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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TROVE BRANDS, LLC
Petitioner
v.

CAMELBAK PRODUCTS, LLC
Patent Owner

IPR2024-01137
Patent 10,676,255

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 10,676,255**

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37 C.F.R. § 314	98
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TABLE OF EXHIBITS

Exhibit No.	Description
1001	U.S. Patent No. 10,676,255 (“the ’255 patent”)
1002	Ex Parte Reexamination Certificate No. 10,676,255 C1
1003	Declaration of Glenn E. Vallee, Ph.D.
1004	Certified English Translation of Japanese Patent Publication No. 2002-211613 (“Nakajima”)
1005	U.S. Patent No. 6,070,767 (“Gardner”)
1006	Certified English Translation of International Publication No. WO 2004/063042 (“Ribarits”)
1007	U.S. Patent No. 4,485,963 (“Panicci”)
1008	U.S. Patent No. 5,203,468 (“Hsu”)
1009	Certified English Translation of Korean Patent Publication No. KR 200282506 Y1 (“Park”)
1010	U.S. Patent No. 6,523,711 (“Hughes”)
1011	Excerpts of the File History of the ’255 Patent
1012	Excerpts of the Reexamination of the ’255 Patent
1013	CamelBak Infringement Contentions for the ’255 patent dated December 21, 2023, in <i>Trove Brands, LLC v. CamelBak Products, LLC, et al.</i> , No. 5:23-cv-04267-PCP (N.D. Cal. Feb. 14, 2024)
1014	Order Setting Case Schedule in <i>Trove Brands, LLC v. CamelBak Products, LLC, et al.</i> , No. 5:23-cv-04267-PCP (N.D. Cal. Feb. 14, 2024)

Petitioner Trove Brands, LLC (“Petitioner”) requests *inter partes* review of claims 1-7, and 9-23 (“challenged claims”) of U.S. Patent No. 10,676,255 (“the ’255 patent”), which lists CamelBak Products, LLC (“PO” or “Patent Owner”) as assignee.

I. MANDATORY NOTICES

A. Real Party-In-Interest (37 C.F.R. §42.8(b)(1))

Trove Brands, LLC is the real party-in-interest.

B. Related Matters (37 C.F.R. §42.8(b)(2))

Petitioner has filed a suit against PO seeking a declaratory judgment of noninfringement of the ’255 patent by Petitioner’s Owala Flip (For Kids) product. *Trove Brands, LLC v. CamelBak Products, LLC et al.*, No. 5:23-cv-04267 (N.D. Cal.).

Petitioner is not aware of any other judicial or administrative matter that would affect, or be affected by, a decision in this proceeding.

C. Lead and Backup Counsel (37 C.F.R. §42.8(b)(3))

Petitioner provides the following designation of counsel, all of whom are included in Customer No. 20,995 identified in Petitioner’s Power of Attorney.

Lead Counsel	Back-up Counsel
Ali S. Razai (Reg. No. 60,771) <u>Postal and Hand-Delivery Address:</u> Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 Telephone: (949) 760-0404 Facsimile: (949) 760-9502	Joseph F. Jennings (Reg. No. 40,664) Jared Bunker (Reg. No. 58,474) Cheryl Burgess (Reg. No. 60,771) <u>Postal and Hand-Delivery Address:</u> Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 Telephone: (949) 760-0404 Facsimile: (949) 760-9502

D. Service Information (37 C.F.R. §42.8(b)(4))

Please address all correspondence to lead counsel and back-up counsel at the addresses shown above. Petitioner also consents to electronic service by email to BoxTrove2@knobbe.com.

E. Payment of Fees (37 C.F.R. §42.103)

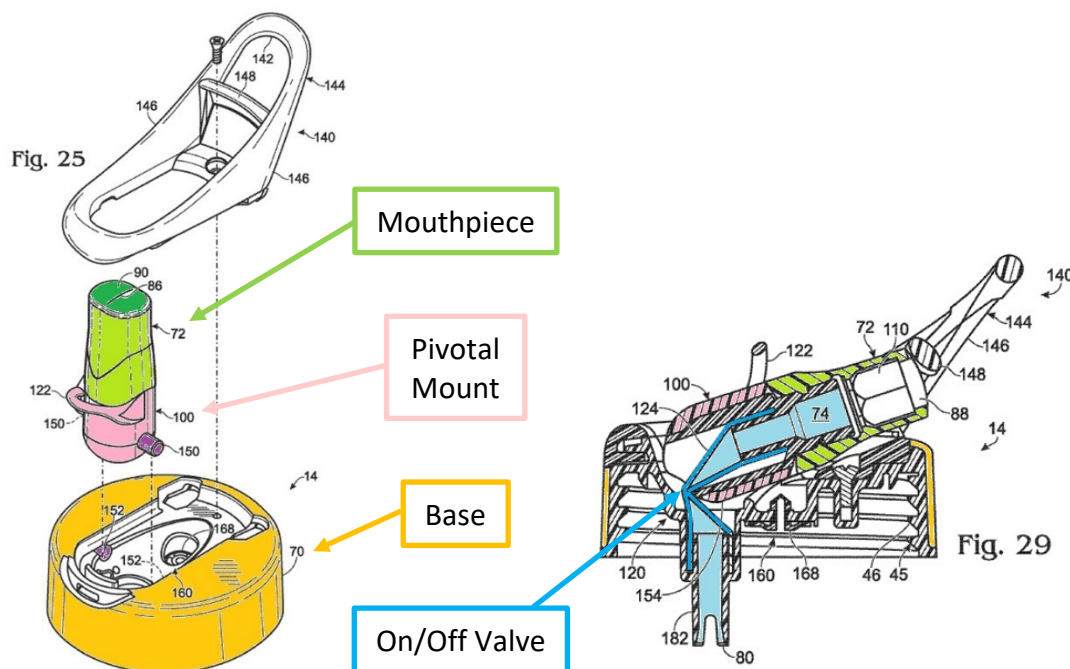
The fee for this petition has been paid. Any additional fees may be charged to Deposit Account 11-1410.

F. Grounds for Standing (37 C.F.R. §42.104)

Petitioner certifies that the '255 patent is available for IPR and that Petitioner is not barred or estopped from requesting IPR. This petition is being filed within one year of service of Patent Owner's counterclaim (filed November 8, 2023) alleging infringement of the '255 patent.

II. INTRODUCTION

The '255 patent claims a drink container having a removable cap assembly that generally includes four elements: (1) a cap assembly base; (2) a pivotal mount; (3) a resilient mouthpiece; and (4) a manual on/off valve.



(Ex. 1001, Figs. 25, 29).¹

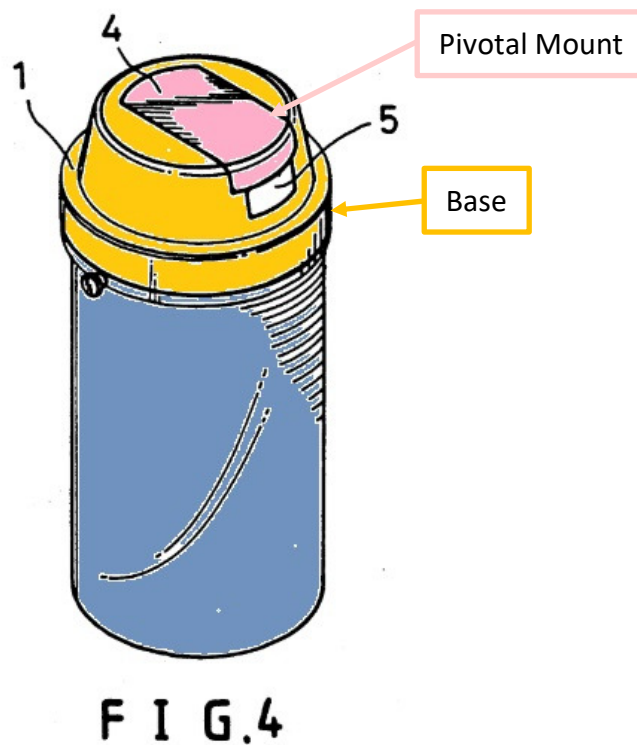
As demonstrated herein, drink containers with cap assemblies as claimed in the '255 patent were known in the art. Because the claimed devices were not patentable at the time of the patent's earliest possible priority date (April 2005), the Board should institute *inter partes* review and cancel the claims.

¹ Figures herein have been colored and annotated for clarity.

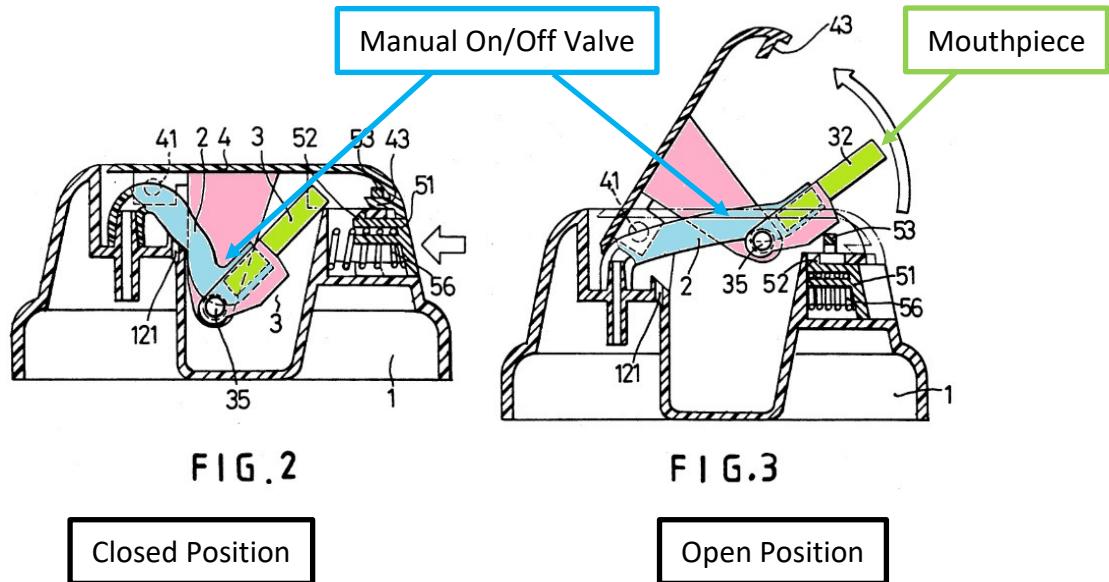
III. BACKGROUND

Drink containers with removable caps have, of course, long been known. And drink cap assemblies with the features claimed in the '255 patent (e.g., base, pivotal mount, resilient mouthpiece, and on/off valve) have also been known since well before the '255 patent's priority date.

For example, Hsu, which issued in 1993, disclosed a drink container with a removeable cap assembly:



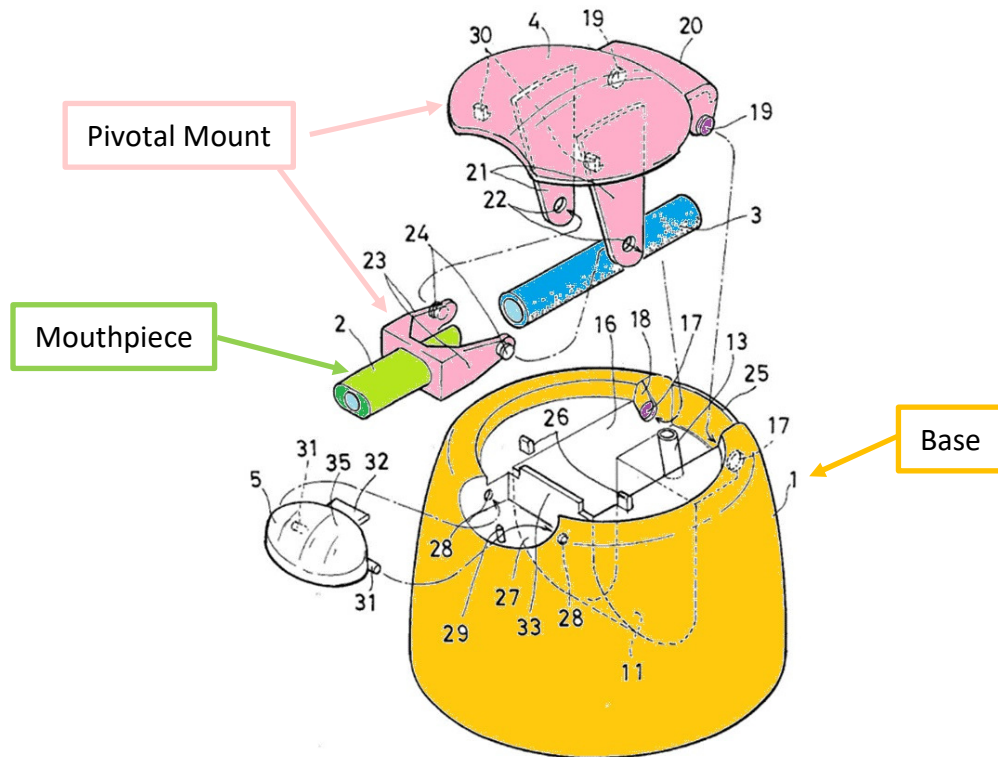
(Ex. 1008, Fig. 4). The removeable cap assembly included a base, a pivotal mount, a mouthpiece (“nipple”), and a manual on/off valve:



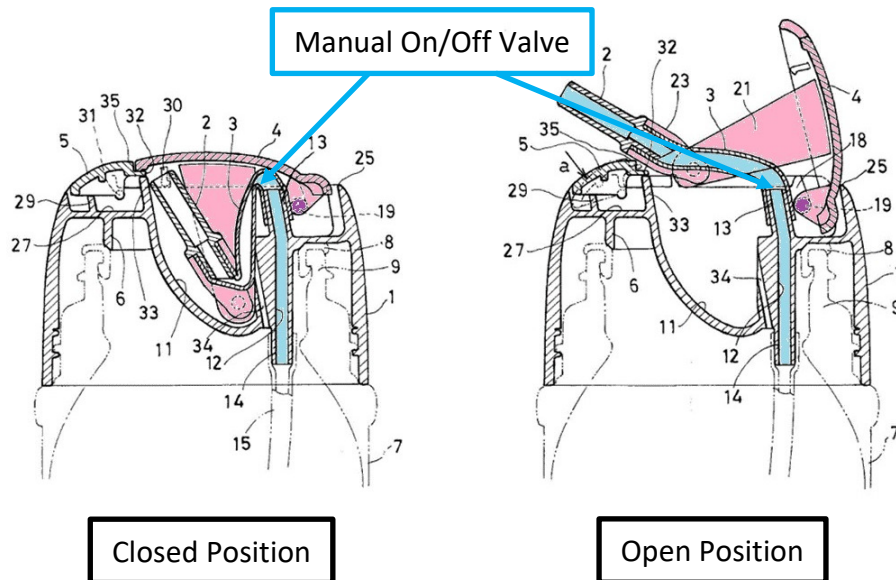
(*Id.*, Figs. 2, 3).

Nakajima, which published in 2002, similarly disclosed a removeable cap assembly including a base, a pivotal mount, a mouthpiece, and a manual on/off valve:

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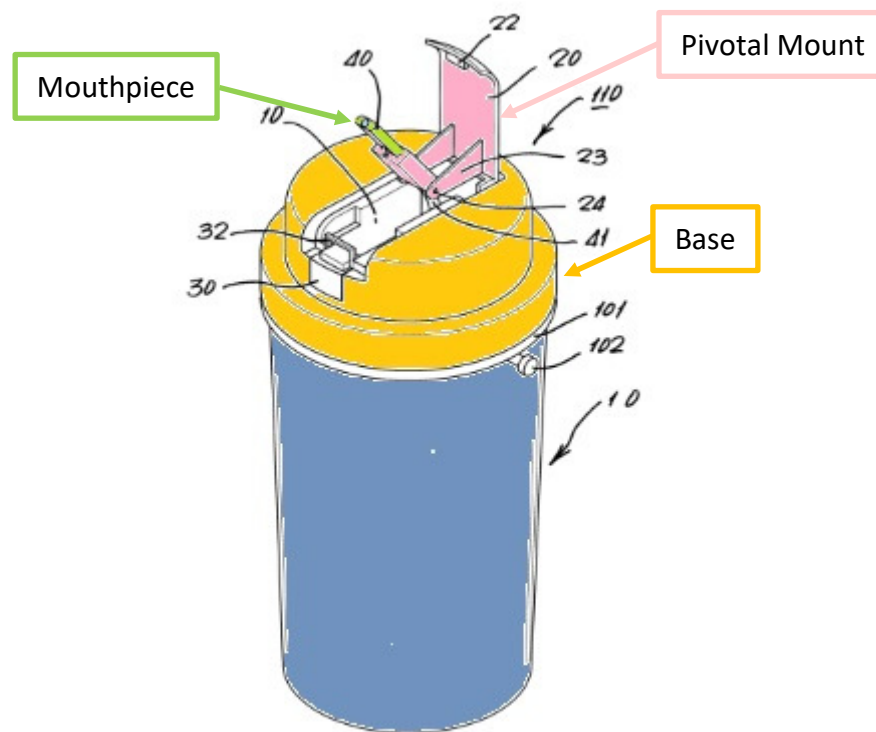


(Ex. 1004, Fig. 1).

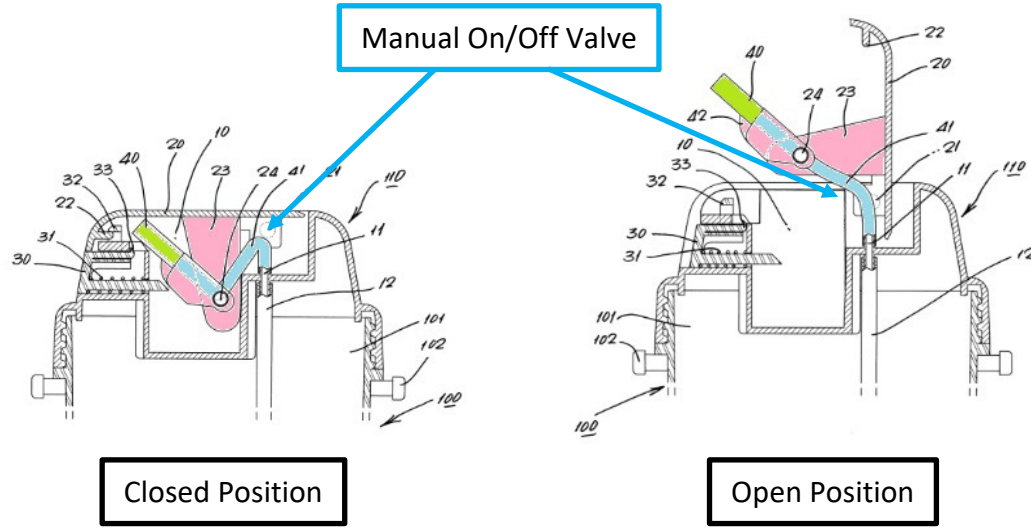


(*Id.*, Figs. 2-3). Nakajima disclosed additional features, such as a pair of lateral guards on opposite sides of the mouthpiece and a dust cover extending between the guards and extending across a portion of the outlet of the mouthpiece. (*Id.*)

Park, which published around the same time as Nakajima, also disclosed a removeable cap assembly including a base, a pivotal mount, a resilient mouthpiece (“straw”), and a manual on/off valve:



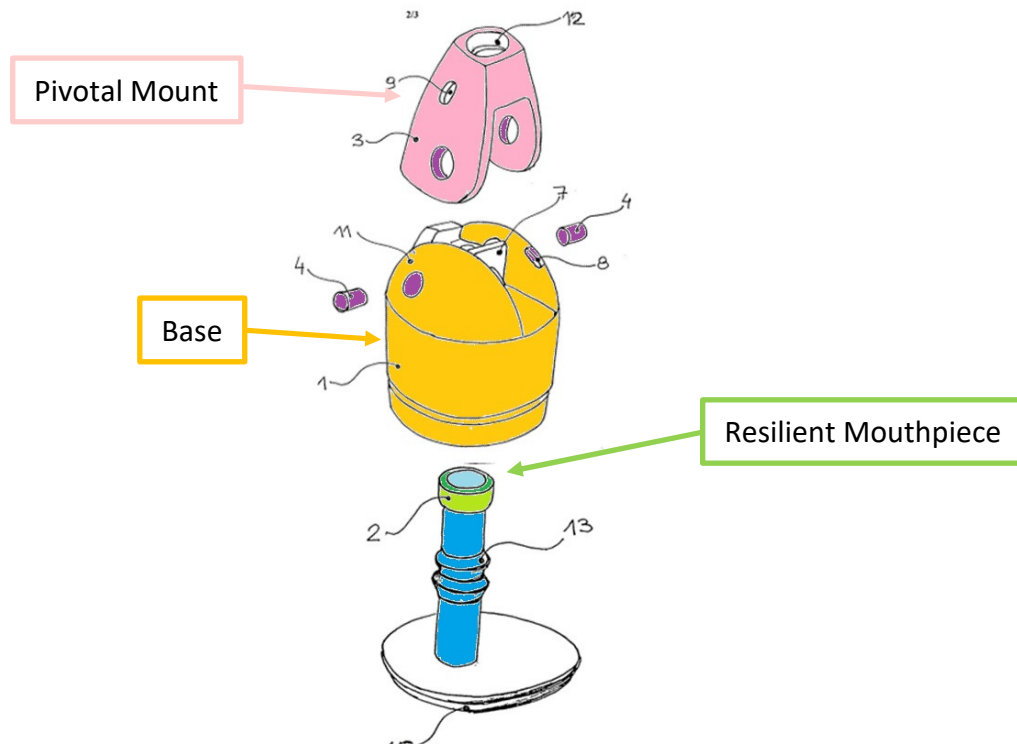
(Ex. 1009, Fig. 2).



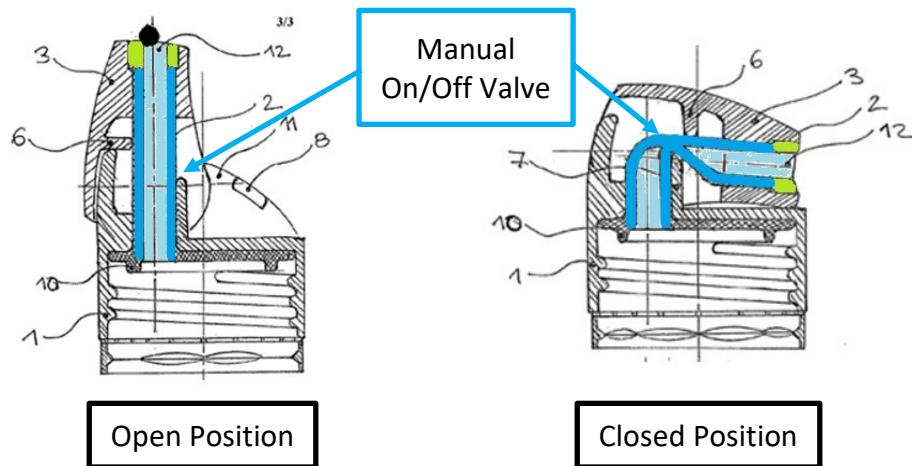
(Ex. 1009, Figs. 5, 6). Park, like Nakajima, also disclosed a pair of lateral guards on opposite sides of the mouthpiece and a dust cover extending between the guards and extending across a portion of the outlet of the mouthpiece. (*Id.*)

Ribarits also disclosed before the '255 patent a removeable cap assembly including a base, a pivotal mount, a resilient mouthpiece (“sealed tubular element of rubber or latex”), and a manual on/off valve:

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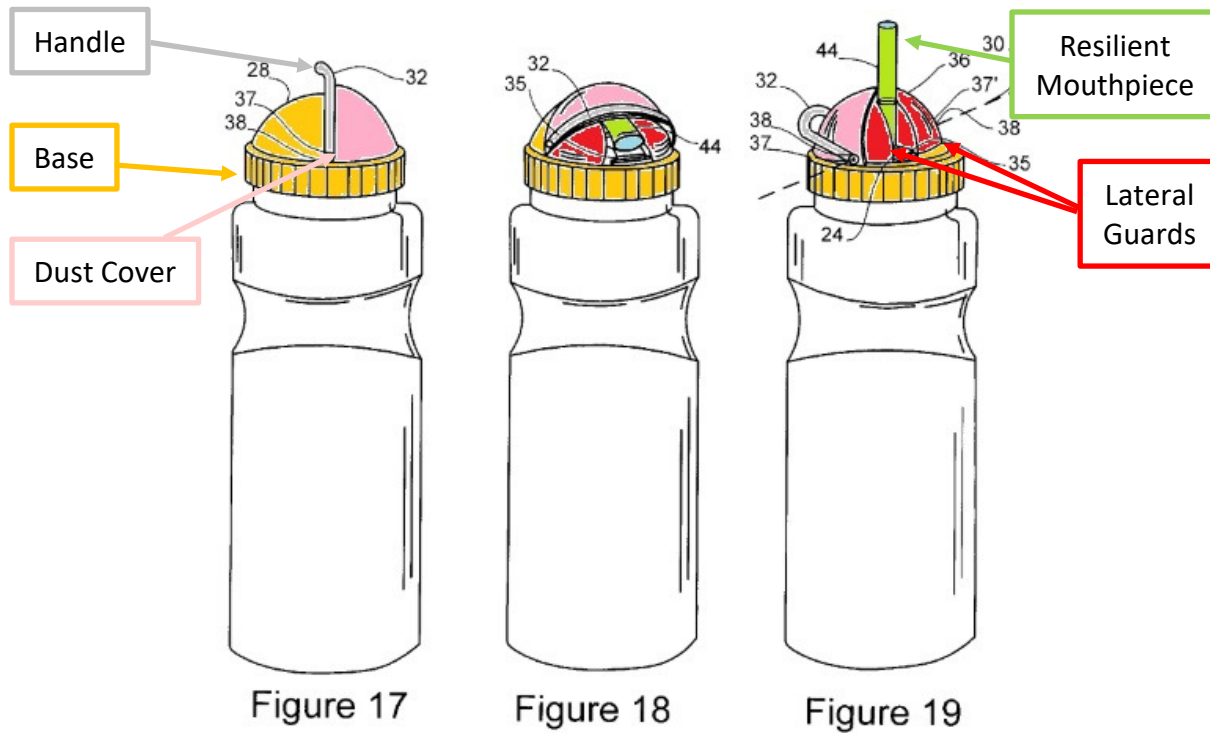


(Ex. 1006, Fig. 2).



(Ex. 1006, Fig. 3).

Hughes, which issued before the '255 patent, also disclosed a removable cap assembly with a pivoting mouthpiece, dust cover, lateral guards, and a carrying handle:



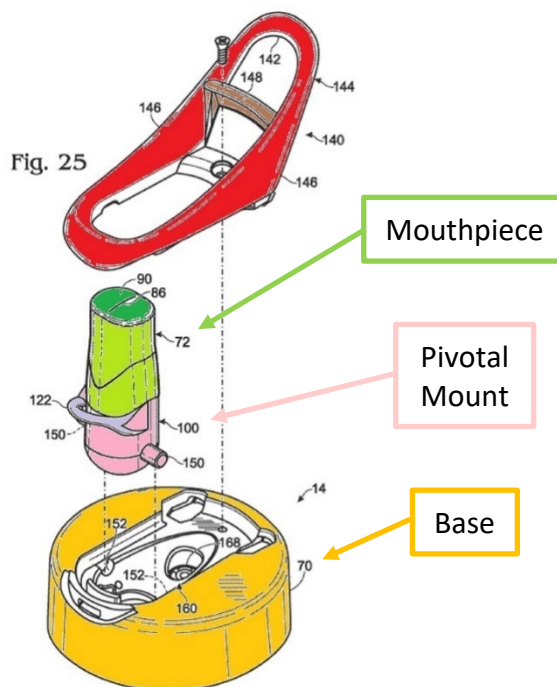
(Ex. 1010, Figs. 17-19). Hughes' mouthpiece was comprised of a flexible "drinking hose" that collapsed when pivoted into a stowed configuration. (*Id.*, 1:29-32, 9:45-53).

