UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TROVE BRANDS, LLC,
Petitioner,

v.

CAMELBAK PRODUCTS, LLC,
Patent Owner.

IPR2024-00858
U.S. Patent No. 8,905,252

DECLARATION OF MICHAEL JOBIN

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I, Michael Jobin, do hereby declare as follows:

I. INTRODUCTION

1. I am making this declaration at the request of Patent Owner CamelBak Products, LLC ("CamelBak") in the matter of this *Inter Partes* Review of U.S. Patent No. 8,905,252 ("the '252 patent").

2. I am being compensated for my work on this matter and for reasonable and customary expenses associated with my work and testimony in this proceeding. My compensation is not contingent on the outcome of this matter or the specifics of my testimony, and I have no other interest in this case or the parties thereto.

3. I have been asked to provide my opinions regarding whether claims 5-7 and 16-19 (the "Challenged Claims") of the '252 patent are unpatentable insofar as they would have been anticipated and/or obvious to a person having ordinary skill in the art ("POSITA") at the time of the alleged invention, in light of the prior art, based on the grounds of unpatentability set forth by Petitioner in its Petition in this matter.

4. It is my opinion that none of the Challenged Claims are unpatentable in that they would not have been anticipated and/or obvious to a POSITA based on the grounds of unpatentability set for in the Petition.

5. In the preparation of this declaration, I have reviewed the below as well as any other documents cited herein that are not listed below:

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- Paper 2 - Petitioner Trove Brands, LLC's Petition for Inter Partes Review of U.S. Patent No. 8,905,252
- Paper 6 - Patent Owner CamelBak Products, LLC's Patent Owner Preliminary Response
- Paper 7 – Decision Granting Institution of Inter Partes Review
- Ex. 1001 - U.S. Patent No. 8,905,252 ("the '252 patent")
- Ex. 1002 - Excerpt of the File History of the '252 Patent
- Ex. 1003 - Declaration of Glenn E. Vallee, Ph.D.
- Ex. 1004 - U.S. Patent No. 9,272,822 ("Samartgis")
- Ex. 1005 - U.S. Patent No. 7,753,240 ("Leoncavallo")
- Ex. 1006 - U.S. Design Patent No. D586,184 ("Miller")
- Ex. 1007 - U.S. Patent No. 8,550,269 ("Lane")
- Ex. 1008 - Excerpts of U.S. Provisional Patent Application No. 61-779,084
- Ex. 1009 - Excerpts of U.S. Provisional Patent Application No. 61-859,662
- Ex. 1010 - CamelBak Infringement Contentions for the '252 Patent dated, December 21, 2023
- Ex. 1011 - EP Publication 2177447A1 ("Gorskey")
- Ex. 1012 - U.S. Patent Publication No. 2006/0006578 A1 ("Johnson")
- Ex. 2010 - Claim Construction Order in *Trove Brands, LLC v. CamelBak Products, LLC, et al.*, No. 23-cv-04267-PCP (N.D. Cal.), Dkt. No. 108 (November 8, 2024) ("CC Order")
- Ex. 2011 - Deposition Transcript of Glenn Vallee, Ph.D. (January 20, 2025) ("Vallee Tr.")
- Ex. 2012 - Merriam-Webster Dictionary – "receive"
- Ex. 2013 - Oxford Dictionary – "receive"
- Ex. 2014 - Cambridge Dictionary – "receive"
- Ex. 2015 - Merriam-Webster Dictionary – "retain"
- Ex. 2016 - Oxford Dictionary – "retain"
- Ex. 2017 - Cambridge Dictionary – "retain"

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- Ex. 2018 - Samartgis File History Excerpt – Original Drawings (submitted January 31, 2014)
- Ex.2020 - Merriam-Webster Dictionary – "stow"
- Ex.2021 - Oxford Dictionary – "stow"
- Ex.2022 - Cambridge Dictionary – "stow"
- Ex.2023 - U.S. Design Patent No. D945,819
- Ex.2024 - U.S. Design Patent No. D751,339

6. In forming the opinions expressed below, I have considered: the documents listed above, the relevant legal standards, including the standards for anticipation and obviousness; any additional documents or authorities as cited in the body of this declaration; and my own knowledge and experience based upon my background, education, training, and work experience.

7. I may rely upon these materials, my knowledge and experience, and/or additional materials to rebut arguments raised by the patent owner. Further, I may also consider additional documents and information in forming any necessary opinions, including documents that may not yet have been provided to me.

8. Unless otherwise noted, all emphasis in any quoted material has been added.

II. QUALIFICATIONS AND PROFESSIONAL EXPERIENCE

9. My complete qualifications and professional experience are described in my *Curriculum Vitae*, a current copy of which can be found in **Exhibit 2019**. The

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following is a brief summary of my relevant qualifications and professional experience.

A. Educational Background

10. I received two degrees from the University of Michigan in 1991, a Bachelor of Science in Engineering with a focus on mechanical engineering, and a Bachelor of Fine Arts in Industrial Design with a focus on product development, both cum laude. I was the recipient of the Kiefer Award for excellence in Industrial Design.

B. Career History

11. I am currently the Director of Product Development at 908 Devices, Inc. in Boston, Massachusetts. I have more than 33 years of experience in product and technology development as a mechanical engineer, consultant and entrepreneur. I have worked in various product development companies throughout my 33-year career, and have I developed many products that demonstrate knowledge and experience relevant to the subject matter at issue in this case, including numerous fluid-containing and dispensing devices, such as those for beverages and other liquids. I have summarized below this relevant work experience, as well as some relevant project examples.

12. After my undergraduate degrees, I was hired as a program manager by Design 4 Plastics, Inc. I leveraged my industrial design and engineering education

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to develop a wide range of products. My projects included a heavy emphasis on plastic part design (including injection molding, rotational molding, vacuum and pressure forming) and sheet metal fabrication (stamping, forming). While there, I designed fluid pumps for laboratory and industrial fluid dispensing applications and a custom impeller pump for insufflation of the abdomen during laparoscopic surgery. I also developed garden hose accessories such as hose reels and sprayers that used quick disconnect fittings and valves.

13. For Coca-Cola, I developed a disposable valve for a bag-in-box syrup dispensing system.

14. Next, in 1996, I joined Proteus, Inc. as Senior Mechanical Engineer. There, I focused on product design and engineering of products for consumer, medical, and laboratory applications. For example, I developed a disposable cartridge for laboratory analysis of blood samples.

15. For PUR, I developed a faucet-mounted water filter with a replaceable cartridge and a rotary actuated valve, as well as filtered water pitchers.

16. I founded Boston Innovation in 1998, focusing on developing precision fluidic dispensing instruments for pharmaceutical research applications that leveraged a novel pressure activated valve technology that I invented. In these instruments, sample fluid was stored in small sealed reservoirs, and precision low

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volumes dispensed by the translation of a needle and application of a rinse fluid and/or air pressure. *See*, *e.g.*, U.S. Pat. Nos. 6,085,773 and 6,706,538.

17. During this time, I developed and licensed novel valve technology to Delta Faucet. This project was focused on a high flow tub fill valve for residential plumbing use.

18. For Gillette, I designed a disposable shaving cream dispenser.

19. In 2000, I joined Arthur D. Little, where I led mechanical engineering of a next-generation network storage product, integrating contributions of mechanical, software, hardware and industrial designers.

20. I founded MicroBioSciences in 2001. There, I invented and developed novel disposable fluid handling cartridges for high throughput screening in pharmaceutical research.

21. Later in 2001, I joined Altitude, Inc., a product development consulting firm, first as Engineering Manager, and then I was promoted to Director of Engineering in 2005. I performed design and engineering activities, and I led a team of designers and engineers to develop a wide range of consumer products, medical devices and instrumentation.

22. I developed coffee makers for Sunbeam and Mr. Coffee, as well as a coffee carafe with a refined pour spout to minimize drips.

23. I also developed a wide range of home humidifiers for Honeywell, Kaz, and Vicks. These included water reservoirs with removable caps and elastomer valves.

24. In addition, I developed a bottled water dispenser for PUR with chilled and heated water and dispensing valves. This included a refillable water reservoir with a wide mouth threaded cap and valve for easy cleaning.

25. For Exact Sciences, I designed a custom cylindrical sample collection and shipping vessel with a large diameter threaded lid and gaskets.

26. I developed the first integrated ice shaving and blending frozen drink appliances designed for home use for Margaritaville. These products included a reservoir for ice, a robust motor and rotary ice shaving blade, a blender, and electronic controls.

27. I also developed a wine preservation and dispensing system for home use. The product stored multiple wine bottles at the user-selected optimum temperature using thermoelectric chiller technology and used valves and air pressure for dispensing, and vacuum for preservation.

28. I developed a handheld eye medication dispenser for Optimyst. This product included a custom disposable fluid reservoir and ultrasonic dispensing technology. *See,* e.g., U.S. Patent Nos. D597,206; 8,545,463; 8,012,136.

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29. I developed commercial carpet cleaning extraction technology for Tennant Company. This included fluid reservoirs, valves and plumbing connections.

30. I also developed pressure washers for Briggs and Stratton and a range of safety eyewear for UVEX. These included adjustable features leveraging advanced injection molding techniques, such as in-mold assembly. *See, e.g.*, U.S. Patent Nos. 7,758,789; 7,246,901; 7,237,892; 7,210,777; 7,175,270.

31. In 2008, I founded Aston Technology Advisors and continued with product development and consulting activities. There, I developed an instrument that uses sound to measure wind. This included a novel hydronic heating system for melting snow. *See* U.S. Patent Nos. 8,958,269 and 9,279,821.

32. I worked with a major beer company on a home keg dispenser, including work on a plastic recyclable vessel for beer.

33. I developed a custom, portable container and dispenser for hand sanitizer.

34. In 2012, I co-founded 908 Devices Inc. to develop portable chemical detection instrumentation based on mass spectroscopy. Here, I have developed various instruments with applications in pharmaceutical research, forensics and hazardous material identification at the point of need. These instruments include complex fluid handling, fluidic and pneumatic connectors, custom vacuum pumps,

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pressure regulators and pressure sensors. *See* U.S. Patent Nos. D703,074; D703,075; 9,093,253; 9,502,226; 9,698,000; 9,978,574; 10,438,787.

35. At 908 Devices, I have also developed various customized fluid vials, bottles, caps, gaskets and packaging for shipping chemical reagents.

36. Throughout my professional career, I have designed products that have won various awards, including: Industrial Designers Society of America (IDSA) IDEA Awards, R&D 100, The Scientist Top 10 Innovations, and The Instrument Business Outlook Industrial Design Gold Award.

37. I have served as an expert witness in numerous patent cases, including cases relating to fluid-containing and fluid-dispensing devices, such as single-serve coffee makers, liquid dispensing valves, and elastomeric dispensing valves for water bottles, among others. For example, I was hired on behalf of the United States Patent & Trademark Office as a technical expert witness in a case related to a USPTO Examiner's rejection of patent claims relating to single-serve coffee pods for single-serve coffee systems. My work in that case involved technical analysis of relevant prior art. Key issues in that matter included high volume manufacturing of thermoformed plastic pods, forming and assembly of filter baskets, and fluidics technology for fluid flow through the system under high pressure. Ultimately, the USPTO Examiner's rejection was affirmed on appeal.

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C. Patents

38. I am a named inventor on nineteen issued utility patents and six issued design patents, listed below. These patents range in technologies from consumer products to medical devices to instrumentation and address technical issues like precision fluid handling, injection molding, and compact mass spectroscopy.

- U.S. D932,046 Fluidic cartridge assembly
- U.S. 10,438,787 Integrated mass spectrometry systems
- U.S. 9,978,574 Sample collection in compact mass spectrometry systems
- U.S. 9,698,000 Integrated mass spectrometry systems
- U.S. 9,502,226 Sample collection in compact mass spectrometry systems
- U.S. 9,279,821 Deicing system in sodar systems
- U.S. 9,093,253 High pressure mass spectrometry systems and methods
- U.S. 8,958,269 Transducer for phased array acoustic systems
- U.S. D703,074 Handheld sensor
- U.S. D703,075 Sensor device
- U.S. 8,545,463 Ophthalmic fluid reservoir assembly for use with an ophthalmic fluid delivery device
- U.S. 8,525,111 High pressure mass spectrometry systems and methods
- U.S. 8,012,136 Ophthalmic fluid delivery device and method of operation
- U.S. 7,758,789 Temple bar assembly for eyeglasses
- U.S. D597,206 Ophthalmic misting device
- U.S. 7,246,901 Adjustable length upper frame member for eyeglasses
- U.S. 7,237,892 Temple bar with ball and socket hinge and method of making same

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- U.S. 7,210,777 Floating lens brow bar attachment for eyeglasses
- U.S. 7,175,270 Flexible frame assembly for eyeglasses
- U.S. D534,446 Handheld instrument
- U.S. 7,080,904 One piece spectacle with temple pre-load
- U.S. 6,706,538 Microvolume liquid dispensing array
- U.S. 6,085,773 Automatic fluid switching valve
- U.S. D425,979 Window fan
- U.S. 5,794,897 Transmission line hanger, a method of attaching the hanger and the resulting assembly

III. RELEVANT LEGAL STANDARDS

39. I am not an attorney. In preparing and expressing my opinions and considering the subject matter of the ’252 patent, I am relying on certain basic legal principles that counsel have explained to me. These principles are discussed below.

40. I have been informed that a party challenging a claim’s patentability in an inter partes review bears the burden to show by a preponderance of the evidence that the claim is unpatentable in view of the prior art. I understand that a “preponderance” means “more likely than not.”

41. I understand that prior art to the ’252 patent includes patents and printed publications in the relevant art that predate the priority date of the alleged invention recited in the ’252 patent. As noted, here, I have been instructed to assume March 13, 2013, is the priority date of the ’252 patent.

42. I have been informed and understand that a patent claim is unpatentable as “anticipated” under 35 U.S.C. § 102 if each element of that claim is disclosed

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either explicitly or inherently in a single prior art reference. I understand that the question of anticipation is whether a POSITA would have reasonably understood or inferred from the prior art reference's teachings that every claim element was disclosed in that single reference. For anticipation by a prior art patent or printed publication, I further understand that the reference's description must enable a POSITA to practice the claimed invention without undue experimentation.

43. I have been informed that a patent claim is unpatentable as "obvious" under 35 U.S.C. § 103 if the differences between the claimed invention and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. I have also been informed by counsel that the obviousness analysis takes into account factual inquiries including the level of ordinary skill in the art, the scope and content of the prior art, and the differences between the prior art and the claimed subject matter.

44. I understand that for a claim to be unpatentable as obvious, the party asserting unpatentability must identify prior art references that alone or in combination with one or more other prior art references would have rendered the claim obvious to one of ordinary skill in the art at the time of the invention.

45. I understand that a single prior art reference can render a claim obvious if it would have been obvious to modify that reference to arrive at the patented

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invention. I understand that it is appropriate to look to the knowledge of a POSITA in assessing whether it would have been obvious to modify a single prior art reference to produce the claimed invention.

46. I have been informed that where, as here, an obviousness defense is based on a combination of prior art references, a patent claim is not obvious unless a POSITA would have been motivated to combine or modify prior art elements to obtain the invention as set forth in the claim with a reasonable expectation of success. I understand that a motivation to combine prior art references can come from the references themselves or from the understanding of a POSITA.

47. I have been informed that references must be considered in their entirety from the view of a POSITA at the time of the invention, but that viewing the art through hindsight is impermissible.

48. I have been informed that in considering obviousness, it is relevant to consider whether the prior art includes references that "teach away" from the claimed invention. I understand that a reference teaches away from the claimed invention if a POSITA, reading the reference, would be discouraged from following the path of the claimed invention or would be led in a divergent direction.

49. I have been informed that design patents are different from utility patents in that they are directed to the appearance of an article of manufacture and thus must depict an "ornamental design."

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50. I have been informed that a claim can recite elements using functional language. Such elements are known as "means-plus-function" elements and are construed according to a particular set of rules. When construing a means-plus-function element, the function recited in the claim must be identified. The element is then construed to cover the corresponding structure disclosed in the specification for performing the recited function, as well as any equivalent structures known at the time of the invention. I have been further informed that a prior art structure is equivalent to the corresponding structure in the specification if the prior art structure performs the same function—the one recited in the claim—in substantially the same way and with substantially the same results.

IV. OVERVIEW OF THE '252 PATENT

51. The '252 patent is titled "Drink Containers with Closure Retention Mechanisms," and issued on December 9, 2014. Ex. 1001 (cover). The patent generally describes a drink container with a liquid container portion and a cap assembly portion removably coupled to the liquid container. Ex. 1001 at Abstract. The cap assembly may include a handle, a base, a drink spout, and a closure for the spout. *Id.*, 2:63-64, 7:54-62. The application that matured into the '252 patent, U.S. Patent Application No. 14/199,817, was filed on March 6, 2014, and claims priority to U.S. Provisional Patent Application No. 61/779,084, filed on March 13, 2013, and U.S. Provisional Patent Application No. 61/859,662, filed on July 29, 2013. *Id.*

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52. The ’252 patent discloses various embodiments to illustrate the claimed drink containers. Figure 8 (below) depicts a cross-sectional view of a drink container according to an embodiment of the ’252 patent. As illustrated, the drink container of the embodiment in Figure 8 includes a cap assembly (102), which includes a base (16), closure (20), handle (50), and tether (104). Ex. 1001, 12:8–23, Fig 8.

