

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

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

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

Petitioner,

vs.

SAUDER MANUFACTURING COMPANY,

Patent owner.

Administrative Patent Judges:

Linda E. Horner

Josiah C. Cocks

James A. Worth

DECLARATION OF ANTHONY J. WARNCKE

I, Anthony J. Warncke do hereby declare as follows:

1 **PERSONAL AND PROFESSIONAL CREDENTIALS AND BACKGROUND**

2 Since February 2000 I have been an employee of the Sauder Manufacturing Company hereinafter
3 “Sauder”, located in Archbold, Ohio. On information and belief, Sauder is the owner of United States
4 Patent No. 8,585,136 “CHAIR WITH COUPLING COMPANION STOOL BASE”, hereinafter the “‘136 patent”

5 At this time I am the Director of Product Development for Sauder. Prior to this position I was the
6 manager of product development and marketing. I am a co-inventor in the ‘136 patent along with
7 Jeffrey A. Jameson and Thomas A. Hagerty.

8 I am a 1991 alumnus of the former GMI Engineering & Management Institute (now Kettering University).
9 I graduated with a bachelor’s degree in Mechanical Engineering (BSME). In 1995 I received a master’s
10 degree in business (MBA) from the Max M. Fisher College of Business at The Ohio State University.
11 Possessing over twenty-five years of professional experience, I’ve worked in engineering, purchasing,
12 marketing, and product development roles in both the automotive and contract furniture industries. I
13 have experience and training with injection-molded plastics, metal stampings/formings, design for
14 manufacturing and assembly (DFMA), systems-integrations, upholstery, product testing, quality systems
15 & management, and market research. I am, and was in 2004, a person of ordinary or better skill in the
16 field of furniture design including and in particular seating. In addition to the ‘136 patent, I possess five
17 other furniture-related patents, with several others currently in various stages of application and
18 prosecution. Three of these current patents (D585,204, 8,083,288 and 8,960,787) are on behalf of the
19 Sauder Trey® chair (in addition to the subject ‘136 patent). The other two -- 9,027,178 and 9,125,496 -
20 - are on behalf of a multi-functional sleep sofa for hospital patient rooms.

21 I am informed that the ‘136 patent is the subject of two Inter Partes Reviews (IPR’s) resulting from
22 Petitions filed in the United States Patent and Trademark Office by J Squared, Inc. d/b/a UNIVERSITY
23 LOFT COMPANY, and that claims 1, 2 and 4-14 of the ‘136 patent are at issue as to validity in ways that I
24 will discuss in detail in this declaration. I have read the Petitions, the Decision of the Patent Trial and
25 Appeal Board Judges on those Petitions and the prior art on which the Board has based its decisions.

26

27 **HISTORY**

28 Sauder is a company which designs, develops, manufacturers, and markets chairs for the Education (ED)
29 market. To Sauder, the ED market is Colleges and Universities. While Sauder has sold chairs into
30 housing, dining, library, and other settings on college campuses, it is housing that has been and is by far
31 the largest portion of our sales into the ED market. "Housing" means Residence Halls or dormitories
32 (dorms) where students live.

33 Our target user for the '136 chair was from the very beginning and always remained college students.
34 This means young adults roughly 18-22 years of age. The '136 chair was not designed for nor intended
35 for use by children under the age of thirteen.

36 Constituents or decision-makers beyond students whom Sauder and its products must serve in the sale
37 of residence hall seating include Student Housing Administrators (e.g., Directors of Housing),
38 Facilities/Maintenance personnel, and Resident Advisors (RAs) among others. Each of these individuals
39 has priorities for selection of chairs which must be considered, including cost, durability, warranty,
40 serviceability, comfort, and student appeal.

41 Sauder's longtime best-selling product within the ED market was at the time of the '136 invention its
42 PlyLok® family of chairs (EXHIBIT 2047). The PlyLok family offers a number of different variants,
43 including seat widths and base frame styles. PlyLok chairs are available in what are called four-legged,
44 sled-base, 2-position, and 3-position models.

45 **CONVERGENCE OF CONDITIONS OR ELEMENTS FOR INNOVATION**

46 At the time of the '136 invention, there was a convergence of a number of conditions. These included
47 Business Risk for Sauder, the advent of Task Chairs as a serious competitor in Residence Hall desk
48 seating, and changing lifestyle needs and expectations of students and their parents (see Figure 1).
49 Combine these conditions with a design brief which directed our attention to developing a chair which
50 embraced these realities, and a conceptual "catalyst" for a multi-functional chair was conceived. Each
51 of these conditions and elements will be discussed in turn below.

