

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MPL BRANDS NV, INC.

Petitioner,

v.

BUZZBALLZ, LLC

Patent Owner.

PTAB Case No. IPR2024-01000

U.S. Patent No. 11,932,441

**PETITION FOR INTER PARTES REVIEW
OF U.S. PATENT NO. 11,932,441**

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EXHIBIT LIST

Exhibit	Description
EX-1001	U.S. Patent No. 11,932,441 B1 (“’441 patent”)
EX-1002	Declaration of Nathan J. Delson, PhD (“Delson”)
EX-1003	Prosecution File History of US Design Patent Application 29/824,813
EX-1004	Prosecution File History of ’441 patent
EX-1005	Reserved
EX-1006	Reserved
EX-1007	The American Heritage Dictionary
EX-1008	U.S. Patent No. 8,524,349 B2 to Protais et al. (“Protais”)
EX-1009	Reserved
EX-1010	U.S. Patent No. 8,141,741 B2 to Metzger et al. (“Metzger”)
EX-1011	U.S. Patent No. 4,465,204 to Kaminski (“Kaminski”)
EX-1012	U.S. Patent No. 6,729,495 B2 to Gardiner (“Gardiner”)
EX-1013	U.S. Patent No. 6,585,123 B1 to Pedmo et al. (“Pedmo”)
EX-1014	U.S. Patent No. 4,024,981 to Brown (“Brown”)
EX-1015	Reserved
EX-1016	Reserved
EX-1017	Handbook of Engineering and Specialty Thermoplastics

I. INTRODUCTION

The claims of U.S. Patent No. 11,932,441 (“’441 patent,” EX-1001) describe features of a beverage container, such as a body made from a resin and a common aluminum lid with a stay-on tab. But by 2010—the earliest alleged priority date of the ’441 patent—plastic beverage containers with the majority of the claimed features had been known and publicly used for decades. The remaining limitations of the ’441 patents’ claims describe simple ornamental and geometrical features that were present in numerous prior art containers.

MPL Brands NV, Inc. (“Petitioner”), therefore, respectfully requests that these claims be held unpatentable and cancelled.

II. MANDATORY NOTICES (37 CFR §42.8(a)(1))

A. Real Party-in-Interest (37 CFR §42.8(b)(1))

The real party-in-interest is MPL Brands NV, Inc., which does business as Patco Brands.

B. Notice of Related Matters (37 CFR §42.8(b)(2))

To the best of Petitioner’s knowledge, the ’441 patent has been involved in the following matters:

- *MPL Brands NV, Inc. v. BuzzBallz, LLC*, 3:24-cv-01282 (N.D. Cal.);
- *BuzzBallz, LLC v. MPL Brands NV, Inc.*, 2:24-cv-00548 (D. Nev.).

Additionally, Petitioner is concurrently filing PGR2024-00035 challenging claims 1-20 of the '441 patent.¹

C. Counsel and Service Information (37 CFR §42.8(b)(3) and (4))

Lead counsel: Babak Tehrani (Reg No. 55,937).

5 Back-up counsel: M. Craig Tyler (Reg. No. 41,519), Kristen Schunter (Reg. No. 76,519), Daniel T. Shvodian (Reg. No. 42,148), R. Tyler Kendrick (Reg. No. 73,930), Andrew Kalamarides (*pro hac vice* forthcoming).

These attorneys can be reached by mail at Perkins Coie LLP, 11452 El Camino Real, Suite 300, San Diego, CA 92130; by phone at (858) 720-5700; and by
10 fax at (858) 720-5799.

Petitioner consents to electronic service. All services and communications to the attorneys listed above may be sent to:

Buzzballz-MPL-Service@perkinscoie.com

A Power of Attorney is being filed concurrently.

¹ As explained in the accompanying statement regarding multiple petitions, Petitioner is filing this IPR petition in case the Board determines the '441 patent is not PGR eligible.

III. REQUIREMENTS FOR *INTER PARTES* REVIEW

A. Grounds for Standing

If the Board determines the '441 patent is not an AIA patent, the '441 patent is available for IPR. Petitioner is not barred or estopped from challenging the claims on the grounds herein. This Petition is timely filed within one year of service of Buzzballz' complaint alleging infringement of the '441 patent against MPL.

B. Challenged Claims and Relief Requested

Petitioner requests that the challenged claims be cancelled under 35 U.S.C. §103.

1. Prior Art

Petitioner relies on the references listed in the Exhibit List. All references are prior art under AIA 35 U.S.C. §§102(a)(1) or 102(a)(2).

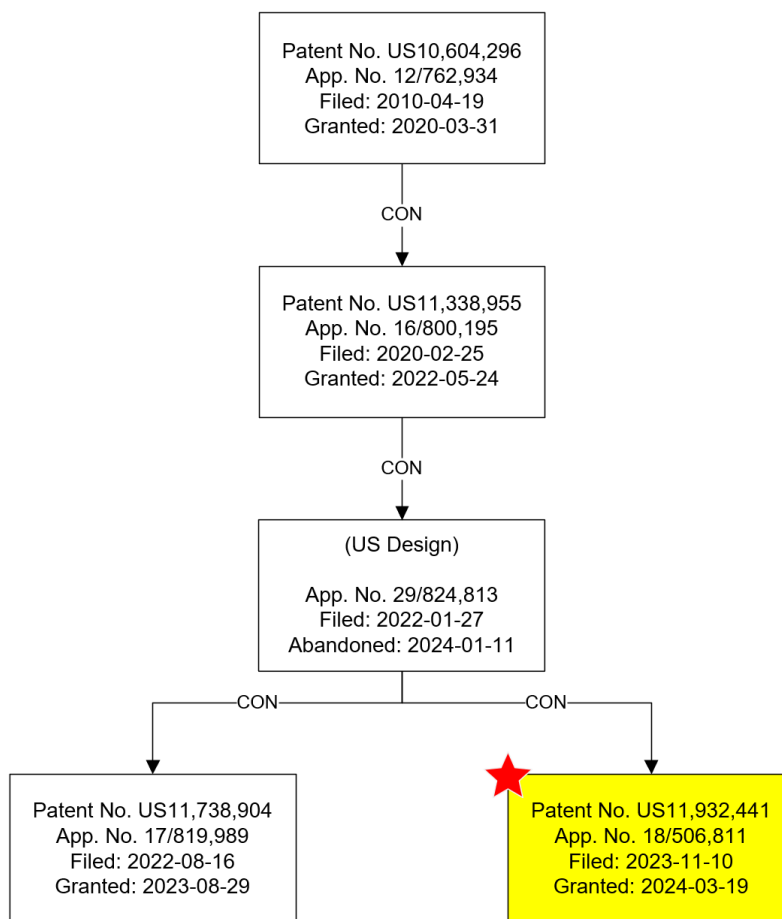
Petitioner also relies on the declaration of Dr. Nathan Delson ("Delson") (EX-1002).

2. Challenged claims and grounds

Ground	Basis	Reference(s)	Challenged Claims
1	§103	Metzger + Protais + Kaminski	1-20
2	§103	Gardiner + Pedmo + Brown	1-20

IV. THE '441 PATENT'S IPR ELIGIBILITY

The '441 patent was filed on November 10, 2023, as patent application no. 18/506,801 (the "'811 application") and issued on March 19, 2024. (Ex. 1001, front page). As illustrated below, the '441 patent claims priority to a series of continuation
5 applications, having an earliest priority date of April 19, 2010. (*Id.*).



'441 Patent's Family Tree

Although the parent Design Application No. 29/824,813 was examined under AIA and contained new matter in the claimed figures (EX-1003, 107-8), the applicant, when filing the '811 application, did not check the box under "Statement

under CFR 1.55 or 1.78 for AIA (First Inventor to File) Transition Applications” in the application data sheet. (EX-1004, 9). And, in the Notice of Allowability, the examiner stated “[t]he present application is being examined under the pre-AIA first to invent provisions.” (*Id.*, 215).

5 Petitioner is filing this IPR Petition in case the Board concludes that the ’441 patent is subject to pre-AIA provisions.

V. THE ’441 PATENT

A. Overview

10 The ’441 patent relates to a container that includes a body with side walls, a bottom, and a lid with a pop top arm which pivots to sever a weakened area of the lid. (EX-1001, Abstract; Delson, ¶24).

 Figure 1 shows a container with a convex side wall 107 that forms a “truncated spherical body” (EX-1001, 2:22-27, Fig. 1), while Figure 2 illustrates a container with a substantially vertical cylinder side wall 107 (*id.*, 2:53-57, Fig. 2). (Delson, 15 ¶25).

Container Shape

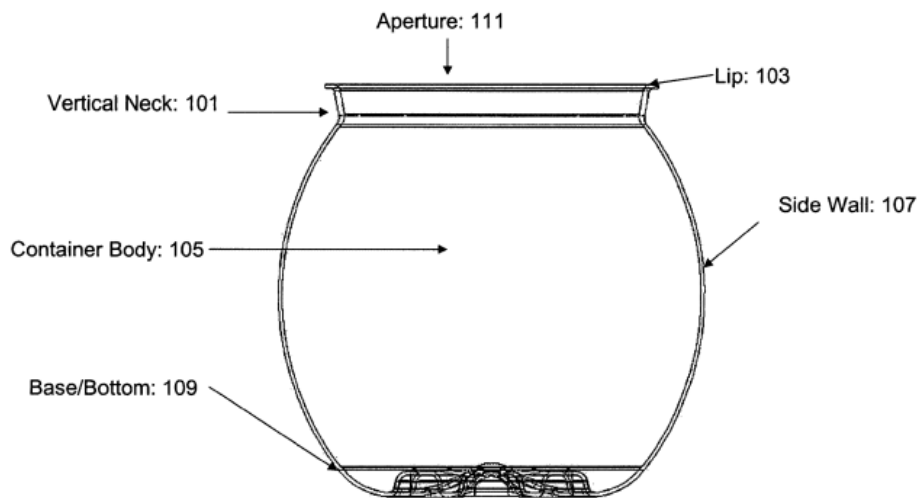


Figure 1

Container Shape

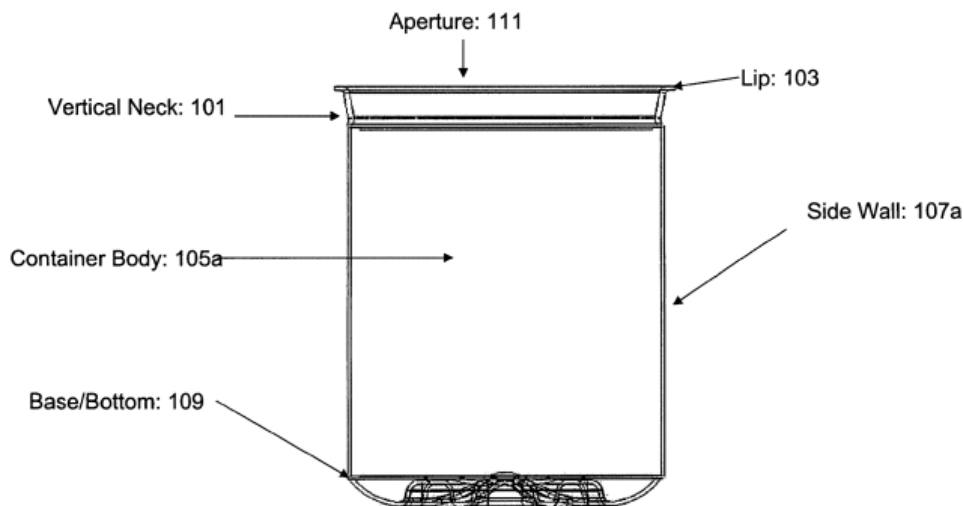


Figure 2

Figure 3 illustrates the bottom of the container that includes depressions 115a,

5 115b (EX-1001, 3:19-30), and Figure 4 appears to show a standard lid with a “pull

top” arm that can pivot to deform a weakened area of the lid to create an opening for access to the container’s interior (*id.*, 3:31-41). (Delson, ¶26).

Bottom of Container

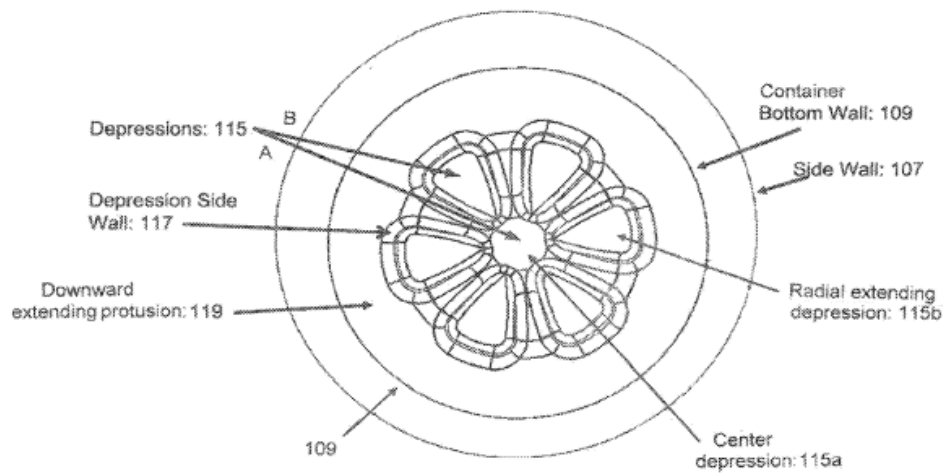


Figure 3

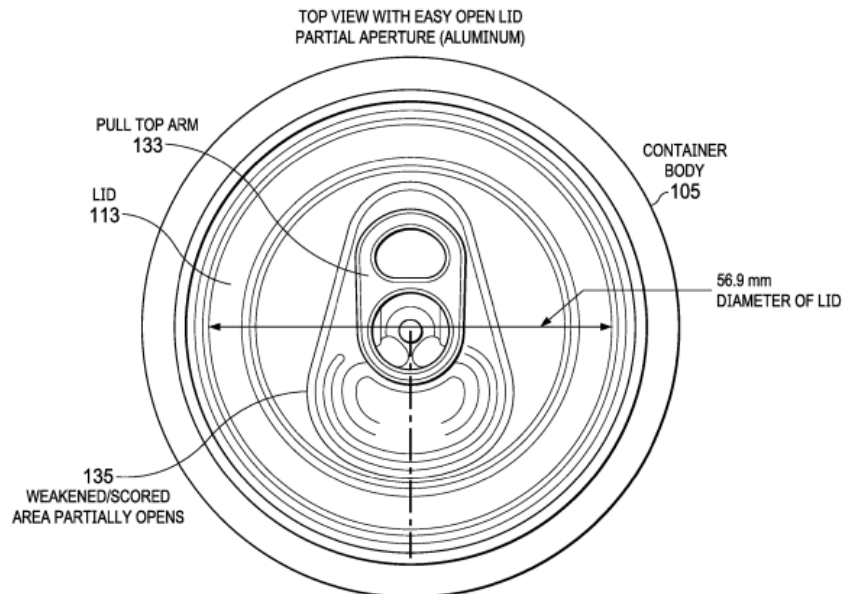


Figure 4

Figure 5 shows an exaggerated view of the container lip that engages with a corresponding lip of the lid to seal the container. (*Id.*, 3:42-46, 2:64-3:3, Fig. 5; Delson, ¶27).

Side View - Lid & Lip of Container
(Note: The lip and lid are enlarged to show hook)

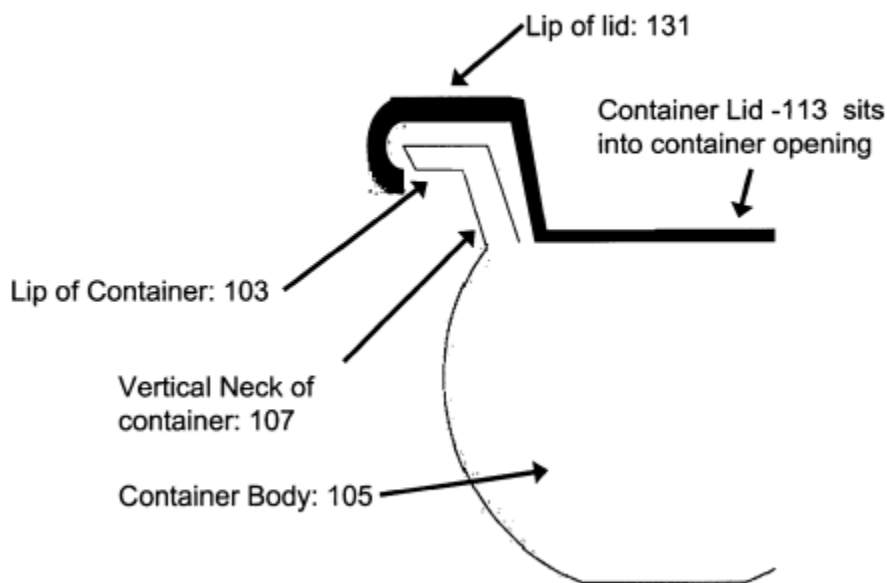


Figure 5

5 In Figure 6, the '441 patent describes an alternate lid where substantially the entire lid can be removed. (EX-1001, 3:47-56, Fig. 6). Figures 7 and 8 are similar to Figure 1 but with markings designating dimensions, and Figure 9 seems similar to Figure 3. (*Id.*, 3:57-64; Delson, ¶28).

The '441 patent has 20 claims and 2 independent claims.² Each independent claim spans at least two columns but simply recites obvious features of an ordinary container.

B. Prosecution History

5 Original claims 1-20 were allowed in a first-action allowance on February 12, 2024. (EX-1004, 211-15). The examiner stated that while Zimmer (U.S. Pat. No. 10,336,496) describes many claim limitations, it does not describe features such as the container body being made of a resin and the lid being made of a metal, among others. (*Id.*, 216-27).

10 **C. Claim Construction**

Petitioner does not believe any constructions are needed. (Delson, ¶¶33-34).

D. Priority Date

The earliest priority date claimed by the '441 patent is April 19, 2010. (EX-1001, front page). As explained in Section IV, claims 9, 10, 15 (and its dependents,
15 including claim 16) have a priority date of November 10, 2023. The prior art in this Petition predates April 19, 2010.

² The limitations of claims 1 and 15 are labeled in the Claims Appendix at the end of this Petition.

E. Level of Ordinary Skill in the Art

A person of ordinary skill in the art (POSITA) is a person having, as of either the alleged April 2010 priority date or the '441 patent's November 2023 filing date:

(i) an associate's or bachelor's degree in mechanical, industrial or manufacturing engineering and (ii) at least two to three years of practical experience with designing or manufacturing mechanical products such as food or beverage packaging. A POSITA could substitute additional education for industry experience and vice versa. (Delson, ¶14).

VI. SPECIFIC GROUNDS

A. Ground 1: Metzger, Protais, and Kaminski render claims 1-20 obvious

Metzger: Metzger described containers for food and beverages. (Metzger, 1:15, 1:21-25). The container had “protective features” that helped maintain a vacuum (*id.*, 1:45-49, 2:27-31) and resisted deformation forces during manufacture, filling, etc. (*id.*, 1:50-53). The container could be formed from various materials (including plastics; *id.*, 3:57-58), could have various container ends to seal the container (including “pop-top” or “pull top” lids; *id.*, 3:43-47), and could be filled with various food materials (including liquids; *id.*, 3:51-56).

Metzger's Figure 1 illustrates a container without a top, while Figure 2 is a side view that includes an example top. (Delson, ¶¶36-37).

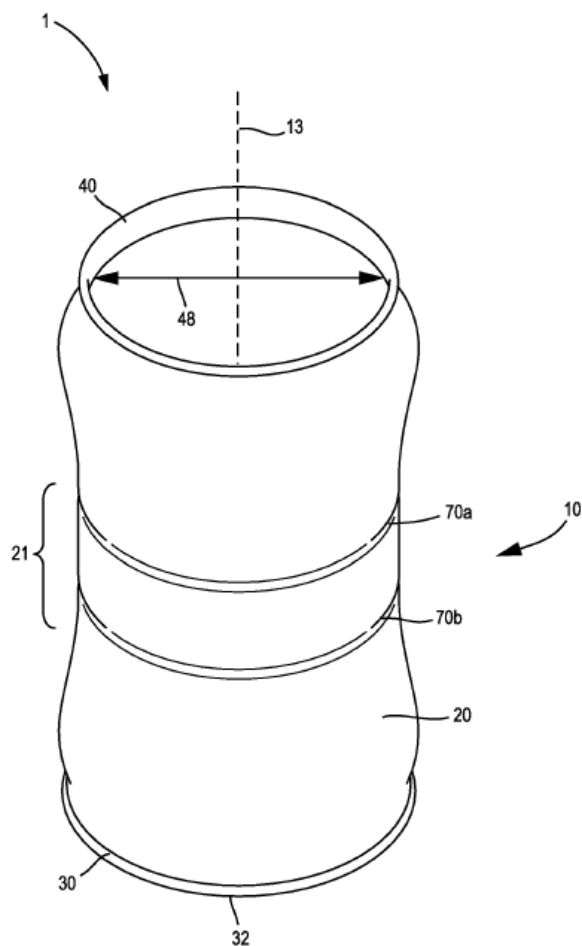


FIG. 1

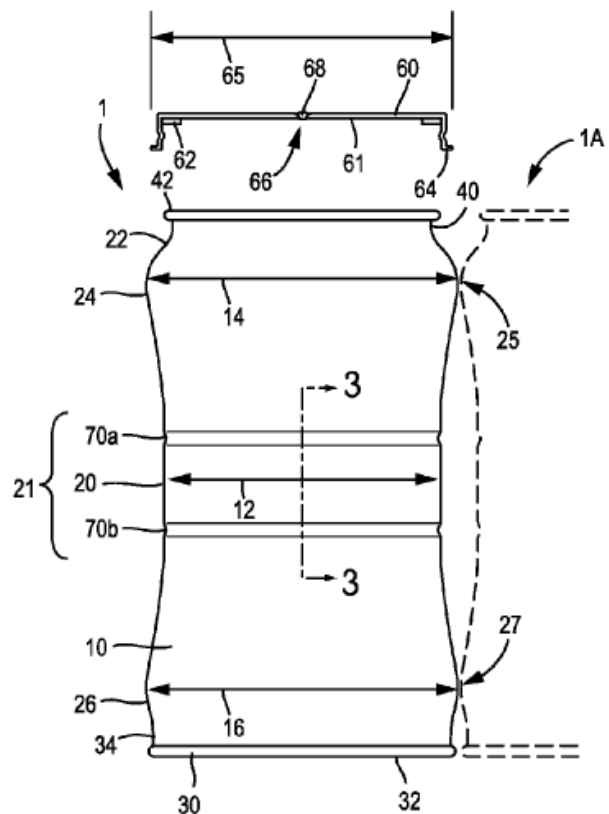
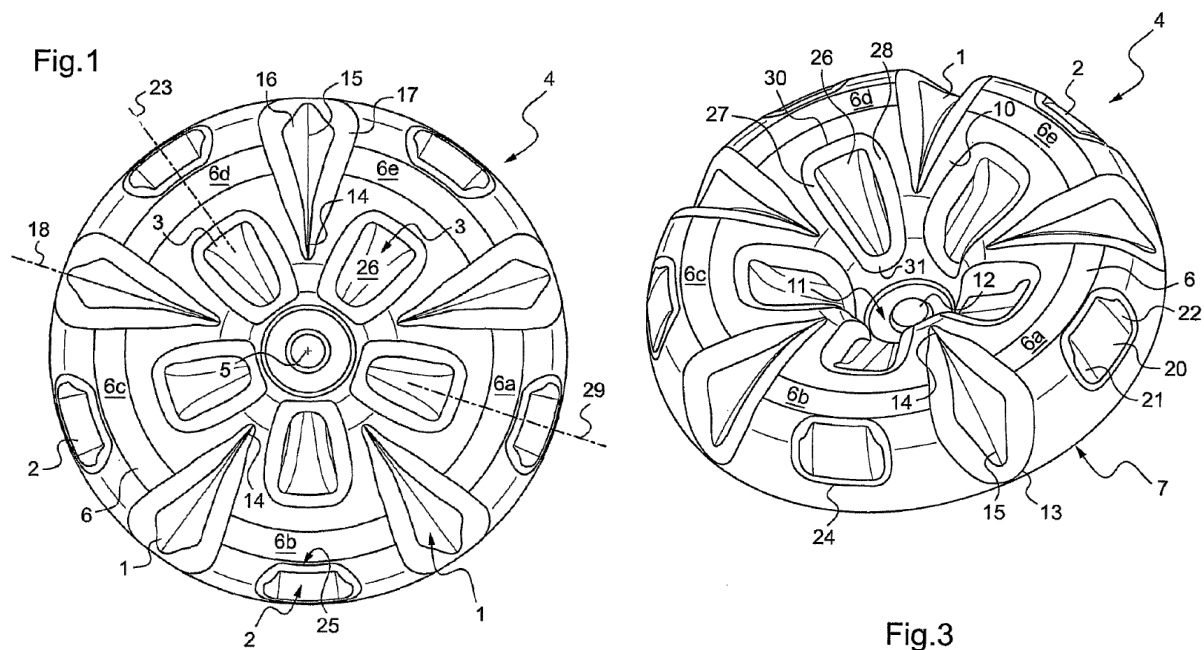


FIG. 2

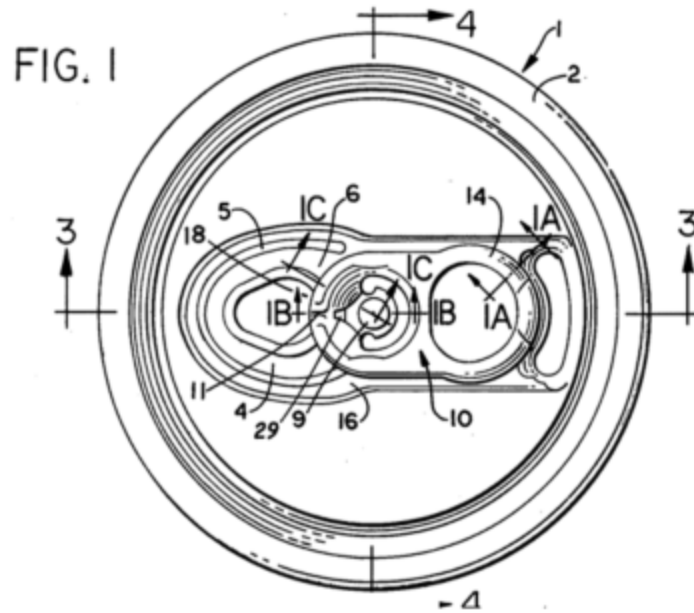
Metzger, Figures 1 and 2

Protais: Protais disclosed a bottom for hollow containers made of thermoplastic materials. (Protais, 1:7-9). The container bottom, shown in Figures 1 and 3, contained various ribs, notches, and/or grooves that individually or together achieved a strong base for thinner walls than other container bottoms and resisted deformation in case of impact. (*Id.*, 3:14-25, 6:20-27, 6:47-48, 6:56-61; Delson, ¶39).



Protais, Figs. 1 and 3

Kaminski: Kaminski described an “easy open can end;” *i.e.*, lid. (Kaminski, Abstract; 2:65). The lid was manufactured from a “relatively ductile metal, such as aluminum” (*id.*, 3:2-3) and attached to a cylindrical container via a “circumferentially extending raised edge...” (*id.*, 2:67-3:1). Figure 1 illustrates a top view of the lid. (Delson, ¶38).



Kaminski, Fig 1

The Combination and Expectation of Success: The Metzger-Protais-

Kaminski combination rendered the challenged claims obvious. In the combination,
5 a POSITA would have augmented Metzger's container body with Protais' improved
container base to include some or all of the ribs, notches, and grooves taught by
Protais. While Metzger described exemplary lid configurations, many were not
detailed. (See Metzger, 3:43-46, 9:43-45). Kaminski, however provided details and
explanations for another lid configuration absent from Metzger. A POSITA would
10 have been guided by these teachings and would have found obvious that Kaminski's
alternate lid could be used with Metzger's container. (Delson, ¶40).

A POSITA would have had a reasonable expectation of success in making the
Metzger-Protais-Kaminski combination because it involved simple modifications to

the plastic container base, based on Protais' teachings, and required a simple combination of Kaminski's lid with the Metzger-Protais container to show a lid that was mentioned but not detailed by Metzger. (*Id.*, ¶41).

Motivation to Combine: A POSITA would have found it obvious to make a container that had Metzger's container body shape, Protais' bottom features, and Kaminski's lid for several reasons.

First, the Metzger-Protais combination would have been a simple combination of known elements by known methods, yielding predictable results. Both Metzger and Protais described plastic containers with sidewalls and integrally connected bottoms. (*See* Metzger, 3:57-58, 7:58-60; Protais, 4:24-28). Both containers were configured to hold liquids. (Metzger, 3:51-55, 4:7-9; Protais, 2:24-35, 2:55-56). A POSITA would have been motivated to use the features of Protais's base, including some or all of its ribs, notches, and grooves, to increase the strength and resistance to deformation of the container taught by Metzger. (Protais, 3:14-25, 6:20-27, 6:56-61, 6:47-48; Delson, 42).

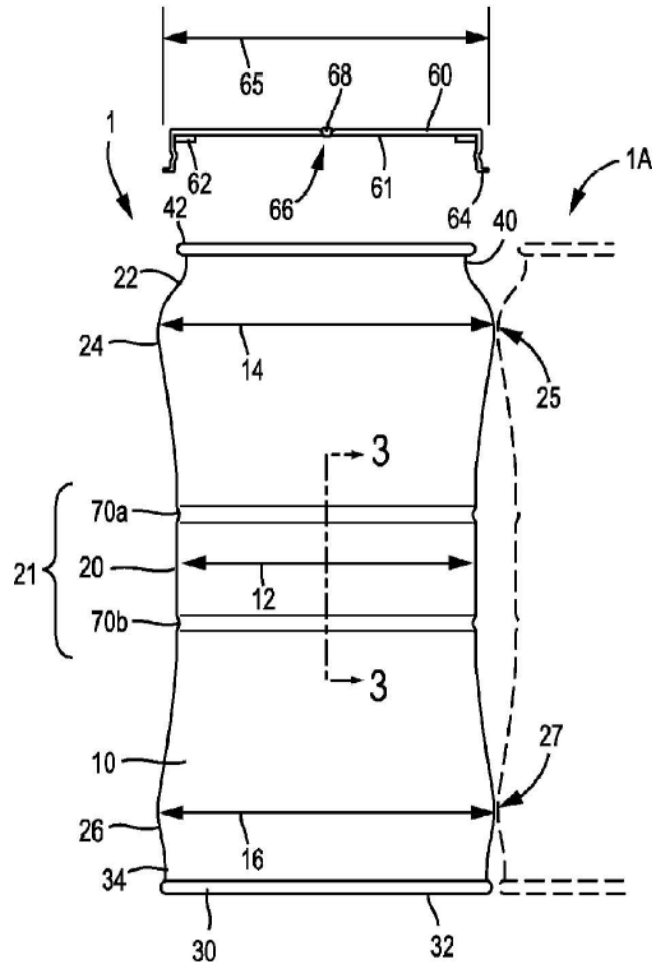
Second, the Metzger-Protais-Kaminski combination would have been a simple combination of known elements. Metzger listed suitable container ends without details (Metzger, 3:43-47), motivating a POSITA to look to Kaminski for configuring a pull-tab lid for a beverage container. (Kaminski, 1:5-8). Furthermore, a POSITA would have been motivated to combine Kaminski with Metzger-Protais

to achieve benefits taught by Kaminski. (*See* Kaminski, 1:5-8, 1:14-17 (describing the tab being retained for ecological and safety reasons), 1:27-31 (describing an easy-open lid using less metal); Delson, 43).

The chart below illustrates that claims 1-20 are obvious by the Metzger-

5 Protais-Kaminski combination.

Claim 1	
[1.Pre] A container comprising:	
	Metzger disclosed a container, below. (Metzger, 3:59-60, 4:12-14; Delson, ¶44).



Metzger, Fig. 2

[1.A] a container body, the container body defining a first opening to an interior of the container body; and

Metzger's container had a **container body** in the form of a “body 10.” (Metzger, 4:12-14, Figures 1, 2). **Container body’s** “neck opening 48” formed a **first opening**. (*Id.*, 4:40-41, Figure 1).

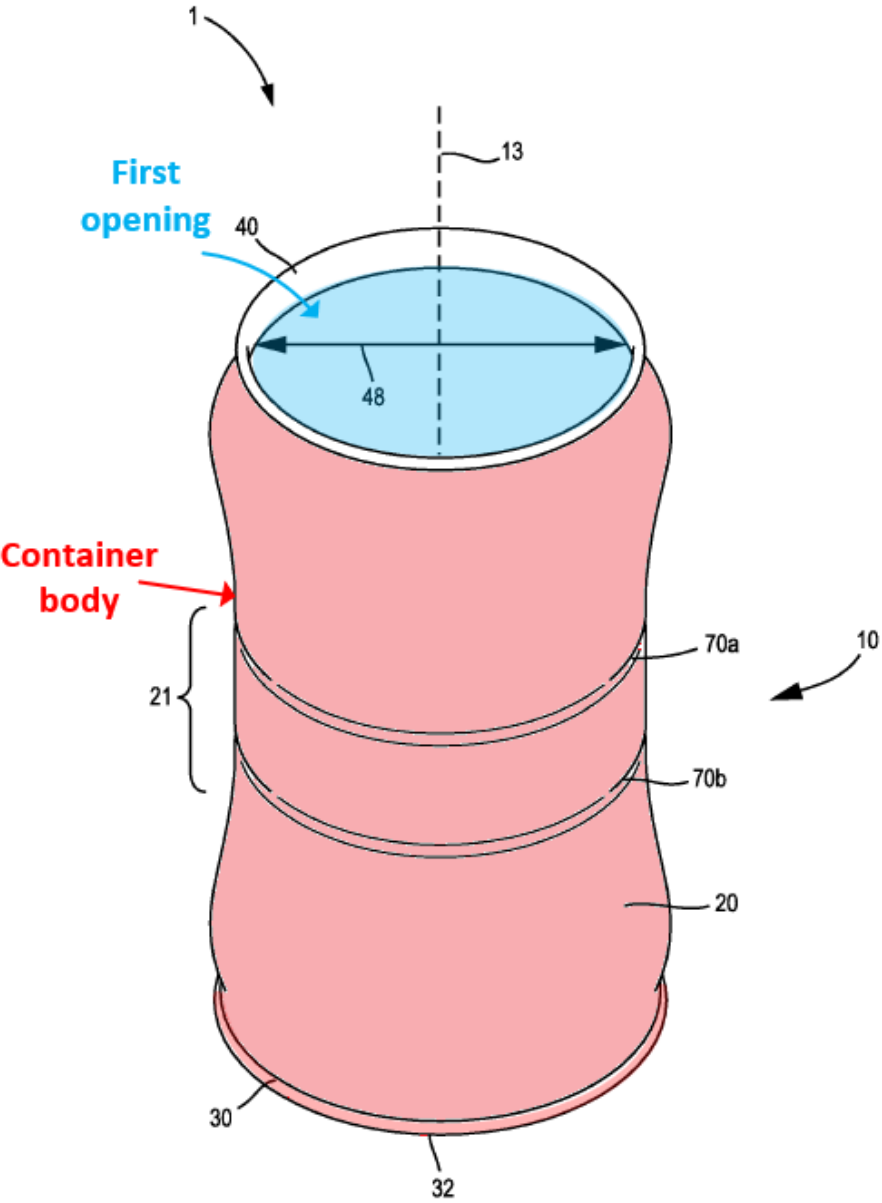


FIG. 1

Metzger, Fig. 1 (Annotated)

Metzger listed many lids suitable to cover the **first opening**, including “**closure 60**,” Figure 2 below, and a “**pull off end 90**,” Figure 6 below. (Metzger, 4:29, 9:43-45, 9:54-59, Figures 2, 5-6).

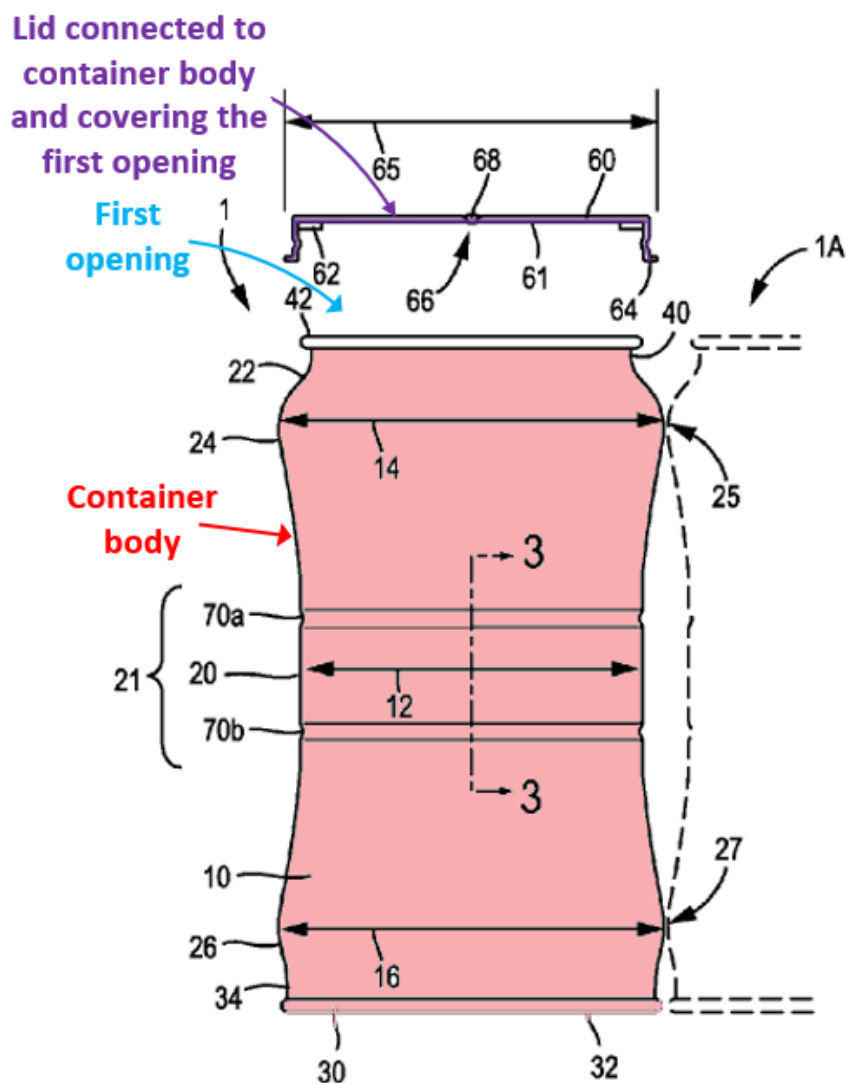


FIG. 2

Metzger, Fig. 2 (Annotated)

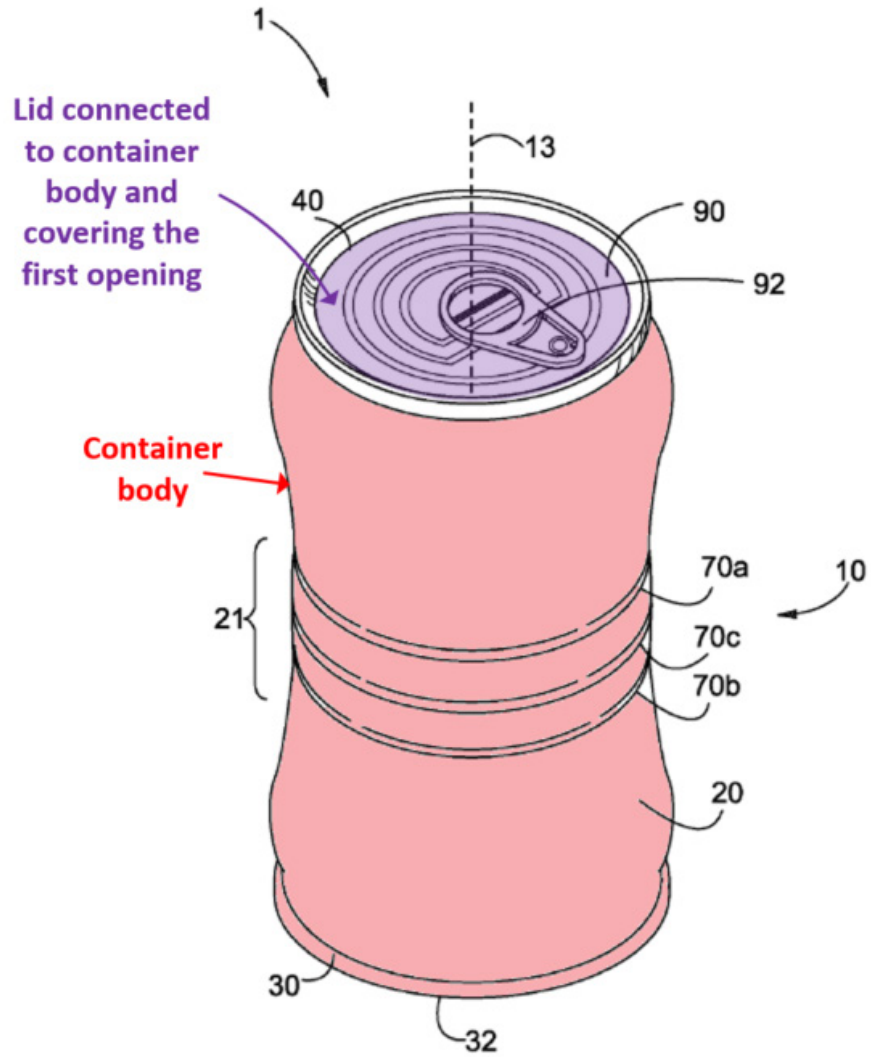


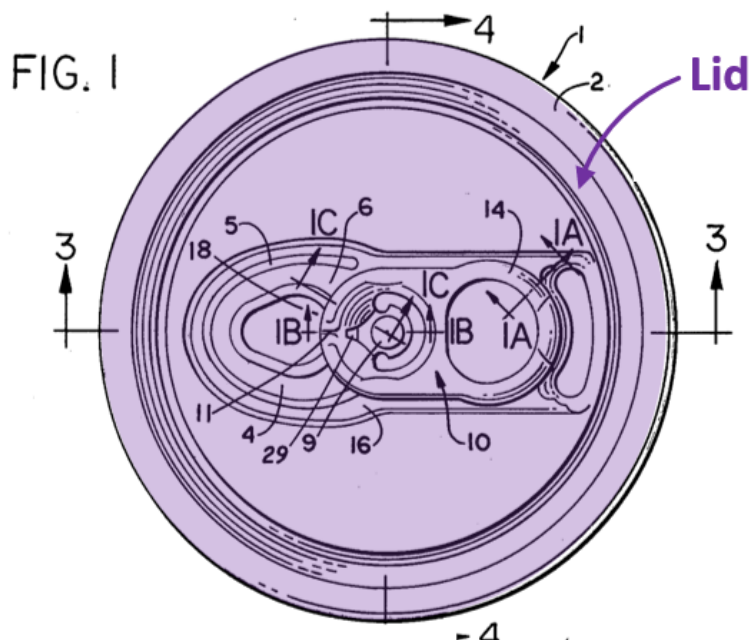
FIG.6

Metzger, Fig. 6 (Annotated)

Metzger also listed “**pop-top**” or “**pull top**” lids as suitable lid options. (*Id.*, 3:43-47).

Kaminski also disclosed a lid (Kaminski, 2:68, Figure 1 (below)). The **lid** was “of generally circular shape including a

circumferentially extending raised edge 2 for attaching can end 1 to
a suitable cylindrical beverage can 3.” (Kaminski, 2:65-3:4).