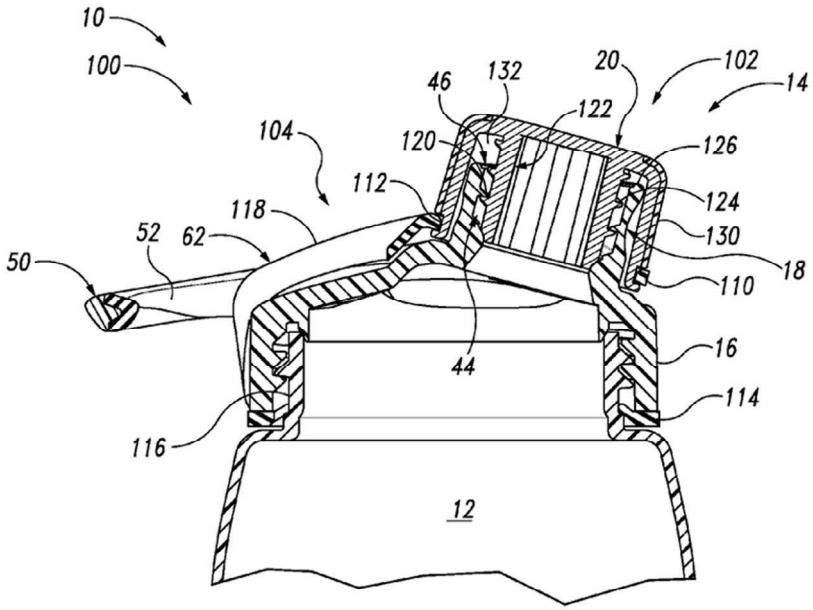


Fig. 8

53. Figure 7 below represents a top view of the same drink container. As shown in Figure 7, the cap assembly (102) of this embodiment includes a closure retention mechanism (54), which further includes a closure retention structure (55) in the form of tabs (56). *Id.*, 10:4–8, Fig. 7.

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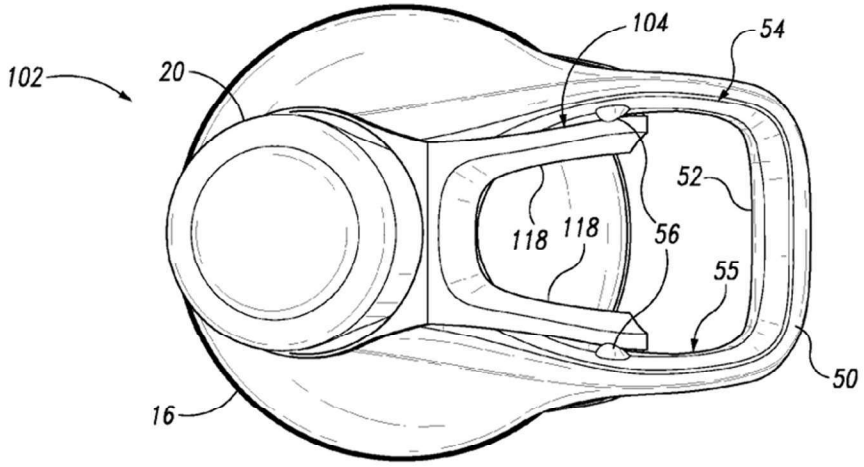


Fig. 7

54. Figures 10 and 12 represent two additional views of the drink container of this embodiment. Both of these Figures depict the closure (20) in a stowed position. *Id.*, Figs. 10 & 12; *see also id.*, Figs. 11 & 13.

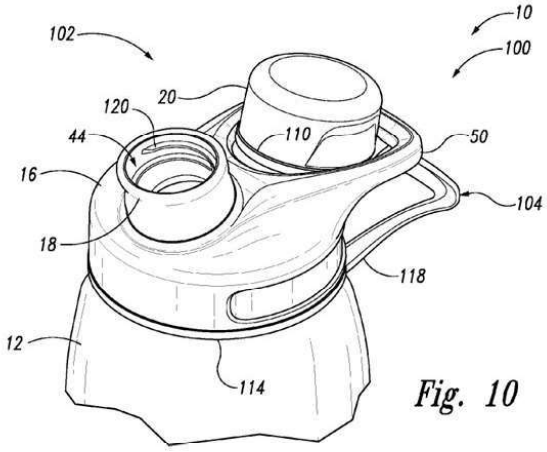


Fig. 10

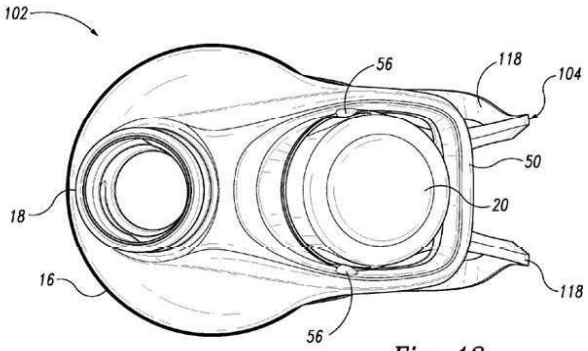


Fig. 12

55. The specification describes the closure being "operatively positioned within the closed perimeter of the handle into [the closure's] stowed position as illustrated in FIGS. 10–13." *Id.*, 13:26-28; *see id.*, 13:14–14:5. In the stowed position, the tabs 56 extending from the inner surface of the closed perimeter of the

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handle "engage opposing sides of the closure." *Id.*, 13:29–31. The tabs engage in such a way that "the closure is slightly compressed between the protrusions [tabs 56], resulting in a friction-fit between the closure and the closed perimeter of the handle." *Id.*, 13:31–34.

56. The '252 patent has 20 claims, of which three are independent: claims 1, 5, and 19. The Petition only challenges claims 5–7 and 16–19. Claims 6, 7, and 16–18 all depend directly or indirectly from independent claim 5.

57. Independent claim 5 recites:

> 5. A drink container, comprising:
> a liquid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink liquid; and
> a cap assembly removably coupled to the liquid container, the cap assembly comprising:
> a base removably coupled to the neck of the liquid container;
> a drink spout extending from the base and defining a passage through which drink liquid from the internal compartment of the liquid container may be selectively dispensed;
> a closure configured to be removably coupled relative to the drink spout in a closed position to selectively restrict dispensing of drink liquid through the passage and to selectively permit dispensing of drink liquid through the passage when removed from the drink spout;

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> a handle extending from the base, wherein the handle includes a closure retention mechanism configured to selectively retain the closure in a stowed position relative to the handle when the closure is selectively removed from the drink spout and received by the closure retention mechanism.

Ex. 1001, 18:44-67.

58. Independent claim 19 is similar to claim 5 and is directed to a cap assembly for use with a liquid container, containing many of the same elements as the cap assembly in claim 5. *Id.*, 20:16-37.

59. Dependent claim 6 depends from and incorporates the limitations of claim 5 and adds a limitation requiring that the handle defines a closed perimeter, and wherein a portion of the closure retention mechanism defines at least a portion of the closed perimeter. Ex. 1001, 19:1-3. Dependent claim 7 depends from and incorporates the limitations of claim 5 and adds a limitation requiring that the handle defines a closed perimeter and that in the stowed position the closure is positioned at least partially within the closed perimeter. *Id.*, 19:4-7. Dependent claim 16 depends from and incorporates the limitations of claim 5 and adds a limitation regarding the drink spout having an internal coupling structure, wherein the closure includes a plug structure that is configured to extend within the passage when the closure is in the closed position, and wherein the plug structure includes an external coupling structure that is configured to operatively mate with the internal coupling

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structure of the drink spout when the closure is in the closed position. *Id.*, 20:1-8. Dependent claim 17 depends from and incorporates the limitations of claim 5 and adds a limitation requiring that the drink spout defines an upper lip, wherein the upper lip does not engage the closure when the closure is in the closed position. *Id.*, 20:9-11. Claim 18 depends from and incorporates the limitations of claim 17 and adds a limitation requiring that the closure and drink spout define a void above the upper lip when the closure is in the closed position. *Id.*, 20:12-15.

60. Based on my review of the file history, I note that the Examiner allowed the claims of the '252 patent to issue without rejection, stating that the prior art did not disclose the claimed limitations. *See* Ex. 1002. I also note that the Miller (D586,184 to Miller et al.) and Leoncavallo (U.S. Patent No. 7,753,240 to Leoncavallo et al.) relied on by Petitioner in this proceeding were cited and before the examiner during prosecution of the '252 patent. While the Samartgis reference (U.S. Patent No. 9,272,822) relied on by Petitioner in this proceeding was not specifically cited and before the examiner, I note that a design patent to the same Samartgis (U.S. Patent No. D679,541) (Ex. 2001) showing the ornamental design for the same drink bottle depicted in the Samartgis reference relied on by Petitioner was cited and before the examiner. The examiner allowed the '252 patent to issue over these cited references.

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V. LEVEL OF ORDINARY SKILL IN THE ART

61. I understand that my assessment of the claims of the '252 patent and the teachings of the prior art and my analysis and opinions herein must be undertaken from the perspective of what would have been known or understood by a person having ordinary skill in the art, reading the '252 patent on its priority date and in light of the specification and file history of the '252 patent. I refer to such a person as a "POSITA."

62. I was asked to determine the level of ordinary skill in the art that a POSITA would have had in the field of the '252 patent as of its priority date.

63. I understand there are multiple factors relevant to determining the level of ordinary skill in the pertinent art, including: (1) the levels of education and experience of persons working in the field at the time of the invention; (2) the sophistication of the technology; (3) the types of problems encountered in the field; and (4) the prior art solutions to those problems. I have considered and analyzed each of these factors in arriving at my opinion regarding the level of ordinary skill in the art.

64. I have been instructed to simply assume that March 13, 2013, the filing date of the provisional application to which the '252 patent purports to claim priority, is the correct priority date for the '252 patent. I have not been asked to offer any opinion on whether the '252 patent is properly entitled to this priority date.

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65. In my opinion, a POSITA in the field of the '252 patent, as of March 13, 2013 would have had a bachelor's degree in mechanical engineering or the equivalent coursework and approximately one year of experience with liquid-containing devices, with more work experience substituting for less education and vice versa.

66. I note that Petitioner's declarant, Dr. Vallee, opined that, in his, opinion, "one skilled in the art would have had an undergraduate degree in mechanical engineering or equivalent coursework, as well as one or more years of experience in designing, prototyping, and/or manufacturing fluid containers or similar products. More work experience may substitute for less education, and vice versa." Ex.1003, ¶28.

67. I do not discern any meaningful difference between my opinion and Dr. Vallee's opinion as to the level of ordinary skill in the art that would have any impact on my opinions in this proceeding, and my opinions would be the same applying either definition.

68. I note that I met at least these minimum qualifications set forth in my proposed definition and set forth in Dr. Vallee's proposed definition to be considered a POSITA as of the assumed priority date of the '252 patent of March 13, 2013. And while my qualifications at that time exceeded that of a POSITA, I nonetheless placed myself back in the shoes of the hypothetical POSITA having the education and

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experience level set forth in these proposed definitions as of March 13, 2013 (rather than my own shoes) when performing my analysis and arriving at my opinions in this matter.

69. I understand that a person of ordinary skill in the art is not a specific real individual, but rather a hypothetical individual having the qualities reflected by the factors above. This hypothetical person has knowledge of all prior art in the relevant field and takes from each reference what it would teach to a person having the education and experience of a POSITA.

70. Even if not expressly stated below, all of my opinions expressed herein are offered from the perspective of this hypothetical POSITA, as provided in the definitions set forth above and as of March 13, 2013. Further, I may in some cases use the present tense (e.g., "a POSITA would understand") instead of the past tense (e.g. "a POSITA would have understood") for simplicity and brevity, but all opinions below are given from the perspective of what a POSITA would have understood as of March 13, 2013.

VI. CLAIM CONSTRUCTION

71. I have been instructed to assume certain claim constructions apply to certain claim terms, and for other claim terms, I have also been asked to offer my opinion regarding the correct claim construction of those terms. I discuss these claim constructions below. For those claim terms not addressed with express constructions

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below, I have been instructed to apply the plain and ordinary meaning of those claim terms as would have been understood by a POSITA as of the assumed priority date of the '252 patent after reviewing the patent and its file history.

A. "closure retention mechanism"

72. I note that Petitioner and its declarant, Dr. Vallee, have proposed in this proceeding to construe "closure retention mechanism" as being a means-plus-function limitation governed by 35 U.S.C. § 112(f) and as requiring the corresponding structure of the '252 patent's spaced-apart tabs 56 extending from the inner surface of the handle. Pet., 18-23; Ex.1003, ¶¶45-50; Vallee Tr. (Ex.2011), at 47:4-7 (confirming he identified only tabs 56 on inside of handle as corresponding structure), 49:16-50:11 (same); 53:11-18 (same).

73. I also understand that a claim construction order has been issued by the district court in the co-pending district court case between Petitioner Trove and Patent Owner CamelBak. *See* Ex. 2010. I understand that the district court construed the term "closure retention mechanism" in that order. Ex. 2010, at 5-11.

74. Specifically, I understand the court held that this is a means-plus-function term governed by 35 U.S.C. § 112(f) and construed the required function to be: "[s]electively retain the closure in a stowed position relative to the handle when the closure is selectively removed from the drink spout and received by the closure retention mechanism." *Id.* at 5. In addition, I understand the court construed

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the required corresponding structure to be: "Closed Perimeter 52, Closure Retention Structure 55, Tabs 56, and Cooperating/Engaging Structure 58." *Id.* at 5, 10-11. While the court used the connector "and," I have been instructed to assume that the court intended to use "or" and that each of these various structures are possible alternative corresponding structures.

75. Even though the district court included these various alternative corresponding structures, I have been instructed to only apply the corresponding structure identified by the district court that Petitioner applied in its Petition in this matter, *i.e.*, the spaced-apart tabs 56 extending from the inner surface of the handle in the '252 patent.

76. Therefore, without opining on the correctness of such a construction, I have been instructed to assume that the claim term "closure retention mechanism," is a means-plus-function term governed by 35 U.S.C. § 112(f), as found by the district court and as proposed by Petitioner. I have also been instructed to assume that the correct recited function for this claim term is to "[s]electively retain the closure in a stowed position relative to the handle when the closure is selectively removed from the drink spout and received by the closure retention mechanism," as set forth in the claim language. Finally, I have been instructed to assume that the required corresponding structure for this claim term is the spaced-apart tabs 56

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extending from the inner surface of the handle in the '252 patent, as proposed by Petitioner and as encompassed within the district court's construction.

77. Therefore, I have in my analysis relied on a construction of "closure retention mechanism" that requires the spaced-apart tabs 56 extending from the inner surface of the handle in the '252 patent.

B. "selectively"

78. I note that the term "selectively" is expressly defined by the '252 patent as follows:

> As used herein, "selective" and "selectively," when modifying an action, movement, configuration, or other activity of one or more components or characteristics of a drink container according to the present disclosure, ***means that the specified action, movement, configuration, or other activity is a direct or indirect result of user manipulation of an aspect of, or one or more components of, the drink container***.

Ex.1001 at 3:23-29 (emphasis added).

79. I have been instructed to assume this express definition of "selectively" applies and have done so in my analysis below.

C. "when the closure is . . . received by the closure retention mechanism"

80. I was asked to offer my opinion regarding the correct claim construction of this claim term. In my opinion, a POSITA would have understood the base term, "receive" to mean "to accept, to acquire, or to engage." And, in my opinion,

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applying this meaning of "receive," a POSITA would have understood the claimed phrase "when the closure is . . . received by the closure retention mechanism" should mean "when the closure is accepted, acquired, or engaged by the closure retention mechanism." In my opinion, this construction is supported by both the intrinsic and extrinsic evidence.

81. Claims 5 and 19 recite "a closure retention mechanism configured to selectively retain the closure in a stowed position relative to the handle when the closure is selectively removed from the drink spout and received by the closure retention mechanism." Ex.1001 at claims 5 and 19. The claims also recite "a closure configured to be removably coupled relative to the drink spout in a closed position to selectively restrict dispensing of drink liquid." *Id.* Thus, the claims recite that the claimed closure is configured to be "removably coupled relative to the drink spout in a closed position" and can be "selectively," i.e., as a direct or indirect result of user manipulation (*see supra* Sec. VI.B), "removed from the drink spout and received by the closure retention mechanism" so as to "selectively retain the closure in a stowed position." Thus, the closure must be "received by" the closure retention mechanism "when the closure is selectively removed from the drink spout" to reach the stowed position, and as such, the closure is not always or permanently engaged by or retained by the closure retention mechanism, such as from manufacture. In my opinion, the claims require that the "closure retention mechanism" is not always

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engaged with the "closure" also because otherwise the "closure retention mechanism" could not "receive[]" the "closure." That is, if the "closure retention mechanism" already always "has" the closure, then the closure retention mechanism would be incapable of receiving it.

