

2007 PAPER P4

SAMPLE SCRIPT A

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Claims:

New (amended) claim 1:

A cap for covering the opening of a drinking vessel, the cap having a through-hole, an open ended tube extending from the outer end of the through-hole, and an air hole provided through the cap, the tube being movable between a first, open configuration, in which the bore of the tube communicates with the through-hole to provide, in use, access to the contents of the drinking vessel via the tube and the through-hole and to allow, in use, air to flow between the vessel and the exterior through the open air hole, and a second blocking configuration, in which the through hole is blocked, wherein a projection provided on the tube is arranged to fit into and seal the air hole when the tube is in the second configuration and to retain the tube in the second configuration.

2. A cap according to claim 1 in which in the second configuration of the tube the through-hole is blocked by the wall of the tube.
3. A cap according to claim 1 or 2 in which the tube is rotatable about its end adjacent the through-hole, between the first and second configurations.
4. A cap according to claim 3 in which the angular displacement between the first configuration of the tube and the second configuration of the tube is approximately 90 degrees.

New Claim 5:

A cap as claimed in claims 3 or 4 in which the tube is mounted to the cap to pivotally rotate by outwardly extending pin projections at the end of the tube adjacent the through-hole which extend into holes in the cap.

6. A container cap according to the claim 3, 4 or 5, in which the end of the tube adjacent the through-hole has an enlarged section of substantially cylindrical shape, the axis of the enlarged cylindrical section being perpendicular to the axis of the tube so as to afford the said rotation of the tube and so that, in the second configuration of the tube, the wall of the enlarged cylindrical section blocks the through-hole.
7. A cap according to any preceding claim in which the tube, in its second configuration, lies in a groove provided in the cap.
8. A cap according to any preceding claim in which the cap has a seal adapted to fit over the rim of a drinking vessel.

New Claims 9 - 14:

9. A cap as claimed in claim 8 wherein the seal is a resilient mating groove in the cap adapted to fit over the rim of a container

- 10: A cap as claimed in claim 8 wherein the seal is a screw fitting.
- 11: A cap as claimed in any preceding claim further having a detachable pipe that extends downwardly from the through-hole into the contents of the drinking vessel in use.
- 12: A drinking vessel having a cap as claimed in any preceding claim covering its opening.
- 13: A cap substantially as herein before described with reference to the drawings.
- 14: A drinking vessel having a cap covering its opening substantially as herein before described with reference to Figures 1-5 or Figure 6 or Figure 7.

Proposed divisional claim:

A cap for covering the mouth of a drinking vessel [remainder of original claim 1], the cap further having a detachable pipe that extends downwardly from the through-hole into the contents of the drinking vessel in use.

Letter to the Patent Office:

Dear Sirs,

In response to the outstanding examination report on GB'812, I enclose an amended set of claims 1-14.

The examiner will note that claims 1-11 and 13 are now directed to a cap for covering the opening of a drinking vessel and that the drinking vessel itself is no longer part of these claims. Basis for this can be found in the statement of the invention on p1 1.6-17 as filed and in the statement of the technical field on p1 1.1-2. Claims 12 and 14 are now directed to a drinking vessel having the claimed cap, wherein claim 12 is dependent on claims 1-11. Claim 1 has been amended to include the feature of the air hole of claim 7 which is open in the first tube configuration and blocked in the second tube configuration. Claim 7 has been deleted. It is further claimed in claim 1 that a projection is provided on the tube which fits into and seals the air hole in the second configuration, thereby preventing leakage from the container (basis – pg 3 lines 29-35), and also retaining the tube in the second configuration thereby preventing inadvertent opening of the bore (basis pg 4 lines 1-5 and pg 2 lines 9-10). Further functional wording has been inserted into claim 1 to clarify the function of the two configurations of the tube when the cap is in use (basis p.1 1.24-26).

Claims 2-4 remain with claims 3-4 being clarified.

New Claim 5 has been inserted and finds basis in page 3 lines 19-21.

Original Claims 5, 6 and 8 have been renumbered.

New Claims 9 and 10 find basis in the last paragraph of page 4.

New Claim 11 finds basis on pg 1 1 26-29 and pg 3 1 6-14.

