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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CINMAR, LLC and
FRONTGATE MARKETING, INC.,
Petitioners

v.

RICHELL USA, INC.,
Patent Owner

Case No. IPR2020-00210

Patent No. 7,568,449

PETITION FOR *INTER PARTES* REVIEW
UNDER 35 U.S.C. §§ 311–19 and 37 C.F.R. § 42.100 *et seq.*

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PETITIONERS' EXHIBIT LIST

Exhibit No.	Description
1001	U.S. Patent No. 7,568,449 B2 to Hirokawa, (the “ 449 Patent ”)
1002	Declaration of Todd S. Ventrola (“ Ventrola Decl. ”)
1003	Response to Action Closing Prosecution in <i>Inter Partes</i> Reexamination of U.S. Patent 8,230,816, submitted November 1, 2013 (“ Richell Reexam Response ”)
1004	U.S. Patent No. 5,058,863 to Maffet (“ Maffet ”)
1005	U.S. Patent No. 2,369,552 to Ferran (“ Ferran ”)
1006	U.S. Patent No. 6,123,321 to Miller (“ Miller ”)
1007	A website publication depicting and offering for sale a pet barrier on Richell’s website at least as early as October 2004 and its translation (“ Richell 2004 Website ”)
1008	Affidavit of Christopher Butler (Internet Archive) (“ Butler Aff. ”)
1009	U.S. Patent No. 6,918,640 to DeMars (“ DeMars ”)
1010	Japan Design Patent No. 929,649 and its translation (“ JP D649 ”)
1011	A catalog publication issued by Richell Corporation depicting and offering for sale a pet barrier, which issued in February 2003 and its partial translation (“ Richell 2003 Catalog ”)
1012	Dictionary definition of “adjustable” from the <i>Oxford English Dictionary</i>
1013	Dictionary definition of “barrier” from the <i>Oxford English Dictionary</i>
1014	Information Disclosure Statement signed on April 24, 2008
1015	U.S. Patent No. 135,837 to Overholser (“ Overholser ”)
1016	U.S. Patent No. 3,627,272 to Friedberg (“ Friedberg ”)
1017	U.S. Patent No. 5,356,119 to Schock (“ Schock ”)

1018	United Kingdom Patent No. 679,297 to Tubular Construction Systems (“Tubular Construction Systems”)
1019	Dutch Patent No. 67750 to Thijssen (“Thijssen”)
1020	U.S. Patent No. 5,779,227 to Elkins (“Elkins”)
1021	United Kingdom Patent No. 1,098,201 to Appleby (“Appleby”)
1022	United Kingdom Patent No. 2,063,956 to Hague (“Hague”)
1023	U.S. Patent App. Pub. No. 2004/0173325 to Maas (“Maas”)
1024	U.S. Patent No. 6,598,649 to Moore (“Moore”)
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1026	Richell USA, Inc.’s Responses and Objections to Defendants’ First Set of Requests for Admission (NOS. 1-18)
1027	U.S. Patent Application Publication No. 2001/0011406 (“Nakamoto”)

I. INTRODUCTION

Petitioners Cinmar, LLC and Frontgate Marketing, Inc. petition the USPTO to review and cancel claims 1-3, 5-21, and 24-36 of the '449 Patent. The '449 Patent is directed to a “self-supporting pet barrier comprising a front panel and two side panels.”

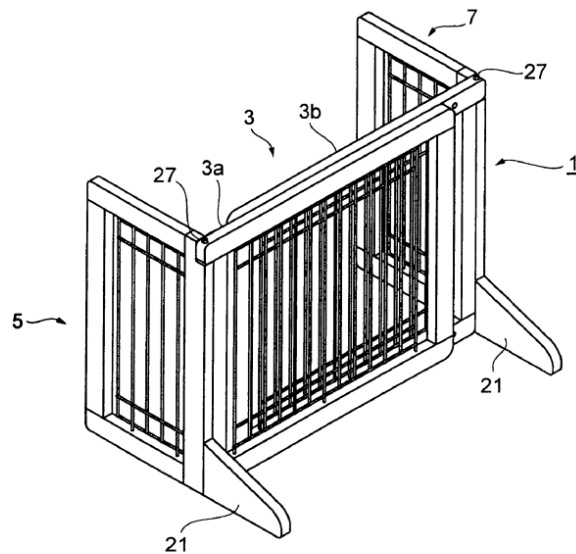


FIG. 2

II. MANDATORY NOTICES UNDER 37 C.F.R. § 42.8

A. Real Parties-in-Interest

Under 37 C.F.R. § 42.8(b)(1), Petitioners identify Cinmar, LLC and Frontgate Marketing, Inc. as the real parties-in-interest.

B. Related Matters

Under 37 C.F.R. § 42.8(b)(2), Petitioners identify one related matter: *Richell USA, Inc. v. Cinmar, LLC and Frontgate Marketing, Inc.*, Civil Action No. 4:18-

cv-00847-ALM (E.D. Tex.). In that matter, Patent Owner asserts the '449 Patent against Petitioners.

C. Lead Counsel

Under 37 C.F.R. § 42.8(b)(3), Petitioners identify as lead counsel:

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D. Back-up Counsel

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Andrew E. Samuels
USPTO Reg. No. 72,210
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asamuels@bakerlaw.com

E. Service Information

Under 37 C.F.R. § 42.8(b)(4), Petitioners request that all correspondence be sent to lead counsel at Baker & Hostetler LLP, 312 Walnut Street, Suite 3200, Cincinnati, OH 45202-4074. Petitioners consent to service by email at

kflynn@bakerlaw.com, dmancino@bakerlaw.com, kkirsch@bakerlaw.com, and
asamuels@bakerlaw.com.

III. PAYMENT OF FEES

Under 37 C.F.R. § 42.15(a), this petition is accompanied by electronic payment of \$42,500, comprising the \$15,500 request fee, \$3,000 excess claim request fee, \$15,000 post-institution fee, and \$9,000 post-institution excess claim request fee. Any additional fees due or refund owed in connection with this petition should be charged to Deposit Account No. 50-2036.

IV. GROUNDS FOR STANDING

Under 37 C.F.R. § 42.104(a), Petitioners certify that the '449 is available for *inter partes* review and that Petitioners are neither barred nor estopped from requesting *inter partes* review challenging the patent claims on the grounds identified in this petition.

V. IDENTIFICATION OF CHALLENGES

Under 37 C.F.R. § 42.104(b), Petitioners request review and cancellation of claims 1, 5-21, 24-25, and 27-36 of the '449 Patent on the following grounds:

Ground	Claims	Basis for Cancellation
1	1, 5-19, 35-36	35 U.S.C. § 103: Maffet in view of JP D649 and the Richell Publications (and optionally further in view of the other Stability References)

2	20-21, 24, 26, 32-34	35 U.S.C. § 103: Ferran in view of JP D649 (and optionally further in view of the other Stability References)
3	25	35 U.S.C. § 103: Ferran in view of JP D649, Maffet, and DeMars (and optionally further in view of the other Stability References)
4	27-31	35 U.S.C. § 103: Ferran in view of JP D649 and the Richell Publications (and optionally further in view of the other Stability References)
5	3	Maffet in view of JP D649, the Richell Publications, and Ferran (and optionally further in view of the other Stability References)
6	2	Maffet in view of JP D649, the Richell Publications, and Nakamoto (and optionally further in view of the other Stability References)

None of these specific grounds were previously before the USPTO.

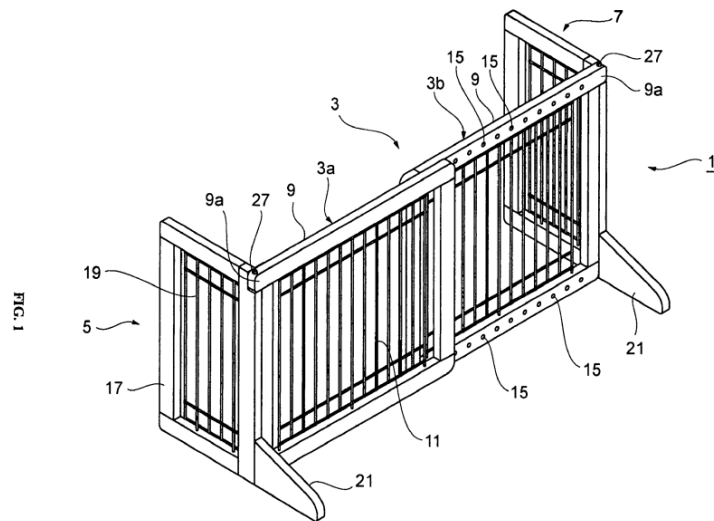
Petitioners support these grounds with the Declaration of Todd S. Ventrola, a technical expert with more than 30 years' experience in mechanical engineering and design, including of freestanding barriers. Ex. 1002.

VI. SUMMARY OF THE '449 PATENT

The '449 Patent issued from U.S. Application No. 11/280,970, which was filed November 16, 2005 and claims priority to Japan Application No. 2004-

338416, which was filed on November 24, 2004. Accordingly, under pre-AIA 35 U.S.C. § 102(b), the '816 Patent has a critical date of November 16, 2004.

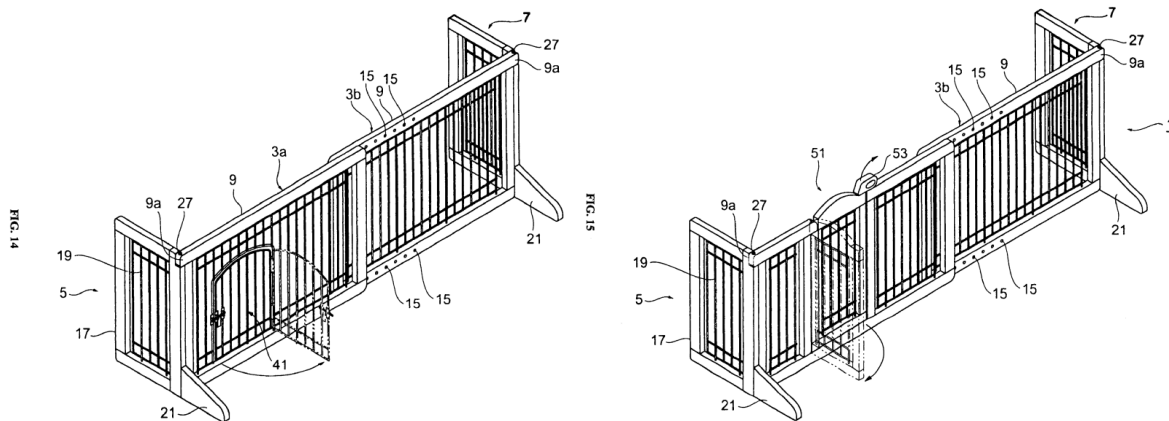
The '449 Patent is directed to an “indoor barrier which prevents pets from entering designated areas of the home.” Ex. 1001 at 1:23-25. The barrier described in the '449 Patent is “freestanding,” includes adjustable front panels and two side panels, and has legs “extend[ing] outwardly from the front panel opposite to the direction of the side panels.” *Id.* at 1:34-38, 2:42-57. The front panels, and in some embodiments, the side panels, define an open space interrupted by only vertical members in the central three-fifths portion of the open space; the vertical members may be wires. *Id.* at cl. 1, 6-7, 14, 17, 32, 35. The open space may be “further interrupted by horizontal members in a top or bottom one-fifth of the open space.” *Id.* at cl. 6, 15, 36.



Id. at Fig. 1.

In some embodiments, the side panels are attached to the front panels by hinges, allowing the side panels to rotate with respect to the front panels. *Id.* at cl. 2, 12, 24, 25. Some claims require certain “floor-contacting surfaces” to include “friction-increasing members.” *Id.* at cl. 5, 27-28.

In some embodiments, one of the front panels includes a “gate.” *Id.* at cl. 9-10, 29-31. The “gate” may be “configured to open so as to allow a pet or a person to pass through” it. *Id.* at cl. 10, 30-31.



Id. at Figs. 14-15.

VII. LEVEL OF SKILL IN THE ART

A POSITA as of the date of the invention of the subject matter to which the '816 Patent pertains would have an associate degree in an engineering field or about six months' experience designing and/or building mechanical-based consumer products. Ex. 1002 ¶ 19. Alternatively, such a POSITA would be craftsman such as a carpenter having average skill. *Id.* Petitioners' expert fits this description. *See id.* All references to a POSITA herein pertain to a POSITA as of

November 24, 2004 (the date of filing of the priority Japan App. No. 2004-338416). Likewise, all assertions of obviousness, motivation and expectations of success herein are made as of the date of the invention.

VIII. CLAIM CONSTRUCTION

A. “Leg” and “Barrier Stabilizer”

Petitioners contend that both “leg” and “barrier stabilizer” must be construed as *a stabilizing protrusion which is a separate component from the claimed “side panel/side barrier.”*

Each independent claim recites either a “leg” or a “barrier stabilizer” coupled to and extending from one of the front panels. *See, e.g.*, Ex. 1001 at cl. 1, 14, 20, 35. Most of the claims further recite that the leg extends from one of the front panels in a direction opposite the side panels. *See id.* at cl. 1, 20, 35. In claim 14, the “barrier stabilizer” is a component separate from the side panels; the only other structure disclosed in the specification as a barrier stabilizer is a leg. *See id.* at cl. 14.

Consistently, the ’449 Patent’s figures illustrate that the leg protrusion is part of neither the front barrier nor the side barrier, but rather is a separate component:

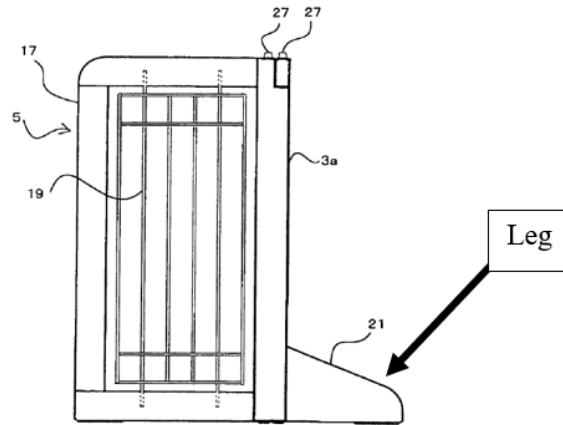


FIG. 7

Ex. 1001 at Fig. 7.

Several patents claim priority to the '449 Patent. During reexamination of one such patent, U.S. Patent No. 8,230,816, Patent Owner disclaimed any interpretation of the patent-in-suit that allows a single component to be hypothetically divided into both legs and side panels. While distinguishing claims from prior art, Patent Owner clearly and unmistakably told that Patent Office:

[T]he side guide plate is being hypothetically divided along the front barrier. A first hypothetical portion is then being cited as part of the side barrier, and a second hypothetical portion is being cited as the leg. However, *Kleinsasser* explicitly states that the side guide plates are single components that have ‘a length sufficient to extend to the front and rear of the base 10.’ . . . The fact that the side guide plates have to be hypothetically divided to attempt to read on the claims demonstrates the unreasonableness of this argument.

Ex. 1003 at 23.

B. “Configured to Not Obstruct a Path of a Pet”

The reexamination history of U.S. Patent No. 8,230,816 expressly defines this term as *having a length and/or height approximately flush with the ground*. During reexamination, while distinguishing claims from the prior art, Patent Owner stated:

With regard to exemplary structural limitations imposed by this element of claim 4, the Patent Owner notes that a leg having a length and/or height (both structural features) approximately flush with the ground would not obstruct the path of a pet, ...

Ex. 1003 at 22-23.

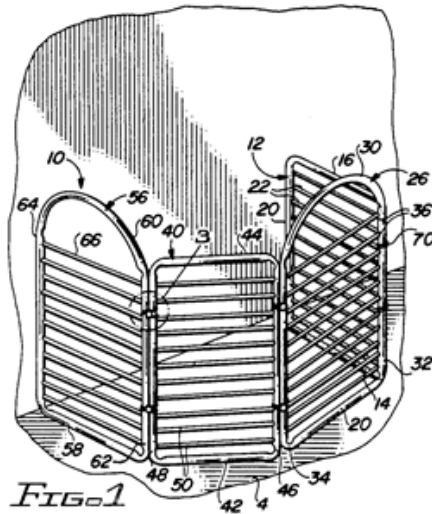
IX. PRIOR ART

A. Maffet (Ex. 1004)

U.S. Patent No. 5,058,863, issued on October 22, 1991 to Maffet, is titled “Panel apparatus and elements for securing a plurality of panels together.” Maffet discloses a system comprising several “panel elements which may be secured together” to form structures such as “enclosures for pets, a playing area for a small child, a gate for preventing children and/or pets from straying from a particular room or area, and the like.” Ex. 1004 at 1:15–19. Maffet’s panel system allows the plurality of panels to “be assembled together to define virtually any type of structure desired by a user.” *Id.* at 1:29-32.

Maffet’s disclosure describes a “panel apparatus including a plurality of generally identical panels secured together to define enclosures in which children

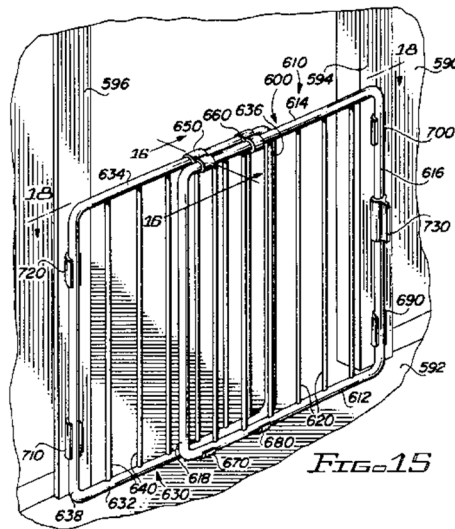
and animals may be kept.” *Id.* at 1:62-65. One of Maffet’s teachings, referencing FIG. 1, is “an enclosure made of four panels . . . disposed on a floor”:



Id. at 2:49–54, Fig. 1. The freestanding, four-panel barrier is depicted “disposed against a wall,” forming an enclosure with the wall, but a POSITA would understand that it could be disposed as a barrier to preclude a pet from accessing a room. Ex. 1002 ¶ 32. Each of the panels is “moveable relative to adjacent panels.” Ex. 1004 at 3:4-5.