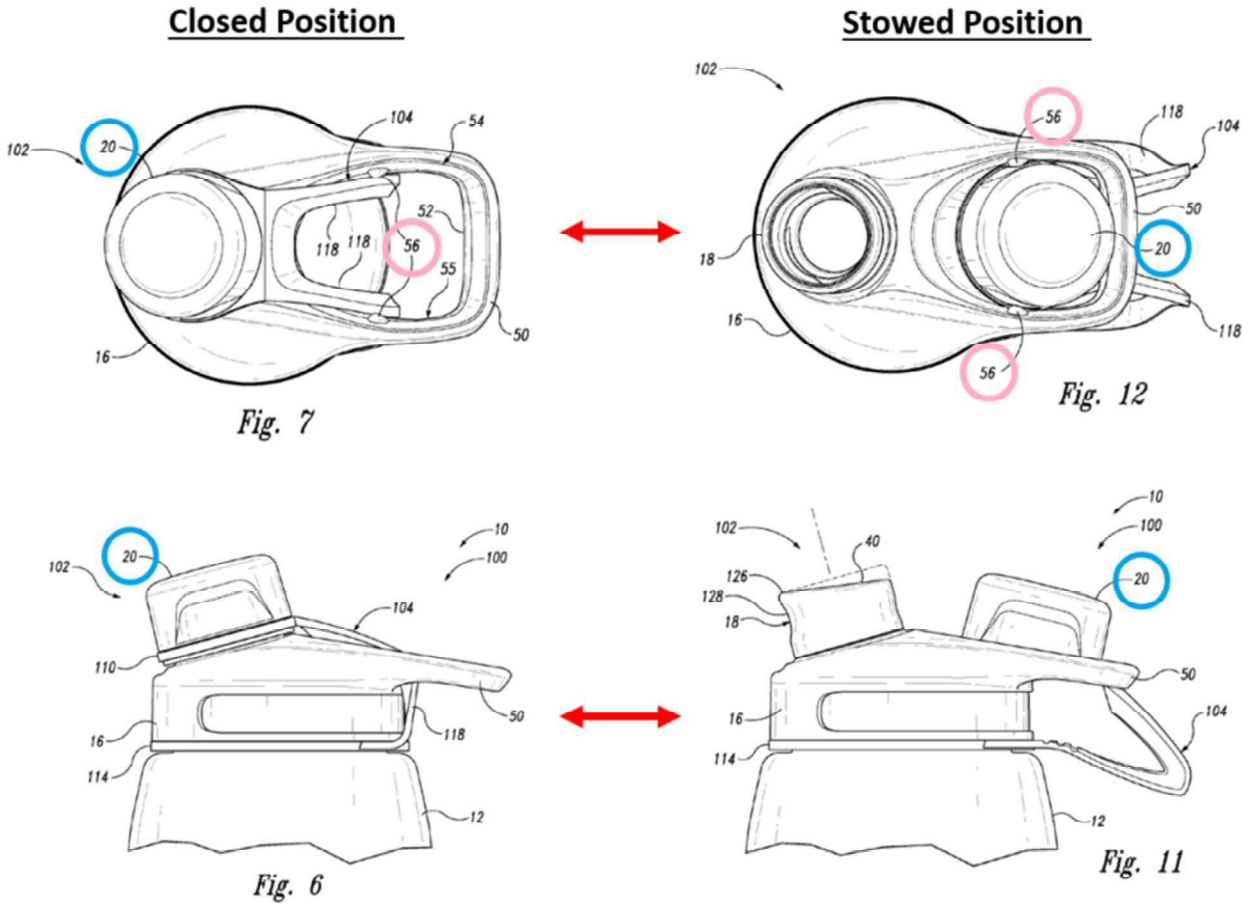
82. The '252 patent specification confirms my understanding. The spaced-apart tabs 56, which I have been asked to assume are the corresponding structure of the "closure retention mechanism," are repeatedly described as being configured to "engage" the closure when the closure is removed from the spout and moved to the stowed position. Ex.1001 at 8:58-60 ("[T]abs 56 . . . are configured to *selectively engage* and retain, or otherwise grip, the closure in the stowed position"); 9:42-44 ("the closure . . . is *engaged* by the tabs"); 9:45-48; 11:36-39 ("the closure retention mechanism 54 may be configured to *engage* both of the tether and the closure to operatively retain the closure in its stowed configuration."); 13:29-30; 13:42-43. In addition, the specification states that the tabs 56 receive the closure with a "friction-fit" or "snap-fit" arrangement. *Id*. at 8:52; 9:20; 11:14-16. A POSITA would understand that a "friction-fit" is a form of engaging two mating parts. A POSITA would understand that a "snap-fit" is a specific way to engage two parts by pushing them together into frictional engagement. The patent further clarifies that the "friction-fit" or "snap-fit" arrangement of the tabs 56 and closure involve bending, deflecting, or compression of the closure or tabs when the tabs receive the closure.

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Id. at 9:30-39. Based on these descriptions, it is my opinion that the closure is not permanently engaged with the tabs and the closure must begin in a state that is disengaged from the "closure retention mechanism" before it can be engaged with the "closure retention mechanism."

83. The '252 patent's figures are consistent with my opinion. For example, the figures indicate that a user can remove the closure from the spout in its closed position to a stowed position when the closure is received and retained by the tabs 56:

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Ex.1001 at Figs. 6-7, 11-12 (annotated). In addition, these figures, much like the specification, further indicate that the tabs 56 receive the closure when they accept, acquire, or otherwise engage the closure when it is removed from the spout.

84. I note my opinion is also supported by the plain meaning of the term "receive" as provided in dictionary definitions, which define "receive" as meaning to "acquire," "accept," or "get." Ex.2012, at 1-2; Ex.2013, at 3, 5, 13-14, 21; Ex.2014, at 1.

85. Thus, based on my review of the '252 patent and my knowledge as one of skill in the art, it is my opinion that a POSITA would have understood the term

"receiv[e/ed]" as used in claims 5 and 19 to mean the ability of the closure retention mechanism to acquire, accept, or engage the closure when it is removed from the spout and moved to the stowed position. Thus, in my opinion, applying this meaning of "receive," a POSITA would have understood the claimed phrase "when the closure is . . . received by the closure retention mechanism" to mean "when the closure is accepted, acquired, or engaged by the closure retention mechanism." I note that the requirement that this occur "when the closure is selectively removed from the spout" is already otherwise present in the plain claim language.

D. "retain the closure in a stowed position"

86. I was asked to offer my opinion regarding the correct claim construction of this claim term. In my opinion, a POSITA would have understood this phrase to mean "to hold or keep the closure in a position removed from the drink spout." In my opinion, this construction is supported by both the intrinsic and extrinsic evidence.

87. Claims 5 and 19 recite that the closure retention mechanism is configured to selectively retain the closure in a stowed position "when the closure is selectively removed from the drink spout." As I mention above, the claims also recite a "stowed position" and a "closed position," and the "closed position" is a position where the closure is "coupled relative to the drink spout." Thus, in my opinion, the

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"stowed position" cannot be the "closed position," and must be "a position removed from the drink spout."

88. The specification and figures of the '252 patent are consistent with my opinion that the "stowed position" is a position where the "closure" is removed from the drink spout. For instance, the specification suggests that the "stowed position" is an "open position" "[w]hen the closure is uncoupled from the drink spout." Ex.1001, 6:56-62. Likewise, all of the figures distinguish between the closed position where the closure is coupled relative to the drink spout and the stowed position. Figs. 6-7 (depicting closed position), 10-13 (depicting stowed position); *see also supra* Sec. V.C (showing annotated figures).

89. In addition, it is my opinion that a POSITA would have understood the plain and ordinary meaning of "retain," as that term is used in the '252 patent, to mean "to hold" or "to keep." My opinion is supported by dictionary definitions of "retain" as meaning "to hold" or "to keep" "in a position." Ex. 2015, at 1 ("to keep in possession . . . to hold secure"); Ex. 2016, at 2 ("To restrain; to hold back"), 4 ("to hold (something) fixed in a place or position; to prevent from becoming separated or detached"); Ex. 2017, at 1 ("to keep or continue to have something").

90. My opinion is also consistent with the plain and ordinary meaning of "stowed," which, as demonstrated by dictionary definitions, means to place or put in a certain place or position, such as to place in a receptacle to be stored. *See*

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Ex.2021 ("To place; to put in a certain place, position, or situation. . . . To place in a receptacle to be stored or kept in reserve."); Ex.2020 ("HOUSE, LODGE . . . to put away for future use: STORE"); Ex. 2022 ("to store something . . . to put something in a place where it can be kept safely").

91. Therefore, in my opinion, a POSITA would have understood this phrase to mean "to hold or keep the closure in a position removed from the drink spout."

VII. THE PETITION DOES NOT ESTABLISH THE UNPATENTABILITY OF ANY OF THE CHALLENGED CLAIMS

A. Samartgis

1. Samartgis Fails to Disclose that the "Closure" is "Retain[ed]" "in a Stowed Position" by the Closure Retention Mechanism

92. In my opinion, Samartgis does not anticipate claims 5 and 19 of the '252 patent because Samartgis does not disclose a "closure retention mechanism" that performs the recited function of a "closure retention mechanism." In particular, claims 5 and 19 require that the closure retention mechanism must be configured to "retain the closure in a stowed position." Ex.1001 at 18:62-67; 20:32-37. I understand that Petitioner and Petitioner's expert Dr. Vallee point only to the "locking position" of lug members 15 and 16 within the tracks 23 disclosed by Samartgis, and shown in Figure 9, as the "stowed position" required by claims 5 and 19 of the '252 Patent. I disagree.

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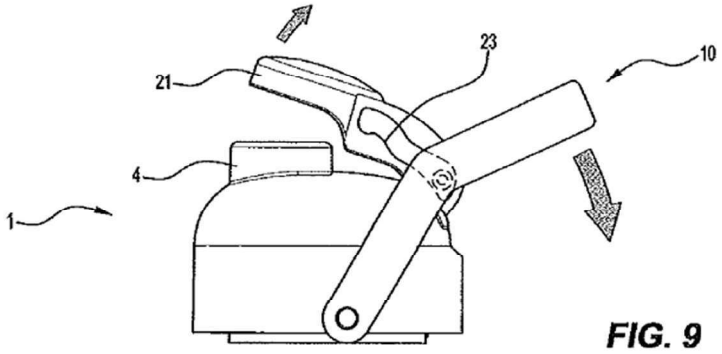


FIG. 9

93. There is no evidence that the cap 21 in Samartgis is held, kept, or locked in the position shown in Figure 9. Likewise, there is no evidence that the cap shown in Figure 9 is held, kept, or locked in a position removed from the drink spout. Instead, Samartgis first describes "locking" with reference to Figure 7: "FIG. 7 is a view, similar to FIGS. 5 and 6, showing the principle behind the locking action for the assembly." Ex.1004, 2:27-28. As shown in Figure 7, the lever/handle and lugs are pushed to the left towards the leftmost position in tracks 23. This is not the position shown in Figure 9 with the lugs in the rightmost position.

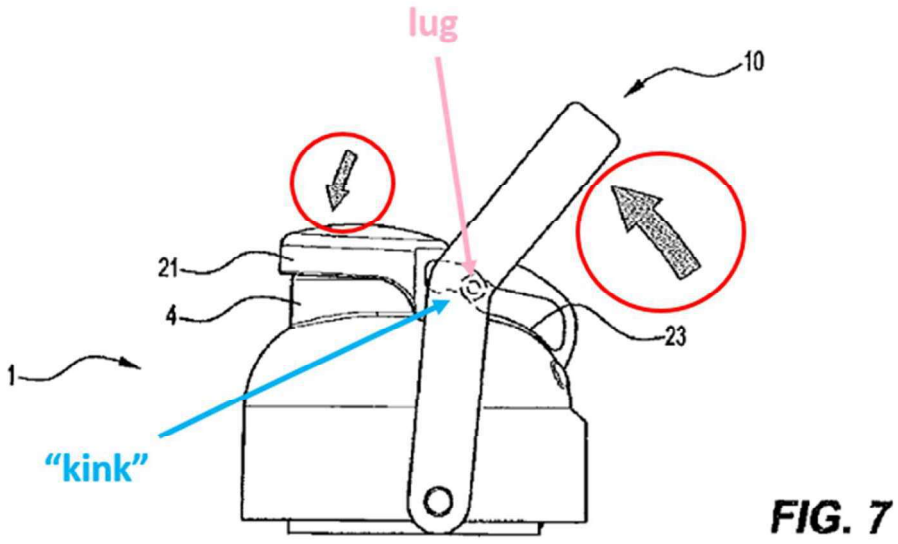


FIG. 7

94. Additionally, Samartgis describes the lug members 15 and 16 as being pushed over a "kink" of tracks 23 to lock the lugs, lever, and cap into place to so that a load is place on the cap in the direction of keeping the cap assembly closed during impact. Ex.1004, 6:15-21. As a result of the kink on the leftmost side of tracks 23, shown in Figure 7, when the user pushes the lever to the left from the position shown in Figure 7, the lug members 15 and 16 will forced up and over the kink to the position shown in Figure 5. As Samartgis explains: "[T]he lever member, which also functions as a carry handle, by having a ***"kink"*** in its side profile (as shown in the drawings), provides a biased load on ***the locking mechanism*** (the flap) member when the container or flask is being carried. This ensures a load in the direction of ***locking*** during any impact, as for example as might be incurred by the container or flask when carried by a jogger or the like." Ex.1004, 6:15-21. It is the position shown in Figure 5 that the lever, lugs, and cap are in a "locking position" to hold the cap closed. Ex. 1004, 2:27-28, 3:58-4:4, 6:15-21, Figs 5 & 7; Ex.2011, 110:1-8.

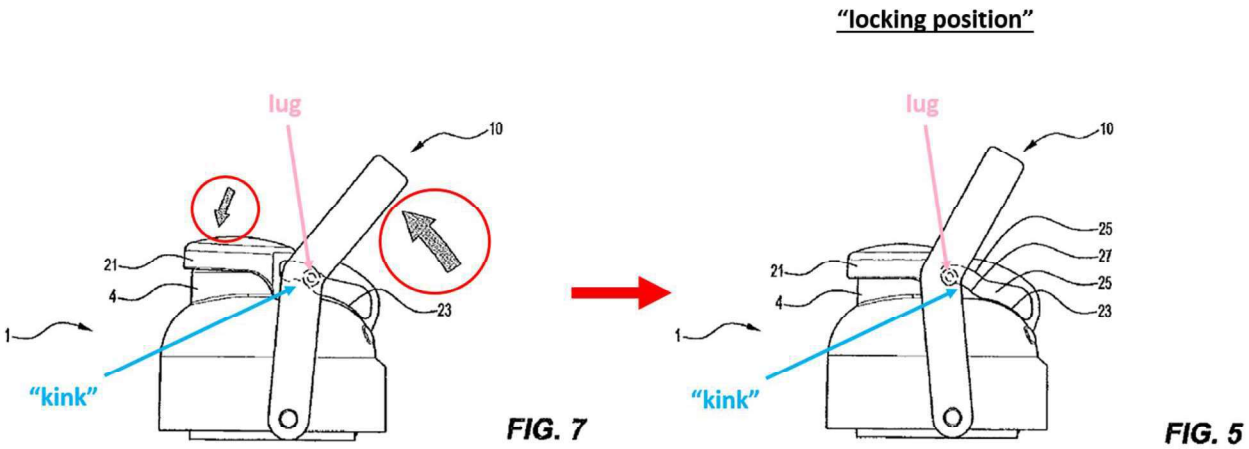


FIG. 7 FIG. 5

95. Samartgis also describes that its tracks 23 have "a number of specific elements or sections" and describes "a disengaging ramp section 25, sited close to the cap" that lifts the cap "in an upward direction," followed by "a track or flat" (unlabeled), "an anti-tamper ramp 26 which allows the lever member 10 to continue and lock the flap member 20 in place should that flap member 20 be snapped closed by action directly thereon," and a "fourth section" that is "a locking ramp and interface section 27." Ex.1004, 3:58-4:4. I have depicted disengaging ramp section 25 and locking ramp and interface section 27 in annotated Figure 5 below:

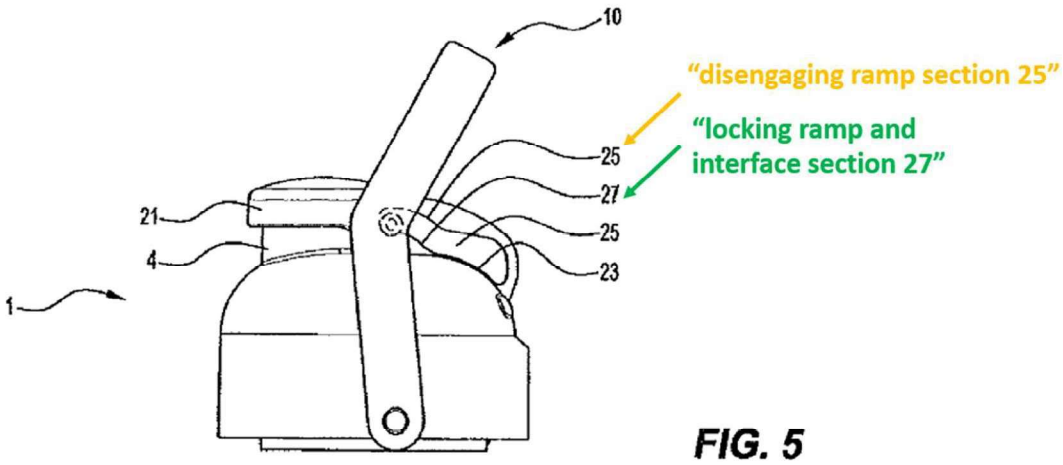
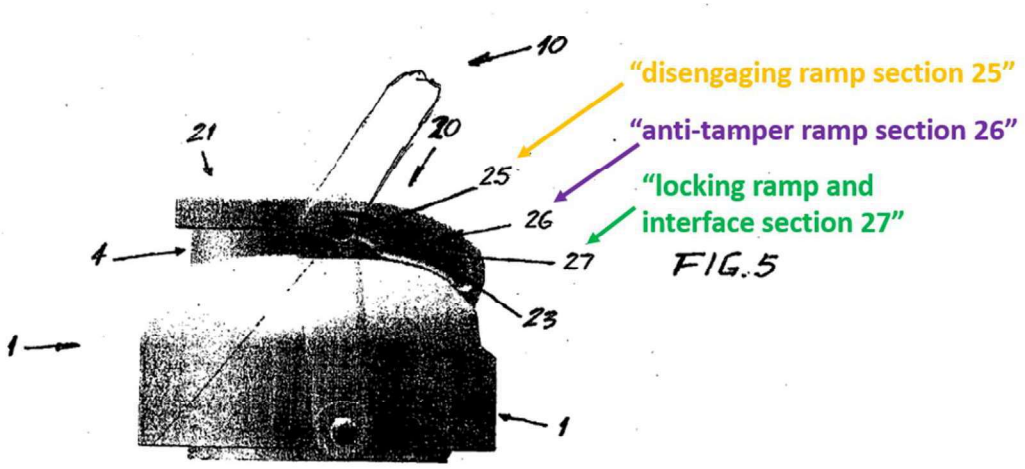


FIG. 5

96. The anti-tamper ramp 26 is not labeled in Samartgis, but the original drawings submitted for Samartgis in its file history do label it, as shown below:



Ex.2018 (Samartgis File History Excerpt), at 4.

