

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Zak Designs, Inc.,

*Petitioner,*

v.

CamelBak Products, LLC,

*Patent Owner.*

IPR2022-00803  
U.S. Patent 9,782,028

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**PETITION FOR *INTER PARTES* REVIEW**

**LIST OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
EX1001	U.S. Patent No. 9,782,028 (“the ’028 patent”)
EX1002	File history of U.S. Patent No. 9,782,028
EX1003	Declaration of Ottmar Brandau
EX1004	<i>Curriculum Vitae</i> of Ottmar Brandau
EX1005	International Patent Application Publication No. WO 2007/148441 to Yamashita et al. (“Yamashita”)
EX1006	English Translation of Yamashita and Certification of Accurate Translation
EX1007	U.S. Patent 5,791,510 to Paczonay (“Paczonay”)
EX1008	European Patent Application No. EP 1 095 599 to Dall’Agnese, <i>et al.</i> (“Dall’Agnese”)
EX1009	U.S. Patent 5,897,013 to Manganiello, <i>et al.</i> (“Manganiello”)
EX1010	U.S. Patent 3,307,752 (“Anderson”)
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## **I. INTRODUCTION**

Petitioner Zak Designs, Inc. requests *inter partes* review (“IPR”) of claims 1, 2, 5-10, 14, 16, and 21 of U.S. Patent 9,782,028 (“’028 patent”).

## **II. MANDATORY NOTICES**

### **A. Real Party-in-Interest**

Under 37 C.F.R. §42.8(b)(1), Petitioner Zak Designs Inc. certifies that Zak Designs, Inc. is the real party-in-interest in this proceeding.

### **B. Related Matters**

Patent Owner CamelBak Products, LLC is the assignee of record for the ’028 patent. The ’028 patent is at issue in the following district court matter: *CamelBak Products, LLC v. Zak Designs, Inc.*, No. 5:21-cv-05109 (W.D. Ark. June 11, 2021).

**C. Lead and Back-up Counsel and Service Information**

Petitioner identifies the following lead and back-up counsel:

<b>Lead Counsel</b>	<b>Back-up Counsel</b>
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Petitioner consents to service electronically by email at ZakDesignsIPR@leehayes.com.

**III. GROUNDS FOR STANDING**

Petitioner certifies the '028 patent is available for IPR and Petitioner isn't barred/estopped from requesting IPR of the challenged claims.

**IV. PRECISE RELIEF REQUESTED**

**A. Claims for Which Review Is Requested**

Petitioner requests IPR and cancelation of challenged claims 1, 2, 5-10, 14, 16, and 21.

**B. Statutory Grounds<sup>1</sup>**

<b>Ground</b>	<b>Claims</b>	<b>Description</b>
1-2	1, 2, 5-9, 21	Yamashita (EX1005)--§§102, 103
3	1, 2, 5-9, 21	Yamashita, Paczonay (EX1007)--§103

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<sup>1</sup> Pre-AIA 35 U.S.C. §§102, 103 applies here.

Ground	Claims	Description
4-5	1, 2, 5-9, 21	Yamashita, Dall’Agnese (EX1008)--§103; Yamashita/Paczonay, Dall’Agnese--§103
6-8	16	Yamashita, Manganiello (EX1009)--§103; Yamashita/Paczonay, Manganiello--§103; Yamashita/Paczonay/Dall’Agnese, Manganiello--§103
9	1, 2, 5, 8-10, 14, 16, 21	Manganiello, Dall’Agnese--§103
10	1, 2, 5, 8-10, 14, 16, 21	Manganiello/Dall’Agnese, Paczonay--§103
11-12	6	Manganiello/Dall’Agnese, Anderson (EX1010)--§103; Manganiello/Dall’Agnese/Paczonay, Anderson--§103
13-14	7	Manganiello/Dall’Agnese, Yamashita--§103; Manganiello/Dall’Agnese/Paczonay, Yamashita--§103

Each cited reference is a patent document issued/published more than year before the earliest-claimed priority date of the ’028 patent, qualifying as prior art under §102(a), (b).

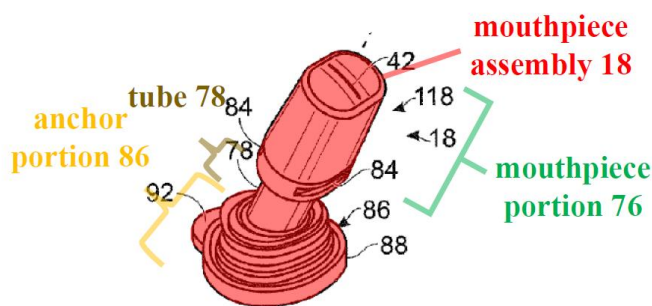
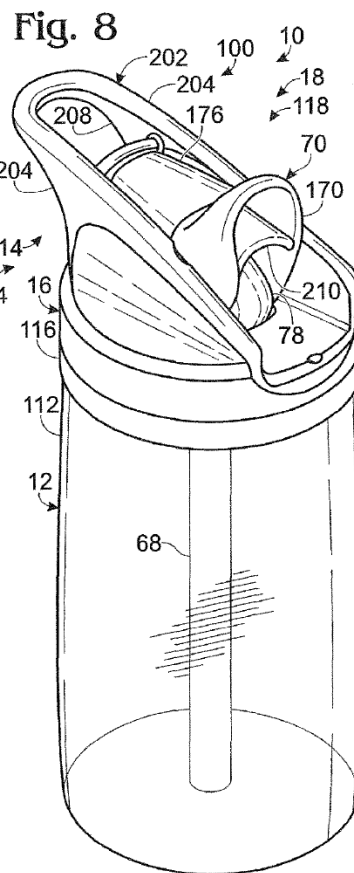
## **V. THE ’028 PATENT**

### **A. Overview**

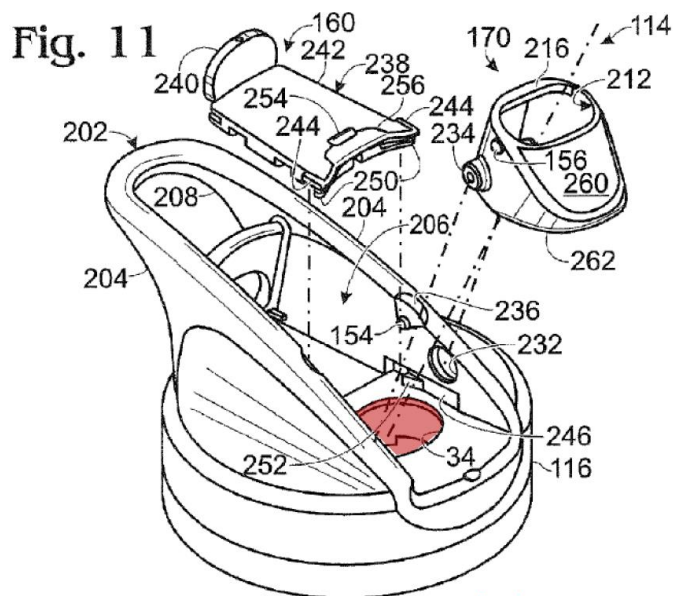
The ’028 patent describes a drink container having: (1) a unitary mouthpiece assembly with an anchor portion retaining the mouthpiece assembly in base of the cap; (2) a stowed configuration crimping the mouthpiece assembly so liquid cannot flow; (3) a dispensing configuration uncrimping the mouthpiece assembly so liquid



The mouthpiece assembly has mouthpiece portion 76, EX1001, 8:28-34, and “[t]ube 78 ... for drink liquid to flow from the internal compartment of the liquid container to mouthpiece portion 76.” *Id.*, 9:17-28. “[C]onstructed as a unitary assembly of a resiliently deformable material,” *id.*, 10:56-59, the mouthpiece assembly pivots between the drinking (FIG. 7) and stowed (FIG. 8) configurations to open/close the container. *Id.*, 5:25-28, 5:38-51, 11:4-14.



