfying the requirements of claim 3.

3. Dr. Tanbour fails to rebut that Bosch 800 renders obvious Independent Claim 1 and Dependent Claims 2-4

a. Bosch 800 discloses angled walls which form a first and second set of cup seats

220. Dr. Tanbour opines that Bosch 800 fails to disclose the recited two angled walls and that these angled walls fail to define a first and second set of cup seats. Tanbour '922 Reply Decl., ¶¶ 121-122. Dr. Tanbour specifically contends that the bottom wall is “arbitrarily separate[d].” *Id.* ¶ 121. This is not supported by Bosch 800’s disclosure. Bosch 800 clearly teaches two angled walls. There is a clear vertical break between the two angled walls, which is not an arbitrary selection. Bosch 800 make a functional decision to have two angled walls, so as to accommodate differing arrangements of dishes to be washed.



Second Rebuttal Decl., ¶ 101.

221. As I have already established, Bosch 800’s angled walls comprise cup seats, which Dr. Tanbour has previously recognized. *See supra* Section V.A.4.a (citing Tanbour Reply Decl., ¶ 161 (annotated)). Further, Dr. Tanbour’s argument that the ’922 patent requires cups to be held on their cylindrical sides is not supported by the claims. *See supra* Section V.A.2. Bosch 800 clearly allows for cups to be supported on its angled walls, and thus discloses the use of cup seats as understood by the ’922 patent.

222. Dr. Tanbour additionally comments that the MyWay rack “includes a slightly angled (*substantially horizontal*) portion” when referring to first and second angled wall. Tanbour ’922 Reply Decl., ¶ 122. This assertion that the angled walls would be “substantially horizontal” appears to be inconsistent with statements made by Dr. Tanbour regarding the infringement analysis previously presented. In analyzing the Accused Product, Dr. Tanbour measured a horizontal portion of the upper dish rack and reported it to be angled at “approximately 3 degrees” and therefore determined it was “upwardly angled.” Tanbour Reply Decl., ¶¶ 72-75. These two positions are not consistent. Dr. Tanbour cannot credibly suggest that the angled bottom wall of the MyWay rack should be considered horizontal, while at the same time asserting that the horizontal portion of the rack in the Accused Product is actually angled, based on Dr. Tanbour’s (demonstrably erroneous) opinion that it is angled to the same extent.

4. Dr. Tanbour fails to rebut that Mailander renders obvious Independent Claim 1 and Dependent Claims 2-3

a. Mailander discloses an upper dish rack defining a planar portion and a depression

223. Dr. Tanbour asserts that the “washing items support” does not constitute an upper dish rack. Tanbour ’922 Reply Decl., ¶ 128. Dr. Tanbour states that Mailander’s washing items support “*is not necessarily* positioned at the top of a dishwasher.” *Id.* However, this does not account for the fact that Mailander does disclose embodiments in which it is at the top of a dishwasher. Mailander claims the “washing space having . . . *at least one* removable crockery basket therein.” Mailander, Cl. 22. A POSITA would have understood that the at least one removable crockery basket corresponds to the first and second lower dish racks. Dr. Tanbour does not dispute claim element 1[b] in his Rebuttal Declaration, where the lower dish racks are initially claimed. *See generally* Tanbour ’922 Reply Decl. It is further clear that Mailander teaches that the washing items support “is arranged above a crockery basket 50,” as Dr. Tanbour admits. *Id.* ¶

128; Mailander, [0025]. Mailander, therefore discloses an upper dish rack above the first and second lower dish racks.

224. Dr. Tanbour’s argument that the washing items holders are merely placed along the bottom wall is additionally unavailing. As I previously established, this conclusion ignores the embodiments of Mailander in which the washing item holders are integrally formed with the bottom wall. *See supra* Sections V.A.5.b, V.C.1. Mailander clearly teaches a depression within the upper dish rack.

b. Mailander discloses a first and second angled wall which define a first and second set of cup seats

225. Dr. Tanbour argues that the washing item holders and support surfaces fail to disclose a set of angled walls. Tanbour ’922 Reply Decl., ¶ 130. Dr. Tanbour states that Mailander does not refer to these components as walls, while referring to other elements of the structure as “walls.” *Id.* ¶ 131. However, this conclusion ignores the teachings of Mailander as understood by a POSITA. Despite not being explicitly called a “wall,” a POSITA would still understand the support structures 34 of Mailander to fulfill the requirements of the “angled wall” as understood by the ’922 patent.

