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Choi et al.

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(54) **DRINK BOTTLES**

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Related U.S. Application Data

(63) Continuation of application No. 15/287,915, filed on Oct. 7, 2016, now Pat. No. 10,023,365, which is a continuation of application No. 14/329,096, filed on Jul. 11, 2014, now Pat. No. 9,463,911, which is a continuation of application No. 12/133,954, filed on Jun. 5, 2008, now Pat. No. 8,777,048, which is a continuation of application No. 11/588,476, filed on Oct. 26, 2006, now Pat. No. 8,622,237, which is a continuation of application No. 11/313,488, filed on Dec. 20, 2005, now Pat. No. 7,533,783.

(60) Provisional application No. 60/706,700, filed on Aug. 8, 2005, provisional application No. 60/670,828, filed on Apr. 11, 2005.

(51) **Int. Cl.**

B65D 47/06	(2006.01)
A47G 19/22	(2006.01)
A45F 3/20	(2006.01)

(52) **U.S. Cl.**
CPC ***B65D 47/065*** (2013.01); ***A45F 3/20*** (2013.01); ***A47G 19/2266*** (2013.01); ***B65D 47/066*** (2013.01); *A47G 19/2272* (2013.01)

(58) **Field of Classification Search**
None
See application file for complete search history.

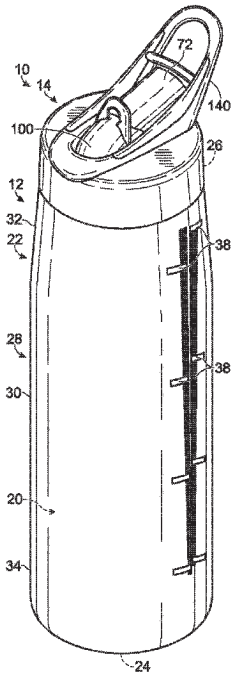
(56) **References Cited**

To view the complete listing of prior art documents cited during the proceeding for Reexamination Control Number 90/015,192, please refer to the USPTO's Patent Electronic System.

Primary Examiner — Jeffrey R Jastrzab

(57) **ABSTRACT**

Drink bottles, or drink containers with cap assemblies that include a drink spout. In some embodiments, the drink spout is pivotally coupled to a base of the cap assembly. In some embodiments, the drink spouts include mouthpieces, including self-sealing and/or bite-actuated mouthpieces. In some embodiments, the cap assembly includes a handle, which may include at least one guard for the drink spout and/or mouthpiece. In some embodiments, the drink containers include a manual on/off valve. In some embodiments, the dispensing spout includes a mount for the mouthpiece and/or cooperates with the cap to provide a manual on/off valve to selectively restrict flow of drink fluid from the drink container regardless of the drink spout's and/or mouthpiece's configuration. In some embodiments, the drink containers include a drink tube extending from external of the drink containers and/or an air return system.



EX PARTE REEXAMINATION CERTIFICATE

THE PATENT IS HEREBY AMENDED AS INDICATED BELOW.

Matter enclosed in heavy brackets [ ] appeared in the patent, but has been deleted and is no longer a part of the patent; matter printed in italics indicates additions made to the patent.

AS A RESULT OF REEXAMINATION, IT HAS BEEN DETERMINED THAT:

Claim **1** is determined to be patentable as amended.

Claims **3-8**, **13**, **14**, **18** and **19**, dependent on an amended claim, are determined to be patentable.

New claims **20-23** are added and determined to be patentable.

Claims **2**, **9-12** and **15-17** were not reexamined.

1. A drink container, comprising:

a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, *the pivotal mount comprising a mount outlet,* wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

a resilient mouthpiece *engaged with the mount outlet and removably* coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and

a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet; wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and

wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

20. A drink container, comprising:

a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth;

a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position; and

a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid con-

duit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet; wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and

wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

21. The drink container of claim 20, wherein the cap assembly base further comprises a handle that extends from the cap assembly base, and further wherein the handle is secured to the cap assembly base in a position that obstructs removal of the pair of lateral projections from the pair of sockets.

22. The drink container of claim 20, wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.

23. The drink container of claim 20, wherein the resilient mouthpiece includes projections that extend generally transverse to the portion of the fluid conduit that extends through the resilient mouthpiece, and further wherein the projections engage an end region of the pivotal mount.

* * * * *

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

CHOI, et al.

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DRINK BOTTLES

Mail Stop *Ex Parte* Reexam
Attn: Central Reexamination Unit
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RESPONSE TO OFFICE ACTION IN EX PARTE REEXAMINATION

Please enter this Amendment and Response to the Office Action dated June 27, 2023 ("Office Action").

Amendments to the Claims begin on page 2 of this paper.

Remarks begin on page 8 of this paper.

AMENDMENTS TO THE CLAIMS

1. (Amended) A drink container, comprising:

a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and

a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet; wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and

wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

2. (Issued) The drink container of claim 1, wherein the cap assembly base further comprises a handle that extends from the cap assembly base, and further wherein the handle is secured to the cap assembly base in a position that obstructs removal of the pair of lateral projections from the pair of sockets.

3. (Issued) The drink container of claim 1, wherein the cap assembly includes a pair of lateral guards that extend on opposed sides of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position, and further wherein the cap assembly includes a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position.

4. (Issued) The drink container of claim 3, wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.

5. (Issued) The drink container of claim 3, wherein the dust cover projects above an upper surface of the cap assembly base.

6. (Issued) The drink container of claim 3, wherein the cap assembly further includes a handle that extends from the cap assembly base and includes the pair of lateral guards and the dust cover.

7. (Issued) The drink container of claim 1, wherein the cap assembly further comprises a handle that extends in a fixed orientation from the cap assembly base and which defines at least a portion of a closed loop with an aperture through which a user's finger may be inserted to carry the drink container.

8. (Issued) The drink container of claim 1, wherein the resilient mouthpiece is permanently secured to the pivotal mount.

9. (Issued) The drink container of claim 1, wherein the resilient mouthpiece includes projections that extend generally transverse to the portion of the fluid conduit that extends through the resilient mouthpiece, and further wherein the projections engage an end region of the pivotal mount.

10. (Issued) The drink container of claim 9, wherein the projections are internal projections.

11. (Issued) The drink container of claim 1, wherein the resilient mouthpiece is configured to be selectively removed from and recoupled to the pivotal mount.

12. (Issued) The drink container of claim 11, wherein the resilient mouthpiece includes a mouthpiece base with an end distal the dispensing outlet that has a contoured configuration that does not extend at a constant distance from the dispensing outlet, wherein the end of the resilient mouthpiece base includes a projecting region and a concave region, wherein the projecting region of the end of the mouthpiece base extends a greater distance away from the dispensing outlet than the concave region of the end of the mouthpiece base, and further wherein

the pivotal mount is configured to engage the projecting region and the concave region of the mouthpiece base to restrict rotation of the resilient mouthpiece relative to the pivotal mount.

13. (Issued) The drink container of claim 1, wherein the resilient mouthpiece includes a dispensing face, and further wherein the dispensing outlet extends through the dispensing face of the resilient mouthpiece.

14. (Issued) The drink container of claim 13, wherein the dispensing outlet is defined by a slit that extends through the dispensing face of the resilient mouthpiece.

15. (Issued) The drink container of claim 1, wherein the resilient mouthpiece includes a dispensing face that defines the dispensing outlet, wherein the resilient mouthpiece includes opposed bite regions, wherein the dispensing face includes opposed lips between which the dispensing outlet is defined, and further wherein when a user applies compressive forces to the opposed bite regions, the lips are urged away from each other to enlarge the dispensing outlet.

16. (Issued) The drink container of claim 15, wherein the opposed lips seal against each other when the opposed bite regions are not urged toward each other.

17. (Issued) The drink container of claim 1, wherein the pivotal mount further includes a projecting flange that extends away from a portion of the fluid conduit that extends through the pivotal mount, wherein the projecting flange provides a lever arm that is configured to be engaged by a user's finger to pivot the pivotal mount from the stowed position to the dispensing position.

18. (Issued) The drink container of claim 1, wherein the pivotal mount is adapted to selectively engage the flexible tube to apply crimping forces thereto and thereby configure the manual on/off valve to the closed configuration as the pivotal mount is pivoted from the dispensing position to the stowed position.

19. (Issued) The drink container of claim 1, wherein the flexible tube is secured to the pivotal mount.

20. (New) A drink container, comprising:

a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth;

a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position; and

a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet; wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and

wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

21. (New) The drink container of claim 20, wherein the cap assembly base further comprises a handle that extends from the cap assembly base, and further wherein the handle is secured to the cap assembly base in a position that obstructs removal of the pair of lateral projections from the pair of sockets.

22. (New) The drink container of claim 20, wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.

23. (New) The drink container of claim 20, wherein the resilient mouthpiece includes projections that extend generally transverse to the portion of the fluid conduit that extends through the resilient mouthpiece, and further wherein the projections engage an end region of the pivotal mount.

REMARKS

Claims 1-19 are issued in U.S. Patent No. 10,676,255 (the '255 Patent). Claims 1, 3-8, 13-14, and 18-19 are subject to reexamination and currently stand rejected. By this amendment, claim 1 is amended and new claims 20-23 are added. In light of the above amendments and the following remarks, Patent Owner respectfully requests withdrawal of the outstanding rejections, confirmation of the amended issued claims, and allowance of the new claims.

I. Status of Claims and Support for Claim Changes

Pursuant to 37 C.F.R. § 1.530(e), Patent Owner provides the following status of the claims and support for amendments.

Claims 2, 9-12, and 15-17 are issued and not subject to reexamination;

Claim 1 is issued and amended herein and currently stands rejected;

Claims 3-8, 13-14, and 18-19 are issued and unamended and currently stand rejected;

New claims 20-23 are added in this reexamination.

Claim 1 is amended herein to recite *"a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet"* and *"a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base."* Support for these claim amendments is found, for example, at column 3, lines 18-42, column 7, lines 1-24 and Figs. 1-2, 5, and 26-29.

New claim 20 incorporates all of the limitations of independent claim 1 and claims 21-23 incorporate limitations recited in dependent claims 2, 4, and 9. Additionally, new claim 20 recites *"a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position."* Support for these claim amendments is found, for example, at column 17, lines 4-23 and Figs. 21-22 and 25-27.

II. Rejections under 35 U.S.C. §§ 102 and 103

A. Summary of Rejections

Claims 1, 3-5, 13, and 18-19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US 2005/0029271 A1 to McDonough ("McDonough"). Alternatively, these claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough in view of WO 03/101261 to Wright et a. ("Wright").

Claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough or McDonough and Wright in view of US 3,307,752 to Anderson ("Anderson") and US 2004/0217139 A1 to Roth ("Roth").

Claims 1, 3-5, 8, 13, and 18-19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by JP 2001-294252 to Toudou ("Toudou"). Alternatively, these claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Toudou.

Claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Toudou in view of Anderson and Roth.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Toudou in view of Wright or US Patent No. 2,816,548 to Tupper ("Tupper").

Claims 1, 3-5, 8, 13-14, and 18-19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of Wright.

Claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Toudou and Wright in view of Anderson and Roth.

Claims 1, 3-5, 8, 13, and 18-19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of US Patent No. 2,467,463 to Canham ("Canham") and U.S. Patent No. 2,001,842 ("Heise").

Claims 6-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Toudou, Canham, and Heise in view of Anderson and Roth.

B. Neither McDonough nor the combination of McDonough and Wright disclose, suggest, or teach each and every limitation of independent claim 1 or new claim 20.

1. The combination of McDonough and Wright does not disclose, suggest, or teach "a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet" and "a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base" recited in independent claims 1 and 20.

Independent claims 1 and 20, as presented herein, recite *"a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet"* and further recite *"a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base."* This feature can be seen in, for example, Fig. 27 of the Application, presented below with annotations:

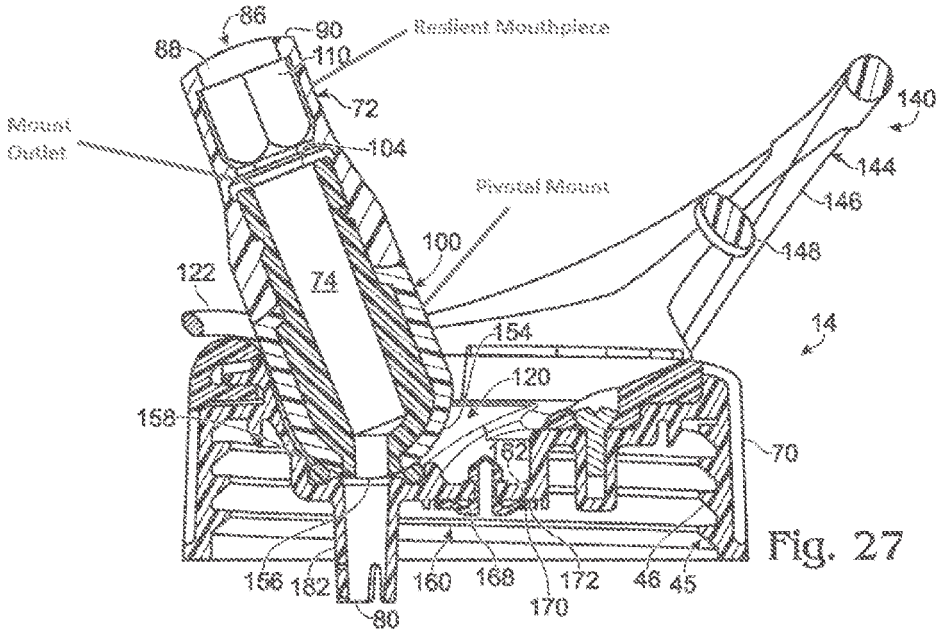


Fig. 27

In the Office Action, the Examiner maps the claimed pivotal mount to straw positioning mechanism 20 and maps the claimed mouthpiece to first end 16 of flexible straw 14 of McDonough. Office Action, pp. 4-5. These features can be seen in Fig. 2 of McDonough, presented below with annotations:

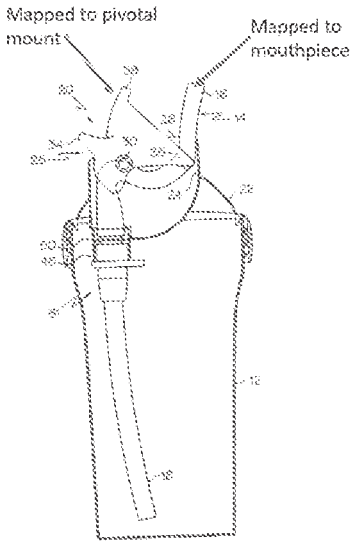


FIG. 2

McDonough fails to disclose, teach, or suggest a pivotal mount comprising a mount outlet and a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount. The straw positioning mechanism 20 of McDonough has an open underside that allows the straw to pass through positioning mechanism 20 and out of opening 36, as shown in Fig. 4:

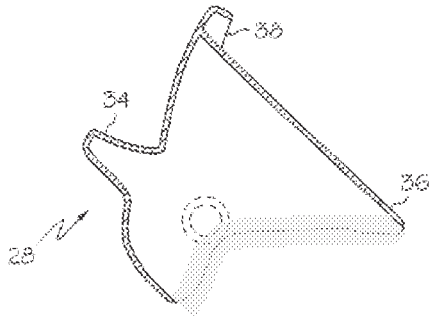
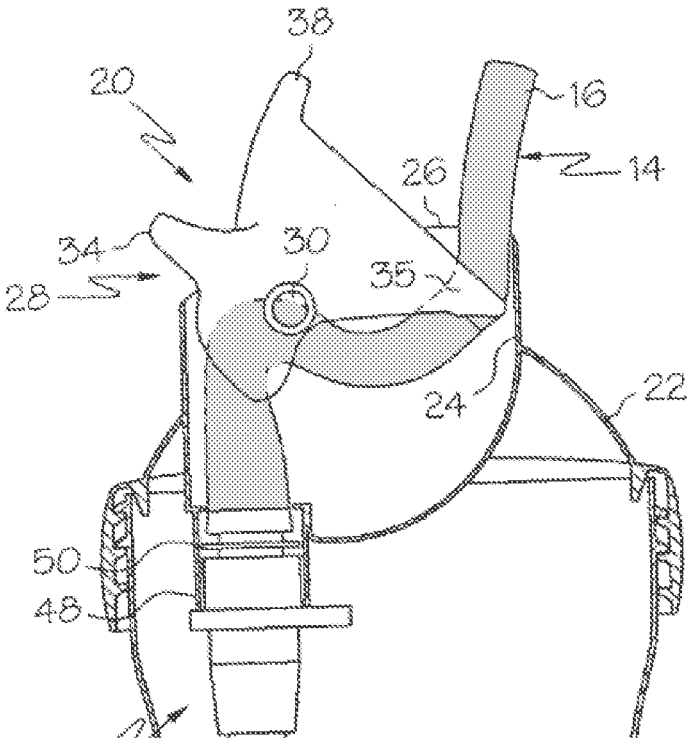


FIG. 4

The straw in McDonough passes through opening 36 and is not engaged with the opening 36. As shown in the annotated figure below, the straw positioning mechanism 20 does not have a mount outlet and the first end 16 of straw 14 is not engaged with a mount outlet of the straw positioning mechanism 20:



Additionally, as shown above, the straw 14 in McDonough passes through the straw positioning mechanism 20, but it is not coupled or removably coupled to the straw positioning mechanism 20. Furthermore, the *end* of the straw 16 (mapped to the resilient mouthpiece) is also not coupled or removably coupled to the straw positioning mechanism 20.

McDonough's specification similarly fails to disclose, teach, or suggest the first end 16 of straw 14 being engaged with any outlet of the straw positioning mechanism 20. In contrast, amended claim 1 and new claim 20 require that the resilient mouthpiece is engaged with a mount outlet of the pivotal mount and that the resilient mouthpiece is removably coupled to the pivotal mount.

As these features are not disclosed or suggested by Wright, Patent Owner respectfully submits that the combination of McDonough and Wright does not disclose, suggest, or teach the limitations of *"a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet"* and *"a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base"* recited in independent claims 1 and 20.

2. The combination of McDonough and Wright does not disclose, suggest, or teach "the resilient mouthpiece [being] pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets" recited in independent claims 1 and 20.

Independent claims 1 and 20, as presented herein, recite that *"the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets."* This is shown, for example, in Fig. 7 of the Application:

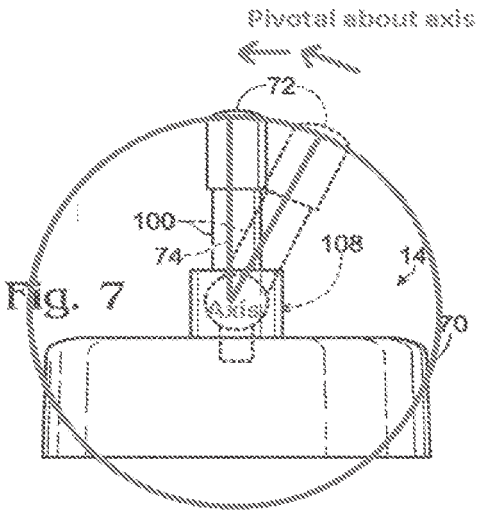


Fig. 7

As shown above, the mouthpiece 72 is pivotal about an axis defined by the pair of lateral projections as they rotate. In the Office Action, the Examiner maps the recited mouthpiece to the end portion 16 of straw 14, shown:

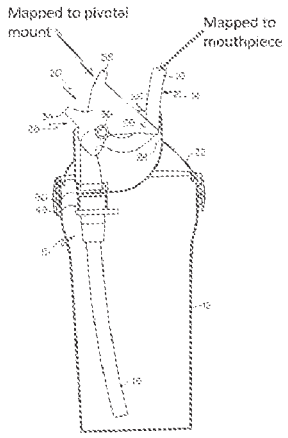


FIG. 2

However, portion 16 of the straw in McDonough (mapped to the resilient mouthpiece) is not pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets, as required by the claims. This is shown, for example, in Figs. 2-3 of McDonough:

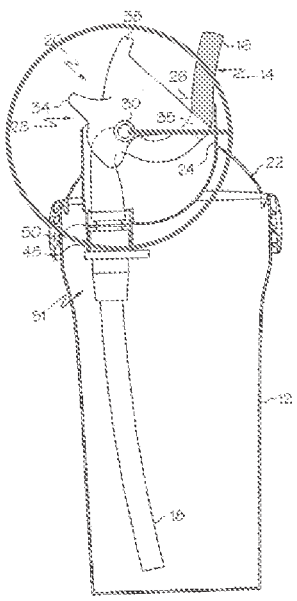


FIG. 2

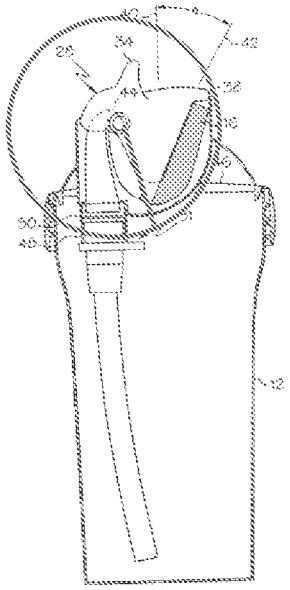


FIG. 3

As shown in the figures above, when the straw positioning member 20 is pivoted about a pivotal axis, the end portion 16 of straw 14 is pulled downwards. The end portion 16 of the

straw (mapped to the resilient mouthpiece) is not "*pivotal about an axis defined by the pair of lateral projections*" as required by the claims.

As these features are not disclosed or suggested by Wright, Patent Owner respectfully submits that the combination of McDonough and Wright does not disclose, suggest, or teach the limitation of *"the resilient mouthpiece [being] pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets"* recited in independent claims 1 and 20.

3. The combination of McDonough and Wright does not disclose, suggest, or teach "a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position" recited in independent claim 20.

Independent claim 20 recites *"a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position."* This feature can be seen in Figs. 26 and 27 showing the mouthpiece and the pivotal mount in the stowing position and the dispensing position, respectively, presented below with annotations:

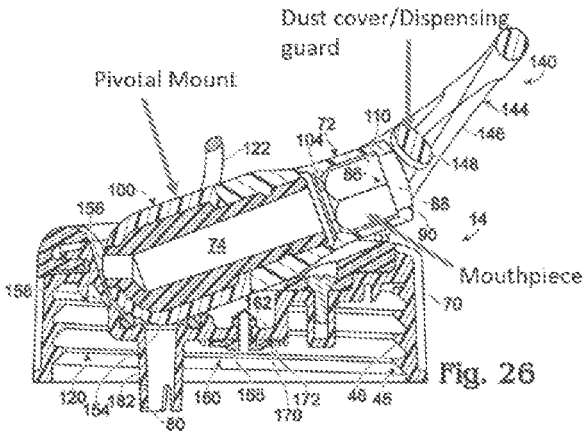


Fig. 26

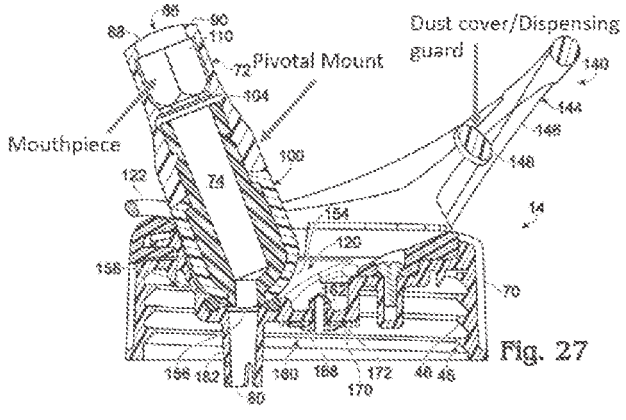


Fig. 27

As can be seen in the figures above, guard or cover 148 is stationary when mouthpiece 72 and mount 100 are selectively transitioned between the stowed position, shown in Fig. 26, and the dispensing configuration, shown in Fig. 27.

As explained above, the Examiner maps the claimed pivotal mount to straw positioning mechanism 20 and the claimed mouthpiece to drinking end 16 of straw 14. Additionally, with respect to dependent claim 3, the Examiner maps the claimed dust cover to element 38 of McDonough. Office Action, p. 8. The Examiner further maps the claimed dispensing position to Fig. 2 of McDonough and the claimed stowed position to Fig. 3 of McDonough. These features can be seen in Figs. 2 and 3 of McDonough showing the dispensing position and the stowed position, respectively, presented below with annotations:

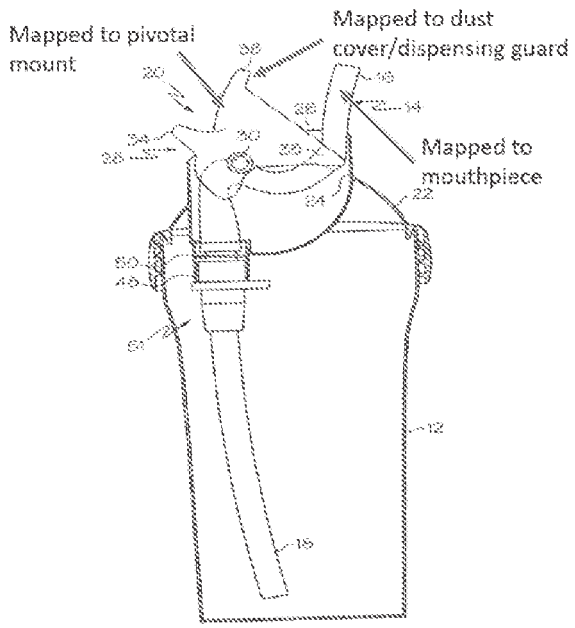


FIG. 2

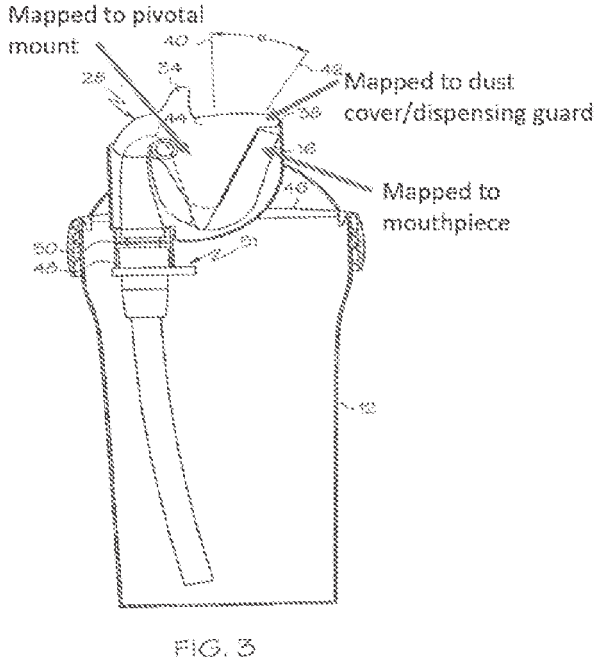


FIG. 3

As can be seen in Figs. 2 and 3 of McDonough, portion 38 of straw positioning mechanism 20 is displaced a distance α when straw positioning mechanism 20 and drinking end 16 of straw 14 are selectively transitioned between the dispensing position shown in Fig. 2 to the stowed position shown in Fig. 2. In contrast, as seen in Figs. 26 and 27 of the Application, Applicant's dust cover/dispensing guard 148 remains stationary when mouthpiece 72 and mount 100 are selectively transitioned between the stowed position and the dispensing position.

McDonough fails to disclose or suggest a configuration in which portion 38 is stationary when straw positioning mechanism 20 and dispensing end 16 selectively transition between the stowed position and the dispending position.

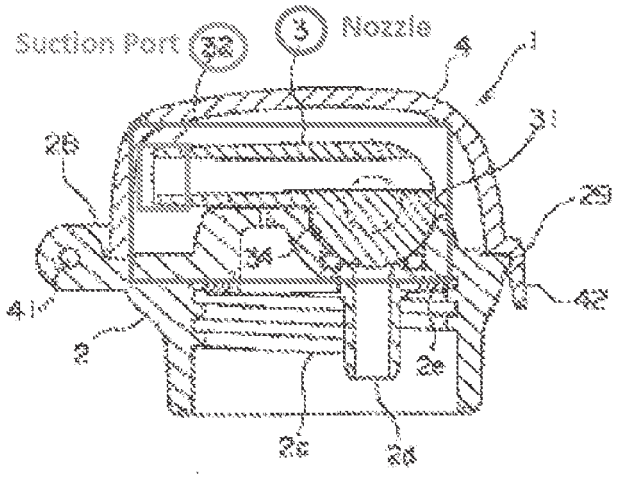
As this feature is not disclosed by Wright, Patent Owner respectfully submits that McDonough fails to disclose, suggest or teach the limitation "*wherein the dust cover/dispensing guard is stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position*" recited in independent claim 20.

C. Neither Toudou nor the combination of Toudou and Wright or Toudou, Canham, and Heise disclose, suggest, or teach each and every limitation of independent claim 1 or new claim 20.

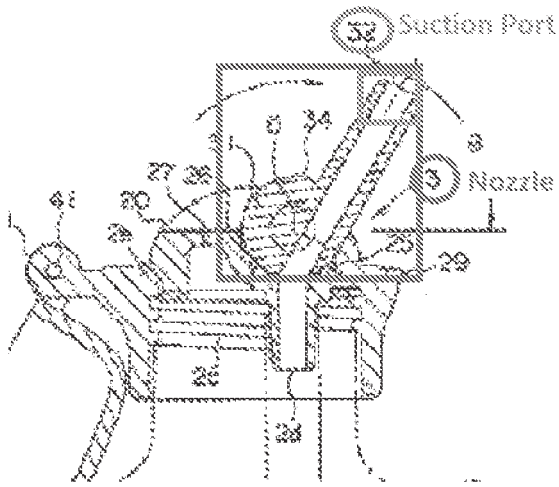
1. The combination of Toudou and Wright or Toudou, Canham, and Heise does not disclose, suggest, or teach "a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet" and "a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base" recited in independent claims 1 and 20.

In the Office Action, the Examiner maps the recited feature of a *pivotal mount coupled to the cap assembly base* to pivoting nozzle 3 of Toudou. Office Action, p. 12. Additionally, the Examiner maps the recited feature of a *resilient mouthpiece coupled to the pivotal mount* to the suction port 32 at the end of nozzle 3. Office Action, p. 13. These features are shown in Figs 2 and 4 of Toudou:

[FIG. 2]



[FIG. 4]



As shown above, the suction port 32 of Toudou is an integral part of the nozzle 3 – is it part of the nozzle and forms the end of the nozzle. However, Toudou does not disclose or suggest the features of "a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet" and "a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base."

As explained above, the **nozzle** 3 of Toudou is mapped by the Examiner to the recited pivotal mount. However, the nozzle of Toudou does not have a *mount outlet* distinct from the suction port itself. Additionally, the suction port 32 mapped by the Examiner to the recited resilient mouthpiece is not *engaged with a mount outlet* on the nozzle and is not *removably coupled* to the nozzle. To the contrary, Toudou explains that the suction forms an integral portion of the nozzle. *See* Toudou, ¶ 13 ("the nozzle 3 is provided with a spherical base portion 31 and a suction port 32 extending tangentially from the base portion 3l").

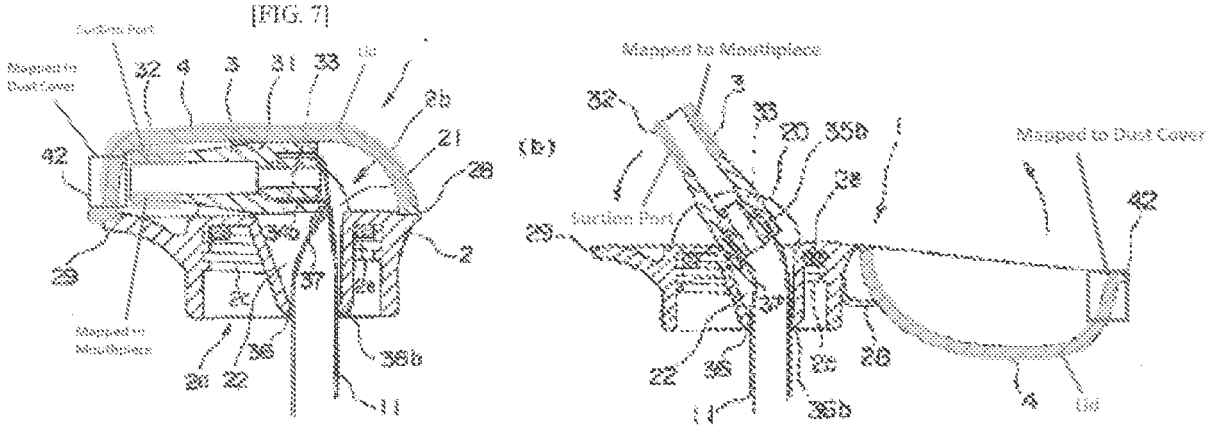
As this feature is not disclosed or suggested by Wright, Canham, and Heise, Patent Owner respectfully submits that the combination of Toudou and Wright or Toudou, Canham, and Heise does not disclose suggest, or teach the limitations of *"a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet"* and *"a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base"* recited in independent claims 1 and 20.

2. The combination of Toudou and Wright or Toudou, Canham, and Heise does not disclose, suggest, or teach "a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position" recited in independent claim 20.

Independent claim 20 recites *"a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position."*

In the Office Action, the Examiner maps the feature of a dust cover, recited in dependent claim 4, to the feature of a lid 4 in Toudou. Office Action, p. 20. Toudou discloses multiple different embodiments, but the only embodiment which discloses a pivoting nozzle (mapped to the recited pivotal mount) and a manual on/off valve that utilizes a crimped tube (also recited in independent claims 1 and 20) is the **third** embodiment of Toudou, which is shown in Figs. 7 and 8(a)-8(b) of Toudou.

With respect to the third embodiment, Toudou explains that when the lid is pivoted down, it exerts a force on the tip of the nozzle to hold it in the stowed position. *See* Toudou ¶ 24, ("when the latching piece 42 of the lid 4 under the resistance force of the straw 11 is latched onto the latching portion 29, the nozzle 3 comes out of the inverted conical portion and becomes a prone state as shown in FIG. 7 to be stored in the storage groove 21"). Additionally, when the lid is released, this frees the nozzle to move from the stowed position to the dispensing position. *See* ¶ Toudou 25, ("when the latching of the hinge portion 28 is released, the nozzle 3 pressed by the lid 4 follows the opening of the lid 4 by the restoring force of the straw 11 and is automatically raised as shown in FIG. 8 (b) from the state shown in FlG. 7"). This operation is shown below in the annotated Figs. 7 and 8(b) of Toudou, along with the Examiner's mappings:



As shown above, the release of the lid allows the nozzle 3 (including suction port 32) to move from the stowed position to a dispensing position. Claim 20 recites that *"the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position."* As discussed previously, the Examiner maps a portion of the lid, shown above, to the recited dust cover. However, this portion of the lid (and the entirety of the lid) does not remain stationary as the nozzle is pivoted between the stowed and dispensing positions. To the contrary, the lid is **required** to be raised to allow the nozzle to move from the stowed to the dispensing position.

As this feature is not disclosed or suggested by Wright, Canham, and Heise, Patent Owner respectfully submits that the combination of Toudou and Wright or Toudou, Canham, and Heise does not disclose suggest, or teach the limitation of *"a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the dispensing position"* recited in independent claim 20.

II. Update on Concurrent Litigation Pursuant to 37 C.F.R. § 1.565

The '911 Patent was the subject of concurrent district court litigation in CamelBak Products, LLC v. Zak Designs, Inc. 5-21-cv-05 l 09 (WDAR). On February 7, 2023 the parties reached a settlement and a Motion to Dismiss was granted pursuant to the terms of a settlement agreement.

III. Related Applications

Nonprovisional Application No. 17/565,354, filed on December 29, 2021 is currently pending and related to the '255 Patent. The '354 Application is a continuation of Application No. 16/035,418 (now the '255 Patent).

For at least the above-stated reasons, Patent Owner requests withdrawal of the outstanding rejections and submits that claims 1, 3-8, 13-14, and 18-23 are patentable.

Dated: August 28, 2023

Respectfully submitted,

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/015,192	01/18/2023	10676255	Z036-0005RE	7437

165846 7590 06/27/2023

Reed Smith LLP (972852)
IP Docketing Dept.
P.O. Box 488
Pittsburgh, PA 15230

EXAMINER	
JASTRZAB, JEFFREY R	

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
06/27/2023	PAPER

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

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

Trove Brands Ex. 1012
IPR Petition - USP 10,676,255

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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/015,192* .

PATENT UNDER REEXAMINATION *10,676,255* .

ART UNIT *3993* .

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

/JEFFREY R JASTRZAB/

Trove Brands Ex. 1012
IPR Petition - USP 10,676,255

Office Action in Ex Parte Reexamination	**Control No.** 90/015,192	**Patent Under Reexamination** 10676255	
	Examiner JEFFREY R JASTRZAB	**Art Unit** 3993	**AIA (FITF) Status** No

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

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

b. ☐ This action is made FINAL.

c. ☐ A statement under 37 CFR 1.530 has not been received from the patent owner.

A shortened statutory period for response to this action is set to expire 2 month(s) from the mailing date of this letter. Failure to respond within the period for response will result in termination of the proceeding and issuance of an *ex parte* reexamination certificate in accordance with this action. 37 CFR 1.550(d). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).** If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☐ Information Disclosure Statement, PTO/SB/08.
3. ☐ Interview Summary, PTO-474.
4. ☐ _____.

Part II SUMMARY OF ACTION

1a. ☑ Claims 1,3-8,13-14 and 18-19 are subject to reexamination.

1b. ☑ Claims 2,9-12 and 15-17 are not subject to reexamination.

2. ☐ Claims _____ have been canceled in the present reexamination proceeding.

3. ☐ Claims _____ are patentable and/or confirmed.

4. ☑ Claims 1,3-8,13-14 and 18-19 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ The drawings, filed on _____ are acceptable.

7. ☐ The proposed drawing correction, filed on _____ has been (7a) ☐ approved (7b) ☐ disapproved.

8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have

1 ☐ been received.

2 ☐ not been received.

3 ☐ been filed in Application No. _____.

4 ☐ been filed in reexamination Control No. _____.

5 ☐ been received by the International Bureau in PCT application No. _____.

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

9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.

10. ☐ Other: _____

cc: Requester (if third party requester)

Trove Brands Ex. 1012
IPR Petition - USP 10,676,255

Reexamination

This action is directed only to the claims for which reexamination was requested. With respect to such claims, requester has alleged that a substantial new question of patentability (SNQ) exists, and upon review, it has been determined that the alleged SNQ in fact is present for claims 1, 3-8, 13, 14, 18 and 19. No determination was made with respect to the existence or nonexistence of an SNQ with respect to any claim for which reexamination was not specifically requested.

Notice of Pre-AIA or AIA Status

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

Claim Status

Claims 2, 9-12 and 15-17 are not subject to this reexamination

Claims 1, 3-8, 13, 14, 18 and 19 are rejected herein.

Claim Rejections - 35 USC § 102 and § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

> by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

McDonough:

Claims 1, 3-5, 13, 18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by McDonough as evidenced by WO 03/101261 to Wright et al., or in the alternative under 35 U.S.C. 103(a) as unpatentable over McDonough, in view of WO 03/101261 to Wright et al.

As to Claim 1, McDonough teaches a drink container (12 in Fig. 3), comprising: a fluid container (volume) having a neck (enlarged portion near the top of 12) with an opening (covered by lid 22) and having an internal compartment sized to hold a volume of potable drink fluid (below the opening and above the bottom, see [0022] "*container 12 for serving a beverage*");

a cap assembly (lid 22) removably coupled (screwable at [0020]) to the fluid container to cover the opening,

wherein the cap assembly defines a fluid conduit (straw 14) for drink fluid to flow from the fluid container and through the cap assembly to a user (at drinking end 16), wherein the fluid conduit includes an inlet (18) through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet (16) through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

a cap assembly base removably coupled to the neck of the fluid container (note the lower portion of the lid 22 screwed onto the neck or top of the container 12), wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container (note the "screwable" nature of the connection at [0020], thus enabling the claimed function);

a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base: "(a)s may best be seen in FIGS. 2 and 3, straw positioning mechanism 20 is preferably embodied as a straw positioning member 28 that is pivotally mounted to the lid 22 and is substantially positioned within the opening 26 that is defined by the upstanding wall 23" at [0021];

wherein the pivotal mount includes a pair of lateral projections (axle projections 30), wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend (holes 32);

a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base (note the flexible nature of straw, i.e. being of "*a resilient elastomeric material such as silicone*" at [0025];

wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets (compare Figures 2 and 3);

wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet (note the components of the straw include drinking end 16, hence a part of the fluid conduit including the dispensing outlet 16);

wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position: *"(s)traw drinking cup 10 further includes a straw positioning mechanism 20 for positioning the flexible straw 14 with respect to the container 12 between a first drinking position, shown in FIG. 2, and a second storage position, shown in FIG. 3*" at [0019], further, comparing FIGS. 2 and 3, resilient mouthpiece 16 is farther from the cap assembly base, i.e., lower portion of lid 22, in the dispensing position of FIG. 2 than in the storage position of FIG. 3;

wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth (inherent to silicone/resilient flexible elastomeric material);

and a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet, (note, as in FIGS. 2 and 3, "*straw positioning mechanism 20 is preferably embodied as a straw positioning member 28 that is pivotally mounted to the lid 22 and is substantially positioned within the opening 26 that is defined by the upstanding wall 23.... Straw positioning member 28 preferably includes a downwardly extending arm 35 that has a recess 36 defined at its distal end for receiving the flexible straw 14*" at [0021]. When the manual on/off valve of downward extending arm 35 is in the closed position of FIG. 3, the fluid conduit or flexible straw 14 will be crimped to obstruct drink fluid flowing from container 12 to drinking end 16: (t)*he flexible straw 14 will be bent into a horizontal S-shaped configuration by the downwardly extending arm 35 so as to be crimped in a first location 44 and also in a second location 46 that is adjacent to the recess 36. This minimizes the potential for leakage through the flexible straw 16 in the storage position..."*

wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit (note the portion of flexible straw 14 within valve 20/straw positioning mechanism that is crimped during closure of the same;

wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit and wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not

obstruct the flow of drink fluid through the fluid conduit (see discussion above and the minimized leaking discussed at [0021].

