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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/895,014	06/15/2023	Barry Alexander	1558.2006	6253
62254	7590	06/17/2025		
HARTMAN TITUS PLC Two North Central Ave Suite 1800 PHOENIX, AZ 85004			EXAMINER BIRDWELL, AMANDA KAY	
			ART UNIT	PAPER NUMBER
			2931	
			NOTIFICATION DATE	DELIVERY MODE
			06/17/2025	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

BHARTMAN@HARTMANTITUS.COM
DOCKET@HARTMANTITUS.COM
JTITUS@HARTMANTITUS.COM



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APPLICATION NO.	ISSUE DATE	PATENT NO.
29/895,014	17-Jun-2025	D1079464

HARTMAN TITUS PLC
Two North Central Ave
PHOENIX, AZ 85004

EGRANT NOTIFICATION

Your electronic patent grant (eGrant) is now available, which can be accessed via Patent Center at <https://patentcenter.uspto.gov>

The electronic patent grant is the official patent grant under 35 U.S.C. 153. For more information, please visit <https://www.uspto.gov/electronicgrants>

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), by mail or fax, or via the USPTO patent electronic filing system.

By mail, send to: **Mail Stop ISSUE FEE**
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By fax, send to: **(571)-273-2885**

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CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

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62254 7990 04/01/2025

HARTMAN TITUS PLC
Two North Central Ave
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PHOENIX, AZ 85004

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 (Typed or printed name)

 (Signature)

 (Date)

APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY CHECK NO.	CONFIRMATION NO.
294075.014	06/15/2023	Bury Alexander	1558.2006	6253

TITLE OF INVENTION: Wine Case

APPL. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	SMALL	\$520	\$0.00	\$0.00	\$520	07/01/2025

EXAMINER	ART UNIT	CLASS SUBCLASS
BIRDWELL, AMANHA KAY	2941	D06-43(SM)

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

2. For printing on the patent front page, list

(1) The names of up to 3 registered patent attorneys or agents OR, alternatively,

(2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 **Hartman Titus PLC**

2 **Joseph W Mott**

3 _____

☐ Change of correspondence address (or Change of Correspondence Address form PTO/AIA/122 or PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/AIA/47 or PTO/SB/47, Rev. 03-02 or more recent) attached. Use of a **Customer Number** is required.

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document must have been previously recorded, or filed for recordation, as set forth in 37 CFR 3.11 and 37 CFR 3.81(a). Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. Fees submitted: ☒ Issue Fee ☐ Publication Fee (if required)

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☐ The Office is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment to Deposit Account No. _____

5. Change in Entity Status (from status indicated above)

☐ Applicant certifying micro entity status. See 37 CFR 1.29

☐ Applicant asserting small entity status. See 37 CFR 1.27

☐ Applicant changing to regular undiscounted fee status.

NOTE: Absent a valid certification of Micro Entity Status (see forms PTO/SB/15A and 15B), issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment.

NOTE: If the application was previously under micro entity status, checking this box will be taken to be a declaration of loss of entitlement to micro entity status.

NOTE: Checking this box will be taken to be a declaration of loss of entitlement to small or micro entity status, as applicable.

NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature **/Josephmott/**

Date **2025-05-14**

Typed or printed name **Joseph W Mott**

Registration No. **35621**



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NOTICE OF ALLOWANCE AND FEE(S) DUE

62254 7590 04/02/2025
HARTMAN TITUS PLC
Two North Central Ave
Suite 1800
PHOENIX, AZ 85004

EXAMINER

BIRDWELL, AMANDA KAY

ART UNIT

PAPER NUMBER

2931

DATE MAILED: 04/02/2025

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/895,014	06/15/2023	Barry Alexander	1558.2006	6253

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nonprovisional	SMALL	\$520	\$0.00	\$0.00	\$520	07/02/2025

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the ENTITY STATUS shown above. If the ENTITY STATUS is shown as SMALL or MICRO, verify whether entitlement to that entity status still applies.

If the ENTITY STATUS is the same as shown above, pay the TOTAL FEE(S) DUE shown above.

If the ENTITY STATUS is changed from that shown above, on PART B - FEE(S) TRANSMITTAL, complete section number 5 titled "Change in Entity Status (from status indicated above)".

For purposes of this notice, small entity fees are 40% the amount of undiscounted fees, and micro entity fees are 20% the amount of undiscounted fees.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Maintenance fees are due in utility patents issuing on applications filed on or after Dec. 12, 1980. It is patentee's responsibility to ensure timely payment of maintenance fees when due. More information is available at www.uspto.gov/PatentMaintenanceFees.

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(Typed or printed name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/895,014	06/15/2023	Barry Alexander	1558.2006	6253

TITLE OF INVENTION: Wine Case

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nonprovisional	SMALL	\$520	\$0.00	\$0.00	\$520	07/02/2025

EXAMINER	ART UNIT	CLASS-SUBCLASS
BIRDWELL, AMANDA KAY	2931	D09-432000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

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☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment to Deposit Account No. _____

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Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/895,014	06/15/2023	Barry Alexander	1558.2006	6253
62254	7590	04/02/2025	EXAMINER	
HARTMAN TITUS PLC			BIRDWELL, AMANDA KAY	
Two North Central Ave			ART UNIT	
Suite 1800			PAPER NUMBER	
PHOENIX, AZ 85004			2931	

DATE MAILED: 04/02/2025

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (Applications filed on or after May 29, 2000)

The Office has discontinued providing a Patent Term Adjustment (PTA) calculation with the Notice of Allowance.

Section 1(h)(2) of the AIA Technical Corrections Act amended 35 U.S.C. 154(b)(3)(B)(i) to eliminate the requirement that the Office provide a patent term adjustment determination with the notice of allowance. See Revisions to Patent Term Adjustment, 78 Fed. Reg. 19416, 19417 (Apr. 1, 2013). Therefore, the Office is no longer providing an initial patent term adjustment determination with the notice of allowance. The Office will continue to provide a patent term adjustment determination with the Issue Notification Letter that is mailed to applicant approximately three weeks prior to the issue date of the patent, and will include the patent term adjustment on the patent. Any request for reconsideration of the patent term adjustment determination (or reinstatement of patent term adjustment) should follow the process outlined in 37 CFR 1.705.

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

OMB Clearance and PRA Burden Statement for PTOL-85 Part B

The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to obtain Office of Management and Budget approval before requesting most types of information from the public. When OMB approves an agency request to collect information from the public, OMB (i) provides a valid OMB Control Number and expiration date for the agency to display on the instrument that will be used to collect the information and (ii) requires the agency to inform the public about the OMB Control Number's legal significance in accordance with 5 CFR 1320.5(b).

The information collected by PTOL-85 Part B is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. The United States Patent and Trademark Office (USPTO) collects the information in this record under authority of 35 U.S.C. 2. The USPTO's system of records is used to manage all applicant and owner information including name, citizenship, residence, post office address, and other information with respect to inventors and their legal representatives pertaining to the applicant's/owner's activities in connection with the invention for which a patent is sought or has been granted. The applicable Privacy Act System of Records Notice for the information collected in this form is COMMERCE/PAT-TM-7 Patent Application Files, available in the Federal Register at 78 FR 19243 (March 29, 2013).

<https://www.govinfo.gov/content/pkg/FR-2013-03-29/pdf/2013-07341.pdf>

Routine uses of the information in this record may include disclosure to:

- 1) law enforcement, in the event that the system of records indicates a violation or potential violation of law;
- 2) a federal, state, local, or international agency, in response to its request;
- 3) a contractor of the USPTO having need for the information in order to perform a contract;
- 4) the Department of Justice for determination of whether the Freedom of Information Act (FOIA) requires disclosure of the record;
- 5) a Member of Congress submitting a request involving an individual to whom the record pertains, when the individual has requested the Member's assistance with respect to the subject matter of the record;
- 6) a court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel in the course of settlement negotiations;
- 7) the Administrator, General Services Administration (GSA), or their designee, during an inspection of records conducted by GSA under authority of 44 U.S.C. 2904 and 2906, in accordance with the GSA regulations and any other relevant (i.e., GSA or Commerce) directive, where such disclosure shall not be used to make determinations about individuals;
- 8) another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c));
- 9) the Office of Personnel Management (OPM) for personnel research purposes; and
- 10) the Office of Management and Budget (OMB) for legislative coordination and clearance.

If you do not furnish the information requested on this form, the USPTO may not be able to process and/or examine your submission, which may result in termination of proceedings, abandonment of the application, and/or expiration of the patent.

Notice of Allowability For A Design Application	Application No. 29/895,014	Applicant(s) Alexander, Barry	
	Examiner AMANDA K BIRDWELL	Art Unit 2931	AIA (FITF) Status Yes

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308. This notice does not set or reset the time period for paying the issue fee. The issue fee must be paid within THREE MONTHS FROM THE MAILING DATE of the Notice of Allowance (PTOL-85) or this application shall be regarded as ABANDONED. This statutory period cannot be extended. See 35 U.S.C.151.

1. ☒ This communication is responsive to The Amendment of 10/25/2024 .
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____ .
2. ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____ the restriction requirement and election have been incorporated into this action.
3. ☒ The claim is allowed.
4. ☒ Acceptable drawings:
 (a) ☒ The drawings filed on 10/25/2024 are accepted by the Examiner.
 (b) ☐ Drawing Figures filed on ____ and drawing Figures filed on ____ are accepted by the Examiner.
5. ☐ The claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f) is acknowledged.

Certified copies:

- a) ☐ All b) ☐ Some *c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____ .
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: ____ .

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirement for corrected drawings noted in item 6 below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.** See 37 CFR 1.85(c). **NOTE: This notice does not set or reset the time period for paying the issue fee.**

6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____ .

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

Attachment(s)

- | | |
|---|---|
| 1. ☐ Notice of References Cited (PTO-892) | 4. ☒ Examiner's Amendment/Comment |
| 2. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Receipt Date ____ | 5. ☐ Examiner's Statement of Reasons for Allowance |
| 3. ☐ Interview Summary (PTO-413),
Paper No./Mail Date ____ | 6. ☐ Other ____ . |

NOTE: See Continuation Sheet

/A.K.B./
Examiner, Art Unit 2931

/VY N KOENIG/
Primary Examiner, Art Unit 2938

Continuation of Note 1: Applicant's amended Specification and Replacement Drawing Sheets overcome the objection and rejection in the previous action.

Notice of Pre-AIA or AIA Status

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

Applicant's Response

Acknowledgement is here made of the Applicant's Remarks and Amendment of 10/25/2024. The merits of the application have been carefully reconsidered in view of the Remarks and Amendment of 10/25/2024.

Applicant's Response to Specification Objections

Applicant has addressed all issues raised by the Examiner's Objections to the Specification. Therefore, Applicant's amendment of 10/25/2024 has overcome the objections.

Applicant's Response to Claim Objections

Applicant has addressed all issues raised by the Examiner's Objections to the Claim. Therefore, Applicant's amendment of 10/25/2024 has overcome the objections.

Applicant's Response to Drawing Objections

Applicant has addressed all issues raised by the Examiner's Objections to the Drawings. Therefore, Applicant's amendment of 10/25/2024 has overcome the objections.

Applicant's Response to Claim Rejection – 35 U.S.C. 112 (a) and (b)

The Replacement Drawings and Specification provided by the Applicant have been carefully examined and are found to address all concerns raised in the previous action. Therefore, Applicant's Remarks and Amendment of 10/25/2024 overcome the rejection under 35 U.S.C. 112 (a) and (b), set forth in the previous action.

Applicant's Response to Claim Rejection – 35 U.S.C. 103 – Agar (+ Reynolds + Wong)

The remarks and arguments presented by the Applicant have been carefully considered and are found persuasive. Upon review, the Examiner has found that it would not necessarily have been obvious to a designer of ordinary skill in the art to modify the primary reference using qualities or features shown in the supporting references. Therefore, Applicant's remarks of 10/25/2024 overcome the rejection under 35 U.S.C. 102(a)(1), set forth in the previous action. Please see *Examiner's Comments on Applicant's Remarks* below.

Examiner's Comments on Applicant's Remarks

The Applicant states:

"The examiner has rejected the claim as obvious over US 1481333 (Agar) in view of US 2004/0262186 (Reynolds). Without expressly stating so, the examiner applied the standard Rosen-Durling test to find obviousness, selecting Agar as the primary reference and Reynolds and Wong as the secondary references."

"In its analysis of obviousness in this case, the Office Action does not apply the proper test."

As stated by the Applicant, the previously issued Rejection was arrived at utilizing the Rosen-Durling test for obviousness, which was the standard as of 04/25/2024 (mailing date). The procedures and guidance that were developed following the LKQ decision were not available at the time that the prior action was issued.

However, the primary reference (Agar) and the supporting references (Reynolds and Wong) are considered by the Examiner to qualify as analogous art (that being partitioned container systems), are utilized in the same field of endeavor (that being safely storing and transporting a plurality of objects), and finally, are visually similar to the claimed design. These references meet the updated standards instituted following the LKQ decision.

Art Unit: 2931

The Applicant states:

“The examiner’s argument that “the applied references are so related that the appearance of features shown in one would suggest the application of those features to the others” [OA at 7], parroting the words of the now-defunct Durling test, does not articulate a motive to combine the references. Therefore, a prima facie case of obviousness is not presented.”

Upon review, the Examiner has found that it would not necessarily have been obvious to a designer of ordinary skill in the art to modify the primary reference (Agar) using qualities or features shown in the supporting references (Reynolds and Wong).

The Applicant states:

“Even if the examiner were to re-cast the rejection under the proper test, applicant submits that under the LKQ Corp. test (or, for that matter, the Rosen-Durling test), Reynolds is not a proper secondary reference in the obviousness inquiry because it is not analogous art.”

“Reynolds is not in the same field of endeavor as either the claimed design or the Agar or Wong references. These are, respectively, a wine box and a corrugated fiber box with partition cells. Reynolds is entirely different.”

“Plainly, the design of a temporary holder for items in an intermediate step in a manufacturing process is not in the same field of endeavor as the design of partitioned boxes for shipping goods such as bottles. Indeed, the only evident relationship between Reynolds and the claimed design is that Reynolds “looks like” a partitioned box and has roughly the same proportions as the claimed design. Relying on that similarity would constitute impermissible hindsight reconstruction.”

Art Unit: 2931

As stated above, when compared to the claimed design, Reynolds qualifies as analogous art (that being partitioned container systems), is utilized in the same field of endeavor (that being safely storing and transporting a plurality of objects), and finally, is visually similar.

The full title of the Reynolds reference is for a “Blister Package Storage and Dispensing Container and Method”, and is described as “an apparatus and method for inexpensively storing a quantity of packages awaiting transfer to a manufacturing process station includes a dispenser for quickly removing the packages from the container and directly into a secondary receptacle while is particularly adapted for feeding the packages to the process station.”

It is plainly stated in the description that Reynolds is designed to inexpensively store a quantity of packages awaiting transfer. The “dispenser” referenced in the description is simply a circular hole at the bottom of each cell, through which a rod (a separate component from the primary container) is inserted to facilitate removal of the objects within. The examiner submits that these circular holes constitute extra features, and do not obscure the container’s underlying configuration, nor do they negate Reynolds’ primary function as a storage container.

The Applicant frames Reynolds as having been designed to “move [items] between sequential process stations”, implying a higher level of technological or mechanical involvement. However, the article itself is simply a compartmented storage container, analogous to the claimed design.

When comparing Reynolds and the claimed design, both are compartmented rectangular containers with closure flaps, containing 12 four-sided vertically-oriented compartments designed to store and separate a plurality of objects, providing protection during transit from one location to another. As Reynolds provides storage and protection for a plurality of objects in between stations in a factory setting, the claimed design provides storage and protection for a plurality of wine bottles between various stations in their journey from the manufacturer to the consumer. The reference meets the updated standards instituted following the LKQ decision.

Conclusion

The claimed design is patentable over the references cited.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMANDA KAY BIRDWELL whose telephone number is (571)272-9125. The examiner can normally be reached Mon-Fri 8:30-5.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rich Edgar, can be reached at (571)272-4816. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of published or unpublished applications may be obtained from Patent Center. Unpublished application information in Patent Center is available to registered users. To file and manage patent submissions in Patent Center, visit: <https://patentcenter.uspto.gov>. Visit <https://www.uspto.gov/patents/apply/patent-center> for more information about Patent Center and <https://www.uspto.gov/patents/docx> for information about filing in DOCX format. For additional questions, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A.K.B./
Examiner, Art Unit 2931

/VY N KOENIG/
Primary Examiner, Art Unit 2938

Amendments to the Specification

Please amend the specification as follows.

A clean copy of the amended specification follows here, followed by a copy of the original specification marked to show changes. The amendments re-number the drawing figures as a consequence of election of a single embodiment. No new matter has been added.

I, Barry Alexander, the inventor identified in the accompanying declaration have invented a design for a WINE CASE.

A description of the Figures of the drawing is as follows:

Fig. 1 is a front perspective view of a wine case;

Fig. 2 is a bottom perspective view thereof;

Fig. 3 is a top view thereof;

Fig. 4 is a bottom view thereof;

Fig. 5 is a left-side view thereof;

Fig. 6 is a front view thereof;

Fig. 7 is a rear view thereof; and

Fig. 8 is a front perspective view thereof, shown with the top flaps closed.

The broken lines showing bottles in Figs. 1 and 3 represent environmental structure. All other broken lines represent the bounds of the claim. The broken lines form no part of the claimed design.

Original specification marked to show changes.

I, Barry Alexander, the inventor identified in the accompanying declaration have invented a design for a WINE CASE.

A description of the Figures of the drawing is as follows:

~~Fig. 1 is a top perspective view of a wine case showing an embodiment of my new design;~~

~~Fig. 2 is a bottom perspective view of the wine case shown in Fig. 1;~~

~~Fig. 3 is a top view of the wine case shown in Fig. 1;~~

~~Fig. 4 is a bottom view of the wine case shown in Fig. 1;~~

~~Fig. 5 is a right side view of the wine case shown in Fig. 1;~~

~~Fig. 6 is a front view of the wine case shown in Fig. 1;~~

~~Fig. 7 is a front perspective view of the wine case shown in Fig. 1;~~

~~Fig. 8 is an exploded perspective view of the wine case shown in Fig. 1;~~

~~Fig. 9 is a front perspective view of the wine case shown in Fig. 1 with the top flaps closed;~~

~~Fig. 10 is a front perspective view of an alternative embodiment of my new design;~~

~~Fig. 11 is a bottom perspective view of the wine case shown in Fig. 10;~~

~~Fig. 12 is a top view of the wine case shown in Fig. 10;~~

~~Fig. 13 is a bottom view of the wine case shown in Fig. 10;~~

~~Fig. 14 is a right side view of the wine case shown in Fig. 10;~~

~~Fig. 15 is a rear view of the wine case shown in Fig. 10;~~

~~Fig. 16 is a front view of the wine case shown in Fig. 10~~

~~Fig. 17 is a front perspective view of the wine case shown in Fig. 10 with the top flaps closed;~~

~~Fig. 18 is a front perspective view of another alternative embodiment of my new design;~~

~~Fig. 19 is a bottom perspective view of the wine case shown in Fig. 18;~~

~~Fig. 20 is a top view of the wine case shown in Fig. 18;~~

~~Fig. 21 is a bottom view of the wine case shown in Fig. 18;~~

~~Fig. 22 is a right side view of the wine case shown in Fig. 18;~~

~~Fig. 23 is a left side view of the wine case shown in Fig. 18;~~

~~Fig. 24 is a front view of the wine case shown in Fig. 18;~~

~~Fig. 25 is a front perspective view of the wine case shown in Fig. 18 with the top flaps closed;~~

~~Fig. 26 is a front perspective view of another alternative embodiment of my new design;~~

~~Fig. 27 is a bottom perspective view of the wine case shown in Fig. 26;~~

~~Fig. 28 is a top view of the wine case shown in Fig. 26;~~

~~Fig. 29 is a bottom view of the wine case shown in Fig. 26;~~

~~Fig. 30 is a left side view of the wine case shown in Fig. 26;~~

~~Fig. 31 is a rear view of the wine case shown in Fig. 26;~~

~~Fig. 32 is a front view of the wine case shown in Fig. 26;~~

~~Fig. 33 is a front perspective view of the wine case shown in Fig. 26 with the top flaps closed;~~

~~Fig. 34 is a front perspective view of another alternative embodiment of my new design;~~

~~Fig. 35 is a bottom perspective view of the wine case shown in Fig. 34;~~

~~Fig. 36 is a top view of the wine case shown in Fig. 34;~~

~~Fig. 37 is a bottom view of the wine case shown in Fig. 34;~~

~~Fig. 38 is a right side view of the wine case shown in Fig. 34;~~

~~Fig. 39 is a left side view of the wine case shown in Fig. 34;~~
~~Fig. 40 is a front view of the wine case shown in Fig. 34; and~~
~~Fig. 41 is a front perspective view of the wine case shown in Fig. 34 with the top flaps closed~~
~~The broken lines form no part of the invention~~

Fig. 1 is a front perspective view of a wine case;
Fig. 2 is a bottom perspective view thereof;
Fig. 3 is a top view thereof;
Fig. 4 is a bottom view thereof;
Fig. 5 is a left-side view thereof;
Fig. 6 is a front view thereof;
Fig. 7 is a rear view thereof; and
Fig. 8 is a front perspective view thereof, shown with the top flaps closed.

The broken lines showing bottles in Figs. 1 and 3 represent environmental structure. All other broken lines represent the bounds of the claim. The broken lines form no part of the claimed design.

Amendments to the Drawings

Attached to this response are 8 Replacement Sheets containing Figures 1-8. These figures were formerly Figures 26-33 in the original application and depict the elected embodiment after a restriction requirement. They have been renumbered to reflect that they are the only figures in the present application. No new matter has been added by changing the numbering.

Figures 1-25 and 34-41 in the original application have been cancelled.

Figure 1 (formerly Figure 26) has been amended to delete a stray line in the front right corner of the box to make it consistent with Figure 3 (formerly Figure 28), as recommended by the examiner.

Figure 2 (formerly Figure 27) has been amended to delete a stray line at the corner of the box top to make it consistent with Figure 5 (formerly Figure 30), as recommended by the examiner.

Figure 3 (formerly Figure 28) has been amended to remove the gray shading around the bottles and insert a broken line boundary indicating unclaimed subject matter in its stead, as recommended by the examiner. This amendment is supported by original Figure 26.

Figure 5 (formerly Figure 30) has been amended to match the width dimension of the top to the width dimension of the box, as recommended by the examiner. This amendment is supported by original Figures 26-28.

Figure 8 (formerly Figure 33) has been amended to depict the small portion of the top as outside the box when it is closed, and to show the right edge of the top flap. flap in the same position as the top flap in Figure 3. This amendment is supported by original Figures 26, 28 and 30.

Remarks/Arguments

As a consequence of a restriction requirement by the examiner, this application describes and claims one of the embodiments of the original application. The applicant's election of a specific embodiment has necessitated a re-numbering of the figures and minor modifications to the specification and claim.

Objections to Drawings and Specification.

The examiner has objected to the numbering of both the drawings and the figure descriptions, and certain aspects of the figure descriptions. Applicant has amended the numbering and language of the descriptions in accordance with the recommendations provided by the examiner, which are gratefully acknowledged.

Rejection for Indefiniteness.

The examiner has rejected the claim as indefinite and non-enabling because of certain shading on Figure 28 (now Figure 3). New Figure 3 has been revised in accordance with the examiner's recommendation to overcome the rejection. The examiner has rejected the claim as indefinite because the closed flap depictions in Figure 33 (now Figure 8) displayed the smaller portion of the top flap as inserted into the case, which is not possible given that the illustrated side flaps cover the entire width of the box and the width of the top flap in Figure 30 is too long. Amended Figure 8 shows the smaller portion of the top flap outside the box, which is consistent with the dimensions in Figures 3 and 5.

Claim Rejection Under 35 U.S.C. 103

The examiner has rejected the claim as obvious over US 1481333 (Agar) in view of US 2004/0262186 (Reynolds) and US 2001/0040113 (Wong). Without expressly stating so, the examiner applied the standard *Rosen-Durling* test to find obviousness, selecting Agar as the primary reference and Reynolds and Wong as secondary references.

Agar, a 1921 utility patent for a novel box liner, illustrated in part the invention (Figure 1) by showing the liner inside a box that had partition cells. Agar is presented as the *Rosen* reference, with characteristics “basically the same” as the claimed design. [OA at 10]. Reynolds and Wong are evidently the *Durling* references, showing characteristics that may be added to Agar to produce a wine box similar to the claimed design.

In its analysis of obviousness in this case, the Office Action does not apply the proper test. *LKQ Corp. v. GM Global Technology Operations LLC*, 102 F.4th 1280 (Fed. Cir. 2024) expressly overruled the *Rosen-Durling* test and substituted a different test. This was followed immediately by Updated Guidance and Examination Instructions for Making a Determination of Obviousness in Designs in Light of LKQ Corp. v. GM Global Technology Operations LLC from the PTO (“Updated Guidance”). The test is new, and not a mere tweaking of *Rosen-Durling*.

The *LKQ Corp.* standard has its own 2-part test. In the first prong, a primary reference must be an existing article in an analogous art. One of the guidelines for analogous art is the articles are in the same field of endeavor. Although the examiner’s characterization of Agar as “basically the same” as the claimed wine box applies an overruled standard, Agar discloses an existing article that is in the same field of endeavor (container systems that may carry bottles).

The second *LKQ Corp.* prong requires secondary references (here, Reynolds and Wong) that are analogous art. Importantly, the examiner must supply “some record-supported reason (without impermissible hindsight) that an ordinary designer in the field of the article of manufacture would have modified the primary reference with the feature(s)

from the secondary reference(s) to create the same overall appearance as the claimed design.” [Updated Guidance, p.3] The examiner’s argument that “the applied references are so related that the appearance of features shown in one would suggest the application of those features to the others” [OA at 12-13], parroting the words of the now-defunct *Durling* test, does not articulate a motive to combine the references. Therefore, a prima facie case of obviousness is not presented.

Applicant recognizes that the recitation of the wrong standard is not the examiner’s error. The *LKQ Corp.* case upended design patent law after the instant office action was mailed. Nevertheless, the new obviousness test is controlling, and it has not been met.

Even if the examiner were to re-cast the rejection under the proper test, applicant submits that under the *LKQ Corp.* test (or, for that matter, the *Rosen-Durling* test), Reynolds is not a proper secondary reference in the obviousness inquiry because it is not analogous art. The Federal Circuit has not provided substantial guidance on how to identify analogous art: “In this opinion, we do not delineate the full and precise contours of the analogous art test for design patents.” [LKQ Corp., slip op. at 23] Indeed, the only specific guidance is that “[p]rior art designs for the same field of endeavor as the article of manufacture will be analogous.” [Id.]

Reynolds is not in the same field of endeavor as either the claimed design or the Agar or Wong references. These are, respectively, a wine box, a corrugated fiber box with partition cells, and a shipping and display box for bottles. Reynolds is entirely different.

Reynolds discloses a container used to hold a plurality of stacked blister packages and move them between sequential process stations in a manufacturing environment where the blister packages are to be used as the final package for a product (e.g., a contact lens). [Reynolds, para. 7] The container is a lightweight box that has dividing panels that form individual vertical cells to hold stacks of blister packs [Reynolds, para 6]. The bottom of the container has holes, one in the center of each vertical cell. These align with a plurality of push rods in a station in the manufacturing line, which push up through the

holes and move upward, expelling blister packs out the top of the container and transferring them to the next process step. [Reynolds, para. 10]

Plainly, the design of a temporary holder for items in an intermediate step in a manufacturing process is not in the same field of endeavor as the design of partitioned boxes for shipping goods such as bottles. Indeed, the only evident relationship between Reynolds and the claimed design is that Reynolds “looks like” a partitioned box and has roughly the same proportions as the claimed design. Relying on that similarity would constitute impermissible hindsight reconstruction.

Of course, the “analogous art” test is not restricted to the same field of endeavor. A reference may be analogous for purposes of obviousness analysis where there is “some record-supported reason (without impermissible hindsight) that an ordinary designer in the field of the article of manufacture would have modified the primary reference with the feature(s) from the secondary reference(s) to create the same overall appearance as the claimed design.” The examiner has not provided such a reason, and applicant submits that no such reason is plausible.

In the absence of the Reynolds reference, the combination of the examiner’s remaining references does not disclose all of the ornamental aspects of the claimed design.

Conclusion

Applicant has rectified the indefiniteness of the drawings, removed unelected and superfluous elements remaining from the parent application, and revised the claim and the descriptions of the drawings to be consistent and accurate. Applicant has shown that the examiner’s analysis of the prior art under the *Rosen-Durling* test has not made out a prima facie case for obviousness under current law. Further, applicant has shown that the examiner’s references would fail to make out a prima facie case for obviousness under the new *LKQ Corp.* standards.

