

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

Petitioners

v.

WHIRLPOOL CORPORATION

Patent Owner

Case PGR2026-00043
Patent 12,543,922

PATENT OWNER'S PRELIMINARY RESPONSE

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EXHIBIT LIST

Exhibit	Description
EX2001	Declaration of William B. Collier, Jr. in Support of Patent Owner's Notice of Intent to Designate Provisionally Recognized Attorney William B. Collier, Jr. as Back-Up Counsel Under 37 C.F.R. § 42.10(c)
EX2002	Complaint for Patent Infringement, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 1, filed Oct. 10, 2025 (E.D. Tex.)
EX2003	Amended Complaint for Patent Infringement, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 38, filed Feb. 9, 2026 (E.D. Tex.)
EX2004	Plaintiff's Motion for Preliminary Injunction, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 4, filed Oct. 10, 2025 (E.D. Tex.)
EX2005	Samsung's Opposition to Whirlpool's Motion for Preliminary Injunction (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 24, filed Dec. 15, 2025 (E.D. Tex.)
EX2006	Expert Declaration of Dr. Kimberly K. Cameron Regarding Non-infringement and Invalidity of the Asserted Patents, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 70-1, filed May 27, 2026 (E.D. Tex.)
EX2007	Expert Declaration of Dr. Kimberly K. Cameron Regarding Non-infringement and Invalidity of U.S. Patent No. 12,543,922 (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 70-2, filed May 27, 2026 (E.D. Tex.)
EX2008	Expert Declaration of Dr. Kimberly K. Cameron Regarding Non-infringement and Invalidity of the Asserted Patents (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 70-3, filed May 27, 2026 (E.D. Tex.)
EX2009	Transcript of Evidentiary Hearing Held April 8, 2026 (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 76, filed June 10, 2026 (E.D. Tex.)
EX2010	Plaintiff's Post-hearing Brief in Support of Motion for a Preliminary Injunction, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 65, filed May 5, 2026 (E.D. Tex.)
EX2011	Samsung's Post-hearing Responsive Brief in Opposition to Motion for a Preliminary Injunction (Redacted), <i>Whirlpool Corporation v. Samsung</i>

	<i>Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 70, filed May 27, 2026 (E.D. Tex.)
EX2012	Plaintiff's Post-hearing Reply Brief in Support of Motion for a Preliminary Injunction (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 75, filed June 10, 2026 (E.D. Tex.)
EX2013	Declaration Of Justin DeLapa In Support Of Patent Owner's Discretionary Denial Briefing Pursuant To The Director's March 26, 2025 Memorandum
EX2014	Docket Report, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042 (E.D. Tex.) <i>last accessed</i> June 28, 2026
EX2015	Whirlpool Corporation Product Marking Page, <i>available at</i> https://www.patent-listing.com/index.html (last accessed June 10, 2026)
EX2016	Docket Control Order, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 78, filed June 12, 2026 (E.D. Tex.)
EX2017	Letter from Counsel for Samsung regarding prior art stipulation
EX2018	Samsung's Post-hearing Sur-reply Brief in Opposition to Motion for a Preliminary Injunction (Redacted), <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 85, filed June 25, 2026 (E.D. Tex.)
EX2019	Second Amended Complaint for Patent Infringement, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 88, filed Jun. 26, 2026 (E.D. Tex.)
EX2020	RESERVED
EX2021	Curriculum Vitae of Dr. Emad Tanbour
EX2022	Declaration of Dr. Emad Tanbour, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 65-6, filed May 5, 2026 (E.D. Tex.) (signed Oct. 10, 2025)
EX2023	Samsung, Bespoke AI Smart Dishwasher, https://www.samsung.com/us/dishwashers/freestanding/38-dba-bespoke-auto-open-door-dish (Last accessed July 11, 2026)
EX2024	Declaration of Dr. Emad Tanbour, <i>Whirlpool Corporation v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-01042, Dkt. No. 65-9, filed May 5, 2026 (E.D. Tex.) (signed Oct. 10, 2025)

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I. Introduction

Patent Owner Whirlpool Corporation (“Whirlpool” or “Patent Owner”) respectfully requests that the Board deny Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.’s (collectively “Samsung” or “Petitioner”) Petition to institute post grant review of U.S. Patent No. 12,543,922 (the “’922 Patent”).

The ’922 Patent discloses a unique dishwasher design introduced recently by Whirlpool in its premium product line. Specifically, the ’922 Patent discloses and claims a three rack dishwasher. The uppermost dish rack includes at least two sections, a planar portion and a depression. Within the depression are two angled walls that define cup seats that securely hold cups in the upper dish rack. The planar portion includes utensil holders that also secures utensils. Thus, the upper rack includes a specific configuration that securely retains both cups and utensils and minimizes movement during a washing cycle.

All Petitioner’s primary references were considered by the U.S. Patent Office during the original examination of the ’922 Patent and are cited on the face of that patent. The cited and previously considered references include Mailander (EX1006),

Carr (EX1005), and Andrew (EX1013).¹ In addition to rehashing prior art that has already been considered by the Patent Office, all the grounds presented in the post grant review petition fail to show a reasonable likelihood of success on the merits for at least the reasons identified below.

As an initial matter, none of the references render obvious the “cup seat” required by claim 1 of the ’922 Patent. Under a proper understanding of the claimed “cup seat,” the references fail to describe a structure that securely holds or retains cups in a manner consistent with the ’922 Patent. Unable to identify any structure in its cited references correlating to the claimed cup seats, Petitioner proposes and applies an overly broad definition of “cup seat” to effectively encompass any part of a dishrack with sufficient vertical clearance to place cups “and other items to be treated within the treating chamber such as ‘baby bottles, plates, bowls, pans, or the like.’” Pet. at 8. As a result, Petitioner’s obviousness challenges ignore the claim language requiring an angled seating configuration that securely holds or retains cups to minimize movement and breakage during the washing process.

¹ The published application that led to Petitioner’s fourth reference, Gutkowski (EX015), was also considered during the original examination. Gutkowski is only used in combination with Andrew.

In Ground 1, the Petition fails to present *prima facie* evidence that Mailander teaches or suggests a first and a second set of cup seats in a dishwasher rack in conjunction with a first and second angled wall formed as part of the depression. In Mailander, the surfaces that Petitioner contends are cup seats are not formed by the angled portions of a depression of the dish rack, as required by claim 1, but rather includes inserts positioned above the dish rack. Thus, Mailander does not teach a dish rack with a depression having a first and second angled wall forming two sets of cup seats. Nor does Mailander disclose a planar portion having a utensil holder under Petitioner's construction (which Patent Owner does not agree with), and instead, they also are separate inserts that are placed within and rest above the dish rack itself. Petitioner bears the burden to show a reasonable likelihood of invalidity under its proposed construction, but Mailander only describes a flat surface for holding items and not one that forms a cup seat to hold or retain the cups to minimize movement inside the dishwasher.

In Ground 2, Petitioner admits that Carr does not render obvious the utensil holders of claim 1, under its construction proposed in this proceeding. Carr also fails to describe the first and second angled wall of claim 1 forming a first and second set of cup seats. Carr teaches only a single sloping wall with ribs to keep bowls from sliding in a single direction down the slope. These ribs in Carr are not formed from two separate angled walls, as claim 1 requires. The Petition fails to present *prima*

facie evidence that Carr teaches or suggests a first and a second set of cup seats in a dishwasher rack in conjunction with a first and second angled wall formed as part of the depression. Carr only describes a surface on which bowls may be placed on their top surface (*i.e.*, the lip of the bowl) but does not teach the function and design of the angled cup seat arrangement.

In Ground 3, Petitioner recognizes that Andrew, the primary reference, does not describe the claimed third (and upper) dish rack. In proposing to modify Andrew to include a third dish rack, Petitioner ignores Andrew's teaching and design. Because Andrew's upper dish rack is a full sized dish rack designed to hold plates and bowls, Andrew's design does not leave space for an additional third dish rack in its dishwasher. The only way to accommodate an additional third rack in Andrew would be to reduce its vertical height available for items in the lowest dish rack. But Petitioner's proposed modification to do so would result in a dishwasher that was incapable of loading full sized plates, large pots, or baking sheets, which a skilled artisan would find unacceptable. Petitioner also proposes modifying Andrew's dish rack to mount a basket insert as per Gutkowski, its secondary reference. But this change would remove the ability of the resulting dish rack to conveniently hold plates and would weaken the dish rack structure. As a result, Petitioner's proposed combination ignores Andrew and Gutkowski's teachings, and no POSITA would combine the teachings of those references in the manner suggested. Petitioner's

Andrew-Gutkowski combination can only be explained as unreasonable hindsight reconstruction of the '922 patent and should be rejected. Further, the unsupported assumptions and re-designs of the Andrew and Gutkowski combination upon which Petitioner relies make that combination figure unreliable as relevant evidence in this proceeding.

In light of these failures, the Petition fails to establish a reasonable likelihood that the claims of the '922 Patent are obvious and should be denied.

II. Background

A. Technology

Household dishwashers are a common appliance in most homes. The dishwasher defines an interior space commonly referred to as the “dishwasher tub” where washing activity occurs. EX1001, 1:22-24. Within the tub, dishwashers typically include dish racks for holding various types of dishware. *Id.* Traditionally, dishwashers include only two racks: an upper dish rack for small items, such as glassware and small dishes, and a lower rack for larger items, such as plates. *Id.* 1:24-26. These two racks typically occupy most of the space in the dishwasher tub. *Id.* 1:26-28. More recently, some dishwashers have begun to include a small third top rack that can accommodate silverware or other flat-laying utensils, but little else. *Id.* 1:28-32.

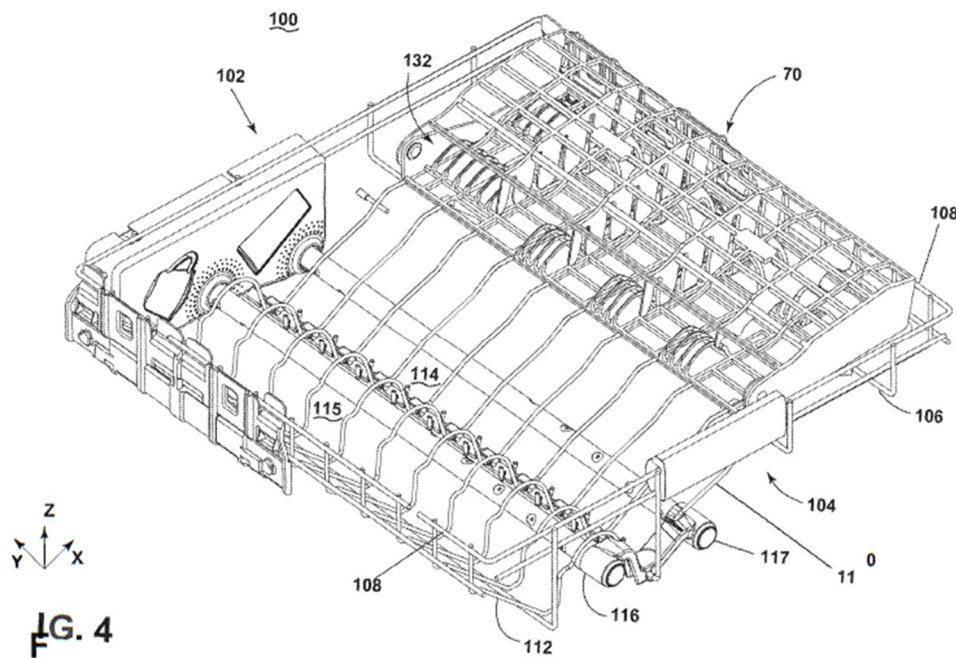
Another option for storing utensils is a utensil caddy that is designed to hold silverware. *Id.* 1:33-34. Typically, the utensil caddy, also known as a silverware basket, is a removable part placed on the lower dishrack or mounted on the inner surface of the dishwasher door. *Id.* 1:34-36. Some dishwashers include both a silverware basket and a third level rack, where the third level rack can accommodate long handled items, such as spatulas, serving spoons, knives, etc., that would be too tall for a silverware basket and would collide with the sprayer mounted below the upper rack. *Id.* 1:39-44. However, this combination consumes a large amount of space that cannot be filled with dishes.

B. The '922 Patent Invention

The '922 Patent is titled "Dishwasher with a dish rack." EX1001, cover. It was invented by inventors employed by Whirlpool Corporation. *Id.* The '922 Patent was filed on April 12, 2025, and claims priority through a chain of continuation applications to March 30, 2020. *Id.*, cover-2. The '922 Patent issued on February 10, 2026. *Id.*

The inventors of the '922 Patent recognized and sought to improve on the limitations of the prior dishwasher designs described above. One solution described by the '922 Patent is an improved third (or top) dish rack that includes both utensil holders including seats 126 and loops 128, and two sets of cup seats 114, 115 formed by first and second angled walls in a depression to support cups in the same dish

rack. *Id.*, 1:59-67; 5:47-52 (The “depression defined by a first and second angled wall 110, 112 ... forms a first set of cup seats 114 and a second set of cup seats 115, which ***hold cups as illustrated***) (emphasis added); 6:51-67 (“first side wall 120 can include a first set of utensil holders illustrated as a set of ***utensil seats 126 or loops 128***” which “can be ***configured to retain or hold*** a set of utensils”) (emphasis added). As the '922 Patent explains, these “seats” are configured to “hold” or “retain” the cups and utensils securely in the dishwasher’s top shelf. *Id.* An example of this improved dish rack is illustrated in Figure 4:



EX1001, Fig. 4.

Thus, the '922 Patent describes a dishwasher containing a third, upper dish rack assembly specifically configured to securely hold or retain one or more different

sets of utensils and two different sets of cups or mugs. *Id.* at Fig. 6, 1:59-67; 5:47-52; 6:51-67 7:33-43. Consistent with this disclosure, Claim 1 of the '922 Patent recites a dishwasher with a tub that includes a specially configured dish rack in which sets of both utensils and cups may be securely supported. *Id.*, Claim 1. The dish rack has a “planar portion” and a “depression” including first and second angled walls 110, 112 that extend entirely below the top of the utensil holders in the planar portion. *Id.* The planar portion includes a set of utensil holders, and the second depression portion defines a first and second set of cup seats formed from first and second angled walls formed in the dish rack depression. *Id.* .

