

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TROVE BRANDS, LLC,

Petitioner,

v.

CAMELBAK PRODUCTS, LLC,

Patent Owner.

IPR2024-01501

U.S. Patent No. 9,782,028 B2

PATENT OWNER'S PRELIMINARY RESPONSE

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PATENT OWNER’S EXHIBIT LIST

Exhibit No.	Description
2001	Declaration of Michael Jobin (“Jobin Decl.”)
2002	Claim Construction Order in <i>Trove Brands, LLC v. CamelBak Products, LLC, et al.</i> , No. 23-cv-04267-PCP (N.D. Cal.), Dkt. No. 108 (November 8, 2024) (“CC Order”).
2003	File History for U.S. Patent No. 9,782,028, U.S. Patent Application No. 13/479,962
2004	Merriam-Webster Dictionary – “automatic”
2005	Cambridge Dictionary – “automatically”
2006	Oxford English Dictionary – “automatic”
2007	Cambridge Dictionary – “flexible”
2008	Decision Granting Institution in IPR2024-01137 (regarding U.S. Patent No. 10,676,255), dated January 28, 2025
2009	Material Properties Chart for various rubber materials (accessed from https://www.martins-rubber.co.uk/technical-references/material-properties/)
2010	Merriam-Webster Dictionary – “mouthpiece”
2011	Types of Plastic Materials: A Comprehensive Guide (accessed from https://www.tricorbraun.com/blog/understanding-types-of-plastic.html)
2012	Curriculum Vitae of Michael Jobin

I. INTRODUCTION

Under Petitioner’s own construction and grounds, the “user release mechanism” of the Challenged Claims is a means-plus-function element directed to specific structures in the ’028 patent—the sliding member 238 (and its component parts) or the user engagement portion 260 on rigid collar member 170. Petitioner fails to meet its burden of proving by a reasonable likelihood that Kiyota or Ribarits discloses either of these novel structures or an equivalent. These novel structures, upon actuation by a user, provide a simple, yet innovative, means for allowing a mouthpiece assembly to move or be released automatically from a stowed position to a dispensing position via a bias.

First, relying only on a theory of an “equivalent” under § 112(f), Petitioner relies on Kiyota’s mechanism that requires depressing two buttons on the sides of the bottle that require two points of contact (e.g., two fingers) and that use a mere button-press actuation to cause direct catch disengagement, such that they can be inadvertently depressed by a user merely trying to hold the bottle. The ’028 patent’s mechanism, however, only requires a single point of contact (e.g., one finger) on the top of the bottle, rather than the sides, and that requires a greater application of force by the user because of its use of an intermediary structure to cause indirect catch

disengagement. The '028 patent's mechanism, therefore, reduces the points of contact required while also better preventing inadvertent opening of the mouthpiece from the stowed position. Petitioner fails to offer any non-conclusory explanation whatsoever as to how any of the differences between the "way" the two structures operate or the "result" they achieve is insubstantial. As such, Petitioner has failed to show there is a reasonable likelihood that Kiyota's buttons are an "equivalent."

Second, Ribarits fails to disclose the use of any bias whatsoever, much less any automatic disengagement or release from the stowed position to the dispensing position via any such bias. Petitioner's arguments to the contrary, which are based solely on inherency, come nowhere close to meeting the high standard for inherency of having to prove these limitations are "necessarily present." And in attempting to prove Ribarits discloses an "equivalent" under § 112 (f), Petitioner fails to offer any non-conclusory analysis whatsoever comparing the "way" or "result" of Ribarits's drinking spout 3 with the '028 patent's structure (i.e., user engagement portion 260) that is distinct from Petitioner's argument that Ribarits's spout performs the same function. Because the law demands more, Petitioner fails to establish an "equivalent" under § 112(f).

Finally, both Kiyota and Ribarits fail to disclose the claimed “mouthpiece portion” that is both made of resilient material and “constructed as a unitary assemble” with the claimed “tube.” Kiyota either: i) uses a mouthpiece of hard resin material that is both not resilient and not unitary with the tube, or ii) to the extent Petitioner is correct that Kiyota’s hard mouthpiece is just “optional” such that the user could drink directly from the tube, then Kiyota merely discloses the claimed “tube” with no additional “mouthpiece portion” element that is in any way distinguishable from the tube itself or “to” which the tube can deliver liquid, as required by the claims. Ribarits also fails to disclose the claimed resilient “mouthpiece portion” because Petitioner’s alleged mouthpiece portion, the end of Ribarits’s resilient tube, is completely surrounded by Ribarits’s rigid non-resilient drinking spout—which serves as Ribarits’ actual mouthpiece that the user places their mouth on when they drink—such that the user cannot place their mouth on the resilient tube alleged to be the claimed “mouthpiece portion.”

Petitioner, therefore, has failed to establish a reasonable likelihood of prevailing, and, therefore, Patent Owner respectfully requests that the Board deny institution. Petitioner has also submitted the Declaration of Michael Jobin (Ex.2001) in support of the arguments presented herein.

II. THE '028 PATENT

The '028 patent is titled “Drink Containers,” and issued on October 10, 2017. Ex. 1001 (cover). The patent generally describes a drink container with a cap assembly portion and a mouthpiece assembly portion with two configurations, a dispensing configuration and a stowed configuration to selectively restrict the flow of drink liquid. Ex. 1001 at Abstract. The cap assembly may include a “user release mechanism,” to automatically release the mouthpiece assembly from the stowed to the dispensing configuration. *Id.*, 1:45-49, 6:31-39. The application that matured into the '028 patent, U.S. Patent Application No. 13/479,962, was filed on May 24, 2012, and is a continuation of U.S. Patent Application No. 12/357,114, filed on January 21, 2009. *Id.*

A. Claims

The '028 patent has 21 claims. Ex. 1001, 21:20 to 26:44. Petitioner challenges claims 1, 2, 5, 6, 8, 9, 15, 16, and 21 in the Petition, with claims 1 and 21 being the only independent claims. Pet., 11-14. Independent claim 1 recites:

1. **A drink container**, comprising:
a liquid container having a neck with an opening and having
an internal compartment sized to hold a volume of potable
drink liquid;

a cap assembly removably coupled to the liquid container, the cap assembly comprising:

a base removably coupled to the neck of the liquid container;

a first catch structure;

a mouthpiece assembly extending through the through-

passage of the base and defining a liquid passage through which drink liquid from the liquid container may selectively flow, and further defining an inlet through which drink liquid in the internal compartment may enter the liquid passage and an outlet through which drink liquid from the internal compartment of the liquid container is selectively dispensed, wherein the mouthpiece assembly is configured to be selectively configured between a dispensing configuration, in which the liquid passage permits drink liquid to flow from the internal compartment at least into the liquid passage, and a stowed configuration, in which the liquid passage restricts the flow of drink liquid through the liquid passage, wherein the mouthpiece assembly is biased to the dispensing configuration, and wherein the mouthpiece assembly comprises:

a mouthpiece portion that includes the outlet;

a tube that defines at least a portion of the liquid passage for drink liquid to flow from the internal compartment to the mouthpiece portion, wherein

the tube includes a crimping region constructed of a resiliently deformable material and is adapted to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration, and where the mouthpiece portion and the tube are constructed as a unitary assembly of the resiliently deformable material;

an anchor portion extending from the tube distal the mouthpiece portion, wherein the anchor portion is sized to restrict passage of the anchor portion through the through-passage of the base of the cap assembly;

a second catch structure adapted to be selectively engaged with the first catch structure to retain the mouthpiece assembly in the stowed configuration; and

a user release mechanism adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism and thereby release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration.

Ex. 1001, 21:21-22:6.

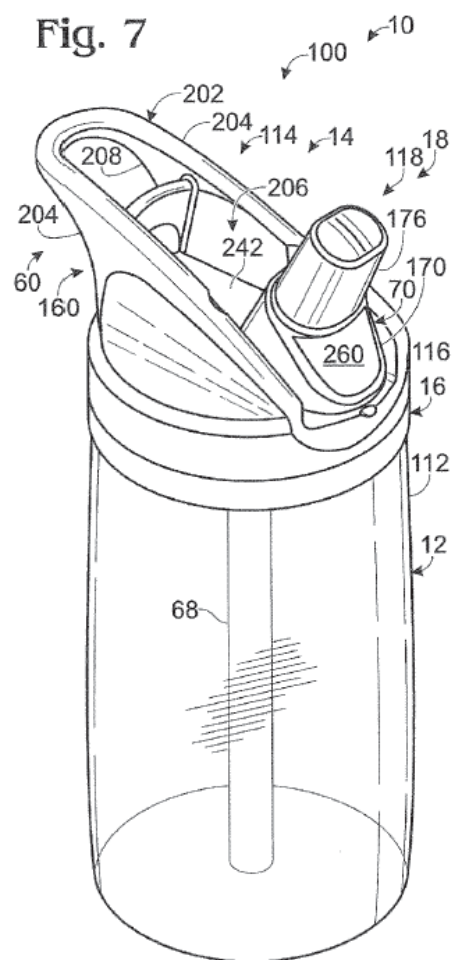
Independent claim 21 is similar to claim 1 and is directed to a cap assembly for use with a liquid container, containing many of the same elements as the cap assembly in claim 1. *Id.*, 26:10-44. However, there are notable differences between claim 21 and claim 1, including that “user release mechanism” is subject to different constructions between the claims (Pet. at 17) and that claim 21 requires a “resilient” mouthpiece and anchor portion. Pet. at 52-53.

Dependent claims 2, 5, 6, 8, 9, 15, and 16 all depend from, and incorporate the limitations of, claim 1. Ex. 1001, 22:7-23:39. Claim 2 adds the limitation that “the user release mechanism is mechanically coupled to the first catch structure.” *Id.*, 22:7-9. Claim 5 adds the limitation that “the crimping region at least partially biases the mouthpiece assembly to the dispensing configuration.” *Id.*, 22:31-33. Claim 6 adds the limitation that the cap assembly includes a handle with certain structural characteristics. *Id.*, 22:34-40. Claim 8 add the limitation that “the mouthpiece portion permits a user to draw drink liquid from the drink container when the mouthpiece assembly is in the dispensing configuration.” *Id.*, 22:54-57. Claim 9 adds the limitation that “the mouthpiece portion, the tube, and the anchor portion are constructed as a unitary assembly of the resiliently deformable material.” *Id.*, 22:58-60. Claim 15 adds the limitation that “the anchor portion includes a

plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage.” *Id.*, 23:31-34. Finally, claim 16 add the limitation that “the drink container includes a straw with a first end that extends into the liquid container and a second end that extends into the liquid passage and is retained therein by the friction-fit arrangement. *Id.*, 23:35-39.

B. Specification

The '028 patent discloses various embodiments to illustrate the claimed drink containers. Figure 7 below represents an example drink container according to the '028 patent, including a cap assembly (14) and a mouthpiece assembly (18). Ex.1001, 2:16-20, 10:66-11:15, Fig 7; Ex.2001, ¶51.



Mouthpiece assembly (18) includes a mouthpiece portion (76), tube (78), and anchor portion (86), as is represented in Figure 6 below. Ex.1001, 2:13-15, 10:19-33, Fig. 6; Ex.2001, ¶52.

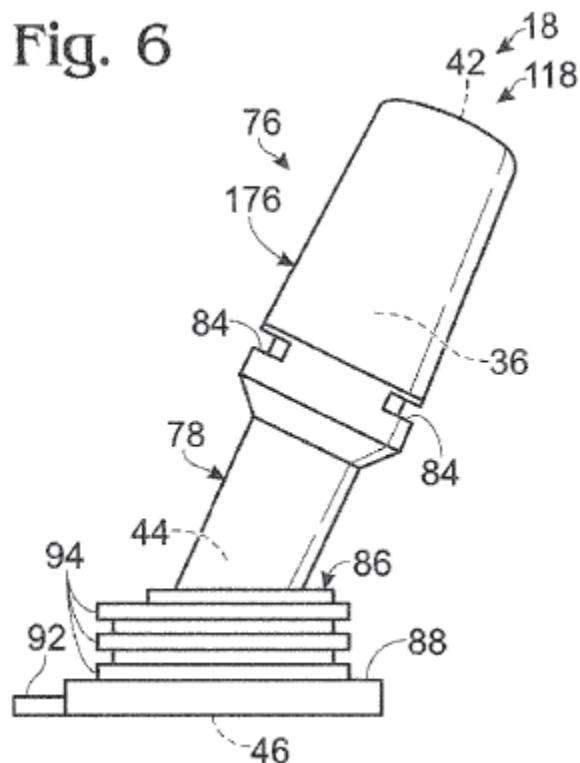
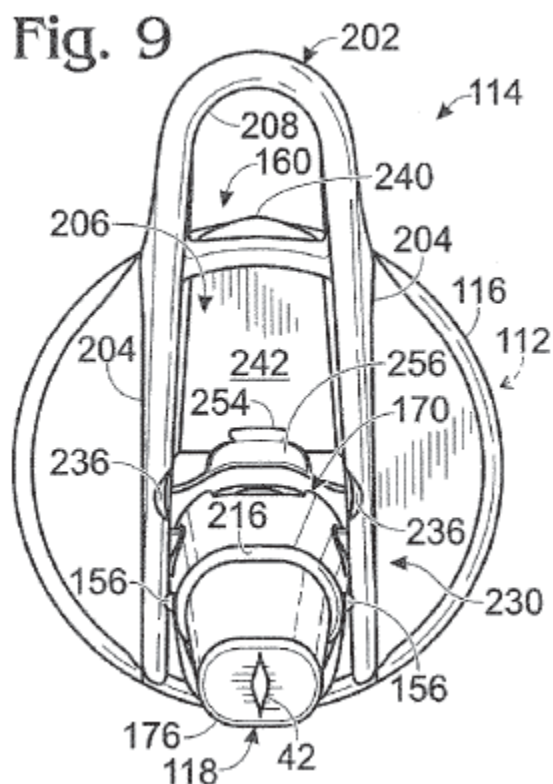
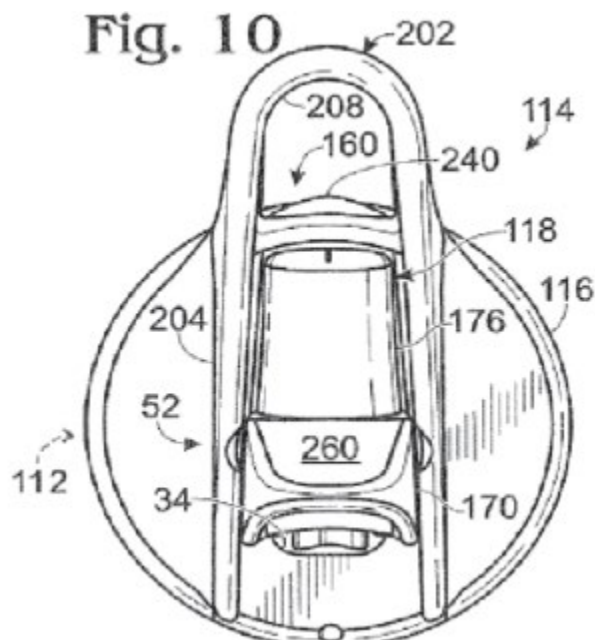


Figure 9 below represents a top view of an exemplary cap assembly (114) according to the invention, including a user release mechanism (160), which further includes a user engagement pad (240) and a sliding member including a generally planar portion (242). Ex.1001, 12:50-67, Fig. 9; Ex.2001, ¶53. The sliding member is configured to slide upon user actuation of the user release mechanism, automatically disengaging the catch structures and releasing the mouthpiece assembly to move from the stowed to the dispensing configuration. Ex.1001, 11:2-15, Fig. 9; Ex.2001, ¶52.