Maffet discloses several types of panels but teaches that one panel can simply be substituted for another panel. *Id.* at 4:1-6 (“... different types of panels may be secured together, as desired.”); Ex. 1002 ¶¶ 33, 35, 65.

Maffet teaches that a “pair of panels” may be “secured together to comprise a gate panel assembly”:



Id. at 11:23–25, Fig. 15. The panels comprising the gate panel assembly “are disposed adjacent to each other in an overlapping manner” so that “their combined length may be as desired.” *Id.* at 12:14–16.

Maffet further teaches that panels used to make the adjustable gate assembly can be used to make the freestanding enclosure. *Id.* at 11:52-59 (“Moreover, the general structure of the panels 610 and 630 is substantially identical to the panels discussed above in conjunction with the other embodiments ... in that the panels of [sic] made of outer frame members with interior members, ... extending between a pair of the outer frame members.”); cl. 4. Maffet, provides a roadmap for combining the adjustable-width panels of Fig. 15 with the free-standing, multi-panel barrier of Fig. 1. Ex. 1002 ¶¶ 33-35.

While Maffet was before the examiner during prosecution, it was not cited or relied upon by the USPTO against any of the claims.

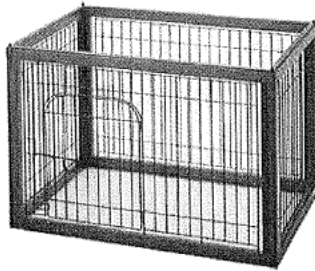
B. The Richell Publications (Ex. 1007, 1008, 1011)

Richell Corporation promulgated printed publications depicting and offering for sale prior-art pet barriers online as early as October 2004, and through a catalog as early as February 2003 (the “Richell 2004 Website” and the “Richell 2003 Catalog,” respectively; together, the “Richell Publications”). *See* Ex. 1007, 1008, 1011, 1014, 1026. As illustrated below, one such Richell barrier is a multi-panel barrier that included an internal gate:

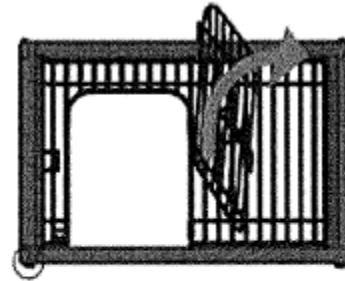


Ex. 1007 at 1-2; *see* Ex. 1011 at 3. A “non-slip rubber part” is highlighted, which would increase friction with respect to the floor:





Wooden circles for pets 90-60 D
13,500 yen Quantity: 2
・Size/90x61x60.5H(cm)
・Individual Packaging Size/91.5x11x62.5(cm)
・Material Frame Part: Rubber Wood
Wire Part, others: Steel (Polyester Paint)
Non-slip Rubber Part: TPE Resin
JAN Code 4973655 89291-6



The door can be removed. There is a rubber attachment to prevent scratches on the floor.

Ex. 1007 at 1-2.

Richell offered the barrier for sale in various sizes, including one with a height of 60.5 centimeters:

小・中型犬用 体重目安：4～20kg



ペット用木製サークル90-60D

¥13,500 入数 2

●サイズ/90×61×60.5H(cm)

●包装サイズ/91.5×11×62.5(cm)

●材質/フレーム部：ラバーウッド

ワイヤー部、他：スチール（ポリエステル塗装）

滑り止めゴム部：TPE樹脂

JANコード 4973655 89291-6



Wooden circles for pets 90-60 D

13,500 yen Quantity: 2

・Size/90x61x60.5H(cm)

・Individual Packaging Size/91.5x11x62.5(cm)

・Material Frame Part: Rubber Wood

Wire Part, others: Steel (Polyester Paint)

Non-slip Rubber Part: TPE Resin

JAN Code 4973655 89291-6

Id. at 1-2; *see also* Ex. 1005 at 3. Additionally, since the publications included product dimensions, the relative positions of the panels' horizontal and vertical wires can be measured. *Id.*; Ex. 1002 ¶ 42.

The Richell 2004 Website, Ex. 1007, as indicated by its Internet Archive URL, was publicly accessible at least as early as October 25, 2004 and is prior art under 35 U.S.C. § 102(a)-(b). Ex. 1008.

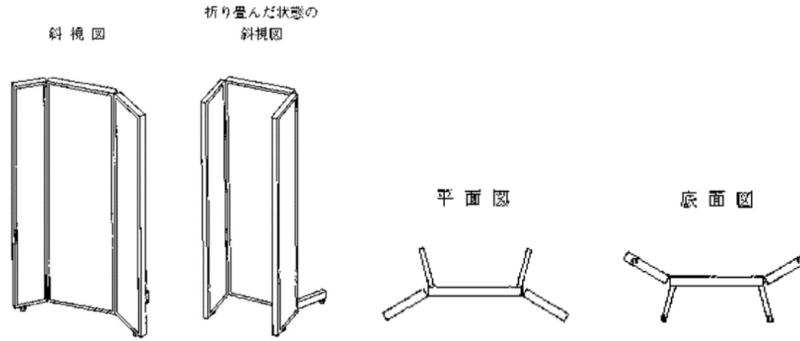
The Richell 2003 Catalog, Ex. 1011, is prior art under 35 U.S.C. § 102(a)-(b). As Richell represented to the USPTO, the Richell 2003 Catalog “[i]ssued in February 2003.” Ex. 1014. And as Richell admitted in litigation, the Richell 2003 Catalog was distributed to third parties before November 16, 2004. Ex. 1026 (Response to Request for Admission No. 2).

A POSITA would recognize that the Richell 2004 Website and the Richell 2003 Catalog offered for sale identical prior-art pet barriers. Ex. 1002 ¶ 42.

Only page 10 of the Richell 2003 Catalog was before the USPTO, but it was not cited or relied upon by the examiner. Ex. 1011 at 6.

C. JP D649 (Ex. 1010)

Japanese Design Patent No. 929,649 published on July 12, 1995 and depicts an indoor, multi-panel, freestanding acoustic barrier. The barrier includes legs extending in the opposite direction from the side panels, which promote directional stability and prevent tipping:

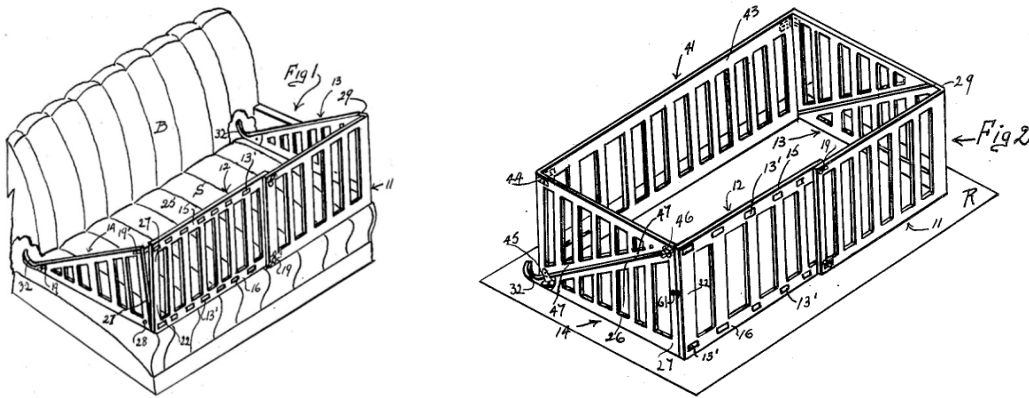


Ex. 1010; Ex. 1002, ¶¶ 48, 60-64. The legs have a low profile, close to the ground. A POSITA would understand that there is no mechanical reason preventing JP D649 barrier's use as a pet barrier. *Id.* ¶ 48. Moreover, the issue of stabilizing a structure made of freestanding panels in an upright configuration, as understood by a POSITA, is the same for acoustic barriers as it is for pet barriers. *Id.*

JP D649 was before the examiner, but it was not cited or relied upon by the examiner. Ex. 1011 at 6.

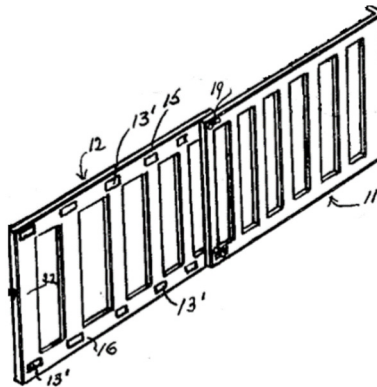
D. Ferran (Ex. 1005)

U.S. Patent No. 2,369,552, issued on February 13, 1945 to Ferran, is titled “Child’s enclosure.” Ferran discloses “an adjustable enclosure” usable either in an automobile “or upon the ground or upon a floor,” allowing a child “to move about but protect[ing] him from falls or wandering away”:



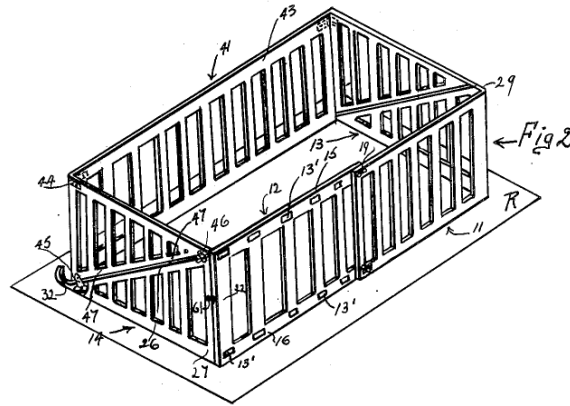
Ex. 1005 at 2:25–31, Fig. 1.

The enclosure is “adjustable” because it contains “a number of oblong slots” in the front panel, allowing the enclosure to be “narrowed at will.” *Id.* at 4:14–20, Fig. 2.



The enclosure restrains the child from moving beyond the enclosure because, preferably, “all enclosing members” are “firm and rigid and adapted to be disposed and rigidly maintained vertically.” *Id.* at 4:3–5, Fig. 2.

Ferran may be used as a pet barrier. Ex. 1002 ¶ 38. Although Ferran discloses an enclosure primarily adapted for use on a car seat, Ferran also discloses that one form of the enclosure can be used on a floor:



Id.; Ex. 1005 at Fig. 2. When the enclosure is used on the floor, a “supplementary enclosing device” to build a four-sided enclosure is preferred. *Id.* at 3:58–62. But Ferran emphasizes that this supplementary device “is not necessary” because “the primary enclosure is complete in itself and may be used alone.” *Id.* at 5:54–62, 7:14–16. A POSITA would understand from reading Ferran that the supplementary device could provide a closed enclosure if that was desired. Ex. 1002 ¶ 38. But a POSITA would understand that Ferran teaches the supplementary device is unnecessary, and the primary barrier as shown in Fig. 1 would still be effective at preventing access to a room or another area of a residence. *Id.* ¶ 39

Ferran was not before the examiner during prosecution.

E. The Stability References

Exhibits 1006, 1009-1010, and 1015-1025 provide examples of stability legs extending orthogonally from vertically oriented panel structures. Exhibits 1006, 1009-1010, and 1015-1025 are collectively referred to in this Petition as the “Stability References.” As an example, the Miller reference (Ex. 1006), U.S. Patent

No. 6,123,321, issued on September 26, 2000 to Miller, is titled “Modular resilient child or pet safety fence system.” Miller discloses a multi-panel fence restraint system for “restraining children or household pets.” Ex. 1006 at 1:5–10. If the fence system endures “greater lateral stress,” a brace or leg (denoted by element 11 below), may maintain the fence “in an upright position”:

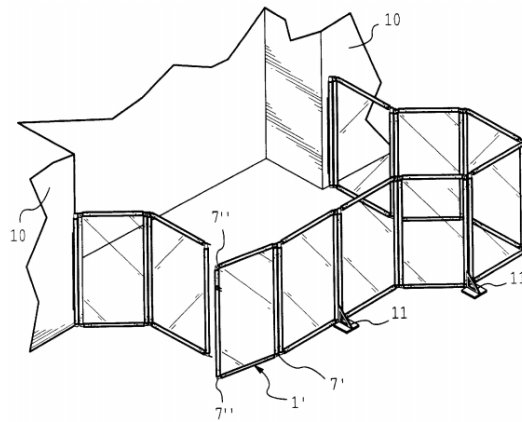


FIG.15

Id. at 7:1–6, Fig. 15.

X. PETITIONERS ARE REASONABLY LIKELY TO PREVAIL WITH RESPECT TO AT LEAST ONE CHALLENGED CLAIM OF THE '449 PATENT

The references identified above, alone or in combination, are reasonably likely to invalidate the claims 1, 5-21, 24-25, and 27-36 of the '449 Patent as obvious under 35 U.S.C. § 103.

**A. Ground 1: Maffet in view of JP D649 and the Richell Publications
(and optionally further in view of the other Stability References)**

Ground	Claims	Basis for Cancellation
1	1, 5-19, 35-36	35 U.S.C. § 103: Maffet in view of JP D649 and the Richell Publications (and optionally further in view of the other Stability References)

1. Claim 1

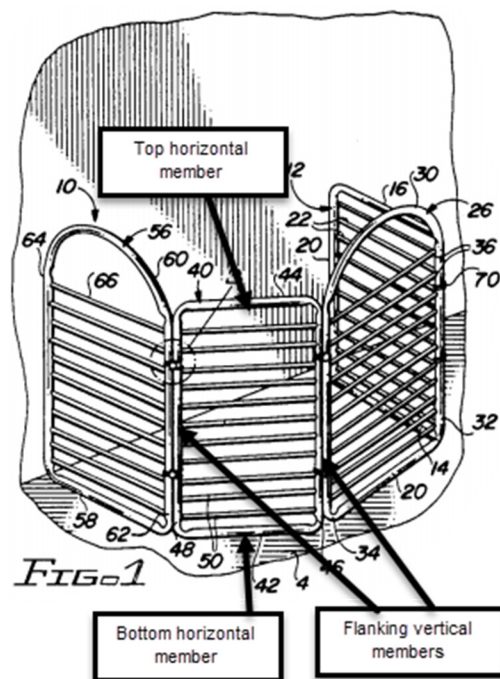
a. A self-supporting pet barrier, comprising:

Maffet discloses a panel system in which a user can assemble a plurality of panels together to form “virtually any type of structure.” Ex. 1004 at 1:15-19. Maffet specifically suggests providing a “panel apparatus” which may prevent “pets from straying from a particular room or area.” *Id.* at 1:15-19; 1:62–65. When the Maffet system is assembled as a barrier, the panels may be disposed “against a wall” and “on a floor,” with the wall forming a back end of the enclosure. *Id.* at 2:49–54, Fig. 1. A POSITA would understand that the Maffet panel system is a self-supporting barrier. Ex. 1002 ¶ 32. Similarly, JP D649 discloses a multi-panel, freestanding acoustic barrier. Ex. 1010. A POSITA would recognize that JP D649 could be used as a pet barrier. Ex. 1002 ¶ 48. The Richell Publications teach a multi-panel, freestanding pet barrier. Ex. 1007 at 1–2; Ex. 1011 at 3.

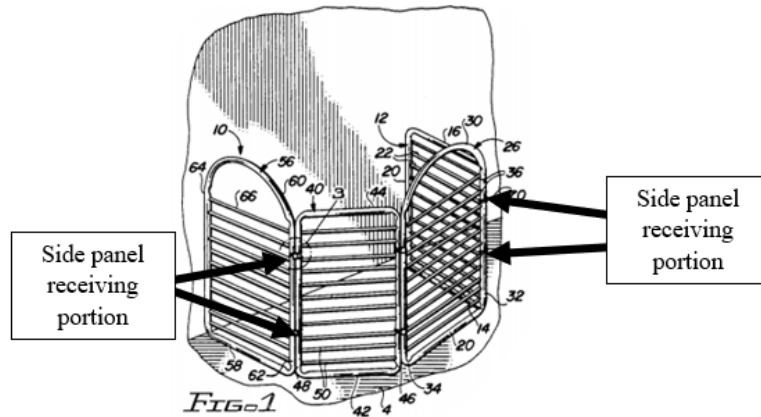
b. [i] a front panel which comprises a top horizontal member, a bottom horizontal member comprising a floor-contacting surface, and two flanking vertical

members attached to, and extending between, said top and bottom horizontal members, [ii] each of said flanking vertical members further comprising a side panel receiving portion, [iii] wherein the top horizontal member, the bottom horizontal member, and the two flanking vertical members define an open space interrupted by vertical members between the two flanking vertical members with only the interrupting vertical members in a central three-fifths portion of the open space;

Maffet discloses parts [i], [ii], and [iii] of this claim limitation. With respect to part [i], Fig. 1 of Maffet illustrates front panels comprising top and bottom horizontal members and two flanking vertical members attached to, and extending between, the top and bottom horizontal members. The bottom horizontal member is disposed on a floor and thus has a floor-contacting surface. Ex. 1004 at 2:49-54.



