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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
17/670,629	02/14/2022	Marc Krüger	1859.029USC13	5952

25215 7590 07/05/2022
The Dobrusin Law Firm P.C.
29 W. Lawrence Street
Suite 210
Pontiac, MI 48342

EXAMINER
CHOU, JIMMY

ART UNIT	PAPER NUMBER
3761	

NOTIFICATION DATE	DELIVERY MODE
07/05/2022	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):

dobrusin_PAIR@firsttofile.com
patmail@patentco.com
rmasquelier@patentco.com

PTOL-90A (Rev. 04/07)

Applicant-Initiated Interview Summary	**Application No.** 17/670,629	**Applicant(s)** Krüger, Marc		
	Examiner JIMMY CHOU	**Art Unit** 3761	**AIA (First Inventor to File) Status** No	**Page** 1 of 2

All Participants (applicant, applicants representative, PTO personnel)	**Title**	**Type**
JIMMY CHOU	Primary Examiner	Telephonic
Paul Palinski	Attorney of Record	

Date of Interview: 28 June 2022

Issues Discussed:

35 U.S.C. 112

With respect to 35 USC 112, the attorney agreed to change "bowed upwardly" to "bowed outwardly".

Drawings

Discussed about the drawing objections. The attorney argues that the support can be found on page 6, 23-26, i.e., the invention will be explained herein below with reference to figures 1-18. These explanations do not have a limiting effect on the general concept of the invention; on page 9 lines 8-9, 11 -27, i.e., what has been said in relation to the identifier applies to all other examples ... it is possible as symbolized by the arrow 15, for the barcode to be provided on that side of the peripheral region; on page 12, lines 13-35 and on page 17-19; on page 8 at lines 35-38, i.e., convexities 8 constitutes the identifier. Thus, the drawing objections have been withdrawn.

Non-statutory Double Patenting

The attorney agreed to file terminal disclaimer.

Priority Claim(s)

Discussed about the priority claims. The support can be found in the above drawing objection section.

/JIMMY CHOU/ Primary Examiner, Art Unit 3761	

Applicant is reminded that a complete written statement as to the substance of the interview must be made of record in the application file. It is the applicants responsibility to provide the written statement, unless the interview was initiated by the Examiner and the Examiner has indicated that a written summary will be provided. See MPEP 713.04
Please further see:
MPEP 713.04
Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews, paragraph (b)
37 CFR § 1.2 Business to be transacted in writing

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview.

K-FEE SYSTEM GMBH, EX2014, page 2
NESPRESSO USA, INC. v. K-FEE SYSTEM GMBH
IPR2023-00485, U.S. PATENT 11,230,430

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.

K-FEE SYSTEM GMBH, EX2014, page 3
NESPRESSO USA, INC. v. K-FEE SYSTEM GMBH
IPR2023-00485, U.S. PATENT 11,230,430

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PTOL-90A (Rev. 04/07)

Office Action Summary	Application No. 17/670,629	Applicant(s) Krüger, Marc	
	Examiner JIMMY CHOU	Art Unit 3761	AIA (FITF) Status No

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☑ Responsive to communication(s) filed on 02/14/2022.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

2a)☐ This action is **FINAL.** 2b) ☑ This action is non-final.

3)☐ 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.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5) ☑ Claim(s) 10-28 is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6) ☐ Claim(s) _____ is/are allowed.

7) ☑ Claim(s) 10-28 is/are rejected.

8) ☐ Claim(s) _____ is/are objected to.

9) ☐ Claim(s) _____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to **PPHfeedback@uspto.gov.**

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☑ The drawing(s) filed on 02/14/2022 is/are: a)☐ accepted or b)☑ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

12)☑ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

a)☑ All b)☐ Some** c)☐ None of the:

1.☑ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ 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)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☑ Notice of References Cited (PTO-892)

2) ☑ Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date _____.

3) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.

4) ☑ Other: EAST search history is attached.

DETAILED ACTION

Notice of Pre-AIA or AIA Status

The present application is being examined under the pre-AIA first to invent provisions.