226. Dr. Tanbour again concludes that the washing item holders and support surfaces merely sit on top of Mailander’s upper dish rack and fail to hold cups along their cylindrical side. As I have previously stated, Mailander discloses embodiments in which the support surfaces are integrally formed with the upper dish rack, and there is no requirement by the ’922 patent claims to hold a cup on its cylindrical side. *See supra* Sections V.C.1, V.A.2.

5. Dr. Tanbour fails to rebut that Andrew in view of Carr renders obvious Independent Claim 1 and Dependent Claims 2-4, 7-25

a. It would have been straightforward to combine Andrew and Carr

227. Dr. Tanbour argues that Andrew teaches a two-rack dishwasher and does not contemplate a dishwasher with three racks. Tanbour '922 Reply Decl., ¶ 137. Although it is true that Andrew is directed at a two-rack dishwasher, Carr does disclose three dish racks. Dr. Tanbour states a POSITA would not have looked to Andrew to learn about a three-rack dishwasher, but that is not representative of my position. In my prior declaration, I explained that a POSITA would have been motivated to modify Andrew, in view of Carr, to add the additional lower dish rack. *See* Second Rebuttal Decl., ¶ 128. A three-rack dishwasher is consistent with the goals of Andrew, which states “[i]t is desirable to hold the maximum quantity of any of a plurality of like dishes.” Andrew, 1:33-35. The addition of a third dish rack, as taught by Carr, is in line with this desire. Although Dr. Tanbour makes passing reference to the combination being inoperable, he fails to elaborate how it would be inoperable. *See* Tanbour '922 Reply Decl., ¶ 137.

228. Dr. Tanbour also concludes that the “flat support” section of Andrew is too narrow or shallow to support a utensil caddy as embodied by the '922 patent. *Id.* ¶ 138. However, this has no bearing on the ability of Andrew to be combined with Carr and meet the limitations of claim 1. Dr. Tanbour also asserts that a POSITA would not have been motivated to combine the utensil insert of Carr with Andrew as Andrew already discloses one. *Id.* However, that is not an accurate representation of Andrew's disclosure. Andrew teaches that the flat support section may “selectively receive and support long carving knives or spatulas in a horizontal position,” but there is no insert disclosed in Andrew. Andrew, 1:68-71. As I explained in my previous declaration, a POSITA would understand a utensil caddy to be consistent with the goals of Andrew, which

recognizes that it is important to “prevent[] knives, forks or the like from sliding off the support.”
See Second Rebuttal Decl., ¶ 126; Andrew, Cl. 1.

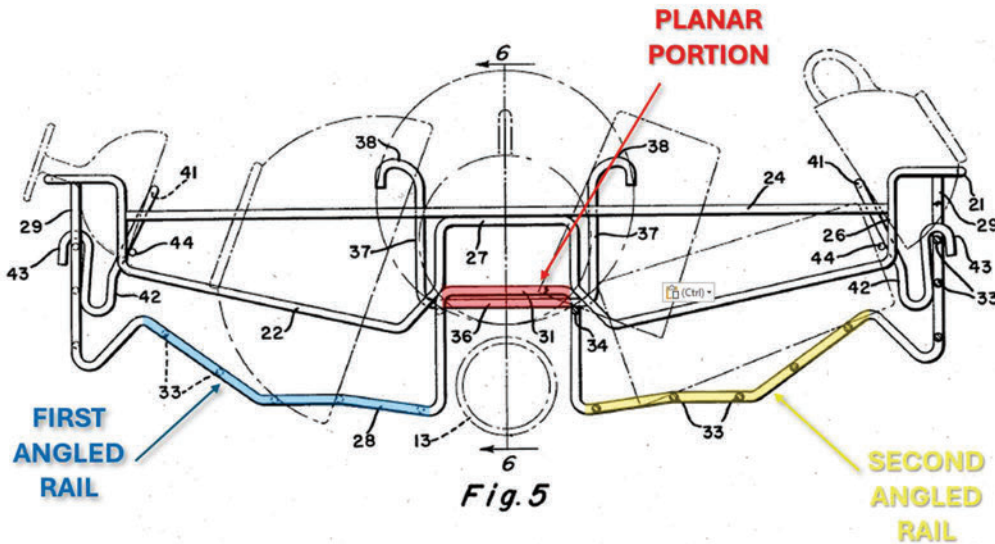
229. Dr. Tanbour’s argument that “the ’922 Patent creates a clear relationship between the ‘planar portion’ of the ’922 Patent and the first and second angled portions to form a V-shaped depression” is additionally not found in the requirements of the claims. Although illustrated embodiments may depict such an arrangement, this does not negate the combination of Andrew and Carr or its rendering obvious the claims of the ’922 patent.