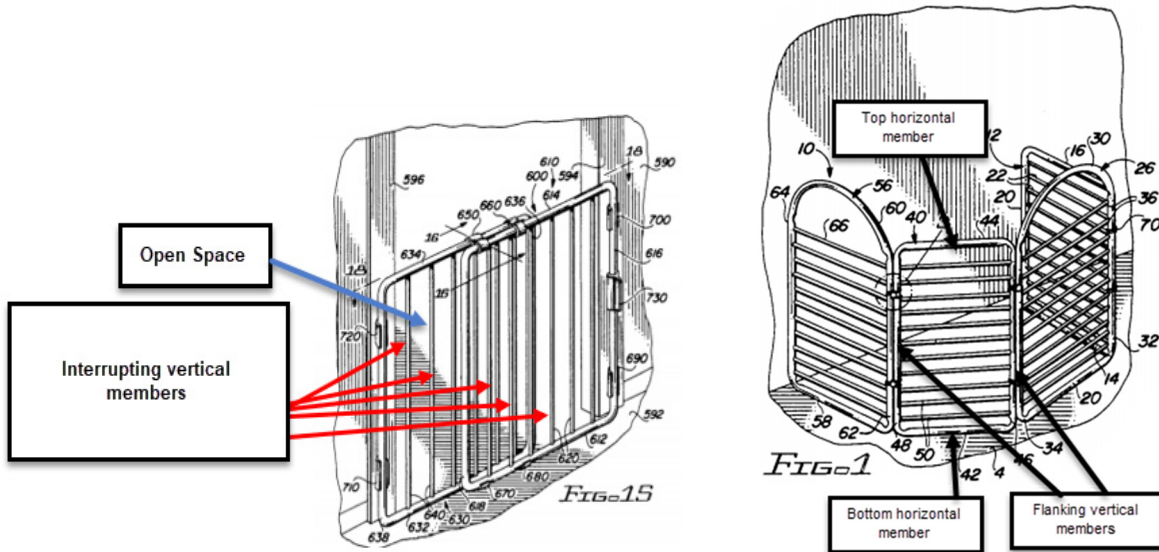
Maffet discloses part [ii] of this claim limitation, as flanking vertical members on each front panel portion include a side panel receiving portion, evidenced by the side panels being attached at that location:



Maffet also discloses part [iii] of this claim limitation. While the two front panels in Maffet's Fig. 1 have horizontal members in the open space, Maffet makes clear that one type of panel can simply be substituted for another type of panel. *Id.* at 4:1-6 (panels with horizontal or vertical inner members can be secured to each other); 4:66-67 (identical panels can be secured to each other). Maffet also depicts an embodiment where identical panels having only interrupting vertical members in the open space defined by the top and bottom horizontal members and the vertical flanking members. *Id.* at 4:1-6, 4:66-67, 11:33-40 (describing the vertical interrupting members), 11:51-61 (noting that the "general structure of the panels" in Fig. 15 is "substantially identical to the panels discussed . . . in conjunction with the other embodiments"), Fig. 15. Thus, Maffet teaches that the panels in Fig. 15

could be used as the front panels in the freestanding embodiment of Fig. 1. Ex.

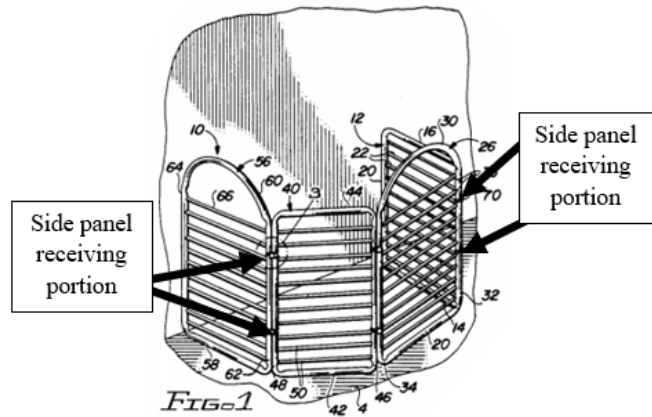
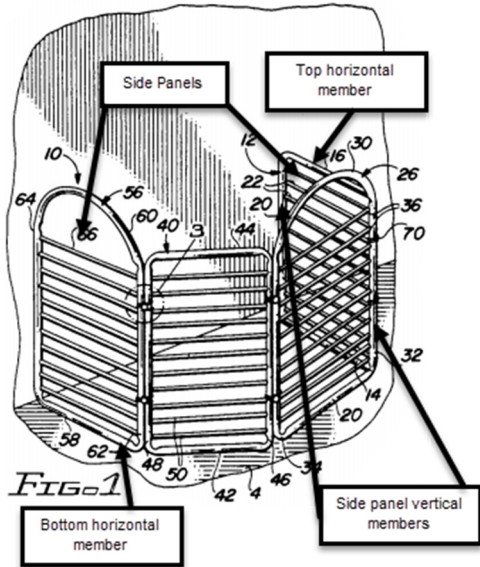
1002 ¶ 35; see also Section IX(A) above.



- c. **[i]** at least two generally rectangular side panels, each side panel comprising a side panel top horizontal member, a side panel bottom horizontal member comprising a floor-contacting surface, and first and second side panel vertical members attached to, and extending between, said side panel top horizontal member and said side panel horizontal bottom member, **[ii]** each of said first side panel vertical members further comprising a front panel attaching portion;

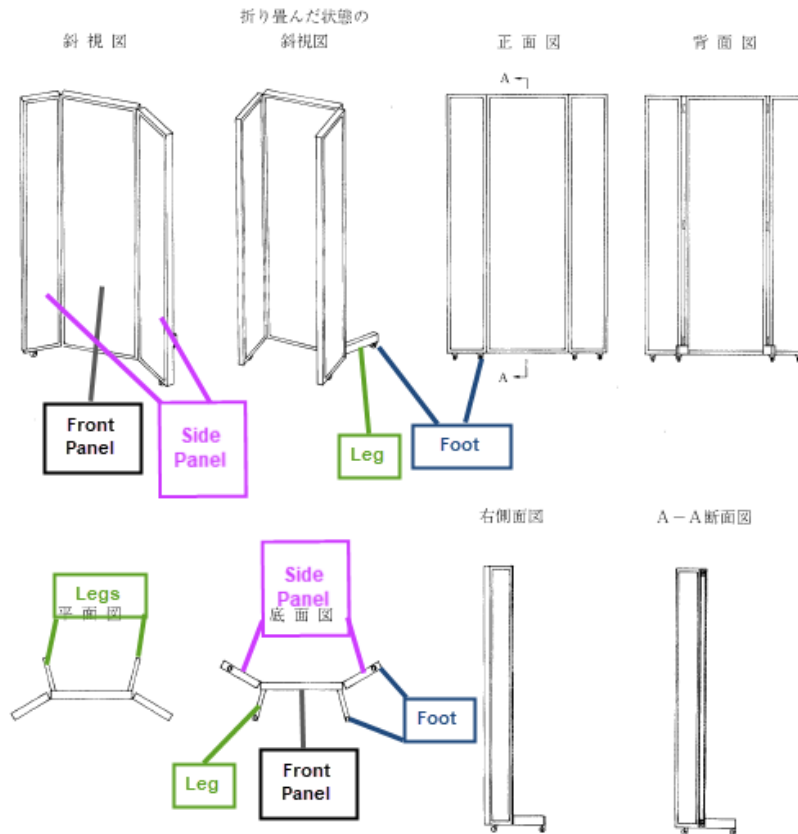
Maffet discloses parts [i] and [ii] of this claim limitation. Fig. 1 of Maffet illustrates two generally rectangular side panels having top and bottom horizontal members and first and second vertical members extending between the side panel top horizontal member and horizontal bottom member. The side panel bottom horizontal member contacts the floor and thus has a floor-contacting surface. Ex.

1004 at 2:49-54. Each of first side panel vertical members includes a front panel attaching portion, evidenced by the front panels being attached at that location.



- d. at least one leg coupled to said front panel having a floor-contacting surface and extending from a front side of said front panel;

JP D649 discloses this claim limitation. JP D649 depicts an indoor, multi-panel, freestanding acoustic barrier. Ex. 1010; Ex. 1002 ¶ 48. The barrier includes legs coupled to the front barrier which extend from a front side of the front panel:



Ex. 1010; Ex. 1002 ¶ 48. A POSITA would recognize that the legs stabilize the self-supporting barrier in a vertical position. Ex. 1002, ¶¶ 43, 48, 60-64.

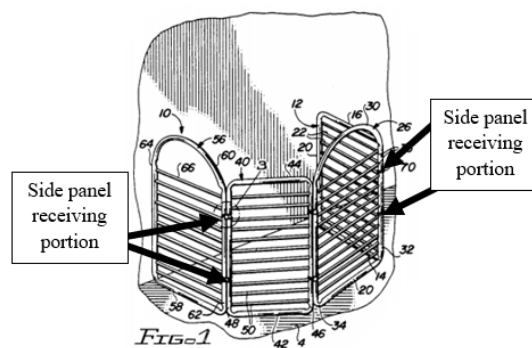
A POSITA at the time of the invention would have been motivated to add legs such as those depicted in JP D649 to a self-supporting multi-panel pet barrier as taught by Maffet. Ex. 1002 ¶¶ 43, 48, 60-64. Maffet and JP D649 are in the same field of endeavor—multi-panel, freestanding barriers. Ex. 1002 ¶¶ 30, 43, 48. Using legs to maintain multi-panel barriers in a vertical configuration is a well-known mechanical principle, and a POSITA would have reasonably expected the legs to be successful in vertically stabilizing the barrier, especially if those legs extended in the opposite direction that the side barriers extended. Ex. 1002 ¶¶ 43, 60-64. A POSITA

would have expected this combination to succeed at the outset, and very little testing would have been required to confirm this expectation. *Id*

Moreover, it would have been obvious for the legs of JP D649 to comprise floor-contacting surfaces. Ex. 1002 ¶¶ 22, 26, 31, 36, 38-39. Maffet discloses a self-supporting pet barrier “disposed on a floor.” Ex. 1004 at 2:53-54. JP D649 discloses using legs situated at the bottom of a vertically disposed panel to maintain the panel in a vertical position. Ex. 1010. A POSITA would expect a leg supporting a barrier in a vertical position to contact the floor to optimize the added stability. Ex. 1002 ¶¶ 22, 26, 31, 36, 38-39, 43, 48, 60-64. JP D649 additionally shows floor-contacting “feet” used on the barrier. *Id.* ¶ 48; Ex. 1010.

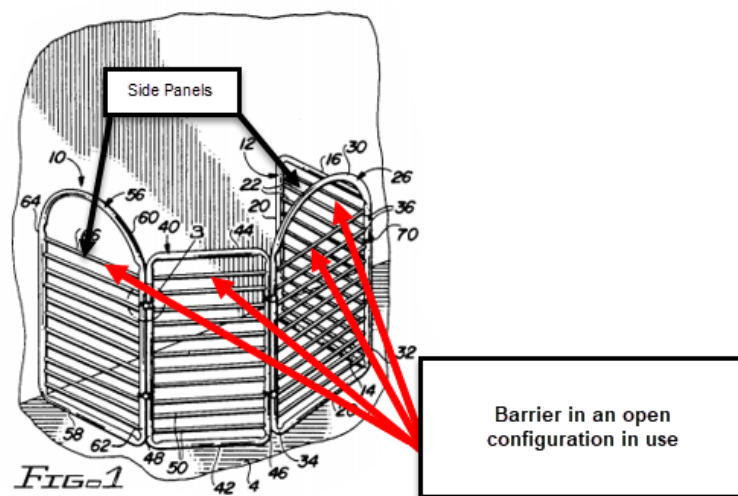
e. said front panel attaching portion attached to said side panel receiving portion;

Maffet discloses this claim limitation. Maffet’s Fig. 1 illustrates two side panels attached to two front panels, and thus discloses a front panel attaching portion attached to a side panel receiving portion at the attachment interface.



- f. **said side panels configured to be extended in use in an open configuration in the direction generally perpendicular to said front panel to stabilize said self supporting pet barrier in use;**

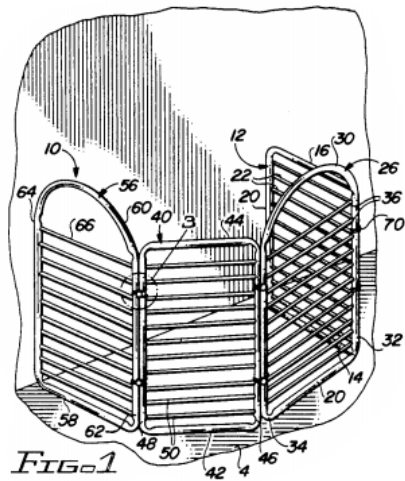
Maffet discloses this claim limitation. Maffet's Figure 1 illustrates two side panels in use extending in the direction generally perpendicular to the front panels. Extending the side panels generally perpendicularly stabilizes the front panel. *See* Ex. 1002 ¶¶ 60, 62. Figure 1 also shows the barrier comprising the front panels and side panels in an open configuration. Maffet discloses that the side panels are rotatable with respect to the front panels so a generally perpendicular open configuration is easily obtained. Ex. 1004 at 3:3-5, 4:36-39.



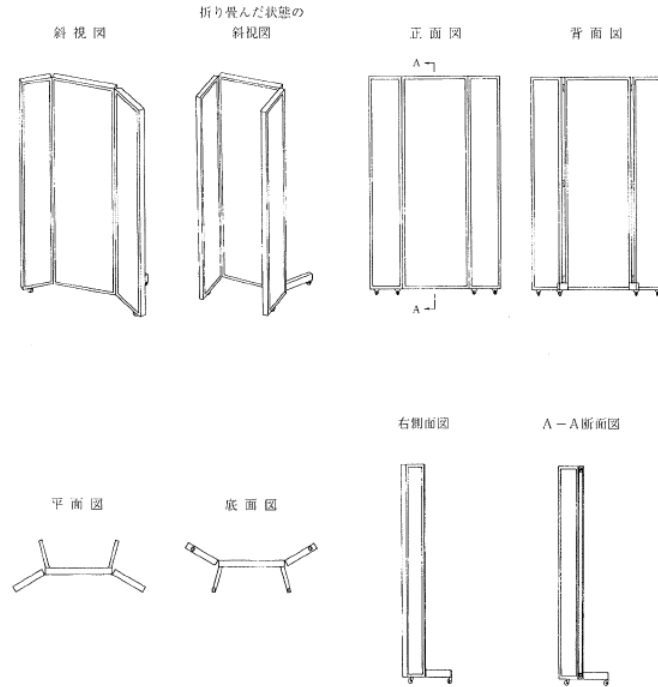
- g. **[i] said self supporting pet barrier adapted to rest on a floor through contact between said floor-contacting surfaces of said bottom members and said floor, [ii] and to stand upright thereon without securing said pet barrier to a structure external to said barrier, [iii] said at least one leg is configured to assist with maintaining said self supporting pet barrier to stand**

upright but is not configured to obstruct a path of a house pet;

Maffet and JP D649 render obvious parts [i] and [ii] of this claim limitation. As explained in section X(A)(1)(b)-(c), Maffet discloses its bottom horizontal members are disposed on a floor, and Fig. 1 shows the barrier resting on the floor. Ex. 1004 at 2:49-54. And as explained in section X(A)(1)(d), it would have been obvious at the time of the invention to configure the legs having floor-contacting surfaces disclosed in JP D649 into the multi-panel barrier structure of Maffet and have the legs extend from a front side of the front panel, where such combination would have rendered predictable results. As illustrated in Maffet's Figure 1, the self-supporting pet barrier rests on the floor through contact between floor-contacting surfaces of the bottom members and the floor. The barrier stands upright on the floor without securing the barrier to any external structure. Figure 1 and the corresponding disclosure in the specification indicate that the self-supporting barrier in Figure 1 is "disposed against a wall," but nothing in Maffet indicates that the barrier is secured to the wall in any way. *See* Ex. 1004 at 2:49-3:51.



JP D649 further discloses part [iii] of this claim limitation. As discussed in section X(A)(1)(d), it would have been obvious at the time of the invention to incorporate the legs of JP D649 to the multi-panel, freestanding barrier of Maffet, as a POSITA would have recognized that such legs provide stability and where such combination would have rendered predictable results. The legs of JP D649 are also low-profile and, as such, are configured to not obstruct a path of a pet.

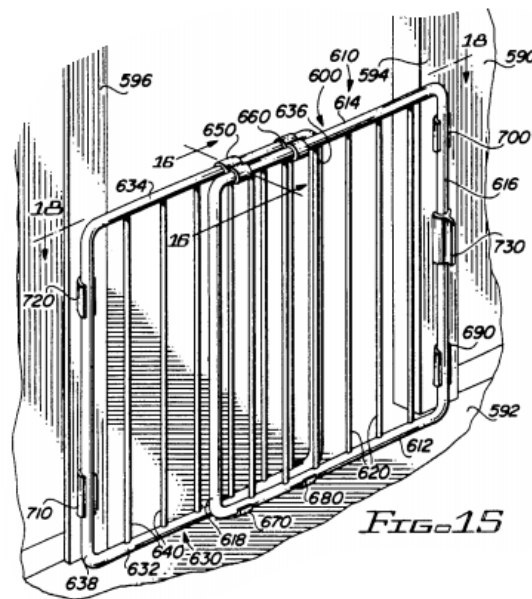


Ex. 1010; Ex. 1002 ¶ 48. The other Stability References teach similar low-profile legs. Ex. 1009 at Fig. 50; Ex. 1006 at Figs. 1, 15; *see also* Ex. 1002 ¶¶ 43-59 (discussing Ex. 1015-1025). A POSITA would readily appreciate from JP D649 and the other Stability References that low-profile legs would still provide stability-enhancing features while minimizing the impact of the barrier on the pet. Ex. 1002 ¶¶ 43, 48, 60-64. And because a purpose of legs is to add stability to the pet barrier, it would have been obvious to configure the legs “to not obstruct the path of a pet;” otherwise, the pet could collide with the legs and destabilize the barrier. *Id.*

- h. wherein said front panel comprises a first anterior section and a second posterior section adjustably secured to said first anterior section so that the width of said front panel can be adjusted by moving the**

**position of said first anterior section substantially
parallel to said second posterior section or vice versa.**

Maffet discloses this claim limitation. Maffet teaches anterior and posterior sections of a front panel which may be clamped together and “disposed adjacent to each other.” Ex. 1004 at 1:41-52, 2:49-54, 12:14-19, 14:18-23; Fig. 15. The two sections overlap each other such that “their combined length may be as desired.” *Id.* at 12:14-19. Maffet’s overlapping panel sections are, therefore, adjustable and, as depicted, are adjustable by moving one section parallel to the other. Ex. 1002 ¶¶ 34-35, 65-66; Ex. 1012. A POSITA would understand Maffet as teaching that its overlapping panel structure of Fig. 15 could replace the two front panels of the freestanding panel structure of Fig. 1. Ex. 1002 ¶¶ 33-35, 65-66; Ex. 1004 at 3:4-5, 4:1-6, 11:52-55. See also Section IX(A).