To the extent one might disagree that McDonough teaches the claimed resilient mouthpiece, Wright et al. teaches that with a mouthpiece "*formed of a flexible, resilient flexible elastomer material*" at 4:21-22, after application of a biting force "*to the sides of the mouthpiece, the mouthpiece deforms inwardly*" at 2:7-8. Wright recognizes a concern with rigid or semi-rigid mouthpieces potentially causing damage to a user's teeth, particularly an infant at 1:18-19: "*(i)t will be appreciated that biting or prolonged sucking on a spout can lead to tooth damage for the infant during the important teething stage, especially for infants up to 9 months of age*." To address this risk, Wright discloses using a "*resilient flexible elastomer material*" to enable resilient deformation of the mouthpiece when bitten at 2:18-19. The mouthpiece of resilient flexible elastomer material is "arranged such that on application of a force to the sides of the mouthpiece, the mouthpiece deforms inwardly" to open a duck bill valve, see the Abstract. That force to the sides of the mouthpiece is delivered by compression from a user's teeth, as claimed: "*(t)he duck bill valve opens under a pursing, biting or stripping action ....*" at 2:16-17; and at 5:20-24: "*(t)he mouth of the user is guided between the rim (82) and the dimples (84) so that the biting or stripping action occurs such that a sideways force is applied in the same direction on the duck bill valve to ensure opening of the duck bill valve and resulting flow of liquid.*"). Thus Wright et al. confirms that the silicone of McDonough is inherently resilient. In the alternative, it would have been obvious to those having ordinary skill in the art at the time of the invention to have either incorporated such a duck bill valve mouthpiece of Wright et al. into McDonough in order

to alleviate the noted concerns with teething users, or to have substituted the duck bill valve for the internal straw valve of 70 of McDonough as a mere substitution of known available straw valve structures for preventing fluid flow until the user demands it.

As to Claim 3, McDonough teaches that the cap assembly includes a pair of lateral guards that extend on opposed sides of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position (note the inner surface 24 of upstanding wall 23 that extends on opposite sides of flexible straw 14 and drinking end 16 when the manual on/off valve 20 is in second storage position in FIG. 3;

and further wherein the cap assembly includes a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position (note portion 38 of the McDonough valve covers the straw portion 16 and hence functions as a dust cover.

As to Claim 4, McDonough teaches when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover. After pivoting the straw positioning mechanism from storage to drinking position, resilient mouthpiece 16 of flexible straw 14 is farther away from the dust cover, i.e., portion 38 of straw positioning mechanism 20 (FIG. 2), than before pivoting when in the storage position (FIG. 3).

As to Claim 5, McDonough teaches that the dust cover 38 projects above an upper surface of the cap assembly base or lower portion of lid 22 in Figures 1 and 3 and Claim 8 of McDonough.

As to Claim 13, McDonough teaches that the resilient mouthpiece includes a dispensing face (end of dispensing outlet that would face a user), and further wherein the dispensing outlet extends through the dispensing face of the resilient mouthpiece (note the fluid conduit is within the straw and hence the dispensing face). In the alternative, in McDonough as modified by the duck valve of Wright et al., the duck valve face that would face a user is the dispensing face with the outlet extending therethrough via the straw of McDonough.

As to Claim 18, McDonough teaches that the pivotal mount is adapted to selectively engage the flexible tube to apply crimping forces thereto and thereby configure the manual on/off valve to the closed configuration as the pivotal mount is pivoted from the dispensing position to the stowed position, see the discussion above and at [0021] regarding the crimping function.

As to Claim 19, McDonough teaches that the flexible tube is secured to the pivotal mount, note that the flexible straw 14 is received into recess 36 to form a "*a positive interlocking arrangement for positioning the straw 14*" at [0027].

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDonough in view of the handle teachings of Anderson and Roth, or McDonough in view of Wright et al. and in further view of the handle teachings of Anderson and Roth.

As to Claim 6, McDonough and McDonough as modified by Wright et al. disclose the invention substantially as claimed less the cap assembly further including a handle

that extends from the cap assembly base and includes the pair of lateral guards and the dust cover.

However, the concept of a handle on a liquid-dispensing container was well known in the art at the time of the invention. For example, Anderson teaches such a container with a handle 20 extending from a circular base. Anderson states that the "*handle 20 is affixed to and may be integrally molded with the base portion 16 at outwardly protruding lugs 22 located at its periphery*" at 2:66-67 and *"(i)n one of its aspects, my invention includes the provision of a specially shaped handle preferably molded as an integral part of the base and captive cap*" at 2:69-72. Similarly, Roth teaches in FIG. 2, a looped connector 24 is formed on a pivotal lid 28 of the closure body and may incorporate a snap hook 22 for attaching the bottle 34 to an object such as a backpack. But Roth explains that the looped connector may be positioned elsewhere on closure body 32, such as laterally from annular shroud 64 of base portion 26: "*As shown in FIG. 1 the connector 24 preferably extends generally upwardly from the lid 28. However, those of ordinary skill in the art will appreciate from this disclosure that the connector 24 can extend from a lateral side of the closure body 32 or from a lateral side of the annular shroud 64 without departing from the scope of the present invention.*" Roth at [0031]. Roth FIG. 11A additionally illustrates an embodiment in which the looped connector extends laterally from the annular shroud 64 of base portion 26 separate from and beneath lid 28: "*FIG. 11A is [in] cross-section a view similar to that of FIG. 3 illustrating an alternative embodiment of a closure according to the present invention in which the snap hook is disposed on a side of the closure.*"

It would have been obvious to those of ordinary skill in the art at the time of the invention to have included a handle as disclosed in Anderson or Roth on the cup 10 of McDonough in order to provide a more convenient means for carrying the container than simply grasping its body, especially for children who have small hands. As noted in Anderson, its U-shaped handle that extends outwardly "*enables the containers to [] be grasped quite readily*" for carrying and provides "*full finger access without interference with movements of said overcap*" at 3:15-23, 5:35-41.

The bodily incorporation of the such a handle into the base of McDonough would necessarily preserve the lateral guards and dust cover of McDonough as applied above. In the alternative, the sides of handle 20 of Anderson would constitute "the pair of lateral guards" and the outer end of handle 20 would qualify as "the dust cover," as recited in claims 3 and 6 and as incorporated into McDonough.

As to Claim 7, McDonough as modified by Anderson or Roth above discloses a handle that extends in a fixed orientation from the cap assembly base and which defines at least a portion of a closed loop with an aperture through which a user's finger may be inserted to carry the drink container, see Figures 2 and 6 of Anderson and Figures 1 and 11A of Roth.

Toudou:

Claims 1, 3-5, 8, 13, 18, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Toudou, or in the alternative under 35 U.S.C. 103(a) as unpatentable over Toudou.

As to Claim 1, Toudou teaches a drink container 12 in Figure 4, comprising: a fluid container (see fluid 13) having a neck (narrow portion) with an opening (top threaded portion) and having an internal compartment sized to hold a volume of potable drink fluid (volume inside 12);

a cap assembly 1 removably coupled to the fluid container to cover the opening,

wherein the cap assembly defines a fluid conduit (straw 11) for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet (bottom of straw at [0016]) through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet (top of suction port 32) through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user,

and further wherein the cap assembly comprises: a cap assembly base (main body of base 2) removably coupled (via threads) to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container (inherent to the threaded connection);

a pivotal mount (see pivoting nozzle 3 and corresponding rotation shafts 33 within bearings 23) coupled to the cap assembly base for pivotal movement relative to the cap assembly base,

wherein the pivotal mount includes a pair of lateral projections,(shafts 33) wherein the cap assembly base defines a pair of sockets (sockets 23) into which the pair of lateral projections extend: "*(t)he base portion 31 is formed of a spherical surface corresponding to storage portion 22 of the main body 2, and on the spherical surface, a*

pair of boss-shaped rotation shafts 33 are symmetrically projected in the direction intersecting with the extending direction of the suction port 32" at [0014]. "*In this way, the nozzle 3 mounted on the outer surface side 2b of the main body 2 rotates about the rotation shaft 33 in an angular range of about 120 degrees...*" at [0015]. "*In addition, the shaft support structure of the nozzle 3 in which the nozzle 3 rotates around the rotation shaft 33 up and down is similar to that of the first embodiment*" at [0023]. "*When the lid 4 is further rotated, the nozzle 3 stretches the straw 11 having elasticity to apply resistance force to the lid 4 in the opposite direction and integrally rotates in the same direction around the rotating shaft 33*" at [0024];

a resilient mouthpiece (suction port 32 made of polypropylene with a "*slightly soft resin material*" at [0011], hence inherently resilient, also note the applicability to baby bottles at [0027]) coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base (Figs. 1 and 3);

wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets, Toudou discloses that suction port 32 within nozzle 3 pivots about axis O-O defined by rotation shafts 33 rotating in bearings at [0013]: *"(r)eference numeral 23 is a substantially U-shaped groove-like bearing formed to face the horizontal direction (the front-back direction in FIG. 3) and is orthogonal to the central shaft Y1-Y1 and constitutes the shaft center 0-0 of the rotation shaft of the nozzle 3 described below.*";

wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet, e.g. at 32 in Figures 4 and 8;

wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position, see, for example Figs. 7 and 8(b) depicting the opened and closed positions with the resilient mouthpiece in respective stowed and dispensing positions and the relative position of the suction port 32 and the base 2 in those positions;

wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth, Toudou indicates that bottle cap 1 is made of soft polypropylene or the like at [0011]: "*(p)olypropylene or the like is used as the material of the bottle cap 1 and is molded with a slightly soft resin material that is hard to break... Furthermore, 11 is a straw using a rubber-like elastic resin such as a silicone tube.*"). Toudou also teaches that its pivotal cap "*can also be applied to other bottles such as water bottles and baby bottles*" at [0027], which by definition have resilient nipples or other mouthpieces compressible by teeth. As evidenced by U.S. Patent 6,116,458 to Dark, and noted in the original prosecution history in the Office Action of 8/2/2019, such known polypropylene spouts "*resiliently compress responsive to forces applied to the resilient mouthpiece by a user's teeth (a user can bite the plastic mouth piece and the natural tendencies of plastic make it resilient*);"

a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve

permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet, Toudou discloses a manual on/off valve for its third embodiment in two variations. In the first variation, the manual on/off valve is a ridge or projecting portion 37 on the lower edge of base 31 of nozzle 3 and flexible straw 11 that obstructs the fluid conduit when in the stowed or prone position, as shown in annotated FIG. 7. As explained in Toudou: *"(i)n the third embodiment, ... the flow path is closed by pressing the straw 11 with part of the nozzle 3, ..."* at [0023]. "*In order to effectively block the flow path of the straw 11 when the nozzle 3 is prone, a projecting portion 37 is formed at least on the lower outer ring portion of the base portion 31.*" At [0024] Toudou explains this manual on/off valve obstructing the fluid conduit as lid 4 is closed:

> "*When the lid 4 is further rotated, the nozzle 3 stretches the straw 11 having elasticity to apply resistance force to the lid 4 in the opposite direction and integrally rotates in the same direction around the rotating shaft 33. Then, when the latching piece 42 of the lid 4 under the resistance force of the straw 11 is latched onto the latching portion 29, the nozzle 3 comes out of the inverted conical portion and becomes a prone state as shown in FIG. 7 to be stored in the storage groove 21. At this time, the straw 11 near the connection portion is crushed based on the partial expansion difference due to the rotation of the nozzle 3, and the ridge 37 elastically presses the inner surface of the crushed portion to make it attached firmly. As a result, the internal flow path is automatically closed and thereby the internal liquid 13 is prevented from leaking.*"

Further, in a second variation, Toudou discloses a manual on/off valve with an inclined tip or extended inner portion of the lower edge of base 31 of nozzle 3 and flexible straw 11 that obstructs the fluid conduit when in the stowed or prone position, as shown in annotated FIG. 8(c). At paragraph [0026], Toudou thoroughly explains the operation of this second variation. For example:

> "*FIG. 8 (c) shows a modified example of the flow path blocking mechanism according to the third embodiment. In other words, in FIG. 8 (c), an inclined surface 38 is formed at the cylinder tip of the inner ring portion of the base portion 31 of the nozzle 3 to which the straw 11 is connected. When the nozzle 3 is pressed by the closed lid 4 to lie down, the inner surface portion of the straw 11 which is strongly stretched due to the expansion difference in a manner similar to that described above is elastically pressed against the inclined surface 38. Therefore, by the pressure bonding of the inner surface portion, the flow path that is open to the inclined surface 38 is automatically closed, and the leakage of the inner liquid 13 is prevented.*

See also Toudou at [0010]: ((t)*he present invention is constituted of a bottle cap with a nozzle, ...wherein the flow path of the internal liquid is blocked by pressing the straw with part of the nozzle in connection with the pressing motion by the nozzle associated with the opening and closing of the lid member.*"). Toudou also expressly explains that its manual on/off valve has an open configuration permitting drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet, as claimed: *"(w)hen the latching of the hinge portion 28 is released, the nozzle 3 pressed by the lid 4 follows the opening of the lid 4 by the restoring force of the straw 11 and is automatically raised as shown in*

FIG. 8 (b) from the state shown in FIG. 7." Toudou at [0025], and at [0023] ("*when the lid is released, and an automatic undulating structure is employed in which the nozzle is automatically raised by the resilience of the straw 11*"). "*Now, as shown in FIG. 8 (b), when the lid 4 is rotated about 150 degrees in the direction of an arrow around the hinge 28 as the fulcrum when the nozzle 3 is standing in the open state....*" at [0024]. FIG. 8(b), shows that the lifting of lid 4 leads to the rise of nozzle 3 and the release of elastic straw 11 by ridge 37, which clears the fluid conduit to pass liquid to the dispensing outlet at suction port 32. Note Toudou at [0028]: *("(t)he present invention is constituted of a bottle cap with a nozzle, ... wherein the flow path of the internal liquid is opened or closed in connection with the up and down motion associated with the rotation of the nozzle.*");

wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit, note flexible straw 11;

wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit, see Toudou Figures 7 and 8(b) and the discussion above.

As to Claim 3, Toudou teaches that the cap assembly includes a pair of lateral guards that extend on opposed sides of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position: Toudou discloses two structures within its cap assembly, i.e., bottle cap 1, corresponding to the pair of lateral guards. First, pivotal mount, i.e., nozzle 3, and its suction port 32 rests in a prone state

within an arcuate storage groove 21 formed in support portion 20, and the "*opposing wall surfaces"* within groove 21 correspond with the claimed pair of lateral guards. "*21 is an arcuate storage groove formed by horizontally cutting the top portion of the support portion 20 in the left-right direction. Due to the cutting of the storage groove 21, opposing wall surfaces in the front-rear direction are provided on the support portion 20*" Toudou at [0012]; at [0015]: ("*the suction port 32 is stored in the storage groove 21 while lying down*"); at [0023]: *("[a]s shown in FIG.1, the main body 2 has a substantially elliptical shape, and the support portion 20 having a circular dome shape is provided side by side on the outer surface side 2b to have a common structure.*"). FIG. 8(a), depicts these support portions 20 with their horizontal cuts forming storage grooves 21 on lateral sides of nozzle 3 and suction port 32. Second, Toudou includes a lid 4 that, when in a stowed position, has side walls extending laterally along nozzle 3 and suction port 32. FIG. 7 (prone state) and FIG. 8 (open state for first embodiment), illustrate the lid sides. Note the Abstract: ("*a lid member mounted on the main body via a hinge in an openable and closable manner to cover the upper surface of the main body....*"). Toudou teaches that these lid structures help guard the mouthpiece: *"(s)ince the nozzle 3 is covered with the lid 4 in the stored state, no contact with clothes or the like occurs and dust is not attached, so that the hygienic state can be maintained*" at [0018];

and further wherein the cap assembly includes a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position: Toudou teaches that its cap assembly, i.e., bottle cap 1, includes a

dust cover for a mouthpiece in the form of lid 4. A top surface and front surface of lid 4, shown in FIGS. 7 and 8(a), covers nozzle 3 and suction port 32 to protect them from dust and extends between the pair of lateral guards formed by opposing wall surfaces within storage groove 21. The claims do not require that the dust cover be connected to or integral with the lateral guards, and as such, lid 4 when closed is positioned in the space separating the pair of opposing wall surfaces within storage groove 21. Alternatively, the top surface and front surface of lid 4 extends between the pair of lateral guards formed by the sides of lid 4, which also function as a "*pair of lateral guards*" and to which the top surface and the front surface are attached. Additionally, the top and front surfaces of lid 4 extend "*across at least a portion of the dispensing outlet*," as claimed. Toudou explicitly teaches that lid 4 protects the dispensing outlet of the mouthpiece, i.e. suction port 32, as a cover from dust when in the stowed position: "*After the drinking is finished, the upper space of the nozzle 3 stored in the storage groove 21 is covered with the lid 4 by the operation reversed to the above. Since the nozzle 3 is covered with the lid 4 in the stored state, no contact with clothes or the like occurs and dust is not attached, so that the hygienic state can be maintained*." Toudou at [0018].

As to Claim 4, Toudou teaches that the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover: in Toudou, when nozzle 3 is pivoted about shafts 33 as it rises from a stowed, or prone, position, to a dispensing position, suction port 32 pivots away from the dust cover, i.e., the top of lid 4. Specifically, FIGS. 7 and 8(b) illustrate that when nozzle 3 and suction port 32 pivot from the stowed position (FIG. 7) to the dispensing

position (FIG. 8(b)), nozzle 3 pivots to be farther away from lid 4 comprising the dust cover to be accessible by the user. According to Toudou, advantages follow from having an increased separation between suction port 32 and lid 4: *"[s]ince the lid 4 in the open state and the sucking port 32 in a rising and inclined state face each other right and left and are held in opposite directions, nothing can interfere to drink the internal liquid 13 by sucking*" at [0018]; also at [0027]: ("*[i]t is good enough as long as the suction port can be set on the opposite side of the lid and the rising angle θ of the nozzle 3 as described above may be set within an arbitrary acute angle, preferably at an angle of about 90 degrees.").* For some embodiments, Toudou also teaches that a direction of pivoting as well as a distance for nozzle 3 from pivoting may be away from lid 4: "*the rising direction of the nozzle is set to the direction opposite to the direction of the lid member when it is opened*" at [0028].

As to Claim 5, Toudou teaches that the dust cover (top of lid 4) projects above an upper surface of the cap assembly base as can be seen in Figure 7.

As to Claim 8, Toudou teaches that the resilient mouthpiece is permanently secured to the pivotal mount, note the boss-shaped rotation shafts 33 at the base portion 31 of the nozzle being connected to corresponding U-shaped groove 23.

As to Claim 13, Toudou teaches that the resilient mouthpiece includes a dispensing face, and further wherein the dispensing outlet extends through the dispensing face of the resilient mouthpiece: the broadest reasonable interpretation of a "dispensing face" of a mouthpiece includes a lipped rim of a tube, Toudou discloses a hole at the tip of suction port 32 on nozzle 3. As shown in FIG. 8(a), a tip of suction port 32 is a dispensing face of nozzle 3 or "face," and the hole functions as the dispensing

outlet for nozzle 3. As stated in Toudou, *"(t)he present invention is constituted of a bottle cap with a nozzle, ... comprising: a nozzle provided with a suction port at its tip ..."* Toudou at Abstract. "*The other end of the flow path ... penetrates through the suction port 32 and opens at the tip, ...*" at § [0014].

As to Claim 18, Toudou teaches that the pivotal mount is adapted to selectively engage the flexible tube to apply crimping forces thereto and thereby configure the manual on/off valve to the closed configuration as the pivotal mount is pivoted from the dispensing position to the stowed position: Toudou discloses that its pivotal mount (nozzle 3) is adapted to selectively engage the flexible tube (straw 11) to apply crimping forces and configure the manual on/off valve (lower edge of base 31 of nozzle 3 and straw 11) to the closed position as nozzle 3 is pivoted from a dispensing position to a stowed position. As explained in Toudou, *"(i)n the third embodiment, ... the flow path is closed by pressing the straw 11 with part of the nozzle 3, ..."* at [0023]; Toudou at Abstract: ("*the flow path of the internal liquid is opened or closed in connection with the up and down motion associated with the rotation of the nozzle*"). In one option, the manual on/off valve is a ridge or projecting portion 37 on the lower edge of base 31 of nozzle 3, which is illustrated in FIG. 7. Paragraph [0024] explains this manual on/off valve obstructing the fluid conduit as lid 4 is closed and nozzle 3 enters the stowed position:

> "(*w)hen the lid 4 is further rotated, the nozzle 3 stretches the straw 11 having elasticity to apply resistance force to the lid 4 in the opposite direction and integrally rotates in the same direction around the rotating shaft 33. Then, when the latching piece 42 of the lid 4 under the resistance force of the straw 11 is*

latched onto the latching portion 29, the nozzle 3 comes out of the inverted conical portion and becomes a prone state as shown in FIG. 7 to be stored in the storage groove 21. At this time, the straw 11 near the connection portion is crushed based on the partial expansion difference due to the rotation of the nozzle 3, and the ridge 37 elastically presses the inner surface of the crushed portion to make it attached firmly. As a result, the internal flow path is automatically closed and thereby the internal liquid 13 is prevented from leaking."

In another option, the manual on/off valve with an inclined tip or extended inner portion of the lower edge of base 31 of nozzle 3 and flexible straw 11 that obstructs the fluid conduit when in the stowed or prone position, which is shown in FIG. 8(c). Paragraph [0026] in Toudou explains the operation of this second variation:

"FIG. 8 (c) shows a modified example of the flow path blocking mechanism according to the third embodiment. In other words, in FIG. 8 (c), an inclined surface 38 is formed at the cylinder tip of the inner ring portion of the base portion 31 of the nozzle 3 to which the straw 11 is connected. When the nozzle 3 is pressed by the closed lid 4 to lie down, the inner surface portion of the straw 11 which is strongly stretched due to the expansion difference in a manner similar to that described above is elastically pressed against the inclined surface 38. Therefore, by the pressure bonding of the inner surface portion, the flow path that is open to the inclined surface 38 is automatically closed, and the leakage of the inner liquid 13 is prevented."

As to Claim 19, Toudou teaches that the flexible tube is secured to the pivotal mount: as illustrated in FIGS. 7 and 8(b), the flexible tube, i.e. straw 11, in Toudou is

secured to the pivotal mount of nozzle 3 by being rigidly connected within cylindrical groove 35b at the base 31 of nozzle 3. "*A cylindrical groove 35b is formed in the base portion 31 of the nozzle 3, and the straw 11 is slightly rigidly connected to the inner cylinder surrounded by the cylindrical groove 35b*" at [0023]; and at [0019]: ("*35b denotes a cylindrical groove formed at the end portion [of base portion 31]. The cylinder surrounded by the cylindrical groove 35b constitutes a connecting portion with the straw 11*"). FIGS. 7 and 8(b) illustrate that tube 11 remains secured to base portion 31 as nozzle 3 pivots between a stowed position (FIG. 7) and a dispensing position (FIG. 8(b).

Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of the handle teachings of Anderson and Roth.

As to Claim 6, Toudou fails to teach that the cap assembly further includes a handle that extends from the cap assembly base and includes the pair of lateral guards and the dust cover. Anderson teaches, in the same field of endeavor a handle extending from a cap assembly base that includes lateral guards and a dust cover. For example, Anderson discloses: "*a container closure for use in connection with spouted containers" that "neatly seal[s] and protect[s] a spouted container opening*" at 1:47-52. "*On the top of the container 10, ... [a] novel cap arrangement is formed of a plastic material such as polyethylene and includes a circular base 16, fitted onto the top wall 12*" of the container 10 at 2:64-68. A handle 20 extends from the cap assembly base, i.e., from circular base 16. The "*handle 20 is affixed to and may be integrally molded with the base portion 16 at outwardly protruding lugs 22 located at its periphery*" at 2:66-67 and at 2:13-15. Further: *"(i)n one of its aspects, my invention includes the provision*

of a specially shaped handle preferably molded as an integral part of the base and captive cap") at 2:69-72.

Similarly, Roth teaches in FIG. 2, a looped connector 24 is formed on a pivotal lid 28 of the closure body and may incorporate a snap hook 22 for attaching the bottle 34 to an object such as a backpack. But Roth explains that the looped connector may be positioned elsewhere on closure body 32, such as laterally from annular shroud 64 of base portion 26: "*As shown in FIG. 1 the connector 24 preferably extends generally upwardly from the lid 28. However, those of ordinary skill in the art will appreciate from this disclosure that the connector 24 can extend from a lateral side of the closure body 32 or from a lateral side of the annular shroud 64 without departing from the scope of the present invention*." Roth at [0031]. Roth FIG. 11A additionally illustrates an embodiment in which the looped connector extends laterally from the annular shroud 64 of base portion 26 separate from and beneath lid 28: "*FIG. 11A is [in] cross-section a view similar to that of FIG. 3 illustrating an alternative embodiment of a closure according to the present invention in which the snap hook is disposed on a side of the closure*."

It would have been obvious to those of ordinary skill in the art at the time of the invention to have included a handle as disclosed in Anderson or Roth on the bottle cap 1 of Toudou in order to provide a more convenient means for carrying the container than simply grasping its body—especially for children who have small hands. As noted in Anderson, its U-shaped handle that extends outwardly "*enables the containers to [] be grasped quite readily*" for carrying and provides "*full finger access without interference with movements of said overcap*" at 3:15-23, 5:35-41. Those in the art

would have readily appreciated that applying handles of Anderson or Roth to main body 2 of Toudou would have resulted in the sides of handle 20 being positioned on opposite sides of suction port 32 of nozzle 3 in Toudou and the outer end of handle 20 extending across at least a portion of the dispensing outlet of the tip of suction port 32, when nozzle 3 and suction port 32 are in the stowed position. Thus, the sides of handle 20 would serve as "the pair of lateral guards" and the outer end of handle 20 would function as "the dust cover," as recited in claims 3 and 6.

As to Claim 7, Toudou fails to teach that the cap assembly further comprises a handle that extends in a fixed orientation from the cap assembly base and which defines at least a portion of a closed loop with an aperture through which a user's finger may be inserted to carry the drink container. Note the application of Anderson and Roth above in combination with the handle loop depictions in Figures 2 and 6 of Anderson and Figures 3 and 11A of Roth.

Claim 14 is rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of Wright or Tupper.

As to Claim 14, Toudou fails to teach that the dispensing outlet is defined by a slit that extends through the dispensing face of the resilient mouthpiece. However, Wright et al. teaches that with a mouthpiece "*formed of a flexible, resilient flexible elastomer material*" at 4:21-22, after application of a biting force "*to the sides of the mouthpiece, the mouthpiece deforms inwardly*" at 2:7-8. Wright recognizes a concern with rigid or semi-rigid mouthpieces potentially causing damage to a user's teeth, particularly an infant at 1:18-19: "*(i)t will be appreciated that biting or prolonged sucking on a spout can*

lead to tooth damage for the infant during the important teething stage, especially for infants up to 9 months of age." To address this risk, Wright discloses using a "*resilient flexible elastomer material*" to enable resilient deformation of the mouthpiece when bitten at 2:18-19. The mouthpiece of resilient flexible elastomer material is "arranged such that on application of a force to the sides of the mouthpiece, the mouthpiece deforms inwardly" to open a duck bill valve, see the Abstract. That force to the sides of the mouthpiece is delivered by compression from a user's teeth, as claimed: "*(t)he duck bill valve opens under a pursing, biting or stripping action ....*" at 2:16-17; and at 5:20-24: "*(t)he mouth of the user is guided between the rim (82) and the dimples (84) so that the biting or stripping action occurs such that a sideways force is applied in the same direction on the duck bill valve to ensure opening of the duck bill valve and resulting flow of liquid*.").

Similarly, Tupper discloses an elongated slot 20 in the dispensing end of mouthpiece of "*resilient plastic material*" for consuming fluid contents from a container, as shown for example in FIG. 1 and at 1:15-17, 3:45. The mouthpiece is primarily intended for use by infants and other children. The shape of slot 20 can aid in drawing liquid from the bottle when the mouthpiece is "*squeezed or deformed by the mouth or teeth of the user*," "*wherein the sipping or drawing operation is capable of functioning ... by alternate lip or teeth compression of the tubular structure to force fluid contents therethrough based on the principle of Nee nipple feeding*" at 1:41-49; and at 3:40-42: ("*the dispensing end is capable of being squeezed or deformed by the mouth or teeth of the user* ..."). In addition, slot 20 helps to retain liquid if the bottle is overturned. As explained in Tupper, *"(w)hen the elongated slot 20 of the sipper seal is held in any non-*

drinking position capable of creating a gravity flow toward slot 20, the fluid tends to completely fill the entire area of the slot to check spillage by reason of fluid capillarity and surface tension" at 3:29-34; and at 4:16-19: ("*said slot serving either as a withdrawing outlet for fluid contents or to check the flow of said fluid contents when the vessel lies in horizontal or other leaking position*").

It would have been obvious to those having ordinary skill in the art at the time of the invention to have either incorporated valve mouthpieces of Wright et al. or Tupper into Toudou in order to alleviate the noted concerns with teething users, as a mere substitution of known available straw valve structures for preventing fluid flow until the user demands it.

Claims 1, 3-5, 8, 13, 14, 18, and 19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of Wright et al.

As applied above, Toudou discloses the invention substantially as claimed, however, to the extent one might disagree that Toudou teaches the resilient mouthpiece to be coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, Wright et al. teaches, in the same field of endeavor, a cover for a drinking vessel and teaches a resilient mouthpiece coupled to a mount. According to Wright, "*biting or prolonged sucking on a spout can lead to tooth damage*" and, in response, Wright advocates use of a mouthpiece that deforms from biting forces on "*flexible resilient material and hence does not damage the user's teeth*" at 1:17-18, 2:18-21. Wright teaches that such a flexible mouthpiece may be made of a resilient elastomeric material such as polyurethane rubber. Abstract, 2:7-8, 2:18-21, 4:21-22.

Additionally, Wright teaches multiple configurations for coupling a resilient mouthpiece to a mount. First, Wright explains that only the tip of its mouthpiece could be made resilient: *"(t)he mouthpiece can be provided with a portion of the mouthpiece for example the top portion being flexible*" at 7:8-9, which would result in the resilient mouthpiece being integrated into its base as a mount. "*Alternatively, the whole of the mouthpiece may be flexible*" at 7:8-10. In that situation, the resilient mouthpiece may be molded onto a polypropylene base "*via a second shot process*" as taught by Wright, which base may be part of note the drinking vessel, e.g. at 4:11-13. Third, the polypropylene base 26 on which the resilient mouthpiece 24 is molded may be configured for removal from the drinking vessel, such as by threading as shown in FIG. 1C. Based on these teachings, it would have been obvious for a person of ordinary skill in the art at the time of the invention to have modified bottle cap 1 in Toudou to have a resilient mouthpiece integrally coupled to nozzle 3 to avoid "*tooth damage*" from "*biting or prolonged sucking on [the] spout*" as taught by Wright at 1:16-21; also at 6:24-26: "*(i)n addition, because the mouthpiece is of flexible material ... physical damage to the infant's teeth is reduced or avoided*." The teachings of Wright provide a variety of options for implementing a resilient mouthpiece on nozzle 3. For instance, only "*a portion of the mouthpiece for example the top portion,"* i.e., suction port 32 of nozzle 3, could be made of resilient material (see 7:8-9), or "*the whole of the mouthpiece may be flexible*" at 7:8-10, i.e., all of nozzle 3. Wright also contemplates the joinder of its resilient mouthpiece with other materials, such as polypropylene, which is the material of bottle cap 1 in Toudou and the material of cup body 12, cover 16, and threaded locking ring 26 in Wright at 4:5-6, 4:11-17. With this joinder, the resilient mouthpiece in

Wright may be fixed to the drinking vessel or to a detachable mount such as ring 26, e.g. at 4:11-17. In addition, a modification of nozzle 3 in Toudou with a resilient mouthpiece as taught by Wright would have flowed from the similarity of mouthpieces taught in the two references. Both suction port 32 in Toudou and the resilient mouthpiece in Wright as a duckbill (see FIGS. 2A-E, 3A, and 3B) have a narrowed neck that culminates in a lipped outer rim.

Further as to Claim 8, to the extent one might argue that the Toudou mouthpiece is not permanently secured to the pivotal mount, Wright teaches that a resilient mouthpiece for a user may be integrated with, and not intended to be separated from, a mount. For example, "*the whole of the mouthpiece may be flexible*" and then molded onto a polypropylene base "*via a second shot process.*" E.g. at 4:11-17. Alternatively, the mouthpiece could be partially resilient and partially non-flexible: *"[t]he mouthpiece can be provided with a portion of the mouthpiece for example the top portion being flexible*" at 7:8-10. In either embodiment, the resilient mouthpiece is integrated together with a polypropylene or other non-flexible base on which the mouthpiece is permanently mounted, e.g. at 8:5-7: *"(t)he components are of a size and shape that remove any choking hazard and again makes cleaning more easy - for example the mouthpiece comprises a single integral piece.*"), at 3:1 ("*Fig. 1c shows a sectional view of the cover with an integrally moulded spout*"); at 3:14 ("*Fig. 3a shows a sectional view of the spout integrally moulded onto a screw ring ...*"). Therefore, Toudou in view of Wright teaches and suggests all limitations of claim 8.

It would have been obvious to those having ordinary skill in the art at the time of the invention, given the combined teachings, to have implemented the resilient

mouthpiece as taught by Wright as suction port 32 within an integral structure of nozzle 3 in Toudou at least because a unitary nozzle and mouthpiece structure is what Toudou describes. Moreover, an integrated mouthpiece and pivotal mount or spout results in fewer parts, which as taught by Toudou eases disassembly and washing at [0018] and reduces costs, see the Abstract: "(t)*he present invention realizes a bottle cap with a nozzle that enables ... the cost to be reduced by lowering the number of parts with a simple configuration and is convenient to handle and compact.*", and at [0021]: "*the number of parts and the number of assembling steps can be reduced, which can contribute to the cost reduction*".

Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of Wright et al. and further in view of Anderson and Roth for the reasons noted above.

Claims 1, 3-5, 8, 13, 18, and 19 is rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of Canham and Heise.

As applied above, Toudou discloses the invention substantially as claimed, however, to the extent one might disagree that Toudou teaches the resilient mouthpiece to be coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, however, Canham discloses a bottle 11 for dispensing liquids with a cap threadedly engaged onto a reduced neck portion 17 of the bottle. The cap, termed nipple adapter member 19, is illustrated in FIGS. 1 and 5 of Canham as secured to the top of bottle 11. A "*conventional nipple 21*" is received onto the outlet end of

adapter member 19, from which a baby may be fed, e.g. at 1:55-56, 2:21-23. Because conventional nursing nipples are resilient mouthpieces intended to promote and accommodate a baby's sucking, Canham teaches to couple a resilient mouthpiece in the form of nipple 21 to a dispensing mount pivoted "*at about 45° to the axis of the container*" and extending from within a cap threaded on the neck of the container. The reasons for mounting "*a conventional nipple 21*" of Canham on suction port 32 in Toudou flow from the two references. Toudou explains that pivoting nozzle 3 within its bottle cap so that suction port 32 is at an angle provides more comfortable drinking: *"(s)ince the nozzle (straw) does not project vertically upward unlike the conventional containers shown in FIGS. 9 and 10, the internal liquid can conveniently be drunk in a comfortable posture without unreasonably tilting the head or upper body*" at [0029]; and. at the Abstract: *"(t)he present invention realizes a bottle cap with a nozzle that enables the nozzle to be tilted at an appropriate angle to facilitate drinking ....*"). Canham also recognizes the increased comfort in drinking from an angled spout and mouthpiece: *"(t)he inclined relation of passage 20 of adapter 19 to the axis of the container makes it possible to feed the infant in many different positions comfortably*" at 2:21- 23; and at 2:29-31*:"(t)he angle top makes it easy to handle the container regardless of which way the baby turns.*"). And while Toudou explains that its cap 1, with nozzle 3 and suction port 32, can be applied to "*baby bottles*" at [0027]), Canham teaches the improvement of coupling a nipple 21 to a pivoted spout that is screwed on to the neck of a baby bottle for comfortably feeding a baby. Thus, coupling nipple 21 of Canham to suction port 23 of Toudou would have extended the use of bottle cap 1 in Toudou to "*baby bottles*," while maintaining the comfort advantages from an angular spout recognized in both

references. The parallels between Canham and Toudou are evident from a comparison of the top portion of FIG. 1 in Canham and FIG. 8(b) of Toudou. Both caps feature an angled spout for dispensing liquid through a cap threaded onto their bottle. Both spouts culminate in a rimmed lip at the outlet. Shaped like suction port 32 in Toudou, the top end of spout, or nipple adapter member 19, in Canham "*is formed to receive a conventional nipple 21*" about its rimmed lip for nursing a baby, e.g. at 1:55-56.

While it is common knowledge—and common sense—that a "*conventional nipple*" for bottle-feeding a baby as taught by Canham is a "resilient mouthpiece" designed to simulate a mother's breast and to foster sucking behavior for the baby, Heise (Ex. 1012) confirms this fact. Contemporary to Canham, Heise discloses a nipple for use on the spout of a baby bottle. The nipple is made of resilient rubber: "*The body is of soft rubber of sufficient thickness to normally retain the shape disclosed in Figure 1 and its outer end 1 which is formed with an outlet opening 4 at its center, is substantially spherical in shape and molded about a reinforcement 5 formed of tough resilient rubber*", e.g. at 2:8-14.

As such, it would have been obvious to those having ordinary skill in the art at the time of the inventio to have utilized the teachings of Canham and Heise in the Toudou device in order to comfortably feed a baby through an angled spout within a bottle cap screwed onto a neck of the bottle.

Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of Wright, Canham and Heise and further in view of Anderson and Roth for the reasons cited above.

Claim 8 is rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou, Canham and Heise, as applied above, and in further view of Phlaphongphanich.

As to Claim 8, to the extent that modified Toudou might be argued as failing to teach that the resilient mouthpiece is permanently secured to the pivotal mount, Phlaphongphanich teaches, in the same field of endeavor, a "traditional" baby bottle nipple made of an elastomer, such as liquid silicone rubber, e.g. at Abstract, 3:30-34. The nipple 110 or mouth portion is coupled to a base portion 112 of semi-rigid thermoplastic, such as polypropylene, in a two-mold process, as shown in FIG. 10. The base portion is configured for attachment to a source of liquid, such as a baby bottle. Phlaphongphanich teaches to permanently secure feeding the nipple of liquid silicone rubber to a mount formed of semi-rigid thermoplastic such as polypropylene. The two-mold process in Phlaphongphanich is taught to bind the resilient nipple 110 to the non-flexible base 112 so that "*the mouth portion is securely locked to the base portion ... to inhibit the pulling of the skirt from the cavity*" at 4:51-57. Integral construction is fundamental to Phlaphongphanich: *"(a)nother object of this invention is the provision of a nipple which can be attached to a baby bottle in such a way that it cannot be pulled free by the baby*" at 1:23-25.

Given the combined teachings, it would have been obvious to a person of ordinary skill in the art at the time of the invention to have permanently secured a resilient mouthpiece, such as the nipple in Canham and Heise, or nipple 110 in Phlaphongphanich, to nozzle 3 of Toudou to form an integrated spout and mouthpiece in order to ensure that the resilient mouthpiece "*cannot be pulled free"* by a user/baby. Phlaphongphanich at 1:23-25. Phlaphongphanich teaches how its resilient nipple 110

may be securely coupled to a base of polypropylene, which is the material of bottle cap 1 in Toudou. Following the instructions of Phlaphongphanich, one skilled in the art could form "*an integral combination of an elastomer mouth portion and a semi-rigid cap portion*" in two apparent ways, first, nipple 110 of Phlaphongphanich could be integrally formed as an extension of suction port 3 on polypropylene nozzle 3 of Toudou, or second, nipple 110 and base 112 of Phlaphongphanich could be integrally formed into one unit as taught in Phlaphongphanich, with base 112 being threaded onto nozzle 3 when needed to adapt suction port 32 for appropriate use by "baby bottles." Ex. Toudou at [0027]; Phlaphongphanich at 1:22-30. Permanently securing such a resilient mouthpiece to nozzle 3 in Toudou would also have advantageously provided a unitary nozzle and mouthpiece structure, as desired by Toudou. An integrated mouthpiece and pivotal mount or spout would result in fewer parts, which, as taught by Toudou, eases disassembly and washing at [0018] and reduces costs (Abstract*):"(t)he present invention realizes a bottle cap with a nozzle that enables ... the cost to be reduced by lowering the number of parts with a simple configuration and is convenient to handle and compact.*", and at [0021]: "*the number of parts and the number of assembling steps can be reduced, which can contribute to the cost reduction*".

Claim 14 is rejected under 35 U.S.C. § 103(a) as unpatentable over Toudou, Canham and Heise in view of Hurst or Tupper.

As to Claim 14, modified Toudou fails to teach that the dispensing outlet is defined by a slit that extends through the dispensing face of the resilient mouthpiece. However, Hurst teaches an "*infants feeding bottle*' comprising a container for liquid and

a teat securable onto the container. (Abstract). The teat has an oval shape, and an outlet 17 for passing liquid from the bottle is "*in the form of a slit in the center of the end of teat 16*" at 1:45-46; FIG. 2.

Similarly, Tupper discloses an elongated slot 20 in the dispensing end of mouthpiece of "*resilient plastic material*" for consuming fluid contents from a container, as shown for example in FIG. 1 and at 1:15-17, 3:45. The mouthpiece is primarily intended for use by infants and other children. The shape of slot 20 can aid in drawing liquid from the bottle when the mouthpiece is "*squeezed or deformed by the mouth or teeth of the user*," "*wherein the sipping or drawing operation is capable of functioning ... by alternate lip or teeth compression of the tubular structure to force fluid contents therethrough based on the principle of Nee nipple feeding*" at 1:41-49; and at 3:40-42: ("*the dispensing end is capable of being squeezed or deformed by the mouth or teeth of the user* ..."). In addition, slot 20 helps to retain liquid if the bottle is overturned. As explained in Tupper, *"(w)hen the elongated slot 20 of the sipper seal is held in any non-drinking position capable of creating a gravity flow toward slot 20, the fluid tends to completely fill the entire area of the slot to check spillage by reason of fluid capillarity and surface tension*" at 3:29-34; and at 4:16-19: ("*said slot serving either as a withdrawing outlet for fluid contents or to check the flow of said fluid contents when the vessel lies in horizontal or other leaking position*").