Accordingly, in view of the above remarks it is submitted that the claim is allowable and that all the rejections and objections have been overcome. Reconsideration and reexamination of the application is requested. Based on the foregoing, Applicant respectfully requests that the pending claim be allowed, and that a timely Notice of Allowance be issued in this case. If the examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

Respectfully submitted,

Barry Alexander

Date: October 25, 2024

By:

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Hartman Titus PLC
2 North Central Ave., Suite 1800
Phoenix, AZ 85004
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REPLACEMENT SHEET

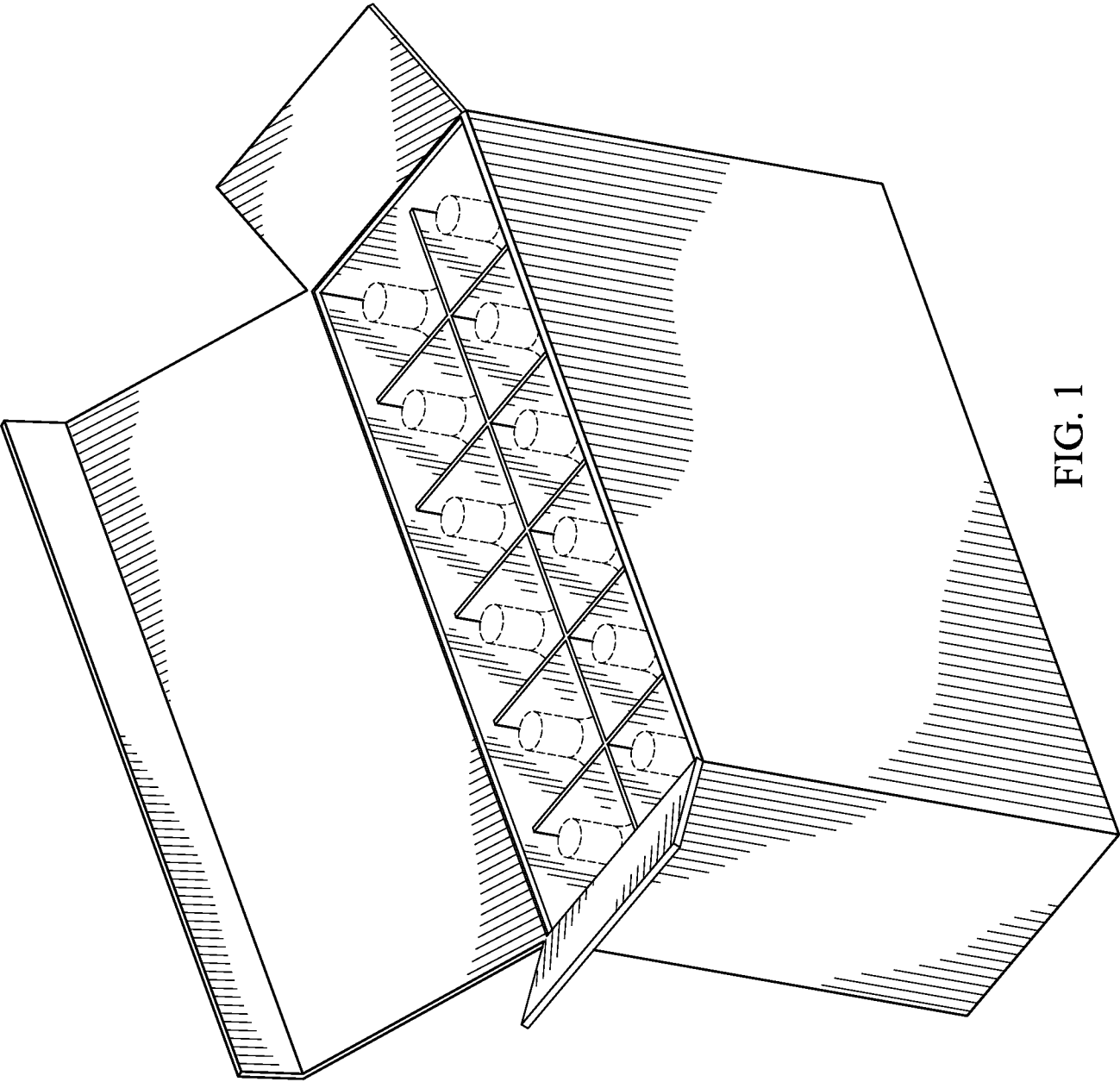


FIG. 1

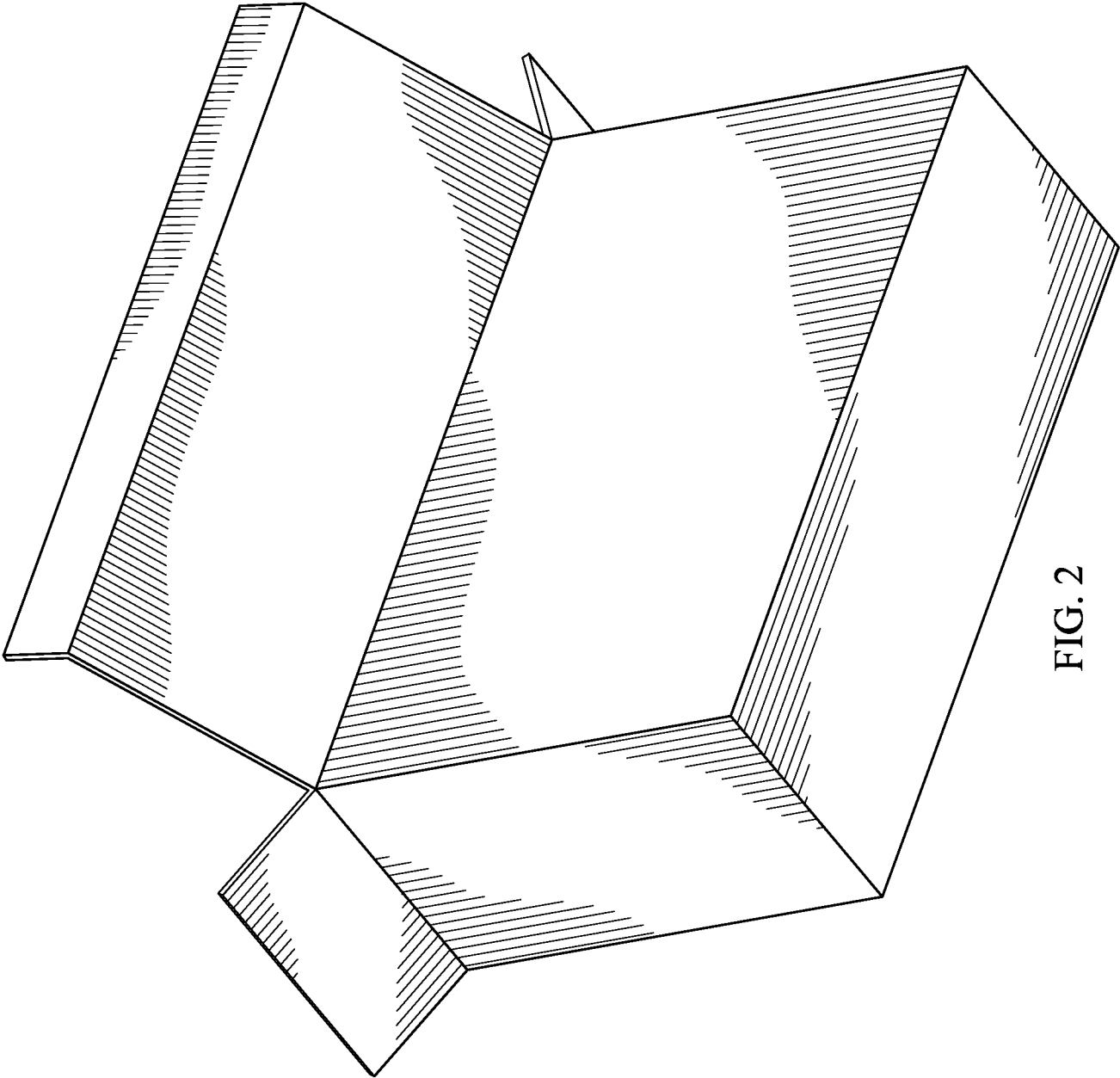


FIG. 2

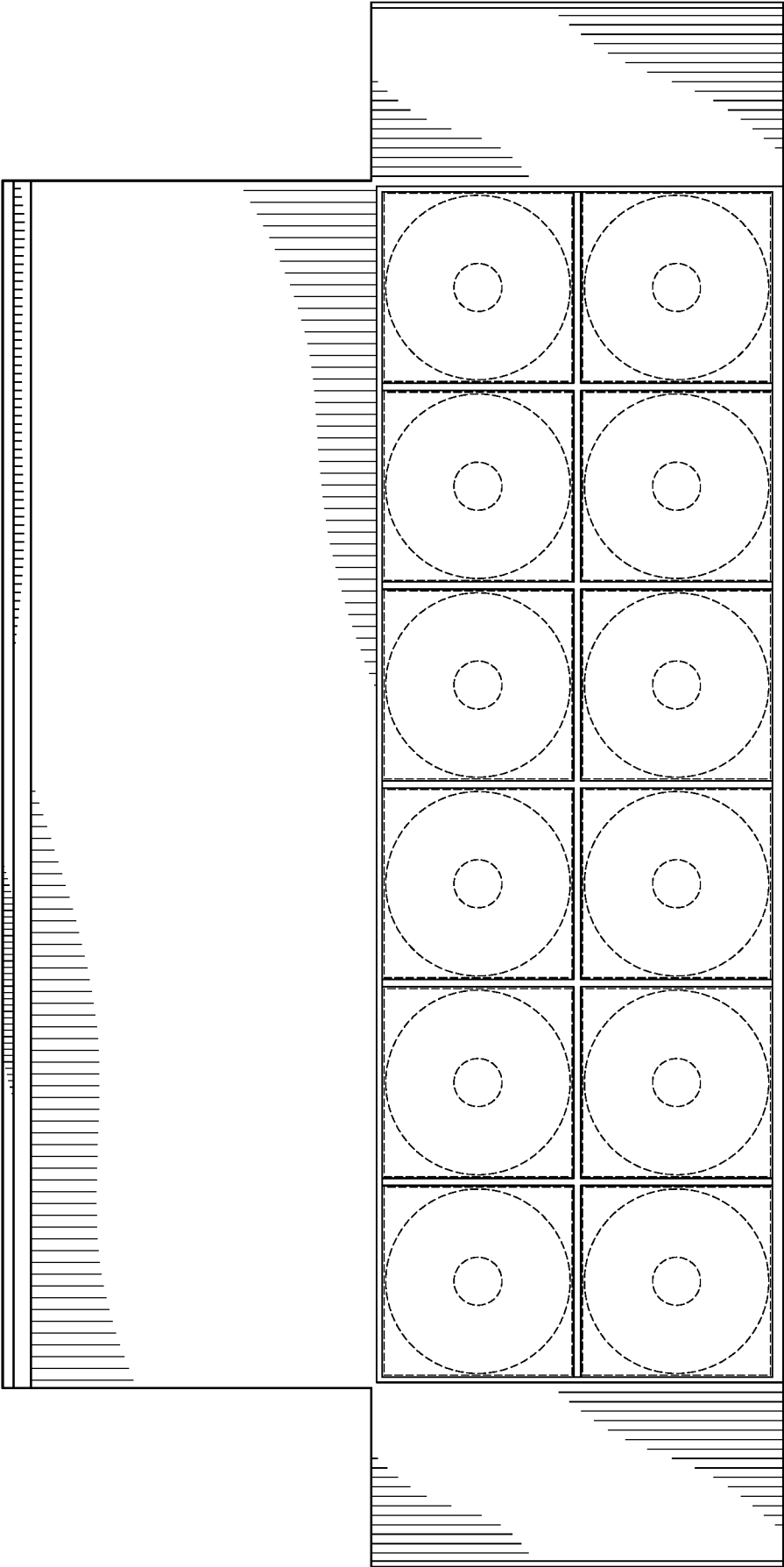


FIG. 3

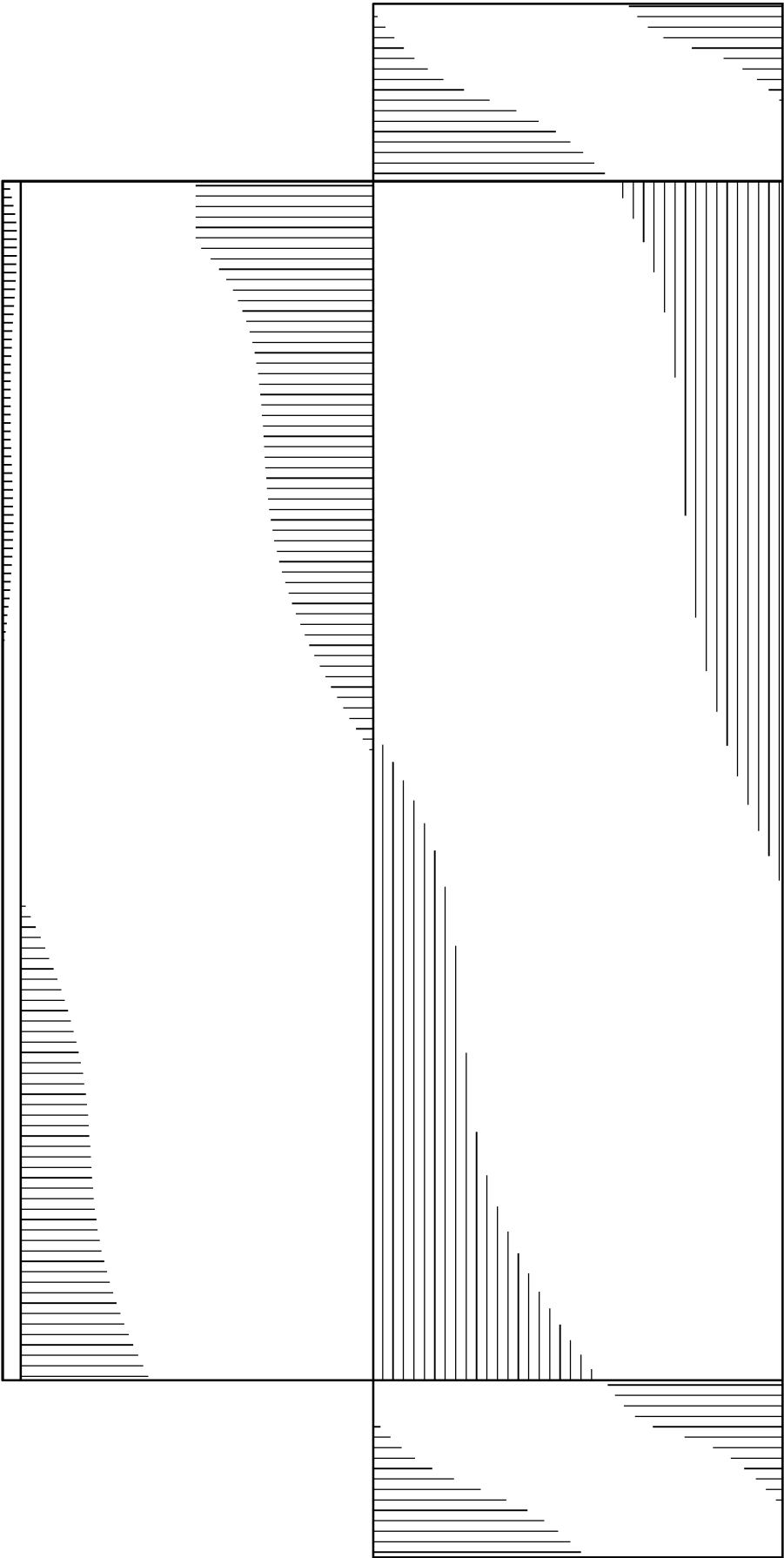


FIG. 4

REPLACEMENT SHEET

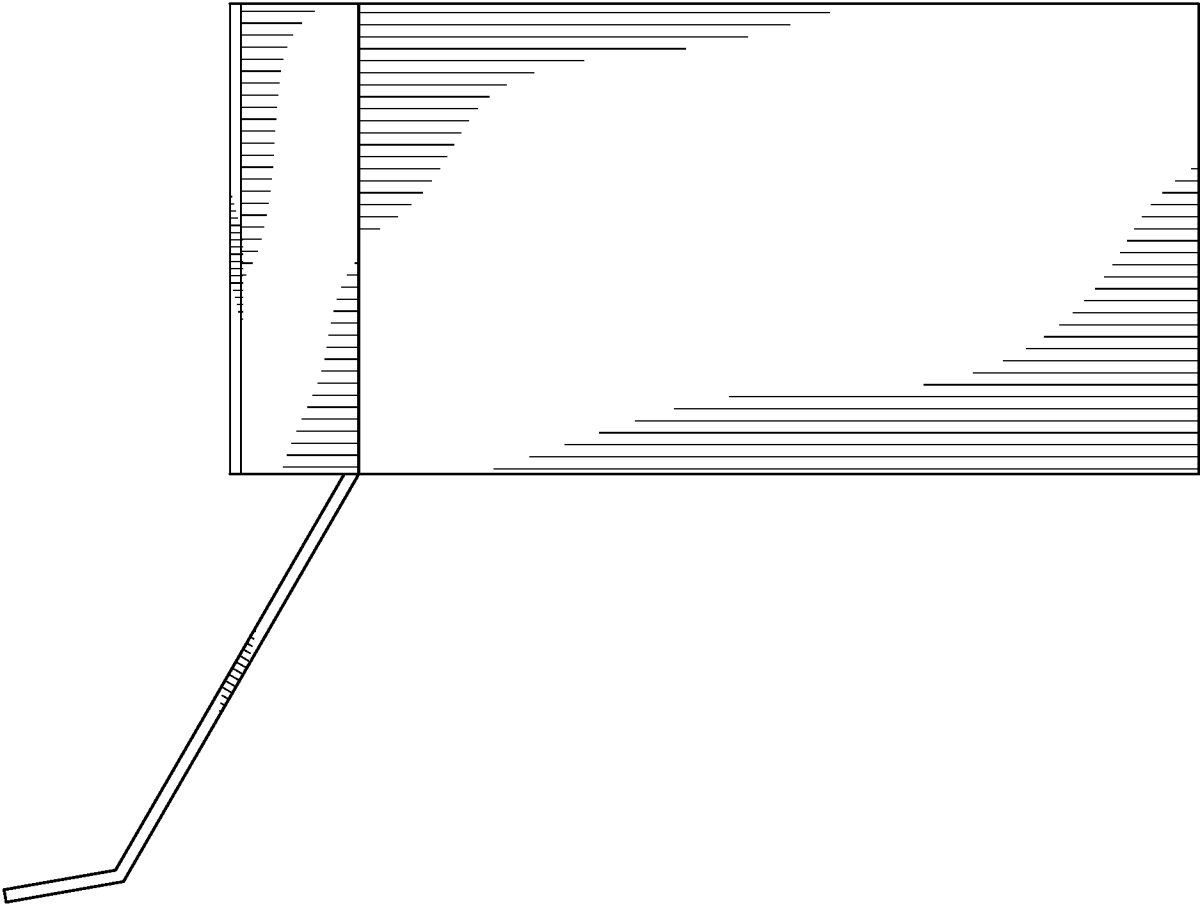


FIG. 5

REPLACEMENT SHEET

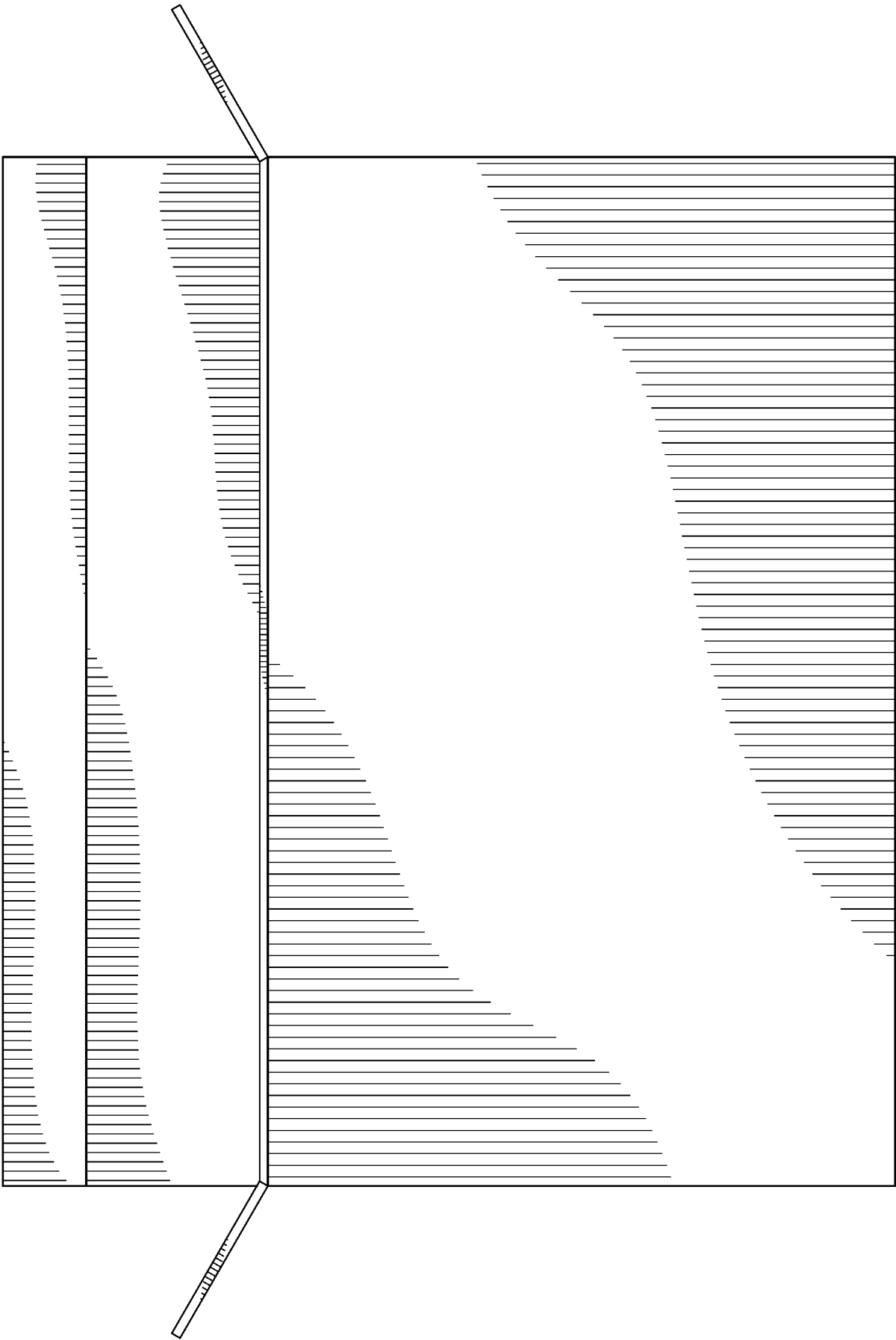


FIG. 6

REPLACEMENT SHEET



FIG. 7

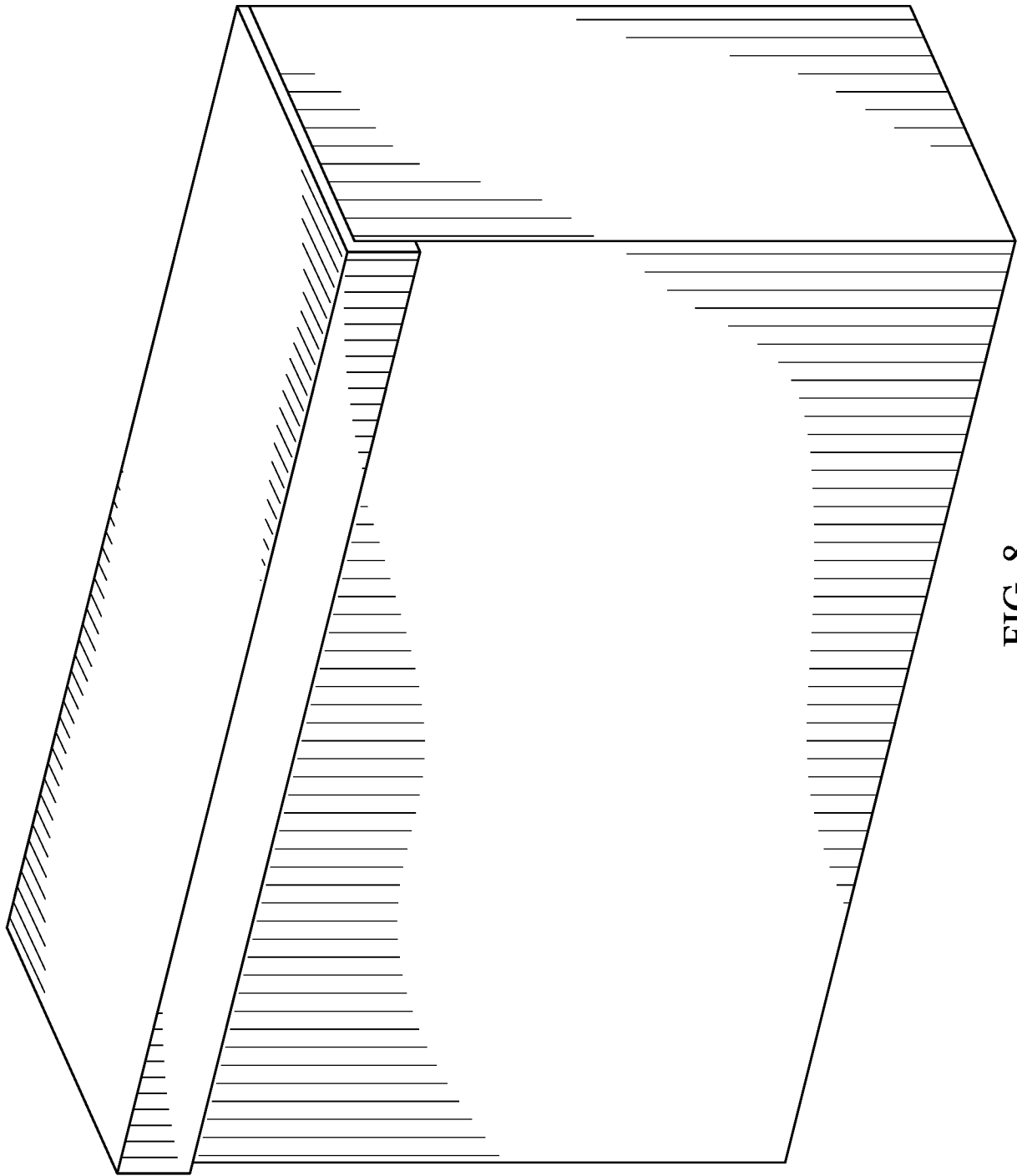


FIG. 8

Listing of Claims (amended)

The ornamental design for a wine case, as shown and described.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Alexander, Barry Attorney Docket No.: 1558.2006
Application No.: 29895014 Group Art Unit: 2931
Filed: June 15, 2023 Examiner: Amanda K Birdwell

Title: Wine Case

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action mailed April 25, 2024 ("OA"), Applicant respectfully submits the following:

Amendments to the claim begin on page 2 of this response.

Amendments to the drawings begin on page 3 of this response.

Amendments to the specification begin on page 4 of this response.

Remarks/Arguments begin on page 9 of this response.

Replacement Sheets for drawings accompany this response.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/895,014	06/15/2023	Barry Alexander	1558.2006	6253
62254	7590	04/25/2024		
HARTMAN TITUS PLC Two North Central Ave Suite 1800 PHOENIX, AZ 85004			EXAMINER BIRDWELL, AMANDA KAY	
			ART UNIT	PAPER NUMBER
			2931	
			NOTIFICATION DATE	DELIVERY MODE
			04/25/2024	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

BHARTMAN@HARTMANTITUS.COM
DOCKET@HARTMANTITUS.COM
JTITUS@HARTMANTITUS.COM

Notice of Pre-AIA or AIA Status

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

Preliminary Amendment

Applicant's preliminary amendment submitted with the original papers on 06/15/2023, wherein Applicant cancelled Figs. 1-25 and 34-41 and their corresponding descriptions, is acknowledged and considered part of the original disclosure. See MPEP 608.04(b) and 37 CFR 1.115.

Objections to the Specification

In view of the preliminary amendment, the figure descriptions for Figs. 26-33 must be renumbered as Figs. 1-8, respectively.

The description for current Fig. 26 (to be renumbered Fig. 1) is objectionable because it is inaccurate and unclear. As a result of the preliminary amendment, there is now only a single design in the application, so any reference to embodiments in the figure descriptions is unnecessary. Therefore, for the purpose of clearly describing what is shown in the drawings (see MPEP 1503.01(II)), and to avoid confusion as to whether other embodiments exist in the present application, the figure description must be amended to cancel all language referring to embodiments.

The figure descriptions for current Figs. 31-32 (to be renumbered Figs. 6 and 7, respectively) do not accurately describe the views. Specifically, the descriptions appear to be reversed, based on the views shown in Figs. 26 and 33, both of which refer to a **front** perspective view.

In view of the preliminary amendment, the *semicolon* punctuation at the end of the description for Fig. 33 must be replaced with a *period* punctuation.

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Therefore, for clarity, accuracy and brevity, the figure descriptions for Figs. 26-33 must be amended as follows:

- **Fig. 1 is a front perspective view of a wine case;**
- Fig. 2 is a bottom perspective view thereof;**
- Fig. 3 is a top view thereof;**
- Fig. 4 is a bottom view thereof;**
- Fig. 5 is a left-side view thereof;**
- Fig. 6 is a front view thereof;**
- Fig. 7 is a rear view thereof; and**
- Fig. 8 is a front perspective view thereof, shown with the top flaps closed. --**

The broken line description is objectionable because it does not explicitly state what the various broken lines represent in the drawings. While the broken lines are stated to "form no part of the invention", their meaning must also be described.

Broken lines are most commonly used for two purposes: 1) to disclose the environment related to the claimed design, or 2) to define the bounds of the claim (MPEP 1503.02 (III)).

1. The term environment includes *portions of the design* and *environmental structure*.

While *portions* are descriptive of actual parts of the article of manufacture (designated by the title of the design), *environmental structure* is descriptive of subject matter beyond the article embodying the design.

2. Broken lines used as boundaries define unshaded regions and are normally understood to represent claim limitations.

Since broken lines may mean different things in different circumstances, it must be made clear in each design case what they mean, else the claim is bad for indefiniteness.