Priority

Acknowledgment is made of applicant's claim for foreign priority based on applications DE 19 2010 031 988.0, DE 10 2010 044 251.8, and DE 16 2011 010 5384.4 filed in Germany on 22 July 2010, 02 September 2010, and 07 February 2011 respectively, the official translations of which were received **02/14/2022.**

Under 35 U.S.C. 119(a) or (e), the claims in a U.S. application are entitled to the benefit of a foreign priority date or the filing date of a provisional application if the corresponding foreign application or provisional application supports the claims in the manner required by 35 U.S.C. 112(a) or pre-AIA 35 U.S.C. 112, first paragraph.

This is to say that current application must be an application for a patent for an invention which is also disclosed in the prior application(s), foreign or domestic. The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of 35 U.S.C. 112(a) or the first paragraph of pre-AIA 35 U.S.C. 112, except for the best mode requirement. See Transco Products, Inc. v. Performance Contracting, Inc., 38 F.8d 551, 32 USPQ2d 1077 (Fed. Cir. 1994)

The disclosure of the prior-filed applications, Applications No. DE 19 2010 031 988.0, DE 10 2010 044 251.8, and DE 16 2011 010 5384.4, as well as US Applications 13/744,623, 15/211823, and 15/646,980 fail to provide adequate support or

enablement. For example: there is no single embodiment teach or suggest as to how one or more features of embodiment can be used together to produce the embodiment as required in independent claims (i.e., the detail structures of a base element, a rim, a cover, a sensor/detector, an insertion shaft, a chamfered mandrel and a seal).

This application has been filed as a continuation application. The application repeats a substantial portion of prior **Applications No. 15/646,980 filed on 7/11/2017, Applications No. 15/211,823 filed on 07/15/2016, Applications No. 13/744,623 filed on 01/18/2013** and respectively but, by way of the claims adds significant disclosure not presented in the prior applications (i.e., "bowed upwardly" in both independent claims and dependent claims 15 and 24 recite the features not in prior applications. For example: para.0017 of '363 recites the edge can also designed for guiding the portion capsule into the chute in order to position the portion capsule in the brewing chamber properly. However, instant application claims rim guides the capsule in the insertion shaft such that the portion capsule drops into a brewing chamber).

In this case, **the appropriate filing date of instant application is treated as 02/14/2022**.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. A nonstatutory double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on nonstatutory double patenting provided the reference application or patent either is shown to be commonly owned with the examined application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. See MPEP § 717.02 for applications subject to examination under the first inventor to file provisions of the AIA as explained in MPEP § 2159. See MPEP § 2146 *et seq.* for applications not subject to examination under the first inventor to file provisions of the AIA. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).

The USPTO Internet website contains terminal disclaimer forms which may be used. Please visit www.uspto.gov/patent/patents-forms. The filing date of the application in which the form is filed determines what form (e.g., PTO/SB/25, PTO/SB/26, PTO/AIA/25, or PTO/AIA/26) should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets

all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp.

Claims 10-13 and 21-22 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 10-11 of copending **Application No. 17/547,363** in view of **Kilber et al.** (US 2010/0288131).

Regarding claim 10, **'363 discloses** "a beverage system" (*claim 10 at line 1*) "for making a beverage" (*intended use*), comprising:

A) "a portion capsule" (*claim 10, single-serve capsule*) comprising:

i) "a base element with a cavity, in which a beverage material is provided, the base element being symmetrical about a central longitudinal axis thereof and having a bottom portion" (*claim 10 at lines 3-6*);

ii) "a rim extending outwardly from the base element, the rim comprising a top side and an opposing bottom side" (*claim 10, step A) ii). Examiner noted that a flange is the rim*);

iii) "a cover fastened to the **flange** to close the cavity" (*claim 10, A) iii) a cover fastened to the top side of the flange*), "the cover is **bowed upwardly** in a central region of the cover relative to a peripheral region of the cover, the cover includes a region configured to be pierced at a location that is offset from the central longitudinal axis" (*claim 10, A) iii). Examiner noted that the term "bowed upwardly" conflict with each other because ordinary definition of "bowed" means downwardly and forward and "upwardly" means upward direction. Currently the claim limitation does not provide sufficient information as to*

how the cover bowed upwardly. ***For examining purpose, Examiner interpreted that bowed upwardly means bowed outwardly***);

iv) "a barrier layer to prevent moisture or aroma from escaping out of the portion capsule" (*claim 10, A) iv)*); and

v) "an identifier provided on the bottom side of the rim" (*claim 10, A) v)*);