'028 Patent, FIG. 11\*<sup>2</sup>

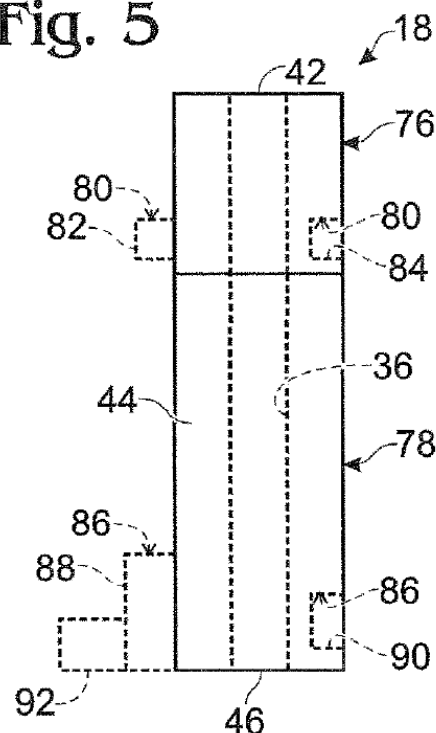


<sup>2</sup> Petitioner identifies figures modified by annotations/colorization with “\*”.

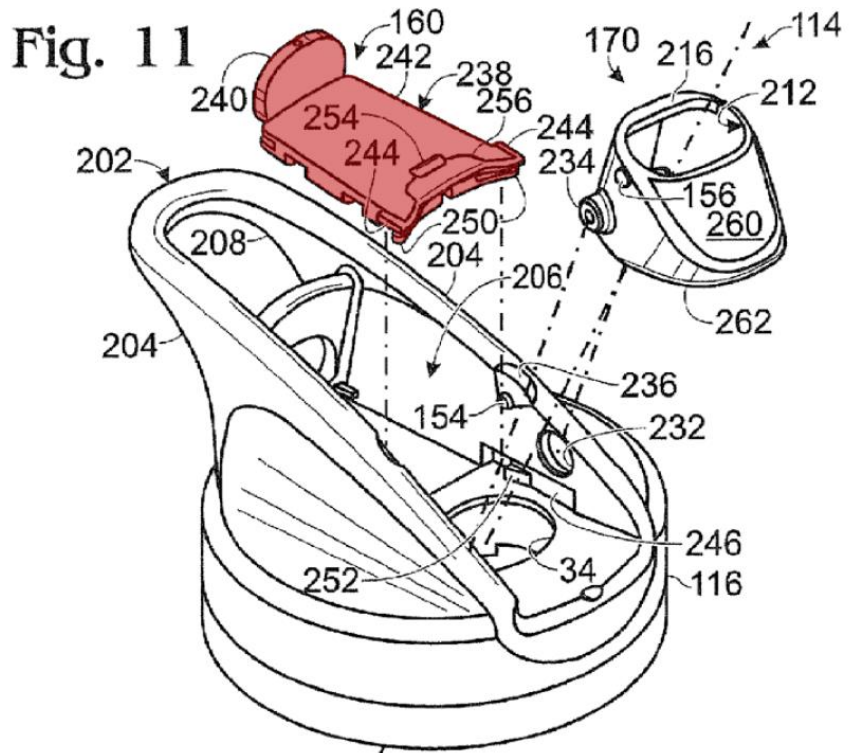


In the stowed configuration (FIG. 8, above), a crimping region 44 (FIG. 5, right) of the tube becomes crimped “to prevent, or at least restrict, the flow of drink liquid through the liquid passage.” *Id.*, 9:17-23; *see*, 5:33-65, 7:6-8:8, 9:24-28. The mouthpiece assembly has an “internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed” toward the dispensing configuration. *Id.*, 5:52-65, 6:37-39. In the dispensing configuration (FIG. 7), the mouthpiece assembly is uncrimped so liquid may flow through the liquid passage within the mouthpiece assembly. *Id.*, 12:1-13.

**Fig. 5**



User release mechanism 160 in the cap “permit[s] the reconfiguring of the mouthpiece assembly from the stowed configuration to the dispensing configuration.” *Id.*, 12:50-54, FIG. 11 (right). It “includes a sliding



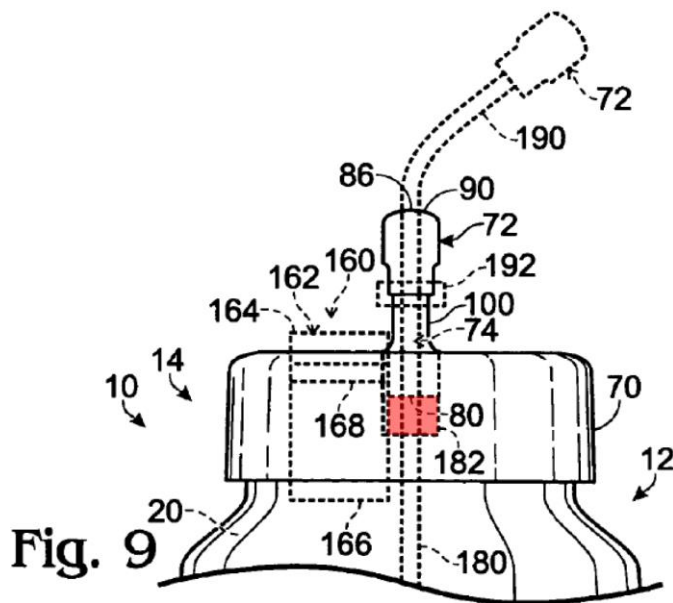
member 238” with “a user engagement pad 240 and an actuator [in the form of] generally planar portion 242. *Id.*, 12:54-58. “Sliding member 238 is configured to slide relative to the base of the cap assembly upon user actuation of the user release mechanism (i.e., upon user engagement and translation of the user engagement pad).” *Id.*, 12:61-65.

Translating sliding member 238 toward tube 78 disengages one catch structure from another, allowing the mouthpiece assembly to move from the stowed to the dispensing configuration. *Id.*, 12:61-13:33. To close the container, the user pivots the mouthpiece assembly to the stowed configuration, crimping the tube and reengaging the catch structures to hold the mouthpiece in position. *Id.*, 5:66-6:9,

11:61-67, 12:38-44. In some embodiments, the mouthpiece may have a bite-actuated valve at its outlet 42 (FIG. 11). *Id.*, 10:27-43, FIG. 11.

## B. Prosecution History

The '028 patent prosecution focused on establishing Choi (EX1011) does not disclose the claimed anchor portion. In the first action, the examiner rejected claims as obvious over Choi (and other references), identifying Choi's mount 182 as the claimed anchor portion of the mouthpiece assembly. EX1002, 393-404; EX1011, FIG. 9 (right). The applicant argued Choi's mount 182 wasn't "a mouthpiece anchor ... sized to restrict passage of the anchor through a through-passage defined by the base of the associated cap assembly, as recited in [the] independent



claims[.]” EX1002, 378. In a final rejection, Examiner disagreed and asserted Choi's mount 182 “has the size capable of performing the recited function” of restricting passage the through passage of the cap assembly. *Id.*, 345-357.

The applicant appealed the rejection, *id.*, 246-294, and the Board reversed the examiner finding “[t]he ‘sized to restrict’ language ... is not a statement of intended use.” *Id.*, 203. Rather, “this 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.” *Id.* And Choi “does not describe its size, shape, structure, or function, including whether it restricts passage through the through-passage[.]” *Id.*, 204. Nothing in Choi’s figures or description demonstrates mount 182 functions as an anchor that restricts straw 190 from passing through the opening in cap 70. EX1003, ¶35.

Yamashita (EX1006, Ground 1) addresses Choi’s deficiency. Yamashita’s straw 20 has an anchor portion—a lower flange--that mates with through-passage 32a on cap base 32, holding the straw in place. Section VIII.A.10. Unlike Choi’s mount 182, Yamashita’s anchor portion is sized to, and does, restrict passage of anchor portion through the through-passage of the cap. EX1003, ¶36. Manganiello (EX1009, Ground 9), also overcomes Choi because Manganiello’s mouthpiece assembly also has an anchor portion (shoulder 18 with finger 22) that prevents passage through the cap. EX1009, 2:52-56.

Yamashita was not before the Office during prosecution. EX1001, 1-2. Nor was Paczonay (EX1007, Ground 3), Dall’Agnese (EX1008, Ground 4), or Anderson (EX1010, Ground 11). *Id.* While the applicant cited Manganiello (EX1009, Ground 9) on an IDS, Manganiello was not otherwise mentioned on the record. EX1001, 1.

## **VI. LEVEL OF ORDINARY SKILL IN THE ART**

A person of ordinary skill in the art (“POSITA”) as of the claimed priority date of the ’028 patent would have had a degree in engineering or equivalent coursework, and a year or more of experience in designing, prototyping, and/or manufacturing containers produced from thermoplastic resins, including injection molding and/or blow molding such containers from preforms. Less work experience may be compensated by a higher level of education, and vice versa. EX1003, ¶14.