IV. THE '255 PATENT

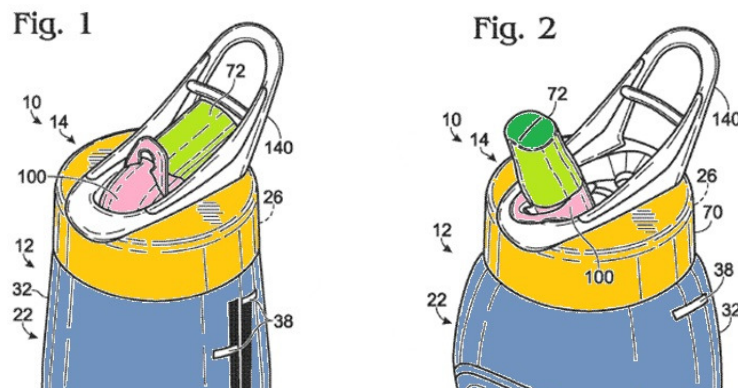
A. Overview

The '255 patent is titled “Drink Bottles” and discloses and claims “drink containers with cap assemblies” that include “drink spout[s]” that are “pivotally coupled to a base of the cap assembly.” (Ex. 1001, Abstract). In some embodiments, the cap assembly includes “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.” (*Id.*)

An exploded view of an embodiment of the claimed cap assembly is provided in Figure 25, below:

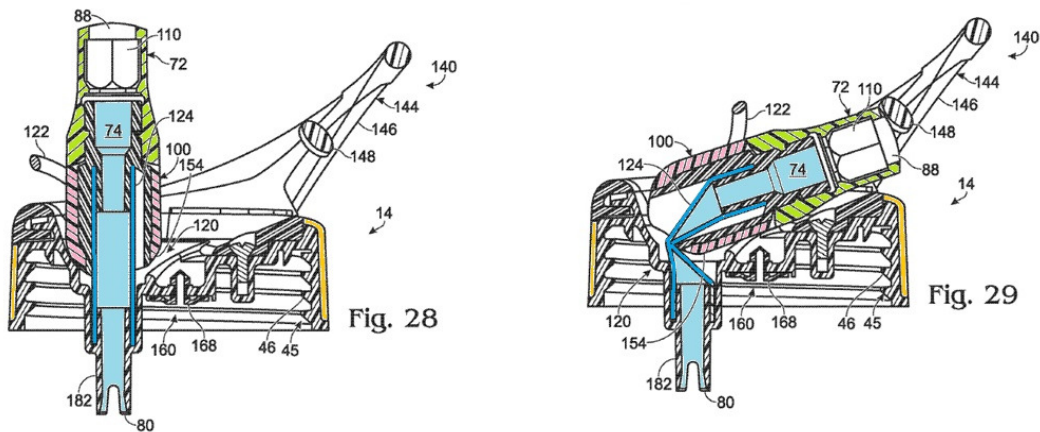


(Ex. 1001, Fig. 25). A mouthpiece (green) is fitted to a mount (pink) and pivots relative to a cap assembly base (yellow). (*Id.*, 16:57-67). The mouthpiece pivots between a stowed position and a dispensing position, as shown in Figures 1 and 2, respectively.



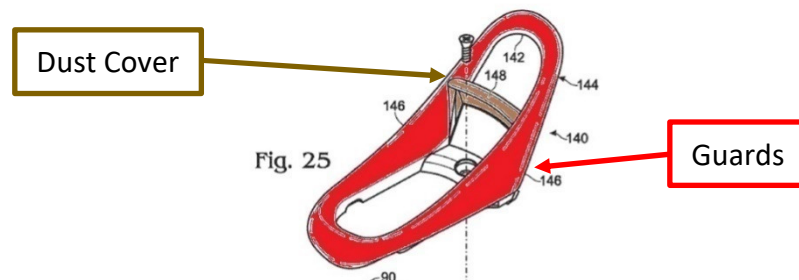
(*Id.*, Figs. 1, 2).

The '255 patent discloses mechanisms that can serve as a manual on/off valve in the cap assemblies. One such valve is shown in Figures 28 and 29, and “includes a flexible tube, or conduit 124” that “collapses” in the stowed configuration, “thereby preventing the flow of drink fluid from the container, through the fluid conduit, and out of the mouthpiece, regardless of the configuration of the mouthpiece.” (*Id.*, 18:20-30).



(*Id.*, Figs. 28-29).

In some embodiments, the cap assembly also includes a pair of guards (red) and a dust cover (brown):



(*Id.*, Fig. 25, 17:8-18).

B. The Challenged Claims

The '255 Patent issued with 19 claims, of which only claim 1 was independent. (Ex. 1001, Claims). On November 20, 2023, the Patent Office issued an *Ex Parte* Reexamination Certificate for the '255 Patent (Ex. 1002), which amended independent claim 1 and added claims 20-23, of which claim 20 is independent. Independent claim 1, as amended during reexamination, is set

forth below (with bracketed labels added for reference and the main elements of the drink container bolded).

Claim 1	
Preamble	A drink container, comprising:
1[a]	a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid;
1[b]	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:
1[b][1]	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;
1[b][2]	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;
1[b][3]	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,

Claim 1	
1[b][3][i]	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;
1[b][3][ii]	wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet;
1[b][3][iii]	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
1[b][3][iv]	wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and
1[b][4]	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;
1[b][4][i]	wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit;
1[b][4][ii]	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[b][4][iii]	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.

Independent claim 20, added during reexamination, is identical to claim 1, but adds the following limitation:

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.

(Ex. 1002, 2:60-65).

The challenged dependent claims add limitations directed to: a carrying handle (claims 2, 6-7, 21); the structure of a dust cover on the cap assembly (claims 3-5, 22); the structure of the resilient mouthpiece (claims 9-16, 23); the structure of the pivotal mount (claim 17-18); and the configuration of the flexible tube portion of the manual on/off valve (claim 19).

Dependent claim 8 is the only claim not being challenged in this petition. Claim 8 depends from claim 1 and further recites: “wherein the resilient mouthpiece is permanently secured to the pivotal mount.” Claim 8 contradicts limitation 1[b][3] of claim 1, which recites: “a resilient mouthpiece ... **removably coupled** to the pivotal mount” (Ex 1002, Claim 1). Accordingly, claim 8 is an improper dependent claim and invalid for reasons beyond the scope of this petition.

V. STATEMENT OF RELIEF REQUESTED

A. IPR Grounds

IPR is requested for the following grounds of unpatentability:

Ground	Claims Challenged	35 U.S.C. §	References
1	1, 3-5, 9-11, 13, 18, 19	103	Nakajima in view of the knowledge of a POSA
2	12, 14-16	103	Nakajima in view of Gardner
3	1, 9, 11, 13, 17-19	103	Ribarits in view of the knowledge of a POSA
4	2-7, 20-23	103	Ribarits in view of Panicci and/or Hughes

B. The '255 Patent Is Subject to the pre-AIA Prior Art Provisions of the Patent Statute.

The '255 patent claims priority to two provisional applications: Application No. 60/670,828 filed Apr. 11, 2005, and Application No. 60/706,700 filed Aug. 8, 2005. Therefore, the earliest possible effective filing date for the challenged claims is April 11, 2005. In co-pending litigation, PO has contended that challenged claims 1, 3-5, 11, 13, and 19 are entitled to a priority date of April 11, 2005, claim 9 is entitled to a priority date of December 20, 2005, and claim 12 is entitled to a priority date of August 8, 2005. (Ex. 1013 at 3).

C. The Asserted References Are Prior Art

This Petition relies on the following prior art references:

Exhibit	Reference	Date	pre-AIA Art Type
1004	Nakajima	Published: July 31, 2002	§ 102(a), (b)
1005	Gardner	Issued: June 6, 2000	§ 102(a), (b)
1006	Ribarits	Published: July 29, 2004	§ 102(a)
1007	Panicci	Issued: Dec. 4, 1984	§ 102(a), (b)
1010	Hughes	Issued: Feb. 25, 2003	§ 102(a), (b)

This Petition is also supported by the expert declaration of Glenn E. Vallee, Ph.D. (Ex. 1003).

VI. LEVEL OF ORDINARY SKILL

Based on the relevant factors, *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995), a hypothetical person of ordinary skill in the art (“POSITA”) would have had an undergraduate degree in mechanical engineering or equivalent coursework, and a year or more of experience in designing, prototyping, and/or manufacturing fluid containers or similar products. (Ex. 1003 ¶26). More work experience may substitute for a lower level of education, and vice versa. (*Id.*).

This Petition does not turn on this specific definition of the level of ordinary skill. The claims are anticipated and/or would be obvious from the perspective of a POSITA under any reasonable definition. (*Id.* ¶27).

VII. CLAIM CONSTRUCTION

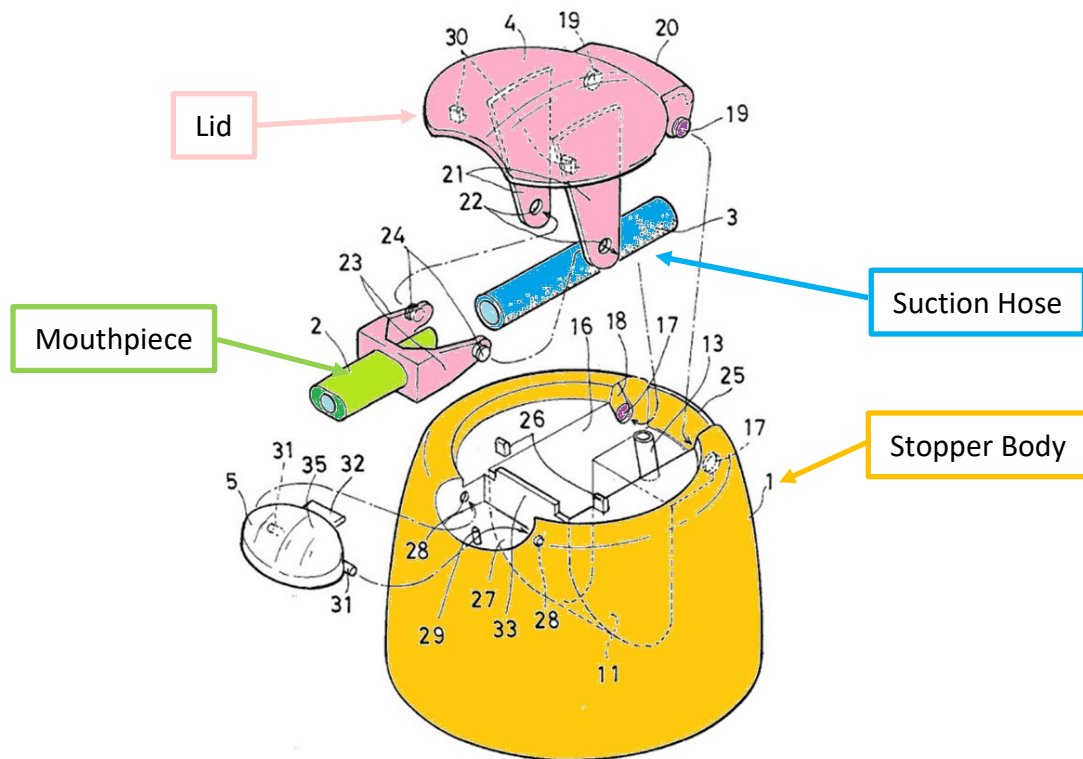
Petitioner submits that no claim terms require construction to resolve the invalidity challenges here. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Ltd. Matal*, 868 F.3d 1013, 1017 (Fed. Cir. 2017).

In certain instances, described in more detail below, this Petition is based on PO's allegations that the '255 patent covers Petitioner's Owala Flip (For Kids) product and the scope of the claims as asserted by PO in the co-pending district court litigation. (Ex. 1013); *see also 10X Genomics, Inc. v. Bio-Rad Labs., Inc.*, IPR2020-00087, Paper 9 at 9-10, 15-19 (P.T.A.B. Apr. 27, 2020) (“[W]e see no problem with Petitioner relying on statements by [PO] in the related district court action in which [PO] took a position on the scope of a challenged claim.”).

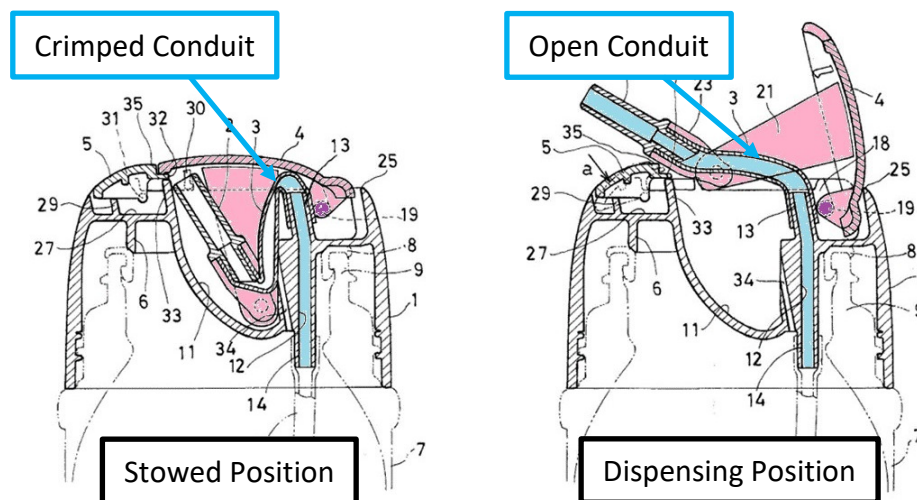
VIII. GROUND 1: CLAIMS 1, 3-5, 9-11, 13, 18, AND 19 WOULD HAVE BEEN OBVIOUS OVER NAKAJIMA IN VIEW OF THE KNOWLEDGE OF A POSA

A. Overview of Nakajima

Nakajima (Ex. 1004) is titled “Stopper with Mouthpiece for Liquid Container” and discloses a cap assembly for a drink bottle, where the cap assembly “is composed of a combination of a stopper body 1, a mouthpiece 2, a suction hose 3, a lid 4, and a button 5 serving as a disengaging means.” (Ex. 1004, ¶[0012]).



(Ex. 1004, Fig. 1). Nakajima's cap assembly includes a manual on/off valve, wherein a flexible suction hose is open in the dispensing position, and crimped in the stowed position to restrict the flow of fluid.



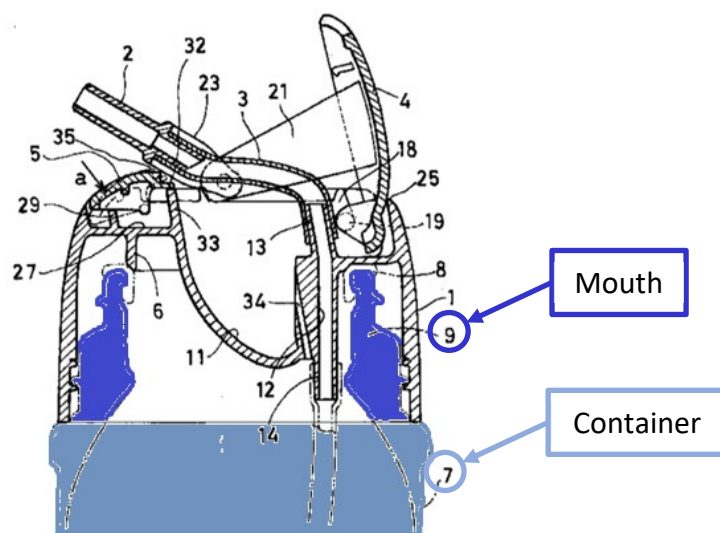
(*Id.*, Figs. 2-3). Nakajima’s lid is a dust cover that protects the mouthpiece and suction hose from debris when in the stowed position. (Ex. 1004, ¶¶0004]; Ex. 1003, ¶49).

B. Claim 1 is Obvious over Nakajima

1. Preamble and Limitation 1[a]: “fluid container”

Nakajima discloses the preamble and limitation 1[a], which recite: “[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.” (Ex. 1003, ¶¶71-75).

Nakajima discloses “a stopper with a mouthpiece for a water bottle or other liquid container.” (Ex. 1004, ¶¶0001]). For example, Figure 2 shows Nakajima’s cap assembly on the neck of a water bottle.

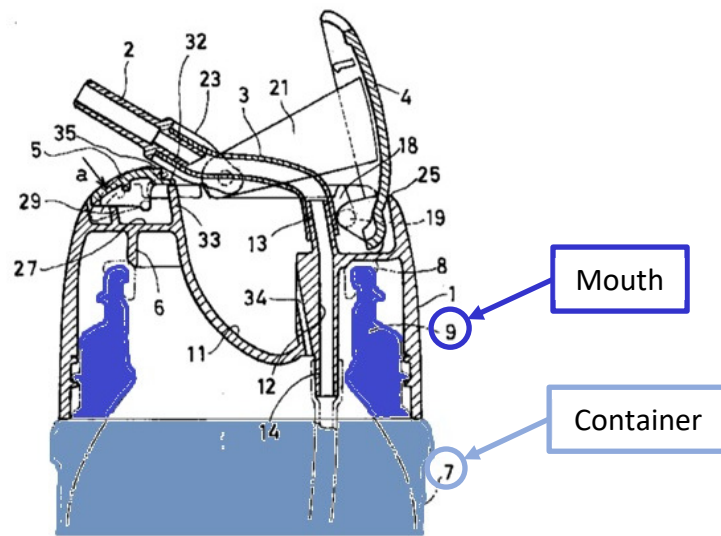


(*Id.*, Fig. 3, ¶[0013]). A POSA would have understood the “mouth” of the “container” to constitute a neck with an opening. (Ex. 1003, ¶75).

2. 1[b]: Cap Assembly

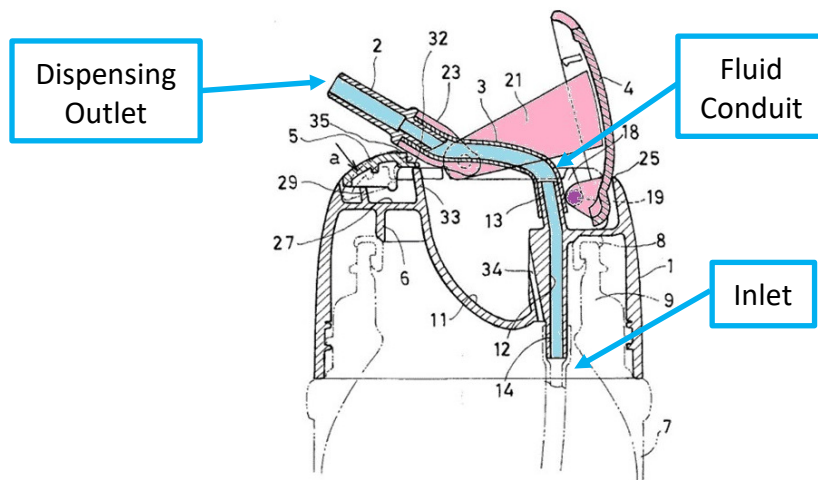
Nakajima discloses limitation 1[b]: “a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet through 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.” (Ex. 1003 ¶¶76-78).

Nakajima’s cap assembly is removably coupled to the mouth of the fluid container via “an annular rib 6” that “is used to seal the mouth 9 of the container 7” (Ex. 1004, ¶¶[0012]-[0014]; Ex. 1003, ¶¶77).



(*Id.*, Fig. 3, ¶¶[0013]).

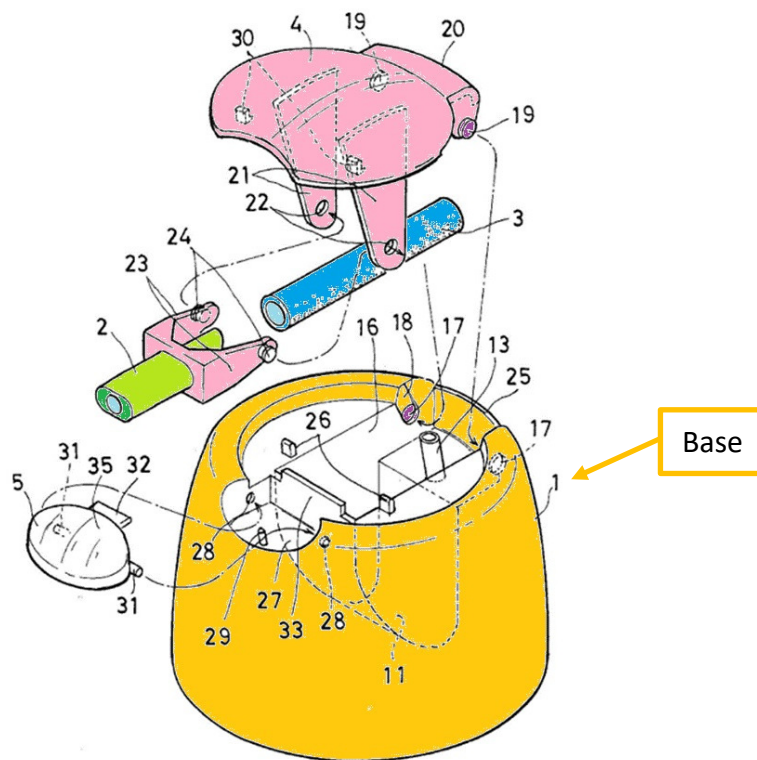
As shown below, Nakajima's cap assembly includes a fluid conduit from the container to the user:



(Ex. 1004, Fig. 3, ¶¶[0012]-[0014]). Fluid enters the fluid conduit from the container, flows through the “suction hose 3,” and is dispensed from a dispensing outlet at the end of “mouthpiece 2.” (*Id.*, ¶¶[0012]-[0014]; Ex. 1003, ¶78).

a. 1[b][1]: Cap Assembly Base

Nakajima discloses limitation 1[b][1]: “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.” (Ex. 1003 ¶¶79-80). As discussed above, Nakajima discloses that its cap assembly base can be removed and recoupled to the liquid container.



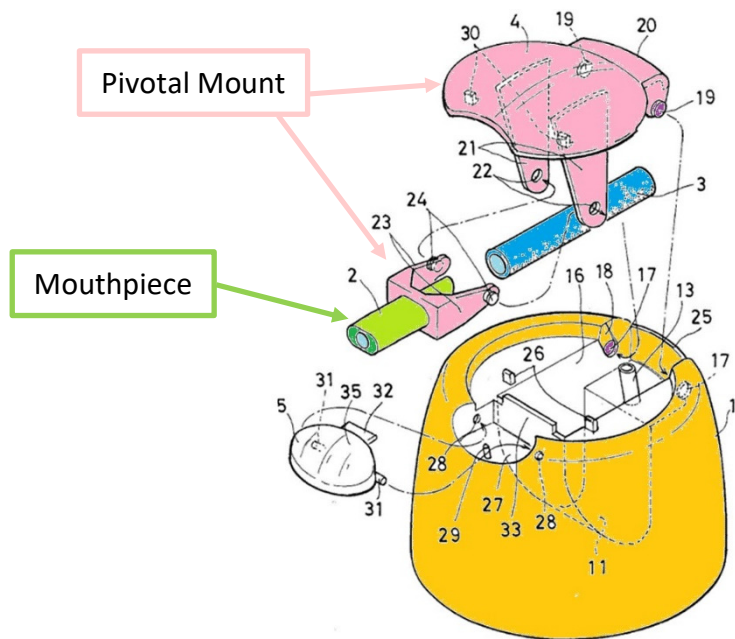
(Ex. 1004, Fig. 1).

b. 1[b][2]: Pivotal Mount

Nakajima discloses limitation 1[b][2]: “a pivotal mount coupled to the cap

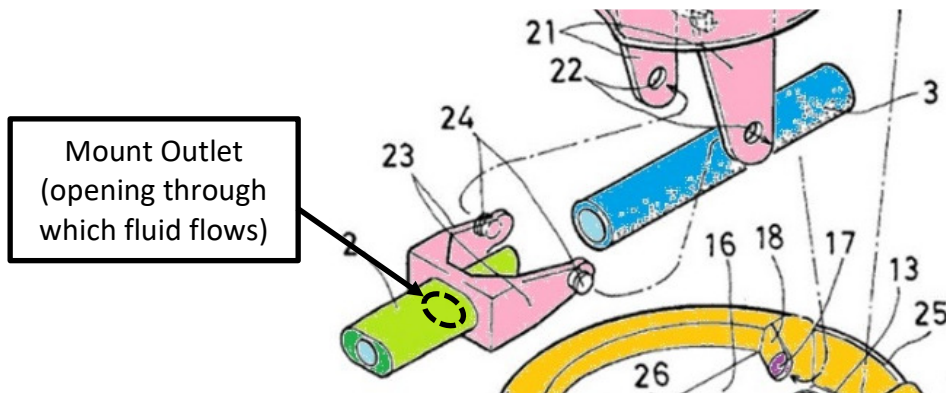
assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend.” (Ex. 1003 ¶¶81-84).

Nakajima includes two structures that pivot and form a “pivotal mount.” (*Id.*, ¶82). Nakajima’s pivotal mount, highlighted pink below, comprises the combination of (1) “lid 4” having “leg pieces 21,” and (2) the mouthpiece bracket “arms 23” of “mouthpiece 2.”

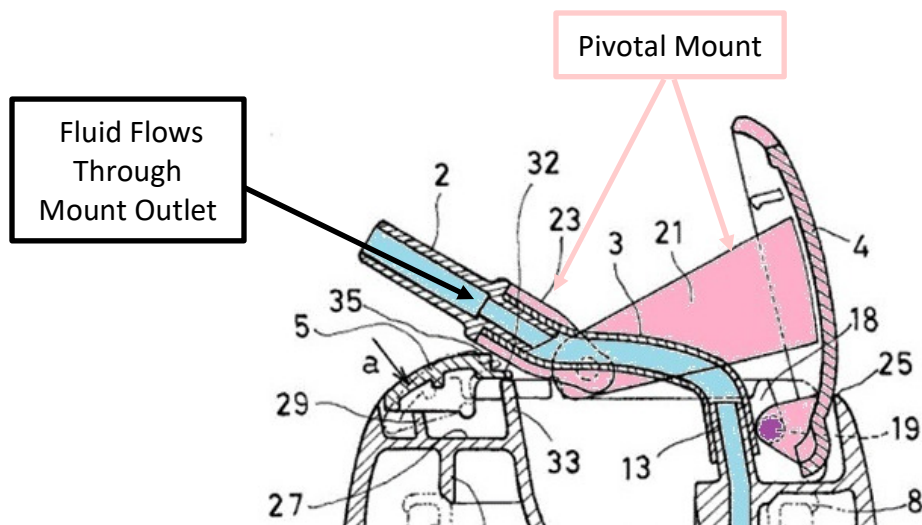


(Ex. 1004, Fig. 1; ¶[0003]; Ex. 1003, ¶82). As shown above, Nakajima’s mouthpiece extends from the base of the bracket formed by “arms 23” of the pivotal mount.

