US00D781151C1

(12) EX PARTE REEXAMINATION CERTIFICATE (11949th)

United States Patent
Lerman

(10) **Number: US D781,151 C1**
(45) **Certificate Issued: Nov. 30, 2021**

(54) **JAR**

(71) Applicant: **eBottles.com**, Jupiter, FL (US)

(72) Inventor: **Robert Lerman**, Jupiter, FL (US)

(73) Assignee: **EBOTTLES.COM**, Jupiter, FL (US)

Reexamination Request:
No. 90/014,262, Feb. 11, 2019

Reexamination Certificate for:
Patent No.: **Des. 781,151**
Issued: **Mar. 14, 2017**
Appl. No.: **29/567,402**
Filed: **Jun. 8, 2016**

(51) **LOC (13) Cl.** **09-01**

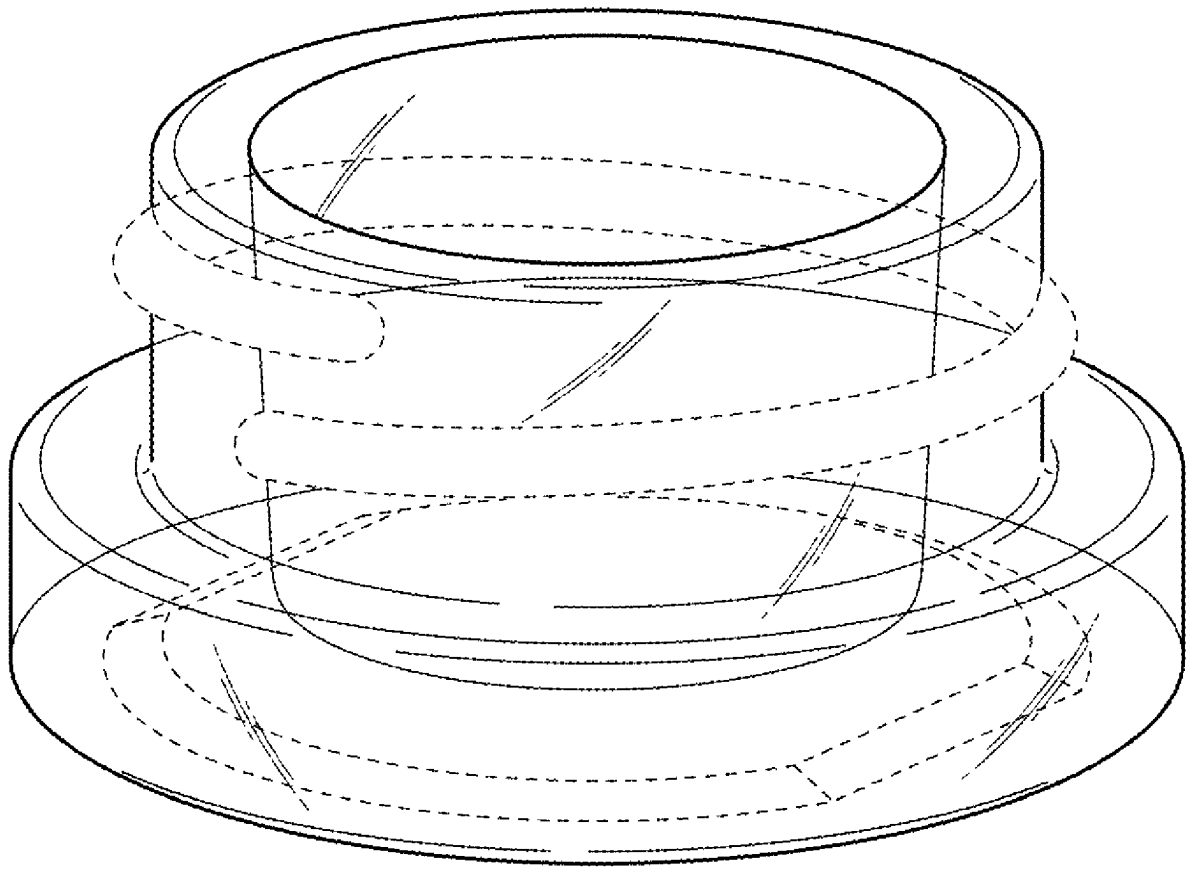
(52) **U.S. Cl.**
USPC **D9/500**

(58) **Field of Classification Search**
USPC D9/500, 503, 504, 549, 558, 715; D3/264
CPC B65D 1/00; B65D 1/02; B65D 1/0207; B65D 1/0223; B65D 1/10; B65D 23/00; B65D 2501/00; B65D 2501/0009
See application file for complete search history.

(56) **References Cited**

To view the complete listing of prior art documents cited during the proceeding for Reexamination Control Number 90/014,262, please refer to the USPTO's public Patent Application Information Retrieval (PAIR) system under the Display References tab.

Primary Examiner — Philip S Hyder



EX PARTE REEXAMINATION CERTIFICATE

NO AMENDMENTS HAVE BEEN MADE TO THE PATENT

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

The patentability of claim **1** is confirmed.

* * * * *

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	8748-019	8506

22440 7590 11/12/2021
GOTTLIEB RACKMAN & REISMAN PC
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NEW YORK, NY 10016-0601

EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
11/12/2021	PAPER

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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/014,262* .

PATENT UNDER REEXAMINATION *D781151* .

ART UNIT *2917* .

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

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

Notice of Intent to Issue Ex Parte Reexamination Certificate	**Control No.** 90/014,262	**Patent Under Reexamination** D781151	
	Examiner PHILIP S HYDER	**Art Unit** 2917	**AIA Status** Yes

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

1. ☑ Prosecution on the merits is (or remains) closed in this *ex parte* reexamination proceeding. This proceeding is subject to reopening at the initiative of the Office or upon petition. *Cf.* 37 CFR 1.313(a). A Certificate will be issued in view of
   (a) ☐ Patent owner's communication(s) filed: _____.
   (b) ☐ Patent owner's failure to file an appropriate timely response to the Office action mailed: _____.
   (c) ☐ Patent owner's failure to timely file an Appeal Brief (37 CFR 41.31).
   (d) ☑ The decision on appeal by the ☑ Board of Patent Appeals and Interferences ☐ Court dated 01 September 2021
   (e) ☐ Other: _____.
2. The Reexamination Certificate will indicate the following:
   (a) Change in the Specification: ☐ Yes ☑ No
   (b) Change in the Drawing(s): ☐ Yes ☑ No
   (c) Status of the Claim(s):
      (1) Patent claim(s) confirmed: 1.
      (2) Patent claim(s) amended (including dependent on amended claim(s)): _____
      (3) Patent claim(s) canceled: _____.
      (4) Newly presented claim(s) patentable: _____.
      (5) Newly presented canceled claims: _____.
      (6) Patent claim(s) ☐ previously ☐ currently disclaimed: _____
      (7) Patent claim(s) not subject to reexamination: _____.
3. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
4. ☑ Note the attached statement of reasons for patentability and/or confirmation. Any comments considered necessary by patent owner regarding reasons for patentability and/or confirmation must be submitted promptly to avoid processing delays. Such submission(s) should be labeled: "Comments On Statement of Reasons for Patentability and/or Confirmation."
5. ☐ Note attached NOTICE OF REFERENCES CITED (PTO-892).
6. ☐ Note attached LIST OF REFERENCES CITED (PTO/SB/08 or PTO/SB/08 substitute).
7. ☐ The drawing correction request filed on _____ is: ☐approved ☐disapproved.
8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☐None of the certified copies have
   ☐been received.
   ☐not been received.
   ☐been filed in Application No. _____.
   ☐been filed in reexamination Control No. _____.
   ☐been received by the International Bureau in PCT Application No. _____.

   * Certified copies not received: _____.
9. ☐ Note attached Examiner's Amendment.
10. ☐ Note attached Interview Summary (PTO-474).
11. ☐ Other: _____.

All correspondence relating to this reexamination proceeding should be directed to the **Central Reexamination Unit** at the mail, FAX, or hand-carry addresses given at the end of this Office action.

/Philip S Hyder/ Primary Examiner, Art Unit 2917	/KEVIN K RUDZINSKI /Darlington Ly/ Primary Examiner, Art Unit 2911 Primary Examiner, AU2914

cc: Requester (if third party requester)

STATEMENT OF REASONS FOR PATENTABILITY AND/OR CONFIRMATION

The following is an examiner's statement of reasons for patentability and/or confirmation of the claims found patentable in this reexamination proceeding:

The decision by the USPTO Board of Appeal dated Sept. 1, 2021 reverses the examiner's rejection of the claim. In the opinion of the board, the primary reference fails to qualify as a primary reference as defined by "*In re Rosen*" because the frosted finish on McKernan's jar creates a visual impression that is more significant to the overall appearance than is argued by the examiner. The board also does not believe the secondary reference is so related to suggested a skilled designer would create a transparent McKernan jar merely by the applying the transparency from Zamberlan.

The patentability of the claim is CONFIRMED.

Any comments considered necessary by PATENT OWNER regarding the above statement must be submitted promptly to avoid processing delays. Such submission by the patent owner should be labeled: "Comments on Statement of Reasons for Patentability and/or Confirmation" and will be placed in the reexamination file.

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By hand: Customer Service Window
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Any inquiry concerning this communication should be directed to Philip Hyder at telephone number (571) 272-2621.

/Philip S Hyder/
Primary Examiner, Art Unit 2917

Conferees:

/KEVIN K RUDZINSKI/
Primary Examiner, Art Unit 2911

/DARLINGTON LY/
Primary Examiner, Art Unit 2914

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/014,262	D781151
	Examiner	Art Unit
	PHILIP S HYDER	2917

CPC - Searched*		
Symbol	Date	Examiner
B65D 1/00 ; B65D1/02 ; B65D 1/0207 ; B65D 1/0223 ; B65D 1/10 ; B65D 23/00 ; B65D 2501/00 ; B65D 2501/0009	08/09/2019	/psh/

CPC Combination Sets - Searched*		
Symbol	Date	Examiner

US Classification - Searched*			
Class	Subclass	Date	Examiner
D9	500, 503, 504 , 549 , 558 , D9/715 , D3/264	08/09/2019	/psh/

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

Search Notes		
Search Notes	Date	Examiner
Review of original application 29/567,402 and the resulting Patent D781,151	08/09/2019	/psh/
Consulted with the original examiner Dana Meyrow	11/09/2021	/psh/

Interference Search			
US Class/CPC Symbol	US Subclass/CPC Group	Date	Examiner
D9	500	08/09/2019	/psh/

Reexamination	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/014,262	D781151
	Certificate Date	Certificate Number
		C1

Requester Correspondence Address: ☐ Patent Owner ☑ Third Party
Jacob M. Ward Ward Law Office LLC 120 1/2 S. Washington Street Suite 207 Tiffin, Ohio 44883

LITIGATION REVIEW ☑	PSH (examiner initials)	01 May 2019 (date)
Case Name		Director Initials
NONE		sjs for KY

COPENDING OFFICE PROCEEDINGS	
TYPE OF PROCEEDING	NUMBER
NONE	

/Philip S Hyder/ Primary Examiner, Art Unit 2917	

Issue Classification	Application/Control No. 90/014,262	Applicant(s)/Patent Under Reexamination D781151
	Examiner PHILIP S HYDER	**Art Unit** 2917

CPC					
Symbol				**Type**	**Version**
	/		/		

CPC Combination Sets							
Symbol				**Type**	**Set**	**Ranking**	**Version**
	/		/				

NONE (Assistant Examiner) (Date)	**Total Claims Allowed:** 1	
/Philip S Hyder/ Primary Examiner, Art Unit 2917 12 October 2021 (Primary Examiner) (Date)	O.G. Print Claim(s) 1	O.G. Print Figure 1

U.S. Patent and Trademark Office Part of Paper No.: 20211012

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/014,262	D781151
	Examiner	Art Unit
	PHILIP S HYDER	2917

INTERNATIONAL CLASSIFICATION				
CLAIMED				
	/	09	/	01

NON-CLAIMED				
	/		/	

US ORIGINAL CLASSIFICATION	
CLASS	SUBCLASS
D9	500

CROSS REFERENCES(S)						
CLASS	SUBCLASS (ONE SUBCLASS PER BLOCK)					

NONE		Total Claims Allowed:	
(Assistant Examiner)	(Date)	1	
/Philip S Hyder/ Primary Examiner, Art Unit 2917	12 October 2021	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	1

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/014,262	D781151
	Examiner	Art Unit
	PHILIP S HYDER	2917

☑ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIMS

Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original	Final	Original

NONE		Total Claims Allowed:	
(Assistant Examiner)	(Date)	1	
/Philip S Hyder/ Primary Examiner, Art Unit 2917	12 October 2021	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	1

Bibliographic Data

Application No: 90/014,262

Foreign Priority claimed: ○ Yes ◉ No

35 USC 119 (a-d) conditions met: ☐ Yes ☐ No ☐ Met After Allowance

Verified and Acknowledged: /Philip S Hyder/ (Examiner's Signature) | (Initials)

Title: JAR

FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
02/11/2019	D09	2917	8748-019
RULE			

APPLICANTS

INVENTORS

D781151,

LERMAN CONTAINER CORPORATION (PATENT OWNER), JUPITER, FL, UNITED STATES

JACOB M WARD (3RD PTY REQ.), TIFFIN, OH, UNITED STATES

CONTINUING DATA

This application is a REX of 29567402 06/08/2016 PAT D781151 *

(*) Data provided by applicant is not consistent with PTO record

FOREIGN APPLICATIONS

IF REQUIRED, FOREIGN LICENSE GRANTED**

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90/014,262	02/11/2019	D781151	8748-019	8506

22440 7590 09/01/2021
GOTTLIEB RACKMAN & REISMAN PC
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NEW YORK, NY 10016-0601

EXAMINER
HYDER, PHILIP S

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
09/01/2021	PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LERMAN CONTAINER CORPORATION
Patent Owner and Appellant

Appeal 2021-002799
Reexamination Control 90/014,262
Patent D781,151 S
Technology Center 2900

Before DANIEL S. SONG, RAE LYNN P. GUEST, and JEREMY M. PLENZLER, *Administrative Patent Judges.*

GUEST, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(b) and § 306, Appellant[1] appeals from the Examiner's decision to reject the claimed design of U.S. Patent D781,151 S[2] solely under 35 U.S.C. § 103. *See* Examiner's Final Office Action ("Final Act."), dated December 26, 2019; Appellant's Brief on

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[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42 (a). Appellant identifies the real party in interest as Lerman Container Corp. Appeal Br. 3.

[2] US Patent D781,151 S issued on March 14, 2017 to Robert Lerman (hereinafter "the '151 Patent"). The claimed design was not amended during this reexamination proceeding.

Appeal ("Appeal Br."), dated June 8, 2020; and Examiner's Answer ("Ans."), dated January 25, 2021. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

CLAIMED SUBJECT MATTER

Appellant's invention is titled "JAR." The claimed design is an ornamental design for a jar as illustrated in the figures. *See* Appeal Br. 33–36. Representative Figures 1 and 2 are reproduced below.

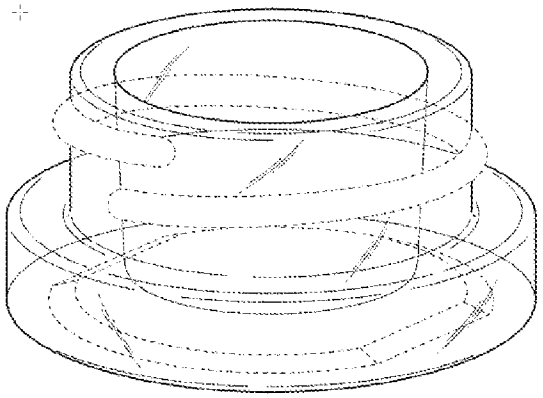


FIG. 1

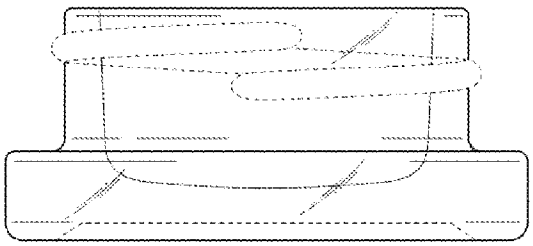


FIG. 2

Figure 1 of the '151 Patent, reproduced above left, depicts a top, front, right side perspective view of the claimed jar design. Figure 2 of the '151 Patent, reproduced above right, depicts a front elevation view of the claimed jar design. *See* '151 Patent, Description.

The claimed jar has a wide and thick circular base, and a tall narrow circular neck extending upwardly from the base. *See*, Appeal Br. 5. The base and the neck are concentric, and the base encompasses about 40% of the total height of the jar. *See*, Appeal Br. 5. The neck encompasses the remainder of the jar's height that is about 60% of the total height. *See*,

Appeal Br. 5. The jar defines an exteriorly visible interior storage chamber that extends downwardly from the top of the neck through the entire height of the neck, and partially into the base. *See*, Appeal Br. 6. The interior storage chamber has a slight frustoconical shape within the neck, and an ellipsoidal shape within the base. *See*, Appeal Br. 6. The interior storage chamber is also described as having a bowl-like shape with a curved bottom edge extending below the shoulder of the thick circular base. *See*, Appeal Br. 6. All of the claimed exterior edges of the jar are curved but for the top surface of the neck, which is flat and has an interior right angle with the interior storage chamber. The jar is entirely transparent. *See*, Appeal Br. 5. The thread and punt of the jar, depicted in broken lines, form no part of the claimed design. *See* '151 Patent, Description.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Zamberlan et al.	US D634,202 S	March 15, 2011
Beauty Packaging, *McKernan Adds Low Profile, Frosted Glass Jars* (June 2012) (https://www.beautypackaging.com/issues/2012-06/view_design-center/mckernan-adds-low-profile-frosted-glass-jars) (printed Jan. 24, 2019) ("Exhibit B1").		
McKernan Catalogue, published February 2012 ("Exhibit B2").		
Image of McKernan jar, available from archive.org as of October 30, 2013 ("Exhibit B3").		
McKernan Packaging Clearing House, part drawings, identifying Part Number EL-28595 and dated March 21, 2011 ("Exhibit B4").[3]		

REJECTION

Claim 1 is rejected under 35 U.S.C. § 103 as being unpatentable over McKernan in view of Zamberlan.

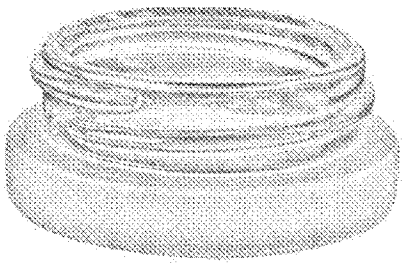
OPINION

After reviewing carefully each of Appellant's arguments for patentability, we determine that a preponderance of the evidence supports reversing the Examiner's determination that a designer of ordinary skill would have arrived at the claimed design by modifying the frosted glass jar of McKernan with the transparent jar of Zamberlan. Accordingly, we reverse the Examiner's rejection of the claimed design under 35 U.S.C. § 103.

McKernan's jar, illustrated in Exhibit B3, which is reproduced below discloses a jar having a wide base that is frosted, to which a concentric and transparent neck or opening is attached or formed. McKernan shows a jar

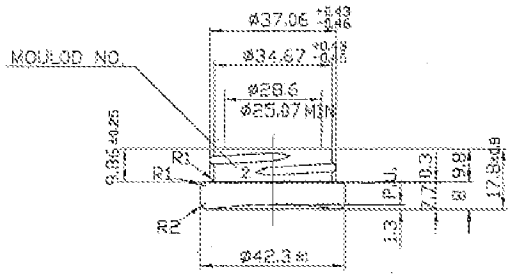
[3] The four McKernan references (Exhibits B1-B4) are collectively referred to as "McKernan" or "the McKernan jar." Each references was submitted by Appellant in an Information Disclosure Statement filed May 7, 2019, and is admittedly prior art.

having edges that are rounded and a neck that comprises threads. The photograph in Exhibit B3, reproduced below, provides a limited view of the interior of the McKernan jar so that the shape of the interior storage chamber of the jar cannot be ascertained.



The McKernan Exhibit B3 figure depicts a black and white photograph of a jar, in a perspective view.

The Examiner further relies on schematic drawings, illustrated in Exhibit B4, from the McKernan company, allegedly of the same frosted jar, which is reproduced below.



The McKernan Exhibit B4 figure is a schematic plan view of a side of a jar.

Zamberlan, Figures 6 and 7 of which are reproduced below, discloses a front elevation view of a jar having a wide base and a short narrower neck. The base comprises a significant portion of the jar and has a narrowed "waistline" in the middle of the base. The jar has an internal storage

chamber that transitions from the neck of the jar, which is concentric with the base, down into the base of the jar. The jar illustrated in Figures 6 and 7 of Zamberlan is transparent and from this view we are able to ascertain an interior storage chamber that has rounded corners inside the base.

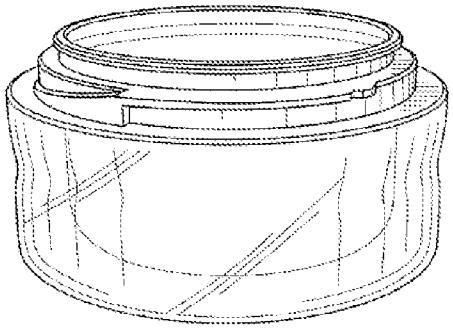


FIG. 6

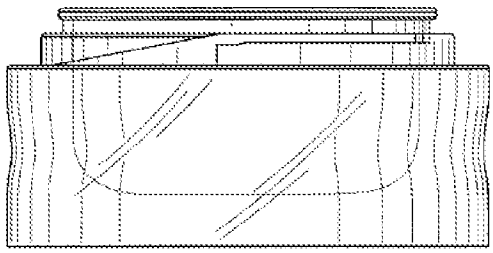


FIG. 7

Zamberlan Figure 6, reproduced above left, depicts a top perspective view of the flask (base) portion of the claimed design. Figure 7, reproduced above right, depicts a front elevation view of the same flask (base) portion. *See* Zamberlan, Description.

In determining prima facie obviousness, the proper standard is "whether the claimed design would have been obvious to a designer of ordinary skill who designs articles of the type involved." *See Spigen Korea Co., Ltd. v. Ultraproof, Inc.*, 955 F.3d 1379, 1383 (Fed. Cir. 2020) (quoting *Durling v. Spectrum Furnit. Co.*, 101 F.3d 100, 103 (Fed. Cir. 1996)); *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1380–81 (Fed. Cir. 2009).

An obviousness analysis must involve two steps: first, "one must find a single reference, a something in existence, the design characteristics of which are basically the same as the claimed design," often referred to as a *Rosen* reference (*see In re Rosen*, 673 F.2d 388, 391 (CCPA 1982)); second,

"[o]nce this primary reference is found, other references may be used to modify it to create a design that has the same overall visual appearance as the claimed design." *Durling*, 101 F.3d at 103 (internal quotations and citation omitted); *see also Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1329 (Fed. Cir. 2012); *High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1311 (Fed. Cir. 2013). However, in doing so, "the teachings of prior art designs may be combined only when the designs are 'so related that the appearance of certain ornamental features in one [design] would suggest the application of those features to the other.'" *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996) (quoting *In re Glavas*, 230 F.2d 447, 450 (CCPA 1956)).

Primary Reference

The Examiner finds both the McKernan jar and the jar of the '151 Patent consist of a short and wide cylindrical body topped with a taller narrower cylindrical neck. Final Act. 2. The Examiner finds any differences in proportions or shaping are negligible. *Id.* The Examiner acknowledges the frosted finish on the body of the McKernan jar, where the claimed jar design body is transparent. *Id.* The Examiner finds the designs are "basically the same" because their primary characteristics include stubby cylindrical bodies topped with taller narrower cylindrical necks, the wall thicknesses of both designs appear to be substantially the same, and overall the basic design characteristics are the same. *Id.* at 4. The Examiner finds the frosted finish on the McKernan jar does not affect the "underlying form" or "underlying design," the "basic shape," and the "overall form." *Id.* at 4; Ans. 7, 9. The Examiner finds that the frosted surface does not alter the basic shape or

detract from the overall similarities of the jars. Ans. 9. The Examiner acknowledges other differences (e.g., marginally taller neck) but finds those to be negligible as well. Final Act. 4–5. The Examiner concedes the frosted appearance makes it impossible to see how deep the chamber extends into the jar but finds the perspective view of the McKernan jar in Figure B3 establishes there is an interior chamber. Ans. 7. The Examiner finds that a side by side comparison of the McKernan jar and the jar of the '151 Patent shows that the jars have the same overall visual appearance. Final Act. 5–6.

Appellant contends McKernan cannot be a primary reference as a matter of law because it is not "basically the same" visual impression as the claimed jar design found in the '151 Patent. Appeal Br. 12. Appellant argues the visual impression created by the claimed jar design as a whole is one of openness and clarity, which contrasts the visual impression of McKernan's jar, in which the "visually prominent" frosted finish base diffuses or blocks the transmission of light and gives the impression of a solid opaque object that is visually closed. *Id.* at 12–13; Reply Br. 10–11. Appellant contends that the Examiner's "underlying form" position is comparing only the outlines of the two jar designs and nothing else, which is "from too high a level of abstraction" and not the legal test. Appeal Br. 17. Appellant also argues that, even assuming McKernan's jar has an interior opening, it has an unknown shape and size due to the limited view of the opening. *Id.* at 18; Reply Br. 11–12.

In considering the evidence and arguments of record, we are persuaded the Appellant has the better argument. Initially, we take judicial notice that there are many types of jars, and even the "small jar" art is a

crowded art. Thus, the differences in small details will have more weight than in less crowded arts. *See Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 675 (Fed. Cir. 2008) (noting, in the context of infringement, that "similarity 'is not to be determined by making too close an analysis of detail,' nonetheless, 'where in a crowded art the composite of differences presents a different impression to the eye of the average observer'") (quoting *Applied Arts Corp. v. Grand Rapids Metalcraft Corp.*, 67 F.2d 428, 430 (6th Cir. 1933)).

While the McKernan jar has a shape similar to that of the jar of the claimed design, it falls short of creating an overall visual impression that is "basically the same" as the claimed jar to qualify as a proper primary reference as defined by *Rosen*. We agree with the Appellant that the overall visual impression of the claimed jar design as a transparent jar conveys an impression of openness and clarity that is lacking in the frosted finish of McKernan's jar, which creates a visual impression of being masked or visually closed from the outside due to the prominent opaque base. The Examiner relies on the "underlying form" or shape of the jar as the sole basis for applying the reference and considers all other features minor or not otherwise affecting that overall shape. Yet, an overall visual impression, particularly in a crowded art, must reflect more than an overall shape, which is only one aspect of a design. We also find the lack of disclosure of the shape and depth of the interior chamber due to the limited views of the reference to be problematic. Part of the overall visual effect of a transparent jar necessarily will be reflected by the interior surfaces of the jar's container.

Accordingly, the frosted aspect of McKernan's jar is more significant to the overall visual impression than argued by the Examiner.

Combination of References

Even if one were to find McKernan a suitable *Rosen* primary reference, we are not persuaded that a skilled artisan would have arrived at the claimed invention in combining the references.

The Examiner finds the Zamberlan reference discloses a similar stubby jar design where the body does not have a frosted finish and is fully transparent to reveal an inner cavity that has rounded contours. Final Act. 2. The Examiner concludes it would have been obvious to a designer of ordinary skill in the art at the time of filing to have modified the McKernan jar by removing the frosted finish from the base of the jar to reveal an inner cavity having rounded corners as suggested by Zamberlan. *Id.* at 2–3.

Appellant contends the Zamberlan reference cannot bridge the gap between the McKernan jar and the claimed invention. Appeal Br. 20. Specifically, Appellant argues that the base of the Zamberlan jar makes up virtually the entire jar including the internal storage area (about 73% according to Appellant), while the neck is significantly smaller. *Id.* at 22; Reply Br. 8. Appellant also points out the Zamberlan jar has a step-like neck which is different in appearance from the neck of the McKernan jar. Appeal Br. 20. Moreover, Appellant points out the Zamberlan jar has a visually prominent interlocking mechanism and an inwardly directed "waistline" curve located circumferentially about the base. *Id.* at 23. Other differences noted by Appellant include an inner chamber that extends in a vertical, not sloping direction as in the claimed design. Reply Br. 8.

Appellant thus argues the Examiner has arbitrarily and improperly combined selected features from the McKernan and Zamberlan jars based on hindsight reasoning. Appeal Br. 25. Specifically, Appellant contends the Examiner has failed to demonstrate why an ordinary designer would only borrow the interior chamber and clear exterior finish of the Zamberlan to the exclusion of the other features, such as the small neck, middle "waistline," and prominent threading, in order to modify the McKernan jar to arrive at the claimed jar design. *Id*. at 26. Appellant argues the appearance of the McKernan jar modified with the teachings of Zamberlan would be substantially different from the claimed jar design, i.e., the base would constitute essentially the entire body of the jar and have a minuscule neck and a middle "waistline." *Id.* Appellant concludes the Zamberlan jar is not "so related" to the McKernan jar in appearance, an ordinary designer would not be motivated to modify the McKernan jar with teachings of Zamberlan. *Id.* at 28.

The Examiner contends that a secondary reference is not required to "display an appearance that is basically the same as, or strikingly similar to, the claimed design." Ans. 9. The Examiner takes the position that a designer of jars, charged with knowledge of all jars, would be sufficiently skilled to modify one jar with certain aesthetics of another jar. *Id*. The Examiner contends Zamberlan and McKernan disclose cylindrical jars with chambers extending from a top opening and an ordinary jar designer would have removed the frosted finish, as taught by Zamberlan, so the chamber is visible to the base of the jar depicted in McKernan. *Id*. at 9–10. The Examiner further responds that foremost any combination of references is in a sense a

reconstruction based on hindsight reasoning and that 35 U.S.C. § 103 does not require all the features of Zamberlan to be incorporated into the McKernan jar. *Id.* at 10. Instead, the Examiner argues the intent of 35 U.S.C. § 103 is that the integrity of the primary reference is maintained with minor modifications based on the teachings of the secondary reference. *Id.* The Examiner argues the modifications of the McKernan jar with some features of the Zamberlan jar are not conceptual and are applied in whole to cure minor deficiencies of the McKernan jar in teaching the claimed jar design. *Id.* at 11.

We again agree that Appellant has the better argument. Unlike with a utility application, there is no particular reason we can point to that a skilled designer would apply a feature of one design into another. Thus, the suggestion must come from some similar aspects between the primary and secondary design to suggest minor changes in the primary reference. Even if not required to be basically the same or similar, the primary and second reference must be "so related" that the secondary reference suggests modifying the primary reference with such features. *Glavas*, 230 F.2d at 450. We agree with Appellant that a designer of ordinary skill in the art would not have modified the features of the McKernan jar with only the transparency of the Zamberlan jar, nor can we find that the artisan would have arrived at the claimed jar design in doing so. Appellant notes the differences in the McKernan jar and the Zamberlan jar, namely the relative side and shapes of the bases and necks of the jars and the prominent "waistline" of the Zamberlan jar, in addition to the transparency. These differences are not minor and would not suggest the skilled artisan pull only

one aspect, the transparency, from Zamberlan to apply to McKernan. Accordingly, the references are not "so related" to suggest the skilled designer create a transparent McKernan jar.

Moreover, even if the references were combined, we agree with Appellant that the interior chamber of Zamberlan is visually different than the interior of the claimed design. We cannot determine the shape and depth of McKernan's jar, and thus the skilled artisan would have only Zamberlan's design. We note that Zamberlan's interior chamber extends substantially through the base with vertical walls, and find that a skilled designer in the art would have had to incorporate these aspects into the design as well. Yet, the claimed design has relatively shallow depth with respect to the base, the interior chamber residing mostly in the neck of the jar and taking up less than half of the depth of the base, in sharp contrast to Zamberlan's design. Further, in the claimed design, the sides of the interior chamber are sloped down with a slight curve to an entirely sloped bottom, while the sides of Zamberlan's interior chamber are substantially vertical and form a sharper curve down to a primarily flat bottom. We find these aspects of the design to be of significance in the overall visual impression of such an otherwise simple design, particularly in an otherwise crowded art. Thus, even in combining the visual features of the two references, the skilled artisan would not have arrived at the claimed design.

Secondary Considerations

Appellant argues that the claimed jar is patentable based on the secondary consideration of commercial success. Appeal Br. 29. For support, Appellant points to the Declaration of the inventor Robert Lerman, who

testifies about continuous sales growth of the product based on the claimed jar design over the last several years. *Id.* Mr. Lerman also declares that jars embodying the claimed design comprise 65% of all jars that are purchased by licensed cannabis producers nationwide. *Id.* at 31. Appellant concludes this information and other evidence in the declaration establishes a proper nexus because the commercially successful jar is the design of the '151 Patent. *Id.*

While we need not address Appellant's arguments regarding commercial success in light of our positions above, we agree with the Examiner that Appellant has not shown the commercial success of the product is based on the particular design of the claimed jar.[4] Ans. 11. Appellant has not distinguished sales of the claimed jar from the growth of cannabis sales in the U.S. *Id.* We agree with the Examiner that Appellant has not demonstrated a nexus between the jar's design and increased growth in sales, outside of its connection to cannabis sales.

CONCLUSION

We reverse the Examiner's rejection.

---

[4] Further, to the extent that the jar is particularly suited to a particular use, here cannabis packaging, such a finding suggests a functional correlation between the jar and particular product stored therein (e.g., due to the size or transparency) rather than a correlation based purely on ornamental aspects of the jar. Functional features cannot be a basis of patentability for a claimed design. *KeyStone Retaining Wall Sys., Inc. v. Westrock, Inc.*, 997 F.2d 1444, 1450 (Fed. Cir. 1993) ("A design patent protects the non-functional aspects of an ornamental design as shown in a patent.").

DECISION SUMMARY

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1	103	McKernan, Zamberlan		1

REVERSED

PL Initials:
hh

For Appellant:

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	8748-019	8506

22440 7590 03/25/2021
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EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
03/25/2021	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LERMAN CONTAINER CORPORATION
Appellant

Appeal 2021-002799
Application 90/014,262
Technology Center 2900

APPEAL DOCKETING NOTICE

The Patent Trial and Appeal Board received the appeal in the above-identified application from the Technology Center on March 18, 2021, and has assigned it the appeal number indicated above.

The recipient of this notice is reminded of its ongoing duty, within 20 days of any change during the proceeding, to update its mandatory notices to identify the real party-in-interest and each judicial or administrative proceeding that could affect, or be affected by, the Board proceeding. 37 C.F.R. § 41.8. For example, another docketed appeal in a related application may have the potential to affect, or be affected by, the Board proceeding.

In all future communications regarding this appeal, please include both the application number and the appeal number. Telephone inquiries can be made by calling 571-272-9797 and referencing the appeal number listed above. The mailing address for the Board is:

PATENT TRIAL and APPEAL BOARD
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VIRGINIA 22313-1450

cc: Third Party Requester

Ward Law Office LLC (General)
120 1/2 S. Washington Street
Suite 207
Tiffin, OH 44883

Electronic Patent Application Fee Transmittal

Application Number:	90014262
Filing Date:	11-Feb-2019
Title of Invention:	JAR
First Named Inventor/Applicant Name:	D781151
Filer:	Akiko Sakagami
Attorney Docket Number:	8748-019

Filed as Small Entity

Filing Fees for ex parte reexam

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
APPEAL FORWARDING FEE	2413	1	1180	1180
Post-Allowance-and-Post-Issuance:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	**1180**

Electronic Acknowledgement Receipt

EFS ID:	42206938
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	D781151
Customer Number:	22440
Filer:	Akiko Sakagami
Filer Authorized By:	
Attorney Docket Number:	8748-019
Receipt Date:	17-MAR-2021
Filing Date:	11-FEB-2019
Time Stamp:	15:24:33
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$1180
RAM confirmation Number	E20213GF25484037
Deposit Account	071730
Authorized User	Akiko Sakagami

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

37 CFR 1.17 (Patent application and reexamination processing fees)

37 CFR 1.19 (Document supply fees)

37 CFR 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Reexam Certificate of Service	8748-019-Certificate_of_Service_for_Reply_Brief.pdf	87265 44936bd381f2fab0b74c828c45b2b8f3afccb004	no	2
Warnings:					
Information:					
2	Reply Brief Filed	8748-019-Reply_Brief.pdf	1496220 fd95c23e40368de707baeb538585641114cf018f	no	34
Warnings:					
Information:					
3	Fee Worksheet (SB06)	fee-info.pdf	29777 ba3c156ab4bb9d4308e32f6c655d81d4d97e3ce7	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	1613262		

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Patent Owner	:	LERMAN CONTAINER CORPORATION
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

CERTIFICATE OF SERVICE

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

Dear Commissioner:

In accordance with 37 CFR § 1.550, a copy of the Reply Brief, as filed with the Office in *Ex Parte* Reexamination Control No. 90/014,262 has been served on the third party requester indicated below via email only at jake@wardpatent.com.

Jacob M. Ward
Ward Law Office LLC
120 ½ S. Washington Street
Suite 207
Tiffin, OH 44883

As previously stated, Mr. Ward has agreed to receive electronic service of papers via email at the above-noted email address.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.
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/Ilirian Durri/
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Reg. No. 77,016

Dated: 3/17/2021

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Patent Owner and Appellant	:	LERMAN CONTAINER CORPORATION
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

REPLY BRIEF

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

Dear Commissioner:

Patent Owner submits this Reply Brief pursuant to 37 C.F.R. § 41.41 in response to the Examiner's Answer mailed on January 25, 2021.

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I. BRIEF PROCEDURAL HISTORY

On February 11, 2019, a third party filed a request with the U.S. Patent and Trademark Office seeking to initiate an *Ex Parte* reexamination of U.S. Patent No. D781,151 (the "'151 Patent").

The third party cited to several printed publications in its request for reexamination, and more particularly, to a website printout and a copy of a pamphlet presumably mailed by or on behalf of E.J. McKernan Co., with both publications illustrating the same blurry and pixelated black and white photograph of a jar having a frosted base (the McKernan jar design).

On May 7, 2019, Examiner Hyder issued an order granting the request for *Ex Parte* reexamination, alleging that the McKernan jar design raises a substantial new question of patentability for the '151 Patent "because it presents an overall appearance that is so related to the clamed design that it should have been considered in deciding whether the claim is patentable." *Id.* at 3.

A non-final Office Action issued on September 3, 2019, containing a single 35 U.S.C. § 103 rejection of the claimed design, alleging that the claimed design was obvious over the jar design depicted in the McKernan reference in view of U.S. Patent No. D634,202 ("Zamberlan"), a reference uncovered by the Examiner.

Patent Owner responded on November 4, 2019 by the traversing rejection. More specifically, Patent Owner argued that the claimed jar design was not obvious in that (1) the McKernan reference cannot be utilized as a primary reference, (2) that the Zamberlan patent does not qualify as a secondary reference, (3) that the Examiner improperly combines arbitrarily selected features from McKernan and Zamberlan in order to supposedly arrive at the claimed design, and (4) that the product embodying the claimed design has been commercially

successful. *Id.* at 3. Patent Owner also submitted a sworn declaration by inventor Robert Lerman in support of its response of November 4, 2019, stating that the commercial success of the jars embodying the patented design is owed at least in part to the design of the jar. The declaration of Robert Lerman is reproduced in the Evidence Appendix below.

A final rejection issued on December 26, 2019, in essence repeating the same 35 U.S.C. § 103 rejection based on the combined teachings of McKernan (primary reference) and Zamberlan (secondary reference).

Patent Owner submitted an after-final response on February 25, 2020, seeking to overcome the § 103 rejection by further clarifying the reasons for nonobviousness presented above.

An Advisory Action issued on April 16, 2020, indicating that the after final response of February 25, 2020 fails "to place this application [sic] in condition for allowance." See the Continuation Sheet included in the Advisory Action of April 26, 2020.

Patent Owner therefore filed a Notice of Appeal on April 17, 2020, and subsequently an Appeal Brief on June 8, 2020, the latter traversing the final rejection of the patented design as well as providing a clear articulation of reasons why the patented jar design is not obvious when compared to the teachings in the McKernan and Zamberlan references, taken alone or in combination.

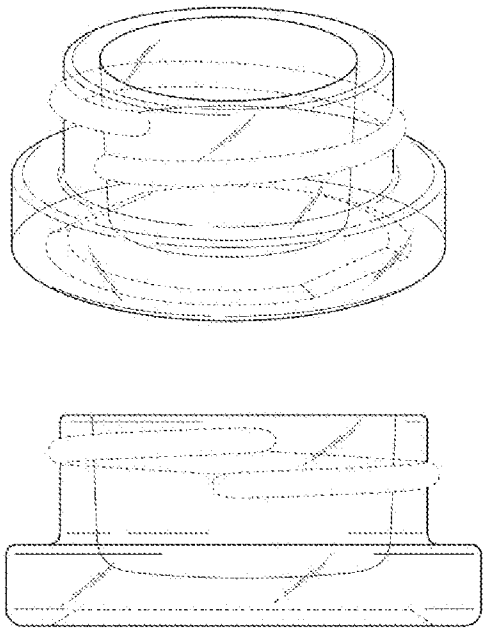
The Examiner issued an Answer to the Appeal Brief on January 25, 2021, maintaining the § 103 rejection of the patented design. Notwithstanding, the Examiner did in fact admit that much of the Patent Owner's characterization of the McKernan and Zamberlan jar designs as set forth in the Appeal Brief is on point.

Patent Owner hereby continues to respectfully traverse the § 103 rejection, and submits this Reply Brief in order to respond to the Examiner's contentions raised in its Answer.

II. SUMMARY OF CLAIMED SUBJECT MATTER

Set forth below is a summary of the claimed subject matter:

Representative Drawings Illustrating the Patented Design:



The '151 Patent claims the ornamental design of a transparent jar. See FIGS. 1-7 of the'151 Patent in the Evidence Appendix below. The jar has a wide and thick circular base, and a tall narrow circular neck extending upwardly from the base. See FIGS. 1-7. The base and the neck are concentric, and the base encompasses about 40% of the total height of the jar. See FIGS. 1-7. The neck encompasses the remainder of the jar's height, that is, about 60% of the total height. See FIGS. 1-7.

The jar defines an interior storage chamber that extends downwardly from the top of the neck. See FIGS. 1-5. Starting from the top of the neck, the storage chamber extends downwardly, through the entire height of the neck, and partially into the base. See FIGS. 1-5. The interior storage chamber has a frustoconical shape within the neck, and an ellipsoidal shape within the base. See FIGS. 1-5. The transition between the two shapes of the storage chamber is seamless. See FIGS. 1-5. Stated otherwise, the interior storage chamber has a bowl-like shape with a curved bottom edge extending below the shoulder of the base. See FIGS. 1-5.

The neck comprises the majority of the volume of the storage chamber. See FIGS. 1-5. The storage chamber extends downwardly through less than one-half of the vertical height of the base. See FIGS. 2-5.

All of the claimed exterior edges of the jar are curved. See FIGS. 2-5. The top surface of the neck is flat. See FIGS. 1-5. Since the jar is made entirely of a transparent material, any object that is stored within the interior storage chamber is readily visible from the outside. See FIGS. 1-7.

III. ARGUMENT

A. THE REJECTION UNDER 35 U.S.C. § 103 OF THE CLAIMED JAR DESIGN AS BEING OBVIOUS OVER McKERNAN IN VIEW OF ZAMBERLAN IS WRONG

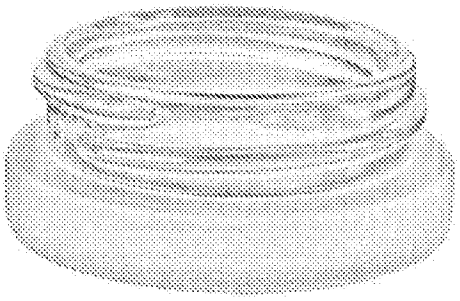
The claimed design stands rejected as being obvious over McKernan in view of Zamberlan. The Examiner raises no new grounds of rejection in the Answer of January 25. 2021, and no rejection is being withdrawn via the Answer of January 25, 2021.

Patent Owner respectfully traverses. The outstanding rejection is improper because: (1) the McKernan reference cannot be a primary reference, (2) the Zamberlan patent does not qualify as a secondary reference, (3) the combination of features selected arbitrarily from the

McKernan and Zamberlan references is improper, and (4) the product bearing the claimed design has been commercially successful.

1. DESCRIPTION OF THE CITED ART

The McKernan jar



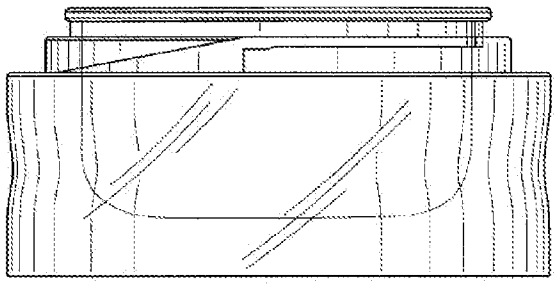
The McKernan reference illustrates a jar that is partially frosted and partially clear. The jar of the McKernan reference has a wide circular base with a circular neck extending upwardly from the base and being concentric with the base. The outer surface of the base of McKernan's jar is frosted, rendering the base opaque. The base of the McKernan jar is very thick, accounting for about 47% of the entire height of the jar, as measured on the image illustrated above.

The neck of the jar depicted in the McKernan reference is transparent and accounts for the remainder of the height of the jar, that is, about 53% of the total height. In addition, the top surface of the jar illustrated in the McKernan reference is rounded. In contrast, the base of the claimed jar design is shorter than that of McKernan, accounting for 40% of the total height of the jar while the neck of the claimed jar design is taller than McKernan, accounting for 60% of the total height of the jar.

The Examiner admits that the above description of the McKernan jar design is accurate in its entirety. See Answer of January 25, 2021, at 5.

Indeed, at this juncture the only disagreement between the Patent Owner and the Examiner concerning the structural configuration of the McKernan jar design is whether the Examiner has met his burden of proving that the jar depicted in the McKernan publications has an interior chamber. Patent Owner firmly maintains that the Examiner has not because the black and white, blurry and pixelated image of the McKernan jar does not illustrate with sufficient clarity a discernable cavity within the jar.

The Zamberlan Jar



The Zamberlan patent illustrates a somewhat ordinary jar that is formed of transparent material. The jar of the Zamberlan reference has a cylindrical body that makes up virtually the entire jar. A minute neck protrudes upwardly from the body.

The body of the jar depicted in the Zamberlan reference has a "waistline" at about mid-height. The jar of the Zamberlan reference defines an inner chamber with a rounded bottom edge and flat bottom surface. The inner chamber of the Zamberlan jar design extends through most of the jar's body in the vertical direction, or through about 73% of the height of the body, as measured on the image above. In addition, the body of the Zamberlan jar forms the major part of

the chamber's total volume, which is opposite to the configuration of the claimed jar design. In contrast with the design of McKernan, the jar design of Zamberlan has a very thick base with a small step-like neck.

The Examiner also admits that the Patent Owner's description of the Zamberlan jar design is accurate in its entirety. See Answer of January 25, 2021, at 5.

2. LEGAL STANDARD FOR OBVIOUSNESS

In analyzing an ornamental design for obviousness, first, "one must find a single reference, 'a something in existence, the design characteristics of which are basically the same as the claimed design.'" *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1329-1330 (Fed. Cir. 2012), quoting *Durling v. Spectrum Furniture Co, Inc.*, 101 F.3d 100, 103 (Fed. Cir. 1996), which in turn quotes *In re Rosen*, 673 F.2d 388, 391 (C.C.P.A. 1982). In order to perform the first step, courts must "(1) discern the correct visual impression created by the patented design as a whole; and (2) determine whether there is a single reference that creates basically the same visual impression." at 1312. *High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1312 (Fed. Cir. 2013).

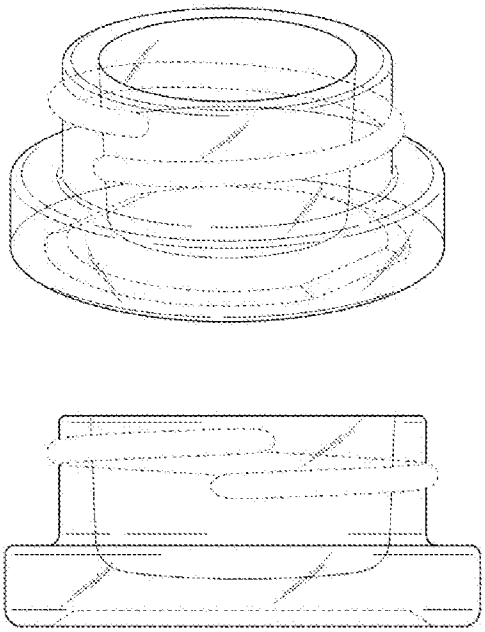
Second, "other references may be used to modify [the primary reference] to create a design that has the same overall visual appearance as the claimed design." *Apple* at 1329. However, the "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other.'" *Id.* at 1329-30, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996).

3. THE McKERNAN REFERENCE CANNOT BE A PRIMARY REFERENCE

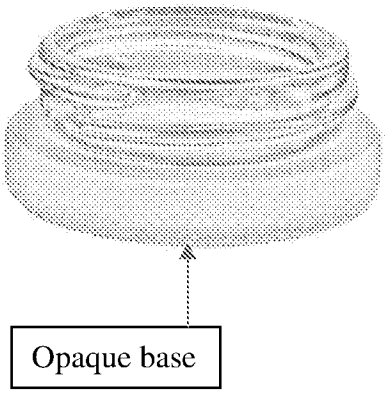
As a matter of law, McKernan cannot be a primary reference because it does not create the same visual impression as the '151 Patent.

The claimed design and the McKernan jar are reproduced below.

The '151 Patent Design



The McKernan jar



The correct visual impression created by the patented design as a whole can be discerned by referring to the figures of the '151 Patent reproduced above. As shown in these figures, the claimed design illustrates a jar that is entirely transparent. The jar has a base that is substantially wider than the neck. Since the claimed jar design is entirely transparent, the claimed jar design as a whole conveys an impression of openness and clarity. This is because both the exterior of the jar and the interior storage chamber thereof are clearly visible from the outside. In other words, the overall three-dimensional configuration of the jar can be clearly viewed from the outside. In

addition, anything that is stored or housed in the interior chamber of the claimed jar design is readily visible from the outside.[1]

In contrast, the jar depicted in the McKernan reference, while also having a base that is wider than its neck, has an appearance that is substantially different than that of the claimed jar design. This is in large part because the jar of the McKernan reference has a large and rather pronounced opaque base. Indeed, the Examiner admits on page 3 of the Answer that the base of the jar depicted in the McKernan reference has "a frosted finish."

As can be appreciated, a frosted surface finish either substantially diffuses light or blocks the transmission of light altogether. In either case, based on the teaching of the McKernan reference, one is not able to see through the exterior surface of the base in the McKernan jar. Stated another way, the base of the jar of the McKernan reference appears as a solid opaque object that is visually closed from the outside, thereby preventing an observer from seeing inside of the base. The fact that the base of the McKernan jar design is visually prominent further emphasizes the difference between the overall appearance of the jar of the McKernan reference and the overall appearance of the claimed jar design.

Moreover, in acknowledging the accuracy of Patent Owner's description of the McKernan jar design on page 5 of the Answer, the Examiner implicitly admits that the neck of the claimed jar design is proportionally taller than the neck of the jar of the McKernan reference. The taller neck of the claimed jar design, in combination with the claimed jar design being entirely transparent, as discussed above, presents an overall visual impression that is markedly different from what is disclosed by the McKernan reference.

[1] While not per se relevant on the issue of obviousness in a design patent context, the Patent Owner notes that the jar of the '151 Patent, because of its design, has enhanced child-proof characteristics.

Further, as noted above, Patent Owner maintains that it is virtually impossible to tell whether or not the jar of the McKernan reference, as illustrated in the printed publication that was supplied by the third party requester of the *Ex Parte* reexamination and as reproduced by the Examiner in the Answer, includes any type of an interior storage chamber. This is due to the very low image quality of the printed publication that depicts the McKernan jar design. The jar design claimed in the '151 Patent, on the other hand, has a clearly visible interior chamber having a bowl-like configuration with its bottom surface extending below the shoulder of the base as one of its prominent design features.

In the Answer, the Examiner concedes that the *Apple* and *Rosen* decisions, as quoted by Patent Owner in the Appeal Brief, state the governing law concerning the qualifications that a printed publication must fulfill in order to qualify as a primary reference. However, the Examiner opines that Patent Owner interprets "the 'basically the same' standard [laid out in *Rosen*] too strictly" and more particularly, that Patent Owner is "overreaching in equating the frosted finish on McKernan with the sunk in picture frame of Fidler." See Answer at 7.

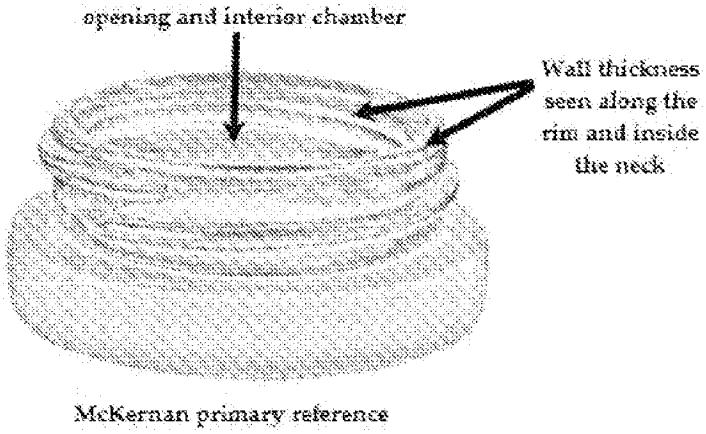
Respectfully, these statements make little sense because the Examiner then admits on page 7 of the Answer that that the primary difference in appearance between the McKernan and claimed jar designs "resides in the [frosted] finish applied to the exterior surface; not in the form of the jar." If the primary difference between these two jar designs resides in the frosted finish, as contended by the Examiner, then how could this fact not be equated to the sunk in picture frame of Fidler, which is the primary difference cited in *Apple* for differentiating the Apple and Fiddler designs from one another?

To this end, Patent Owner contends that, just like the sunken frame around the screen of the Fidler device swayed the *Apple* court to hold that two tablet designs do not meet the

"basically the same" legal standard, the frosted finish of the McKernan design would persuade a court to conclude that the McKernan jar design and the claimed patented design are not "basically the same." Indeed, because the frosted finish is what gives the McKernan jar design its distinctive visual appearance, there is simply no other conclusion than to find that the McKernan jar design and the patented jar design have very different ornamental presentations.

In addition, the Examiner repeats in the Answer that, in his opinion, an interior chamber is allegedly discernible in the McKernan publication. *Id.* at 7.

The Examiner presents the following annotated figure in the Answer in support of his contention.



Further, the Examiner contends that the above figure shows with sufficient clarity the wall thickness at the neck of the container, and further still, that there is "a clear understanding that the sides of the interior chamber are substantially vertical." *Id.* at 8.

Due to the low image quality of the reproduction above, Patent Owner is unable to discern an "opening and interior chamber" in the McKernan jar, let alone a "wall thickness … along the rim and inside the neck" and the "vertical sides" of the purported chamber. Such

detailed description of the McKernan jar design by the Examiner appears to be fictional in light of the blurry and pixelated image presented in support thereof.

At any rate, the statement concerning the "vertical sides" of the alleged inner chamber of McKernan actually undermines the Examiner's position concerning the qualification of the McKernan publication as a primary reference. This is because the Examiner admits on page 8 of the Answer that the inner chamber wall of the claimed jar design does not extend vertically , i.e., that it tapers or extends at an oblique angle with respect to the vertical alignment. In other words, the designs of the two inner chambers are different (presuming that the McKernan jar design does in fact feature an interior chamber).

The Examiner also states that "the profiles of the jars present 'basically the same' appearance." *Id.* at 7. The Examiner is wrong. As the Examiner admits, the base of McKernan jar is proportionally taller than the base of the claimed jar design, and the neck of the McKernan jar is proportionally shorter than the neck of the patented jar design. With such different proportions in the external configuration of the two jar designs, it is somewhat disingenuous to say that the two jar designs have basically the same profile.

Moreover, the Examiner admits on page 7 of the Answer that the base of the McKernan jar design is frosted, and agrees with Patent Owner that the frosted finish on the McKernan base "makes it impossible to see how deep the chamber extends in the [McKernan] jar [presuming that one exists]." This statement substantially undercuts the Examiner's argument concerning the propriety of the McKernan design as a primary reference. Even assuming, *arguendo*, that the McKernan jar design features an interior chamber, the frosted finish of the McKernan design would conceal that chamber from being visible from the outside, leaving a viewer very much

uncertain as to what the inner part of the jar looks like. This uncertainty leaves a much different impression on a viewer than the openness and clarity conveyed by the claimed patented design.

This fact, combined with the visual differences that result from the different profiles of the two jar designs, unequivocally establishes that the jar design of the McKernan reference is not "basically the same" as the claimed jar design. See *Rosen* at 391.

Accordingly, Patent Owner submits that an ordinary designer, who, as a matter of law, should not be imbued with hindsight knowledge of the claimed jar design, would not consider the visual impression of the claimed design and visual impression of the design shown in the McKernan reference to be the same. *See L.A. Gear, Inc. v. Thom McAn Shoe Company*, 988 F.2d 1117, 1124 (Fed. Cir. 1993). Thus, contrary to Examiner's contention, the design characteristics of the McKernan jar are not "basically the same [as those of] as the claimed design" and therefore the McKernan reference cannot function as a primary reference under the obviousness standard set forth in *Durling*. As a result, the Examiner's rejection under Section 103 of the Patent Statute is not correct.

4. THE ZAMBERLAN REFERENCE DOES NOT QUALIFY AS A SECONDARY REFERENCE

Notwithstanding the above arguments, and even if the McKernan reference is found to be a primary reference under the *Durling* standard, which Patent Owner submits it should not, the Zamberlan reference, as a matter of law, cannot qualify as a secondary reference as it cannot bridge the gap between the McKernan jar and the claimed invention. *See Apple* at 1331.

As cited in *Apple*, "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain

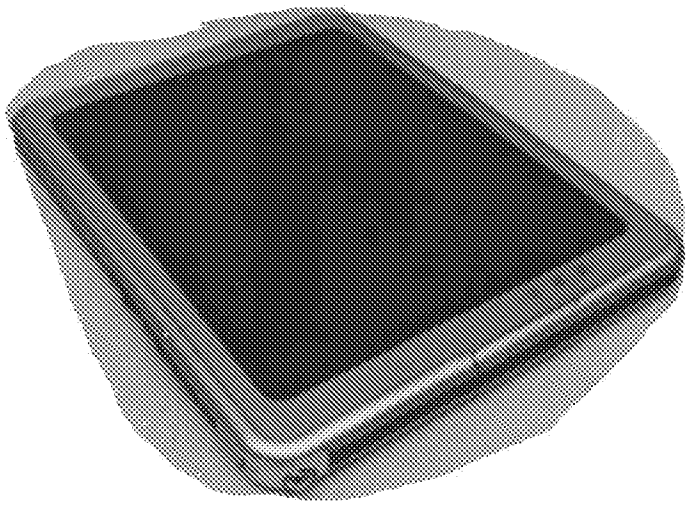
ornamental features in one would suggest the application of those features to the other.'" *Id.* at 1330.

In *Apple*, the court held that the TC1000 secondary reference (see illustration below) was not "so related to the [Fidler tablet]" because the "screen area of the [TC1000] device is encircled by a wide rounded-over metallic rim," and because "the screen area [of the TC1000 device] contains indicator lights in several places," which the Fidler tablet does not. *Id.* at 1331. See the two designs below.

Fidler Tablet

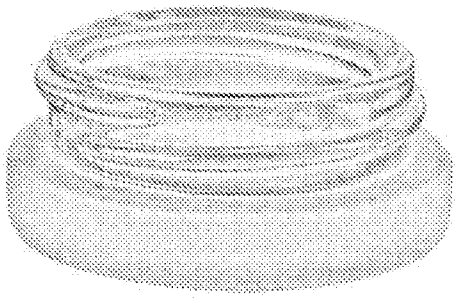


The TC1000 Device

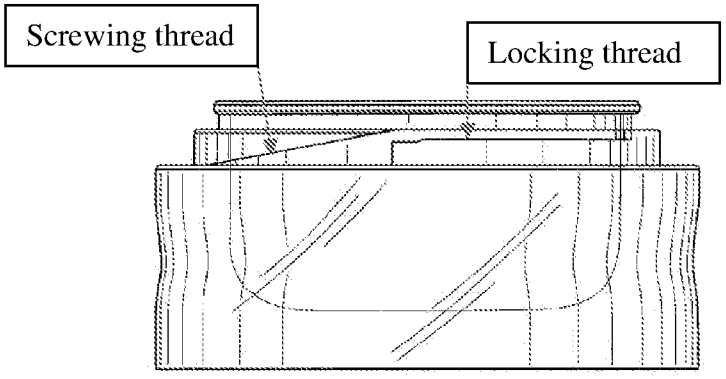


Similarly here, and as depicted below, the design of the Zamberlan reference is so visually different from that of the jar depicted in McKernan that it would be illogical to categorize Zamberlan as a secondary reference under the current circumstances.

McKernan Jar



Zamberlan Jar



Indeed, the Zamberlan reference as a whole illustrates a somewhat "standard"-looking jar having a simple "one-cylinder" base construction and a small step-like neck at the top. The jar design of the Zamberlan reference emphasizes a substantially single-cylinder look because the cylinder that defines the base makes up virtually the entire jar, including the internal storage area. The step-like neck is miniscule in proportion to the single-cylinder base configuration of the Zamberlan jar that it is barely noticeable.

In addition to the massive proportional difference between the neck of the McKernan design and the neck of the Zamberlan design, the step-like neck of the Zamberlan jar has a configuration that is vastly different in appearance from the neck of the McKernan jar. In particular, the neck of the Zamberlan jar has two visibly separate curved screwing threads that extend diametrically opposite to one another along approximately a quarter of the circumference of the neck. See one of the two visible screwing threads annotated in the illustration of Zamberlan above, which appears as a sloped ramp.

Further, the neck of the Zamberlan jar has a visually prominent interlocking mechanism for locking a lid in place. The interlocking mechanism depicts two locking threads, each of which extends along approximately a quarter of the circumference of the neck at diametrically

opposite portions thereof. See one of the two visible locking threads annotated in the illustration of Zamberlan above.

Moreover, as shown above, the Zamberlan jar has an inwardly directed "waistline" curve, located circumferentially about the base.

On the other hand, the McKernan reference clearly depicts a distinctive two-cylinder jar design (with one cylinder defining the base and the other defining the upwardly extending neck). In McKernan, both the base and the neck are prominent features of the design. Further, the McKernan jar has only one thread that visually extends all-around the neck, in contrast with the two separate, visually distinct and oppositely directed threads of the Zamberlan jar which extend along the neck. Further, the McKernan jar has no visible interlocking mechanism and no identifiable "waistline" curve along the base.

The Examiner agrees with the above description of the Zamberlan jar design. See Answer at 5. However, the Examiner argues that Patent Owner's interpretation of the legal test, requiring the secondary reference to be "so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other" is "too stringent." See Answer at 9. Frankly speaking, it is simply not appropriate for the Examiner to ignore legal precedent.

According to the Examiner, the "so related" standard recited in *Durling* does not require a secondary reference to be basically the same as or even strikingly similar to the claimed design. See Answer at 9. By such a statement, the Examiner appears to imply that any prior art reference can qualify as a secondary reference so long as it features one design characteristic that the Examiner can utilize in an obviousness type rejection. Indeed, the only reason cited by the

Examiner in support of qualifying Zamberlan as a secondary reference is that "Zamberlan and McKernan disclose cylindrical jars with chambers that are entered from a top opening." *Id.* at 9.

Such a loose interpretation of the law is completely at odds with case law. In *Apple*, the design of the TC 1000 device did not qualify as being "so related" to the design of the Fidler tablet even though it depicted a rectangular tablet with rounded corners and a bezel around the screen. The *Apple* court correctly pointed out that the TC 1000 device was very different in visual appearance from the Fidler tablet because the TC1000 device has a flat glass front surrounded by a gray bezel containing several indicator lights, which do not exist in the Fidler tablet. *Id.* at 1331.

Similarly here, the Zamberlan jar design does not qualify as a secondary reference merely because it shows a jar with a clear exterior finish and an interior chamber. The overall visual appearance of the Zamberlan jar design – with its oversized base featuring a waistline at mid-height and minute step-like neck - is so different in its visual presentation from that of McKernan that it cannot possibly qualify as being so related to the McKernan design under the *Durling* obviousness standard.

Accordingly, the rejection by the Examiner under 35 U.S.C. § 103 must fail for this reason as well.

5. COMBINING THE FEATURES SELECTED ARBITRARILY FROM THE McKERNAN AND ZAMBERLAN REFERENCES IS IMPROPER

Even assuming, *arguendo*, that the McKernan reference and the Zamberlan reference are valid references for purposes of an obviousness evaluation, the claimed design is nevertheless directed to patentable subject matter as the combination of teachings in the McKernan reference

and the Zamberlan reference would not lead an ordinary designer to create the design that is claimed in the '151 Patent. Stated differently, an ordinary designer of jars would not modify the alleged primary reference to McKernan by the secondary reference to Zamberlan in order to arrive at the claimed design of the '151 Patent.

The Examiner suggests that Patent Owner's argument requires that all of the design features of Zamberlan must be applied to McKernan, thereby effectively writing the McKernan reference out of the rejection. See Answer at 10. This is a misstatement of Patent Owner's position. In its Appeal Brief, Patent Owner argued that the Examiner employed impermissible hindsight in selecting only certain design characteristics from Zamberlan without addressing how the other design characteristics of the Zamberlan jar design would affect the McKernan design. This does not imply that the Examiner must use all of the design features of Zamberlan in a manner that effectively renders the design of the McKernan jar obsolete. Rather, it is the position of Patent Owner that the McKernan jar design, for the purpose of determining obviousness, can be modified as suggested by Zamberlan, but only in a way that the resulting design still shows its roots in McKernan. That is not what the Examiner has done here.

For example, since the Zamberlan design features a waistline at mid-height of the base of the jar, this would suggest to an ordinary designer of jars to apply the waistline to the base of the McKernan jar design as well (at mid-height thereof as taught by Zamberlan). In this case, the waistline of Zamberlan could be applied to the base of the Zamberlan design without altering the overall proportions of the McKernan design. The resulting jar would not only display its origin in the McKernan design, but would also serve to further visually differentiate the claimed jar design from the modified McKernan design due to the distinctive look that the addition of the waistline would impart on the McKernan jar design.

In other words, a multitude of design features found in the Zamberlan reference could be applied to the McKernan design without writing the McKernan design out of the equation. Doing so, however, would further set apart the resulting design when combining McKernan and Zamberlan from the claimed design of the '151 Patent.

In addition, the Examiner's proposition that "the intent of the 35 U.S.C. 103 is to maintain the integrity of the primary reference, modifying it in minor ways based on the teachings of the secondary reference(s)" is simply not the law. See Answer at 10. The Federal Circuit has clearly stated that the primary reference is required to be "basically the same" as the claimed design, and that the secondary reference must be so related to the primary reference that the appearance of certain ornamental features in the secondary reference would suggest the application of those features to the primary reference. *Apple* at 1329-1330 and 1329.

The PTAB case[2] that the Examiner refers to on pages 10-11 of the Answer is quite relevant. It involves a secondary reference with design details that are not clearly discernible in the photographs in evidence. The PTAB correctly held that the secondary reference could not bridge the gap between the primary reference and the claimed design because "without supporting evidence, we are left to guess at what is shown in the photos of the secondary references."

In the instant dispute, the inverse is true. That is, due to the low quality of the publication illustrating the McKernan jar design, we are left to guess as to whether the McKernan jar features an interior chamber in the first place, and even if it does, what the overall shape of the chamber is, how deep the chamber extends into the jar (i.e., does the chamber extend only in the neck of the jar or does it extends into the base as well, and if so, how deep?), etc.

[2] *Premier Gem Corp. v. Wing Yee Gems & Jewellery Ltd.*, IPR 2016-00434 (P.T.A.B. January 7, 2016),

In addition, the Examiner points to the fact that, according to *In re McLaughlin*, 443 F.2d 1392, (CCPA 1971), a reconstruction of the claimed invention is necessarily based upon hindsight reasoning; such reconstruction is proper, according to the Examiner, so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the invention was made, and does not include knowledge gleaned only from the applicant's disclosure. See Answer at 10. Patent Owner agrees.

However, the Examiner's subsequent argument contradicts *McLaughlin* by inappropriately injecting into the combined design of McKernan and Zamberlan features that are found in neither one of these two references. For example, the claimed jar design has a chamber with sloping walls and a slightly concave bottom surface extending just beneath the shoulder of the base. This feature is clearly not illustrated in the McKernan publication. The Zamberlan reference does not illustrate this configuration because the interior chamber of Zamberlan has vertical walls, a flat bottom surface, and extends significantly deep into the base (about ¾ of the total height of the base).

More specifically, since the Examiner asserts that the combined designs of McKernan and Zamberlan render obvious the design of the '151 Patent, even though neither one of these references discloses the actual shape and proportions of the inner chamber relative to the entire jar as depicted in the '151 Patent, the Examiner must have extracted this knowledge "based upon hindsight reasoning" from the '151 Patent design itself. This clearly contradicts the *McLaughlin* decision.

At any rate, even assuming, *arguendo*, that the inner chamber of Zamberlan and the clear exterior finish of Zamberlan can be applied to the McKernan reference, as the Examiner contends, the resulting jar would be vastly different in appearance from that of the '151 Patent.

This is because the Zamberlan reference teaches that the inner chamber must extend deeply into the base (i.e., about ¾ of the total height of the base below the shoulder). Boring out McKernan's jar this deep would make the base of the McKernan jar appear as being hollowed out and with a thin bottom wall, not as a thick and solid slab of transparent material as shown in the '151 Patent.

Further, the Zamberlan design illustrates that the interior wall of the chamber must extend completely vertically inside of the jar, while in the claimed design of the '151 patent, the interior walls are sloped, as the Examiner admits on page 8 of the Answer.

Also, in the claimed design of the '151 patent, the bottom portion of the interior chamber has an ellipsoid shape that transitions seamlessly from the sloped walls of the chamber, while in Zamberlan the bottom portion of the interior chamber is flat and has rounded corners.

With these design characteristics of Zamberlan being applied to the McKernan design, a jar embodying the resulting design would certainly appear to be very different from a jar embodying the '151 Patent design.

Accordingly, the Examiner's rejection of the claimed design based on the combination of teachings in McKernan and Zamberlan is not appropriate.

6. COMMERCIAL SUCCESS

Secondary considerations, such as commercial success, are relevant to the evaluation of obviousness of a design claim. *See MRC Innovations, Inc. v. Hunter Mfg., LLP*, 747 F.3d 1326, 1335-36 (Fed. Cir. 2014); *Crocs Inc. v. International Trade Commission,* 598 F.3d 1294, 1310, (Fed. Cir. 2010). Indeed, secondary considerations "can be the most probative evidence of non-obviousness…, and enables the... court to avert the trap of hindsight." *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 960 (Fed. Cir. 1986).

Secondary considerations "may often establish that an invention appearing to have been obvious in light of the prior art was not." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed.Cir.1983). It is important to note that evidence of secondary considerations "… is not just a cumulative or confirmatory part of the obviousness calculus but constitutes independent evidence of nonobviousness." *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1365 (Fed. Cir. 2008).

The jars made and sold by the Patent Owner and which practice the claimed design of the '151 Patent have enjoyed significant commercial success. See the Evidence Appendix, including the Declaration of inventor Robert Lerman, which was filed on November 4, 2019, and was made of record in this reexamination proceeding. There has been continuous sales growth over the last several years. *Id.*

In the Answer, the Examiner accords little to no weight to the demonstrated commercial success of the patented jar design; the Examiner suggests that the commercial success of the jars embodying the design claimed in the '151 Patent has occurred due to the "growing cannabis industry." *Id.* at 11. The Examiner refers to MPEP 716.03 in opining that "[Mr. Lerman] consider[s] [the commercial success of the jar embodying the patented design] to be attributed, at least in part, to the uniqueness of the jar design" is subjective, and therefore, non-compelling. *Id.* at 12.

While Patent Owner acknowledges that it bears the burden of establishing a nexus between the claimed invention and its commercial success, as required by MPEP 716.03, Patent Owner believes that it has established such nexus by concluding that in its professional opinion the success in sales is owed to the patented jar design.

While the cannabis industry is growing, there is certainly no shortage of containers available for sale in the marketplace that would suit the needs of cannabis users. In addition to the availability of a plethora of off-the-shelf containers, cannabis users may also repurpose used medication containers (e.g., plastic prescription medication bottles) to fulfill their needs. In other words, even though the cannabis industry is growing, certain jars employing appealing designs are likely to be commercially successful precisely due to their design, while other jars featuring unappealing designs are likely to remain stagnant in store shelves even though the cannabis industry as a whole is growing.

Therefore, with the large number of competing jar designs in the marketplace, the appearance of jars embodying the design claimed in the '151 Patent is the driving factor of commercial success thereof.

IV. CONCLUSION

In view of the above remarks, it is submitted that the claimed design of the '151 Patent is patentably distinct over the prior art relied upon by the Examiner. As such, withdrawal of the obviousness rejection under 35 U.S.C. § 103 is hereby requested.

No additional fees are believed due, but if any additional fee is required, the Commissioner is hereby authorized to charge the amount of any such fee to Deposit Account No. 07-1730, Docket No. 8748-019.

Respectfully submitted,

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/Jeffrey M. Kaden/
Jeffrey M. Kaden
Reg. No. 31,268
Ilirian Durri
Reg. No. 77,016

Dated: 3/17/2021

V. CLAIMS APPENDIX

The design claimed in the '151 Patent is illustrated below for convenience:

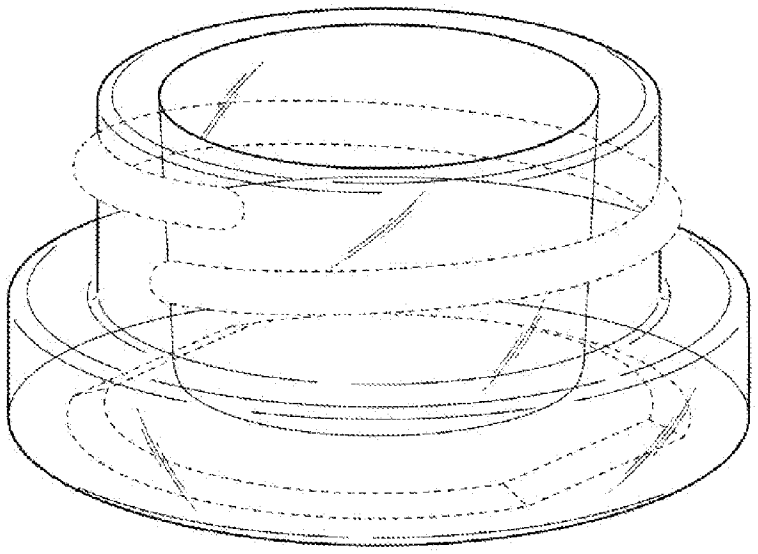


FIG. 1

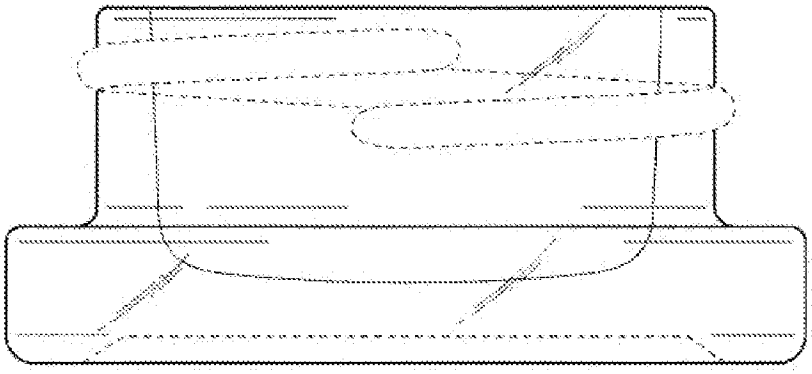


FIG. 2

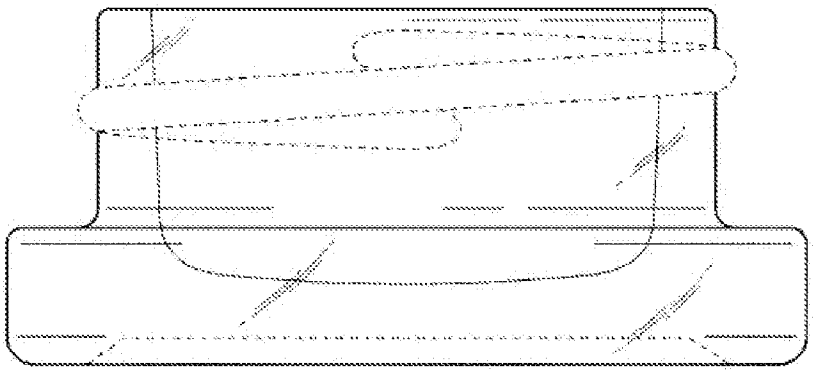


FIG. 3

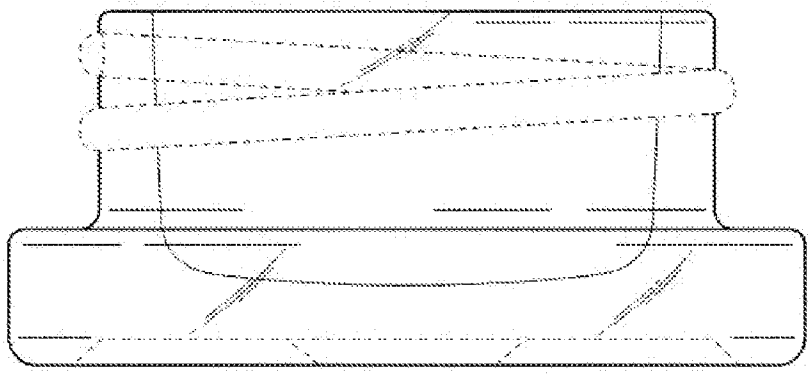


FIG. 4

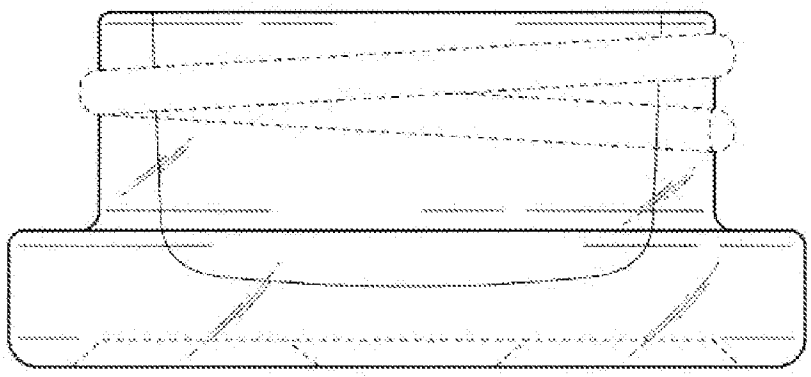


FIG. 5

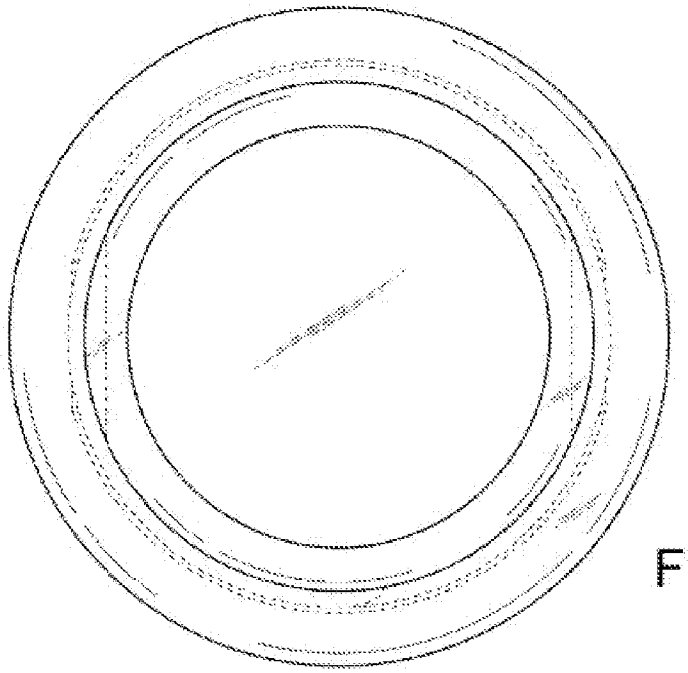


FIG. 6

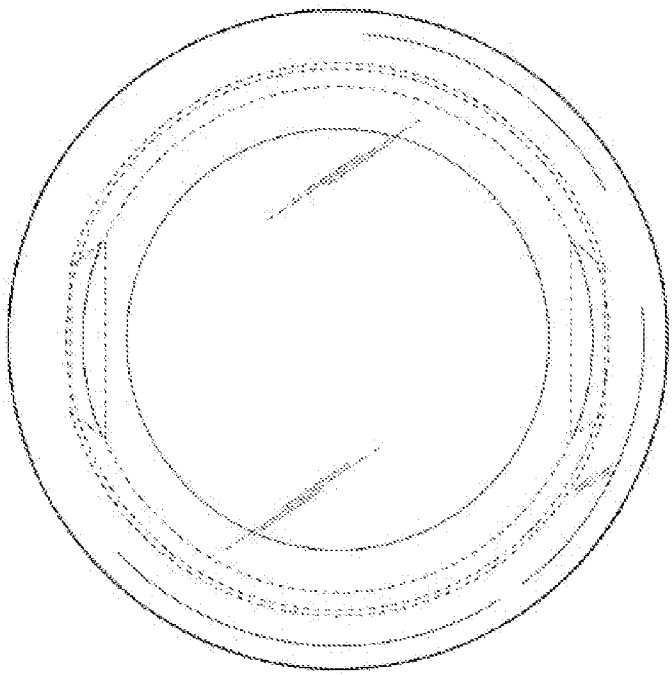


FIG. 7

VI. EVIDENCE APPENDIX

A copy of a Declaration submitted by Robert Lerman on November 4, 2019, in support of Patent Owner's response to the non-final Office Action mailed on September 3, 2019, is provided below. Mr. Lerman is the sole inventor of the jar design claimed in the '151 Patent and the principal of Lerman Container Corp. Mr. Lerman's Declaration has been entered in the record of this reexamination proceeding.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Applicant and Patent Owner	:	Ebottles.com
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

DECLARATION OF ROBERT LERMAN

1. I am the principal of patent owner Ebottles.com and the inventor of the claimed design of the U.S. Design Patent No. 781,151 (the "151 Patent"). I submit this Declaration in support of Patent Owner's response to the non-final Office Action dated September 3, 2019 in the subject Ex Parte Reexamination.

2. I make this Declaration from personal knowledge.

3. I respectfully request that the Examiner take into account the commercial success of jars embodying the claimed design of the '151 Patent (the "Jar" or "Jars").

4. Since its introduction, the Jar has enjoyed a considerable amount of commercial success and continued sales growth.

5. I consider this success to be attributable, at least in part, to the uniqueness of the jar design depicted in the '151 Patent.

6. In the past three years, our company has manufactured and sold more than 10 million units of the Jars.

7. In 2016, Ebottles.com manufactured and sold more than 1 million units of the Jars.

8. In 2017, Ebottles.com manufactured and sold more than 2.5 million units of the Jars.

9. In 2018, Ebottles.com manufactured and sold more than 6.5 million units of the Jars.

10. As you can see from these figures, we have experienced tremendous growth in our sales of the Jar, as sales have more than doubled each year since we introduced the Jar.

11. The vast majority of our clients who purchase the Jars use them to contain concentrated forms of cannabis.

12. Based on my knowledge of the cannabis industry, including the number of licensed producers of cannabis concentrates nationwide, I would estimate that sales of the Ebottles.com Jar comprise, in units, upwards of sixty five percent (65%) of jars purchased by such licensed producers.

I hereby declare, that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these

statements were made with the knowledge that willful false statements and the like so made are punishable as perjury.

/s/ Robert Lerman
Robert Lerman

Dated: New York, New York
November 4, 2019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s)	:	LERMAN CONTAINER CORPORATION, et al.
Application No.	:	90/014,262
Filing Date	:	February 11, 2019
Examiner	:	Philip S. Hyder
Group Art	:	2917
TITLE	:	JAR

REQUEST FOR CHANGE OF ENTITY STATUS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please note that the above identified patent is not entitled to a micro entity status. It was recently discovered that the Appeal Fee was incorrectly paid on April 17, 2020 as a micro entity and the difference is hereby being submitted. If there are any additional fees due, please consider this to be a petition therefore, and Applicant's attorney hereby authorizes that any such fees be charged to Deposit Account No. 07-1730, Docket No. 8748-019.

