Litigation Search Report CRU 3999

Reexamination Control No. 90/015,192

To: Examiner	**From: Renee Preston**
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Search Notes

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

1. Performed a KeyCite Search in Westlaw, which retrieves all history on the patent including any litigation.
2. Performed a search on the patent in Lexis CourtLink for any open dockets or closed cases.
3. Performed a search in Lexis in the Federal Courts and Administrative Materials databases for any cases found.
4. Performed a search in Lexis in the IP Journal and Periodicals database for any articles on the patent.
5. Performed a search in Lexis in the news databases for any articles about the patent or any articles about litigation on this patent.

Litigation: Cases Found

Status	Docket	Description
Open	5:21cv5109	Camelbak Products, Llc V. Zak Designs, Inc.

Paper No. 01/17/2023

Citing References (11)

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	**1.** First Supplemental Complaint for Patent Infringement CAMELBAK PRODUCTS, LLC, Plaintiff, v. ZAK DESIGNS, INC., Defendant. 2022 WL 17885878, *1+ , W.D.Ark. (Trial Pleading)	Sep. 12, 2022	Petition		—
Examined by	**2.** Complaint for Patent Infringement CAMELBAK PRODUCTS, LLC, Plaintiff, v. ZAK DESIGNS, INC., Defendant. 2021 WL 5134204, *1+ , W.D.Ark. (Trial Pleading)	June 11, 2021	Petition		—
Cited by	**3.** Camelbak Products, LLC v. Zak Designs, Inc. 2022 WL 2348676, *1+ , W.D.Ark.	June 29, 2022	Case		—
Mentioned by	**4.** Drink bottles LitAlert P2021-25-34	June 11, 2021	Lit Alert		—
—	**5.** POTABLE FLUID DRINK CONTAINER, HAS TUBE CRIMPED TO OBSTRUCT FLOW OF DRINK FLUID THROUGH FLUID CONDUIT WHEN MANUAL ON/OFF VALVE IS IN CLOSED CONFIGURATION, WHERE TUBE IS NOT CRIMPED WHEN MANUAL ON/OFF VALVE IS IN OPEN CONFIGURATION Out Of Plan DWPI 2018-89922L	Apr. 11, 2005	DWPI	—	—
—	**6.** CONTAINER FOR DRINK FLUID, HAS TUBE THAT IS CRIMPED TO OBSTRUCT FLOW OF DRINK FLUID THROUGH FLUID CONDUIT WHEN ON/OFF VALVE IS IN CLOSED CONFIGURATION, AND NOT CRIMPED AND DOES NOT OBSTRUCT FLOW OF DRINK FLUID THROUGH FLUID CONDUIT Out Of Plan DWPI 2020-776554+	Apr. 11, 2005	DWPI	—	—
—	**7.** DRINK CONTAINER WITH BITE-ACTUATED MOUTHPIECES FOR CONTAINING WATER OR OTHER POTABLE BEVERAGES, E.G., SPORTS DRINKS, HAS FLUID CONTAINER INCLUDING NECK WITH OPENING AND INTERNAL COMPARTMENT SIZED TO HOLD VOLUME OF POTABLE DRINK FLUID Out Of Plan DWPI 2022-52302J	Apr. 11, 2005	DWPI	—	—
—	**9.** LID FOR CONTAINER Out Of Plan US PAT 11396408 , U.S. PTO Utility	July 26, 2022	Patents	—	—
—	**10.** DRINK BOTTLES Out Of Plan US PAT 11242178 , U.S. PTO Utility	Feb. 08, 2022	Patents	—	—
—	**11.** DRINK BOTTLES Out Of Plan US PAT APP 20220119168 , U.S. PTO Application	Apr. 21, 2022	Patents	—	—
—	**12.** DRINK BOTTLES Out Of Plan US PAT APP 20200255192 , U.S. PTO Application	Aug. 13, 2020	Patents	—	—

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☐ US10676255B2 - Drink bottles

Original

Bibliographic information & Images

Publication number and date
US10676255B2
2020-06-09

Granted

Application number and date
US16035418 {/api/control?query=AN:{"US16035418"}&autosearch=true}
2018-07-13

Priority number and date
US16035418 {/api/control?query=PRN:{"US16035418"}&autosearch=true}
2018-07-13

Ultimate owner
Vista Outdoor {/api/control?query=uo:{"Vista%20Outdoor"}&autosearch=true}

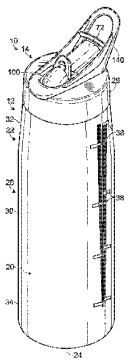
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Abstract

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

Original

Claims

1. A drink container, comprising: a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid; a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises: a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container; a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend; a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets; wherein the

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

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

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

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

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

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

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

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

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

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

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

12. The drink container of claim 11 , wherein the resilient mouthpiece includes a mouthpiece base with an end distal the dispensing outlet that has a contoured configuration that does not extend at a constant distance from the dispensing outlet, wherein the end of the resilient mouthpiece base includes a projecting region and a concave region, wherein the projecting region of the end of the mouthpiece base extends a greater distance away from the dispensing outlet than the concave region of the end of the mouthpiece base, and further wherein the pivotal mount is configured to engage the projecting region and the concave region of the mouthpiece base to restrict rotation of the resilient mouthpiece relative to the pivotal mount.

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

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

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

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

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

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

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

Original

Families

Display in a list (/api/control?familiesSearch=_) INPADOC

This section contains all family relations of this particular document. For more information about the different families, refer to the User Manual (Glossary/Families).

Extended (48) Priority date/claims	Complete (2) Priority date/claims	Main (2) Priority date/claims	Domestic (2) Priority date/claims	Publication number	Application number	Title	Status

2005-04-11 AU2006235383 AU2011201183 AU2012202351 CA2643788 CN200680020859 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US17565354 US313488 US60670828 US60706700	2021-12-29 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US17565354 US60670828 US60706700	2021-12-29 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US17565354 US60670828 US60706700	2021-12-29	☐	US20220119168A1	US17565354	DRINK BOTTLES	Filed

2020-04-29 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US60670828 US60706700	2020-04-29 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US60670828 US60706700	2020-04-29	☐ US11242178B2	US16862105	Drink bottles	Granted	
			☐ US20200255192A1	US16862105	DRINK BOTTLES	Granted	
2018-07-13 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US60670828 US60706700	2018-07-13 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US60670828 US60706700	2018-07-13	☐ US10676255B2	US16035418	Drink bottles	Granted	
			☐ US20180327151A1	US16035418	DRINK BOTTLES	Granted	
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			☐ US20170021982A1	US15287915	DRINK BOTTLES	Granted	
2014-07-11 US11313488 US11588476 US12133954 US14329096 US60670828 US60706700	2014-07-11 US11313488 US11588476 US12133954 US14329096 US60670828 US60706700	2014-07-11	☐ US9463911B2	US14329096	Drink bottles	Granted	
			☐ US20140319183A1	US14329096	DRINK BOTTLES	Granted	
2012-04-20 AU2011201183 AU2012202351	2012-04-20 AU2011201183 AU2012202351	2012-04-20	☐ AU2012202351B2	AU2012202351	Drink bottles with bite-actuated mouthpieces	Granted	
			☐ AU2012202351A1	AU2012202351	Drink bottles with bite-actuated mouthpieces	Granted	
2008-06-05 US11313488 US11588476 US12133954 US60670828 US60706700	2008-06-05 US11313488 US11588476 US12133954 US60670828 US60706700	2008-06-05	☐ US8777048B2	US12133954	Drink bottles	Granted	
			☐ US20080237233A1	US12133954	DRINK BOTTLES	Granted	
2006-10-26 US11313488 US11588476 US60670828 US60706700	2006-10-26 US11313488 US11588476 US60670828 US60706700	2006-10-26	☐ US8622237B2	US11588476	Drink bottles with bite-actuated mouthpieces	Granted	
			☐ US20070039959A1	US11588476	Drink bottles with bite-actuated mouthpieces	Granted	

2005-04-11 AU2006235383 CA2643788 CN200680020859 US11313488 US313488 US60670828 US60706700	2005-12-20 US11313488 US60670828 US60706700	2005-12-20	☐	US7533783B2	US11313488	Drink bottles with bite-actuated mouthpieces	Granted

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2005-04-11 US313488 US60670828 US60706700	2005-04-11	☐ EP1874646B1	EP06749713	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	

2005-04-11 AU2006235383 CA2643788 CN200680020859 US11313488 US60670828 US60706700	2005-04-11	☐ ES2599861T3	ES06749713	Beverage bottles with bite-actuated nozzle	Granted	

2005-04-11	CN102670022B	CN201210118993	Drink bottles and self-sealing mouthpieces used by drink bottles	Granted	
	CN102670022A	CN201210118993	Drink bottles with bite-actuated mouthpieces	Granted	
2005-04-11	AU2006235383B2	AU2006235383	Drink bottles with bite-actuated mouthpieces	Granted	
	AU2006235383A1	AU2006235383	Drink bottles with bite-actuated mouthpieces	Granted	
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2005-04-11	CN101355896B	CN200680020859	Drink bottles with bite-actuated mouthpieces	Granted	
	CN101355896A	CN200680020859	Drink bottles with bite-actuated mouthpieces	Granted	
2005-04-11	CA2643788C	CA2643788	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
	CA2643788A1	CA2643788	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
2005-04-11	TWI297317B	TW095112378	Drink bottles with bite-actuated mouthpieces	Granted	
	TW200706461A	TW095112378	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
2005-04-11	GB2439905B	GB0722018	Drink bottles with bite-actuated mouthpieces	Granted	
	GB2439905A	GB0722018	Drink bottles with bite-actuated mouthpieces	Granted	
	GB0722018D0	GB0722018	Drink bottles with bite-actuated mouthpieces	Filed	
	GB722018D0	GB0722018	Drink bottles with bite-actuated mouthpieces	Granted	
2005-04-11	HK1126636A1	HK09105488	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
2005-04-11	HK1176254A1	HK13103113	DRINK CONTAINERS AND SELF-SEALING MOUTHPIECES FOR USE WITH THE DRINK CONTAINERS	Granted	
2005-04-11	GB2457608B	GB0907359	Drink bottles with bite-actuated mouthpieces	Granted	
	GB2457608A	GB0907359	Drink bottles with bite-actuated mouthpieces	Granted	
	GB0907359D0	GB0907359	Drink bottles with bite-actuated mouthpieces	Filed	
	GB907359D0	GB0907359	Drink bottles with bite-actuated mouthpieces	Granted	
2005-04-11	EP1874646A4	EP06749713	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
	EP1874646A2	EP06749713	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
2005-04-11	CA2791377C	CA2791377	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
	CA2791377A1	CA2791377	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	

			2005-04-11	AU2011201183B2	AU2011201183	Drink bottles with bite-actuated mouthpieces	Granted
				AU2011201183A1	AU2011201183	Drink bottles with bite-actuated mouthpieces	Granted

Description

RELATED APPLICATIONS

[0001] The present application is a continuation of, and claims priority under 35 U.S.C. § 120 to, U.S. patent application Ser. No. 15/287,915, which was filed on Oct. 7, 2016, issued on Jul. 17, 2018 as U.S. Pat. No. 10,023,365, and which claims priority to U.S. patent application Ser. No. 14/329,096, which was filed on Jul. 11, 2014, issued on Oct. 11, 2016 as U.S. Pat. No. 9,463,911, and which claims priority to U.S. patent application Ser. No. 12/133,954, which was filed on Jun. 5, 2008, issued on Jul. 15, 2014 as U.S. Pat. No. 8,777,048, and which claims priority to U.S. patent application Ser. No. 11/588,476, which was filed on Oct. 26, 2006, issued on Jan. 7, 2014 as U.S. Pat. No. 8,622,237, and which claims priority to U.S. patent application Ser. No. 11/313,488, which was filed on Dec. 20, 2005, and issued on May 19, 2009 as U.S. Pat. No. 7,533,783. U.S. patent application Ser. No. 11/313,488 claims priority to U.S. Provisional Patent Application Ser. Nos. 60/670,828 and 60/706,700, which were filed on Apr. 11, 2005 and Aug. 8, 2005, respectively. The complete disclosures of the above-identified patents and patent applications are hereby incorporated by reference.

FIELD OF THE DISCLOSURE

[0002] The present disclosure relates generally to drink bottles, and more particularly to drink bottles with bite-actuated mouthpieces.

BACKGROUND OF THE DISCLOSURE

[0003] For some time people have recognized the need to stay hydrated. Conventionally, many individuals carry drink bottles that contain water or other potable beverages. These bottles are formed from plastic and include a cap. Some conventional drink bottles include a threaded or other neck from which a user drinks fluid contained in the drink bottle after removal of the cap. Some conventional drink bottles include a spout, or nozzle, from which the drink fluid may be drawn from the drink bottle without removing the cap of the drink bottle. Conventional spouts include straws and rigid spouts having an outlet through which drink fluid may flow. Other conventional drink bottles require the cap to be removed to permit drink fluid to be removed from the drink bottle.

BRIEF DESCRIPTION OF THE DRAWINGS

[0004] FIG. 1 is a perspective view of a bite-actuated drink bottle according to the present disclosure.

[0005] FIG. 2 is a perspective view of another bite-actuated drink bottle according to the present disclosure.

[0006] FIG. 3 is a fragmentary, partial cross-sectional side elevation view of a fluid container that may be used with bite-actuated drink bottles according to the present disclosure.

[0007] FIG. 4 is a fragmentary cross-sectional side elevation view of portions of another bite-actuated drink bottle according to the present disclosure.

[0008] FIG. 5 is a partial cross-sectional side elevation view of a cap assembly that may be used with bite-actuated drink bottles according to the present disclosure.

[0009] FIG. 6 is a side elevation view of another cap assembly that may be used with bite-actuated drink bottles according to the present disclosure.

[0010] FIG. 7 is a side elevation view of another cap assembly that may be used with bite-actuated drink bottles according to the present disclosure.

[0011] FIG. 8 is a fragmentary somewhat schematic side elevation view of portions of another bite-actuated drink bottle according to the present disclosure.

[0012] FIG. 9 is a fragmentary somewhat schematic side elevation view of portions of another bite-actuated drink bottle according to the present disclosure.

[0013] FIG. 10 is an isometric view of a bite-actuated mouthpiece that may be used with bite-actuated drink bottles according to the present disclosure.

[0014] FIG. 11 is a top plan view of the mouthpiece of FIG. 10.

[0015] FIG. 12 is a side elevation view of the mouthpiece of FIG. 10.

[0016] FIG. 13 is a side elevation view of the mouthpiece of FIG. 10.

[0017] FIG. 14 is a cross-sectional view of the mouthpiece of FIG. 12.

[0018] FIG. 15 is a cross-sectional view of the mouthpiece of FIG. 13.

[0019] FIG. 16 is a somewhat schematic top plan view of a bite-actuated mouthpiece in a dispensing configuration.

[0020] FIG. 17 is a cross-sectional view of another bite-actuated mouthpiece that may be used with bite-actuated drink bottles according to the present disclosure.

[0021] FIG. 18 is transverse cross-sectional view of the mouthpiece of FIG. 17.

[0022] FIG. 19 is a cross-sectional view of another bite actuated mouthpiece that may be used with bite-actuated drink bottles according to the present disclosure.

[0023] FIG. 20 is a transverse cross-sectional view of the mouthpiece of FIG. 19.

[0024] FIG. 21 is a top plan view of another suitable cap assembly for use with bite-actuated drink bottles according to the present disclosure, with the cap assembly's spout in a stowed configuration.

[0025] FIG. 22 is a top plan view of the cap assembly of FIG. 21, with the cap assembly's spout in a dispensing configuration.

[0026] FIG. 23 is a side elevation view of the cap assembly of FIG. 21.

[0027] FIG. 24 is a side elevation view of the cap assembly of FIG. 22.

[0028] FIG. 25 is an exploded isometric view of the cap assembly of FIG. 21.

[0029] FIG. 26 is a cross-sectional side elevation view of the cap assembly of FIG. 21.

[0030] FIG. 27 is a cross-sectional side elevation view of the cap assembly of FIG. 22.

[0031] FIG. 28 is a partial cross-sectional side elevation view of another cap assembly that may be used with bite-actuated drink bottles according to the present disclosure.

[0032] FIG. 29 is a partial cross-sectional side elevation view of the cap assembly of FIG. 28, with the spout pivoted to a stowed configuration.

DETAILED DESCRIPTION AND BEST MODE OF THE DISCLOSURE

[0033] Examples of drink bottles according to the present disclosure are shown in FIGS. 1 and 2 and indicated generally at **10**. Drink bottles **10** according to the present disclosure include a fluid container **12** and a cap, or cap assembly, **14** that includes a mouthpiece **72**. Although referred to herein as being "drink bottles," it is within the scope of the present disclosure that the fluid container may have any suitable shape, including shapes that do not resemble conventional bottles, and may be

formed from any suitable material. Accordingly, it is within the scope of the present disclosure that drink bottles **10** may additionally or alternatively be referred to as drink containers **10** and/or as beverage containers **10**. As discussed in more detail herein, drink bottles **10** according to the present disclosure will typically include a free-standing fluid container **12**. Drink bottles **10** according to the present disclosure will typically include a cap assembly with a base **70** that is adapted to be coupled to the fluid container and a bite-actuated mouthpiece, or valve assembly, **72** upon which a user may bite to configure the mouthpiece from a closed configuration to a dispensing configuration.

[0034] In FIGS. 1 and 2, the cap assemblies are shown including optional pivotal mounts **100** to which the mouthpieces are mounted, and optional handles **140** that extend from the cap assembly. In FIG. 2, the cap assembly is shown with the mount in a dispensing configuration in which the mouthpiece is oriented in a suitable position from which a user may draw drink fluid from the drink bottle through mouthpiece **72** when the user bites upon the mouthpiece or otherwise urges the mouthpiece from the illustrated sealed configuration to a dispensing configuration. In FIG. 1, the illustrative example of a cap assembly **14** is shown with the mount in a stowed configuration, in which the mouthpiece is positioned closer to the base of the cap than in the dispensing configuration, with the stowed configuration typically corresponding to an orientation in which the mouthpiece is not suitably positioned for a user to bite upon the mouthpiece to configure the mouthpiece to a dispensing configuration. The stowed configuration may also be referred to as a retracted configuration, and the dispensing configuration may also be referred to as an extended configuration in which the distal end, or outlet, of the mount is oriented to extend generally away from the base of the cap assembly. The various configurations referred to herein may also be selectively referred to as positions without departing from the scope of the present disclosure.

[0035] As indicated in FIGS. 1-2 and perhaps best seen in FIG. 3, fluid container **12** defines an internal compartment **20** that is sized to hold, or receive, up to a predetermined volume of potable drink fluid, or liquid. Illustrative examples of drink fluids include water, sports drinks, juices, energy drinks, and the like. Typically, container **12** will be sized to hold up to approximately two liters of drink fluid, with many embodiments of container **12** being sized to hold a maximum volume of less than two liters of drink fluid. It is within the scope of the present disclosure that container **12** may have any suitable size and shape, with illustrative, non-exclusive examples being shown in FIGS. 1-3. Illustrative, non-exclusive examples of suitable sizes (i.e., capacities of drink fluid able to be received into the fluid container at one time) for fluid container **12** include 4 oz., 6 oz., 8 oz., 10 oz., 12 oz., 16 oz., 20 oz., 24 oz., 32 oz., 36 oz., 0.5 liters, 0.7 liters, 1 liter, 1.5 liters, 6-11 oz., 12-19 oz., 19-25 oz., 12-36 oz., 25-36 oz, and 10-70 oz. (with these illustrative examples referring to fluid ounces of drink fluid that may be poured in one filling into an empty fluid container). It is within the scope of the present disclosure that containers having different sizes, including sizes that are smaller than, larger than, or within the illustrative sizes and/or ranges presented above, may be used without departing from the scope of the present disclosure.

[0036] Fluid container **12** may be formed from any suitable material or combination of materials. Non-exclusive examples of factors that may be (but are not required to be) considered when selecting material(s) for the fluid container include the durability of the material, the intended potable drink fluid, or types of drink fluids, that will be contained in the fluid container, the intended life, or period of use, of the drink bottle, whether the fluid container is intended to be refilled or otherwise reused, environmental concerns, whether the fluid container is intended to resist being collapsed during use, whether the fluid container is designed to permit a user to collapse the fluid container inwardly when dispensing fluid therefrom, or to dispense drink fluid therefrom, whether the drink container (and optionally the cap assembly) is designed to be washed in a household dishwasher, etc. Illustrative examples of materials that may be used include polycarbonate, polyethylene, polypropylene, glass, metal, and the like. In some embodiments, it may be desirable for the material(s) to be selected so that the fluid container will be transparent, or at least translucent, so that a user may see the contents of the fluid container, or at least the level of drink fluid within the fluid container, through the walls, or wall structure, of the container. In some embodiments, it may be desirable for the material(s) to be selected so that the fluid container is rigid and resists being collapsed when a user drinks from the container. In some embodiments, the material(s) may be selected so that the fluid container is designed to be collapsed (i.e., to permit opposing portions of the wall structure to be urged toward, or even into contact with, each other) during use. However, even fluid containers that are adapted to be collapsed during use, such as by a user squeezing the container, will tend to be at least semi-rigid in their construction and thereby adapted to be self-supporting. In some embodiments, the material(s) may be selected so that the fluid container is not breakable, i.e., will not shatter if dropped. Polyethylene will typically produce a collapsible fluid container that is translucent or opaque, but not transparent. Polycarbonate will typically produce a rigid, or stiff, fluid container that has a clear or glass-like appearance without the fragility of glass. Polypropylene will typically produce a fluid container that is more translucent and stiffer than polyethylene yet still able to be collapsed during use by a user squeezing the wall structure of the fluid container.

[0037] As indicated with respect to the illustrated examples of fluid containers shown in FIGS. 1-3, container **12** includes a body **22** with a base, or bottom surface, **24** and a neck **26**, with the bottom surface and the neck being separated by wall structure **28**. As perhaps best seen in FIG. 3, bottom surface **24** is adapted to support the drink bottle on a level surface. In other words, in the illustrative example, when the drink bottle is set upon a generally level surface, the bottom surface of the drink bottle will support the drink bottle in an upright configuration upon that surface. FIG. 3 also demonstrates that the bottom surface of the fluid container is not required to have a flat, or planar, configuration, although this configuration is within the scope of the present disclosure.

[0038] In the illustrated example shown in FIG. 2, wall structure **28** has a contoured configuration, with the central region **30** of the wall structure being tapered, or defining a portion of the internal compartment that has a reduced cross-sectional area, relative to the corresponding upper and lower regions **32** and **34** of the wall structure. For example, the central region may be shaped to facilitate easier grasping of the drink bottle by a user. It is within the scope of the present disclosure that other configurations may be utilized. For example, the body may include a handle, or passage, that extends into, or through, the drink compartment. As another illustrative, non-exclusive example, the body may include a handle that projects outwardly from the wall structure. As yet another example, the wall structure may have a cylindrical or other geometrically shaped configuration. As shown in FIG. 1, the container's wall structure **28** may have a generally cylindrical configuration. In the illustrated example, the upper region **32** of the wall structure has a tapered configuration relative to the central and lower regions **30** and **34** of the wall structure, and thereby has a smaller internal perimeter.

[0039] The cross-sectional configuration of the wall structural may be symmetrical throughout the upper, central, and lower regions, or at least one of the regions may have a cross-sectional configuration that is not symmetrical with the other regions and/or with respect to itself. For example, selectively shaping the cross-sectional configuration, or perimeter, of at least the central region may permit the drink bottle to be rotationally oriented by a user for drinking from the subsequently discussed bite-actuated valve assembly without requiring the user to look at the rotational position of the valve assembly relative to the user's hand that is holding the central region of the fluid container's wall structure. For example, and with reference to FIG. 2, shaping the wall structure to have a depression or other unsymmetrical portion **36** on the central region of the wall structure generally beneath the bite-actuated mouthpiece may permit a user to grasp and orient the bottle for drinking from the mouthpiece simply by feeling the position of the unsymmetrical portion of the wall structure. However, this is but one of many suitable configurations and is not required. In FIGS. 1 and 2, the wall structure includes gradations **38** to indicate the volume of fluid present in the container. As shown, the gradations are spaced-apart along the height of the fluid container to indicate or otherwise demarcate volumes of drink fluid. Gradations **38** provide another example of optional structure that may or may not be implemented in a particular embodiment without departing from the scope of the present disclosure.

[0040] Neck **26** provides an opening, or portal, through which drink fluid may be poured into the internal compartment of the fluid container and/or removed therefrom. Neck **26** will typically have a reduced cross-sectional area (or smaller perimeter) than the region of the fluid container from which it extends, although this configuration is not required. Neck **26** is adapted to interconnect, typically removably, with the cap assembly via any suitable mechanical interconnection, or coupling structure. In the illustrative example shown in FIG. 3, neck **26** includes a portal **40** with a coupling structure **42** that includes threads **44** that are configured to be threadingly engaged by corresponding threads **46** on the base **70** of the cap assembly to permit the cap to be screwed, or threaded, onto the neck, such as shown in FIG. 3. In the illustrative example shown in FIG. 3, the cap assembly's threads **46** provide the coupling structure **45** of the base. It is within the scope of the present disclosure that coupling assembly **43** may be used to refer collectively to the coupling structures of the base and the neck, such as threads **44** and **46**.

[0041] Another example of a suitable coupling assembly **43** for interconnecting the cap assembly and the fluid container is shown in FIG. 4. As shown, the cap assembly is configured to engage the neck with a coupling assembly **43** in the form of a friction fit assembly, with neck **26** including a coupling structure **42** that includes an external lip, or ledge, **48** over which a corresponding coupling structure **45** in the form of a flange, or internal ledge, **50** of the base of the cap assembly extends to couple the cap assembly onto the neck. Cap assembly **14** and/or neck **26** may form a fluid-tight seal therebetween without requiring the inclusion of gaskets, o-rings or seal-enhancing structure. However, it is also within the scope of the present disclosure that one or more such structures may be utilized.

[0042] As discussed, cap assembly **14** is connected, and typically removably connected, to the neck of the fluid container. By "removably connected," it is meant that the cap assembly is designed, or adapted, to be repeatedly connected to and disconnected from the neck of the fluid container without destruction of the cap assembly or the neck. When properly connected to the neck, the cap assembly forms a seal with the neck of the fluid container and thereby selectively seals the internal compartment of the container to prevent drink fluid from being dispensed therefrom through opening **40** except as permitted by the cap assembly. One or more of the cap assembly and the neck may include a compressible gasket or other sealing structure to assist in providing a water-tight seal between the cap assembly and the neck when the cap assembly is properly secured on the neck. When removed or otherwise disconnected from the fluid container, the cap assembly may be retained proximate the fluid container by a tether that interconnects the cap assembly and the fluid container to retain a connection between these components when

the base of the cap assembly is not coupled to the neck of the fluid container. An optional tether is schematically illustrated in FIG. 4 at **52**. When present, the tether may be integrally formed with one or both of the cap assembly and the fluid container, or it may be coupled to the cap assembly and/or the fluid container via any suitable mechanism. It is also within the scope of the present disclosure that the cap assembly may not be coupled to the fluid container by a tether.

[0043] As discussed, and as somewhat schematically illustrated in FIG. 5, cap assembly **14** includes a base **70**, which is adapted to interconnect with the neck of the fluid container. Cap assembly **14** further includes a mouthpiece, such as a bite-actuated mouthpiece **72**, which is adapted to selectively permit drink fluid to flow therethrough when the valve assembly is deformed from its closed configuration to a dispensing, or open, configuration. Cap assembly **14** further includes, or defines, a fluid conduit **74** though which drink fluid may selectively flow from the fluid container to the mouthpiece.

[0044] As discussed, base **70** is preferably configured to be removably coupled to the neck of the fluid container to seal the portal defined by the neck of the fluid container. In other words, a user may drink directly from the fluid container through opening **40** when the cap assembly is not secured to the neck by a suitable coupling structure. When cap assembly **14** is secured to the neck, then drink fluid may not be withdrawn from fluid container **12** other than as permitted by the cap assembly, such as via bite-actuated mouthpiece **72**. Base **70** forms a portion of coupling assembly **43**, with the base and the neck of the fluid container cooperating to secure the base upon the neck. In FIG. 5, base **70** is shown including coupling structure **45** in the form of threads **46** that are configured to threadingly engage corresponding threads on the neck of a fluid container. As shown in FIG. 5, base **70** also includes, or defines, an inlet **80** to the fluid conduit **74** through which drink fluid is selectively drawn from the fluid container and dispensed through bite-actuated mouthpiece **72**.

[0045] As discussed, cap assembly **14** defines a fluid conduit **74** that extends from the fluid container to the bite-actuated mouthpiece so that drink fluid from container **12** may be selectively dispensed through mouthpiece **72**. FIG. 5 graphically depicts that it is within the scope of the present disclosure that cap assembly **14** may include a mount **100** to which the bite-actuated mouthpiece is removably mounted, or secured, with the mount defining at least a portion of fluid conduit **74**, such as which may extend through a hollow passage **102** within the mount to a distal open end region **104** of the mount. When mount **100** includes a fluid passage through which drink fluid may at least selectively flow from the internal compartment of the fluid container to the mouthpiece, the mount may be referred to as a drink spout. In the illustrated example shown in FIG. 5, mount **100** extends in a fixed orientation relative to base **70**, thereby defining the orientation of the mouthpiece **72** relative to the base (and fluid container) during use of the drink bottle. In FIG. 5, the mount extends generally parallel to the central, or long, axis **106** of the cap assembly and corresponding drink bottle (i.e., straight away from the cap assembly). However, any suitable orientation may be used without departing from the scope of the present disclosure. This is graphically depicted in FIG. 6, in which the mount is shown extending at an inclined angle relative to the long, or central, axis **106** of the cap assembly and corresponding drink bottle.

[0046] It is also within the scope of the present disclosure that mount **100** may be adjustably positionable relative to the base of the cap assembly, thereby permitting the orientation of the bite-actuated mouthpiece to be adjusted within a range of positions, or configurations, that are defined at least in part by the mount. This adjustable positioning of the mouthpiece, when provided for in a particular embodiment, may permit a user to adjust the orientation of the mouthpiece to a user-selected drinking orientation. An example of an adjustably positionable mount **100** is shown in dashed lines in FIG. 6, in which the mount and attached mouthpiece are shown pivoted from the dispensing configuration shown in solid lines to a stowed configuration. In the stowed configuration, the mouthpiece is typically not positioned for being received into a user's mouth. As discussed in more detail herein, it is within the scope of the present disclosure that the cap assembly may include an optional valve or other fluid regulator that is adapted to prevent or otherwise restrict the flow of drink fluid to the mouthpiece when the mount is in a stowed configuration. In such an embodiment, when the mount is in the stowed configuration, drink fluid would be prevented from flowing from the fluid container through the mouthpiece regardless of the configuration of the mouthpiece.

[0047] Another illustrative example of a cap assembly **14** that includes a mount, or drink spout, **100** that is pivotal within a range of positions, or configurations, relative to the base of the cap assembly is shown in FIG. 7. As shown, the cap assembly includes an adjustable joint **108**, which is somewhat schematically illustrated. As illustrative examples, the mouthpiece, and at least a portion of the mount, may be coupled to the base of the cap assembly by a joint (and/or valve) **108**, such as may take the form of a pivotal joint, a ball joint, or other suitable structure that provides for adjusting the angular and/or rotational orientation of the mount relative to the base of the cap assembly. When the cap assembly includes such a pivotal joint **108**, it is within the scope of the present disclosure that the joint may form a portion of the cap assembly's fluid conduit **74**, such as with the passage of the fluid conduit extending through the joint. However, this construction is not required to all embodiments. As a variation of this structure, the mount may include a hinged or other flexible region that permits selective adjustment of the orientation of the mount's distal open end region **104** relative to the inlet of the fluid conduit.

[0048] It is within the scope of the present disclosure that the mouthpiece is non-removably, or permanently, secured to the base, mount, or other portion of the cap assembly. However, in many embodiments it may be desirable for the mouthpiece to be removably connected to the cap assembly, such as to permit the mouthpiece to be repeatedly removed, such as for cleaning or replacement, and thereafter recoupled to the mount. As non-exclusive, illustrative examples, the mouthpiece may be removably mounted onto mount **100** and/or with mount **100** being designed to be removed from base **70**.

[0049] Bite-actuated mouthpiece, or valve, **72** includes at least one opening through which drink fluid may flow when the mouthpiece is in its dispensing, or open configuration. An illustrative, non-exclusive example of a suitable construction for bite-actuated mouthpiece **72** is shown in FIGS. 10-15. In the illustrated example, and perhaps best seen in FIGS. 10 and 14-15, the mouthpiece includes a dispensing outlet, or opening, **86** that is defined by a slit **88** that extends through the dispensing face **90** of the mouthpiece. It is within the scope of the present disclosure that other configurations may be used, including two or more slits, intersecting or spaced-apart slits, etc. This range of optional configurations is schematically indicated in FIG. 11, in which a pair of laterally spaced slits are shown in dashed lines at **88'**, and in which a second slit that intersects with slit **88** is shown in dash-dot lines at **88"**. The mouthpiece defines an internal chamber **110** into which drink fluid flows from the outlet, or end region, of the mount and to the opening formed by slit **88** when the mouthpiece is in a dispensing configuration. The sidewalls, or wall structure, **92** of the mouthpiece may be described as including one or more bite regions **112**, which refer to opposed regions upon which a user may bite or otherwise apply compressive forces to urge the mouthpiece from its closed configuration to a dispensing configuration.

[0050] As perhaps best seen in FIG. 10, the illustrated example of a mouthpiece **72** has a non-symmetrical cross-sectional configuration between opposed regions of the mouthpiece's sidewalls **92**. By this it is meant that the illustrated mouthpiece has different dimensions transverse to the direction of fluid flow, depending upon whether the dimensions are measured transverse or parallel to the illustrated slit. It is within the scope of the present disclosure that other non-symmetrical or symmetrical configurations may be used. For example, mouthpiece **72** may have a circular cross-sectional configuration, amongst others.

[0051] Mouthpiece **72** is resilient and biased to its closed configuration, such as is shown in FIGS. 10-15. In use, the mouthpiece is adapted to be configured to the dispensing configuration by a user placing the mouthpiece in the user's mouth and biting upon or otherwise compressing the appropriate portions of sidewalls **92** of the mouthpiece, such as bite regions **112**, to deform the mouthpiece to a position where the slit or other opening is no longer sealed and instead defines a fluid pathway through which drink fluid may flow. This is somewhat schematically depicted in FIG. 16 with another illustrative example of a suitable bite-actuated mouthpiece. As shown, the opposed lips, or sealing surfaces, **94** that define slit **88** are spread apart from each other to define opening **86**, through which drink fluid may be dispensed from the drink bottle. Mouthpiece **72** may be referred to as a self-sealing valve, or valve assembly, because the mouthpiece is constructed to automatically return to its closed, or sealed, configuration when the compressive forces, such as may be applied by a user's teeth or mouth, are no longer applied to maintain the mouthpiece in its dispensing configuration. Therefore, unless forces are being exerted to the mouthpiece to deform the mouthpiece to a dispensing configuration, the mouthpiece will be in its closed, or sealed, configuration.

[0052] The illustrated example also demonstrates that the region of the mouthpiece distal the dispensing face, which may be referred to as the base, or distal, portion of the mouthpiece and which is generally indicated at **113** in FIGS. 10 and 12-15 may have (but is not required to have) a contoured configuration that does not extend at a constant distance from the dispensing face. In the illustrative, non-exclusive example shown in FIGS. 12 and 13, the base portion includes a pair of projecting regions **114** separated by a pair of concave regions **115**, although this construction is not required and other irregular base configurations may be utilized without departing from the scope of the present disclosure. Having a contoured or otherwise irregular configuration, when mounting on a dispensing spout or other mount that is complimentarily configured to receive and conform to such a configuration enables the mount to restrict relative rotation of the mouthpiece thereupon due to the engagement of the distal portion **113** of the mouthpiece with the mount, such as shown by referring back to FIGS. 1 and 2. As discussed, the illustrated example is but a non-exclusive example of a suitable configuration, with it being within the scope of the present disclosure that the distal portion of the mouthpiece and/or the corresponding mount may have any suitable configuration for securing the mouthpiece upon the mount.

[0053] Additional illustrative, non-exclusive examples of suitable configurations for bite-actuated, self-sealing mouthpieces **72** for use with drink containers according to the present disclosure are shown in FIGS. 17-20. In FIGS. 17-20, the mouthpieces are shown positioned on a mount **100** that extends into a neck region **116** of the mouthpiece and terminates at an end region **104**. Also shown are optional stops, or internal projections, **118** that are adapted to engage the end region **104** of the

mount to define the fully inserted position of the mount within the mouthpiece. The illustrative portions of mount **100** define portions of fluid conduit **74** which extends from the end region, or outlet, **104** of the mount and into the internal chamber **110** of the mouthpiece.

[0054] Additional illustrative examples of suitable bite-actuated mouthpieces, including external and internal constructions of which that may be selectively utilized (in whole or in part) with mouthpieces **72** according to the present disclosure are disclosed in U.S. Pat. Nos. 6,070,767 and 6,032,831, the complete disclosures of which are hereby incorporated by reference for all purposes. In the illustrated examples, mouthpiece **72** has a narrower head portion than the mouthpieces disclosed in the incorporated patents, but any of the illustrated configurations may be utilized. Similarly, the internal construction of the incorporated mouthpieces may be utilized with mouthpiece **72**, such as the internal configurations for the mouthpiece's face and/or sidewalls. For example, at least FIGS. 14 and 15 illustrate that mouthpieces **72** may, but are not required to, include internal discontinuities, such as internal corners or edges, that extend along the sidewalls away from the dispensing face and which may assist in the mouthpiece deforming to its open configuration and/or returning to a sealed configuration.

[0055] In the preceding discussion, mouthpiece **72** has been described as a bite-actuated mouthpiece. As also discussed, in some embodiments, the fluid container will be formed from a material that configures, or permits, the wall structure of the fluid container to be collapsed inwardly as a user squeezes the fluid container. This intentional reduction in the internal volume of the fluid container may urge drink fluid through the fluid conduit and expel the fluid through the bite-actuated mouthpiece. It is within the scope of the present disclosure that mouthpiece **72** may be configured to permit this additional method of dispensing drink fluid from the drink bottle.

[0056] A potential benefit of the bite-actuated mouthpiece being biased to its closed configuration is that a user may position the drink bottle (and mouthpiece) to a desired drinking orientation, and even a partially or completely inverted orientation, without drink fluid being dispensed from the mouthpiece. When the user desires to drink from the positioned drink bottle, the user may bite upon the mouthpiece (and/or optionally squeeze a fluid container that is designed to be collapsed during use) to commence the flow of drink fluid through the mouthpiece to the user.

[0057] As discussed, bite-actuated mouthpiece **72** is biased to a closed, or sealed, configuration in which the opening that is formed in the dispensing face of the mouthpiece is closed and prevents drink fluid from passing therethrough. Therefore, unless the mouthpiece is reconfigured from its closed configuration to a dispensing configuration, drink fluid is prevented from being dispensed through the cap assembly's fluid conduit. In some embodiments, it may be desirable for the cap assembly to further include a flow-restricting, or on/off, valve in addition to the bite-actuated mouthpiece. For example, because the mouthpiece is designed to be configured to its dispensing configuration when lateral external forces are imparted to the mouthpiece (such as when a user bites upon or otherwise compresses the sidewalls of the mouthpiece toward each other), it is possible that external forces may be inadvertently exerted upon the mouthpiece. Should this occur, drink fluid may be dispensed through the mouthpiece. However, the inclusion of an optional manual on/off valve, which selectively restricts whether drink fluid may flow to the mouthpiece from the fluid container, may prevent this unintentional dispensing of drink fluid regardless of the configuration of the mouthpiece. A graphical example of a drink bottle according to the present disclosure that includes an on/off, or shutoff, valve and a bite-actuated mouthpiece **72** is shown in FIG. 8. In FIG. 8, the on/off valve is indicated in dashed lines at **120** to graphically represent that the on/off valve, when present, may be located at any suitable position downstream (i.e., toward the internal compartment of the fluid container) of the mouthpiece's face, and typically proximate or upstream (i.e., toward the mouthpiece's dispensing face) from the inlet of the fluid conduit **74**.

[0058] The on/off valve is selectively configured between open and closed configurations independent of the configuration of the bite-actuated mouthpiece. When the on/off valve is in its closed configuration, it is adapted to obstruct at least a portion of the fluid conduit, and optionally to completely obstruct the fluid conduit, thereby preventing drink fluid from passing from the fluid container to the face of the bite-actuated mouthpiece. Therefore, when the on/off valve is in its closed configuration, drink fluid cannot be dispensed from the fluid container through the mouthpiece, regardless of the configuration of the bite-actuated mouthpiece. As such, the on/off valve may also be referred to as a shutoff valve. When the on/off valve is in its open configuration, the drink fluid is selectively dispensed from the fluid container through the mouthpiece depending upon the configuration of the bite-actuated mouthpiece.

[0059] Unlike bite-actuated mouthpiece **72**, the on/off valve will typically not be biased to return automatically to a particular configuration. Instead, the on/off valve may be configured to remain in a user-selected orientation until reconfigured to a different orientation by a user. In such an embodiment, the on/off valve may be referred to as being a static valve, in that it only restricts flow of drink fluid through the fluid conduit when positively configured to do so by a user. The on/off valve may utilize any suitable actuation mechanism to selectively configure the valve between its open and closed configurations.

[0060] As an illustrative, non-exclusive example, the joint **108** illustrated in FIG. 7 may be configured to provide an on/off valve **120** when pivoting of the mount relative to the cap assembly selectively causes the fluid conduit through the cap assembly to mouthpiece **72** to be obstructed. For example, at least a portion of the fluid conduit may be obstructed as the distal end of the mount is pivoted toward the cap assembly. In some embodiments, such as when the fluid conduit extends through the joint, the degree to which the corresponding portion of the fluid conduit is obstructed may vary depending upon the degree to which the mount is pivoted or otherwise moved toward the cap assembly. In such an embodiment, the fluid conduit may not be obstructed by the joint or other on/off valve in at least one position (and optionally a sub-range of positions) within the range of positions within which the mount may be oriented relative to the cap assembly, the portion of the fluid conduit may be partially obstructed during another sub-range of the range of positions, and the portion of the fluid conduit may be completely obstructed in at least one (and optionally a third sub-range of positions) within the range of positions. It is also within the scope of the present disclosure that a similar range and sub-ranges may be provided by other embodiments of on/off valve **120**. However, this construction is not required to all drink bottles according to the present disclosure.

[0061] An illustrative, non-exclusive example of a suitable configuration for an on/off, or shutoff, valve is shown in FIGS. 26 and 27, in which the on/off valve is generally indicated at **120**. As shown, mount **100** is pivotally coupled to base **70** of the cap assembly to selectively restrict and permit drink fluid to flow from the fluid container to the fluid conduit. In at least FIGS. 26 and 27, mount **100** may be described as providing a drink spout that is pivotally coupled to the base of the cap assembly. The drink spout is selectively pivoted between a stowed, or closed, configuration (such as shown in FIG. 26) and a dispensing, or extended, configuration (such as shown in FIG. 27), in which the drink spout is pivoted generally away from the base of the cap assembly relative to the closed configuration. In the closed configuration, the drink spout is pivoted toward or even against the base of the cap assembly relative to the dispensing configuration. In the illustrated example, the fluid conduit between the internal compartment of the drink container and the mouthpiece of the cap assembly is blocked by the drink spout when the drink spout is in its closed configuration, thereby restricting (or preventing) drink fluid from being dispensed through the drink spout regardless of the configuration of the mouthpiece when the drink spout is in the closed configuration. In the dispensing configuration, pivoting of the drink spout away from the base aligns an aperture in the drink spout to establish a continuous fluid conduit from the internal compartment to the mouthpiece.

[0062] Another example of a suitable actuation mechanism for an on/off valve **120** that may be used with drink bottles **10** according to the present disclosure is a push-pull mechanism, in which the bite-actuated mouthpiece and typically at least a portion of the mount and/or fluid conduit is urged away from a baffle or other obstruction that selectively prevents drink fluid from passing through the mount or other portion of the fluid conduit to the internal chamber of the mouthpiece. For example the push-pull mechanism may, in its closed configuration, prevent drink fluid from entering the inlet of the fluid conduit until the mouthpiece and other corresponding structure is drawn away from the obstruction. As another example, the push-pull mechanism that provides an on/off valve may selectively restrict drink fluid from passing through an intermediate portion of the fluid conduit (such as within the mount), and/or from exiting the mount into the internal compartment of the mouthpiece. In a variant of this push-pull mechanism, the obstruction is selectively pushed or otherwise urged away from the inlet or other suitable portion of the fluid conduit to permit drink fluid to flow therethrough.

[0063] Yet another illustrative example of a suitable construction for a static on/off valve **120** is a rotatable mechanism, in which a portion of the fluid conduit upstream from the internal chamber of the mouthpiece (such as the inlet, outlet, or an intermediate portion of the mount) is selectively obstructed until the mouthpiece (and typically at least a portion of the mount and/or fluid conduit) is rotated to a position in which the obstruction no longer prevents drink fluid from passing through the fluid conduit. Yet another illustrative, non-exclusive example of a suitable actuation mechanism for a static on/off valve **120** utilizes a fluid conduit having a foldable, collapsible, resiliently deformable, and/or crimpable region and suitable structure for selectively folding, flattening, resiliently deforming, and/or crimping that region of the fluid conduit to block, obstruct, or otherwise restrict the flow of drink fluid therethrough. This region may define a portion of the fluid conduit through which drink fluid may selectively flow from the inlet to the mouthpiece. An illustrative, non-exclusive example of a suitable material for such a portion of the fluid conduit is silicone or another material that does not readily take a compression set and therefore may be repeatedly folded, flattened, crimped, and the like without leaking or otherwise being permanently deformed or failing.

[0064] The schematic example of an on/off, or shutoff, valve **120** that is depicted in FIG. 8 is intended to graphically represent these and any other suitable constructions for a static on/off valve that selectively prevents drink fluid from being dispensed from the drink bottle through the opening of the mouthpiece regardless of the configuration of the mouthpiece. Additional examples are presented in the provisional patent applications that are incorporated by reference herein.

[0065] Drink bottles **10** according to the present disclosure may, but are not required to, additionally or alternatively include an air return, or pressure relief, assembly that is adapted to selectively permit air from external the drink bottle to enter the drink bottle's internal compartment other than through the dispensing opening of the mouthpiece. When present, the air return assembly is preferably positioned sufficiently away from the dispensing face of the mouthpiece that the air return valve is not obstructed when a user is drawing drink fluid from the fluid container through the opening of the mouthpiece. Especially when the fluid container has a rigid construction that is not adapted to readily collapse as drink fluid is drawn therefrom, a vacuum will tend to be drawn within the fluid container as drink fluid is withdrawn therefrom through the mouthpiece. As this vacuum, or pressure-differential, increases, it will become more difficult for a user to draw additional drink fluid through the mouthpiece until this pressure differential is reduced.

[0066] A schematic example of a drink bottle **10** according to the present disclosure that includes an air return assembly is shown in FIG. 9, with the air return assembly generally indicated at **160**. Air return assembly **160** is adapted to permit air from external the drink bottle to enter the internal compartment **20** of fluid container **12** without having to pass through the drink bottle's mouthpiece **72** (or least the dispensing face **90** or opening **86** of the mouthpiece). It is within the scope of the present disclosure that the air return assembly may be implemented on the cap assembly, such as on base **70** of the cap assembly. It is also within the scope of the present disclosure that the air return assembly, when present, may be implemented on the fluid container and/or that the drink bottle may be formed without an air return assembly that is separate from the bite-actuated mouthpiece. It is also within the scope of the present disclosure that an air return valve may be integrally formed with the bite-actuated mouthpiece or that it may be separately formed from the mouthpiece. When separately formed from the mouthpiece, the air return assembly may be positioned in a spaced-apart relationship to the mouthpiece on the cap assembly, on a dispensing mount (or nozzle) **100**, on the fluid container, etc.

[0067] Air return assembly **160** may define an air conduit **162** through which air may flow at least from external the drink bottle to the internal compartment of the drink container. In FIG. 9, the conduit is schematically illustrated including an inlet **164**, through which air may enter the conduit from external the drink container, and an outlet **166**, through which air in the conduit may pass to the interior of the drink bottle, such as to the internal compartment of the drink container.

[0068] In embodiments of drink bottles **10** that include an air return assembly **160**, the air return assembly may, but is not required to, include at least one air return valve, such as is schematically illustrated in FIG. 9 at **168** and which is less schematically illustrated in the subsequently discussed FIGS. 25-29. Air return valve **168** is adapted to selectively restrict the flow of air through the air conduit from external the drink bottle and/or to restrict the flow of drink fluid through the air conduit from internal the drink bottle. Air return valve **168** is adapted to be selectively configured between a closed, or sealed, configuration in which the flow of air into the internal compartment through the air return assembly from external the drink bottle is restricted, and an open, or actuated, configuration, in which the air return valve is at least partially displaced from its sealed configuration and in which air may flow through the air return assembly, such as from external the drink bottle into the internal compartment of the fluid container. This flow of air may be through an air conduit, such as conduit **162**, or may be simply through an opening in the drink bottle that is selectively obstructed by the air return valve. Air return valve **168** preferably has a relatively low actuation pressure for permitting air to be drawn from external the drink bottle into the drink bottle's internal compartment, while also having a relatively high resistance to drink fluid being able to pass through the valve from within the internal compartment. In other words, the air return valve is preferably constructed to resist fluid flow through the valve from internal the compartment. Similar to bite-actuated mouthpiece **72**, the air return valve is preferably a resilient valve that is biased to a closed configuration in which the valve is sealed and thereby prevents air or other fluid from passing therethrough. As discussed, the air return valve may be designed to be configured to an actuated, or open, configuration responsive to more than a predetermined pressure differential existing between the drink bottle's internal compartment and the environment external the drink bottle.

[0069] Air return valve **168** may include any suitable structure for selectively permitting air to enter the internal compartment of the drink bottle, preferably while also restricting drink fluid from exiting the internal compartment through the air return valve. As an illustrative, non-exclusive example, the air return valve may be a pressure-differential valve that is adapted to selectively permit air to flow into the drink container's internal compartment while restricting the flow of fluid through the air conduit from the internal compartment to exterior of the drink bottle. An illustrative, non-exclusive example of a suitable construction for air return valve **168** is an umbrella, or diaphragm valve, although other suitable valves may be used, including other suitable self-sealing valves. Another illustrative example of a suitable structure is a "duck bill" configuration, in which the valve assembly projects internally into the internal compartment and includes lips that are adapted to spread apart from each other to define a passage through which air may be returned into the internal compartment of the drink bottle, but which are biased together to resist drink fluid passing from the internal compartment through the passage. Further examples include valves having one or more slits, including intersecting slits. When a self-sealing valve (i.e., a valve that is biased to a sealed configuration) is utilized, the seal may be provided by abutting surfaces of the valve itself and/or by the valve sealing against a portion of the drink bottle.

[0070] It is within the scope of the present disclosure that drink containers that include an air return assembly **160** may alternatively not include any form of physical valve that restricts the flow of fluid through the air conduit. In some embodiments, the air return assembly may include an air conduit that is obstructed on at least one of its ends (internal the fluid container or external the fluid container) when the drink bottle is not being used, such as when a pivotal dispensing nozzle is pivoted to a closed configuration. Air return assembly **160** is preferably positioned so that its air conduit is not obstructed by a user's mouth when the drink bottle is used to dispense drink fluid to a user.

[0071] FIG. 9 also graphically depicts that drink bottles **10** according to the present disclosure may, but are not required to, include an optional straw **180** that extends from the cap assembly into the fluid container, such as to (or at least proximate) the lower region of the fluid container. Straw **180** enables a user to draw drink fluid from the drink container via mouthpiece **72** without having to tip the drink bottle so that drink fluid may flow into the fluid conduit **74**. For example, as the size of the fluid container increases, users may be more likely to want to draw drink fluid from the drink bottle without having to lift and tilt the drink bottle to the generally horizontal or even inverted configuration that would be used if straw **180** was not present. Straw **180** may be removably (or permanently) coupled to a corresponding mount **182** on the cap assembly, such as at or proximate the inlet **80** of fluid conduit **74**. A benefit of a removable straw structure **180** is that a user may selectively attach or remove the straw structure from the cap assembly, such as depending upon the desired use of the drink bottle at a given time. As discussed, it is also within the scope of the present disclosure that the straw may be fixedly, or permanently, attached to the cap assembly. As used herein, "removably," "removably coupled," and "removably attached" refer to structures that are designed to be repeatedly connected and disconnected without destruction of the corresponding structures. Similarly, fixedly connected or permanently coupled structures refer to structures that are not designed to be separated without destruction of at least a portion of the structures and/or the mechanism that joins the structures.

[0072] FIG. 9 also illustrates that drink bottles **10** according to the present disclosure may, but are not required to, include (or be selectively used with) elongate, flexible drink tubes, or external straw structures, **190** that fluidly interconnect the bite-actuated mouthpiece with mount **100** or another suitable receiver on cap assembly **14**. It is within the scope of the present disclosure that any of the drink bottles disclosed, illustrated, and/or incorporated herein may be selectively utilized with an elongate drink tube **190**. A potential benefit of this optional construction is that a user may draw drink fluid from the drink bottle without having to hold the drink bottle. Although it is within the scope of the present disclosure that the drink tube may be integrated with or otherwise permanently secured to one or both of the cap assembly or the bite-actuated mouthpiece, it may be desirable for each of these components to be removably coupled to the drink tube. For example, this permits the drink bottle to be used with the mouthpiece connected directly to the cap assembly (such as to mount **100**) or to be connected to the cap assembly by drink tube **190**. In FIG. 9, an optional mount **192** is shown interconnecting the drink tube with mount **100**, such as with the end region thereof), although it is within the scope of the present disclosure that the drink tube may be coupled directly to an end of the mount, such as by extending the corresponding end of the drink tube within or over an end of the mount. After attachment to the mount, the drink tube may optionally be described as forming an extension of the fluid conduit **74** of the drink bottle. When drink bottles according to the present disclosure include an elongate drink tube, such as tube **190**, it is also within the scope of the present disclosure that the downstream assembly defined by the drink tube and mouthpiece may optionally include one or more quick-connect assemblies and/or flow-regulating devices and accessories, such as disclosed in U.S. Pat. Nos. 6,908,015, 7,073,688, and U.S. Patent Application Publication No. 2004/0089301, the complete disclosures of which are hereby incorporated by reference herein for all purposes.

[0073] The previously discussed FIGS. 7-9 schematically illustrate a variety of components and structures that may (but are not required to be) incorporated into drink bottles according to the present disclosure. It is within the scope of the present disclosure that these components and structures, when present, may have any suitable structure meeting the functional criteria set forth herein and may be implemented individually or in combination with others of these or other components and structures.

[0074] FIGS. 21-27 show a less schematic example of a suitable cap assembly **14** that may be used with drink bottles **10** according to the present disclosure. The example shown in FIGS. 21-27 includes non-exclusive examples of various ones of the previously discussed components and structures. However, it is with the scope of the present disclosure that other components and/or structures may be utilized in place of or in addition to the illustrated components and structures. Accordingly, the depicted example is not intended to require the selected examples and combination of components and structures. Instead, it is intended to provide an illustrative, non-exclusive example of a suitable construction for cap assemblies according to the present disclosure. The other components, structures, and variants thereof that

are illustrated, described and/or incorporated herein may be selectively utilized with the illustrated cap assembly without departing from the scope of the present disclosure. Similarly, the illustrated cap assembly may be used with any of the drink bottles described, illustrated, and/or incorporated herein, as may the other cap assemblies and/or mouthpieces described, illustrated and/or incorporated herein.

[0075] In the example shown in FIGS. 21-27, the cap assembly includes a base **70** from which a mount, or drink spout, **100** extends. The mount is pivotally coupled to the base of the cap assembly and is selectively pivoted within a range of positions relative to the base of the cap assembly. In FIGS. 21, 23, and 26, the mount is shown in a stowed configuration, while in FIGS. 22, 24-25 and 27, the mount is shown in illustrative dispensing configurations within the range of positions. The dispensing configurations of the mount may also be described as deployed and/or ready-to-drink configurations. The cap assembly includes a bite-actuated mouthpiece **72** that is mounted on mount **100** and is in fluid communication therewith. The illustrative mouthpiece includes a dispensing face **90** having a self-sealing opening **86** through which drink fluid may be selectively dispensed when the mount and mouthpiece are both in dispensing configurations.

[0076] In the illustrative example shown in FIGS. 21-27, the mount includes an optional flange, or lever arm, **122** that projects from the mount and provides a surface that may be grasped or otherwise suitably engaged by a user, such as by a user's finger or thumb, to draw the mouthpiece and its mount from the stowed configuration toward, or to, a ready-to-drink configuration. Flange **122** may optionally be utilized with any of the other pivotal (or otherwise selectively stowable) mounts that are described, illustrated and/or incorporated herein.

[0077] The illustrative example of a cap assembly **14** shown in FIGS. 21-27 also includes a handle **140** that extends from the base of the cap assembly. Handle **140** may take any other suitable form, may have a rigid or flexible construction, and may be (but is not required to be) used with any of the other cap assemblies that are disclosed, illustrated and/or incorporated herein. When present, handle **140** may, but is not required to, define a closed perimeter, or boundary, **142** through which a lanyard, karabineer, belt, strap, user's finger, or other structure may extend to hold and/or retain the drink bottle in a selected position. It is within the scope of the present disclosure that this closed boundary is perhaps best seen in FIG. 25. The closed boundary may be defined entirely by the handle or that it may be defined by

for: 10676255 or 1,676,255 Terms & Connectors
5 or 1,676,255

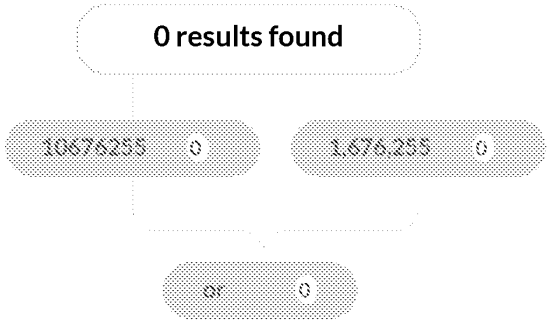
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1. *United States Courts Opinion: United States District Court Western District of Arkansas : 21-5109 - Camelbak Products , LLC v. Zak Designs, Inc.*

   Client/Matter: -None-
   Search Terms: 10676255 or 10,676,255
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2. *Head Line: CamelBak Products, LLC (California) granted US Patent for "Drink bottles"*

   Client/Matter: -None-
   Search Terms: 10676255 or 10,676,255
   Search Type: Terms and Connectors
   Narrowed by:

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News	-None-

3. *US Patent Issued to CamelBak Products on June 9 for "Drink bottles" (California ; Utah Inventors)*

   Client/Matter: -None-
   Search Terms: 10676255 or 10,676,255
   Search Type: Terms and Connectors
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United States Courts Opinion: United States District Court Western District of Arkansas: 21-5109 - Camelbak Products, LLC v. Zak Designs, Inc.

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Length: 10170 words

Body

Washington: United States District Court Western District of Arkansas has issued the following opinion:

IN THE UNITED STATES DISTRICT COURTWESTERN DISTRICT OF ARKANSASFAYETTEVILLE DIVISIONCAMELBAK PRODUCTS, LLC PLAINTIFFV. CASE NO. 5:21-CV-05109ZAK DESIGNS, INC. DEFENDANTMEMORANDUM OPINION AND ORDERI. INTRODUCTIONAs Plaintiff CamelBak Products, LLC ' s patents explain, "For some time people have recognized the need to stay hydrated. " (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 1 of 37 PageID #: <pageID>2The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak ' s patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),1 the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. See Docs. 64, 65, 69. The parties ' briefing included declarations and deposition testimony from CamelBak ' s expert witness, Jim Goldman, and Zak ' s expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias. " See Docs. 71, 73, 74.Having fully examined the patents, briefing, exhibits, expert opinions, and the parties ' oral arguments and presentations, the Court construes the disputed claim terms as stated below.1 The parties consented to the Court ' s adoption of the Northern District of California Patent Local Rules in this case. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 2 of 37 PageID #: <pageID>3II. BACKGROUNDCamelBak ' s Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows: Family Patent Number Priority Date Drink Bottles Leak-proof flip-top water bottles 9,463,911 ("the ' 911 patent") Apr. 11, 2005 ***10,676,255*** ("the ' 255 patent") Drink Containers Push-button flip-top water bottles 9,782,028 ("the ' 028 patent") Jan. 21, 2009 9,820,595 ("the ' 595 patent") 10,165,879 ("the ' 879 patent") 10,542,833 ("the ' 833 patent")The ' 255

patent is a continuation of the ' 911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the ' 595, ' 879, and ' 833 patents are continuations of the ' 028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the ' 911 and ' 028 specifications. However, certain of the disputed claim terms appear only in the continuation patents. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 3 of 37 PageID #: <pageID>4The ' 911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.The ' 028 patent (Doc. 64-3) describes a drink container that is similar to the drink container described in the ' 911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 4 of 37 PageID #: <pageID>5biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.III. LEGAL STANDARD "Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer ' s product or process, ' which in turn necessitates a determination of 'what the words in the claim mean. ' " Markman v. Westview Instruments, Inc., 517 U.S 370, 372 (1996) (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court. " Id. at 372.Claim terms are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. " Phillips v. AWH Corp., 415 F.3d 1303, 1312 – 13 (Fed. Cir. 2005) (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. " Id. at 1314 (citing Brown v. 3M, 265 F.3d 1349, 1352 (Fed. Cir. 2001)). In other words, some claim terms do not require any construction at all.Nevertheless, "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court ' s duty to resolve it. " O2 Micro Int ' l Ltd. v. Beyond Innovation Tech. Co., 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Thus, a determination that a claim term needs no construction or has the plain and ordinary meaning may be Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 5 of 37 PageID #: <pageID>6inadequate when a term has more than one 'ordinary ' meaning or when reliance on a term ' s 'ordinary ' meaning does not resolve the parties ' dispute. " Eon Corp. IP Holdings v. Silver Spring Networks, 815 F.3d 1314, 1318 (Fed. Cir. 2016) (cleaned up).Claims must be construed in light of the intrinsic evidence—the claim language itself, the specification, and the patent ' s prosecution history. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and through comparison with other claims in the patent. Phillips, 415 F.3d at 1314. "[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term. " Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent. " Phillips, 415 F.3d at 1317.Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. Id. Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. See Frans Nooren Afdichtingssystemen B.V v. Stopaq Amcorr Inc., 744 F.3d 715, 722 (Fed. Cir. 2014). Expert testimony can also help "to ensure that the court ' s understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field. " Phillips, 415 F.3d at 1318. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 6 of 37 PageID #: <pageID>7IV. DISCUSSION A. Agreed Constructions Claim Term Patents Construction"constructed as a unitary assembly" ' 028,

' 595, ' 879, and ' 833 Patents"constructed as a single piece that includes a group of parts or distinct portions" "friction-fit arrangement" ' 028, ' 595, ' 879, and ' 833 Patents "arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction""fluid conduit" ' 911 and ' 255 Patents"fluid-carrying structure, such as a channel, pipe, or tube" "mouthpiece assembly" ' 028, ' 595, ' 879, and ' 833 Patents "the group of parts or distinct sections that, taken together, allow the user to drink liquid""air return assembly" ' 911 Patent"a group of parts that, taken together, form a unit that is adapted to return air"In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement. " In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit. " On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly. " Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with the parties ' constructions and adopts them as stated above. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 7 of 37 PageID #: <pageID>8The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing. B. "rigid" ' 028, ' 595, ' 879, and ' 833 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaningindefiniteplain and ordinary meaningThe term "rigid" is used extensively in the Asserted Patents ' specifications and claims. For example, claim 10 of the ' 028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration. " (Doc. 64-3, pp. 18 – 19). This "rigid collar member" 170 is seen in figure 8 of the ' 028 patent:Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 8 of 37 PageID #: <pageID>9Id. at p. 6. The ' 028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least semi-rigid. " Id. at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification.Zak argues the term "rigid" is indefinite. Indefiniteness occurs when the "claims, read in light of the specification . . . and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention. " Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S 898, 901 (2014). A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, 35 U.S.C § 282(a), the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence. Young v. Lumenis, Inc., 492 F.3d 1336, 1345 (Fed. Cir. 2007) (citing AK Steel Corp. v. Sollac & Ugine, 344 F.3d 1234, 1238 – 39 (Fed. Cir. 2003)).Zak ' s expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid ' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and 'there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," id. at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.CamelBak admits that rigidity exists on a spectrum but counters that the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 9 of 37 PageID #: <pageID>10Zak ' s expert are fatal to Zak ' s indefiniteness argument. At his deposition, Mr. Hamilton admitted that • the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents; • the collar member must be rigid enough to collapse the silicone crimping region; and • while rigidity is context specific and difficult to define, "engineers know it when they see it. "(Doc. 64-9, pp. 11, 18, 20). CamelBak ' s expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. See Doc. 64-7, ¶ 32.The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak ' s expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with

which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification ' s singular use of the term "semi-rigid" Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 10 of 37 PageID #: <pageID>11to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is indefinite, Zak has not offered a contrary construction. C. "the resilient mouthpiece is more resilient than the drink spout" ' 911 Patent CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaningindefiniteplain and ordinary meaningThis term appears in claims 1 and 25 of the ' 911 patent. Claim 1 states that the invention includesa resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, wherein the resilient mouthpiece is more resilient than the drink spout and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth . . . .(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19). Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 11 of 37 PageID #: <pageID>12Zak contends this term is indefinite because the ' 911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:(1) the mouthpiece springs back or returns to its previous position or shape after being compressed faster than the drink spout;(2) the mouthpiece springs back or returns to its previous position or shape without damage after being compressed to a greater extent than the drink spout;(3) the mouthpiece can be compressed for a longer period of time and still spring back or return to its previous position or shape compared to the drink spout; or(4) the mouthpiece can be compressed and decompressed more times than the drink spout and still spring back or return to its previous position or shape without damage.(Doc. 65-1, ¶ 60). Based on Mr. Hamilton ' s opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.CamelBak counters that it is clear in context that this term means that the "mouthpiece" must be sufficiently resilient to compress in response to a user ' s teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit. " (Doc. 64, p. 15). CamelBak points to Mr. Hamilton ' s admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. See Doc. 64-9, pp. 25 – 26.Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 12 of 37 PageID #: <pageID>13CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster ' s Dictionary definition of "resilient," from which he derived the four plausible meanings above.The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster ' s Dictionary definition gives four possible meanings of "resilient. " But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the ' 911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term ' s scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention. " Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S 898, 901 (2014). Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 13 of 37 PageID #:

<pageID>14Lacking any counter-construction from Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties ' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial. D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" ' 028, ' 595, ' 879, and ' 833 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaningindefiniteplain and ordinary meaningZak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination. " Energizer Holdings, Inc. v. Int'l Trade Comm'n, 435 F.3d 1366, 1370 (Fed. Cir. 2006). The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always render a claim indefinite" because "an antecedent basis can be present by implication. " Id. Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention. " Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S 898, 901 (2014). Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 14 of 37 PageID #: <pageID>15Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias. " Zak points out that the patents ' other uses of "bias" were as a verb or adjective—"biased" or "biases. " Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent ' s specification:Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias. " (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.The Court disagrees with Zak ' s reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly ' s bias can be accomplished. The mouthpiece assembly ' s bias is the same—it returns to the dispensing configuration—whether that bias is created using a resiliently deformable material, a spring, or both. In Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 15 of 37 PageID #: <pageID>16the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains why the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of how that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.Even assuming Zak ' s reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly ' s bias renders the claim indefinite. Under Zak ' s reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.The term "its bias" may lack an explicit antecedent basis, but it is clear in context that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly ' s predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed Case 5:21-cv-05109-TLB Document

77 Filed 01/09/23 Page 16 of 37 PageID #: <pageID>17configuration to the dispensing configuration" is easily understood by lay judges and juries. E. "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" ' 028, ' 595, and ' 879 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaningmeans-plus-function limitationplain and ordinary meaningZak argues this claim must be limited to a means-plus-function construction under 35 U.S.C § 112(f), which states:An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. O.I Corp. v. Tekmar Co., Inc., 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. See Williamson v. Citrix Online, LLC, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 17 of 37 PageID #: <pageID>18word "means" are not governed by § 112(f), but the presumption is not a strong one. Id. at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means ' but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure. " Id. at 1348.When the word "means" is not present, the drafter ' s use of "[g]eneric terms such as 'mechanism, ' 'element, ' 'device, ' and other nonce words that reflect nothing more than verbal constructs may be . . . tantamount to using the word 'mean ' because they 'typically do not connote sufficiently definite structure. ' " Id. at 1350 (quoting Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means. " Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism . . . ' —is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does. " (Doc. 65, p. 20).Zak points to Williamson, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f) applied to the term "distributed learning control module," despite the term ' s lack of the word "means. " 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to using the word "means. " Id. at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent ' s other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure. " Id. at 1351. While recognizing "that the presence of modifiers can change the Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 18 of 37 PageID #: <pageID>19meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure. " Id.CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:[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.(Doc. 64-3, p. 18) (emphasis added). CamelBak argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism. "CamelBak relies on Alex Is the Best, LLC v. BLU Products, Inc., where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module. " 2017 WL 5031638, at *7 – 8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms '

structures sufficiently clear to a person of ordinary skill in the art. Id. The court adopted the plain and ordinary meaning of the terms. Id. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 19 of 37 PageID #: <pageID>20The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim language. This mechanism is not a generic placeholder in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in Williamson, here the specification "inform[s] the structural character" of "user release mechanism. " 792 F.3d at 1351. For example, the figures in the ' 028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:(Doc. 64-3, pp. 4, 10).Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," Williamson, 792 F.3d at 1348, and Zak has failed to overcome the presumption against the application of § 112(f). The Court further finds that the meaning of the full phrasea user release mechanism adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism and Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 20 of 37 PageID #: <pageID>21thereby release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configurationis clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase its plain and ordinary meaning. F. "is biased" / "biases" ' 028, ' 595, ' 879 and ' 833 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Construction"tends to return . . . absent an external force""is pushed, or force is exerted on, in a particular direction""returns . . . absent an external force"Variations of the term "bias" appear in the patents in at least three contexts. First, the claims recite a mouthpiece assembly that "is biased to the dispensing configuration" and a crimping region that "at least partially biases the mouthpiece assembly to the dispensing configuration. " (Doc. 64-3, p. 18). CamelBak asserts that the mouthpiece assembly ' s bias can be either internal—created by the material the mouthpiece assembly is made from—or external—created by a mechanism external to the mouthpiece assembly, such as a spring. The ' 028 specification explains:The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring.Id. at p. 10. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 21 of 37 PageID #: <pageID>22Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration. " Id. CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user ' s mouth.Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration. " (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.CamelBak proposes the "bias" terms be construed to mean "tends to return . . . absent an external force. " For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "is biased tends to return to the dispensing configuration absent an external force. " In this example, the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction. " Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position. " (Doc. 73, p. 3). Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 22 of 37 PageID #: <pageID>23Zak argues CamelBak ' s proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak ' s "proposed construction impossible for the jury to understand. " Id. at 4 – 5. CamelBak contends Zak ' s proposed construction is inappropriately limited to only external biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on Perfectvision

Manufacturing, Inc. v. PPC Broadband, Inc., 2014 WL 4285786, at *4 (E.D Ark. Aug. 29, 2014), where the district court construed "to bias" to mean "to exert force in a particular direction against an object. " Zak also points to Invisible Fence, Inc. v. Perimeter Technologies, Inc., 2006 WL 1443399, at *5 (N.D Ind. May 25, 2006), where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder. "CamelBak argues that the claim language in Perfectvision and Invisible Fence referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on Acantha LLC v. DePuy Synthes Sales, Inc., 2017 WL 972106, at *6 (E.D Wis. Mar. 13, 2017), where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force. " Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 23 of 37 PageID #: <pageID>24The Court finds Zak ' s "is pushed, or force is exerted on" language fails to capture the full meaning of the "bias" terms. Zak ' s language is a poor fit when used to refer to the mouthpiece assembly ' s internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak ' s "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak ' s proposed construction—"tends to return . . . absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force. " (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak ' s construction, as a placeholder for a part ' s specified default state, is appropriate and will be understandable by a jury.However, Zak takes issue with CamelBak ' s inclusion of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word ' s inclusion. While one dictionary definition of the word "bias" is "tendency," Bias, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to always move to their default configuration absent an external force, see, e.g , Doc. 65-3, p. 11 ("Bite-actuated valves . . . are typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compression forces being applied thereto . . . . "). So, rather than having a tendency to return, the parts simply return. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 24 of 37 PageID #: <pageID>25Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns . . . absent an external force. " G. "stowing region" ' 028, ' 595, and ' 879 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaning"the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly"plain and ordinary meaningThe term "stowing region" appears in the ' 028, ' 595, and ' 879 patents. For example, claim 1 of the ' 879 patent recites that "the cap assembly defines a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration. " (Doc. 64-5, p. 18). Claim 6 of the ' 028 patent recites that "the cap assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly. " (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the ' 028 patent: Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 25 of 37 PageID #: <pageID>26Id. at p. 6.Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly. " In other words, Zak contends the "stowing region" is limited to only the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak ' s construction improperly replaces "region" with "space" and "stowing" with "storing" and adds redundant language already present in the claims.The Court finds that "stowing region" should be given its plain and ordinary meaning. First, CamelBak is correct that Zak ' s construction would substitute the claim language for similar words and would include redundant language. Second, Zak ' s construction would limit the claims based on the possible embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 26 of 37 PageID #: <pageID>27to preferred embodiments or specific examples in the specification. " Vulcan Eng ' g Co. v. Fata Aluminium, Inc., 278 F.3d 1366, 1376 (Fed. Cir. 2002)

(quoting Texas Instruments, Inc. v. U.S Int ' l Trade Comm ' n, 805 F.2d 1558, 1563 (Fed. Cir. 1986)). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be no larger than the mouthpiece assembly. Zak ' s contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court. H. "automatically" ' 028, ' 595, and ' 879 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Construction"without additional human intervention""without additional action by the user after actuation of the user release mechanism""without additional human intervention"The term "automatically" appears in conjunction with the user release mechanism ' s ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the ' 028 patent recites "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. " (Doc. 65-3, p. 18). The ' 028 specification states that "[i]n some examples, the mouthpiece assembly is Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 27 of 37 PageID #: <pageID>28biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism. " Id. at p. 8.CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism. " So, Zak ' s compromise resolves the parties ' primary dispute, which was over the word "additional. " However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak ' s straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak ' s concession. "Automatically" cannot mean without any human intervention because the claim language requires that the user first actuate the user release mechanism. See CollegeNet, Inc. v. ApplyYourself, Inc., 418 F.3d 1225, 1235 (Fed. Cir. 2005) (affirming the district court ' s construction of "automatically" as "once initiated, the function is performed by a machine, without the need for manuallyCase 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 28 of 37 PageID #: <pageID>29performing the function"). But full adoption of Zak ' s compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention. " I. "user engagement pad . . . which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly" ' 028, ' 595, and ' 833 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaning"user engagement pad . . . which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"plain and ordinary meaningThese terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from the stowed configuration. Claim 3 of the ' 028 patent recites that "the user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user. " The same or similar claim language is present elsewhere in the ' 028 patent and the ' 595 and ' 833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the ' 028 patent: Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 29 of 37 PageID #: <pageID>30(Doc. 64-3, p. 7).Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak

contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak ' s construction injects limitations not present in the claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 30 of 37 PageID #: <pageID>31The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak ' s description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. See Vulcan Eng ' g, 278 F.3d at 1376. Certainly, one embodiment of CamelBak ' s patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism. " This may be accomplished by having the "user release mechanism" protrude through an enclosed opening that is the same size as the "user release mechanism," but this is not the only embodiment contemplated by the claim language. Accordingly, there remains no genuine dispute as to the scope of the plain language of these terms, and they require no construction by the Court. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 31 of 37 PageID #: <pageID>32J. "the anchor portion is sized to restrict passage of the anchor portion through the through passage" ' 028, ' 595, and ' 879 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaning"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion may pass into one end of the through-passage and out of the opposite end of the through-passage"plain and ordinary meaningA representation of this claim phrase appears in claim 1 of the ' 028 patent, which recites "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. " (Doc. 64-3, p. 18). The ' 028 patent ' s specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly. " Id. at p. 12. The "anchor portion" 86 and "through passage" 34 are exemplified in figure 1 of the ' 028 patent: Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 32 of 37 PageID #: <pageID>33Id. at p. 4.Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak ' s proposed construction, the patents explicitly distinguish between restricting passage through the through passage and preventing passage through the through passage. CamelBak writes that "Zak ' s proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment. " (Doc. 65, p. 28).Zak directs the Court to the relevant prosecution history. The patent examiner initially rejected certain claims of the ' 028 patent due to prior art. Specifically, the examiner found that a prior drink container patent disclosed a mouthpiece portion with an anchor Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 33 of 37 PageID #: <pageID>34portion. Ex Parte Jeff Davies & Derek Gavin Sullivan, 2017 WL 1032223, at *2 (P.T.A.B Mar. 15, 2017). The examiner found CamelBak ' s limitation in claims 1 and 21 that the anchor portion be "sized to restrict passage of the anchor portion through the through passage" failed to distinguish CamelBak ' s invention from the prior art because "as long as the anchor portion has a size, it is capable of restricting passage. " Id. CamelBak appealed the examiner ' s decision to the PTAB, which reversed the examiner ' s decision. Id. at *3. The PTAB found that CamelBak ' s "sized to restrict" language "positively limits the structure of the claims to a structure in which an anchor portion has a size that functionally acts to restrict, or limit, passage of the anchor portion through the claimed through-passage," and this limitation was not present in the prior art the examiner relied on. Id. Adopting CamelBak ' s argument, the PTAB explained that the examiner ' s findings were "unreasonable" because "[e]very structure has a size, but not all structures are capable of performing the claimed functional requirement of restricting passage of the anchor portion through the through-passage of the base of the cap assembly. " Id. (emphasis in original). The PTAB further explained that "as [CamelBak] correctly note[s], for example, an anchor portion that is smaller than the through-passage will not function to restrict passage therethrough. " Id. (emphasis in original).The PTAB also reversed the

examiner ' s rejection of claim 18 of the ' 028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage. " Id. at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 34 of 37 PageID #: <pageID>35found that "that it would have been obvious to incorporate Lin's flanges into Choi ' s anchor portion to prevent leakage. " Id. The PTAB reversed this finding, explaining:We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor portion through a through-passage. Indeed, Lin's lower flange is expressly configured to permit passage through the through-passage. Further, the Examiner ' s purported reasoning for incorporating Lin's flanges into Choi ' s structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.Id. (emphasis in original) (citations omitted).Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak ' s arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage ' limitation. " (Doc. 65, pp. 10 – 12). Zak also points to the specification figures to support its proposed construction.The Court finds Zak ' s proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak ' s successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 35 of 37 PageID #: <pageID>36the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be larger than the through passage so that the anchor portion ' s passage through the through passage is prevented. Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict. " (Doc. 64-3, p. 12). As for claim 18 of the ' 028 patent, none of CamelBak ' s arguments nor the PTAB ' s reasoning—which was simply that the prior art did not include CamelBak ' s "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through passage.The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15 – 16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 36 of 37 PageID #: <pageID>37V. CONCLUSIONThe Court HEREBY ADOPTS the above constructions for the claim terms identified by the parties.IT IS SO ORDERED on this 9th day of January, 2023._____TIMOTHY L. BROOKSUNITED STATES DISTRICT JUDGECase 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 37 of 37 PageID #: <pageID>

The complete document can be viewed at this link:*https://www.govinfo.gov/app/details/USCOURTS-arwd-5_21-cv-05109/USCOURTS-arwd-5_21-cv-05109-3*

Load-Date: January 11, 2023

End of Document

Renee Preston

Head Line: CamelBak Products, LLC (California) granted US Patent for "Drink bottles"

Impact Financial News

June 12, 2020 Friday

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Length: 233 words

Body

ALEXANDRIA, Va: CamelBak Products, LLC has been granted a patent no. ***10,676,255*** on June 9, 2020, by United States Patent And Trademark Office.