b. Andrew-Carr discloses an upper dish rack with a planar portion, a depression, and two angled walls forming two sets of cup seats

230. Dr. Tanbour argues that Andrew’s “flat support” is too narrow and does not terminate by the side wall. Tanbour ’922 Reply Decl., ¶ 141. However, the planar portion terminating in the side wall is not a claimed feature of the ’922 patent. It merely needs to be part of the upper dish rack, which Andrew discloses. The flat support is further not “too narrow,” as Dr. Tanbour contends. As Andrew explains, the flat support section can “selectively receive and support long carving knives or spatulas in a horizontal position.” Andrew, 1:68-71. A POSITA would thus understand that the flat support section can similarly accommodate a utensil caddy. Dr. Tanbour further states a utensil caddy would interfere with cups supported by posts 38, but this ignores the statement of Andrew that the “rack is flexible and versatile to thereby increase its utility.” Tanbour ’922 Reply Decl., ¶ 141; Andrew, 4:60-68. A POSITA would have appreciated the ability of Andrew-Carr to accommodate different arrangements of utensils, including a utensil caddy on its flat support section.

231. Dr. Tanbour also concludes that the upper dish rack of Andrew-Carr fails to disclose the first and second angled walls. Tanbour ’922 Reply Decl., ¶ 142. Dr. Tanbour fails to articulate a reason why the angled walls of Andrew fail to teach this limitation. *See id.* (arguing

that the angled walls “do not define a set of cup seats” and that Carr does not disclose this limitation). As I established in my prior declaration, Andrew’s upper rack has a first and second angled wall. *See* Second Rebuttal Decl., ¶ 139,



Id.

232. Dr. Tanbour further states that Andrew-Carr fails to disclose cup seats, stating there is only one cup seat in each depression. Tanbour ’922 Reply Decl., ¶ 143. Dr. Tanbour here concedes that Andrew does disclose two cup seats, but distinguishes the fact there are two depressions. *Id.* However, the claims do not require the depression to be a singular depression. The depression of Andrew still contains two angled walls, which define cup seats. Dr. Tanbour’s arguments that Carr cannot overcome the deficiency are how combinations are inoperable are unavailing, as the Andrew-Carr combination as defined in my prior declaration does not utilize Carr’s specific teachings for this limitation. *See* Second Rebuttal Decl., ¶¶ 139-140.

233. Dr. Tanbour again asserts the contention that the “flat support” of Andrew is too narrow and does not terminate in a side wall. Tanbour ’922 Reply Decl., ¶ 144. As I previously established, there is not requirement in the ’922 patent claims that the planar portion terminates in

the sidewall and the “flat support” section is sufficiently wide enough to accommodate a plurality of utensil holders. *See supra* Section V.C.5.b.

c. Andrew-Carr discloses a utensil caddy that is operably coupled, removably coupled, and is defined by a periphery with an open top