Omnibus claims 13 and 14 have been added.

With regard to novelty, D1 discloses a container closure having a movable spout 16 assembly which is biased positively in its open and closed positions by leaf spring 30. In the open position, dispensing opening 20 in the spout 16 communicates with opening 24 in the cap and spout vent 22 communicates with cap vent opening 26 and holes 34, 32 to allow dispensing and venting of the contents of the container.

However, in the closed position, as shown in Figure 4A the spout surface merely covers the vent opening 26 in the cap and the leaf spring urges the spout 16 in the closed position. No projection on the spout is provided to fit into and seal the vent opening 26 and to act to retain the spout in place. This is performed by the leaf spring.

Therefore Claim 1 is novel over D1.

The dispensing closure 10 of D2 relates to a cover for squeezable containers (see p1, 1st para), and so no separate venting mechanism is provided or said to be needed as the container is vented through opening 24 after dispensing.

Therefore C1 is novel over D2 as no separate air hole and through-hole through the cap are provided. In any case, no protrusion is provided on the spout 14 to engage the opening 24 when in the closed configuration and to retain that position, as required by claim 1.

Therefore we submit claim 1 to be novel.

With regard to inventive step, we submit that the skilled man would be a drinks container engineer.

The inventive concept of claim 1 is to provide a cap with a mechanism for venting the container and for holding the spout in the closed position that positively prevents leakage from the container.

Beginning from D1, the skilled man would have to provide a protrusion on the spout 16 to sealingly engage the vent hole 26 in the closed position and retain it in the closed position.

He would have no motivation for doing this as in D1, the spout itself is said in the closed position to effectively close off the vent opening and reduce leakage, and the leaf spring is already provided to urge the spout closed. Therefore the skilled man would not think it necessary to adapt D1 in the claimed way.

Further, there is no teaching or suggestion in his common general knowledge of D2 which would lead him to adapt D1 to provide such a claimed protrusion.

The leaf spring device of D1, unlike the protrusion of the present invention, only urges the spout closed to cover the vent opening. Thus, in use, the spout may inadvertently be prised open leading to a spillage. Further, merely closing off the face of the vent does not provide an effective seal. Whereas, in the present invention, the protrusion seals the air opening and positively retains the tube in the closed position, minimising any leakage or spillage. Further, no leaf spring mechanism is needed leading to a more simple construction. The skilled man would not adapt D2 to arrive at the invention now claimed as there is no need to provide an air hole in the cap as the D2 cap is intended only for use with squeezable containers. Further, there is no teaching or suggestion of providing a projection on the spout.

Therefore we submit that claim 1 provides an inventive step.

The examiner will note that original claim 5 (new claim 6) has been amended to clarify the reference to the 'cylinder' as being the previously referred to 'cylindrical section'.

We submit this application is now in order for grant. However, please give us sufficient notification of any intended grant to provide is an opportunity to file any divisionals.

Yours....

Memo to J Straw:

I have prepared and filed the claimed response and have amended claim 1 to be directed to your preferred 'neat mechanism' for retaining the spout in the closed position and preventing leakage.

Original claim 1 lacked novelty over both D1 and D2 in which the spouts are movable between open and closed configurations in which the bores of the spouts are 'continuous' with the cap through holes and, alternatively, the through hole is blocked off.

As for possible amendments, I identified the straw feature as novel and advantageous. However, it appears that it is not an essential feature of your current product and so I suggest we file a divisional, if you like, directed to this feature, and I suggest the enclosed claim as an example. Unfortunately, we are limited to a divisional claim comprising the cap of original claim 1 as there is no basis for a broader claim than this to the cap and pipe only. Such a claim to a detachable pipe straw is arguably inventive.

Other possibilities were the pin arrangement as you suggest, but this would have lacked either novelty over the pin-end like trunnion mechanism of D2 or at least an inventive step.

The vent hole was disclosed in D1, so would not merit a granted claim. A single air hole would lack inventive step. A claim to a general 'retro fit' cap would also have been advantageous but would probably have been obvious.

The neat projection sealing mechanism provides a definitive I.S. and technical advantage which will clearly be of use to you in marketing your caps.