Claim 1, the only independent claim of the '922 Patent, covers this new dish rack configuration:

- 1[pre]. A dishwasher, comprising:
 - a tub defining a dish treating chamber;
 - a first lower dish rack and a second lower dish rack located in the dish treating chamber;
 - an upper dish rack located above the first lower dish rack and the second lower dish rack in the dish treating chamber, the upper dish rack defining a planar portion and a depression, wherein the depression includes a first angled wall and a second angled wall that each extend at an acute angle relative to the planar portion, and

wherein the first angled wall defines a first set of cup seats, and
wherein the second angled wall defines a second set of cup
seats;
wherein the planar portion includes a plurality of utensil holders
configured to horizontally support utensils; and
wherein the depression extends entirely below a top of the utensil
holders in the planar portion.

Id., 11:60-12:10.

C. Effective Filing Date of the '922 Patent

The '922 Patent claims priority to March 30, 2020, as a continuation of application No. 19/039,228, filed on January 28, 2025, which is a continuation of application No. 18/535,327, filed on December 11, 2023, which is a continuation of application No. 17/830,947, filed on June 2, 2022, which is a continuation of application No. 16/833,984, filed on March 30, 2020. There is no dispute that the priority date of the '922 Patent is March 30, 2020. *See Pet.*, 7.

D. Level of Ordinary Skill in the Art

For purposes of this Preliminary Response only, Patent Owner has applied Petitioner's recitation of the level of skill in the art, because even under Petitioner's proposed level of skill (*Pet.*, 7), Petitioner has failed to demonstrate a reasonable likelihood of success. Patent Owner reserves the right to propose to define the appropriate level of ordinary skill in future responses, if necessary.

E. Petitioner's References

Petitioner asserts four grounds of invalidity based on combinations of four references: (1) Mailander; (2) Carr; (3) Andrew; and (4) Gutkowski. Pet., 3. A summary of Petitioner's grounds is listed below:

Ground	Claims	Statute	References
1	1–3	§ 103	Mailander in view of Carr
2	1–4	§ 103	Carr
3	1–4, 7–26	§ 103	Andrew in view of Gutkowski
4	20	§ 112	

Id.

1. Mailander

Mailander is U.S. Patent Application Publication No. 2008/0169009 A1, titled “Washing Items Support for a Dishwasher,” and published July 17, 2008. Mailander describes a “washing items support assembly for a dishwasher” that includes two sections. The first section includes a “cutlery container” and the second includes a “second container region” for washing “other items.” EX1006, Abstract. The structure described by Mailander is illustrated in figures 1 and 2:

Fig. 1

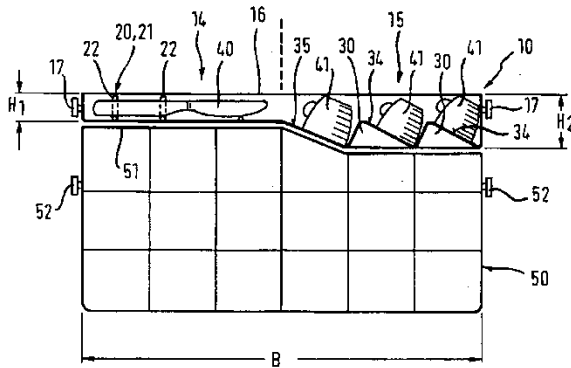
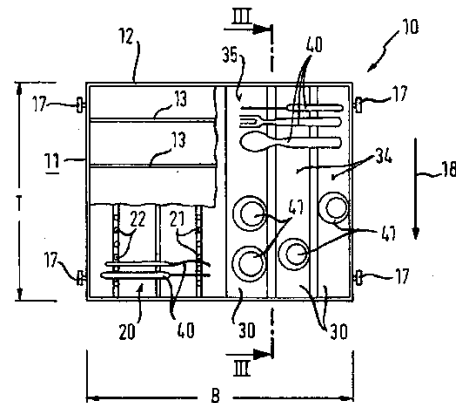


Fig. 2



Id. Figs. 1, 2. The first container region includes a cutlery insert 20 which includes first cutlery containers 21 and cutlery holders 22 on which pieces of cutlery are placed horizontally, and the second container region can include a pair of removable washing items holders 30, that do not form part of the walls of the dish rack, with an inclined support surface for smaller items such as cups, small bowls, shallow glasses, or cutlery. EX1006 ¶¶11-13; EX2024 ¶¶100-102. The washing item holders are “designed as inserts” and are “releasably inserted in the” base of the holder. EX1006 ¶28; EX2024 ¶¶100-102.

2. Carr

Carr, U.S. Patent Application Publication No. 2018/0220867 A1, titled “Wire Dishware and Cutlery Rack For Dishwasher,” published August 9, 2018, discloses a wire washware rack for a dishwasher. EX1005, Abstract. Figure 1 of Carr depicts

a front perspective of the dishwasher that includes a third, top washware rack. *Id.* at ¶28.

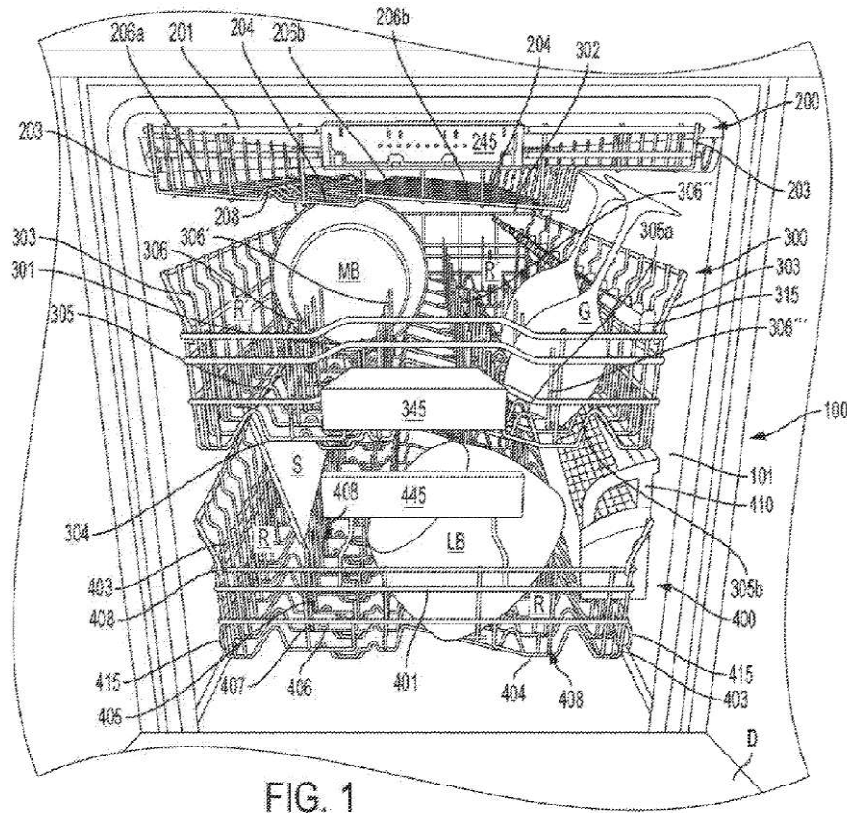


FIG. 1

The third rack 200 in Figure 1 is configured as a basket having front, rear, and opposing side walls interconnected with a bottom portion 204. EX1005 ¶41. The bottom portion 204 includes a notch section located “along at least one side” to accommodate cutlery and one or more angled portions 206 tilted approximately 3 to 5 degrees from horizontal to hold bowls and drain water from them. *Id.* ¶¶43. This configuration of the third rack is shown in isolation in Figure 2:

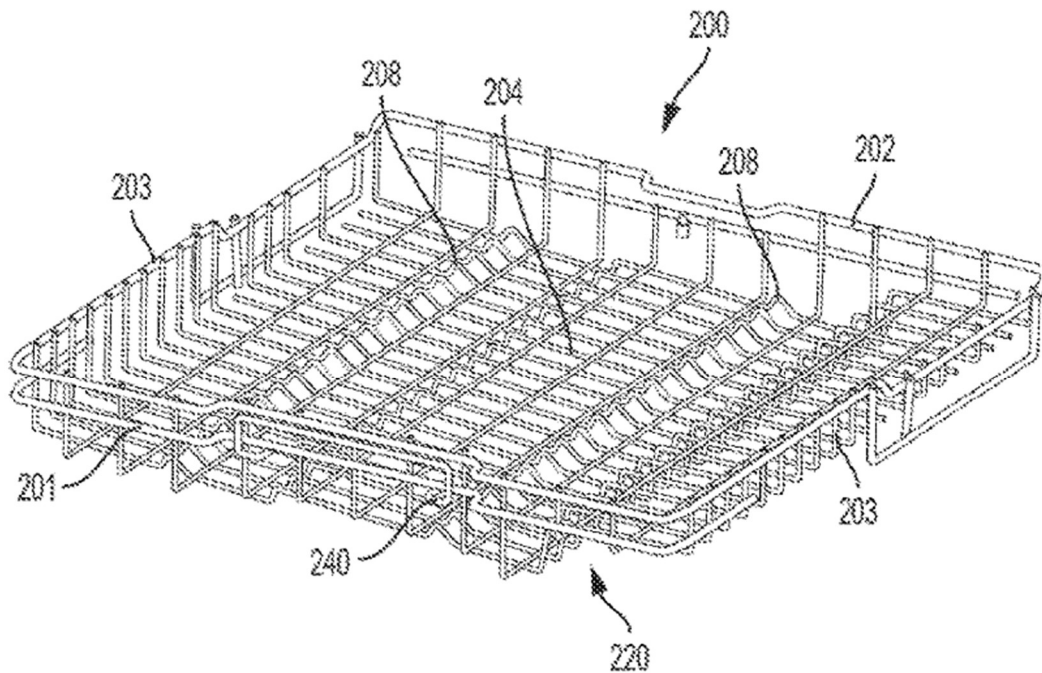
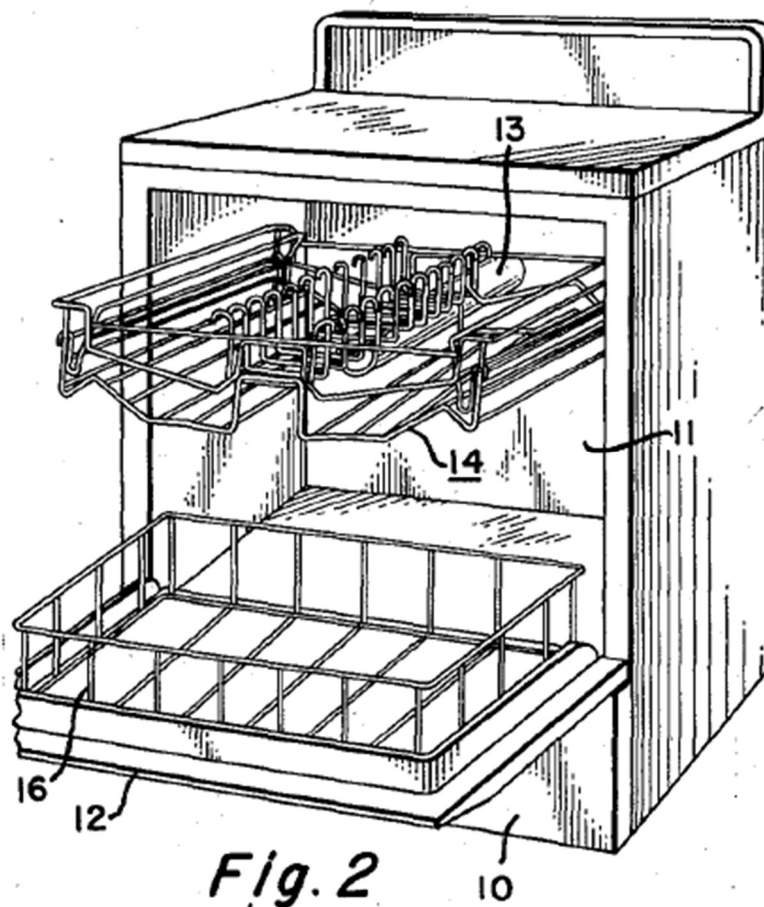


FIG. 2

Id. Fig. 2. Carr describes stopper ribs or forms 208 (which appear as small bumps in the Figures) to keep bowls from sliding in a single (side-to-side) direction. *Id.* ¶¶22, 44. Carr generically indicates that cutlery and washware larger than cutlery, such as small dishes, bowls, cups, and cooking utensils, may be washed. *Id.* ¶41. However, Carr lacks any description of a specially-configured cup seat arrangement in the top rack that holds or retains cups or mugs securely in place during dishwashing cycles. *See id.* ¶¶43-44; EX2024¶91-93. Rather than disclosing a cup seat, the Carr disclosure notes that bowls may be placed “at a slight tilt ... in order to drain off water from the bowls.” EX1005 at ¶¶9, 19, 26; *see* EX2024¶91-93.

3. Andrew

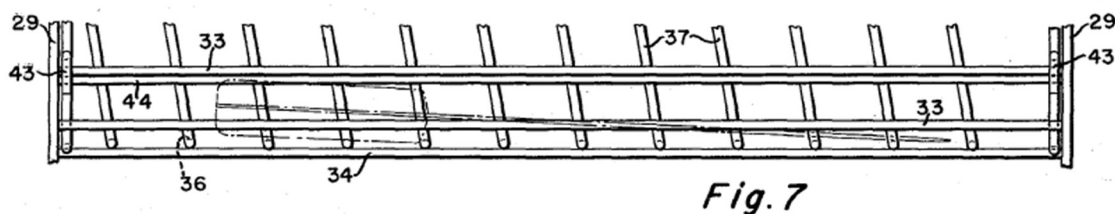
Andrew is U.S. Patent No. 2,910,207, titled “Dish Rack for Domestic Appliance,” issued October 27, 1959. EX1013, cover. Andrew describes a two rack dish washer with a large second level dish rack that allegedly improves the placement of utensils and glassware:



Id. 1:43-2:5, Fig. 2. The upper dishrack includes a central portion with rows of posts or spines 37 that “are adapted to invertedly receive and support drinking glasses,

Fig. 4

Id. Fig. 5 (front view of Andrew's upper dish rack). As the above figure shows, this rack is designed to hold relatively large items and takes up considerable height. *See id.* As a result, Andrew's dishwasher can only contain two dishracks. Andrew also does not include a utensil holder. Instead, Andrew teaches laying utensils on their side in place of the cups or plates held by the spines:



Id. Fig. 7 (sectional view of the center of Andrew's upper dish rack holding a knife on its side).

