

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

J SQUARED, INC., d/b/a
UNIVERSITY LOFT COMPANY,

Petitioner,

Case IPR2015-00774 and
Case IPR2015-00958
Patent No. 8,585,136 B2

vs.

SAUDER MANUFACTURING COMPANY,

Patent owner.

_____ /

Administrative Patent Judges:

Linda E. Horner

Josiah C. Cocks

James A. Worth

_____ /

DECLARATION OF DAVID HARTING

I, David Harting, do hereby declare on the basis of personal knowledge, unless otherwise indicated, as follows:

I. PERSONAL AND PROFESSIONAL CREDENTIALS

1. My resume is attached hereto as Exhibit 2040.

2. I am a resident of Mansfield, Massachusetts. I make this Declaration on the basis of personal knowledge unless otherwise indicated.

3. I was a founding member of ELEVEN, LLC, a product development consulting firm located at 54 Canal Street, Boston, MA 02114. It was founded in 1996. ELEVEN holds licenses on dozens of products in a variety of consumer markets including kitchenware, pet products, furniture and gardening.

4. I graduated from Northeastern University in 1982 with a bachelor of science degree in mechanical engineering. I have 33 years of experience developing products for a wide range of industrial, military and consumer markets. Products I have developed include vibration isolation mounts for military aircraft, sonobuoys for anti-submarine warfare, consumer electronics, audio equipment, consumer medical instrumentation and many others. I am the Chief Operations Officer and Director of Engineering for Eleven Point Five. I was the project manager on the development of the Sauder Trey chair. I am the inventor on 25 patents.

5. Sauder Manufacturing hired ELEVEN, LLC to develop a line of furniture for sale to the education market, specifically, college dormitories. After conceptualizing designs for a complete line of furniture including bed, dresser, armoire, desk, nightstand, and desk chair, the decision was made to bring the chair to market. I acted as project manager on this effort overseeing the schedule and budget while also working directly with Sauder and the ELEVEN, LLC project team, which was comprised of researchers, industrial designers and engineers.

II. WHAT I'VE DONE TO PREPARE FOR THIS DECLARATION

6. To prepare for this Declaration, I have read a number of documents that have been provided to me by counsel for Sauder Manufacturing Company, the Patent Owner in the IPRs identified on the cover page of this Declaration. Those documents include preliminary decisions by a Board of administrative law judges in the United States Patent and Trademark Office, and copies of patents to Mackey, Pollack (two patents), Yu, Clark, and Kassai. I have also read U.S. Patent No. 8,585,136 owned by Sauder Manufacturing Company, in its entirety, and I have undertaken to understand the content of the patent claims on the basis of rules and interpretational techniques or principles that have been explained to me. I have also been informed of the following facts:

A. The Petitioner who precipitated the IPRs is J Squared, Inc., an Indiana Company doing business under the name “University Loft;”

B. University Loft has put on the market a chair called the “WAVE” chair which, in my opinion, is a virtual copy of the chair which is described in the ‘136 patent owned by Sauder and involved in these proceedings;

C. Petitioner alleges that at least some of the claims of the patent are “anticipated” by Mackey and I take that, on information and belief, to mean Petitioner believes the claims of the ‘136 patent describe exactly what is shown in Mackey;

D. I further understand on the basis of information and belief that Petitioner has also taken the position that certain claims of the ‘136 patent describe subject matter that would have been obvious to a person of ordinary skill in the art at the time the ‘136 patent invention was made, if that person had two separate groups of prior art in front of

him or her; namely, the two Pollack patents in one group, and the Yu, Clark and Kassai patents in another group.

E. I am further informed and understand on the basis of information and belief that the terms of patent claims are to be interpreted or “construed” as a person having ordinary skill in the seating art would construe them in the light of the entire disclosure of the ‘136 patent and not simply as free standing, albeit oddly written elements of literature; and

F. I further understand on the basis of information and belief that phrases in patent claims which use the format of a “means for performing a specific function” are to be interpreted to mean the corresponding structures described in the patent specification, and where appropriate, illustrated in the patent drawings, for carrying out the recited function and equivalents of those structures. I believe I am at least a person of ordinary skill in the seating art as a result of my education and extensive experience.

7. The successful development of any product within the marketplace today requires a thorough understanding of the content and environment in which the product will be used. As an experienced product designer with 30 years of experience and 25 patents issued on inventions that I have made or participated in making, I have firsthand experience in knowing how difficult it is to solve problems that, with the benefit of hindsight, appear to be straightforward, easy, and perhaps even “obvious.” In fact, it is a common reaction upon seeing a new and innovative product to think “Why didn’t I think of that!” The use of hindsight in looking at successful inventions that have been incorporated into successful products, however, is often, if not mostly, deceiving because the inventor in most cases is presented with, not just a few hand selected pieces of prior art, but an entire universe of knowledge and understanding of various

mechanisms and principles, as well as a myriad of government issued rules and regulations involving safety. I also find it ironic that James Jannetides, the President and Owner of Petitioner University Loft, would, after introducing the “wave chair” which, in my opinion, after careful analysis, is a virtual copy of the Sauder chair described in the ‘136 patent, would sponsor a program to declare the chair obvious when he published a statement calling his own chair “innovative” and a “modern marvel” for college students living in residence halls.

III. THE PATENTED CHAIR

8. Patent Owner Sauder originally hired my company “ELEVEN” to develop an entire line of furniture for sale for use in college dormitories and residence rooms. After conceptualizing designs for a complete line of furniture including beds, dressers, armoires, desks, nightstands, and desk chairs, the decision was made to focus on the chair. I acted as project manager on this effort overseeing the schedule and budget while also working directly with Sauder and the ELEVEN project team.

9. One of the guiding principles derived from our original research was that all of the furniture in the dorm room, including the seat, must be capable of being configured in various ways. It was fundamental that the chair we were tasked to invent had to be in one of its configurations useable as a “desk chair.” It also had to be capable of being transformed into something else. Desk chairs must have a certain height, size, load bearing capability, durability, comfort, and safety aspect in order to be saleable in the education market. A desk chair must place the user at the right height to work at a conventional desk. It must fit into the kneehole of a desk. So these were all parameters that had to be satisfied when our convertible chair was in one of its two configurations.¹

¹ See Exhibit 2041, Furniture Project Nov. 3, 2003

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