It would have been obvious to those having ordinary skill in the art at the time of the invention to have either incorporated valve mouthpieces of Hurst or Tupper into Toudou in order to alleviate the noted concerns with teething users, as a mere substitution of known available straw valve structures for preventing fluid flow until the

user demands it, or, as suggested by Hurst to regulate feeding rate: *"(t)he slit provides means for regulating the rate at which feeding takes place, and the oval section of the feeding bottle allows the orientation of the slit to be readily recognized."* Hurst at 4:3-6.

Amendment in Reexamination Proceedings

Patent Owner is notified that any proposed amendment to the specification and/or claims in this reexamination proceeding must comply with 37 CFR 1.530(d)-(j), must be formally presented pursuant to 37 CFR 1.52(a) and (b), and must contain any fees required by 37 CFR 1.20(c). Also, in accordance with 37 CFR 1.530(e), each claim amendment must be accompanied by an explanation of the support in the disclosure of the patent for the amendment (i.e., support for the changes made in the claim(s), support for any insertions and deletions). See MPEP § 2250(IV) for examples to assist in the preparation of proper proposed amendments in reexamination proceedings.

In order to ensure full consideration of any amendments, affidavits or declarations, or other documents as evidence of patentability, such documents must be submitted in response to this Office action. Submissions after the next Office action, which is intended to be a final action, will be governed by the requirements of 37 CFR 1.116, after final rejection and 37 CFR 41.33 after appeal, which will be strictly enforced. See MPEP § 2250(IV) for examples to assist in the preparation of proper proposed amendments in reexamination proceedings.

In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to his patent and a new claim or claims thereto, in

order to distinguish the invention as claimed from the prior art cited under the provisions of section 301 of this title, or in response to a decision adverse to the patentability of a claim of a patent. See 35 U.S.C. 305. **For this reason, patent owner is notified that *any* amendment to a claim not involved in the reexamination proceeding may not be entered, and if entered, will bring that claim into the reexamination proceeding.** See 37 CFR 1.104.

Service of Papers

After filing of a request for ex parte reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party (or parties where two or more third party requester proceedings are merged) in the reexamination proceeding in the manner provided in 37 CFR 1.248. The document must reflect service or the document may be refused consideration by the Office. See 37 CFR 1.550(f).

Extensions of Time

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

Litigation Reminder

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 10,676,255 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

All correspondence relating to this *ex parte* reexamination proceeding should be directed as follows:

By **U.S. Postal Service Mail** to:

Mail Stop *Ex Parte* Reexam
ATTN: Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By EFS: Registered users may submit via the electronic filing system EFS-Web, at https://efs.uspto.gov/efile/myportal/efs-registered

By FAX to: (571) 273-9900
Central Reexamination Unit

By hand to: Customer Service Window
Randolph Building
401 Dulany St.
Alexandria, VA 22314

For EFS-Web transmissions, 37 CFR 1.8(a)(1)(i) (C) and (ii) states that correspondence (except for a request for reexamination and a corrected or replacement request for reexamination) will be considered timely filed if (a) it is transmitted via the

Office's electronic filing system in accordance with 37 CFR 1.6(a)(4), and (b) includes a certificate of transmission for each piece of correspondence stating the date of transmission, which is prior to the expiration of the set period of time in the Office action.

Any inquiry concerning this communication or earlier communications from the Reexamination Legal Advisor or Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7070.

/Jeffrey R. Jastrzab/
Reexamination Specialist
Central Reexamination Unit
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/GAS/
Gay Ann Spahn
Supervisory Patent Reexamination Specialist, Art Unit 3993

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of Robert Choi et al.	§	Attorney Docket No.: Z036-0005RE
	§	
U.S. Patent No. 10,676,255	§	
	§	
Issue Date: June 9, 2020	§	Customer No.: 29150
	§	
Filing Date: July 13, 2018	§	
	§	
For: DRINK BOTTLES	§	

Mail Stop "*Ex Parte* Reexam"
Attn: Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR *EX PARTE* REEXAMINATION OF U.S. PATENT NO. 10,676,255

Dear Commissioner:

Zak Designs, Inc. ("Requester") requests an *ex parte* reexamination of claims 1, 3-8, 13, 14, 18, and 19 (the "Challenged Claims") of U.S. Patent No. 10,676,255 (the "'255 Patent," Ex. 1001) under 35 U.S.C. §§ 301-307. The '255 Patent issued on June 9, 2020, to CamelBak Products, LLC as Applicant and Robert Choi et al. as inventors. The '255 Patent issued from U.S. Patent Application No. 16/035,418 (the "'418 Application"), filed on July 13, 2018, which claimed priority to applications dating to 2005.

Requester submits that this Request presents prior art references and analyses that are noncumulative of the prior art that was considered by the Examiner during the original prosecution of the '255 Patent, or are presented in a new light or a different way that escaped review during earlier examination, and that the Challenged Claims are invalid over these references under 35 U.S.C. §§ 102(a), (b), and/or (e) (pre-AIA) or under 35 U.S.C. §§ 103(a) (pre-AIA). Requester therefore requests issuance of an order for reexamination and an Office Action rejecting claims 1, 3-8, 13, 14, 18, and 19.

Ex Parte Patent Reexamination Filing Requirements

Section III of this Request contains statements pointing out at least one substantial new question of patentability based on material, non-cumulative reference patents and printed publications for the Challenged Claims of the '255 Patent, in compliance with 37 C.F.R. § 1.510(b)(1).

Reexamination of the Challenged Claims of the '255 Patent is requested, and Section IV of this Request contains a detailed explanation of the pertinence and manner of applying the cited references to the Challenged Claims, in compliance with 37 C.F.R. § 1.510(b)(2).

Exhibits 1006-1015 of this Request contain copies of every patent or printed publication relied upon or referred to in the statement pointing out each substantial new question of patentability (Section IV) or in the detailed explanation of the pertinence and manner of applying the cited references (Section V), in compliance with 37 C.F.R. § 1.510(b)(3).

A copy of the '255 Patent is provided as Exhibit 1001 of this Request, along with a copy of any disclaimer, certificate of correction, and reexamination certificate issued corresponding to the patent, in compliance with 37 C.F.R. §1.510(b)(4),

The attached Certificate of Service indicates that a copy of this Request, in its entirety, has been served on Patent Owner at the following address of record for Patent Owner, in compliance with 37 C.F.R. §§ 1.510(b)(5) and 1.33(c):

REED SMITH LLP
IP Docketing Dept.
P.O. Box 488
Pittsburgh, PA 15230

Requester also submits the fee set forth in 37 C.F.R. § 1.20(c)(2).

Requester hereby certifies that the statutory estoppel provisions of 35 U.S.C. § 315(e)(1) and 35 U.S.C. § 325(e)(1) do not prohibit Requester from filing this Request, in compliance with 37 C.F.R. § 1.510(b)(6).

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Trove Brands Ex. 1012
IPR Petition - USP 10,676,255

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Ex. 1002	Patent Family for Application No. 16/035,418 ("the '096 Application)
Ex. 1003	Prosecution History of the '255 Patent
Ex. 1004	U.S. Patent No. 6,116,458 ("Dark")
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Ex. 1006	U.S. Patent App. Pub. No. 2005/0029271 ("McDonough")
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Ex. 1011	U.S. Patent No. 2,816,548 ("Tupper")
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Ex. 1014	U.S. Patent No. 3,307,752 ("Anderson")
Ex. 1015	U.S. Patent App. Pub. No. 2004/0217139 ("Roth")
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Ex. 1017	Memorandum Opinion and Order Dated Jan. 9, 2023, from *CamelBak Products, LLC v. Zak Designs, Inc.*, Case No. 5-21-cv-05109 (W.D. Ark.) (Jun. 11, 2021).

I. Preliminary Statement

The '255 Patent is generally directed to a drink bottle having a resilient mouthpiece pivotal within a removable cap assembly. The mouthpiece may be selectively pivoted between a stowed position, where a manual on/off valve obstructs a fluid conduit to restrict drink fluid from flowing to the mouthpiece, and a dispensing position, where the manual on/off valve permits the drink fluid to flow to the mouthpiece.

Faced with an anticipation rejection for independent claim 1, the Applicant incorporated subject matter from a dependent claim relating to structure for a pivotal mount for the mouthpiece. In particular, the Applicant amended the claims to recite an axle-type mechanism for the pivotal mount: "wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend … wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets." These amendments led to allowance of the claims.

At least two prior-art documents, however, disclose exactly those features for a pivotal mount of drink bottle: U.S. Patent App. Pub. No. 2005/0029271 ("McDonough," Ex. 1006) and Japanese Patent App. Pub. No. 2001-294252 ("Toudou," Ex. 1007 and Ex. 1008). These references, either alone or in combination with other teachings, render independent claim 1 unpatentable. The other Challenged Claims are also unpatentable in view of prior art not considered by the Office. For example, claims 6 and 7 are directed to a handle for the bottle, but U.S. Patent No. 3,307,752 ("Anderson," Ex. 1014) discloses this precise structure for a drink bottle, noting that its handle enables ready grasping for carrying the bottle without interfering with the cap.

In short, the Challenged Claims are not patentable. Accordingly, the Office should issue an Action rejecting the Challenged Claims over at least these references based on one or more of the grounds discussed below.

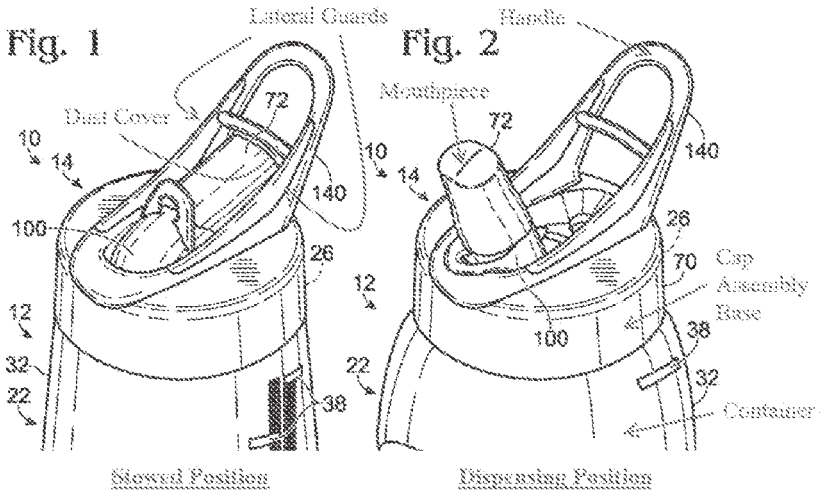
II. U.S. Patent No. 10,676,255

A. Summary

The '255 Patent is generally directed to drink bottles having removably attached cap assemblies. In an example, a cap assembly on a drink container has a fluid conduit for passing drink fluid from an inlet inside the container to a dispensing outlet outside the container. At the dispensing outlet, a user can extract the drink fluid using a resilient, compressible mouthpiece.

As shown in FIG. 3 of the '255 Patent, an exemplary container 12 may have a body 22 for holding a fluid, an opening or portal 40 at a top of the body, and a neck 26 surrounding the opening. Ex. 1001 ('255 Patent) at FIG. 3, 4:45-49, 5:42-48. The neck may include a coupling structure, such as threads 44, configured to engage with corresponding threads on a cap assembly 14. *Id.* at 5:45-59. Accordingly, after fluid is poured into opening 40, the cap assembly is screwed onto neck 26, making it removably connected. *Id.* at 6:7-12.

FIGS. 1 and 2 of the '255 Patent illustrate an example cap assembly on a container, and portions of those figures are reproduced below with annotations. As shown in both figures, a mouthpiece 72 provides a dispensing outlet for the user. The mouthpiece is pivotal relative to a base 70 of the cap assembly 14 between a stowed position (FIG. 1) against the cap assembly and a dispensing position (FIG. 2) away from the cap assembly, as shown here in reproductions of FIGS. 1 and 2 with annotations:



When mouthpiece 72 is in the stowed position in FIG. 1, a pair of lateral guards extend on opposite sides of the mouthpiece. *Id.* at 17:8-10. In addition, a dust cover extends between the lateral guards and across at least a portion of the dispensing outlet. The dust cover purportedly

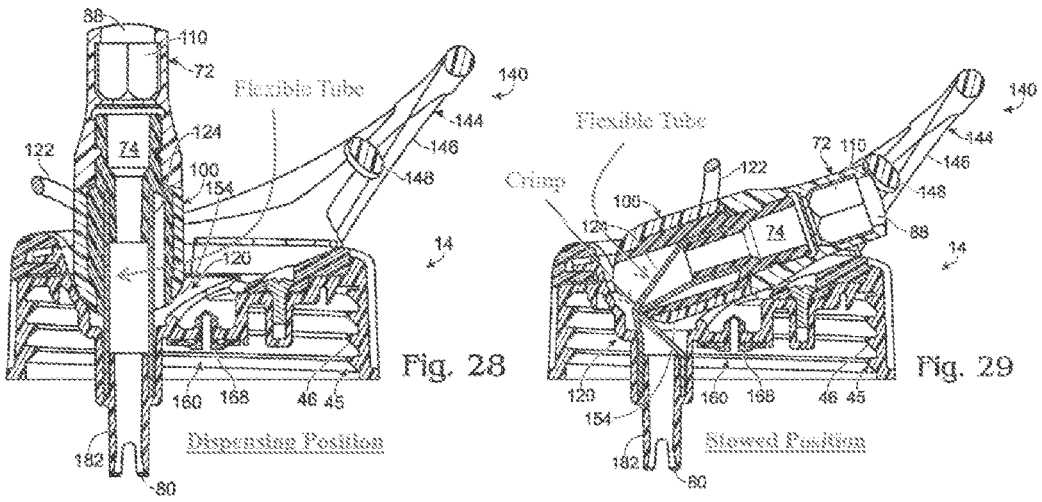
"protects the dispensing face, and thus the slit or other opening formed therein, from being contacted by dirt, grime, and other substances when the mouthpiece is in its stowed configuration." *Id.* at 17:13-18.

With mouthpiece 72 in the stowed position, a manual on/off valve obstructs the fluid conduit to restrict the drink fluid from flowing. According to the '255 Patent, the manual on/off valve "may be located at any suitable position downstream (i.e., toward the internal compartment of the fluid container) of the mouthpiece's face." *Id.* at 10:46-48. Any mechanism may suffice: "The on/off valve may utilize any suitable actuation mechanism to selectively configure the valve between its open and closed configurations." *Id.* at 11:8-11.

The '255 Patent provides several examples for a manual on/off valve. These include pivoting a spout associated with the mouthpiece (*id.* at 11:12-64), employing a push-pull mechanism with a baffle within the fluid conduit (*id.* at 11:65-12:19), and crimping "a foldable, collapsible, resiliently deformable, and/or crimpable region" of the fluid conduit (*id.* at 12:28-38, 18:23-30). According to the patent, a suitable material for a crimpable region "is silicone or another material that does not readily take a compression set and therefore may be repeatedly folded, flattened, crimped, and the like without leaking or otherwise being permanently deformed or failing." *Id.* at 12:39-43. With any of the examples, "when the on/off valve is in its closed configuration, drink fluid cannot be dispensed from the fluid container through the mouthpiece…." *Id.* at 10:59-61.

When pivoted from the stowed position (FIG. 1) to the dispensing position (FIG. 2), the mouthpiece pivots away from the dust cover for access by the user. In the dispensing position, mouthpiece 72 is positioned farther away from the cap assembly base 70 than in the stowed position (FIG. 1). In this dispensing position, "the constrictive pressure applied" by the manual on/off valve is reduced, "and a fluid flow path through the fluid conduit is reestablished." *Id.* at 18:30-35.

FIGS. 28 and 29 of the '255 Patent illustrate one example of the manual on/off valve causing a crimp in flexible tube 124, which are annotated below. In the stowed position at right (FIG. 29), the pivoted mouthpiece 72 leads to the crimp as shown, while in the dispensing position at left (FIG. 28), the erect mouthpiece 72 removes the crimp and allows fluid to flow through flexible tube 124.



The '255 Patent describes several options for fluid conduit 74 and mouthpiece 72. For example, mouthpiece 72 may be coupled to the cap assembly via a pivotal mount, such as mount 100 shown in FIGS. 2 and 3 above. The mount has lateral projections that rotate in sockets within the cap assembly base "and thereby function as rotatable supports, or axles, upon which the mount and any attached mouthpiece may be pivotally moved relative to the base of the cap assembly...." *Id.* at 16:62-65.

Finally, as also shown in FIGS. 1 and 2 above, the drink bottle includes a handle "that extends from the base of the cap assembly." *Id.* at 16:33-35. The handle and the cap assembly base define a closed loop with an aperture through which a user's finger may be inserted to carry the drink container. *Id.* at 16:33-56, FIG. 25. While handle 140 in FIG. 25 is an example, the '255 Patent indicates that "[h]andle 140 may take any other suitable form, may have a rigid or flexible construction, and may be (but is not required to be) used with any of the other cap assemblies that are disclosed, illustrated and/or incorporated herein." *Id.* at 16:35-39.

B. Prosecution History

As stated above, the '255 Patent issued from the '418 Application, which was filed July 13, 2018. The '418 Application was filed as a continuation that claimed priority to a string of five nonprovisional applications. The earliest of those applications, filed December 20, 2005, claimed the benefit of two provisional applications respectively filed August 8, 2005, and April 11, 2005. Because the priority dates for the '255 Patent were before March 16, 2013, when the America Invents Act became effective, the "pre-AIA" patent laws of Title 35 define the prior art for the '255 Patent.

Because the '255 Patent claims the benefit of an original application filed April 11, 2005, that date is the constructive date of invention for determining whether a document is prior art under 35 U.S.C. §§ 102(a) and (e) (pre-AIA), assuming that the original application provides adequate support under 35 U.S.C. § 112 (pre-AIA) for the Challenged Claims.[1] As well, the critical date for determining prior art under 35 U.S.C. § 102(b) is April 11, 2004.

Subsequent to the '418 Application, two other continuation applications have been filed, resulting in the following chronology of applications in a family that includes the '255 Patent:

Filing Date	*App. No.*	*App. Type*	*Status*
April 11, 2005	60/670,828	Provisional	Expired
August 8, 2005	60,706,700	Provisional	Expired
December 20, 2005	11/313,488	Nonprovisional	U.S. Patent No. 7,533,783
October 26, 2006	11/588,476	Continuation	U.S. Patent No. 8,622,237
June 5, 2008	12/133,954	Continuation	U.S. Patent No. 8,777,048
July 11, 2014	14/329,096	Continuation	U.S. Patent No. 9,463,911
October 7, 2016	15/287,915	Continuation	U.S. Patent No. 10,023,365
July 13, 2018	***16/035,418***	***Continuation***	***U.S. Patent No. 10,676,255***
April 29, 2020	16/862,105	Continuation	U.S. Patent No. 11,242,178
December 29, 2021	17/565,354	Continuation	Pending

See Ex. 1002 (Patent Family for App. 16/035,418 from USPTO's Global Dossier, available at https://globaldossier.uspto.gov/#/result/application/US/16035418/104942).

When filed, the '418 Application contained 20 claims. Ex. 1003 (Prosecution History of '255 Patent) at 62-67. Application claim 1 was the sole independent claim and was directed to a cap assembly for the drink container including a cap assembly base, a pivotal mount, a resilient mouthpiece, and a manual on/off valve. It recited:

> 1. (Application) A drink container, comprising:
>
> a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;
>
> a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through

[1] For purposes of this Request, Requester assumes the '255 Patent is entitled to its claimed earliest priority date of April 11, 2005.

> the cap assembly to a user, wherein the fluid conduit includes an inlet through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:
>
> a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;
>
> a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base;
>
> a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base; wherein the resilient mouthpiece defines a portion of the fluid conduit, and including the dispensing outlet; wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position; wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and
>
> a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet; wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit; wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

Id. at 62-63. The claims depending from independent application claim 1 specified other features of the drink container. For example, application claim 2 recited the pivotal mount having a pair of lateral projections and the cap assembly base having a pair of sockets into which the pair of lateral projections extend:

> 2. (Application) The drink container of claim 1, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend, and wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets.

Id. at 63.

1. Office Action of August 2, 2019

The Examiner issued a non-final Office Action dated August 2, 2019, that, in pertinent part, rejected application claims 1-3, 19, and 20 as being anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 6,116,458 ("Dark," Ex. 1004) and rejected application claims 4-18 as being unpatentable under 35 U.S.C. § 103(a) over Dark in view of U.S. Design Patent No. D547,607 ("Forsman," Ex. 1005). Ex. 1003 at 103-08.

Dark is generally directed to a sport drinking bottle having a cap with a valved straw. A drinking spout 3 extends horizontally in a closed position when pivoted down into a U-shaped recess 10 within a cap base 7. Ex. 1004 at 4:7-10. Spout 3 may be formed of polypropylene and is "inwardly resiliently compress[able]." *Id.* at 5:53-56.

In a closed position, an elastic tube 8 feeding a liquid from within the bottle to spout 3 is pinched at a bend to form a block against fluid passage. *Id.* at 6:52-63. A hinge 5 is integrally formed in the upper surface of cap base 7, and a diaphragm 4 enables pivotal movement of spout 3 about hinge 5 into a vertical open position, releasing the block. FIG. 1 and a portion of FIG. 2 from Dark, shown below, illustrate the closed and open positions for spout 3.

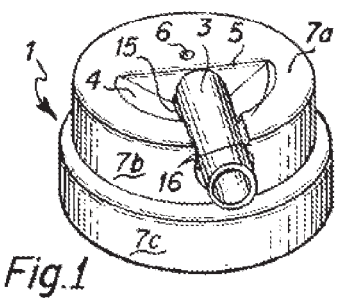
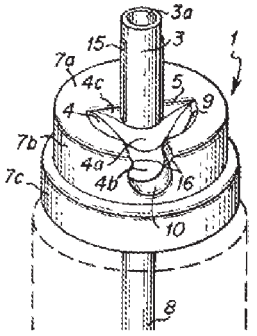


Fig.1

Dark, FIG. 1



Dark, FIG. 2

The Examiner mapped every limitation of claim 1 to Dark. Ex. 1003 at 103-04. For example, the Office Action identified the claimed fluid container, cap assembly, and cap assembly base as Dark's liquid container 2, cup cap 1, and cylindrical walled collar 7c, respectively. *Id.* According to the Office Action, Dark discloses the claimed pivotal mount in lower flexible portion 4b of diaphragm 4, which performs pivotal movement relative to cap base 7b. *Id.* Spout 3, which is coupled to the diaphragm for pivotal movement between a stowed position (FIG. 1) and a dispensing position (FIG. 2), corresponds to the claimed resilient mouthpiece. Spout 3 is adapted "to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth," as claimed, because "a user can bite the plastic mouth piece and the natural tendencies of plastic make it resilient." *Id.* at 104. Additionally, the Examiner concluded that Dark discloses the claimed manual on/off valve in that closing spout 3 causes tube 8 to crimp against interference rib 12 (*see* FIG. 6) to obstruct the fluid conduit and that opening spout 3 releases the crimp to permit the flow of flu*id. Id.*

Among several dependent claims anticipated by Dark, the Examiner further found that Dark discloses the subject matter of application claim 2. According to the Office Action, the pivotal mount in Dark includes a pair of lateral projections as claimed in splines 15 protruding radially from spout 3. *Id.* at 104-05. Splines 15 mate with a pair of elongated barbs 16 formed in opposed side walls of U-shaped region 10 (FIGS. 1 and 2), corresponding to the claimed pair of sockets in dependent claim 2. *Id.*

Finally, the Examiner concluded that various features of the cap assembly base and the resilient mouthpiece recited in application claims 4-18 not disclosed in Dark would have been obvious in view of Forsman. As with the '255 Patent, Forsman is assigned to CamelBak Products, LLC and illustrates essentially the same drink bottle cap as described in the '255 Patent. Forsman was filed on August 8, 2005.

2. Response to Office Action

Following several telephone interviews (Ex. 1003 at 132, 152), Applicant filed a Response to Office Action on December 2, 2019. The Response canceled dependent application claim 2 and incorporated its subject matter into amended independent application claim 1. *Id.* at 141-42. Accordingly, application claim 1 was amended as follows, with underlines indicating additions:

> a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;
>
> a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets; …

Ex. 1003 at 141. According to the Response, Applicant and the Examiner had agreed in the interviews that Dark does not disclose or suggest this subject matter incorporated from claim 2. *Id.* at 146. As indicated in an Examiner's Interview Summary, "One key point applicant raised is that the pivotal mount of the Dark reference does not include a pair of lateral projections. The projections of Dark are more on the straw than the pivotal mount." *Id.* at 152.

In addition, Applicant traversed the obviousness rejections of claims 4-18 because Forsman purportedly did not qualify as prior art. Forsman was filed on August 9, 2005, and published on July 31, 2007, but the '418 Application claimed priority to provisional applications filed April 11, 2005, and August 8, 2005. *Id.* at 147-48.

The Notice of Allowance was mailed January 29, 2020. Ex. 1003 at 154. While the Examiner had applied only Dark and Forsman against the Challenged Claims, 134 other potential references had also been provided or cited during prosecution. *See id.* at 110, 112, 115-124; Ex. 1001 at pp. 1-3.

C. Challenged Claims as Issued

The '255 Patent issued on June 9, 2020, with application claims 1 and 3-20 becoming patent claims 1-19. Ex. 1003 at 162. Challenged Claims 1, 3-8, 13, 14, 18, and 19 recite:

1. A drink container, comprising:

a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and

a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid

conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet; wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and

wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

3. The drink container of claim 1, wherein the cap assembly includes a pair of lateral guards that extend on opposed sides of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position, and further wherein the cap assembly includes a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position.

4. The drink container of claim 3, wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.

5. The drink container of claim 3, wherein the dust cover projects above an upper surface of the cap assembly base.

6. The drink container of claim 3, wherein the cap assembly further includes a handle that extends from the cap assembly base and includes the pair of lateral guards and the dust cover.

7. The drink container of claim 1, wherein the cap assembly further comprises a handle that extends in a fixed orientation from the cap assembly base and which defines at least a portion of a closed loop with an aperture through which a user's finger may be inserted to carry the drink container.

8. The drink container of claim 1, wherein the resilient mouthpiece is permanently secured to the pivotal mount.

13. The drink container of claim 1, wherein the resilient mouthpiece includes a dispensing face, and further wherein the

dispensing outlet extends through the dispensing face of the resilient mouthpiece.

14. The drink container of claim 13, wherein the dispensing outlet is defined by a slit that extends through the dispensing face of the resilient mouthpiece.

18. The drink container of claim 1, wherein the pivotal mount is adapted to selectively engage the flexible tube to apply crimping forces thereto and thereby configure the manual on/off valve to the closed configuration as the pivotal mount is pivoted from the dispensing position to the stowed position.

19. The drink container of claim 1, wherein the flexible tube is secured to the pivotal mount.

D. Level of Ordinary Skill in the Art

An expert in the relevant field, a person of ordinary skill in the art ("POSITA") of the '255 Patent in April 2005, would have had at least a degree in mechanical engineering or equivalent coursework, and a year or more of experience in designing, prototyping, and/or manufacturing containers produced from thermoplastic resins, such as polyethylene terephthalate (PET), including injection molding and/or blow molding such containers from preforms. Less work experience may be compensated by a higher level of education and vice versa.

E. Claim Construction

Because the '255 Patent has not expired, the Challenged Claims should be given their "broadest reasonable interpretation consistent with the specification." 37 CFR §1.75(d)(1); *see also* MPEP § 2111; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005). Under this standard, "[t]he Patent and Trademark Office … determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (quotation and citation omitted). "Because applicant has the opportunity to amend the claims during prosecution, giving a claim its broadest reasonable interpretation will reduce the possibility that the claim, once issued, will be interpreted more broadly than is justified." MPEP § 2111 (citing *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984)).

Requester does not believe that the Challenged Claims require express construction for purposes of reexamination. Because several terms appear repeatedly in the claims and bear on the prior art, however, Requester presents the following discussion of these terms supporting their broadest reasonable construction. Requester reserves the right to advocate a different interpretation of the claims in another forum, if necessary or as dictated by different legal standards.[2]

First, the Challenged Claims recite in many instances that a mouthpiece for a drink container must be "resilient." For instance, claim 14 recites a "resilient mouthpiece" that is "adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth." Ex. 1001 at 21:35-37. Claims 21 and 22 further specify that the resilient mouthpiece have opposed lips within a dispensing face such that "when a user applies compressive forces to the opposed bite regions, the lips are urged away from each other to enlarge the opening" (*id.* at 22:47-49) and "seal against each other when the opposed bite regions are not urged toward each other" (*id.* at 22:51-52).

In its ordinary meaning, a "resilient" material generally is deformable under applied forces and is capable of returning, at least in part, "to the original form or position after being bent, compressed, or stretched." *See Dictionary.com* available at https://www.dictionary.com/browse/resilient; *see also Merriam-Webster Online Dictionary* available at https://www.merriam-webster.com/dictionary/resilient ("a: capable of withstanding shock without permanent deformation or rupture b: tending to recover from or adjust easily to misfortune or change."). The specification of the '255 Patent does not use "resilient" differently from its ordinary meaning. *See, e.g.*, Ex. 1001 at 8:44-45 ("Mouthpiece 72 is resilient and biased to its closed configuration, such as is shown in FIGS. 10-15."); *id.* at 12:24-27 ("a fluid conduit having a foldable, collapsible, resiliently deformable, and/or crimpable region and suitable structure for selectively folding, flattening, resiliently deforming, and/or crimping that region"). Materials known to a POSITA to be "resilient," particularly for tubing and mouthpieces, include silicone. *See id.* at 12:31-36 ("An illustrative, non-exclusive example of a suitable material for such a portion of the fluid conduit is silicone or another material that does not readily take a

[2] As indicated in Section VII below, the '255 Patent is currently involved in litigation in the Western District of Arkansas. *See also* Ex. 1003 at 189. Although the parties largely do not dispute the meaning of claim terms in the '255 Patent, a Memorandum and Order from the Court dated January 9, 2023, addressing claim construction for all patents in the litigation is included for information as Exhibit 1017.

compression set and therefore may be repeatedly folded, flattened, crimped, and the like without leaking or otherwise being permanently deformed or failing.").

Second, the Challenged Claims recite forms of the word "pivoting," such as the resilient mouthpiece being "pivotal relative to the cap assembly base" or configured to be "selectively pivoted between a stowed position and dispensing position," and "when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover" in independent claim 14. Dependent claim 16 recites that the "resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets." In its ordinary usage, a "pivot" is "a shaft or pin on which something turns," and the act of "pivoting" is "to turn on or as if on a pivot." *See Merriam-Webster Online Dictionary* available at https://www.merriam-webster.com/dictionary/pivot. Thus, "pivoting," being "pivoted," or "being pivotal," generally refers to turning as if on a shaft or pin.

Third, claim 11 recites "coupled to" in the phrase "a resilient mouthpiece coupled to the pivotal mount for pivotal movement." In its broadest reasonable interpretation, "coupled to" generally refers to two items that are paired together for combined effect and treated as one, such as a married couple, or two structures that are associated, joined, or combined to operate together as one. *See Merriam-Webster Online Dictionary* available at https://www.merriam-webster.com/dictionary/coupled ("to connect for consideration together … to join for combined effect"). In the '255 Patent, two items may be removably coupled (i.e., "designed to be repeatedly connected and disconnected without destruction of the corresponding structures," Ex. 1001 at 14:65-15:1) or permanently coupled (i.e., "structures that are not designed to be separated without destruction of at least a portion of the structures and/or the mechanism that joins the structures," *id.* at 15:3-5).

Fourth, claim 8 recites that the resilient mouthpiece is "permanently secured" to the pivotal mount. In its broadest reasonable interpretation, "permanently secured" implies a joinder between two items that is not possible to breach. The '255 Patent does not define the phrase "permanently secured," but it does define a similar phrase of "permanently coupled," as noted above. According to the '255 Patent, "fixedly connected or permanently coupled structures refer to structures that are not designed to be separated without destruction of at least a portion of the structures and/or the mechanism that joins the structures." Ex. 1001 at 15:1-5. In a similar passage, the '255 Patent equates being "permanently secured" with being "integrated with": "Although it is within the

scope of the present disclosure that the drink tube may be integrated with or otherwise permanently secured to one or both of the cap assembly or the bite-actuated mouthpiece, it may be desirable for each of these components to be removably coupled to the drink tube." *Id.* at 15:17-21. Thus, "permanently secured" generally refers to two structures connected or integrated together that cannot be separated without destroying at least one of them or the mechanism that joins them.

Fifth, claim 3 recites "a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece is in the stowed position." The specification of the '255 Patent explains that a dust cover is "a dispensing face guard, or cover, 148 that is adapted to protect the dispensing face of the bite-actuated mouthpiece when the mouthpiece is in its stowed configuration." Ex. at 17:11-13. In the example provided in FIGS. 21 and 22-29, a dust cover 148 is part of an optional handle 140. But the claims of the '255 Patent do not require that a "dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet" be connected with or otherwise a part of either a handle or a pair of lateral guards.

III. Listing of Prior Art Patents and Printed Publications

Requester requests reexamination of the Challenged Claims in view of the following prior art documents and new technological teachings.

A. Primary References Disclosing a Pivotal Mount with a Pair of Lateral Projections Extending into a Pair of Sockets as Claimed

1. McDonough

U.S. Patent App. Pub. No. 2005/0029271 ("McDonough," Ex. 1006) was filed August 8, 2003, and published February 10, 2005. Accordingly, McDonough is prior art to the '255 Patent under 35 U.S.C. §§ 102(a) and 102(e) (pre-AIA). McDonough was cited in an Information Disclosure Statement during prosecution but was not applied in an Office Action. Ex. 1003 at 117.

At the least, McDonough presents a new technological teaching of "a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend" and "wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral

projections rotate within the pair of sockets," alleged by the Applicant to be missing from the art in allowance of claim 1. *See* Ex. 1003 at 147.

McDonough discloses a drinking cup having a container, a detachable lid, and a flexible straw having a drinking end for delivering liquid from within the container to a user. The cup includes a straw positioning mechanism pivotally attached to the lid through "a pair of axle projections 30 that are journaled into a corresponding pair of holes 32." Ex. 1006 (McDonough) ¶ [0021]. A recess 36 at a distal end of the straw positioning mechanism receives the flexible straw 24, and movement of the straw positioning mechanism pivots the flexible straw 24 between a downward storage position and an upward dispensing position, where it is "presented for sipping by a consumer." *Id.* ¶ [0010]. The flexible straw is "preferably fabricated from a resilient elastomeric material such as silicone." *Id.* ¶ [0025]. "When the straw positioning mechanism 20 is in the second, closed position shown in FIG. 3, the flexible straw 14 will be bent into a horizontal S-shaped configuration by the downwardly extending arm 35 so as to be crimped in a first location 44 and also in a second location 46 that is adjacent to the recess 36. This minimizes the potential for leakage through the flexible straw 16 in the storage position...." *Id.* ¶ [0021]. In the storage position, portion 38 of straw positioning mechanism 20 covers the outlet of flexible straw 14 and serves as "a protective shelf portion for precluding external contact with said first end of said flexible straw." *Id.* at Claim 8.

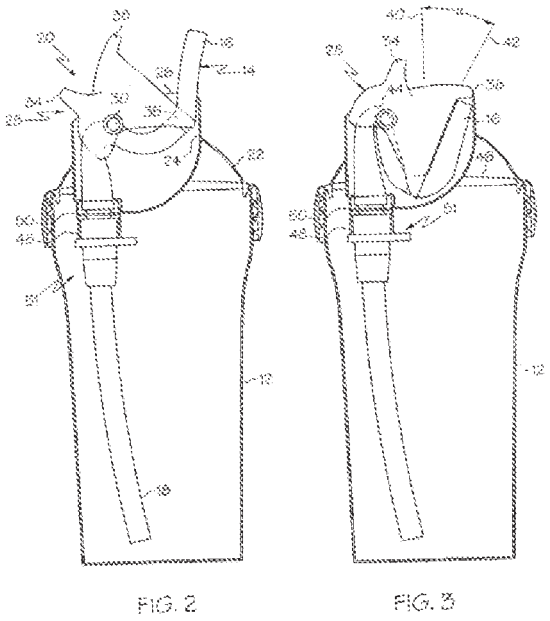


FIG. 2 FIG. 3

2. Toudou

Japanese Patent App. Pub. No. 2001-294252 ("Toudou," Ex. 1007) was published October 23, 2001, and is prior art to the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA). A certified English translation of Toudou is provided as Ex. 1008 (certification on last page).[3] Toudou was not cited

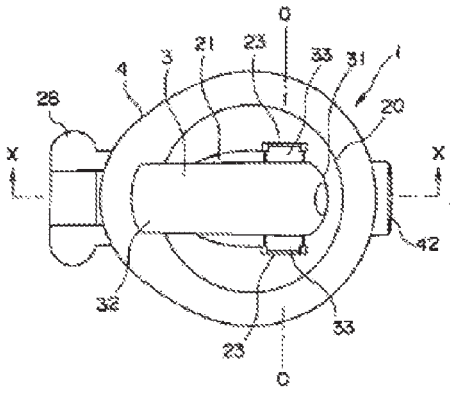
[3] JP2001-294252 includes the published Japanese patent application on pages 1-10 and, beginning on page 10 of Ex. 1008, certain amendments also having numbered paragraphs. Citations in this Request refer to the numbered paragraphs and figures on pages 1-9 of Ex. 1008.

or otherwise considered during prosecution of the '255 Patent. *See* Ex. 1001 at pp. 1-3; Ex. 1003 at 110, 112, 115-124.

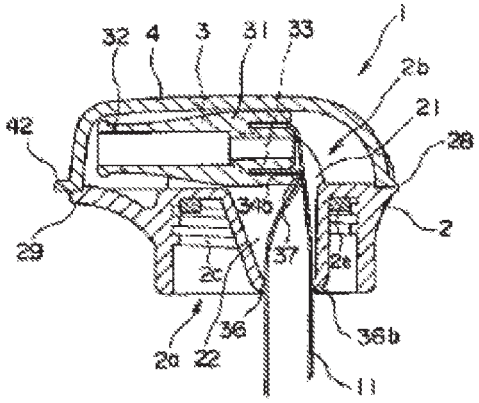
At the least, Toudou presents a new technological teaching of "a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend" and "wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets," alleged by the Applicant to be missing from the art in allowance of claim 1. *See* Ex. 1003 at 147.

Toudou discloses three embodiments for a detachable cap of polypropylene or the like for a drinking bottle in which a straw feeds liquid from within the bottle to a pivotal nozzle within the cap. Ex. 1008 ¶ [0011]. In a first and third embodiment, a pair of rotation shafts 33 extend from a base portion 31 of the nozzle 3 orthogonal to the length of the nozzle. *Id.* ¶ [0012]. The nozzle is mounted via the shafts 33 into pair of substantially U-shaped bearings 23 and pivotally rotates about the shafts 33. *Id.* ¶¶ [0012]-[0014], FIGS. 1 and 7.

[FIG. 1]



[FIG. 7]



In the third embodiment illustrated in FIG. 7, which expressly adopts the same pivotal structure as the first embodiment, the pivotal nozzle 3 includes a suction port 32 at a longitudinal end opposite base portion 31 for extracting liquid from the bottle. The straw 11 of "a rubber-like elastic resin such as a silicone tube" is connected within a cylindrical groove 35b within the base portion 31 of the nozzle 3. Closing a lid 4 forces nozzle 3 to pivot into a horizontal stowed position, causing straw 11 to become crimped to prevent leaking. *Id.* ¶ [0024]. Opening lid 4 allows elasticity of straw 11 to move nozzle 3 into an upright position for drinking, while releasing the crimp within straw 11. *Id.* ¶ [0025]. When the nozzle is stowed, a storage groove 21 and vertical walls of lid 4

protect the nozzle. *Id.* ¶ [0018] ("Since the nozzle 3 is covered with the lid 4 in the stored state, no contact with clothes or the like occurs and dust is not attached, so that the hygienic state can be maintained.").

B. Secondary References Teaching Resilient Mouthpieces as Claimed

1. Wright

International Patent App. Pub. No. WO03/101261A1 ("Wright," Ex. 1009) was published May 31, 2002, and is prior art to the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA). Wright was not cited or otherwise considered during prosecution of the '255 Patent. *See* Ex. 1001 at pp. 1-3; Ex. 1003 at 110, 112, 115-124.

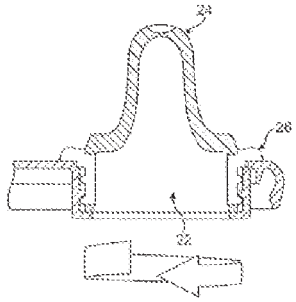


FIG. 1C

Wright discloses a cover for a drinking vessel that includes a flexible mouthpiece made of a resilient elastomeric material such as polyurethane rubber that deforms from biting forces and "hence does not damage the user's teeth." Ex. 1009 at Abstract, 2:7-8, 2:18-21, 4:21-22. The spout for the mouthpiece is removable for cleaning. *Id.* at 2:27, 8:3-7. The resilient mouthpiece may be molded onto a polypropylene base "via a second shot process" for removal from the cover, as shown in FIG. 1C. In one configuration, such as shown in FIG. 2C, the resilient mouthpiece has an upper mouthpiece portion 40 with a duck bill valve 44. "The mouth of the user is guided between the rim (82) and the dimples (84) so that the biting or stripping action occurs such that a sideways force is applied in the same direction on the duck bill valve to ensure opening of the duck bill valve and resulting flow of liquid." *Id.* at 5:20-24. According to Wright, "[t]he mouthpiece can be provided with a portion of the mouthpiece for example the top portion being flexible. Alternatively, the whole of the mouthpiece may be flexible." *Id.* at 7:8-10.