4. Gutkowski

Gutkowski is U.S. Patent No. 10,602,910 titled "Modular Dishwasher Rack with Interchangeable and Customizable Basket Inserts," issued March 31, 2020. EX1016, cover. Gutkowski addresses the "limited... capacity, flexibility, and versatility" of third, top washware racks in existing dishwasher designs. *Id.* 1:38-39. According to Gutkowski, existing third racks "have a large plastic piece that forms the basket of the rack and that is fitted over and fixed onto a wire frame" which "results in a relatively small clearance or spacing between an upper surface of a deepest portion of the top washware rack and an inner surface of a top wall of the

dishwashing compartment, thereby limiting what can be placed on the third washware rack.” *Id.* 1:43-52.

One solution to this problem proposed by Gutkowski is a modular washware rack “that has interchangeable and customizable basket inserts.” *Id.* 1:55-61. This modular rack can be adjusted in height or completely removed, if desired. *Id.* 1:62-2:4.

III. Claim Construction

Neither party has submitted any terms for construction in the underlying litigation, although Petitioner contends that Patent Owner has asserted implied claim construction arguments in the litigation. Pet., 7-8. The Petition in this proceeding, however, identifies constructions for several terms. Pet., 8-9. For the purposes of this Preliminary Response, Patent Owner addresses Petitioner’s construction for the term “cup seat,” because the construction of that term is dispositive relative to the references and issues presented in this Petition. But even under Petitioner’s proposed construction, the Petition fails to establish that any of its cited references include a “seat” for the reasons noted in the element-by-element analysis below. *See id.* Patent Owner also specifically addresses Petitioner’s construction of the phrase “the planar portion includes a plurality of utensil holders,” as the Petition fails to show that any of its Grounds establish a *prima facie* case of obviousness under its own proposed construction. Whirlpool does not agree with Petitioner’s proposed constructions and

reserves the right to submit constructions for these or other terms in future submissions.

IV. Arguments

Petitioner has failed to show a reasonable likelihood that any of its proposed grounds render claim 1 of the '922 Patent obvious, the only challenged independent claim. Accordingly, institution should be denied.

A. Ground 1

Because Mailander fails to render claim 1 of the '922 Patent obvious, Ground 1 cannot support institution of the '922 Patent.

1. Mailander does not render obvious “the first angled wall defines a first set of cup seats, and wherein the second angled wall defines a second set of cup seats.”

Mailander fails to teach the angled walls defining “cup seats” of claim 1. Mailander describes flat support surfaces 34 as part of washing item holders 30. But these nebulous, all-purpose, surfaces do not teach the claimed cup seat. EX2024 ¶¶130-132.

The '922 Patent claims and describes a cup seat defined by the angled walls of a depression of the dish rack. The preferred embodiment of the '922 Patent describes two opposed cup seats, 114 and 115, that are located within a depression. EX1001, 1:59-65. These cup seats are found throughout the figures, but can be seen in the perspective view of Figure 4:

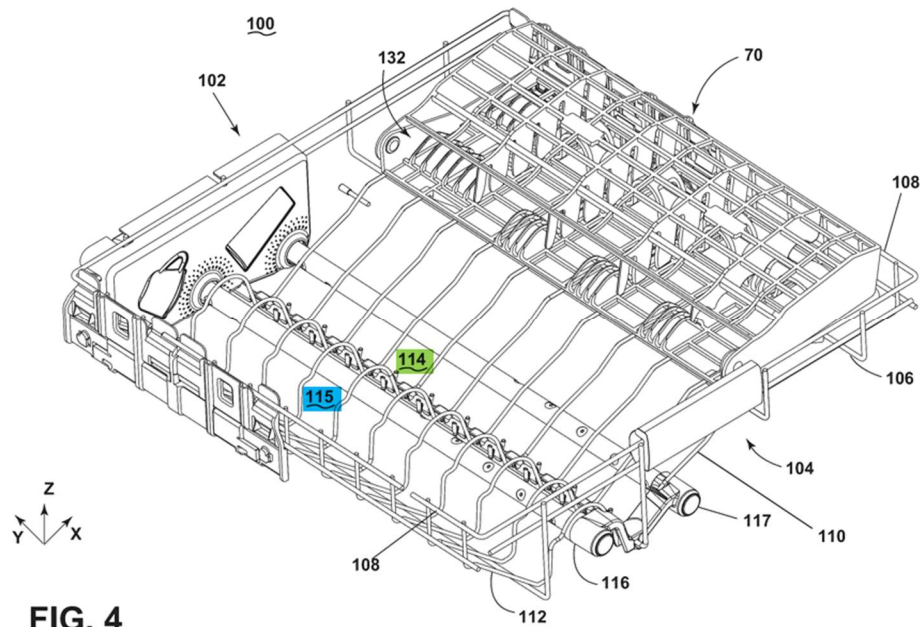


FIG. 4

EX1001, Fig. 4 (annotated). When holding cups or mugs, the cup seat securely retains the cups or mugs such that they face downwardly towards sprayer 116, as illustrated in Figure 8:

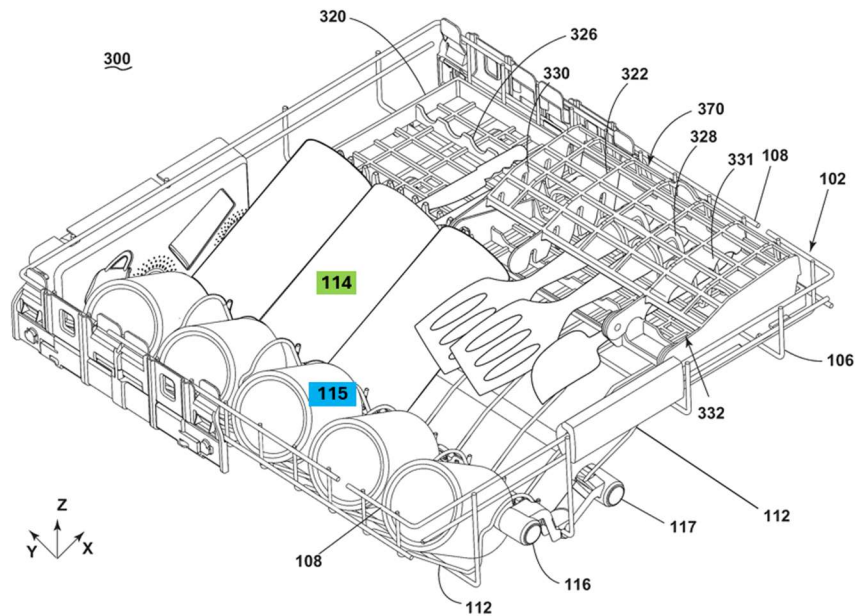
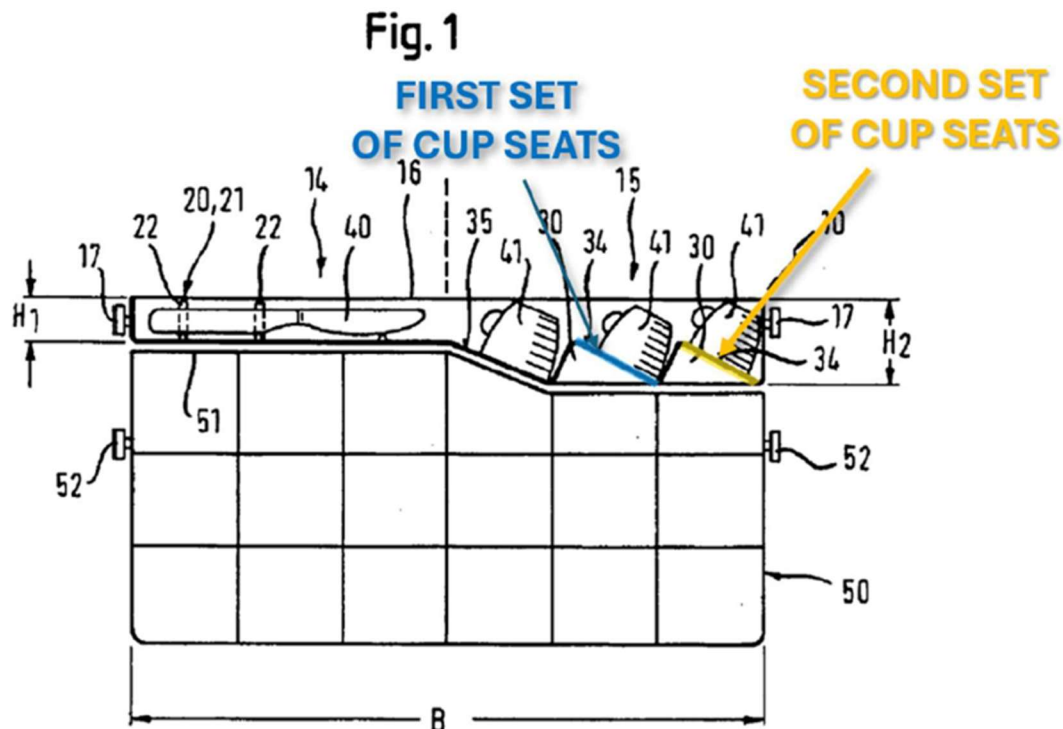


FIG. 8

EX1001, Fig. 8 (annotated). As these figures illustrate, the cup seat operates as a “seat,” and is capable of securely retaining or cradling glasses and cups along their bottom and cylindrical side. EX2024 ¶132.

Mailander’s washing holder 30 and support surface 34 are not cup seats.² Petitioner contends that support surface 34 of washing holder 30 teaches the claimed cup seat:



Mailander Figure 1 (Petitioner’s Annotations)

² Mailander also fails to teach the cup seat for the same reasons it does not teach the first and second angled wall of the dish rack. To the extent those components exist in Mailander, they are not part of the wall. *Supra* IV.A.1.

Pet. 39 (annotating EX1006, Fig. 1). However, as Figure 1 illustrates, Mailander only describes placing mugs, top down, onto the support surfaces. *Id.* These surfaces are not described or shown to be capable of securely supporting glasses and cups along their cylindrical side, consistent with the '922 Patent. EX2024 ¶132. Instead, these surfaces in Mailander's design appear to be uniform linear surfaces (similar to a shelf) that do not seat the cups. While cups may be placed along a shelf, they are not seated or retained in place. *Id.*

Reduced to its basic premise, Petitioner's argument is that "a cup seat" can be any part of a dishrack on which a cup can be placed. This position improperly reads the cup seat limitation out of the claim, which is contrary to well-established law. *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021). As the Board is aware, "[i]t is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous." *Id.* (quotation omitted, collecting cases). The *Intel* case is illustrative. There, the parties disputed the meaning of the phrase "hardware buffer." *Id.*, 806. The petitioner urged that the term simply meant a "buffer implemented in hardware." *Id.*, 809. The Federal Circuit recognized that because every buffer in the physical world "is ultimately implemented on a physical device (*i.e.*, hardware), a 'hardware buffer' must mean something more than [the petition's proposal]." *Id.* On the other hand, that patent owner "in its claim language, did not just say 'buffer,' but instead said 'hardware buffer,' provides a strong reason to avoid

the disfavored result of rendering the word ‘hardware’ superfluous.” *Id.*, 810. For this and other reasons, the Federal Circuit noted that the Board should have looked to the specification to ascertain the meaning of the term. *Id.*

The same reasoning applies here. The ’922 Patent did not merely claim a dish rack, or a dish rack with two angled walls. The patent instead specifically claims that the angled walls form sets of cup seats. EX1001, cl. 1. As the discussion of the ’922 Patent specification illustrates, the claimed sets of cup seats are capable of securely holding or retaining glasses and cups of ordinary dimension along their cylindrical side. *Id.*, 5:50-52.

In addition to failing to follow established law, Petitioner’s proposed construction relies on a misrepresentation of the ’922 Patent’s disclosure. Petitioner argues that the claimed cup seat could hold “measuring cups,” but Petitioner’s only support for that argument is the statement from the ’922 Patent that “other [items] such as sporks, measuring cups, or the like can be received with the *utensil seats*....” EX1001, 7:43-47 (emphasis added); *see* Pet. at 55 (citing same). That statement says nothing about items held in the cup seats. The other statement from the ’922 Patent referenced by Petitioner simply notes that other items could be placed in cup seats, as with many other parts of the dishwasher, *see* Pet. at 555, but does not change the fact that the claimed cup seat must securely cradle glasses and cups. EX2024 ¶132.

At best, the configuration illustrated in Figure 1 of Mailander may reduce sliding to the left or right (from the perspective of Figure 1), but nothing restricts the cups from sliding forward or backward. *Id.* Thus, this surface does not form a seat, and the Petition fails to explain how Mailander teaches a cup seat. *Id.* ¶¶57.

2. Mailander does not render obvious a “depression includes a first angled wall and a second angled wall.”

The Petition has failed to show that Mailander teaches a dish rack structure defining a depression that includes a first angled wall and a second angled wall as claimed by claim 1.