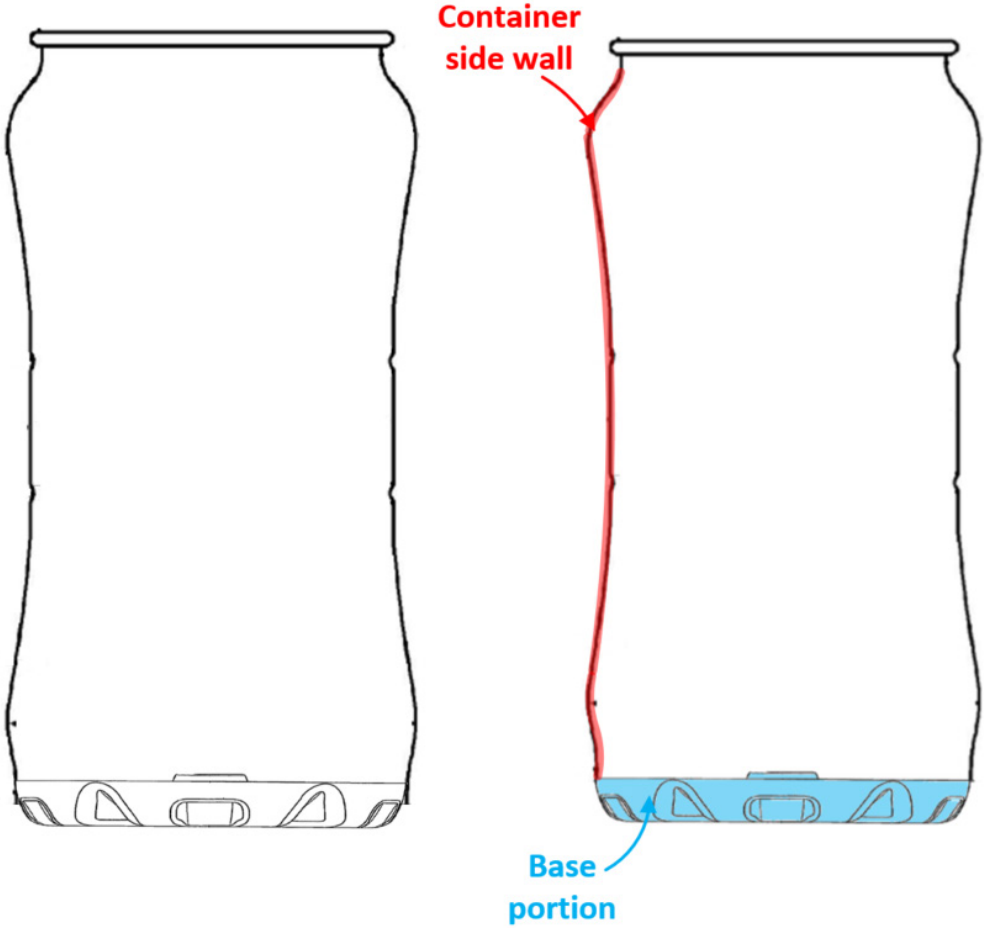
Kaminski, Fig. 1 (Annotated)

Since Metzger did not explain all the lid types suitable to for its container, a POSITA would have found it obvious to look to Kaminski's teaching to understand how to configure a pull-tab lid. A POSITA would have been motivated to use Kaminski's lid with Metzger's container to simplify manufacturing of the lid, use less metal, and make the can easy-open, retaining the pull-tab for ecological and safety reasons. (Kaminski, 1:14-17, 1:27-31; Delson, ¶¶47-50).

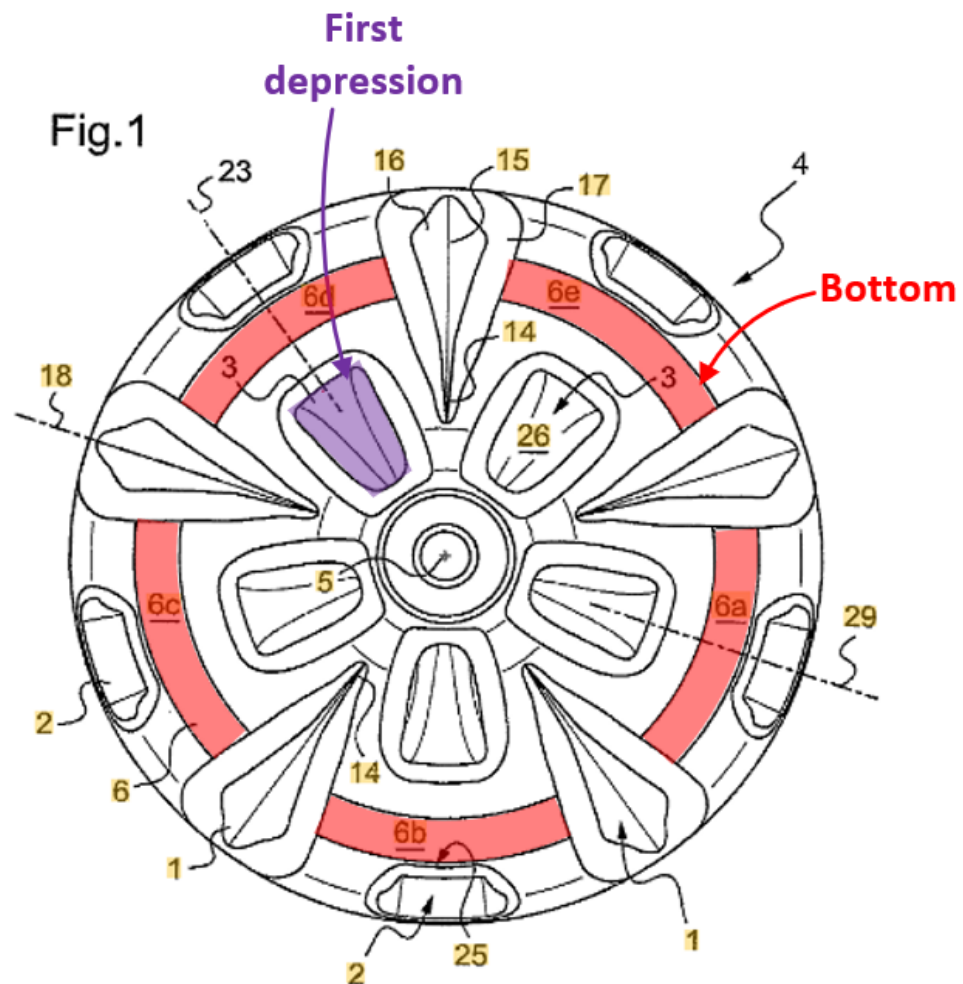
[1.C] wherein the container body is made out of a resin;	
	Metzger's container was made of “various plastics.” (Metzger, 3:56-58; Delson, ¶51). It would have been obvious to a POSITA that plastics can be made out of a resin. (Delson, ¶51; EX-1007 (defining resin as “any of numerous physical similar polymerized synthetics...to form plastics”))).
[1.D] wherein the lid is made out of a metal;	
	Metzger disclosed a lid made of “ <i>metals</i> , such as steel or aluminum.” ³ (Metzger, 3:49-50; Delson, ¶52).
[1.E] wherein the container body comprises a container side wall and a base portion connected to the container side wall;	
	Metzger disclosed a container side wall by “sidewall 20.” (Metzger, 3:60-62, Figure 2 (below)). A base portion , “bottom end wall 32,” was either “contiguously formed or molded from a single piece of material” as the sidewall or attached to it by “bottom seal structure 30.” (<i>Id.</i> , 7:51-54, 7:58-60; Delson, ¶53).

³ All emphasis added unless otherwise indicated.

	Protais' base supplemented Metzger's base disclosure. Protais disclosed a bottom section (base portion) for containers made from thermoplastic materials, which improved the strength and resistance to deformation of container bottoms. (Protais, Abstract, 1:7-12, 3:13-14, 3:19-21, 3:23-24; Delson, ¶54). Thus, a POSITA would have been motivated to combine Metzger and Protais, by using Protais' container bottom with Metzger's container. An example mockup of the Metzger-Protais container, based on Metzger's Figure 2 and Protais' Figure 2, is below. (Delson, ¶¶54-55).
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	 Container side wall Base portion Example Combination of Metzger and Protais
[1.F] wherein the base portion comprises a bottom and a first depression formed therein, the first depression extending upwardly from the bottom;	
	Metzger’s bottom end wall (forming part of a base portion) had a surface on which the container rested when standing (bottom). The bottom included a “concave recession” (Metzger, 7:60-64), but Metzger did not provide details of it.

Protais supplemented Metzger's disclosure by describing a container bottom (a base portion) that had a “transverse support surface 6” (e.g., a **bottom** below) and recessed “reinforcing grooves 3.” (*Id.*, 4:41-44, 4:55, 5:1-2, 5:62-6:3). At least one reinforcing groove formed a **first depression**. (Delson, ¶¶56-57).



Protais, Fig. 1 (Annotated)

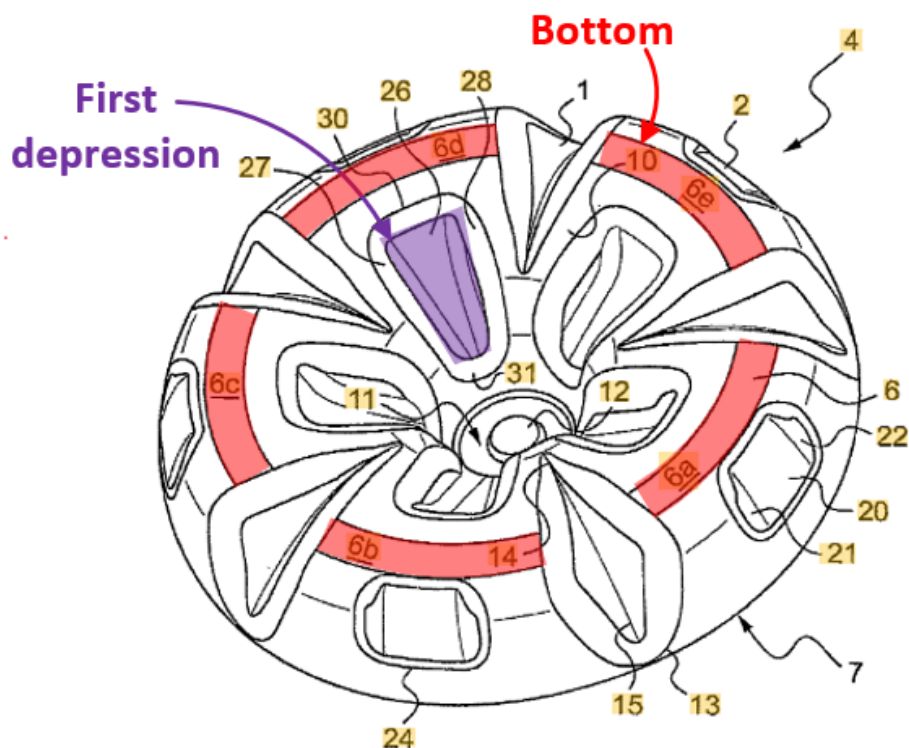
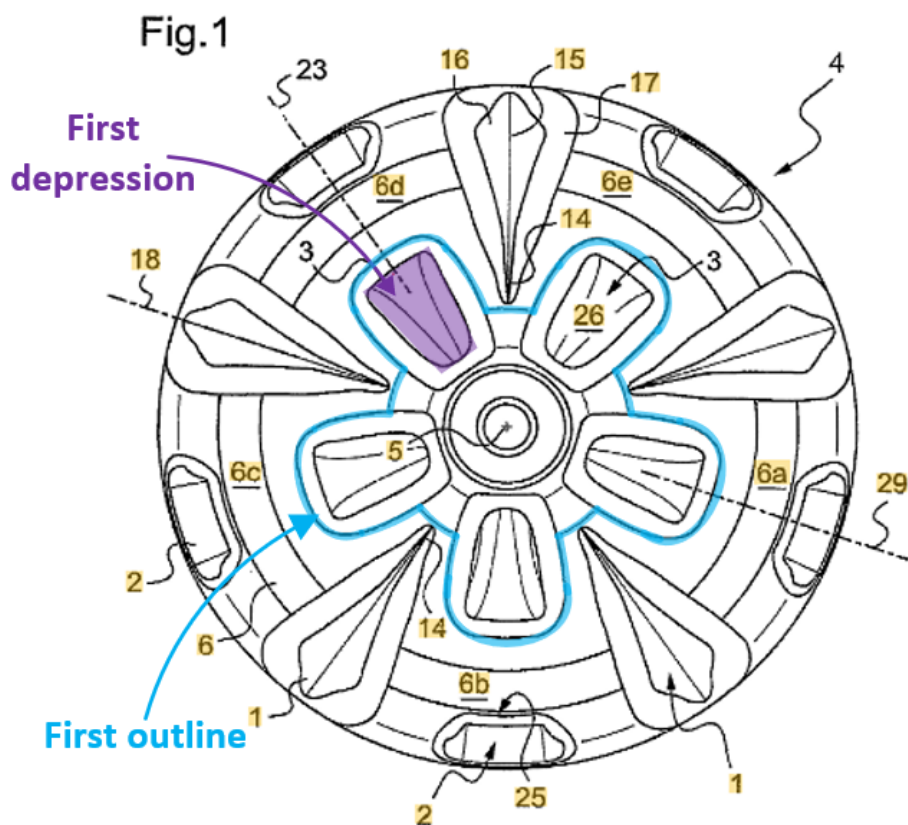


Fig.3

Protais, Fig. 3 (Annotated)

[1.G] wherein the first depression at least partially defines a first outline;

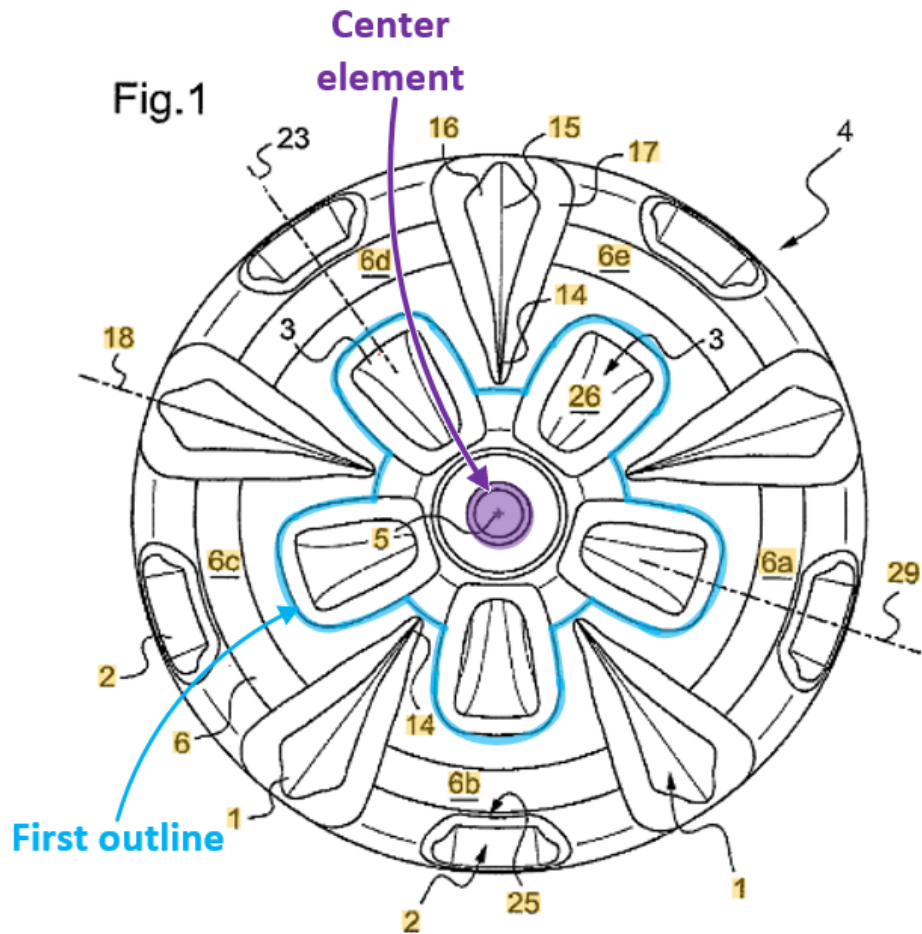
Protais disclosed a first outline because reinforcing grooves on Protais' container bottom (**first depression**) each had an outer edge that together formed a **first outline** tracing these outer edges, annotated below. (See EX-1007, 4; Ground 1, [1.G]; Delson, ¶58).



Protais, Fig. 1 (Annotated)

[1.H] wherein the base portion further comprises a center element centered with respect to the first outline at least partially defined by the first depression;

Protais' container base includes "axial disk 12" (**center element**), which "correspond[ed] to the injection point of the preform" from which the container base was manufactured. (*Id.*, 5:11-12, 6:64-65, 7:3-5). Based on Figure 1 below, it would have been obvious that the axial disk was centered with respect to the **first outline**, *see* [1.G]. (Delson, ¶59).

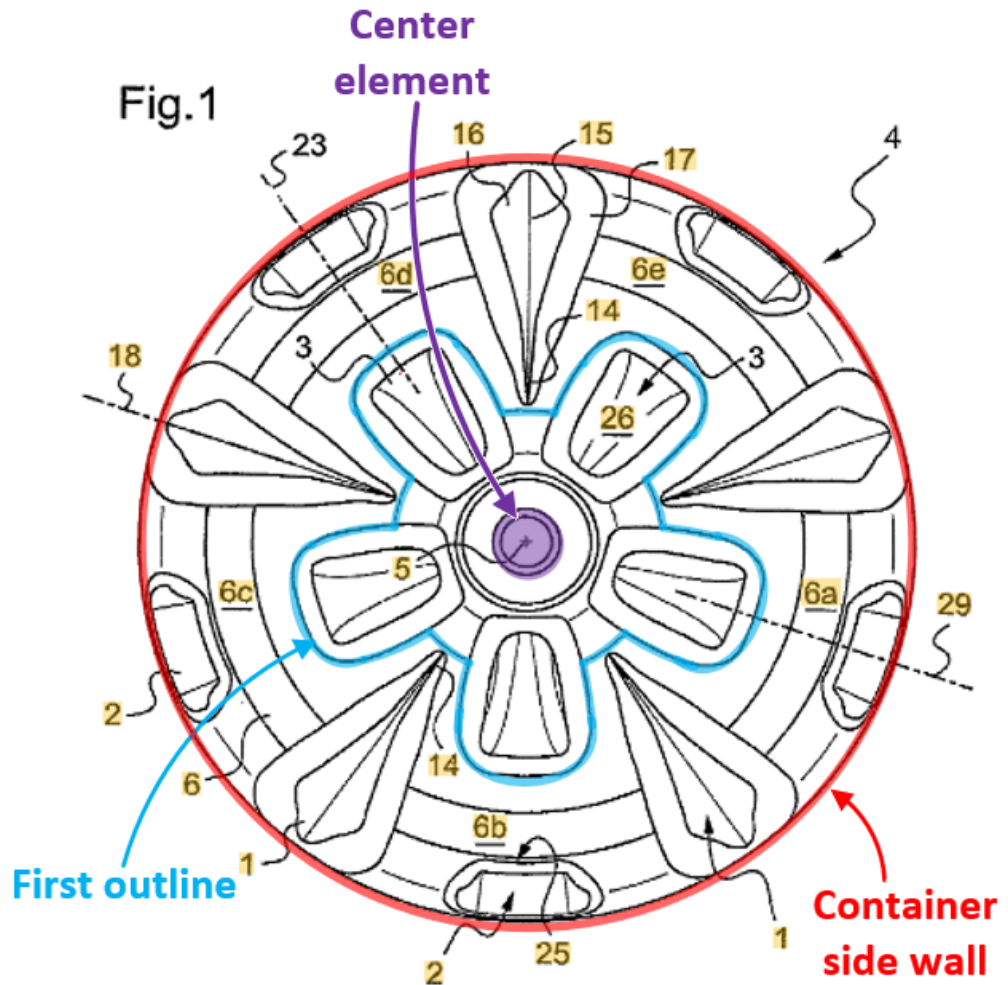


Protais, Fig. 1 (Annotated)

[1.I] wherein each of the center element, and the first outline at least partially defined by the first depression, is centered with respect to the container side wall;

Centering Protais' axial disk (**center element**) with respect to the **first outline** would have been obvious. See [1.H]. Furthermore, in the Protais-Metzger combination with Protais' base replacing Metzger's bottom end and integrally forming with the container's

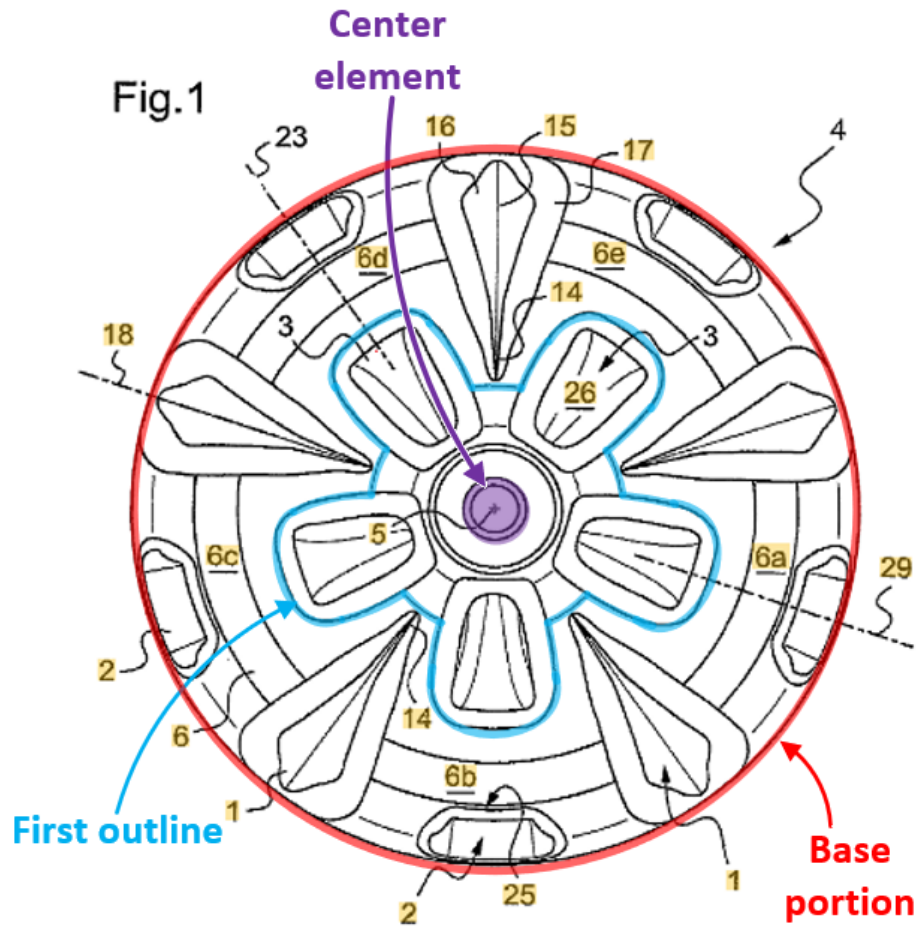
	sidewall, a POSITA would have found it obvious for the center element and first outline to be centered with respect to Metzger's container side wall. (See Metzger, 7:58-60; Protais, 4:24-28). This simple substitution of the base would not have required changes to Metzger's sidewalls, and would have facilitated centering the base portion with respect to the container side wall and centering the first outline and center element with respect to the container side wall. (Delson, ¶60).
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Protais, Fig. 1 (Annotated)

[1.J] wherein each of the center element, and the first outline at least partially defined by the first depression, is centered with respect to the base portion;

From Protais' Figure 1, below, it would have been obvious that the axial disk (center element) and the first outline are each centered with respect to the base portion. (Delson, ¶61).



Protais, Fig. 1 (Annotated)

[1.K] wherein the cross-sectional diameter of the first opening to the interior of the container body is less than a cross-sectional diameter of a middle portion of the container side wall;

Metzger's container had a "neck opening" (first opening) to the interior of the container body. (See [1.A]; Metzger, Fig. 1, 4:40-41). In a "twenty-six-ounce embodiment," the neck opening had a

maximum width (cross-sectional diameter) of about 2.89 inches.
(Metzger, 4:41-44).

Metzger's container had a side wall section that extended between the “first protective feature 24” and the “second protective feature 26,” (middle portion) shown below.

Metzger's middle portion had a “principal diameter 12.” (*Id.*, 4:14-15). In the container's twenty-six-ounce embodiment, the principal diameter was 3.01 inches—greater than the 2.89-inch cross-sectional diameter of the neck opening. (*Id.*, 4:15-17). The middle portion of the container also had other cross-sectional diameters that were larger than the principal diameter, up to 3.46 inches. (*Id.*, 6:19-20, 6:23-24, 6:62-65; Delson, ¶62).

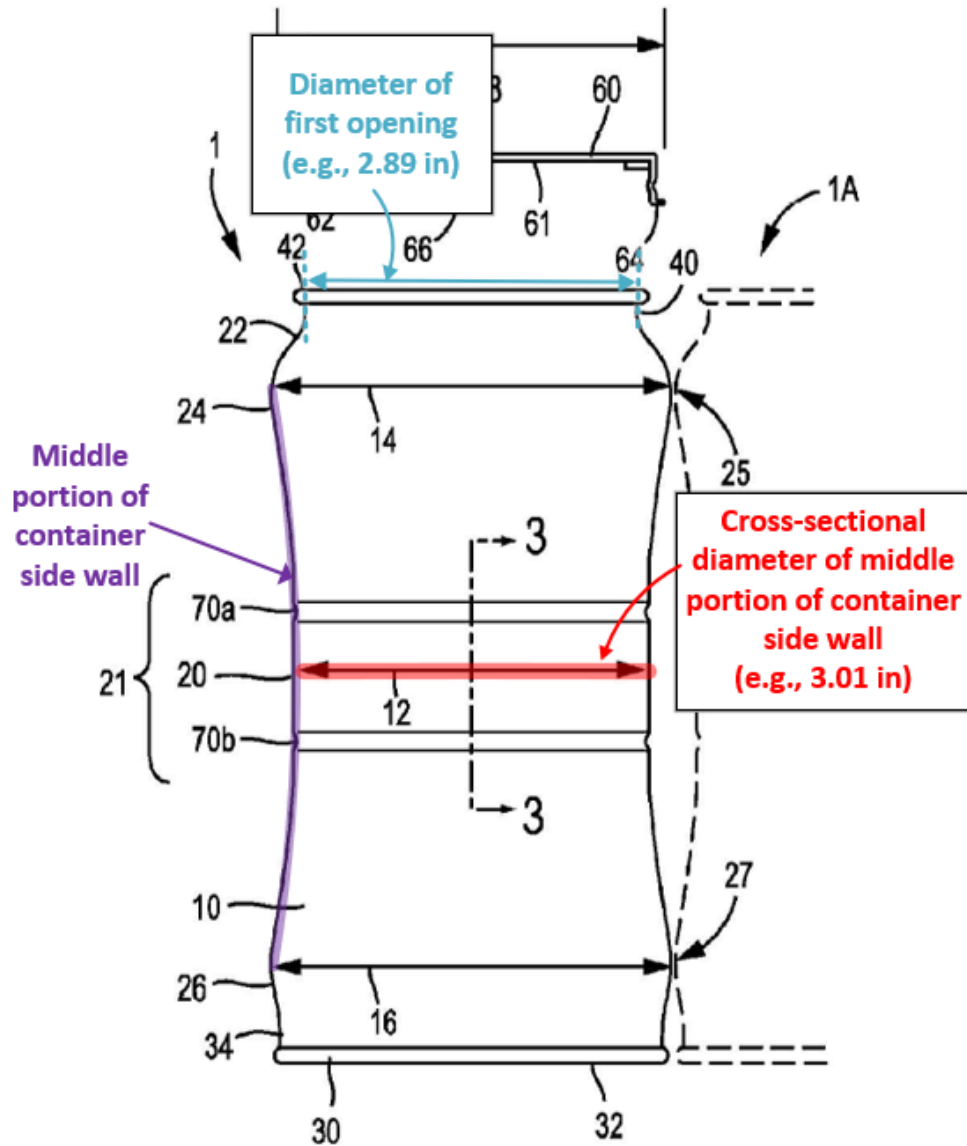


FIG. 2

Metzger, Fig. 2 (Annotated)

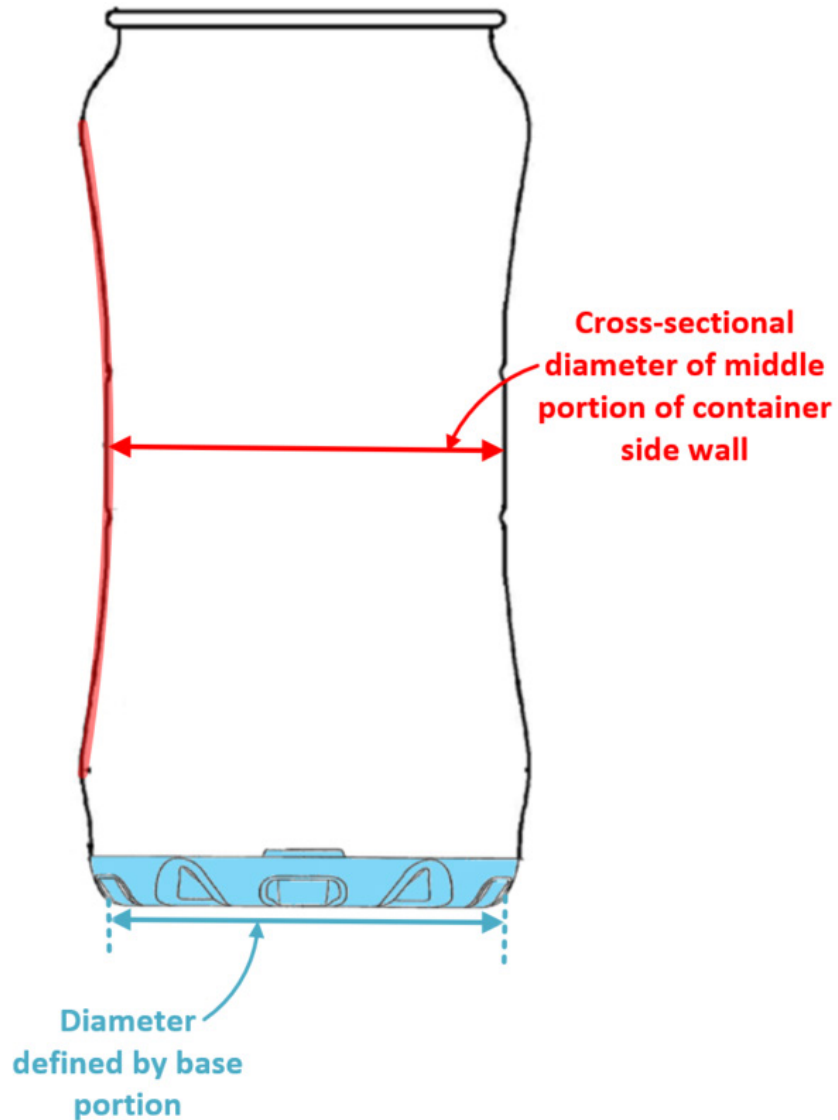
[1.L] wherein the base portion defines a diameter that is less than the cross-sectional diameter of the middle portion of the container side wall;

The middle portion of Metzger's container had **cross-sectional diameters** ranging from 3.01 inches, at a narrowest point, to 3.46 inches at its widest points, ([1.K]; Metzger, 4:15-17, 6:19-20, 6:23-24, 6:62-65, Fig. 2), and its base portion included “bottom seal structure 30” (Metzger, 7:51-54, Fig. 2; *see* [1.E]), with an exemplary diameter of 3.31 inches (Metzger, 7:24-26).

Metzger further explained that a “tapered transition 34,” connecting a lower portion of the container to the bottom seal structure, could have a slope with “angles greater or lesser than 12 degrees” from the vertical axis. (*Id.*, 7:22-29). A POSITA would have found it obvious to increase or decrease the cross-sectional diameter of the bottom seal structure by decreasing or increasing the slope of the tapered transition. Forming a bottom diameter that was less than the middle body's narrowest cross-sectional diameter would have been within the scope of these obvious modifications. (Delson, ¶63).

In the Metzger-Protais combination, it would have been obvious for the cross-sectional diameter of the base to be approximately equal to, or less than, the diameter of Metzger's bottom seal structure because this size would have enabled the base

	to be formed integrally with the container body. (<i>See Metzger</i>, 7:58-60; <i>Protais</i>, 4:24-28). Additionally, the '441 patent does not attach any significance to the relative size of the middle and base portions, which is merely an ornamental feature and a routine design choice. <i>E.g.</i>, <i>Application of Aslanian</i>, 590 F.2d 911, 914-15 (Cust. & Pat. App. 1979) (holding that whether a restraint is reversible or not is a matter of design choice to a POSITA and, therefore, is obvious). Thus, it would have been obvious for a diameter defined by the base section of the combined container to be less than the diameter of the middle portion of the container side wall. (<i>Delson</i>, ¶64).
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Example Combination of Metzger and Protais

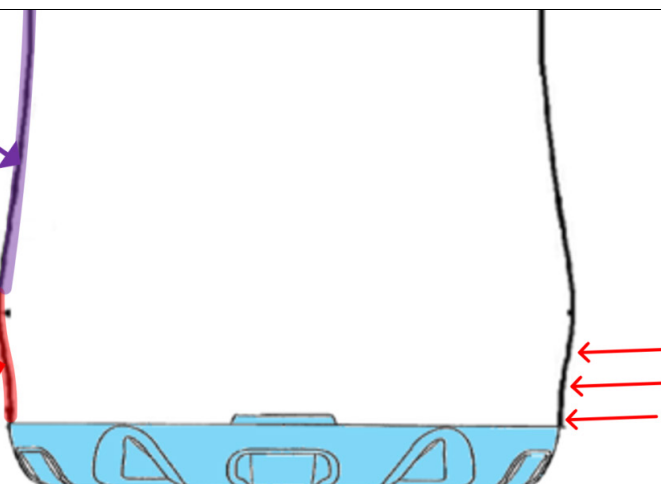
[1.M] wherein a lower portion of the container side wall extends downwardly from the middle portion of the container side wall to the base portion of the container body, the lower portion along its entirety being greater in diameter along its entirety than the base portion, including the bottom, thereby rendering the container body stemless;

The Metzger-Protais container had a side wall and a base portion, discussed above, with a “middle portion” of the side wall defined as a portion extending between Metzger’s “first protective feature” and the “second protective feature.” (*See* [1.E], 1.K]).

Metzger’s side wall further had a lower portion formed from “tapered transition” connecting the “second protective feature” of the container to the base. (Metzger, 7:22-24). This tapered transition was angled such that the lower portion of the side wall decreased in diameter from the second protective feature to the base. (*Id.*, 7:26-29). In the Metzger-Protais combination in which the side walls are integrally formed with Protails’ bottom, it would have been obvious for the tapered transition to have a greater diameter along its entirety than the container bottom. (Delson, ¶65).

Middle portion of
container side
wall

Lower portion of
container side
wall

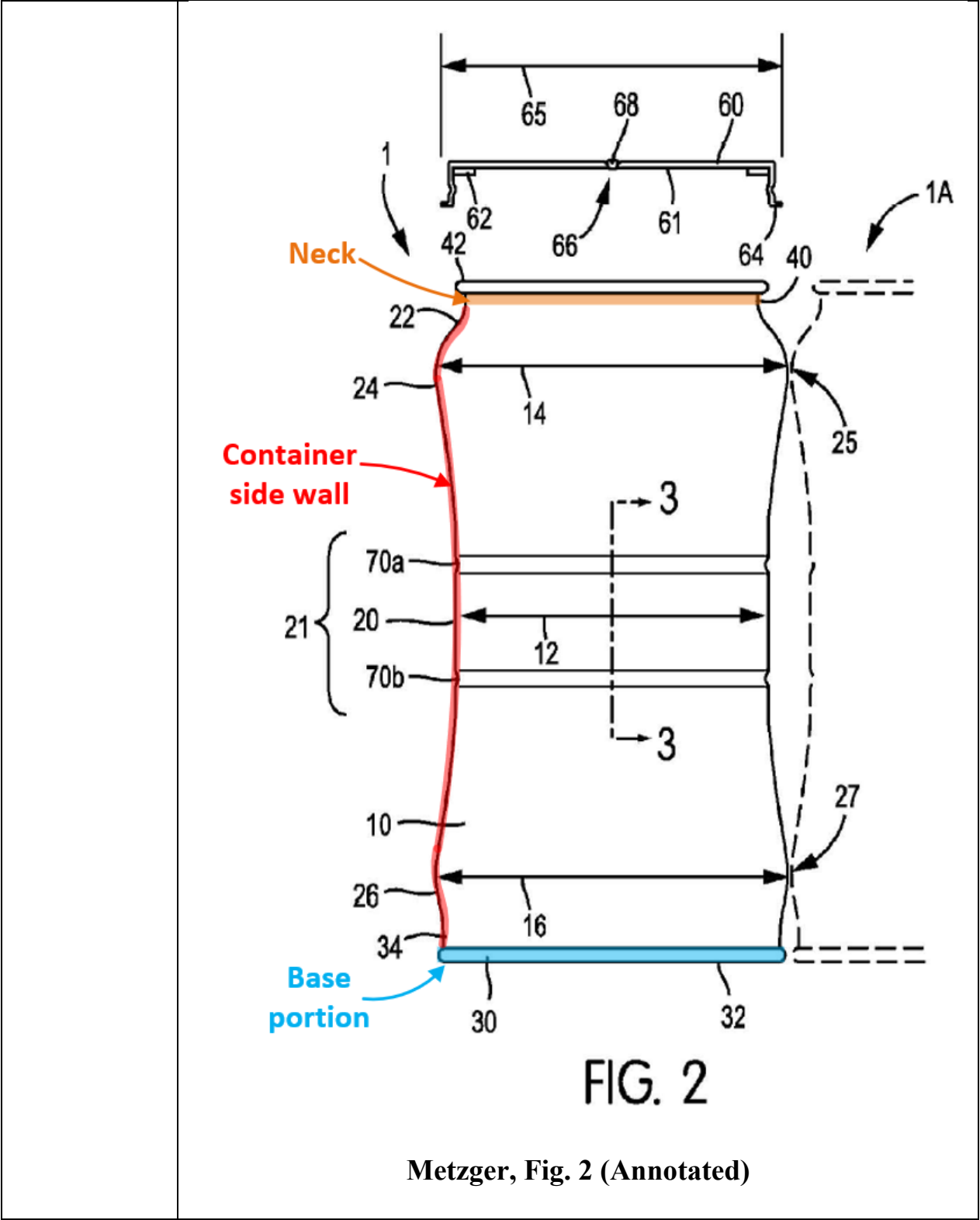


Example Combination of Metzger and Protais

Finally, the recitations following the thereby clause should not be given patentable weight because they merely state an intended result. *E.g., Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc.*, 246 F.3d 1368, 1376 (Fed. Cir. 2001); *Texas Instruments Inc. v. U.S. Int’l Trade Comm’n*, 988 F.2d 1165, 1172 (Fed. Cir. 1993). But even if given patentable weight, the **lower portion** of the side wall in the Metzger-Protais combination along its entirety is greater in diameter than the base portion, including the bottom. (Delson, ¶¶65-66).

Further, even if the “thereby” transitional phrase is ignored and the “stemless” limitation is construed to require a stemless

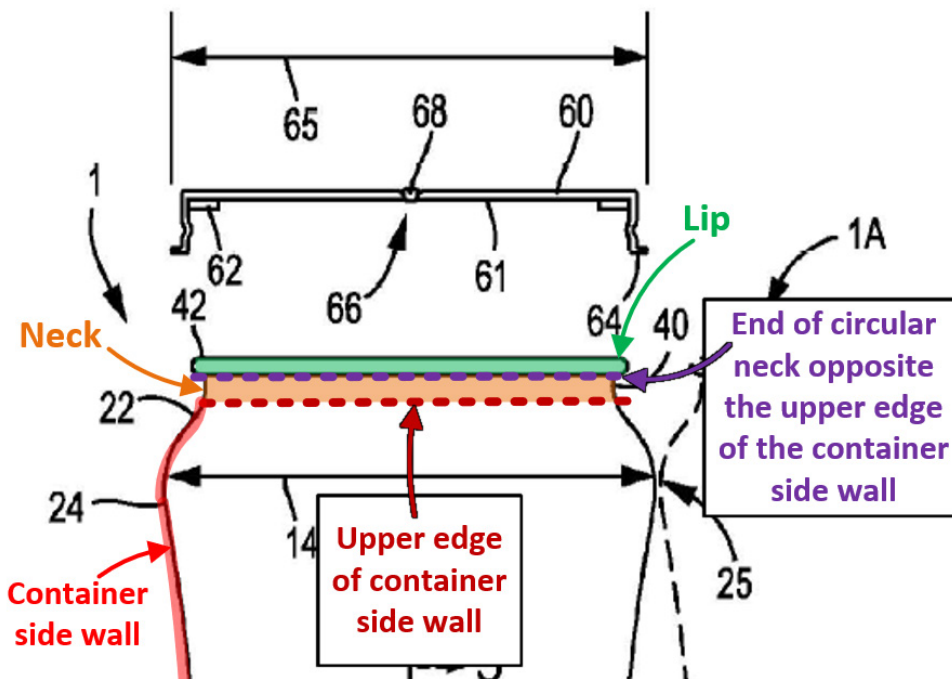
	container body, the combined container is stemless, as illustrated above. (Delson, ¶66).
[1.N] wherein the container body further comprises a circular neck extending from the container side wall so that the container side wall extends between the circular neck and the base portion;	
	Metzger disclosed “neck 40,” which was circular because the container was cylindrical. (Metzger, 4:21, Fig. 2, 3:62-65). The neck extended from the container side wall. (<i>Id.</i> , 4:21-24 (describing how the neck “extend[ed] upward from a tapered transition”)). As a result, Metzger’s container had a container side wall that extended between the circular neck and the base portion (e.g., bottom seal structure and bottom end wall, or Protais’ base in the combination), below. (Delson, ¶67).



Metzger, Fig. 2 (Annotated)

[1.P] wherein the container body further comprises a lip at an end of the circular neck opposite the upper edge of the container side wall;

Metzger’s container body had a “rim or lip, shown as neck edge 42, [that] may be curled or rounded to provide a suitable sealing surface.” (Metzger, 4:32-33, Fig. 2). Figure 2, below, illustrates neck edge 42 at an end of neck 40 opposite the upper edge of the container side wall. (Delson, ¶69).



Metzger, Fig. 2 (Cropped and Annotated)

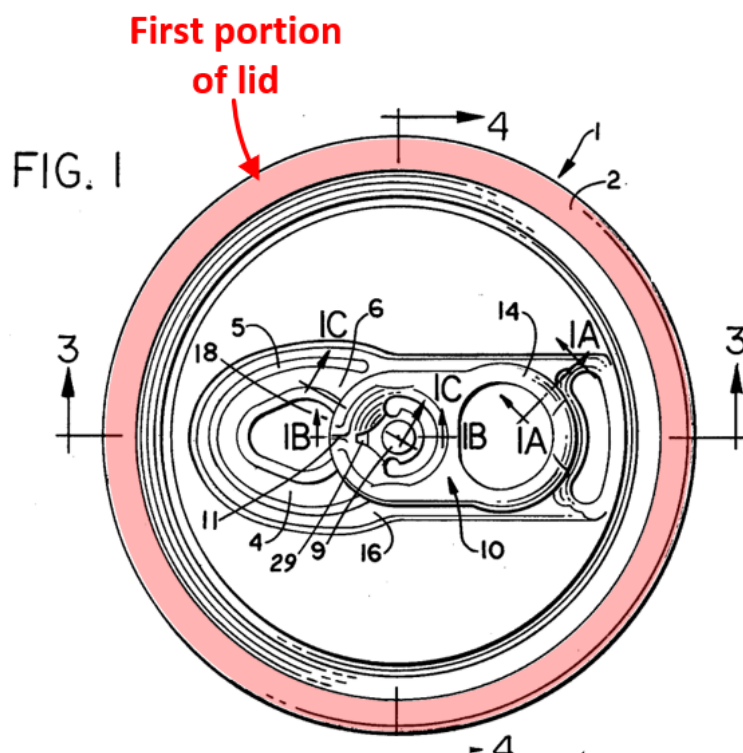
[1.Q] wherein the circular neck is adjacent to the lip;

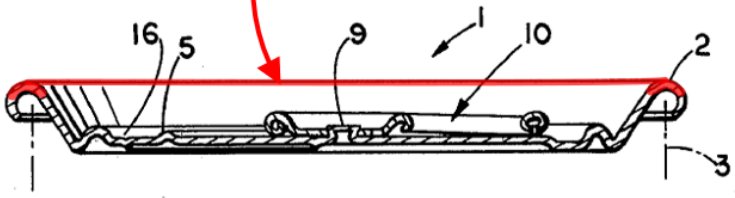
Metzger's **circular neck** was adjacent to the neck edge 42
(**lip**), illustrated above. (See [1.P]; Delson, ¶70).