Ex.1001, Fig. 9. In a separate embodiment, the user release mechanism may be only a user engagement portion 260, on which the user may impart force to force the disengagement of the catch structures, which then allows the mouthpiece assembly to automatically move to the dispensing configuration via its bias. *Id.*, 13:40-54; Ex.2001, ¶54.



C. Prosecution History

The application that matured into the '028 patent was filed on May 24, 2012, and is a continuation of U.S. Patent Appl. No. 12/357,114, filed on January 21, 2009.

Both Kiyota and Choi were presented to the Board during prosecution of the '028 patent application. Ex.1001, 2. During prosecution, the Applicant faced non-final and final rejections under 35 U.S.C. § 103(a), all over Choi as the primary reference. Ex.2003, 88-102, 145-160; Ex.2001, ¶55. Applicant appealed the rejection, arguing, *inter alia*, that Choi does not disclose an “anchor portion” as claimed. The Board reversed, finding the claims patentable over Choi, and finding that none of the recited secondary references remedied Choi’s lack of “anchor

portion.” Ex.2003, 299-307, *Ex Parte Davies et. al.*, Appeal 2014-007854 (P.T.A.B. Mar. 15, 2017); Ex.2001, ¶55.

III. PETITIONER’S GROUNDS AND CITED REFERENCES

Petitioner asserts that the challenged claims would have been anticipated and/or obvious based on four (4) grounds¹: Petitioner argues that all challenged claims are obvious over Kiyota² (Ground 1); Petitioner argues that claims 1, 2, 5, 6, 8, 9, 15, and 21 are obvious in view of Ribarits³ (Ground 2); Petitioner argues that claims 6, 9, 21 are obvious over Kiyota in view of Ribarits (Ground 3); Petitioner argues that claim 16 is obvious over either Kiyota in view of Choi⁴ or Ribarits in view of Choi (Ground 4).

¹ Ground 4 includes two grounds, Kiyota in view of Choi and Ribarits in view of Choi. In effect, Petitioner has asserted six (5) discrete invalidity grounds.

² U.S. Patent No. 6,279,773 to Kiyota (Ex. 1004).

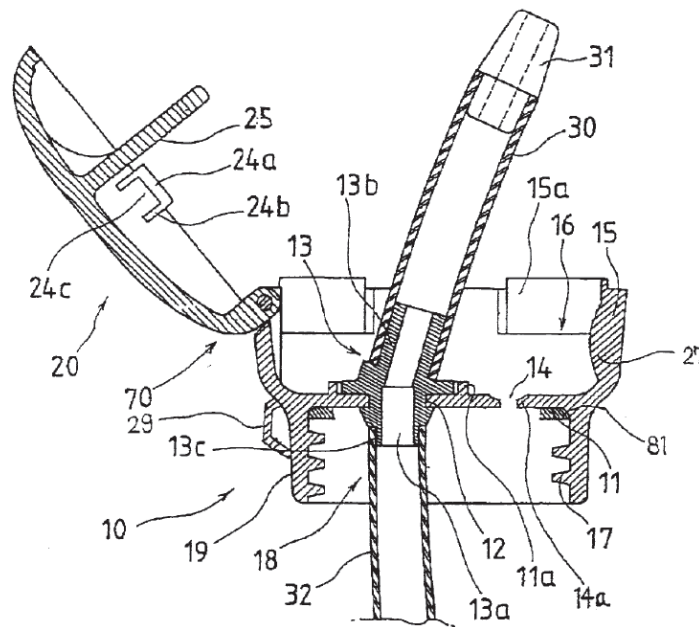
³ International Publication No. WO 2004/063042 to Ribarits (Ex. 1005).

⁴ U.S. Patent Application Publication No. 2007/0039959 to Choi, *et al.* (Ex. 1008).

A. Kiyota

Kiyota is titled “lid body of beverage container.” Ex. 1004, 1. Kiyota was submitted to the Examiner during prosecution of the '028 patent and appears on its face. Ex. 1001, 2. Kiyota’s lid body is composed of two main portions, the main body portion 10 and the openable lid 20, connected together by a hinge portion 70. Ex. 1004, 4:54-58.

FIG. 6



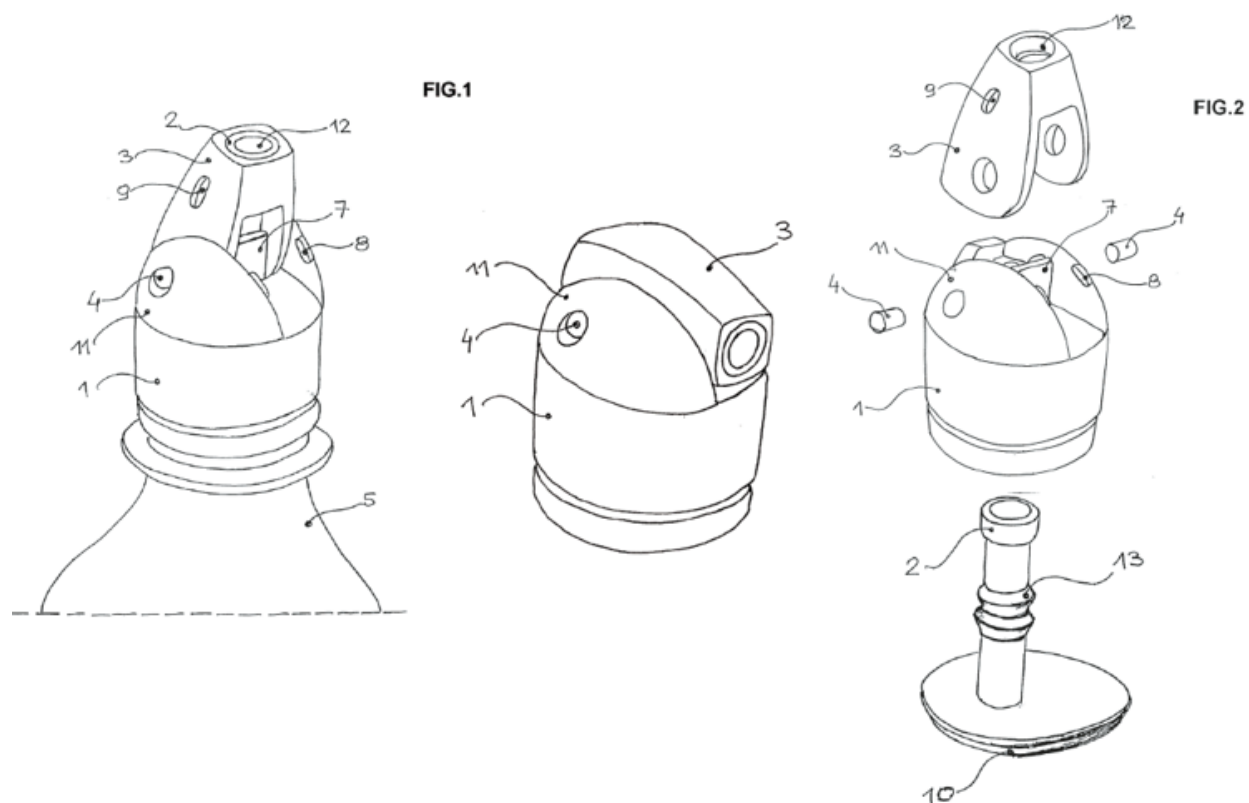
Id., Fig. 6.

To open the lid and drink from the bottle, the user presses on lock release buttons 40, which are located on either side of the lid. When the user presses lock

FIG. 1 is a cross-sectional view of a vehicle seat backrest assembly. The diagram shows a central vertical axis 20. On the left side, components include a shell 24, a spring mechanism 24a, a support structure 24c, a base plate 60, and a series of horizontal ribs 81. On the right side, components include a shell 45, a spring mechanism 45a, a support structure 45b, a base plate 42, and a series of horizontal ribs 47. A central vertical axis 10 is shown at the bottom. Other labels include 11a, 12, 18, 21, 54, and 55.

15

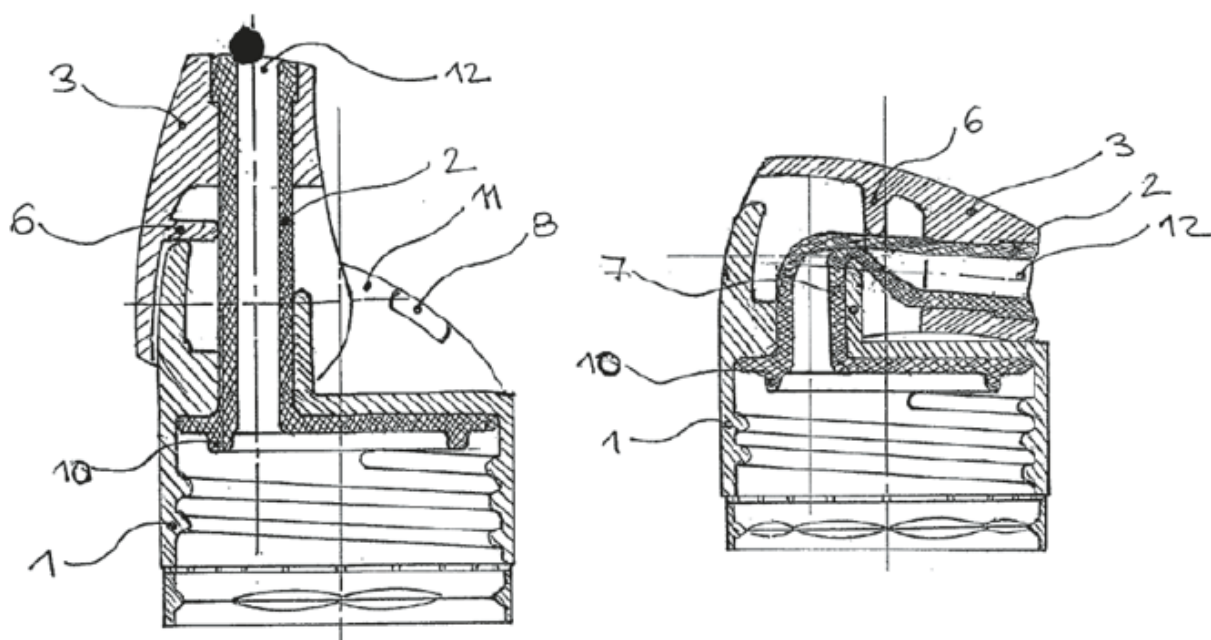
Ribarits is generally directed to a drinking device that is designed such that it can be opened and closed with one hand. Ex.1005 at Abstract, 2. The drinking device includes a closing cap 1, a drinking spout 3 that rotates about two axial pins 4, a bottle 5, and a tubular element 2 that is “inserted into said cap” and also “inserted” in the drinking spout, as shown in the versions of Figures 1 and 2 below. Ex.1005, Abstract, 2, claim 1, Fig. 1.



Id. at Figs. 1-2. As shown above, the drinking spout 3 can be in an open position (Fig. 1 at left) or in a closed position (Fig. 1 at right). *Id.* at 2, Fig. 1. While Ribarits

describes being able to open the drinking spout with one hand, it does not describe how someone would go about opening the drinking spout, only noting that “the drinking spout is pivoted open.” *Id.* at 2 (“In the lateral parts placed at the top of the closing cap, the drinking spout is movably mounted by means of both axles.”).

As shown in the version of Figure 3 below, the tubular element 2 is inserted into the cap 1 and drinking spout 3. Ex.1005, claim 1 (“[T]he sealed tubular element (2) is inserted into the drinking spout (3)”), Fig. 2. The sealed tubular element 2 can be made of “rubber,” “latex,” or “plastics.” *Id.* at 2 (“[A] sealed tubular element of rubber or latex is inserted”); *Id.* at 3 (“[T]he sealed tubular element (2) is made of rubber or of plastics.”).

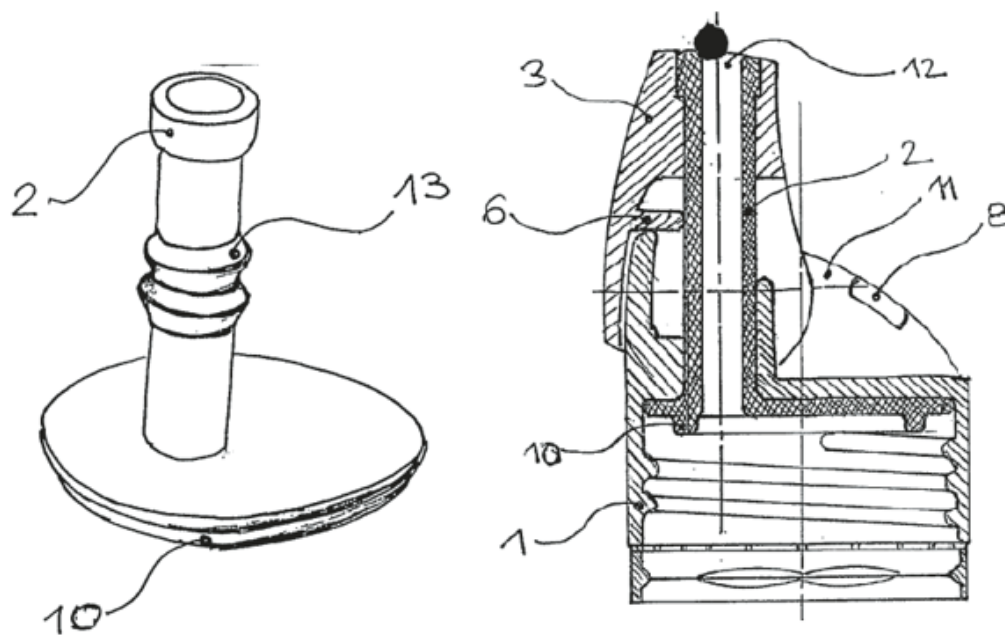


Ex.1005, Fig. 3 (excerpt).

When the drinking spout 3 is in the open position, as illustrated to the left above in Figure 3, the tubular element 2 is opened to allow drink to pass through it. *Id.* at 2 (“When the drinking spout is pivoted open, the elastic tube inserted therein is straightened and the opening is thus released.”). When the drinking spout is in the closed position, as illustrated to the right above in Figure 3, the tubular element 2 is bent to close it. *Id.* at 2 (“If now the device is to be closed, by folding down the drinking spout, the tube is bent between the outlet opening of the closing cap and the

accommodation in the drinking spout by means of the two webs, and the device is closed.”).