## **VII. CLAIM CONSTRUCTION<sup>3</sup>**

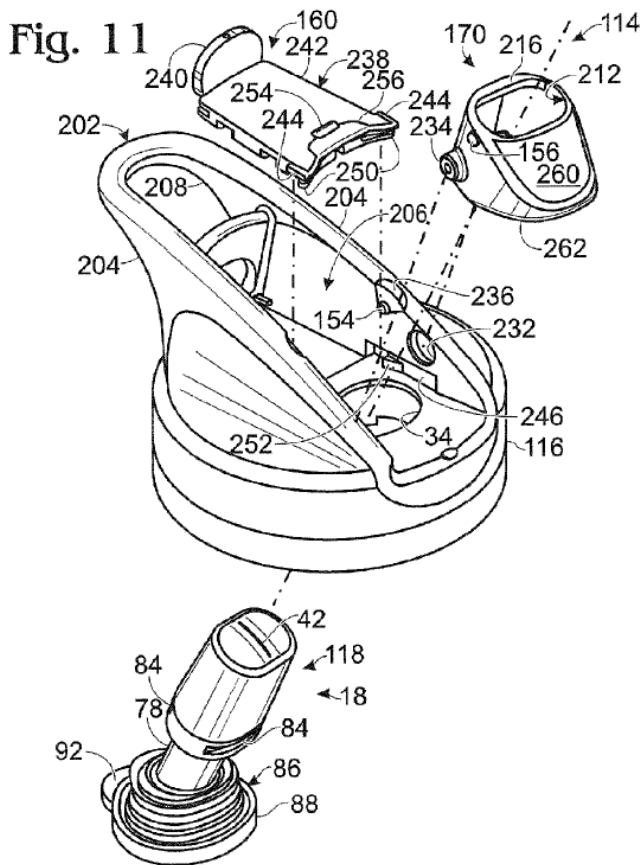
### **A. “mouthpiece assembly” (Claims 1, 21)**

This term may be construed to mean a mouthpiece part separate from the cap. EX1003, ¶37. The word “assembly” after “mouthpiece” suggests a distinct part within a larger structure—the cap in which it installs. EX1012 (“the fitting together of manufactured parts into a complete machine, structure, or unit of a machine”).

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<sup>3</sup> Petitioner reserves the right to raise claim construction and other arguments here and other proceedings as relevant and necessary. Petitioner does not concede any claim of the ’028 patent satisfies any patentability requirement not addressed here.

Figure 11 (right) shows mouthpiece assembly 18 as a distinct part that installs on cap assembly 14 by insertion through through-passage 34. The specification likewise describes the mouthpiece assembly as removably installed through the through-hole and anchored by anchor portion 86. EX1001, 4:63-5:15, 4:39-45.



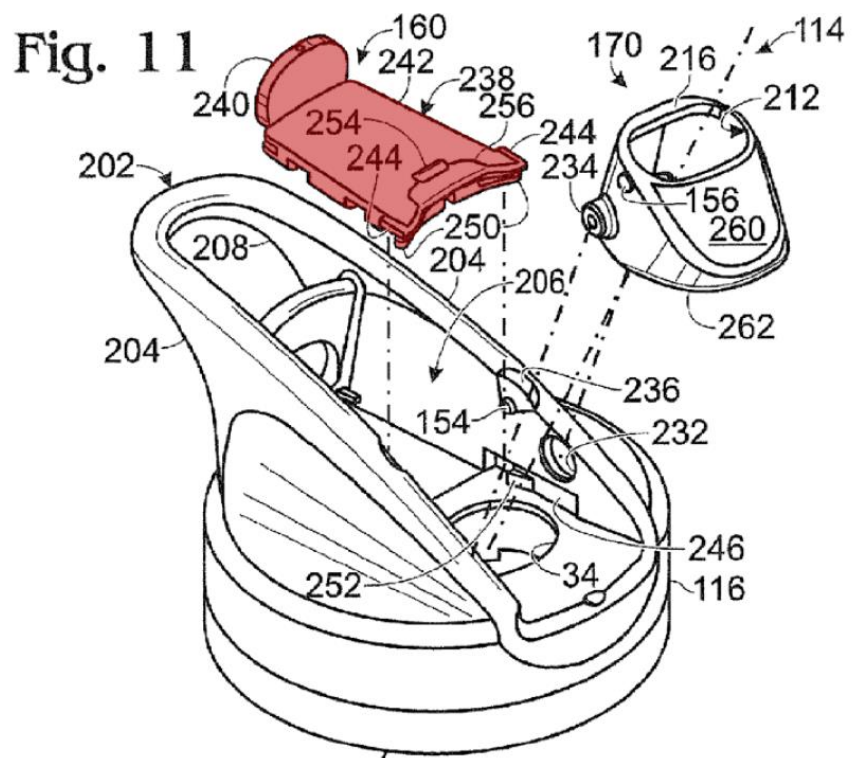
**B. “a user release mechanism adapted to automatically disengage the first and second catch structures upon actuation of the user release mechanism and thereby release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration” (Claim 1)**

This phrase may be construed under Section 112, ¶6 because “user release mechanism,” alone, may not be “understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). Claim 1 recites no structural aspects of the user release mechanism that interact with the first/second catch structures to release the mouthpiece assembly. Petitioner identifies the following corresponding structure and function.

Function: 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.

Structure: sliding member having a user engagement pad and actuator, and equivalents.

The specification identifies sliding member 238 with user engagement pad 240 and actuator 242 as the structure performing the claimed function. EX1001, 12:54-67, FIG. 11 (right). The actuator comprises



“generally planar portion 242.” *Id.* The user engagement pad provides an area for the user to engage (e.g., with the thumb) and translate sliding member 238 to open the container. *Id.*, 12:61-65; EX1003, ¶39. The translation disengages catch structures, releasing the mouthpiece assembly to move to the dispensing configuration. EX1001, 13:15-19.

If this phrase does not invoke Section 112, ¶6, it may be construed to mean “a user release mechanism having a mechanical relationship with the first and/or second catch structure, such that actuation of the mechanism disengages the first catch structure from the second catch structure, or vice versa, and thereby releases the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration.” EX1003, ¶40.

Claim 1’s language itself requires a mechanical relationship between the user release mechanism and the first/second catch structures because, without it, actuation of the user release mechanism would not release the mouthpiece assembly as claimed. EX1003, ¶41. The dependent claims support this, reciting various mechanical relationships allowing actuation of the user release mechanism. EX1001, claims 2 (“the user release mechanism is mechanically coupled to the first catch structure”), 3, 4. Supporting the construction, the specification explains the user release mechanism’s ability to disengage the catch structures upon actuation stems from its “mechanical relationship with” the first/second catch structure. *Id.*, 6:39-46; EX1003, ¶41.

**C. “a user release mechanism adapted to automatically release the mouthpiece assembly from the stowed configuration to the dispensing configuration via the bias of the mouthpiece assembly” (Claim 21)**

This phrase is similar to the previous phrase but lacks the first/second catch structures and recites the function more broadly. For reasons similar to the claim 1



phrase, this claim 21 phrase should have the following construction if it invokes Section 112, ¶6:

Function: automatically release the mouthpiece assembly from the stowed configuration to the dispensing configuration via the bias of the mouthpiece assembly.

Structure: sliding member having a user engagement pad and actuator, and equivalents thereof.

If the phrase does not invoke Section 112, ¶6, it may be construed to mean “a user release mechanism having a mechanical relationship with the cap assembly such that actuation of the mechanism releases the mouthpiece assembly from the stowed configuration to the dispensing configuration via the bias of the mouthpiece assembly.” *See* Section VII.B.

**D. “the mouthpiece portion and the tube are constructed as a unitary assembly of the resiliently deformable material” (Claim 1)**

**“the mouthpiece portion, the tube, and the anchor portion are constructed as a unitary assembly of the resiliently deformable material” (Claim 9)**

These phrases may be construed respectively to mean that “the mouthpiece portion and the tube are integrally formed from the resiliently deformable material” and that “the mouthpiece portion, the tube, and the anchor portion are integrally formed from the resiliently deformable material.” EX1003, ¶44. “Unitary” means

“having the character of a unit: undivided, whole.”<sup>4</sup> EX1012. So, these phrases require their respective portions to be constructed as an undivided, whole unit of the resiliently deformable material---integrally formed from the resiliently deformable material. EX1003, ¶44.

