

KSR in a Simple Mechanical Invention

Pivonka v. Axelrod



David Lee

EAGLE IP LIMITED

Hong Kong

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Background

- Axelrod owns application 09/914047 ('047 application)
- Pivonka holds patent 6408797 ('797 patent)
- Axelrod requested interference of '797 patent to '047 application
- BPAI declared interference
- During interference, '797 patent is invalidated for being obvious

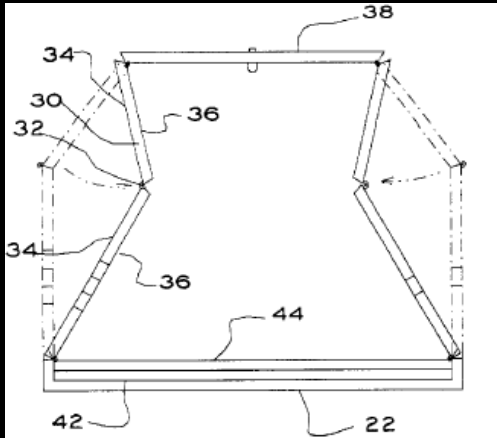
Point of Appeal

- Pivonka argued that “the Board did not appreciate the structural differences and functional benefits provided by the claimed invention as compared to the prior art”

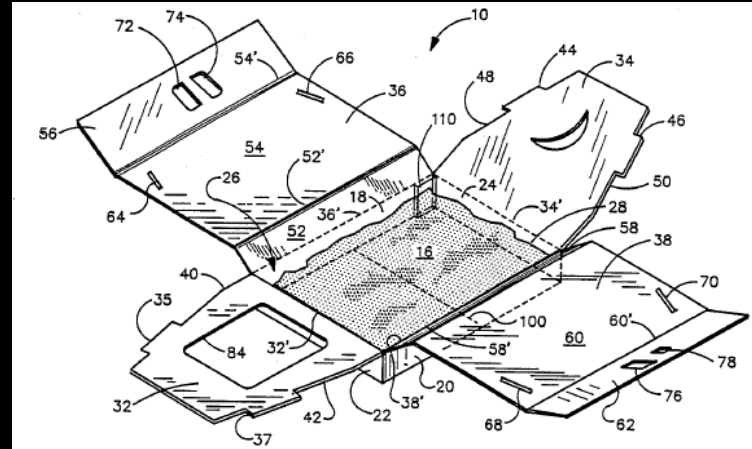
Claim 1 of '797 patent

- ...the hinged connection between the wall panels allowing the wall panels to cooperate with one another to retain the external surfaces of the wall panels at an angle greater than 180 degrees relative to one another, so that the hinged connection allows movement of the wall panels from:
 - A first position where the external surfaces of the wall panels are at an acute angle relative to one another to
 - A second position where the external surface of the wall panels are retained at an angle greater than 180 degrees relative to one another

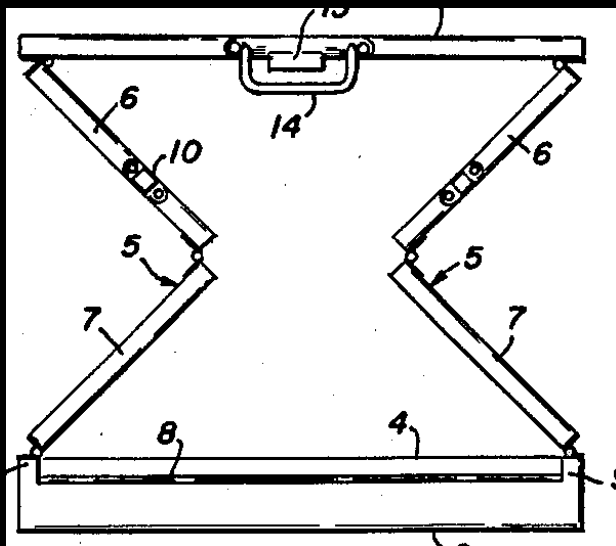
Structures



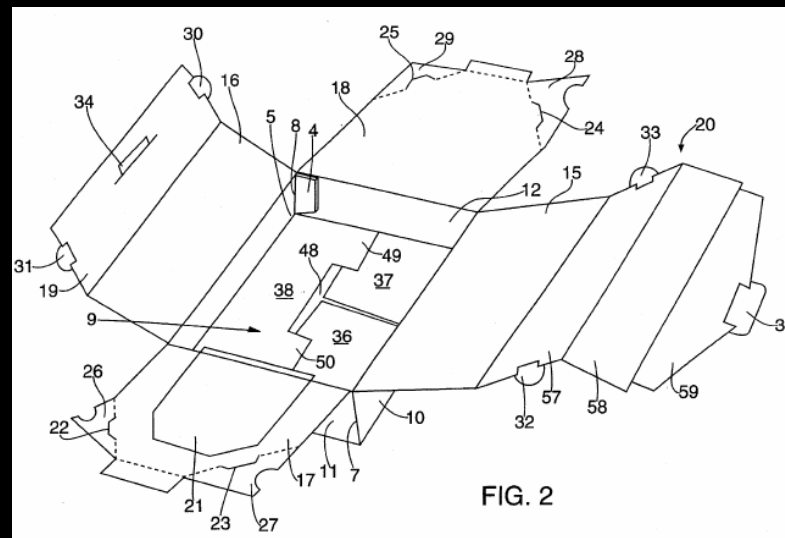
Pivonka



Heath (D2)



Beard (D1)



Monetti (D3)

Affidavit from Dr. Shina

- Axelrod's expert
- 1st affidavit supports that “ordinary skill consists of knowledge of the relative movement of parts and hinges”
- 2nd affidavit stated that “one of ordinary skill in the art would have recognized the benefits of a container that can maintain a position where the side walls are at an angle greater than 180 degree relative to each other”

Affidavit from Dr. Shina

- Last affidavit stated that “a person of ordinary skill in the art would have had no difficulty building a container that could collapse in the manner shown in Beard from a position in which the external walls were, as in Heath and Monetti, at an angle greater than 180 degrees relative to each other to a position where those walls formed an acute angle, as in the collapsed Beard container”

Reasoning of KSR

- “the combination of familiar elements according to known methods is likely to be obvious when it does not more than yield predictable results”
- Predictable result – structural benefit
- Combination of familiar elements – apparent to a person of ordinary skill in the art

Decision

- Affirmed that claims at issue are obvious