The broken line description must clarify the relationship of the broken line subject matter to the solid line of the claim in accordance with the requirements set forth in MPEP 1503.02(III).

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It appears that the Applicant's current intent is that they illustrate *environmental structure*. However, further revisions may be necessitated by the 112 Rejection below. See rejection below for details and suggestions.

Objection to the Claim

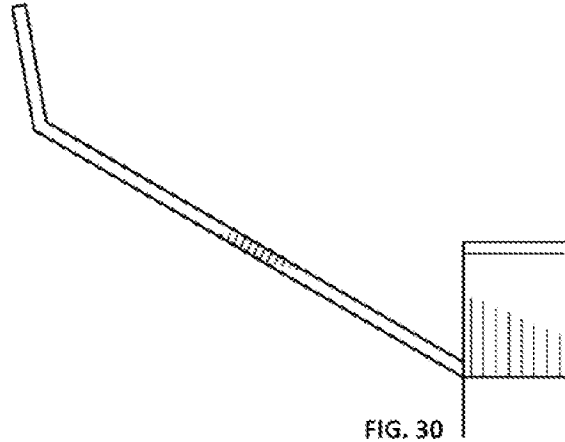
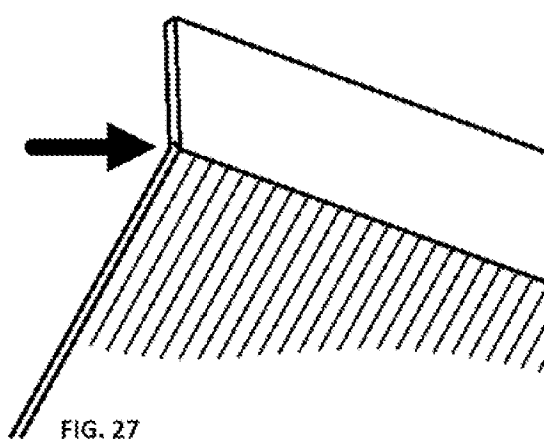
The Claim is objectionable because it is not in proper form. In accordance with 37 CFR 1.153(a), the claim shall be in formal terms to "the ornamental design for the article (specifying name) as shown, or **as shown and described**." Specifically, when the specification includes a proper descriptive statement of the design (see MPEP § 1503.01, subsection II), or a proper showing of modified forms of the design or other descriptive matter has been included in the specification (as is the case in the description for Fig. 33), the words "as shown and described" must be added to the claim. Therefore, the claim must be amended to read:

--What is claimed is: The ornamental design for a wine case, as shown and described.--

Objections to the Drawings

In view of the preliminary amendment, Figs. 26-33 must be renumbered as Figs. 1-8, respectively.

Fig. 27 is objectionable because it shows the appearance of the wine case inconsistently with the other drawings. Specifically, Fig. 27 shows a small score line between the first and second portions of the top flap of the wine case. This score line cannot be corroborated by any of the other drawings. Correction must be made for consistency.



Claim Rejection - 35 U.S.C. 112, (a) and (b)

The claim is rejected under 35 U.S.C. 112, (a) and (b), as the claimed invention is not described in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the same, and fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is indefinite and non-enabling because the precise appearance of the wine case cannot be determined because of the following reasons:

The three-dimensional form of the interior of the wine case cannot be ascertained from the perspective and top plan views. See diagram below, wherein the gray shading represents subject matter that is indefinite and non-enabled.

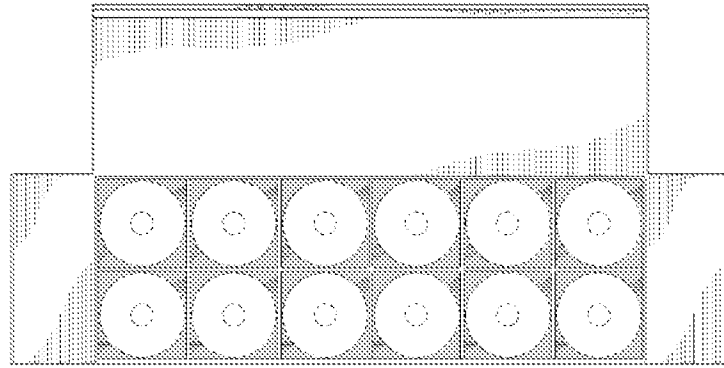


FIG. 28

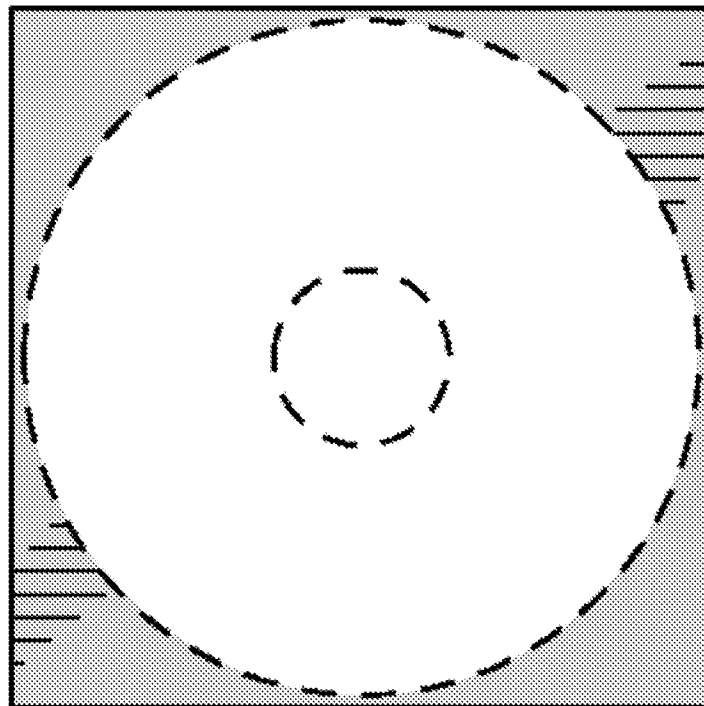


FIG. 28 DETAIL

In response to this Office action, it is suggested that the Applicant overcome this portion of the rejection under 35 USC 112, (a) and (b), by inserting a broken line boundary adjacent to the outermost area shown in grey above, and converting any solid-line subject matter within to broken lines, so that those features form no part of the claimed design. All shading and contour lines must be removed. Inserting this boundary to illustrate unclaimed subject matter will meet the written description requirement of 35 USC 112(a). See proposed example image below, which is solely for purpose of explanation.

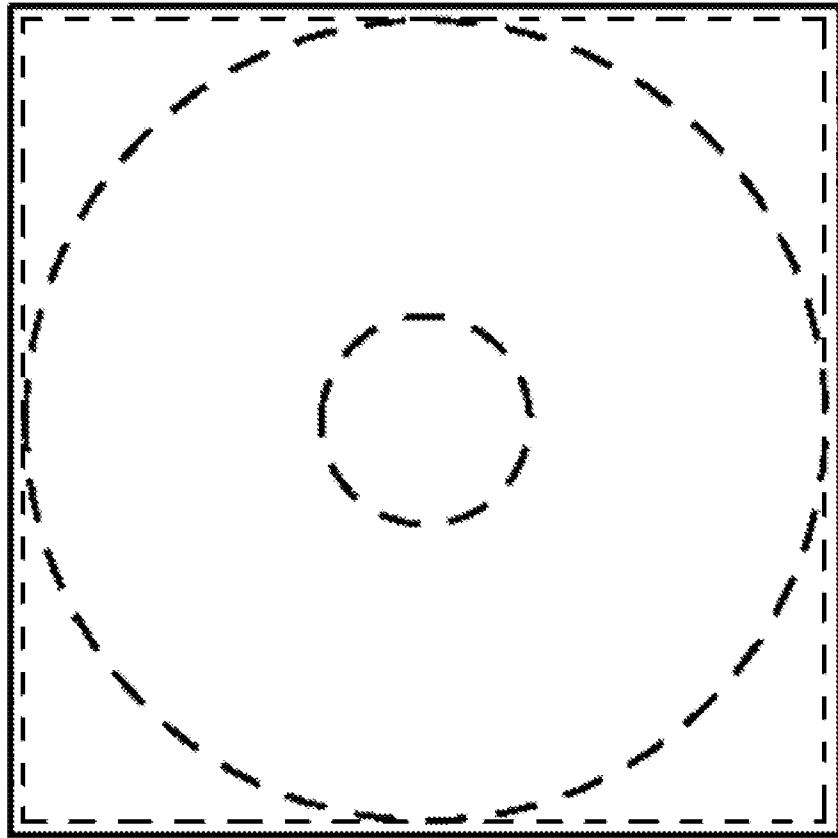


FIG. 28 DETAIL

If the claim is amended as suggested above, the broken line description must also be updated accordingly. The broken lines would represent the *boundaries* of the claim, as well as *environmental structure*. A suggested broken line description would be:

--The broken lines showing bottles in Figs. 1 and 3 represent environmental structure.
All other broken lines represent the bounds of the claim. The broken lines form no part
of the claimed design. --

FIGS. 26, 28 and 33 show the appearance of the wine box inconsistently with each other.
Specifically, Figs. 26 and 33 contain a small line in the corner of the wine case, which is not shown in Fig. 28.

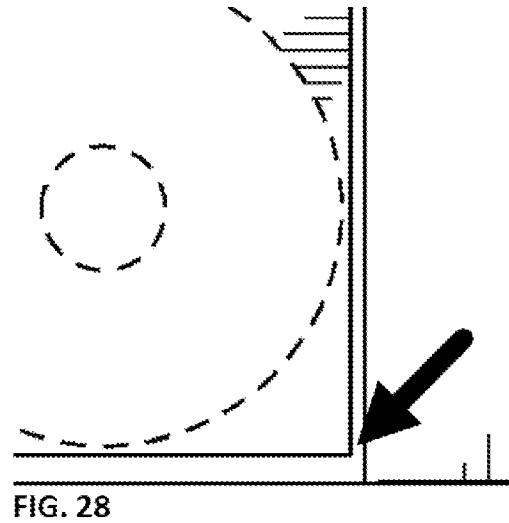
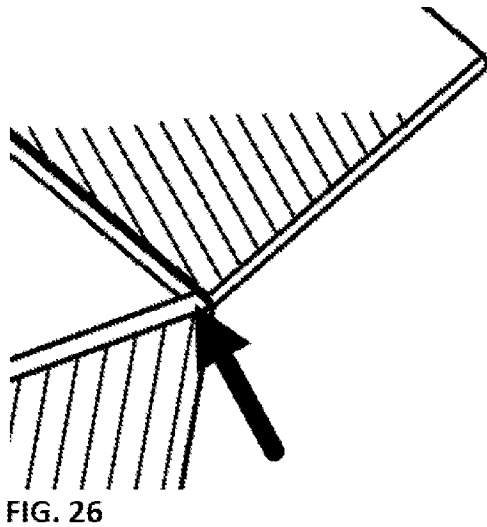


FIG. 33 shows the appearance of the wine box inconsistently with the other drawings.

Specifically, Fig. 33 shows the case tightly sealed, with the smaller portion of the top flap understood to be inserted into the case (Arrow A). The manner of closure shown in Fig. 33 is not achievable when considering the other views. The area marked in grey in Fig. 28 below indicates the approximate placement of the side flaps when folded into the case. As they are an equal width as the case, these side flaps would overlap the front wall of the case (Arrow C). This leaves no space for the smaller portion of the top flap to be inserted into the case, making the tightly closed wine case as shown in Fig. 33 impossible. These side flaps, which run the entire width of the crate, do not even appear to be present in Fig. 33 (Arrow E).

Additionally, given the appreciable thickness of the crate's flaps, the outside edge of the top flap should be visible when the wine crate is closed (Arrow F). See diagrams below.

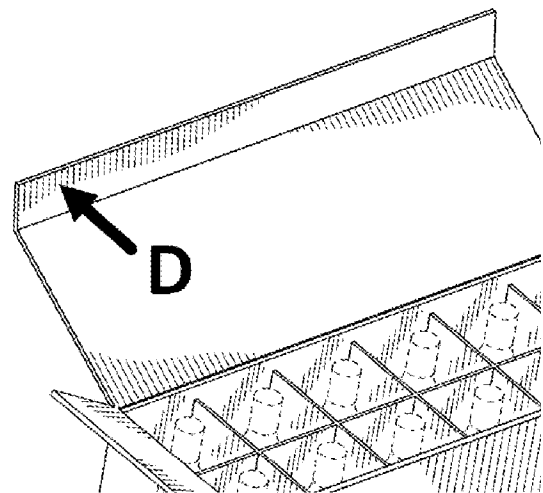
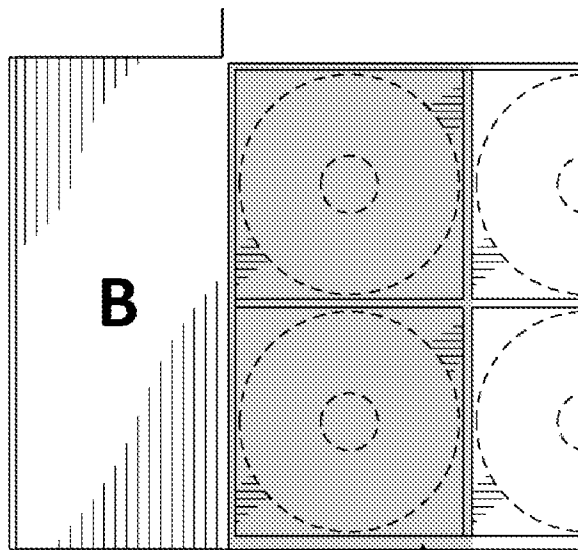
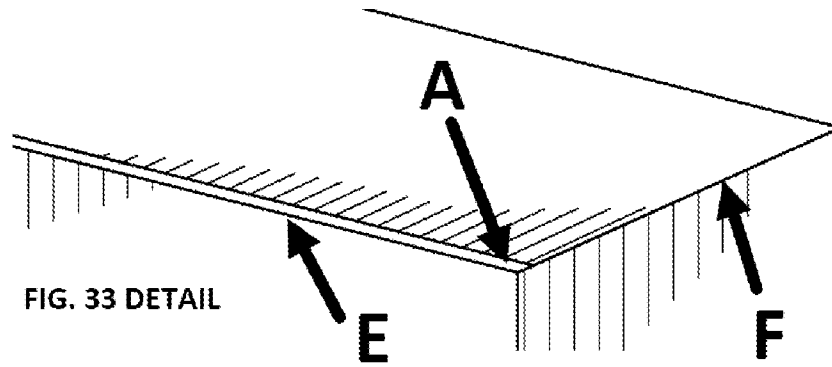
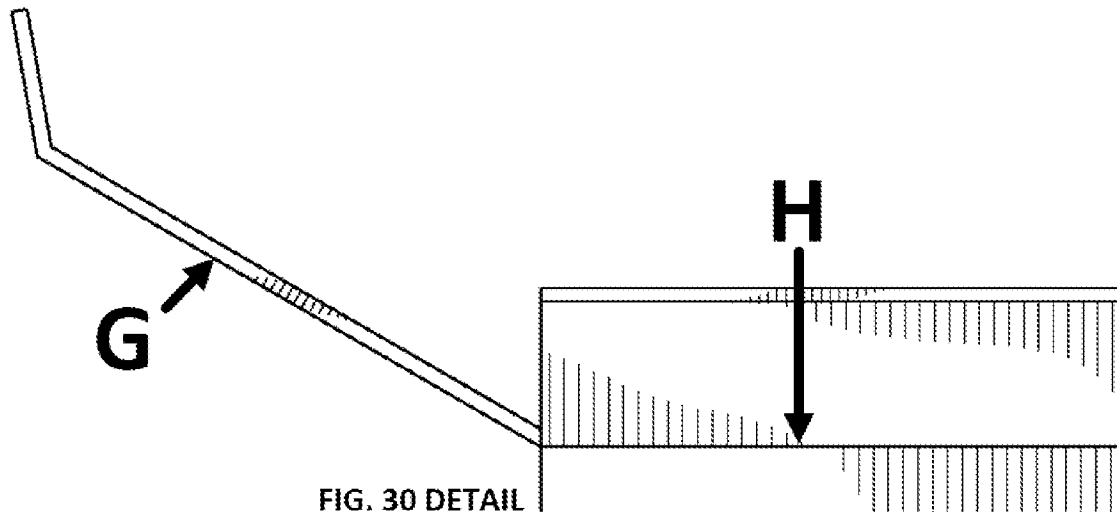


FIG. 30 shows the appearance of the wine box inconsistently with the other drawings.

Specifically, knowing that Fig. 33 shows the case tightly sealed, with the smaller portion of the top flap understood to be inserted into the case (Arrow A above), it's understood that the largest portion of the top flap (Arrow G) must be slightly shorter than the width of the **interior** of the crate (Arrow H). However, Fig. 30 shows the two to be equal in length, conflicting with the closure style seen in Fig. 33. See diagrams below.



Therefore, the scope of the claim is indefinite and non-enabled. Correction is therefore required to show all such features clearly and consistently throughout all views of the drawing disclosure.

Claim Rejection - 35 U.S.C. 103

Agar Design (+ Reynolds Design + Wong Design)

The claim is rejected under 35 U.S.C. 103 as being unpatentable over Examiner's cited U.S. Patent Document 1,481,333, to **Agar**, in view of Examiner's cited U.S. Publication Document US2004/0262186, to **Reynolds**, and Examiner's cited U.S. Publication Document US2001/0040113, to **Wong**.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious before the effective filing date of the claimed invention to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

The **Agar** design shows a container system having design characteristics which are basically the same as those of the claimed design. The **Agar** design shows a tall rectangular box with multiple

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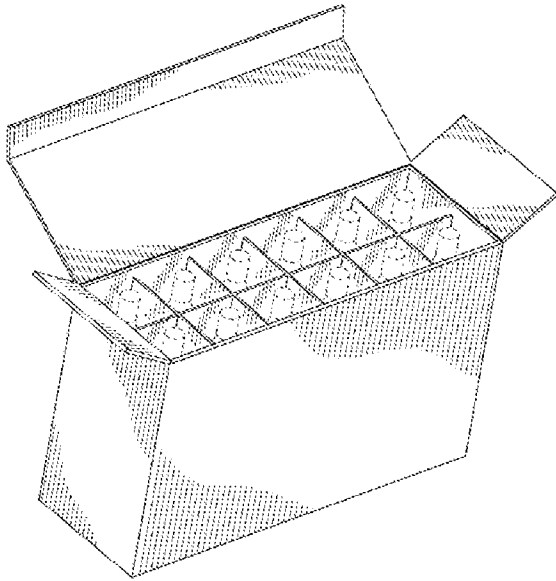
closure flaps, containing grid-style dividers forming individual four-sided cells, sitting slightly below the uppermost point of the box.

The claimed design differs from the **Agar** design in that it has a divider configuration of 2x6, the proportions of the box are longer and narrower, and it has 3 closure flaps - the longest of which spans the width of the box, and is folded at the end.

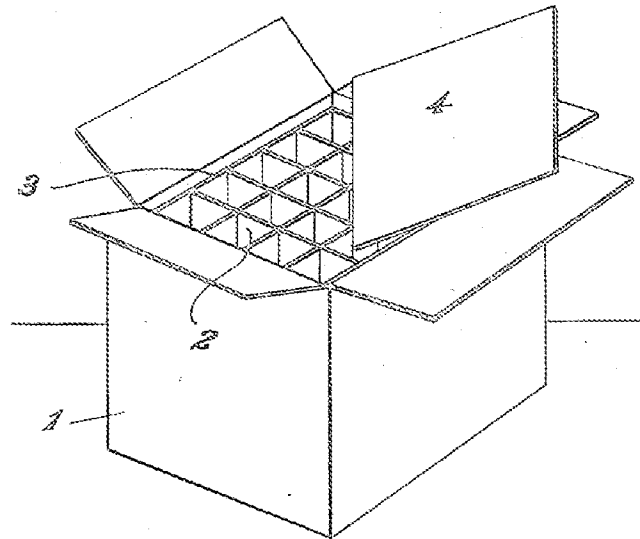
The **Reynolds** design teaches a divider configuration of 2x6, as well as a box proportion that is longer and narrower.

The **Wong** design teaches 3 closure flaps - the longest of which spans the width of the box, and is folded at the end.

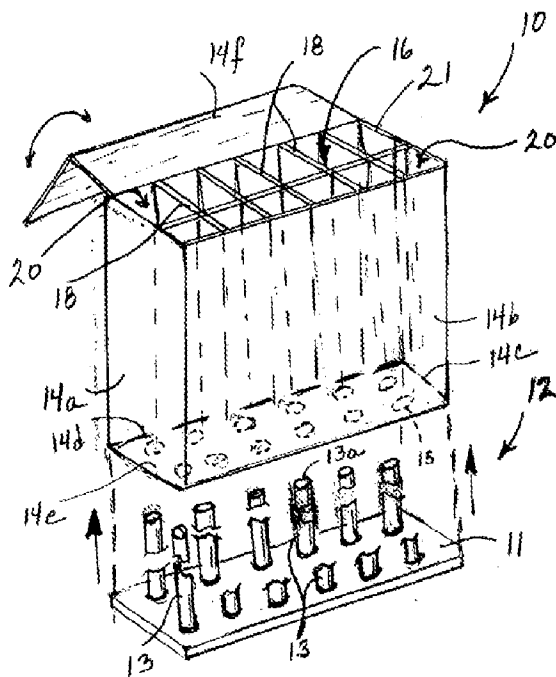
It would have been obvious to a designer of ordinary skill in the art at the time the invention was made to apply the divider configuration and box proportions from the **Reynolds** design and the closure flap style and configuration from the **Wong** design to the **Agar** design, resulting in an appearance basically the same as the claimed design, and over which the claimed design would have no patentable distinction. See the following images.



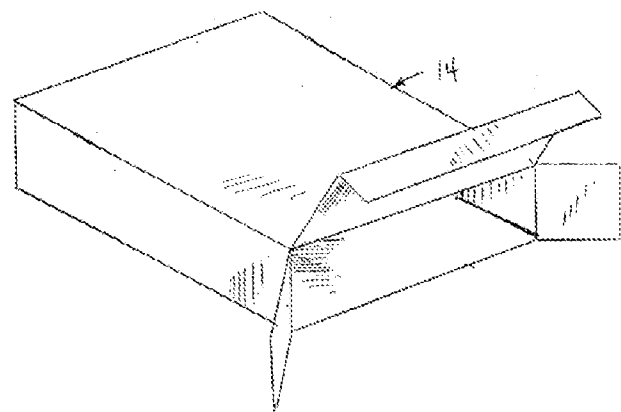
CLAIMED DESIGN



**US PATENT DOCUMENT
1,481,333 (AGAR)**



**US PUBLICATION DOCUMENT
US2004/0262186 (REYNOLDS et al.)**



**US PUBLICATION DOCUMENT
US2001/0040113 (Wong)**

This modification of the primary reference in light of the secondary references is proper because the applied references are so related that the appearance of features shown in one

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would suggest the application of those features to the others. See *In re Rosen*, 673 F.2d 388, 213 USPQ 347 (CCPA 1982); *In re Carter*, 673 F.2d 1378, 213 USPQ 625 (CCPA 1982), and *In re Glavas*, 230 F.2d 447, 109 USPQ 50 (CCPA 1956). It is noted that case law has held that one skilled in the art is charged with knowledge of the related art; therefore, the combination of old elements, herein, would have been well within the level of ordinary skill. See *In re Antle*, 444 F.2d 1168, 170 USPQ 285 (CCPA 1961) and *In re Nalbandian*, 661 F.2d 1214, 211 USPQ 782 (CCPA 1981).

The Examiner submits that once references have been combined, the resulting design is compared to the claimed design with the standard of the ordinary observer, not one of ordinary skill in the art. For design patents, the role of one skilled in the art in the obviousness context lies only in determining whether to combine earlier references to arrive at a single piece of art for comparison with the potential design or to modify a single prior art reference. Once that piece of prior art has been constructed, obviousness, like anticipation, requires application of the ordinary observer test, not the view of one skilled in the art. *International Seaway Trading Corporation, v Walgreens Corporation* (2009)

The claimed design has no patentable distinction over the Examiner's combination of references.

Replacement Drawings

A response is required in reply to the Office action to avoid abandonment of the application. If corrected drawings are submitted in response to this Office action, they must be in compliance with 37 CFR 1.121(d). Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as amended. If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. If all the figures on a drawing sheet are canceled, a replacement sheet is not required. A marked-up copy of the drawing sheet (labeled as "Annotated Sheet") including an annotation showing that all the figures on that drawing sheet have been canceled must be presented in the amendment or remarks section that explains the change to the drawings. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

When preparing new or replacement drawings, any amendment must meet the written description requirement of 35 USC 112(a). It must be apparent that applicant was in possession of the amended design at the time of filing. This pertains to either: the addition to, or the removal of, any elements shown in the originally disclosed design.

Conclusion

The claimed design is rejected for the reasons set forth above.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMANDA KAY BIRDWELL whose telephone number is (571)272-9125. The examiner can normally be reached Mon-Fri 8:30-5.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

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If attempts to reach the examiner by telephone are unsuccessful, Primary Examiner Teddy Falloway can be reached on (571)270-0207, or, the examiner's supervisor, Rich Edgar, can be reached at (571)272-4816. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of published or unpublished applications may be obtained from Patent Center. Unpublished application information in Patent Center is available to registered users. To file and manage patent submissions in Patent Center, visit: <https://patentcenter.uspto.gov>. Visit <https://www.uspto.gov/patents/apply/patent-center> for more information about Patent Center and <https://www.uspto.gov/patents/docx> for information about filing in DOCX format. For additional questions, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A.K.B./

Examiner, Art Unit 2931

/W. A. Teddy Falloway/

Primary Examiner, Art Unit 2921

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
APPLICATION FOR UNITED STATES DESIGN PATENT

Title: WINE CASE

Inventor: Barry ALEXANDER
Scottsdale, Arizona

Attorneys: Hartman Titus PLC
3507 North Central Avenue, Suite 101
Phoenix, AZ 85012

Fig. 7 is a front perspective view of the wine case shown in Fig. 1;

Fig. 8 is an exploded perspective view of the wine case shown in Fig. 1;

Fig. 9 is a front perspective view of the wine case shown in Fig. 1 with the top flaps closed;

Fig. 10 is a front perspective view of an alternative embodiment of my new design;

Fig. 11 is a bottom perspective view of the wine case shown in Fig. 10;

Fig. 12 is a top view of the wine case shown in Fig. 10;

Fig. 13 is a bottom view of the wine case shown in Fig. 10;

Fig. 14 is a right-side view of the wine case shown in Fig. 10;

Fig. 15 is a rear view of the wine case shown in Fig. 10;

Fig. 16 is a front view of the wine case shown in Fig. 10

Fig. 17 is a front perspective view of the wine case shown in Fig. 10 with the top flaps closed;

Fig. 18 is a front perspective view of another alternative embodiment of my new design;

Fig. 19 is a bottom perspective view of the wine case shown in Fig. 18;

Fig. 20 is a top view of the wine case shown in Fig. 18;

Fig. 21 is a bottom view of the wine case shown in Fig. 18;

Fig. 22 is a right-side view of the wine case shown in Fig. 18;

Fig. 23 is a left-side view of the wine case shown in Fig. 18;

Fig. 24 is a front view of the wine case shown in Fig. 18;

Fig. 25 is a front perspective view of the wine case shown in Fig. 18 with the top flaps closed;

Fig. 26 is a front perspective view of another alternative embodiment of my new design;

Fig. 27 is a bottom perspective view of the wine case shown in Fig. 26;

Fig. 28 is a top view of the wine case shown in Fig. 26;

Fig. 29 is a bottom view of the wine case shown in Fig. 26;

Fig. 30 is a left-side view of the wine case shown in Fig. 26;

Fig. 31 is a rear view of the wine case shown in Fig. 26;

Fig. 32 is a front view of the wine case shown in Fig. 26;

Fig. 33 is a front perspective view of the wine case shown in Fig. 26 with the top flaps closed;

Fig. 34 is a front perspective view of another alternative embodiment of my new design;

Fig. 35 is a bottom perspective view of the wine case shown in Fig. 34;

Fig. 36 is a top view of the wine case shown in Fig. 34;

Fig. 37 is a bottom view of the wine case shown in Fig. 34;

Fig. 38 is a right-side view of the wine case shown in Fig. 34;

Fig. 39 is a left-side view of the wine case shown in Fig. 34;

Fig. 40 is a front view of the wine case shown in Fig. 34; and

Fig. 41 is a front perspective view of the wine case shown in Fig. 34 with the top flaps closed