97. I have reviewed Samartgis and there is no specific element, structure, or section depicted or described in Samartgis that locks the lug of the lever into the rightmost position of the track, and Figure 9 would not have been understood to depict a "locking position." There is nothing in Samartgis (other than the user holding the lever in place) to hold or keep the cap/closure in a position removed from the drink spout in the alleged stowed position of Figure 9. It is my opinion, therefore, that Petitioner has failed to prove that Samartgis's Figure 9 is "a stowed position" in which the "closure" is "retain[ed]" by the alleged closure retention mechanism.

98. I also disagree that the reference in Samartgis at 4:25-34 refers to the position shown in Figure 9 as being "the locking position" of Samartgis. Instead, that portion of Samartgis describes pushing the flap member into its "closed position" (i.e., Fig. 5) by the lever being "*returned to* the locking position" by the lug members engaging the ramp section and allowing the lever to pass through that

ramp section 25. The reference to "locking position" at 4:25-34 refers to the prior discussion of "the locking position" described with reference to Figure 5 with the lug members locked in place by the "kink." As such, a POSITA would not understand Samartgis to describe Figure 9 as a "locking position." Indeed, Figure 9 shows the cap is not even fully open nor in a position to provide sufficient clearance to allow a user to drink comfortably without the cap hitting the user's face:

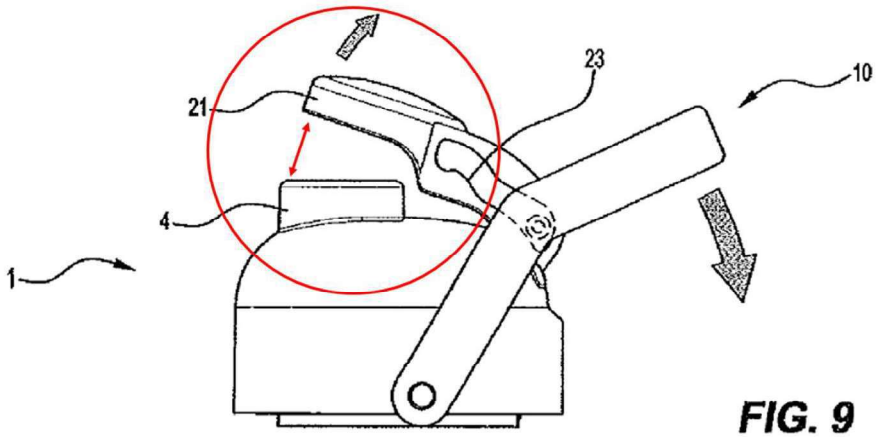
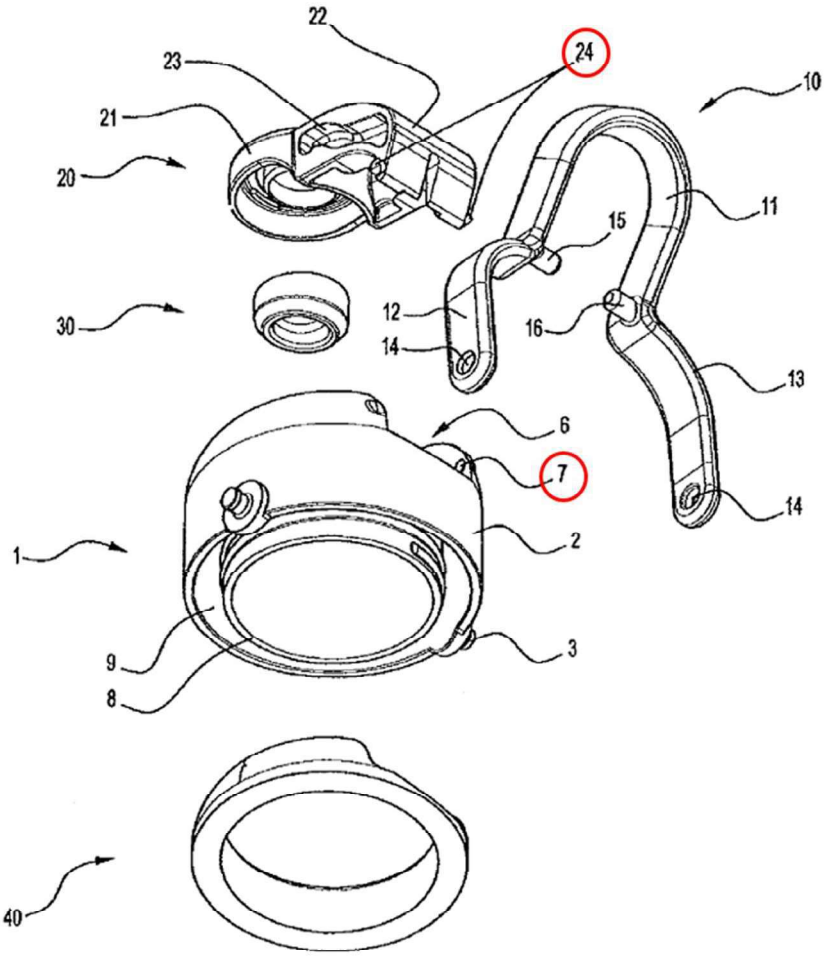


FIG. 9

99. As shown in the annotated Figure 4 below, the protrusions 24 (red) of the flap member 20 rotate within the apertures 7 (red) to create a hinge about which the flap member rotates. There is no structure in Samartgis, such as a stop, that prevents the flap member from continuing to rotate to the right to more fully open the spout, beyond the position shown in Figure 9. *See* Ex.1004, at Figs. 1-4, 9.



100. As I have shown in the annotated version of Figure 9 below, if the user continues to apply downward force to the lever from the positon shown in Figure 9, the force applied to the lug (pink) would be offset from the axis of rotation (red) created by the protrusions 24 rotating within the apertures 7, which a POSITA would have understood would cause the cap to continue rotating about this axis (red) to rotate to a more fully open position given that there is no structure present that prevents such further rotation.

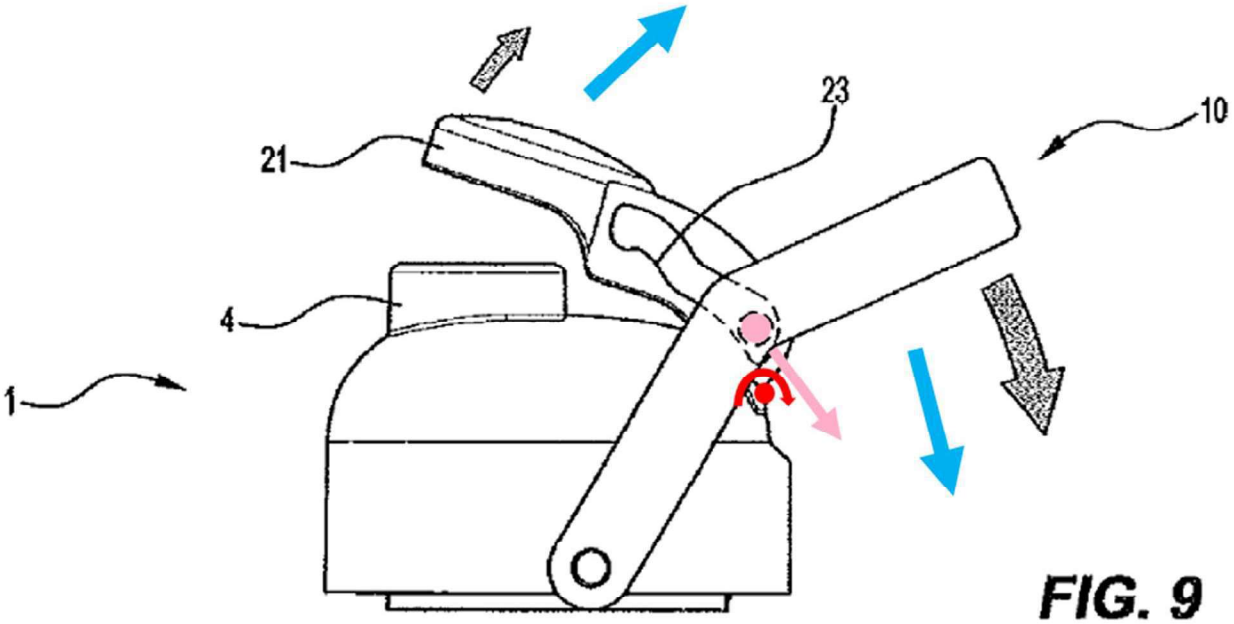


FIG. 9

101. It is my opinion that a POSITA reviewing Samartgis would have understood that it is highly likely that this design would have allowed the user to continue to apply downward force on the lever from the position shown in Figure 9 to more fully open the flap member 20 so as to allow the user to drink from the bottle comfortably without having the flap member 20 hit their face.

102. It is also my opinion that since there is nothing described in Samartgis to lock or hold the cap and lever in place in the position shown in Figure 9, a POSITA would have understood that if the user were to leg go of the lever when it is in the position shown in Figure 9, the flap member 20 could either potentially close shut or open further depending on the relative weights of the flap member 20 and lever 10.

103. If the flap member 20 were made of a heavier material than the "preferably . . . plastic material" of the lever, then the flap's weight could tend to cause it to close when the user releases the lever. Because Samartgis does not describe the relative weights of these components, a POSITA would have understood Samartgis does not disclose whether the cap would close (or open more fully) if the user lets go of the lever, given that, as discussed above, there is nothing holding or keeping the cap and lever in the position shown in Figure 9.

104. My above analysis demonstrates that Figure 9 would not be understood by a POSITA to be what Samartgis calls its "locking position," which is, instead, the position shown in Figure 5. Petitioner, in my opinion, therefore, has failed to establish that it is more likely than not, that Figure 9 depicts a "closure" "retain[ed]" by a "closure retention mechanism" in a "stowed position," because there is nothing described or depicted that is holding or keeping the closure in a position removed from the drink spout, as required by the claim construction for what it means to be "retain[ed] in a stowed position."

2. Samartgis Fails to Disclose a "Closure" that is "Received By" a Closure Retention Mechanism Under Petitioner's Theory

105. I understand that Petitioner contends that lug members 15 and 16 in Samartgis are the "closure retention mechanism" required by claims 5 and 19. However, under the proper construction of "received by" Samartgis does not disclose claims 5 and 19 because the lug members 15 and 16 are always within and

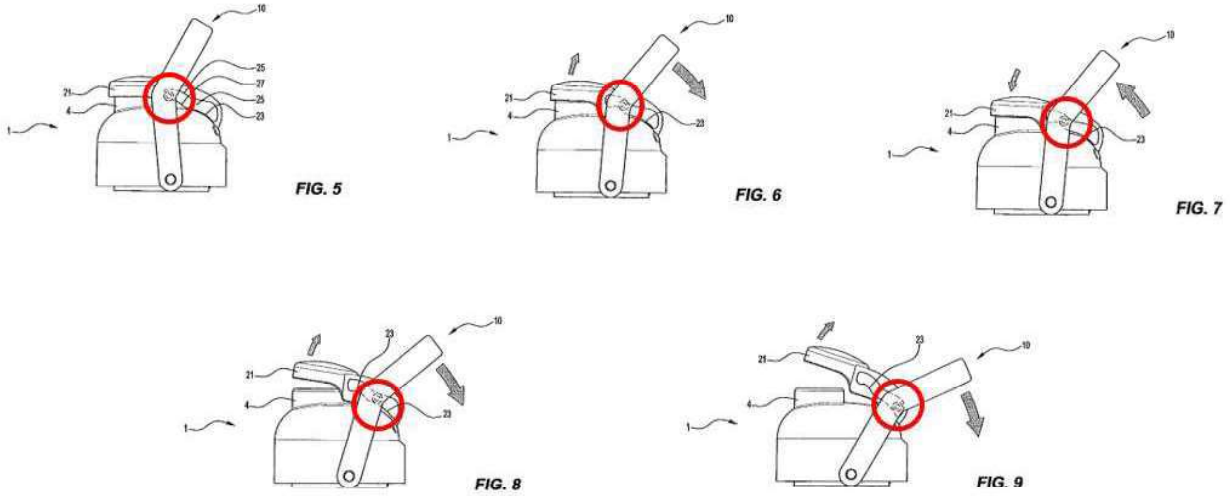
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in engagement with the tracks 23 and, therefore, can never accept, acquire, or come into engagement with (i.e., receive) the tracks 23 of the flap member 20 (the alleged "closure") when the flap member is removed by the user from the drink spout.

106. As explained above, the phrase "when the closure is . . . received by the closure retention mechanism" should be construed to mean "when the closure is accepted, acquired, or engaged by the closure retention mechanism." And the plain claim language requires this to occur "when the closure is selectively removed from the drink spout" to move the closure to the stowed position. The lug members 15 and 16 Samartgis do not meet this limitation because they can never accept, acquire, or engage the tracks of the cap when the cap is removed from the drink spout because the lug members 15 and 16 are always within tracks 23. Ex.1004, 4:12-19 ("lug members 15 and 16 . . . move along the tracks 23 of flap member 20"), 5:64-6:5 (same), 4:23-25 (describing "controlled movement" of the lever "along the tracks 23"); Ex.2011, 155:10-13 ("Q . . . In Samartgis the lugs 15 and 16 always move within the track of the flap member 20, correct? A That is correct.").

107. Samartgis's figures likewise confirm that the lugs 15 and 16 are always within and always engage the tracks 23, preventing them from being capable of accepting, acquiring, or coming into engagement with the tracks 23 when the user removes the cap from the drink spout:

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Ex.1004, Figs. 5-9 (annotated).

108. This permanent engagement between the alleged closure and alleged closure retention mechanism in Samartgis is contrary to the '252 patent, which, as discussed, describes receiving the closure as moving it into *engagemen*t with the tabs 56 when user removes the cap from the spout. The '252 patent also describes that the closure is releasable or removable from this engagement, indicating it is not permanent like in Samartgis. *Id.* at 2:65-3:2; 8:39-44; 13:34-41 ("the spaced-apart tabs . . . retain[] the closure in i[t]s stowed position in a friction-fit arrangement and restrict[] removal of the closure until a user selectively chooses to remove the closure").

109. Samartgis, therefore, fails to disclose a "closure" that "is . . . received by" a closure retention mechanism "when the closure is selectively removed from the drink spout."

3. The Lugs in Samartgis are not Equivalent to the Spaced-Apart Tabs 56 in the '252 Patent

110. In my opinion, the lug members 15 and 16 are not equivalent to the structure Petitioner relies on for the "closure retention mechanism" in the '252 patent. In particular, lug members 15 and 16 are not an "equivalent" to the spaced-apart tabs 56 on the interior of the handle in the '252 patent because lug members 15 and 16 do not perform the identical function, in substantially the same way, with substantially the same result as the spaced-apart tabs 56.

111. As explained above, lug members 15 and 16 do not perform the identical function to "selectively retain the closure in a stowed position relative to the handle when the closure is selectively removed from the drink spout and received by the closure retention mechanism." Rather, lug members 15 and 16 perform a substantially different function to attach the lever (e.g., handle) to the closure to permit the handle to remove the closure from the spout and lock the closure in a closed position over the spout. This is certainly not identical to the function of the "closure retention mechanism" in the '252 patent.

112. Moreover, Samartgis's lug members 15 and 16 do not perform the required function in substantially the same way as spaced-apart tabs 56. In the '252 patent, the spaced-apart tabs form a portion of the closed perimeter inside the handle and narrow the width of the perimeter to retain the closure by way of a snap-fit or friction-fit arrangement. Lug members 15 and 16 do not function in substantially

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this same way. In particular, tabs 56 "extend[] from the closed perimeter . . . [and] may be integral to the handle" and "are configured to selectively engage and retain, or otherwise grip, the closure in the stowed position" within the closed perimeter, as shown in Figures 2 and 12 below. Ex. 1001, 8:61-9:1, 8:58-60, Fig. 2, Fig. 12; *see also id.* at 13:14-46 ("When the closure is operatively positioned within the closed perimeter of the handle into its stowed position as illustrated in FIGS. 10-13, . . . the tabs ***engage*** opposing sides of the closure . . . . [W]hen the closure is fully positioned in its stowed positioned, the closure not only ***engages*** the tabs, but also engages the inside edge of the distal portion of the handle so that the closure is secured between the tabs and the inside edge of the handle, as perhaps best seen in FIG. 12."), Fig. 7.