The patent has been granted for "Drink bottles"Inventors: Choi; Robert (Ogden, UT), Forsman; Barley A. (Cotati, CA), Galten; Jeremy (Petaluma, CA)Assignee: CamelBak Products, LLC (Petaluma, CA) (California)According to the abstract released by the U.S Patent & Trademark Office: "Drink bottles, or drink containers with cap assemblies that include a drink spout. In some embodiments, the drink spout is pivotally coupled to a base of the cap assembly. In some embodiments, the drink spouts include mouthpieces, including self-sealing and/or bite-actuated mouthpieces. In some embodiments, the cap assembly includes a handle, which may include at least one guard for the drink spout and/or mouthpiece. In some embodiments, the drink containers include a manual on/off valve. In some embodiments, the dispensing spout includes a mount for the mouthpiece and/or cooperates with the cap to provide a manual on/off valve to selectively restrict flow of drink fluid from the drink container regardless of the drink spout's and/or mouthpiece's configuration. In some embodiments, the drink containers include a drink tube extending from external of the drink containers and/or an air return system."The patent was filed on July 13, 2018 by Application No. 16/035,418

Load-Date: June 12, 2020

End of Document

Renee Preston

US Patent Issued to CamelBak Products on June 9 for "Drink bottles" (California, Utah Inventors)

US Fed News

June 10, 2020 Wednesday GENERAL_EDIT_CORRECTION ERROR Document ID 1069 Has error Validate old format failed - Input Date Invalid - 00:41: Unparseable date: "00:41" EST

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Length: 285 words

Dateline: ALEXANDRIA, Va.

Body

ALEXANDRIA, Va., June 10 -- United States Patent no. ***10,676,255***, issued on June 9, was assigned to CamelBak Products LLC (Petaluma, Calif.).

"Drink bottles" was invented by Robert Choi (Ogden, Utah), Barley A. Forsman (Cotati, Calif.) and Jeremy Galten (Petaluma, Calif.). According to the abstract* released by the U.S. Patent & Trademark Office: "Drink bottles, or drink containers with cap assemblies that include a drink spout. In some embodiments, the drink spout is pivotally coupled to a base of the cap assembly. In some embodiments, the drink spouts include mouthpieces, including self-sealing and/or bite-actuated mouthpieces. In some embodiments, the cap assembly includes a handle, which may include at least one guard for the drink spout and/or mouthpiece. In some embodiments, the drink containers include a manual on/off valve. In some embodiments, the dispensing spout includes a mount for the mouthpiece and/or cooperates with the cap to provide a manual on/off valve to selectively restrict flow of drink fluid from the drink container regardless of the drink spout's and/or mouthpiece's configuration. In some embodiments, the drink containers include a drink tube extending from external of the drink containers and/or an air return system." The patent was filed on July 13, 2018, under Application No. 16/035,418. *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=10676255&OS=10676255&RS=10676255 For any query with respect to this article or any other content requirement, please contact Editor at *contentservices@htlive.com*

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Renee Preston

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Document (1)

1. *5:21cv5109, Camelbak Products, Llc V. Zak Designs, Inc.*
   Client/Matter: -None-
   Search Terms: 10676255 or 10,676,255
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
Dockets	-None-

5:21cv5109, Camelbak Products, Llc V. Zak Designs, Inc.

US District Court Docket

United States District Court, Arkansas Western

(Fayetteville)

This case was retrieved on 01/17/2023

Header

Case Number: 5:21cv5109
Date Filed: 06/11/2021
Assigned To: Honorable Timothy L. Brooks
Nature of Suit: Patent (830)
Cause: Patent Infringement
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: Open
Statute: 35:271
Jury Demand: Both
Demand Amount: $0
NOS Description: Patent

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Proceedings

#	Date	Proceeding Text	Source
1	06/11/2021	CIVIL COVER SHEET for case initiated by Camelbak Products, LLC. Please proceed with filing your case initiating document(s).If the case initiating documents are not filed by Close of Business the next business day your case may be terminated. (lgd) (Entered: 06/11/2021)	

#	Date	Proceeding Text	Source
2	06/11/2021	COMPLAINT with Jury Demand against Zak Designs, Inc. (Filing fee $ 402 receipt number BARWDC-2408915), filed by Camelbak Products, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L)(Doan, Darby) (Entered: 06/11/2021)	
	06/11/2021	TEXT ONLY CLERK'S NOTICE to attorney(s) filing a complaint or amended complaint in a Patent action: Please complete AO Form 120 found on the U.S Courts website https://www.uscourts.gov/services-forms/forms and file it with the Court using Other Filings-Other Documents-Initial Report.Copyright/Patent/Trademark Report due 7/2/2021. (tg) (Entered: 06/11/2021)	
3	06/11/2021	Magistrate Notice/Consent Form (tg) (Entered: 06/11/2021)	
4	06/11/2021	NOTICE of Appearance by Joshua Reed Thane on behalf of Camelbak Products, LLC. (Thane, Joshua) (Entered: 06/11/2021)	
	06/15/2021	TEXT ONLY CLERK'S NOTICE re Multiple Attorneys Listed on Pleading directed to Plaintiff Camelbak Products, LLC. Complaint, 2 lists multiple attorneys appearing for the filer. The following attorney(s), who did not sign the pleading, must enter a separate Notice of Appearance in order to receive electronic notification of future activity in the case: Joshua Thane, David T. Pollock, Jonathan I. Detrixhe, Christopher J. Pulido. (lgd) (Entered: 06/15/2021)	
5	06/15/2021	MOTION for Attorney Christopher J. Pulido to Appear Pro Hac Vice (PHV Application fee paid $ 100; receipt number AARWDC-2410449) by Camelbak Products, LLC. (Thane, Joshua) (Entered: 06/15/2021)	
6	06/15/2021	MOTION for Attorney Jonathan I. Detrixhe to Appear Pro Hac Vice (PHV Application fee paid $ 100; receipt number AARWDC-2410480) by Camelbak Products, LLC. (Thane, Joshua) (Entered: 06/15/2021)	
7	06/15/2021	TEXT ONLY ORDER granting 5 Motion to Appear Pro Hac Vice. Christopher J. Pulido is directed to immediately register for Pro Hac Vice filer access through PACER and enter his appearance in this matter. Signed by Honorable P. K. Holmes III on June 15, 2021. (jas) (Entered: 06/15/2021)	
8	06/15/2021	TEXT ONLY ORDER granting 6 Motion to Appear Pro Hac Vice. Jonathan I. Detrixhe is directed to immediately register for Pro Hac Vice filer access through PACER and enter his appearance in this matter. Signed by Honorable P. K. Holmes III on June 15, 2021. (jas) (Entered: 06/15/2021)	
9	06/17/2021	NOTICE of Appearance by Christopher John Pulido on behalf of Camelbak Products, LLC. (Pulido, Christopher) (Entered: 06/17/2021)	
10	06/21/2021	NOTICE of Appearance by Jonathan Iain Max Detrixhe on behalf of Camelbak Products, LLC. (Detrixhe, Jonathan) (Entered: 06/21/2021)	
11	06/23/2021	THE DOCUMENT IS RESTRICTED TO COURT USERS. Summons Requested as to ZAK DESIGNS, INC. for service of the following document: 2 Complaint,. (Doan, Darby) (Entered: 06/23/2021)	
12	06/23/2021	NOTICE of Appearance by David Thomas Pollock on behalf of Camelbak Products, LLC. (Pollock, David) (Entered: 06/23/2021)	
13	06/23/2021	THE DOCUMENT IS RESTRICTED TO COURT USERS AND CASE PARTICIPANTS. Summons Issued as to Zak Designs, Inc. and returned to attorney or plaintiff for service. YOU MUST PRINT THIS ISSUED SUMMONS, WHICH IS THE MAIN DOCUMENT.	

#	Date	Proceeding Text	Source
		PAPER COPIES WILL NOT BE MAILED. (lgd) (Entered: 06/23/2021)	
14	06/28/2021	SUMMONS Returned Executed by Camelbak Products, LLC. Zak Designs, Inc. served on 6/24/2021, answer due 7/15/2021. (Doan, Darby) (Entered: 06/28/2021)	
15	07/02/2021	INITIAL REPORT ON THE FILING OF A PATENT ACTION for a case initiated by Camelbak Products, LLC with the filing of 2 Complaint,. (Doan, Darby) (Entered: 07/02/2021)	
16	07/14/2021	NOTICE of Appearance by Richard Blakely Glasgow on behalf of Zak Designs, Inc.. (Glasgow, Richard) (Entered: 07/14/2021)	
17	07/14/2021	ANSWER to 2 Complaint, with Jury Demand by Zak Designs, Inc..(Glasgow, Richard) (Entered: 07/14/2021)	
18	07/15/2021	INITIAL SCHEDULING ORDER: Rule 26 Meeting Report due by 8/23/2021. Jury Trial set for 11/14/2022 09:00 AM in Fayetteville - 2nd flr (Rm 210) before Honorable P. K. Holmes III. Signed by Jane Ann Short, Courtroom Deputy for Honorable P. K. Holmes III on July 15, 2021. (jas) (Entered: 07/15/2021)	
19	08/11/2021	MOTION to Transfer Case Zak Design's Motion to Transfer to the Eastern District of Washington by Zak Designs, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Glasgow, Richard) (Entered: 08/11/2021)	
20	08/11/2021	MEMORANDUM BRIEF in Support of 19 MOTION to Transfer Case Zak Design's Motion to Transfer to the Eastern District of Washington by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 08/11/2021)	
21	08/13/2021	Unopposed MOTION FOR ENTRY OF SCHEDULING ORDER FOR DISCOVERY AND BRIEFING RELATED TO DEFENDANT'S MOTION TO TRANSFER by Camelbak Products, LLC. (Thane, Joshua) (Entered: 08/13/2021)	
22	08/18/2021	TEXT ONLY ORDER granting 21 Motion. Plaintiff may conduct limited discovery prior to responding to the pending motion to transfer. During this limited discovery, Plaintiff may propound 3 interrogatories and 10 requests for production, and may depose Defendant's declarant for 2 hours. The discovery and briefing deadlines proposed in the motion are imposed. Consideration of whether to hold a hearing on the motion to transfer is premature. Signed by Honorable P. K. Holmes III on August 18, 2021. (rab) (Entered: 08/18/2021)	
23	08/23/2021	JOINT REPORT of Rule 26(f) Planning Meeting by Camelbak Products, LLC. (Thane, Joshua) (Entered: 08/23/2021)	
24	09/02/2021	MOTION to Stay Discovery Pending Transfer by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 09/02/2021)	
25	09/02/2021	MEMORANDUM BRIEF in Support of 24 MOTION to Stay Discovery Pending Transfer by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 09/02/2021)	
26	09/02/2021	TEXT ONLY ORDER granting 24 Motion to Stay Discovery. All discovery, with the exception of the limited discovery permitted by the Court's August 18 order, is stayed pending resolution of the 19 motion to transfer. Signed by Honorable P. K. Holmes III on September 2, 2021. (rab) Modified on 9/2/2021 to edit text (jlm). (Entered: 09/02/2021)	
27	09/02/2021	NOTICE of Appearance by Kyle Ray Wilson on behalf of Zak Designs, Inc.. (Wilson, Kyle) (Entered: 09/02/2021)	
28	09/10/2021	Joint MOTION for Protective Order Joint Motion for Entry of Agreed Protective Order by Zak Designs, Inc.. (Attachments: # 1 Exhibit A)(Glasgow, Richard) (Entered: 09/10/2021)	
29	09/15/2021	OPINION AND ORDER granting 28 Motion for Protective Order. Signed by Honorable P. K. Holmes III on September 15, 2021. (tg)	

#	Date	Proceeding Text	Source
		(Entered: 09/15/2021)	
30	09/15/2021	PROTECTIVE ORDER. Signed by Honorable P. K. Holmes III on September 15, 2021. (tg) (Entered: 09/15/2021)	
31	09/15/2021	Unopposed MOTION to Continue DISCOVERY AND BRIEFING DEADLINES RELATED TO DEFENDANT'S MOTION TO TRANSFER by Camelbak Products, LLC. (Thane, Joshua) (Entered: 09/15/2021)	
32	09/17/2021	TEXT ONLY ORDER granting 31 Motion to Continue, adopting the deadlines proposed in the motion. Signed by Honorable P. K. Holmes III on September 17, 2021. (rab) (Entered: 09/17/2021)	
33	10/01/2021	RESPONSE IN OPPOSITION TO Motion re 19 MOTION to Transfer Case Zak Design's Motion to Transfer to the Eastern District of Washington filed by Camelbak Products, LLC. (Attachments: # 1 Pulido Declaration, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R)(Thane, Joshua) (Entered: 10/01/2021)	
34	10/01/2021	THE DOCUMENT IS FILED UNDER SEAL WITH THE COURT.SEALED OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER by Camelbak Products, LLC. An Order was entered on 9/15/2021 allowing the document(s) to be filed under seal. This docket entry is related to 33 Response to Motion,.. (Attachments: # 1 Pulido Declaration, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Errata E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R) (Thane, Joshua) Modified text and granted access to parties on 10/4/2021 (lgd). (Entered: 10/01/2021)	
35	10/08/2021	MOTION for Leave to Motion for Leave to File Reply in Support of Motion to Transfer by Zak Designs, Inc.. (Attachments: # 1 Exhibit 1)(Glasgow, Richard) (Entered: 10/08/2021)	
36	10/12/2021	TEXT ONLY ORDER granting 35 Motion for Leave to File Reply. Defendant directed to immediately file reply attached as an exhibit to the motion. Signed by Honorable P. K. Holmes III on October 12, 2021. (mer) (Entered: 10/12/2021)	
37	10/12/2021	REPLY by Zak Designs, Inc. re 35 MOTION for Leave to Motion for Leave to File Reply in Support of Motion to Transfer to the Eastern District of Washington. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Glasgow, Richard) (Entered: 10/12/2021)	
38	11/10/2021	ORDER directing clerk to reassign case. Signed by Honorable P. K. Holmes III on November 10, 2021. (tg) (Entered: 11/10/2021)	
39	11/10/2021	TEXT ONLY MEMO OF REASSIGNMENT. Case reassigned to Honorable Timothy L. Brooks. Honorable P. K. Holmes III no longer assigned to the case. (tg) (Entered: 11/10/2021)	
40	03/07/2022	MEMORANDUM OPINION AND ORDER denying 19 Motion to Transfer Case. Signed by Honorable Timothy L. Brooks on March 7, 2022. (tg) (Entered: 03/07/2022)	
41	04/28/2022	MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office by Zak Designs, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Glasgow, Richard) (Entered: 04/28/2022)	
42	04/28/2022	MEMORANDUM BRIEF in Support of 41 MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 04/28/2022)	
43	05/12/2022	RESPONSE IN OPPOSITION TO Motion re 41 MOTION to Stay	

#	Date	Proceeding Text	Source
		Pending Patent Challenges in the U.S. Patent and Trademark Office filed by Camelbak Products, LLC. (Attachments: # 1 DECLARATION OF DAVID T. POLLOCK IN SUPPORT OF CAMELBAK PRODUCTS, LL'S OPPOSITION TO ZAK DESIGNS, INC.'S MOTION TO STAY PENDING PATENT CHALLENGES IN THE U.S. PATENT AND TRADEMARK OFFICE, # 2 Exhibit to Declaration of David T. Pollock, # 3 Exhibit to Declaration of David T. Pollock, # 4 Exhibit to Declaration of David T. Pollock, # 5 Exhibit to Declaration of David T. Pollock, # 6 Exhibit to Declaration of David T. Pollock)(Pulido, Christopher) (Entered: 05/12/2022)	
44	05/19/2022	MOTION for Leave to File Reply in Support of Motion to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office by Zak Designs, Inc.. (Attachments: # 1 Exhibit 1)(Glasgow, Richard) (Entered: 05/19/2022)	
45	05/19/2022	TEXT ONLY ORDER granting 44 Motion for Leave to File Reply in Support of Motion to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office. Signed by Honorable Timothy L. Brooks on May 19, 2022. (glk) (Entered: 05/19/2022)	
46	05/20/2022	REPLY to Response to Motion re 41 MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office filed by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 05/20/2022)	
47	05/24/2022	MOTION for Leave to File Sur-Reply in Opposition to Zak Designs, Inc.'s Motion to Stay by Camelbak Products, LLC. (Attachments: # 1 Exhibit 1 - CamelBak Products, LLC's Sur-Reply in Opposition to Zak Design's Motion to Stay)(Pollock, David) (Entered: 05/24/2022)	
48	05/24/2022	TEXT ONLY ORDER granting 47 Motion for Leave to File Sur-Reply. The Court does not anticipate granting any further briefing on this Motion. Signed by Honorable Timothy L. Brooks on May 24, 2022. (glk) (Entered: 05/24/2022)	
49	05/24/2022	REPLY to Response to Motion re 41 MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office filed by Camelbak Products, LLC. (Pollock, David) (Entered: 05/24/2022)	
50	06/29/2022	MEMORANDUM OPINION AND ORDER denying 41 Motion to Stay. Signed by Honorable Timothy L. Brooks on June 29, 2022. (bjb) Modified on 6/29/2022 (bjb). (Entered: 06/29/2022)	
51	06/29/2022	CASE MANAGEMENT ORDER: Final Pretrial Conference set for 6/19/2023 09:00 AM in Fayetteville -- 5th flr (Rm 509) before Honorable Timothy L. Brooks. Jury Trial set for 6/26/2023 09:00 AM in Fayetteville -- 5th flr (Rm 509) before Honorable Timothy L. Brooks. Signed by Honorable Timothy L. Brooks on June 29, 2022. (bjb) (Entered: 06/29/2022)	
52	07/19/2022	ORDER Setting Hearings: Settlement Conference set for 5/4/2023 09:00 AM in Fayetteville - 2nd flr (Rm 210) before Honorable Christy D. Comstock. Each party shall provide a concise, confidential settlement statement NO LATER THAN ONE WEEK PRIOR TO THE SCHEDULED CONFERENCE via email to CDCsettle@arwd.uscourts.gov. Signed by Honorable Christy D. Comstock on July 19, 2022. (rg) (Entered: 07/19/2022)	
53	07/20/2022	AMENDED ORDER Resetting Hearings: Settlement Conference reset for 5/2/2023 09:00 AM in Fayetteville - 2nd flr (Rm 210) before Honorable Christy D. Comstock. Each party shall provide a concise, confidential settlement statement NO LATER THAN ONE WEEK PRIOR TO THE SCHEDULED CONFERENCE via email to CDCsettle@arwd.uscourts.gov. Signed by Honorable Christy D. Comstock on July 20, 2022. (rg) (Entered: 07/20/2022)	
54	08/29/2022	MOTION for Attorney Anna M. Targowska to Appear Pro Hac Vice	

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CamelBak - Ex 2002
Page 536 of 857

#	Date	Proceeding Text	Source
		(PHV Application fee paid $ 100; receipt number AARWDC-2646842) by Camelbak Products, LLC. (Thane, Joshua) (Entered: 08/29/2022)	
55	08/29/2022	TEXT ONLY ORDER GRANTING 54 Motion to Appear Pro Hac Vice. ANNA M. TARGOWSKA is directed to immediately register for Pro Hac Vice filer access through PACER and enter her appearance in this matter. Signed by Honorable Timothy L. Brooks on August 29, 2022. (slc) (Entered: 08/29/2022)	
56	08/31/2022	NOTICE of Appearance by Anna M Targowska on behalf of Camelbak Products, LLC. (Targowska, Anna) (Entered: 08/31/2022)	
57	09/06/2022	Joint MOTION to Amend/Correct 51 Final Scheduling Order, JOINT MOTION TO AMEND CASE SCHEDULE by Camelbak Products, LLC. (Thane, Joshua) (Entered: 09/06/2022)	
58	09/07/2022	TEXT ONLY ORDER granting 57 Joint Motion to Amend Case Schedule. The new claim construction and damages contentions deadlines are approved as set out in the Motion. Signed by Honorable Timothy L. Brooks on September 7, 2022. (glk) (Entered: 09/07/2022)	
	09/07/2022	***Claim Construction Hearing set for 12/2/2022 at 09:00 AM in Fayetteville -- 5th flr (Rm 509) before Honorable Timothy L. Brooks (See Case Management Order at paragraph 3). Signed by Honorable Timothy L. Brooks on September 7, 2022. (slc) (Entered: 09/07/2022)	
59	09/09/2022	Unopposed MOTION for Leave to FILE FIRST SUPPLEMENTAL COMPLAINT by Camelbak Products, LLC. (Attachments: # 1 Exhibit 1)(Thane, Joshua) (Entered: 09/09/2022)	
60	09/09/2022	TEXT ONLY ORDER granting 59 Unopposed Motion for Leave to File First Supplemental Complaint. Plaintiff is directed to file its supplemental complaint by September 12, 2022. Signed by Honorable Timothy L. Brooks on September 9, 2022. (glk) (Entered: 09/09/2022)	
61	09/12/2022	AMENDED COMPLAINT with Jury Demand as to 2 Complaint, against Camelbak Products, LLC PLAINTIFF'S FIRST SUPPLEMENTAL COMPLAINT FOR PATENT INFRINGEMENT, filed by Camelbak Products, LLC. Related document: 2 Complaint, filed by Camelbak Products, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L)(Thane, Joshua) (Entered: 09/12/2022)	
62	09/21/2022	ANSWER to 61 Amended Complaint,, with Jury Demand by Zak Designs, Inc..(Glasgow, Richard) (Entered: 09/21/2022)	
63	10/10/2022	JOINT CLAIM CONSTRUCTION CHART by Camelbak Products, LLC DISCLOSURE OF JOINT CLAIM CONSTRUCTIONS AND PREHEARING STATEMENT PURSUANT TO PATENT LOCAL RULE 4-3. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Thane, Joshua) (Entered: 10/10/2022)	
64	10/31/2022	CLAIM CONSTRUCTION BRIEF by Camelbak Products, LLC . (Attachments: # 1 Exhibit 1 - U.S. Patent No. 9,463,911, # 2 Exhibit 2 - U.S. Patent No. 10,676,255, # 3 Exhibit 3 - U.S. Patent No. 9,782,028, # 4 Exhibit 4 - U.S. Patent No. 9,820,595, # 5 Exhibit 5 - U.S. Patent No. 10,165,879, # 6 Exhibit 6 - U.S. Patent No. 10,542,833, # 7 Exhibit 7 - Declaration of Mr. Goldman, # 8 Exhibit 8 - Expert Report of Mr. Hamilton, # 9 Exhibit 9 - Excerpts from Deposition Transcript of Mr. Hamilton (October 25, 2022))(Pollock, David) (Entered: 10/31/2022)	
65	11/14/2022	RESPONSE by Zak Designs, Inc. re 64 Claim Construction Brief,, Zak Design, Inc.'s Responsive Claim Construction Brief. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4	

#	Date	Proceeding Text	Source
		Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Glasgow, Richard) (Entered: 11/14/2022)	
66	11/15/2022	MOTION for Leave to Exceed Page Limitation by Camelbak Products, LLC. (Thane, Joshua) (Entered: 11/15/2022)	
67	11/16/2022	RESPONSE IN OPPOSITION TO Motion re 66 MOTION for Leave to Exceed Page Limitation Response to CamelBak's Motion for Leave to Exceed Reply Page Limits filed by Zak Designs, Inc.. (Attachments: # 1 Exhibit Ex. A - Hamilton Deposition)(Glasgow, Richard) (Entered: 11/16/2022)	
68	11/16/2022	TEXT ONLY ORDER granting 66 Motion for Leave to File Excess Pages. Signed by Honorable Timothy L. Brooks on November 16, 2022. (glk) (Entered: 11/16/2022)	
69	11/21/2022	REPLY by Camelbak Products, LLC re 65 Response, . (Attachments: # 1 Exhibit 1 - Figs 11 & 12, # 2 Exhibit 2 - Hamilton depo excerpts)(Pollock, David) (Entered: 11/21/2022)	
70	12/02/2022	Minute Entry for proceedings held before Honorable Timothy L. Brooks: Claim Construction Hearing held on 12/2/2022. (Dana Hayden-Court Reporter)(Proceedings held in Fayetteville-Room 509) (slc) (Entered: 12/02/2022)	
71	12/09/2022	CLAIM CONSTRUCTION BRIEF by Camelbak Products, LLC - Supplemental. (Attachments: # 1 Appendix A to Supplemental Claim Construction Brief (substituted))(Pollock, David) (Entered: 12/09/2022)	
72	12/16/2022	NOTICE OF FILING OFFICIAL TRANSCRIPT of Claim Construction Hearing held on December 2, 2022, before Judge Timothy L. Brooks. Court Reporter/Transcriber: Dana Hayden, Telephone number 479-695-4465, dana_hayden@arwd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber. After the Release of Transcript Restriction deadline, it, or a redacted transcript, may be obtained through the Court Reporter/Transcriber or PACER. A Notice of Intent to Request Redaction of the Transcript MUST be filed within 7 calendar days of the filing of the transcript and served manually on the court reporter/transcriber. Redaction Request due 1/6/2023. Redacted Transcript Deadline set for 1/17/2023. Release of Transcript Restriction set for 3/16/2023. (bjb) Modified to grant access on 12/19/2022 (lgd). (Entered: 12/16/2022)	
73	12/16/2022	CLAIM CONSTRUCTION BRIEF by Zak Designs, Inc. and response to 71 Claim Construction Brief Zak Designs, Inc.'s Supplemental Responsive Claim Construction Brief. (Glasgow, Richard) (Entered: 12/16/2022)	
74	12/21/2022	REPLY by Camelbak Products, LLC re 73 Claim Construction Brief, 71 Claim Construction Brief . (Pollock, David) (Entered: 12/21/2022)	
75	01/04/2023	NOTICE of Appearance by Gary D. Marts, Jr on behalf of Zak Designs, Inc.. (Marts, Gary) (Entered: 01/04/2023)	
76	01/04/2023	Unopposed MOTION to Extend Discovery and Motion Deadlines by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 01/04/2023)	
77	01/09/2023	MEMORANDUM OPINION AND ORDER. Signed by Honorable Timothy L. Brooks on January 9, 2023. (bjb) (Entered: 01/09/2023)	
78	01/09/2023	TEXT ONLY ORDER granting in part and denying in part 76 Motion to Extend Discovery and Motion Deadlines. The deadline for expert witness disclosures is extended to January 31, 2023. The deadlines for rebuttal expert disclosures, final discovery, and dispositive/Daubert motions remain the same as provided in the 51 Case Management Order. Signed by Honorable Timothy L. Brooks on January 9, 2023. (glk) (Entered: 01/09/2023)	

#	Date	Proceeding Text	Source
79	01/13/2023	Unopposed MOTION to Extend UNOPPOSED MOTION FOR EXTENSION OF EXPERT REPORT DEADLINES by Camelbak Products, LLC. (Thane, Joshua) (Entered: 01/13/2023)	
80	01/13/2023	TEXT ONLY ORDER GRANTING 79 Unopposed Motion to Extend Expert Report Deadlines. The deadlines for initial and rebuttal expert witness disclosures are extended to February 3 and March 3, 2023, respectively. The Court notes that it does not envision making further adjustments to the pretrial deadlines absent exceptional circumstances. Signed by Honorable Timothy L. Brooks on January 13, 2023. (gik) (Entered: 01/13/2023)	

Patents

Number	Title	Issued	Class	Subclass
9,463,911	Drink bottles	10/11/2016	1	1
9,782,028	Drink containers	10/10/2017	1	1
9,820,595	Drink containers	11/21/2017	1	1
10,165,879	Drink containers	01/01/2019	1	1
10,542,833	Drink containers	01/28/2020	1	1
10,676,255	Drink bottles	06/09/2020	1	1

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*** THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY ***

End of Document

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent of Robert Choi et al.	§	Attorney Docket No.: Z036-0005RE
	§	
U.S. Patent No. 10,676,255	§	
	§	
Issue Date: June 9, 2020	§	Customer No.: 29,150
	§	
Filing Date: July 13, 2018	§	
	§	
For: DRINK BOTTLES	§	

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

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 1.248(a)(4) and 1.550 and M.P.E.P. § 2266.03, the undersigned attorney for the Requester certifies that a copy of the foregoing **REQUEST FOR *EX PARTE* REEXAMINATION OF U.S. PATENT 10,676,255** and accompanying Exhibits 1001 to 1017 were served by First Class U.S. Mail at the following address of record for the subject patent:

Correspondence Address of Record
REED SMITH LLP
IP Docketing Dept.
P.O. Box 488
Pittsburgh, PA 15230

District Court Counsel
David T. Pollock
Jonathan I. Detrixhe
Christopher J. Pulido
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659

Dated: January 18, 2023

By: /R. Bruce Bower/
R. Bruce Bower (Reg. No. 37,099)

Electronic Acknowledgement Receipt

EFS ID:	47389465
Application Number:	90015192
International Application Number:	
Confirmation Number:	7437
Title of Invention:	DRINK CONTAINERS
First Named Inventor/Applicant Name:	10676255
Customer Number:	165846
Filer:	R. Bruce Bower/Gwendolyn Ramsey
Filer Authorized By:	R. Bruce Bower
Attorney Docket Number:	Z036-0005RE
Receipt Date:	18-JAN-2023
Filing Date:	
Time Stamp:	14:47:53
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	Information Disclosure Statement (IDS) Form (SB08)	2TX0287.PDF	97394 4e7385047ffed50bc263aa53a804d106a4065ab0	no	3

Warnings:

Information:					
This is not an USPTO supplied IDS fillable form					
2	Reexam Certificate of Service	2TX0650.PDF	106921 647d085fc5531b4764d7c8e92b28aca00d4b598c	no	1
Warnings:					
Information:					
			Total Files Size (in bytes):	204315	

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.

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

BIB DATA SHEET

CONFIRMATION NO. 7437

SERIAL NUMBER	FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
90/015,192	01/18/2023 RULE	215	3993	Z036-0005RE

APPLICANTS

INVENTORS

10676255, Residence Not Provided;
CAMELBAK PRODEUCTS, LLC (PATENT OWNER), PETALUMA ,, CA;
ZAK DESIGNS INC. (3RD. PTY. REQ.), AIRWAY HEIGHTS, WA;
LEE & HAYES, P.C., SPOLANE, WA;

**** CONTINUING DATA ***************************

This application is a REX of 16/035,418 07/13/2018 PAT 10676255

**** FOREIGN APPLICATIONS ***************************

**** IF REQUIRED, FOREIGN FILING LICENSE GRANTED ****

Foreign Priority claimed ❑ Yes ❑ No 35 USC 119(a-d) conditions met ❑ Yes ❑ No Verified and Acknowledged _____ Examiner's Signature	❑ Met after Allowance _____ Initials	STATE OR COUNTRY	SHEETS DRAWINGS	TOTAL CLAIMS	INDEPENDENT CLAIMS
				19	1

ADDRESS

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

TITLE

DRINK CONTAINERS

FILING FEE RECEIVED		
0.00	FEES: Authority has been given in Paper 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

BIB (Rev. 05/07).

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REEXAM CONTROL NUMBER	FILING OR 371 (c) DATE	PATENT NUMBER
90/015,192	01/18/2023	6983504

CONFIRMATION NO. 7437

REEXAM ASSIGNMENT NOTICE

165846
Reed Smith LLP (972852)
IP Docketing Dept.
P.O. Box 488
Pittsburgh, PA 15230

OC000000137244772

Date Mailed: 01/23/2023

NOTICE OF ASSIGNMENT OF REEXAMINATION REQUEST

The above-identified request for reexamination has been assigned to Art Unit 3993. 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)
LEE & HAYES, P.C.
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

/pflewis/

Legal Instruments Examiner
Central Reexamination Unit 571-272-7705; FAX No. 571-273-9900

IPR 2025-00140
CamelBak - Ex 2002
Page 544 of 857

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REEXAM CONTROL NUMBER	FILING OR 371 (c) DATE	PATENT NUMBER
90/015,192	01/18/2023	6983504

CONFIRMATION NO. 7437

LEE & HAYES, P.C.
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

REEXAMINATION REQUEST NOTICE

OC00000137244770

Date Mailed: 01/23/2023

NOTICE OF REEXAMINATION REQUEST FILING DATE

(Third Party Requester)

Requester is hereby notified that the filing date of the request for reexamination is 01/18/2023, 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
165846
Reed Smith LLP (972852)
IP Docketing Dept.
P.O. Box 488
Pittsburgh, PA 15230

/pflewis/

Legal Instruments Examiner
Central Reexamination Unit 571-272-7705; FAX No. 571-273-9900

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

165846 7590 02/15/2023

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

EXAMINER	
JASTRZAB, JEFFREY R	

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
02/15/2023	PAPER

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

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

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)

LEE & HAYES, P.C.
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

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

PATENT UNDER REEXAMINATION *10,676,255* .

ART UNIT *3993* .

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

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

Ex Parte Reexamination Interview Summary – Pilot Program for Waiver of Patent Owner's Statement	Control No. 90/015,192	Patent Under Reexamination is Requested 10,676,255	
	Examiner Jastrzab, Jeffrey	Art Unit 3993	AIA (FITF) Status No

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

All participants (USPTO official and patent owner):

(1) Reed Smith LLP (3) _____

(2) Renee Preston (4) _____

Date of Telephonic Interview: 13 February 2023.

A. 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.

☑ USPTO personnel were unable to reach the patent owner.**

B. The Patent Owner of record telephoned the Office and indicated they would like to participate in the pilot program for waiver of patent owner's statement in *ex parte* reexamination proceedings.*

☐ The Patent owner of record telephoned the Office and **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 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.

**The patent owner may contact the USPTO personnel at (571) 272-7705 or 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 M PRESTON/
CRU Paral (571) 272-1607
Signature and telephone number of the USPTO official, who contacted, was contacted by, or attempted to contact the patent owner.

cc: Requester (if third party requester)

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

165846 7590 03/02/2023

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

EXAMINER	
JASTRZAB, JEFFREY R	

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
03/02/2023	PAPER

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

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

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UNITED STATES PATENT AND TRADEMARK OFFICE

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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

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

PATENT UNDER REEXAMINATION *10,676,255* .

ART UNIT *3993* .

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

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

/JEFFREY R JASTRZAB/

PTOL-465 (Rev.07-04)

Order Granting Request For Ex Parte Reexamination	Control No. 90/015,192	Patent Under Reexamination 10676255	
	Examiner JEFFREY R JASTRZAB	Art Unit 3993	AIA (FITF) Status No

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

The request for *ex parte* reexamination filed 01/18/2023 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: ____

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.

/JEFFREY R JASTRZAB/ Reexamination Specialist, Art Unit 399		

cc:Requester (if third party requester)

Decision Granting *Ex Parte* Reexamination

A substantial new question of patentability affecting claims 1, 3-8, 13, 14, 18 and 19 of United States Patent Number 10,676,255 is raised by the request for *ex parte* reexamination.

Since requester did not request reexamination of claims 2, 9-12 and 15-17, and did not assert the existence of a substantial new question of patentability (SNQ) for such claims (see 35 U.S.C. § 302); see also 37 CFR 1.510b and 1.515), such claims will not be reexamined. This matter was squarely addressed in *Sony Computer Entertainment America Inc., et al. v. Jon W. Dudas*, Civil Action No. 1:05CV1447 (E.D.Va. May 22, 2006), Slip Copy, 2006 WL 1472462. The District Court upheld the Office's discretion to not reexamine claims in a reexamination proceeding other than those claims for which reexamination had specifically been requested. The Court stated:

> "To be sure, a party may seek, and the PTO may grant, ...review of each and every claim of a patent. Moreover, while the PTO in its discretion may review claims for which ... review was not requested, nothing in the statute compels it to do so. To ensure that the PTO considers a claim for ... review, ...requires that the party seeking reexamination demonstrate why the PTO should reexamine each and every claim for which it seeks review. Here, it is undisputed that **Sony** did not seek review of every claim under the '213 and '333 patents. Accordingly, **Sony** cannot now claim that the PTO wrongly failed to reexamine claims for which **Sony** never requested review, and its argument that AIPA compels a contrary result is unpersuasive."

Notice of Pre-AIA or AIA Status

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

Substantial New Question

The substantial new question of patentability (SNQP) is based on:

U.S. Patent App. Pub. No. 2005/0029271 ("McDonough")

Japanese Patent App. Pub. No. 2001-294252 ("Toudou")

International Patent App. Pub. No. WO03/101261A1 ("Wright")

U.S. Patent No. 4,676,386 ("Phlaphongphanich"')

U.S. Patent No. 2,816,548 ("Tupper")

U.S. Patent No. 2,001,842 ("Heise")

U.S. Patent No. 2,467,463 ("Canham")

U.S. Patent No. 3,307,752 ("Anderson")

U.S. Patent App. Pub. No. 2004/0217139 ("Roth")

U.S. Patent No. 4,020,964 ("Hurst")

A discussion of the specifics now follows:

Prosecution History in Brief

In a first Office action on 8/2/19, the Examiner applied U.S. Patent No. 6,116,458, issued to Dark to then Claims 1-3, 19 and 20, applied Dark in combination with U.S. D547607 to Forsman to Claims 4-18, as well as applied a double patenting rejection over parent U.S. Patent No. 10,023,365.

In a subsequent amendment filed on 12/2/19 (after interviews of 11/12/19 and 11/27/19, Applicant incorporated subject matter from a dependent claim relating to structure for a pivotal mount for the mouthpiece. In particular, the Applicant amended the claims to recite an axle-type mechanism for the pivotal mount: "*wherein the pivotal*

mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend ... wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets." Applicant successfully argued to obviate the double patenting rejection.

Accordingly, it is readily apparent that the concept of such a pivotal mount for the cap assembly was believed to be absent in the art applied by the original Examiner.

Issues Raised by the Requester

The Requester states that a substantial new question of patentability under 35 U.S.C. §§ 102 and 103 is raised by the following combinations of references:

McDonough

Claims 1, 3-5, 13, 18, and 19 are stated to be unpatentable under 35 U.S.C. §§ 102 or 103(a) over McDonough;

Claim 6 is stated to be unpatentable under 35 U.S.C. § 103(a) over McDonough in view of Anderson;

Claim 7 is stated to be unpatentable under 35 U.S.C. § 103(a) over McDonough in view of Anderson or Roth;

Toudou

Claims 1, 3-5, 8, 13, 18, and 19 are stated to be unpatentable under 35 U.S.C. §§ 102 or 103(a) over Toudou;

Claim 6 is stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Anderson;

Claim 7 is stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Anderson or Roth;

Claim 14 is stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Wright or Tupper;

Claims 1, 3-5, 8, 13, 14, 18, and 19 are stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Wright;

Claim 6 is stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Wright and further in view of Anderson;

Claim 7 is stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Wright and further in view of Anderson or Roth;

Claims 1, 3-5, 8, 13, 18, and 19 are stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Canham and Heise;

Claim 6 is stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Wright, Canham and Heise and further in view of Anderson;

Claim 7 is stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou in view of Wright, Canham and Heise and further in view of Anderson or Roth;

Claim 14 is stated to be unpatentable under 35 U.S.C. § 103(a) over Toudou, Canham and Heise in view of Phlaphongphanich; and

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

Analysis of the Prior Art Provided in the Request

McDonough:

It is agreed that the consideration of U.S. Patent App. Pub. No. 2005/0029271 to McDonough raises a SNQP as to Claims 1, 3-5, 13, 18, and 19 of the '255 Patent.

As pointed out in the request on page 35, McDonough appears to teach a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, in the form of a straw positioning member 28 and recess 36 within its downwardly extending arm 35, and that pivots within lid 22: *"(a)s may best be seen in FIGS. 2 and 3, straw positioning mechanism 20 is preferably embodied as a straw positioning member 28 that is pivotally mounted to the lid 22 and is substantially positioned within the opening 26 that is defined by the upstanding wall 23*" at [0021] and Figs. 2 and 3.

McDonough was cited but not applied in a rejection during the original prosecution. Thus, the teaching of a pivoting straw positioning member amounts to a

new, non-cumulative technological teaching that was not previously considered and discussed on the record during the prosecution of the ‘255 patent.

Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable.

Accordingly, McDonough raises a substantial new question of patentability as to Claims 1, 3-5, 13, 18, and 19 which question has not been decided in a previous examination of the ‘255 Patent. It follows from the above discussion that consideration of McDonough in combination with the handle teachings of Anderson and also raises a substantial new question.

Toudou:

It is agreed that the consideration of Japanese Patent App. Pub. No. 2001-294252 to Toudou raises a SNQP as to Claims 1, 3-5, 8, 13, 18, and 19 of the ‘255 Patent.

As pointed out in the request on page 58 and 59, Toudou appears to teach a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, in the form of rotation shafts 33 within bearings 23 as shown in Figures 1, 7 and 8B (see annotated figures on Request page 59).

Toudou was not cited nor applied in a rejection during the original prosecution. Thus, the teaching of rotation shafts within bearings amounts to a new, non-cumulative technological teaching that was not previously considered and discussed on the record during the prosecution of the ‘255 patent.

Further, there is a substantial likelihood that a reasonable examiner would consider this teaching important in deciding whether or not these claims are patentable.

Accordingly, Toudou raises a substantial new question of patentability as to Claims 1, 3-5, 8, 13, 18, and 19 which question has not been decided in a previous examination of the '255 Patent. It follows from the above discussion that consideration of Toudou in combination with the with the handle teachings of Anderson and Roth, the teachings of nozzles with resilient mouthpiece slits of Wright and Tepper, and the resilient nipple teachings of Canham and Heise also raises a substantial new question.

USC 325(d)

A review of the post grant history for the '255 patent indicates that there have been no other Office post grant challenges involving the patent (Reexamination Proceedings or Inter Partes Review, Post Grant Review, Covered Business Method trials). Accordingly, a determination of whether to exercise discretion to reject the request pursuant to 35 USC 325(d) is not applicable.

Service of Papers

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

Waiver of Right to File Patent Owner Statement

In a reexamination proceeding, Patent Owner may waive the right under 37 C.F.R. 1.530 to file a Patent Owner Statement. The document needs to contain a statement that Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement and proof of service in the manner provided by 37 C.F.R. 1.248, if the request for reexamination was made by a third party requester, see 37 C.F.R 1.550(f). The Patent Owner may consider using the following statement in a document waiving the right to file a Patent Owner Statement:

WAIVER OF RIGHT TO FILE PATENT OWNER STATEMENT

Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement.

Extensions of Time

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

Amendment in Reexamination Proceedings

Patent owner is notified that any proposed amendment to the specification and/or claims in this reexamination proceeding must comply with 37 CFR 1.530(d)-(j), must be

formally presented pursuant to 37 CFR 1.52(a) and (b), and must contain any fees required by 37 CFR 1.20(c). See MPEP § 2250(IV) for examples to assist in the preparation of proper proposed amendments in reexamination proceedings.

Submissions

In order to insure full consideration of any amendments, affidavits or declarations or other documents as evidence of patentability, such documents must be submitted in response to the first Office action on the merits (which does not result in a close of prosecution). Submissions after the second Office action on the merits, which is intended to be a final action, will be governed by the requirements of 37 CFR 1.116, after final rejection and by 37 CFR 41.33 after appeal, which will be strictly enforced.

Notification of Concurrent Proceedings

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

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

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

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

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

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

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

For EFS-Web transmissions, 37 CFR 1.8(a)(1)(i) (C) and (ii) states that correspondence (except for a request for reexamination and a corrected or replacement request for reexamination) will be considered timely filed if (a) it is transmitted via the Office's electronic filing system in accordance with 37 CFR 1.6(a)(4), and (b) includes a certificate of transmission for each piece of correspondence stating the date of transmission, which is prior to the expiration of the set period of time in the Office action.

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

/Jeffrey R. Jastrzab/
Jeffrey R. Jastrzab
Reexamination Specialist
AU 3993
(571) 272-4947

Conferees: /BMF/
Beverly M. Flanagan
Reexamination Specialist, Art Unit 3993

/GAS/
Gay Ann Spahn
Supervisory Patent Reexamination Specialist, Art Unit 3993

Reexamination	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/015,192	10676255
	Certificate Date	Certificate Number

Requester Correspondence Address: ☐ Patent Owner ☑ Third Party
LEE & HAYES, P.C. 601 W. RIVERSIDE AVENUE SUITE 1400 SPOKANE, WA 99201

LITIGATION REVIEW ☑	/JRJ/ (examiner initials)	15 February 2023 (date)
Case Name		Director Initials
Camelbak Products,LLC v. Zak Designs, Inc., 5:21cv5109, USDC W. AR, open		GAS for DPR

COPENDING OFFICE PROCEEDINGS	
TYPE OF PROCEEDING	NUMBER
None	N/A

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/015,192	10676255
	Examiner	Art Unit
	JEFFREY R JASTRZAB	3993

CPC - Searched*		
Symbol	Date	Examiner

CPC Combination Sets - Searched*		
Symbol	Date	Examiner

US Classification - Searched*			
Class	Subclass	Date	Examiner

* 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
Reviewed subject patent file history.	01/26/2023	/JRJ/
P-TACTS for AIA proceedings: none	01/26/2023	/JRJ/
Litigation Search	02/03/2023	/JRJ/
PDP for continuity	02/03/2023	/JRJ/
Reviewed 90/015013	02/03/2023	/JRJ/

Interference Search			
US Class/CPC Symbol	US Subclass/CPC Group	Date	Examiner

/JEFFREY R JASTRZAB/ Reexamination Specialist, Art Unit 3993	

IPR 2025-00140
CamelBak - Ex 2002
Page 563 of 857

Doc code: IDS
Doc description: Information Disclosure Statement (IDS) Filed

PTO/SB/08a (03-15)
Approved for use through 07/31/2016. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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INFORMATION DISCLOSURE STATEMENT BY REQUESTER (Not for submission under 37 CFR 1.99)		
	Control Number	90015192
	Filing Date	01/18/2023
	First Named Inventor	Robert Choi
	Art Unit	
	Examiner Name	Jeffrey R. JASTRZAB
	Attorney Docket Number	Z036-0005RE

U.S.PATENTS						
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
/J.R.J/	1	2001842		1935-05-21	Arthur C Heise, et al.	
	2	2467463		1949-04-19	Walter G Canham, et al.	
	3	2816548		1957-12-17	Earl S Tupper	
	4	3307752		1967-03-07	John J Anderson	
	5	4020964		1977-05-03	Eric Kenneth Hurst	
	6	4676386		1987-06-30	Vichai Phlaphongphanich	
	7	6116458		2000-09-12	Richard C. G. Dark	
	8	D547607	S1	2007-07-31	Barley A. Forsman	

If you wish to add additional U.S. Patent citation information please click the Add button.

INFORMATION DISCLOSURE STATEMENT BY REQUESTER (Not for submission under 37 CFR 1.99)		
	Control Number	90015192
	Filing Date	01/18/2023
	First Named Inventor	Robert Choi
	Art Unit	
	Examiner Name	Jeffrey R. JASTRZAB
	Attorney Docket Number	Z036-0005RE

U.S.PATENT APPLICATION PUBLICATIONS

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
/J.R.J/	1	20040217139	A1	2004-11-04	Donna Roth, et al.	
/J.R.J/	2	20050029271	A1	2005-02-10	Justin McDonough	

If you wish to add additional U.S. Published Application citation information please click the Add button.

FOREIGN PATENT DOCUMENTS

Examiner Initial*	Cite No	Foreign Document Number[3]	Country Code[2] i	Kind Code[4]	Publication Date	Name of Patentee or Applicant of cited Document	Pages,Columns,Lines where Relevant Passages or Relevant Figures Appear	T[5]
/J.R.J/	1	03101261	WO	A1	2003-12-11	Jackel Internatonal Limited		☐
/J.R.J/	2	2001294252	JP	A	2001-10-23	Richell Corporation		☐

If you wish to add additional Foreign Patent Document citation information please click the Add button

NON-PATENT LITERATURE DOCUMENTS

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]
/J.R.J/	1	Certified translation of Japanese Patent App. Pub. No. 2001-294252 (17 pages)	☐

If you wish to add additional non-patent literature document citation information please click the Add button

INFORMATION DISCLOSURE STATEMENT BY REQUESTER (Not for submission under 37 CFR 1.99)		
	Control Number	90015192
	Filing Date	01/18/2023
	First Named Inventor	Robert Choi
	Art Unit	
	Examiner Name	Jeffrey R. JASTRZAB
	Attorney Docket Number	Z036-0005RE

EXAMINER SIGNATURE			
Examiner Signature	/JEFFREY R JASTRZAB/	Date Considered	02/15/2023

*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.

PTO/AIA/81B (07-13)
Approved for use through 09/30/2025. OMB 0651-0035
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REEXAMINATION OR SUPPLEMENTAL EXAMINATION – PATENT OWNER POWER OF ATTORNEY OR REVOCATION OF POWER OF ATTORNEY WITH A NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS FOR REEXAMINATION OR SUPPLEMENTAL EXAMINATION AND PATENT

Control Number(s)	90/015,192
Filing Date(s)	January 18, 2023
First Named Inventor	Robert CHOI
Title	DRINK BOTTLES
Patent Number	10,676,255
Examiner Name	JEFFREY R JASTRZAB
Attorney Docket No(s)	P23808US09

I. Power of Attorney. This form may be used to change the Power of Attorney in a reexamination or supplemental examination proceeding (or multiple proceedings where merged). This form may also be used to change the Power of Attorney in the patent file; in such a case, a copy of this form will be placed in both the patent file and the reexamination or supplemental examination proceeding.

A. Revocation of Previous Power of Attorney. I hereby revoke all previous patent owner powers of attorney, if any, given:

☒ in the above-identified reexamination or supplemental examination proceeding control number(s) (more than one may be changed only if the proceedings are merged).

☐ in the file of the above-identified patent.

(check BOTH boxes if change in BOTH the patent file and the reexamination or supplemental examination proceeding is requested).

B. Designation of Power of Attorney.

☐ A Power of Attorney is submitted herewith.

OR

☒ I hereby appoint Practitioner(s) associated with the Customer Number identified in the box at right as my/our attorney(s) or agent(s) to prosecute the proceeding(s)/patent identified above and selected in section I(A), and to transact all business in the United States Patent and Trademark Office connected therewith:

165846

OR

☐ I hereby appoint Practitioner(s) named below as my/our attorney(s) or agent(s) to prosecute the proceeding(s) identified above, and to transact all business in the United States Patent and Trademark Office connected therewith:

Practitioner(s) Name	Registration Number

Authorization for the Power of Attorney is provided by the signature on page 2 of this form.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with an information collection subject to the requirements of the Paperwork Reduction Act of 1995, unless the information collection has a currently valid OMB Control Number. The OMB Control Number for this information collection is 0651-0035. Public burden for this form is estimated to average 15 minutes hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing this burden to the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 or email informationCollection@uspto.gov. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **If filing this completed form by mail, 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.

II. Change of Correspondence Address

Please recognize or change the correspondence address for the above-identified reexamination or supplemental examination proceeding control number(s) (more than one may be changed **only** if they are merged proceedings) **and for the file of the above-identified patent** to be:

☒ The address associated with the above-identified Customer Number.
OR
☐ The address associated with the Customer Number identified in the box at right: ☐
OR

☐ Firm or Individual Name					
Address					
City		State		Zip	
Country					
Telephone		Email			

NOTE: THE CORRESPONDENCE ADDRESS FOR THE REEXAMINATION OR SUPPLEMENTAL EXAMINATION PROCEEDING CONTROL NUMBER(S) MUST BE THE SAME AS THAT FOR THE PATENT. SEE 37 CFR 1.33.

III. Authorization for Power of Attorney and (if selected) Change of Correspondence Address

I am the:
☐ Inventor, having ownership of the patent being reexamined.
OR
☒ Patent owner.
Statement under 37 CFR 3.73(c) (Form PTO/AIA/96) submitted herewith or filed on _____.

Signature of Inventor or Patent Owner		Date	May 1, 2023
Name	Mark Kowalski	Telephone	
Title and Company	VP, Tax CamelBak Products, LLC		

NOTE: Signatures of all the inventors or patent owners of the entire interest or their representative(s) are required. If more than one signature is required, submit multiple forms, check the box below, and identify the total number of forms submitted in the blank below.

☐ A total of _____ forms are submitted. *If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.*

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. The United States Patent and Trademark Office (USPTO) collects the information in this record under authority of 35 U.S.C. 2. The USPTO's system of records is used to manage all applicant and owner information including name, citizenship, residence, post office address, and other information with respect to inventors and their legal representatives pertaining to the applicant's/owner's activities in connection with the invention for which a patent is sought or has been granted. The applicable Privacy Act System of Records Notice for the information collected in this form is COMMERCE/PAT-TM-7 Patent Application Files, available in the Federal Register at 78 FR 19243 (March 29, 2013). https://www.govinfo.gov/content/pkg/FR-2013-03-29/pdf/2013-07341.pdf

Routine uses of the information in this record may include disclosure to: 1) law enforcement, in the event that the system of records indicates a violation or potential violation of law; 2) a Federal, state, local, or international agency, in response to its request; 3) a contractor of the USPTO having need for the information in order to perform a contract; 4) the Department of Justice for determination of whether the Freedom of Information Act (FOIA) requires disclosure of the record; 5) a Member of Congress submitting a request involving an individual to whom the record pertains, when the individual has requested the Member's assistance with respect to the subject matter of the record; 6) a court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel in the course of settlement negotiations; 7) the Administrator, General Services Administration (GSA), or their designee, during an inspection of records conducted by GSA under authority of 44 U.S.C. 2904 and 2906, in accordance with the GSA regulations and any other relevant (i.e., GSA or Commerce) directive, where such disclosure shall not be used to make determinations about individuals; 8) 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)); 9) the Office of Personnel Management (OPM) for personnel research purposes; and 9) the Office of Management and Budget (OMB) for legislative coordination and clearance.

If you do not furnish the information requested on this form, the USPTO may not be able to process and/or examine your submission, which may result in termination of proceedings, abandonment of the application, and/or expiration of the patent.

Additional Uses

Additional USPTO uses of the information in this record may include disclosure to: 1) the International Bureau of the World Intellectual Property Organization, if the record is related to an international application filed under the Patent Cooperation Treaty; 2) the public i) after publication of the application pursuant to 35 U.S.C. 122(b), ii) after issuance of a patent pursuant to 35 U.S.C. 151, iii) 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, or iv) without publication of the application or patent under the specific circumstances provided for by 37 CFR 1.14(a)(1)(v)-(vii); and/or 3) the National Archives and Records Administration, for inspection of records.

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 #
90/015,192	**05/02/2023 03:06:49 PM ET**	**Z036-0005RE**

Title of Invention

DRINK CONTAINERS

Application Information

APPLICATION TYPE	Utility / ex parte reexam	PATENT #	10676255
CONFIRMATION #	7437	FILED BY	Shiju Varghese
PATENT CENTER #	62023554	FILING DATE	01/18/2023
CUSTOMER #	165846	FIRST NAMED INVENTOR	- 10676255
CORRESPONDENCE ADDRESS	-	AUTHORIZED BY	Amardeep Grewal

Documents

TOTAL DOCUMENTS: 4

DOCUMENT		PAGES	DESCRIPTION	SIZE (KB)
P23808US09_Waiver_of_POS.pdf		3	-	546 KB
P23808US09_Waiver_of_POS-RXLET..pdf	(1-2)	2	Reexam Miscellaneous Incoming Letter	167 KB
P23808US09_Waiver_of_POS-RXC/SR.pdf	(3-3)	1	Reexam Certificate of Service	87 KB
Reexam_POA.pdf		3	Power of Attorney	686 KB
P23808US09_373c_Stmt.pdf		3	Assignee showing of ownership per 37 CFR 3.73	178 KB

Digest

DOCUMENT	MESSAGE DIGEST(SHA-512)
P23808US09_Waiver_of_POS.pdf	4FAB6BB014C10694F8B49760661FC80A6D26EFC92402CB616EC1A3DBE91944360488DFFCEA606184E1D362BAFA209DB7CA94D518CA9B931E0627E7EE23055C98
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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.

PTO/AIA/96 (08-12)
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.

STATEMENT UNDER 37 CFR 3.73(c)

Applicant/Patent Owner: CAMELBAK PRODUCTS, LLC

Application No./Patent No.: 10,676,255 Filed/Issue Date: June 09, 2020

Titled: DRINK BOTTLES

CAMELBAK PRODUCTS, LLC, a limited liability company

(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that, for the patent application/patent identified above, it is (choose **one** of options 1, 2, 3 or 4 below):

1. ☑ The assignee of the entire right, title, and interest.

2. ☐ An assignee of less than the entire right, title, and interest (check applicable box):

   ☐ The extent (by percentage) of its ownership interest is _____%. Additional Statement(s) by the owners holding the balance of the interest must be submitted to account for 100% of the ownership interest.

   ☐ There are unspecified percentages of ownership. The other parties, including inventors, who together own the entire right, title and interest are:

   Additional Statement(s) by the owner(s) holding the balance of the interest must be submitted to account for the entire right, title, and interest.

3. ☐ The assignee of an undivided interest in the entirety (a complete assignment from one of the joint inventors was made). The other parties, including inventors, who together own the entire right, title, and interest are:

   Additional Statement(s) by the owner(s) holding the balance of the interest must be submitted to account for the entire right, title, and interest.

4. ☐ The recipient, via a court proceeding or the like (*e.g.*, bankruptcy, probate), of an undivided interest in the entirety (a complete transfer of ownership interest was made). The certified document(s) showing the transfer is attached.

The interest identified in option 1, 2 or 3 above (not option 4) is evidenced by either (choose **one** of options A or B below):

A. ☑ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 046348, Frame 0227, or for which a copy thereof is attached.

B. ☐ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

   1. From: _____ To: _____

      The document was recorded in the United States Patent and Trademark Office at

      Reel _____, Frame _____, or for which a copy thereof is attached.

   2. From: _____ To: _____

      The document was recorded in the United States Patent and Trademark Office at

      Reel _____, Frame _____, or for which a copy thereof is attached.

This collection of information is required by 37 CFR 3.73(b). 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 and 1.14. 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.

PTO/AIA/96 (08-12)
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.

STATEMENT UNDER 37 CFR 3.73(c)

3. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at

Reel _____, Frame _____, or for which a copy thereof is attached.

4. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at

Reel _____, Frame _____, or for which a copy thereof is attached.

5. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at

Reel _____, Frame _____, or for which a copy thereof is attached.

6. From: _____ To: _____

The document was recorded in the United States Patent and Trademark Office at

Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet(s).

☑ As required by 37 CFR 3.73(c)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

/Amardeep S. Grewal, Reg. No. 62,798/	May 2, 2023
Signature	Date
Amardeep S. Grewal	62,798
Printed or Typed Name	Title or Registration Number

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.

Attorney Docket No. P23808US09
Client Ref. No. 994-RE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

CHOI, et al.

Patent No.: 10,676,255

Reexam Control No.: 90/015,192

Filed: January, 18, 2023

Conf. No.: 7437

Art Unit: 3993

Examiner: JEFFREY R JASTRZAB

Atty. Docket No.: P23808US09

DRINK CONTAINERS

Mail Stop *Ex Parte* Reexam
Attn: Central Reexamination Unit
Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

WAIVER OF RIGHT TO FILE PATENT OWNER STATEMENT UNDER 37 C.F.R. § 1.530

Dear Commissioner:

The owner of U.S. Patent No. 10,676,255 (the '255 Patent) has received the order granting request for *Ex Parte* Reexamination mailed March 02, 2023 in the above-identified proceeding.

The '255 Patent is currently the subject of concurrent district court litigation in *CamelBak Products, LLC v. Zak Designs, Inc.* 5-21-cv-05 l 09 (WDAR). On February 7, 2023 the parties reached a settlement and a Motion to Dismiss was granted pursuant to the terms of a settlement agreement.

Patent Owner waives the right under 37 C.F.R. §1.530 to file a Patent Owner Statement. Accordingly, Patent Owner requests that the reexamination proceed without consideration of any Patent Owner Statement and without consideration of any reply to a Patent Owner's Statement under 37 C.F.R. §1.535.

Submitted herewith are an executed Power of Attorney and a Statement under 37 CFR 3.73(c), which lists current assignment information for the patent under reexamination.

Dated: May 02, 2023

Respectfully submitted,

/Amardeep S. Grewal, Reg. No. 62,798/
Amardeep S. Grewal
Attorney for Patent Owner
Reg. No. 62,798

REED SMITH LLP
CUSTOMER NO.: 165846
IP Docketing Dept.
P.O. Box 488
Pittsburgh, PA 15230
Tel: 202.414.9272

CERTIFICATE OF TRANSMISSION			
This paper (along with any referred to as being attached or enclosed) is being electronically filed with the U.S. Patent and Trademark Office by the below-named person under the authority of the undersigned agent/attorney of record on the date below.			
Name (Print/Type)	Amardeep S. Grewal		
Signature	/Amardeep S. Grewal, Reg. No. 62,798/		Date: May 02, 2023

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§1.248 and 1.550 and MPEP §2266.03, Attorney for Patent Owner hereby certifies that a full and accurate copy of this Waiver of Right to File Patent Owner Statement was served by electronic and first-class mail on counsel for Requester Zak Designs, Inc.:

R. Bruce Bower
Lee & Hayes, P.C.
75 14th Street NE, Suite 2500
Atlanta, Georgia 30309
bruce.bower@leehayes.com

this 2nd day of May, 2023

By:
/Amardeep S. Grewal, Reg. No. 62,798/
Amardeep S. Grewal
Attorney for Patent Owner
Reg. No. 62,798

Attorney Docket No. P23808US09
Client Ref. No. 994-RE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

CHOI, et al.

Patent No.: 10,676,255

Reexam Control No.: 90/015,192

Filed: January, 18, 2023

Conf. No.: 7437

Art Unit: 3993

Examiner: JEFFREY R JASTRZAB

Atty. Docket No.: P23808US09

DRINK CONTAINERS

Mail Stop *Ex Parte* Reexam
Attn: Central Reexamination Unit
Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

This submission is being re-filed, with a corrected Certificate of Service.

WAIVER OF RIGHT TO FILE PATENT OWNER STATEMENT UNDER 37 C.F.R. § 1.530

Dear Commissioner:

The owner of U.S. Patent No. 10,676,255 (the '255 Patent) has received the order granting request for *Ex Parte* Reexamination mailed March 02, 2023 in the above-identified proceeding.

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Submitted herewith are an executed Power of Attorney and a Statement under 37 CFR 3.73(c), which lists current assignment information for the patent under reexamination.

Dated: May 02, 2023

Respectfully submitted,

/Amardeep S. Grewal, Reg. No. 62,798/
Amardeep S. Grewal
Attorney for Patent Owner
Reg. No. 62,798

REED SMITH LLP
CUSTOMER NO.: 165846
IP Docketing Dept.
P.O. Box 488
Pittsburgh, PA 15230
Tel: 202.414.9272

CERTIFICATE OF TRANSMISSION			
This paper (along with any referred to as being attached or enclosed) is being electronically filed with the U.S. Patent and Trademark Office by the below-named person under the authority of the undersigned agent/attorney of record on the date below.			
Name (Print/Type)	Amardeep S. Grewal		
Signature	/Amardeep S. Grewal, Reg. No. 62,798/		Date: May 02, 2023

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§1.248 and 1.550 and MPEP §2266.03, Attorney for Patent Owner hereby certifies that a full and accurate copy of this Waiver of Right to File Patent Owner Statement was served by first-class mail on counsel for Requester Zak Designs, Inc.:

LEE & HAYES, P.C.
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

this 2nd day of May, 2023

By:
/Amardeep S. Grewal, Reg. No. 62,798/
Amardeep S. Grewal
Attorney for Patent Owner
Reg. No. 62,798

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 #
90/015,192	**05/03/2023 11:00:19 AM ET**	**Z036-0005RE**

Title of Invention

DRINK CONTAINERS

Application Information

APPLICATION TYPE	Utility / ex parte reexam	PATENT #	10676255
CONFIRMATION #	7437	FILED BY	Shiju Varghese
PATENT CENTER #	62028238	FILING DATE	01/18/2023
CUSTOMER #	165846	FIRST NAMED INVENTOR	- 10676255
CORRESPONDENCE ADDRESS	-	AUTHORIZED BY	Amardeep Grewal

Documents

TOTAL DOCUMENTS: 2

DOCUMENT		PAGES	DESCRIPTION	SIZE (KB)
P23808US09_Waiver_of_POS_Ref.pdf		3	-	551 KB
P23808US09_Waiver_of_POS_Ref-RXLET..pdf	(1-2)	2	Reexam Miscellaneous Incoming Letter	172 KB
P23808US09_Waiver_of_POS_Ref-RXC/SR.pdf	(3-3)	1	Reexam Certificate of Service	92 KB

Digest

DOCUMENT	MESSAGE DIGEST(SHA-512)

P23808US09_Waiver_of_POS_Ref.pdf	64E071EE1486D59E2C9F03E6722B1B3661260C6FB334A37846A497421EE7AD9159213E18351F9CD93F782D009CD9E874C97CC2E546D72339300AA19C16F1E76F
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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.
90/015,192	01/18/2023	10676255	Z036-0005RE	7437

165846 7590 06/27/2023

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

EXAMINER	
JASTRZAB, JEFFREY R	

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
06/27/2023	PAPER

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

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

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

DO NOT USE IN PALM PRINTER

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

LEE & HAYES, P.C.
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

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

PATENT UNDER REEXAMINATION *10,676,255* .

ART UNIT *3993* .

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

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

/JEFFREY R JASTRZAB/

PTOL-465 (Rev.07-04)

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

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

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

b. ☐ This action is made FINAL.