The broken lines form no part of the invention

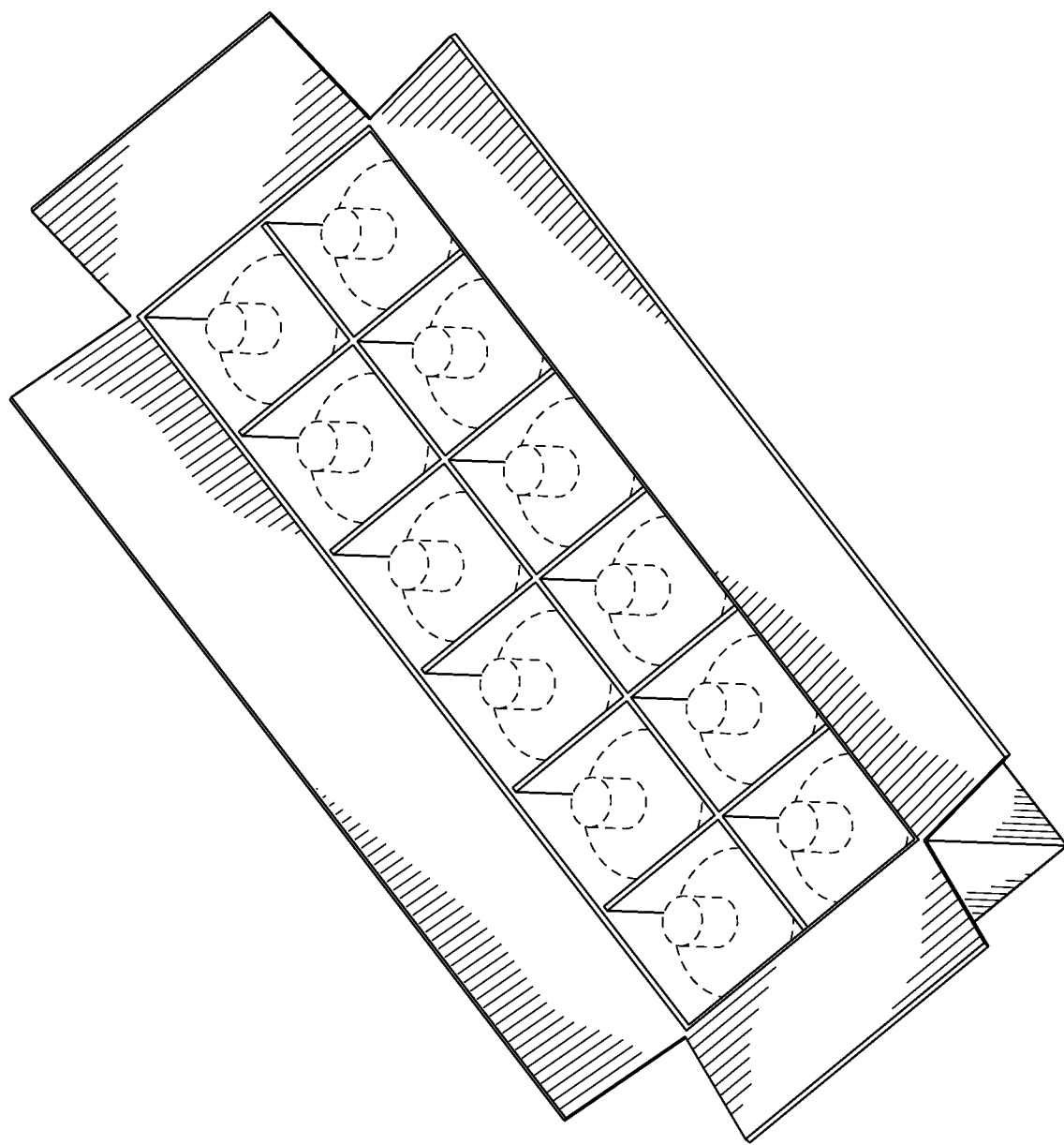


FIG. 1

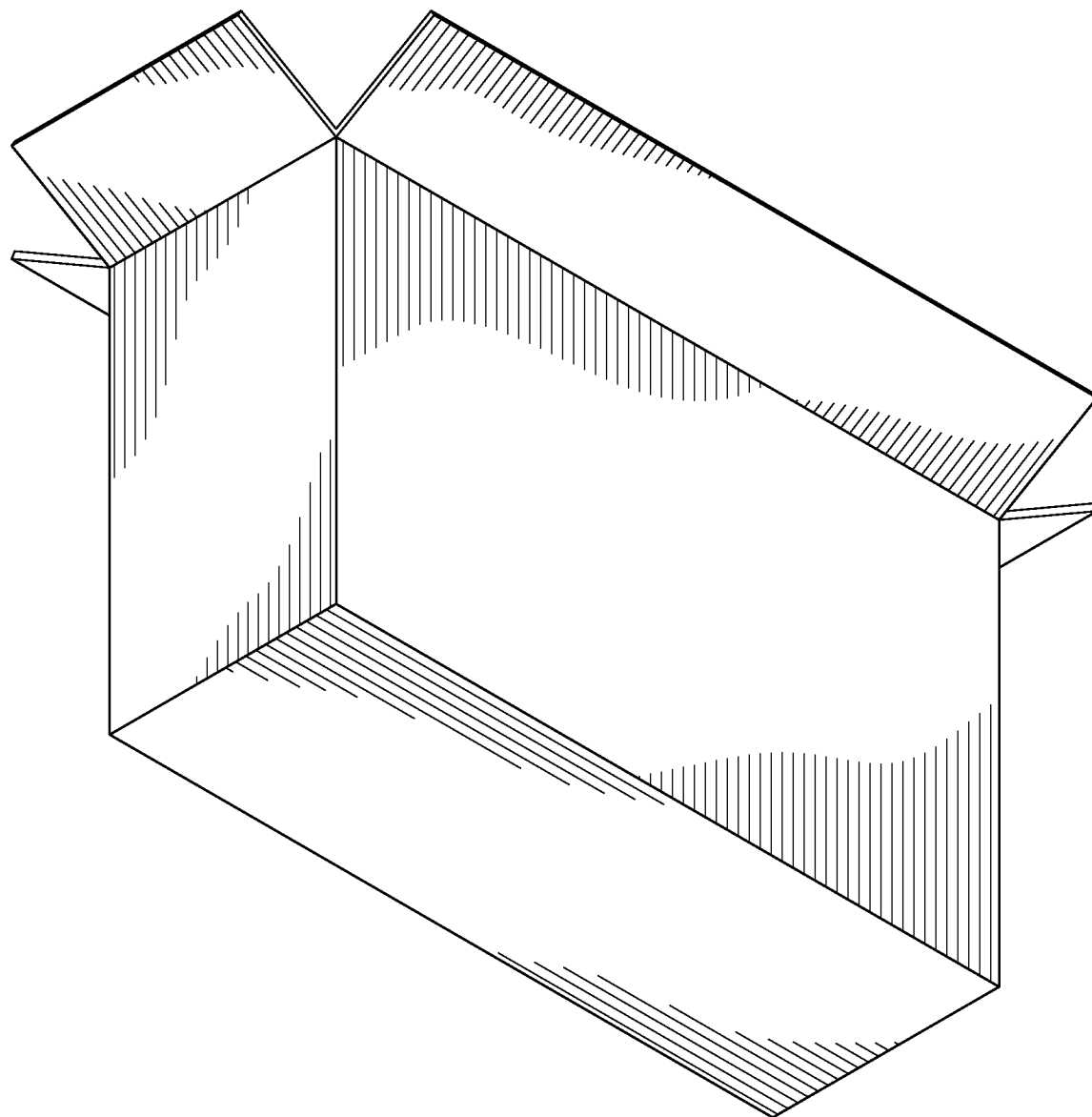


FIG. 2

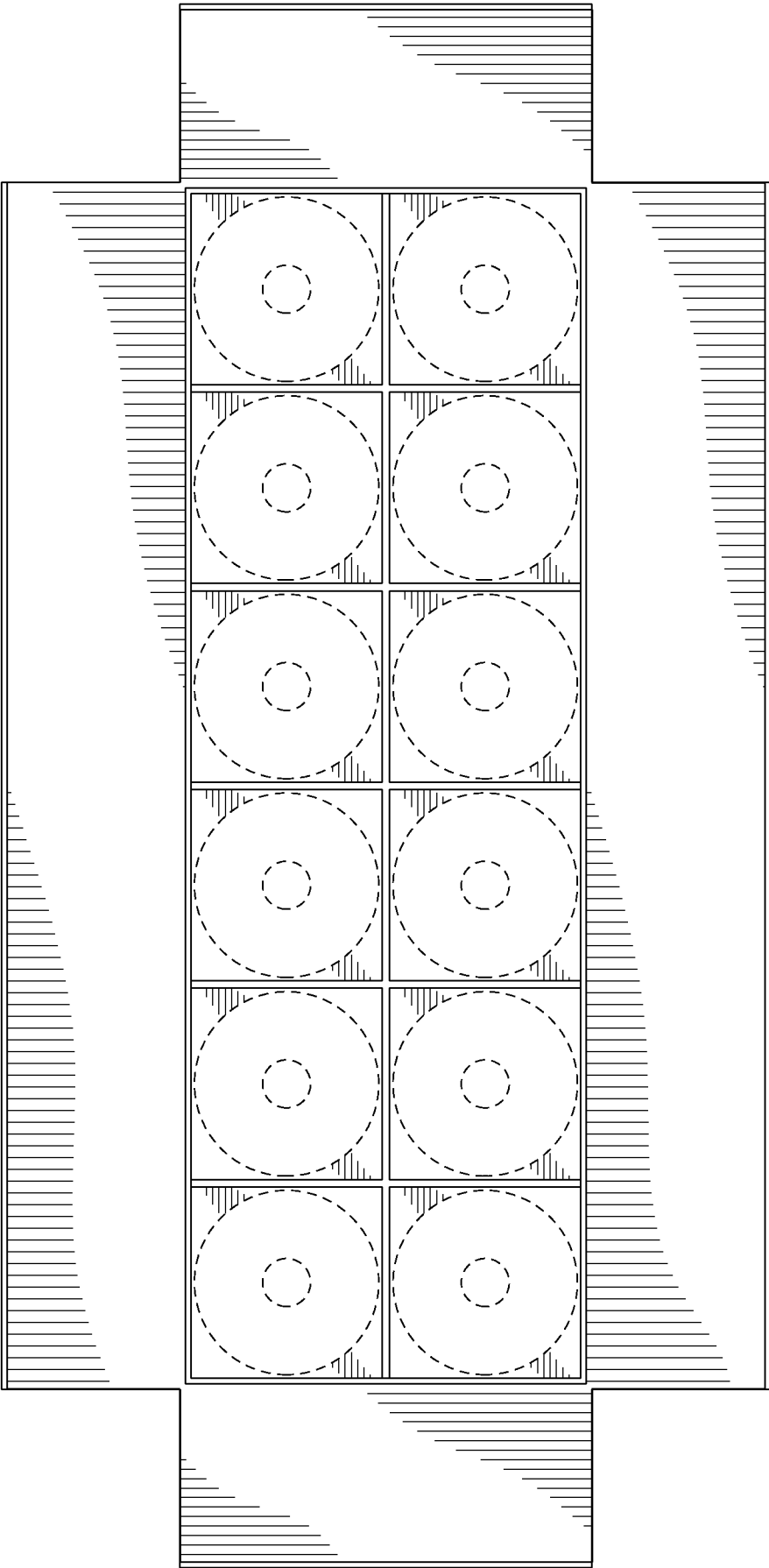


FIG. 3

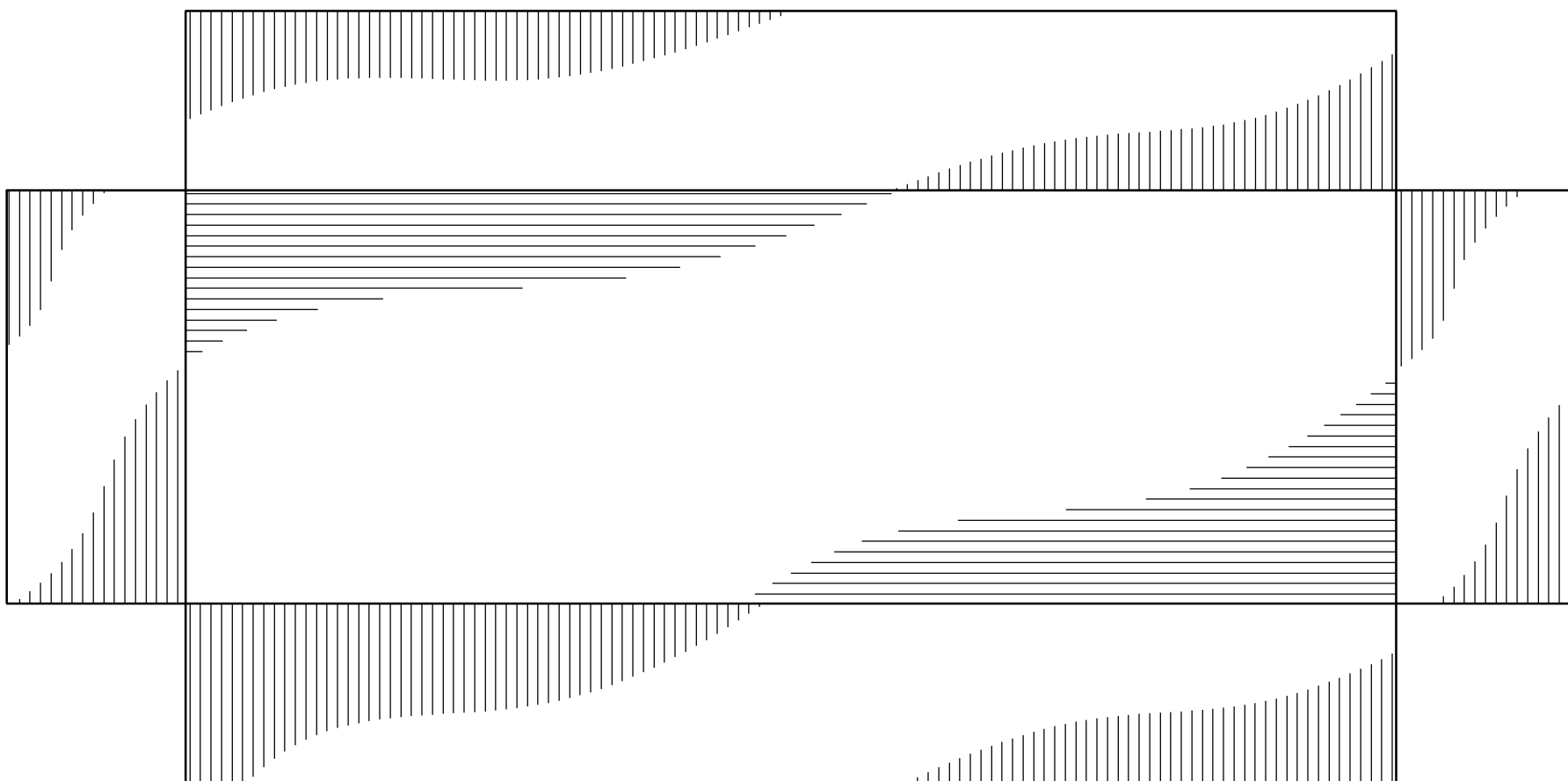


FIG. 4

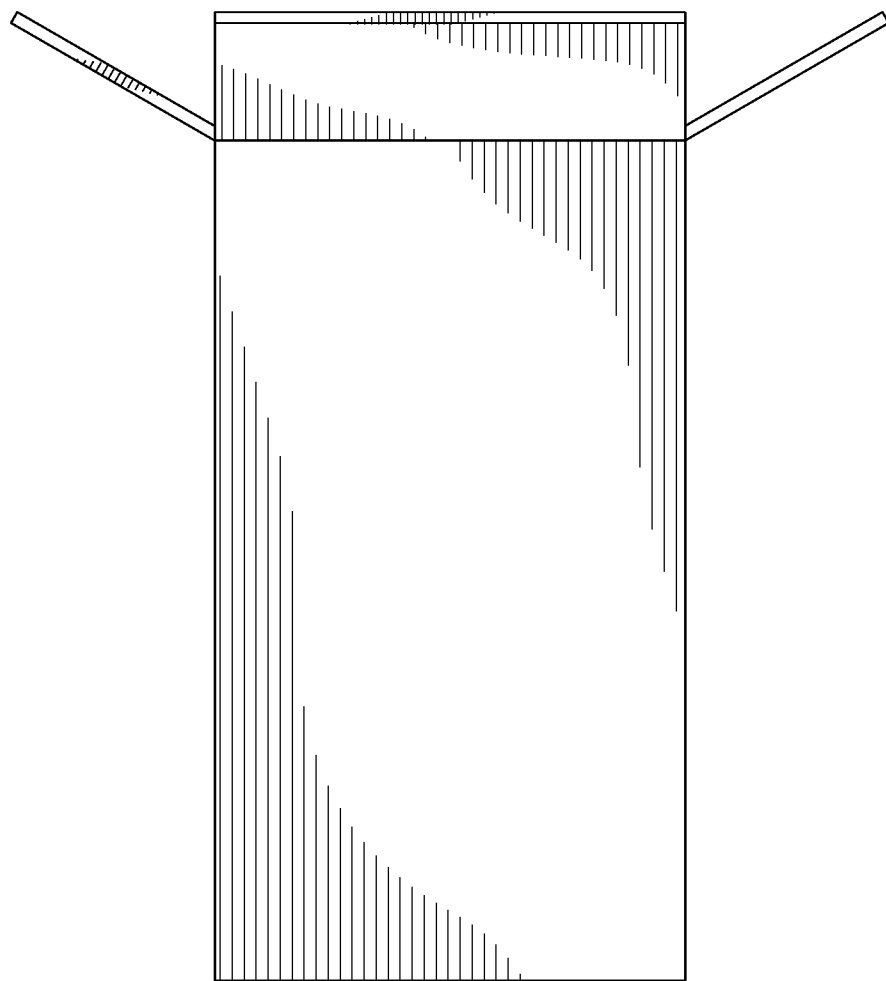


FIG. 5

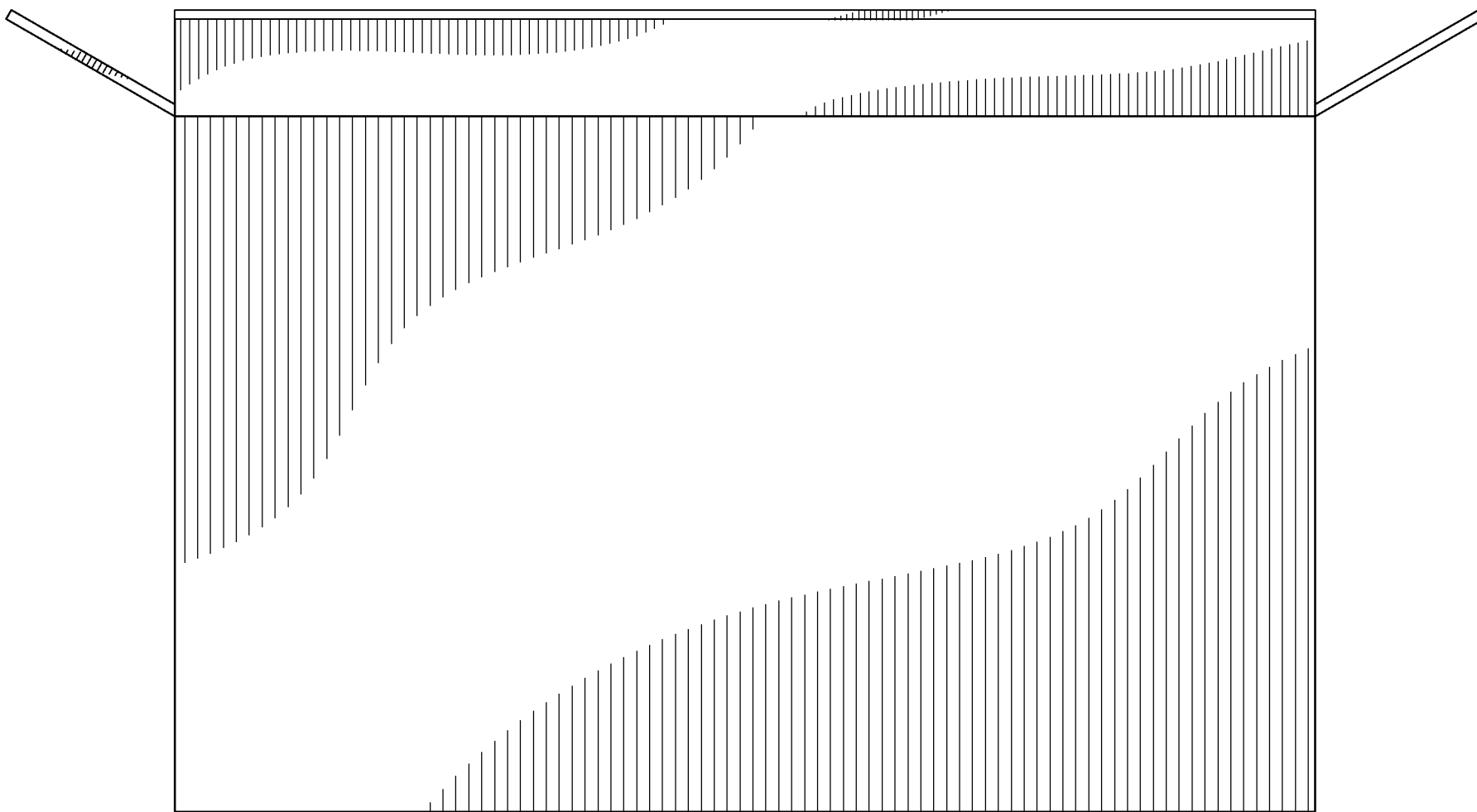
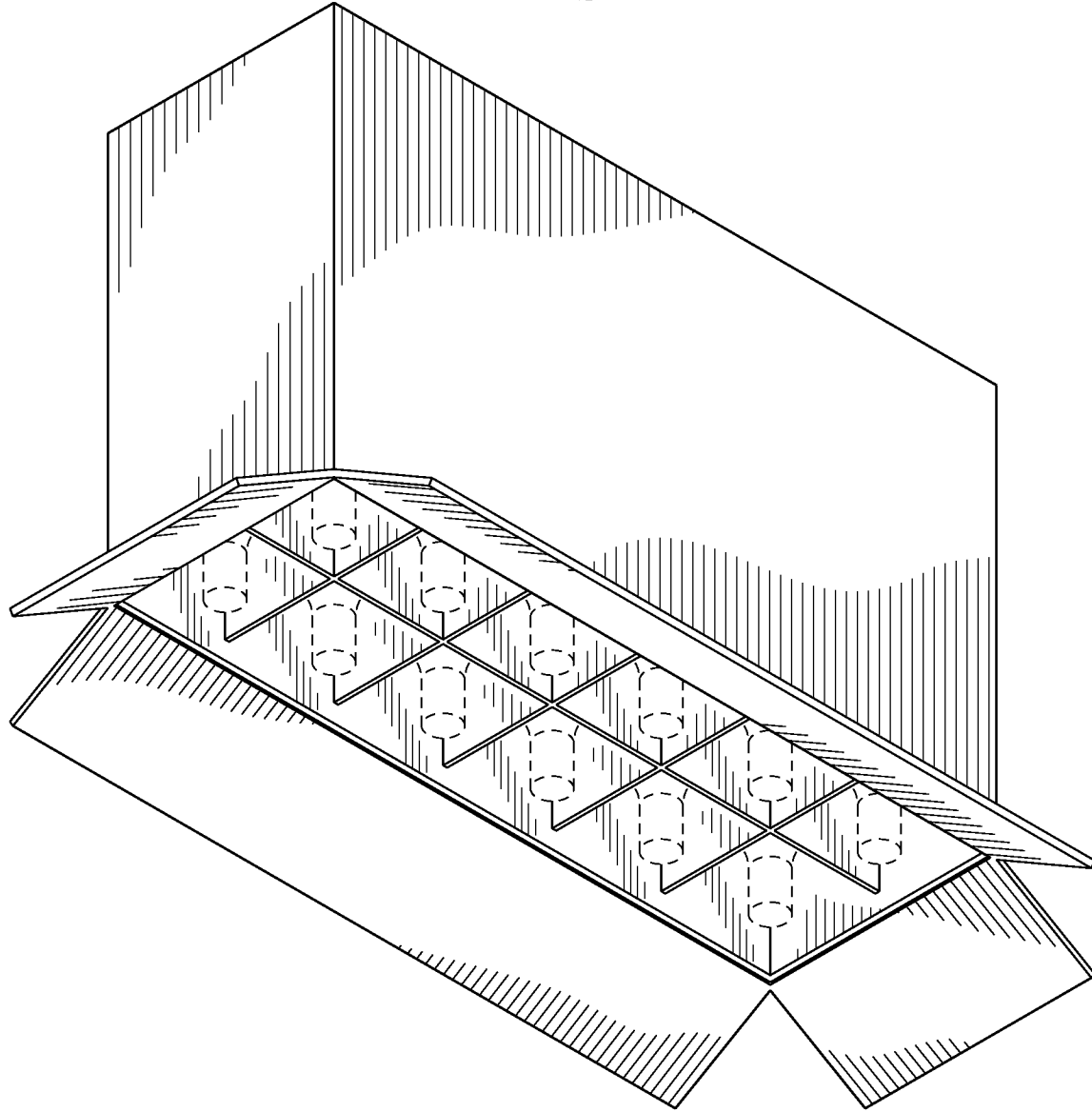