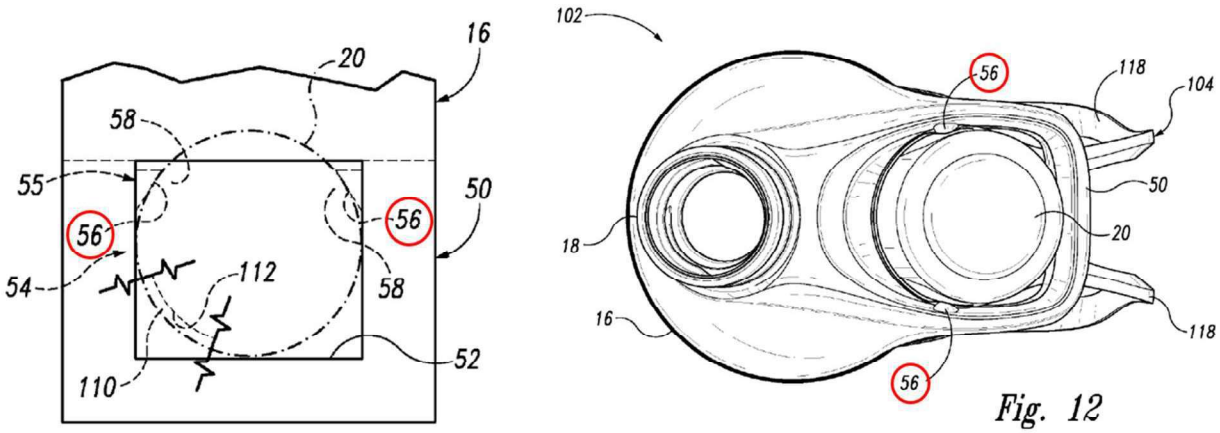


Fig. 12

Ex.1001, at Figs. 2 & 12 (annotated).

113. The '252 patent explains the closure "may have a maximum width that is greater than the distance between the spaced-apart tabs," so the tabs minimize the width of the closed perimeter to hold the closure in place. Ex. 1001, 9:30-37. The

'252 patent further explains the way the tabs operate: "Stated differently, the tabs nominally may be spaced-apart by less than the lateral dimension of the closure," "so that when the closure is positioned between and/or otherwise in engagement with the tabs, the tabs engage the closure across the maximum width, such as with the tabs resiliently deflecting, bending, or compressing to accommodate the greater width of the closure." Ex. 1001, 9:28-37. Based on the disclosure in the '252 patent, one skilled in the art would understand the configuration of the spaced-apart tabs on the interior of the handle "provide a friction-fit arrangement between the closure and the handle" for stowing the closure. Ex. 1001, 9:19-23, 13:31-34; FIG. 7.

114. The lug members 15 and 16 in Samartgis do not interact with the closure (i.e., flap member 20) in substantially the same way as spaced-apart tabs 56 because, as shown in Petitioner's annotated Figure 3 of Samartgis and Figures 5 through 9, the lug members 15 and 16 do not engage with the closure through a friction-fit or snap-fit arrangement to hold the closure in place, nor do they do so by narrowing the width of the closed perimeter of the handle. Rather, lug members 15 and 16 are merely "actuating pins" that rest inside tracks 23 (whether the cap is open or closed) and move within the tracks by movement of the lever member 10 (handle). Specifically, "[a]pplication of hand pressure to the lever member 10 (handle) will result in rotation of that lever member 10 relative to the main body member 1, which in turn will result in movement of the lug members 15 and 16 of lever member 20,

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with those lug members 15 and 16 being able to move along the tracks 23 of flap member 20." Ex. 1004, 4:12-17. Unlike the friction-fit or snap-fit way described for the tabs 56 in the '252 patent, lug members 15 and 16 operate on the flap 20 through a rotational force of lever member 10 causing lug members 15 and 16 to rotate and slide through the lateral tracks 23.

115. Further, the tabs 56 allow the closure to be engaged and disengaged with the handle, but the lugs 15 and 16 are always engaged with the track 23 of the closure, preventing the user from being able to engage or disengage the closure from the handle, as shown in annotated Figure 3 below.

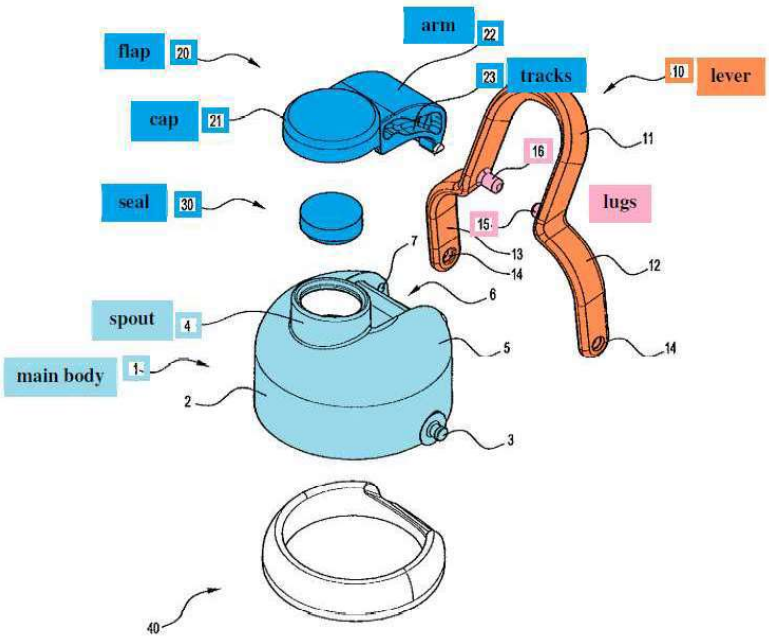


FIG. 3

116. Additionally, Samartgis' lug members 15 and 16 do not achieve substantially the same result as the spaced-apart tabs 56. In the '252 patent, the result

of performing the required function with the spaced-apart tabs 56 is that the closure is held in a stowed position within the closed perimeter of the handle when selectively removed from the drink spout. Lug members 15 and 16 in Samartgis do not achieve substantially the same result of keeping the flap 20 within the closed perimeter of the handle as lever member (10) rotates.

117. As discussed above, lug members 15 and 16 achieve the result of locking the cap in the *closed position* when the lever/handle is pushed all the way to the left, over the "kink," into the closed position of Figure 5, but do not achieve the result of locking the cap into the alleged "stowed position" argued by Petitioner. In my opinion, this is a substantially different result from the spaced-apart tabs 56 of the '252 patent.

B. Leoncavallo

1. Leoncavallo does not disclose or suggest a "closure retention mechanism" as required by every challenged claim.

118. In my opinion, Leoncavallo does not anticipate or render obvious claims 5 and 19 because it does not disclose or render obvious a "closure retention mechanism," as claimed. In particular, the alleged "closure retention mechanism" in Leoncavallo, detents 90, are not the same as, or equivalent to, the spaced-apart tabs 56 on the interior of the handle in the '252 patent that Petitioner identifies as the corresponding structure for the "closure retention mechanism" recited in the claims. Detents 90 are not equivalent to the tabs of the '252 patent because the detents do

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not perform the recited function in substantially the same way as the "tabs 56," nor do they achieve substantially the same results. Both the way the function is performed and the results achieved must be substantially the same for there to be equivalence.

119. Petitioner identifies the spaced-apart tabs 56 extending from the inner surface of the handle as the relevant corresponding structure in the '252 patent specification. Pet., 22–23. The specification of the '252 patent discloses that tabs 56 "*extend[] from the closed perimeter* . . . [and] may be integral to the handle." Ex. 1001, 8:61–65 (emphasis added). These tabs "are configured to selectively engage and retain, or *otherwise grip*, the closure in the stowed position" within the closed perimeter, as shown in Figure 7 below. Ex.1001, 8:58–60 (emphasis added); *see id.*, Figs. 2, 7. The closure "may have a maximum width that is greater than the distance between the spaced-apart tabs," so the tabs minimize the width of the closed perimeter to hold the closure in place. *Id.*, 9:30–37. The '252 patent describes these embodiments as examples of retaining the stowed closure using a snap-fit or friction-fit arrangement. *Id.*, 8:49–52.

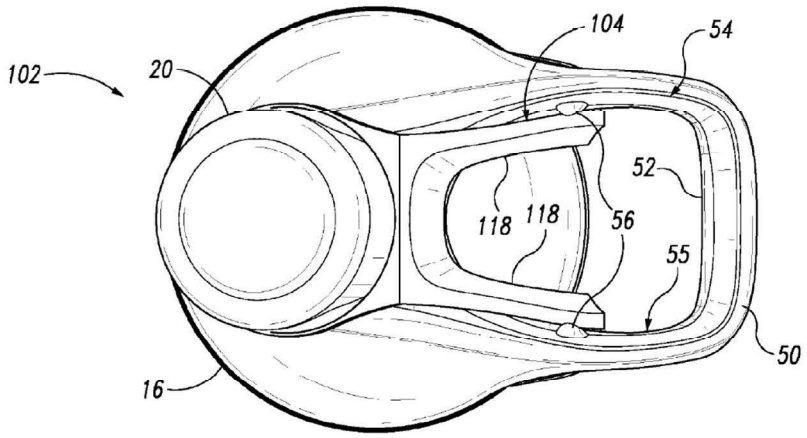


Fig. 7

Ex.1001, Fig. 7.

120. The Petition identifies the flip cap 68 of Leoncavallo as the "closure" recited by the claims. Pet., 64–65. Leoncavallo describes its flip cap 68 as being "movable between a closed position in which the spout 46 is covered (FIGS. 1, 1B, 2 and 4) and an open position in which the spout 46 is exposed (FIGS. 1A and 3)." Ex.1005, 4:60–65. Figures 2 and 3, illustrating these positions, are reproduced below. I understand that Petitioner has asserted the "open position" in Figure 3 is the "stowed position" of the claims. The Petition identifies detents 90 as the "closure retention mechanism" of the claims, and compares them to the tabs 56 of the '252 patent. Pet., 67–70.

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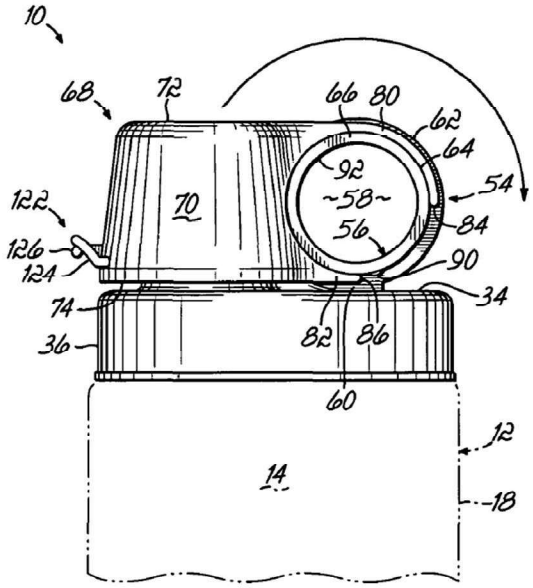


FIG. 2

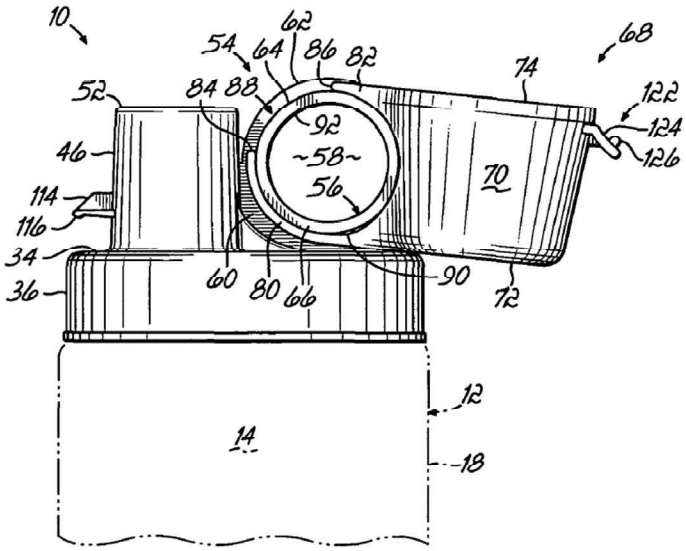


FIG. 3

Ex.1005, Figs. 2 & 3.

121. In my opinion, detents 90 do not perform the recited function in substantially the same way as the spaced-apart tabs 56 of the '252 patent. First, each of the detents 90 is a "rib or other suitable structure [that] project[s] ***outwardly*** from the outer arcuate surface 64 of the loop 54 on opposite sides of the annular rib 62," which pushes outwardly against connector 80 for "frictional engagement." Ex. 1005, 5:33-41 (emphasis added). I note that Dr. Vallee partly acknowledged this: "One skilled in the art would recognize that the detents 90 are on the outside of loop 54." Ex.1003 ¶179. In contrast, the corresponding structure identified in the Petition was the "two or more spaced-apart tabs extending from the *inner surface* of the handle." Pet., 23 (emphasis added). The detents 90 differ substantially because they are on the *exterior* of the handle in Leoncavallo, unlike the tabs 56, which are on the *interior*

of the handle in the '252 patent. This difference causes the detents 90 to exert outward frictional force, rather than the inward frictional force of tabs 56.

122. In addition, the tabs 56 in the '252 patent grip the portion of the closure itself that covers the spout. The detents 90, however, engage in frictional contact (when the flip cap is sufficiently rotated) with an elongated connector member 80 of the flip cap 68, rather than gripping the portion of flip cap 68 that actually covers the spout in Leoncavallo. In fact, the flip cap 68 is always external to the loop 54 and never retained within the loop in Leoncavallo, whereas the tabs 56 in the '252 patent retain the spout-covering portion of the closure within the inner surface of the handle.

123. Moreover, this frictional contact between the detents 90 and the connector member 80 of the flip cap 68 is not limited to when the flip cap is in the open position shown in Figure 3. Rather, there is frictional contact when the cap is in many different positions—from the time the detents 90 first contact the flip cap 68—when it is in a partially open position—all the way until the cap is rotated to the fully open position shown in Figure 3 identified as the "stowed position."

124. This continuous frictional engagement with the connector member of the closure of the cap in Leoncavallo as the cap continues to open works in a substantially different way than the tabs 56. The spaced-apart tabs 56 of the '252 patent create a very simple and quick snap-fit or friction-fit arrangement in which

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the closure is either gripped within the handle in a stowed position or popped out or released by the user, which contrasts with the varying degrees of openness of Leoncavallo's flip cap. Furthermore, the tabs 56 are spaced apart on opposing sides of the handle's inner surface and provide multiple points of frictional engagement to facilitate the snap-fit arrangement. In contrast, both of the detents 90 are positioned at approximately the same position relative to the handle, meaning that they provide frictional engagement only at that single location and not from opposing positions.

125. A POSITA would have understood that the above listed differences between the detents 90 and the tabs 56 of the '252 patent all cause the detents 90 to not perform the function in substantially the same way. Whether considered individually or collectively, these differences show that the detents 90 perform the recited function in a substantially different way than the tabs 56.

126. It is also my opinion that the detents 90 do not achieve substantially the same result as the spaced-apart tabs 56 of the '252 patent.

127. First, the arrangement of the detents in Leoncavallo of engaging the cap external to the handle and not placing the cap within the handle is not mere happenstance. Rather, that arrangement is an intentional design choice made by Leoncavallo's inventors in order to achieve a particular result that provides certain advantages in their design. Specifically, by placing the detents on the outside of the handle to engage a rotating connector member on the outside of the handle, instead

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of stowing the cap within the closed perimeter of the handle, the user's finger or attachment hardware can grip the inside of the handle and "not interfere with the movement of the flip cap or cause unintentional opening of the flip cap." Ex.1005, 2:26-30.

128. In other words, by providing the frictional engagement of the detents and connector on the outside of the handle, Leoncavallo "isolates the connector members 80, 82 from a user's finger or attachment hardware passing through the loop 54." *Id.* at 5:20-29. Thus, Leoncavallo's design locating its detents on the exterior of the loop 54 provides a substantially different result of avoiding any moving components on the inside of the handle. In contrast, the tabs 56 provide frictional engagement and allow the closure to be moved into and out of the stowed position within the space of the handle. That is what Leoncavallo seeks to avoid.

129. Second, the rotational movement of the flip cap in Leoncavallo results in an open position (identified as the "stowed position") supposedly provided by the detents 90 retention. This is not substantially the same result as achieved by the tabs 56 in the '252 patent, which provide a gripping snap-fit or frictional fit arrangement to retain the closure.

130. A POSITA would have understood that the closure in the '252 patent is stowed when gripped by the tabs 56. In contrast, "[t]he detents 90 are configured to frictionally engage the connector member 80 *as it travels about the loop*." Ex.1005,

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5:36–38 (emphasis added). The detents first come in contact with the connector members when the cap has only been opened partway (about 80 degrees), which is well before it reaches the open position identified as the "stowed position." That supposed "stowed position" is merely the point at which the flip cap cannot rotate any farther because it has hit the top of the cap assembly. Even in the fully open position, the user can still easily close the cap. A POSITA would have therefore understood that flip cap 68 of Leoncavallo can still be moved in and out of the open position identified as the "stowed position," even while detents 90 remain engaged. This too is a substantially different result from the one achieved by the tabs 56 in the '252 patent. For example, if a user bumps the cap of Leoncavallo's container with their finger or hand (or a similar small force), that would cause the cap to swing at least partially closed. In contrast, the closure retained by the tabs 56 in the '252 patent would be retained in the stowed position when bumped by a similar force. Accordingly, the retention that results from these two structures is not substantially the same, and the structures are not equivalent for this reason too.