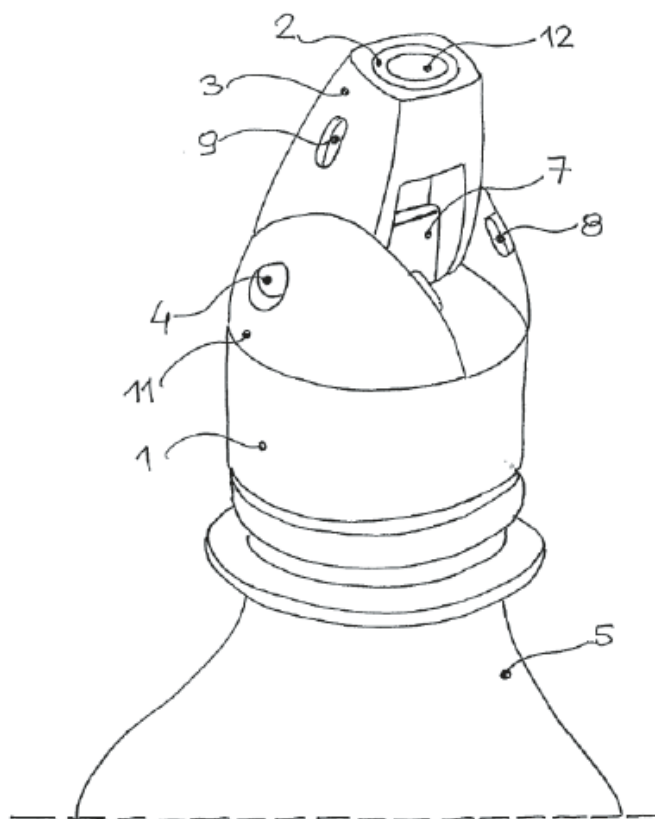
The tubular element 2 also includes sealing rings 10, as illustrated below, that hold the inserted tubular element 2 in place within the cap 1 and drinking spout 3 by screwing the neck of the bottle into the thread of the cap and tightening the sealing rings 10 in place. *Id.* at 2 (“the tightness is given by screwing the neck of the bottle onto the sealing part of this [tubular] element”); *id.* at claim 1 (“when the closing cap (1) is screwed onto the bottle (5), the required tightness is obtained by means of the sealing rings (10)”).



Id. at Figs. 2 (left, excerpt) & 3 (right, excerpt).

As shown below, the cap 1 also includes two knobs 8 that can snap into two recesses 9 on the sides of the drinking spout 3 when the spout is in the closed position as a “securing mechanism” to “prevent an accidental opening of the drinking spout.”

Ex.1005 at Abstract, 2, claim 1, Figs. 1-2.

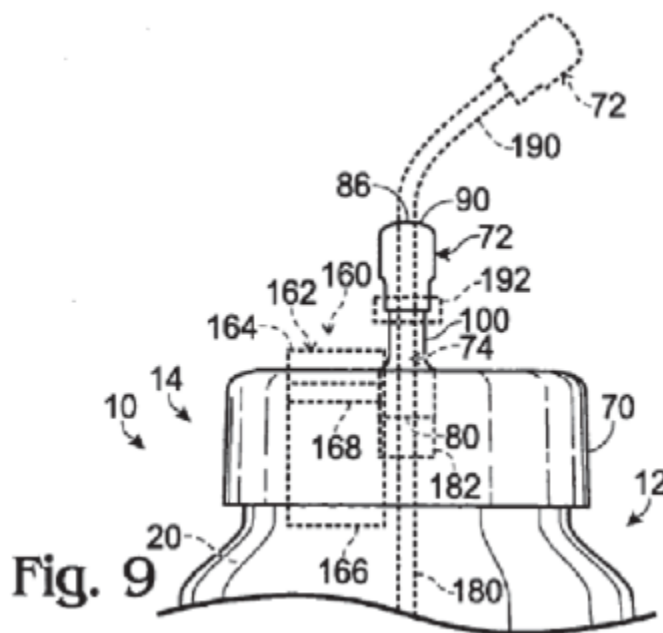


Ex.1005, Fig. 1 (excerpt).

C. Choi

Choi is titled “drink bottles with bite-actuated mouthpieces.” Ex. 1008, 1. Choi was submitted to the Examiner during prosecution of the '028 patent and appears on its face. Ex. 1001, 2. Choi was also the basis for rejections by the examiner during prosecution as the primary reference. Ex. 2003, 88-102, 145-160.

Choi describes a cap assembly 14, which includes a mouthpiece 72. Ex. 1008, [0034]. Choi’s drink bottles may also include an optional straw 180 extending from the cap assembly into the fluid container, which may be coupled to a mount 182 on the cap assembly, at the inlet 80 of fluid conduit 74. *Id.*, [0072], Fig. 9.



IV. LEVEL OF ORDINARY SKILL IN THE ART

A person having ordinary skill in the art would have had a bachelor's degree in mechanical engineering or the equivalent coursework and approximately one year of experience with liquid-containing devices, with more work experience substituting for less education and vice versa. Ex.2001, ¶¶56–65. However, Petitioner fails to show a reasonable likelihood of prevailing on any claim even under the level of ordinary skill in the art Petitioner sets forth, and, thus, Patent Owner discerns no material difference between the definitions provided by the parties for purposes the Board's decision on whether to institute this proceeding.

V. CLAIM CONSTRUCTION

A. “user release mechanism”

Subsequent to the filing of the Petition, a claim construction order was issued in the co-pending district court case between Petitioner and Patent Owner. *See* Ex.2002. The district court held that the term “closure retention mechanism” is a means-plus-function term governed by 35 U.S.C. § 112(f), *id.*, at 12-15, and construed the corresponding structure for the “user release mechanism” of claim 1 to require “sliding member 238, including its component parts” or “user engagement portion 260” of the '028 patent. *Id.*, at 15-17. For the “user release mechanism” of

claim 21, the court construed the corresponding structure to require “sliding member 238, including its component parts” or “user engagement pad 240, planar portion 242, tabs 244, collar engagement portion 254, [or] depression 256.” *Id.* at 17-19.

Petitioner has proposed to construe the “user release mechanism” as being governed by § 112(f). Pet., at 16-17. Petitioner relies on different corresponding structure for its grounds based on Kiyota and its grounds based on Ribarits.

In Petitioner’s Kiyota grounds, Petitioner construes the corresponding structure as being the purported “first embodiment” of the user release mechanism in the ’028 patent: “the sliding member 238 (and its component parts)” of the ’028 patent; and Petitioner purports to argue that Kiyota’s release buttons 40 are an equivalent thereof. Pet. at 34 (“The specification discloses two embodiments of the user release mechanism. *In the first embodiment, the user release mechanism is sliding member 238 (and its compo[n]ent parts) . . .*”); Pet., at 37-38 (“*In the first embodiment* of the user release mechanism of the ’028 patent, for example, a user pushes *a sliding element* forward, towards the mouthpiece assembly, to disengage the catch structures. *This is substantially the same in Kiyota, wherein a user presses on the release buttons 40 . . .*”).

In Petitioner's Ribarits grounds, Petitioner construes the corresponding structure as being the purported "second embodiment" of the user release mechanism in the '028 patent: the "user engagement portion 260 on rigid collar member 170" of the '028 patent; and Petitioner purports to argue that Ribarits's drinking spout 3 is an equivalent thereof. Pet., at 35 (***"In the second embodiment, the user release mechanism is user engagement portion 260 on rigid collar member 170."***); Pet. at 72 ("In ***the second embodiment*** of the user release mechanism of the '028 patent, for example, a user ***may press on the collar*** to force the catch structures to disengage. ***This is substantially the same in Ribarits: a user may press on the drinking spout*** to automatically disengage the first and second catch structures.").

For purposes of this proceeding only, Patent Owner does not dispute that the "user release mechanism" is governed by §112(f). Further, for purposes of this proceeding only, Patent Owner also does not dispute including "sliding member 238, including its component parts" in the corresponding structure for claim 1 or including "user engagement portion 260" in the structure for claim 21, even though the district court did not expressly include "user engagement portion 260" in the structure for claim 21. Ex.2002, at 15-19.

It is unnecessary, however, for the Board to determine whether any additional structures are encompassed by the claimed “user release mechanism” for either claims 1 or 21, because Petitioner did not provide any arguments or analysis comparing such other structures to the prior art asserted in the Petition. Further, it would be impermissible for Petitioner to offer new theories based on alleged equivalences to such additional structures not included in the Petition. Therefore, the Board need not determine whether any additional structures are included. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

B. “mouthpiece portion”

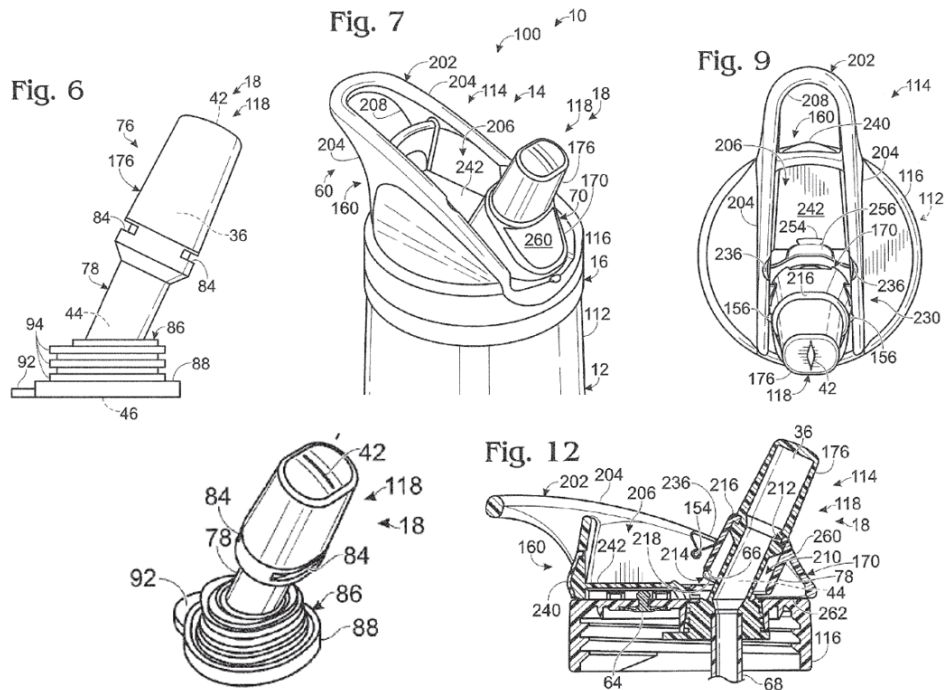
The term “mouthpiece portion” means “a portion designed for a user to put his or her mouth on to draw liquid from the container.” This is consistent with the intrinsic and extrinsic evidence.

As recited by both claims 1 and 21, the claimed “mouthpiece portion” “includes an outlet” “through which drink liquid from the internal compartment of the liquid container is selectively dispensed.” Further, claim 21 recites that a

“mouthpiece portion . . . permits a user to draw drink liquid from the drink container.” As the specification describes, the “mouthpiece portion” is a portion of the overall mouthpiece assembly where the liquid is selectively dispensed to a user drinking the liquid from the drink container. Ex.1001, at 8:31-34 (“Mouthpiece portion 76 includes outlet 42 and is adapted to permit a user to selectively receive and consume drink liquid from the drink container.”). The ’028 patent also describes embodiments of mouthpiece portions as including “user-actuated valves adapted to permit selective dispensing of drink liquid from the drink container,” “mouthpiece portions that permit a user to draw, or suck, drink liquid from the drink container,” and “bite-actuated mouthpieces.” Ex.1001, at 8:35-42. 8:48-62. Such bite-actuated mouthpieces are “typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compressive forces being applied thereto by a user, such as by a user's teeth and/or mouth.” Ex.1001, at 8:48-62.

In each of these examples of mouthpiece portions, a POSITA would have understood that a user would be putting their mouth on it to draw liquid from the container, and, in certain embodiments, to optionally selectively dispense the liquid through the mouthpiece via a valve in it. Ex.2001, ¶¶76-77. Further, the figures of

the '028 patent consistently depict the mouthpiece portion as being a straw-like structure designed to allow a user to place their mouth to draw or suck drink liquid from it. Ex.1001, at Figs. 6-9, 11, 12; Ex.2001, ¶77.



Ex.1001, at Figs. 6-9, 11, 12.

This is further supported by the plain and ordinary meaning of the term “mouthpiece,” which uses the base term “mouth.” Meriam-Webster defines a “mouthpiece” as “something placed at or forming a mouth” or “a part (as of an instrument) that goes in the mouth or to which the mouth is applied.” Ex.2010. Thus, the plain and ordinary meaning of a mouthpiece, as revealed by the dictionary, is

consistent with the intrinsic evidence's usage: a "mouthpiece portion" would have been understood by a POSITA to be "a portion designed for a user to put his or her mouth on to draw liquid from the container." Ex.2001, ¶¶77-78; *see also id.* at ¶¶74-76.

C. "to automatically disengage the first and second catch structures" (claim 1) / "to automatically release the mouthpiece assembly" (claim 21)

Patent Owner submits that the claimed "automatic[]" disengagement and release means that the claimed disengagement and release must be at least in part caused by the bias as opposed to being wholly caused by the user. This is demonstrated by both the intrinsic and extrinsic evidence.

First, the plain claim language makes this requirement clear. In reciting that the "user release mechanism" performs the function of "automatically disengage[ing] the first and second catch structures," claim 1 recites that "thereby" the mouthpiece assembly "move[s] via its bias." Similarly, in reciting that the "user release mechanism" of claim 21 performs the function of "automatically releas[ing] the mouthpiece assembly," claim 21 recites that the mouthpiece assembly is released "from the stowed configuration to the dispensing configuration via the bias of the

mouthpiece assembly.” Thus, both claims 1 and 21 make clear that these automatic actions result in the mouthpiece assembly moving via its bias.

Second, the specification confirms this meaning. The '028 patent specification repeatedly equates its use of “automatic” in this manner to movement under the force of a bias, as opposed to being movement that is wholly under the action of the user (i.e., wholly manual in nature). Ex.1001, at 1:49-52 (“the mouthpiece assembly is biased toward the dispensing configuration ***and thus moves automatically under its bias*** upon release by the user-release mechanism”), 6:16-19 (“the mouthpiece assembly may be configured ***to move automatically via, or under, its bias*** to the dispensing configuration upon release from its stowed configuration.”), 11:9-15 (“a portion of the mouthpiece assembly . . . may be biased ***to pivot automatically to the dispensing configuration when not restrained from moving under this bias.***”).

Third, this construction is consistent with dictionary definitions and case law that “automatic” or “automatically” requires at least some lack of user intervention, so as to distinguish the term “automatic” from “manual.” Ex.2004, at 1 (“done or produced as if by machine” or “having a self-acting or self-regulating mechanism”); Ex.2005, at 1 (“If a machine or device does something automatically, it does it

independently, without human control”); Ex.2006, at 2-3 (“self-acting once set in motion” or “[o]f a machine, appliance, etc.: that does not require an operator; that works by itself under fixed conditions, with little or no direct human control”); *Space Sys./Loral, Inc. v. Lockheed Martin Corp.*, 243 F.3d 558, 2000 WL 1205154, at *5 (Fed. Cir. 2000) (“Given its ordinary meaning, the term ‘automatically’ denotes that the claimed apparatus is capable of performing east-west stationkeeping independently, without any external control.”); *id.* at *6 (agreeing that “manual” operation is “antithetical to the concept of being automatic”); *Lugus IP, LLC v. Volvo Car Corp.*, 2014 WL 2094086, at *7 (D.N.J. 2014) (construing “automatically” in the context of a child car seat that would “automatically retract” into an adult seat “by giving it its plain ordinary meaning shown by a dictionary definition [of a] ‘self-acting or self-regulating mechanism that performs a required act at a predetermined point in an operation’”). The district court agrees. Ex.2002, at 16 (“[T]he bias of the mouthpiece towards the dispensing configuration causes the mouthpiece to move automatically . . .”).