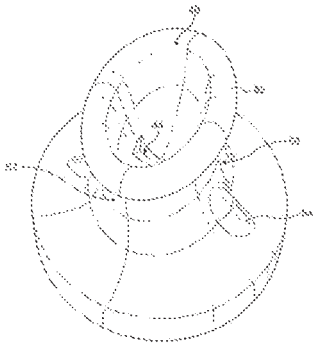
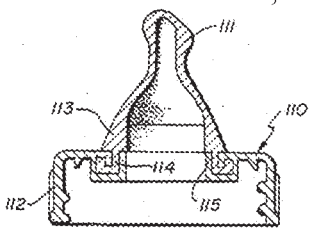


FIG. 2A

2. Phlaphongphanich

U.S. Patent No. 4,676,386 ("Phlaphongphanich," Ex. 1010) issued June 30, 1987, and is prior art to the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA). Phlaphongphanich was not cited or otherwise considered during prosecution of the '255 Patent. *See* Ex. 1001 at pp. 1-3; Ex. 1003 at 110, 112, 115-124.

Phlaphongphanich discloses a "traditional" baby bottle nipple having a mouth portion made of an elastomer, such as liquid silicone rubber. The mouth portion is coupled to a base portion

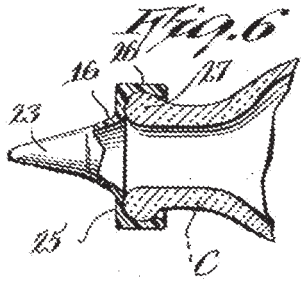


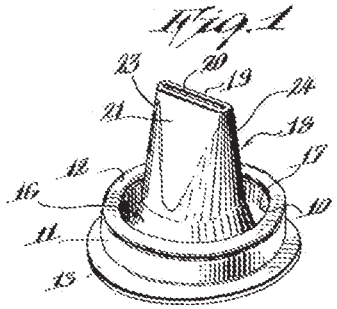
of semi-rigid thermoplastic, such as polypropylene, in a two-mold process. Ex. 1010 at Abstract, 3:30-34. The base portion is configured for attachment to the source of liquid, such as a baby bottle. The unitary construction avoids the pulling of the mouth portion from the base portion.

3. Tupper

U.S. Patent No. 2,816,548 ("Tupper," Ex. 1011) issued December 17, 1957, and is prior art to the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA). Tupper was not cited or otherwise considered during prosecution of the '255 Patent. *See* Ex. 1001 at pp. 1-3; Ex. 1003 at 110, 112, 115-124.

Tupper discloses a removable sipper-type of seal of "resilient plastic material" for consuming fluid contents from vessels or containers. Ex. 1011 at 1:15-17, 3:45. "The device serves



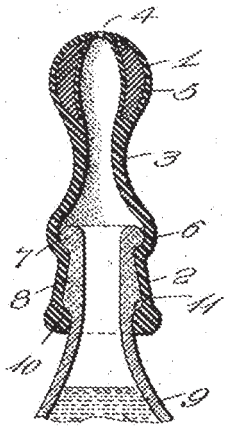


to sealably engage the vessel neck … to act simultaneously as a sipper for withdrawal of fluid contents, …" *Id.* at 1:26-31. The seal has an engaging groove 14 with a side wall 11 or flange 26 capable of being applied around the outside of vessel rim "for complete hermetical engagement" (*id.* at 2:44-49, FIGS. 4, 6) or a cylindrical section 28 to frictionally engage the inside of a passageway "in the form of a stopper" (*id.* at 2:67-3:2, FIG. 9). A feature "of the invention resides in the provision of a seal of this type wherein the sipping or drawing operation is capable of functioning … by alternate lip or teeth compression of the tubular structure to force fluid contents therethrough based on the principle of nipple feeding." *Id.* at 1:41-49; *id.* at 3:40-42 (the dispensing end of the sipper seal "is capable of being squeezed or deformed by the mouth or teeth of the user"). Further, the dispensing end culminates in a "narrow and elongated rim 19 for a slot 20" (*id.* at 2:38-39), as shown in FIG. 1. The slot functions "to check spillage by reason of fluid capillarity and surface tension" (*id.* at 3:29-34), acting "to check the flow of said fluid contents when the vessel lies in horizontal or other leaking position" (*id.* at 4:16-19).

4. Heise

U.S. Patent No. 2,001,842 ("Heise," Ex. 1012) issued May 21, 1935, and is prior art to the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA). Heise was not cited or otherwise considered during prosecution of the '255 Patent. *See* Ex. 1001 at pp. 1-3; Ex. 1003 at 110, 112, 115-124.

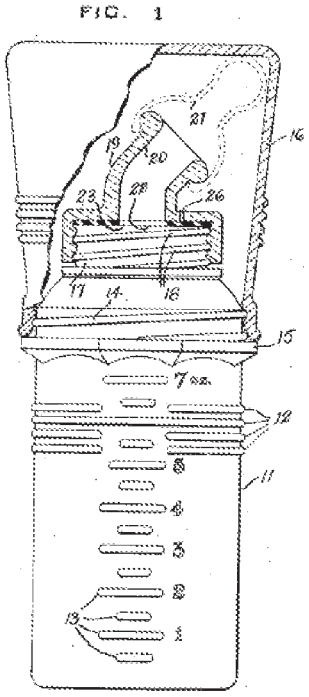
Heise discloses a combined teething and feeding nipple for use on the spout of a baby bottle. In a first embodiment, "[t]he body is of soft rubber of sufficient thickness to normally retain the shape disclosed in Figure 1 and its outer end 1 which is formed with an outlet opening 4 at its center, is substantially spherical in shape and molded about a reinforcement 5 formed of tough resilient rubber." Ex. 1012 at 2:8-14. The two-layered resilient mouthpiece of FIG. 1 therefore doubles as a teething and feeding nipple: "By this arrangement, the head will have a soft outer surface so that it will not hurt a baby's tender gums but at the same time the head will have sufficient resiliency and toughness to permit it to be used as a teething device." *Id.* at 2:18-23. In a second embodiment of FIG. 5, the mouthpiece is made entirely of soft rubber. *Id.* at 3:39-42.



The nipple resiliently adapts to compressive forces from the baby's mouth. During feeding, "pressure of the lips will cause the nipple to be constricted inwardly of its reinforced outer end portion as suction is applied." *Id.* at 1:14-16. And "[w]hen a baby is cutting teeth the nipple can be used as a teething device as the reinforcement is sufficiently tough and resilient to permit the head to be chewed upon without losing its spherical shape." *Id.* at 3:27-31.

5. Canham

U.S. Patent No. 2,467,463 ("Canham," Ex. 1013) issued April 19, 1949, and is prior art to the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA). Canham was not cited or otherwise considered during prosecution of the '255 Patent. *See* Ex. 1001 at pp. 1-3; Ex. 1003 at 110, 112, 115-124.



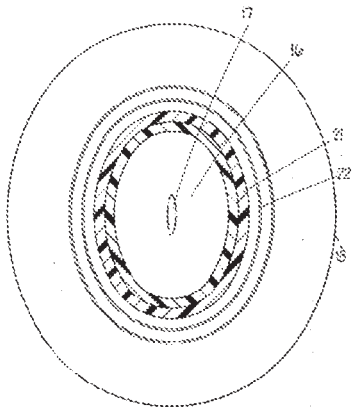
Canham discloses a bottle 11 that has a reduced neck portion 17 that is capped by a nipple adapter member 19 engaged with threads 18 to a neck of bottle 11, as shown in FIG. 1. Ex. 1013 at 1:39-52. Nipple adapter member 19, which is "preferably of molded plastic," is "formed with an outlet passage 20 inclined at about 45° to the axis of the container." *Id.* at 1:53-55. "The top end of adapter member 19 is formed to receive a conventional nipple 21," as shown in FIGS. 1 and 5. *Id.* at 1:55-56. According to Canham, "[t]he inclined relation of passage 20 of adapter 19 to the axis of the container makes it possible to feed the infant in many different positions comfortably." *Id.* at 2:21-23; *id.* at 2:29-31 ("The angle top makes it easy to handle the container regardless of which way the baby turns.").

6. Hurst

U.S. Patent No. 4,020,964 ("Hurst," Ex. 1016) issued May 3, 1977, and is prior art to the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA). Hurst was not cited or otherwise considered during prosecution of the '255 Patent. *See* Ex. 1001 at pp. 1-3; Ex. 1003 at 110, 112, 115-124.

Hurst is directed to an "infants feeding bottle" comprising a container for liquid and a teat securable onto the container. Ex. 1016 at Abstract. The teat, as well as other components of the bottle, has an oval shape. "The longer dimensions of the oval sections are moreover aligned so that the whole assembly is narrower in one direction than it is in the other." *Id.* at 2:49-51. Outlet 17 for passing liquid from the bottle is "in the form of a slit in the center of the end of teat 16" (*id.* at 1:45-46) and "extends in the direction of the longer dimensions of the oval sections" (*id.* at 2:52-54), as shown in cross-sectional top view of FIG. 2. According to Hurst, advantages in the oval shape of teat 16 and slit opening 17 include: "The slit provides means for regulating the rate at which feeding takes place, and the oval section of the feeding bottle allows the orientation of the slit to be readily recognised." *Id.* at 4:3-6. Additionally, according to Hurst, oval teats can be manufactured in larger numbers simultaneously than can teats with circular cross-section. *Id.* at 4:7-14.

FIG 2.

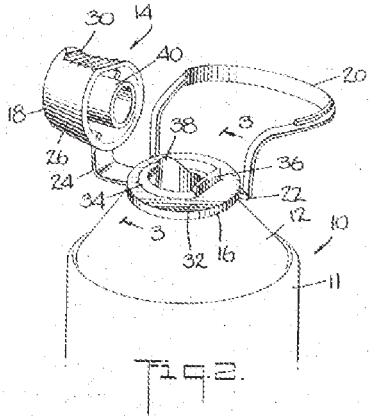


C. Secondary References Teaching Handles as Claimed

1. Anderson

U.S. Patent No. 3,307,752 ("Anderson," Ex. 1014) issued March 15, 1965, and is prior art to the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA). Anderson was not cited or otherwise considered during prosecution of the '255 Patent. *See* Ex. 1001 at pp. 1-3; Ex. 1003 at 110, 112, 115-124.

Among other features, Anderson describes a handle for a liquid container that is molded as an integral part of a cap base. One function for the handle is "providing a carrying means thus eliminating the need for a waist shaped or small necked container...." Ex. 1014 (Anderson) at 2:13-20. As depicted in FIG. 1, "handle 20 is affixed to and may be integrally molded with the base portion 16 at outwardly protruding lugs 22 located at its periphery." *Id.* at 2:69-72.



Being generally U-shaped, the handle "extends upwardly from the lugs 22 for a short distance and then outwardly away from

the overcap 18 so that its maximum height does not exceed that of the overcap.... [T]his handle configuration enables the containers to [] be grasped quite readily both for pouring and for carrying." *Id.* at 3:15-23. Made of plastic and moving horizontally away from the overcap 18, handle 20 can "provide full finger access without interference with movements of said overcap." *Id.* at 5:35-41.

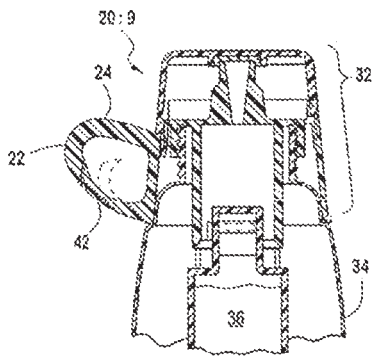
2. Roth

U.S. Patent App. Pub. No. 2004/0217139 ("Roth," Ex. 1015) was filed November 5, 2003, claims the benefit of a design patent application filed April 30, 2003, and was published November 4, 2004. Accordingly, Roth is prior art to the '255 Patent under 35 U.S.C. §§ 102(a) and 102(e) (pre-AIA). Roth was cited in an Information Disclosure Statement during prosecution but was not applied in an Office Action. *See* Ex. 1001 at pp. 2-3; Ex. 1003 at 117.

In Roth, a mouth of a bottle 34 mates with a base portion 26 of a closure body 32 that includes a liquid passageway. Ex. 1015 at Abstract. An annular shroud 64 covers a periphery of base portion 26. Ex. 1015 ¶ [0028], FIG. 3. In a first embodiment shown in Roth's FIG. 2, a looped connector 24 is formed on a pivotal lid 28 of the closure body and may incorporate a snap hook 22 for attaching the bottle to an object such as a backpack.

Roth explains that the looped connector may be positioned elsewhere on closure body 32, such as laterally from annular shroud 64 of base portion 26: "As shown in FIG. 1 the connector 24 preferably extends generally upwardly from the lid 28. However, those of ordinary skill in the art will appreciate from this disclosure that the connector 24 can extend from a lateral side of the closure body 32 or from a lateral side of the annular shroud 64 without departing from the scope of the present invention." *Id.* ¶ [0031]. FIG. 11A illustrates an embodiment in which the looped connector extends from the annular shroud 64 of base portion 26 separate from and beneath lid 28: "FIG. 11A is [in] cross-section a view similar to that of FIG. 3 illustrating an alternative embodiment of a closure according to the present invention in which the snap hook is disposed on a side of the closure;..." *Id.* ¶ [0018]. According to Roth, "[i]t is preferred that the snap hook 22 is integrally formed with the closure body 32 ... [and] that the closure body 32 and the snap hook 22 are formed by a suitable polymer." *Id.* ¶ [0032].

FIG. 11A



IV. Substantial New Questions of Patentability

This Request identifies the following fifteen substantial new questions of patentability for the Challenged Claims based on two primary references: McDonough and Toudou.

A. Questions Based on McDonough

As noted in the previous section and detailed below, McDonough at the least presents a new technological teaching of "a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend" and "wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets," alleged by the Applicant to be missing from the art in allowance of claim 1. *See* Ex. 1003 at 147. Therefore, "the teaching of the (prior art) patents and printed publications is such that a reasonable examiner would consider the teaching to be important in deciding whether or not the claim is patentable." *See* MPEP 2242. Further, McDonough was cited among 136 references during prosecution but was not applied in an Office Action. 35 U.S.C. 303(a) ("The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office."). Nor was the art applied (i.e., Dark (Ex. 1004)) cumulative to McDonough. Thus, the "same question of patentability as to the claim has not been decided by the Office in an earlier concluded examination or review of the patent." MPEP § 2642. In addition, to Requester's knowledge, the '255 Patent has not been challenged in a prior post-grant proceeding. The following grounds of rejection flow from this substantial new question of patentability:

1. Anticipation or obviousness of claims 1, 3-5, 13, 18, and 19 in view of McDonough
2. Obviousness of claim 6 over McDonough in view of Anderson
3. Obviousness of claim 7 over McDonough in view of Anderson or Roth

B. Questions Based on Toudou

As noted in the previous section and detailed below, Toudou at the least presents a new technological teaching of "a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, wherein the pivotal mount includes a pair of lateral projections,

wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend" and "wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets," alleged by the Applicant to be missing from the art in allowance of claim 1. *See* Ex. 1003 at 147. Therefore, "the teaching of the (prior art) patents and printed publications is such that a reasonable examiner would consider the teaching to be important in deciding whether or not the claim is patentable." *See* MPEP 2242. Nor was the art applied (i.e., Dark (Ex. 1004)) cumulative to Toudou. Further, Toudou was not cited during prosecution and was not applied in an Office Action. Thus, the "same question of patentability as to the claim has not been decided by the Office in an earlier concluded examination or review of the patent." MPEP § 2642. In addition, to Requester's knowledge, the '255 Patent has not been challenged in a prior post-grant proceeding. The following grounds of rejection flow from this substantial new question of patentability:

4. Anticipation or obviousness of claims 1, 3-5, 8, 13, 18, and 19 in view of Toudou

5. Obviousness of claim 6 over Toudou in view of Anderson

6. Obviousness of claim 7 over Toudou in view of Anderson or Roth

7. Obviousness of claim 14 over Toudou in view of Wright

In addition to Toudou inherently disclosing the resilient mouthpiece recited in the Challenged Claims, the following alternative grounds of rejection establish the obviousness of the claimed subject matter based on Toudou and Wright for a resilient mouthpiece integrally coupled to a pivotal spout:

8. Alternatively, obviousness of claims 1, 3-5, 8, 13, 14, 18, and 19 over Toudou in view of Wright

9. Alternatively, obviousness of claim 6 over Toudou in view of Wright, further in view of Anderson

10. Alternatively, obviousness of claim 7 over Toudou in view of Wright, further in view of Anderson or Roth

In addition to Toudou inherently disclosing the resilient mouthpiece recited in the Challenged Claims, and Toudou and Wright rendering obvious a resilient mouthpiece integrally coupled to a pivotal spout within the scope of the claims, the following alternative grounds of rejection establish the obviousness of the claimed subject matter based on Toudou, Canham, and

Heise for a resilient mouthpiece removably coupled to a pivotal spout:

11. Alternatively, obviousness of claims 1, 3-5, 13, 18, and 19 over Toudou in view of Canham, further in view of Heise

12. Alternatively, obviousness of claim 6 over Toudou in view of Canham and Heise, further in view of Anderson

13. Alternatively, obviousness of claim 7 over Toudou in view of Canham and Heise, further in view of Anderson or Roth

14. Alternatively, obviousness of claim 8 over Toudou in view of Canham and Heise, further in view of Phlaphongphanich

15. Alternatively, obviousness of claim 14 over Toudou in view of Canham and Heise, further in view of Hurst or Tupper

V. Detailed Application of Challenged Claims to Prior Art

In Grounds 1-15 below, Requester explains in detail and on an element-by-element basis how the prior-art references listed above establish the unpatentability of the Challenged Claims under 35 U.S.C. §§ 102(a), (b), and/or (e) (pre-AIA) or under 35 U.S.C. §§ 103(a) (pre-AIA). To aid the analysis and more easily identify claim limitations, Requester has added numbers within square brackets to certain phrases within the claims. Requester respectfully requests the issuance of an Office Action rejecting the Challenged Claims based on one or more of Grounds 1-15.

A. Ground 1: McDonough Anticipates, or Would Have Rendered Obvious, Claims 1, 3-5, 13, 18, and 19

As explained below on an element-by-element basis, McDonough discloses all limitations and therefore anticipates claims 1, 3-5, 13, 18, and 19 of the '255 Patent under 35 U.S.C. §§ 102(a)/(e) (pre-AIA) or, in the alternative, would have rendered obvious those claims under 35 U.S.C. § 103(a) (pre-AIA).

1. Claim 1

[1.pre] A drink container, comprising: [1.1] a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

To the extent the preamble is limiting, McDonough describes the claimed drink container in the form of container 12, as shown in FIG. 3. *See* Ex. 1006 (McDonough) ¶ [0002] ("This invention relates broadly to sealed drinking containers for serving beverages…."); *id.* ¶ [0022] (straw 14 "is in communication with the container 12 for serving a beverage from the container 12").

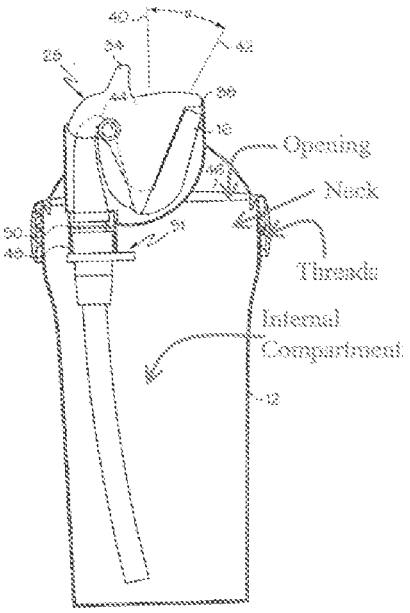


FIG. 3

In McDonough, container 12 has a neck and opening that is covered with lid 22, as recited in [1.1] and shown in the cross-section of FIG. 3, reproduced and annotated here. As well, the internal compartment 12 is part of a "straw drinking cup" configured to hold potable drink fluid, such that straw 14 "is in communication with the container 12 for serving a beverage from the container 12." *Id.* ¶ [0022].

[1.2] a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines

McDonough includes a cap assembly as lid 22, labeled in FIG. 2, that is removably coupled to the fluid container 12 to cover its opening. As stated in McDonough, "Referring now to FIG. 2, it will be seen that container 12 is constructed so as to includ[e] a lid 22 that is screwable onto the main body portion of the container 12…." *Id.* ¶ [0020].

[1.2.1] a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes [1.2.2] an inlet through which drink fluid from the fluid container may enter the fluid conduit, and [1.2.3] a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

McDonough includes the claimed fluid conduit of claim 1. Lid 22 in McDonough defines a fluid conduit as "a flexible elastomeric straw 14 having a first, drinking end 16 and a second end

18 that is positioned within the container 12, as shown in FIG. 2." *Id.* ¶ [0019]. Through this fluid conduit 14, drink fluid will flow from the container 12 through lid 22 to a user: "In operation, a consumer will suck on the draining [sic, drinking] end 16 of the flexible straw 14, which will induce a pressure differential between the drinking end 16 and the second end 18 of the flexible straw 14. This, in turn, will draw the beverage upwardly through the flexible straw 14 into the mouth of the consumer." *Id.* ¶ [0022]. Thus, an inlet of straw 14 for drink fluid from the container is second end 18 in FIG. 2, while a dispensing outlet through which drink fluid may be dispensed from the cap assembly to a user is drinking end 16 of straw 14 in FIG. 2, as recited in [1.2.2] and [1.2.3].

[1.3] a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

McDonough discloses a cap assembly base as a lower portion of lid 22 shown screwed onto container 12 in FIG. 2. Lid 22 is removably coupled to the upper portion or neck of fluid container 12 and configured to be selectively and repeatedly decoupled from and re-coupled to the neck through the use of threads for screwing and unscrewing: "Referring now to FIG. 2, it will be seen that container 12 is constructed so as to includ[e] a lid 22 that is screwable onto the main body portion of the container 12 …." *Id.* ¶ [0020]. A lid that is "screwable" with threads is configured to be "selectively and repeatedly decoupled" as claimed.

[1.4] a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base,

McDonough discloses that lid 22 further includes a pivotal mount in the form of straw positioning member 28 and recess 36 within its downwardly extending arm 35. And straw positioning member 28 pivots within lid 22: "As may best be seen in FIGS. 2 and 3, straw positioning mechanism 20 is preferably embodied as a straw positioning member 28 that is pivotally mounted to the lid 22 and is substantially positioned within the opening 26 that is defined by the upstanding wall 23." Ex. 1006 ¶ [0021]. A comparison of FIG. 2 and FIG. 3 shows the pivotal movement of the pivotal mount, i.e., straw positioning member 28, relative to the cap assembly base, i.e. the lower portion of lid 22.

[1.4.1] wherein the pivotal mount includes a pair of lateral projections, [1.4.2] wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

According to McDonough, straw positioning structure 28 pivots around a pair of lateral projections, i.e., axle projections 30, which are shown in FIG. 1. Moreover, tracking the language of [1.4.2], lid 22 includes a pair of sockets in the form of holes 32 into which the pair of axle projections 30 extend. As stated in McDonough, "Straw positioning member 28 includes a pair of axle projections 30 that are journaled into a corresponding pair of holes 32 that are defined in the upstanding wall 23, as shown in FIG. 1." *Id.* ¶ [0021]. Accordingly, McDonough discloses the subject matter of [1.4.1] and [1.4.2].

[1.5] a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base,

Drinking cup 10 in McDonough includes a resilient mouthpiece in the form of drinking end 16 of flexible straw 14. As stated in the reference, "The entire flexible straw 14 … is preferably fabricated from a resilient elastomeric material such as silicone." Ex. 1006 ¶ [0025]. The resilient mouthpiece 16 includes a dispensing outlet at its tip: "In operation, a consumer will suck on the draining [sic, drinking] end 16 of the flexible straw 14, which … will draw the beverage upwardly through the flexible straw 14 into the mouth of the consumer." *Id.* ¶ [0022].

Straw 14 is "coupled to" straw positioning member 28 (straw positioning member 20) by being received within its recess 36. Ex. 1006 ¶ [0021] ("Straw positioning member 28 preferably includes a downwardly extending arm 35 that has a recess 36 defined at its distal end for receiving the flexible straw 14."). Thus, straw 14 is joined to straw positioning member 28 through a mating within recess 36, a coupling that McDonough refers to as an "interlocking arrangement." *Id.* ¶ [0027]. This interlocking of resilient mouthpiece 16 in recess 36 of pivotal mount 28 enables the pivotal positioning of resilient mouthpiece 16: "The flexible straw 14 in conjunction with the pivotal straw positioning structure 28 further provides a positive interlocking arrangement for positioning the straw 14, while minimizing the complexity of assembly with the other components." *Id.* ¶ [0027].

In addition, the interlocking between straw 14 and straw positioning member 28 causes the resilient mouthpiece, i.e., drinking end 16, to pivot with the pivotal mount, i.e., straw positioning member 28, relative to the cap assembly base. Portions of FIGS. 2 and 3, annotated below, show

that resilient mouthpiece 16 is pivotal relative to the base of lid 22 as straw positioning mechanism 20 pivots about axle projections 30:

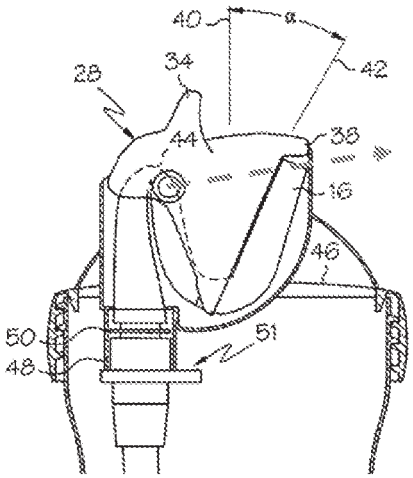


FIG. 3

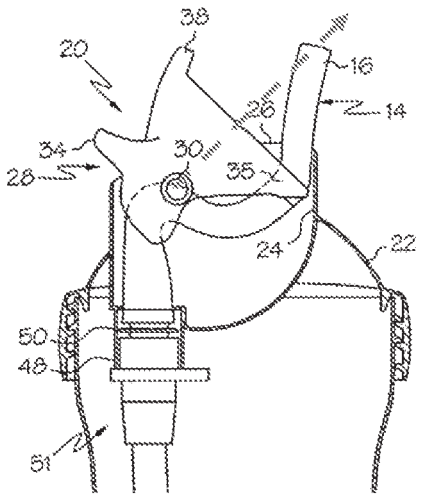


FIG. 2

Therefore, McDonough discloses the subject matter of [1.5].

[1.5.1] wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

A comparison of FIG. 2 and 3 in McDonough shows that as axle projections 30 journaled into holes 32 are rotated, straw positioning member 28 pivots, causing resilient mouthpiece 16 to pivot about an axis defined by the axle projections 30 (*see* dashed arrows), meeting the requirements of [1.5.1]. Specifically, pivoting of pivotal mount 28 moves downwardly extending arm 35 and recess 36, as shown in FIGS. 2 and 3, which in turn causes resilient mouthpiece 16 mounted on pivotal mount 28 to pivot upwardly and downwardly between an open, dispensing position (FIG. 3) and a closed, stowed position (FIG. 2). *See id.* ¶ [0021].

Accordingly, McDonough discloses the subject matter of [1.5.1].

[1.5.2] wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

As indicated above for [1.2.1]-[1.2.3], McDonough defines a fluid conduit as "a flexible elastomeric straw 14 having a first, drinking end 16 and a second end 18 that is positioned within the container 12, as shown in FIG. 2." Ex. 1006 ¶ [0019]. "The entire flexible straw 14 … is preferably fabricated from a resilient elastomeric material such as silicone." *Id.* ¶ [0025]. Drinking end 16 of this resilient elastomeric straw 14 is a dispensing outlet through which drink fluid may

be dispensed to a user. As stated in the reference, "In operation, a consumer will suck on the draining [sic, drinking] end 16 of the flexible straw 14, which … will draw the beverage upwardly through the flexible straw 14 into the mouth of the consumer." *Id.* ¶ [0022].

As a result, McDonough discloses the subject matter of [1.5.2].

[1.6] wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further [1.6.1] in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

As annotated above, McDonough illustrates in FIGS. 2 and 3 the selective pivoting of the resilient mouthpiece, i.e. drinking end 16, and pivotal mount, i.e., straw positioning member 28 or straw positioning mechanism 20, between a stowed position (FIG. 3) and a dispensing position (FIG. 2). "Straw drinking cup 10 further includes a straw positioning mechanism 20 for positioning the flexible straw 14 with respect to the container 12 between a first drinking position, shown in FIG. 2, and a second storage position, shown in FIG. 3." Ex. 1006 ¶ [0019]. Straw positioning mechanism 20 adjusts the resilient mouthpiece 16 between the stowed position and the dispensing position and "is pivotally mounted to the lid 22…." *Id.* ¶ [0021]. Moreover, as shown in comparing FIGS. 2 and 3, resilient mouthpiece 16 is farther from the cap assembly base, i.e., lower portion of lid 22, in the dispensing position of FIG. 2 than in the storage position of FIG. 3.

Therefore, McDonough discloses the subject matter of [1.6] and [1.6.1].

[1.6.2] wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and

As pointed out above for [1.2.1], in McDonough, "The entire flexible straw 14" including drinking end 16 "is preferably fabricated from a resilient elastomeric material such as silicone." Ex. 1006 ¶ [0025]. McDonough does not expressly state that flexible straw 14 will "compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth," as recited in [1.6.2].

It necessarily follows from McDonough, however, that flexible straw 14 formed from an elastomeric material such as silicone would be compressible from forces applied to a user's teeth. *See Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985) ("good corrosion resistance in hot brine environments" was inherent and necessary property of alloy insufficient to

avoid anticipation). For example, McDonough explains that compressive forces will readily bend and crimp its flexible, resilient straw in multiple locations. *Id.* ¶ [0021] ("the flexible straw 14 will be bent into a horizontal S-shaped configuration by the downwardly extending arm 35 so as to be crimped"); *id.* ¶ [0026] ("crimping the flexible straw 14 in two different positions"). Thus, McDonough teaches that flexible straw 14 is compressible enough not only to deform, but to collapse in multiple locations and form a seal to block the flow of liquid. That compression of flexible straw 14 occurs from the movement of straw positioning mechanism 20, an action expected to be performed by "small children." *Id.* at 1:9-11 ("This invention relates broadly to sealed drinking containers for serving beverages, especially to small children and individuals who are disabled."). Moreover, the forces required to cause crimping of flexible straw 14 into a seal as shown in McDonough would be less than biting forces that could be applied by a user's teeth, and it would be a natural result from McDonough that compressive forces from either straw positioning mechanism 20 or a user's teeth would cause flexible straw 14 "to resiliently compress" as claimed.

Additionally, other prior-art documents confirm that a mouthpiece "fabricated from a resilient elastomeric material such as silicone" as in McDonough (Ex. 1006 ¶ [0025]) "is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth," as recited in [1.6.2]. *See Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991) ("To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence."); MPEP § 2131.01 (using multiple references for inherency). For example, Wright (Ex. 1009) teaches that with a mouthpiece "formed of a flexible, resilient flexible elastomer material" (*id.* at 4:21-22), after application of a biting force "to the sides of the mouthpiece, the mouthpiece deforms inwardly." *Id.* at 2:7-8. Wright recognizes a concern with rigid or semi-rigid mouthpieces potentially causing damage to a user's teeth, particularly an infant. *Id.* at 1:18-19 ("It will be appreciated that biting or prolonged sucking on a spout can lead to tooth damage for the infant during the important teething stage, especially for infants up to 9 months of age."). To address this risk, Wright discloses using a "resilient flexible elastomer material"—as with flexible straw 14 in McDonough—to enable resilient deformation of the mouthpiece when bitten. *Id.* at 2:18-19 ("The flexibility of the mouthpiece also reduces the risk of damage to the infant's teeth."). The mouthpiece of resilient flexible elastomer material is "arranged such that on application of a force to the sides of the mouthpiece, the mouthpiece deforms inwardly" to open a duck bill valve. *Id.* at

Abstract. That force to the sides of the mouthpiece is delivered by compression from a user's teeth, as claimed: "[T]he duck bill valve opens under a pursing, biting or stripping action …." *Id.* at 2:16-17; *id.* at 5:20-24 ("The mouth of the user is guided between the rim (82) and the dimples (84) so that the biting or stripping action occurs such that a sideways force is applied in the same direction on the duck bill valve to ensure opening of the duck bill valve and resulting flow of liquid.").

Thus, to the extent McDonough alone is not deemed to inherently disclose the properties of a resilient flexible elastomer material "to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth," those inherent properties are evident in view of Wright.

Accordingly, McDonough inherently discloses the subject matter of [1.6.2].

[1.7] a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and [1.7.1] an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet;

In addition to the mouthpiece of the drink container being compressible, claim 1 separately recites a manual on/off valve that can obstruct the fluid conduit. At least downward extending arm 35 of straw positioning mechanism 20 (or straw positioning member 28) in FIGS. 2 and 3 of McDonough corresponds to the claimed manual on/off valve of the '255 Patent in [1.7]. Shown best in FIGS. 2 and 3, "straw positioning mechanism 20 is preferably embodied as a straw positioning member 28 that is pivotally mounted to the lid 22 and is substantially positioned within the opening 26 that is defined by the upstanding wall 23.… Straw positioning member 28 preferably includes a downwardly extending arm 35 that has a recess 36 defined at its distal end for receiving the flexible straw 14." Ex. 1006 ¶ [0021]. When the manual on/off valve of downward extending arm 35 is in the closed position of FIG. 3 as in [1.7], the fluid conduit or flexible straw 14 will be crimped to obstruct drink fluid flowing from container 12 to drinking end 16: "[T]he flexible straw 14 will be bent into a horizontal S-shaped configuration by the downwardly extending arm 35 so as to be crimped in a first location 44 and also in a second location 46 that is adjacent to the recess 36. This minimizes the potential for leakage through the flexible straw 16 in the storage position…." *Id.*

As to [1.7.1], manual on/off valve 20 has an open position shown in FIG. 2 that permits drink fluid to flow through straw 14 from container 12 to drinking end 16. *Id.* ¶ [0019] ("Straw

drinking cup 10 further includes a straw positioning mechanism 20 for positioning the flexible straw 14 with respect to the container 12 between a first drinking position, shown in FIG. 2, and a second storage position, shown in FIG. 3."); *id.* ¶ [0010] ("[T]he straw positioning mechanism being movable between a first operative position wherein the first end of the flexible straw is presented for sipping by a consumer and a second storage position.").

[1.7.2] wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

McDonough discloses that its manual on/off valve 20 includes a flexible tube, i.e., flexible straw 14, as shown in FIGS. 2 and 3, coupled to recess 36 within downwardly extending arm 35.

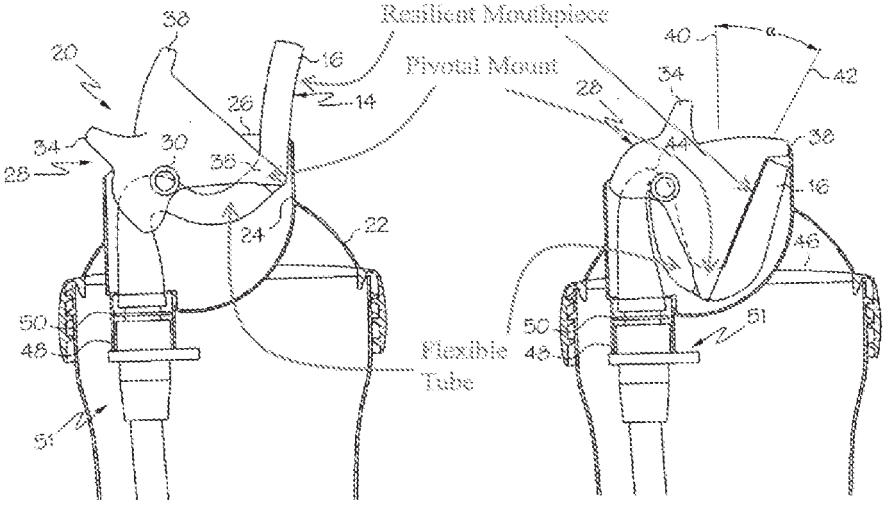


FIG. 2 FIG. 3

"Straw positioning member 28 preferably includes a downwardly extending arm 35 that has a recess 36 defined at its distal end for receiving the flexible straw 14." Ex. 1006 ¶ [0021]. Flexible straw 14 defines a portion of the fluid conduit, as recited in [1.7.2]: "The inner surface 64 of the flexible straw 14 defines a first passage that is in communication with the container 12 for serving a beverage from the container 12." *Id.* ¶ [0022]. With the manual on/off valve, crimping of the flexible straw by the downwardly extending arm 35 "minimizes the potential for leakage through the flexible straw 16 [sic, 14] in the storage position." *Id.* ¶ [0021].

[1.7.3] wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and [1.7.4] wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

With respect to [1.7.3], McDonough explains that pivoting the on/off valve 20 to the closed position crimps flexible tube 14 in multiple locations to obstruct the flow of drink fluid: "When the straw positioning mechanism 20 is in the second, closed position shown in FIG. 3, the flexible straw 14 will be bent into a horizontal S-shaped configuration by the downwardly extending arm 35 so as to be crimped in a first location 44 and also in a second location 46 that is adjacent to the recess 36. This minimizes the potential for leakage through the flexible straw 16 in the storage position…." Ex. 1006 ¶ [0021].

Further, as required by [1.7.4], counterclockwise pivoting of straw positioning mechanism 20 into the open position in McDonough releases and extends flexible tube 14 for drinking, as shown in FIG. 2. *Id.* ¶ [0019] ("Straw drinking cup 10 further includes a straw positioning mechanism 20 for positioning the flexible straw 14 with respect to the container 12 between a first drinking position, shown in FIG. 2, and a second storage position, shown in FIG. 3."); *id.* ¶ [0010] ("[T]he straw positioning mechanism being movable between a first operative position wherein the first end of the flexible straw is presented for sipping by a consumer and a second storage position.").

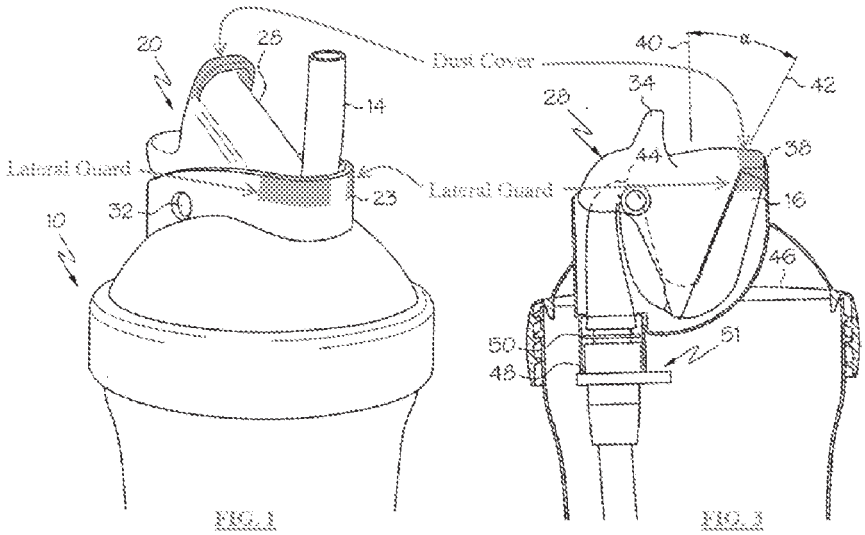
As a result, McDonough expressly or inherently discloses all limitations of claim 1 and, therefore, anticipates that claim under 35 U.S.C. § 102(a) (pre-AIA). To the extent it is deemed that McDonough does not disclose one or more limitations of claim 1, those limitations would have been obvious modifications of McDonough based at least on McDonough's other teachings and the knowledge of one or ordinary skill in the art, rendering the claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

2. Claim 3

3. The drink container of claim 1, [3.1] wherein the cap assembly includes a pair of lateral guards that extend on opposed sides of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position,

The inner surface 24 of upstanding wall 23 that extends on opposite sides of flexible straw 14 and drinking end 16 when the manual on/off valve 20 is in second storage position in FIG. 3 of McDonough corresponds to the pair of lateral guards recited in [3.1]. Upstanding wall 23 is formed within lid 23 and defines a space for receiving manual on/off valve, i.e., straw positioning mechanism 20. *Id.* ¶ [0020]. "Upstanding wall 23 has an inner surface 24 that is positioned, as may

be seen in FIG. 2, to be frictionally engaged by the outer surface of the flexible straw 14 as the straw positioning mechanism 20 is moved between the first and second positions." *Id.* When manual on/off valve 20 is closed in FIG. 3, inner surface 24 of upstanding wall 23 extends on opposed sides of resilient mouthpiece 16. FIGS. 1 and 3 of McDonough, portions of which are reproduced and annotated below, illustrate the sides of upstanding wall 23 as the claimed lateral guards on opposed sides of resilient mouthpiece 14:



[3.2] and further wherein the cap assembly includes a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position.

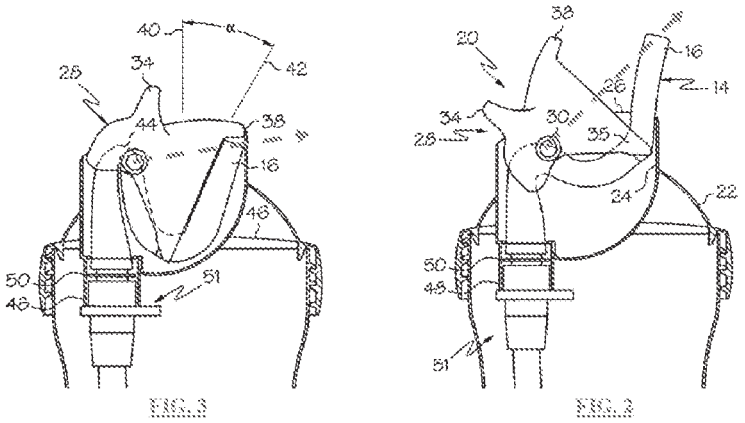
Portion 38 of the manual on/off valve, i.e., straw positioning mechanism 20, in McDonough corresponds to the dust cover in [3.2]. Element 3.2 recites "a dust cover extending between the pair of lateral guards," but does not require that the dust cover be connected to or integral with the lateral guards. As shown above annotated in FIG. 3, in the closed position, portion 38 extends between a pair of lateral guards, i.e., the opposing sides of upstanding wall 23, and is positioned as a shelf above straw 14 to protect the tip of resilient mouthpiece 16. Indeed, McDonough specifically refers to this overhang as "a protective shelf portion": "[W]herein said straw positioning member further includes a protective shelf portion for precluding external contact with said first end of said flexible straw when said straw positioning mechanism is in the second storage position." *Id.* at Claim 8.