Consistent with this, Figures 5 and 6 show the entire mouthpiece assembly 18—including the mouthpiece portion 76, tube 78, and anchor portion 86—as a distinct part. EX1001, FIGS. 5, 6; 10:56-65, 15:52-54, 16:21-24, 16:28-30, 17:16-19 (the mouthpiece assembly and its sub-portions comprise a “unitary assembly”).

Additionally, the examiner and applicant mutually described the mouthpiece assembly’s features as “integral” when discussing this claim language. EX1002, 380 (“the mount 182 of Choi simply is not integral to a mouthpiece assembly and is provided solely for the purpose of mounting a separate straw within the liquid container”), 260-262, 377, 394-396, 400, 402.

## **VIII. GROUNDS 1-2: YAMASHITA ANTICIPATES AND/OR RENDERS OBVIOUS CLAIMS 1, 2, 5-9, AND 21**

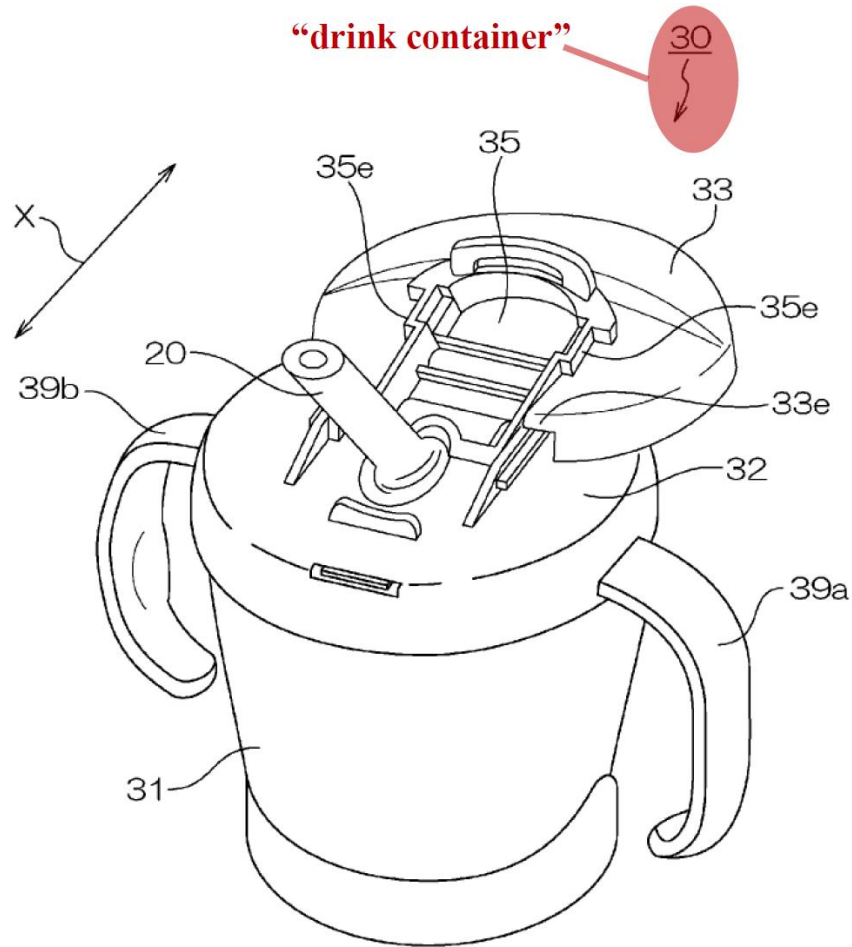
### **A. Claim 1**

#### **1. [1.pre] “A *drink container, comprising:*”**

Yamashita discloses a drink container--**beverage container 30** (EX1003, ¶48):

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<sup>4</sup> Emphasis added unless otherwise specified.

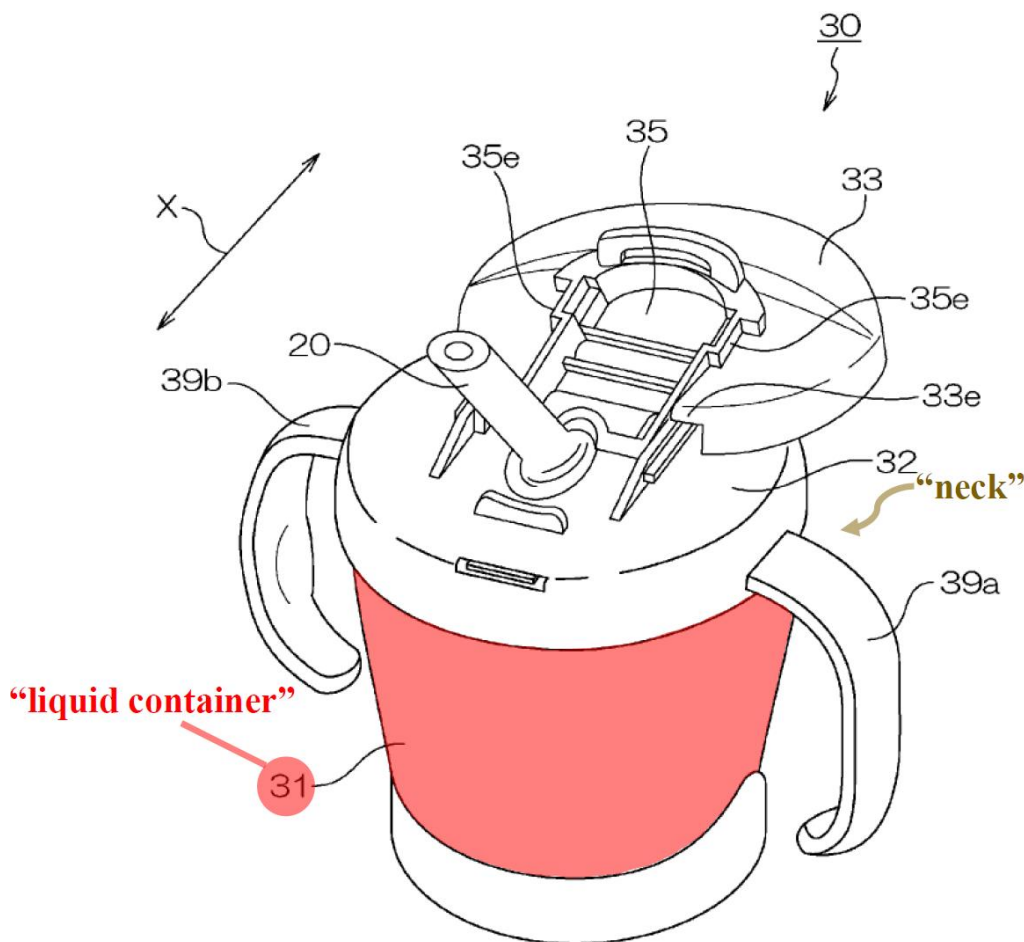


**Yamashita, FIG. 6\***

“[T]he beverage container 30 has a container main body 31 for containing a beverage, such as milk, and a base member 32” that “cover[s] an opening provided in the upper part of the container main body 31.” EX1006, ¶[0055]. Using straw 20, “the user can drink the milk contained in the container main body 31.” *Id.*

2. [1.1] *“a liquid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink liquid; and”*

Yamashita’s “beverage container 30 has a container **main body 31** for containing a beverage,” EX1006, ¶[0055], disclosing the claimed liquid container (EX1003, ¶¶48-49):