52

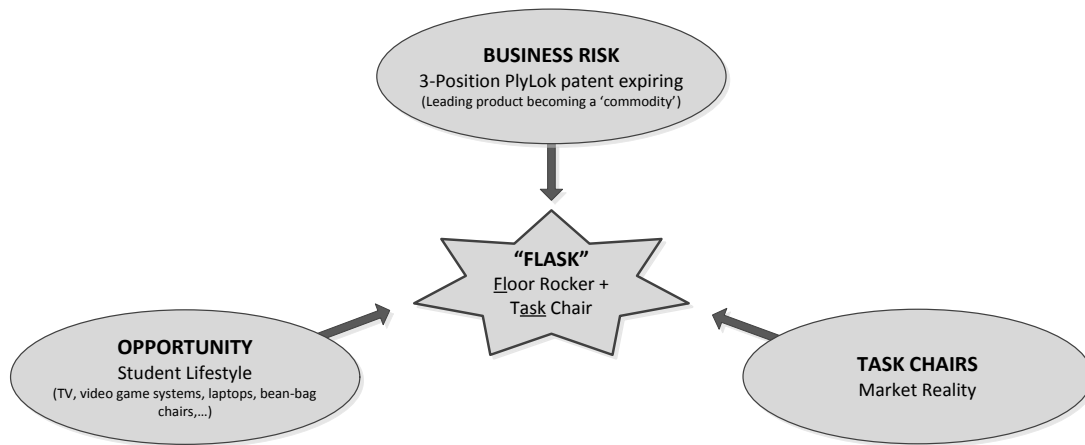


Figure 1

53

54 **Business Risk**

55 At the time of the '136 invention, PlyLok was Sauder's top-selling product line in the ED market, and a
 56 significant portion of SMC's overall sales. Within the PlyLok product line, the 3-position model was its
 57 clear market leader and offered differentiation from competitors in college desk seating at that time.
 58 Although it was protected by a patent (US #D329,340), the patent was scheduled to expire in 2006.
 59 Sauder's 2-position PlyLok chair design had been copied by competitors in years past, so it was entirely
 60 reasonable to expect that once the patent expired, the 3-position PlyLok's design would be copied, too.
 61 The entire PlyLok product line would then be largely undifferentiated in the average customer's eyes,
 62 and Sauder's competitive position and pricing power within the market could likely have been severely
 63 diminished.

64 Something needed to be done to change the path we were on.

65 **Task Chairs**

66 At or about that same time, Sauder's independent Sales Representatives were informing us that they
 67 had begun to hear some of their more progressive customers asking for what is commonly referred to as
 68 task chairs, e.g., desk chairs with 5-star bases, tilt/swivel/height adjustment capabilities, casters, and
 69 constructed of metal and plastic, not wood (see Figure 2). Some schools had even gone to office
 70 product retailers like Staples® to buy such products because their schools' normal furniture suppliers,
 71 Sauder included, weren't selling them. Contract-grade products of this type (for instance, from large
 72 furniture companies such as Herman-Miller and Steelcase) could not be found at colleges' low target
 73 purchase price. Retail-grade chairs, while lower in cost, just weren't reliable. The retail chairs wouldn't

74 last long, didn't carry the desired warranties, weren't supported by their manufacturers or distributors,
75 and couldn't be serviced.

76 We at Sauder were also seeing from our own research into dorm life that some students were beginning
77 to bring their own desk chairs to school with them. Evidently, these students were accustomed to task
78 chairs in their home, and preferred them over what the colleges were providing. However, this trend
79 caused some campus housing professionals and maintenance personnel no small amount of
80 consternation. When students pushed aside the college's chairs in favor of their own, the colleges
81 needed to store them or else face the chance that the chairs would simply disappear. Either way,
82 students bringing their own desk chairs to campus could cost the colleges extra money.

83 A change in the desk chair market for dorms was afoot. However, Sauder recognized that jumping into
84 the market with just another task chair was not a recipe for competitive and financial success. After all,
85 the components necessary for the creation of a basic low-cost task chair – tilt/swivel mechanisms,
86 height adjustable gas springs, 5-star chair bases with casters, and even basic seat and back cushions –
87 were all available to chair manufacturers in the open marketplace from East Asian suppliers.
88 Conceivably, anyone could build a basic task chair with little investment required. (Figure 2)

89 It was becoming apparent that Sauder would need to conceive and develop an innovative and
90 meaningfully differentiated product to remain a leader in the college and university desk chair market.

91

92

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Figure 2

97 **Opportunity**

98 Through investment in market research, Sauder had begun to recognize a number of trends within and
99 among college housing, students, and their parents. We concluded that where these trends departed

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