B) "a beverage machine comprising:" (*claim 10, B)*)

i) "a sensor/detector" (*claim 10, B) iii)*);

ii) "an insertion shaft configured to receive the portion capsule and to enable detection of the identifier on the bottom side of the rim by the sensor/detector" (*claim 10, B) i) and iii). Examiner noted that an insertion shaft is the capsule receptacle*);

iii) "a chamfered mandrel that is configured to pierce the cover at the location that is offset from the central longitudinal axis" (*claim 10, B) ii)*);

iv) "a seal that is configured to bear against the top side of the cover in a region between the peripheral region of the cover and the region of the cover that is pierced by the chamfered mandrel" (*claim 10, B) vi)*); and

v) "a pump controlled to supply hot water into the portion capsule only upon detection of the identifier by the sensor/detector and a determination by the beverage machine that the portion is suitable for use with the beverage machine" (*claim 10, B) iv) and claim 11, i.e., a determination that the single serve capsule is not compatible with the beverage machine. Examiner noted that hot water is a relative term*).

'363 is silent regarding A) i) a base element having an open end, the base element having a first height that is defined between the open end and the bottom portion; A) iii) a cover fastened to the base element, the cover has a second height that

is defined between the peripheral region and the central region, wherein the first height of the base element is greater than the second height of the cover.

Kilber et al. teaches "A) i) a base element having an open end, the base element having a first height that is defined between the open end and the bottom portion" (*40 or 42 pointed at a base element having an open portion on top that is sealed by the cover*); A) iii) "a cover fastened to the base element" (*51 pointed at the cover that is fastened to the top portion 46 of the base element 40*), "the cover has a second height that is defined between the peripheral region and the central region" (*the cover 51 has a thickness between the peripheral region and the central region of itself*), wherein "the first height of the base element is greater than the second height of the cover" (*the height of the base 40 is greater than the height of the cover 51*). '363 teaches a beverage capsule. Kilber et al. teaches a beverage capsule. It would have been obvious to one of ordinary skill in the art at the time the invention was filed to modify '363 with Kilber et al., by modifying '363's seal and in connection with the base element according Kilber et al.'s seal and base element configuration, to provide secure seal for the capsule.

Regarding claim 11, modified '363 discloses "an operation of the pump, which pushes the hot water through a brewing chamber is prevented upon a determination by the beverage machine that the portion capsule is not suitable for use with the beverage machine" (*'363, Claim 11*).

Regarding claim 12, modified '363 discloses wherein "the insertion shaft has a wall structure that receives the portion capsule, the insertion shaft being defined by a base portion and an annular portion laterally extending from the base portion along a plane that is transverse to a longitudinal axis of the insertion shaft" (*Claim 10, B) i).*

Examiner noted that insertion shaft is the capsule receptacle), wherein "the sensor/detector is positioned outside of the base portion of the wall structure of the insertion shaft and below the annular portion, and which directs a beam through a portion of the wall structure to read the identifier on the portion capsule" (*Claim 10, B) iii)*).

Regarding claim 13, modified '363 discloses "the beverage machine comprises a groove that is laterally offset from the chamfered mandrel" (*claim 10, B), v)*), and "the seal that is at least partially seated in the groove" (*claim 10, B), vi)*).

Regarding claim 21, '363 discloses "a beverage system" (claim 10 at line 1) "for making a beverage" (intended use), comprising:

A) "a portion capsule" (claim 10, single-serve capsule) comprising:

i) "a base element with a cavity, in which a beverage material is provided, the base element being symmetrical about a central longitudinal axis thereof and having a bottom portion" (claim 10 at lines 3-6);

ii) "a rim extending outwardly from the base element, the rim having a top side and an opposing bottom side" (claim 10, step A) ii));

iii) "a cover fastened to the flange" (claim 10, A) iii)), "the cover is bowed upwardly in a central region of the cover relative to a peripheral region of the cover, the cover includes a region configured to be pierced at a location that is offset from the central longitudinal axis" (claim 10, A) iii). Examiner noted that the term "bowed upwardly" conflict with each other because ordinary definition of "bowed" means downwardly and forward and "upwardly" means upward direction. Currently the claim limitation does not provide sufficient information as to how the cover bowed upwardly.