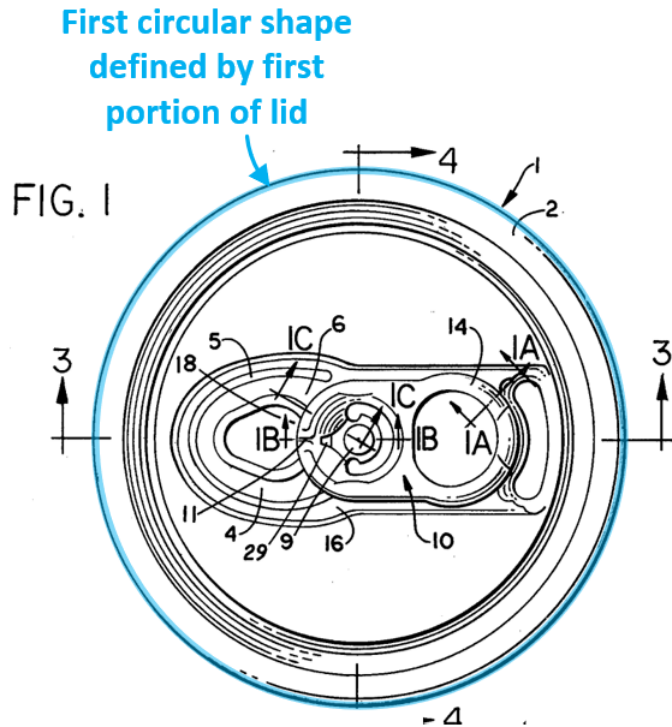
[1.R] wherein a first portion of the lid is above the lip of the container body;

Metzger disclosed a variety of suitable container lids. (See [1.B]; Metzger, 4:29, 9:43-45, 9:54-59, Figures 2, 5-6). Since at least some lids attached to the top of the container body, a portion of them was above the lip of the container body.

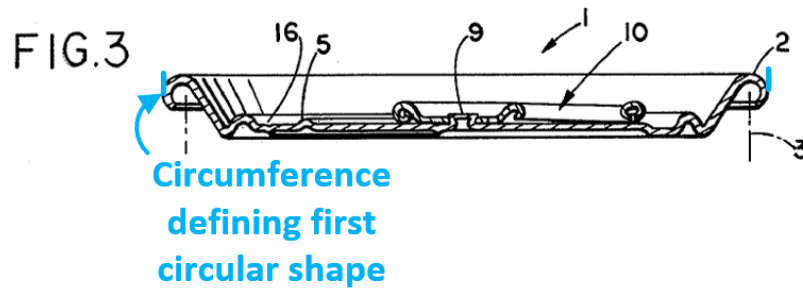
Kaminski supplemented Metzger's disclosure with a lid having “a circumferentially extending raised edge 2” (**first portion**), below, which attached the lid to a cylindrical can. (Kaminski, 2:67-68, 2:68-3:1, Figures 1, 3; Delson, ¶71).



	Kaminski, Fig. 1 (Annotated) FIG.3 First portion of lid  Kaminski, Fig. 3 (Annotated) Based on this analogous configuration, and discussed in [1.B], it would have been obvious for the raised edge of Kaminski's lid to attach to the lip of Metzger's container to seal the combined container. In the combination, the raised edge of Kaminski's lid (first portion) would be above the lip. (Delson, ¶72).
[1.S] wherein the first portion of the lid defines a first circular shape;	
	Kaminski's lid had "raised edge" (first portion). ([1.R]; Kaminski, 2:67-68, Figures 1, 3). A first circular shape was defined by a circumference extending around the lid positioned at or near the outermost point on the raised edge, below. (Delson, ¶73).



Kaminski, Fig. 1 (Annotated)

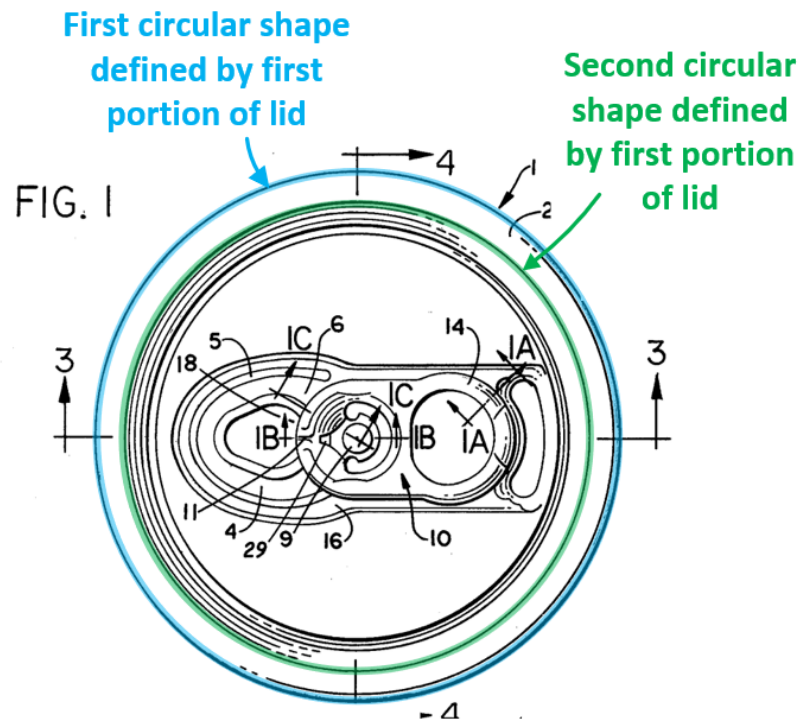


Kaminski, Fig. 1 (Annotated)

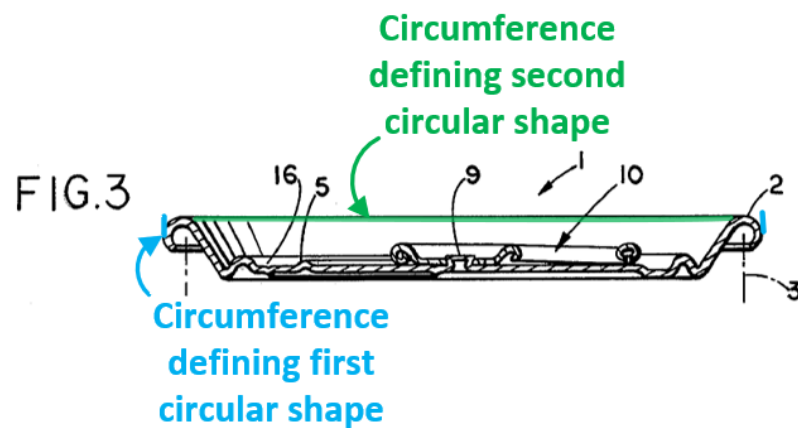
[1.T] wherein the first portion of the lid further defines a second circular shape around which the first circular shape circumferentially extends;

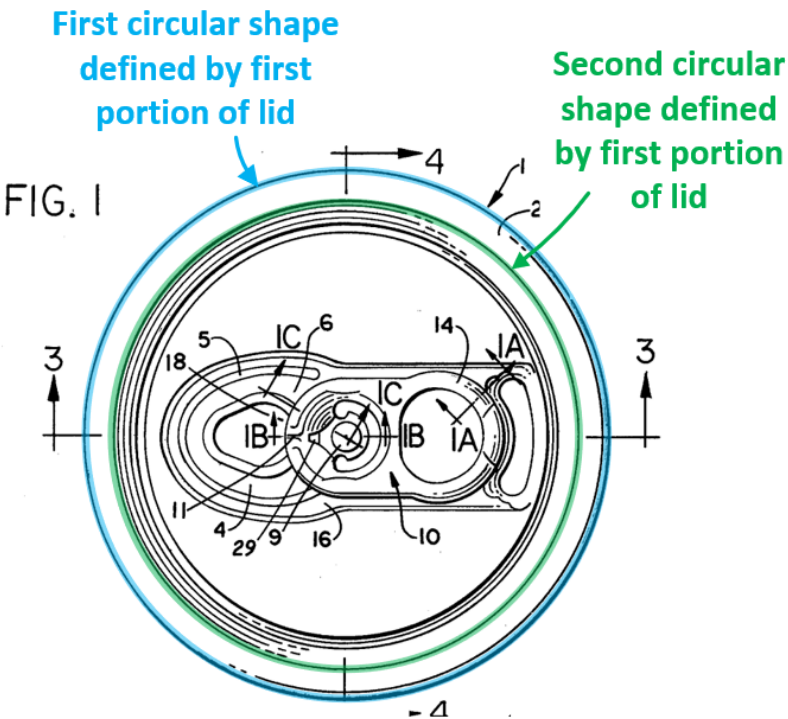
Kaminski's raised edge defined a **second circular shape** by a circumference extending around the lid at or near an inner side of

the raised edge. Figures 1 and 3, below, show the **second circular shape**, and demonstrate how the **first shape** ([1.S]) circumferentially extended around the **second circular shape**. (Delson, ¶74).

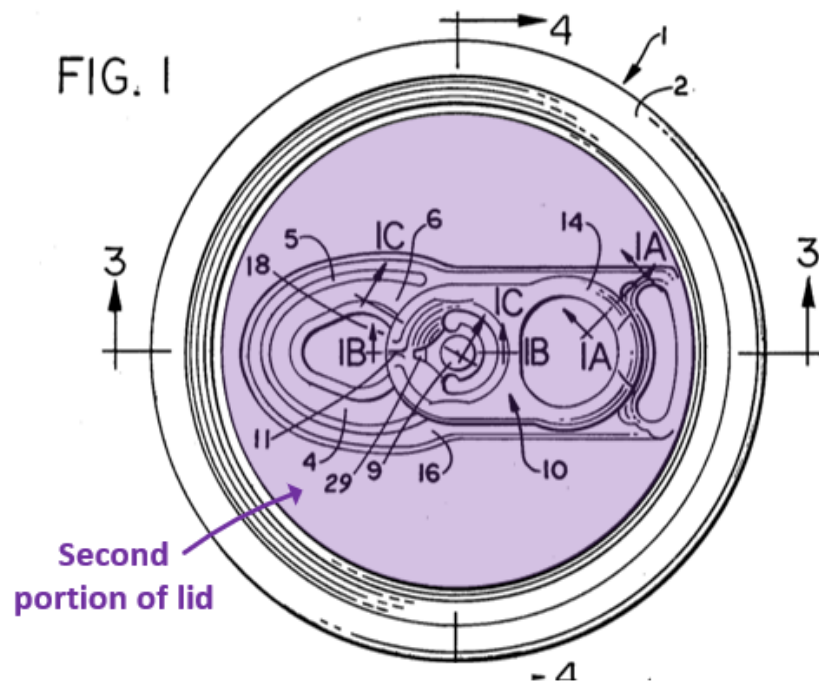


Kaminski, Fig. 1 (Annotated)

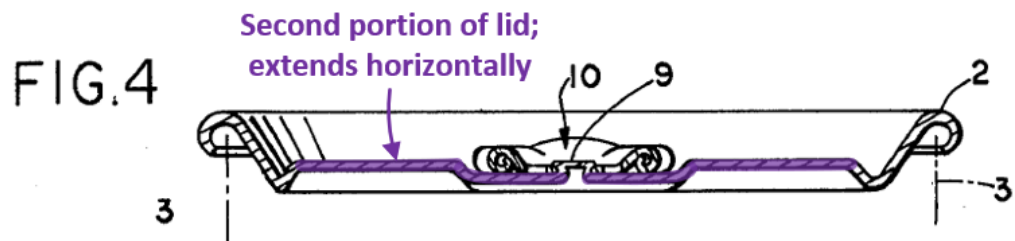


	Kaminski, Fig. 3 (Annotated)
	[1.U] wherein the second circular shape defined by the first portion of the lid is concentric with the first circular shape defined by the first portion of the lid;
	In the Metzger-Kaminski combination, Kaminski's lid (below) included the second circular shape that was concentric with the first circular shape; <i>see</i> [1.T]. (Delson, ¶75). 
	[1.V] wherein the first circular shape defined by the first portion of the lid is radially positioned between the container side wall and the second circular shape defined by the first portion of the lid;

	Metzger's container side wall diameter varied but generally had a larger cross-sectional diameter than the container's neck opening. (Metzger, 4:14-17, 4:41-44, 6:19-20, 6:23-24, 6:62-65). In the Metzger-Kaminski combination, the raised edge of Kaminski's lid would engage with the neck edge of Metzger's container. (See [1.B], [1.R]). It would have been obvious for the circumference at or near the raised edge's outermost point (first circular shape) to have a smaller diameter than the container side wall because the lid would cover an opening with a smaller diameter than the sidewall. Thus, the first circular shape would have a smaller radius than at least part of the container side wall, and a greater radius than the second circular shape. (See [1.T]; Delson, ¶76).
[1.W] wherein a second portion of the lid extends horizontally and is positioned so that the second circular shape is radially positioned between the second portion of the lid and the first circular shape;	
	Kaminski's lid had a second, horizontally-extending portion, below.



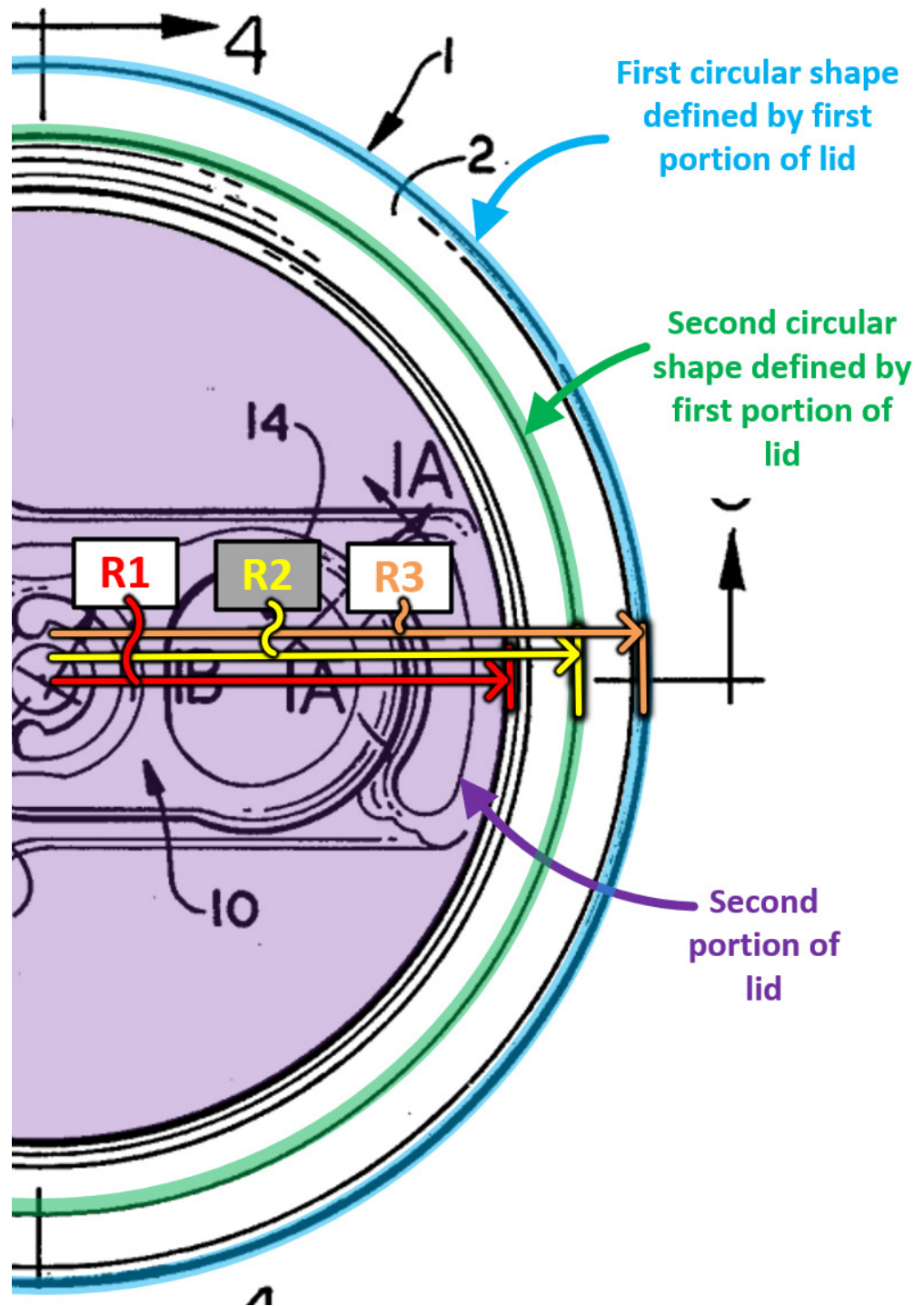
Kaminski, Fig. 1 (Annotated)



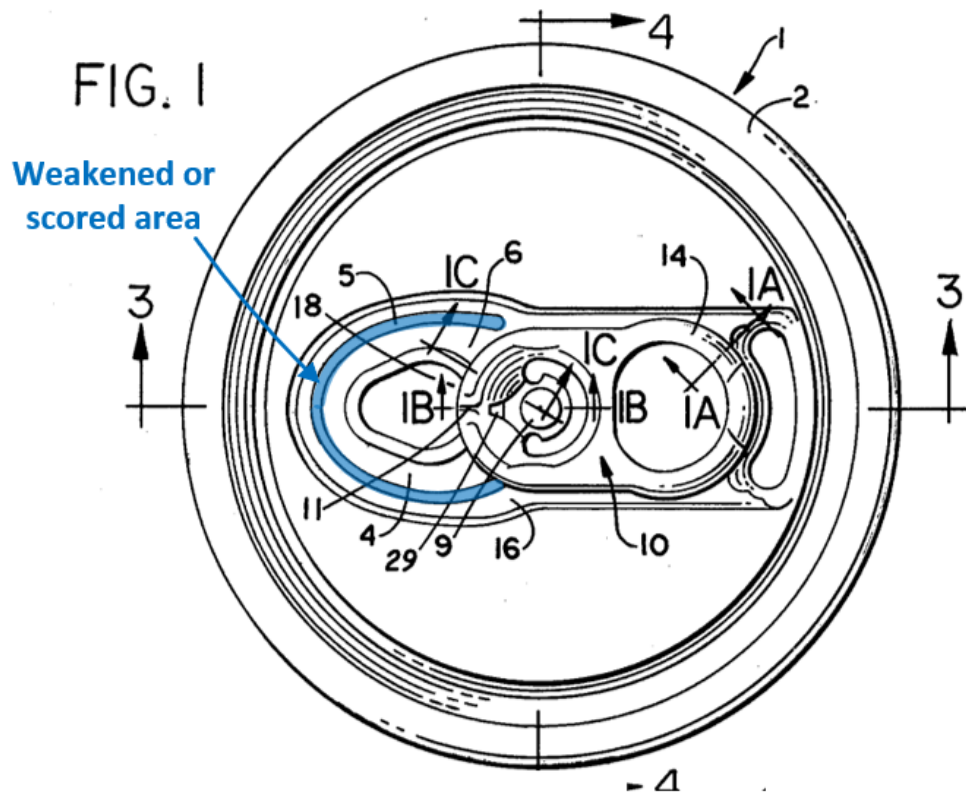
Kaminski, Fig. 4 (Annotated)

The second circular shape, *see* [1.T], had a radius (R2, yellow) that was greater than a maximum radius of the **second portion of the lid** (R1). The **first circular shape** in turn had a radius (R3) that was greater than the radius of the **second circular shape**. The **second circular shape** of Kaminski's lid was radially positioned

between the second portion and first circular shape. (Delson, ¶¶77-78).



	Kaminski, Fig. 1 (Cropped and Annotated)
[1.X] wherein the second portion of the lid defines a total area across which the second portion of the lid extends horizontally;	
	The second portion of Kaminski's lid laid out horizontally, <i>see</i> [1.W], defined a total area. (Delson, ¶79).
[1.Y] wherein the second portion of the lid comprises a weakened or scored area;	
	Kaminski disclosed "score or tear line 5" on the second portion of its lid (weakened or scored area), which could be torn by raising a pull tab. (Kaminski, 3:7-10, 3:49-51, 3:56-58, Fig. 1; Delson, ¶80).



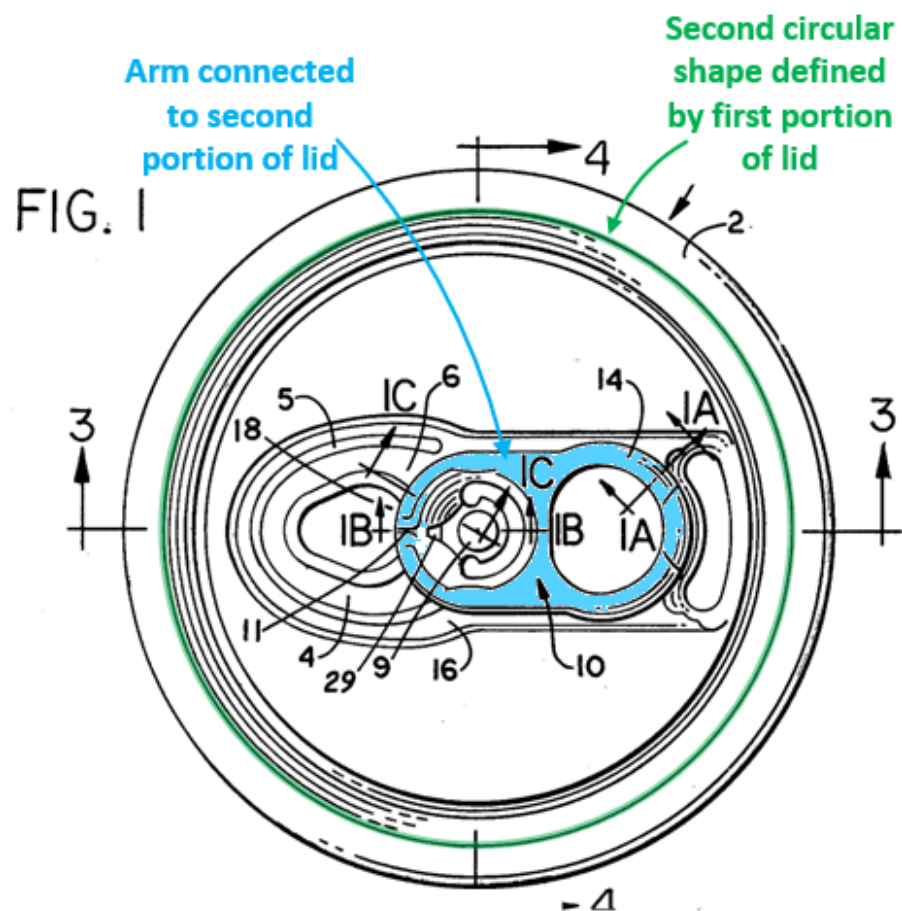
Kaminski, Fig. 1 (Annotated)

[1.Z] wherein the weakened or scored area is less than the total area across which the second portion of the lid extends horizontally;

The **score line 5** had an area less than the total area across which the **second portion** of Kaminski's lid extended horizontally.
(See [1.W], [1.Y]; Delson, ¶81).

[1.AA] wherein the lid further comprises an arm connected to the second portion of the lid and radially positioned within the second circular shape;

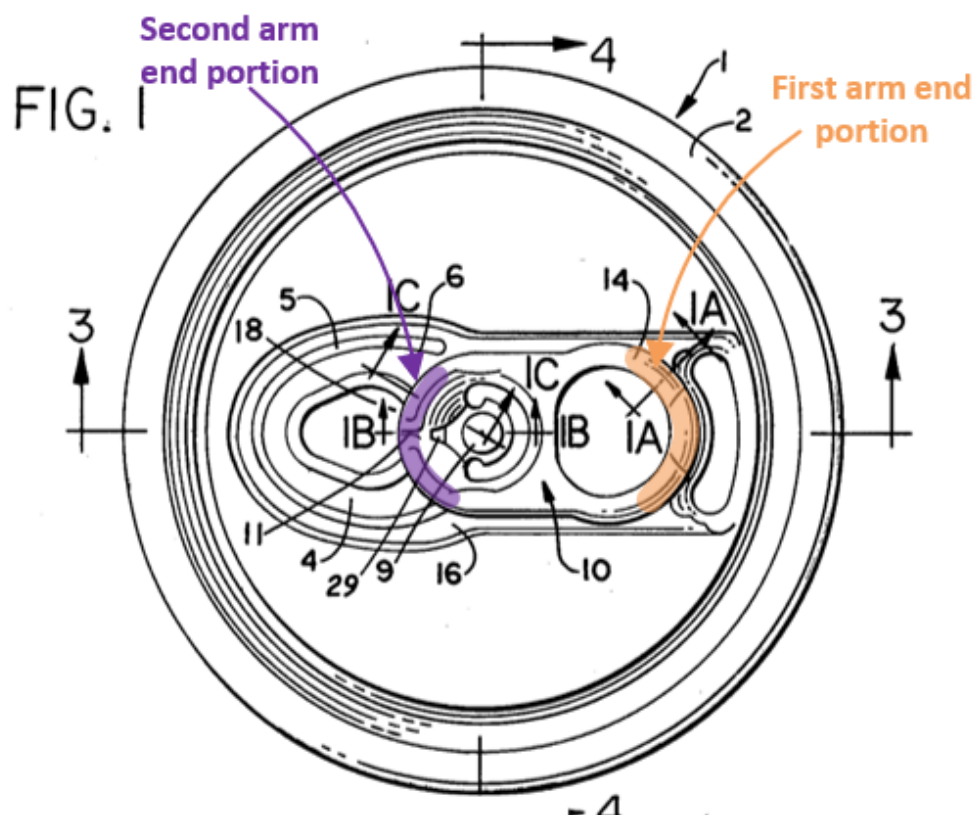
Kaminski's lid included an "pull tab 10" (arm). (Kaminski, 3:15-19, 3:49-52). The pull tab was connected to the lid by a rivet in the second portion of the lid. (*Id.*, 3:15-17). The pull tab was radially positioned within the second circular shape, see [1.T], and below. (Delson, ¶82).



Kaminski, Fig. 1 (Annotated)

[1.AB] wherein the arm comprises opposing first and second end portions;

Kaminski's pull tab (**arm**) had a "finger end 14" (**first end portion**) and "nose portion 11" (**second end portion**). (Kaminski, 3:17-18, 3:27-29, Figure 1). The **finger end** and **nose portion** were at opposite ends of the pull tab. (Delson, ¶83).

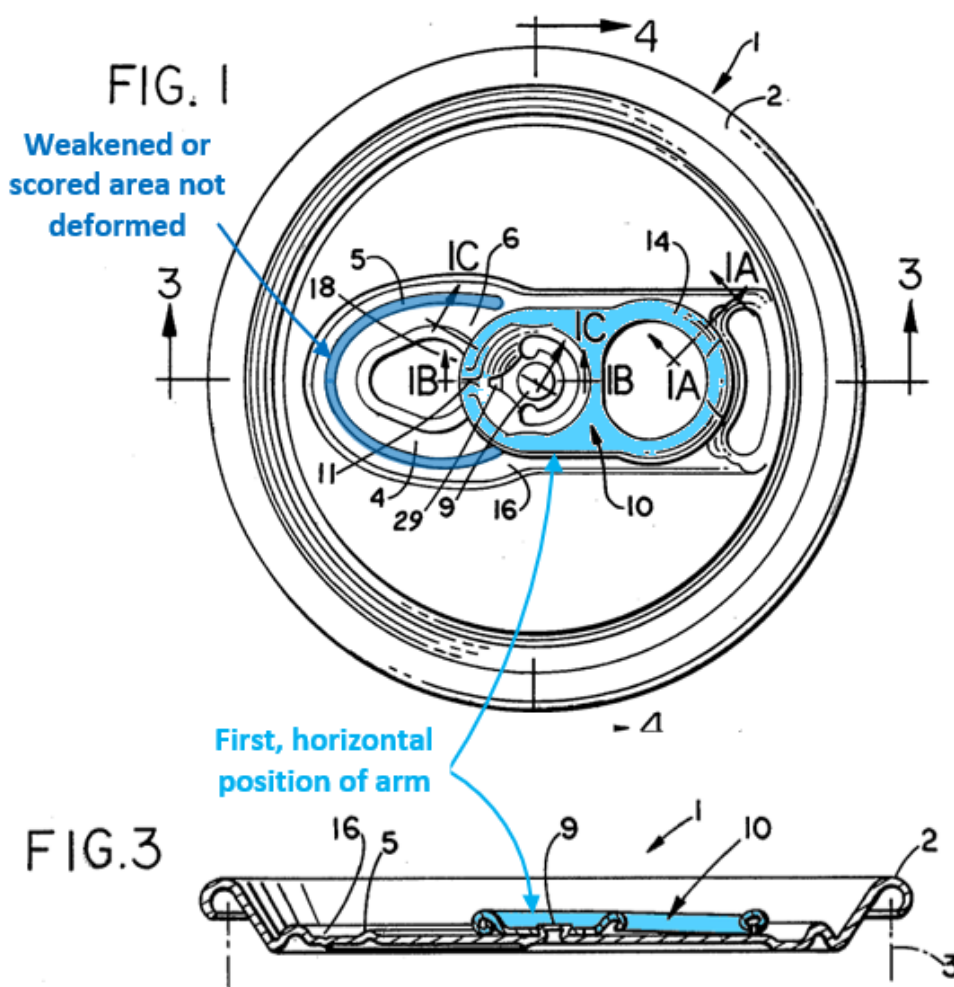


Kaminski, Fig. 1 (Annotated)

[1.AC] wherein the arm is pivotable from a first position, in which the arm extends horizontally and the weakened or scored area is not deformed, to a second position, in which the arm does not extend horizontally and the

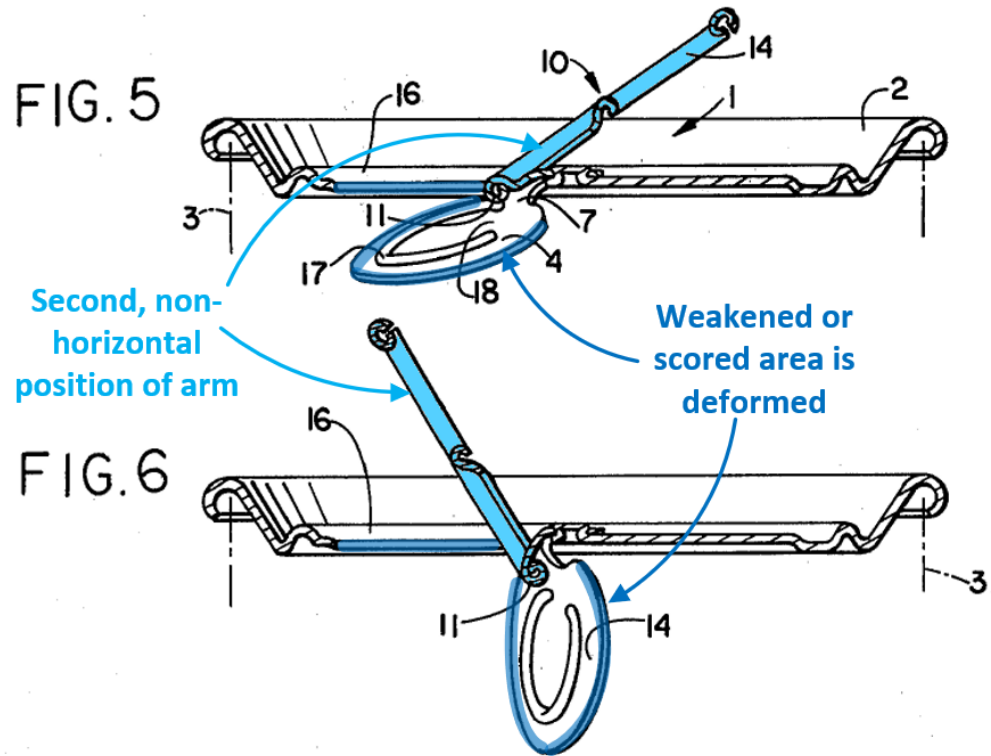
weakened or scored area is deformed to provide a second opening to the interior of the container body;

Kaminski's pull tab was pivotable. Figures 1 and 3 depicted a top and side view of a **first position** where the pull tab extends horizontally and the score line (**weakened or scored area**) is not deformed.



Kaminski, Figs. 1 and 3 (Annotated)

Figure 5 illustrated how raising the pull tab—pivoting it to a second, non-horizontal position—would “initiate[] a tear along the score line”—deforming it. (Kaminski, 3:49-51; Delson, ¶¶84-85).



Kaminski, Figs. 5 and 6 (Annotated)

[1.AD] wherein an upper portion of the container side wall extends upwardly from the middle portion of the container side wall to the upper edge of the container side wall, the upper portion along its entirety being greater in diameter than the first opening to the interior of the container body;

Metzger's container side wall had an **upper edge** at a top circumference of the side wall before the beginning of the neck.

	([1.O]; Metzger, 4:21-2,; Fig. 2). “[T]apered transition 22,” (upper portion of the container side wall) extended upwardly from the middle portion of the container side wall to the upper edge, below. (Metzger, 4:51-54). Metzger explained the benefits of the curvature of the tapered transition, including creating an aesthetically pleasing top, providing the user with increased leverage, and preventing contact with adjacent containers. (<i>Id.</i>, 5:5-11).
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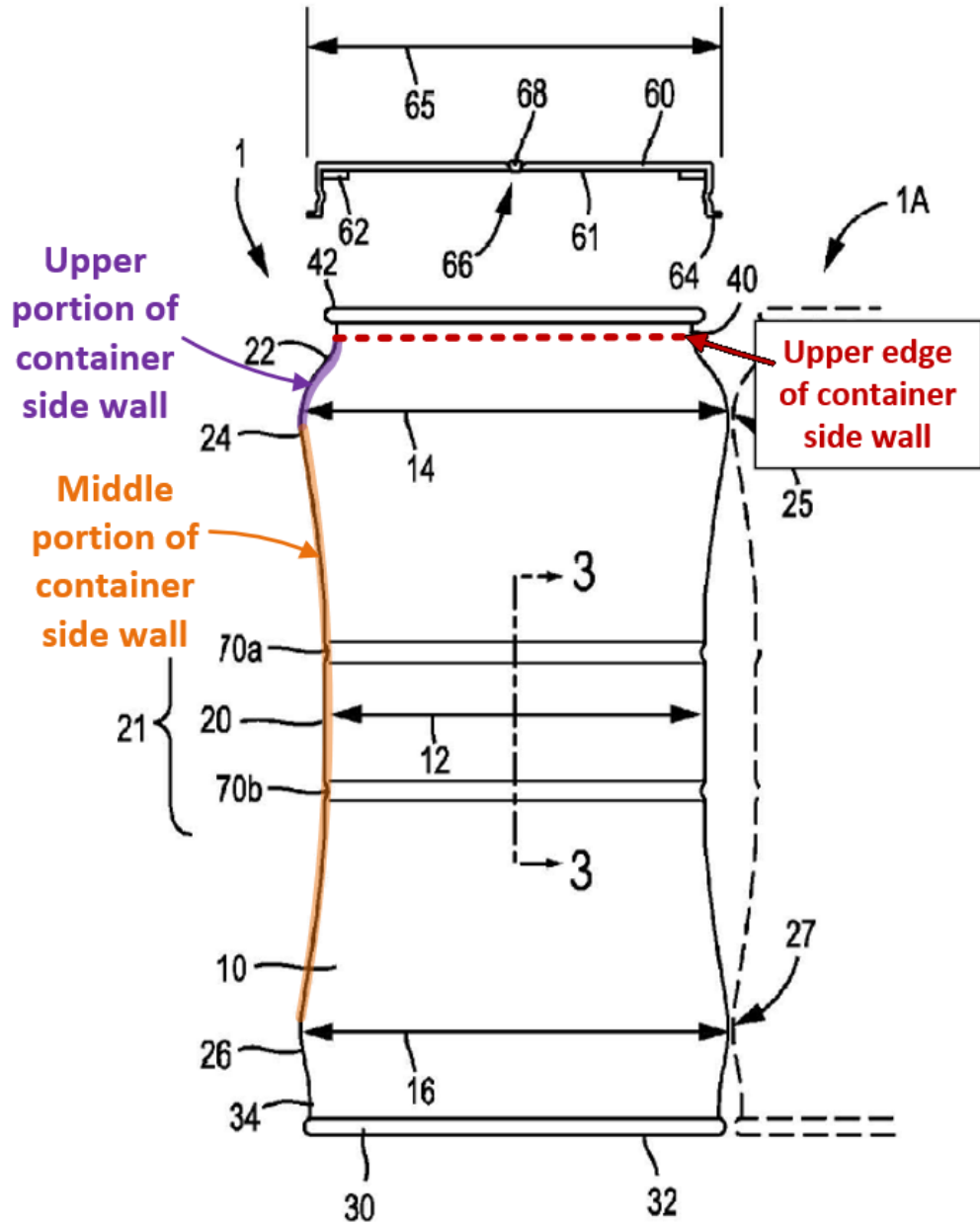


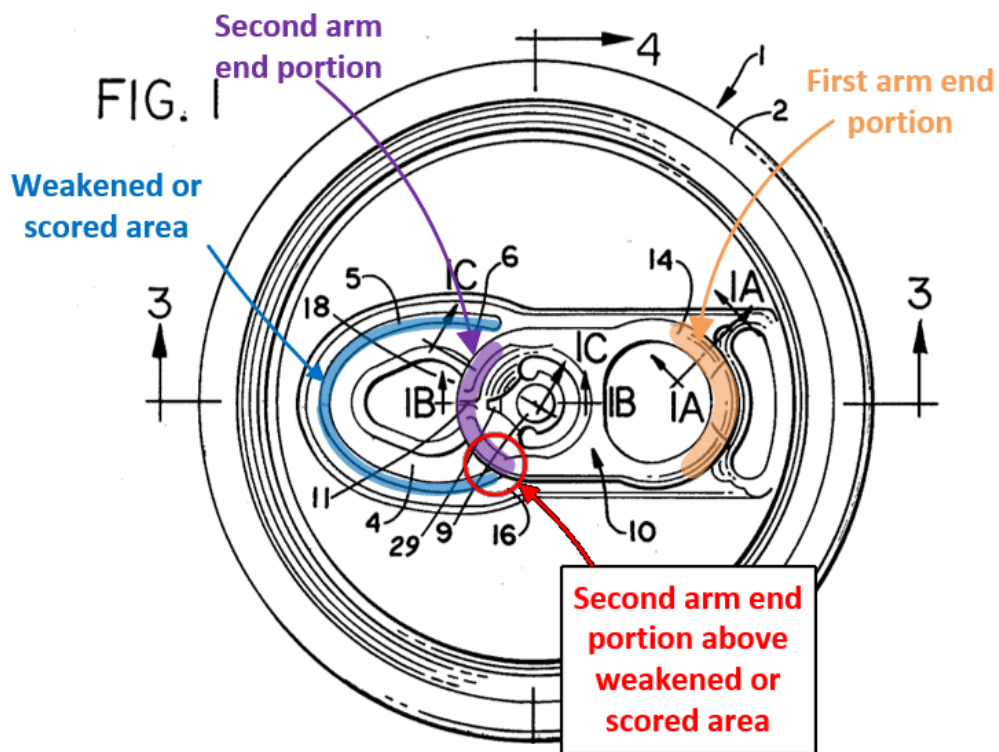
FIG. 2

Metzger, Fig. 2 (Annotated)

The tapered transition was greater in diameter along its entirety than the diameter of the neck opening (first opening to the

	Metzger described the “neck edge” (lip) as a “suitable sealing surface.” (Metzger, 4:32-33). Kaminski’s can end had a “raised edge 2 for attaching can end 1 to a suitable cylindrical beverage can 3.” (Kaminski, 2:65-3:4). It would have been obvious for Kaminski’s raised edge to cooperate with (e.g., seal against) Metzger’s neck edge, because this would have ensured the container did not leak. (See Metzger, 1:29-33, 3:47-48, 4:32-33; Kaminski, 3:1; Delson, ¶89).
[1.AG] wherein, when the arm of the lid is in the first position and the weakened or scored area is not deformed: the first end portion of the arm is not positioned above the weakened or scored area of the second portion of the lid; and at least a portion of the second end portion of the arm is positioned above the weakened or scored area of the second portion of the lid;	
	Kaminski’s pull tab (arm) had a first, horizontal position. See [1.AC]. In this position, the “finger end” (first end portion) was not positioned above the score line (weakened or scored area). (Kaminski, 3:27-29, Figure 1), while the “nose portion” (second end portion) was positioned above the score line, illustrated below (<i>id.</i>, 3:17-18). The nose portion was positioned such that it “initiate[d]

a tear along the score line 5" when the pull tab was raised. (*Id.*, 3:49-51; Delson, ¶90).



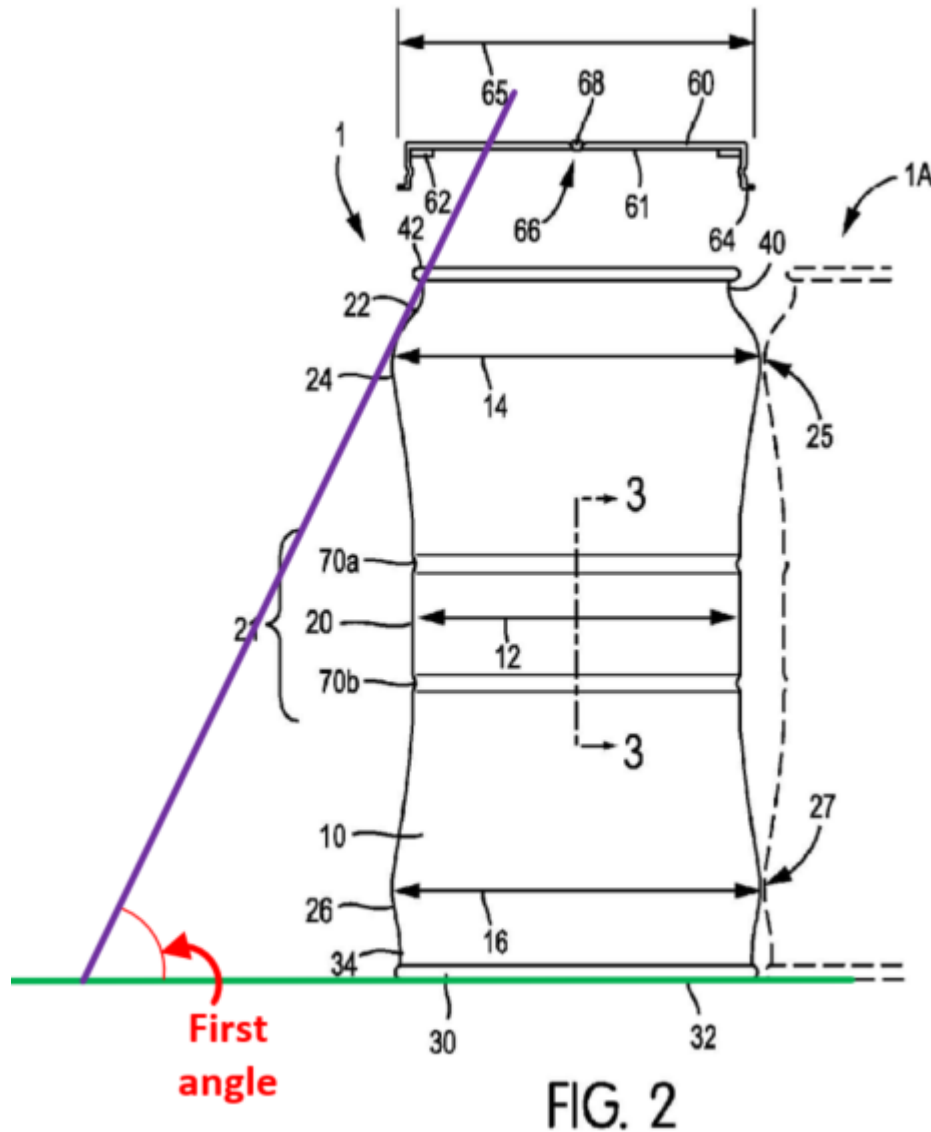
Kaminski, Fig. 1 (Annotated)

[1.AH] wherein the container side wall extends between the circular neck and the base portion so that:

the upper portion of the container side wall defines a first angle: between the upper portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion;

the middle portion of the container side wall defines a second angle: between the middle portion of the container side wall and the

bottom of the base portion, and with respect to the bottom of the base portion; the lower portion of the container side wall defines a third angle: between the lower portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion; the first angle is an acute angle; the third angle is an obtuse angle; the second angle is greater than the first angle; and the third angle is greater than the second angle; and	
	Metzger's container side wall extended between the neck and the base portion. [1.N]. A first angle is defined between the tapered transition (upper portion of the container side wall; Metzger, 4:51-52) and the bottom of the base. A tangent line to the tapered transition intersects a line parallel to the plane of the container's bottom, forming a first angle with respect to the bottom of the base portion. The first angle was acute.