The pivotal mount further includes a mount outlet, which, as shown below, comprises the outlet through which fluid flows from “suction hose 3” to the dispensing end of the mouthpiece:

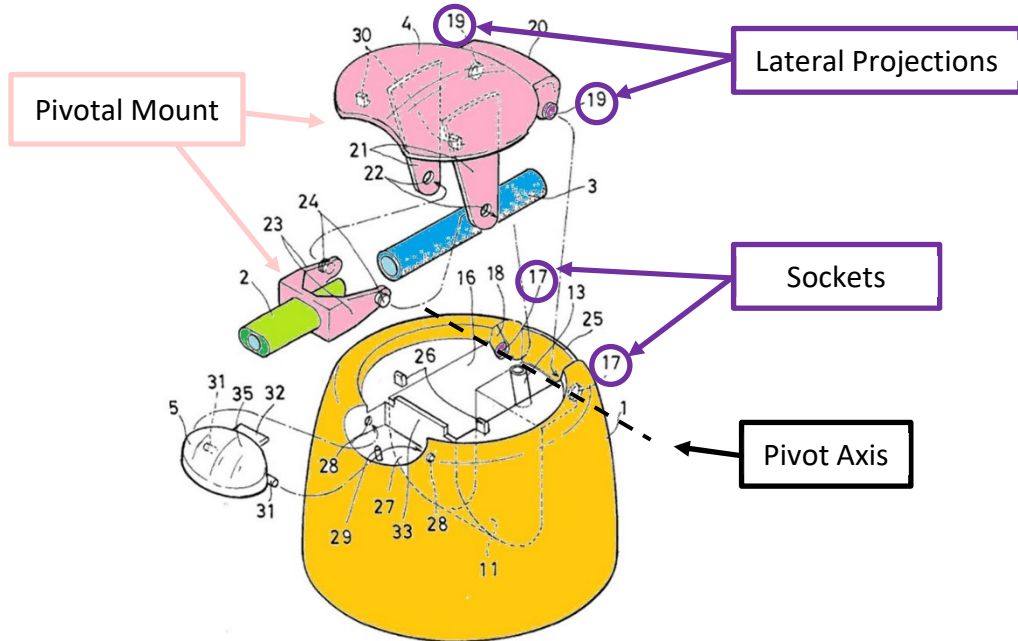


(Ex. 1004, Fig. 1).

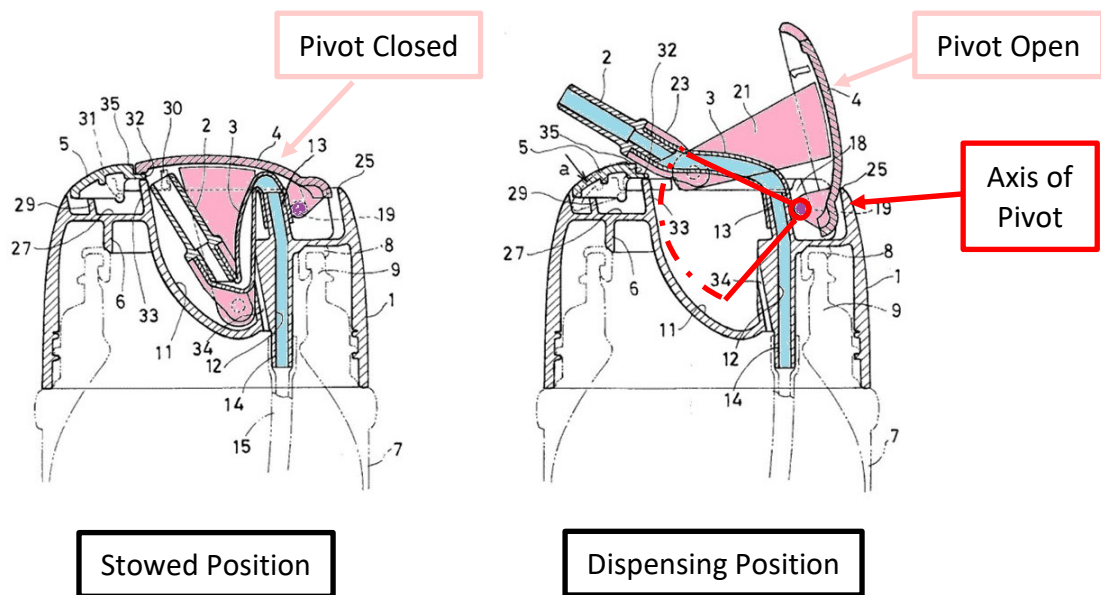


(Ex. 1004, Fig. 3; Ex. 1003, ¶¶83).

As shown below, a “pair of hinge shafts 19” project laterally from the “hinge portion 20” and are “rotatably fitted into” a corresponding pair of “shaft receiving recesses 17” in the cap assembly base. (Ex. 1004, ¶¶[0015]-[0016]).



Id. at Fig. 1.



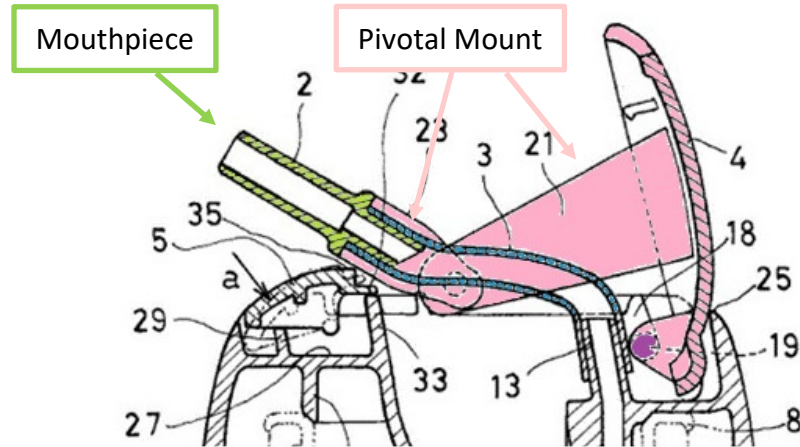
(*Id.*, Figs. 2-3). Thus, a POSA would have understood the hinge shafts and recesses comprise a pair of lateral projections and sockets that define an axis of rotation of the pivotal mount. (Ex. 1003, ¶¶84).

3. 1[b][3]: Resilient Mouthpiece

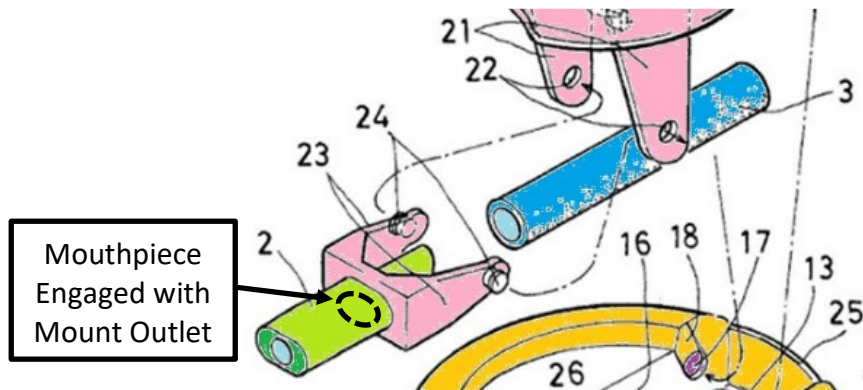
Limitation 1[b][3] recites: “a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base.” This limitation is obvious over Nakajima in view of the knowledge of a POSA. (Ex. 1003, ¶¶85-100).

Although Nakajima describes “mouthpiece 2” and “arms 23” as two portions of a single component (Ex. 1004, ¶[0016]), it would have been obvious for a POSA to form the component in two parts removably coupled to each other, namely (1) a tubular portion configured to provide a fluid conduit and engage a user’s mouth (the “mouthpiece”), which would be removably coupled to (2) a bracket portion with arms 23 configured to pivot when the cap assembly is opened (the “pivotal mount”). (Ex. 1003, ¶86). A POSA would have recognized such a change to be a routine design choice that would not have altered the overall design or functionality of the Nakajima mouthpiece or pivotal mount. (*Id.*, ¶87).

An example of this modification is shown in Figure 3 below:



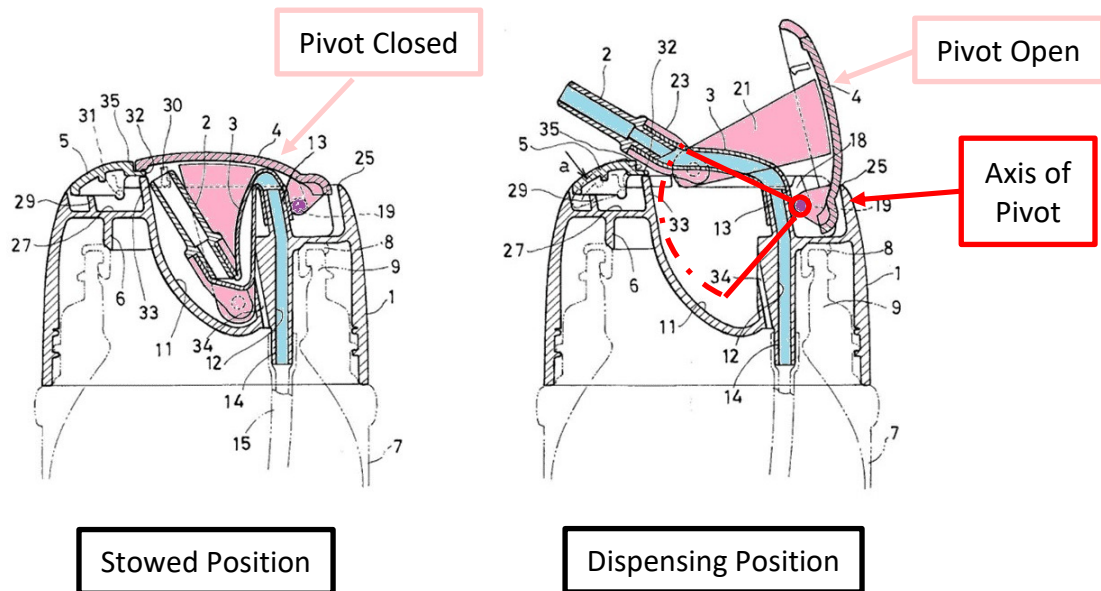
(Ex. 1004, Fig. 3; Ex 1003, ¶¶88). As shown in green highlighting above, a separate mouthpiece is inserted through, and thus engaged with, the mount outlet of the pivotal mount. (Ex. 1003, ¶¶88). In this configuration, the mount outlet is on the bracket portion of the pivotal mount, as discussed above in connection with limitation 1[b][2], and illustrated below:



(Ex. 1004, Fig. 1; Ex. 1003, ¶¶88).

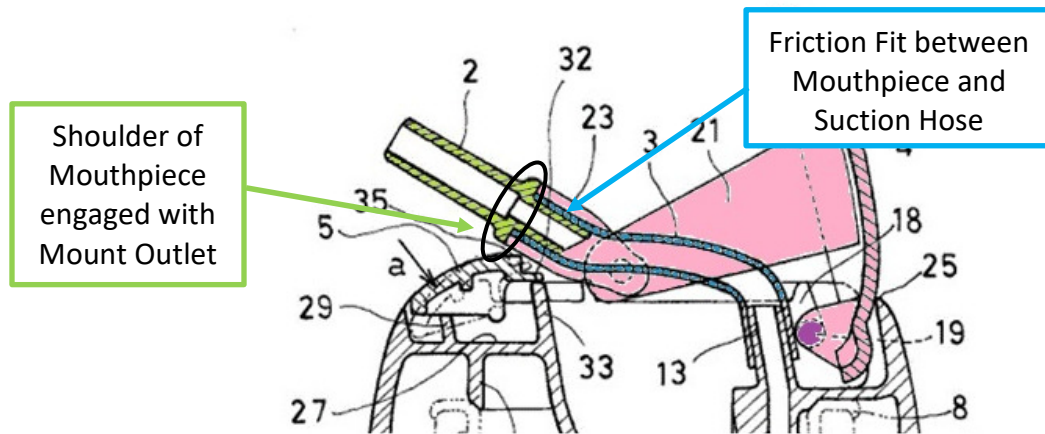
Due to its engagement with the pivotal mount, Nakajima’s mouthpiece “moves up and down in conjunction with the opening and closing of the lid.” (*Id.*, ¶¶0003]; Ex. 1003, ¶¶89). The pivoting movement of the mouthpiece is shown

below:



(Ex.1004, Figs. 2-3).

A POSA would have been motivated to use a separate mouthpiece to allow it to be removed from the pivotal mount to facilitate cleaning, maintenance, or replacement. (*Id.*, ¶90). A POSA also would have recognized that there were conventional means to removably couple the mouthpiece to the pivotal mount using well-known design features, such as a shoulder or collar abutting the mount outlet. (*Id.*, ¶91). An example is shown with highlighting in Figure 3 below:



(Ex. 1004, Fig. 3; Ex. 1003, ¶¶92).

Nakajima does not specify the material of its mouthpiece. However, in view of the knowledge of a POSA, it would have been obvious to use a resilient material for a separate, removable mouthpiece. (Ex. 1003, ¶¶93). Moreover, the desire to make the mouthpiece resilient, as discussed below, would have provided further motivation to separately form the mouthpiece and pivotal mount. (Ex. 1003, ¶¶91). A POSA also would have recognized the pivotal mount would desirably be more rigid to facilitate its pivoting function. (*Id.*)

The use of resilient materials, such as plastic, rubber, latex, or other polymer material, for drink container mouthpieces was routine and common to a POSA at the time of the invention. (Ex. 1003, ¶¶94). For example, basic reusable water bottles routinely included resilient mouthpieces. (*Id.*) Moreover, Gardner, which the '255 patent identifies as disclosing exemplary known mouthpieces (Ex. 1001, 9:45-51), describes resilient mouthpieces that can be used in a variety of

hydration systems, including bladder-based systems or, as in Nakajima, cap assemblies for bottle-based systems. (Ex. 1003, ¶96).

Several other references disclose the use of resilient materials for mouthpieces and provide further support for the POSA's common knowledge. For example, Ribarits' mouthpiece is comprised of "rubber or latex," which a POSA would have understood to be exemplary resilient materials. (Ex. 1006, 2; Ex. 1003, ¶95). Hughes' mouthpiece is comprised of a flexible, silicone drinking hose that collapses into a stowed configuration. (Ex. 1010, 1:29-32, 9:45-51). More broadly, a POSA would have been aware of other prior art references directed to the mouthpieces of infant bottles or children's sippy cups, which routinely utilized resilient materials to prevent damage from excessive biting or chewing and to improve the comfort of the infant's or child's teeth and gums. (Ex. 1003, ¶95).

Accordingly, a POSA would have recognized the desirability of making Nakajima's mouthpiece from a resilient material, and this would have constituted a routine design choice for a POSA. (*Id.*, ¶97).

A POSA would have been motivated to use a resilient material for Nakajima's mouthpiece for at least two reasons. (Ex. 1003, ¶98). First, as noted above, resilient mouthpieces were well-known to be gentler on a user's teeth and

gums, and thus a POSA would have recognized that the use of a resilient mouthpiece in Nakajima would have improved user comfort and safety during use of the device. (*Id.*)

Second, a POSA would have recognized that the use of resilient materials for the Nakajima mouthpiece could aid in the mouthpiece resisting excessive forces applied by the user. Indeed, in the context of mouthpieces, a well-known purpose for using resilient materials was to ensure that the mouthpiece did not permanently deform in response to compressive forces applied by the user's mouth, which could affect fluid flow. (*Id.*, ¶¶99).

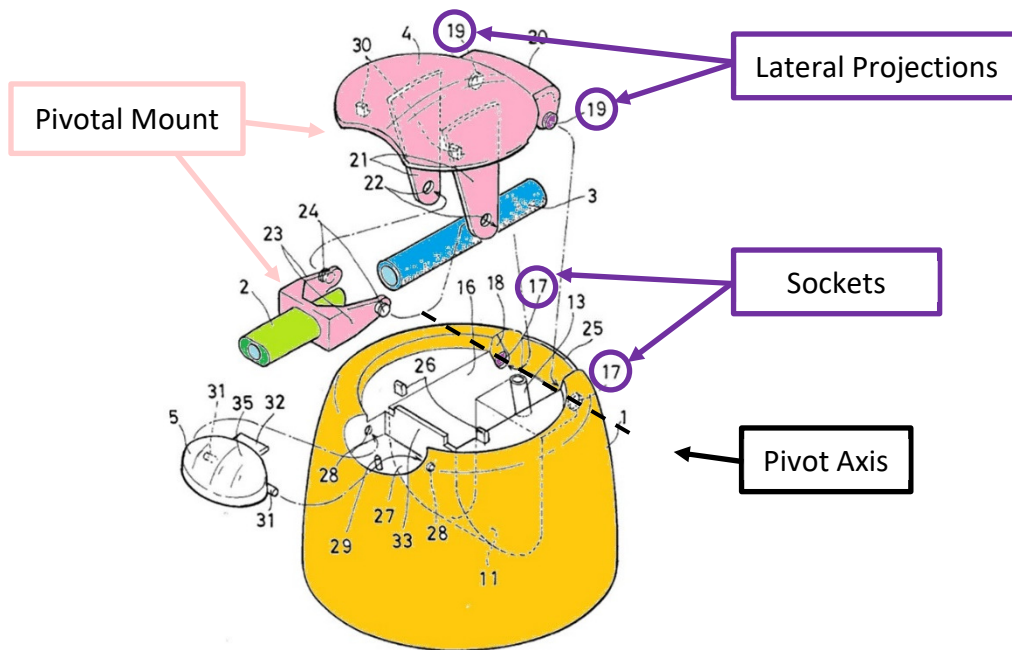
A POSA would have had a reasonable expectation of success in using a resilient material for the Nakajima mouthpiece. (Ex. 1003, ¶¶100-101). First, as noted above, the prior art was replete with examples of resilient materials being used for the mouthpieces of drinking devices. (Ex. 1003, ¶¶100). Second, a POSA would have understood that common resilient materials used in mouthpieces, such as silicone (as in Gardner), rubber, or latex (as in Ribarits) could be molded and manufactured into the desired shape required for compatibility with Nakajima's pivotal mount. (Ex. 1003, ¶¶101).

a. Limitation 1[b][3][i]

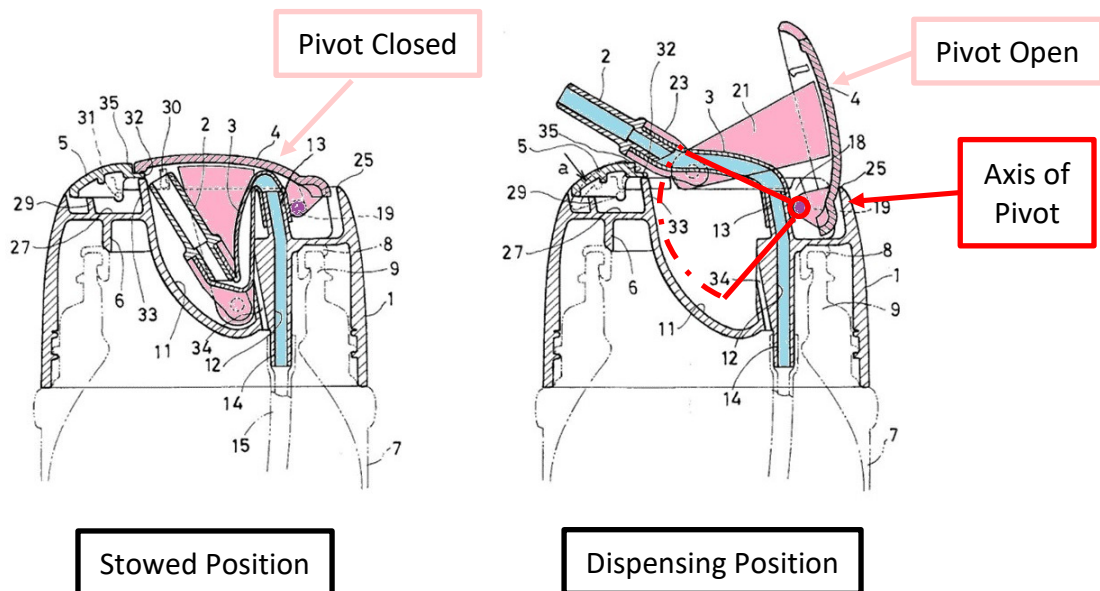
Nakajima discloses limitation 1[b][3][i]: “wherein the resilient mouthpiece

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, ¶¶102-103).

As shown below, Nakajima’s pivotal mount pivots about the axis defined by the lateral projections:



(Ex. 1004, at Fig. 1).

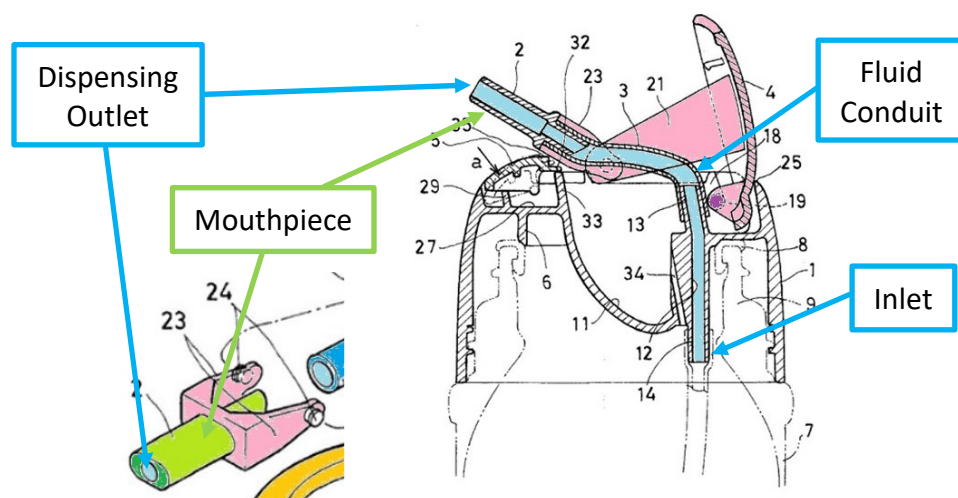


(*Id.*, Figs. 2-3). Because the mouthpiece is coupled to the lid, it “moves up and down in conjunction with the opening and closing of the lid.” (*Id.*, ¶[0003]). Thus, Nakajima’s mouthpiece pivots about the axis defined by the lateral projections. (Ex. 1003, ¶[103]).

b. Limitation 1[b][3][ii]

Nakajima discloses limitation 1[b][3][ii]: “wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet.” (Ex. 1003, ¶¶104-105).

As discussed above, Nakajima’s cap assembly includes a fluid conduit from an inlet and ending with a dispensing outlet. Nakajima’s mouthpiece defines the portion of the fluid conduit that includes the dispensing outlet:

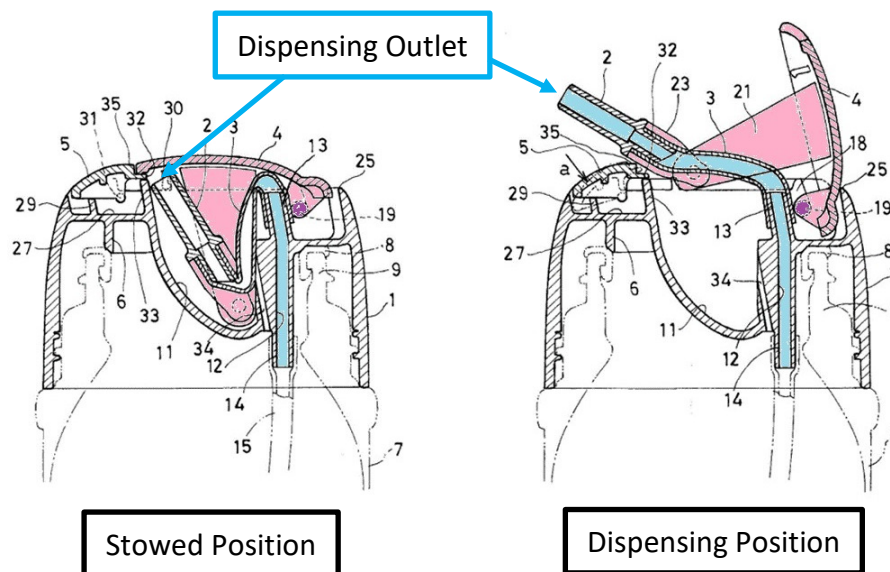


(Ex. 1004, Figs. 1, 3; Ex. 1003, ¶[105]).

c. Limitation 1[b][3][iii]

Nakajima discloses limitation 1[b][3][iii]: “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.” (Ex. 1003, ¶¶106-107).

As discussed above, Nakajima’s mouthpiece pivots between a stowed position and a dispensing position. As shown below, in the dispensing position, the dispensing outlet is further away from the cap assembly base, as compared to the stowed position:



(*Id.*, Figs. 2-3; Ex. 1003, ¶¶107).

d. Limitation 1[b][3][iv]

Limitation 1[b][3][iv] recites: “wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth.” For the reasons described for limitation 1[b][3][i] above, this limitation is obvious over Nakajima in view of the knowledge of a POSA. (Ex. 1003, ¶¶108).

Moreover, Petitioner notes that in the co-pending litigation, PO’s infringement contentions confirm that this claim limitation requires only that the mouthpiece be made of a resilient material that does not permanently deform in response to compressive forces. (Ex. 1003, ¶109). PO has asserted that Petitioner’s Owala Flip (For Kids) product includes a “resilient mouthpiece adapted to resiliently compress responsive to compressive forces,” as recited in this claim limitation. PO has relied on the annotated photographs below to map the accused product to this claim limitation:

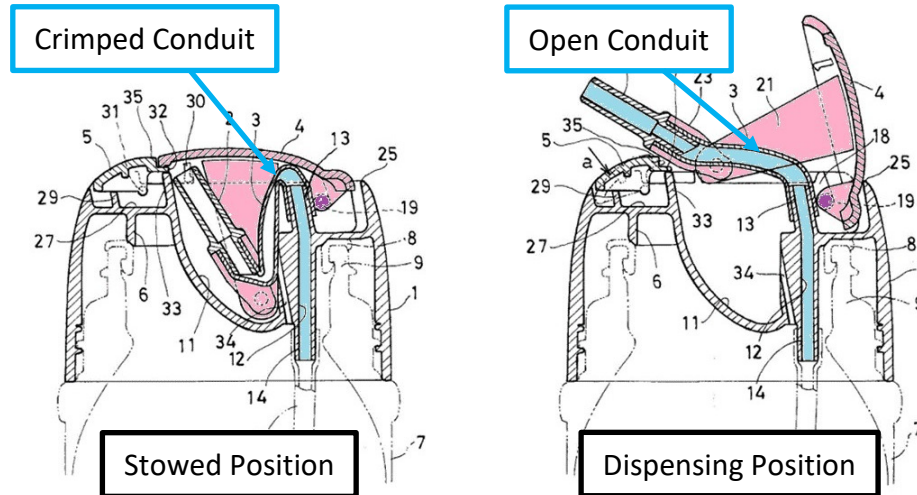


(Ex. 1013, Claim Chart (Exhibit C-1) at 9; Ex. 1003, ¶110). As shown in these photographs, PO contends that a “resilient mouthpiece” includes a mouthpiece that returns to its original shape after being compressed. (*Id.*)

4. 1[d]: Manual On/Off Valve

Nakajima discloses limitation 1[d]: “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.” (Ex. 1003 ¶¶111-117).

The manual on/off valve of Nakajima comprises the crimping of “suction hose 3” when the lid and mouthpiece pivot between the open and closed configurations:



(Ex. 1004, Figs. 2-3.¶¶[0022]-[0023]; Ex. 1003, ¶112). As shown above, “suction hose 3” is a flexible tube that forms a portion of the fluid conduit between the inlet and the mouthpiece, which crimps when the lid is closed. (Ex. 1004, ¶¶[0014], [0018]). When the lid is opened, the suction hose unfolds, thereby opening the fluid conduit. (See *id.* at ¶[0023]; Ex. 1003, ¶115).