2. **Dependent Claim 5**

- a. **The self supporting pet barrier of claim 1, wherein said floor contacting surfaces further comprise a friction increasing substance.**

Regarding dependent claim 5, the Richell Publications disclose that [ii] at least one of the floor contacting surfaces comprises a friction increasing substance. As depicted in the Richell Publications, it was well-known for pet barriers to add friction-increasing substances, such as rubber feet:

小・中型犬用 体重目安：4～20kg



ペット用木製サークル90-60D

¥13,500 入数 2

●サイズ/90×61×60.5H(cm)

●個装サイズ/91.5×11×62.5(cm)

●材質/フレーム部：ラバーウッド

ワイヤー部、他：スチール（ポリエステル塗装）

滑り止めゴム部：TPE樹脂

JANコード 4973655 89291-6



扉は取り外しできます。床にキズをつけにくいゴム脚付。



Wooden circles for pets 90-60 D

13,500 yen Quantity: 2

・Size/90x61x60.5H(cm)

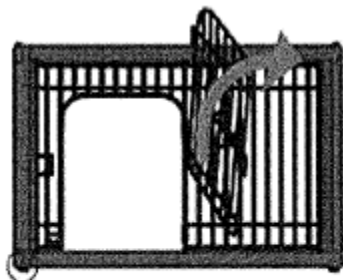
・Individual Packaging Size/91.5x11x62.5(cm)

・Material Frame Part: Rubber Wood

Wire Part, others: Steel (Polyester Paint)

Non-slip Rubber Part: TPE Resin

JAN Code 4973655 89291-6



The door can be removed. There is a rubber attachment to prevent scratches on the floor.

Ex. 1004 at 1-2.

It would have been obvious for a POSITA to add rubber feet to a floor-contacting surface, such as the floor-contacting surfaces of Maffet and/or JP D649,

to resist tipping, sliding, or a pet pushing the barrier open. Ex. 1002 ¶ 68. Adding rubber feet would have been an efficient and predictably successful way to increase the barrier's stability. *Id.*

3. Dependent Claim 6

- a. **The self supporting pet barrier according to claim 1, wherein the open space is further interrupted by horizontal members between the top horizontal member and bottom horizontal member in a bottom or top one-fifth of the open space.**

Regarding dependent claim 6, the Richell Publications further depict a prior-art pet barrier having panels with an open space with interrupting vertical members that is further interrupted by horizontal members between the top horizontal member and bottom horizontal member in a bottom or top one-fifth of the open space. Ex. 1002 ¶¶ 40-42. The Richell 2004 Webpage and Richell 2003 Catalog each specify the dimensions and provide photographs from which a POSITA could calculate the claimed “one-fifth” dimension:

小・中型犬用 体重目安：4～20kg



ペット用木製サークル90-60D

¥13,500 入数2

●サイズ/90×61×60.5H(cm)

●展開サイズ/91.5×11×62.5(cm)

●材質/フレーム部：ラバーウッド

ワイヤー部、他：スチール（ポリエステル塗装）

滑り止めゴム部：TPE樹脂

JANコード 4973655 89291-6



Wooden circles for pets 90-60 D
13,500 yen Quantity: 2
•Size/90x61x60.5H(cm)
•Individual Packaging Size/91.5x11x62.5(cm)
•Material Frame Part: Rubber Wood
Wire Part, others: Steel (Polyester Paint)
Non-slip Rubber Part: TPE Resin
JAN Code 4973655 89291-6

Ex. 1007 at 1–2.

It would have been obvious to a POSITA for the open space of Maffet to be further interrupted by at least one substantially horizontal member in a bottom or top one-fifth of the open space. Ex. 1002 ¶ 68. A POSITA would think it obvious to have a bottom or top one fifth of the open space interrupted by horizontal members given the teachings and depictions of such an arrangement in the Richell Publications. *Id.* ¶¶ 40-42. A POSITA would have no challenge in implementing the horizontal interrupting member present in the open space in the pet barrier depicted in the Richell Publications, as changing the configurations of the interrupting members of the open space on the barrier presented by Maffet or JP D649 would be trivial and would not structurally impact other areas of the structure. Ex. 1002 ¶ 68. Horizontal members in those locations would increase the stability of the barrier while ensuring that the horizontal members could not be used as steps for a pet to climb over the barrier. *Id.* Given the anticipated heights of the pets that might be contained within the barrier, a POSITA would have known

that horizontal members in a bottom or top one-fifth of the open space would have been reasonably likely to succeed. *Id.*

4. Dependent Claim 7

- a. The self-supporting pet barrier of claim 6, wherein the interrupting vertical members and the interrupting horizontal members are wires.

Regarding dependent claim 7, the Richell Publications further disclose that the interrupting vertical members and the interrupting horizontal members are steel wires with polyester paint.



Ex. 1007 at 2.

It would have been obvious to a POSITA for the vertical interrupting members in a Maffet barrier to be wires, just as Richell constructed them in its prior-art pet barrier depicted in the Richell Publications. Ex. 1002 ¶ 68. Wires

would be durable to withstand a pet chewing on them. *Id.* A POSITA would have had a reasonable expectation that the wires would withstand chewing and would have been able to confirm that expectation with minimal testing or research. *Id.*

5. Dependent Claim 8

a. The self supporting pet barrier according to claim 1 wherein said front panel has a height of 65 cm or less.

Regarding dependent claim 8, the Richell Publications depict multi-panel, freestanding pet barriers that were 65 cm or less. The product pictured below is 60.5 cm in height:

小・中型犬用 体重目安：4～20kg



ペット用木製サークル90-60D

¥13,500 入数2

●サイズ/90×61×60.5H(cm)

●個装サイズ/91.5×11×62.5(cm)

●材質/フレーム部：ラバーウッド

ワイヤー部、他：スチール（ポリエステル塗装）

滑り止めゴム部：TPE樹脂

JANコード 4973655 89291-6



Wooden circles for pets 90-60 D

13,500 yen Quantity: 2

・Size/90x61x60.5H(cm)

・Individual Packaging Size/91.5x11x62.5(cm)

・Material Frame Part: Rubber Wood

Wire Part, others: Steel (Polyester Paint)

Non-slip Rubber Part: TPE Resin

JAN Code 4973655 89291-6



ペット用
木製サークル 90-60D

¥13,500 入数2

●サイズ/90×61×60.5H(cm)

●個装サイズ/91.5×11×62.5(cm)

●材質/フレーム部：ラバーウッド、滑り止めゴム：TPE樹脂、ワイヤー部、他：鉄(ポリエステル塗装)

JANコード 4973655 89291-6

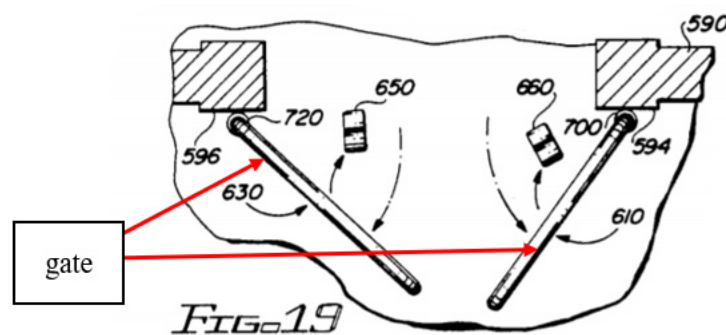
Ex. 1007 at 1–2; Ex. 1011 at 3.

It would have been obvious to a POSITA for the front panel of Maffet to have a height of 65 cm or less as disclosed by the Richell Publications. Ex. 1002 ¶ 68. This height range would allow for barrier tall enough to prevent pets from climbing over it, yet short enough for easy manufacturing, stability, mobility, and storage. *Id.*

6. Dependent Claim 9

- a. The self-supporting pet barrier according to claim 1, wherein a gate is formed in said front panel and attached thereto by hinges and a locking means, whereupon release of said locking means said gate can be swung open so that a pet can pass through said gate.**

Regarding dependent claim 9, Maffet further describes to a POSITA how to form a gate through the front barrier formed from the overlapping panels. The front barrier may be “relatively easily opened or pivoted . . . as desired,” including to “comprise a double gate for the doorway”:



Ex. 1004 at 12:56–58, 13:11–21, Fig. 19. While FIG. 19 illustrates the overlapping barrier panels pivoting against a wall, Maffet teaches a POSITA that the overlapping panels are “identical” to panels in other embodiments and could be

implemented in the free-standing barrier of Fig. 1. Ex. 1002 ¶¶ 33-35; Ex. 1004 at 11:23-25, 11:52-55, 12:14-19. Maffet teaches that the panels of the free-standing barrier “are movable relative to adjacent panels.” Ex. 1004 at 3:4-5. The gate doors are attached at one end by “clamps acting as hinges” and lock to each other at the other end with clamps. *Id.* at 13:14-22. Accordingly, Maffet provides a POSITA with instructions for forming the gate depicted in FIG. 19 in the free-standing barrier embodiment of Fig. 1. Ex. 1002 ¶¶ 33, 35, 65.

The Richell Publications also teach a gate comprising hinges and a locking means implemented in a pet barrier:



Ex. 1007 at 1; Ex. 1011 at 3.

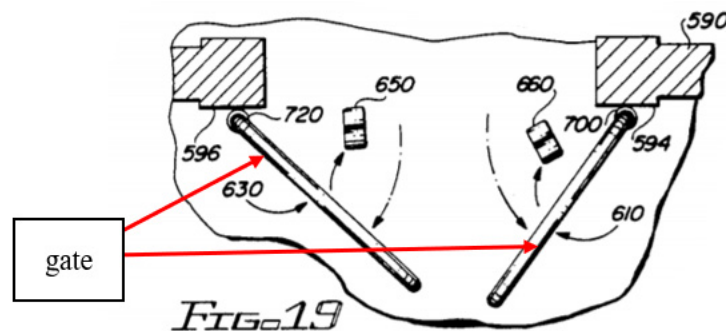
A POSITA would have been motivated to incorporate a pet gate into the front barrier, and such a combination would have rendered predictable results. Ex. 1002 ¶ 67. Gates were well-known in the art, and it would have been obvious to include a gate here. Maffet provides a POSITA with a map for configuring panels to have an adjustable, free-standing pet barrier with a gate through the front barrier.

Ex. 1002 ¶¶ 30-35. The Richell Publications also demonstrate that providing a small pet gate in a barrier was known and obvious. A POSITA would be motivated to incorporate such a pet gate to avoid having to move the barrier or lift the pet over the barrier to allow a pet to pass through as illustrated by the Richell Publications. And incorporating a lock as shown in the Richell Publications would be obvious to maintain the barrier's utility as a barrier when the gate is shut.

7. Dependent Claim 10

- a. **The self-supporting pet barrier according to claim 1, wherein said front panel further comprises a hinged portion which can open and close to permit a person to pass through said barrier without having to step over it.**

Regarding dependent claim 10, as further described in section X(A)(6), Maffet further describes to a POSITA how to form a hinged gate through the front barrier formed from the overlapping panels. The front barrier may be “relatively easily opened or pivoted . . . as desired,” including to “comprise a double gate for the doorway”:



Ex. 1004 at 12:56–58, 13:11–21, Fig. 19. In the Maffet gate implementation of Fig. 19, the panels 610, 630 have hinges 700, 720. The hinged panels open across the entire height of the front panel, enabling a person to pass through the barrier without having to step over it.

A POSITA would have been motivated to incorporate a gate for a pet into the front barrier, and such a combination would have rendered predictable results. Ex. 1002 ¶ 67. Gates were well-known in the art, and it would have been obvious to include a gate here. For example, a gate could allow a person to pass by the barrier without stepping over the barrier or moving it. *Id.* A POSITA would have known, for example, that a person may want to pass through the gate while carrying or walking alongside a pet. *Id.* Maffet provides a POSITA with a map for configuring panels to have an adjustable, free-standing pet barrier with a gate through the front barrier. *Id.* ¶¶ 30-35; *see also* Section IX(A).

8. Dependent Claim 11

- a. **The self supporting pet barrier of claim 1 which is [i] adapted to be disassembled for transportation or storage in a generally planar configuration, [ii] wherein said front panel attaching portion and said side panel receiving portion comprise connecting means and complementary connecting means adapted to removably secure said side panel to said front**

**panel, so that said side panels are detachable from
and reattachable to said front panel.**

Regarding dependent claim 11, Maffet further teaches parts [i] and [ii] of this claim limitation, in that the fastening elements for its panel structures are “easily assembled to the panels and are relatively easily removed,” allowing for the barrier of Maffet to be easily disassembled and reassembled. *See* Ex. 1004 at 1:46-52. Maffet’s claims also indicate that the connecting means between the panels are removable. *Id.* at 13:35-14:8 (reciting “clamp means for securing the plurality of panels together, including top clamp means removable [sic] secured to adjacent top frame members, and side clamp means removable [sic] secured to adjacent side frame members . . .”). Disassembling the panels would allow the panels to be stored or transported in a planar configuration.

The Richell Publications also render this claim obvious by teaching a pet barrier that may be disassembled for transportation or storage in a planar configuration. The front panel and side panels include connecting means and complementary connecting means, in the form of hinges with axial pins, allowing the panels to detach and reattach. The Richell Publications illustrate the detachment and reattachment process and even include dimensions for transportation in a disassembled state (decreasing a depth dimension from 61 cm to 11 cm when packaged):

木製サークル

木の温もりあふれる快適ペット空間です。

木製のフレームなので室内に調和します。
ゴム脚付きで床にキズをつける心配がありません。

ペットのしつけ用スペース
として便利です。

子犬の飼いはじめや狭いスペースでの使用に最適



ペット用 木製サークル 60-50D

¥9,500 入数 2

- サイズ: 63.5 x 49 x 50.5 (cm)
- 設置サイズ: 65 x 51 x 52.5 (cm)
- 材質/フレーム部: ラバーウッド、滑り止めゴム: TPE樹脂、ワイヤー部、他: 鉄(ポリエステル塗装)
- JANコード 4973655 89281-7



ペット用 木製サークル 90-60D

¥13,500 入数 2

- サイズ: 90 x 61 x 60.5 (cm)
- 設置サイズ: 91.5 x 62.5 (cm)
- 材質/フレーム部: ラバーウッド、滑り止めゴム: TPE樹脂、ワイヤー部、他: 鉄(ポリエステル塗装)
- JANコード 4973655 89291-6



90-60Dの使用例です。



パネルを組み込みだけです。

木製サークルとNフリーストレーは
組み合わせて使うこともできます。

サークルのアンダートレーとして...

Cage/Circle/House

Wooden circle

A comfortable space for pets replete with the warmth of wood.

Wooden frame blends in with the interior.
Rubber-tipped legs don't scratch the floor.

Convenient as a space for
training pets.

Optimum for training puppies and for use in
confined spaces.



Wooden Circle for Pets 60-50D

¥9,500 quantity per package: 2

- Size: 63.5 x 49 x 50.5 H (cm)
- Package size: 65 x 10 x 52.5 (cm)
- Material: Frame: Rubber wood; anti-skid rubber: TPE resin; Wire portion, etc.: Iron (with polyester coating)
- JAN code 4973655 89281-7



Wooden Circle for Pets 90-60D

¥13,500 quantity per package: 2

- Size: 90 x 61 x 60.5 H (cm)
- Package size: 91.5 x 11 x 62.5 (cm)
- Material: Frame: Rubber wood; anti-skid rubber: TPE resin; Wire portion, etc.: Iron (with polyester coating)
- JAN code 4973655 89291-6



Example of 90-60D being used



Just insert the panels together

Wooden Circles and N Free Trays can
be used in combination.

As an under-tray in a circle

Ex. 1011 at 3. As evidenced by Maffet, it was well known to a person of ordinary skill in the art that freestanding pet barriers comprising panel structures could be

easily disassembled and reassembled. And as illustrated by the Richell Publications, it would have been immediately apparent to a POSITA that the panels could attach and detach by connecting means and complementary connecting means, rendering predictable results. Ex. 1002 ¶ 68.