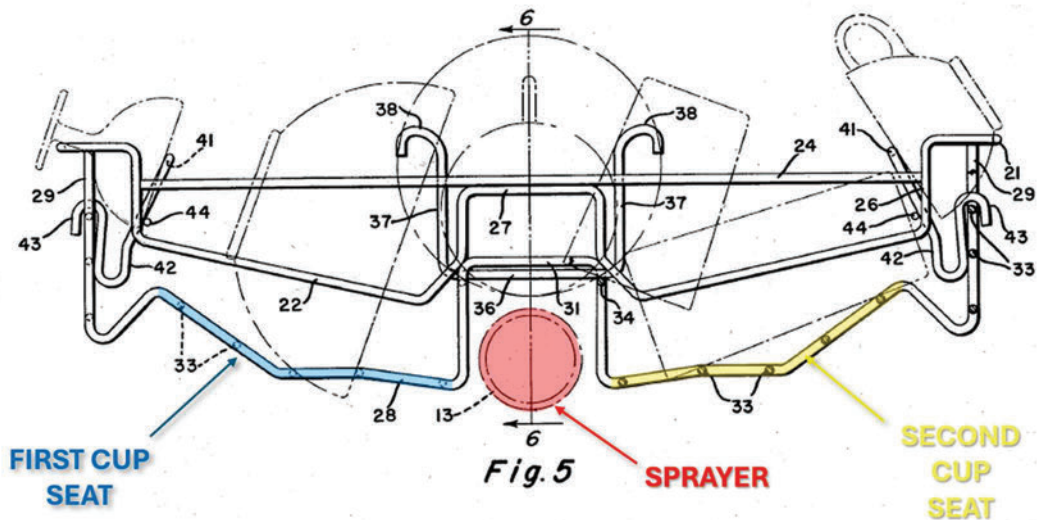
234. With regard to dependent claim 2, Dr. Tanbour asserts that the utensil caddy of the Andrew-Carr combination is not operably coupled. Tanbour ’922 Reply Decl., ¶ 145. As I explained in reference to Carr in isolation, Carr teaches the insert being coupled as understood by the ’922 patent. *See supra* Section V.C.2.b. I additionally established that a POSITA would have been motivated to combine the teachings of Andrew and Carr as it relates to the utensil caddy. *See supra* Section V.C.5.a.

235. With regard to dependent claim 4, Dr. Tanbour now argues that neither Andrew nor Carr disclose the claimed “utensil caddy.” Tanbour ’922 Reply Decl., ¶ 147. Yet, Dr. Tanbour has not argued this lack of disclosure previously. *See id.* ¶¶ 109-114, 145. The previous contentions are targeted at the “operably coupled” limitation. It is clear that Carr discloses a utensil caddy and the teachings are readily applied to Andrew. Dr. Tanbour states the insert of Carr is too deep and narrow for Andrew’s support portion, despite previously arguing Andrew is too narrow to receive a utensil caddy. *Id.* ¶ 147. However, a POSITA is would not have been limited to the utensil insert illustrated in Carr’s figures and would have still been motivated to apply Carr’s teachings, recognizing the benefits of storing utensils in an organized and secure manner.

d. Andrew-Carr discloses a sprayer adjacent to the first and second cup seats and emits a spray of water into the cups

236. In relation to dependent claim 7, Dr. Tanbour asserts that “there is no conceivable way to combine Andrew’s sprayer with Carr’s teachings.” Tanbour ’922 Reply Decl., ¶ 148. Dr. Tanbour does not elaborate why the sprayer would fail to function in the proposed combination.

Andrew-Carr clearly depicts the sprayer being disposed between the two cup seats, where a spray of water would be emitted into the cups held by the cup seats. *See* Second Rebuttal Decl., ¶ 150.



Id.

237. Dr. Tanbour again reiterates the argument that the sprayer could not be combined with the teachings of Carr for claim 8. Tanbour '922 Reply Decl., ¶ 149. This is again unavailing. Dr. Tanbour further argues that Carr has no sprayer and no obvious location for one, but the combination, as presented in my prior declaration, does not rely on Carr in this manner. *See* Second Rebuttal Decl., ¶ 152. The teachings of Andrew show that the sprayer is disposed between the two sets of cup seats.