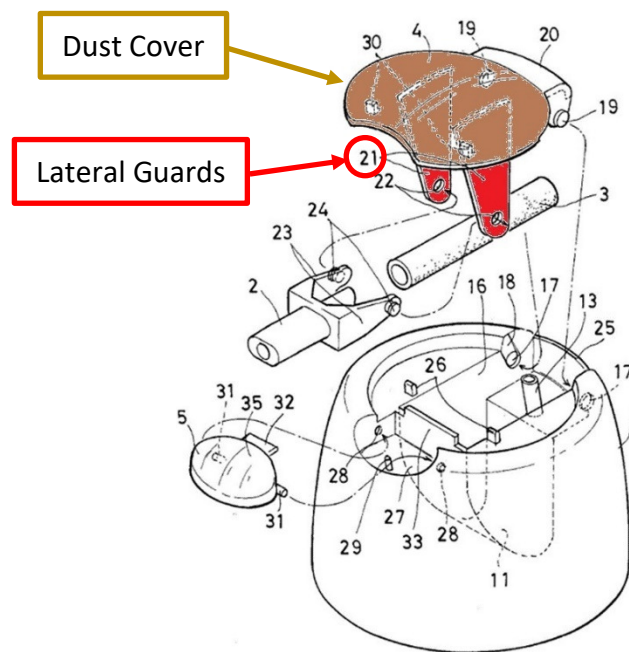
Accordingly, Nakajima either discloses or renders obvious each limitation of claim 1. Thus, claim 1 would have been obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶116).

C. Claim 3 is Obvious over Nakajima

Claim 3 depends from claim 1, and further recites, “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

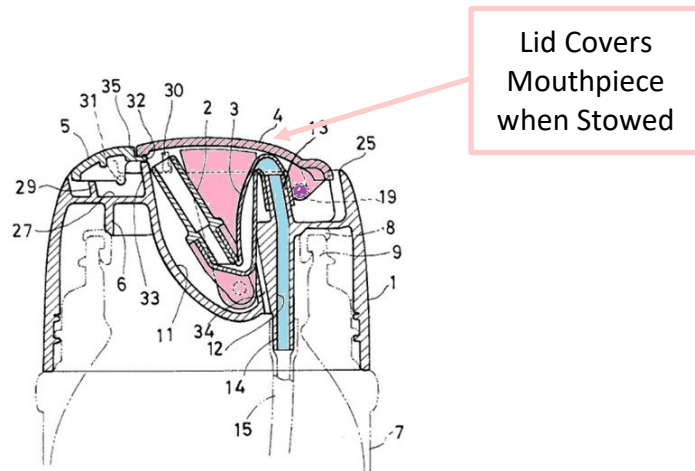
extending between the pair of lateral guards and positioned to protect the dispensing outlet of the resilient mouthpiece by extending across at least a portion of the dispensing outlet of the resilient mouthpiece when the resilient mouthpiece and the pivotal mount are in the stowed position.” Nakajima discloses these additional limitations. (Ex. 1003, ¶¶117-121).

Nakajima’s “leg pieces 21” extend on opposed sides of the mouthpiece when the pivotal mount and mouthpiece are in the stowed position, as shown below:



(Ex. 1004, Fig. 1, ¶[0016]). Nakajima’s lid is a dust cover extending between the pair of lateral guards (i.e. “pair of legs 21”) and protecting the dispensing outlet and mouthpiece when the pivotal mount is in the stowed position. (Ex. 1004,

¶[0004]; Ex. 1003, ¶120).



(Ex. 1004, Fig. 2; Ex. 1003, ¶118-119).

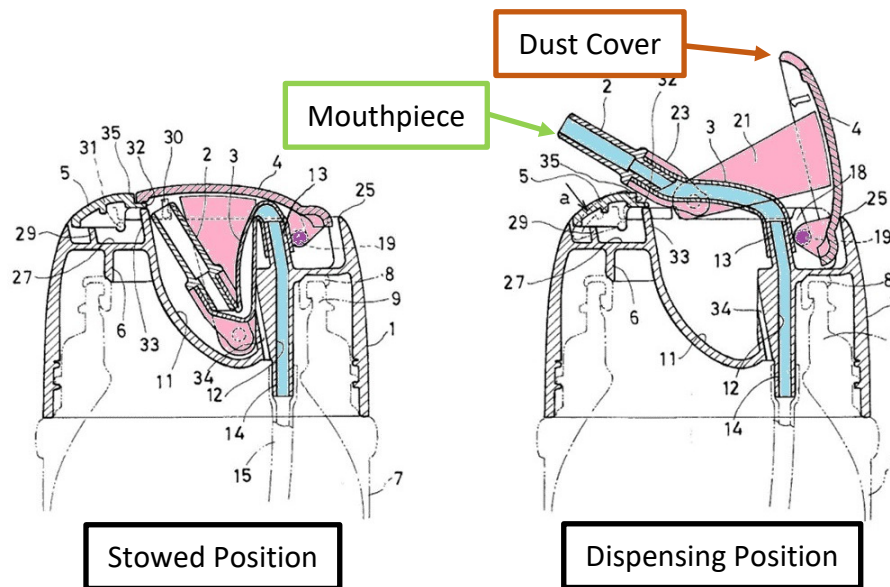
Accordingly, Nakajima discloses the additional limitations of claim 3. (Ex. 1003, ¶121). Thus, for the same reasons discussed above in connection with claim 1, claim 3 would have been obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶121).

D. Claim 4 is Obvious over Nakajima

Claim 4 depends from claim 3, and further recites, “wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.” Nakajima discloses this additional limitation. (Ex. 1003, ¶¶122-124).

Nakajima’s mouthpiece pivots away from the dust cover (i.e. “lid”) when the mouthpiece is pivoted from the stowed position to the dispensing position, as

shown below:



(*Id.*, Figs. 2-3).

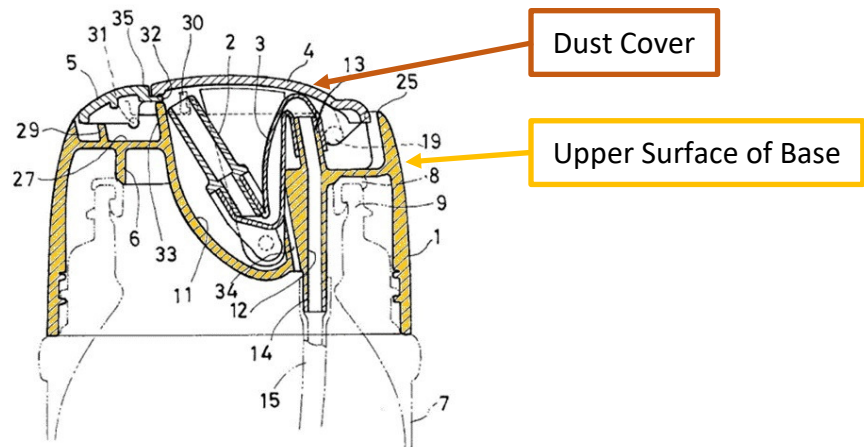
Accordingly, Nakajima discloses the additional limitation of claim 4. Thus, for the same reasons discussed above in connection with claim 3, claim 4 would have been obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶124).

E. Claim 5 is Obvious over Nakajima

Claim 5 depends from claim 3, and further recites, “wherein the dust cover projects above an upper surface of the cap assembly base.” Nakajima discloses this additional limitation. (Ex. 1003, ¶¶125-127).

Nakajima’s dust over (i.e. “lid”) projects above an upper surface of the cap assembly base (i.e. “stopper body”) in both the stowed position and dispensing

position, as shown below:



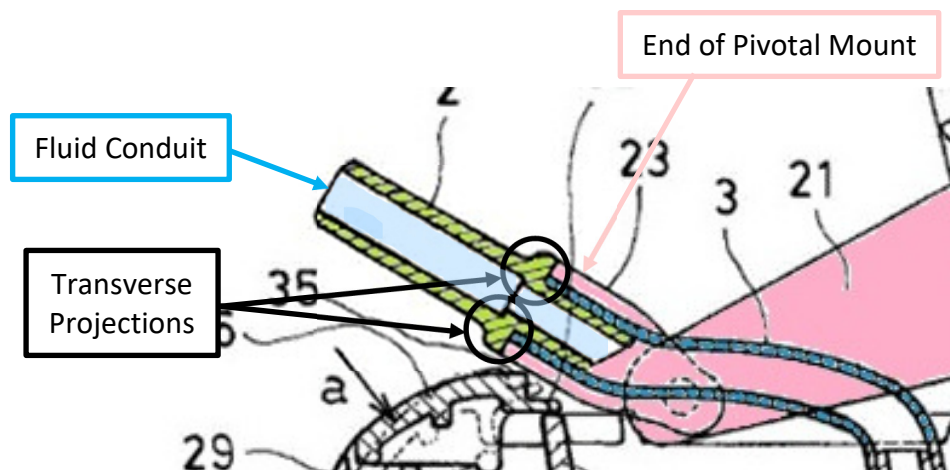
(Ex. 1004, Fig. 2).

Accordingly, Nakajima discloses the additional limitation of claim 5. Thus, for the same reasons as discussed above in connection with claim 1, claim 5 would have been obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶127).

F. Claim 9 is Obvious over Nakajima

Claim 9 depends from claim 1, and further recites, “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.” These additional limitations are obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶¶128-134).

As discussed in connection with claim 1 above, it would have been obvious to a POSA to modify Nakajima to include a separate, resilient mouthpiece removably coupled to the pivotal mount. A POSA also would have recognized the desirability of designing the mouthpiece to include transverse projections that engage an end of the pivotal mount, including to control movement of the mouthpiece relative to the pivotal mount. (Ex. 1003, ¶131). One such configuration is shown below:

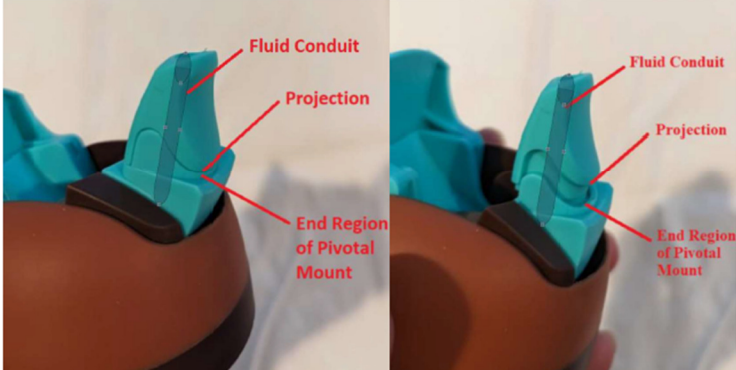


(Ex. 1004, Fig. 3). The projections include both external projections and internal projections, which together form a set of circumferential shoulders abutting the end of the pivotal mount and suction hose. In this way, the projections can be used to control movement of the mouthpiece relative to the pivotal mount. (Ex. 1003, ¶131).

The use of such transverse projections was a well-known technique to

control the position and movement of mouthpieces removably attached to hydration systems. For example, Gardner teaches the use of “stops” that “extend internally into the mouthpiece” to prevent the fluid conduit supply tube from being inserted into the mouthpiece more than a defined distance. (Ex. 1005, 4:27-30). Thus, a POSA would have reasonably expected to successfully include transverse projections on a removable mouthpiece to engage an end of the pivotal mount. (Ex. 1003, ¶132). Doing so would have been a straightforward design choice and would have constituted nothing more than the use of a well-known technique to improve a known device in a predictable way. (*Id.*)

PO’s infringement contentions in co-pending litigation confirm that a circumferential shoulder of the type illustrated in the figure above constitutes “projections” for purposes of claim 9. Contending that Petitioner’s Owala Flip (For Kids) product infringes claim 9, PO has asserted the following:

Claim	Claim Language	Mapping to Owala Flip Kids	
9	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.		

(Ex. 1013, 16). As the images show, PO contends a single circumferential

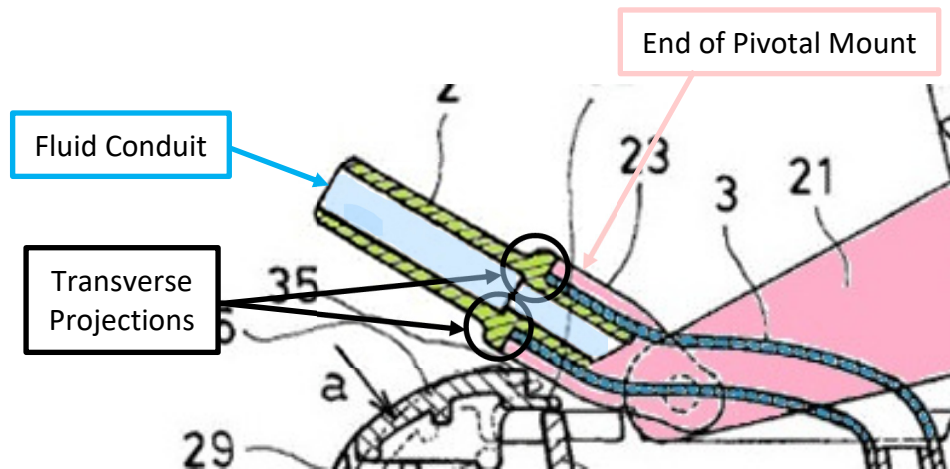
shoulder extending transverse to the fluid path meets the “projections” limitation of claim 9.

Accordingly, for the same reasons as discussed above in connection with claim 1, claim 9 would have been obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶134).

G. Claim 10 is Obvious over Nakajima

Claim 10 depends from claim 9, and further recites, “wherein the projections are internal projections.” This additional limitation is obvious over Nakajima in view of the knowledge of a person of ordinary skill in the art. (Ex. 1003, ¶135-138).

As discussed in connection with claim 9 above, where Nakajima includes a separate resilient mouthpiece removably coupled to the pivotal mount, a POSA also would have recognized the desirability of designing the mouthpiece to include transverse projections that engage an end of the pivotal mount. (Ex. 1003, ¶137). In the example shown below, the projections include internal projections that form a shoulder abutting the pivotal mount and suction hose:



(Ex. 1004, Fig. 3). In this way, the projections can be used to control movement of the mouthpiece relative to the pivotal mount. (Ex. 1003, ¶137).

Accordingly, for the same reasons as discussed above in connection with claims 1 and 9, claim 10 would have been obvious over Nakajima, in view of the knowledge of a POSA. (*Id.*, ¶138).

H. Claim 11 is Obvious over Nakajima

Claim 11 depends from claim 1, and further recites, “wherein the resilient mouthpiece is configured to be selectively removed from and recoupled to the pivotal mount.” For the same reasons discussed above in connection with claim 1, which requires the mouthpiece to be “removably coupled” to the pivotal mount, it would have been obvious to a POSA for Nakajima’s mouthpiece to be configured to be selectively removed from and recoupled to the pivotal mount. (Ex. 1003, ¶¶139-141).

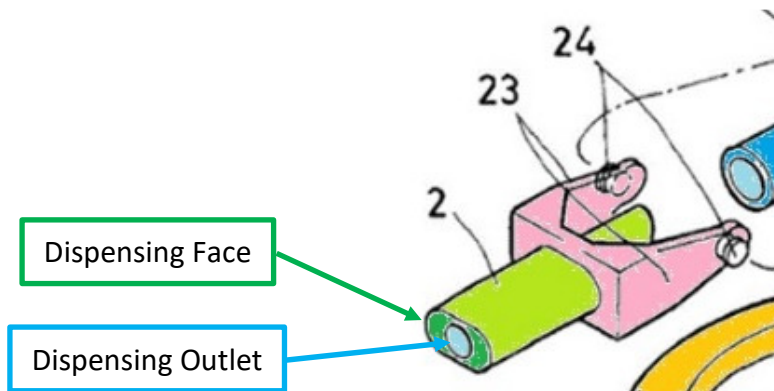
Thus, for the same reasons as discussed above in connection with claim 1,

claim 11 would have been obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶141).

I. Claim 13 is Obvious over Nakajima

Claim 13 depends from claim 1, and further recites, “wherein the resilient mouthpiece includes a dispensing face, and further wherein the dispensing outlet extends through the dispensing face of the resilient mouthpiece.” Nakajima discloses these additional limitations. (Ex. 1003, ¶¶142-145).

Nakajima’s mouthpiece includes a dispensing face, through which the dispensing outlet extends, as shown below:



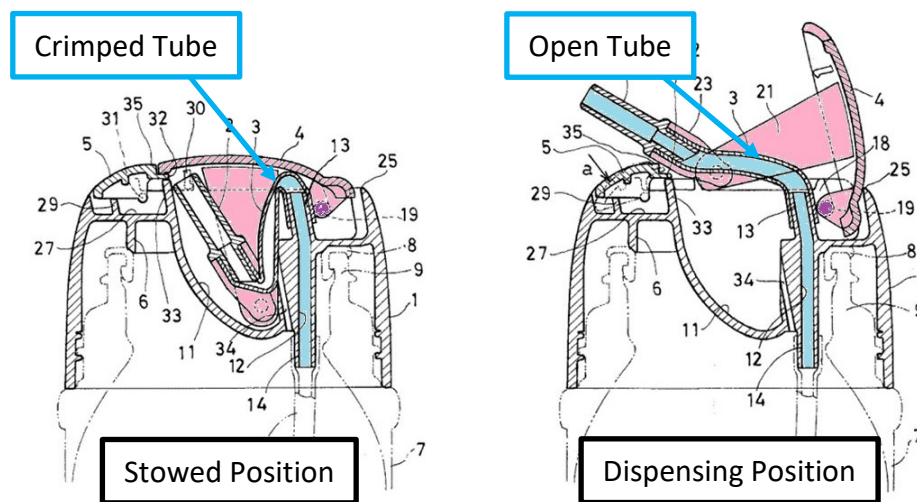
(Ex. 1004, Fig. 1).

Accordingly, Nakajima discloses all the limitations of claim 13. Thus, for the same reasons as discussed above in connection with claim 1, claim 13 would have been obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶145).

J. Claim 18 is Obvious over Nakajima

Claim 18 depends from claim 1, and further recites, “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.” Nakajima discloses this additional limitation. (Ex. 1003, ¶¶146-149).

As discussed above, Nakajima’s pivotal mount engages the flexible tube to apply crimping forces thereto via the “connection port 13” when pivoted into the stowed position:



(Ex. 1004, Figs. 2-3.¶¶[0022]-[0023]; Ex. 1003, ¶152).

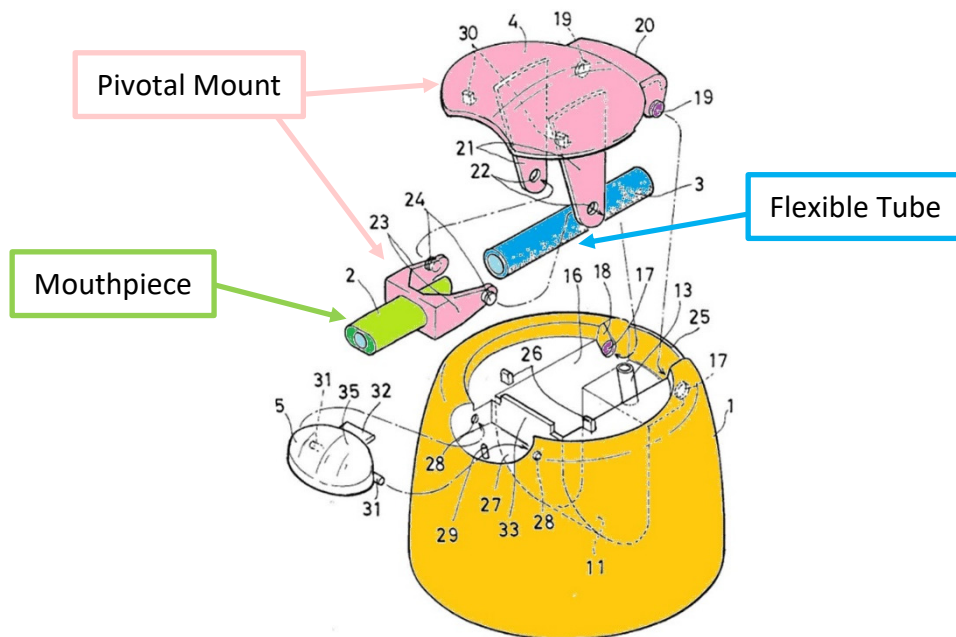
Accordingly, Nakajima discloses the additional limitation of claim 18. Thus, for the same reasons as discussed above in connection with claim 1, claim 18 would have been obvious over Nakajima, in view of the knowledge of a POSA.

(Ex. 1003, ¶149).

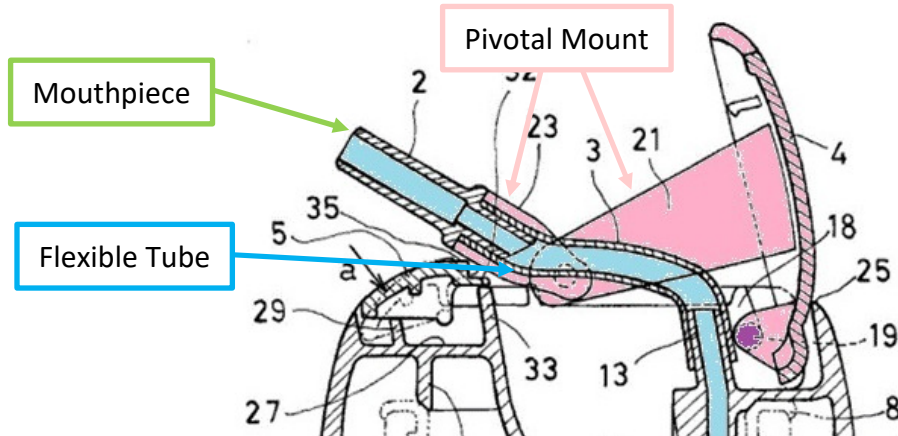
K. Claim 19 is Obvious over Nakajima

Claim 19 depends from claim 1, and further recites, “wherein the flexible tube is secured to the pivotal mount.” Nakajima discloses this additional limitation. (Ex. 1003, ¶¶150-153).

Nakajima’s manual on/off valve includes a flexible tube. The tube is secured to the pivotal mount when the tube, pivotal mount, and mouthpiece are connected:



(Ex. 1004, Fig. 1, ¶¶[0023]).



(Ex. 1004, Fig. 3).

Accordingly, Nakajima discloses the additional limitations of claim 19. Thus, for the same reasons as discussed above in connection with claim 1, claim 19 would have been obvious over Nakajima, in view of the knowledge of a POSA. (Ex. 1003, ¶153).

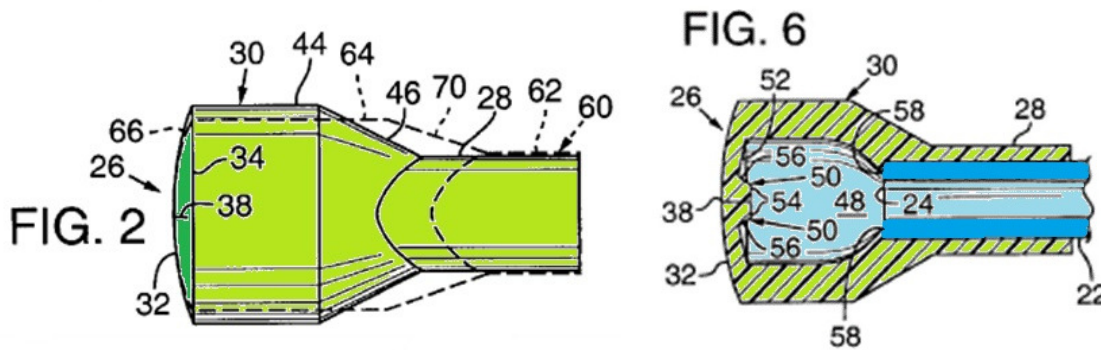
IX. GROUND 2: CLAIMS 12, AND 14-16 WOULD HAVE BEEN OBVIOUS OVER NAKAJIMA IN VIEW OF GARDNER

A. Overview of Gardner

Gardner (Ex. 1005) is titled “Personal Hydration System with an Improved Mouthpiece” and discloses a mouthpiece that “includes a neck that is adapted to be mounted on a supply tube to a hydration system and which is joined to a resilient head.” (Ex. 1005, Abstract).

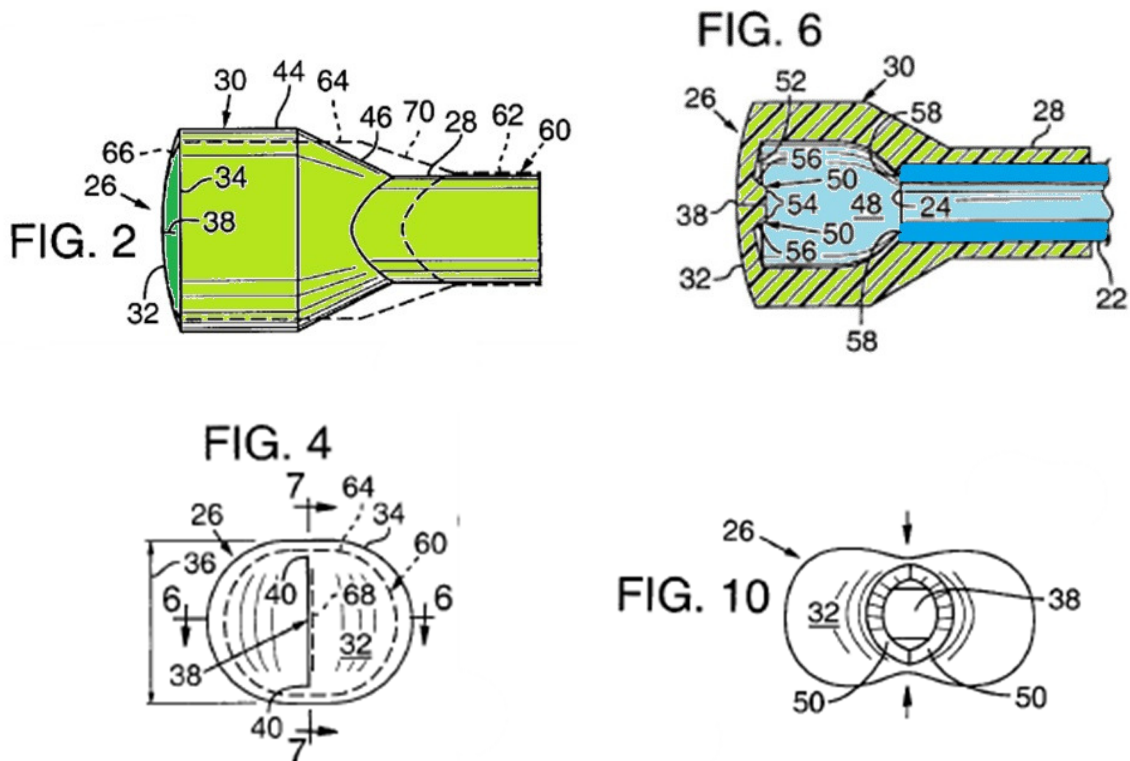
Gardner’s resilient mouthpiece includes a bite-actuated valve responsive to compressive forces applied by the user’s teeth. (*See id.* at 3:31-36). As shown

The neck can be fit over a hose to form a watertight seal, but can be easily slipped off for cleaning. (*Id.* at 3:14-19).



(Ex. 1005, Figs. 2, 6).