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

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

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

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

Part II SUMMARY OF ACTION

1a. ☑ Claims 1,3-8,13-14 and 18-19 are subject to reexamination.
1b. ☑ Claims 2,9-12 and 15-17 are not subject to reexamination.
2. ☐ Claims _____ have been canceled in the present reexamination proceeding.
3. ☐ Claims _____ are patentable and/or confirmed.
4. ☑ Claims 1,3-8,13-14 and 18-19 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ The drawings, filed on _____ are acceptable.
7. ☐ The proposed drawing correction, filed on _____ has been (7a) ☐ approved (7b) ☐ disapproved.
8. ☐ Acknowledgment is made of the priority claim under 35 U.S.C. 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☐ None of the certified copies have
   1 ☐ been received.
   2 ☐ not been received.
   3 ☐ been filed in Application No. _____.
   4 ☐ been filed in reexamination Control No. _____.
   5 ☐ been received by the International Bureau in PCT application No. _____.
   * See the attached detailed Office action for a list of the certified copies not received.
9. ☐ Since the proceeding appears to be in condition for issuance of an *ex parte* reexamination certificate except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte* Quayle, 1935 C.D. 11, 453 O.G. 213.
10. ☐ Other: _____

cc: Requester (if third party requester)

Reexamination

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

Notice of Pre-AIA or AIA Status

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

Claim Status

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

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

Claim Rejections - 35 USC § 102 and § 103

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

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

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

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

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

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

McDonough:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Toudou:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amendment in Reexamination Proceedings

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

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

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

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

Service of Papers

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

Extensions of Time

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

Litigation Reminder

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

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

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

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

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

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

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

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

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

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

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PTO/SB/06 (09-11)
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PATENT APPLICATION FEE DETERMINATION RECORD Substitute for Form PTO-875	Application or Docket Number 90/015,192	Filing Date 01/18/2023	☐ 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 $100 =	
INDEPENDENT CLAIMS (37 CFR 1.16(h))	minus 3 =	*		x $480 =	
☐ 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	08/28/2023	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA		RATE ($)	ADDITIONAL FEE ($)
	Total (37 CFR 1.16(i))	* 23	Minus	** 23	= 0		x $100 =	0
	Independent (37 CFR 1.16(h))	* 2	Minus	*** 3	= 0		x $480 =	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 $0 =	
	Independent (37 CFR 1.16(h))	*	Minus	***	=		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	

* 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.	

This collection of information is required by 37 CFR 1.16. 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 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.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:

CHOI, et al.

Patent No.: 10,676,255

Reexam Control No.: 90/015,192

Filed: January 18, 2023

Conf. No.: 7437

Art Unit: 3993

Examiner: Jeffrey R. Jastrzab

Patent Owner's Atty. Docket No.: P23808US09

DRINK BOTTLES

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Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION IN EX PARTE REEXAMINATION

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

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

Remarks begin on page 8 of this paper.

AMENDMENTS TO THE CLAIMS

1. (Amended) A drink container, comprising:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. (New) A drink container, comprising:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REMARKS

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

I. Status of Claims and Support for Claim Changes

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

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

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

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

New claims 20-23 are added in this reexamination.

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

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

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

A. Summary of Rejections

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

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

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

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

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

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

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

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

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

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

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

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

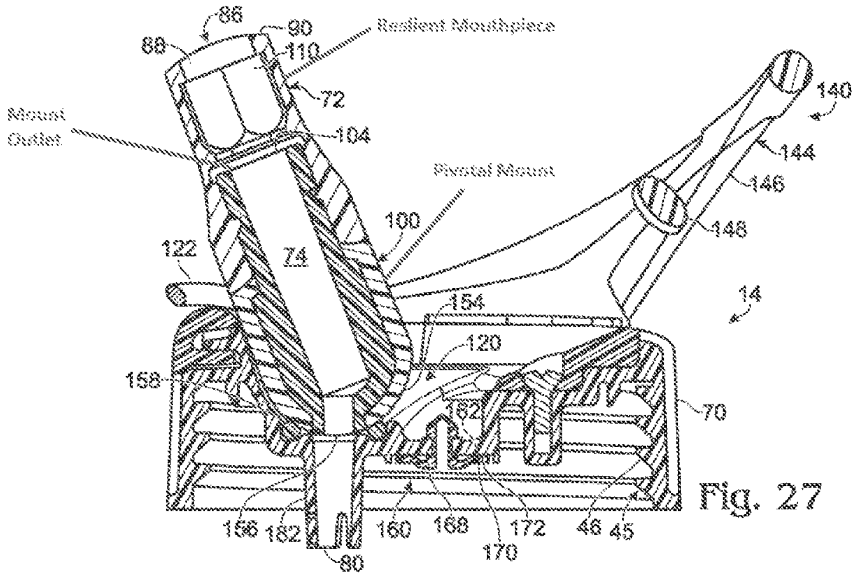


Fig. 27

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

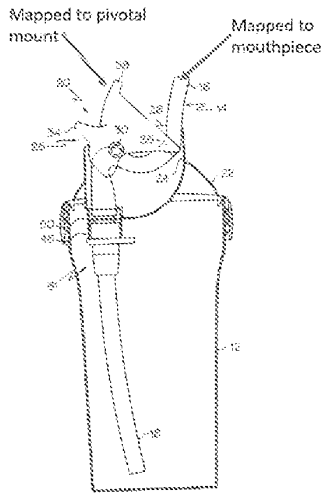


FIG. 2

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

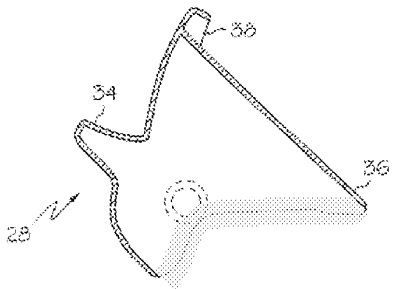
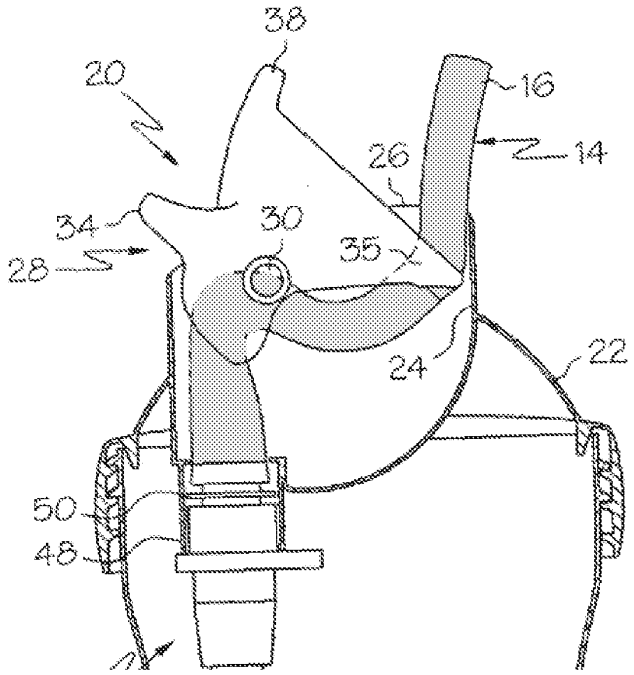


FIG. 4

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



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

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

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

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

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

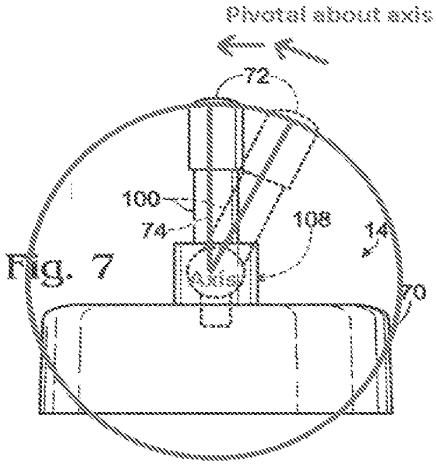


Fig. 7

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

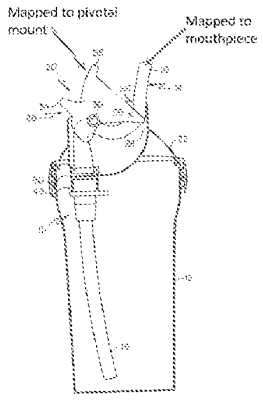


FIG. 2

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

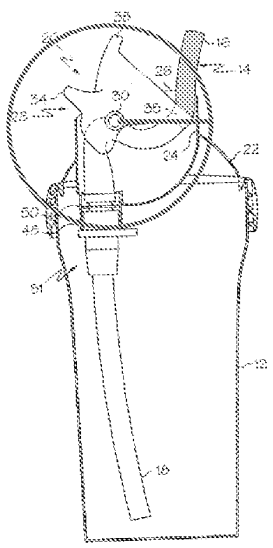


FIG. 2

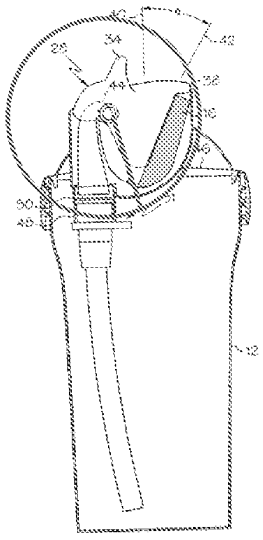


FIG. 3

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

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

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

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

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

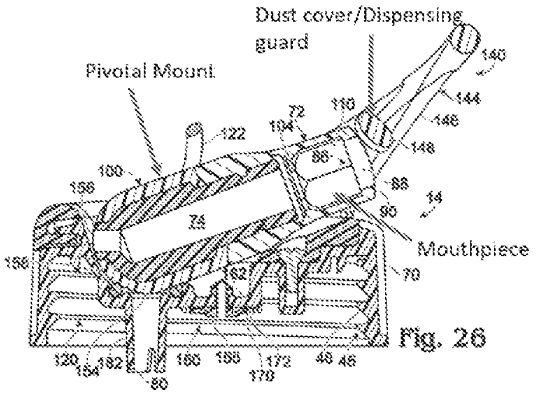


Fig. 26

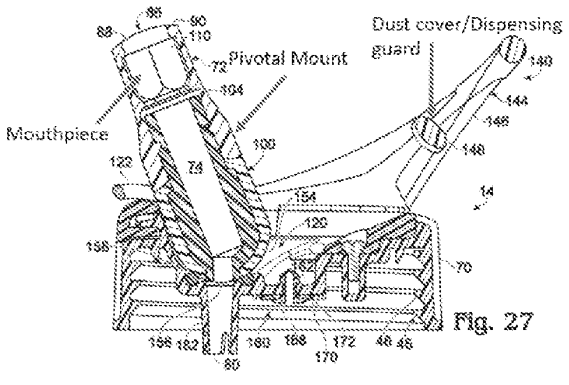


Fig. 27

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

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

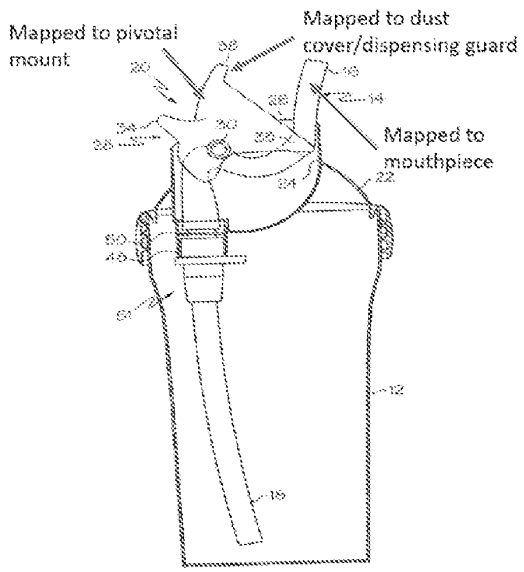


FIG. 2

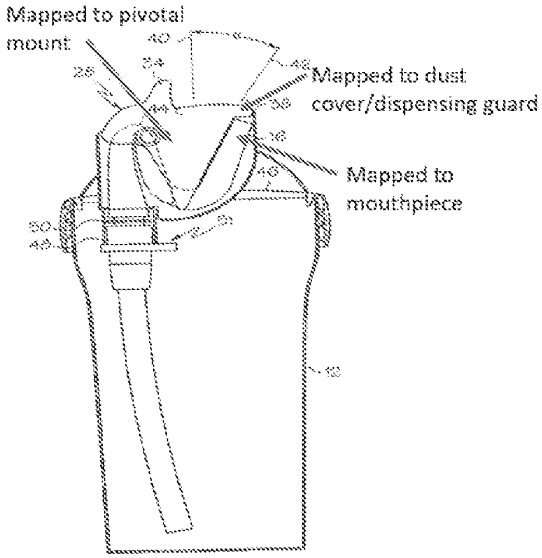


FIG. 3

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

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

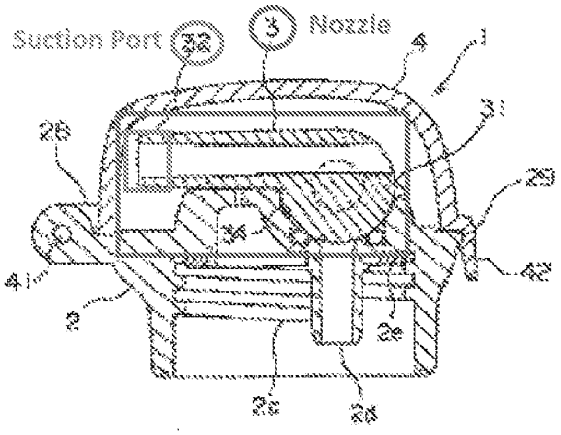
As this feature is not disclosed by Wright, Patent Owner respectfully submits that McDonough fails to disclose, suggest or teach the limitation "*wherein the dust cover/dispensing guard is stationary when the mouthpiece and the pivotal mount are selectively pivoted between the stowed position and the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

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

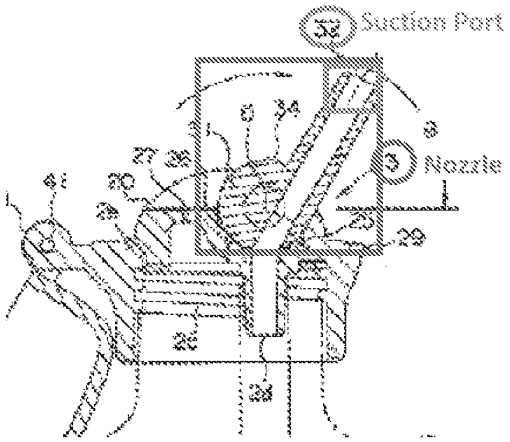
1. The combination of Toudou and Wright or Toudou, Canham, and Heise does not disclose, suggest, or teach "a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet" and "a resilient mouthpiece engaged with the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

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

[FIG. 2]



[FIG. 4]



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

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

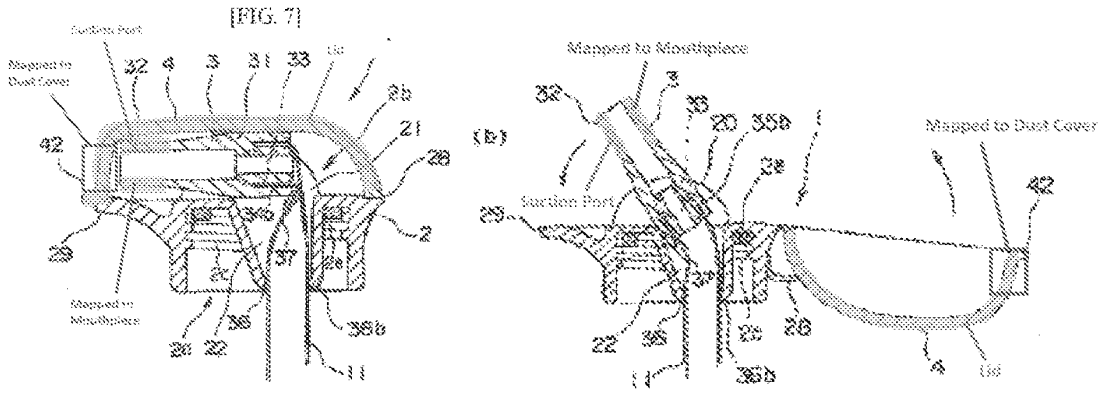
As this feature is not disclosed or suggested by Wright, Canham, and Heise, Patent Owner respectfully submits that the combination of Toudou and Wright or Toudou, Canham, and Heise does not disclose suggest, or teach the limitations of *"a pivotal mount coupled to the cap assembly base for pivotal movement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

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

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

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

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



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

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

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

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

III. Related Applications

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

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

Dated: August 28, 2023

Respectfully submitted,

/Amardeep S. Grewal, Reg. No. 62,798/
Amardeep S. Grewal
Attorney for Patent Owner
Reg. No. 62,798

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CERTIFICATE OF TRANSMISSION			
This paper (along with any referred to as being attached or enclosed) is being electronically filed with the U.S. Patent and Trademark Office by the below-named person under the authority of the undersigned agent/attorney of record on the date below.			
Name (Print/Type)	Amardeep S. Grewal		
Signature	/Amardeep S. Grewal, Reg. No. 62,798/		Date: August 28, 2023

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§1.248 and 1.550 and MPEP §2266.03, Attorney for Patent Owner hereby certifies that a full and accurate copy of this Response to Office Action in Ex Parte Reexamination was served by first class mail (together with electronic service) on counsel for Requester Zak Designs, Inc.:

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this 28th day of August, 2023

By:
/Amardeep S. Grewal, Reg. No. 62,798/
Amardeep S. Grewal
Attorney for Patent Owner
Reg. No. 62,798

Electronic Patent Application Fee Transmittal

Application Number:	90015192
Filing Date:	18-Jan-2023
Title of Invention:	DRINK CONTAINERS
First Named Inventor/Applicant Name:	10676255
Filer:	Amardeep S. Grewal/Shiju Varghese
Attorney Docket Number:	Z036-0005RE

Filed as Large Entity

Filing Fees for ex parte reexam

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
REEXAMINATION CLAIMS IN EXCESS OF 20	1822	3	100	300
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Extension-of-Time:				
Miscellaneous:				
			Total in USD ($)	**300**

Electronic Acknowledgement Receipt

EFS ID:	48502064
Application Number:	90015192
International Application Number:	
Confirmation Number:	7437
Title of Invention:	DRINK CONTAINERS
First Named Inventor/Applicant Name:	10676255
Customer Number:	165846
Filer:	Amardeep S. Grewal/Shiju Varghese
Filer Authorized By:	Amardeep S. Grewal
Attorney Docket Number:	Z036-0005RE
Receipt Date:	28-AUG-2023
Filing Date:	18-JAN-2023
Time Stamp:	16:56:14
Application Type:	Reexam (Patent Owner)

Payment information:

Submitted with Payment	yes
Payment Type	CARD
Payment was successfully received in RAM	$300
RAM confirmation Number	E20238RG56406432
Deposit Account	501529
Authorized User	Shiju Varghese
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)	

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		P23808US09_994-RE_-_Response_to_Non-Final_Office_Action_08-28-2023.pdf	1308825 c0272a83b79ea077ef8d8da3d27fdf435062 3ded	yes	23

	Multipart Description/PDF files in .zip description		
	Document Description	**Start**	**End**
	Amendment/Request for Reconsideration-After Non-Final Rejection	1	1
	Claims	2	7
	Applicant Arguments/Remarks Made in an Amendment	8	22
	Reexam Certificate of Service	23	23

Warnings:					
Information:					
2	Fee Worksheet (SB06)	fee-info.pdf	37814 fe6d8e1aeaba67c701c52ae8fea03874bd9a 3ce3	no	2
Warnings:					
Information:					
			Total Files Size (in bytes):	1346639	

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.

Litigation Search Report CRU 3999

Reexamination Control No. 90/015,192

To: Jeffrey Jastrzab	**From: Renee Preston**
Location: CRU	**Location: CRU 3999 / REM 4C75**
Art Unit: 3993	**Phone: (571) 272-1607**
Date: 09/18/2023	**E-mail: renee.preston@uspto.gov**

Search Notes

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

1. Performed a KeyCite Search in Westlaw, which retrieves all history on the patent including any litigation.
2. Performed a search on the patent in Lexis CourtLink for any open dockets or closed cases.
3. Performed a search in Lexis in the Federal Courts and Administrative Materials databases for any cases found.
4. Performed a search in Lexis in the IP Journal and Periodicals database for any articles on the patent.
5. Performed a search in Lexis in the news databases for any articles about the patent or any articles about litigation on this patent.

Litigation: Cases Found

Status	Docket	Description
Closed	5:21cv5109	Camelbak Products, Llc V. Zak Designs, Inc.

Paper No. 01/18/2023

2023 WL 137485

Editor's Note: Additions are indicated by Text and deletions by ~~Text~~ .

United States District Court, W.D. Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

CASE NO. 5:21-CV-05109

|

Signed January 9, 2023

West Headnotes (1)

[1] Patents ⚭ In general; utility

US Patent 9,463,911, US Patent 9,782,028, US Patent 9,820,595, US Patent 10,165,879, US Patent 10,542,833, US Patent 10,676,255. Construed.

Go to Markman Construed Terms

Attorneys and Law Firms

Anna M. Targowska, Reed Smith LLP, Chicago, IL, Darby Vincent Doan, Josina Reed Thane, Haltom & Doan, Texarkana, TX, David Thomas Pollock, Christopher John Pulido, Jonathan Iain Max Detrixhe, Reed Smith LLP, San Francisco, CA, for Plaintiff.

Kyle Ray Wilson, Richard Blakely Glasgow, Gary D. Marts, Jr., Wright, Lindsey & Jennings LLP, Little Rock, AR, for Defendant.

MEMORANDUM OPINION AND ORDER

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

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III. LEGAL STANDARD...——

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D. “release the mouthpiece assembly to move via its bias ...”...——

E. “a user release mechanism adapted to automatically disengage ...”...——

F. “is biased” / “biases”...——

G. “stowing region”...——

H. “automatically”...——

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J. “the anchor portion is sized to restrict passage ...”...——

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I. INTRODUCTION

As Plaintiff CamelBak Products, LLC's patents explain, “For some time people have recognized the need to stay hydrated.” (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids.

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The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak's patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),[1] the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. *See* Docs. 64, 65, 69. The parties' briefing included declarations and deposition testimony from CamelBak's expert witness, Jim Goldman, and Zak's expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias." *See* Docs. 71, 73, 74.

Having fully examined the patents, briefing, exhibits, expert opinions, and the parties' oral arguments and presentations, the Court construes the disputed claim terms as stated below.

II. BACKGROUND

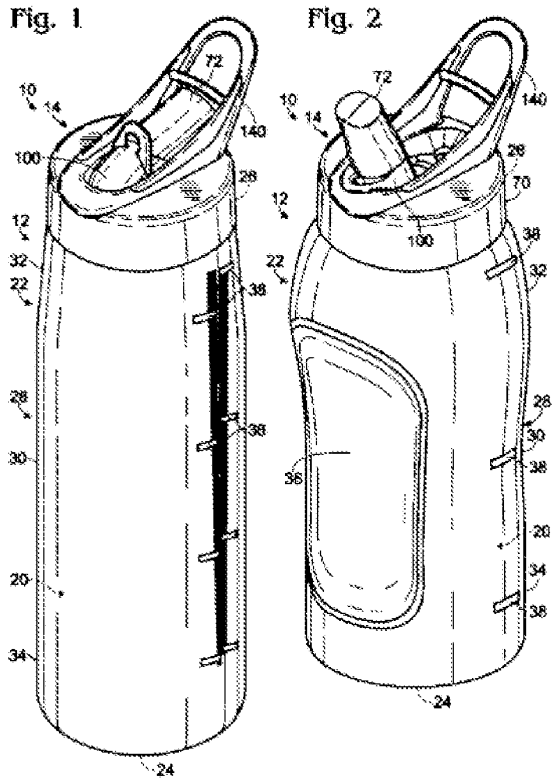
CamelBak's Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows:

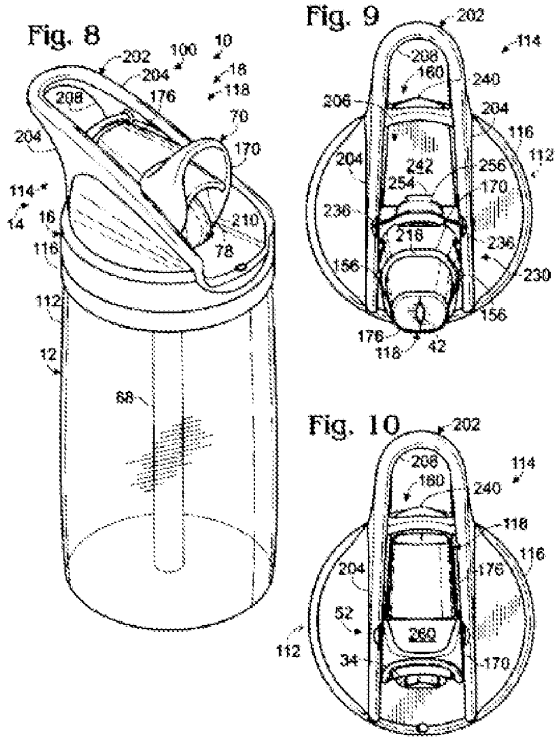
Family	Patent Number	Priority Date
Drink Bottles	9,463,911 ("the '911 patent")	Apr. 11, 2005
Leak-proof flip-top water bottles	10,676,255 ("the '255 patent")	
	9,782,028 ("the '028 patent")	
Drink Containers	9,820,595 ("the '595 patent")	Jan. 21, 2009
Push-button flip-top water bottles	10,165,879 ("the '879 patent")	
	10,542,833 ("the '833 patent")	

***2** The '255 patent is a continuation of the '911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the '595, '879, and '833 patents are continuations of the '028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the '911 and '028 specifications. However, certain of the disputed claim terms appear only in the continuation patents.

The '911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.

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The '028 patent (Doc. 64-3) describes a drink container that is similar to the drink container described in the '911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.

III. LEGAL STANDARD

"Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer's product or process,' which in turn necessitates a determination of 'what the words in the claim mean.' " *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996) (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court." *Id.* at 372.

Claim terms are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314 (citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001)). In other words, some claim terms do not require any construction at all.

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Nevertheless, "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it." *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Thus, a determination that a claim term needs no construction or has the plain and ordinary meaning may be inadequate when a term has more than one 'ordinary' meaning or when reliance on a term's 'ordinary' meaning does not resolve the parties' dispute." *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318 (Fed. Cir. 2016) (cleaned up).

***3** Claims must be construed in light of the intrinsic evidence—the claim language itself, the specification, and the patent's prosecution history. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and through comparison with other claims in the patent. *Phillips*, 415 F.3d at 1314. "[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317.

Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. *Id.* Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. *See Frans Nooren Afdichtingssystemen B.V. v. Stopaq Amcorr Inc.*, 744 F.3d 715, 722 (Fed. Cir. 2014). Expert testimony can also help "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318.

IV. DISCUSSION

A. Agreed Constructions

Claim Term	Patents	Construction
"constructed as a unitary assembly"	'028, '595, '879, and '833 Patents	"constructed as a single piece that includes a group of parts or distinct portions"
"friction-fit arrangement"	'028, '595, '879, and '833 Patents	"arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction"
"fluid conduit"	'911 and '255 Patents	"fluid-carrying structure, such as a channel, pipe, or tube"
"mouthpiece assembly"	'028, '595, '879, and '833 Patents	"the group of parts or distinct sections that, taken together, allow the user to drink liquid"

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"air return assembly"	'911 Patent	"a group of parts that, taken together, form a unit that is adapted to return air"

In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement." In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit." On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly." Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with the parties' constructions and adopts them as stated above.

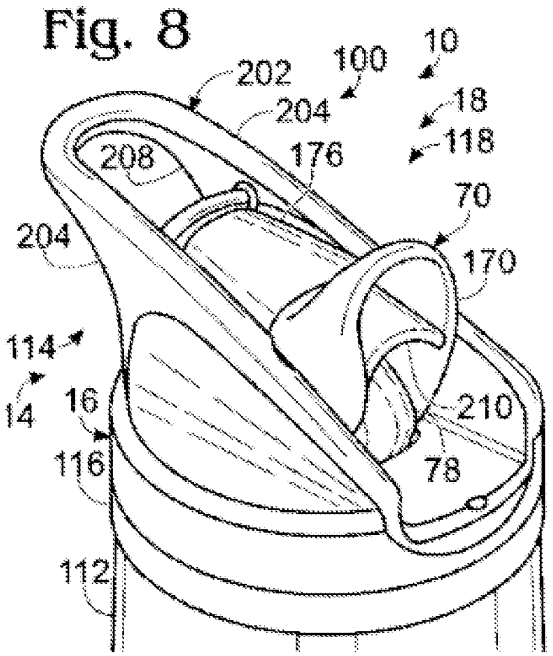
The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing.

B. "rigid"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

The term "rigid" is used extensively in the Asserted Patents' specifications and claims. For example, claim 10 of the '028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration." (Doc. 64-3, pp. 18–19). This "rigid collar member" 170 is seen in figure 8 of the '028 patent:



***4** *Id.* at p. 6. The '028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least

semi-rigid." *Id.* at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification. Zak argues the term "rigid" is indefinite. Indefiniteness occurs when the "claims, read in light of the specification ... and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014). A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, 35 U.S.C. § 282(a), the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence, *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1345 (Fed. Cir. 2007) (citing *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1238–39 (Fed. Cir. 2003)).

Zak's expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and "there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," *id.* at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.

CamelBak admits that rigidity exists on a spectrum but counters that the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Zak's expert are fatal to Zak's indefiniteness argument. At his deposition, Mr. Hamilton admitted that

- the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents;
- the collar member must be rigid enough to collapse the silicone crimping region; and
- while rigidity is context specific and difficult to define, "engineers know it when they see it."

(Doc. 64-9, pp. 11, 18, 20). CamelBak's expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. *See* Doc. 64-7, ¶ 32.

The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak's expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification's singular use of the term "semi-rigid" to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.

***5** Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is indefinite, Zak has not offered a contrary construction.

C. "the resilient mouthpiece is more resilient than the drink spout"

'911 Patent

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

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This term appears in claims 1 and 25 of the '911 patent. Claim 1 states that the invention includes

> a resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, *wherein the resilient mouthpiece is more resilient than the drink spout* and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth....

(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19).

Zak contends this term is indefinite because the '911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:

> (1) the mouthpiece springs back or returns to its previous position or shape after being compressed *faster* than the drink spout;
>
> (2) the mouthpiece springs back or returns to its previous position or shape without damage after being *compressed to a greater extent* than the drink spout;
>
> (3) the mouthpiece can be *compressed for a longer period of time* and still spring back or return to its previous position or shape compared to the drink spout; or
>
> (4) the mouthpiece can be *compressed and decompressed more times* than the drink spout and still spring back or return to its previous position or shape without damage.

(Doc. 65-1, ¶ 60). Based on Mr. Hamilton's opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.

CamelBak counters that it is clear in context that this term means that the "mouthpiece" must be sufficiently resilient to compress in response to a user's teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit." (Doc. 64, p. 15). CamelBak points to Mr. Hamilton's admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. *See* Doc. 64-9, pp. 25–26. CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster's Dictionary definition of "resilient," from which he derived the four plausible meanings above.

***6** The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.

Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster's Dictionary definition gives four possible meanings of "resilient." But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the '911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term's scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Lacking any counter-construction from Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial.

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D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Zak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination." *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006). The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always render a claim indefinite" because "an antecedent basis can be present by implication." *Id.* Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias." Zak points out that the patents' other uses of "bias" were as a verb or adjective—"biased" or "biases." Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent's specification:

> *7 Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.

(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias." (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.

The Court disagrees with Zak's reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly's bias *can be accomplished.* The mouthpiece assembly's bias is the same —it returns to the dispensing configuration—whether that bias is created using a resiliently deformable material, a spring, or both. In the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains *why* the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of *how* that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.

Even assuming Zak's reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly's bias renders the claim indefinite. Under Zak's reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the

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specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.

The term "its bias" may lack an explicit antecedent basis, but it is clear in context that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly's predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.

CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" is easily understood by lay judges and juries.

E. "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"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	means-plus-function limitation	plain and ordinary meaning

***8** Zak argues this claim must be limited to a means-plus-function construction under 35 U.S.C. § 112(f), which states:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. *O.I. Corp. v. Tekmar Co., Inc.*, 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.

Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the word "means" are not governed by § 112(f), but the presumption is not a strong one. *Id.* at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means' but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." *Id.* at 1348.

When the word "means" is not present, the drafter's use of "[g]eneric terms such as 'mechanism,' 'element,' 'device,' and other nonce words that reflect nothing more than verbal constructs may be ... tantamount to using the word 'mean' because they 'typically do not connote sufficiently definite structure.' " *Id.* at 1350 (quoting *Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software*, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).

Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means." Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism ...'—is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does." (Doc. 65, p. 20).

Zak points to *Williamson*, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f)

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applied to the term "distributed learning control module," despite the term's lack of the word "means." 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to using the word "means." *Id.* at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent's other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure." *Id.* at 1351. While recognizing "that the presence of modifiers can change the meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure." *Id.*

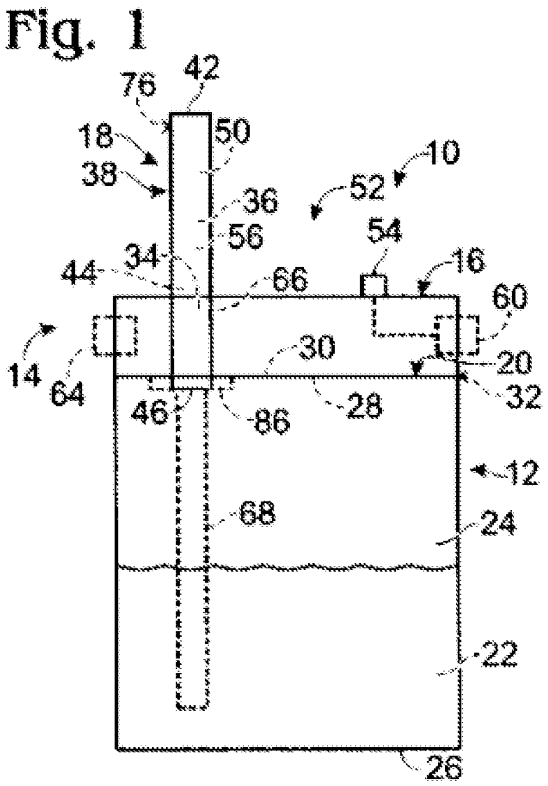
***9** CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:

> [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.*

(Doc. 64-3, p. 18) (emphasis added). CamelBak argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism."

CamelBak relies on *Alex Is the Best, LLC v. BLU Products, Inc.*, where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module." 2017 WL 5031638, at *7–8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms' structures sufficiently clear to a person of ordinary skill in the art. *Id.* The court adopted the plain and ordinary meaning of the terms. *Id.*

The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim language. This mechanism is not a generic placeholder in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in *Williamson*, here the specification "inform[s] the structural character" of "user release mechanism." 792 F.3d at 1351. For example, the figures in the '028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:



(Doc. 64-3, pp. 4, 10).

Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," *Williamson*, 792 F.3d at 1348, and Zak has failed to overcome the presumption against the application of § 112(f). The Court further finds that the meaning of the full phrase

> 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

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is clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase its plain and ordinary meaning.

F. "is biased" / "biases"

'028, '595, '879 and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"tends to return ... absent an external force"	"is pushed, or force is exerted on, in a particular direction"	"returns ... absent an external force"

***10** Variations of the term "bias" appear in the patents in at least three contexts. First, the claims recite a mouthpiece assembly that "is biased to the dispensing configuration" and a crimping region that "at least partially biases the mouthpiece assembly to the dispensing configuration." (Doc. 64-3, p. 18). CamelBak asserts that the mouthpiece assembly's bias can be either internal—created by the material the mouthpiece assembly is made from—or external—created by a mechanism external to the mouthpiece assembly, such as a spring. The '028 specification explains:

> The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring.

Id. at p. 10.

Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration." *Id.* CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user's mouth.

Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration." (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.

CamelBak proposes the "bias" terms be construed to mean "tends to return ... absent an external force." For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "~~is biased~~ tends to return to the dispensing configuration absent an external force." In this example, the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.

Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction." Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position." (Doc. 73, p. 3).

Zak argues CamelBak's proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak's "proposed construction impossible for the jury to understand." *Id.* at 4–5. CamelBak contends Zak's proposed construction is inappropriately limited to only external biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.

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Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on *Perfectvision Manufacturing, Inc. v. PPC Broadband, Inc.*, 2014 WL 4285786, at *4 (E.D. Ark. Aug. 29, 2014), where the district court construed "to bias" to mean "to exert force in a particular direction against an object." Zak also points to *Invisible Fence, Inc. v. Perimeter Technologies, Inc.*, 2006 WL 1443399, at *5 (N.D. Ind. May 25, 2006), where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder."

***11** CamelBak argues that the claim language in *Perfectvision* and *Invisible Fence* referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on *Acantha LLC v. DePuy Synthes Sales, Inc.*, 2017 WL 972106, at *6 (E.D. Wis. Mar. 13, 2017), where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force."

The Court finds Zak's "is pushed, or force is exerted on" language fails to capture the full meaning of the "bias" terms. Zak's language is a poor fit when used to refer to the mouthpiece assembly's internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak's "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak's proposed construction—"tends to return ... absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force." (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak's construction, as a placeholder for a part's specified default state, is appropriate and will be understandable by a jury.

However, Zak takes issue with CamelBak's inclusion of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word's inclusion. While one dictionary definition of the word "bias" is "tendency," *Bias*, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to *always* move to their default configuration absent an external force, *see, e.g.*, Doc. 65-3, p. 11 ("Bite-actuated valves ... are typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compression forces being applied thereto...."). So, rather than having a tendency to return, the parts simply return.

Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns ... absent an external force."

G. "stowing region"

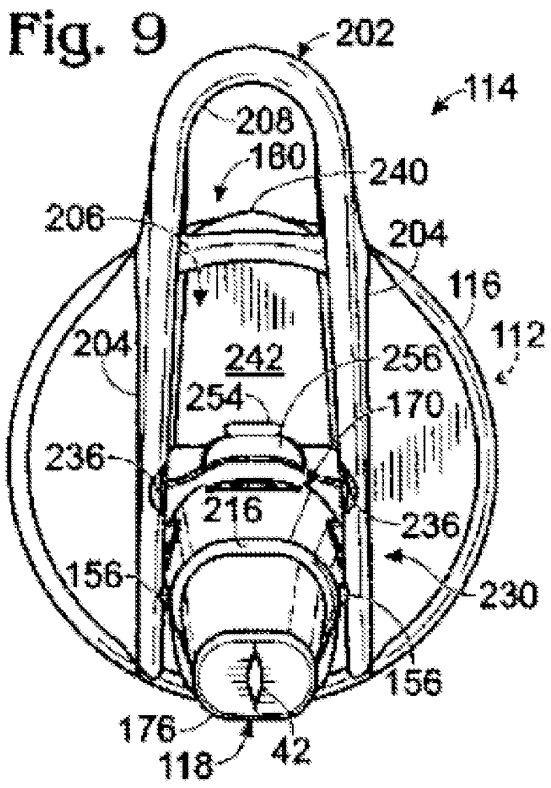
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly"	plain and ordinary meaning

The term "stowing region" appears in the '028, '595, and '879 patents. For example, claim 1 of the '879 patent recites that "the cap assembly defines a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration." (Doc. 64-5, p. 18). Claim 6 of the '028 patent recites that "the cap

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assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly." (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the '028 patent:



***12** *Id.* at p. 6.

Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly." In other words, Zak contends the "stowing region" is limited to *only* the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.

CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak's construction improperly replaces "region" with "space" and "stowing" with "storing" and adds redundant language already present in the claims.

The Court finds that "stowing region" should be given its plain and ordinary meaning. First, CamelBak is correct that Zak's construction would substitute the claim language for similar words and would include redundant language. Second, Zak's construction would limit the claims based on the *possible* embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification." *Vulcan Eng'g Co. v. Fata Aluminium, Inc.*, 278 F.3d 1366, 1376 (Fed. Cir. 2002) (quoting *Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986)). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be *no larger* than the mouthpiece assembly. Zak's contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court.

H. "automatically"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"without additional human intervention"	"without additional action by the user after actuation of the user release mechanism"	"without additional human intervention"

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The term "automatically" appears in conjunction with the user release mechanism's ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the '028 patent recites "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." (Doc. 65-3, p. 18). The '028 specification states that "[i]n some examples, the mouthpiece assembly is biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism." *Id.* at p. 8.

CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.

***13** Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism." So, Zak's compromise resolves the parties' primary dispute, which was over the word "additional." However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.

The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak's straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak's concession. "Automatically" cannot mean without *any* human intervention because the claim language requires that the user first actuate the user release mechanism. *See CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1235 (Fed. Cir. 2005) (affirming the district court's construction of "automatically" as "once initiated, the function is performed by a machine, without the need for manually performing the function"). But full adoption of Zak's compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention."

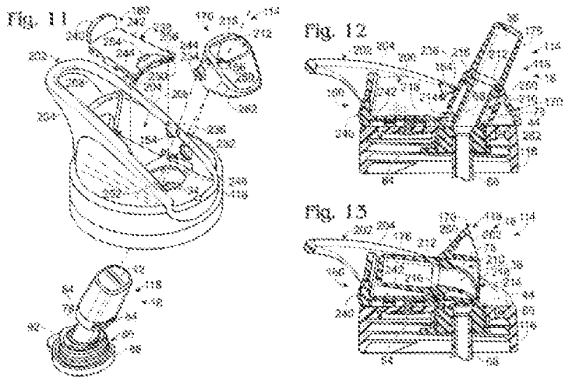
l. "user engagement pad ... which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly"

'028, '595, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"user engagement pad ... which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"	plain and ordinary meaning

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These terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from the stowed configuration. Claim 3 of the '028 patent recites that "the user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user." The same or similar claim language is present elsewhere in the '028 patent and the '595 and '833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the '028 patent:



(Doc. 64-3, p. 7).

Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak's construction injects limitations not present in the claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening.

***14** The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak's description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. *See Vulcan Eng'g*, 278 F.3d at 1376. Certainly, one embodiment of CamelBak's patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism." This *may* be accomplished by having the "user release mechanism" protrude through an enclosed opening that is the same size as the "user release mechanism," but this is not the only embodiment contemplated by the claim language. Accordingly, there remains no genuine dispute as to the scope of the plain language of these terms, and they require no construction by the Court.

J. "the anchor portion is sized to restrict passage of the anchor portion through the through passage"

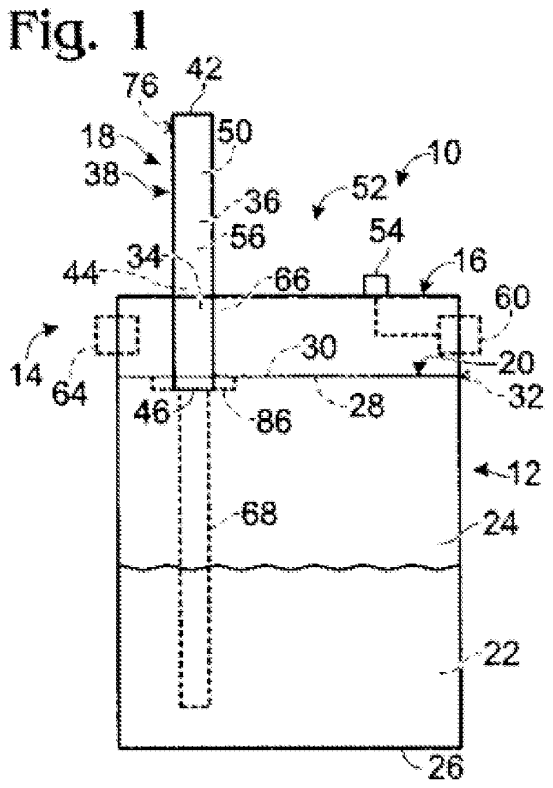
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion	plain and ordinary meaning

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may pass into one end of the through-passage and out of the opposite end of the through-passage"

A representation of this claim phrase appears in claim 1 of the '028 patent, which recites "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." (Doc. 64-3, p. 18). The '028 patent's specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly." *Id.* at p. 12. The "anchor portion" 86 and "through passage" 34 are exemplified in figure 1 of the '028 patent:



Id. at p. 4.

Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit *all the way* through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.

CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak's proposed construction, the patents explicitly distinguish between *restricting* passage through the through passage and *preventing* passage through the through passage. CamelBak writes that "Zak's proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment." (Doc. 65, p. 28).

Zak directs the Court to the relevant prosecution history. The patent examiner initially rejected certain claims of the '028 patent due to prior art. Specifically, the examiner found that a prior drink container patent disclosed a mouthpiece portion with an anchor portion. *Ex Parte Jeff Davies & Derek Gavin Sullivan*, 2017 WL 1032223, at *2 (P.T.A.B. Mar. 15, 2017). The examiner found CamelBak's limitation in claims 1 and 21 that the anchor portion be "sized to restrict passage of the anchor portion through the through passage" failed to distinguish CamelBak's invention from the prior art because "as long as the anchor portion has a size, it is capable of restricting passage." *Id.* CamelBak appealed the examiner's decision to the PTAB, which reversed the examiner's decision. *Id.* at *3. The PTAB found that CamelBak's "sized to restrict" language "positively limits the structure of the claims to a structure in which an anchor portion has a size that functionally acts to restrict, or limit, passage of the anchor portion through the claimed through-passage," and this limitation was not present in the prior art the examiner relied on. *Id.* Adopting CamelBak's argument, the PTAB explained that the examiner's findings were "unreasonable" because "[e]very structure has *a size*, but not all structures are capable of performing the claimed functional requirement of restricting passage of the anchor portion through the through-passage of the base of the cap assembly." *Id.* (emphasis in original). The PTAB further explained that "as [CamelBak] correctly note[s], for example, an anchor portion that is *smaller* than the through-passage will

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not function to restrict passage therethrough." *Id.* (emphasis in original).

***15** The PTAB also reversed the examiner's rejection of claim 18 of the '028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage." *Id.* at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner found that "that it would have been obvious to incorporate Lin's flanges into Choi's anchor portion to prevent leakage." *Id.* The PTAB reversed this finding, explaining:

> We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor portion through a through-passage. Indeed, Lin's lower flange is expressly configured *to permit* passage through the through-passage. Further, the Examiner's purported reasoning for incorporating Lin's flanges into Choi's structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.

Id. (emphasis in original) (citations omitted).

Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak's arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage' limitation." (Doc. 65, pp. 10–12). Zak also points to the specification figures to support its proposed construction.

The Court finds Zak's proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak's successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be *larger* than the through passage so that the anchor portion's passage through the through passage is *prevented.* Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict." (Doc. 64-3, p. 12). As for claim 18 of the '028 patent, none of CamelBak's arguments nor the PTAB's reasoning—which was simply that the prior art did not include CamelBak's "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through passage.

The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15–16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning.

V. CONCLUSION

***16** The Court **HEREBY ADOPTS** the above constructions for the claim terms identified by the parties.

IT IS SO ORDERED on this 9th day of January, 2023.

All Citations

Slip Copy, 2023 WL 137485, 2023 Markman 137485

Footnotes

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1 The parties consented to the Court's adoption of the Northern District of California Patent Local Rules in this case.

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2023 WL 137485

Editor's Note: Additions are indicated by Text and deletions by ~~Text~~ .

United States District Court, W.D. Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

CASE NO. 5:21-CV-05109

|

Signed January 9, 2023

West Headnotes (1)

[1] Patents ⚭ In general; utility

US Patent 9,463,911, US Patent 9,782,028, US Patent 9,820,595, US Patent 10,165,879, US Patent 10,542,833, US Patent 10,676,255. Construed.

Go to Markman Construed Terms

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MEMORANDUM OPINION AND ORDER

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

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I. INTRODUCTION

As Plaintiff CamelBak Products, LLC's patents explain, “For some time people have recognized the need to stay hydrated.” (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids.

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The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak's patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),[1] the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. *See* Docs. 64, 65, 69. The parties' briefing included declarations and deposition testimony from CamelBak's expert witness, Jim Goldman, and Zak's expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias." *See* Docs. 71, 73, 74.

Having fully examined the patents, briefing, exhibits, expert opinions, and the parties' oral arguments and presentations, the Court construes the disputed claim terms as stated below.

II. BACKGROUND

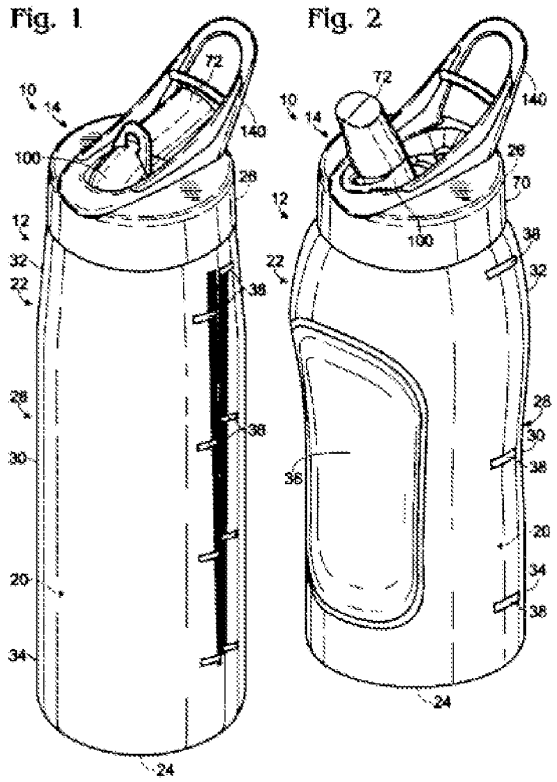
CamelBak's Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows:

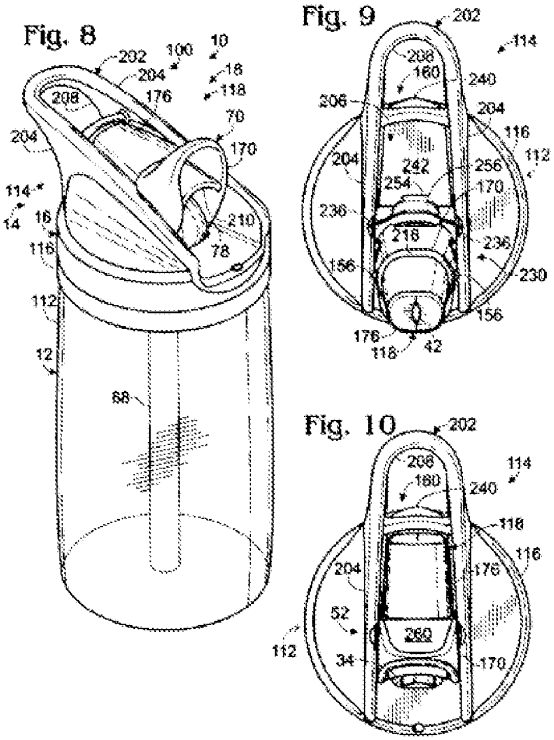
Family	Patent Number	Priority Date
Drink Bottles	9,463,911 ("the '911 patent")	Apr. 11, 2005
Leak-proof flip-top water bottles	10,676,255 ("the '255 patent")	
	9,782,028 ("the '028 patent")	
Drink Containers	9,820,595 ("the '595 patent")	Jan. 21, 2009
Push-button flip-top water bottles	10,165,879 ("the '879 patent")	
	10,542,833 ("the '833 patent")	

***2** The '255 patent is a continuation of the '911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the '595, '879, and '833 patents are continuations of the '028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the '911 and '028 specifications. However, certain of the disputed claim terms appear only in the continuation patents.

The '911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.

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The '028 patent (Doc. 64-3) describes a drink container that is similar to the drink container described in the '911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.

III. LEGAL STANDARD

"Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer's product or process,' which in turn necessitates a determination of 'what the words in the claim mean.' " *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996) (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court." *Id.* at 372.

Claim terms are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314 (citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001)). In other words, some claim terms do not require any construction at all.

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Nevertheless, "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it." *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Thus, a determination that a claim term needs no construction or has the plain and ordinary meaning may be inadequate when a term has more than one 'ordinary' meaning or when reliance on a term's 'ordinary' meaning does not resolve the parties' dispute." *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318 (Fed. Cir. 2016) (cleaned up).

***3** Claims must be construed in light of the intrinsic evidence—the claim language itself, the specification, and the patent's prosecution history. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and through comparison with other claims in the patent. *Phillips*, 415 F.3d at 1314. "[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317.

Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. *Id.* Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. *See Frans Nooren Afdichtingssystemen B.V. v. Stopaq Amcorr Inc.*, 744 F.3d 715, 722 (Fed. Cir. 2014). Expert testimony can also help "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318.

IV. DISCUSSION

A. Agreed Constructions

Claim Term	Patents	Construction
"constructed as a unitary assembly"	'028, '595, '879, and '833 Patents	"constructed as a single piece that includes a group of parts or distinct portions"
"friction-fit arrangement"	'028, '595, '879, and '833 Patents	"arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction"
"fluid conduit"	'911 and '255 Patents	"fluid-carrying structure, such as a channel, pipe, or tube"
"mouthpiece assembly"	'028, '595, '879, and '833 Patents	"the group of parts or distinct sections that, taken together, allow the user to drink liquid"

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"air return assembly"	'911 Patent	"a group of parts that, taken together, form a unit that is adapted to return air"

In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement." In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit." On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly." Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with the parties' constructions and adopts them as stated above.

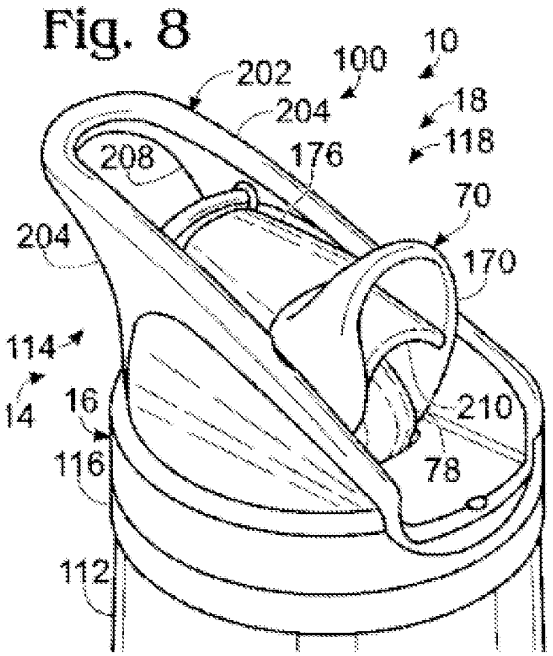
The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing.

B. "rigid"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

The term "rigid" is used extensively in the Asserted Patents' specifications and claims. For example, claim 10 of the '028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration." (Doc. 64-3, pp. 18–19). This "rigid collar member" 170 is seen in figure 8 of the '028 patent:



***4** *Id.* at p. 6. The '028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least

semi-rigid." *Id.* at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification. Zak argues the term "rigid" is indefinite. Indefiniteness occurs when the "claims, read in light of the specification ... and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014). A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, 35 U.S.C. § 282(a), the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence, *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1345 (Fed. Cir. 2007) (citing *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1238–39 (Fed. Cir. 2003)).

Zak's expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and "there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," *id.* at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.

CamelBak admits that rigidity exists on a spectrum but counters that the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Zak's expert are fatal to Zak's indefiniteness argument. At his deposition, Mr. Hamilton admitted that

- the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents;
- the collar member must be rigid enough to collapse the silicone crimping region; and
- while rigidity is context specific and difficult to define, "engineers know it when they see it."

(Doc. 64-9, pp. 11, 18, 20). CamelBak's expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. *See* Doc. 64-7, ¶ 32.

The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak's expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification's singular use of the term "semi-rigid" to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.

***5** Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is indefinite, Zak has not offered a contrary construction.

C. "the resilient mouthpiece is more resilient than the drink spout"

'911 Patent

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

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This term appears in claims 1 and 25 of the '911 patent. Claim 1 states that the invention includes

> a resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, *wherein the resilient mouthpiece is more resilient than the drink spout* and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth....

(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19).

Zak contends this term is indefinite because the '911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:

> (1) the mouthpiece springs back or returns to its previous position or shape after being compressed *faster* than the drink spout;
>
> (2) the mouthpiece springs back or returns to its previous position or shape without damage after being *compressed to a greater extent* than the drink spout;
>
> (3) the mouthpiece can be *compressed for a longer period of time* and still spring back or return to its previous position or shape compared to the drink spout; or
>
> (4) the mouthpiece can be *compressed and decompressed more times* than the drink spout and still spring back or return to its previous position or shape without damage.

(Doc. 65-1, ¶ 60). Based on Mr. Hamilton's opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.

CamelBak counters that it is clear in context that this term means that the "mouthpiece" must be sufficiently resilient to compress in response to a user's teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit." (Doc. 64, p. 15). CamelBak points to Mr. Hamilton's admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. *See* Doc. 64-9, pp. 25–26. CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster's Dictionary definition of "resilient," from which he derived the four plausible meanings above.

***6** The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.

Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster's Dictionary definition gives four possible meanings of "resilient." But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the '911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term's scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Lacking any counter-construction from Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial.

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D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Zak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination." *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006). The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always render a claim indefinite" because "an antecedent basis can be present by implication." *Id.* Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias." Zak points out that the patents' other uses of "bias" were as a verb or adjective—"biased" or "biases." Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent's specification:

> *7 Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.

(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias." (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.

The Court disagrees with Zak's reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly's bias *can be accomplished.* The mouthpiece assembly's bias is the same —it returns to the dispensing configuration—whether that bias is created using a resiliently deformable material, a spring, or both. In the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains *why* the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of *how* that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.

Even assuming Zak's reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly's bias renders the claim indefinite. Under Zak's reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the

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specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.

The term "its bias" may lack an explicit antecedent basis, but it is clear in context that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly's predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.

CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" is easily understood by lay judges and juries.

E. "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"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	means-plus-function limitation	plain and ordinary meaning

***8** Zak argues this claim must be limited to a means-plus-function construction under 35 U.S.C. § 112(f), which states:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. *O.I. Corp. v. Tekmar Co., Inc.*, 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.

Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the word "means" are not governed by § 112(f), but the presumption is not a strong one. *Id.* at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means' but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." *Id.* at 1348.

When the word "means" is not present, the drafter's use of "[g]eneric terms such as 'mechanism,' 'element,' 'device,' and other nonce words that reflect nothing more than verbal constructs may be ... tantamount to using the word 'mean' because they 'typically do not connote sufficiently definite structure.' " *Id.* at 1350 (quoting *Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software*, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).

Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means." Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism ...'—is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does." (Doc. 65, p. 20).

Zak points to *Williamson*, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f)

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applied to the term "distributed learning control module," despite the term's lack of the word "means." 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to using the word "means." *Id.* at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent's other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure." *Id.* at 1351. While recognizing "that the presence of modifiers can change the meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure." *Id.*

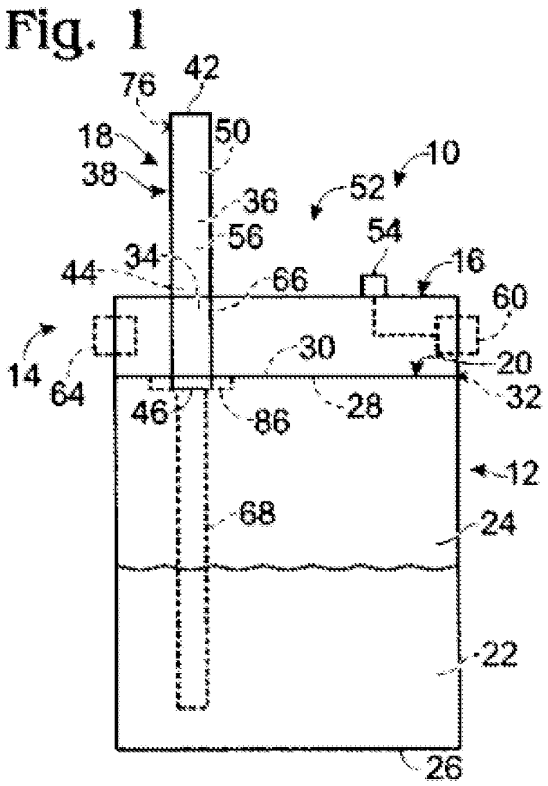
***9** CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:

> [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.*

(Doc. 64-3, p. 18) (emphasis added). CamelBak argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism."

CamelBak relies on *Alex Is the Best, LLC v. BLU Products, Inc.*, where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module." 2017 WL 5031638, at *7–8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms' structures sufficiently clear to a person of ordinary skill in the art. *Id.* The court adopted the plain and ordinary meaning of the terms. *Id.*

The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim language. This mechanism is not a generic placeholder in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in *Williamson*, here the specification "inform[s] the structural character" of "user release mechanism." 792 F.3d at 1351. For example, the figures in the '028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:



(Doc. 64-3, pp. 4, 10).

Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," *Williamson*, 792 F.3d at 1348, and Zak has failed to overcome the presumption against the application of § 112(f). The Court further finds that the meaning of the full phrase

> 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

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is clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase its plain and ordinary meaning.

F. "is biased" / "biases"

'028, '595, '879 and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"tends to return ... absent an external force"	"is pushed, or force is exerted on, in a particular direction"	"returns ... absent an external force"

***10** Variations of the term "bias" appear in the patents in at least three contexts. First, the claims recite a mouthpiece assembly that "is biased to the dispensing configuration" and a crimping region that "at least partially biases the mouthpiece assembly to the dispensing configuration." (Doc. 64-3, p. 18). CamelBak asserts that the mouthpiece assembly's bias can be either internal—created by the material the mouthpiece assembly is made from—or external—created by a mechanism external to the mouthpiece assembly, such as a spring. The '028 specification explains:

> The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring.

Id. at p. 10.

Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration." *Id.* CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user's mouth.

Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration." (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.

CamelBak proposes the "bias" terms be construed to mean "tends to return ... absent an external force." For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "~~is biased~~ tends to return to the dispensing configuration absent an external force." In this example, the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.

Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction." Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position." (Doc. 73, p. 3).

Zak argues CamelBak's proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak's "proposed construction impossible for the jury to understand." *Id.* at 4–5. CamelBak contends Zak's proposed construction is inappropriately limited to only external biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.

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Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on *Perfectvision Manufacturing, Inc. v. PPC Broadband, Inc.*, 2014 WL 4285786, at *4 (E.D. Ark. Aug. 29, 2014), where the district court construed "to bias" to mean "to exert force in a particular direction against an object." Zak also points to *Invisible Fence, Inc. v. Perimeter Technologies, Inc.*, 2006 WL 1443399, at *5 (N.D. Ind. May 25, 2006), where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder."

***11** CamelBak argues that the claim language in *Perfectvision* and *Invisible Fence* referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on *Acantha LLC v. DePuy Synthes Sales, Inc.*, 2017 WL 972106, at *6 (E.D. Wis. Mar. 13, 2017), where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force."

The Court finds Zak's "is pushed, or force is exerted on" language fails to capture the full meaning of the "bias" terms. Zak's language is a poor fit when used to refer to the mouthpiece assembly's internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak's "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak's proposed construction—"tends to return ... absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force." (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak's construction, as a placeholder for a part's specified default state, is appropriate and will be understandable by a jury.

However, Zak takes issue with CamelBak's inclusion of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word's inclusion. While one dictionary definition of the word "bias" is "tendency," *Bias*, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to *always* move to their default configuration absent an external force, *see, e.g.*, Doc. 65-3, p. 11 ("Bite-actuated valves ... are typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compression forces being applied thereto...."). So, rather than having a tendency to return, the parts simply return.

Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns ... absent an external force."

G. "stowing region"

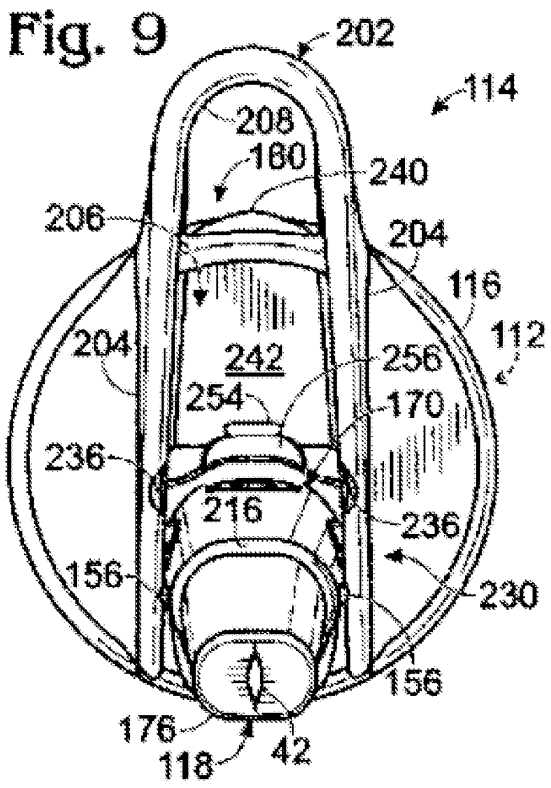
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly"	plain and ordinary meaning

The term "stowing region" appears in the '028, '595, and '879 patents. For example, claim 1 of the '879 patent recites that "the cap assembly defines a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration." (Doc. 64-5, p. 18). Claim 6 of the '028 patent recites that "the cap

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assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly." (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the '028 patent:



***12** *Id.* at p. 6.

Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly." In other words, Zak contends the "stowing region" is limited to *only* the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.

CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak's construction improperly replaces "region" with "space" and "stowing" with "storing" and adds redundant language already present in the claims.

The Court finds that "stowing region" should be given its plain and ordinary meaning. First, CamelBak is correct that Zak's construction would substitute the claim language for similar words and would include redundant language. Second, Zak's construction would limit the claims based on the *possible* embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification." *Vulcan Eng'g Co. v. Fata Aluminium, Inc.*, 278 F.3d 1366, 1376 (Fed. Cir. 2002) (quoting *Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986)). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be *no larger* than the mouthpiece assembly. Zak's contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court.

H. "automatically"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"without additional human intervention"	"without additional action by the user after actuation of the user release mechanism"	"without additional human intervention"

The term "automatically" appears in conjunction with the user release mechanism's ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the '028 patent recites "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." (Doc. 65-3, p. 18). The '028 specification states that "[i]n some examples, the mouthpiece assembly is biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism." *Id.* at p. 8.

CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.

***13** Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism." So, Zak's compromise resolves the parties' primary dispute, which was over the word "additional." However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.

The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak's straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak's concession. "Automatically" cannot mean without *any* human intervention because the claim language requires that the user first actuate the user release mechanism. *See CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1235 (Fed. Cir. 2005) (affirming the district court's construction of "automatically" as "once initiated, the function is performed by a machine, without the need for manually performing the function"). But full adoption of Zak's compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention."

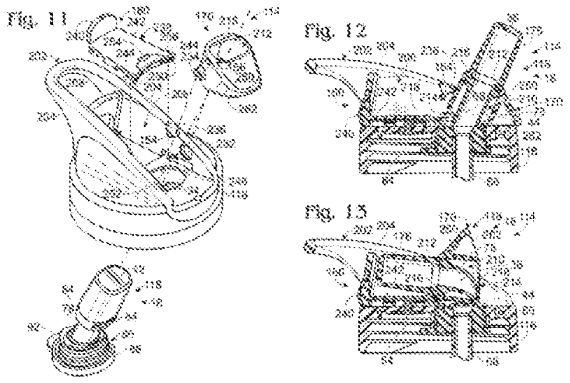
I. "user engagement pad ... which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly"

'028, '595, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"user engagement pad ... which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"	plain and ordinary meaning

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These terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from the stowed configuration. Claim 3 of the '028 patent recites that "the user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user." The same or similar claim language is present elsewhere in the '028 patent and the '595 and '833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the '028 patent:



(Doc. 64-3, p. 7).

Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak's construction injects limitations not present in the claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening.

***14** The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak's description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. *See Vulcan Eng'g*, 278 F.3d at 1376. Certainly, one embodiment of CamelBak's patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism." This *may* be accomplished by having the "user release mechanism" protrude through an enclosed opening that is the same size as the "user release mechanism," but this is not the only embodiment contemplated by the claim language. Accordingly, there remains no genuine dispute as to the scope of the plain language of these terms, and they require no construction by the Court.

J. "the anchor portion is sized to restrict passage of the anchor portion through the through passage"

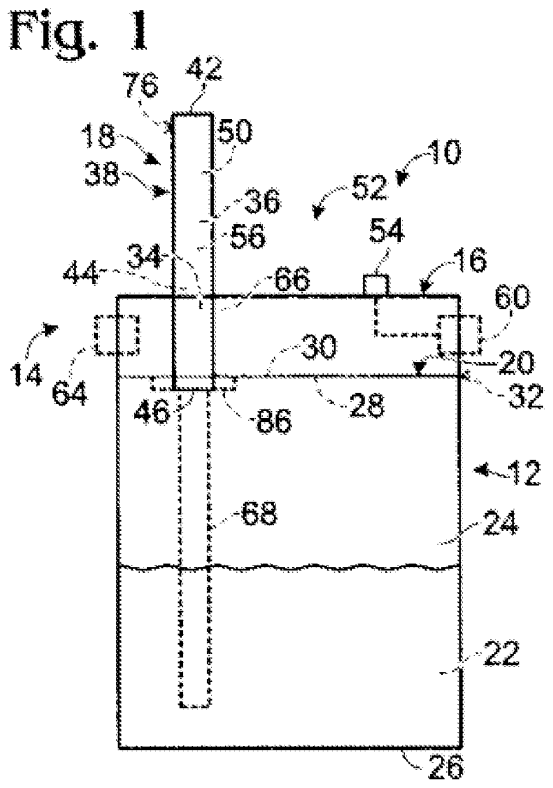
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion	plain and ordinary meaning

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may pass into one end of the through-passage and out of the opposite end of the through-passage"

A representation of this claim phrase appears in claim 1 of the '028 patent, which recites "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." (Doc. 64-3, p. 18). The '028 patent's specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly." *Id.* at p. 12. The "anchor portion" 86 and "through passage" 34 are exemplified in figure 1 of the '028 patent:



Id. at p. 4.

Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit *all the way* through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.

CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak's proposed construction, the patents explicitly distinguish between *restricting* passage through the through passage and *preventing* passage through the through passage. CamelBak writes that "Zak's proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment." (Doc. 65, p. 28).

Zak directs the Court to the relevant prosecution history. The patent examiner initially rejected certain claims of the '028 patent due to prior art. Specifically, the examiner found that a prior drink container patent disclosed a mouthpiece portion with an anchor portion. *Ex Parte Jeff Davies & Derek Gavin Sullivan*, 2017 WL 1032223, at *2 (P.T.A.B. Mar. 15, 2017). The examiner found CamelBak's limitation in claims 1 and 21 that the anchor portion be "sized to restrict passage of the anchor portion through the through passage" failed to distinguish CamelBak's invention from the prior art because "as long as the anchor portion has a size, it is capable of restricting passage." *Id.* CamelBak appealed the examiner's decision to the PTAB, which reversed the examiner's decision. *Id.* at *3. The PTAB found that CamelBak's "sized to restrict" language "positively limits the structure of the claims to a structure in which an anchor portion has a size that functionally acts to restrict, or limit, passage of the anchor portion through the claimed through-passage," and this limitation was not present in the prior art the examiner relied on. *Id.* Adopting CamelBak's argument, the PTAB explained that the examiner's findings were "unreasonable" because "[e]very structure has *a size*, but not all structures are capable of performing the claimed functional requirement of restricting passage of the anchor portion through the through-passage of the base of the cap assembly." *Id.* (emphasis in original). The PTAB further explained that "as [CamelBak] correctly note[s], for example, an anchor portion that is *smaller* than the through-passage will

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not function to restrict passage therethrough." *Id.* (emphasis in original).

***15** The PTAB also reversed the examiner's rejection of claim 18 of the '028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage." *Id.* at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner found that "that it would have been obvious to incorporate Lin's flanges into Choi's anchor portion to prevent leakage." *Id.* The PTAB reversed this finding, explaining:

> We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor portion through a through-passage. Indeed, Lin's lower flange is expressly configured *to permit* passage through the through-passage. Further, the Examiner's purported reasoning for incorporating Lin's flanges into Choi's structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.

Id. (emphasis in original) (citations omitted).

Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak's arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage' limitation." (Doc. 65, pp. 10–12). Zak also points to the specification figures to support its proposed construction.

The Court finds Zak's proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak's successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be *larger* than the through passage so that the anchor portion's passage through the through passage is *prevented.* Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict." (Doc. 64-3, p. 12). As for claim 18 of the '028 patent, none of CamelBak's arguments nor the PTAB's reasoning—which was simply that the prior art did not include CamelBak's "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through passage.

The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15–16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning.

V. CONCLUSION

***16** The Court **HEREBY ADOPTS** the above constructions for the claim terms identified by the parties.

IT IS SO ORDERED on this 9th day of January, 2023.

All Citations

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Footnotes

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1 The parties consented to the Court's adoption of the Northern District of California Patent Local Rules in this case.

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2023 WL 137485

Editor's Note: Additions are indicated by Text and deletions by ~~Text~~ .