Accordingly, McDonough expressly or inherently discloses all limitations of claim 3 and, therefore, anticipates that claim under 35 U.S.C. § 102(e) (pre-AIA). Alternatively, the subject matter of claim 3 would have been obvious at least from McDonough itself.

3. Claim 4

4. The drink container of claim 3, wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.

For claim 4, a comparison of FIGS. 2 and 3 in McDonough shows that when straw positioning mechanism 20 pivots from the storage position (FIG. 3) to the drinking position (FIG. 2), resilient mouthpiece 16 is pivoted upward from within opening 26 defined by upstanding wall 23.



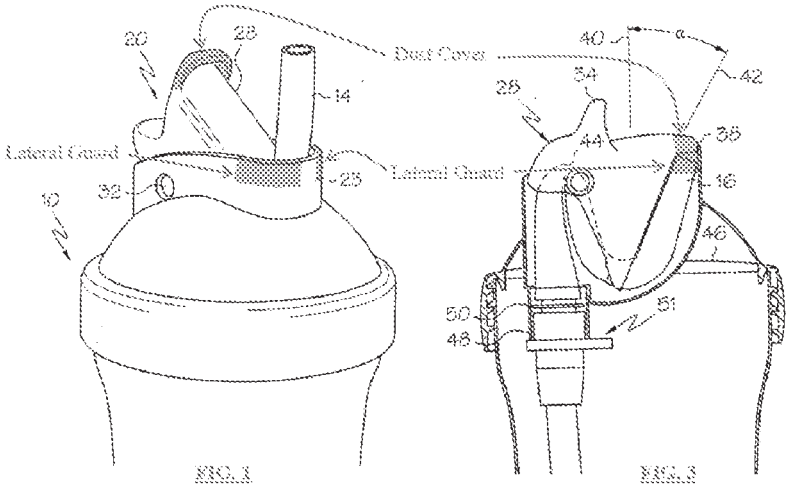
After this pivoting, resilient mouthpiece 16 of flexible straw 14 is farther away from the dust cover, i.e., portion 38 of straw positioning mechanism 20 (FIG. 2), than before pivoting when in the storage position (FIG. 3). Indeed, in the closed position of FIG. 3, dust cover 38 is nearly in contact with the end of resilient mouthpiece 16, whereas in the open position of FIG. 2 dust cover 38 is a larger distance apart from resilient mouthpiece 16.

Accordingly, McDonough expressly or inherently discloses all limitations of claim 4 and, therefore, anticipates that claim under 35 U.S.C. § 102(e) (pre-AIA). Alternatively, the subject matter of claim 4 would have been obvious at least from McDonough itself.

4. Claim 5

5. The drink container of claim 3, wherein the dust cover projects above an upper surface of the cap assembly base.

As indicated above for claim element [3.2] and as shown below in annotated figures, McDonough discloses a dust cover in the form of portion 38 of straw positioning mechanism 20. In the closed position, portion 38 is positioned as a shelf above straw 14 and above an upper surface of the cap assembly base, such as lid 22. *Id.* at Claim 8. ("[W]herein said straw positioning member further includes a protective shelf portion for precluding external contact with said first end of said flexible straw when said straw positioning mechanism is in the second storage position.")

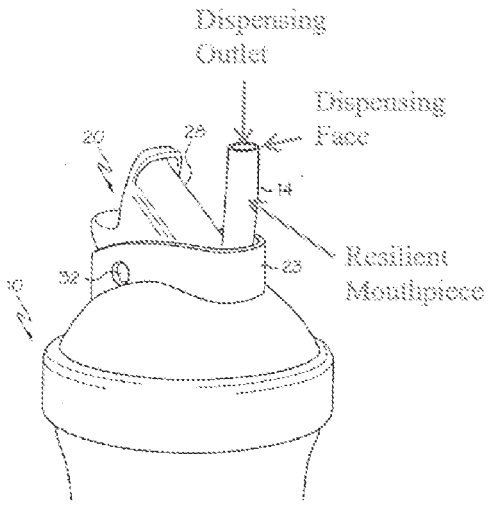


Accordingly, McDonough expressly or inherently discloses all limitations of claim 5 and, therefore, anticipates that claim under 35 U.S.C. § 102(e) (pre-AIA). Alternatively, the subject matter of claim 5 would have been obvious at least from McDonough itself.

5. Claim 13

13. The drink container of claim 1, wherein the resilient mouthpiece includes a dispensing face, and further wherein the dispensing outlet extends through the dispensing face of the resilient mouthpiece.

To the extent the broadest reasonable interpretation of a "dispensing face" of a mouthpiece includes a cut end of a straw, McDonough discloses a dispensing face at the terminus of drinking end 16 on straw 14. The dispensing face or end of straw 14 includes a hole where a dispensing outlet extends through the dispensing face. Annotations of a portion of FIG. 1 from McDonough below illustrate these components.



Accordingly, McDonough expressly or inherently discloses all limitations of claim 13 and, therefore, anticipates that claim under 35 U.S.C. § 102(e) (pre-AIA). Alternatively, the subject matter of claim 13 would have been obvious at least from McDonough itself.

6. Claim 18

18. The drink container of claim 1, wherein the pivotal mount is adapted to selectively engage the flexible tube to apply crimping forces thereto and thereby configure the manual on/off valve to the closed configuration as the pivotal mount is pivoted from the dispensing position to the stowed position.

McDonough also discloses all subject matter of dependent claim 18. As explained above for element [1.4], McDonough discloses a pivotal mount in the form of straw positioning mechanism 20 or straw positioning member 28 and recess 36 within its downwardly extending arm 35. Regarding the recited flexible tube, McDonough discloses that its manual on/off valve 20 may include flexible tube 14 within opening 26 defined by upstanding wall 23 in lid 22, as shown in FIGS. 2 and 3. According to McDonough, the pivotal mount, i.e., straw positioning member 28, is adapted to selectively engage the flexible tube, i.e. straw 14, via recess 36. Ex. 1006 ¶ [0021] ("Straw positioning member 28 preferably includes a downwardly extending arm 35 that has a recess 36 defined at its distal end for receiving the flexible straw 14."). Moreover, McDonough explains that pivoting the on/off valve 20 to the closed position as it moves from a dispensing position to a stowed position crimps flexible tube 14 in multiple locations to obstruct the flow of drink fluid: "When the straw positioning mechanism 20 is in the second, closed position shown in FIG. 3, the flexible straw 14 will be bent into a horizontal S-shaped configuration by the downwardly extending arm 35 so as to be crimped in a first location 44 and also in a second

location 46 that is adjacent to the recess 36. This minimizes the potential for leakage through the flexible straw 16 in the storage position…." *Id.* ¶ [0021].

Accordingly, McDonough expressly or inherently discloses all limitations of claim 18 and, therefore, anticipates that claim under 35 U.S.C. § 102(e) (pre-AIA). Alternatively, the subject matter of claim 18 would have been obvious at least from McDonough itself.

7. Claim 19

19. The drink container of claim 1, wherein the flexible tube is secured to the pivotal mount.

McDonough further discloses that its flexible tube, i.e., lower portion of straw 14, is secured to the pivotal mount, i.e., straw positioning mechanism 20 or straw positioning member 28 and recess 36 within downwardly extending arm 35. Straw 14 is secured to downwardly extending arm 35 at recess 36 at least to the extent that a frictional coupling is required for downwardly extending arm 35 to move straw 14 between a crimped (closed) and uncrimped (open) position by pulling or lifting, as illustrated below for FIGS. 2 and 3:

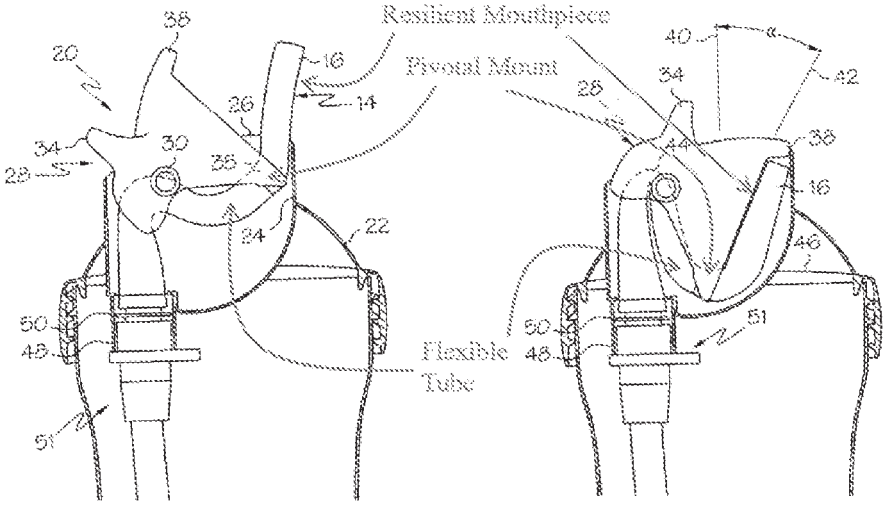


FIG. 2 FIG. 3

McDonough describes this relationship, explaining that flexible straw 24 is received into recess 36 to form a "a positive *interlocking* arrangement for positioning the straw 14." Ex 1006 ¶ [0027] (emphasis added). This interlocking secures straw 14 to straw positioning structure 28 so that the straw can be forced into a bent position in multiple locations when finger-gripping structure 34 is pushed by a user. *Id.* ¶ [0021] ("When the straw positioning mechanism 20 is in the second, closed position shown in FIG. 3, the flexible straw 14 will be bent into a horizontal S-shaped configuration by the downwardly extending arm 35 so as to be crimped in a first location

44 and also in a second location 46 that is adjacent to the recess 36. This minimizes the potential for leakage through the flexible straw 16 in the storage position…").

Accordingly, McDonough expressly or inherently discloses all limitations of claim 19 and, therefore, anticipates that claim under 35 U.S.C. § 102(e) (pre-AIA). Alternatively, the subject matter of claim 19 would have been obvious at least from McDonough itself.

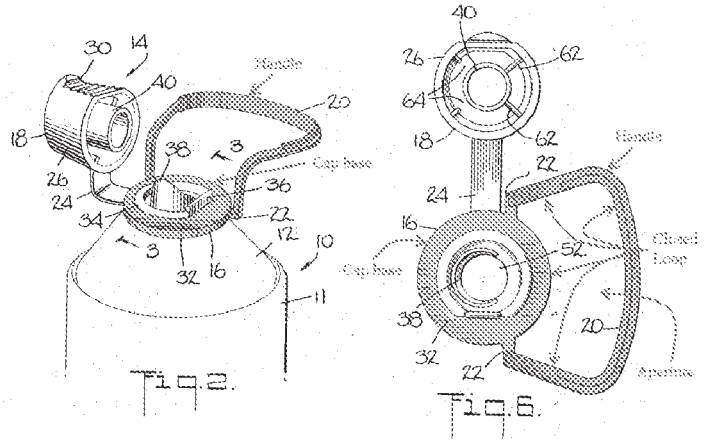
B. Ground 2: McDonough in View of Anderson Would Have Rendered Obvious Claim 6

As explained below, McDonough in view of Anderson would have rendered obvious claim 6 under 35 U.S.C. § 103(a) (pre-AIA).

6. The drink container of claim 3, wherein the cap assembly further includes a handle that extends from the cap assembly base and includes the pair of lateral guards and the dust cover.

While disclosing all subject matter of independent claim 1, McDonough does not expressly disclose a handle associated with drinking cup 10 as recited in dependent claim 6. Anderson, which also discloses a closure for a liquid-dispensing container in the same field of endeavor as McDonough and the '255 Patent, discloses the handle for a container with the features recited in claim 6.

Specifically, Anderson discloses "a container closure for use in connection with spouted containers" that "neatly seal[s] and protect[s] a spouted container opening." Ex. 1014 at 1:47-52. "On the top of the container 10, … [a] novel cap arrangement is formed of a plastic material such as polyethylene and includes a circular base 16, fitted onto the top wall 12" of the container 10. *Id.* at 2:64-68. A handle 20 extends from the cap assembly base, i.e., from circular base 16, as claimed and shown below:



The "handle 20 is affixed to and may be integrally molded with the base portion 16 at outwardly protruding lugs 22 located at its periphery." *Id.* at 2:66-67; *see id.* at 2:13-15 ("In one of its aspects, my invention includes the provision of a specially shaped handle preferably molded as an integral part of the base and captive cap."). Ex. 1014 at 2:69-72.

It would have been obvious to have included the handle as disclosed in Anderson on the cup 10 of McDonough at least to provide a more convenient means for carrying the container than simply grasping its body—especially for children who have small hands. As noted in Anderson, its U-shaped handle that extends outwardly "enables the containers to [] be grasped quite readily" for carrying and provides "full finger access without interference with movements of said overcap." *Id.* at 3:15-23, 5:35-41. Applied to McDonough, such a handle would make carrying more efficient and avoid interference with lid 22 and, particularly, straw positioning mechanism 20 and straw 14 to minimize the risk of contamination by handling. In addition, by being molded together as plastic with its cap in one option of Anderson, handle 20 would combine efficiently with lid 22 in McDonough.

Moreover, it would have been readily apparent that the relationships recited in claim 6 relating to the handle and the resilient mouthpiece would have resulted from combining the handle 20 of Anderson with the lid 22 of McDonough. Indeed, the handle 140 in the '255 patent and handle 20 in McDonough are highly similar:

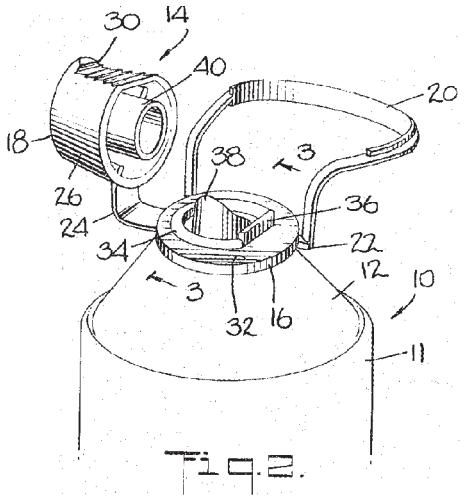
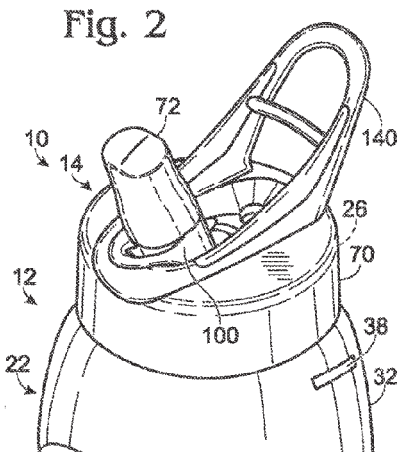


FIG. 2 of Anderson

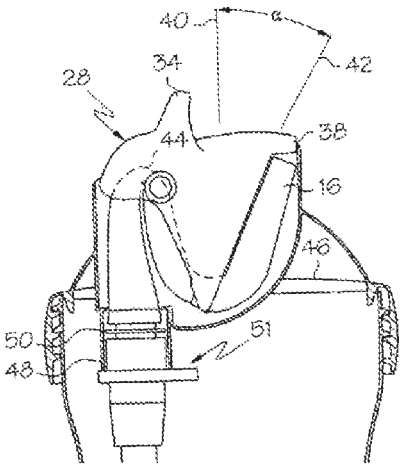


Portion of FIG. 2 of '255 Patent

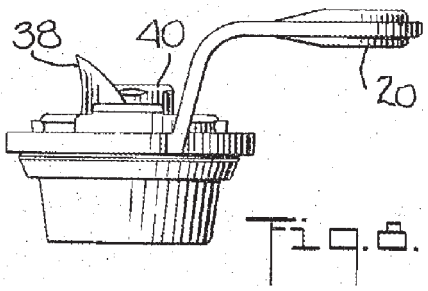
For instance, in many implementations, applying handle 20 of Anderson to lid 22 of McDonough would have resulted in the sides of handle 20 being positioned on opposite sides of

drinking end 16 of straw 14 in McDonough and the outer end of handle 20 extending across at least a portion of the dispensing outlet of dispensing end 16 of straw 14, when straw positioning mechanism 20 and straw 14 are in the stowed position. Thus, the sides of handle 20 would qualify as "the pair of lateral guards" and the outer end of handle 20 would qualify as "the dust cover," as recited in claims 3 and 6.

The figures below illustrate this combination. The figure on the left is a cross-sectional side view of the lid of McDonough in a stowed position, and the figure on the right is a side view of the cap and handle 20 of Anderson.

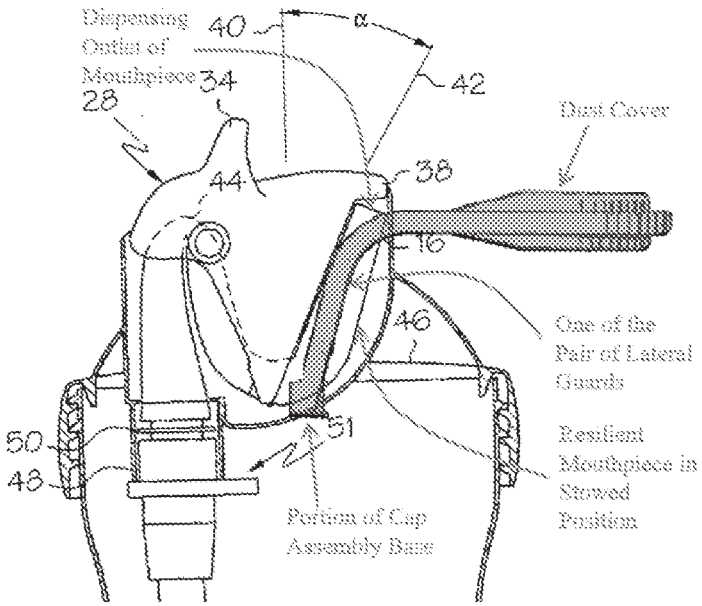


McDonough: Portion of FIG. 3 in Stowed Position



Anderson: FIG. 8 Side View

Implementing handle 20 on lid 22 would result in the following mockup of these figures:



Mockup of Anderson Handle 20 Applied to McDonough Lid 22

As indicated in this mockup, handle 20 from Anderson has arms rising angularly above the cap base on lateral sides of the container opening (as with handle 140 in the '255 Patent) and a looped end to the handle extending to the side and above the cap base (as with handle 140 in the '255 Patent). Accordingly, the rising arms of handle 20 on opposed sides of resilient mouthpiece 16 equate to the claimed "pair of lateral guards" and the looped end of handle 20, which extends between these pair of lateral guards, extends across at least a portion of the dispensing outlet of resilient mouthpiece 16 as the claimed "dust cover."

Therefore, the combination of McDonough and Anderson teaches and suggests all limitations of claim 6 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

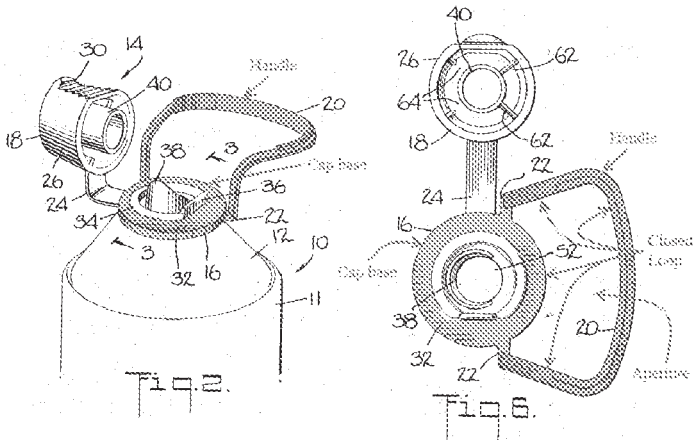
C. Ground 3: McDonough in View of Anderson or Roth Would Have Rendered Obvious Claim 7

As explained below, McDonough in view of Anderson or Roth would have rendered obvious claim 7 under 35 U.S.C. § 103(a) (pre-AIA).

> **7. The drink container of claim 1, wherein the cap assembly further comprises a handle [7.1] that extends in a fixed orientation from the cap assembly base and, [7.2] which defines a closed loop with an aperture through which a user's finger may be inserted to carry the drink container.**

While disclosing all subject matter of independent claim 1, McDonough does not expressly disclose a handle associated with drinking cup 10 as recited in dependent claim 7. Anderson, which also discloses a closure for a container in the same field of endeavor as McDonough and the '255 Patent, discloses the handle with the features recited in claim 7. In particular, for [7.1], Anderson discloses a "novel cap arrangement" in which a handle 20 "is affixed to and may be integrally molded with the base portion 16 at outwardly protruding lugs 22 located at its periphery." Ex. 1014 at 2:69-72. This fixed orientation is set by being molded in plastic. *Id.* at 2:66-67; *see id.* at 2:13-20 ("In one of its aspects, my invention includes the provision of a specially shaped handle preferably molded as an integral part of the base and captive cap. This handle serves a dual function; first, that of providing a carrying means thus eliminating the need for a waist shaped or small necked container....").

Additionally, handle 20 in Anderson defines a closed loop with an aperture through which a user's finger may be inserted to carry the drink container 10, as recited in [7.2]. FIG. 2 (isometric view) and FIG. 6 (top view), annotated below, illustrate this form most clearly.

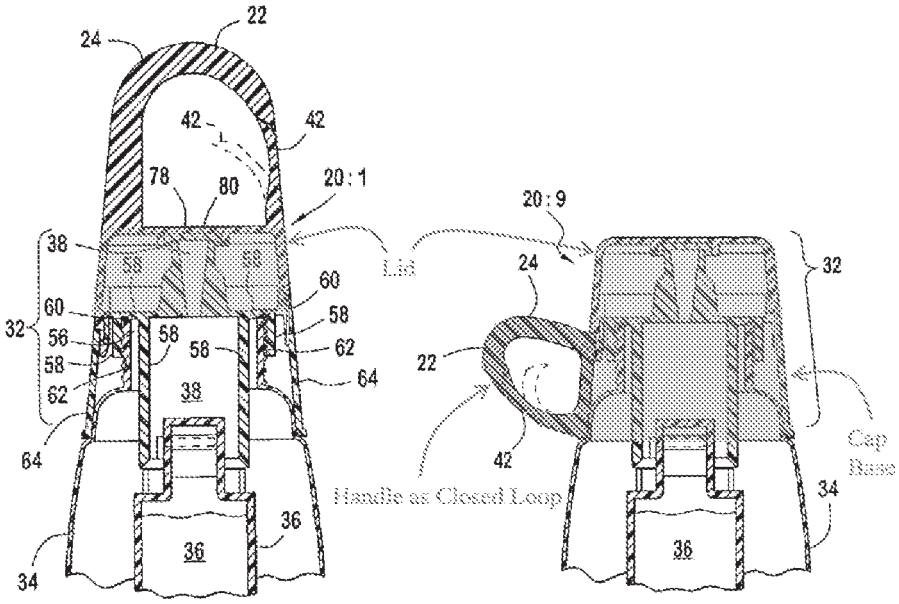


As shown above, "handle 20 is generally U-shaped." Ex. 1014 at 2:69-70. "In the preferred embodiment handle 20, as can be seen in FIG. 2, extends upwardly from the lugs 22 for a short distance and then outwardly away from the overcap 18 so that its maximum height does not exceed that of the overcap.... Also, this handle configuration enables the containers to [] be grasped quite readily both for pouring and for carrying." *Id.* at 3:15-23. Anderson directly addresses accessibility by a user's finger into the closed-loop handle 20, as recited in [7.2]: "[A] plastic handle of generally U-shaped configuration and attached at its ends to points along the edge of said base, said handle rising upwardly from said base to the height of said overcap, and then horizontally away from said

cap to provide full finger access without interference with movements of said overcap." *Id.* at 5:35-41.

It would have been obvious to have included the handle as disclosed in Anderson on the cup 10 of McDonough at least to provide a more convenient means for carrying the container than simply grasping its body. As noted in Anderson, its U-shaped handle that extends outwardly "enables the containers to [] be grasped quite readily" for carrying and provides "full finger access without interference with movements of said overcap." *Id.* at 3:15-23, 5:35-41. Applied to McDonough, such a handle would make carrying more efficient and avoid interference with lid 22 and, particularly, straw positioning mechanism 20 and straw 14 to minimize the risk of contamination by handling. In addition, by being molded together as plastic with its cap in one option of Anderson, handle 20 would combine efficiently with lid 22 in McDonough.

Roth also teaches and suggests the subject matter of claim 7. Roth discloses a closure for a beverage container in the same field of endeavor as McDonough and the '255 Patent. In a first embodiment shown in Roth's FIG. 2, a looped connector 24 is formed on a pivotal lid 28 of the closure body and may incorporate a snap hook 22 for attaching the bottle 34 to an object such as a backpack. But Roth explains that the looped connector may be positioned elsewhere on closure body 32, such as laterally from annular shroud 64 of base portion 26: "As shown in FIG. 1 the connector 24 preferably extends generally upwardly from the lid 28. However, those of ordinary skill in the art will appreciate from this disclosure that the connector 24 can extend from a lateral side of the closure body 32 or from a lateral side of the annular shroud 64 without departing from the scope of the present invention." Ex. 1015 ¶ [0031]. FIG. 11A illustrates an embodiment in which the looped connector extends laterally from the annular shroud 64 of base portion 26 separate from and beneath lid 28: "FIG. 11A is [in] cross-section a view similar to that of FIG. 3 illustrating an alternative embodiment of a closure according to the present invention in which the snap hook is disposed on a side of the closure." *Id.* ¶ [0018]. A comparison of FIGS. 3 and 11A in Roth shows the positioning of connector 24 extending laterally from the cap assembly base, i.e., base portion 26, as claimed:



Roth FIG. 3 **Roth FIG. 11A**

Additionally, connector 22 in FIG. 11A extends in the claimed "fixed orientation" of [7.1] as Roth teaches that "[i]t is preferred that the snap hook 22 is integrally formed with the closure body 32" (*id.* ¶ [0032]), and FIG. 11A shows connector 22 having its snap lever 42 lateral to and apart from base portion 26. And as illustrated in FIG. 11A, connector 22 has the shape of a closed loop on the cap assembly base and forms an aperture, as required by [7.2]. An object, including a user's finger, may be inserted through the aperture to carry bottle 34. *See, e.g.*, *id.* ¶ [0034] ("A user attaches the bottle closure 20:1 to an object, such as a backpack strap, by depressing the snap lever 42 to allow the back pack strap or the like to be placed within the snap connector 22. Once the closure 20:1 and any accompanying bottle is secured, a user may carry the closure 20:1 with ease.").

It would have been obvious to have included the handle as disclosed in Roth on the cup 10 of McDonough at least to provide a more convenient means for carrying the container than simply grasping its body. In addition to providing a loop for handling drinking cup 10 of McDonough, the snap hook 22 within connector 24 in Roth would provide an additional incentive for more easily and securely attaching and detaching the cup to an object such as a belt loop or purse strap, as explained at length in Roth. *See, e.g.*, Ex. 1015 ¶¶ [0004], [0044]. Further, Roth teaches that "the closure body 32 and the snap hook 22 are formed by a suitable polymer" (*id.* ¶ [0032]), making the handle in Roth a natural combination for use with lid 22 in McDonough.

Therefore, McDonough in view of Anderson or Roth teaches and suggests all limitations of claim 7 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

D. Ground 4: Toudou Anticipates, or Would Have Rendered Obvious, Claims 1, 3-5, 8, 13, 18, and 19

As explained below, Toudou anticipates claims 1, 3-5, 8, 13, 18, and 19 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious those claims under 35 U.S.C. § 103(a) (pre-AIA).

1. Claim 1

[1.pre] A drink container, comprising: [1.1] a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

To the extent the preamble is limiting, Toudou describes the claimed drink container in the form of PET bottle 12, as shown in FIG. 4, for example. Ex. 1008 ¶ [0011] ("The reference numeral 12 is a PET bottle, and 13 is an internal liquid filled in the PET bottle 12."). As to [1.1], FIG. 4 illustrates a standard bottle holding water that narrows into a neck leading to a threaded opening. As stated in the reference: "Each of the abovementioned embodiments describes the case where the present invention is applied to a pouring opening provided with a male screw of a PET bottle filled with natural water or the like as an example; however, if an alternative structure of a female screw is used, it can also be applied to other bottles such as water bottles and baby bottles." *Id.* ¶ [0027]; *id.* at Abstract ("The present invention is constituted of a bottle cap with a nozzle, which is detachably installed by screwing a female screw into the pouring opening of the internal liquid of a bottle, …").

[1.2] a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines

Toudou discloses a cap assembly in the form of bottle cap 1 that is removably coupled by screwing to cover the opening of a bottle 12. *Id.* at Abstract ("The present invention is constituted of a bottle cap with a nozzle, which is detachably installed by screwing a female screw into the pouring opening of the internal liquid of a bottle, …"). The reference explicitly explains the removability of its cap assembly over the opening of the fluid container: "After removing the dedicated cap covering the pouring portion of the PET bottle 12, the straw 11 connected to the liquid passing cylinder 2d is inserted into the pouring portion. The female screw 2c of the bottle

cap 1 in the closed state as shown in FIG. 2 is screwed into the male screw of the pouring portion, and the packing 2e interposed on the surface in contact with the pouring portion is attached by tightening." Ex. 1008 ¶ [0016].

[1.2.1] a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes [1.2.2] an inlet through which drink fluid from the fluid container may enter the fluid conduit, and [1.2.3] a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

Toudou discloses the claimed fluid conduit for drink fluid to flow from the container to the user via bottle cap 1. In particular, a flow path for liquid 13 to flow upward from bottle 12 to a user passes through straw 11, through vertical liquid passing cylinder 2d (illustrated for first embodiment in FIG. 4), and through spout 3 and out suction port 32, as shown in annotated FIGS. 4 (first embodiment) and 8(b) (third embodiment) below.

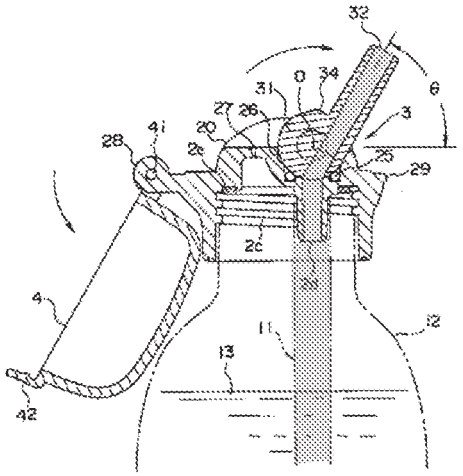


FIG. 4: First Embodiment

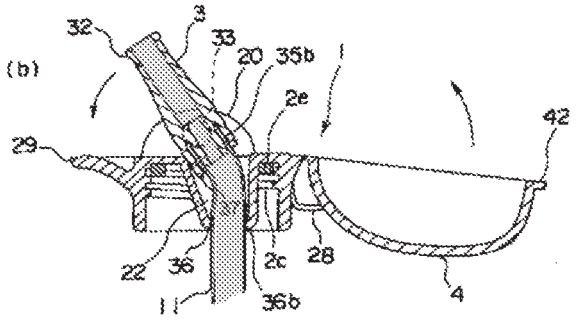


FIG. 8(b): Third Embodiment

As for [1.2.2], the inlet through which drink fluid may enter the fluid conduit is the tip of straw 11 immersed in the water 13. "[T]he tip of the straw 11 inserted into the PET bottle 12 is sunk to the bottom and immersed in the deepest part of the internal liquid 13 (not shown here)." Ex. 1008 ¶ [0016]. Along the flow path, the end of straw 11 opposite the tip immersed in the liquid 13 is attached to a liquid passing cylinder 2d of the cap in the first embodiment or to a cylindrical groove 35b of the base portion 31 of nozzle 3 in the third embodiment. For the first embodiment: "The straw 11 is detachably connected to the liquid passing cylinder 2d, and the tip thereof is immersed in the internal liquid 13, …" *Id.* ¶ [0012]; *id.* ¶ [0012] ("2d is a vertical liquid passing

cylinder protruding downward and provided with a passage for the internal liquid 13 penetrating therethrough …"). For the third embodiment: "A cylindrical groove 35b is formed in the base portion 31 of the nozzle 3, and the straw 11 is slightly rigidly connected to the inner cylinder surrounded by the cylindrical groove 35b." *Id.* ¶ [0023].

With respect to [1.2.3], a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user in Toudou is the tip of suction port 32 on nozzle 3. *Id.* ¶ [0014] ("The other end of the flow path … penetrates through the suction port 32 and opens at the tip, …"). Annotated figures for several embodiments below illustrate the dispensing outlet for the fluid conduit in Toudou.

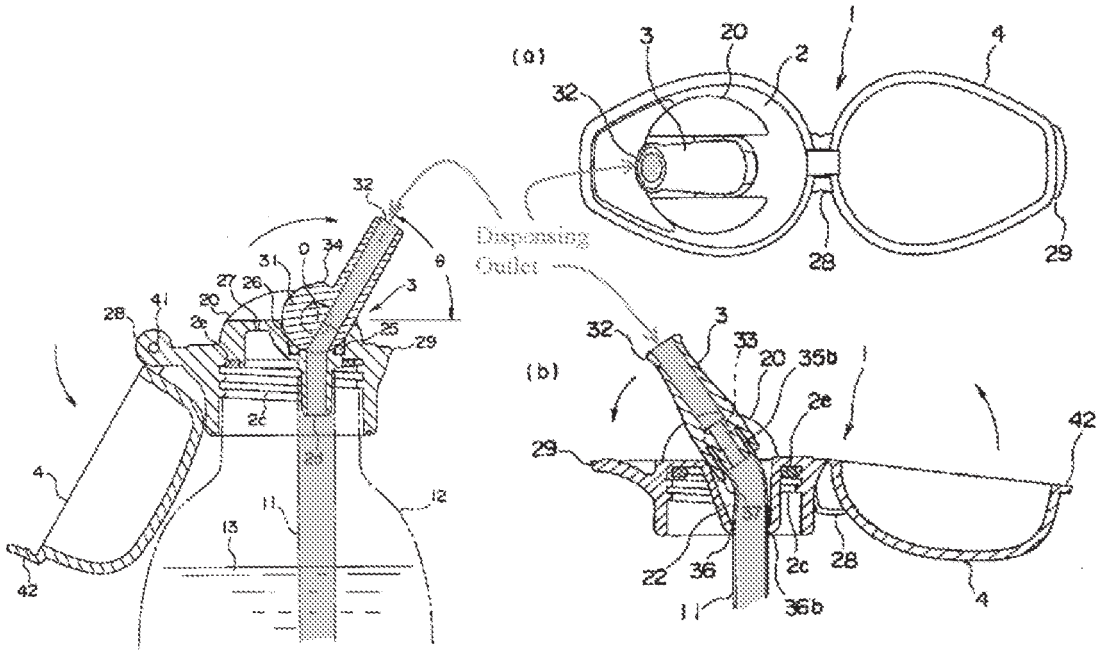


FIG. 4: First Embodiment FIGS. 8(a) and (b): Third Embodiment

[1.3] a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

Toudou discloses the claimed cap assembly base in the form of main body 2 of a bottle cap 1 that is removably coupled and decoupled with threads to the pouring opening of fluid container 12, as shown in FIGS. 4 and 7 below. "The reference numeral 2 is the main body of the bottle cap 1…. Reference numeral 2a is the inner surface side of the cap-type main body 2, and 2b is the outer surface side. Reference numeral 2c is a female screw provided on the inner surface side 2a,…" Ex. 1008 ¶ [0012].

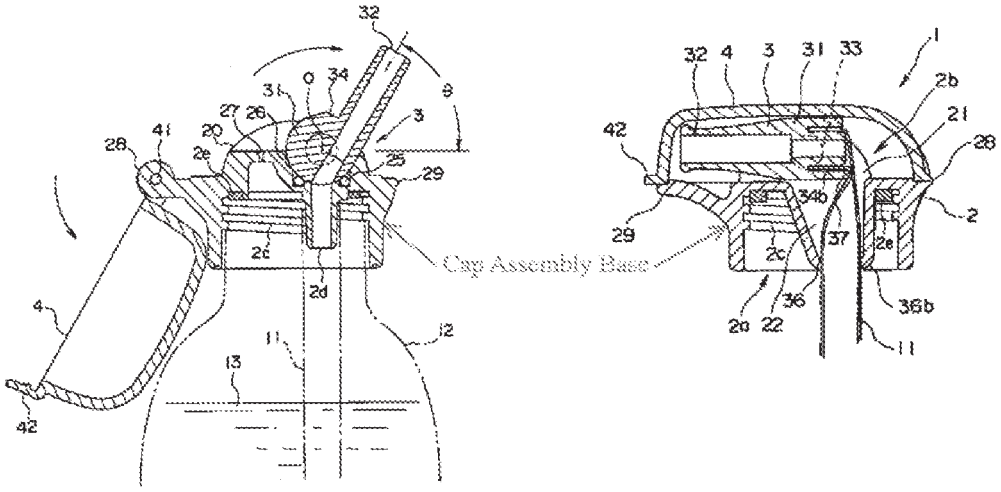


FIG. 4: First Embodiment FIG. 7: Third Embodiment

The main body 2 of the bottle cap 1 is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container, as claimed, using threads. *Id.* at Abstract ("The present invention is constituted of a bottle cap with a nozzle, which is detachably installed by screwing a female screw into the pouring opening of the internal liquid of a bottle."). *See id.* ¶ [0016] ("After removing the dedicated cap covering the pouring portion of the PET bottle 12, the straw 11 connected to the liquid passing cylinder 2d is inserted into the pouring portion. The female screw 2c of the bottle cap 1 in the closed state as shown in FIG. 2 is screwed into the male screw of the pouring portion, and the packing 2e interposed on the surface in contact with the pouring portion is attached by tightening.").

[1.4] a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base,

Toudou discloses the claimed pivotal mount in the form of pivotal nozzle 3. Nozzle 3 is coupled to cap base 2 via rotation shafts 33 within bearings 23, as shown on annotated FIGS. 1 and 7 below.

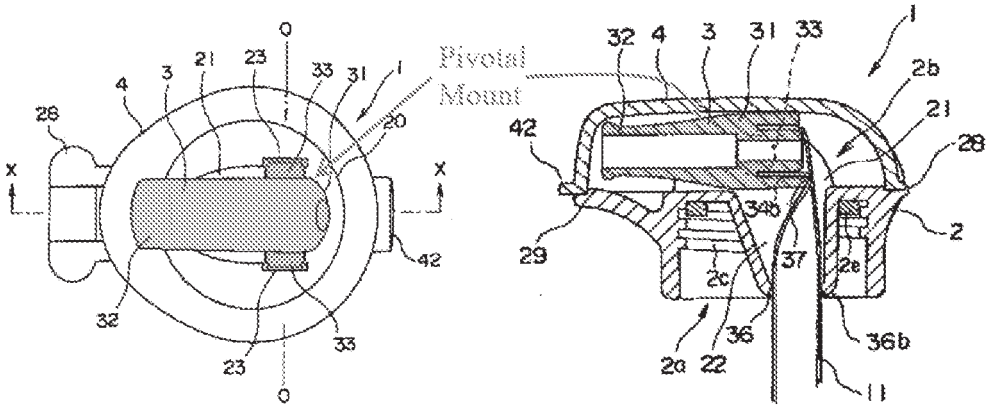


FIG. 1 FIG. 7

A comparison of FIGS. 7 and 8b in Toudou, for instance, illustrates the pivotal movement of nozzle 3 about shaft 33 and axis O-O relative to the cap assembly base, i.e., main portion 2 of cap 1. The reference further explains the pivotal movement: "The base portion 31 is formed of a spherical surface corresponding to storage portion 22 of the main body 2, and on the spherical surface, a pair of boss-shaped rotation shafts 33 are symmetrically projected in the direction intersecting with the extending direction of the suction port 32." Ex. 1008 ¶ [0014]. "In this way, the nozzle 3 mounted on the outer surface side 2b of the main body 2 rotates about the rotation shaft 33 in an angular range of about 120 degrees…." *Id.* ¶ [0015]. "In addition, the shaft support structure of the nozzle 3 in which the nozzle 3 rotates around the rotation shaft 33 up and down is similar to that of the first embodiment." *Id.* ¶ [0023]. "When the lid 4 is further rotated, the nozzle 3 stretches the straw 11 having elasticity to apply resistance force to the lid 4 in the opposite direction and integrally rotates in the same direction around the rotating shaft 33." *Id.* ¶ [0024]; *compare* Ex. 1008 (Toudou), FIGS. 7 and 8(b) *with* Ex. 1001 ('255 Patent), FIGS. 29 and 28.

[1.4.1] wherein the pivotal mount includes a pair of lateral projections, [1.4.2] wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

The pivotal mount in Toudou, i.e., nozzle 3, includes a pair of lateral projections as recited in [1.4.1] in the form of rotation shafts 33. Annotated FIGS. 1 and 7 below illustrate the rotation shafts 33 that extend along axis O-O orthogonally to the longitudinal direction of nozzle 3 and central shaft axis Y1-Y1 that passes through straw 11. FIG. 1 is a top view of the first embodiment showing rotation shafts 33, or projections, at the sides of nozzle 3; FIG. 7 is a cross-sectional side view of the third embodiment showing one of the rotation shafts 33 coming from a side of nozzle

3 in plane out of the page. Toudou confirms this aspect of the bottle cap applies to both the first and third embodiments: "In addition, the shaft support structure of the nozzle 3 [for the third embodiment] in which the nozzle 3 rotates around the rotation shaft 33 up and down is similar to that of the first embodiment." Ex. 1008 ¶ [0023].