Gardner’s mouthpiece can be used in connection with a variety of liquid storage devices, including drink bottles. (*See id.* at 6:28-32). Gardner’s mouthpiece “includes a neck that is adapted to be mounted on a supply tube to a hydration system and which is joined to a resilient head.” (Ex. 1005, Abstract). As shown below, Gardner’s resilient mouthpiece is bite-actuated and “deformable to a dispensing position in which the lips are spread at least partially away from each other to allow fluid to be dispensed through the lips.” (*Id.*)



(Ex. 1005, Figs. 2, 4, 6, 10).

B. Claim 12 is Obvious over Nakajima in view of Gardner

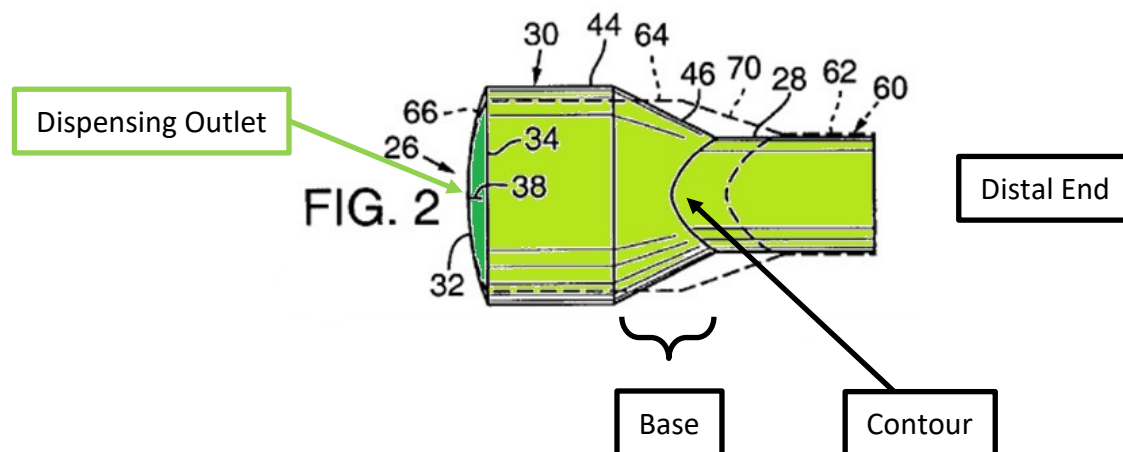
Claim 12 depends from claim 11. Claim 12 is directed to the features of a bite-actuated valve. (Ex. 1003, ¶154). As discussed above in Ground 1, claim 11 is obvious over Nakajima, in view of the knowledge of a POSA. As discussed below, claim 12 would have been obvious to a POSA in view of Nakajima and Gardner. (Ex. 1003, ¶¶156-159).

1. Limitation 12[a]

Gardner discloses limitation 12[a]: “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.” (Ex. 1003, ¶160-161).

Gardner’s resilient mouthpiece includes a base that is distal² to the dispensing outlet and has a contoured configuration, as shown below:



(Ex. 1005, Fig. 2). Gardner describes its mouthpiece as having several distinct regions, including a “bite region 44,” “lip-receiving shoulder 46” and “neck 28.” The “lip-receiving shoulder 46” comprises the base of Gardner’s mouthpiece, and its contoured configuration does not extend at a constant distance from the dispensing outlet. (Ex. 1003, ¶161).

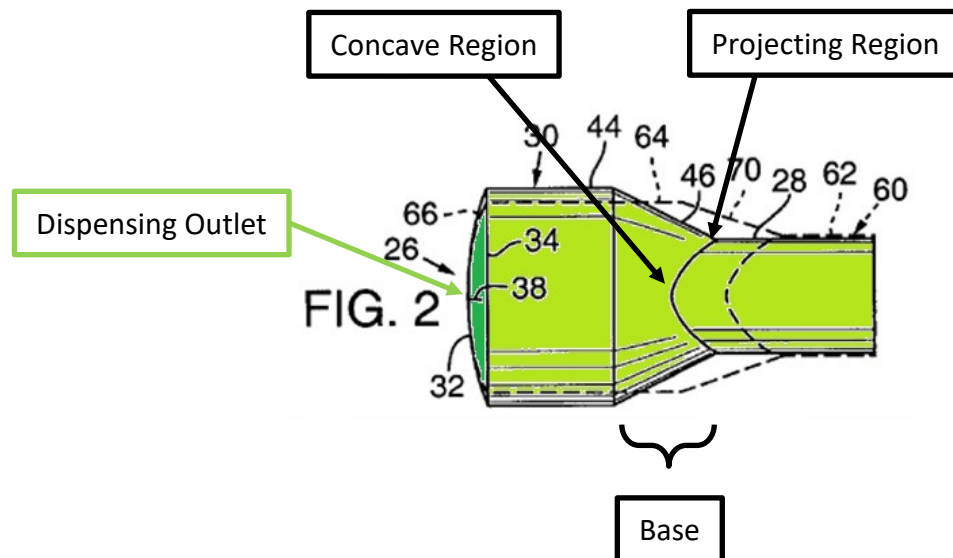
2. Limitation 12[b]

Gardner discloses limitation 12[b]: “wherein the end of the resilient

² When describing the mouthpiece, the ’255 patent uses the term “distal” to refer to the end of the mouthpiece that is opposite the “dispensing face.” (See Ex. 1001, 9:7-13; Ex. 1003, ¶160).

mouthpiece base includes a projecting region and a concave region.” (Ex. 1003, ¶162).

The base of Gardner’s resilient mouthpiece includes a projecting and a concave region, as shown below:

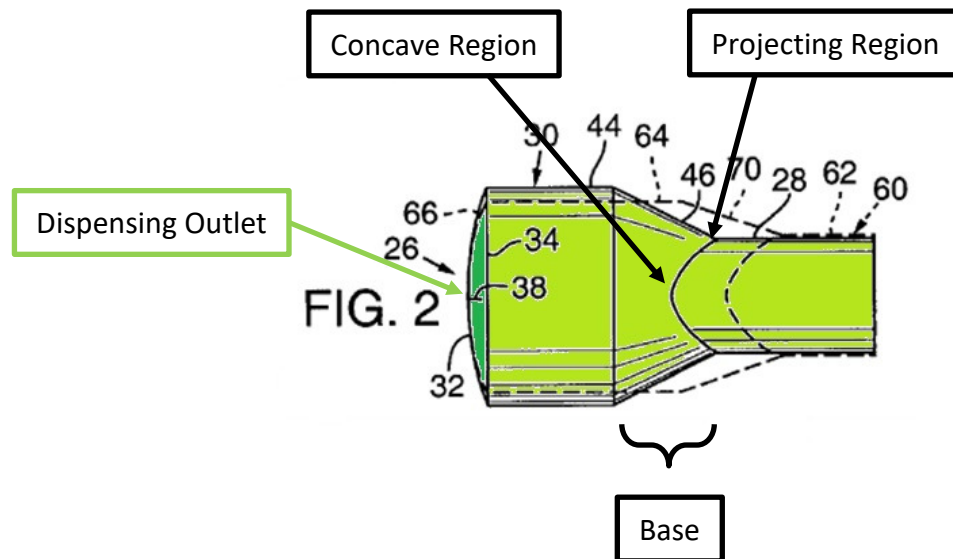


(Ex. 1005, Fig. 2; Ex. 1003, ¶162).

3. Limitation 12[c]

Gardner discloses limitation 12[c]: “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.” (Ex. 1003, ¶163).

The projecting region on the end of Gardner’s resilient mouthpiece extends further away from the dispensing outlet than the concave region, as shown below:



(Ex. 1005, Fig. 2; Ex. 1003, ¶163).

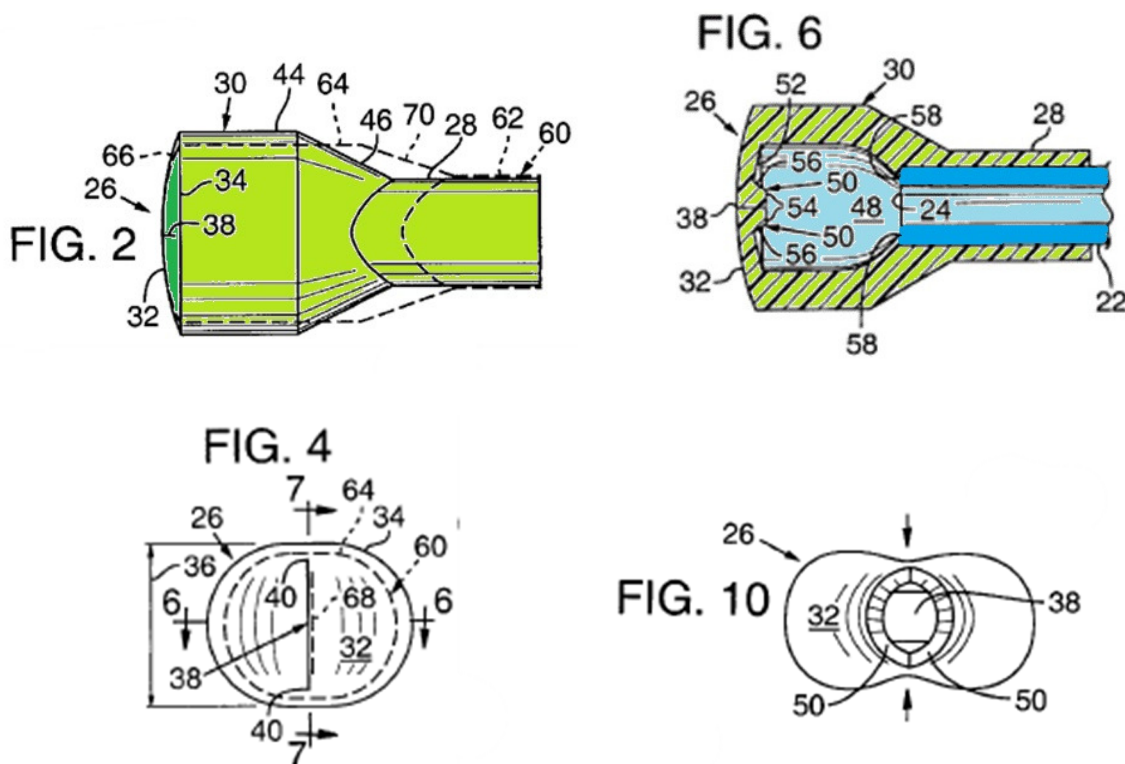
4. Limitation 12[d]

Limitation 12[d] recites: “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.” This limitation is obvious over Nakajima, in view of Gardner. (Ex. 1003, ¶¶164-174).

Gardner does not disclose a pivotal mount for its resilient mouthpiece. However, as discussed above in connection with claim 1, Nakajima discloses a mouthpiece and pivotal mount, and it would be obvious to a POSA to modify Nakajima to include a separate, resilient mouthpiece removably coupled to the pivotal mount. For the reasons discussed below, it also would have been obvious to a POSA to modify Nakajima to include Gardner’s resilient mouthpiece. (Ex.

1003, ¶167).

Gardner discloses a mouthpiece that “includes a neck that is adapted to be mounted on a supply tube to a hydration system and which is joined to a resilient head.” (Ex. 1004, Abstract). As shown below, Gardner’s resilient mouthpiece is bite-actuated and “deformable to a dispensing position in which the lips are spread at least partially away from each other to allow fluid to be dispensed through the lips.” (*Id.*)



(Ex. 1005, Figs. 2, 4, 6, 10).

A POSA would have been motivated to combine the resilient, bite-actuated mouthpiece of Gardner with the mouthpiece of Nakajima for several reasons. (Ex.

1003, ¶164). First, as discussed above in Ground 1, the use of resilient mouthpieces in drinking devices was common at the time of the invention of the '255 patent. (Ex. 1003, ¶165).

Second, it was equally well-known that a resilient, bite-actuated mouthpiece—such as the Gardner mouthpiece—would provide a secondary level of protection against inadvertent leakage of liquid from the container when the mouthpiece was in the dispensing position. (Ex. 1003, ¶166). As Gardner explains: “it is desirable for the mouthpiece not to leak when in a closed position” (Ex. 1005, 1:41-42). A POSA would have understood that such a mouthpiece would provide complementary functionality with Nakajima’s on/off valve. Whereas the on/off valve described in Nakajima remains in a user-selected configuration until repositioned by the user, the bite-actuated mouthpiece of Gardner is biased to return to a closed position. (Ex. 1003, ¶167). Therefore, adding Gardner’s bite-actuated mouthpiece would provide the added benefit of preventing inadvertent leakage even when Nakajima’s on/off valve is in the ‘on’ position. (*Id.*)

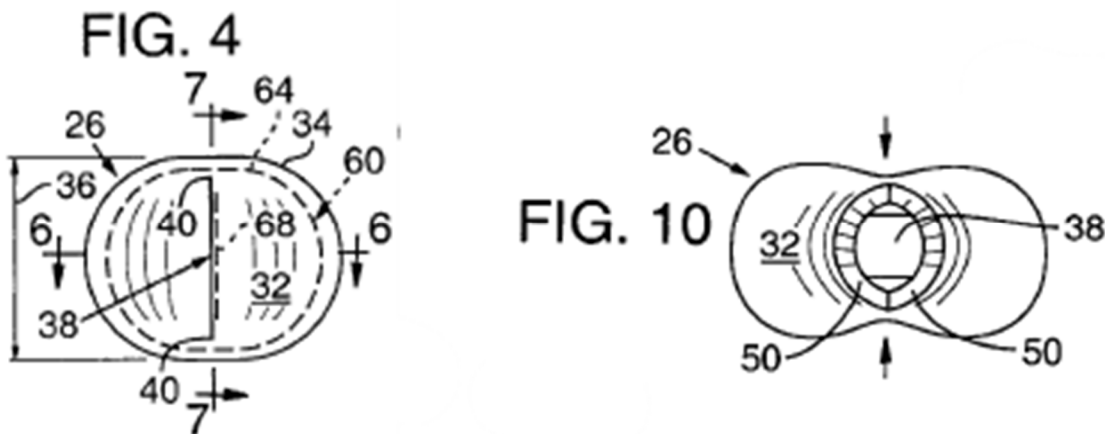
Third, a POSA would have understood that modifying Nakajima to include the bite-actuated mouthpiece of Gardner constitutes nothing more than a simple substitution of one well-known element—Gardner’s resilient, bite-actuated

mouthpiece—for another well-known element—a resilient mouthpiece without a bite-actuated valve. (Ex. 1003, ¶168). Likewise, a POSA would have understood that the modification would constitute nothing more than the use of a well-known technique—resilient materials to create a comfortable, bite-actuated mouthpiece—to improve a known device—Nakajima’s resilient mouthpiece—in a predictable way without negatively impacting the component’s—or the overall device’s—functionality. (*Id.*)

Finally, a POSA would have had a reasonable expectation of success in modifying Nakajima to use Gardner’s resilient, bite-actuated mouthpiece. (Ex. 1003, ¶169). That is because a POSA would have understood the desirability of either (1) manufacturing Gardner’s mouthpiece into a shape compatible with the pivotal mount disclosed in Nakajima, which could thus be readily exchanged for the Nakajima mouthpiece without sacrificing any aspect of the functionality of the Nakajima design, or (2) mounting Gardner’s mouthpiece on the end of Nakajima’s existing mouthpiece to improve the existing design. In either case, a POSA would have recognized the desirability of fitting the Gardner mouthpiece over the flexible tube of Nakajima’s fluid conduit to form a watertight seal, as Gardner itself teaches. (Ex. 1005, 3:11-19 (teaching “neck” of mouthpiece is fitted over fluid conduit to form a watertight seal, and “mouthpiece can be slipped on and

off” for cleaning or maintenance)). (Ex. 1003, ¶169).

In doing so, it also would have been obvious to a POSA to configure Nakajima’s pivotal mount to engage the projecting and concave regions of Gardner’s mouthpiece to restrict rotation of the mouthpiece on the pivotal mount. (Ex. 1003, ¶170). That is because Gardner’s bite-actuated mouthpiece is directional, that is, it is intended to be compressed along only one axis to open the valve. (Ex. 1003, ¶171-172). This is shown in Figures 4 and 10, below:



Ex. 1005, Figs. 4, 10, 6:12-21.

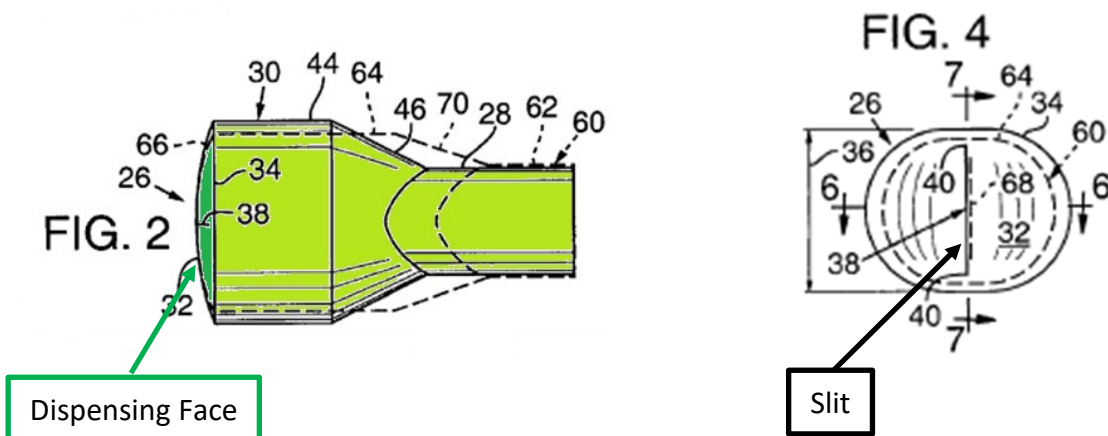
In view of these disclosures in Gardner, a POSA would have understood that applying a compressive bite force to the resilient mouthpiece in a direction perpendicular to the dispensing outlet slit would open the valve and thereby dispense fluid. (Ex. 1003, ¶173). A POSA would have also understood that applying a compressive bite force to the resilient mouthpiece in a direction parallel

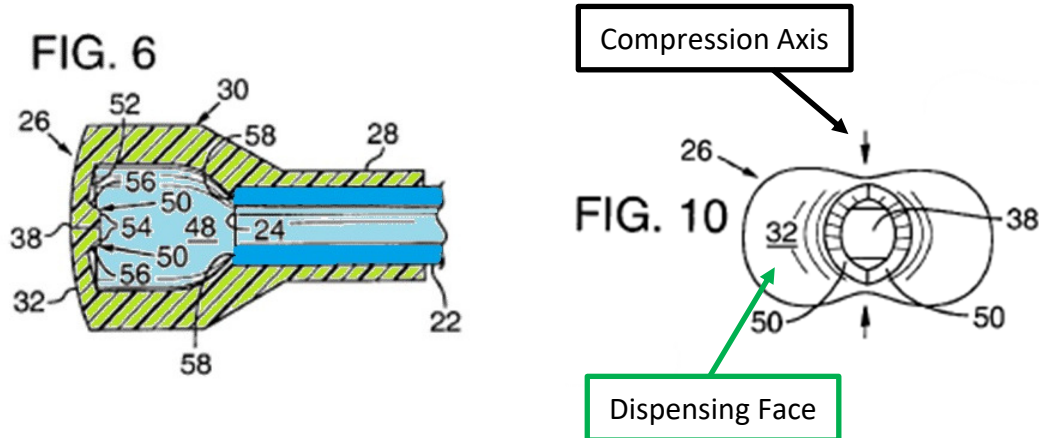
to the dispensing outlet slit would not cause the slit to open. (*Id.*) Therefore, a POSA would have recognized the need to fix the orientation of the mouthpiece when combined with Nakajima’s pivotal mount to ensure proper functionality of the bite-actuated valve. (*Id.*, ¶174).

C. Claim 14 is Obvious over Nakajima in view of Gardner

Claim 14 depends from claim 13, and further recites: “wherein the dispensing outlet is defined by a slit that extends through the dispensing face of the resilient mouthpiece.” As discussed in Ground 1 above, claim 13 is obvious over Nakajima, in view of the knowledge of a POSA. Gardner further discloses the additional limitations of claim 14. (Ex. 1003, ¶¶175-177).

Gardner’s mouthpiece includes a “slit 38” that extends through a “dispensing face 32” of the mouthpiece, as shown below:





(Ex. 1005, Figs. 2, 4, 6, 10).

Accordingly, claim 14 is also obvious over Nakajima and Gardner. (Ex. 1003, ¶¶175-177).

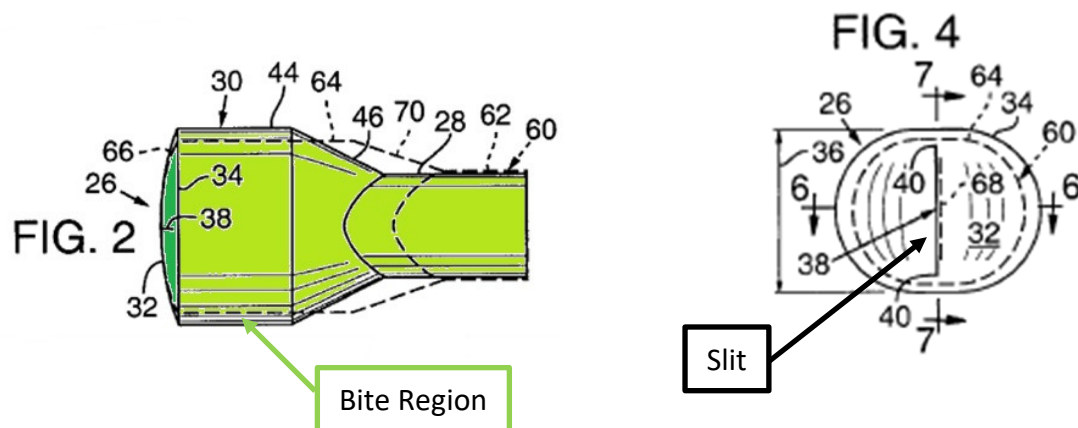
D. Claim 15 is Obvious over Nakajima in view of Gardner

Claim 15 depends from claim 1 and further recites: “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.”

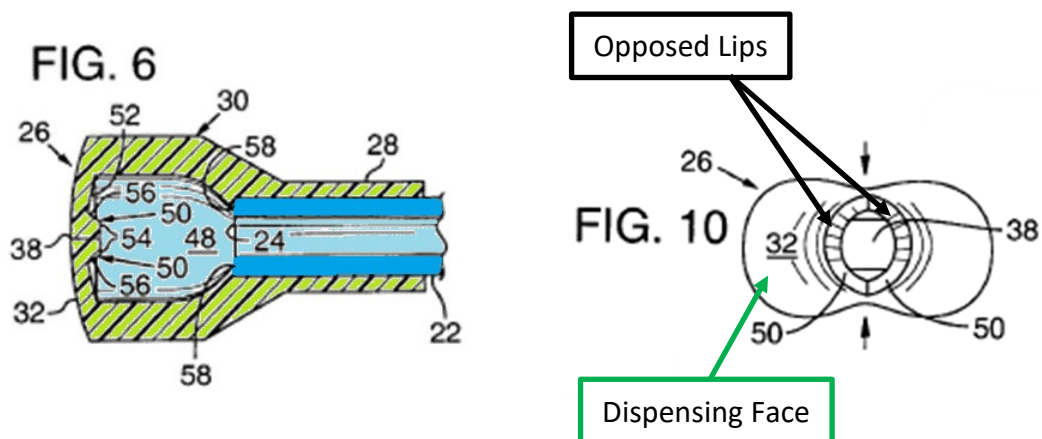
As discussed in Ground 1 above, claim 1 is obvious over Nakajima, in view of the knowledge of a POSA. As discussed below, Gardner further discloses the additional limitations of claim 15. Therefore, for the same reasons discussed in

connection with claim 12 above, claim 15 is also obvious over Nakajima and Gardner. (Ex. 1003, ¶¶178-181).

Gardner's mouthpiece includes a "bite region 44 generally adjacent ends 40 of slit 38," as shown below:



(Ex. 1005, Figs. 2, 4, 6:12-21). The "dispensing face 32" includes opposed "lips 50" which define the dispensing outlet of the mouthpiece, as shown below:



(Ex. 1005, Figs. 6, 10). As shown in Figure 10, a user applied compressive force

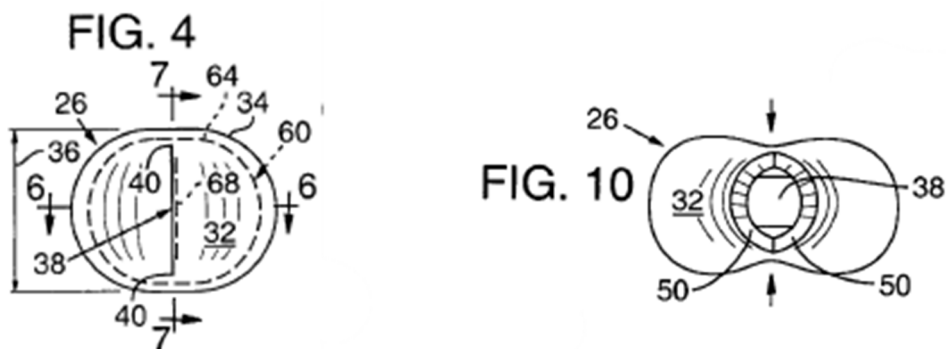
to the bite region “causes lips 50 to spread at least partially apart ... to cause slit 38 to form an opening ... through which fluid may be passed.” *Id.*, 6:12-21.

Accordingly, claim 15 is obvious over Nakajima and Gardner. (Ex. 1003, ¶181).

E. Claim 16 is Obvious over Nakajima in view of Gardner

Claim 16 depends from claim 15, and further recites: “wherein the opposed lips seal against each other when the opposed bite regions are not urged toward each other.” Gardner discloses the additional limitations of claim 15. (Ex. 1003, ¶¶182-184).

As shown below, when the user’s compressive force is removed, “the resilient nature of ... the lips 50 causes the mouthpiece to return to its closed, non-dispensing position.” (Ex. 1005, 6:32-35).



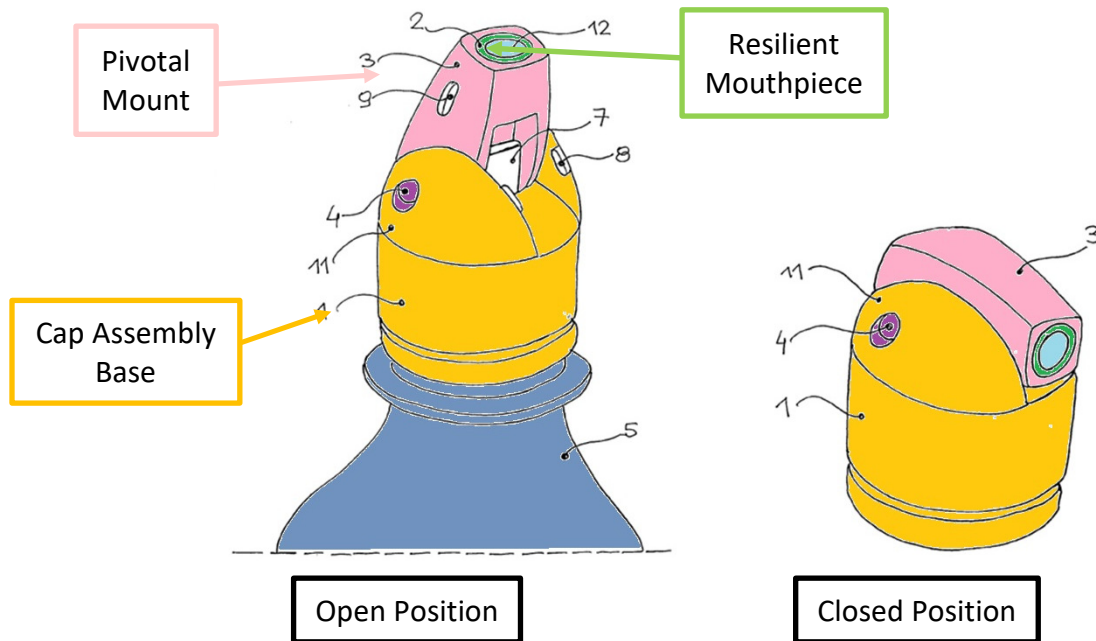
(*Id.*, Figs. 4, 10).