Claim 1 recites an “upper dish rack defining a planar portion and a depression, wherein the depression includes a first angled wall and a second angled wall that each extend at an acute angle relative to the planar portion, and wherein the first angled wall defines a first set of cup seats, and wherein the second angled wall defines a second set of cup seats.” EX1001, cl. 1. In other words, claim 1 requires that the angled walls are part of the dish rack depression and the cup seats are defined by those angled portions. *See id.*, 5:41-46 (walls define the shape of the dishrack); EX2024 ¶129. An example of this configuration can be seen in Figures 3 and 4 of the '922 Patent below, where a depression is formed by angled walls 110 and 112 and that depression forms two sets of cup seats, 114 and 115:

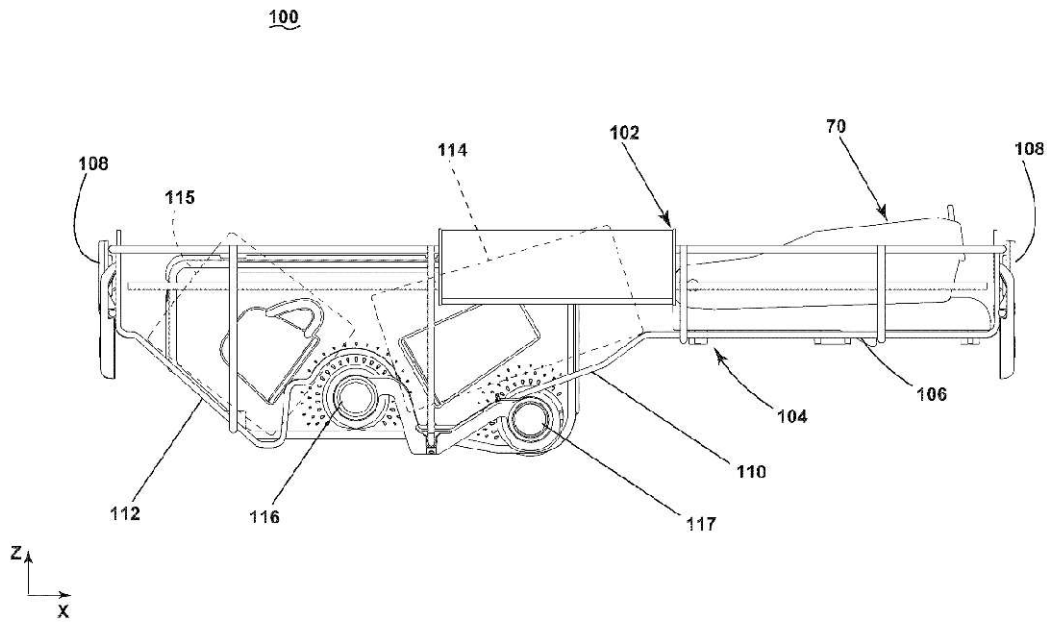


FIG. 3

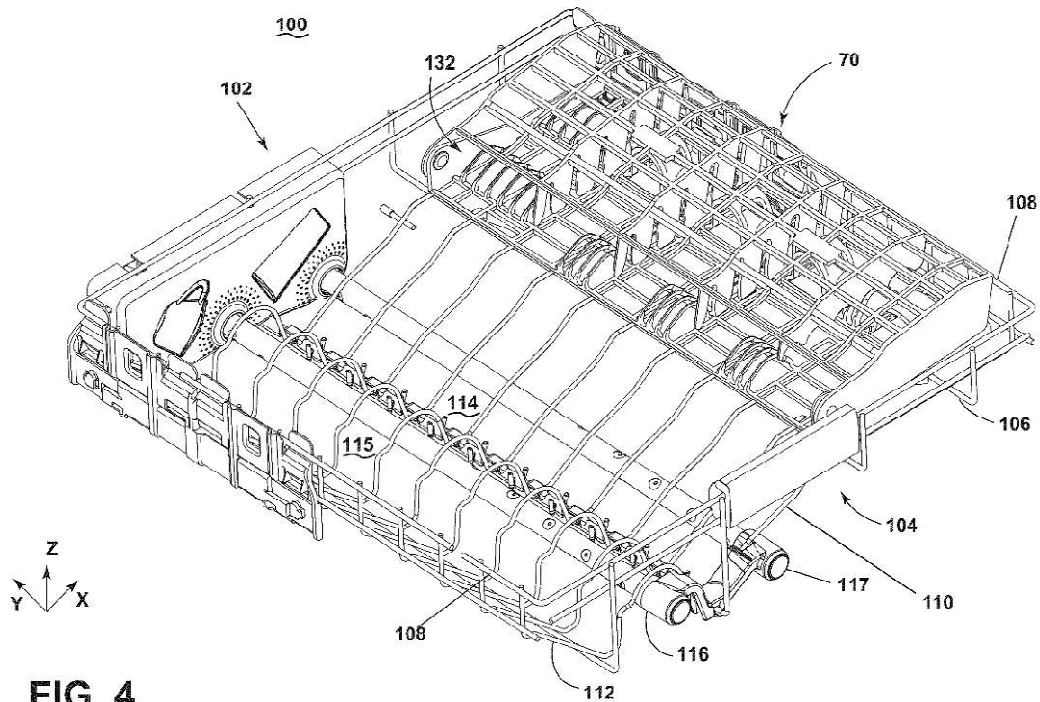


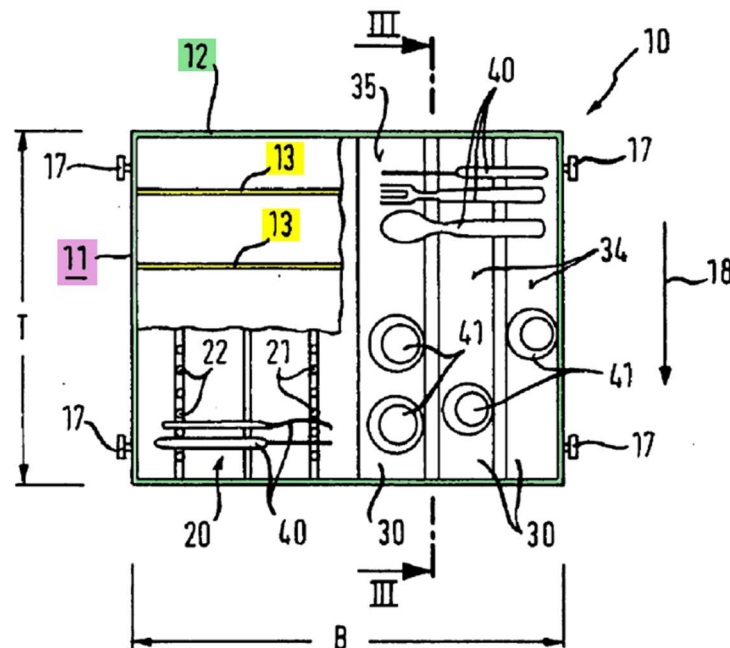
FIG. 4

EX1001, Figs. 3, 4; *id.* As the above figures illustrate, the angled walls are not inserts or some removable part that is placed within the depression of a dishrack. *See*

EX1001 5:42-44 (“The dish rack 102 has a wire frame construction forming a bottom wall 104 from which extends a peripheral wall 108 defining the sides of the dishrack.”); *also id.* 5:44-61. A dishrack has a bottom wall and peripheral walls that define the shape of the dishrack, and the angled walls the dishrack depression itself. *Id.*, 5:42-61.

Mailander’s support surfaces 30 are not an angled wall of a dish rack depression and do not form any part of the structure of the dish rack. Mailander describes a dish washing rack (washing item support 10) with a base basket 11 formed by a wire frame 12 and a few base wires 13, illustrated below:

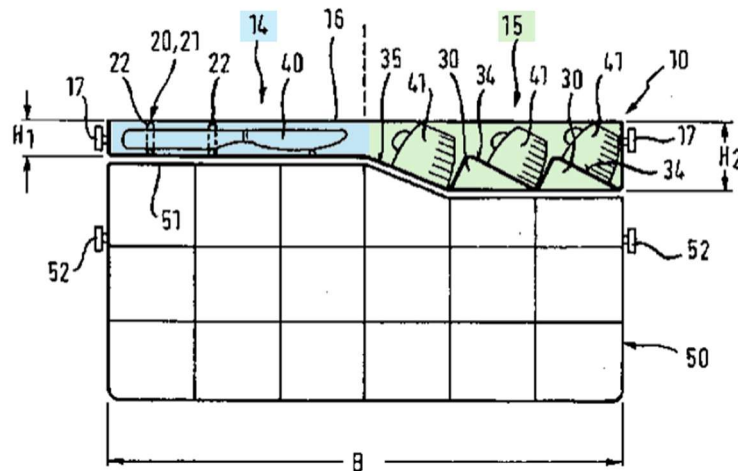
Fig. 2



Mailander Figure 2 (Patent Owner’s Annotations)

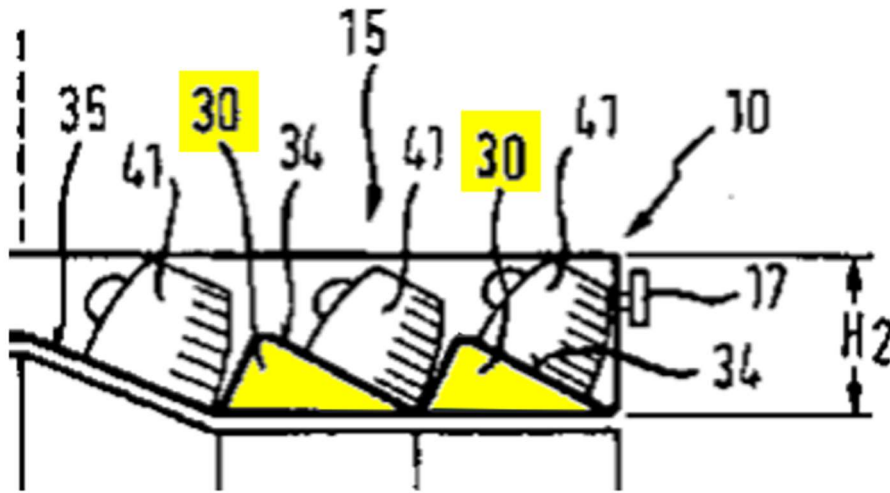
EX1006, Fig. 2 (Patent Owner's annotation), ¶28. The dish rack is further subdivided into two "container regions" 14 and 15. *Id.* ¶25. A sectional view of the dish washing rack is illustrated in Figure 1 with region 14 on the left, illustrated holding utensils, and region 15 on the right where cups may be placed:

Fig. 1



Mailander Figure 1 (Patent Owner's Annotations)

Id., Fig. 1 (Patent Owner's annotations), ¶22. As the above illustrates, region 14 includes a cutlery insert 20, and region 15 includes "two washing items holders 30, each of which has a support surface 34 inclined to the horizontal." *Id.* ¶¶25-27. The washing item holders 30 are highlighted below:



Mailander Figure 1 (Patent Owner's Annotations)

Id., Fig. 1 (annotated). As Mailander explains, these washing item holders 30 are not part of angled walls (or any walls) of the dish rack, and instead are “designed as inserts” that are “releasably inserted” in base basket 11:

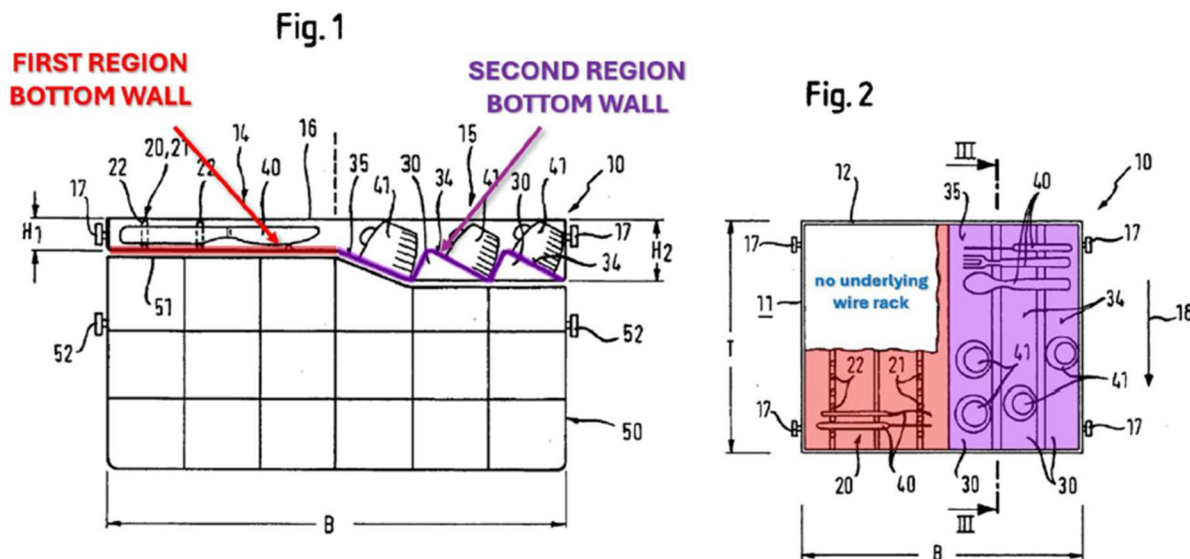
Washing items holders 30, designed as inserts, and the cutlery insert, are releasably inserted in this base basket, the connection being made by a stop in the wire frame. Washing items holders 30, as inserts, preferably consist of plastic. The inserts are supported on continuous bottom wires 13, which are also more clearly shown in FIG. 2. Washing items support 10 therefore consist of a base basket 11 and a washing items holder 30 of plastic.

Id. ¶28.

Despite Mailander’s explanation that washing item holders 30 and cutlery insert 20 are in all instances designed as releasable inserts and do not form any portions of the base basket, Petitioner contends that washing item holders 30 form

angled walls in Mailander's rack and therefore teach the claimed first and second angled walls. Pet., 33-36.