I have also tidied up the claims generally to make them clearer and easier to interpret.

I have added dependent claims to newly claimed features which may provide good fall-backs. I have also added omnibus claims.

In order to protect your 'cap' products on their own, I have amended the claims to be directed to a cap for covering a drinking vessel opening. (limitation to a drinking vessel will cover your interests and guard somewhat against accidental anticipations of other unrelated vessel caps). There is basis for this in the spec as filed. I have also added in a dep. claim to a container having a cap as previously claimed in other claims. This would maximise you protection.

I have also requested sufficient notice of grant to give us time to file a div. app. Please let me know if you are interested as I can see you would like to minimise costs.

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SAMPLE SCRIPT B

This script has been supplied by the JEB as an example of an answer which achieved a pass in the relevant paper. It is not to be taken as a "model answer", nor is there any indication of the mark awarded to the answer. The script is a transcript of the handwritten answer provided by the candidate, with no alterations, other than in the formatting, such as the emboldening of headings and italicism of case references, to improve readability.

Potential Divisional Application

1. A cap for covering the mouth of a container, said cap having a spout through which is defined a bore, and extending downwardly from a lower end of which bore is an elongate tube.
2. A container fitted with a cap according to claim 1.

Claims

1. A cap for covering a mouth of a container, said cap having a through-hole and an open ended tube extending from the outer end of the through hole, the tube being movable between a first configuration and a second configuration wherein in the first configuration of the tube its bore is continuous with the through-hole, and in the second configuration of the tube the through-hole is blocked, and wherein the tube further comprises a projection that is adapted to mate with an air hole defined in the cap (thereby to hold the tube in the second configuration).
2. A cap according to claim 1, wherein the projection snap fits into the air hole and plugs and seals it, thereby preventing spillage from the container.
3. A cap according to claim 1 or claim 2 in which an end of the tube adjacent the through-hole has an enlarged section of substantially cylindrical shape, the axis of the cylindrical enlarged section being perpendicular to the axis of the tube so as to afford rotation of the tube and so that, in the second configuration of the tube, the cylinder wall blocks the through hole.
4. A cap according to claim 1 to 3, wherein the tube is rotatable about a hinge pin that passes through an end of the tube adjacent the through-hole.
5. A cap according to claims 1 to 4, in which the cap has a seal adapted to fit over the rim of a container.
6. A cap according to claim 5, wherein the cap is attachable to the rim of a container by virtue of the mating of a resilient groove in the cap and said rim.
7. A cap according to claim 5, wherein the cap is attachable to a container by virtue of a suitably dimensioned screw fitting.
8. A cap according to any preceding claim wherein the cap further comprises a spigot at a lower end of the through hole, which spigot mates detachably with an elongate tube.
9. A cap according to claims 1 to 7, wherein an elongate tube is integrally formed with a lower end of the through hole and which extends downwardly from the cap.
10. A container fitted with a cap according to claims 1 to 7.

The Comptroller
UK IPO
Newport

Dear Sirs,

Application number 05 67812.4

Applicant: 2-Can Ltd.

With reference to the Examiner's report dated XX, the applicant hereby files his response by the deadline of 1 November 2007.

The applicant hereby files amended claims 1 to 10 that replace original claims 1 to 8 presently on file. Any subject matter in the claims hereby cancelled, is so cancelled on an expressly non-prejudice basis, and the Applicant expressly reserves the right to base one or more divisional applications on, or to reinstate any portion thereof.

Should the examiner feel that the application or amended is still unallowable, the applicant requests that a further examination report be issued and that, before refusal of this application, the applicant be given the opportunity to be heard.

Support for the Amendments

Claim 1 is now directed to a cap rather than a container having a cap, this is supported by the first line of the description where it says that the invention relates to "a cap". The applicant submits that the scope should not be limited to application of the cap to a "bottle or can" because the language of the description clearly indicates that application of the cap to any container was in mind (see "however....vessels") p 11/ 18-19.

Claim 1 has also been amended to limit it to the "projection" of p.10/29 that "mate(s) with an air hole [in the cap]" p10/30. This projection thereby holds the hole in its second configuration as explained "By this means...position" p.11/3-4.