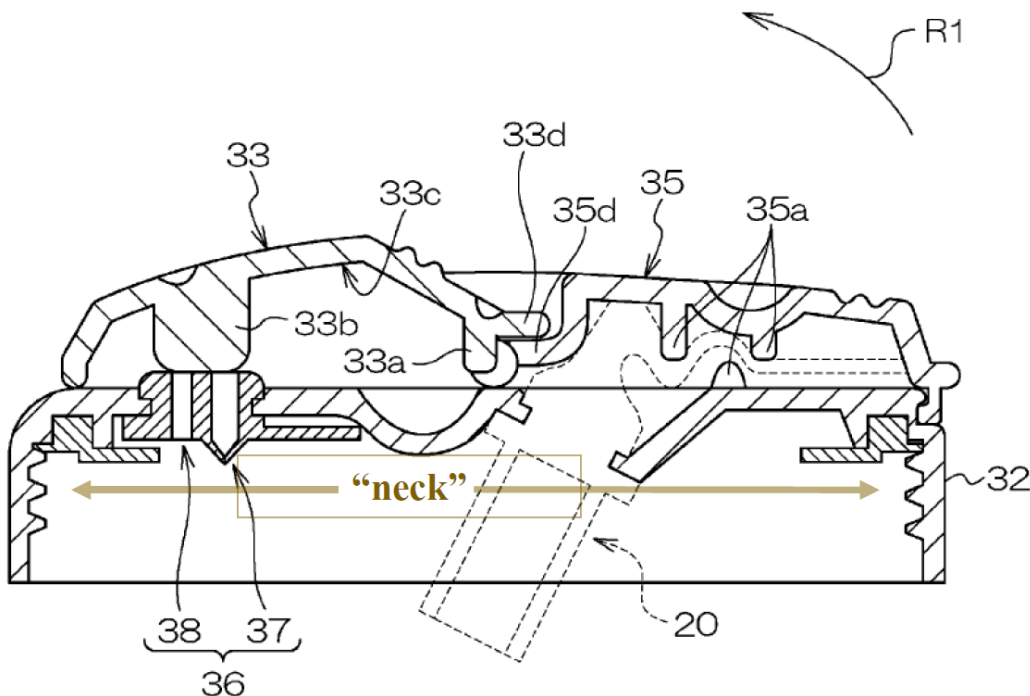


**Yamashita, FIG. 6\***

Thus, the main body is sized to hold a volume of potable drink liquid, as claimed.

EX1003, ¶49. As shown in Figure 6 above and Figure 7 below, the main body has a

**neck** region, with base member 32 “disposed to cover an opening provided in the upper part of the container main body 31” at the neck region. EX1006, ¶[0055].

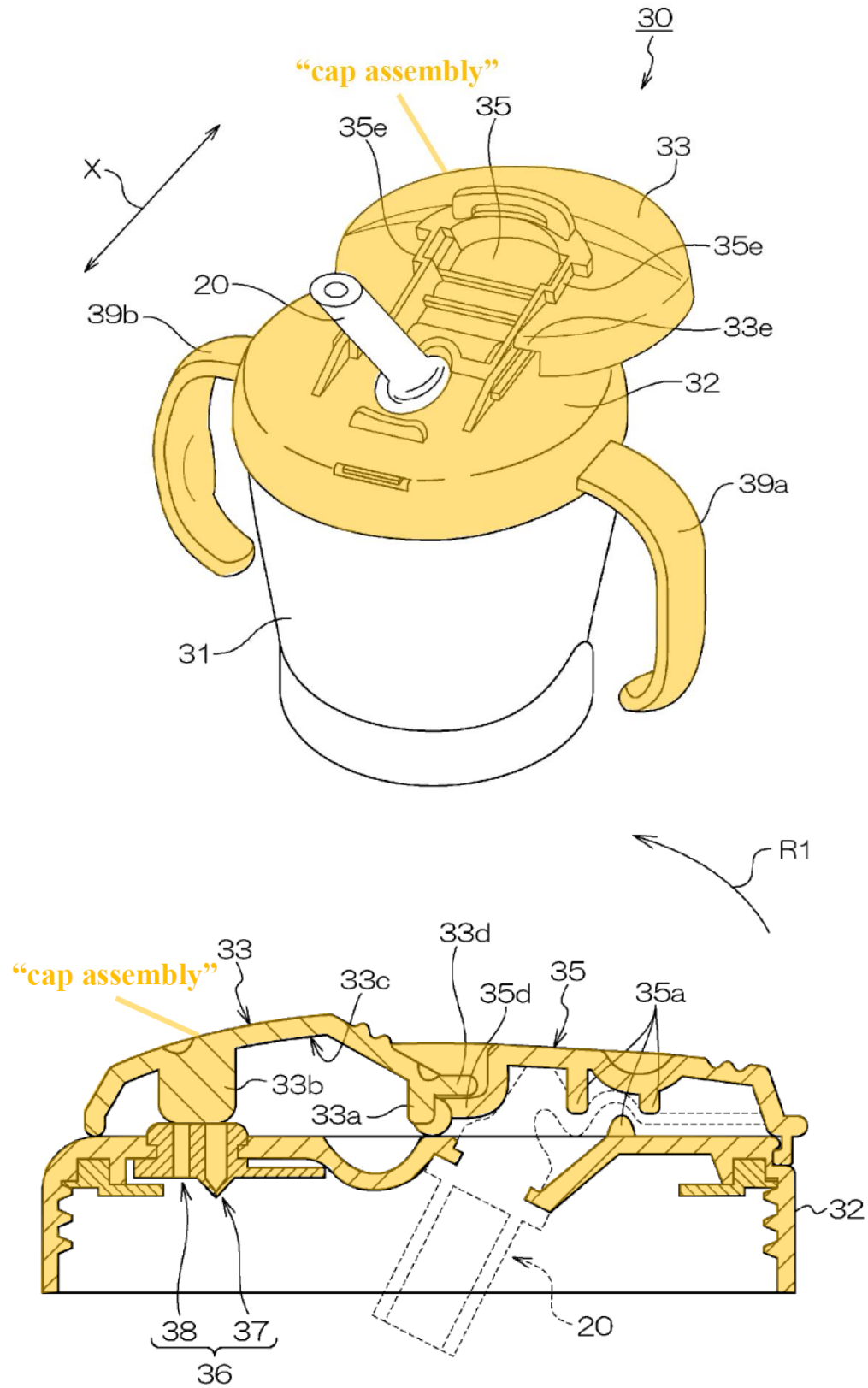


**Yamashita, FIG. 7\***

3. “[1.2] “a cap assembly removably coupled to the liquid container, the cap assembly comprising: a base removably coupled to the neck of the liquid container and including a through-passage;”

The combination of Yamashita’s **base member 32, slider 33, and/or hood**

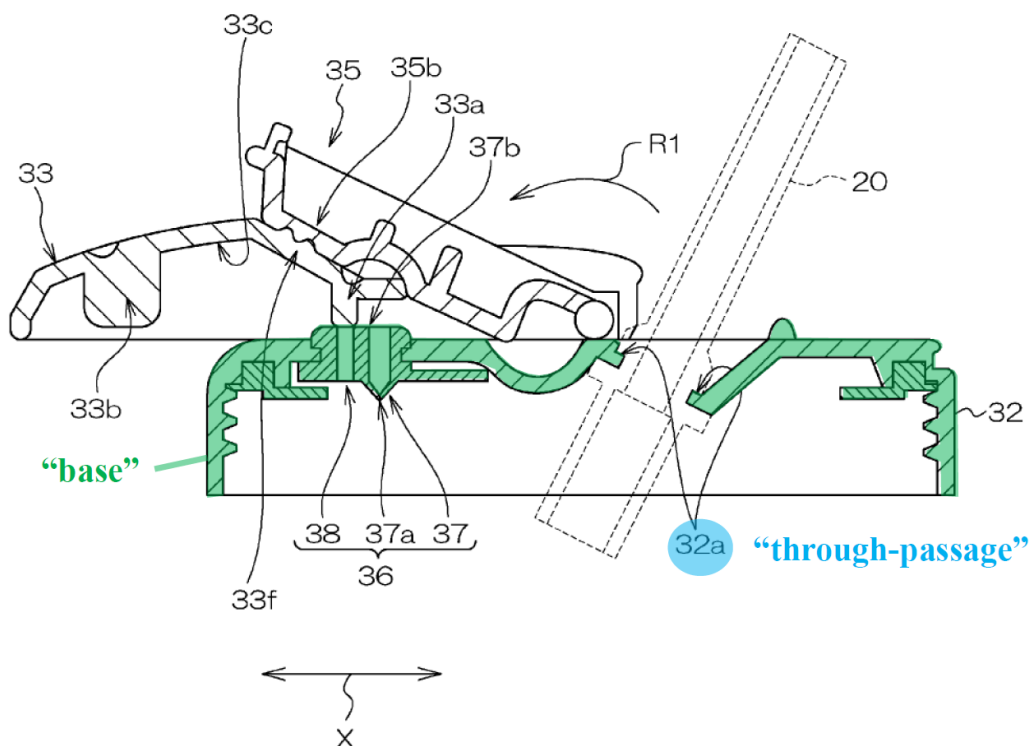
**35** discloses the claimed cap assembly (EX1003, ¶¶50-51):



**Yamashita, FIGS. 6, 7\***

**Base member 32**--the claimed base--“cover[s] an opening provided in the upper part of the container main body 31.” EX1006, ¶[0055], FIG. 9 (below). As shown in the Figures, Yamashita’s threaded base member removably couples to the neck of the main body (liquid container), as claimed. EX1003, ¶50.