Petitioner's argument regarding the dish rack structure is based entirely on a single sentence from Mailander, which states without further elaboration that the dish rack "may consist of only one material, e.g. plastic, i.e. without base basket 11." *Id.*, 11 (quoting EX1006 ¶28). Petitioner uses this statement to create a version of Mailander's Fig. 2 where Petitioner erased the base wires of base basket 11 from the original Figure. Petitioner contends that this modified figure shows the washing item holders 30 form the first and second angle as required by claim 1:



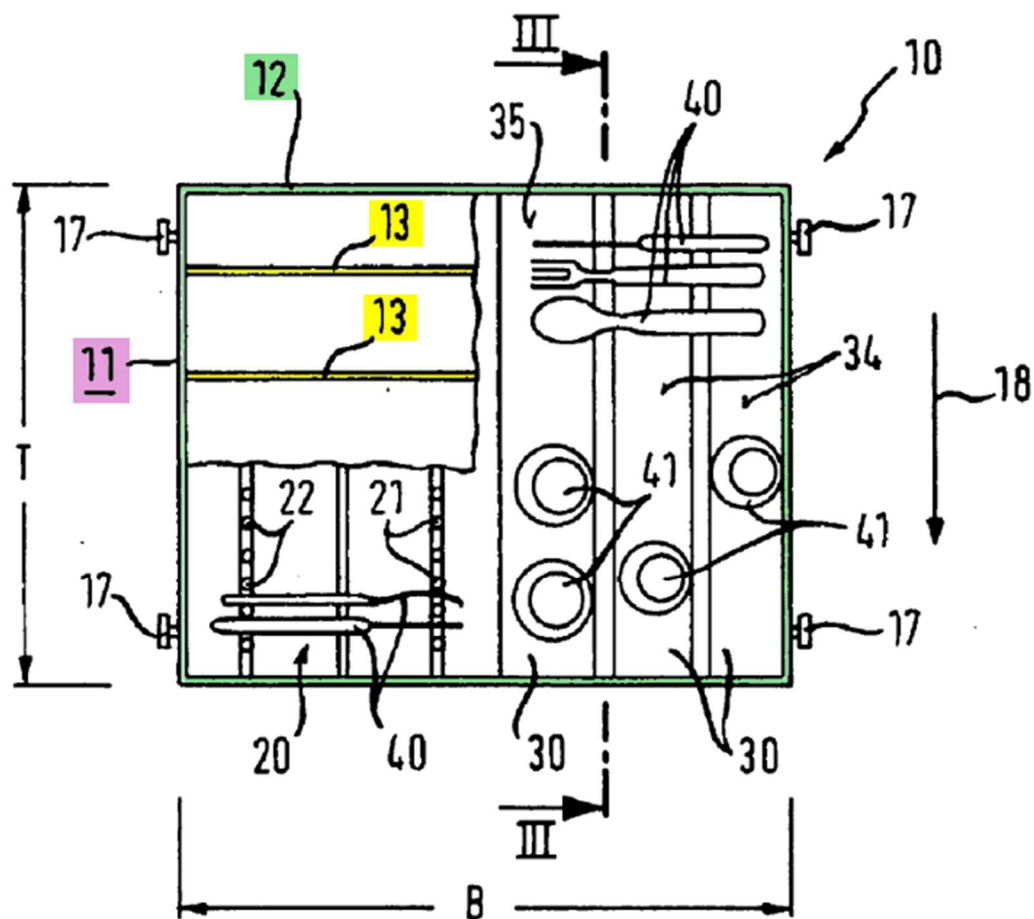
Mailander Figures 1 and 2 (Petitioner's Annotations)

Pet., 42 (annotating Mailander's Figures 1 and 2). Mailander does not teach, suggest or provide any motivation supporting this newly created rendition of Mailander. EX2024 ¶¶100-102, 130-131.

Mailander only states that the wired base basket 11 is not required as a separate part if washing items support 10 is constructed of plastic. *Id.* However, Mailander consistently states that washing item holders 30 are inserts. *See, e.g.,* EX1006 ¶¶27-29, 32-33. There is no teaching that the washing item holders 30 could, themselves, form a wall of the dish rack structure, and doing so would eliminate the benefits of using releasable inserts, such as the ability to remove the inserts when the generic space is needed for different types of items. *See id.* ¶19 (“The advantage of separate extraction mechanics is that the washing items support according to the invention can be pulled out of the washing items container independently of the base basket.”); EX2024 ¶¶100-102, 130-131.

Additionally, Petitioner’s modification does not address Mailander’s suggestion that a plastic dish rack would not include *all* of base basket 11, which includes both base wires 13 and a surrounding wire frame 12:

Fig. 2



Mailander Figure 2 (Patent Owner's Annotations)

But Petitioner's figure retains wire frame 12:

Pet., 42 (Petitioner's annotations). By only removing base wire 13 and failing to remove wire frame 12, Petitioner is being self-servingly selective in its analysis and fails to fully address the modified structure. EX2024 ¶¶100-102. By failing to consider Mailander's teaching as a whole, Petitioner improperly relies on only the portion of those teachings it believes help its arguments. *See W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 1551-52 (Fed. Cir. 1983) (the art as a whole must be considered and cannot render a claim obvious when it teaches away from the claimed invention). These arguments should be rejected.

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to explain how the inserts would still be releasable. *Id.* Without fully addressing the teachings of Mailander, Petitioner has not shown how or why a POSITA would have modified Mailander as Petitioner proposes. *W.L. Gore*, 721 F.2d at 1551-52.

The Petition has failed to establish a reasonable likelihood that Mailander teaches that a depression includes a first and second angled wall, where the angled walls define sets of cup seats.

3. Mailander does not render obvious a “planar portion include[ing] a plurality of utensil holders” under Petitioner’s definition.

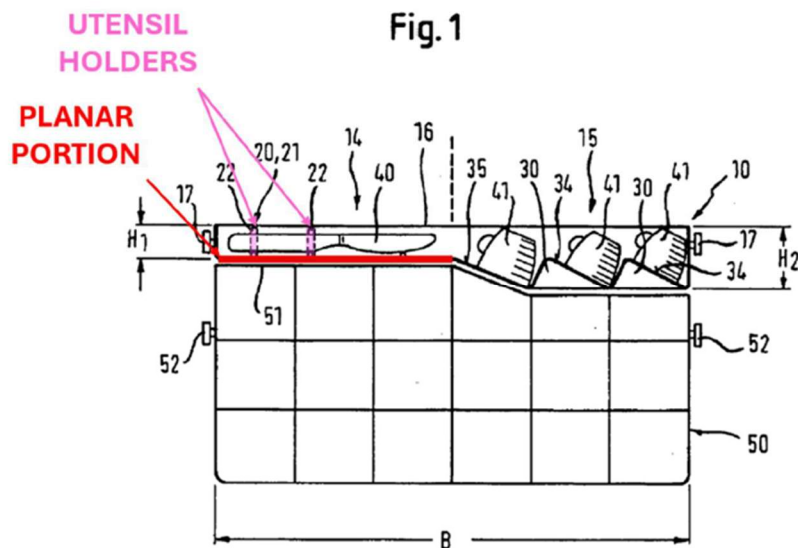
Petitioner proposes a narrow definition of “the planar portion includes a plurality of utensil holders” of Claim 1. Pet. 8. Petitioner argues that the “term “includes” means that the “plurality of utensil holders” are considered part of the “planar portion.” *Id.* In other words, Petitioner contends “the planar portion and the utensil holders comprise one unified structure.”³ *Id.* 8-9. Patent Owner does not agree with this definition or concede that it is correct.

Section 42.104(b) of Title 37 of the Code of Federal Regulations requires the Petitioner to identify: 1) “[h]ow the challenged claim is to be construed;” and 2) “[h]ow the construed claim is unpatentable... specify[ing] where each element of the claim is found in the prior art patents or printed publications relied upon.” This

³ As Petitioner notes, Patent Owner disagrees with this construction.

burden of proposing and supporting a claim construction demonstrating unpatentability rests entirely on the Petitioner and never shifts to the Patent Owner. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1375 (Fed. Cir. 2016) (“[T]he burden of persuasion is on the petitioner to prove unpatentability by a preponderance of the evidence, ... and that burden never shifts to the patentee.”) (quotation omitted) (citing *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015))); *see* 35 USC § 324(a).

Petitioner thus must establish unpatentability under its proposed construction, but under this construction, Mailander does not render obvious the “a plurality of utensil holders” of claim 1. Claim 1 requires that the upper dish rack includes “a planar portion,” “wherein the planar portion includes a plurality of utensil holders configured to horizontally support utensils.” Petitioner points to Mailander’s loading side 51 and cutlery holders 22 as describing these elements:



Mailander Figure 1 (Petitioner's Annotations)

Pet. 41 (Petitioner's annotations to Mailander Figure 1). Petitioner then contends that "Mailander's planar portion is formed in such a way that it includes multiple utensil holders "integrally formed together" arguing that "The planar portion of the rack does not rest on any underlying structure, and all of the utensil holders (21 and 22) are thus included directly in the bottom wall forming the planar portion." Pet. 34. Petitioner does not cite anything in support of this conclusion. Nor can it do so, as there is nothing in Mailander supporting that structure. For that reason alone, the Petition fails to meet its burden to show a reasonable likelihood of success.

Moreover, Mailander explains that its first cutlery containers 21 and cutlery holders 22 are part of cutlery insert 20, which is inserted into first container region 14. EX1006 ¶26. As an insert, cutlery insert 20 is necessarily not "one unified

structure” with the first container region. Thus, Petitioner has failed to present a *prima facie* case of obviousness under its proposed construction for “planar portion.”

B. Ground 2

1. Carr does not render obvious “the first angled wall defines a first set of cup seats, and wherein the second angled wall defines a second set of cup seats.”

As with Ground 1, Carr fails to teach a cup seat in the depression. For this element, the Petition relies on Carr’s third, top washware rack 200 for “cutlery and washware which is larger than cutlery such as, but not limited to, small dishes, bowls, cups, as well as cooking utensils.” Pet. 53 (citing EX1005 ¶41).

As explained above, and incorporated here, the ’922 Patent’s claimed cup seats are capable of cradling or securely retaining glasses and cups of ordinary dimension along their cylindrical side. *Supra* IV.A.1. For similar reasons as Ground 1, Carr’s bottom portion 204 are not cup seats.

Stated simply, Carr does not disclose a cup seat. EX2024 ¶¶91-93, 107-108. Instead, Carr describes a “third, top washware rack 200” with “[t]he bottom portion 204 includes one or more angled portions 206 that is/are configured to hold bowls at a slight tilt with respect to horizontal in order to drain off water from the bowls” EX1005 ¶43. Carr further explains that “[e]ach angled portion 206 is tilted at an angle in a range of 3 to 5 degrees with respect to horizontal, and preferably is tilted

at an angle of approximately 4 degrees with respect to horizontal.” *Id.* The bowl holder is illustrated in Carr’s Figure 6:

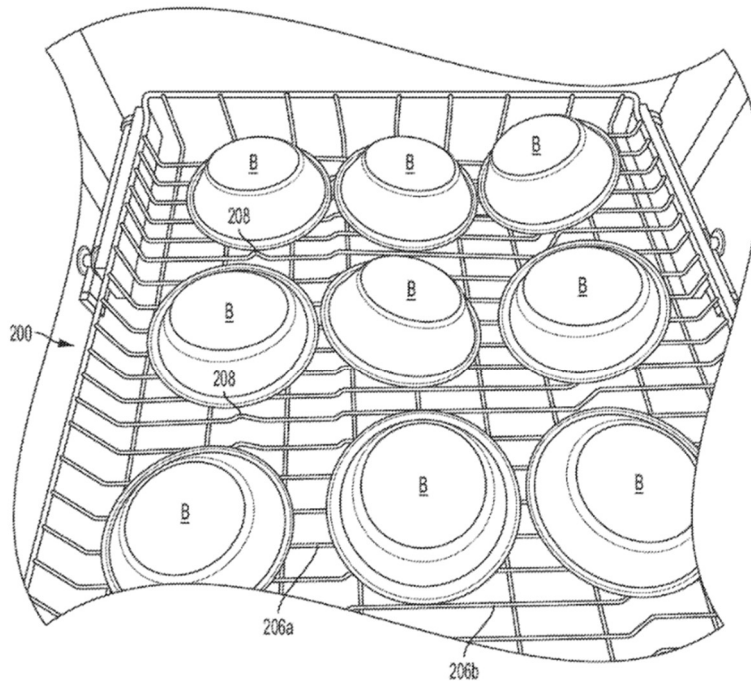


FIG. 6

Petitioner points out that Carr states that “top washware rack 200 is configured to hold cutlery and washware..., but not limited to, small dishes, bowls, cups, as well as cooking utensils.” Pet., 53 (citing *id.*, ¶41) (emphasis omitted). But that statement only provides that assorted items could be placed in the top rack, just as they could be placed in any general-use area of any dish rack. Carr never explains that bottom portion 204 or its angled portions 206 are configured to securely and stably hold

cups in any way. As noted above, Carr is only specifically configured “to hold bowls at a slight tilt.”⁴ EX1005 ¶43. This does not teach a cup seat. EX2024 ¶¶107-108.

To the extent that Petitioner maintains that the ribs or forms 208 in Carr perform a function analogous to a “cup seat,” that argument fails. *See* Pet., 53-54. The ’922 Patent explains that cups or mugs can be “received within” the cup seats. EX1001, 8:31-36. But the forms 208 cannot be fairly identified as cup seats as they do not provide any seating functionality, particularly not for a cup. EX2024 ¶¶ 91-93, 108. Carr suggests that these forms may reduce sliding of a low-profile object like a bowl along a single direction as shown in Figure 6, but such a structure could not and would not securely hold a cup even in that single direction. *Id.* Carr does not teach or suggest a cup seat capable of retaining or cradling a set of cups against movement during a wash cycle. *Id.*

As explained above in Ground 1, and incorporated here, the claimed cup seat must be more than any surface an item could be placed on. *Supra* Section IV.A.1. Petitioner’s construction rendering the claimed “cup seat” superfluous must be rejected. Without that construction, Petitioner has failed to show that Carr’s bowl holding angled portions teach a “cup seat.”

⁴ In contrast, Carr explicitly describes a “cutlery/utensil accessory insert 235” to hold cutlery. No equivalent disclosure exists for a cup seat.

2. Carr does not render obvious that “the depression includes a first angled wall and a second angled wall that each extend at an acute angle relative to the planar portion.”