131. Accordingly, the detents of Leoncavallo are not the same as or equivalent to the corresponding structure in the '252 patent. Leoncavallo therefore does not disclose the "closure retention mechanism" of claims 5 and 19 and does not anticipate or render obvious those claims.

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132. All of the dependent claims challenged on the Leoncavallo-based Grounds (Grounds 3 and 4) incorporate this requirement. Those claims are also not anticipated or rendered obvious.

2. Leoncavallo does not disclose or suggest a "closure retention mechanism" that meets the additional limitation recited by claim 6.

133. In my opinion, Leoncavallo does not anticipate or render obvious dependent claim 6. This is true, in part, because claim 6 includes the limitations of claim 5, and Leoncavallo does not disclose the "closure retention mechanism" of claim 5. In addition, Leoncavallo does not disclose or render obvious the limitations added by claim 6.

134. In particular, claim 6 requires that "the closure retention mechanism defines at least a portion of the closed perimeter," which must be defined by the handle. Ex.1001, claim 6. The detents 90 in Leoncavallo, which are identified as the "closure retention mechanism," do not "define[] at least a portion of the closed perimeter." Leoncavallo expressly discloses that detents 90 "project outwardly from the ***outer*** arcuate surface 64 of the loop 54." Ex. 1005, 5:33–36 (emphasis added).

135. As I noted above, Dr. Vallee admits that "the detents 90 are on the outside of loop 54." Ex.1003 ¶179. The Petition includes the same admission. Pet., 71. Both the Petition and Dr. Vallee's declaration include the annotated figure

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below, which shows that the identified "closed perimeter" is the one defined by the inner surface of loop 54. The detents 90 do not define any portion of that perimeter.

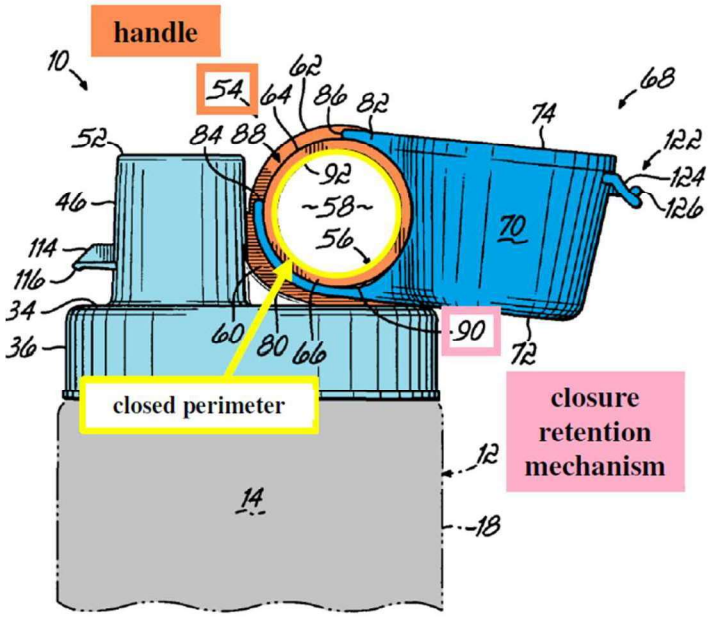


FIG. 3

136. The Petition also cites an alternative embodiment from Leoncavallo. Pet., 71–72. In regard to that embodiment, Leoncavallo states that, "while the flip cap 68 is shown with the arcuate connector members 80, 82 positioned on the outer surface 64 of the loop 54, one or more connector members may be provided on the flip cap 68 that engage the inner arcuate surface 92 of the loop 54 instead." Ex.1005, 5:50–55. But this disclosure does not teach or suggest "wherein the closure retention mechanism defines at least a portion of the closed perimeter," as claim 6 requires.

137. The cited sentence of Leoncavallo only refers to placing the "connector members" on the inner surface of the loop and makes no mention whatsoever with regard to whether any detents are also on the inside of the loop. Ex.1005, 5:50-55.

Those detents—not the connector members—are what has been identified as the "closure retention mechanism." The connector members 80 have been identified as part of the "closure," not as the "closure retention mechanism." Leoncavallo does not expressly disclose that the detents would be positioned on the inner surface of the loop in the alternate embodiment, so it does not expressly disclose the limitation of claim 6.

138. Leoncavallo also does not inherently disclose that the detents 90 would be positioned on the inner surface of the loop in the alternate embodiment. In my opinion based on Leoncavallo's disclosure discussed below, the detents 90 would not necessarily be present in the alternate embodiment at all. There is nothing to indicate they would necessarily be present in any position that would "define[] at least a portion of the closed perimeter," as claimed.

139. It is further my opinion that a POSITA would not have been motivated to modify Leoncavallo to arrive at the limitations of claim 6. To the contrary, in the context of the alternative embodiment where the connector members are on the inside of loop 54, Leoncavallo teaches away from using the connector members for the pivotal connection between the flip cap 68 and the loop 54. This pivotal connection is a necessary part of the modification that Petitioner proposes as being obvious.

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140. A POSITA would have understood the alternative embodiment in the context of Leoncavallo's entire disclosure. And, in its preferred embodiment, Leoncavallo teaches that placing the connector members and this pivotal connection on the outer surface of the loop "isolates the connector members 80, 82 from a user's finger or attachment hardware . . . so that the user's finger or attachment hardware does not interfere with movement of the flip cap 68 or cause unintentional opening of the flip cap 68." Ex. 1005, 5:24–28. A POSITA would have understood from this that moving the pivotal connection to the inside surface of the loop would interfere with the opening and closing the cap. It could also cause unintentional opening. In disparaging this arrangement, Leoncavallo teaches away from such a design.

141. Notably, this teaching away is particular to the placement of the connector members on the inner surface of the loop *when the connector members move as part of the pivotal connection* between the flip cap and the loop, as they do in the preferred embodiment. For example, Leoncavallo describes connector members 80, 82 being "positioned to engage the outer arcuate surface 64 of the loop 54 so that the flip cap 68 is *rotatably supported* by the loop 54 *for movement between the open and closed positions*." Ex.1005, 5:20–24 (emphasis added). Similarly, Leoncavallo states that "*the surface contact of the connector members 80, 82* with the loop 54 provides a bearing surface that resists breakage of *the pivotal connection* formed between the flip cap 68 and the loop 54." *Id.*, 5:29–32 (emphasis added).

142. However, immediately after describing the alternative embodiment that would place the connector members on the inside of the loop, Leoncavallo suggests using "other pivotal connections," indicating that "other pivotal connection structures are possible for rotatably supporting the flip cap 68 on the loop 54." *Id.*, 5:50–59. I note that "rotatably supporting" and "pivotal connection" are both terms Leoncavallo uses in the context of its teaching away. Accordingly, a POSITA would have understood Leoncavallo to suggest using some other kind of pivotal connection for the alternative embodiment (*e.g.*, other than one using detents 90).

143. A POSITA would not have understood the phrase "other pivotal connection structures" to suggest using the very same arrangement that Leoncavallo disparaged two paragraphs earlier. I cannot agree with Dr. Vallee's opinion that this generic reference to "other pivotal connection structures" somehow suggests the specific pivotal connection structure that was disparaged and from which Leoncavallo teaches away. Dr. Vallee does not appear to consider the context in which this suggestion appears.

144. Accordingly, a POSITA would have understood that, if the connector members 80 were moved to the inner surface of loop 54 (as described in the alternative embodiment), a different pivotal connection structure should be used. In that circumstance, there would no longer be a need for detents 90 to be present at all. Even if they were present, there is no reason why they would be moved to the inner

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surface of loop 54. Leoncavallo expressly teaches away from having any of the moving parts associated with the pivotal connection located inside the loop 54. The function of the detents 90 is to frictionally engage with such moving parts. A POSITA would therefore not have been motivated to move the detents to the inner surface of the loop.

145. Although it would not have been obvious to make the proposed modification, I also considered whether that modification would have affected my analysis with respect to the "closure retention mechanism" of claim 5. In my opinion, even if the detents 90 were located on the inner surface of loop 54, they still would not perform the recited function in substantially the same way to obtain substantially the same result as the tabs 56. For example, pushing in a single direction (like Leoncavallo's detents) versus gripping within a closed perimeter from multiple points with tabs 56 are not "the same type of frictional engagement." Accordingly, the portion of flip cap 68 within the perimeter defined by the loop 54 would not be gripped from multiple directions within the closed perimeter. Similarly, the flip cap 68 would be retained in a stowed position to the same degree as the closure retained by tabs 56 in the '252 patent. This means that Leoncavallo's flip cap would still be easily moved from the open position by a small force (like the user's finger), whereas the closure is retained in a more secure grip by the snap-fit or frictional fit provided

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by the tabs 56 of the '252 patent. Petitioner's proposed modification for claim 6 therefore does not change the results of my analysis for independent claim 5.

3. Leoncavallo does not disclose or suggest the additional limitation recited by claim 7.

146. In my opinion, Leoncavallo does not anticipate or render obvious claim 7 because it does not disclose or suggest "wherein in the stowed position, the closure is positioned at least partially within the closed perimeter" defined by the handle, as required by claim 7.

147. First, as shown below, Leoncavallo's cap (royal blue) is not positioned even partially within the yellow annotated circle identified as the "closed perimeter" of the handle (orange) while the cap is in the open position identified as the "stowed position." Indeed, no part of the cap is ever positioned within the supposed "closed perimeter," regardless of which position the cap is in.

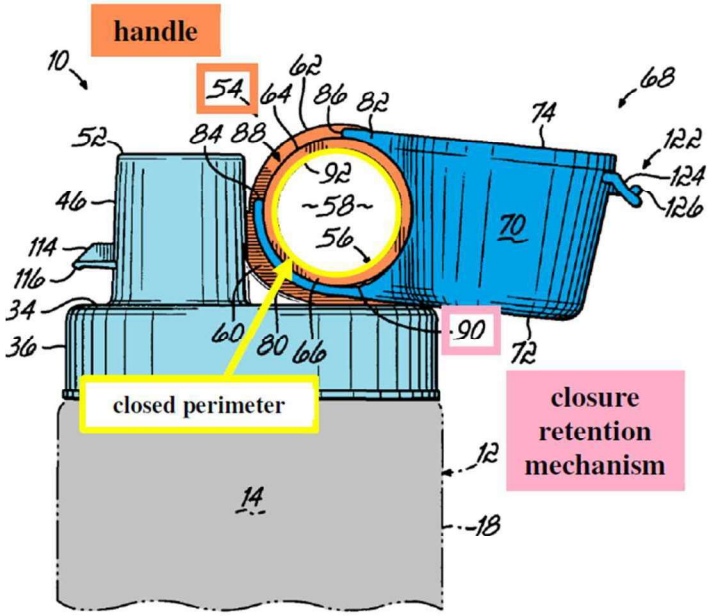


FIG. 3

Petition, 71

148. Second, the Petition relies again on the alternative embodiment that appears in Leoncavallo at column 5, lines 50–55. I addressed this embodiment in my discussion of claim 6 in the previous section. As I explained in that discussion, Leoncavallo does not expressly or inherently disclose that detents 90 are also moved to the inside of the loop. Nor does Leoncavallo suggest or otherwise render obvious that modification.

149. As I noted above, the detents 90 may not even be present in the alternative embodiment because Leoncavallo suggests using a different pivotal connection structure. And, if present, detents 90 would not be moved to the inner surface of the loop 54. Either way, detents 90 would not perform the function identified in the Petition as the recited function of the closure retention mechanism

in claim 5. Petitioner identifies the frictional engagement between the detents 90 and the connecting member 80 as the basis for detents 90 performing this function. Pet., 68. Because detents 90 would not be located on the inner surface of the loop, they would not engage the connector members there. Absent that engagement, there is no support for the proposition that detents 90 either (1) perform the function of the closure retention mechanism of claim 5 or (2) are equivalent to any corresponding structure in the '252 patent.

4. Dependent claims 17 and 18 would not have been obvious over Leoncavallo in view of Johnson and/or Gorskey because a POSITA would not have been motivated to make the proposed combination.

150. In my opinion, Leoncavallo in view of Johnson and/or Gorskey does not render obvious either of claims 17 and 18. A POSITA would not have been motivated to combine the teachings of either Johnson or Gorskey with Leoncavallo because they relate to different kinds of containers that are subject to different requirements and constraints.

151. I note that Petitioner argues in its Petition that "[a]dopting the plug/spout configuration of Gorskey and/or Johnson would result in a more secure, robust defense against inadvertent spills or leaking," relative to the sealing spout taught by Leoncavallo. Pet., 77. Based on my experience, I disagree with this assertion.

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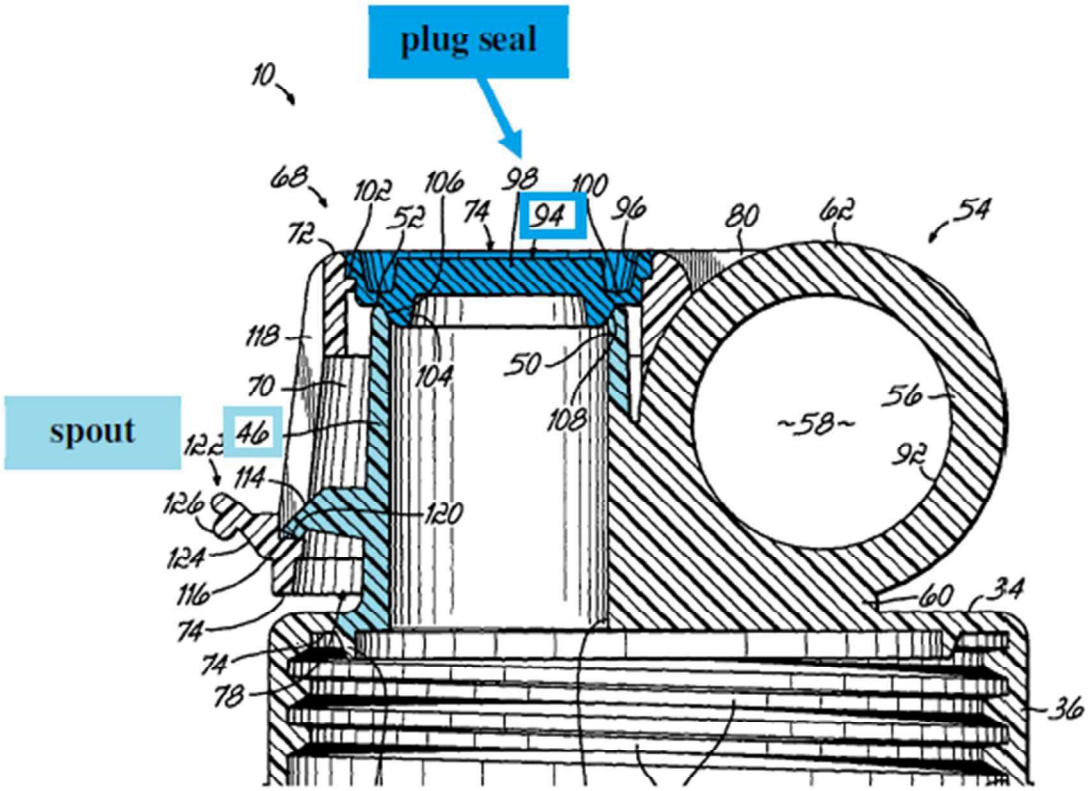
152. First, Leoncavallo teaches a "secure, robust defense against inadvertent spills or leaking" (to use Petitioner's wording), so a POSITA would not have seen this aspect of Leoncavallo as a problem in need of solving. For example, Leoncavallo discloses:

> During storage and transportation with liquid contained in the container 12, the flip cap 68 is moved to the closed position so that the ***plug seal 94 forms an essentially watertight and leak-proof seal*** with the top edge 52 of the spout 46, ... When it is desired to drink or dispense liquid from the container 12, the flip cap 68 is flipped to the open position shown in FIGS. 1A and 3 by lifting tab 122 with a finger to expose the spout 46 . . . . When the user is finished dispensing liquid from the container 12, the flip cap 68 is flipped back to the closed position to cover the spout 46 . . . and provide an essentially leak-proof seal with the spout 46 . . . .

Ex.1005, 7:3–18[1] (emphasis added). Petitioner's annotations (reproduced below) show the plug seal 94 in dark blue.

[1] The ellipses omit an alternative embodiment in which there is no spout—just an "opening formed in end wall 34 of the closure 10." Ex.1005, 7:11–12. The claims of the '252 patent require a spout, and I see no indication that Petitioner relies on this alternative embodiment, so I have omitted it here and in the rest of this discussion.

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Petition at 58 (*original at* Ex.1005, Fig. 4)

153. Leoncavallo teaches that the plug seal is secured to the inside surface at the top of the flip cap 68 by means of "an annular connecting web 100 extending between the annular wall 96 and the plug seal body 98" and "a radially inwardly directed annular shoulder 102 for securing the plug seal 94 adjacent the top edge 72 of the flip cap 68." Ex.1005, 5:60–6:2. (I note that Petitioner's annotations are over-inclusive, in that they also include portions of the flip cap adjacent to plug seal 94 and to which the plug seal is secured. Nevertheless, the shading of the plug seal is distinct enough from that of the flip cap in the Figure below to distinguish between the two.)