A POSITA, therefore, would have understood that the claimed “automatic[]” disengagement and release means that “the claimed disengagement and release must

be at least in part caused by the bias as opposed to being wholly caused by the user.”

Ex.2001, ¶¶80-85.

VI. PETITIONER HAS NOT SHOWN A REASONABLE LIKELIHOOD OF PREVAILING ON ANY CLAIM

Petitioner’s asserted grounds for obviousness are not supported by the evidence, and thus fail to show a reasonable likelihood of Petitioner prevailing in proving the unpatentability of any claim, as required for institution. *See* 35 U.S.C. § 314(a).

A. Grounds 1, 3, and 4 Fail Because Kiyota Does Not Disclose the Claimed “User Release Mechanism” or “Mouthpiece Portion” of Claims 1 and 21.

Petitioner fails to show a reasonable likelihood of prevailing on the basis of Grounds 1, 3, or 4 as to any challenged claim, because Kiyota fails to disclose limitations on which it is relied for each of these grounds. For each of these missing limitations, Petitioner either fails to argue that it would have been obvious or fails to support its argument with evidence or reasoning. The Petition does not cure these deficiencies in its challenges to any of the dependent claims. *See* Pet., 38–62 (setting forth Kiyota-based challenges to dependent claims 2, 5, 6, 8, 9, 15, and 16 under Ground 1), 81–90 (same for additional challenges to claims 6, 9, and 16 under

Grounds 3 and 4). Accordingly, the defects in Petitioner’s Kiyota-based challenges to the independent claims infect all of Petitioner’s Grounds that use Kiyota as the only or primary reference.

1. Kiyota Does Not Disclose a “User Release Mechanism,” as Required by Both of Claims 1 and 21

Petitioner fails to show that Kiyota discloses a “user release mechanism”—a required element of claim 1 and claim 21—and its challenges to both independent claims therefore cannot prevail. Pet., 34–38, 52–54. As noted above (*see supra* Sec. V.A), Petitioner contends that “user release mechanism” should be construed as a means-plus-function limitation under §112(6); the district court did so in the related litigation, and Patent Owner does not dispute that §112(6) applies for the purposes of this Preliminary Response. Petitioner acknowledges that this means the “user release mechanism” is construed to cover the disclosed corresponding structure in the written description of the ’028 patent that corresponds to the recited function of the “user release mechanism,” as well as equivalent structures. *See* Pet., 34–36. Contrary to Petitioner’s assertion, the “structures in Kiyota that [allegedly] perform the claimed user release mechanism function” are not equivalent to the corresponding structure in the ’028 patent. Pet., 37; Ex.2001, ¶¶88, 92. *See generally*

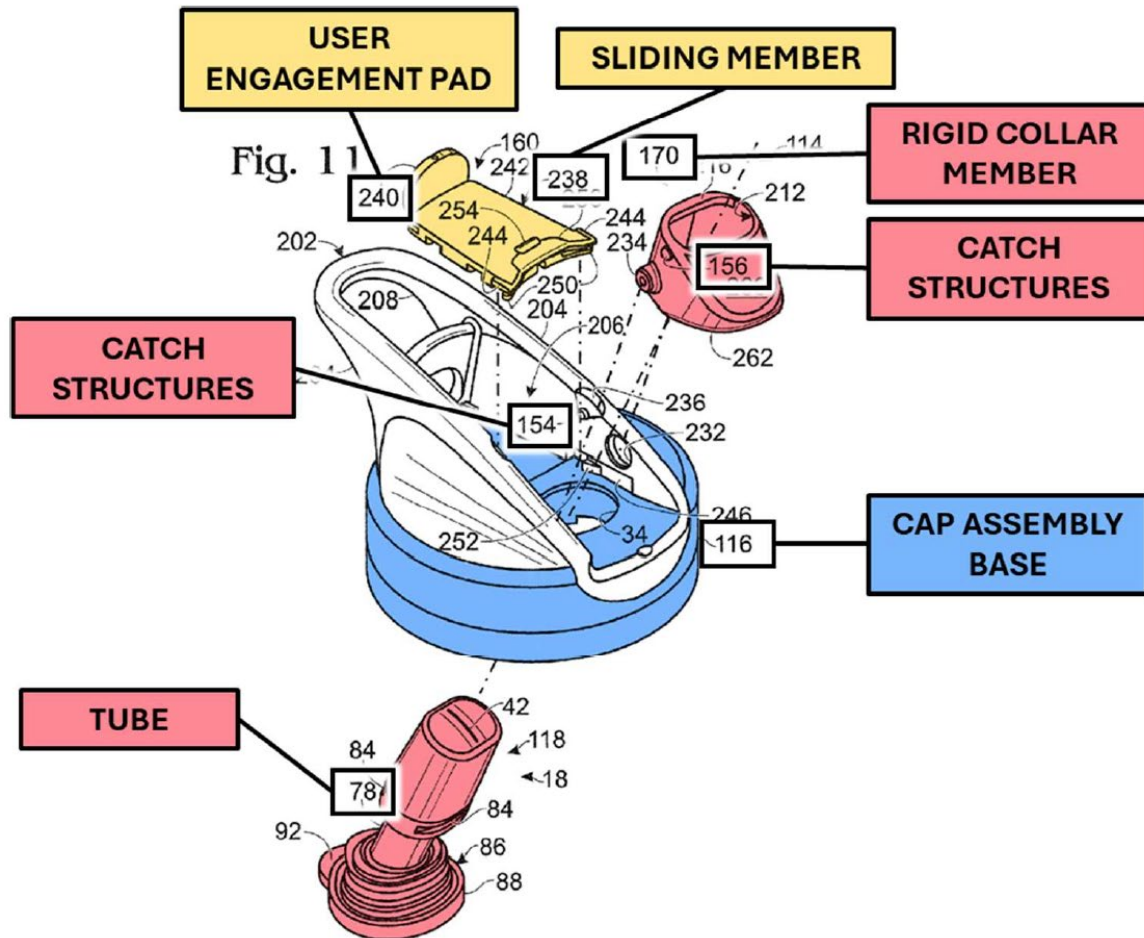
Ex.2001 ¶¶87–103. Petitioner must show that Kiyota discloses structures that perform “the identical function, in substantially the same way, with substantially the same result” as the corresponding structure from the ’028 patent. *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1364 (Fed. Cir. 2000). And Petitioner fails to identify evidence capable of supporting that conclusion, much less establishing a reasonable likelihood of it being true.

For its Kiyota-based arguments, Petitioner relies on the alleged “first embodiment” of the user release mechanism in the ’028 patent as the corresponding structure. *Id.* (claim 1); *see id.*, 52–54 (incorporating claim 1 arguments for claim 21). Specifically, Petitioner describes the user release mechanism of this embodiment as “sliding member 238 (and its compoent [sic] parts),” including “user engagement pad 240.” *Id.*, 34–35. Petitioner describes the operation of this corresponding structure as follows:

Activating the user release mechanism by pressing user engagement pad 240 forces the sliding member 238 between base 116 and rigid collar member 170, pressing the collar upwards with enough force to disengage catch structures 154 and 156. With the catch structures disengaged, the mouthpiece pivots into its dispensing

configuration due to the bias created by the bend in tube
78.

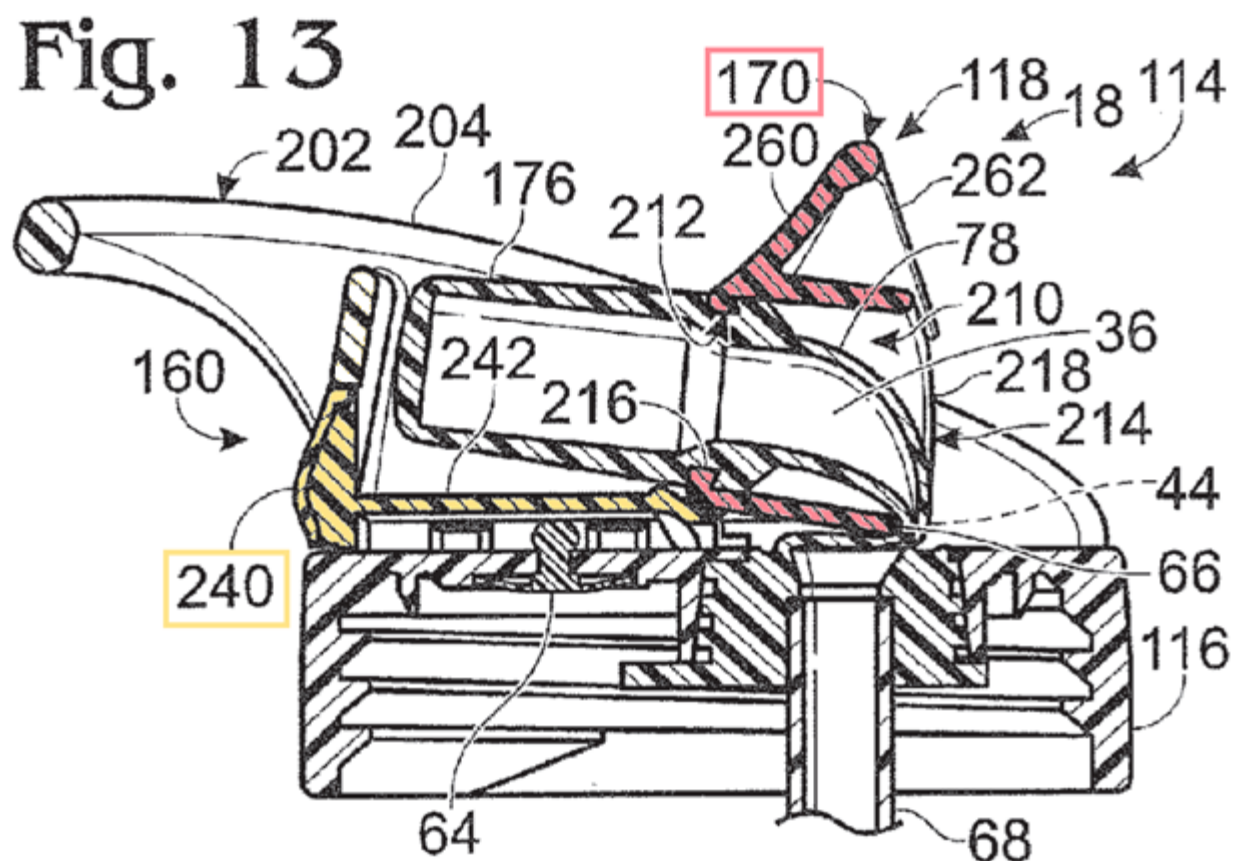
Id. (internal citations omitted) (citing Ex.1001, 12:50–13:33). Petitioner uses annotations to Figure 11 from the '028 patent to illustrate this:



Id., 35.

The following annotations to Figure 13 further illustrate how the sliding member structure interacts with the rigid collar member 170 to disengage the catch

structures 156 from the catch structures 154. (Annotations colored to correspond with Petitioner's annotations.)

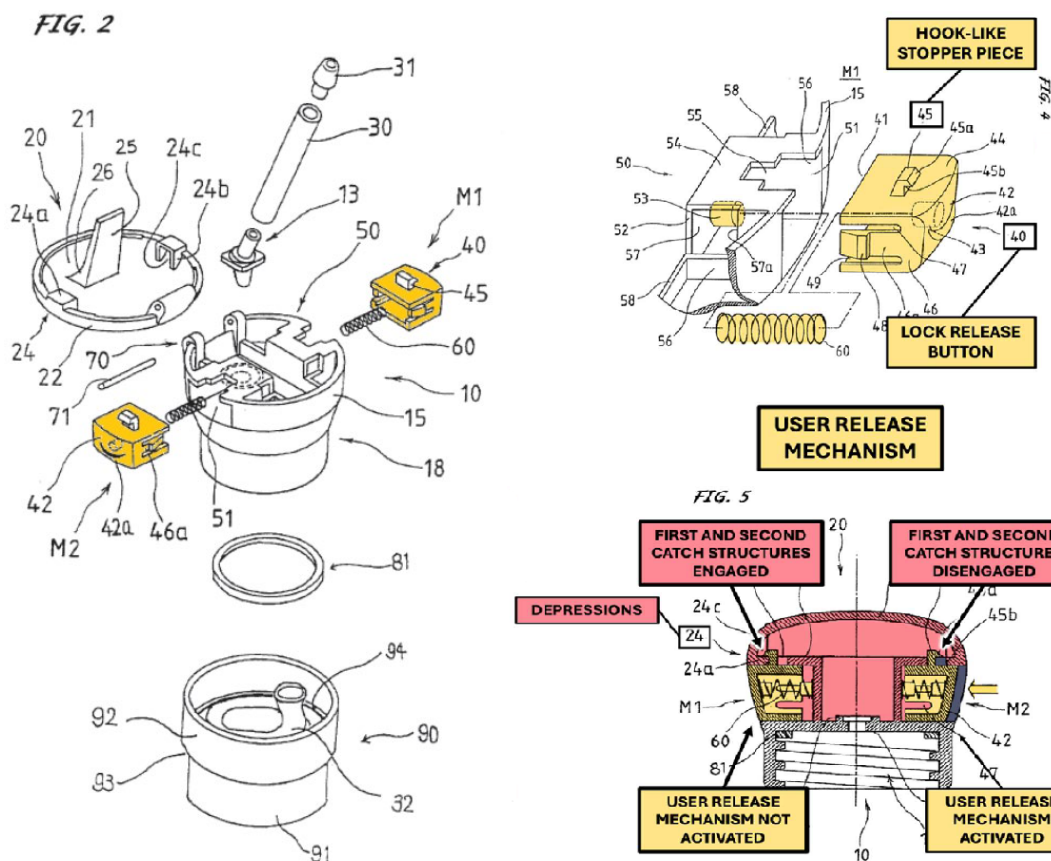


Ex.2001, ¶91 (annotating Ex.1001, Fig. 13 and discussing related specification text).

Petitioner fails to show that Kiyota discloses an equivalent structure to the sliding member 238 of the '028 patent, as Petitioner contends. Pet., 37–38. Petitioner merely asserts, in conclusory fashion, that the structures in Kiyota and the '028 patent “perform the claimed function in the same way to achieve the same result,”

citing the identical language from Dr. Vallee’s declaration. *Id.*, 37 (citing Ex.1003 ¶89). But Dr. Vallee, which is equally conclusory, fails to add any analysis or discussion of the two structures beyond what appears in the Petition itself. *Compare id.*, 37–38 with Ex.1003 ¶89. Petitioner only alleges one similarity between “how” both structures operate—that they both involve pushing and sliding—and neither Petitioner nor its declarant explain why this alleged similarity demonstrates that Kiyota’s structure functions in “substantially the same way” to achieve “substantially the same result” as the sliding member 238 in the ’028 patent. *See* Pet., 37–38; Ex.1003 ¶89.