For examining purpose, Examiner interpreted that bowed upwardly means bowed outwardly);

iv) "a barrier layer to prevent moisture or aroma from escaping out of the portion capsule" (claim 10, A) iv)); and

v) "an identifier provided on the bottom side of the rim" (claim 10, A) v));

B) "a beverage machine" (claim 10, B)) comprising:

i) "an insertion shaft having a wall structure that receives the portion capsule, the insertion shaft defined by a base portion and an annular portion laterally extending from the base portion along a plane that is transverse to a longitudinal axis of the insertion shaft" (Claim 10, B), i));

ii) "a chamfered mandrel that pierces the cover at the location that is offset from the central longitudinal axis" (Claim 10, B), ii));

iii) "an optical sensor/detector positioned outside of the base portion of the wall structure of the insertion shaft and below the annular portion, which directs a beam through a portion of the wall structure to read the identifier on the portion capsule" (Claim 10, B), iii));

iv) "a seal that is configured to bear against a top side of the cover in a region between the peripheral edge of the cover and the region of the cover that is pierced by the chamfered mandrel" (Claim 10, B), vi)); and

v) "a pump that supplies hot water into the portion capsule only after the identifier is read by the sensor/detector" (Claim 10, B), iv)).

'363 discloses is silent regarding A) i) the base element having a first height that is defined between the open end and the bottom portion; A) iii) the cover has a second

height that is defined between the peripheral region and the central region, wherein the first height of the base element is greater than the second height of the cover.

Kilber et al. teaches "A) i) a base element having an open end, the base element having a first height that is defined between the open end and the bottom portion" (40 or 42 pointed at a base element having an open portion on top that is sealed by the cover); A) iii) "a cover fastened to the base element" (51 pointed at the cover that is fastened to the top portion 46 of the base element 40), "the cover has a second height that is defined between the peripheral region and the central region" (the cover 51 has a thickness between the peripheral region and the central region of itself), wherein "the first height of the base element is greater than the second height of the cover" (the height of the base 40 is greater than the height of the cover 51). '363 teaches a beverage capsule. Kilber et al. teaches a beverage capsule. It would have been obvious to one of ordinary skill in the art at the time the invention was filed to modify '363 with Kilber et al., by modifying '363's seal and in connection with the base element according Kilber et al.'s seal and base element configuration, to provide secure seal for the capsule.

Regarding claim 22, modified '363 discloses "an operation of the pump, which pushes the hot water through a brewing chamber is prevented upon a determination by the beverage machine that the portion capsule is not suitable for use with the beverage machine" (*'363, Claim 11*).

Claims 14 and 23 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 10-29 of copending Application No. 17/547,363 in view of Kilber et al. (US 2010/0288131) as applied in claims 10-13 above, and further in view of Empl et al. (US 2016/0242594).

Regarding claims 14 and 23, '363 discloses all the features of claim limitations as set forth above except for upon the identifier being read by the sensor/detector, beverage making properties are set, which include a quantify of the hot water, pressure of the hot water, and/or temperature of the hot water.

Empl et al. teaches "upon the identifier being read by the sensor/detector, beverage making properties are set, which include a quantify of the hot water, pressure of the hot water, and/or temperature of the hot water" (*para.0030, i.e., It is conceivable that the identified GS1 code is compared with a list of prestored GS1 codes that are stored on a memory chip of the comparison unit and a brewing operation is started when there is a match with a prestored GS1 code. Preferably, each GS1 code prestored on the memory chip is linked with at least one specific brewing parameter that is used in the started brewing operation. For example, the amount of water, the water temperature, the brewing pressure and/or an interim action time are taken from the list as brewing parameters and are used appropriately when brewing with the associated portion capsule*). '363 teaches a coffee capsule. Empl et al. teaches a coffee capsule. It would have been obvious to one of ordinary skill in the art at the time the invention was filed to modify '363 with Empl et al., by adding Empl et al.'s algorithm to '363 controller, to provide more user friendly control for beverage operation based on particular capsule used in the machine (para.0030) as taught by Empl et al.

Claims 15-17, 19-20, 24-26 and 28 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 10-29 of copending Application No. 17/547,363 in view of Kilber et al. (US 2010/0288131) and Empl et al. (US 2016/0242594) as applied in claims 10-13 above, and further in view of Beaulieu et al. (US 6,079,315).