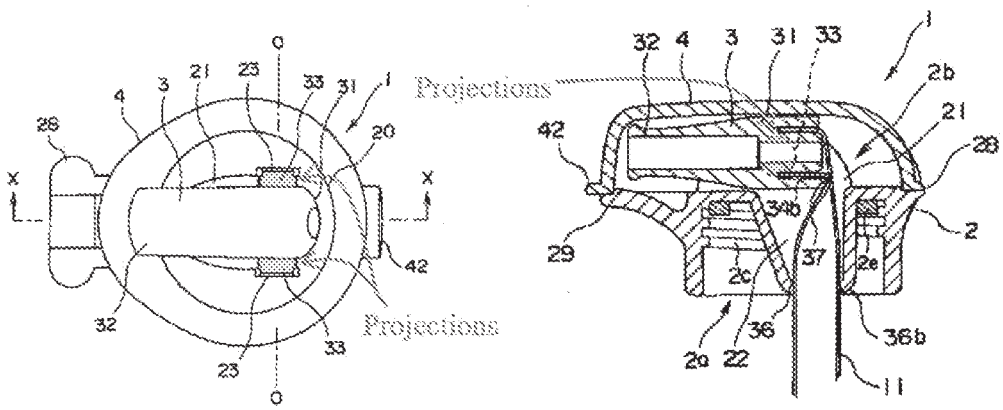


FIG. 1 FIG. 7

The text of Toudou elaborates on the presence of a pair of lateral projections, i.e., shafts 33, as part of a pivotal mount within cap body 2 and how they rotate. "The present invention is constituted of a bottle cap with a nozzle … provided with a suction port at its tip and rotation shafts on both sides of the base portion…." *Id.* at Abstract. "The base portion 31 is formed of a spherical surface corresponding to storage portion 22 of the main body 2, and on the spherical surface, a pair of boss-shaped rotation shafts 33 are symmetrically projected in the direction intersecting with the extending direction of the suction port 32." *Id.* ¶ [0014].

As to [1.4.2], the pair of lateral projections 33 in Toudou extend into a pair of sockets 23 defined by the cap base, as claimed. Toudou describes sockets 23 as substantially U-shaped grooves formed in a support portion 20 of the cap base aligned with a rotational axis O-O of shafts 33: "Reference numeral 23 is a substantially U-shaped groove-like bearing formed to face the horizontal direction (the front-back direction in FIG. 3) and is orthogonal to the central shaft Y1-Y1 and constitutes the shaft center O-O of the rotation shaft of the nozzle 3 described below." *Id.* ¶ [0013]. The rotation shafts are inserted into the bearings. *Id.* at [Claim 1] ("a bearing formed on the opposing side of the support portion, through which the rotation shaft can be inserted,…").

FIGS. 1 and 3, annotated below, show the pair of sockets, i.e., bearings 33, into which a pair of lateral projections, i.e., shafts 33, extend, as claimed in [1.4.2]. FIG. 3 is a cross-sectional side view of the cap body without nozzle 3 showing one a U-shaped bearing 23, i.e., a socket; FIG.

1 is a top view of the first embodiment showing rotation shafts 33, or projections, at the sides of nozzle 3 extending into bearings 33, or sockets, for rotation. "[T]he shaft support structure of the nozzle 3 [for the third embodiment] in which the nozzle 3 rotates around the rotation shaft 33 up and down is similar to that of the first embodiment." *Id.* ¶ [0023]; *compare* Ex. 1008 (Toudou), FIGS. 7 and 8(b) *with* Ex. 1001 ('255 Patent), FIGS. 29 and 28.

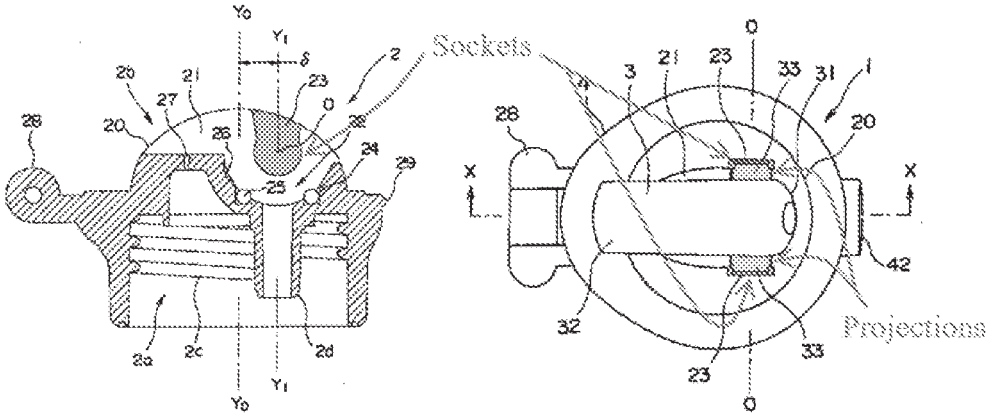


FIG. 3 FIG. 1

[1.5] a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base,

Toudou discloses a resilient mouthpiece in the form of suction port 32 coupled to the pivotal mount, i.e., nozzle 3, by being integrated with nozzle 3 for pivotal movement with nozzle 3 relative to the cap assembly base, i.e., main body 2 of bottle cap 1. *See* Ex. 1008 at Abstract ("bottle cap with a nozzle comprising: a nozzle provided with a suction port at its tip and rotation shafts on both sides of the base portion … wherein the flow path of the internal liquid is opened or closed in connection with tup and down motion associated with the rotation of the nozzle."). Toudou states that its bottle cap 1 is made of soft polypropylene or similar materials: "Polypropylene or the like is used as the material of the bottle cap 1 and is molded with a slightly soft resin material that is hard to break." Ex. 1008 ¶ [0011]. Moreover, Toudou indicates that its bottle cap "can also be applied to other bottles such as water bottles and baby bottles." *Id.* ¶ [0027].

Toudou discloses, suggests, and renders obvious that its mouthpiece is "resilient" as claimed. Indeed, it necessarily follows that a "suction port" for sucking liquid from a bottle, "molded with a slightly soft resin material," and applicable to "baby bottles" is a resilient mouthpiece as claimed. *See Titanium Metals*, 778 F.2d at 781. As a material such as polypropylene

molded from a slightly soft resin material, suction port 32 would be plastic deformable from compressive forces. Moreover, to accommodate use by infants using a baby bottle, suction port 32 must necessarily have a resilient composition to permit pliable suction and biting for a young mouth, as is conventionally known for teats and other mouthpieces on baby bottles. *See, e.g.,* Ex. 1009 (Wright), Ex. 1010 (Phlaphongphanich), Ex. 1011 (Tupper), Ex. 1012 (Heise), Ex. 1013 (Canham). Therefore, it would have been a natural, and obvious, property of suction port 32 based on the disclosure of Toudou for suction port 32 made of slightly soft resin material to be resilient in response to compressive forces.

Additionally, other prior-art documents confirm that a polypropylene mouthpiece on a drink bottle as in Toudou would be resilient. *See Continental Can*, 948 F.2d at 1268; MPEP § 2131.01. For example, Dark (Ex. 1004) discloses a sport drinking bottle having a cap with a valved straw leading to a drinking spout 3. Spout 3 extends horizontally in a closed position when pivoted down into a U-shaped recess 10 within a cap base 7, where splines 15 on the spout help latch the spout into the recess. *Id.* at 4:7-10, 5:22-30. The bottle cap including spout 3 is "formed of one-piece of plastic material, suitably polypropylene" (*id.* at 3:8-10, 8:50-54), which Dark describes as being resilient: "The downward force exerted by the user must be sufficient to … through the splines, inwardly resiliently compress the spout, in order to move the spout down past the horizontal portion of barbs 16 and latch it in place." *Id.* at 5:51-56. The polypropylene mouthpiece then resiliently returns to its original shape: "Once splines 15 have moved past the tapered portion of the barbs, the flexed surfaces [on the spout] elastically return to their original shape and the barbs overlie the splines." *Id.* at 5:57-69. Accordingly, the Office concluded during prosecution of the '255 Patent that the polypropylene spout in Dark is a "resilient mouthpiece," as claimed (Ex. 1003 at 104), and the Applicant did not traverse this conclusion. *Id.* at 140-49.

Thus, Toudou inherently discloses and renders obvious the properties of its suction port 32 being a "resilient" mouthpiece in view of its formation from "slightly soft resin material" such as polypropylene and being applicable to "baby bottles." In addition, this inherent property of [1.5] for suction port 32 would have been evident in view of Dark for a spout having similar structure, composition, and function.

[1.5.1] wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

Toudou discloses that suction port 32 within nozzle 3 pivots about axis O-O defined by rotation shafts 33 rotating in bearings 23. Ex. 1008 ¶ [0013] ("Reference numeral 23 is a substantially U-shaped groove-like bearing formed to face the horizontal direction (the front-back direction in FIG. 3) and is orthogonal to the central shaft Y1-Y1 and constitutes the shaft center O-O of the rotation shaft of the nozzle 3 described below."). In the annotated figures below, FIG. 1 depicts the axis O-O through rotation shafts 33, and the dashed arrows show the pivoting of suction port 32 and nozzle 3 for the third embodiment as the pair of lateral projections, i.e., rotation shafts 33, rotate within the pair of sockets, i.e., bearings 33:

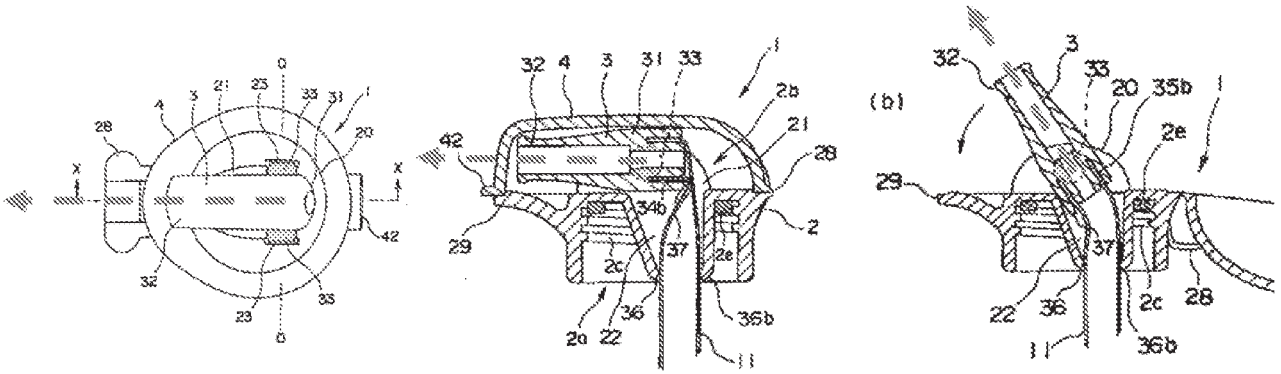


FIG. 1 FIG. 7 FIG. 8(b)

"In this way, the nozzle 3 mounted on the outer surface side 2b of the main body 2 rotates about the rotation shaft 33 in an angular range of about 120 degrees so that the upper limit of the rotation angle corresponds to a desired rising angle θ described below and makes the suction port 32 up and down." *Id.* ¶ [0015]; *compare* Ex. 1008 (Toudou), FIGS. 7 and 8(b) *with* Ex. 1001 ('255 Patent), FIGS. 29 and 28.

[1.5.2] wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

Pivotal mount, i.e., nozzle 3, in Toudou includes an opening at the end of resilient mouthpiece, i.e., suction port 32, for dispensing liquid extracted from bottle 12, as illustrated below in annotated figures from Toudou. Ex. 1008 at Abstract ("The present invention is constituted of a bottle cap with a nozzle, … comprising: a nozzle provided with a suction port at its tip …"); *id.*

¶ [0014] ("The other end of the flow path … penetrates through the suction port 32 and opens at the tip, …").

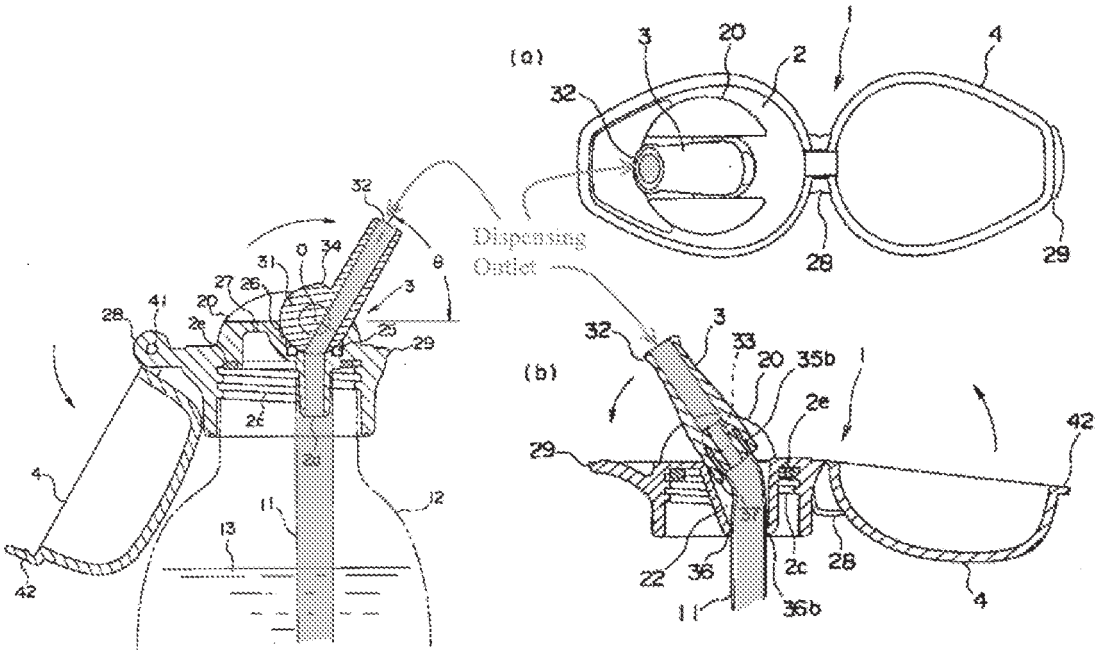
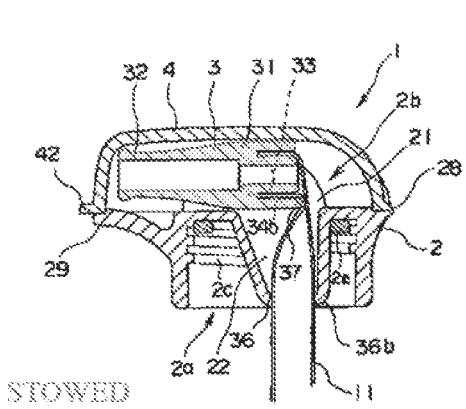


FIG. 4: First Embodiment FIGS. 8(a) and (b): Third Embodiment

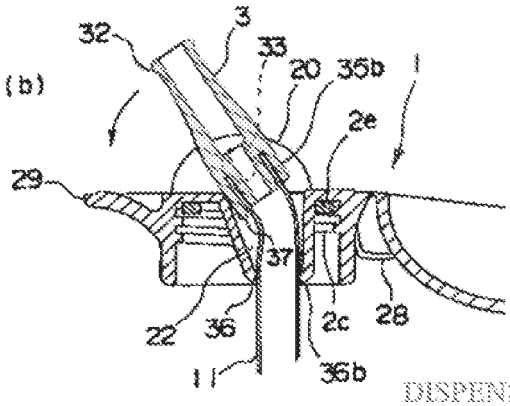
[1.6] wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further [1.6.1] in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

Toudou discloses that resilient mouthpiece, i.e., suction port 32, and pivotal mount, i.e., nozzle 3, are selectively pivoted between a stowed position and a dispensing position, for example, as lid 4 is opened and closed in the third embodiment. FIGS. 7 and 8(b), annotated below, illustrate this movement:



STOWED POSITION

FIG. 7



DISPENSING POSITION

FIG. 8(b)

The text of Toudou explains this pivoting. For moving into a stowed position:

> Now, as shown in FIG. 8 (b), when the lid 4 is rotated about 150 degrees in the direction of an arrow around the hinge 28 as the fulcrum when the nozzle 3 is standing in the open state, the inner surface of the lid 4 comes into contact with the suction port 32. When the lid 4 is further rotated, the nozzle 3 stretches the straw 11 having elasticity to apply resistance force to the lid 4 in the opposite direction and integrally rotates in the same direction around the rotating shaft 33. Then, when the latching piece 42 of the lid 4 under the resistance force of the straw 11 is latched onto the latching portion 29, the nozzle 3 comes out of the inverted conical portion and becomes a prone state as shown in FIG. 7 to be stored in the storage groove 21.

Ex. 1008 ¶ [0024]. And, for moving into the dispensing position: "Conversely, when the latching of the hinge portion 28 is released, the nozzle 3 pressed by the lid 4 follows the opening of the lid 4 by the restoring force of the straw 11 and is automatically raised as shown in FIG. 8 (b) from the state shown in FIG. 7." *Id.* ¶ [0025].

With respect to [1.6.1], as shown at least FIGS. 7 and 8(b), the tip of suction port 32 coupled to nozzle 3 is positioned farther away from cap assembly base 2 when suction port 32 and nozzle 3 are in an open position (FIG. 8(b)) than when in a stowed or prone position (FIG. 7), as claimed.

[1.6.2] wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and

As discussed above for [1.5], Toudou indicates that bottle cap 1 is made of soft polypropylene or the like. Ex. 1008 ¶ [0011]. ("Polypropylene or the like is used as the material of the bottle cap 1 and is molded with a slightly soft resin material that is hard to break….

Furthermore, 11 is a straw using a rubber-like elastic resin such as a silicone tube."). Toudou also teaches that its pivotal cap "can also be applied to other bottles such as water bottles and baby bottles." (*id.* ¶ [0027]), and baby bottles by definition have resilient nipples or other mouthpieces compressible by teeth. *See, e.g.*, Ex. 1009 (Wright), Ex. 1010 (Phlaphongphanich), Ex. 1011 (Tupper), Ex. 1012 (Heise). As a result, a natural and necessary—and obvious—property of the polypropylene in suction port 32 as taught by Toudou would be to "resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth," as claimed. Otherwise, suction port 32 would be effectively unusable on "baby bottles" as Toudou advocates.

Additionally, Dark (Ex. 1004) confirms this inherent (or obvious) property of a polypropylene mouthpiece as in Toudou. Dark discloses that a downward force from a user on its polypropylene spout must be sufficient to "inwardly resiliently compress the spout" as it is latched into a closed position, after which "the flexed surfaces elastically return to their original shape." Ex. 1004 at 5:51-69. These compressive forces in snapping closed the spout are likely much less than the compressive forces applied by a user's teeth. Thus, it follows from Dark, that a polypropylene spout as in Toudou would include the ability to deform or "to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth," as recited in [1.6.2].

Significantly, the Office concluded during prosecution of the '255 Patent that the polypropylene spout in Dark would possess the properties recited in [1.6.2]. Ex. 1003 at 104. As stated in the Office Action of August 2, 2019, "the resilient mouthpiece (3a) is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth (a user can bite the plastic mouth piece and the natural tendencies of plastic make it resilient)." *Id.* The Applicant did not traverse this conclusion from the Office and chose to incorporate dependent subject matter to obtain an allowance of the claims. *Id.* at 140-49, 152, 154.

Thus, Toudou inherently discloses and renders obvious the properties of its suction port 32 being "adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth" in view of its formation from "slightly soft resin material" such as polypropylene and being applicable to "baby bottles." In addition, these inherent properties of [1.6.2] for suction port 32 would have been evident in view of Dark for a spout having similar structure, composition, and function, particularly in view of the Office's positions regarding Dark during original prosecution.

[1.7] a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and [1.7.1] an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet;

Toudou discloses a manual on/off valve for its third embodiment in two variations. In the first variation, the manual on/off valve is a ridge or projecting portion 37 on the lower edge of base 31 of nozzle 3 and flexible straw 11 that obstructs the fluid conduit when in the stowed or prone position, as shown in annotated FIG. 7 here. As explained in Toudou, "In the third embodiment, … the flow path is closed by pressing the straw 11 with part of the nozzle 3, …" Ex. 1008 ¶ [0023]. "[I]n order to effectively block the flow path of the straw 11 when the nozzle 3 is prone, a projecting portion 37 is formed at least on the lower outer ring portion of the base portion 31." *Id.* Paragraph [0024] explains this manual on/off valve obstructing the fluid conduit as lid 4 is closed:

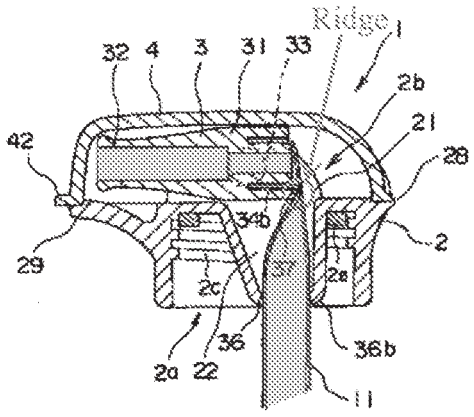


FIG. 7

> When the lid 4 is further rotated, the nozzle 3 stretches the straw 11 having elasticity to apply resistance force to the lid 4 in the opposite direction and integrally rotates in the same direction around the rotating shaft 33. Then, when the latching piece 42 of the lid 4 under the resistance force of the straw 11 is latched onto the latching portion 29, the nozzle 3 comes out of the inverted conical portion and becomes a prone state as shown in FIG. 7 to be stored in the storage groove 21. At this time, the straw 11 near the connection portion is crushed based on the partial expansion difference due to the rotation of the nozzle 3, and the ridge 37 elastically presses the inner surface of the crushed portion to make it attached firmly. As a result, the internal flow path is automatically closed and thereby the internal liquid 13 is prevented from leaking.

In the second variation, Toudou discloses a manual on/off valve with an inclined tip or extended inner portion of the lower edge of base 31 of nozzle 3 and flexible straw 11 that obstructs the fluid conduit when in the stowed or prone position, as shown in annotated FIG. 8(c) here. Paragraph [0026] in Toudou thoroughly explains the operation of this second variation corresponding to claim element [1.7].

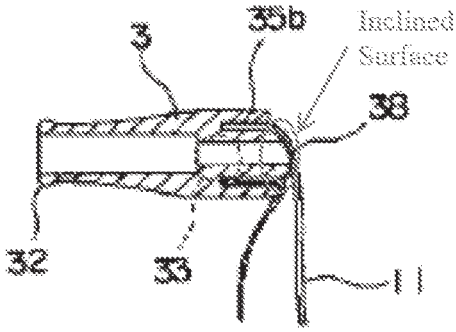


FIG. 8(c)

> FIG. 8 (c) shows a modified example of the flow path blocking mechanism according to the third embodiment. In other words, in FIG. 8 (c), an inclined surface 38 is formed at the cylinder tip of the inner ring portion of the base portion 31 of the nozzle 3 to which the straw 11 is connected. When the nozzle 3 is pressed by the closed lid 4 to lie down, the inner surface portion of the straw 11 which is strongly stretched due to the expansion difference in a manner similar to that described above is elastically pressed against the inclined surface 38. Therefore, by the pressure bonding of the inner surface portion, the flow path that is open to the inclined surface 38 is automatically closed, and the leakage of the inner liquid 13 is prevented.

Id. ¶ [0026]; *id.* ¶ [0010] ("The present invention is constituted of a bottle cap with a nozzle, … wherein the flow path of the internal liquid is blocked by pressing the straw with part of the nozzle in connection with the pressing motion by the nozzle associated with the opening and closing of the lid member.").

For [1.7.1], Toudou also expressly explains that its manual on/off valve has an open configuration permitting drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet, as claimed. "[W]hen the latching of the hinge portion 28 is released, the nozzle 3 pressed by the lid 4 follows the opening of the lid 4 by the restoring force of the straw 11 and is automatically raised as shown in FIG. 8 (b) from the state shown in FIG. 7." *Id.* ¶ [0025]; *id.* ¶ [0023] ("when the lid is released, and an automatic undulating structure is employed in which the nozzle is automatically raised by the resilience of the straw 11"). "Now, as shown in FIG. 8 (b), when the lid 4 is rotated about 150 degrees in the direction of an arrow around the hinge 28 as the fulcrum when the nozzle 3 is standing in the open state…." *Id.* ¶ [0024]. FIG. 8(b), annotated here,

shows that the lifting of lid 4 leads to the rise of nozzle 3 and the release of elastic straw 11 by ridge 37, which clears the fluid conduit to pass liquid to the dispensing outlet at suction port 32. *Id.* ¶ [0028] ("The present invention is constituted of a bottle cap with a nozzle, … wherein the flow path of the internal liquid is opened or closed in connection with the up and down motion associated with the rotation of the nozzle."). This structure and function in Toudou is effectively the same as that disclosed in the '255 Patent for a manual on/off valve. *Compare* Ex. 1008 (Toudou), FIGS. 7 and 8(b) *with* Ex. 1001 ('255 Patent), FIGS. 29 and 28.

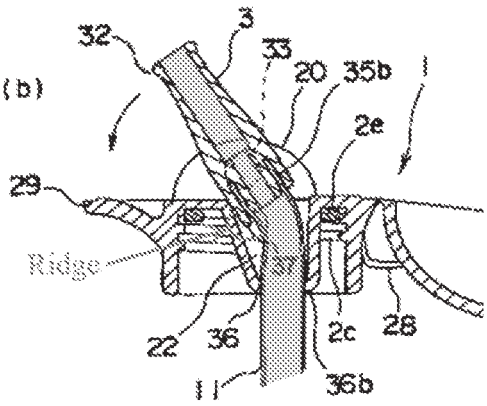


FIG. 8(b)

[1.7.2] wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

The manual on/off valve in Toudou includes straw 11 that is part of the fluid conduit and is coupled to nozzle 3, as claimed in [1.7.2]. "[T]he flow path is closed by pressing the straw 11 with part of the nozzle 3, and when the lid is released, and an automatic undulating structure is employed in which the nozzle is automatically raised by the resilience of the straw 11." *Id.* ¶ [0023]; *see id.* ("A cylindrical groove 35b is formed in the base portion 31 of the nozzle 3, and the straw 11 is slightly rigidly connected to the inner cylinder surrounded by the cylindrical groove 35b."); *id.* ¶ [0012] ("The straw 11 is detachably connected to the liquid passing cylinder 2d, and the tip thereof is immersed in the internal liquid 13 …" *Id.* ¶ [0012].

Moreover, straw 11 is flexible: "Furthermore, 11 is a straw using a rubber-like elastic resin such as a silicone tube." *Id.* ¶ [0011]. "At this time, the straw 11 near the connection portion is crushed based on the partial expansion difference due to the rotation of the nozzle 3, and the ridge 37 elastically presses the inner surface of the crushed portion to make it attached firmly." *Id.* ¶ [0024].

[1.7.3] wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and [1.7.4] wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

See elements [1.7] and [1.7.1] above. Toudou discloses elements [1.7.3] and [1.7.4] at least in FIGS. 7 and 8(b), annotated below:

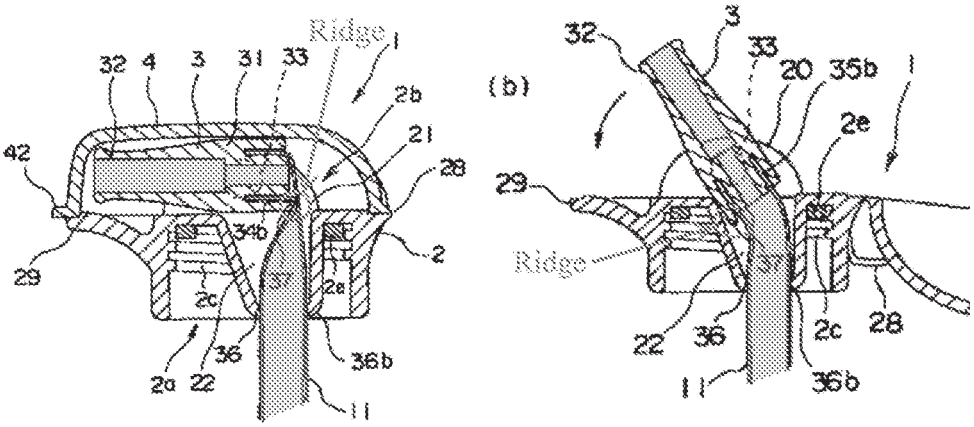


FIG. 7 FIG. 8(b)

For [1.7.3], Toudou describes that when nozzle 3 is closed into a prone position, flexible straw 11 is crimped to obstruct the flow of fluid, as shown in FIG. 7.

> When the lid 4 is further rotated, the nozzle 3 stretches the straw 11 having elasticity to apply resistance force to the lid 4 in the opposite direction and integrally rotates in the same direction around the rotating shaft 33. Then, when the latching piece 42 of the lid 4 under the resistance force of the straw 11 is latched onto the latching portion 29, the nozzle 3 comes out of the inverted conical portion and becomes a prone state as shown in FIG. 7 to be stored in the storage groove 21. At this time, the straw 11 near the connection portion is crushed based on the partial expansion difference due to the rotation of the nozzle 3, and the ridge 37 elastically presses the inner surface of the crushed portion to make it attached firmly. As a result, the internal flow path is automatically closed and thereby the internal liquid 13 is prevented from leaking.

Id. ¶ [0024]; *id.* ¶ [0010] ("The present invention is constituted of a bottle cap with a nozzle, … wherein the flow path of the internal liquid is blocked by pressing the straw with part of the nozzle in connection with the pressing motion by the nozzle associated with the opening and closing of the lid member.").

For [1.7.4], Toudou describes that when nozzle 3 is in an open configuration flexible straw 11 is not crimped and does not obstruct the flow of drink fluid through the fluid conduit, as shown in FIG. 8(b). "Conversely, when the latching of the hinge portion 28 is released, the nozzle 3 pressed by the lid 4 follows the opening of the lid 4 by the restoring force of the straw 11 and is

automatically raised as shown in FIG. 8 (b) from the state shown in FIG. 7." *Id.* ¶ [0025]; *id.* ¶ [0024] ("Now, as shown in FIG. 8 (b), when the lid 4 is rotated about 150 degrees in the direction of an arrow around the hinge 28 as the fulcrum when the nozzle 3 is standing in the open state…"). "The present invention is constituted of a bottle cap with a nozzle, … wherein the flow path of the internal liquid is opened or closed in connection with the up and down motion associated with the rotation of the nozzle." *Id.* ¶ [0028]. This structure and crimping action are effectively the same as the manual on/off valve disclosed in the '255 Patent. *Compare* Ex. 1008 (Toudou), FIGS. 7 and 8(b) *with* Ex. 1001 ('255 Patent), FIGS. 29 and 28.

As a result, Toudou anticipates claim 1 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious that claim under 35 U.S.C. § 103(a) (pre-AIA).

2. Claim 3

3. The drink container of claim 1, [3.1] wherein the cap assembly includes a pair of lateral guards that extend on opposed sides of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position,

Toudou discloses two structures within its cap assembly, i.e., bottle cap 1, corresponding to the pair of lateral guards in claim 3. First, pivotal mount, i.e., nozzle 3, and its suction port 32 rests in a prone state within an arcuate storage groove 21 formed in support portion 20, and the "opposing wall surfaces" within groove 21 correspond with the claimed pair of lateral guards. "21 is an arcuate storage groove formed by horizontally cutting the top portion of the support portion 20 in the left-right direction. Due to the cutting of the storage groove 21, opposing wall surfaces in the front-rear direction are provided on the support portion 20." Toudou ¶ [0012]; *id.* ¶ [0015] ("the suction port 32 is stored in the storage groove 21 while lying down"); *id.* ¶ [0023] ("[A]s shown in FIG.1, the main body 2 has a substantially elliptical shape, and the support portion 20 having a circular dome shape is provided side by side on the outer surface side 2b to have a common structure."). FIG. 8(a), below right, indicates these support portions 20 with their horizontal cuts forming storage grooves 21 on lateral sides of nozzle 3 and suction port 32:

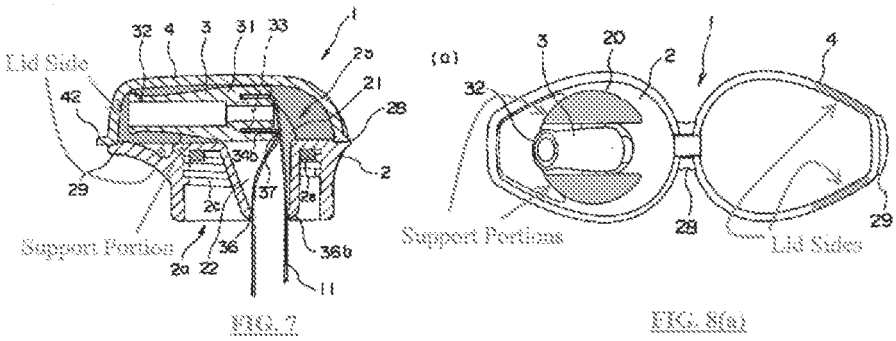


FIG. 7 FIG. 8(a)

Second, Toudou includes a lid 4 that, when in a stowed position, has side walls extending laterally along nozzle 3 and suction port 32. FIG. 7 (prone state) and FIG. 8 (open state for first embodiment), shown above, illustrate the lid sides. *Id.* at Abstract ("a lid member mounted on the main body via a hinge in an openable and closable manner to cover the upper surface of the main body…."). As indicated at least in FIG. 8(a), these pair of lateral lid sides are not cylindrically shaped, but are substantially linear. Further, Toudou teaches that these lid structures help guard the mouthpiece: "Since the nozzle 3 is covered with the lid 4 in the stored state, no contact with clothes or the like occurs and dust is not attached, so that the hygienic state can be maintained." *Id.* ¶ [0018].

[3.2] and further wherein the cap assembly includes a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position.

Toudou teaches that its cap assembly, i.e., bottle cap 1, includes a dust cover for a mouthpiece in the form of lid 4. A top surface and front surface of lid 4, shown below in annotated FIGS. 7 and 8(a), covers nozzle 3 and suction port 32 to protect them from dust and extends between the pair of lateral guards formed by opposing wall surfaces within storage groove 21. The claims do not require that the dust cover be connected to or integral with the lateral guards, and lid 4 when closed is positioned in the space separating the pair of opposing wall surfaces within storage groove 21. Alternatively, the top surface and front surface of lid 4 extends between the pair of lateral guards formed by the sides of lid 4, which also function as a "pair of lateral guards" and to which the top surface and the front surface are attached. Additionally, the top and front surfaces of lid 4 extend "across at least a portion of the dispensing outlet," as claimed. Toudou explicitly teaches that lid 4 protects the dispensing outlet of the mouthpiece, i.e. suction port 32,

as a cover from dust when in the stowed position: "After the drinking is finished, the upper space of the nozzle 3 stored in the storage groove 21 is covered with the lid 4 by the operation reversed to the above. Since the nozzle 3 is covered with the lid 4 in the stored state, no contact with clothes or the like occurs and *dust is not attached*, so that the hygienic state can be maintained." Ex. 1008 ¶ [0018] (emphasis added).

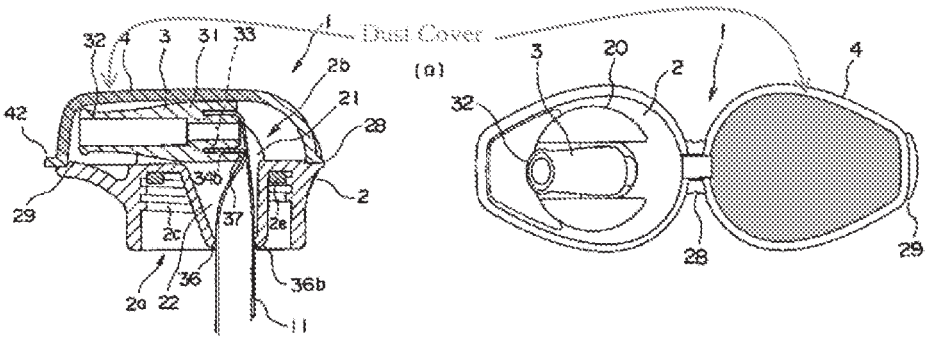


FIG. 7 FIG. 8(a)

As a result, Toudou anticipates claim 3 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious that claim under 35 U.S.C. § 103(a) (pre-AIA).

3. Claim 4

4. The drink container of claim 3, wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.

In Toudou, when nozzle 3 is pivoted about shafts 33 as it rises from a stowed, or prone, position, to a dispensing position, suction port 32 pivots away from the dust cover, i.e., the top of lid 4. Specifically, FIGS. 7 and 8(b) illustrate that when nozzle 3 and suction port 32 pivot from the stowed position (FIG. 7) to the dispensing position (FIG. 8(b)), nozzle 3 pivots to be farther away from lid 4 comprising the dust cover to be accessible by the user, as annotated below.

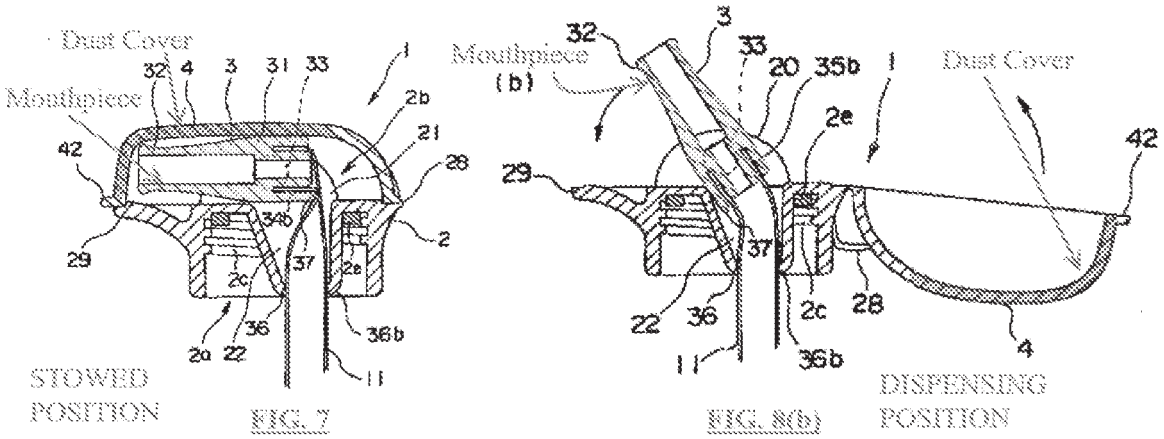


FIG. 7 FIG. 8(b)

According to Toudou, advantages follow from having an increased separation between suction port 32 and lid 4: "[S]ince the lid 4 in the open state and the sucking port 32 in a rising and inclined state face each other right and left and are held in opposite directions, nothing can interfere to drink the internal liquid 13 by sucking." Ex 1008 ¶ [0018]; *id.* ¶ [0027] ("[I]t is good enough as long as the suction port can be set on the opposite side of the lid and the rising angle θ of the nozzle 3 as described above may be set within an arbitrary acute angle, preferably at an angle of about 90 degrees."). For some embodiments, Toudou also teaches that a direction of pivoting as well as a distance for nozzle 3 from pivoting may be away from lid 4: "the rising direction of the nozzle is set to the direction opposite to the direction of the lid member when it is opened." *Id.* ¶ [0028].

As a result, Toudou anticipates claim 4 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious that claim under 35 U.S.C. § 103(a) (pre-AIA).

4. Claim 5

5. The drink container of claim 3, wherein the dust cover projects above an upper surface of the cap assembly base.

See [3.2] above. In Toudou, the dust cover, i.e., top of lid 4, projects above an upper surface of the cap assembly base, as shown here in annotated FIG. 7. "[A] lid member [is] mounted on the main body via a hinge in an openable and closable manner to cover the upper surface of the main body and thereby press the nozzle down when the lid is closed, …" Ex. 1008 ¶ [0030]. "Since the nozzle 3 is covered with the lid 4 in the stored state, no contact with clothes or the like occurs and dust is not attached, so that the hygienic state can be maintained." *Id.* ¶ [0018].

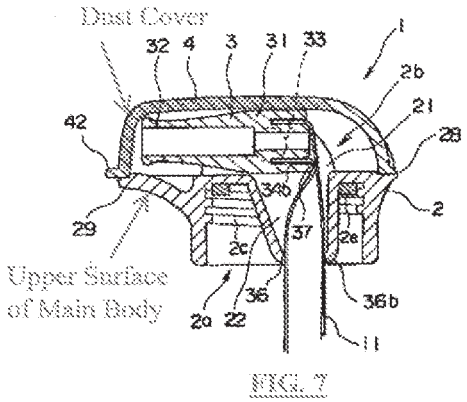


FIG. 7

As a result, Toudou anticipates claim 5 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious that claim under 35 U.S.C. § 103(a) (pre-AIA).

5. Claim 8

8. The drink container of claim 1, wherein the resilient mouthpiece is permanently secured to the pivotal mount.

For claim 8, Toudou discloses its resilient mouthpiece, i.e., suction port 32, being permanently secured to the pivotal mount, i.e., nozzle 3, by being integrated together in a single body. To be "permanently secured" generally refers to two structures connected or integrated together that cannot be separated without potentially destroying at least one of them or the mechanism that joins them. *See* Section II.E, *supra*. Toudou discloses a common structure of a nozzle 3 having a suction port 32 at its upper end and a base 31 at its lower end. Ex. 1008 ¶ [0014] ("the nozzle 3 is provided with a spherical base portion 31 and a suction port 32 extending tangentially from the base portion 31"); *id.* at FIGS. 7 and 8(b) (depicting contiguous structure for nozzle 3 and suction port 32). Being integrated into one piece, suction port 32 is "permanently secured" to nozzle 3 within the meaning of claim 8.

As a result, Toudou anticipates claim 8 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious that claim under 35 U.S.C. § 103(a) (pre-AIA).

6. Claim 13

13. The drink container of claim 1, wherein the resilient mouthpiece includes a dispensing face, and further wherein the dispensing outlet extends through the dispensing face of the resilient mouthpiece.

With respect to claim 13, to the extent the broadest reasonable interpretation of a "dispensing face" of a mouthpiece includes a lipped rim of a tube, Toudou discloses a hole at the tip of suction port 32 on nozzle 3. As shown here in annotated FIG. 8(a), a tip of suction port 32 is a dispensing face of nozzle 3 under a broadest reasonable interpretation of "face," and the hole functions as the dispensing outlet for nozzle 3. As stated in Toudou, "The present invention is constituted of a bottle cap with a nozzle, … comprising: a nozzle provided with a suction port at its tip …" Toudou at Abstract. "The other end of the flow path … penetrates through the suction port 32 and opens at the tip, …" Ex. 1008 ¶ [0014].