Claim 2 is newly inserted and defines the snap fit [of the projection] into the air hole [to] plug and seal it, thereby preventing spillage from the container" p.10/33-35.

Claim 3 is the combination of former claims 2 and 5.

Claim 4 is new and recites the feature of the "hinge pin 23" p.10/19-20.

Claim 5 is former claim 8.

Claims 6 and 7 are new and define the alternative methods of attaching the cap to a container set out in "however....fitting" at p.11/18-21.

Claims 8 and 9 are new and directed to the 'spigot' described at p.10/8 that either "mates detachably" p.10/8 or is "formed integrally" p.10/9 with a lower end of the through hole.

Claim 10 is new and is directed to the combination of the cap with a container.

Novelty

Claim 1 as amended provides a tube with a projection that "mates" with an air hole in the cap. D1 does not provide a "projection" on its tube that mates with an air hole; the "trunions 28" p.19/29 engage against the "leaf springs 30" p.19/30. The "vent opening 22" p.19/8 that depends from that

main tube does not “mate” with the “vent 26 in the cover” p.19/12-13 but rather simply overlies it in the tube’s closed position, as illustrated in fig. 4A.

Claims 2 to 9 fall within the scope of claim 1 and are therefore, similarly distinguished. Nonetheless, the applicant draws the Examiner’s attention to the fact that even if D1 were construed to provide a projection that mates with an air hole in the cap, claim 2 would still be novel because it limits the “mating” to plugging and sealing the air hole. “Plugging” clearly means the entering of a bung of some sort into an aperture; and therefore the unlikely “projection” of D1 would fall short, as it merely rests on top of the air hole, as shown in fig 4A.

Claims 8 and 9 are also distinct over both D1 and D2, neither of which contemplate any sort of spigot or integrally formed elongate member depending down from the cap and into the vessel.

Claim 10 is novel on the same basis as claim 1.

Inventive Step

Claim 1 as amended is distinguished from the closest prior art (D1) by virtue of the projection that mates with an air hole. This is inventive over D1 in that it is a simpler solution to the problem of maintaining the tube in its closed position than the rectangular tube and trunion/leaf spring arrangement of D1. The mating of the projection and air hole, once formed, requires a conscious effort to “break” (or disconnect) and therefore maintains the tube closed. D1 teaches away from this, in that the trunions and leaf springs engage and subsequently deform (the leaf springs that is) to provide a resilient bias force that keeps the tube closed.

Combining D2 with D1 does not render claim 1 obvious as its tube is “rotated easily and conveniently between [the opened and closed]...positions” p.25/Para 4, lines 9-10. D2 has no projections, nor air hole that could equate to the features of claim 1.

Claim 2 is further inventive over D1 in that by plugging and sealing the air hole, the cap produces a tight seal against spillage, and uses the force that the user imparts to create the seal to create a snap fit that also keeps the tube closed. Neither D1 alone, nor in combination with D2 arrive at such a plugged seal.

Claims 2 to 10 fall completely within the scope of claim 1 and are, therefore, similarly inventive.

Nonetheless, claims 8 and 9 are further inventive in that the provided elongate member, be it mated detachably with the cap or integrally formed, allows the user to drink substantially all the fluid in the container without tilting it and therefore without risking liquid egressing via the air hole. Neither D1 alone, nor in combination with D2 would lead the skilled addressee to consider fitting such an elongate member to the bottom of the through hole. D1 suggests a “drinking straw [may] be inserted through the openings” p.18/15-16, but this does not benefit from the hidden, tidying and convenient provision of an integrated drinking straw depending from the cap.

Clarity

“cylinder” in claim 5 (new claim 2) has been given antecedent basis.

Please favourably reconsider the allowance of this application based on the amended claims.