United States District Court, W.D. Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

CASE NO. 5:21-CV-05109

|

Signed January 9, 2023

West Headnotes (1)

[1] Patents ⚭ In general; utility

US Patent 9,463,911, US Patent 9,782,028, US Patent 9,820,595, US Patent 10,165,879, US Patent 10,542,833, US Patent 10,676,255. Construed.

Go to Markman Construed Terms

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MEMORANDUM OPINION AND ORDER

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

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I. INTRODUCTION

As Plaintiff CamelBak Products, LLC's patents explain, “For some time people have recognized the need to stay hydrated.” (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids.

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The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak's patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),[1] the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. *See* Docs. 64, 65, 69. The parties' briefing included declarations and deposition testimony from CamelBak's expert witness, Jim Goldman, and Zak's expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias." *See* Docs. 71, 73, 74.

Having fully examined the patents, briefing, exhibits, expert opinions, and the parties' oral arguments and presentations, the Court construes the disputed claim terms as stated below.

II. BACKGROUND

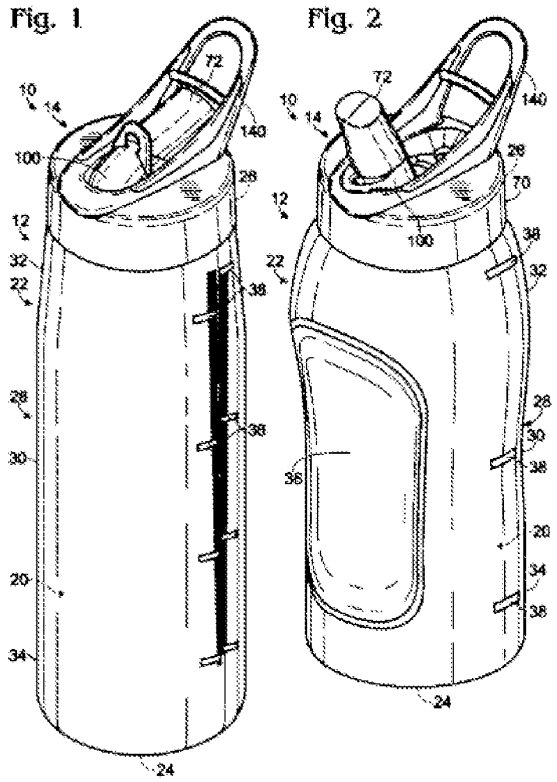
CamelBak's Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows:

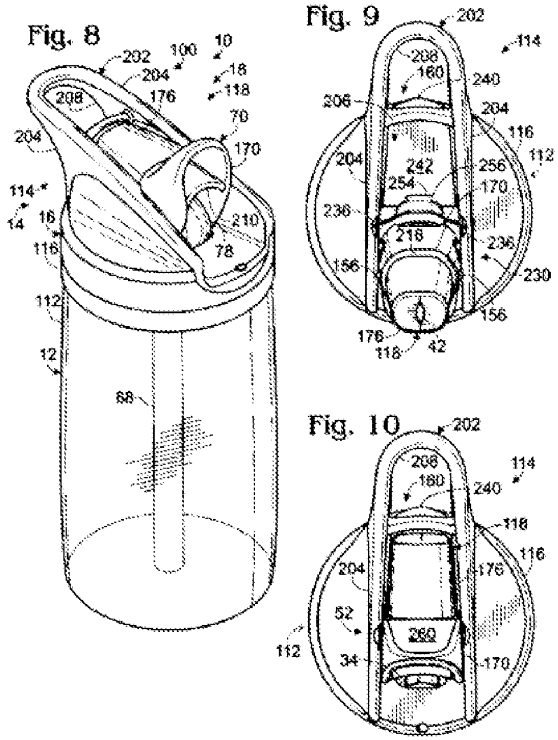
Family	Patent Number	Priority Date
Drink Bottles	9,463,911 ("the '911 patent")	Apr. 11, 2005
Leak-proof flip-top water bottles	10,676,255 ("the '255 patent")	
	9,782,028 ("the '028 patent")	
Drink Containers	9,820,595 ("the '595 patent")	Jan. 21, 2009
Push-button flip-top water bottles	10,165,879 ("the '879 patent")	
	10,542,833 ("the '833 patent")	

***2** The '255 patent is a continuation of the '911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the '595, '879, and '833 patents are continuations of the '028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the '911 and '028 specifications. However, certain of the disputed claim terms appear only in the continuation patents.

The '911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.

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The '028 patent (Doc. 64-3) describes a drink container that is similar to the drink container described in the '911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.

III. LEGAL STANDARD

"Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer's product or process,' which in turn necessitates a determination of 'what the words in the claim mean.' " *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996) (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court." *Id.* at 372.

Claim terms are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314 (citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001)). In other words, some claim terms do not require any construction at all.

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Nevertheless, "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it." *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Thus, a determination that a claim term needs no construction or has the plain and ordinary meaning may be inadequate when a term has more than one 'ordinary' meaning or when reliance on a term's 'ordinary' meaning does not resolve the parties' dispute." *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318 (Fed. Cir. 2016) (cleaned up).

***3** Claims must be construed in light of the intrinsic evidence—the claim language itself, the specification, and the patent's prosecution history. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and through comparison with other claims in the patent. *Phillips*, 415 F.3d at 1314. "[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317.

Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. *Id.* Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. *See Frans Nooren Afdichtingssystemen B.V. v. Stopaq Amcorr Inc.*, 744 F.3d 715, 722 (Fed. Cir. 2014). Expert testimony can also help "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318.

IV. DISCUSSION

A. Agreed Constructions

Claim Term	Patents	Construction
"constructed as a unitary assembly"	'028, '595, '879, and '833 Patents	"constructed as a single piece that includes a group of parts or distinct portions"
"friction-fit arrangement"	'028, '595, '879, and '833 Patents	"arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction"
"fluid conduit"	'911 and '255 Patents	"fluid-carrying structure, such as a channel, pipe, or tube"
"mouthpiece assembly"	'028, '595, '879, and '833 Patents	"the group of parts or distinct sections that, taken together, allow the user to drink liquid"

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"air return assembly"	'911 Patent	"a group of parts that, taken together, form a unit that is adapted to return air"

In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement." In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit." On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly." Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with the parties' constructions and adopts them as stated above.

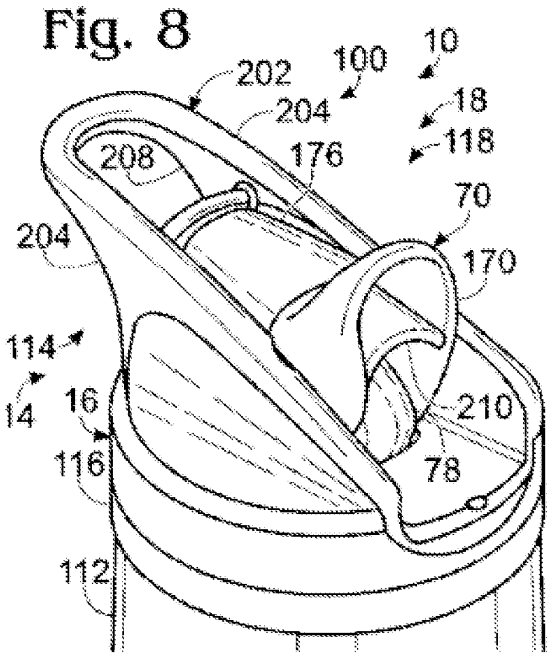
The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing.

B. "rigid"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

The term "rigid" is used extensively in the Asserted Patents' specifications and claims. For example, claim 10 of the '028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration." (Doc. 64-3, pp. 18–19). This "rigid collar member" 170 is seen in figure 8 of the '028 patent:



***4** *Id.* at p. 6. The '028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least

semi-rigid." *Id.* at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification. Zak argues the term "rigid" is indefinite. Indefiniteness occurs when the "claims, read in light of the specification ... and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014). A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, 35 U.S.C. § 282(a), the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence, *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1345 (Fed. Cir. 2007) (citing *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1238–39 (Fed. Cir. 2003)).

Zak's expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and "there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," *id.* at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.

CamelBak admits that rigidity exists on a spectrum but counters that the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Zak's expert are fatal to Zak's indefiniteness argument. At his deposition, Mr. Hamilton admitted that

- the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents;
- the collar member must be rigid enough to collapse the silicone crimping region; and
- while rigidity is context specific and difficult to define, "engineers know it when they see it."

(Doc. 64-9, pp. 11, 18, 20). CamelBak's expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. *See* Doc. 64-7, ¶ 32.

The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak's expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification's singular use of the term "semi-rigid" to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.

***5** Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is indefinite, Zak has not offered a contrary construction.

C. "the resilient mouthpiece is more resilient than the drink spout"

'911 Patent

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

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This term appears in claims 1 and 25 of the '911 patent. Claim 1 states that the invention includes

> a resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, *wherein the resilient mouthpiece is more resilient than the drink spout* and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth....

(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19).

Zak contends this term is indefinite because the '911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:

> (1) the mouthpiece springs back or returns to its previous position or shape after being compressed *faster* than the drink spout;
>
> (2) the mouthpiece springs back or returns to its previous position or shape without damage after being *compressed to a greater extent* than the drink spout;
>
> (3) the mouthpiece can be *compressed for a longer period of time* and still spring back or return to its previous position or shape compared to the drink spout; or
>
> (4) the mouthpiece can be *compressed and decompressed more times* than the drink spout and still spring back or return to its previous position or shape without damage.

(Doc. 65-1, ¶ 60). Based on Mr. Hamilton's opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.

CamelBak counters that it is clear in context that this term means that the "mouthpiece" must be sufficiently resilient to compress in response to a user's teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit." (Doc. 64, p. 15). CamelBak points to Mr. Hamilton's admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. *See* Doc. 64-9, pp. 25–26. CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster's Dictionary definition of "resilient," from which he derived the four plausible meanings above.

***6** The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.

Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster's Dictionary definition gives four possible meanings of "resilient." But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the '911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term's scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Lacking any counter-construction from Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial.

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D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Zak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination." *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006). The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always render a claim indefinite" because "an antecedent basis can be present by implication." *Id.* Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias." Zak points out that the patents' other uses of "bias" were as a verb or adjective—"biased" or "biases." Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent's specification:

> *7 Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.

(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias." (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.

The Court disagrees with Zak's reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly's bias *can be accomplished.* The mouthpiece assembly's bias is the same —it returns to the dispensing configuration—whether that bias is created using a resiliently deformable material, a spring, or both. In the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains *why* the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of *how* that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.

Even assuming Zak's reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly's bias renders the claim indefinite. Under Zak's reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the

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specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.

The term "its bias" may lack an explicit antecedent basis, but it is clear in context that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly's predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.

CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" is easily understood by lay judges and juries.

E. "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"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	means-plus-function limitation	plain and ordinary meaning

***8** Zak argues this claim must be limited to a means-plus-function construction under 35 U.S.C. § 112(f), which states:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. *O.I. Corp. v. Tekmar Co., Inc.*, 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.

Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the word "means" are not governed by § 112(f), but the presumption is not a strong one. *Id.* at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means' but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." *Id.* at 1348.

When the word "means" is not present, the drafter's use of "[g]eneric terms such as 'mechanism,' 'element,' 'device,' and other nonce words that reflect nothing more than verbal constructs may be ... tantamount to using the word 'mean' because they 'typically do not connote sufficiently definite structure.' " *Id.* at 1350 (quoting *Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software*, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).

Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means." Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism ...'—is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does." (Doc. 65, p. 20).

Zak points to *Williamson*, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f)

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applied to the term "distributed learning control module," despite the term's lack of the word "means." 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to using the word "means." *Id.* at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent's other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure." *Id.* at 1351. While recognizing "that the presence of modifiers can change the meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure." *Id.*

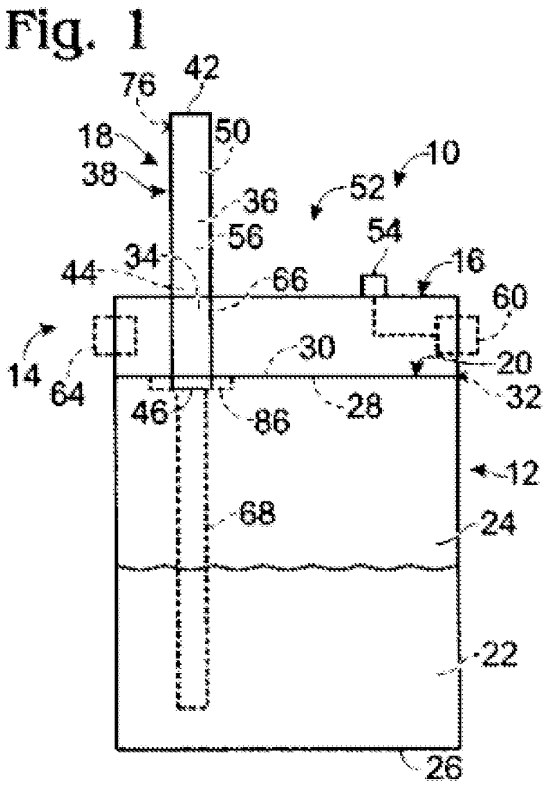
***9** CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:

> [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.*

(Doc. 64-3, p. 18) (emphasis added). CamelBak argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism."

CamelBak relies on *Alex Is the Best, LLC v. BLU Products, Inc.*, where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module." 2017 WL 5031638, at *7–8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms' structures sufficiently clear to a person of ordinary skill in the art. *Id.* The court adopted the plain and ordinary meaning of the terms. *Id.*

The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim language. This mechanism is not a generic placeholder in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in *Williamson*, here the specification "inform[s] the structural character" of "user release mechanism." 792 F.3d at 1351. For example, the figures in the '028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:



(Doc. 64-3, pp. 4, 10).

Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," *Williamson*, 792 F.3d at 1348, and Zak has failed to overcome the presumption against the application of § 112(f). The Court further finds that the meaning of the full phrase

> 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

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is clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase its plain and ordinary meaning.

F. "is biased" / "biases"

'028, '595, '879 and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"tends to return ... absent an external force"	"is pushed, or force is exerted on, in a particular direction"	"returns ... absent an external force"

***10** Variations of the term "bias" appear in the patents in at least three contexts. First, the claims recite a mouthpiece assembly that "is biased to the dispensing configuration" and a crimping region that "at least partially biases the mouthpiece assembly to the dispensing configuration." (Doc. 64-3, p. 18). CamelBak asserts that the mouthpiece assembly's bias can be either internal—created by the material the mouthpiece assembly is made from—or external—created by a mechanism external to the mouthpiece assembly, such as a spring. The '028 specification explains:

> The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring.

Id. at p. 10.

Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration." *Id.* CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user's mouth.

Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration." (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.

CamelBak proposes the "bias" terms be construed to mean "tends to return ... absent an external force." For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "~~is biased~~ tends to return to the dispensing configuration absent an external force." In this example, the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.

Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction." Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position." (Doc. 73, p. 3).

Zak argues CamelBak's proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak's "proposed construction impossible for the jury to understand." *Id.* at 4–5. CamelBak contends Zak's proposed construction is inappropriately limited to only external biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.

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Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on *Perfectvision Manufacturing, Inc. v. PPC Broadband, Inc.*, 2014 WL 4285786, at *4 (E.D. Ark. Aug. 29, 2014), where the district court construed "to bias" to mean "to exert force in a particular direction against an object." Zak also points to *Invisible Fence, Inc. v. Perimeter Technologies, Inc.*, 2006 WL 1443399, at *5 (N.D. Ind. May 25, 2006), where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder."

***11** CamelBak argues that the claim language in *Perfectvision* and *Invisible Fence* referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on *Acantha LLC v. DePuy Synthes Sales, Inc.*, 2017 WL 972106, at *6 (E.D. Wis. Mar. 13, 2017), where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force."

The Court finds Zak's "is pushed, or force is exerted on" language fails to capture the full meaning of the "bias" terms. Zak's language is a poor fit when used to refer to the mouthpiece assembly's internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak's "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak's proposed construction—"tends to return ... absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force." (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak's construction, as a placeholder for a part's specified default state, is appropriate and will be understandable by a jury.

However, Zak takes issue with CamelBak's inclusion of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word's inclusion. While one dictionary definition of the word "bias" is "tendency," *Bias*, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to *always* move to their default configuration absent an external force, *see, e.g.*, Doc. 65-3, p. 11 ("Bite-actuated valves ... are typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compression forces being applied thereto...."). So, rather than having a tendency to return, the parts simply return.

Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns ... absent an external force."

G. "stowing region"

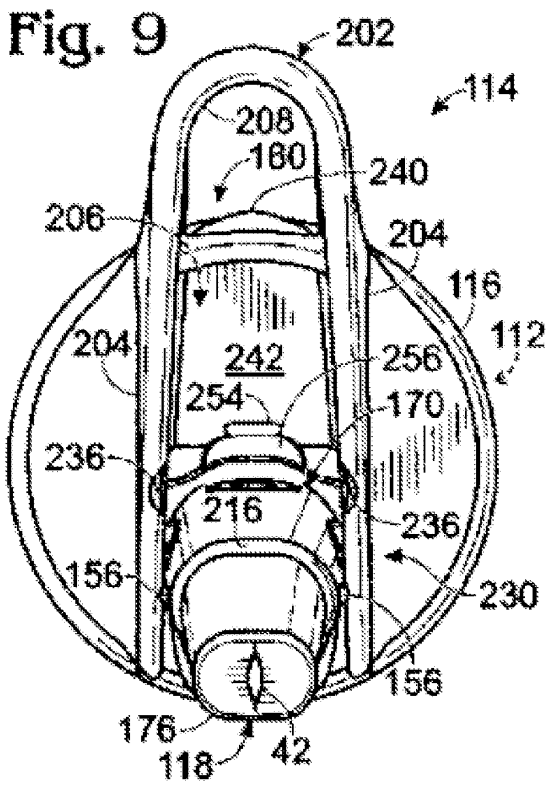
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly"	plain and ordinary meaning

The term "stowing region" appears in the '028, '595, and '879 patents. For example, claim 1 of the '879 patent recites that "the cap assembly defines a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration." (Doc. 64-5, p. 18). Claim 6 of the '028 patent recites that "the cap

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assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly." (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the '028 patent:



***12** *Id.* at p. 6.

Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly." In other words, Zak contends the "stowing region" is limited to *only* the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.

CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak's construction improperly replaces "region" with "space" and "stowing" with "storing" and adds redundant language already present in the claims.

The Court finds that "stowing region" should be given its plain and ordinary meaning. First, CamelBak is correct that Zak's construction would substitute the claim language for similar words and would include redundant language. Second, Zak's construction would limit the claims based on the *possible* embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification." *Vulcan Eng'g Co. v. Fata Aluminium, Inc.*, 278 F.3d 1366, 1376 (Fed. Cir. 2002) (quoting *Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986)). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be *no larger* than the mouthpiece assembly. Zak's contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court.

H. "automatically"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"without additional human intervention"	"without additional action by the user after actuation of the user release mechanism"	"without additional human intervention"

The term "automatically" appears in conjunction with the user release mechanism's ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the '028 patent recites "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." (Doc. 65-3, p. 18). The '028 specification states that "[i]n some examples, the mouthpiece assembly is biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism." *Id.* at p. 8.

CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.

***13** Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism." So, Zak's compromise resolves the parties' primary dispute, which was over the word "additional." However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.

The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak's straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak's concession. "Automatically" cannot mean without *any* human intervention because the claim language requires that the user first actuate the user release mechanism. *See CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1235 (Fed. Cir. 2005) (affirming the district court's construction of "automatically" as "once initiated, the function is performed by a machine, without the need for manually performing the function"). But full adoption of Zak's compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention."

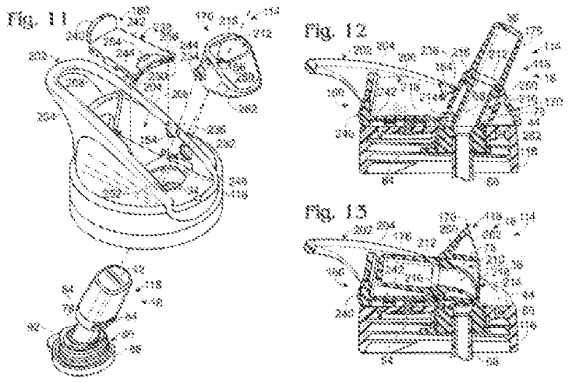
l. "user engagement pad ... which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly"

'028, '595, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"user engagement pad ... which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"	plain and ordinary meaning

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These terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from the stowed configuration. Claim 3 of the '028 patent recites that "the user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user." The same or similar claim language is present elsewhere in the '028 patent and the '595 and '833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the '028 patent:



(Doc. 64-3, p. 7).

Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak's construction injects limitations not present in the claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening.

***14** The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak's description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. *See Vulcan Eng'g*, 278 F.3d at 1376. Certainly, one embodiment of CamelBak's patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism." This *may* be accomplished by having the "user release mechanism" protrude through an enclosed opening that is the same size as the "user release mechanism," but this is not the only embodiment contemplated by the claim language. Accordingly, there remains no genuine dispute as to the scope of the plain language of these terms, and they require no construction by the Court.

J. "the anchor portion is sized to restrict passage of the anchor portion through the through passage"

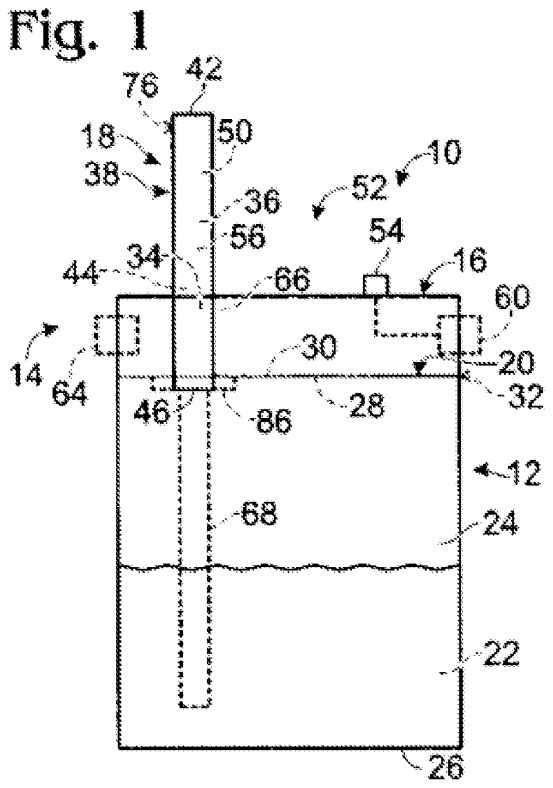
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion	plain and ordinary meaning

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may pass into one end of the through-passage and out of the opposite end of the through-passage"

A representation of this claim phrase appears in claim 1 of the '028 patent, which recites "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." (Doc. 64-3, p. 18). The '028 patent's specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly." *Id.* at p. 12. The "anchor portion" 86 and "through passage" 34 are exemplified in figure 1 of the '028 patent:



Id. at p. 4.

Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit *all the way* through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.

CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak's proposed construction, the patents explicitly distinguish between *restricting* passage through the through passage and *preventing* passage through the through passage. CamelBak writes that "Zak's proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment." (Doc. 65, p. 28).

Zak directs the Court to the relevant prosecution history. The patent examiner initially rejected certain claims of the '028 patent due to prior art. Specifically, the examiner found that a prior drink container patent disclosed a mouthpiece portion with an anchor portion. *Ex Parte Jeff Davies & Derek Gavin Sullivan*, 2017 WL 1032223, at *2 (P.T.A.B. Mar. 15, 2017). The examiner found CamelBak's limitation in claims 1 and 21 that the anchor portion be "sized to restrict passage of the anchor portion through the through passage" failed to distinguish CamelBak's invention from the prior art because "as long as the anchor portion has a size, it is capable of restricting passage." *Id.* CamelBak appealed the examiner's decision to the PTAB, which reversed the examiner's decision. *Id.* at *3. The PTAB found that CamelBak's "sized to restrict" language "positively limits the structure of the claims to a structure in which an anchor portion has a size that functionally acts to restrict, or limit, passage of the anchor portion through the claimed through-passage," and this limitation was not present in the prior art the examiner relied on. *Id.* Adopting CamelBak's argument, the PTAB explained that the examiner's findings were "unreasonable" because "[e]very structure has *a size*, but not all structures are capable of performing the claimed functional requirement of restricting passage of the anchor portion through the through-passage of the base of the cap assembly." *Id.* (emphasis in original). The PTAB further explained that "as [CamelBak] correctly note[s], for example, an anchor portion that is *smaller* than the through-passage will

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not function to restrict passage therethrough." *Id.* (emphasis in original).

***15** The PTAB also reversed the examiner's rejection of claim 18 of the '028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage." *Id.* at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner found that "that it would have been obvious to incorporate Lin's flanges into Choi's anchor portion to prevent leakage." *Id.* The PTAB reversed this finding, explaining:

> We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor portion through a through-passage. Indeed, Lin's lower flange is expressly configured *to permit* passage through the through-passage. Further, the Examiner's purported reasoning for incorporating Lin's flanges into Choi's structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.

Id. (emphasis in original) (citations omitted).

Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak's arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage' limitation." (Doc. 65, pp. 10–12). Zak also points to the specification figures to support its proposed construction.

The Court finds Zak's proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak's successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be *larger* than the through passage so that the anchor portion's passage through the through passage is *prevented.* Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict." (Doc. 64-3, p. 12). As for claim 18 of the '028 patent, none of CamelBak's arguments nor the PTAB's reasoning—which was simply that the prior art did not include CamelBak's "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through passage.

The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15–16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning.

V. CONCLUSION

***16** The Court **HEREBY ADOPTS** the above constructions for the claim terms identified by the parties.

IT IS SO ORDERED on this 9th day of January, 2023.

All Citations

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Footnotes

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1 The parties consented to the Court's adoption of the Northern District of California Patent Local Rules in this case.

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Editor's Note: Additions are indicated by Text and deletions by ~~Text~~ .

United States District Court, W.D. Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

CASE NO. 5:21-CV-05109

|

Signed January 9, 2023

West Headnotes (1)

[1] Patents ⚭ In general; utility

US Patent 9,463,911, US Patent 9,782,028, US Patent 9,820,595, US Patent 10,165,879, US Patent 10,542,833, US Patent 10,676,255. Construed.

Go to Markman Construed Terms

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MEMORANDUM OPINION AND ORDER

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

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I. INTRODUCTION

As Plaintiff CamelBak Products, LLC's patents explain, “For some time people have recognized the need to stay hydrated.” (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids.

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The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak's patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),[1] the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. *See* Docs. 64, 65, 69. The parties' briefing included declarations and deposition testimony from CamelBak's expert witness, Jim Goldman, and Zak's expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias." *See* Docs. 71, 73, 74.

Having fully examined the patents, briefing, exhibits, expert opinions, and the parties' oral arguments and presentations, the Court construes the disputed claim terms as stated below.

II. BACKGROUND

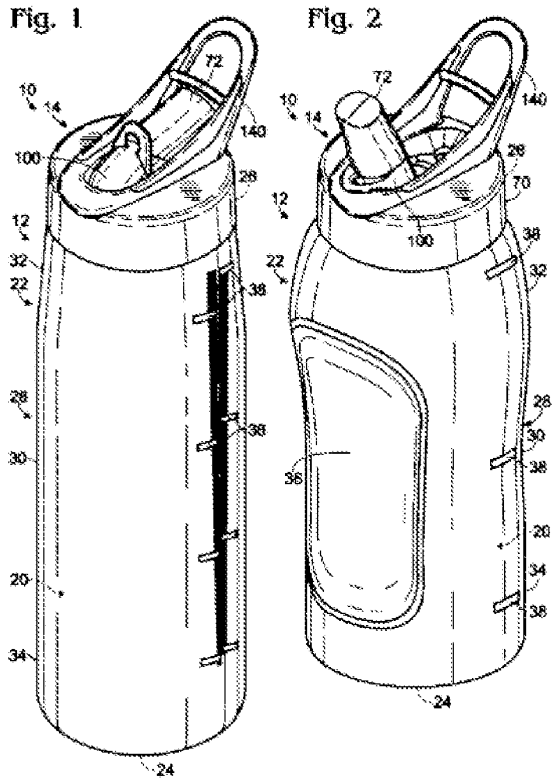
CamelBak's Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows:

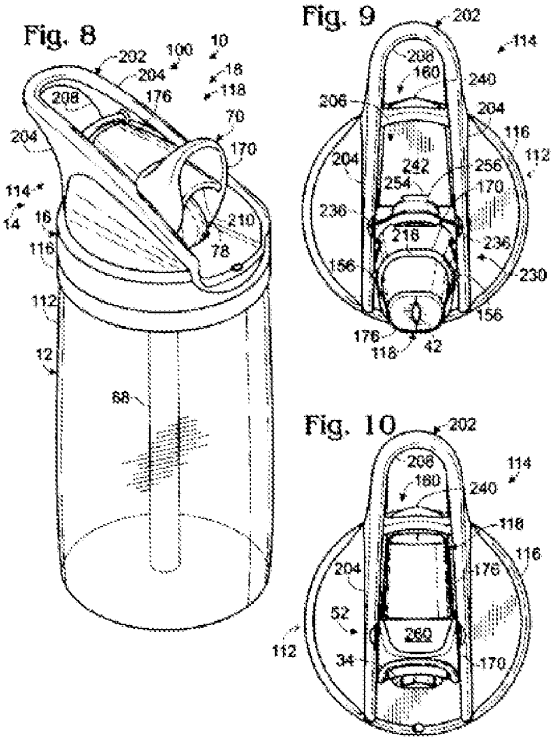
Family	Patent Number	Priority Date
Drink Bottles	9,463,911 ("the '911 patent")	Apr. 11, 2005
Leak-proof flip-top water bottles	10,676,255 ("the '255 patent")	
	9,782,028 ("the '028 patent")	
Drink Containers	9,820,595 ("the '595 patent")	Jan. 21, 2009
Push-button flip-top water bottles	10,165,879 ("the '879 patent")	
	10,542,833 ("the '833 patent")	

***2** The '255 patent is a continuation of the '911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the '595, '879, and '833 patents are continuations of the '028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the '911 and '028 specifications. However, certain of the disputed claim terms appear only in the continuation patents.

The '911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.

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The '028 patent (Doc. 64-3) describes a drink container that is similar to the drink container described in the '911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.

III. LEGAL STANDARD

"Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer's product or process,' which in turn necessitates a determination of 'what the words in the claim mean.' " *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996) (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court." *Id.* at 372.

Claim terms are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314 (citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001)). In other words, some claim terms do not require any construction at all.

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Nevertheless, "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it." *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Thus, a determination that a claim term needs no construction or has the plain and ordinary meaning may be inadequate when a term has more than one 'ordinary' meaning or when reliance on a term's 'ordinary' meaning does not resolve the parties' dispute." *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318 (Fed. Cir. 2016) (cleaned up).

***3** Claims must be construed in light of the intrinsic evidence—the claim language itself, the specification, and the patent's prosecution history. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and through comparison with other claims in the patent. *Phillips*, 415 F.3d at 1314. "[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317.

Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. *Id.* Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. *See Frans Nooren Afdichtingssystemen B.V. v. Stopaq Amcorr Inc.*, 744 F.3d 715, 722 (Fed. Cir. 2014). Expert testimony can also help "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318.

IV. DISCUSSION

A. Agreed Constructions

Claim Term	Patents	Construction
"constructed as a unitary assembly"	'028, '595, '879, and '833 Patents	"constructed as a single piece that includes a group of parts or distinct portions"
"friction-fit arrangement"	'028, '595, '879, and '833 Patents	"arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction"
"fluid conduit"	'911 and '255 Patents	"fluid-carrying structure, such as a channel, pipe, or tube"
"mouthpiece assembly"	'028, '595, '879, and '833 Patents	"the group of parts or distinct sections that, taken together, allow the user to drink liquid"

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"air return assembly"	'911 Patent	"a group of parts that, taken together, form a unit that is adapted to return air"

In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement." In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit." On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly." Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with the parties' constructions and adopts them as stated above.

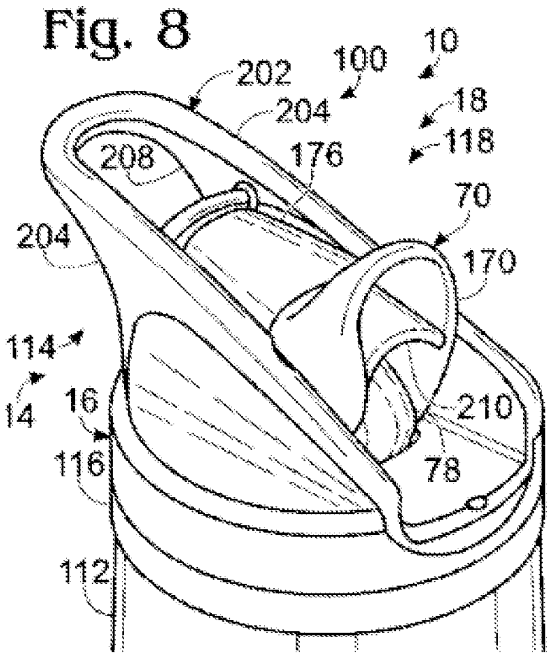
The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing.

B. "rigid"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

The term "rigid" is used extensively in the Asserted Patents' specifications and claims. For example, claim 10 of the '028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration." (Doc. 64-3, pp. 18–19). This "rigid collar member" 170 is seen in figure 8 of the '028 patent:



***4** *Id.* at p. 6. The '028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least

semi-rigid." *Id.* at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification. Zak argues the term "rigid" is indefinite. Indefiniteness occurs when the "claims, read in light of the specification ... and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014). A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, 35 U.S.C. § 282(a), the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence, *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1345 (Fed. Cir. 2007) (citing *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1238–39 (Fed. Cir. 2003)).

Zak's expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and "there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," *id.* at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.

CamelBak admits that rigidity exists on a spectrum but counters that the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Zak's expert are fatal to Zak's indefiniteness argument. At his deposition, Mr. Hamilton admitted that

- the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents;
- the collar member must be rigid enough to collapse the silicone crimping region; and
- while rigidity is context specific and difficult to define, "engineers know it when they see it."

(Doc. 64-9, pp. 11, 18, 20). CamelBak's expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. *See* Doc. 64-7, ¶ 32.

The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak's expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification's singular use of the term "semi-rigid" to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.

***5** Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is indefinite, Zak has not offered a contrary construction.

C. "the resilient mouthpiece is more resilient than the drink spout"

'911 Patent

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

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This term appears in claims 1 and 25 of the '911 patent. Claim 1 states that the invention includes

> a resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, *wherein the resilient mouthpiece is more resilient than the drink spout* and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth....

(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19).

Zak contends this term is indefinite because the '911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:

> (1) the mouthpiece springs back or returns to its previous position or shape after being compressed *faster* than the drink spout;
>
> (2) the mouthpiece springs back or returns to its previous position or shape without damage after being *compressed to a greater extent* than the drink spout;
>
> (3) the mouthpiece can be *compressed for a longer period of time* and still spring back or return to its previous position or shape compared to the drink spout; or
>
> (4) the mouthpiece can be *compressed and decompressed more times* than the drink spout and still spring back or return to its previous position or shape without damage.

(Doc. 65-1, ¶ 60). Based on Mr. Hamilton's opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.

CamelBak counters that it is clear in context that this term means that the "mouthpiece" must be sufficiently resilient to compress in response to a user's teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit." (Doc. 64, p. 15). CamelBak points to Mr. Hamilton's admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. *See* Doc. 64-9, pp. 25–26. CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster's Dictionary definition of "resilient," from which he derived the four plausible meanings above.

***6** The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.

Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster's Dictionary definition gives four possible meanings of "resilient." But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the '911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term's scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Lacking any counter-construction from Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial.

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D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Zak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination." *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006). The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always render a claim indefinite" because "an antecedent basis can be present by implication." *Id.* Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias." Zak points out that the patents' other uses of "bias" were as a verb or adjective—"biased" or "biases." Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent's specification:

> *7 Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.

(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias." (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.

The Court disagrees with Zak's reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly's bias *can be accomplished.* The mouthpiece assembly's bias is the same —it returns to the dispensing configuration—whether that bias is created using a resiliently deformable material, a spring, or both. In the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains *why* the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of *how* that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.

Even assuming Zak's reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly's bias renders the claim indefinite. Under Zak's reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the

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specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.

The term "its bias" may lack an explicit antecedent basis, but it is clear in context that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly's predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.

CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" is easily understood by lay judges and juries.

E. "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"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	means-plus-function limitation	plain and ordinary meaning

***8** Zak argues this claim must be limited to a means-plus-function construction under 35 U.S.C. § 112(f), which states:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. *O.I. Corp. v. Tekmar Co., Inc.*, 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.

Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the word "means" are not governed by § 112(f), but the presumption is not a strong one. *Id.* at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means' but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." *Id.* at 1348.

When the word "means" is not present, the drafter's use of "[g]eneric terms such as 'mechanism,' 'element,' 'device,' and other nonce words that reflect nothing more than verbal constructs may be ... tantamount to using the word 'mean' because they 'typically do not connote sufficiently definite structure.' " *Id.* at 1350 (quoting *Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software*, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).

Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means." Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism ...'—is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does." (Doc. 65, p. 20).

Zak points to *Williamson*, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f)

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applied to the term "distributed learning control module," despite the term's lack of the word "means." 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to using the word "means." *Id.* at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent's other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure." *Id.* at 1351. While recognizing "that the presence of modifiers can change the meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure." *Id.*

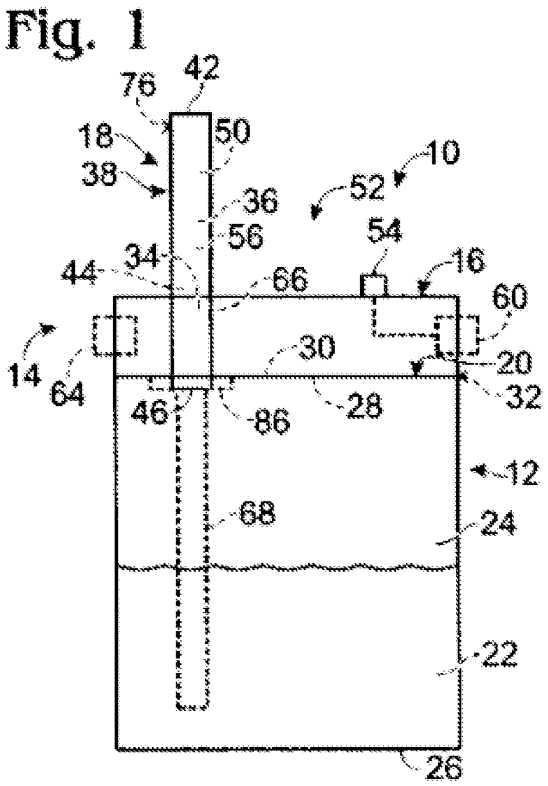
***9** CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:

> [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.*

(Doc. 64-3, p. 18) (emphasis added). CamelBak argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism."

CamelBak relies on *Alex Is the Best, LLC v. BLU Products, Inc.*, where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module." 2017 WL 5031638, at *7–8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms' structures sufficiently clear to a person of ordinary skill in the art. *Id.* The court adopted the plain and ordinary meaning of the terms. *Id.*

The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim language. This mechanism is not a generic placeholder in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in *Williamson*, here the specification "inform[s] the structural character" of "user release mechanism." 792 F.3d at 1351. For example, the figures in the '028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:



(Doc. 64-3, pp. 4, 10).

Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," *Williamson*, 792 F.3d at 1348, and Zak has failed to overcome the presumption against the application of § 112(f). The Court further finds that the meaning of the full phrase

> 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

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is clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase its plain and ordinary meaning.

F. "is biased" / "biases"

'028, '595, '879 and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"tends to return ... absent an external force"	"is pushed, or force is exerted on, in a particular direction"	"returns ... absent an external force"

***10** Variations of the term "bias" appear in the patents in at least three contexts. First, the claims recite a mouthpiece assembly that "is biased to the dispensing configuration" and a crimping region that "at least partially biases the mouthpiece assembly to the dispensing configuration." (Doc. 64-3, p. 18). CamelBak asserts that the mouthpiece assembly's bias can be either internal—created by the material the mouthpiece assembly is made from—or external—created by a mechanism external to the mouthpiece assembly, such as a spring. The '028 specification explains:

> The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring.

Id. at p. 10.

Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration." *Id.* CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user's mouth.

Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration." (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.

CamelBak proposes the "bias" terms be construed to mean "tends to return ... absent an external force." For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "~~is biased~~ tends to return to the dispensing configuration absent an external force." In this example, the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.

Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction." Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position." (Doc. 73, p. 3).

Zak argues CamelBak's proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak's "proposed construction impossible for the jury to understand." *Id.* at 4–5. CamelBak contends Zak's proposed construction is inappropriately limited to only external biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.

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Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on *Perfectvision Manufacturing, Inc. v. PPC Broadband, Inc.*, 2014 WL 4285786, at *4 (E.D. Ark. Aug. 29, 2014), where the district court construed "to bias" to mean "to exert force in a particular direction against an object." Zak also points to *Invisible Fence, Inc. v. Perimeter Technologies, Inc.*, 2006 WL 1443399, at *5 (N.D. Ind. May 25, 2006), where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder."

***11** CamelBak argues that the claim language in *Perfectvision* and *Invisible Fence* referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on *Acantha LLC v. DePuy Synthes Sales, Inc.*, 2017 WL 972106, at *6 (E.D. Wis. Mar. 13, 2017), where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force."

The Court finds Zak's "is pushed, or force is exerted on" language fails to capture the full meaning of the "bias" terms. Zak's language is a poor fit when used to refer to the mouthpiece assembly's internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak's "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak's proposed construction—"tends to return ... absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force." (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak's construction, as a placeholder for a part's specified default state, is appropriate and will be understandable by a jury.

However, Zak takes issue with CamelBak's inclusion of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word's inclusion. While one dictionary definition of the word "bias" is "tendency," *Bias*, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to *always* move to their default configuration absent an external force, *see, e.g.*, Doc. 65-3, p. 11 ("Bite-actuated valves ... are typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compression forces being applied thereto...."). So, rather than having a tendency to return, the parts simply return.

Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns ... absent an external force."

G. "stowing region"

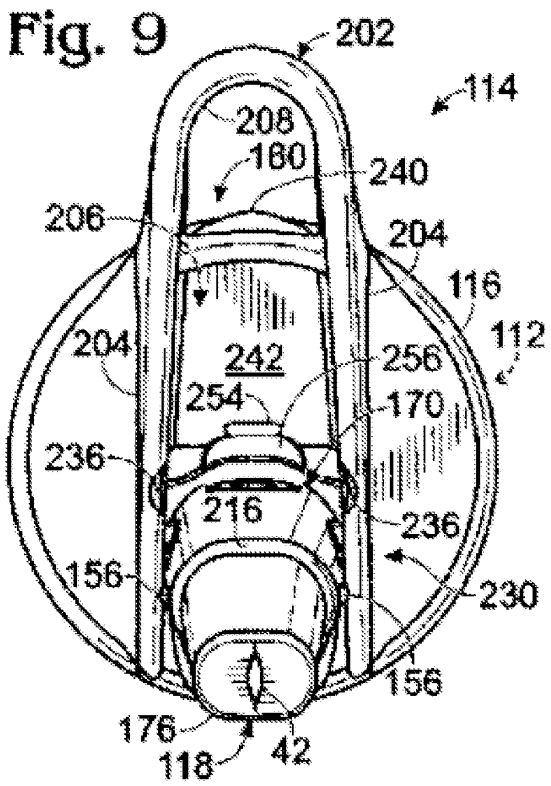
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly"	plain and ordinary meaning

The term "stowing region" appears in the '028, '595, and '879 patents. For example, claim 1 of the '879 patent recites that "the cap assembly defines a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration." (Doc. 64-5, p. 18). Claim 6 of the '028 patent recites that "the cap

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assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly." (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the '028 patent:



***12** *Id.* at p. 6.

Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly." In other words, Zak contends the "stowing region" is limited to *only* the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.

CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak's construction improperly replaces "region" with "space" and "stowing" with "storing" and adds redundant language already present in the claims.

The Court finds that "stowing region" should be given its plain and ordinary meaning. First, CamelBak is correct that Zak's construction would substitute the claim language for similar words and would include redundant language. Second, Zak's construction would limit the claims based on the *possible* embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification." *Vulcan Eng'g Co. v. Fata Aluminium, Inc.*, 278 F.3d 1366, 1376 (Fed. Cir. 2002) (quoting *Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986)). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be *no larger* than the mouthpiece assembly. Zak's contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court.

H. "automatically"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"without additional human intervention"	"without additional action by the user after actuation of the user release mechanism"	"without additional human intervention"

The term "automatically" appears in conjunction with the user release mechanism's ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the '028 patent recites "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." (Doc. 65-3, p. 18). The '028 specification states that "[i]n some examples, the mouthpiece assembly is biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism." *Id.* at p. 8.

CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.

***13** Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism." So, Zak's compromise resolves the parties' primary dispute, which was over the word "additional." However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.

The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak's straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak's concession. "Automatically" cannot mean without *any* human intervention because the claim language requires that the user first actuate the user release mechanism. *See CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1235 (Fed. Cir. 2005) (affirming the district court's construction of "automatically" as "once initiated, the function is performed by a machine, without the need for manually performing the function"). But full adoption of Zak's compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention."

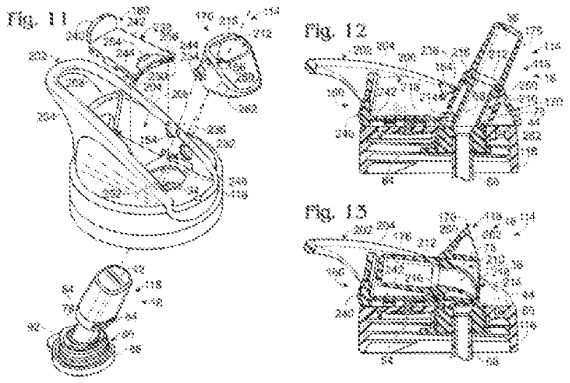
l. "user engagement pad ... which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly"

'028, '595, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"user engagement pad ... which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"	plain and ordinary meaning

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These terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from the stowed configuration. Claim 3 of the '028 patent recites that "the user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user." The same or similar claim language is present elsewhere in the '028 patent and the '595 and '833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the '028 patent:



(Doc. 64-3, p. 7).

Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak's construction injects limitations not present in the claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening.

***14** The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak's description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. *See Vulcan Eng'g*, 278 F.3d at 1376. Certainly, one embodiment of CamelBak's patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism." This *may* be accomplished by having the "user release mechanism" protrude through an enclosed opening that is the same size as the "user release mechanism," but this is not the only embodiment contemplated by the claim language. Accordingly, there remains no genuine dispute as to the scope of the plain language of these terms, and they require no construction by the Court.

J. "the anchor portion is sized to restrict passage of the anchor portion through the through passage"

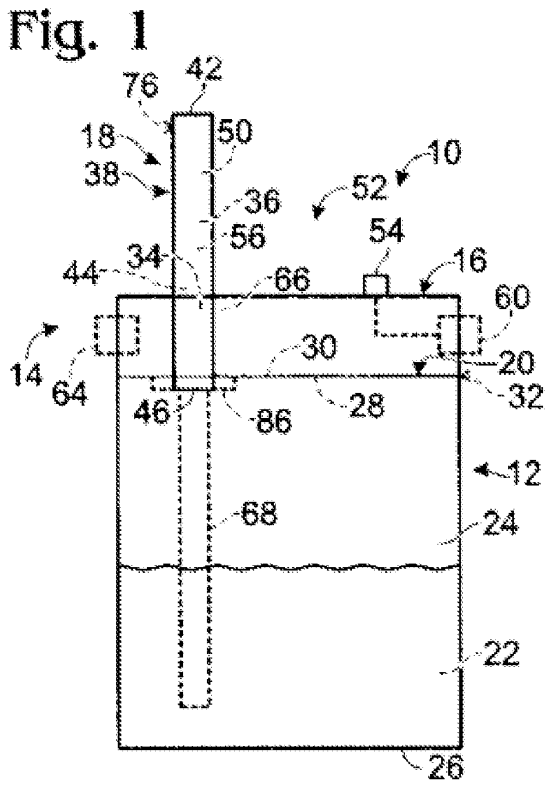
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion	plain and ordinary meaning

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may pass into one end of the through-passage and out of the opposite end of the through-passage"

A representation of this claim phrase appears in claim 1 of the '028 patent, which recites "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." (Doc. 64-3, p. 18). The '028 patent's specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly." *Id.* at p. 12. The "anchor portion" 86 and "through passage" 34 are exemplified in figure 1 of the '028 patent:



Id. at p. 4.

Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit *all the way* through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.

CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak's proposed construction, the patents explicitly distinguish between *restricting* passage through the through passage and *preventing* passage through the through passage. CamelBak writes that "Zak's proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment." (Doc. 65, p. 28).

Zak directs the Court to the relevant prosecution history. The patent examiner initially rejected certain claims of the '028 patent due to prior art. Specifically, the examiner found that a prior drink container patent disclosed a mouthpiece portion with an anchor portion. *Ex Parte Jeff Davies & Derek Gavin Sullivan*, 2017 WL 1032223, at *2 (P.T.A.B. Mar. 15, 2017). The examiner found CamelBak's limitation in claims 1 and 21 that the anchor portion be "sized to restrict passage of the anchor portion through the through passage" failed to distinguish CamelBak's invention from the prior art because "as long as the anchor portion has a size, it is capable of restricting passage." *Id.* CamelBak appealed the examiner's decision to the PTAB, which reversed the examiner's decision. *Id.* at *3. The PTAB found that CamelBak's "sized to restrict" language "positively limits the structure of the claims to a structure in which an anchor portion has a size that functionally acts to restrict, or limit, passage of the anchor portion through the claimed through-passage," and this limitation was not present in the prior art the examiner relied on. *Id.* Adopting CamelBak's argument, the PTAB explained that the examiner's findings were "unreasonable" because "[e]very structure has *a size*, but not all structures are capable of performing the claimed functional requirement of restricting passage of the anchor portion through the through-passage of the base of the cap assembly." *Id.* (emphasis in original). The PTAB further explained that "as [CamelBak] correctly note[s], for example, an anchor portion that is *smaller* than the through-passage will

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not function to restrict passage therethrough." *Id.* (emphasis in original).

***15** The PTAB also reversed the examiner's rejection of claim 18 of the '028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage." *Id.* at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner found that "that it would have been obvious to incorporate Lin's flanges into Choi's anchor portion to prevent leakage." *Id.* The PTAB reversed this finding, explaining:

> We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor portion through a through-passage. Indeed, Lin's lower flange is expressly configured *to permit* passage through the through-passage. Further, the Examiner's purported reasoning for incorporating Lin's flanges into Choi's structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.

Id. (emphasis in original) (citations omitted).

Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak's arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage' limitation." (Doc. 65, pp. 10–12). Zak also points to the specification figures to support its proposed construction.

The Court finds Zak's proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak's successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be *larger* than the through passage so that the anchor portion's passage through the through passage is *prevented.* Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict." (Doc. 64-3, p. 12). As for claim 18 of the '028 patent, none of CamelBak's arguments nor the PTAB's reasoning—which was simply that the prior art did not include CamelBak's "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through passage.

The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15–16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning.

V. CONCLUSION

***16** The Court **HEREBY ADOPTS** the above constructions for the claim terms identified by the parties.

IT IS SO ORDERED on this 9th day of January, 2023.

All Citations

Slip Copy, 2023 WL 137485, 2023 Markman 137485

Footnotes

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1 The parties consented to the Court's adoption of the Northern District of California Patent Local Rules in this case.

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2023 WL 137485

Editor's Note: Additions are indicated by Text and deletions by ~~Text~~ .

United States District Court, W.D. Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

CASE NO. 5:21-CV-05109

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Signed January 9, 2023

West Headnotes (1)

[1] Patents ⚭ In general; utility

US Patent 9,463,911, US Patent 9,782,028, US Patent 9,820,595, US Patent 10,165,879, US Patent 10,542,833, US Patent 10,676,255. Construed.

Go to Markman Construed Terms

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MEMORANDUM OPINION AND ORDER

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

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I. INTRODUCTION

As Plaintiff CamelBak Products, LLC's patents explain, “For some time people have recognized the need to stay hydrated.” (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids.

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The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak's patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),[1] the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. *See* Docs. 64, 65, 69. The parties' briefing included declarations and deposition testimony from CamelBak's expert witness, Jim Goldman, and Zak's expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias." *See* Docs. 71, 73, 74.

Having fully examined the patents, briefing, exhibits, expert opinions, and the parties' oral arguments and presentations, the Court construes the disputed claim terms as stated below.

II. BACKGROUND

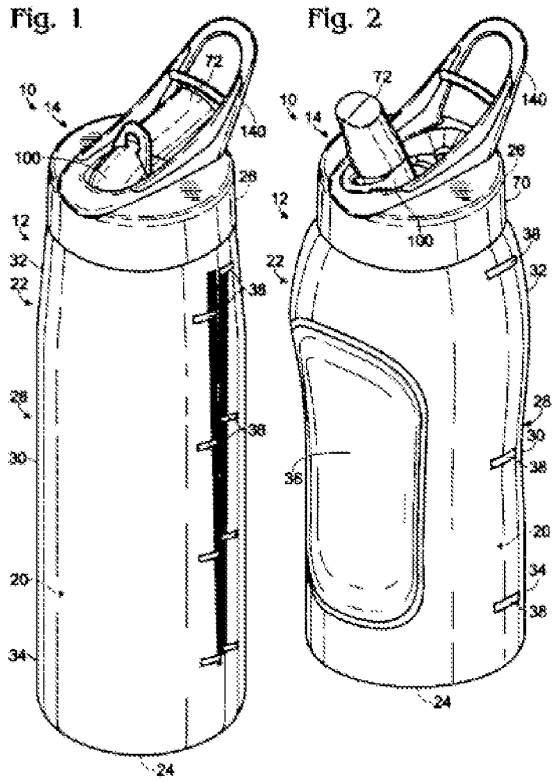
CamelBak's Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows:

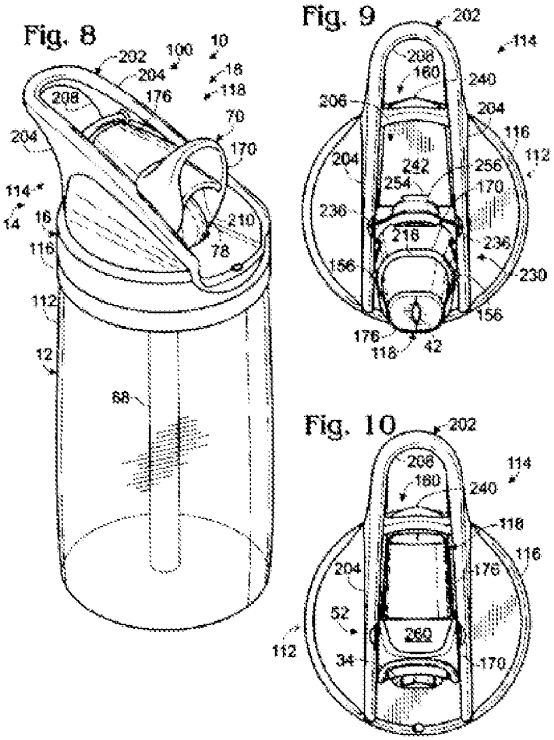
Family	Patent Number	Priority Date
Drink Bottles	9,463,911 ("the '911 patent")	Apr. 11, 2005
Leak-proof flip-top water bottles	10,676,255 ("the '255 patent")	
	9,782,028 ("the '028 patent")	
Drink Containers	9,820,595 ("the '595 patent")	Jan. 21, 2009
Push-button flip-top water bottles	10,165,879 ("the '879 patent")	
	10,542,833 ("the '833 patent")	

***2** The '255 patent is a continuation of the '911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the '595, '879, and '833 patents are continuations of the '028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the '911 and '028 specifications. However, certain of the disputed claim terms appear only in the continuation patents.

The '911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.

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The '028 patent (Doc. 64-3) describes a drink container that is similar to the drink container described in the '911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.

III. LEGAL STANDARD

"Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer's product or process,' which in turn necessitates a determination of 'what the words in the claim mean.' " *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996) (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court." *Id.* at 372.

Claim terms are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314 (citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001)). In other words, some claim terms do not require any construction at all.

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Nevertheless, "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it." *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Thus, a determination that a claim term needs no construction or has the plain and ordinary meaning may be inadequate when a term has more than one 'ordinary' meaning or when reliance on a term's 'ordinary' meaning does not resolve the parties' dispute." *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318 (Fed. Cir. 2016) (cleaned up).

***3** Claims must be construed in light of the intrinsic evidence—the claim language itself, the specification, and the patent's prosecution history. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and through comparison with other claims in the patent. *Phillips*, 415 F.3d at 1314. "[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317.

Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. *Id.* Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. *See Frans Nooren Afdichtingssystemen B.V. v. Stopaq Amcorr Inc.*, 744 F.3d 715, 722 (Fed. Cir. 2014). Expert testimony can also help "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318.

IV. DISCUSSION

A. Agreed Constructions

Claim Term	Patents	Construction
"constructed as a unitary assembly"	'028, '595, '879, and '833 Patents	"constructed as a single piece that includes a group of parts or distinct portions"
"friction-fit arrangement"	'028, '595, '879, and '833 Patents	"arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction"
"fluid conduit"	'911 and '255 Patents	"fluid-carrying structure, such as a channel, pipe, or tube"
"mouthpiece assembly"	'028, '595, '879, and '833 Patents	"the group of parts or distinct sections that, taken together, allow the user to drink liquid"

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"air return assembly"	'911 Patent	"a group of parts that, taken together, form a unit that is adapted to return air"

In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement." In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit." On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly." Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with the parties' constructions and adopts them as stated above.

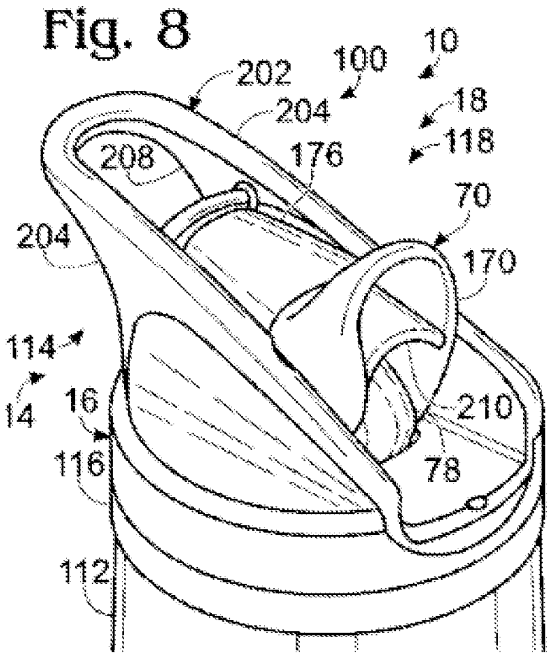
The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing.

B. "rigid"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

The term "rigid" is used extensively in the Asserted Patents' specifications and claims. For example, claim 10 of the '028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration." (Doc. 64-3, pp. 18–19). This "rigid collar member" 170 is seen in figure 8 of the '028 patent:



***4** *Id.* at p. 6. The '028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least

semi-rigid." *Id.* at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification. Zak argues the term "rigid" is indefinite. Indefiniteness occurs when the "claims, read in light of the specification ... and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014). A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, 35 U.S.C. § 282(a), the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence, *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1345 (Fed. Cir. 2007) (citing *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1238–39 (Fed. Cir. 2003)).

Zak's expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and "there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," *id.* at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.

CamelBak admits that rigidity exists on a spectrum but counters that the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Zak's expert are fatal to Zak's indefiniteness argument. At his deposition, Mr. Hamilton admitted that

- the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents;
- the collar member must be rigid enough to collapse the silicone crimping region; and
- while rigidity is context specific and difficult to define, "engineers know it when they see it."

(Doc. 64-9, pp. 11, 18, 20). CamelBak's expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. *See* Doc. 64-7, ¶ 32.

The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak's expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification's singular use of the term "semi-rigid" to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.

***5** Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is indefinite, Zak has not offered a contrary construction.

C. "the resilient mouthpiece is more resilient than the drink spout"

'911 Patent

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

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This term appears in claims 1 and 25 of the '911 patent. Claim 1 states that the invention includes

> a resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, *wherein the resilient mouthpiece is more resilient than the drink spout* and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth....

(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19).

Zak contends this term is indefinite because the '911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:

> (1) the mouthpiece springs back or returns to its previous position or shape after being compressed *faster* than the drink spout;
>
> (2) the mouthpiece springs back or returns to its previous position or shape without damage after being *compressed to a greater extent* than the drink spout;
>
> (3) the mouthpiece can be *compressed for a longer period of time* and still spring back or return to its previous position or shape compared to the drink spout; or
>
> (4) the mouthpiece can be *compressed and decompressed more times* than the drink spout and still spring back or return to its previous position or shape without damage.

(Doc. 65-1, ¶ 60). Based on Mr. Hamilton's opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.

CamelBak counters that it is clear in context that this term means that the "mouthpiece" must be sufficiently resilient to compress in response to a user's teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit." (Doc. 64, p. 15). CamelBak points to Mr. Hamilton's admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. *See* Doc. 64-9, pp. 25–26. CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster's Dictionary definition of "resilient," from which he derived the four plausible meanings above.

***6** The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.

Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster's Dictionary definition gives four possible meanings of "resilient." But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the '911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term's scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Lacking any counter-construction from Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial.

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D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Zak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination." *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006). The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always render a claim indefinite" because "an antecedent basis can be present by implication." *Id.* Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias." Zak points out that the patents' other uses of "bias" were as a verb or adjective—"biased" or "biases." Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent's specification:

> *7 Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.

(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias." (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.

The Court disagrees with Zak's reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly's bias *can be accomplished.* The mouthpiece assembly's bias is the same —it returns to the dispensing configuration—whether that bias is created using a resiliently deformable material, a spring, or both. In the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains *why* the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of *how* that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.

Even assuming Zak's reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly's bias renders the claim indefinite. Under Zak's reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the

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specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.

The term "its bias" may lack an explicit antecedent basis, but it is clear in context that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly's predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.

CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" is easily understood by lay judges and juries.

E. "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"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	means-plus-function limitation	plain and ordinary meaning

***8** Zak argues this claim must be limited to a means-plus-function construction under 35 U.S.C. § 112(f), which states:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. *O.I. Corp. v. Tekmar Co., Inc.*, 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.

Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the word "means" are not governed by § 112(f), but the presumption is not a strong one. *Id.* at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means' but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." *Id.* at 1348.

When the word "means" is not present, the drafter's use of "[g]eneric terms such as 'mechanism,' 'element,' 'device,' and other nonce words that reflect nothing more than verbal constructs may be ... tantamount to using the word 'mean' because they 'typically do not connote sufficiently definite structure.' " *Id.* at 1350 (quoting *Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software*, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).

Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means." Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism ...'—is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does." (Doc. 65, p. 20).

Zak points to *Williamson*, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f)

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applied to the term "distributed learning control module," despite the term's lack of the word "means." 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to using the word "means." *Id.* at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent's other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure." *Id.* at 1351. While recognizing "that the presence of modifiers can change the meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure." *Id.*

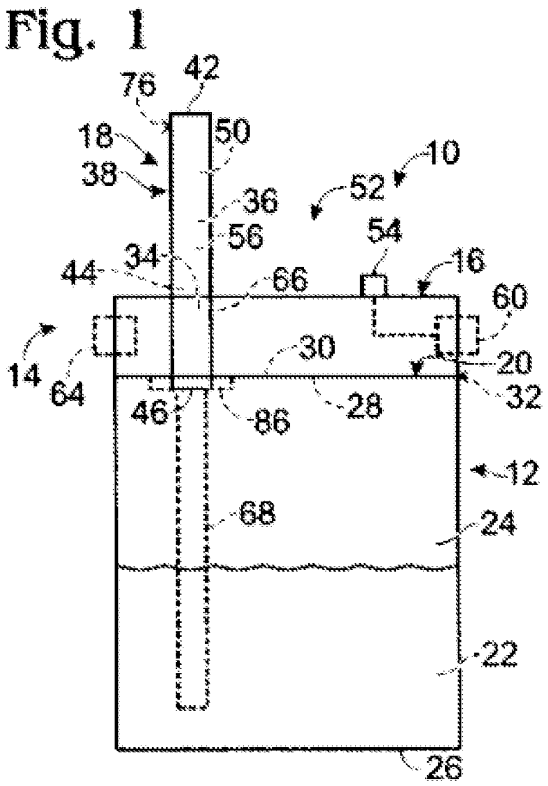
***9** CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:

> [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.*

(Doc. 64-3, p. 18) (emphasis added). CamelBak argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism."

CamelBak relies on *Alex Is the Best, LLC v. BLU Products, Inc.*, where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module." 2017 WL 5031638, at *7–8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms' structures sufficiently clear to a person of ordinary skill in the art. *Id.* The court adopted the plain and ordinary meaning of the terms. *Id.*

The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim language. This mechanism is not a generic placeholder in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in *Williamson*, here the specification "inform[s] the structural character" of "user release mechanism." 792 F.3d at 1351. For example, the figures in the '028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:



(Doc. 64-3, pp. 4, 10).

Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," *Williamson*, 792 F.3d at 1348, and Zak has failed to overcome the presumption against the application of § 112(f). The Court further finds that the meaning of the full phrase

> 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

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is clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase its plain and ordinary meaning.

F. "is biased" / "biases"

'028, '595, '879 and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"tends to return ... absent an external force"	"is pushed, or force is exerted on, in a particular direction"	"returns ... absent an external force"

***10** Variations of the term "bias" appear in the patents in at least three contexts. First, the claims recite a mouthpiece assembly that "is biased to the dispensing configuration" and a crimping region that "at least partially biases the mouthpiece assembly to the dispensing configuration." (Doc. 64-3, p. 18). CamelBak asserts that the mouthpiece assembly's bias can be either internal—created by the material the mouthpiece assembly is made from—or external—created by a mechanism external to the mouthpiece assembly, such as a spring. The '028 specification explains:

> The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring.

Id. at p. 10.

Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration." *Id.* CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user's mouth.

Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration." (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.

CamelBak proposes the "bias" terms be construed to mean "tends to return ... absent an external force." For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "~~is biased~~ tends to return to the dispensing configuration absent an external force." In this example, the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.

Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction." Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position." (Doc. 73, p. 3).

Zak argues CamelBak's proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak's "proposed construction impossible for the jury to understand." *Id.* at 4–5. CamelBak contends Zak's proposed construction is inappropriately limited to only external biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.

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Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on *Perfectvision Manufacturing, Inc. v. PPC Broadband, Inc.*, 2014 WL 4285786, at *4 (E.D. Ark. Aug. 29, 2014), where the district court construed "to bias" to mean "to exert force in a particular direction against an object." Zak also points to *Invisible Fence, Inc. v. Perimeter Technologies, Inc.*, 2006 WL 1443399, at *5 (N.D. Ind. May 25, 2006), where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder."

***11** CamelBak argues that the claim language in *Perfectvision* and *Invisible Fence* referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on *Acantha LLC v. DePuy Synthes Sales, Inc.*, 2017 WL 972106, at *6 (E.D. Wis. Mar. 13, 2017), where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force."

The Court finds Zak's "is pushed, or force is exerted on" language fails to capture the full meaning of the "bias" terms. Zak's language is a poor fit when used to refer to the mouthpiece assembly's internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak's "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak's proposed construction—"tends to return ... absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force." (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak's construction, as a placeholder for a part's specified default state, is appropriate and will be understandable by a jury.

However, Zak takes issue with CamelBak's inclusion of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word's inclusion. While one dictionary definition of the word "bias" is "tendency," *Bias*, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to *always* move to their default configuration absent an external force, *see, e.g.*, Doc. 65-3, p. 11 ("Bite-actuated valves ... are typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compression forces being applied thereto...."). So, rather than having a tendency to return, the parts simply return.

Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns ... absent an external force."

G. "stowing region"

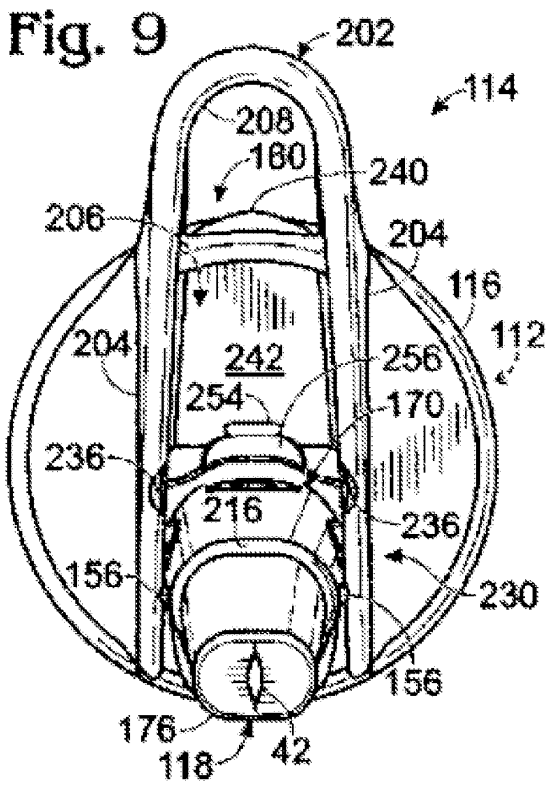
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly"	plain and ordinary meaning

The term "stowing region" appears in the '028, '595, and '879 patents. For example, claim 1 of the '879 patent recites that "the cap assembly defines a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration." (Doc. 64-5, p. 18). Claim 6 of the '028 patent recites that "the cap

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assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly." (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the '028 patent:



***12** *Id.* at p. 6.

Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly." In other words, Zak contends the "stowing region" is limited to *only* the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.

CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak's construction improperly replaces "region" with "space" and "stowing" with "storing" and adds redundant language already present in the claims.

The Court finds that "stowing region" should be given its plain and ordinary meaning. First, CamelBak is correct that Zak's construction would substitute the claim language for similar words and would include redundant language. Second, Zak's construction would limit the claims based on the *possible* embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification." *Vulcan Eng'g Co. v. Fata Aluminium, Inc.*, 278 F.3d 1366, 1376 (Fed. Cir. 2002) (quoting *Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986)). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be *no larger* than the mouthpiece assembly. Zak's contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court.

H. "automatically"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"without additional human intervention"	"without additional action by the user after actuation of the user release mechanism"	"without additional human intervention"

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The term "automatically" appears in conjunction with the user release mechanism's ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the '028 patent recites "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." (Doc. 65-3, p. 18). The '028 specification states that "[i]n some examples, the mouthpiece assembly is biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism." *Id.* at p. 8.

CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.

***13** Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism." So, Zak's compromise resolves the parties' primary dispute, which was over the word "additional." However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.

The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak's straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak's concession. "Automatically" cannot mean without *any* human intervention because the claim language requires that the user first actuate the user release mechanism. *See CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1235 (Fed. Cir. 2005) (affirming the district court's construction of "automatically" as "once initiated, the function is performed by a machine, without the need for manually performing the function"). But full adoption of Zak's compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention."

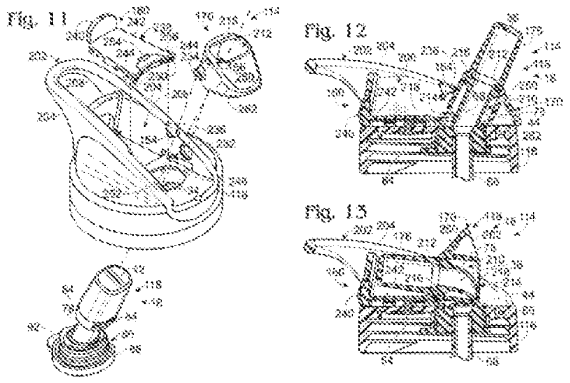
l. "user engagement pad ... which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly"

'028, '595, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"user engagement pad ... which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"	plain and ordinary meaning

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These terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from the stowed configuration. Claim 3 of the '028 patent recites that "the user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user." The same or similar claim language is present elsewhere in the '028 patent and the '595 and '833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the '028 patent:



(Doc. 64-3, p. 7).

Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak's construction injects limitations not present in the claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening.

***14** The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak's description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. *See Vulcan Eng'g*, 278 F.3d at 1376. Certainly, one embodiment of CamelBak's patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism." This *may* be accomplished by having the "user release mechanism" protrude through an enclosed opening that is the same size as the "user release mechanism," but this is not the only embodiment contemplated by the claim language. Accordingly, there remains no genuine dispute as to the scope of the plain language of these terms, and they require no construction by the Court.