Accordingly, claim 16 is obvious over Nakajima, in view of Gardner. (Ex. 1003, ¶¶182-184).

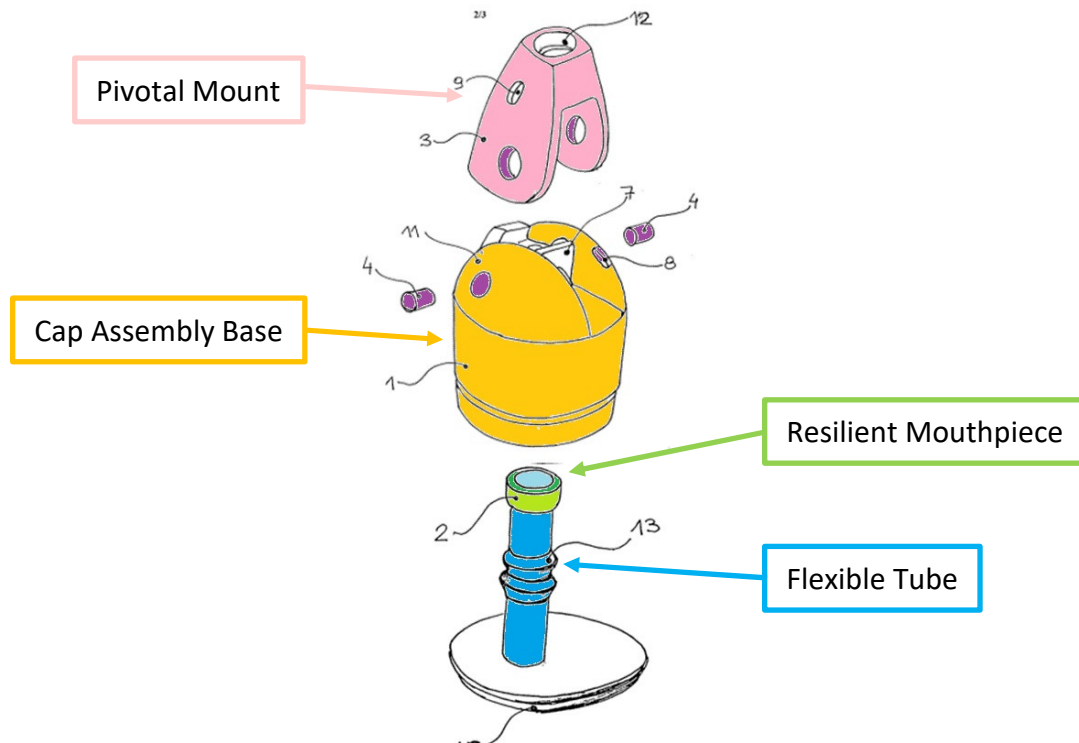
X. GROUND 3: CLAIMS 1, 9, 11, 13, AND 17-19 WOULD HAVE BEEN OBVIOUS OVER RIBARITS IN VIEW OF THE KNOWLEDGE OF A PERSON OF ORDINARY SKILL IN THE ART

A. Overview of Ribarits

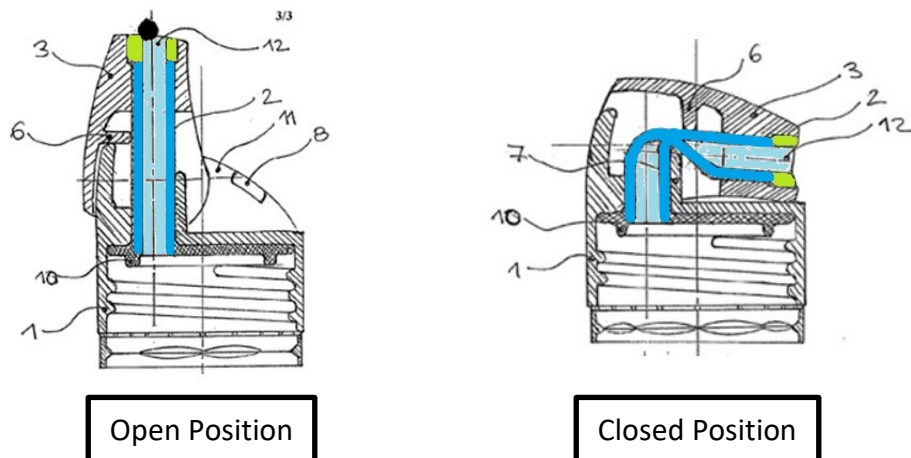
Ribarits (Ex. 1006) is titled “Drinking Device” and discloses a drinking device that includes “a drinking spout” that can be “pivoted” between an open position and a closed position. (Ex. 1006, 2). Ribarits includes a resilient mouthpiece at the end of an elastic tube that provides fluid communication from the drink bottle, through the cap assembly, and to the user’s mouth.



(*Id.*, Fig. 1).



(*Id.*, Fig. 2). The tube functions as an on/off valve that opens and closes based on the pivoting of the drinking spout, as shown below:



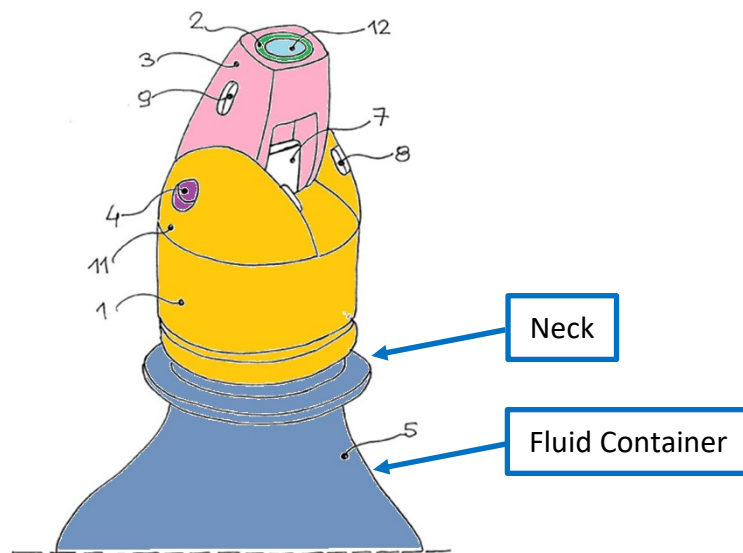
(Ex. 1006, Fig.3).³

B. Claim 1 is Obvious over Ribarits

1. Preamble and Limitation 1[a]: “fluid container”

Ribarits discloses the preamble and limitation 1[a]. (Ex. 1003, ¶¶185-188).

Ribarits discloses “a drinking device” that includes a fluid container having a neck with an opening. (Ex. 1006, Abstract). Figure 1 of Ribarits shows a drink container, as item 5:



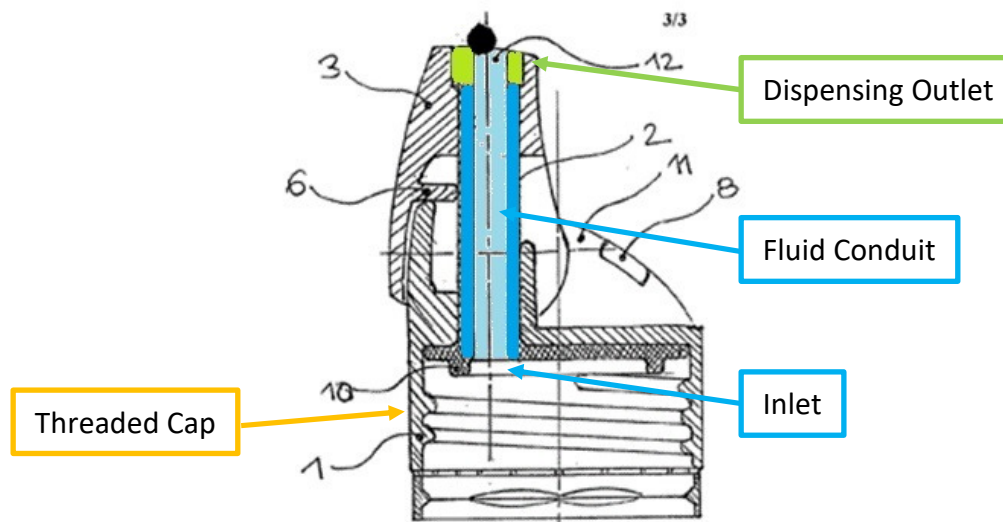
(*Id.*, Fig. 1). A POSA would have understood that the neck portion of the bottle would have an opening that attaches to Ribarits’ threaded cap. (Ex. 1003 ¶188).

³ The black dot adjacent the dispensing outlet in Figure 3 appears to be a printing error in the original published patent figure.

2. 1[b]: Cap Assembly

Ribarits discloses limitation 1[b]. (Ex. 1003 ¶¶189-191).

Ribarits’ “closing cap” is removably coupled to the fluid container via a threaded connection. (Ex. 1006, 2-3). The cap contains an “elastic tube” that forms a fluid conduit with an inlet at the fluid container and a dispensing outlet at the mouthpiece. *Id.* at 2.

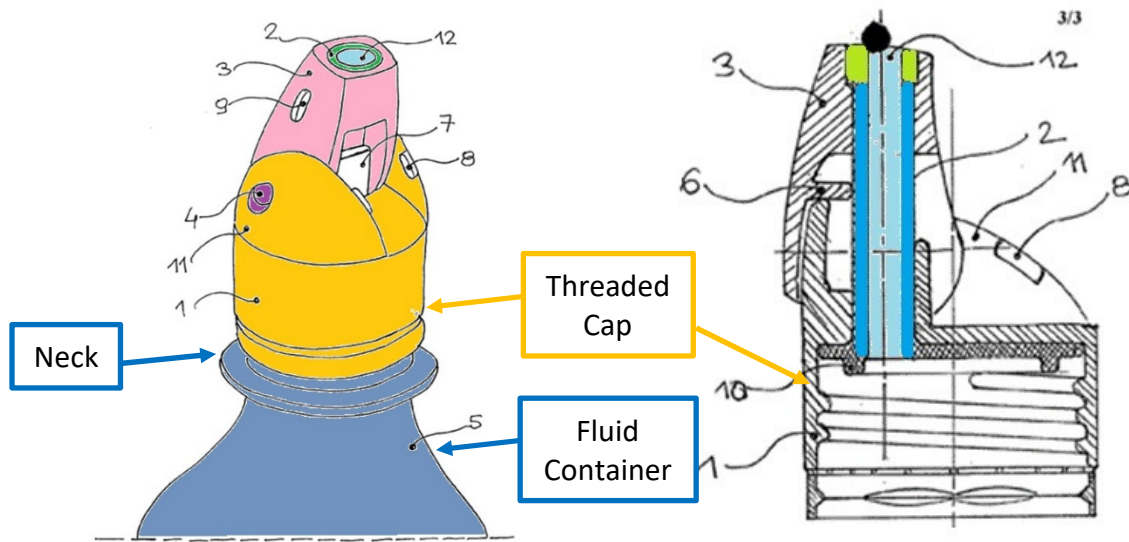


(*Id.*, Fig. 3).

a. 1[b][1]: Cap Assembly Base

Ribarits discloses limitation 1[b][1]. (Ex. 1003 ¶¶192-193).

As discussed above and shown below, Ribarits’ cap assembly is removably coupled to the neck of the fluid container via a threaded connection:

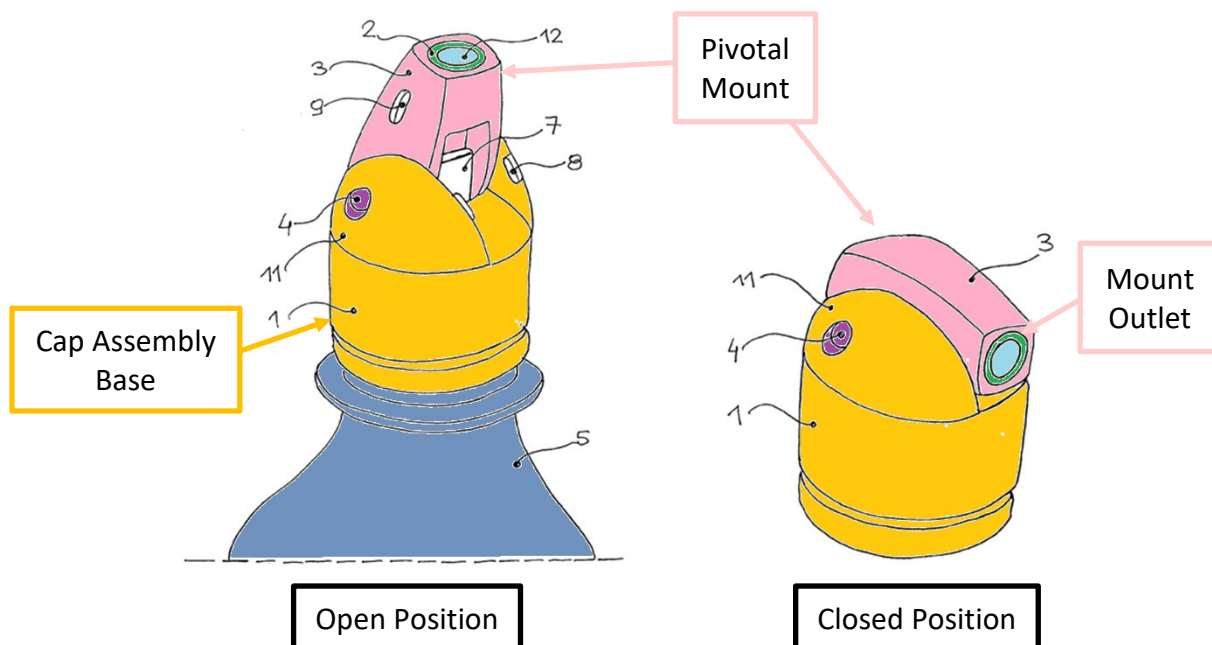


(*Id.*, Figs. 1, 3).

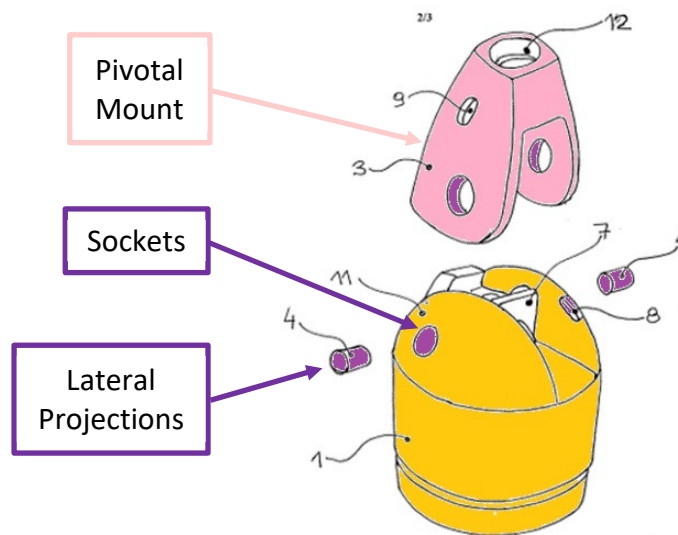
b. 1[b][2]: Pivotal Mount

Ribarits discloses limitation 1[b][2]. (Ex. 1003 ¶¶194-201).

Ribarits’ “drinking spout” is a pivotal mount that pivots relative to the cap assembly base and includes a mount outlet, as shown below:



(Ex. 1006, 2, Fig. 1). As shown below, Ribarits’ drinking spout is mounted to the cap assembly by “axial pins” that extend into a pair of sockets in the cap and engage corresponding sockets on the spout. *Id.* at 2.



Id., Fig. 2. A POSA would understand the axial pins to constitute lateral projections on Ribarits’ pivotal mount when the device is assembled. (Ex. 1003, ¶197).

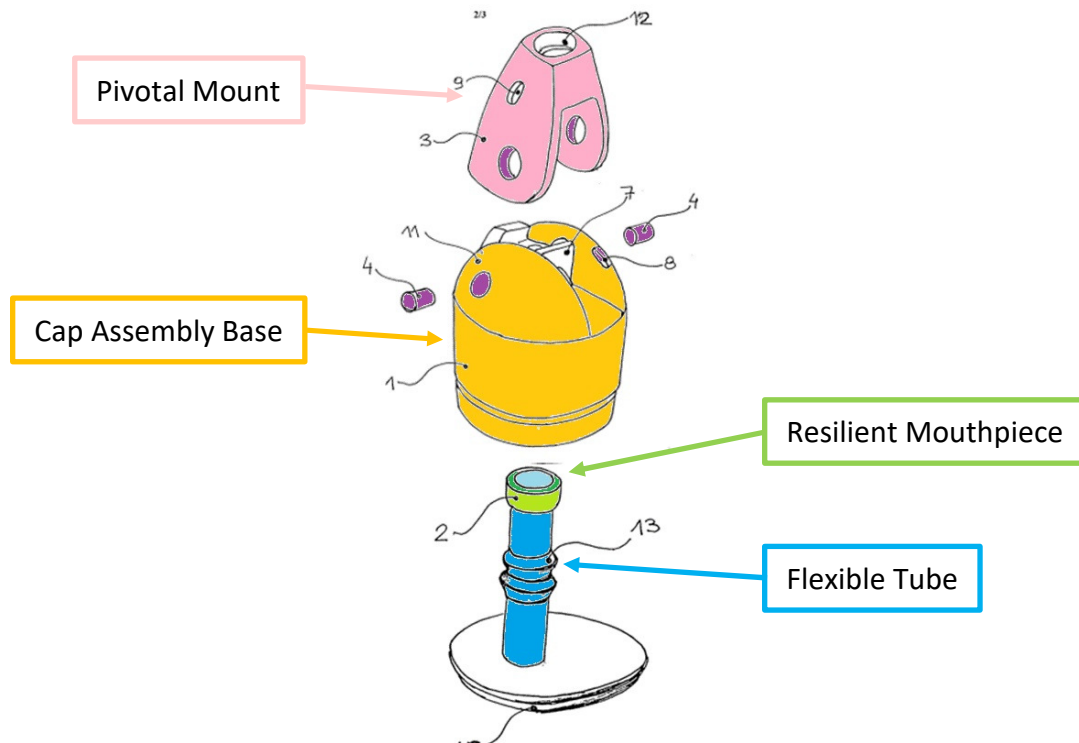
To the extent a POSA would not have understood Ribarits’ “axial pins” to constitute a “pair of lateral projections” on the pivotal mount, it would have been obvious to include this feature in view of the knowledge of a POSA. (Ex. 1003, ¶198). That is because the concept of using projections and sockets to create a pivoting hinge was well-known at the time of invention. (*Id.*, ¶199). The prior

art includes numerous examples of such pivotable connections in the context of reusable beverage containers like Ribarits. Nakajima, for example, includes two pivoting hinge joints comprised of lateral projections rotatably fitted into corresponding sockets. (*Id.*) In view of this and similar prior art devices, a POSA would have readily understood the desirability of substituting the axial pins with lateral projections formed on the pivotal mount and would have had a reasonable expectation of success in doing so. (*Id.*, ¶¶200-201).

3. 1[b][3]: Resilient Mouthpiece

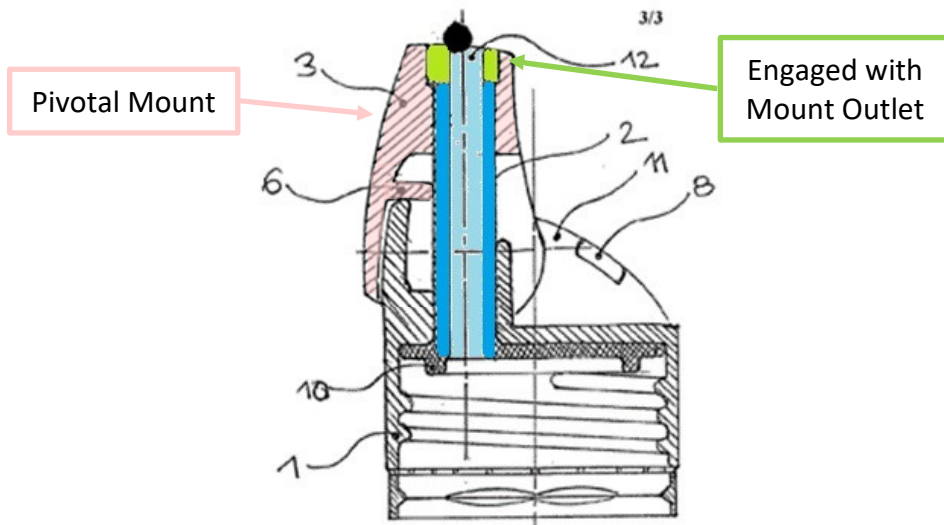
Ribarits discloses limitation 1[c]. (Ex. 1003, ¶¶202-204).

The resilient mouthpiece of Ribarits is the end portion of the “tubular element of rubber or latex,” as shown below:



(*Id.*, 2, Fig. 2). A POSA would have understood rubber and latex to be examples of resilient materials commonly used for the mouthpieces of drinking devices at the time of invention of the '255 patent. (Ex. 1003, ¶¶203).

Ribarits' resilient mouthpiece is inserted through the cap assembly base and engaged with the mount outlet at the dispensing outlet:

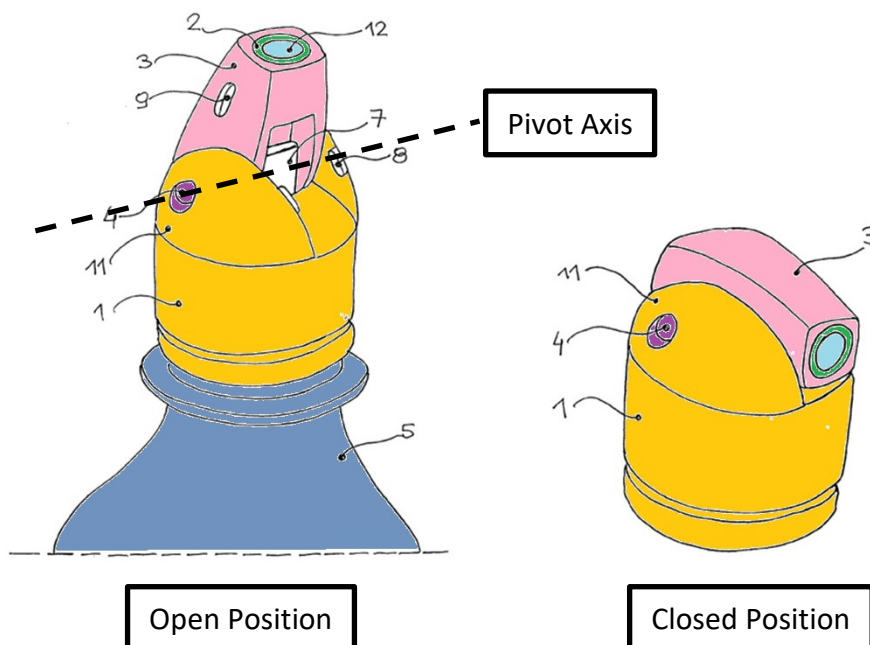


(*Id.*, Fig. 3).

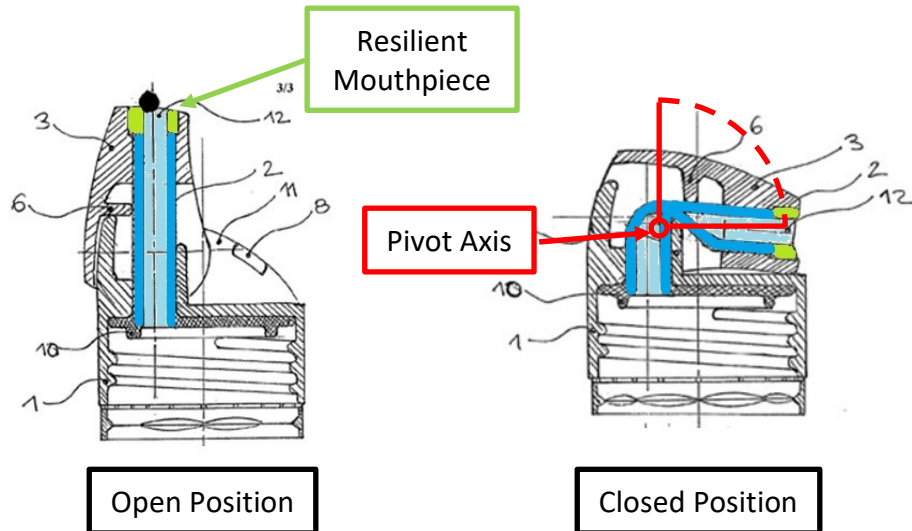
a. **Limitation 1[b][3][i]**

Ribarits discloses limitation 1[b][3][i]. (Ex. 1003 ¶¶205-206).

Ribarits' resilient mouthpiece pivots with the drinking spout about the axis defined by the lateral projections, as shown below:



(Ex. 1006, 2, Fig. 1).

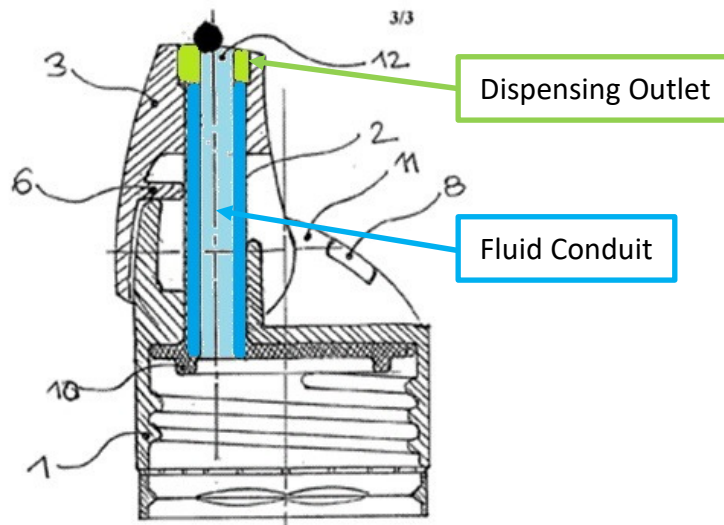


(*Id.*, 2, Fig.3).

b. Limitation 1[b][3][ii]

Ribarits discloses limitation 1[b][3][ii]. (Ex. 1003 ¶¶207-208).

Ribarits' resilient mouthpiece defines the portion of the fluid conduit that includes the dispensing outlet:

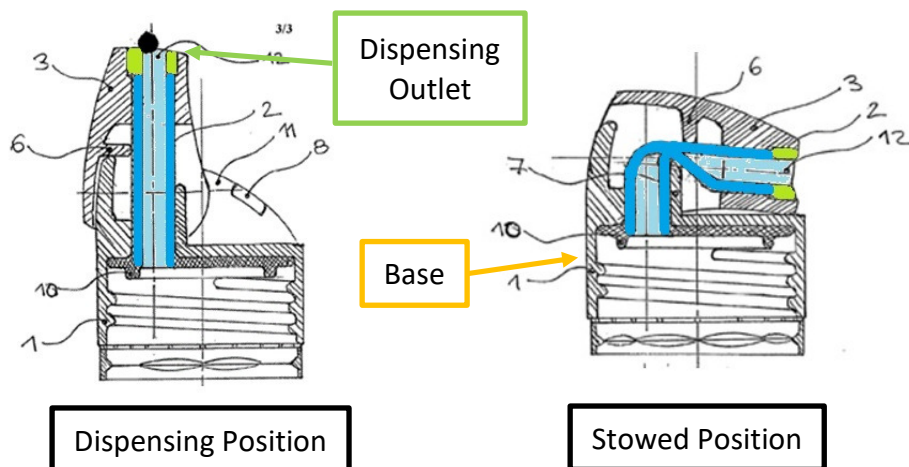


(Ex. 1006, 2, Fig. 3).

c. **Limitation 1[b][3][iii]**

Ribarits discloses limitation 1[b][3][iii]. (Ex. 1003 ¶¶209-211).