Respectfully submitted,

Date: January 29, 2021 By: /Jason R. Wachter/

Jason R. Wachter (Reg. No. 65,987)
Attorney for the Applicant

PTO Correspondence Address:

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UNITED STATES
PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313 - 1450
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ELECTRONIC ACKNOWLEDGEMENT RECEIPT

APPLICATION #	RECEIPT DATE / TIME	ATTORNEY DOCKET #
90/014,262	**01/29/2021 12:25:41 PM ET**	**8748-019**

Title of Invention

JAR

Application Information

APPLICATION TYPE	Design / ex parte reexam	PATENT #	D781151
CONFIRMATION #	8506	FILED BY	Susan Piperno
PATENT CENTER #	60137851	FILING DATE	02/11/2019
CUSTOMER #	22440	FIRST NAMED INVENTOR	- D781151
CORRESPONDENCE ADDRESS	-	AUTHORIZED BY	Jason Wachter

Documents

TOTAL DOCUMENTS: 1

DOCUMENT	PAGES	DESCRIPTION	SIZE (KB)
8748-019_PTO-change_small_entity.pdf	1	Assertion of entitlement to small entity status	258 KB

Digest

DOCUMENT	MESSAGE DIGEST(SHA-512)
8748-019_PTO-change_small_entity.pdf	783D659950AEB8227E60F5B6B590CB4D7D09959BDAA320A35D5B40EB787DFAA2A13D905BF51C3051E22364EC64D1312E294AA839A242F293BE7E9556979A2D8A

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as

described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	8748-019	8506

22440 7590 01/25/2021
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

EXAMINER
HYDER, PHILIP S

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
01/25/2021	PAPER

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

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

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UNITED STATES

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/014,262* .

PATENT UNDER REEXAMINATION *D781151* .

ART UNIT *2917* .

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Application Number: 90/014,262
Filing Date: 11 Feb 2019
Appellant(s): D781151

Jeffrey M. Kaden

GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601
UNITED STATES

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 8, 2020.

Every ground of rejection set forth in the Office action dated Dec. 26, 2019 from which the appeal is taken is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

The following ground(s) of rejection are applicable to the appealed claims.

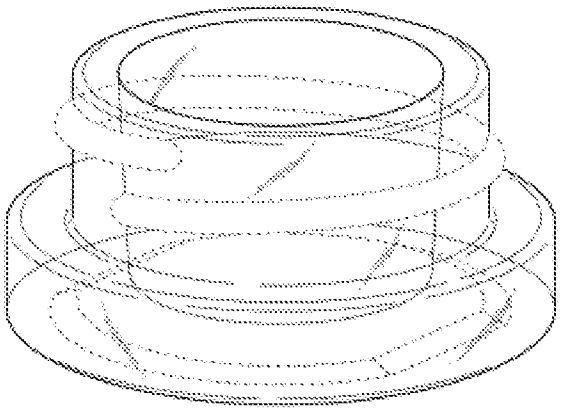
The claim in patent D781,151 is rejected under 35 U.S.C. 103 as being unpatentable over the McKernan Jar in view of the jar disclosed by in Zamberlan et al. Patent reference D634,202.

The overall design characteristics of the McKernan jar are basically the same as the design claimed in D781,151. Both jar designs consist of stubby cylindrical bodies topped with taller narrower cylindrical necks. The only discernable difference is that the claimed design is fully transparent whereas the body on McKernan has a frosted finish, thus revealing its interior chamber.

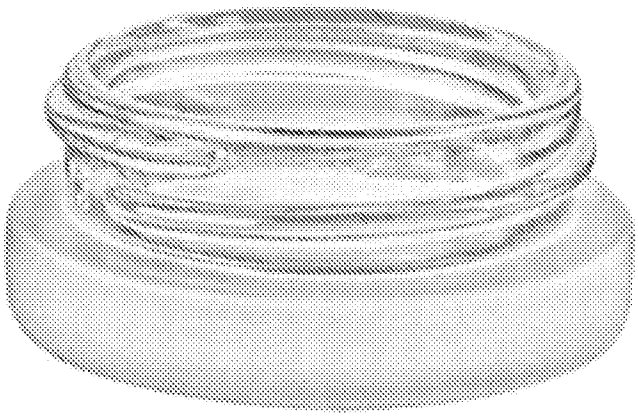
The Zamberlan reference D634,202 discloses a design for a stubby jar in which the body lacks the frosted finish, thus making the body fully transparent to reveal an inner chamber having the rounded bottom corners

It would have been obvious to a designer of ordinary skill in the art at the time the invention was made to have modified the McKernan jar by removing the frosted finish from the

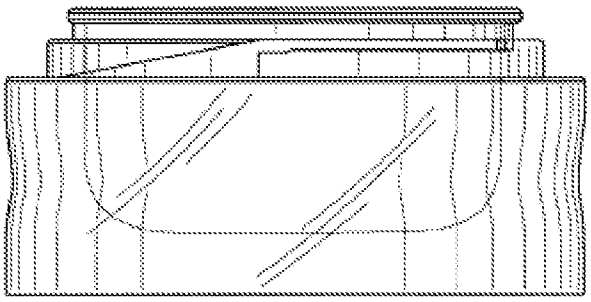
lower body to reveal an inner cavity having rounded corners, as shown and suggested by Zamberlan.



D781,151 under reexam



McKernan primary reference



D634,202

NEW GROUNDS OF REJECTION

NA

WITHDRAWN REJECTIONS

NA

(2) Response to Argument

The following seven sections correspond to the sections in the Appeal Brief

1. Description of the cited art

The examiner accepts the appellant's description of the McKernan jar with one exception. The only point of disagreement is that the appellant contends that "*it is virtually impossible to tell whether or not the jar of the McKernan reference includes any type of interior chamber*", whereas the examiner believes that the circular opening at the top of the neck is sufficient evidence that the jar in fact has an interior chamber. Furthermore, one skilled in the art would have the expectation that in order for a jar to fulfill its intended use as a jar/container, by necessity it must include some form of an interior chamber.

The examiner accepts the appellant's description of the Zamberlan jar.

2. Rejection of the Claimed Design

The examiner accepts the appellant's description of the rejection, except in one regard. Appellant states that in the final Office Action the Examiner states for the first time that the "transparent characteristic" of the Zamberlan jar design is "*is being applied to the entire jar of McKernan*" and that "*the interior chamber with rounded lower corners is being taken from*

Zamberlan without any modifications and being directly applied to the interior of McKernan".

The examiner submits that the prior art was applied in the same manner in both the non-final and final rejections; even if the language of the rejection is not restated verbatim. As stated in the nonfinal rejection "*It would have been obvious to a designer of ordinary skill in the art at the time the invention was made to have modified the McKernan jar by removing the frosted finish from the lower body to reveal an inner cavity with rounded corners as shown and suggested by Zamberlan.*"

3. Legal Standard for Obvious

The examiner accepts the appellant's description of the standard.

4. The Primary McKERNAN Reference

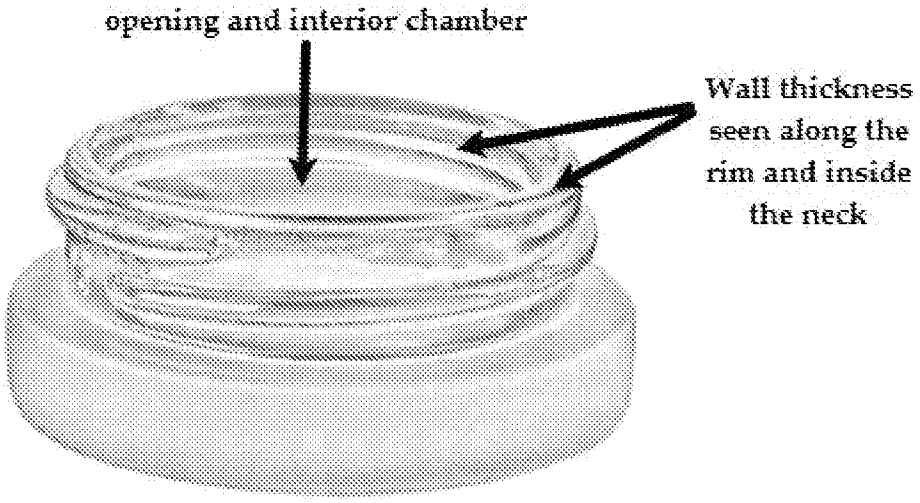
The patent owner argues that the primary McKernan reference is not a proper primary reference because it fails to present the same visual impression as their design. Their design is fully transparent and thus "*conveys an impression of openness and clarity*" thereby revealing the interior chamber, whereas the base on McKernan has a frosted finish; the neck on their design is taller than the neck on McKernan; and the frosted exterior on the McKernan jar makes it "*impossible to tell*" whether or not it "*includes any type of interior storage chamber*".

When constructing a rejection under 35 U.S.C. 103, the primary reference must comply with the standard established in In re Rosen, 673 F.2d 388, 213 USPQ 347 (CCPA 1982). The standard is that "*There must be a reference, a something in existence, design characteristics of which are basically same as claimed design in order to support holding of obviousness; such reference is necessary whether holding is based on basic reference alone or on basic reference in view of modifications suggested by secondary references.*" The examiner remains convinced that in no uncertain terms, McKernan fulfills the "*basically the same*" standard. Appellant

presents the *"Apple"* decision from the Federal Circuit in support of their position of the standard which should be applied in a determining the applicability of a primary reference. In the decision, the court held the Fidler tablet does not create the same visual impression as Apple's tablet. The examiner believes that the facts in Apple are dissimilar from the facts in this case. In the discussion of Apple, the Apple design is interpreted as having "*polished reflected surface extending to the edge*"; i.e. an uninterrupted reflective surface extending across the entire surface. The court interpreted the Fidler design as having a screen that sinks into the frame, thus creating a *"picture frame"* effect, therefore breaking "the continuity between the frame and screen embedded within it." The examiner believes that the applicant is overreaching in equating the frosted finish on McKernan with the sunk in picture frame effect of Fidler.

While the applicant argues that the examiner is viewing the two deigns from too high a level of abstraction, the examiner believes that the opposite is true, and that the appellant is interpreting the "*basically the same*" standard too strictly. In terms of their overall forms, there is no appreciable difference. The appellant takes issue with the examiner's remark in the final rejection regarding the "underlying form" or "underlying design" being the same. While this is not a legal test, the remark was intended to explain that the primary difference in appearance resides in the finish applied to the exterior surface; not in the form of the jar. The profiles of the jars present "basically the same" appearance.

The examiner finds no merits in the appellant's argument that McKernan lacks an interior chamber. While the examiner is willing to concede that the frosted appearance makes it impossible to see how deep the chamber extends into the jar, there is no question that the reference shows an opening at the top leading to an interior chamber.



McKernan primary reference

Appellant has questioned what the examiner was referring to in regard to the wall thickness. When viewing McKernan, the thickness of the rim describes the thickness of the walls and consequently, the diameter of the interior chamber. Contrary to the appellant's contention, the examiner believes that the image of McKernan is sufficiently clear that one can obtain a clear understanding that the sides of the interior chamber are substantially vertical. The examiner acknowledges that the chamber in '151 tapers slightly from top to bottom, but the degree of the taper is negligible.

For clarification, the exact quote from *Shoe Form Co. Inc. v. Irwin Corp.* 71 USPQ 144 (1946) is as follows:

"Granting, however, that plaintiff is right, that the patent is limited to transparent material, that is not a distinction which takes it out of the prior art. In recent years there has been a vast increase in the number of new materials available for fabrication. It would open a wide field for design patent monopolies if the imposition of old designs upon these new materials would warrant the issue of design patents. I assume that the shape and design of the common brick is in the public domain even if it be applied to material newly invented."

The distinction presented by the appellant between the "deliberate application of a frosted exterior surface finish" and the "utilization of a novel transparent material for forming a jar" is unclear. Regardless of whether the transparent aspect of the appearance was added or removed from the design, it does not alter the basic shape of the jar and does not detract from the overall similarities in their designs. The examiner stands by his position that the McKernan reference successfully fulfills its role as a primary reference under the standards of Rosen.

5. The Secondary ZAMBERLAN Reference

While the examiner and the appellant agree that "The long-standing test for properly combining references has been '...whether they are so related that the appearance of certain ornamental features in one would suggest the application of those features to the other,'" In re Glavas, 230 F.2d 447, 450, 109 USPQ 50, 52 (CCPA 1956)," [1] is the standard for combining references in an obviousness rejection, there is a difference of opinion regarding how closely related the two articles must be to each other. The examiner believes that the appellant's interpretation of the standard is too stringent. Glavas does not require that a secondary reference displays an appearance that is basically the same as, or strikingly similar to, the claimed design. The examiner's position is that a designer of jars would be charged with the knowledge of all types of jars, and this proverbial designer of ordinary skill would be expected to be sufficiently skilled to take certain aesthetics of one jar and apply them to another jar. Zamberlan and McKernan disclose cylindrical jars with chambers that are entered from a top opening. It is reasonable to assume that a designer might have applied teachings from Zamberlan such as the

[1] MPEP 1504.03 II A

removal of the frosted finish, and the appearance of a chamber that is visible inside of the base, to McKernan.

6. Combining the features of McKernan And Zamberlan

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Appellant presents that certain features from Zamberlan cannot be incorporated into McKernan without incorporating other design characteristics such as the onward curved waistline, the proportions between the neck and base, and the dual screw threading. If the examiner understands this premise correctly, the appellant believes that the only way to avoid a hindsight combination would be to take all of the design characteristics of Zamberlan and apply them into McKernan. If that were done, the resulting appearance would be the Zamberlan jar, and McKernan would be written out of the rejection. This is a distortion of the intention of 35 U.S.C. 103. To the contrary, the intent of the 35 U.S.C. 103 is to maintain the integrity of the primary reference, modifying it in minor ways based upon the teachings of the secondary reference(s).

In IPR2016-00434, the PTAB decided against the combination of art because they determined that the petition improperly focused on concepts, rather than specific appearances. The board had problems understanding the secondary references and determined that the

information they provided was too vague and therefore only conceptual, so it was not sufficient to "bridge the gap" between the primary reference and the claimed design. They found that the "*the details of the secondary reference designs are not clearly discernable… Without supporting evidence, we are left to guess at what is shown in the photos of the secondary references.*"[2] The same circumstance is not present in this situation. The secondary reference is a patent and the appearance is clearly described. This is not a situation where a concept for a modification is being applied to the primary reference. At best, the appellant may be arguing that the primary reference it too conceptual since the chamber is not described as extending into the frosted base, but in this case, the chamber from the secondary Zamberlan cures this deficiency, rather than detracts from the clarity. Nothing about the application of the chamber or the removal of the frosted finish is done in a conceptual manner or a manner that would require the selection of some aspects of those particular features. The examiner has applied those aspects of Zamberlan to McKernan without modification. The examiner does not believe that he employed a level of hindsight that reached beyond the level that was determined to be permissible in *In re McLaughlin*.

7. Commercial Success

The examiner understands there to be a direct correlation between the sales of the jar and the legal sale of cannabis in the U.S. While the growth shown in the below chart is not identical to the growth stated by Robert Lerman in his Declaration, the evidence is clear that cannabis sales has experienced significant growth during the same time frame discussed in the Declaration. It would only make sense that products related to the growing cannabis industry

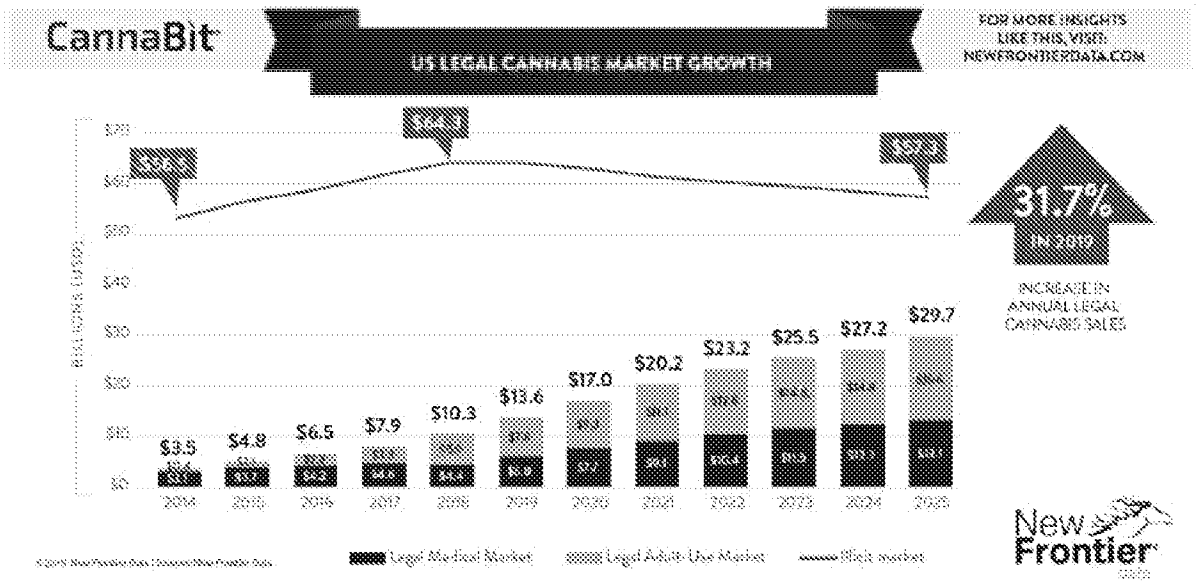
[2] Premier Gem Corp. vs. Wing Yee Gems & Jewellery Limited, Docket No. IPR2016-00434 (P.T.A.B. Jan 07, 2016)

would also make sizeable gains during the same time period. The declaration fails to present compelling evidence that the commercial success of their product is attributed to the visual appearance.

MPEP 14.03: "When evidence of commercial success is submitted, examiners must evaluate it to determine whether there is objective evidence of success, and whether the success can be attributed to the ornamental design. See Litton System, Inc. v. Whirlpool Corp., 728 F.2d 1423, 221 USPQ 97 (Fed. Cir. 1984); In re Nalbandian, 661 F.2d 1214, 211 USPQ 782 (CCPA 1981). An affidavit or declaration under 37 CFR 1.132 has minimal evidentiary value on the issue of commercial success if there is no nexus or connection between the sales of the article in which the design is embodied and the ornamental features of the design. See Avia Group Int'l Inc. v. L.A. Gear, 853 F.2d 1557, 7 USPQ2d 1548 (Fed. Cir. 1988)."

Robert Lerman's statement that "I consider this success to be attributed, at least in part, to the uniqueness of the jar design…" appears to be subjective because there is no support or insight into how he came to the conclusion.

Commercial success can be attributed to a variety of factors including cost benefits, advertisement, or superior distribution, and yet the declaration has not explained why these factors could not have led to the commercial success. All that the Declaration shows is that the product has experienced sales growth in a growing market.



3

In conclusion, the examiner believes that he has provided a strong evidence that claim is patentable over the combination of art.

For the above reasons, it is believed that the rejection should be sustained.

Respectfully submitted,

/Philip S Hyder/
Primary Examiner, Art Unit 2917

Conferees:

/KEVIN K RUDZINSKI/
Primary Examiner, Art Unit 2911

/DARLINGTON LY/
Primary Examiner, Art Unit 2914

[3] https://newfrontierdata.com/cannabis-insights/u-s-legal-cannabis-market-growth/

Requirement to pay appeal forwarding fee. In order to avoid dismissal of the instant appeal in any application or ex parte reexamination proceeding, 37 CFR 41.45 requires payment of an appeal forwarding fee within the time permitted by 37 CFR 41.45(a), unless appellant had timely paid the fee for filing a brief required by 37 CFR 41.20(b) in effect on March 18, 2013.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Patent Owner	:	LERMAN CONTAINER CORPORATION
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

CERTIFICATE OF SERVICE

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

In accordance with 37 CFR § 1.550, a copy of the Appeal Brief filed with the Office in *Ex Parte* Reexamination Control No. 90/014,262 has been served on the third party requester indicated below via email only at jake@wardpatent.com.

Jacob M. Ward
Ward Law Office LLC
120 ½ S. Washington Street
Suite 207
Tiffin, OH 44883

As previously stated, Mr. Ward has agreed to receive electronic service of papers via email at the above-noted email address.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Applicant(s)
270 Madison Avenue, 8th Floor
New York, New York 10016
(212) 684-3900

/Ilirian Durri/
Ilirian Durri
Reg. No. 77,016

Dated: 6/8/2020

GOTTLIEB, RACKMAN & REISMAN, P.C.

INTELLECTUAL PROPERTY LAW

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Ilirian Durri
Attorney At Law
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June 8, 2020

VIA EMAIL ONLY: jake@wardpatent.com

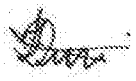
Jacob M. Ward
Ward Law Office LLC
120 ½ S. Washington Street
Suite 207
Tiffin, OH 44883

RE: Service Copy of Appeal Brief Filed in *Ex Parte* Reexam Control No. 90/014,262

Dear Mr. Ward,

Enclosed please find a service copy of the Appeal Brief filed in Reexamination Control No. 90/014,262, concerning the reexamination proceeding of U.S. Patent No. D781,151.

Very truly yours,
GOTTLIEB, RACKMAN & REISMAN, P.C.



Ilirian Durri

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Patent Owner	:	LERMAN CONTAINER CORPORATION
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

APPEAL BRIEF

Mail Stop: *Ex Parte* Reexam
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P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

Patent Owner submits this Appeal Brief in support of the Notice of Appeal filed on April 17, 2020. This appeal is taken from the Final Rejection mailed on December 26, 2019.

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I. REAL PARTY IN INTEREST

The real party in interest is Lerman Container Corp., the assignee of record of U.S. Patent No. D781,151 (the "'151 Patent").

II. RELATED APPEALS, INTERFERENCES, AND TRIALS

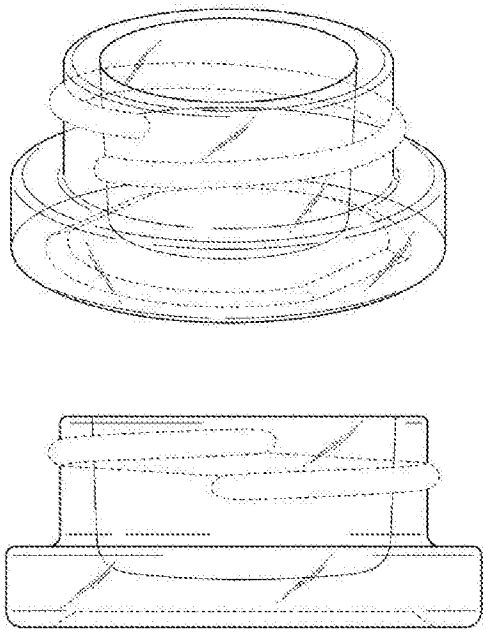
Pursuant to 37 C.F.R. § 41.37(c)(1)(ii), a civil action involving the '151 Patent was filed in the United States District Court for the District of Maryland on May 14, 2019. The action is entitled *Lerman Container Corp. v. Lids and Jars, LLC.*, and is assigned Docket No. 19cv01414.

There are no other known appeals, interferences or trials that may be related to, directly affect or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. SUMMARY OF CLAIMED SUBJECT MATTER

Set forth below is a summary of the claimed subject matter as required by 37 C.F.R. § 41.37(c)(1)(iii). Since the subject of this appeal is a design patent, the requirement to identify any claim that contains a means-plus-function or a step-plus-function limitation under 37 C.F.R. § 41.37(c)(1)(iii) is inapplicable.

Representative Drawings Illustrating the Patented Design



The '151 Patent claims the ornamental design of a transparent jar. See FIGS. 1-7. The jar has a wide and thick circular base, and a tall narrow circular neck extending upwardly from the base. See FIGS. 1-7. The base and the neck are concentric, and the base encompasses about 40% of the total height of the jar. See FIGS. 1-7. The neck encompasses the remainder of the jar's height, that is, about 60% of the total height. See FIGS. 1-7.

The jar defines an interior storage chamber that extends downwardly from the top of the neck. See FIGS. 1-5. Starting from the top of the neck, the storage chamber extends downwardly, through the entire height of the neck, and partially into the base. See FIGS. 1-5. The interior storage chamber has a frustoconical shape within the neck, and an ellipsoidal shape within the base. See FIGS. 1-5. The transition between the two shapes of the storage chamber is seamless. See FIGS. 1-5. Stated otherwise, the interior storage chamber has a bowl-like shape with a curved bottom edge extending below the shoulder of the base. See FIGS. 1-5.

The neck comprises the majority of the volume of the storage chamber. See FIGS. 1-5. The storage chamber extends downwardly through less than one-half of the vertical height of the base. See FIGS. 2-5.

All of the claimed exterior edges of the jar are curved. See FIGS. 2-5. The top surface of the neck is flat. See FIGS. 1-5. Since the jar is made entirely of a transparent material, any object that is stored within the interior storage chamber is readily visible from the outside. See FIGS. 1-7.

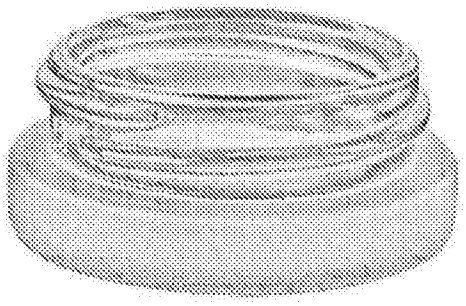
IV. ARGUMENT

A. REJECTION UNDER 35 U.S.C. § 103 OF THE CLAIMED JAR DESIGN AS BEING OBVIOUS OVER McKERNAN IN VIEW OF ZAMBERLAN

The claimed design stands rejected as being obvious over McKernan (a printed publication supplied by the third party requester for reexamination) in view of U.S. Patent No. D634,202 ("Zamberlan"). The rejection is improper because: (1) the McKernan reference cannot be a primary reference, (2) the Zamberlan patent does not qualify as a secondary reference, (3) the combination of features selected arbitrarily from the McKernan and Zamberlan references is improper, and (4) the product bearing the claimed design has been commercially successful.

1. DESCRIPTION OF THE CITED ART

The McKernan jar



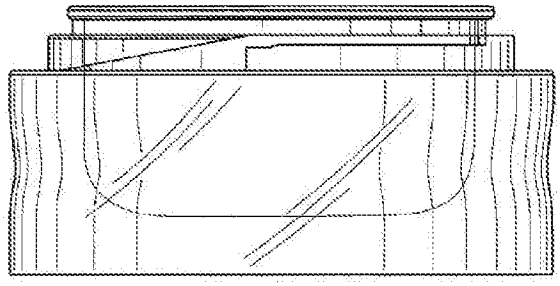
The McKernan reference illustrates a jar that is partially frosted and partially clear. The jar of the McKernan reference has a wide circular base with a circular neck extending upwardly from the base and being concentric with the base. The outer surface of the base of McKernan's jar is frosted, rendering the base opaque. The base of the McKernan jar is very thick, accounting for about 47% of the entire height of the jar, as measured on the image illustrated above.

The neck of the jar depicted in the McKernan reference is transparent and accounts for the remainder of the height of the jar, that is, about 53% of the total height. In other words, the neck of the jar depicted in the McKernan publication is proportionally shorter than the neck of the jar claimed in the '151 Patent. To this point, the Examiner admits that the neck of the claimed jar design is taller than the neck of the jar in the McKernan reference. See page 4 of the final Office Action.

Based on the very low image quality of the printed publication that depicts the jar of the McKernan reference, as supplied by the third party requester for the *Ex Parte* reexamination and as reproduced by the Examiner in the non-final and final Office Actions, it is virtually impossible to tell whether or not the jar of the McKernan reference includes any type of an interior storage chamber.

In addition, the top surface of the jar illustrated in the McKernan reference is rounded.

The Zamberlan Jar



The Zamberlan patent illustrates a somewhat ordinary jar that is formed of transparent material. The jar of the Zamberlan reference has a cylindrical body that makes up virtually the entire jar. A minute neck protrudes upwardly from the body.

The body of the jar depicted in the Zamberlan reference has a "waistline" at about mid-height. The jar of the Zamberlan reference defines an inner chamber with a rounded bottom edge. The inner chamber of the Zamberlan jar design extends through most of the jar's body in the vertical direction, or through about 73% of the height of the body, as measured on the image above. In addition, the body of the Zamberlan jar forms the major part of the chamber's total volume, which is opposite to the configuration of the claimed jar design.

2. REJECTION OF THE CLAIMED DESIGN

In both final and non-final Office Actions, the Examiner rejects the design claimed in the '151 Patent under AIA 35 U.S.C. § 103 as being unpatentable over the design depicted in the McKernan reference in view of the design illustrated in the Zamberlan reference.

In the final Office Action, the Examiner re-asserts that the McKernan reference qualifies as a primary reference because "the overall design characteristics of the McKernan reference are basically the same as [those of] the design claimed in [the '151 Patent]." See page 2 of the final Office Action. In addition, the Examiner contends that "both jar designs consist of short and wide cylindrical bodies topped with taller narrower cylindrical necks." *Id.* The Examiner further contends that:

> any differences in the proportioning or shaping of the designs [in the '151 Patent and McKernan references] is [sic] negligible. The only identifiable difference is that the claimed design is fully transparent whereas the body on McKernan has a frosted finish, so that only the upper neck portion is fully transparent." *Id.*

The Examiner states that the Zamberlan patent qualifies as a secondary reference because it illustrates "[a] short cylindrical jar having a threaded smaller diameter neck at the top." *Id.* at 6.

In more detail, the Examiner contends that "Zamberlan … discloses a similarly stubby jar design in which the body lacks the frosted finish, thus making the body is [sic] fully transparent to reveal an inner cavity having the rounded contours." *Id.* at 2.

The Examiner then concludes that "it would have been obvious to a designer of ordinary skill … to have modified the McKernan jar by removing the frosted finish from the lower body to reveal an inner cavity with rounded corners, as shown and suggested by Zamberlan." *Id.* at 2-3.

In the final Office Action the Examiner states for the first time that the "transparent characteristic" of the Zamberlan jar design is "is being applied to the entire jar of McKernan" and that "the interior chamber with rounded lower corners is being taken from Zamberlan without any modifications and being directly applied to the interior of McKernan" in order to "address[] both deficiencies in the McKernan reference by teaching the application of the transparent finish to the entire body of the design and teaching the appearance of the interior cavity." *Id.* at 7.

In addition, in the final Office Action, the Examiner accords little to no weight to the demonstrated commercial success of the claimed jar design by suggesting that the commercial success of the jars embodying the design claimed in the '151 Patent has occurred due to the "growth of the sales and use of the extract THC." Therefore, the Examiner opines that "[t]he declaration [of Robert Lerman, see Evidence Appendix, listing the Declaration of inventor Robert Lerman, the principal of Patent Owner Lerman Container Corp., which was filed on November 4, 2019 and was made of record in this reexamination proceeding] fails to establish certain nexus that the appearance [of the jar design claimed in the '151 Patent] is solely responsible for the success." Final Office Action at 8. The Examiner opines that "[a] number of

factors can contribute to commercial success and sales growth that are not attributable to the ornamental design." *Id.*

3. LEGAL STANDARD FOR OBVIOUSNESS

In analyzing an ornamental design for obviousness, first, "one must find a single reference, 'a something in existence, the design characteristics of which are basically the same as the claimed design.'" *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1329-1330 (Fed. Cir. 2012), quoting *Durling v. Spectrum Furniture Co, Inc.*, 101 F.3d 100, 103 (Fed. Cir. 1996), which in turn quotes *In re Rosen*, 673 F.2d 388, 391 (C.C.P.A. 1982). In order to perform the first step, courts must "(1) discern the correct visual impression created by the patented design as a whole; and (2) determine whether there is a single reference that creates basically the same visual impression." at 1312. *High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1312 (Fed. Cir. 2013).

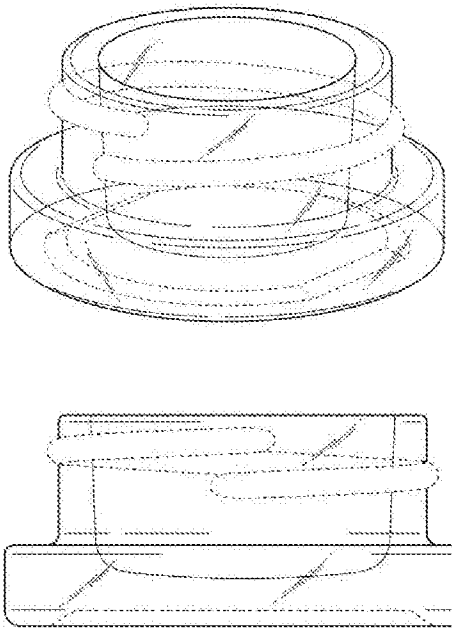
Second, "other references may be used to modify [the primary reference] to create a design that has the same overall visual appearance as the claimed design." *Apple* at 1329. However, the "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other.'" *Id.* at 1329-30, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996).

4. THE McKERNAN REFERENCE CANNOT BE A PRIMARY REFERENCE

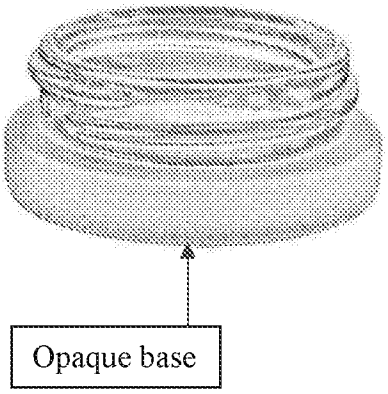
As a matter of law, McKernan cannot be a primary reference because it does not create the same visual impression as the '151 Patent.

The claimed design and the McKernan jar are reproduced below.

The '151 Patent Design



The McKernan jar



The correct visual impression created by the patented design as a whole can be discerned by referring to the figures of the '151 Patent reproduced above. As shown in these figures, the claimed design illustrates a jar that is entirely transparent. The jar has a base that is substantially wider than the neck. Since the claimed jar design is entirely transparent, the claimed jar design as a whole conveys an impression of openness and clarity. This is because both the exterior of the jar and the interior storage chamber thereof are clearly visible from the outside. In other words, the overall three-dimensional configuration of the jar can be clearly viewed from the outside. In addition, anything that is stored or housed in the interior chamber of the claimed jar design is readily visible from the outside.[1]

[1] While not per se relevant on the issue of obviousness in a design patent context, the Patent Owner notes that the jar of the '151 Patent, because of its design, has enhanced child-proof characteristics.

In contrast, the jar depicted in the McKernan reference, while also having a base that is wider than its neck, has an appearance that is substantially different than that of the claimed jar design. This is in large part because the jar of the McKernan reference has a large and rather pronounced opaque base. Indeed, the Examiner admits on pages 2 and 5 of the final Office Action that the base of the jar depicted in the McKernan reference is "frosted." As can be appreciated, a frosted surface finish either substantially diffuses light or blocks the transmission of light altogether. In either case, based on the teaching of the McKernan reference, one is not able to see through the surface of the base of the McKernan jar. Stated another way, the base of the jar of the McKernan reference appears as a solid opaque object that is visually closed from the outside, thereby preventing an ordinary observer from seeing inside of the base. The fact that the base of the McKernan jar design is visually prominent further emphasizes the difference between the overall appearance of the jar of the McKernan reference and the overall appearance of the claimed jar design.

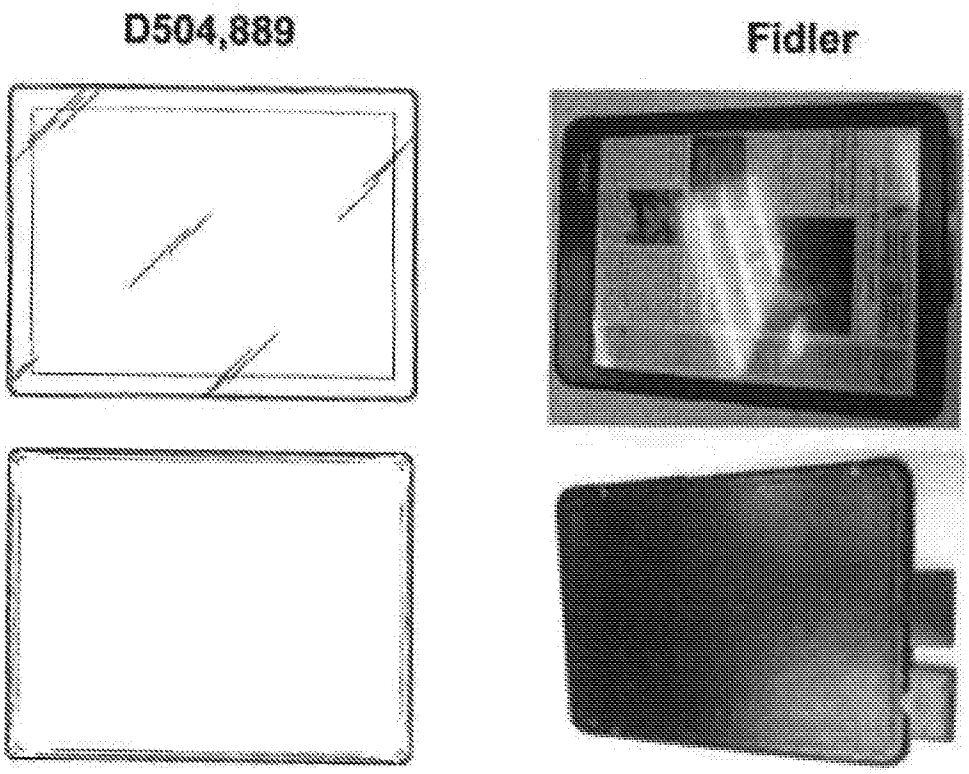
Moreover, the Examiner admits on page 4, lines 18-19 of the final Office Action that the neck of the claimed jar design is taller than the neck of the jar of the McKernan reference. The taller neck of the claimed jar design, in combination with the claimed jar design being entirely transparent, as discussed above, presents an overall visual impression that is markedly different from what is disclosed by the McKernan reference.

Further, Patent Owner maintains that it is virtually impossible to tell whether or not the jar of the McKernan reference, as illustrated in the printed publication that was supplied by the third party requester of the *Ex Parte* reexamination and as reproduced by the Examiner in the non-final and final Office Actions, includes any type of an interior storage chamber. This is due to the very low image quality of the printed publication that depicts the jar of the McKernan

reference. The claimed jar design of the '151 Patent, on the other hand, has a clearly visible interior chamber defining a bowl-like configuration that extends below the shoulder of the base as one of its prominent design features.

In the *Apple* decision discussed *supra* (hereinafter "*Apple*" for brevity purposes), the design of a tablet by Fidler was used by the federal trial court as a primary reference to obviate Apple's U.S. Design Patent No. D504,889. The Federal Circuit disagreed.

A side-by-side comparison of the Fidler and Apple designs is reproduced below:



In deciding that the Fiddler design was not a primary reference, the Federal Circuit in *Apple* made clear that the trial courts (and the Examiner) should avoid "view[ing] the various designs from too high a level of abstraction." The Federal Circuit in *Apple* held that "Fidler does not qualify as a primary reference simply by disclosing a rectangular tablet with four evenly rounded corners and a flat back." *Id.* at 1332.

The standard applied by the Federal Circuit in *Apple* applies here. Patent Owner submits that McKernan reference cannot qualify as a primary reference merely by disclosing a jar with a base that is wider than the neck. Doing so amounts to inappropriately viewing the jar depicted in the McKernan reference "from too high a level of abstraction." *Apple* at 1332.

In *Apple*, the Federal Circuit further held that the Fidler tablet does not create the same visual impression as Apple's tablet design as claimed in U.S. Design Patent No. D504,889. The Federal Circuit opined that "[a] side-by-side comparison of the two designs shows substantial differences in the overall visual appearance between the patented design and the Fidler reference." *Id.* at 1330. [2]

Similarly here, the design of the McKernan jar is significantly different from that of the design claimed in the '151 Patent. The claimed invention conveys an overall visual impression of openness and clarity, as explained hereinabove, due to the jar of the claimed design being entirely transparent, while the jar depicted in the McKernan reference conveys a masked visual impression since it is shown as being predominantly opaque.[3]

In *Rosen*, the Court of Customs And Patent Appeals (the predecessor appeals court to the Federal Circuit) held that a primary reference can be disqualified as not being "basically the same as the claimed design" when "a designer of ordinary skill would find [the claimed design

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[2] In determining that the two designs have substantial differences in their overall visual appearance, the Federal Circuit emphasized that "the frame of the Fidler tablet creates a very different impression from the 'unframed' D'889 design." *Apple* at 1330. The court held that the Fidler screen "appears to sink into the frame, creating a 'picture frame' effect." *Id.* at 1331. In addition, the court held that the "'picture frame effect break[s] the continuity between the frame and the screen embedded within it." *Id.* In contrast with the Fidler tablet, the court opined that the *Apple* design "covers essentially the entire face of the patented design without any breaks or interruptions." *Id.* For this reason, the court held that "[Apple's design] ... creates the visual impression of an unbroken slab of glass extending from edge to edge on the front side of the tablet." *Id.* According to the court, the "Fidler reference does not create such an impression." *Id.*

[3] Patent owner notes that the difference in appearance between the opaque jar depicted in the McKernan reference and the transparent jar in the '151 Patent would be substantially exacerbated when viewed as intended to be used with a lid selectively attached thereto.

and the primary reference to be] significantly different in concept." 673 F.2d at 391. In other words, when a designer of ordinary skill would find the two designs at issue significantly different in concept, that is that the designs create a very different impression, the primary reference cited against the claimed invention is not "basically the same as the claimed design," and therefore, does not create the same visual impression as the claimed design. *Id.*[4] *See also In re Nalbandian*, 661 F.2d 1214 (C.C.P.A. 1981). (In determining obviousness, the proper standard is whether the design would have been obvious to a designer of ordinary skill).

The *Apple* and *Rosen* decisions are right on point. The claimed design of the '151 Patent creates to an ordinary designer a visual impression that is very different from that of the design depicted in McKernan. It is axiomatic that without a primary reference having the same overall visual impression as the claimed design, there can be no finding of obviousness. *See Apple*, at 1331-32.

The Examiner argues on page 4 of the final Office Action that "[t]he designs [of the '151 Patent and the jar of the McKernan reference] are found to be basically the same because their primary characteristics both include stubby cylindrical bodies topped with taller narrower cylindrical necks." This argument amounts to nothing more than roughly comparing the exterior outlines of the two jar designs in a vacuum, that is, without taking into consideration the different exterior surface finishes of the two jars, and without weighing in the fact that the interior

[4] In *Rosen*, the claimed design was a round table with a glass top supported by three "V"-shaped legs with notches at the top. The round glass top of *Rosen* was unskirted (e.g., there was no border covering the outer periphery of the glass), and the glass was inserted into notchings on the legs. The primary reference cited against *Rosen* depicted an oval table with "V"-shaped legs. The table top of the primary reference was skirted at the outer perimeter by a border, and the "V"-shaped legs were notched inside of the table top. Based on this, the *Rosen* court held that the claimed round table design was significantly different in concept from the primary reference because the primary reference "does not give the same visual impression of lightness and suspension in space conveyed by the [claimed invention]". *Id.* at 391. The *Rosen* court held that this is so because the primary reference "embodies a concept of confinement of space, resulting in a different overall appearance and aesthetic appeal." *Id.*

chamber is clearly visible in the claimed jar design, but is not visible in the McKernan design. By merely comparing the outlines of the two jar designs and not comparing anything else, the Examiner is viewing the two jar designs "from too high a level of abstraction." *Apple* at 1332.

The Examiner states on page 4 of the final Office Action that "the change from a frosted finish to a clear finish does not affect the underlying form or design so it does not detract from the sameness of the designs." Patent Owner submits that the applicable legal standard is whether the overall appearance of the alleged primary reference is basically the same as that of the claimed design. Simply stated, the "underlying form" or the "underlying design" is not the legal test.

The Examiner's arguments regarding an interior chamber of the McKernan jar design are contradictory. First, the Examiner admits on page 5 of the final Office Action that the interior chamber of the McKernan reference cannot be seen "because it is obscured by the frosted exterior finish." Patent Owner agrees.

However, the Examiner then states on page 5 of the final Office Action that the McKernan jar has an interior chamber because "the McKernan design is sufficiently tilted so that an opening at the top is visible." As stated above, due to the low image quality of the reproduction of the McKernan publication, one cannot discern whether the McKernan jar design illustrates an opening at the top of the jar. Thus, due to the low quality of the images that depict the McKernan jar design as well as the frosted finish of the base of the McKernan jar design, the Examiner has simply not established that an opening in the McKernan jar even exists, let alone what that opening looks like, that is, what is the overall shape of the opening, how deep is the opening, what does the bottom surface of the opening look like, etc.

In addition, on page 5 of the final Office Action the Examiner states that the McKernan jar has an opening because "a jar by definition must have a chamber in its interior." Respectfully, the Examiner's conclusion that the McKernan jar has an opening because a jar "must have a chamber" is speculative at best. Nothing in the record supports the Examiner's premise that "a jar by definition must have a chamber in its interior." Thus, the conclusion that is based on this premise – that the McKernan jar has a chamber – cannot stand.

Therefore, the Examiner has failed to meet his burden of proving that the jar depicted in the McKernan reference has an interior chamber.

However, even assuming, *arguendo*, that the McKernan jar does have an interior opening, the fact that the opening of McKernan jar design has an unknown shape and size, when combined with the visual differences that result from the clear versus frosted exterior surface finishes between the claimed jar design and the design of McKernan, unequivocally establishes that the jar design of the McKernan reference is not "basically the same" as the claimed jar design. *Rosen* at 391.

The Examiner opines on page 4 of the final Office Action that "the wall thicknesses of both designs appear to be substantially the same." First, it is not clear which walls the Examiner is comparing to one another. The walls of the jar design claimed in the '151 Patent are illustrated in FIGS. 2-5 of said patent but the McKernan reference does not illustrate any of the alleged walls of the jar. This is so because the base of the McKernan jar is frosted, therefore hiding the interior construction of the base. The McKernan reference fails to illustrate that the neck has a particular wall thickness – and therefore an interior chamber - due to the low image quality of the McKernan publication. Second, even if the jar of the McKernan reference has an interior chamber – a position that Patent Owner refutes - and therefore a certain wall thickness along the

neck, the image that depicts the jar of the McKernan reference clearly fails to illustrate that this alleged wall thickness is "substantially the same" as that of the jar design claimed in FIGS. 2-5 of the '151 Patent because no wall thickness can be gauged on the McKernan illustration. *Id.* Note that in the claimed design, the thickness of the vertical sidewall along the neck of the jar varies because the vertical sidewall tapers slightly in the upwardly direction toward the opening of the jar. This design feature cannot be discerned in the McKernan reference.

The Examiner argues that the "difference between the[] clear finish of the claim and the frosted finish in McKernan is [not] equivalent to Apples [sic] unbroken flush screen relative to picture frame sunk in appearance on Fiddler." Final Office Action at 5. Patent Owner disagrees. Patent Owner maintains that just like the picture frame appearance of the Fiddler tablet is not "basically the same" as the flush screen of the Apple tablet, the entirely transparent appearance of the claimed jar design is not "basically the same" as the mostly opaque appearance of the jar depicted in the McKernan reference. *Rosen* at 391.

In addition, the Examiner's reliance on the *Shoe Form Co. Inc. v. Irwin Corp.* 71 USPQ 144 (1946) decision is of no avail. First, the Examiner quotes that "[d]esign is not patentable because box is made of transparent material." Final Office Action at 5. This quotation does not exist in the original text of the *Shoe Form* case. Second, and more importantly, the Examiner quotes from the *Shoe Form* decision that the "imposition of old designs upon new materials does not warrant design patents." *Id.* This quotation is irrelevant here because Patent Owner is not arguing that the claimed jar design merits design patent protection merely because it calls for the utilization of a novel transparent material for forming the jar. The point here is that the deliberate application of a frosted exterior surface finish to the McKernan jar design creates a visual

impression to an ordinary designer of jars that is substantially different from that of the entirely transparent jar design of the '151 Patent.

Accordingly, Patent Owner submits that an ordinary designer, who, as a matter of law, should not be imbued with hindsight knowledge of the claimed jar design, would not consider the visual impression of the claimed design and visual impression of the design shown in the McKernan reference to be the same. *See L.A. Gear, Inc. v. Thom McAn Shoe Company*, 988 F.2d 1117, 1124 (Fed. Cir. 1993). Thus, contrary to Examiner's contention, the design characteristics of the McKernan jar are not "basically the same [as those of] as the claimed design" and therefore the McKernan reference cannot function as a primary reference under the obviousness standard set forth in *Durling*. As a result, the Examiner's rejection under Section 103 of the Patent Statute is not correct.

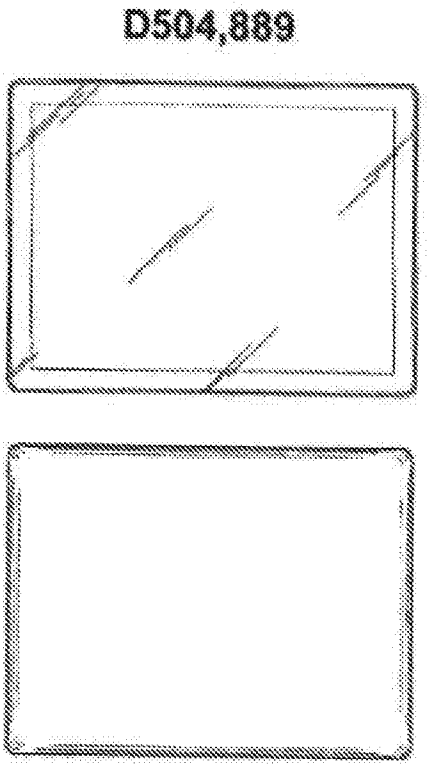
5. THE ZAMBERLAN REFERENCE DOES NOT QUALIFY AS A SECONDARY REFERENCE

Notwithstanding the above arguments, and even if the McKernan reference is found to be a primary reference under the Durling standard, which Patent Owner submits it should not, the Zamberlan reference, as a matter of law, cannot qualify as a secondary reference as it cannot bridge the gap between the McKernan jar and the claimed invention. *See Apple* at 1331.

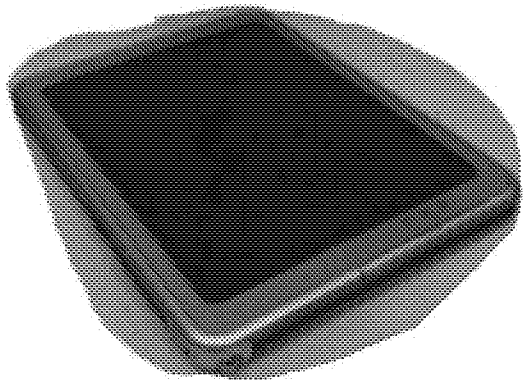
As cited in *Apple*, "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other.'" *Id.* at 1330.

In *Apple*, the court held that the TC1000 secondary reference (see illustration below) was not "so related to the [Fidler tablet]" because the "screen area of the [TC1000] device is

encircled by a wide rounded-over metallic rim," and because "the screen area [of the TC1000 device] contains indicator lights in several places, unlike the minimalist design claimed in the [Apple design]." *Id.* at 1331. See the two designs below.



Apple's Design

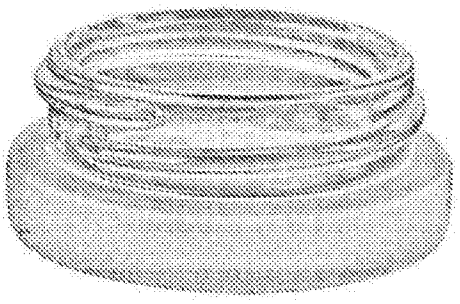


The TC1000 Device

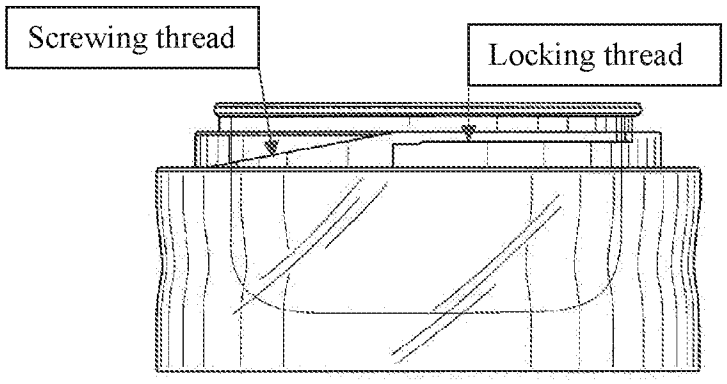
Thus, the *Apple* court held that the TC1000 device "could not bridge the gap between the Fidler and the [Apple design]." *Id.* at 1331.

Similarly, and as depicted below, the design of the Zamberlan reference is so visually different from that of the jar depicted in McKernan that it would be illogical to categorize Zamberlan as a secondary reference under the current circumstances.

McKernan Jar



Zamberlan Jar



Indeed, the Zamberlan reference as a whole illustrates a somewhat "standard"-looking jar having a simple "one-cylinder" base construction and a small step-like neck at the top. The jar design of the Zamberlan reference emphasizes a substantially single-cylinder look because the cylinder that defines the base makes up virtually the entire jar, including the internal storage area. The step-like neck is miniscule in proportion to the single-cylinder base configuration of the Zamberlan jar that it is barely noticeable.

In addition to the massive proportional difference between the neck of the McKernan design and the neck of the Zamberlan design, the step-like neck of the Zamberlan jar has a configuration that is vastly different in appearance from the neck of the McKernan jar. In particular, the neck of the Zamberlan jar has two visibly separate curved screwing threads that extend diametrically opposite to one another along approximately a quarter of the circumference of the neck. See one of the two visible screwing threads annotated in the illustration of Zamberlan above, which appears as a sloped ramp.

Further, the neck of the Zamberlan jar has a visually prominent interlocking mechanism for locking a lid in place. The interlocking mechanism depicts two locking threads, each of which extends along approximately a quarter of the circumference of the neck at diametrically

opposite portions thereof. See one of the two visible locking threads annotated in the illustration of Zamberlan above.

Moreover, as shown above, the Zamberlan jar has an inwardly directed "waistline" curve, located circumferentially about the base.

On the other hand, the McKernan reference clearly depicts a distinctive two-cylinder jar design (with one cylinder defining the base and the other defining the upwardly extending neck). In McKernan, both the base and the neck are prominent features of the design. Further, the McKernan jar has only one thread that visually extends all-around the neck, in contrast with the two separate, visually distinct and oppositely directed threads of the Zamberlan jar which extend along the neck. Further, the McKernan jar has no visible interlocking mechanism and no identifiable "waistline" curve along the base.

The Examiner states on page 6 of the final Office Action that "[t]he directed comparison of the Zamberlan and the McKernan jars in the patent owner's response is irrelevant." Respectfully, Patent Owner maintains that the applicable legal standard requires that the secondary reference be compared to the primary reference in order to determine whether the secondary reference can be used to bridge the gap between the primary reference and the claimed design. See *Apple* at 1329-30, quoting that "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other (emphasis added).'" *Id.*, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996).

The Examiner also states on page 6 of the final Office Action that the design of the jar of Zamberlan qualifies as being "so related" to the design of McKernan because "it is [a] short cylindrical jar having a threaded smaller diameter neck at the top." While the Zamberlan design

may arguably depict "a short cylindrical jar," it does not qualify as being "so related" to the design of the jar depicted in the McKernan reference. This is because the Zamberlan jar design is completely different from the McKernan jar design, as described above.

Therefore, because the Zamberlan reference is so different in its visual presentation from that of the McKernan jar, the Zamberlan reference cannot qualify as a secondary reference under the *Durling* standard. Accordingly, the rejection by the Examiner under 35 U.S.C. § 103 must fail for this reason as well.

6. COMBINING THE FEATURES SELECTED ARBITRARILY FROM THE McKERNAN AND ZAMBERLAN REFERENCES IS IMPROPER

Even assuming, *arguendo*, that the McKernan reference and the Zamberlan reference are valid references for purposes of an obviousness evaluation, the claimed design is nevertheless directed to patentable subject matter as the combination of teachings in the McKernan reference and the Zamberlan reference would not lead an ordinary designer to create the design that is claimed in the '151 Patent. Stated differently, an ordinary designer of jars would not modify the alleged primary reference to McKernan by the secondary reference to Zamberlan in order to arrive at the claimed design of the '151 Patent.

In pages 2-3 of the final Office Action, the Examiner submits that "it would have been obvious to a designer of ordinary skill ... to have modified the McKernan jar by removing the frosted finish from the lower body to reveal an inner cavity with rounded corners, as shown and suggested by Zamberlan." Patent Owner does not agree.

In addition, the Examiner maintains that the jar of the McKernan reference must have an interior chamber because jars are "used especially for storing food." *Id.* at 7. Thus, the Examiner opines that the jar of the McKernan reference "could not fulfill its intended use as a vessel for

food storage without an interior chamber." *Id.* The Examiner also states that "while the appearance of the chamber [of the McKernan jar design] is obscured, a designer of ordinary skill in the art would expect MeKernan's [sic] jar to have an interior chamber." *Id.*

Further, the Examiner contends that:

> Zamberlan discloses a jar that is entirely transparent and the transparent characteristic is being applied to the entire jar of McKernan. There is no selectivity in the way that the transparent characteristic is being applied to the McKernan reference. *Id.*

The Examiner also states that "the interior chamber with rounded corners is being taken from Zamberlan without any modifications and [is] being directly applied to the interior of McKernan." *Id.*

In the first place, the Examiner's selective use of design characteristics from the Zamberlan and McKernan designs suggests that the Examiner's analysis is driven by impermissible hindsight as to the patented design. The Examiner selects only the outer surface finish and the inner chamber features of the Zamberlan design, and deliberately ignores all other design features taught by Zamberlan.

The Patent Trial and Appeal Board (PTAB) has held that in design cases, the use of only select design characteristics from a secondary reference in conjunction with deliberately ignoring other design characteristics of that secondary reference results in impermissible hindsight as to the patented design. See *Inter Partes* Review 2016-00434, Decision of the Patent Trial and Appeal Board, Patent No. D618,132, paper No. 9, page 16. Applied here, Patent Owner submits that the Examiner uses impermissible hindsight in order to reconstruct the patented design from select components of the prior art.

Indeed, nothing on the record here indicates that an ordinary designer would consider borrowing only the interior chamber and the clear exterior finish of the base from the Zamberlan jar design without also borrowing other design characteristics from the Zamberlan reference, such as the overall single-cylinder appearance of the Zamberlan design with a neck that is extremely small in proportion to the size of the base, the inwardly-curved "waistline" that is disposed in the middle of the base of the Zamberlan design, the dual screwing threads on the neck of the Zamberlan design and/or the dual locking threads on the neck of the Zamberlan design.

Conveniently, the Examiner does not address at all how these additional design characteristics of the Zamberlan reference would motivate an ordinary designer to modify the overall appearance of the McKernan jar design - without hindsight - or how the McKernan jar design would appear when modified in light of all of the above-referenced design features of Zamberlan.

Moreover, when applying all of these design characteristics from the Zamberlan reference to the McKernan jar design, the McKernan jar would have a mono-cylinder look where the base of the jar would constitute essentially the entire body of the jar, with the neck being disproportionally miniscule and hence visually negligible. In addition, the McKernan jar design would be modified to have an inwardly-facing "waistline" at mid-height of the body, and the neck of the McKernan jar would have two separate screwing threads and two separate locking threads. Thus, the overall appearance of the McKernan jar as modified by the teaching of the Zamberlan reference would to be substantially different from that of the claimed jar design.

In the IPR2016-00434 decision, the challenged design patent claimed an arrangement of a large round central diamond surrounded by several smaller diamonds. The petitioner sought to

reconstruct the appearance of the patented design by using a primary reference and a secondary reference to bridge the gap between the primary and secondary references.

In particular, the petitioner in the IPR2016-00434 decision used a secondary reference for the proposition that stones of difference cuts can be combined together, while ignoring the fact that the secondary reference called for a square center stone sitting above the smaller surrounding stones (the patented design depicted a round center stone sitting substantially at the same elevation as the smaller stone). *Id.* at 16.

The PTAB held in the IPR2016-00434 decision that "[t]his selective use of the design characteristics of the prior art suggests that it is driven by a hindsight reconstruction of the invention rather than the objective teachings of the references." *Id.* at 16. In supporting its conclusion, the PTAB opined that "[t]here is nothing on this record to suggest that an ordinary jewelry designer would have considered the use of single-cut periphery stones without the corresponding change in height difference and shape relative to the center stone." *Id.* at 16-17.

Similarly here, there is nothing in the record to suggest that an ordinary jar designer should consider solely the transparent surface finish and the interior chamber of the Zamberlan jar design without also considering the large body/miniscule neck, mid-height waistline, dual screwing and/or the dual locking threads of Zamberlan. Notwithstanding, and as stated above, even if the ordinary jar designer were to apply these design features of Zamberlan to the jar design of McKernan, the resulting design would be substantially different from the claimed jar design.

Furthermore, the Examiner's reasoning appears to be based, at least in part, on combining the teachings of two or more prior art references under the standard that is applicable for evaluation on the issue of obviousness as to a utility patent, as opposed to the standard that

should be applied in evaluating obviousness as to a design patent. This is because the Examiner presumes that the jar of McKernan includes the concept of a storage chamber that can be replaced by the storage chamber depicted in Zamberlan. This presumption is not supported by what is shown in the McKernan illustrations, especially since no storage chamber is clearly shown in the jar that is depicted in the McKernan reference. Courts have repeatedly held that the standards for examining (and reexamining) utility and design patents are very different. *See In re Harvey*, 12 F.3d 1061, 1063 (Fed. Cir. 1993), reciting that "[l]ike the examiner, the Board improperly mixed principles of obviousness for utility patents with those for ornamental design patents .... we hold that the Board erred in misapplying the obviousness standard because it admittedly relied upon the prior art Harvey vase as a 'design concept' rather than for its specific design characteristics."

In the final Office Action, the Examiner states that the Zamberlan reference suggests modifying the teaching in the McKernan reference in order to transform the frosted base of McKernan into a transparent base merely because Zamberlan shows a transparent jar. While Zamberlan does indeed show a transparent jar, as discussed above, the Zamberlan jar is entirely different in its configuration and appearance from that of the McKernan jar. Since the subject matter at issue here is directed to a design patent, and since the design of the Zamberlan jar is unrelated to the McKernan jar in appearance, it follows that Zamberlan fails to suggest making any modifications to the McKernan jar from a design standpoint. Thus, it is not appropriate for the Examiner to suggest using the teaching in Zamberlan in order to modify the design of the McKernan jar, be it for making it into a transparent object, or for rounding the corners of its interior.

Moreover, even if it made sense to combine the teachings in the McKernan and Zamberlan, *the disclosure in Zamberlan* does not bridge the gap between McKernan and the claimed design of the '151 Patent. This is in large part because the McKernan reference is silent regarding the depth of the jar's interior, even if it is assumed that the McKernan jar has an interior chamber. The addition of the Zamberlan reference is of no assistance because Zamberlan teaches that the interior chamber must extend throughout the major part of the base in the vertical direction while the claimed design illustrates that the interior chamber extends only minimally under the shoulder of the base in the vertical direction.

Thus, not only does the combination of select design features of the Zamberlan reference to the McKernan reference result in impermissible hindsight reconstruction of the claimed jar design, but such a combination, even if legally permitted, would form a hybrid jar design that is vastly different in visual appearance from the jar design as claimed in the '151 Patent.

Accordingly, the Examiner's rejection of the claimed design based on the combination of teachings in McKernan and Zamberlan is not appropriate.

7. COMMERCIAL SUCCESS

Secondary considerations, such as commercial success, are relevant to the evaluation of obviousness of a design claim. *See MRC Innovations, Inc. v. Hunter Mfg., LLP*, 747 F.3d 1326, 1335-36 (Fed. Cir. 2014); *Crocs Inc. v. International Trade Commission,* 598 F.3d 1294, 1310, (Fed. Cir. 2010). Indeed, secondary considerations "can be the most probative evidence of non-obviousness…, and enables the... court to avert the trap of hindsight." *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 960 (Fed. Cir. 1986).

Secondary considerations "may often establish that an invention appearing to have been

obvious in light of the prior art was not." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed.Cir.1983). It is important to note that evidence of secondary considerations "... is not just a cumulative or confirmatory part of the obviousness calculus but constitutes independent evidence of nonobviousness." *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1365 (Fed. Cir. 2008).

The jars made and sold by the Patent Owner and which practice the claimed design of the '151 Patent have enjoyed significant commercial success. See the Evidence Appendix, including the Declaration of inventor Robert Lerman, which was filed on November 4, 2019, and was made of record in this reexamination proceeding. There has been continuous sales growth over the last several years. *Id.*

The Examiner suggests that the commercial success of the claimed jar design may be attributable to the use of tetrahydrocannabinol (TCH) extract in the marketplace. The Examiner states that: "[o]utstanding commercial success may be evidence of invention, and in [a] doubtful case may resolve doubt in favor of invention, but commercial success must not be used to create doubt regarding the inventiveness where none would exist otherwise." *In re Coey*, 90 USPQ 216 (1951). Patent Owner agrees.

However, contrary to what the Examiner quotes in *In re Coey*, the Examiner then seeks to create doubt in the inventiveness of the claimed design by arguing that the commercial success of the jars embodying the claimed design is not due to the design of the jars themselves, but rather by the increase of cannabis-related products in the marketplace. Not only is it impermissible to use commercial success data to create doubt regarding the inventiveness of a patented design, as set forth in *In re Coey*, but here such doubt is unsupported by Mr. Lerman's declaration or by any other evidence that is in the record.

As stated in Mr. Lerman's declaration, the jars embodying the claimed design comprise 65% of all the jars that are purchased by licensed cannabis producers nationwide. The fact that the number of jars embodying the '151 Patent design account for more than half of the nationwide market share of cannabis jars establishes that the jars are commercially successful due to their design.

A prima facie case of nexus is made when the patentee shows both that there is commercial success, and that the product that is commercially successful is the invention disclosed and claimed in the patent. *See In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995). Here, both have been demonstrated. Accordingly, the claimed jar design of the '151 Patent is patentable in view of the commercial success evidence that has been presented, and therefore, the Examiner's rejection under 35 U.S.C. § 103 is not appropriate.

V. CONCLUSION

In view of the above remarks, it is submitted that the claimed design of the '151 Patent is patentably distinct over the prior art relied upon by the Examiner, especially given the commercial success of the patented design. As such, withdrawal of the obviousness rejection under 35 U.S.C. § 103 is hereby requested.

No additional fees are believed due, but if any additional fee is required, the Commissioner is hereby authorized to charge the amount of any such fee to Deposit Account No. 07-1730, Docket No. 8748-019.

Respectfully submitted,

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(212) 684-3900

/Jeffrey M. Kaden/
Jeffrey M. Kaden
Reg. No. 31,268

Dated: 6/8/2020

VI. CLAIMS APPENDIX

Pursuant to 37 C.F.R. § 41.37(c)(1)(v), the '151 Patent claims: "[t]he ornamental design for a jar, as shown and described [in FIGS. 1-7 below]."

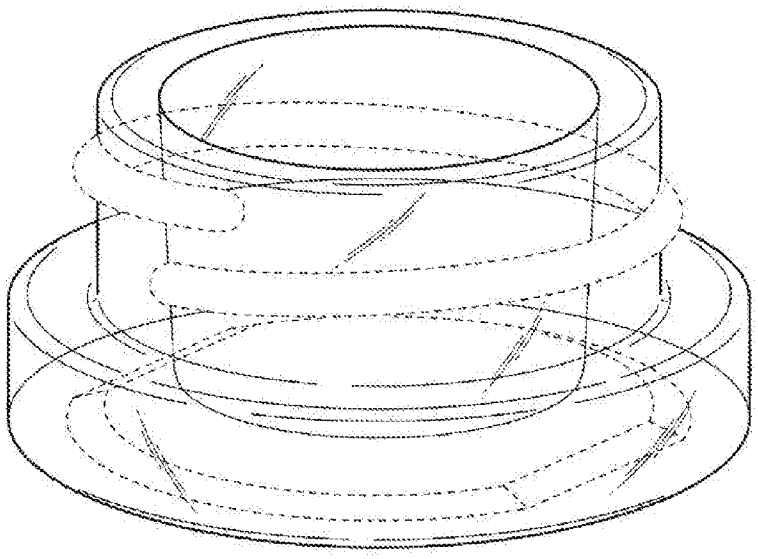


FIG. 1

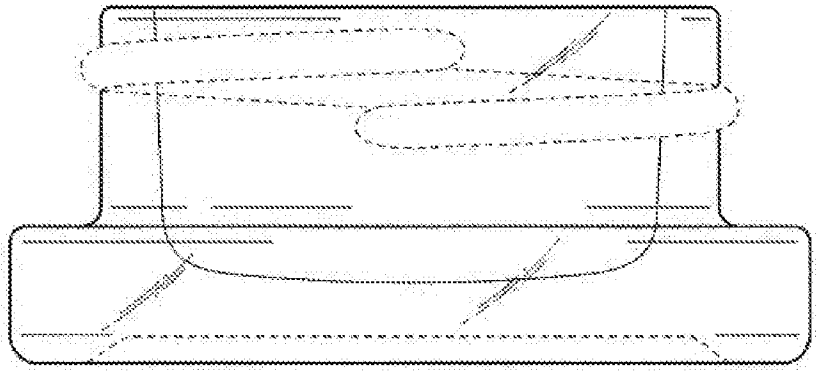


FIG. 2

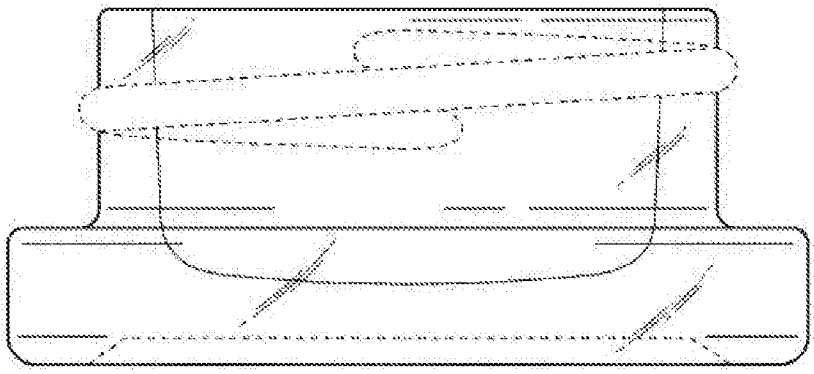


FIG. 3

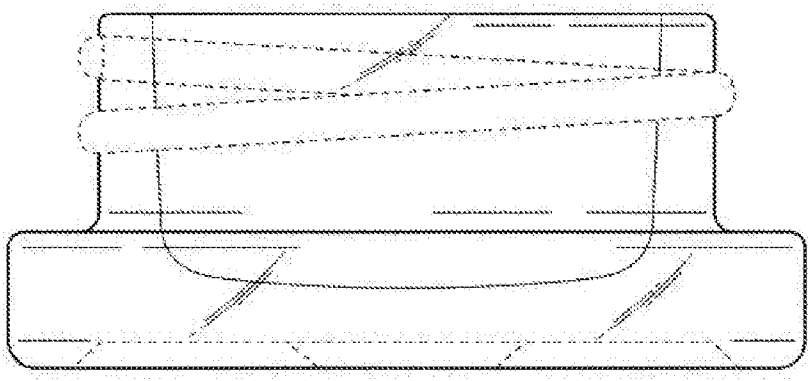


FIG. 4

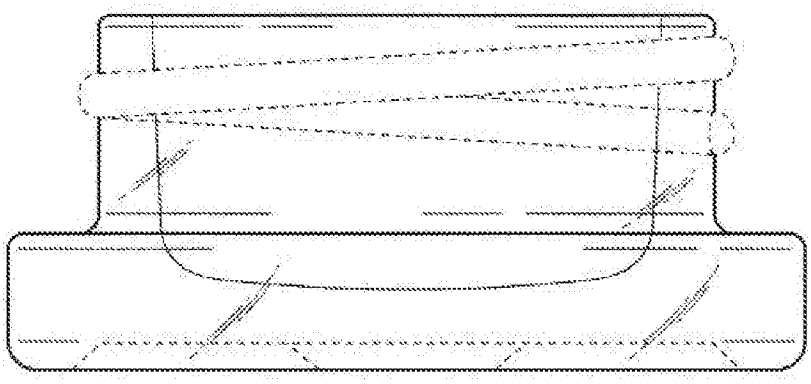


FIG. 5

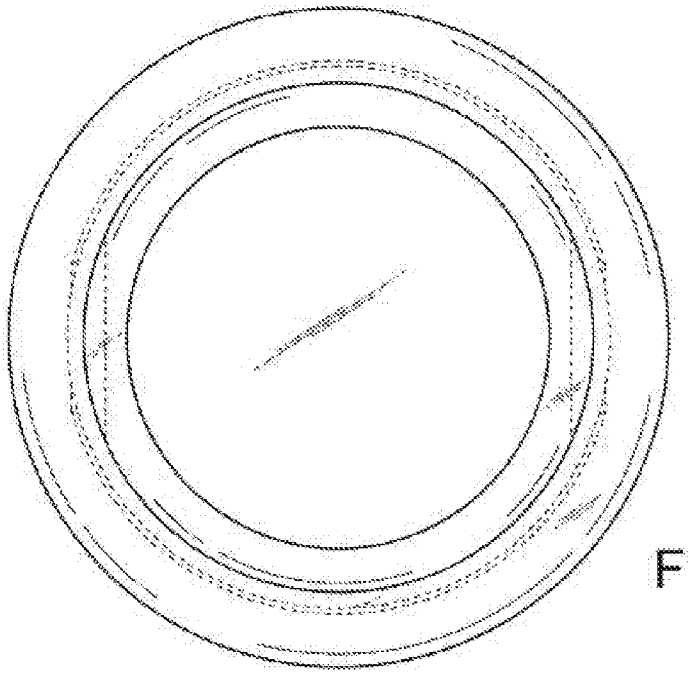


FIG. 6

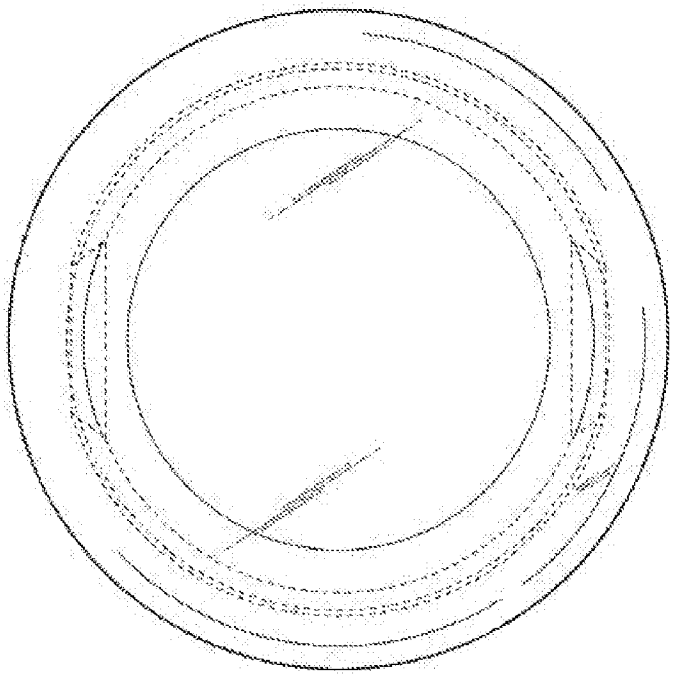


FIG. 7

VII. EVIDENCE APPENDIX

Pursuant to M.P.E.P. § 1205.02, Patent Owner presents below a copy of a Declaration submitted by Robert Lerman on November 4, 2019, in support of Patent Owner's response to the non-final Office Action mailed on September 3, 2019. Mr. Lerman is the sole inventor of the jar design claimed in the '151 Patent, and the principal of Lerman Container Corp. Mr. Lerman's Declaration has been entered in the record of this reexamination proceeding.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Applicant and Patent Owner	:	Ebottles.com
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

DECLARATION OF ROBERT LERMAN

1. I am the principal of patent owner Ebottles.com and the inventor of the claimed design of the U.S. Design Patent No. 781,151 (the "151 Patent"). I submit this Declaration in support of Patent Owner's response to the non-final Office Action dated September 3, 2019 in the subject Ex Parte Reexamination.

2. I make this Declaration from personal knowledge.

3. I respectfully request that the Examiner take into account the commercial success of jars embodying the claimed design of the '151 Patent (the "Jar" or "Jars").

4. Since its introduction, the Jar has enjoyed a considerable amount of commercial success and continued sales growth.

5. I consider this success to be attributable, at least in part, to the uniqueness of the jar design depicted in the '151 Patent.

6. In the past three years, our company has manufactured and sold more than 10 million units of the Jars.

7. In 2016, Ebottles.com manufactured and sold more than 1 million units of the Jars.

8. In 2017, Ebottles.com manufactured and sold more than 2.5 million units of the Jars.

9. In 2018, Ebottles.com manufactured and sold more than 6.5 million units of the Jars.

10. As you can see from these figures, we have experienced tremendous growth in our sales of the Jar, as sales have more than doubled each year since we introduced the Jar.

11. The vast majority of our clients who purchase the Jars use them to contain concentrated forms of cannabis.

12. Based on my knowledge of the cannabis industry, including the number of licensed producers of cannabis concentrates nationwide, I would estimate that sales of the Ebottles.com Jar comprise, in units, upwards of sixty five percent (65%) of jars purchased by such licensed producers.

I hereby declare, that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these

statements were made with the knowledge that willful false statements and the like so made are punishable as perjury.

/s/ Robert Lerman
Robert Lerman

Dated: New York, New York
November 4, 2019

UNITED STATES
PATENT AND TRADEMARK OFFICE

P.O. Box 1450
Alexandria, VA 22313 - 1450
www.uspto.gov

ELECTRONIC ACKNOWLEDGEMENT RECEIPT

APPLICATION #	RECEIPT DATE / TIME	ATTORNEY DOCKET #
90/014,262	06/08/2020 11:42:57 AM ET	8748-019

Title of Invention

JAR

Application Information

APPLICATION TYPE	Design / ex parte reexam	PATENT #	D781151
CONFIRMATION #	8506	FILED BY	Akiko Sakagami
PATENT CENTER #	60034448	FILING DATE	02/11/2019
CUSTOMER #	22440	FIRST NAMED INVENTOR	- D781151
CORRESPONDENCE ADDRESS	-	AUTHORIZED BY	-

Documents

TOTAL DOCUMENTS: 1

DOCUMENT	PAGES	DESCRIPTION	SIZE (KB)
8748-019-CertificateofServiceforAppealBrief.pdf	43	Reexam Certificate of Service	1785 KB

Digest

DOCUMENT	MESSAGE DIGEST(SHA-512)
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This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

UNITED STATES
PATENT AND TRADEMARK OFFICE

P.O. Box 1450
Alexandria, VA 22313 - 1450
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ELECTRONIC ACKNOWLEDGEMENT RECEIPT

APPLICATION #	RECEIPT DATE / TIME	ATTORNEY DOCKET #
90/014,262	06/08/2020 10:53:10 AM ET	8748-019

Title of Invention

JAR

Application Information

APPLICATION TYPE	Design / ex parte reexam	PATENT #	D781151
CONFIRMATION #	8506	FILED BY	Akiko Sakagami
PATENT CENTER #	60034402	FILING DATE	02/11/2019
CUSTOMER #	22440	FIRST NAMED INVENTOR	- D781151
CORRESPONDENCE ADDRESS	-	AUTHORIZED BY	-

Documents

TOTAL DOCUMENTS: 1

DOCUMENT	PAGES	DESCRIPTION	SIZE (KB)
8748-019-Appeal-Brief.pdf	40	Appeal Brief Filed	1456 KB

Digest

DOCUMENT	MESSAGE DIGEST(SHA-512)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Patent Owner	:	LERMAN CONTAINER CORPORATION
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

APPEAL BRIEF

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

Dear Commissioner:

Patent Owner submits this Appeal Brief in support of the Notice of Appeal filed on April 17, 2020. This appeal is taken from the Final Rejection mailed on December 26, 2019.

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I. REAL PARTY IN INTEREST

The real party in interest is Lerman Container Corp., the assignee of record of U.S. Patent No. D781,151 (the "'151 Patent").

II. RELATED APPEALS, INTERFERENCES, AND TRIALS

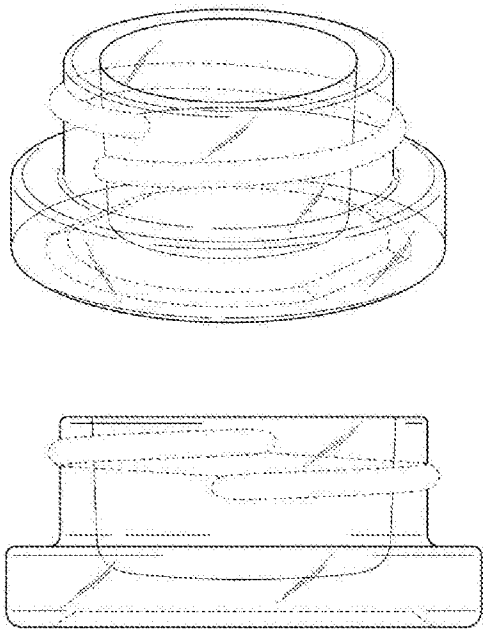
Pursuant to 37 C.F.R. § 41.37(c)(1)(ii), a civil action involving the '151 Patent was filed in the United States District Court for the District of Maryland on May 14, 2019. The action is entitled *Lerman Container Corp. v. Lids and Jars, LLC.*, and is assigned Docket No. 19cv01414.

There are no other known appeals, interferences or trials that may be related to, directly affect or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. SUMMARY OF CLAIMED SUBJECT MATTER

Set forth below is a summary of the claimed subject matter as required by 37 C.F.R. § 41.37(c)(1)(iii). Since the subject of this appeal is a design patent, the requirement to identify any claim that contains a means-plus-function or a step-plus-function limitation under 37 C.F.R. § 41.37(c)(1)(iii) is inapplicable.

Representative Drawings Illustrating the Patented Design



The '151 Patent claims the ornamental design of a transparent jar. See FIGS. 1-7. The jar has a wide and thick circular base, and a tall narrow circular neck extending upwardly from the base. See FIGS. 1-7. The base and the neck are concentric, and the base encompasses about 40% of the total height of the jar. See FIGS. 1-7. The neck encompasses the remainder of the jar's height, that is, about 60% of the total height. See FIGS. 1-7.

The jar defines an interior storage chamber that extends downwardly from the top of the neck. See FIGS. 1-5. Starting from the top of the neck, the storage chamber extends downwardly, through the entire height of the neck, and partially into the base. See FIGS. 1-5. The interior storage chamber has a frustoconical shape within the neck, and an ellipsoidal shape within the base. See FIGS. 1-5. The transition between the two shapes of the storage chamber is seamless. See FIGS. 1-5. Stated otherwise, the interior storage chamber has a bowl-like shape with a curved bottom edge extending below the shoulder of the base. See FIGS. 1-5.

The neck comprises the majority of the volume of the storage chamber. See FIGS. 1-5. The storage chamber extends downwardly through less than one-half of the vertical height of the base. See FIGS. 2-5.

All of the claimed exterior edges of the jar are curved. See FIGS. 2-5. The top surface of the neck is flat. See FIGS. 1-5. Since the jar is made entirely of a transparent material, any object that is stored within the interior storage chamber is readily visible from the outside. See FIGS. 1-7.

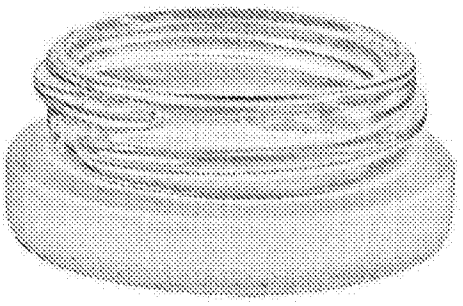
IV. ARGUMENT

A. REJECTION UNDER 35 U.S.C. § 103 OF THE CLAIMED JAR DESIGN AS BEING OBVIOUS OVER McKERNAN IN VIEW OF ZAMBERLAN

The claimed design stands rejected as being obvious over McKernan (a printed publication supplied by the third party requester for reexamination) in view of U.S. Patent No. D634,202 ("Zamberlan"). The rejection is improper because: (1) the McKernan reference cannot be a primary reference, (2) the Zamberlan patent does not qualify as a secondary reference, (3) the combination of features selected arbitrarily from the McKernan and Zamberlan references is improper, and (4) the product bearing the claimed design has been commercially successful.

1. DESCRIPTION OF THE CITED ART

The McKernan jar



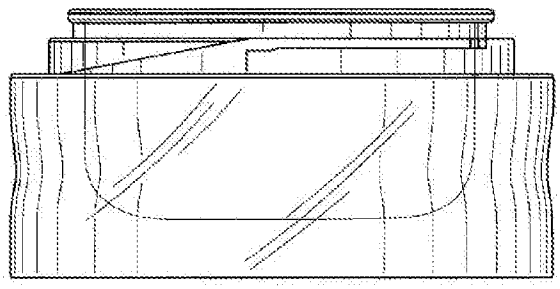
The McKernan reference illustrates a jar that is partially frosted and partially clear. The jar of the McKernan reference has a wide circular base with a circular neck extending upwardly from the base and being concentric with the base. The outer surface of the base of McKernan's jar is frosted, rendering the base opaque. The base of the McKernan jar is very thick, accounting for about 47% of the entire height of the jar, as measured on the image illustrated above.