J. "the anchor portion is sized to restrict passage of the anchor portion through the through passage"

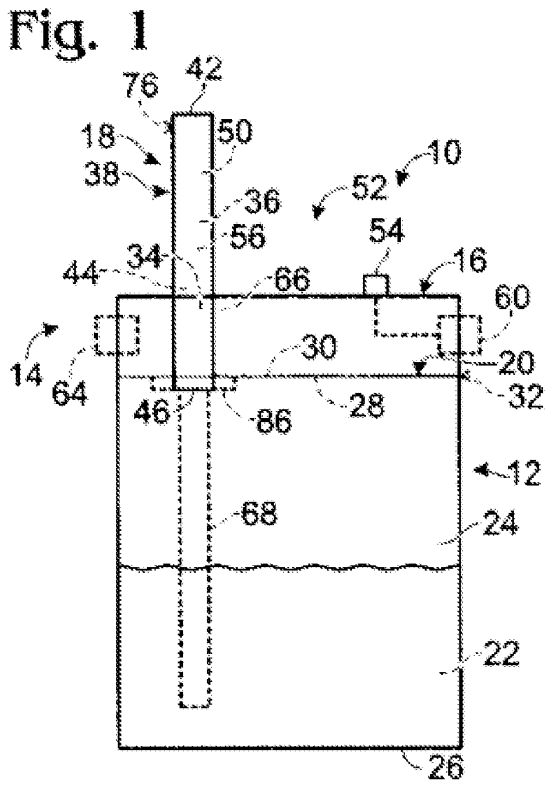
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion	plain and ordinary meaning

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may pass into one end of the through-passage and out of the opposite end of the through-passage"

A representation of this claim phrase appears in claim 1 of the '028 patent, which recites "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." (Doc. 64-3, p. 18). The '028 patent's specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly." *Id.* at p. 12. The "anchor portion" 86 and "through passage" 34 are exemplified in figure 1 of the '028 patent:



Id. at p. 4.

Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit *all the way* through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.

CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak's proposed construction, the patents explicitly distinguish between *restricting* passage through the through passage and *preventing* passage through the through passage. CamelBak writes that "Zak's proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment." (Doc. 65, p. 28).

Zak directs the Court to the relevant prosecution history. The patent examiner initially rejected certain claims of the '028 patent due to prior art. Specifically, the examiner found that a prior drink container patent disclosed a mouthpiece portion with an anchor portion. *Ex Parte Jeff Davies & Derek Gavin Sullivan*, 2017 WL 1032223, at *2 (P.T.A.B. Mar. 15, 2017). The examiner found CamelBak's limitation in claims 1 and 21 that the anchor portion be "sized to restrict passage of the anchor portion through the through passage" failed to distinguish CamelBak's invention from the prior art because "as long as the anchor portion has a size, it is capable of restricting passage." *Id.* CamelBak appealed the examiner's decision to the PTAB, which reversed the examiner's decision. *Id.* at *3. The PTAB found that CamelBak's "sized to restrict" language "positively limits the structure of the claims to a structure in which an anchor portion has a size that functionally acts to restrict, or limit, passage of the anchor portion through the claimed through-passage," and this limitation was not present in the prior art the examiner relied on. *Id.* Adopting CamelBak's argument, the PTAB explained that the examiner's findings were "unreasonable" because "[e]very structure has *a size*, but not all structures are capable of performing the claimed functional requirement of restricting passage of the anchor portion through the through-passage of the base of the cap assembly." *Id.* (emphasis in original). The PTAB further explained that "as [CamelBak] correctly note[s], for example, an anchor portion that is *smaller* than the through-passage will

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not function to restrict passage therethrough." *Id.* (emphasis in original).

***15** The PTAB also reversed the examiner's rejection of claim 18 of the '028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage." *Id.* at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner found that "that it would have been obvious to incorporate Lin's flanges into Choi's anchor portion to prevent leakage." *Id.* The PTAB reversed this finding, explaining:

> We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor portion through a through-passage. Indeed, Lin's lower flange is expressly configured *to permit* passage through the through-passage. Further, the Examiner's purported reasoning for incorporating Lin's flanges into Choi's structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.

Id. (emphasis in original) (citations omitted).

Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak's arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage' limitation." (Doc. 65, pp. 10–12). Zak also points to the specification figures to support its proposed construction.

The Court finds Zak's proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak's successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be *larger* than the through passage so that the anchor portion's passage through the through passage is *prevented.* Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict." (Doc. 64-3, p. 12). As for claim 18 of the '028 patent, none of CamelBak's arguments nor the PTAB's reasoning—which was simply that the prior art did not include CamelBak's "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through passage.

The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15–16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning.

V. CONCLUSION

***16** The Court **HEREBY ADOPTS** the above constructions for the claim terms identified by the parties.

IT IS SO ORDERED on this 9th day of January, 2023.

All Citations

Slip Copy, 2023 WL 137485, 2023 Markman 137485

Footnotes

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1 The parties consented to the Court's adoption of the Northern District of California Patent Local Rules in this case.

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2023 WL 137485

Editor's Note: Additions are indicated by Text and deletions by ~~Text~~ .

United States District Court, W.D. Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

CASE NO. 5:21-CV-05109

|

Signed January 9, 2023

West Headnotes (1)

[1] Patents ⚭ In general; utility

US Patent 9,463,911, US Patent 9,782,028, US Patent 9,820,595, US Patent 10,165,879, US Patent 10,542,833, US Patent 10,676,255. Construed.

Go to Markman Construed Terms

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MEMORANDUM OPINION AND ORDER

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

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I. INTRODUCTION

As Plaintiff CamelBak Products, LLC's patents explain, “For some time people have recognized the need to stay hydrated.” (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids.

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The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak's patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),[1] the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. *See* Docs. 64, 65, 69. The parties' briefing included declarations and deposition testimony from CamelBak's expert witness, Jim Goldman, and Zak's expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias." *See* Docs. 71, 73, 74.

Having fully examined the patents, briefing, exhibits, expert opinions, and the parties' oral arguments and presentations, the Court construes the disputed claim terms as stated below.

II. BACKGROUND

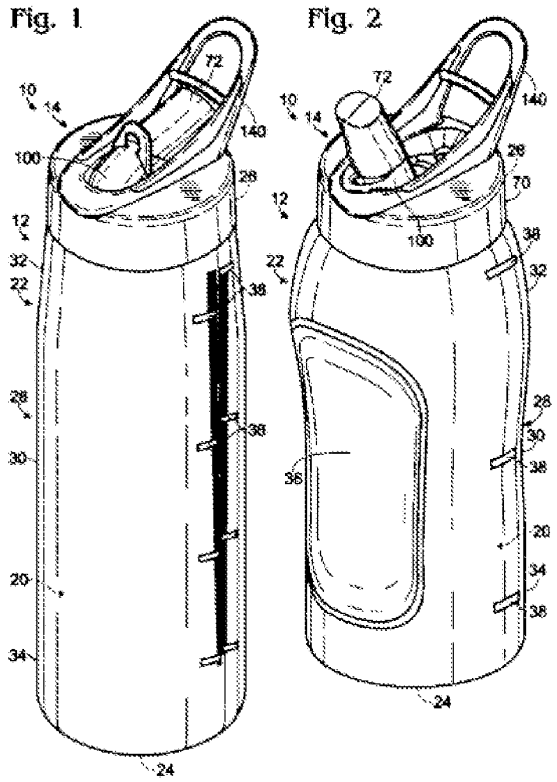
CamelBak's Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows:

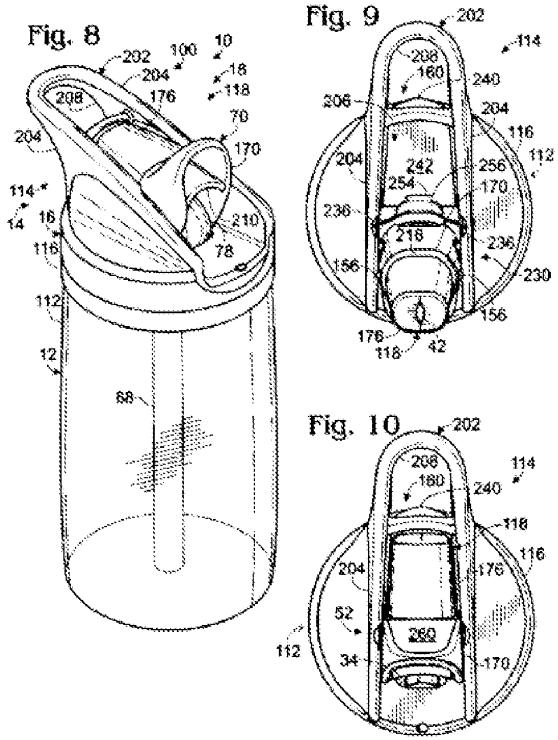
Family	Patent Number	Priority Date
Drink Bottles	9,463,911 ("the '911 patent")	Apr. 11, 2005
Leak-proof flip-top water bottles	10,676,255 ("the '255 patent")	
	9,782,028 ("the '028 patent")	
Drink Containers	9,820,595 ("the '595 patent")	Jan. 21, 2009
Push-button flip-top water bottles	10,165,879 ("the '879 patent")	
	10,542,833 ("the '833 patent")	

***2** The '255 patent is a continuation of the '911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the '595, '879, and '833 patents are continuations of the '028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the '911 and '028 specifications. However, certain of the disputed claim terms appear only in the continuation patents.

The '911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.

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The '028 patent (Doc. 64-3) describes a drink container that is similar to the drink container described in the '911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.

III. LEGAL STANDARD

"Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer's product or process,' which in turn necessitates a determination of 'what the words in the claim mean.' " *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996) (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court." *Id.* at 372.

Claim terms are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314 (citing *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001)). In other words, some claim terms do not require any construction at all.

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Nevertheless, "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court's duty to resolve it." *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Thus, a determination that a claim term needs no construction or has the plain and ordinary meaning may be inadequate when a term has more than one 'ordinary' meaning or when reliance on a term's 'ordinary' meaning does not resolve the parties' dispute." *Eon Corp. IP Holdings v. Silver Spring Networks*, 815 F.3d 1314, 1318 (Fed. Cir. 2016) (cleaned up).

***3** Claims must be construed in light of the intrinsic evidence—the claim language itself, the specification, and the patent's prosecution history. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and through comparison with other claims in the patent. *Phillips*, 415 F.3d at 1314. "[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent." *Phillips*, 415 F.3d at 1317.

Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. *Id.* Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. *See Frans Nooren Afdichtingssystemen B.V. v. Stopaq Amcorr Inc.*, 744 F.3d 715, 722 (Fed. Cir. 2014). Expert testimony can also help "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips*, 415 F.3d at 1318.

IV. DISCUSSION

A. Agreed Constructions

Claim Term	Patents	Construction
"constructed as a unitary assembly"	'028, '595, '879, and '833 Patents	"constructed as a single piece that includes a group of parts or distinct portions"
"friction-fit arrangement"	'028, '595, '879, and '833 Patents	"arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction"
"fluid conduit"	'911 and '255 Patents	"fluid-carrying structure, such as a channel, pipe, or tube"
"mouthpiece assembly"	'028, '595, '879, and '833 Patents	"the group of parts or distinct sections that, taken together, allow the user to drink liquid"

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"air return assembly"	'911 Patent	"a group of parts that, taken together, form a unit that is adapted to return air"

In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement." In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit." On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly." Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with the parties' constructions and adopts them as stated above.

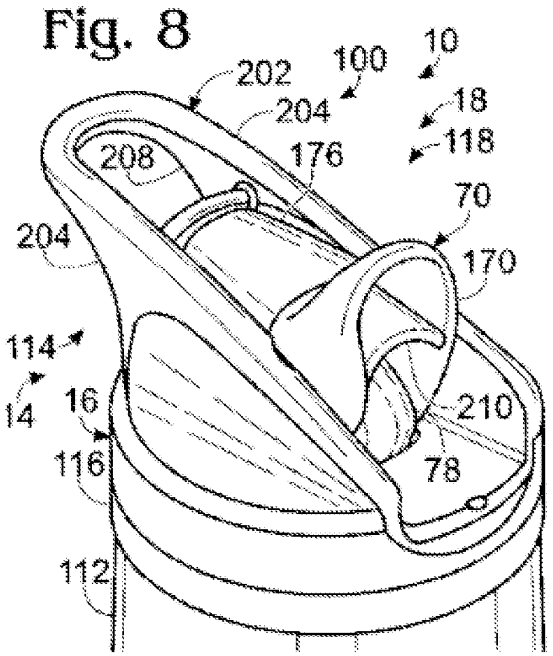
The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing.

B. "rigid"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

The term "rigid" is used extensively in the Asserted Patents' specifications and claims. For example, claim 10 of the '028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration." (Doc. 64-3, pp. 18–19). This "rigid collar member" 170 is seen in figure 8 of the '028 patent:



***4** *Id.* at p. 6. The '028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least

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semi-rigid." *Id.* at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification. Zak argues the term "rigid" is indefinite. Indefiniteness occurs when the "claims, read in light of the specification ... and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014). A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, 35 U.S.C. § 282(a), the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence, *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1345 (Fed. Cir. 2007) (citing *AK Steel Corp. v. Sollac & Ugine*, 344 F.3d 1234, 1238–39 (Fed. Cir. 2003)).

Zak's expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and "there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," *id.* at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.

CamelBak admits that rigidity exists on a spectrum but counters that the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Zak's expert are fatal to Zak's indefiniteness argument. At his deposition, Mr. Hamilton admitted that

- the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents;
- the collar member must be rigid enough to collapse the silicone crimping region; and
- while rigidity is context specific and difficult to define, "engineers know it when they see it."

(Doc. 64-9, pp. 11, 18, 20). CamelBak's expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. *See* Doc. 64-7, ¶ 32.

The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak's expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification's singular use of the term "semi-rigid" to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.

***5** Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is indefinite, Zak has not offered a contrary construction.

C. "the resilient mouthpiece is more resilient than the drink spout"

'911 Patent

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

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This term appears in claims 1 and 25 of the '911 patent. Claim 1 states that the invention includes

> a resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, *wherein the resilient mouthpiece is more resilient than the drink spout* and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth....

(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19).

Zak contends this term is indefinite because the '911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:

> (1) the mouthpiece springs back or returns to its previous position or shape after being compressed *faster* than the drink spout;
>
> (2) the mouthpiece springs back or returns to its previous position or shape without damage after being *compressed to a greater extent* than the drink spout;
>
> (3) the mouthpiece can be *compressed for a longer period of time* and still spring back or return to its previous position or shape compared to the drink spout; or
>
> (4) the mouthpiece can be *compressed and decompressed more times* than the drink spout and still spring back or return to its previous position or shape without damage.

(Doc. 65-1, ¶ 60). Based on Mr. Hamilton's opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.

CamelBak counters that it is clear in context that this term means that the "mouthpiece" must be sufficiently resilient to compress in response to a user's teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit." (Doc. 64, p. 15). CamelBak points to Mr. Hamilton's admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. *See* Doc. 64-9, pp. 25–26. CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster's Dictionary definition of "resilient," from which he derived the four plausible meanings above.

***6** The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.

Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster's Dictionary definition gives four possible meanings of "resilient." But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the '911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term's scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Lacking any counter-construction from Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial.

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D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration"

'028, '595, '879, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Zak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination." *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370 (Fed. Cir. 2006). The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always render a claim indefinite" because "an antecedent basis can be present by implication." *Id.* Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc.*, 572 U.S. 898, 901 (2014).

Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias." Zak points out that the patents' other uses of "bias" were as a verb or adjective—"biased" or "biases." Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent's specification:

> *7 Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.

(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias." (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.

The Court disagrees with Zak's reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly's bias *can be accomplished.* The mouthpiece assembly's bias is the same —it returns to the dispensing configuration—whether that bias is created using a resiliently deformable material, a spring, or both. In the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains *why* the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of *how* that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.

Even assuming Zak's reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly's bias renders the claim indefinite. Under Zak's reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the

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specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.

The term "its bias" may lack an explicit antecedent basis, but it is clear in context that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly's predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.

CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" is easily understood by lay judges and juries.

E. "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"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	means-plus-function limitation	plain and ordinary meaning

***8** Zak argues this claim must be limited to a means-plus-function construction under 35 U.S.C. § 112(f), which states:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. *O.I. Corp. v. Tekmar Co., Inc.*, 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.

Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the word "means" are not governed by § 112(f), but the presumption is not a strong one. *Id.* at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means' but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." *Id.* at 1348.

When the word "means" is not present, the drafter's use of "[g]eneric terms such as 'mechanism,' 'element,' 'device,' and other nonce words that reflect nothing more than verbal constructs may be ... tantamount to using the word 'mean' because they 'typically do not connote sufficiently definite structure.' " *Id.* at 1350 (quoting *Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software*, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).

Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means." Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism ...'—is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does." (Doc. 65, p. 20).

Zak points to *Williamson*, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f)

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applied to the term "distributed learning control module," despite the term's lack of the word "means." 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to using the word "means." *Id.* at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent's other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure." *Id.* at 1351. While recognizing "that the presence of modifiers can change the meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure." *Id.*

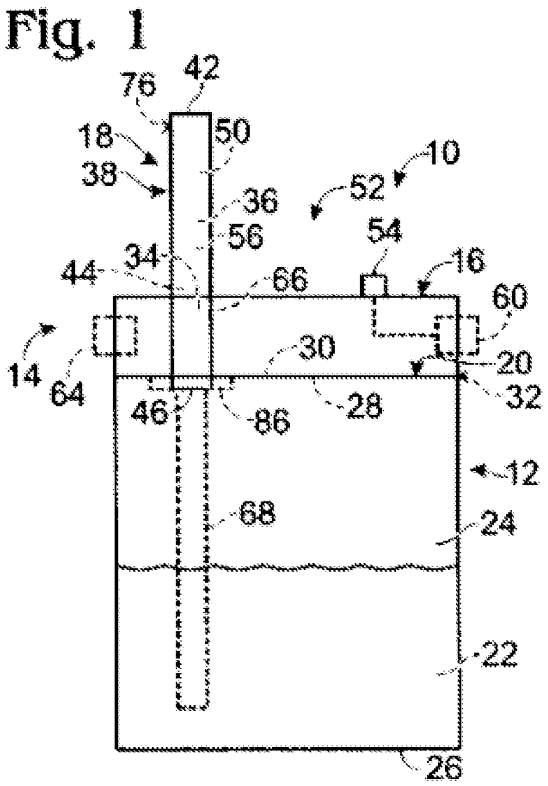
***9** CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:

> [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.*

(Doc. 64-3, p. 18) (emphasis added). CamelBak argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism."

CamelBak relies on *Alex Is the Best, LLC v. BLU Products, Inc.*, where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module." 2017 WL 5031638, at *7–8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms' structures sufficiently clear to a person of ordinary skill in the art. *Id.* The court adopted the plain and ordinary meaning of the terms. *Id.*

The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim language. This mechanism is not a generic placeholder in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in *Williamson*, here the specification "inform[s] the structural character" of "user release mechanism." 792 F.3d at 1351. For example, the figures in the '028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:



(Doc. 64-3, pp. 4, 10).

Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," *Williamson*, 792 F.3d at 1348, and Zak has failed to overcome the presumption against the application of § 112(f). The Court further finds that the meaning of the full phrase

> 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

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is clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase its plain and ordinary meaning.

F. "is biased" / "biases"

'028, '595, '879 and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"tends to return ... absent an external force"	"is pushed, or force is exerted on, in a particular direction"	"returns ... absent an external force"

***10** Variations of the term "bias" appear in the patents in at least three contexts. First, the claims recite a mouthpiece assembly that "is biased to the dispensing configuration" and a crimping region that "at least partially biases the mouthpiece assembly to the dispensing configuration." (Doc. 64-3, p. 18). CamelBak asserts that the mouthpiece assembly's bias can be either internal—created by the material the mouthpiece assembly is made from—or external—created by a mechanism external to the mouthpiece assembly, such as a spring. The '028 specification explains:

> The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring.

Id. at p. 10.

Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration." *Id.* CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user's mouth.

Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration." (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.

CamelBak proposes the "bias" terms be construed to mean "tends to return ... absent an external force." For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "~~is biased~~ tends to return to the dispensing configuration absent an external force." In this example, the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.

Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction." Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position." (Doc. 73, p. 3).

Zak argues CamelBak's proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak's "proposed construction impossible for the jury to understand." *Id.* at 4–5. CamelBak contends Zak's proposed construction is inappropriately limited to only external biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.

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Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on *Perfectvision Manufacturing, Inc. v. PPC Broadband, Inc.*, 2014 WL 4285786, at *4 (E.D. Ark. Aug. 29, 2014), where the district court construed "to bias" to mean "to exert force in a particular direction against an object." Zak also points to *Invisible Fence, Inc. v. Perimeter Technologies, Inc.*, 2006 WL 1443399, at *5 (N.D. Ind. May 25, 2006), where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder."

***11** CamelBak argues that the claim language in *Perfectvision* and *Invisible Fence* referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on *Acantha LLC v. DePuy Synthes Sales, Inc.*, 2017 WL 972106, at *6 (E.D. Wis. Mar. 13, 2017), where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force."

The Court finds Zak's "is pushed, or force is exerted on" language fails to capture the full meaning of the "bias" terms. Zak's language is a poor fit when used to refer to the mouthpiece assembly's internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak's "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak's proposed construction—"tends to return ... absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force." (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak's construction, as a placeholder for a part's specified default state, is appropriate and will be understandable by a jury.

However, Zak takes issue with CamelBak's inclusion of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word's inclusion. While one dictionary definition of the word "bias" is "tendency," *Bias*, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to *always* move to their default configuration absent an external force, *see, e.g.*, Doc. 65-3, p. 11 ("Bite-actuated valves ... are typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compression forces being applied thereto...."). So, rather than having a tendency to return, the parts simply return.

Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns ... absent an external force."

G. "stowing region"

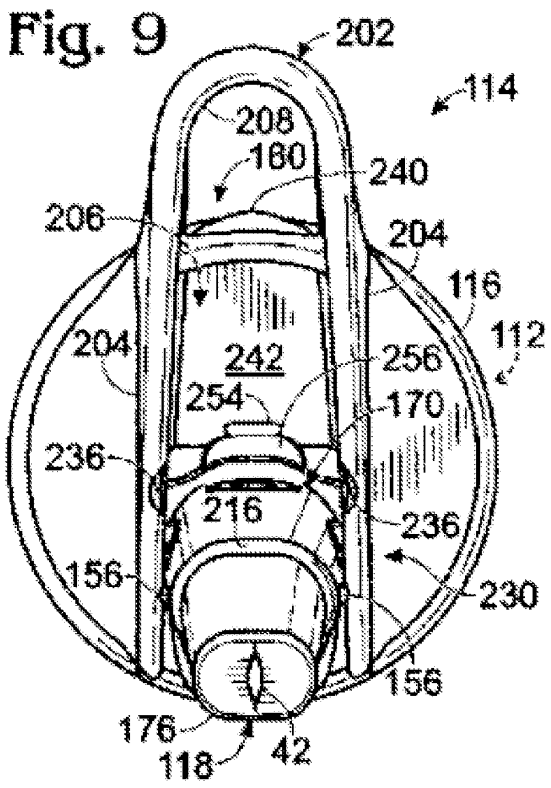
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly"	plain and ordinary meaning

The term "stowing region" appears in the '028, '595, and '879 patents. For example, claim 1 of the '879 patent recites that "the cap assembly defines a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration." (Doc. 64-5, p. 18). Claim 6 of the '028 patent recites that "the cap

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assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly." (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the '028 patent:



***12** *Id.* at p. 6.

Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly." In other words, Zak contends the "stowing region" is limited to *only* the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.

CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak's construction improperly replaces "region" with "space" and "stowing" with "storing" and adds redundant language already present in the claims.

The Court finds that "stowing region" should be given its plain and ordinary meaning. First, CamelBak is correct that Zak's construction would substitute the claim language for similar words and would include redundant language. Second, Zak's construction would limit the claims based on the *possible* embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification." *Vulcan Eng'g Co. v. Fata Aluminium, Inc.*, 278 F.3d 1366, 1376 (Fed. Cir. 2002) (quoting *Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986)). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be *no larger* than the mouthpiece assembly. Zak's contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court.

H. "automatically"

'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"without additional human intervention"	"without additional action by the user after actuation of the user release mechanism"	"without additional human intervention"

The term "automatically" appears in conjunction with the user release mechanism's ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the '028 patent recites "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." (Doc. 65-3, p. 18). The '028 specification states that "[i]n some examples, the mouthpiece assembly is biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism." *Id.* at p. 8.

CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.

***13** Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism." So, Zak's compromise resolves the parties' primary dispute, which was over the word "additional." However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.

The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak's straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak's concession. "Automatically" cannot mean without *any* human intervention because the claim language requires that the user first actuate the user release mechanism. *See CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1235 (Fed. Cir. 2005) (affirming the district court's construction of "automatically" as "once initiated, the function is performed by a machine, without the need for manually performing the function"). But full adoption of Zak's compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention."

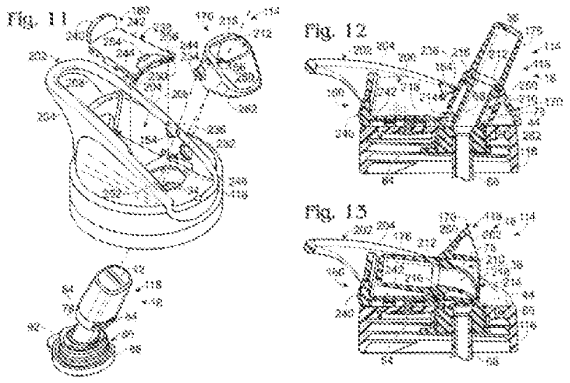
I. "user engagement pad ... which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly"

'028, '595, and '833 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"user engagement pad ... which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"	plain and ordinary meaning

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These terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from the stowed configuration. Claim 3 of the '028 patent recites that "the user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user." The same or similar claim language is present elsewhere in the '028 patent and the '595 and '833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the '028 patent:



(Doc. 64-3, p. 7).

Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak's construction injects limitations not present in the claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening.

***14** The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak's description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. *See Vulcan Eng'g*, 278 F.3d at 1376. Certainly, one embodiment of CamelBak's patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism." This *may* be accomplished by having the "user release mechanism" protrude through an enclosed opening that is the same size as the "user release mechanism," but this is not the only embodiment contemplated by the claim language. Accordingly, there remains no genuine dispute as to the scope of the plain language of these terms, and they require no construction by the Court.

J. "the anchor portion is sized to restrict passage of the anchor portion through the through passage"

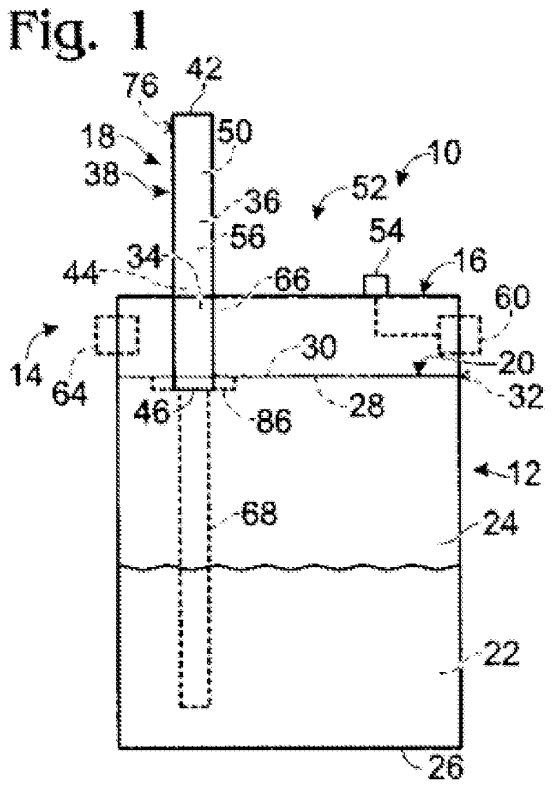
'028, '595, and '879 Patents

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion	plain and ordinary meaning

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may pass into one end of the through-passage and out of the opposite end of the through-passage"

A representation of this claim phrase appears in claim 1 of the '028 patent, which recites "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." (Doc. 64-3, p. 18). The '028 patent's specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly." *Id.* at p. 12. The "anchor portion" 86 and "through passage" 34 are exemplified in figure 1 of the '028 patent:



Id. at p. 4.

Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit *all the way* through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.

CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak's proposed construction, the patents explicitly distinguish between *restricting* passage through the through passage and *preventing* passage through the through passage. CamelBak writes that "Zak's proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment." (Doc. 65, p. 28).

Zak directs the Court to the relevant prosecution history. The patent examiner initially rejected certain claims of the '028 patent due to prior art. Specifically, the examiner found that a prior drink container patent disclosed a mouthpiece portion with an anchor portion. *Ex Parte Jeff Davies & Derek Gavin Sullivan*, 2017 WL 1032223, at *2 (P.T.A.B. Mar. 15, 2017). The examiner found CamelBak's limitation in claims 1 and 21 that the anchor portion be "sized to restrict passage of the anchor portion through the through passage" failed to distinguish CamelBak's invention from the prior art because "as long as the anchor portion has a size, it is capable of restricting passage." *Id.* CamelBak appealed the examiner's decision to the PTAB, which reversed the examiner's decision. *Id.* at *3. The PTAB found that CamelBak's "sized to restrict" language "positively limits the structure of the claims to a structure in which an anchor portion has a size that functionally acts to restrict, or limit, passage of the anchor portion through the claimed through-passage," and this limitation was not present in the prior art the examiner relied on. *Id.* Adopting CamelBak's argument, the PTAB explained that the examiner's findings were "unreasonable" because "[e]very structure has *a size*, but not all structures are capable of performing the claimed functional requirement of restricting passage of the anchor portion through the through-passage of the base of the cap assembly." *Id.* (emphasis in original). The PTAB further explained that "as [CamelBak] correctly note[s], for example, an anchor portion that is *smaller* than the through-passage will

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not function to restrict passage therethrough." *Id.* (emphasis in original).

***15** The PTAB also reversed the examiner's rejection of claim 18 of the '028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage." *Id.* at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner found that "that it would have been obvious to incorporate Lin's flanges into Choi's anchor portion to prevent leakage." *Id.* The PTAB reversed this finding, explaining:

> We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor portion through a through-passage. Indeed, Lin's lower flange is expressly configured *to permit* passage through the through-passage. Further, the Examiner's purported reasoning for incorporating Lin's flanges into Choi's structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.

Id. (emphasis in original) (citations omitted).

Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak's arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage' limitation." (Doc. 65, pp. 10–12). Zak also points to the specification figures to support its proposed construction.

The Court finds Zak's proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak's successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be *larger* than the through passage so that the anchor portion's passage through the through passage is *prevented.* Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict." (Doc. 64-3, p. 12). As for claim 18 of the '028 patent, none of CamelBak's arguments nor the PTAB's reasoning—which was simply that the prior art did not include CamelBak's "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through passage.

The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15–16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning.

V. CONCLUSION

***16** The Court **HEREBY ADOPTS** the above constructions for the claim terms identified by the parties.

IT IS SO ORDERED on this 9th day of January, 2023.

All Citations

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Footnotes

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1 The parties consented to the Court's adoption of the Northern District of California Patent Local Rules in this case.

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2021 WL 7906879
Only the Westlaw citation is currently available.
United States District Court, W.D.
Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

No. 5:21-cv-05109
|
Signed 09/15/2021

Attorneys and Law Firms

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Kyle Ray Wilson, Richard Blakely Glasgow, Wright, Lindsey & Jennings LLP, Little Rock, AR, for Defendant.

OPINION AND ORDER

P.K. HOLMES, III, UNITED STATES DISTRICT JUDGE

***1** Before the Court is the parties' joint motion (Doc. 28) for a protective order and proposed protective order (Doc. 28-1). The motion represents that a protective order is necessary because the parties will likely produce "confidential, sensitive, and proprietary information." (Doc. 28, p. 1). For the reasons set forth below, the Court will GRANT the motion and enter the proposed protective order, with some amendment.

Federal Rule of Civil Procedure 26(c)(1)(G) provides that "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" by "requiring that a trade secret or other confidential research, development or commercial information not be revealed or be revealed only in a specified way." "The burden is therefore upon the movant to show the necessity of its issuance, which contemplates 'a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.' " *Gen. Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973) (citing Wright & Miller, *Federal Practice and Procedure: Civil* § 2035 at 264-65).

The parties have shown good cause for the entry of a protective order as to documents containing confidential and proprietary information. Confidential commercial information falls squarely within the ambit of Rule 26(c). "Where discovery of confidential commercial information is involved, the court must 'balance the risk of disclosure to competitors against the risk that a protective order will impair prosecution or defense of the claims.' " *Bussing v. COR Clearing, LLC*, 2015 WL 4077993, at *2 (D. Neb. July 6, 2015) (quoting *Nutratech, Inc. v. Syntech (SSPF) Int'l, Inc.*, 242 F.R.D. 552, 555 (C.D. Cal. 2007)). Here, entry of a protective order will neither impair prosecution nor the defense of the claims as the parties are in agreement as to the proposed protective order. The Court finds that good cause has been shown for the entry of a protective order regarding documents containing confidential commercial information.

The parties' motion requests that the Court enter a protective order that requires the parties to file all deposition testimony containing confidential information under seal with the Court. However, read broadly, this provision would allow the entire testimony of a deposed party to be filed under seal, which the Court will not allow. Accordingly, the modified protective order will direct that only the portions of testimony which are deemed confidential shall be redacted, and the redacted copy will be filed on the public docket while an unredacted copy will be filed under seal with the Clerk. The proposed protective order will also be revised to clarify that the protective order controls the use of confidential information except during hearing or trial. The protective order will state that a party that intends or that anticipates that another party may present information designated confidential at a hearing or trial must bring that issue to the attention of the Court and the other parties without disclosing the information, and that any party who wishes to restrict access to confidential information during trial must move the Court for that relief prior to trial. Finally, the Court has modified some of the terms of the protective order to comply with this Court's standard practice or omit the parties' citation to subsections of the Federal Rules of Civil Procedure which are no longer present in the Rules.

***2** IT IS THEREFORE ORDERED that the motion (Doc. 28) for entry of a protective order is GRANTED. The Court will separately enter a revised protective order.

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IT IS SO ORDERED this 15th day of September, 2021.

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2022 WL 678652
Only the Westlaw citation is currently available.
United States District Court, W.D.
Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

CASE NO. 5:21-CV-05109

Signed 03/07/2022

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Kyle Ray Wilson, Richard Blakely Glasgow, Wright, Lindsey & Jennings LLP, Little Rock, AR, for Defendant.

MEMORANDUM OPINION AND ORDER DENYING MOTION TO TRANSFER

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

***1** Currently before the Court are the Motion to Transfer to the Eastern District of Washington (Doc. 19) and Brief in Support (Doc. 20) submitted by Defendant Zak Designs, Inc. Plaintiff CamelBak Products, LLC filed a Response in Opposition (Doc. 33), and Zak filed a Reply (Doc. 37). Because Zak has failed to show the Eastern District of Washington is a clearly more convenient venue than the Western District of Arkansas, its Motion to Transfer is **DENIED.**

I. BACKGROUND

Both CamelBak and Zak design and sell water bottles. CamelBak's Complaint (Doc. 2) alleges Zak has infringed on six of CamelBak's patents related to water bottles and water bottle lids. The alleged infringing activity stems from several water bottles that Zak sells direct-to-consumer and to third-party retailers in the United States.

This case was originally assigned to the Honorable P.K. Holmes, III. On July 15, 2021, Judge Holmes issued an initial scheduling order, which set a trial date of November 14, 2022. (Doc. 18). About a month later, Zak filed the Motion to Transfer. Judge Holmes granted CamelBak's unopposed motion to conduct limited discovery related to the Motion to Transfer. (Doc. 22). Judge Holmes also granted Zak's motion to stay all other discovery pending resolution of the Motion to Transfer. (Doc. 26). On November 10, 2021, this case was reassigned upon Judge Holmes's recusal to the undersigned. (Doc. 38).

In the instant Motion, Zak asks the Court to transfer this case to the District Court for the Eastern District of Washington, Spokane Division. Zak argues the Eastern District of Washington is a more convenient venue for both parties and the alleged infringing conduct—the design, marketing, and sales decisions for the accused water bottles—occurred there. Zak is headquartered in Airway Heights, Washington, just outside Spokane. CamelBak is headquartered in Petaluma, California, north of San Francisco.

CamelBak maintains the Western District of Arkansas is the appropriate venue for this case because Zak has an office in Bentonville, Arkansas to facilitate the company's relationship with Bentonville-based Walmart. CamelBak argues Walmart is one of Zak's biggest customers and a significant portion of the alleged infringing sales are made in this District.

II. LEGAL STANDARD

The transfer of venue statute, 28 U.S.C. § 1404(a), provides that "for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district where it might have been brought." The Eighth Circuit has declined to offer an exhaustive list of factors for courts consider in evaluating a motion to transfer. *In re Apple, Inc.*, 602 F.3d 909, 912 (8th Cir. 2010). Rather, district courts have discretion under section 1404(a) "to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988). Moreover, because "federal courts give considerable deference to a plaintiff's choice of forum ... the party seeking a transfer under section 1404(a) typically bears

the burden of proving that a transfer is warranted." *Terra Int'l v. Miss. Chem. Corp.*, 119 F.3d 688, 695 (8th Cir. 1997).

***2** Factors courts generally consider that bear upon the convenience of litigating in a particular venue include: 1) the convenience of the parties, 2) the convenience of the witnesses—including the willingness of witnesses to appear, the ability to subpoena witnesses, and the adequacy of deposition testimony, 3) the accessibility to records and documents, 4) the location where the conduct complained of occurred, and 5) the applicability of each forum state's substantive law. *Id.* at 696.

In considering whether transfer is in the interest of justice, courts look to: 1) judicial economy, 2) the plaintiff's initial forum choice, 3) the comparative costs to both parties of litigating in the different forums, 4) enforceability issues for any resulting judgment, 5) obstacles to a fair trial, 6) conflict of law concerns, and 7) the advantage of having a local court determine questions of local law. *Id.*

III. DISCUSSION

After weighing the relevant factors, the Court finds the Eastern District of Washington is not a "clearly more convenient" venue than the Western District of Arkansas. *In re Microsoft Corp.*, 630 F.3d 1361, 1362 (Fed. Cir. 2011). The convenience factors weigh against transfer because the Western District of Arkansas is more convenient for the potential nonparty witnesses. The interest-of-justice factors also weigh against transfer because CamelBak desires to litigate in this District and there are no sufficiently countervailing factors to outweigh CamelBak's desire.

As a threshold matter, the Court finds that the Eastern District of Washington, the requested transferee venue, is a district where this action could have originally been brought. *See* 28 U.S.C. § 1404(a). Venue in a patent case is proper under 28 U.S.C. § 1400(b) where the defendant "resides" or "has committed acts of infringement and has a regular and established place of business." Zak is headquartered within the boundaries of the Eastern District of Washington, and the parties do not dispute that this suit could have been filed there.

A. Convenience

The convenience factors weigh against transferring this case to the Eastern District of Washington. While the Eastern District of Washington would be more convenient for Zak and is the location of many relevant documents, the Western District of Arkansas is more convenient for the potential nonparty witnesses. The convenience of witnesses is the more important consideration and tips the convenience factors against transfer.

The Eastern District of Washington is a slightly more convenient venue for the parties. Neither party is headquartered in the Western District of Arkansas and both will be inconvenienced to some extent by litigating the case here. The Eastern District of Washington would be more convenient for Zak because its headquarters and executives are all located there. However, CamelBak also has no connection to the Eastern District of Washington—it will be inconvenienced whether it litigates this case in Arkansas or in Washington. And the Western District of Arkansas is not wholly inconvenient to Zak—it does maintain an office in this District and its executives frequently travel here from Washington. *See* Doc. 34-7. Nevertheless, this factor favors transfer because CamelBak is inconvenienced in both potential venues, but Zak would be less inconvenienced litigating in Washington.

The Western District of Arkansas is more convenient for the potential nonparty witnesses. The convenience of witnesses "is probably the single most important factor in [the] transfer analysis." *In re Genentech, Inc.*, 566 F.3d 1338, 1343 (Fed. Cir. 2009) (quoting *Neil Bros. Ltd. v. World Wide Lines, Inc.*, 425 F. Supp. 2d 325, 329 (E.D.N.Y. 2006)). Witnesses forced to travel significant distances will "likely incur expenses for airfare, meals and lodging, and losses in productivity from time spent away from work." *In re Apple*, 602 F.3d at 913. The location of nonparty witnesses is given more weight in the analysis than party witnesses. *WhatRU Holding, LLC v. Bouncing Angels, Inc.*, 2014 WL 2986657, at *3 (D. Minn. July 1, 2014).

***3** Three nonparty witnesses—Walmart and two former Zak employees who likely have material information—reside in the Western District of Arkansas. One nonparty inventor lives in Austin, Texas; at least three other inventors live in Northern California, near CamelBak's headquarters; Target, another Zak customer, is based in Minneapolis, Minnesota; and the company that manufactures Zak's water bottles is based in China. This China-based manufacturer may be an important witness because, according to Zak, that company "also

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designed some of the accused water bottles and presented the designs to Zak." (Doc. 20, p. 6). There are no nonparty witnesses in Washington. The Western District of Arkansas is a more convenient venue for the nonparty witnesses who reside in this District and for the inventor in Austin. Neither venue is clearly more convenient for the nonparty witnesses in Northern California,[1] Minnesota, and China.[2]

While Zak argues the most important witnesses—its own executives—are in Washington, it does not contest the relevance of the nonparty witnesses identified by CamelBak. *See* Doc. 37, p. 4. Instead, Zak argues transfer will not inhibit access to these witnesses, and, in any event, videotaped depositions can be used at trial to remedy any loss of access. However, live testimony is preferred to videotaped depositions, and the Court must consider the extent to which potential witnesses will be subject to the subpoena power of the district court in both potential venues, *see In re Genentech*, 566 F.3d at 1345. The nonparty witnesses in Arkansas are currently subject to this Court's subpoena power but would not be subject to the subpoena power of the Eastern District of Washington. Conversely, neither party has identified any nonparty witnesses who *would* be subject to the subpoena power of the Eastern District of Washington. So, if this case were transferred, unfettered access to three witnesses would be lost with no commensurate gain.

Neither potential venue is more convenient for a majority of the party witnesses. Of the witnesses employed by Zak, four work in Airway Heights, Washington; three work in Bentonville, Arkansas; and one works in Massachusetts. The Court recognizes Zak's four Washington employees are high-ranking executives who will likely be important witnesses. But the Court also recognizes that two of those same executives often travel to Zak's Bentonville office. *See* Doc. 34-7. Zak's Bentonville employees also appear to have material information and include Zak's Director of Product Development, Director of Sales and Business Development – Walmart, and Customer Supply Chain Analyst. (Doc. 34-6). In addition, Arkansas appears to be a slightly more convenient venue for Zak's Massachusetts-based Vice President of Design and Development, a likely critical witness. *See* Doc. 34, p. 13. In total, then, four of Zak's eight party witnesses are either in or closer to the Western District of Arkansas and two often travel to the Western District of Arkansas. As for Zak's travel costs, they would not "be significantly minimized or avoided by transfer" because, while transfer would save Zak's Washington employees from traveling, many of those costs would be shifted to paying for its Bentonville employees to travel to Washington. *In re Apple*, 602 F.3d at 914. CamelBak's party witnesses largely reside in Northern California, and none reside in Arkansas or Washington.

***4** The location of documents crucial to resolution of this case weighs slightly in favor of transfer. The bulk of Zak's records are at its headquarters in Washington, and "while electronic storage of documents makes them more widely accessible than was true in the past, that does not make the sources-of-proof factor irrelevant." *In re Juniper Networks, Inc.*, 14 F.4th 1313, 1321 (Fed. Cir. 2021) (citing *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 316 (5th Cir. 2008)). However, Zak's Bentonville office also likely has relevant documents, particularly documents related to Zak's relationship with Walmart and the design of water bottles to meet Walmart's requests. *See* Doc. 34-7, p. 11. Also, the accused water bottles are readily available in Arkansas. *See* Doc. 34, p. 20.

Neither potential venue is more convenient with respect to where the alleged harmful conduct occurred. The harmful conduct, as explained in CamelBak's Complaint, is Zak's alleged infringement of CamelBak's patents through "the manufacture, use, sale, offer for sale, and/or importation into the United States" of the accused water bottles. (Doc. 2, p. 9). As such, the alleged harmful conduct occurred in both potential venues. Zak's water bottles are largely developed in Airway Heights, Washington, *see* Doc. 19-1, ¶ 8, with some design input from meetings with Walmart in Bentonville, *see* Doc. 34-7. Some of the design work also presumably occurs in Massachusetts, where Zak's Vice President of Design and Development is based. *See* Doc. 19-1, ¶¶ 8–9. The water bottles are then manufactured in China. *Id.* at ¶ 12. They are imported into the United States in Seattle, located in the Western District of Washington, and transported to Zak's warehouse in Airway Heights, in the Eastern District of Washington. *See id.* at ¶¶ 12–13. The water bottles are then offered for sale and shipped to retailers and consumers all over the country. There is no dispute that Walmart accounts for a substantial portion of Zak's total sales and that Walmart's purchases are facilitated by Zak's office in Bentonville, Arkansas.

In sum, the Court finds the convenience of nonparty witnesses favors keeping this case in the Western District of Arkansas. The convenience of the parties and location of documents slightly favor transfer to the Eastern District of Washington, but the convenience of nonparty witnesses is the more

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important factor. Other considerations—the convenience of party witnesses and where the harmful conduct occurred—are largely neutral. This is a close call, but overall, the convenience factors weigh against transfer.

B. Interest of Justice

The interest-of-justice factors also weigh against transfer. While it will likely be more expensive for Zak to litigate in Arkansas, judicial economy considerations are neutral, and the Court gives substantial weight to CamelBak's chosen forum.

CamelBak's desire to litigate this case in the Western District of Arkansas weighs against transfer. Federal courts afford considerable deference to a plaintiff's initial choice of forum. *Terra Int'l*, 119 F.3d at 695. Zak urges the Court to discount CamelBak's chosen forum "because CamelBak does not reside in the Western District of Arkansas" and "a significant part of the underlying facts occurred in the Eastern District of Washington." (Doc. 37, p. 7). Zak is correct that courts have found that when the plaintiff is headquartered elsewhere and the conduct central to the complaint occurred outside of the chosen forum, the plaintiff's initial choice is entitled to less weight. *See Harrell v. Robinson*, 2014 WL 1977134, at *2 (W.D. Ark. May 15, 2014). But as explained above, the alleged harmful conduct occurred both inside and outside the Western District of Arkansas. There is also no indication here that CamelBak "chose the forum to take advantage of favorable law or to harass the defendant." *In re Apple*, 602 F.3d at 913. Therefore, there is no reason to accord less weight to CamelBak's forum choice than the transfer analysis ordinarily demands.

***5** The relative cost for the parties to litigate in the potential venues weighs slightly in favor of transfer. Both potential venues will be similarly costly for CamelBak to litigate in. And while there may be some additional cost for Zak to litigate in Arkansas, this is quite different from a case where an out-of-state company is dragged into an unfamiliar forum. Zak has an office in this District, and its executives travel here multiple times per year. Zak has computers in this District connected to the company's file storage applications, and high-ranking employees work here and could assist with litigation-related matters that require a physical presence in Arkansas. *See* Doc. 34, pp. 18, 20.

Judicial economy concerns are largely neutral here. Courts in the Western District of Arkansas have found that "the administration of justice is served more efficiently when the action is litigated in the forum that more clearly encompasses the locus of operative facts." *Beijing Zhongyi Zhongbiao Elec. Info. Tech. v. Microsoft Corp.*, 2013 WL 3808009, at *5 (W.D. Ark. July 22, 2013). As noted above, much of the design of the accused water bottles took place in Washington, some design input occurred in Arkansas, and the alleged infringing sales took place in both forums. This distinguishes this case from patent cases where the only connection a case has to the plaintiff's chosen forum is infringing sales made in that district. *See In re Samsung Elecs. Co., Ltd.*, 2 F.4th 1371, 1380 (Fed. Cir. 2021) (ordering transfer of venue where "[t]he relevant events leading to the infringement claims here took place largely in Northern California, and *not at all* in the Western District of Texas") (emphasis added). Zak's connection to the Western District of Arkansas is much more substantial. Therefore, neither potential venue *clearly* encompasses the locus of operative facts.

CamelBak argues the time-to-trial will be significantly less here than in the Eastern District of Washington. Assuming that is true, the Court "do[es] not regard the relative speed with which this case might be brought to trial in the two districts to be of particular significance." *In re Juniper Networks, Inc.*, 14 F.4th at 1322. The Federal Circuit has cautioned that "the court congestion factor [is] the 'most speculative' of the factors bearing of the transfer decision" and should be given little weight. *Id.* (quoting *In re Genentech*, 566 F.3d at 1347).

Like the convenience factors, the interest-of-justice factors do not overwhelmingly point in either direction. But CamelBak's forum choice deserves deference, and Zak has not shown that litigating in this District is sufficiently unfair to overcome that deference.

IV. CONCLUSION

IT IS THEREFORE ORDERED that Zak's Motion to Transfer (Doc. 19) is **DENIED**. The parties are **ORDERED** to resume discovery in full. A Case Management Order with revised task deadlines and a new trial date will be entered separately.

IT IS SO ORDERED on this 7th day of March, 2022.

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Footnotes

1 CamelBak points out that the travel time from the airport nearest the nonparty inventors and CamelBak's headquarters—in Santa Rosa, California—is nearly the same to both Northwest Arkansas and Spokane, Washington. (Doc. 34, p. 15).

2 The Eighth Circuit has explained that for "nonparty witnesses located in foreign countries, ... the two [competing] venues are roughly equivalent, for we recognize that persons coming from abroad 'will be required to travel a significant distance no matter where they testify.' " *In re Apple*, 602 F.3d at 914 (quoting *In re Genentech*, 566 F.3d at 1344).

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2022 WL 2348676
Only the Westlaw citation is currently available.
United States District Court, W.D.
Arkansas, Fayetteville Division.

CAMELBAK PRODUCTS, LLC, Plaintiff

v.

ZAK DESIGNS, INC., Defendant

CASE NO. 5:21-CV-05109
|
Signed June 29, 2022

Attorneys and Law Firms

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MEMORANDUM OPINION AND ORDER DENYING MOTION TO STAY

TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE

***1** Currently before the Court are the Motion to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office (Doc. 41) and Brief in Support (Doc. 42) submitted by Defendant Zak Designs, Inc. Plaintiff CamelBak Products, LLC filed a Response in Opposition (Doc. 43), Zak filed a Reply (Doc. 46), and Camelbak filed a Sur-Reply (Doc. 49). Because a stay would unduly prejudice Camelbak and may only partially simplify this case, Zak's Motion to Stay (Doc. 41) is **DENIED.**

I. BACKGROUND

Both CamelBak and Zak design and sell water bottles. CamelBak's Complaint (Doc. 2) alleges Zak has infringed on six of CamelBak's patents related to water bottles and water bottle lids. The alleged infringing activity stems from several water bottles that Zak sells direct-to-consumer and to third-party retailers in the United States. The patents at issue include United States Patent No. 9,463,911 (the "'911 Patent"), United States Patent No. 9,782,028 (the "'028 Patent"), United States Patent No. 9,820,595 (the "'595 Patent"), United States Patent No. 10,165,879 (the "'879 Patent"), United States Patent No. 10,542,833 (the "'833 Patent"), and United States Patent No. 10,676,255 (the "'255 Patent") (collectively, the "Patents-in-Suit").

This case was originally assigned to the Honorable P.K. Holmes, III. On July 15, 2021, Judge Holmes issued an initial scheduling order, which set a trial date of November 14, 2022. (Doc. 18). About a month later, Zak moved to transfer this case to the Eastern District of Washington. (Doc. 19). Judge Holmes granted CamelBak's unopposed motion to conduct limited discovery related to the Motion to Transfer. (Doc. 22). Judge Holmes also granted Zak's motion to stay all other discovery pending resolution of the Motion to Transfer. (Doc. 26). On November 10, 2021, this case was reassigned upon Judge Holmes's recusal to the undersigned. (Doc. 38).

On March 7, 2022, the Court denied the Motion to Transfer and ordered the parties to resume discovery in full. (Doc. 40). The Court has not yet issued a final scheduling order and no trial date is currently set.

Zak now seeks review of two of the Patents-in-Suit with the United States Patent and Trademark Office (PTO). On April 19, 2022, Zak filed for *Inter Partes* Review (IPR) with the PTO, challenging the validity of claims 1–2, 5–10, 14, 16, and 21 of the '028 Patent. Camelbak has until July 27, 2022 to file a preliminary response in opposition to IPR being granted. 35 U.S.C. § 313; 37 C.F.R. § 42.107(b). Within three months of that deadline for Camelbak's response, the PTO must decide whether to grant Zak's IPR request and will do so if "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a). If the PTO grants review, a final determination must be issued "not later than 1 year" after the petition is granted, but the PTO may extend that time by six months for good cause. 35 U.S.C. § 316(a)(11). The patent owner has an opportunity to add or amend claims during IPR. 35 U.S.C. § 318(b). After review concludes, the party who requested IPR is estopped from asserting that a claim is invalid "on any ground that the petitioner raised or reasonably could have raised during [IPR]." 35 U.S.C. § 315(e)(2). "A party dissatisfied with the [PTO's] decision can seek judicial review in the Court of Appeals for the Federal Circuit." *Oil*

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States Energy Servs., LLC v. Greene's Energy Grp., LLC, 138 S. Ct. 1365, 1372 (2018).

***2** On April 22, 2022, Zak also filed a Request for Reexamination with the PTO, asking the PTO to reexamine and find unpatentable claims 14–17 and 21–22 of the '911 Patent. Under 35 U.S.C. § 302, "[a]ny person at any time may file a request for reexamination by the Office of any claim of a patent on the basis of any prior art." In its Request, Zak argues the '911 Patent is invalid based on earlier published patent applications and issued patents. The PTO now has until July 22, 2022, to "determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request." 35 U.S.C. § 303(a). If the PTO determines there is a substantial new question of patentability, the PTO will order reexamination of the patent and allow CamelBak at least two months to "file a statement on such question, including any amendment to his patent and new claim or claims he may wish to propose, for consideration in the reexamination." 35 U.S.C. § 304. After allowing Zak to reply to any such filing by CamelBak, the PTO will be required to conduct the reexamination "with special dispatch." 35 U.S.C. § 305.

Zak filed the instant Motion to Stay on April 28, 2022. Zak seeks a stay of the case until the conclusion of the IPR and reexamination proceedings.

II. LEGAL STANDARD

"[A] motion to stay an action pending the resolution of a related matter in the PTO is directed to the sound discretion of the district court." *In re SDI Techs., Inc.*, 456 F. App'x 909, 911 (Fed. Cir. 2012). In deciding whether a stay is warranted, district courts consider the totality of the circumstances but focus their inquiry on three factors: "(1) the stage of the court proceedings; (2) whether a stay of litigation will simplify the issues in question and facilitate the trial of the case; and (3) whether a stay would unduly prejudice the non-moving party or would present a clear tactical disadvantage for that party." *Guntert & Zimmerman Constr. Division, Inc. v. Gomaco Corp.*, 2021 WL 7185089, at *2 (N.D. Iowa Jan. 13, 2021) (internal quotation marks omitted). "The party seeking to stay the litigation bears the burden of showing that the stay is the appropriate course of action." *Oxygenator Water Techs., Inc. v. Tennant Co.*, 2021 WL 4622241, at *2 (D. Minn. Oct. 7, 2021).

III. DISCUSSION

After weighing the relevant factors, the Court finds a stay pending resolution of the PTO proceedings is not warranted. While the case is in its early stages, the PTO proceedings will only address a minority of the issues in this case and CamelBak would face undue prejudice from a lengthy delay.

The Court has yet to set deadlines for claim construction or discovery and there is no trial date currently set.[3] This early posture favors granting a stay. *See ZeaVision, LLC v. Bausch & Lomb Inc.*, 2022 WL 715013, at *2 (E.D. Mo. Mar. 10, 2022).

As for whether a stay would simplify this case, the PTO's proceedings may eliminate none of the infringement claims in this case and, at best, may eliminate a minority of the claims. The simplification factor therefore weighs against a stay.

Zak has challenged the validity of two of the six Patents-in-Suit. Zak argues this case will be simplified by the PTO proceedings because those two patents "could be invalidated, affirmed, or amended during the IPR and reexamination proceedings," resulting either in fewer issues for this Court to decide or in Zak being estopped from raising claims of invalidity already denied by the PTO. (Doc. 42, pp. 6–7). CamelBak responds that it is speculative that the PTO will initiate IPR or reexamination proceedings, and, even if it does, "there is not a complete overlap between the District Court litigation and Patent Office proceedings." (Doc. 43, p. 15).

District courts are split on whether it is premature to stay a case prior to the PTO deciding whether to institute review proceedings. *See Guntert*, 2021 WL 7185089, at *3 (collecting cases). The Court agrees with the district court in *Guntert* that while "the potential the [PTO] declines to institute IPR should not act as a per se bar to a stay," it should be considered when evaluating whether a stay would simplify the case. *Id.* Here, the PTO has not decided whether either of Zak's challenges have sufficient merit to proceed, making any potential simplification of this case more speculative.

***3** More important to the simplification analysis is that the PTO proceedings have the potential to resolve only a minority of the issues in this case. This case could be stayed for years with the result being all or nearly all the Patents-in-Suit remaining valid. And as CamelBak points out, even if Zak succeeded on both PTO petitions, it would not "eliminate

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any of the accused water bottles from the case because each of the accused products (Riverside I & II, Park I & II, and Genesis) is accused of infringing at least one claim of the unchallenged '595, '879, '833, or '255 Patents." (Doc. 49, p. 4). While the Court recognizes the PTO's expertise could be helpful in this case, the fact that Zak is not challenging all the Patents-in-Suit significantly lessens that helpfulness. The Court therefore finds the simplification factor, while mixed, weighs against a stay. *See G. W. Lisk Co., Inc. v. Power Packer N. Am., Inc.*, 2022 WL 766470, at *4 (S.D. Iowa Mar. 14, 2022) (explaining that when the PTO proceedings could "invalidate some of the claims ..., but not all of them ..., a stay is generally unwarranted"); *Snyders Heart Valve LLC v. St. Jude Med. S.C. Inc.*, 2021 WL 1063005, at *5 (D. Minn. Mar. 19, 2021) ("[B]ecause the outcome of three claims on remand is such a small portion of the overall case and the case has been languishing for so long, the Court finds that the simplification factor weighs against a stay.").

The undue prejudice factor also weighs against a stay. "In weighing this factor, courts consider whether the parties are direct competitors, whether the non-moving party seeks solely monetary damages or instead seeks injunctive relief, and whether the moving party possessed a 'dilatory motive' or is otherwise attempting to gain an unfair tactical advantage." *Masa LLC v. Apple Inc.*, 2016 WL 2622395, at *3 (E.D. Mo. May 9, 2016) (quoting *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1318 (Fed. Cir. 2014)).[2]

CamelBak and Zak are direct competitors in the marketplace, where Zak's accused water bottles compete with CamelBak's water bottles. If this case were stayed for a lengthy period of time, CamelBak could lose considerable ground in the marketplace as a result of the allegedly infringing products. *See Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, 2019 WL 3826051, at *3 (E.D. Tex. Aug. 14, 2019) ("Peloton's product practicing the patent-in-suit competes with Flywheel's accused product in the marketplace, so a stay would result in heightened prejudice for Peloton as compared to other cases."); *Provisur Techs., Inc. v. Weber, Inc.*, 2020 WL 7346698, at *3 (W.D. Mo. Oct. 21, 2020) ("Taking Provisur's assertions as true, its potential loss of goodwill, market share, and future revenue is both significant and difficult to quantify."). CamelBak "thus has a present and actual need for the expeditious resolution of this action." *Provisur Techs.*, 2020 WL 7346698, at *3.

CamelBak seeks both damages and "an injunction enjoining Defendant from infringing, actively inducing infringement, and contributorily infringing the Patents-in-Suit." (Doc. 2, p. 22). While "[c]ompetitors often seek injunctions in patent infringement lawsuits," CamelBak's request for a permanent injunction nevertheless suggests it may suffer harm from a lengthy stay that would not be remedied by a damages award. *Ened Techs. Corp. v. Repro-med Sys., Inc.*, 2016 WL 2758112, at *2 (E.D. Tex. May 12, 2016); *see also Masa*, 2016 WL 2622395, at *3.

Zak argues CamelBak cannot claim undue prejudice from a delay in adjudication of this case because CamelBak "waited years after it believed that Zak was infringing its patents before filing this lawsuit" and "did not seek a preliminary injunction in this case." (Doc. 42, pp. 8–9). In the years prior to bringing this lawsuit, CamelBak was attempting to amicably resolve this dispute with Zak. *See* Doc. 43-1, ¶ 2. The Court will not fault CamelBak for pursing alternatives to litigation. It may still suffer prejudice from a delay now that litigation has become necessary. Zak itself waited months into this litigation—after the Court had denied Zak's Motion to Transfer—to file its requests with the PTO and move for a stay. Nevertheless, the Court has no evidence of any dilatory motive by Zak in seeking a stay.

***4** CamelBak's decision to not seek preliminary relief is given little weight by the Court. *See Universal Elecs., Inc. v. Universal Remote Control, Inc.*, 943 F. Supp. 2d 1028, 1034 (C.D. Cal. 2013) ("The fact that Plaintiff did not seek a preliminary injunction does not mean that it would not suffer prejudicial harm from its competitor's market activity during a lengthy delay in the case."). Given the direct competitive relationship between the parties, the permanent injunctive relief sought by CamelBak, and the potential for the PTO proceedings and appeals thereof to take years, the undue prejudice factor weighs against a stay.

The Court also has concern for the efficient management of its docket. *See Universal Elecs.*, 943 F. Supp. at 1035 (finding "the Court's ability to control its docket to ensure that cases are managed in the interest of justice" weighed against a stay). The Court has an obligation under Federal Rule of Civil Procedure 1 "to secure the just, speedy, and inexpensive determination of every action and proceeding." This case has already been delayed and could languish for years if a stay were granted. Given this loss in efficiency, the marginal simplification attainable by waiting for the PTO's decisions, and the undue prejudice to CamelBak, the Court finds a stay is not warranted in this case.

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IV. CONCLUSION

IT IS THEREFORE ORDERED that Zak's Motion to Stay (Doc. 41) is **DENIED.** A Case Management Order will be issued contemporaneous with this Order.

IT IS SO ORDERED on this 29th day of June, 2022.

All Citations

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Footnotes

1 While this case has been pending for nearly a year, it remains in its infancy, in part due to Zak moving to transfer venue.

2 CamelBak points the Court to four subfactors used by some district courts in weighing the undue prejudice factor: (1) the timing of the review request; (2) the timing of the request for stay; (3) the status of the review proceedings; and (4) the competitive relationship of the parties. *See Masimo Corp. v. Sotera Wireless*, 2021 WL 321481, at *4 (S.D. Cal. Feb. 1, 2021). While not identical, these four subfactors cover much of the same ground as the three subfactors used in *Masa* and on which the Court relies.

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Citing References (13)

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	**1.** First Supplemental Complaint for Patent Infringement CAMELBAK PRODUCTS, LLC, Plaintiff, v. ZAK DESIGNS, INC., Defendant. 2022 WL 17885878, *1+ , W.D.Ark. (Trial Pleading)	Sep. 12, 2022	Petition		—
Examined by	**2.** Complaint for Patent Infringement CAMELBAK PRODUCTS, LLC, Plaintiff, v. ZAK DESIGNS, INC., Defendant. 2021 WL 5134204, *1+ , W.D.Ark. (Trial Pleading)	June 11, 2021	Petition		—
Examined by	**3.** Complaint for Declaratory Judgment of Non-Infringement of U.S. Patent Nos. 8,905,252; 9,463,911; 10,676,255; and 11,242,178 TROVE BRANDS, LLC, a Utah limited liability company, Plaintiff, v. CAMELBAK PRODUCTS, LLC and Vista Outdoor Inc., Defendants. 2023 WL 5431134, *1+ , N.D.Cal. (Trial Pleading)	Aug. 21, 2023	Petition		—
Cited by	**4.** Camelbak Products, LLC v. Zak Designs, Inc. 2022 WL 2348676, *1+ , W.D.Ark.	June 29, 2022	Case		—
Cited by	**5.** Disclosure of Joint Claim Constructions and Prehearing Statement Pursuant to Patent Local Rule 4-3 CAMELBAK PRODUCTS, LLC, Plaintiff, v. ZAK DESIGNS, INC., Defendant. 2022 WL 19827566, *1 , W.D.Ark. (Trial Filing)	Oct. 10, 2022	Filing		—
—	**6.** POTABLE FLUID DRINK CONTAINER, HAS TUBE CRIMPED TO OBSTRUCT FLOW OF DRINK FLUID THROUGH FLUID CONDUIT WHEN MANUAL ON/OFF VALVE IS IN CLOSED CONFIGURATION, WHERE TUBE IS NOT CRIMPED WHEN MANUAL ON/OFF VALVE IS IN OPEN CONFIGURATION Out Of Plan DWPI 2018-89922L	Apr. 11, 2005	DWPI	—	—
—	**7.** CONTAINER FOR DRINK FLUID, HAS TUBE THAT IS CRIMPED TO OBSTRUCT FLOW OF DRINK FLUID THROUGH FLUID CONDUIT WHEN ON/OFF VALVE IS IN CLOSED CONFIGURATION, AND NOT CRIMPED AND DOES NOT OBSTRUCT FLOW OF DRINK FLUID THROUGH FLUID CONDUIT Out Of Plan DWPI 2020-776554+	Apr. 11, 2005	DWPI	—	—
—	**8.** DRINK CONTAINER WITH BITE-ACTUATED MOUTHPIECES FOR CONTAINING WATER OR OTHER POTABLE BEVERAGES, E.G., SPORTS DRINKS, HAS FLUID CONTAINER INCLUDING NECK WITH OPENING AND INTERNAL COMPARTMENT SIZED TO HOLD VOLUME OF POTABLE DRINK FLUID Out Of Plan DWPI 2022-52302J	Apr. 11, 2005	DWPI	—	—
—	**9.** PatStat 10676255	Mar. 07, 2023	Patent Status Files	—	—

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Treatment	Title	Date	Type	Depth	Headnote(s)
—	**13.** LID FOR CONTAINER (Out Of Plac) US PAT 11396408 , U.S. PTO Utility	July 26, 2022	Patents	—	—
—	**14.** DRINK BOTTLES (Out Of Plac) US PAT 11242178 , U.S. PTO Utility	Feb. 08, 2022	Patents	—	—
—	**15.** DRINK BOTTLES (Out Of Plac) US PAT APP 20220119168 , U.S. PTO Application	Apr. 21, 2022	Patents	—	—
—	**16.** DRINK BOTTLES (Out Of Plac) US PAT APP 20200255192 , U.S. PTO Application	Aug. 13, 2020	Patents	—	—

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☐ US10676255B2 - Drink bottles

Original

Bibliographic information & Images

Publication number and date
US10676255B2
2020-06-09

Granted

Application number and date
US16035418 {/api/control?client=&query=AN:{"US16035418"}&autosearch=true}
2018-07-13

Priority number and date
US16035418 {/api/control?client=&query=PRN:{"US16035418"}&autosearch=true}
2018-07-13

Ultimate owner
Vista Outdoor {/api/control?client=&query=uo:{"Vista%20Outdoor"}&autosearch=true}

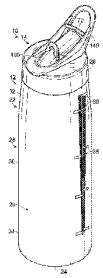
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Abstract

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

Original

Claims

1. A drink container, comprising: a fluid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink fluid; a cap assembly removably coupled to the fluid container to cover the opening, wherein the cap assembly defines a fluid conduit for drink fluid to flow from the fluid container and through the cap assembly to a user, wherein the fluid conduit includes an inlet through which drink fluid from the fluid container may enter the fluid conduit, and a dispensing outlet through which drink fluid in the fluid conduit may be dispensed from the cap assembly to a user, and further wherein the cap assembly comprises: a cap assembly base removably coupled to the neck of the fluid container, wherein the cap assembly base is configured to be selectively and repeatedly decoupled from and re-coupled to the neck of the fluid container; a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, wherein the pivotal mount includes a pair of lateral projections, wherein the cap assembly base defines a pair of sockets into which the pair of lateral projections extend; a resilient mouthpiece coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base, wherein the resilient mouthpiece is pivotal about an axis defined by the pair of lateral projections as the pair of lateral projections rotate within the pair of sockets; wherein the resilient mouthpiece defines a portion of the fluid conduit, including the dispensing outlet; wherein the resilient mouthpiece and the pivotal mount are configured to be selectively pivoted between a stowed position and a dispensing position, and further in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the resilient mouthpiece and the pivotal mount are in the stowed position; wherein the resilient mouthpiece is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth; and a manual on/off valve having a closed configuration, in which the manual on/off valve obstructs the fluid conduit to restrict drink fluid from flowing between the inlet and the dispensing outlet, and an open configuration, in which the manual on/off valve permits drink fluid to flow through the fluid conduit from the inlet to the dispensing outlet; wherein the manual on/off valve includes a flexible tube that defines a portion of the fluid conduit; wherein when the manual on/off valve is in the closed configuration, the tube is crimped to obstruct the flow of drink fluid through the fluid conduit; and wherein when the manual on/off valve is in the open configuration, the tube is not crimped and does not obstruct the flow of drink fluid through the fluid conduit.

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

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

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

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

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

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

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

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

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

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

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

from the dispensing outlet than the concave region of the end of the mouthpiece base, and further wherein the pivotal mount is configured to engage the projecting region and the concave region of the mouthpiece base to restrict rotation of the resilient mouthpiece relative to the pivotal mount.