Metzger, Fig. 2 (Annotated)

A **second angle** is defined between a center portion (middle portion of the container side wall; *id.*, 5:12-13) and the bottom of the base, at the intersection of a **line parallel to the middle portion of the container side wall** and the **line parallel to the plane of the**

container's bottom (below), forming a **second angle** with respect to the bottom of the base portion. The **second angle** was approximately 90 degrees.

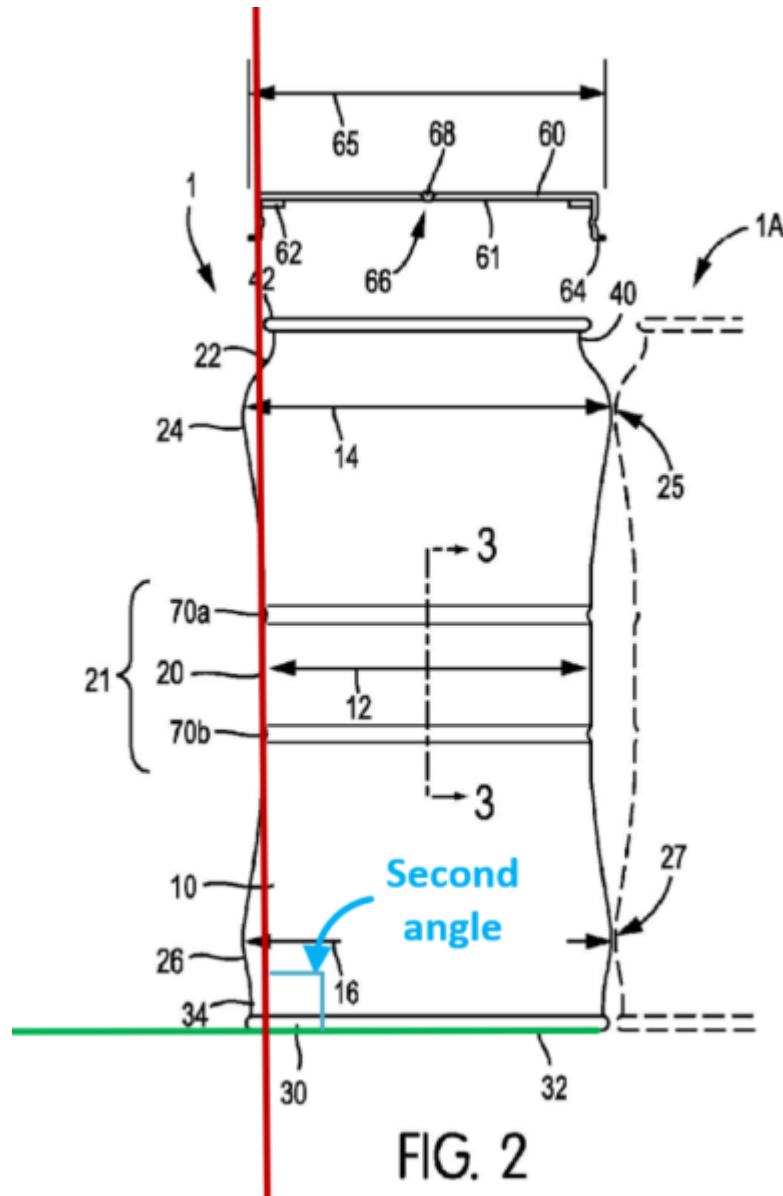


FIG. 2

Metzger, Fig. 2 (Annotated)

	A third angle is defined between the tapered transition (lower portion of the container side wall; <i>id.</i>, 7:22-24) and the bottom of the base, at the intersection of a line tangent to the tapered transition and the line parallel to the plane of the container's bottom (below), forming a third angle with respect to the bottom of the base portion. The third angle was obtuse.
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[1.AI] wherein the interior of the container body extends continuously across the cross-sectional diameter of the middle portion at a height midway between the circular neck and the base portion so as to be interrupted, if at all, only by the liquid contained within the container body.

Metzger did not indicate any obstruction in the container at a height midway between the circular neck and base portion that would interrupt any contained liquid. (Delson, ¶95).

Claim 2

2. The container of claim 1, wherein the resin is a polyethylene terephthalate (PET) resin.

Metzger’s container could be made from “various plastics.” (Metzger, 3:56-58). However, Metzger did not explicitly disclose a PET resin.

Instead, Protais explained that PET was a common material for manufacturing plastic containers. (Protais, 1:13-16).

A POSITA would have been motivated to use PET to manufacture the Metzger-Protais-Kaminski container because Protais explained PET had “good mechanical strength and thermal resistance.” (*Id.*, 1:50-51). PET also was translucent when blow-

	molded (<i>id.</i> , 1:23-25), which enabled presentation of the product in the container (<i>id.</i> , 1:61-63). (Delson, ¶96).
Claim 3	
3. The container of claim 1, wherein the container body is formed using a blow molding process.	
	Claim 3 is a product-by-process claim and is invalid if “a product made by the process recited...is anticipated by or obvious from prior art products, even if those prior art products are made by different processes.” <i>Amgen Inc. v. F. Hoffmann-La Roche Ltd.</i>, 580 F.3d 1340, 1370 n.14 (Fed. Cir. 2009). The Metzger-Protais-Kaminski combination (collectively describing a prior art product) met every limitation of claim 1 and thus rendered claim 3 obvious regardless of the process that used to produce the combined container. Notably, the ’441 specification does not attach any particular significance to the blow molding process. (<i>E.g.</i>, EX-1001, 2:49-52, 3:15-18 (stating any one of several known blow molding alternatives may be used)). Since claim 3 only recites a process by which the container body of claim 1 is formed, claim 3 is obvious.

	Additionally, blow molding is applicant-admitted prior art (AAPA), and thus obvious. The '441 patent's background acknowledges that prior art plastic containers "have been <i>molded</i> into various shapes" (EX-1001, 1:36-37), and elsewhere characterizes all varieties of the blow molding process as "<i>known molding processes</i>." (<i>Id.</i>, 2:49-52; Delson, ¶¶97-99). Finally, Protais also explained that blow-molding was a known manufacturing process. (Protais, 1:10-12, 1:22-24, 1:31-36, 3:32-34, 4:25-27; Delson, ¶100).
Claim 4	
4. The container of claim 1, wherein the metal is aluminum.	
	Metzger explained that the container end "may be made of metals, such as...aluminum." (Metzger, 3:49-50). Kaminski, likewise, disclosed "a relatively ductile metal, such as aluminum" can end. (Kaminski, 3:2-3; Delson, ¶101).
Claim 5	
[5.A] The container of claim 1, wherein the metal is aluminum; and	
	<i>See</i> [4].
[5.B] wherein the resin is a polyethylene terephthalate (PET) resin.	

	<i>See [2].</i>
Claim 6	
[6.A] The container of claim 1, wherein the container body is formed using a blow molding process; and	
	<i>See [3].</i>
[6.B] wherein the resin is a polyethylene terephthalate (PET) resin.	
	<i>See [2].</i>
Claim 7	
[7.A] The container of claim 1, wherein the metal is aluminum; and	
	<i>See [4].</i>
[7.B] wherein the container body is formed using a blow molding process.	
	<i>See [3].</i>
Claim 8	
[8.A] The container of claim 1, wherein the metal is aluminum;	
	<i>See [4].</i>
[8.B] wherein the resin is a polyethylene terephthalate (PET) resin; and	
	<i>See [2].</i>
[8.C] wherein the container body is formed using a blow molding process.	
	<i>See [3].</i>

Claim 9

[9.A] The container of claim 1, wherein the first depression is visible through at least a portion of the container body;

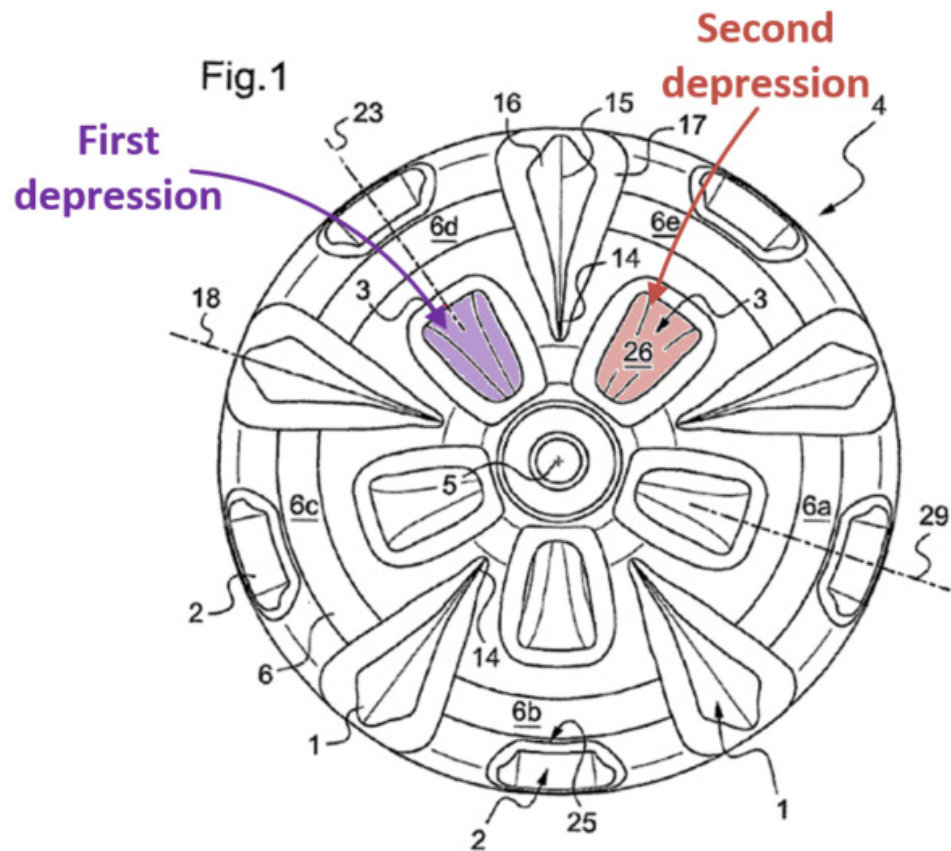
Protais disclosed “reinforcing grooves,” forming the **first depression**. ([1.F]; Protais, 4:41-44, 4:55, 5:1-2, 5:62-6:3, Figures 1, 3).

Protais explained that a PET container formed by blowing or stretch-blowing “causes a crystallization...leaving the material translucent.” (Protais, 1:23-25). Since Protais described a container with a translucent container body, a POSITA would have found it obvious that a reinforcing groove (**first depression**) would have been visible through at least a portion of the container body. (Delson, ¶111).

Furthermore, whether the depression is visible or not visible through the container body has no functional or structural significance, and the ’441 specification includes no related explanations. This limitation relates to an ornamental design choice and would have been obvious to a POSITA. *E.g., Application of Aslanian*, 590 F.2d at 914-15; (Delson, ¶262).

[9.B] wherein the base portion further comprises a second depression adjacent the first depression; and

Protais' container bottom also had a **second depression** adjacent to the **first depression**, in the form of another, neighboring reinforcing groove 3 shown below. (Delson, ¶112).



Protais, Fig. 1 (Annotated)

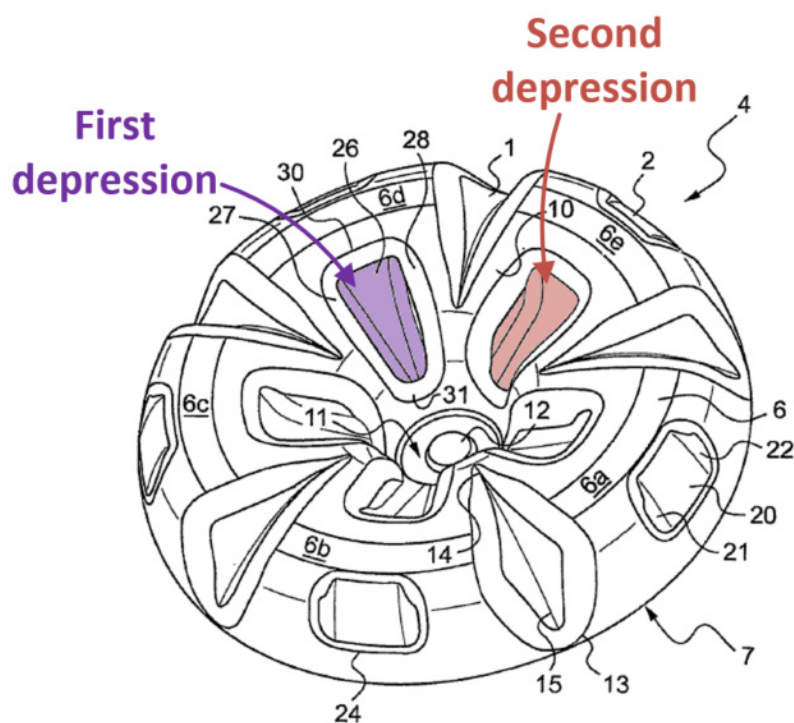


Fig.3

Protais, Fig. 3 (Annotated)

[9.C] wherein the second depression is visible through the at least a portion of the container body.

The **second depression** of Protais' container bottom, like the **first depression**, would have been visible through the container body. (See [9.A]; Delson, ¶113).

Claim 10

[10.A] The container of claim 1, wherein at least a portion of the container body is transparent;

	Protais' container could be made of translucent PET. (Protais, 1:23-25). PET can be transparent, however, which a POSITA understands. (Delson, ¶114; EX-1017, 1-2). It would have been obvious to form the PET container body in the Metzger-Protais-Kaminski combination from transparent PET because it would have been a simple choice between two well-known alternatives, and it would have improved aesthetics of the container and its product. (Protais, 1:61-63; Delson, ¶114).
[10.B] wherein the first depression is visible through the at least a portion of the container body;	
	<i>See</i> [9.A].
[10.C] wherein the base portion further comprises a second depression adjacent the first depression; and	
	<i>See</i> [9.B].
[10.D] wherein the second depression is visible through the at least a portion of the container body.	
	<i>See</i> [9.C].
Claim 11	

11. The container of claim 1, wherein the center element of the base portion is a downward extending protrusion.

Protais disclosed a **center element** by the “axial disk.” (Protais, 5:11-13; Figure 3). The axial disk “*project[ed] downward...out of the container provided with the bottom 4.*” (*Id.*; Delson, ¶118)

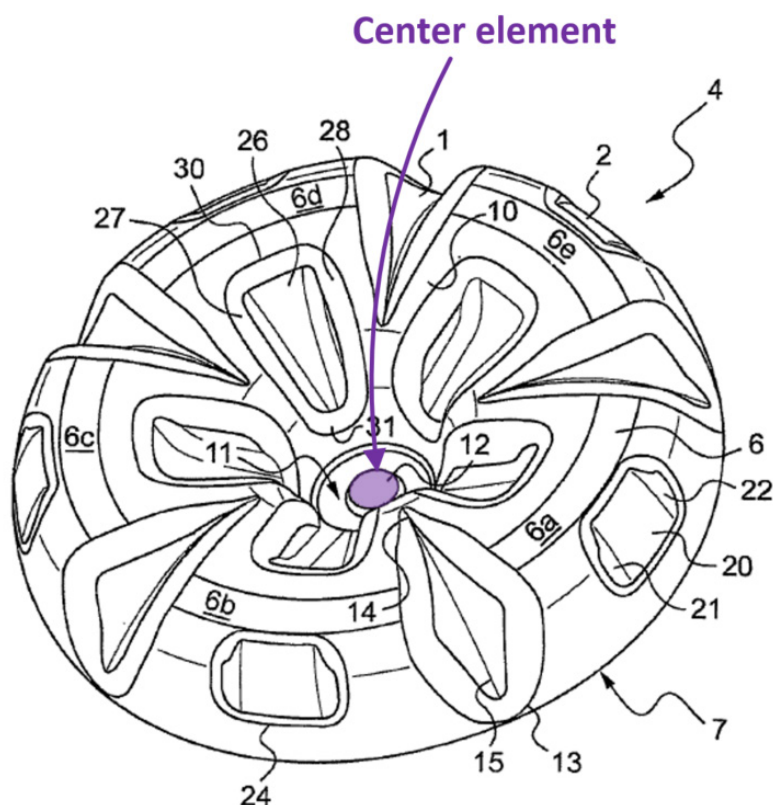
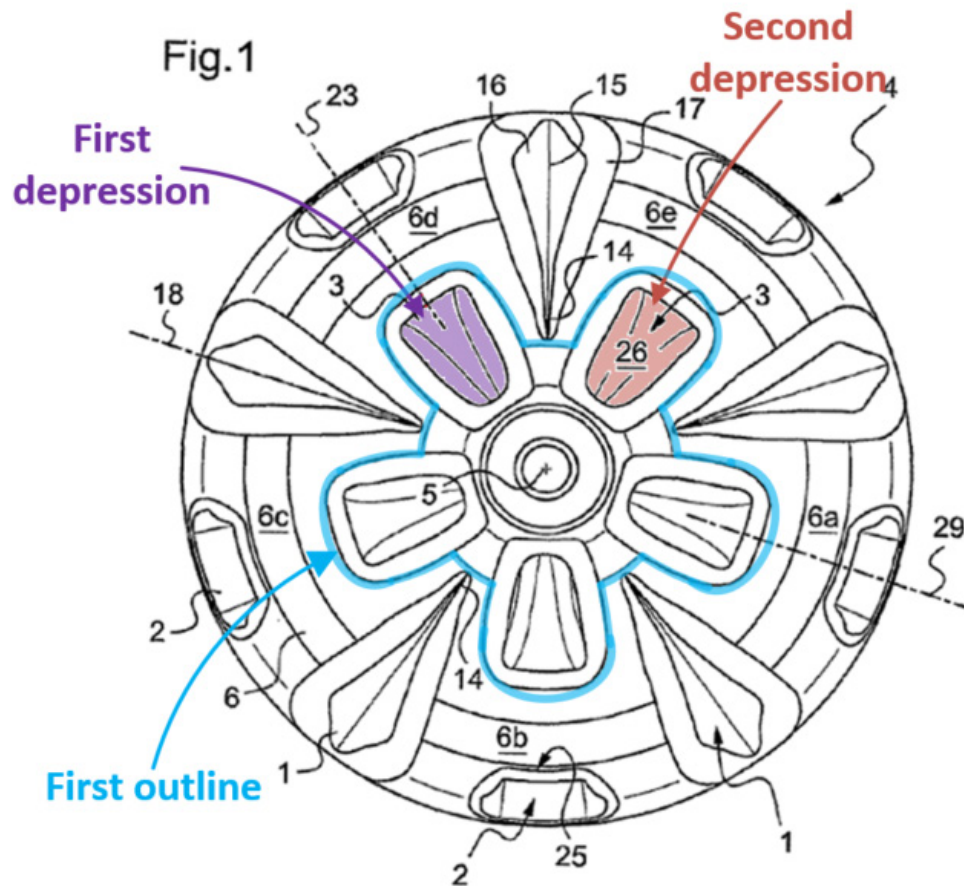


Fig.3

Metzger, Fig. 3 (Annotated)

Claim 12

[12.A] The container of claim 1, wherein the base portion further comprises a second depression adjacent the first depression; and	
	<i>See</i> [9.B].
[12.B] wherein the second depression at least partially defines the first outline.	
	Protatis disclosed a reinforcing groove 3 (second depression), which neighbored the first depression . The second reinforcing groove , like the first , at least partially defined the first outline because each reinforcing groove had an outer edge that formed the first outline . (<i>See</i> [1.G]; Delson, ¶120).



Claim 13

[13.A] The container of claim 1, wherein the center element of the base portion is a downward extending protrusion; and

See [11].

[13.B] wherein the base portion further comprises a second depression adjacent the first depression.

See [9.B].

Claim 14	
14. The container of claim 13, wherein the second depression at least partially defines the first outline.	
	<i>See [12.B].</i>
Claim 15	
[15.PRE] A container, comprising:	
	<i>See [1.PRE].</i>
[15.A] a container body, the container body defining a first opening to an interior of the container body; and	
	<i>See [1.A].</i>
[15.B] a lid connected to the container body and covering the first opening to the interior of the container body;	
	<i>See [1.B].</i>
[15.C] wherein the container body is made out of a resin;	
	<i>See [1.C].</i>
[15.D] wherein the lid is made out of a metal;	
	<i>See [1.D]</i>
[15.E] wherein the container body comprises a container side wall and a base portion connected to the container side wall;	

	<i>See [1.E].</i>
[15.F] wherein the base portion comprises a bottom and a first depression formed therein, the first depression extending upwardly from the bottom;	
	<i>See [1.F].</i>
[15.G] wherein the first depression at least partially defines a first outline;	
	<i>See [1.G].</i>
[15.H] wherein the base portion further comprises a center element centered with respect to the first outline at least partially defined by the first depression;	
	<i>See [1.H].</i>
[15.I] wherein each of the center element, and the first outline at least partially defined by the first depression, is centered with respect to the container side wall;	
	<i>See [1.I].</i>
[15.J] wherein each of the center element, and the first outline at least partially defined by the first depression, is centered with respect to the base portion;	
	<i>See [1.J].</i>
[15.K] wherein a cross-sectional diameter of the first opening to the interior of the container body is less than a cross-sectional diameter of a middle portion of the container side wall;	

	<i>See [1.K].</i>
[15.L] wherein the base portion defines a diameter that is less than the cross-sectional diameter of the middle portion of the container side wall;	
	<i>See [1.L].</i>
[15.M] wherein a lower portion of the container side wall extends downwardly from the middle portion of the container side wall to the base portion of the container body, the lower portion along its entirety being greater in diameter than the base portion, including the bottom, thereby rendering the container body stemless;	
	<i>See [1.M].</i>
[15.N] wherein the container body further comprises a circular neck extending from the container side wall so that the container side wall extends between the circular neck and the base portion;	
	<i>See [1.N].</i>
[15.O] wherein an upper edge of the container side wall is adjacent to the circular neck of the container body;	
	<i>See [1.O].</i>
[15.P] wherein the container body further comprises a lip at an end of the circular neck opposite the upper edge of the container side wall;	

	<i>See [1.P].</i>
[15.Q] wherein the circular neck is adjacent to the lip;	
	<i>See [1.Q].</i>
[15.R] wherein a first portion of the lid is above the lip of the container body;	
	<i>See [1.R].</i>
[15.S] wherein the first portion of the lid defines a first circular shape;	
	<i>See [1.S].</i>
[15.T] wherein the first portion of the lid further defines a second circular shape around which the first circular shape circumferentially extends;	
	<i>See [1.T].</i>
[15.U] wherein the second circular shape defined by the first portion of the lid is concentric with the first circular shape defined by the first portion of the lid;	
	<i>See [1.U].</i>
[15.V] wherein the first circular shape defined by the first portion of the lid is radially positioned between the container side wall and the second circular shape defined by the first portion of the lid;	
	<i>See [1.V].</i>

[15.W] wherein a second portion of the lid extends horizontally and is positioned so that the second circular shape is radially positioned between the second portion of the lid and the first circular shape;	
	<i>See [1.W].</i>
[15.X] wherein the second portion of the lid defines a total area across which the second portion of the lid extends horizontally;	
	<i>See [1.X].</i>
[15.Y] wherein the second portion of the lid comprises a weakened or scored area;	
	<i>See [1.Y].</i>
[15.Z] wherein the weakened or scored area is less than the total area across which the second portion of the lid extends horizontally;	
	<i>See [1.Z].</i>
[15.AA] wherein the lid further comprises an arm connected to the second portion of the lid and radially positioned within the second circular shape;	
	<i>See [1.AA].</i>
[15.AB] wherein the arm comprises opposing first and second end portions;	
	<i>See [1.AB].</i>

[15.AC] wherein the arm is pivotable from a first position, in which the arm extends horizontally and the weakened or scored area is not deformed, to a second position, in which the arm does not extend horizontally and the weakened or scored area is deformed to provide a second opening to the interior of the container body;

See [1.AC].

[15.AD] wherein an upper portion of the container side wall extends upwardly from the middle portion of the container side wall to the upper edge of the container side wall, the upper portion along its entirety being greater in diameter than the first opening to the interior of the container body;

See [1.AD].

[15.AE] wherein the container body contains a liquid therewithin;

See [1.AE].

[15.AF] wherein the lid cooperates with the lip to provide a seal so that the liquid contained within the container body is sealed against leaking out from between the container body and the lid;

See [1.AF].

[15.AG] wherein, when the arm of the lid is in the first position and the weakened or scored area is not deformed: the first end portion of the arm is

not positioned above the weakened or scored area of the second portion of the lid; and at least a portion of the second end portion of the arm is positioned above the weakened or scored area of the second portion of the lid;

See [1.AG].

[15.AH] wherein the container side wall extends between the circular neck and the base portion so that:

the upper portion of the container side wall defines a first angle: between the upper portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion;

the middle portion of the container side wall defines a second angle: between the middle portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion;

the lower portion of the container side wall defines a third angle: between the lower portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion;

the first angle is an acute angle;

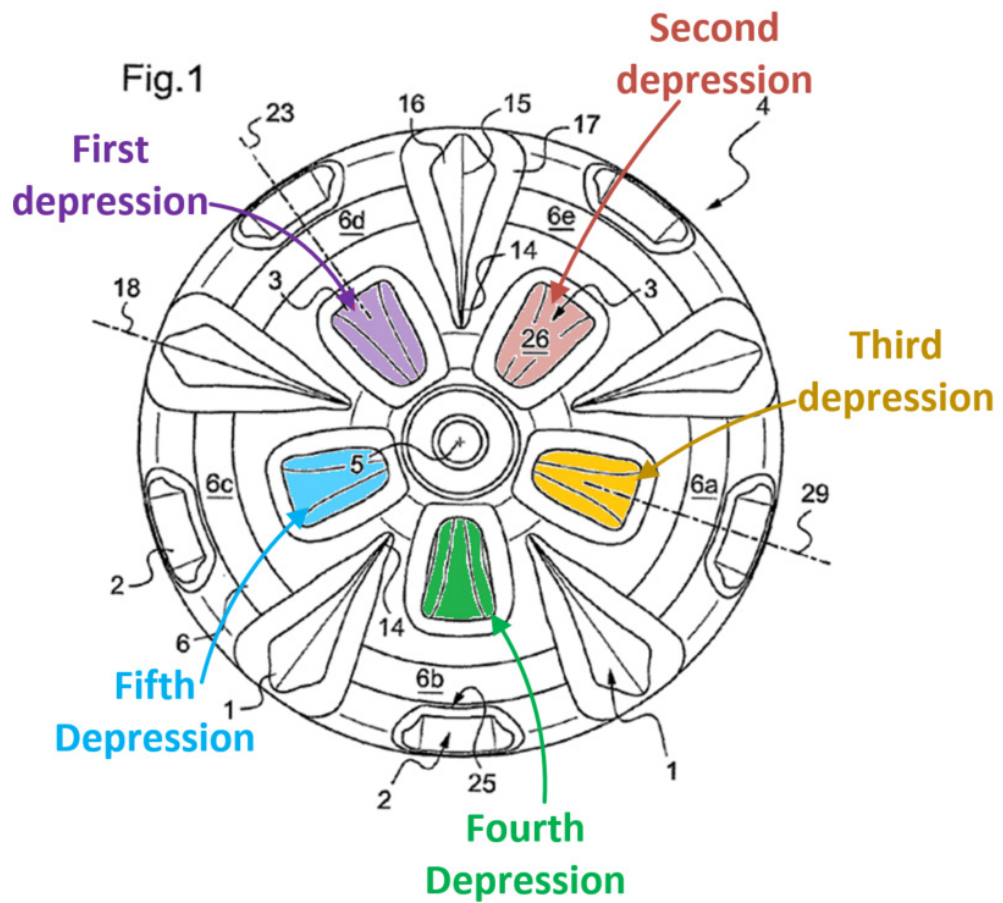
the third angle is an obtuse angle;

the third angle is greater than the second angle;

	<i>See</i> [1.AH].
[15.AI] wherein the interior of the container body extends continuously across the cross-sectional diameter of the middle portion at a height midway between the circular neck and the base portion so as to be interrupted, if at all, only by the liquid contained within the container body;	
	<i>See</i> [1.AI].
[15.AJ] wherein the metal is aluminum;	
	<i>See</i> [4].
[15.AK] wherein the resin is a polyethylene terephthalate (PET) resin;	
	<i>See</i> [2].
[15.AL] wherein the first depression is visible through at least a portion of the container body;	
	<i>See</i> [9.A].
[15.AM] wherein the center element of the base portion is a downward extending protrusion;	
	<i>See</i> [11].
[15.AN] wherein the base portion further comprises a second depression adjacent the first depression; and	
	<i>See</i> [9.B].

[15.AO] wherein the second depression is visible through the at least a portion of the container body.	
	<i>See [9.C].</i>
Claim 16	
16. The container of claim 15, wherein the at least a portion of the container body is transparent.	
	<i>See [10.A].</i>
Claim 17	
17. The container of claim 15, wherein the second depression at least partially defines the first outline.	
	<i>See [14].</i>
Claim 18	
[18.A] The container of claim 17, wherein the base portion further comprises third, fourth, fifth, and sixth depressions; and	
	Protais’ container bottom included five reinforcing grooves 3 (plurality of depressions). (Protais, 4:41-44, 4:55, 5:1-2, 5:62-6:3, Figures 1, 3). Protais explained “[t]he number of...grooves can be greater than five” (<i>id.</i>, 6:56-58); thus, a POSITA would have found

it obvious to add a sixth groove to the container bottom. (Delson, ¶168).



Protais, Fig. 1 (Annotated)

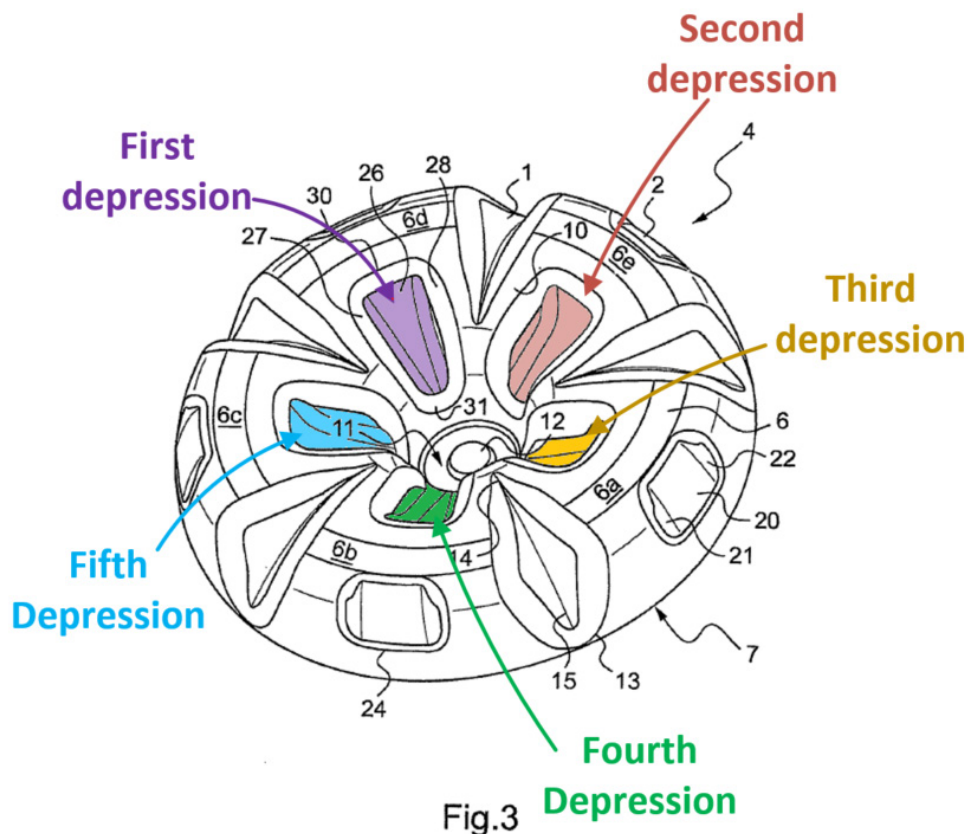
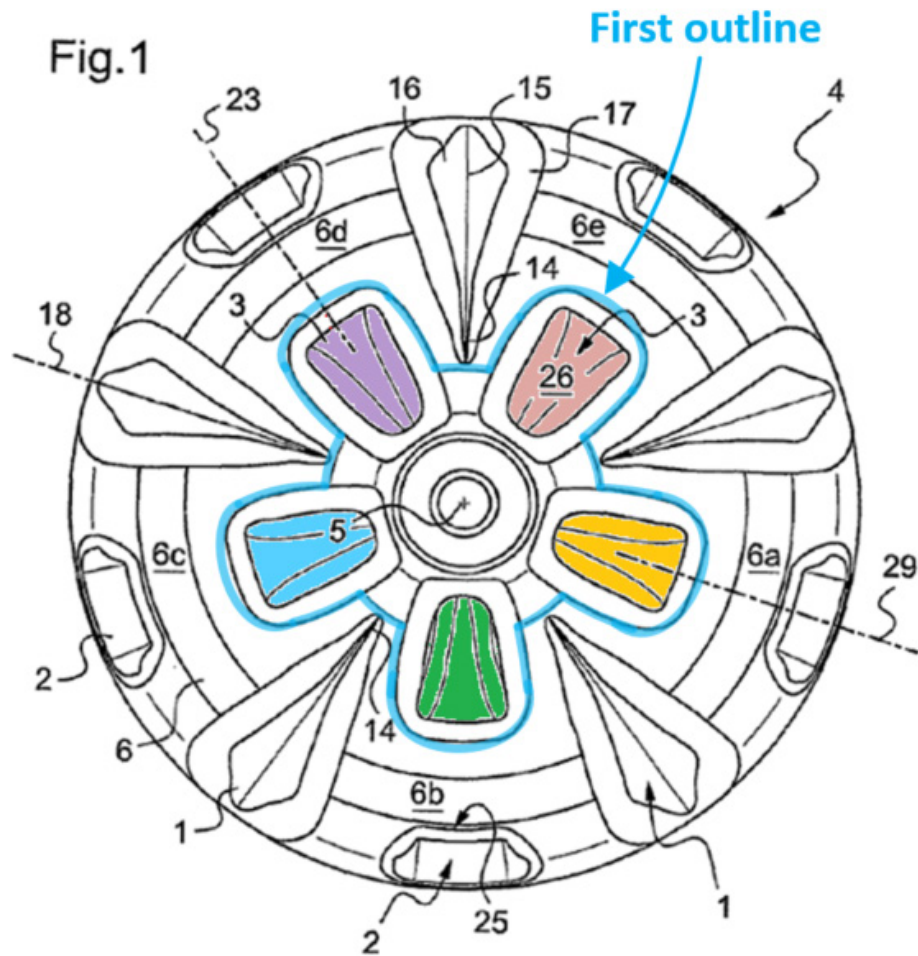


Fig.3

Protais, Fig. 3 (Annotated)

[18.B] wherein the third, fourth, fifth, and sixth depressions at least partially define the first outline.

The outer edge of each of the first through fifth reinforcing grooves at least partially defined the first outline. See [1.G]. It would have been obvious for an outer edge of a sixth reinforcing groove to partially define the first outline to maintain rotational symmetry of the base. (Protais, 4:9-12, 6:56-58; Delson, ¶169).



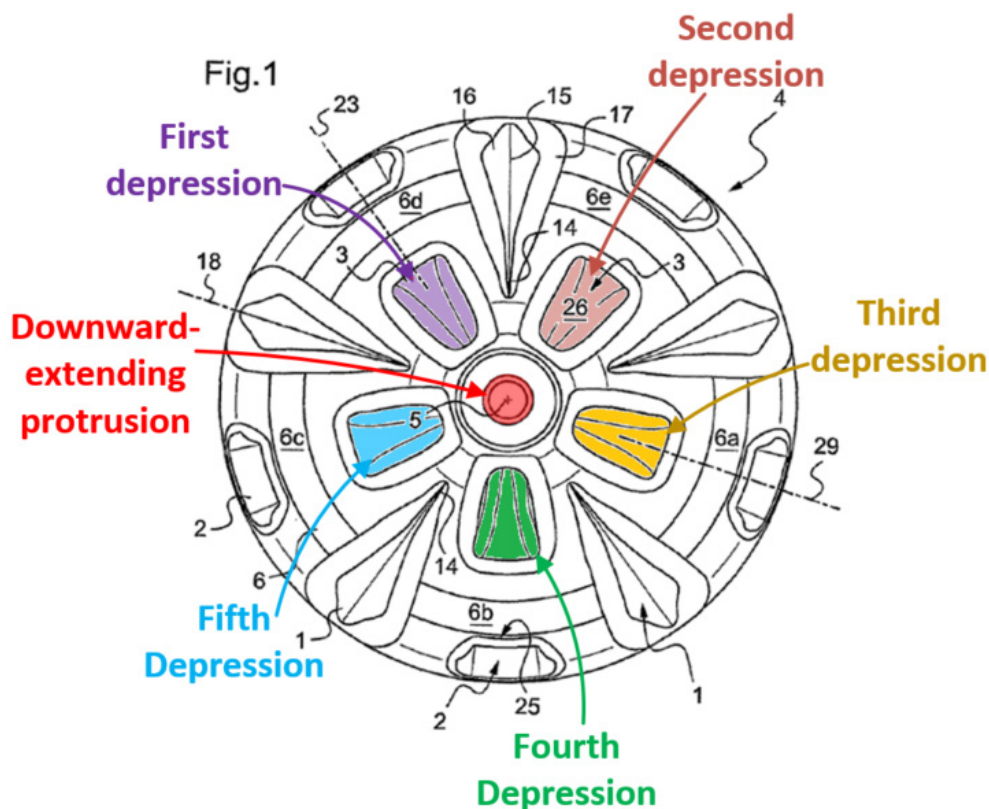
Protais, Fig. 1 (Annotated)

Claim 19

19. The container of claim 18, wherein the downward extending protrusion is centered with respect to the first, second, third, fourth, fifth, and sixth depressions.

Protais disclosed a **downward extending protrusion** (axial disk), which “project[ed] downward...out of the container provided

with the bottom 4.” (See [11]; Protais, 5:11-13, Figure 3). The **axial disk** was centered with respect to the reinforcing grooves 3 (first through sixth depressions). (Delson, ¶170).

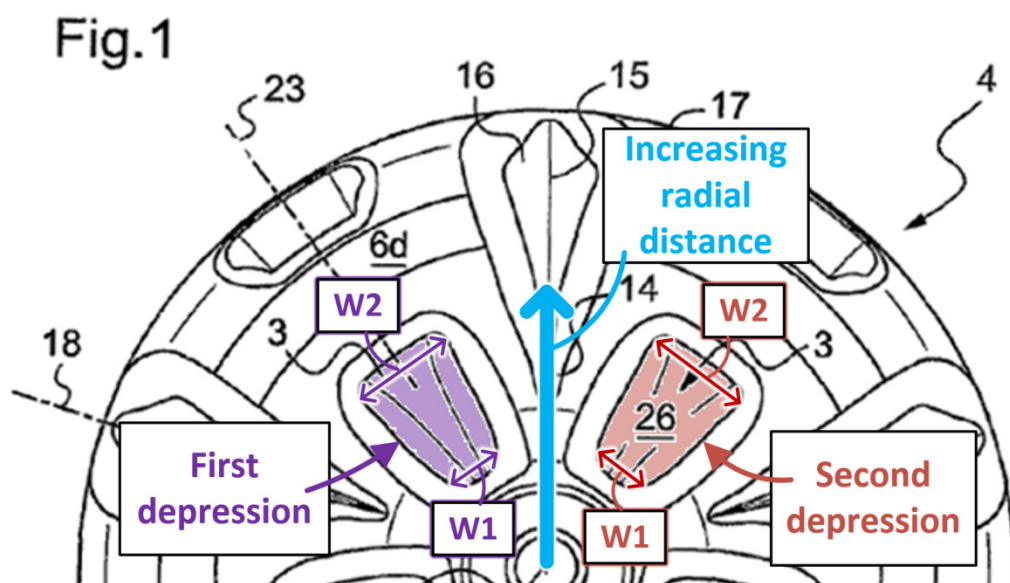


Protais, Fig. 1 (Annotated)

Claim 20

20. The container of claim 17, wherein each of the first and second depressions increases in width as the radial distance from a center of the bottom of the base portion increases.

Each of Protais' reinforcing grooves 3 (first and second depressions) have a narrower width closest to the container bottom's center (W1 below) and a wider width farthest from the center (W2 below). The grooves increased in width as the radial distance from the center increased. (Delson, ¶171).

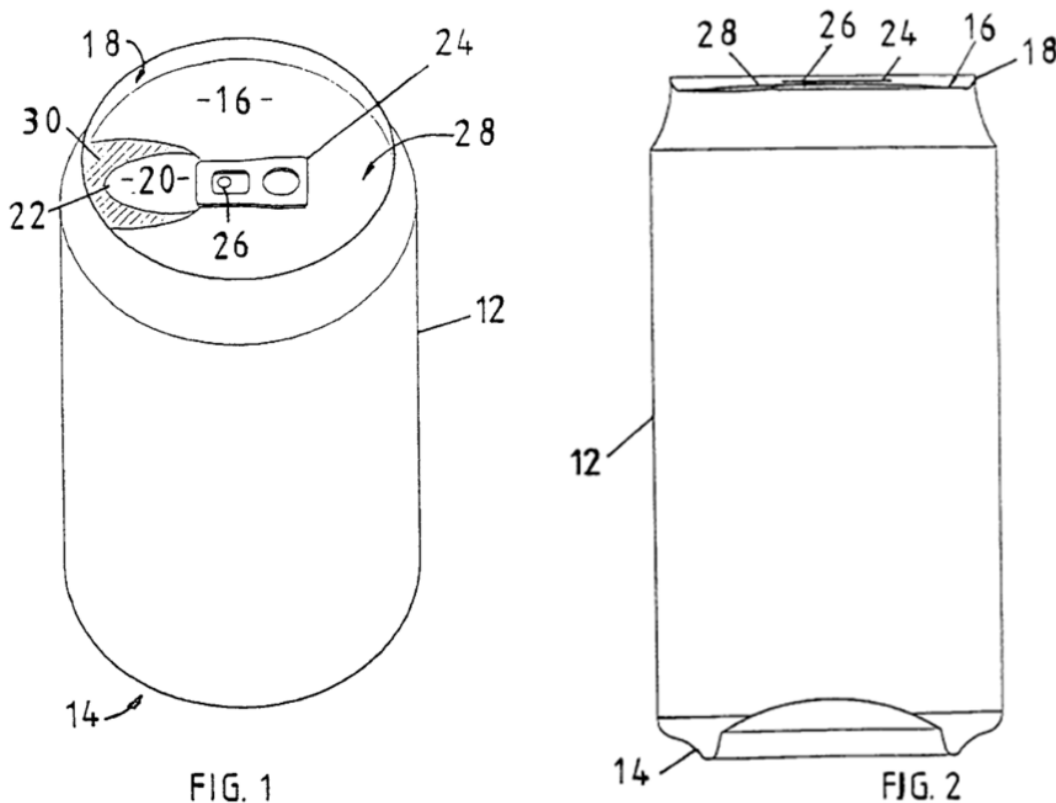


Protais, Fig. 1 (Cropped and Annotated)

B. Ground 2: Gardiner, Pedmo, and Brown render claims 1-20 obvious

Gardiner: Gardiner disclosed a beverage container that included a “tubular body member” with a top and bottom. (Gardiner, Title, Abstract, 4:27, 4:32-33). A cap member (lid) was “sealingly fixed” to the top of the container body. (*Id.*, 4:33-

36). The container could be made of any of aluminum alloy, steel, or plastic. (*Id.*, 4:28-31; Delson, ¶¶172-73).



Gardiner, Figs. 1 and 2

5 **Pedmo:** Pedmo described an “improved base” for a thermoplastic container. (Pedmo, Abstract). The base included an “inwardly extending portion” with multiple radially extending struts, (*id.*, Abstract, 1:40-47, 1:51-54, 2:21-23, 2:46-58, Figures 2, 4-5), and a central hub “having a downwardly extending button-like portion” at a center of the base, where the struts extended toward an annular rim.

10 (*Id.*, 2:39-45). Pedmo’s base “provide[d] considerable increased strength in a critical

location,” where it “[wa]s less susceptible to roll-out or bulging...and ha[d] improved impact properties.” (*Id.*, 1:58-60, 2:61-66; Delson, ¶174).