“[B]ase member 32 has ... a straw hole 32a to which the straw 20 is fitted” and “sealed by mounting the straw 20 into the straw hole 32a so that the milk contained in the container main body 31 does not leak from the straw hole 32a.” EX1006, ¶[0056]; *see* ¶[0034]. **Straw hole 32a** discloses the claimed through-passage of **base 32** (base):

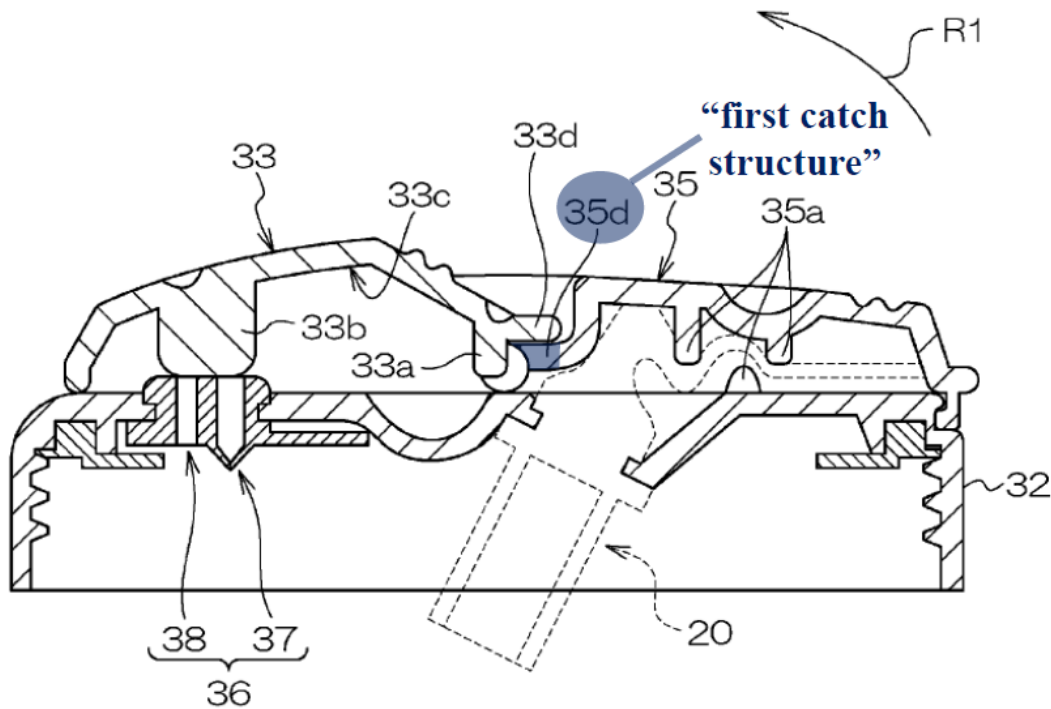


**Yamashita, FIG. 9\***

4. [1.3] “*a first catch structure;*”

**Base end abutting part 35d** discloses the claimed first catch structure<sup>5</sup>

(EX1003, ¶51):



**Yamashita, FIG. 7\***

“[T]he hood 35 has a base end abutting part 35d at its base[] end side, and this base end abutting part 35d is brought into abutment against a base[] end side hood stopper 33d provided in the slider 33” to close the container. EX1006, ¶[0058].

<sup>5</sup> The base end side hood stopper 33d, which abuts the base end abutting part 35d in the stowed configuration, discloses the claimed second catch structure recited in element [1.10] discussed below.



5. [1.4] *“a mouthpiece assembly extending through the through-passage of the base and defining a liquid passage through which drink liquid from the liquid container may selectively flow, and further defining an inlet through which drink liquid in the internal compartment may enter the liquid passage and an outlet through which drink liquid from the internal compartment of the liquid container is selectively dispensed,”*

Yamashita's **straw 20**

discloses the claimed

mouthpiece assembly. EX1006,

¶[0055] (“The straw 20 through

which the user can drink the milk

... is disposed in the base

member 32.”), FIG. 6 (right);

EX1003, ¶52. Straw 20 extends

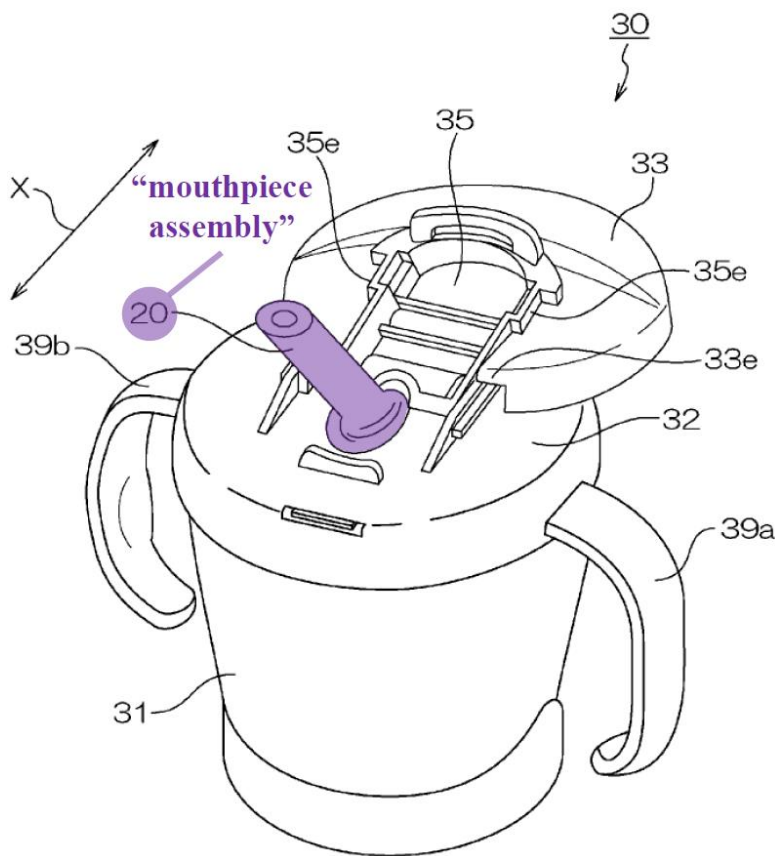
through **straw hole 32a**

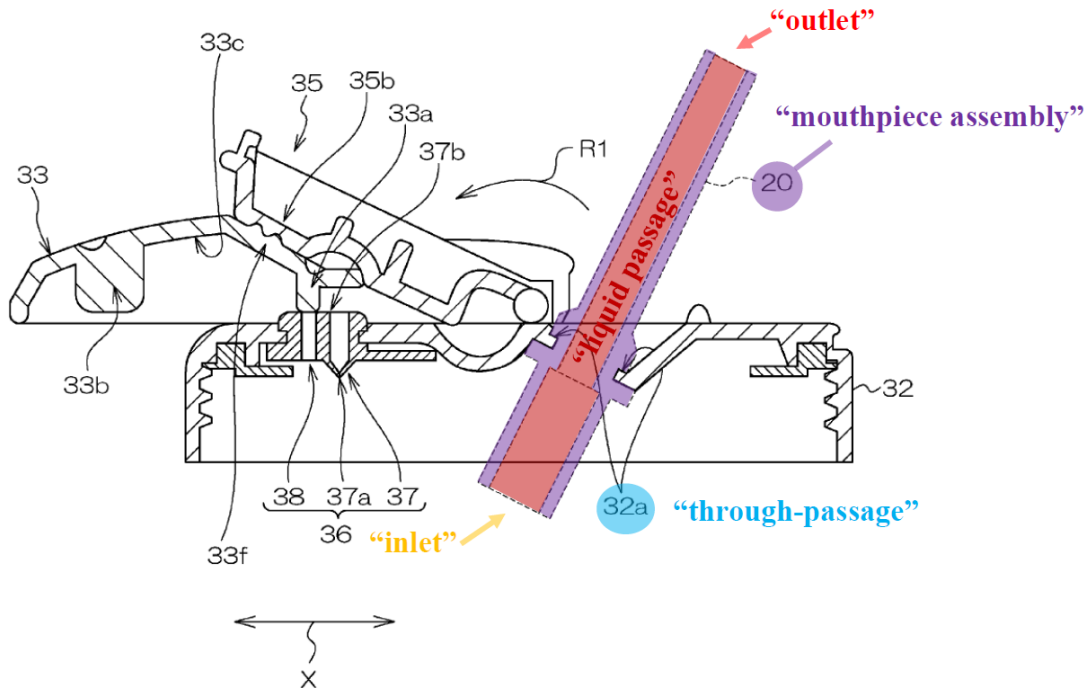
(through-passage) and defines a

**liquid passage** having an **outlet**

at its drinking end and an **inlet** at the opposite end, within the main body 31 of the

beverage container. EX1006, ¶[0056], FIG. 9 (below).





