

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. IPR2024-01098

U.S. Patent No. 11,738,904 B2

PETITIONER REPLY

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EXHIBIT LIST (unchanged)

Exhibit	Description
Ex. 1001	U.S. Patent No. 11,738,904 B2 (“’904 patent”)
Ex. 1002	Declaration of Nathan J. Delson, Ph.D. (“Delson”)
Ex. 1003	Prosecution History of U.S. Patent No. 11,738,904 B2
Ex. 1004	Prosecution History of U.S. Patent No. 10,604,296 B2
Ex. 1005	Comparison of Original and Amended Specifications
Ex. 1006	Prosecution History of U.S. Patent No. 11,338,955 B2
Ex. 1007	U.S. Patent Publication 2011/0253720 A1 (“Kick”)
Ex. 1008	German Unexamined Patent Publication 102004046423 A1 (“Ackermann”)
Ex. 1009	U.S. Patent No. 4,465,204 (“Kaminski”)
Ex. 1010	U.S. Patent Publication 2008/0044603 A1 (“Hutchinson”)
Ex. 1011	The American Heritage Dictionary

I. INTRODUCTION

Patent Owner did not file a Patent Owner Response (POR) to the Petition and has therefore forfeited all arguments regarding the validity of the claims of the '904 patent. (Institution Decision (“ID”), 32 (“The Board will deem forfeited any issue not raised by Patent Owner in a timely response to the Petition, or as permitted in another manner during trial, even if asserted in the Preliminary Response or discussed in this Decision.”).) Petitioner, however, submits this Reply to confirm that it has carried its burden to prove by a preponderance of the evidence that all claims of the '904 patent are invalid and should be cancelled.

II. THE KICK APPLICATION INVALIDATES THE CLAIMS OF THE '904 PATENT

A. The '904 patent is not entitled to the April 19, 2010 filing date because it claims new matter that was later added.

As set forth in the Petition, when it was filed on April 19, 2010, U.S. Patent Application No. 12/762,934 (“the '934 application”) did not disclose any information about the size of the containers. (Pet., 8:6-8; EX1004, 1-17.) It wasn’t until June 1, 2010, when the applicant submitted an edited specification and replacement figures, including new figures 7-9, that there was any disclosure of the size of the container. (Pet., 8:1-9:3; EX1004, 44-45, 54-55.)

Not only did the original application fail to disclose any size limitation, it made no disclosure that any of the images were drawn to scale. (EX1004, 1-17

(making no mention of the figures being drawn to scale).) *See Hockerson-Halberstadt, Inc. v. Avia Grp. Int'l*, 222 F.3d 951, 956 (Fed. Cir. 2000) (“[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.”); MPEP § 2125 (“When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.”). And while the figures in the original ’934 application depicted a pop-top lid and the specification discussed a pop-top lid, there is no disclosure that the container uses a “standard” sized pop-top nor the dimension of such a “standard” lid. (EX1004, 1-17.) Notably, the size of pop-top lids can vary from small lids on juice cans to large lids on Foster’s Lager beer cans. Accordingly, no information could be drawn from the original ’934 application about the specific size of the disclosed container. Furthermore, there is no evidence that the figures in the ’934 application were CAD generated and therefore drawn to scale, as the original figures of the ’934 application, and specifically Figures 1 and 2, contain wobbly and asymmetric lines, which are hallmarks of hand-drawn sketches. (EX1004, 15-17.)

Because every claim of the ’904 patent recites a limitation regarding the size of the container that was not disclosed in the original ’934 application, the claims

are entitled to a priority date no earlier than the February 25, 2020 filing date of U.S. Application No. 16/800,195 (“the ’195 application”). (Pet., 10:8-11:9.)

B. Because it is prior art, the Kick Application invalidates the claims.

As set forth in the Petition, the amended version of the ’296 application (the “Kick Application”) was published on October 20, 2011. (Pet., 16:5-11; EX1007, 1.) The Kick Application is therefore prior art to the ’904 patent. (Pet., 16:5-11.) And the Kick Application, which has the identical written description and figures as the ’904 patent, discloses and/or renders obvious each limitation of the claims of the ’904 patent. (*Id.*, 16:12-41:14.) The Kick Application therefore anticipates and/or renders obvious each claim of the ’904 patent.