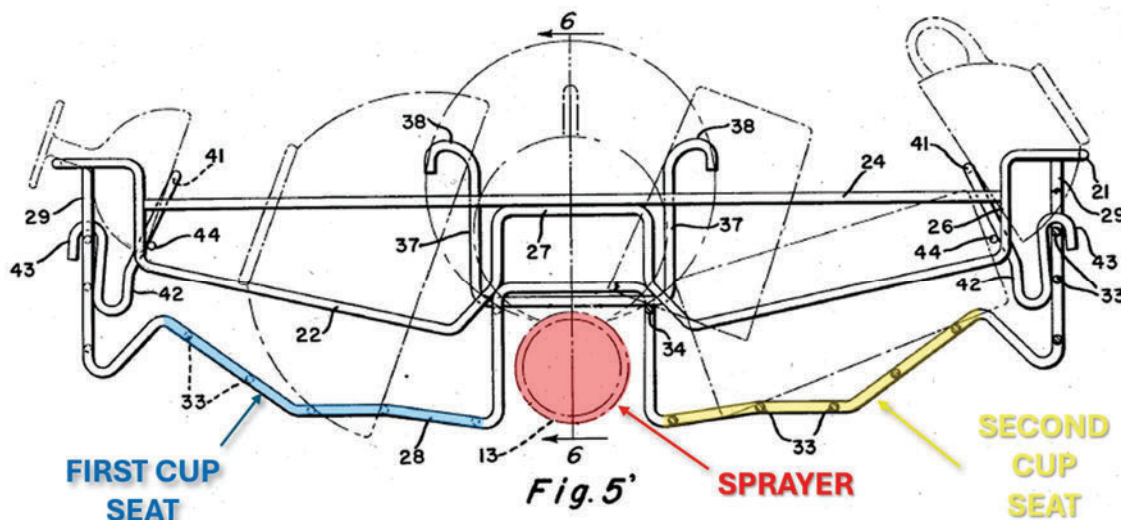
e. Andrew-Carr discloses a set of cup seats which may support mugs

238. In regards to claim 16, Dr. Tanbour argues that Andrew-Carr fails to disclose cup seats which may support mugs. Tanbour '922 Reply Decl., ¶ 157. He specifically argues that the cup seats of '922 are not of equal length, but this is not required by the claim language. As Andrew clearly discloses, its upper rack holds “glassware such as coffee or tea cups.” Andrew, 2:30-37.

A POSITA would have understood that a rack capable of holding a coffee cup would have been able to hold a mug.

f. Andrew-Carr discloses that the lowestmost portion of the cup seats may be disposed below the sprayer

239. In regards to claim 25, Dr. Tanbour argues that Andrew-Carr fails to disclose the lowestmost portion of the cup seats being disposed below the sprayer. Tanbour '922 Reply Decl., ¶ 166. In doing so, Dr. Tanbour address the unmodified Andrew Figure 5. He fails to address the arguments made in my prior declaration, in which I opine on the additional teachings incorporated by reference in Andrew. See Second Rebuttal Decl., ¶ 175. I argue a POSITA would have recognized that U.S. Patent No. 2,734,520, incorporated by reference by Andrew, teaches the sprayer may be disposed higher in relation to the upper dish rack without departing from Andrew's teachings. See *id.* ¶¶ 175-176. It is therefore well within the combined teachings of Andrew-Carr that the lowestmost point of the cup seats may be disposed below the sprayer, as was shown in the modified Andrew Fig. 5.



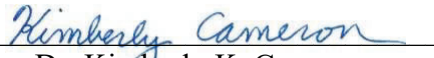
Id.

VI. CONCLUSION

240. For the reasons stated above, I disagree with the opinions offered by Dr. Tanbour in his Reply Declaration, and I maintain my opinions that all of the Asserted Claims are (1) not infringed by the Accused Product and (2) invalid as being either anticipated or rendered obvious in view of prior art.

241. I declare that all statements made in this Declaration of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

DATED: March 17, 2026


Dr. Kimberly K. Cameron

CERTIFICATE OF SERVICE

The undersigned certifies that on March 17, 2026, counsel of record are
being served with a copy of this document by email.

/s/ Brian Treggs

Brian A. Treggs
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