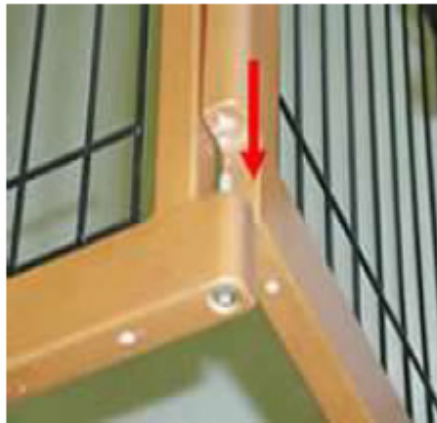
9. Dependent Claim 12

- a. The self supporting pet barrier of claim 1 which is adapted for transportation or storage in a generally planar configuration, wherein said side panels are attached to said front panel by one or more hinges which permit said side panels to be folded flat against said front panel to form said generally planar configuration.**

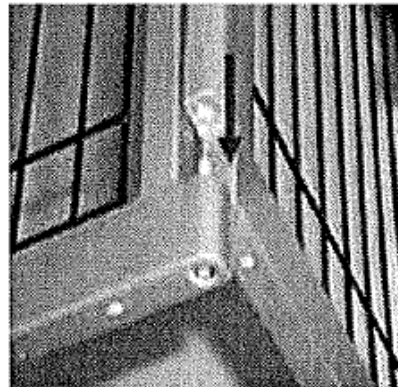
Regarding dependent claim 12, Maffet further discloses that the pet barrier is adapted for transportation or storage in a generally planar configuration:

“Moreover, the use of such flexible elements allows the panels to be literally folded on top of each other for storage and for transport purposes.” Ex. 1004 at 4:36-39. Maffet further discloses that its panels may be connected by clamps, which function as hinges. *Id.* at 8:11-21, 11:20-22, 13:7-22.

The Richell Publications illustrate panels being attached by a hinged connection:



パネルをはめ込むだけで、
簡単に組立ができます。



It is easy to assemble just by
fitting the panel together.

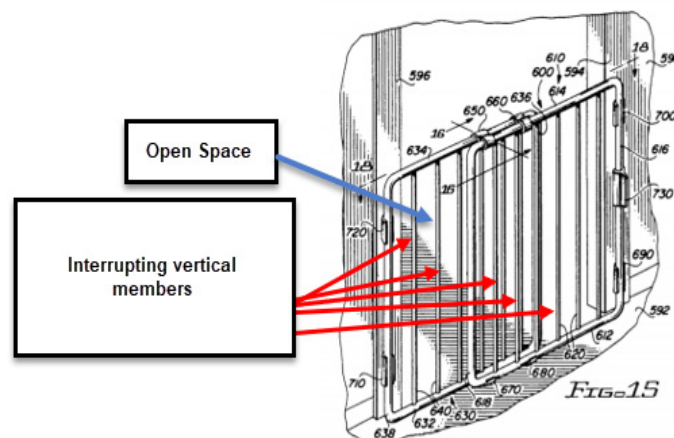
Ex. 1011 at 3; Ex. 1007 at 1. And as discussed in section X(A)(8), the Richell Publications disclose a comparison of dimensions between an assembled and a disassembled state. *Id.* Accordingly, it would have been obvious to a POSITA to connect side panels to a front panel by hinges to allow the panels to fold against

one another for storage or transportation, rendering predictable results. Ex. 1002 ¶
68.

10. Dependent Claim 13

- a. The self-supporting pet barrier of claim 1, wherein for each side panel, the side panel top horizontal member, the side panel bottom horizontal member and the first and second side panel vertical members define a second open space interrupted by vertical members between said first and second side panel vertical members.

Regarding dependent claim 13, Maffet further discloses that each side panel includes an open space defined by side panel top and bottom horizontal members and first and second side panel vertical members, wherein the side panels' open space is interrupted by vertical members. Maffet discloses and illustrates a gate comprising panels having vertical interrupting members in an open space defined by the periphery of the panel:



Ex. 1004 at Fig. 15. Maffet further indicates that panels disclosed in one embodiment can be simply substituted for panels in another embodiment. *Id.* at 4:1-6, 4:66-67, 11:51-61. Thus, Maffet teaches that one of the panels in Fig. 15 could be used as each side panel in the freestanding embodiment of Fig. 1. A POSITA would have thought it obvious to include side panels having vertical interrupting members, rendering predictable results. Ex. 1002 ¶¶ 33-35.

11. Independent Claim 14

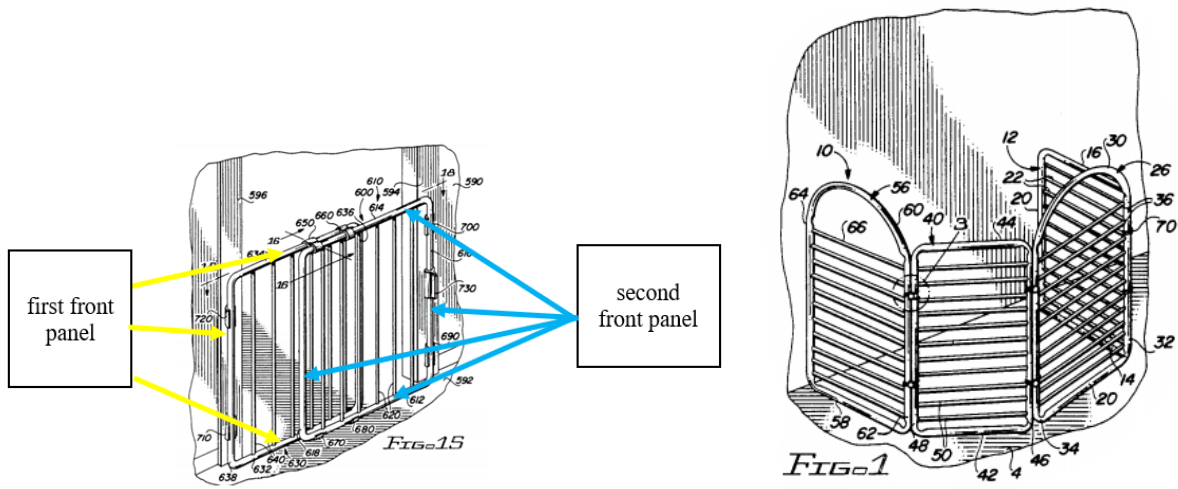
- a. **A method for temporarily restricting access to an indoor area, comprising the steps of providing a freestanding pet barrier comprising**

As explained in section X(A)(1), Maffet and the Richell Publications disclose multi-panel, freestanding pet barriers. And as also explained there, JP D649 discloses a multi-panel, freestanding acoustic barrier that a POSITA would understand could be used as a pet barrier. By teaching the freestanding, multi-panel barriers and depicting them upright and in use, Maffet, the Richell Publications, and JP D649 teach a method for restricting access to an indoor area with the barriers.

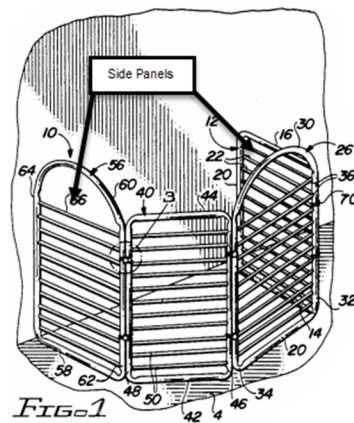
- b. **[i] at least two front panels, [ii] at least two side panels, [iii] and at least one barrier stabilizer, [iv] each having bottom floor-contacting surfaces,**

As explained in section X(A)(1)(b) and (h), Maffet teaches a freestanding pet barrier comprising [i] at least two front panels. *See also* Ex. 1004, Fig. 15. As

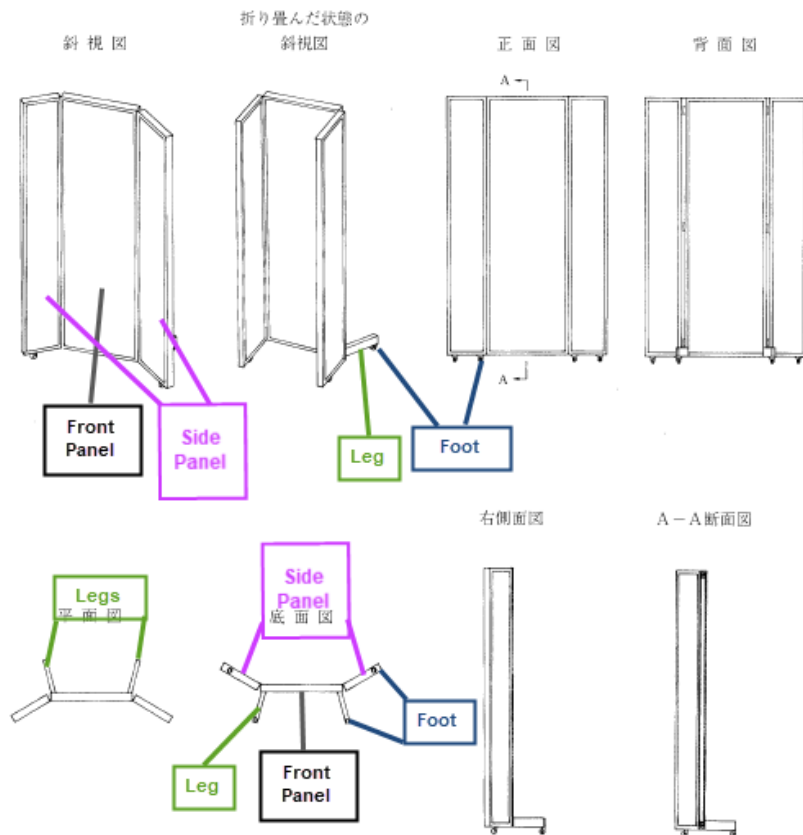
explained in section X(A)(1)(h), a POSITA would understand Maffet as teaching that its overlapping panel structure of Fig. 15 could replace the two front panels of the freestanding panel structure of Fig. 1. Ex. 1002 ¶¶ 33-35, 65-66; Ex. 1004 at 3:4-5, 4:1-6, 11:52-55. See also Section IX(A).



As explained in section X(A)(1)(c), Maffet discloses [ii] two side panels. Ex. 1004 at Fig. 1.



As explained in detail in section X(A)(1)(d), JP D649 discloses [iii] at least one barrier stabilizer in the form of legs. Also as explained in section X(A)(1)(d), a POSITA at the time of the invention would have been motivated to add legs such as those depicted in JP D649 to a self-supporting multi-panel pet barrier as taught by Maffet to stabilize the barrier. *See also* Ex. 1002 ¶¶ 43, 48, 60-64; Ex. 1010.



With respect to part [iv] of this limitation, Maffet discloses that the front panel and the side panels include bottom floor-contacting surfaces, as discussed in sections X(A)(1)(b)-(c). Moreover, JP D649 depicts that its barrier-stabilizing legs include bottom floor-contacting surfaces in the form of feet, as discussed in section X(A)(1)(d). Additionally, as discussed in section X(A)(1)(d), a POSITA would

have considered it obvious to combine the floor-contacting legs of JP D649 to the freestanding barrier comprising two front panels and two side panels of Maffet, and such combination would have rendered predictable results.

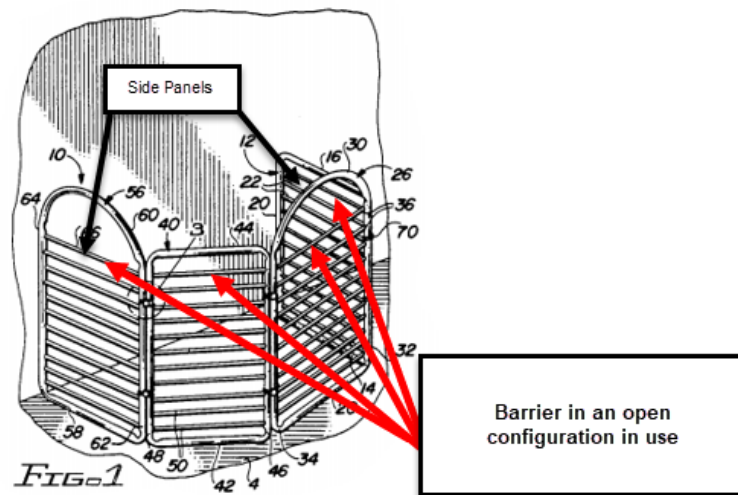
Accordingly, Maffet and JP D649 render these claim limitations obvious.

- c. said front panels adjustably coupled together to allow adjustment of an extent to which said at least two front panels overlap and extend beyond each other,**

For the reasons discussed in section X(A)(1)(h), Maffet discloses two front panels adjustably coupled together to allow adjustment of an extent to which said at least two front panels overlap and extend beyond each other.

- d. said side panels rotatably attached to said front panels so that said side panels may be positioned in an open and freestanding configuration generally perpendicular to said front panels in use,**

As discussed in section X(A)(9), Maffet discloses that its two side panels may be rotatably attached to the front panels. Ex. 1004 at 4:33-39 (“[U]sing, for example, a pair of fastener elements 70 for each adjacent panel, as shown in FIG. 1, the panels may be oriented at any desired angle with respect to each other.”). And as discussed in section X(A)(1)(f), Maffet’s Fig. 1 discloses the side panels positioned in an open and freestanding configuration generally perpendicular to the front panels in use.



- e. **said front panels and said side panels comprising vertical interrupting members with only the vertical members in a central three-fifths portion of said front panels and said side panels,**

As discussed in sections X(A)(1)(b) and X(A)(10), the front panels and the side panels of Maffet may comprise vertical interrupting members with only the vertical members in a central three-fifths portion of the front panels. Sections X(A)(1)(b) and X(A)(10) also explain why a POSITA would find it obvious to incorporate Maffet's panels having only vertical interrupting members into the multi-panel, freestanding pet barrier of Fig. 1.

A pet barrier comprising front panels and side panels having only vertical interrupting members in a central three-fifths portion of the front panels and the side panels would have been obvious to a POSITA at the time of the invention given Maffet's teachings of a pet barrier comprising front panels and side panels

having only vertical interrupting members in the open space of the panels,
rendering predictable results.

- f. said at least one barrier stabilizer coupled to and extending from at least one of said at least two front panels.**

As discussed in section X(A)(1)(d), JP D649 discloses a barrier stabilizer (in the form of legs) coupled to and extending from the at least one of said at least two front panels. Also as discussed in section X(A)(1)(d), a POSITA at the time of the invention would have been motivated to add stabilizing legs such as those depicted in JP D649, where the legs are coupled to and extend from one a front panel, to a multi-panel, freestanding pet barrier as taught by Maffet. The POSITA would have expected the legs to stabilize the barrier comprising the front panels and would have expected such a combination to succeed. Ex. 1002 ¶¶ 43, 60-64.

12. Dependent Claim 15

- a. The method of claim 14, wherein said front panels and said side panels further comprise horizontal interrupting members in a top or bottom one-fifth portion of said front panels and said side panels.**

Regarding dependent claim 15, as discussed in section X(A)(3), the Richell Publications further depict a multi-panel, freestanding pet barrier having a front barrier interrupted by horizontal interrupting members in a top or bottom one-fifth portion of the front panels. The Richell Publications also depict a pet barrier

having side panels including horizontal interrupting members in a top or bottom one-fifth portion of the front panels and the side panels:



Ex. 1007 at 1–2. The Richell 2004 Webpage and Richell 2003 Catalog each specify the dimensions and provide photographs from which a POSITA could calculate the claimed “one-fifth” dimension. Ex. 1002 ¶¶ 40-42.

For the same reasons discussed in section X(A)(3), it would have been obvious to a POSITA to combine the horizontal interrupting members in a top or bottom one-fifth portion of the front panels and the side panels, as depicted in the Richell Publications, to the freestanding, multi-panel barrier in Maffet and expect such combination to succeed. Ex. 1002 ¶¶ 40-42, 68.

13. Dependent Claim 16

- a. The method of claim 15, [i] wherein said front panels and said side panels each comprise a top horizontal member, a bottom horizontal member, and two

flanking vertical members attached to and extending between said top and bottom horizontal members, and [ii] wherein said vertical interrupting members are between said flanking vertical members and [iii] said horizontal interrupting members are between said top and bottom horizontal members.

Regarding dependent claim 16, as discussed in sections X(A)(1)(b) and X(A)(1)(c), Maffet discloses part [i], wherein said front panels and said side panels each comprise a top horizontal member, a bottom horizontal member, and two flanking vertical members attached to and extending between said top and bottom horizontal members. As discussed in sections X(A)(1)(b) and X(A)(13), Maffet discloses part [ii], wherein said vertical interrupting members are between said flanking vertical members. And as discussed in sections X(A)(1)(3) and X(A)(1)(12), the Richell Publications disclose part [iii], said horizontal interrupting members are between said top and bottom horizontal members. As further discussed in sections X(A)(1)(3) and X(A)(1)(12), it would have been obvious to a POSITA to combine the horizontal interrupting members in a top or bottom one-fifth portion of the front panels and the side panels, as depicted in the Richell Publications, to the freestanding, multi-panel barrier in Maffet as stabilized by the barrier-stabilizing legs of JP D649 and expect such combination to succeed.

14. Dependent Claim 17

- a. The method of claim 16, wherein said vertical interrupting members and said horizontal interrupting members are wires.**

Regarding dependent claim 17, as discussed in section X(A)(4), the Richell Publications disclose that the vertical interrupting members and the horizontal interrupting members of the front panels are wires and that a POSITA would have been motivated to incorporate the wire-based interrupting members in the barrier of Maffet. As discussed in section X(A)(13), the Richell Publications disclose that the side panels may also comprise the horizontal interrupting members in a top or bottom one-fifth portion of the side panels. The Richell Publications disclose that the vertical and horizontal interrupting members of the front panel and the side panels are steel wires.