FIG. 6

FIG. 7



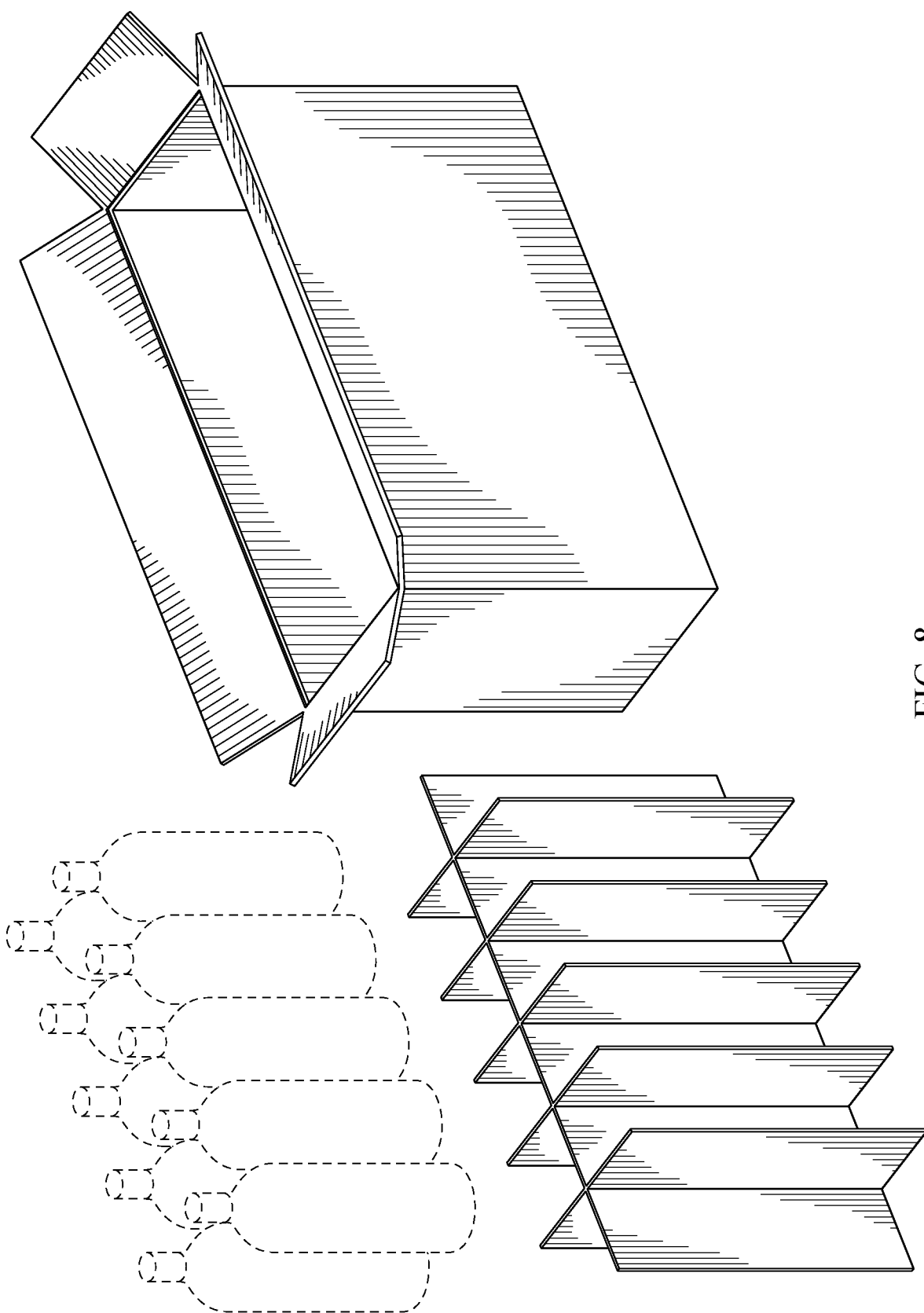


FIG. 8

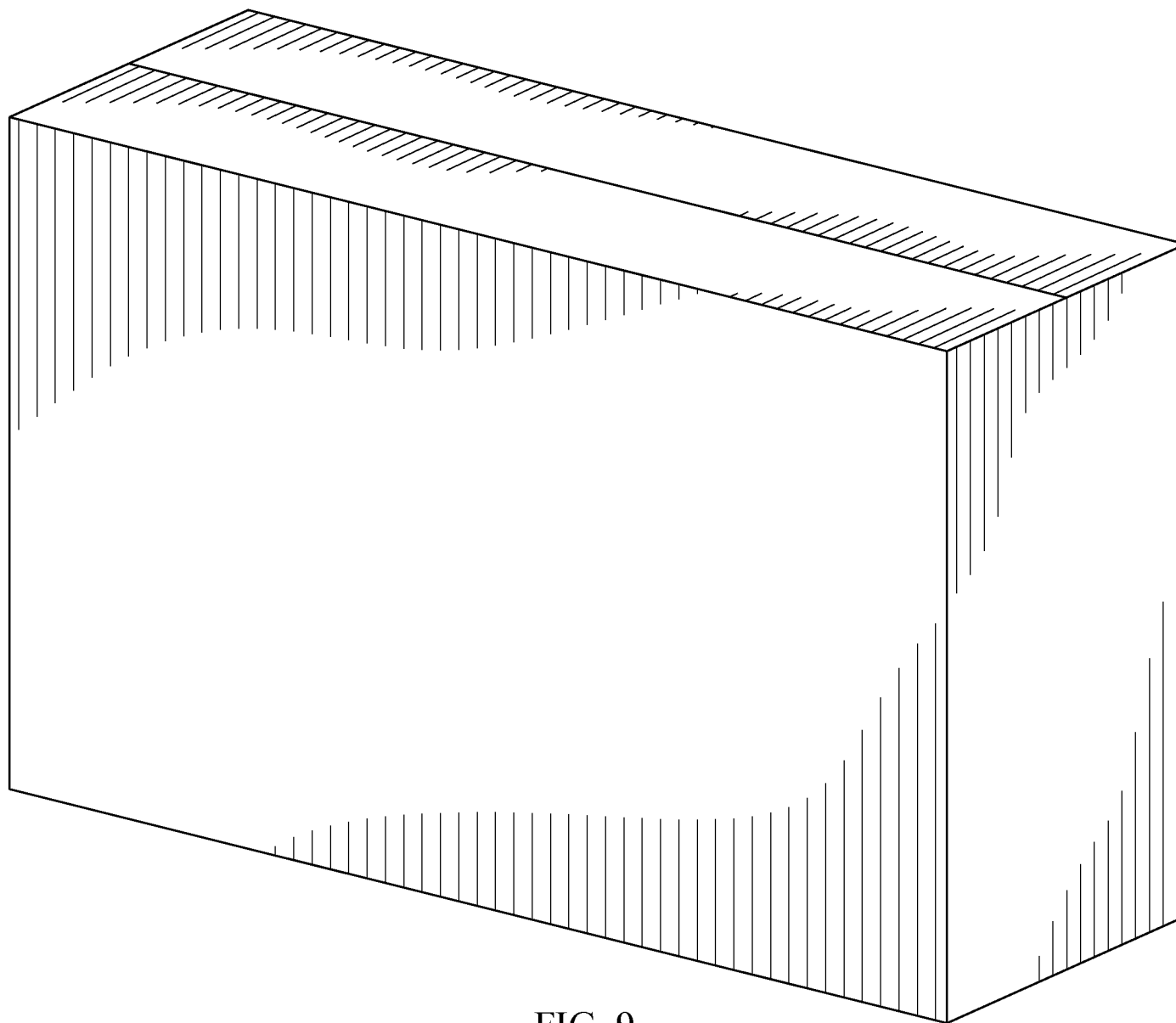


FIG. 9

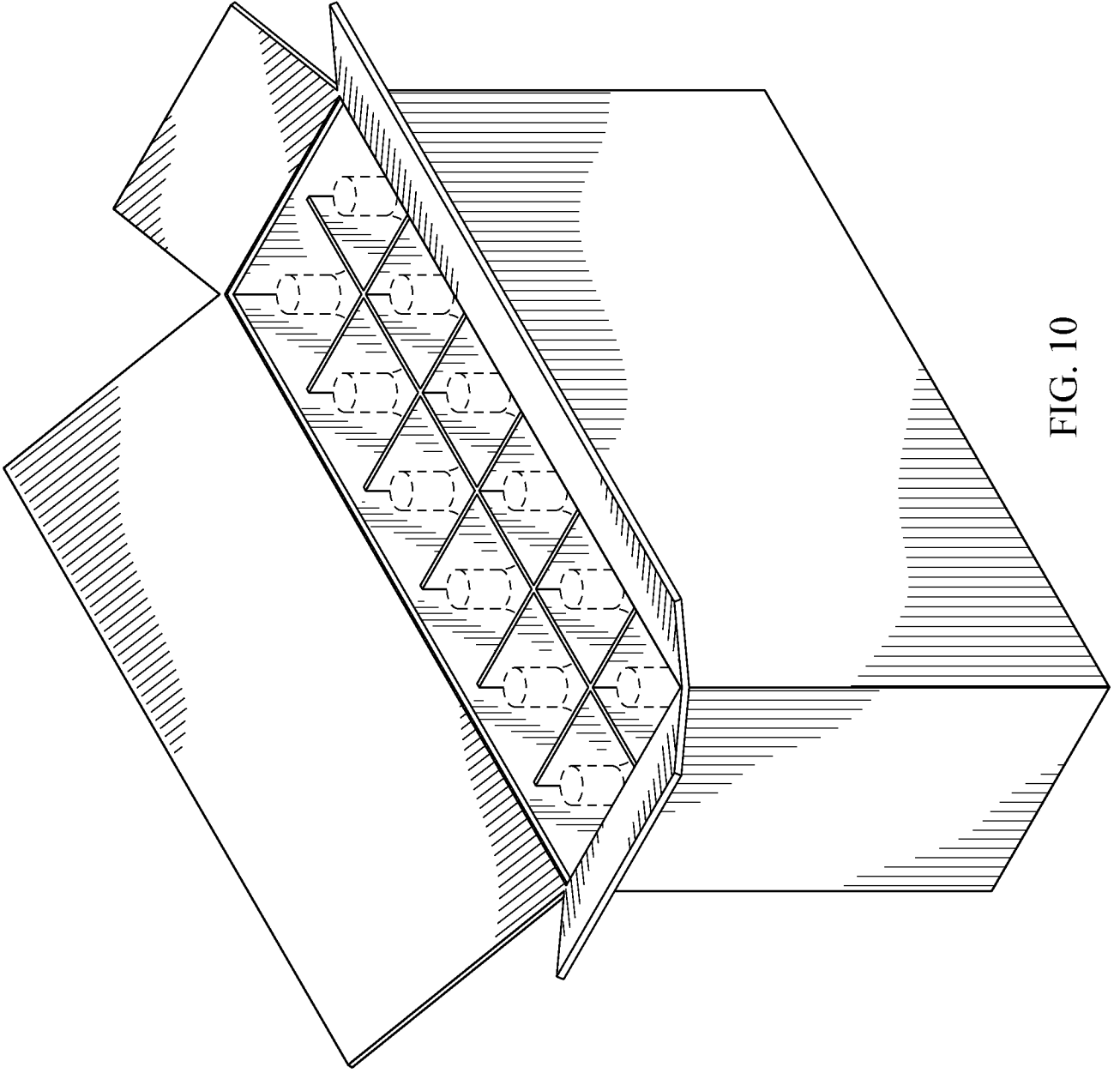


FIG. 10

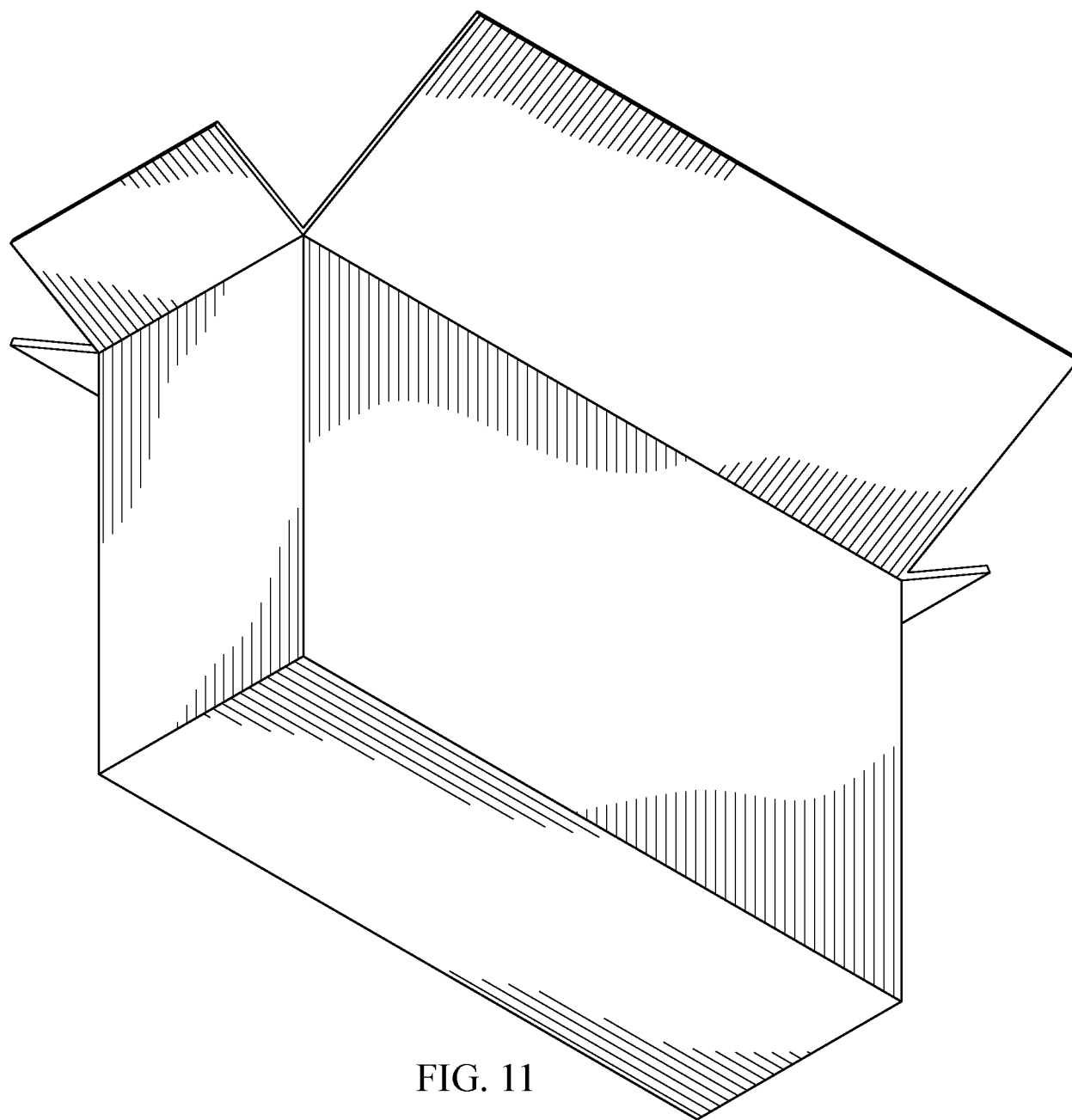


FIG. 11

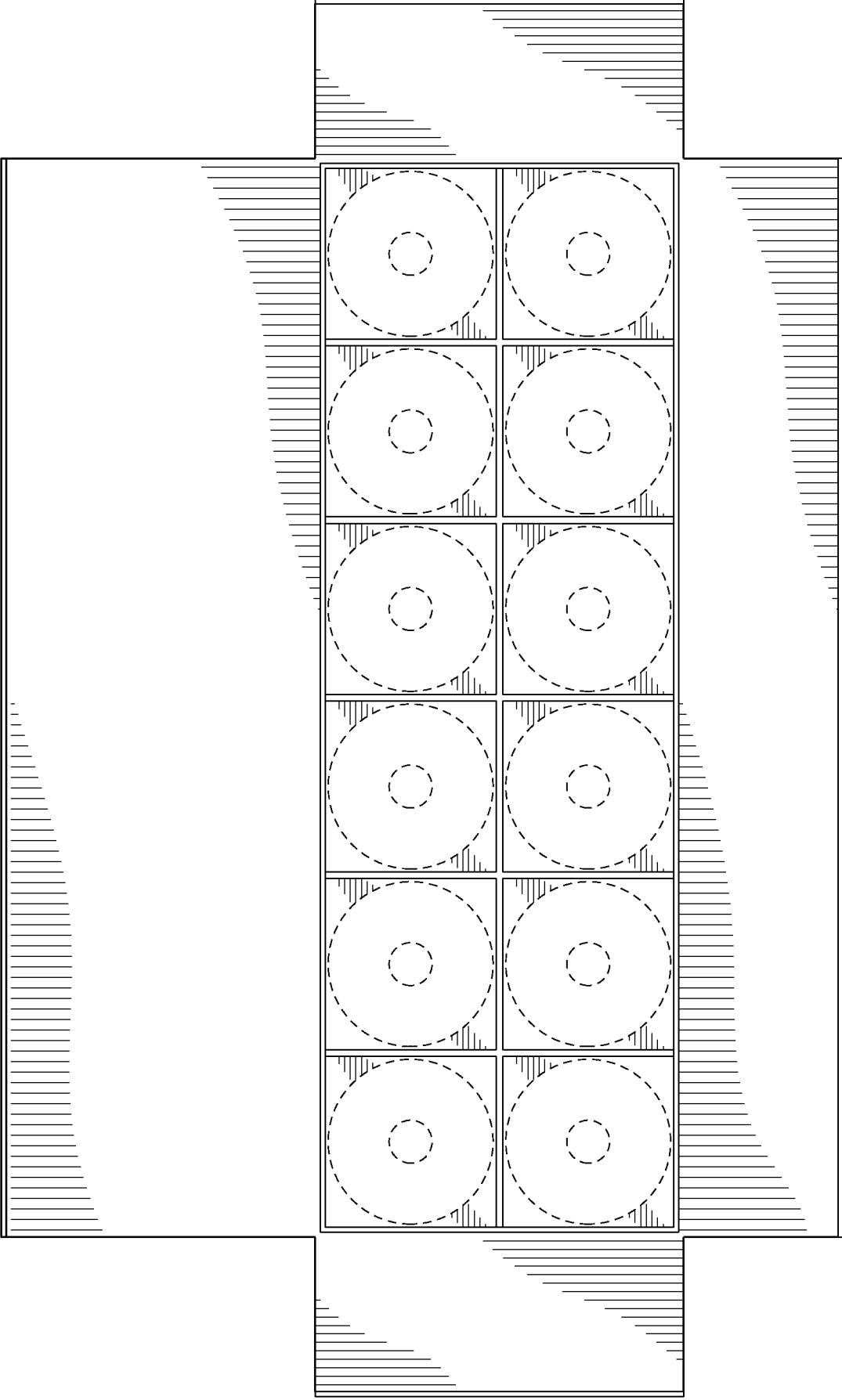


FIG. 12

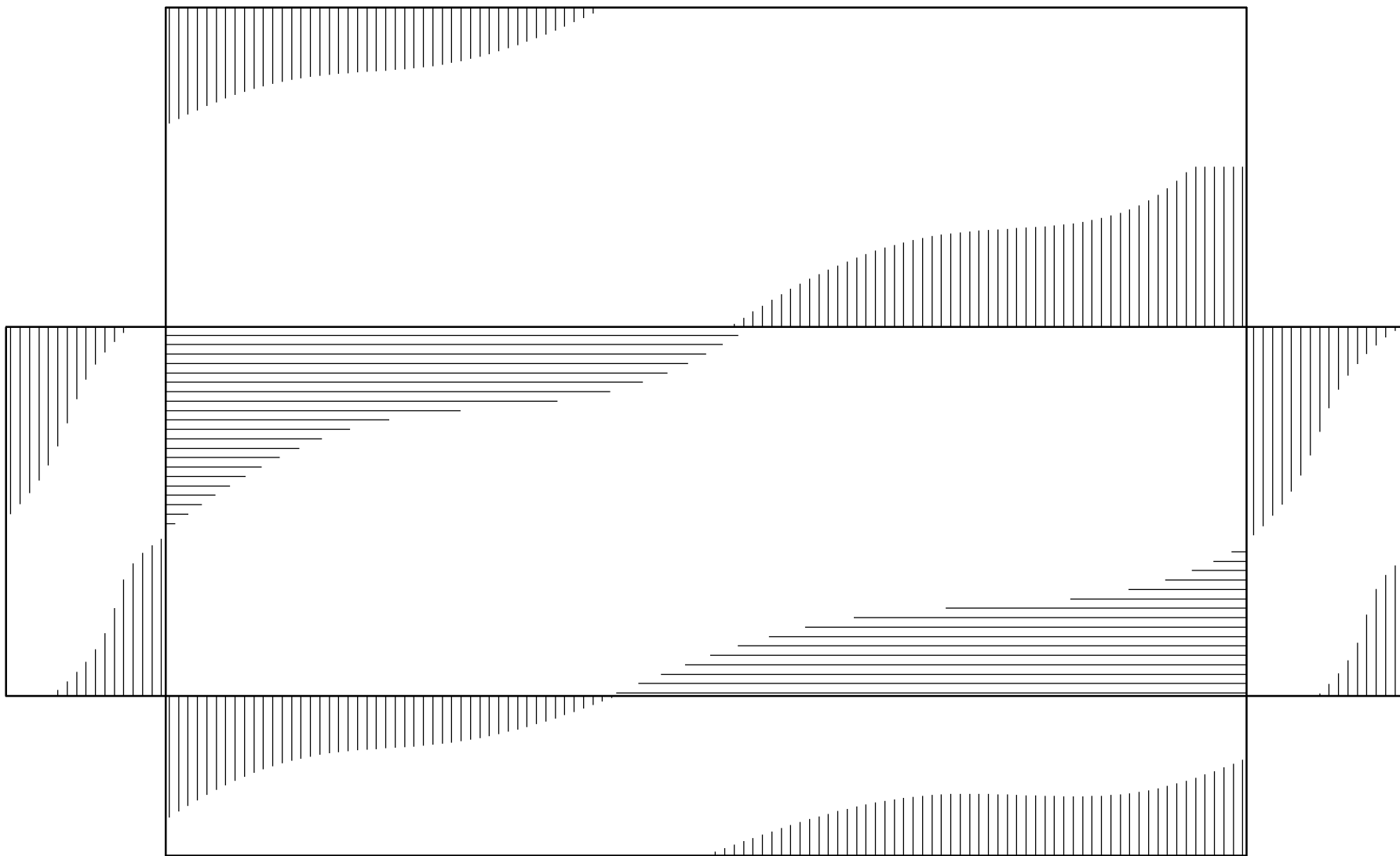


FIG. 13

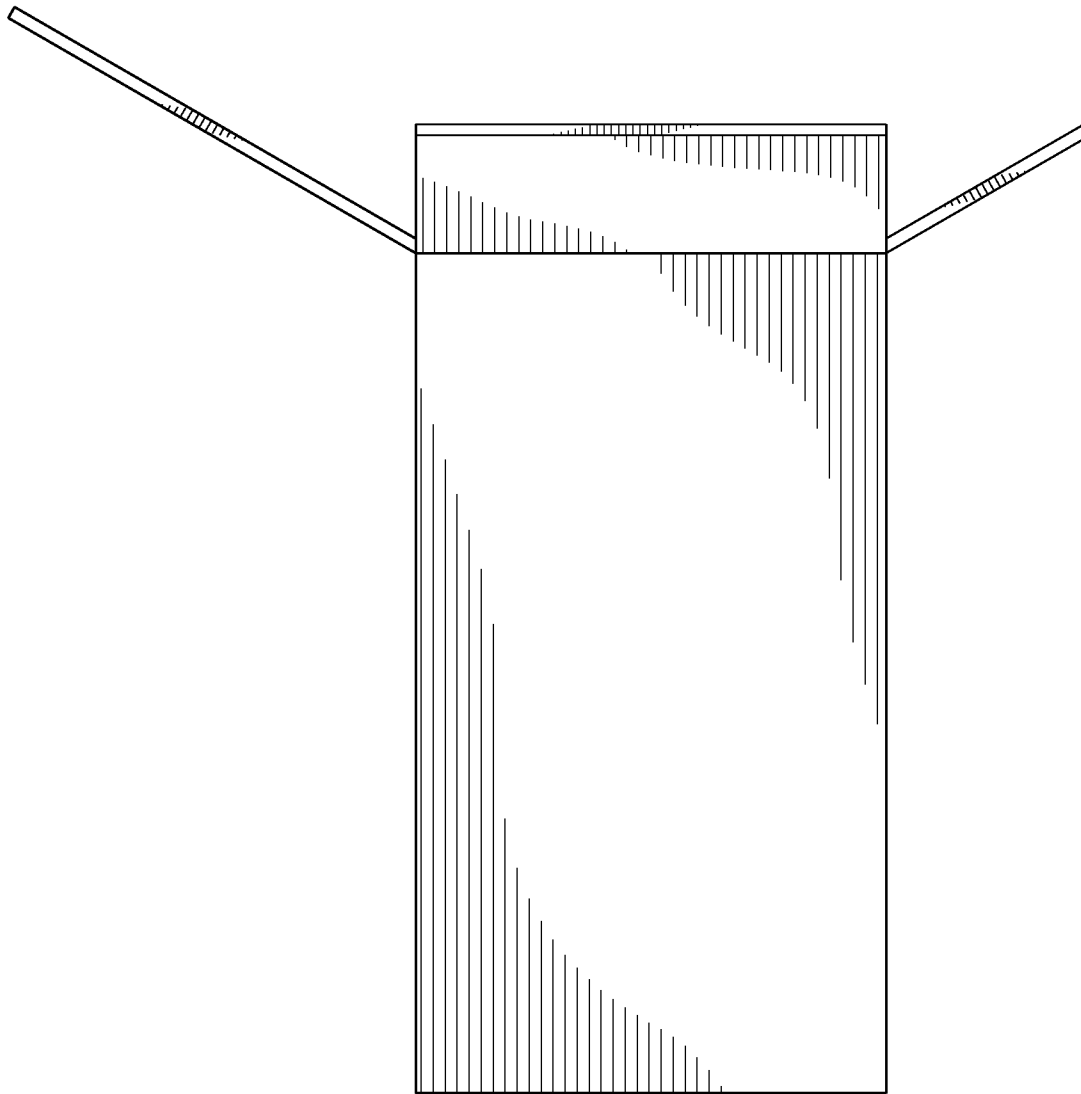


FIG. 14

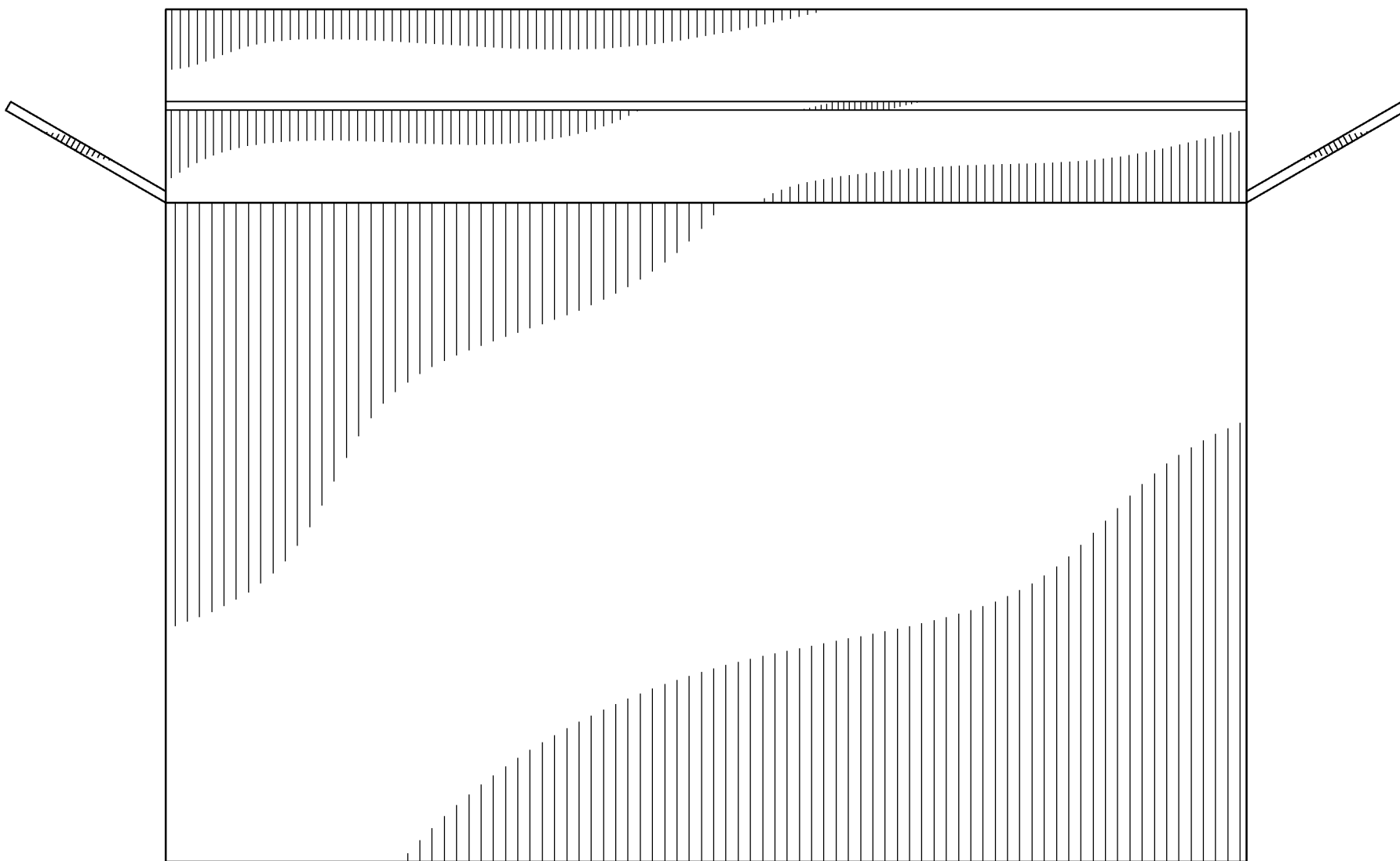


FIG. 15



FIG. 16

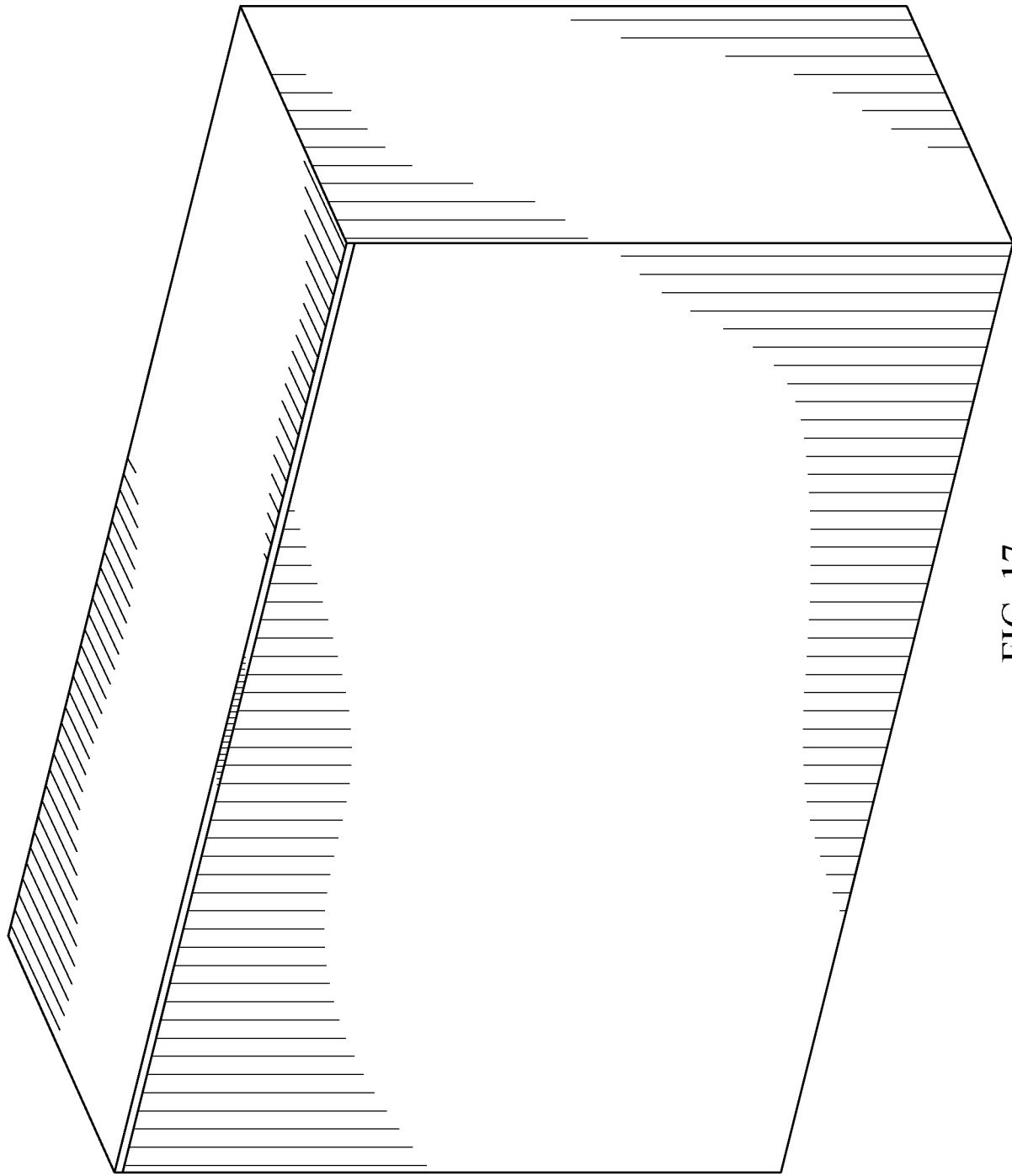
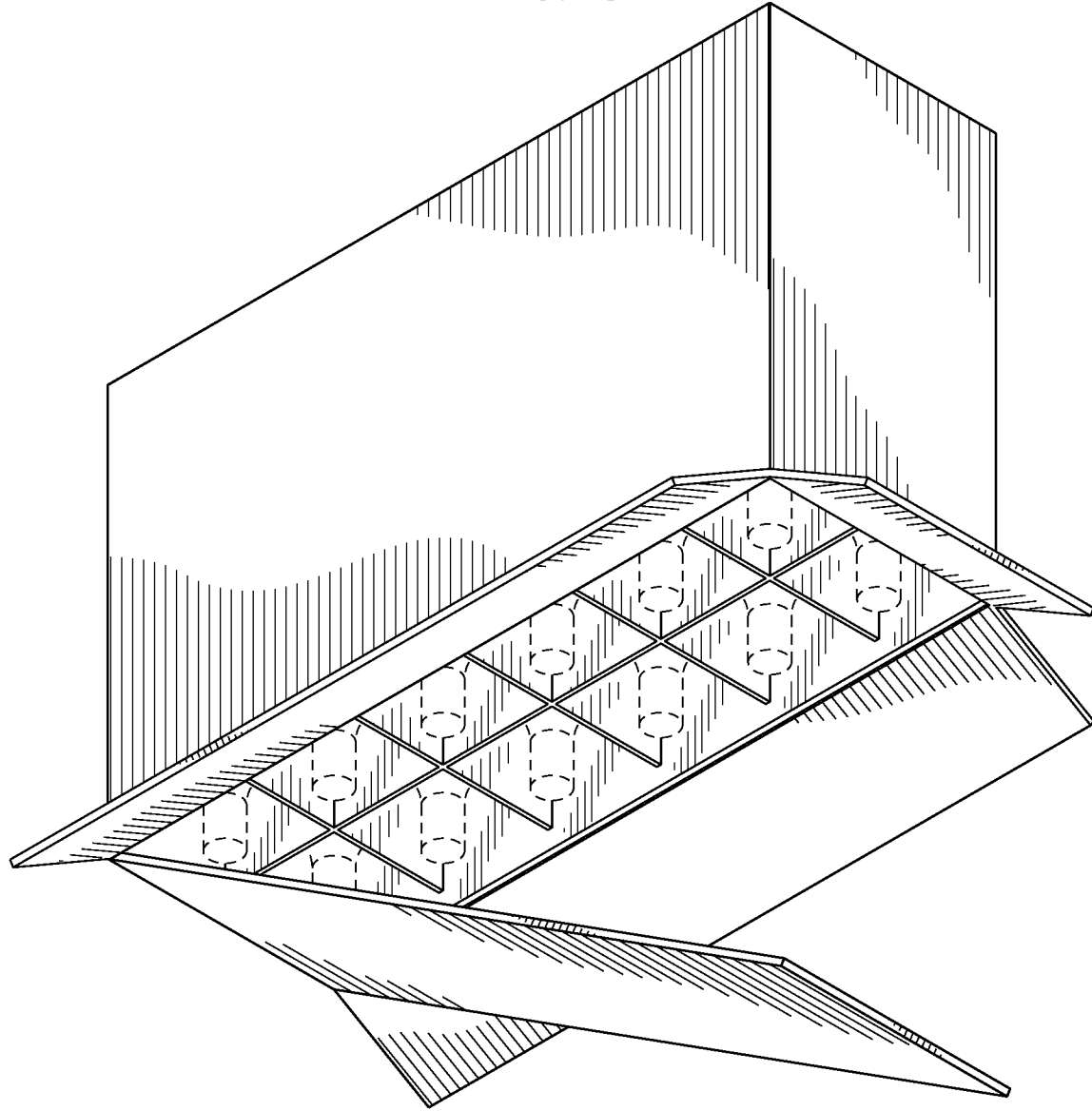