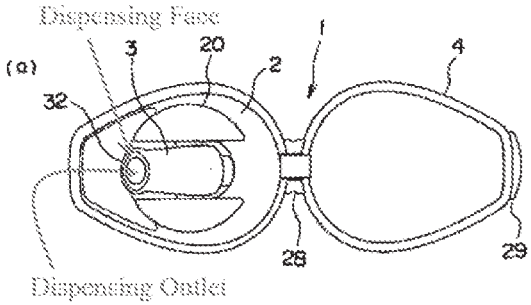


FIG. 8(a)

As a result, Toudou anticipates claim 13 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious that claim under 35 U.S.C. § 103(a) (pre-AIA).

7. Claim 18

18. The drink container of claim 1, wherein the pivotal mount is adapted to selectively engage the flexible tube to apply crimping forces thereto and thereby configure the manual on/off valve to the closed configuration as the pivotal mount is pivoted from the dispensing position to the stowed position.

Toudou discloses that its pivotal mount [nozzle 3] is adapted to selectively engage the flexible tube [straw 11] to apply crimping forces and configure the manual on/off valve [lower edge of base 31 of nozzle 3 and straw 11] to the closed position as nozzle 3 is pivoted from a dispensing position to a stowed position. As explained in Toudou, "In the third embodiment, …

the flow path is closed by pressing the straw 11 with part of the nozzle 3, …" Ex. 1008 ¶ [0023]; Toudou at Abstract ("the flow path of the internal liquid is opened or closed in connection with the up and down motion associated with the rotation of the nozzle").

In one option, the manual on/off valve is a ridge or projecting portion 37 on the lower edge of base 31 of nozzle 3, which is illustrated in FIG. 7 below. Paragraph [0024] explains this manual on/off valve obstructing the fluid conduit as lid 4 is closed and nozzle 3 enters the stowed position, according to claim 18:

> When the lid 4 is further rotated, the nozzle 3 stretches the straw 11 having elasticity to apply resistance force to the lid 4 in the opposite direction and integrally rotates in the same direction around the rotating shaft 33. Then, when the latching piece 42 of the lid 4 under the resistance force of the straw 11 is latched onto the latching portion 29, the nozzle 3 comes out of the inverted conical portion and becomes a prone state as shown in FIG. 7 to be stored in the storage groove 21. At this time, the straw 11 near the connection portion is crushed based on the partial expansion difference due to the rotation of the nozzle 3, and the ridge 37 elastically presses the inner surface of the crushed portion to make it attached firmly. As a result, the internal flow path is automatically closed and thereby the internal liquid 13 is prevented from leaking.

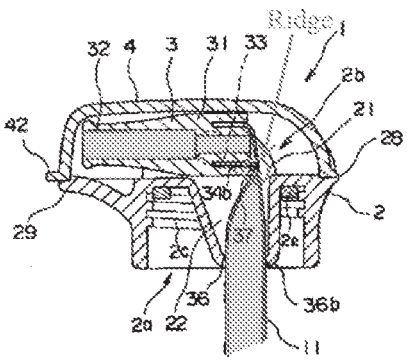


FIG. 7

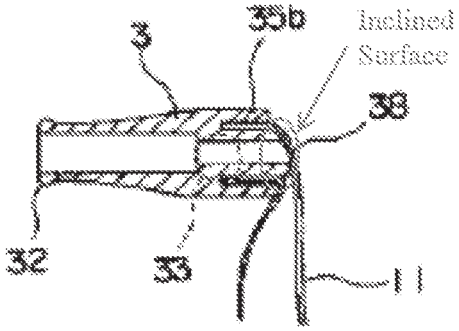


FIG. 8(c)

In another option, the manual on/off valve with an inclined tip or extended inner portion of the lower edge of base 31 of nozzle 3 and flexible straw 11 that obstructs the fluid conduit when in the stowed or prone position, which is shown in FIG. 8(c) above. Paragraph [0026] in Toudou explains the operation of this second variation corresponding to claim 18:

> FIG. 8 (c) shows a modified example of the flow path blocking mechanism according to the third embodiment. In other words, in FIG. 8 (c), an inclined surface 38 is formed at the cylinder tip of

> the inner ring portion of the base portion 31 of the nozzle 3 to which the straw 11 is connected. When the nozzle 3 is pressed by the closed lid 4 to lie down, the inner surface portion of the straw 11 which is strongly stretched due to the expansion difference in a manner similar to that described above is elastically pressed against the inclined surface 38. Therefore, by the pressure bonding of the inner surface portion, the flow path that is open to the inclined surface 38 is automatically closed, and the leakage of the inner liquid 13 is prevented.

As a result, Toudou anticipates claim 18 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious that claim under 35 U.S.C. § 103(a) (pre-AIA).

8. Claim 19

19. The drink container of claim 1, wherein the flexible tube is secured to the pivotal mount.

As illustrated in FIGS. 7 and 8(b), the flexible tube, i.e., straw 11, in Toudou is secured to the pivotal mount of nozzle 3 by being rigidly connected within cylindrical groove 35b at the base 31 of nozzle 3. "A cylindrical groove 35b is formed in the base portion 31 of the nozzle 3, and the straw 11 is slightly rigidly connected to the inner cylinder surrounded by the cylindrical groove 35b." Ex. 1008 ¶ [0023]; *id.* ¶ [0019] ("35b denotes a cylindrical groove formed at the end portion [of base portion 31]. The cylinder surrounded by the cylindrical groove 35b constitutes a connecting portion with the straw 11."). FIGS. 7 and 8(b), annotated below, illustrate that tube 11 remains secured to base portion 31 as nozzle 3 pivots between a stowed position (FIG. 7) and a dispensing position (FIG. 8(b)):

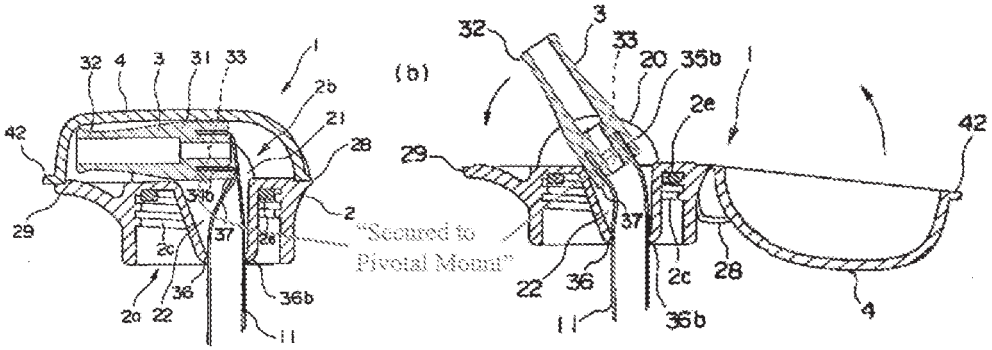


FIG. 7 FIG. 8(b)

As a result, Toudou anticipates claim 19 of the '255 Patent under 35 U.S.C. § 102(b) (pre-AIA) or, in the alternative, would have rendered obvious that claim under 35 U.S.C. § 103(a) (pre-AIA).

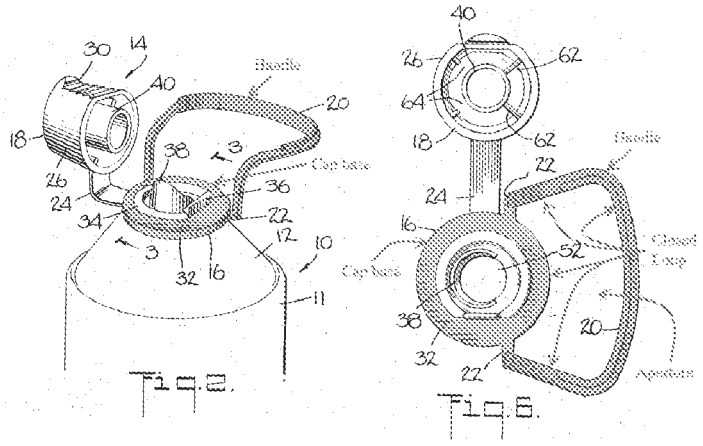
E. Ground 5: Toudou in View of Anderson Would Have Rendered Obvious Claim 6

As explained below, Toudou in view of Anderson would have rendered obvious claim 6 under 35 U.S.C. § 103(a) (pre-AIA).

6. The drink container of claim 3, wherein the cap assembly further includes a handle that extends from the cap assembly base and includes the pair of lateral guards and the dust cover.

Toudou and the alternative secondary references do not expressly disclose a handle associated with bottle cap 1 as recited in dependent claim 6. Anderson, which also discloses a closure for a liquid-dispensing container in the same field of endeavor as Toudou and the '255 Patent, discloses the handle for a container with the features recited in claim 6.

Specifically, Anderson discloses "a container closure for use in connection with spouted containers" that "neatly seal[s] and protect[s] a spouted container opening." Ex. 1014 at 1:47-52. "On the top of the container 10, … [a] novel cap arrangement is formed of a plastic material such as polyethylene and includes a circular base 16, fitted onto the top wall 12" of the container 10. *Id.* at 2:64-68. A handle 20 extends from the cap assembly base, i.e., from circular base 16, as claimed and shown below:



The "handle 20 is affixed to and may be integrally molded with the base portion 16 at outwardly protruding lugs 22 located at its periphery." *Id.* at 2:66-67; *see id.* at 2:13-15 ("In one of its aspects,

my invention includes the provision of a specially shaped handle preferably molded as an integral part of the base and captive cap."). Ex. 1014 at 2:69-72.

It would have been obvious to have included the handle as disclosed in Anderson on the bottle cap 1 of Toudou at least to provide a more convenient means for carrying the container than simply grasping its body—especially for children who have small hands. As noted in Anderson, its U-shaped handle that extends outwardly "enables the containers to [] be grasped quite readily" for carrying and provides "full finger access without interference with movements of said overcap." *Id.* at 3:15-23, 5:35-41. Applied to McDonough, such a handle would make carrying more efficient and avoid interference with lid 22 and, particularly, straw positioning mechanism 20 and straw 14 to minimize the risk of contamination by handling. In addition, by being molded together as plastic with its cap in one option of Anderson, handle 20 would combine efficiently with polypropylene main body 2 in Toudou.

Moreover, it would have been readily apparent that the relationships recited in claim 6 relating to the handle and the resilient mouthpiece would have resulted from combining the handle 20 of Anderson with the lid 22 of McDonough. Indeed, the handle 140 in the '255 patent and handle 20 in Anderson are highly similar:

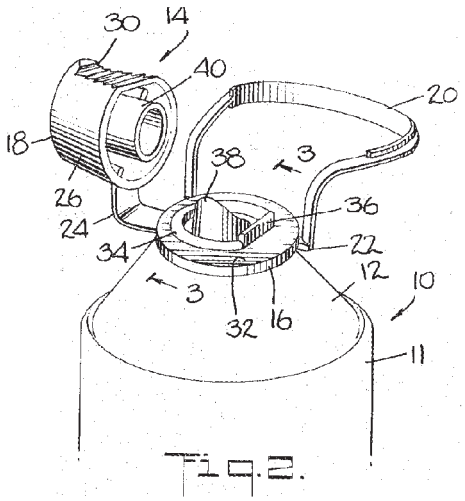
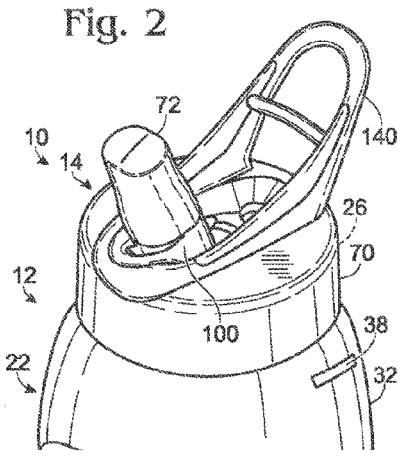


FIG. 2 of Anderson

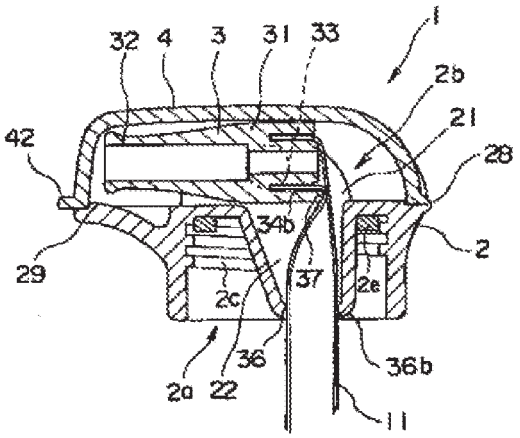


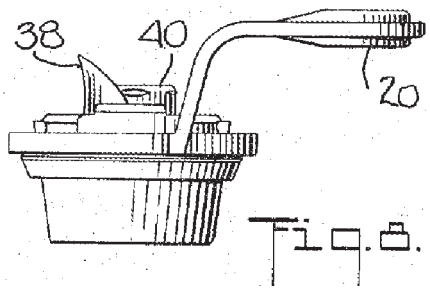
Portion of FIG. 2 of '255 Patent

For instance, in many implementations, applying handle 20 of Anderson to main body 2 of Toudou would have resulted in the sides of handle 20 being positioned on opposite sides of suction port 32 of nozzle 3 in Toudou and the outer end of handle 20 extending across at least a portion of the dispensing outlet of the tip of suction port 32, when nozzle 3 and suction port 32 are in the

stowed position. Thus, the sides of handle 20 would serve as "the pair of lateral guards" and the outer end of handle 20 would function as "the dust cover," as recited in claims 3 and 6.

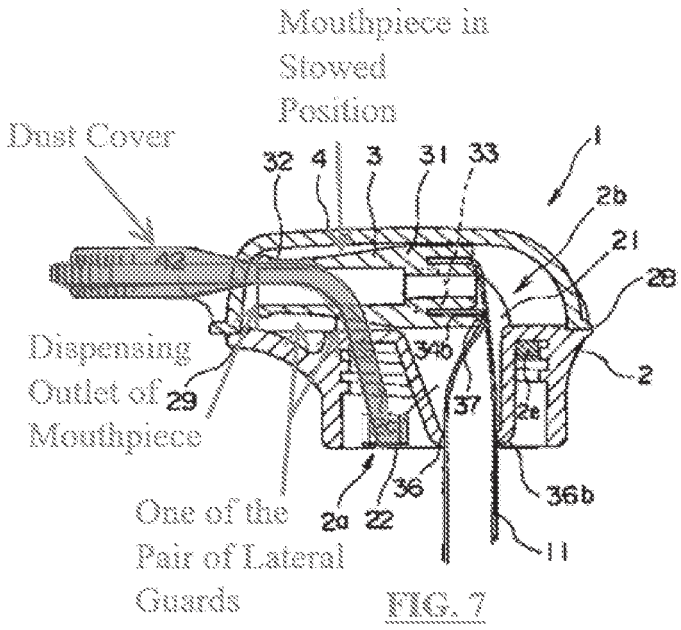
The figures below illustrate this combination. The figure on the left is a cross-sectional side view of the bottle cap 1 of Toudou in a stowed position, and the figure on the right is a side view of the cap and handle 20 of Anderson.





Toudou: FIG. 7 in Stowed Position **Anderson: FIG. 8 Side View**

Implementing handle 20 on main body 2 of Toudou would result in the following mockup of these figures:



Mockup of Anderson Handle 20 Applied to Toudou Main Body 2

As indicated in this mockup, handle 20 from Anderson has arms rising angularly above the cap base on lateral sides of the container opening (as with handle 140 in the '255 Patent) and a looped end to the handle extending to the side and above the cap base (as with handle 140 in the '255 Patent). Accordingly, the rising arms of handle 20 on opposed sides of mouthpiece 32 equate to the claimed "pair of lateral guards" and the looped end of handle 20, which extends between these pair of lateral guards, extends across at least a portion of the dispensing outlet of mouthpiece 32 and serve as the claimed "dust cover."

Therefore, Toudou in view of Anderson teaches and suggests all limitations of claim 6 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

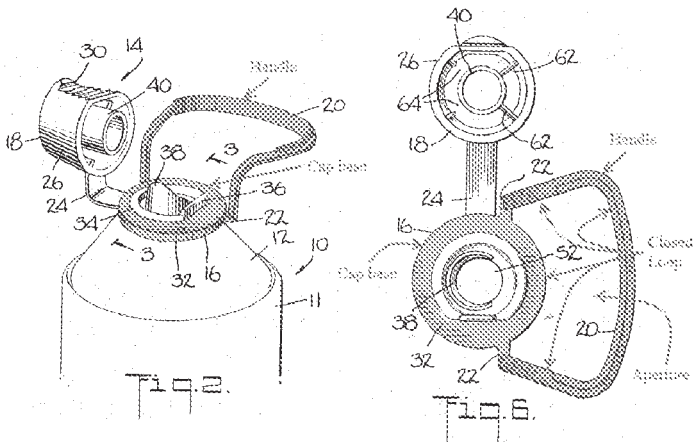
F. Ground 6: Toudou in View of Anderson or Roth Would Have Rendered Obvious Claim 7

As explained below, Toudou in view of Anderson or Roth would have rendered obvious claim 6 under 35 U.S.C. § 103(a) (pre-AIA).

> **7. The drink container of claim 1, wherein the cap assembly further comprises a handle [7.1] that extends in a fixed orientation from the cap assembly base and, [7.2] which defines a closed loop with an aperture through which a user's finger may be inserted to carry the drink container.**

Toudou and the alternative secondary references do not expressly disclose a handle associated with bottle cap 1 as recited in dependent claim 7. Anderson, which also discloses a closure for a container in the same field of endeavor as Toudou and the '255 Patent, discloses the handle with the features recited in claim 7. In particular, for [7.1], Anderson discloses a "novel cap arrangement" in which a handle 20 "is affixed to and may be integrally molded with the base portion 16 at outwardly protruding lugs 22 located at its periphery." Ex. 1014 at 2:69-72. This fixed orientation is set by being molded in plastic. *Id.* at 2:66-67; *see id.* at 2:13-20 ("In one of its aspects, my invention includes the provision of a specially shaped handle preferably molded as an integral part of the base and captive cap. This handle serves a dual function; first, that of providing a carrying means thus eliminating the need for a waist shaped or small necked container....").

Additionally, handle 20 in Anderson defines a closed loop with an aperture through which a user's finger may be inserted to carry the drink container 10, as recited in [7.2]. FIG. 2 (isometric view) and FIG. 6 (top view), annotated below, illustrate this form most clearly.

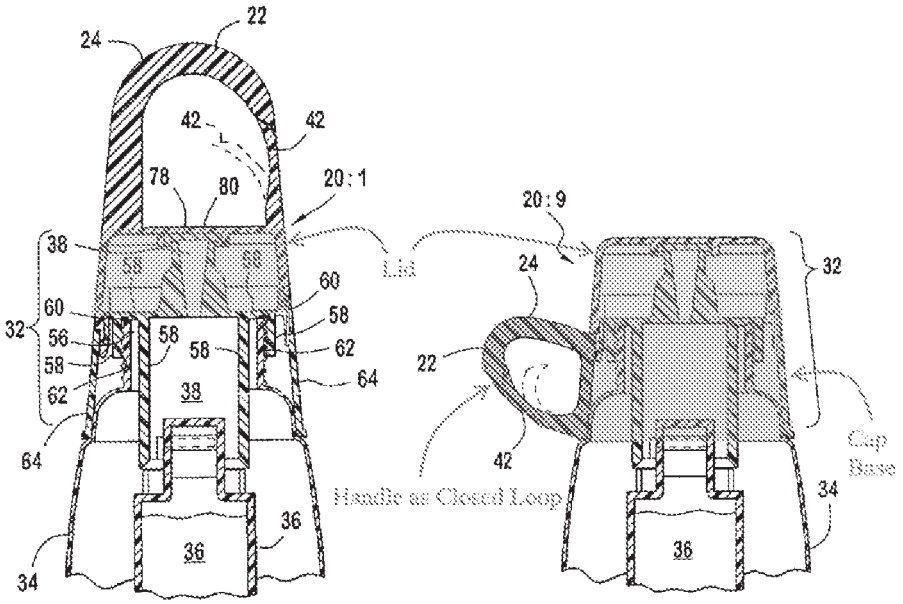


As shown above, "handle 20 is generally U-shaped." Ex. 1014 at 2:69-70. "In the preferred embodiment handle 20, as can be seen in FIG. 2, extends upwardly from the lugs 22 for a short distance and then outwardly away from the overcap 18 so that its maximum height does not exceed that of the overcap.... Also, this handle configuration enables the containers to [] be grasped quite readily both for pouring and for carrying." *Id.* at 3:15-23. Anderson directly addresses accessibility by a user's finger into the closed-loop handle 20, as recited in [7.2]: "[A] plastic handle of generally U-shaped configuration and attached at its ends to points along the edge of said base, said handle rising upwardly from said base to the height of said overcap, and then horizontally away from said cap to provide full finger access without interference with movements of said overcap." *Id.* at 5:35-41.

It would have been obvious to have included the handle as disclosed in Anderson on the bottle cap 1 of Toudou at least to provide a more convenient means for carrying the container than simply grasping its body. As noted in Anderson, its U-shaped handle that extends outwardly "enables the containers to [] be grasped quite readily" for carrying and provides "full finger access without interference with movements of said overcap." *Id.* at 3:15-23, 5:35-41. Applied to McDonough, such a handle would make carrying more efficient and avoid interference with lid 22 and, particularly, straw positioning mechanism 20 and straw 14 to minimize the risk of contamination by handling. In addition, by being molded together as plastic with its cap in one option of Anderson, handle 20 would combine efficiently with polypropylene main body 2 in Toudou.

Roth also teaches and suggests the subject matter of claim 7. Roth discloses a closure for a beverage container in the same field of endeavor as Toudou and the '255 Patent. In a first

embodiment shown in Roth's FIG. 2, a looped connector 24 is formed on a pivotal lid 28 of the closure body and may incorporate a snap hook 22 for attaching the bottle 34 to an object such as a backpack. But Roth explains that the looped connector may be positioned elsewhere on closure body 32, such as laterally from annular shroud 64 of base portion 26: "As shown in FIG. 1 the connector 24 preferably extends generally upwardly from the lid 28. However, those of ordinary skill in the art will appreciate from this disclosure that the connector 24 can extend from a lateral side of the closure body 32 or from a lateral side of the annular shroud 64 without departing from the scope of the present invention." Ex. 1015 ¶ [0031]. FIG. 11A illustrates an embodiment in which the looped connector extends laterally from the annular shroud 64 of base portion 26 separate from and beneath lid 28: "FIG. 11A is [in] cross-section a view similar to that of FIG. 3 illustrating an alternative embodiment of a closure according to the present invention in which the snap hook is disposed on a side of the closure." *Id.* ¶ [0018]. A comparison of FIGS. 3 and 11A in Roth shows the positioning of connector 24 extending laterally from the cap assembly base, i.e., base portion 26, as claimed:



Roth FIG. 3 **Roth FIG. 11A**

Additionally, connector 22 in FIG. 11A extends in the claimed "fixed orientation" of [7.1] as Roth teaches that "[i]t is preferred that the snap hook 22 is integrally formed with the closure body 32" (*id.* ¶ [0032]), and FIG. 11A shows connector 22 having its snap lever 42 lateral to and apart from base portion 26. And as illustrated in FIG. 11A, connector 22 has the shape of a closed

loop on the cap assembly base and forms an aperture, as required by [7.2]. An object, including a user's finger, may be inserted through the aperture to carry bottle 34. *See, e.g.*, *id.* ¶ [0034] ("A user attaches the bottle closure 20:1 to an object, such as a backpack strap, by depressing the snap lever 42 to allow the back pack strap or the like to be placed within the snap connector 22. Once the closure 20:1 and any accompanying bottle is secured, a user may carry the closure 20:1 with ease.").

It would have been obvious to have included the handle as disclosed in Roth on the bottle cap 1 of Toudou at least to provide a more convenient means for carrying the container than simply grasping its body. In addition to providing a loop for handling bottle cap 1 of Toudou, the snap hook 22 within connector 24 in Roth would provide an additional incentive for more easily and securely attaching and detaching the cup to an object such as a belt loop or purse strap, as explained at length in Roth. *See, e.g.*, Ex. 1015 ¶¶ [0004], [0044]. Further, Roth teaches that "the closure body 32 and the snap hook 22 are formed by a suitable polymer" (*id.* ¶ [0032]), making the handle in Roth a natural combination for use with polypropylene main body 2 in Toudou.

Therefore, Toudou in view of Anderson or Roth teaches and suggests all limitations of claim 7 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

G. Ground 7: Toudou in View of Wright or Tupper Would Have Rendered Obvious Claim 14

14. The drink container of claim 13, wherein the dispensing outlet is defined by a slit that extends through the dispensing face of the resilient mouthpiece.

As indicated for claim 13 above, Toudou discloses that a hole at the tip of suction port 32 on nozzle 3 as a dispensing outlet. *See* Ex. 1008 at Abstract ("The present invention is constituted of a bottle cap with a nozzle, … comprising: a nozzle provided with a suction port at its tip …"); *id.* ¶ [0014] ("The other end of the flow path … penetrates through the suction port 32 and opens at the tip, …"). Wright and Tupper further teach openings within a dispensing end of a resilient mouthpiece that is defined by a slit.

Wright teaches a duck bill valve for a mouthpiece on a drinking cup. Ex. 1009. The mouthpiece is shaped similarly to suction port 32 in Toudou, having a flared end formed with a lipped rim. The mouthpiece includes an outlet defined by a slit 44, as illustrated in FIGS. 2A, 2D, and 2E below:

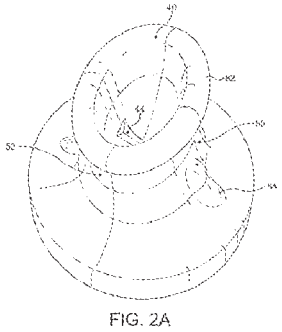


FIG. 2A

Wright Resilient Mouthpiece

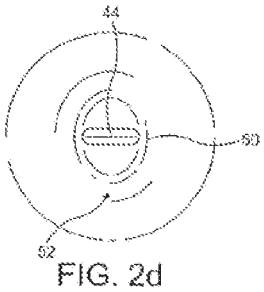


FIG. 2d

Slit 44 in Closed Position

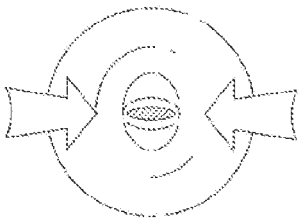


FIG. 2e

Slit 44 in Open Position

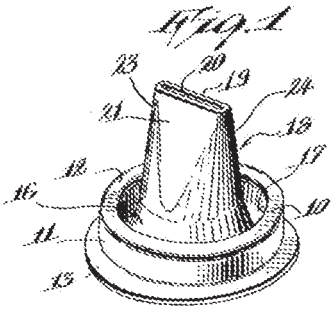
Wright explains that opening 44 corresponds to a slit: "Referring to figure 2D, the upper mouthpiece portion can be viewed as being substantially oval in cross-section having two 'long sidewalls' 50 visible in front cross-section and two 'short sidewalls' 52 visible in side cross-section terminating in a concave top. The duck bill valve 44 is located perpendicular to the long sidewalls 50." Ex. 1009 at 5:2-5.

It would have been obvious to have implemented a slit mouthpiece as taught by Wright in suction port 32 of Toudou to result in a dispensing outlet "defined by a slit that extends through the dispensing face of the resilient mouthpiece," as recited in claim 14. Toudou teaches that its bottle cap 1 can be applied to "baby bottles" (Ex. 1008 ¶ [0027]), while Wright explains that its duck bill mouthpiece with slit opening enables infants to drink more naturally:

> A particular advantage of the configuration according to the present invention is that it allows a natural drinking action especially in younger infants. In order to open the duck bill valve, lateral pressure on the mouthpiece by the infant's teeth, lips or gums is required. While this pressure can result from normal biting or squeezing, the 'stripping' action used by an infant when breastfeeding will also open the duck bill valve. It is well established that this stripping action is beneficial to the infant's dental development and that the transition to a pure sucking action too early can be detrimental.

Ex. 1009 at 6:15-22. Thus, an apparent reason to implement a slit mouthpiece as in Wright to suction port 32 in Toudou would have been to improve the "natural drinking action especially in younger infants" as taught by Wright when applying bottle cap 1 with suction port 32 of Toudou for use with "baby bottles" as taught by Toudou. Moreover, the shape of upper mouthpiece portion 40 in Wright is highly similar to the shape of suction port 32 in Toudou, further suggesting the interchangeability of the teachings regarding their mouthpieces for drinking bottles.

Tupper discloses an elongated slot 20 in the dispensing end of mouthpiece of "resilient plastic material" for consuming fluid contents from a container, as shown for example in FIG. 1. Ex. 1011 at 1:15-17, 3:45. The mouthpiece is primarily intended for use by infants and other children. The shape of slot 20 can aid in drawing liquid from the bottle when the mouthpiece is "squeezed or deformed by the mouth or teeth of the user," "wherein the sipping or drawing operation is capable of functioning … by alternate lip or teeth compression of the tubular structure to force fluid contents therethrough based on the principle of nipple feeding." Ex. 1011 at 1:41-49; *id.* at 3:40-42 ("the dispensing end is capable of being squeezed or deformed by the mouth or teeth of the user …").



In addition, slot 20 helps to retain liquid if the bottle is overturned. As explained in Tupper, "[W]hen the elongated slot 20 of the sipper seal is held in any non-drinking position capable of creating a gravity flow toward slot 20, the fluid tends to completely fill the entire area of the slot to check spillage by reason of fluid capillarity and surface tension." *Id.* at 3:29-34; *id.* at 4:16-19 ("said slot serving either as a withdrawing outlet for fluid contents or to check the flow of said fluid contents when the vessel lies in horizontal or other leaking position").

It additionally would have been obvious to have implemented a slit mouthpiece as taught by Tupper in suction port 32 of Toudou to result in a dispensing outlet "defined by a slit that extends through the dispensing face of the resilient mouthpiece," as recited in claim 14. Toudou teaches that its bottle cap 1 can be applied to "baby bottles" (Ex. 1008 ¶ [0027]), while Tupper explains that the slot or slit within its mouthpiece opening provides several advantages, including promoting lip or teeth compression to force fluid contents out "based on the principle of nipple feeding" (Ex. 1011 at 1:41-49) and avoiding leakage through capillary action if the opened container is overturned (*id.* at 3:29-34). Thus, apparent reasons to implement a slot in a mouthpiece as in Tupper for suction port 32 in Toudou would have been to achieve these stated benefits of Tupper in suction port 32 of Toudou at least when bottle cap 1 of Toudou is applied to "baby bottles."

Therefore, Toudou in view of Wright or Tupper teaches and suggests all limitations of claim 14 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

H. Ground 8: Alternatively, Toudou in View of Wright Would Have Rendered Obvious Claims 1, 3-5, 8, 13, 14, 18, and 19

While Toudou inherently discloses a resilient mouthpiece as recited in independent claim 1 (or renders that subject matter obvious), Toudou in view of Wright would also have rendered obvious claims 1, 3-5, 8, 13, 14, 18, and 19 of the '255 Patent under 35 U.S.C. § 103(a) (pre-AIA), as explained below.

1. Claim 1

[1.pre] A drink container, comprising: [1.1] a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

See Discussion of Toudou in Ground 4, [1.pre], *supra*, which is incorporated by reference.

[1.2] a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines

See Discussion of Toudou in Ground 4, [1.2], *supra*, which is incorporated by reference.

[1.2.1] a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes [1.2.2] an inlet through which drink fluid from the fluid container may enter the fluid conduit, and [1.2.3] a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

See Discussion of Toudou in Ground 4, [1.2.1], [1.2.2], and [1.2.3], *supra*, which are incorporated by reference.

[1.3] a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

See Discussion of Toudou in Ground 4, [1.3], *supra*, which is incorporated by reference.

[1.4] a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base,

See Discussion of Toudou in Ground 4, [1.4], *supra*, which is incorporated by reference.

[1.4.1] wherein the pivotal mount includes a pair of lateral projections, [1.4.2] wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

See Discussion of Toudou in Ground 4, [1.4.1] and [1.4.2], *supra*, which are incorporated by reference.

[1.5] a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base,

Toudou discloses a mouthpiece in the form of suction port 32 coupled to the pivotal mount, i.e., nozzle 3, by being integrated with nozzle 3 for pivotal movement with nozzle 3 relative to the cap assembly base, i.e., main body 2 of bottle cap 1. *See* Ex. 1008 at Abstract ("bottle cap with a nozzle comprising: a nozzle provided with a suction port at its tip and rotation shafts on both sides of the base portion … wherein the flow path of the internal liquid is opened or closed in connection with tup and down motion associated with the rotation of the nozzle."). As explained for Ground 4 above, Toudou alone inherently anticipates, or would have rendered obvious, that suction port 32 is a "resilient" mouthpiece in [1.5]. It also, or alternatively, would have been obvious over Toudou in view of Wright to have coupled a resilient mouthpiece to the pivotal mount by making integrated suction port 32 from resilient material for pivotal movement with nozzle 3 relative to cap base 2, as explained below.

In the same field of endeavor as Toudou and the '255 Patent, Wright discloses a cover for a drinking vessel and teaches a resilient mouthpiece coupled to a mount, as recited in [1.5]. According to Wright, "biting or prolonged sucking on a spout can lead to tooth damage" and, in response, Wright advocates use of a mouthpiece that deforms from biting forces on "flexible resilient material and hence does not damage the user's teeth." *Id.* at 1:17-18, 2:18-21. Wright teaches that such a flexible mouthpiece may be made of a resilient elastomeric material such as polyurethane rubber. Ex. 1009 at Abstract, 2:7-8, 2:18-21, 4:21-22.

Additionally, Wright teaches multiple configurations for coupling a resilient mouthpiece to a mount. First, Wright explains that only the tip of its mouthpiece could be made resilient—"[t]he mouthpiece can be provided with a portion of the mouthpiece for example the top portion being flexible" (*id.* at 7:8-9)—which would result in the resilient mouthpiece being integrated into its base as a mount. "Alternatively, the whole of the mouthpiece may be flexible." *Id.* at 7:8-10. In that situation, the resilient mouthpiece may be molded onto a polypropylene base "via a second shot process" as taught by Wright, which base may be part of the drinking vessel. *Id.* at 4:11-13. Third, the polypropylene base 26 on

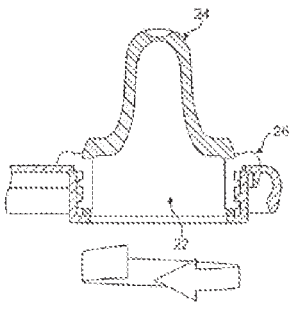
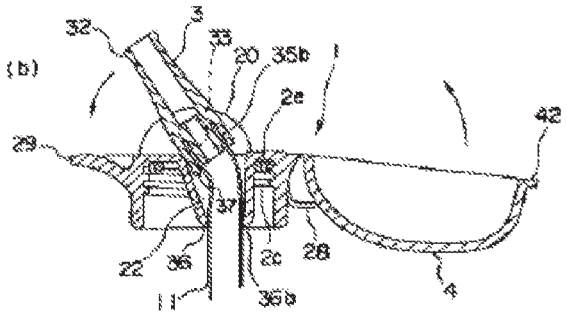


FIG. 1C

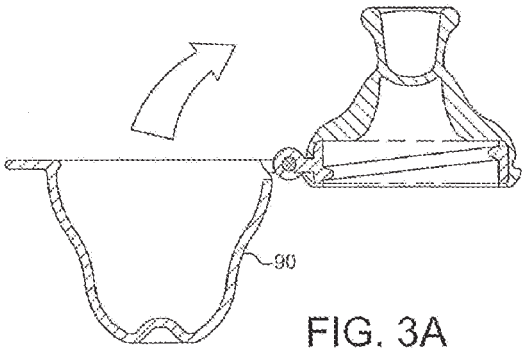
which the resilient mouthpiece 24 is molded may be configured for removal from the drinking vessel, such as by threading as shown in FIG. 1C.

Based on these teachings, it would have been obvious for a person of ordinary skill in the art to have modified bottle cap 1 in Toudou to have a resilient mouthpiece integrally coupled to nozzle 3 to avoid "tooth damage" from "biting or prolonged sucking on [the] spout" as taught by Wright. *Id.* at 1:16-21; *id.* at 6:24-26 ("In addition, because the mouthpiece is of flexible material ... physical damage to the infant's teeth is reduced or avoided."). The teachings of Wright provide a variety of options for implementing a resilient mouthpiece on nozzle 3. For instance, only "a portion of the mouthpiece for example the top portion," i.e., suction port 32 of nozzle 3, could be made of resilient material (*see id.* at 7:8-9), or "the whole of the mouthpiece may be flexible" (*id.* at 7:8-10), i.e., all of nozzle 3. Wright also contemplates the joinder of its resilient mouthpiece with other materials, such as polypropylene, which is the material of bottle cap 1 in Toudou (Ex. 1008 ¶ [0011]) and the material of cup body 12, cover 16, and threaded locking ring 26 in Wright (Ex. 1009 at 4:5-6, 4:11-17). With this joinder, the resilient mouthpiece in Wright may be fixed to the drinking vessel or to a detachable mount such as ring 26. Ex. 1009 at 4:11-17.

In addition, a modification of nozzle 3 in Toudou with a resilient mouthpiece as taught by Wright would have flowed from the similarity of mouthpieces taught in the two references. Both suction port 32 in Toudou and the resilient mouthpiece in Wright as a duckbill (*see* FIGS. 2A-E, 3A, and 3B) have a narrowed neck that culminates in a lipped outer rim, as shown in the figures below:



Toudou FIG. 8(b)



Wright FIG. 3A

This physical similarity between components for performing the same function of sucking liquid from a bottle further suggests the substitutability of at least the top portion of the resilient

mouthpiece in Wright for suction port 32 in Toudou. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 415-16 (2007) ("[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results."). Each mouthpiece is shaped in a way to facilitate manipulation of the mouthpiece with a user's lips and teeth. Ex. 1008 (Toudou) at FIGS. 5-8 ("suction port" 32); Ex. 1009 (Wright) at 5:19-24 ("To aid orientation of the mouthpiece in the mouth, the mouthpiece (40) may comprise a lipped rim (82) and one or more dimples (84). The mouth of the user is guided between the rim (82) and the dimples (84) so that the biting or stripping action occurs such that a sideways force is applied in the same direction …"); *id.* at 7:4-6 ("the user can control the flow rates by varying the force exerted on the mouthpiece"); *id.* at 7:6-8 ("In addition the responsiveness [of the mouthpiece] can be varied by altering the materials, their softness/hardness flexibility or their thickness.").

In short, Toudou and Wright together teach and suggest the subject matter recited in [1.5] for the purpose of protecting a user's teeth from damage by a non-resilient mouthpiece and for the purpose of enhancing the suction action on the mouthpiece to extract liquid from the bottle.

As a result, Toudou in view of Wright teaches and suggests the subject matter of claim element [1.5].

[1.5.1] wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

See Discussion of Toudou in Ground 4, [1.5.1], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being integral with nozzle 3, as discussed above for element [1.5], would move together with nozzle 3. Thus, a resilient mouthpiece as taught by Wright would likewise, and necessarily, be pivotal about an axis defined by the pair of lateral projections when nozzle 3 pivots as the pair of lateral projections rotate within the pair of sockets, as recited in [1.5.1].

[1.5.2] wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

See Discussion of Toudou in Ground 4, [1.5.2], *supra*, which is incorporated by reference.

In addition, Wright teaches and suggests a resilient mouthpiece integrally coupled to a spout or nozzle that defines a portion of the fluid conduit, including the dispensing outlet, as recited in [1.5.2]. The vessel cover in Wright includes "a flexible mouthpiece (24) defining a flow passage

from the vessel body." Ex. 1009 at Abstract. For an upper mouthpiece portion 40 with a duck bill valve 44 in Wright, "[a]s a sideways force is applied to the long sidewalls 50, the duck bill valve is forced open allowing the flow of fluid." *Id.* at 6:1-2; *see id.* at FIG. 2C. Indeed, a purpose of a mouthpiece for consuming liquids is to provide a portion of a fluid conduit including a dispensing outlet for the user. Thus, a resilient mouthpiece as taught by Wright further defines a portion of the fluid conduit, including the dispensing outlet, as recited in [1.5.2].

[1.6] wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further [1.6.1] in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

See Discussion of Toudou in Ground 4, [1.6] and [1.6.1], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being integral with nozzle 3 as discussed above for [1.5] would move together with nozzle 3. Thus, a resilient mouthpiece as taught by Wright would likewise, and necessarily, be selectively pivoted between a stowed and dispensing position as nozzle 3 moves, and, in the dispensing position, the dispensing outlet would be positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position, as recited in [1.6] and [1.6.1].

[1.6.2] wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and

As explained for Ground 4 above, Toudou alone inherently anticipates, or would have rendered obvious, that suction port 32 is "adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth" in [1.6.2]. Element [1.6.2] also, or alternatively, would have been obvious over Toudou in view of Wright.

As discussed above for [1.5], it would have been obvious to have integrated a resilient mouthpiece to the pivotal mount, i.e., nozzle 3 and suction port 32, in view of Wright. This secondary reference teaches and suggests that its resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied by a user's teeth, as claimed.

For example, Wright is specifically directed to avoid "tooth damage" that can occur from "biting or prolonged sucking on a spout" and addresses that risk with a mouthpiece that has "flexible resilient material and hence does not damage the user's teeth." Ex. 1009 at 1:17-18, 2:18-21. Moreover, in some embodiments, Wright teaches the use of a duck bill valve that operates from compressive forces applied by a user's teeth on the resilient mouthpiece, as shown here by the arrows in FIG. 2C. *Id.* at 5:26-6:1 ("In use, the action of pursing, biting or stripping the mouthpiece in the direction of the duck bill valve causes the opening of the duck bill valve and allows fluid flow."), *id.* at 5:20-24 ("The mouth of the user is guided between the rim (82) and the dimples (84) so that the biting or stripping action occurs such that a sideways force is applied in the same direction on the duck bill valve to ensure opening of the duck bill valve and resulting flow of liquid."); *see* also *id.* at 5:10-11, 5:16-17.