Regarding claims 15 and 24, modified '363 discloses all the features of claim limitations as set forth above except for the rim guides the portion capsule in the insertion shaft such that the portion capsule drops into a brewing chamber in a specific position.

Beaulieu et al. teaches "the rim guides the portion capsule in the insertion shaft such that the portion capsule drops into a brewing chamber in a specific position" (*the capsule having the rim 52 that facilitate positioning, holding and guiding in the insertion shaft 86 such that the portion capsule 52 drops into a brewing chamber in a rest position. See fig.2B*). '363 teaches a coffee capsule. Beaulieu et al. teaches a coffee capsule. It would have been obvious to one of ordinary skill in the art at the time the invention was filed to modify '363 with Beaulieu et al., by modifying '363's the capsule holding device according to Beaulieu et al.'s capsule holding device, to automatic manipulate the holder to eject the cartridge (abstract) as taught by Beaulieu et al.

Regarding claims 16 and 25, modified '363 discloses the base element of the portion capsule is made of a biodegradable material, metal, or plastic (*'363, Claim 19*).

Regarding claims 17 and 26, modified '363 discloses "the portion capsule comprises a filter inside the cavity" (*'363, 52 pointed the capsule having a filter inside the capsule for holding powder and col.1 at lines 14-29, i.e., filter cartridge*).

Regarding claims 19 and 20, modified '363 discloses "the beverage machine comprises a waste container for the portion capsule to fall into" (*'363, Claim 13*)

Regarding claim 28, modified '363 discloses "the beverage machine comprises a waste container for the portion capsule to fall into and a pair of holding arms for guiding the portion capsule" (*'363, Claim 13 and Claim 14*).

Claims 18 and 27 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 10-29 of copending Application No. 17/547,363 in view of Kilber et al. (US 2010/0288131) and Empl et al. (US 2016/0242594) as applied in claims 10-13 above, and further in view of Hu (US 7,412,921)

Regarding claims 18 and 27, modified '363 discloses all the features of claim limitations as set forth above except for the portion capsule is free of a filter inside of the cavity.

Hu teaches "the portion capsule is free of a filter inside of the cavity" (*fig.2*). '363 teaches a coffee capsule. Hu teaches a coffee capsule. It would have been obvious to one of ordinary skill in the art at the time the invention was filed to modify '363 with Hu, by modifying '363's interior of capsule according to '363 of capsule without filter, to save filter material cost.

This is a provisional nonstatutory double patenting rejection.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the independent claims 10 and 21 recites **structure details of listed in A) i)-v) and B) i)-v)** (*However, there is no single embodiment shows the combination of independent claims 10 and 21 or the original specification discuss in details as to how the embodiments can be combine or use together. For example fig.17C show portion capsule in the base element. Fig.18 shows a different embodiment that the portion capsule does not have the base element so that the flange 2.4.1 can be engaged with the gear 24 of the shaft housing 23. However, nothing in the original specification suggest the insertion shaft feature in combination with other features such as a sensor/detector, a seal, etc. as required by the independent claims*) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. 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 consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. 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. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of 35 U.S.C. 112(b):
(b) CONCLUSION.—The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.

The following is a quotation of 35 U.S.C. 112 (pre-AIA), second paragraph:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-28 are rejected under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor (or for applications subject to pre-AIA 35 U.S.C. 112, the applicant), regards as the invention.

Claims 10 and 21 recite "the cover is bowed upwardly". However, the term "bowed upwardly" conflict with each other because ordinary definition of "bowed" means downwardly and forward and "upwardly" means upward direction. Then, it is unclear as to how the cover bowed upwardly without further explanation in the claim. Currently the claim limitation does not provide sufficient information as to how the cover bowed upwardly. MPEP2173.05 (a), I and III, i.e., Consistent with the well-established axiom in patent law that a patentee or applicant is free to be his or her own lexicographer, a

patentee or applicant may use terms in a manner contrary to or inconsistent with one or more of their ordinary meanings if the written description clearly redefines the terms.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JIMMY CHOU whose telephone number is (571)270-7107. The examiner can normally be reached Mon-Friday.

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, Helena Kosanovic can be reached on (571) 272-9059. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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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.

/JIMMY CHOU/
Primary Examiner, Art Unit 3761