The neck of the jar depicted in the McKernan reference is transparent and accounts for the remainder of the height of the jar, that is, about 53% of the total height. In other words, the neck of the jar depicted in the McKernan publication is proportionally shorter than the neck of the jar claimed in the '151 Patent. To this point, the Examiner admits that the neck of the claimed jar design is taller than the neck of the jar in the McKernan reference. See page 4 of the final Office Action.

Based on the very low image quality of the printed publication that depicts the jar of the McKernan reference, as supplied by the third party requester for the *Ex Parte* reexamination and as reproduced by the Examiner in the non-final and final Office Actions, it is virtually impossible to tell whether or not the jar of the McKernan reference includes any type of an interior storage chamber.

In addition, the top surface of the jar illustrated in the McKernan reference is rounded.

The Zamberlan Jar



The Zamberlan patent illustrates a somewhat ordinary jar that is formed of transparent material. The jar of the Zamberlan reference has a cylindrical body that makes up virtually the entire jar. A minute neck protrudes upwardly from the body.

The body of the jar depicted in the Zamberlan reference has a "waistline" at about mid-height. The jar of the Zamberlan reference defines an inner chamber with a rounded bottom edge. The inner chamber of the Zamberlan jar design extends through most of the jar's body in the vertical direction, or through about 73% of the height of the body, as measured on the image above. In addition, the body of the Zamberlan jar forms the major part of the chamber's total volume, which is opposite to the configuration of the claimed jar design.

2. REJECTION OF THE CLAIMED DESIGN

In both final and non-final Office Actions, the Examiner rejects the design claimed in the '151 Patent under AIA 35 U.S.C. § 103 as being unpatentable over the design depicted in the McKernan reference in view of the design illustrated in the Zamberlan reference.

In the final Office Action, the Examiner re-asserts that the McKernan reference qualifies as a primary reference because "the overall design characteristics of the McKernan reference are basically the same as [those of] the design claimed in [the '151 Patent]." See page 2 of the final Office Action. In addition, the Examiner contends that "both jar designs consist of short and wide cylindrical bodies topped with taller narrower cylindrical necks." *Id.* The Examiner further contends that:

> any differences in the proportioning or shaping of the designs [in the '151 Patent and McKernan references] is [sic] negligible. The only identifiable difference is that the claimed design is fully transparent whereas the body on McKernan has a frosted finish, so that only the upper neck portion is fully transparent." *Id.*

The Examiner states that the Zamberlan patent qualifies as a secondary reference because it illustrates "[a] short cylindrical jar having a threaded smaller diameter neck at the top." *Id.* at 6.

In more detail, the Examiner contends that "Zamberlan … discloses a similarly stubby jar design in which the body lacks the frosted finish, thus making the body is [sic] fully transparent to reveal an inner cavity having the rounded contours." *Id.* at 2.

The Examiner then concludes that "it would have been obvious to a designer of ordinary skill … to have modified the McKernan jar by removing the frosted finish from the lower body to reveal an inner cavity with rounded corners, as shown and suggested by Zamberlan." *Id.* at 2-3.

In the final Office Action the Examiner states for the first time that the "transparent characteristic" of the Zamberlan jar design is "is being applied to the entire jar of McKernan" and that "the interior chamber with rounded lower corners is being taken from Zamberlan without any modifications and being directly applied to the interior of McKernan" in order to "address[] both deficiencies in the McKernan reference by teaching the application of the transparent finish to the entire body of the design and teaching the appearance of the interior cavity." *Id.* at 7.

In addition, in the final Office Action, the Examiner accords little to no weight to the demonstrated commercial success of the claimed jar design by suggesting that the commercial success of the jars embodying the design claimed in the '151 Patent has occurred due to the "growth of the sales and use of the extract THC." Therefore, the Examiner opines that "[t]he declaration [of Robert Lerman, see Evidence Appendix, listing the Declaration of inventor Robert Lerman, the principal of Patent Owner Lerman Container Corp., which was filed on November 4, 2019 and was made of record in this reexamination proceeding] fails to establish certain nexus that the appearance [of the jar design claimed in the '151 Patent] is solely responsible for the success." Final Office Action at 8. The Examiner opines that "[a] number of

factors can contribute to commercial success and sales growth that are not attributable to the ornamental design." *Id.*

3. LEGAL STANDARD FOR OBVIOUSNESS

In analyzing an ornamental design for obviousness, first, "one must find a single reference, 'a something in existence, the design characteristics of which are basically the same as the claimed design.'" *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1329-1330 (Fed. Cir. 2012), quoting *Durling v. Spectrum Furniture Co, Inc.*, 101 F.3d 100, 103 (Fed. Cir. 1996), which in turn quotes *In re Rosen*, 673 F.2d 388, 391 (C.C.P.A. 1982). In order to perform the first step, courts must "(1) discern the correct visual impression created by the patented design as a whole; and (2) determine whether there is a single reference that creates basically the same visual impression." at 1312. *High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1312 (Fed. Cir. 2013).

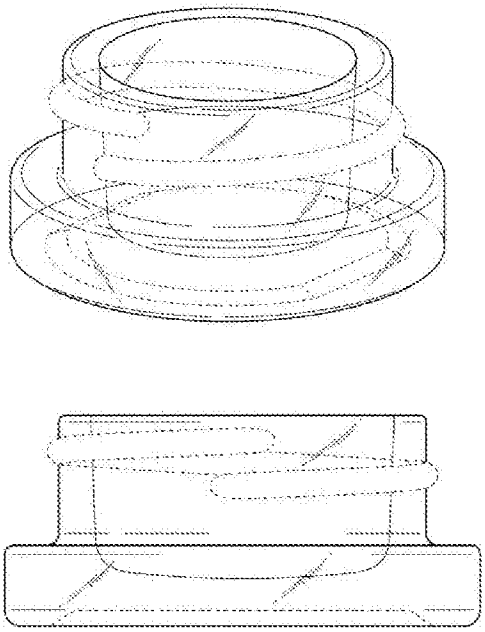
Second, "other references may be used to modify [the primary reference] to create a design that has the same overall visual appearance as the claimed design." *Apple* at 1329. However, the "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other.'" *Id.* at 1329-30, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996).

4. THE McKERNAN REFERENCE CANNOT BE A PRIMARY REFERENCE

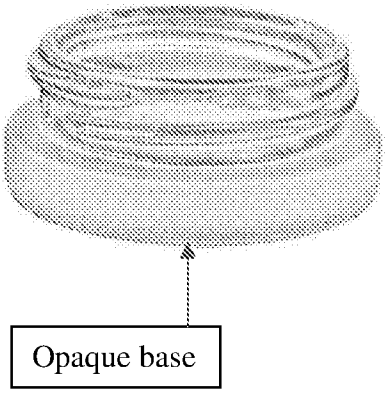
As a matter of law, McKernan cannot be a primary reference because it does not create the same visual impression as the '151 Patent.

The claimed design and the McKernan jar are reproduced below.

The '151 Patent Design



The McKernan jar



The correct visual impression created by the patented design as a whole can be discerned by referring to the figures of the '151 Patent reproduced above. As shown in these figures, the claimed design illustrates a jar that is entirely transparent. The jar has a base that is substantially wider than the neck. Since the claimed jar design is entirely transparent, the claimed jar design as a whole conveys an impression of openness and clarity. This is because both the exterior of the jar and the interior storage chamber thereof are clearly visible from the outside. In other words, the overall three-dimensional configuration of the jar can be clearly viewed from the outside. In addition, anything that is stored or housed in the interior chamber of the claimed jar design is readily visible from the outside.[1]

[1] While not per se relevant on the issue of obviousness in a design patent context, the Patent Owner notes that the jar of the '151 Patent, because of its design, has enhanced child-proof characteristics.

In contrast, the jar depicted in the McKernan reference, while also having a base that is wider than its neck, has an appearance that is substantially different than that of the claimed jar design. This is in large part because the jar of the McKernan reference has a large and rather pronounced opaque base. Indeed, the Examiner admits on pages 2 and 5 of the final Office Action that the base of the jar depicted in the McKernan reference is "frosted." As can be appreciated, a frosted surface finish either substantially diffuses light or blocks the transmission of light altogether. In either case, based on the teaching of the McKernan reference, one is not able to see through the surface of the base of the McKernan jar. Stated another way, the base of the jar of the McKernan reference appears as a solid opaque object that is visually closed from the outside, thereby preventing an ordinary observer from seeing inside of the base. The fact that the base of the McKernan jar design is visually prominent further emphasizes the difference between the overall appearance of the jar of the McKernan reference and the overall appearance of the claimed jar design.

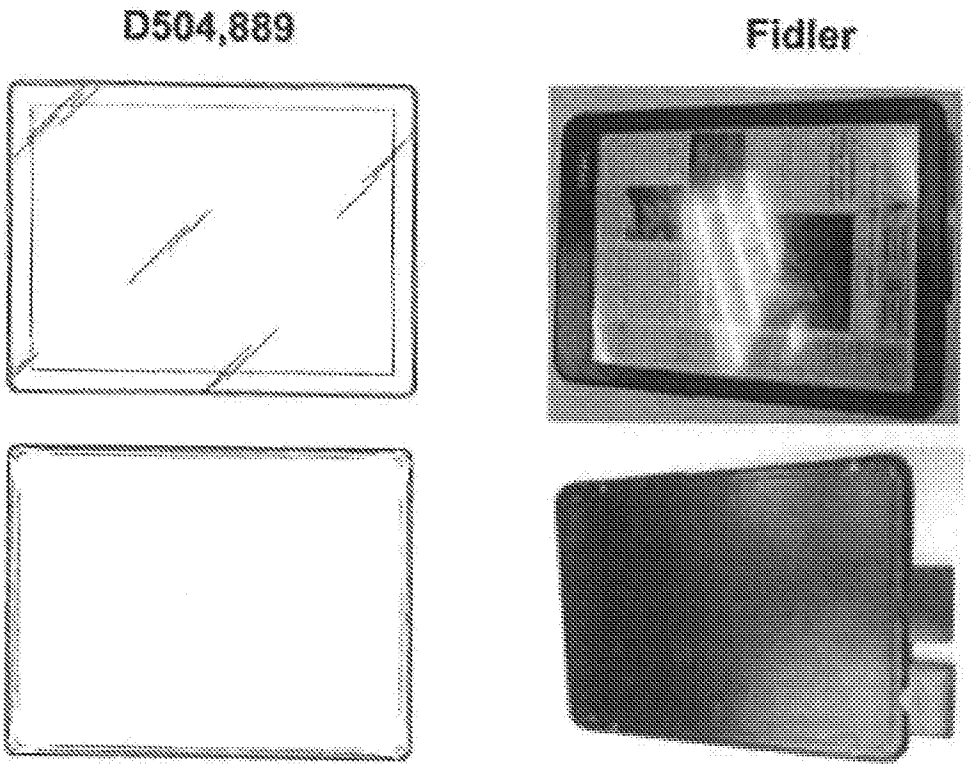
Moreover, the Examiner admits on page 4, lines 18-19 of the final Office Action that the neck of the claimed jar design is taller than the neck of the jar of the McKernan reference. The taller neck of the claimed jar design, in combination with the claimed jar design being entirely transparent, as discussed above, presents an overall visual impression that is markedly different from what is disclosed by the McKernan reference.

Further, Patent Owner maintains that it is virtually impossible to tell whether or not the jar of the McKernan reference, as illustrated in the printed publication that was supplied by the third party requester of the *Ex Parte* reexamination and as reproduced by the Examiner in the non-final and final Office Actions, includes any type of an interior storage chamber. This is due to the very low image quality of the printed publication that depicts the jar of the McKernan

reference. The claimed jar design of the '151 Patent, on the other hand, has a clearly visible interior chamber defining a bowl-like configuration that extends below the shoulder of the base as one of its prominent design features.

In the *Apple* decision discussed *supra* (hereinafter "*Apple*" for brevity purposes), the design of a tablet by Fidler was used by the federal trial court as a primary reference to obviate Apple's U.S. Design Patent No. D504,889. The Federal Circuit disagreed.

A side-by-side comparison of the Fidler and Apple designs is reproduced below:



In deciding that the Fiddler design was not a primary reference, the Federal Circuit in *Apple* made clear that the trial courts (and the Examiner) should avoid "view[ing] the various designs from too high a level of abstraction." The Federal Circuit in *Apple* held that "Fidler does not qualify as a primary reference simply by disclosing a rectangular tablet with four evenly rounded corners and a flat back." *Id.* at 1332.

The standard applied by the Federal Circuit in *Apple* applies here. Patent Owner submits that McKernan reference cannot qualify as a primary reference merely by disclosing a jar with a base that is wider than the neck. Doing so amounts to inappropriately viewing the jar depicted in the McKernan reference "from too high a level of abstraction." *Apple* at 1332.

In *Apple*, the Federal Circuit further held that the Fidler tablet does not create the same visual impression as Apple's tablet design as claimed in U.S. Design Patent No. D504,889. The Federal Circuit opined that "[a] side-by-side comparison of the two designs shows substantial differences in the overall visual appearance between the patented design and the Fidler reference." *Id.* at 1330. [2]

Similarly here, the design of the McKernan jar is significantly different from that of the design claimed in the '151 Patent. The claimed invention conveys an overall visual impression of openness and clarity, as explained hereinabove, due to the jar of the claimed design being entirely transparent, while the jar depicted in the McKernan reference conveys a masked visual impression since it is shown as being predominantly opaque.[3]

In *Rosen*, the Court of Customs And Patent Appeals (the predecessor appeals court to the Federal Circuit) held that a primary reference can be disqualified as not being "basically the same as the claimed design" when "a designer of ordinary skill would find [the claimed design

[2] In determining that the two designs have substantial differences in their overall visual appearance, the Federal Circuit emphasized that "the frame of the Fidler tablet creates a very different impression from the 'unframed' D'889 design." *Apple* at 1330. The court held that the Fidler screen "appears to sink into the frame, creating a 'picture frame' effect." *Id.* at 1331. In addition, the court held that the "'picture frame effect break[s] the continuity between the frame and the screen embedded within it." *Id.* In contrast with the Fidler tablet, the court opined that the *Apple* design "covers essentially the entire face of the patented design without any breaks or interruptions." *Id.* For this reason, the court held that "[Apple's design] ... creates the visual impression of an unbroken slab of glass extending from edge to edge on the front side of the tablet." *Id.* According to the court, the "Fidler reference does not create such an impression." *Id.*

[3] Patent owner notes that the difference in appearance between the opaque jar depicted in the McKernan reference and the transparent jar in the '151 Patent would be substantially exacerbated when viewed as intended to be used with a lid selectively attached thereto.

and the primary reference to be] significantly different in concept." 673 F.2d at 391. In other words, when a designer of ordinary skill would find the two designs at issue significantly different in concept, that is that the designs create a very different impression, the primary reference cited against the claimed invention is not "basically the same as the claimed design," and therefore, does not create the same visual impression as the claimed design. *Id.*[4] *See also In re Nalbandian*, 661 F.2d 1214 (C.C.P.A. 1981). (In determining obviousness, the proper standard is whether the design would have been obvious to a designer of ordinary skill).

The *Apple* and *Rosen* decisions are right on point. The claimed design of the '151 Patent creates to an ordinary designer a visual impression that is very different from that of the design depicted in McKernan. It is axiomatic that without a primary reference having the same overall visual impression as the claimed design, there can be no finding of obviousness. *See Apple*, at 1331-32.

The Examiner argues on page 4 of the final Office Action that "[t]he designs [of the '151 Patent and the jar of the McKernan reference] are found to be basically the same because their primary characteristics both include stubby cylindrical bodies topped with taller narrower cylindrical necks." This argument amounts to nothing more than roughly comparing the exterior outlines of the two jar designs in a vacuum, that is, without taking into consideration the different exterior surface finishes of the two jars, and without weighing in the fact that the interior

[4] In *Rosen*, the claimed design was a round table with a glass top supported by three "V"-shaped legs with notches at the top. The round glass top of *Rosen* was unskirted (e.g., there was no border covering the outer periphery of the glass), and the glass was inserted into notchings on the legs. The primary reference cited against *Rosen* depicted an oval table with "V"-shaped legs. The table top of the primary reference was skirted at the outer perimeter by a border, and the "V"-shaped legs were notched inside of the table top. Based on this, the *Rosen* court held that the claimed round table design was significantly different in concept from the primary reference because the primary reference "does not give the same visual impression of lightness and suspension in space conveyed by the [claimed invention]". *Id.* at 391. The *Rosen* court held that this is so because the primary reference "embodies a concept of confinement of space, resulting in a different overall appearance and aesthetic appeal." *Id.*

chamber is clearly visible in the claimed jar design, but is not visible in the McKernan design. By merely comparing the outlines of the two jar designs and not comparing anything else, the Examiner is viewing the two jar designs "from too high a level of abstraction." *Apple* at 1332.

The Examiner states on page 4 of the final Office Action that "the change from a frosted finish to a clear finish does not affect the underlying form or design so it does not detract from the sameness of the designs." Patent Owner submits that the applicable legal standard is whether the overall appearance of the alleged primary reference is basically the same as that of the claimed design. Simply stated, the "underlying form" or the "underlying design" is not the legal test.

The Examiner's arguments regarding an interior chamber of the McKernan jar design are contradictory. First, the Examiner admits on page 5 of the final Office Action that the interior chamber of the McKernan reference cannot be seen "because it is obscured by the frosted exterior finish." Patent Owner agrees.

However, the Examiner then states on page 5 of the final Office Action that the McKernan jar has an interior chamber because "the McKernan design is sufficiently tilted so that an opening at the top is visible." As stated above, due to the low image quality of the reproduction of the McKernan publication, one cannot discern whether the McKernan jar design illustrates an opening at the top of the jar. Thus, due to the low quality of the images that depict the McKernan jar design as well as the frosted finish of the base of the McKernan jar design, the Examiner has simply not established that an opening in the McKernan jar even exists, let alone what that opening looks like, that is, what is the overall shape of the opening, how deep is the opening, what does the bottom surface of the opening look like, etc.

In addition, on page 5 of the final Office Action the Examiner states that the McKernan jar has an opening because "a jar by definition must have a chamber in its interior." Respectfully, the Examiner's conclusion that the McKernan jar has an opening because a jar "must have a chamber" is speculative at best. Nothing in the record supports the Examiner's premise that "a jar by definition must have a chamber in its interior." Thus, the conclusion that is based on this premise – that the McKernan jar has a chamber – cannot stand.

Therefore, the Examiner has failed to meet his burden of proving that the jar depicted in the McKernan reference has an interior chamber.

However, even assuming, *arguendo*, that the McKernan jar does have an interior opening, the fact that the opening of McKernan jar design has an unknown shape and size, when combined with the visual differences that result from the clear versus frosted exterior surface finishes between the claimed jar design and the design of McKernan, unequivocally establishes that the jar design of the McKernan reference is not "basically the same" as the claimed jar design. *Rosen* at 391.

The Examiner opines on page 4 of the final Office Action that "the wall thicknesses of both designs appear to be substantially the same." First, it is not clear which walls the Examiner is comparing to one another. The walls of the jar design claimed in the '151 Patent are illustrated in FIGS. 2-5 of said patent but the McKernan reference does not illustrate any of the alleged walls of the jar. This is so because the base of the McKernan jar is frosted, therefore hiding the interior construction of the base. The McKernan reference fails to illustrate that the neck has a particular wall thickness – and therefore an interior chamber - due to the low image quality of the McKernan publication. Second, even if the jar of the McKernan reference has an interior chamber – a position that Patent Owner refutes - and therefore a certain wall thickness along the

neck, the image that depicts the jar of the McKernan reference clearly fails to illustrate that this alleged wall thickness is "substantially the same" as that of the jar design claimed in FIGS. 2-5 of the '151 Patent because no wall thickness can be gauged on the McKernan illustration. *Id.* Note that in the claimed design, the thickness of the vertical sidewall along the neck of the jar varies because the vertical sidewall tapers slightly in the upwardly direction toward the opening of the jar. This design feature cannot be discerned in the McKernan reference.

The Examiner argues that the "difference between the[] clear finish of the claim and the frosted finish in McKernan is [not] equivalent to Apples [sic] unbroken flush screen relative to picture frame sunk in appearance on Fiddler." Final Office Action at 5. Patent Owner disagrees. Patent Owner maintains that just like the picture frame appearance of the Fiddler tablet is not "basically the same" as the flush screen of the Apple tablet, the entirely transparent appearance of the claimed jar design is not "basically the same" as the mostly opaque appearance of the jar depicted in the McKernan reference. *Rosen* at 391.

In addition, the Examiner's reliance on the *Shoe Form Co. Inc. v. Irwin Corp.* 71 USPQ 144 (1946) decision is of no avail. First, the Examiner quotes that "[d]esign is not patentable because box is made of transparent material." Final Office Action at 5. This quotation does not exist in the original text of the *Shoe Form* case. Second, and more importantly, the Examiner quotes from the *Shoe Form* decision that the "imposition of old designs upon new materials does not warrant design patents." *Id.* This quotation is irrelevant here because Patent Owner is not arguing that the claimed jar design merits design patent protection merely because it calls for the utilization of a novel transparent material for forming the jar. The point here is that the deliberate application of a frosted exterior surface finish to the McKernan jar design creates a visual

impression to an ordinary designer of jars that is substantially different from that of the entirely transparent jar design of the '151 Patent.

Accordingly, Patent Owner submits that an ordinary designer, who, as a matter of law, should not be imbued with hindsight knowledge of the claimed jar design, would not consider the visual impression of the claimed design and visual impression of the design shown in the McKernan reference to be the same. *See L.A. Gear, Inc. v. Thom McAn Shoe Company*, 988 F.2d 1117, 1124 (Fed. Cir. 1993). Thus, contrary to Examiner's contention, the design characteristics of the McKernan jar are not "basically the same [as those of] as the claimed design" and therefore the McKernan reference cannot function as a primary reference under the obviousness standard set forth in *Durling*. As a result, the Examiner's rejection under Section 103 of the Patent Statute is not correct.

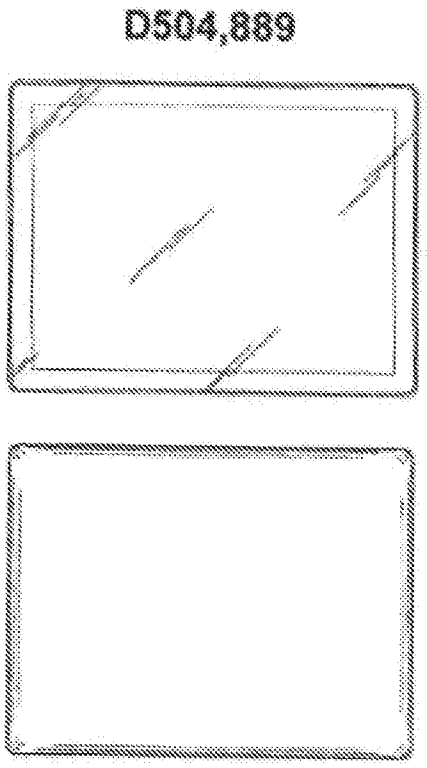
5. THE ZAMBERLAN REFERENCE DOES NOT QUALIFY AS A SECONDARY REFERENCE

Notwithstanding the above arguments, and even if the McKernan reference is found to be a primary reference under the Durling standard, which Patent Owner submits it should not, the Zamberlan reference, as a matter of law, cannot qualify as a secondary reference as it cannot bridge the gap between the McKernan jar and the claimed invention. *See Apple* at 1331.

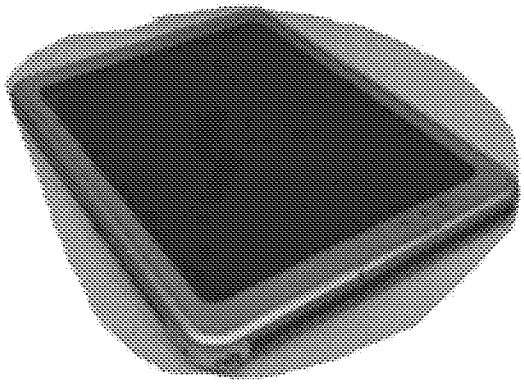
As cited in *Apple*, "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other.'" *Id.* at 1330.

In *Apple*, the court held that the TC1000 secondary reference (see illustration below) was not "so related to the [Fidler tablet]" because the "screen area of the [TC1000] device is

encircled by a wide rounded-over metallic rim," and because "the screen area [of the TC1000 device] contains indicator lights in several places, unlike the minimalist design claimed in the [Apple design]." *Id.* at 1331. See the two designs below.



Apple's Design

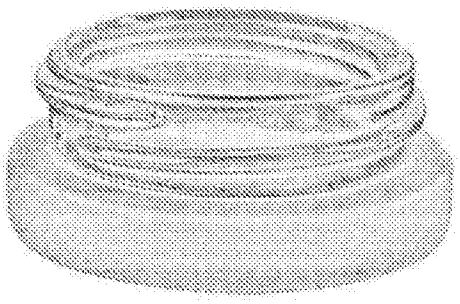


The TC1000 Device

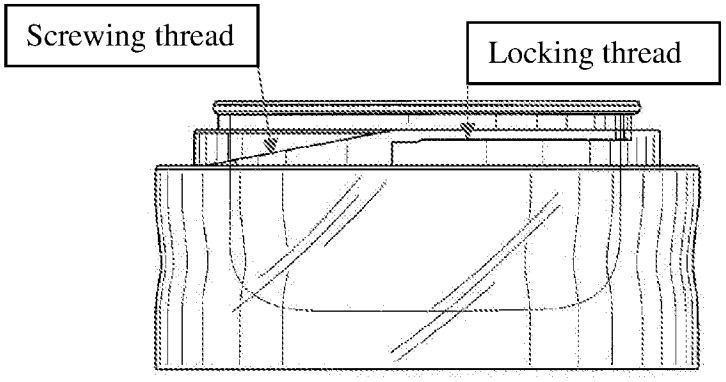
Thus, the *Apple* court held that the TC1000 device "could not bridge the gap between the Fidler and the [Apple design]." *Id.* at 1331.

Similarly, and as depicted below, the design of the Zamberlan reference is so visually different from that of the jar depicted in McKernan that it would be illogical to categorize Zamberlan as a secondary reference under the current circumstances.

McKernan Jar



Zamberlan Jar



Indeed, the Zamberlan reference as a whole illustrates a somewhat "standard"-looking jar having a simple "one-cylinder" base construction and a small step-like neck at the top. The jar design of the Zamberlan reference emphasizes a substantially single-cylinder look because the cylinder that defines the base makes up virtually the entire jar, including the internal storage area. The step-like neck is miniscule in proportion to the single-cylinder base configuration of the Zamberlan jar that it is barely noticeable.

In addition to the massive proportional difference between the neck of the McKernan design and the neck of the Zamberlan design, the step-like neck of the Zamberlan jar has a configuration that is vastly different in appearance from the neck of the McKernan jar. In particular, the neck of the Zamberlan jar has two visibly separate curved screwing threads that extend diametrically opposite to one another along approximately a quarter of the circumference of the neck. See one of the two visible screwing threads annotated in the illustration of Zamberlan above, which appears as a sloped ramp.

Further, the neck of the Zamberlan jar has a visually prominent interlocking mechanism for locking a lid in place. The interlocking mechanism depicts two locking threads, each of which extends along approximately a quarter of the circumference of the neck at diametrically

opposite portions thereof. See one of the two visible locking threads annotated in the illustration of Zamberlan above.

Moreover, as shown above, the Zamberlan jar has an inwardly directed "waistline" curve, located circumferentially about the base.

On the other hand, the McKernan reference clearly depicts a distinctive two-cylinder jar design (with one cylinder defining the base and the other defining the upwardly extending neck). In McKernan, both the base and the neck are prominent features of the design. Further, the McKernan jar has only one thread that visually extends all-around the neck, in contrast with the two separate, visually distinct and oppositely directed threads of the Zamberlan jar which extend along the neck. Further, the McKernan jar has no visible interlocking mechanism and no identifiable "waistline" curve along the base.

The Examiner states on page 6 of the final Office Action that "[t]he directed comparison of the Zamberlan and the McKernan jars in the patent owner's response is irrelevant." Respectfully, Patent Owner maintains that the applicable legal standard requires that the secondary reference be compared to the primary reference in order to determine whether the secondary reference can be used to bridge the gap between the primary reference and the claimed design. See *Apple* at 1329-30, quoting that "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other (emphasis added).'" *Id.*, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996).

The Examiner also states on page 6 of the final Office Action that the design of the jar of Zamberlan qualifies as being "so related" to the design of McKernan because "it is [a] short cylindrical jar having a threaded smaller diameter neck at the top." While the Zamberlan design

may arguably depict "a short cylindrical jar," it does not qualify as being "so related" to the design of the jar depicted in the McKernan reference. This is because the Zamberlan jar design is completely different from the McKernan jar design, as described above.

Therefore, because the Zamberlan reference is so different in its visual presentation from that of the McKernan jar, the Zamberlan reference cannot qualify as a secondary reference under the *Durling* standard. Accordingly, the rejection by the Examiner under 35 U.S.C. § 103 must fail for this reason as well.

6. COMBINING THE FEATURES SELECTED ARBITRARILY FROM THE McKERNAN AND ZAMBERLAN REFERENCES IS IMPROPER

Even assuming, *arguendo*, that the McKernan reference and the Zamberlan reference are valid references for purposes of an obviousness evaluation, the claimed design is nevertheless directed to patentable subject matter as the combination of teachings in the McKernan reference and the Zamberlan reference would not lead an ordinary designer to create the design that is claimed in the '151 Patent. Stated differently, an ordinary designer of jars would not modify the alleged primary reference to McKernan by the secondary reference to Zamberlan in order to arrive at the claimed design of the '151 Patent.

In pages 2-3 of the final Office Action, the Examiner submits that "it would have been obvious to a designer of ordinary skill … to have modified the McKernan jar by removing the frosted finish from the lower body to reveal an inner cavity with rounded corners, as shown and suggested by Zamberlan." Patent Owner does not agree.

In addition, the Examiner maintains that the jar of the McKernan reference must have an interior chamber because jars are "used especially for storing food." *Id.* at 7. Thus, the Examiner opines that the jar of the McKernan reference "could not fulfill its intended use as a vessel for

food storage without an interior chamber." *Id.* The Examiner also states that "while the appearance of the chamber [of the McKernan jar design] is obscured, a designer of ordinary skill in the art would expect MeKernan's [sic] jar to have an interior chamber." *Id.*

Further, the Examiner contends that:

> Zamberlan discloses a jar that is entirely transparent and the transparent characteristic is being applied to the entire jar of McKernan. There is no selectivity in the way that the transparent characteristic is being applied to the McKernan reference. *Id.*

The Examiner also states that "the interior chamber with rounded corners is being taken from Zamberlan without any modifications and [is] being directly applied to the interior of McKernan." *Id.*

In the first place, the Examiner's selective use of design characteristics from the Zamberlan and McKernan designs suggests that the Examiner's analysis is driven by impermissible hindsight as to the patented design. The Examiner selects only the outer surface finish and the inner chamber features of the Zamberlan design, and deliberately ignores all other design features taught by Zamberlan.

The Patent Trial and Appeal Board (PTAB) has held that in design cases, the use of only select design characteristics from a secondary reference in conjunction with deliberately ignoring other design characteristics of that secondary reference results in impermissible hindsight as to the patented design. See *Inter Partes* Review 2016-00434, Decision of the Patent Trial and Appeal Board, Patent No. D618,132, paper No. 9, page 16. Applied here, Patent Owner submits that the Examiner uses impermissible hindsight in order to reconstruct the patented design from select components of the prior art.

Indeed, nothing on the record here indicates that an ordinary designer would consider borrowing only the interior chamber and the clear exterior finish of the base from the Zamberlan jar design without also borrowing other design characteristics from the Zamberlan reference, such as the overall single-cylinder appearance of the Zamberlan design with a neck that is extremely small in proportion to the size of the base, the inwardly-curved "waistline" that is disposed in the middle of the base of the Zamberlan design, the dual screwing threads on the neck of the Zamberlan design and/or the dual locking threads on the neck of the Zamberlan design.

Conveniently, the Examiner does not address at all how these additional design characteristics of the Zamberlan reference would motivate an ordinary designer to modify the overall appearance of the McKernan jar design - without hindsight - or how the McKernan jar design would appear when modified in light of all of the above-referenced design features of Zamberlan.

Moreover, when applying all of these design characteristics from the Zamberlan reference to the McKernan jar design, the McKernan jar would have a mono-cylinder look where the base of the jar would constitute essentially the entire body of the jar, with the neck being disproportionally miniscule and hence visually negligible. In addition, the McKernan jar design would be modified to have an inwardly-facing "waistline" at mid-height of the body, and the neck of the McKernan jar would have two separate screwing threads and two separate locking threads. Thus, the overall appearance of the McKernan jar as modified by the teaching of the Zamberlan reference would to be substantially different from that of the claimed jar design.

In the IPR2016-00434 decision, the challenged design patent claimed an arrangement of a large round central diamond surrounded by several smaller diamonds. The petitioner sought to

reconstruct the appearance of the patented design by using a primary reference and a secondary reference to bridge the gap between the primary and secondary references.

In particular, the petitioner in the IPR2016-00434 decision used a secondary reference for the proposition that stones of difference cuts can be combined together, while ignoring the fact that the secondary reference called for a square center stone sitting above the smaller surrounding stones (the patented design depicted a round center stone sitting substantially at the same elevation as the smaller stone). *Id.* at 16.

The PTAB held in the IPR2016-00434 decision that "[t]his selective use of the design characteristics of the prior art suggests that it is driven by a hindsight reconstruction of the invention rather than the objective teachings of the references." *Id.* at 16. In supporting its conclusion, the PTAB opined that "[t]here is nothing on this record to suggest that an ordinary jewelry designer would have considered the use of single-cut periphery stones without the corresponding change in height difference and shape relative to the center stone." *Id.* at 16-17.

Similarly here, there is nothing in the record to suggest that an ordinary jar designer should consider solely the transparent surface finish and the interior chamber of the Zamberlan jar design without also considering the large body/miniscule neck, mid-height waistline, dual screwing and/or the dual locking threads of Zamberlan. Notwithstanding, and as stated above, even if the ordinary jar designer were to apply these design features of Zamberlan to the jar design of McKernan, the resulting design would be substantially different from the claimed jar design.

Furthermore, the Examiner's reasoning appears to be based, at least in part, on combining the teachings of two or more prior art references under the standard that is applicable for evaluation on the issue of obviousness as to a utility patent, as opposed to the standard that

should be applied in evaluating obviousness as to a design patent. This is because the Examiner presumes that the jar of McKernan includes the concept of a storage chamber that can be replaced by the storage chamber depicted in Zamberlan. This presumption is not supported by what is shown in the McKernan illustrations, especially since no storage chamber is clearly shown in the jar that is depicted in the McKernan reference. Courts have repeatedly held that the standards for examining (and reexamining) utility and design patents are very different. *See In re Harvey*, 12 F.3d 1061, 1063 (Fed. Cir. 1993), reciting that "[l]ike the examiner, the Board improperly mixed principles of obviousness for utility patents with those for ornamental design patents .... we hold that the Board erred in misapplying the obviousness standard because it admittedly relied upon the prior art Harvey vase as a 'design concept' rather than for its specific design characteristics."

In the final Office Action, the Examiner states that the Zamberlan reference suggests modifying the teaching in the McKernan reference in order to transform the frosted base of McKernan into a transparent base merely because Zamberlan shows a transparent jar. While Zamberlan does indeed show a transparent jar, as discussed above, the Zamberlan jar is entirely different in its configuration and appearance from that of the McKernan jar. Since the subject matter at issue here is directed to a design patent, and since the design of the Zamberlan jar is unrelated to the McKernan jar in appearance, it follows that Zamberlan fails to suggest making any modifications to the McKernan jar from a design standpoint. Thus, it is not appropriate for the Examiner to suggest using the teaching in Zamberlan in order to modify the design of the McKernan jar, be it for making it into a transparent object, or for rounding the corners of its interior.

Moreover, even if it made sense to combine the teachings in the McKernan and Zamberlan, *the disclosure in Zamberlan* does not bridge the gap between McKernan and the claimed design of the '151 Patent. This is in large part because the McKernan reference is silent regarding the depth of the jar's interior, even if it is assumed that the McKernan jar has an interior chamber. The addition of the Zamberlan reference is of no assistance because Zamberlan teaches that the interior chamber must extend throughout the major part of the base in the vertical direction while the claimed design illustrates that the interior chamber extends only minimally under the shoulder of the base in the vertical direction.

Thus, not only does the combination of select design features of the Zamberlan reference to the McKernan reference result in impermissible hindsight reconstruction of the claimed jar design, but such a combination, even if legally permitted, would form a hybrid jar design that is vastly different in visual appearance from the jar design as claimed in the '151 Patent.

Accordingly, the Examiner's rejection of the claimed design based on the combination of teachings in McKernan and Zamberlan is not appropriate.

7. COMMERCIAL SUCCESS

Secondary considerations, such as commercial success, are relevant to the evaluation of obviousness of a design claim. *See MRC Innovations, Inc. v. Hunter Mfg., LLP*, 747 F.3d 1326, 1335-36 (Fed. Cir. 2014); *Crocs Inc. v. International Trade Commission,* 598 F.3d 1294, 1310, (Fed. Cir. 2010). Indeed, secondary considerations "can be the most probative evidence of non-obviousness…, and enables the... court to avert the trap of hindsight." *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 960 (Fed. Cir. 1986).

Secondary considerations "may often establish that an invention appearing to have been

obvious in light of the prior art was not." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed.Cir.1983). It is important to note that evidence of secondary considerations "… is not just a cumulative or confirmatory part of the obviousness calculus but constitutes independent evidence of nonobviousness." *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1365 (Fed. Cir. 2008).

The jars made and sold by the Patent Owner and which practice the claimed design of the '151 Patent have enjoyed significant commercial success. See the Evidence Appendix, including the Declaration of inventor Robert Lerman, which was filed on November 4, 2019, and was made of record in this reexamination proceeding. There has been continuous sales growth over the last several years. *Id.*

The Examiner suggests that the commercial success of the claimed jar design may be attributable to the use of tetrahydrocannabinol (TCH) extract in the marketplace. The Examiner states that: "[o]utstanding commercial success may be evidence of invention, and in [a] doubtful case may resolve doubt in favor of invention, but commercial success must not be used to create doubt regarding the inventiveness where none would exist otherwise." *In re Coey*, 90 USPQ 216 (1951). Patent Owner agrees.

However, contrary to what the Examiner quotes in *In re Coey*, the Examiner then seeks to create doubt in the inventiveness of the claimed design by arguing that the commercial success of the jars embodying the claimed design is not due to the design of the jars themselves, but rather by the increase of cannabis-related products in the marketplace. Not only is it impermissible to use commercial success data to create doubt regarding the inventiveness of a patented design, as set forth in *In re Coey*, but here such doubt is unsupported by Mr. Lerman's declaration or by any other evidence that is in the record.

As stated in Mr. Lerman's declaration, the jars embodying the claimed design comprise 65% of all the jars that are purchased by licensed cannabis producers nationwide. The fact that the number of jars embodying the '151 Patent design account for more than half of the nationwide market share of cannabis jars establishes that the jars are commercially successful due to their design.

A prima facie case of nexus is made when the patentee shows both that there is commercial success, and that the product that is commercially successful is the invention disclosed and claimed in the patent. *See In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995). Here, both have been demonstrated. Accordingly, the claimed jar design of the '151 Patent is patentable in view of the commercial success evidence that has been presented, and therefore, the Examiner's rejection under 35 U.S.C. § 103 is not appropriate.

V. CONCLUSION

In view of the above remarks, it is submitted that the claimed design of the '151 Patent is patentably distinct over the prior art relied upon by the Examiner, especially given the commercial success of the patented design. As such, withdrawal of the obviousness rejection under 35 U.S.C. § 103 is hereby requested.

No additional fees are believed due, but if any additional fee is required, the Commissioner is hereby authorized to charge the amount of any such fee to Deposit Account No. 07-1730, Docket No. 8748-019.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Patent Owner(s)
270 Madison Avenue, 8th Floor
New York, New York 10016
(212) 684-3900

/Jeffrey M. Kaden/
Jeffrey M. Kaden
Reg. No. 31,268

Dated: 6/8/2020

VI. CLAIMS APPENDIX

Pursuant to 37 C.F.R. § 41.37(c)(1)(v), the '151 Patent claims: "[t]he ornamental design for a jar, as shown and described [in FIGS. 1-7 below]."

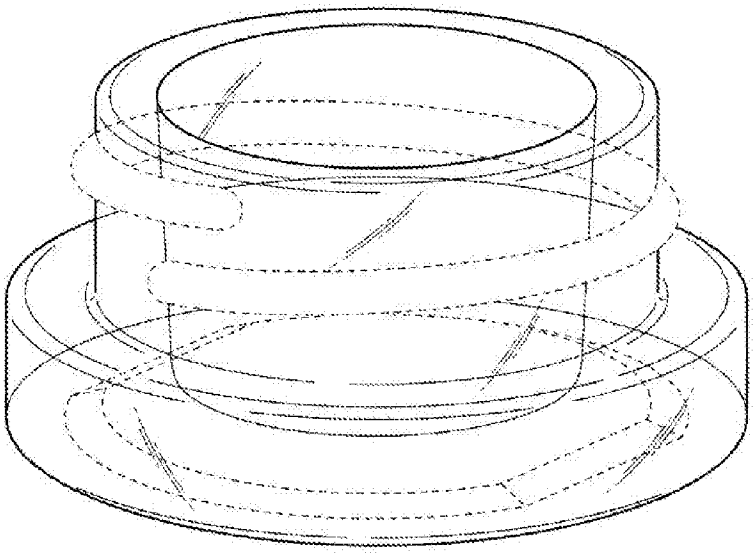


FIG. 1

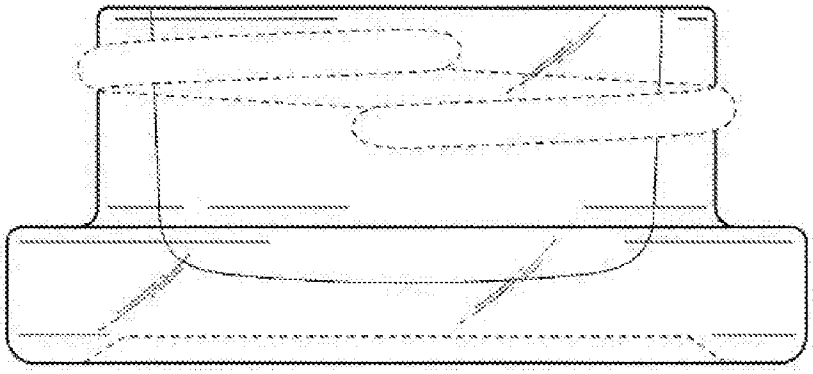


FIG. 2

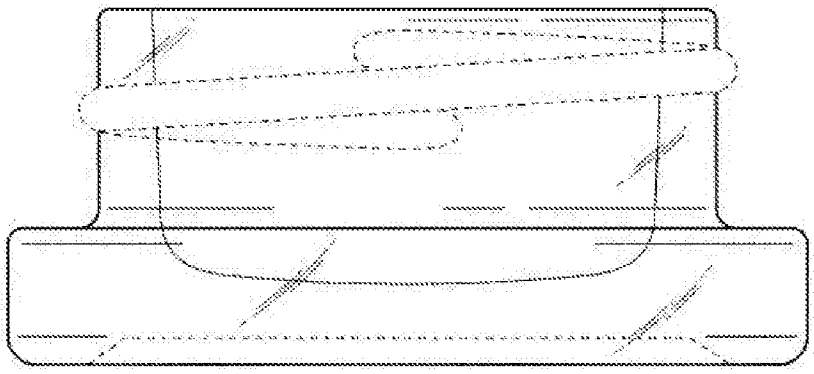


FIG. 3

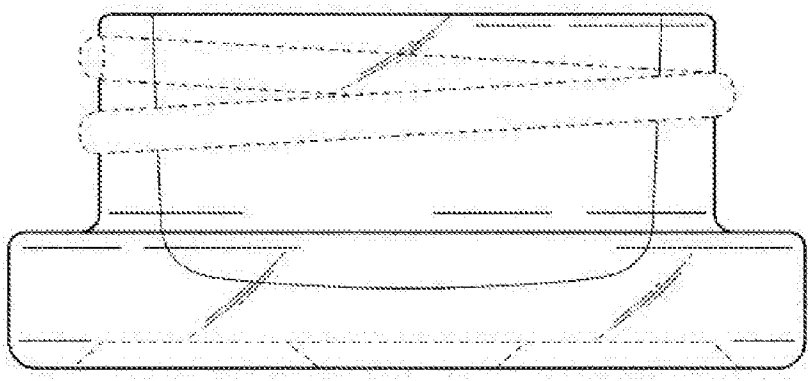


FIG. 4

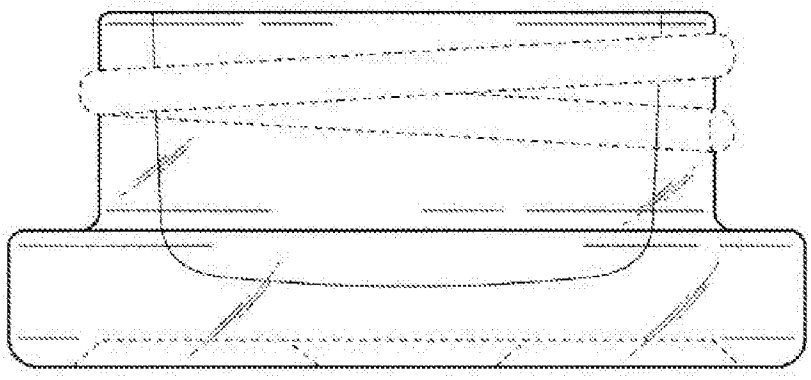


FIG. 5

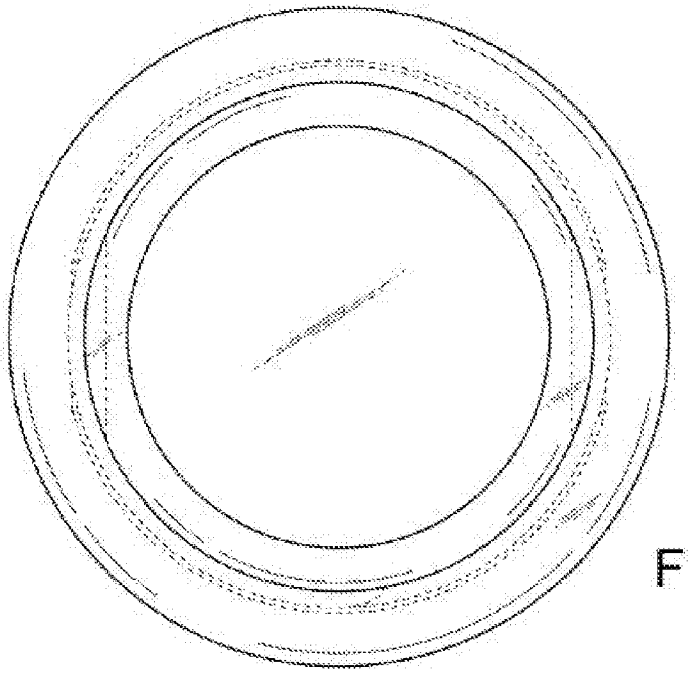


FIG. 6

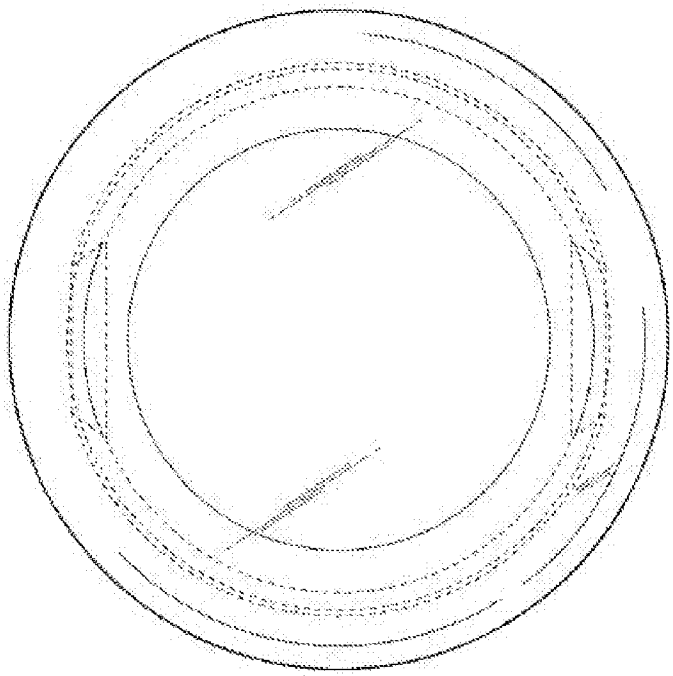


FIG. 7

VII. EVIDENCE APPENDIX

Pursuant to M.P.E.P. § 1205.02, Patent Owner presents below a copy of a Declaration submitted by Robert Lerman on November 4, 2019, in support of Patent Owner's response to the non-final Office Action mailed on September 3, 2019. Mr. Lerman is the sole inventor of the jar design claimed in the '151 Patent, and the principal of Lerman Container Corp. Mr. Lerman's Declaration has been entered in the record of this reexamination proceeding.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Applicant and Patent Owner	:	Ebottles.com
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

DECLARATION OF ROBERT LERMAN

1. I am the principal of patent owner Ebottles.com and the inventor of the claimed design of the U.S. Design Patent No. 781,151 (the "151 Patent"). I submit this Declaration in support of Patent Owner's response to the non-final Office Action dated September 3, 2019 in the subject Ex Parte Reexamination.

2. I make this Declaration from personal knowledge.

3. I respectfully request that the Examiner take into account the commercial success of jars embodying the claimed design of the '151 Patent (the "Jar" or "Jars").

4. Since its introduction, the Jar has enjoyed a considerable amount of commercial success and continued sales growth.

5. I consider this success to be attributable, at least in part, to the uniqueness of the jar design depicted in the '151 Patent.

6. In the past three years, our company has manufactured and sold more than 10 million units of the Jars.

7. In 2016, Ebottles.com manufactured and sold more than 1 million units of the Jars.

8. In 2017, Ebottles.com manufactured and sold more than 2.5 million units of the Jars.

9. In 2018, Ebottles.com manufactured and sold more than 6.5 million units of the Jars.

10. As you can see from these figures, we have experienced tremendous growth in our sales of the Jar, as sales have more than doubled each year since we introduced the Jar.

11. The vast majority of our clients who purchase the Jars use them to contain concentrated forms of cannabis.

12. Based on my knowledge of the cannabis industry, including the number of licensed producers of cannabis concentrates nationwide, I would estimate that sales of the Ebottles.com Jar comprise, in units, upwards of sixty five percent (65%) of jars purchased by such licensed producers.

I hereby declare, that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these

statements were made with the knowledge that willful false statements and the like so made are punishable as perjury.

/s/ Robert Lerman
Robert Lerman

Dated: New York, New York
November 4, 2019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Patent Owner	:	LERMAN CONTAINER CORPORATION
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

CERTIFICATE OF SERVICE

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

Dear Commissioner:

In accordance with 37 CFR § 1.550, a copy of the Notice of Appeal filed with the Office in Ex Parte Reexamination Control No. 90/014,262 has been served on the third party requester indicated below via email only at jake@wardpatent.com.

Jacob M. Ward
Ward Law Office LLC
120 ½ S. Washington Street
Suite 207
Tiffin, OH 44883

In light of the difficulties stemming from the ongoing pandemic, Mr. Ward has agreed to receive electronic service of papers via email at the above-noted email address.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Applicant(s)
270 Madison Avenue, 8th Floor
New York, New York 10016
(212) 684-3900

/Ilirian Durri/
Ilirian Durri
Reg. No. 77,016

Dated: 5/12/2020

GOTTLIEB, RACKMAN & REISMAN, P.C.

INTELLECTUAL PROPERTY LAW

270 Madison Ave, New York, NY 10016 | T: (212) 684-3900 | F: (212) 684-3999 | www.grr.com

Ilirian Durri
Attorney At Law
Direct: 646-813-3555
idurri@grr.com

May 12, 2020

VIA EMAIL ONLY: jake@wardpatent.com

Jacob M. Ward
Ward Law Office LLC
120 ½ S. Washington Street
Suite 207
Tiffin, OH 44883

RE: Service Copy of Notice of Appeal Filed in Ex Parte Reexam Control No. 90/014,262

Dear Mr. Ward,

Enclosed please find a service copy of the Notice of Appeal filed in Reexamination Control No. 90/014,262, concerning the reexamination proceeding of U.S. Patent No. D781,151.

Very truly yours,
GOTTLIEB, RACKMAN & REISMAN, P.C.

Ilirian Durri

PTO/AIA/31 (03-14)
Approved for use through 11/30/2020. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

NOTICE OF APPEAL FROM THE EXAMINER TO THE PATENT TRIAL AND APPEAL BOARD

Docket Number (Optional): 8748-019

I hereby certify that this correspondence is being facsimile transmitted to the USPTO, EFS-Web transmitted to the USPTO, or deposited with the United States Postal Service with sufficient postage in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, on Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on April 17, 2020.

Signature: /Akiko Sakagami/

Typed or printed name: Akiko Sakagami

In re Application of: D781,151

Application Number	Filed
90/014,262	February 11, 2019

For: JAR

Art Unit	Examiner
2917	PHILIP S. HYDER

Applicant hereby **appeals** to the Patent Trial and Appeal Board from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) $ 200.00

☐ Applicant asserts small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by 50%, and the resulting fee is: $ _____

☑ Applicant certifies micro entity status. See 37 CFR 1.29. Therefore, the fee shown above is reduced by 75%, and the resulting fee is: $ 200.00
Form PTO/SB/15A or B or equivalent must either be enclosed or have been submitted previously.

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. _____.

☐ Payment made via EFS-Web.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/AIA/22 or equivalent) is enclosed.
For extensions of time in reexamination proceedings, see 37 CFR 1.550.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant

☑ attorney or agent of record
Registration number 31,268

☐ attorney or agent acting under 37 CFR 1.34
Registration number _____

Signature: /Jeffrey M. Kaden/

Typed or printed name: Jeffrey M. Kaden

Telephone Number: (212) 684-3900

Date: April 17, 2020

NOTE: This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4 for signature requirements and certifications. Submit multiple forms if more than one signature is required, see below*.

☐ * Total of 1 forms are submitted.

This collection of information is required by 37 CFR 41.20(b)(1) and 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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Electronic Patent Application Fee Transmittal

Application Number:	29567402
Filing Date:	08-Jun-2016
Title of Invention:	JAR
First Named Inventor/Applicant Name:	Robert Lerman
Filer:	Akiko Sakagami
Attorney Docket Number:	8748-003

Filed as Micro Entity

Filing Fees for Design

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
NOTICE OF APPEAL	3401	1	200	200
Post-Allowance-and-Post-Issuance:				

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Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	**200**

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Electronic Acknowledgement Receipt

EFS ID:	39193710
Application Number:	29567402
International Application Number:	
Confirmation Number:	6122
Title of Invention:	JAR
First Named Inventor/Applicant Name:	Robert Lerman
Customer Number:	22440
Filer:	Akiko Sakagami
Filer Authorized By:	
Attorney Docket Number:	8748-003
Receipt Date:	17-APR-2020
Filing Date:	08-JUN-2016
Time Stamp:	15:56:05
Application Type:	Design

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$200
RAM confirmation Number	E20204GF59106415
Deposit Account	071730
Authorized User	Akiko Sakagami
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows: 37 CFR 1.16 (National application filing, search, and examination fees) 37 CFR 1.17 (Patent application and reexamination processing fees)	

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37 CFR 1.19 (Document supply fees)

37 CFR 1.20 (Post Issuance fees)

37 CFR 1.21 (Miscellaneous fees and charges)

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Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Notice of Appeal Filed	8748-019-NoticeofAppeal-ID.pdf	240738 4b58bda0b049494400a4c15d5bb273e2351f6c2d	no	2
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	29812 8d55e5ac76d1436828efda5d6d091b46997f86ad	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	270550		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Copied from 29567402 on 05/08/2020

Electronic Acknowledgement Receipt

EFS ID:	39420001
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	D781151
Customer Number:	22440
Filer:	Akiko Sakagami
Filer Authorized By:	
Attorney Docket Number:	8748-019
Receipt Date:	12-MAY-2020
Filing Date:	11-FEB-2019
Time Stamp:	16:03:22
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Reexam Certificate of Service	8748-019-ServicofNoticeofAppealonThirdPartyRequester1.pdf	888497 eb420eb38d90d1bcd61231c589f09f25a9f489ac	no	9

Warnings:

Information:	
Total Files Size (in bytes):	888497

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

AO 120 (Rev. 08/10)

TO:	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court District of Maryland on the following

☐ Trademarks or ☑ Patents. (☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
19cv01414	5/14/2019	District of Maryland

PLAINTIFF	DEFENDANT
Lerman Container Corp. d/b/a eBottles.com	LIDS AND JARS, L.L.C.

	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	D781151	3/14/2017	eBottles.com
2			
3			
4			
5			

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above---entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE

Copy 1---Upon initiation of action, mail this copy to Director Copy 3---Upon termination of action, mail this copy to Director
Copy 2---Upon filing document adding patent(s), mail this copy to Director Copy 4---Case file copy

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PTO/AIA/31 (03-14)
Approved for use through 11/30/2020. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

NOTICE OF APPEAL FROM THE EXAMINER TO THE PATENT TRIAL AND APPEAL BOARD

Docket Number (Optional): 8748-019

I hereby certify that this correspondence is being facsimile transmitted to the USPTO, EFS-Web transmitted to the USPTO, or deposited with the United States Postal Service with sufficient postage in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, on Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on April 17, 2020.

Signature: /Akiko Sakagami/

Typed or printed name: Akiko Sakagami

In re Application of: D781,151

Application Number	Filed
90/014,262	February 11, 2019

For: JAR

Art Unit	Examiner
2917	PHILIP S. HYDER

Applicant hereby **appeals** to the Patent Trial and Appeal Board from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1)) $ 200.00

☐ Applicant asserts small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by 50%, and the resulting fee is: $ _____

☑ Applicant certifies micro entity status. See 37 CFR 1.29. Therefore, the fee shown above is reduced by 75%, and the resulting fee is: $ 200.00
Form PTO/SB/15A or B or equivalent must either be enclosed or have been submitted previously.

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. _____.

☐ Payment made via EFS-Web.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/AIA/22 or equivalent) is enclosed.
For extensions of time in reexamination proceedings, see 37 CFR 1.550.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant

☑ attorney or agent of record
Registration number 31,268

☐ attorney or agent acting under 37 CFR 1.34
Registration number _____

Signature: /Jeffrey M. Kaden/

Typed or printed name: Jeffrey M. Kaden

Telephone Number: (212) 684-3900

Date: April 17, 2020

NOTE: This form must be signed in accordance with 37 CFR 1.33. See 37 CFR 1.4 for signature requirements and certifications. Submit multiple forms if more than one signature is required, see below*.

☐ * Total of 1 forms are submitted.

This collection of information is required by 37 CFR 41.20(b)(1) and 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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Electronic Patent Application Fee Transmittal

Application Number:	29567402
Filing Date:	08-Jun-2016
Title of Invention:	JAR
First Named Inventor/Applicant Name:	Robert Lerman
Filer:	Akiko Sakagami
Attorney Docket Number:	8748-003

Filed as Micro Entity

Filing Fees for Design

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
NOTICE OF APPEAL	3401	1	200	200
Post-Allowance-and-Post-Issuance:				

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Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	**200**

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Electronic Acknowledgement Receipt

EFS ID:	39193710
Application Number:	29567402
International Application Number:	
Confirmation Number:	6122
Title of Invention:	JAR
First Named Inventor/Applicant Name:	Robert Lerman
Customer Number:	22440
Filer:	Akiko Sakagami
Filer Authorized By:	
Attorney Docket Number:	8748-003
Receipt Date:	17-APR-2020
Filing Date:	08-JUN-2016
Time Stamp:	15:56:05
Application Type:	Design

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$200
RAM confirmation Number	E20204GF59106415
Deposit Account	071730
Authorized User	Akiko Sakagami

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

37 CFR 1.16 (National application filing, search, and examination fees)

37 CFR 1.17 (Patent application and reexamination processing fees)

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37 CFR 1.19 (Document supply fees)

37 CFR 1.20 (Post Issuance fees)

37 CFR 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Notice of Appeal Filed	8748-019-NoticeofAppeal-ID.pdf	240738 4b58bda0b049494400a4c15d5bb273e2351f6c2d	no	2
Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	29812 8d55e5ac76d1436828efda5d6d091b46997f86ad	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	270550		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	8748-019	8506

22440 7590 04/16/2020
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
04/16/2020	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

GOTTLIEB, RACKMAN & REISMAN PC
270 MADISON AVE, 8TH FLOOR
NEW YORK, NY 10016-0601

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/014,262* .

PATENT UNDER REEXAMINATION *D781151* .

ART UNIT *2917* .

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

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

Ex Parte Reexamination Advisory Action ***Before the Filing of an Appeal Brief***	**Control No.** 90/014,262	**Patent Under Reexamination** D781151	
	Examiner PHILIP S HYDER	**Art Unit** 2917	**AIA (FITF) Status** Yes

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

THE PROPOSED RESPONSE FILED 25 February 2020 FAILS TO OVERCOME ALL OF THE REJECTIONS IN THE FINAL REJECTION MAILED 26 December 2019.

1. ☐ Unless a timely appeal is filed, or other appropriate action by the patent owner is taken to overcome all of the outstanding rejection(s), this prosecution of the present *ex parte* reexamination proceeding WILL BE TERMINATED and a Notice of Intent to Issue *Ex Parte* Reexamination Certificate will be mailed in due course. Any finally rejected claims, or claims objected to, will be CANCELLED.
   THE PERIOD FOR RESPONSE IS EXTENDED TO RUN 5 MONTHS FROM THE MAILING DATE OF THE FINAL REJECTION.
   Extensions of time are governed by 37 CFR 1.550(c).

NOTICE OF APPEAL

2. ☐ An Appeal Brief is due two months from the date of the Notice of Appeal filed on _____ to avoid dismissal of the appeal. See 37 CFR 41.37(a). Extensions of time are governed by 37 CFR 1.550(c). See 37 CFR 41.37(e) .

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final action, but prior to the date of filing a brief, will not be entered because:
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the proceeding in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____ (See 37 CFR 1.116 and 41.33(a)).
4. ☐ Patent owner's proposed response filed _____ has overcome the following rejection(s): _____
5. ☐ The proposed new or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☐ For purposes of appeal, the proposed amendment(s) a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claim(s) would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) patentable and/or confirmed: _____
   Claim(s) objected to: _____
   Claim(s) rejected: _____
   Claim(s) not subject to reexamination: _____

AFFIDAVIT OR OTHER EVIDENCE

7. ☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____ .
8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because patent owner failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence fails to overcome all rejections under appeal and/or appellant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☑ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet .
12. ☐ Note the attached Information Disclosure Statement(s), PTO/SB/08, Paper No(s) _____ .
13. ☐ Other: _____ .

/Philip S Hyder/ Primary Examiner, Art Unit 2917	/KEVIN K RUDZINSKI/ Primary Examiner, Art Unit 2911	/DARLINGTON LY/ Primary Examiner, Art Unit 2914

cc: Requester (if third party requester)

Continuation of REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place this application in condition for allowance because: While the wording of the rejection was revised in the final action, it is in fact the same rejection. The primary and the secondary references are unchanged and the same features are taken from the secondary reference and applied to the primary reference in the same manner. The examiner has also considered the remarks directed to alledged deficiencies in the primary and secondary references, and the assertion of comercial succuccess, and remains convinced that the rejection is proper and in order.

Electronic Acknowledgement Receipt

EFS ID:	38689240
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	D781151
Customer Number:	22440
Filer:	Jeffrey Kaden/Susan Piperno
Filer Authorized By:	Jeffrey Kaden
Attorney Docket Number:	8748-019
Receipt Date:	25-FEB-2020
Filing Date:	11-FEB-2019
Time Stamp:	17:53:31
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Response After Final Action	8748-019-Response_to_Final_OA-25FEB2020.pdf	666522 3104e2d81693c82661d108bf9a29a71b55f54ea4	no	24

Warnings:

Information:	
Total Files Size (in bytes):	666522

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Patent Owner	:	LERMAN CONTAINER CORPORATION
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

RESPONSE TO FINAL OFFICE ACTION

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

Commissioner:

This communication is submitted in response to the final Office Action dated December 26, 2019 in the subject *Ex Parte* Reexamination. The Examiner is respectfully requested to consider the following remarks. Reconsideration and withdrawal of the outstanding rejections and allowance of the claimed design is earnestly solicited.

REMARKS

Patent Owner responds as follows:

CLAIM REJECTION – 35 U.S.C. § 103

In the final Office Action, the Examiner once more rejects the claimed design of U.S. Design Patent No. D781,151 (the "'151 Patent") under AIA 35 U.S.C. § 103 as being unpatentable over the reference to the McKernan jar (cited in the request for *Ex Parte* Reexamination) in view of U.S. Design Patent No. D634,202 to Zamberlan (cited by the Examiner).

In the final Office Action, the Examiner presents new arguments for rejecting the claimed design based on 35 U.S.C. § 103 in addition the same obviousness arguments that were presented in the first Office Action.

In the final Office Action, the Examiner re-asserts that "the overall design characteristics of the McKernan reference are basically the same as [those of] the design claimed in [the '151 Patent]." See page 2 of the final Office Action. In addition, the Examiner contends that "both jar designs consist of short and wide cylindrical bodies topped with taller narrower cylindrical necks." *Id.* The Examiner further contends that "any differences in the proportioning or shaping of the designs is negligible. The only identifiable difference is that the claimed design is fully transparent whereas the body on McKernan has a frosted finish, so that only the upper neck portion is fully transparent." *Id.*

Further on in the Office Action, the Examiner contends that "Zamberlan … discloses a similarly stubby jar design in which the body lacks the frosted finish, thus making the body is [sic] fully transparent to reveal an inner cavity having the rounded contours." *Id.*

The Examiner then concludes that "it would have been obvious to a designer of ordinary skill … to have modified the McKernan jar by removing the frosted finish from the lower body to reveal an inner cavity with rounded corners, as shown and suggested by Zamberlan." *Id.*

In the final Office Action the Examiner states for the first time that the "transparent characteristic" of the Zamberlan jar design is "is being applied to the entire jar of McKernan" and that "the interior chamber with rounded lower corners is being taken from Zamberlan without any modifications and being directly applied to the interior of McKernan" in order to "address[] both deficiencies in the McKernan reference by teaching the application of the transparent finish to the entire body of the design and teaching the appearance of the interior cavity."

In addition, in the final Office Action, the Examiner accords little to no weight to the demonstrated commercial success of the claimed jar design by arguing that the commercial success of the jars embodying the claimed design has occurred due to the "growth of the sales and use of the extract THC."

The Patent Owner respectfully traverses the rejection.

As will be described in detail below, it is submitted that the rejection set forth in the outstanding Office Action should be withdrawn. This is because (1) the McKernan reference cannot be a primary reference, (2) the Zamberlan patent does not qualify as a secondary reference, (3) the Examiner improperly combines arbitrarily selected features from McKernan and Zamberlan in order to supposedly arrive at the claimed design, and (4) the product bearing the claimed design has been commercially successful.

THE TEST FOR OBVIOUSNESS

In analyzing an ornamental design for obviousness, first, "one must find a single reference, 'a something in existence, the design characteristics of which are basically the same as the claimed design.'" *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1329-1330 (Fed. Cir. 2012), quoting *Durling v. Spectrum Furniture Co, Inc.*, 101 F.3d 100, 103 (Fed. Cir. 1996), which in turn quotes *In re Rosen*, 673 F.2d 388, 391 (C.C.P.A. 1982). In order to perform the first step, courts must "(1) discern the correct visual impression created by the patented design as a whole; and (2) determine whether there is a single reference that creates basically the same visual impression." at 1312. *High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1312 (Fed. Cir. 2013).

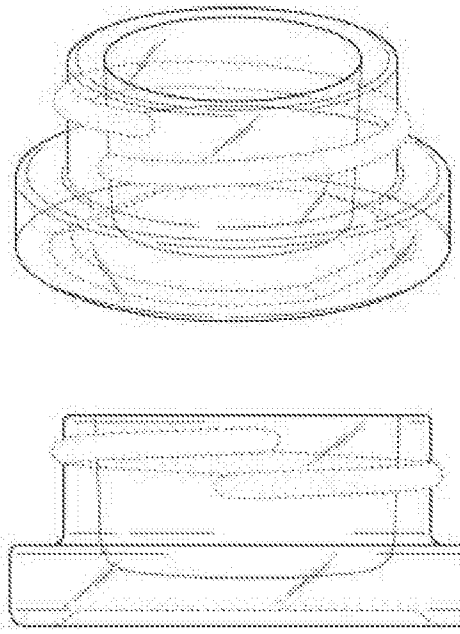
Second, "other references may be used to modify [the primary reference] to create a design that has the same overall visual appearance as the claimed design." *Apple* at 1329. However, the "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other (emphasis added).'" *Id.* at 1329-30, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996).

THE McKERNAN REFERENCE CANNOT BE A PRIMARY REFERENCE

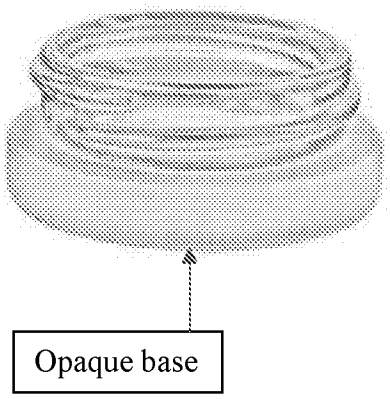
As a matter of law, McKernan cannot be a primary reference because it does not create the same visual impression as the '151 Patent.

The claimed design and the McKernan jar are reproduced below.

The '151 Patent Design



The McKernan jar



The correct visual impression created by the patented design as a whole can be discerned by referring to the figures of the '151 Patent reproduced above. As shown in these figures, the claimed design illustrates a jar that is entirely transparent, and has a base that is substantially wider than its neck. Since the claimed jar design is entirely transparent, the claimed jar design as a whole conveys an impression of openness and clarity. This is because both the exterior of the jar and the interior storage chamber thereof are clearly visible from the outside. In other words, the overall three-dimensional configuration of the jar can be clearly viewed from the outside. In addition, anything that is stored or housed in the interior chamber of the claimed jar design is readily visible from the outside.[1]

[1] While not per se relevant on the issue of obviousness in a design patent context, the Patent Owner notes that the jar of the '151 Patent, because of its design, has enhanced child-proof characteristics.

In contrast, the jar depicted in the McKernan reference, while arguably also having a base that is wider than its neck, has an appearance that is substantially different than that of the claimed jar design. This is in large part because the jar of the McKernan reference has a large and rather pronounced opaque base. Indeed, the Examiner admits on pages 2 and 5 of the Office Action that the base of the jar depicted in the McKernan reference is "frosted." As can be appreciated, a frosted surface finish either substantially diffuses light or blocks the transmission of light altogether. In either case, based on the teaching of the McKernan reference, one is not able to see through the surface of the base of the McKernan jar. Stated another way, the base of the jar of the McKernan reference appears as a solid opaque object that is visually closed from the outside, thereby preventing an ordinary observer from seeing inside of the base. The fact that the base of the McKernan jar design is visually prominent further emphasizes the difference between the overall appearance of the jar of the McKernan reference and the overall appearance of the claimed jar design.

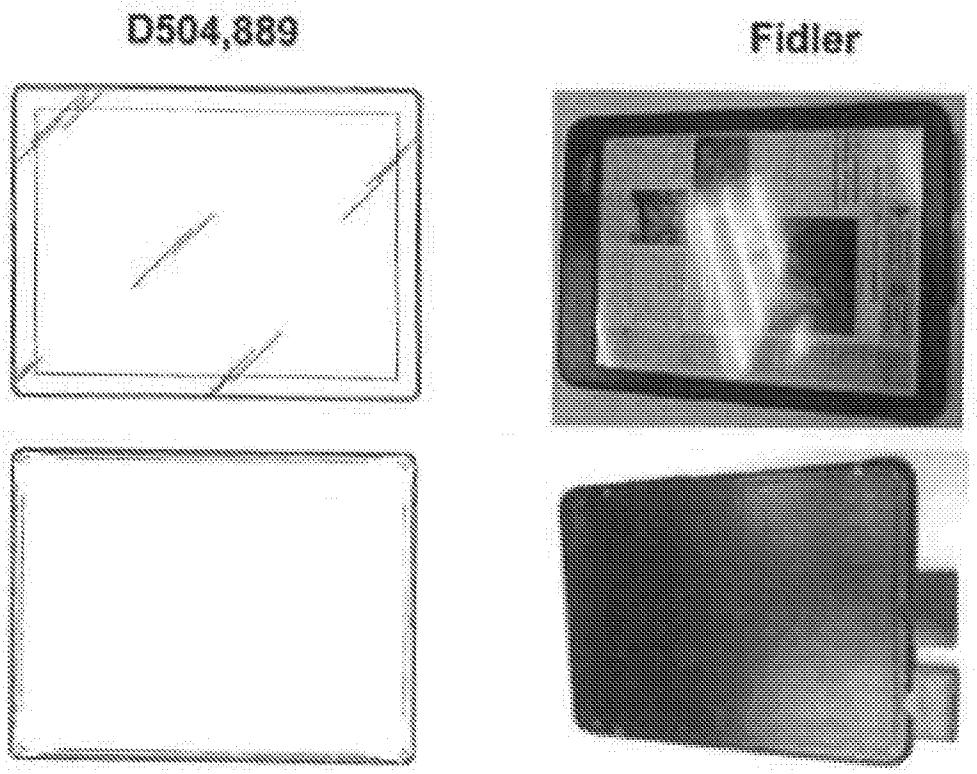
Moreover, the Examiner admits on page 4, lines 18-19 of the final Office Action that the neck of the claimed jar design is significantly taller than the neck of the jar of the McKernan reference. The taller neck of the claimed jar design, in combination with the claimed jar design being entirely transparent, as discussed above, presents an overall visual impression that is markedly different from what is disclosed by the McKernan reference.

Further, the Patent Owner maintains that it is virtually impossible to tell whether or not the jar of the McKernan reference, as illustrated in the printed publication that was supplied by the third party requester of the *Ex Parte* reexamination and as reproduced by the Examiner in the non-final and final Office Actions, includes any type of an interior storage chamber. This is due to the very low image quality of the printed publication that depicts the jar of the McKernan

reference. The claimed jar design of the '151 Patent, on the other hand, has a clearly visible interior chamber defining a bowl-like configuration that extends below the shoulder of the base as one of its prominent design features.

In the *Apple* decision discussed *supra* (hereinafter "*Apple*" for brevity purposes), the design of a tablet by Fidler was used by the federal trial court as a primary reference to obviate Apple's U.S. Design Patent No. D504,889. The Federal Circuit disagreed.

A side-by-side comparison of the Fidler and Apple designs is reproduced below:



In deciding that the Fiddler design was not a primary reference, the Federal Circuit in *Apple* made clear that the trial courts (and the Examiner) should avoid "view[ing] the various designs from too high a level of abstraction (emphasis added)." The Federal Circuit in *Apple* held that "Fidler does not qualify as a primary reference simply by disclosing a rectangular tablet with four evenly rounded corners and a flat back." *Id.* at 1332.

The standard applied by the Federal Circuit in *Apple* applies here. Patent Owner submits that the jar depicted in the McKernan reference cannot qualify as a primary reference merely by disclosing a jar with a base that is wider than the neck. Doing so amounts to inappropriately viewing the jar depicted in the McKernan reference "from too high a level of abstraction." *Apple* at 1332.

In *Apple*, the Federal Circuit further held that the Fidler tablet does not create the same visual impression as Apple's tablet design as claimed in U.S. Design Patent No. D504,889. The Federal Circuit opined that "[a] side-by-side comparison of the two designs shows substantial differences in the overall visual appearance between the patented design and the Fidler reference." *Apple* at 1330. [2]

Similarly here, the design of the McKernan jar is significantly different from that of the claimed design of the '151 Patent. The claimed invention conveys an overall visual impression of openness and clarity, as explained hereinabove, due to the jar of the claimed design being entirely transparent, while the jar depicted in the McKernan reference conveys a masked visual impression since it is shown as being predominantly opaque.[3]

In *Rosen*, the Court of Customs And Patent Appeals (the predecessor appeals court to the Federal Circuit) held that a primary reference can be disqualified as not being "basically the

[2] In determining that the two designs have substantial differences in their overall visual appearance, the Federal Circuit emphasized that "the frame of the Fidler tablet creates a very different impression from the 'unframed' D'889 design." *Apple* at 1330. The court held that the Fidler screen "appears to sink into the frame, creating a 'picture frame' effect." *Id.* at 1331. In addition, the court held that the "'picture frame effect break[s] the continuity between the frame and the screen embedded within it." *Id.* In contrast with the Fidler tablet, the court opined that the *Apple* design "covers essentially the entire face of the patented design without any breaks or interruptions." *Id.* For this reason, the court held that "[Apple's design] ... creates the visual impression of an unbroken slab of glass extending from edge to edge on the front side of the tablet." *Id.* According to the court, the "Fidler reference does not create such an impression." *Id.*

[3] Patent owner notes that the difference in appearance between the opaque jar depicted in the McKernan reference and the transparent jar in the '151 Patent would be substantially exacerbated when viewed as intended to be used with a lid selectively attached thereto.

same as the claimed design" when "a designer of ordinary skill would find [the claimed design and the primary reference to be] significantly different in concept (emphasis added)." 673 F.2d at 391. In other words, when a designer of ordinary skill would find the two designs at issue significantly different in concept, that is that the designs create a very different impression, the primary reference cited against the claimed invention is not "basically the same as the claimed design," and therefore, does not create the same visual impression as the claimed design. *Id.*[4] *See also In re Nalbandian,* 661 F.2d 1214 (C.C.P.A. 1981). (In determining obviousness, the proper standard is whether the design would have been obvious to a designer of ordinary skill).

The *Apple* and *Rosen* decisions are right on point. The claimed design of the '151 Patent creates to an ordinary designer a visual impression that is very different from that of the design depicted in McKernan. It is axiomatic that without a primary reference having the same overall visual impression as the claimed design, there can be no finding of obviousness. *See Apple*, 678 F.2d at 1331-32.

The Examiner argues on page 4 of the Office Action that "[t]he designs [of the '151 Patent and the jar of the McKernan reference] are found to be basically the same because their primary characteristics both include stubby cylindrical bodies topped with taller narrower cylindrical necks." This argument amounts to nothing more than roughly comparing the exterior outlines of the two jar designs in a vacuum, that is, without taking into consideration the different

[4] In *Rosen*, the claimed design was a round table with a glass top supported by three "V"-shaped legs with notches at the top. The round glass top of *Rosen* was unskirted (e.g., there was no border covering the outer periphery of the glass), and the glass was inserted into notchings on the legs. The primary reference cited against *Rosen* depicted an oval table with "V"-shaped legs. The table top of the primary reference was skirted at the outer perimeter by a border, and the "V"-shaped legs were notched inside of the table top. Based on this, the *Rosen* court held that the claimed round table design was significantly different in concept from the primary reference because the primary reference "does not give the same visual impression of lightness and suspension in space conveyed by the [claimed invention]". *Id.* at 391. The *Rosen* court held that this is so because the primary reference "embodies a concept of confinement of space, resulting in a different overall appearance and aesthetic appeal." *Id.*

exterior surface finishes of the two jars, and without weighing in the fact that the interior chamber is clearly visible in the claimed jar design, but is not visible in the McKernan design. By merely comparing the outlines of the two jar designs and not comparing anything else, the Examiner is viewing the two jar designs "from too high a level of abstraction."

The Examiner states that "the change from a frosted finish to a clear finish does not affect the underlying form or design so it does not detract from the sameness of the designs." Patent Owner submits that the applicable legal standard is whether the overall appearance of the alleged primary reference is basically the same as that of the claimed design. Simply stated, the "underlying form" or the "underlying design" is not the legal test.

The Examiner's arguments regarding an interior chamber of the McKernan jar design are contradictory. First, the Examiner admits on page 5 of the Office Action that the interior chamber of the McKernan reference cannot be seen "because it is obscured by the frosted exterior finish." Patent Owner agrees.

However, the Examiner then states on page 5 of the Office Action that the McKernan jar has an interior chamber because "the McKernan design is sufficiently tilted so that an opening at the top is visible." As stated above, due to the low image quality of the reproduction of the McKernan publication, one cannot discern whether the McKernan jar design illustrates an opening at the top of the jar. Thus, due to the low quality of the images that depict the McKernan jar design as well as the frosted finish of the base of the McKernan jar design, the Examiner has simply not established that an opening in the McKernan jar even exists, let alone what that opening looks like, that is, what is the overall shape of the opening, how deep is the opening, what does the bottom surface of the opening look like, etc.

In addition, on page 5 of the Office Action the Examiner states that the McKernan jar has an opening because "a jar by definition must have a chamber in its interior." Respectfully, the Examiner's conclusion that the McKernan jar has an opening because a jar "must have a chamber" is speculative at best. Nothing in the record supports the Examiner's premise that "a jar by definition must have a chamber in its interior." Thus, the conclusion that is based on this premise – that the McKernan jar has a chamber – cannot stand.

Therefore, the Examiner has failed to meet his burden of proving that the jar depicted in the McKernan reference has an interior chamber.

However, even assuming, *arguendo*, that the McKernan jar does have an interior opening, the fact that the opening of McKernan jar design has an unknown shape and size, when combined with the visual differences that result from the clear versus frosted exterior surface finishes between the claimed jar design and the design of McKernan, unequivocally establishes that the jar design of the McKernan reference is not "basically the same" as the claimed jar design.

The Examiner argues that the "difference between the[] clear finish of the claim and the frosted finish in McKernan is [not] equivalent to Apples [sic] unbroken flush screen relative to picture frame sunk in appearance on Fiddler." Patent Owner disagrees. Patent Owner maintains that just like the picture frame appearance of the Fiddler tablet is not "basically the same" as the flush screen of the Apple tablet, the entirely transparent appearance of the claimed jar design is not "basically the same" as the mostly opaque appearance of the jar depicted in the McKernan reference.

In addition, the Examiner's reliance on the *Shoe Form Co. Inc. v. Irwin Corp.* 71 USPQ 144 (1946) decision is of no avail. First, the Examiner quotes that "[d]esign is not patentable

because box is made of transparent material." This quotation does not exist in the original text of the *Shoe Form* case. Second, and more importantly, the Examiner quotes from the *Shoe Form* decision that the "imposition of old designs upon new materials does not warrant design patents (emphasis added)." This quotation is irrelevant here because Patent Owner is not arguing that the claimed jar design merits design patent protection merely because it calls for the utilization of a novel transparent material for forming the jar. The point here is that the deliberate application of a frosted exterior surface finish to the McKernan jar design creates a visual impression to an ordinary designer of jars that is substantially different from that of the entirely transparent jar design of the '151 Patent.

Accordingly, Patent Owner submits that an ordinary designer, who, as a matter of law, should not be imbued with hindsight knowledge of the claimed jar design, would not consider the visual impression of the claimed design and visual impression of the design shown in the McKernan reference to be the same. *See L.A. Gear, Inc. v. Thom McAn Shoe Company*, 988 F.2d 1117, 1124 (Fed. Cir. 1993). Thus, contrary to Examiner's contention, the design characteristics of the McKernan jar are not "basically the same [as those of] as the claimed design" and therefore the McKernan reference cannot function as a primary reference under the obviousness standard set forth in *Durling*. 101 F.3d at 103. As a result, the Examiner's rejection under Section 103 of the Patent Statute is not correct.

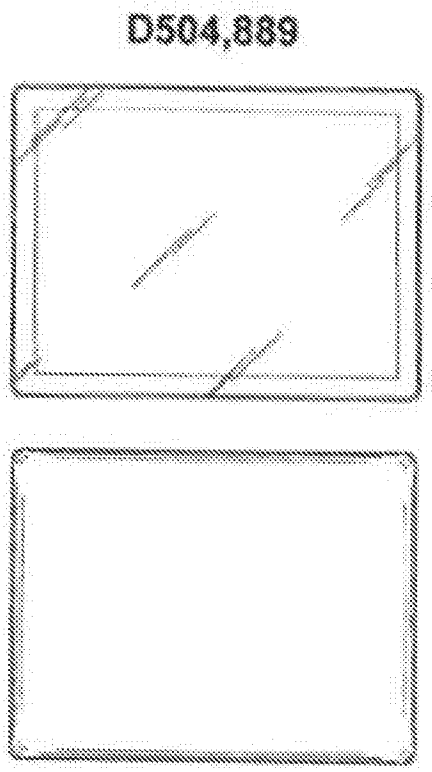
THE ZAMBERLAN REFERENCE DOES NOT QUALIFY AS A SECONDARY REFERENCE

Notwithstanding the above arguments, and even if the McKernan reference is found to be a primary reference under the Durling standard, which Patent Owner submits it should not, the Zamberlan reference, as a matter of law, cannot qualify as a secondary reference as it cannot

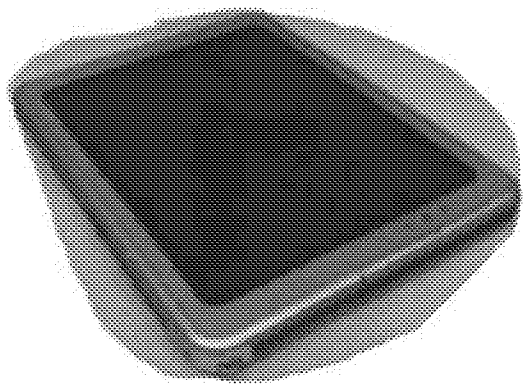
bridge the gap between the McKernan jar and the claimed invention. *See Apple*, 678 F.3d at 1331.