As discussed above, Ribarits' drinking spout pivots between a stowed position and a dispensing position:



(Ex. 1006, 2, Fig. 3). As shown above, in the dispensing position, the dispensing

outlet is positioned further away from the cap assembly base than in the stowed position:

a. Limitation 1[b][3][iv]

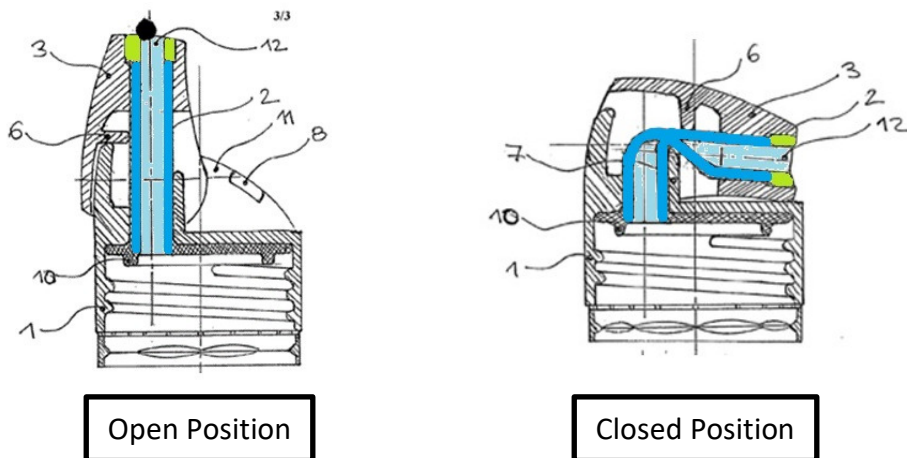
Ribarits discloses limitation 1[b][3][iv]. (Ex. 1003 ¶¶212).

As discussed in connection with limitation 1[b][3] above, Ribarits “tubular element of rubber or latex” constitutes a resilient mouthpiece. (*Supra*). As would have been understood by a POSA, rubber and latex are adapted to resiliently compress responsive to compressive forces, such as the compressive forces applied by a user’s teeth. (Ex. 1003, ¶212).

4. 1[b][4]: Manual On/Off Valve

Ribarits discloses limitation 1[b][4]. (Ex. 1003 ¶¶213-215).

Ribarits’ “sealed tubular element” is an on/off valve that opens and closes based on the pivoting of the drinking spout, as shown below:

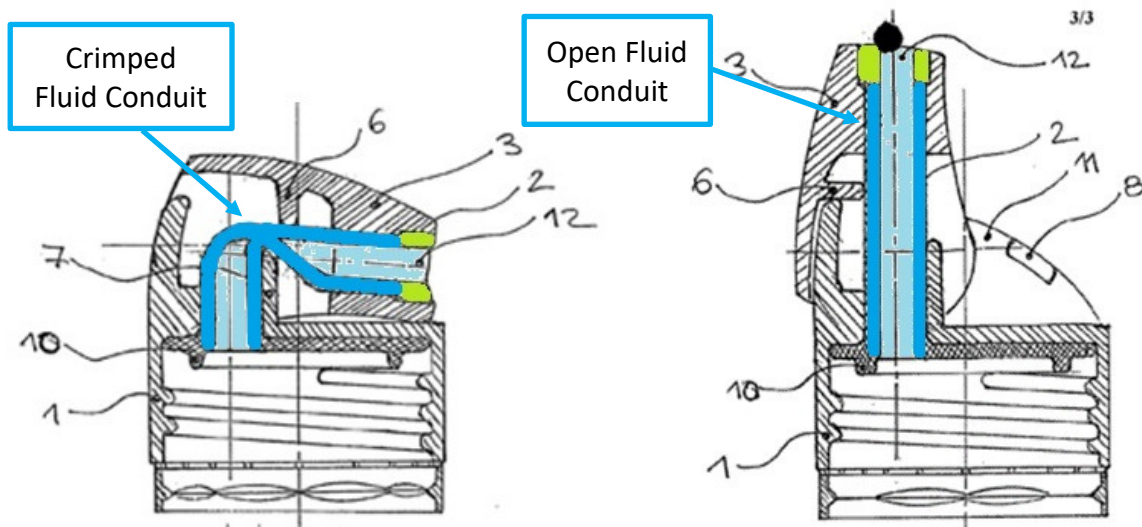


(Ex. 1006, 2, Fig. 3). In the closed position, the valve obstructs fluid flow through the fluid conduit, and in the open configuration, the valve permits fluid to flow through the fluid conduit from the inlet at the cap assembly base to the dispensing outlet at the opposite end. (*Id.*; Ex. 1003, ¶215).

a. **Limitation 1[b][4][i]-[iii]**

Ribarits further discloses limitations 1[b][4][i]-[iii]. (Ex. 1003 ¶¶216-220).

As discussed above, Ribarits’ “tubular element 2” is a flexible tube that defines a fluid conduit from the inlet to the dispensing outlet:



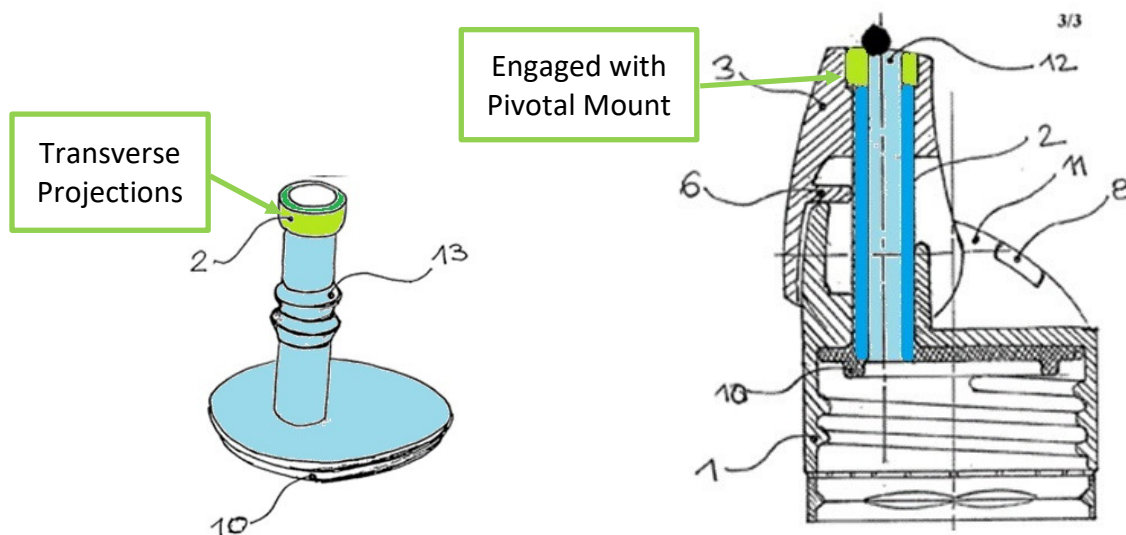
(Ex. 1006, 2, Fig. 3). In the closed configuration, the flexible tube crimps to obstruct fluid flow, while in the open configuration, the flexible tube straightens to allow fluid to flow. (*Id.* at 2).

For the reasons discussed above, each limitation of claim 1 is either

disclosed by Ribarits, or obvious over Ribarits in view of the knowledge of a POSA. (Ex. 1003 ¶¶220).

C. Claim 9 is Obvious over Ribarits

Ribarits also discloses the additional limitations of claim 9. (Ex. 1003, ¶¶221-224). Ribarits' resilient mouthpiece includes circumferential projections that extend transverse to the fluid conduit and engage with the pivotal mount, as shown below:



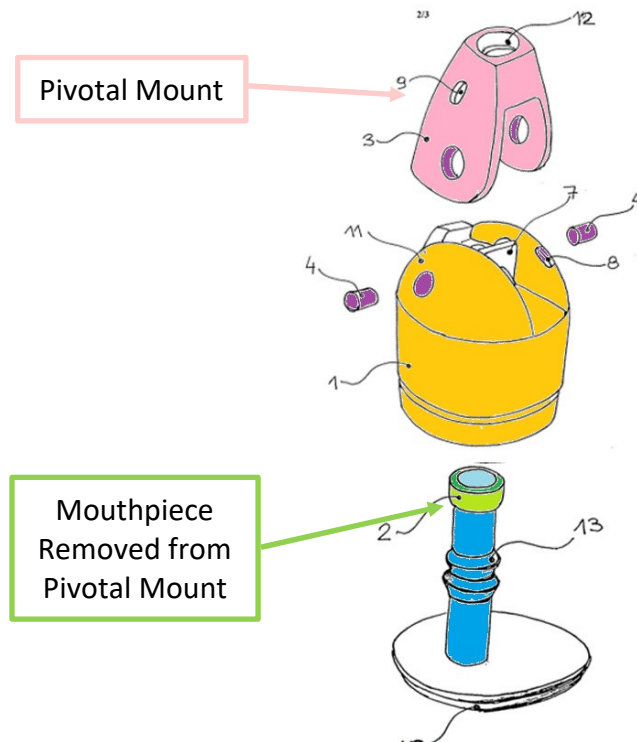
(Ex. 1006, 2, Figs. 2, 3).

PO's infringement contentions in co-pending litigation confirm that a circumferential projection of the type on Ribarits' mouthpiece constitutes "projections" for purposes of claim 9. (*See Supra*, §VIII.F). Because Ribarits discloses the additional limitations of claim 9, which depends from claim 1, claim

9 is obvious over Ribarits in view of the knowledge of a POSA. (Ex. 1003, ¶¶224).

D. Claim 11 is Obvious over Ribarits

Ribarits also discloses the additional limitations of claim 11. (Ex. 1003 ¶¶225-228). Ribarits' resilient mouthpiece is configured to be removed and reinserted into the drinking spout (i.e. pivotal mount), as shown below:

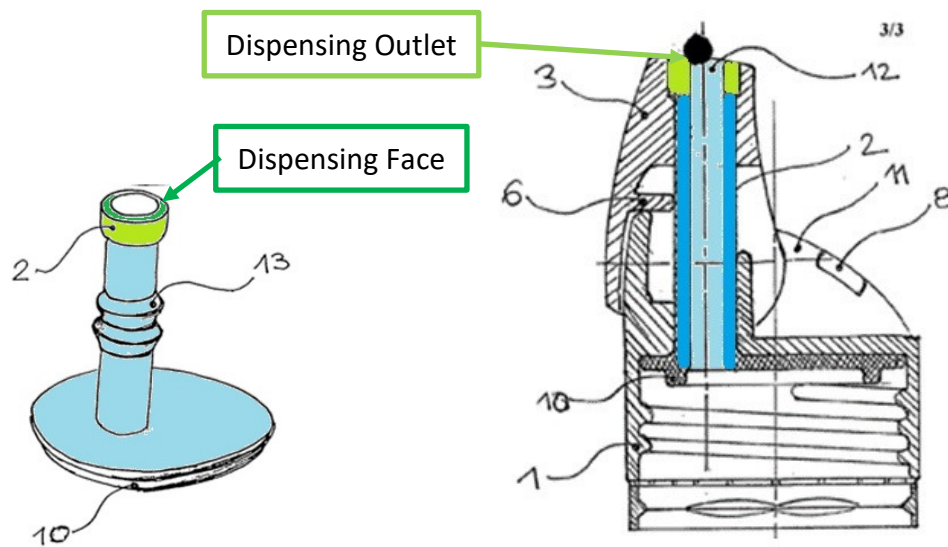


(Ex. 1006, 2, Fig. 2).

Because Ribarits discloses the additional limitation of claim 11, which depends from claim 1, claim 11 is obvious over Ribarits in view of the knowledge of a POSA. (Ex. 1003 ¶¶228).

E. Claim 13 is Obvious over Ribarits

Ribarits also discloses the additional limitations of claim 13. (Ex. 1003 ¶¶229-231). Ribarits' resilient mouthpiece includes a dispensing face through which the dispensing outlet extends to allow fluid to be dispensed from the drinking spout, as shown below:



(Ex. 1006, 2, Figs. 2, 3).

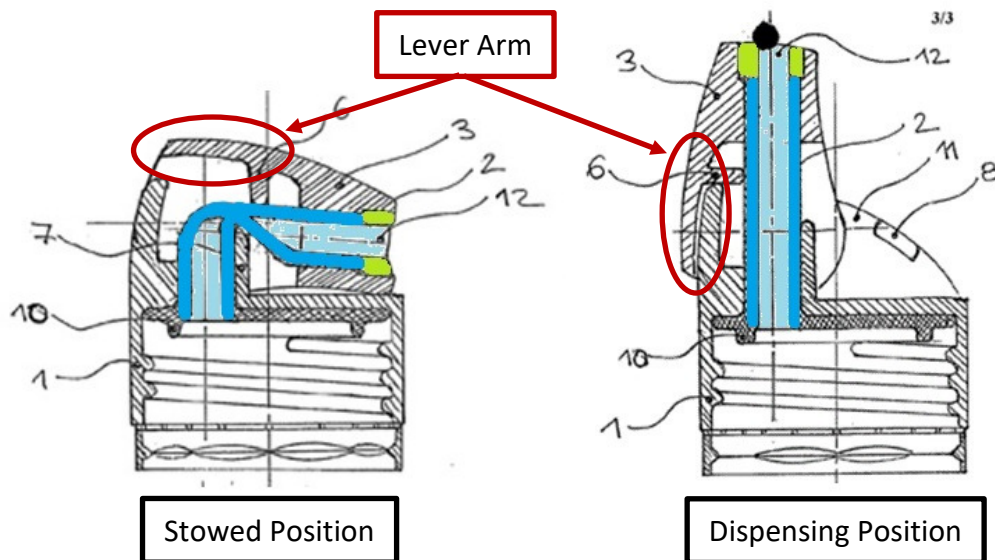
Because Ribarits discloses the additional limitation of claim 13, which depends from claim 1, claim 13 is obvious over Ribarits in view of the knowledge of a POSA. (Ex. 1003 ¶¶231).

F. Claim 17 is Obvious over Ribarits

Claim 17 depends from claim 1, and further recites, “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.” Ribarits discloses this additional limitation. (Ex. 1003, ¶¶232-235).

As shown below, Ribarits' pivotal mount includes a projecting lever arm or flange that extends away from a portion of the fluid conduit that extends through the pivotal mount and that is configured to engage a user's finger to pivot the mount to the dispensing position:



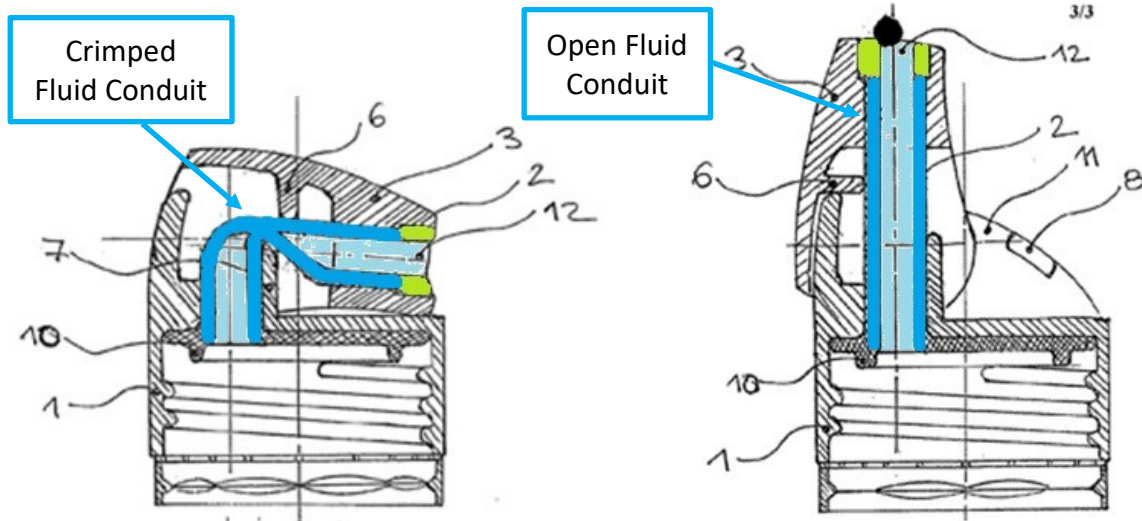
(Ex. 1006, 2, Fig.3). In particular, the lever arm extends away from the lower portion of the fluid conduit when the assembly is in the stowed position. (*Id.*; Ex. 1003, ¶234).

Because Ribarits discloses the additional limitations of claim 17, which

depends from claim 1, claim 17 is obvious over Ribarits in view of the knowledge of a POSA. (Ex. 1003, ¶235).

G. Claim 18 is Obvious over Ribarits

Ribarits also discloses the additional limitations of claim 18. (Ex. 1003, ¶¶236-239). As discussed above, Ribarits' pivotal mount engages the flexible tube to apply crimping forces thereto when pivoted into the stowed position:



(Ex. 1006, 2, Fig. 3).

Because Ribarits discloses the additional limitations of claim 18, which depends from claim 1, claim 18 is obvious over Ribarits in view of the knowledge of a POSA. (Ex. 1003, ¶239).

H. Claim 19 is Obvious over Ribarits

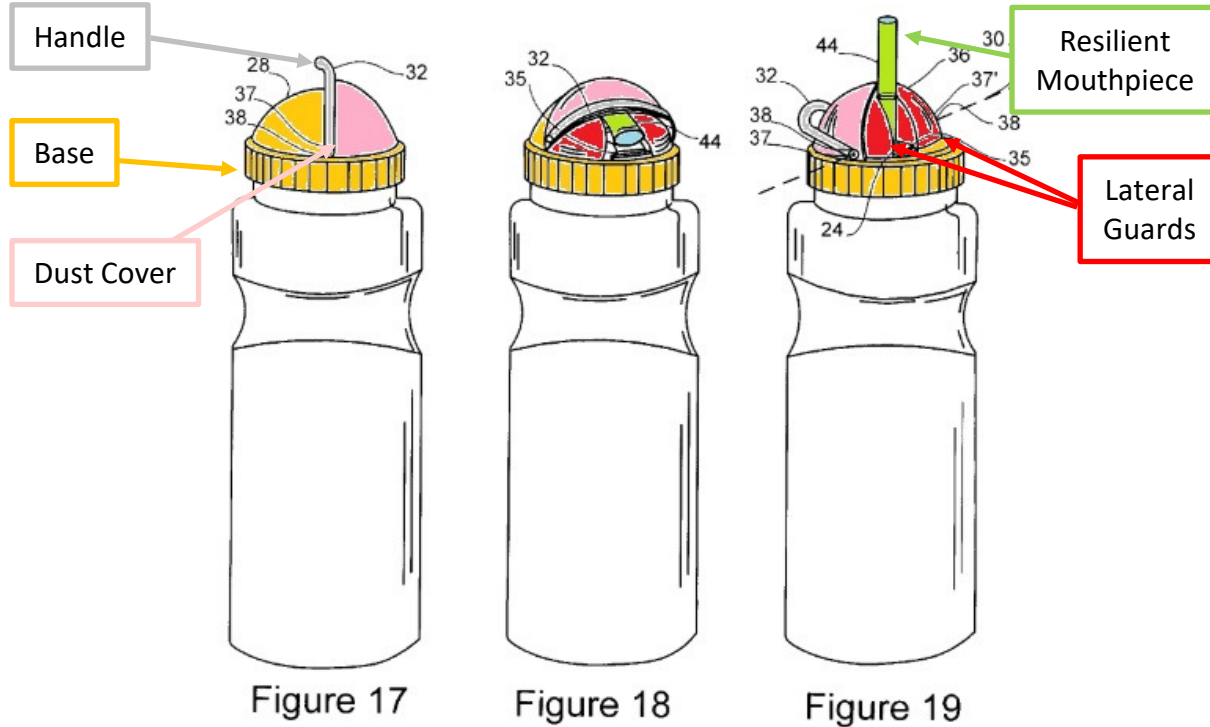
Ribarits also discloses the additional limitation of claim 19. (Ex. 1003

¶¶240-243). As discussed above, the Ribarits' flexible tube is secured to the pivotal mount via circumferential projections that engage with the mount outlet. Because Ribarits discloses the additional limitation of claim 19, which depends from claim 1, claim 19 is obvious over Ribarits in view of the knowledge of a POSA. (*Id.*, ¶243).

XI. GROUND 4: CLAIMS 2-7, AND 20-23 WOULD HAVE BEEN OBVIOUS OVER RIBARITS IN VIEW OF HUGHES AND/OR PANICCI

A. Overview of Hughes

Hughes (Ex. 1010) is titled “Automatic Valved Bottle Cap for use with Liquid Containers” and discloses a removable cap assembly with a pivoting mouthpiece, dust cover, lateral guards, and a carrying handle:



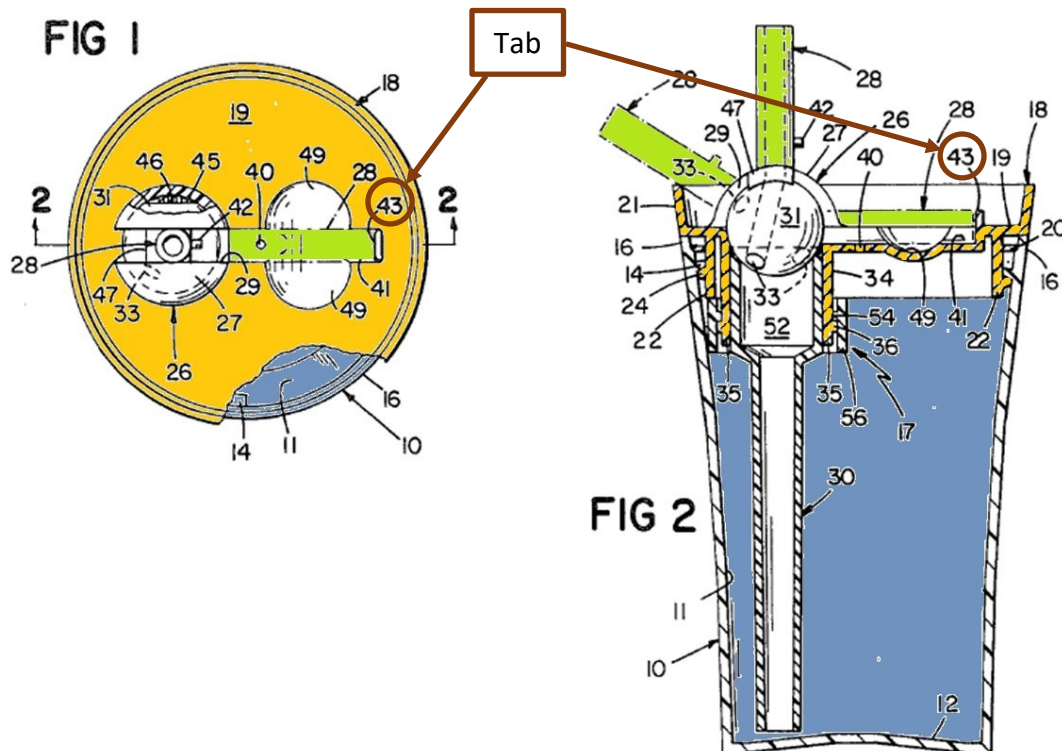
(Ex. 1010, Figs. 17-19). Hughes’ mouthpiece is comprised of a flexible “drinking hose” that collapses when pivoted into a stowed configuration. (*Id.* at 9:45-53). In the stowed configuration, the mouthpiece is secured in a channel formed by a pair of lateral guards, which is, in turn, covered by a domed dust cover. (*Id.*)

B. Overview of Panicci

Panicci (Ex. 1007) is titled “Cup with Pivoting Straw” and discloses a “drinking cup and cover” intended to “provide a means for storing the external straw segment” in a way that minimizes “contamination of the straw or for spilling the contents of the cup.” (Ex. 1007, Abstract, 1:29-35).

As shown below, the upper straw pivots into “a storage recess 41 in the

plane of slot 29”



(*Id.*, Figs. 1-2). The end of the recess includes “tab 43,” which “is positioned to cover the upper end of straw segment 26 to avoid contamination of the straw.”

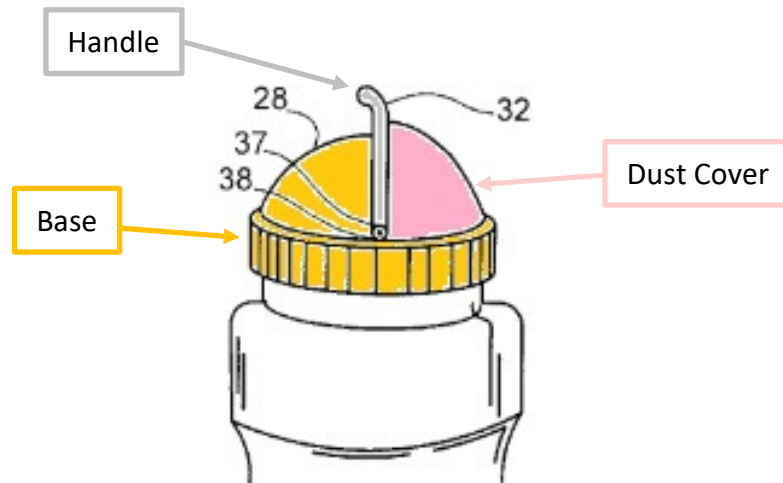
(*Id.*, 3:45-47).

C. Claim 2 is Obvious over Ribarits in view of Hughes

Claim 2 depends from claim 1, and further recites: “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.” These additional limitations would have been obvious over Ribarits, in

view of Hughes. (Ex. 1003, ¶¶244-250).

Hughes discloses a handle that extends from the cap assembly base:



(Ex. 1010, Fig. 17). The handle in Hughes is secured to the cap assembly via a pair of axle pins that engage the cap assembly and allow for pivotal movement of the handle and cover. (*Id.*, 4:63-5:4).

It would have been obvious to a POSA to add the handle of Hughes to the cap assembly of Ribarits to achieve the claimed invention for several reasons. (Ex. 1003, ¶247).