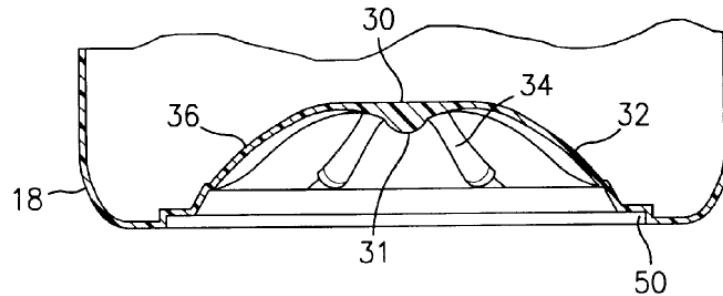


FIG. 4

Pedmo, Fig. 4

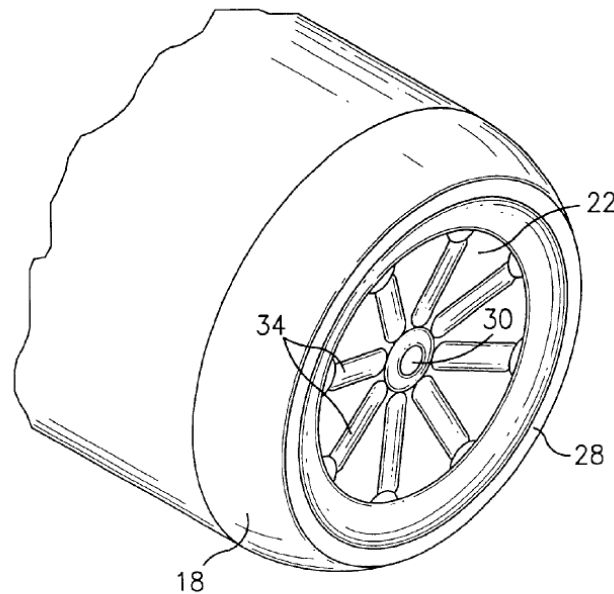
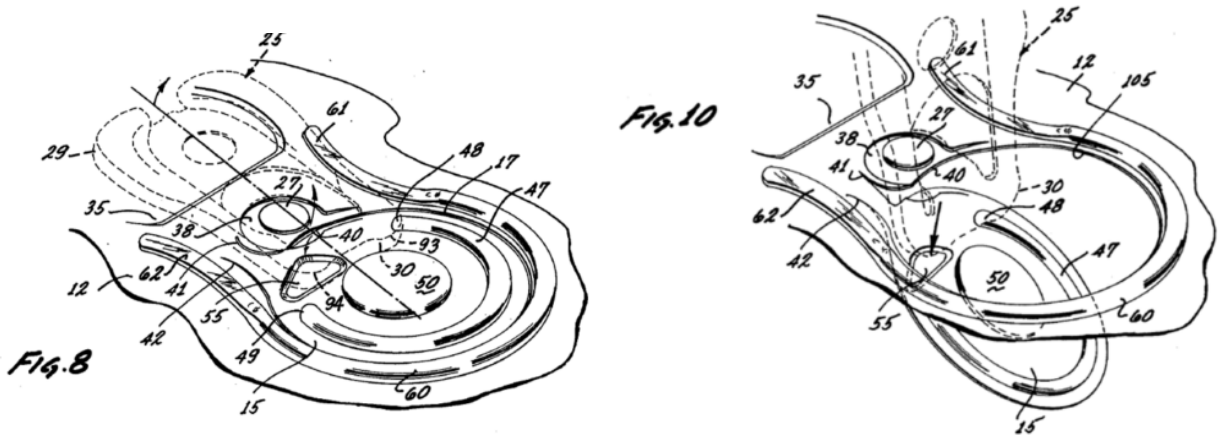


FIG. 5

Pedmo, Fig. 5

Brown: Brown described an “improved easy-opening” lid. (Brown, Abstract). Brown's lid had a rivet-attached tab and a scoreline circumscribing a pour

panel. (*Id.*, 5:3-9, 7:35-40). The tab operated as a lever to initiate rupture of the scoreline and force the pour panel downward into a container. (*Id.*, 5:14-21, 7:36-40, 10:15-16, 10:37-53, 10:61-68, Figures 8, 10; Delson, ¶175).



5

Brown, Figs. 8 and 10

Combination and Expectation of Success:

The combination of Gardiner, Pedmo and Brown rendered the challenged claims obvious. In the combination, a POSITA would have augmented the teachings of Gardiner's container body and lid with the teachings of Pedmo's improved container base to include Pedmo's hub and struts on the bottom of Gardiner's container. While Gardiner described a lid having scored portion and a tab for puncturing it, Gardiner did not explicitly show the tab's position when the puncture occurred. A POSITA would have been guided by the teachings of Brown's tab

10

position both before and after it punctured a scored area of the lid, and would have found the claimed elements obvious.

A POSITA would have had a reasonable expectation of success in making the combination because it involved simple modifications to the base of Pedmo's plastic container, and included depiction of the tab's position after the container lid is punctured—known decades prior to the '441 patent's priority date. (Delson, ¶¶176-77).

Motivation to Combine: A POSITA would have found it obvious to make a container that had Gardiner's body and lid, features of Pedmo's bottom, and Brown's lid opening mechanism. A POSITA would have been motivated to make these combinations for several reasons.

First, with respect to Gardiner-Pedmo, the combination would have been a simple combination of known elements by known methods that yields predictable results. Gardiner's "tubular" container can be made from plastic. (Gardiner, 4:31-32). Although Gardiner described an "end member" of the container and appeared to depict a curved, upwardly extending portion within this end member (*see id.*, 4:33-34, Fig. 2), Gardiner did not provide details for the end member's structure. Pedmo supplemented Gardiner's disclosure, describing a base for cylindrical plastic containers, like Gardiner's. (Pedmo, 1:4-5; 1:37-41; 2:15-17). Pedmo's base included a "supporting annular rim for supporting the bottle on a surface" (*id.*, 1:42-

43), and a “continuous curved portion 32 extending upwardly from the annular rim” (*id.*, 2:43-44), similar in shape to Gardiner’s Figure 2. (Delson, ¶¶178-79).

Additionally, a POSITA would have been motivated to use the features of Pedmo’s base to improve Gardiner’s container. Pedmo’s base included struts that
5 were “uniformly spaced around the central portion of the base, and extend[ed] outwardly from the plane of the base.” (Pedmo, 2:46-43). A POSITA would have been motivated to use the features of Pedmo’s base, including its annular rim, upwardly extending curved portion, and these struts, on Gardiner’s container body, because Pedmo’s base would have imparted increased strength and improved impact
10 properties to the combined container. (*Id.*, 32:59-66; Delson, ¶180).

The Gardiner-Pedmo-Brown combination would have also been a simple combination of known elements. Gardiner’s lid included a “scored portion” with a “score line” extending around it. (Gardiner, 5:2, 5:13-15, 5:27-28, Figure 1). The connected tab was “pivotally movable for separating the portion 20 and thereby
15 presenting a pour aperture.” (*Id.*, 4:45-53). However, Gardiner did not explicitly describe how the tab separated the scored portion. Brown’s analogous tab was pivotable to apply force to a scored area, thereby forming an opening. (Brown, 5:14-21). A POSITA would have found it obvious to look to the teachings of Brown to understand how to operate Gardiner’s tab to open a pour aperture in Gardiner’s lid,
20 since these references are analogous and readily combinable to obtain predictable

results. (Delson, ¶181). A POSITA would have been motivated to use Brown’s easy-open retained-tab style lid, which created less litter, to open the Gardiner-Pedmo container. (Brown, 1:6-10, 1:32-37; Delson, ¶¶178-81).

The chart below illustrates how each and every feature of claims 1-20 of the ’441 patent is rendered obvious by the Gardiner-Pedmo-Brown combination.

Claim 1	
[1.Pre]	
	Gardiner disclosed a “beverage container 10.” (Gardiner, Title, 4:27-28; Delson, ¶183).

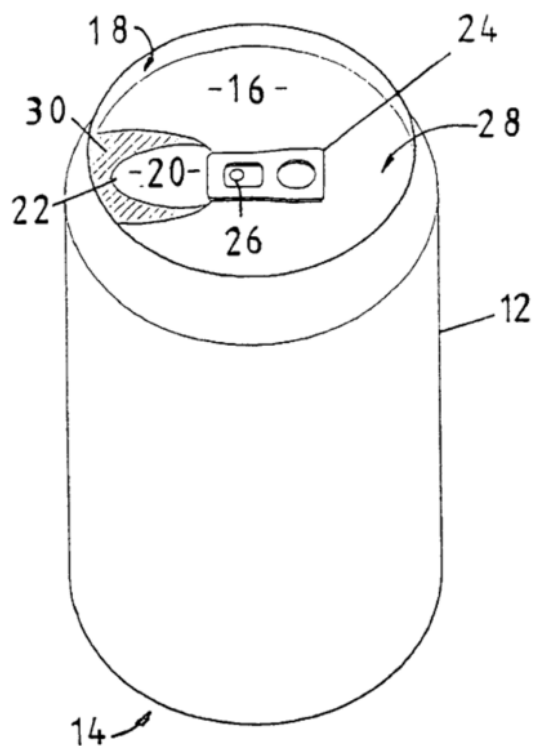
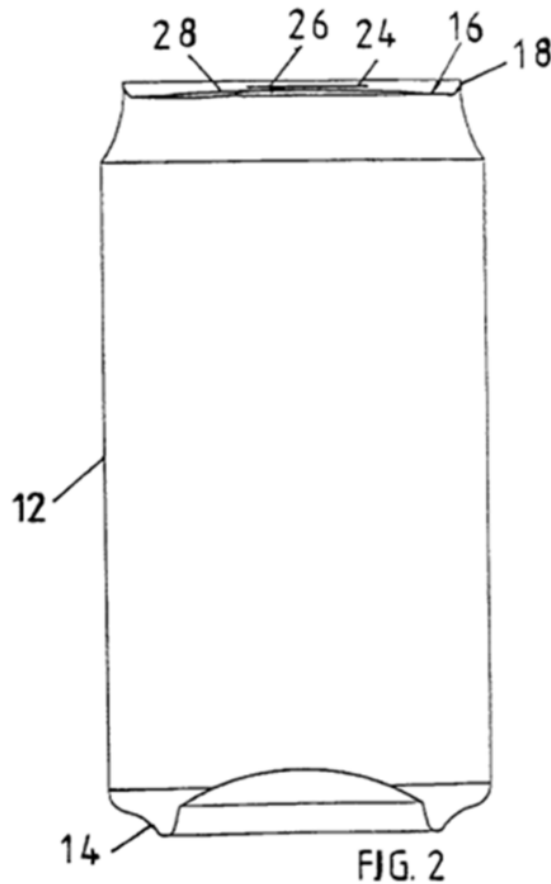


FIG. 1

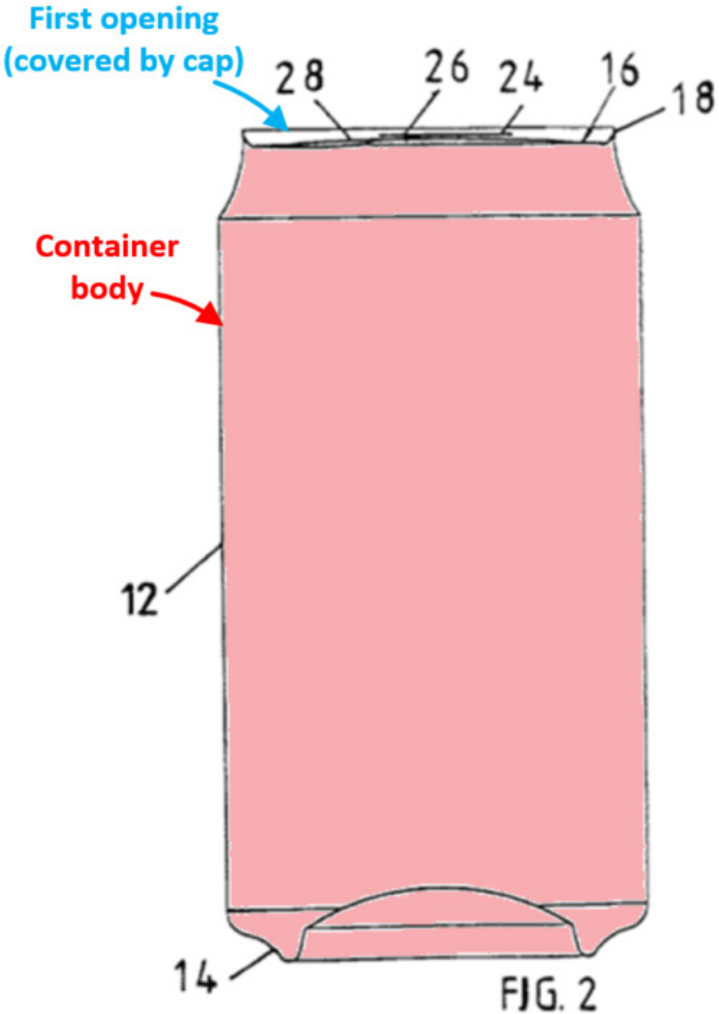
Gardiner, Fig. 1

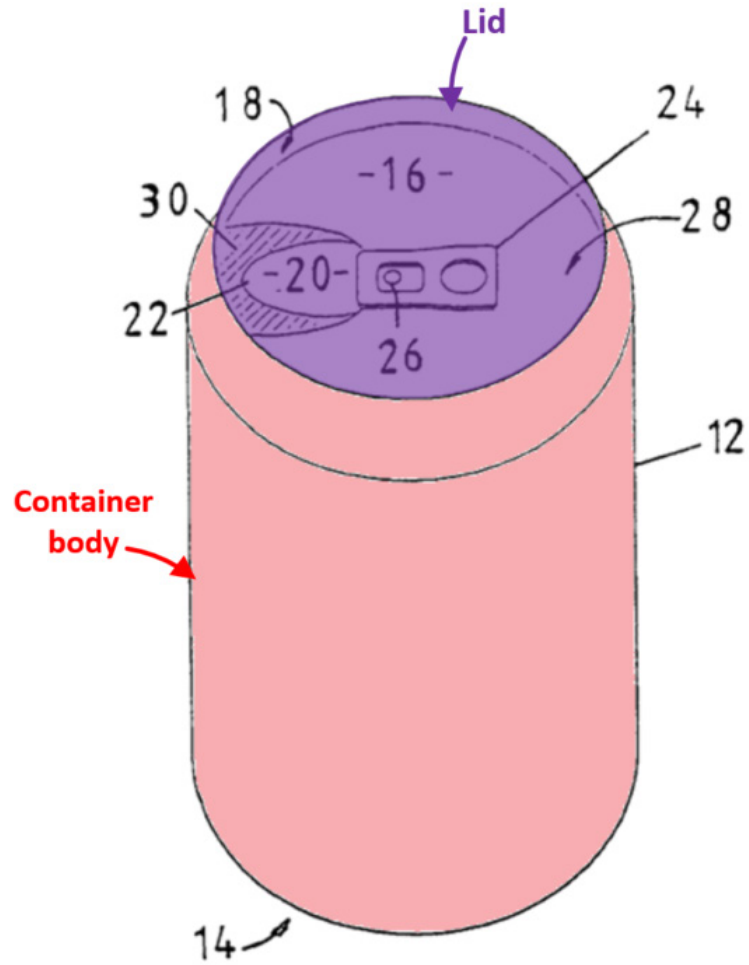


Gardiner, Fig. 2

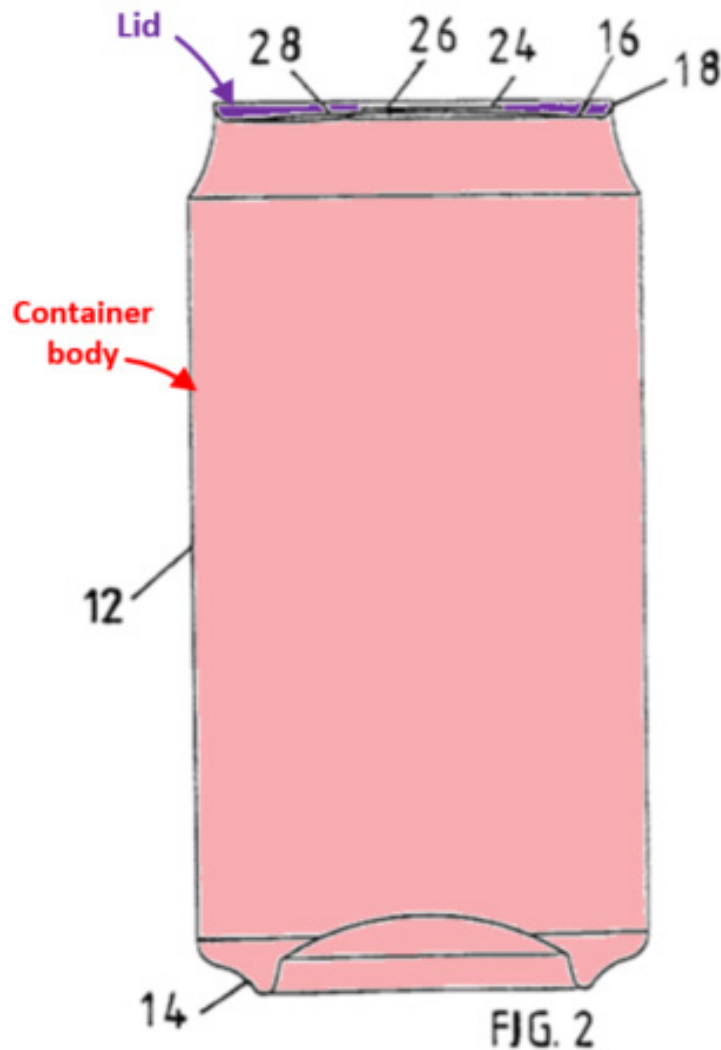
[1.A]

Gardiner disclosed a “hollow body member with opposed ends” (**container body**) with an interior. (Gardiner, 1:61-62, 4:32-33, 4:45-46). One end had a “bottom member.” (*Id.*, 1:63, 4:33-34, 4:45). The other end had a **first opening** to the interior covered by a cap. (*Id.*, 1:63-64, 4:34-35, 4:46-48; Delson, ¶184).

	 FIG. 2 Gardiner, Fig. 2 (Annotated)
[1.B]	
	Gardiner disclosed a “cap member” (lid) that “cover[ed] an opening” at the container end opposite the bottom. (Gardiner, 1:63-65, 4:34-35, 4:46-48). Gardiner’s lid was “sealingly fixed” (connected) to the container body. (<i>Id.</i>; Delson, ¶185).



Gardiner, Fig. 1 (Annotated)



Gardiner, Fig. 2 (Annotated)

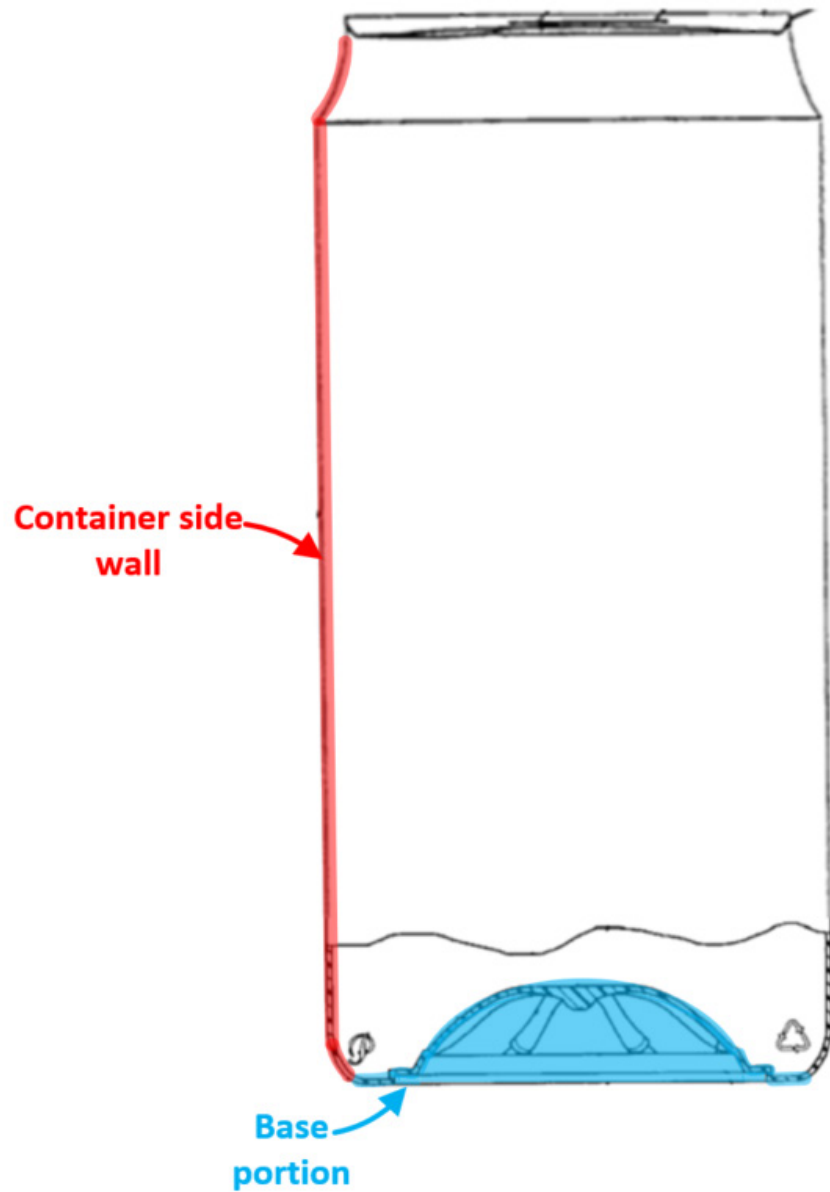
[1.C]

Gardiner’s container “can be made of any suitable material” *including plastic*. (Gardiner, 2:22-23, 4:30-31). It would have been obvious to a POSITA that plastics can be made out of a resin. (Delson, ¶¶186, 51; Ground 1, [1.C]). Since “[d]ifferent

	components of the container can be made of different ones of the materials,” it would have been obvious to select a plastic for manufacturing the container body. (Gardiner, 2:24-25; Delson, ¶186).
[1.D]	
	Gardiner’s cap member (lid) was made from aluminum, a metal. (Gardiner, 7:30, 2:22-23; Delson, ¶187).
[1.E]	
	Gardiner’s beverage container had a side wall that formed the “hollow body member” (container side wall). (Gardiner, 1:61-63, 4:32-34). The hollow body member had a “bottom member” connected to the body member. (<i>Id.</i>). Gardiner did not provide details about the features of its bottom member. However, Pedmo supplemented Gardiner’s disclosure, describing an “improved base” for a hollow plastic bottle. (Pedmo, Abstract). Pedmo’s base had “an inwardly extending portion...[and] a continuous outer supporting annular rim.” (<i>Id.</i>, 1:40-42, Figures 1, 5). The base included a “plurality of struts extending radially from the central portion of the base towards said annular rim” in a space between a central portion of the base

and the outer supporting rim. (*Id.*, 1:44-47). Pedmo’s container base was “less susceptible to roll-out or bulging...and ha[d] improved impact properties.” (*Id.*, 1:58-60).

A POSITA would have been motivated to use the design of Pedmo’s base on Gardiner’s container to achieve the above-described benefits. A mockup of the combination, based on Gardiner Figure 2 and Pedmo Figure 1 is below. The combined container includes a **container side wall** and a **base portion**. (Delson, ¶¶188-90).

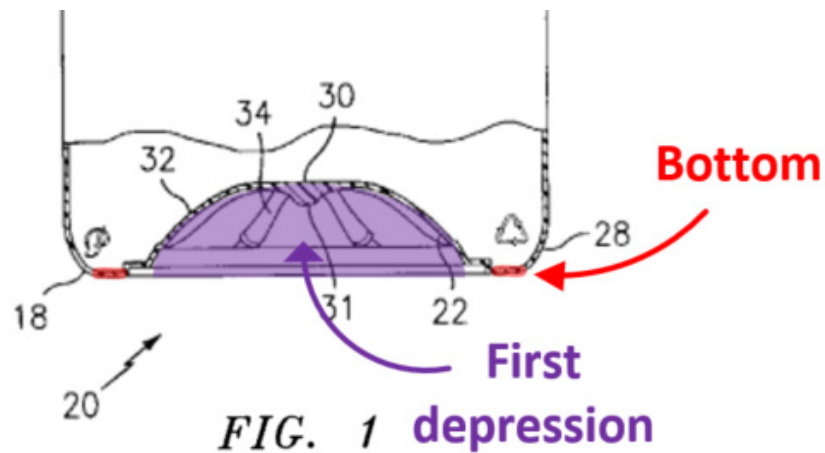


Mockup of Combined Gardiner/Pedmo Container

[1.F]

Pedmo's base had "continuous, outer supporting annular rim 28 for supporting the bottle 10 on a surface" (**bottom**). (Pedmo, 2:39-41, Figures 1, 5).

Pedmo disclosed a **first depression** in two ways. First, Pedmo described an “inwardly extending portion 20” that extended into the container (*id.*, 2:21-22) and included a “continuous curved portion 32 extending upwardly from the annular rim 28” (*id.*, 2:43-45). (Delson, ¶¶191-92).



Pedmo, Fig. 1 (Cropped and Annotated)

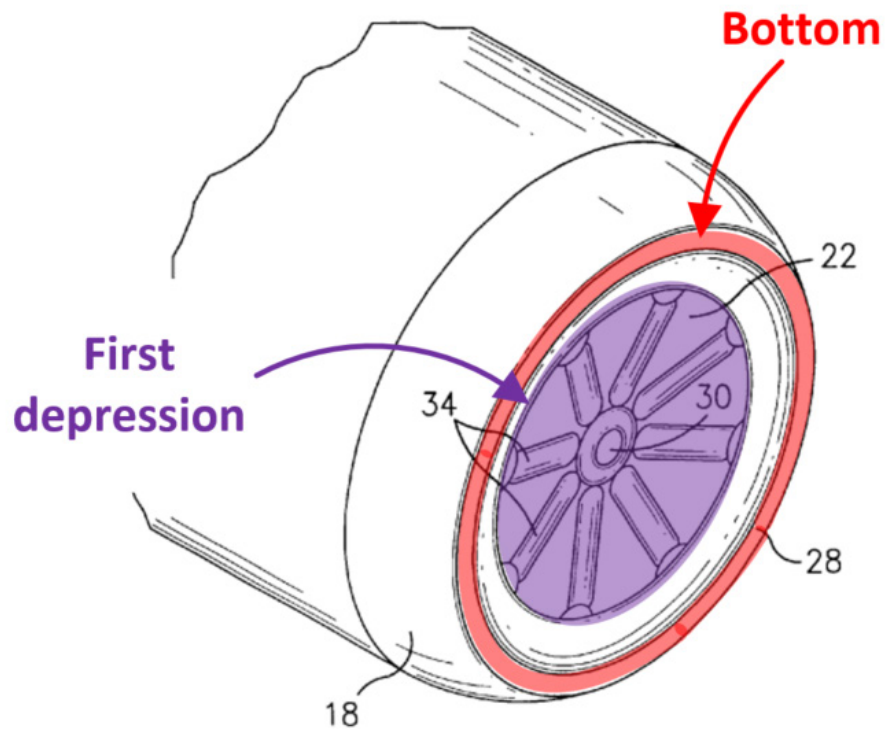
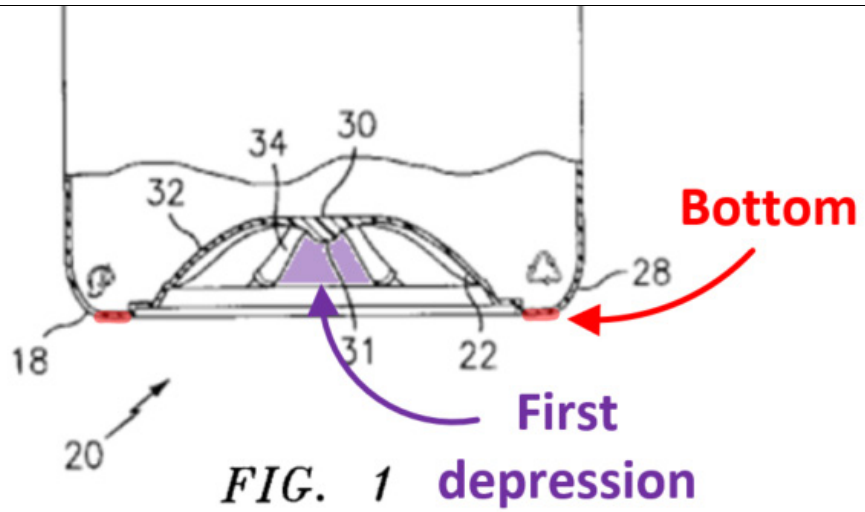


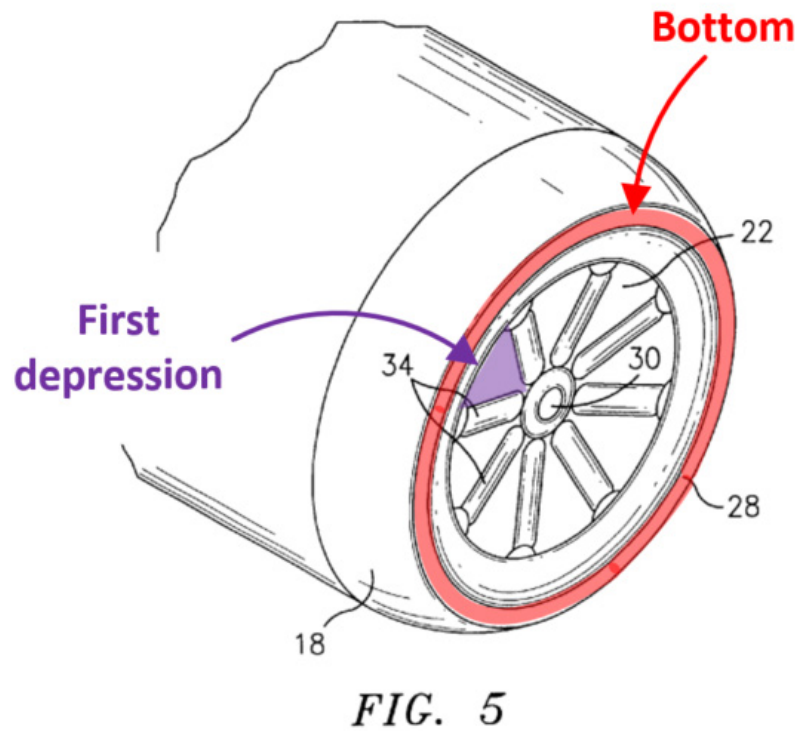
FIG. 5

Pedmo, Fig 5 (Annotated)

Second, Pedmo disclosed a space between two of a “plurality of struts 23 [that] extend radially from the central portion of the base or hub 30 towards the annular rim 28.” (Pedmo, 2:46-47). Since the struts “extend outwardly from the plane of the base” (*see id.*, 2:52-53), the sections between each strut were inset from the outermost surface of the strut, and thus a “**depression.**” (Delson, ¶193).



Pedmo, Fig. 1 (Cropped and Annotated)



Pedmo, Fig. 5 (Annotated)

[1.G]

Pedmo disclosed a circular edge—forming a **first outline** (see EX-1007, 4; Ground 1, [1.G])—that traced a circumference around the “continuous curved portion” that extended upwardly from the bottom rim of the base. (Pedmo, 2:43-45, Figures 2, 5; Delson, ¶194). A portion of the continuous curved portion formed a **first depression**. See [1.F]. Under either **first depression** of Pedmo, the circular edge constituted the **first outline** because some of the edges of the **first depression** partially defined the **first outline**, shown below.

Figures 2 and 5, below, illustrate the **first outline** and **first depression** according to the first interpretation of the **depression**, where the circumference of the **first depression** forms the **first outline**:

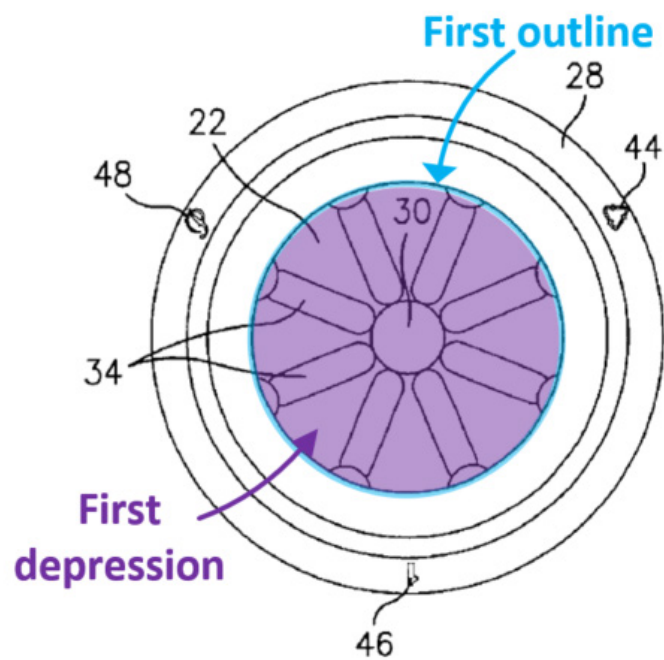
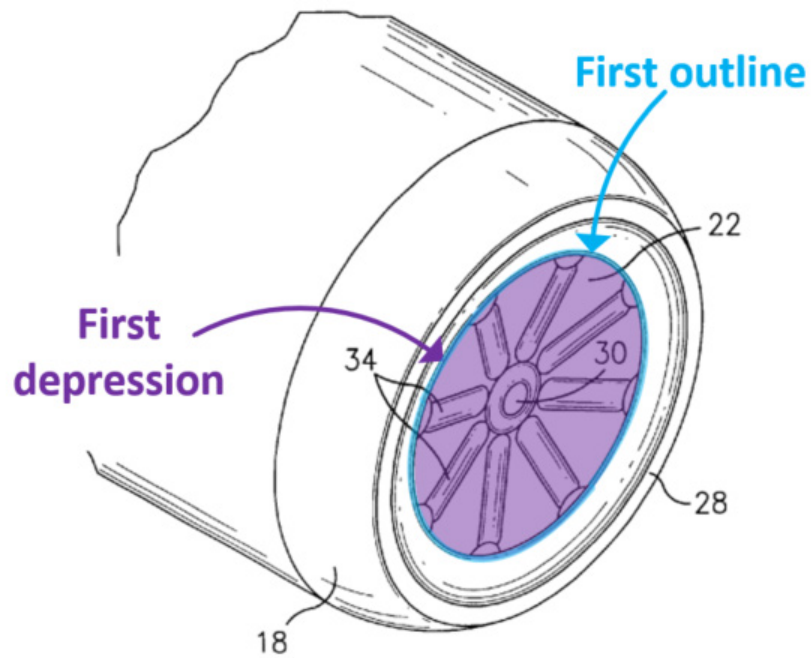


FIG. 2

Pedmo, Fig. 2 (Annotated)



Pedmo, Fig. 5 (Annotated)

(Delson, ¶195).

The following illustrates the **first outline** and **first depression** under the second interpretation:

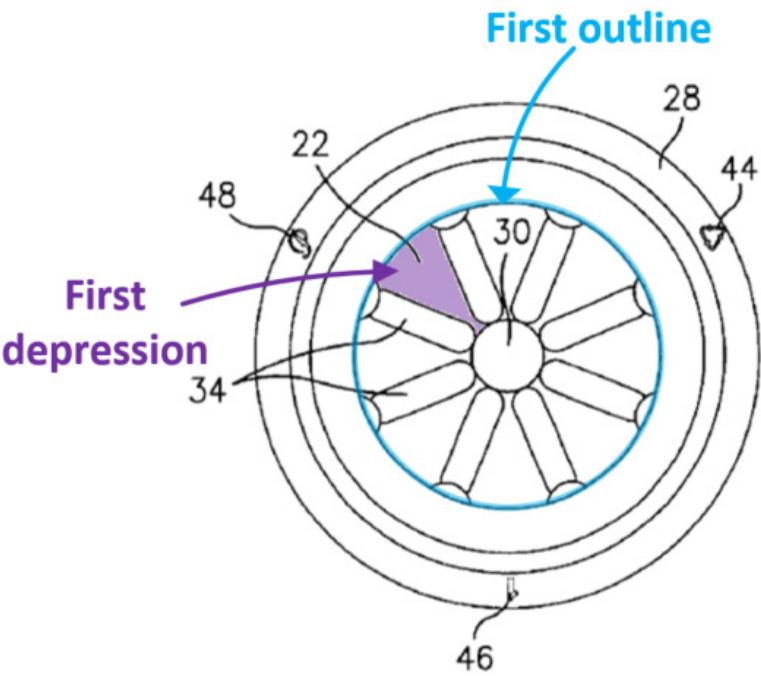


FIG. 2

Pedmo, Fig. 2 (Annotated)

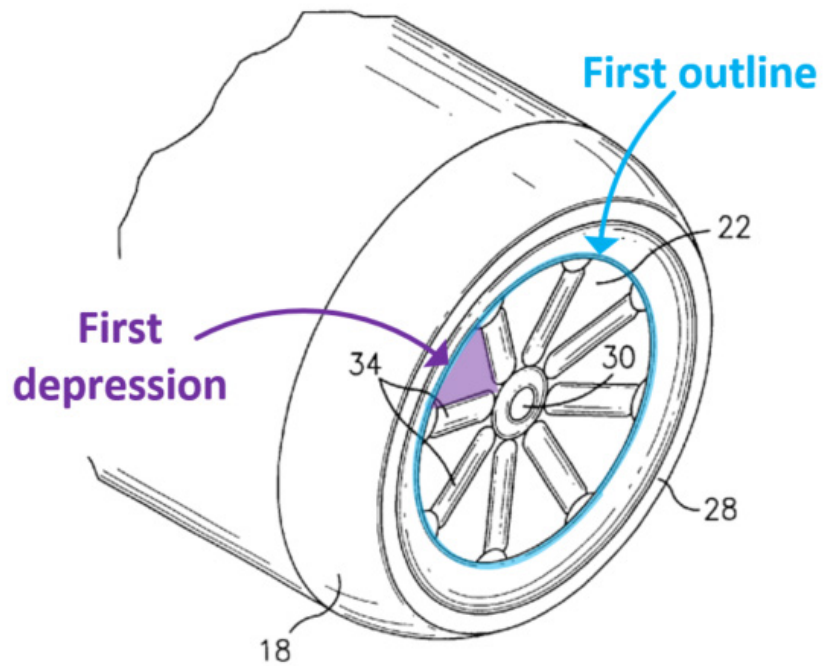


FIG. 5

Pedmo, Fig. 5 (Annotated)

(*Id.*, ¶196).

[1.H]

Pedmo's base included "a central portion or hub" (**center element**). (Pedmo, 2:41-42, 2:47, 3:45). The **hub** was centered with respect to the **first outline**. (Delson, ¶197).

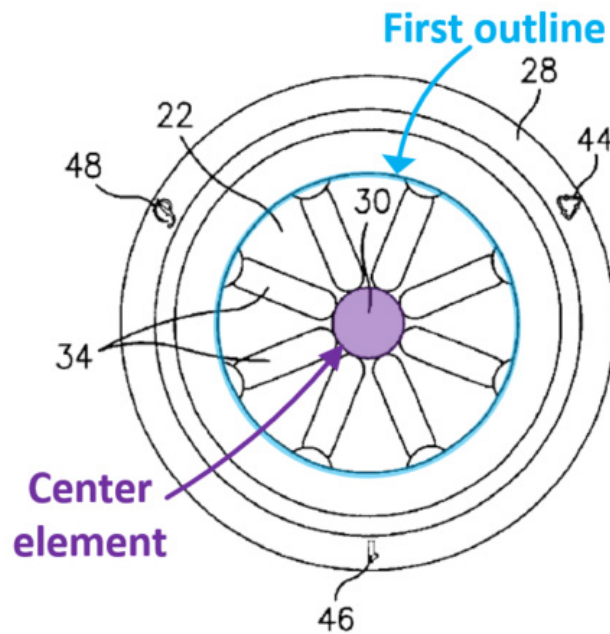


FIG. 2

Pedmo, Fig. 2 (Annotated)

[1.I]

Pedmo's hub (**center element**) was centered with respect to the **first outline**. See [1.H]. As further shown in Figure 2, annotated below, both of these elements were centered with respect to the **container side wall**. In the Gardiner-Pedmo combination, a POSITA would have understood and found it obvious that Pedmo's **center hub** and **first outline** would similarly be centered with respect to the **container side wall**; this would have been a simple

substitution of the base, and would not have required changes to Gardiner's sidewalls. (Delson, ¶198).

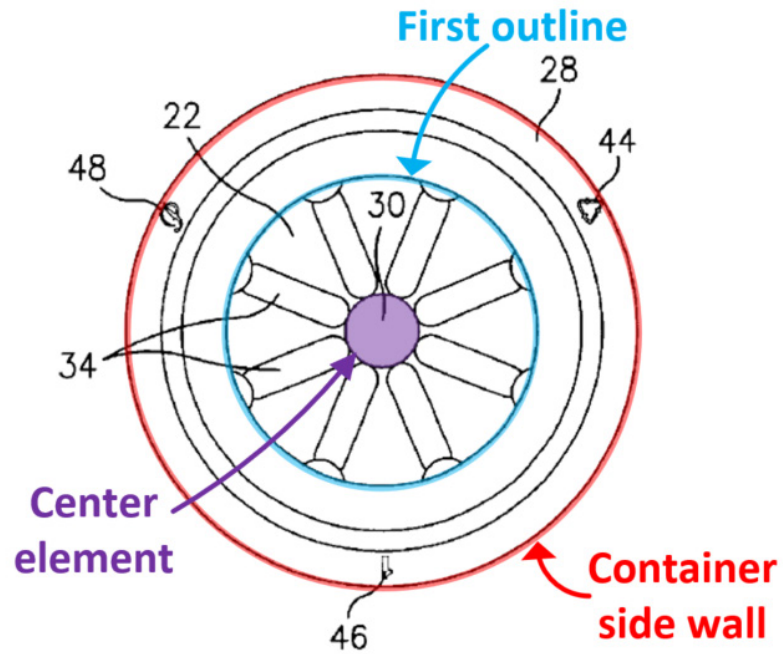
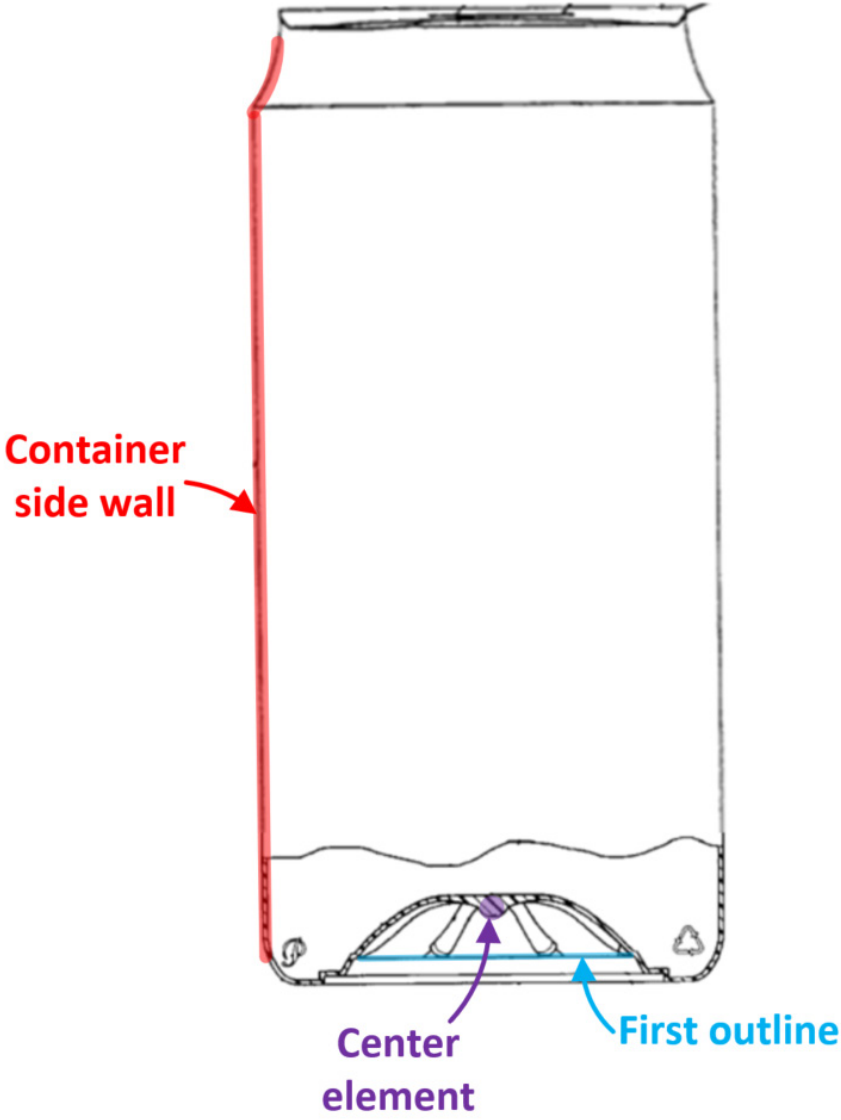
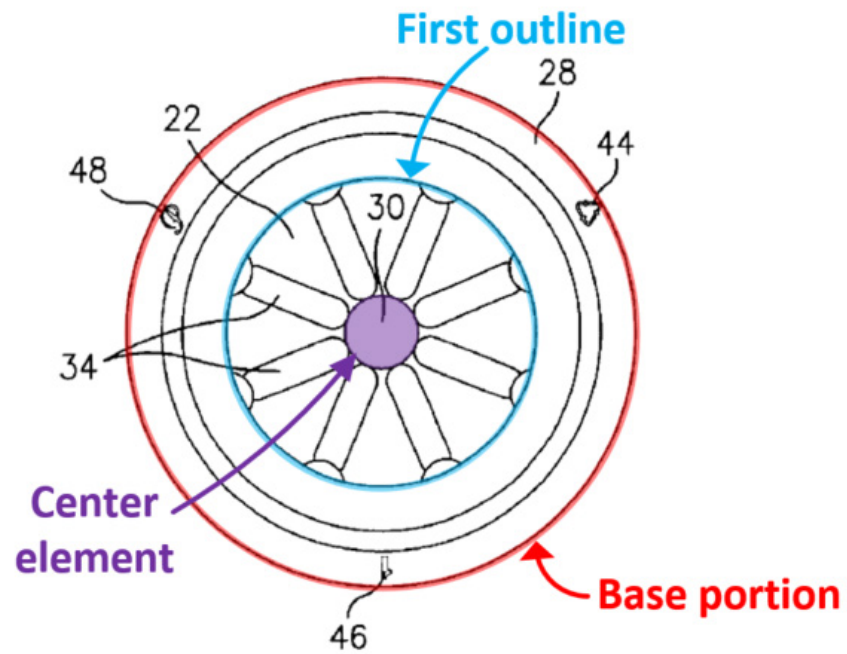


FIG. 2

Pedmo, Fig. 2 (Annotated)

	 Container side wall Center element First outline Mockup of Combined Gardiner/Pedmo Container
[1.J]	
	Pedmo's Figure 2 shows the hub (center element) and the first outline centered with respect to the base portion . (Delson, ¶199).