As found in *Apple*, "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other (emphasis added).'" *Id.* at 1330.

In *Apple*, the court held that the TC1000 secondary reference (see illustration below) was not "so related to the [Fidler tablet]" because the "screen area of the [TC1000] device is encircled by a wide rounded-over metallic rim," and because "the screen area [of the TC1000 device] contains indicator lights in several places, unlike the minimalist design claimed in the [Apple design]." 678 F.3d at 1331. See the two designs below.



Apple's Design

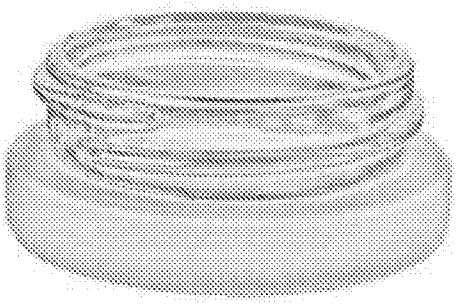


The TC1000 Device

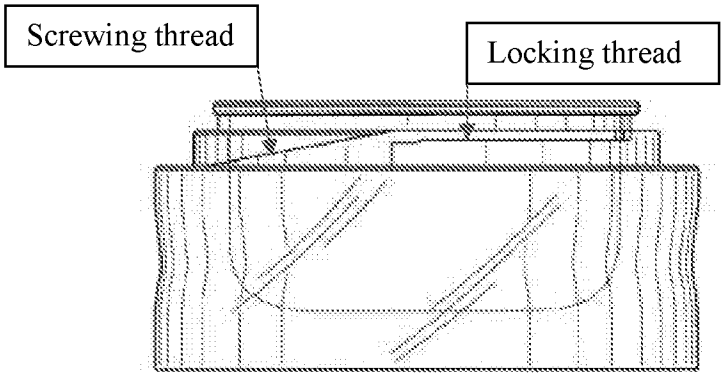
Thus, the *Apple* court held that the TC1000 device "could not bridge the gap between the Fidler and the [Apple design]." *Id.* at 1331.

Similarly, and as depicted below, the design of the Zamberlan reference is so visually different from that of the jar depicted in McKernan that it would be illogical to categorize Zamberlan as a secondary reference under the current circumstances.

McKernan Jar



Zamberlan Jar



Indeed, the Zamberlan reference as a whole illustrates a somewhat "standard"-looking jar having a simple "one-cylinder" base construction and a small step-like neck at the top. The jar design of the Zamberlan reference emphasizes a substantially single-cylinder look because the cylinder that defines the base makes up virtually the entire jar, including the internal storage area. The step-like neck is miniscule in proportion to the single-cylinder base configuration of the Zamberlan jar that it is barely noticeable.

In addition, the step-like neck of the Zamberlan jar has a configuration that is vastly different in appearance from the neck of the McKernan jar. In particular, the neck of the Zamberlan jar has two visibly separate curved screwing threads that extend diametrically

opposite to one another along approximately a quarter of the circumference of the neck. (See one of the two visible screwing threads annotated in the illustration of Zamberlan above, which appears as a sloped ramp).

Further, the neck of the Zamberlan jar has a visually prominent interlocking mechanism for locking a lid in place. The interlocking mechanism depicts two locking threads, each of which extends along approximately a quarter of the circumference of the neck at diametrically opposite portions thereof. (See one of the two visible locking threads annotated in the illustration of Zamberlan above).

Moreover, as shown above, the Zamberlan jar has an inwardly directed "waistline" curve, located circumferentially about the base.

On the other hand, the McKernan reference clearly depicts a distinctive two-cylinder jar design (with one cylinder defining the base and the other defining the upwardly extending neck). In McKernan, both the base and the neck are prominent features of the design. Further, the McKernan jar has only one thread that visually extends all-around the neck, in contrast with the two separate, visually distinct and oppositely directed threads of the Zamberlan jar which extend along the neck. Further, the McKernan jar has no visible interlocking mechanism and no identifiable "waistline" curve along the base.

The Examiner states on page 6 of the Office Action that "[t]he directed comparison of the Zamberlan and the McKernan jars in the patent owner's response is irrelevant." Respectfully, Patent Owner maintains that the applicable legal standard requires that the secondary reference be compared to the primary reference in order to determine whether the secondary reference can be used to bridge the gap between the primary reference and the claimed design. See *Apple* at 1329-30, quoting that "secondary references may only be used to modify the primary reference if

they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other (emphasis added).'" *Id.*, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996).

The Examiner also states on page 6 of the Office Action that the design of the jar of Zamberlan qualifies as being "so related" to the design of McKernan because "it is [a] short cylindrical jar having a threaded smaller diameter neck at the top." While the Zamberlan design may arguably depict "a short cylindrical jar," it does not qualify as being "so related" to the design of the jar depicted in the McKernan reference. This is because the Zamberlan jar design is completely different from the McKernan jar design, as described above.

Therefore, because the Zamberlan reference is so different in its visual presentation from that of the McKernan jar, the Zamberlan reference cannot qualify as a secondary reference under the *Durling* standard. Accordingly, the rejection by the Examiner under 35 U.S.C. § 103 must fail.

COMBINING McKERNAN AND ZAMBERLAN DOES NOT CURE THEIR SHORTCOMINGS

Even assuming, *arguendo*, that the McKernan reference and the Zamberlan reference are valid references for purposes of an obviousness evaluation, the claimed design is nevertheless directed to patentable subject matter as the combination of teachings in the McKernan reference and the Zamberlan reference would not lead an ordinary designer to create the design that is claimed in the '151 Patent. Stated differently, an ordinary designer would not modify the alleged primary reference to McKernan by the secondary reference to Zamberlan in order to arrive at the claimed design of the '151 Patent.

In the Office action, the Examiner submits that "it would have been obvious to a designer of ordinary skill … to have modified the McKernan jar by removing the frosted finish from the

lower body to reveal an inner cavity with rounded corners, as shown and suggested by Zamberlan." Patent Owner does not agree.

In addition, the Examiner maintains that the jar of the McKernan reference must have an interior chamber because jars are "used especially for storing food." See page 7 of the Office Action. Thus, the Examiner opines that the jar of the McKernan reference "could not fulfill its intended use as a vessel for food storage without an interior chamber." *Id.* The Examiner also states that "while the appearance of the chamber [of the McKernan jar design] is obscured, a designer of ordinary skill in the art would expect MeKernan's [sic] jar to have an interior chamber (emphasis added)."

Further, the Examiner states that "Zamberlan discloses a jar that is entirely transparent and the transparent characteristic is being applied to the entire jar of McKernan. There is no selectivity in the way that the transparent characteristic is being applied to the McKernan reference." The Examiner also states that "the interior chamber with rounded corners is being taken from Zamberlan without any modifications and [is] being directly applied to the interior of McKernan."

In the first place, the Examiner's selective use of design characteristics from the Zamberlan and McKernan designs suggests that the Examiner's analysis is driven by impermissible hindsight as to the patented design. The Examiner selects only the outer surface finish and the inner chamber features of the Zamberlan design, and deliberately ignores all other design features taught by Zamberlan.

The Patent Trial and Appeal Board (PTAB) has held that in design cases, the use of only select design characteristics from a secondary reference in conjunction with deliberately ignoring other design characteristics of that secondary reference results in impermissible hindsight as to

the patented design. In other words, the Examiner uses hindsight in order to reconstruct the patented design from select components of various prior art designs. See *Inter Partes* Review 2016-00434, Decision of the Patent Trial and Appeal Board, Patent No. D618,132, paper No. 9, page 16.

Nothing on the record here indicates that an ordinary designer would consider "borrowing" only the interior chamber and the clear exterior finish of the base of the Zamberlan jar design without also "borrowing" other design characteristics from the Zamberlan reference, such as the overall single-cylinder appearance of the Zamberlan design with a neck that is extremely small in proportion to the size of the base, the inwardly-curved "waistline" that is disposed in the middle of the base of the Zamberlan design, the dual screwing threads on the neck of the Zamberlan design and/or the dual locking threads on the neck of the Zamberlan design.

Indeed, the Examiner has not addressed at all how these additional design characteristics of the Zamberlan reference would motivate an ordinary designer to modify the overall appearance of the McKernan jar design - without hindsight - or how the McKernan jar design would appear when modified in light of all of the above-referenced design features of Zamberlan.

Moreover, when applying all of these design characteristics from the Zamberlan reference to the McKernan jar design, the McKernan jar would have a mono-cylinder look where the base of the jar would constitute essentially the entire body of the jar, with the neck being disproportionally miniscule and hence visually negligible. In addition, the McKernan jar design would be modified to have an inwardly-facing "waistline" at mid-height of the body, and the neck of the McKernan jar would have two separate screwing threads and two separate locking

threads. Thus, the overall appearance of the McKernan jar as modified by the teaching of the Zamberlan reference would to be substantially different from the claimed jar design.

In the IPR2016-00434 decision, the challenged design patent claimed an arrangement of a large round central diamond surrounded by several smaller diamonds. The petitioner sought to reconstruct the appearance of the patented design by using a primary reference and a secondary reference to bridge the gap between the primary and secondary references.

In particular, the petitioner in the IPR2016-00434 decision used a secondary reference for the proposition that stones of difference cuts can be combined together, while ignoring the fact that the secondary reference called for a square center stone sitting above the smaller surrounding stones (the patented design depicted a round center stone sitting substantially at the same elevation as the smaller stone). *Id.* at 16.

The PTAB held in the IPR2016-00434 decision that "[t]his selective use of the design characteristics of the prior art suggests that it is driven by a hindsight reconstruction of the invention rather than the objective teachings of the references." *Id.* at 16. In supporting its conclusion, the PTAB opined that "[t]here is nothing on this record to suggest that an ordinary jewelry designer would have considered the use of single-cut periphery stones without the corresponding change in height difference and shape relative to the center stone." *Id.* at 16-17.

Similarly here, there nothing in the record to suggest that an ordinary jar designer should consider solely the transparent surface finish and the interior chamber of the Zamberlan jar design without also considering the large body/miniscule neck, mid-height waistline, dual screwing and/or the dual locking threads of Zamberlan. Notwithstanding, and as stated above, even if the ordinary jar designer were to apply these design features of Zamberlan to the jar

design of McKernan, the resulting design would be substantially different from the claimed jar design.

Furthermore, the Examiner's reasoning appears to be based, at least in part, on combining the teachings of two or more prior art references under the standard that is applicable for evaluation on the issue of obviousness as to a utility patent, as opposed to the standard that should be applied in evaluating obviousness as to a design patent. This is because the Examiner presumes that the jar of McKernan includes the concept of a storage chamber that can be replaced by the storage chamber depicted in Zamberlan. This presumption is not supported by what is shown in the McKernan illustrations, especially since no storage chamber is clearly shown in the jar that is depicted in the McKernan reference. Courts have repeatedly held that the standards for examining (and reexamining) utility and design patents are very different. *See In re Harvey*, 12 F.3d 1061, 1063 (Fed. Cir. 1993), reciting that "[l]ike the examiner, the Board improperly mixed principles of obviousness for utility patents with those for ornamental design patents .... we hold that the Board erred in misapplying the obviousness standard because it admittedly relied upon the prior art Harvey vase as a 'design concept' rather than for its specific design characteristics."

In the Office Action, the Examiner states that the Zamberlan reference suggests modifying the teaching in the McKernan reference in order to transform the frosted base of McKernan into a transparent base merely because Zamberlan shows a transparent jar. While Zamberlan does indeed show a transparent jar, as discussed above, the Zamberlan jar is entirely different <u>in its configuration and appearance</u> from that of the McKernan jar. Since the subject matter at issue here is directed to a design patent, and since the design of the Zamberlan jar is unrelated to the McKernan jar <u>appearance</u>, it follows that Zamberlan fails to suggest making <u>any</u>

modifications to the McKernan jar from a design standpoint. Thus, it is not appropriate for the Examiner to suggest using the teaching in Zamberlan in order to modify the design of the McKernan jar, be it for making it into a transparent object, or for rounding the corners of its interior.

Moreover, even if it made sense to combine the teachings in the McKernan and Zamberlan, *the disclosure in Zamberlan* does not bridge the gap between McKernan and the claimed design of the '151 patent. This is in large part because the McKernan reference is silent regarding the depth of the jar's interior, even if it is assumed that the McKernan jar has an interior chamber. The addition of the Zamberlan reference is of no assistance because Zamberlan teaches that the interior chamber must extend throughout the major part of the base in the vertical direction while the claimed design illustrates that the interior chamber extends only minimally under the shoulder of the base in the vertical direction.

Thus, not only does the combination of select design features of the Zamberlan reference to the McKernan reference result in impermissible hindsight reconstruction of the claimed jar design, but such a combination, even if legally permitted, would form a hybrid jar design that is vastly different in visual appearance from the jar design as claimed in the '151 Patent. Accordingly, the Examiner's rejection of the claimed design based on the combination of teachings in McKernan and Zamberlan is not appropriate.

COMMERCIAL SUCCESS

Secondary considerations, such as commercial success, are relevant to the evaluation of obviousness of a design claim. *See MRC Innovations, Inc. v. Hunter Mfg., LLP*, 747 F.3d 1326, 1335-36 (Fed. Cir. 2014); *Crocs Inc. v. International Trade Commission,* 598 F.3d 1294, 1310, (Fed. Cir. 2010). Indeed, secondary considerations "can be the most probative evidence of non-obviousness…, and enables the... court to avert the trap of hindsight." *Custom Accessories, Inc.*

v. Jeffrey-Allan Indus., Inc., 807 F.2d 955, 960 (Fed. Cir. 1986).

Secondary considerations "may often establish that an invention appearing to have been obvious in light of the prior art was not." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed.Cir.1983). It is important to note that evidence of secondary considerations "… is not just a cumulative or confirmatory part of the obviousness calculus but constitutes independent evidence of nonobviousness." *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1365 (Fed.Cir.2008).

The jars made and sold by the Patent Owner and which practice the claimed design of the '151 Patent have enjoyed significant commercial success. There has been continuous sales growth over the last several years. See the Declaration of inventor Robert Lerman, the principal of Patent Owner Ebottles.com, which was submitted in response to the first Office Action in *Ex Parte* reexamination.

The Examiner suggests that the commercial success of the claimed jar design may be attributable to the use of tetrahydrocannabinol (TCH) extract in the marketplace. The Examiner states that: "[o]utstanding commercial success may be evidence of invention, and in [a] doubtful case may resolve doubt in favor of invention, but commercial success must not be used to create doubt regarding the inventiveness where none would exist otherwise." *In re Coey*, 90 USPQ 216 (1951). Patent Owner agrees.

However, contrary to what the Examiner quotes in *Coey*, the Examiner then seeks to create doubt in the inventiveness of the claimed design by arguing that the commercial success of the jars embodying the claimed design is not due to the design of the jars themselves, but rather by the increase of cannabis-related products in the marketplace. Not only is it impermissible to use commercial success data to create doubt regarding the inventiveness of a

patented design, as set forth in *In re Coey*, but here such doubt is unsupported by Mr. Lerman's declaration or by any other evidence that is in the record.

As stated in Mr. Lerman's declaration, the jars embodying the claimed design comprise 65% of all the jars that are purchased by licensed cannabis producers nationwide. The fact that the number of jars embodying the '151 Patent design account for more than half of the nationwide market share of cannabis jars establishes that the jars are commercially successful due to their design.

A prima facie case of nexus is made when the patentee shows both that there is commercial success, and that the product that is commercially successful is the invention disclosed and claimed in the patent. *See In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed.Cir.1995). Here, both have been demonstrated. Accordingly, the claimed jar design of the '151 Patent is patentable in view of the commercial success evidence that has been presented, and therefore, the Examiner's rejection under 35 U.S.C. § 103 is not appropriate.

CONCLUSION

In view of the above remarks, it is submitted that the claimed design of the '151 Patent is patentably distinct over the prior art relied upon by the Examiner in the Action, especially given the commercial success of the patented design. As such, withdrawal of the obviousness rejection under 35 U.S.C. § 103 is hereby requested.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P. C.

Dated: February 25, 2020

By: /Jeffrey M. Kaden/__
Jeffrey M. Kaden, Reg. No. 31,268
Attorney for Applicant

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Docket No. 8748-019

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Owner	:	LERMAN CONTAINER CORPORATION
Serial No.	:	90/014,262
Filing Date	:	02-11-2019
Title	:	JAR
Group Art No.	:	2917
Examiner	:	HYDER, PHILIP S.
Confirmation No.	:	8506

TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

The Applicant submits a copy of the Patent Owner's website (and an engineering drawing of the jar illustrated in said website) that was cited as non-patent literature listed on the Information Disclosure Statement filed on November 4, 2019 and acknowledged by the Examiner on December 26, 2019. The reference was inadvertently not uploaded. The applicant respectfully requests the prior art be included in the record.

Although no fee is deemed necessary, the Commissioner is authorized to charge Deposit Account 07-1730 for any fees that may be required.

Respectfully submitted,

GOTTLIEB, RACKMAN & REISMAN, P. C.

Dated: February 25, 2020

By: /Jeffrey M. Kaden/
Jeffrey M. Kaden, Reg. No. 31,268
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New York, NY 10016
Telephone: (212) 684-3900
Facsimile: (212) 684-3999

Electronic Acknowledgement Receipt

EFS ID:	38687568
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	D781151
Customer Number:	22440
Filer:	Jeffrey Kaden/Susan Piperno
Filer Authorized By:	Jeffrey Kaden
Attorney Docket Number:	8748-019
Receipt Date:	25-FEB-2020
Filing Date:	11-FEB-2019
Time Stamp:	16:26:55
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Transmittal Letter	8748-019-Transmittal_Letter-25FEB2020.pdf	203729 5de6132c9b1fe5f6c3cb3db7e8afb292999a2bfb	no	1

Warnings:

Information:					
2	Non Patent Literature	8748-019-Thick_Wall_Glass_Concentrate_Jars.pdf	13321160 17e9c2c10f2b6f98e96669f5a52f8d1cfafed46c	no	3
Warnings:					
Information:					
			Total Files Size (in bytes):	13524889	

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If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 90/014,262	Filing Date 02/11/2019	☐ To be Mailed

ENTITY: ☑ LARGE ☐ SMALL ☐ MICRO

APPLICATION AS FILED - PART I

FOR	(Column 1) NUMBER FILED	(Column 2) NUMBER EXTRA		RATE ($)	FEE ($)
☐ BASIC FEE (37 CFR 1.16(a), (b), or (c))	N/A	N/A		N/A	
☐ SEARCH FEE (37 CFR 1.16(k), (i), or (m))	N/A	N/A		N/A	
☐ EXAMINATION FEE (37 CFR 1.16(o), (p), or (q))	N/A	N/A		N/A	
TOTAL CLAIMS (37 CFR 1.16(i))	minus 20 =	*		x $ =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*		x $ =	
☐ APPLICATION SIZE FEE (37 CFR 1.16(s))	If the specification and drawings exceed 100 sheets of paper, the application size fee due is $310 ($155 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).				
☐ MULTIPLE DEPENDENT CLAIM PRESENT (37 CFR 1.16(j))					
* If the difference in column 1 is less than zero, enter "0" in column 2.				TOTAL	

APPLICATION AS AMENDED - PART II

		(Column 1)		(Column 2)	(Column 3)			
AMENDMENT	02/25/2020	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 1	Minus	** 20	= 0		x $ =	0
	Independent (37 CFR 1.16(h))	* 1	Minus	*** 3	= 0		x $ =	0
	☐ Application Size Fee (37 CFR 1.16(s))							
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							
							TOTAL ADD'L FEE	0

		(Column 1)		(Column 2)	(Column 3)			
AMENDMENT		CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	*	Minus	**	=		x $ =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=		x $ =	
	☐ Application Size Fee (37 CFR 1.16(s))							
	☐ FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM (37 CFR 1.16(j))							
							TOTAL ADD'L FEE	

* If the entry in column 1 is less than the entry in column 2, write "0" in column 3.	LIE
** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, enter "20".	/PATRICIA F LEWIS/
*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, enter "3".	
The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.	

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If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Doc code: IDS
Doc description: Information Disclosure Statement (IDS) Filed

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	90014262
Filing Date	2019-02-11
First Named Inventor	Robert LERMAN
Art Unit	2917
Examiner Name	Philip S. HYDER
Attorney Docket Number	8748-019

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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /P.S.H/

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	90014262
Filing Date	2019-02-11
First Named Inventor	Robert LERMAN
Art Unit	2917
Examiner Name	Philip S. HYDER
Attorney Docket Number	8748-019

	1	EBOTTLES.COM, July 2014, www.ebottles.com/showbottles-bottle-1689-kw-THICK_WALL_GLASS_CONCENTRATE_JARS___NOT_CR_CLEAR.htm#, last retrieved on November 1, 2019.

If you wish to add additional non-patent literature document citation information please click the Add button Add

EXAMINER SIGNATURE

Examiner Signature	/Philip S Hyder/	Date Considered	11/27/2019

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	90014262
Filing Date	2019-02-11
First Named Inventor	Robert LERMAN
Art Unit	2917
Examiner Name	Philip S. HYDER
Attorney Docket Number	8748-019

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

☒ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/Jeffrey M. Kaden/	Date (YYYY-MM-DD)	2019-11-04
Name/Print	Jeffrey M. Kaden	Registration Number	31268

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The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	8748-019	8506

22440 7590 12/26/2019
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
12/26/2019	PAPER

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

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

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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/014,262* .

PATENT UNDER REEXAMINATION *D781151* .

ART UNIT *2917* .

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

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

EX PARTE REEXAMINATION FINAL ACTION

Reconsideration has been accorded the merits of the claim in light of the arguments presented by the patent owner. The examiner is not convinced that the rejection of the claim under 35 U.S.C. 103 is unfounded. Accordingly, the rejection is repeated and made final.

Claim Rejections - 35 U.S.C. § 103

The claim is rejected under 35 U.S.C. 103 as being unpatentable over the McKernan Jar in view of the Zamberlan et al. Patent reference D634,202.

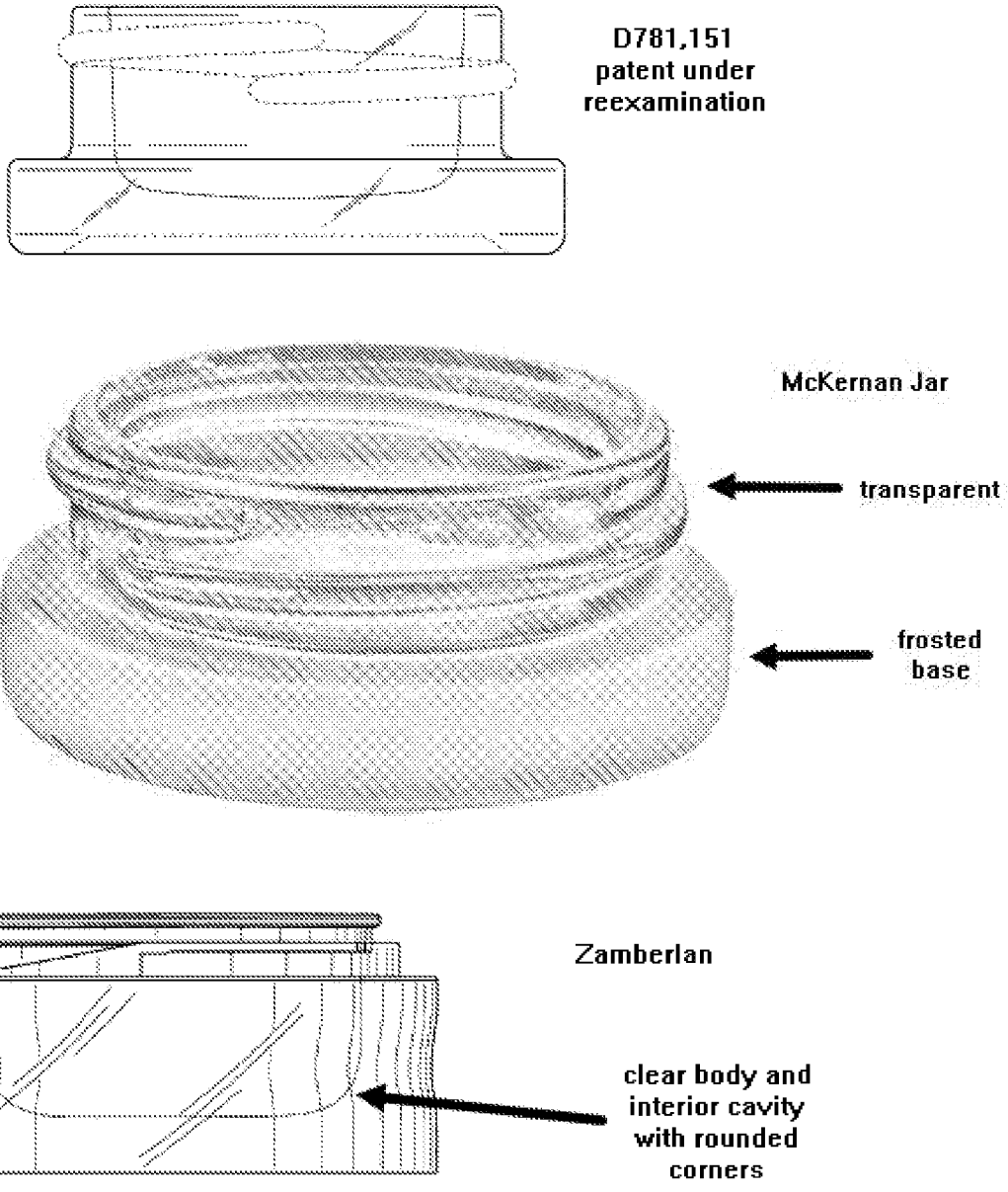
Although the invention is not identically disclosed or described as set forth in 35 U.S.C. 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a designer having ordinary skill in the art to which the claimed invention pertains, the invention is not patentable.

The overall design characteristics of the McKernan reference are basically the same as the design claimed in D781,151. Both jar designs consist of short and wide cylindrical bodies topped with taller narrower cylindrical necks. Any differences in the proportions or shaping of the designs is negligible. The only identifiable difference is that the claimed design is fully transparent whereas the body on McKernan has a frosted finish, so that only the upper neck portion is fully transparent.

The Zamberlan reference D634,202 discloses a similarly stubby jar design in which the body lacks the frosted finish, thus making the body is fully transparent to reveal an inner cavity having the rounded contours.

It would have been obvious to a designer of ordinary skill in the art at the time the invention was made to have modified the McKernan jar by removing the frosted finish from the

lower body to reveal an inner cavity having rounded corners, as shown and suggested by Zamberlan.



Arguments

McKERNAN: THE PRIMARY REFERENCE

The patent owner argues that the primary McKernan reference fails to create the same visual impression as the design in their 'D781,151 patent because the appearances differ in three

respects. Their design is fully transparent and thus "conveys an impression of openness and clarity." Second, the neck of the claimed design is taller than the one on the McKernan jar. Third, the frosted exterior of the McKernan jar makes it "impossible to tell… whether or not it includes any type of interior storage chamber".

When constructing a rejection under 35 U.S.C. 103, the primary reference must comply with the standard established in In re Rosen, 673 F.2d 388, 213 USPQ 347 (CCPA 1982). That is, *"There must be a reference, a something in existence, design characteristics of which are basically same as claimed design in order to support holding of obviousness; such reference is necessary whether holding is based on basic reference alone or on basic reference in view of modifications suggested by secondary references."* The primary reference that was applied in the rejection that led to the In re Rosen decision is vastly different from Rosen's design. The same cannot be said for the differences between McKernan and the design in '151. The differences in the present case are minor and the mere fact that differences exist is not sufficient to justify patentability. The designs are found to be basically the same because their primary characteristics both include stubby cylindrical bodies topped with taller narrower cylindrical necks. Moreover, the wall thicknesses of both designs appear to be substantially the same. Simply put, the basic designs have the same characteristics. The change from a frosted finish to a clear finish does not affect the underlying form or design so it does not detract from the sameness of the designs. Although the examiner acknowledges that the '151 neck is marginally taller than that of McKernan, the examiner finds that this also does not detract from the overall sameness. Both designs show a single ring of threading, claimed or not, and both necks are only tall enough to accommodate the single ring of threading. The difference in height is not so great that the '151 design could accommodate multiple rings of threading whereas McKernan cannot.

The examiner does not believe that the assertion that McKernan jar may not have an interior chamber has merit. The McKernan design is sufficiently tilted so that an opening at the top is visible. Moreover, a jar by definition must have a chamber in its interior. Although the appearance of the chamber is cannot be seen because it is obscured by frosted exterior finish, it is presumed that the McKernan jar, as with all jars, has an interior chamber. Even if the interior chamber of McKernan has a different shape than the one in '151; that in and of itself, is not sufficient to support the assertion that the designs characteristically different.

In Apple 678 F.2d at 1331.32, the federal Circuit found that the Fidler tablet does not create the same visual impression as the Apple tablet because Fidler's screen *"appears to sink into the frame, creating a 'picture frame' effect"..."whereas the screen on the apple design covers essentially the entire face of the patented design without any breaks or interruptions."...creating "the visual impression of an unbroken slab of glass extending from edge to edge on the front side of the tablet."* The examiner does not agree that the difference between their clear finish of the claim and the frosted finish in McKernan is equivalent to Apples unbroken flush screen relative to the picture framed sunk in appearance on Fidler. The differences under discussion in In re Rosen and Apple are significantly greater than the differences between McKernan and the '151 patent. Moreover, past precedence supports the examiner's position that a new and patentable design cannot be created simply by constructing an existing design using transparent material. *"Design is not patentable because box is made of transparent material; in recent years, there has been vast increase in number of new materials available for fabrication; imposition of old designs upon new materials does not warrant design patents."* Shoe Form Co. Inc. v. Irwin Corp. 71 USPQ 144 (1946). Contrary to the findings of Apple, the examiner believes that side-by-side comparison of this design and McKernan would

not result in a determination of them being found to have characteristically different overall appearances.

ZAMBERLAN: THE SECONDARY REFERENCE

There is no precise standard for determining how closely related the overall appearance of a secondary reference must be to the basic reference or the claimed design (D781,151) in order to qualify as a proper secondary reference. The similar guidance is found in many decisions and it is best stated in MRC Innovations, Inc. v. Hunter Mfg., LLP, 110 USPQ2d 1235 (Fed. Cir. 2014) *"[W]e have explained this requirement [there must be some suggestion in the prior art to modify the basic design] to mean that "the teachings of prior art designs may be combined only when the designs are 'so related that the appearance of certain ornamental features in one would suggest the application of those features to the other.'" In other words, it is the mere similarity in appearance that itself provides the suggestion that one should apply certain features to another design."* A secondary reference need not be strikingly similar to or substantially the same as the claimed design. It need only be so closely related that it would suggest to one of ordinary skill in the art, the application of certain features to the other reference. Zamberlan, McKernan and the design claimed in'151 are all jars and thus are analogous. Zamberlan qualifies are being "so related" because it is short cylindrical jar having a threaded smaller diameter neck at the top. At the time the design in the '151 patent was created, a designer of ordinary skill in the art would have been charged with the knowledge subject matter of in the Zamberlan reference including the transparency and interior cavities with rounded edges, and would have been expected to be able to apply them to similar designs such as McKernan. The directed comparison of the Zamberlan and the McKernan jars in the patent owner's responses is irrelevant.

COMBINATION OF McKERNAN AND ZAMBERLAIN

A jar is generally defined as a broad-mouthed container usually made of glass, with a wide top opening, and used especially for storing food. It is counter intuitive to conclude that the McKernan jar would lack an interior chamber. It could not fulfill its intended use as vessel for food storage without an interior chamber. Furthermore, the image of McKernan clearly shows the top being open so that the interior cavity can be accessed. The examiner does not believe that there is merit to the argument that McKernan does fulfill the Rosen requirement of being basically the same because it lacks an interior chamber. While the appearance of the chamber is obscured, a designer of ordinary skill in the art would expect MeKerman's jar to have an interior chamber.

The examiner is aware of the In re Harvey decision cited by the applicant and the rejection does not run afoul of the standard stated therein. In the Harvey rejection, a prior art reference were relied upon as a "design concept" rather than for its' specific design characteristics. Zamberlan discloses a jar that is entirely transparent and the transparent characteristic is being applied to the entire jar of McKernan. There is no selectivity in the way that the transparent characteristic is being applied to the McKernan reference. Similarly, the interior chamber with rounded lower corners is being taken from Zamberlan without any modifications and being directly applied to the interior of McKernan.

In Apple v. Samsung, the TC1000 device was not found to bridge the gap between Fidler and Apple's 889 patent because the combination of art did not result in a design have an uninterrupted flush screen covering the entire top surface. Applying the front face of the TC1000 to Fidler would still result in a design with a wide frame or border around the screen. In the present case, the examiner believes that Zamberlan successfully addresses both deficiencies in

the McKernan reference by teaching the application of the transparent finish to the entire body of the design and teaching the appearance of the interior cavity.

COMERCIAL SUCCESS

MPEP 1504.03: When evidence of commercial success is submitted, examiners must evaluate it to determine whether there is objective evidence of success, and whether the success can be attributed to the ornamental design. See Litton System, Inc. v. Whirlpool Corp., 728 F.2d 1423, 221 USPQ 97 (Fed. Cir. 1984); In re Nalbandian, 661 F.2d 1214, 211 USPQ 782 (CCPA 1981). An affidavit or declaration under 37 CFR 1.132 has minimal evidentiary value on the issue of commercial success if there is no nexus or connection between the sales of the article in which the design is embodied and the ornamental features of the design. See Avia Group Int'l Inc. v. L.A. Gear, 853 F.2d 1557, 7 USPQ2d 1548 (Fed. Cir. 1988).

The declaration by Robert Lerman describes the commercial success and growth in the sales of the bottles employing the claimed design. A number of factors can contribute to commercial success and sales growth that are not attributable to the ornamental design. The declaration fails to establish certain nexus that the appearance is solely responsible for the success. For example, the majority of the jars employing the design are used to contain concentrated forms of cannabis and the growth of the sales and use of the extract THC could also be a major contributing factor in the commercial success. Convincing evidence of commercial success must show that the ornamental appearance is the contributing factor to the success.

"Outstanding commercial success may be evidence of invention, and in doubtful case may resolve doubt in favor of invention, but commercial success must not be used to create doubt regarding inventiveness where none would exist otherwise." In re Coey et al. 90 USPQ 216 (1951)

The examiner has no doubt that the rejection is appropriate. The basic McKernan references fully complies with the Rosen standard and the secondary Zamberlan teaches the differences in the appropriate manner. The examiner is so convinced that the rejection is appropriate that it is doubtful that any evidence of commercial success would be effective.

In view of the above discussion, the examiner is maintaining the grounds for the rejection of the claim in Design patent D781,151 under 35 USC 103.

Conclusion

The claim is finally rejected under 35 U.S.C. §103.

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. D781,151 throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

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

By Mail to: Mail Stop *Ex Parte* Reexam
Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication should be directed to Philip S. Hyder at telephone number (571) 272-2621.

/Philip S Hyder/
Primary Examiner, Art Unit 2917

/KEVIN K RUDZINSKI/
Primary Examiner, Art Unit 2911

DARLINGTON LY
Primary Examiner, Art Unit 2914

Office Action in Ex Parte Reexamination	**Control No.** 90/014,262	**Patent Under Reexamination** D781151	
	Examiner PHILIP S HYDER	**Art Unit** 2917	**AIA (FITF) Status** Yes

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

a. ☑ Responsive to the communication(s) filed on 04 November 2019.
☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.

b. ☑ This action is made FINAL.

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

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

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

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

Part II SUMMARY OF ACTION

1a. ☑ Claims 1 are subject to reexamination.
1b. ☐ Claims _____ are not subject to reexamination.
2. ☐ Claims _____ have been canceled in the present reexamination proceeding.
3. ☐ Claims _____ are patentable and/or confirmed.
4. ☑ Claims 1 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ The drawings, filed on _____ are acceptable.
7. ☐ The proposed drawing correction, filed on _____ has been (7a) ☐ approved (7b) ☐ disapproved.
8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have
   1 ☐ been received.
   2 ☐ not been received.
   3 ☐ been filed in Application No. _____.
   4 ☐ been filed in reexamination Control No. _____.
   5 ☐ been received by the International Bureau in PCT application No. _____.
   * See the attached detailed Office action for a list of the certified copies not received.
9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.
10. ☐ Other: _____

cc: Requester (if third party requester)

PTO/SB/08a (02-18)
Approved for use through 11/30/2020. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	90014262
Filing Date	2019-02-11
First Named Inventor	Robert LERMAN
Art Unit	2917
Examiner Name	Philip S. HYDER
Attorney Docket Number	8748-019

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Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	90014262
	Filing Date	2019-02-11
	First Named Inventor	Robert LERMAN
	Art Unit	2917
	Examiner Name	Philip S. HYDER
	Attorney Docket Number	8748-019

	1	EBOTTLES.COM, July 2014, www.ebottles.com/showbottles-bottle-1689-kw-THICK_WALL_GLASS_CONCENTRATE_JARS___NOT_CR_CLEAR.htm#, last retrieved on November 1, 2019.

If you wish to add additional non-patent literature document citation information please click the Add button Add

EXAMINER SIGNATURE

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	90014262
Filing Date	2019-02-11
First Named Inventor	Robert LERMAN
Art Unit	2917
Examiner Name	Philip S. HYDER
Attorney Docket Number	8748-019

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

☒ The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/Jeffrey M. Kaden/	Date (YYYY-MM-DD)	2019-11-04
Name/Print	Jeffrey M. Kaden	Registration Number	31268

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s)	:	Robert LERMAN
Application/Control No.	:	90/014,262
Filing Date	:	February 11, 2019
Patent No. Under Reexamination	:	D781,151
Title	:	JAR
Examiner	:	Philip S. HYDER
Group Art Unit	:	2917
Confirmation No.	:	8506
Docket No.	:	8748-019

INFORMATION DISCLOSURE STATEMENT

Mail Stop *Ex Parte* Reexam
Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

In accordance with 37 C.F.R. § 1.56, the material listed on the attached form PTO/SB/08 is being brought to the attention of the Examiner for consideration in connection with the examination of the above-identified patent application. It is respectfully requested that the Examiner indicate consideration of the cited reference by returning a copy of the attached PTO/SB/08 with initials or other appropriate remarks.

Pursuant to 37 C.F.R. § 1.98(a)(2)(ii), a copy of the non-patent literature is provided herewith.

In accordance with 37 C.F.R. § 1.97(g) and (h), the filing of this Information Disclosure Statement shall not be construed as a representation that a search has been made, an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. § 1.56(b) or an admission that the information cited in the statement is, or is considered to be, prior art.

Applicant's attorney hereby authorizes that any such fees related to this Information Disclosure Statement be charged to Deposit Account No. 07-1730, Docket No. 8748-019.

Respectfully submitted,

Date: November 4, 2019

By: /Jeffrey M. Kaden/
Jeffrey M. Kaden, Reg. No. 31,268

USPTO Correspondence Address:
GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Applicant
270 Madison Avenue
New York, New York 10016-0601
Telephone: (212) 684-3900

Electronic Acknowledgement Receipt

EFS ID:	37644056
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	D781151
Customer Number:	22440
Filer:	Akiko Sakagami
Filer Authorized By:	
Attorney Docket Number:	8748-019
Receipt Date:	04-NOV-2019
Filing Date:	11-FEB-2019
Time Stamp:	12:39:19
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Response after non-final action-owner timely	8748-019-Response-NFOA-ExParteReexam-11-4-2019.pdf	499227 2d5478d739a2517affde69e25f9cb85928747099	no	16

Warnings:

Information:					
2	Reexam Miscellaneous Incoming Letter	8747-019-LermanDeclaration-11-4-2019.pdf	110004 498a2d8da6a80242e850ea4dde38e72eeecc3547	no	3
Warnings:					
Information:					
3	Information Disclosure Statement (IDS) Form (SB08)	8748-019-IDS-SB08.pdf	1034344 6a55a75b9967f6838b685d59801318fdc00d992e	no	4
Warnings:					
Information:					
A U.S. Patent Number Citation or a U.S. Publication Number Citation is required in the Information Disclosure Statement (IDS) form for autoloading of data into USPTO systems. You may remove the form to add the required data in order to correct the Informational Message if you are citing U.S. References. If you chose not to include U.S. References, the image of the form will be processed and be made available within the Image File Wrapper (IFW) system. However, no data will be extracted from this form. Any additional data such as Foreign Patent Documents or Non Patent Literature will be manually reviewed and keyed into USPTO systems.					
4	Transmittal Letter	8748-019-Transmital_LTR-IDS_11-4-19.pdf	22138 8fffacbd7376769190e3f863d46648fd88316362	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	1665713		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Applicant and Patent Owner	:	Ebottles.com
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

DECLARATION OF ROBERT LERMAN

1. I am the principal of patent owner Ebottles.com and the inventor of the claimed design of the U.S. Design Patent No. 781,151 (the "151 Patent"). I submit this Declaration in support of Patent Owner's response to the non-final Office Action dated September 3, 2019 in the subject Ex Parte Reexamination.

2. I make this Declaration from personal knowledge.

3. I respectfully request that the Examiner take into account the commercial success of jars embodying the claimed design of the '151 Patent (the "Jar" or "Jars").

4. Since its introduction, the Jar has enjoyed a considerable amount of commercial success and continued sales growth.

5. I consider this success to be attributable, at least in part, to the uniqueness of the jar design depicted in the '151 Patent.

6. In the past three years, our company has manufactured and sold more than 10 million units of the Jars.

7. In 2016, Ebottles.com manufactured and sold more than 1 million units of the Jars.

8. In 2017, Ebottles.com manufactured and sold more than 2.5 million units of the Jars.

9. In 2018, Ebottles.com manufactured and sold more than 6.5 million units of the Jars.

10. As you can see from these figures, we have experienced tremendous growth in our sales of the Jar, as sales have more than doubled each year since we introduced the Jar.

11. The vast majority of our clients who purchase the Jars use them to contain concentrated forms of cannabis.

12. Based on my knowledge of the cannabis industry, including the number of licensed producers of cannabis concentrates nationwide, I would estimate that sales of the Ebottles.com Jar comprise, in units, upwards of sixty five percent (65%) of jars purchased by such licensed producers.

I hereby declare, that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these

statements were made with the knowledge that willful false statements and the like so made are punishable as perjury.

/s/ Robert Lerman
Robert Lerman

Dated: New York, New York
November 4, 2019

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Reexamination of	:	D781,151
Applicant and Patent Owner	:	Ebottles.com
Inventor(s)	:	Robert Lerman
Reexamination Control No.	:	90/014,262
Reexam Filing Date	:	February 11, 2019
Title	:	JAR
Group Art Unit	:	2917
Examiner	:	Philip S. Hyder
Confirmation No.	:	8506
Atty. Docket No.	:	8748-019

RESPONSE TO OFFICE ACTION

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

Commissioner:

This communication is submitted in response to the non-final Office Action dated September 3, 2019 in the subject Ex Parte Reexamination. The Examiner is respectfully requested to consider the following remarks. Reconsideration and withdrawal of the outstanding rejections and allowance of the claimed design is earnestly solicited.

REMARKS

Patent Owner responds as follows:

CLAIM REJECTION – 35 U.S.C. § 103

In the Office Action, the Examiner rejects the claimed design of the U.S. Design Patent No. 781,151 (the "151 Patent") under AIA 35 U.S.C. § 103 as being unpatentable over the reference to the McKernan jar (cited in the request for *Ex Parte* Reexamination) in view of U.S. Design Patent No. D634,202 to Zamberlan (cited by the Examiner).

In particular, the Examiner states that "the overall design characteristics of the McKernan reference are basically the same as [those of] the design claimed in [the '151 Patent]." In addition, the Examiner contends that "both jar designs consist of short and wide cylindrical bodies topped with taller narrower cylindrical necks." The Examiner further contends that "any differences in the proportioning or shaping of the designs is negligible. The only identifiable difference is that the claimed design is fully transparent whereas the body on McKernan has a frosted finish, so that only the upper neck portion is fully transparent."

Further on in the Office Action, the Examiner contends that "Zamberlan … discloses a container design that is quite similar to [the design illustrated in the '151 Patent]." [1]The Examiner states that Zamberlan discloses "a cylindrical transparent container … [which] lacks the frosted finish so the body is fully transparent and an inner cavity with the rounded contours is fully visible."

[1] The Examiner's contention that the design of the jar in the Zamberlan reference is similar to the design of the jar claimed in '151 Patent jar is irrelevant. The relevant question, as discussed hereinafter, is whether the Zamberlan jar is related in appearance to the design of the McKernan jar. *See Apple, Inc., v. Samsung Elecs. Co.*, 678 F.3d 1314, 1331 (Fed. Cir. 2012).

The Examiner then concludes that "it would have been obvious to a designer of ordinary skill … to have modified the McKernan jar by removing the frosted finish from the lower body to reveal an inner cavity with rounded corners as shown and suggested by Zamberlan … because the applied references are so related that the appearance of features shown in one would suggest the application of those features to the other."

The Patent Owner respectfully traverses the rejection.

As will be described in detail below, it is submitted that the rejection set forth in the outstanding Office Action should be withdrawn. This is because (1) the McKernan reference cannot be a primary reference, (2) the Zamberlan patent does not qualify as a secondary reference, (3) the Examiner improperly combines arbitrarily selected features from McKernan and Zamberlan in order to supposedly arrive at the claimed design, and (4) the product bearing the claimed design has been commercially successful.

THE TEST FOR OBVIOUSNESS

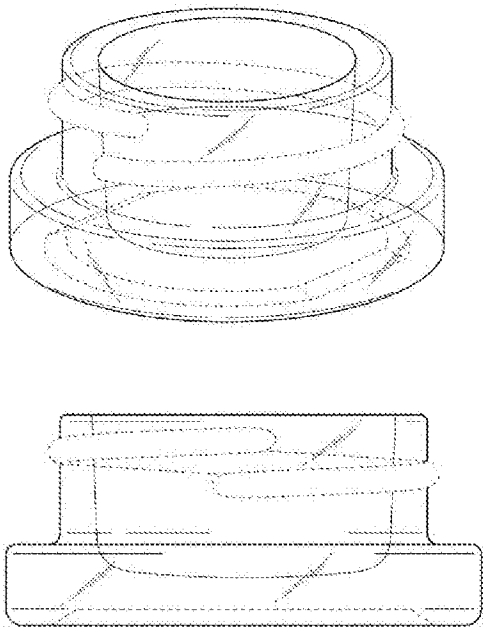
In analyzing an ornamental design for obviousness, "one must [first] find a single reference, 'a something in existence, the design characteristics of which are basically the same as the claimed design.'" *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1329-1330 (Fed. Cir. 2012), quoting *Durling v. Spectrum Furniture Co, Inc.*, 101 F.3d 100, 103 (Fed. Cir. 1996), which in turn quotes *In re Rosen*, 673 F.2d 388, 391 (C.C.P.A. 1982). Second, "other references may be used to modify [the primary reference] to create a design that has the same overall visual appearance as the claimed design." *Apple* at 1329. However, the "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those

features to the other.'" *Id.* at 1329-30, quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996).

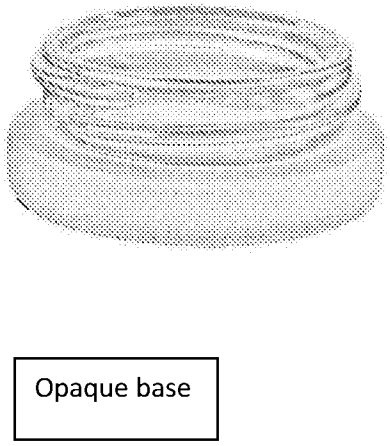
THE McKERNAN REFERENCE CANNOT BE A PRIMARY REFERENCE

As a matter of law, McKernan cannot be a primary reference because it does not create the same visual impression as the '151 Patent.

The claimed design and the McKernan jar are reproduced below.



The '151 Patent Design



The McKernan jar

As illustrated in the figures of the '151 Patent (see above), the claimed design teaches a transparent jar having a base that is substantially wider than its neck. Since the entire jar of the claimed design is transparent, the claimed jar design as a whole conveys an impression of openness and clarity as both the exterior shape of the jar as well as the interior storage chamber thereof are visible from the outside. In other words, the claimed jar design allows one to clearly

see the overall three-dimensional configuration of the jar when viewed from the outside. In addition, anything that is stored or housed in the interior chamber of the claimed jar design is readily visible from the outside.[2]

In contrast, the jar depicted in the McKernan reference, while arguably also having a base that is wider than its neck, has an appearance that is very different than that of the claimed jar design. This is in large part because the jar of the McKernan reference has a large and rather pronounced opaque base. Indeed, the Examiner admits that the base of the jar depicted in the McKernan reference is "frosted." As can be appreciated, a frosted surface finish either substantially diffuses light or blocks the transmission of light altogether. In either case, based on the teaching of the McKernan reference, one is not able to see beneath the surface of the base of the jar that is shown. Stated another way, the base of the jar of the McKernan reference appears as a solid opaque object that is visually closed from the outside, thereby preventing the ordinary observer from seeing inside of the base.

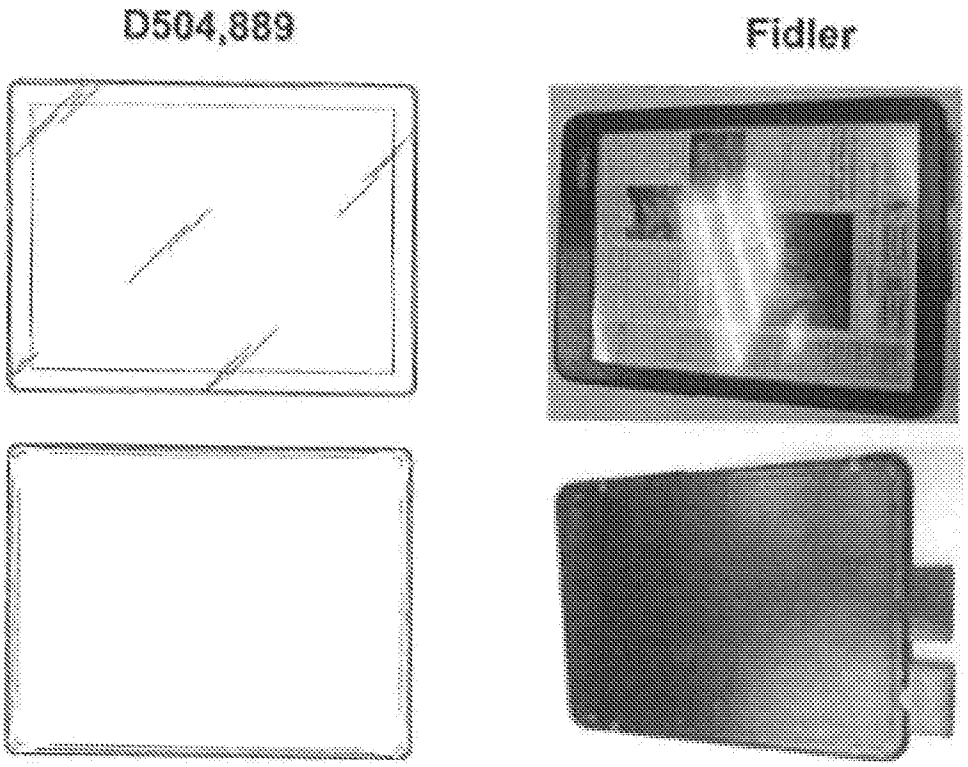
Moreover, the Examiner should not ignore the fact that the neck of the claimed design, as compared to the size of the base, is substantially taller than that of the neck of the jar depicted in the McKernan reference. This design feature, in combination with the claimed jar design being transparent, as discussed above, presents an overall visual impression that is markedly different from what is disclosed by the McKernan reference.

Further, it is virtually impossible to tell from viewing the jar of the McKernan reference whether or not it includes any type of an interior storage chamber. The claimed jar design of the '151 Patent, on the other hand, has an interior chamber defining a bowl-like configuration located below the shoulder of the base as one of its prominent design features.

[2] While not per se relevant on the issue of obviousness in a design patent context, the Patent Owner notes that the jar of the '151 Patent, because of its design, has enhanced child-proof characteristics.

In the *Apple* decision discussed *supra* (hereinafter "*Apple*" for brevity purposes), the design of a tablet by Fidler was used by the federal trial court as a primary reference to obviate Apple's U.S. Design Patent No. D504,889. The Federal Circuit disagreed.

A side-by-side comparison of the Fidler and Apple designs is reproduced below:



In deciding that the Fiddler design was not a primary reference, the Federal Circuit in *Apple* made clear that the trial courts (and the Examiner) should avoid "view[ing] the various designs from too high a level of abstraction (emphasis added)." The Federal Circuit in *Apple* held that "Fidler does not qualify as a primary reference simply by disclosing a rectangular tablet with four evenly rounded corners and a flat back." *Id.* at 1332.

The standard applied by the Federal Circuit in *Apple* applies here. Patent Owner submits that the jar depicted in the McKernan reference cannot qualify as a primary reference merely by disclosing a jar with a base that is wider than the neck. Doing so amounts to inappropriately

viewing the jar depicted in the McKernan reference "from too high a level of abstraction." *Apple* at 1332.

In *Apple*, the Federal Circuit further held that the Fidler tablet does not create the same visual impression as Apple's tablet design as claimed in U.S. Design Patent No. D504,889. The Federal Circuit opined that "[a] side-by-side comparison of the two designs shows substantial differences in the overall visual appearance between the patented design and the Fidler reference." *Apple* at 1330. [3]

Similarly here, the design of the McKernan jar is significantly different from that of the claimed design of the '151 Patent. The claimed invention conveys an overall visual impression of openness and clarity, as explained hereinabove, due to the jar of the claimed design being entirely transparent, while the jar depicted in the McKernan reference conveys a masked visual impression since it is shown as being predominantly opaque.[4]

In *Rosen*, the Court of Customs And Patent Appeals (the predecessor appeals court to the Federal Circuit) held that a primary reference can be disqualified as not being "basically the same as the claimed design" when "a designer of ordinary skill would find [the claimed design and the primary reference to be] significantly different in concept (emphasis added)." 673 F.2d at 391. In other words, when a designer of ordinary skill would find the two designs at issue

[3] In determining that the two designs have substantial differences in their overall visual appearance, the Federal Circuit emphasized that "the frame of the Fidler tablet creates a very different impression from the 'unframed' D'889 design." *Apple* at 1330. The court held that the Fidler screen "appears to sink into the frame, creating a 'picture frame' effect." *Id.* at 1331. In addition, the court held that the "'picture frame effect break[s] the continuity between the frame and the screen embedded within it." *Id.* In contrast with the Fidler tablet, the court opined that the *Apple* design "covers essentially the entire face of the patented design without any breaks or interruptions." *Id.* For this reason, the court held that "[Apple's design] ... creates the visual impression of an unbroken slab of glass extending from edge to edge on the front side of the tablet." *Id.* According to the court, the "Fidler reference does not create such an impression." *Id.*

[4] Patent owner notes that the difference in appearance between the opaque jar depicted in the McKernan reference and the transparent jar in the '151 Patent would be exacerbated when viewed as intended to be used with the lid selectively attached thereto.

significantly different in concept, that is that the designs create a very different impression, the primary reference cited against the claimed invention is not "basically the same as the claimed design," and therefore, does not create the same visual impression as the claimed design. *Id.*[5] *See also In re Nalbandian*, 661 F.2d 1214 (C.C.P.A. 1981). (In determining obviousness, the proper standard is whether the design would have been obvious to a designer of ordinary skill).

The Rosen decision is right on point. The claimed design of the '151 Patent creates a very different visual impression to a designer of ordinary skill than that of the jar design depicted in McKernon. It is axiomatic that without a primary reference having the same overall visual impression as the claimed design, there can be no finding of obviousness. *See Apple*, 678 F.2d at 1331-32.

Accordingly, Patent Owner submits that an ordinary designer, who, as a matter of law, should not be imbued with hindsight knowledge of the claimed jar design, would not consider the visual impression of the claimed design and visual impression of the design shown in the McKernan reference to be the same. *See L.A. Gear, Inc. v. Thom McAn Shoe Company*, 988 F.2d 1117, 1124 (Fed. Cir. 1993). Thus, contrary to Examiner's contention, the design characteristics of the McKernan jar are not "basically the same [as those of] as the claimed design" and therefore the McKernan reference cannot function as a primary reference under the obviousness

[5] In *Rosen*, the claimed design was a round table with a glass top supported by three "V"-shaped legs with notches at the top. The round glass top of *Rosen* was unskirted (e.g., there was no border covering the outer periphery of the glass), and the glass was inserted into notchings on the legs. The primary reference cited against *Rosen* depicted an oval table with "V"-shaped legs. The table top of the primary reference was skirted at the outer perimeter by a border, and the "V"-shaped legs were notched inside of the table top. Based on this, the *Rosen* court held that the claimed round table design was significantly different in concept from the primary reference because the primary reference "does not give the same visual impression of lightness and suspension in space conveyed by the [claimed invention]". *Id.* at 391. The *Rosen* court held that this is so because the primary reference "embodies a concept of confinement of space, resulting in a different overall appearance and aesthetic appeal." *Id.*

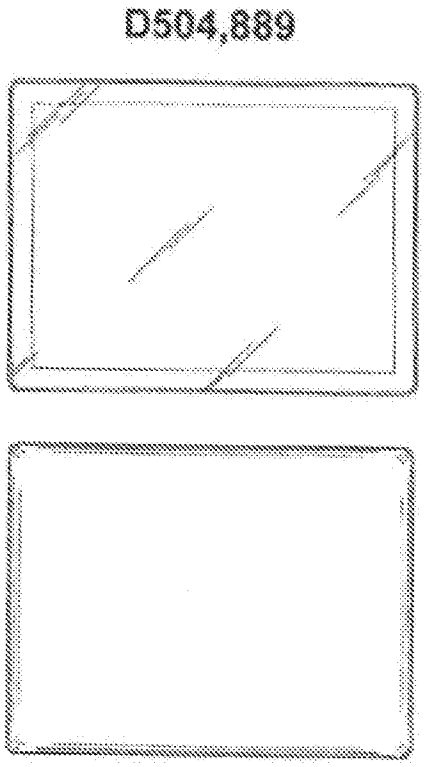
standard set forth in *Durling*. 101 F.3d at 103. As a result, the Examiner's rejection under Section 103 of the Patent Statute is no longer viable.

THE ZAMBERLAN REFERENCE DOES NOT QUALIFY AS A SECONDARY REFERENCE

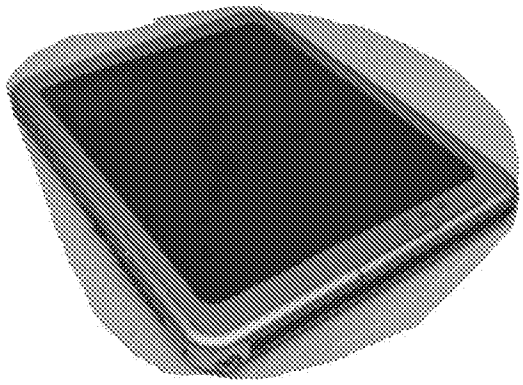
Notwithstanding the above arguments, and even if the McKernan reference is found to be a primary reference under the Durling standard, which Patent Owner submits it should not, the Zamberlan reference, as a matter of law, cannot qualify as a secondary reference as it cannot bridge the gap between the McKernan jar and the claimed invention. *See Apple*, 678 F.3d at 1331.

As found in *Apple*, "secondary references may only be used to modify the primary reference if they are 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other (emphasis added).'" *Id.* at 1330.

In *Apple*, the court held that the TC1000 secondary reference (see illustration below) was not "so related to the [Fidler tablet]" because the "screen area of the [TC1000] device is encircled by a wide rounded-over metallic rim," and because "the screen area [of the TC1000 device] contains indicator lights in several places, unlike the minimalist design claimed in the [Apple design]." 678 F.3d at 1331. See the two designs below.



Apple's Design

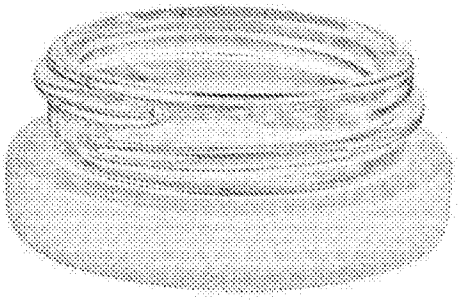


The TC1000 Device

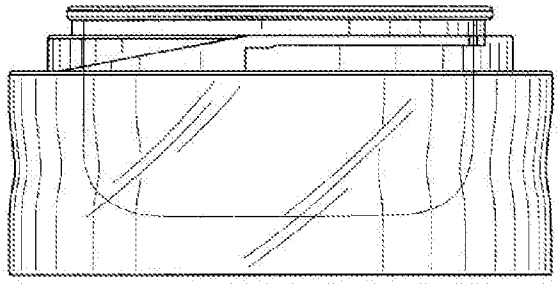
Thus, the *Apple* court held that the TC1000 device "could not bridge the gap between the Fidler and the [Apple design]." *Id.* at 1331.

Similarly, and as depicted below, the design of the Zamberlan reference is so visually different from that of the jar depicted in McKernon that it would be illogical to categorize Zamberlan as a secondary reference under the current circumstances.

McKernan Jar



Zamberlan Jar



Indeed, the Zamberlan reference as a whole illustrates a somewhat "standard"-looking jar having a simple "one-cylinder" construction and a small step-like neck at the top. The jar design of the Zamberlan reference emphasizes a substantially single-cylinder look because the cylinder that defines the base makes up virtually the entire jar, including internal storage area. The step-like neck is so small in proportion to the substantially single cylinder configuration of the Zamberlan jar that it is almost barely noticeable.

In addition, the step-like neck of the Zamberlan jar has a configuration that is vastly different in appearance from the neck of the McKernan jar. In particular, the neck of the Zamberlan jar has two visibly separate curved threads, each of which extends along approximately a quarter of the circumference of the neck at diametrically opposite portions thereof. (See the left half portion of the neck of the Zamberlan jar above, illustrating one of the two curved threads which appears as a sloped ramp).

Further, the neck of the Zamberlan jar has a visually prominent interlocking mechanism for locking a lid in place. The interlocking mechanism depicts two locking threads, each of which extends along approximately a quarter of the circumference of the neck at diametrically

opposite portions thereof. (See the prominent locking thread extending along the bottom right half of the neck, adjacent to the thread, in the illustration of Zamberlan above).

Moreover, as shown above, the Zamberlan jar has an inwardly directed "waistline" curve, located circumferentially about the base.

On the other hand, the McKernan reference clearly depicts a distinctive two-cylinder jar design (with one cylinder defining the base and the other defining the upwardly extending neck). In McKernan, both the base and the neck are prominent features of the design. Further, the McKernan jar has only one thread that visually extends all-around the neck, in contrast with the two separate and visually distinct threads of the Zamberlan jar which extend along diametrically opposite portions of the neck. Further, the McKernan jar has no visible interlocking mechanism and no identifiable "waistline" curve along the base.

Therefore, the Zamberlan reference is so different in its visual presentation from that of the McKernan jar that it cannot qualify as a secondary reference under the *Durling* standard. *See Apple* at 1331 (the Durling test requires that "secondary references [must be] 'so related to the primary reference that the appearance of certain ornamental features in one would suggest the application of those features to the other.")

COMBINING McKERNAN AND ZAMBERLAN DOES NOT CURE THEIR SHORTCOMINGS

Even when assuming, arguendo, that the McKernan reference and the Zamberlan reference are valid references for purposes of an obviousness evaluation, the claimed design is nevertheless directed to patentable subject matter as the combination of teachings in the McKernan reference and the Zamberlan reference would not lead an ordinary designer to create the design that is claimed in the '151 Patent. Stated differently, an ordinary designer would not

modify the alleged primary reference to McKernon by the secondary reference to Zamberlan in order to arrive at the claimed design of the '151 Patent.

In the Office action, the Examiner submits that "it would have been obvious to a designer of ordinary skill … to have modified the McKernan jar by removing the frosted finish from the lower body to reveal an inner cavity with rounded corners as shown and suggested by Zamberlan … because the applied references are so related that the appearance of features shown in one would suggest the application of those features to the other." Patent Owner does not agree.

In the first place, the Examiner's reasoning is flawed since it appears to be based, at least in part, on combining the teachings of two or more prior art references under the standard that is applicable for evaluation on the issue of obviousness as to a utility patent, as opposed to the standard that should be applied in evaluating obviousness as to a design patent. This is because the Examiner presumes that the jar of McKernan includes the concept of a storage chamber that can be replaced by the storage chamber depicted in Zamberlan. This presumption is not supported by what is shown in the McKernan illustrations, especially since no storage chamber is shown in the jar that is depicted in the McKernan reference. Courts have repeatedly held that the standards for examining (and reexamining) utility and design patents are different. *See In re Harvey*, 12 F.3d 1061, 1063 (Fed. Cir. 1993), reciting that "[l]ike the examiner, the Board improperly mixed principles of obviousness for utility patents with those for ornamental design patents …. we hold that the Board erred in misapplying the obviousness standard because it admittedly relied upon the prior art Harvey vase as a 'design concept' rather than for its specific design characteristics."

Secondly, the Examiner's rejection starts with the statement that the Zamberlan reference suggests modifying the teaching in the McKernan reference in order to transform the frosted base

of McKernan into a transparent base merely because Zamberlan shows a transparent jar. While Zamberlan does indeed show a transparent jar, the Zamberlan jar is entirely different in its configuration and appearance from that of the McKernan jar. Since the subject matter at issue here is directed to a design patent, and since the design of the Zamberlan jar is unrelated to the McKernan jar appearance, it follows that Zamberlan fails to suggest making any modifications to the McKernan jar from a design standpoint. Thus, it is not appropriate for the Examiner to suggest using the teaching in Zamberlan in order to modify the design of the McKernan jar, be it into a transparent object, or for rounding the corners of its interior.

Moreover, even if it made sense to combine the teachings in the McKernan and Zamberlan, *the disclosure in Zamberlan* does not bridge the gap between McKernan and the claimed design of the '151 patent. This is in large part because the McKernan reference is silent regarding the depth of the jar's interior, even if it can be argued that the McKernan jar has an interior chamber (which the Patent Owner refutes), and the addition of the Zamberlan reference is of no assistance.

Thus, not only is the combination of McKernan and Zamberlan improper because the standard applied by the Examiner is only applicable in an obviousness analysis with respect to utility patent protection, such a combination would not even result in the claimed design of the '151 Patent. [6]Accordingly, the Examiner's rejection of the claimed design based on the combination of teachings in McKernon and Zamberlan is not appropriate.

[6] Patent Owner has concurrently filed an Information Disclosure Statement (IDS) herewith. It is the Patent Owner's position that the design claimed in the '151 Patent is neither anticipated nor rendered obvious in light of the prior art cited in the IDS.

COMMERCIAL SUCCESS

Secondary considerations, such as commercial success, are relevant to the evaluation of obviousness of a design claim. *See MRC Innovations, Inc. v. Hunter Mfg., LLP*, 747 F.3d 1326, 1335-36 (Fed. Cir. 2014); *Crocs Inc. v. International Trade Commission,* 598 F.3d 1294, 1310, (Fed. Cir. 2010). Indeed, secondary considerations "can be the most probative evidence of non-obviousness…, and enables the... court to avert the trap of hindsight." *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 960 (Fed. Cir. 1986).

Secondary considerations "may often establish that an invention appearing to have been obvious in light of the prior art was not." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed.Cir.1983). It is important to note that evidence of secondary considerations "… is not just a cumulative or confirmatory part of the obviousness calculus but constitutes independent evidence of nonobviousness." *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1365 (Fed.Cir.2008).

The jars made and sold by the Patent Owner and which practice the claimed design of the '151 Patent have enjoyed significant commercial success and continuous sales growth over the last several years. See the attached Declaration of inventor Robert Lerman, the principal of Patent Owner Ebottles.com.

A prima facie case of nexus is made when the patentee shows both that there is commercial success, and that the product that is commercially successful is the invention disclosed and claimed in the patent. *See In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed.Cir.1995). Here, both have been demonstrated. Accordingly, the claimed jar design of the '151 Patent is patentable in view of the commercial success evidence that has been presented.

CONCLUSION

In view of the above remarks, it is submitted that the claimed design of the '151 Patent is patentably distinct over the prior art relied upon by the Examiner in the Action, especially given the commercial success of the patented design. As such, withdrawal of the obviousness rejection under 35 U.S.C. § 103 is hereby requested.

Respectfully submitted,

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Dated: 11/4/2019

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	8748-019	8506

22440 7590 09/03/2019
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EXAMINER
HYDER, PHILIP S

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
09/03/2019	PAPER

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

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

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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/014,262* .

PATENT UNDER REEXAMINATION *D781151* .

ART UNIT *2917* .

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

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

Office Action in Ex Parte Reexamination	**Control No.** 90/014,262	**Patent Under Reexamination** D781151	
	Examiner PHILIP S HYDER	**Art Unit** 2917	**AIA (FITF) Status** Yes

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

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

b. ☐ This action is made FINAL.

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

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

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

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

Part II SUMMARY OF ACTION

1a. ☑ Claims 1 are subject to reexamination.
1b. ☐ Claims _____ are not subject to reexamination.
2. ☐ Claims _____ have been canceled in the present reexamination proceeding.
3. ☐ Claims _____ are patentable and/or confirmed.
4. ☑ Claims 1 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ The drawings, filed on _____ are acceptable.
7. ☐ The proposed drawing correction, filed on _____ has been (7a) ☐ approved (7b) ☐ disapproved.
8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have
   1 ☐ been received.
   2 ☐ not been received.
   3 ☐ been filed in Application No. _____.
   4 ☐ been filed in reexamination Control No. _____.
   5 ☐ been received by the International Bureau in PCT application No. _____.
   * See the attached detailed Office action for a list of the certified copies not received.
9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.
10. ☐ Other: _____

cc: Requester (if third party requester)

EX PARTE REEXAMINATION NON-FINAL ACTION

Claim Rejections - 35 USC § 102

The claim is rejected under 35 U.S.C. 103 as being unpatentable over the McKernan Jar cited in the request for Ex Parte Reexamination in view of the Zamberlan et al. Patent reference D634,202 cited by the examiner on the attached PTO-892

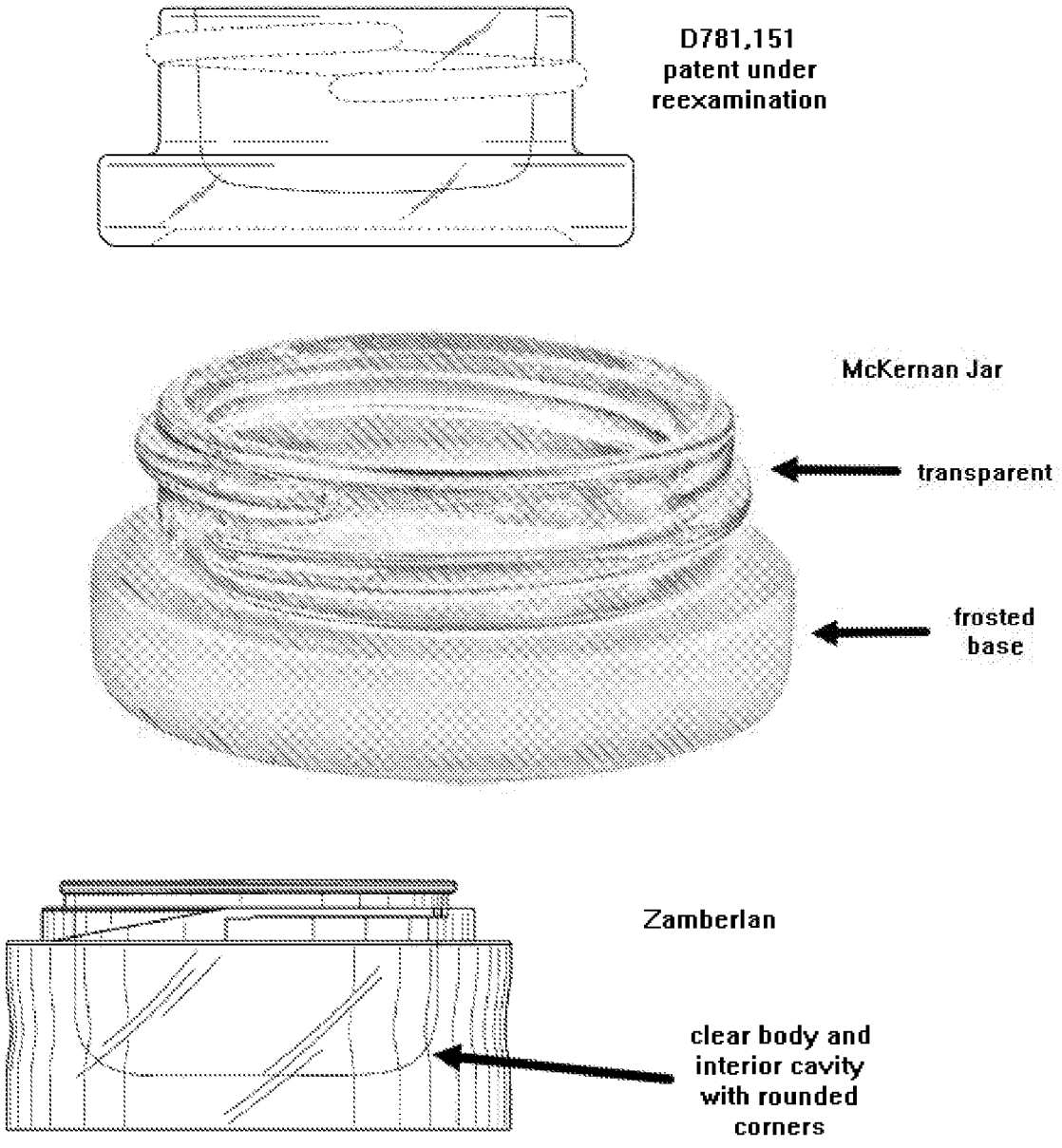
Although the invention is not identically disclosed or described as set forth in 35 U.S.C. 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a designer having ordinary skill in the art to which the claimed invention pertains, the invention is not patentable.

The overall design characteristics of the McKernan reference are basically the same as the design claimed in D781,151. Both jar designs consist of short and wide cylindrical bodies topped with taller narrower cylindrical necks. Any differences in the proportions or shaping of the designs is negligible. The only identifiable difference is that the claimed design is fully transparent whereas the body on McKernan has a frosted finish, so that only the upper neck portion is fully transparent.

The Zamberlan reference D634,202 discloses a container design that is quite similar to design in D781,151. Specifically, it is a cylindrical transparent container topped with a narrower neck. More importantly, the body of the Zamberlan container lacks the frosted finish so the body is fully transparent and an inner cavity with the rounded contours is fully visible.

It would have been obvious to a designer of ordinary skill in the art at the time the invention was made to have modified the McKernan jar by removing the frosted finish from the

lower body to reveal an inner cavity with rounded corners, as shown and suggested by Zamberlan.



This modification of the primary reference in light of the secondary reference is proper because the applied references are so related that the appearance of features shown in one would suggest the application of those features to the other. See *In re Rosen*, 673 F.2d 388, 213 USPQ 347 (CCPA 1982); *In re Carter*, 673 F.2d 1378, 213 USPQ 625 (CCPA 1982), and *In re Glavas*,

230 F.2d 447, 109 USPQ 50 (CCPA 1956). Further, it is noted that case law has held that a designer skilled in the art is charged with knowledge of the related art; therefore, the combination of old elements, herein, would have been well within the level of ordinary skill. See *In re Antle*, 444 F.2d 1168,170 USPQ 285 (CCPA 1971) and *In re Nalbandian*, 661 F.2d 1214, 211 USPQ 782 (CCPA 1981).

Conclusion

The claim is rejected under 35 U.S.C. §103.

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. D781,151 throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

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

By Mail to: Mail Stop *Ex Parte* Reexam
Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication should be directed to Philip S. Hyder at telephone number (571) 272-2621.

/Philip S Hyder/
Primary Examiner, Art Unit 2917

/Kevin Rudzinski/
Primary Examiner, Art Unit 2911

/DARLINGTON LY/
Primary Examiner, Art Unit 2914

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	Examiner PHILIP S HYDER	Art Unit 2917	Page 1 of 1

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	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/014,262	D781151
	Examiner	Art Unit
	PHILIP S HYDER	2917

CPC - Searched*		
Symbol	Date	Examiner
B65D 1/00 ; B65D1/02 ; B65D 1/0207 ; B65D 1/0223 ; B65D 1/10 ; B65D 23/00 ; B65D 2501/00 ; B65D 2501/0009	08/09/2019	/psh/

CPC Combination Sets - Searched*		
Symbol	Date	Examiner

US Classification - Searched*			
Class	Subclass	Date	Examiner
D9	500, 503, 504 , 549 , 558 , D9/715 , D3/264	08/09/2019	/psh/

* See search history printout included with this form or the SEARCH NOTES box below to determine the scope of the search.