小・中型犬用 体重目安：4～20kg



ペット用木製サークル90-60D

¥13,500 入数2

●サイズ/90×61×60.5H(cm)

●個装サイズ/91.5×11×62.5(cm)

●材質/フレーム部：ラバーウッド

ワイヤー部、他：スチール（ポリエステル塗装）

滑り止めゴム部：TPE樹脂

JANコード 4973655 89291-6



Wooden circles for pets 90-60 D

13,500 yen Quantity: 2

・Size/90x61x60.5H(cm)

・Individual Packaging Size/91.5x11x62.5(cm)

・Material Frame Part: Rubber Wood

Wire Part, others: Steel (Polyester Paint)

Non-slip Rubber Part: TPE Resin

JAN Code 4973655 89291-6

Ex. 1007 at 2.

It would have been obvious to a POSITA for the vertical and horizontal interrupting members in the front and side panels of a Maffet barrier to be wires, just as Richell constructed them in its prior-art pet barrier depicted in the Richell Publications, for the same reasons listed in section X(A)(4). Ex. 1002 ¶ 68.

15. Dependent Claim 18

- a. The method of claim 14, wherein said barrier stabilizer does not impede a path of a house pet.**

Regarding dependent claim 18, as explained in section X(A)(1)(d), it would have been obvious at the time of the invention to configure the low-profile, barrier-stabilizing legs disclosed in JP D649 onto the multi-panel barrier structure of Maffet, where such combination would have rendered predictable results. And as explained in section X(A)(1)(g), a POSITA would have realized that such a combination would result in a stabilized barrier where the barrier stabilizers/legs would not impede the path of a house pet due to their low profile.

16. Dependent Claim 19

- a. The method of claim 12, wherein said barrier stabilizer does not impede a path of a house pet.**

This claim depends from one of the method claims (claims 14-18), so it cannot depend from claim 12. Claims 14-18 are obvious over Maffet, JP D649,

and/or the Richell Publications, as discussed in sections X(A)(11)-(15). Claim 16 is obvious for the same reasons as discussed in section X(A)(15).

17. Claim 35

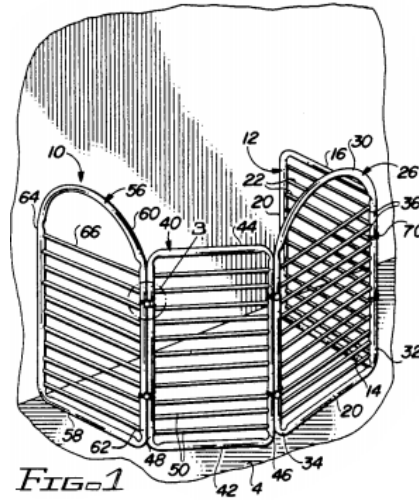
a. A self-supporting house pet barrier, comprising:

As explained in section X(A)(1), Maffet and the Richell Publications disclose multi-panel, freestanding pet barriers. And as also explained there, JP D649 discloses a multi-panel, freestanding acoustic barrier that a POSITA would understand could be used as a pet barrier.

b. [i] a front barrier configured to block the path of a house pet, [ii] said front barrier having a front side and a back side, wherein said front barrier comprises two panel portions adjustably coupled together to allow adjustment of an extent to which said two panel portions overlap and extend beyond each other;

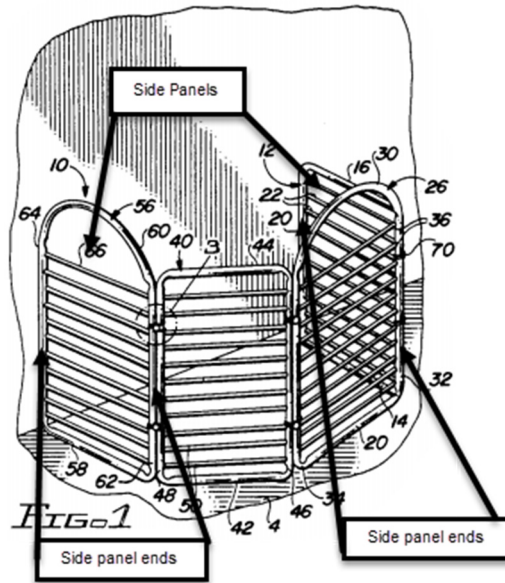
For the reasons discussed in section X(A)(1)(h), Maffet discloses [ii] a front barrier having a front side and a back side, wherein the front barrier comprises two panel portions adjustably coupled together to allow adjustment of an extent to which the panel portions overlap and extend beyond each other. A POSITA would understand that Maffet discloses [i] a front barrier configured to block the path of a house pet. Indeed, Maffet states that it is directed to “structures, such as enclosures for pets, a playing area for a small child, a gate for preventing children and/or pets from straying from a particular room or area, and the like.” Ex. 1004 at 1:14-19.

Looking at Fig. 1 of Maffet, illustrating a self-supporting pet barrier, a pet confronted with such a front barrier would have its path blocked.



- c. a first stabilizing member having two ends; and a second stabilizing member having two ends;

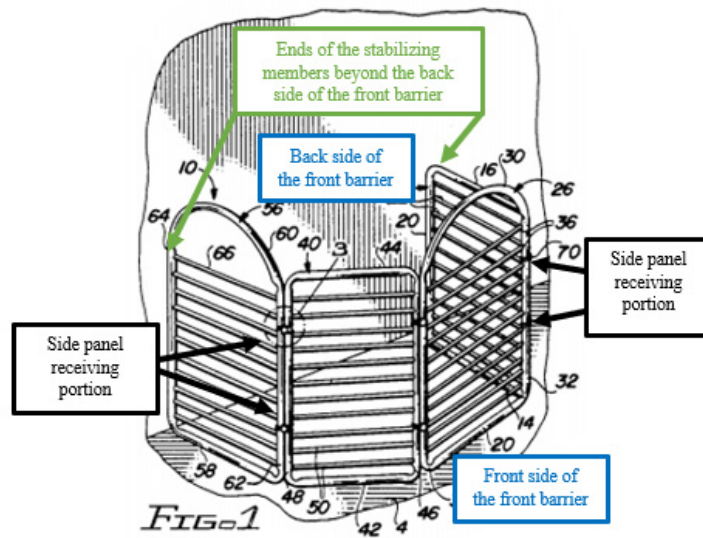
As explained in section X(A)(1)(c), Maffet discloses two side panels. Ex. 1004 at Fig. 1. Each side panel has two ends. As discussed in section X(A)(1)(f), when the side panels are extended perpendicularly from the front barrier, the panels help to stabilize the pet barrier in use. Accordingly, Maffet's teachings of side panels in the multi-panel, freestanding barrier embodiment of Fig. 1 teach first and second stabilizing members as claimed, each of which has two ends.



- d. **said front barrier being coupled to said first stabilizing member such that one of said two ends of said first stabilizing member is located beyond said back side of said front barrier and the other of said two ends of said first stabilizing member is coupled to said front barrier; said front barrier being coupled to said second stabilizing member such that one of said two ends of said second stabilizing member is located beyond said back side of said front barrier and the other of said two ends of said second stabilizing member is coupled to said front barrier;**

As discussed in sections X(A)(1)(c) and X(A)(1)(e), Maffet discloses that each of its two side panels/stabilizing members are coupled to the front barrier at one of the two ends. Maffet additionally discloses that the other of the two ends of each side panel/stabilizing member extend beyond the back side of the front barrier. Fig. 1 of Maffet shows one end of each of the side panels/stabilizing

members coupled to the front barrier while the other end is located beyond the back side of the front barrier.



- e. a first leg coupled to said front barrier and extending from said front side of said front barrier; and a second leg coupled to said front barrier and extending from said front side of said front barrier,

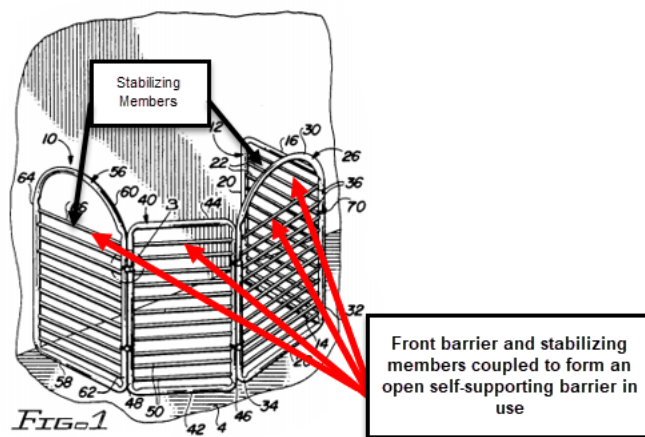
As explained in section X(A)(1)(d), JP D649 discloses first and second legs coupled to the front barrier and extending from the front side of the front barrier. As further explained in section X(A)(1)(d), a POSITA at the time of the invention would have been motivated to add legs such as those depicted in JP D649 to a self-supporting multi-panel pet barrier as taught by Maffet and would have expected such a combination to yield predictable results.

- f. **wherein said first and second legs are configured to assist with maintaining said front barrier in a vertical position,**

As discussed in sections X(A)(1)(d) and X(A)(1)(g), it would have been obvious at the time of the invention to incorporate the legs of JP D649 to the multi-panel, freestanding barrier of Maffet, as a POSITA would have recognized that such legs provide stability and, so, are configured to assist with maintaining the front barrier in a vertical position. Such a combination would have rendered predictable results.

- g. **wherein said front barrier, said first stabilizing member, and said second stabilizing member are coupled to form an open self-supporting barrier in use, and**

As discussed in section X(A)(1)(f), Maffet discloses that the front barrier and first and second stabilizing members/side panels are coupled to form an open self-supporting barrier in use. Ex. 1004, Fig. 1; Ex. 1002, ¶¶ 60, 62.



- h. wherein said two panel portions of said front barrier, said first stabilizing member, and said second stabilizing member each comprise a frame defining an open space interrupted by vertical members with only the vertical members in a central three-fifths portion of the open space.**

As discussed in sections X(A)(1)(b) and X(A)(1)(h), Maffet discloses two panel portions of the front barrier comprising a frame defining an open space interrupted by vertical members with only the vertical members in a central three-fifths portion of the open space.

As discussed in section X(A)(10), Maffet discloses the first and second stabilizing members/side panels each comprise a frame defining an open space interrupted by vertical members with only the vertical members in a central three-fifths portion of the open space.

18. Dependent Claim 36

- a. The self-supporting house pet barrier of claim 35, wherein the open space is further interrupted by horizontal members in a top or bottom one-fifth portion of the open space.**

Regarding dependent claim 36, as discussed in section X(A)(3), the Richell Publications further depict a multi-panel, freestanding pet barrier having a front barrier interrupted by horizontal interrupting members in a top or bottom one-fifth portion of the open space. And as discussed in section X(A)(12), the Richell

Publications also disclose side barriers having an open space interrupted by horizontal members in a top or bottom one-fifth portion of the open space.

As explained in sections X(A)(3) and X(A)(12), it would have been obvious to a POSITA to combine the horizontal interrupting members in a top or bottom one-fifth portion of the front panels and the side panels, as depicted in the Richell Publications, to the freestanding, multi-panel barrier in Maffet as stabilized by the barrier-stabilizing legs of JP D649 and expect such combination to succeed.

B. Ground 2: Ferran in view of JP D649 (and optionally further in view of the other Stability References)

Ground	Claims	Basis for Cancellation
2	20-21, 24, 26, 32-34	35 U.S.C. § 103: Ferran in view of JP D649 (and optionally further in view of the other Stability References)

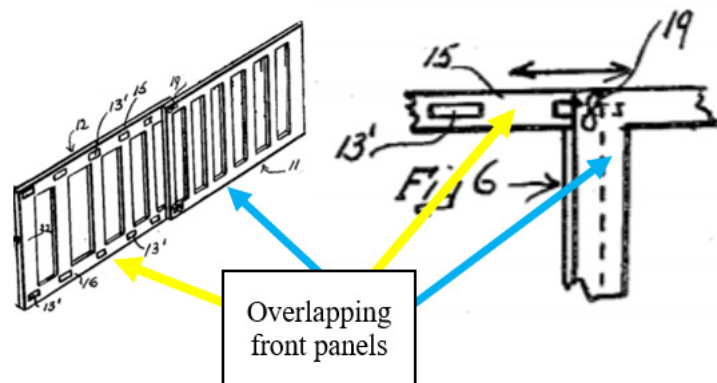
1. Claim 20

a. A self-supporting house pet barrier for use on a surface, comprising:

Ferran and JP D649 disclose a self-supporting pet barrier. Although Ferran is directed to a self-supporting child barrier, there is no meaningful structural difference between a pet barrier and an infant barrier. Ex. 1002 ¶ 39. Similarly, JP D649 discloses an indoor, multi-panel, freestanding sound barrier that could be used as a pet barrier. Ex. 1002 ¶ 48.

- b. **[i]** a first front barrier for blocking the path of a house pet, said first barrier having a front side and a back side and having an inner end and an outer end; **[ii]** a second front barrier for blocking the path of a house pet, said second front barrier having a front side and a back side and having an inner end and an outer end, **[iii]** wherein said inner end of said first front barrier extends beyond said inner end of said second front barrier, and wherein said first and second front barriers are configured to allow adjustment of the extent to which said inner end of said first front barrier overlaps and extends beyond said inner end of said second front barrier in steps with physical features of the first and second front barriers;

Ferran discloses parts [i], [ii], and [iii] of this limitation. It discloses part [i] by teaching “two quadrilateral front enclosing members,” 11/12 which “in function serve as a single member.” Ex. 1005 at 3:66–68. It discloses part [iii] by teaching in detail how “the enclosure may be narrowed at will” by overlapping the front barriers 11/12 at various “slot” 13' positions:

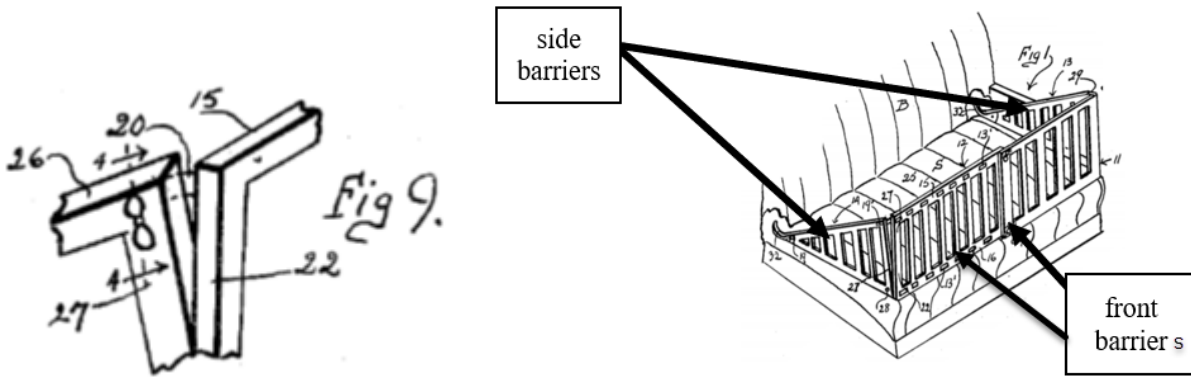


Id. at 4:14–40, Figs. 2, 6. By configuring the enclosure to be narrowed at will by overlapping the front barriers along multiple slot positions, Ferran discloses that the first and second front barriers are adjustable to the extent the front barriers overlap. Ferran teaches that the width of the overlapping front barriers may be fixed along the slots by affixing wing nuts to openings with corresponding slots and, as such, discloses the front barriers extending in steps with physical features of the first and second front barriers. *Id.* at 4:14-26.

- c. **[i] a first side barrier having two ends; and a second side barrier having two ends; [ii] said first front barrier being coupled to said first side barrier such that one of said two ends of said first side barrier is located beyond said back side of said first front barrier and the other of said two ends of said first side barrier is coupled to said first front barrier; [iii] said second front barrier being coupled to said second side barrier such that one of said two ends of said second side barrier is located beyond said back side of said second front barrier and the other of said two ends of said second side barrier is coupled to said second front barrier;**

Ferran discloses first and second side barriers 13 & 14, each having two ends. Ferran also discloses that one end of the first side barrier is coupled to the first front barrier such that the other end is located beyond the back side of the first front barrier and that one end of the second side barrier is coupled to the second front barrier such that the other end is located beyond the back side of the second front barrier. To

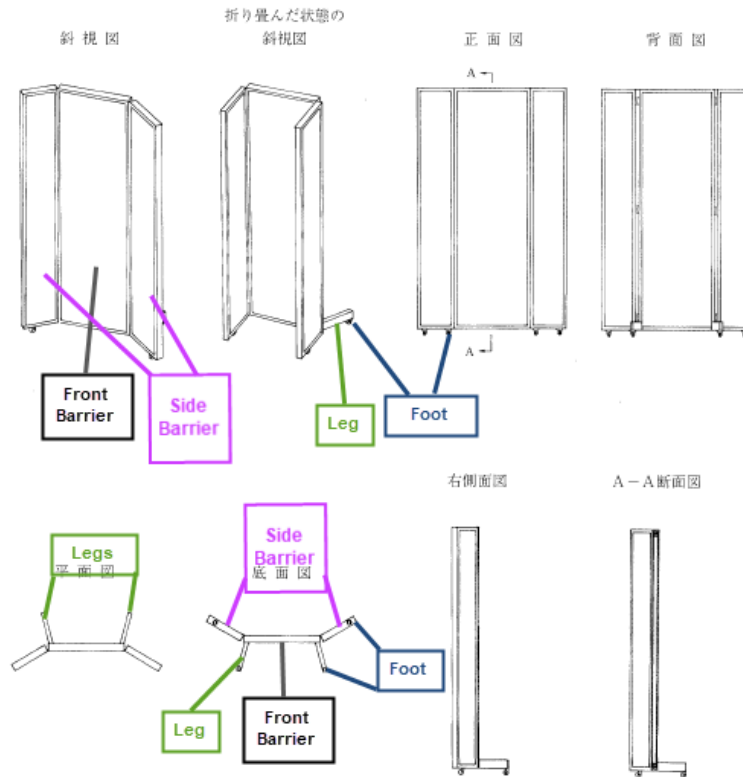
couple a front barrier with a first side and a second side to a side barrier, Ferran
“employ[s] a simple hinge member 20 best shown in Figure 9”:



Ex. 1005 at 4:41-63, Fig. 1, Fig. 9. The side barriers thus extend beyond the front barriers on the first (back) sides of the front barriers.