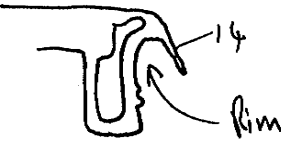
Yours Sincerely
P. Attorney

Memo

1. Reasoning for actions taken.
2. Outline suggested future actions.
3. What further info. could be needed.

The following indicated how the citations relate to the examined claims:

Claim 1.	D1 (full prior art)	D2 (full prior art)
Container + cap for mouth	Present – “cover assembly...can” p. 18/3-4	Present “dispensing closures....packaging” p.18/Para 1
“Through-hole”	Present – (24) fig 4a	Present – (24) fig 2
“Open ended tube...through hole”	Present – (20) fig 4a	Present (50) fig 2
Tube moveable between 1 st and 2 nd config.	Present “upright position” p.19/11 & closed position” p.19/29	Present – “closed position” p.25/para 4, line 7. “open position” p.25/para 4, line 9
1 st config, bore continuous with through hole	Present – fig 2	Present – fig 2
2 nd config through hole blocked	Present – fig 4b	Present – fig 2
Claim 2		
Through hole blocked by wall of tube	Present – fig 4a	Present – fig2
Claim 3		
Tube rotates adjacent through hole	Present – fig 4a vs. fig 4b	Present – fig 2
Claim 4		
1 st config – 2 nd config ~ 90°	Present – fig 4a vs. fig 4b	Present – fig 2
Claim 5		
Cylindrical part of tube perpendicular to tube axis	Not present “rectangular section” p.19/8 + discussion of trunions rising up and down p.19/lines 23-28	Present (lib) fig 4
Claim 6		
Tube lies in groove in cap in 2 nd config	Present – illustrated in fig 4a	Present illustrated in fig 1
Claim 7		
Air hole through cap that is open in 1 st config + blocked in 2 nd config	Present – “vent opening” p.19/16	Not present

Claim 8		
Cap has seal adapted to fit over rim of container	Present – illustrated in fig 4a 	Not specifically contemplated

The claims are largely anticipated.

Re: projection on tube – D1 has no projection – the air vent part of the tube could arguably be called as such, but see below. D2 has no such projection at all from its tube.

The projection “mates” with the air hole to keep the tube in closed position and so seal the hole. This seemed both novel and inventive and the language is not overly restrictive as to where or what the projection is.

Have amended claim 1 to recite the projection that mates with the air hole to keep the tube closed and have created a new claim 2 to the “plug and seal”, “snap fit” language that relates to preventing spillages – this offers a strong fall position.

So as to cover the sale of caps on their own, I have directed claim 1 to a “cap” with a new claim 10 to the combination of cap and container.

Claim 4 is also new and limits to the hinge pin that you use – neither prior art doc has that. So it offers ‘another string to the bow’ later. Is this a cheaper design?

Claims 6 & 7 will offer us some latitude for amending to different ways of engaging the cap onto a container should we uncover a specific arrangement of container/ cap that we need to overcome.

Claims 8 and 9 introduce the spigot/ integrally formed elongate member language. This would also be a very strong fall back amendment should we need it as neither prior art document suggests such a feature. See notes below re: divisional.

I have enclosed details of claims 1 and 2 of a proposed divisional application. This is directed to the inclusion of an elongate member, depending from the cap, as broadly as possible. The description suggests that such a feature is only useful for caps that have spouts, hence I have limited the claim as such. There is support for the word “spout” in the description p.10/10 and the presence of a bore is inherent, so support for this word should not be an issue.

We have until 4 years, 3 months from the priority date of the application, though filing as early as possible is advised. Discuss funding for divisional and strategise as to when to file. When is the “follow-up” product going to be launched? Will it be covered by the divisional (or parent even)? Are there samples available?

Filing a divisional is advisable because it will offer a great deal wider protection for the concept than is possible with the parent due to the limitations claim of the parent necessarily comprises.

Suggest an infringement search before launching the follow up product to see what rights exist. A prior art search could be useful in determining whether or not to file divisional, but may as well ask the UK IPO to search it to keep costs down.