Search Notes		
Search Notes	Date	Examiner
Review of original application 29/567,402 and the resulting Patent D781,151	08/09/2019	/psh/
Consulted with the original examiner Dana Meyrow		

Interference Search			
US Class/CPC Symbol	US Subclass/CPC Group	Date	Examiner
D9	500	08/09/2019	/psh/

EAST Search History

EAST Search History (Prior Art)

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S58	52	(glue and gun).ti. and s.at.	USPAT	OR	OFF	2019/08/06

						17:38
S59	13	("20040232165" | "4776490" | "D303612" | "D404622" | "D510243" | "D514406" | "D535167" | "D583639" | "D590674" | "D671385" | "D744305" | "D748444").PN. OR ("D821170").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:39
S60	19	("6105824" | "6170709" | "7775403" | "D315852" | "D316019" | "D398204" | "D404622" | "D510243" | "D514406" | "D535167" | "D576458" | "D590674" | "D671385").PN. OR ("D748444").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:40
S61	13	("20040232165" | "4776490" | "D303612" | "D404622" | "D510243" | "D514406" | "D535167" | "D583639" | "D590674" | "D671385" | "D744305" | "D748444").PN. OR ("D821170").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:40
S62	26	("1700876" | "2056951" | "2086102" | "2662962" | "3155362" | "4379516" | "4776124" | "5215230" | "5881924" | "6105824" | "6170709" | "6820768" | "D404622" | "D456681" | "D458524").PN. OR ("7775403").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:41
S63	29	(heat and gun).ti. and s.at.	USPAT	OR	OFF	2019/08/06 17:43
S64	22	("20100065545" | "5349161" | "D283259" | "D293020" | "D296070" | "D297398" | "D388297" | "D481277" | "D516883" | "D572097" | "D639129" | "D641220" | "D655994" | "D664820" | "D703020" | "D727706" | "D740629" | "D746653" | "D775505" | "D779903" | "D787289" | "D790940").PN. OR ("D846963").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:44
S65	27	("20100065545" | "5349161" | "D283259" | "D293020" | "D296070" | "D297398" | "D388297" | "D481277" | "D516883" | "D572097" | "D639129" | "D641220" | "D655994" | "D664820" | "D703020" | "D727706" | "D740629" | "D746653" | "D775505" | "D779903" | "D787289" | "D790940").PN. OR ("D803649").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:45
S66	20	("D280338" | "D293020" | "D297398" | "D388298" | "D456679" | "D457044" | "D457407" | "D481277" | "D516883" | "D535167" | "D552443").PN. OR ("D639129").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:46
S67	156	(sanding adj block).ti.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:48
S68	36	("1455559" | "2386900" | "2414036" | "2765593" | "2773338" | "3089294" | "3821829" | "4242843" | "4478011" | "5054248" | "5522763" | "6227959" | "6267658" | "D152607" | "D319766" | "D329583" | "D365507" | "D377305" | "D392868" | "D429136").PN. OR ("D480619").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 17:53
S69	100	("1062214" | "1570177" | "1595700" | "1782577" | "20010029967" | "20030208866" | "2030911" | "2112593" | "2295823" |	US-PGPUB; USPAT;	OR	OFF	2019/08/06 17:53

		"2531588" | "2817931" | "3034267" | "3137880" | "3279130" | "3614845" | "3653859" | "3694845" | "3699729" | "3777444" | "3924362" | "3998012" | "4202139" | "4263677" | "4263755" | "4501096" | "4525959" | "4543751" | "4640060" | "4825597" | "4887396" | "5054248" | "5131193" | "5134809" | "5168663" | "5177909" | "5203123" | "5309681" | "5313746" | "5316812" | "5337523" | "5337524" | "5417726" | "5429545" | "5533926" | "5605500" | "5651728" | "5662519" | "5690547" | "5718622" | "5759090" | "5799357" | "5849051" | "5849646" | "5885148" | "5895316" | "5915869" | "5954571" | "6059850" | "6120365" | "6196909" | "6227959" | "6383064" | "6419573" | "6439988" | "6524175" | "6601591" | "D159216" | "D211262" | "D319766" | "D336027" | "D340397" | "D348817" | "D355105" | "D356935" | "D356936" | "D357394" | "D357620" | "D373715" | "D386058" | "D480619").PN. OR ("7621802").URPN.	USOCR			
S70	151	(pasta).ti. and s.at.	USPAT	OR	OFF	2019/08/06 18:00
S71	27	("0422370").PN. OR ("D381185").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 18:00
S72	58	("20050012413" | "4881995" | "5223067" | "7107938" | "7744474" | "9052017" | "D134414" | "D311625" | "D340942" | "D364079" | "D381185" | "D427669" | "D445502" | "D454143" | "D458438" | "D474873" | "D475173" | "D482847" | "D485661" | "D489865" | "D492836" | "D509045" | "D511236" | "D515275" | "D534416" | "D534706" | "D553326" | "D591926" | "D603134" | "D603135" | "D603136" | "D630409" | "D632751" | "D633277" | "D649740" | "D658847" | "D661868" | "D675130" | "D683517" | "D683927" | "D683928" | "D687101" | "D692206" | "D692994" | "D704917" | "D705516" | "D714016" | "D725868" | "D726991" | "D733992").PN. OR ("D771898").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 18:01
S73	30	("20020117263" | "20060096999" | "20070113986" | "4389934" | "4497420" | "4543095" | "4986524" | "5056945" | "5279469" | "5445703" | "5674350" | "5851348" | "6390711" | "7318877" | "7717149" | "7919027" | "D217052" | "D230264" | "D336493" | "D340942" | "D620979" | "D643158").PN. OR ("D687101").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 18:01
S74	40	("20030127933" | "20050012413" | "3110270" | "3387570" | "4528913" | "5829359" | "6073562" | "6123030" | "6263803" | "6286437" | "6357361" |	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 18:02

		"6363863" | "6412422" | "6899038" | "7140303" | "7171907" | "7256521" | "7352097" | "D340942" | "D437411" | "D445502" | "D612007" | "RE35925").PN. OR ("D675130").URPN.				
S75	18	("5779886" | "6889963" | "D465257").PN. OR ("D612007").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 18:03
S76	8	("D389572").PN. OR ("D445502").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 18:03
S77	13	("3886291" | "4879126" | "5462758" | "D311625").PN. OR ("D474873").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/06 18:04
S78	9	("2457045").URPN.	USPAT	OR	OFF	2019/08/07 07:23
S79	38	("0485923" | "1844996" | "2275766" | "2414036" | "2430785" | "2457045" | "2493852" | "2531588" | "2761257" | "3063208").PN. OR ("4242843").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 07:24
S80	20	("0315033" | "1927574" | "2808687" | "3345785" | "3510991" | "4242843" | "4501096" | "5177909" | "5522763" | "D319766" | "D377305" | "D392868" | "D417131").PN. OR ("D481284").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 07:24
S81	29	("2103320" | "2802313" | "2804729" | "2808687" | "4534138" | "4688356" | "4937910").PN. OR ("5177909").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 07:25
S82	10	("3364630" | "3916586" | "4918875" | "5177909" | "5491025" | "5564971" | "6679271" | "8585471" | "D623537").PN. OR ("D768453").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 07:25
S83	60	("2557175" | "2838057" | "4246914" | "5177909" | "D387489" | "D388904" | "D389957").PN. OR ("5899210").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 07:26
S84	30	("3557901" | "4219575" | "4458936" | "5378151" | "5899210" | "5943836" | "6827041" | "D010882" | "D515275" | "D525762" | "D530482" | "D534706" | "D564708" | "D586534" | "D630409" | "D641536" | "D641537" | "D658847" | "D672334" | "D692206" | "D721218" | "D730617" | "D746541" | "D748891" | "D760992" | "D778526" | "D785901" | "D789651" | "D793365").PN. OR ("D831927").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 07:26
S85	32	("20040154525" | "3606230" | "3648920" | "3917194" | "5378151" | "5531043" | "5809734" | "5899210" | "6099203" | "6178798" | "D204889" | "D311626" | "D333900" | "D343312" | "D379705" | "D399400" | "D439838" | "D503645" | "D532583" | "D558444" | "D576721" | "D585177" | "D586454" | "D603241" | "D656648" | "D658847").PN. OR	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 07:27

		("D746541").URPN.				
S86	19	("0057890" | "20010019732" | "5685224" | "D094174" | "D277031" | "D325619" | "D349743" | "D375157" | "D532583" | "D619116" | "D647567" | "D686192" | "D700671" | "D737250" | "D746541").PN. OR ("D802880").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 07:27
S87	24	("0547925" | "2103320" | "2396418" | "2595429" | "3063208" | "4501096" | "5177909").PN. OR ("5522763").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:00
S88	20	("2531588" | "3410035" | "3510991" | "4640060" | "4918875" | "5168672" | "5383308" | "5522763" | "5997221" | "6196909" | "D392868" | "D406514" | "D417131").PN. OR ("6682400").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:00
S89	15	("2531588").URPN.	USPAT	OR	OFF	2019/08/07 09:01
S90	40	("2189980" | "2414036" | "2430785" | "2457045" | "2531588" | "2626489" | "3173231" | "3339562" | "3510991" | "3564782" | "3637359" | "4242843").PN. OR ("4525959").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:01
S91	9	("2457045").URPN.	USPAT	OR	OFF	2019/08/07 09:02
S92	72	("2523884" | "2817931" | "3279130" | "3998012" | "4182000" | "4202139" | "4391013" | "4399170" | "4774789" | "4802310" | "4825597" | "4829719" | "4885876" | "5016402" | "5036627" | "5054248" | "5123139" | "5131193" | "5168672" | "5220752" | "5245797" | "5309681" | "5474490" | "5479675" | "5522763" | "5605500" | "5624305" | "5651728" | "6227959").PN. OR ("6524175").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:03
S93	7	("2595429").URPN.	USPAT	OR	OFF	2019/08/07 09:05
S94	4	("2396418").URPN.	USPAT	OR	OFF	2019/08/07 09:05
S95	7	("2595429").URPN.	USPAT	OR	OFF	2019/08/07 09:06
S96	38	("0485923" | "1844996" | "2275766" | "2414036" | "2430785" | "2457045" | "2493852" | "2531588" | "2761257" | "3063208").PN. OR ("4242843").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:12
S97	0	(sander and ruler).ti.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:14
S98	2	(sander and level).ti.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:14
S99	17	("2761257").URPN.	USPAT	OR	OFF	2019/08/07 09:15
S100	24	("2765593").URPN.	USPAT	OR	OFF	2019/08/07 09:21

S101	1	D846963	USPAT	OR	OFF	2019/08/07 09:27
S102	3832	(A45D20/08 ; A45D20/10 ; F24H3/00 ; F24H3/0423 ; F16M13/00).cpc.	USPAT	OR	OFF	2019/08/07 09:29
S103	22	("20100065545" | "5349161" | "D283259" | "D293020" | "D296070" | "D297398" | "D388297" | "D481277" | "D516883" | "D572097" | "D639129" | "D641220" | "D655994" | "D664820" | "D703020" | "D727706" | "D740629" | "D746653" | "D775505" | "D779903" | "D787289" | "D790940").PN. OR ("D846963").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:30
S104	1	("D803649").PN.	USPAT; USOCR	OR	OFF	2019/08/07 09:38
S105	27	("20100065545" | "5349161" | "D283259" | "D293020" | "D296070" | "D297398" | "D388297" | "D481277" | "D516883" | "D572097" | "D639129" | "D641220" | "D655994" | "D664820" | "D703020" | "D727706" | "D740629" | "D746653" | "D775505" | "D779903" | "D787289" | "D790940").PN. OR ("D803649").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:39
S106	3619	(F24H3/00 ; F24H3/0423 ; F16M13/00).cpc.	USPAT	OR	OFF	2019/08/07 09:40
S107	83	(heat and gun).ti.	USPAT	OR	OFF	2019/08/07 09:45
S108	27	("20100065545" | "5349161" | "D283259" | "D293020" | "D296070" | "D297398" | "D388297" | "D481277" | "D516883" | "D572097" | "D639129" | "D641220" | "D655994" | "D664820" | "D703020" | "D727706" | "D740629" | "D746653" | "D775505" | "D779903" | "D787289" | "D790940").PN. OR ("D803649").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:45
S109	27	("20100065545" | "5349161" | "D283259" | "D293020" | "D296070" | "D297398" | "D388297" | "D481277" | "D516883" | "D572097" | "D639129" | "D641220" | "D655994" | "D664820" | "D703020" | "D727706" | "D740629" | "D746653" | "D775505" | "D779903" | "D787289" | "D790940").PN. OR ("D803649").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:46
S110	18	("7182280" | "D388297" | "D456679" | "D457044" | "D457407" | "D481277" | "D490500" | "D552443" | "D615834" | "D615835" | "D641220" | "D679561").PN. OR ("D742708").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:46
S111	12	("2133922" | "3109083" | "4849607" | "5208895" | "5313931" | "5575035" | "7717104" | "D296070").PN. OR ("7964822").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:47
S112	38	("D296070" | "D297397").PN. OR ("D388297").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 09:54
S113	2	D821170	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 10:21

S114	1005	(B05C17/0053 ; B05C17/00546 ; B05C17/00526 ; B05C17/01).cpc.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 10:22
S115	1	("8820195").PN.	USPAT; USOCR	OR	OFF	2019/08/07 10:33
S116	66	("1424202" | "1930238" | "20030188605" | "20030196522" | "20030209108" | "20050247167" | "20060230883" | "20070277652" | "20070295171" | "20080092695" | "20080196562" | "20080229887" | "20080229889" | "20080245194" | "20090193944" | "20090205467" | "20110209585" | "20110247463" | "2346364" | "2697370" | "3113479" | "3289503" | "3592086" | "3672419" | "4893529" | "5157994" | "5186083" | "5365811" | "5421225" | "5535648" | "5537899" | "5822830" | "6109141" | "6125722" | "6134990" | "6151997" | "6186030" | "6282992" | "6305248" | "6378701" | "6427564" | "6453779" | "6457389" | "6575060" | "6666112" | "6739224" | "6951154" | "7017453" | "7044029" | "7127766" | "7207247" | "7278339" | "7287448" | "7299720" | "D356239" | "D547624" | "D552949" | "D555445" | "D586634").PN. OR ("8820195").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 10:33
S117	50	("20030110906" | "2346364" | "3651718" | "3672419" | "3958469" | "4238978" | "4926721" | "5421225" | "5822830" | "6151998" | "6347450" | "6378402" | "6675678" | "7166040" | "D217324" | "D285769" | "D339048" | "D339279" | "D377444" | "D378797" | "D392535" | "D394794" | "D409463" | "D454045" | "D470733" | "D486723" | "D493685" | "D517634").PN. OR ("D547624").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 10:35
S118	1480	(B25F1/00 ; F41B11/00 ; B05B15/00 ; B05B15/025 ; B05B15/02 ; B25B33/00).cpc.	USPAT	OR	OFF	2019/08/07 10:36
S119	33	("0102677" | "1209583" | "2501757" | "2603260" | "3119424" | "3578825" | "4193433").PN. OR ("4732058").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 10:53
S120	28	("1389477" | "2473158" | "2641939" | "3864769").PN. OR ("4304019").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 10:55
S121	23	("20110314968" | "4253352" | "4304019" | "4373246" | "4412464" | "4563919" | "4660446" | "4681358" | "5277083" | "5509380" | "D269587" | "D274688" | "D281389" | "D281760" | "D292479" | "D296754" | "D297204" | "D334518" | "D363863" | "D405331" | "D539105" | "D696089").PN. OR ("D724914").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 10:56
S122	11	("4304019" | "4368569" | "4446763" | "4685360" | "D248613" | "D268473" | "D287927" | "D288893" | "D300000").PN. OR ("D338815").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 10:57

S123	1679	(d8/14).CCLS.	USPAT; USOCR	OR	OFF	2019/08/07 10:59
S124	11	("0332657" | "3176390" | "D190067" | "D379497" | "D525510" | "D732734" | "D755587" | "D757505").PN. OR ("D814558").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:08
S125	6	("2067442" | "4531482" | "D266963" | "D342270").PN. OR ("D486044").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:14
S126	13	("5151552").PN. OR ("D397596").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:16
S127	30	("0245382" | "0754069" | "1181565" | "1512699" | "3392621" | "3713983" | "3813983" | "4287806" | "4476770" | "4791849" | "D195736" | "D267410" | "D303342" | "D342001" | "D366996" | "D397596").PN. OR ("D421882").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:16
S128	48	("0841472" | "D275446" | "D356016").PN. OR ("D376520").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:18
S129	9	("4436004" | "5622090" | "6374707" | "6543959" | "D319764" | "D376520").PN. OR ("6854364").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:19
S130	32	("1343862" | "1559976" | "2585013" | "2680003" | "2718374" | "2937004" | "3122354" | "D214988").PN. OR ("D275446").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:20
S131	25	(paint adj stirrer).ti.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:24
S132	48	("0569428" | "0793844" | "1447653" | "1698402" | "3704007").PN. OR ("4422770").URPN.	US-PGPUB; USPAT; USOCR	OR	OFF	2019/08/07 11:24
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8/ 9/ 2019 12:01:48 PM
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s)	:	Robert Lerman
Application No.	:	90/014,262
Filed	:	February 11, 2019
For	:	JAR
Examiner	:	Philip S. Hyder
Art Unit	:	2917
Confirmation No.	:	8506
Attorney Docket	:	8748-019

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF SERVICE

Dear Commissioner:

In accordance with 37 CFR 1.248, a copy of correspondence notifying the Office of ongoing litigation activity that was filed on July 19, 2019 has been served on the requesting party by First Class U.S. Mail at the address indicated in the Petition for Reexamination:

Jacob M. Ward
Ward Law Office LLC
120 1/2 S. Washington Street
Suite 207
Tiffin, OH 44883

Respectfully submitted,

Date: August 20, 2019

By: /Jason R. Wachter/
Jason R. Wachter, Registration No. 65,987

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Electronic Acknowledgement Receipt

EFS ID:	36927204
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	D781151
Customer Number:	22440
Filer:	Jason R. Wachter/Susan Piperno
Filer Authorized By:	Jason R. Wachter
Attorney Docket Number:	8748-019
Receipt Date:	20-AUG-2019
Filing Date:	11-FEB-2019
Time Stamp:	15:34:10
Application Type:	Reexam (Patent Owner)

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Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Miscellaneous Incoming Letter	8748-019_Cert_of_Service-20AUG2019.pdf	201759 5e59ac1082848dcfdefb685151347681d1db2089	no	1

Warnings:

Information:	
Total Files Size (in bytes):	201759

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New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Litigation Search Report CRU 3999

Reexam Control No. 90/014,262

To: Phillip Hyder Location: CRU Art Unit: 2917 Date: 07/29/2019	From: Renee Preston Location: CRU 3999 REM 4C75 Phone: (571) 272-1607 Renee.preston@uspto.gov

Search Notes

U.S. Patent No. D781,151

1) I performed a KeyCite Search in Westlaw, which retrieves all history on the patent including any litigation.

2) I performed a search on the patent in Lexis CourtLink for any open dockets or closed cases.

3) I performed a search in Lexis in the Federal Courts and Administrative Materials databases for any cases found.

4) I performed a search in Lexis in the IP Journal and Periodicals database for any articles on the patent.

5) I performed a search in Lexis in the news databases for any articles about the patent or any articles about litigation on this patent.

Litigation: No cases found

Status	Description	Court	Docket Number
Open	Lerman Container Corp. D/B/A Ebottles.Com v. Lids And Jars, L.L.C.	US-DIS-MDD	1:19cv1414

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1. CHILD-RESISTANT CLOSURE WITH AUDIBLE CLICK CLOSE INDICATOR Out Of Plan US PAT 5197616	Jun 23, 1992	Patents
2. PACKAGING COMPRISING A CONTAINER AND MEMBRANE Out Of Plan US PAT APP 20050074528	Feb 20, 2004	Patents
3. LAYERS OF SOAP IN A TRANSPARENT CONTAINER WITH A SPONGE Out Of Plan US PAT D506128	Apr 18, 2003	Patents
4. CLOSURE Out Of Plan US PAT D633386	May 27, 2010	Patents
5. TWO PIECE SCREW CAP CLOSURE Out Of Plan US PAT D519837	Apr 08, 2004	Patents
6. CONTAINER HAVING AN AUTOMATIC IDENTIFICATION DEVICE FOR IDENTIFYING THE CONTENTS THEREIN Out Of Plan US PAT APP 20080308518	Jun 16, 2008	Patents
7. FLASK, CAP AND REFILL Out Of Plan US PAT D634202	Dec 28, 2009	Patents
8. PACKAGE FOR CONTACT LENSES Out Of Plan US PAT D554367	May 04, 2004	Patents
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10. CONTACT LENS BLISTER PACKAGE Out Of Plan US PAT D441284	May 09, 2000	Patents
11. CLOSURE CAP Out Of Plan US PAT D574240	Mar 02, 2007	Patents
12. TWO-PIECE LID Out Of Plan US PAT D442864	Jul 12, 2000	Patents
13. BOTTLE Out Of Plan US PAT D578891	Dec 10, 2007	Patents
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16. THREADED CHILD-RESISTANT PACKAGE HAVING LINERLESS CLOSURE Out Of Plan US PAT 7527159	Mar 11, 2004	Patents
17. FRICTION SURFACE FOR PUSH AND TURN CHILD RESISTANT CLOSURE Out Of Plan US PAT 7815061	Mar 31, 2006	Patents
18. CHILD PROOF CLOSURE Out Of Plan US PAT APP 20160030285	Jul 29, 2015	Patents
19. PACKAGING Out Of Plan US PAT D679990	Nov 02, 2011	Patents
20. CHILD RESISTANT CLOSURE WITH IMPROVED ASSEMBLY Out Of Plan US PAT APP 20110147334	Feb 13, 2010	Patents

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Title	Date	Type
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22. CONTAINER ASSEMBLY WITH ONE-PIECE CHILD RESISTANT CLOSURE Out Of Plan US PAT APP 20150076103	Sep 04, 2014	Patents
23. INSULATED JAR Out Of Plan US PAT 3311248	Nov 18, 1964	Patents
24. CHILD RESISTANT CLOSURE Out Of Plan US PAT 4020965	May 03, 1976	Patents
25. CONTAINER Out Of Plan US PAT APP 20150298866	Jun 04, 2013	Patents
26. BOTTLE CAP Out Of Plan US PAT D687299	Nov 02, 2011	Patents
27. CHILD PROOF CLOSURE CAP FOR CONTAINER WITH COMBINED TILTING AND ROTATING OPERATION Out Of Plan US PAT 9045265	Oct 01, 2012	Patents
28. CHILD RESISTANT CLOSURE WITH IMPROVED ASSEMBLY Out Of Plan US PAT APP 20150122767	Nov 05, 2013	Patents
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33. Bague de col de récipient rigide avec couvercle Out Of Plan FR PAT APP 2720376 A1	May 26, 1994	Patents

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—	**2.** RF 046032/0937 Out Of Pat.	Apr. 27, 2018	Assignments	—	—
—	**3.** RF 038847/0589 Out Of Pat.	June 08, 2016	Assignments	—	—
—	**4.** PatStat D781151	Apr. 02, 2019	Patent Status Files	—	—
—	**5.** PatStat D781151	2019	Patent Status Files	—	—
—	**6.** PatStat D781151	2019	Patent Status Files	—	—
—	**7.** PatStat D781151	2019	Patent Status Files	—	—
—	**9.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D846808 , U.S. PTO Design	Apr. 23, 2019	Patents	—	—
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—	**12.** JAR Out Of Pat. US PAT D835508 , U.S. PTO Design	Dec. 11, 2018	Patents	—	—
—	**13.** LID FOR A CULTURE VESSEL Out Of Pat. US PAT D831842 , U.S. PTO Design	Oct. 23, 2018	Patents	—	—
—	**14.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D831891 , U.S. PTO Design	Oct. 23, 2018	Patents	—	—
—	**15.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D830638 , U.S. PTO Design	Oct. 09, 2018	Patents	—	—
—	**16.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D829996 , U.S. PTO Design	Oct. 02, 2018	Patents	—	—
—	**17.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D827935 , U.S. PTO Design	Sep. 04, 2018	Patents	—	—
—	**18.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D827205 , U.S. PTO Design	Aug. 28, 2018	Patents	—	—
—	**19.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D825856 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—
—	**20.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D825857 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—
—	**21.** LIP PRODUCT CONTAINER Out Of Pat. US PAT D825858 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—

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Treatment	Title	Date	Type	Depth	Headnote(s)
---	**22.** LIP PRODUCT CONTAINER Out Of Plan US PAT D825859 , U.S. PTO Design	Aug. 14, 2018	Patents	---	---
---	**23.** LIP PRODUCT CONTAINER Out Of Plan US PAT D825860 , U.S. PTO Design	Aug. 14, 2018	Patents	---	---
---	**24.** LIP PRODUCT CONTAINER Out Of Plan US PAT D825861 , U.S. PTO Design	Aug. 14, 2018	Patents	---	---
---	**25.** FACE PAINT CONTAINER Out Of Plan US PAT D814705 , U.S. PTO Design	Apr. 03, 2018	Patents	---	---
---	**26.** JAR Out Of Plan US PAT D797559 , U.S. PTO Design	Sep. 19, 2017	Patents	---	---

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Job Number: 93843137

Documents (2)

1. *US Patent Issued to eBottles.com on March 14 for "Jar" (Florida Inventor)*
   Client/Matter: -None-
   Search Terms: D781151 or D781,151
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
News	-None-

2. *eBottles.com Announces Award of US Design Patent D781151*
   Client/Matter: -None-
   Search Terms: D781151 or D781,151
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
News	-None-

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US Patent Issued to eBottles.com on March 14 for "Jar" (Florida Inventor)

US Fed News

March 16, 2017 Thursday 3:00 PM EST

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Length: 105 words

Dateline: ALEXANDRIA, Va.

Body

ALEXANDRIA, Va., March 16 -- United States Patent no. ***D781,151***, issued on March 14, was assigned to eBottles.com (Jupiter, Fla.).

"Jar" was invented by eBottles.com (Jupiter, Fla.). The patent was filed on June 8, 2016, under Application No. D/567,402. *For further information, including images, charts and tables, please visit: http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetahtml%2FPTO%2Fsearch-bool.html&r=1&f=G&l=50&co1=AND&d=PTXT&s1=D781151&OS=D781151&RS=D781151 For any query with respect to this article or any other content requirement, please contact Editor at htsyndication@hindustantimes.com

Load-Date: March 16, 2017

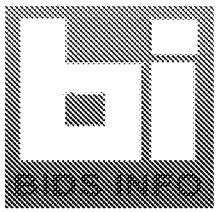
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eBottles.com Announces Award of US Design Patent D781151

Global Data Point

March 3, 2017 Friday

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Length: 658 words

Body

(PRWeb) - In remarks during a recent announcement to employees and other stakeholders, Robert Lerman, President of eBottles.com declared that the company had been issued the design patent for their unique design which pairs child resistant closures with cosmetic thick wall glass jars.

The combination of the special neck finish tooled glass jars and smooth top child resistant closures yields a new cosmetic glass package capable of meeting the rigorous standards of the Poison Prevention Package Act with Resecuring Effectiveness per Code of Federal Regulations Title 16, Part 1700. The jar was created with the particular needs of the cannabis industry in mind.

Mr. Lerman declared that he was very proud of the team that had produced an aesthetically pleasing design for marketers who are required to package their products in child resistant packages. We all share a great sense of gratification from this design patent award. Many hours of hard work and dedication went into this design which is unique in our industry and which will set the standard for combining attractive packaging with effective child resistant design.

The new glass jars available in 5 ml and 9 ml sizes have been on the market since October 2015. The company has also recently introduced a new 15 ml 53mm size.

Responding to the needs of the cannabis industry`s expanding focus on concentrate products, the eBottles team created its new line of cosmetic thick wall jars with the particular needs of concentrate products in mind. Mr Lerman stated: Cannabis industry leaders told us that they were dissatisfied with the current choices for concentrate packages. Customers were concerned about the clear styrene jewel cases being used believing that the dabbing process included a risk of scraping plastic into the product. The expensive silicone choice was also problematic as the silicone was seen as absorbing terpenes. Further, neither of these packages were child resistant, requiring the addition of secondary child resistant packaging adding labor and cost.

The eBottles solution was to create economical glass jars which could satisfy the industry demands of product safety, ease of use, cosmetic appearance and most importantly a package that would maintain child resistance throughout its useful life. The insides of the jars are rounded allowing heated concentrates to pool in the middle of the jar, providing the consumer the ability to gain easy access to all of the valuable contents.

The 5 ml 28mm jar has been well received by marketers of distillates, isolates and saps. The 5 ml jar package includes child resistant closures lined with a foil and mylar laminate construction designed specifically for high

terpene content products. The 9 ml 38mm jar is a hit with marketers of solid thc based concentrates such as shatter and wax. The new 15 ml 53mm jar expands the companys offering to include a size capable of holding multiple grams of concentrates.

Brett Mouser, CEO of Mahatma Concentrates a leading manufacturer of concentrate products stated, "These new glass jars provide the quality image that mirrors the Mahatma brand. We could not be more happy with our switch from plastic to glass containers and the customer response has been overwhelmingly positive. In particular, customers love the ability to see the product through the base of the jar and we love the fact that customers can see the purity and quality of our product prior to purchase."

eBottles.com offers high end products from US, Asian, and European manufacturers. With multiple distribution centers in the US, eBottles ships most orders within 24 hours. eBottles headquarters is based in Jupiter, Florida. Distribution centers are located in Bethel, CT, Denver, CO, and Los Angeles, CA.

For more information, please contact the Customer Relations Department at eBottles.com 561-203-2779 You can visit their website at http://www.ebottles.com . SOURCE eBottles.com 2017 Global Data Point.

Load-Date: March 3, 2017

End of Document

US District Court Civil Docket

U.S. District - Maryland
(Baltimore)

1:19cv1414

Lerman Container Corp. v. Lids And Jars, L.L.C.

This case was retrieved from the court on Monday, July 29, 2019

Date Filed:	**05/14/2019**		
Assigned To:	**Judge George Jarrod Hazel**	Class Code:	**OPEN**
Referred To:		Closed:	
Nature of suit:	**Patent (830)**	Statute:	**35:271**
Cause:	**Patent Infringement**	Jury Demand:	**Plaintiff**
Lead Docket:	**None**	Demand Amount:	**$0**
Other Docket:	**None**	NOS Description:	**Patent**
Jurisdiction:	**Federal Question**		

Litigants	Attorneys
Lerman Container Corp. Plaintiff	Robert Carroll Baker , III LEAD ATTORNEY;ATTORNEY TO BE NOTICED Neuberger, Quinn, Gielen, Rubin & Gibber, P.A. One South Street Baltimore , MD 21202 USA (410)332-8522 Fax: (410) 332-8594 Email:Rcb@nqgrg.Com Thomas M Wood , IV LEAD ATTORNEY;ATTORNEY TO BE NOTICED Neuberger Quinn Gielen Rubin and Gibber PA One South St 27th Fl Baltimore , MD 21202 USA 14103328523 Fax: 14103328564 Email:Tmw@nqgrg.Com Jonathan Purow PRO HAC VICE;ATTORNEY TO BE NOTICED Gottlieb Rackman and Reisman PC 270 Madison Ave. New York , NY 10016 USA 2126843900 Fax: 2126843999 Email:Jpurow@grr.Com

Lids And Jars, L.L.C. Defendant	Edward A Pennington LEAD ATTORNEY;ATTORNEY TO BE NOTICED Smith Gambrell and Russell LLP 1055 Thomas Jefferson St Nw Ste 400 Washington , DC 20007 USA 12022634300 Fax: 12022634348 Email:Epennington@sgrlaw.Com
Lids And Jars, L.L.C. Counter Claimant	Edward A Pennington LEAD ATTORNEY;ATTORNEY TO BE NOTICED Smith Gambrell and Russell LLP 1055 Thomas Jefferson St Nw Ste 400 Washington , DC 20007 USA 12022634300 Fax: 12022634348 Email:Epennington@sgrlaw.Com
Lerman Container Corp. Counter Defendant	Robert Carroll Baker , III LEAD ATTORNEY;ATTORNEY TO BE NOTICED Neuberger, Quinn, Gielen, Rubin & Gibber, P.A. One South Street Baltimore , MD 21202 USA (410)332-8522 Fax: (410) 332-8594 Email:Rcb@nqgrg.Com Thomas M Wood , IV LEAD ATTORNEY;ATTORNEY TO BE NOTICED Neuberger Quinn Gielen Rubin and Gibber PA One South St 27th Fl Baltimore , MD 21202 USA 14103328523 Fax: 14103328564 Email:Tmw@nqgrg.Com Jonathan Purow PRO HAC VICE;ATTORNEY TO BE NOTICED Gottlieb Rackman and Reisman PC 270 Madison Ave. New York , NY 10016 USA 2126843900 Fax: 2126843999 Email:Jpurow@grr.Com

Date	#	Proceeding Text	Source
05/14/2019	1	COMPLAINT against LIDS AND JARS, L.L.C. (Filing fee $ 400 receipt number 0416-8011547.), filed by Lerman Container Corp. d/b/a eBottles.com. (Attachments: # 1 Civil Cover Sheet, # 2 Summons, # 3 Jury Demand, # 4 Disclosure of Corporate Interest)(Wood, Thomas) (Entered: 05/14/2019)	
05/15/2019	2	Report on Filing Patent/Trademark (Wood, Thomas) (Entered: 05/15/2019)	

05/16/2019		Deficiency Notice -- Your Local Rule 103.3 disclosure statement was filed as an attachment to the Complaint, please re-file using the civil event - Other Filings - Correspondence - Magistrate Judge-Consent to. The Statement must be filed by 5/23/2019 (jf3s, Deputy Clerk) (Entered: 05/16/2019)
05/16/2019	3	Summons Issued 21 days as to Lids and Jars, L.L.C.(jf3s, Deputy Clerk) (Entered: 05/16/2019)
05/16/2019	4	Local Rule 103.3 Disclosure Statement by Lerman Container Corp. (Wood, Thomas) Modified on 5/16/2019 (jf3s, Deputy Clerk). (Entered: 05/16/2019)
05/16/2019	5	Supplemental to 1 Complaint, filed by Lerman Container Corp. (Attachments: # 1 Exhibit)(Wood, Thomas) (Entered: 05/16/2019)
05/20/2019		Case Reassigned to Judge George Jarrod Hazel. Judge Deborah K. Chasanow no longer assigned to the case. (kns, Deputy Clerk) (Entered: 05/20/2019)
06/05/2019	6	(FILED IN ERROR) AFFIDAVIT of Service for Summons, Civil Cover Sheet, Complaint with Exhibits, Disclosure of Corporate Interest, Jury Demand, and Report on the Filing or Determination of an Action Regarding a Patent or Trademark served on Andreas Rickert, Co-Owner of Lids and Jars, L.L.C. on May 17, 2019, filed by Lerman Container Corp..(Wood, Thomas) Modified on 6/11/2019 (jf3s, Deputy Clerk). (Entered: 06/05/2019)
06/06/2019	7	NOTICE of Appearance by Edward A Pennington on behalf of Lids and Jars, L.L.C. (Pennington, Edward) (Entered: 06/06/2019)
06/06/2019	8	Consent MOTION for Extension of Time to Respond to the Complaint by Lids and Jars, L.L.C. (Attachments: # 1 Text of Proposed Order) (Pennington, Edward) (Entered: 06/06/2019)
06/11/2019	9	QC NOTICE: 6 Affidavit of Service, filed by Lerman Container Corp. was filed incorrectly. ** Re-file using the Civil Event - Summons Returned Executed. It has been noted as FILED IN ERROR, and the document link has been disabled. (jf3s, Deputy Clerk) (Entered: 06/11/2019)
06/11/2019	10	SUMMONS Returned Executed by Lerman Container Corp.. Lids and Jars, L.L.C. served on 5/17/2019, answer due 6/7/2019.(Wood, Thomas) (Entered: 06/11/2019)
06/18/2019	11	PAPERLESS ORDER granting 8 Motion for Extension of Time. Signed by Judge George Jarrod Hazel on 6/18/2019. (jw2s, Deputy Clerk) (Entered: 06/18/2019)
07/08/2019	12	Local Rule 103.3 Disclosure Statement by Lids and Jars, L.L.C. (Pennington, Edward) (Entered: 07/08/2019)
07/08/2019	13	ANSWER to 1 Complaint, Affirmative Defenses, COUNTERCLAIM against Lerman Container Corp. by Lids and Jars, L.L.C..(Pennington, Edward) (Entered: 07/08/2019)
07/08/2019	14	CERTIFICATE OF SERVICE by Lids and Jars, L.L.C. re 12 Local Rule 103.3 Disclosure Statement (Pennington, Edward) (Entered: 07/08/2019)
07/08/2019	15	CERTIFICATE OF SERVICE by Lids and Jars, L.L.C. re 13 Answer to Complaint, Counterclaim (Pennington, Edward) (Entered: 07/08/2019)
07/12/2019	16	MOTION to Appear Pro Hac Vice for Jonathan M. Purow (Filing fee $100, receipt number 0416-8120060.) by Lerman Container Corp.(Wood, Thomas) (Entered: 07/12/2019)
07/15/2019	17	PAPERLESS ORDER granting 16 Motion to Appear Pro Hac Vice on behalf of Jonathan Purow. Directing attorney Jonathan Purow to register online for CM/ECF at http://www.mdd.uscourts.gov/electronic-case-filing-registration. Signed by Clerk on 7/15/2019. (srd, Deputy Clerk) (Entered: 07/15/2019)
07/24/2019	18	

		MOTION to Appear Pro Hac Vice for Mitchell Feller (Filing fee $100, receipt number 0416-8140330.) by Lerman Container Corp.(Wood, Thomas) (Entered: 07/24/2019)
07/24/2019	19	PAPERLESS CORRESPONDENCE Scheduling a Rule 16 Conference Call for August 12, 2019 at 4:30PM. Please dial in on(877) 810-9415 Access Code 5860700 (jw2s, Deputy Clerk) (Entered: 07/24/2019)
07/26/2019	20	Consent MOTION for Extension of Time to File Answer to Counterclaims by Lerman Container Corp.(Wood, Thomas) (Entered: 07/26/2019)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s)	:	Robert Lerman
Application No.	:	90/014,262
Filed	:	February 11, 2019
For	:	JAR
Examiner	:	Philip S. Hyder
Art Unit	:	2917
Confirmation No.	:	8506
Attorney Docket	:	8748-019

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

LITIGATION ACTIVITY

Dear Commissioner:

This submission is in furtherance of Form AO 120 to notify the United States Patent and Trademark Office of concurrently ongoing litigation activity pursuant to 37 C.F.R. § 1.565(a) involving U.S. Patent No. D781,151. A court action was filed in the District Court of Maryland on May 14, 2019, Docket No. 19cv01414 entitled Lerman Container Corp. v. Lids and Jars, LLC.

Respectfully submitted,

Date: July 19, 2019

By: /Jason R. Wachter/
Jason R. Wachter, Registration No. 65,987

USPTO Correspondence Address:
GOTTLIEB, RACKMAN & REISMAN, P.C.
Attorneys for Applicant
270 Madison Avenue
New York, New York 10016-0601
Telephone: (212) 684-3900 Direct: (646) 813-3567

Electronic Acknowledgement Receipt

EFS ID:	36634076
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	D781151
Customer Number:	22440
Filer:	Jason R. Wachter/Susan Piperno
Filer Authorized By:	Jason R. Wachter
Attorney Docket Number:	8748-019
Receipt Date:	19-JUL-2019
Filing Date:	11-FEB-2019
Time Stamp:	11:20:20
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Miscellaneous Incoming Letter	8749-019_Transmittal_Filed_7-19-19.pdf	271789 14bdb22a6fa7eb5da3d9541779735aff090fe567	no	1

Warnings:

Information:	
Total Files Size (in bytes):	271789

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	8748-019	8506

22440 7590 06/05/2019
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

EXAMINER
HYDER, PHILIP S

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
06/05/2019	PAPER

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

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

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THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS

WARD LAW OFFICE LLC
120 1/2 S. WASHINGTON STREET
SUITE 207
TIFFIN , OHIO 44883

Date: June 5, 2019

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. : 90014262
PATENT NO. : D781151
ART UNIT : 2900

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

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

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
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Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR/ PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
90/014,262	02/11/2019	D781151	8748-019

		EXAMINER	
GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 10016-0601		Phillip Hyder	
		ART UNIT	PAPER
		3990	20190605

DATE MAILED: _____

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

Commissioner for Patents

This is courtesy a copy of the Order granting ex parte reexamination of US D781151 mailed May 7, 2019, which had inadvertently been mailed the incorrect mailing address for the third party requester.

/Stephen Stein/
Managing Quality Assurance Specialist
Central Reexamination Unit
571-272-1544

PTO-90C (Rev.04-03)

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	70565-1	8506

22440 7590 05/07/2019
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NEW YORK, NY 10016-0601

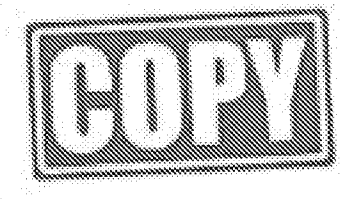
EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
05/07/2019	PAPER

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

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



Order Granting Request For Ex Parte Reexamination	Control No. 90/014,262	Patent Under Reexamination D781151	
	Examiner PHILIP S HYDER	Art Unit 2917	AIA (FITF) Status Yes

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

The request for *ex parte* reexamination filed 02/11/2019 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a)☐ PTO-892, b)☐ PTO/SB/08, c)☑ Other: PTO 1449

1. ☑ The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.



/Philip S Hyder/ Primary Examiner, Art Unit 2917		

cc:Requester (if third party requester)

DECISION GRANTING EX PARTE REEXAMINATION

A Substantial New Question of Patentability affecting the claim of United States Patent Number D781,151 (hereinafter '151 patent) granted to Lerman on March 14, 2017 is raised by the Request for Ex Parte Reexamination.

MPEP 2242 "For "a substantial new question of patentability" to be present, it is only necessary that the teaching of the (prior art) patents and printed publications is such that a reasonable examiner would consider the teaching to be important in deciding whether or not the claim is patentable."

The claim in the '151 patent is directed to the ornamental design for a Jar. The appearance is disclosed in seven views. The design consists of a cylindrical, transparent body and a taller cylindrical neck centered atop the body. The requestor has submitted ten references for consideration. The requestor is primarily concerned that the McKernan Jar raises a SNQ but also want to make the office aware of, and consideration of, references that were cited in the child of the '151 patent.

The following references have been cited in the request for reexamination:

Exhibit B1-B4: The McKernan Jar

Exhibit C: U.S. Patent Publication 2010/0307521 (Pires et al)

Exhibit D: U.S. Patent No. 2,076,551 (Conner)

Exhibit E: U.S. Patent No. 2,077,215 (Conner)

Exhibit F: U.S. Patent No. 2,077,216 (Conner)

Exhibit G: U.S. Patent No. 2,711,766 (Archer)

Exhibit H: U.S. Patent No. D635,030 (L'Abbate)

Exhibit I: U.S. Patent No. D638,300 (L'Abbate)

Exhibit J: U.S. Patent No. D641,257 (Thiebaut et al)

Exhibit K: U.S. Patent No. D739,741 (Staab)

Prior Art Discussion: Substantial New Question of Patentability

The examiner has come to the following conclusions regarding the prior art.

Exhibit B1-B4: Chinese The McKernan Jar

The McKernan reference raises a substantial new question of patentability for the '151 patent because it presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The reference presents an appearance that is substantially the same as the claimed design, as required for anticipation under 35 U.S.C. 102, and it also presents an appearance that is basically the same as the claimed design, as is required to act as a primary reference in an obviousness rejection under 35 U.S.C.103.

The McKernan reference was not previously considered nor addressed in the prior examination of the patent or a final holding of invalidity by the Federal Courts. This new teaching is such that a reasonable examiner would consider the new teaching to be important in deciding to allow the claim. This reference should have been considered for the basis of an anticipation analysis, to serve as a primary reference in an obviousness analysis, or to serve in a supporting role as a secondary reference. Consequently, a substantial new question of patentability has been raised by this reference.

Exhibit C: U.S. Patent Publication 2010/0307521 (Pires al et)

The 2010/0307521 patent publication reference raises a substantial new question of patentability for the '151 patent because it presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The reference does not present an appearance that is substantially the same as the claimed design, as required for anticipation under 35 U.S.C. 102 and it also does not present an appearance that is basically the same as the claimed design, as is required to act as a primary reference in an obviousness rejection under 35 U.S.C.103. However, a reasonable examiner would consider this new teaching to be important in deciding to allow the claim because it shares the common theme of comprising s short cylindrical body, and a cylindrical neck centered atop the body. This reference should have been considered for its use in a supporting role as a secondary reference. Consequently, a substantial new question of patentability has been raised by this reference.

The '521 reference was not previously considered nor addressed in the prior examination of the patent or a final holding of invalidity by the Federal Courts.

Exhibits D, E and F: U.S. Patent Numbers. 2,076,551; 2,077,215 & 2,077,216 (Conner)

None of the patents granted to Conner raise a substantial new question of patentability for the '151 patent. The references do not present overall appearances that are so related to the claimed design that they should have been considered in deciding whether the claim is patentable. Specifically, the bodies Conner designs are all considerably taller than that of the claimed design, whereas the neck is taller than the body in '151. The references are not so

related that any one of them could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and they do not provide any additional teachings, which would make them useful in a secondary role in an obviousness rejection.

Exhibit G: U.S. Patent No. 2,711,766 (Archer)

The Archer patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. Specifically, the tapered and considerably taller body shares little in common with the design in '151. The reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.

Exhibits H and I: U.S. Patent No. D635, 030 & D638,300 (L'Abbate)

Neither of the patents granted to L'Abbate raises a substantial new question of patentability for the '151 patent. Neither reference presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. These designs differ from '151 due to the differences in their overall proportions and because their forms lack symmetry. Neither reference is so related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection

under 35 U.S.C.103, and they do not provide any additional teachings, which would make them useful in a secondary role in an obviousness rejection.

Exhibit J: U.S. Patent No. D641, 257 (Thiebaut et al)

The Thiebaut patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present overall appearances that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. This design differs from '151 in its overall proportions and because it is opaque rather than transparent. This reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.

Exhibit K: U.S. Patent No. D739,741 (Staab)

The Staab patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present overall appearances that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The tapered and considerably taller body shares little in common with the design in '151. This reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.

In summary, at least one prior art reference submitted by the requester raises a substantial new question of patentability affecting the claim of United States Patent Number D781,151. The request for reexamination is GRANTED.

Litigation Activity

The patent owner is reminded of the continuing responsibility under 37 CFR § 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving the '321 patent throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Additional Information

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

Conclusion

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

By Mail to: Mail Stop *Ex Parte* Reexam
Central Reexamination Unit
Commissioner for Patents
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication should be directed to Philip Hyder at telephone number 571-272-2621.

/Philip S Hyder/
Primary Examiner, Art Unit 2917

Conferees:

/K.K.R/
Primary Examiner, Art Unit 2911

/IAN SIMMONS/
Supervisory Patent Examiner, Art Unit 2912

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	70565-1	8506

22440 7590 05/07/2019
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

EXAMINER
HYDER, PHILIP S

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
05/07/2019	PAPER

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

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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

Michael W. Piper
Conley Rose, P.C.
5601 Granite Parekway, Suite 500, Plano, TX 75024

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/014,262* .

PATENT UNDER REEXAMINATION *D781151* .

ART UNIT *2917* .

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

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

Order Granting Request For Ex Parte Reexamination	Control No. 90/014,262	Patent Under Reexamination D781151	
	Examiner PHILIP S HYDER	Art Unit 2917	AIA (FITF) Status Yes

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

The request for *ex parte* reexamination filed 02/11/2019 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a)☐ PTO-892, b)☐ PTO/SB/08, c)☑ Other: PTO 1449

1. ☑ The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

/Philip S Hyder/ Primary Examiner, Art Unit 2917		

cc:Requester (if third party requester)

DECISION GRANTING EX PARTE REEXAMINATION

A Substantial New Question of Patentability affecting the claim of United States Patent Number D781,151 (hereinafter '151 patent) granted to Lerman on March 14, 2017 is raised by the Request for Ex Parte Reexamination.

MPEP 2242 "For "a substantial new question of patentability" to be present, it is only necessary that the teaching of the (prior art) patents and printed publications is such that a reasonable examiner would consider the teaching to be important in deciding whether or not the claim is patentable."

The claim in the '151 patent is directed to the ornamental design for a Jar. The appearance is disclosed in seven views. The design consists of a cylindrical, transparent body and a taller cylindrical neck centered atop the body. The requestor has submitted ten references for consideration. The requestor is primarily concerned that the McKernan Jar raises a SNQ but also want to make the office aware of, and consideration of, references that were cited in the child of the '151 patent.

The following references have been cited in the request for reexamination:

Exhibit B1-B4: The McKernan Jar

Exhibit C: U.S. Patent Publication 2010/0307521 (Pires et al)

Exhibit D: U.S. Patent No. 2,076,551 (Conner)

Exhibit E: U.S. Patent No. 2,077,215 (Conner)

Exhibit F: U.S. Patent No. 2,077,216 (Conner)

Exhibit G: U.S. Patent No. 2,711,766 (Archer)

Exhibit H: U.S. Patent No. D635,030 (L'Abbate)

Exhibit I: U.S. Patent No. D638,300 (L'Abbate)

Exhibit J: U.S. Patent No. D641,257 (Thiebaut et al)

Exhibit K: U.S. Patent No. D739,741 (Staab)

Prior Art Discussion: Substantial New Question of Patentability

The examiner has come to the following conclusions regarding the prior art.

Exhibit B1-B4: Chinese The McKernan Jar

The McKernan reference raises a substantial new question of patentability for the '151 patent because it presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The reference presents an appearance that is substantially the same as the claimed design, as required for anticipation under 35 U.S.C. 102, and it also presents an appearance that is basically the same as the claimed design, as is required to act as a primary reference in an obviousness rejection under 35 U.S.C.103.

The McKernan reference was not previously considered nor addressed in the prior examination of the patent or a final holding of invalidity by the Federal Courts. This new teaching is such that a reasonable examiner would consider the new teaching to be important in deciding to allow the claim. This reference should have been considered for the basis of an anticipation analysis, to serve as a primary reference in an obviousness analysis, or to serve in a supporting role as a secondary reference. Consequently, a substantial new question of patentability has been raised by this reference.

Exhibit C: U.S. Patent Publication 2010/0307521 (Pires al et)

The 2010/0307521 patent publication reference raises a substantial new question of patentability for the '151 patent because it presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The reference does not present an appearance that is substantially the same as the claimed design, as required for anticipation under 35 U.S.C. 102 and it also does not present an appearance that is basically the same as the claimed design, as is required to act as a primary reference in an obviousness rejection under 35 U.S.C.103. However, a reasonable examiner would consider this new teaching to be important in deciding to allow the claim because it shares the common theme of comprising s short cylindrical body, and a cylindrical neck centered atop the body. This reference should have been considered for its use in a supporting role as a secondary reference. Consequently, a substantial new question of patentability has been raised by this reference.

The '521 reference was not previously considered nor addressed in the prior examination of the patent or a final holding of invalidity by the Federal Courts.

Exhibits D, E and F: U.S. Patent Numbers. 2,076,551; 2,077,215 & 2,077,216 (Conner)

None of the patents granted to Conner raise a substantial new question of patentability for the '151 patent. The references do not present overall appearances that are so related to the claimed design that they should have been considered in deciding whether the claim is patentable. Specifically, the bodies Conner designs are all considerably taller than that of the claimed design, whereas the neck is taller than the body in '151. The references are not so

related that any one of them could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and they do not provide any additional teachings, which would make them useful in a secondary role in an obviousness rejection.

Exhibit G: U.S. Patent No. 2,711,766 (Archer)

The Archer patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. Specifically, the tapered and considerably taller body shares little in common with the design in '151. The reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.

Exhibits H and I: U.S. Patent No. D635, 030 & D638,300 (L'Abbate)

Neither of the patents granted to L'Abbate raises a substantial new question of patentability for the '151 patent. Neither reference presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. These designs differ from '151 due to the differences in their overall proportions and because their forms lack symmetry. Neither reference is so related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection

under 35 U.S.C.103, and they do not provide any additional teachings, which would make them useful in a secondary role in an obviousness rejection.

Exhibit J: U.S. Patent No. D641, 257 (Thiebaut et al)

The Thiebaut patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present overall appearances that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. This design differs from '151 in its overall proportions and because it is opaque rather than transparent. This reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.

Exhibit K: U.S. Patent No. D739,741 (Staab)

The Staab patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present overall appearances that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The tapered and considerably taller body shares little in common with the design in '151. This reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.

In summary, at least one prior art reference submitted by the requester raises a substantial new question of patentability affecting the claim of United States Patent Number D781,151. The request for reexamination is GRANTED.

Litigation Activity

The patent owner is reminded of the continuing responsibility under 37 CFR § 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving the '321 patent throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Additional Information

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

Conclusion

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

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Alexandria, VA 22314

Any inquiry concerning this communication should be directed to Philip Hyder at telephone number 571-272-2621.

/Philip S Hyder/
Primary Examiner, Art Unit 2917

Conferees:

/K.K.R/
Primary Examiner, Art Unit 2911

/IAN SIMMONS/
Supervisory Patent Examiner, Art Unit 2912

Reexamination	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/014,262	D781151
	Certificate Date	Certificate Number

Requester Correspondence Address: ☐ Patent Owner ☑ Third Party
Jacob M. Ward Ward Law Office LLC 120 1/2 S. Washington Street Suite 207 Tiffin, Ohio 44883

LITIGATION REVIEW ☑	PSH (examiner initials)	01 May 2019 (date)
Case Name		Director Initials

COPENDING OFFICE PROCEEDINGS	
TYPE OF PROCEEDING	NUMBER

Bibliographic Data

Application No: 90/014,262

Foreign Priority claimed: ○ Yes ◉ No

35 USC 119 (a-d) conditions met: ☐ Yes ☐ No ☐ Met After Allowance

Verified and Acknowledged: /Philip S Hyder/ (Examiner's Signature) | (Initials)

Title: JAR

FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
02/11/2019	D09	2917	70565-1
RULE			

APPLICANTS

INVENTORS

D781151

LERMAN CONTAINER CORPORATION (PATENT OWNER) JUPITER, FL, UNITED STATES

JACOB M WARD (3RD PTY REQ.) TIFFIN, OH, UNITED STATES

CONTINUING DATA

This application is a REX of 29567402 06/08/2016 PAT D781151

FOREIGN APPLICATIONS

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Doc description: Information Disclosure Statement (IDS) Filed

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	29567402
Filing Date	2016-06-08
First Named Inventor	Robert Lerman
Art Unit	
Examiner Name	
Attorney Docket Number	70565-1

U.S.PATENTS Remove

Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	2076551		1937-04-13	Conner	
	2	2077215		1937-04-13	Conner	
	3	2077216		1937-04-13	Conner	
	4	2711766		1955-06-28	Archer	
	5	D635030		2011-03-29	L'Abbate	
	6	D638300		2011-05-24	L'Abbate	
	7	D641257		2011-07-12	Thiebaut	
	8	D739741		2015-09-29	Staab	

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Attorney Docket Number	70565-1

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Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20100307521		2010-12-09	Pires	

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Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	https://www.beautypackaging.com/issues/2012-06/view_design-center/mckernan-adds-low-profile-frosted-glass-jars	
	2	The McKernan Jar was distributed in McKernan Catalogue, which was published, widely distributed, and available publically with a publication date of February 2012	
	3	Images of the McKernan Jar were publically disclosed and available on the internet as archived by Archive.org as of October 30, 2013.	
	4	Readily available part drawings of the McKernan Jar were regularly provided by the McKernan Packaging Clearing House identifying Part Number EL-28595 and dated March 21, 2011. The part drawings were readily available, offered to customers to promote sales, and reflect publically available information depicting the McKernan Jar.	

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	29567402
Filing Date	2016-06-08
First Named Inventor	Robert Lerman
Art Unit	
Examiner Name	
Attorney Docket Number	70565-1

EXAMINER SIGNATURE			
Examiner Signature	/Philip S Hyder/	Date Considered	05/01/2019

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	29567402
Filing Date	2016-06-08
First Named Inventor	Robert Lerman
Art Unit	
Examiner Name	
Attorney Docket Number	70565-1

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/Jacob M. Ward/	Date (YYYY-MM-DD)	2019-02-11
Name/Print	Jacob M. Ward	Registration Number	56,754

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	70565-1	8506

22440 7590 03/25/2019

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EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
03/25/2019	PAPER

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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/014,262*.

PATENT NO. *D 781,151*.

ART UNIT *2917*.

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

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

Ex Parte Reexamination Interview Summary – Pilot Program for Waiver of Patent Owner's Statement	Control No. 90/014,262	Patent For Which Reexamination is Requested D781,151
	Examiner Phillip Hyder	Art Unit 2917

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

All participants (USPTO official and patent owner):

(1) Jason Wachter, 65,987 (3)

(2) Renee Preston, CRU Paralegal (4)

Date of Telephonic Interview: 03/22/2019.

The USPTO official requested waiver of the patent owner's statement pursuant to the pilot program for waiver of patent owner's statement in *ex parte* reexamination proceedings.*

☐ The patent owner **agreed** to waive its right to file a patent owner's statement under 35 U.S.C. 304 in the event reexamination is ordered for the above-identified patent.

☒ The patent owner **did not agree** to waive its right to file a patent owner's statement under 35 U.S.C. 304 at this time.

The patent owner is not required to file a written statement of this telephone communication under 37 CFR 1.560(b) or otherwise. However, any disagreement as to this interview summary must be brought to the immediate attention of the USPTO, and no later than one month from the mailing date of this interview summary. Extensions of time are governed by 37 CFR 1.550(c).

*For more information regarding this pilot program, see *Pilot Program for Waiver of Patent Owner's Statement in Ex Parte Reexamination Proceedings*, 75 *Fed. Reg.* 47269 (August 5, 2010), available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

☐ USPTO personnel were unable to reach the patent owner.

The patent owner may contact the USPTO personnel at the telephone number provided below if the patent owner decides to waive the right to file a patent owner's statement under 35 U.S.C. 304.

Renee Preston Renee Preston (571) 272-1607
Signature and telephone number of the USPTO official who contacted or attempted to contact the patent owner.

cc: Requester (if third party requester)

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	70565-1	8506

22440 7590 03/11/2019
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

EXAMINER	
HYDER, PHILIP S	

ART UNIT	PAPER NUMBER
2917	

MAIL DATE	DELIVERY MODE
03/11/2019	PAPER

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

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

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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. *90/014,262*.

PATENT NO. *D 781,151*.

ART UNIT *2917*.

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

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

Ex Parte Reexamination Interview Summary – Pilot Program for Waiver of Patent Owner's Statement	Control No. 90/014,262	Patent For Which Reexamination is Requested D781,151
	Examiner Phillip Hyder	Art Unit 2917

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

All participants (USPTO official and patent owner):

(1) Gottlieb Rackman & Reisman PC (3)

(2) Renee Preston, CRU Paralegal (4)

Date of Telephonic Interview: 03/11/2019.

The USPTO official requested waiver of the patent owner's statement pursuant to the pilot program for waiver of patent owner's statement in *ex parte* reexamination proceedings.*

☐ The patent owner **agreed** to waive its right to file a patent owner's statement under 35 U.S.C. 304 in the event reexamination is ordered for the above-identified patent.

☐ The patent owner **did not agree** to waive its right to file a patent owner's statement under 35 U.S.C. 304 at this time.

The patent owner is not required to file a written statement of this telephone communication under 37 CFR 1.560(b) or otherwise. However, any disagreement as to this interview summary must be brought to the immediate attention of the USPTO, and no later than one month from the mailing date of this interview summary. Extensions of time are governed by 37 CFR 1.550(c).

*For more information regarding this pilot program, see *Pilot Program for Waiver of Patent Owner's Statement in Ex Parte Reexamination Proceedings*, 75 *Fed. Reg.* 47269 (August 5, 2010), available on the USPTO Web site at http://www.uspto.gov/patents/law/notices/2010.jsp.

☒ USPTO personnel were unable to reach the patent owner.

The patent owner may contact the USPTO personnel at the telephone number provided below if the patent owner decides to waive the right to file a patent owner's statement under 35 U.S.C. 304.

Renee Preston Renee Preston (571) 272-1607
Signature and telephone number of the USPTO official who contacted or attempted to contact the patent owner.

cc: Requester (if third party requester)

Litigation Search Report CRU 3999

Reexam Control No. 90/014,262

To: Examiner Location: CRU Art Unit: 2916 Date: 02/12/2019	**From: Renee Preston** **Location: CRU 3999** **REM 4C75** **Phone: (571) 272-1607** **Renee.preston@uspto.gov**

Search Notes

U.S. Patent No. D781,151

1) I performed a KeyCite Search in Westlaw, which retrieves all history on the patent including any litigation.

2) I performed a search on the patent in Lexis CourtLink for any open dockets or closed cases.

3) I performed a search in Lexis in the Federal Courts and Administrative Materials databases for any cases found.

4) I performed a search in Lexis in the IP Journal and Periodicals database for any articles on the patent.

5) I performed a search in Lexis in the news databases for any articles about the patent or any articles about litigation on this patent.

Litigation: No cases found

References Cited Items (33)

Title	Date	Type
1. CHILD-RESISTANT CLOSURE WITH AUDIBLE CLICK CLOSE INDICATOR Out Of Plan US PAT 5197616	Jun 23, 1992	Patents
2. PACKAGING COMPRISING A CONTAINER AND MEMBRANE Out Of Plan US PAT APP 20050074528	Feb 20, 2004	Patents
3. LAYERS OF SOAP IN A TRANSPARENT CONTAINER WITH A SPONGE Out Of Plan US PAT D506128	Apr 18, 2003	Patents
4. CLOSURE Out Of Plan US PAT D633386	May 27, 2010	Patents
5. TWO PIECE SCREW CAP CLOSURE Out Of Plan US PAT D519837	Apr 08, 2004	Patents
6. CONTAINER HAVING AN AUTOMATIC IDENTIFICATION DEVICE FOR IDENTIFYING THE CONTENTS THEREIN Out Of Plan US PAT APP 20080308518	Jun 16, 2008	Patents
7. FLASK, CAP AND REFILL Out Of Plan US PAT D634202	Dec 28, 2009	Patents
8. PACKAGE FOR CONTACT LENSES Out Of Plan US PAT D554367	May 04, 2004	Patents
9. ENCLOSURE HAVING AN AUTOMATIC IDENTIFICATION DEVICE Out Of Plan US PAT APP 20080314900	Jun 16, 2008	Patents
10. CONTACT LENS BLISTER PACKAGE Out Of Plan US PAT D441284	May 09, 2000	Patents
11. CLOSURE CAP Out Of Plan US PAT D574240	Mar 02, 2007	Patents
12. TWO-PIECE LID Out Of Plan US PAT D442864	Jul 12, 2000	Patents
13. BOTTLE Out Of Plan US PAT D578891	Dec 10, 2007	Patents
14. BOTTLE CAP Out Of Plan US PAT D453473	Jun 20, 2000	Patents
15. FLASK Out Of Plan US PAT D493721	Aug 26, 2002	Patents
16. THREADED CHILD-RESISTANT PACKAGE HAVING LINERLESS CLOSURE Out Of Plan US PAT 7527159	Mar 11, 2004	Patents
17. FRICTION SURFACE FOR PUSH AND TURN CHILD RESISTANT CLOSURE Out Of Plan US PAT 7815061	Mar 31, 2006	Patents
18. CONTAINER ASSEMBLY WITH ONE-PIECE CHILD RESISTANT CLOSURE Out Of Plan US PAT APP 20150076103	Sep 04, 2014	Patents
19. INSULATED JAR Out Of Plan US PAT 3311248	Nov 18, 1964	Patents
20. CHILD RESISTANT CLOSURE Out Of Plan US PAT 4020965	May 03, 1976	Patents

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Title	Date	Type
21. BOTTLE CAP Out Of Plan US PAT D687299	Nov 02, 2011	Patents
22. CHILD PROOF CLOSURE CAP FOR CONTAINER WITH COMBINED TILTING AND ROTATING OPERATION Out Of Plan US PAT 9045265	Oct 01, 2012	Patents
23. CHILD RESISTANT CLOSURE WITH IMPROVED ASSEMBLY Out Of Plan US PAT APP 20150122767	Nov 05, 2013	Patents
24. PACKAGING Out Of Plan US PAT D679990	Nov 02, 2011	Patents
25. CHILD RESISTANT CLOSURE WITH IMPROVED ASSEMBLY Out Of Plan US PAT APP 20110147334	Feb 13, 2010	Patents
26. COMPOSITE CLOSURE Out Of Plan US PAT APP 20150122769	Nov 01, 2013	Patents
27. CONTAINER Out Of Plan US PAT APP 20150298866	Jun 04, 2013	Patents
28. CHILD PROOF CLOSURE Out Of Plan US PAT APP 20160030285	Jul 29, 2015	Patents
29. LIGHTWEIGHT CHILD-RESISTANT CLOSURE Out Of Plan US PAT 8205761	Nov 25, 2009	Patents
30. IMPACT RESISTANT CLOSURE Out Of Plan US PAT 8672158	Jun 27, 2012	Patents
31. INJECTION MOLDING DIE FOR ROOF PRISM LENS ARRAY Out Of Plan JP PAT APP 11058455 A (PAJ)	Aug 26, 1997	Patents
32. CHILD RESISTANT CLOSURE DEVICE Out Of Plan WO 1983002763 A1	Apr 03, 1980	Patents
33. Bague de col de récipient rigide avec couvercle Out Of Plan FR PAT APP 2720376 A1	May 26, 1994	Patents

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Citing References (17)

Treatment	Title	Date	Type	Depth	Headnote(s)
—	1. RF 046032/0937 Out Of Plan	Apr. 27, 2018	Assignments	—	—
—	2. RF 038847/0589 Out Of Plan	June 08, 2016	Assignments	—	—
—	3. JAR Out Of Plan US PAT D835508 , U.S. PTO Design	Dec. 11, 2018	Patents	—	—
—	4. LID FOR A CULTURE VESSEL Out Of Plan US PAT D831842 , U.S. PTO Design	Oct. 23, 2018	Patents	—	—
—	5. LIP PRODUCT CONTAINER Out Of Plan US PAT D831891 , U.S. PTO Design	Oct. 23, 2018	Patents	—	—
—	6. LIP PRODUCT CONTAINER Out Of Plan US PAT D830638 , U.S. PTO Design	Oct. 09, 2018	Patents	—	—
—	7. LIP PRODUCT CONTAINER Out Of Plan US PAT D829996 , U.S. PTO Design	Oct. 02, 2018	Patents	—	—
—	8. LIP PRODUCT CONTAINER Out Of Plan US PAT D827935 , U.S. PTO Design	Sep. 04, 2018	Patents	—	—
—	9. LIP PRODUCT CONTAINER Out Of Plan US PAT D827205 , U.S. PTO Design	Aug. 28, 2018	Patents	—	—
—	10. LIP PRODUCT CONTAINER Out Of Plan US PAT D825856 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—
—	11. LIP PRODUCT CONTAINER Out Of Plan US PAT D825857 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—
—	12. LIP PRODUCT CONTAINER Out Of Plan US PAT D825858 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—
—	13. LIP PRODUCT CONTAINER Out Of Plan US PAT D825859 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—
—	14. LIP PRODUCT CONTAINER Out Of Plan US PAT D825860 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—
—	15. LIP PRODUCT CONTAINER Out Of Plan US PAT D825861 , U.S. PTO Design	Aug. 14, 2018	Patents	—	—
—	16. FACE PAINT CONTAINER Out Of Plan US PAT D814705 , U.S. PTO Design	Apr. 03, 2018	Patents	—	—
—	17. JAR Out Of Plan US PAT D797559 , U.S. PTO Design	Sep. 19, 2017	Patents	—	—

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Job Number: 82712927

Documents (2)

1. *US Patent Issued to eBottles.com on March 14 for "Jar" (Florida Inventor)*
   Client/Matter: -None-
   Search Terms: D781151 or D781,151
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
News	-None-

2. *eBottles.com Announces Award of US Design Patent D781151*
   Client/Matter: -None-
   Search Terms: D781151 or D781,151
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
News	-None-

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US Patent Issued to eBottles.com on March 14 for "Jar" (Florida Inventor)

US Fed News

March 16, 2017 Thursday 3:00 PM EST

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Length: 105 words

Dateline: ALEXANDRIA, Va.

Body

ALEXANDRIA, Va., March 16 -- United States Patent no. ***D781,151***, issued on March 14, was assigned to eBottles.com (Jupiter, Fla.).

"Jar" was invented by eBottles.com (Jupiter, Fla.). The patent was filed on June 8, 2016, under Application No. D/567,402. *For further information, including images, charts and tables, please visit: http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetahtml%2FPTO%2Fsearch-bool.html&r=1&f=G&l=50&co1=AND&d=PTXT&s1=D781151&OS=D781151&RS=D781151 For any query with respect to this article or any other content requirement, please contact Editor at htsyndication@hindustantimes.com

Load-Date: March 16, 2017

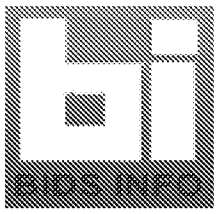
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eBottles.com Announces Award of US Design Patent D781151

Global Data Point

March 3, 2017 Friday

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Length: 658 words

Body

(PRWeb) - In remarks during a recent announcement to employees and other stakeholders, Robert Lerman, President of eBottles.com declared that the company had been issued the design patent for their unique design which pairs child resistant closures with cosmetic thick wall glass jars.

The combination of the special neck finish tooled glass jars and smooth top child resistant closures yields a new cosmetic glass package capable of meeting the rigorous standards of the Poison Prevention Package Act with Resecuring Effectiveness per Code of Federal Regulations Title 16, Part 1700. The jar was created with the particular needs of the cannabis industry in mind.

Mr. Lerman declared that he was very proud of the team that had produced an aesthetically pleasing design for marketers who are required to package their products in child resistant packages. We all share a great sense of gratification from this design patent award. Many hours of hard work and dedication went into this design which is unique in our industry and which will set the standard for combining attractive packaging with effective child resistant design.

The new glass jars available in 5 ml and 9 ml sizes have been on the market since October 2015. The company has also recently introduced a new 15 ml 53mm size.

Responding to the needs of the cannabis industry`s expanding focus on concentrate products, the eBottles team created its new line of cosmetic thick wall jars with the particular needs of concentrate products in mind. Mr Lerman stated: Cannabis industry leaders told us that they were dissatisfied with the current choices for concentrate packages. Customers were concerned about the clear styrene jewel cases being used believing that the dabbing process included a risk of scraping plastic into the product. The expensive silicone choice was also problematic as the silicone was seen as absorbing terpenes. Further, neither of these packages were child resistant, requiring the addition of secondary child resistant packaging adding labor and cost.

The eBottles solution was to create economical glass jars which could satisfy the industry demands of product safety, ease of use, cosmetic appearance and most importantly a package that would maintain child resistance throughout its useful life. The insides of the jars are rounded allowing heated concentrates to pool in the middle of the jar, providing the consumer the ability to gain easy access to all of the valuable contents.

The 5 ml 28mm jar has been well received by marketers of distillates, isolates and saps. The 5 ml jar package includes child resistant closures lined with a foil and mylar laminate construction designed specifically for high

terpene content products. The 9 ml 38mm jar is a hit with marketers of solid thc based concentrates such as shatter and wax. The new 15 ml 53mm jar expands the companys offering to include a size capable of holding multiple grams of concentrates.

Brett Mouser, CEO of Mahatma Concentrates a leading manufacturer of concentrate products stated, "These new glass jars provide the quality image that mirrors the Mahatma brand. We could not be more happy with our switch from plastic to glass containers and the customer response has been overwhelmingly positive. In particular, customers love the ability to see the product through the base of the jar and we love the fact that customers can see the purity and quality of our product prior to purchase."

eBottles.com offers high end products from US, Asian, and European manufacturers. With multiple distribution centers in the US, eBottles ships most orders within 24 hours. eBottles headquarters is based in Jupiter, Florida. Distribution centers are located in Bethel, CT, Denver, CO, and Los Angeles, CA.

For more information, please contact the Customer Relations Department at eBottles.com 561-203-2779 You can visit their website at http://www.ebottles.com . SOURCE eBottles.com 2017 Global Data Point.

Load-Date: March 3, 2017

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REEXAM CONTROL NUMBER	FILING OR 371 (c) DATE	PATENT NUMBER
90/014,262	02/11/2019	D781151

CONFIRMATION NO. 8506

WARD LAW OFFICE LLC (GENERAL)
120 1/2 S. WASHINGTON STREET.
SUITE 207
TIFFIN,, OH 44883

REEXAMINATION REQUEST NOTICE

OC000000106033196

Date Mailed: 02/21/2019

NOTICE OF REEXAMINATION REQUEST FILING DATE

(Third Party Requester)

Requester is hereby notified that the filing date of the request for reexamination is 02/11/2019, the date that the filing requirements of 37 CFR § 1.510 were received.

A decision on the request for reexamination will be mailed within three months from the filing date of the request for reexamination. (See 37 CFR 1.515(a)).

A copy of the Notice is being sent to the person identified by the requester as the patent owner. Further patent owner correspondence will be the latest attorney or agent of record in the patent file. (See 37 CFR 1.33). Any paper filed should include a reference to the present request for reexamination (by Reexamination Control Number).

cc: Patent Owner
22440
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

/pflewis/

Legal Instruments Examiner
Central Reexamination Unit 571-272-7705; FAX No. 571-273-9900

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REEXAM CONTROL NUMBER	FILING OR 371 (c) DATE	PATENT NUMBER
90/014,262	02/11/2019	D781151

CONFIRMATION NO. 8506

REEXAM ASSIGNMENT NOTICE

22440
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

OC000000106033198

Date Mailed: 02/21/2019

NOTICE OF ASSIGNMENT OF REEXAMINATION REQUEST

The above-identified request for reexamination has been assigned to Art Unit 2900. All future correspondence to the proceeding should be identified by the control number listed above and directed to the assigned Art Unit.

A copy of this Notice is being sent to the latest attorney or agent of record in the patent file or to all owners of record. (See 37 CFR 1.33(c)). If the addressee is not, or does not represent, the current owner, he or she is required to forward all communications regarding this proceeding to the current owner(s). An attorney or agent receiving this communication who does not represent the current owner(s) may wish to seek to withdraw pursuant to 37 CFR 1.36 in order to avoid receiving future communications. If the address of the current owner(s) is unknown, this communication should be returned within the request to withdraw pursuant to Section 1.36.

NOTICE OF USPTO EX PARTE REEXAMINATION PATENT OWNER STATEMENT WAIVER PROGRAM

The USPTO has implemented a pilot program where, after a reexamination proceeding has been granted a filing date and before the examiner begins his or her review, the patent owner may orally waive the right to file a patent owner's statement. See *"Pilot Program for Waiver of Patent Owner's Statement in Ex Parte Reexamination Proceedings,"* 75 FR 47269 (August 5, 2010). One goal of the pilot program is to reduce the pendency of reexamination proceedings and improve the efficiency of the reexamination process.

Ordinarily when ex parte reexamination is ordered, the USPTO must wait until after the receipt of the patent owner's statement and the third party requester's reply, or after the expiration of the time period for filing the statement and reply (a period that can be as long as 5 to 6 months), before mailing a first determination of patentability. The USPTO's first determination of patentability is usually a first Office action on the merits or a Notice of Intent to Issue Reexamination Certificate (NIRC).

Under the pilot program, the patent owner's oral waiver allows the USPTO to act on the first determination of patentability immediately after determining that reexamination will be ordered, and in a suitable case issue the reexamination order and the first determination of patentability (which could be a NIRC if the claims under reexamination are confirmed) at the same time.

Benefits to the Patent Owner for participating in this pilot program include reduction in pendency.

To participate in this pilot program, Patent Owners may contact the USPTO's Central Reexamination Unit (CRU) at 571-272-7705. The USPTO will make the oral waiver of record in the reexamination file in an interview summary and a copy will be mailed to the patent owner and any third party requester.

cc: Third Party Requester(if any)
WARD LAW OFFICE LLC (GENERAL)
120 1/2 S. WASHINGTON STREET.
SUITE 207
TIFFIN,, OH 44883

/pflewis/

Legal Instruments Examiner
Central Reexamination Unit 571-272-7705; FAX No. 571-273-9900

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Bib Data Sheet

CONFIRMATION NO. 8506

SERIAL NUMBER	FILING OR 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
90/014,262	02/11/2019 RULE	D09	2900	70565-1

AIA (First Inventor to File): YES

INVENTORS

D781151, Residence Not Provided;
LERMAN CONTAINER CORPORATION (PATENT OWNER), JUPITER, FL;
JACOB M WARD (3RD PTY REQ.), TIFFIN, OH;

APPLICANTS

WARD LAW OFFICE LLC (GENERAL), TIFFIN,, OH

**** CONTINUING DATA ***************************

This application is a REX of 29/567,402 06/08/2016 PAT D781151 *
(*)Data provided by applicant is not consistent with PTO records.

**** FOREIGN APPLICATIONS *********************

** MICRO ENTITY **

Foreign Priority claimed	STATE OR COUNTRY	SHEETS DRAWING	TOTAL CLAIMS	INDEPENDENT CLAIMS
☐ yes ☐ no			1	1
35 USC 119 (a-d) conditions met ☐ yes ☐ no ☐ Met after Allowance				
Verified and Acknowledged _____ Examiner's Signature Initials				

ADDRESS
22440

TITLE
JAR

FILING FEE RECEIVED	FEES: Authority has been given in Paper
3000	No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:

- ☐ All Fees
- ☐ 1.16 Fees (Filing)
- ☐ 1.17 Fees (Processing Ext. of time)
- ☐ 1.18 Fees (Issue)
- ☐ Other _____
- ☐ Credit

Patent Assignment Abstract of Title

Total Assignments: 2

Application #: 29567402 **Filing Dt:** 06/08/2016 **Patent #:** D781151 **Issue Dt:** 03/14/2017
PCT #: NONE **Intl Reg #:** **Publication #:** NONE **Pub Dt:**
Inventor: Robert Lerman
Title: JAR

Assignment: 1

Reel/Frame: 038847 / 0589 **Received:** 06/08/2016 **Recorded:** 06/08/2016 **Mailed:** 06/09/2016 **Pages:** 3
Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).
Assignor: LERMAN, ROBERT **Exec Dt:** 06/07/2016
Assignee: EBOTTLES.COM
4286 WEST MAIN STREET
JUPITER, FLORIDA 33458
Correspondent: GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
8TH FLOOR
NEW YORK, NY 10016-0601

Assignment: 2

Reel/Frame: 046032 / 0937 **Received:** 04/27/2018 **Recorded:** 04/27/2018 **Mailed:** 06/11/2018 **Pages:** 5
Conveyance: CORRECTIVE ASSIGNMENT TO CORRECT THE RECEIVING PARTY PREVIOUSLY RECORDED AT REEL: 038847 FRAME: 0589. ASSIGNOR(S) HEREBY CONFIRMS THE ASSIGNMENT.
Assignor: LERMAN, ROBERT **Exec Dt:** 06/07/2016
Assignee: LERMAN CONTAINER CORPORATION
4286 WEST MAIN ST.
JUPITER, FLORIDA 33458
Correspondent: GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
JASON R. WACHTER
NEW YORK, NY 10016-0601

Search Results as of: 02/20/2019 01:18 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.6
Web interface last modified: Jun 26, 2017 v.2.6

PTO/SB/57 (01-18)
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(Also referred to as FORM PTO-1465)

REQUEST FOR *EX PARTE* REEXAMINATION TRANSMITTAL FORM

Address to:
Mail Stop *Ex Parte* Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attorney Docket No.: 70565-1

Date: February 12, 2019

1. ☒ This is a request for *ex parte* reexamination pursuant to 37 CFR 1.510 of patent number D781,151 issued March 14, 2017. The request is made by:
   ☐ patent owner. ☒ third party requester.

2. ☒ The name and address of the person requesting reexamination is:
   Jacob M. Ward
   Ward Law Office LLC
   120 1/2 S. Washington Street, Suite 207, Tiffin, Ohio 44883

3. Requester ☒ asserts small entity status (37 CFR 1.27) or ☐ certifies micro entity status (37 CFR 1.29). Only a patent owner requester can certify micro entity status. Form PTO/SB/15A or B must be attached to certify micro entity status.

4. This request is accompanied by payment of the reexamination fee as set forth in:
   ☐ 37 CFR 1.20(c)(2); **or**
   ☒ 37 CFR 1.20(c)(1). **In checking this box for payment of the fee set forth in 37 CFR 1.20(c)(1), requester asserts that this request has forty (40) or fewer pages and complies with all other requirements of 37 CFR 1.20(c)(1).**

   Payment of the reexamination fee is made by the method set forth below.
   a. ☐ A check in the amount of $_____ is enclosed to cover the reexamination fee;
   b. ☒ The Director is hereby authorized to charge the reexamination fee to Deposit Account No. 601308;
   c. ☐ Payment by credit card. Form PTO-2038 is attached; **or**
   d. ☒ Payment made via EFS-Web.

   ☒ In addition, the Director is hereby authorized to charge any fee deficiencies to Deposit Account No. 601308.

5. ☐ Any refund should be made by ☐ check or ☐ credit to Deposit Account No._____. 37 CFR 1.26(c). If payment is made by credit card, refund must be to credit card account.

6. ☒ A copy of the patent to be reexamined having a double column format on one side of a separate paper is enclosed. 37 CFR 1.510(b)(4).

7. ☐ CD-ROM or CD-R in duplicate, Computer Program (Appendix) or large table
   ☐ Landscape Table on CD

This collection of information is required by 37 CFR 1.510. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) a request for reexamination. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 18 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop *Ex Parte* Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

8. ☐ Nucleotide and/or Amino Acid Sequence Submission
If applicable, items a. – c. are required.
   a. ☐ Computer Readable Form (CRF)
   b. Specification Sequence Listing on:
      i. ☐ CD-ROM (2 copies) or CD-R (2 copies) **or**
      ii. ☐ paper
   c. ☐ Statements verifying identity of above copies.

9. ☐ A copy of any disclaimer, certificate of correction or reexamination certificate issued in the patent is included.

10. ■ Reexamination of claim(s) 1 is requested.

11. ■ A copy of every patent or printed publication relied upon is submitted herewith including a listing thereof on Form PTO/SB/08, PTO-1449, or equivalent.

12. ■ An English language translation of all necessary and pertinent non-English language patents and/or printed publications is attached.

13. ■ The attached detailed request includes at least the following items:
   a. A statement identifying each substantial new question of patentability based on prior patents and printed publications. 37 CFR 1.510(b)(1).
   b. An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited art to every claim for which reexamination is requested. 37 CFR1.510(b)(2).

14. ☐ A proposed amendment is included (only where the patent owner is the requester). 37 CFR 1.510(e).

15. ■ It is certified that the statutory estoppel provisions of 35 U.S.C. 315(e)(1) or 35 U.S.C. 325(e)(1) do not prohibit requester from filing this *ex parte* reexamination request. 37 CFR 1.510(b)(6).

16. Service
   a. ■ It is certified that a copy of this request (if filed by other than the patent owner) has been served in its entirety on the patent owner as provided in 37 CFR 1.33(c).

      The name and address of the party served are:

      Gottlieb Rackman & Reisman PC

      270 Madison Avenue, 8th Floor, New York, NY 10016-0601

      Date of Service: February 12, 2019

   OR

   b. ☐ A duplicate copy is enclosed since service on patent owner was not possible. An explanation of the efforts made to serve patent owner **is attached**. See MPEP 2220.

17. Correspondence Address: Direct all communication about the reexamination to:

☒ The address associated with Customer Number: 144899

OR

☐ Firm or Individual Name _____
(at the address identified below)

Address

City	State	Zip

Country

Telephone	Email

18. ☐ The patent is currently the subject of the following concurrent proceeding(s):

a. ☐ Copending reissue Application No. _____

b. ☐ Copending reexamination Control No. _____

c. ☐ Copending Interference No. _____

d. ☐ Copending litigation styled:

_____

_____

WARNING : Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

/Jacob M. Ward/ — Authorized Signature

February 12, 2019 — Date

Jacob M. Ward — Typed/Printed Name

56,754 — Registration No.

☐ For Patent Owner Requester ☒ For Third Party Requester

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

Shipment Receipt

Transaction Date: 12 Feb 2019 Tracking Number: 1ZF2V0101396690236

1 ADDRESS INFORMATION

Ship To:

Gottlieb Rackman & Reisman PC
Gottlieb Rackman & Reisman PC
270 Madison Avenue
8th Floor
NEW YORK NY 100160601
Telephone:2126843900
email:info@grr.com

Ship From:

World Patent Services
Rick Jordan/Shari White
113 S. West Street
Suite 100
Alexandria VA 22314
Telephone:703-418-2848
email:wps@world-patent.com

Return Address:

World Patent Services
Rick Jordan/Shari White
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Suite 100
ALEXANDRIA VA 22314
Telephone:703-418-2848
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UPS (Air) Tue 12 Feb 2019 1pkg

TOTAL PACKAGES: 1pkg

TRACKING NUMBER	CARRIER & SERVICE	WEIGHT
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Electronic Acknowledgement Receipt

EFS ID:	35131306
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	Robert Lerman
Correspondence Address:	- - - - - - - - - -
Filer:	Jacob Michael Ward./Jennifer Howard
Filer Authorized By:	Jacob Michael Ward.
Attorney Docket Number:	70565-1
Receipt Date:	12-FEB-2019
Filing Date:	
Time Stamp:	18:10:57
Application Type:	Reexam (Third Party)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Transmittal Letter	70565-1_Transmittal_REFILED_02-12-19.pdf	230544 8337901582077a9430a176b690ebeae24145ea04	no	4
Warnings:					
Information:					
2	Reexam Certificate of Service	70565-1_Receipt_of_Service_REFILED_02-12-19.pdf	51695 6ded0bebe169c79bd11251ead71507f73c24d75a	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	282239		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

<u>New Applications Under 35 U.S.C. 111</u>
If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.
<u>National Stage of an International Application under 35 U.S.C. 371</u>
If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.
<u>New International Application Filed with the USPTO as a Receiving Office</u>
If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

PTO/SB/08a (01-10)
Approved for use through 07/31/2012. OMB 0651-0031
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	29567402
Filing Date	2016-06-08
First Named Inventor	Robert Lerman
Art Unit	
Examiner Name	
Attorney Docket Number	70565-1

U.S.PATENTS Remove

Examiner Initial*	Cite No	Patent Number	Kind Code[1]	Issue Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	2076551		1937-04-13	Conner	
	2	2077215		1937-04-13	Conner	
	3	2077216		1937-04-13	Conner	
	4	2711766		1955-06-28	Archer	
	5	D635030		2011-03-29	L'Abbate	
	6	D638300		2011-05-24	L'Abbate	
	7	D641257		2011-07-12	Thiebaut	
	8	D739741		2015-09-29	Staab	

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Not for submission under 37 CFR 1.99)

Application Number	29567402
Filing Date	2016-06-08
First Named Inventor	Robert Lerman
Art Unit	
Examiner Name	
Attorney Docket Number	70565-1

U.S.PATENT APPLICATION PUBLICATIONS Remove

Examiner Initial*	Cite No	Publication Number	Kind Code[1]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear
	1	20100307521		2010-12-09	Pires	

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	1							

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NON-PATENT LITERATURE DOCUMENTS Remove

Examiner Initials*	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc), date, pages(s), volume-issue number(s), publisher, city and/or country where published.	T[5]
	1	https://www.beautypackaging.com/issues/2012-06/view_design-center/mckernan-adds-low-profile-frosted-glass-jars	
	2	The McKernan Jar was distributed in McKernan Catalogue, which was published, widely distributed, and available publically with a publication date of February 2012	
	3	Images of the McKernan Jar were publically disclosed and available on the internet as archived by Archive.org as of October 30, 2013.	
	4	Readily available part drawings of the McKernan Jar were regularly provided by the McKernan Packaging Clearing House identifying Part Number EL-28595 and dated March 21, 2011. The part drawings were readily available, offered to customers to promote sales, and reflect publically available information depicting the McKernan Jar.	

If you wish to add additional non-patent literature document citation information please click the Add button Add

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	29567402
	Filing Date	2016-06-08
	First Named Inventor	Robert Lerman
	Art Unit	
	Examiner Name	
	Attorney Docket Number	70565-1

EXAMINER SIGNATURE			
Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through a citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

[1] See Kind Codes of USPTO Patent Documents at www.USPTO.GOV or MPEP 901.04. [2] Enter office that issued the document, by the two-letter code (WIPO Standard ST.3). [3] For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. [4] Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. [5] Applicant is to place a check mark here if English language translation is attached.

INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Not for submission under 37 CFR 1.99)		
	Application Number	29567402
	Filing Date	2016-06-08
	First Named Inventor	Robert Lerman
	Art Unit	
	Examiner Name	
	Attorney Docket Number	70565-1

CERTIFICATION STATEMENT

Please see 37 CFR 1.97 and 1.98 to make the appropriate selection(s):

That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(1).

OR

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in 37 CFR 1.56(c) more than three months prior to the filing of the information disclosure statement. See 37 CFR 1.97(e)(2).

See attached certification statement.

The fee set forth in 37 CFR 1.17 (p) has been submitted herewith.

☒ A certification statement is not submitted herewith.

SIGNATURE

A signature of the applicant or representative is required in accordance with CFR 1.33, 10.18. Please see CFR 1.4(d) for the form of the signature.

Signature	/Jacob M. Ward/	Date (YYYY-MM-DD)	2019-02-11
Name/Print	Jacob M. Ward	Registration Number	56,754

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

EXHIBIT B1

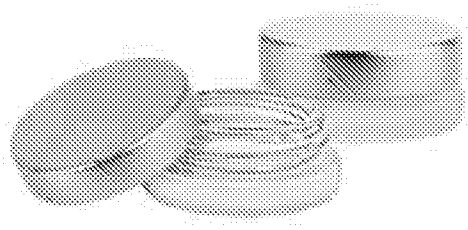
- Paper/Board
- PCR
- PET
- Plastics
- Wood

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  - Anti-Counterfeit
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  - Decorative Effects
  - Design Capabilities
  - Digital Printing
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  - Machinery
  - Made In USA
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Design Center

McKernan Adds Low Profile, Frosted Glass Jars

06.01.12



McKernan Packaging has added a 7ml frosted glass jar to its continuous stock inventory. This jar is offered with a metal unishell, brushed silver closure in a 38/400 finish with a foam liner. It is ideal for lipgloss, blush, eye creams and numerous other cosmetic products. The frosted jar is currently in stock and ready to ship with no lead times and is also available in flint. The caps are available in custom high gloss or matte colors. Call (800) 787-7587 or (775)-356-6111 to talk to a McKernan Packaging professional about more info on this jar and closure.

More info: www.mckernan.com

Related Searches

- Caps

EXHIBIT B2

FEBRUARY 2012
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Las Vegas, NV
Permit No. 184

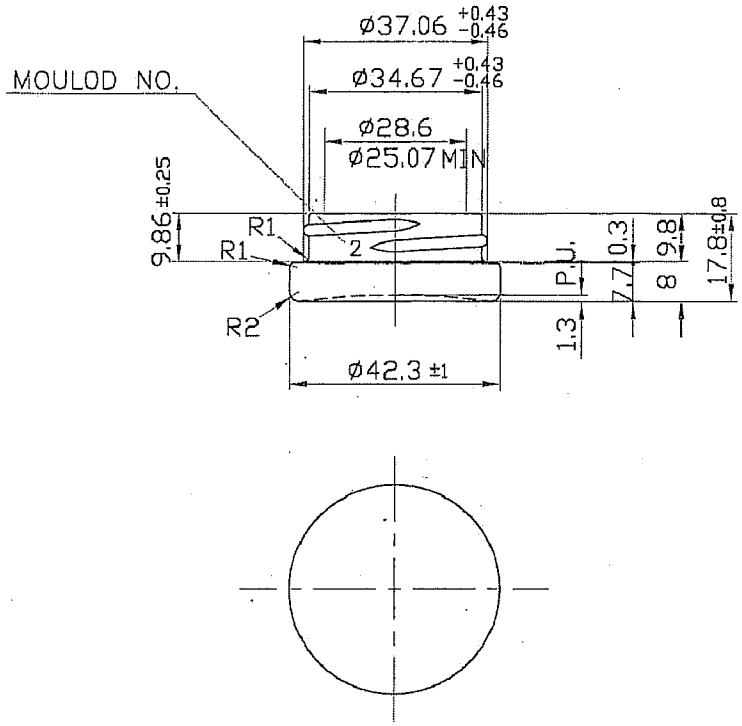
McKernan
CUSTOMIZED PACKAGING SOLUTIONS
P.O. Box 7261
Reno • Nevada • 89510

EXHIBIT B3

http://mckernan.com/store/images/D/EL-28595.jpg Go SEP OCT NOV
1 capture
30 Oct 2013
30
2012 2013 2014
About this capture



EXHIBIT B4



REP	DATA	NOTE	MODIFICATIONS
A	21.03.11		MODIFIED FINISH DIMENSION.