FIG. 17

FIG. 18



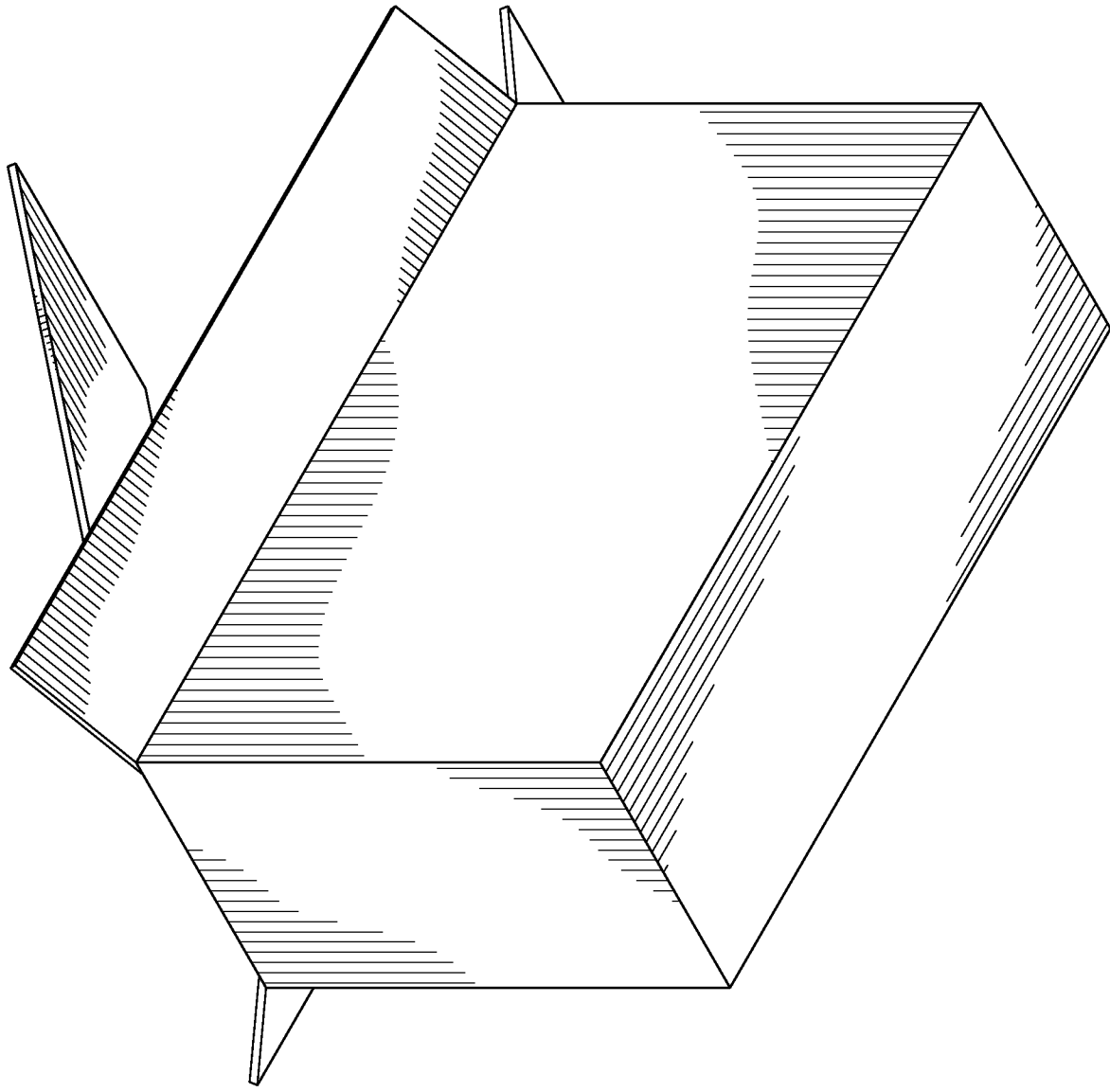


FIG. 19

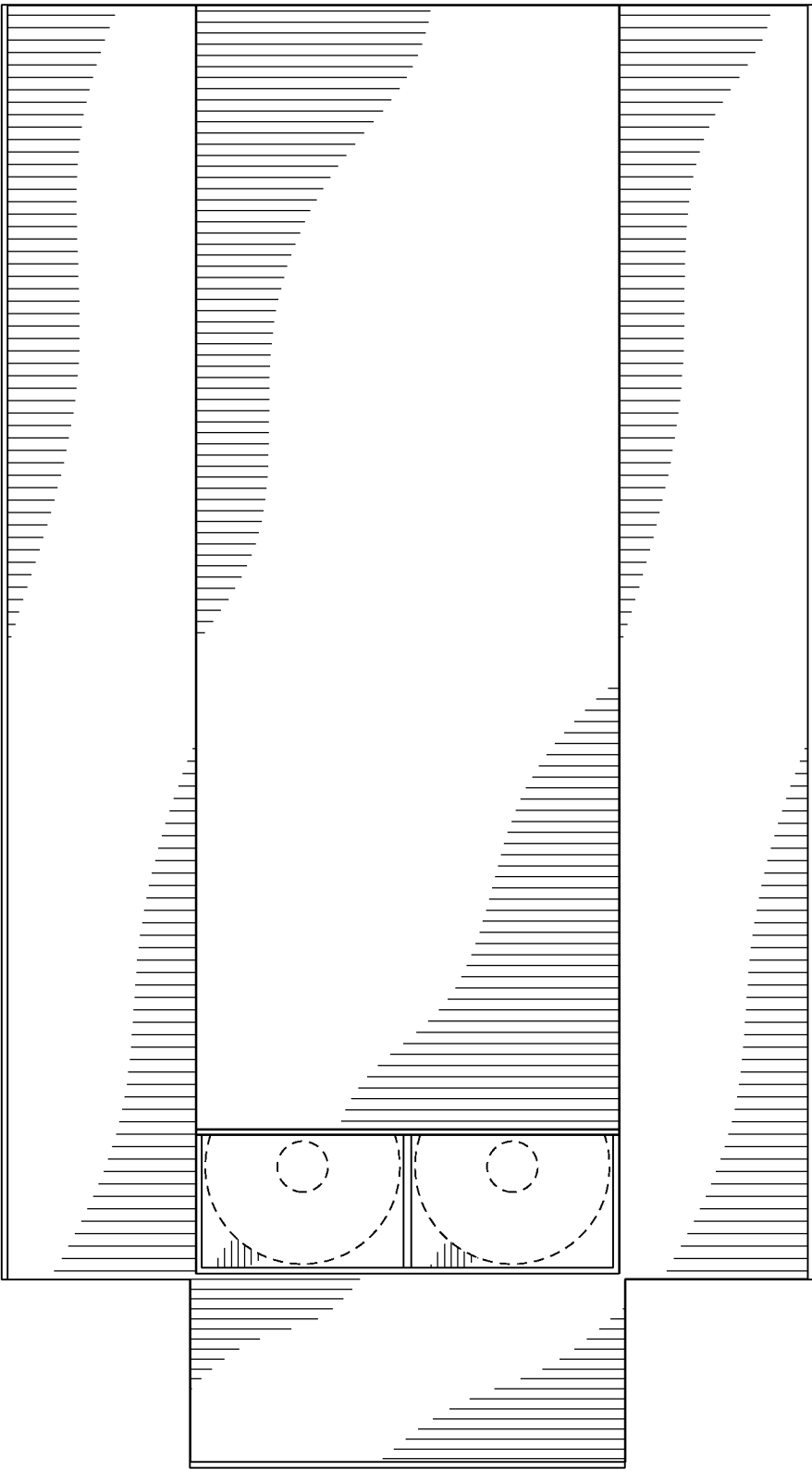


FIG. 20

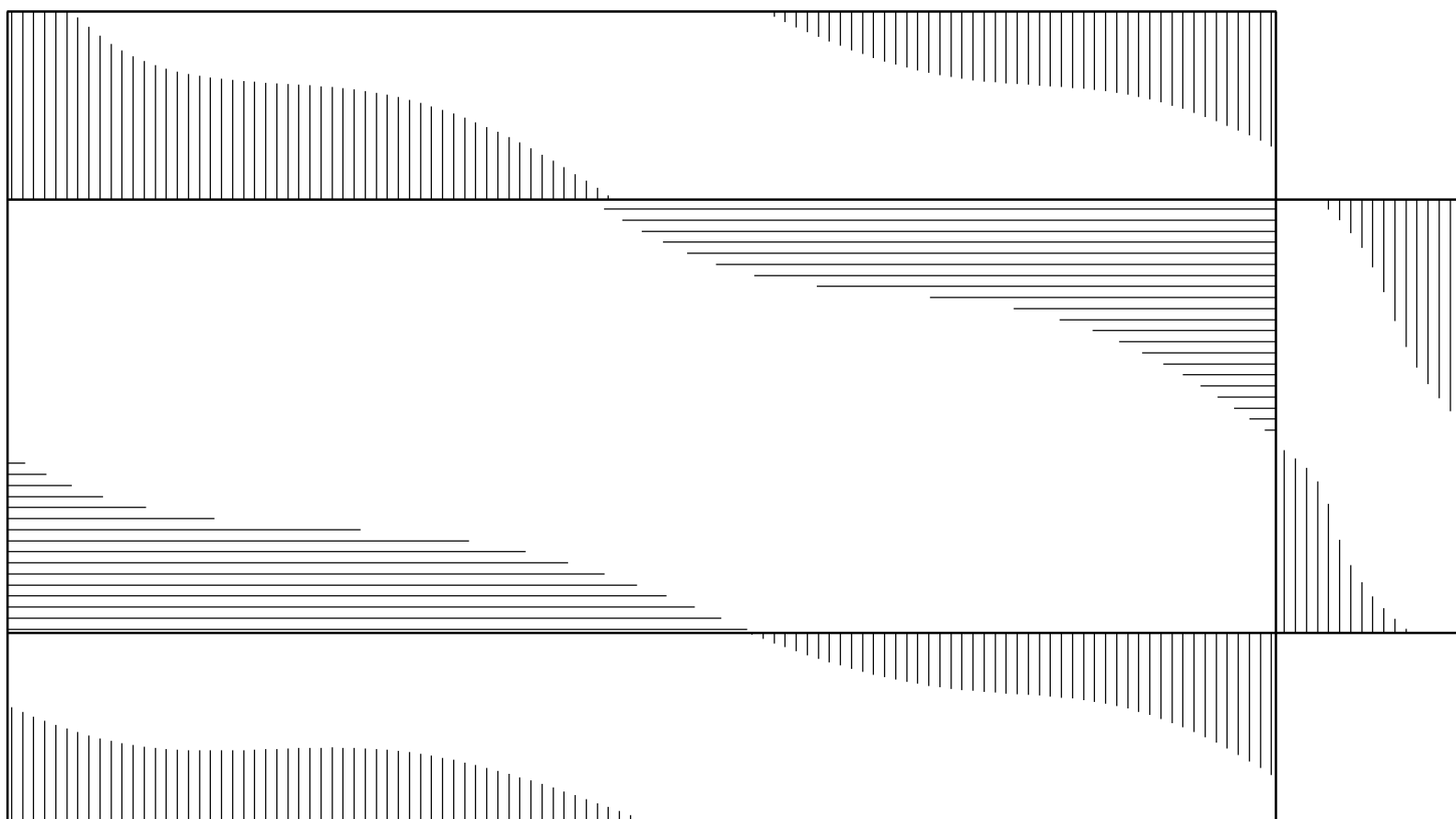


FIG. 21

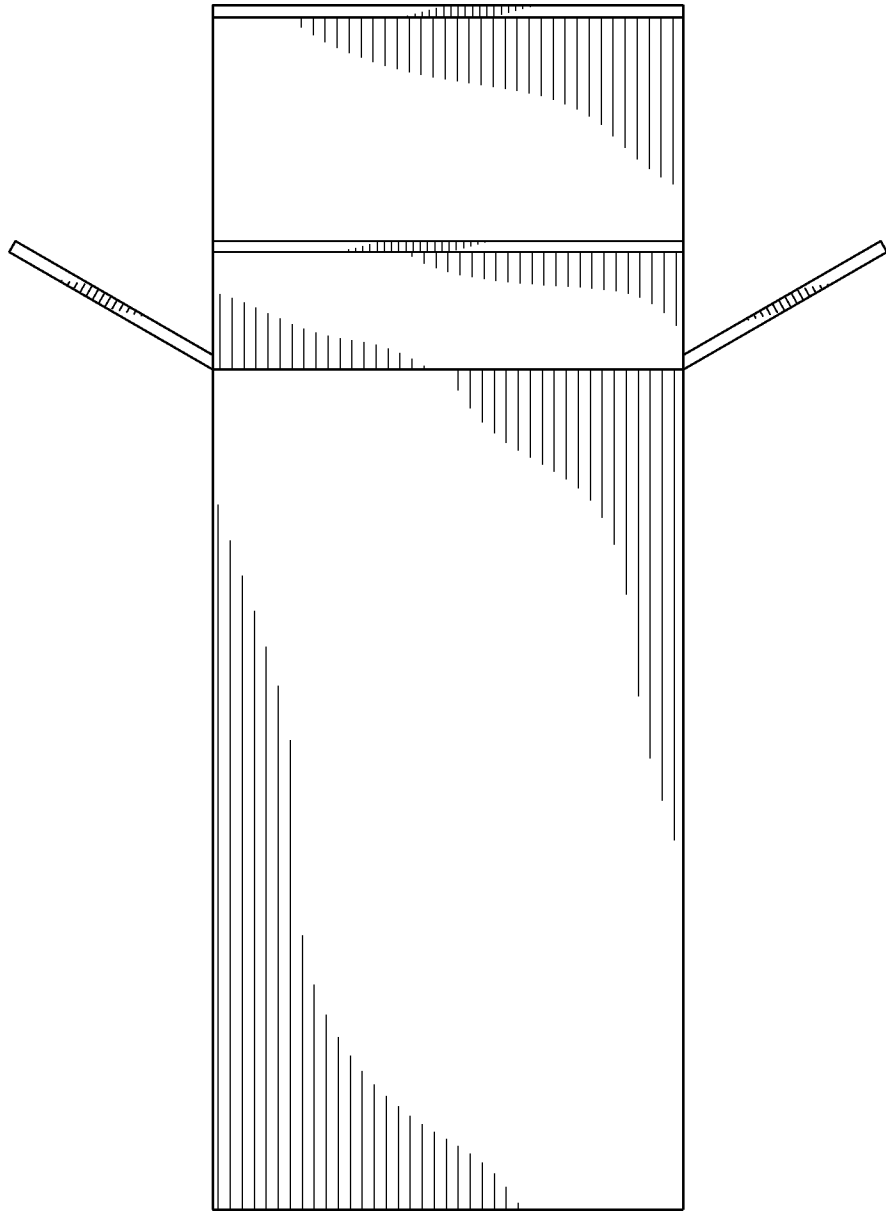


FIG. 22

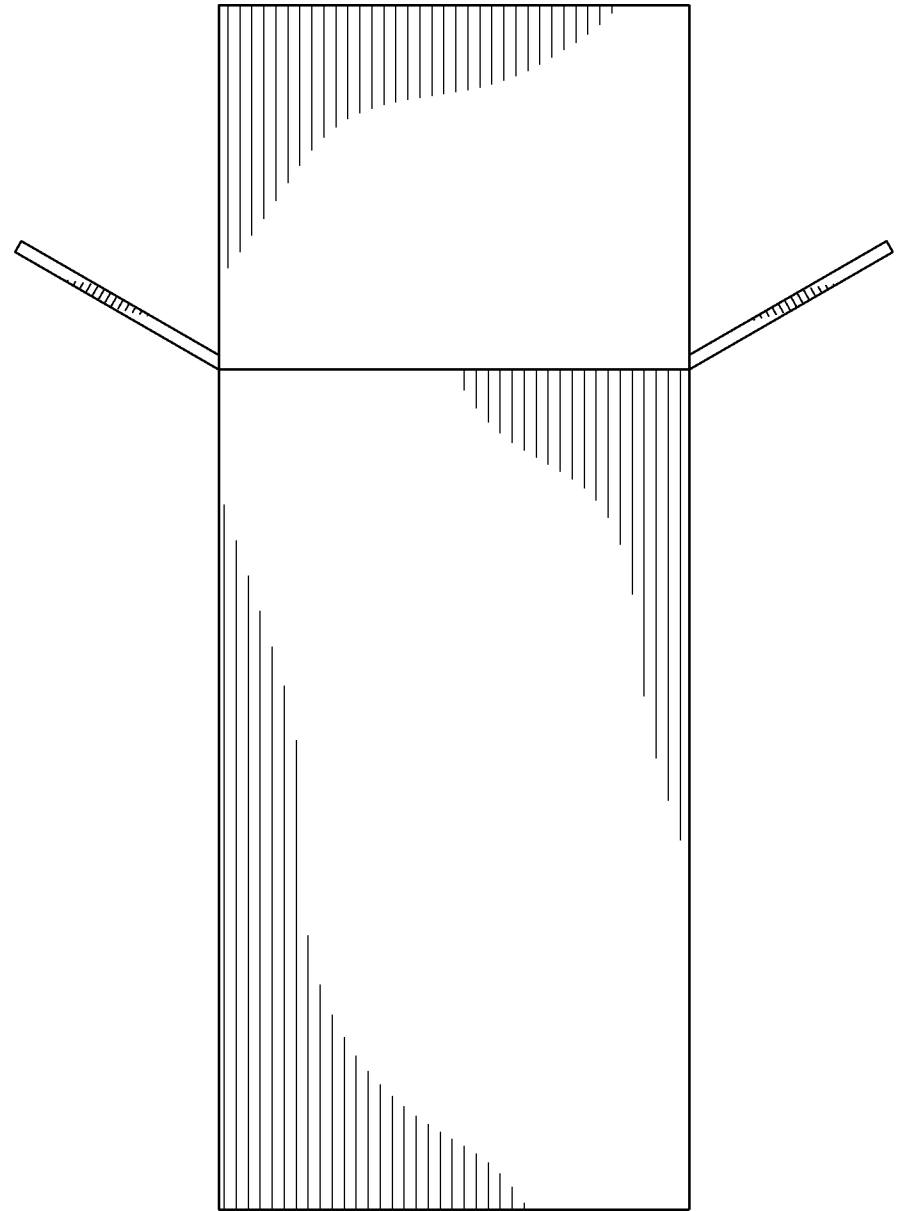


FIG. 23

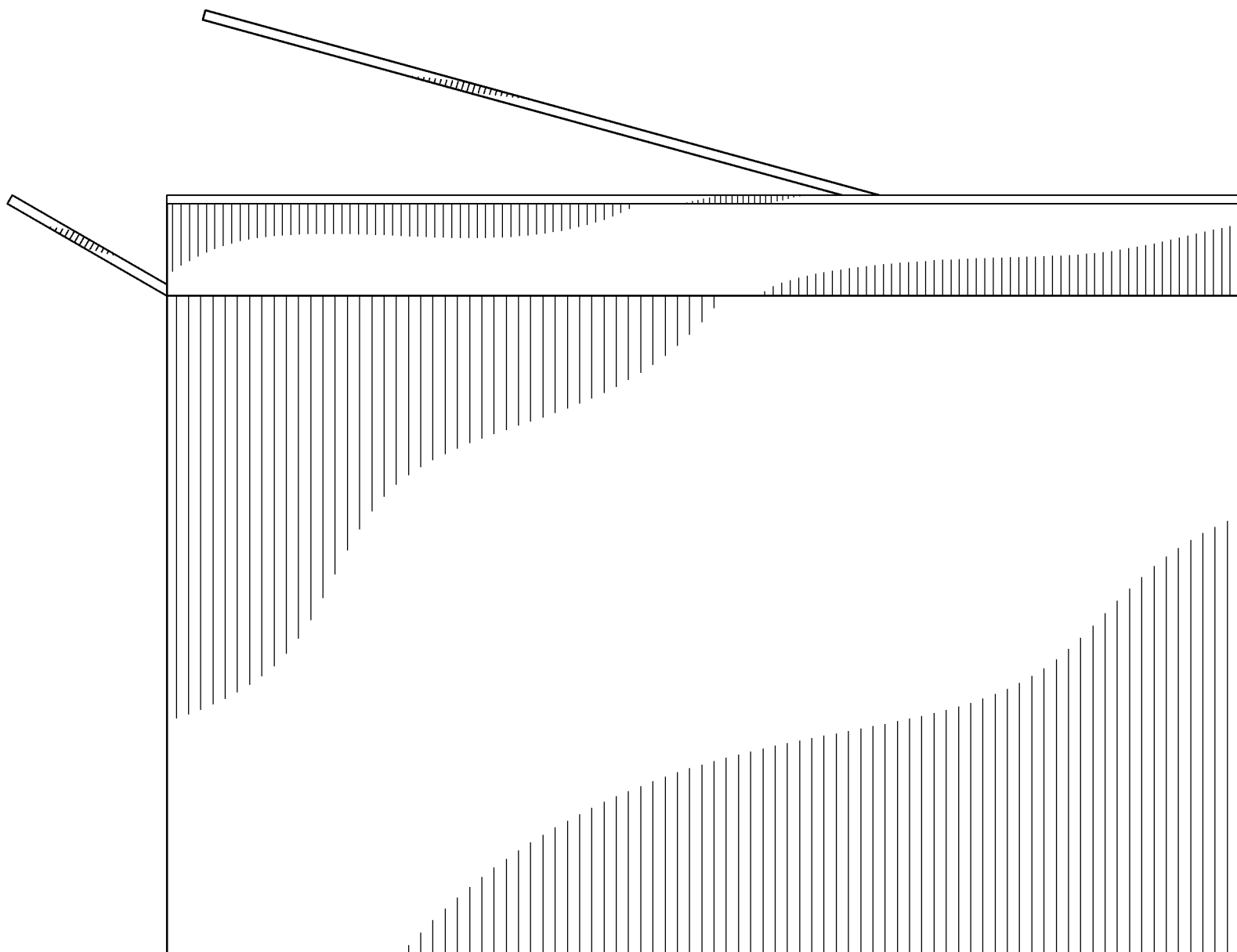


Fig. 24

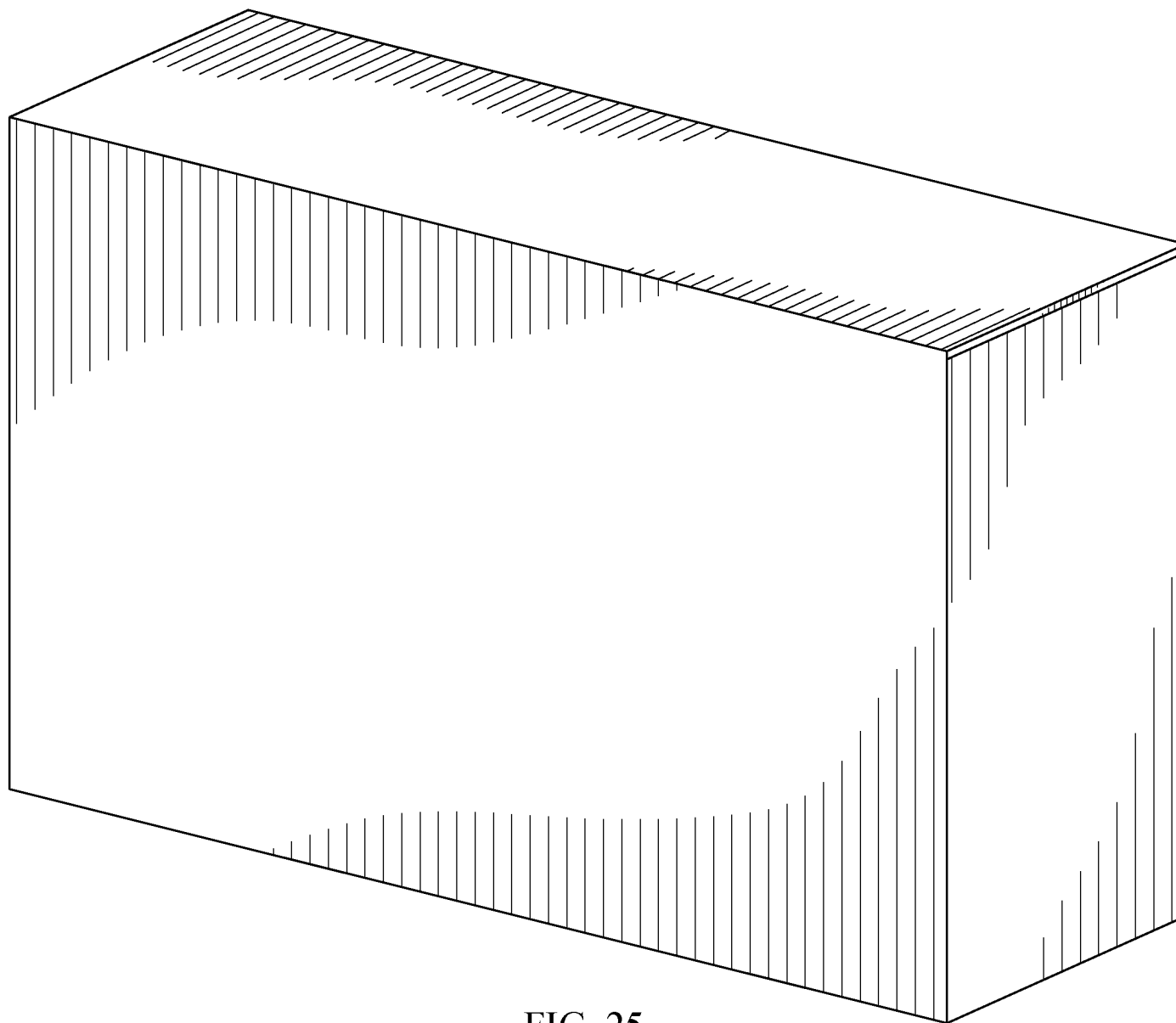


FIG. 25

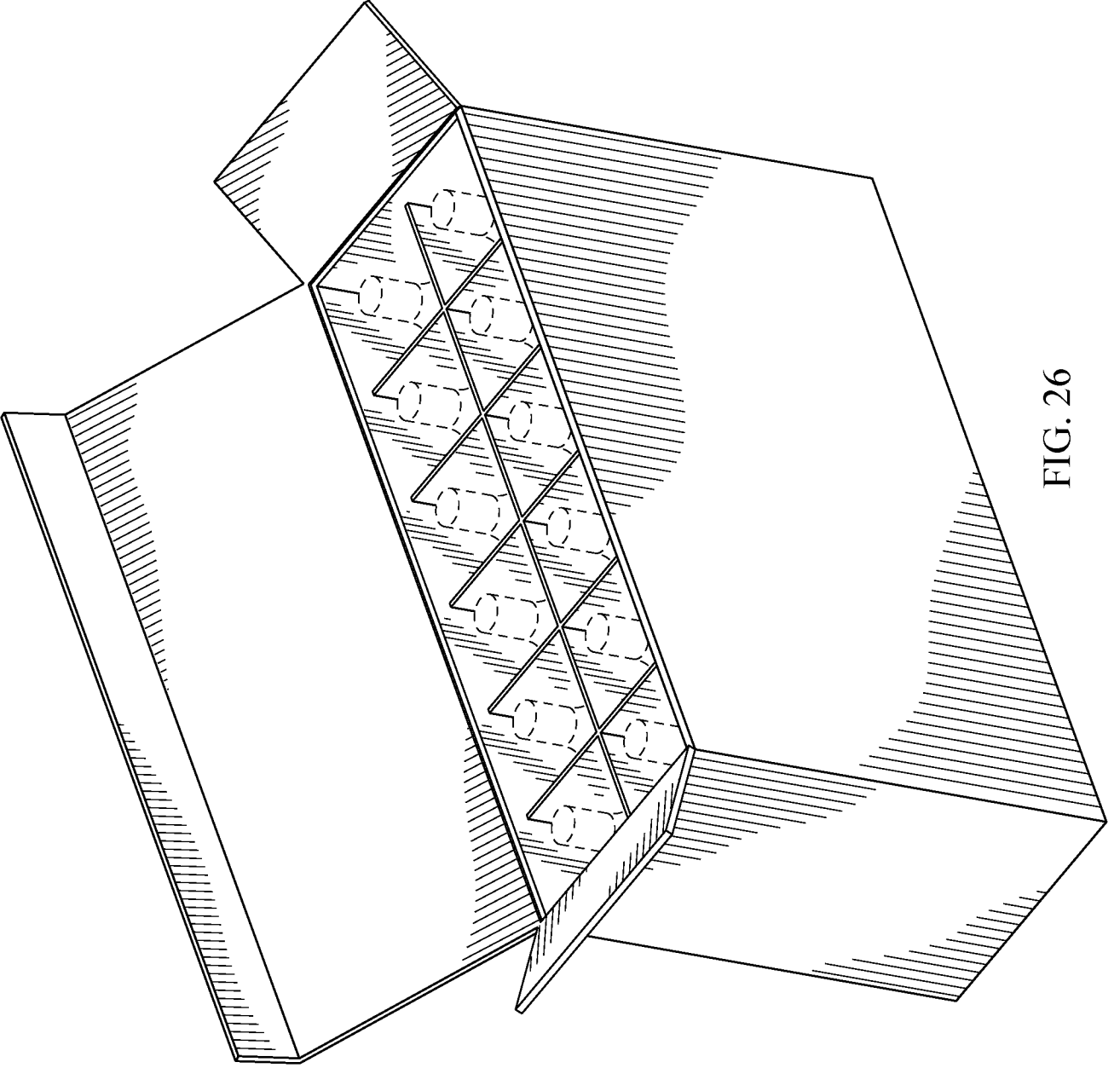