III. PETITIONER ADEQUATELY DEMONSTRATED INVALIDITY UNDER GROUNDS 2 AND 3 IN THE PETITION

Petitioner set forth in the Petition why the claims of the ’904 patent are also invalid under Grounds 2 and 3, and Petitioner stands on those arguments.

As noted earlier, Patent Owner has forfeited all arguments by not filing a response to the Institution Decision. Furthermore, Petitioner agrees with the Board’s preliminary indication that the addition of Kaminski’s pop-top features to Ackermann’s lid does not undermine Ackermann’s purported goals of reusability and cleaning of the container (ID, 28-29), and the lid thickness of Kaminski is irrelevant because the combination “uses Ackermann’s lid, not Kaminski’s.” (*Id.*, 29.)

Furthermore, while the Board indicated that issues about Ackerman's container volume may need further analysis of facts (ID, 30), the pertinent disclosure of Ackerman does not contradict or undermine the Petition's reasoning that having a volume of 211.5 mL would have been a simple design choice and obvious to a POSITA, with no special or unexpected results. (Pet., 77; Delson, ¶135.) Notably, Ackerman's recitation of a container volume between 0.25 liter to 2 liters is in the dependent claim 6, and Ackerman's general invention, as formulated in claim 1, does not recite any such volume limitations. (EX1008, claims 1 and 6.)

IV. CONCLUSION

Claims 1-6 of the '904 patent should be found invalid.

Dated: June 24, 2025

PERKINS COIE LLP
11452 El Camino Real, Suite 300
San Diego, CA 92130
Telephone: (858) 720-5700
Fax: (858) 720-5834

Respectfully submitted,

/Babak Tehrani/

Lead Counsel
Babak Tehrani, Reg. No. 55,937

Back-up Counsel
M. Craig Tyler, Reg. No. 41,519
Daniel T. Shvodian, Reg. No. 42,148
R. Tyler Kendrick, Reg. No. 73,930
Andrew Kalamarides, *pro hac vice*

Attorneys for Petitioner
MPL Brands NV, Inc.

CERTIFICATION OF WORD COUNT

I hereby certify that the foregoing PETITIONER’S REPLY includes 829 words (as calculated by Microsoft Word), excluding those in a table of contents; a table of authorities; a listing of facts that are admitted, denied, or cannot be admitted or denied; a certificate of service or word count; or an appendix of exhibits. Accordingly, this Reply is under the word count limit of 5,600 words.

Dated: June 24, 2025

Respectfully submitted,

/Babak Tehranchi/

PERKINS COIE LLP
11452 El Camino Real, Suite 300
San Diego, CA 92130
Telephone: (858) 720-5700
Fax: (858) 720-5834

Lead Counsel
Babak Tehranchi, Reg. No. 55,937

Back-up Counsel
M. Craig Tyler, Reg. No. 41,519
Daniel T. Shvodian, Reg. No. 42,148
R. Tyler Kendrick, Reg. No. 73,930
Andrew Kalamarides, *pro hac vice*

Attorneys for Petitioner
MPL Brands NV, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2025, a true and correct copy of the foregoing
PETITIONER REPLY was served by electronic mail on the Patent Owner via its
attorneys of record:

Gregory P. Webb
Alan N. Herda
Jason W. Whitney
Zachary A. Halbur
Brooke E. Parker
Adam Erickson
HAYNES AND BOONE, LLP
2801 N. Harwood St., Suite 2300
Dallas, TX 75201

greg.webb.ipr@haynesboone.com
alan.herda.ipr@haynesboone.com
jason.whitney.ipr@haynesboone.com
zachary.halbur.ipr@haynesboone.com
brooke.parker.ipr@haynesboone.com
adam.erickson.ipr@haynesboone.com

Dated: June 24, 2025

/ Kate Rose /

Kate Rose
Senior Paralegal