154. Leoncavallo further teaches that the flip cap and plug seal are made from different polymeric materials in a two-shot molding process. *See id.*, 6:13–28. First, the flip cap is "molded during a first shot of a two-shot molding process from a suitable thermoplastic material, such as a polycarbonate." *Id.*, 6:15–17. "During the second shot of the two-shot molding process, the plug seal 94 is formed and integrally attached to the radially inwardly directed annular shoulder 102 of the flip cap 68. The plug seal 94 may be molded from a suitable material such as a thermoplastic elastomer, for example." *Id.*, 6:19–24. Leoncavallo thus discloses to a POSITA that the plug seal is made from a soft but resilient material (*e.g.*, a thermoplastic elastomer), while the flip cap is made from a different material, such as polycarbonate, that is more rigid and durable than the plug seal.

155. A POSITA would have understood from Leoncavallo's disclosures regarding the composition of the plug seal 94 and the flip cap 68 that plug seal 94 is compressed to some degree when the flip cap 68 is in the closed position. This compression of the elastomer causes it to conform with the edge of the spout with which the plug seal is in contact, as shown in the depicted embodiment. This compression against the surface of the spout forms the airtight, leak-proof seal. This was typical for an elastomeric plug seal with which a POSITA would have been familiar.

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156. The elastomer provides a good compression seal while the rigid material of the cap ensures the seal will not be broken by accident. For example, if the drink container of Leoncavallo we knocked over or dropped from a modest height, the rigid material of the flip cap would keep its shape, which would maintain the compression seal of the elastomer on the spout. I am not aware of any evidence to support Petitioner's assertion that either Johnson or Gorskey teaches a more secure, robust defense against inadvertent spills or leaking than the seal taught by Leoncavallo.

157. Johnson discloses an injection-molded plastic vial with an integral lid connected by a structure called a "living hinge": "The vial body 22 and vial lid 48 are integrally molded together, connected by a living hinge structure 62." Ex.1011 ¶57. This one-piece construction is evident from Figure 4 of Johnson (at right).

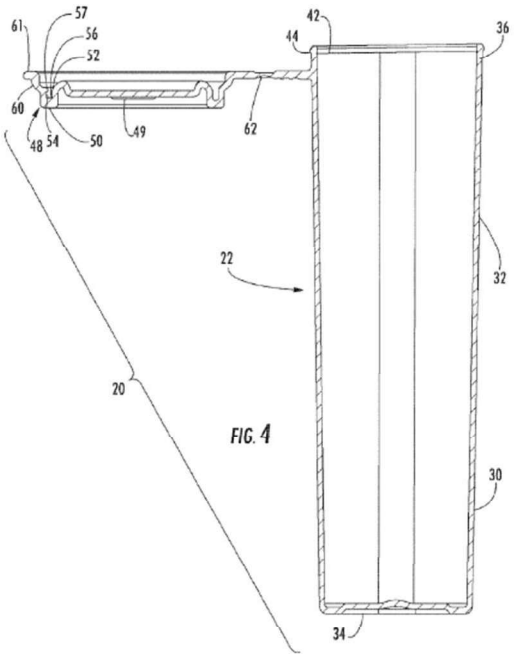


FIG. 4

158. A POSITA would have understood that this type of unitary construction, using a living hinge, was typically for single-use product packaging, often made from polypropylene (which is more flexible and less durable than polycarbonate). For example, shampoo bottle caps would often have included a

living hinge structure. Common experience supports that the living hinge structure is not very durable and is generally the first point of mechanical failure in such packaging.

159. In addition, Johnson identifies the problem it tries to solve as relating to "packaging of food products, and in particular sugar-based candy products." Ex.1011 ¶14. This problem, according to Johnson, arose from "a recent trend in the candy industry to develop unique dispensing packages for small candy products." *Id.* ¶11. A POSITA would have understood that candy packaging of the sort envisioned by Johnson would have been single-use and disposable. This understanding would have been further supported by the unitary construction, as well as the description of the manufacturing process (*see id.* ¶¶55–68).

160. Finally, I note that the leak testing disclosed in Johnson indicates that even the vials' best performance still resulted in leaks at 6.0 PSI. *See id.* ¶¶51–52, Fig. 15. This indicates that even a modest spike in pressure (*e.g.*, an increase of 50% from atmospheric pressure at sea level, which is about 14–15 PSI) would result in leaks. In contrast, Leoncavallo teaches a seal that is "essentially watertight and leak-proof." Ex.1005, 7:5–7. As noted above, the multi-part construction of the cap and seal in Leoncavallo provides the advantage of a durable shell over an elastomeric compression seal. The single-shot molding process of Johnson deliberately sacrifices those advantages for cheaper, single-piece, disposable product packaging.

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161. Based on the foregoing, it is my opinion that a POSITA designing a reusable container based on Leoncavallo's teachings would not have looked to single-use containers (like Johnson's) for several reasons. Durability is important for reusable containers (as shown by Leoncavallo's use of polycarbonate) and is not a significant consideration for single-use containers (as reflected by the use of a living hinge structure in Johnson). Furthermore, the seal from Johnson would not be an improvement over the one taught by Leoncavallo.

162. As for Gorskey, it discloses a collar-and-lid combination for sealing opened bags used in food-product packaging (e.g., cereal). *See* Ex.1011 ¶¶2–3. More particularly, Gorskey teaches:

> [T]he open end of the bag 202 may be inserted through the internal collar 110 with the remaining portion of the bag 204 extending therebelow. Thereafter, the lid collar 104 may be pressed onto the internal collar 110 providing a firm connection and seal thereto. This is best shown in Figure 6 wherein the open end of the bag 202 is shown extending out from the internal collar 110.

Id. ¶35. As indicated, Figure 6 of Gorskey (below) illustrates this arrangement. As described elsewhere in Gorskey, the lid 102 is designed to engage with internal collar 110 to "form a frictional fit connection" between ridges 116 and 118. *Id.* ¶34.

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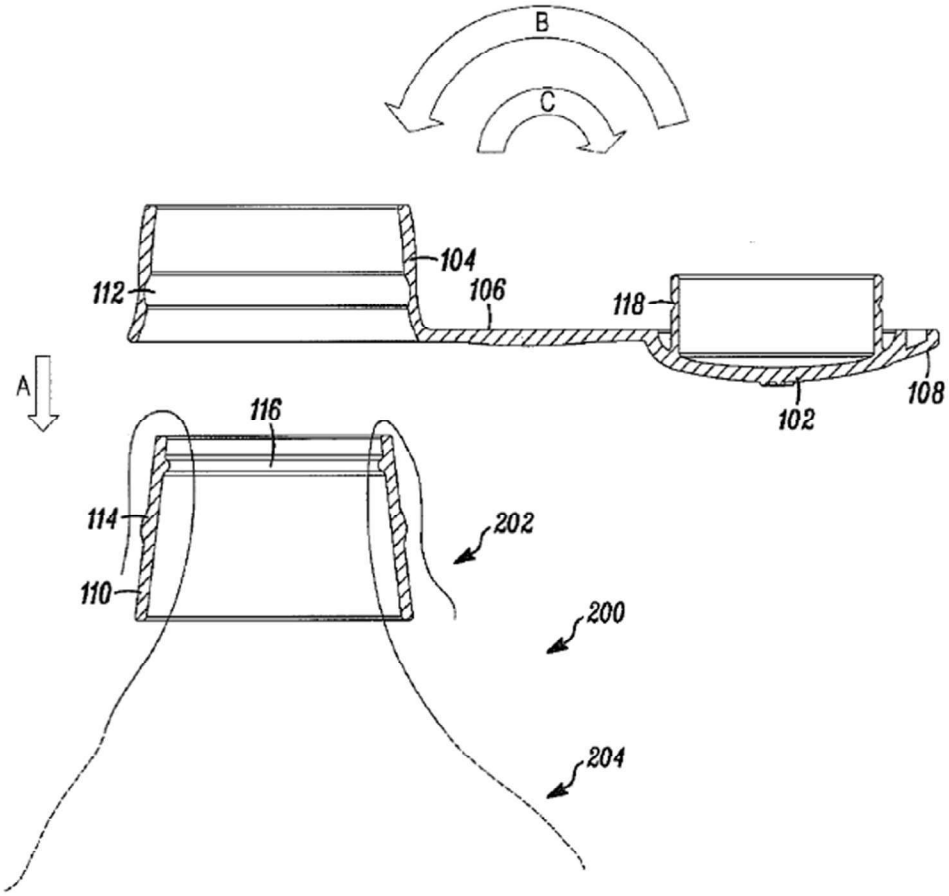


FIG. 6

Ex.1011, Figure 6

163. Gorskey does not teach or suggest that the disclosed lid can create a watertight seal with the collar. Gorskey also does not teach or suggest that the arrangement would be appropriate for use in liquid containers, such as the reusable drink container of Leoncavallo. Rather, Gorskey purports to address the same problem as a "chip-clip." Ex.1011 ¶3. Accordingly, in my opinion, a POSITA would not have considered Gorskey to be in the same field as the '252 patent, which "relates to drink containers." Ex.1001, 1:17–19; *see id.*, 18:44–47 (claiming a "drink

container, comprising: a liquid container . . . sized to hold a volume of potable drink liquid"). Moreover, a POSITA would not have looked to Gorskey to address the need for an "essentially watertight and leak-proof seal" in Leoncavallo. Ex.1005, 7:5–7. Gorskey is therefore not analogous art to the '252 patent or Leoncavallo.

C. Miller

1. Miller does not disclose or suggest the "drink spout," "closure," or "closure retention mechanism" limitations as claimed.

164. Miller does not disclose or suggest: i) the "drink spout extending from the base," ii) the "closure" which is "configured to be removably coupled relative to the drink spout" or configured to "selectively restrict dispensing of drink liquid through the passage and to selectively permit dispensing of drink liquid through the passage when removed from the drink spout," or iii) or the "closure retention mechanism" limitations of claims 5 and 19.

165. The Miller reference consists of seven figures depicting the ornamental design of a beverage container. These drawings depict only the outside of the beverage container, and none of the drawings show the container with its apparent cap in an open position. There is no visible means for a user to drink from the container pictured in Miller, nor are any particular functional features of the container shown in the drawings. Miller, as a design patent, lacks any written description of any functional features. Further, I understand from counsel, that

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design patents can only encompass ornamental designs and cannot be functional in nature.

166. In each of Miller's seven figures, Miller's alleged "closure" (or cap) is in a closed position that makes it impossible to see what is underneath, including whether any opening to the beverage container exists, and, if so, what it looks like. Ex. 1006, Figs. 1-7. This can be seen in Figure 1 below:

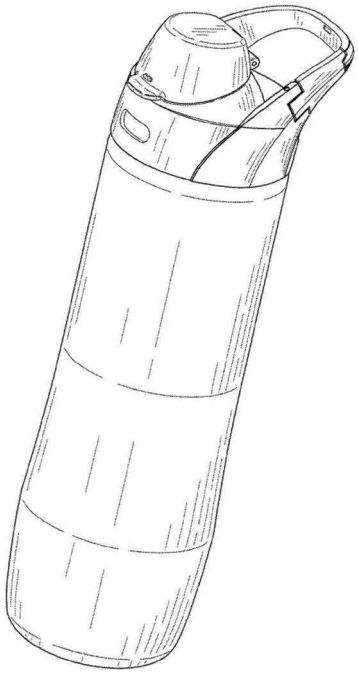


FIG. 1

Ex. 1006, Fig. 1.

167. I understand Dr. Vallee argues that Miller must disclose or suggest a "drink spout" as claimed. Specifically, Dr. Vallee contends "the base of the cap assembly would necessarily include a passage through the base, i.e., a spout, for dispensing the contents of the beverage container to the user."

I disagree that this establishes that a "drink spout extending from the base" would necessarily be present in Miller, because all Dr. Vallee argues is that there would necessarily be an opening for dispensing liquid.

168. As Dr. Vallee admits, "a passage through the base . . . for dispensing the contents of the beverage container" is "not depicted in Miller." Ex.1003, ¶ 74.

169. Miller does not disclose any particular method for drinking from the beverage container, and not all methods for drinking from Miller's container would be the claimed "drink spout." The claimed drink spout must "extend[] from the base" of the container. A mere hole or opening through the base would not be a "drink spout extending from the base," because a mere hole or opening does not have any structure "extending from the base." As Dr. Vallee admitted in deposition, just a hole in the base" would not satisfy this claim element. Ex.2011, 194:15-21 ("I don't read that claim element to be like it's just a hole in the base.").

170. Thus, even if it is assumed that Miller's drink bottle would necessarily have an opening under its cap for dispensing liquid (even though this is not shown in Miller), a "drink spout extending from the base" would not have necessarily been present because a mere hole or opening could have been used.

171. Many common drinking container configurations known to a POSITA at the time of the '252 patent had openings which did not include a "drink spout

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extending from the base" as claimed. For example, certain Yeti lids, such as the MagSlider, simply have a hole recessed in the base of the cap, like below:



See Ex. 2025 (accessed from https://www.yeti.com/drinkware/drinkware-accessories/rambler-magslider-lid.html). U.S. Design Patent Application No. D751,339 was filed by Yeti Coolers LLC, disclosing a design which looks very similar to the MagSlider Lid:

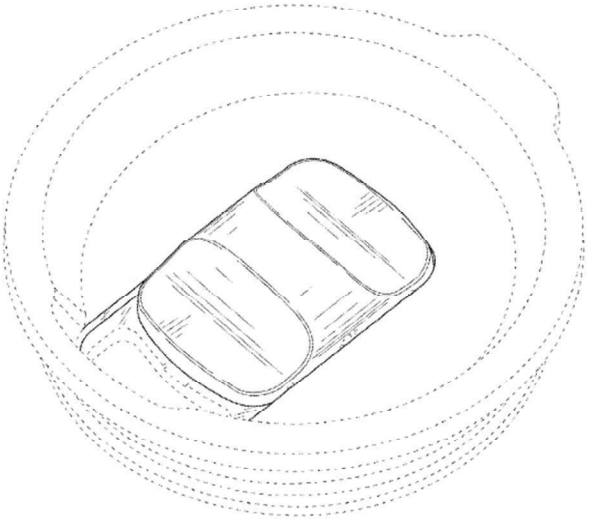


FIG. 1

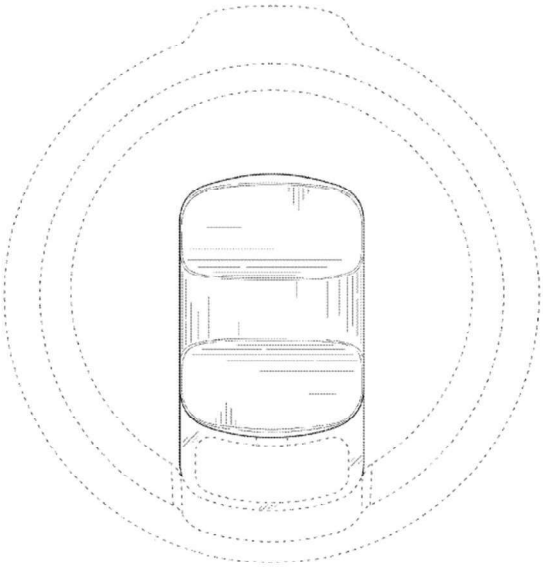


FIG. 6

Ex. 2024, Figs. 1 & 6.

172. The RTIC Flip Top Lid also has an opening in the cap base rather than a "drink spout extending from the base" as claimed. As shown in the photo below, the opening is a hole in the cap base that does not include a "drink spout extending from the base" of the cap:



See Ex. 2026 (accessed from https://rticoutdoors.com/32oz-40oz-Bottle-Lid?color=Black&utm_source=google&utm_medium=cpc&utm_campaign=21883518880&gad_source=1&gclid=CjwKCAiAneK8BhAVEiwAoy2HYf4IXTY9pk6JnvDFWpb2HOC7-WJf1aijanutP6BYGdg_z8hfDy_S_BoCd58QAvD_BwE). U.S. Design Patent Application No. D945,819 was filed by RTIC Outdoors LLC, disclosing a design which looks very similar to the RTIC Lid:

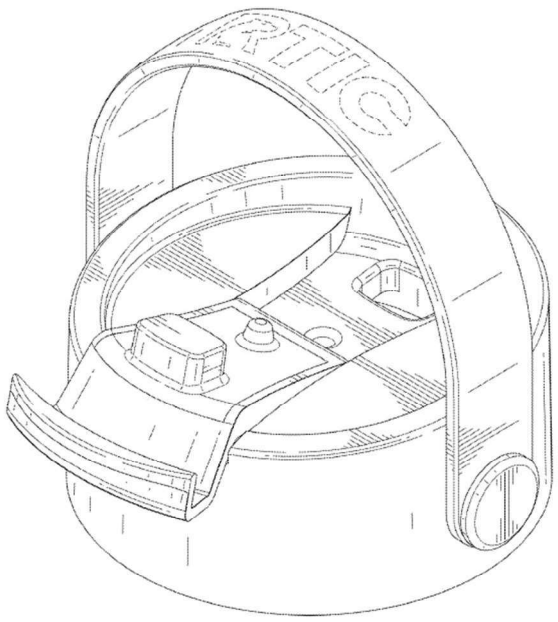


FIG. 9

Ex. 2023, at Fig. 9.