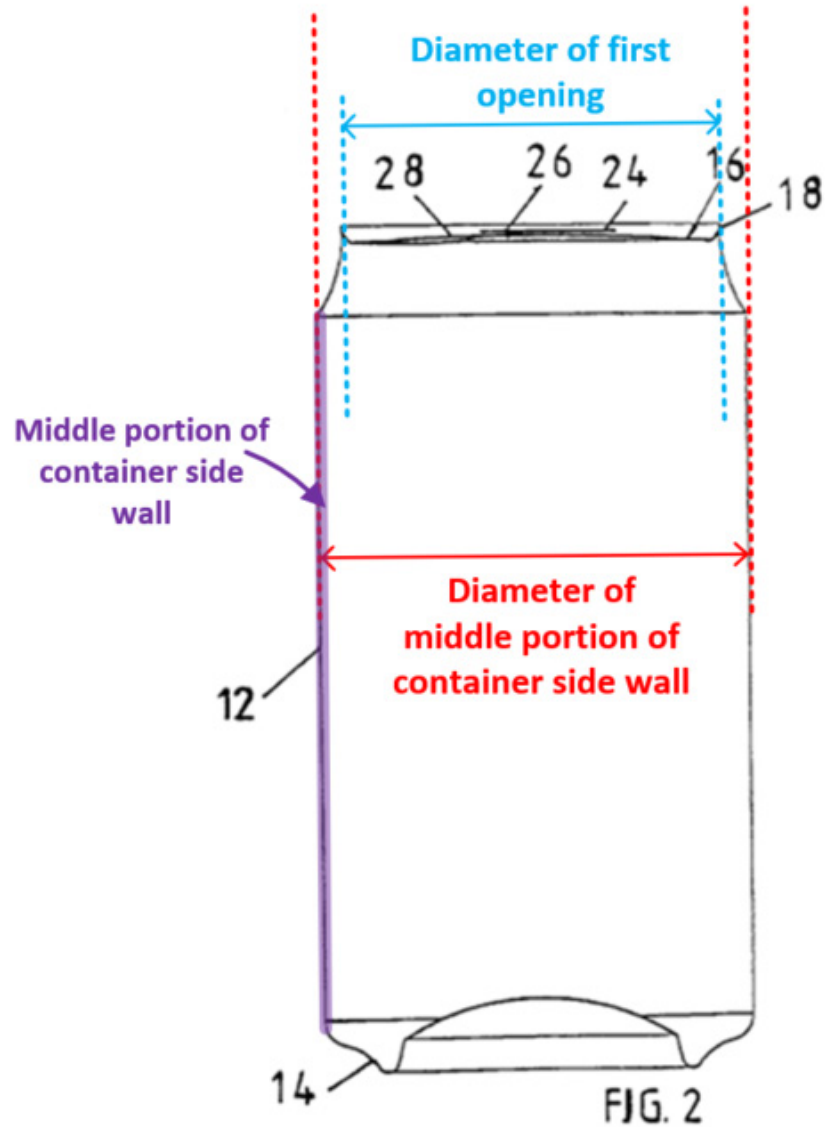


Pedmo, Fig. 2 (Annotated)

[1.K]

Gardiner's container had a first opening covered by a cap member. (See [1.A]; Gardiner, 1:63-64, 4:34-35, 4:46-48). An upper portion of Gardiner's container body angled inwards from a middle portion of the container side wall. Although Gardiner does not explicitly identify the opening's diameter, it would be obvious to a POSITA based on Gardiner's disclosure that the widest diameter of the cap member—the maximum diameter of the first

opening—is less than a cross-sectional diameter of the middle portion of the side wall. (Delson, ¶200).



Gardiner, Fig. 2 (Annotated)

[1.L]

	Pedmo's base is defined by a diameter by an inner circumference of annular rim 28. A POSITA would have found it obvious, based on Pedmo's disclosure, that the inner circumference of annular rim 28 had a diameter that was less than a cross-sectional diameter of the container side walls. In combination with Gardiner, the diameter defined by the inner circumference of the annular rim would be less than the cross-sectional diameter of the middle portion of the container side wall to avoid modification of the connection of the container side walls and base. (Delson, ¶201).
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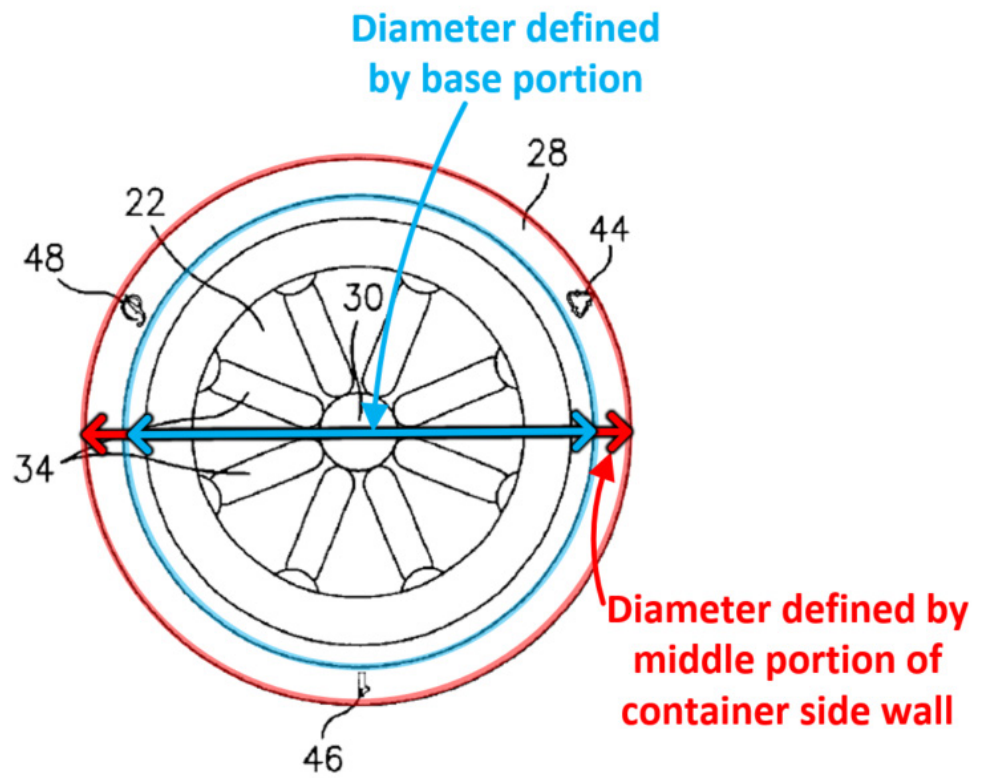
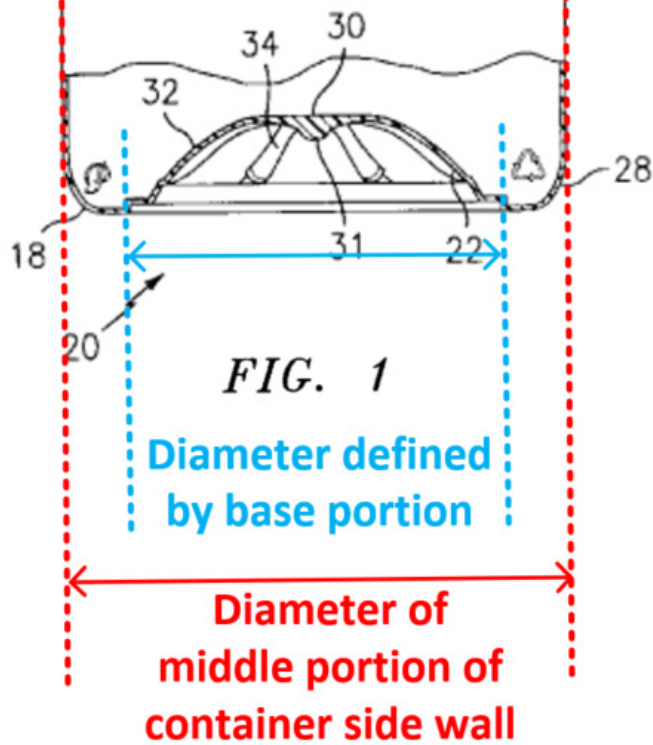


FIG. 2

Pedmo, Fig. 2 (Annotated)



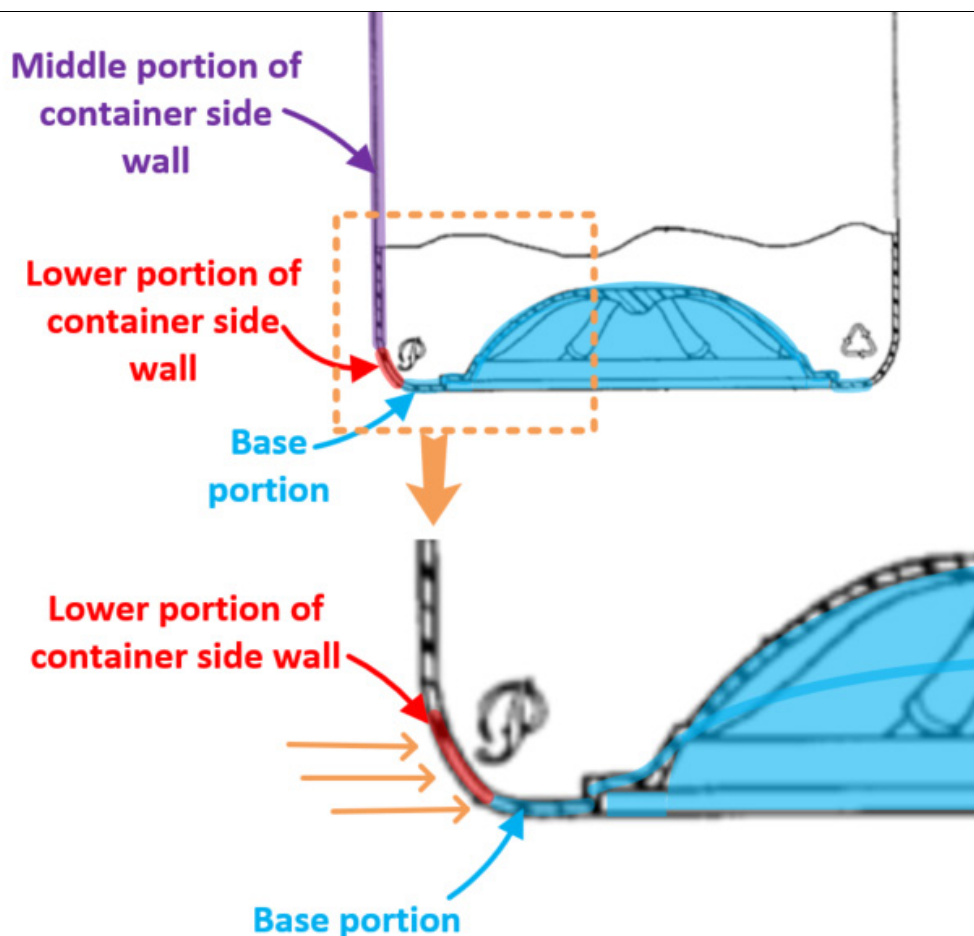
Pedmo, Fig. 1 (Annotated)

[1.M]

Gardiner's side wall had a middle portion, below, in combination with Pedmo's base.

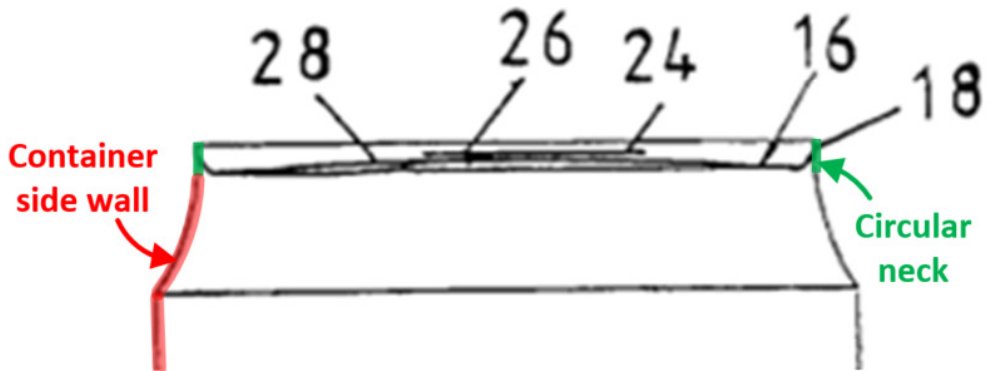
Pedmo's base portion would be connected to the side wall of the combined container by a curved wall section that transitioned from the vertical side wall to the horizontal rim on which the container would sit (bottom of base; *see* [1.F]). This curved portion represented a lower portion of the container side wall, which, in the combination, would extend downwardly from the middle portion of the container to the base portion.

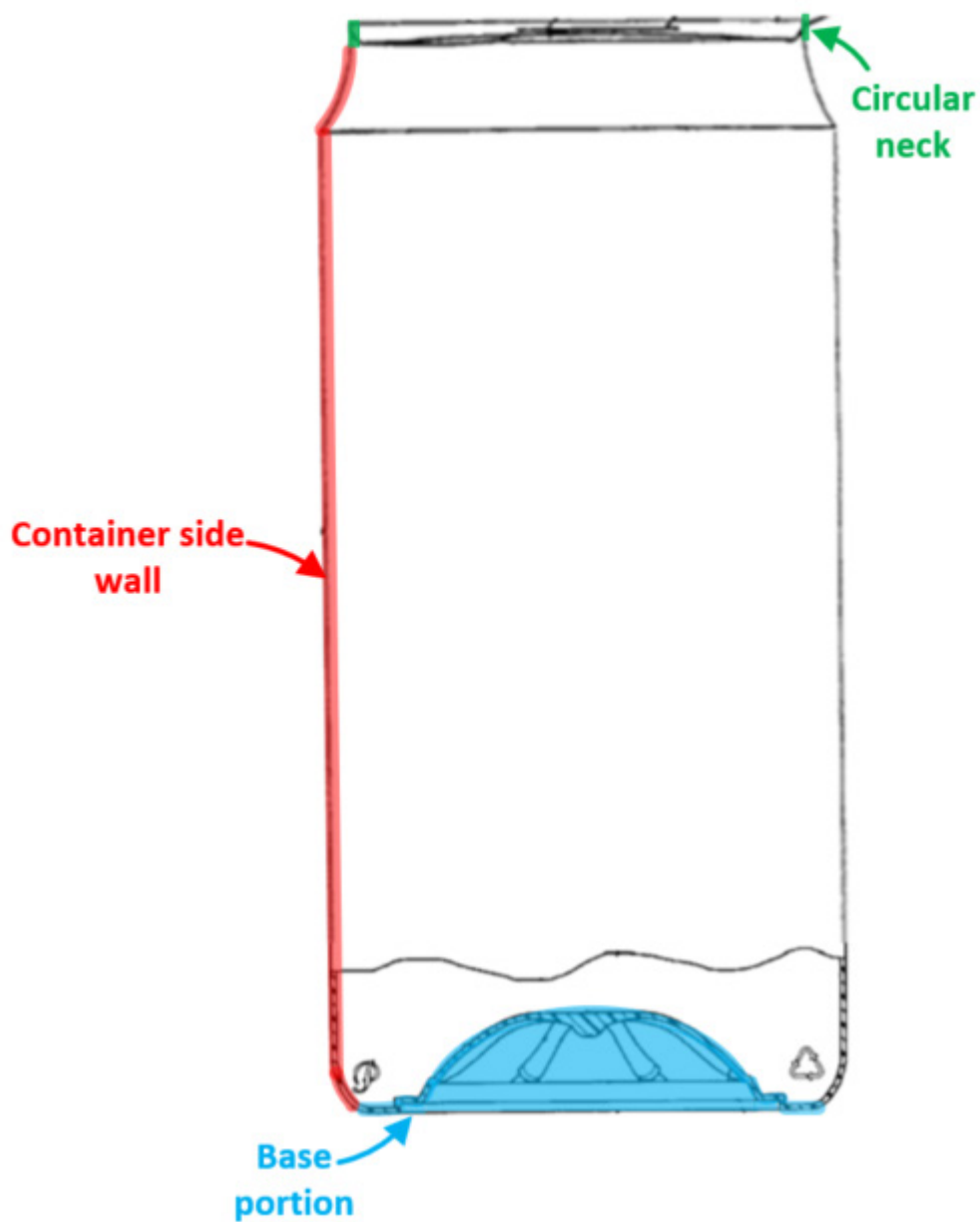
Since Pedmo's curved lower wall section curved towards the center of the base, its diameter monotonically decreased from the point this curved section intersected the middle portion of the container side wall to the beginning of the base portion. The lower portion of the container side wall in the combination would have had a greater diameter along its entirety than the entirety of the base portion, including the bottom. (Delson, ¶¶202-05).



Mockup of Combined Gardiner/Pedmo Container

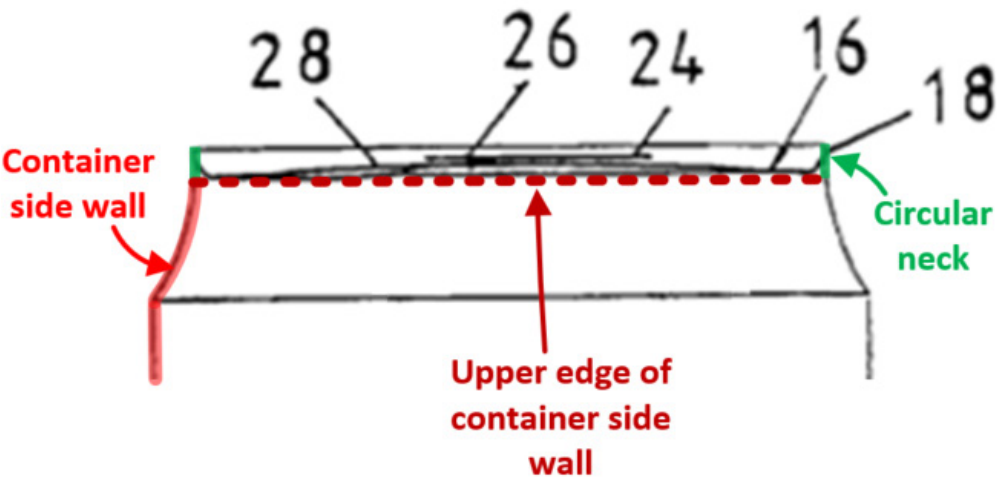
The recitations following the thereby clause should not be given patentable weight. (Ground 1, [1.M]). Even if such an intended result is given patentable weight, the combination satisfies this limitation because its lower portion along its entirety is greater in diameter than the base portion, including the bottom. If the “thereby” transitional phrase is ignored and the “stemless” limitation is construed to require a stemless container body, the

	container in the combination is stemless, shown above. (Delson, ¶206).
[1.N]	
	Gardiner depicted a circular neck by a substantially vertical section of the container body that approximately corresponded to a location of a lid sealed to the container body. This circular neck extended from the container side wall.  Gardiner, Fig. 2 (Cropped and Annotated) In the Gardiner-Pedmo combination, Gardiner's container side wall would extend between the circular neck and Pedmo's base portion. (Delson, ¶¶207-08).



Mockup of Combined Gardiner/Pedmo Container

[1.0]

	Gardiner's container side wall had an upper edge adjacent to the neck in [1.N], in the form of a top circumference of the side wall before the beginning of the neck. (Delson, ¶209).  Gardiner, Fig. 2 (Cropped and Annotated)
[1.P]	
	A cap connected to Gardiner's container body by "a peripheral 140 [wa]s shaped to be positioned [] over an open end of a can body and seamed thereat to join to the can body for forming a rim of the can," below.⁴ (Gardiner, 5:42-45; Delson, ¶210).

⁴ Gardiner's Figures 13-15 differ from Figures 10-12 only in the structure of "wedge portions 200" that fix an "insert element 180" into a countersink 160. (Gardiner, 5:56-62). This difference does not affect and is not related to the shape of the peripheral 140.

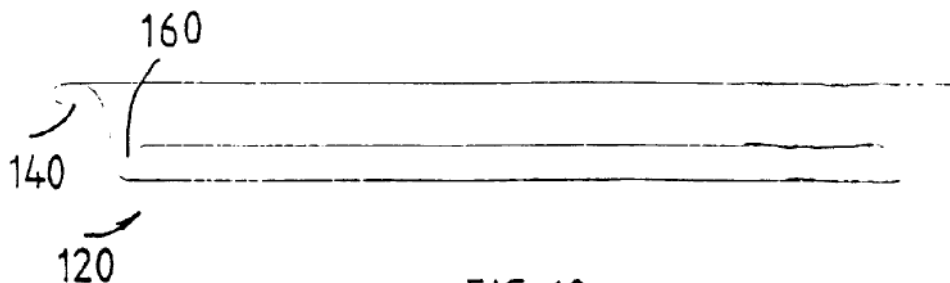


FIG. 10

Gardiner, Fig. 10

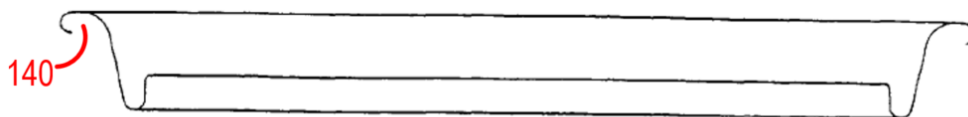


FIG. 13

Gardiner, Fig. 13 (Annotated)

Peripheral 140 had a hook-like shape. Since the peripheral was “shaped to be positioned” over the open end of the can body, a POSITA would have found it obvious that the can body would have a reciprocal shape (a lip) at the top of the can body, over which peripheral 140 was seamed to form a rim for the can, because this reciprocal shape would have enabled a lid to seal to the container body for beverage storage. (Gardiner, 1:44-50 (explaining cap/can seaming that was “sufficiently strong to prevent separation by internal pressures exerted by the carbonated drinks”); Delson, ¶211). Using the lid with a lip that engaged with a container’s rim

	was routinely done to secure the lid to the container. (Delson, ¶¶89, 211).
[1.Q]	
	Gardiner’s circular neck [1.O] was adjacent to the lip [1.P] because the circular neck extended to the top of the container body, where the lip was positioned. (Delson, ¶212).
[1.R]	
	Gardiner described a lid that had “peripheral 140.” (Gardiner, 5:42, Figures 10, 13). Peripheral 140 formed a first portion of the lid (below), where this first portion was “positioned [] over an open end of a can body” (<i>i.e.</i>, above the lip). (Gardiner, 5:42-45; Delson, ¶213). The diagram shows a cross-sectional profile of a lid. A red line highlights the top surface of the lid, which is labeled 'First portion of lid' with a red arrow. At the left end of this red line, there is a small red curved line labeled '140'. Below the red line, a black line represents the inner structure or a container body, showing a lip at the left end. The lid is positioned above this lip. FIG. 13 Gardiner, Fig. 13 (Annotated)
[1.S]	

Peripheral 140 (**first portion of the lid**) defined a **first circular shape by a circumference** at or near an outer side of peripheral 140. The **circumference** was circular because the cap was circular. (Delson, ¶214).

Circumference on first lid portion that defines a first circular shape

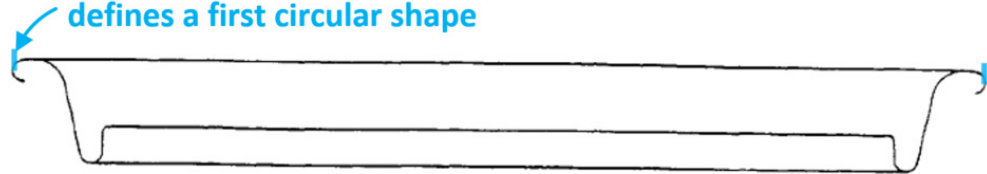


FIG. 13

Gardiner, Fig. 13 (Annotated)

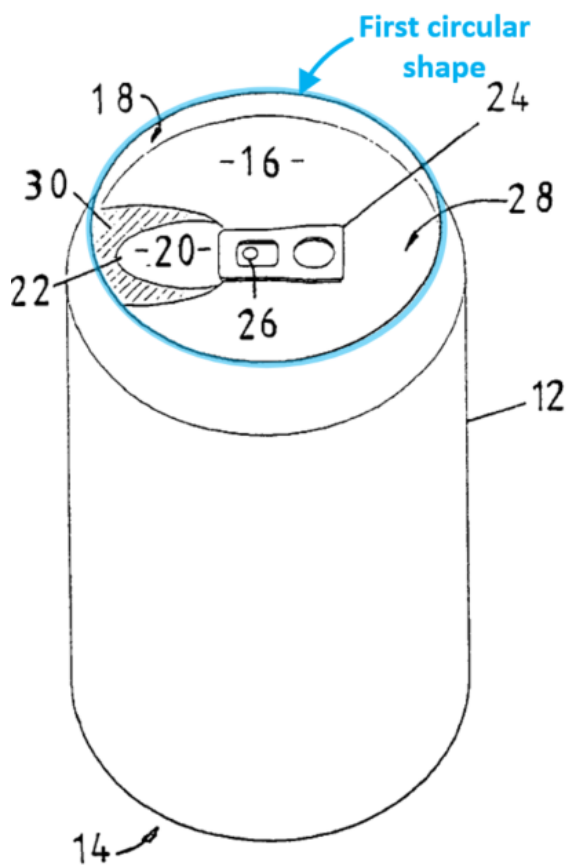


FIG. 1

Gardiner, Fig. 1 (Annotated)

[1.T]

Peripheral 140 (first portion of the lid) defined a second circular shape by a circumference at or near an inner side of peripheral 140, below. When the lid was attached to a container, the first portion would form a ledge around rim 18 where an outer edge of the ledge defined the first circular shape and an inner edge defined the second circular shape. (Gardiner, 4:34-36 (describing

rim 18)). The locations of the circumferences on Gardiner's lid for the first and second circular shapes could be modified to form a lid that is slightly wider or narrower, and such modifications would have been obvious variations of each other. (Delson, ¶215).

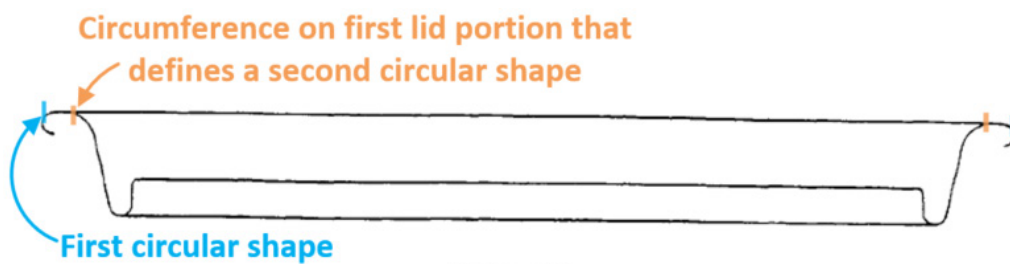


FIG. 13

Gardiner, Fig. 13 (Annotated)

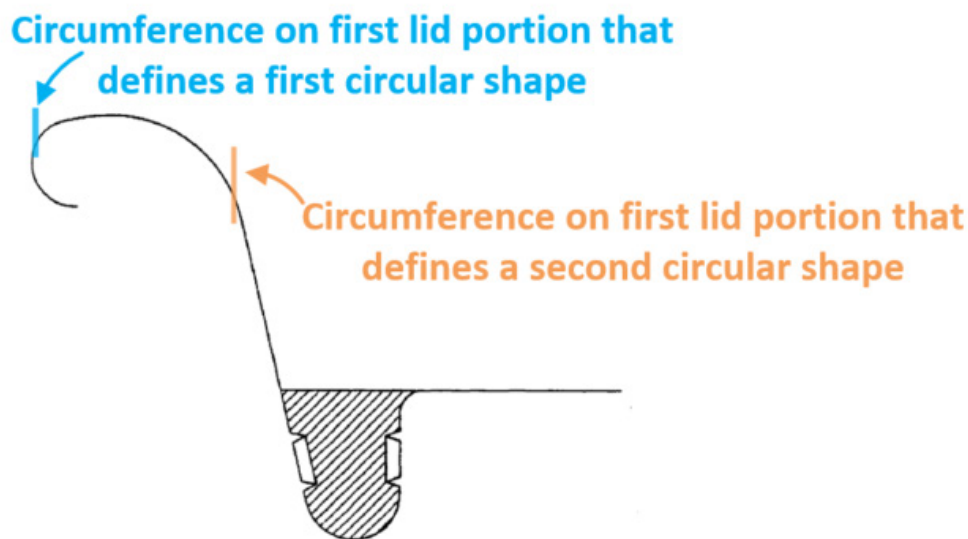


FIG. 15

Gardiner, Fig. 15 (Annotated)

The terms “first circular shape” and “second circular shape” do not appear in the '441 specification. However, Gardiner's Figure

15 is analogous to an “enlarged” view of a container lid of Figure 5 of the '441 patent.

Side View - Lid & Lip of Container
(Note: The lip and lid are enlarged to show hook)

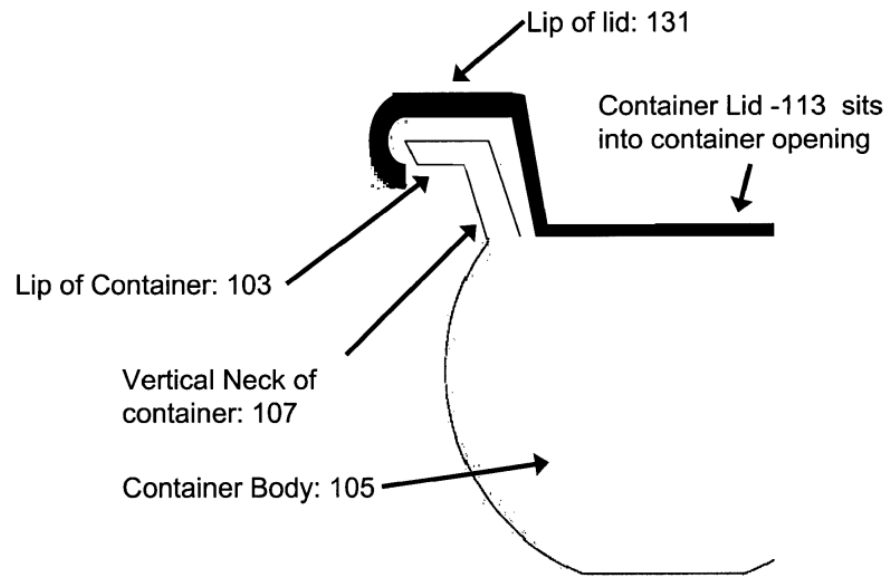
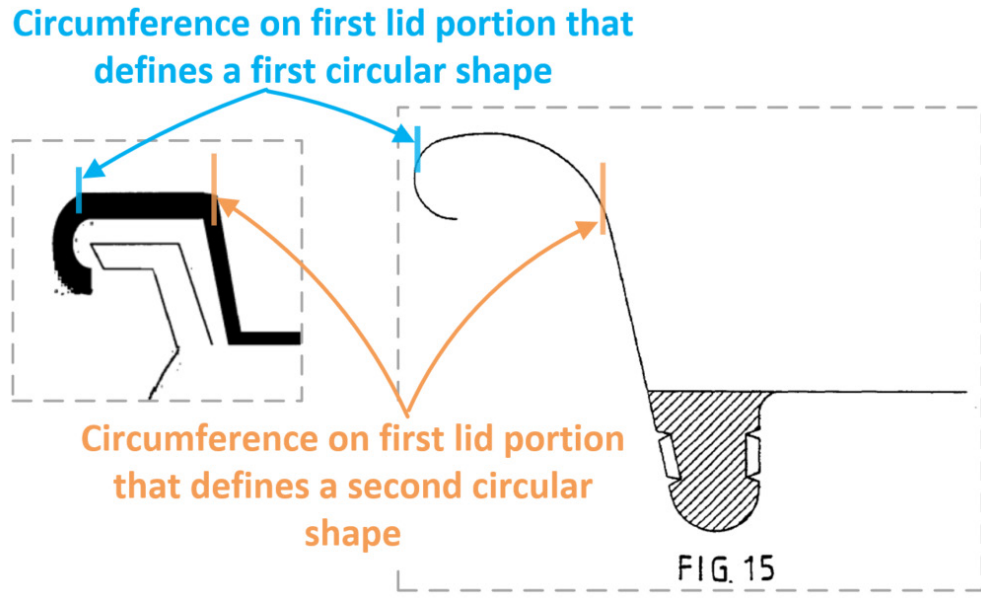


Figure 5

'441 Patent, Figure 5



**Comparison of '441 Patent's Fig. 5 (Cropped) and Gardiner's
Fig. 15**

The circumferences indicated above would be circular because the cap was circular. (Delson, ¶¶216-18).

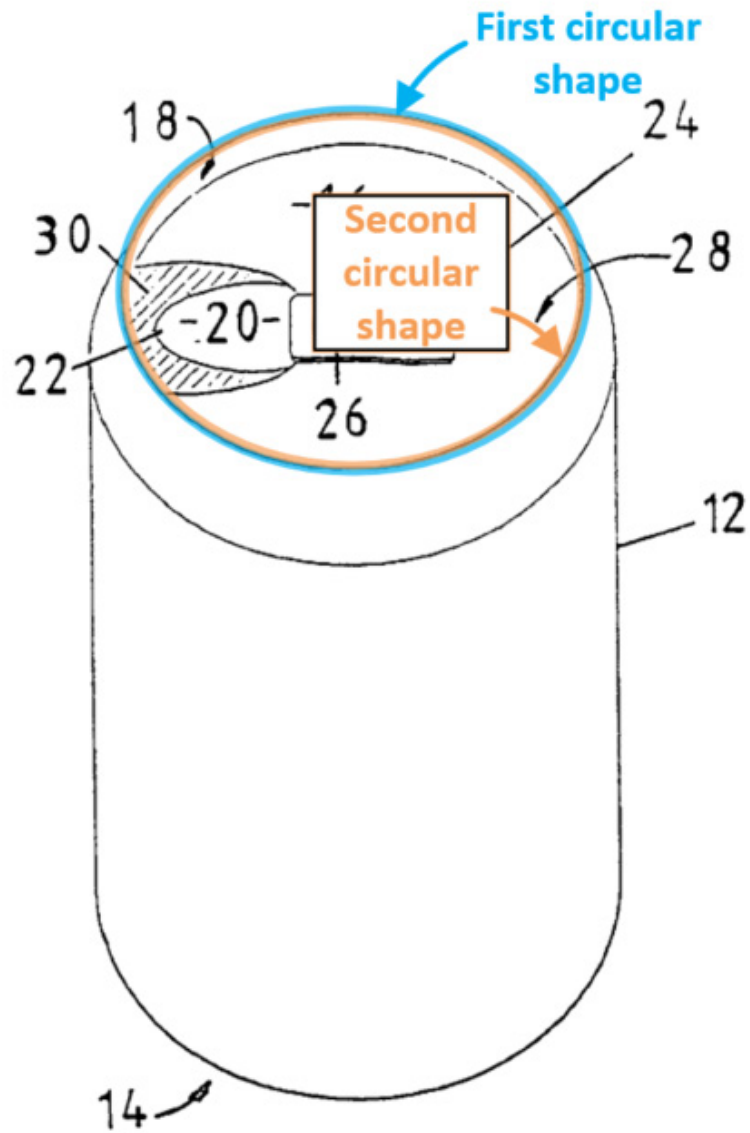


FIG. 1

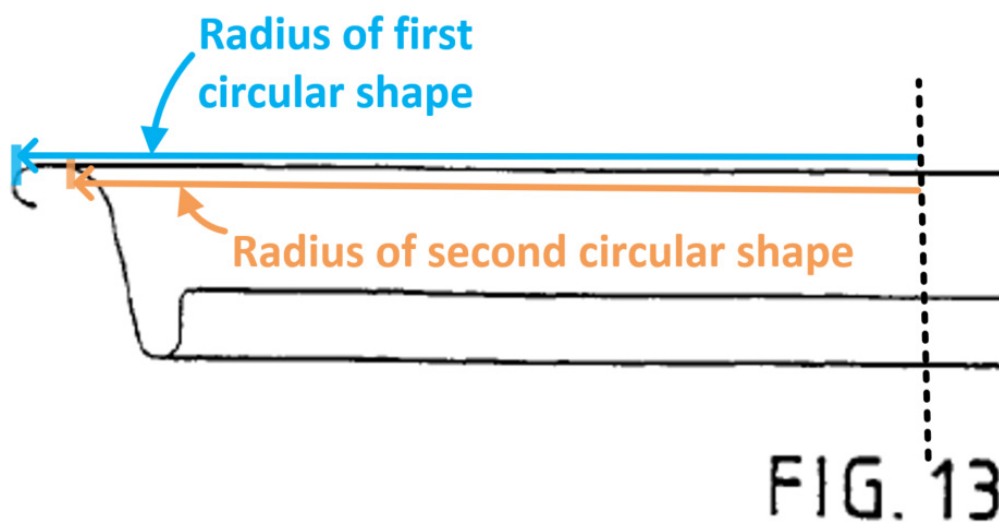
Gardiner, Fig. 1 (Annotated)

[1.U]

Gardiner's **second circular shape** was concentric with the **first circular shape**. (See [1.T]; Delson, ¶219).

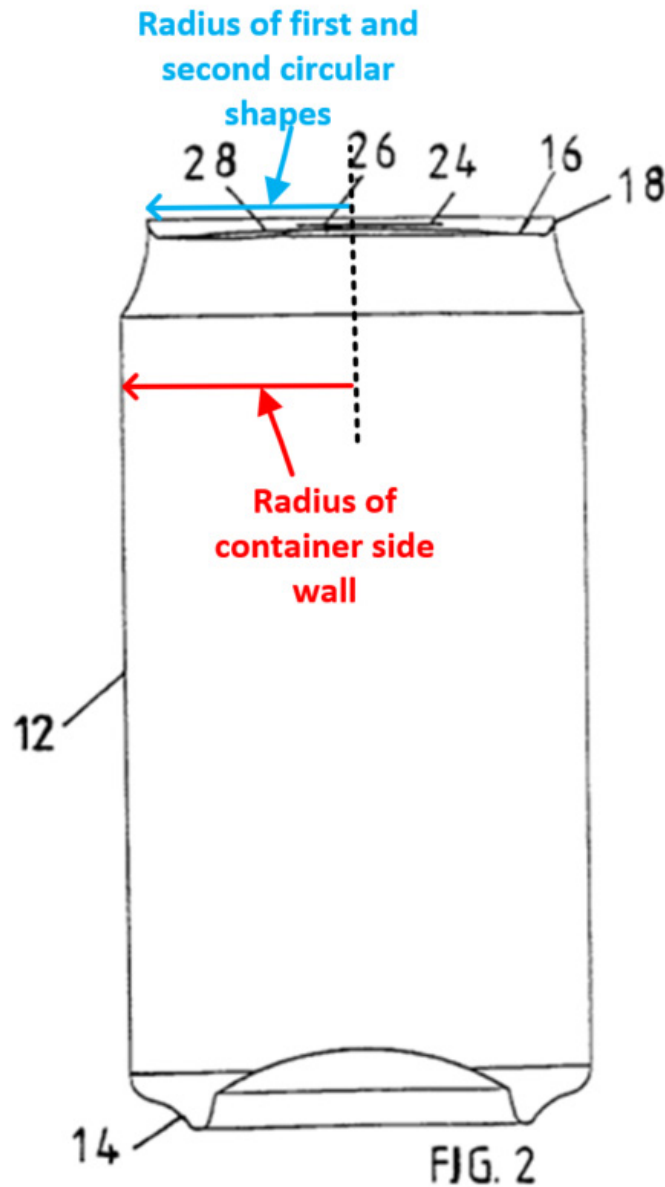
[1.V]

The **first** and **second** circular shapes were formed by respective circumferences of peripheral 140. *See* [1.T]. The **first circular shape** had a greater radius than the **second circular shape** because the **first circular shape** was defined by a circumference at or near an outer edge of the peripheral, while the **second circular shape** was defined by a circumference at or near an inner edge.



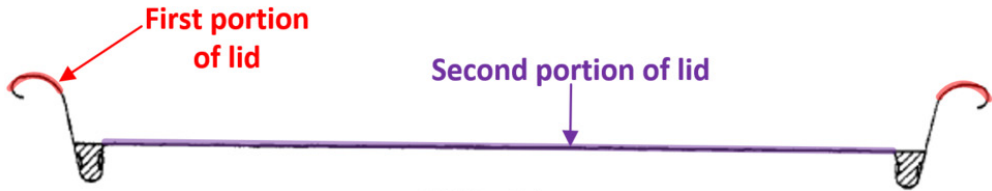
Gardiner, Fig. 13 (Cropped and Annotated)

An upper portion of Gardiner's container body angled inwards from a **middle portion of the container side wall**, such that a POSITA would have found it obvious for the outermost diameter of the cap (**first circular shape**) to have a smaller diameter than a **middle portion of the container body**.



Gardiner, Fig. 2 (Annotated)

It would have been obvious that the **first circular shape** would have a radius larger than the **second circular shape** but smaller than the **container side wall**, i.e., the **first circular shape** was radially

	positioned between the container side wall and second circular shape . (Delson, ¶¶220-22).
[1.W]	
	Gardiner's lid had a "radially inner part of the cap" (second portion), which extended horizontally. (Gardiner, 5:53, Figure 11, 14⁵; Delson, ¶223).  FIG. 14 Gardiner, Fig. 14 (Annotated)

⁵ As noted above, although Figures 10-12 depict a different embodiment than Figures 13-15, these embodiments differ only in the structure of their "wedge portions 200," unrelated to peripheral 140 or the second portion of the lid.