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

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

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

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

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

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

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

Original

Families

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Extended (48) Priority date/claims	Complete (2) Priority date/claims	Main (2) Priority date/claims	Domestic (2) Priority date/claims	Publication number	Application number	Title	Status

2005-04-11 AU2006235383 AU2011201183 AU2012202351 CA2643788 CN200680020859 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US17565354 US313488 US60670828 US60706700	2021-12-29 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US17565354 US60670828 US60706700	2021-12-29 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US17565354 US60670828 US60706700	2021-12-29	☐	US20220119168A1	US17565354	DRINK BOTTLES	Filed
	2020-04-29 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US60670828 US60706700	2020-04-29 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US16862105 US60670828 US60706700	2020-04-29	☐	US11242178B2	US16862105	Drink bottles	Granted
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	2018-07-13 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US60670828 US60706700	2018-07-13 US11313488 US11588476 US12133954 US14329096 US15287915 US16035418 US60670828 US60706700	2018-07-13	☐	US10676255B2	US16035418	Drink bottles	Granted
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	2016-10-07 US11313488 US11588476 US12133954 US14329096 US15287915 US60670828 US60706700	2016-10-07 US11313488 US11588476 US12133954 US14329096 US15287915 US60670828 US60706700	2016-10-07	☐	US10023365B2	US15287915	Drink bottles	Granted
				☐	US20170021982A1	US15287915	DRINK BOTTLES	Granted
	2014-07-11 US11313488 US11588476 US12133954 US14329096 US60670828 US60706700	2014-07-11 US11313488 US11588476 US12133954 US14329096 US60670828 US60706700	2014-07-11	☐	US9463911B2	US14329096	Drink bottles	Granted
				☐	US20140319183A1	US14329096	DRINK BOTTLES	Granted
	2012-04-20 AU2011201183 AU2012202351	2012-04-20 AU2011201183 AU2012202351	2012-04-20	☐	AU2012202351B2	AU2012202351	Drink bottles with bite-actuated mouthpieces	Granted
				☐	AU2012202351A1	AU2012202351	Drink bottles with bite-actuated mouthpieces	Granted
	2008-06-05 US11313488 US11588476 US12133954 US60670828 US60706700	2008-06-05 US11313488 US11588476 US12133954 US60670828 US60706700	2008-06-05	☐	US8777048B2	US12133954	Drink bottles	Granted
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				☐	US20070039959A1	US11588476	Drink bottles with bite-actuated mouthpieces	Granted

2005-04-11 AU2006235383 CA2643788 CN200680020859 US11313488 US313488 US60670828 US60706700	2005-12-20 US11313488 US60670828 US60706700	2005-12-20	US7533783B2	US11313488	Drink bottles with bite-actuated mouthpieces	Granted	
			US20060226110A1	US11313488	Drink bottles with bite-actuated mouthpieces	Granted	
	2005-04-11 US313488 US60670828 US60706700	2005-04-11	EP1874646B1	EP06749713	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
	2005-04-11 AU2006235383 CA2643788 CN200680020859 US11313488 US60670828 US60706700	2005-04-11	ES2599861T3	ES06749713	Beverage bottles with bite-actuated nozzle	Granted	
		2005-04-11	CN102670022B	CN201210118993	Drink bottles and self-sealing mouthpieces used by drink bottles	Granted	
			CN102670022A	CN201210118993	Drink bottles with bite-actuated mouthpieces	Granted	
		2005-04-11	AU2006235383B2	AU2006235383	Drink bottles with bite-actuated mouthpieces	Granted	
			AU2006235383A1	AU2006235383	Drink bottles with bite-actuated mouthpieces	Granted	
		2005-04-11	WO2006110707A3	WOUS06013410	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Filed	
			WO2006110707A8	WOUS06013410	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Filed	
			WO2006110707A2	WOUS06013410	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Filed	
		2005-04-11	CN101355896B	CN200680020859	Drink bottles with bite-actuated mouthpieces	Granted	
			CN101355896A	CN200680020859	Drink bottles with bite-actuated mouthpieces	Granted	
		2005-04-11	CA2643788C	CA2643788	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
			CA2643788A1	CA2643788	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
		2005-04-11	TWI297317B	TW095112378	Drink bottles with bite-actuated mouthpieces	Granted	
			TW200706461A	TW095112378	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
		2005-04-11	GB2439905B	GB0722018	Drink bottles with bite-actuated mouthpieces	Granted	
			GB2439905A	GB0722018	Drink bottles with bite-actuated mouthpieces	Granted	
			GB0722018D0	GB0722018	Drink bottles with bite-actuated mouthpieces	Filed	
			GB722018D0	GB0722018	Drink bottles with bite-actuated mouthpieces	Granted	
		2005-04-11	HK1126636A1	HK09105488	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
		2005-04-11	HK1176254A1	HK13103113	DRINK CONTAINERS AND SELF-SEALING MOUTHPIECES FOR USE WITH THE DRINK CONTAINERS	Granted	
		2005-04-11	GB2457608B	GB0907359	Drink bottles with bite-actuated mouthpieces	Granted	
			GB2457608A	GB0907359	Drink bottles with bite-actuated mouthpieces	Granted	
			GB0907359D0	GB0907359	Drink bottles with bite-actuated mouthpieces	Filed	
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		2005-04-11	EP1874646A4	EP06749713	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
			EP1874646A2	EP06749713	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
		2005-04-11	CA2791377C	CA2791377	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
			CA2791377A1	CA2791377	DRINK BOTTLES WITH BITE-ACTUATED MOUTHPIECES	Granted	
		2005-04-11	AU2011201183B2	AU2011201183	Drink bottles with bite-actuated mouthpieces	Granted	
			AU2011201183A1	AU2011201183	Drink bottles with bite-actuated mouthpieces	Granted	

Description

RELATED APPLICATIONS

[0001] The present application is a continuation of, and claims priority under 35 U.S.C. § 120 to, U.S. patent application Ser. No. 15/287,915, which was filed on Oct. 7, 2016, issued on Jul. 17, 2018 as U.S. Pat. No. 10,023,365, and which claims priority to U.S. patent application Ser. No. 14/329,096, which was filed on Jul. 11, 2014, issued on Oct. 11, 2016 as U.S. Pat. No. 9,463,911, and which claims priority to U.S. patent application Ser. No. 12/133,954, which was filed on Jun. 5, 2008, issued on Jul. 15, 2014 as U.S. Pat. No. 8,777,048, and which claims priority to U.S. patent application Ser. No. 11/588,476, which was filed on Oct. 26, 2006, issued on Jan. 7, 2014 as U.S. Pat. No. 8,622,237, and which claims priority to U.S. patent application Ser. No. 11/313,488, which was filed on Dec. 20, 2005, and issued on May 19, 2009 as U.S. Pat. No. 7,533,783. U.S. patent application Ser. No. 11/313,488 claims priority to U.S. Provisional Patent Application Ser. Nos. 60/670,828 and 60/706,700, which were filed on Apr. 11, 2005 and Aug. 8, 2005, respectively. The complete disclosures of the above-identified patents and patent applications are hereby incorporated by reference.

FIELD OF THE DISCLOSURE

[0002] The present disclosure relates generally to drink bottles, and more particularly to drink bottles with bite-actuated mouthpieces.

BACKGROUND OF THE DISCLOSURE

[0003] For some time people have recognized the need to stay hydrated. Conventionally, many individuals carry drink bottles that contain water or other potable beverages. These bottles are formed from plastic and include a cap. Some conventional drink bottles include a threaded or other neck from which a user drinks fluid contained in the drink bottle after removal of the cap. Some conventional drink bottles include a spout, or nozzle, from which the drink fluid may be drawn from the drink bottle without removing the cap of the drink bottle. Conventional spouts include straws and rigid spouts having an outlet through which drink fluid may flow. Other conventional drink bottles require the cap to be removed to permit drink fluid to be removed from the drink bottle.

BRIEF DESCRIPTION OF THE DRAWINGS

[0004] FIG. 1 is a perspective view of a bite-actuated drink bottle according to the present disclosure.

[0005] FIG. 2 is a perspective view of another bite-actuated drink bottle according to the present disclosure.

[0006] FIG. 3 is a fragmentary, partial cross-sectional side elevation view of a fluid container that may be used with bite-actuated drink bottles according to the present disclosure.

[0007] FIG. 4 is a fragmentary cross-sectional side elevation view of portions of another bite-actuated drink bottle according to the present disclosure.

[0008] FIG. 5 is a partial cross-sectional side elevation view of a cap assembly that may be used with bite-actuated drink bottles according to the present disclosure.

[0009] FIG. 6 is a side elevation view of another cap assembly that may be used with bite-actuated drink bottles according to the present disclosure.

[0010] FIG. 7 is a side elevation view of another cap assembly that may be used with bite-actuated drink bottles according to the present disclosure.

[0011] FIG. 8 is a fragmentary somewhat schematic side elevation view of portions of another bite-actuated drink bottle according to the present disclosure.

[0012] FIG. 9 is a fragmentary somewhat schematic side elevation view of portions of another bite-actuated drink bottle according to the present disclosure.

[0013] FIG. 10 is an isometric view of a bite-actuated mouthpiece that may be used with bite-actuated drink bottles according to the present disclosure.

[0014] FIG. 11 is a top plan view of the mouthpiece of FIG. 10.

[0015] FIG. 12 is a side elevation view of the mouthpiece of FIG. 10.

[0016] FIG. 13 is a side elevation view of the mouthpiece of FIG. 10.

[0017] FIG. 14 is a cross-sectional view of the mouthpiece of FIG. 12.

[0018] FIG. 15 is a cross-sectional view of the mouthpiece of FIG. 13.

[0019] FIG. 16 is a somewhat schematic top plan view of a bite-actuated mouthpiece in a dispensing configuration.

[0020] FIG. 17 is a cross-sectional view of another bite-actuated mouthpiece that may be used with bite-actuated drink bottles according to the present disclosure.

[0021] FIG. 18 is transverse cross-sectional view of the mouthpiece of FIG. 17.

[0022] FIG. 19 is a cross-sectional view of another bite actuated mouthpiece that may be used with bite-actuated drink bottles according to the present disclosure.

[0023] FIG. 20 is a transverse cross-sectional view of the mouthpiece of FIG. 19.

[0024] FIG. 21 is a top plan view of another suitable cap assembly for use with bite-actuated drink bottles according to the present disclosure, with the cap assembly's spout in a stowed configuration.

[0025] FIG. 22 is a top plan view of the cap assembly of FIG. 21, with the cap assembly's spout in a dispensing configuration.

[0026] FIG. 23 is a side elevation view of the cap assembly of FIG. 21.

[0027] FIG. 24 is a side elevation view of the cap assembly of FIG. 22.

[0028] FIG. 25 is an exploded isometric view of the cap assembly of FIG. 21.

[0029] FIG. 26 is a cross-sectional side elevation view of the cap assembly of FIG. 21.

[0030] FIG. 27 is a cross-sectional side elevation view of the cap assembly of FIG. 22.

[0031] FIG. 28 is a partial cross-sectional side elevation view of another cap assembly that may be used with bite-actuated drink bottles according to the present disclosure.

[0032] FIG. 29 is a partial cross-sectional side elevation view of the cap assembly of FIG. 28, with the spout pivoted to a stowed configuration.

DETAILED DESCRIPTION AND BEST MODE OF THE DISCLOSURE

[0033] Examples of drink bottles according to the present disclosure are shown in FIGS. 1 and 2 and indicated generally at **10**. Drink bottles **10** according to the present disclosure include a fluid container **12** and a cap, or cap assembly, **14** that includes a mouthpiece **72**. Although referred to herein as being "drink bottles," it is within the scope of the present disclosure that the fluid container may have any suitable shape, including shapes that do not resemble conventional bottles, and may be formed from any suitable material. Accordingly, it is within the scope of the present disclosure that drink bottles **10** may additionally or alternatively be referred to as drink containers **10** and/or as beverage containers **10**. As discussed in more detail herein, drink bottles **10** according to the present disclosure will typically include a free-standing fluid container **12**. Drink bottles **10** according to the present disclosure will typically include a cap assembly with a base **70** that is adapted to be coupled to the fluid container and a bite-actuated mouthpiece, or valve assembly, **72** upon which a user may bite to configure the mouthpiece from a closed configuration to a dispensing configuration.

[0034] In FIGS. 1 and 2, the cap assemblies are shown including optional pivotal mounts **100** to which the mouthpieces are mounted, and optional handles **140** that extend from the cap assembly. In FIG. 2, the cap assembly is shown with the mount in a dispensing configuration in which the mouthpiece is oriented in a suitable position from which a user may draw drink fluid from the drink bottle through mouthpiece **72** when the user bites upon the mouthpiece or otherwise urges the mouthpiece from the illustrated sealed configuration to a dispensing configuration. In FIG. 1, the illustrative example of a cap assembly **14** is shown with the mount in a stowed configuration, in which the mouthpiece is positioned closer to the base of the cap than in the dispensing configuration, with the stowed configuration typically corresponding to an orientation in which the mouthpiece is not suitably positioned for a user to bite upon the mouthpiece to configure the mouthpiece to a dispensing configuration. The stowed configuration may also be referred to as a retracted configuration, and the dispensing configuration may also be referred to as an extended configuration in which the distal end, or outlet, of the mount is oriented to extend generally away from the base of the cap assembly. The various configurations referred to herein may also be selectively referred to as positions without departing from the scope of the present disclosure.

[0035] As indicated in FIGS. 1-2 and perhaps best seen in FIG. 3, fluid container **12** defines an internal compartment **20** that is sized to hold, or receive, up to a predetermined volume of potable drink fluid, or liquid. Illustrative examples of drink fluids include water, sports drinks, juices, energy drinks, and the like. Typically, container **12** will be sized to hold up to approximately two liters of drink fluid, with many embodiments of container **12** being sized to hold a maximum volume of less than two liters of drink fluid. It is within the scope of the present disclosure that container **12** may have any suitable size and shape, with illustrative, non-exclusive examples being shown in FIGS. 1-3. Illustrative, non-exclusive examples of suitable sizes (i.e., capacities of drink fluid able to be received into the fluid container at one time) for fluid container **12** include 4 oz., 6 oz., 8 oz., 10 oz., 12 oz., 16 oz., 20 oz., 24 oz., 32 oz., 36 oz., 0.5 liters, 0.7 liters, 1 liter, 1.5 liters, 6-11 oz., 12-19 oz., 19-25 oz., 12-36 oz., 25-36 oz, and 10-70 oz. (with these illustrative examples referring to fluid ounces of drink fluid that may be poured in one filling into an empty fluid container). It is within the scope of the present disclosure that containers having different sizes, including sizes that are smaller than, larger than, or within the illustrative sizes and/or ranges presented above, may be used without departing from the scope of the present disclosure.

[0036] Fluid container **12** may be formed from any suitable material or combination of materials. Non-exclusive examples of factors that may be (but are not required to be) considered when selecting material(s) for the fluid container include the durability of the material, the intended potable drink fluid, or types of drink fluids, that will be contained in the fluid container, the intended life, or period of use, of the drink bottle, whether the fluid container is intended to be refilled or otherwise reused, environmental concerns, whether the fluid container is intended to resist being collapsed during use, whether the fluid container is designed to permit a user to collapse the fluid container inwardly when dispensing fluid therefrom, or to dispense drink fluid therefrom, whether the drink container (and optionally the cap assembly) is designed to be washed in a household dishwasher, etc. Illustrative examples of materials that may be used include polycarbonate, polyethylene, polypropylene, glass, metal, and the like. In some embodiments, it may be desirable for the material(s) to be selected so that the fluid container will be transparent, or at least translucent, so that a user may see the contents of the fluid container, or at least the level of drink fluid within the fluid container, through the walls, or wall structure, of the container. In some embodiments, it may be desirable for the material(s) to be selected so that the fluid container is rigid and resists being collapsed when a user drinks from the container. In some embodiments, the material(s) may be selected so that the fluid container is designed to be collapsed (i.e., to permit opposing portions of the wall structure to be urged toward, or even into contact with, each other) during use. However, even fluid containers that are adapted to be collapsed during use, such as by a user squeezing the container, will tend to be at least semi-rigid in their construction and thereby adapted to be self-supporting. In some embodiments, the material(s) may be selected so that the fluid container is not breakable, i.e., will not shatter if dropped. Polyethylene will typically produce a collapsible fluid container that is translucent or opaque, but not transparent. Polycarbonate will typically produce a rigid, or stiff, fluid container that has a clear or glass-like appearance without the fragility of glass. Polypropylene will typically produce a fluid container that is more translucent and stiffer than polyethylene yet still able to be collapsed during use by a user squeezing the wall structure of the fluid container.

[0037] As indicated with respect to the illustrated examples of fluid containers shown in FIGS. 1-3, container **12** includes a body **22** with a base, or bottom surface, **24** and a neck **26**, with the bottom surface and the neck being separated by wall structure **28**. As perhaps best seen in FIG. 3, bottom surface **24** is adapted to support the drink bottle on a level surface. In other words, in the illustrative example, when the drink bottle is set upon a generally level surface, the bottom surface of the drink bottle will support the drink bottle in an upright configuration upon that surface. FIG. 3 also demonstrates that the bottom surface of the fluid container is not required to have a flat, or planar, configuration, although this configuration is within the scope of the present disclosure.

[0038] In the illustrated example shown in FIG. 2, wall structure **28** has a contoured configuration, with the central region **30** of the wall structure being tapered, or defining a portion of the internal compartment that has a reduced cross-sectional area, relative to the corresponding upper and lower regions **32** and **34** of the wall structure. For example, the central region may be shaped to facilitate easier grasping of the drink bottle by a user. It is within the scope of the present disclosure that other configurations may be utilized. For example, the body may include a handle, or passage, that extends into, or through, the drink compartment. As another illustrative, non-exclusive example, the body may include a handle that projects outwardly from the wall structure. As yet another example, the wall structure may have a cylindrical or other geometrically shaped configuration. As shown in FIG. 1, the container's wall structure **28** may have a generally cylindrical configuration. In the illustrated example, the upper region **32** of the wall structure has a tapered configuration relative to the central and lower regions **30** and **34** of the wall structure, and thereby has a smaller internal perimeter.

[0039] The cross-sectional configuration of the wall structural may be symmetrical throughout the upper, central, and lower regions, or at least one of the regions may have a cross-sectional configuration that is not symmetrical with the other regions and/or with respect to itself. For example, selectively shaping the cross-sectional configuration, or perimeter, of at least the central region may permit the drink bottle to be rotationally oriented by a user for drinking from the subsequently discussed bite-actuated valve assembly without requiring the user to look at the rotational position of the valve assembly relative to the user's hand that is holding the central region of the fluid container's wall structure. For example, and with reference to FIG. 2, shaping the wall structure to have a depression or other unsymmetrical portion **36** on the central region of the wall structure generally beneath the bite-actuated mouthpiece may permit a user to grasp and orient the bottle for drinking from the mouthpiece simply by feeling the position of the unsymmetrical portion of the wall structure. However, this is but one of many suitable configurations and is not required. In FIGS. 1 and 2, the wall structure includes gradations **38** to indicate the volume of fluid present in the container. As shown, the gradations are spaced-apart along the height of the fluid container to indicate or otherwise demarcate volumes of drink fluid. Gradations **38** provide another example of optional structure that may or may not be implemented in a particular embodiment without departing from the scope of the present disclosure.

[0040] Neck **26** provides an opening, or portal, through which drink fluid may be poured into the internal compartment of the fluid container and/or removed therefrom. Neck **26** will typically have a reduced cross-sectional area (or smaller perimeter) than the region of the fluid container from which it extends, although this configuration is not required. Neck **26** is adapted to interconnect, typically removably, with the cap assembly via any suitable mechanical interconnection, or coupling structure. In the illustrative example shown in FIG. 3, neck **26** includes a portal **40** with a coupling structure **42** that includes threads **44** that are configured to be threadingly engaged by corresponding threads **46** on the base **70** of the cap assembly to permit the cap to be screwed, or threaded, onto the neck, such as shown in FIG. 3. In the illustrative example shown in FIG. 3, the cap assembly's threads **46** provide the coupling structure **45** of the base. It is within the scope of the present disclosure that coupling assembly **43** may be used to refer collectively to the coupling structures of the base and the neck, such as threads **44** and **46**.

[0041] Another example of a suitable coupling assembly **43** for interconnecting the cap assembly and the fluid container is shown in FIG. 4. As shown, the cap assembly is configured to engage the neck with a coupling assembly **43** in the form of a friction fit assembly, with neck **26** including a coupling structure **42** that includes an external lip, or ledge, **48** over which a corresponding coupling structure **45** in the form of a flange, or internal ledge, **50** of the base of the cap assembly extends to couple the cap assembly onto the neck. Cap assembly **14** and/or neck **26** may form a fluid-tight seal therebetween without requiring the inclusion of gaskets, o-rings or seal-enhancing structure. However, it is also within the scope of the present disclosure that one or more such structures may be utilized.

[0042] As discussed, cap assembly **14** is connected, and typically removably connected, to the neck of the fluid container. By "removably connected," it is meant that the cap assembly is designed, or adapted, to be repeatedly connected to and disconnected from the neck of the fluid container without destruction of the cap assembly or the neck. When properly connected to the neck, the cap assembly forms a seal with the neck of the fluid container and thereby selectively seals the internal compartment of the container to prevent drink fluid from being dispensed therefrom through opening **40** except as permitted by the cap assembly. One or more of the cap assembly and the neck may include a compressible gasket or other sealing structure to assist in providing a water-tight seal between the cap assembly and the neck when the cap assembly is properly secured on the neck.

When removed or otherwise disconnected from the fluid container, the cap assembly may be retained proximate the fluid container by a tether that interconnects the cap assembly and the fluid container to retain a connection between these components when the base of the cap assembly is not coupled to the neck of the fluid container. An optional tether is schematically illustrated in FIG. 4 at **52**. When present, the tether may be integrally formed with one or both of the cap assembly and the fluid container, or it may be coupled to the cap assembly and/or the fluid container via any suitable mechanism. It is also within the scope of the present disclosure that the cap assembly may not be coupled to the fluid container by a tether.

[0043] As discussed, and as somewhat schematically illustrated in FIG. 5, cap assembly **14** includes a base **70**, which is adapted to interconnect with the neck of the fluid container. Cap assembly **14** further includes a mouthpiece, such as a bite-actuated mouthpiece **72**, which is adapted to selectively permit drink fluid to flow therethrough when the valve assembly is deformed from its closed configuration to a dispensing, or open, configuration. Cap assembly **14** further includes, or defines, a fluid conduit **74** though which drink fluid may selectively flow from the fluid container to the mouthpiece.

[0044] As discussed, base **70** is preferably configured to be removably coupled to the neck of the fluid container to seal the portal defined by the neck of the fluid container. In other words, a user may drink directly from the fluid container through opening **40** when the cap assembly is not secured to the neck by a suitable coupling structure. When cap assembly **14** is secured to the neck, then drink fluid may not be withdrawn from fluid container **12** other than as permitted by the cap assembly, such as via bite-actuated mouthpiece **72**. Base **70** forms a portion of coupling assembly **43**, with the base and the neck of the fluid container cooperating to secure the base upon the neck. In FIG. 5, base **70** is shown including coupling structure **45** in the form of threads **46** that are configured to threadingly engage corresponding threads on the neck of a fluid container. As shown in FIG. 5, base **70** also includes, or defines, an inlet **80** to the fluid conduit **74** through which drink fluid is selectively drawn from the fluid container and dispensed through bite-actuated mouthpiece **72**.

[0045] As discussed, cap assembly **14** defines a fluid conduit **74** that extends from the fluid container to the bite-actuated mouthpiece so that drink fluid from container **12** may be selectively dispensed through mouthpiece **72**. FIG. 5 graphically depicts that it is within the scope of the present disclosure that cap assembly **14** may include a mount **100** to which the bite-actuated mouthpiece is removably mounted, or secured, with the mount defining at least a portion of fluid conduit **74**, such as which may extend through a hollow passage **102** within the mount to a distal open end region **104** of the mount. When mount **100** includes a fluid passage through which drink fluid may at least selectively flow from the internal compartment of the fluid container to the mouthpiece, the mount may be referred to as a drink spout. In the illustrated example shown in FIG. 5, mount **100** extends in a fixed orientation relative to base **70**, thereby defining the orientation of the mouthpiece **72** relative to the base (and fluid container) during use of the drink bottle. In FIG. 5, the mount extends generally parallel to the central, or long, axis **106** of the cap assembly and corresponding drink bottle (i.e., straight away from the cap assembly). However, any suitable orientation may be used without departing from the scope of the present disclosure. This is graphically depicted in FIG. 6, in which the mount is shown extending at an inclined angle relative to the long, or central, axis **106** of the cap assembly and corresponding drink bottle.

[0046] It is also within the scope of the present disclosure that mount **100** may be adjustably positionable relative to the base of the cap assembly, thereby permitting the orientation of the bite-actuated mouthpiece to be adjusted within a range of positions, or configurations, that are defined at least in part by the mount. This adjustable positioning of the mouthpiece, when provided for in a particular embodiment, may permit a user to adjust the orientation of the mouthpiece to a user-selected drinking orientation. An example of an adjustably positionable mount **100** is shown in dashed lines in FIG. 6, in which the mount and attached mouthpiece are shown pivoted from the dispensing configuration shown in solid lines to a stowed configuration. In the stowed configuration, the mouthpiece is typically not positioned for being received into a user's mouth. As discussed in more detail herein, it is within the scope of the present disclosure that the cap assembly may include an optional valve or other fluid regulator that is adapted to prevent or otherwise restrict the flow of drink fluid to the mouthpiece when the mount is in a stowed configuration. In such an embodiment, when the mount is in the stowed configuration, drink fluid would be prevented from flowing from the fluid container through the mouthpiece regardless of the configuration of the mouthpiece.

[0047] Another illustrative example of a cap assembly **14** that includes a mount, or drink spout, **100** that is pivotal within a range of positions, or configurations, relative to the base of the cap assembly is shown in FIG. 7. As shown, the cap assembly includes an adjustable joint **108**, which is somewhat schematically illustrated. As illustrative examples, the mouthpiece, and at least a portion of the mount, may be coupled to the base of the cap assembly by a joint (and/or valve) **108**, such as may take the form of a pivotal joint, a ball joint, or other suitable structure that provides for adjusting the angular and/or rotational orientation of the mount relative to the base of the cap assembly. When the cap assembly includes such a pivotal joint **108**, it is within the scope of the present disclosure that the joint may form a portion of the cap assembly's fluid conduit **74**, such as with the passage of the fluid conduit extending through the joint. However, this construction is not required to all embodiments. As a variation of this structure, the mount may include a hinged or other flexible region that permits selective adjustment of the orientation of the mount's distal open end region **104** relative to the inlet of the fluid conduit.

[0048] It is within the scope of the present disclosure that the mouthpiece is non-removably, or permanently, secured to the base, mount, or other portion of the cap assembly. However, in many embodiments it may be desirable for the mouthpiece to be removably connected to the cap assembly, such as to permit the mouthpiece to be repeatedly removed, such as for cleaning or replacement, and thereafter recoupled to the mount. As non-exclusive, illustrative examples, the mouthpiece may be removably mounted onto mount **100** and/or with mount **100** being designed to be removed from base **70**.

[0049] Bite-actuated mouthpiece, or valve, **72** includes at least one opening through which drink fluid may flow when the mouthpiece is in its dispensing, or open configuration. An illustrative, non-exclusive example of a suitable construction for bite-actuated mouthpiece **72** is shown in FIGS. 10-15. In the illustrated example, and perhaps best seen in FIGS. 10 and 14-15, the mouthpiece includes a dispensing outlet, or opening, **86** that is defined by a slit **88** that extends through the dispensing face **90** of the mouthpiece. It is within the scope of the present disclosure that other configurations may be used, including two or more slits, intersecting or spaced-apart slits, etc. This range of optional configurations is schematically indicated in FIG. 11, in which a pair of laterally spaced slits are shown in dashed lines at **88'**, and in which a second slit that intersects with slit **88** is shown in dash-dot lines at **88"**. The mouthpiece defines an internal chamber **110** into which drink fluid flows from the outlet, or end region, of the mount and to the opening formed by slit **88** when the mouthpiece is in a dispensing configuration. The sidewalls, or wall structure, **92** of the mouthpiece may be described as including one or more bite regions **112**, which refer to opposed regions upon which a user may bite or otherwise apply compressive forces to urge the mouthpiece from its closed configuration to a dispensing configuration.

[0050] As perhaps best seen in FIG. 10, the illustrated example of a mouthpiece **72** has a non-symmetrical cross-sectional configuration between opposed regions of the mouthpiece's sidewalls **92**. By this it is meant that the illustrated mouthpiece has different dimensions transverse to the direction of fluid flow, depending upon whether the dimensions are measured transverse or parallel to the illustrated slit. It is within the scope of the present disclosure that other non-symmetrical or symmetrical configurations may be used. For example, mouthpiece **72** may have a circular cross-sectional configuration, amongst others.

[0051] Mouthpiece **72** is resilient and biased to its closed configuration, such as is shown in FIGS. 10-15. In use, the mouthpiece is adapted to be configured to the dispensing configuration by a user placing the mouthpiece in the user's mouth and biting upon or otherwise compressing the appropriate portions of sidewalls **92** of the mouthpiece, such as bite regions **112**, to deform the mouthpiece to a position where the slit or other opening is no longer sealed and instead defines a fluid pathway through which drink fluid may flow. This is somewhat schematically depicted in FIG. 16 with another illustrative example of a suitable bite-actuated mouthpiece. As shown, the opposed lips, or sealing surfaces, **94** that define slit **88** are spread apart from each other to define opening **86**, through which drink fluid may be dispensed from the drink bottle. Mouthpiece **72** may be referred to as a self-sealing valve, or valve assembly, because the mouthpiece is constructed to automatically return to its closed, or sealed, configuration when the compressive forces, such as may be applied by a user's teeth or mouth, are no longer applied to maintain the mouthpiece in its dispensing configuration. Therefore, unless forces are being exerted to the mouthpiece to deform the mouthpiece to a dispensing configuration, the mouthpiece will be in its closed, or sealed, configuration.

[0052] The illustrated example also demonstrates that the region of the mouthpiece distal the dispensing face, which may be referred to as the base, or distal, portion of the mouthpiece and which is generally indicated at **113** in FIGS. 10 and 12-15 may have (but is not required to have) a contoured configuration that does not extend at a constant distance from the dispensing face. In the illustrative, non-exclusive example shown in FIGS. 12 and 13, the base portion includes a pair of projecting regions **114** separated by a pair of concave regions **115**, although this construction is not required and other irregular base configurations may be utilized without departing from the scope of the present disclosure. Having a contoured or otherwise irregular configuration, when mounting on a dispensing spout or other mount that is complimentarily configured to receive and conform to such a configuration enables the mount to restrict relative rotation of the mouthpiece thereupon due to the engagement of the distal portion **113** of the mouthpiece with the mount, such as shown by referring back to FIGS. 1 and 2. As discussed, the illustrated example is but a non-exclusive example of a suitable configuration, with it being within the scope of the present disclosure that the distal portion of the mouthpiece and/or the corresponding mount may have any suitable configuration for securing the mouthpiece upon the mount.

[0053] Additional illustrative, non-exclusive examples of suitable configurations for bite-actuated, self-sealing mouthpieces **72** for use with drink containers according to the present disclosure are shown in FIGS. 17-20. In FIGS. 17-20, the mouthpieces are shown positioned on a mount **100** that extends into a neck region **116** of the mouthpiece and terminates at an end region **104**. Also shown are optional stops, or internal projections, **118** that are adapted to engage the end region **104** of the mount to define the fully inserted position of the mount within the mouthpiece. The illustrative portions of mount **100** define portions of fluid conduit **74** which extends from the end region, or outlet, **104** of the mount and into the internal chamber **110** of the mouthpiece.

[0054] Additional illustrative examples of suitable bite-actuated mouthpieces, including external and internal constructions of which that may be selectively utilized (in whole or in part) with mouthpieces **72** according to the present disclosure are disclosed in U.S. Pat. Nos. 6,070,767 and 6,032,831, the complete disclosures of which are hereby incorporated by reference for all purposes. In the illustrated examples, mouthpiece **72** has a narrower head portion than the mouthpieces disclosed in the incorporated patents, but any of the illustrated configurations may be utilized. Similarly, the internal construction of the incorporated mouthpieces may be utilized with mouthpiece **72**, such as the internal configurations for the mouthpiece's face and/or sidewalls. For example, at least FIGS. 14 and 15 illustrate that mouthpieces **72** may, but are not required to, include internal discontinuities, such as internal corners or edges, that extend along the sidewalls away from the dispensing face and which may assist in the mouthpiece deforming to its open configuration and/or returning to a sealed configuration.

[0055] In the preceding discussion, mouthpiece **72** has been described as a bite-actuated mouthpiece. As also discussed, in some embodiments, the fluid container will be formed from a material that configures, or permits, the wall structure of the fluid container to be collapsed inwardly as a user squeezes the fluid container. This intentional reduction in the internal volume of the fluid container may urge drink fluid through the fluid conduit and expel the fluid through the bite-actuated mouthpiece. It is within the scope of the present disclosure that mouthpiece **72** may be configured to permit this additional method of dispensing drink fluid from the drink bottle.

[0056] A potential benefit of the bite-actuated mouthpiece being biased to its closed configuration is that a user may position the drink bottle (and mouthpiece) to a desired drinking orientation, and even a partially or completely inverted orientation, without drink fluid being dispensed from the mouthpiece. When the user desires to drink from the positioned drink bottle, the user may bite upon the mouthpiece (and/or optionally squeeze a fluid container that is designed to be collapsed during use) to commence the flow of drink fluid through the mouthpiece to the user.

[0057] As discussed, bite-actuated mouthpiece **72** is biased to a closed, or sealed, configuration in which the opening that is formed in the dispensing face of the mouthpiece is closed and prevents drink fluid from passing therethrough. Therefore, unless the mouthpiece is reconfigured from its closed configuration to a dispensing configuration, drink fluid is prevented from being dispensed through the cap assembly's fluid conduit. In some embodiments, it may be desirable for the cap assembly to further include a flow-restricting, or on/off, valve in addition to the bite-actuated mouthpiece. For example, because the mouthpiece is designed to be configured to its dispensing configuration when lateral external forces are imparted to the mouthpiece (such as when a user bites upon or otherwise compresses the sidewalls of the mouthpiece toward each other), it is possible that external forces may be inadvertently exerted upon the mouthpiece. Should this occur, drink fluid may be dispensed through the mouthpiece. However, the inclusion of an optional manual on/off valve, which selectively restricts whether drink fluid may flow to the mouthpiece from the fluid container, may prevent this unintentional dispensing of drink fluid regardless of the configuration of the mouthpiece. A graphical example of a drink bottle according to the present disclosure that includes an on/off, or shutoff, valve and a bite-actuated mouthpiece **72** is shown in FIG. 8. In FIG. 8, the on/off valve is indicated in dashed lines at **120** to graphically represent that the on/off valve, when present, may be located at any suitable position downstream (i.e., toward the internal compartment of the fluid container) of the mouthpiece's face, and typically proximate or upstream (i.e., toward the mouthpiece's dispensing face) from the inlet of the fluid conduit **74**.

[0058] The on/off valve is selectively configured between open and closed configurations independent of the configuration of the bite-actuated mouthpiece. When the on/off valve is in its closed configuration, it is adapted to obstruct at least a portion of the fluid conduit, and optionally to completely obstruct the fluid conduit, thereby preventing drink fluid from passing from the fluid container to the face of the bite-actuated mouthpiece. Therefore, when the on/off valve is in its closed configuration, drink fluid cannot be dispensed from the fluid container through the mouthpiece, regardless of the configuration of the bite-actuated mouthpiece. As such, the on/off valve may also be referred to as a shutoff valve. When the on/off valve is in its open configuration, the drink fluid is selectively dispensed from the fluid container through the mouthpiece depending upon the configuration of the bite-actuated mouthpiece.

[0059] Unlike bite-actuated mouthpiece **72**, the on/off valve will typically not be biased to return automatically to a particular configuration. Instead, the on/off valve may be configured to remain in a user-selected orientation until reconfigured to a different orientation by a user. In such an embodiment, the on/off valve may be referred to as being a static valve, in that it only restricts flow of drink fluid through the fluid conduit when positively configured to do so by a user. The on/off valve may utilize any suitable actuation mechanism to selectively configure the valve between its open and closed configurations.

[0060] As an illustrative, non-exclusive example, the joint **108** illustrated in FIG. 7 may be configured to provide an on/off valve **120** when pivoting of the mount relative to the cap assembly selectively causes the fluid conduit through the cap assembly to mouthpiece **72** to be obstructed. For example, at least a portion of the fluid conduit may be obstructed as the distal end of the mount is pivoted toward the cap assembly. In some embodiments, such as when the fluid conduit extends through the joint, the degree to which the corresponding portion of the fluid conduit is obstructed may vary depending upon the degree to which the mount is pivoted or otherwise moved toward the cap assembly. In such an embodiment, the fluid conduit may not be obstructed by the joint or other on/off valve in at least one position (and optionally a sub-range of positions) within the range of positions within which the mount may be oriented relative to the cap assembly, the portion of the fluid conduit may be partially obstructed during another sub-range of the range of positions, and the portion of the fluid conduit may be completely obstructed in at least one (and optionally a third sub-range of positions) within the range of positions. It is also within the scope of the present disclosure that a similar range and sub-ranges may be provided by other embodiments of on/off valve **120**. However, this construction is not required to all drink bottles according to the present disclosure.

[0061] An illustrative, non-exclusive example of a suitable configuration for an on/off, or shutoff, valve is shown in FIGS. 26 and 27, in which the on/off valve is generally indicated at **120**. As shown, mount **100** is pivotally coupled to base **70** of the cap assembly to selectively restrict and permit drink fluid to flow from the fluid container to the fluid conduit. In at least FIGS. 26 and 27, mount **100** may be described as providing a drink spout that is pivotally coupled to the base of the cap assembly. The drink spout is selectively pivoted between a stowed, or closed, configuration (such as shown in FIG. 26) and a dispensing, or extended, configuration (such as shown in FIG. 27), in which the drink spout is pivoted generally away from the base of the cap assembly relative to the closed configuration. In the closed configuration, the drink spout is pivoted toward or even against the base of the

cap assembly relative to the dispensing configuration. In the illustrated example, the fluid conduit between the internal compartment of the drink container and the mouthpiece of the cap assembly is blocked by the drink spout when the drink spout is in its closed configuration, thereby restricting (or preventing) drink fluid from being dispensed through the drink spout regardless of the configuration of the mouthpiece when the drink spout is in the closed configuration. In the dispensing configuration, pivoting of the drink spout away from the base aligns an aperture in the drink spout to establish a continuous fluid conduit from the internal compartment to the mouthpiece.

[0062] Another example of a suitable actuation mechanism for an on/off valve **120** that may be used with drink bottles **10** according to the present disclosure is a push-pull mechanism, in which the bite-actuated mouthpiece and typically at least a portion of the mount and/or fluid conduit is urged away from a baffle or other obstruction that selectively prevents drink fluid from passing through the mount or other portion of the fluid conduit to the internal chamber of the mouthpiece. For example the push-pull mechanism may, in its closed configuration, prevent drink fluid from entering the inlet of the fluid conduit until the mouthpiece and other corresponding structure is drawn away from the obstruction. As another example, the push-pull mechanism that provides an on/off valve may selectively restrict drink fluid from passing through an intermediate portion of the fluid conduit (such as within the mount), and/or from exiting the mount into the internal compartment of the mouthpiece. In a variant of this push-pull mechanism, the obstruction is selectively pushed or otherwise urged away from the inlet or other suitable portion of the fluid conduit to permit drink fluid to flow therethrough.

[0063] Yet another illustrative example of a suitable construction for a static on/off valve **120** is a rotatable mechanism, in which a portion of the fluid conduit upstream from the internal chamber of the mouthpiece (such as the inlet, outlet, or an intermediate portion of the mount) is selectively obstructed until the mouthpiece (and typically at least a portion of the mount and/or fluid conduit) is rotated to a position in which the obstruction no longer prevents drink fluid from passing through the fluid conduit. Yet another illustrative, non-exclusive example of a suitable actuation mechanism for a static on/off valve **120** utilizes a fluid conduit having a foldable, collapsible, resiliently deformable, and/or crimpable region and suitable structure for selectively folding, flattening, resiliently deforming, and/or crimping that region of the fluid conduit to block, obstruct, or otherwise restrict the flow of drink fluid therethrough. This region may define a portion of the fluid conduit through which drink fluid may selectively flow from the inlet to the mouthpiece. An illustrative, non-exclusive example of a suitable material for such a portion of the fluid conduit is silicone or another material that does not readily take a compression set and therefore may be repeatedly folded, flattened, crimped, and the like without leaking or otherwise being permanently deformed or failing.

[0064] The schematic example of an on/off, or shutoff, valve **120** that is depicted in FIG. 8 is intended to graphically represent these and any other suitable constructions for a static on/off valve that selectively prevents drink fluid from being dispensed from the drink bottle through the opening of the mouthpiece regardless of the configuration of the mouthpiece. Additional examples are presented in the provisional patent applications that are incorporated by reference herein.

[0065] Drink bottles **10** according to the present disclosure may, but are not required to, additionally or alternatively include an air return, or pressure relief, assembly that is adapted to selectively permit air from external the drink bottle to enter the drink bottle's internal compartment other than through the dispensing opening of the mouthpiece. When present, the air return assembly is preferably positioned sufficiently away from the dispensing face of the mouthpiece that the air return valve is not obstructed when a user is drawing drink fluid from the fluid container through the opening of the mouthpiece. Especially when the fluid container has a rigid construction that is not adapted to readily collapse as drink fluid is drawn therefrom, a vacuum will tend to be drawn within the fluid container as drink fluid is withdrawn therefrom through the mouthpiece. As this vacuum, or pressure-differential, increases, it will become more difficult for a user to draw additional drink fluid through the mouthpiece until this pressure differential is reduced.

[0066] A schematic example of a drink bottle **10** according to the present disclosure that includes an air return assembly is shown in FIG. 9, with the air return assembly generally indicated at **160**. Air return assembly **160** is adapted to permit air from external the drink bottle to enter the internal compartment **20** of fluid container **12** without having to pass through the drink bottle's mouthpiece **72** (or least the dispensing face **90** or opening **86** of the mouthpiece). It is within the scope of the present disclosure that the air return assembly may be implemented on the cap assembly, such as on base **70** of the cap assembly. It is also within the scope of the present disclosure that the air return assembly, when present, may be implemented on the fluid container and/or that the drink bottle may be formed without an air return assembly that is separate from the bite-actuated mouthpiece. It is also within the scope of the present disclosure that an air return valve may be integrally formed with the bite-actuated mouthpiece or that it may be separately formed from the mouthpiece. When separately formed from the mouthpiece, the air return assembly may be positioned in a spaced-apart relationship to the mouthpiece on the cap assembly, on a dispensing mount (or nozzle) **100**, on the fluid container, etc.

[0067] Air return assembly **160** may define an air conduit **162** through which air may flow at least from external the drink bottle to the internal compartment of the drink container. In FIG. 9, the conduit is schematically illustrated including an inlet **164**, through which air may enter the conduit from external the drink container, and an outlet **166**, through which air in the conduit may pass to the interior of the drink bottle, such as to the internal compartment of the drink container.

[0068] In embodiments of drink bottles **10** that include an air return assembly **160**, the air return assembly may, but is not required to, include at least one air return valve, such as is schematically illustrated in FIG. 9 at **168** and which is less schematically illustrated in the subsequently discussed FIGS. 25-29. Air return valve **168** is adapted to selectively restrict the flow of air through the air conduit from external the drink bottle and/or to restrict the flow of drink fluid through the air conduit from internal the drink bottle. Air return valve **168** is adapted to be selectively configured between a closed, or sealed, configuration in which the flow of air into the internal compartment through the air return assembly from external the drink bottle is restricted, and an open, or actuated, configuration, in which the air return valve is at least partially displaced from its sealed configuration and in which air may flow through the air return assembly, such as from external the drink bottle into the internal compartment of the fluid container. This flow of air may be through an air conduit, such as conduit **162**, or may be simply through an opening in the drink bottle that is selectively obstructed by the air return valve. Air return valve **168** preferably has a relatively low actuation pressure for permitting air to be drawn from external the drink bottle into the drink bottle's internal compartment, while also having a relatively high resistance to drink fluid being able to pass through the valve from within the internal compartment. In other words, the air return valve is preferably constructed to resist fluid flow through the valve from internal the compartment. Similar to bite-actuated mouthpiece **72**, the air return valve is preferably a resilient valve that is biased to a closed configuration in which the valve is sealed and thereby prevents air or other fluid from passing therethrough. As discussed, the air return valve may be designed to be configured to an actuated, or open, configuration responsive to more than a predetermined pressure differential existing between the drink bottle's internal compartment and the environment external the drink bottle.

[0069] Air return valve **168** may include any suitable structure for selectively permitting air to enter the internal compartment of the drink bottle, preferably while also restricting drink fluid from exiting the internal compartment through the air return valve. As an illustrative, non-exclusive example, the air return valve may be a pressure-differential valve that is adapted to selectively permit air to flow into the drink container's internal compartment while restricting the flow of fluid through the air conduit from the internal compartment to exterior of the drink bottle. An illustrative, non-exclusive example of a suitable construction for air return valve **168** is an umbrella, or diaphragm valve, although other suitable valves may be used, including other suitable self-sealing valves. Another illustrative example of a suitable structure is a "duck bill" configuration, in which the valve assembly projects internally into the internal compartment and includes lips that are adapted to spread apart from each other to define a passage through which air may be returned into the internal compartment of the drink bottle, but which are biased together to resist drink fluid passing from the internal compartment through the passage. Further examples include valves having one or more slits, including intersecting slits. When a self-sealing valve (i.e., a valve that is biased to a sealed configuration) is utilized, the seal may be provided by abutting surfaces of the valve itself and/or by the valve sealing against a portion of the drink bottle.

[0070] It is within the scope of the present disclosure that drink containers that include an air return assembly **160** may alternatively not include any form of physical valve that restricts the flow of fluid through the air conduit. In some embodiments, the air return assembly may include an air conduit that is obstructed on at least one of its ends (internal the fluid container or external the fluid container) when the drink bottle is not being used, such as when a pivotal dispensing nozzle is pivoted to a closed configuration. Air return assembly **160** is preferably positioned so that its air conduit is not obstructed by a user's mouth when the drink bottle is used to dispense drink fluid to a user.

[0071] FIG. 9 also graphically depicts that drink bottles **10** according to the present disclosure may, but are not required to, include an optional straw **180** that extends from the cap assembly into the fluid container, such as to (or at least proximate) the lower region of the fluid container. Straw **180** enables a user to draw drink fluid from the drink container via mouthpiece **72** without having to tip the drink bottle so that drink fluid may flow into the fluid conduit **74**. For example, as the size of the fluid container increases, users may be more likely to want to draw drink fluid from the drink bottle without having to lift and tilt the drink bottle to the generally horizontal or even inverted configuration that would be used if straw **180** was not present. Straw **180** may be removably (or permanently) coupled to a corresponding mount **182** on the cap assembly, such as at or proximate the inlet **80** of fluid conduit **74**. A benefit of a removable straw structure **180** is that a user may selectively attach or remove the straw structure from the cap assembly, such as depending upon the desired use of the drink bottle at a given time. As discussed, it is also within the scope of the present disclosure that the straw may be fixedly, or permanently, attached to the cap assembly. As used herein, "removably," "removably coupled," and "removably attached" refer to structures that are designed to be repeatedly connected and disconnected without destruction of the corresponding structures. Similarly, fixedly connected or permanently coupled structures refer to structures that are not designed to be separated without destruction of at least a portion of the structures and/or the mechanism that joins the structures.

[0072] FIG. 9 also illustrates that drink bottles **10** according to the present disclosure may, but are not required to, include (or be selectively used with) elongate, flexible drink tubes, or external straw structures, **190** that fluidly interconnect the bite-actuated mouthpiece with mount **100** or another suitable receiver on cap assembly **14**. It is within the scope of the present disclosure that any of the drink bottles disclosed, illustrated, and/or incorporated herein may be selectively utilized with an elongate drink tube **190**. A potential benefit of this optional construction is that a user may draw drink fluid from the drink bottle without having to hold the drink bottle. Although it is within the scope of the present disclosure that the drink tube may be integrated with or otherwise permanently secured to one or both of the cap assembly or the bite-actuated mouthpiece, it may be desirable for each of these components to be removably coupled to the drink tube. For example, this permits the drink bottle to be used with the mouthpiece connected directly to the cap assembly (such as to mount **100**) or to be connected to the cap assembly by drink tube **190**. In FIG. 9, an optional mount **192** is shown interconnecting the drink tube with mount **100**, such as with the end region thereof), although it is within the scope of the present disclosure that the drink tube may be coupled directly to an end of the mount, such as by extending the corresponding end of the drink tube within or over an end of the mount. After attachment to the mount, the drink tube may optionally be described as forming an extension of the fluid conduit **74** of the drink bottle. When drink bottles according to the present disclosure include an elongate drink tube, such as tube **190**, it is also within the scope of the present disclosure that the downstream assembly defined by the drink tube and mouthpiece may optionally include one or more quick-connect assemblies and/or flow-regulating devices and accessories, such as disclosed in U.S. Pat. Nos. 6,908,015, 7,073,688, and U.S. Patent Application Publication No. 2004/0089301, the complete disclosures of which are hereby incorporated by reference herein for all purposes.

[0073] The previously discussed FIGS. 7-9 schematically illustrate a variety of components and structures that may (but are not required to be) incorporated into drink bottles according to the present disclosure. It is within the scope of the present disclosure that these components and structures, when present, may have any suitable structure meeting the functional criteria set forth herein and may be implemented individually or in combination with others of these or other components and structures.

[0074] FIGS. 21-27 show a less schematic example of a suitable cap assembly **14** that may be used with drink bottles **10** according to the present disclosure. The example shown in FIGS. 21-27 includes non-exclusive examples of various ones of the previously discussed components and structures. However, it is with the scope of the present disclosure that other components and/or structures may be utilized in place of or in addition to the illustrated components and structures. Accordingly, the depicted example is not intended to require the selected examples and combination of components and structures. Instead, it is intended to provide an illustrative, non-exclusive example of a suitable construction for cap assemblies according to the present disclosure. The other components, structures, and variants thereof that are illustrated, described and/or incorporated herein may be selectively utilized with the illustrated cap assembly without departing from the scope of the present disclosure. Similarly, the illustrated cap assembly may be used with any of the drink bottles described, illustrated, and/or incorporated herein, as may the other cap assemblies and/or mouthpieces described, illustrated and/or incorporated herein.

[0075] In the example shown in FIGS. 21-27, the cap assembly includes a base **70** from which a mount, or drink spout, **100** extends. The mount is pivotally coupled to the base of the cap assembly and is selectively pivoted within a range of positions relative to the base of the cap assembly. In FIGS. 21, 23, and 26, the mount is shown in a stowed configuration, while in FIGS. 22, 24-25 and 27, the mount is shown in illustrative dispensing configurations within the range of positions. The dispensing configurations of the mount may also be described as deployed and/or ready-to-drink configurations. The cap assembly includes a bite-actuated mouthpiece **72** that is mounted on mount **100** and is in fluid communication therewith. The illustrative mouthpiece includes a dispensing face **90** having a self-sealing opening **86** through which drink fluid may be selectively dispensed when the mount and mouthpiece are both in dispensing configurations.

[0076] In the illustrative example shown in FIGS. 21-27, the mount includes an optional flange, or lever arm, **122** that projects from the mount and provides a surface that may be grasped or otherwise suitably engaged by a user, such as by a user's finger or thumb, to draw the mouthpiece and its mount from the stowed configuration toward, or to, a ready-to-drink configuration. Flange **122** may optionally be utilized with any of the other pivotal (or otherwise selectively stowable) mounts that are described, illustrated and/or incorporated herein.

[0077] The illustrative example of a cap assembly **14** shown in FIGS. 21-27 also includes a handle **140** that extends from the base of the cap assembly. Handle **140** may take any other suitable form, may have a rigid or flexible construction, and may be (but is not required to be) used with any of the other cap assemblies that are disclosed, illustrated and/or incorporated herein. When present, handle **140** may, but is not required to, define a closed perimeter, or boundary, **142** through which a lanyard, karabineer, belt, strap, user's finger, or other structure may extend to hold and/or retain the drink bottle in a selected position. It is within the scope of the present disclosure that this closed boundary is perhaps best seen in FIG. 25. The closed boundary may be defined entirely by the handle or that it may be defined by the handle and the base of the cap assembly. Regardless, the closed boundary refers to a closed perimeter around an opening through which an object may be inserted, such as to position or coupled to the drink container. Additionally or alternatively, when the drink bottle includes a tether than interconnects the cap assembly and the fluid container, the tether may also define (when the cap assembly is properly mounted on the fluid container) a (or another) closed boundary through which a strap or other securing or positioning structure may extend.

[0078] FIG. 25 also illustrates a non-exclusive example for a suitable pivotal mounting mechanism for mount **100**, with the mount including lateral projections **150** that are received into sockets **152** defined by portions of the base **70** and handle **140** of the cap assembly. The projections are rotatable within the sockets, and thereby function as rotatable supports, or axles, upon which the mount and any attached mouthpiece may be pivotally moved relative to the base of the cap assembly, such as between stowed and dispensing configurations and/or otherwise within the previously discussed range of positions. This illustrative mounting configuration is intended to provide a non-exclusive example of a suitable configuration, and it is within the scope of the present disclosure that other configurations may be utilized.

[0079] In the illustrated example, and as indicated in FIGS. 21-22 and 25, the handle also provides guards **144** that are positioned to protect the bite-actuated mouthpiece from unintentional contact and/or exposure at least when the mouthpiece is in its stowed configuration. In the illustrated example, handle **140** provides a pair of lateral guards **146** that extend on opposing sides of the mouthpiece, as well as a dispensing face guard, or cover, **148** that is adapted to protect the dispensing face of the bite-actuated mouthpiece when the mouthpiece is in its stowed configuration. For example, guard **148** may provide a form of dust cover that protects the dispensing face, and thus the slit or other opening formed therein, from being contacted by dirt, grime, and other substances when the mouthpiece is in its stowed configuration. As handle **140** is itself optional and thereby not required to all embodiments of drink bottles according to the present disclosure, it follows that handle **140**, when present, may be formed with only one or more of the illustrated guards, with one or more additional guards, and/or without any guards.

[0080] In FIGS. 26 and 27, the internal structure of the cap assembly shown in FIGS. 21-25 is shown in more detail. For example, the illustrated cap assembly includes a coupling structure **45** in the form of threads **46**. As discussed, any other suitable coupling structures may be utilized without departing from the scope of the present disclosure. FIGS. 26 and 27 provide a graphical illustration of a pivotal mount **100** that defines a portion of fluid conduit **74** and therefore may be referred to as a drink spout through which drink fluid may selectively flow from the drink container, through an inlet **80** of the fluid conduit defined by the cap assembly, and thereafter through an outlet **104** of the mount into the internal chamber **110** of the bite-actuated mouthpiece **72**. When the mouthpiece is urged to a dispensing configuration, such as by a user biting upon the mouthpiece, the drink fluid may be dispensed through the self-sealing opening **86** in the mouthpiece.

[0081] The illustrated example of a cap assembly **14** includes a manual on/off valve, or shutoff valve, **120** that is defined at least in part by the mount. As shown in FIG. 26, fluid conduit **74** is obstructed by a portion of the body **154** of the mount when the mount is in a stowed configuration. As shown with consideration of FIGS. 26 and 27, the mount's body includes an inlet **156** that is selectively aligned in fluid communication with the inlet **80** of the fluid conduit. In FIG. 26, the mount is in a stowed configuration and the fluid inlet to the mount is not aligned in fluid communication with the inlet of the fluid conduit. As such, drink fluid is prevented from flowing from the fluid container and through the fluid conduit to the mouthpiece. Therefore, drink fluid from the fluid container will not be dispensed through the fluid conduit and mouthpiece regardless of the configuration of the mouthpiece. When the mount is pivoted to a dispensing configuration, such as shown in FIG. 27, drink fluid may flow through the entire fluid conduit. FIGS. 26 and 27 include an optional gasket, or sealing member, **158**. As illustrated, the gasket takes the form of a compressible o-ring, but any other suitable structure may be utilized when sealing member **158** is included in cap assembly **14**.

[0082] In FIGS. 26 and 27, the inlet **80** of the fluid conduit is defined by an optional mount **182** for an internal straw that may be selectively attached to the mount. When attached, the inlet for the fluid conduit would be defined by the distal end of the straw. When mount **182** is not present, the inlet to the fluid conduit may be defined by a portion of the cap assembly beneath the mount, or optionally, by the fluid inlet to the mount itself.

[0083] FIGS. 26 and 27 also provide a graphical example of a cap assembly **14** that includes an air return assembly **160**. In the illustrative, non-exclusive example, the air return assembly includes an air return valve **168** that has an umbrella valve configuration, in which the valve assembly includes an internally deflectable flap or perimeter region **170** that is biased to seal against a region **172** of the underside (or other suitable portion) of the cap assembly that contains an aperture or other passage or conduit **162** through which air may selectively flow when the air return valve is in a open, or deflected configuration.

[0084] FIGS. 28 and 29 generally correspond to the cap assembly shown in FIGS. 26 and 27. FIGS. 28 and 29 provide a graphical demonstration that cap assemblies **14** that include an on/off valve **120** may implement the shutoff mechanism with structure other than the structure shown in FIGS. 26 and 27. For example, in FIGS. 28 and 29, the on/off valve includes a flexible tube, or conduit **124** that in FIG. 28 fluidly interconnects the inlet **80** of the fluid conduit with the internal chamber **110** of the mouthpiece. However, when the mount is pivoted to a stowed configuration, such as shown in FIG. 29, the body **154** of the mount engages the tube and collapses or otherwise compresses or crimps the tube to obstruct the fluid conduit, thereby preventing the flow of drink fluid from the fluid container, through the fluid conduit, and out of the mouthpiece, regardless of the configuration of the mouthpiece. As the mount is pivoted from the stowed configuration shown in FIG. 29 to a dispensing configuration, such as the illustrative configuration shown in FIG. 28, the constrictive pressure applied by the body of the mount is correspondingly reduced, and a fluid flow path through the fluid conduit is reestablished.

INDUSTRIAL APPLICABILITY

[0085] The drink bottles and drink containers of the present disclosure are applicable to the hydration fields, and are specifically applicable to portable bottles and similar containers from which users may selectively drink potable drink fluid.

[0086] It is believed that the disclosure set forth above encompasses multiple distinct inventions with independent utility. While each of these inventions has been disclosed in its preferred form, the specific embodiments thereof as disclosed and illustrated herein are not to be considered in a limiting sense as numerous variations are possible. The subject matter of the inventions includes all novel and non-obvious combinations and subcombinations of the various elements, features, functions and/or properties disclosed herein. Similarly, where the claims recite "a" or "a first" element or the equivalent thereof, such claims should be understood to include incorporation of one or more such elements, neither requiring nor excluding two or more such elements.

[0087] It is believed that the following claims particularly point out certain combinations and subcombinations that are directed to one of the disclosed inventions and are novel and non-obvious. Inventions embodied in other combinations and subcombinations of features, functions, elements and/or properties may be claimed through amendment of the present claims or presentation of new claims in this or a related application. Such amended or new claims, whether they are directed to a different invention or directed to the same invention, whether different, broader, narrower, or equal in scope to the original claims, are also regarded as included within the subject matter of the inventions of the present disclosure.

Original

Classifications

IPC	CPC
B65D47/06	A47G19/2266
A45F3/20	B65D47/2031
A47G19/22	A47G19/22
	B65D39/00
	B65D51/00
	B65D51/16
	B65D83/00
	B65D25/40
	B65D25/44
	B65D25/46
	B65D47/06
	B65D47/061
	B65D47/065
	B65D47/066
	A47G19/2272
	A45F3/20

Persons

Ultimate Owner

Original
Vista Outdoor {/api/control?client=&query=uo:("Vista%20Outdoor")&autosearch=true}

Original Assignees

Original	Standardized	Normalized
CamelBak Products, LLC {/api/control?client=&query=pa:("CamelBak%20Products%2C%20LLC")&autosearch=true} Petaluma, California, United States of America, US	CAMELBAK PRODUCTS {/api/control?client=&query=pas:("CAMELBAK%20PRODUCTS")&autosearch=true}	

Current Assignees

Original	Standardized	Normalized
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Legal information

Standardized Post issuance INPADOC

Legal status

Event	Date	Description
Granted	2020-06-09	GRANTED
Filed	2018-07-13	FILED

Designated states

Date	Event code	Description

Ownership



Payment status

Date	Status	Event code	Description

Litigation/Opposition

Docket number	Docket description	Court	Date Filed
5:21cv5109	Camelbak Products, Llc V. Zak Designs, Inc.		2021-06-10

Page: 1

Pharmaceuticals

Product	Type	Active Ingredient	Applicant	Application No.	Application Type	Approval Date	Patent Expiry Date	Patent usage code	Exclusivity Code	Exclusivity Date	Dosage	Strength	Product Number	Route	RLD	Patent Delist Requested	Exclusivity Text	Therapeutic Equivalence

No pharmaceuticals data

Citations

Display in a list {/api/control?client=&citationsSearch=_}

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☐ All

☐ **Drink bottles with bite-actuated mouthpieces**

Publication number GB0907359D0
Publication date 2009-06-10
Application date 2009-04-29

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

☐ **Drink bottles with bite-actuated mouthpieces**

Publication number GB0722018D0
Publication date 2007-12-19
Application date 2007-11-09

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

☐ **Drink bottles**

Publication number US9463911B2
Publication date 2016-10-11
Application date 2014-07-11

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

☐ **DRINK BOTTLES**

Publication number US20140319183A1
Publication date 2014-10-30
Application date 2014-07-11

Drink bottles, or drink containers with cap assemblies that include a drink spout. In some embodiments, the drink spout is pivotally coupled to a base of the cap assembly. In some embodiments, the drink spouts include mouthpieces, including self-sealing and/or bite-actuated mouthpieces. In some embodiments, the cap assembly includes a handle, which may include at least one guard for

the drink spout and/or mouthpiece. In some embodiments, the drink containers include a manual on/off valve. In some embodiments, the dispensing spout includes a mount for the mouthpiece and/or cooperates with the cap to provide a manual on/off valve to selectively restrict flow of drink fluid from the drink container regardless of the drink spout's and/or mouthpiece's configuration. In some embodiments, the drink containers include a drink tube extending from external of the drink containers and/or an air return system.

☐ DRINK BOTTLES

Publication number US20170021982A1
Publication date 2017-01-26
Application date 2016-10-07

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

☐ Drink bottles

Publication number US10023365B2
Publication date 2018-07-17
Application date 2016-10-07

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

☐ DRINK BOTTLES

Publication number US20200255192A1
Publication date 2020-08-13
Application date 2020-04-29

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

☐ Drink bottles

Publication number US11242178B2
Publication date 2022-02-08
Application date 2020-04-29

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

☐ DRINK BOTTLES

Publication number US20080237233A1
Publication date 2008-10-02
Application date 2008-06-05

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

☐ Drink bottles

Publication number US8777048B2
Publication date 2014-07-15
Application date 2008-06-05

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User Name: Renee Preston
Date and Time: Monday, September 18, 2023 8:15:00AM EDT
Job Number: 206007571

Documents (2)

1. *Camelbak Prods., LLC v. Zak Designs, Inc., 2022 U.S. Dist. LEXIS 3539*
   Client/Matter: -None-
   Search Terms: 10676255 or 10,676,255
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
Cases	-None-

2. *Camelbak Prods., LLC v. Zak Designs, Inc., 2022 U.S. Dist. LEXIS 115193*
   Client/Matter: -None-
   Search Terms: 10676255 or 10,676,255
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
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Camelbak Prods., LLC v. Zak Designs, Inc.

United States District Court for the Western District of Arkansas, Fayetteville Division

January 9, 2023, Decided; January 9, 2023, Filed

CASE NO. 5:21-CV-05109

Reporter
2023 U.S. Dist. LEXIS 3539 *; 2023 WL 137485

CAMELBAK PRODUCTS, LLC, PLAINTIFF v. ZAK DESIGNS, INC., DEFENDANT

Prior History: Camelbak Prods., LLC v. Zak Designs, Inc., 2021 U.S. Dist. LEXIS 174987, 2021 WL 7906879 (W.D. Ark., Sept. 15, 2021)

Core Terms

mouthpiece, assembly, user, patent, bias, configuration, specification, anchor, resilient, rigid, stowed, biased, drink, dispensing, terms, skill, cap, argues, ordinary person, indefinite, spout, automatically, ordinary meaning, region, through-passage, constructed, recites, proposed construction, engagement, sized

Counsel: **[*1]** For Camelbak Products, LLC, Plaintiff: Darby Vincent Doan, LEAD ATTORNEY, Haltom & Doan, Texarkana, TX; David Thomas Pollock, LEAD ATTORNEY, Reed Smith LLP, San Francisco, CA; Christopher John Pulido, Reed Smith LLP, San Francisco, CA; Jonathan Iain Max Detrixhe, Reed Smith, San Francisco, CA; Joshua Reed Thane, Haltom & Doan, Texarkana, TX.

For Zak Designs, Inc., Defendant: Kyle Ray Wilson, LEAD ATTORNEY, Wright, Lindsey & Jennings LLP, Little Rock, AR; Richard Blakely Glasgow, LEAD ATTORNEY, Wright Lindsey and Jennings LLP, Little Rock, AR.

Judges: TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE.

Opinion by: TIMOTHY L. BROOKS

Opinion

MEMORANDUM OPINION AND ORDER

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I. INTRODUCTION

As Plaintiff CamelBak Products, LLC's patents explain, "For some time **[*2]** people have recognized the need to stay hydrated." (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids.

The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak's patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),[1] the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. *See* Docs. 64, 65, 69. The parties' briefing included declarations and deposition testimony from CamelBak's expert witness, Jim Goldman, and Zak's expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced **[*3]** mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and

[1] The parties consented to the Court's adoption of the Northern District of California Patent Local Rules in this case.

presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias." *See* Docs. 71, 73, 74.

Having fully examined the patents, briefing, exhibits, expert opinions, and the parties' oral arguments and presentations, the Court construes the disputed claim terms as stated below.

II. BACKGROUND

CamelBak's Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows:

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The '255 patent is a continuation of the '911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the '595, '879, and '833 patents are continuations of the '028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the '911 and '028 specifications. However, certain of the disputed claim terms appear only in the continuation patents.

The '911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.

Fig. 1

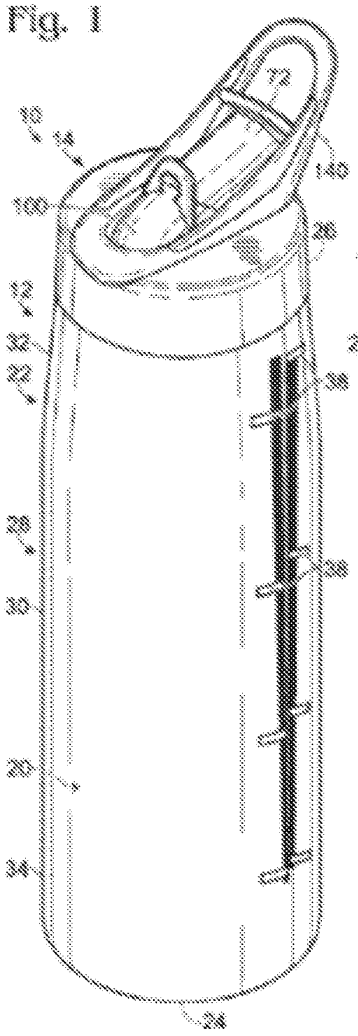
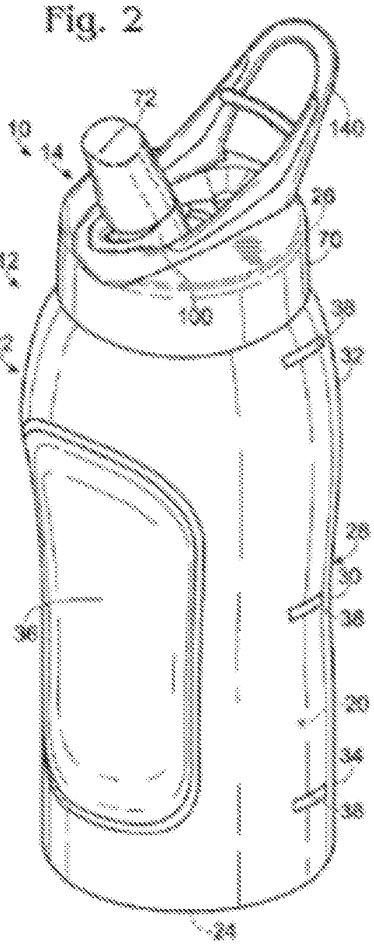
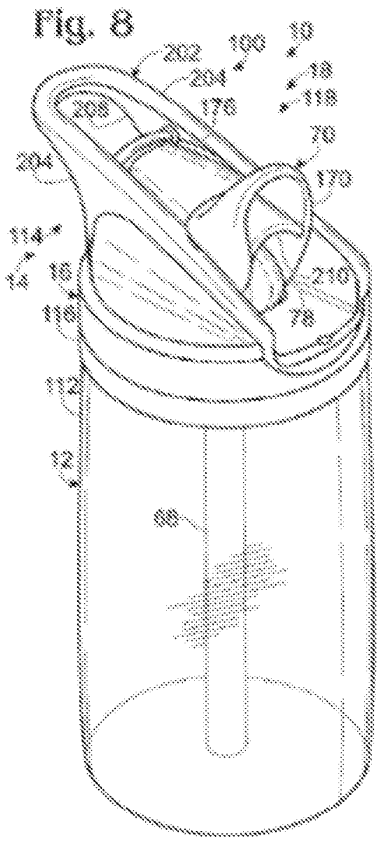
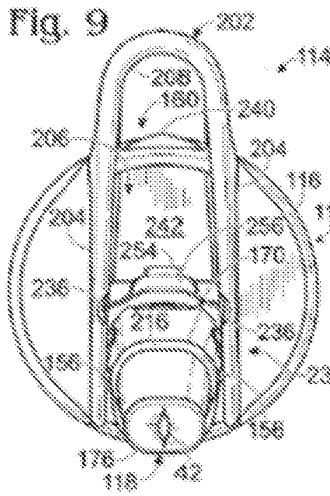


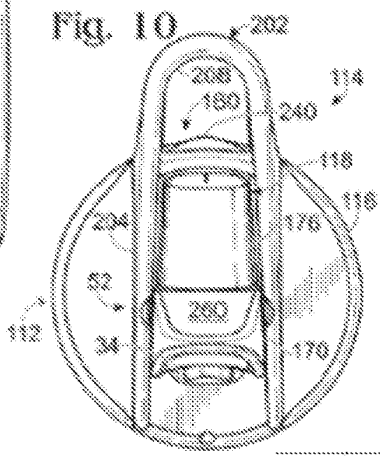
Fig. 2



The '028 patent (Doc. 64-3) describes a drink container that is **[*5]** similar to the drink container described in the '911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.







on of skill in the art may be readily apparent judges, and claim construction in such cases ttle more than the application of the widely meaning of commonly understood words." *Id.* ting *Brown v. 3M, 265 F.3d 1349, 1352 (Fed.*). In other words, some claim terms do not construction at all.

ıss, "[w]hen the parties present a fundamental garding the scope of a claim term, it is the y to resolve it." *O2 Micro Int'l Ltd. v. Beyond Tech. Co., 521 F.3d 1351, 1362 (Fed. Cir.* us, a determination that a claim term needs ıction or has the plain and ordinary meaning ıadequate when a term has more than one meaning or when reliance on a term's neaning does not resolve the parties' dispute." *IP Holdings v. Silver Spring Networks, 815 1316 (Fed. Cir. 2016)* (cleaned up).

ust be construed in light of the intrinsic -the claim language itself, the specification, patent's prosecution history. The claim can "provide substantial guidance as to the of particular claim terms," **[*7]** both through ct in which the claim terms are used and omparison with other claims in the patent. *5 F.3d at 1314*. "[T]he specification is always evant to the claim construction analysis. is dispositive; it is the single best guide to the of a disputed term." *Vitronics Corp. v. nic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)*. The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent." *Phillips, 415 F.3d at 1317*.

Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. *Id.* Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. *See Frans Nooren Afdichtingssystemen B.V. v. Stoneg Amcorr Inc., 744 F.3d 715, 722 (Fed. Cir. 2014)*. Expert testimony can also help "to ensure that the court's understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field." *Phillips, 415 F.3d at 1318*.

III. LEGAL STANDARD

"Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer's product or process,' which in turn necessitates a determination of 'what the words in the claim mean.'" *Markman v. Westview Instruments, Inc., 517 U.S. 370, 372, 116 S. Ct. 1384, 134 L. Ed. 2d 577 (1996)* (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court." *Id. at 372*.

Claim terms **[*6]** are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips v. AWH Corp., 415 F.3d 1303, 1312-13 (Fed. Cir. 2005)* (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood

IV. DISCUSSION

A. Agreed Constructions

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In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement." In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit." On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly." Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with **[*9]** the parties' constructions and adopts them as stated above.

The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing.

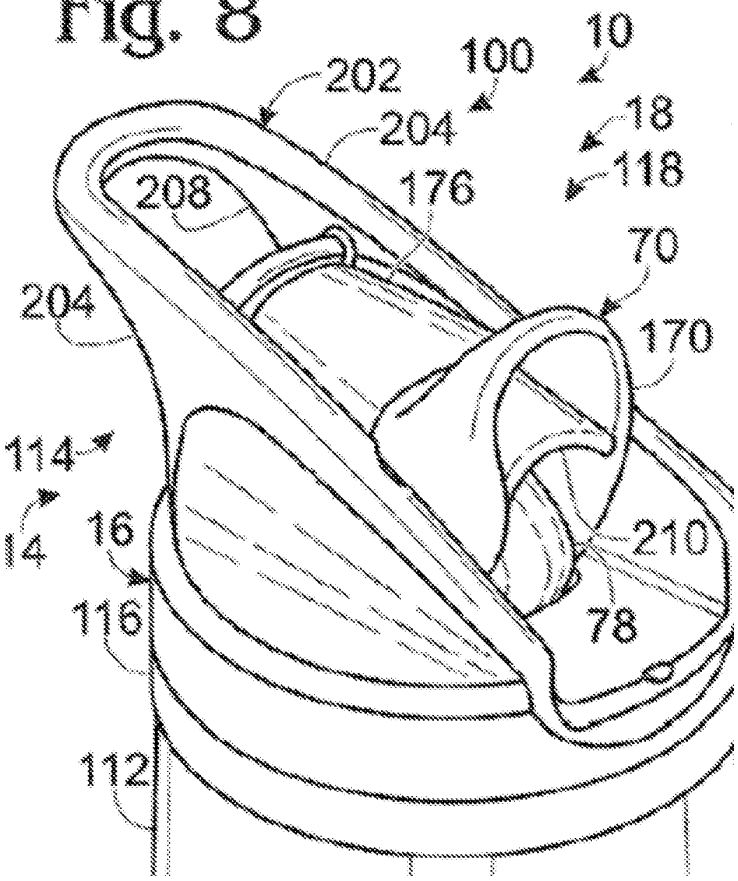
B. "rigid"

'028, '595, '879, and '833 Patents

Go to table4

The term "rigid" is used extensively in the Asserted Patents' specifications and claims. For example, claim 10 of the '028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration." (Doc. 64-3, pp. 18-19). This "rigid collar member" 170 is seen in figure 8 of the '028 patent:

Fig. 8



Id. at p. 6. The '028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least semi-rigid." *Id.* at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification.

Zak argues the term "rigid" is indefinite. **[*10]** Indefiniteness occurs when the "claims, read in light of the specification . . . and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S. 898, 901, 134 S. Ct. 2120, 189 L. Ed. 2d 37 (2014)*. A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, *35 U.S.C. § 282(a)*, the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence, *Young v. Lumenis, Inc., 492 F.3d 1336, 1345 (Fed. Cir. 2007)* (citing *AK Steel Corp. v. Sollac & Ugine, 344 F.3d 1234, 1238-39 (Fed. Cir. 2003)*).

Zak's expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at

any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and "there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," *id.* at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.