Petitioner ignores differences that are apparent even from its own summaries of the ’028 patent and Kiyota. For example, the ’028 patent describes a single sliding member that performs the recited function by lifting another portion of the mouthpiece assembly—rigid collar 170—which disengages the catch structures. *See* Pet., 34–35; Ex.1001, 12:54–65, 13:15–25; Ex.2001, ¶92. In contrast, Kiyota discloses two “lock release buttons 40, 40” that must be “simultaneously depressed,” which disengages the alleged catch structures integral to each lock release button (“stopper pieces 45, 45”) from depressions 24c, 24c. Ex.1004, 8:65–9:7; *see* Pet., 36; Ex.2001, ¶93. Kiyota’s structures are illustrated by the annotations below.



Ex.2001, ¶94 (left); Pet., 37 (right); see Ex.1004, Figs. 2, 4, 5.

Thus, releasing the alleged mouthpiece in Kiyota requires a user to press simultaneously on two distinct, opposing buttons (40) on the sides of the cap assembly where the '028 patent describes a user only engaging a single sliding member 238 on the top of the cap assembly. Ex.1001, 12:56–65, 13:15–25; Ex.1004, 8:65–9:7; Ex.2001, ¶95. Further, Kiyota's structure also teaches the alleged catch structures being integral with the lock release buttons, while the '028 patent instead

describes a sliding member that forces movement of another component where the catch structures are located. Ex.1001, 13:15–25; Ex.1004, 6:28–35; Ex.2001, ¶96.

The presence of at least these differences demonstrate that Kiyota's lock release buttons 40 do not operate in substantially the same way nor achieve substantially the same result as the sliding member 238 of the user release mechanism in the '028 patent. *See* Ex.2001, ¶97. As explained by Patent Owner's expert, "two buttons that must be simultaneously actuated and that directly disengage catch structures, as in Kiyota, do not work in substantially the same way nor achieve substantially the same result as a single actuator that indirectly disengages catch structures, as in the '028 patent." *Id.*

These differences would not have been insubstantial for many reasons. *Id.* ¶98. A POSITA would have appreciated that the '028 patent's sliding member 238 would have been advantageous over Kiyota's two buttons 40, because the sliding member would only require one point of contact, and thus only one finger, while Kiyota's buttons would require two points of contact, and thus at least two fingers. *Id.* The '028 patent's structure would have also been superior through its use of sliding member 238, which is positioned on top of the bottle near the handle, rather than Kiyota's structure, which requires buttons on the sides of the bottle where the

user may be attempting to grip the bottle—posing a risk that the user might inadvertently depress the buttons with their grip and thereby unintentionally open the spout. *Id.* ¶99. Further, the '028 patent's sliding member 238 requires more forceful pressure from a user's finger because the mechanism has to indirectly dislodge the mouthpiece and collar from the catch structures on the cap assembly base using an intermediary structure, the rigid collar member 170. *Id.* ¶100. This contrasts with Kiyota's use of buttons that only require a quick instantaneous vertical in-and-out motion of a user's finger (which could result from merely gripping the bottle) because the catch structure is a small, integral hook on the button itself that is directly disengaged. *Id.* As a consequence, the '028 patent's mechanism better prevents inadvertent openings in a superior way, as compared to Kiyota's structure in light of its indirect, rather than direct, disengagement of the catches. *See id.* ¶¶98–100.

Therefore, the differences between the “way” Kiyota's buttons operate and the '028 patent's sliding member 238 operates, and the differences in the “result” achieved by Kiyota's buttons and the '028 patent's sliding member 238 are far from insubstantial. *Id.* ¶101. Instead, these are important differences in how the two structures operate and the results they achieve that render the design of the '028

patent's user release mechanism far superior in providing a better ease of use (one finger instead of two) while at the same time better protecting against the risk of inadvertent actuation and thereby inadvertent opening. *Id.* By failing to account for these important differences between the “way” Kiyota's buttons 40 operate and the “result” they achieve and the “way” the '028 patent's sliding member 238 operates and the “result” it achieves, Petitioner has failed to meet its burden of demonstrating a reasonable likelihood that the two operate in “substantially the same way” to achieve “substantially the same result.” *See id.* ¶102.

The Petition was required to address these differences and explain why they are not substantial. The Board's governing regulations require that a petition identify (i) how each “challenged claim is to be construed” (which includes identifying corresponding structure for means-plus-function elements), (ii) “[h]ow the construed claim is unpatentable,” and (iii) “specific portions of the evidence that support the challenge.” 37 C.F.R. § 42.104(b)(3)–(5). By failing even to address the differences between the identified corresponding structure in the '028 patent and the disclosure of Kiyota, including their “way” and their “results,” which are both required to satisfy the tripartite test for § 112(f) “equivalents,” Petitioner fails to satisfy its

fundamental obligation to explain the challenge on which its Petition is based or to even state a *prima facie* case of alleged unpatentability.

Moreover, Dr. Vallee’s conclusory declaration, which simply concludes the “way” and “results” prongs are satisfied, without more, is legally insufficient to support a conclusion of unpatentability. *See* 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”); *see also TQ Delta, LLC v. CISCO Sys., Inc.*, 942 F.3d 1352, 1358–63 (Fed. Cir. 2019) (“Conclusory expert testimony does not qualify as substantial evidence.”); *DSS Tech. Mgmt., Inc. v. Apple Inc.*, 885 F.3d 1367, 1376 (Fed. Cir. 2018) (reversing obviousness determination that was based on conclusory expert testimony).

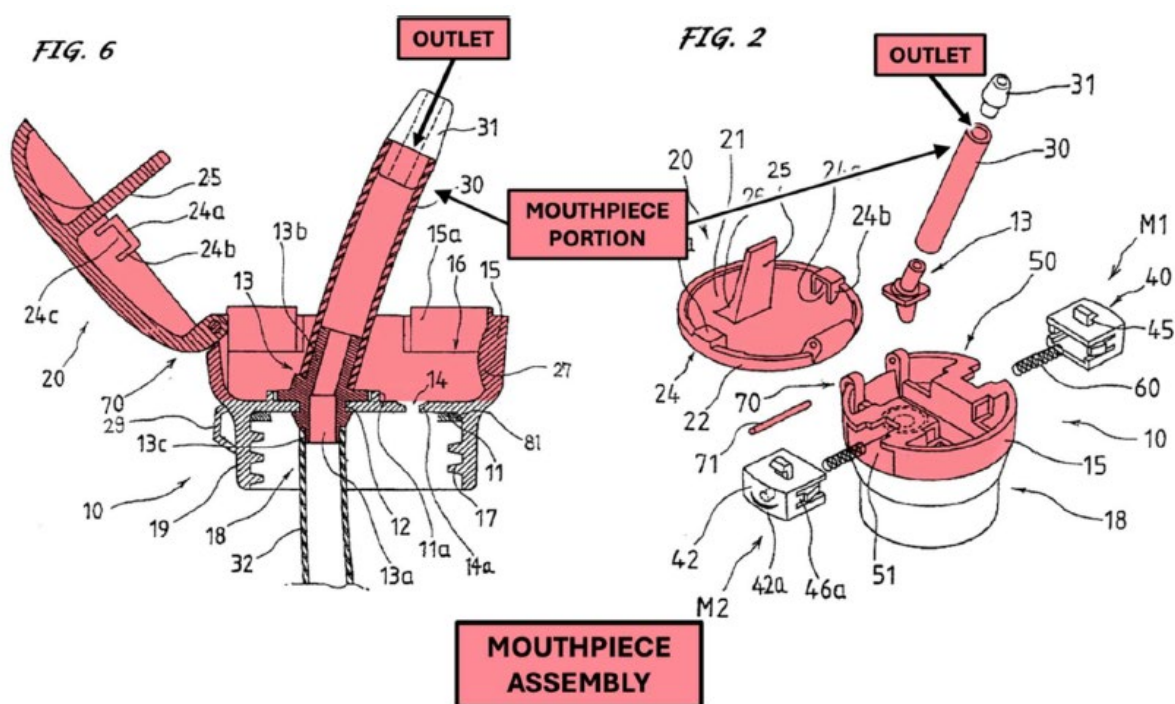
Petitioner does not assert an alternative obviousness theory for the “user release mechanism,” but rather relies entirely on Kiyota disclosing this element (and all the other elements of claim 1, too). *See* Pet., 38 (“Because Kiyota discloses each element of claim 1, the claimed invention would have been obvious in view of Kiyota.”); *see also id.*, 34–38. Petitioner’s failure to show that Kiyota discloses the “user release mechanism” is therefore fatal, notwithstanding Petitioner identifying § 103 as the statutory ground for the challenge.

For claim 21, Petitioner relies on and attempts to incorporate its arguments for the corresponding elements of claim 1. *See* Pet., 53 (“Kiyota renders claim 21 obvious for the same reasons addressed above.”). Petitioner fails to make any specific incorporation arguments directed to the “user release mechanism” element of claim 21. Petitioner identifies this element of claim 21 with reference number “1[B][3] [sic],” *id.*, but never uses a reference number for a “[B][3]” limitation in claim 21 in its table indicating correlations between claims. *See id.*, 54 (going from “21[B][2][c]” to “21[C]”). Regardless, Petitioner failed to prove Kiyota discloses the “user release mechanism” element of claim 1, and its reliance on the same argument for claim 21 should fail for the same reasons. In particular, and as explained above, Petitioner fails to show by a reasonable likelihood that Kiyota’s lock release buttons 40 operate in substantially the same way to achieve substantially the same results as the sliding member 238 of the ’028 patent, for the reasons discussed above, and as such, Petitioner has, therefore failed to show there is a reasonable likelihood they are “equivalent” under § 112(f). Ex.2001, ¶103.

2. Petitioner Fails to Show Kiyota Discloses a “Mouthpiece Portion” Meeting All the Limitations of Claims 1 and 21

Petitioner fails to show that Kiyota discloses or renders obvious all the limitations of the “mouthpiece portion” of claims 1 and 21. Claim 1 recites “a mouthpiece portion that includes the outlet.” Ex.1001, 21:48. The referenced “outlet” is “an outlet through which drink liquid from the internal compartment of the liquid container is selectively dispensed.” *Id.*, 21:35–38. Claim 1 further recites that “the mouthpiece portion and the tube are constructed as a unitary assembly of [a] resiliently deformable material.” *Id.*, 21:56–58.

Petitioner fails to show that Kiyota’s “mouthpiece tube 30” constitutes a “mouthpiece portion,” nor that it “includes the outlet,” which is the “outlet through which drink liquid from the internal compartment of the liquid container is selectively dispensed.” *See* Pet., 29. As evident from Petitioner’s own annotations to Figures 2 and 6 of Kiyota (reproduced below), the “mouthpiece tube 30” (highlighted pink) is not where a user puts his or her mouth to draw liquid from the container (*see supra* § V.B), nor does it “include[] the outlet” “through which drink liquid . . . is selectively dispensed,” as required for the claimed “mouthpiece portion” and its “include[d]” “outlet” of the claim. Ex.2001, ¶105.



Pet., 29 (citing Ex.1004, Figs. 2, 6). This is because the component labeled “31,” which Kiyota itself calls the “*mouthpiece portion 31*” (i.e., using terminology identical to the “mouthpiece portion” claimed in the ’028 patent) that “can easily be taken in the mouth” is coupled to the end of the mouthpiece tube 30 and serves as the outlet through which drink liquid is dispensed and the portion on which the user places their mouth. Ex.1004, 9:18–24, Fig. 2, Fig. 6. As evident from the figures, a POSITA would have understood that the outlet from which drink liquid is dispensed and the portion the user places their mouth on is the end of Kiyota’s “mouthpiece portion 31,” not the end of the “mouthpiece tube 30.” Ex.2001, ¶106. Thus the

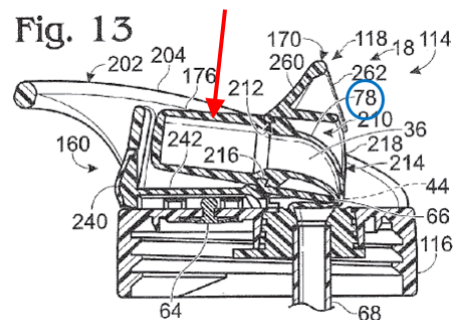
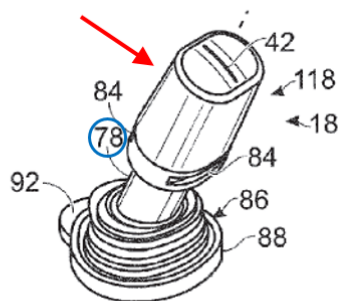
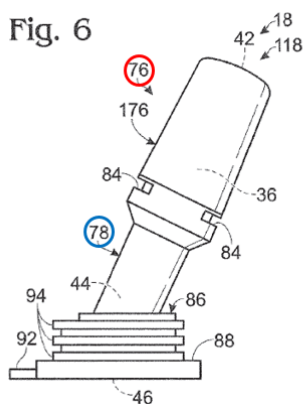
“outlet through which drink liquid . . . is selectively dispensed” that is “include[d]” in the “mouthpiece portion” (as recited in the claims) is the outlet at the end of the “mouthpiece portion 31” where drink liquid is dispensed, and there is no such outlet from which drink liquid is dispensed in “mouthpiece tube 30,” because mouthpiece tube 30 merely transports liquid on its way to the “mouthpiece portion 31” and does not provide the exit from which drink liquid is dispensed. Ex.2001, ¶107.

However, Kiyota’s “mouthpiece portion 31” does not meet the limitations requiring that the claimed “mouthpiece portion” of claims 1 and 21 be “constructed as a unitary assembly” with the claimed “tube” (i.e., “mouthpiece tube 30”) and be made from a “resiliently deformable material.” Ex.2001, ¶108; Ex.1001, 21:56–58, 26:37–39. Rather, Kiyota states that “the mouthpiece portion 31 consist[s] of comparatively hard synthetic resin material [and] is inserted into the end of the mouthpiece tube 30.” Ex.1004, 9:18-24. Kiyota, therefore, discloses constructing a non-unitary assembly from “mouthpiece portion 31” and “mouthpiece tube 30.” Ex.2001, ¶109. It further discloses that the “mouthpiece portion 31” be made from a “hard resin” that would, thus, not be understood by a POSITA to be “resiliently deformable material” (claim 1) or a “resilient mouthpiece portion” (claim 21). Ex.2001, ¶110.

Petitioner cannot exclude Kiyota’s “mouthpiece portion 31” from consideration, as it attempts to do in a footnote, by characterizing the “mouthpiece portion 31” as “optional.” Pet., 29 n.3 (citing Ex.1004, 5:44–46). Kiyota describes “mouthpiece portion 31” as a component of the disclosed embodiment—one that can be inserted and, presumably, removed—but never describes it as optional. *See* Ex.1004, 9:17–19; Ex.2001, ¶111. Further, removing the hard resin “mouthpiece portion 31” as a component from the alleged “mouthpiece assembly” cannot transform the “mouthpiece tube 30” into constituting both the claimed “tube” and claimed “mouthpiece portion.” Ex.2001, ¶112. Nor does Petitioner offer any explanation or evidence as to how this one uniform mouthpiece tube 30 could constitute both elements. *See* Pet., 28–29.