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SAMPLE SCRIPT C

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Amended Claims

- 1) A cap for covering a mouth of a container, said cap having a through-hole and an open-ended tube extending from the outer end of the through-hole, the tube being movable between a first configuration and a second configuration, wherein in the first configuration of the tube its bore is continuous with the through-hole, and in the second configuration of the tube, the through-hole is blocked, and wherein the cap has an air-hole and the tube has a projection which is adapted to mate with the air hole, such that the air hole is open when the tube is in the first configuration and sealed by the projection when the tube is in the second configuration.
- 2) Original claim 2, but “a cap according to claim 1” NOT a “container and cap”
- 3) Original claim 3, but “a cap according to claim 1 or 2” NOT a “container and cap”
- 4) Original claim 4, but “a cap according to claim 3” NOT a “container and cap”
- 5) Original claim 6 (but “a cap ... “, NOT a “container and cap”).
- 6) A cap according to claim 3,4 and 5, wherein the end of the tube adjacent to the through-hole has an enlarged section of substantially cylindrical shape and one end of the groove section is provided with a concave section, containing the through hole, such that the enlarged section of the tube fits into the concave section and is rotatable therein, between a vertical orientation and a horizontal orientation, such that in the horizontal orientation, a wall of the enlarged section blocks the through-hole.

* Just realised don't need groove, therefore could just have concave section
- 7) A cap according to claim 5 or 6, wherein the groove and tube are rectangular in section.
- 8) A cap according to any one of the preceding claims, wherein the cap has a seal adapted to fit over the rim of the container.
- 9) A cap according to any one of the preceding claims, wherein the tube is connected to the cap by a pin.
- 10) A cap according to any one of the preceding claims, wherein the cap is provided with a pipe, which is arranged to extend from the cap, such that it extends downwardly into a container when the cap is attached to the container.
- 11) A cap according to claim 10, wherein the pipe is detachable.
- 12) A cap according to claim 10, wherein the pipe is formed integrally with the cap.

- 13) A cap according to any one of claims 5 to 13, wherein the groove extends at one edge to the peripheral edges of the cap.
- 14) A cap according to any one of the preceding claims, wherein the tube has a length of greater radius than the cap.
- 15) A container and the cap of any one of the preceding claims, wherein the cap is adapted to cover the container.
- 16). A container and cap according to claim 15, wherein the cap has a seal adapted to fit over the rim of the container.
- 16) A cap substantially as described herein, with reference to and as illustrated in accompanying figures 1 to 5.
- 17) A container and cap substantially as described herein with reference to and as illustrated in accompanying figures 6 and 7.

Divisional 1

- 1) A cap for covering a mouth of a container, said cap having a through-hole and an open-ended tube extending from the outer end of the through-hole, the tube being movable between a first configuration and second configuration, wherein in the first configuration of the tube, its bore is continuous with the through-hole, and in the second configuration of the tube, the through-hole is blocked, and wherein the cap is provided with a pipe which is arranged to extend from the cap, such that it extends downwardly into a container when the cap is attached to the mouth of said container.

2) Letter to the Patent Office

Dear Sirs,

In response to the office action on GB0567812.4, I file herewith an amended set of claims in duplicate. I also file herewith PF51/77 (for appointment of new agent).

Basis

Basis for the amended claims in the application as filed is as follows:

Claim	Basis
1	Original claims 1+7; p8 line 16 for "cap" only p10 line 29 for "projection" p10 lines 33-34
2	Original claim 2
3	Original claim 3
4	Original claim 4
5	Original claim 6
6	Based on original claim 5; p10 line 4 (for concave section) p10 line 18 (for "enlarged section" p10 lines 26-28

7	P9 lines 7-8
8	Original claim 8
9	Page 10, line 5
10	Page 8 lines 26-28
11	Page 10, lines 7-8
12	Page 10, lines 9-10
13	Page 10, lines 1-2
14	Page 10 , line 17
15	Original claim 8
16	Original claim 8
17	Description; figs 1-5
18	Description; figs 6+7

NOVELTY

The examiner has alleged that pending claim 1 lacks novelty in view of D1 and D2.

D1

claim 1 has now been amended to specify that the cap has an air hole and the tube has a projection which mates with the air hole.

Although the cover assembly described in D1 has a vent opening 26 and holes 32 and 34, there is no projection on the spout 16, (i.e. the tube) which mates with any of these openings to block them. Instead, the vent is opened and closed by altering the alignment with another vent opening 22 in the spout, not by mating with a projection in the spout.

Therefore, amended claim 1 and all its dependent claims are novel over D1

D2

The dispensing closure described in D2 does not have an air-hole. Instead, the closure avoids the need for venting the container (see page 24 1st paragraph). Therefore, amended claim 1 and all its dependent claims are novel over D2.