FIG. 26

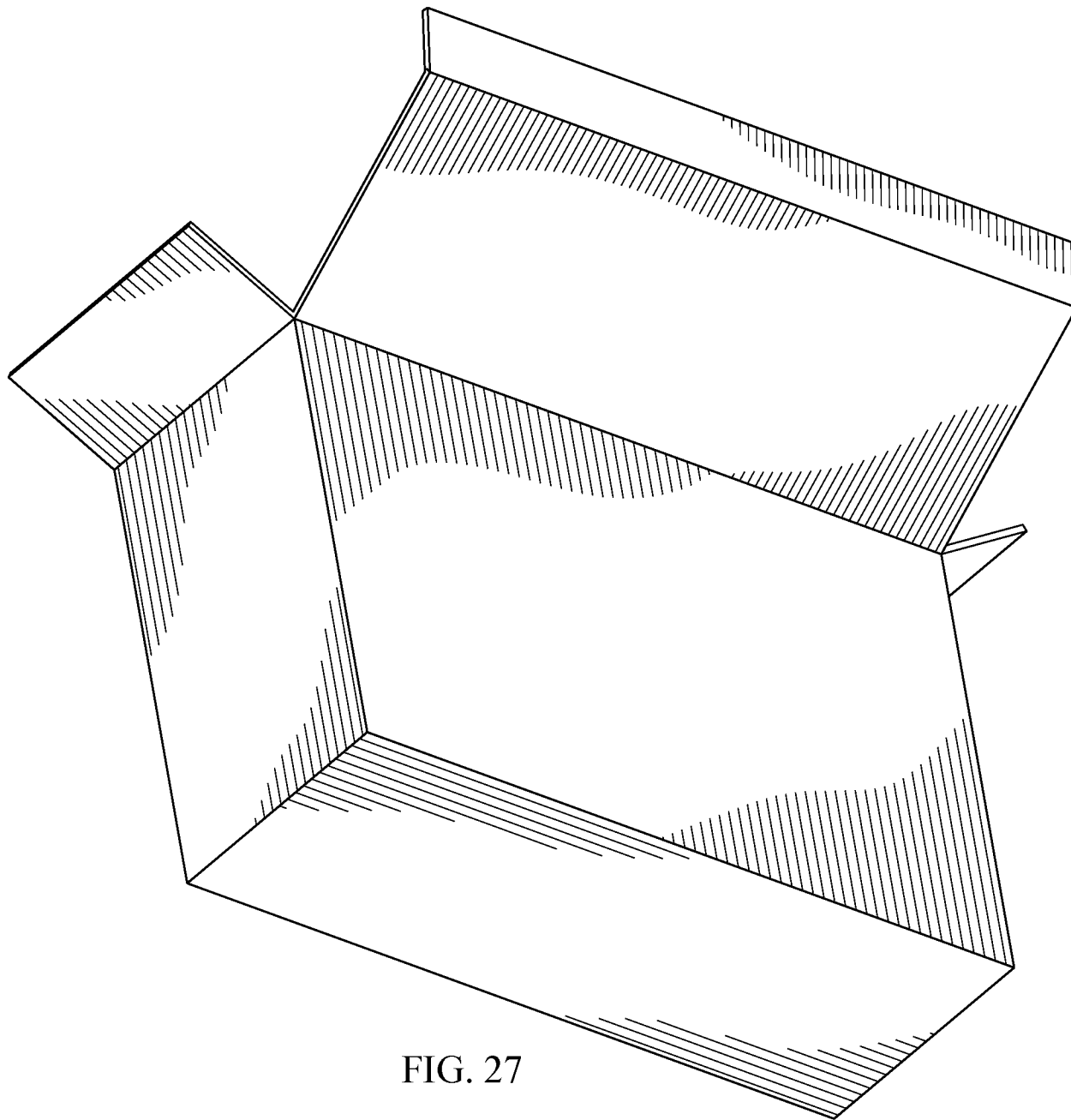


FIG. 27

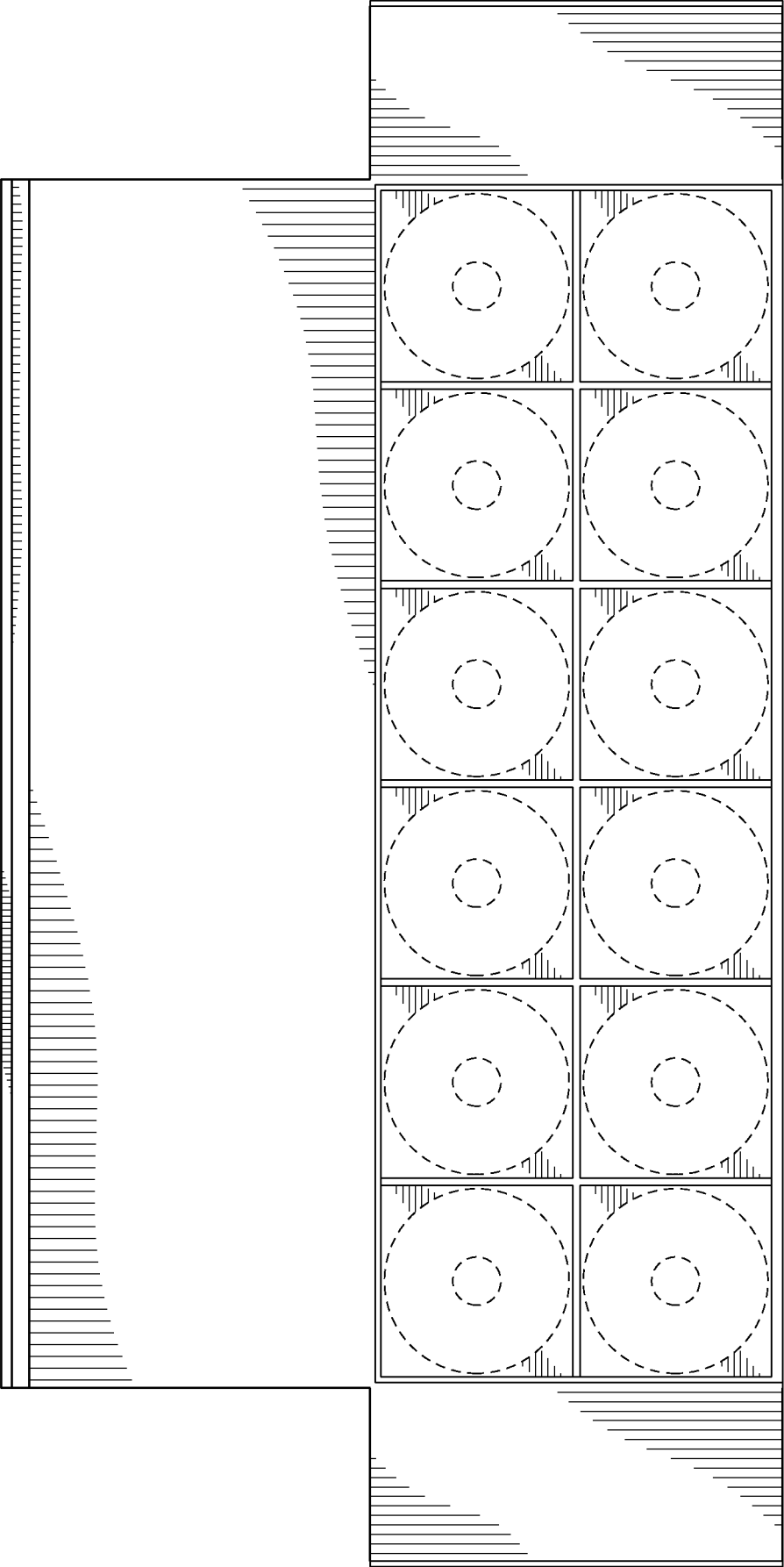


FIG. 28

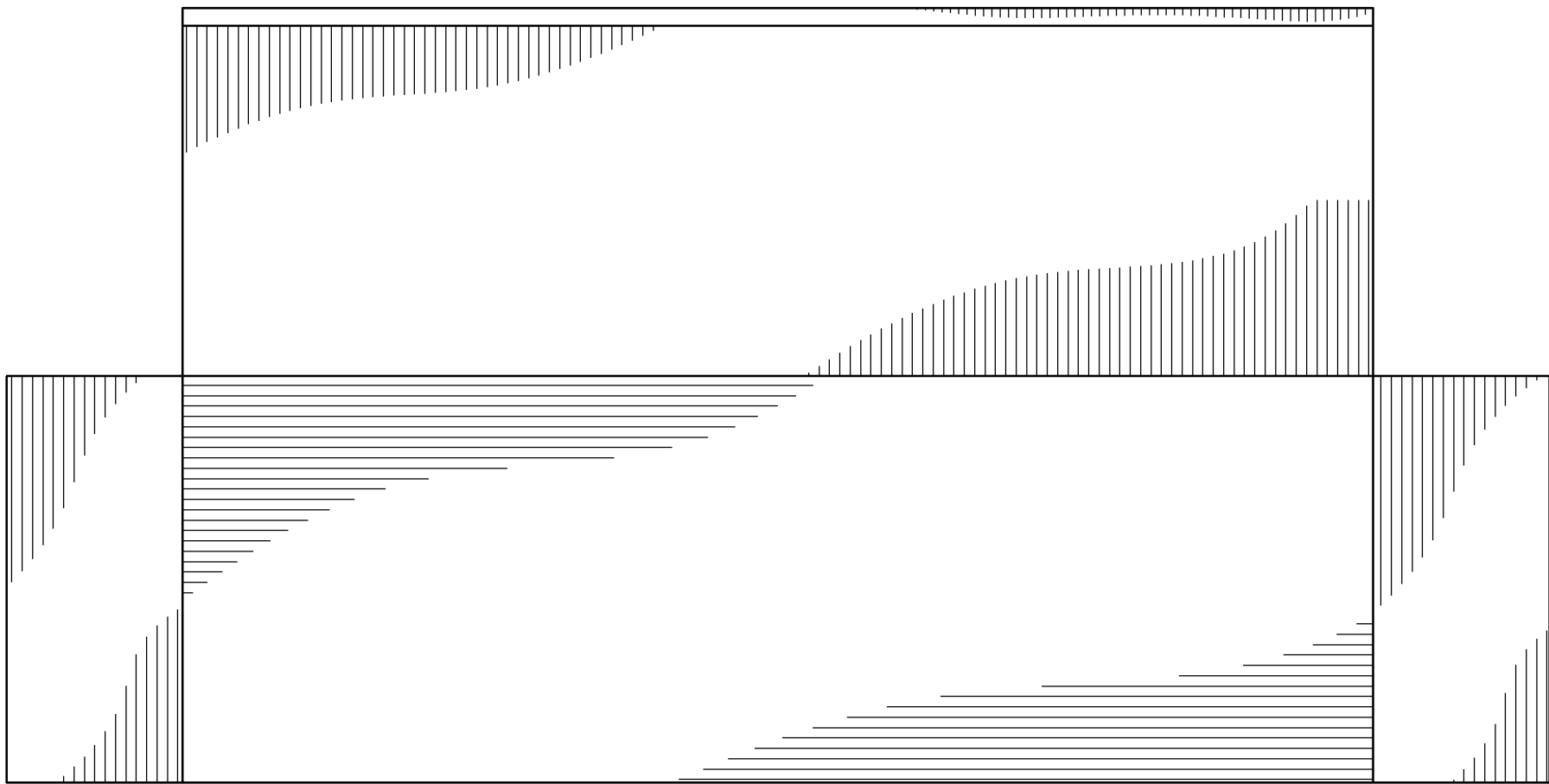


FIG. 29

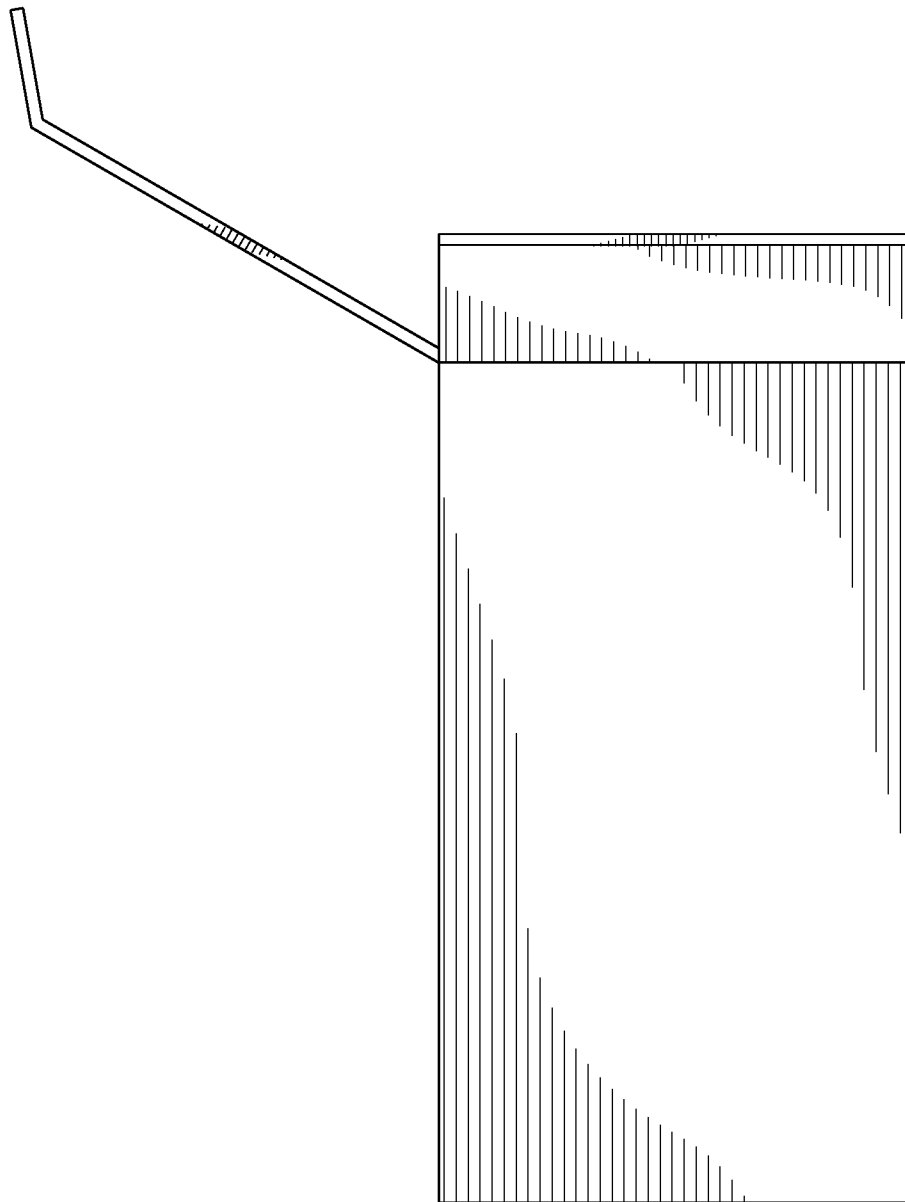


FIG. 30

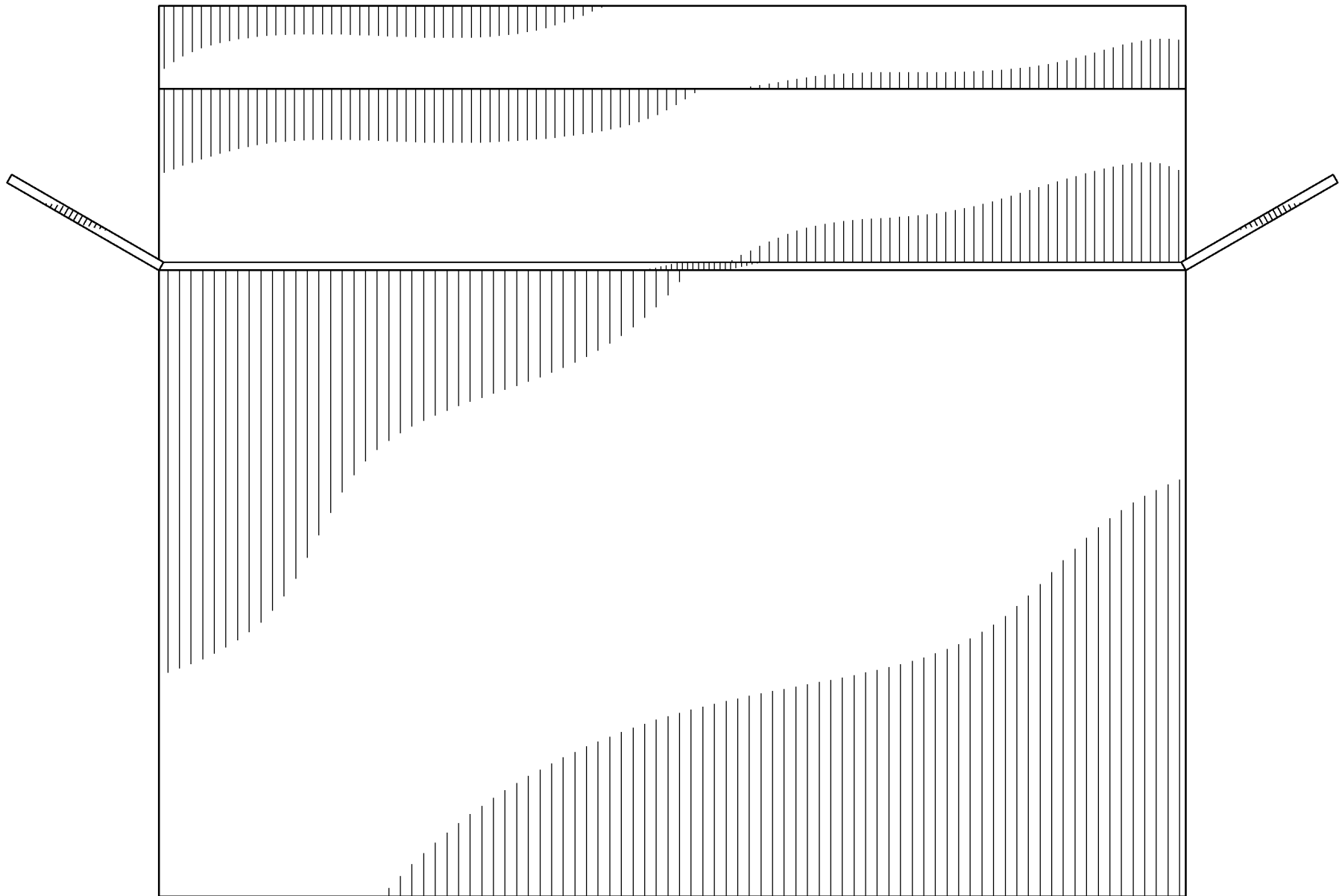


FIG. 31

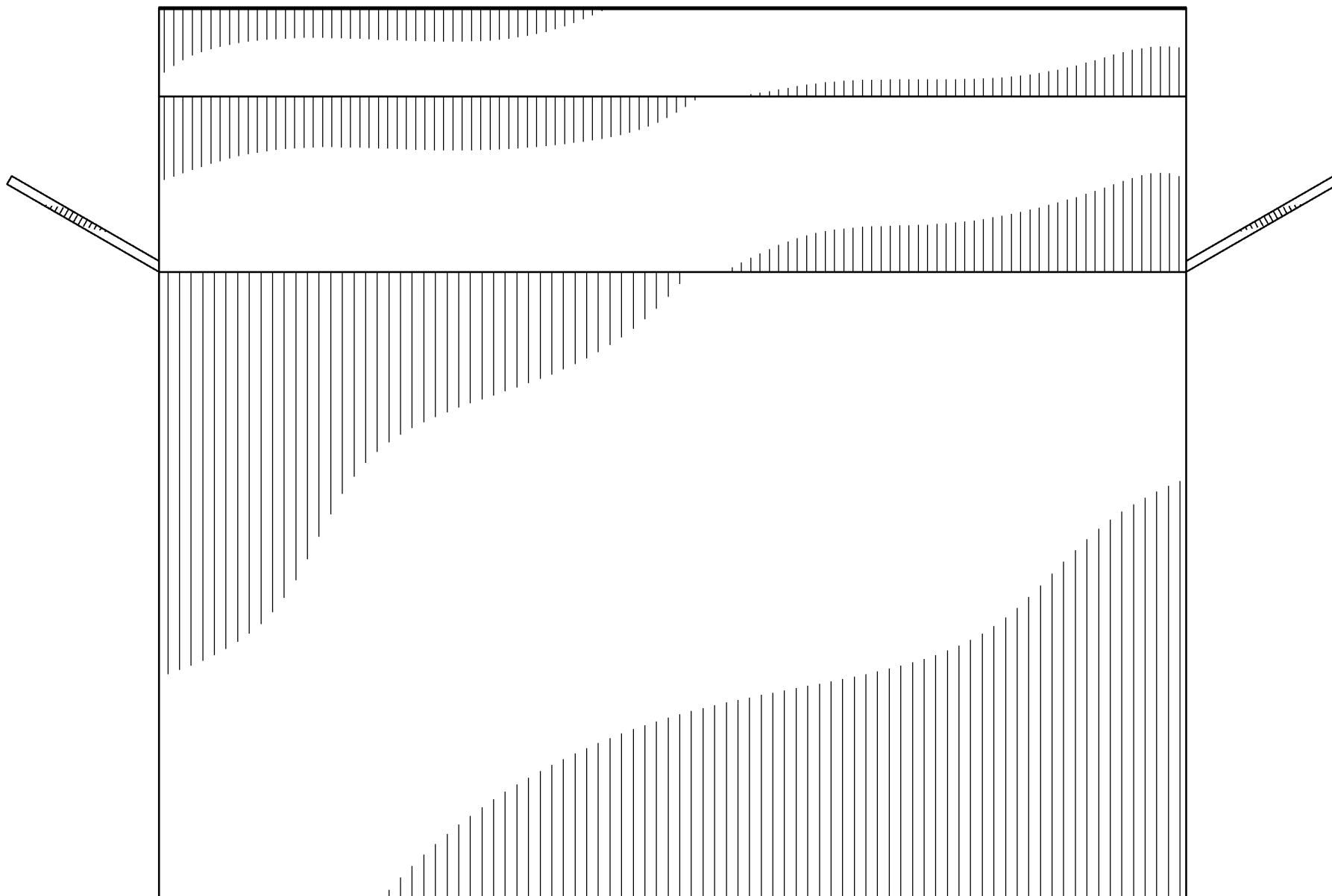


FIG. 32

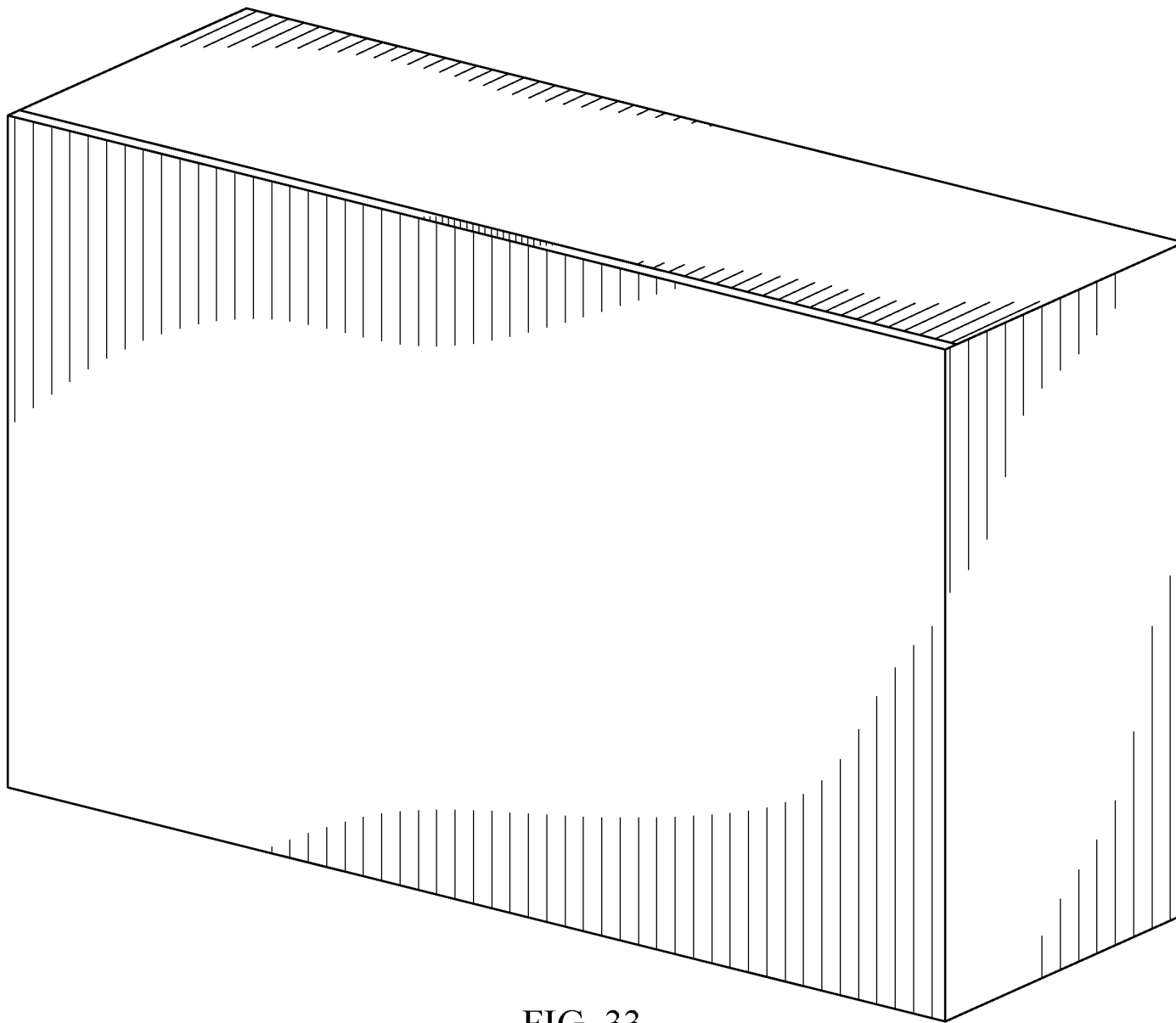
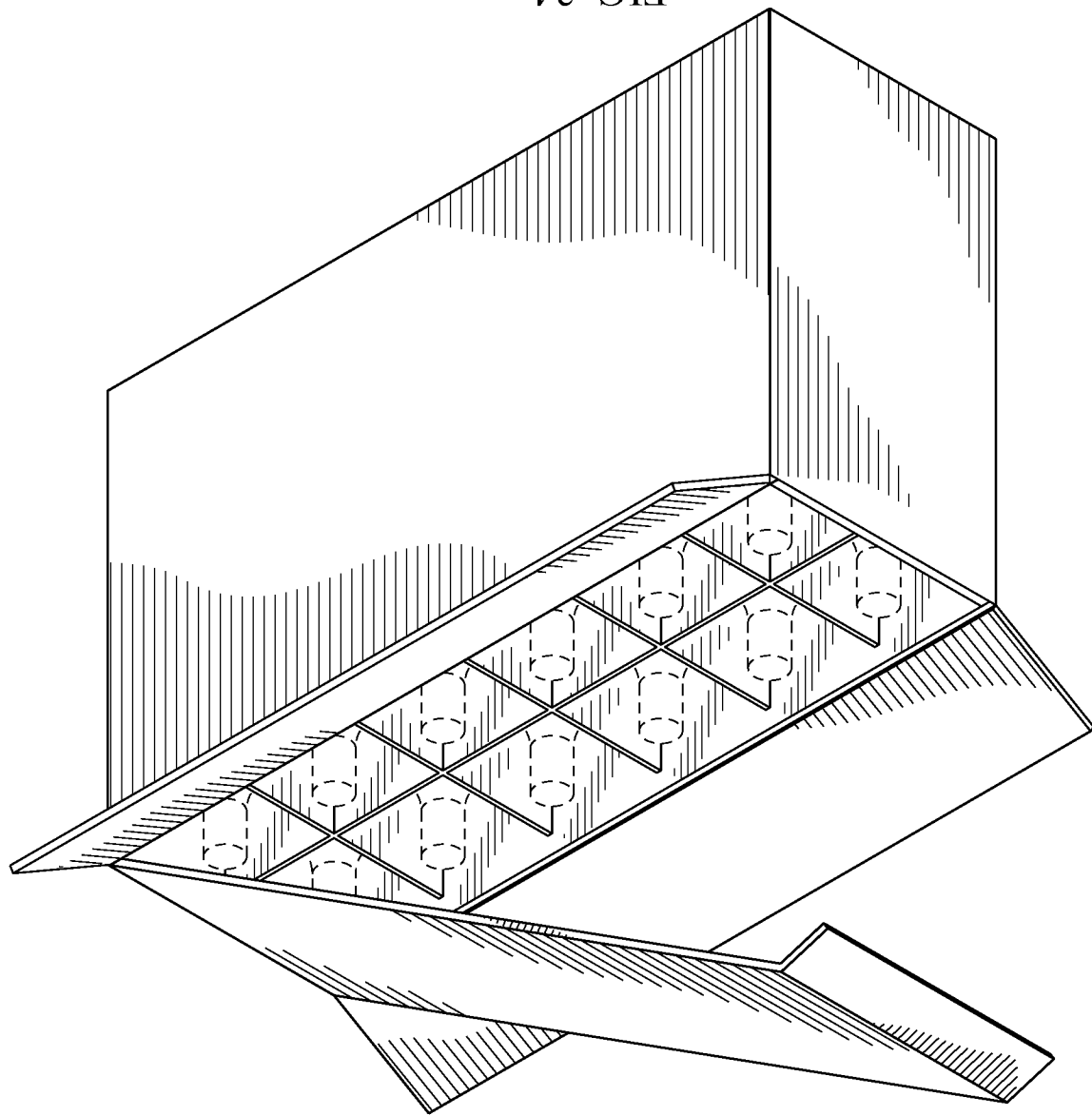