The Petition has failed to show that Carr teaches a depression that includes a first angled wall and a second angled wall as claimed by claim 1. *See* EX1001, cl. 1. Petitioner points to Carr’s “bottom angled portions 206” as correlating to the claimed first and second angled walls:

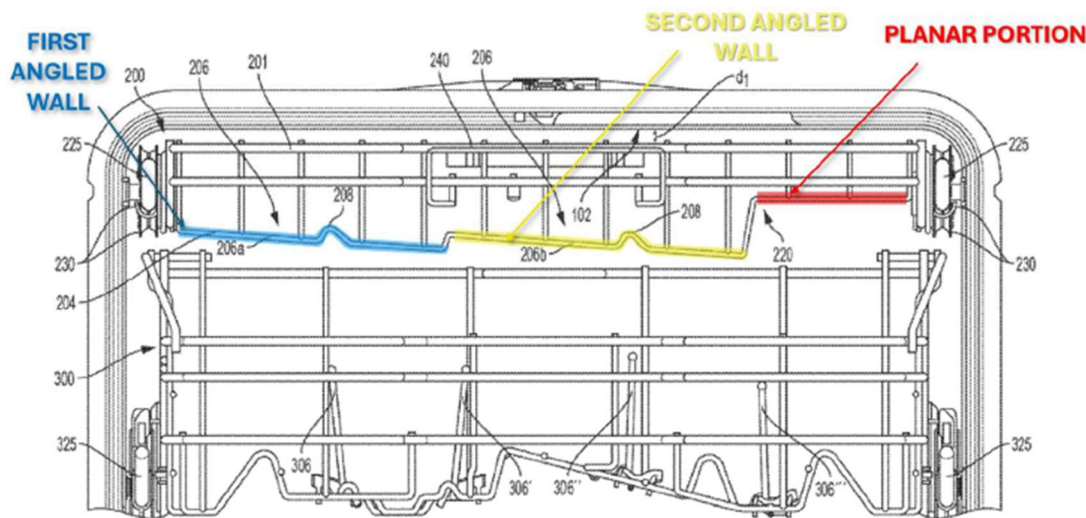


FIG. 4

Carr Figure 4 (Petitioner’s Annotations)

A person of ordinary skill would not understand Carr’s bottom angled portions 206 to describe a first and second angled wall, but rather a single angled bottom wall declining in one direction from left to right:

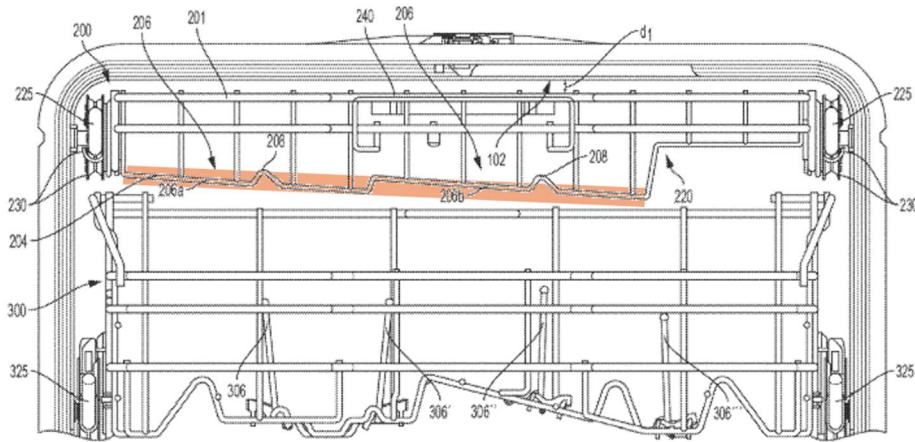


FIG. 4

Carr Figure 4 (Patent Owner's Annotations)

EX2024 ¶¶93, 105-106. There is nothing in Carr that suggests that this base portion of Carr forms two discrete angled walls, such as those illustrated by the '922 Patent:

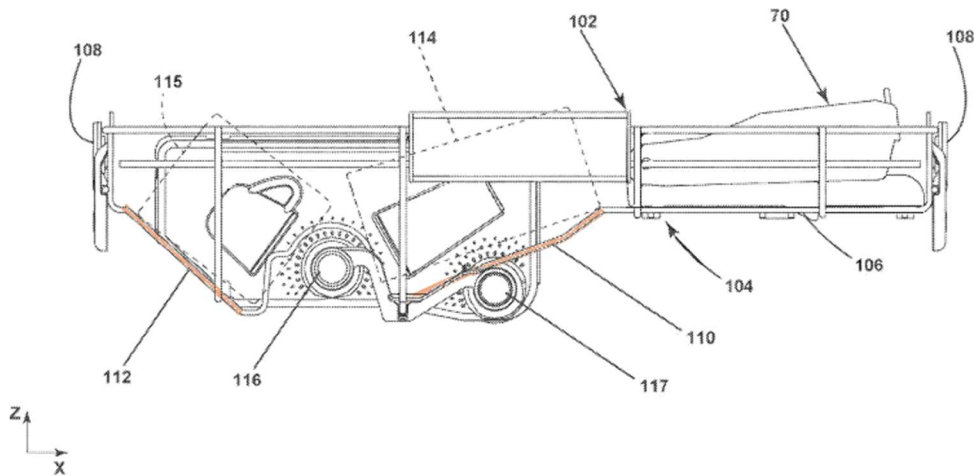


FIG. 3

Carr Figure 3 (Patent Owner's Annotations)

EX1001, Fig. 3. The Petition fails to meet its burden, and thus institution should be denied.

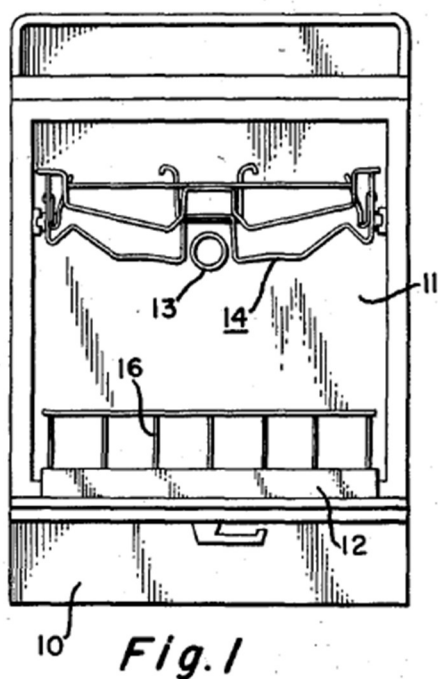
C. Ground 3

1. A POSITA would not be motivated to combine Andrew with Gutkowski

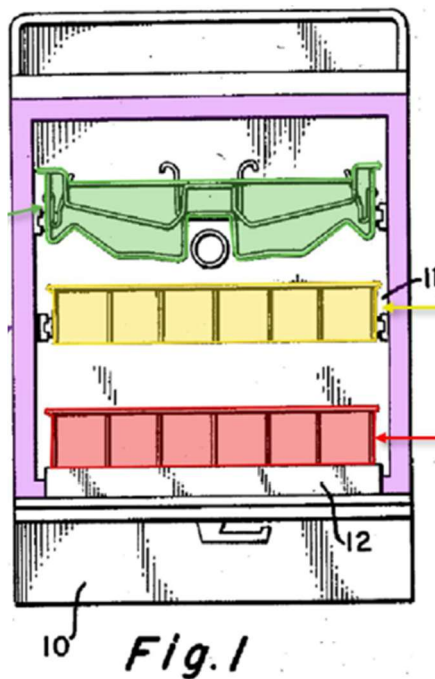
As Petitioner recognizes, Andrew does not describe “a plurality of utensil holders configured to horizontally support utensils” or “a first lower dish rack and a second lower dish rack” along with “an upper dish rack located above the first lower dish rack and the second lower dish rack.” Pet. 62-67. Petitioner proposes combining Andrew with Gutkowski to fix these deficiencies. Petitioner’s argument relies on modified versions of Andrew’s Figures 1 and 4 that it created based on self-serving and incorrect assumptions to recreate the claimed invention.

Specifically, Petitioner proposes inserting a third dish rack in Andrew’s dishwasher and inserting a “silverware basket” from Gutkowski into Andrew’s elevated central rails 36. These modifications are illustrated below in figures created by Petitioner:

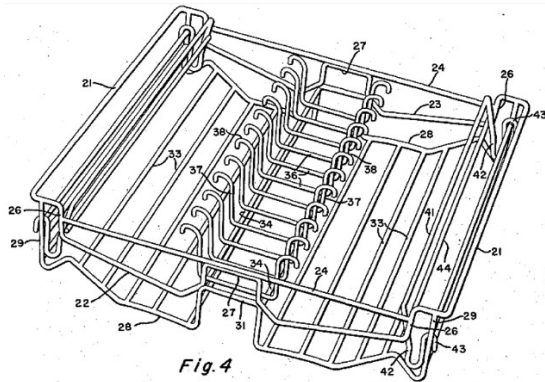
Andrew Figure 1:



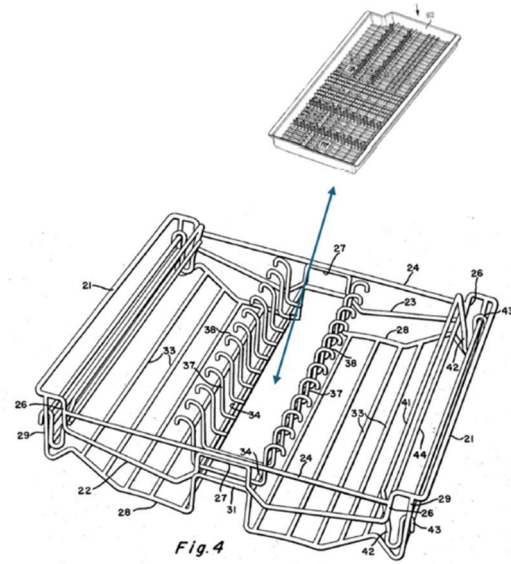
Petitioner-Created Andrew-Gutkowski Combination:



Andrew Figure 4:



Petitioner-Created Andrew-Gutkowski Combination:



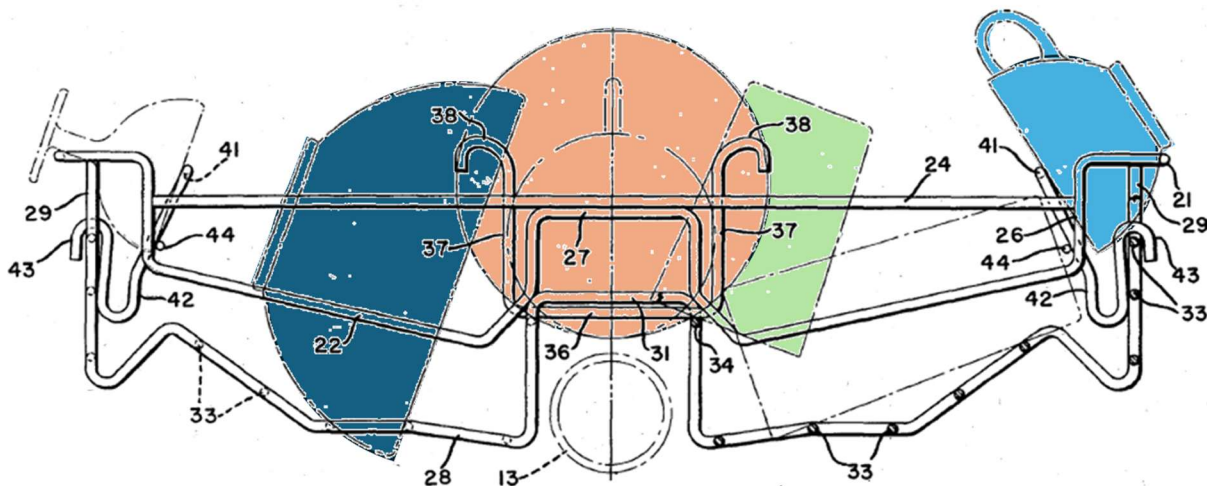
Pet. 65, 67. A POSITA would not have combined Andrew and Gutkowski as proposed by Petitioner. Instead, the Petitioner's Andrew-Gutowski Combination is a dishwasher design that is motivated solely by hindsight using Whirlpool's patented design as a blueprint. The Andrew and Gutkowski references do not provide any motivation to make this reconstructed dishwasher design.

- i. *A POSITA would not add another lower dishrack to Andrew.*

First, Petitioner contends that a POSITA would recognize the space between Andrew's upper rack and lower rack could accommodate a third, full size rack. Pet. 66-67. Gutkowski directly contradicts that modification. As Gutkowski notes, "In general, most domestic dishwashers include two dishware racks to support items to be washed...." EX1016 1:16-17. "Typically, the two dishware racks include an

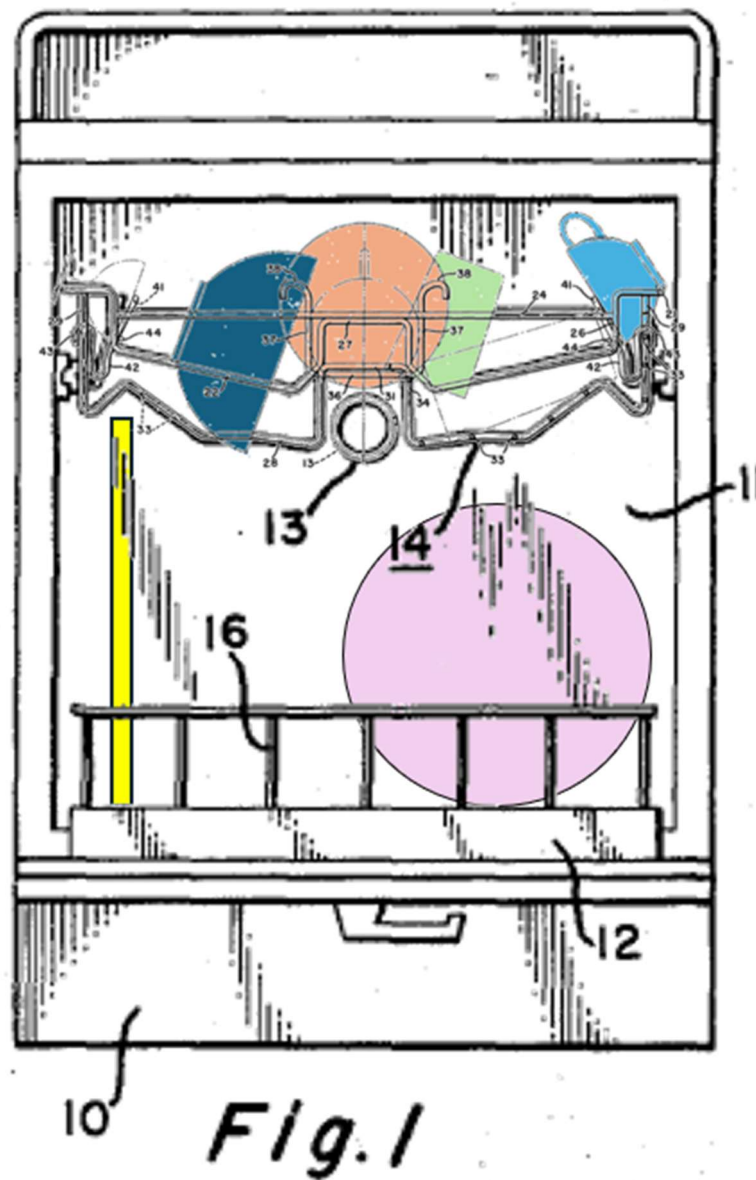
upper dishware rack positioned near a top portion of the dishwasher, and a lower dishware rack arranged below the upper dishware rack.” *Id.* 1:18-21. The “third, top washware rack is positioned immediately above a second or middle washware rack.” *Id.* 1:32-34. Because the lower racks must hold larger items, the “third, top washware racks are limited in their capacity, flexibility, and versatility.” *Id.* 1:38-39.