INVENTIVE STEP

The inventive concept embodied in amended claim 1 is the provision of a projection on the tube to block an air-hole in the cap, such that in the closed position, the projection plugs and seals the air hole preventing spillage from the container. This positively prevents leakage from the container when the spout is secured against the top of the cap. The air hole itself allows the contents of the container to be sucked out easily, especially from a relatively rigid container.

The person skilled in the art is likely to be a manufacturer of drinking vessels and his common general knowledge would include all the contents of D1 and D2. The cover assembly described in D1 includes a vent opening 26 and holes 32 and 34 (i.e. air holes), but there is no projection on the spout 16 to mate with one of these openings. Therefore, the difference between amended claim 1 and D1 is that amended claim 1 uses a projection on the tube to block the air hole when the tube is in the closed position, whereas D1 relies on the alignment of another vent opening 22 in the spout of open and

close vent opening 26. This is a very different mechanism from that specified by amended claim 1 and allows leakage from the container to be positively prevented from the container.

D2 does not disclose the use of an air hole in the cap at all and even teaches away from having one as the dispensing closure is designed to avoid the need for venting.

Therefore, the use of a projection on the tube to block the air-hole when the tube is in the closed position could not be obvious to the skilled person from D1 alone or from a combination of D1 and D2. Therefore, amended claim 1 and its dependent claims are inventive over the prior art

CLARITY/ SUPPORT

Previous claim 5 has been replaced by amended claim 6, which no longer includes the word “cylinder”. Therefore, the examiner’s clarity objection no longer applies.

The applicant intends to file one or more divisional applications. Therefore, should the examiner allow the application to proceed to grant, I request notification and a short stay of grant (e.g. a week)

Yours Faithfully,

X

MEMO TO CLIENT

Dear Mr. Straw,

I have amended your claims so that they are directed to a cap, rather than a container and cap, as you are selling covers separately from caps. (have also kept claims to cap and container)

As you acknowledge, previous claim 1 lacked novelty over D1 and D2 for the following reasons:

- D1 has a cover 14 and a spout 16, which could be pivoted between an open and closed position.
- D2 discusses a rotatable spout member 14 which is located in the closure top 12 by trunnions 40, which allow movement of the spout between open and closed positions.

Therefore, some amendment of the claims was required.

I agree with the examiner that previous claims 2-4 and 6-8 lacked novelty over D1 for the reasons listed in the office action. Therefore, none of these features could be added to claim 1 to make it novel.

The examiner acknowledged that previous claim 5 was novel, but not inventive. I struggled to come up with a good argument for inventive step for this, so did not make it an independent claim. I do not think that adding the pin to this claim would make it inventive, as you acknowledge this is a straightforward (i.e. obvious) alternative to using trunnions. Dealt with clarity issues of claim 5 by describing structural “concave” and “enlarged section” features and avoided the need to use “cylinder”. Could consider filing subject matter of amended claim 6 as a divisional, if you want to protect covers which don’t have an air hole or a pipe. However, I note you want to keep costs to a minimum. Please let me know.

Possible amendments to make claim 1 novel:

- i) Air hole in cap and projection on tube to mate with air hole
- ii) Pipe extending downwards from container
- iii) Rotatable enlarged section of tube to block through-hole in concave section

Choose (i) because its novel and inventive over prior art (because air hole makes it easier to suck contents from container and projections positively prevents leakage when tube is closed; basis for amendment is present in description. D1 doesn't have a projection : novel. Importantly, you say you like the feature of the air hole and the mechanism for holding spout closed (i.e. by projection).

Suggest filing divisional directed to pipe, even though you want to save money because you intend to use this idea in a follow-up product. This is inventive because allows container to be held upright while drinking.

Therefore, important to cover this.

Filed PF51/77 to appoint myself as agent.

Added omnibus claims to cover specific embodiment shown.

Added additional dependent claims to features I thought are inventive e.g. pipe feature in dependent claim 10 makes it possible to drink from the container while holding it upright.

Haven't limited container, so cap can be used with any beverage container.

As mentioned above, have directed amended claims to cap itself, as you to sell this separately

Yours sincerely

X

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