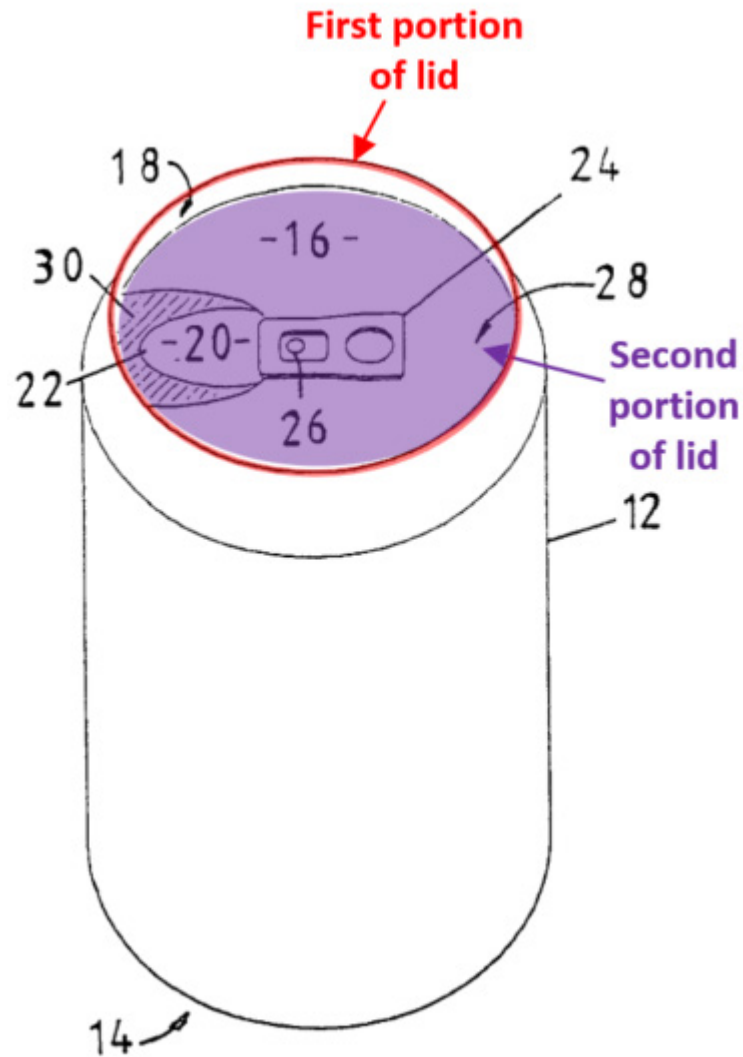
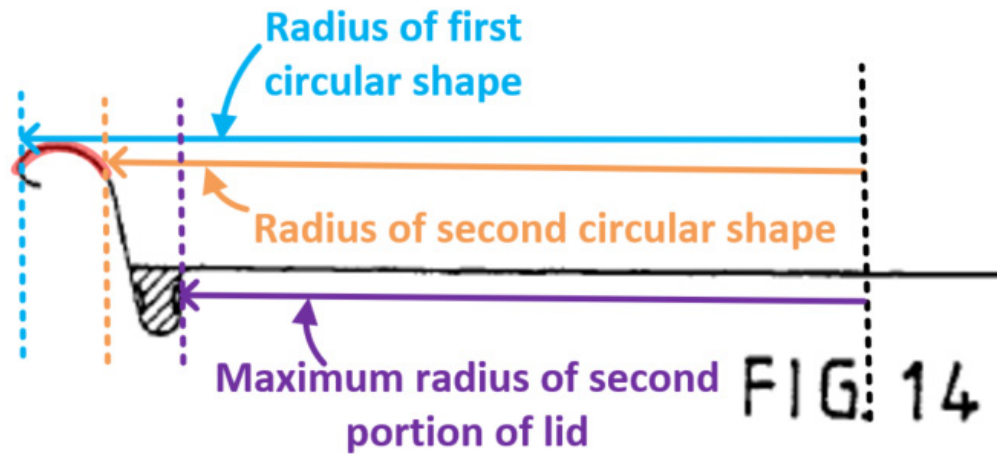


FIG. 1

Gardiner, Fig. 1 (Annotated)

The **second circular shape** had a radius greater than a maximum radius of the **second portion of the lid**, but less than the radius of the **first circular shape**. The **second circular shape** was radially positioned between the **second portion of the lid** and **first**

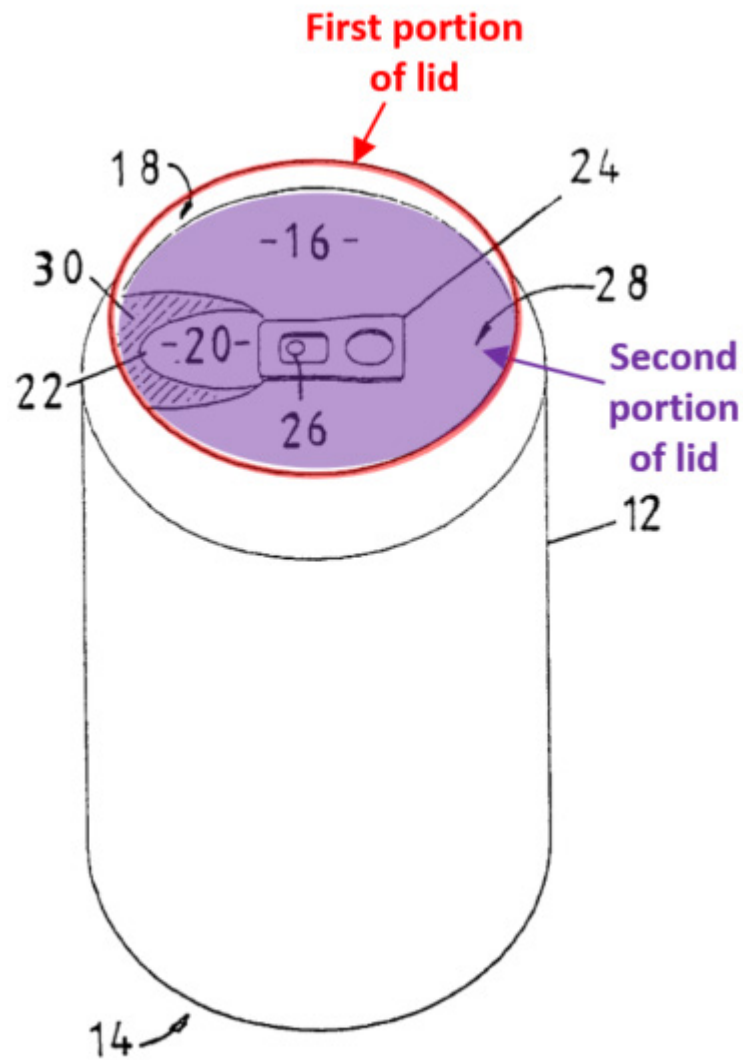
circular shape. The radii, below, can be larger or smaller than shown to form different-sized ledges on the first portion (*see* [1.T]), while maintaining their same relative size ordering. (Delson, ¶224).



Gardiner, Fig. 14 (Cropped and Annotated)

[1.X]

The **second portion** of Gardiner's lid, [1.W], had a **total area** that represented the area of the lid's horizontal portions. (Delson, ¶225).



Gardiner, Fig. 1 (Annotated)

[1.Y]

Gardiner described a “score line 22” ([weakened or scored area](#)) that extended around a “scored portion 20.” (Gardiner, 5:2, 5:13-15, 5:27-28, Figure 1).

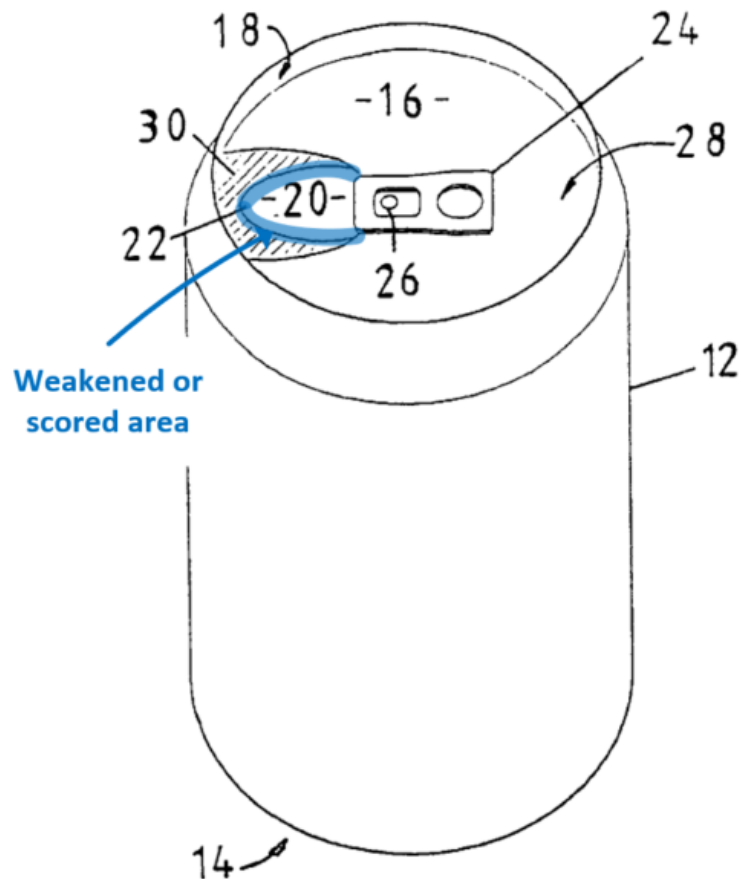
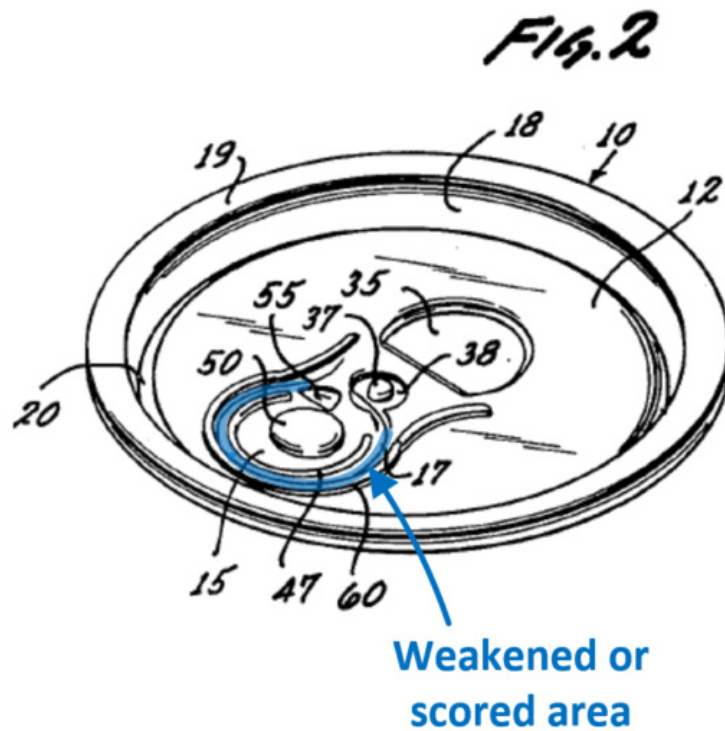


FIG. 1

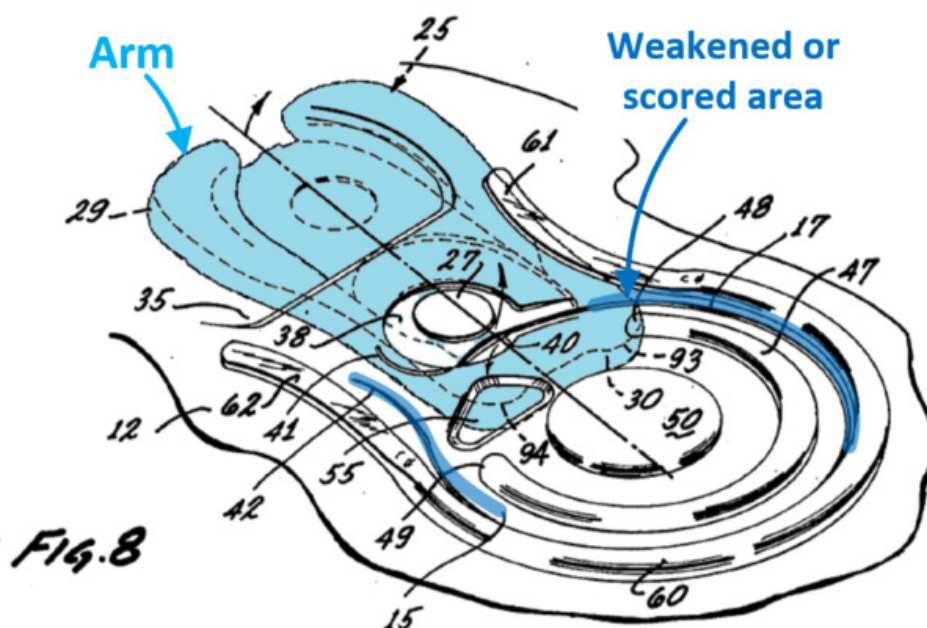
Gardiner, Fig. 1 (Annotated)

While the teachings of Gardiner were sufficient, Brown, which is used in the combination for [1.AC], corroborated Gardiner’s teachings. Brown described a similar [scored area](#), “pour

panel 15...being at least partially circumscribed by a scoreline 17 which was ruptured to form a pour opening in the end structure.”
(Brown, 7:37-40, Figs. 2, 8).



Brown, Fig. 2 (Annotated)



Brown, Fig. 8 (Annotated)

Brown's pour panel was analogous to Gardiner's scored portion, while Brown's scoreline was analogous to Gardiner's score line; thus, these components were readily combinable to yield predictable results. (See [1.AC]; Delson, ¶¶226-28).

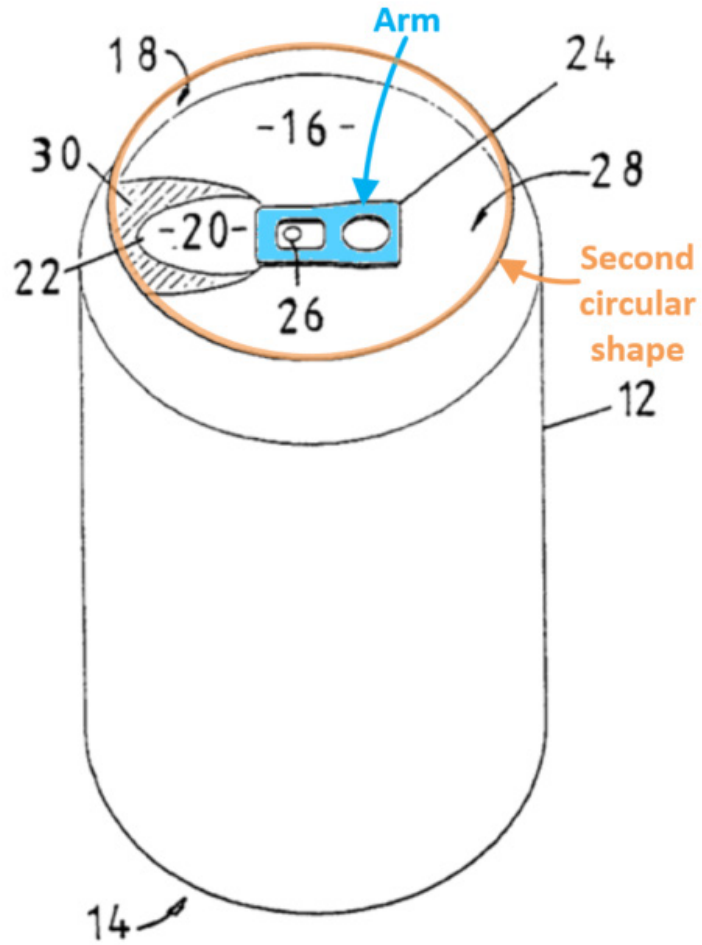
[1.Z]

The score lines of Gardiner and Brown (**weakened or scored area**) were less than the total area across which the second portion of the lid extended horizontally. (See [1.W], [1.Y]; Delson, ¶229).

[1.AA]

	Gardiner’s container lid had a “ring pull tab” or “tab portion” (arm). (Gardiner, 4:45-53,⁶ 4:67, 5:22). The tab portion was connected to the second portion of the lid by rivet 26, rendering it “pivotally movable for separating the portion 20 and thereby presenting a pour aperture.” (<i>Id.</i>, 4:45-53). The arm was radially positioned within the second circular shape, [1.T], because the pull tab was inside of the radius of the second circular shape. (Delson, ¶230).
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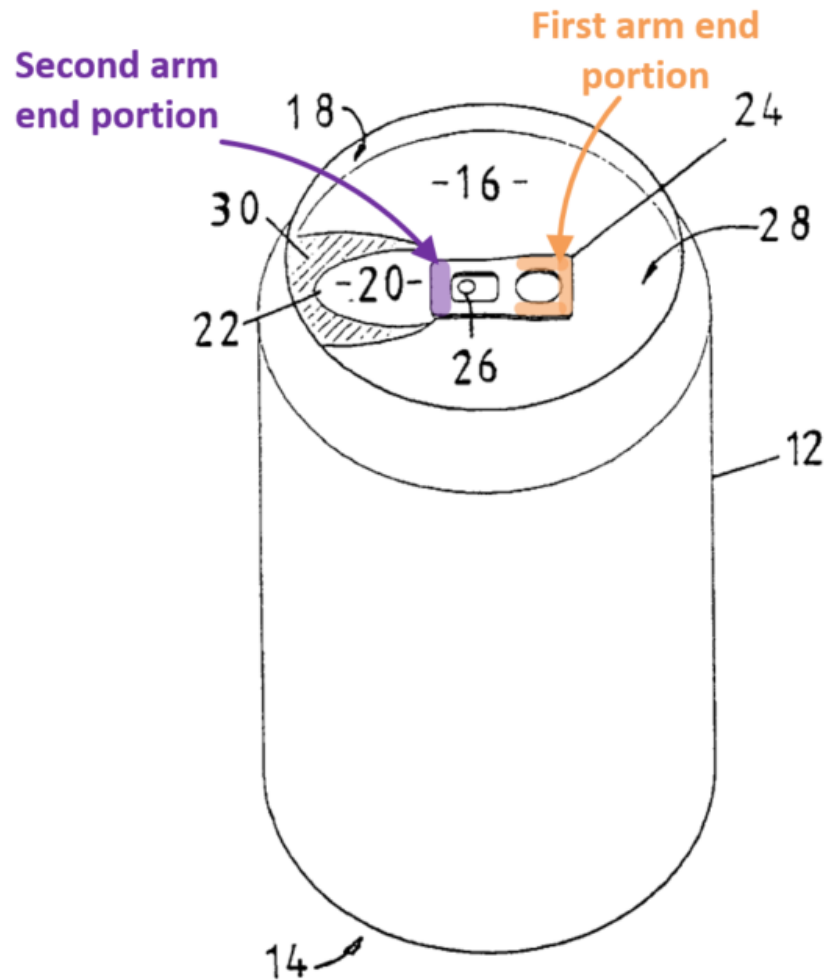
⁶ A Certificate of Correction modifies Gardiner 4:44-53. Citations to these lines are a citation to the corrected lines.



Gardiner, Fig. 1 (Annotated)

[1.AB]

Gardiner's pull tab (**arm**) had **first** and **second** end portions at opposite ends. (Gardiner, Fig. 1; Delson, ¶231).



Gardiner, Fig. 1 (Annotated)

[1.AC]

Gardiner illustrated the pull tab or tab portion (arm) at a [first position extended horizontally](#), where score line 22 ([weakened or scored area](#)) that extended around scored area 20 was not deformed.

The tab portion was “pivotally movable for separating the portion 20” to present a “pour aperture” (a second opening to the container body interior). (Gardiner, 4:45-53). It would have been obvious to a POSITA that the tab would move from its horizontal position to a non-horizontal position to separate the scored portion and create a second opening. (Delson, ¶¶232-33).

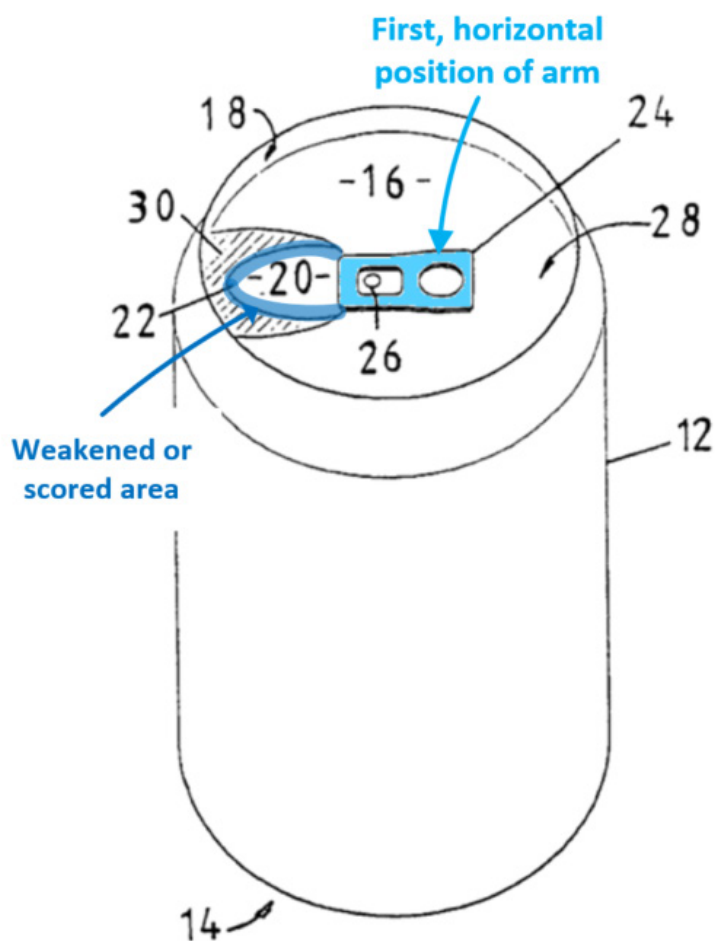
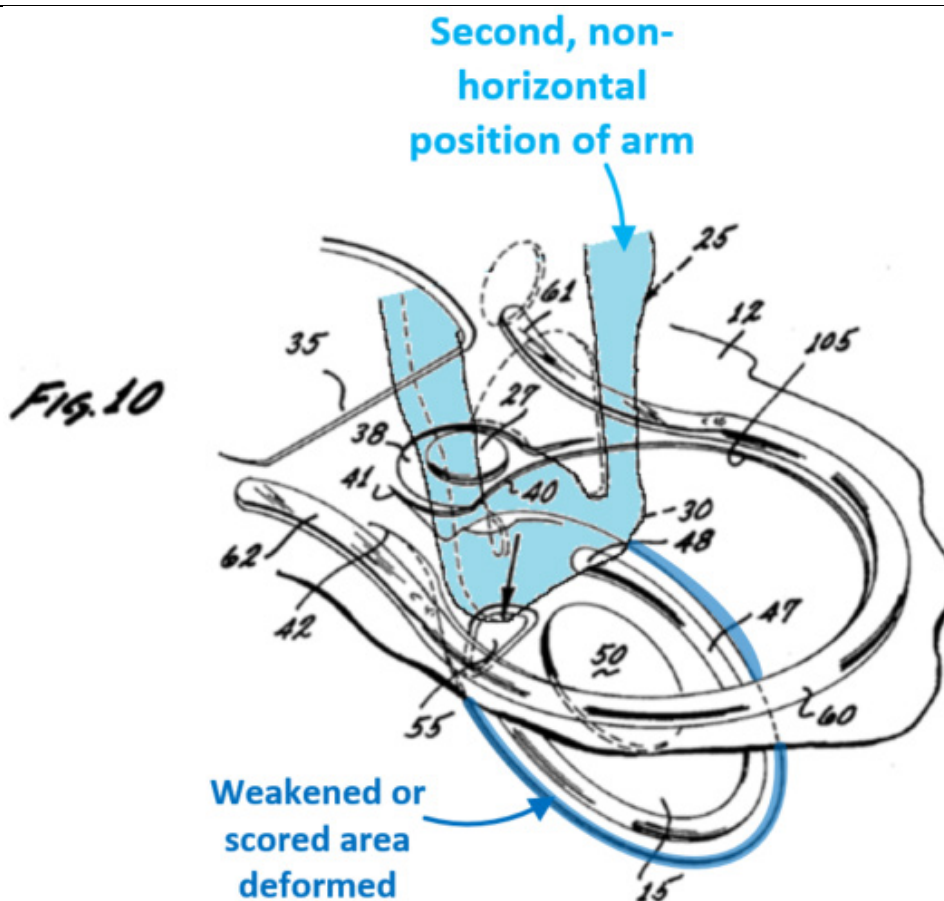


FIG. 1

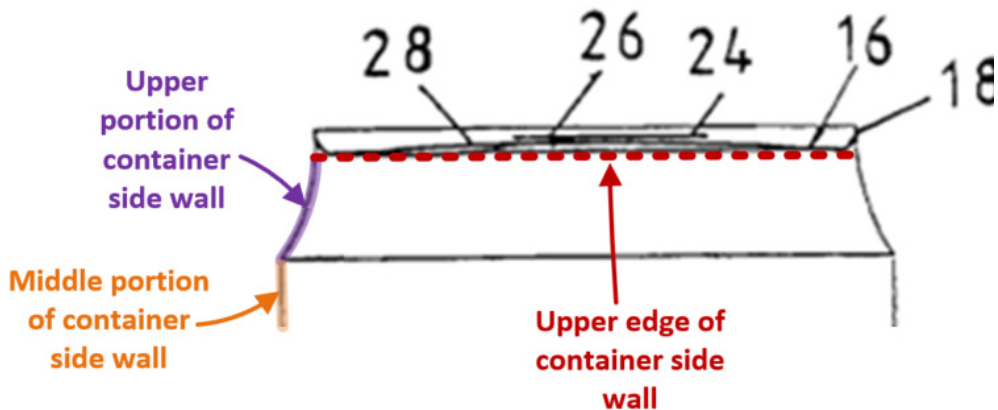
Gardiner, Fig 1 (Annotated)

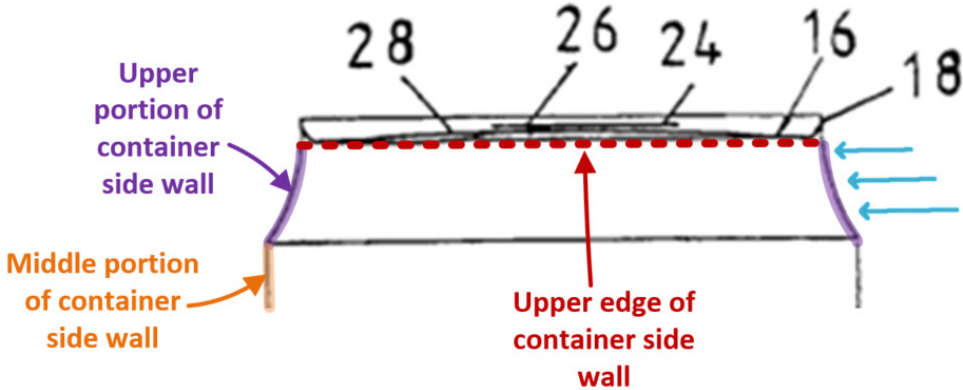
	While Petitioner believes Gardiner alone rendered this limitation obvious, Brown explicitly described how a pour aperture would be formed, where a tab (arm) was attached to a container lid by a rivet (Brown, 5:5-8), and operated as a lever “upon lifting one end thereof to initiate rupture of the portion of the scoreline between the opening end and the rivet.” (<i>Id.</i>, 5:14-17). The tab would pivot to a second position where it did not extend horizontally, causing scoreline 17 (scored area) to deform to provide the second opening, below. (<i>Id.</i>, 10:37-41, 10:61-68, 5:1-2, 5:14-21, Fig. 10).
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Brown, Fig. 10 (Annotated)

A POSITA would have found it obvious, based on Brown, that Gardiner's pivotable tab would have moved from its horizontal position to a non-horizontal position to rupture the scoreline and to form a second opening for pouring out liquid. Brown's tab and scoreline are analogous to Gardiner's "tab portion" and "scored area," and a POSITA would have seen that Brown's explanation for operating an arm to open a lid's scored area was readily applicable

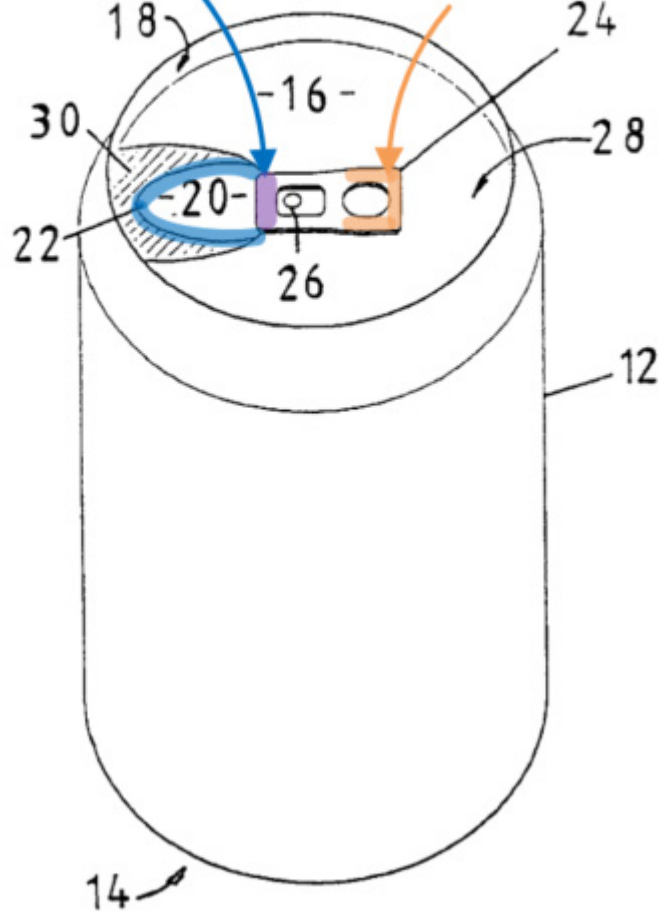
	to Gardiner's disclosure to cause predictable results. (Delson, ¶¶234-35).
[1.AD]	
	Gardiner's container side wall had an upper edge at a top circumference of the side wall before the beginning of the neck. [1.O]. An upper portion of the container side wall, below, extended upwardly from the middle portion of the container side wall to the upper edge.  Gardiner, Fig. 2 (Cropped and Annotated) The upper portion of Gardiner's container side wall was greater in diameter along its entirety than the diameter of the first opening to the interior of the container's body because the upper portion had a monotonic slope that caused the cross-section to

	monotonically decrease from the middle portion of the container side wall to the upper edge. (Delson, ¶¶236-37).  Gardiner, Fig. 2 (Cropped and Annotated)
[1.AE]	
	Gardiner's container body was configured to hold a liquid. (Gardiner, 1:15, 1:44-50, 4:28-30; Delson, ¶238).
[1.AF]	
	Gardiner's lid had a "peripheral 140 which is shaped to be positioned [] over an open end of a can body and <i>seamed thereat</i> to join to the can body for forming a rim of the can." (Gardiner, 5:42-45). "The cap member is <i>sealingly fixed to the body member</i> at said opposite end and in a manner forming a rim at about the periphery of said opposite end." (<i>Id.</i>, 1:64-67, 4:33-36, 4:44-48). A POSITA would have understood that the can body would have an

	element with a reciprocal shape to peripheral 140 (lip) at the top of the can body, over which peripheral 140 was seamed to form the can's rim (the lid cooperating with the lip to provide a seal). <i>See</i> [1.P]. A seam formed between peripheral 140 and the reciprocally shaped structure on the container body would have enabled a lid to seal to the container body to prevent leaks. (<i>Id.</i>, 1:44-50; Delson, ¶239).
[1.AG]	
	Gardiner disclosed a first position for an arm, where a weakened or scored area of a lid is not deformed. <i>See</i> [1.AC]. Here, a first end portion of the arm is not positioned above the weakened or scored area of the lid, while part of the second end portion of the arm is positioned above the weakened or scored area. (Delson, ¶240).

Portion of the second
end portion is positioned
above the weakened or
scored area

First arm end
portion; not
positioned above
the weakened or
scored area

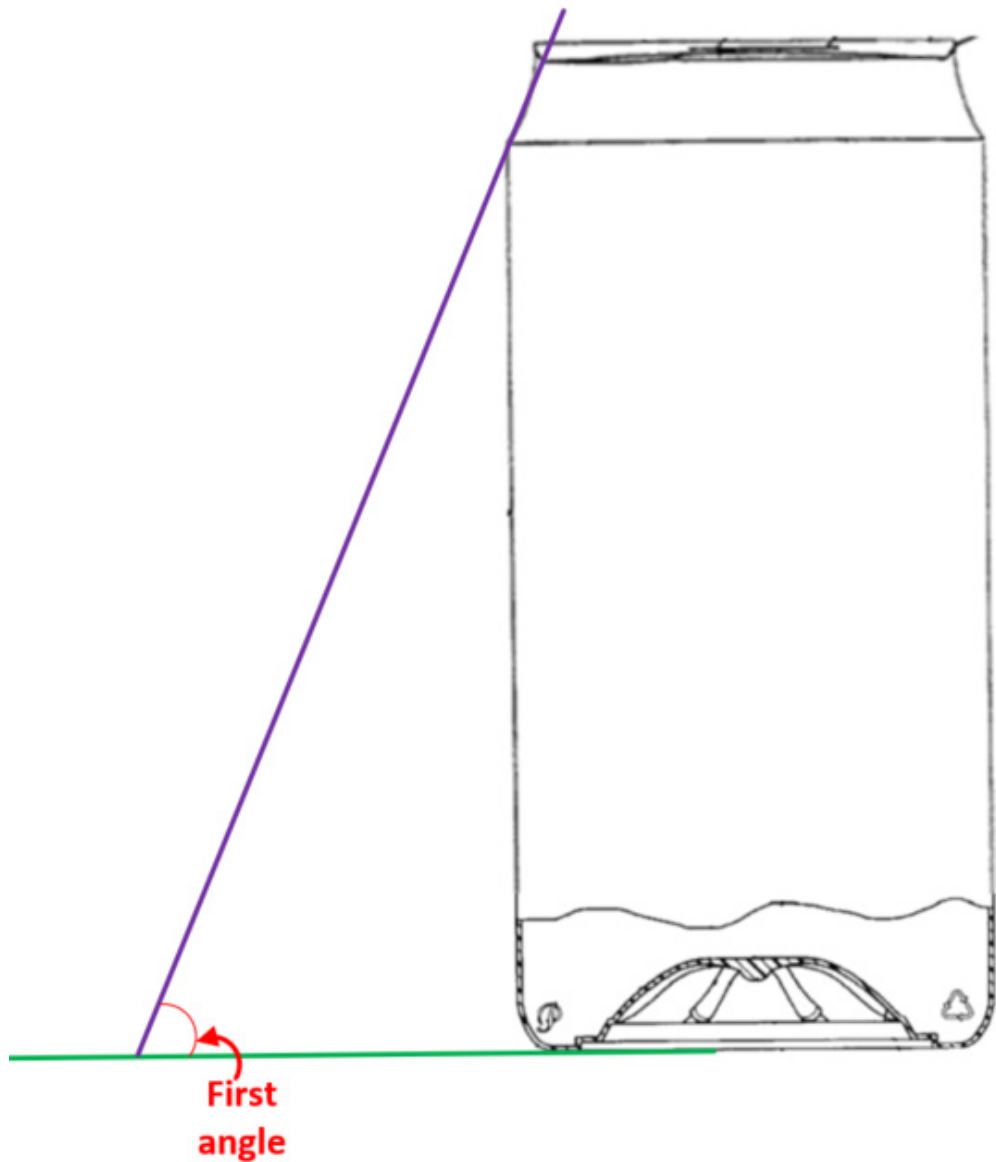


Gardiner, Fig. 1 (Annotated)

[1.AH]

Gardiner's container side wall extended between the neck and Pedmo's base portion. *See* [1.N].

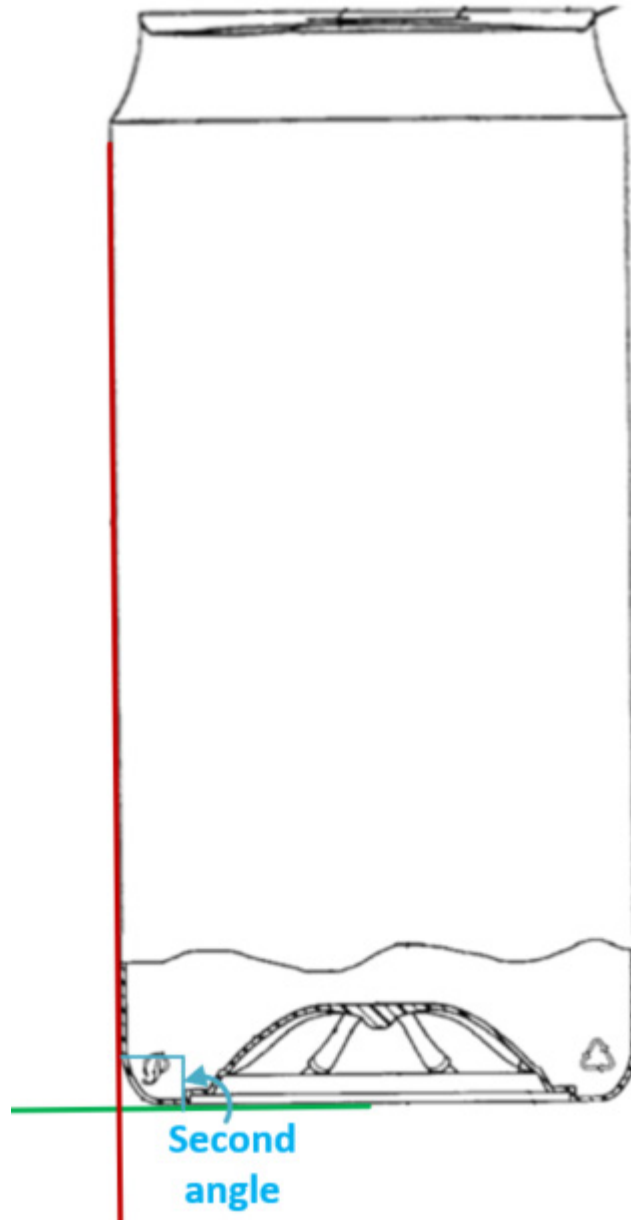
A **first angle** is defined as a portion of the container side wall that angled up to Gardiner's lid (the upper portion of the container side wall) and the bottom of the base portion. A **tangent line to the upper portion of the container side wall** intersects a **line parallel to the plane of the container's bottom**, forming a **first angle** with respect to the bottom of the base portion. The **first angle** is acute.



Mockup of Combined Gardiner/Pedmo Container

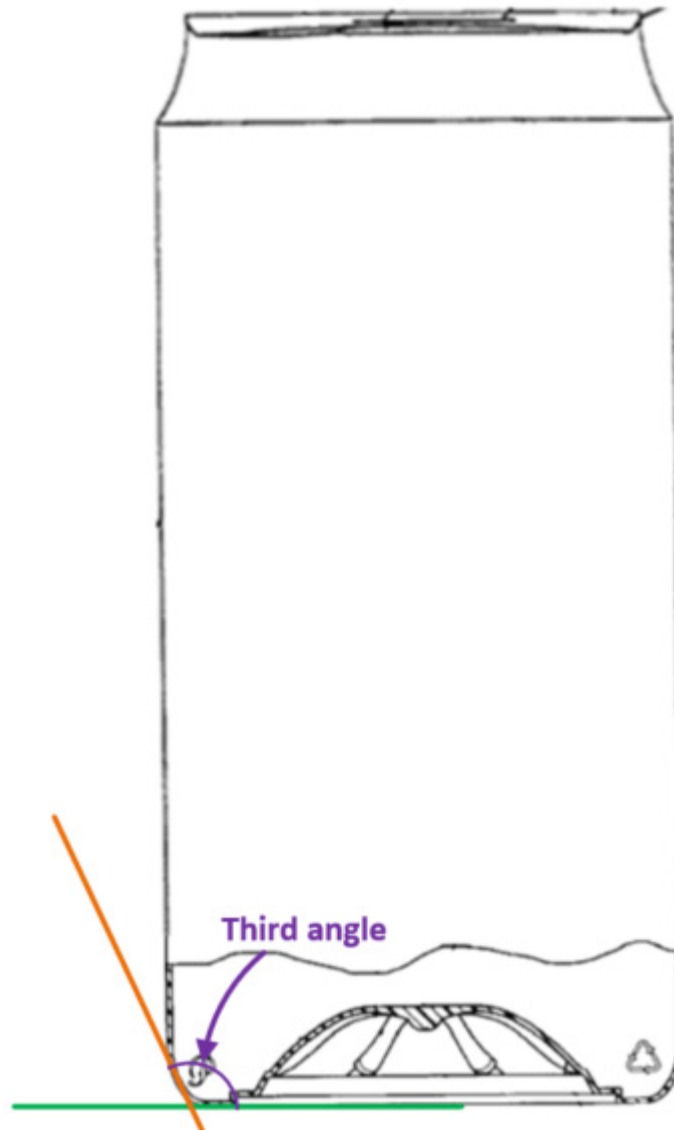
A **second angle** is defined between the central, vertical side wall portion of the combined container (the middle portion of the container side wall) and the bottom of the base portion, at the intersection of a **line parallel to the middle portion of the container**

side wall and the line parallel to the plane of the container's bottom, forming a second angle with respect to the bottom of the base portion. The second angle is approximately 90 degrees.



Mockup of Combined Gardiner/Pedmo Container

	A third angle is defined between the lower portion of the container side wall ([1.N]) and the bottom of the base portion, at the intersection of a line tangent to the sidewall's lower portion and the line parallel to the plane of the container's bottom, forming a third angle with respect to the bottom of the base portion. The third angle is obtuse.
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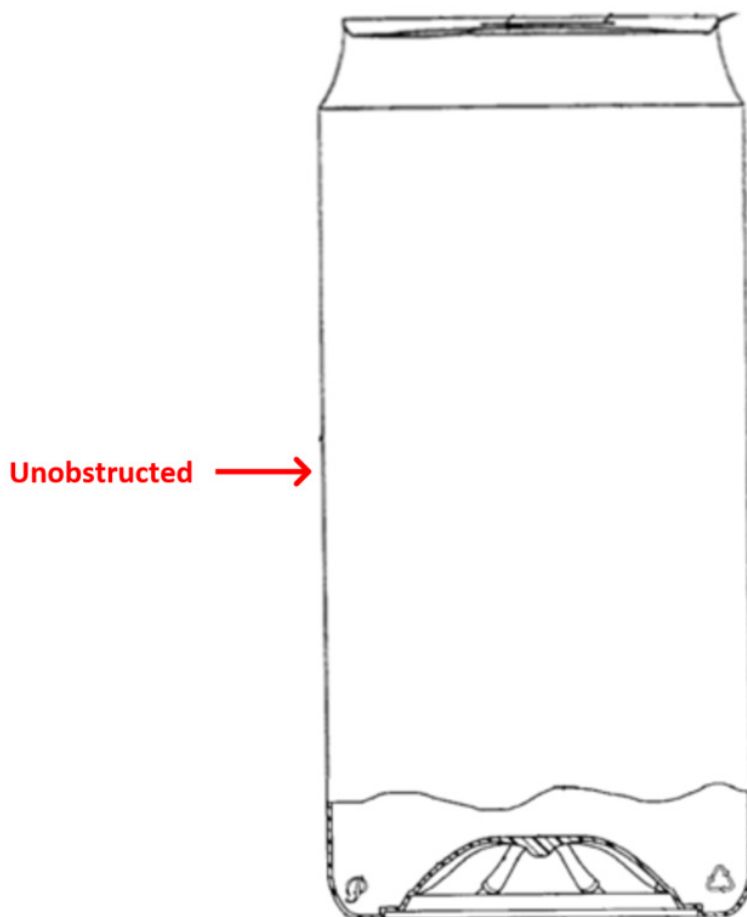


Mockup of Combined Gardiner/Pedmo Container

The second, approximately 90-degree angle is greater than the first, acute angle. The third, obtuse angle is greater than the second, approximately 90-degree angle. (Delson, ¶¶241-45).

[1.AI]

Gardiner did not indicate there was any obstruction in the container at a height midway between the circular neck and base portion that would interrupt any liquid in the container. A POSITA would have found it obvious that the Gardiner-Pedmo-Brown container would have a body with a cross-sectional diameter at its midpoint that is unobstructed and would only be interrupted by liquid inside the container. (Delson, ¶246).