Consistent with Gutkowski’s teachings, Andrew’s second rack supports glassware, utensils, and other items. As a result, it is considerably taller than the top rack of Gutkowski and is capable of holding full size bowls and small plates:



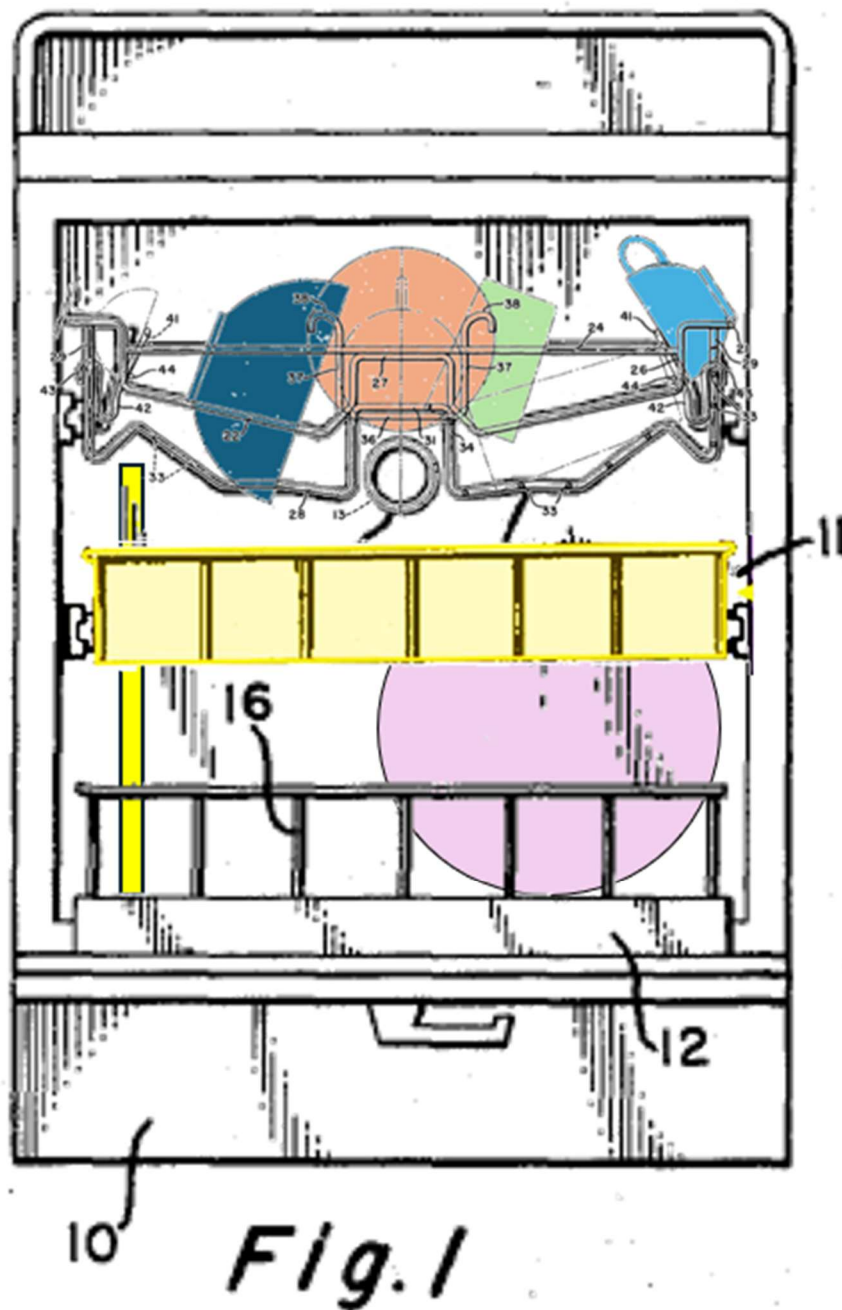
Andrew Figure 5 (Patent Owner’s Annotations)

EX1013 Fig. 5 (coloring added to draw attention to some of the washing items drawn in the original figure). Due to the size of this second dish rack, there is no space to insert another dish rack between the existing racks and retain space to “support larger items, such as dinner plates, large bowls, cooking sheets, and baking pans” in the lower dish rack. EX1016 1:23-25:



Andrew Figure 5 Superimposed on Figure 1 (Patent Owner's Annotation)

As the above image illustrates, Andrew, unmodified, includes space for various dishes on both the top rack and bottom rack, with smaller items in the upper rack and larger items in the lower rack. Petitioner's proposal limits the dish washer to only small items:



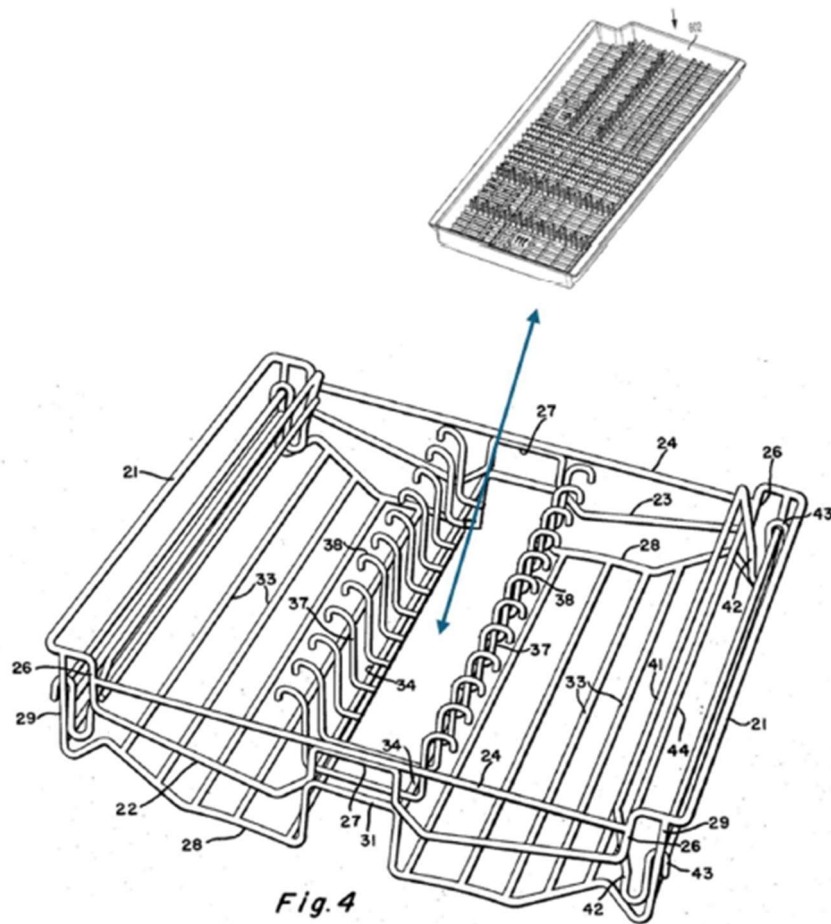
Above Figure with Petitioner's Middle Rack Superimposed

See Pet. 67. No POSITA would propose this change and destroy the usefulness of Andrew's dishwasher. See *Medtronic, Inc. v. Teleflex Innovations S.A.R.L.*, 69 F.4th 1341, 1349 (Fed. Cir. 2023) ("modifying a device in a manner that would

undermine a purpose it shares with the challenged claims counsels against a motivation to make such modifications.”). The resulting racks could only hold the same types of small items, leaving no space in the dishwasher for large items, or even dinner plates. Petitioner’s modification can only be explained by hindsight and must be rejected. *See Graham v. John Deere Co.*, 383 U.S. 1, 36, 86 S. Ct. 684, 703 (1966) (instructing practitioners to “resist the temptation to read into the prior art the teachings of the invention in issue.”). Accordingly, Andrew would not be modified to include three dish racks, the Petition fails to establish a reasonable likelihood that Andrew in view of Gutkowski either the second lower dish rack or the upper dish rack of claim 1.

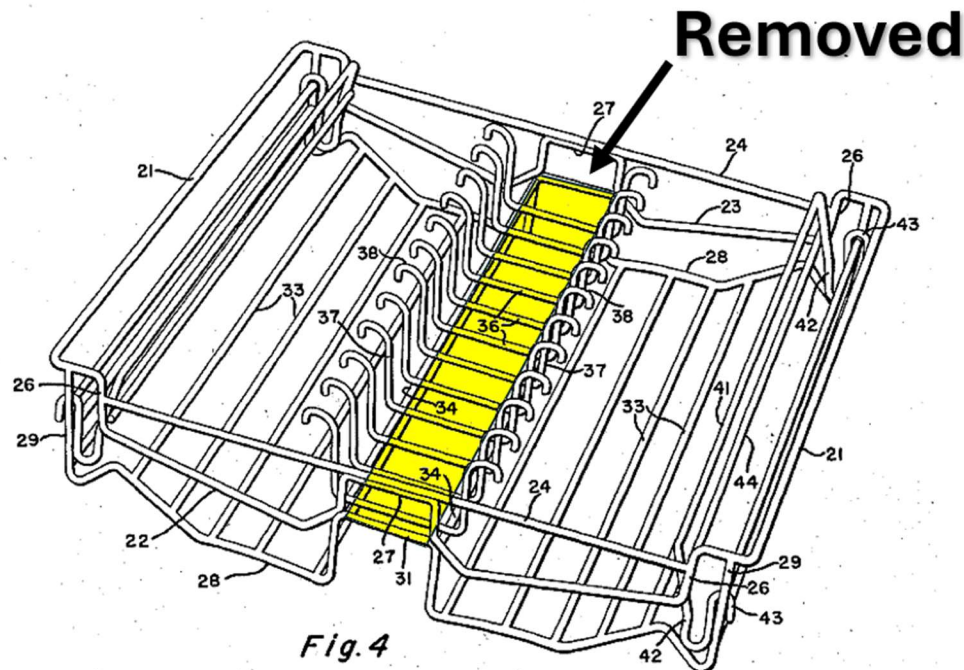
ii. *A POSITA would not modify Andrew to include Gutkowski’s basket insert.*

Second, Petitioner contends that the center portion of Andrew’s upper rack could be replaced with Gutkowski’s basket insert to form a utensil holder “configured to horizontally support utensils”:



Patent Owner's Modified Andrew Figure 4

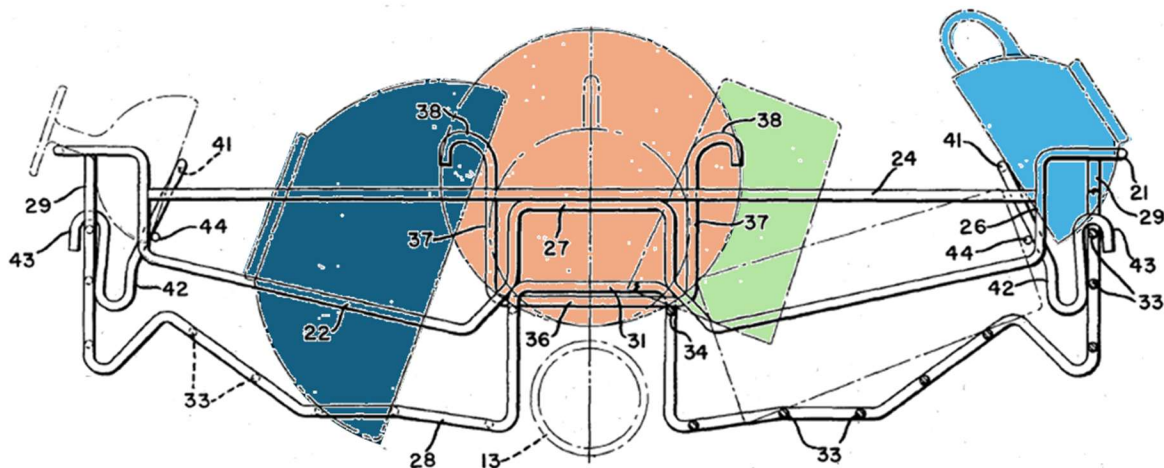
Pet. 65-66. Petitioner contends that the rail bases 36 that would normally occupy the center portion of Andrew's upper rack could be removed, and Gutkowski's basket latched in place instead:



Andrew Figure 4 (Patent Owner's Annotations)

EX1013 Fig. 1 (Patent Owner's annotations). A POSITA would not make this change.