FIG. 33

FIG. 34



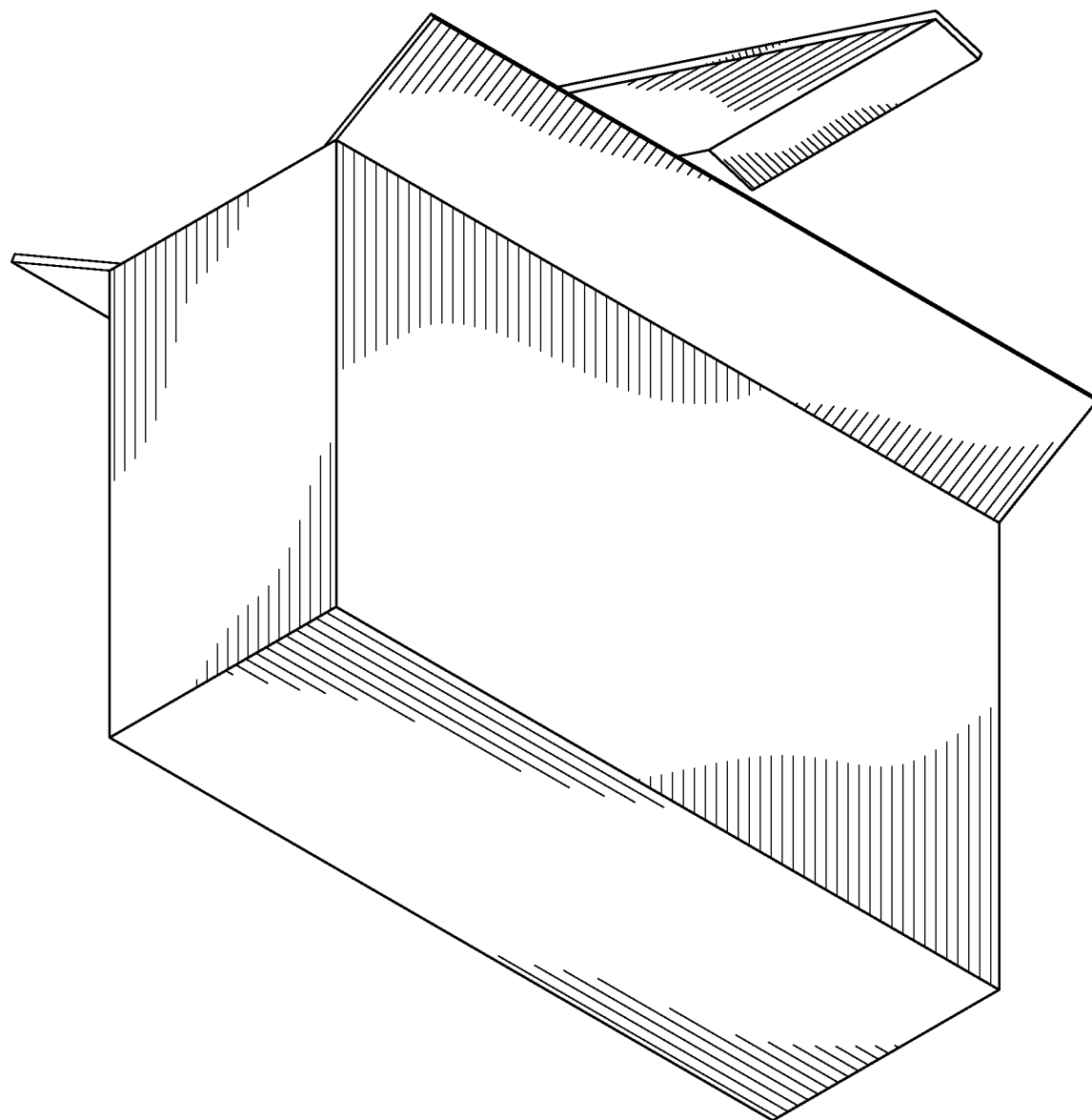


FIG. 35

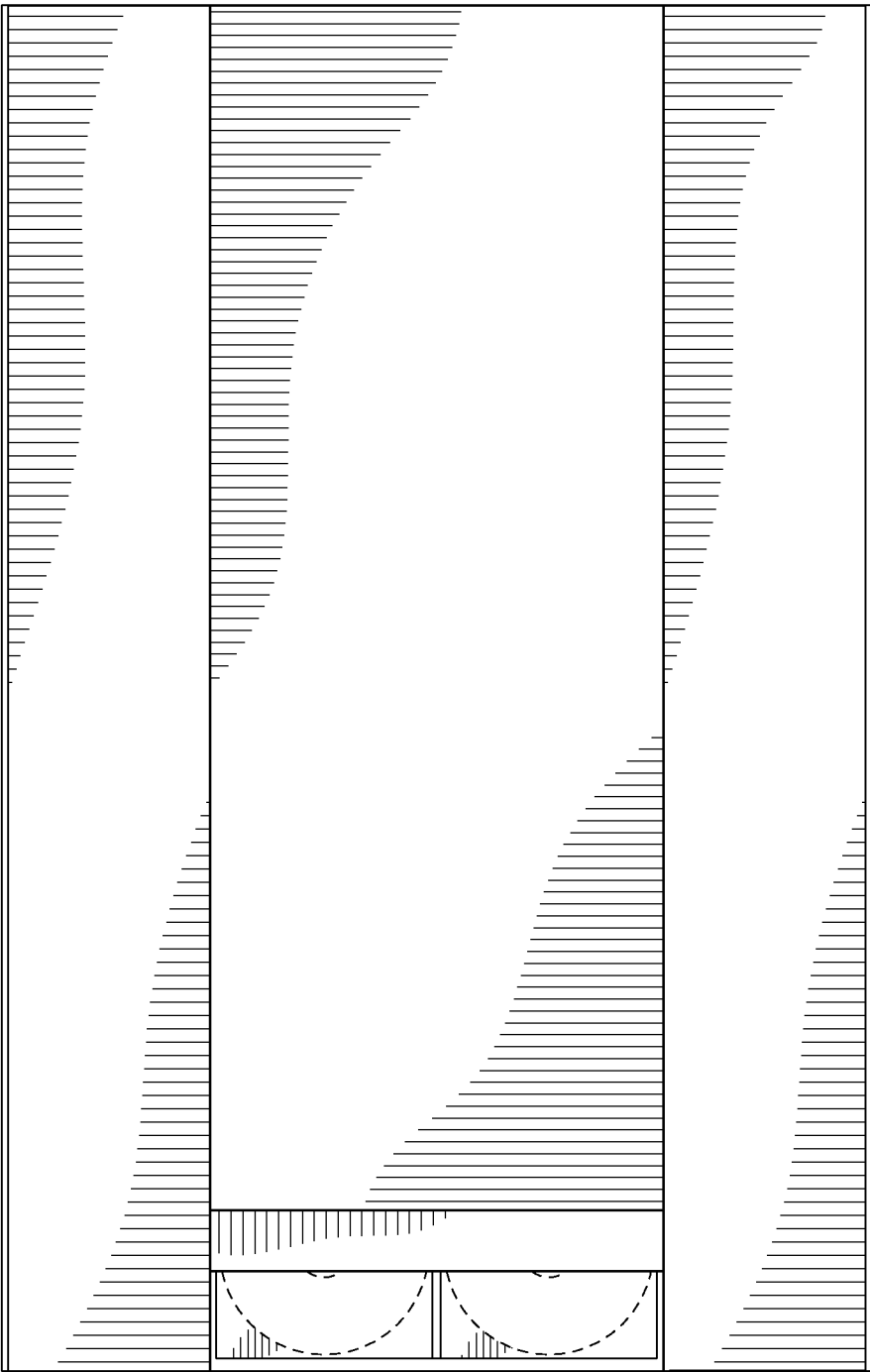


FIG. 36

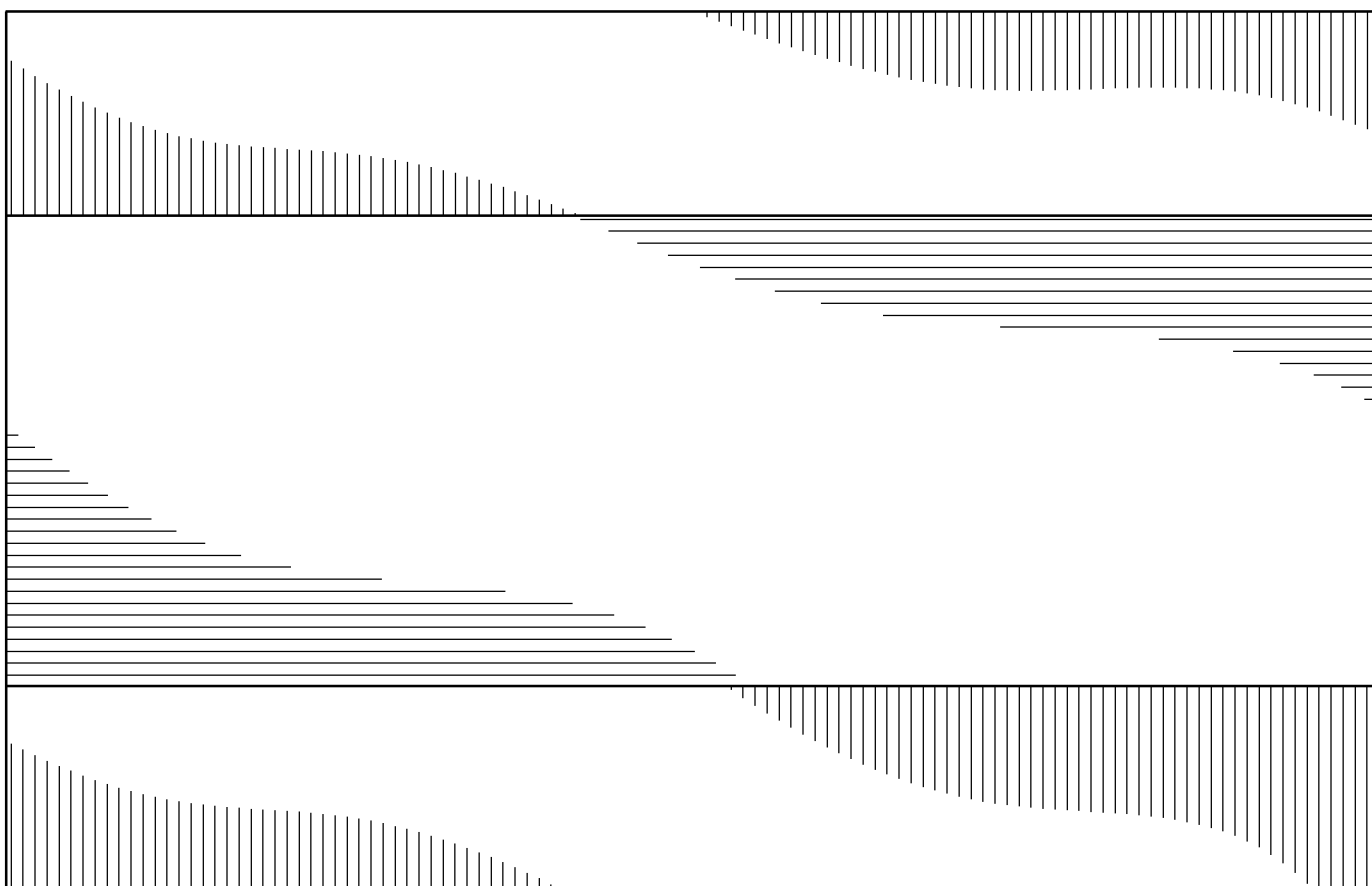


FIG. 37

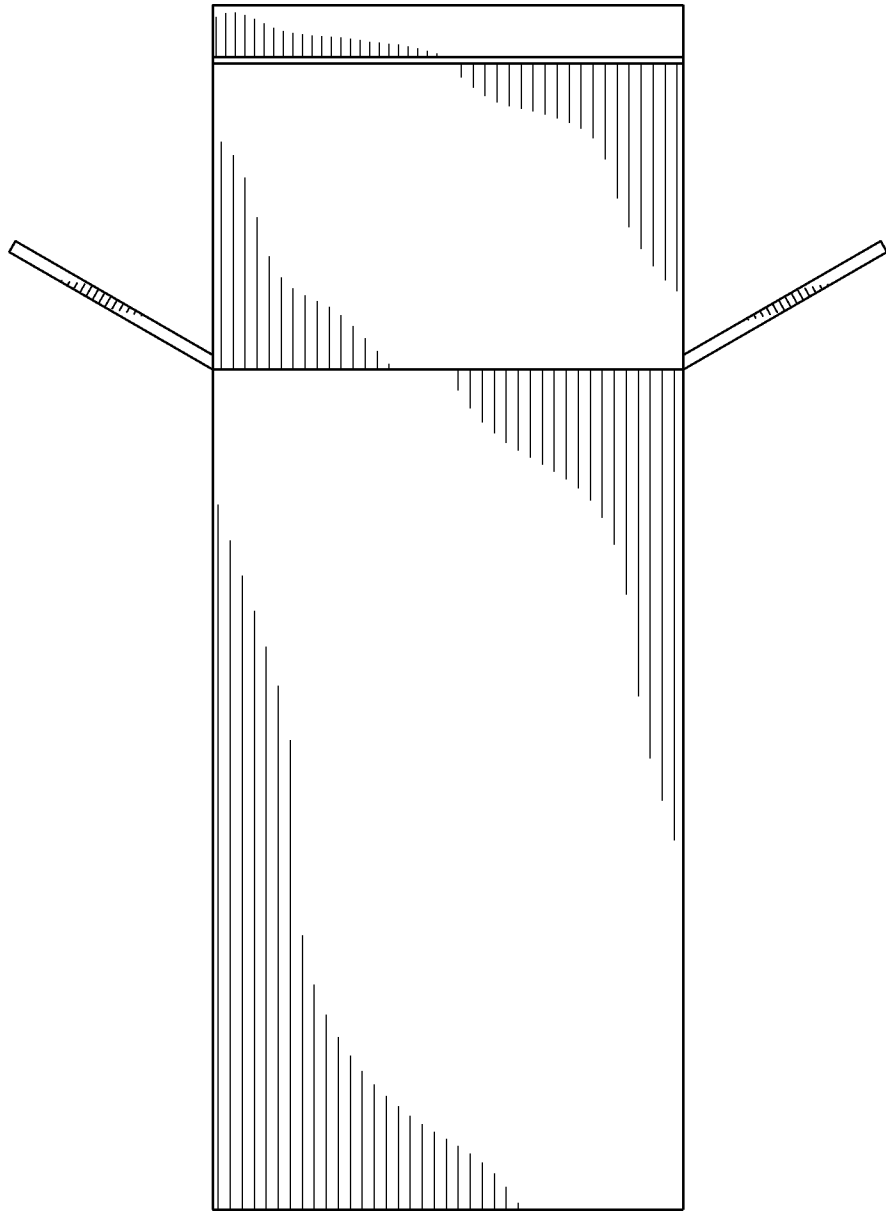


FIG. 38

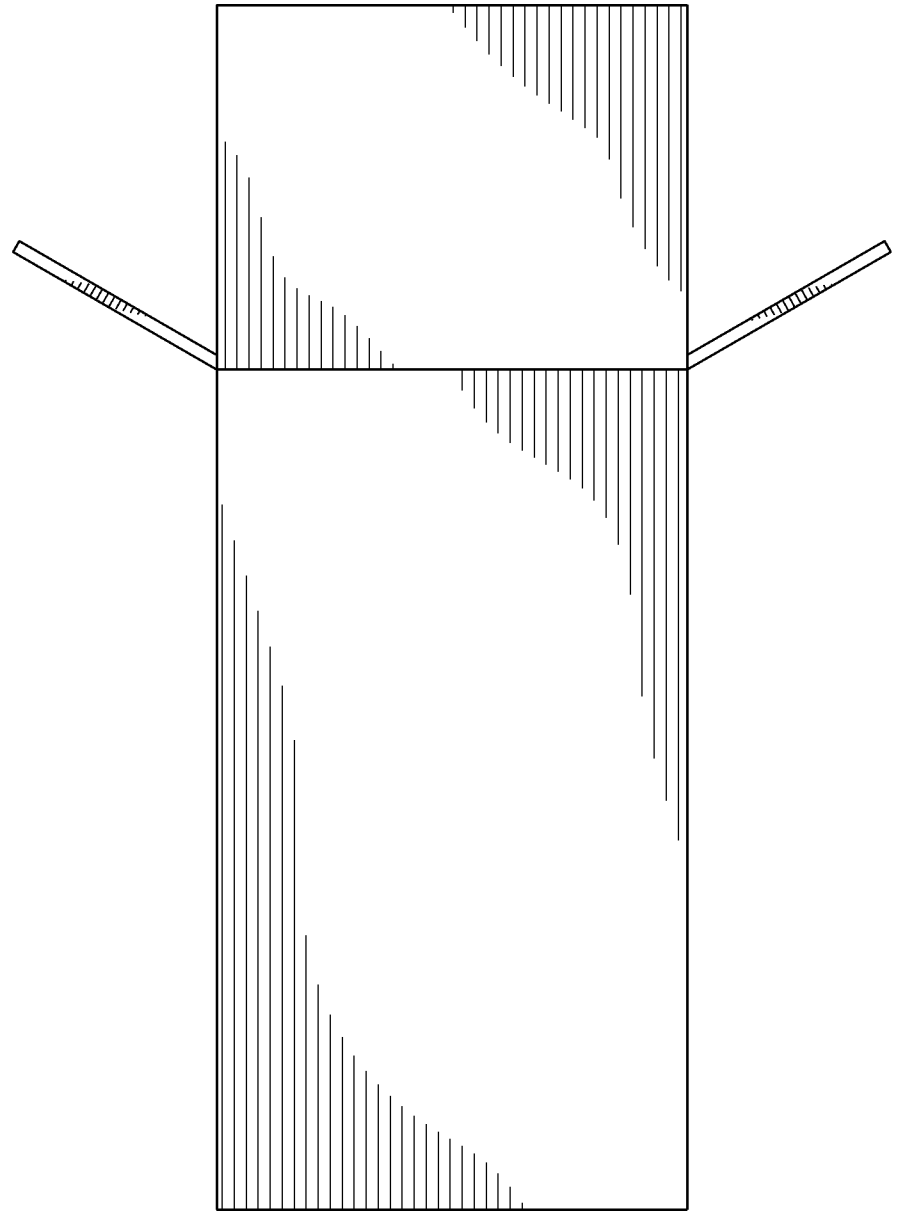


FIG. 39

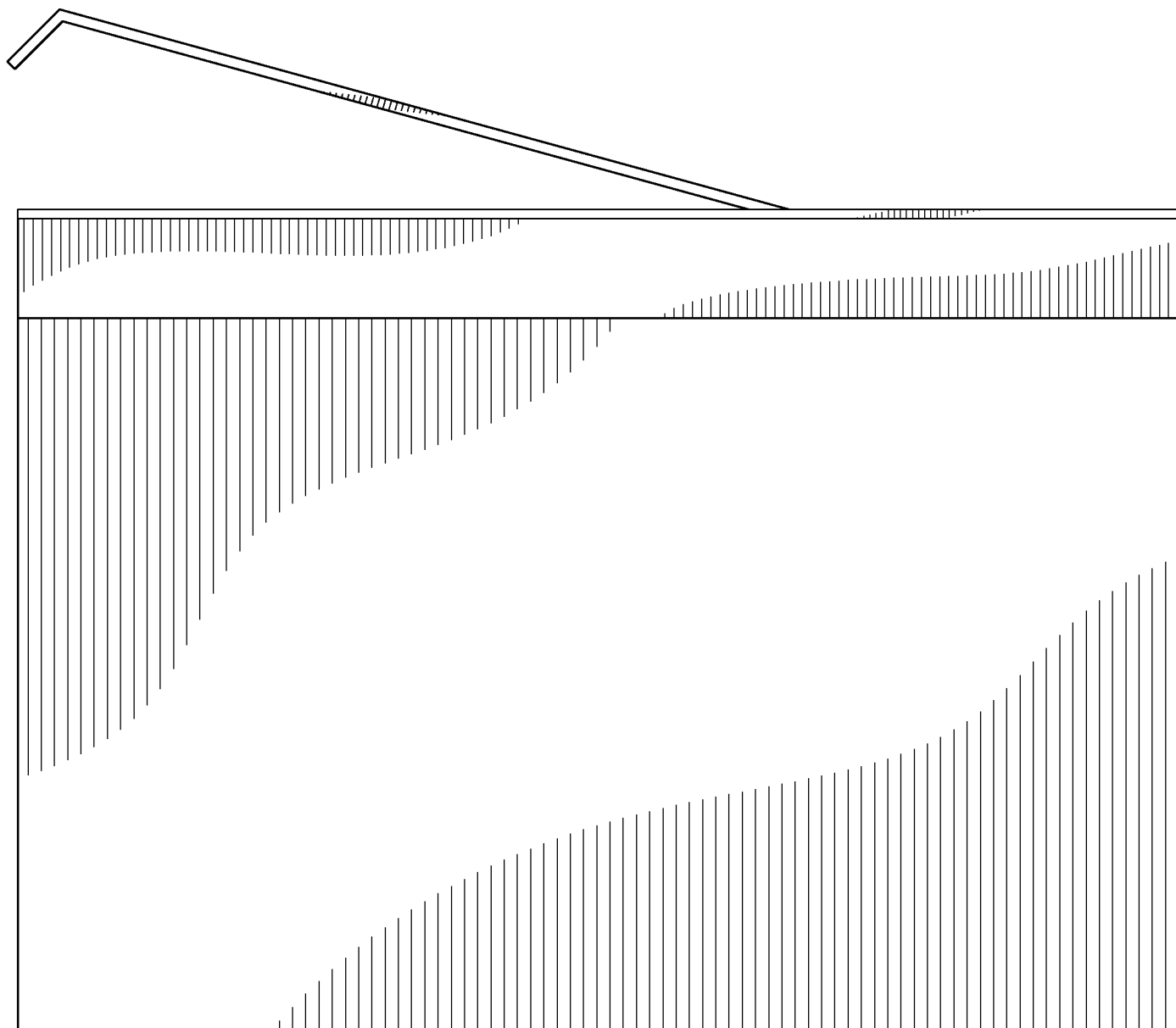


Fig. 40

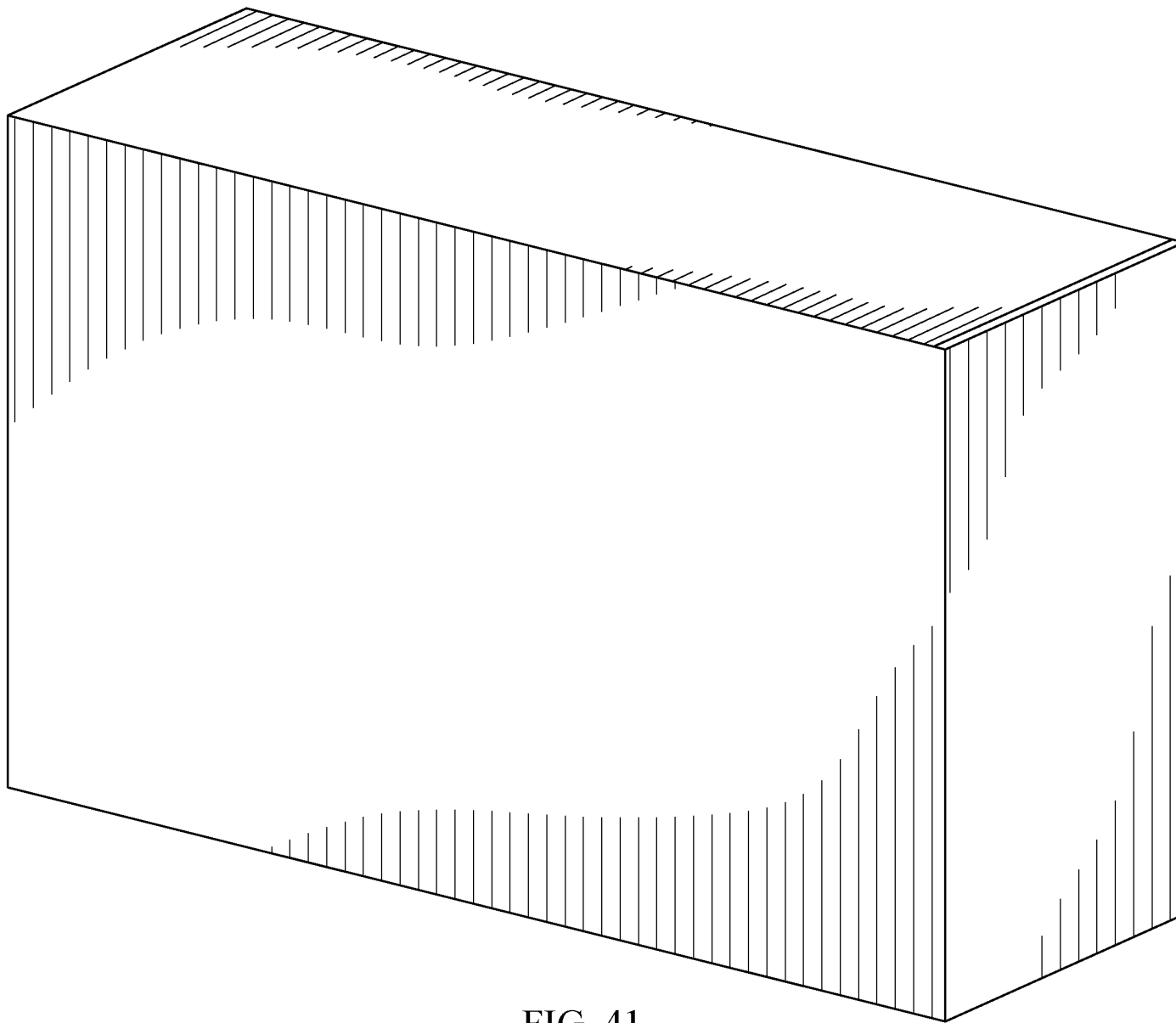


FIG. 41

What is claimed is:

The ornamental design for a wine case as shown.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: Alexander, Barry Attorney Docket No.: 4065.2006
Application No.: TBD Group Art Unit: TBD
Filed: Herewith Examiner: TBD

Title: Wine Case

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

PRELIMINARY AMENDMENT

Sir:

This application is a divisional of pending design patent application serial number 29747078, filed August 19, 2020, intended to claim the embodiment depicted in Figures 26-33.

Please amend the specification and drawings by deleting Figures 1-25 and 34-41 and their corresponding descriptions.

Respectfully submitted,

Barry Alexander

Date: June 15, 2023

By: _____
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Phoenix, AZ 85004
(602) 714-7441; jmott@hartmantitus.com