Mockup of Combined Gardiner/Pedmo Container

Claim 2	
	Gardiner’s container could be made out of plastic. (Gardiner, 2:22-24). Gardiner did not explicitly disclose a PET resin. However, Pedmo explained that PET was a material used to manufacture plastic containers. (Pedmo, 3:9-10, 4:8-9). A POSITA would have been motivated to use PET to manufacture the Gardiner-Pedmo-Brown container based on Pedmo's teaching. (<i>Id.</i>, 3:9-10; Delson, ¶¶247-48).
Claim 3	
	First, claim 3 is invalid because it (1) is a product-by-process claim that only recites a process by which claim 1’s container body is formed, and (2) recites features that are AAPA. (<i>See</i> Ground 1, Claim 3). Additionally, Pedmo explained that blow-molding is a known process for manufacturing containers. (Pedmo, 1:48-50; Delson, ¶249).
Claim 4	
	Gardiner explained that a cap member (lid) can be made from aluminum. (Gardiner, 7:30, 2:22-23; Delson, ¶250).
Claim 5	

[5.A]	
	<i>See</i> [4].
[5.B]	
	<i>See</i> [2].
Claim 6	
[6.A]	
	<i>See</i> [3].
[6.B]	
	<i>See</i> [2].
Claim 7	
[7.A]	
	<i>See</i> [4].
[7.B]	
	<i>See</i> [3].
Claim 8	
[8.A]	
	<i>See</i> [4].
[8.B]	
	<i>See</i> [2].

[8.C]	
	<i>See</i> [3].
Claim 9	
[9.A]	
	Gardiner’s container could be plastic (Gardiner, 2:22-24; <i>see</i> [2]), while Pedmo disclosed that PET is a plastic that is suitable to manufacture containers. (Pedmo, 3:9-10, 4:8-9; Delson, ¶260). A POSITA would have found it obvious that a container made from PET could be transparent or translucent. (Delson, ¶261). When the container body is made from transparent or translucent PET, a POSITA would have understood that the first depression would be visible through at least part of the container body. (<i>Id.</i>). Furthermore, whether the depression is visible or not visible through the container body has no functional or structural significance, and the ’441 specification includes no related explanations. This limitation relates to an ornamental design choice and would have been obvious to a POSITA. (<i>Id.</i>, ¶262).
[9.B]	

Pedmo disclosed a **first depression** in at least two ways, one being a space between two of a plurality of struts 23 (first depression) on the base. (See [1.F]; Pedmo, 2:46-47, Figures 2, 5).

Pedmo's base had another space between two struts, forming a **second depression**. The **second depression** was adjacent to the **first depression** because both depressions were formed, in part, by the same strut, below. (Delson, ¶¶263-64).

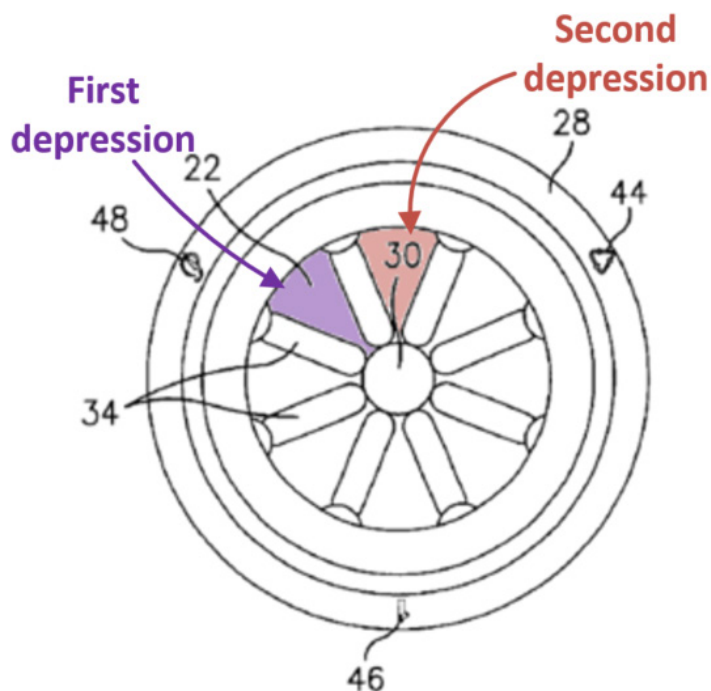


FIG. 2

Pedmo, Fig. 2 (Annotated)

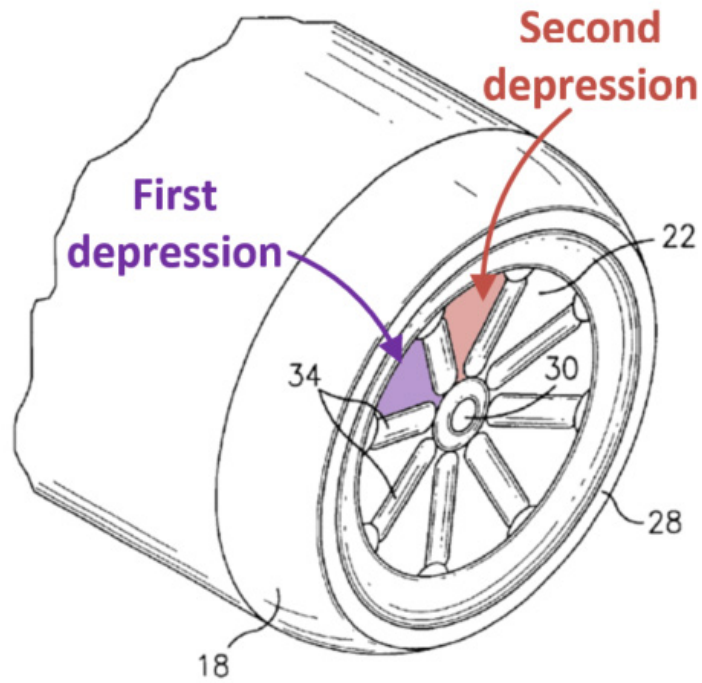
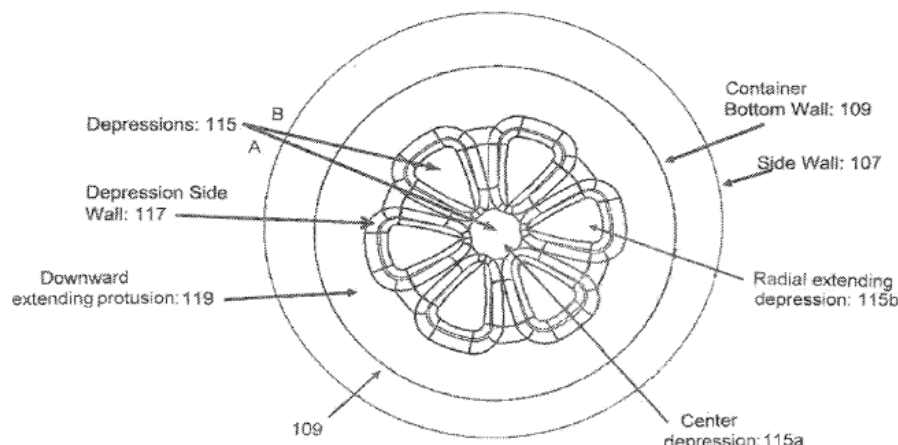


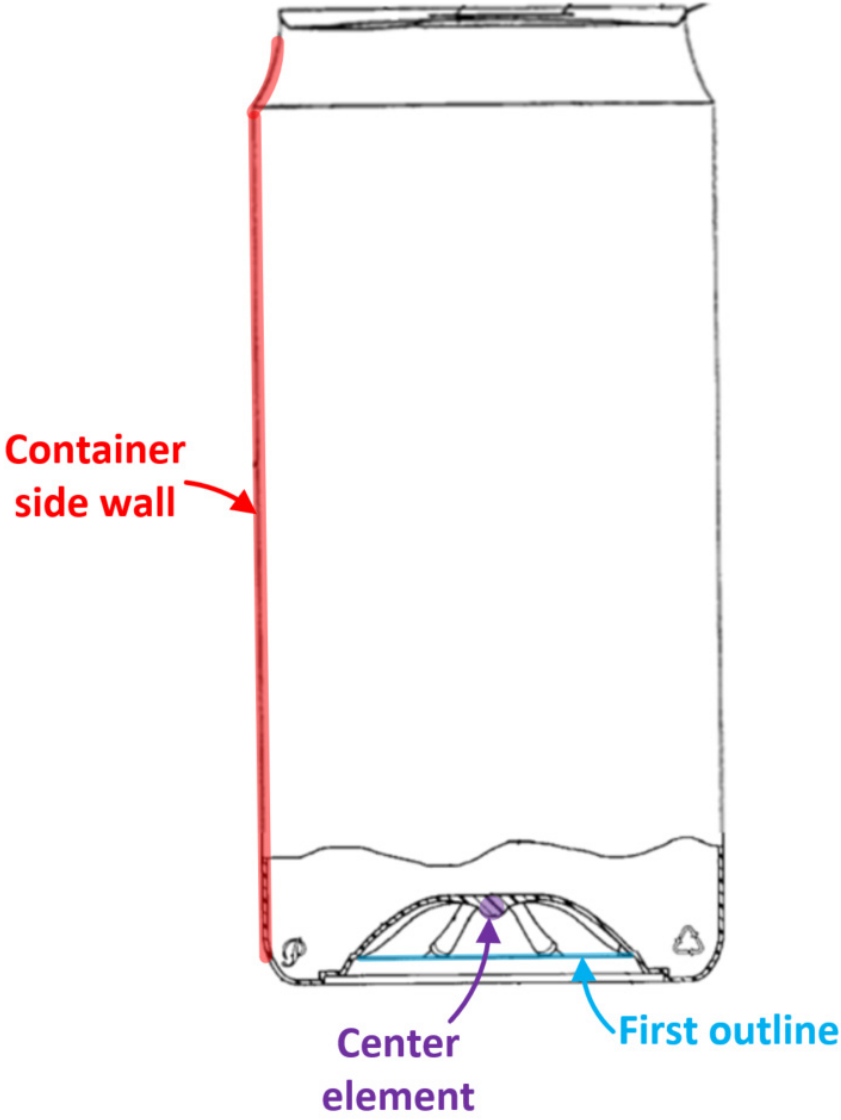
FIG. 5

Pedmo, Fig. 5 (Annotated)

This feature of Pedmo is similar to the '441 patent's depiction of adjacent depressions (115 and 115b), below. (*Id.*, ¶265).

	Bottom of Container  Figure 3
[9.C]	
	A POSITA would have found it obvious that some plastic containers, including PET containers, are translucent or transparent. [9.A]. It would have been obvious for the first and second depressions to be visible through at least a portion of the container body. (Delson, ¶266).
Claim 10	
[10.A]	
	A POSITA would have found it obvious that some plastic containers, including PET containers, are transparent. (See [9.A]; Delson, ¶267).
[10.B]	

	<i>See</i> [9.A].
[10.C]	
	<i>See</i> [9.B].
[10.D]	
	<i>See</i> [9.C].
Claim 11	
	Pedmo’s hub 30 (center element) of the base portion had “a downwardly extending button-like portion 31” (downward extending protrusion), below. (Pedmo, 2:42-43; Delson, ¶271).

	 Container side wall Center element First outline Mockup of Combined Gardiner/Pedmo Container
Claim 12	
[12.A]	
	<i>See [9.B].</i>
[12.B]	

Pedmo disclosed **first** and **second** depressions by two neighboring sections of a base between struts. A circular edge that traced a circumference around the “continuous curved portion 32” formed a **first outline**. (Pedmo, 2:43-45, Figures 2, 5). The **first** and **second** depressions at least partially formed this **first outline** because an outer edge of each of the depressions partially formed the circular edge around the continuous curved portion. (Delson, ¶273).

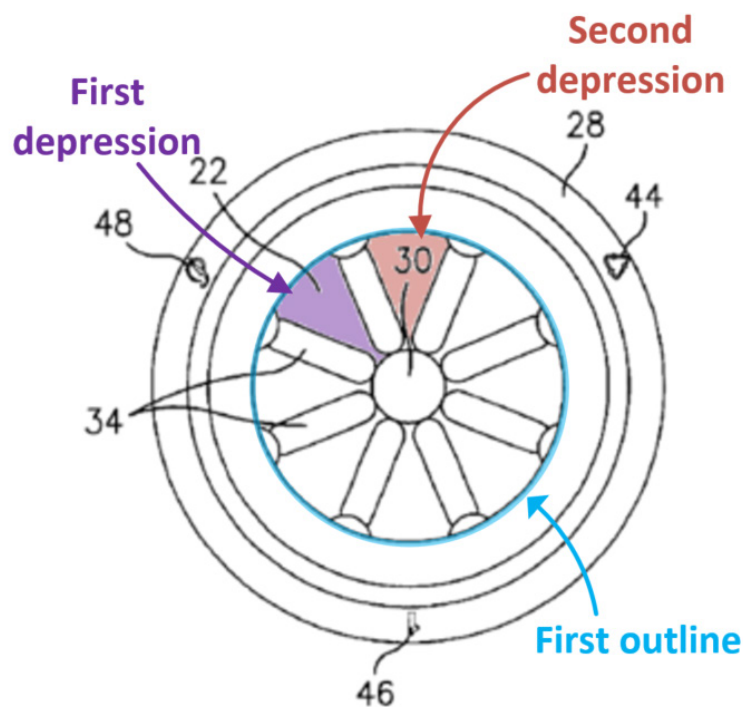


FIG. 2

Pedmo, Fig. 2 (Annotated)

Claim 13	
[13.A]	
	<i>See</i> [11].
[13.B]	
	<i>See</i> [9.B].
Claim 14	
	<i>See</i> [12.B].
Claim 15	
[15.PRE]	
	<i>See</i> [1.PRE].
[15.A]	
	<i>See</i> [1.A].
[15.B]	
	<i>See</i> [1.B].
[15.C]	
	<i>See</i> [1.C].
[15.D]	
	<i>See</i> [1.D]
[15.E]	

	<i>See</i> [1.E].
[15.F]	
	<i>See</i> [1.F].
[15.G]	
	<i>See</i> [1.G].
[15.H]	
	<i>See</i> [1.H].
[15.I]	
	<i>See</i> [1.I].
[15.J]	
	<i>See</i> [1.J].
[15.K]	
	<i>See</i> [1.K].
[15.L]	
	<i>See</i> [1.L].
[15.M]	
	<i>See</i> [1.M].
[15.N]	
	<i>See</i> [1.N].

[15.O]	
	<i>See</i> [1.O].
[15.P]	
	<i>See</i> [1.P].
[15.Q]	
	<i>See</i> [1.Q].
[15.R]	
	<i>See</i> [1.R].
[15.S]	
	<i>See</i> [1.S].
[15.T]	
	<i>See</i> [1.T].
[15.U]	
	<i>See</i> [1.U].
[15.V]	
	<i>See</i> [1.V].
[15.W]	
	<i>See</i> [1.W].
[15.X]	

	<i>See</i> [1.X].
[15.Y]	
	<i>See</i> [1.Y].
[15.Z]	
	<i>See</i> [1.Z].
[15.AA]	
	<i>See</i> [1.AA].
[15.AB]	
	<i>See</i> [1.AB].
[15.AC]	
	<i>See</i> [1.AC].
[15.AD]	
	<i>See</i> [1.AD].
[15.AE]	
	<i>See</i> [1.AE].
[15.AF]	
	<i>See</i> [1.AF].
[15.AG]	
	<i>See</i> [1.AG].

[15.AH]	
	<i>See</i> [1.AH].
[15.AI]	
	<i>See</i> [1.AI].
[15.AJ]	
	<i>See</i> [4].
[15.AK]	
	<i>See</i> [2].
[15.AL]	
	<i>See</i> [9.A].
[15.AM]	
	<i>See</i> [11].
[15.AN]	
	<i>See</i> [9.B].
[15.AO]	
	<i>See</i> [9.C].
Claim 16	
	<i>See</i> [10.A].

Claim 17

See [12.B].

Claim 18

[18.A]

The plurality of struts of Pedmo's base (*see* Pedmo, 2:46-47, 2:52-53) formed additional depressions including third through sixth depressions, below. (Delson, ¶321).

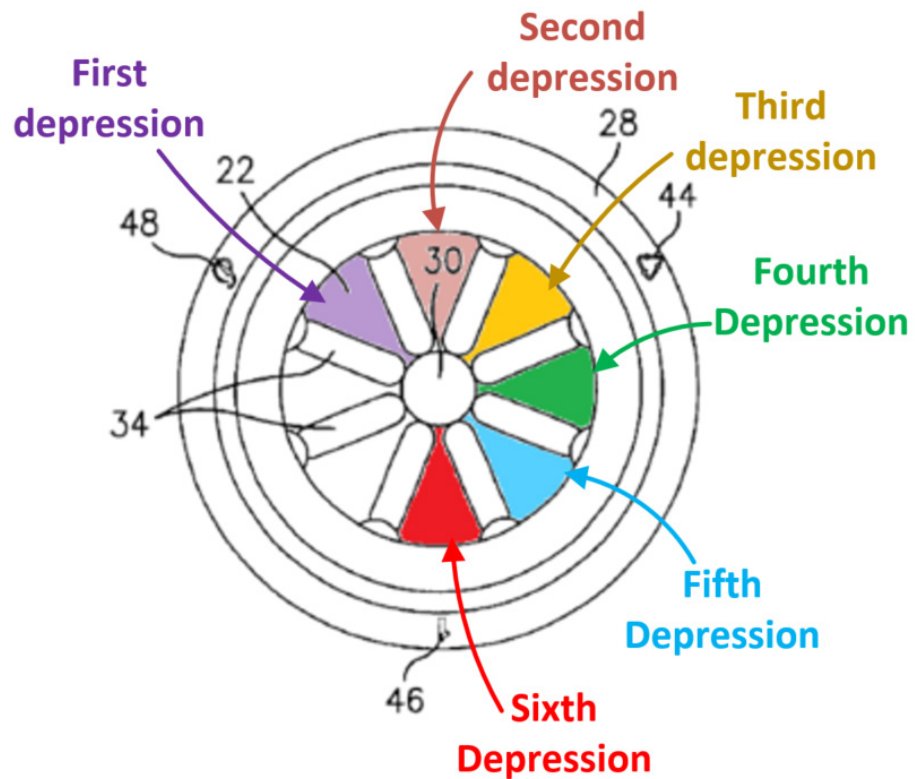
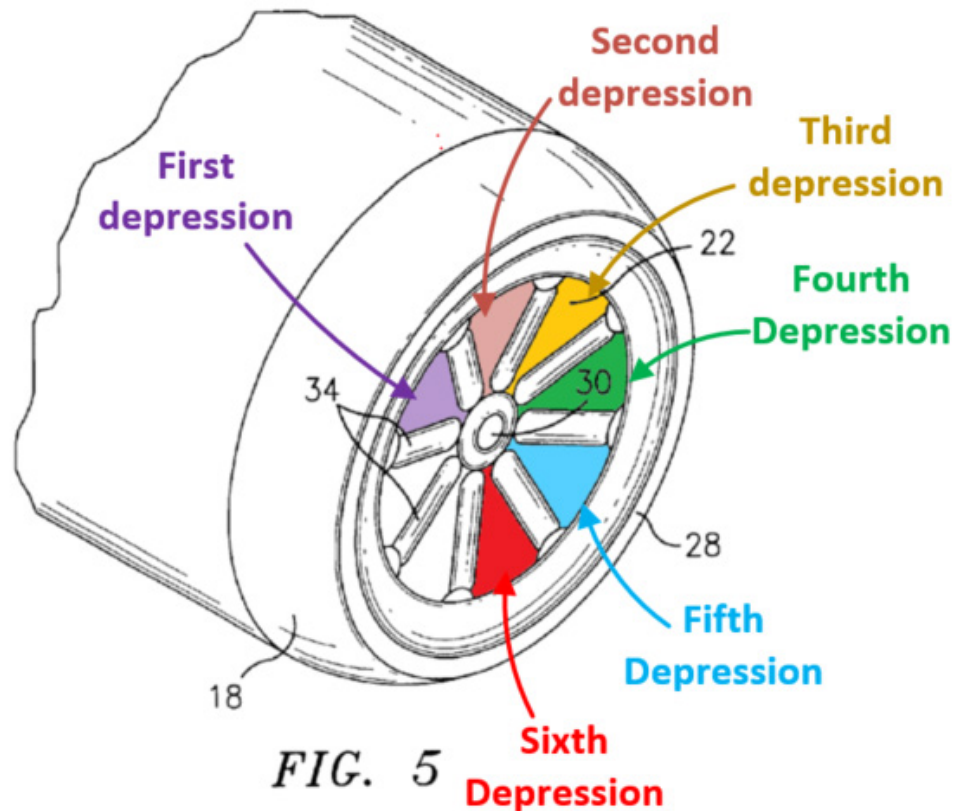


FIG. 2

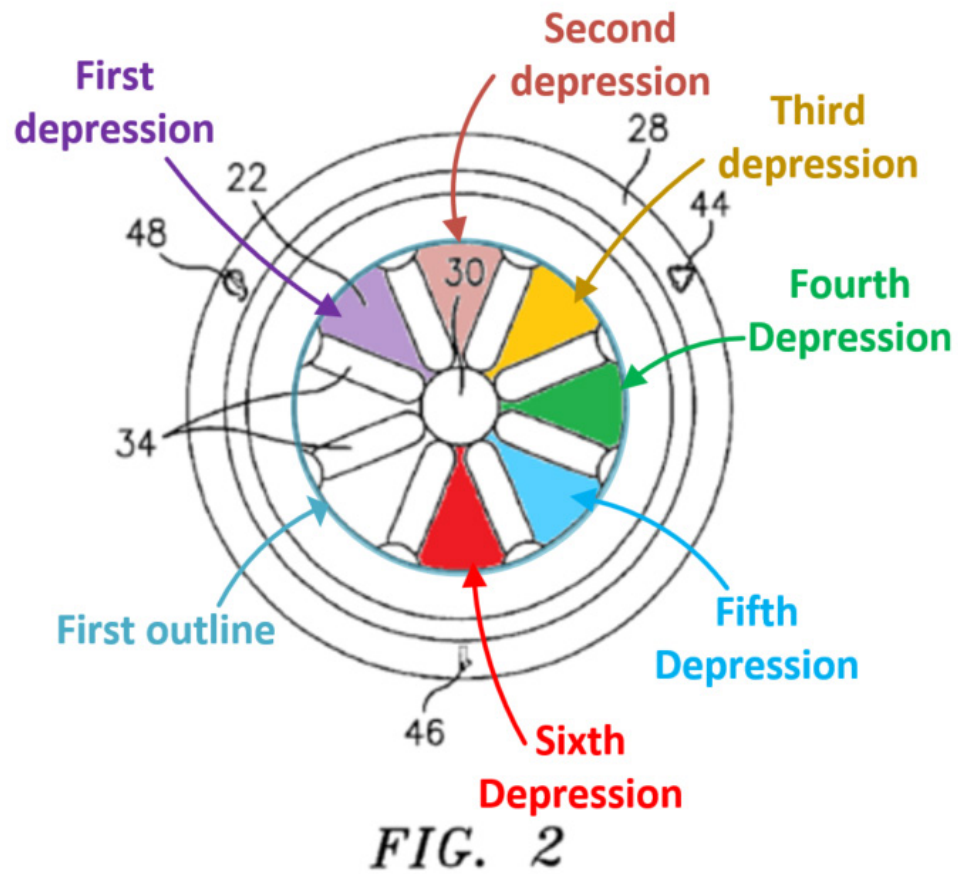
Pedmo, Fig. 2 (Annotated)



Pedmo, Fig. 5 (Annotated)

[18.B]

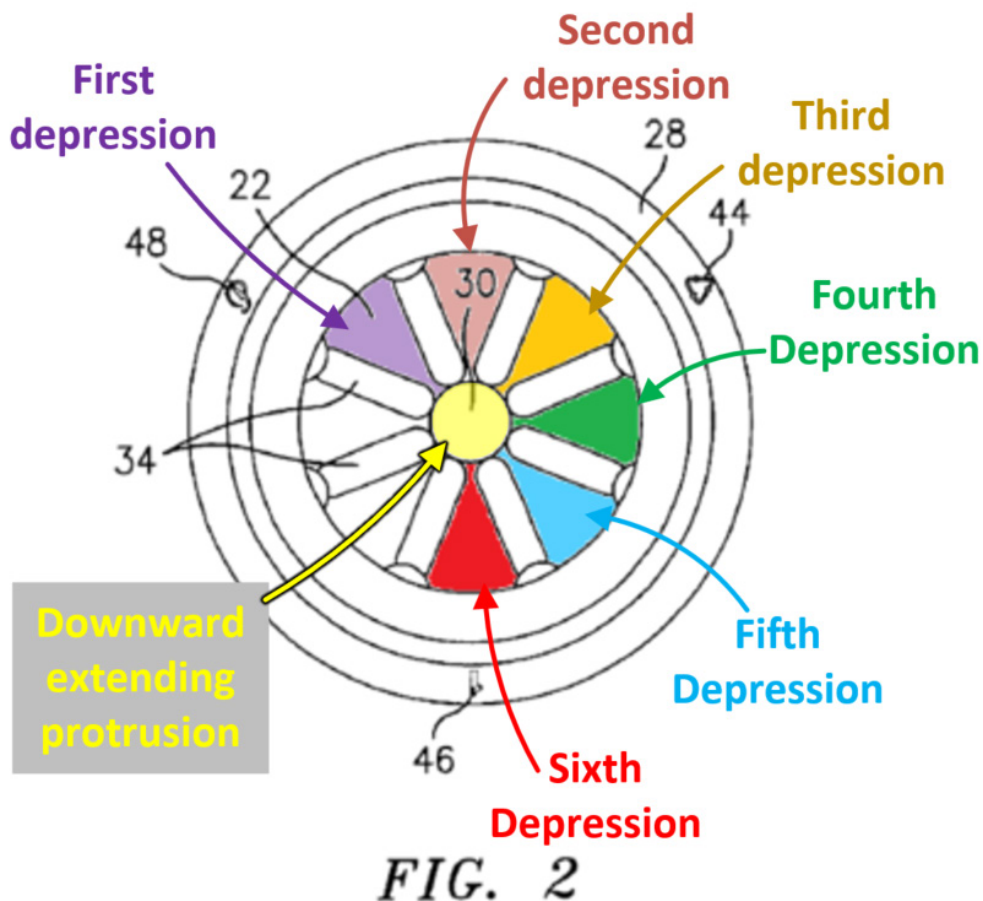
Pedmo's third through sixth depressions partially defined the first outline because each had an outer edge that formed part of the first outline. (See [12.B]). (Delson, ¶322).



Pedmo, Fig. 2 (Annotated)

Claim 19

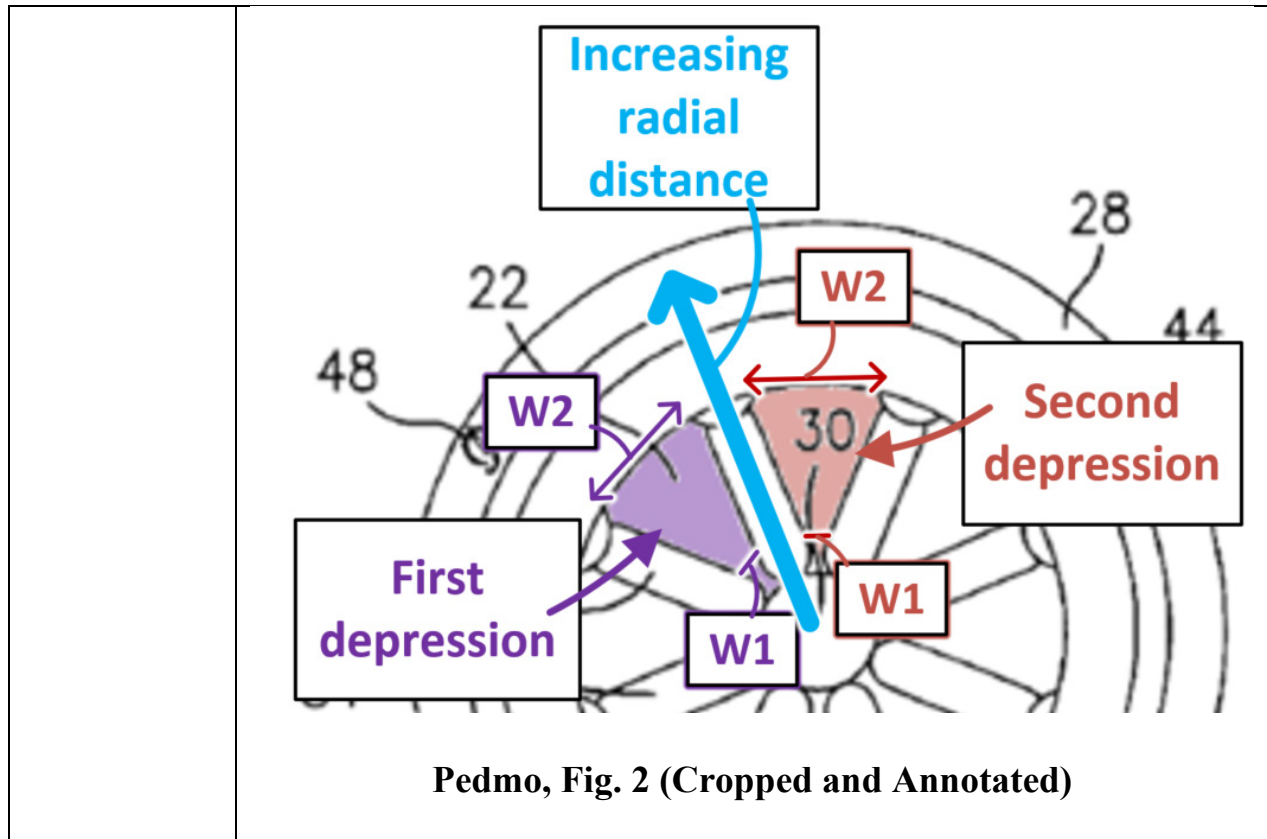
Pedmo disclosed a downward extending protrusion in the form of the hub 30 (yellow). (See [11]; Pedmo, 2:41-42, 2:47, 3:45). A POSITA would have found claim 19 obvious in the Gardiner-Pedmo-Brown combination because Pedmo showed that the hub was centered with respect to the first through sixth depressions formed between the struts 34. (Delson, ¶323).



Pedmo, Fig. 2 (Annotated)

Claim 20

Pedmo, Figure 2 below, illustrated that wedge-shaped depressions had a narrower width W_1 closer to hub 30 (the center of the bottom of the base) and a wider width W_2 farthest from the center. The spaces between the struts thus increased in width as the [radial distance from the center](#) increases. (*Id.*, ¶324).



VII. THE BOARD SHOULD NOT DECLINE REVIEW UNDER §314(A) OR §325(D)

1. §325(d)

5 The Board should not exercise its discretion under 35 U.S.C. §325(d) under *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, No. IPR2019-01469, Paper 6 at 8 (Feb. 13, 2020) (precedential) two-step framework. No prior art in this Petition were cited or considered during the original examination. This Petition is neither cumulative, nor provides overlapping arguments with those
10 in the original examination. All claims were allowed in a first action and the only prior art discussed in the Notice of Allowance did not describe several limitations of

the container which are taught by the references used in this Petition. *See* Section V.B, *supra*.

Additionally, this Petition is accompanied by the expert testimony of Dr. Delson, which the Office lacked during the original prosecution.

5 **2. §314(a)**

Petitioner will file a stipulation not to pursue in a parallel proceeding the same grounds or any grounds that could have reasonably been raised before the PTAB in the parallel district court litigation if the Petition is instituted.

VIII. CONCLUSION

10 The Board should institute IPR and cancel the challenged claims.

Dated: June 7, 2024

Respectfully submitted,

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CLAIMS APPENDIX

Reference	Claim Limitation
[1.PRE]	A container comprising:
[1.A]	a container body, the container body defining a first opening to an interior of the container body; and
[1.B]	a lid connected to the container body and covering the first opening to the interior of the container body;
[1.C]	wherein the container body is made out of a resin;
[1.D]	wherein the lid is made out of a metal;
[1.E]	wherein the container body comprises a container side wall and a base portion connected to the container side wall;
[1.F]	wherein the base portion comprises a bottom and a first depression formed therein, the first depression extending upwardly from the bottom;
[1.G]	wherein the first depression at least partially defines a first outline;
[1.H]	wherein the base portion further comprises a center element centered with respect to the first outline at least partially defined by the first depression;
[1.I]	wherein each of the center element, and the first outline at least partially defined by the first depression, is centered with respect to the container side wall;
[1.J]	wherein each of the center element, and the first outline at least partially defined by the first depression, is centered with respect to the base portion;
[1.K]	wherein a cross-sectional diameter of the first opening to the interior of the container body is less than a cross-sectional diameter of a middle portion of the container side wall;
[1.L]	wherein the base portion defines a diameter that is less than the cross-sectional diameter of the middle portion of the container side wall;

[1.M]	wherein a lower portion of the container side wall extends downwardly from the middle portion of the container side wall to the base portion of the container body, the lower portion along its entirety being greater in diameter than the base portion, including the bottom, thereby rendering the container body stemless;
[1.N]	wherein the container body further comprises a circular neck extending from the container side wall so that the container side wall extends between the circular neck and the base portion;
[1.O]	wherein an upper edge of the container side wall is adjacent to the circular neck of the container body;
[1.P]	wherein the container body further comprises a lip at an end of the circular neck opposite the upper edge of the container side wall;
[1.Q]	wherein the circular neck is adjacent to the lip;
[1.R]	wherein a first portion of the lid is above the lip of the container body;
[1.S]	wherein the first portion of the lid defines a first circular shape;
[1.T]	wherein the first portion of the lid further defines a second circular shape around which the first circular shape circumferentially extends;
[1.U]	wherein the second circular shape defined by the first portion of the lid is concentric with the first circular shape defined by the first portion of the lid;
[1.V]	wherein the first circular shape defined by the first portion of the lid is radially positioned between the container side wall and the second circular shape defined by the first portion of the lid;
[1.W]	wherein a second portion of the lid extends horizontally and is positioned so that the second circular shape is radially positioned between the second portion of the lid and the first circular shape;
[1.X]	wherein the second portion of the lid defines a total area across which the second portion of the lid extends horizontally;
[1.Y]	wherein the second portion of the lid comprises a weakened or scored area;

[1.Z]	wherein the weakened or scored area is less than the total area across which the second portion of the lid extends horizontally;
[1.AA]	wherein the lid further comprises an arm connected to the second portion of the lid and radially positioned within the second circular shape;
[1.AB]	wherein the arm comprises opposing first and second end portions;
[1.AC]	wherein the arm is pivotable from a first position, in which the arm extends horizontally and the weakened or scored area is not deformed, to a second position, in which the arm does not extend horizontally and the weakened or scored area is deformed to provide a second opening to the interior of the container body;
[1.AD]	wherein an upper portion of the container side wall extends upwardly from the middle portion of the container side wall to the upper edge of the container side wall, the upper portion along its entirety being greater in diameter than the first opening to the interior of the container body;
[1.AE]	wherein the container body contains a liquid therewithin;
[1.AF]	wherein the lid cooperates with the lip to provide a seal so that the liquid contained within the container body is sealed against leaking out from between the container body and the lid;
[1.AG]	wherein, when the arm of the lid is in the first position and the weakened or scored area is not deformed: the first end portion of the arm is not positioned above the weakened or scored area of the second portion of the lid; and at least a portion of the second end portion of the arm is positioned above the weakened or scored area of the second portion of the lid;
[1.AH]	wherein the container side wall extends between the circular neck and the base portion so that: the upper portion of the container side wall defines a first angle: between the upper portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion; the middle portion of the container side wall defines a second angle:

	between the middle portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion; the lower portion of the container side wall defines a third angle: between the lower portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion; the first angle is an acute angle; the third angle is an obtuse angle; the second angle is greater than the first angle; and the third angle is greater than the second angle; and
[1.AI]	wherein the interior of the container body extends continuously across the cross-sectional diameter of the middle portion at a height midway between the circular neck and the base portion so as to be interrupted, if at all, only by the liquid contained within the container body.
CLAIM 2	
[2]	The container of claim 1, wherein the resin is a polyethylene terephthalate (PET) resin.
CLAIM 3	
[3]	The container of claim 1, wherein the container body is formed using a blow molding process.
CLAIM 4	
[4]	The container of claim 1, wherein the metal is aluminum.
CLAIM 5	
[5.A]	The container of claim 1, wherein the metal is aluminum; and
[5.B]	wherein the resin is a polyethylene terephthalate (PET) resin.
CLAIM 6	
[6.A]	The container of claim 1, wherein the container body is formed using a blow molding process; and
[6.B]	wherein the resin is a polyethylene terephthalate (PET) resin.
CLAIM 7	

[7.A]	The container of claim 1, wherein the metal is aluminum; and
[7.B]	wherein the container body is formed using a blow molding process.1
CLAIM 8	
[8.A]	The container of claim 1, wherein the metal is aluminum;
[8.B]	wherein the resin is a polyethylene terephthalate (PET) resin; and
[8.C]	wherein the container body is formed using a blow molding process.
CLAIM 9	
[9.A]	The container of claim 1, wherein the first depression is visible through at least a portion of the container body;
[9.B]	wherein the base portion further comprises a second depression adjacent the first depression; and
[9.C]	wherein the second depression is visible through the at least a portion of the container body.
CLAIM 10	
[10.A]	The container of claim 1, wherein at least a portion of the container body is transparent;
[10.B]	wherein the first depression is visible through the at least a portion of the container body;
[10.C]	wherein the base portion further comprises a second depression adjacent the first depression;
[10.D]	and wherein the second depression is visible through the at least a portion of the container body.
CLAIM 11	
[11]	The container of claim 1, wherein the center element of the base portion is a downward extending protrusion.
CLAIM 12	
[12.A]	The container of claim 1, wherein the base portion further comprises a second depression adjacent the first depression; and
[12.B]	wherein the second depression at least partially defines the first outline.

CLAIM 13	
[13.A]	The container of claim 1, wherein the center element of the base portion is a downward extending protrusion; and
[13.B]	wherein the base portion further comprises a second depression adjacent the first depression.
CLAIM 14	
[14]	The container of claim 13, wherein the second depression at least partially defines the first outline.
CLAIM 15	
[15.PRE]	A container, comprising:
[15.A]	a container body, the container body defining a first opening to an interior of the container body; and
[15.B]	a lid connected to the container body and covering the first opening to the interior of the container body;
[15.C]	wherein the container body is made out of a resin;
[15.D]	wherein the lid is made out of a metal;
[15.E]	wherein the container body comprises a container side wall and a base portion connected to the container side wall;
[15.F]	wherein the base portion comprises a bottom and a first depression formed therein, the first depression extending upwardly from the bottom;
[15.G]	wherein the first depression at least partially defines a first outline;
[15.H]	wherein the base portion further comprises a center element centered with respect to the first outline at least partially defined by the first depression;
[15.I]	wherein each of the center element, and the first outline at least partially defined by the first depression, is centered with respect to the container side wall;
[15.J]	wherein each of the center element, and the first outline at least partially defined by the first depression, is centered with respect to the base portion;

[15.K]	wherein a cross-sectional diameter of the first opening to the interior of the container body is less than a cross-sectional diameter of a middle portion of the container side wall;
[15.L]	wherein the base portion defines a diameter that is less than the cross-sectional diameter of the middle portion of the container side wall;
[15.M]	wherein a lower portion of the container side wall extends downwardly from the middle portion of the container side wall to the base portion of the container body, the lower portion along its entirety being greater in diameter than the base portion, including the bottom, thereby rendering the container body stemless;
[15.N]	wherein the container body further comprises a circular neck extending from the container side wall so that the container side wall extends between the circular neck and the base portion;
[15.O]	wherein an upper edge of the container side wall is adjacent to the circular neck of the container body;
[15.P]	wherein the container body further comprises a lip at an end of the circular neck opposite the upper edge of the container side wall;
[15.Q]	wherein the circular neck is adjacent to the lip;
[15.R]	wherein a first portion of the lid is above the lip of the container body;
[15.S]	wherein the first portion of the lid defines a first circular shape;
[15.T]	wherein the first portion of the lid further defines a second circular shape around which the first circular shape circumferentially extends;
[15.U]	wherein the second circular shape defined by the first portion of the lid is concentric with the first circular shape defined by the first portion of the lid;
[15.V]	wherein the first circular shape defined by the first portion of the lid is radially positioned between the container side wall and the second circular shape defined by the first portion of the lid;

[15.W]	wherein a second portion of the lid extends horizontally and is positioned so that the second circular shape is radially positioned between the second portion of the lid and the first circular shape;
[15.X]	wherein the second portion of the lid defines a total area across which the second portion of the lid extends horizontally;
[15.Y]	wherein the second portion of the lid comprises a weakened or scored area;
[15.Z]	wherein the weakened or scored area is less than the total area across which the second portion of the lid extends horizontally;
[15.AA]	wherein the lid further comprises an arm connected to the second portion of the lid and radially positioned within the second circular shape;
[15.AB]	wherein the arm comprises opposing first and second end portions;
[15.AC]	wherein the arm is pivotable from a first position, in which the arm extends horizontally and the weakened or scored area is not deformed, to a second position, in which the arm does not extend horizontally and the weakened or scored area is deformed to provide a second opening to the interior of the container body;
[15.AD]	wherein an upper portion of the container side wall extends upwardly from the middle portion of the container side wall to the upper edge of the container side wall, the upper portion along its entirety being greater in diameter than the first opening to the interior of the container body;
[15.AE]	wherein the container body contains a liquid therewithin;
[15.AF]	wherein the lid cooperates with the lip to provide a seal so that the liquid contained within the container body is sealed against leaking out from between the container body and the lid;
[15.AG]	wherein, when the arm of the lid is in the first position and the weakened or scored area is not deformed: the first end portion of the arm is not positioned above the weakened or scored area of the second portion of the lid; and at least a portion of the second end portion of the arm is positioned above the weakened or scored area of the second portion of the lid;

[15.AH]	wherein the container side wall extends between the circular neck and the base portion so that: the upper portion of the container side wall defines a first angle: between the upper portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion; the middle portion of the container side wall defines a second angle: between the middle portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion; the lower portion of the container side wall defines a third angle: between the lower portion of the container side wall and the bottom of the base portion, and with respect to the bottom of the base portion; the first angle is an acute angle; the third angle is an obtuse angle; the second angle is greater than the first angle; and the third angle is greater than the second angle; and
[15.AI]	wherein the interior of the container body extends continuously across the cross-sectional diameter of the middle portion at a height midway between the circular neck and the base portion so as to be interrupted, if at all, only by the liquid contained within the container body;
[15.AJ]	wherein the metal is aluminum;
[15.AK]	wherein the resin is a polyethylene terephthalate (PET) resin;
[15.AL]	wherein the first depression is visible through at least a portion of the container body;
[15.AM]	wherein the center element of the base portion is a downward extending protrusion;
[15.AN]	wherein the base portion further comprises a second depression adjacent the first depression; and

[15.AO]	wherein the second depression is visible through the at least a portion of the container body.
CLAIM 16	
[16]	The container of claim 15, wherein the at least a portion of the container body is transparent.
CLAIM 17	
[17]	The container of claim 15, wherein the second depression at least partially defines the first outline.
CLAIM 18	
[18.A]	The container of claim 17, wherein the base portion further comprises third, fourth, fifth, and sixth depressions; and
[18.B]	wherein the third, fourth, fifth, and sixth depressions at least partially define the first outline.
CLAIM 19	
[19]	The container of claim 18, wherein the downward extending protrusion is centered with respect to the first, second, third, fourth, fifth, and sixth depressions.
CLAIM 20	
[20]	The container of claim 17, wherein each of the first and second depressions increases in width as the radial distance from a center of the bottom of the base portion increases.

CERTIFICATION OF WORD COUNT UNDER 37 C.F.R. § 42.24(d)

Pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the word count for the foregoing *Petition for Inter Partes Review* of U.S. Patent No. 11,932,441 totals 13,674, excluding the parts exempted by 37 C.F.R. § 42.24(a). Accordingly, this Petition is under the word count limit of 14,000 words.

This word count was calculated by using the built-in word-count tool in Microsoft Word 2016, the software used to prepare the document.

Dated: June 7, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **PETITION FOR INTER PARTES REVIEW OF U.S. PATENT NO. 11,932,441** and supporting materials (Exhibits 1001 – 1004, 1007, 1008, 1010-1014, 1017) and Power of Attorney) have been served this 7th day of June, 2024, by FedEx® mail delivery service on Patent Owner at the correspondence address for the attorney of record for the '441 patent shown in USPTO Patent Center:

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Dated: June 7, 2024

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