Further, to the extent Petitioner is relying on the “end of mouthpiece tube 30” having an arbitrary boundary which is indistinguishable from the rest of mouthpiece tube 30 as being the claimed “mouthpiece portion” (Pet., 29) and relying on the “mouthpiece tube 30” as being the claimed “tube,” this would be contrary to and not satisfy the plain claim language of claims 1 and 21, and it would also improperly render one of either the “tube” or the “mouthpiece portion” entirely superfluous within these claims, for the reasons explained below.

First, the plain claim language of claim 1 requires “a tube that defines at least a portion of the liquid passage for drink liquid to flow from the internal compartment *to the mouthpiece portion.*” Thus, the claimed mouthpiece portion must be a destination “*to*” which drink liquid can flow from the tube, demonstrating that the mouthpiece portion must, at a minimum, be an identifiable destination that is somehow distinguishable from the tube itself—even though the mouthpiece portion and the tube “are constructed as a unitary assembly of [] resiliently deformable material” in claim 1. Similarly, claim 21 recites “a resilient tube *connected to* the mouthpiece portion,” which also demonstrates that the mouthpiece portion must, at a minimum, be distinguishable from the tube in order for it to be able to be “connected to” the tube. The specification is consistent with the fact that the mouthpiece portion is distinguishable from the tube: As shown believe, its figures depict the mouthpiece portion (red) as being distinguishable from the tube (blue) and it describes that the mouthpiece portion can, for example, have “a greater exterior perimeter than the tube,” as also shown below. Ex.1001, at 10:59-61 (“As illustrated, the mouthpiece portion has a greater exterior perimeter than the tube . . .”), Fig. 6; *see* Ex.2001 ¶113.



Ex.1001, at Figs. 6, 11, & 13 (annotated and excerpted). Thus, the claimed “mouthpiece portion” and claimed “tube” must be somehow distinguishable from each other as distinguishable elements in order to be consistent with the claim language and specification.

Second, Petitioner’s attempt to contend that the same or overlapping portions of mouthpiece tube 30 that are indistinguishable from each other are both the claimed “tube” and “mouthpiece portion,” then this would improperly render one of these two claimed elements superfluous of the other. *See Wasica Fin. GmbH v. Cont’l Auto. Sys.*, 853 F.3d 1272, 1288 n.10 (Fed. Cir. 2017) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”) (citing *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950-51 (Fed. Cir. 2006) (refusing to construe claim terms in a way that made other limitations meaningless)); *see also Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 29 (1997)

(“Each element contained in a patent claim is deemed material to defining the scope of the patented invention[.]”). This mapping, therefore, cannot be correct, and Petitioner has failed to show both a “mouthpiece portion” and a “tube” where the mouthpiece portion is at least somehow distinguishable from the rest of the tube.

Because Petitioner has failed to show that Kiyota discloses a “user release mechanism” and a “mouthpiece portion” meeting all the limitations of claims 1 and 21 (Ex.2001 ¶114), the Board should deny institution on all grounds based on Kiyota.

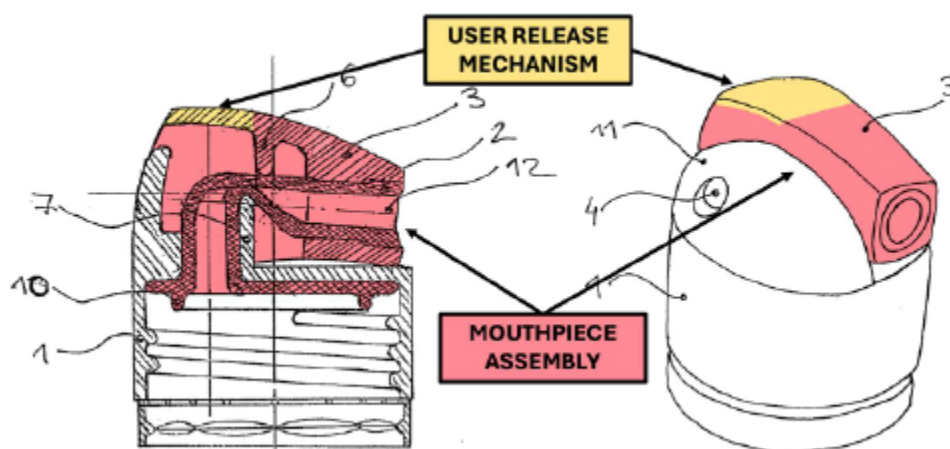
VII. GROUNDS 2, 3, AND 4 FAIL BECAUSE RIBARITS DOES NOT DISCLOSE THE CLAIMED “USER RELEASE MECHANISM” OR “MOUTHPIECE PORTION” OF CLAIMS 1 AND 21.

A. Petitioners fail to show that Ribarits discloses the “user release mechanism” of claim 1.

As discussed above, Petitioner and the district court have construed the “user release mechanism” as a means-plus-function term governed by § 112(f), and Patent Owner does not dispute this conclusion for purposes of this proceeding. *See supra* Sec. V.A. As also discussed above, Petitioner has relied on the corresponding structure for this term to include “the second embodiment” of the user release mechanism in the ’028 patent—which Petitioner contends is “user engagement

portion 260 on rigid collar member 170”—and Patent Owner does not dispute this corresponding structure for purposes of this proceeding. *See supra* Sec. V.A (citing Pet., at 35, 72). Petitioner relies on only this corresponding structure, i.e., “user engagement portion 260 on rigid collar member 170,” in contending that Ribarits discloses the claimed “user release mechanism.” *See supra* Sec. V.A (citing Pet., at 35, 72). Ex.2001, ¶116.

Specifically, Petitioner contends that an arbitrarily defined area (annotated in **tan**) on the top of Ribarits’s drinking spout 3 is a “lever arm that can be engaged by the user’s finger to open and close the spout” and that constitutes the claimed “user release mechanism” as shown below. Pet., 70-72. Ex.2001, ¶117.



Pet., 71 (citing Ex.1005, at Figs. 1 & 3 (annotated)); Ex.2001, ¶117. Petitioner does not contend that the alleged “lever arm” area on the drinking spout highlighted in **tan** is the same as the user engagement portion 260 of the rigid collar member 170 of the '028 patent, and instead argues that it is an “equivalent” under § 112(f). Pet., 70-72.

Petitioner, therefore, must show that the alleged “lever arm” area on the drinking spout highlighted in **tan** performs “the identical function, in substantially the same way, with substantially the same result” as the user engagement portion 260 of the rigid collar member 170 of the '028 patent to prove it is an “equivalent” under § 112(f). *See Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1364 (Fed. Cir. 2000). Petitioner has failed to meet *any* of the three required prongs for this test. Ex.2001, ¶118.

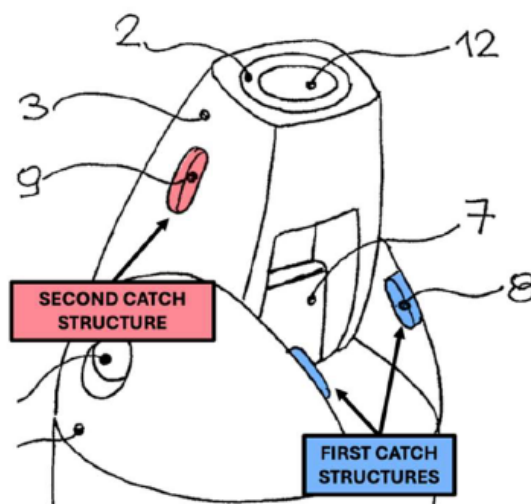
1. Petitioner fails to show that the alleged “lever arm” of Ribarits’s drinking spout performs the identical function as the claimed “user release mechanism” of claim 1.

As Patent Owner does not dispute for purposes of this proceeding, the recited function of the claimed “user release mechanism” of claim 1 is “to automatically disengage the first and second catch structures upon actuation of the user release mechanism and thereby release the mouthpiece assembly to move via its bias from

the stowed configuration to the dispensing configuration.” Pet., 70; Ex.2002, at 15-16. Petitioner fails to show that the alleged “lever arm” of the drinking spout of Ribarits performs this identical function. *See generally* Ex.2001, ¶¶119-40.

a) Petitioner fails to show that the alleged “lever arm” will “disengage the first and second catch structures upon actuation” as required by the recited function for the “user release mechanism” of claim 1.

Petitioner argues that this alleged lever arm “can be engaged by the user’s finger to open and close the spout” and that specifically, “[w]hen the drinking spout is in the stowed configuration, the user may apply a force to the drinking spout to facilitate disengagement of the snap-fit connection between the catch structures, i.e. the ‘knobs’ and ‘recesses.’” Pet., 70-71. Petitioner annotates these knobs **blue** and recesses **red** (i.e., the alleged “first and second catch structures”) below:

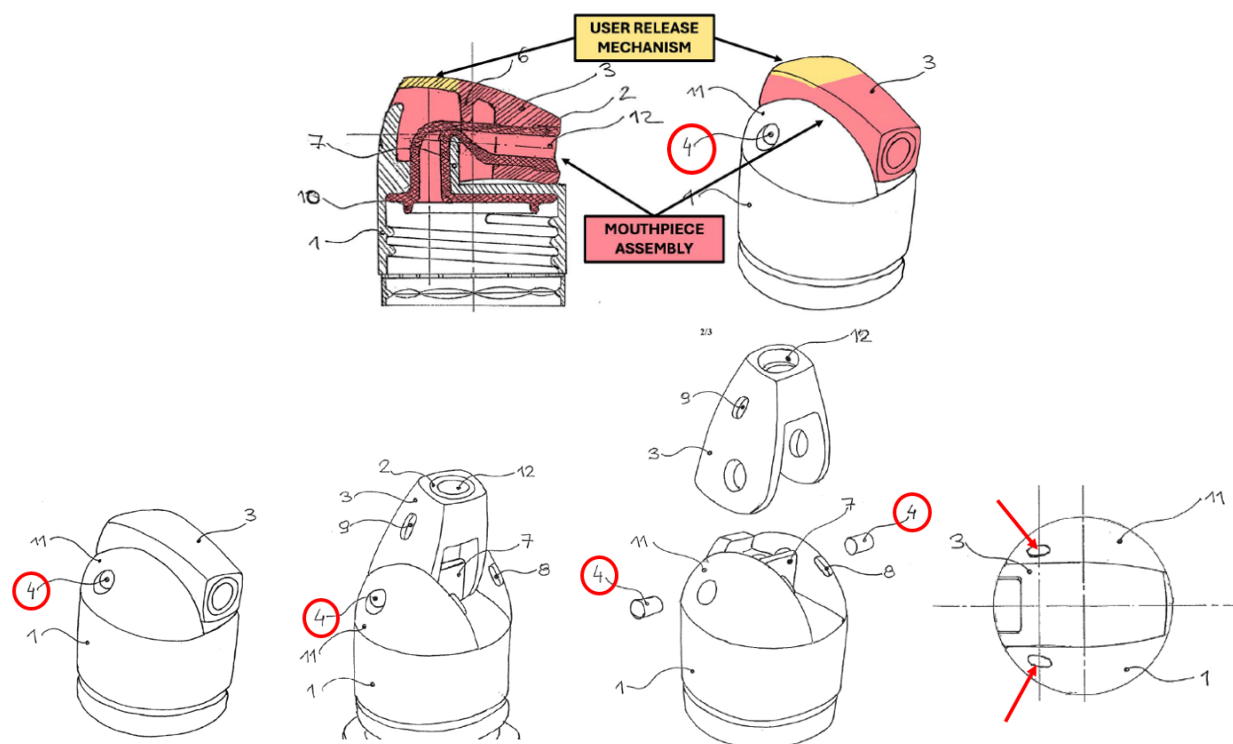


Pet., 69 (citing Ex.1005, at Fig. 1 (cropped and annotated)). Ex.2001, ¶120.

But Ribarits never separately labels or separately describes Petitioner’s alleged “lever arm” area of its drinking spout. *See* Ex.1005, at 1-5, Figs. 1-3; Ex.2001, ¶121. And, more importantly, Ribarits never discloses that a user may open the drink spout by pushing down on this alleged “lever arm” nor that the downward force applied by a user in the arbitrarily defined **tan** area would be sufficient to cause the recesses 9 to “disengage[]” from their “snap-fit connection” with the knobs 8, as alleged by Petitioner. Pet., 72; *see* Ex.1005, at 1-5, Figs. 1-3; Ex.2001, ¶121. Further, Petitioner’s reliance on its declarant, Dr. Vallee, fails no better, because he merely repeats the same conclusory assertion, unsupported by any disclosure in Ribarits or other evidence, that pressing on this alleged “lever arm” area location of Ribarits’s drinking spout would disengage the catch structures holding it closed. *See* Ex.1003, ¶189 (“[T]he above figure depicts what I have described as a ‘lever arm’ on the Ribarits drinking spout . . .”); *see also id.* at ¶191 (“Ribarits’s mechanism functions in substantially the same way: a user presses directly on the ‘drinking spout’ portion of the mouthpiece assembly, which causes the catch structures to disengage and move into the dispensing configuration.”); Ex.2001, ¶121.