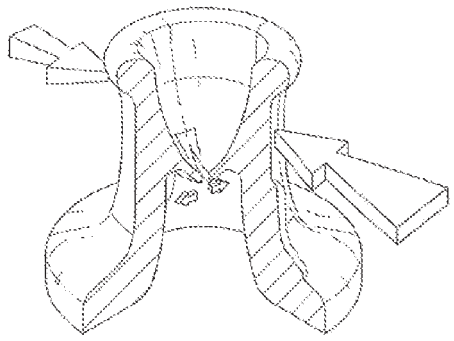


FIG. 2C

As a result, further to the discussion above for [1.5] regarding the combinability of Toudou with Wright, this secondary reference also teaches and suggests the subject matter of claim element [1.6.2].

[1.7] a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and [1.7.1] an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet;

See Discussion of Toudou in Ground 4, [1.7], *supra*, which is incorporated by reference.

[1.7.2] wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

See Discussion of Toudou in Ground 4, [1.7.2], *supra*, which is incorporated by reference.

[1.7.3] wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and [1.7.4] wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

See Discussion of Toudou in Ground 4, [1.7.3] and [1.7.4], *supra*, which are incorporated by reference.

In short, Toudou in view of Wright teaches and suggests all limitations of claim 1 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

2. Claim 3

3. The drink container of claim 1, [3.1] wherein the cap assembly includes a pair of lateral guards that extend on opposed sides of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position,

See Discussion of Toudou in Ground 4, [3.1], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being integral with nozzle 3, as discussed above for element [1.5], would move together with nozzle 3 into its prone state. Thus, a pair of lateral guards in the form of "opposing wall surfaces" within storage groove 21 of support portion 20 and side walls of closed lid 4 would likewise, and necessarily, extend on lateral sides of a resilient mouthpiece as taught by Wright when the resilient mouthpiece and the pivotal mount are in the stowed position, as recited in [3.1].

[3.2] and further wherein the cap assembly includes a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position.

See Discussion of Toudou in Ground 4, [3.2], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being integral with nozzle 3 would move together with nozzle 3 into its prone state. Thus, the dust cover of the top and front of lid 4, which extends between the pair of lateral guards in the form of "opposing wall surfaces" within storage groove 21 of support portion 20 and between side walls of closed lid 4, and each of which extends across at least a portion of the dispensing outlet, would be positioned to also protect a resilient mouthpiece as taught by Wright when the resilient mouthpiece and the pivotal mount are in the stowed position, as in [3.2].

As a result, Toudou in view of Wright teaches and suggests all limitations of claim 3 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

3. Claim 4

4. The drink container of claim 3, wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.

See Discussion of Toudou in Ground 4, [Claim 4], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being integral with nozzle 3, as discussed above for claim element [1.5], would move together with nozzle 3 from its prone state to its dispensing state. Thus, a resilient mouthpiece as taught by Wright would also pivot away from the dust cover along with suction port 32, as recited in claim 4.

As a result, Toudou in view of Wright teaches and suggests all limitations of claim 3 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

4. Claim 5

5. The drink container of claim 3, wherein the dust cover projects above an upper surface of the cap assembly base.

See Discussion of Toudou in Ground 4, [Claim 5], *supra*, which is incorporated by reference.

Accordingly, Toudou discloses the limitations recited in claim 5, and Toudou in view of Wright would have rendered obvious the subject matter of claim 5.

5. Claim 8

8. The drink container of claim 1, wherein the resilient mouthpiece is permanently secured to the pivotal mount.

Toudou discloses a pivotal mount as claimed (*see* discussion for element [1.4] above), while Toudou in view of Wright teaches and suggests a resilient mouthpiece, e.g., mouthpiece 24 in Wright, coupled to a pivotal mount (*see* discussion for element [1.5] above). Toudou in view of Wright further teaches and suggests the subject matter of dependent claim 8 in that the resilient mouthpiece is "permanently secured to the pivotal mount." As explained above for claim construction, "permanently secured" at least for purposes of the '255 Patent refers to two distinct or integrated structures (viz., a resilient mouthpiece and a pivotal mount) not intended to be

separated without destruction of at least a portion of the structures and/or the mechanism that joins the structures.

Wright teaches that a resilient mouthpiece for a user may be integrated with, and not intended to be separated from, a mount. For example, "the whole of the mouthpiece may be flexible" and then molded onto a polypropylene base "via a second shot process." Ex. 1009 at 4:11-17. Alternatively, the mouthpiece could be partially resilient and partially non-flexible: "[t]he mouthpiece can be provided with a portion of the mouthpiece for example the top portion being flexible." *Id.* at 7:8-10. In either embodiment, the resilient mouthpiece is integrated together with a polypropylene or other non-flexible base on which the mouthpiece is permanently mounted. *Id.* at 8:5-7 ("The components are of a size and shape that remove any choking hazard and again makes cleaning more easy - for example the mouthpiece comprises a single integral piece."), 3:1 ("Fig. 1c shows a sectional view of the cover with an integrally moulded spout"); 3:14 ("Fig. 3a shows a sectional view of the spout integrally moulded onto a screw ring …"). Therefore, Toudou in view of Wright teaches and suggests all limitations of claim 8.

It would have been obvious to have implemented the resilient mouthpiece as taught by Wright as suction port 32 within an integral structure of nozzle 3 in Toudou at least because a unitary nozzle and mouthpiece structure is what Toudou describes. Moreover, an integrated mouthpiece and pivotal mount or spout results in fewer parts, which as taught by Toudou eases disassembly and washing (Ex. 1008 ¶ [0018]) and reduces costs (*id.* at Abstract ("The present invention realizes a bottle cap with a nozzle that enables … the cost to be reduced by lowering the number of parts with a simple configuration and is convenient to handle and compact."), [0021] ("the number of parts and the number of assembling steps can be reduced, which can contribute to the cost reduction")). Therefore, Toudou in view of Wright renders claim 8 unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

6. Claim 13

13. The drink container of claim 1, wherein the resilient mouthpiece includes a dispensing face, and further wherein the dispensing outlet extends through the dispensing face of the resilient mouthpiece.

See Ground 4, [Claim 13], *supra*, which is incorporated by reference.

As discussed above for [1.5], it would have been obvious to have integrated a resilient mouthpiece to the pivotal mount, i.e., nozzle 3 and suction port 32, in view of Wright. It follows

that a resilient mouthpiece coupled to nozzle 3 by being integral with nozzle 3, as discussed above for claim element [1.5], would further define a dispensing outlet so that the liquid could be extracted from the bottle by the user, as taught by Wright. Specifically, this secondary reference discloses a dispensing face within a resilient mouthpiece through which a dispensing outlet extends. *See* Ex. 1009 (Wright) at FIG. 2A (upper mouthpiece portion 40 above duck bill valve 44).

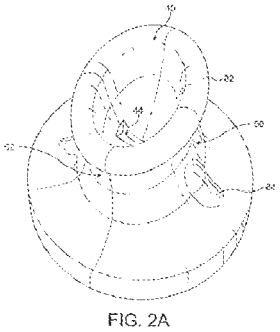
Accordingly, Toudou in view of Wright would have rendered obvious the subject matter recited in claim 13.

7. Claim 14

14. The drink container of claim 13, wherein the dispensing outlet is defined by a slit that extends through the dispensing face of the resilient mouthpiece.

As indicated for claim 13 above, Toudou discloses that a hole at the tip of suction port 32 on nozzle 3 as a dispensing outlet. *See* Ex. 1008 at Abstract ("The present invention is constituted of a bottle cap with a nozzle, … comprising: a nozzle provided with a suction port at its tip …"); *id.* ¶ [0014] ("The other end of the flow path … penetrates through the suction port 32 and opens at the tip, …").

Wright further teaches an opening within a dispensing end of a resilient mouthpiece that is defined by a slit. Specifically, Wright teaches a duck bill valve, shaped similarly to suction port 32 in Toudou, as part of its resilient mouthpiece including an outlet defined by a slit 44, as illustrated in FIGS. 2A, 2D, and 2E below:


FIG. 2A

Wright Resilient Mouthpiece

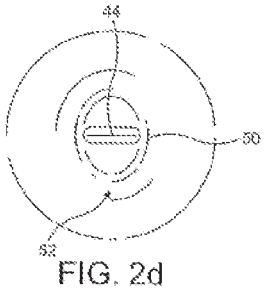
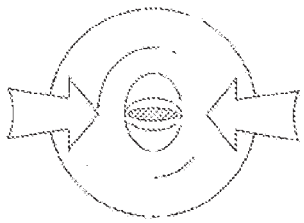


FIG. 2d

Slit 44 in Closed Position


FIG. 2e

Slit 44 in Open Position

Wright explains that opening 44 corresponds to a slit: "Referring to figure 2D, the upper mouthpiece portion can be viewed as being substantially oval in cross-section having two 'long sidewalls' 50 visible in front cross-section and two 'short sidewalls' 52 visible in side cross-section

terminating in a concave top. The duck bill valve 44 is located perpendicular to the long sidewalls 50." Ex. 1009 at 5:2-5. Therefore, Toudou in view of Wright teaches and suggests all limitations of claim 14.

It would have been obvious in view Wright to implement a slit opening within suction port 32 of Toudou, which is explicitly intended for possible use in "baby bottles." Ex. 1008 ¶ [0027]. In doing so, "the vessel promotes a healthy drinking action, especially for infants," which according to Wright occurs when the outlet "opens under a pursing, biting or stripping action rather than sucking. " Ex. 1009 at 2:13-18; 5:14-17; 6:15-24 ("It is well established that this stripping action is beneficial to the infant's dental development and that the transition to a pure sucking action too early can be detrimental."). Therefore, Toudou in view of Wright renders claim 14 unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

8. Claim 18

18. The drink container of claim 1, wherein the pivotal mount is adapted to selectively engage the flexible tube to apply crimping forces thereto and thereby configure the manual on/off valve to the closed configuration as the pivotal mount is pivoted from the dispensing position to the stowed position.

See Discussion of Toudou in Ground 4, [Claim 18], *supra*, which is incorporated by reference.

Accordingly, Toudou discloses the limitations recited in dependent claim 18, and claim 18 would have been obvious over Toudou in view of Wright.

9. Claim 19

19. The drink container of claim 1, wherein the flexible tube is secured to the pivotal mount.

See Discussion of Toudou in Ground 4, [Claim 19], *supra*, which is incorporated by reference.

As a result, Toudou discloses the limitations recited in dependent claim 19, and claim 19 would have been obvious over Toudou in view of Wright.

I. Ground 9: Alternatively, Toudou in View of Wright, Further in View of Anderson, Would Have Rendered Obvious Claim 6

As explained for Ground 5 above, Toudou in view of Anderson would have rendered obvious the subject matter of claim 6. Claim 6 also, or alternatively, would have been obvious over

Toudou in view of Wright, further in view of Anderson under 35 U.S.C. § 103(a) (pre-AIA), as explained below.

6. The drink container of claim 3, wherein the cap assembly further includes a handle that extends from the cap assembly base and includes the pair of lateral guards and the dust cover.

See Discussion of Toudou and Anderson in Ground 5, [Claim 6], *supra*, which is incorporated by reference.

Accordingly, Toudou in view of Anderson teaches and suggests the limitations recited in claim 6, and Toudou in view of Wright, further in view of Anderson renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

J. Ground 10: Alternatively, Toudou in View of Wright, Further in View of Anderson or Roth, Would Have Rendered Obvious Claim 7

As explained for Ground 6 above, Toudou in view of Anderson or Roth would have rendered obvious the subject matter of claim 7. Claim 7 also, or alternatively, would have been obvious over Toudou in view of Wright, further in view of Anderson or Roth under 35 U.S.C. § 103(a) (pre-AIA), as explained below.

7. The drink container of claim 1, wherein the cap assembly further comprises a handle [7.1] that extends in a fixed orientation from the cap assembly base and, [7.2] which defines a closed loop with an aperture through which a user's finger may be inserted to carry the drink container.

See Discussion of Toudou, Anderson, and Roth in Ground 6, [Claim 7], *supra*, which is incorporated by reference.

Therefore, Toudou in view of Anderson or Roth teaches and suggests the limitations recited in claim 7, and Toudou in view of Wright, further in view of Anderson or Roth renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

K. Ground 11: Alternatively, Toudou in View of Canham, Further in View of Heise, Would Have Rendered Obvious Claims 1, 3-5, 13, 18, and 19

While Toudou inherently discloses a resilient mouthpiece as recited in independent claim 1 (or renders that subject matter obvious), and Toudou and Wright render obvious a resilient mouthpiece integrally coupled to a pivotal spout within the scope of the claims, Toudou in view

of Canham, further in view of Heise, would also have rendered obvious claims 1, 3-5, 13, 18, and 19 of the '255 Patent under 35 U.S.C. § 103(a) (pre-AIA), as explained below.

1. Claim 1

[1.pre] A drink container, comprising: [1.1] a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;

See Discussion of Toudou in Ground 4, [1.pre], *supra*, which is incorporated by reference.

[1.2] a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines

See Discussion of Toudou in Ground 4, [1.2], *supra*, which is incorporated by reference.

[1.2.1] a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes [1.2.2] an inlet through which drink fluid from the fluid container may enter the fluid conduit, and [1.2.3] a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises:

See Discussion of Toudou in Ground 4, [1.2.1], [1.2.2], and [1.2.3], *supra*, which are incorporated by reference.

[1.3] a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container;

See Discussion of Toudou in Ground 4, [1.3], *supra*, which is incorporated by reference.

[1.4] a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base,

See Discussion of Toudou in Ground 4, [1.4], *supra*, which is incorporated by reference.

[1.4.1] wherein the pivotal mount includes a pair of lateral projections, [1.4.2] wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend;

See Discussion of Toudou in Ground 4, [1.4.1] and [1.4.2], *supra*, which are incorporated by reference.

[1.5] a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base,

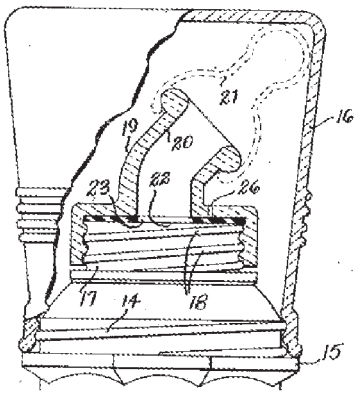
Toudou discloses a mouthpiece in the form of suction port 32 coupled to the pivotal mount, i.e., nozzle 3, by being integrated with nozzle 3 for pivotal movement with nozzle 3 relative to the cap assembly base, i.e., main body 2 of bottle cap 1. *See* Ex. 1008 at Abstract ("bottle cap with a nozzle comprising: a nozzle provided with a suction port at its tip and rotation shafts on both sides of the base portion … wherein the flow path of the internal liquid is opened or closed in connection with tup and down motion associated with the rotation of the nozzle."). As explained for Ground 4 above, Toudou alone inherently anticipates, or would have rendered obvious, that suction port 32 is a "resilient" mouthpiece in [1.5]. It also, or alternatively, would have been obvious over Toudou in view of Canham, further in view of Heise, to have coupled a resilient mouthpiece to the pivotal mount by attaching a resilient mouthpiece to suction port 32, for pivotal movement with nozzle 3 relative to cap base 2, as explained below.

In the same field of endeavor as Toudou and the '255 Patent, Canham discloses a bottle 11 for dispensing liquids with a cap threadedly engaged onto a reduced neck portion 17 of the bottle. The cap, termed nipple adapter member 19, is illustrated in FIGS. 1 and 5 of Canham as secured to the top of bottle 11. A "conventional nipple 21" is received onto the outlet end of adapter member 19, from which a baby may be fed. Ex. 1013 at 1:55-56, 2:21-23. Because conventional nursing nipples are resilient mouthpieces intended to promote and accommodate a baby's sucking, Canham teaches to couple a resilient mouthpiece in the form of nipple 21 to a dispensing mount pivoted "at about 45° to the axis of the container" and extending from within a cap threaded on the neck of the container, in accordance with [1.5].

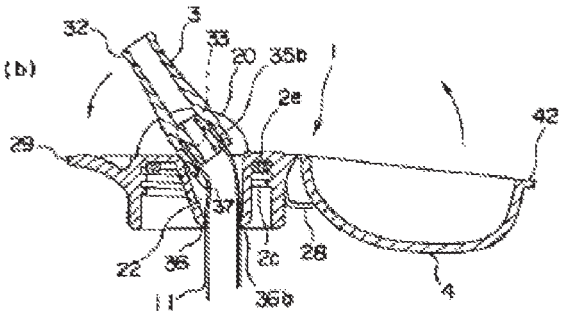
The reasons for mounting "a conventional nipple 21" of Canham on suction port 32 in Toudou flow from the two references. Toudou explains that pivoting nozzle 3 within its bottle cap so that suction port 32 is at an angle provides more comfortable drinking: "[S]ince the nozzle (straw) does not project vertically upward unlike the conventional containers shown in FIGS. 9 and 10, the internal liquid can conveniently be drunk in a comfortable posture without unreasonably tilting the head or upper body." *Id.* ¶ [0029]; *id.* at Abstract ("The present invention realizes a bottle cap with a nozzle that enables the nozzle to be tilted at an appropriate angle to facilitate drinking ….."). Canham also recognizes the increased comfort in drinking from an angled spout and mouthpiece: "The inclined relation of passage 20 of adapter 19 to the axis of the container makes it possible to feed the infant in many different positions comfortably." *Id.* at 2:21-23; *id.* at 2:29-31 ("The angle top makes it easy to handle the container regardless of which way

the baby turns."). And while Toudou explains that its cap 1, with nozzle 3 and suction port 32, can be applied to "baby bottles" (Ex. 1008 ¶ [0027]), Canham teaches the improvement of coupling a nipple 21 to a pivoted spout that is screwed on to the neck of a baby bottle for comfortably feeding a baby. Thus, coupling nipple 21 of Canham to suction port 23 of Toudou would have extended the use of bottle cap 1 in Toudou to "baby bottles," while maintaining the comfort advantages from an angular spout recognized in both references.

The parallels between Canham and Toudou are evident from a comparison of the top portion of FIG. 1 in Canham and FIG. 8(b) of Toudou, as shown below:



Canham Portion of FIG. 1



Toudou FIG. 8(b)

Both caps feature an angled spout for dispensing liquid through a cap threaded onto their bottle. Both spouts culminate in a rimmed lip at the outlet. Shaped like suction port 32 in Toudou, the top end of spout, or nipple adapter member 19, in Canham "is formed to receive a conventional nipple 21" about its rimmed lip for nursing a baby. Ex. 1013 at 1:55-56.

While it is common knowledge—and common sense—that a "conventional nipple" for bottle-feeding a baby as taught by Canham is a "resilient mouthpiece" designed to simulate a mother's breast and to foster sucking behavior for the baby, Heise (Ex. 1012) confirms this fact. Contemporary to Canham, Heise discloses a nipple for use on the spout of a baby bottle. The nipple is made of resilient rubber: "The body is of soft rubber of sufficient thickness to normally retain the shape disclosed in Figure 1 and its outer end 1 which is formed with an outlet opening 4 at its center, is substantially spherical in shape and molded about a reinforcement 5 formed of tough resilient rubber." Ex. 1012 at 2:8-14.

In short, the combination of Toudou and Canham, further in view of Heise, teaches and suggests the subject matter recited in [1.5] for the purpose of comfortably feeding a baby through an angled spout within a bottle cap screwed onto a neck of the bottle.

[1.5.1] wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets;

See Discussion of Toudou in Ground 4, [1.5.1], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being attached to nozzle 3, as discussed above for element [1.5], would move together with nozzle 3. Thus, a resilient mouthpiece as taught by Canham and Heise would likewise, and necessarily, be pivotal about an axis defined by the pair of lateral projections when nozzle 3 pivots as the pair of lateral projections rotate within the pair of sockets, as recited in [1.5.1].

[1.5.2] wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;

See Discussion of Toudou in Ground 4, [1.5.2], *supra*, which is incorporated by reference.

In addition, Canham and Heise teach and suggest a resilient mouthpiece coupled to a spout or nozzle that defines a portion of the fluid conduit, including the dispensing outlet, as recited in [1.5.2]. In Canham, "withdrawal of fluid by the infant" occurs "a substantial continuous flow of fluid to the infant while nursing" occurs through an outlet passage 20 of nipple adapter member 19 and "a conventional nipple 21." Ex. 1013 at 1:7-9, 1:49-56. In Heise, "when this nipple is in its normal condition and applied to a bottle, milk can flow freely from the bottle through the neck 3 into the head or front end 1 and fill the interior of the nipple." Ex. 1012 at 2:43-47. Pressure and suction from the child "causes milk in this chamber to pass out through the discharge opening 4…." *Id.* at 3:3-5. Indeed, a purpose of any mouthpiece for consuming liquids from a bottle is to provide a portion of a fluid conduit leading to a dispensing outlet for the user. Thus, a resilient mouthpiece as taught by Canham and Heise further defines a portion of the fluid conduit, including the dispensing outlet, as recited in [1.5.2].

[1.6] wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further [1.6.1] in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position;

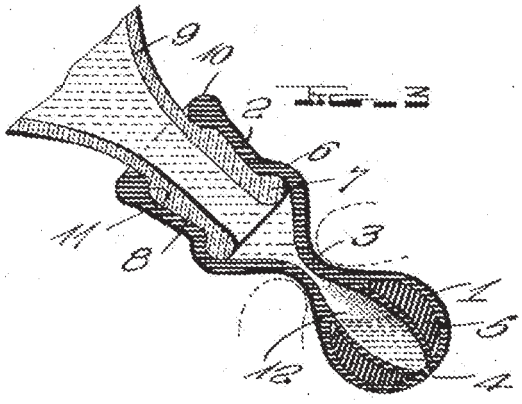
See Discussion of Toudou in Ground 4, [1.6] and [1.6.1], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being attached to nozzle 3 as discussed above for [1.5] would move together with nozzle 3 in Toudou. Thus, a resilient mouthpiece as taught by Canham and Heise would likewise, and necessarily, be selectively pivoted between a stowed and dispensing position as nozzle 3 moves, and, in the dispensing position, the dispensing outlet would be positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position, as recited in [1.6] and [1.6.1].

[1.6.2] wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and

As explained for Ground 4 above, Toudou alone inherently anticipates, or would have rendered obvious, that suction port 32 is "adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth" in [1.6.2]. Element [1.6.2] also, or alternatively, would have been obvious over Toudou in view of Canham, further in view of Heise.

As discussed above for [1.5], it would have been obvious to have attached a resilient mouthpiece to the pivotal mount, i.e., nozzle 3 and suction port 32, in view of Canham further view of Heise. These secondary references further teach and suggest that their resilient mouthpieces are adapted to resiliently compress responsive to compressive forces applied by a user's teeth, as claimed. In particular, Canham discloses the coupling of a "conventional nipple



21" on the angled spout of a bottle cap for nursing, which necessarily indicates a mouthpiece of pliable and resilient consistency required for a baby. Heise further evidences a conventional nipple "of soft rubber of sufficient thickness to normally retain the shape" and explains that "[i]n drinking from the bottle, the baby sucks upon the nipple and pressure of the lips will cause the neck 3 to be constricted, thereby entirely or almost entirely closing the nipple intermediate the length of the neck ...." Ex. 1012 at 2:51-3:1. FIG. 3, shown here, illustrates that the nipple in Heise is adapted to resiliently compress at its neck 3 responsive to compressive forces applied to it from a baby's "lips indicated by dotted lines in

this view." *Id.* at 2:47-51. Moreover, Heise explains that its rubber mouthpiece resiliently responds to compressive forces from a user's teeth: "When a baby is cutting teeth the nipple can be used as a teething device as the reinforcement is sufficiently tough and resilient to permit the head to be chewed upon without losing its spherical shape." *Id.* at 3:27-31.

As a result, further to the discussion above for [1.5], the combination of Toudou with Canham and Heise also teaches and suggests the subject matter of claim element [1.6.2].

[1.7] a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and [1.7.1] an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet;

See Discussion of Toudou in Ground 4, [1.7], *supra*, which is incorporated by reference.

[1.7.2] wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;

See Discussion of Toudou in Ground 4, [1.7.2], *supra*, which is incorporated by reference.

[1.7.3] wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and [1.7.4] wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

See Discussion of Toudou in Ground 4, [1.7.3] and [1.7.4], *supra*, which are incorporated by reference.

In short, the combination of Toudou in view of Canham, further in view of Heise, teaches and suggests all limitations of claim 1 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

2. Claim 3

3. The drink container of claim 1, [3.1] wherein the cap assembly includes a pair of lateral guards that extend on opposed sides of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position,

See Discussion of Toudou in Ground 4, [3.1], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being attached to nozzle 3, as discussed above for element [1.5], would move together with nozzle 3 into its prone

state. Thus, a pair of lateral guards in the form of "opposing wall surfaces" within storage groove 21 of support portion 20 and side walls of closed lid 4 in Toudou would likewise, and necessarily, extend on lateral sides of a resilient mouthpiece as taught by the combination of Canham and Heise when the resilient mouthpiece and the pivotal mount are in the stowed position, as recited in [3.1].

[3.2] and further wherein the cap assembly includes a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position.

See Discussion of Toudou in Ground 4, [3.2], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being attached to nozzle 3 would move together with nozzle 3 into its prone state. Thus, the dust cover of the top and front of lid 4 in Toudou, which extends between the pair of lateral guards in the form of "opposing wall surfaces" within storage groove 21 of support portion 20 and between side walls of closed lid 4 and which extends across at least a portion of the dispensing outlet, would be positioned to also protect a resilient mouthpiece as taught by the combination of Canham and Heise when the resilient mouthpiece and the pivotal mount are in the stowed position, as in [3.2].

As a result, Toudou in view of Canham, further in view of Heise, teaches and suggests all limitations of claim 3 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

3. Claim 4

4. The drink container of claim 3, wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.

See Discussion of Toudou in Ground 4, [Claim 4], *supra*, which is incorporated by reference.

It necessarily follows that a resilient mouthpiece coupled to nozzle 3 by being attached to nozzle 3 as discussed above for claim element [1.5] would move together with nozzle 3 from its prone state to its dispensing state. Thus, a resilient mouthpiece as taught by the combination of Canham and Heise would also pivot away from the dust cover along with suction port 32 on Toudou, as recited in claim 4.

As a result, Toudou in view of Canham, further in view of Heise, teaches and suggests all limitations of claim 3 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

4. Claim 5

5. The drink container of claim 3, wherein the dust cover projects above an upper surface of the cap assembly base.

See Discussion of Toudou in Ground 4, [Claim 5], *supra*, which is incorporated by reference.

Accordingly, Toudou discloses the limitations recited in claim 5, and Toudou in view of Canham, further in view of Heise, would have rendered obvious the subject matter of claim 5.

5. Claim 13

13. The drink container of claim 1, wherein the resilient mouthpiece includes a dispensing face, and further wherein the dispensing outlet extends through the dispensing face of the resilient mouthpiece.

See Ground 4, [Claim 13], *supra*, which is incorporated by reference.

As discussed above for [1.5], it would have been obvious to have attached a resilient mouthpiece to the pivotal mount, i.e., nozzle 3 and suction port 32, in view of Canham further view of Heise. It follows that a resilient mouthpiece coupled to nozzle 3 by being attached to nozzle 3, as discussed above for claim element [1.5], would further define a dispensing outlet so that the liquid could be extracted from the bottle by the user, as taught by the combination of Canham and Heise. Indeed, nursing nipples definitionally have a dispensing outlet for delivering liquid from the bottle to the baby through a dispensing face of the nipple. In addition, Heise evidences this structure for its resilient nipple, having an "outer end 1 which is formed with an outlet opening 4 at its center." Ex. 1012 at 2:10-11, FIGS. 1-3.

Accordingly, Toudou in view of Canham, further in view of Heise, would have rendered obvious the subject matter recited in claim 13.

6. Claim 18

18. The drink container of claim 1, wherein the pivotal mount is adapted to selectively engage the flexible tube to apply crimping forces thereto and thereby configure the manual on/off valve to the closed configuration as the pivotal mount is pivoted from the dispensing position to the stowed position.

See Discussion of Toudou in Ground 4, [Claim 18], *supra*, which is incorporated by reference.

Accordingly, Toudou discloses the limitations recited in dependent claim 18, and claim 18 would have been obvious over Toudou in view of Canham, further in view of Heise.

7. Claim 19

19. The drink container of claim 1, wherein the flexible tube is secured to the pivotal mount.

See Discussion of Toudou in Ground 4, [Claim 19], *supra*, which is incorporated by reference.

As a result, Toudou discloses the limitations recited in dependent claim 19, and claim 19 would have been obvious over Toudou in view of Canham, further in view of Heise.

L. Ground 12: Alternatively, Toudou in View of Canham and Heise, Further in View of Anderson, Would Have Rendered Obvious Claim 6

As explained for Ground 5 above, Toudou in view of Anderson would have rendered obvious the subject matter of claim 6. Claim 6 also, or alternatively, would have been obvious over Toudou in view of Canham and Heise, further in view of Anderson, under 35 U.S.C. § 103(a) (pre-AIA), as explained below.

6. The drink container of claim 3, wherein the cap assembly further includes a handle that extends from the cap assembly base and includes the pair of lateral guards and the dust cover.

See Discussion of Toudou and Anderson in Ground 5, [Claim 6], *supra*, which is incorporated by reference.

Accordingly, Toudou in view of Anderson teaches and suggests the limitations recited in claim 6, and Toudou in view of Canham and Heise, further in view of Anderson, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

M. Ground 13: Alternatively, Toudou in View of Canham and Heise, Further in View of Anderson or Roth, Would Have Rendered Obvious Claim 7

As explained for Ground 6 above, Toudou in view of Anderson or Roth would have rendered obvious the subject matter of claim 7. Claim 7 also, or alternatively, would have been

obvious over Toudou in view of Canham and Heise, further in view of Anderson or Roth, under 35 U.S.C. § 103(a) (pre-AIA), as explained below.

7. The drink container of claim 1, wherein the cap assembly further comprises a handle [7.1] that extends in a fixed orientation from the cap assembly base and, [7.2] which defines a closed loop with an aperture through which a user's finger may be inserted to carry the drink container.

See Discussion of Toudou, Anderson, and Roth in Ground 6, [Claim 7], *supra*, which is incorporated by reference.

Therefore, Toudou in view of Anderson or Roth teaches and suggests the limitations recited in claim 7, and Toudou in view of Canham and Heise, further in view of Anderson or Roth, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

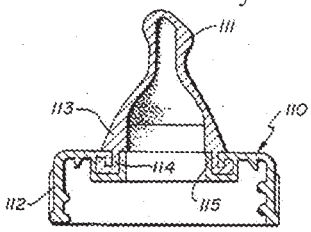
N. Ground 14: Alternatively, Toudou in View of Canham and Heise, Further in View of Phlaphongphanich, Would Have Rendered Obvious Claim 8

As explained for Ground 4 above, Toudou discloses the subject matter of claim 8. Claim 8 also, or alternatively, would have been obvious over Toudou in view of Canham and Heise, further in view of Phlaphongphanich, under 35 U.S.C. § 103(a) (pre-AIA), as explained below.

8. The drink container of claim 1, wherein the resilient mouthpiece is permanently secured to the pivotal mount.

Toudou discloses a pivotal mount as claimed (*see* discussion for element [1.4] above), while Toudou in view of the combination of Canham and Heise teaches and suggests a resilient mouthpiece coupled to a pivotal mount (*see* discussion for element [1.5] above). Toudou in view Canham and Heise, further in view of Phlaphongphanich, additionally teaches and suggests the subject matter of dependent claim 8 in that the resilient mouthpiece is "permanently secured to the pivotal mount." As explained above for claim construction, "permanently secured" at least for purposes of the '255 Patent refers to two distinct or integrated structures (viz., a resilient mouthpiece and a pivotal mount) not intended to be separated without destruction of at least a portion of the structures and/or the mechanism that joins the structures.

In the same field of endeavor as Toudou and the '255 Patent, Phlaphongphanich discloses a "traditional" baby bottle nipple having a mouth portion corresponding to element [1.5] made of an elastomer, such as liquid silicone rubber. Ex. 1010 at Abstract, 3:30-34. The nipple 110 or mouth portion is coupled to a base portion 112 of semi-rigid thermoplastic, such as polypropylene, in a two-mold process, as shown here in FIG. 10. *Id.* The base portion is configured for attachment to the source of liquid, such as a baby bottle.



Phlaphongphanich teaches to permanently secure feeding nipple of liquid silicone rubber to a mount formed of semi-rigid thermoplastic such as polypropylene. Indeed, the two-mold process in Phlaphongphanich is taught to bind the resilient nipple 110 to the non-flexible base 112 so that "the mouth portion is securely locked to the base portion … to inhibit the pulling of the skirt from the cavity." Ex. 1010 at 4:51-57. This integral construction is fundamental to Phlaphongphanich: "Another object of this invention is the provision of a nipple which can be attached to a baby bottle in such a way that it cannot be pulled free by the baby." *Id.* at 1:23-25.

It would have been obvious to a person of ordinary skill in the art to have permanently secured a resilient mouthpiece, such as the nipple in Canham and Heise, or nipple 110 in Phlaphongphanich, to nozzle 3 of Toudou to form an integrated spout and mouthpiece. A reason for combining Toudou and the teachings of Canham and Heise with Phlaphongphanich is to ensure that the resilient mouthpiece "cannot be pulled free by the baby." Ex. 1010 at 1:23-25. Phlaphongphanich teaches how its resilient nipple 110 may be securely coupled to a base of polypropylene, which is the material of bottle cap 1 in Toudou.

Following the instructions of Phlaphongphanich, one skilled in the art could form "an integral combination of an elastomer mouth portion and a semi-rigid cap portion" in two apparent ways. Ex. 1010 at 1:34-36. First, nipple 110 of Phlaphongphanich could be integrally formed as an extension of suction port 3 on polypropylene nozzle 3 of Toudou. Or nipple 110 and base 112 of Phlaphongphanich could be integrally formed into one unit as taught in Phlaphongphanich, with base 112 being threaded onto nozzle 3 when needed to adapt suction port 32 for appropriate use by "baby bottles." Ex. 1008 (Toudou) ¶ [0027]; Ex. 1010 (Phlaphongphanich) at 1:22-30.

Permanently securing a resilient mouthpiece as in Canham and Heise to nozzle 3 in Toudou would also have advantageously provided a unitary nozzle and mouthpiece structure, which is what Toudou describes. An integrated mouthpiece and pivotal mount or spout would result in

fewer parts, which as taught by Toudou eases disassembly and washing (Ex. 1008 ¶ [0018]) and reduces costs (*id.* at Abstract ("The present invention realizes a bottle cap with a nozzle that enables … the cost to be reduced by lowering the number of parts with a simple configuration and is convenient to handle and compact."), [0021] ("the number of parts and the number of assembling steps can be reduced, which can contribute to the cost reduction")).

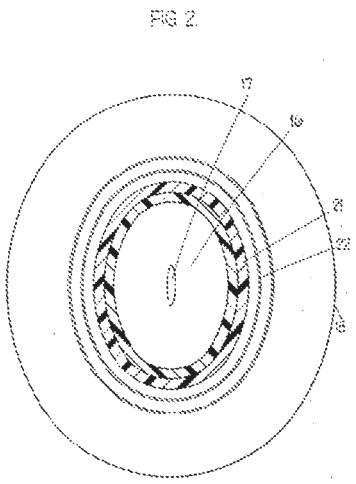
Therefore, Toudou in view of Canham and Heise, further view of Phlaphongphanich, teaches and suggests all limitations of claim 8 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

O. Ground 15: Alternatively, Toudou in View of Canham and Heise, Further in View of Hurst or Tupper, Would Have Rendered Obvious Claim 14

Alternative to Ground 7 above, Toudou in view of Canham and Heise, further in view of Hurst or Tupper would have rendered obvious claim 14 under 35 U.S.C. § 103(a) (pre-AIA), as explained below.

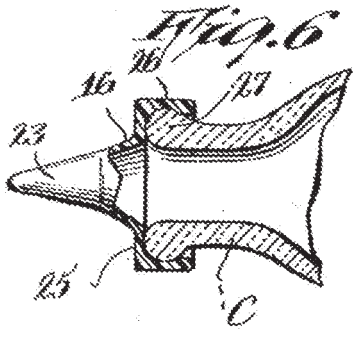
14. The drink container of claim 13, wherein the dispensing outlet is defined by a slit that extends through the dispensing face of the resilient mouthpiece.

As indicated for claim 13 above, Toudou discloses that a hole at the tip of suction port 32 on nozzle 3 as a dispensing outlet. *See* Ex. 1008 at Abstract ("The present invention is constituted of a bottle cap with a nozzle, … comprising: a nozzle provided with a suction port at its tip …"); *id.* ¶ [0014] ("The other end of the flow path … penetrates through the suction port 32 and opens at the tip, …"). The combination of Canham and Heise also discloses openings through a dispensing end of a resilient mouthpiece, as discussed for claim 13. Hurst or Tupper further teach openings within a dispensing end of a resilient mouthpiece that is defined by a slit.

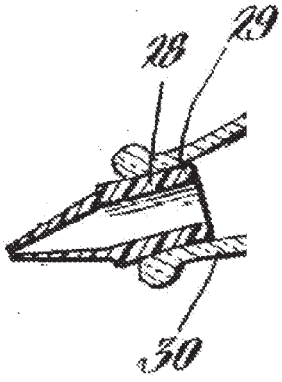


Hurst teaches an "infants feeding bottle" comprising a container for liquid and a teat securable onto the container. Ex. 1016 at Abstract. The teat has an oval shape, and an outlet 17 for passing liquid from the bottle is "in the form of a slit in the center of the end of teat 16." *Id.* at 1:45-46; FIG. 2. It would have been obvious to have implemented a dispensing outlet in the shape of a slit, as claimed, in the resilient mouthpieces of Canham and Heise to accomplish the advantages advocated by Hurst: "The slit provides means for regulating the rate at which feeding takes place, and the oval section of the feeding bottle allows the orientation of the slit to be readily recognised." *Id.* at 4:3-6.

Alternatively, in the same field of endeavor as Toudou and the '255 Patent, Tupper discloses a seal of "resilient plastic material" according to element [1.5] removably attached to a spout for consuming fluid contents from a vessel or container. Ex. 1011 at 1:15-17, 3:45. "The device serves to sealably engage the vessel neck … to act simultaneously as a sipper for withdrawal of fluid contents, …" *Id.* at 1:26-31. In one option, the seal has an engaging groove 14 with a side wall 11 or an engaging flange 26 capable of being applied around the outside of vessel rim "for complete hermetical engagement," as illustrated in FIG. 4 or below left in FIG. 6. *Id.* at 2:44-49. In another option, shown below right in a portion of FIG. 9, a cylindrical section 28 of the seal may frictionally engage the inner surface 29 of a passageway "in the form of a stopper" (*id.* at 2:67-3:2, FIG. 9).

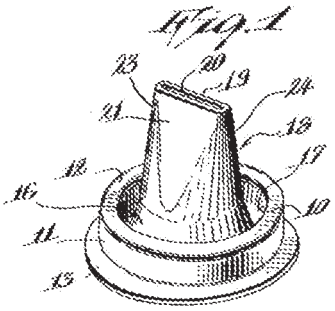


Tupper FIG. 6



Tupper Portion of FIG. 9

Tupper discloses an elongated slot 20 in the dispensing end of its resilient mouthpiece, as shown for example in FIG. 1. The shape of slot 20 can aid in drawing liquid from the bottle when the mouthpiece is "squeezed or deformed by the mouth or teeth of the user," "wherein the sipping or drawing operation is capable of functioning … by alternate lip or teeth compression of the tubular structure to force fluid contents therethrough based on the principle of nipple feeding." Ex. 1011 at 1:41-49; *id.* at 3:40-42 ("the dispensing end is capable of being squeezed or deformed by the mouth or teeth of the user …"). In addition, slot 20 helps to retain liquid if the bottle is overturned. As explained in Tupper, "[W]hen the elongated slot 20 of the sipper seal is held in any non-drinking position capable of creating a gravity flow toward slot 20, the fluid tends to completely fill the entire area of the slot to check spillage by reason of fluid capillarity and surface tension." *Id.* at 3:29-34; *id.* at 4:16-19 ("said slot serving either as a withdrawing outlet for fluid contents or to check the flow of said fluid contents when the vessel lies in horizontal or other leaking position").



Therefore, Toudou in view of Canham and Heise, further in view of Hurst or Tupper, teaches and suggests all limitations of claim 14 and, therefore, renders that claim unpatentable under 35 U.S.C. § 103(a) (pre-AIA).

VI. Secondary Considerations

This Request demonstrates that the Challenged Claims of the '255 Patent are unpatentable as either being anticipated or having been obvious in view of the prior art references. The Applicant did not identify any evidence of secondary considerations during prosecution. Further, the clear teachings in the prior art cannot be overcome by any supposed "secondary considerations." *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 36 (1966); *see Ohio Willow Wood Co. v. Alps South, LLC*, 735 F.3d 1333, 1344 (Fed. Cir. 2013) ("[W]here a claimed invention represents no more than the predictable use of prior art elements according to established functions, as here, evidence of secondary indicia are frequently deemed inadequate to establish non-obviousness.").

VII. Disclosure of Concurrent Litigation, Reexamination, and Related Proceedings

The '255 Patent is at issue in the following district court matter: *CamelBak Products, LLC v. Zak Designs, Inc.*, Case No. 5-21-cv-05109 (W.D. Ark.) (Jun. 11, 2021). Requester is unaware of any prior reexaminations or other post-grant proceedings or other litigations involving the '255

Patent. U.S. Patent No. 9,463,911, which issued from a grandparent application of the '418 Application, is currently undergoing *ex parte* reexamination under Control No. 90/015,013.

VIII. Conclusion

Requester requests the issuance of an Office Action rejecting the Challenged Claims based on one or more of Grounds 1-15 detailed above. The Commissioner is hereby authorized to charge Deposit Account 12-0769 under Docket No. Z036-0005RE the *Ex Parte* Reexamination fee of $12,600 under 37 C.F.R. § 1.20(c)(2). Requester believes no other fee is due with this submission; however, the Commissioner is hereby authorized to charge any fee deficiency or credit any over-payment to Deposit Account 12-0769.

Please direct all correspondence in this matter to the undersigned.

Respectfully submitted,

Dated: January 13, 2023

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