- d. a first leg coupled to said first front barrier and extending from said front side of said first front barrier; and a second leg coupled to said second front barrier and extending from said front side of said second front barrier,

JP D649 further first and second legs coupled to a front barrier and extending from the front side of the front barrier. JP D649 depicts an indoor, multi-panel, freestanding acoustic barrier. Ex. 1010; Ex. 1002 ¶ 48. The barrier includes legs coupled to the front barrier:



Ex. 1010. A POSITA would recognize that JPD649 legs stabilize the self-supporting barrier in a vertical position. Ex. 1002, ¶¶ 43, 48, 60-64. In the other Stability References, stability legs are used to maintain the vertical panels in an upright configuration. Ex. 1002 ¶¶ 43-59 (discussing Ex. 1015-1025); Ex. 1009 at 21:16–25, Fig. 50 (depicting legs as “elongated foot member[s]” which “are situated at a bottom end of a side frame”).

A POSITA would have been motivated to combine legs of JP D649 (and/or of the Stability References) with the multi-panel barrier of Ferran, coupling one leg each to the first and second front barriers of Ferran. Ex. 1002 ¶¶ 43, 48, 60-64.

Ferran and JP D649 are in the same field of endeavor—indoor, multi-panel,

freestanding barriers. Ex. 1002 ¶¶ 36-39, 43, 48. Using legs to maintain multi-panel barriers in a vertical configuration is a well-known mechanical principle, and a POSITA would have reasonably expected the legs to be successful in vertically stabilizing the barrier, especially if those legs extended in the opposite direction that the side barriers extended. Ex. 1002 ¶¶ 43, 60-64. A POSITA would have expected this combination to succeed at the outset, and little testing would have been required to confirm this expectation. *Id.* When designing a freestanding pet barrier, a POSITA would have looked not only to freestanding pet barriers, but also to freestanding child barriers, acoustic barriers, and other multi-panel structures as analogous art. Ex. 1002 ¶¶ 20, 61. Ferran, JP D649, and the other Stability References each disclose similar structures that serve a similar purpose—providing a self-supporting panel structure maintained in an open configuration.

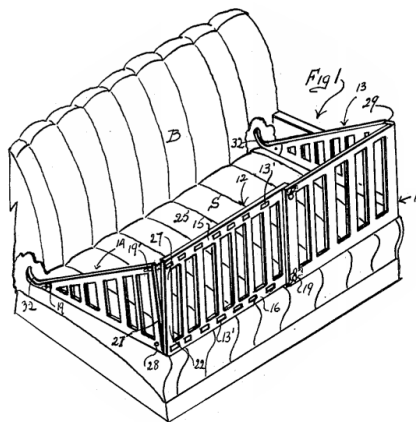
- e. **[i] wherein said first and second legs are configured to assist with maintaining said first front barrier and said second front barrier in a vertical position [ii] but are not configured to obstruct the path of a house pet, and**

As discussed in section X(B)(1)(d), the legs of JP D649 are configured to assist with maintaining the first and second front barriers in a vertical position. Further, the legs of JP D649 are low-profile to not obstruct the path of a house pet. Ex. 1010; Ex. 1002 ¶ 48. For the same reasons listed in section X(A)(1)(f), a POSITA would have

found it obvious to incorporate low-profile legs of JP 649 to the self-supporting barrier.

- f. wherein said first front barrier, said second front barrier, said first side barrier, and said second side barrier are coupled to form an open self-supporting barrier in use.**

Ferran discloses parts [iii] and [iv] of this claim limitation. As shown in Figure 1, a plan view of Ferran discloses a self-supporting pet barrier in an open, vertical, non-enclosing configuration:



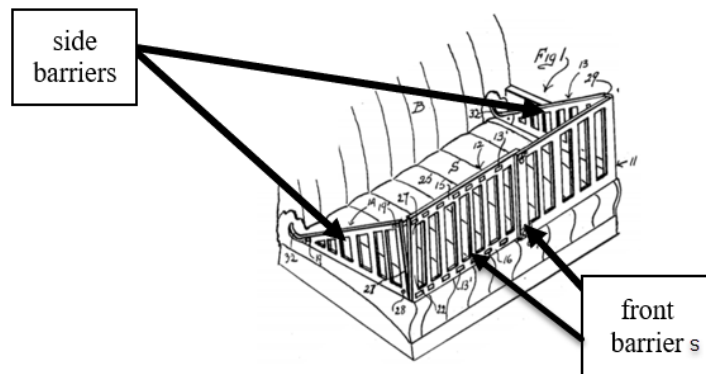
Ex. 1005 at FIG. 1. Although Ferran has an adaptor that can convert the barrier into a closed configuration, the adaptor “is not necessary” because “the primary enclosure is complete in itself and may be used alone.” *Id.* at 5:54–62, 7:14–16; Ex. 1002 ¶¶ 36–39. See also Section IX(D).

2. Dependent Claim 21

- a. The self-supporting house pet barrier of claim 20, wherein said first front barrier and said first side barrier are substantially perpendicular to one**

another; and said second front barrier and said second side barrier are substantially perpendicular to one another.

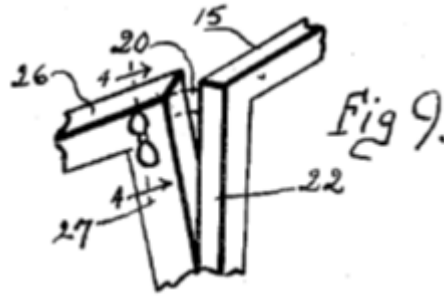
Regarding dependent claim 21, Ferran also discloses that the first and second side barriers are substantially perpendicular to the first and second front barriers:



3. Dependent Claim 24

- a. **The self-supporting house barrier of claim 20, wherein said first side barrier is coupled to said first front barrier by a first hinge and said second side barrier is coupled to said second front barrier by a second hinge.**

Regarding dependent claim 24, Ferran also discloses that the front barriers and side barriers are coupled together with hinge, such as “a simple hinge member 20 best shown in Figure 9”:



Ex. 1005 at 4:41-63, Fig. 9.

4. Dependent Claim 26

- a. The self-supporting barrier of claim 20, further comprising:**

Regarding dependent claim 26:

- b. a first stopper coupled to said first side barrier to prevent rotation of said first side barrier relative to said first front barrier; and a second stopper coupled to said second side barrier to prevent rotation of said second side barrier relative to said second front barrier.**

Ferran discloses first and second stoppers coupled to respective side barriers to prevent rotation of the side barriers relative to the front barrier. To attach Ferran's side barriers 13/14 to the front barriers, Ferran discloses using a hinge 20, "one leaf 21 of which is permanently fastened to an adjacent upright end piece" of the front barrier." Ex. 1004 at 4:41-46. The leaf includes a series of holes, and the top slat of each side member includes a corresponding hole. *Id.* at 4:46-50. When a wing bolt 19' is disposed through a selected hole in the hinge leaf and the corresponding hole in the top slat of the side member, the angular rotation of the

front barrier and the side barrier becomes fixed. *Id.* at 4:51-56. Each side member is coupled to the front barrier in this manner. *Id.* at 4:56-62.

5. Dependent Claim 32

a. The freestanding house pet gate of claim 20, wherein:

Regarding dependent claim 23:

b. said physical features of said first front barrier comprise a plurality of openings; said physical features of said second front barrier comprise at least one opening;

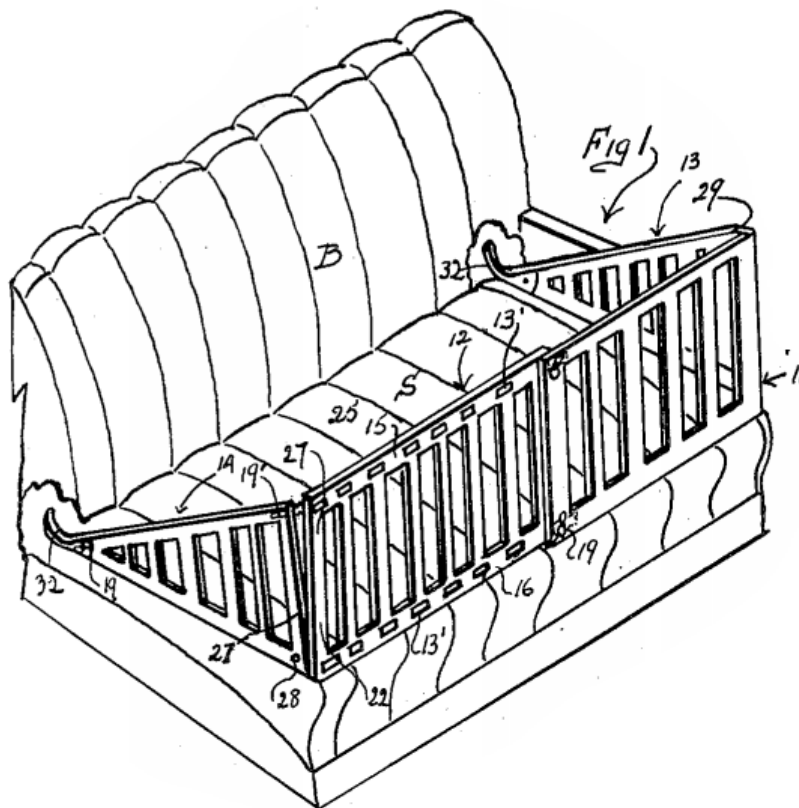
Ferran discloses the physical features of the first front barrier comprise a plurality of openings 13' and the physical features of the second front barrier comprise at least one opening (allowing a wing-nut 19 to extend through). To allow the first and second front barriers to “be narrowed at will,” Ferran provided “a number of oblong slots 13” in the first front barrier “and two openings not shown one in the top and one in the bottom portion” of the second front barrier.

Ex. 1005 at 4:14-22.

c. at least one of said plurality of openings in said first front barrier aligns in steps with the at least one opening in said second front barrier based on the extent to which said inner end of said first front barrier extends beyond said inner end of said second front barrier; and

Ferran discloses at least one of the openings in the first front barrier aligns in steps with the opening in the second front barrier based on the extent to which the

two front barriers overlap. Ferran teaches that the width of the overlapping front barriers may be “narrowed at will” and that one, using wing nuts 19, may “join openings 17 with any corresponding and desired slots 13’ thus making the width of the enclosing structure anything which is desired in greater than one-half of the total.” Ex. 1005 at 4:14-26, Fig. 1.



- d. a first connecting member, said first connecting member disposed within said aligned openings of said first and second front barriers.

Ferran discloses a first connecting member disposed within the aligned openings of the first and second barriers. Ferran teaches that “[w]ing nuts 19 may be employed to join openings 17 with any corresponding and desired slots 13’ thus

making the width of the enclosing structure anything which is desired in greater than one-half of the total.” Ex. 1005 at 4:14-26, Fig. 1.

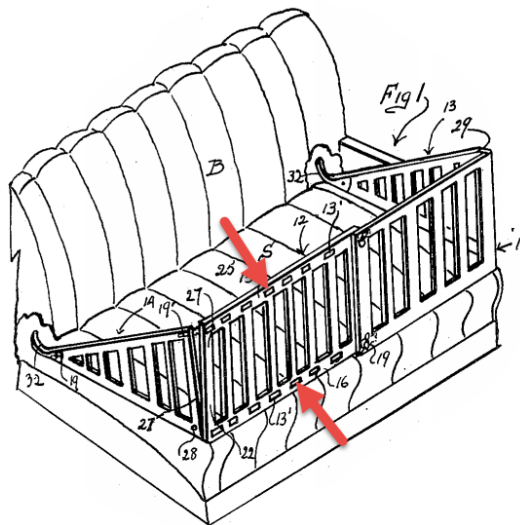
6. Dependent Claim 33

a. The freestanding house pet gate of claim 32, wherein:

Regarding dependent claim 33:

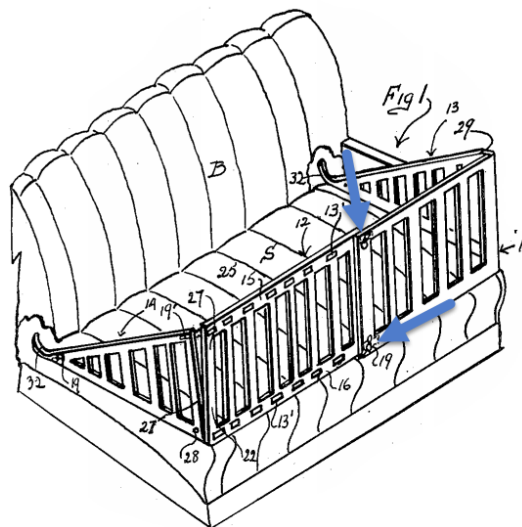
b. said plurality of openings of said first front barrier comprise a plurality of openings at a top of said first front barrier and a plurality of openings at a bottom of said first front barriers;

Ferran discloses the plurality of openings of the first front barrier comprise a plurality of openings at a top of said first front barrier and a plurality of openings at a bottom of said first front barrier, as the first front barrier of Ferran includes “oblong slots 13” in both the “top slat 15 and bottom slat 16.” Ex. 1005 at 4:18-20, Fig. 1.



- c. **said at least one opening of said second front barrier comprises at least one opening at a top of said second front barrier and at least one opening at a bottom of said second front barrier;**

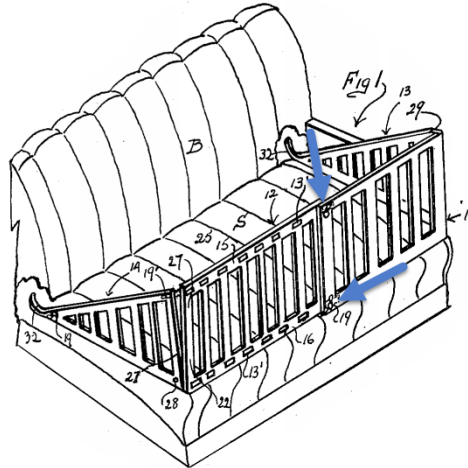
Ferran discloses the at least one opening of the second front barrier includes an opening at the top of the second front barrier and an opening at the bottom of the second front barrier. While Ferran teaches that these openings are not shown, Ferran also teaches that Fig. 1 is depicted with wing nuts 19 disposed through the openings. Ex. 1005 at 4:14-26, Fig. 1.



- d. **at least one pair of said plurality of openings at the top of said first front barrier and said plurality of openings at the bottom of said first front barrier aligns in steps with a pair of the at least one opening at the top of said second front barrier and the at least one opening at the bottom of said second front barrier;**

Ferran discloses that a pair of openings at the top and bottom of the first front barrier align in steps with a pair of openings at the top and bottom of the

second front barrier, as depicted in Fig. 1 (wing nuts are disposed through pairs of openings on the top and bottom of the first and second front barriers, aligning the front barriers in steps).



- e. a plurality of connecting members disposed within said aligned pairs of openings.**

Ferran discloses a plurality of connecting members disposed within the aligned pairs of openings, as it teaches that wing nuts 19 are disposed within the aligned pairs of openings. Ex. 1005 at 4:14-26, Fig. 1.

7. Dependent Claim 34

- a. The freestanding house pet gate of claim 32, wherein:**

Regarding dependent claim 34:

- b. said at least one opening in said second front barrier comprises at least two openings;**

Ferran discloses the at least one opening of the second front barrier includes a plurality of openings 13' at the top of the second front barrier and a plurality of

openings 13' at the bottom of the second front barrier for the reasons explained in section X(B)(5)(c).

- c. **a pair of said plurality of openings in said first front barrier aligns in steps with the at least two openings in said second front barrier based on the extent to which said inner end of said first front barrier extends beyond said inner end of said second front barrier; and**

Ferran discloses that a plurality of openings 13' of the first front barrier align in steps with a pair of openings of the second front barrier based on the extent to which the inner end of the first front barrier extends beyond the inner end of the second front barrier for the reasons explained in section X(B)(5)(d).

- d. **a plurality of connecting members disposed within said aligned pairs of openings of first and second front barriers.**

Ferran discloses a plurality of connecting members 19 disposed within the aligned pairs of openings of the first and second front barriers for the reasons explained in section X(B)(5)(e).

C. Ground 3: Ferran in view of JP D649, Maffet, and DeMars (and optionally further in view of the other Stability References)

Ground	Claims	Basis for Cancellation
3	25	35 U.S.C. § 103: Ferran in view of JP D649, Maffet, and DeMars (and optionally further in view of the other Stability References)

1. Dependent Claim 25

a. The self-supporting barrier of claim 20, wherein:

As explained in section X(B)(1), Ferran and JP D649 render obvious the self-supporting house pet barrier of claim 20.