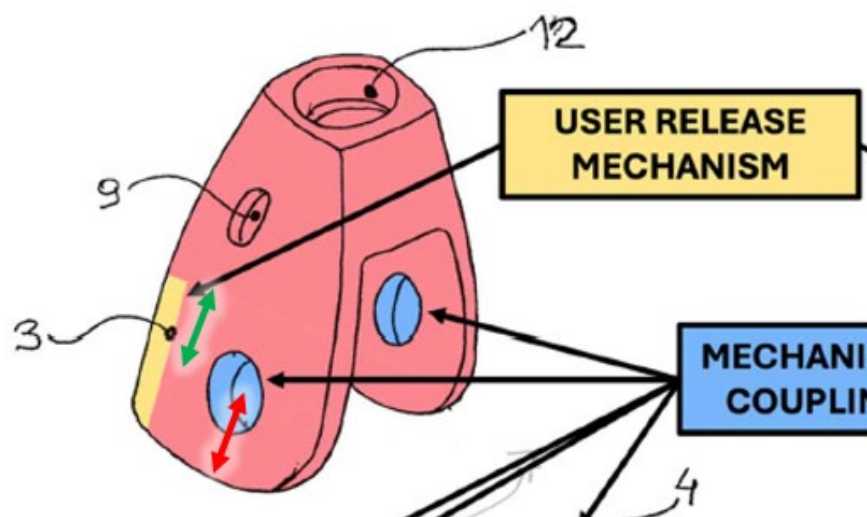
As Patent Owner's expert, Michael Jobin, explains, however, a POSITA reviewing Ribarits would have understood that it does not disclose whether a user is able to press down with their finger in the alleged "lever arm" area of Ribarits's drinking spout to cause recesses 9 to disengage from the knobs 8 and to cause the drinking spout to move from the stowed position to the dispensing position. Ex.2001, ¶122. Petitioner's theory that pressing the arbitrarily identified **tan** area Petitioner alleges is a "lever arm" is not only unsupported by any evidence, but it also contradicts fundamental principles of physics. *Id.* A POSITA would have known that applying force at a fulcrum point of a lever does not generate any torque and, as a result, does not generate any motion about the fulcrum point. *Id.* Similarly, applying force near a fulcrum point of a lever generates relatively less torque than applying force farther from the fulcrum point. *Id.* A POSITA, therefore, would have understood that Ribarits fails disclose whether its design is such that a user applying downward force in the **tan** area of the drinking spout that Petitioner alleges is a "lever arm" would have generated sufficient torque, much less any torque, to overcome the frictional forces from the snap-fit connection between the recesses 9 and knobs 8 of Ribarits. *Id.* This is demonstrated by the below annotated figures,

which label the axial pins 4 in **red** that serve as the fulcrum point about which Petitioner's alleged "lever arm" would operate. *Id.*



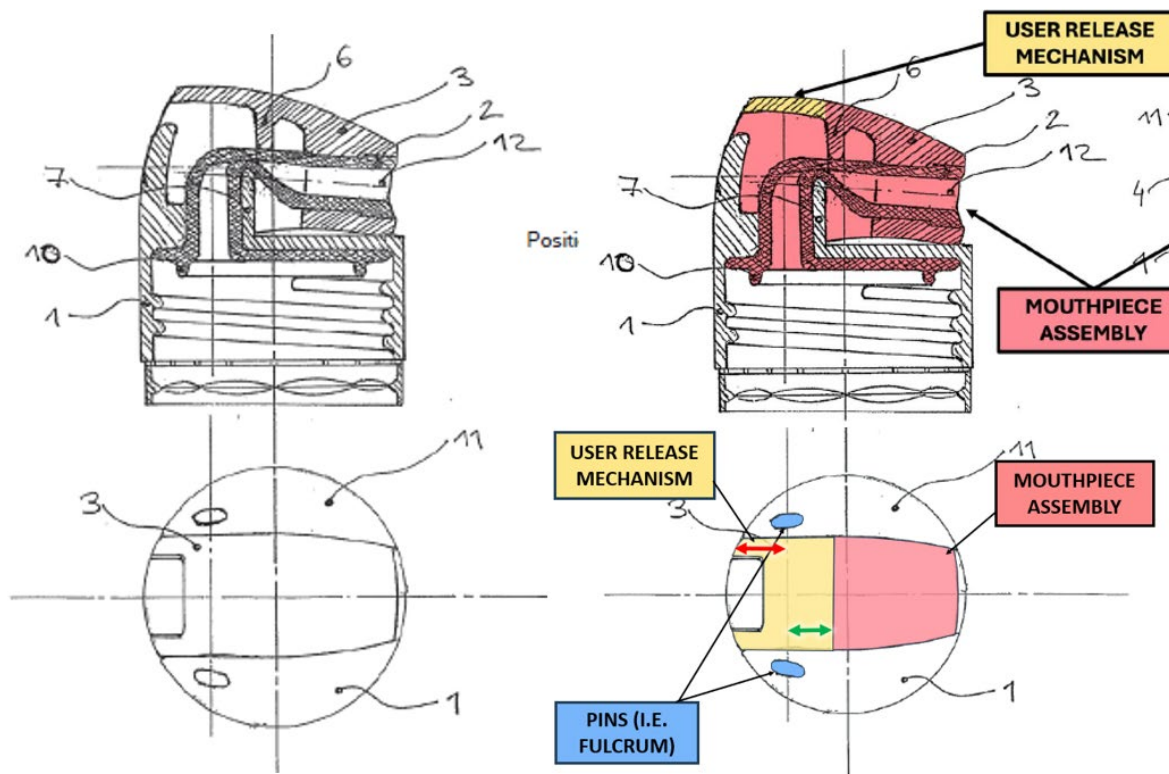
Pet., 71 (citing Figs. 1 & 3) (annotated); Fig. 1-2 (annotated and excerpted); Ex.2001, ¶122. As further shown below by Patent Owner's **red** annotation, the fulcrum point provided by the pins 4 are positioned very near the rear of the drink spout, demonstrating that any alleged lever arm portion within Petitioner's arbitrary alleged "user release mechanism" (**tan**) is extremely close (**red** arrows) to the

fulcrum point so as to be nearly on top of it and rendering any alleged lever arm virtually non-existent. Ex.2001, ¶123.



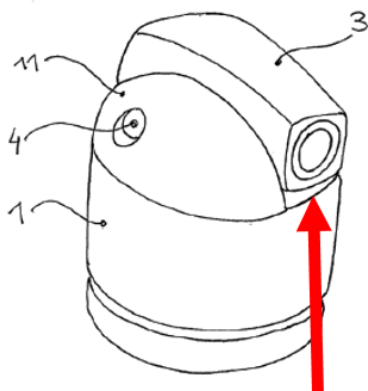
Pet., 73 (annotated by Patent Owner) (citing Ex.1005, Fig. 2 (annotated by Petitioner)). Indeed, as shown by Patent Owner’s **green** annotation above, Petitioner’s alleged “user release mechanism” (**tan**) extends *on top of and past* (**green** arrows) the fulcrum point created by the axial pins 4, such that force applied by the user in that region would be in the *wrong* direction and tend to keep the drinking spout *closed*, not *open* it. Ex.2001, ¶123. Further, the below diagram reveals just how small an area of Petitioner’s alleged “user release mechanism” extends to the left (**red**) of the fulcrum point in an overhead view and how much

area extends to the right (**green**). Ex.2001, ¶123. The below diagram shows an excerpt of Ribarits's Figure 3, which includes vertical lines aligning a cross-sectional view (top left) of the drinking spout with an overhead view (bottom left) of the drinking spout, alongside an annotated excerpt of Figure 3 containing Petitioner's annotated cross-sectional view (top right) of its "user release mechanism" (**tan**) aligned by the vertical lines with the overhead view, as annotated by Patent Owner to align with Petitioner's annotation to show the position of this alleged "user release mechanism" in the overhead view:

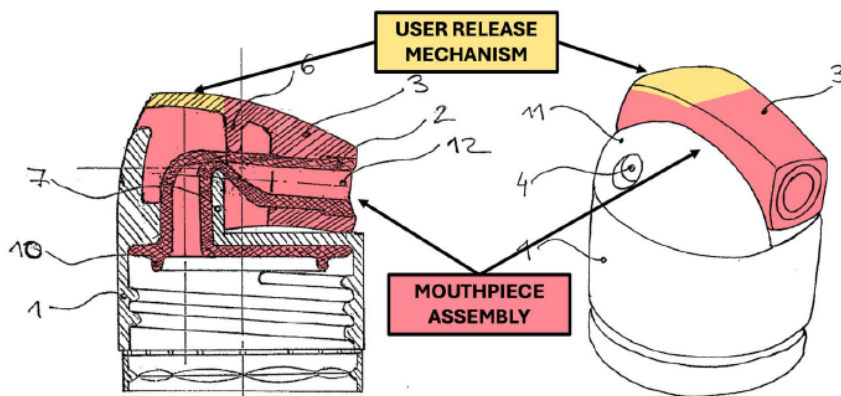


Id. (citing Ex.1005, Fig. 3 (left); Pet., 71 (citing Fig. 3 (annotated by Petitioner)) (top right); Ex. 1005, Fig. 3 (annotated by Patent Owner) (bottom right). Given the very small area where the user could potentially place their finger to attempt to create any lever arm at all within Petitioner’s alleged “user release mechanism” area and its extremely close proximity to the fulcrum point defined by the pins 4, a POSITA would not have understood Ribarits to either expressly or inherently disclose that this alleged “lever arm” would have allowed a user to generate sufficient torque to overcome the frictional force from the snap-fit connection between the recesses 9 and knobs 8 (i.e., the alleged catch structures), especially given that Ribarits provides no description that this is possible, no description of how much frictional force holds this snap-fit connection in place, and no description of whether it is possible to create a lever arm or how much torque it would generate. Ex.2001, ¶123.

Indeed, from the perspective of a POSITA, it would have been highly unusual and awkward for a user to attempt to open Ribarits’s drinking spout using Petitioner’s alleged lever arm, because it would have been far easier and far more natural for them to instead grip and then lift upward with their finger the drinking spout’s front, outlet portion from which liquid is dispensed, as shown below. *Id.* at ¶124.



Ex.1005, Fig. 1 (annotated); Ex.2001, ¶124. Petitioner’s declarant, Dr. Vallee, acknowledges that this front, outlet portion of the spout can be used to open it. Ex.1005, ¶189 (“[T]he user can engage the lower edge of the outlet portion of the drinking spout to lift the spout, and thereby automatically disengage the ‘knobs’ from the ‘recesses.’”). The Petitioner, of course, however, does not contend that this front, outlet portion of the drink spout is a “user release mechanism.” Ex.2001, ¶124.



Pet., 71.

Finally, while Petitioner and Dr. Vallee appear to suggest that their alleged “lever arm” accomplishes Ribarits’s desired objective of allowing a user to open and close the drinking spout with “one hand,” Pet., 70 (citing Ex.1005, at 2); Ex.1003, ¶189, there is no evidence whatsoever demonstrating a user could hold the bottle with hand and also somehow use one or more fingers to apply a downward force to Petitioner’s alleged “lever arm” sufficient to overcome the frictional force of the snap-fit connection between the recesses 9 and knobs 8 disengage them—this is so for the same reasons discussed immediately above regarding the miniscule and virtually non-existent alleged lever arm that would have made it extremely difficult, if not impossible, for the user to attempt to apply pressure with one or more fingers in that precise location while also holding the bottle with the same hand. Ex.2001, ¶125. On the other hand, using the front, outlet portion of the spout where liquid is dispensed would readily facilitate Ribarits’s objective of allowing the spout to be opened and closed with one hand, because the user could grip the bottle in their palm and easily use their thumb or another finger to raise the spout upward to open it. Ex.2001, ¶126.

Petitioner, therefore, has failed to show a reasonable likelihood that its alleged “user release mechanism,” i.e., its arbitrarily defined and unlabeled **tan** area of the drinking spout, will perform the identical portion of the claimed function of “disengag[ing] the first and second catch structures upon actuation of the user release mechanism.” Ex.2001, ¶127.

b) Petitioner fails to show that the alleged “lever arm” will “*automatically*” disengage the first and second catch structures upon actuation of the user release mechanism “*and thereby release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration,*” as required by the recited function of the “user release mechanism” in claim 1.

In addition to disengaging the first and second catch structures upon actuation, the claimed user release mechanism must do so “*automatically*” and must “*thereby release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration.*” Petitioner also fails to show that the alleged **tan** “lever arm” area of Ribarits’s drinking spout performs these additional aspects of the recited function, too. *See generally* Ex.2001, ¶¶128-40.

Petitioner contends that this portion of the recited function is satisfied because it alleges that: i) the flexible tube within the drinking spout is “inherently biased toward the dispensing configuration” and thus “wants to revert to its open position”

“when in the collapsed, stowed position” because it “is comprised of an elastic ‘rubber or latex’ material, and ii) this alleged “inherent bias further facilitates the automatic disengagement of the first and second catch structures (i.e. the ‘knobs’ and ‘recesses’) and causes the mouthpiece assembly to move from the stowed configuration to the dispensing configuration in conjunction with the movement of the lever arm.” Pet., at 71. This argument is riddled with logical fallacies. Ex.2001, ¶129.

First, the first (i) prong of Petitioner’s argument regarding the presence of a “bias” in the tube of Ribarits is incorrect. *Id.* at ¶130.

Ribarits does not expressly describe or depict in its figures that any bias is present in its tube element 2 that would cause the drinking spout to want to revert from the stowed position to the open position. *Id.* at ¶131. And Petitioner does not contend that such a bias is expressly disclosed. *See* Pet., 71. Instead, Petitioner argues that such a bias is “inherent” in Ribarits’s tube element 2, because it is comprised of elastic rubber or latex material. *Id.* Not so.

To meet the “high standard” required to establish inherency, Petitioner must show that this bias toward the dispensing configuration is “necessarily present” in the tube of Ribarits. *See Schering Corp. v. Geneva Pharms., Inc.*, 339 F.3d 1373,

1377 (Fed. Cir. 2003) (“[A] prior art reference may anticipate without disclosing a feature of the claimed invention if that missing characteristic is necessarily present, or inherent, in the single anticipating reference.”); *see also Par Pharm., Inc. v. TWi Pharms., Inc.*, 773 F.3d 1186, 1195-96 (Fed. Cir. 2014) (“A party must, therefore, meet a high standard in order to rely on inherency to establish the existence of a claim limitation in the prior art in an obviousness analysis—the limitation at issue necessarily must be present, or the natural result of the combination of elements explicitly disclosed by the prior art.”). “[M]ere possibility is not enough.” *PersonalWeb Techs., LLC v. Apple, Inc.*, 917 F.3d 1376, 1382 (Fed. Cir. 2019); Ex.2001, ¶132.

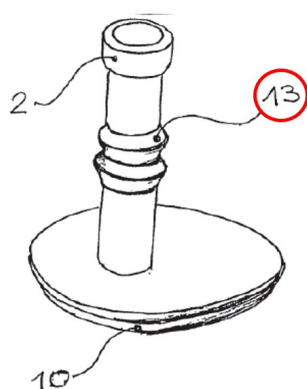
Petitioner fails to establish that the claimed bias is inherent in Ribarits. Ex.2001, ¶133.

As noted, the only support Petitioner relies on to attempt to show that Ribarits’s tube would inherently bias its drinking spout from a stowed configuration to a dispensing configuration is that the tube is “flexible” and “comprised of an elastic ‘rubber or latex material.’” Pet., 71 (citing Ex.1003, ¶190). But this fails to show such a bias is necessarily present, rather than just a mere possibility. Ex.2001, ¶134.

The term “flexible” merely establishes that Ribarits’s tube can flex or bend without breaking and does not necessarily establish that Ribarits’s tube will have a bias that tends to return the tube to its original open position from the stowed position. Ex.2001, ¶135; Ex.2007, at 2. To have such a bias, however, the tube, in addition to being flexible, would also need to have sufficient stiffness or inelasticity such that it would not remain in a bent or flexed position and would instead tend to return to its original open position. Ex.2001, ¶135. And, as such, a tube like that in Ribarits could bend or flex in a manner such that it remains in that position without having a bias causing it to return to its original position. *Id.* at ¶135. A POSITA would have had this understanding, because, as Mr. Jobin shows with a simple demonstrative showing a common flexible/bendable drink straw, a flexible tube used for drinking can flex or bend and not have a bias causing it to return to its original straight position:



Id. Indeed, Ribarits discloses a similar crimped portion of its tube that allows its tube to bend or flex when it describes its “bellow-shaped formation (13)” shown below. Ex.1005, at claim 3, Fig. 3; Ex.2001, ¶135.