CamelBak admits that rigidity exists on a spectrum but counters that **[*11]** the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Zak's expert are fatal to Zak's indefiniteness argument. At his deposition, Mr. Hamilton admitted that

- the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents;
- the collar member must be rigid enough to collapse the silicone crimping region; and
- while rigidity is context specific and difficult to define, "engineers know it when they see it."

(Doc. 64-9, pp. 11, 18, 20). CamelBak's expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. *See* Doc. 64-7, ¶ 32.

The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak's expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic **[*12]** evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification's singular use of the term "semi-rigid" to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.

Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is **[*13]** indefinite, Zak has not offered a contrary construction.

C. "the resilient mouthpiece is more resilient than the drink spout"

'911 Patent

Go to table5

This term appears in claims 1 and 25 of the '911 patent. Claim 1 states that the invention includes

> a resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, *wherein the resilient mouthpiece is more resilient than the drink spout* and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth . . . .

(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19).

Zak contends **[*14]** this term is indefinite because the '911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:

> (1) the mouthpiece springs back or returns to its previous position or shape after being compressed *faster* than the drink spout;
>
> (2) the mouthpiece springs back or returns to its

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previous position or shape without damage after being *compressed to a greater extent* than the drink spout;

(3) the mouthpiece can be *compressed for a longer period of time* and still spring back or return to its previous position or shape compared to the drink spout; or

(4) the mouthpiece can be *compressed and decompressed more times* than the drink spout and still spring back or return to its previous position or shape without damage.

(Doc. 65-1, ¶ 60). Based on Mr. Hamilton's opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.

CamelBak counters that it is clear in context that this term means that the "mouthpiece" **[*15]** must be sufficiently resilient to compress in response to a user's teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit." (Doc. 64, p. 15). CamelBak points to Mr. Hamilton's admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. *See* Doc. 64-9, pp. 25-26. CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster's Dictionary definition of "resilient," from which he derived the four plausible meanings above.

The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience **[*16]** of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.

Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster's Dictionary definition gives four possible meanings of "resilient." But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the '911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term's scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S. 898, 901, 134 S. Ct. 2120, 189 L. Ed. 2d 37 (2014)*.

Lacking any counter-construction from **[*17]** Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial.

D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration"

'028, '595, '879, and '833 Patents

Go to tables

Zak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination." *Energizer Holdings, Inc. v. Int'l Trade Comm'n, 435 F.3d 1366, 1370 (Fed. Cir. 2006)*. The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always **[*18]** render a claim indefinite" because "an antecedent basis can be present by implication." *Id.* Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S. 898, 901, 134 S. Ct. 2120, 189 L. Ed. 2d 37 (2014)*.

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Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias." Zak points out that the patents' other uses of "bias" were as a verb or adjective—"biased" or "biases." Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent's specification:

> Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, **[*19]** non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.

(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias." (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.

The Court disagrees with Zak's reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly's bias *can be accomplished*. The mouthpiece assembly's bias is the same—it returns to the dispensing configuration—whether that bias is created using **[*20]** a resiliently deformable material, a spring, or both. In the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains *why* the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of *how* that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.

Even assuming Zak's reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly's bias renders the claim indefinite. Under Zak's reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.

The term "its bias" may lack an explicit antecedent basis, but it is clear in context **[*21]** that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly's predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.

CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" is easily understood by lay judges and juries.

E. "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"

'028, '595, and '879 Patents

Go to table1

Zak argues this claim must be limited to a means-plus-function construction under **[*22]** 35 U.S.C. § 112(f), which states:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the

specification and equivalents thereof.

Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. O.I. Corp. v. Tekmar Co., Inc., 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.

Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. *See* Williamson v. Citrix Online, LLC, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the word "means" are not governed by § 112(f), but the presumption is not a strong one. Id. at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means' but whether the words **[*23]** of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure." Id. at 1348.

When the word "means" is not present, the drafter's use of "[g]eneric terms such as 'mechanism,' 'element,' 'device,' and other nonce words that reflect nothing more than verbal constructs may be . . . tantamount to using the word 'mean' because they 'typically do not connote sufficiently definite structure.'" Id. at 1350 (quoting Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).

Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means." Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism . . .'—is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does." (Doc. 65, p. 20).

Zak points to Williamson, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f) applied to the term "distributed learning control module," despite the term's lack of the word "means." 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to **[*24]** using the word "means." Id. at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent's other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure." Id. at 1351. While recognizing "that the presence of modifiers can change the meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure." *Id.*

CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:

> [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*.

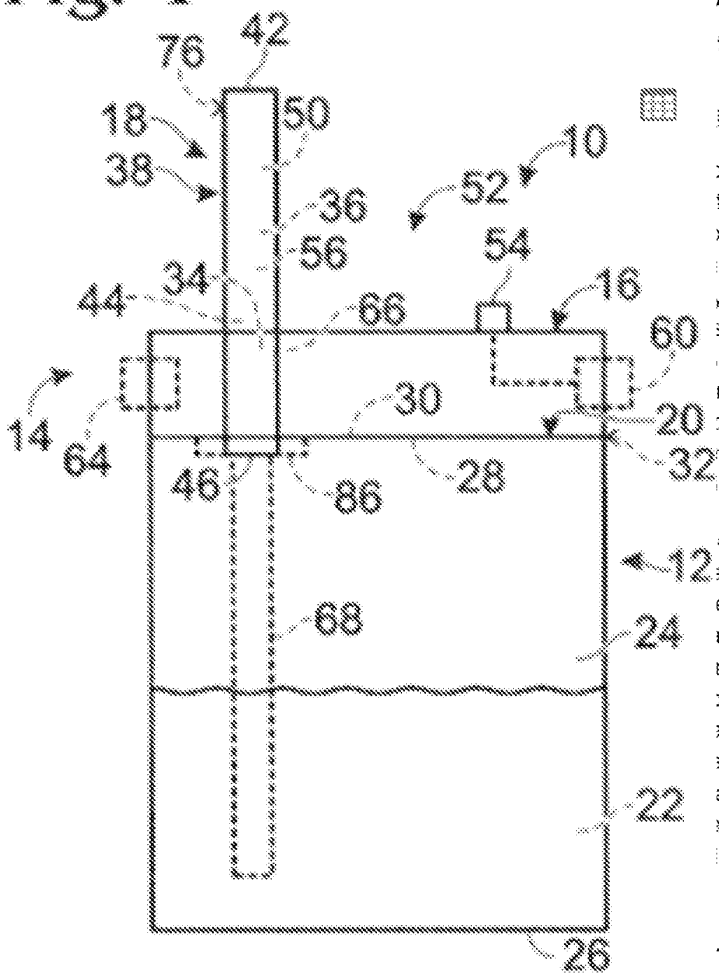
(Doc. 64-3, p. 18) (emphasis added). CamelBak **[*25]** argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism."

CamelBak relies on *Alex Is the Best, LLC v. BLU Products, Inc.*, where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module." 2017 U.S. Dist. LEXIS 182213, 2017 WL 5031638, at *7-8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms' structures sufficiently clear to a person of ordinary skill in the art. *Id.* The court adopted the plain and ordinary meaning of the terms. *Id.*

The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim

language. This mechanism is not a generic placeholder **[*26]** in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in *Williamson*, here the specification "inform[s] the structural character" of "user release mechanism." *792 F.3d at 1351*. For example, the figures in the '028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:

Fig. 1



(Doc. 64-3, pp. 4, 10).

Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," *Williamson, 792 F.3d at 1348*, and Zak has failed to overcome the presumption against the application of *§ 112(f)*. The Court further finds that the meaning of the full phrase

> 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

is clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase **[*27]** its plain and ordinary meaning.

›iased" / "biases"

95, '879 and '833 Patents

to tables

›ns of the term "bias" appear in the patents in at three contexts. First, the claims recite a ›iece assembly that "is biased to the dispensing ›ration" and a crimping region that "at least / biases the mouthpiece assembly to the sing configuration." (Doc. 64-3, p. 18). CamelBak that the mouthpiece assembly's bias can be nternal—created by the material the mouthpiece ›ly is made from—or external—created by a nism external to the mouthpiece assembly, such ring. The '028 specification explains:

> e bias of a mouthpiece assembly according to present disclosure may be provided by the ernal bias created by the material from which at ıst a portion of the mouthpiece assembly is nstructed. For example, at least a portion of a ›uthpiece assembly, such as crimping region 44, ay be constructed of a resiliently deformable ıterial. An **[*28]** illustrative, non-exclusive ample of a suitable resiliently deformable ıterial includes (but is not limited to) silicone. ditionally or alternatively, a biasing mechanism may include at least one spring.

. 10.

Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration." *Id.* CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user's mouth.

Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration." (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.

CamelBak proposes the "bias" terms be construed to mean "tends to return . . . absent an external force." For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "is biased tends to return to the dispensing configuration absent an external force." In this example, **[*29]** the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.

Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction." Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position." (Doc. 73, p. 3).

Zak argues CamelBak's proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak's "proposed construction impossible for the jury to understand." *Id.* at 4-5. CamelBak contends Zak's proposed construction is inappropriately limited to only external **[*30]** biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.

Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on *Perfectvision Manufacturing, Inc. v. PPC Broadband, Inc., 2014 U.S. Dist. LEXIS 121057, 2014 WL 4285766, at *4 (E.D. Ark. Aug. 29, 2014)*, where the district court construed "to bias" to mean "to exert force in a particular direction against an object." Zak also points to *Invisible Fence, Inc. v. Perimeter Technologies, Inc., 2006 U.S. Dist. LEXIS 33792, 2006 WL 1443339, at *5 (N.D. Ind. May 25, 2006)*, where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder."

CamelBak argues that the claim language in *Perfectvision* and *Invisible Fence* referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on *Acantha LLC v. DePuy Synthes Sales, Inc., 2017 U.S. Dist. LEXIS 38596, 2017 WL 972106, at *6 (E.D. Wis. Mar. 13, 2017)*, where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force."

The Court finds Zak's "is pushed, or force is exerted on" language fails to capture the full meaning of the **[*31]** "bias" terms. Zak's language is a poor fit when used to refer to the mouthpiece assembly's internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak's "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak's proposed construction—"tends to return . . . absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force." (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak's construction, as a placeholder for a part's specified default state, is appropriate and will be understandable by a jury.

However, Zak takes issue with CamelBak's inclusion **[*32]** of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word's inclusion. While one dictionary definition of the word "bias" is "tendency," *Bias*, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to *always* move to their default configuration absent an external force, *see, e.g.*, Doc. 65-3, p. 11 ("Bite-actuated valves . . . are typically biased to a closed configuration, and thus automatically return from an open

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configuration to a closed configuration upon release of the compression forces being applied thereto . . . ."). So, rather than having a tendency to return, the parts simply return.

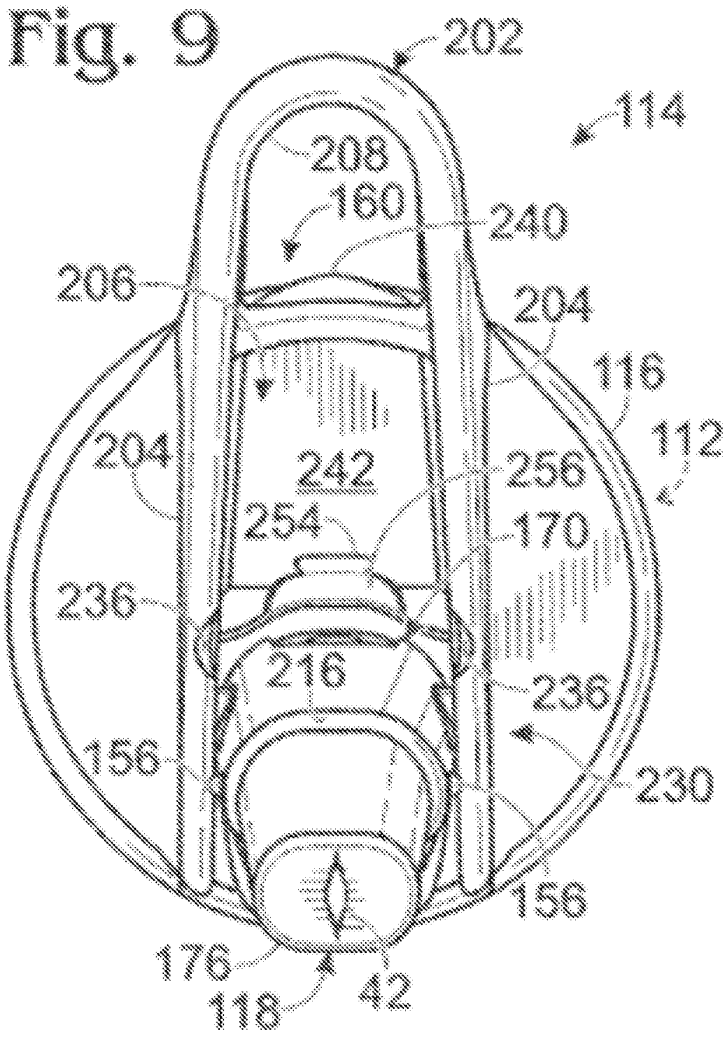
Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns . . . absent an external force."

G. "stowing region"

'028, '595, and '879 Patents

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The term "stowing region" appears in the '028, '595, and '879 patents. For example, claim 1 of the '879 patent recites that "the cap assembly defines **[*33]** a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration." (Doc. 64-5, p. 18). Claim 6 of the '028 patent recites that "the cap assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly." (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the '028 patent:



Id. at p. 6.

Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly." In other words, Zak contends the "stowing region" is limited to *only* the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.

CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak's construction improperly replaces "region" with "space" and "stowing" with "storing" **[*34]** and adds redundant language already present in the claims.

The Court finds that "stowing region" should be given its

plain and ordinary meaning. First, CamelBak is correct that Zak's construction would substitute the claim language for similar words and would include redundant language. Second, Zak's construction would limit the claims based on the *possible* embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification." *Vulcan Eng'g Co. v. Fata Aluminium, Inc., 278 F.3d 1366, 1378 (Fed. Cir. 2002)* (quoting *Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n, 805 F.2d 1558, 1563 (Fed. Cir. 1986)*). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be *no larger* than the mouthpiece assembly. Zak's contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court.

H. "automatically"

'028, '595, and '879 Patents

Go to table10

The term "automatically" appears in conjunction with the user release mechanism's ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the '028 patent recites "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." (Doc. 65-3, p. 18). The '028 specification states that "[i]n some examples, the mouthpiece assembly is biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism." *Id.* at p. 8.

CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.

Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other **[*36]** claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism." So, Zak's compromise resolves the parties' primary dispute, which was over the word "additional." However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.

The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak's straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak's concession. "Automatically" cannot mean without *any* human intervention because the claim language requires that the user first actuate the user release mechanism. *See CollegeNet, Inc. v. ApplyYourself, Inc., 418 F.3d 1225, 1235 (Fed. Cir. 2005)* (affirming the district court's construction **[*37]** of "automatically" as "once initiated, the function is performed by a machine, without the need for manually performing the function"). But full adoption of Zak's compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention."

I. "user engagement pad . . . which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly"

'028, '595, and '833 Patents

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These terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from **[*38]** the stowed configuration. Claim 3 of the '028 patent recites that "the

user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user." The same or similar claim language is present elsewhere in the '028 patent and the '595 and '833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the '028 patent:

Fig. 11

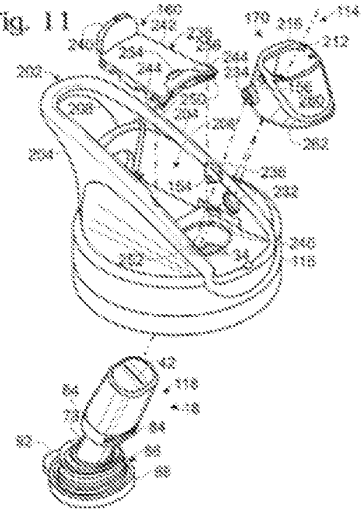


Fig. 12

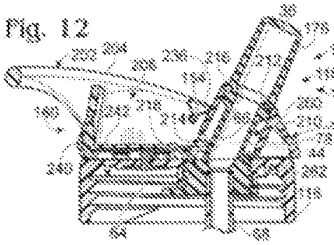
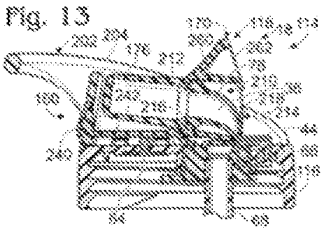


Fig. 13



(Doc. 64-3, p. 7).

Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak's construction injects limitations not present in the **[*39]** claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening.

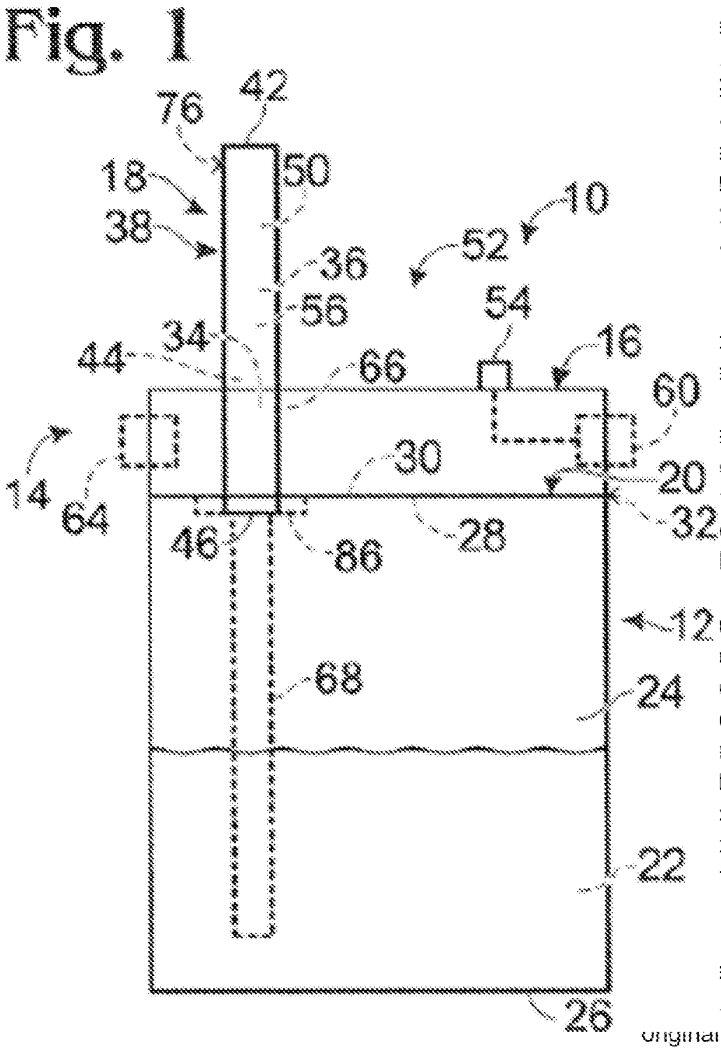
The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak's description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. *See* Vulcan Eng'g, 278 F.3d at 1376. Certainly, one embodiment of CamelBak's patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism." This *may* be accomplished by having the "user release mechanism" rough an enclosed opening that is the same "user release mechanism," but this is not the diment contemplated by the claim language. , there remains no genuine **[*40]** dispute as e of the plain language of these terms, and e no construction by the Court.

:hor portion is sized to restrict passage of r portion through the through passage"

and '879 Patents

ible 12

tation of this claim phrase appears in claim 1 of the '028 patent, which recites "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." (Doc. 64-3, p. 18). The '028 patent's specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly." *Id.* at p. 12. The "anchor portion" 86 and **[*41]** "through passage" 34 are exemplified in figure 1 of the '028 patent:



Id. at p. 4.

Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit *all the way* through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.

CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak's proposed construction, the patents explicitly distinguish between *restricting* passage through the through passage and *preventing* passage through the through passage. CamelBak writes that "Zak's proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment." (Doc. 65, p. 28).

ects the Court to the relevant prosecution history. tent examiner initially rejected certain claims of 28 patent due to prior art. Specifically, the er found that a prior drink container patent ed a mouthpiece portion with an anchor portion. *Ex parte Jeff Davies & Derek Gavin Sullivan*, 2017 WL 3, at *2 (P.T.A.B. Mar. 15, 2017). **[*42]** The er found CamelBak's limitation in claims 1 and the anchor portion be "sized to restrict passage anchor portion through the through passage" o distinguish CamelBak's invention from the prior ause "as long as the anchor portion has a size, it able of restricting passage." *Id.* CamelBak ed the examiner's decision to the PTAB, which d the examiner's decision. *Id.* at *3. The PTAB that CamelBak's "sized to restrict" language ely limits the structure of the claims to a structure h an anchor portion has a size that functionally restrict, or limit, passage of the anchor portion the claimed through-passage," and this n was not present in the prior art the examiner n. *Id.* Adopting CamelBak's argument, the PTAB ed that the examiner's findings were sonable" because "[e]very structure has *a size*, all structures are capable of performing the functional requirement of restricting passage of hor portion through the through-passage of the f the cap assembly." *Id.* (emphasis in original). TAB further explained that "as [CamelBak] y note[s], for example, **[*43]** an anchor portion *smaller* than the through-passage will not function rict passage therethrough." *Id.* (emphasis in original).

The PTAB also reversed the examiner's rejection of claim 18 of the '028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage." *Id.* at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner found that "that it would have been obvious to incorporate Lin's flanges into Choi's anchor portion to prevent leakage." *Id.* The PTAB reversed this finding, explaining:

> We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor

> portion through a through-passage. Indeed, Lin's lower flange is expressly configured *to permit* passage through the through-passage. Further, the Examiner's purported **[*44]** reasoning for incorporating Lin's flanges into Choi's structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.

Id. (emphasis in original) (citations omitted).

Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak's arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage' limitation." (Doc. 65, pp. 10-12). Zak also points to the specification figures to support its proposed construction.

The Court finds Zak's proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak's successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor **[*45]** portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be *larger* than the through passage so that the anchor portion's passage through the through passage is *prevented*. Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict." (Doc. 64-3, p. 12). As for claim 18 of the '028 patent, none of CamelBak's arguments nor the PTAB's reasoning—which was simply that the prior art did not include CamelBak's "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through **[*46]** passage.

The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15-16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning.

V. CONCLUSION

The Court **HEREBY ADOPTS** the above constructions for the claim terms identified by the parties.

IT IS SO ORDERED on this 9th day of January, 2023.

/s/ Timothy L. Brooks

TIMOTHY L. BROOKS

UNITED STATES DISTRICT JUDGE

Table1 (*Return to related document text*)

I. INTRODUCTION

II. BACKGROUND

III. LEGAL STANDARD

IV. DISCUSSION

A. Agreed Constructions

B. "rigid"

C. "the resilient mouthpiece is more resilient than the drink spout"

D. "release the mouthpiece assembly to move via its bias . . ."

E. "a user release mechanism adapted to automatically disengage . . ."

F. "is biased" / "biases"

G. "stowing region"

H. "automatically"

I. "user engagement pad . . ."

J. "the anchor portion is sized to restrict passage . . ."

V. CONCLUSION

Table1 (*Return to related document text*)

Table2 (*Return to related document text*)

Family	Patent NumberPatent Number	Priority Date
Drink Bottles	9,463,911 ("the '911 patent")	Apr. 11, 2005
Leak-proof flip-top water bottles	***10,676,255*** ("the '255 patent")	
Drink Containers	9,782,028 ("the '028 patent")	Jan. 21, 2009
Push-button flip-top water bottles	9,820,595 ("the '595 patent")	
	10,165,879 ("the '879 patent")	
	10,542,833 ("the **[*4]** '833 patent")	

Table2 (*Return to related document text*)

Table3 (*Return to related document text*)

Claim Term	Patents	Construction
"constructed as a unitary assembly"	'028, '595, '879, and '833 Patents	"constructed **[*8]** as a single piece that includes a group of parts or distinct portions"
"friction-fit arrangement"	'028, '595, '879, and '833 Patents	"arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction"
"fluid conduit"	'911 and '255 Patents	"fluid-carrying structure, such as a channel, pipe, or tube"
"mouthpiece assembly"	'028, '595, '879, and '833 Patents	"the group of parts or distinct sections that, taken together, allow the user to drink liquid"
"air return assembly"	'911 Patent	"a group of parts that, taken together, form a unit that is adapted to return air"

Table3 (*Return to related document text*)

Table4 (*Return to related document text*)

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Table4 (*Return to related document text*)

Table5 (*Return to related document text*)

CamelBak's Proposed Construction Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Table5 (*Return to related document text*)

Table6 (*Return to related document text*)

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	indefinite	plain and ordinary meaning

Table6 (*Return to related document text*)

Table7 (*Return to related document text*)

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	means-plus-function limitation	plain and ordinary meaning

Table7 (*Return to related document text*)

Table8 (*Return to related document text*)

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"tends to return . . . absent an external force"	"is pushed, or force is exerted on, in a particular direction"	"returns . . . absent an external force"

Table8 (*Return to related document text*)

Table9 (*Return to related document text*)

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary	"the space on the cap	plain and ordinary meaning

CamelBak's Proposed	Zak's Proposed	Court's Construction
meaning	assembly that is sized for storing at least a portion of the mouthpiece assembly"	

Table9 (*Return to related document text*)

Table10 (*Return to related document text*)

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
"without additional human intervention" **[*35]**	"without additional action by the user after actuation of the user release mechanism"	"without additional human intervention"

Table10 (*Return to related document text*)

Table11 (*Return to related document text*)

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"user engagement pad . . . which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"	plain and ordinary meaning

Table11 (*Return to related document text*)

Table12 (*Return to related document text*)

CamelBak's Proposed Construction	Zak's Proposed Construction	Court's Construction
plain and ordinary meaning	"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion may pass into one end of the through-passage and out of the opposite end of the through-passage"	plain and ordinary meaning

Table12 (*Return to related document text*)

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As of: September 18, 2023 12:15 PM Z

Camelbak Prods., LLC v. Zak Designs, Inc.

United States District Court for the Western District of Arkansas, Fayetteville Division

June 29, 2022, Decided; June 29, 2022, Filed

CASE NO. 5:21-CV-05109

Reporter
2022 U.S. Dist. LEXIS 115193 *; 2022 WL 2348676

CAMELBAK PRODUCTS, LLC, PLAINTIFF v. ZAK DESIGNS, INC., DEFENDANT

Prior History: *Camelbak Prods., LLC v. Zak Designs, Inc., 2021 U.S. Dist. LEXIS 174987, 2021 WL 7906879 (W.D. Ark., Sept. 15, 2021)*

Core Terms

Deadline, discovery, parties, patent, disclosures, proceedings, motions, infringing, instructions, reexamination, SETTLEMENT, exhibits, weighs, injunction, email, expert witness, water bottle, DEPOSITION, simplify, invalid, undue prejudice, district court, motion to stay, STIPULATIONS, designations, uscourts, Reply

Counsel: **[*1]** For Camelbak Products, LLC, Plaintiff: Darby Vincent Doan, LEAD ATTORNEY, Haltom & Doan, Texarkana, TX; David Thomas Pollock, LEAD ATTORNEY, Christopher John Pulido, Reed Smith LLP, San Francisco, CA; Jonathan Iain Max Detrixhe, Reed Smith, San Francisco, CA; Joshua Reed Thane, Haltom & Doan, Texarkana, TX.

For Zak Designs, Inc., Defendant: Kyle Ray Wilson, LEAD ATTORNEY, Wright, Lindsey & Jennings LLP, Little Rock, AR; Richard Blakely Glasgow, LEAD ATTORNEY, Wright Lindsey and Jennings LLP, Little Rock, AR.

Judges: TIMOTHY L. BROOKS, UNITED STATES DISTRICT JUDGE.

Opinion by: TIMOTHY L. BROOKS

Opinion

MEMORANDUM OPINION AND ORDER DENYING MOTION TO STAY

Currently before the Court are the Motion to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office (Doc. 41) and Brief in Support (Doc. 42) submitted by Defendant Zak Designs, Inc. Plaintiff CamelBak Products, LLC filed a Response in Opposition (Doc. 43), Zak filed a Reply (Doc. 46), and Camelbak filed a Sur-Reply (Doc. 49). Because a stay would unduly prejudice Camelbak and may only partially simplify this case, Zak's Motion to Stay (Doc. 41) is **DENIED**.

I. BACKGROUND

Both CamelBak and Zak design and sell water bottles. CamelBak's Complaint (Doc. 2) alleges **[*2]** Zak has infringed on six of CamelBak's patents related to water bottles and water bottle lids. The alleged infringing activity stems from several water bottles that Zak sells direct-to-consumer and to third-party retailers in the United States. The patents at issue include United States Patent No. 9,463,911 (the "'911 Patent"), United States Patent No. 9,782,028 (the "'028 Patent"), United States Patent No. 9,820,595 (the '595 Patent"), United States Patent No. 10,165,879 (the "'879 Patent"), United States Patent No. 10,542,833 (the '833 Patent"), and United States Patent No. ***10,676,255*** (the "'255 Patent") (collectively, the "Patents-in-Suit").

This case was originally assigned to the Honorable P.K. Holmes, III. On July 15, 2021, Judge Holmes issued an initial scheduling order, which set a trial date of November 14, 2022. (Doc. 18). About a month later, Zak moved to transfer this case to the Eastern District of Washington. (Doc. 19). Judge Holmes granted CamelBak's unopposed motion to conduct limited discovery related to the Motion to Transfer. (Doc. 22). Judge Holmes also granted Zak's motion to stay all other discovery pending resolution of the Motion to Transfer. (Doc. 26). On November 10, 2021, this case was reassigned upon Judge Holmes's recusal to the

undersigned. (Doc. 38).

On March 7, 2022, the Court denied the Motion to Transfer and ordered the parties to resume discovery in full. (Doc. 40). The Court has not yet issued a final scheduling order and no trial date is currently set. **[*3]**

Zak now seeks review of two of the Patents-in-Suit with the United States Patent and Trademark Office (PTO). On April 19, 2022, Zak filed for *Inter Partes* Review (IPR) with the PTO, challenging the validity of claims 1-2, 5-10, 14, 16, and 21 of the '028 Patent. Camelbak has until July 27, 2022 to file a preliminary response in opposition to IPR being granted. *35 U.S.C. § 313*; *37 C.F.R. § 42.107(b)*. Within three months of that deadline for Camelbak's response, the PTO must decide whether to grant Zak's IPR request and will do so if "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." *35 U.S.C. § 314(a)*. If the PTO grants review, a final determination must be issued "not later than 1 year" after the petition is granted, but the PTO may extend that time by six months for good cause. *35 U.S.C. § 316(a)(11)*. The patent owner has an opportunity to add or amend claims during IPR. *35 U.S.C. § 318(b)*. After review concludes, the party who requested IPR is estopped from asserting that a claim is invalid "on any ground that the petitioner raised or reasonably could have raised during [IPR]." *35 U.S.C. § 315(e)(2)*. "A party dissatisfied with the [PTO's] decision can seek judicial review in the Court of Appeals for the Federal Circuit." **[*4]** *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC, 138 S. Ct. 1365, 1372, 200 L. Ed. 2d 671 (2018)*.

On April 22, 2022, Zak also filed a Request for Reexamination with the PTO, asking the PTO to reexamine and find unpatentable claims 14-17 and 21-22 of the '911 Patent. Under *35 U.S.C. § 302*, "[a]ny person at any time may file a request for reexamination by the Office of any claim of a patent on the basis of any prior art." In its Request, Zak argues the '911 Patent is invalid based on earlier published patent applications and issued patents. The PTO now has until July 22, 2022, to "determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request." *35 U.S.C. § 303(a)*. If the PTO determines there is a substantial new question of patentability, the PTO will order reexamination of the patent and allow CamelBak at least two months to "file a statement on such question, including any amendment to his patent and new claim or claims he may wish to propose, for consideration in the reexamination." *35 U.S.C. § 304*. After allowing Zak to reply to any such filing by CamelBak, the PTO will be required to conduct the reexamination "with special dispatch." *35 U.S.C. § 305*.

Zak filed the instant Motion to Stay on April 28, 2022. Zak seeks a stay of the case until the conclusion of the IPR and reexamination proceedings. **[*5]**

II. LEGAL STANDARD

"[A] motion to stay an action pending the resolution of a related matter in the PTO is directed to the sound discretion of the district court." *In re: SDI Techs., Inc., 456 F. App'x 909, 911 (Fed. Cir. 2012)*. In deciding whether a stay is warranted, district courts consider the totality of the circumstances but focus their inquiry on three factors: "(1) the stage of the court proceedings; (2) whether a stay of litigation will simplify the issues in question and facilitate the trial of the case; and (3) whether a stay would unduly prejudice the non-moving party or would present a clear tactical disadvantage for that party." *Guntert & Zimmerman Constr. Division, Inc. v. Gomaco Corp., 2021 U.S. Dist. LEXIS 254262, 2021 WL 7165069, at *2 (N.D. Iowa Jan. 13, 2021)* (internal quotation marks omitted). "The party seeking to stay the litigation bears the burden of showing that the stay is the appropriate course of action." *Oxygenator Water Techs., Inc. v. Tennant Co., 2021 U.S. Dist. LEXIS 193974, 2021 WL 4822241, at *2 (D. Minn. Oct. 7, 2021)*.

III. DISCUSSION

After weighing the relevant factors, the Court finds a stay pending resolution of the PTO proceedings is not warranted. While the case is in its early stages, the PTO proceedings will only address a minority of the issues in this case and CamelBak would face undue prejudice from a lengthy delay.

The Court has yet to set deadlines for claim construction or discovery and there is no trial date currently set.[1] This early posture favors granting **[*6]** a stay. See *ZeeVision, LLC v. Bausch & Lomb Inc., 2022 U.S. Dist. LEXIS 42176, 2022 WL 715013, at *2 (E.D. Mo. Mar. 10, 2022)*.

[1] While this case has been pending for nearly a year, it remains in its infancy, in part due to Zak moving to transfer venue.

As for whether a stay would simplify this case, the PTO's proceedings may eliminate none of the infringement claims in this case and, at best, may eliminate a minority of the claims. The simplification factor therefore weighs against a stay.

Zak has challenged the validity of two of the six Patents-in-Suit. Zak argues this case will be simplified by the PTO proceedings because those two patents "could be invalidated, affirmed, or amended during the IPR and reexamination proceedings," resulting either in fewer issues for this Court to decide or in Zak being estopped from raising claims of invalidity already denied by the PTO. (Doc. 42, pp. 6-7). CamelBak responds that it is speculative that the PTO will initiate IPR or reexamination proceedings, and, even if it does, "there is not a complete overlap between the District Court litigation and Patent Office proceedings." (Doc. 43, p. 15).

District courts are split on whether it is premature to stay a case prior to the PTO deciding whether to institute review proceedings. *See* Gunter, 2021 U.S. Dist. LEXIS 254262, 2021 WL 7185089, at *3 (collecting cases). The Court agrees with the district court in Gunter that while "the potential the [PTO] declines to institute IPR should not act as a per **[*7]** se bar to a stay," it should be considered when evaluating whether a stay would simplify the case. *Id.* Here, the PTO has not decided whether either of Zak's challenges have sufficient merit to proceed, making any potential simplification of this case more speculative.

More important to the simplification analysis is that the PTO proceedings have the potential to resolve only a minority of the issues in this case. This case could be stayed for years with the result being all or nearly all the Patents-in-Suit remaining valid. And as CamelBak points out, even if Zak succeeded on both PTO petitions, it would not "eliminate any of the accused water bottles from the case because each of the accused products (Riverside I & II, Park I & II, and Genesis) is accused of infringing at least one claim of the unchallenged '595, '879, '833, or '255 Patents." (Doc. 49, p. 4). While the Court recognizes the PTO's expertise could be helpful in this case, the fact that Zak is not challenging all the Patents-in-Suit significantly lessens that helpfulness. The Court therefore finds the simplification factor, while mixed, weighs against a stay. *See* G.W. Lisk Co., Inc. v. Power Packer N. Am., Inc., 591 F. Supp. 3d 391, 2022 U.S. Dist. LEXIS 47212, 2022 WL 766470, at *4 (S.D. Iowa Mar. 14, 2022) (explaining that when the PTO proceedings could "invalidate some of the claims **[*8]** . . . , but not all of them . . . , a stay is generally unwarranted"); Snyders Heart Valve LLC v. St. Jude Med. S.C. Inc., 2021 U.S. Dist. LEXIS 52580, 2021 WL 1063005, at *5 (D. Minn. Mar. 19, 2021) ("[B]ecause the outcome of three claims on remand is such a small portion of the overall case and the case has been languishing for so long, the Court finds that the simplification factor weighs against a stay.").

The undue prejudice factor also weighs against a stay. "In weighing this factor, courts consider whether the parties are direct competitors, whether the non-moving party seeks solely monetary damages or instead seeks injunctive relief, and whether the moving party possessed a 'dilatory motive' or is otherwise attempting to gain an unfair tactical advantage." Masa LLC v. Apple Inc., 2016 U.S. Dist. LEXIS 60953, 2016 WL 2622395, at *3 (E.D. Mo. May 9, 2016) (quoting VirtualAgility Inc. v. Salesforce.com, Inc., 759 F.3d 1307, 1318 (Fed. Cir. 2014)).[2]

CamelBak and Zak are direct competitors in the marketplace, where Zak's accused water bottles compete with CamelBak's water bottles. If this case were stayed for a lengthy period of time, CamelBak could lose considerable ground in the marketplace as a result of the allegedly infringing products. *See* Peloton Interactive, Inc. v. Flywheel Sports, Inc., 2019 U.S. Dist. LEXIS 137774, 2019 WL 3826051, at *3 (E.D. Tex. Aug. 14, 2019) ("Peloton's product practicing the patent-in-suit competes with Flywheel's accused product in the marketplace, so a stay would result in heightened prejudice for Peloton as compared to other cases."); Provisur Techs., Inc. v. Weber, Inc., 2020 U.S. Dist. LEXIS 195033, 2020 WL 7346698, at *3 (W.D. Mo. Oct. 21, 2020) ("Taking Provisur's assertions as **[*9]** true, its potential loss of goodwill, market share, and future revenue is both significant and difficult to quantify."). CamelBak "thus has a present and actual need for the expeditious resolution of this action." Provisur Techs., 2020 U.S. Dist. LEXIS 195033, 2020 WL 7346698, at

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[2] CamelBak points the Court to four subfactors used by some district courts in weighing the undue prejudice factor: (1) the timing of the review request; (2) the timing of the request for stay; (3) the status of the review proceedings; and (4) the competitive relationship of the parties. *See* Masimo Corp. v. Sotera Wireless, 2021 U.S. Dist. LEXIS 18691, 2021 WL 321481, at *4 (S.D. Cal. Feb. 1, 2021). While not identical, these four subfactors cover much of the same ground as the three subfactors used in Masa and on which the Court relies.

*3.

CamelBak seeks both damages and "an injunction enjoining Defendant from infringing, actively inducing infringement, and contributorily infringing the Patents-in-Suit." (Doc. 2, p. 22). While "[c]ompetitors often seek injunctions in patent infringement lawsuits," CamelBak's request for a permanent injunction nevertheless suggests it may suffer harm from a lengthy stay that would not be remedied by a damages award. *Emed Techs. Corp. v. Repro-med Sys., Inc., 2016 U.S. Dist. LEXIS 63066, 2016 WL 2758112, at *2 (E.D. Tex. May 12, 2016)*; see *also Masa, 2016 U.S. Dist. LEXIS 60953, 2016 WL 2622395, at *3*.

Zak argues CamelBak cannot claim undue prejudice from a delay in adjudication of this case because CamelBak "waited years after it believed that Zak was infringing its patents before filing this lawsuit" and "did not seek a preliminary injunction in this case." (Doc. 42, pp. 8-9). In the years prior to bringing this lawsuit, CamelBak was attempting to amicably resolve this dispute with Zak. *See* Doc. 43-1, ¶ 2. The Court will not fault CamelBak for pursing alternatives to litigation. It may still suffer prejudice from a delay now that litigation has become **[*10]** necessary. Zak itself waited months into this litigation—after the Court had denied Zak's Motion to Transfer—to file its requests with the PTO and move for a stay. Nevertheless, the Court has no evidence of any dilatory motive by Zak in seeking a stay.

CamelBak's decision to not seek preliminary relief is given little weight by the Court. *See Universal Elecs., Inc. v. Universal Remote Control, Inc., 943 F. Supp. 2d 1028, 1034 (C.D. Cal. 2013)* ("The fact that Plaintiff did not seek a preliminary injunction does not mean that it would not suffer prejudicial harm from its competitor's market activity during a lengthy delay in the case."). Given the direct competitive relationship between the parties, the permanent injunctive relief sought by CamelBak, and the potential for the PTO proceedings and appeals thereof to take years, the undue prejudice factor weighs against a stay.

The Court also has concern for the efficient management of its docket. *See Universal Elecs., 943 F. Supp. at 1035* (finding "the Court's ability to control its docket to ensure that cases are managed in the interest of justice" weighed against a stay). The Court has an obligation under *Federal Rule of Civil Procedure 1* "to secure the just, speedy, and inexpensive determination of every action and proceeding." This case has already been delayed and could languish for years if a stay were **[*11]** granted. Given this loss in efficiency, the marginal simplification attainable by waiting for the PTO's decisions, and the undue prejudice to CamelBak, the Court finds a stay is not warranted in this case.

IV. CONCLUSION

IT IS THEREFORE ORDERED that Zak's Motion to Stay (Doc. 41) is **DENIED**. A Case Management Order will be issued contemporaneous with this Order.

IT IS SO ORDERED on this 29th day of June, 2022.

/s/ Timothy L. Brooks

TIMOTHY L. BROOKS

UNITED STATES DISTRICT JUDGE

CASE MANAGEMENT ORDER

After a review of the parties' *Rule 26(f)* Joint Report and pursuant to *Rule 16(b) of the Federal Rules of Civil Procedure*, IT IS HEREBY ORDERED:

1. TRIAL SET DURING THE COURT'S JUNE 26, 2023 TRIAL TERM

The trial of this matter is scheduled for a **JURY TRIAL** in **FAYETTEVILLE**, **ARKANSAS**, at the call of the Court during a **One Week Trial Term which begins on JUNE 26, 2023 at 9:00 a.m.** The case may be called up and tried at any point during the term; however, a more precise starting date will be set as the trial term approaches.

The case will be tried to an **eight (8)** person jury—unanimous verdict required. Counsel are directed to report to **the Fifth-floor Courtroom by no later than 8:30 a.m.** on the first day of trial unless otherwise notified.

2. FINAL PRE-TRIAL CONFERENCE [*12]

A Final Pre-Trial Conference shall be conducted pursuant to the provisions of *Rule 16(e)* on **JUNE 19, 2023, beginning at 9:00 a.m.**

3. CLAIM CONSTRUCTION HEARING

A claim construction hearing is scheduled for **December 2, 2022, beginning at 9:00 a.m.**

4. AMENDMENT OF PLEADINGS

Leave to amend pleadings and/or to add or substitute parties shall be sought no later than **SEPTEMBER 27, 2022**.

5. DISCOVERY

Discovery will be conducted in two phases, as set forth below. Pursuant to the Parties' agreement, the Court adopts the Northern District of California's Patent Local Rules ("P.L.R.") for purposes of this matter, with slight adjustments to the P.L.R. deadlines to accommodate the Court's schedule.

PHASE I - Claim Construction and Liability Facts

- Deadline to serve Disclosure of Asserted Claims and Infringement Contentions and production of documents in support: **JULY 13, 2022** (P.L.R. 3-1 & 3-2)
- Deadline to serve Invalidity Contentions and productions of documents in support: **AUGUST 12, 2022** (P.L.R. 3-3 & 3-4)
- Deadline for Parties to exchange proposed terms for construction: **AUGUST 26, 2022** (P.L.R. 4-1)
- Deadline for Parties to exchange preliminary proposed claim constructions: **SEPTEMBER 9, 2022** (P.L.R. 4-2)
- Deadline **[*13]** to serve opening damages contentions: **SEPTEMBER 29, 2022** (P.L.R. 3-8)
- Deadline for Parties to file Joint Claim Construction and Prehearing Statement: **OCTOBER 3, 2022** (P.L.R. 4-3)
- Deadline for claim construction expert witness disclosures: **OCTOBER 3, 2022** (P.L.R. 4-3)
- Deadline to complete all discovery relating to claim construction, including depositions and expert witness discovery: **OCTOBER 24, 2022** (P.L.R. 4-4)
- Deadline to serve responsive damages contentions: **OCTOBER 28, 2022** (P.L.R. 3-9)
- Deadline for Plaintiff to file opening claim construction brief and all supporting evidence: **OCTOBER 31, 2022** (P.L.R. 4-5(a))
- Deadline for Defendant to file responsive claim construction brief and all supporting evidence: **NOVEMBER 14, 2022** (P.L.R. 4-5(b))
- Deadline for Plaintiff to file reply brief in support of opening claim construction brief: **NOVEMBER 21, 2022** (P.L.R. 4-5(c))
- Claim Construction Hearing (if necessary): **DECEMBER 2, 2022, at 9:00 a.m.** (P.L.R. 4-6)
- Deadline to provide advice of counsel disclosures: **30 days after Claim Construction Ruling** (P.L.R. 3-7)

PHASE II - Residual Discovery

- Deadline for trial expert (initial) disclosures: **JANUARY 24, 2023**
- Deadline for trial expert (rebuttal) disclosures: **FEBRUARY [*14] 24, 2023**
- Final discovery deadline: **MARCH 17, 2023**

The parties may conduct discovery beyond the final discovery deadline if all parties are in agreement to do so. To avoid later misunderstandings, such agreements should be reduced to a writing which describes the type, scope, and length of the extended period of discovery. That said, the Court will not resolve any disputes which may arise in the course of extended discovery.

All discovery requests must be propounded sufficiently in advance of the discovery deadline to allow for a timely response. Witnesses and exhibits not identified and produced in response to *Rule 26(a)(1)* Initial Disclosures, and/or in response to subsequent discovery requests, may not be used at trial except in extraordinary circumstances. The Court will not grant a continuance because a party does not have time in which to depose a lay or expert witness.

6. TRIAL EXPERT DISCLOSURES

The deadline to provide trial expert witness disclosures and written reports pursuant to *Rule 26(a)(2)* is **JANUARY 24, 2023**. The deadline to provide disclosures and reports of rebuttal experts (*i.e.* whose testimony will be offered solely to contradict or rebut the expert opinions offered by an opposing expert) is **[*15] FEBRUARY 24, 2023**.

7. MOTION DEADLINES

(a) **Summary Judgment**. The deadline to file dispositive motions is **MARCH 24, 2023**.

(b) ***Daubert***. If applicable, *Daubert* and related expert disqualification motions should be filed no later than **MARCH 24, 2023**.

(c) **Discovery Motions**. Prior to filing a discovery motion the parties must (i) engage in a substantive good faith effort to amicably resolve the dispute without court intervention (to include at least one verbal discussion), and then, if necessary, (ii) the parties must schedule a conference call with the Court to discuss the dispute. In the event a discovery dispute cannot be informally resolved by the Court, then a formal motion must be filed sufficiently in advance of the discovery deadline to allow for a proper response time under the rules. The length of any such motions and supporting memorandum shall not exceed ten (10) pages in length (excluding exhibits). A response to a discovery motion, with the same page limitations, should be promptly filed.

(d) **Motions in Limine** must be filed on or before **JUNE 5, 2023**. Responses must be filed within seven (7) days thereafter. Motions submitted after the deadline may be denied solely on that ground. **[*16]** Briefs in Support of such motions and responses shall not exceed three (3) pages per ruling sought, except on leave of Court for good cause shown.

8. MEMORANDUM BRIEFS

Page limits for discovery motions and liminal motions are noted above. Memorandum briefs filed in support or in response to other types of motions must not exceed **twenty-five (25) pages** in length, without leave of court and for good cause shown. Over-length briefs filed without advance leave may be stricken *sua sponte*. Reply briefs require leave of Court, except with respect to motions for summary judgment. Reply briefs must not exceed **seven (7) pages** in length.

9. SETTLEMENT CONFERENCE

The parties are ordered to attend a Settlement Conference with Magistrate Judge Christy D. Comstock by no later than **MAY 22, 2023**. The exact date will be set by separate order.[1]

10. PRETRIAL DISCLOSURE SHEET

Pursuant to the provisions of *Rule 26(a)(3)*, the parties shall simultaneously file Pretrial Disclosures on **MAY 22, 2023**, in a form consistent with the outline contained in Local Rule 26.2.

11. DEPOSITIONS TO BE USED AT TRIAL PURSUANT TO *RULE 32*[2]

The proffering party must designate the pertinent portions of a deposition to be used as evidence at trial by **MAY 22, 2023**. The opposing **[*17]** party must then provide notice of objections and/or counter-designations by **MAY 29, 2023**. These designations and objections should not be filed with the Court, but rather exchanged by the parties. The parties shall then confer in good faith to resolve any objections to designations.

Any unresolved objections shall be made by a joint written motion filed no later than **JUNE 5, 2023**. Instructions for preparing the joint motion and the form to be used are posted on the Court's website at http://www.arwd.uscourts.gov/judge-brooks-forms. Objections will be resolved during the Final Pre-Trial Conference.

12. JURY INSTRUCTIONS

The parties must confer in advance regarding proposed jury instructions in an attempt to narrow areas of disagreement. The parties shall jointly submit a single agreed set of proposed instructions (clearly marked "AGREED") to Chambers on or before **JUNE 12, 2023**.

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[1] By motion, for good cause shown, the parties may request to be excused from this requirement. "Good cause" will be established by a statement that the posture of the case is such that the parties believe settlement efforts would be futile and the parties intend to proceed to trial as scheduled.

[2] Depositions to be used solely for impeachment are not contemplated by the requirements of this paragraph.

Proposed verdict forms should be submitted as well. Counsel should use model instructions whenever possible from the Eighth Circuit, AMI, or Federal Jury Practice and Instructions (5th Edition), as applicable, and should note the source and/or basis of the instruction at the end of each instruction.

If the parties **[*18]** cannot agree to a particular instruction(s), the party requesting a disputed instruction must submit it to the Court and to opposing counsel by the same date Agreed Instructions are due. Such instructions should be clearly marked as "[Plaintiff's/Defendant's] DISPUTED Instruction No. __." The legal basis for the instruction and brief description of the parties' disagreement shall be provided with the instruction (either in the space below the form of the instruction or attached on a separate page).

The parties should follow the same process to submit "agreed" and "disputed" proposed verdict forms. Agreed and disputed instructions/verdict forms should be submitted electronically in WordPerfect or Word format to *tlbinfo@arwd.uscourts.gov*.

13. STATEMENT OF THE CASE

Each party must submit via email by **JUNE 12, 2023** a concise non-argumentative statement/overview of the case, *no more than one double spaced page in length*, that it proposes the Court to read to the venire panel.

14. STIPULATIONS

The parties should stipulate in writing to the facts not in controversy and provide the same to the Court via email by no later than **JUNE 12, 2023**. Stipulations will be marked and received as a joint exhibit, **[*19]** and may be read/shown to the jury at an appropriate time(s) during the trial. The parties are encouraged to use stipulations as a means of establishing the chronology of significant events, and to otherwise narrow and simplify fact issues submitted to the jury.

15. WITNESS AND EXHIBIT LISTS

Each party shall submit "final" witness and exhibit lists to the Court by no later than **JUNE 12, 2023**. The lists should be in the format as posted on the Court's website at http://www.arwd.uscourts.gov/judge-brooks-forms. Witnesses shall be grouped together under headings indicating whether they "will be called" or merely "may be called" to testify.

Trial Exhibits must be identified, numbered, provided, and made available to opposing counsel in advance of the deadline. Counsel must then review and confer for the purpose of identifying any exhibits to which agreement or objections are contemplated. The final numbered exhibit list provided to the Court should therefore indicate—for each applicable exhibit—whether opposing counsel intends to "agree" (subject to proponent laying proper foundation) or "object" to its introduction. Prior to trial, the parties shall further confer and identify which, if any, **[*20]** of the agreed exhibits may be stipulated into evidence *in mass* at the beginning of the trial. Please promptly notify the Court via email as to which exhibits will be received in this manner.

Each party shall provide a notebook of its final proposed exhibits(numbered, indexed, and tabbed) to Chambers by no later than **JUNE 19, 2023**.

16. DEADLINES

The deadlines set forth above are firm. Extensions and/or continuances will not be considered absent very compelling circumstances.

17. SUMMARY TABLE AND FORMS

A table summarizing the deadlines is attached. In the event of a discrepancy between this Order and the summary table, the deadline set forth in the Order is controlling. The forms are available for download on the Court's public website - http://www.arwd.uscourts.gov/judge-brooks-forms.

18. COMMUNICATION WITH COURT REGARDING TRIAL OR SETTLEMENT

Settlements should be immediately reported to the Court.[3] Please communicate any late developing settlement or problems/issues (*i.e.* over the weekend prior to trial) to the Courtroom Deputy, Sheri Craig, at (479) 695-4460 or *tlbinfo@arwd.uscourts.gov*. If notice of settlement is received after **1:00 p.m. on JUNE 23,**

[3] This is especially true when there are ripe motions pending. Prompt notification is also of great help to the Court in the management of remaining cases set for a given trial term.

2023, the parties will be assessed any **[*21]** costs associated with the Court's inability to timely recall the jury panel from reporting. The parties are further advised that the case will not be removed from the trial docket until an order of dismissal has been entered.

IT IS SO ORDERED this 29th day of June, 2022.

/s/ Timothy L. Brooks

TIMOTHY L. BROOKS

UNITED STATES DISTRICT JUDGE

DATES AND DEADLINES

(not inclusive of all deadlines in Order)

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Table1 (*Return to related document text*)

HEARINGS AND TRIAL DATE	
CLAIM CONSTRUCTION HEARING (if necessary)	12/2/22
FINAL PRE-TRIAL CONFERENCE	6/19/23
TRIAL DATE (One Week Trial Term beginning on)	**6/26/23**
DISCOVERY	
AMEND PLEADINGS/ADD OR SUBSTITUTE PARTIES	9/27/22
CLAIM CONSTRUCTION DISCOVERY DEADLINE	10/24/22
TRIAL EXPERT WITNESS DISCLOSURES/REPORTS	1/24/23
REBUTTAL TRIAL EXPERT WITNESS DISCLOSURES/REPORTS	2/24/23
FINAL DISCOVERY DEADLINE	**3/17/23**
MOTIONS	
DISPOSITIVE MOTIONS	3/24/23
DAUBERT AND RELATED MOTIONS REGARDING EXPERT OPINION TESTIMONY (if applicable)	3/24/23
SETTLEMENT CONFERENCE	
SETTLEMENT CONFERENCE (to be separately scheduled no later than)	5/22/23
FINAL TRIAL PREPARATIONS	
PRETRIAL DISCLOSURES (per format of Local Rule 26.2)	5/22/23
MOTIONS IN LIMINE	6/5/23
DEPOSITION DESIGNATIONS (exchanged)	5/22/23
DEPOSITION COUNTER-DESIGNATIONS (exchanged)	5/29/23
JOINT MOTION TO EXCLUDE **[*22]** DEPOSITION TESTIMONY	6/5/23
JURY INSTRUCTIONS (submitted to the Court via email)	6/12/23
STATEMENT OF THE CASE (submitted to the Court via email)	6/12/23
STIPULATIONS (submitted to the Court via email)	6/12/23
WITNESS AND EXHIBIT LISTS (submitted to the Court via email)	6/12/23
EXHIBITS NOTEBOOK (INDEXED AND TABBED) TO CHAMBERS	6/19/23

Table1 (*Return to related document text*)

End of Document

LexisNexis

User Name: Renee Preston
Date and Time: Monday, September 18, 2023 8:18:00 AM EDT
Job Number: 206007661

Documents (3)

1. *United States Courts Opinion: United States District Court Western District of Arkansas : 21-5109 - Camelbak Products , LLC v. Zak Designs, Inc.*

Client/Matter: -None-
Search Terms: 10676255 or 10,676,255
Search Type: Terms and Connectors
Narrowed by:

Content Type	Narrowed by
News	-None-

2. *Head Line: CamelBak Products, LLC (California) granted US Patent for "Drink bottles"*

Client/Matter: -None-
Search Terms: 10676255 or 10,676,255
Search Type: Terms and Connectors
Narrowed by:

Content Type	Narrowed by
News	-None-

3. *US Patent Issued to CamelBak Products on June 9 for "Drink bottles" (California ; Utah Inventors)*

Client/Matter: -None-
Search Terms: 10676255 or 10,676,255
Search Type: Terms and Connectors
Narrowed by:

Content Type	Narrowed by
News	-None-

United States Courts Opinion: United States District Court Western District of Arkansas: 21-5109 - Camelbak Products, LLC v. Zak Designs, Inc.

Impact News Service

January 11, 2023 Wednesday

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Length: 10170 words

Body

Washington: United States District Court Western District of Arkansas has issued the following opinion:

IN THE UNITED STATES DISTRICT COURTWESTERN DISTRICT OF ARKANSASFAYETTEVILLE DIVISIONCAMELBAK PRODUCTS, LLC PLAINTIFFV. CASE NO. 5:21-CV-05109ZAK DESIGNS, INC. DEFENDANTMEMORANDUM OPINION AND ORDERI. INTRODUCTIONAs Plaintiff CamelBak Products, LLC ' s patents explain, "For some time people have recognized the need to stay hydrated. " (Doc. 64-1, p. 14). This need has created a market for well-designed, reusable water bottles. CamelBak and Defendant Zak Designs, Inc. are competitors in this market. CamelBak brought this case alleging Zak is infringing on its patents for water bottles and water bottle lids. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 1 of 37 PageID #: <pageID>2The parties now ask the Court to construe certain terms that appear in the claims—the recitations at the end of a patent that define the scope of the invention—of CamelBak ' s patents. The Court conducted a claim construction hearing on December 2, 2022. In advance of the hearing, the parties submitted a Joint Claim Construction and Prehearing Statement (Doc. 63) which identified 23 claim terms in dispute. Pursuant to Northern District of California Patent Local Rule 4.3(c),1 the parties also identified the 10 most significant terms for the Court to construe during the claim construction stage of this case. The parties then briefed their proposed constructions of those 10 terms. See Docs. 64, 65, 69. The parties ' briefing included declarations and deposition testimony from CamelBak ' s expert witness, Jim Goldman, and Zak ' s expert, John Hamilton. There is no dispute that both Mr. Goldman and Mr. Hamilton, as experienced mechanical engineers, qualify as persons of ordinary skill in the art. At the hearing, the Court entertained oral argument and presentations on the disputed terms identified as most significant by the parties. After the hearing, the Court instructed the parties to submit supplemental briefing on their proposed constructions of an additional disputed term, variations of the word "bias. " See Docs. 71, 73, 74.Having fully examined the patents, briefing, exhibits, expert opinions, and the parties ' oral arguments and presentations, the Court construes the disputed claim terms as stated below.1 The parties consented to the Court ' s adoption of the Northern District of California Patent Local Rules in this case. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 2 of 37 PageID #: <pageID>3II. BACKGROUNDCamelBak ' s Amended Complaint (Doc. 61) alleges Zak is infringing on six of its patents which fall into two patent families (collectively, "the Asserted Patents"). Within the six Asserted Patents, CamelBak alleges Zak has infringed 75 claims. The Asserted Patents are as follows: Family Patent Number Priority Date Drink Bottles Leak-proof flip-top water bottles 9,463,911 ("the ' 911 patent") Apr. 11, 2005 ***10,676,255*** ("the ' 255 patent") Drink Containers Push-button flip-top water bottles 9,782,028 ("the ' 028 patent") Jan. 21, 2009 9,820,595 ("the ' 595 patent") 10,165,879 ("the ' 879 patent") 10,542,833 ("the ' 833 patent")The ' 255

patent is a continuation of the ' 911 patent, and their specifications—the figures and text in a patent that precede the claims—are nearly identical. Similarly, the ' 595, ' 879, and ' 833 patents are continuations of the ' 028 patent with near-identical specifications for each patent. Therefore, this Opinion cites only to the ' 911 and ' 028 specifications. However, certain of the disputed claim terms appear only in the continuation patents. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 3 of 37 PageID #: <pageID>4The ' 911 patent (Doc. 64-1) describes, in part, a drink container with a removable cap and a fluid conduit (tube). The cap has a manually operated drink spout and valve that allow for a closed configuration, wherein the spout is stowed and the valve prevents liquid from flowing through the fluid conduit, and an open configuration, wherein the spout is in a dispensing position and the valve allows liquid to flow through the fluid conduit. The drink spout has a flexible mouthpiece that opens when the user bites down on it, allowing the user to drink liquid. The cap also has an air return assembly that allows air to flow into the drink container when the drink spout is in the dispensing position but does not allow air to flow when the spout is stowed.The ' 028 patent (Doc. 64-3) describes a drink container that is similar to the drink container described in the ' 911 patent. The container includes, in part, the following features: a cap assembly; a mouthpiece that alternates between a stowed configuration and a dispensing configuration; a tube that may be crimped to restrict the flow of liquid when the mouthpiece is stowed; a mouthpiece that is biased toward being in the dispensing configuration and moves automatically to that configuration upon user activation; a mouthpiece that is opened through an action of the user, such as Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 4 of 37 PageID #: <pageID>5biting down; two catch structures that secure the mouthpiece in the stowed position until activated; and a user release mechanism that allows the user to activate and release the mouthpiece from its stowed configuration so the mouthpiece can move automatically to the dispensing configuration.III. LEGAL STANDARD "Victory in an infringement suit requires a finding that the patent claim 'covers the alleged infringer ' s product or process, ' which in turn necessitates a determination of 'what the words in the claim mean. ' " Markman v. Westview Instruments, Inc., 517 U.S 370, 372 (1996) (quoting H. Schwartz, Patent Law and Practice 1, 80 (2d ed.1995)). This determination of the meaning of claim terms, known as claim construction, "is exclusively within the province of the court. " Id. at 372.Claim terms are given "the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. " Phillips v. AWH Corp., 415 F.3d 1303, 1312 – 13 (Fed. Cir. 2005) (en banc) (quotation and citations omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. " Id. at 1314 (citing Brown v. 3M, 265 F.3d 1349, 1352 (Fed. Cir. 2001)). In other words, some claim terms do not require any construction at all.Nevertheless, "[w]hen the parties present a fundamental dispute regarding the scope of a claim term, it is the court ' s duty to resolve it. " O2 Micro Int ' l Ltd. v. Beyond Innovation Tech. Co., 521 F.3d 1351, 1362 (Fed. Cir. 2008). "Thus, a determination that a claim term needs no construction or has the plain and ordinary meaning may be Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 5 of 37 PageID #: <pageID>6inadequate when a term has more than one 'ordinary ' meaning or when reliance on a term ' s 'ordinary ' meaning does not resolve the parties ' dispute. " Eon Corp. IP Holdings v. Silver Spring Networks, 815 F.3d 1314, 1318 (Fed. Cir. 2016) (cleaned up).Claims must be construed in light of the intrinsic evidence—the claim language itself, the specification, and the patent ' s prosecution history. The claim language can "provide substantial guidance as to the meaning of particular claim terms," both through the context in which the claim terms are used and through comparison with other claims in the patent. Phillips, 415 F.3d at 1314. "[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term. " Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). The prosecution history, while often lacking the "clarity" of the specification, also constitutes intrinsic evidence that provides "evidence of how the PTO and the inventor understood the patent. " Phillips, 415 F.3d at 1317.Courts may also consider extrinsic evidence—such as dictionaries and expert testimony—though such evidence is given less weight than intrinsic evidence. Id. Dictionaries may reveal what the ordinary and customary meaning of a term would have been to a person of ordinary skill in the art at the time of the invention. See Frans Nooren Afdichtingssystemen B.V v. Stopaq Amcorr Inc., 744 F.3d 715, 722 (Fed. Cir. 2014). Expert testimony can also help "to ensure that the court ' s understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent or the prior art has a particular meaning in the pertinent field. " Phillips, 415 F.3d at 1318. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 6 of 37 PageID #: <pageID>7IV. DISCUSSION A. Agreed Constructions Claim Term Patents Construction"constructed as a unitary assembly" ' 028,

' 595, ' 879, and ' 833 Patents"constructed as a single piece that includes a group of parts or distinct portions" "friction-fit arrangement" ' 028, ' 595, ' 879, and ' 833 Patents "arrangement in which one part is fitted inside another part such that relative movement between them is resisted by friction""fluid conduit" ' 911 and ' 255 Patents"fluid-carrying structure, such as a channel, pipe, or tube" "mouthpiece assembly" ' 028, ' 595, ' 879, and ' 833 Patents "the group of parts or distinct sections that, taken together, allow the user to drink liquid""air return assembly" ' 911 Patent"a group of parts that, taken together, form a unit that is adapted to return air"In the Joint Claim Construction and Prehearing Statement, the parties agreed to the constructions of two claim terms, "constructed as a unitary assembly" and "friction-fit arrangement. " In their claim construction briefing, the parties informed the Court they had also reached an agreement on the construction of one of the ten most significant terms, "fluid conduit. " On the record at the claim construction hearing, the parties agreed to the constructions of two additional disputed terms, "mouthpiece assembly" and "air return assembly. " Having reviewed these agreed constructions in the context of the Asserted Patents, the Court agrees with the parties ' constructions and adopts them as stated above. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 7 of 37 PageID #: <pageID>8The Court now turns to the remaining disputed terms, taking them up in the order presented by the parties at the claim construction hearing. B. "rigid" ' 028, ' 595, ' 879, and ' 833 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaningindefiniteplain and ordinary meaningThe term "rigid" is used extensively in the Asserted Patents ' specifications and claims. For example, claim 10 of the ' 028 patent recites that "the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion," and "wherein the rigid collar member engages and crimps the crimping region to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration. " (Doc. 64-3, pp. 18 – 19). This "rigid collar member" 170 is seen in figure 8 of the ' 028 patent:Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 8 of 37 PageID #: <pageID>9Id. at p. 6. The ' 028 specification further states that "[i]n some embodiments, the collar member may be rigid or at least semi-rigid. " Id. at 11. However, only "rigid" appears in the claim language; "semi-rigid" is used only in the specification.Zak argues the term "rigid" is indefinite. Indefiniteness occurs when the "claims, read in light of the specification . . . and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention. " Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S 898, 901 (2014). A finding of indefiniteness renders the claim invalid. Because patents are presumptively valid, 35 U.S.C § 282(a), the party asserting indefiniteness bears the burden of proof and must demonstrate invalidity by clear and convincing evidence, Young v. Lumenis, Inc., 492 F.3d 1336, 1345 (Fed. Cir. 2007) (citing AK Steel Corp. v. Sollac & Ugine, 344 F.3d 1234, 1238 – 39 (Fed. Cir. 2003)).Zak ' s expert, Mr. Hamilton, attests that "that the scope of the claim term 'rigid ' was not reasonably certain to a person of ordinary skill in the art in January 2009 or at any time since," (Doc. 65-1, ¶ 22), because the specification describes the collar member as either "rigid" or "semi-rigid" and 'there are no functional standards in the specifications or prosecution histories to use to determine when the collar member is rigid, semi-rigid, or other than rigid or semi-rigid," id. at ¶ 26. In short, Zak contends that rigidity exists on a spectrum, and the intrinsic evidence provides no guidance as to what level of rigidity the claims are referencing when they use the term.CamelBak admits that rigidity exists on a spectrum but counters that the scope of "rigid" is not indefinite because the specification extensively discusses the term and even includes examples of the materials that would be "rigid" in this context. CamelBak further argues that "rigid" is a well-known term to mechanical engineers and the admissions of Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 9 of 37 PageID #: <pageID>10Zak ' s expert are fatal to Zak ' s indefiniteness argument. At his deposition, Mr. Hamilton admitted that • the examples of rigid materials in the specification helped clarify what "rigid" means in the context of the patents; • the collar member must be rigid enough to collapse the silicone crimping region; and • while rigidity is context specific and difficult to define, "engineers know it when they see it. "(Doc. 64-9, pp. 11, 18, 20). CamelBak ' s expert, Mr. Goldman, attests that the meaning of "rigid" in this context would be clear to a person of ordinary skill in the art. See Doc. 64-7, ¶ 32.The Court finds that Zak has not met its burden to show "rigid" is indefinite by clear and convincing evidence. The contentions of Zak ' s expert as to the indefiniteness of "rigid" are undercut by his later admissions that a person of ordinary skill in the art could determine what "rigid" means when presented with the intrinsic evidence here. While rigidity is a relative measurement, the specification and claims adequately define the level of rigidity required by the inventions. For example, the claim language makes clear that the collar member must be sufficiently rigid to crimp the tube when the mouthpiece is in the stowed configuration and thereby prevent liquid from passing through the tube. This context, along with the figures and "rigid" material examples, provides sufficient objective standards with

which a person of ordinary skill in the art could determine the level of rigidity required by the inventions. The specification ' s singular use of the term "semi-rigid" Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 10 of 37 PageID #: <pageID>11to describe a possible embodiment of the collar member does not render "rigid"—the term actually used in the claims—indefinite.Having found "rigid" not indefinite, the Court turns to the proper construction of the term and finds that "rigid" is an easily understood term that requires no construction in the context of these patents. The Court agrees with CamelBak that the meaning of "rigid" in this context would be clear not only to a person of ordinary skill in the art but also to lay judges and juries. Aside from asserting that "rigid" is indefinite, Zak has not offered a contrary construction. C. "the resilient mouthpiece is more resilient than the drink spout" ' 911 Patent CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaningindefiniteplain and ordinary meaningThis term appears in claims 1 and 25 of the ' 911 patent. Claim 1 states that the invention includesa resilient mouthpiece removably mounted on the drink spout and having a dispensing face, which includes the dispensing outlet, and a mouthpiece base that is shaped to restrict rotation of the resilient mouthpiece on the drink spout; wherein when the drink spout is in the dispensing position, the dispensing outlet is positioned further away from the cap assembly base than when the drink spout is in the Stowed position, wherein the resilient mouthpiece is more resilient than the drink spout and is adapted to resiliently compress responsive to compressive forces applied to the resilient mouthpiece by a user's teeth . . . .(Doc. 64-1, p. 23) (emphasis added). The specification provides silicone as an example of a "resiliently deformable" material and polycarbonate as a "rigid, or stiff," material. (Doc. 64-1, pp. 15, 19). Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 11 of 37 PageID #: <pageID>12Zak contends this term is indefinite because the ' 911 patent provides no objective standard to measure resilience and therefore the scope of "more resilient" would not be reasonably certain to a person of ordinary skill in the art. Mr. Hamilton attests that the phrase "the resilient mouthpiece is more resilient than the drink spout" could mean one of four things:(1) the mouthpiece springs back or returns to its previous position or shape after being compressed faster than the drink spout;(2) the mouthpiece springs back or returns to its previous position or shape without damage after being compressed to a greater extent than the drink spout;(3) the mouthpiece can be compressed for a longer period of time and still spring back or return to its previous position or shape compared to the drink spout; or(4) the mouthpiece can be compressed and decompressed more times than the drink spout and still spring back or return to its previous position or shape without damage.(Doc. 65-1, ¶ 60). Based on Mr. Hamilton ' s opinion that all four of these meanings are plausible, Zak argues the scope of the term is not reasonably certain.CamelBak counters that it is clear in context that this term means that the "mouthpiece" must be sufficiently resilient to compress in response to a user ' s teeth, whereas the "drink spout" must be "sufficiently non-resilient, or rigid, so as to be able to apply a crimping force that restricts the flow of fluid through the fluid conduit. " (Doc. 64, p. 15). CamelBak points to Mr. Hamilton ' s admissions at his deposition that resilience has a well-known technical meaning and that a person of ordinary skill in the art would be able to compare the relative resilience of any two materials. See Doc. 64-9, pp. 25 – 26.Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 12 of 37 PageID #: <pageID>13CamelBak argues that Mr. Hamilton ignored this technical meaning in favor of a Webster ' s Dictionary definition of "resilient," from which he derived the four plausible meanings above.The Court finds that Zak has not met its burden to show "the resilient mouthpiece is more resilient than the drink spout" is indefinite by clear and convincing evidence. The surrounding claim language and context from the specification sufficiently define the scope of the term—the mouthpiece must be made of a material that is more resilient, such as silicone, than the material the drink spout is made from. Mr. Hamilton agreed during his deposition that an engineer would understand resilience of a material to be "the elastic energy stored up in a cubic inch of material at the elastic limit" and that resilience is measurable. (Doc. 64-9, p. 25). Consistent with this testimony, Zak conceded at the hearing that a person of ordinary skill in the art would know what "resilient" means.Zak maintains, however, that the dispute is whether adding the word "more" before "resilient" makes the term indefinite because the Webster ' s Dictionary definition gives four possible meanings of "resilient. " But Mr. Hamilton also conceded at his deposition that a person of ordinary skill in the art could compare the resilience of two materials in the context of the ' 911 patent—in other words, a person of ordinary skill in the art could determine whether material A is more resilient than material B. That is all the claim term requires. A lay dictionary definition of "resilient" that allows for four possible types of resilience cannot make the term ' s scope indefinite when there is an agreed technical meaning. Given these findings, the Court cannot say that the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention. " Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S 898, 901 (2014). Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 13 of 37 PageID #:

<pageID>14Lacking any counter-construction from Zak, the Court finds that "the resilient mouthpiece is more resilient than the drink spout" should be given its plain and ordinary meaning. Given that the parties ' experts agree that the resilience of a material is measurable and comparable, the Court finds that the ordinary meaning of the claim term to a person of ordinary skill in the art will not be meaningfully in dispute at trial. D. "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration" ' 028, ' 595, ' 879, and ' 833 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaningindefiniteplain and ordinary meaningZak argues this phrase is indefinite because "its bias" lacks an antecedent basis. "The requirement of antecedent basis is a rule of patent drafting, administered during patent examination. " Energizer Holdings, Inc. v. Int'l Trade Comm'n, 435 F.3d 1366, 1370 (Fed. Cir. 2006). The rule requires that the first time a term is used it be prefaced with an indefinite article—"a" or "an"—and then any subsequent use of the same term should be prefaced by a definite article—"said" or "the"—so the reader is clear that the latter term refers back to the former. "[F]ailure to provide explicit antecedent basis for terms does not always render a claim indefinite" because "an antecedent basis can be present by implication. " Id. Accordingly, whether a term is given an explicit antecedent basis or not, the inquiry remains whether the term "fail[s] to inform, with reasonable certainty, those skilled in the art about the scope of the invention. " Nautilus, Inc. v. Biosig Instr., Inc., 572 U.S 898, 901 (2014). Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 14 of 37 PageID #: <pageID>15Zak contends that "its bias" lacks an antecedent basis because the claim language does not include a recitation of "a bias. " Zak points out that the patents ' other uses of "bias" were as a verb or adjective—"biased" or "biases. " Zak argues that the use of bias as a noun—"its bias"—is ambiguous. Zak points to the following section of the '028 patent ' s specification:Mouthpiece assemblies 18 according to the present disclosure are biased toward the dispensing configuration and therefore may be described as having a biasing mechanism 50. The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring. Other configurations are also within the scope of the present disclosure.(Doc. 64-3, p. 10). Mr. Hamilton attests that that this section describes three different ways the mouthpiece could be biased: "(1) an internal bias created by the material from which the mouthpiece assembly is constructed; (2) an external bias that includes at least one spring; or (3) an internal bias and an external bias. " (Doc. 65-1, ¶ 36) (emphasis in original). Because it is not clear which of these three is being referred to by "its bias," Zak argues a person of ordinary skill in the art could not determine the scope of the claim with reasonable certainty.The Court disagrees with Zak ' s reading of the claims and specification. What Zak and Mr. Hamilton refer to as three ways the mouthpiece assembly can be biased are actually three different ways the mouthpiece assembly ' s bias can be accomplished. The mouthpiece assembly ' s bias is the same—it returns to the dispensing configuration—whether that bias is created using a resiliently deformable material, a spring, or both. In Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 15 of 37 PageID #: <pageID>16the disputed phrase "release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration," "its bias" explains why the mouthpiece assembly would move from the stowed configuration to the dispensing configuration when released by the user. The specification provides examples of how that bias is created. Therefore, the specification language cited by Zak fails to create the ambiguity Zak describes.Even assuming Zak ' s reading of the specification is correct, the Court disagrees that the specification describing three possible embodiments of the mouthpiece assembly ' s bias renders the claim indefinite. Under Zak ' s reading, "its bias" would refer to whatever bias the mouthpiece assembly has in a given embodiment—be it internal, external, or both. But the term would not be indefinite simply because the specification provides the universe of possible biases the mouthpiece assembly can have and, in any event, the term "bias" has its own construction, as discussed below, that adds clarity to the disputed phrase.The term "its bias" may lack an explicit antecedent basis, but it is clear in context that "its" refers to "mouthpiece assembly"—a point Zak conceded at the hearing—and "bias"—as used here—refers to the mouthpiece assembly ' s predisposition to the dispensing configuration. Zak has not shown by clear and convincing evidence that a person of ordinary skill in the art would fail to understand the scope of this term.CamelBak argues that this term should be given its plain and ordinary meaning, and the Court agrees. In context, and with the aid of the other terms separately construed herein, the phrase "release the mouthpiece assembly to move via its bias from the stowed Case 5:21-cv-05109-TLB Document

77 Filed 01/09/23 Page 16 of 37 PageID #: <pageID>17configuration to the dispensing configuration" is easily understood by lay judges and juries. E. "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" ' 028, ' 595, and ' 879 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaningmeans-plus-function limitationplain and ordinary meaningZak argues this claim must be limited to a means-plus-function construction under 35 U.S.C § 112(f), which states:An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.Section 112(f) permits patent drafters to claim an element as "means" or "steps" for performing a function without identifying any particular structure. However, the "price to be paid" for drafting under § 112(f) is the limitation of the claim to only those structures disclosed in the specification and their equivalents. O.I Corp. v. Tekmar Co., Inc., 115 F.3d 1576, 1583 (Fed. Cir. 1997). In other words, § 112(f) allows a patent drafter to draft a claim more generically than otherwise allowed but limits the scope of that claim to only the example-embodiments described in the specification.Normally, the clue that a claim has been drafted under § 112(f) is the use of the word "means" in the claim language. See Williamson v. Citrix Online, LLC, 792 F.3d 1339, 1348 (Fed. Cir. 2015). There is a rebuttable presumption that claim terms without the Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 17 of 37 PageID #: <pageID>18word "means" are not governed by § 112(f), but the presumption is not a strong one. Id. at 1349. "[T]he essential inquiry is not merely the presence or absence of the word 'means ' but whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure. " Id. at 1348.When the word "means" is not present, the drafter ' s use of "[g]eneric terms such as 'mechanism, ' 'element, ' 'device, ' and other nonce words that reflect nothing more than verbal constructs may be . . . tantamount to using the word 'mean ' because they 'typically do not connote sufficiently definite structure. ' " Id. at 1350 (quoting Mass. Inst. of Tech. & Elecs. for Imaging, Inc. v. Abacus Software, 462 F.3d 1344, 1354 (Fed. Cir. 2006)).Zak argues that "user release mechanism" is a nonce phrase that is tantamount to using the word "means. " Zak further argues that "the remaining language—'adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism . . . ' —is merely functional because it gives no sense of what structure or form the claimed user release mechanism takes and only describes what the user release mechanism does. " (Doc. 65, p. 20).Zak points to Williamson, where the Federal Circuit examined a patent for virtual learning software and held that § 112(f) applied to the term "distributed learning control module," despite the term ' s lack of the word "means. " 792 F.3d at 1351. The court found that "module" was a nonce word equivalent to using the word "means. " Id. at 1350. The court looked without success to the specification for insight as to how a "distributed learning control module" would interact with the patent ' s other components "in a way that might inform the structural character of the limitation-in-question or otherwise impart structure. " Id. at 1351. While recognizing "that the presence of modifiers can change the Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 18 of 37 PageID #: <pageID>19meaning of" a nonce word, the use of the prefix "distributed learning control" could not save the term because those "words do not describe a sufficiently definite structure. " Id.CamelBak argues that "user release mechanism" is not a nonce phrase because—while "mechanism" may be a nonce word on its own—"user release" modifies "mechanism" and connotes sufficient structure to a person of ordinary skill in the art for § 112(f) to not apply. CamelBak points to the structures described in the disputed claim language:[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.(Doc. 64-3, p. 18) (emphasis added). CamelBak argues that the word "user" implies a physical structure with which a user may interact. Moreover, the word "release" describes how the "mechanism" interacts with the other pieces of the physical structure: the "user release mechanism" must be a structure than can release the first and second catch structures to allow the mouthpiece to move to the dispensing configuration. CamelBak also argues that the figures and descriptions in the specification further elucidate the physical structure of the "user release mechanism. "CamelBak relies on Alex Is the Best, LLC v. BLU Products, Inc., where the district court found § 112(f) did not apply to the terms "optical module" and "image capturing module. " 2017 WL 5031638, at *7 – 8 (D. Del. Nov. 3, 2017). The court acknowledged that "module" is a nonce word that did not connote structure on its own but found that, in the context of digital photography equipment, the modifiers "optical" and "image capturing" made the terms '

structures sufficiently clear to a person of ordinary skill in the art. Id. The court adopted the plain and ordinary meaning of the terms. Id. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 19 of 37 PageID #: <pageID>20The Court finds that § 112(f) does not apply to "user release mechanism" and its accompanying claim language. This mechanism is not a generic placeholder in the context of the patents. Rather, it plays the structural role of allowing the user to release the mouthpiece from the catch structures, causing the mouthpiece to move to the dispensing position. And unlike the disputed term in Williamson, here the specification "inform[s] the structural character" of "user release mechanism. " 792 F.3d at 1351. For example, the figures in the ' 028 patent demonstrate how the "user release mechanism" 60 interacts with the catch structures 54 and 56 and the mouthpiece assembly 18:(Doc. 64-3, pp. 4, 10).Accordingly, the Court finds that, to a person of ordinary skill in the art, "user release mechanism" has "a sufficiently definite meaning as the name for structure," Williamson, 792 F.3d at 1348, and Zak has failed to overcome the presumption against the application of § 112(f). The Court further finds that the meaning of the full phrasea user release mechanism adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism and Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 20 of 37 PageID #: <pageID>21thereby release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configurationis clear in context. Apart from the terms in this phrase that are separately construed herein, the Court gives the phrase its plain and ordinary meaning. F. "is biased" / "biases" ' 028, ' 595, ' 879 and ' 833 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Construction"tends to return . . . absent an external force""is pushed, or force is exerted on, in a particular direction""returns . . . absent an external force"Variations of the term "bias" appear in the patents in at least three contexts. First, the claims recite a mouthpiece assembly that "is biased to the dispensing configuration" and a crimping region that "at least partially biases the mouthpiece assembly to the dispensing configuration. " (Doc. 64-3, p. 18). CamelBak asserts that the mouthpiece assembly ' s bias can be either internal—created by the material the mouthpiece assembly is made from—or external—created by a mechanism external to the mouthpiece assembly, such as a spring. The ' 028 specification explains:The bias of a mouthpiece assembly according to the present disclosure may be provided by the internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed. For example, at least a portion of a mouthpiece assembly, such as crimping region 44, may be constructed of a resiliently deformable material. An illustrative, non-exclusive example of a suitable resiliently deformable material includes (but is not limited to) silicone. Additionally or alternatively, a biasing mechanism 50 may include at least one spring.Id. at p. 10. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 21 of 37 PageID #: <pageID>22Second, the claims recite a bite-actuated mouthpiece that "is biased to the closed configuration. " Id. CamelBak asserts this bias is internal only. In other words, the mouthpiece is made from a material—such as silicone—that remains closed until the user bites down on it, at which point the slit in the mouthpiece opens and allows liquid to flow into the user ' s mouth.Third, the claims recite a sliding member that "is biased away from a position in which the sliding member releases the mouthpiece assembly to move from the stowed configuration to the dispensing configuration. " (Doc. 64-6, p. 18). CamelBak asserts this bias is external only.CamelBak proposes the "bias" terms be construed to mean "tends to return . . . absent an external force. " For example, if this construction is inserted into the claim language, the claims would recite a mouthpiece assembly that "is biased tends to return to the dispensing configuration absent an external force. " In this example, the first and second catch structures are the "external force" that restrain the mouthpiece assembly and prevent it from returning to the dispensing configuration. CamelBak contends that this construction gives the "bias" terms a consistent meaning throughout the patents and is applicable to both internal and external biases.Zak proposes "is biased" should be construed to mean "is pushed, or force is exerted on, in a particular direction" and "biases" should be construed to mean "pushes or exerts force in a particular direction. " Zak contends that "the patents describe the biasing mechanism or biasing member as the part of the drink container that pushes or exerts force on another part to move it in a particular direction from one position or another position. " (Doc. 73, p. 3). Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 22 of 37 PageID #: <pageID>23Zak argues CamelBak ' s proposed construction is wrong because it "focus[es] on the part of the drink container that is biased while ignoring how its catch-all construction applies to the part that biases" and the inclusion of an ellipsis makes CamelBak ' s "proposed construction impossible for the jury to understand. " Id. at 4 – 5. CamelBak contends Zak ' s proposed construction is inappropriately limited to only external biases because it requires a "push" or "force" against the structure and that the construction is nonsensical when inserted into the claim language.Both parties cite to district court cases construing variations of the term "bias" to support their proposed constructions. Zak relies on Perfectvision

Manufacturing, Inc. v. PPC Broadband, Inc., 2014 WL 4285786, at *4 (E.D Ark. Aug. 29, 2014), where the district court construed "to bias" to mean "to exert force in a particular direction against an object. " Zak also points to Invisible Fence, Inc. v. Perimeter Technologies, Inc., 2006 WL 1443399, at *5 (N.D Ind. May 25, 2006), where the district court construed the term "biasing"—a term found in the claim language, "a contactor having a spring located inside the battery holder between the base of the battery holder and the battery for biasing the battery toward the opening of the battery holder"—to mean "exerting force in a particular direction toward the open end of the battery holder. "CamelBak argues that the claim language in Perfectvision and Invisible Fence referenced external biases only and are thus inapplicable here. Instead, CamelBak relies on Acantha LLC v. DePuy Synthes Sales, Inc., 2017 WL 972106, at *6 (E.D Wis. Mar. 13, 2017), where the district court construed "biased" to mean "the tendency of a structure or component to return to a certain position or shape absent external force. " Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 23 of 37 PageID #: <pageID>24The Court finds Zak ' s "is pushed, or force is exerted on" language fails to capture the full meaning of the "bias" terms. Zak ' s language is a poor fit when used to refer to the mouthpiece assembly ' s internal bias to the dispensing configuration, where nothing is pushing the mouthpiece assembly and the only force being exerted is the force generated by the material itself. Similarly, while Zak ' s "in a particular direction" language has been used by other courts to construe variations of the term "bias," the language is inartful in the context of these patents. The core of the "bias" terms is the predisposition of a part to a particular orientation, not necessarily the direction the part is moving in. CamelBak ' s proposed construction—"tends to return . . . absent an external force"—better captures this meaning. Mr. Goldman confirms that this is how a person of ordinary skill in the art would have understood the claim language, attesting that, in his opinion, the "bias" terms mean, "tends to return to its default state, absent an external force. " (Doc. 64-7, ¶ 28). The Court finds the inclusion of an ellipsis in CamelBak ' s construction, as a placeholder for a part ' s specified default state, is appropriate and will be understandable by a jury.However, Zak takes issue with CamelBak ' s inclusion of the word "tends" in the phrase "tends to return," and the Court agrees that CamelBak has not justified the word ' s inclusion. While one dictionary definition of the word "bias" is "tendency," Bias, The Merriam-Webster Dictionary (2022), the claim language and specification suggest that the parts are designed to always move to their default configuration absent an external force, see, e.g , Doc. 65-3, p. 11 ("Bite-actuated valves . . . are typically biased to a closed configuration, and thus automatically return from an open configuration to a closed configuration upon release of the compression forces being applied thereto . . . . "). So, rather than having a tendency to return, the parts simply return. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 24 of 37 PageID #: <pageID>25Accordingly, the Court construes the terms "is biased" and "biases" to mean "returns . . . absent an external force. " G. "stowing region" ' 028, ' 595, and ' 879 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaning"the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly"plain and ordinary meaningThe term "stowing region" appears in the ' 028, ' 595, and ' 879 patents. For example, claim 1 of the ' 879 patent recites that "the cap assembly defines a stowing region sized to receive at least a portion of the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration. " (Doc. 64-5, p. 18). Claim 6 of the ' 028 patent recites that "the cap assembly further includes a handle that projects away from the base of the cap assembly and a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly. " (Doc. 64-3, p. 18). A possible embodiment of the "stowing region" 206 and "mouthpiece assembly" 118 is shown in figure 9 of the ' 028 patent: Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 25 of 37 PageID #: <pageID>26Id. at p. 6.Zak argues "stowing region" should be defined as "the space on the cap assembly that is sized for storing at least a portion of the mouthpiece assembly. " In other words, Zak contends the "stowing region" is limited to only the area on the cap assembly where the mouthpiece assembly is stored and does not extend outside the space needed for that purpose. Zak points to the figures in the specification to support this construction.CamelBak argues "stowing region" is a self-explanatory term that requires no construction. CamelBak further argues that Zak ' s construction improperly replaces "region" with "space" and "stowing" with "storing" and adds redundant language already present in the claims.The Court finds that "stowing region" should be given its plain and ordinary meaning. First, CamelBak is correct that Zak ' s construction would substitute the claim language for similar words and would include redundant language. Second, Zak ' s construction would limit the claims based on the possible embodiments shown in the specification, but the Federal Circuit "has cautioned against limiting the claimed invention Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 26 of 37 PageID #: <pageID>27to preferred embodiments or specific examples in the specification. " Vulcan Eng ' g Co. v. Fata Aluminium, Inc., 278 F.3d 1366, 1376 (Fed. Cir. 2002)

(quoting Texas Instruments, Inc. v. U.S Int ' l Trade Comm ' n, 805 F.2d 1558, 1563 (Fed. Cir. 1986)). The claim language limits the scope of the "stowing region" to an area defined by the cap assembly and a pair of lateral guards that is large enough to stow a portion of the mouthpiece assembly when in the stowed configuration, but the language does not say the region must be no larger than the mouthpiece assembly. Zak ' s contentions as to the scope of the "stowing region" are resolved by the claim language, and the term requires no construction by the Court. H. "automatically" ' 028, ' 595, and ' 879 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Construction"without additional human intervention""without additional action by the user after actuation of the user release mechanism""without additional human intervention"The term "automatically" appears in conjunction with the user release mechanism ' s ability, when pressed by the user, to release the mouthpiece assembly from the stowed configuration. For example, claim 1 of the ' 028 patent recites "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. " (Doc. 65-3, p. 18). The ' 028 specification states that "[i]n some examples, the mouthpiece assembly is Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 27 of 37 PageID #: <pageID>28biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism. " Id. at p. 8.CamelBak argues "automatically" means "without additional human intervention" because the claim language and specification show that the user release mechanism "automatically" releases the mouthpiece assembly only after the user actuates it.Zak initially proposed to construe "automatically" as "without action by the user," arguing the word "additional" is not necessary because other claim language recites the action required by the user. Nevertheless, Zak now offers a compromise construction of "without additional action by the user after actuation of the user release mechanism. " So, Zak ' s compromise resolves the parties ' primary dispute, which was over the word "additional. " However, Zak maintains that if "additional" is included, then "after actuation of the user release mechanism" must also be included; CamelBak objects, pointing out that the latter phrase would be redundant of the surrounding claim language.The Court agrees with CamelBak. In this context, "automatically" means that the user release mechanism performs the described function without requiring any further manual manipulation by the user beyond what is already described in the claim language. CamelBak ' s straightforward construction—"without additional human intervention"—captures this meaning. Zak has agreed to the inclusion of the word "additional," and the intrinsic evidence supports Zak ' s concession. "Automatically" cannot mean without any human intervention because the claim language requires that the user first actuate the user release mechanism. See CollegeNet, Inc. v. ApplyYourself, Inc., 418 F.3d 1225, 1235 (Fed. Cir. 2005) (affirming the district court ' s construction of "automatically" as "once initiated, the function is performed by a machine, without the need for manuallyCase 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 28 of 37 PageID #: <pageID>29performing the function"). But full adoption of Zak ' s compromise construction would create an unnecessary and confusing redundancy in the definition of "automatically" by inserting a limitation—"after actuation of the user release mechanism"—that already exists in the claim language. Accordingly, the Court construes "automatically" to mean "without additional human intervention. " I. "user engagement pad . . . which extends through the sidewall of the base of the cap assembly" / "user engagement pad that extends through a wall of the cap assembly" / "user engagement pad extends through a wall of the cap assembly" ' 028, ' 595, and ' 833 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaning"user engagement pad . . . which extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly"plain and ordinary meaningThese terms involve the scope of the "user engagement pad," which is the area of the user release mechanism that the user presses (or otherwise interacts with) to release the mouthpiece from the stowed configuration. Claim 3 of the ' 028 patent recites that "the user release mechanism further includes a user engagement pad that is coupled to the sliding member and which extends through the sidewall of the base of the cap assembly for selective engagement by the user. " The same or similar claim language is present elsewhere in the ' 028 patent and the ' 595 and ' 833 patents. The "user engagement pad" 240, the "user release mechanism" 160, the "sliding member" 238, and the "base of the cap assembly" 116 are exemplified in figures 11, 12, and 13 of the ' 028 patent: Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 29 of 37 PageID #: <pageID>30(Doc. 64-3, p. 7).Zak argues that because the "user engagement pad" phrases are not discussed in the specification, the Court must turn to the figures to understand their meaning. According to Zak, the figures show that the "user engagement pad" must extend from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly. Zak

contends that giving these phrases their plain and ordinary meaning, as CamelBak proposes, would improperly allow CamelBak to claim an invention that is broader than what CamelBak actually invented with the patents. CamelBak argues that Zak ' s construction injects limitations not present in the claim language by substituting "from one side to the other side" for "through" and requiring the sidewall "surround" the opening. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 30 of 37 PageID #: <pageID>31The Court finds the "user engagement pad" phrases should be given their plain and ordinary meaning and require no construction by the Court. The Court declines to construe these phrases using Zak ' s description of the specification figures. Such a construction would improperly limit the claim language by using only the embodiment in the specification figures. See Vulcan Eng ' g, 278 F.3d at 1376. Certainly, one embodiment of CamelBak ' s patents might include a user engagement pad that "extends from one side to the other side of an opening that is surrounded by the sidewall of the base of the cap assembly," but the claim language itself is not limited to that embodiment. Rather, the "user engagement pad" must extend through the wall of the base of the cap assembly so that the user can interact with the "user release mechanism. " This may be accomplished by having the "user release mechanism" protrude through an enclosed opening that is the same size as the "user release mechanism," but this is not the only embodiment contemplated by the claim language. Accordingly, there remains no genuine dispute as to the scope of the plain language of these terms, and they require no construction by the Court. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 31 of 37 PageID #: <pageID>32J. "the anchor portion is sized to restrict passage of the anchor portion through the through passage" ' 028, ' 595, and ' 879 Patents CamelBak ' s Proposed Construction Zak ' s Proposed Construction Court ' s Constructionplain and ordinary meaning"the anchor portion is sized such that at least a part of the anchor portion is too large to fit into the through-passage and no part of the anchor portion may pass into one end of the through-passage and out of the opposite end of the through-passage"plain and ordinary meaningA representation of this claim phrase appears in claim 1 of the ' 028 patent, which recites "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. " (Doc. 64-3, p. 18). The ' 028 patent ' s specification further provides that "the mouthpiece assembly may include an anchor, or anchor portion, 86 that is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly. " Id. at p. 12. The "anchor portion" 86 and "through passage" 34 are exemplified in figure 1 of the ' 028 patent: Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 32 of 37 PageID #: <pageID>33Id. at p. 4.Zak argues this claim phrase must be construed to mean that the "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Zak insists this construction comes directly from the successful arguments CamelBak made to the Patent Trial and Appeal Board ("PTAB") and that CamelBak must be held to those arguments.CamelBak argues it has not abandoned its arguments to the PTAB and that, contrary to Zak ' s proposed construction, the patents explicitly distinguish between restricting passage through the through passage and preventing passage through the through passage. CamelBak writes that "Zak ' s proposed construction fails because it limits the scope of the claim to the unclaimed preventing embodiment and excludes the claimed restricting embodiment. " (Doc. 65, p. 28).Zak directs the Court to the relevant prosecution history. The patent examiner initially rejected certain claims of the ' 028 patent due to prior art. Specifically, the examiner found that a prior drink container patent disclosed a mouthpiece portion with an anchor Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 33 of 37 PageID #: <pageID>34portion. Ex Parte Jeff Davies & Derek Gavin Sullivan, 2017 WL 1032223, at *2 (P.T.A.B Mar. 15, 2017). The examiner found CamelBak ' s limitation in claims 1 and 21 that the anchor portion be "sized to restrict passage of the anchor portion through the through passage" failed to distinguish CamelBak ' s invention from the prior art because "as long as the anchor portion has a size, it is capable of restricting passage. " Id. CamelBak appealed the examiner ' s decision to the PTAB, which reversed the examiner ' s decision. Id. at *3. The PTAB found that CamelBak ' s "sized to restrict" language "positively limits the structure of the claims to a structure in which an anchor portion has a size that functionally acts to restrict, or limit, passage of the anchor portion through the claimed through-passage," and this limitation was not present in the prior art the examiner relied on. Id. Adopting CamelBak ' s argument, the PTAB explained that the examiner ' s findings were "unreasonable" because "[e]very structure has a size, but not all structures are capable of performing the claimed functional requirement of restricting passage of the anchor portion through the through-passage of the base of the cap assembly. " Id. (emphasis in original). The PTAB further explained that "as [CamelBak] correctly note[s], for example, an anchor portion that is smaller than the through-passage will not function to restrict passage therethrough. " Id. (emphasis in original).The PTAB also reversed the

examiner ' s rejection of claim 18 of the ' 028 patent, which does not recite the disputed claim phrase but instead recites an anchor portion having "a plurality of flanges that are sized and shaped to provide a friction-fit arrangement with the through-passage and to restrict passage of the anchor portion through the through-passage. " Id. at *4. The examiner found that a prior patent, Choi, disclosed an anchor portion and another patent, Lin, disclosed flanges. The examiner Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 34 of 37 PageID #: <pageID>35found that "that it would have been obvious to incorporate Lin's flanges into Choi ' s anchor portion to prevent leakage. " Id. The PTAB reversed this finding, explaining:We agree with Appellants. As discussed above, Choi does not disclose an anchor portion as claimed. Lin does not remedy this defect because, although Lin teaches a plurality of flanges, Lin does not teach flanges that restrict passage of an anchor portion through a through-passage. Indeed, Lin's lower flange is expressly configured to permit passage through the through-passage. Further, the Examiner ' s purported reasoning for incorporating Lin's flanges into Choi ' s structure lacks rational underpinning, as Choi does not articulate a "leakage" problem, and Lin does not associate the prevention of leakage with the inclusion of flanges.Id. (emphasis in original) (citations omitted).Zak contends its proposed construction is appropriate because "[t]he PTAB accepted CamelBak ' s arguments that the relative size of the anchor portion and the through-passage is essential to the meaning of this claim phrase" and "that no part of the anchor portion (such as the lower flange in Lin) may pass into one end of the through-passage and out of the opposite end of the through-passage in order to meet the 'restrict passage of the anchor portion through the through-passage ' limitation. " (Doc. 65, pp. 10 – 12). Zak also points to the specification figures to support its proposed construction.The Court finds Zak ' s proposed construction misconstrues the prosecution history and would inappropriately limit the claim phrase to embodiments not dictated by the claim language. While Zak purports to be pulling its construction from CamelBak ' s successful arguments to the PTAB, CamelBak did not argue that its claimed "anchor portion" must be sized so that part of it is too big to fit into the through passage and none of it can fit all the way through the through passage. Instead, CamelBak argued, and the PTAB agreed, that its "sized to restrict passage" claims were patentable because the claims required the anchor portion be at least as big as the through passage; otherwise, the passage of Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 35 of 37 PageID #: <pageID>36the anchor portion through the through passage would not be restricted. This does not require the anchor portion to be larger than the through passage so that the anchor portion ' s passage through the through passage is prevented. Support for this interpretation is found in the specification, which states that the anchor portion "is adapted to prevent, or at least restrict, passing of the anchor portion through the through-passage of the base of the cap assembly," differentiating between "prevent" and "restrict. " (Doc. 64-3, p. 12). As for claim 18 of the ' 028 patent, none of CamelBak ' s arguments nor the PTAB ' s reasoning—which was simply that the prior art did not include CamelBak ' s "plurality of flanges" that would restrict passage through the through passage—require an anchor portion sized to prevent passage through the through passage.The meaning of the disputed claim phrase is simply its plain and ordinary meaning—that the anchor portion is of such a size that its passage through the through passage is restricted. Mr. Goldman persuasively attests that a person of ordinary skill in the art would understand this plain meaning. (Doc. 64-7, pp. 15 – 16). Accordingly, the Court finds that the claim phrase "the anchor portion is sized to restrict passage of the anchor portion through the through passage" requires no construction and is given its plain and ordinary meaning. Case 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 36 of 37 PageID #: <pageID>37V. CONCLUSIONThe Court HEREBY ADOPTS the above constructions for the claim terms identified by the parties.IT IS SO ORDERED on this 9th day of January, 2023._____TIMOTHY L. BROOKSUNITED STATES DISTRICT JUDGECase 5:21-cv-05109-TLB Document 77 Filed 01/09/23 Page 37 of 37 PageID #: <pageID>

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Head Line: CamelBak Products, LLC (California) granted US Patent for "Drink bottles"

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Length: 233 words

Body

ALEXANDRIA, Va: CamelBak Products, LLC has been granted a patent no. ***10,676,255*** on June 9, 2020, by United States Patent And Trademark Office.

The patent has been granted for "Drink bottles"Inventors: Choi; Robert (Ogden, UT), Forsman; Barley A. (Cotati, CA), Galten; Jeremy (Petaluma, CA)Assignee: CamelBak Products, LLC (Petaluma, CA) (California)According to the abstract released by the U.S Patent & Trademark Office: "Drink bottles, or drink containers with cap assemblies that include a drink spout. In some embodiments, the drink spout is pivotally coupled to a base of the cap assembly. In some embodiments, the drink spouts include mouthpieces, including self-sealing and/or bite-actuated mouthpieces. In some embodiments, the cap assembly includes a handle, which may include at least one guard for the drink spout and/or mouthpiece. In some embodiments, the drink containers include a manual on/off valve. In some embodiments, the dispensing spout includes a mount for the mouthpiece and/or cooperates with the cap to provide a manual on/off valve to selectively restrict flow of drink fluid from the drink container regardless of the drink spout's and/or mouthpiece's configuration. In some embodiments, the drink containers include a drink tube extending from external of the drink containers and/or an air return system."The patent was filed on July 13, 2018 by Application No. 16/035,418

Load-Date: June 12, 2020

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Renee Preston

US Patent Issued to CamelBak Products on June 9 for "Drink bottles" (California, Utah Inventors)

US Fed News

June 10, 2020 Wednesday GENERAL_EDIT_CORRECTION ERROR Document ID 1069 Has error Validate old format failed - Input Date Invalid - 00:41: Unparseable date: "00:41" EST

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Length: 285 words

Dateline: ALEXANDRIA, Va.

Body

ALEXANDRIA, Va., June 10 -- United States Patent no. ***10,676,255***, issued on June 9, was assigned to CamelBak Products LLC (Petaluma, Calif.).

"Drink bottles" was invented by Robert Choi (Ogden, Utah), Barley A. Forsman (Cotati, Calif.) and Jeremy Galten (Petaluma, Calif.). According to the abstract* released by the U.S. Patent & Trademark Office: "Drink bottles, or drink containers with cap assemblies that include a drink spout. In some embodiments, the drink spout is pivotally coupled to a base of the cap assembly. In some embodiments, the drink spouts include mouthpieces, including self-sealing and/or bite-actuated mouthpieces. In some embodiments, the cap assembly includes a handle, which may include at least one guard for the drink spout and/or mouthpiece. In some embodiments, the drink containers include a manual on/off valve. In some embodiments, the dispensing spout includes a mount for the mouthpiece and/or cooperates with the cap to provide a manual on/off valve to selectively restrict flow of drink fluid from the drink container regardless of the drink spout's and/or mouthpiece's configuration. In some embodiments, the drink containers include a drink tube extending from external of the drink containers and/or an air return system." The patent was filed on July 13, 2018, under Application No. 16/035,418. *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=10676255&OS=10676255&RS=10676255 For any query with respect to this article or any other content requirement, please contact Editor at *contentservices@htlive.com*

Load-Date: June 10, 2020

End of Document

Renee Preston

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User Name: Renee Preston
Date and Time: Monday, September 18, 2023 8:02:00AM EDT
Job Number: 206006207

Document (1)

1. *5:21cv5109, Camelbak Products, Llc V. Zak Designs, Inc.*
   Client/Matter: -None-
   Search Terms: 10676255 or 10,676,255
   Search Type: Terms and Connectors
   Narrowed by:

Content Type	Narrowed by
Dockets	-None-

5:21cv5109, Camelbak Products, Llc V. Zak Designs, Inc.

US District Court Docket

United States District Court, Arkansas Western

(Fayetteville)

This case was retrieved on 09/18/2023

Header

Case Number: 5:21cv5109
Date Filed: 06/11/2021
Assigned To: Honorable Timothy L. Brooks
Nature of Suit: Patent (830)
Cause: Patent Infringement
Lead Docket: None
Other Docket: None
Jurisdiction: Federal Question

Class Code: Closed
Closed: 02/07/2023
Statute: 35:271
Jury Demand: Both
Demand Amount: $0
NOS Description: Patent

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Proceedings

#	Date	Proceeding Text	Source
1	06/11/2021	CIVIL COVER SHEET for case initiated by Camelbak Products, LLC. Please proceed with filing your case initiating document(s).If the case initiating documents are not filed by Close of Business the next business day your case may be terminated. (lgd) (Entered: 06/11/2021)	
2	06/11/2021	COMPLAINT with Jury Demand against Zak Designs, Inc. (Filing fee $ 402 receipt number BARWDC-2408915), filed by Camelbak Products, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L)(Doan, Darby) (Entered: 06/11/2021)	
	06/11/2021	TEXT ONLY CLERK'S NOTICE to attorney(s) filing a complaint or amended complaint in a Patent action: Please complete AO Form 120 found on the U.S Courts website https://www.uscourts.gov/services-forms/forms and file it with the Court using Other Filings-Other Documents-Initial Report.Copyright/Patent/Trademark Report due 7/2/2021. (tg) (Entered: 06/11/2021)	
3	06/11/2021	Magistrate Notice/Consent Form (tg) (Entered: 06/11/2021)	
4	06/11/2021	NOTICE of Appearance by Joshua Reed Thane on behalf of Camelbak Products, LLC. (Thane, Joshua) (Entered: 06/11/2021)	
	06/15/2021	TEXT ONLY CLERK'S NOTICE re Multiple Attorneys Listed on Pleading directed to Plaintiff Camelbak Products, LLC. Complaint, 2 lists multiple attorneys appearing for the filer. The following attorney(s), who did not sign the pleading, must enter a separate Notice of Appearance in order to receive electronic notification of future activity in the case: Joshua Thane, David T. Pollock, Jonathan I. Detrixhe, Christopher J. Pulido. (lgd) (Entered: 06/15/2021)	
5	06/15/2021	MOTION for Attorney Christopher J. Pulido to Appear Pro Hac Vice (PHV Application fee paid $ 100; receipt number AARWDC-2410449) by Camelbak Products, LLC. (Thane, Joshua) (Entered: 06/15/2021)	
6	06/15/2021	MOTION for Attorney Jonathan I. Detrixhe to Appear Pro Hac Vice (PHV Application fee paid $ 100; receipt number AARWDC-2410480) by Camelbak Products, LLC. (Thane, Joshua) (Entered: 06/15/2021)	
7	06/15/2021	TEXT ONLY ORDER granting 5 Motion to Appear Pro Hac Vice. Christopher J. Pulido is directed to immediately register for Pro Hac Vice filer access through PACER and enter his appearance in this matter. Signed by Honorable P. K. Holmes III on June 15, 2021. (jas) (Entered: 06/15/2021)	
8	06/15/2021	TEXT ONLY ORDER granting 6 Motion to Appear Pro Hac Vice. Jonathan I. Detrixhe is directed to immediately register for Pro Hac Vice filer access through PACER and enter his appearance in	

#	Date	Proceeding Text	Source
		this matter. Signed by Honorable P. K. Holmes III on June 15, 2021. (jas) (Entered: 06/15/2021)	
9	06/17/2021	NOTICE of Appearance by Christopher John Pulido on behalf of Camelbak Products, LLC. (Pulido, Christopher) (Entered: 06/17/2021)	
10	06/21/2021	NOTICE of Appearance by Jonathan Iain Max Detrixhe on behalf of Camelbak Products, LLC. (Detrixhe, Jonathan) (Entered: 06/21/2021)	
11	06/23/2021	THE DOCUMENT IS RESTRICTED TO COURT USERS. Summons Requested as to ZAK DESIGNS, INC. for service of the following document: 2 Complaint,. (Doan, Darby) (Entered: 06/23/2021)	
12	06/23/2021	NOTICE of Appearance by David Thomas Pollock on behalf of Camelbak Products, LLC. (Pollock, David) (Entered: 06/23/2021)	
13	06/23/2021	THE DOCUMENT IS RESTRICTED TO COURT USERS AND CASE PARTICIPANTS. Summons Issued as to Zak Designs, Inc. and returned to attorney or plaintiff for service. YOU MUST PRINT THIS ISSUED SUMMONS, WHICH IS THE MAIN DOCUMENT. PAPER COPIES WILL NOT BE MAILED. (lgd) (Entered: 06/23/2021)	
14	06/28/2021	SUMMONS Returned Executed by Camelbak Products, LLC. Zak Designs, Inc. served on 6/24/2021, answer due 7/15/2021. (Doan, Darby) (Entered: 06/28/2021)	
15	07/02/2021	INITIAL REPORT ON THE FILING OF A PATENT ACTION for a case initiated by Camelbak Products, LLC with the filing of 2 Complaint,. (Doan, Darby) (Entered: 07/02/2021)	
16	07/14/2021	NOTICE of Appearance by Richard Blakely Glasgow on behalf of Zak Designs, Inc.. (Glasgow, Richard) (Entered: 07/14/2021)	
17	07/14/2021	ANSWER to 2 Complaint, with Jury Demand by Zak Designs, Inc..(Glasgow, Richard) (Entered: 07/14/2021)	
18	07/15/2021	INITIAL SCHEDULING ORDER: Rule 26 Meeting Report due by 8/23/2021. Jury Trial set for 11/14/2022 09:00 AM in Fayetteville - 2nd flr (Rm 210) before Honorable P. K. Holmes III. Signed by Jane Ann Short, Courtroom Deputy for Honorable P. K. Holmes III on July 15, 2021. (jas) (Entered: 07/15/2021)	
19	08/11/2021	MOTION to Transfer Case Zak Design's Motion to Transfer to the Eastern District of Washington by Zak Designs, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Glasgow, Richard) (Entered: 08/11/2021)	
20	08/11/2021	MEMORANDUM BRIEF in Support of 19 MOTION to Transfer Case Zak Design's Motion to Transfer to the Eastern District of Washington by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 08/11/2021)	
21	08/13/2021	Unopposed MOTION FOR ENTRY OF SCHEDULING ORDER FOR DISCOVERY AND BRIEFING RELATED TO DEFENDANT'S MOTION TO TRANSFER by Camelbak Products, LLC. (Thane, Joshua) (Entered: 08/13/2021)	
22	08/18/2021	TEXT ONLY ORDER granting 21 Motion. Plaintiff may conduct limited discovery prior to responding to the pending motion to transfer. During this limited discovery, Plaintiff may propound 3 interrogatories and 10 requests for production, and may depose Defendant's declarant for 2 hours. The discovery and briefing deadlines proposed in the motion are imposed. Consideration of whether to hold a hearing on the motion to transfer is premature. Signed by Honorable P. K. Holmes III on August 18, 2021. (rab) (Entered: 08/18/2021)	
23	08/23/2021	JOINT REPORT of Rule 26(f) Planning Meeting by Camelbak Products, LLC. (Thane, Joshua) (Entered: 08/23/2021)	

#	Date	Proceeding Text	Source
24	09/02/2021	MOTION to Stay Discovery Pending Transfer by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 09/02/2021)	
25	09/02/2021	MEMORANDUM BRIEF in Support of 24 MOTION to Stay Discovery Pending Transfer by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 09/02/2021)	
26	09/02/2021	TEXT ONLY ORDER granting 24 Motion to Stay Discovery. All discovery, with the exception of the limited discovery permitted by the Court's August 18 order, is stayed pending resolution of the 19 motion to transfer. Signed by Honorable P. K. Holmes III on September 2, 2021. (rab) Modified on 9/2/2021 to edit text (jlm). (Entered: 09/02/2021)	
27	09/02/2021	NOTICE of Appearance by Kyle Ray Wilson on behalf of Zak Designs, Inc.. (Wilson, Kyle) (Entered: 09/02/2021)	
28	09/10/2021	Joint MOTION for Protective Order Joint Motion for Entry of Agreed Protective Order by Zak Designs, Inc.. (Attachments: # 1 Exhibit A)(Glasgow, Richard) (Entered: 09/10/2021)	
29	09/15/2021	OPINION AND ORDER granting 28 Motion for Protective Order. Signed by Honorable P. K. Holmes III on September 15, 2021. (tg) (Entered: 09/15/2021)	
30	09/15/2021	PROTECTIVE ORDER. Signed by Honorable P. K. Holmes III on September 15, 2021. (tg) (Entered: 09/15/2021)	
31	09/15/2021	Unopposed MOTION to Continue DISCOVERY AND BRIEFING DEADLINES RELATED TO DEFENDANT'S MOTION TO TRANSFER by Camelbak Products, LLC. (Thane, Joshua) (Entered: 09/15/2021)	
32	09/17/2021	TEXT ONLY ORDER granting 31 Motion to Continue, adopting the deadlines proposed in the motion. Signed by Honorable P. K. Holmes III on September 17, 2021. (rab) (Entered: 09/17/2021)	
33	10/01/2021	RESPONSE IN OPPOSITION TO Motion re 19 MOTION to Transfer Case Zak Design's Motion to Transfer to the Eastern District of Washington filed by Camelbak Products, LLC. (Attachments: # 1 Pulido Declaration, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R)(Thane, Joshua) (Entered: 10/01/2021)	
34	10/01/2021	THE DOCUMENT IS FILED UNDER SEAL WITH THE COURT.SEALED OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER by Camelbak Products, LLC. An Order was entered on 9/15/2021 allowing the document(s) to be filed under seal. This docket entry is related to 33 Response to Motion,,. (Attachments: # 1 Pulido Declaration, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Errata E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R) (Thane, Joshua) Modified text and granted access to parties on 10/4/2021 (lgd). (Entered: 10/01/2021)	
35	10/08/2021	MOTION for Leave to Motion for Leave to File Reply in Support of Motion to Transfer by Zak Designs, Inc.. (Attachments: # 1 Exhibit 1)(Glasgow, Richard) (Entered: 10/08/2021)	
36	10/12/2021	TEXT ONLY ORDER granting 35 Motion for Leave to File Reply. Defendant directed to immediately file reply attached as an exhibit to the motion. Signed by Honorable P. K. Holmes III on October 12, 2021. (mer) (Entered: 10/12/2021)	
37	10/12/2021	REPLY by Zak Designs, Inc. re 35 MOTION for Leave to Motion for Leave to File Reply in Support of Motion to Transfer to the Eastern District of Washington. (Attachments: # 1 Exhibit A, # 2	

#	Date	Proceeding Text	Source
		Exhibit B)(Glasgow, Richard) (Entered: 10/12/2021)	
38	11/10/2021	ORDER directing clerk to reassign case. Signed by Honorable P. K. Holmes III on November 10, 2021. (tg) (Entered: 11/10/2021)	
39	11/10/2021	TEXT ONLY MEMO OF REASSIGNMENT. Case reassigned to Honorable Timothy L. Brooks. Honorable P. K. Holmes III no longer assigned to the case. (tg) (Entered: 11/10/2021)	
40	03/07/2022	MEMORANDUM OPINION AND ORDER denying 19 Motion to Transfer Case. Signed by Honorable Timothy L. Brooks on March 7, 2022. (tg) (Entered: 03/07/2022)	
41	04/28/2022	MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office by Zak Designs, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Glasgow, Richard) (Entered: 04/28/2022)	
42	04/28/2022	MEMORANDUM BRIEF in Support of 41 MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 04/28/2022)	
43	05/12/2022	RESPONSE IN OPPOSITION TO Motion re 41 MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office filed by Camelbak Products, LLC. (Attachments: # 1 DECLARATION OF DAVID T. POLLOCK IN SUPPORT OF CAMELBAK PRODUCTS, LL'S OPPOSITION TO ZAK DESIGNS, INC.'S MOTION TO STAY PENDING PATENT CHALLENGES IN THE U.S. PATENT AND TRADEMARK OFFICE, # 2 Exhibit to Declaration of David T. Pollock, # 3 Exhibit to Declaration of David T. Pollock, # 4 Exhibit to Declaration of David T. Pollock, # 5 Exhibit to Declaration of David T. Pollock, # 6 Exhibit to Declaration of David T. Pollock)(Pulido, Christopher) (Entered: 05/12/2022)	
44	05/19/2022	MOTION for Leave to File Reply in Support of Motion to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office by Zak Designs, Inc.. (Attachments: # 1 Exhibit 1)(Glasgow, Richard) (Entered: 05/19/2022)	
45	05/19/2022	TEXT ONLY ORDER granting 44 Motion for Leave to File Reply in Support of Motion to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office. Signed by Honorable Timothy L. Brooks on May 19, 2022. (glk) (Entered: 05/19/2022)	
46	05/20/2022	REPLY to Response to Motion re 41 MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office filed by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 05/20/2022)	
47	05/24/2022	MOTION for Leave to File Sur-Reply in Opposition to Zak Designs, Inc.'s Motion to Stay by Camelbak Products, LLC. (Attachments: # 1 Exhibit 1 - CamelBak Products, LLC's Sur-Reply in Opposition to Zak Design's Motion to Stay)(Pollock, David) (Entered: 05/24/2022)	
48	05/24/2022	TEXT ONLY ORDER granting 47 Motion for Leave to File Sur-Reply. The Court does not anticipate granting any further briefing on this Motion. Signed by Honorable Timothy L. Brooks on May 24, 2022. (glk) (Entered: 05/24/2022)	
49	05/24/2022	REPLY to Response to Motion re 41 MOTION to Stay Pending Patent Challenges in the U.S. Patent and Trademark Office filed by Camelbak Products, LLC. (Pollock, David) (Entered: 05/24/2022)	
50	06/29/2022	MEMORANDUM OPINION AND ORDER denying 41 Motion to Stay. Signed by Honorable Timothy L. Brooks on June 29, 2022. (bjb) Modified on 6/29/2022 (bjb). (Entered: 06/29/2022)	
51	06/29/2022	CASE MANAGEMENT ORDER: Final Pretrial Conference set for 6/19/2023 09:00 AM in Fayetteville -- 5th flr (Rm 509) before Honorable Timothy L. Brooks. Jury Trial set for 6/26/2023 09:00	

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CamelBak - Ex 2002
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#	Date	Proceeding Text	Source
		AM in Fayetteville -- 5th flr (Rm 509) before Honorable Timothy L. Brooks. Signed by Honorable Timothy L. Brooks on June 29, 2022. (bjb) (Entered: 06/29/2022)	
52	07/19/2022	ORDER Setting Hearings: Settlement Conference set for 5/4/2023 09:00 AM in Fayetteville - 2nd flr (Rm 210) before Honorable Christy D. Comstock. Each party shall provide a concise, confidential settlement statement NO LATER THAN ONE WEEK PRIOR TO THE SCHEDULED CONFERENCE via email to CDCsettle@arwd.uscourts.gov. Signed by Honorable Christy D. Comstock on July 19, 2022. (rg) (Entered: 07/19/2022)	
53	07/20/2022	AMENDED ORDER Resetting Hearings: Settlement Conference reset for 5/2/2023 09:00 AM in Fayetteville - 2nd flr (Rm 210) before Honorable Christy D. Comstock. Each party shall provide a concise, confidential settlement statement NO LATER THAN ONE WEEK PRIOR TO THE SCHEDULED CONFERENCE via email to CDCsettle@arwd.uscourts.gov. Signed by Honorable Christy D. Comstock on July 20, 2022. (rg) (Entered: 07/20/2022)	
54	08/29/2022	MOTION for Attorney Anna M. Targowska to Appear Pro Hac Vice (PHV Application fee paid $ 100; receipt number AARWDC-2646842) by Camelbak Products, LLC. (Thane, Joshua) (Entered: 08/29/2022)	
55	08/29/2022	TEXT ONLY ORDER GRANTING 54 Motion to Appear Pro Hac Vice. ANNA M. TARGOWSKA is directed to immediately register for Pro Hac Vice filer access through PACER and enter her appearance in this matter. Signed by Honorable Timothy L. Brooks on August 29, 2022. (slc) (Entered: 08/29/2022)	
56	08/31/2022	NOTICE of Appearance by Anna M Targowska on behalf of Camelbak Products, LLC. (Targowska, Anna) (Entered: 08/31/2022)	
57	09/06/2022	Joint MOTION to Amend/Correct 51 Final Scheduling Order, JOINT MOTION TO AMEND CASE SCHEDULE by Camelbak Products, LLC. (Thane, Joshua) (Entered: 09/06/2022)	
58	09/07/2022	TEXT ONLY ORDER granting 57 Joint Motion to Amend Case Schedule. The new claim construction and damages contentions deadlines are approved as set out in the Motion. Signed by Honorable Timothy L. Brooks on September 7, 2022. (glk) (Entered: 09/07/2022)	
	09/07/2022	***Claim Construction Hearing set for 12/2/2022 at 09:00 AM in Fayetteville -- 5th flr (Rm 509) before Honorable Timothy L. Brooks (See Case Management Order at paragraph 3). Signed by Honorable Timothy L. Brooks on September 7, 2022. (slc) (Entered: 09/07/2022)	
59	09/09/2022	Unopposed MOTION for Leave to FILE FIRST SUPPLEMENTAL COMPLAINT by Camelbak Products, LLC. (Attachments: # 1 Exhibit 1)(Thane, Joshua) (Entered: 09/09/2022)	
60	09/09/2022	TEXT ONLY ORDER granting 59 Unopposed Motion for Leave to File First Supplemental Complaint. Plaintiff is directed to file its supplemental complaint by September 12, 2022. Signed by Honorable Timothy L. Brooks on September 9, 2022. (glk) (Entered: 09/09/2022)	
61	09/12/2022	AMENDED COMPLAINT with Jury Demand as to 2 Complaint, against Camelbak Products, LLC PLAINTIFF'S FIRST SUPPLEMENTAL COMPLAINT FOR PATENT INFRINGEMENT, filed by Camelbak Products, LLC. Related document: 2 Complaint, filed by Camelbak Products, LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L)(Thane, Joshua) (Entered: 09/12/2022)	
62	09/21/2022	ANSWER to 61 Amended Complaint,, with Jury Demand by Zak	

#	Date	Proceeding Text	Source
		Designs, Inc..(Glasgow, Richard) (Entered: 09/21/2022)	
63	10/10/2022	JOINT CLAIM CONSTRUCTION CHART by Camelbak Products, LLC DISCLOSURE OF JOINT CLAIM CONSTRUCTIONS AND PREHEARING STATEMENT PURSUANT TO PATENT LOCAL RULE 4-3. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Thane, Joshua) (Entered: 10/10/2022)	
64	10/31/2022	CLAIM CONSTRUCTION BRIEF by Camelbak Products, LLC . (Attachments: # 1 Exhibit 1 - U.S. Patent No. 9,463,911, # 2 Exhibit 2 - U.S. Patent No. 10,676,255, # 3 Exhibit 3 - U.S. Patent No. 9,782,028, # 4 Exhibit 4 - U.S. Patent No. 9,820,595, # 5 Exhibit 5 - U.S. Patent No. 10,165,879, # 6 Exhibit 6 - U.S. Patent No. 10,542,833, # 7 Exhibit 7 - Declaration of Mr. Goldman, # 8 Exhibit 8 - Expert Report of Mr. Hamilton, # 9 Exhibit 9 - Excerpts from Deposition Transcript of Mr. Hamilton (October 25, 2022))(Pollock, David) (Entered: 10/31/2022)	
65	11/14/2022	RESPONSE by Zak Designs, Inc. re 64 Claim Construction Brief,, Zak Design, Inc.'s Responsive Claim Construction Brief. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Glasgow, Richard) (Entered: 11/14/2022)	
66	11/15/2022	MOTION for Leave to Exceed Page Limitation by Camelbak Products, LLC. (Thane, Joshua) (Entered: 11/15/2022)	
67	11/16/2022	RESPONSE IN OPPOSITION TO Motion re 66 MOTION for Leave to Exceed Page Limitation Response to CamelBak's Motion for Leave to Exceed Reply Page Limits filed by Zak Designs, Inc.. (Attachments: # 1 Exhibit Ex. A - Hamilton Deposition)(Glasgow, Richard) (Entered: 11/16/2022)	
68	11/16/2022	TEXT ONLY ORDER granting 66 Motion for Leave to File Excess Pages. Signed by Honorable Timothy L. Brooks on November 16, 2022. (glk) (Entered: 11/16/2022)	
69	11/21/2022	REPLY by Camelbak Products, LLC re 65 Response, . (Attachments: # 1 Exhibit 1 - Figs 11 & 12, # 2 Exhibit 2 - Hamilton depo excerpts)(Pollock, David) (Entered: 11/21/2022)	
70	12/02/2022	Minute Entry for proceedings held before Honorable Timothy L. Brooks: Claim Construction Hearing held on 12/2/2022. (Dana Hayden-Court Reporter)(Proceedings held in Fayetteville-Room 509) (slc) (Entered: 12/02/2022)	
71	12/09/2022	CLAIM CONSTRUCTION BRIEF by Camelbak Products, LLC - Supplemental. (Attachments: # 1 Appendix A to Supplemental Claim Construction Brief (substituted))(Pollock, David) (Entered: 12/09/2022)	
72	12/16/2022	NOTICE OF FILING OFFICIAL TRANSCRIPT of Claim Construction Hearing held on December 2, 2022, before Judge Timothy L. Brooks. Court Reporter/Transcriber: Dana Hayden, Telephone number 479-695-4465, dana_hayden@arwd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber. After the Release of Transcript Restriction deadline, it, or a redacted transcript, may be obtained through the Court Reporter/Transcriber or PACER. A Notice of Intent to Request Redaction of the Transcript MUST be filed within 7 calendar days of the filing of the transcript and served manually on the court reporter/transcriber. Redaction Request due 1/6/2023. Redacted Transcript Deadline set for 1/17/2023. Release of Transcript Restriction set for 3/16/2023. (bjb) Modified to grant access on 12/19/2022 (lgd). (Entered: 12/16/2022)	
73	12/16/2022	CLAIM CONSTRUCTION BRIEF by Zak Designs, Inc. and response to 71 Claim Construction Brief Zak Designs, Inc.'s Supplemental Responsive Claim Construction Brief. (Glasgow,	

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CamelBak - Ex 2002
Page 836 of 857

#	Date	Proceeding Text	Source
		Richard) (Entered: 12/16/2022)	
74	12/21/2022	REPLY by Camelbak Products, LLC re 73 Claim Construction Brief, 71 Claim Construction Brief . (Pollock, David) (Entered: 12/21/2022)	
75	01/04/2023	NOTICE of Appearance by Gary D. Marts, Jr on behalf of Zak Designs, Inc.. (Marts, Gary) (Entered: 01/04/2023)	
76	01/04/2023	Unopposed MOTION to Extend Discovery and Motion Deadlines by Zak Designs, Inc.. (Glasgow, Richard) (Entered: 01/04/2023)	
77	01/09/2023	MEMORANDUM OPINION AND ORDER. Signed by Honorable Timothy L. Brooks on January 9, 2023. (bjb) (Entered: 01/09/2023)	
78	01/09/2023	TEXT ONLY ORDER granting in part and denying in part 76 Motion to Extend Discovery and Motion Deadlines. The deadline for expert witness disclosures is extended to January 31, 2023. The deadlines for rebuttal expert disclosures, final discovery, and dispositive/Daubert motions remain the same as provided in the 51 Case Management Order. Signed by Honorable Timothy L. Brooks on January 9, 2023. (glk) (Entered: 01/09/2023)	
79	01/13/2023	Unopposed MOTION to Extend UNOPPOSED MOTION FOR EXTENSION OF EXPERT REPORT DEADLINES by Camelbak Products, LLC. (Thane, Joshua) (Entered: 01/13/2023)	
80	01/13/2023	TEXT ONLY ORDER GRANTING 79 Unopposed Motion to Extend Expert Report Deadlines. The deadlines for initial and rebuttal expert witness disclosures are extended to February 3 and March 3, 2023, respectively. The Court notes that it does not envision making further adjustments to the pretrial deadlines absent exceptional circumstances. Signed by Honorable Timothy L. Brooks on January 13, 2023. (glk) (Entered: 01/13/2023)	
81	01/18/2023	TEXT ONLY ORDER Setting ZOOM CONFERENCE re discovery dispute: Zoom Conference set for 1/20/2023 10:30 AM before Honorable Timothy L. Brooks. Signed by Honorable Timothy L. Brooks on January 18, 2023. (slc) (Entered: 01/18/2023)	
82	01/20/2023	TEXT ONLY Minute Entry for proceedings held before Honorable Timothy L. Brooks: ZOOM CONFERENCE re discovery dispute held on 1/20/2023. COURT'S EXHIBIT #1 - Email Communications from the parties; and COURT'S EXHIBIT #2 - Amended Notice of 30(b)(6) Deposition of Zak Designs. (Paula Barden-Court Reporter) (slc) (Entered: 01/20/2023)	
83	01/20/2023	ORDER (see Order for specifics). Signed by Honorable Timothy L. Brooks on January 20, 2023. (tg) (Entered: 01/20/2023)	
84	01/20/2023	TEXT ONLY ORDER amending 51 Case Management Order for the reasons explained at the discovery hearing held on January 20, 2023. The Court extends the deadlines in the Case Management Order as follows: initial expert disclosures are due February 10, 2023; rebuttal expert disclosures are due March 6, 2023; the final discovery deadline is March 23, 2023; and dispositive and Daubert/expert motions are due March 27, 2023. Signed by Honorable Timothy L. Brooks on January 20, 2023. (glk) (Entered: 01/20/2023)	
85	01/22/2023	NOTICE OF FILING OFFICIAL TRANSCRIPT of Discovery Dispute Hearing held on January 20, 2023, before Judge Timothy L. Brooks. Court Reporter/Transcriber: Paula Barden, Telephone number paula_barden@arwd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber. After the Release of Transcript Restriction deadline, it, or a redacted transcript, may be obtained through the Court Reporter/Transcriber or PACER A Notice of Intent to Request Redaction of the Transcript MUST be filed within 7 calendar days of the filing of the transcript and served manually on	

#	Date	Proceeding Text	Source
		the court reporter/transcriber. Redaction Request due 2/13/2023. Redacted Transcript Deadline set for 2/22/2023. Release of Transcript Restriction set for 4/24/2023. (pkb) (Entered: 01/22/2023)	
86	01/23/2023	MOTION for Attorney JACOB M. STONE to Appear Pro Hac Vice (PHV Application fee paid $ 100; receipt number AARWDC-2718949) by Camelbak Products, LLC. (Thane, Joshua) (Entered: 01/23/2023)	
87	01/23/2023	MOTION for Attorney PRINCEPREET S. SINGH to Appear Pro Hac Vice (PHV Application fee paid $ 100; receipt number AARWDC-2718958) by Camelbak Products, LLC. (Thane, Joshua) (Entered: 01/23/2023)	
88	01/24/2023	TEXT ONLY ORDER GRANTING 86 Motion to Appear Pro Hac Vice. JACOB M. STONE is directed to immediately register for Pro Hac Vice filer access through PACER and enter his/her appearance in this matter. Signed by Honorable Timothy L. Brooks on January 24, 2023. (slc) (Entered: 01/24/2023)	
89	01/24/2023	TEXT ONLY ORDER GRANTING 87 Motion to Appear Pro Hac Vice. PRINCEPREET S. SINGH is directed to immediately register for Pro Hac Vice filer access through PACER and enter his/her appearance in this matter. Signed by Honorable Timothy L. Brooks on January 24, 2023. (slc) (Entered: 01/24/2023)	
90	01/24/2023	NOTICE of Appearance by Jacob M. Stone on behalf of Camelbak Products, LLC. (Stone, Jacob) (Entered: 01/24/2023)	
91	01/24/2023	ORDER TO SHOW CAUSE - Show Cause Response due by 2/17/2023. Signed by Honorable Timothy L. Brooks on January 24, 2023. (bjb) Modified on 1/24/2023 (bjb). (Entered: 01/24/2023)	
92	01/26/2023	NOTICE of Appearance by Princepreet S. Singh on behalf of Camelbak Products, LLC. (Singh, Princepreet) (Entered: 01/26/2023)	
93	02/07/2023	ORDER OF DISMISSAL - Parties settled, case is dismissed with prejudice pursuant to terms of settlement agreement. Signed by Honorable Timothy L. Brooks on February 7, 2023. (tg) (Entered: 02/07/2023)	
94	02/17/2023	NOTICE by Camelbak Products, LLC re 91 Order to Show Cause CAMELBAK'S RESPONSE TO ORDER TO SHOW CAUSE (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Errata H, # 9 Exhibit I, # 10 Exhibit J)(Thane, Joshua) (Entered: 02/17/2023)	
95	02/27/2023	RESPONSE by Zak Designs, Inc. re 94 Notice (Other), Zak Designs, Inc.'s Response to Camelbak's Response to Order to Show Cause. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Glasgow, Richard) (Entered: 02/27/2023)	
96	03/16/2023	ORDER IN RESPONSE TO ORDER TO SHOW CAUSE (see Order for specifics). Signed by Honorable Timothy L. Brooks on March 16, 2023. (bjb) (Entered: 03/16/2023)	

Patents

Number	Title	Issued	Class	Subclass
9,463,911	Drink bottles	10/11/2016	1	1
9,782,028	Drink containers	10/10/2017	1	1
9,820,595	Drink containers	11/21/2017	1	1
10,165,879	Drink containers	01/01/2019	1	1
10,542,833	Drink containers	01/28/2020	1	1
10,676,255	Drink bottles	06/09/2020	1	1

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End of Document

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

BIB DATA SHEET

CONFIRMATION NO. 7437

SERIAL NUMBER	FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
90/015,192	01/18/2023 RULE	215	3993	Z036-0005RE

APPLICANTS

INVENTORS

10676255, Residence Not Provided;
CAMELBAK PRODUCTS, LLC (PATENT OWNER), PETALUMA ,, CA;
ZAK DESIGNS INC. (3RD. PTY. REQ.), AIRWAY HEIGHTS, WA;
LEE & HAYES, P.C., SPOLANE, WA;

**** CONTINUING DATA ***************************

This application is a REX of 16/035,418 07/13/2018 PAT 10676255
which is a CON of 15/287,915 10/07/2016 PAT 10023365
which is a CON of 14/329,096 07/11/2014 PAT 9463911
which is a CON of 12/133,954 06/05/2008 PAT 8777048
which is a CON of 11/588,476 10/26/2006 PAT 8622237
which is a CON of 11/313,488 12/20/2005 PAT 7533783
which claims benefit of 60/706,700 08/08/2005
and claims benefit of 60/670,828 04/11/2005

**** FOREIGN APPLICATIONS ***************************

**** IF REQUIRED, FOREIGN FILING LICENSE GRANTED ****

Foreign Priority claimed ☐ Yes ☐ No 35 USC 119(a-d) conditions met ☐ Yes ☐ No Verified and Acknowledged _____ Examiner's Signature	☐ Met after Allowance _____ Initials	STATE OR COUNTRY	SHEETS DRAWINGS	TOTAL CLAIMS	INDEPENDENT CLAIMS
				19	1

ADDRESS

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

TITLE

DRINK CONTAINERS

FILING FEE RECEIVED		
0.00	FEES: Authority has been given in Paper 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

BIB (Rev. 05/07).

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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.
90/015,192	01/18/2023	10676255		7437

165846 7590 09/28/2023

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

EXAMINER	
JASTRZAB, JEFFREY R	

ART UNIT	PAPER NUMBER
3993	

MAIL DATE	DELIVERY MODE
09/28/2023	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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LEE & HAYES, P.C.
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

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

PATENT UNDER REEXAMINATION *10,676,255* .

ART UNIT *3993* .

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

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

/JEFFREY R JASTRZAB/

PTOL-465 (Rev.07-04)

Notice of Intent to Issue Ex Parte Reexamination Certificate	**Control No.** 90/015,192	**Patent Under Reexamination** 10676255	
	Examiner JEFFREY R JASTRZAB	**Art Unit** 3993	**AIA Status** No

-- 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: 28 August 2023.
   (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 _____
   (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: _____.
      (2) Patent claim(s) amended (including dependent on amended claim(s)): 1,3-8,13-14 and 18-19
      (3) Patent claim(s) canceled: _____.
      (4) Newly presented claim(s) patentable: 20-23.
      (5) Newly presented canceled claims: _____.
      (6) Patent claim(s) ☐ previously ☐ currently disclaimed: _____
      (7) Patent claim(s) not subject to reexamination: 2,9-12 and 15-17.
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.

/JEFFREY R JASTRZAB/ Reexamination Specialist, Art Unit 3993	

cc: Requester (if third party requester)

Notice of Intent to Issue Reexamination Certificate

Claim Status

Claims 1, 3-8, 13, 14, 18 and 19 are patentable as amended.

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

New Claims 20-23 are patentable.

Withdrawn Rejections

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

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

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

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

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

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

of Claims 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of Wright et al. and further in view of Anderson and Roth;

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

of Claims 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over Toudou in view of Wright, Canham and Heise and further in view of Anderson and Roth;

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

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

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:

As to the rejections over McDonough et al. and Toudou et al., the amendments to Claims 1 and 20 serve to define over each. More specifically, Claim 1 is amended herein to recite "*a pivotal mount coupled to the cap assembly base for pivotal movement relative to the cap assembly base, the pivotal mount comprising a mount outlet*" and "*a resilient mouthpiece engaged with the mount outlet and removably coupled to the pivotal mount for pivotal movement with the pivotal mount relative to the cap assembly base*." Additionally, new claim 20 recites "*a dust cover configured to at least partially cover the dispensing outlet when the mouthpiece and pivotal mount are in the stowed position, wherein the dust cover remains stationary when the mouthpiece and the*

pivotal mount are selectively pivoted between the stowed position and the dispensing position."

It is agreed that McDonough fails to teach these new limitations for the reasons argued on pages 11-17 of the Response, in combination with the other claimed elements. It is further agreed that Toudou fails to teach these limitiaotns for the reasons argued on pages 17-21 of the Response.

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.

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

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

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

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

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

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

For EFS-Web transmissions, 37 CFR 1.8(a)(1)(i) (C) and (ii) states that correspondence (except for a request for reexamination and a corrected or replacement request for reexamination) will be considered timely filed if (a) it is transmitted via the Office's electronic filing system in accordance with 37 CFR 1.6(a)(4), and (b) includes a certificate of transmission for each piece of correspondence stating the date of transmission, which is prior to the expiration of the set period of time in the Office action.

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

/Jeffrey R. Jastrzab/
Jeffrey R. Jastrzab
Reexamination Specialist
AU 3993
(571) 272-4947

Conferees: /BMF/
Beverly M. Flanagan
Reexamination Specialist, Art Unit 3993

/GAS/
Gay Ann Spahn
Supervisory Patent Reexamination Specialist, Art Unit 3993

Reexamination	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/015,192	10676255
	Certificate Date	Certificate Number
		C1

Requester Correspondence Address: ☐ Patent Owner ☑ Third Party
LEE & HAYES, P.C. 601 W. RIVERSIDE AVENUE SUITE 1400 SPOKANE, WA 99201

LITIGATION REVIEW ☑	/JRJ/ (examiner initials)	18 September 2023 (date)
Case Name		Director Initials
Camelbak Products,LLC v. Zak Designs, Inc., 5:21cv5109, USDC W. AR, closed		GAS for DPR

COPENDING OFFICE PROCEEDINGS	
TYPE OF PROCEEDING	NUMBER
None	N/A

/JEFFREY R JASTRZAB/ Reexamination Specialist, Art Unit 3993	

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/015,192	10676255
	Examiner	Art Unit
	JEFFREY R JASTRZAB	3993

CPC - Searched*		
Symbol	Date	Examiner

CPC Combination Sets - Searched*		
Symbol	Date	Examiner

US Classification - Searched*			
Class	Subclass	Date	Examiner

* 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
Reviewed subject patent file history.	01/26/2023	/JRJ/
P-TACTS for AIA proceedings: none	01/26/2023	/JRJ/
Litigation Search	02/03/2023	/JRJ/
PDP for continuity	02/03/2023	/JRJ/
Reviewed 90/015013	02/03/2023	/JRJ/
Updated above	09/15/2023	/JRJ/

Interference Search			
US Class/CPC Symbol	US Subclass/CPC Group	Date	Examiner

/JEFFREY R JASTRZAB/ Reexamination Specialist, Art Unit 3993	

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CamelBak - Ex 2002
Page 849 of 857

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/015,192	10676255
	Examiner	Art Unit
	JEFFREY R JASTRZAB	3993

CPC							
Symbol						Type	Version
B65D	/	47	/	065		F	2013-01-01
A45F	/	3	/	20		I	2013-01-01
A47G	/	19	/	2266		I	2013-01-01
B65D	/	47	/	066		I	2013-01-01
A47G	/	19	/	2272		A	2013-01-01

CPC Combination Sets								
Symbol						Type	Set	Ranking	Version
	/		/						

NONE		Total Claims Allowed:	
(Assistant Examiner)	(Date)	15	
/JEFFREY R JASTRZAB/ Reexamination Specialist, Art Unit 3993	15 September 2023	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	1

U.S. Patent and Trademark Office — Part of Paper No.: 20230915

IPR 2025-00140
CamelBak - Ex 2002
Page 850 of 857

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/015,192	10676255
	Examiner	Art Unit
	JEFFREY R JASTRZAB	3993

INTERNATIONAL CLASSIFICATION				
CLAIMED				
B65D	/	47	/	06
A47G	/	19	/	22
A45F	/	3	/	20

NON-CLAIMED				
	/		/	

US ORIGINAL CLASSIFICATION	
CLASS	SUBCLASS

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

NONE		Total Claims Allowed:	
(Assistant Examiner)	(Date)	15	
/JEFFREY R JASTRZAB/ Reexamination Specialist, Art Unit 3993	15 September 2023	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	1

U.S. Patent and Trademark Office

Part of Paper No.: 20230915

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CamelBak - Ex 2002
Page 851 of 857

Issue Classification	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/015,192	10676255
	Examiner	Art Unit
	JEFFREY R JASTRZAB	3993

☑ 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)	15	
/JEFFREY R JASTRZAB/ Reexamination Specialist, Art Unit 3993	15 September 2023	O.G. Print Claim(s)	O.G. Print Figure
(Primary Examiner)	(Date)	1	1

U.S. Patent and Trademark Office Part of Paper No.: 20230915

IPR 2025-00140
CamelBak - Ex 2002
Page 852 of 857

Bibliographic Data

Application No: 90/015,192

Foreign Priority claimed: ○ Yes ◉ No

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

Verified and Acknowledged: /JEFFREY R JASTRZAB/ Examiner's Signature | Initials

Title: DRINK BOTTLES

FILING or 371(c) DATE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
01/18/2023	215	3993	
RULE			

APPLICANTS

INVENTORS

10676255,

CAMELBAK PRODUCTS, LLC (PATENT OWNER), PETALUMA ,, CA, UNITED STATES

ZAK DESIGNS INC. (3RD. PTY. REQ.), AIRWAY HEIGHTS, WA, UNITED STATES

CONTINUING DATA

This application is a REX of 16035418 07/13/2018 PAT 10676255

16035418 is a CON of 15287915 10/07/2016 PAT 10023365

15287915 is a CON of 14329096 07/11/2014 PAT 9463911

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FOREIGN APPLICATIONS

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US010676255C1

(12) EX PARTE REEXAMINATION CERTIFICATE (12443rd)
United States Patent
Choi et al.

(10) Number: US 10,676,255 C1
(45) Certificate Issued: Nov. 20, 2023

(54) **DRINK BOTTLES**

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Reexamination Request:
No. 90/015,192, Jan. 18, 2023

Reexamination Certificate for:
Patent No.: **10,676,255**
Issued: **Jun. 9, 2020**
Appl. No.: **16/035,418**
Filed: **Jul. 13, 2018**

Related U.S. Application Data

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

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

(51) **Int. Cl.**
B65D 47/06 (2006.01)
A47G 19/22 (2006.01)
A45F 3/20 (2006.01)

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

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

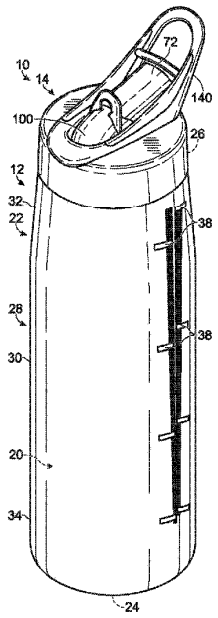
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To view the complete listing of prior art documents cited during the proceeding for Reexamination Control Number 90/015,192, please refer to the USPTO's Patent Electronic System.

Primary Examiner — Jeffrey R Jastrzab

(57) **ABSTRACT**

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



EX PARTE REEXAMINATION CERTIFICATE

THE PATENT IS HEREBY AMENDED AS INDICATED BELOW.

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

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

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

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

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

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

1. A drink container, comprising:

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

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

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

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

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

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

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

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

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

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

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

20. A drink container, comprising:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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