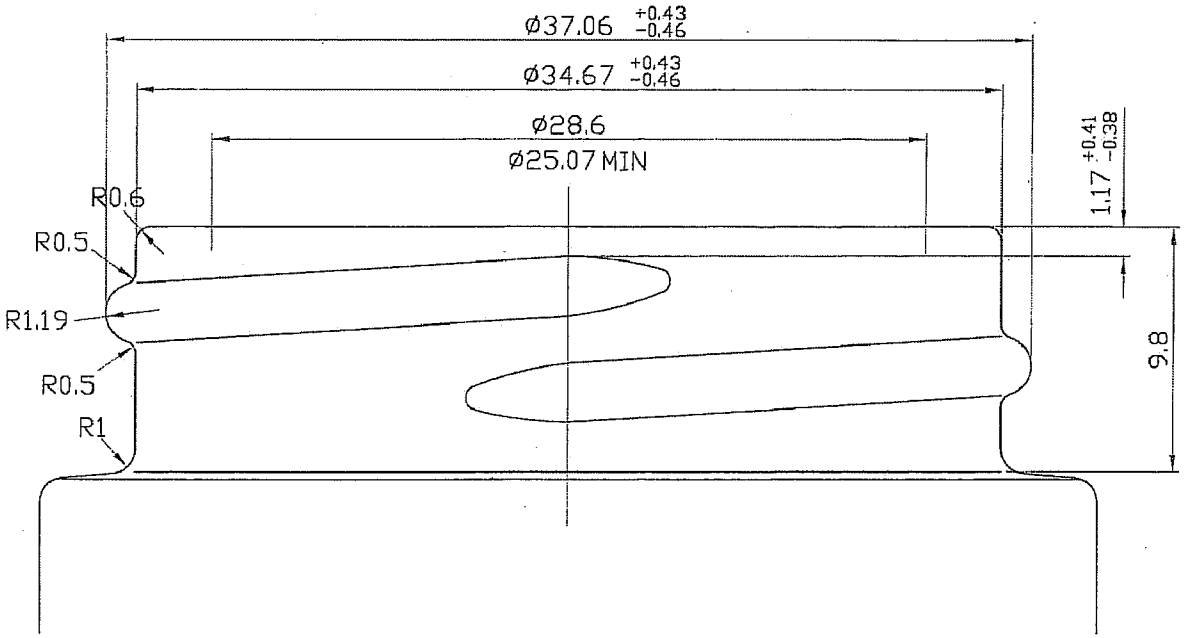
NECK FINISH	G.C.M.I. 38-400	GLASS WEIGHT (g)	31 ± 3.5 gr	CAPACITY NO. (c.c.)	±
MINI INT. COL	Ø25.07	CAPACITY O.F. (c.c.)	7 ± 0.8c.c.	DATE	21.03.2011

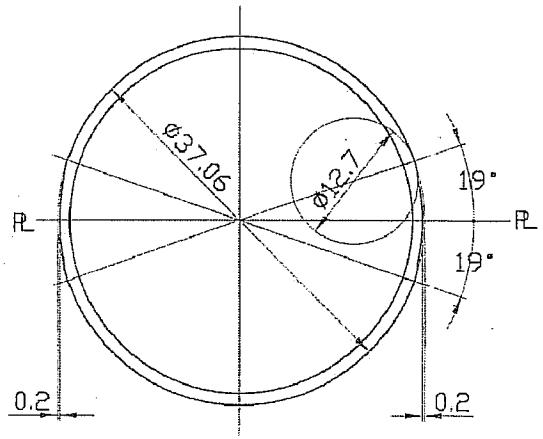
McKernan
PACKAGING CLEARING HOUSE®
QUALITY DISCOUNT PACKAGING

		SCALE	1 : 1	UNIT	m.m.
NAME	Mckernan 7ml Frosted Jar	DWG NO.	EL-28595		

DRAWING BY REVISER APPROVAL

A&A Exhibit 1003 388 of 510





S=2/1

G.C.M.I. : 38−400
PITCH : 4.233mm
TURN : 1

REP	DATA	NOTE	MODIFICATIONS

NECK FINISH	G.C.M.I. 38−400	GLASS WEIGHT (g)	±	CAPACITY NO. (c.c.)	±
MINI INT. COL		CAPACITY O.F. (c.c.)	±	DATE	21.03.2011
McKernan PACKAGING CLEARING HOUSE® QUALITY DISCOUNT PACKAGING			SCALE	5 : 1	UNIT m.m.
NAME	Mckernan 7ml Frosted Jar		DWG NO.	EL-28595	
DRAWING BY		REVISER		APPROVAL	

A&A Exhibit 1003 389 of 510

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number
1ZF2V0101394847928

Weight
2.00 LBS

Service

UPS Next Day Air Saver®

Shipped / Billed On
01/30/2019

Delivered On

01/31/2019 2:29 P.M.

Delivered To
270 MADISON AVE
NEW YORK, NY, 10016, US

Received By

BACKDOOR

Left At
Mail Room

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 01/31/2019 2:36 P.M. EST

Electronic Patent Application Fee Transmittal

Application Number:	
Filing Date:	
Title of Invention:	JAR
First Named Inventor/Applicant Name:	Robert Lerman
Filer:	Jacob Michael Ward./Jennifer Howard
Attorney Docket Number:	70565-1

Filed as Small Entity

Filing Fees for ex parte reexam

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
REQUEST FOR EX PARTE REEXAM- STREAMLINED	2831	1	3000	3000
		Total in USD ($)		**3000**

Electronic Acknowledgement Receipt

EFS ID:	35119204
Application Number:	90014262
International Application Number:	
Confirmation Number:	8506
Title of Invention:	JAR
First Named Inventor/Applicant Name:	Robert Lerman
Customer Number:	144899
Filer:	Jacob Michael Ward./Jennifer Howard
Filer Authorized By:	Jacob Michael Ward.
Attorney Docket Number:	70565-1
Receipt Date:	11-FEB-2019
Filing Date:	
Time Stamp:	18:45:59
Application Type:	Reexam (Third Party)

Payment information:

Submitted with Payment	yes
Payment Type	DA
Payment was successfully received in RAM	$3000
RAM confirmation Number	021219INTEFSW00005779601308
Deposit Account	
Authorized User	
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Recpt of Orig ExParte Reex < 40 Pgs Rule1.20(C)(1)	70565-1_Request_for_Ex-Parte_Reexamination_FILED_02-11-19.pdf	412588 a74859d657ace05b95fc5f11e8c1f72aae3b151c	no	17
Warnings:					
Information:					
2	Miscellaneous Incoming Letter	70565-1_ART_EXHIBITS_FILED_021119.pdf	3471657 458cb187fb7d9d4baf38e449f6d1f043dd50c9f7	no	87
Warnings:					
Information:					
3	Copy of patent for which reexamination is requested	D781151.pdf	136283 46fb2b8b88ff9e222fe9ba7e4a7561927c109fd6	no	6
Warnings:					
Information:					
4	Transmittal Letter	70565-1_Transmittal_FILED_02-11-19.pdf	221611 29320f3703c0be04761bb909bc825363b40c9562	no	4
Warnings:					
Information:					
5	Information Disclosure Statement (IDS) Form (SB08)	70565-1_IDS_FILED_02-11-19.pdf	612606 147c867df2dd26cf8f0312d01c13b16ed0d1ac92	no	5
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Information:					
6	Non Patent Literature	70565-1_NPL_Exhibit_B1_FILED_02-11-19.pdf	78035 9d344e547381a42ae0d8ecc9d41a71fbe5c00621	no	2
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Information:					

7	Non Patent Literature	70565-1_NPL_Exhibit_B2_FILED_02-11-19.pdf	78683 2fcb23e9a2dc17c137539e8a02ca22dca164a955	no	2
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8	Non Patent Literature	70565-1_NPL_Exhibit_B3_FILED_02-11-19.pdf	74634 030103dc3e0a11af5484870489528446783ab54a	no	2
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Information:					
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Warnings:					
Information:					
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Information:					
11	Fee Worksheet (SB06)	fee-info.pdf	29998 e258373fe9a673ac96c9c6391b3bd5db51185380	no	2
Warnings:					
Information:					
			Total Files Size (in bytes):	5252585	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re *Ex Parte* Reexamination of: U.S. Patent No. D781,151

Issued: March 14, 2017

Named Inventor: Robert Lerman

Assignee: Lerman Container Corporation

Control Number: To Be Assigned

Filed: June 8, 2016

Title: JAR

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

Dear Commissioner:

REQUEST FOR *EX PARTE* REEXAMINATION

Ex Parte Reexamination under 35 U.S.C. §§ 301-307 and 37 C.F.R. § 1.510 *et seq.* is requested of U.S. Patent No. D781,151 (the "'115 patent," Exhibit. A), assigned to Lerman Container Corporation. ("Lerman Container" or "Patent Owner").

As demonstrated below, this Request raises substantial new questions (SNQs) of patentability of the sole design claim of the '151 patent. Specifically, the McKernan 7 mL Frosted Jar was commercially and readily available since February 2012 as Part Number EL-28595 *("McKernan Jar")* and anticipates or renders unpatentable the sole design claim of the '151 patent. No reference to the ubiquitous *McKernan Jar* was ever included in an Information Disclosure Statement or a Notice of References Cited during the prosecution of the '151 patent.

Requester respectfully requests that the Office grant this Request for *Ex Parte* Reexamination of the '151 patent, reexamine the sole design claim, and issue an initial Office Action rejecting the claim over at least the prior art discussed in this Request.

Attachments

1. Certificate of Service to Patent Owner
2. IDS form PTO/SB/08a

Exhibits

A. U.S. Patent No. D781,151 to Robert Lerman
B1-B4. Prior Art: McKernan Jar
C. U.S. Patent Publication 2010/0307521 (Pires)

D. U.S. Patent No. 2,076,551 (Conner)
E. U.S. Patent No. 2,077,215 (Conner)
F. U.S. Patent No. 2,077,216 (Conner)
G. U.S. Patent No. 2,711,766 (Archer)
H. U.S. Patent No. D635,030 (L'Abbate)
I. U.S. Patent No. D638,300 (L'Abbate)
J. U.S. Patent No. D641,257 (Thiebaut)
K. U.S. Patent No. D739,741 (Staab)

Exhibits D-K are references cited in the child application of the '151 patent (U.S. Patent No. 797,559)

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I. INTRODUCTION

A. Request for *Ex Parte* Reexamination

Requester respectfully requests reexamination under 35 U.S.C. §§ 301-307 and 37 C.F.R. § 1.510 *et seq.* of the sole claim of U.S. Patent No. D781,151 (Ex. A, the "'151 patent"), and issuance of a reexamination certificate canceling this claim. As explained in more detail below, the McKernan Jar and many other prior art references identified and applied in this Request raise substantial new questions of patentability and anticipates, or alternatively, render obvious the sole claim of the '151 patent. Requester certifies that a complete copy of this Request has been served via Certified Mail on Lerman Container Corporation, the record patent owner of the '151 patent, at the following correspondence address:

Gottlieb Rackman & Reisman PC
270 Madison Avenue
8th Floor
New York NY 10016-0601

Requester asserts small entity status, and asserts that this Request has forty (40) or fewer pages and complies with all other requirements of 37 C.F.R. § 1.20(c)(1). Pursuant to 37 C.F.R. § 1.20(c)(1), Requester is submitting a fee of $3,000.

B. Litigation Review

The claim of the '151 patent is the subject of this Request. For purposes of the Office's "Litigation Review" as described in M.P.E.P. § 2286, Requester is unaware of any litigation, *Inter Partes* Review, or other reexamination related to the '151 patent.

C. Reservation of Rights

All rights and defenses available to one or more parties are hereby reserved, including, but not limited to, defenses as to invalidity, unenforceability, and non-infringement regarding the '151 patent.

Any interpretation or construction of the claims or particular terms, phrases, or clauses made in this Request, either implicitly or explicitly, are solely for the purpose of this proceeding and should not be viewed as constituting, in whole or in part, Requester's own interpretation or construction. Moreover, because an *ex parte* reexamination procedure does not permit challenges under 35 U.S.C. § 112, Requester reserves the right to include indefiniteness arguments in other proceedings.[1]

II. OVERVIEW OF THE '151 PATENT AND ITS PROSECUTION HISTORY

A. Overview of the '151 Patent

The '151 patent, which is attached as Ex. A, describes and claims a jar, as described by its seven figures (FIGS. 1-7). Specifically, the '151 patent claims "[t]he ornamental design for a jar, as shown and described" and states that "[t]he broken lines shown in the drawings are included for the purpose of illustrating portions of the article that form no part of the claimed design." See '151 patent at page 1.

B. Prosecution History of the '151 Patent

The Design application number 29/567,402 ("'402 app.") that issued as the '151 patent was filed on June 8, 2016, without claiming benefit to an earlier-filed application. Applicant filed a request for Expedited Examination on June 14, 2016. The request for Expedited Examination was approved on August 11, 2016. An election was made by the Applicant in response to a restriction requirement during an interview on October 27, 2016 ("Interview"). The Applicant also authorized an Examiner Amendment to cancel the non-elected figures in

[1] While not a ground of rejection under reexamination, Requestor notes the lack of consistency between the broken lines in FIG. 1 around the base of the jar in contrast to the combination of solid lines and broken lines around the base of the jar in FIG. 7.

the specification during the Interview. The Office allowed the '402 app. on January 3, 2017. On January 20, 2017, Applicant filed replacement drawings renumbering the figures. On January 26, 2017, Applicant paid the issue fee. The '402 app. issued as the '151 patent on March 14, 2017.

III. IDENTIFICATION OF PRIOR ART AND EXISTENCE OF SUBSTANTIAL NEW QUESTIONS OF PATENTABILITY OF THE CLAIM OF THE '151 PATENT

A. Identification of the Prior Art

As noted above, the '151 patent was filed on June 8, 2016, as U.S. Patent Application No. 29/567,402, with no priority claim. Thus, the effective filing date of the '151 patent is the actual filing date of the '402 application, *i.e.*, June 8, 2016. 35 U.S.C. §100(i)(l).

Reexamination of the '151 patent is requested in view of the McKernan Jar commercially available since February 2012 and other prior art references that render unpatentable the sole claim of the '151 patent:

The McKernan Jar

The McKernan 7 mL Frosted Jar Part Number EL-28595 is a glass jar that has been sold in large quantities for decades by "the McKernan Packaging Clearing House" of Reno Nevada, also known. The McKernan Jar was published and available for sale in mail/phone order catalogs and on various websites as early as February 2012, and thus qualifies as prior art under at least AIA 35 U.S.C. § 102(a)(2).

(1) The McKernan Jar was disclosed as early as June 2012 at the URL at: https://www.beautypackaging.com/issues/2012-06/view_design-center/mckernan-adds-low-profile-frosted-glass-jars (Exhibit B1, IDS Entry 1).

(2) The McKernan Jar was distributed in McKernan Catalogue, which was

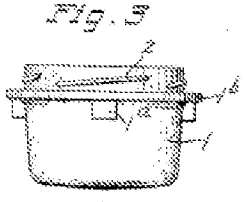
published, widely distributed, and available publically with a publication date of **February 2012**. (Exhibit B2, IDS Entry 2).

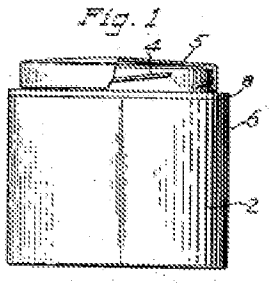
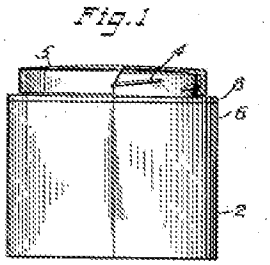
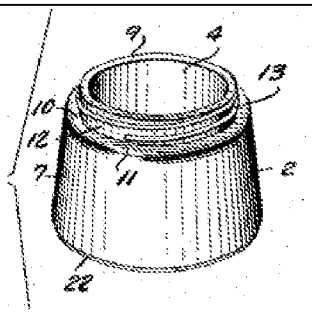
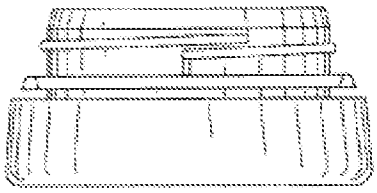
(3) Images of the McKernan Jar were publically disclosed and available on the internet as archived by *Archive.org* as of October 30, 2013. (Exhibit B3, IDS Entry 3).

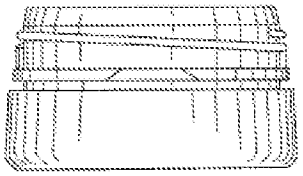
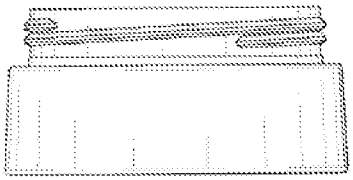
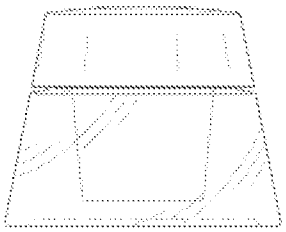
(4) Readily available part drawings of the McKernan Jar were regularly provided by the McKernan Packaging Clearing House identifying Part Number EL-28595 and dated **March 21, 2011**. The part drawings were readily available, offered to customers to promote sales, and reflect publically available information depicting the McKernan Jar. (Exhibit B4, IDS Entry 4).

Moreover, Pires (U.S. Patent Publication 2010/0307521) was filed on June 3, 2009, and published on **December 9, 2010,** and thus qualifies as prior art under at least AIA 35 U.S.C. § 102(a)(2).

The following references, cited in the child application of the '151 patent, were disclosed by the Applicant, the Office, or by third-party submissions during the prosecution of the child application of the '151 patent.

Patent Number	Issue Date	Name of Applicant	Relevant Figure
US Patent 2,076,551	04/13/1937	Conner	

Patent Number	Issue Date	Name of Applicant	Relevant Figure
US Patent 2,077,215	04/13/1937	Conner	
US Patent 2,077,216	04/13/1937	Conner	
US Patent 2,711,766	06/28/1955	Archer	
US Patent D635,030	03/29/2011	L'Abbate	 Fig. 9

Patent Number	Issue Date	Name of Applicant	Relevant Figure
US Patent D638,300	05/24/2011	L'Abbate	 Fig. 11
US Patent D641,257	07/12/2011	Thiebaut	 FIG.6
US Patent D739,741	09/29/2015	Staab	 FIG. 2

B. Summary of the Substantial New Questions of Patentability

The above-listed McKernan Jar constitutes prior art to the '151 patent, and the proposed grounds of rejection outlined below raise substantial new questions of patentability (SNQ). The reference used to establish each of the grounds provides new teachings not previously considered by the Office. The McKernan Jar was not cited by the Office while examining the '402 application, nor was it submitted to the Office in an Information Disclosure Statement (IDS) by the Applicant of the '402 application.

The McKernan Jar raises at least the following SNQs:

- The McKernan Jar anticipates the sole claim of the '151 patent under 35 U.S.C. §

102(a)(2); and

- Alternatively, the McKernan Jar renders obvious the sole claim of the '151 patent under 35 U.S.C. § 103 in view of Pires; or

- Alternatively, the McKernan Jar renders obvious the sole claim of the '151 patent under 35 U.S.C. § 103 in view of the one or more prior art references cited in the child application of the '151 patent.

IV. PROPOSED REJECTIONS OF THE '151 PATENT

Requester proposes that the Office reject the claim of the '151 patent under 35 U.S.C.§ 102(a)(2) as being anticipated by the McKernan Jar, or alternatively under 35 U.S.C. § 103 as being unpatentable over McKernan Jar in view of Pires or in view of one or more of the references cited in the child application of the '151 patent.

V. DETAILED EXPLANATION OF THE PROPOSED REJECTIONS

Pursuant to 37 C.F.R. § 1.510(b)(2), Requester provides the following detailed explanation of the pertinence and manner of applying the cited prior art to the claim of the '151 patent.

A. Grounds of Rejection: Anticipation Based on the McKernan Jar

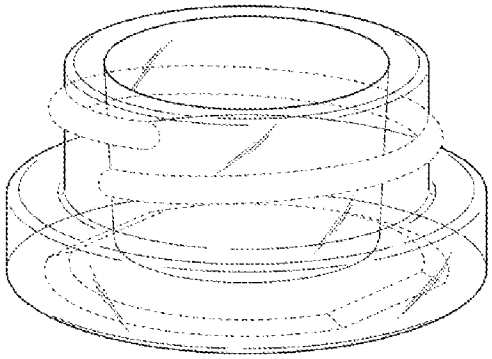
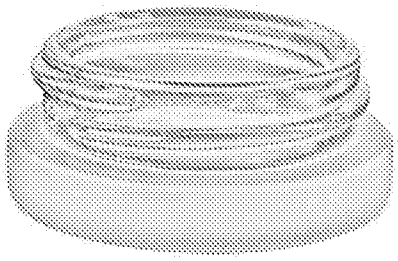
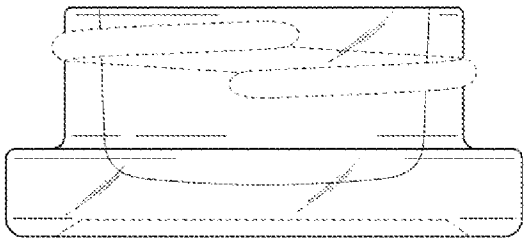
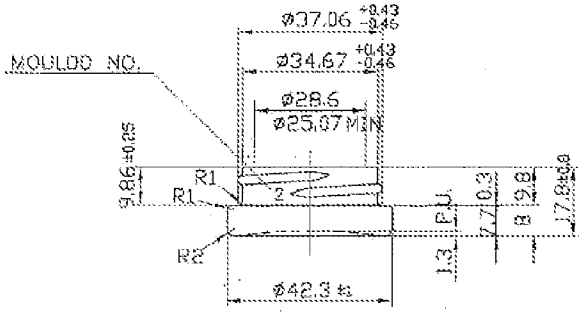
A claimed design may be rejected under 35 U.S.C. § 102 when anticipated over a disclosure that is available as prior art. M.P.E.P. § 1504.02. In determining whether a prior art design anticipates a claimed design, the claimed design and the prior design must be substantially the same. *Door-Master Corp. v. Yorktowne, Inc.*, 256 F.3d 1308, 1313 (Fed. Cir. 2001).

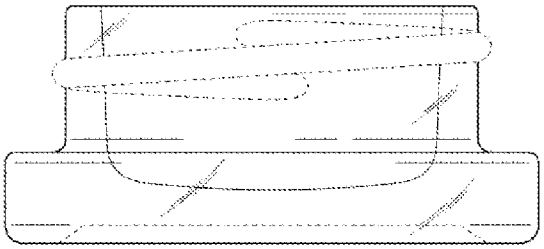
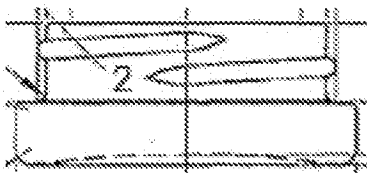
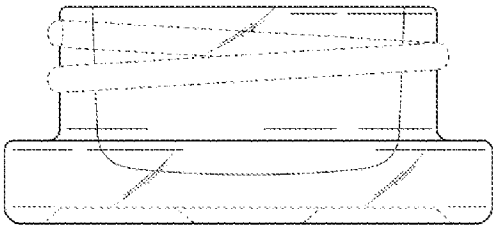
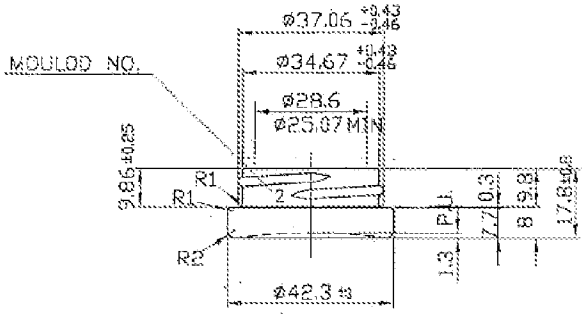
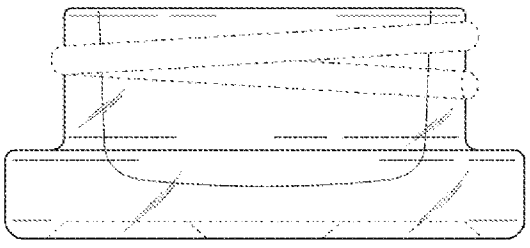
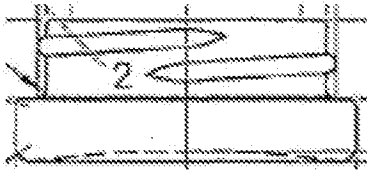
Anticipation is a question of fact. *Akzo N V v. US. Int'l Trade Comm'n,* 808 F.2d 1471, 1479 (Fed. Cir. 1986). The sole test for anticipation is the ordinary observer test, which is the test used for infringement. *Int'l Seaway Trading Corp. v. Walgreens Corp.,* 589 F.3d 1233, 1239-40 (Fed. Cir. 2009). Under the ordinary observer test, "if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it

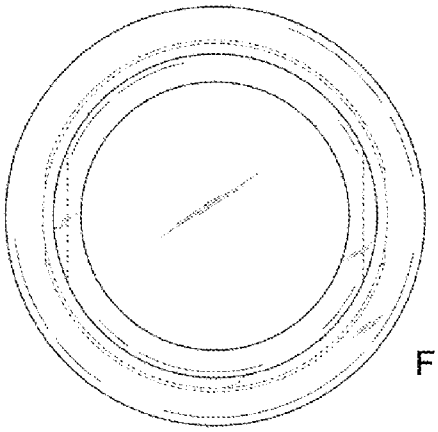
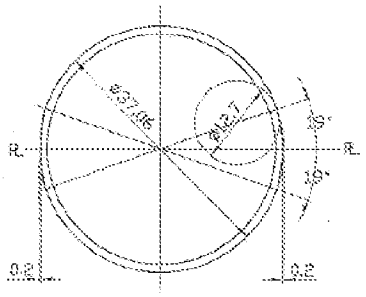
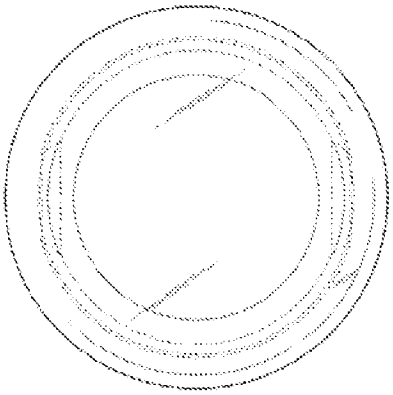
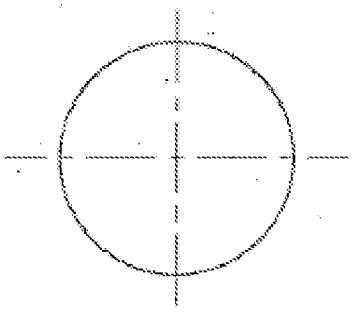
to be the other, the first one [anticipates] the other." *Gorham Mfg. Co. v. White, 81 U.S. 511, 528 (1871).*

The ordinary observer test requires consideration of the design as a whole, and minor variations that do not change the overall visual impression of a design are insufficient to preclude a finding of anticipation. *Int'l Seaway,* 589 F.3d at 1243. The Federal Circuit in *Int'l Seaway Trading Corp.* instructs that insignificant features of the claimed design from the point of view of the ordinary observer should not be considered as part of the overall comparison. *Id.* Even with minor or trivial differences that necessarily exist between any two designs, the Court determined that an earlier design can anticipate a later design that is not its exact copy. *Id.*

The figure-to-figure comparison below of the claimed design of the '151 patent and the McKernan Jar shows that the McKernan Jar is substantially the same as the claimed design of the '151 patent rendering it unpatentable.

The '151 Patent Filed June 8, 2016	**The publically available McKernan Jar as early as Feb. 2012**
Front Perspective View Claimed Jar Design  FIG. 1	Front Perspective View Prior Art Jar, Exhibit B3  *Picture from catalog published in 2012*
Front Elevation View Claimed Jar Design  FIG. 2	Partial Front View Prior Art Jar, Exhibit B4 

The '151 Patent Filed June 8, 2016	**The publically available McKernan Jar as early as Feb. 2012**
Rear Elevation View Claimed Jar Design  FIG. 3	 extraneous markings removed *From readily available prints dated 2011*
Right Side Elevation View Claimed Jar Design  FIG. 4	Partial Front View Prior Art Jar, Exhibit B4 
Left Side Elevation View Claimed Jar Design  FIG. 5	 extraneous markings removed *From readily available prints dated 2011*

The '151 Patent Filed June 8, 2016	**The publically available McKernan Jar as early as Feb. 2012**
Top Plan View Claimed Jar Design  FIG. 6	Partial Top View Prior Art Jar, Exhibit B4  *From readily available prints dated 2011*
Top Plan View Claimed Jar Design  FIG. 7	Partial Bottom View Prior Art Jar, Exhibit B4  *From readily available prints dated 2011*

From the above figure-to-figure comparison, it can be seen that the sole claim of the '151 patent and the McKernan Jar are sufficiently identical. Differences, if any, between the McKernan Jar and the claimed design of the '151 patent are minor or trivial and should not be taken into consideration in determining the anticipation of the '151 patent by the McKernan Jar. An ordinary observer, when considering the claimed design of the '151 patent as a whole would have concluded that the sole claim of the '151 patent and the McKernan Jar are substantially the same, thereby rendering unpatentable the sole claim of the '151 patent.

In view of the above, the Office would have rejected the claim of the '151 patent as being anticipated by the McKernan Jar.

B. Alternative Ground of Rejection: Obviousness Based on the McKernan Jar

As discussed above, the claim of the '151 patent is anticipated by the commercial offerings and publications featuring the McKernan Jar. Alternatively, the McKernan Jar renders obvious the claim of the '151 patent.

In determining *prima facie* obviousness, the proper standard is whether the design would have been obvious to a designer of ordinary skill with the claimed type of article. See *In re Nalbandian,* 661 F.2d 1214 (CCPA 1981). When a Court finds *prima facie* obviousness and rejects the patent claim, the Court stresses that non-obviousness in the overall appearance of the claimed design, when compared with the prior art, constitutes the test of design patentability, rather than being controlled by the minute details or small variations in design. See *In re Frick,* 275 F.2d 741, (CCPA 1960) and in *re Lamb,* 286 F.2d 610 (CCPA 1961).

As detailed in the figure-to-figure comparison above, the McKernan Jar is the same as the claimed design. Any minor differences between the claimed design of the '151 patent and the McKernan Jar are otherwise inherently disclosed by the McKernan Jar.

Moreover, Pires discloses a receptacle 102 comprising a body 102a having a sidewall 102b and a base 102c. The base 102c defines a recess 102d for holding/storing a product. FIGS. 2 and 4 are reproduced immediately below.

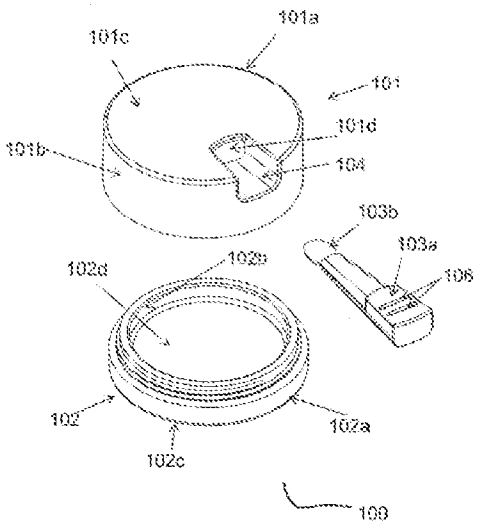


Fig. 2

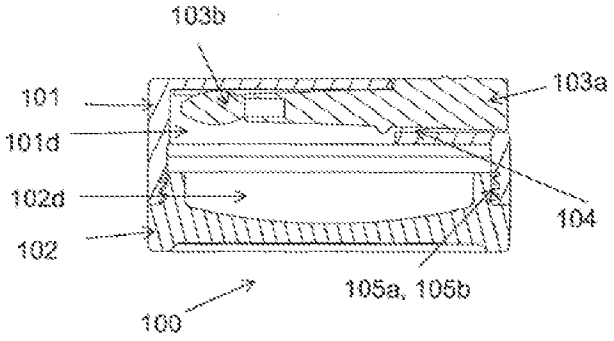


Fig. 4

The '151 patent, the McKernan Jar, and Pires are analogous art as they are all directed to the design of a jar. Any differences between the McKernan Jar and the sole claim of the '151 patent are within the realm of the choice of the designer and, therefore, the McKernan Jar alone or in combination with the skill of the designer renders unpatentable the sole claim of the '151 patent. In further examples, a designer can easily adjust the depth of the inner surface of the jar as taught by Pires. Such a modification to the McKernan Jar, in light of Pires would result in a jar having the same overall visual impression as the claimed design of the '151 patent.

Even if not finding the claim of the '151 patent anticipated by the McKernan Jar, the Office would, therefore, have rejected the claim of the '151 patent as being obvious over the McKernan Jar in view of Pires or as being obvious in view of one or more of the references cited in the child application of the '151 patent.

VI. CONCLUSION

The prior art patent cited in this Request presents multiple substantial new questions of patentability with respect to the sole claim of the '151 patent filed on June 8, 2016. Moreover, the proposed grounds of rejection set forth in this Request show that the claim of the '151 patent is anticipated or, alternatively, rendered obvious by the cited prior art including the nearly identical commercially available McKernan Jar available since February 2012. Accordingly, the Office should initiate reexamination and reject the claim based on at least the grounds detailed in this Request.

Respectfully submitted,

Jacob M. Ward

Dated: February 11, 2019

By: / Jacob M. Ward /
Reg. No. 56,754
(419)408-5500

US00D781151S

(12) **United States Design Patent** (10) **Patent No.: US D781,151 S**
Lerman (45) **Date of Patent: ** Mar. 14, 2017**

(54) **JAR**

(71) Applicant: **eBottles.com**, Jupiter, FL (US)

(72) Inventor: **Robert Lerman**, Jupiter, FL (US)

(73) Assignee: **eBottles.com**, Jupiter, FL (US)

(**) Term: **15 Years**

(21) Appl. No.: **29/567,402**

(22) Filed: **Jun. 8, 2016**

(51) **LOC (10) Cl.** **09-01**

(52) **U.S. Cl.**
USPC **D9/500**

(58) **Field of Classification Search**
USPC D9/500, 503–4, 549, 558, 715; D3/264; D24/224
CPC B65D 1/00; B65D 1/02; B65D 1/0207; B65D 1/0223; B65D 1/10; B65D 23/00; B65D 2501/00; B65D 2501/0009
See application file for complete search history.

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(Continued)

Primary Examiner — Dana L Meyrow
(74) *Attorney, Agent, or Firm* — Gottlieb, Rackman & Reisman, PC

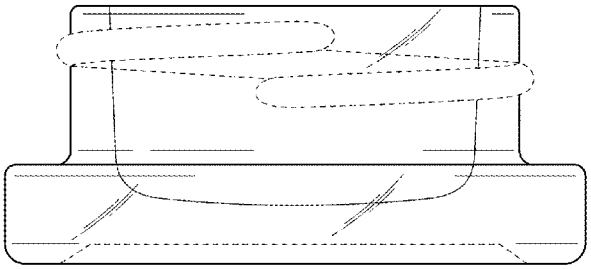
(57) **CLAIM**

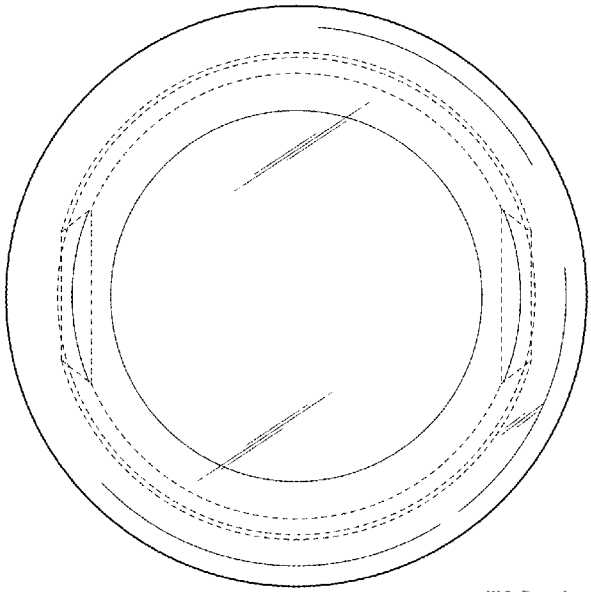
The ornamental design for a jar, as shown and described.

DESCRIPTION

FIG. **1** is a top, front, right side perspective view of a jar showing my new design;
FIG. **2** is a front elevation view thereof;
FIG. **3** is a rear elevation view thereof;
FIG. **4** is a right side elevation view thereof;
FIG. **5** is a left side elevation view thereof;
FIG. **6** is a top plan view thereof; and,
FIG. **7** is a bottom plan view thereof.
The broken lines shown in the drawings are included for the purpose of illustrating portions of the article that form no part of the claimed design.

1 Claim, 4 Drawing Sheets





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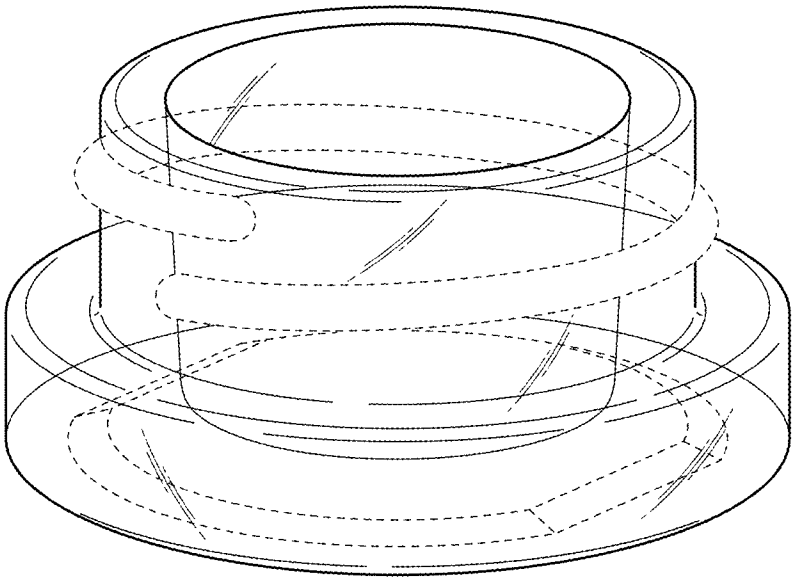


FIG. 1

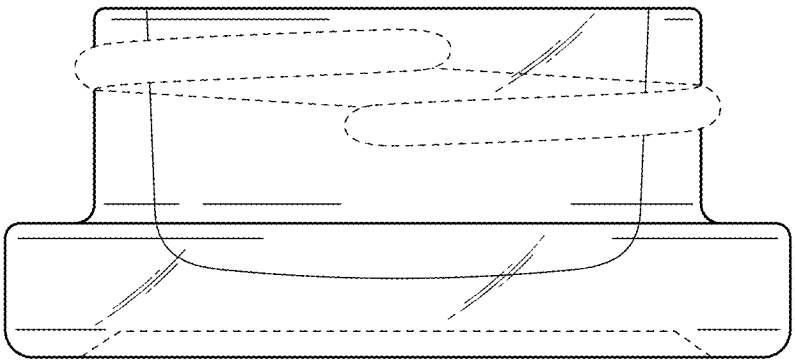


FIG. 2

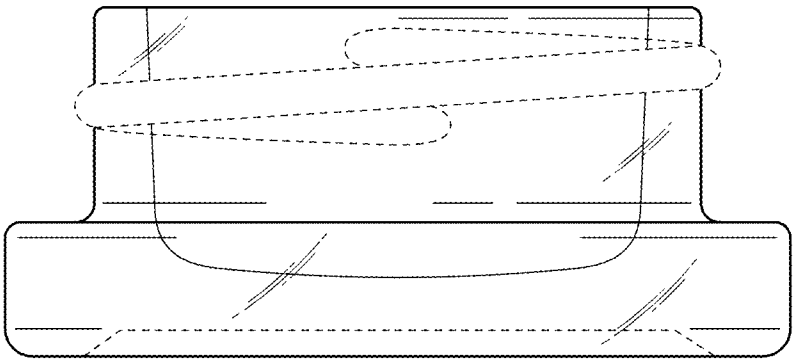


FIG. 3

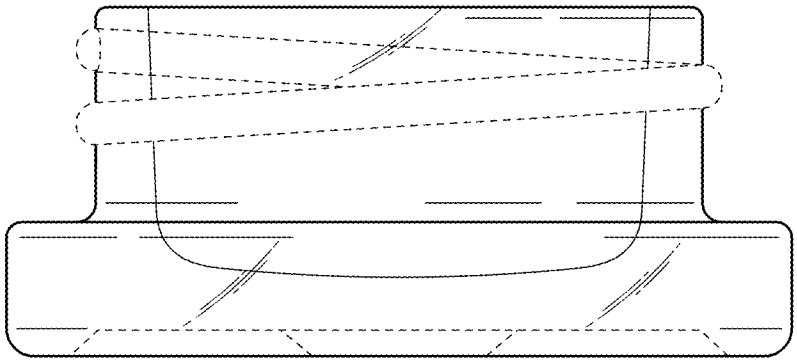


FIG. 4

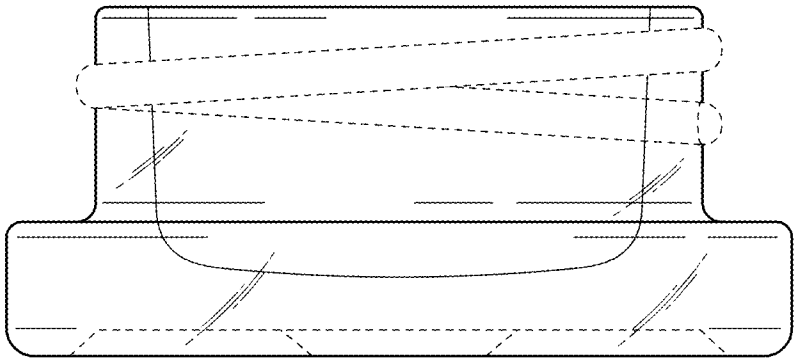


FIG. 5

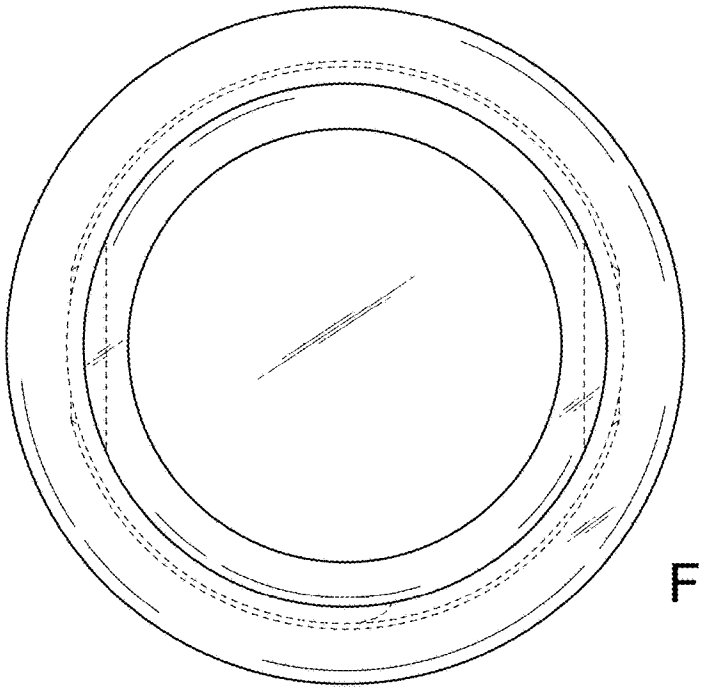


FIG. 6

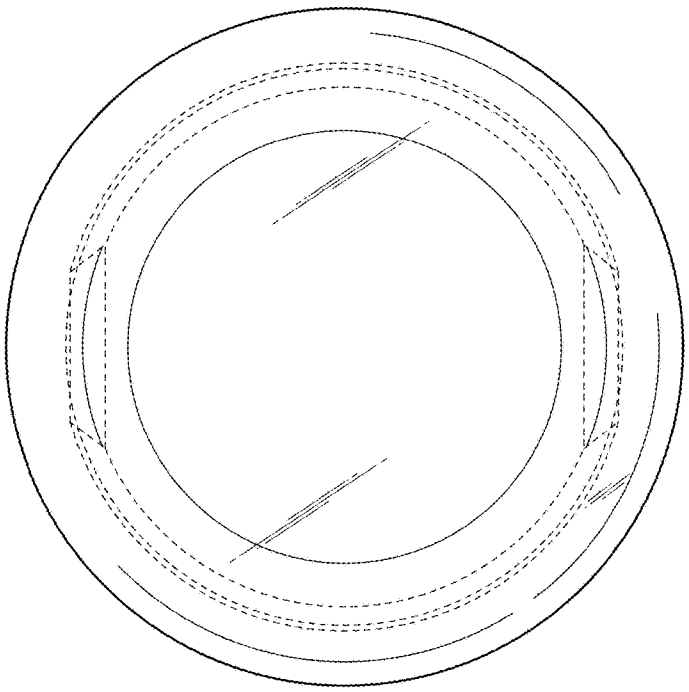


FIG. 7

PTO/SB/57 (01-18)
Approved for use through 09/30/2018. OMB 0651-0064
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

(Also referred to as FORM PTO-1465)

REQUEST FOR *EX PARTE* REEXAMINATION TRANSMITTAL FORM

Address to:
Mail Stop *Ex Parte* Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attorney Docket No.: 70565-1

Date: February 11, 2019

1. ☒ This is a request for *ex parte* reexamination pursuant to 37 CFR 1.510 of patent number D781,151 issued March 14, 2017. The request is made by:
   ☐ patent owner. ☒ third party requester.

2. ☒ The name and address of the person requesting reexamination is:
   Jacob M. Ward
   Ward Law Office LLC
   120 1/2 S. Washington Street, Suite 207, Tiffin, Ohio 44883

3. Requester ☒ asserts small entity status (37 CFR 1.27) or ☐ certifies micro entity status (37 CFR 1.29). Only a patent owner requester can certify micro entity status. Form PTO/SB/15A or B must be attached to certify micro entity status.

4. This request is accompanied by payment of the reexamination fee as set forth in:
   ☐ 37 CFR 1.20(c)(2); **or**
   ☒ 37 CFR 1.20(c)(1). **In checking this box for payment of the fee set forth in 37 CFR 1.20(c)(1), requester asserts that this request has forty (40) or fewer pages and complies with all other requirements of 37 CFR 1.20(c)(1).**

   Payment of the reexamination fee is made by the method set forth below.
   a. ☐ A check in the amount of $_____ is enclosed to cover the reexamination fee;
   b. ☒ The Director is hereby authorized to charge the reexamination fee to Deposit Account No. 601308;
   c. ☐ Payment by credit card. Form PTO-2038 is attached; **or**
   d. ☒ Payment made via EFS-Web.

   ☒ In addition, the Director is hereby authorized to charge any fee deficiencies to Deposit Account No. 601308.

5. ☐ Any refund should be made by ☐ check or ☐ credit to Deposit Account No._____. 37 CFR 1.26(c). If payment is made by credit card, refund must be to credit card account.

6. ☒ A copy of the patent to be reexamined having a double column format on one side of a separate paper is enclosed. 37 CFR 1.510(b)(4).

7. ☐ CD-ROM or CD-R in duplicate, Computer Program (Appendix) or large table
   ☐ Landscape Table on CD

This collection of information is required by 37 CFR 1.510. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) a request for reexamination. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 18 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop *Ex Parte* Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**
If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

8. ☐ Nucleotide and/or Amino Acid Sequence Submission
If applicable, items a. – c. are required.
   a. ☐ Computer Readable Form (CRF)
   b. Specification Sequence Listing on:
      i. ☐ CD-ROM (2 copies) or CD-R (2 copies) **or**
      ii. ☐ paper
   c. ☐ Statements verifying identity of above copies.

9. ☐ A copy of any disclaimer, certificate of correction or reexamination certificate issued in the patent is included.

10. ■ Reexamination of claim(s) 1 is requested.

11. ■ A copy of every patent or printed publication relied upon is submitted herewith including a listing thereof on Form PTO/SB/08, PTO-1449, or equivalent.

12. ■ An English language translation of all necessary and pertinent non-English language patents and/or printed publications is attached.

13. ■ The attached detailed request includes at least the following items:
   a. A statement identifying each substantial new question of patentability based on prior patents and printed publications. 37 CFR 1.510(b)(1).
   b. An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited art to every claim for which reexamination is requested. 37 CFR1.510(b)(2).

14. ☐ A proposed amendment is included (only where the patent owner is the requester). 37 CFR 1.510(e).

15. ☐ It is certified that the statutory estoppel provisions of 35 U.S.C. 315(e)(1) or 35 U.S.C. 325(e)(1) do not prohibit requester from filing this *ex parte* reexamination request. 37 CFR 1.510(b)(6).

16. Service
   a. ■ It is certified that a copy of this request (if filed by other than the patent owner) has been served in its entirety on the patent owner as provided in 37 CFR 1.33(c).

      The name and address of the party served are:

      Gottlieb Rackman & Reisman PC

      270 Madison Avenue, 8th Floor, New York, NY 10016-0601

      Date of Service: January 31, 2019

   OR

   b. ☐ A duplicate copy is enclosed since service on patent owner was not possible. An explanation of the efforts made to serve patent owner **is attached**. See MPEP 2220.

17. Correspondence Address: Direct all communication about the reexamination to:

☒ The address associated with Customer Number: 144899

OR

☐ Firm or Individual Name _____
(at the address identified below)

Address

City	State	Zip

Country

Telephone	Email

18. ☐ The patent is currently the subject of the following concurrent proceeding(s):

a. ☐ Copending reissue Application No. _____

b. ☐ Copending reexamination Control No. _____

c. ☐ Copending Interference No. _____

d. ☐ Copending litigation styled:

_____

_____

WARNING : Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

/Jacob M. Ward/ — Authorized Signature

February 11, 2019 — Date

Jacob M. Ward — Typed/Printed Name

56,754 — Registration No.

☐ For Patent Owner Requester ☒ For Third Party Requester

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

EXHIBIT A

US00D781151S

(12) United States Design Patent

Lerman

(10) Patent No.: US D781,151 S
(45) Date of Patent: ** Mar. 14, 2017

(54) **JAR**

(71) Applicant: **eBottles.com**, Jupiter, FL (US)

(72) Inventor: **Robert Lerman**, Jupiter, FL (US)

(73) Assignee: **eBottles.com**, Jupiter, FL (US)

(**) Term: **15 Years**

(21) Appl. No.: **29/567,402**

(22) Filed: **Jun. 8, 2016**

(51) **LOC (10) Cl.** **09-01**

(52) **U.S. Cl.**
USPC **D9/500**

(58) **Field of Classification Search**
USPC D9/500, 503–4, 549, 558, 715; D3/264; D24/224
CPC B65D 1/00; B65D 1/02; B65D 1/0207; B65D 1/0223; B65D 1/10; B65D 23/00; B65D 2501/00; B65D 2501/0009
See application file for complete search history.

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(Continued)

Primary Examiner — Dana L Meyrow
(74) *Attorney, Agent, or Firm* — Gottlieb, Rackman & Reisman, PC

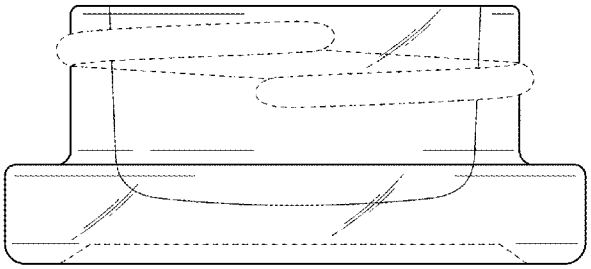
(57) **CLAIM**

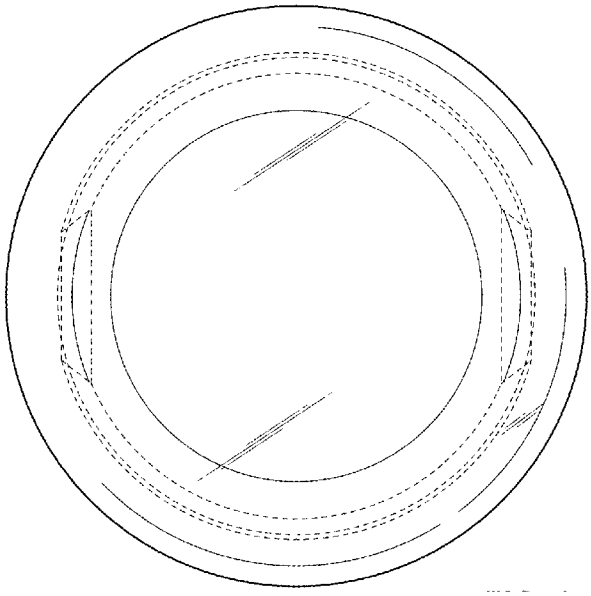
The ornamental design for a jar, as shown and described.

DESCRIPTION

FIG. **1** is a top, front, right side perspective view of a jar showing my new design;
FIG. **2** is a front elevation view thereof;
FIG. **3** is a rear elevation view thereof;
FIG. **4** is a right side elevation view thereof;
FIG. **5** is a left side elevation view thereof;
FIG. **6** is a top plan view thereof; and,
FIG. **7** is a bottom plan view thereof.
The broken lines shown in the drawings are included for the purpose of illustrating portions of the article that form no part of the claimed design.

1 Claim, 4 Drawing Sheets





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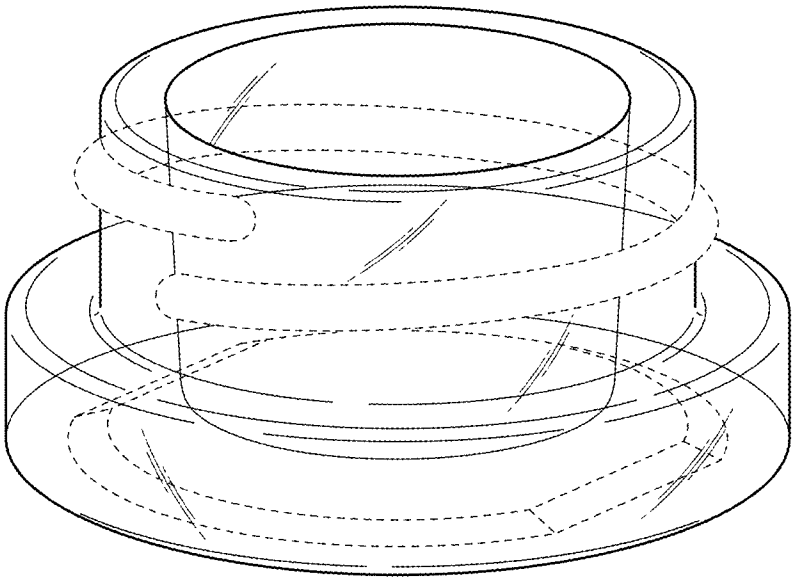


FIG. 1

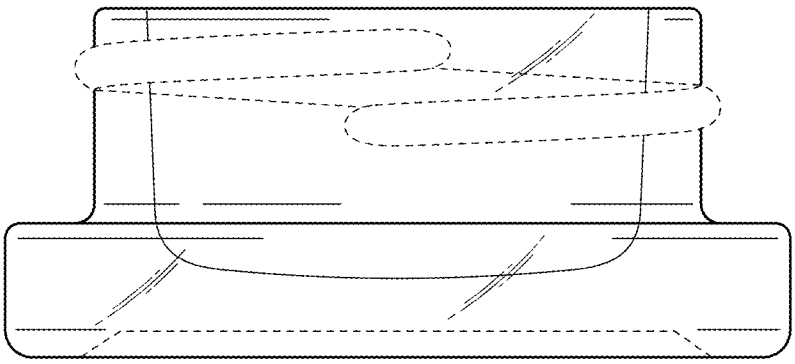


FIG. 2

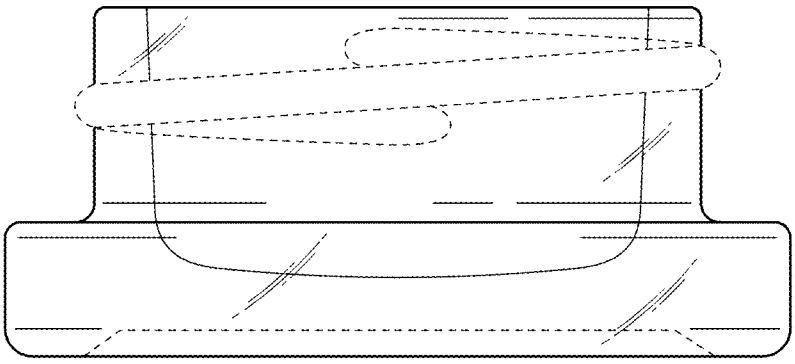


FIG. 3

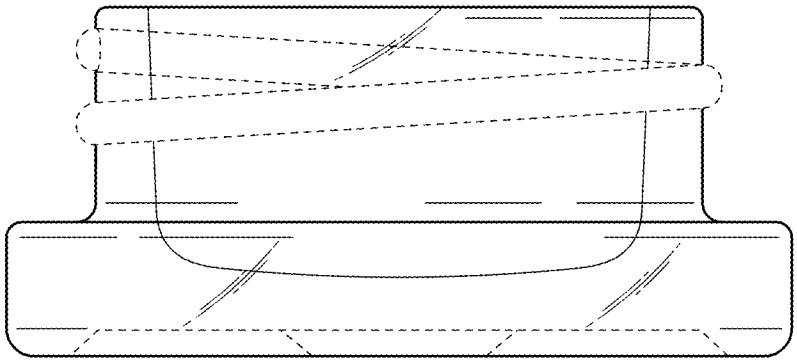


FIG. 4

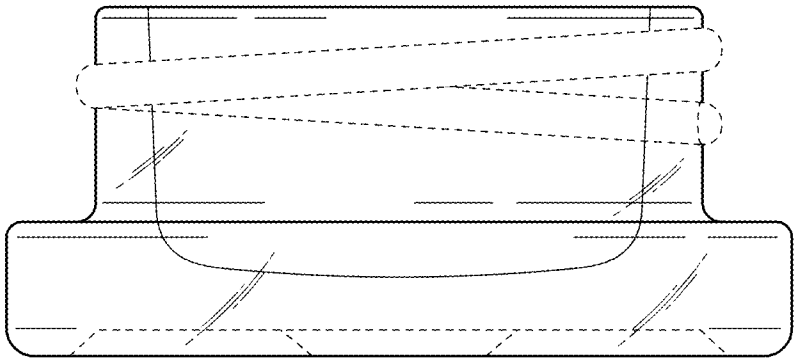


FIG. 5

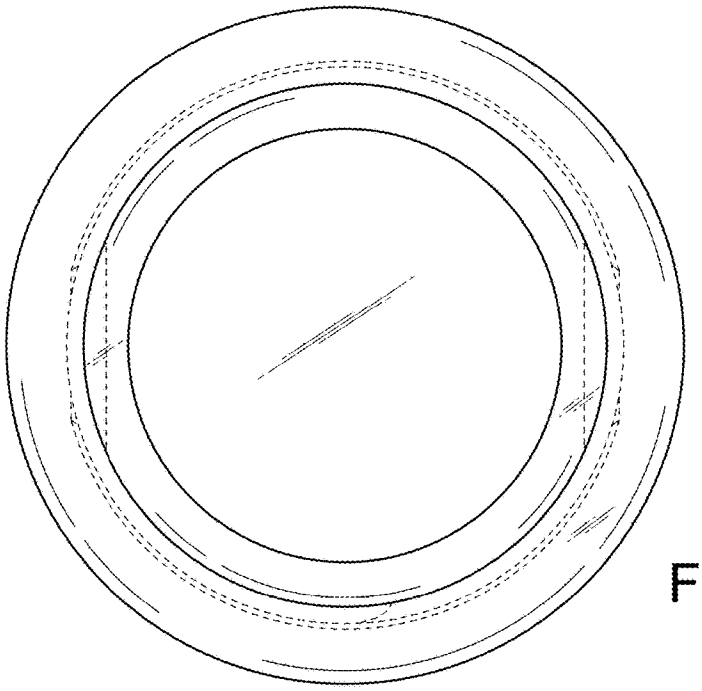


FIG. 6

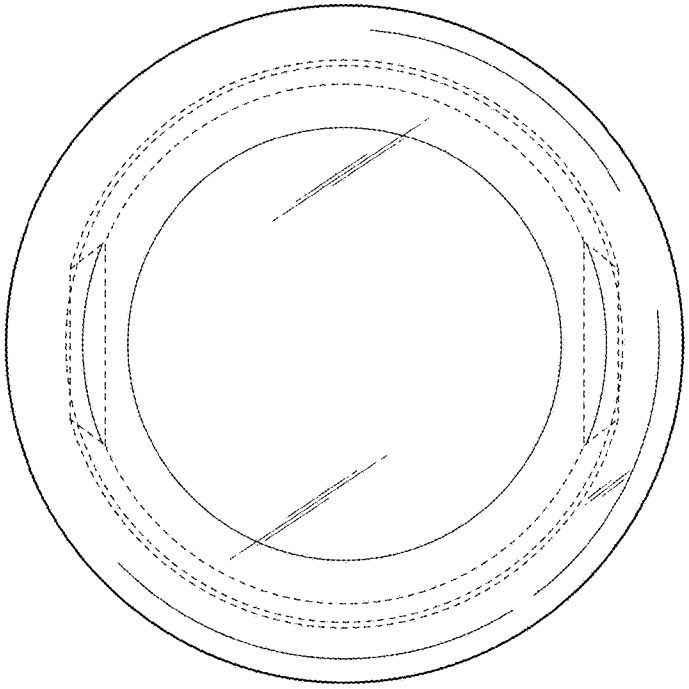


FIG. 7

EXHIBIT B1

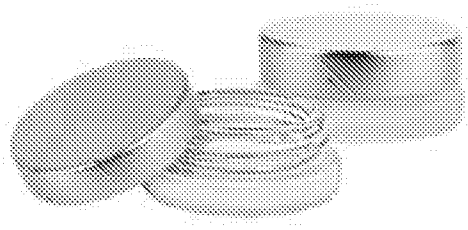
- Paper/Board
- PCR
- PET
- Plastics
- Wood

- Solutions
  - Anti-Counterfeit
  - Cotract Services
  - Decorative Effects
  - Design Capabilities
  - Digital Printing
  - Injection Molding
  - Machinery
  - Made In USA
  - Package Development
  - Printing/Decorating
  - Sustainable Pkg/Practices
  - Turnkey
- Top 20 Companies
- Online Exclusives
- Slideshows
- Expert Opinions
- Videos
- Infographics
- Whitepapers
- Products Showcase
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  - Live From Show Events
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- About Us
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  - Privacy Policy
  - Terms Of Use

Design Center

McKernan Adds Low Profile, Frosted Glass Jars

06.01.12



McKernan Packaging has added a 7ml frosted glass jar to its continuous stock inventory. This jar is offered with a metal unishell, brushed silver closure in a 38/400 finish with a foam liner. It is ideal for lipgloss, blush, eye creams and numerous other cosmetic products. The frosted jar is currently in stock and ready to ship with no lead times and is also available in flint. The caps are available in custom high gloss or matte colors. Call (800) 787-7587 or (775)-356-6111 to talk to a McKernan Packaging professional about more info on this jar and closure.

More info: www.mckernan.com

Related Searches

- Caps

EXHIBIT B2

FEBRUARY 2012

HOT DEALS

SERVING THE PACKAGING INDUSTRY FOR 53 YEARS!

Frosted Glass Jars - Now In Stock!
Call Your Sales Rep For Pricing

McKernan
PACKAGING CLEARING HOUSE
CUSTOMIZED PACKAGING SOLUTIONS

Prsrt Std
U.S. Postage
PAID
Las Vegas, NV
Permit No. 1164

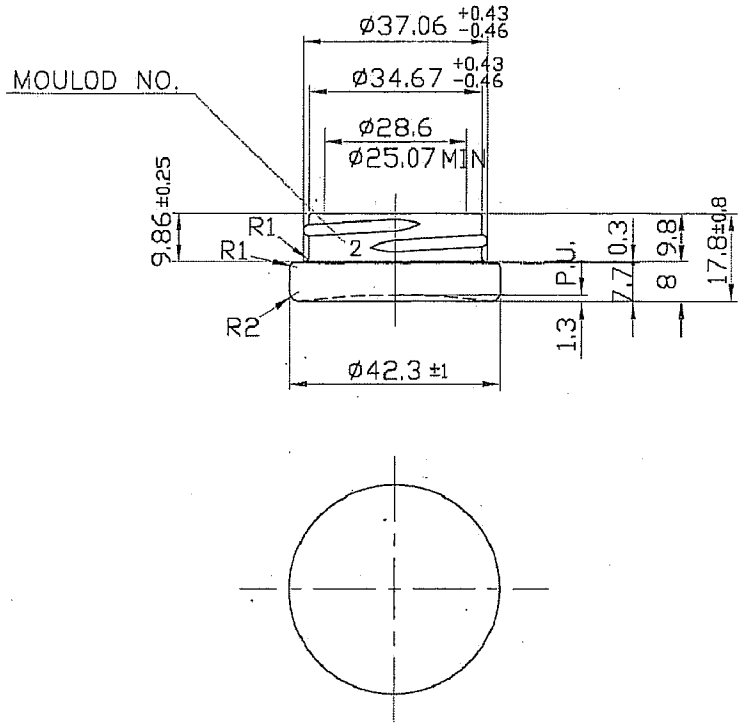
McKernan
CUSTOMIZED PACKAGING SOLUTIONS
P.O. Box 7261
Reno • Nevada • 89510

EXHIBIT B3

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1 capture
30 Oct 2013
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2012 2013 2014
About this capture



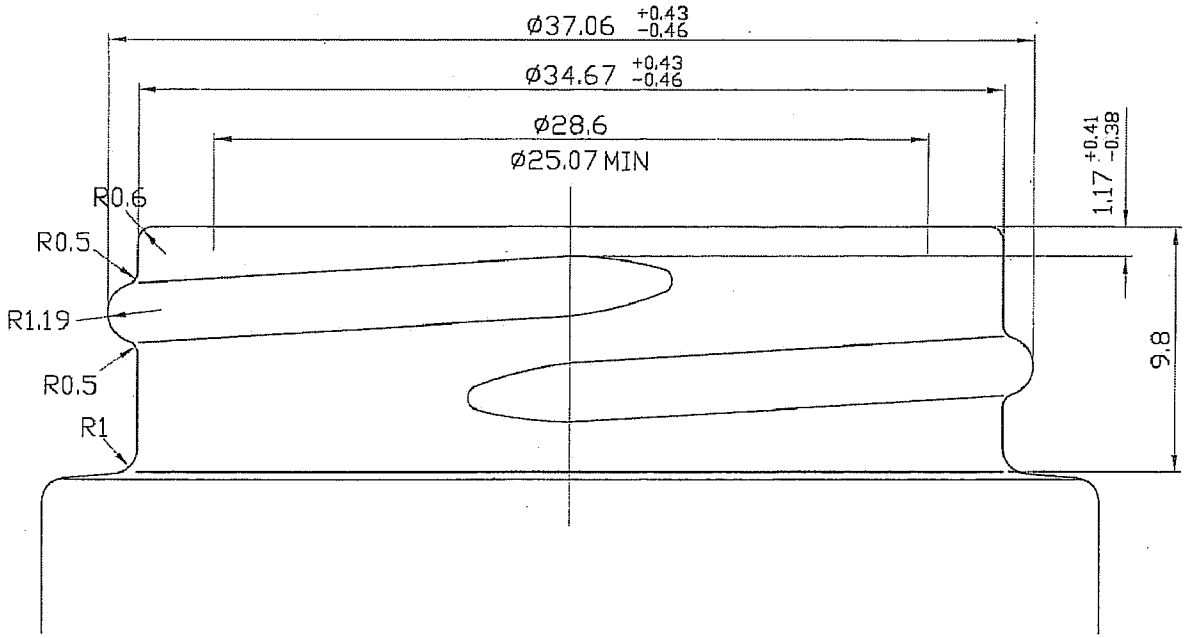
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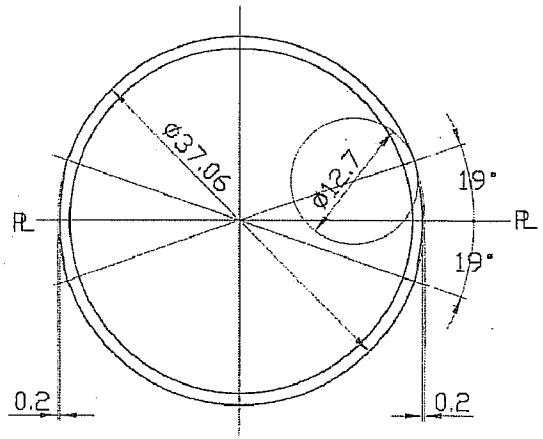


REP	DATA	NOTE	MODIFICATIONS
A	21.03.11		MODIFIED FINISH DIMENSION.

NECK FINISH	G.C.M.I. 38-400	GLASS WEIGHT (g)	31 ± 3.5 gr	CAPACITY NO. (c.c.)	±
MINI INT. COL	ø25.07	CAPACITY O.F. (c.c.)	7 ± 0.8c.c.	DATE	21.03.2011
McKernan PACKAGING CLEARING HOUSE® QUALITY DISCOUNT PACKAGING			SCALE 1 : 1	UNIT	m.m.
NAME	Mckernan 7ml Frosted Jar		DWG NO.	EL-28595	A-01
DRAWING BY		REVISER		APPROVAL	

A&A Exhibit 1003 438 of 510





S=2/1

G.C.M.I. : 38−400
PITCH : 4.233mm
TURN : 1

REP	DATA	NOTE	MODIFICATIONS

NECK FINISH	G.C.M.I. 38−400	GLASS WEIGHT (g)	±	CAPACITY NO. (c.c.)	±
MINI INT. COL		CAPACITY O.F. (c.c.)	±	DATE	21.03.2011
McKernan PACKAGING CLEARING HOUSE® QUALITY DISCOUNT PACKAGING			SCALE	5 : 1	UNIT m.m.
NAME	Mckernan 7ml Frosted Jar		DWG NO.	EL-28595	
DRAWING BY		REVISER		APPROVAL	

A&A Exhibit 1003 439 of 510

EXHIBIT C

US 20100307521A1

(19) **United States**

(12) **Patent Application Publication**

PIRES et al.

(10) **Pub. No.: US 2010/0307521 A1**

(43) **Pub. Date: Dec. 9, 2010**

(54) **ERGONOMIC CONTAINER**

(75) Inventors: **LEO CLIFFORD PIRES**, Basking Ridge, NJ (US); **Roger Hwang**, Maple Ontario (CA); **Vaishali Srivastava**, New Delhi (IN); **Rahul Bose**, New Delhi (IN); **Iti Seth**, New Delhi (IN)

Correspondence Address:
Patterson & Sheridan, LLP - ZEN Design
3040 Post Oak Boulevard, Suite 1500
Houston, TX 77056 (US)

(73) Assignee: **Zen Design Solutions Limited**, Wanchai (HK)

(21) Appl. No.: **12/477,822**

(22) Filed: **Jun. 3, 2009**

Publication Classification

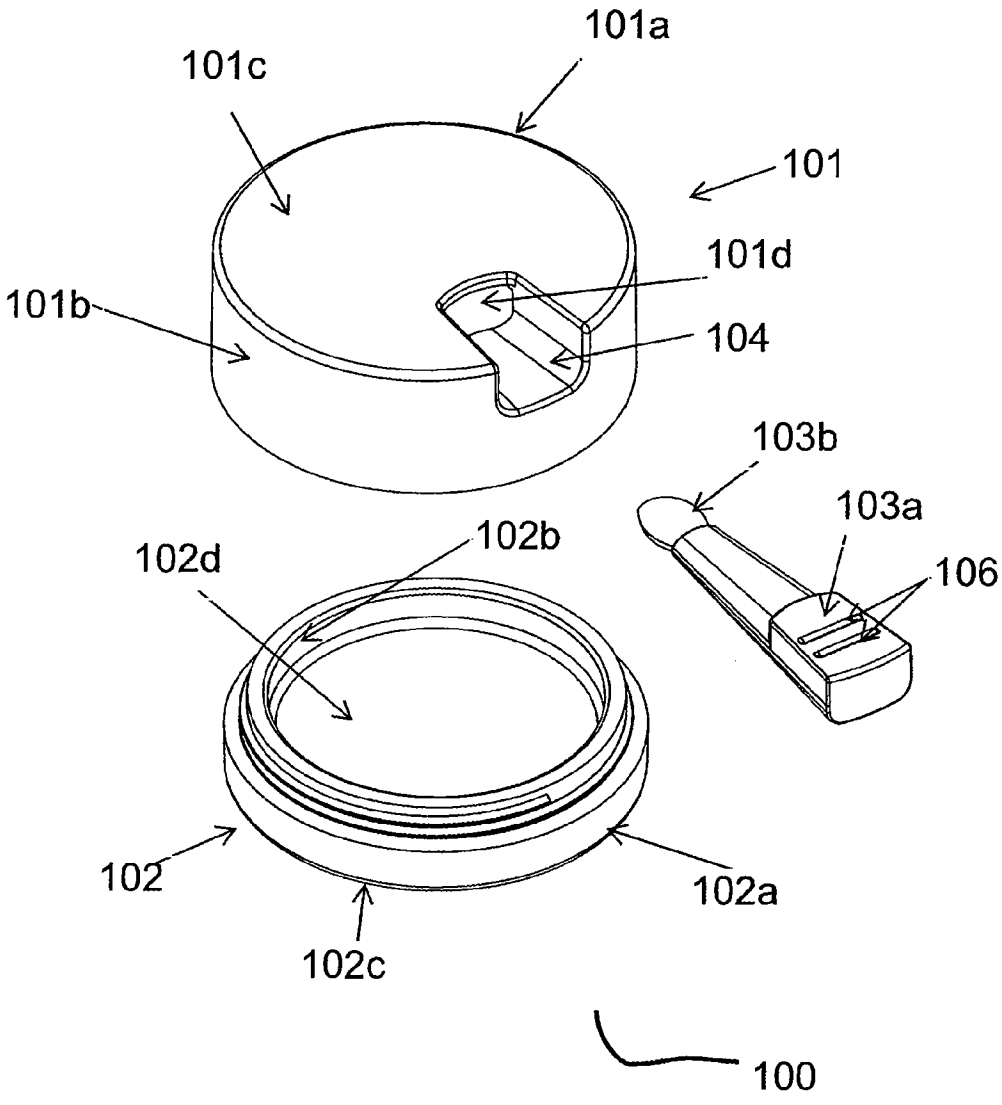
(51) **Int. Cl.**

A45D 33/26	(2006.01)
B65D 25/00	(2006.01)
B65D 51/32	(2006.01)

(52) **U.S. Cl.** **132/200**; 206/581; 220/736; 220/212; 132/294

(57) **ABSTRACT**

The present invention generally is an ergonomic container comprising a cover, an applicator and a receptacle. At least one of the cover or receptacle comprising a housing, wherein the housing is formed by the presence of a cavity and aperture that retain the applicator so as to make a gripping portion of the applicator visible when disposed in the housing.