As Andrew illustrates, its arrangement allows plates to be stored upright in the center section:



Andrew Figure 5 (Patent Owner's Annotations)

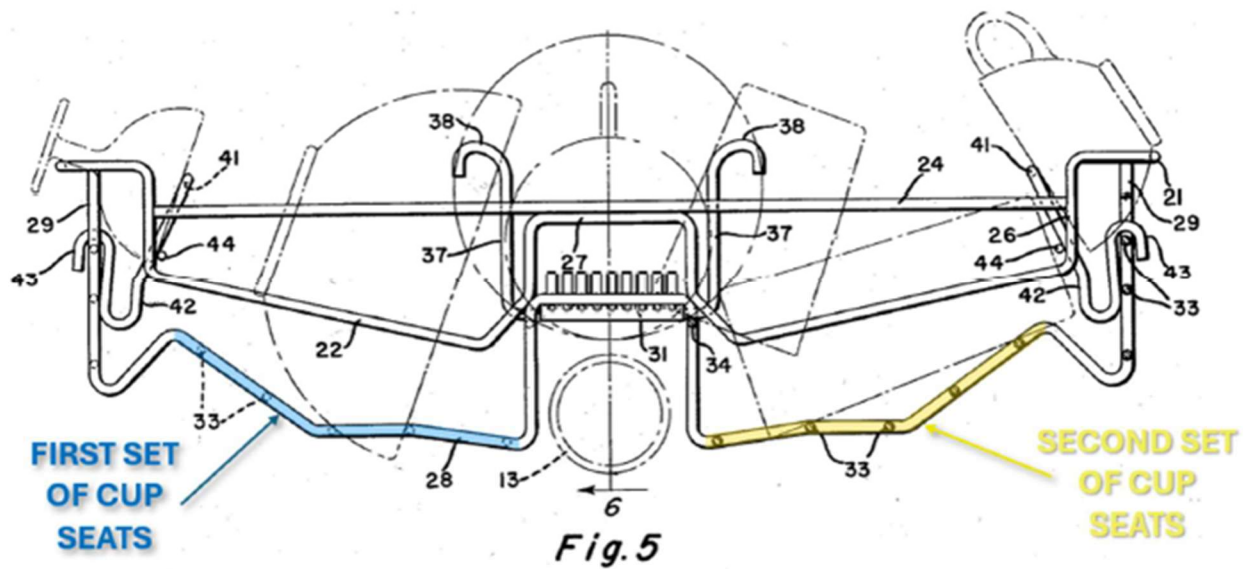
Id. Fig. 5 (Patent Owner’s annotations). In Figure 5, the plates extend below the base 36, such that the lower part of U-shaped wire members (the lower portion of which Petitioner proposes to remove) provide the support necessary to hold the plate up. Inserting Gutkowski’s basket here prevents plates from being loaded when the basket is inserted and would not adequately support the plates when it is removed.

Additionally, forming the U-shaped wire members as a single wire also increases their strength. Petitioner’s proposed removal of the center section would make the remaining spines prone to breaking where they are mounted to the base.

Petitioner’s proposed changes reduce the utility of Andrew’s design and physically weaken the remaining structures. As with its other modification, this modified dish rack can only be explained by hindsight. *See Graham*, 383 U.S. at 36. A POSITA would not make this change, and the Petition fails to show a reasonable likelihood would modify Andrew to include the utensil holders of claim 1.

2. Andrew does not render obvious “the first angled wall defines a first set of cup seats, and wherein the second angled wall defines a second set of cup seats.”

As with Grounds 1 and 2, Andrew fails to teach a cup seat in the depression. For this element, the Petition relies on Andrew’s horizontal wire rails 33 attached to wire bar 28:

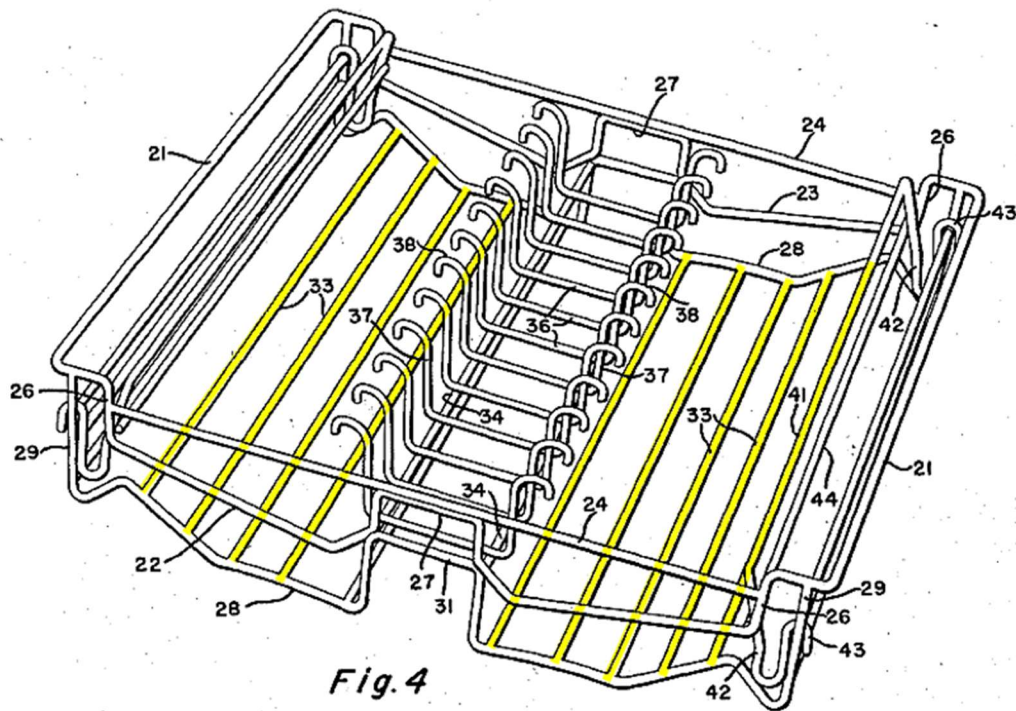


Andrew Figure 5 (Petitioner's Annotations)

Pet. 67.

As explained above, and incorporated here, the claimed cup seats are capable of cradling or securely retaining glasses and cups of ordinary dimension along their cylindrical side. *Supra* IV.A.1. For similar reasons as Grounds 1 and 2, Andrew's wire rails and wire bar do not form cup seats.

The full shape of Andrew's horizontal wire rails 33 are illustrated in Figure 4:



Andrew Figure 4 (Patent Owner's Annotations)

EX1013 Fig. 4 (Patent Owner's annotations to highlight the wire rails). As illustrated, these rails run, uninterrupted from the front to the back of the dish rack. As a result, they provide no resistance against fore and aft movement of any cups placed on the rails. Instead, any cylindrical object would simply roll back and forth. A POSITA would not understand these rails to teach a cup seat, and Petitioner has failed to carry its burden to show a reasonable likelihood that Andrew renders obvious a cup seat.

D. Ground 4

Petitioner argues that claim 20 is indefinite under 35 U.S.C. § 112(b) because the phrase “side walls of the upper dish rack” allegedly lacks antecedent basis. Pet. 108.

Claim 20 recites “The dishwasher of claim 19, wherein the wire frame construction also forms the planar portion and side walls of the upper dish rack.” “The planar portion” finds antecedent basis in claim 1. Conversely, “side walls” are first mentioned in claim 20.

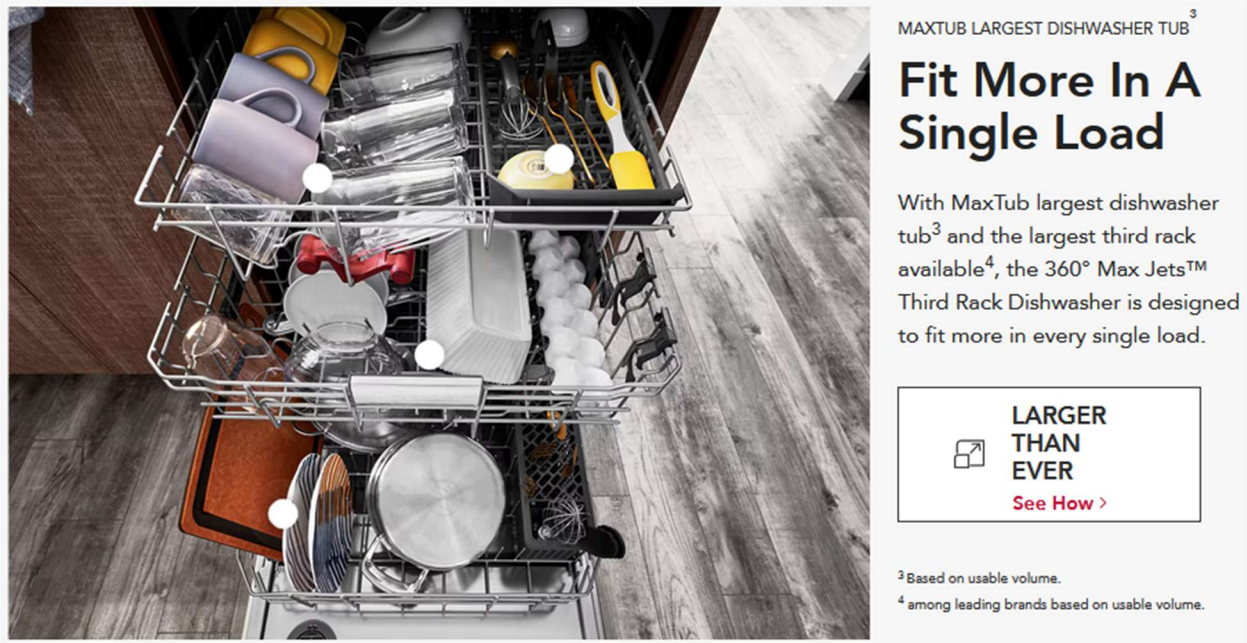
Petitioner’s argument implies (but does not state) that claim 20 recites “[the] side walls,” which lacks antecedent basis. It does not. Claim 20 appropriately claims that “the wire frame construction also forms...side walls of the upper dish rack.” Petitioner also seems to take issue with the fact that the “side walls” of claim 20 are not claimed as the “first side wall [and] a second side wall” of claim 5 (which is not a parent claim to claim 20). But that does not make claim 20 indefinite. Claim 20 itself defines the side walls, and there is no need for any antecedent basis for “side walls.” *See Honeywell Int’l, Inc. v. Int’l Trade Comm’n*, 341 F.3d 1332, 1338--39 (Fed. Cir. 2003) (quoting *Exxon Research & Eng’g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001)) (“Because a claim is presumed valid, a claim is indefinite only if the ‘claim is insolubly ambiguous, and no narrowing construction can properly be adopted.’”).

A POSITA would understand that in this claim, the wire frame construction forms both side walls of the upper dish rack and the planar portion referred to in earlier claims.

E. Secondary considerations show that the '922 Patent is not obvious.

Objective indicia of nonobviousness also shows that the claimed invention of the '922 Patent would not have been obvious to a person of ordinary skill in the art. Here, the invention of the '922 Patent, which is used in Patent Owner Whirlpool's premium dishwashers, was copied by Petitioner Samsung for use in its own dishwasher and sold throughout the United States. The sales by both parties, establishing commercial success of the '922 Patent, along with Samsung's copying the patented invention, reinforce the nonobviousness of the '922 Patent.

Whirlpool dishwashers sold under the KitchenAid brand practice the claims of the '922 Patent. *See* EX2013 ¶8. These dishwashers are three-rack dishwashers with enhanced top racks that can hold both drinkware and utensils. *Id.* This third rack includes a sprayer that is dedicated to cleaning drinkware in the cup. *Id.* An example of this third rack is illustrated below:



Id. These dishwashers first went on sale in 2020, EX2009 44:7-11, and Whirlpool has considered them a “hero feature” of their KitchenAid brand dishwashers. *Id.* 46:7-23. Since its release, Whirlpool has sold 1.7 Million of these premium dishwashers. *Id.* 48:17-20.

Samsung and Whirlpool are long term competitors in the premium household dishwasher segment. Ex2013 ¶8. Samsung, in an attempt to compete with Whirlpool, copied this third-rack design as its DW90 range of household dishwashers, which it released in 2025. EX2009 49:15-50:1. Samsung’s copied design can be seen below, mirroring Whirlpool’s design:



EX2022 ¶39 (showing Samsung’s third rack as a mirror image of Whirlpool’s). And as Whirlpool has asserted in the district court litigation, Samsung’s copy infringes the ’922 Patent. *See id.* ¶¶42-62.

Samsung’s marketing specifically highlights the copied “3rd Rack Washing System.” *See* EX2023, 2, 7. In fact, Samsung’s website plays a short video highlighting this rack and the benefits enabled by the claims of the ’922 Patent. <https://images.samsung.com/is/content/samsung/p6pim/us/feature/166669398/us-feature-dw90f24t-dw90f89p0usraa-550411969.mp4> (last accessed July 11, 2026).

According to Samsung, it provides a “dedicated area for drinkware, cutlery, and utensils,” allows users to “place cups on the 3rd rack to free up space,” and includes “dedicated wash jets...to thoroughly clean” glasses. *Id.*

The sales campaigns by both Whirlpool and Samsung highlight the benefits of dishwashers with the claimed third rack and indicate that their sales success is tied to the claimed features. Similarly, that Samsung copied Whirlpool’s design within a few years of its initial release suggests that the design was not obvious and, in fact, was a significant improvement over existing dishwasher designs.

As the Board is aware, a patentee is entitled to a presumption of nexus “when the patentee shows that the asserted objective evidence is tied to a specific product and that product embodies the claimed features, and is coextensive with them.” *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373 (Fed. Cir. 2019) (quotation omitted). Here, the claims are directed to an automatic dishwasher with the claimed dishrack. EX1001, 10:57-13:7. As the “hero feature” of these dishwashers, both Whirlpool’s and Samsung’s dishwashers embody this invention and are coextensive with it.

Even if a nexus cannot be presumed, the above evidence shows there is a nexus between these considerations and the ’922 Patent. The copying, sales, and marketing discussed above are all directed towards the benefits of the dish rack found in the claims of the ’922 Patent. Samsung’s marketing specifically highlights

the advantages of the dish rack, such as the greater versatility of the claimed configuration, and improved washing efficiency. EX1001 9:34-10:11. These considerations further show that the claims of the '922 Patent are not obvious.

V. Conclusion

Whirlpool respectfully requests that the Board deny institution of post grant review for the reasons stated herein.

Dated: July 28, 2026

Respectfully submitted,

/ Michael F. Heim /

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Attorney for Patent Owner

Whirlpool Corporation

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that this brief complies with the type-volume limitation of 37 C.F.R. § 42.24 because this brief contains 8,416 words as calculated by Microsoft Word, excluding the items exempted under 37 C.F.R. § 42.24.

Dated: July 28, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a true copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE was served on the date below to the following lead counsel for Petitioners via e-mail:

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