First, the use of carrying handles for fluid containers was commonplace at the time of the invention. (Ex. 1003, ¶247). Basic reusable water bottles, such as in Hughes, routinely included handles to facilitate carrying. (*Id.*) Accordingly, a POSA would have recognized the desirability of adding a handle to the Ribarits cap assembly. (*Id.*) Doing so would have constituted nothing more than a routine

design choice for a POSA. (*Id.*)

Moreover, a POSA would have been motivated to add Hughes' handle to the Ribarits cap assembly for at least two reasons. (Ex. 1003, ¶248). First, as noted above, handles were well-known to facilitate carrying of a water bottle. Second, it was equally well-known to a POSA that for liquid containers intended to hold cold beverages, the use of a handle would minimize the transfer of heat from the user's hand, and thereby ensure the contents of the container remained colder for longer. (*Id.*)

In adding the Hughes handle to the Ribarits cap assembly, a POSA would have been motivated to secure the handle via the existing sockets in Ribarits' cap assembly base because doing so would not require any modification to the Ribarits design. (Ex. 1003, ¶249). In this configuration, as in Hughes, the handle could optionally be rotated into a carrying and a retracted position. (*Id.*) Because such a configuration would cover the sockets in the Ribarits cap assembly base, it would have the added benefit of obstructing removal of the pivotal mount from the cap assembly base at the point of connection between the lateral projections and sockets. (*Id.*)

Likewise, a POSA would have had a reasonable expectation of success in modifying Ribarits to include Hughes' handle because, as noted above, it could

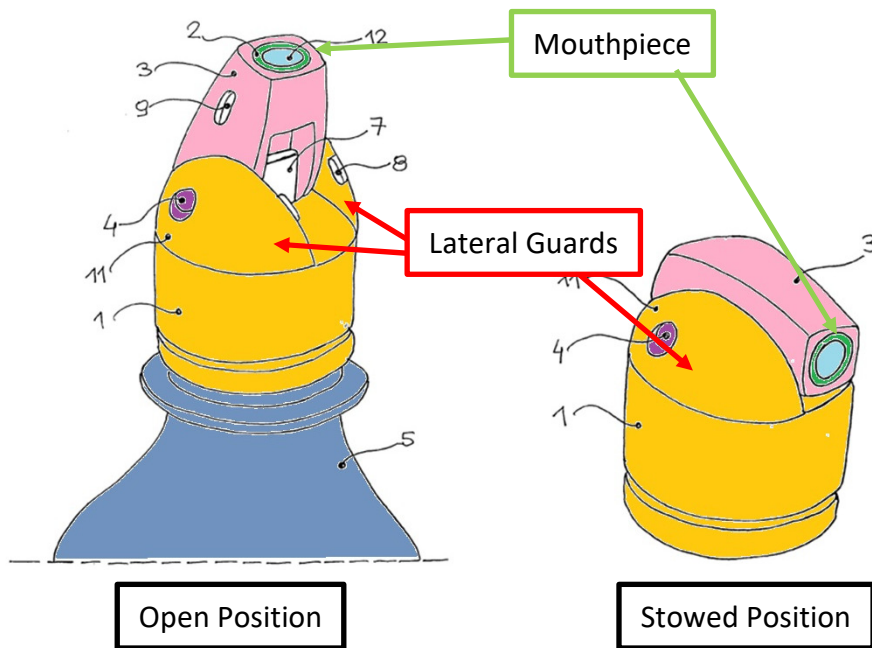
be accomplished in the same manner as in the Hughes device (i.e. by attaching the handle via sockets in the cap assembly base) and doing so would not require any change the design of the Ribarits cap assembly base. (*Id.*)

Accordingly, claim 2 would have been obvious over Ribarits, in view of Hughes. (Ex. 1003, ¶250).

D. Claim 3 is Obvious over Ribarits in view of Panicci

Claim 3 depends from claim 1, and further recites, “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.” These additional limitations are obvious over Ribarits, in view of Panicci. (Ex. 1003, ¶¶251-265).

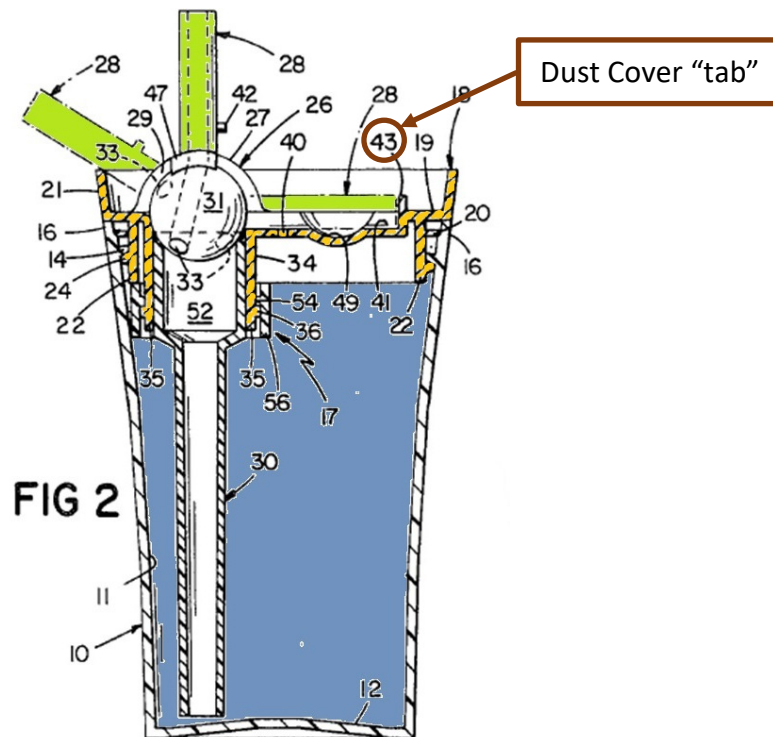
Ribarits’ cap assembly includes a pair of lateral guards on opposed sides of the mouthpiece, as shown below:



(Ex. 1006, Fig. 1). When the pivotal mount is in the stowed position the pair of lateral guards on opposite sides of the pivotal mount. (Ex. 1003, ¶254).

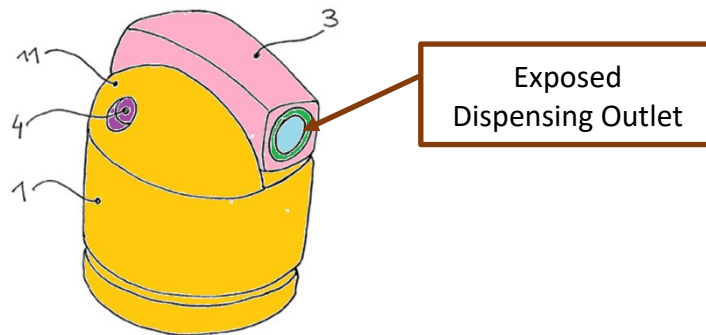
Ribarits does not disclose “a dust cover extending between the pair of lateral guards and positioned to protect the dispensing outlet.” However, in view of Panicci, it would have been obvious to a POSA to modify Ribarits to include such a dust cover. (Ex. 1003, ¶255).

Panicci discloses a “tab 43” that serves as a dust cover to protect the exposed end of a drinking straw when pivoted to a stowed position:



(Ex. 1007, Figs. 2). A POSA would have been motivated to modify Ribarits to add a dust cover similar to Panicci's 'tab,' to prevent unwanted contamination and/or fluid leakage for several reasons. (Ex. 1003, ¶257).

First, at the time of invention, the use of dust covers was a well-known technique in the design of drink container closures with mouthpieces. (Ex. 1003, ¶258). Such a dust cover would be particularly suited to Ribarits because, as shown below, Ribarits' dispensing outlet remains exposed when in the stowed position:



(Ex. 1006, Fig. 1; Ex. 1003, ¶259).

A POSA would have been motivated to add a dust cover to protect Ribarits' dispensing outlet to improve hygiene and reduce the risk of accidental leakage from the spout. (Ex. 1003, ¶260). Panicci confirms this motivation, noting that one of the objects of its invention is “to provide a means for storing the external straw segment in a compact configuration that *minimizes the opportunity for contamination of the straw or for spilling the contents of the cup ...*.” (Ex. 1007, 1:29-35 (emphasis added); Ex. 1003, ¶261).

A POSA would have understood such a modification would be nothing more than the application of a known technique (i.e. the use of dust covers) to improve a known device (i.e. the Ribarits cap assembly) to yield predictable results (i.e. protection of a dispensing outlet from unwanted contamination or leakage). (Ex. 1003, ¶262). Likewise, a POSA would have understood the modification would constitute nothing more than the addition of a known prior art element (i.e. a dust cover) according to its established function (i.e. to cover an

exposed surface) to obtain a predictable result (i.e. the protection of a dispensing outlet from unwanted contamination or leakage). (Ex. 1003, ¶263).

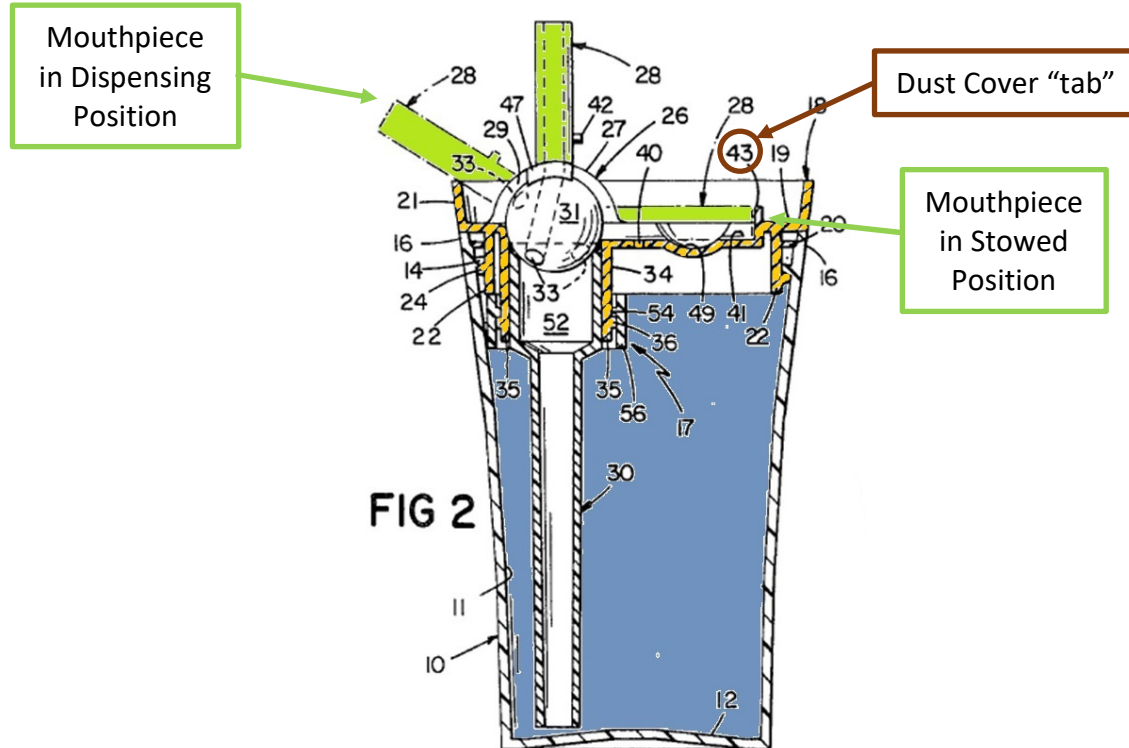
Finally, in view of the numerous prior art examples known at the time of the invention, a POSA would have had a reasonable expectation of success in implementing a dust cover to improve the Ribarits design. (Ex. 1003, ¶264). Indeed, adding a dust cover to protect the exposed end of Ribarits dispensing outlet in the stowed configuration would not have required any rearrangement or modification of any of the other components of the Ribarits cap assembly. (*Id.*)

Accordingly, claim 3 is obvious over Ribarits, in view of Panicci. (Ex. 1003, ¶265).

E. Claim 4 is Obvious over Ribarits in view of Panicci

Claim 4 depends from claim 3, and further recites, “wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.” Panicci discloses this additional limitation. (Ex. 1003, ¶¶266-270).

Panicci’s mouthpiece (i.e. “upper straw 28”) pivots away from the dust cover (i.e. “tab 43”) when the straw moves from the stowed position to the dispensing position.



(Ex. 1007, Fig. 2).

Likewise, the mouthpiece of Ribarits pivots away from the cap assembly when moving from the stowed position to the dispensing position. Thus, in modifying Ribarits to include Panicci's dust cover, a POSA would have understood Ribarits' mouthpiece would pivot away from the dust cover when moving from the stowed position to the dispensing position. (Ex. 1003, ¶269).

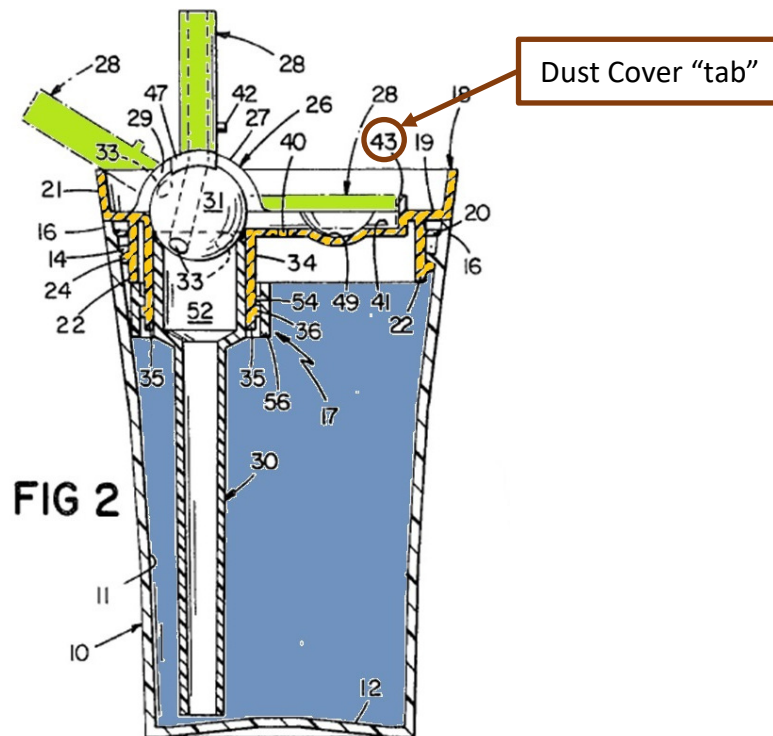
Accordingly, claim 4 is obvious over Ribarits, in view of Panicci. (Ex. 1003, ¶270).

F. Claim 5 is Obvious over Ribarits in view of Panicci

Claim 5 depends from claim 3, and further recites, "wherein the dust cover

projects above an upper surface of the cap assembly base.” Panicci discloses this additional limitation. (Ex. 103, ¶¶271-275).

Panicci’s dust cover projects above an upper surface of the base of the cap assembly:



(Ex. 1007, Fig. 2).

Accordingly, claim 5 is obvious over Ribarits, in view of Panicci. (Ex. 1003, ¶275).

G. Claim 6 is Obvious over Ribarits in view of Panicci, in further view of Hughes

Claim 6 depends from claim 3 and further recites: “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.” The additional limitations of claim 6 would have been obvious to a POSA in further view of Hughes. (Ex. 1003, ¶¶276-281).

As discussed in connection with claim 2 above, it would have been obvious to add Hughes’ handle to the Ribarits cap assembly. As discussed in connection with claim 3 above, it also would have been obvious to modify Ribarits to include the dust cover of Panicci. In making these modification, it would have been equally obvious to a POSA to configure the handle to include both the lateral guards and the dust cover. (Ex. 1003, ¶278).

A POSA would have been motivated to fix the position of the handle laterally on the edge of Ribarits’ cap assembly base. That is because such a configuration would have been necessary to avoid interference between the handle and the pivoting movement of the pivotal mount, as well as interference between the handle and the mouthpiece in the dispensing position. (Ex. 1003, ¶279). A POSA would have also been motivated to include the lateral guards and dust cover as an integrated part of the handle. (*Id.*, ¶280). A POSA would have understood that the handle, guards, and dust cover could be molded together during the manufacturing process as an integrated component of the cap assembly base,

thereby reducing manufacturing time and cost. (*Id.*) Accordingly, claim 6 would have been obvious over Ribarits, in view of Panicci, in further view of Hughes. (*Id.*, ¶281).

H. Claim 7 is Obvious over Ribarits in view of Hughes

Claim 7 depends from claim 1 and further recites: “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.” These additional limitations would have been obvious over Ribarits, in view of Hughes. (Ex. 1003, ¶¶282-285).

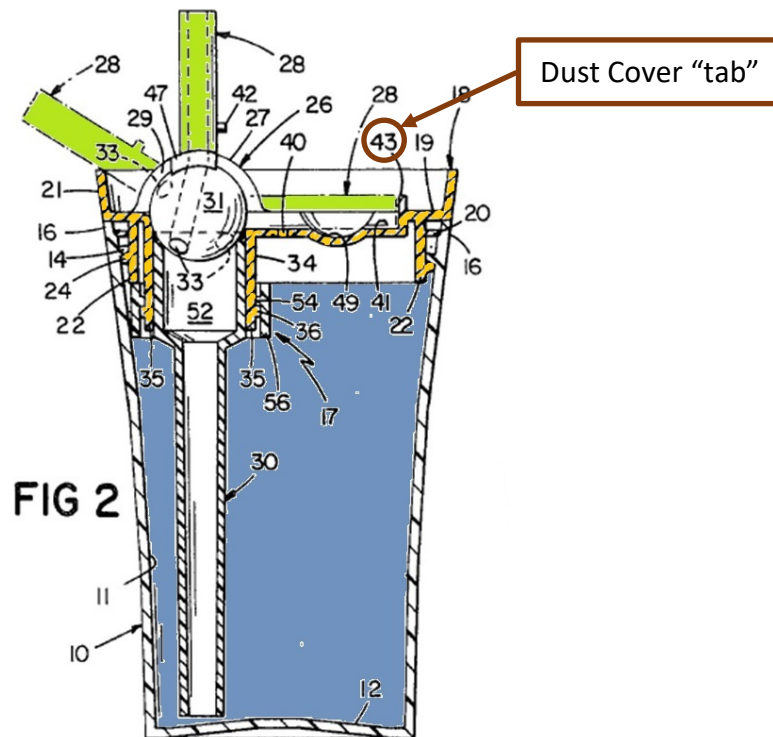
The Hughes handle, like any carrying handle commonly used in connection with fluid containers, includes an aperture to engage a user’s fingers. (Ex. 1010, Fig. 17; Ex. 1003, ¶284). For the reasons discussed in connection with claim 2 above, it would have been obvious to add the handle of Hughes to the Ribarits cap assembly base. (*Id.*) And, as discussed in connection with claim 6 above, it also would have been obvious to fix the orientation of the Hughes handle on the Ribarits cap assembly to avoid interference between the handle and the pivoting action of the pivotal mount. (*Id.*) Thus, claim 7 would have been obvious over Ribarits, in view of Hughes. (Ex. 1003, ¶285).

I. Claim 20 is Obvious over Ribarits in view of Panicci

Independent Claim 20 contains the limitations of independent claim 1 and one additional limitation: “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.” (Ex. 1002, 2:17-3:14).

For the same reasons discussed in Ground 3 above, Ribarits either discloses or renders obvious the limitations of claim 1. As discussed below, Panicci discloses the additional limitation of claim 20. Thus, for the same reasons discussed in connection with claim 3 above, claim 20 would have been obvious over Ribarits, in view of Panicci. (Ex. 1003, ¶287).

Panicci discloses a “tab 43” that serves as a dust cover to protect the exposed end of a drinking straw when pivoted to a stowed position:



(Ex. 1007, Figs. 2). Panicci's "tab" remains stationary at the position identified above, regardless of the position of the mouthpiece. (Ex. 1003, ¶288).

For the same reasons discussed above in claim 3, a POSA would have been motivated to modify Ribarits to add a dust cover similar to Panicci's "tab." Thus, claim 20 is obvious of Ribarits, in view of Panicci. (Ex. 1003, ¶289).

J. Claim 21 is Obvious over Ribarits in view of Panicci and Hughes

Claim 21 depends from claim 20, and further recites: "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.” This additional limitation is identical to that of claim 2. Accordingly, for the same reasons discussed above in connection with claim 2, this limitation would have been obvious over Ribarits, in view of Hughes. (Ex. 1003, ¶290).

K. Claim 22 is Obvious over Ribarits in view of Panicci

Claim 22 depends from claim 20, and further recites, “wherein when the resilient mouthpiece is pivoted from the stowed position to the dispensing position, the resilient mouthpiece pivots away from the dust cover.” This limitation is identical to that of claim 4. Thus, for the same reasons discussed above in connection with claims 20 and 4, claim 22 is obvious over Ribarits, in view of Panicci. (Ex. 103, ¶291).

L. Claim 23 is Obvious over Ribarits in view of Panicci

Claim 23 depends from claim 20, and further recites, “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.” This limitation is identical to that of claim 9. Thus, for the same reasons discussed above in connection with claims 20 and 9, claim 23 is obvious over Ribarits, in view of Panicci. (Ex. 1003, ¶292).

XII. SECONDARY CONSIDERATIONS

Secondary considerations should be considered but do not control the obviousness conclusion. *Newell Cos., Inc. v. Kenney Mfg. Co.*, 864 F.2d 757, 768 (Fed. Cir. 1988). Where, as here, a strong *prima facie* case of obviousness has been made, even relevant secondary considerations supported by substantial evidence may not dislodge an obviousness conclusion. *Leapfrog Enters. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). Petitioner is aware of no evidence supporting a claim for secondary considerations.

XIII. DISCRETIONARY DENIAL UNDER §314(A) IS NOT APPROPRIATE

The Board should decline to exercise its discretion under §314(a). Efficiency, fairness, and the merits support institution despite the existence of co-pending litigation. *Apple v. Fintiv*, IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020) (“*Fintiv*”). Each *Fintiv* factor is discussed below.

A. Factor 1: Potential Stay

When this IPR is instituted, Petitioner will move to stay the district court action as it pertains to the ’255 patent pending resolution of this IPR. Thus, this factor weighs against discretionary denial.

B. Factor 2: Proximity of Trial to FWD

Trial in the district court action is scheduled for September 2025. (Ex. 1014). This date has already been delayed once (*id.*), and would, of course, be delayed further if the case is stayed. Thus, this factor weighs against discretionary denial.

C. Factor 3: Investment in Parallel Proceeding

Petitioner filed its complaint on August 21, 2023, and PO filed its initial counterclaim alleging infringement of the '255 patent on November 8, 2023. Fact discovery in the district court action remains in its infancy. The parties served infringement and invalidity contentions and only recently proposed terms for claim construction. No expert reports have been served.

Fact discovery does not close until December 2024, and even after that, much work would still remain, including expert reports, expert discovery, dispositive motions, pretrial motions, and trial. Ex. 1014. The “remaining investment” outweighs any investments made. *Samsung Elecs. Am. Inc. v. Snik LLC*, IPR2020-01428, Paper 10 at 11 (P.T.A.B. Mar. 9, 2021); *Huawei Techs. Co. v. WSOU Invs., LLC*, IPR2021-00226, Paper 10 at 13-14 (P.T.A.B. June 10, 2021). Thus, this factor weighs against discretionary denial.

D. Factor 4: Overlapping Issues

Petitioner's district court invalidity contentions contain various prior-art references not at issue in the IPR. Moreover, if this IPR is instituted and the district court action is stayed as to the '255 patent, Petitioner could not pursue in the action any invalidity ground raised or that could have been reasonably raised in this IPR. *Cal. Inst. of Tech. v. Broadcom Ltd.*, 25 F.4th 976 (Fed. Cir. 2022). Thus, little concern of duplicative efforts or conflicting decisions exists.

E. Factor 5: The Parties

While the same parties are involved here as in the district court, this factor is not determinative. The Board repeatedly declines to exercise its discretion to deny institution under such circumstances. *See, e.g., NanoCelect Biomedical, Inc. v. Cytonome/ST, LLC*, IPR2020-00551, Paper 19 at 2-25 (P.T.A.B. Aug. 27, 2020); *VMware, Inc. v. Intellectual Ventures I LLC*, No. IPR2020-00470, Paper 13 at 20, 22 (P.T.A.B. Aug. 18, 2020); *Samsung Electronics Co., Ltd. v. Dynamics, Inc.*, IPR2020-00502, Paper 34 at 13-14 (P.T.A.B. Aug. 12, 2020).

F. Factor 6: Other Circumstances

This Petition's merits are particularly strong, which favors institution. *Fintiv*, IPR2020-00019, Paper 11 at 18. Moreover, denying institution would negate Congress's intent in providing a 1-year period to file petitions.

Accordingly, the *Fintiv* analysis favors institution.

**XIV. DISCRETIONARY DENIAL UNDER §325(D) IS NOT
APPROPRIATE**

This Petition presents a strong case of unpatentability and rests on prior art and arguments not previously presented to the PTO, and discretionary denial under §325(d) is thus not warranted.

In a §325(d) analysis, the Board considers several factors delineated in *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 (P.T.A.B. Dec. 15, 2017). Factors (a), (b), and (d) relate to whether the art or arguments are substantially the same as those previously presented, while factors (c), (e), and (f) relate to whether the petition has demonstrated a material error by the PTO during prior consideration. *Advanced Bionics, LLC v. Med-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 10 (P.T.A.B. Feb. 13, 2020). The Board considers the second set of factors only if the first set of factors weighs in favor of exercising discretion. *Id.* at 8.

A. Factors (a), (b), and (d)

The two primary references relied on in this Petition (Nakajima and Ribarits), which are applied in the asserted grounds covering all challenged claims, were not submitted to the PTO and have not previously been considered. *See* (Ex. 1001 at 1-2). The remaining references (Gardner and Panicci) were

submitted by PO in an IDS but were not applied by the Examiner. Thus, any arguments relating to these references likewise has not been considered by the PTO and its prior submission to the PTO does not weigh in favor of exercising discretion. *See (id.)*; *Cisco Sys., Inc. v. NetSocket, Inc.*, IPR2023-00607, Paper 11 at 22 (P.T.A.B. Sept. 26, 2023).

Because all of the grounds, covering all challenged claims, apply art that was not previously presented to the PTO, and because each ground includes arguments not previously considered by the PTO, the Board should not exercise its discretion to deny the Petition under §325(d). *See, e.g., Samsung Elecs. Co., Ltd. v. Collect, LLC*, IPR2020-00471, Paper 15 at 9-17 (P.T.A.B. Aug. 18, 2020) (declining to exercise discretion where petition relies on art not before the PTO in a majority of asserted grounds); *Brunswick Corp. v. Volvo Penta of the Ams., LLC*, IPR2020-01512, Paper 15 at 16-21 (P.T.A.B. Mar. 11, 2021) (declining to exercise discretion where petition includes grounds covering all challenged claims that do not contain cumulative arguments).

B. Factors (c), (e), and (f)

As discussed above, none of the art relied upon in this Petition was substantively evaluated during examination. Accordingly, there is no overlap between discussion of the references in this Petition and the arguments presented

in prior examination. Because the references as applied in this Petition present a strong case for unpatentability, the Examiner clearly and materially erred in not applying them. Accordingly, these factors weigh strongly against exercising discretion. *See, e.g., Fusion Orthopedics, LLC v. Extremity Med., LLC*, IPR2023-00894, Paper 15 at 34-35 (P.T.A.B. Nov. 17, 2023).

For the above reasons, the Board should not exercise discretion under §325(d).

XV. CONCLUSION

Petitioner respectfully requests cancellation of the challenged claims for the reasons described above.

Dated: July 1, 2024

By: /Ali S. Razai/

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. §42.24(d), the undersigned certifies that the foregoing **PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 10,676,255**, exclusive of the parts exempted as provided in 37 C.F.R. §42.24(a), contains 13,069 words and therefore complies with the type-volume limitations of 37 C.F.R. §42.24(a).

Dated: July 1, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date below a copy of this **PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 10,676,255** **PETITIONER’S POWER OF ATTORNEY, AND EXHIBITS 1001 – 1014** were served by Federal Express overnight mail on the Patent Owner at the correspondence address of record for the subject patent as follows:

165846 - Reed Smith LLP (972852)
IP Docketing Dept.
P.O. Box 488
Pittsburgh, PA
UNITED STATES

A courtesy copy has been sent by email on this day to Patent Owner’s counsel of record in the matter identified in Section I.B of the Petition as follows:

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Trove v. CamelBak
IPR Petition – U.S. Patent 10,676,255

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