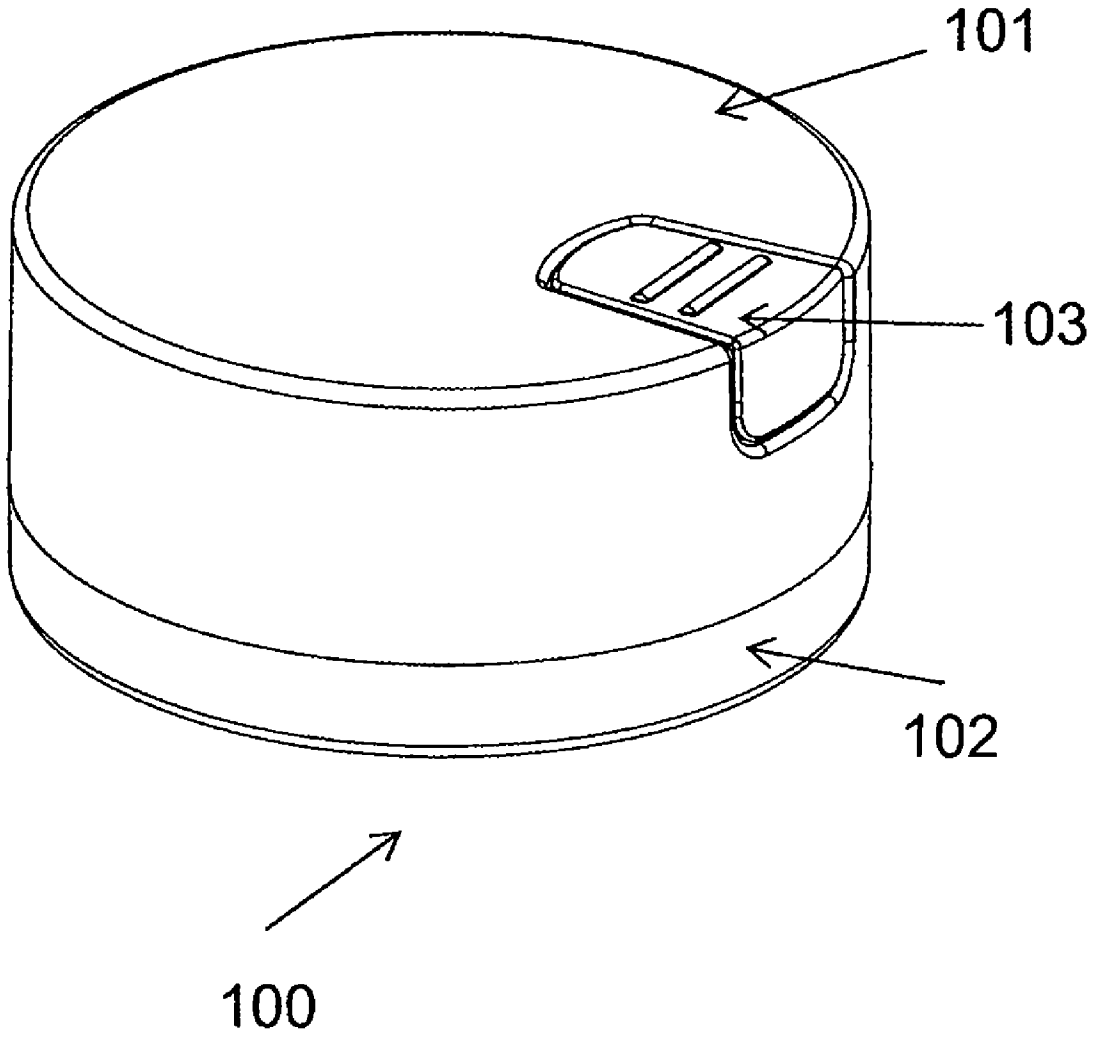


Fig. 1

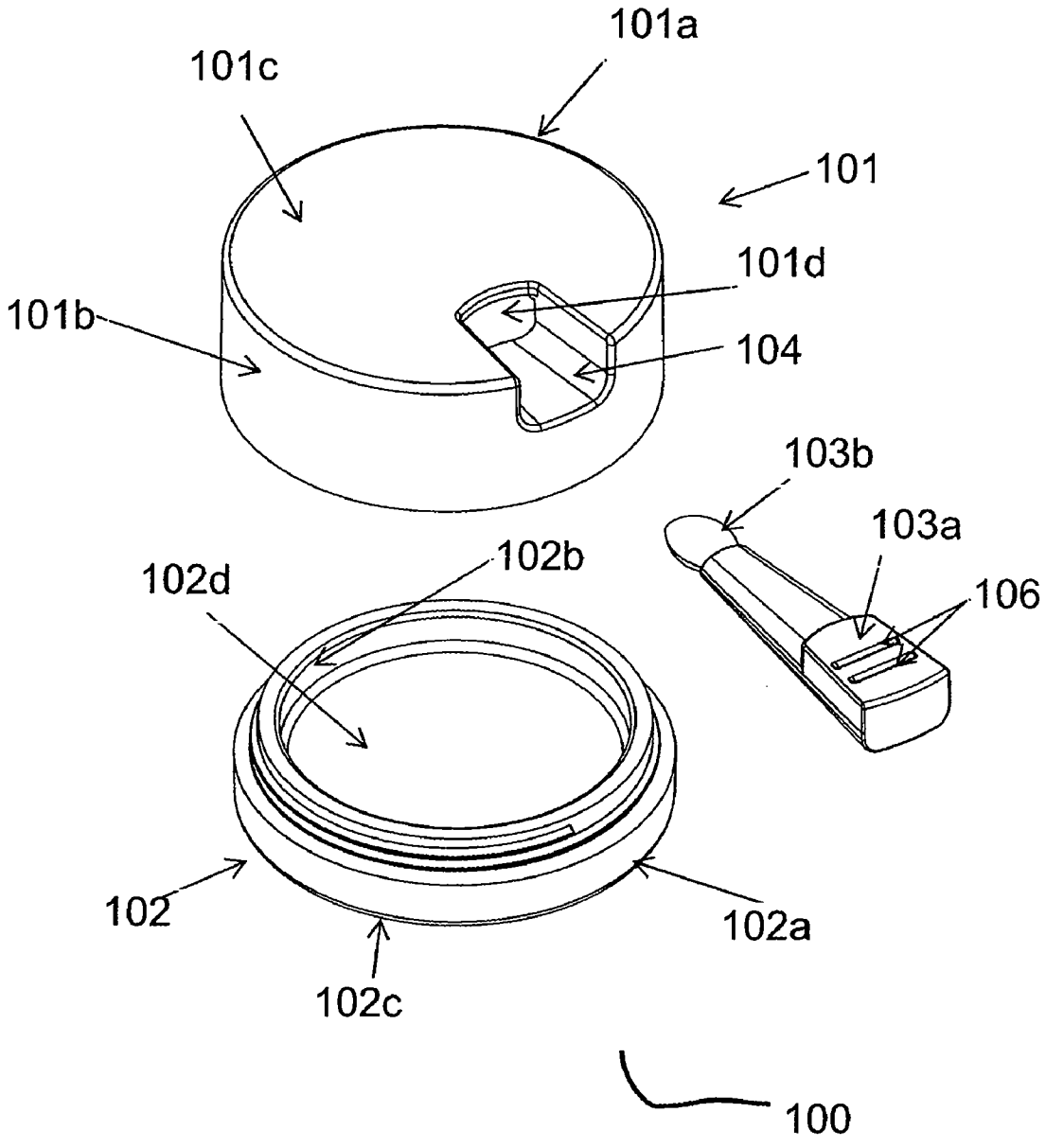

101a
101c
101
101d
101b
104
103b
103a
106
102d
102b
102
102a
102c
100

Fig. 2

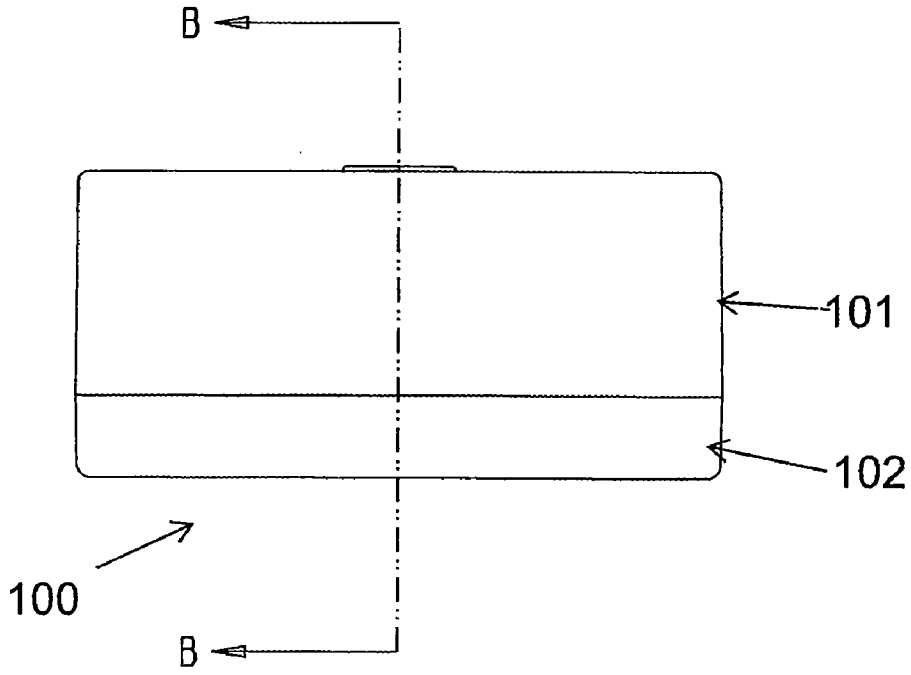


Fig. 3

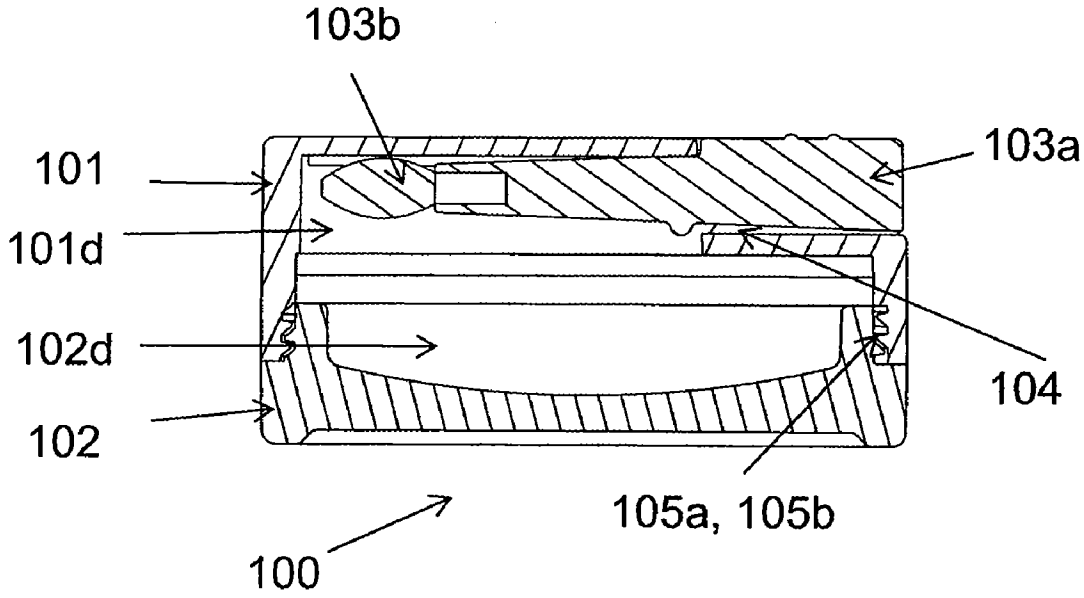


Fig. 4

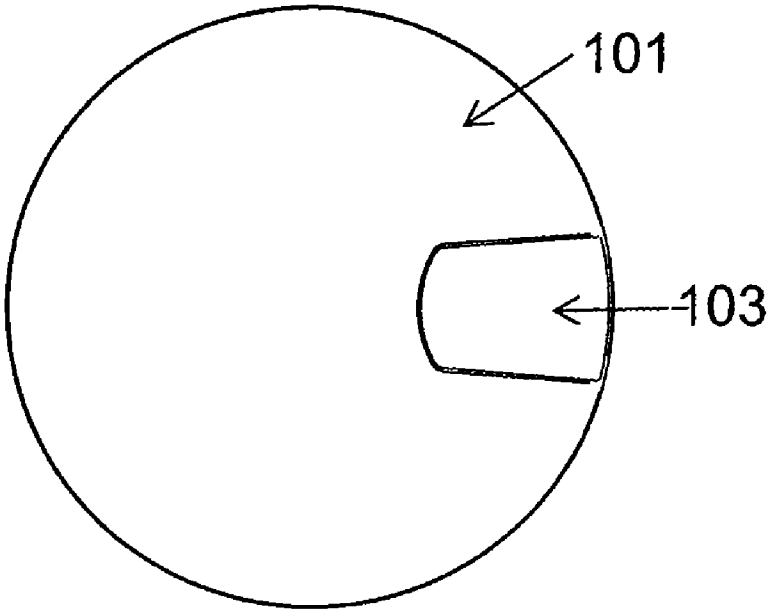


Fig. 5

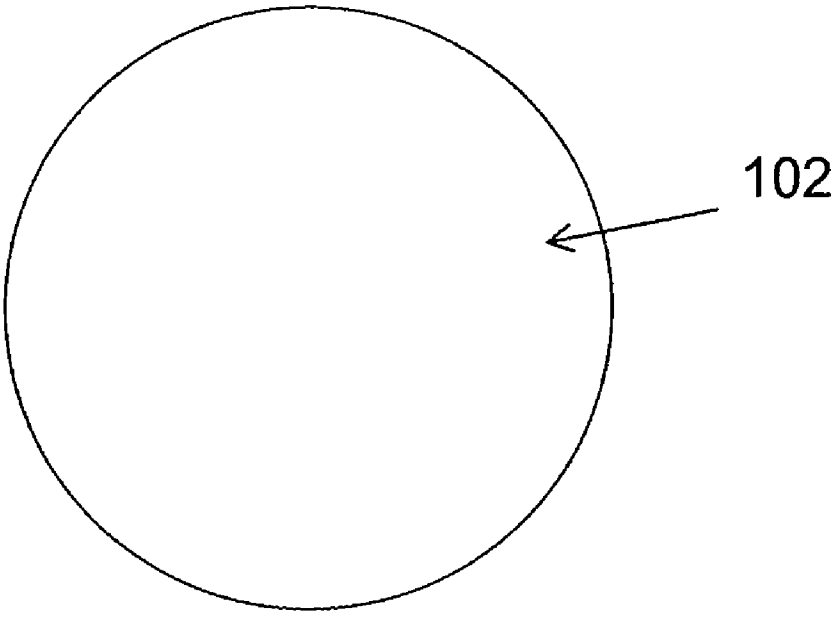


Fig. 6

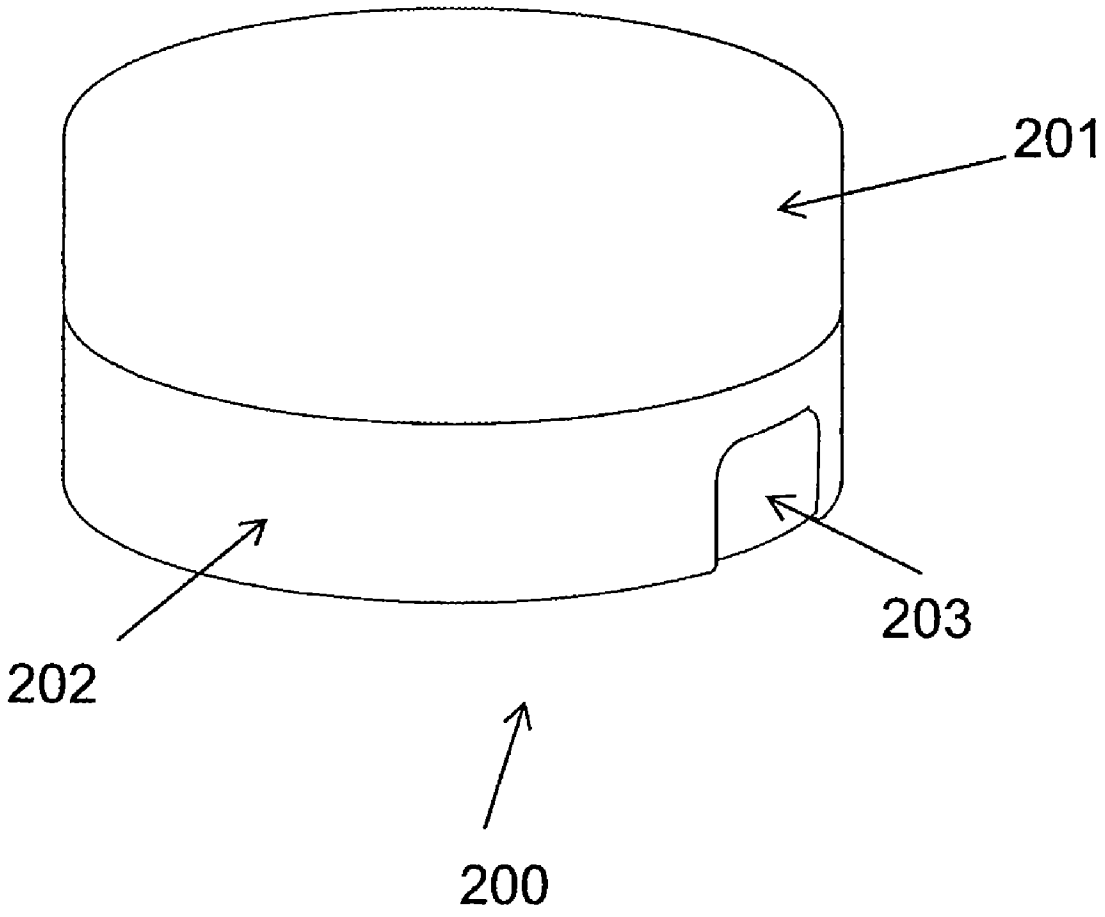


Fig. 7

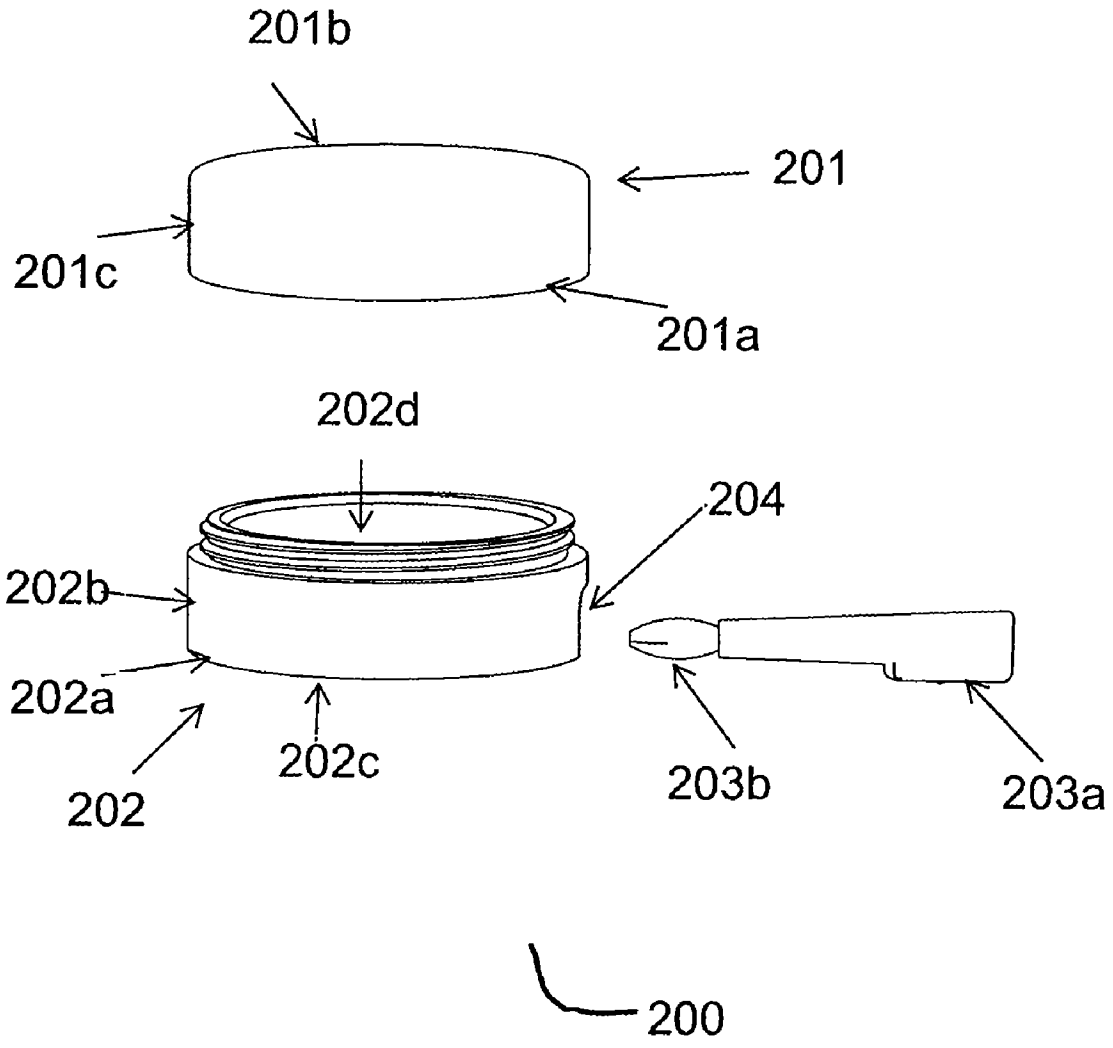


Fig. 8

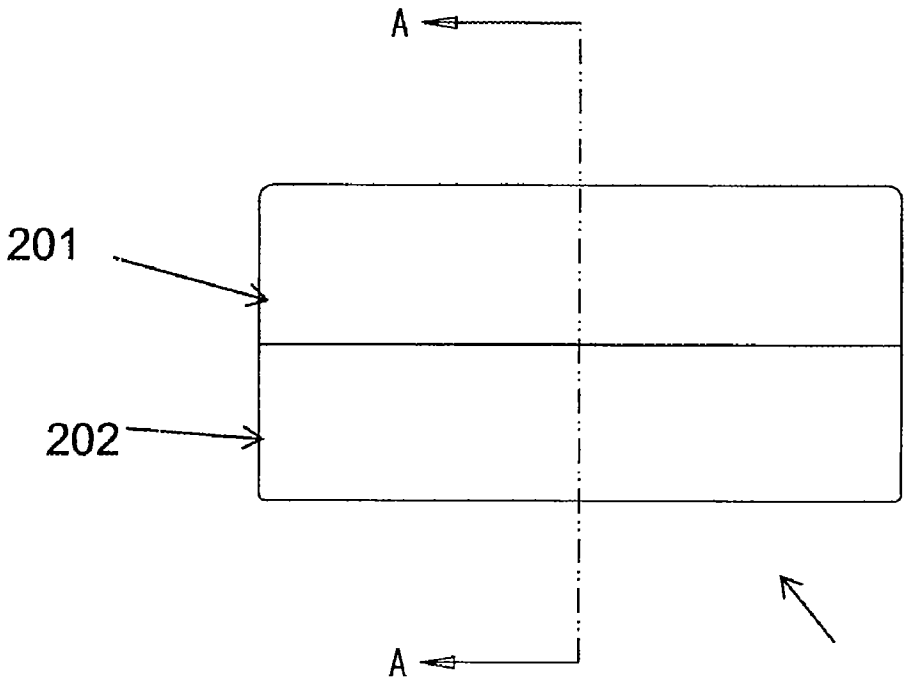


Fig. 9

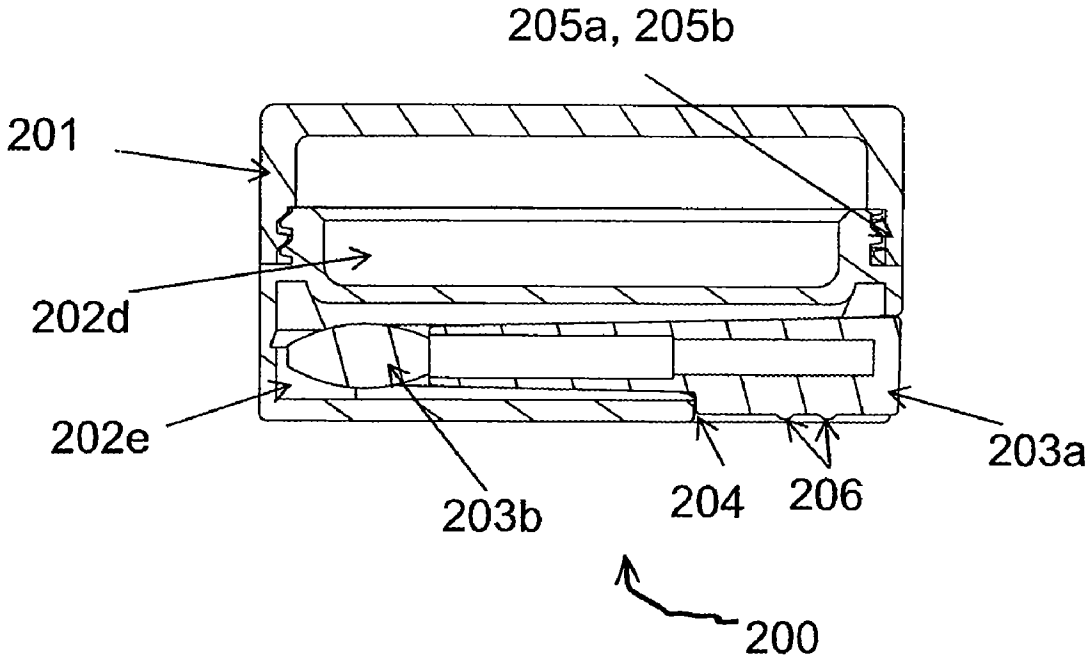


Fig. 10

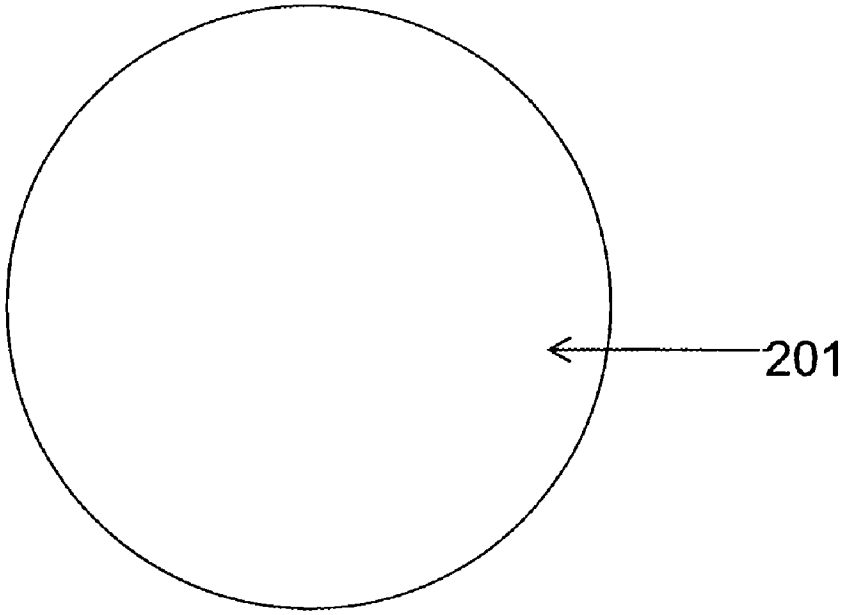


Fig. 11

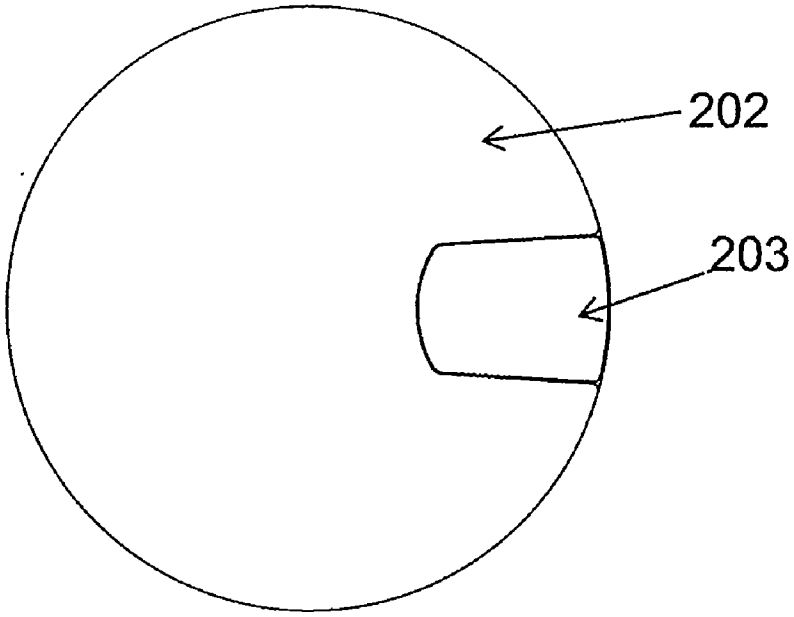


Fig. 12

ERGONOMIC CONTAINER

BACKGROUND

[0001] 1. Field of the Invention

[0002] Embodiments of the present invention generally relate to an ergonomic container for consumer products. More particularly the invention relates to an ergonomic container that provides a product and an applicator therefor in a compact and portable manner. The container of the present invention provides product and an applicator in a single package to facilitate carrying and ready use and at the same time giving the user an ergonomically placed applicator which gives the user an indication of its presence and/or absence.

[0003] 2. Description of the Related Art

[0004] The cosmetic industry generally uses cosmetic cases to store cosmetic compositions. Conventional packages are in the form of jars and compacts of varying sizes, or in the form of dispenser pens.

[0005] Typically, a cosmetic container comprises a base member for holding a given quantity of products and a cover. The cover may be connected with the base by way of respective mating threads, i.e. in the manner of a jar and lid, or pivotally attached to one another at one cooperating edge thereof, i.e., in the manner of a clam, snap-fit or by way of hinge. Further, in some containers there is also provided an applicator, however, the applicator is mostly in contact with the bulk product. Alternatively, there may be provided a separate compartment for storage of an applicator which is generally present below the receptacle in containers such as compacts or jars.

[0006] In case of cosmetic jars, the provision of an applicator results in a bulkier package as the applicator in jars is provided in a separate compartment present in the top of the container. This type of jar results in hindered portability of the container as it becomes bulkier for storage in a woman's purse or like carrying means. Moreover, such an arrangement of an applicator is generally present when the cosmetic preparation is in powder form, however, when the cosmetic preparation is of a creamy nature, as is the case with eyebrow liner, rouge and the like, the necessary applicator brush or like means is generally carried in a separate container, thus adding to the space required in a woman's purse.

[0007] In conventional cosmetic compacts the applicator is typically stored touching the bulk product which results in easier contamination of the product and therefore, is undesirable by the user. There are also present cosmetic compacts in which a separate compartment is present in the form of a pull-out drawer or a slidable tray below the receptacle. There are also present containers in which the compartment containing the applicator is present below the receptacle and engaged by way of hinge. For example, U.S. Pat. No. 5,709,232 to Sheffler et al., discloses a cosmetic jar and applicator storage device having a body providing a pair of back-to-back shallow recesses retaining a cosmetic substance and an applicator respectively, wherein the cover means storing the applicator is attached to the body by way of a hinge. Similarly, U.S. Pat. No. 6,378,533 to Roman discloses a cosmetic storage device having a pivotable pull-out applicator storage device.

[0008] However, all the above packages are cumbersome to use. As the actual number of separate individual pieces increases in such containers which in turn increases the number of steps for application by the user. The user has to first open the container, then open the compartment containing the applicator and then apply the product, and during application the user has to take care of all the pieces of the container. Similarly, closing the container is also a cumbersome task for a user. Moreover, the applicator in such compartments is so placed that the user has to use her nails for pulling out the applicator which may result in breaking of nails while taking out the applicator.

[0009] Moreover, these devices are not intuitive for the consumer to know whether the applicator has been returned to its compartment and may result in the applicator being lost by the user. Further, the presence of a separate tray or a compartment in the container disturbs the aesthetics of the overall products.

[0010] Therefore there is a need for a package that provides an applicator in a manner that the overall aesthetics of the product remain unchanged and at the same time the applicator is easily accessible to the user. There is also a need for a container with an applicator placed in an ergonomic and user-friendly manner. Ease of manipulation and use of the applicator is also important to thereby reduce the possibility of it being inadvertently dropped or misplaced by the user.

[0011] It is also desirable that the applicator is kept in isolation when not in use so as to minimize inadvertent contamination as a special care is required in certain products such as while applying cosmetic material to the face, especially to sensitive skin and areas around the eyes.

[0012] In today's fast world, consumers look for easy-to-use packages. Therefore, easy access, manipulation and use of the applicator is important and hence, the need of a container with storage space in which the applicator is placed in an ergonomic manner without disturbing the overall aesthetics of the package.

SUMMARY

[0013] The present invention generally is an ergonomic container with an applicator. The container provides the product and an applicator therefor in a single package to facilitate carrying and ready use and at the same time giving the user an ergonomically placed applicator having easy access. Further, the ergonomic container also gives visual indication of the presence or absence of the applicator.

[0014] The ergonomic container of the present invention may be used for storage of consumer products wherein the term consumer products is intended to include cosmetic, cosmeceutical and care products. A few examples include but are not limited to lip colour, concealer, primer, tint product, cream product, mousse or gel product, powder compositions in the form of a pressed powder, a cake, hot pour pasty product, for example face powder, eye shadow, rouge, foundation, blush, cake mascara, and the like or skin care and regimen product. The container of the present invention may also be used for storing paint products.

[0015] According to an embodiment of the invention there is provided an ergonomic container with an applicator which provides easy one-hand access of the applicator. Further, the container of the present invention helps in reminding/visually indicating to the user to replace the applicator in its place after usage.

[0016] According to an embodiment of the invention there is provided an ergonomic container that is simple in structure and at the same time convenient to use, retaining essentially the desirable aesthetics of the conventional container.

[0017] According to yet another embodiment of the invention, the ergonomic container comprises a cover, a receptacle and at least one applicator. The cover of the container com-

prises a body having at least one side wall, a top wall and at least one housing for receiving the at least one applicator. The housing in the cover is formed by the presence of a cavity extending through the at least one side wall, said housing having an aperture. Further, the applicator gripping portion is visible in the cavity when the applicator is disposed through the aperture. The receptacle of the container comprises of a body wherein the body has at least one sidewall and a base for holding the product, said base having at least one recess for holding/storing the product. Further, the at least one applicator comprises a gripping portion and an applicator portion. Further, the presence of the applicator in the cover completes the form of the cover thereby maintaining the aesthetics of the container and giving the user a cue to put back the applicator after using it. The receptacle and cover may be connected by a complimentary thread arrangement, or by a hinge, a pin, a snap, a hook or any other suitable means to open and close the container. The interior or exterior surface of the cover of the container may comprise a mirror.

[0018] According to yet another embodiment of the invention the at least one housing in the cover of the ergonomic container may be parallel to the longitudinal axis of the cover such that the presence of the applicator in the housing completes the form of the cover. Alternatively, the at least one housing in the cover of the ergonomic container may be parallel to the transverse axis of the cover such that the presence of the applicator in the housing completes the form of the cover. Alternatively, the at least one housing in the cover of the ergonomic container may be disposed at an inclined angle in the cover such that the presence of the applicator in the housing completes the form of the cover.

[0019] According to yet another embodiment of the invention the gripping portion of the applicator further comprises a plurality of gripping formations. The gripping formations can have any suitable dimensions, and form any suitable pattern. The gripping formations provide for better grip and ergonomy in handling in the applicator. The applicator may further be telescopic. Further, the applicator may be fitted in the housing by way of a locking means wherein the locking means may be a snap, a magnet or a button or any other suitable means.

[0020] According to yet another embodiment of the present invention a locking means may be provided in the cover and base of the receptacle to prevent opening of container when not in use. The locking means may comprise of a fastener piece on the cover that engages a fastener unit on the base for securing the cover to the receptacle. Further, any suitable locking means such as a complimentary threaded arrangement, a snap, a magnet or a button may be provided to secure the container.

[0021] According to yet another embodiment of the invention the applicator is stored in the housing and is slid out of the housing for usage. During use, the user takes out the at least one applicator through the aperture in the cover by help of gripping formations formed on the applicator, then he/she opens the cover of the container to access the product. Post usage, the user closes the container and is reminded to replace the applicator through the exposed aperture in the at least one housing so as to complete the form of the container.

[0022] According to yet another embodiment of the invention the ergonomic container may be a kit with the base of the receptacle having a plurality of recesses for retaining products. Accordingly, the cover of the container has a plurality of housings for retaining the applicators therefor in a single package.

[0023] According to yet another embodiment of the invention the ergonomic container comprises a cover, a receptacle and at least one applicator. The cover comprises a body having at least one side wall and a top wall. The receptacle comprises a body, wherein the body has at least one sidewall and a base, said base having at least one recess for holding/storing the product and at least one housing, wherein the housing is formed by the presence of a cavity extending through the at least one side wall, said housing having an aperture. Further, the applicator comprises a gripping portion and an applicator portion, wherein the at least one applicator is retained in the at least one housing present in the receptacle of the container and wherein the aperture in the housing is disposed so as to make the applicator gripping portion visible in the cavity.

[0024] According to yet another embodiment of the invention the at least one housing in the receptacle may be parallel to the longitudinal axis of the receptacle such that the presence of the applicator in the housing completes the form of the receptacle. Alternatively, the at least one housing in the receptacle may be parallel to the transverse axis of the receptacle such that the presence of the applicator in the housing completes the form of the receptacle. Alternatively, the at least one housing in the receptacle may be disposed at an inclined angle in the receptacle such that the presence of the applicator in the housing completes the form of the receptacle.

[0025] According to yet another embodiment of the invention the gripping portion of the applicator further comprises a plurality of gripping formations. The gripping formations can have any suitable dimensions, and form any suitable pattern. The gripping formations provide for better grip and ergonomy in handling in the applicator. The applicator may further be telescopic. Further, the applicator may be fitted in the housing by way of a locking means wherein the locking means may be a snap, a magnet or a button or any other suitable means.

[0026] According to yet another embodiment of the present invention a locking means may be provided in the cover and base of the receptacle to prevent opening of container when not in use. The locking means may comprise of a fastener piece on the cover that engages a fastener unit on the base for securing the cover to the receptacle. Further, any suitable locking means such as a complimentary threaded arrangement, a snap, a magnet or a button may be provided to secure the container.

[0027] According to yet another embodiment of the invention the applicator is stored in the housing in the receptacle and is slid out of the housing for usage. During use, the user takes out the at least one applicator through the aperture in the receptacle by help of gripping formations formed on the applicator, then he/she opens the cover of the container to access the product. Post usage, the user closes the container and is reminded to replace the applicator through the exposed aperture in the at least one housing in the receptacle so as to complete the form of the container.

[0028] According to yet another embodiment of the invention the ergonomic container may be a kit with the base of the receptacle having a plurality of recesses for retaining products. Accordingly, the receptacle also has a plurality of housings for retaining the applicators therefor in a single package.

[0029] According to yet another embodiment of the invention the housing being integrally formed with the cover or the receptacle utilizes the maximum area available and at the same time reduces the material costs involved in making the container. Also, the housing for storage of applicator being in one of the cover or the receptacle gives the manufacturer the freedom of either giving a screw-threaded mechanism or a hinge-mechanism or any other suitable mechanism for closing the container.

[0030] According to yet another embodiment of the invention there is also provided a container that comprises relatively fewer separate components thereby keeping the manufacturing cost low. As a consequence, highly functional and aesthetically pleasing containers are realized, with low overall manufacturing cost, and use of minimal quantities of plastic raw material.

[0031] According to yet another embodiment of the invention, the container when in the form of a pen such as a cosmetic pen, the housing for storage of applicator may be integrally formed with the cover or the receptacle of the pen. The aperture for storage of the applicator may be formed in alignment with the lateral axis of the pen or the transverse axis of the cover of the pen.

[0032] According to an embodiment of the invention the container may be in the form of jars or pens/dispensers having an easy access to applicators.

[0033] In accordance with yet another embodiment of the invention the container of the present invention therefore provides easy access to the applicator and at the same time provides for better portability of the applicator and the product.

[0034] These and further aspects which will be apparent to the expert of the art are attained by the ergonomic container in accordance with the main claim.

BRIEF DESCRIPTION OF THE DRAWINGS

[0035] So that the manner in which the above recited features of the present invention can be understood in detail, a more particular description of the invention, briefly summarized above, may be had by reference to embodiments, some of which are illustrated in the appended drawings. It is to be noted, however, that the appended drawings illustrate only typical embodiments of this invention and are therefore not to be considered limiting of its scope, for the invention may admit to other equally effective embodiments.

[0036] FIG. **1** is an isometric view of the ergonomic container according to one embodiment of the present invention;

[0037] FIG. **2** is an exploded view of the ergonomic container of FIG. **1**;

[0038] FIG. **3** is a front view of the container of FIG. **1**;

[0039] FIG. **4** illustrates a cross-sectional view of the container of FIG. **1**;

[0040] FIG. **5** illustrates a top view of the ergonomic container of FIG. **1**;

[0041] FIG. **6** shows a bottom view of the ergonomic container of FIG. **1**;

[0042] FIG. **7** illustrates an isometric view of the ergonomic container according to one embodiment of the present invention;

[0043] FIG. **8** is an exploded view of the ergonomic container of FIG. **7**;

[0044] FIG. **9** shows a front view of the container of FIG. **7**;

[0045] FIG. **10** shows a cross-sectional view of the container of FIG. **7**;

[0046] FIG. **11** illustrates a top view of the ergonomic container of FIG. **7**;

[0047] FIG. **12** shows a bottom view of the ergonomic container of FIG. **7**;

[0048] To facilitate understanding, identical reference numerals have been used, where possible, to designate identical elements that are common to the figures. It is to be noted, however, that the appended drawings illustrate only typical embodiments of this invention and are therefore not to be considered limiting of its scope, for the invention may admit to other equally effective embodiments.

DETAILED DESCRIPTION

[0049] FIGS. **1** through to **6** illustrate one embodiment of the present invention showing an ergonomic container **100** for consumer products that provides an ergonomically placed applicator and the product in a single package to facilitate carrying and easy one-hand accessibility of applicator in a container such as a jar and at the same time giving the user a cue to put back the applicator after usage. As represented by FIGS. **1** through to **4**, the container **100** comprises a cover **101**, a receptacle **102** and an applicator **103**. The receptacle **102** of the container **100** comprises of a body **102***a* wherein the body **102***a* has a sidewall **102***b* and a base **102***c* for holding the product, said base **102***c* having at least one recess **102***d* for holding/storing the product. Further, the at least one applicator **103** has a gripping portion **103***a* and an applicator portion **103***b*. The cover **101** comprises a body **101***a* having at least one side wall **101***b*, a top wall **101***c* and at least one housing **101***d* for receiving the at least one applicator **103**. The housing **101***d* is formed by the presence of a cavity extending through the at least one side wall **101***b*, said housing **101***d* having an aperture **104**. Further, the applicator gripping portion **103***a* is visible in the cavity when the applicator **103** is disposed through the aperture **104**. The receptacle **102** and cover **101** are connected together by a complimentary thread arrangement **105***a* and **105***b* in both the cover **101** and the receptacle **102** to open and close the container **100**. The receptacle **102** and cover **101** may alternatively be connected by a hinge, a pin, a snap, a hook or any other suitable means. Further, a locking means may alternatively be provided in the cover **101** and the receptacle **102** to prevent opening of container **100** when not in use. The locking means may comprise of a fastener piece on the cover **101** that engages a fastener unit on the receptacle **102** for securing the cover **101** to the receptacle **102**. Further, the complimentary threaded arrangement may act as a locking means or a snap, a magnet or a button or any other suitable means may be provided to secure the container **100**. Further, the applicator **103** may be fitted in the housing by way of a locking means wherein the locking means may be a snap, a magnet or a button or any other suitable means. The interior or exterior surface of the cover **101** of the container **100** may comprise a mirror. The cover **101** and receptacle **102** may be formed of a suitable polymeric material such as acrylonitrile butadiene styrene or styrene acrylonitrile. Further, the applicator **103** may be telescopic so as to be able to accommodate in the housing as well as provide better grippability when used due to the telescopicity.

[0050] Further, as shown in FIG. **4**, the housing **101***d* and the aperture **104** in the cover **101** is disposed to be substantially parallel to the transverse axis of the cover **101** such that the presence of the applicator **103** in the housing **101***d* completes the form of the cover **101**. Alternatively, the housing **101***d* and the aperture **104** in the cover **101** may be disposed

to be substantially parallel to the longitudinal axis of the cover **101** such that the presence of the applicator **103** in the housing **101***d* completes the form of the cover **101**. Alternatively the housing **101***d* and the aperture **104** in the cover **101** may be disposed to be at an inclined angle in the cover **101** such that the presence of the applicator **103** in the housing **101***d* completes the form of the cover **101**.

[0051] Further, the gripping portion **103***a* of the applicator **103** may be provided with a plurality of gripping formations such as projections, rings, ridges, ribs, embossments, depressions, grooves, or any other suitable gripping structures. The gripping formations can have any suitable dimensions, and form any suitable pattern. As shown in FIGS. **1** to **3**, a suitable number of ridges **106** to provide on gripping portion **103***a* of the applicator **103** for better grip and ergonomy in handling in the applicator **103**. The ridges **106** may be in the form of rings which could be either continuous or discontinuous, lines, dashes, dots or any other suitable form.

[0052] During use, the user holds the container **100** in one hand and is able to pull out the applicator **103** from the cover **101** which is visible from the outside by using a finger of the same hand. The applicator **103** is therefore placed ergonomically in the container **100** and provides for a one-hand operation. The user then opens the cover **101** of the container **100** in a usual manner to access the product, thereby decreasing the steps for application by the user. After usage, the user closes the container **100** in a usual manner and the aperture **104** in the cover **101** gives a visual cue to her to replace the applicator **103** in its place and thereby complete the form of the container **100**.

[0053] FIGS. **7** through to **12** illustrate yet another embodiment of the invention showing an ergonomic container **200** for consumer products that provides an ergonomically placed applicator and the product in a single package. As represented by FIGS. **7** through to **10**, the container **200** comprises a cover **201**, a receptacle **202** and an applicator **203**. The cover **201** of the container **200** comprises of a body **201***a* wherein the body **201***a* has a sidewall **201***b* and a topwall **201***c*. The applicator **203** has a gripping portion **203***a* and an applicator portion **203***b*. The receptacle **202** comprises a body **202***a* having at least one side wall **202***b*, a base **202***c* for holding the product, said base **202***c* having at least one recess **202***d* for holding/storing the product and at least one housing **202***e* for receiving the applicator **203**. The housing **202***e* is formed by the presence of a cavity extending through the at least one side wall **202***b*, said housing **202***e* having an aperture **204**. Further, the applicator gripping portion **203***a* is visible in the cavity when the applicator **203** is disposed in the aperture **204**. The receptacle **202** and cover **201** are connected together by a complimentary thread arrangement **205***a* and **205***b* in both the cover **201** and the receptacle **202** to open and close the container **200**. The receptacle **202** and cover **201** may alternatively be connected by a hinge, a pin, a snap, a hook or any other suitable means. Further, a locking means may alternatively be provided in the cover **201** and the receptacle **202** to prevent opening of container **200** when not in use. The locking means may comprise of a fastener piece on the cover **201** that engages a fastener unit on the base **202***c* for securing the cover **201** to the receptacle **202**. Further, the complimentary threaded arrangement may act as a locking means or a snap, a magnet or a button or any other suitable means may be provided to secure the container. Further, the applicator **203** may be fitted in the housing by way of a locking means wherein the locking means may be a snap, a magnet or a button or any other suitable means. The interior or exterior surface of the cover **201** of the container **200** may comprise a mirror. The cover **201** and receptacle **202** may be formed of a suitable polymeric material such as acrylonitrile butadiene styrene or styrene acrylonitrile. Further, the applicator **203** may be telescopic so as to be able to accommodate in the housing as well as provide better grippability when used due to the telescopicity.

[0054] Further, as shown in FIG. **10**, the housing **202***e* and the aperture **204** in the receptacle **202** is disposed to be substantially parallel to the transverse axis of the receptacle **202** such that the presence of the applicator **203** in the housing **202***e* completes the form of the receptacle **202**. Alternatively, the housing **202***e* and the aperture **204** in the receptacle **202** may be disposed to be substantially parallel to the longitudinal axis of the receptacle **202** such that the presence of the applicator **203** in the housing **202***e* completes the form of the receptacle **202**. Alternatively the housing **202***e* and the aperture **204** in the receptacle **202** may be disposed to be at an inclined angle in the receptacle **202** such that the presence of the applicator **203** in the housing **202***e* completes the form of the receptacle **202**.

[0055] Further, the gripping portion **203***a* of the applicator **203** may be provided with a plurality of gripping formations such as projections, rings, ridges, ribs, embossments, depressions, grooves, or any other suitable gripping structures. The gripping formations can have any suitable dimensions, and form any suitable pattern. As shown in FIG. **10** a suitable number of ridges **206** are provided on gripping portion **203***a* of the applicator **103** for better grip and ergonomy in handling in the applicator **203**. The ridges **206** may be in the form of rings which could be either continuous or discontinuous, lines, dashes, dots or any other suitable form.

[0056] During use the user holds the container **200** in one hand and is able to pull out the applicator **203** from the receptacle **202** which is visible from the outside by using a finger of the same hand. The applicator **203** is therefore placed ergonomically in the container **200** and provides for a one-hand operation. The user then opens the cover **201** of the container **200** in a usual manner to access the product, thereby decreasing the steps for application by the user. After usage the user closes the container **200** in a usual manner and is visually guided to put back the applicator **203** through the exposed aperture **204** in the housing as the aperture **204** is exposed and the form of the container **200** is incomplete unless the applicator **203** is put back in place.

[0057] As the housing is integrally formed in the cover or the receptacle of the container, the maximum area available is being utilized and at the same time helps in reducing the material costs involved in making the container. Also, the housing for storage of applicator being in one of the cover or the receptacle gives the manufacturer the freedom of either providing a screw-threaded mechanism or a hinge-mechanism for closing the container. Moreover, the ergonomic container of the invention container comprises relatively fewer separate components thereby keeping the manufacturing cost low. As a consequence, highly functional and aesthetically pleasing containers are realized, with low overall manufacturing cost, and use of minimal quantities of plastic raw material.

[0058] Depending upon the cosmetic material being used, a variety of sizes and shapes of the applicator can be utilized. The applicator portion may be constructed of a porous or non-porous rubber, fabric mesh, felt material, foamed poly-

mers or sponge material. Further the applicator could have any suitable shape depending on the kind of application required. It could have a shape other than round such as flattened brushes.

[0059] The ergonomic container of the present invention may be of any shape such as square, rectangular, circular polygonal or any suitable shape, such that the cover and the receptacle having identical configuration of varying depths. Further, the container may be in the form of jars, as well as pens, tubes or any other suitable structure such that the housing for storage of applicator may be integrally formed with the cover or the receptacle of the container providing easy access to the applicator as well as better portability of the applicator and the product.

[0060] The ergonomic container of the present invention may be a kit with the base of the receptacle having a plurality of recesses giving options of products and accordingly the cover or the receptacle has a plurality of housings for retaining the applicators therefor in a single package. The ergonomic container of the present invention thus provides a container which gives the user a range of products and applicators therefor in a single package and at the same time giving the user a simplified and user-friendly interface to interact with the package.

[0061] The container of the present invention can be used to store a wide variety of consumer products such as cosmetic, cosmeceutical and care products as well as paint products. A few examples of these products may be pressed powder, a cake, hot pour pasty product, face powder, eye shadow, rouge, foundation, concealer, primer, blush, cake mascara, lip colour, tint product, cream product, mousse or gel product, and the like or skin care and regimen product as well as paint products.

[0062] All components of the ergonomic container could be fabricated in a generally conventional manner using any suitable polymer material such as ABS, SAN, etc while any reflective material could be used as mirror.

[0063] Although the above description and drawings show the case being circular, the shapes and profile cross section thereof are not limited to the same. The case of the present invention may be of any suitable shape such as square, rectangular, circular, cylindrical, polygonal.

[0064] While the foregoing is directed to embodiments of the present invention, other and further embodiments of the invention may be devised without departing from the basic scope thereof, and the scope thereof is determined by the claims that follow.

What is claimed is:

1. An ergonomic container comprising

a cover, said cover comprising a body having at least one side wall, a top wall and at least one housing, wherein the housing is formed by the presence of a cavity extending through the at least one side wall, said housing having an aperture;

a receptacle, said receptacle comprising a body wherein the body has at least one sidewall and a base, said base having at least one recess for holding/storing product; and

at least one applicator, said applicator comprising a gripping portion and an applicator portion,

wherein the at least one applicator is retained in the at least one housing present in the cover and wherein the applicator gripping portion is visible in the cavity when the applicator is disposed through the aperture.

2. The ergonomic container according to claim **1** wherein the at least one housing is substantially parallel to the longitudinal axis of the cover such that the presence of the applicator in the housing completes the form of the cover.

3. The ergonomic container according to claim **1** wherein the at least one housing is substantially parallel to the transverse axis of the cover such that the presence of the applicator in the housing completes the form of the cover.

4. The ergonomic container according to claim **1** wherein the at least one housing is disposed at an inclined angle in the cover such that the presence of the applicator in the housing completes the form of the cover.

5. The ergonomic container according to claim **1** wherein the gripping portion of the applicator further comprises a plurality of gripping formations.

6. The ergonomic container according to claim **1** wherein the applicator is telescopic.

7. The ergonomic container according to claim **1** wherein the applicator is stored in the housing and is slid out of the housing for usage.

8. The ergonomic container according to claim **1** wherein the applicator completes the form of the cover.

9. The ergonomic container according to claim **1** further comprising a fastener piece on the cover that engages a fastener unit on the base for securing the cover to the receptacle.

10. The ergonomic container according to claim **1** wherein the container is a kit with the base of the receptacle having a plurality of recesses for retaining products.

11. The ergonomic container according to claim **10** wherein the cover has a plurality of housings for retaining the applicators therefor in a single package.

12. A method for using the ergonomic container claimed in claim **5**, said method comprising taking out the at least one applicator through the aperture in cover or receptacle by help of gripping formations formed on the applicator, opening the cover of the container to access the product, closing the container and replacing the applicator through the exposed aperture in the at least one housing to complete the form of the container.

13. An ergonomic container comprising

a cover, said cover comprising a body having at least one side wall and a top wall;

a receptacle, said receptacle comprising a body, wherein the body has at least one sidewall and a base, said base having at least one recess for holding/storing the product and at least one housing, wherein the housing is formed by the presence of a cavity extending through the at least one side wall, said housing having an aperture; and

at least one applicator, said applicator comprising a gripping portion and an applicator portion, wherein the at least one applicator is retained in the at least one housing present in the receptacle of the container and wherein the aperture in the housing is disposed so as to make the applicator gripping portion visible in the cavity.

14. The ergonomic container according to claim **13** wherein the at least one housing is substantially parallel to the longitudinal axis of the receptacle such that the presence of the applicator in the housing completes the form of the receptacle.

15. The ergonomic container according to claim **13** wherein the at least one housing is substantially parallel to the transverse axis of the receptacle such that the presence of the applicator in the housing completes the form of the receptacle.

16. The ergonomic container according to claim **13** wherein the at least one housing is disposed at an inclined angle in the receptacle such that the presence of the applicator in the housing completes the form of the receptacle.

17. The ergonomic container according to claim **13** wherein the gripping portion of the applicator further comprises a plurality of gripping formations.

18. The ergonomic container according to claim **13** wherein the applicator is telescopic.

19. The ergonomic container according to claim **13** wherein the applicator is stored in the closed housing and is slid out of the housing for usage.

20. The ergonomic container according to claim **13** wherein the applicator completes the form of the receptacle.

21. The ergonomic container according to claim **13** further comprising a fastener piece on the cover that engages a fastener unit on the base for securing the cover to the receptacle.

22. The ergonomic container according to claim **13** wherein the container is a kit with the base of the receptacle having a plurality of recesses for retaining products.

23. The ergonomic container according to claim **22** wherein the receptacle has a plurality of housings for retaining the applicators therefor in a single package.

24. A method for using the ergonomic container claimed in claim **17**, said method comprising taking out the applicator through the housing in receptacle by help of the gripping formations, opening the cover of the container to access the product, closing the container and replacing the applicator through the exposed aperture in the at least one housing to complete the form of the container.

* * * * *

EXHIBIT D

April 13, 1937. B. F. CONNER 2,076,551

JAR

Filed April 16, 1935

Fig. 1

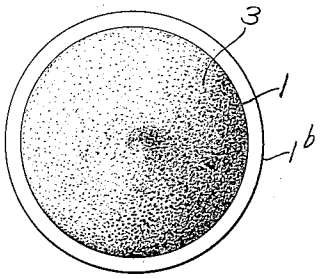


Fig. 2

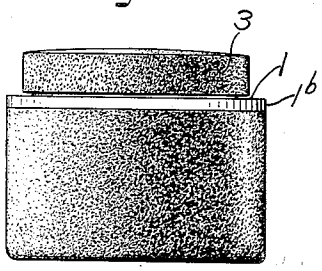


Fig. 3

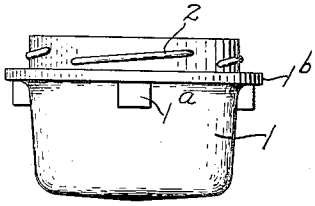
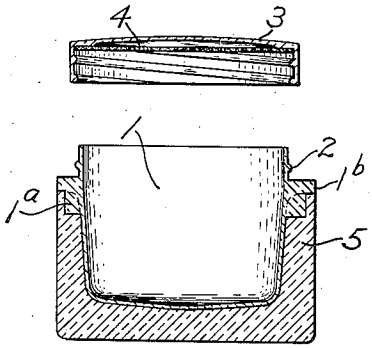


Fig. 4



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A&A Exhibit 1003 457 of 510

Patented Apr. 13, 1937

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UNITED STATES PATENT OFFICE

2,076,551

JAR

Benjamin F. Conner, West Hartford, Conn., assignor to Colt's Patent Fire Arms Manufacturing Co., Hartford, Conn., a corporation of Connecticut

Application April 16, 1935, Serial No. 16,721

1 Claim. (Cl. 215—1)

The invention relates particularly to jars adapted or intended primarily for containing cosmetic preparations including salves, cold creams, and other preparations of a pastelike consistency and also including powders. Jars for preparations of the general character referred to have heretofore been ordinarily made of glass, but it has been proposed, and to some extent practiced, to make such jars of synthetic resin materials or other moldable materials. In my copending application for Jars, Serial No. 18,031 filed April 24, 1935, I have disclosed a jar of this general class made from synthetic resin materials and comprising two thin-walled separately molded concentric members. The general object of the present invention is to provide a jar of the general class referred to which avoids the use of glass and attains some of the advantages incident to synthetic resin materials, but which can be manufactured at less cost than the composite jar shown and described in the application referred to.

In the accompanying drawing I have illustrated the form of jar embodying the invention which I now deem preferable, but it will be understood that the drawing is intended for illustrative purposes only and is not to be relied upon as defining or limiting the scope of the invention, the claim forming a part of this specification being relied upon for that purpose.

Of the drawing:

Fig. 1 is a plan view of a jar embodying the invention.

Fig. 2 is a side view.

Fig. 3 is a side view of the inner member of the jar.

Fig. 4 is a central vertical section view, the closure being separated from the jar proper.

Referring to the drawing, 1 represents the inner member of the jar, this inner member being cup-shaped and having relatively thin walls. It is molded in any usual or preferred way from a suitable material of the synthetic resin class, the material being selected so as to be highly resistant to the deteriorative action of cosmetic and other products. The exact character of the material of the member 1 may be varied according to the cream or other preparation that is to be contained in the jar. The inner member 1 is externally threaded adjacent its upper periphery, as shown at 2, and a closure 3 of the cap type is provided which is interiorly threaded to engage the thread 2 on the inner member. The closure or cap 3 may be provided with a gasket or liner at 4.

In lieu of an independently molded outer member of synthetic resin material, as disclosed in my aforesaid pending application, I provide an outer body 5 which is molded around the inner member so that the exterior of the said inner member and the interior of the outer member are in intimate contact throughout. The inner member 1 is preferably provided with projections or lugs such as 1^a which are surrounded by the material of the body 5 so as to prevent any relative rotation between the said inner member and the said outer body.

While I do not necessarily so limit myself, I prefer to provide the inner member 1 with a peripheral annular rib 1^b which has a diameter greater than the diameter of the cap 3 and which preferably has the same diameter of the outer body 5. This annular rib 1^b is exteriorly exposed and may provide a pleasing color contrast with the color of the closure or with the color of the body 5 or with both.

In accordance with the present invention, the material of the outer body 5 may be considerably less expensive than the synthetic resin material of the inner body and it may be less resistant to the deteriorative action of the products to be contained in the jar. The said material of the outer body is preferably a thermo-plastic material which becomes soft and plastic at a relatively low temperature. Shellac may be taken as an example of such a material.

The inner member 1 is molded in accordance with known practice at a high temperature and under high pressure from a suitable material of the synthetic resin class. Thereafter the completely molded and cured inner member 1 is placed in a suitably shaped mold and the outer body 5 is molded around and in contact with the exterior of the inner member 1. The material of the outer body is such that it is plastic and moldable at a temperature so low that there is no impairment of the synthetic resin material of the inner member. It will be observed that inasmuch as the outer body is molded in direct contact with the inner member no complicated or expensive mold is required, it being necessary to provide only a simple mold which will determine the exterior contour of the outer body.

A jar constructed in accordance with the present invention does not have all of the advantages that are incident to a jar embodying the invention set forth in my aforesaid copending application Serial No. 18,031; but it does have certain

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advantages over the conventional glass jar, and it is particularly suited for use when a low cost is a determining factor. The thermo-plastic material of the outer body 5 is less expensive than the synthetic resin material which would be required for a separately molded outer member, and the cost of molding is somewhat less.

What I claim is:

The combination in a jar of the class described, of an inner thin-walled cup-shaped member externally threaded adjacent its upper periphery, the said inner member having an annular rib immediately below the threaded portion, an outer body molded around the inner member below the annular rib thereon so that the exterior of the inner member and the interior of the outer member are in intimate contact throughout, the said outer body having an external contour substantially different from that of the inner body and having a diameter such that the periphery of the rib on the inner member is exposed, and a closure of the cap type interiorly threaded to engage the thread on the inner member.

BENJAMIN F. CONNER.

EXHIBIT G

June 28, 1955 W. K. ARCHER ET AL 2,711,766

CONTAINER

Filed Oct. 15, 1949

Fig. 1.

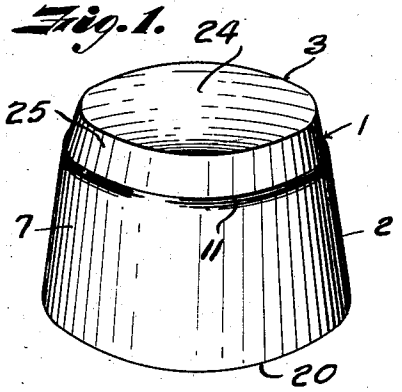


Fig. 2.

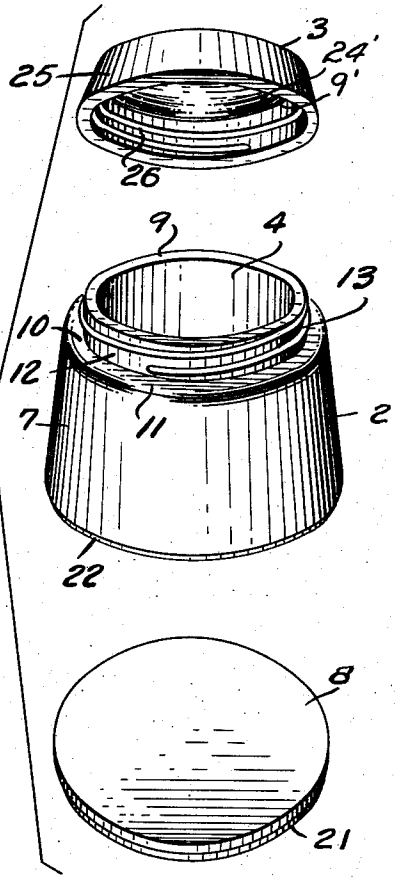


Fig. 3.

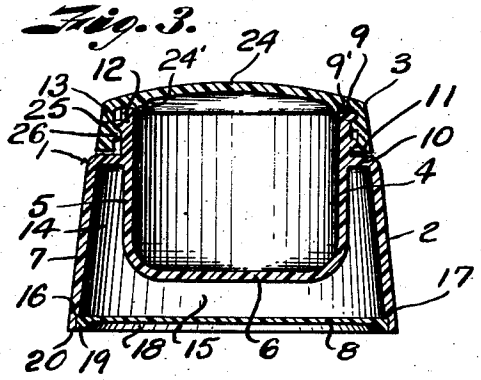


Fig. 4.

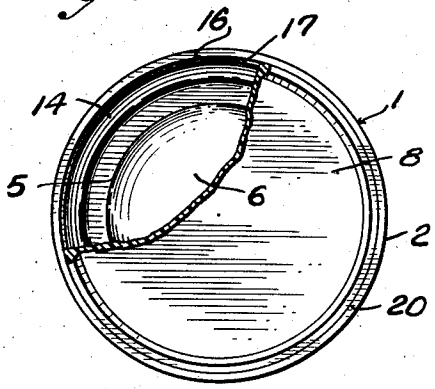
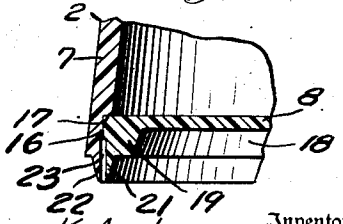


Fig. 5.



William K. Archer and Paul A. Marchant Inventors

By Fishburn & Mullendore

Attorneys

United States Patent Office 2,711,766
Patented June 28, 1955

2,711,766

CONTAINER

William K. Archer, Johnson County, Kans., and Paul A. Marchant, Jackson County, Mo., assignors to Injection Molding Company, Kansas City, Mo., a corporation of Missouri

Application October 15, 1949, Serial No. 121,602

1 Claim. (Cl. 150—.5)

This invention relates to containers adapted for packaging creams, salves and similar paste-like products, the principal object being to provide a container of this character adapted for manufacture from plastic material by molding in high pressure production dies.

One difficulty with containers formed of plastic is that considerable less wall thickness is required than with the usual glass jar in which such preparations are usually packaged, consequently, the purchaser is led to believe that he is not getting the same quantity even though the inner cavity is exactly the same capacity. It is, therefore, a further object of the invention to provide a container having an exterior size comparable with that of the usual jar, while retaining the same inner capacity without using an excessive quantity of plastic material.

Other objects of the invention are to provide a jar type container having an insulated wall and bottom structure to retard the effectiveness of exterior heat and cold on the contents, to provide a container adapted to various exterior shapes while maintaining a cavity which facilitates easy removal of the contents, to provide a container that is of light weight, to provide a container that is substantially resilient and not breakable, and to provide a container which does not require an inner liner in the cap to effect a seal.

In accomplishing these and other objects of the invention hereinafter pointed out, we have provided improved structure, the preferred form of which is illustrated in the accompanying drawing wherein:

Fig. 1 is a perspective view of a jar-like container constructed in accordance with the present invention.

Fig. 2 is a perspective view of the parts of the container shown in disassembled spaced relation.

Fig. 3 is a vertical section through the container.

Fig. 4 is a bottom plan view of the container showing the outer bottom broken away to illustrate the insulating space.

Fig. 5 is a fragmentary section through the base of the container prior to scaling of the outer bottom thereof.

Referring more in detail to the drawing:

1 designates a jar-like container constructed in accordance with the present invention and which includes an open top hollow body 2 and a closure cap 3, both being formed of plastic material by molding in high pressure production dies.

The body portion 2 includes an inner cavity 4 for containing a product such as a cream, salve or other paste-like material, the cavity 4 being of a shape to facilitate removal of the material and of a size corresponding in capacity to the quantity of material to be placed therein. The cavity 4 is formed by an inner annular wall 5 curving into an integral bottom 6, the top being open the full diameter of the cavity to facilitate removal of the core element of the forming die and to facilitate insertion and removal of the material when the container is used.

Since the container is formed of plastic, the wall 5 and bottom 6 may be relatively thin, as compared with the wall thickness of a customary glass jar, with the result that

the exterior diameter is substantially less than the corresponding diameter of the comparable jar. It is, therefore, desirable to shroud the wall 5 and bottom 6 with an outwardly spaced wall 7 and a bottom 8, the wall 7 being connected with the wall 5 at a point below the upper edge 9 thereof by an annular flange portion 10 which forms a shoulder 11 and leaves a sufficient portion of the wall 4 projecting thereabove to provide a neck 12, having exterior threads 13 for attaching the cover 3. As will be noted from Fig. 3, this neck 12 is of substantially greater thickness than the wall 5 and the wall 7. The flange portion 10 and wall 7 may be formed integrally with the wall portion 5, however, to permit formation of an inner annular space 14 between the wall portions 5 and 7, the bottom 8 is formed of a part which is separately molded and attached to the base portion of the wall 7 in spaced relation with the bottom 6, as now to be described. While the exterior of the wall 7 may be of any desired shape, for example, conical, as illustrated, it is preferably of sufficient height so that the base portion thereof extends a distance below the bottom 6 to provide a space 15 therebetween in connection with the space 14. The inner circumferential face of the wall 7 is provided with an internal annular groove 16 to receive the bottom 8 and provide a shoulder 17 against which the bottom rests, as shown in Fig. 3.

The bottom 8 comprises a substantially flat disk of suitable size to be engaged within the groove 16. The bottom member is recessed as at 18 on the underside thereof to leave an annular rim 19 which cooperates with the edge of the wall 7 to provide a substantially flat base rim 20, which forms a stable bottom for the container. The bottom may be secured in position in any suitable manner, however, if the annular space 14 and bottom space are to be used for their insulating qualities, the bottom must be hermetically sealed, and to accomplish this purpose, the bottom 8 is provided around the exterior thereof with a depending lip 21 that cooperates with a lip 22 on the lower edge of the wall 7, the lips normally being spaced apart by a groove 23 which preferably extends within the wall portion 7 to receive fused material when the lips 21 and 22 are fused together, as by placing the bottom of the container on a heated surface and applying pressure to force the fused material of the lips into the groove, thereby effecting a seal.

The cap or lid 3 may be of conventional shape in that it includes a crown top 24 having a flange 25 provided with internal threads 26 adapted to engage the threads 13 of the neck of the container, the flange being of a depth relative to the depth of the neck to effect sealing contact between an annular seat 9' that is formed on the underface of the cap and the upper edge 9 of the container prior to any contact of the flange with the shoulder 10. If desired, a depending annular lip 24' may be provided within the seat 9' to engage within the inner circumferential face of the neck 12 to additionally enhance the seal.

From the foregoing, it is obvious that we have provided a container for creams, salves and the like which may be readily formed of plastic and which has the appearance of the usual container formed of glass or other heavy material. It is also obvious that the space surrounding the inner wall provides for insulation to prevent rapid heat exchange between the exterior of the container and the contents contained in the cavity thereof. It is also obvious that cavity 4 as well as the exterior of the container may be of any suitable shape as desired for meeting the requirements of the trade.

What we claim and desire to secure by Letters Patent is:

A molded, plastic, resilient container including an uninterrupted inner annular wall and bottom forming an open top cavity to receive hot material, said annular wall having an integral thickened neck portion extending upwardly therefrom and substantially consistituting a con-

tinuation of said annular wall, a substantially horizontally disposed uniform, thin and narrow flange portion encircling, outwardly extending from and integral with the inner annular wall at the lower part of the neck portion, an uninterrupted outer wall portion integral with, of substantially the same thickness as and merging into said flange portion so as to provide a smooth outer surface free of projections and the like, said outer wall portion being concentrically spaced from the first mentioned wall and having a lower end portion terminating in spaced relation to the bottom of the cavity, whereby maximum flexure of said flange, neck portion and the inner and outer walls is permitted without rupture of the same, and whereby heat from the material packed in the cavity can be readily dissipated before reaching the joint for the bottom member, a substantially flat bottom member of lesser outside diameter than said lower end portion of

said outer wall portion, secured to said lower end portion and substantially spaced from said bottom to close the space between said walls, and a removable closure for the neck portion.

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EXHIBIT H

US00D635030S

(12) United States Design Patent

L'Abbate

(10) Patent No.: US D635,030 S
(45) Date of Patent: ** Mar. 29, 2011

(54) **FLASK ASSEMBLY**

(75) Inventor: **Frederico de Carvalho L'Abbate**, São Paulo (BR)

(73) Assignee: **Natura Cosmeticos S.A.**, Itapecerica da Serra SP (BR)

(**) Term: **14 Years**

(21) Appl. No.: **29/336,005**

(22) Filed: **Apr. 27, 2009**

(30) **Foreign Application Priority Data**

Oct. 29, 2008 (BR) DI6804782

(51) **LOC (9) Cl.** **09-01**

(52) **U.S. Cl.** **D9/529**

(58) **Field of Classification Search** D9/502–504, D9/516, 529, 530, 537, 540, 549, 434, 435; 215/381–385; 220/662, 669; D28/4, 7, 8, D28/73, 76, 91

See application file for complete search history.

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(Continued)

Primary Examiner — Stella M Reid
Assistant Examiner — Keli L Hill
(74) *Attorney, Agent, or Firm* — B. Aaron Schulman; Stites & Harbison, PLLC

(57) **CLAIM**

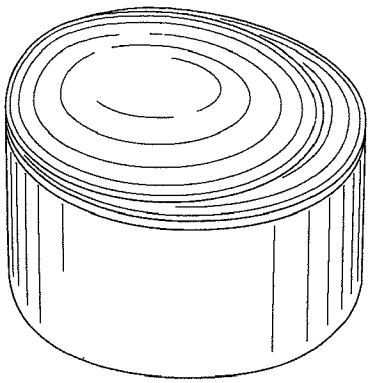
The ornamental design for a flask assembly, as shown and described.

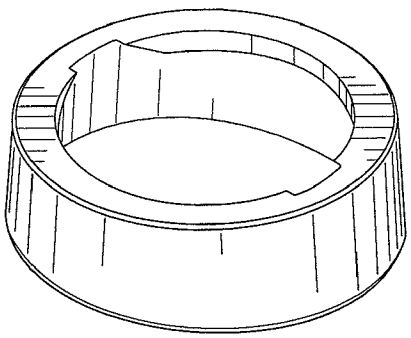
DESCRIPTION

FIG. **1** is a top, front, right side perspective view of a flask assembly, showing my new design.
FIG. **2** is a back view thereof.
FIG. **3** is a front view thereof.
FIG. **4** is a right side view thereof.
FIG. **5** is a left side view thereof.
FIG. **6** is a top view thereof.
FIG. **7** is a bottom view thereof.
FIG. **8** is a top, front, right side perspective view of the refill inside the flask assembly, showing my new design.
FIG. **9** is a back view thereof.
FIG. **10** is a front view thereof.
FIG. **11** is a right side view thereof.
FIG. **12** is a left side view thereof.
FIG. **13** is a top view thereof.
FIG. **14** is a bottom view thereof.
FIG. **15** is a top, front, right side perspective view of the cap of the flask assembly, showing my new design.
FIG. **16** is a back view thereof.
FIG. **17** is a front view thereof.
FIG. **18** is a right side view thereof.
FIG. **19** is a left side view thereof.
FIG. **20** is a top view thereof.
FIG. **21** is a bottom view thereof.
FIG. **22** is a top, front, right side perspective view of the flask base of the flask assembly, showing my new design.
FIG. **23** is a back view thereof.
FIG. **24** is a front view thereof.
FIG. **25** is a right side view thereof.
FIG. **26** is a left side view thereof.
FIG. **27** is a top view thereof.
FIG. **28** is a bottom view thereof.
FIG. **29** is a top, front, right side perspective view of the applicator inside the flask assembly, showing my new design.
FIG. **30** is a back view thereof.
FIG. **31** is a front view thereof.
FIG. **32** is a right side view thereof.
FIG. **33** is a left side view thereof.
FIG. **34** is a top view thereof; and,
FIG. **35** is a bottom view thereof.

The claim comprises a fully assembled flask with multiple internal components that have been shown separately in the disclosure.

1 Claim, 5 Drawing Sheets





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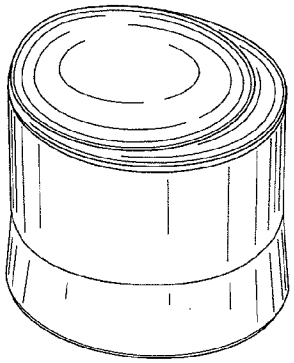


Fig. 1

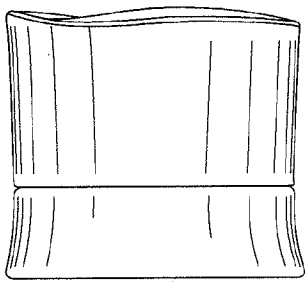


Fig. 2

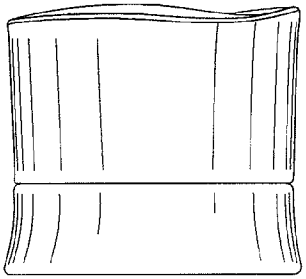


Fig. 3

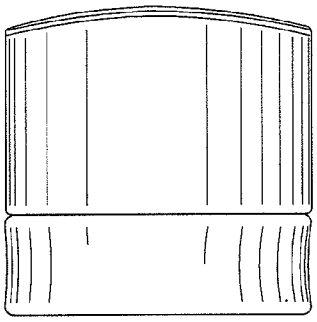


Fig. 4

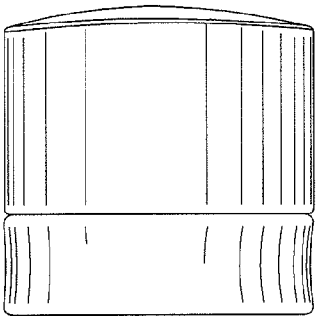


Fig. 5

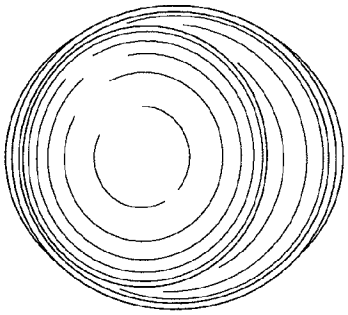


Fig. 6

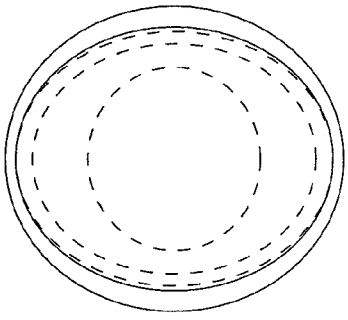


Fig. 7

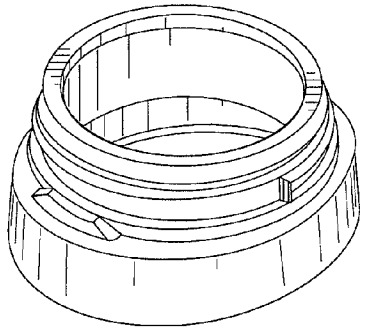


Fig. 8

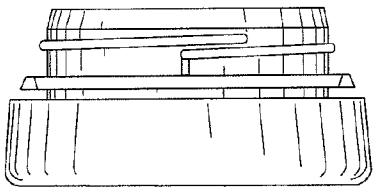


Fig. 9

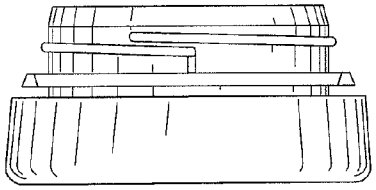


Fig. 10

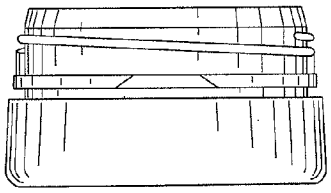


Fig. 11

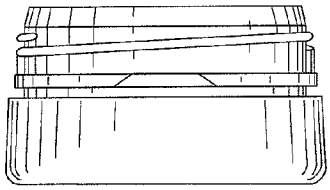


Fig. 12

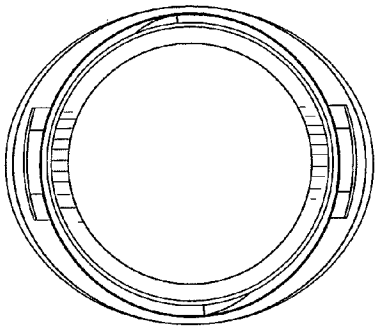


Fig. 13

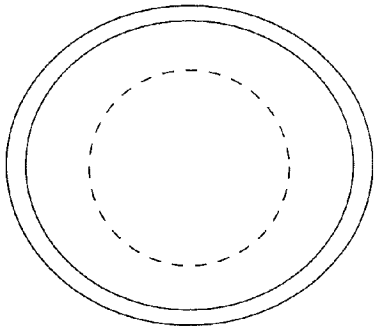


Fig. 14

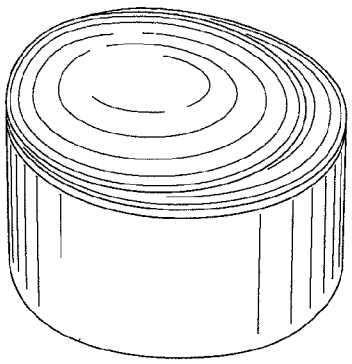


Fig. 15

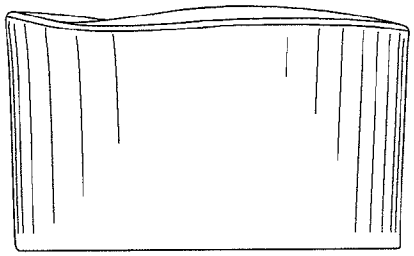


Fig. 16

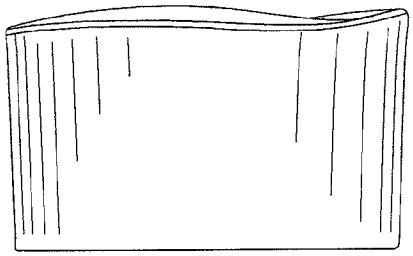


Fig. 17

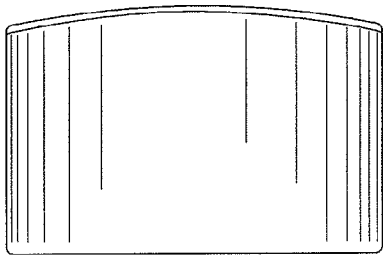


Fig. 18

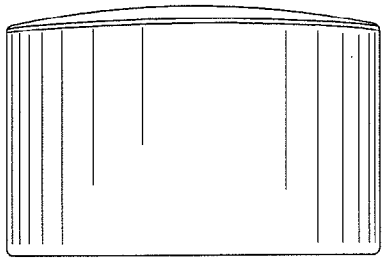


Fig. 19

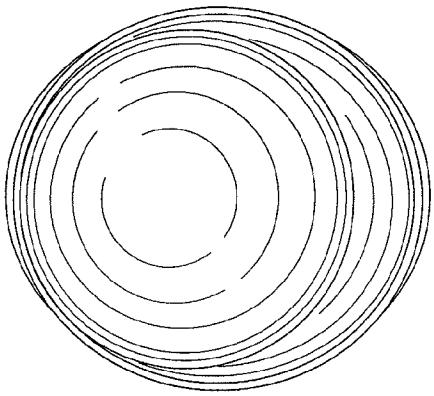


Fig. 20

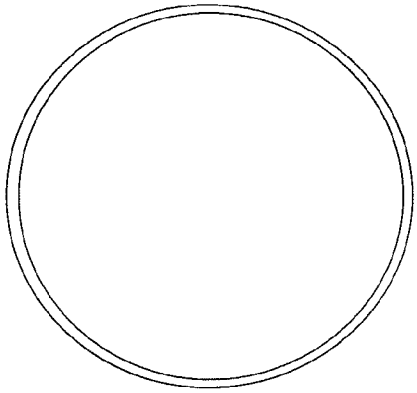


Fig. 21

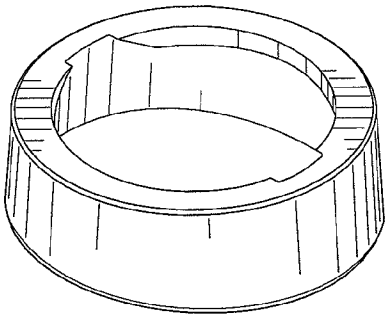


Fig. 22

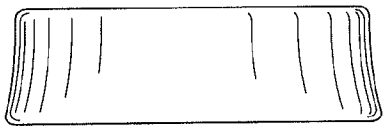


Fig. 23

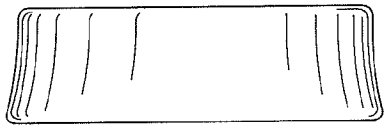


Fig. 24

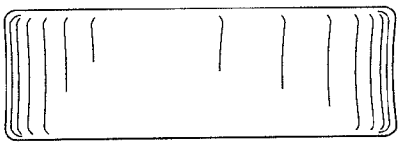


Fig. 25

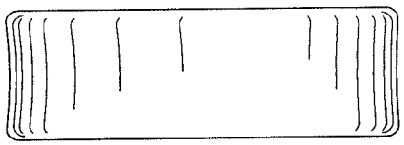


Fig. 26

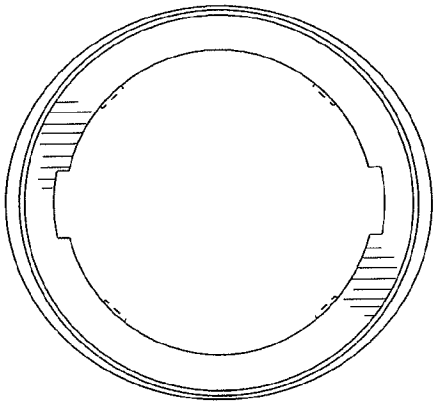


Fig. 27

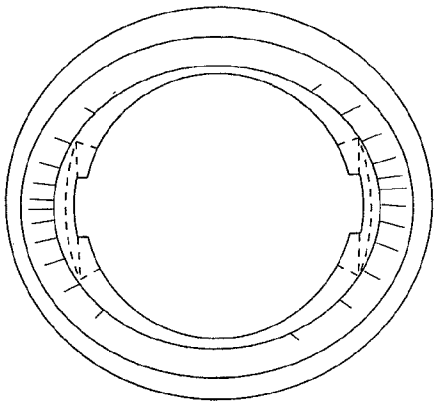


Fig. 28

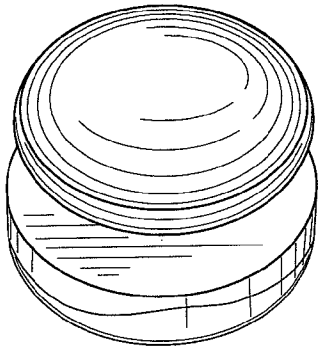


Fig. 29

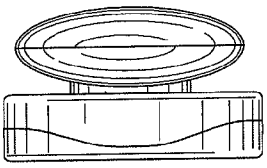


Fig. 30

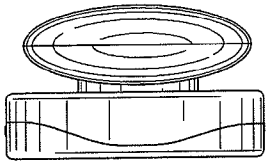


Fig. 31

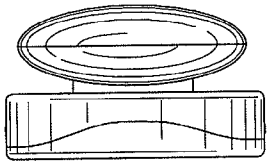


Fig. 32

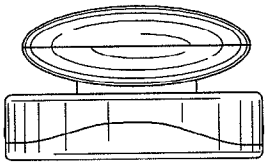


Fig. 33

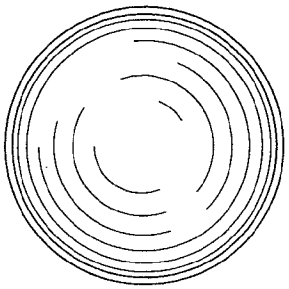


Fig. 34

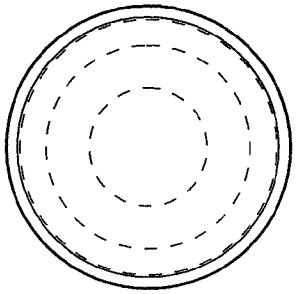


Fig. 35

EXHIBIT K

US00D739741S

(12) United States Design Patent

Staab

(10) Patent No.: US D739,741 S
(45) Date of Patent: ** Sep. 29, 2015

(54) **COSMETIC CONTAINER**

(71) Applicant: **MARY KAY INC.**, Addison, TX (US)

(72) Inventor: **Jenny DeMarco Staab**, Frisco, TX (US)

(73) Assignee: **Mary Kay Inc.**, Addison, TX (US)

(**) Term: **14 Years**

(21) Appl. No.: **29/511,912**

(22) Filed: **Dec. 15, 2014**

Related U.S. Application Data

(62) Division of application No. 29/458,540, filed on Jun. 20, 2013, now Pat. No. Des. 721,967.

(51) **LOC (10) Cl.** **09-01**

(52) **U.S. Cl.**
USPC **D9/504**; D9/454

(58) **Field of Classification Search**
USPC D9/434–435, 444–445, 454, 500, D9/502–505, 516, 529, 537, 539, 544–545, D9/549, 558, 682, 686, 688–691, 715, 719, D9/530; D7/300, 300.1, 598; D23/366; D28/43, 46–44, 91, 91.1, 4, 8, 73, D28/76–77; 215/379, 381–382; 220/660, 220/662, 675
CPC B65D 1/00; B65D 1/02; B65D 1/0223; B65D 1/10; B65D 23/00; B65D 2501/00; B65D 2501/0009
See application file for complete search history.

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Primary Examiner — Dana L Meyrow
(74) *Attorney, Agent, or Firm* — Norton Rose Fulbright US LLP

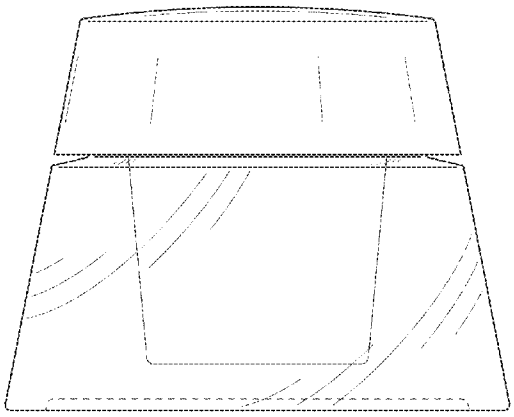
(57) **CLAIM**

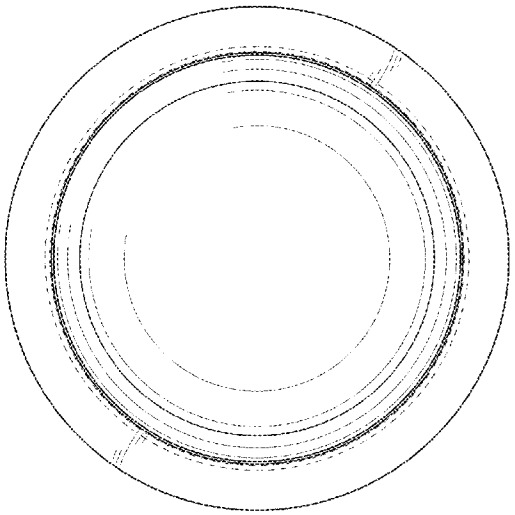
The ornamental design for a cosmetic container, as shown and described.

DESCRIPTION

FIG. **1** is a top perspective view of my design of a cosmetic container;
FIG. **2** is a side elevation view thereof, the cosmetic container being symmetrical about its axis; and,
FIG. **3** is a top plan view thereof.
The dashed lines in the drawings illustrate the portions of the design that form no part of the claim.