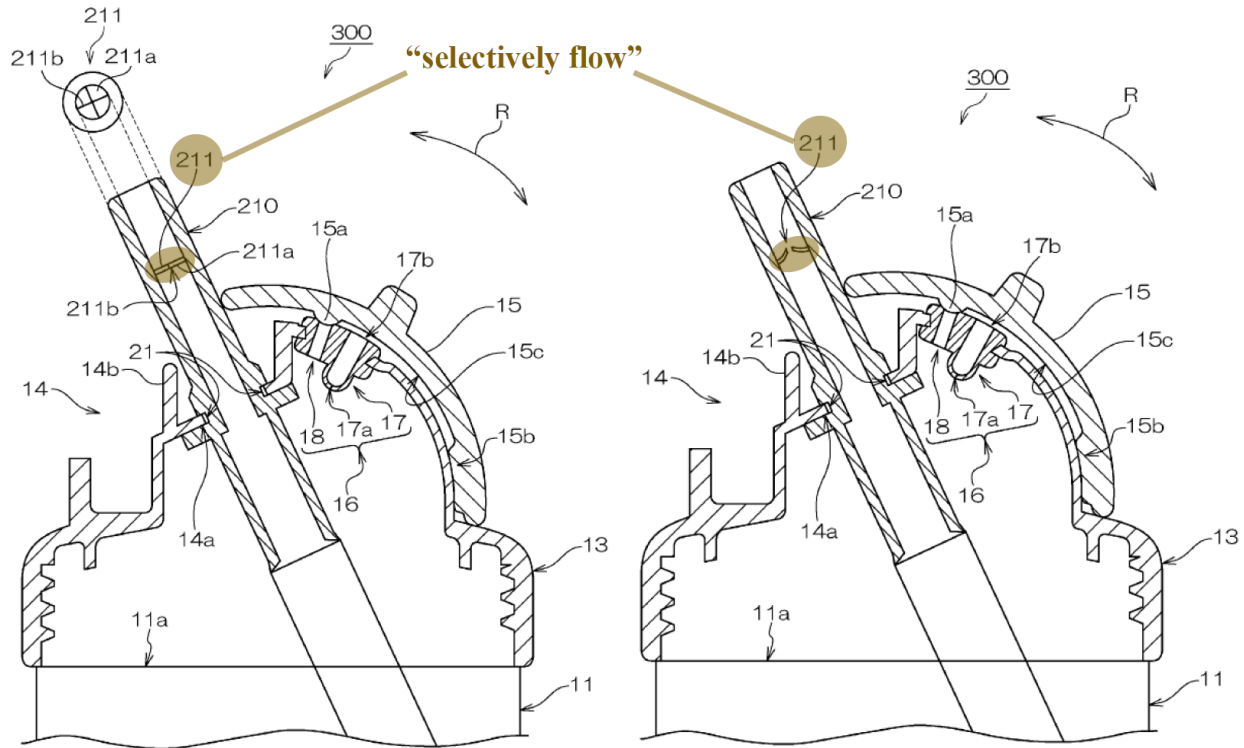
The claimed mouthpiece assembly means a mouthpiece part separate from the cap assembly. Section VII.A. Yamashita’s straw 20 satisfies this construction. EX1003, ¶53. Straw 20 is a mouthpiece because the user drinks from it. EX1006, ¶[0055]. Yamashita shows the straw in the Figures as a part separate from the base 32 and describes the straw as a separate part inserted through, and fitted to, straw hole 32. EX1006, ¶[0056] (“the base member 32 has formed thereon a straw hole 32a to which the straw 20 is fitted”), [0034] (describing “ring-like fitting concave part 21 ... formed on the straw 20” to attach the straw to the straw hole), FIGS. 6-9.

Yamashita discloses drink liquid “selectively flows” through the liquid passage of straw 20 to “selectively dispense” from main body 31, as claimed. EX1003, ¶54. First, the Yamashita user selectively dispenses the fluid from the main

body and selectively causes the fluid to flow through the straw simply by drinking/not drinking from the container. *Id.*

Yamashita also discloses two features allowing fluid to selectively flow through straw 20 and selectively dispense from main body 31. *Id.*, ¶55. First, using slider 33, the user selectively converts the beverage container between: (1) a “portable state” (Figure 7) where “straw 20 is covered by the hood 35 and bent by a straw sealing convex part 35a” so liquid cannot flow through the liquid passage, EX1006, ¶[0058]; and (2) a “drinking state” (Figure 9) where “slider 33 is further moved to the left and disposed to the position for opening the hood 35,” and “straw 20 is recovered so that the user can drink the milk through the straw 20.” *Id.*, ¶[0060].

Second, the Figure 16-18 embodiment of Yamashita, shown below, has a bite-actuated open/close valve 211 inside its straw. EX1003, ¶56. “[O]pen/close valve 211 is formed on the inside of a straw 210” and “deforms when the user deforms the straw 210 with a hand or mouth or when the user suctions the straw 210.” EX1006, ¶[0077]. When not deformed (Figure 16), “the milk is blocked by the open/close valve 211 and thus prevented from leaking out.” *Id.*, ¶[0078]. When deformed (Figure 17), “the milk contained in the container main body 11 flows from the straw 210 to the outside by opening the slit 211b.” *Id.*, ¶[0077].



**Yamashita, FIGS. 16, 17\***

Yamashita suggests and renders obvious, using straw 210's open/close valve 211 in the Figure 6 embodiment relied upon in this Ground. EX1003, ¶57. Yamashita provides teaching, suggestion, or motivation to make this combination. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). For example, Yamashita explains "[a]ny combination of the embodiments may be possible," EX1006, ¶[0080], suggesting using valved straw 210 of Figures 16-18 with the Figure 6 container. EX1003, ¶57. Yamashita also teaches valved straw 210 prevents leakage "even when the user accidentally overturns the beverage container 300 in the drinking state shown in FIG. 16." EX1006, ¶[0078]. A POSITA would have had motivation to use

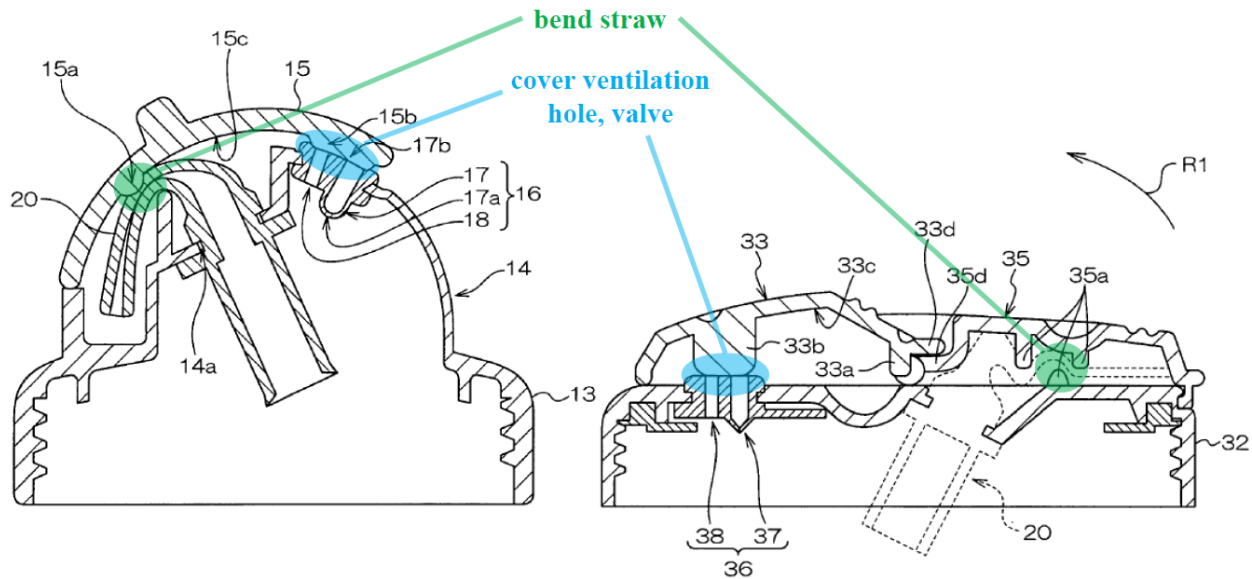
valved straw 210 with the Figure 6 container to prevent accidental leakage if the container is knocked over in the drinking state. EX1003, ¶57.