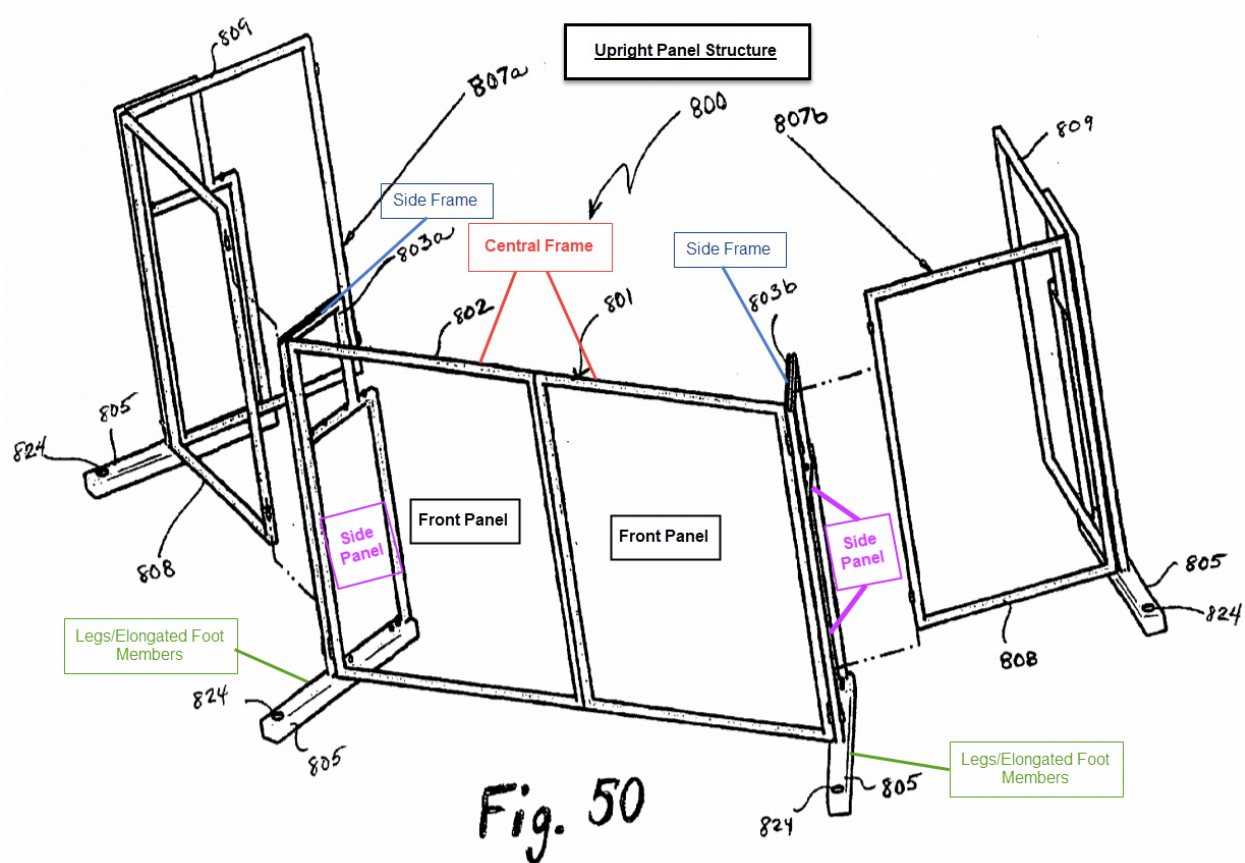
- b. said first side barrier and said first leg are configured to rotate together between a position generally perpendicular to said first front barrier and a position generally parallel to said first front barrier; and said second side barrier and said second leg are configured to rotate together between a position generally perpendicular to said second front barrier and a position generally parallel to said second front barrier.**

Maffet further discloses a pet barrier that is adapted for transportation or storage in a generally planar configuration: “Moreover, the use of such flexible elements allows the panels to be literally folded on top of each other for storage and for transport purposes.” Ex. 1004 at 4:36-39. Maffet further discloses that its panels may be connected by clamps, which function as hinges. *Id.* at 8:11-21, 11:20-22, 13:7-22.

A POSITA would have been motivated to combine the rotatable, hinged connection between the side barriers and the front barrier of Maffet with the multi-panel barrier of Ferran. Maffet provides a simple mechanical way to allow the side barriers to fold flat against the front barrier and informs the POSITA that such a feature is useful for storage and transport. Accordingly, a pet barrier that has side

barriers rotating from a perpendicular position to a parallel position with respect to the front barrier is nothing new.

DeMars discloses an upright panel structure comprising a central frame, side frames, and elongated foot members directly coupled to the bottom ends of the side frames to provide stability to the structure:



Ex. 1009 at 21:16–24, Fig. 50; Ex. 1002 ¶ 47. Maffet teaches a POSITA the advantages of folding a pet barrier for storage or transport as well as hinges to allow said folding. On a barrier that also includes legs stabilizing the barrier in an upright position, DeMars shows that the legs may be directly coupled to the side

barriers. A POSITA would have looked to DeMars because, regardless of the specific application, the mechanical issue of stabilizing upright multi-panel structures using stabilizing legs remains the same. *Id.* ¶ 47. Configuring the leg to be coupled to the side panel would help ensure that the leg and side panel extend across from each other when in use, helping to improve stability. Ex. 1002 ¶¶ 43, 47, 48, 60-64. And when the user wished to store or transport the barrier, directly coupling the leg to the side barrier would ensure that the leg would rotate with the side barrier as shown in Fig. 50 of DeMars. Ex. 1002 ¶ 47.

Thus, Ferran, JP D649, Maffet, and DeMars would show a POSITA that it was obvious to configure side barriers and legs to rotate together from a perpendicular position with respect to the front barrier to a parallel position with respect to the front barrier, as claimed. Such a combination would have rendered predictable results. *See id.*

D. Ground 4: Ferran in view of JP D649 and the Richell Publications (and optionally further in view of the other Stability References)

Ground	Claims	Basis for Cancellation
4	27-31	35 U.S.C. § 103: Ferran in view of JP D649 and the Richell Publications (and optionally further in view of the other Stability References)

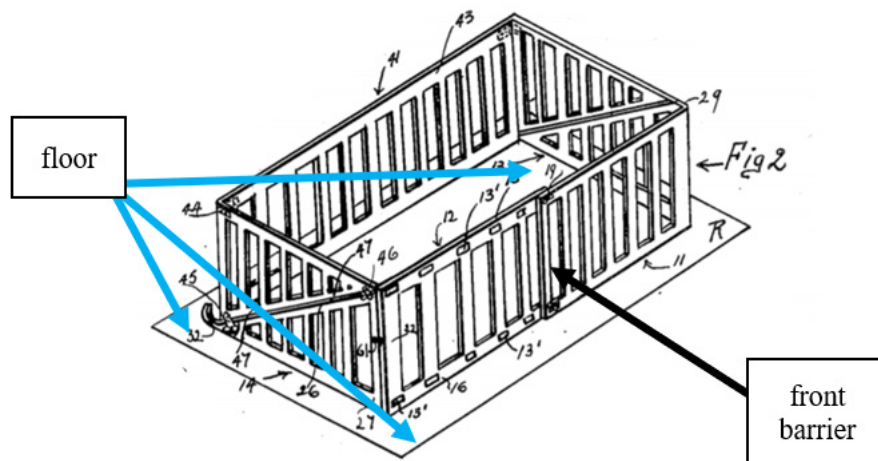
1. Dependent Claim 27

a. The self-supporting pet barrier of claim 20, wherein:

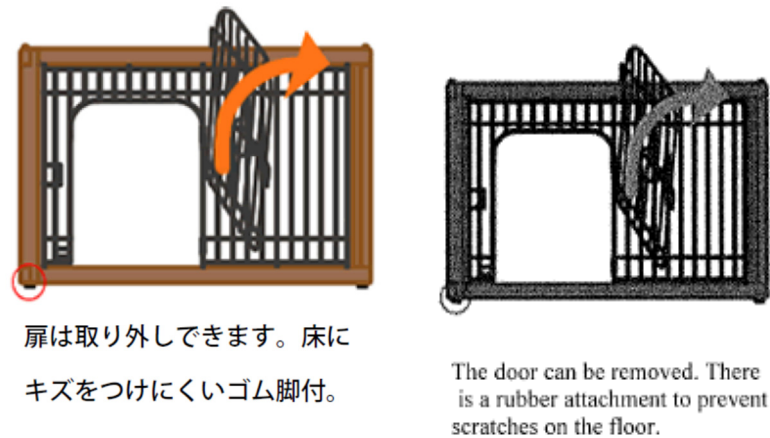
As discussed in section X(B)(1), Ferran and JP D649 render claim 20 obvious.

b. said first side barrier rests on the floor via one or more intermediate members; and said second side barrier rests on the floor via one or more intermediate members.

Ferran further discloses that the first and second side barriers rest on the floor.



Ex. 1005 at Fig. 2. The Richell Publications further disclose a pet barrier that includes intermediate members between the side barriers and the floor in the form of rubber feet. Ex. 1007 at 1; Ex. 1011 at 3:



As discussed in Section X(A)(1)(d), JP D649 also illustrates intermediate feet disposed on the bottom of the multi-panel structure.

It would have been obvious for a POSITA to add an intermediate member such as a rubber foot to a floor-contacting surface on the Ferran barrier, or the feet of JP D649. Ex. 1002 ¶ 68. When designing a freestanding pet barrier, a POSITA would have taken practicable measures to ensure that the barrier did not slide or tip. *Id.* A rubber foot would have been an efficient and likely successful way to increase the stability of the freestanding pet barrier. *Id.*

2. Dependent Claim 28

- a. **The self-supporting pet barrier of claim 27, wherein: said one or more intermediate members of said first side barrier comprise friction increasing members; and said one or more intermediate members of said second side barrier comprise friction-increasing members.**

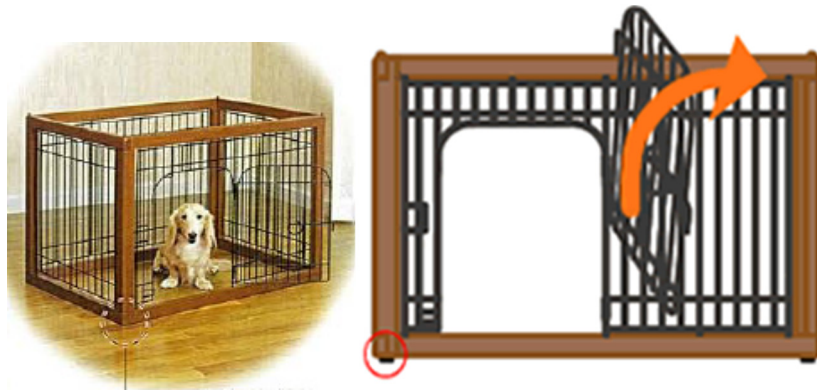
Regarding dependent claim 27, and as further explained in section X(C)(1), the Richell Publications show that it was well-known for pet barriers to have

friction-increasing members like rubber feet on floor-contacting surfaces, and that it would have been obvious for a POSITA to incorporate the rubber feet of the Richell Publications to the floor-contacting surfaces of the side barriers of Ferran. Ex. 1007 at 1; Ex. 1011 at 3; Ex. 1002 ¶ 68.

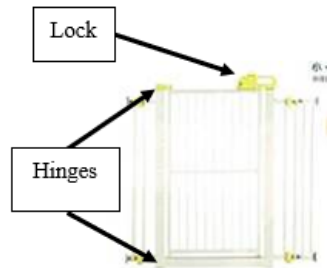
3. Dependent Claim 29

- a. **The self-supporting pet barrier of claim 20, wherein at least one of said first and second front barriers has a gate therein.**

As discussed in section X(B)(1), Ferran and JP D649 render claim 20 obvious. The Richell Publications further depict a freestanding, multi-panel pet barrier having a gate formed in the front barrier:



Ex. 1007 at 1; Ex. 1011 at 3. The Richell 2003 Catalog depicts additional types of gates in pet barriers, extending the entire height of the barrier:



Ex. 1011 at 6.

A POSITA would have been motivated to incorporate a gate into the front barrier of Ferran, as taught by the Richell Publications for the same reasons listed in section X(A)(6). *See also* Ex. 1002 ¶ 67.

4. Dependent Claim 30

- a. **The self-supporting pet barrier of claim 29, wherein said gate is sized to allow a person to pass through when said gate is opened.**

Regarding dependent claim 30, the Richell 2003 Catalog further discloses a gate extending the entire height of a panel, which as pictured would be sized to allow a person to pass through the gate when opened:



Ex. 1011 at 6. A POSITA would have been motivated to incorporate a gate extending the entire height of a barrier, as advertised in the Richell 2003 Catalog, as such gates were well known and provided conveniences to individuals erecting

the barriers, as depicted. Ex. 1002 ¶ 67. A POSITA would have readily understood that a gate extending the entire height of at least one panel would allow a person, a pet, and a person holding or walking a pet to pass through the gate as needed. *Id.* A POSITA also would have determined that a gate extending the entire panel height would be easier to manufacture than a gate extending only part of the panel height. *See id.* Such a combination would have rendered predictable results. *Id.*

5. Dependent Claim 31

- a. The self-supporting pet barrier of claim 29, wherein said gate is sized to allow a house pet to pass through when said gate is opened.**

Regarding dependent claim 31, as discussed in section X(D)(3), it would have been obvious at the time of the invention to incorporate a gate formed in the front barrier of a freestanding pet barrier, as disclosed by the Richell Publications, into the freestanding barrier of Ferran, where the gate is sized to allow a pet to pass through the gate when opened, and where such combination would have rendered predictable results.

E. Ground 5: Maffet in view of JP D649, the Richell Publications, and Ferran (and optionally further in view of the other Stability References)

Ground	Claims	Basis for Cancellation
5	3	Maffet in view of JP D649, the Richell Publications, and Ferran (and optionally further in view of the other Stability References)

1. Dependent Claim 3

- a. The self supporting barrier according to claim 1, further comprising a removable stopper which secures said side panel in a rotation-restricting position when said stopper is installed.**

Regarding claim 3, Ferran discloses a removable stopper which secures said side panel in a rotation-restricting position when said stopper is installed. To attach Ferran's side barriers 13/14 to the front barriers, Ferran discloses using a hinge 20, "one leaf 21 of which is permanently fastened to an adjacent upright end piece" of the front barrier." Ex. 1004 at 4:41-46. The leaf includes a series of holes, and the top slat of each side member includes a corresponding hole. *Id.* at 4:46-50. When a wing bolt 19' is disposed through a selected hole in the hinge leaf and the corresponding hole in the top slat of the side member, the angular rotation of the front barrier and the side barrier becomes fixed. *Id.* at 4:51-56. Each side member is coupled to the front barrier in this manner. *Id.* at 4:56-62.

It would have been obvious at the time of the invention to combine the stopper of Ferran to the barrier of Maffet, as such combination would have rendered predictable results. Maffet and Ferran both disclose indoor barriers that may be used to restrict a pet from accessing or leaving a room. *See* Ex. 1002 ¶¶ 30-39. While Maffet's barrier provides customizability, when using the barrier to restrict access of a child or a pet, a POSITA would be motivated to adopt Ferran's

stopping means to keep the barrier in a desired configuration, once the barrier is set up.

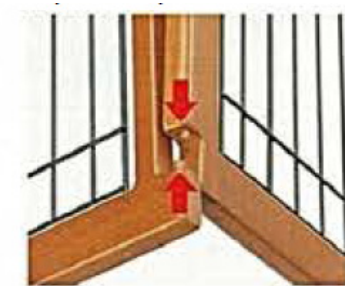
F. Ground 6: Maffet in view of JP D649, the Richell Publications, and Nakamoto (and optionally further in view of the other Stability References)

Ground	Claims	Basis for Cancellation
6	2	Maffet in view of JP D649, the Richell Publications, and Nakamoto (and optionally further in view of the other Stability References)

1. Dependent Claim 2

- a. The self supporting pet barrier according to claim 1, wherein said side panel receiving portion comprises first and second tubular members, and said front panel attaching portion comprises third and fourth tubular members, and wherein said first tubular member further comprises an upwardly extending pin adapted to removably fit into said third tubular member, and wherein said second tubular member is adapted to fit adjacent said fourth tubular member, and wherein a removable securing pin can be removably secured inside said second and fourth tubular members thereby forming rotatable hinges between said front and side panels, said rotatable hinges enabling said side panel to be positioned from a first position folded against the back of said front panel to a generally perpendicular position with respect to said front panel.

Regarding dependent claim 2, the Richell Publications disclose that the side panels and the front panels may attach to each other via a simple hinge mechanism.



Just insert the panels
together



パネルをはめ込むだけで、
簡単に組立ができます。

Ex. 1007 at 1; Ex. 1011 at 3. Maffet also discloses that its clamps can act as hinges so that panels can rotate with respect to each other. Ex. 1004 at 11:20-22 13:4-21.

A POSITA would recognize that hinges are, and have been, common components for securing rotatable components together and would have understood, given the pet-barrier teachings of various hinges coupling panels, that hinges comprising complementary tubular members secured with pins could have readily been employed. Ex. 1002 ¶ 69. Such a substitution would have been readily apparent, and no technical reason would foreclose a POSITA from employing such a component to couple the side panels to the front panels, such as the hinge design as provided in Nakamoto to achieve predictable results. *Id.*; Ex. 1027, Figs. 7-9.

XI. CONCLUSION

Petitioners request that the Board institute *inter partes* review of the '449 Patent on all asserted grounds and cancel claims 1-3, 5-21, and 24-36 of the '449 Patent under 35 U.S.C. § 103.

Respectfully submitted,

Dated: December 4, 2019

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CERTIFICATION

The foregoing Petition for *Inter Partes* Review of U.S. Patent No. 7,568,449, excluding the caption, Table of Contents, Table of Authorities, Certificate of Service, and this certification, contains 13,949 words according to the word processor.

Respectfully submitted,

Dated: December 4, 2019

/Kevin P. Flynn/

Kevin P. Flynn

CERTIFICATE OF SERVICE

I, Kevin P. Flynn, hereby certify that on this 4th day of December, 2019, the foregoing PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 7,568,449 was served by Federal Express overnight delivery on the following:

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