1 Claim, 3 Drawing Sheets





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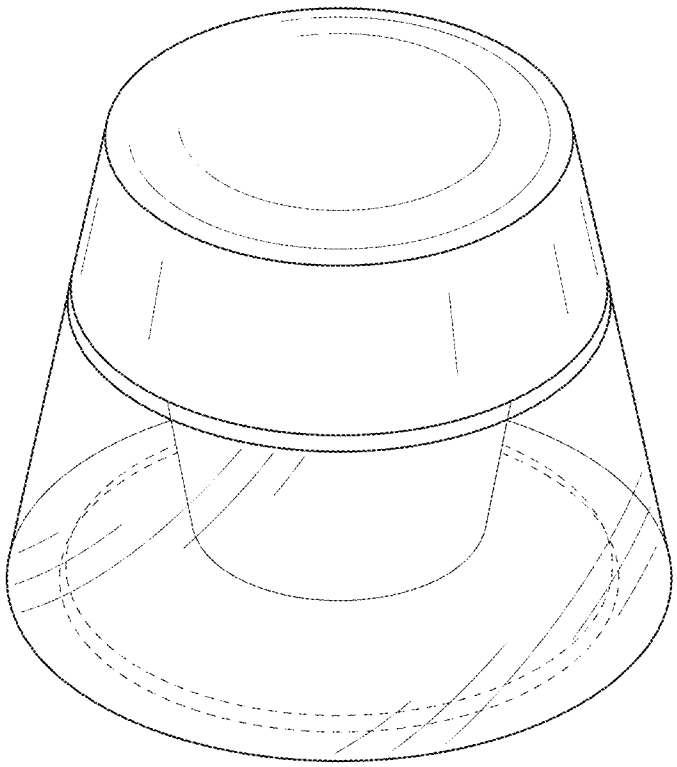


FIG. 1

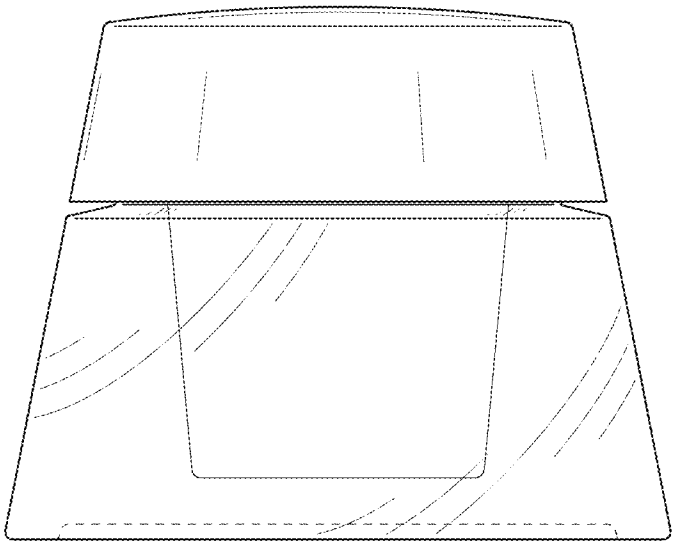


FIG. 2

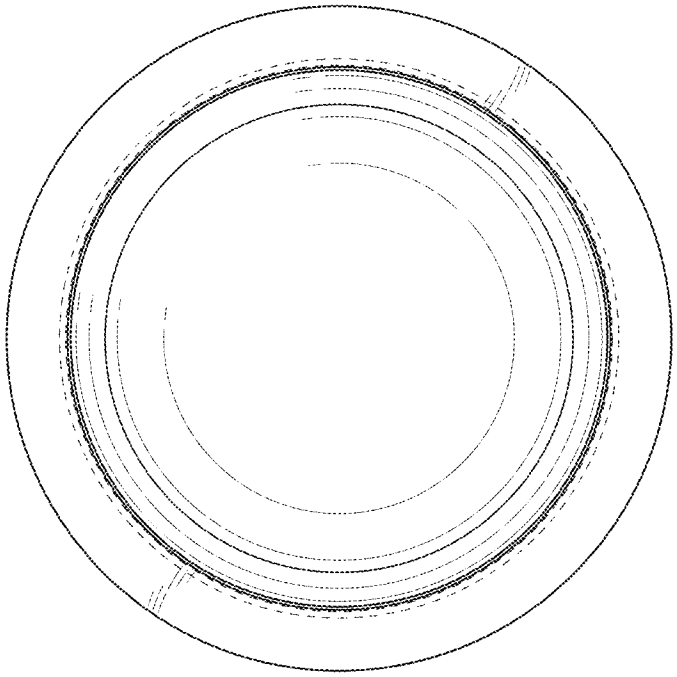


FIG. 3

EXHIBIT I

US00D638300S

(12) **United States Design Patent**
L'Abbate

(10) **Patent No.: US D638,300 S**
(45) **Date of Patent: ** May 24, 2011**

(54) **FLASK ASSEMBLY**

(75) Inventor: **Frederico de Carvalho L'Abbate**, São Paulo (BR)

(73) Assignee: **Natura Cosmeticos S.A.**, Itapecerica da Serra-SP (BR)

(**) Term: **14 Years**

(21) Appl. No.: **29/336,006**

(22) Filed: **Apr. 27, 2009**

(30) **Foreign Application Priority Data**

Oct. 29, 2008 (BR) DI6804781-9

(51) **LOC (9) Cl.** **09-01**
(52) **U.S. Cl.** **D9/529**
(58) **Field of Classification Search** D9/502–504, D9/516, 529, 530, 537, 540, 549, 434, 435; 215/381–385; 220/662, 669; D28/4, 7, 8, D28/73, 76, 91
See application file for complete search history.

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Primary Examiner — Stella M Reid
Assistant Examiner — Keli L Hill
(74) *Attorney, Agent, or Firm* — B. Aaron Schulman; Stites & Harbison, PLLC

(57) **CLAIM**

The ornamental design for a flask assembly, as shown and described.

DESCRIPTION

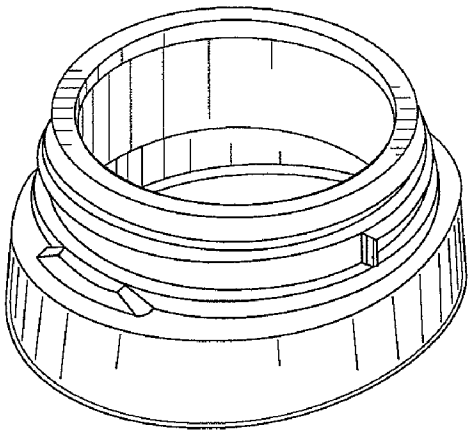
FIG. **1** is a top, front, right side perspective view of a flask assembly, showing my new design.

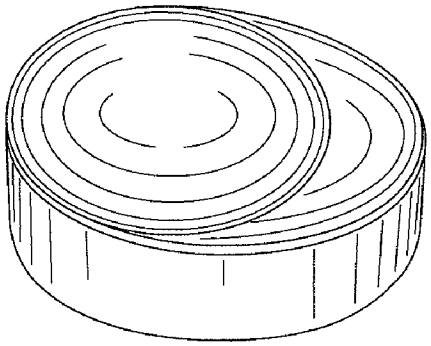
FIG. **2** is a back view thereof.
FIG. **3** is a front view thereof.
FIG. **4** is a right side view thereof.
FIG. **5** is a left side view thereof.
FIG. **6** is a top view thereof.
FIG. **7** is a bottom view thereof.
FIG. **8** is a top, front, right side perspective view of the refill inside the flask assembly, showing my new design.
FIG. **9** is a back view thereof.
FIG. **10** is a front view thereof.
FIG. **11** is a right side view thereof.
FIG. **12** is a left side view thereof.
FIG. **13** is a top view thereof.
FIG. **14** is a bottom view thereof.
FIG. **15** is a top, front, right side perspective view of the cap of the flask assembly, showing my new design.
FIG. **16** is a back view thereof.
FIG. **17** is a front view thereof.
FIG. **18** is a right side view thereof.
FIG. **19** is a left side view thereof.
FIG. **20** is a top view thereof.
FIG. **21** is a bottom view thereof.
FIG. **22** is a top, front, right side perspective view of the flask base of the flask assembly, showing my new design.
FIG. **23** is a back view thereof.
FIG. **24** is a front view thereof.
FIG. **25** is a right side view thereof.
FIG. **26** is a left side view thereof.
FIG. **27** is a top view thereof.
FIG. **28** is a bottom view thereof.
FIG. **29** is a top, front, right side perspective view of the inner cap inside the flask assembly, showing my new design.
FIG. **30** is a back view thereof.
FIG. **31** is a front view thereof.
FIG. **32** is a right side view thereof.
FIG. **33** is a left side view thereof.
FIG. **34** is a top view thereof; and,
FIG. **35** is a bottom view thereof.

Portions of the flask assembly shown in broken lines form no part of the claimed design.

The claim comprises a fully assembled flask with multiple internal components that have been shown separately in the disclosure.

1 Claim, 5 Drawing Sheets





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D592,956	S	*	5/2009	Thiellier	D9/504
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D612,954	S	*	3/2010	Perko	D25/122
D616,748	S	*	6/2010	Nakamura et al.	D9/503
2005/0092343	A1	*	5/2005	Byun	132/293

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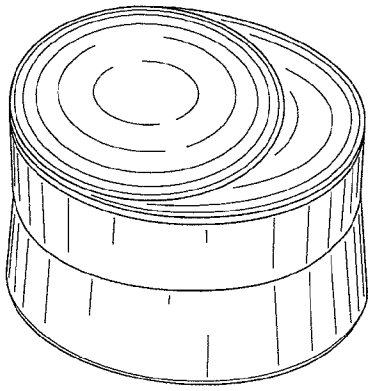


Fig. 1

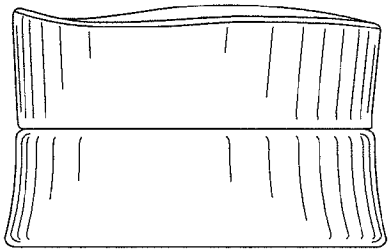


Fig. 2

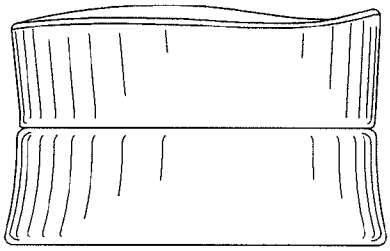


Fig. 3

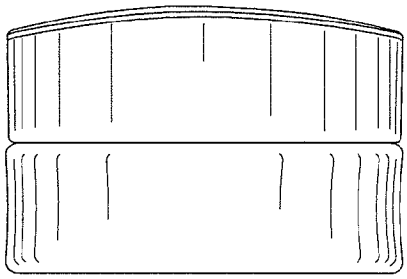


Fig. 4

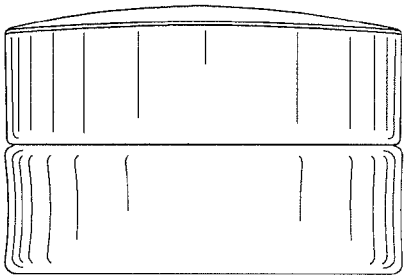


Fig. 5

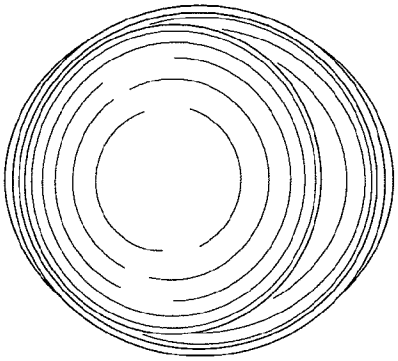


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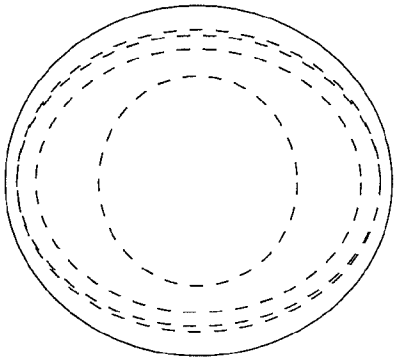


Fig. 7

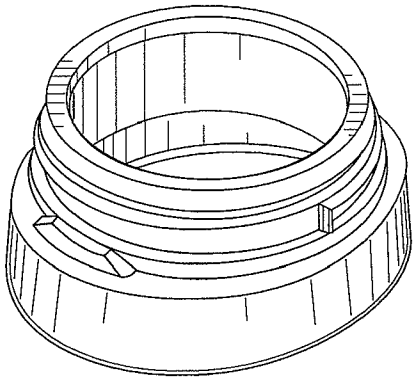


Fig. 8

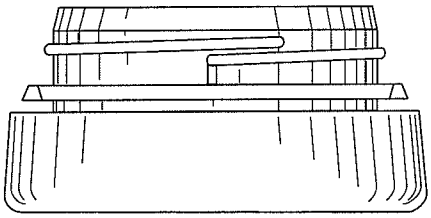


Fig. 9

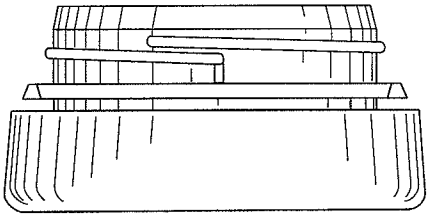


Fig. 10

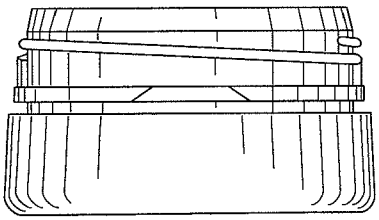


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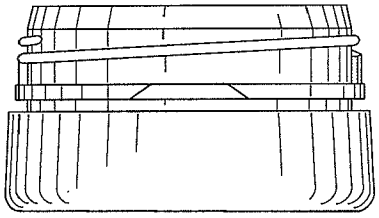


Fig. 12

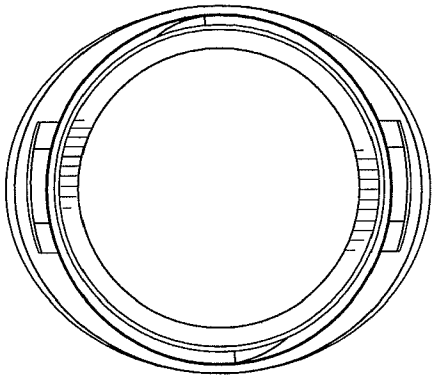


Fig. 13

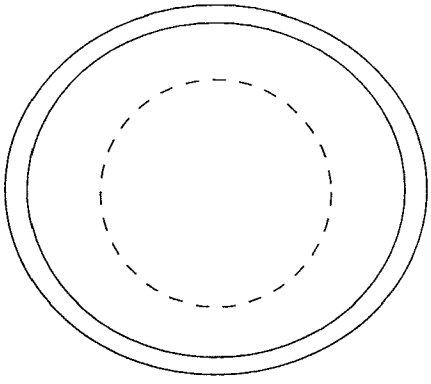


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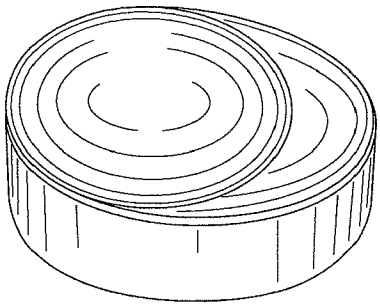


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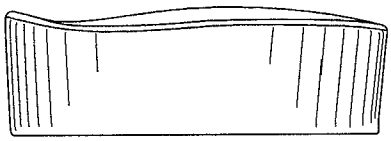


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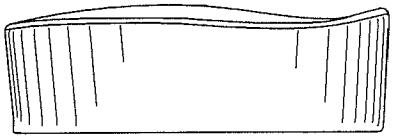


Fig. 17

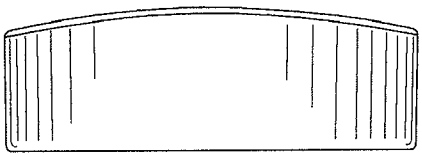


Fig. 18

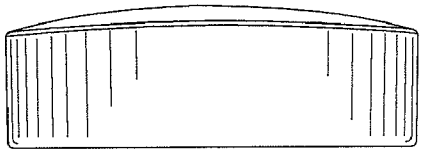


Fig. 19

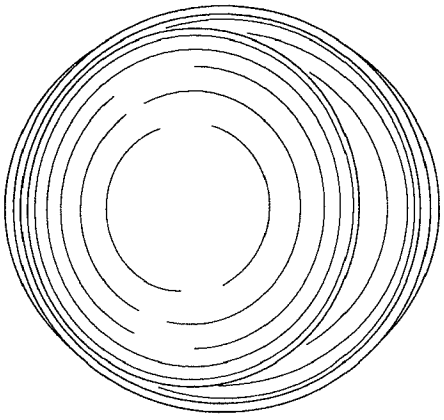


Fig. 20

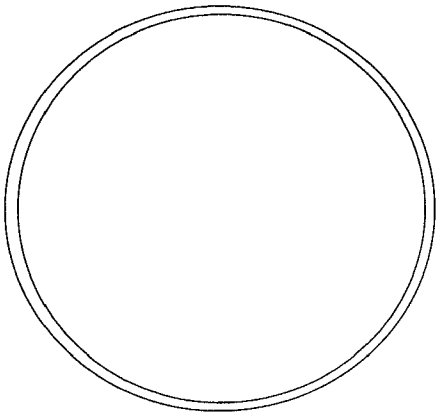


Fig. 21

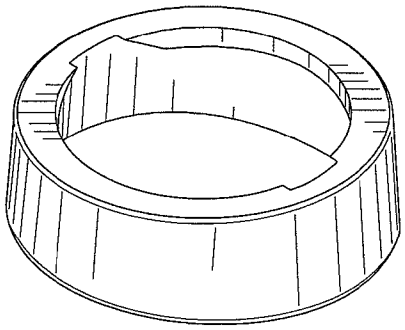


Fig. 22

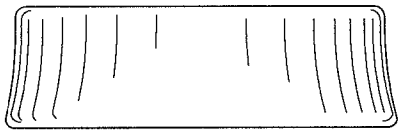


Fig. 23

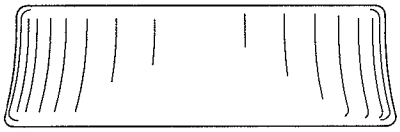


Fig. 24

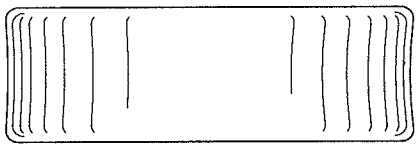


Fig. 25

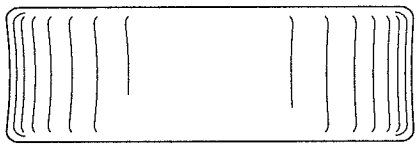


Fig. 26

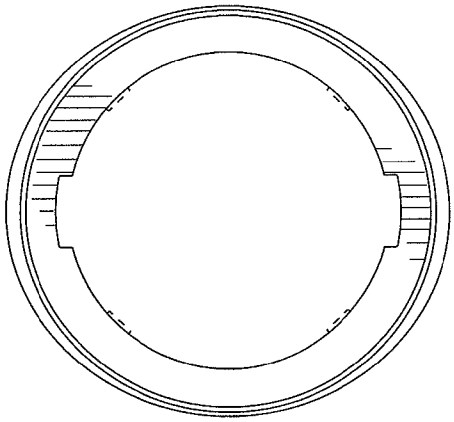


Fig. 27

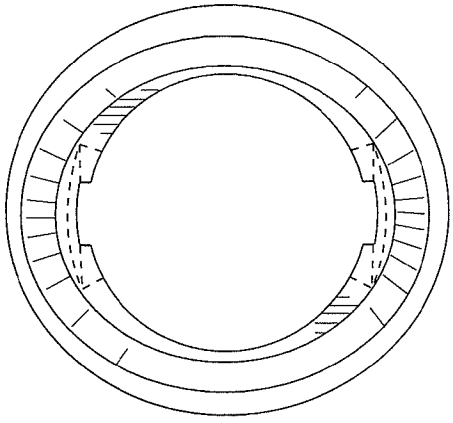


Fig. 28

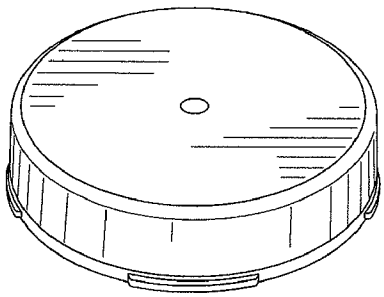


Fig. 29

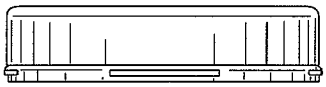


Fig. 30

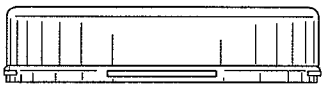


Fig. 31

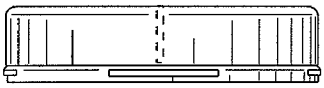


Fig. 32

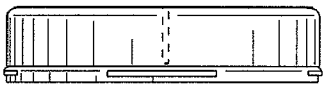


Fig. 33

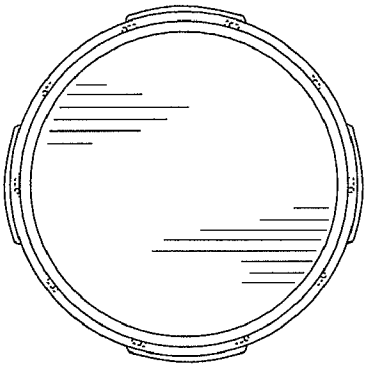


Fig. 34

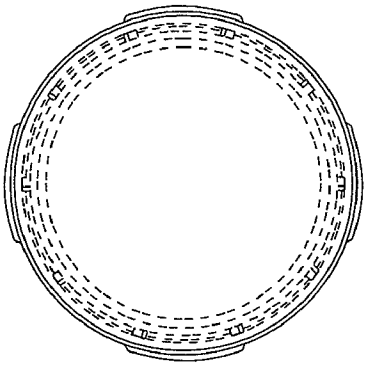


Fig. 35

EXHIBIT J

US00D641257S

(12) United States Design Patent

Thiebaut et al.

(10) Patent No.: US D641,257 S
(45) Date of Patent: ** Jul. 12, 2011

(54) **CONTAINER**

(75) Inventors: **Laure Thiebaut**, Clichy (FR); **Tim Roth**, Piscataway, NJ (US)

(73) Assignee: **Laboratoire Garnier & Cie**, Paris (FR)

(**) Term: **14 Years**

(21) Appl. No.: **29/329,892**

(22) Filed: **Dec. 23, 2008**

(51) **LOC (9) Cl.** **09-01**

(52) **U.S. Cl.** **D9/738**; D9/454; D9/518; D9/551; D9/552

(58) **Field of Classification Search** D9/434, D9/435, 454, 500, 503, 504, 516, 518, 529, D9/549, 551, 552, 558, 572, 573, 574, 737–746; D28/73, 76, 91; 215/379, 381–385; 220/660, 220/669–673, 675

See application file for complete search history.

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Photographs of container for Avon Clinical Eye Lift, Avon Products, Inc., New York, NY 10020, 2005.

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Primary Examiner — Stella Reid

Assistant Examiner — Elizabeth J Oswecki

(74) *Attorney, Agent, or Firm* — Edell, Shapiro & Finnan, LLC

(57) **CLAIM**

The ornamental design for a container, as shown and described.

DESCRIPTION

FIG. **1** is a perspective view of the container.

FIG. **2** is a front view of the container of FIG. **1**, the rear view of the container being identical.

FIG. **3** is a top view of the container of FIG. **1**.

FIG. **4** is a bottom view of the container of FIG. **1**.

FIG. **5** is a perspective view of the container of FIG. **1** with the lid removed.

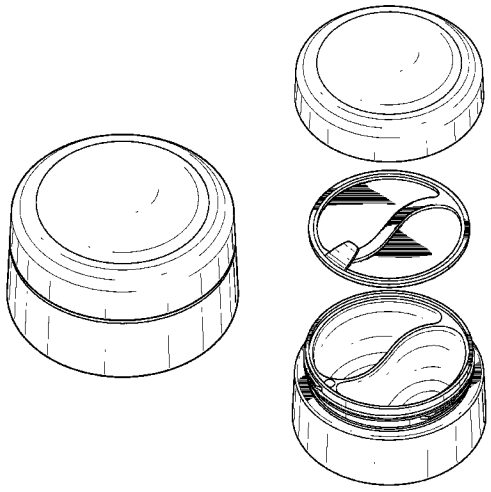
FIG. **6** is a front view of the container of FIG. **1** with the lid removed.

FIG. **7** is a top view of the container of FIG. **1** with the lid removed.

FIG. **8** is an exploded perspective view of the container of FIG. **1**; and,

FIG. **9** is a top view of the container of FIG. **1** with the lid removed and the inside cover removed.

1 Claim, 9 Drawing Sheets



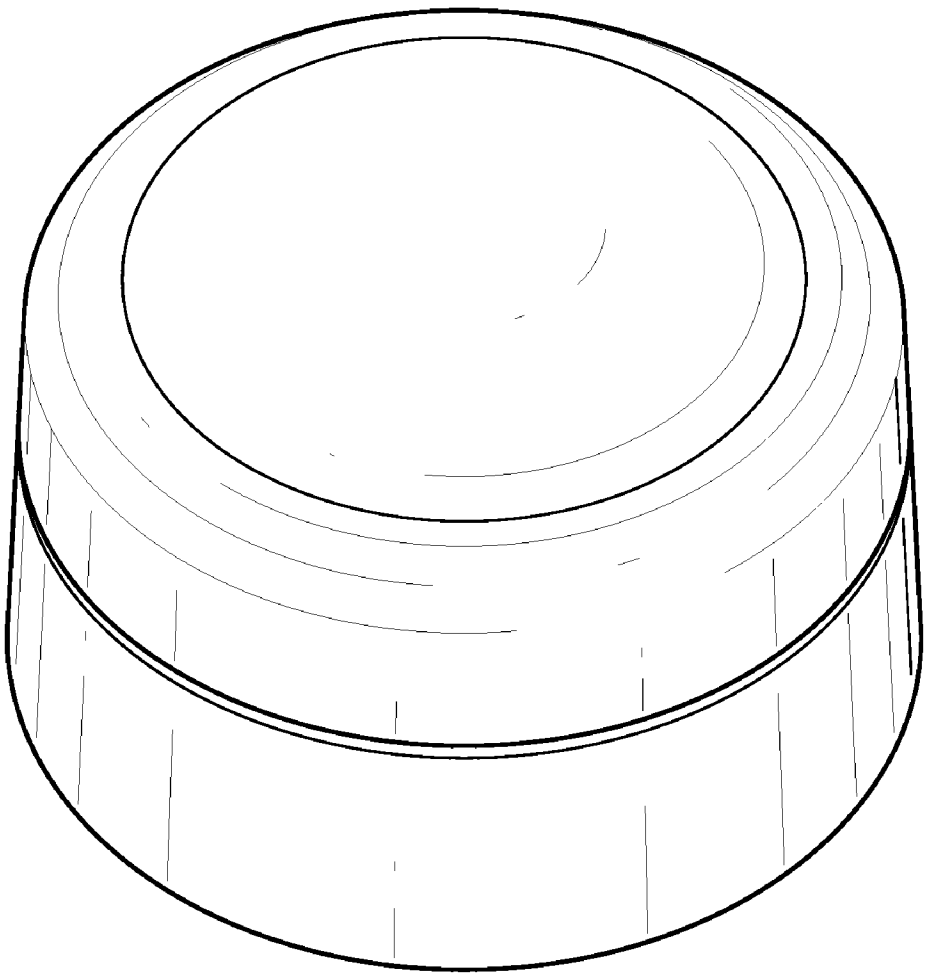


FIG. 1

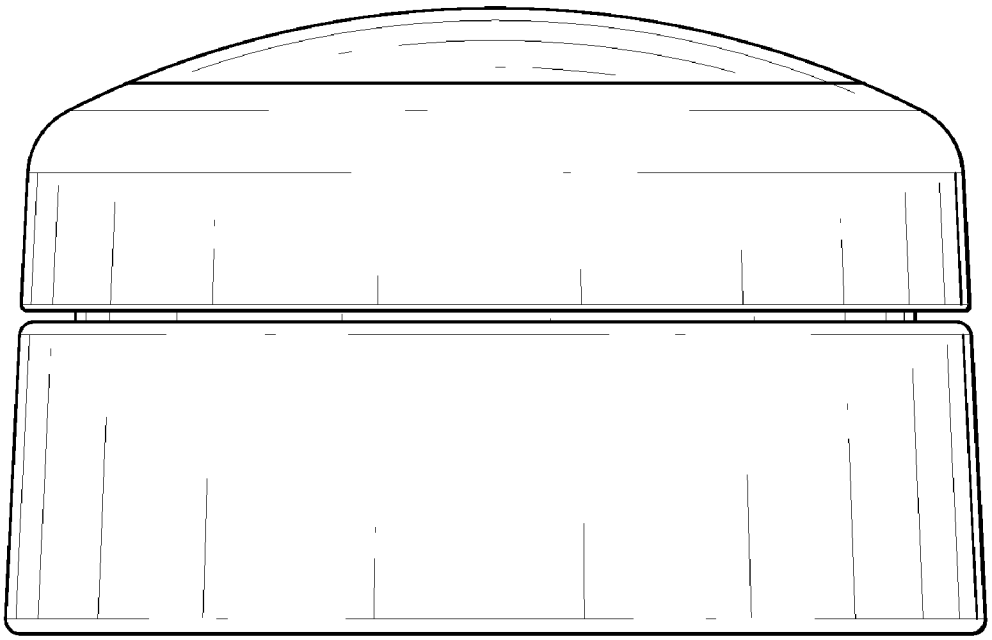


FIG. 2

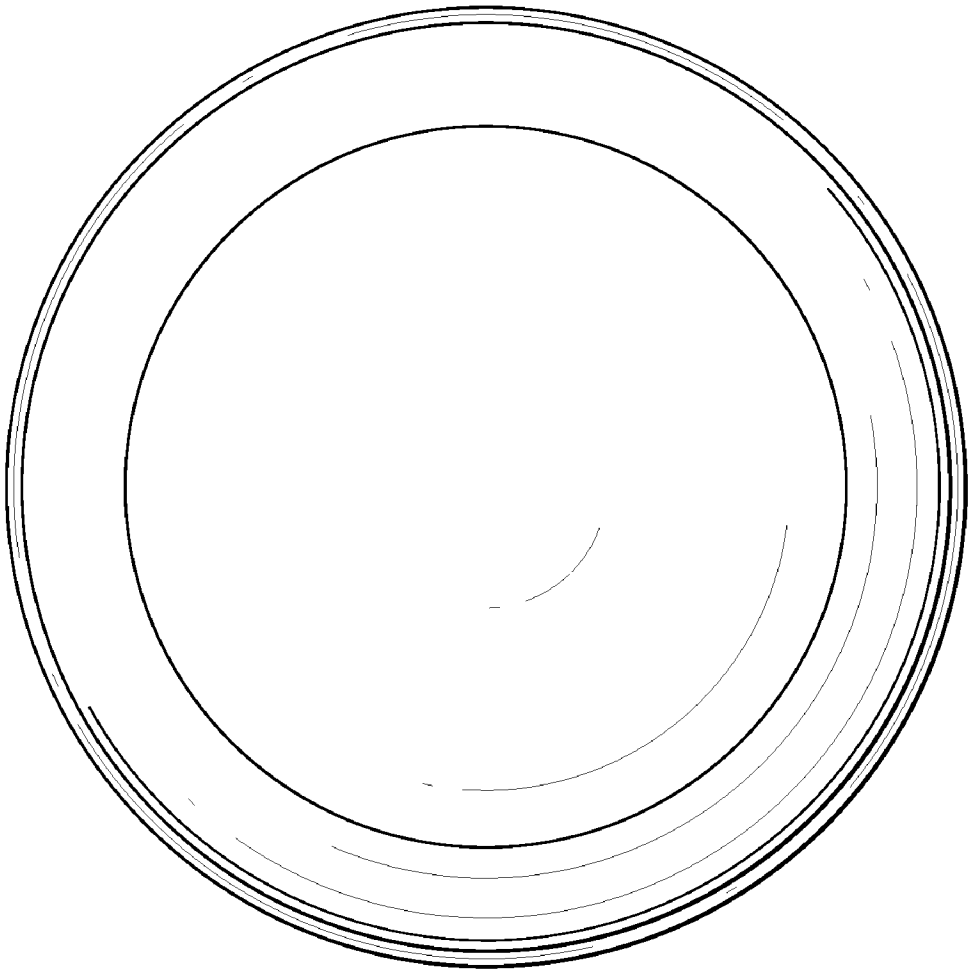


FIG.3

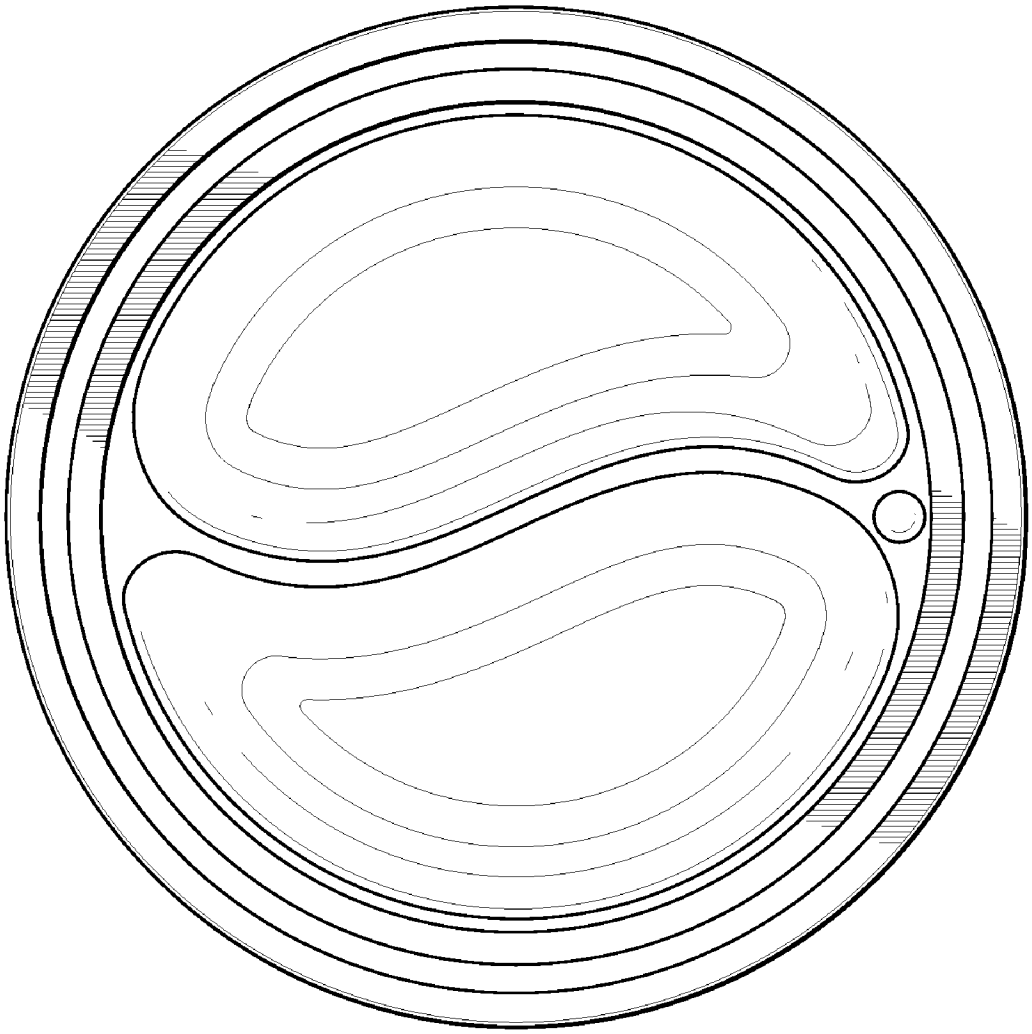


FIG.4

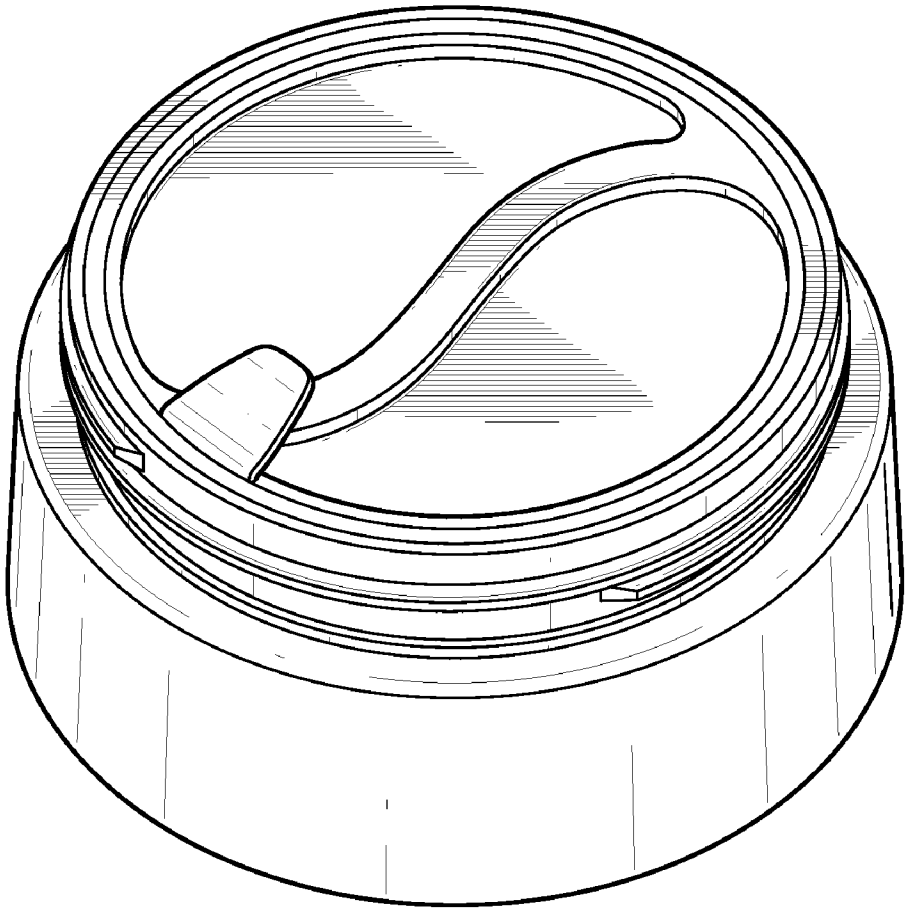


FIG. 5

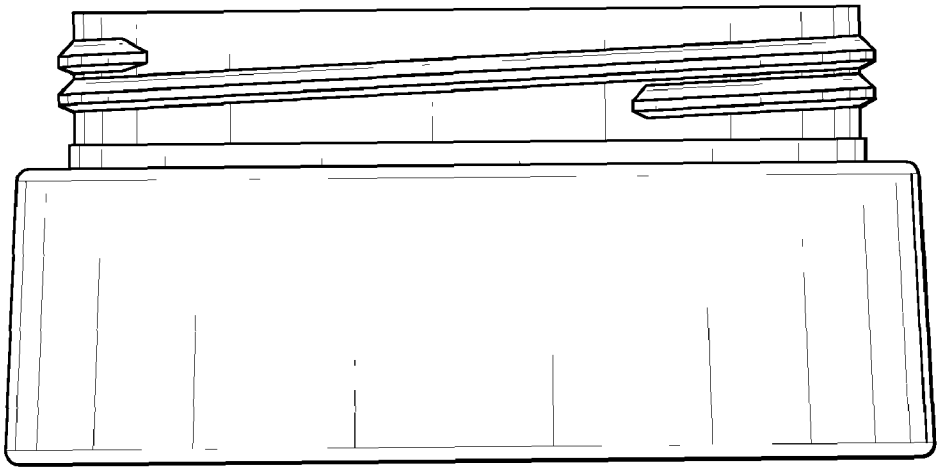


FIG.6

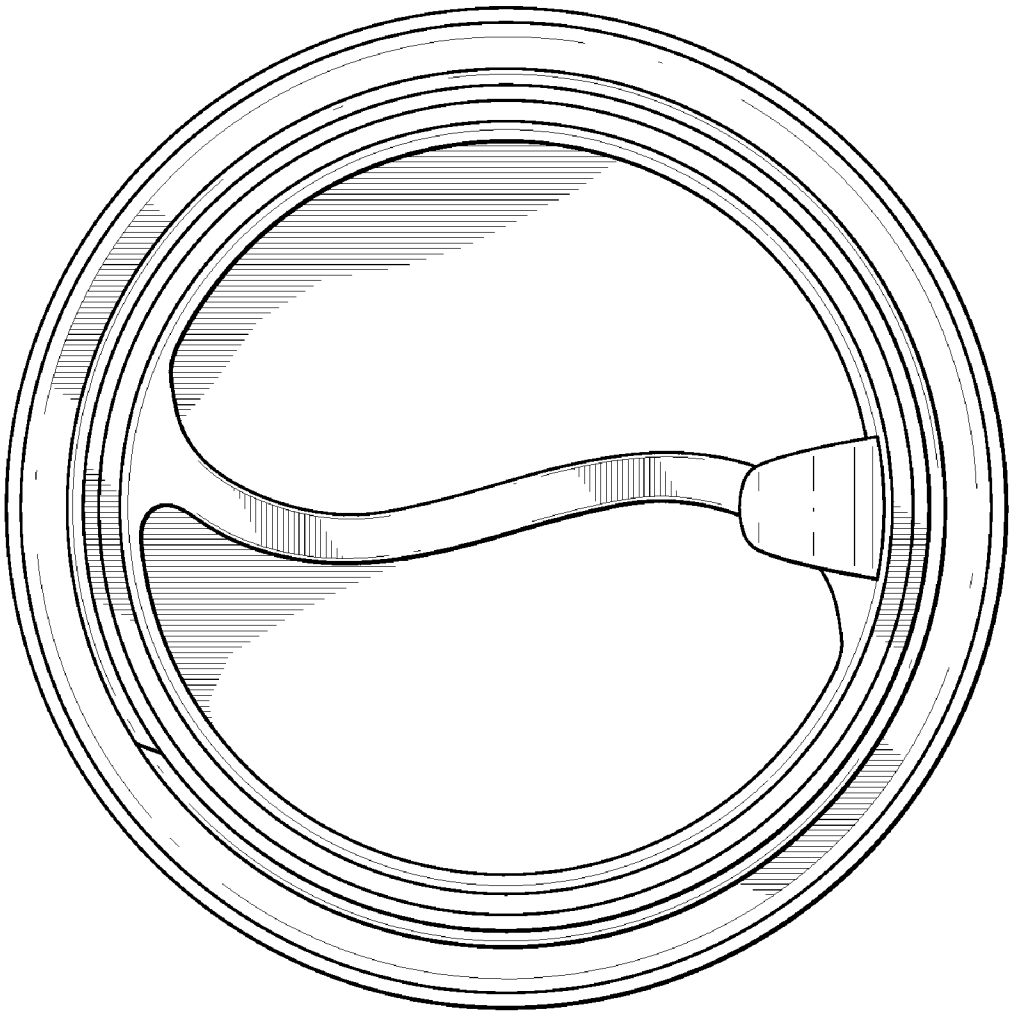


FIG. 7

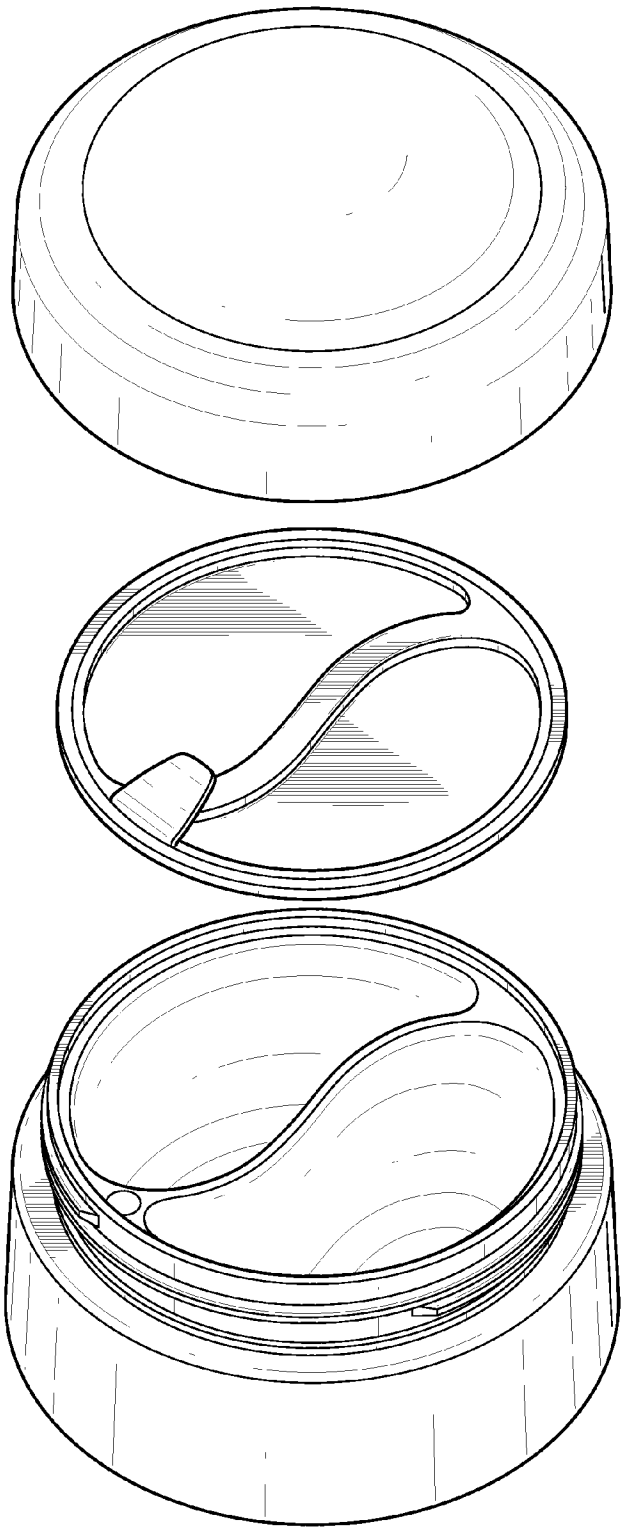


FIG.8

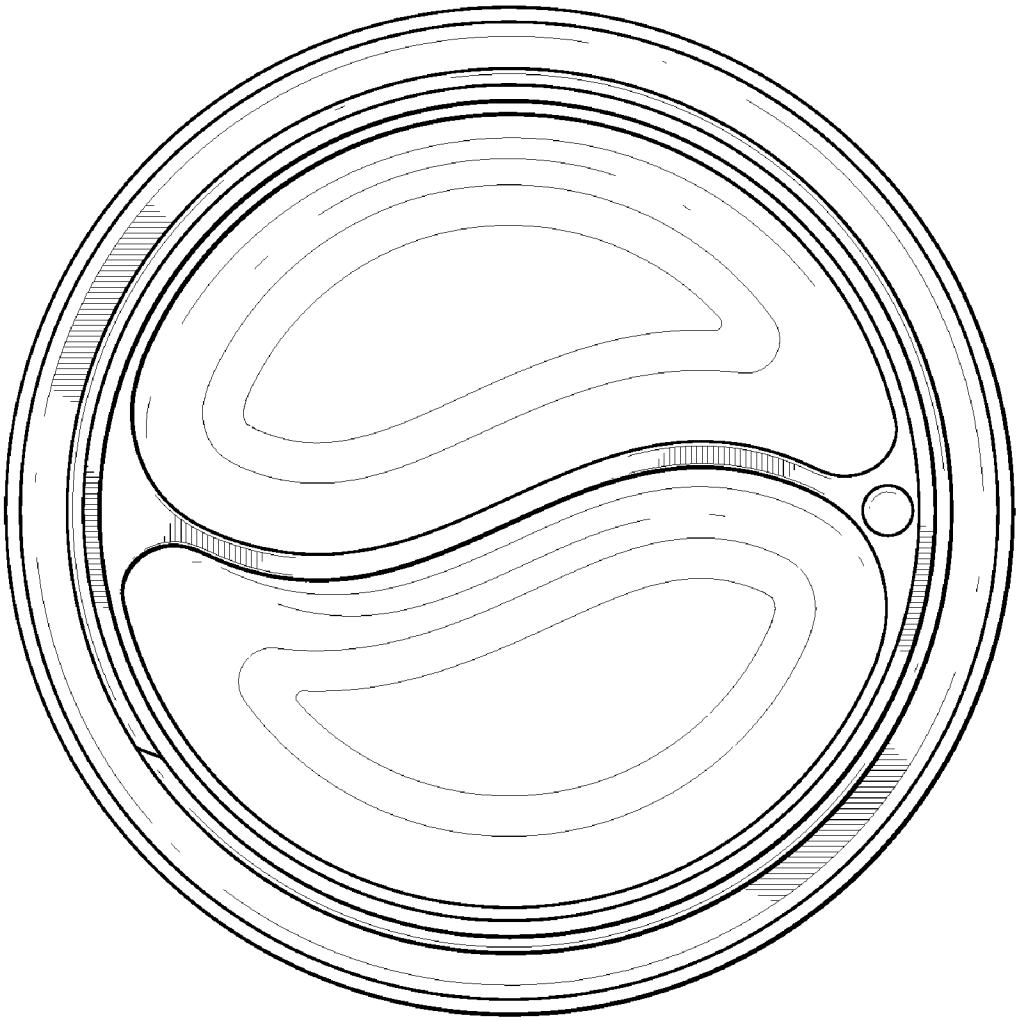


FIG.9

EXHIBIT E

April 13, 1937. B. F. CONNER 2,077,215

JAR

Filed Oct. 1, 1936 2 Sheets-Sheet 1

Fig. 1

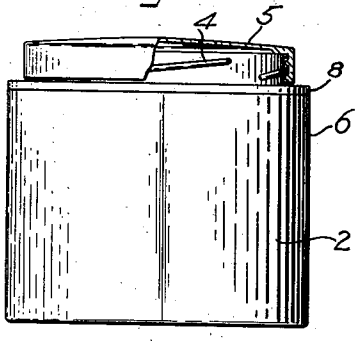


Fig. 5

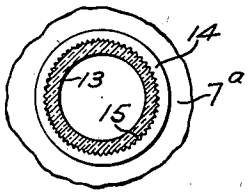


Fig. 4

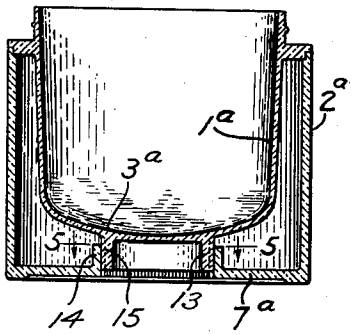


Fig. 2

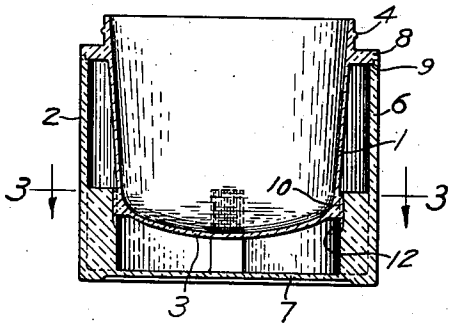


Fig. 3

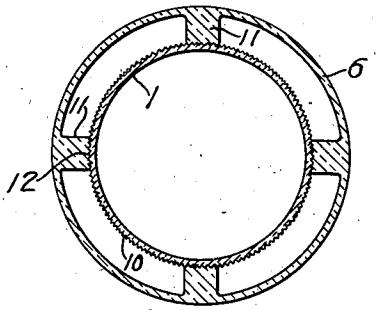


Fig. 6

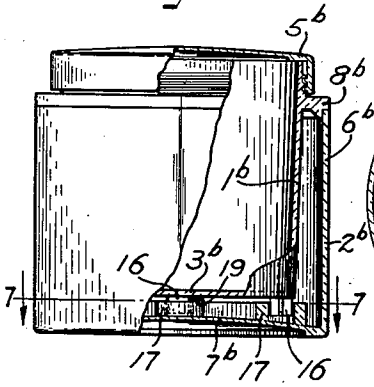


Fig. 7

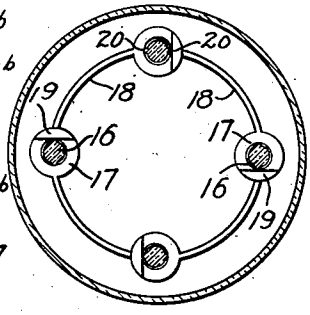
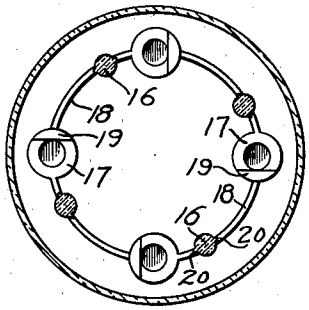


Fig. 8



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JAR

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Fig. 9

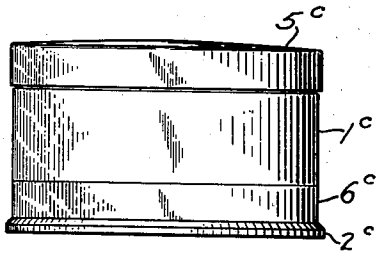


Fig. 10

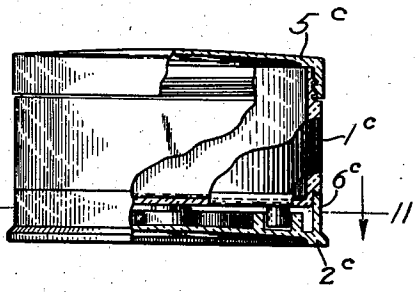
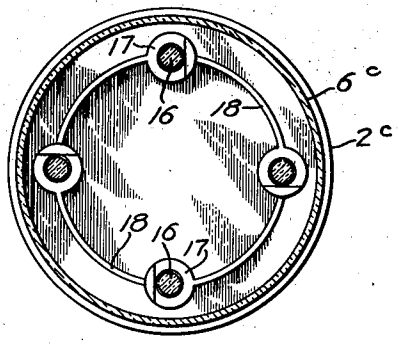


Fig. 11



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2,077,215

UNITED STATES PATENT OFFICE

2,077,215

JAR

Benjamin F. Conner, West Hartford, Conn., assignor to Colt's Patent Fire Arms Manufacturing Co., Hartford, Conn., a corporation of Connecticut

Application October 1, 1936, Serial No. 103,553

18 Claims. (Cl. 215—12)

This invention relates primarily to jars of the type disclosed in my co-pending application for Jars, Serial No. 18,031, filed April 24, 1935, which jars are primarily intended for containing cosmetic preparations including salves, cold creams and other preparations of a pastelike consistency and also including powders. A jar of this type consists of two separate thin-walled members, each of which may be molded from a material of the synthetic resin class. The inner member is formed for engagement with a closure or cap and is adapted for containing the cream or other cosmetic preparation; and the outer or base member serves to support the inner or containing member and to provide at least a portion of the desired exterior contour or design. The two members are engaged with each other in such manner as to provide resistance to separation and in such manner as to prevent relative rotation. The two parts of the jar are ordinarily formed of different materials. The difference between the two materials may be primarily a difference in color only, but usually it is necessary for the inner or containing member to be formed of a material highly resistant to the chemical action of the particular preparations which the jar is to contain. The outer or base member need not be so highly resistant to chemical action and for this a different and less expensive material may be used.

In my aforesaid application, of which this present application is a continuation-in-part, I have disclosed several embodiments of the invention which is therein broadly claimed; but the more specific claims of the said application are directed to those particular embodiments wherein the inner member and the outer member engage each other near the top of the jar and near the periphery thereof. The present application relates more specifically to those embodiments of the aforesaid broad invention wherein the inner or containing member and the outer or base member are engaged or connected with each other near the bottom of the jar, the points of engagement being preferably spaced inward from the periphery of the outer or base member.

Firm engagement must be effected between the members to hold them in assembled relationship, frictional engagement being ordinarily relied upon. In order to obtain such advantages as light weight, economy of material and satisfactory curing, the walls of the members are made quite thin, and they are therefore unavoidably somewhat fragile. When the frictional engagement is at or near the tops of the members, there is a tendency to break the thin walls, at least that of the outer member, when the members are forced together.

Moldable materials of the synthetic resin class are subjected to heat during molding and more or less shrinkage occurs during the subsequent cooling, and different degrees of shrinkage may be encountered particularly when the materials are different. Even with materials supposedly having exactly the same characteristics, the extent of shrinkage will vary slightly, and the extent of shrinkage may vary rather widely when materials are used which have distinctly different characteristics as to color or as to chemical composition. In the constructions specifically claimed in the prior application, shrinkage of the inner member to an extent greater than that of the outer member may cause the parts to fit so loosely as to be too readily separable from each other; or if the extent of shrinkage of the outer member is greater than that of the inner member, it may be impossible to assemble the parts at all, or attempted assembly may cause the breaking of one member or the other, usually the outer member, as already mentioned. The shrinkage of the parts may in some instances continue for a long period of time, with the result that breakage may occur long after the jar has left the manufacturer and is in the hands of the dealer or of the user.

In the constructions specifically claimed in the prior application, in addition to the difficulties due to differentials in shrinkage, further difficulties are encountered when the jar is used for a cosmetic cream or a similar product which is poured into the jar in a hot fluid or semi-fluid condition. The hot cream heats the jar, and more particularly the inner member thereof, and this heating and resultant greater expansion of the inner member may cause breakage of the outer member, even though the two members have resisted the initial strains resulting from assembly.

In accordance with the present invention I avoid so far as possible any frictional engagement between the two members at their upper peripheries where they are weakest and where their diameters are the greatest, and I effect the required engagement at points which are near the bottom where the members are stronger and which are preferably spaced inward from the peripheries so that the diameters are substantially less. I thus not only avoid any tendency to break or excessively stress the thin unsupported upper walls of the members under normal as-

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sembly conditions but I also greatly minimize the difficulties which frequently arise, as already explained, from abnormal or unavoidable differences in shrinkage or in expansion.

In accordance with a more specific phase of the invention, the interengaging parts of the two jar members are not only near the bottoms of the members but are actually on or directly connected with the respective bottom walls thereof.

The invention relates still more specifically to certain details of construction which enable the interengaging parts, which are positioned as aforesaid, to be readily assembled with each other and to be securely held in assembled relationship.

In the accompanying drawings I have shown several embodiments of the invention, but it will be understood that the drawings are intended for illustrative purposes only and are not to be construed as defining or limiting the scope of the invention, the claims forming a part of this specification being relied upon for that purpose.

Of the drawings:

Fig. 1 is a side view of a jar embodying the invention, a portion of the closure being broken away to show the closure retaining threads.

Fig. 2 is a vertical central sectional view through the jar shown in Fig. 1, the closure being omitted.

Fig. 3 is a horizontal sectional view taken along the line 3—3 of Fig. 2.

Fig. 4 is a view similar to Fig. 2 but showing an alternative embodiment of the invention.

Fig. 5 is a fragmentary horizontal sectional view taken along the line 5—5 of Fig. 4.

Fig. 6 is a combined elevational and vertical sectional view showing another alternative embodiment of the invention.

Fig. 7 is a horizontal sectional view taken along the line 7—7 of Fig. 6.

Fig. 8 is a view somewhat similar to Fig. 7 but illustrating an intermediate step in the assembly of the two members of the jar.

Fig. 9 is an elevational view of another alternative embodiment of the invention.

Fig. 10 is a combined elevational and vertical sectional view of the jar shown in Fig. 9.

Fig. 11 is a horizontal sectional view taken along the line 11—11 of Fig. 10.

Referring to the drawings and more particularly to Figs. 1, 2 and 3 thereof, 1 and 2 represent respectively the two main members constituting the jar. The member 1 is designated as the inner or containing member, and the member 2 is designated as the outer or base member.

The inner or containing member 1 is a thin-walled cup-shaped member preferably molded from a material of the synthetic resin class and it is preferably of such shape that its interior diameter at the top is at least as large as the interior diameter below the top. The bottom wall of the containing member is indicated at 3. The containing member 1 is threaded adjacent its upper periphery as indicated at 4, being thus adapted for engagement with a threaded closure 5 of the cap type.

The outer or base member 2 is so related to the containing member 1 as to permit the said containing member to be assembled vertically downward with respect thereto. The base member has a peripheral annular portion 6 which is in engagement adjacent its top with an annular portion of the containing member 1, and the base member preferably has a bottom wall 7 which is positioned beneath the containing member. While I do not necessarily so limit myself, the annular portion 6 of the base member is shown in Figs. 1 to 3 as surrounding the entire lower portion of the containing member and as being spaced outward therefrom. The containing member 1 is provided with a thin outward projecting annular flange 8 immediately below the threads at 4, this flange being of such size and so positioned that the bottom surface thereof is engaged by the top edge of the annular portion 6 of the base member. The elements 6 and 8 are shown as being provided at 9 with interengaging rabbets which serve to prevent lateral displacement of one of the members with respect to the other.

Frictionally engaging walls are provided for normally holding the two members in their proper relationship; and in order to avoid, or at least minimize, the difficulties already explained, these interengaging walls are spaced downward from the tops of the members and are preferably spaced inward from the periphery of the outer or base member. As shown, the inner or containing member is provided near the bottom wall 3 thereof with an annular peripheral series of vertical serrations as indicated at 10. The outer or base member is provided with a plurality of integral ribs 11 projecting radially inward from its peripheral wall, the inner faces of the said ribs being serrated as shown at 12 so as to engage the serrations 10 on the containing member. It will be apparent that the inner or containing member 1 can be assembled vertically downward with respect to the outer or base member 2, the serrations 10 of the containing member readily engaging with the serrations 12 on the ribs 11 of the base member. The engaging surfaces at the serrations frictionally resist separation of the members and positively prevent relative rotation.

By reason of the fact that the interengaging surfaces at 10 and 12 are closely adjacent the bottom walls of the respective members, greatly increased strength is provided and the members will resist breakage even though considerable force may be necessary to assemble them, or even though there may be a considerable difference in expansion due to subsequent heating. Furthermore, on account of the smaller diameter, the dimensional differences resulting from shrinkage or expansion will be smaller.

The construction shown in Figs. 4 and 5 differs from that shown in Figs. 1 to 3 in that the interengaging walls for holding the members in assembled relationship are carried directly by and are preferably formed integrally with the bottom walls of the two members. The inner or containing member 1^a is or may be similar to the member 1 already described with the exception that in lieu of the serrations 10 at the periphery, there is provided a retaining means formed integrally with the bottom wall 3^a of the said member. The outer or base member 2^a is or may be similar to the member 2 already described with the exception that the inward projecting ribs 11, 11 are omitted and in lieu thereof there is provided a retaining means formed integrally with the bottom wall 7^a and adapted to engage the retaining means on the bottom wall of the inner or containing member.

The interengaging means on the bottom walls 3^a and 7^a may be varied as to details of construction, but preferably and as shown there is a vertically extending plug on one bottom wall and a corresponding socket on the other bottom wall adapted to receive and frictionally hold the plug. As shown, there is a downward extending central

plug 13 formed integrally with the bottom wall 3a of the containing member 1a. This plug may be hollow for economy of material. Formed on the bottom wall 7a of the member 2a is an upward extending central socket 14 adapted to receive the plug 13. For economy of material the bottom of the socket may be open. The plug 13 and the socket 14 are of such size as to be adapted to firmly engage each other and to resist separation of the two members. The said walls are preferably serrated as shown at 15 or they are otherwise non-circular so as to prevent relative rotative movement between the members. It will be apparent that the construction shown in Figs. 4 and 5 has all of the advantages that have been described in connection with the construction shown in Figs. 1 to 3, the construction being perhaps somewhat more desirable by reason of the smaller diameter of the interengaging surfaces at 15.

The construction shown in Figs. 6 to 8 is in many respects similar to that shown in Figs. 4 and 5 but varies in important details and has important additional advantages. The inner or containing member 1b is or may be similar to the members 1 and 1a already described except that a different form of retaining means is provided. The closure 5b is or may be similar to the cap 5 shown in Fig. 1. The outer or base member 2b is or may be similar to the members 2 and 2a already described except that a different form of retaining means is provided. The said member 2b has an annular portion 6b, which surrounds the lower part of the containing member and engages a flange 8b thereon.

Instead of having only a single plug and a single socket as disclosed in Figs. 4 and 5, the construction shown in Figs. 6 to 8 has a plurality of eccentrically located plugs and a corresponding plurality of eccentrically located sockets. As shown, the plugs are on the inner or containing member and the sockets are on the outer or base member.

Projecting downward from the bottom wall 3b of the containing member 1b are four relatively small plugs 16, 16 which are located at uniform distances from the axis of the jar and which are preferably spaced apart uniformly or substantially so. Formed on the bottom wall 7b of the outer or base member 2b are four sockets 17, 17 of such size and so positioned as to be adapted to receive the said plugs 16, 16. On account of the substantially uniform spacing it is possible for the two members of the jar to be assembled in four angularly different relationships.

While the plugs and sockets are substantially uniformly spaced from each other as already stated, they may vary slightly from such uniformity in order to provide increased friction of engagement, as explained in detail in my aforesaid co-pending application.

In order to facilitate assembly, annular ribs are preferably provided on one of the members, which ribs serve to prevent the plugs on one of the members from entering the spaces between the sockets on the other of the members. Preferably and as shown, arcuate ribs 18, 18 are provided on the bottom wall of the base member between the sockets 17, 17. When the two members are initially assembled the plugs 16, 16 may engage the ribs 18, 18 at some intermediate relative position, as shown for instance in Fig. 8. Then the inner member can be turned relatively to the outer member until the plugs come into register with and enter the sockets.

In order to still further facilitate assembly the sockets 17, 17 may be provided with raised transverse stops 19, 19. When stops such as 19, 19 are provided, the inner or containing member after being once entered in the outer or base member, is turned in the clockwise direction until the plugs 16, 16 engage the stops 19, 19. When such engagement occurs the plugs are in register with the sockets and will readily enter the sockets upon application of vertical pressure.

Preferably the several plugs 16, 16 have their main body portions smaller than the sockets and are provided with a plurality of narrow vertical fins 20, 20 which project radially outward from the body of the plug. These fins provide narrow bearing surfaces for engagement with the walls of the sockets, and they tend to cut into the socket walls to provide a firmer engagement.

Preferably each plug has only two fins 20, 20 which project in opposite directions substantially perpendicularly to a radius through the axis of the jar. Thus the plugs engage the interior walls of the sockets only at those portions of the said walls which extend approximately radially. The result of this is that the shrinkages of the two members can vary considerably without substantially affecting the character of the fit between the plugs and the sockets.

The construction shown in Figs. 9 to 11 is similar to that shown in Figs. 6 to 8, the principal difference being in the relative shapes and proportions of the two main members of the jar. The inner or containing member 1c is so constructed that a considerable portion of its main peripheral wall is exposed at the periphery of the jar. The closure 5c is similar to the closure 5b shown in Fig. 6 but is somewhat larger in diameter. The annular portion 6c of the base member 2c extends upward through a much smaller distance than does the portion 6b of the member 2b, and the said annular portion surrounds only the extreme lower portion of the containing member 1c.

The two members 1c and 2c are connected with each other at their bottoms by means of plugs and sockets which are or may be the same in construction as shown in Figs. 6 to 8. Repetition of the description is deemed unnecessary.

What I claim is:

1. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member externally threaded adjacent its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto and having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member, and retaining means formed integrally with the containing member and with the base member and having interengaging substantially vertical walls immediately adjacent the bottom wall of the containing member and serving to frictionally resist relative upward movement of the containing member and also serving to positively prevent relative rotation between the two members.

2. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member externally threaded adjacent its upper periphery for engagement with a closure

of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto and having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member, and retaining means formed integrally with the containing member and with the base member and having interengaging substantially vertical walls immediately adjacent the bottom wall of the containing member and spaced inward from the periphery of the base member, the said interengaging walls serving to frictionally resist relative upward movement of the containing member and also serving to positively prevent relative rotation between the two members.

3. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member externally threaded adjacent its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto and having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member, and means formed integrally with the containing member and with the base member and having interengaging substantially vertical walls at the periphery of the containing member near the bottom thereof and serving to frictionally resist relative upward movement of the containing member and also serving to positively prevent relative rotation between the two members.

4. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member externally threaded adjacent its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, the said member having an outward projecting annular flange immediately below the thread, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto and having an annular portion which surrounds the containing member and is in engagement at its top edge with the bottom surface of the said flange, and means formed integrally with the containing member and with the base member and having interengaging substantially vertical walls at the periphery of the containing member near the bottom thereof and spaced inward from the periphery of the base member, the said interengaging walls serving to frictionally resist relative upward movement of the containing member and also serving to positively prevent relative rotation between the two members.

5. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, the said member having an outward projecting annular flange immediately below the thread, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto and having an annular portion which surrounds the containing member and is in engagement at its top edge with the bottom surface of the said flange, an annular series of vertical serrations formed integrally on the periphery of the containing member near the bottom thereof, and a plurality of integral ribs projecting radially inward from the periphery of the base member and serrated to engage the serrations on the containing member, the said ribs being near the bottom of the base member and having their top ends below and spaced from the flange on the containing member.

6. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member externally threaded adjacent its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a wall positioned beneath the containing member, and two means respectively connected with the bottom wall of the containing member and with the last said wall of the base member and interengaging with each other to resist relative upward movement of the containing member and also to resist relative rotation between the two members.

7. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a bottom wall positioned beneath the containing member, at least one vertically extending plug on the bottom wall of one of the members, and at least one socket on the bottom wall of the other of the members which socket is of such size and so positioned as to receive and engage the plug and thereby frictionally resist relative upward movement of the containing member and also positively prevent relative rotation between the two members.

8. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a bottom wall positioned beneath the containing member, a central non-circular vertically extending plug on the bottom wall of one of the members, and a central plug receiving socket on the bottom wall of the other of the members, the said socket being non-circular and corresponding in size and shape to the said plug so as to frictionally resist relative upward movement of the containing member and also posi-

tively prevent relative rotation between the two members.

9. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a bottom wall positioned beneath the containing member, a plurality of vertically extending plugs on the bottom wall of one of the members, and a plurality of sockets on the bottom wall of the other of the members, the said sockets being of such size and so positioned as to receive the respective plugs and thereby frictionally resist relative upward movement of the containing member and also positively prevent relative rotation between the two members.

10. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a bottom wall positioned beneath the containing member, a plurality of vertically extending plugs on the bottom wall of one of the members which plugs are at uniform distances from the central vertical axis of the jar and are substantially uniformly spaced from each other, and a plurality of sockets on the bottom wall of the other of the members which sockets are of such size and so positioned as to receive the respective plugs and thereby frictionally resist relative upward movement of the containing member and also positively prevent relative rotation between the two members.

11. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member, a plurality of vertically extending plugs on the bottom wall of one of the members which plugs are at uniform distances from the central vertical axis of the jar and are substantially uniformly spaced from each other, a plurality of sockets on the bottom wall of the other of the members which sockets are of such size and so positioned as to receive the respective plugs and thereby frictionally resist relative upward movement of the containing member and also positively prevent relative rotation between the two members, and arcuate ribs on one of the members for guiding the ends of the plugs as the members are relatively rotated to bring the plugs into register with the sockets.

12. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a bottom wall positioned beneath the containing member, a plurality of vertically extending plugs on the bottom wall of one of the members each of which plugs has thereon a plurality of narrow fins projecting outward from the main body of the plug, and a plurality of sockets on the bottom wall of the other of the members which sockets are of such size and so positioned as to receive the respective plugs and engage the edges of the said fins thereon, the said sockets thereby cooperating with the plugs to frictionally resist relative upward movement of the containing member and also to positively prevent relative rotation between the two members.

13. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a bottom wall positioned beneath the containing member, a plurality of vertically extending plugs on the bottom wall of one of the members each of which plugs has thereon two narrow vertical fins projecting outward from the main body of the plug in directions substantially perpendicular to a radius through the axis of the jar, and a plurality of cylindrical sockets on the bottom wall of the other of the members which sockets are of such size and so positioned as to receive the respective plugs and engage the edges of the said fins thereon, the said sockets thereby cooperating with the plugs to frictionally resist relative upward movement of the containing member and also to positively prevent relative rotation between the two members.

14. For a jar of the class described, a molded base member having a bottom wall and also having an upstanding annular portion adapted to permit a containing member to be assembled vertically downward with respect thereto, the said base member having a plurality of sockets on its bottom wall of such size and so positioned as to be adapted to receive a plurality of vertically extending plugs on the bottom wall of the containing member.

15. For a jar of the class described, a molded base member having a bottom wall and also having an upstanding annular portion adapted to permit a containing member to be assembled vertically downward with respect thereto, the said base member having a plurality of sockets on its bottom wall of such size and so positioned as to be adapted to receive a plurality of verti-

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cally extending plugs on the bottom wall of the containing member and the said base member also having arcuate ribs between the sockets for guiding the ends of the plugs as the members are relatively rotated to bring the plugs into register with the sockets.

16. For a jar of the class described, of a thin-walled cup-shaped molded containing member externally threaded adjacent its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, the said member having a plurality of vertically extending plugs on the bottom wall thereof of such size and so positioned as to be adapted to enter sockets on a base member.

17. For a jar of the class described, a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, the said member having a plurality of vertically extending plugs on the bottom wall thereof which plugs have thereon a plurality of narrow fins projecting outward from the main body of the plug and which plugs are of such size and so positioned as to be adapted to enter sockets on a base member.

18. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member externally threaded adjacent its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, the said member having a thin outward projecting annular flange immediately below the thread, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having an annular portion which surrounds the lower portion of the containing member and is in engagement at its top edge with the bottom surface of the said flange and the said base member also having a bottom wall positioned beneath the containing member, a plurality of vertically extending plugs on the bottom wall of one of the members, and a plurality of sockets on the bottom wall of the other of the members, the said sockets being of such size and so positioned as to receive the respective plugs and thereby frictionally resist relative upward movement of the containing member and also positively prevent relative rotation between the two members.

BENJAMIN F. CONNER.

EXHIBIT F

April 13, 1937. B. F. CONNER 2,077,216

JAR

Filed Oct. 1, 1936

Fig. 1

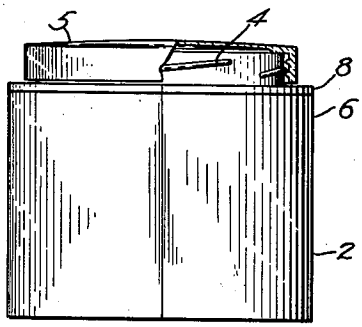


Fig. 2

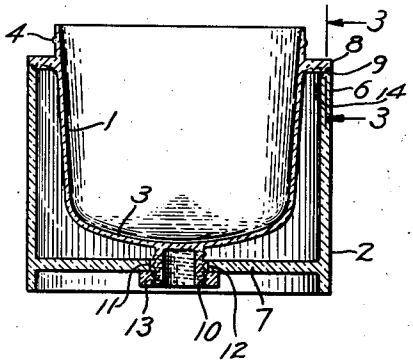


Fig. 3

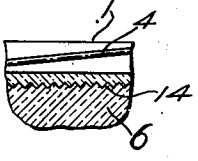


Fig. 5

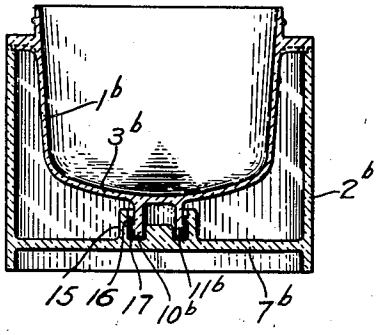
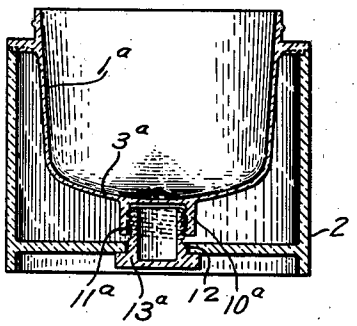


Fig. 4



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Patented Apr. 13, 1937 2,077,216

UNITED STATES PATENT OFFICE

2,077,216

JAR

Benjamin F. Conner, West Hartford, Conn., assignor to Colt's Patent Fire Arms Manufacturing Co., Hartford, Conn., a corporation of Connecticut

Application October 1, 1936, Serial No. 103,554

4 Claims. (Cl. 215—12)

This invention relates primarily to jars of the type disclosed in my-copending application for Jars, Serial No. 18,031, filed April 24, 1935, which jars are primarily intended for containing cosmetic preparations including salves, cold creams and other preparations of a pastelike consistency and also including powders. A jar of this type consists of two separate thin-walled members, each of which may be molded from a material of the synthetic resin class. The inner member is formed for engagement with a closure or cap and is adapted for containing the cream or other cosmetic preparation; and the outer or base member serves to support the inner or containing member and to provide at least a portion of the desired exterior contour or design. The two members are engaged with each other in such manner as to provide resistance to separation and in such manner as to prevent relative rotation. The two jar members are ordinarily formed of different materials. The difference between the two materials may be primarily a difference in color only, but usually it is necessary for the inner or containing member to be formed of a material highly resistant to the chemical action of the particular preparations which the jar is to contain. The outer or base member need not be so highly resistant to chemical action and for this a different and less expensive material may be used.

In my aforesaid application, of which this present application is a continuation-in-part, I have disclosed several embodiments of the invention which is therein broadly claimed; but the more specific claims of the said application are directed to those particular embodiments wherein the inner member and the outer member engage each other near the top of the jar and near the periphery thereof. The present application relates more specifically to those embodiments of the aforesaid broad invention wherein the inner or containing member and the outer or base member are positively connected with each other at their bottoms.

Firm engagement must be effected between the members to hold them in assembled relationship, frictional engagement being relied upon in the constructions to which the claims of the said prior application are particularly directed. In order to obtain such advantages as light weight, economy of material and satisfactory curing, the walls of the members are made quite thin, and they are therefore unavoidably somewhat fragile. When the frictional engagement is at or near the tops of the members, there is a tendency to break the thin walls, at least that of the outer member, when the members are forced together. In the constructions specifically claimed in the prior application, the shrinkage of the inner member to an extent greater than that of the outer member may cause the parts to fit so loosely as to be too readily separable from each other; or if the extent of shrinkage of the outer member is greater than that of the inner member, it may be impossible to assemble the parts at all, or attempted assembly may cause the breaking of one member or the other, usually the outer member, as already mentioned. The shrinkage of the parts may in some instances continue for a long period of time, with the result that breakage may occur long after the jar has left the manufacturer and is in the hands of the dealer or of the user.

In the constructions specifically claimed in the prior application, in addition to the difficulties due to differentials in shrinkage, further difficulties are encountered when the jar is used for a cosmetic cream or a similar product which is poured into the jar in a hot fluid or semi-fluid condition. The hot cream heats the jar, and more particularly the inner member thereof, and this heating and resultant greater expansion of the inner member may cause breakage of the outer member, even though the two members have resisted the initial strains resulting from assembly.

In my co-pending application for Jars, Serial No. 103,553 filed on even date herewith, I have disclosed and broadly claimed several alternative constructions wherein there is little or no frictional engagement between the two members at their upper peripheries where they are weakest and where their diameters are the greatest, and wherein the frictional engagement for holding the members in assembled relationship is effected at points which are near the bottom where the members are stronger. In the constructions shown in the last said application, the points of frictional engagement are preferably spaced inward from the peripheries so that the diameters are substantially less.

The constructions last above mentioned avoid any tendency to break or excessively stress the thin unsupported upper walls of the members under normal assembly conditions, and they also greatly minimize the difficulties which frequently arise, as already explained, from abnormal or unavoidable differences in shrinkage or expansion; but under some circumstances and with some materials it is preferable to entirely avoid any reliance whatsoever upon friction and to connect the two jar members with each other positively. In accordance with the present invention the said

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members are connected as last above stated, preferably by means associated with their respective bottom walls.

In the accompanying drawing I have shown several embodiments of the invention, but it will be understood that the drawing is intended for illustrative purposes only and is not to be construed as defining or limiting the scope of the invention, the claims forming a part of this specification being relied upon for that purpose.

Of the drawing:

Fig. 1 is a side view of a jar embodying the invention, a portion of the closure being broken away to show the closure retaining threads.

Fig. 2 is a vertical central sectional view through the jar shown in Fig. 1, the closure being omitted.

Fig. 3 is a fragmentary vertical sectional view taken along the line 3—3 of Fig. 2.

Fig. 4 is a view similar to Fig. 2 but showing an alternative embodiment of the invention.

Fig. 5 is a view similar to Fig. 2 but showing another alternative embodiment of the invention.

Referring to the drawing and more particularly to Figs. 1, 2 and 3 thereof, 1 and 2 represent respectively the two main members constituting the jar. The member 1 is designated as the inner or containing member, and the member 2 is designated as the outer or base member.

The inner or containing member 1 is a thin-walled cup-shaped member preferably molded from a material of the synthetic resin class and it is preferably of such shape that its interior diameter at the top is at least as large as the interior diameter below the top. The bottom wall of the containing member is indicated at 3. The containing member 1 is threaded adjacent its upper periphery as indicated at 4, being thus adapted for engagement with a threaded closure 5 of the cap type.

The outer or base member 2 is so related to the containing member 1 as to permit the said containing member to be assembled vertically downward with respect thereto. The base member has a peripheral annular portion 6 which is in engagement adjacent its top with an annular portion of the containing member 1, and the base member preferably has a bottom wall 7 which is positioned beneath the containing member. While I do not necessarily so limit myself, the annular portion 6 of the base member is shown as surrounding the entire lower portion of the containing member and as being spaced outward therefrom. The containing member 1 is provided with a thin outward projecting annular flange 8 immediately below the threads at 4, this flange being of such size and so positioned that the bottom surface thereof is engaged by the top edge of the annular portion 6 of the base member. The elements 6 and 8 are shown as being provided at 9 with interengaging rabbets which serve to prevent lateral displacement of one of the members with respect to the other.

In accordance with the present invention I provide means structurally separate from the containing member and from the base member and engaging both of the said members to hold them in assembled relationship. The said structurally separate means may advantageously be associated with the bottom walls of the two members for connecting them in such manner as to positively prevent the members from separating. As shown in Fig. 2, the bottom wall 3 of the containing member 1 is provided with a downward extending plug 10 which is threaded as indicated at 11. The upper surface of the thread constitutes an upward exposed shoulder. The plug 10 extends through a hole 12 in the bottom wall 7 of the outer member 2, and the thread 11 is engaged by a threaded nut 13 which engages bottom surface of the bottom wall 7. The plug 10 and the nut 13 thus serve to prevent relative upward movement of the containing member.

Preferably serrations are provided at 14 on the bottom of the flange 8 and on the top of the annular portion 6. These serrations interengage as shown in Fig. 3 to prevent relative rotative movement between the members when they are held together as already described.

Inasmuch as friction resulting from radial pressure is entirely eliminated as a factor in holding the jar members in assembled relationship, there is no tendency for the member to separate or be broken as the result of even extreme variations in shrinkage or in expansion.

In the alternative construction shown in Fig. 4, the inner or containing member 1^a is similar to the containing member 1 shown in Fig. 2, except that a different retaining means is provided at the bottom. The outer or base member 2 is or may be identical in construction with the member 2 shown in Fig. 2. Formed on the bottom wall 3^a of the containing member 1^a is a hollow boss 10^a which is internally threaded at 11^a. The upper surface of the thread constitutes an upward exposed shoulder. An externally threaded screw 13^a is provided which projects through the hole 12 in the bottom wall 7 and engages the internal thread 11^a of the boss 10^a. By virtue of the construction shown the two members are positively held against relative movement.

In the alternative construction shown in Fig. 5, the inner or containing member 1^b is similar to the members 1 and 1^a already described excepting that a different retaining means is provided at the bottom. The outer or base member 2^b is or may be similar to the member 2 already described, except that a different retaining means is provided at the bottom. As shown, the bottom wall 3^b of the member 1^b is provided with a downward extending hollow plug 10^b which is provided with an external projection or thread 11^b the upper surface of the projection or thread constituting an upward facing shoulder. Formed on the bottom wall 7^b of the member 2^b is a hollow or apertured boss 15 constituting a socket for receiving the plug 10^b. The interior surface of the socket is provided with an internal projection or thread 16, the lower surface of which constitutes a downward facing shoulder. The projections or threads 11^b and 15 do not directly engage with each other, and in order that the parts may be held in the desired relationship the socket is filled with a body 17 of a hardened plastic material as for instance sealing wax. It will be understood that in assembly a small quantity of molten wax is pourned into the socket 15, the inner member being then put in place while the wax is still soft. As the wax hardens it forms a rigid connection between the projections or threads 11^b and 16, and it thus holds the two members 1^b and 2^b in their proper relative positions.

What I claim is:

1. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at

the top at least as large as is the interior diameter below the top, a base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a centrally apertured bottom wall positioned beneath the containing member, interengaging means on the said annular portion of the base member and on the annular portion of the containing member for positively preventing relative rotation between the said members, a downward extending projection on the bottom of the containing member having an upward facing shoulder thereon, and means engaging the centrally apertured bottom wall of the base member and engaging the said shoulder on the projection to positively prevent relative upward movement of the containing member.

2. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member externally threaded adjacent its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, the said member having a thin outward projecting annular flange immediately below the thread, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having an annular portion which surrounds the containing member and is in engagement at its top edge with the bottom surface of the said flange and having a bottom wall positioned beneath the containing member, interengaging means on the said annular portion of the base member and on the flange of the containing member for positively preventing relative rotation between the said members, a downward extending projection on the bottom of the containing member having an upward facing shoulder thereon, and means engaging the bottom wall of the base member and engaging the said shoulder on the projection to positively prevent relative upward movement of the containing member.

3. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a base member adapted to permit the said containing member to be assembled vertically downward with respect thereto and having a centrally apertured bottom wall positioned beneath the containing member, the said base member having a peripheral annular portion which is in engagement adjacent its top edge with an annular portion of the containing member, a downward extending threaded projection on the bottom of the containing member positioned in register with the aperture in the bottom wall of the base member, and an independently rotatable nut engaging the bottom surface of the bottom wall of the base member adjacent the said aperture and having threaded engagement with the projection on the containing member to hold the latter in place.

4. The combination in a jar of the class described, of a thin-walled cup-shaped molded containing member adapted at its upper periphery for engagement with a closure of the cap type and having its interior diameter at the top at least as large as is the interior diameter below the top, a molded base member adapted to permit the said containing member to be assembled vertically downward with respect thereto, the said base member having a peripheral annular portion which is in engagement adjacent its top with an annular portion of the containing member and having a bottom wall positioned beneath the containing member, a downward extending projection on the bottom of the containing member having an upward facing shoulder thereon, a socket on the bottom wall of the base member positioned to receive the said projection and having a downward facing shoulder therein, and a body of hardened plastic material in the socket surrounding the projection and serving to positively prevent upward movement of the containing member.

BENJAMIN F. CONNER.

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