Ex.1005, Fig. 2 (annotated). A POSITA would have understood that this crimping in the tube in Ribarits tends to allow the tube to flex or bend so that it may be moved by the user between the open and closed configurations by effectively reducing the stiffness of the tube. Ex.2001, ¶135. Thus, a POSITA would have also understood that this reduction in stiffness caused by the crimping could result in the tube having no bias toward its straightened, open position such that the tube stays in a bent, closed position unless and until the user moves it back to its straightened, open position, like the drinking straw example shown above. *Id.* Therefore, the “flexible” nature of Ribarits’s tube does not establish that any bias to the open configuration is necessarily present. *Id.*

In addition, the fact that Ribarits’s tube can be comprised of “rubber or latex material,” Pet., 71 (citing Ex.1003, ¶190), or of “plastic” also, of course, does not establish that any bias toward the open, dispensing configuration is present. Ex.1005, 2 (“a sealed tubular element of rubber or latex”); *id.* at 3 (“sealed tubular element (2) is made of rubber or of plastics”); Ex.2001, ¶136. A POSITA would have understood, that not all tubes made of rubber, latex, or plastic like that in Ribarits would have the properties necessary to create such a bias, because it will depend on the mechanical properties of the specific material used, including factors

such as its thickness, its stiffness, its elasticity, and the nature of any crimping used, such as the crimping in the bellows-shaped region 13 of Ribarits shown above. Ex.2001, ¶136. And a POSITA would have understood that there were a wide variety of rubbers, latexes, and plastics available having a wide range of thicknesses, stiffnesses, and elasticities, ranging from very soft and elastic materials to very hard and inelastic materials, for example. *Id.* (citing Ex.2009 (describing different types of rubbers and their various properties; Ex.2011 (describing common plastic types and their various properties)). A POSITA, therefore, would have understood that Ribarits's discloses used of flexible rubber, latex, or elastic would not have necessarily created a bias toward the open, dispensing configuration in Ribarits, contrary to the Petition's speculation. *Id.*

The claimed bias, therefore, is neither expressly nor inherently present in the tube of Ribarits. *Id.* at ¶137.

Second, the second (ii) prong of Petitioner's flawed chain of logic regarding this alleged inherent bias "facilitate[ing] the automatic disengagement of the first and second catch structures (i.e. the 'knobs' and 'recesses') and caus[ing] the mouthpiece assembly to move from the stowed configuration to the dispensing configuration in conjunction with the movement of the lever arm" is also incorrect.

Id. at ¶138. As an initial matter, given that Petitioner has failed to credibly show that any bias is present, as explained above, then Petitioner has certainly not also shown that any such bias in the tube of Ribarits is sufficiently strong to both: i) “*automatic[ally] disengage[]*” the recesses 9 from the knobs 8 and ii) also cause the mouthpiece assembly “to move via” any “bias” “from the stowed configuration *to* the dispensing configuration.” *Id.* Ribarits does not expressly disclose the existence of any such bias in its tube, much less a bias that is sufficiently strong to overcome the frictional and gravitational forces that would be necessary to both i) cause automatic disengagement, *i.e.*, disengagement that is at least in part caused by the bias as opposed to wholly manual disengagement by the user (*see supra* Sec. V.C), of these catches, as well as ii) move the mouthpiece assembly from the stowed configuration “*to*” the dispensing configuration, and not merely *toward* or *in the direction of* the dispensing configuration. Ex.1005, at 1-5, Figs. 1-3; Ex.2001, ¶138. And Petitioner does not suggest otherwise given that Petitioner only argues the bias is inherently disclosed, rather than arguing it is expressly disclosed by Ribarits. Pet., 71.

For the same reasons discussed above regarding why a bias toward the dispensing configuration is not necessarily present, and thus not inherently

disclosed, in Ribarits, Ribarits also fails to inherently disclose: i) disengagement caused at least in part by the bias, i.e., automatic disengagement (*see supra* Sec, V.C), and ii) movement of the mouthpiece assembly from the stowed configuration “to” the dispensing configuration. Ex.2001, ¶139. That is, even if Ribarits did disclose that its tube had a bias (which it does not), there is certainly no disclosure in Ribarits from which a POSITA could have concluded that Ribarits’s tube has sufficient characteristics, such as sufficient stiffness, hardness, elasticity, and/or crimping design to create sufficient bias to impart sufficient force to overcome the frictional forces and gravitational forces imposed by: i) the snap-fit connection of the recesses 9 and knobs 8 in the closed position, and ii) the frictional resistance to movement caused by the cap assembly as the drinking spout tries to rotate about the pins 4, as well as the weight of the rigid drinking spout 3. *Id.* That is, because of these forces tending to keep the drinking spout in the closed configuration, any bias would need to be sufficiently large to overcome these forces to satisfy the required “automatic[.]” movement disengaging the catches and the required movement “via [any] bias from the stowed configuration to the dispensing configuration”—and Ribarits fails to expressly or inherently discloses *any* such bias for the reasons discussed above, much less a sufficiently large bias to overcome these forces

required for the claimed “automatic[]” disengagement and movement via the bias from the stowed configuration to the dispensing configuration. *Id.*

Petitioner, therefore, has failed to show there is a reasonable likelihood that Ribarits expressly or inherently discloses the claimed function of the “user release mechanism” of claim 1. *Id.* at ¶140.

2. Petitioner fails to provide any non-conclusory explanation for how the alleged “lever arm” in Ribarits meets the “way” and “result” prongs required to be an “equivalent” under § 112(f) for claim 1.

Finally, Petitioner fails to provide any non-conclusory evidence or argument showing there is a reasonable likelihood that its alleged **tan** “lever arm” area operates in substantially the same way to achieve substantially the same results as the user engagement portion 260 of the ’028 patent, as required for it to be an “equivalent” under § 112(f). *See* Pet., at 72. Petitioner first pays lip service to the legal test in a conclusory fashion: “The structure performing the user release mechanism in Ribarits is equivalent to the structures of the ’028 patent. They perform the claimed function in the same way to achieve the same result.” *Id.*; Ex.2001, ¶141. Next, Petitioner argues that “in the second embodiment of the user release mechanism of the ’028 patent, for example, a user may press on the collar to force the catch

structures to disengage” and that “this is substantially the same in Ribarits: a user may press on the drinking spout to automatically disengage the first and second catch structures.” Pet., at 72; Ex.2001, ¶141. But the action of a user pressing the user release mechanism to disengage the catches is merely a regurgitation of part of the claimed function: “to automatically disengage the first and second catch structures upon actuation of the user release mechanism.” Petitioner, therefore, failed to provide any explanation whatsoever of the “way” or “result” independent of the claimed function, as required under the law. *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267 (Fed. Cir. 1999) (“Functional identity and either structural identity or equivalence are **both necessary**.”); *Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, 145 F.3d 1303, 1309 (Fed. Cir. 1998) (finding the “way” prong not satisfied notwithstanding performance of the same function and noting that “[a]lmost by definition, two structures that perform the same function may be substituted for one another” but “[t]he question of known interchangeability is not whether both structures serve the same function, but whether it was known that one structure was an equivalent of another.”). Petitioner, therefore, fails to show there is a reasonable likelihood that Ribarits’s alleged “lever arm” satisfies the “way” or

“result” prongs required to show it is an equivalent to the user engagement portion 260 of the ’028 patent. Ex.2001, ¶141.

B. Petitioner fails to show that Ribarits discloses the “user release mechanism” of claim 21.

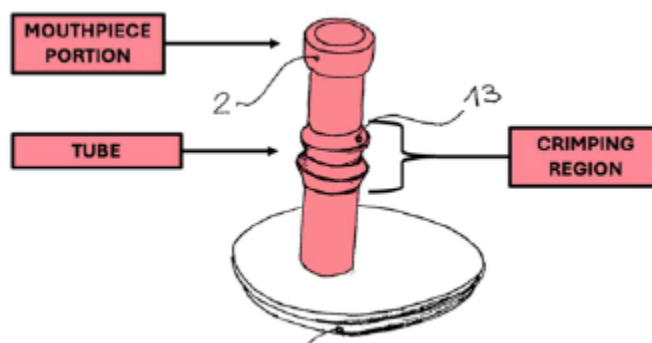
Claim 21 recites “a mouthpiece assembly . . . wherein the mouthpiece assembly is *biased to the dispensing configuration*” and also recites that the claimed “user release mechanism” must “*automatically* release the mouthpiece assembly *from* the stowed configuration *to* the dispensing configuration *via the bias* of the mouthpiece assembly.” Despite the different claim language used by these limitations of claim 21, as compared to claim 1, Petitioner merely incorporates by reference its arguments for claim 1 for the purpose of attempting to demonstrate that claim 21 is also disclosed by Ribarits. Pet., 80-81. Petitioner’s argument suffers from a failure of proof on that basis alone. But nonetheless, Ribarits does not satisfy these limitations for the same reasons discussed above for claim 1: First, there is no evidence of any bias that is necessarily present, and thus inherent, in Ribarits’s tube. *See supra* Sec. VII.A.1.b (discussing how there is no bias inherent within Ribarits’s tube made from rubber, latex, or plastic). And second, there is no evidence of any bias that is sufficiently strong so as to automatically release the mouthpiece assembly

from the stowed configuration to the dispensing configuration via the bias of the mouthpiece assembly. *See id.* (discussing that there is no evidence the materials described within Ribarits would provide a bias sufficient to release the drinking spout and move it to a dispensing configuration, and also providing a flexible/bendable drinking straw demonstrative illustrating the same). Finally, Petitioner fails to provide any non-conclusory evidence or argument sufficient to satisfy the “way” or “result” prongs required to prove a structure is an “equivalent” under § 112(f). *See supra* Sec. VII.A.2; Ex.2001, ¶¶142-43.

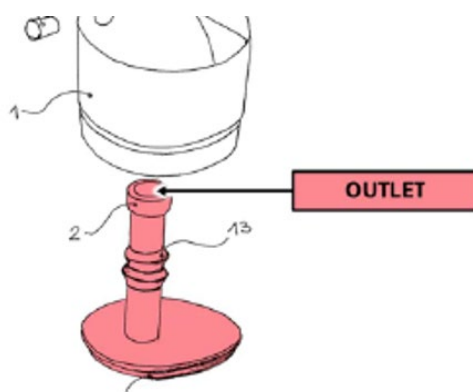
C. The Petition fails to show that Ribarits discloses a “mouthpiece portion” as required by claims 1 and 21.

Claim 1 of the '028 Patent requires “a mouthpiece assembly . . . defining an outlet through which drink liquid from the internal compartment of the liquid container is selectively dispensed.” The mouthpiece assembly comprises “a mouthpiece portion that includes the outlet” and “a tube,” where “the mouthpiece portion and the tube are constructed as a unitary assembly of [a] resiliently deformable material.” Claim 21 similarly requires “a resilient mouthpiece portion that permits a user to draw drink liquid from the drink container when the mouthpiece assembly is in the dispensing configuration.” Ex.2001, ¶144.

As discussed above, a “mouthpiece portion” is a portion designed for a user to put his or her mouth on to draw liquid from the container. *See supra* Sec. V.B. Petitioner contends that the end, outlet portion of the tube element 2 constitutes the claimed “mouthpiece portion,” as labeled below.

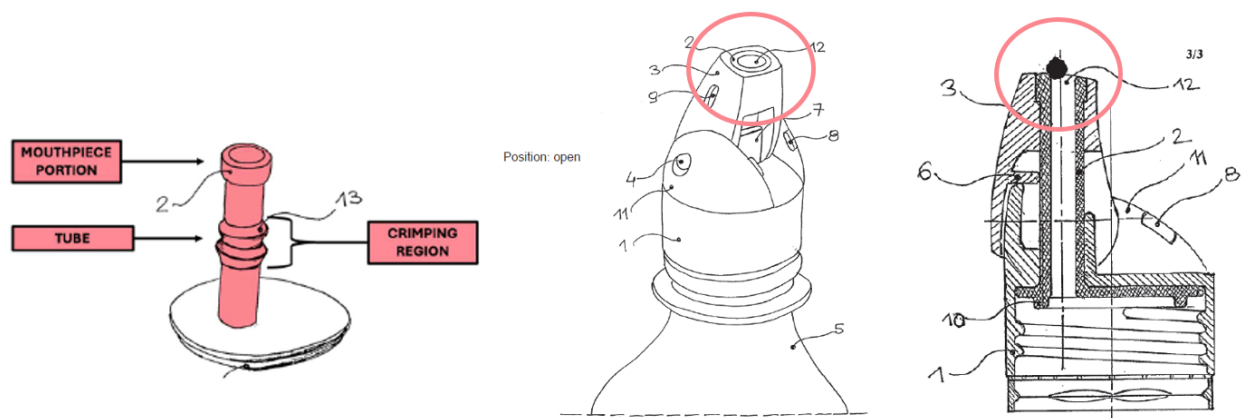


Pet., 66; Ex.1005, Fig. 2 (annotated and cropped by Petitioner); Ex.2001, ¶145. Petitioner also contends that the end of the tube constitutes the outlet “from which fluid flows directly into the user’s mouth,” Pet., 64-65, and that “includes the outlet,” as recited in claim 1.



Pet., 64; Ex.1005, Fig. 2 (annotated by Petitioner); Ex.2001, ¶145.

However, Petitioner fails to identify any portion in Ribarits designed for a user to put his or her mouth on to draw liquid from the container. Instead, the alleged “mouthpiece portion” identified by Petitioner (i.e., the end of the tube element 2) is entirely surrounded by Ribarits’s drinking spout 3 and does not extend beyond it, as shown below:



Pet., 66 (citing Ex.1005, Fig. 2); Ex.1005, Fig. 1 (annotated), Fig. 3 (annotated); Ex.2001, ¶146. A POSITA, therefore, would have understood that the end of the tube relied on by Petitioner is not a portion designed for a user to put his or her mouth on to draw liquid from the container, and thus, *not* a “mouthpiece portion.” Ex.2001,

¶146. Put simply the tube is not designed for the user’s mouth.⁵ Instead, a POSITA would have understood that the drinking spout 3, *not* any portion of the tube element 2, is the “mouthpiece portion” in Ribarits’s design, because that is the portion designed for a user to put his or her mouth on to draw liquid from the container. *Id.* The drinking spout 3, however, would not satisfy other elements of claims 1 and 22 at least because it is not “resilient” or “resiliently deformable” and is not in a “unitary assembly” with the tube, as required by claims 1 and 21. *Id.*

⁵ Indeed, the Board’s recent institution decision in IPR2024-01137 helps illustrate this point. *See* Ex. 2008, at 16-17. In that decision, the Board found that the same alleged mouthpiece of Ribarits (the top of tube element 2) “is surrounded by the pivotal mount,” i.e., drinking spout 3, and as such, the Board found that Petitioner had failed to show how the top of the tube was adapted to be compressed by a user’s teeth. *Id.* While the claim language differs here, this factual finding nonetheless supports that the top of tube 2 is not designed for the user’s mouth because it is “surrounded by” the drinking spout 3.

VIII. CONCLUSION

For at least the foregoing reasons, Patent Owner respectfully requests that the Board deny institution of the Petition.

Dated: February 18, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing PATENT OWNER'S PRELIMINARY RESPONSE, according to the word-processing system used to prepare the paper and not including those parts excluded by § 42.24(a)(1), has 12,978 words, which is within the type-volume limit set by § 42.24.

By: /Ryan J. Schletzbaum/
Ryan J. Schletzbaum
Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on February 18, 2025, a complete and entire copy of the foregoing Patent Owner's Preliminary Response and Exhibits 2001-2012 were provided via e-mail to Petitioner's counsel of record as follows:

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