173. Given the fact that beverage containers which did not have "drink spout" which "extend[] from the base" of a beverage container were common and known to a POSITA at the time of the '252 patent, a POSITA would not have understood such a "drink spout extending from the base" to be necessarily disclosed (i.e., inherently disclosed) by Miller for this additional reason because, even if it were assumed that Miller necessarily has an opening to dispense liquid under its cap, this opening could be a mere hole or opening not having a "drink spout extending from the base," as claimed.

174. Because a POSITA would not have understood Miller to disclose or suggest the "drink spout extending from the base," Miller also does not disclose or suggest the additional limitations related to the "drink spout." Specifically, Miller

does not disclose a "closure" which is "configured to be removably coupled relative to the drink spout" for this reason. Without disclosure of a "drink spout extending from the base" there is no indication of if or how such a spout would be coupled to the closure. Nor is there any disclosure or suggestion in Miller of said "closure" being able to "selectively restrict dispensing of drink liquid through the passage and to selectively permit dispensing of drink liquid through the passage when removed from the drink spout," given the lack of disclosure about the "drink spout extending from the base" and its relationship to and positioning relative to the closure.

175. In fact, there is no disclosure in Miller to suggest that it has any sealing mechanism at all to "restrict dispensing of drink liquid" through any opening in the container. Miller does not provide a POSITA adequate information to understand whether there is a sealing mechanism within the closure to prevent liquid from exiting the container, or whether the closure is simply a cover to prevent dust and debris from entering the container without performing a sealing function.

176. Indeed, there is no evidence that Miller's cap ever even comes into contact with any drink spout under the cap, because Miller does not provide any view under the cap. Because it is impossible to know whether any contact occurs, it is impossible to know whether the cap is able to selectively restrict or permit the flow of fluid through any such drink spout under the cap. Petitioner assumes a closure "would be necessary to allow the user to close the spout and prevent spills

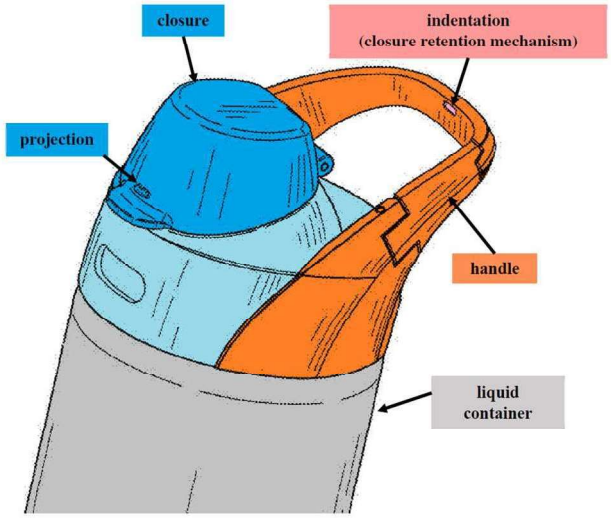
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or leakage when not in use." Pet., 87. But the cap could, of course, prevent spills or leakage outside of the cap without preventing such fluid flow through the spout. Further, nothing suggests that the purported closure in Miller is anything more than a cover, perhaps to prevent dust and debris from entering the beverage container to keep it clean. To glean whether the cover actually selectively restricts passage of the drink liquid from the container to the user, it is necessary to know more than just the ornamental design of the bottle as depicted in Miller—a POSITA would need information regarding the internal structures in the cap assembly and closure to understand whether they function to seal liquid from exiting the drink spout when the closure is in a closed position. Absent a sealing mechanism (which is not pictured in Miller), a liquid could simply flow from any opening/hole between the closure and base when the bottle is in an inverted position. Petitioner's position is based entirely on conjecture and speculation from a single set of drawings in a design patent that does not depict any structure under Miller's cover.

177. In addition, Petitioner and Dr. Vallee's contention that Miller discloses a "closure retention mechanism" which is "configured to selectively retain the closure in a stowed position relative to the handle when the closure is selectively removed from the drink spout and received by the closure retention mechanism" is purely speculative in my opinion because Miller only depicts ornamental design and does not describe function. As an initial matter, "closure retention" is a function

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which the "mechanism" performs, but Miller is a design patent, which I understand discloses the ornamental design of a beverage container rather than the functional elements of such container. Petitioner and Dr. Vallee label an alleged "projection" and "indentation" in Miller that they contend perform a closure retention function.



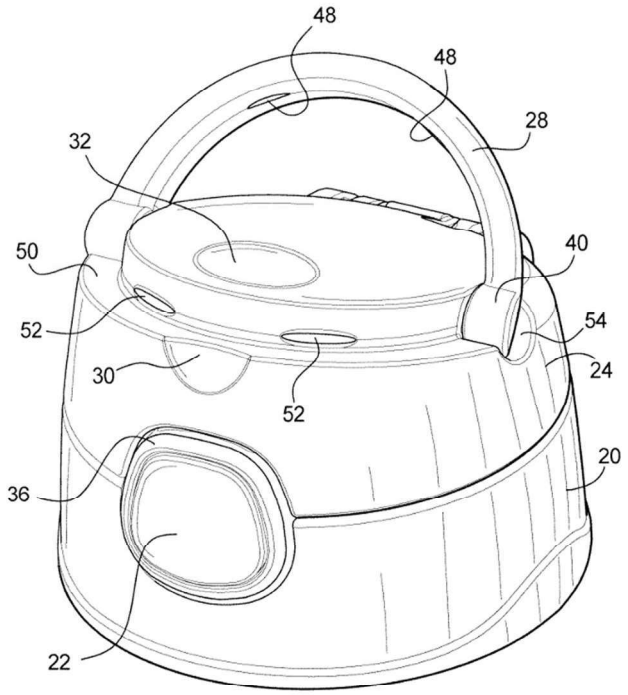
Pet., 89. Miller does not contain any disclosure about whether any of the ornamental design elements shown in its figures have any functions at all, let alone disclosure of whether or how such elements might "selectively retain the closure in a stowed position relative to the handle" when such a closure is removed from the (hypothetical) "drink spout." Any analysis regarding the existence of a "closure retention mechanism" in Miller would be purely speculative from the standpoint of a POSITA. Further, the alleged "projection" and "indentation" speculated by Petitioner and Dr. Vallee could simply be artifacts of the manufacturing process,

such as from the molds used to create those components—without having the speculative closure retention function alleged.

178. I understand that Petitioner has argued that the Lane reference (Ex. 1007) indicates that a POSITA would have recognized Miller's alleged projection on the closure and indent on the handle as a "closure retention mechanism." I disagree. The Lane reference discloses a bail handle 28 which "is moved between the stowed and deployed positions." Ex. 1007, 3:44-47. In Lane, it is therefore the ***handle*** (not the closure as Petitioner argues is shown in Miller) which moves between an open and closed position. The handle includes retainer projections 48 which extend inwardly to engage with retainer indentations 52 on the outer lid 24 when the handle is flipped forward in the closed position. *Id.*, 3:26-36. Lane therefore does not indicate that a POSITA would understand the design in Miller to include or suggest a "closure retention mechanism" as claimed, including one in which the closure is selectively retained in a stowed position in the handle. If anything, Lane would tend to suggest the *opposite*—that Miller's handle could flip forward to engage the closure.

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FIG. 3



Ex. 1007, at Fig. 3. Further, in Lane, the projections are in the handle while the indentations are in the closure, which is the opposite of the design that Petitioner and Dr. Vallee contends exists in Miller where they label an indentation in the handle (not the closure) and a projection in the closure (not the handle). Thus, Lane does nothing to establish that the specific claimed "closure retention mechanism" was conventional or that a POSITA would have recognized Miller discloses the claimed "closure retention mechanism" by virtue of having knowledge of designs like Lane's design.

179. For the reasons I give above in Sections VII.A and VII.B.1, neither Samartgis nor Leoncavallo support the conclusion that a POSITA at the time of the

invention would have understood a "pivotal closure cooperating with a handle to maintain the closure open while drinking" to be conventional, because Samartgis and Leoncavallo do not disclose a "closure retention mechanism" as claimed. That is, for the reasons discussed above, Samartgis does not teach a closure retention mechanism that "receive[s]" a closure, that "selectively retains" a closure in a "stowed position," or that is "equivalent" to tabs 56 of the '252 patent. *See* Section VII.A. And Leoncavallo similarly does not disclose a closure retention mechanism that is an "equivalent" of the required tabs 56 of the '252 patent. *See* Section VII.B.1.

180. Therefore, in my opinion, neither Samartgis nor Leoncavallo cure the deficiencies in Miller nor do they support that suggestion that Miller discloses the claimed "closure retention mechanism," because neither Samartgis nor Leoncavallo satisfies the requirements of the claimed "closure retention mechanism."

2. Petitioner has failed to prove that the missing elements of Miller would have been obvious over Leoncavallo or the knowledge of a POSITA

181. As discussed above, Miller fails to disclose the claimed "drink spout extending from the base." Petitioner argues that it would have been obvious to modify Miller to include the claimed "drink spout" in view of Leoncavallo. Pet., 86. The only reason given for why is an extremely conclusory argument that "including a drink spout disclosed in Leoncavallo would provide a convenient way for the user to drink the beverage contained in the liquid container." Pet., 96. But this argument

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ignores that the claimed drink spout must "extend[] from the base" and does not encompass a mere opening or hole. Petitioner's proffered reason of providing "a convenient way for the user to drink the beverage contained in the liquid container" applies to any opening, including a mere hole or opening that does not "extend[] from the base." An opening or hole would also provide "a convenient way for the user to drink the beverage contained in the liquid container," as demonstrated by the drink bottle designs known at the time that simply used a hole or opening rather than a spout "extending from the base." *See* Ex. 2023; Ex. 2024; Ex.1005, 7:11–12.

182. I noted that Leoncavallo itself has an embodiment that uses such an "outlet opening" rather than Leoncavallo's "spout." Ex.1005, 7:11-12. Petitioner provides no explanation why a POSITA would have chosen a "drink spout extending from the base" over a design using a hole or opening or why such the claimed "drink spout extending from the base" design would have been more convenient than a design using a hole or opening. And more importantly, Petitioner does not explain why a POSITA would have chosen Leoncavallo's spout over its mere opening given that it discloses both. Ex.1005, 7:11-12.

183. A POSITA would have potentially not chosen a "drink spout extending from the opening" for many reasons including the fact that: i) such a design requires more materials to "extend[] from the base" than a design using a simple hole or opening, ii) such spouts typically require elastomeric materials for user comfort and

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those materials are harder to clean and keep bacteria free, iii) such spouts can suffer from more wear and tear over time that can require replacement than mere openings, and iv) because such spouts may require crimping or more involved closure mechanisms than a mere hole or opening. A POSITA, therefore, would not have found the claimed "drink spout extending from the base" to be a more convenient way to dispense liquid over other alternatives, such as a simpler hole or opening design, and as such would not have been motivated based on convenience to choose a spout over an opening, including to choose Leoncavallo's spout design over its opening design.

184. Next, with regard to the claimed requirement that the "closure" must be "configured to be removably coupled relative to the drink spout" so as "to selectively restrict dispensing" of liquid through the spout, Petitioner contends that "including a closure and plug disclosed in Leoncavallo would provide the user a way to securely close the spout to prevent leakage or spills, when not in use, and to open the spout to take a drink." Pet., 96. But this is conclusory. All Petitioner's argument suggests is that including the closure and plug disclosed in Leoncavallo would provide "a way" a POSITA could have used to securely close the spout, but Petitioner does not explain why a POSITA would have used this particular way. As discussed, known bottles at the time used a simple hole or opening with a simple closure for closing the hole/opening that did not require coupling to or restricting fluid flow through any

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drink spout extending from the base. Ex.2024; Ex.2024; Ex.1005, 7:11–12; *see also* Ex. 1005, 7:1-18. As a result, these designs often provided simpler closures than those requiring coupling to and restricting of fluid flow through drink spouts, such as those requiring crimping of elastomeric spouts.

185. Further, importantly, Petitioner ignores that Leoncavallo discloses alternative embodiments for its "closure and plug" that Petitioner argues would have been obvious to combine. That is, Leoncavallo discloses an alternative embodiment having an "outlet opening formed in the end wall 34" rather than a "spout 34," and this "opening," like the "spout," that also uses a plug seal 94 to seal this opening. Ex.1005, 7:1-18. But Petitioner provides no reason why a POSITA would have chosen Leoncavallo's spout-based closure over its design using a sealing closure for a mere opening that does not use a spout. Ex.1005, 7:1-18. Therefore, a POSITA would not have been motivated to use Leoncavallo's spout-based closure based on its mere ability to close its spout because other designs not requiring such were available, including those that were simpler and superior.

186. Next, Petitioner argues that the claimed handle including the claimed "closure retention mechanism" would have been obvious over Miller in view of "the knowledge of one skilled in the art and commonality of closure retention mechanisms appear as protrusions on handles (such as Leoncavallo)." Pet., 93. I note that Petitioner does contend that this would have been obvious in view of

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Leoncavallo nor does Petitioner contend that a POSITA would have been motivated to combine Leoncavallo's very different alleged "closure retention mechanism" with Miller's alleged "closure retention mechanism." Pet., 93, 95-97.

187. As discussed above, alleged closure retention mechanisms using protrusions on handles (such as Leoncavallo) are not necessarily "equivalent" to the tabs 56 on the interior of the handles of the '252 patent, for the many reasons discussed above regarding why Leoncavallo's very different protrusion-based design is not equivalent. *See supra* Sec. VII.B.1. Further, Petitioner fails to demonstrate how or why the "knowledge of one skilled in the art" or known alleged closure retention mechanisms using protrusions on handles would have motivated a POSITA to arrive at the claimed "closure retention mechanism," including its tabs 56.

3. Petitioner failed to explain how any combination of Miller with Leoncavallo would have been made or how it would work

188. Importantly, with regard to the alleged combinations of Miller with Leoncavallo discussed above, Petitioner fails to explain how Leoncavallo would be combined with Miller or how such a combination would even work. This is not surprising because Miller, as a design patent, leaves many aspects of its design unknowable including whether it has any "drink spout extending from the base," whether its closure couples to any drink spout, whether its closure selectively

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restricts and permits dispending of liquid, and whether it includes the claimed "closure retention mechanism." Further, even if it did include any of these components, the specifics of their design are unknown and unknowable to a POSITA because they are not depicted or described in Miller. Absent such details, a POSITA would not know how Leoncavallo is to be allegedly combined with Miller to arrive at these claimed components.

189. As one example, Petitioner has not explained whether or how any particular aspects of Leoncavallo's rotating flip cap and loop assembly would be combined with Miller's container to provide for the claimed "coupling" between the closure and drink spout and to provide for the claimed "selective[] restrict[ing]" and "dispensing" of liquid." Miller has a handle that would appear to block placement of such a rotating assembly and loop as used by Leoncavallo and to also obstruct such rotation.

190. Because Petitioner has failed to articulate how these components relating to Leoncavallo's closure mechanism would have been combined with Miller's unknown and unspecified components or how they would have worked together, a POSITA would not have found claims 5-7 or 16 and 19 to be obvious over Miller in view of Leoncavallo.

4. Petitioner fails to provide a specific motivation to combine for any particular missing limitations or how such a combination would have been made for its Ground 6

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combinations (Miller in view of Leoncavallo in further view of Gorskey or Johnson)

191. For Ground 6, Petitioner argues "[a] POSITA would have been motivated to use the spout and plug seal disclosed in Leoncavallo, as modified by Gorskey and/or Johnson, with Miller for the same reasons discussed above." Pet., 98. I disagree.

192. First, I note that Petitioner has not provided any analysis for how Gorskey and/or Johnson would be combined with Miller or why a POSITA would have been motivated to do so. Further the "reasons discussed above" pertain to why Petitioner contends it would have been obvious to modify Leoncavallo with Gorskey and/or Johnson, not why it would have allegedly have been obvious to modify Miller with Gorskey and/or Johnson.

193. Second, as discussed above in Section VII.C.2, Leoncavallo disclosed both a mere opening that can be closed with a plug seal and a spout that can be closed with a plug seal. Petitioner has provided no explanation for why a POSITA would have chosen Leoncavallo's spout design rather than its opening design for dispensing liquid. As discussed, there are many reasons why a POSITA would choose a simple opening over a design using a "drink spout extending from the base," and there were many common designs known that used such an opening instead of a "spout extending from the base." *See* Section VII.C.2. As such, Petitioner, in my opinion has failed to demonstrate why a POSITA would have been

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motivated to combine Miller, Leoncavallo, and Gorskey and/or Johnson to arrive at the claimed closure coupled relative to a "drink spout extending from the base" that selectively restricts and permits dispensing of liquid from the bottle. Ground 6, therefore, does not establish obviousness in my opinion.

194. Further, as discussed in Section VII.B.4 above, a POSITA would not have been motivated to combine Gorskey or Johnson with Leoncavallo. Therefore, for the same reasons set forth above in that section, a POSITA also would not have been motivated to make the combination proposed in Ground 6 of Miller, Leoncavallo, and Gorskey and/or Johnson.

VIII. CONCLUSION

This declaration and my opinions herein are made to the best of my knowledge and understanding, and based on the material available to me, at the time of signing this declaration. I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 or Title 18 of the United States Code.

Date: 2/7/2025

Michael Jobin

Michael Jobin

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