Adding Yamashita's valved straw to the Figure 6 container merely involves using a known technique (Figure 16 valved straw) to improve a similar device (Figure 6 container with regular straw) in the same way and/or applying a known technique to a known device ready for improvement to yield predictable results. *KSR*, 127 S. Ct. at 1741. Although the Figure 6 and 16 containers look somewhat different, they function similarly. EX1003, ¶58.

Both containers have a mechanism to bend the straw and cover a ventilation hole and valve to seal the container in the portable state. EX1003, ¶59. In the Figure 6 container, “straw 20 is covered by the hood 35 and bent by a straw sealing convex part 35a,” while “the portable sealing convex part 33b of the slider 33 ... cover[s] both the ventilation hole 38 and ... valve 37” to prevent the container from leaking when tilted. EX1006, ¶[0058].

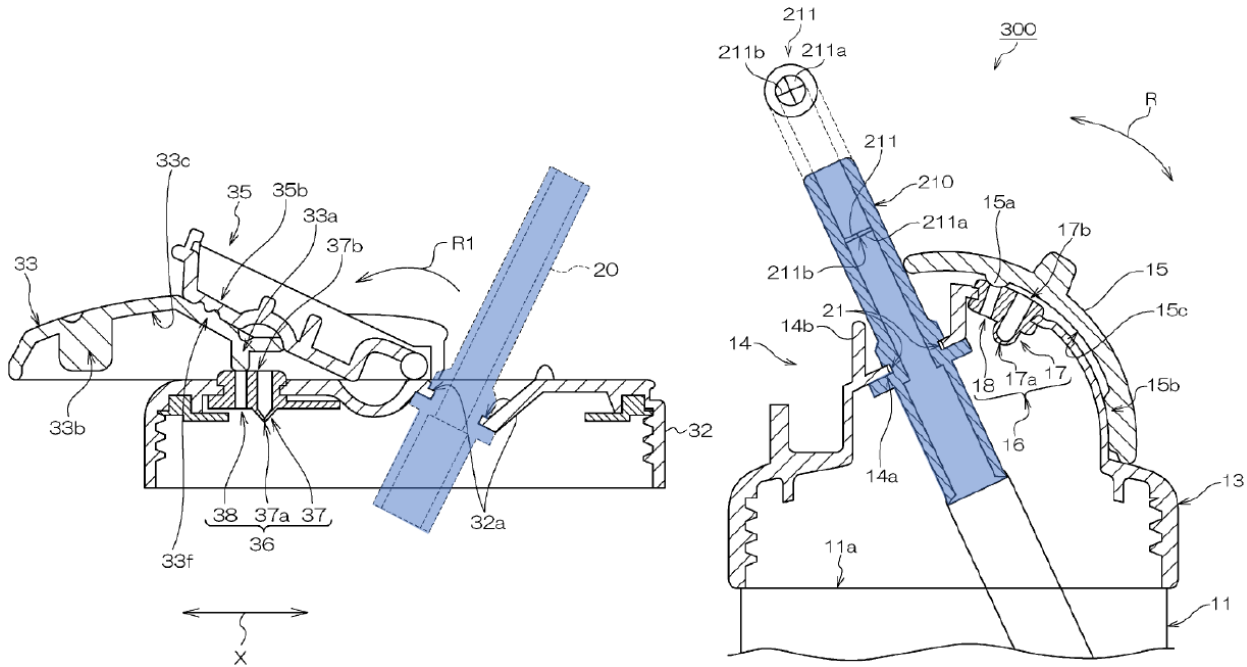
Similarly, the Figure 16 container—identical to the Figure 5 container except for its valved straw 210---has hood 15 with sealing convex parts 15a, 15b that respectively bend the straw and cover ventilation hole 18 and valve 17 to seal the container in the portable state. *Id.*, ¶¶[0040], [0043]-[0044], [0049], [0052], [0053], [0076]. In the drinking state, both containers release the straw and uncover the

ventilation valve while still covering the ventilation hole. *Compare id.*, ¶¶[0040]-[0041], [0044]-[0047], [0052]-[0053] *with id.*, ¶¶[0056], [0058]-[0062].



**Yamashita, FIGS. 5, 7\***

Except for the open/close valve 211, the two straws appear identical and install on their respective containers in the same way. *Compare* EX1006, FIG. 9 with *id.*, FIG. 16. For example, highlighted below, both straws have the same size/shape and recess 21 for mounting to the base 32, 13 within their respective straw holes 32a, 14a:



**Yamashita, FIGS. 9, 16\***

Regarding the Figure 6 container, Yamashita explains “base member 32 has ... a straw hole 32a to which the straw 20 is fitted,” and “the straw hole 32a is sealed by mounting the straw 20 into the straw hole 32a” to prevent leakage. EX1006, ¶[0056]. Similarly, the Figure 16 container has “a ring-like fitting concave part 21 ... on the straw 20 ... , so that when the straw 20 is inserted ... the ring-like fitting concave part 21 is fitted to the straw hole 14a, whereby the straw 20 is fixed.” *Id.*, ¶[0034].

Both containers have similar mechanisms to convert the container between the portable and drinking states. EX1003, ¶¶62. The Figure 6 container has slider 33 that slides to the right to close hood 35 and seal the container in the portable state and that slides left to release the hood and uncover the straw in the drinking state. EX1006, ¶¶[0055]-[0062]. Similarly, hood 15 of the Figure 16 container slidably

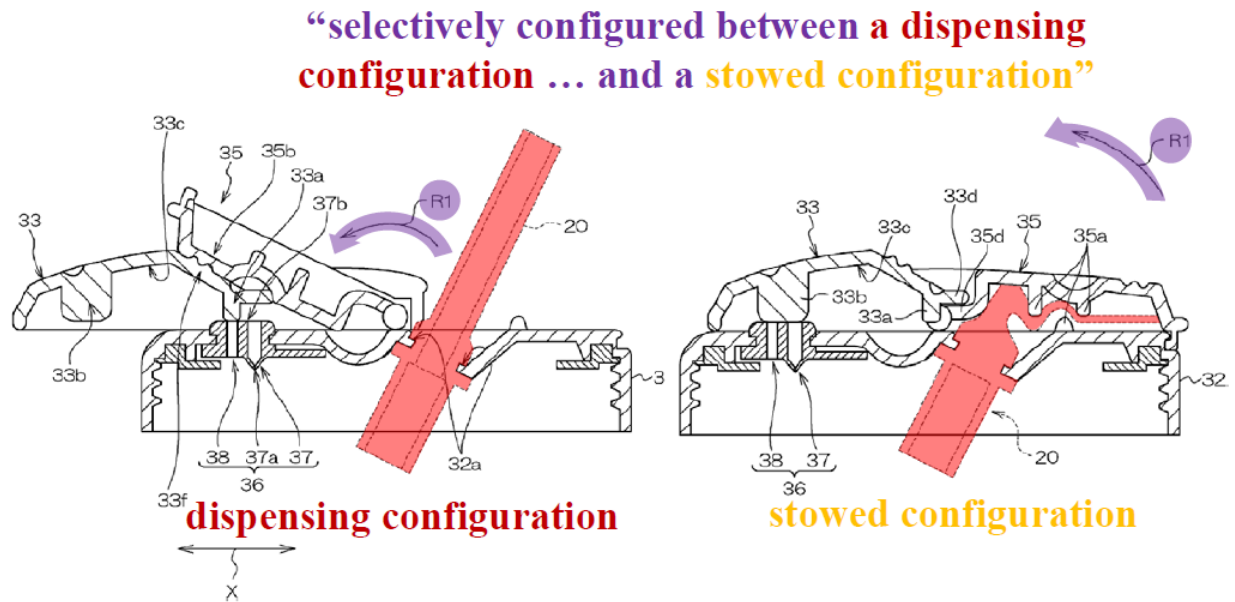
rotates in one direction to cover the straw and seal the container and in the other direction to expose the straw and open the container. ¶¶[0037]-[0049].

A POSITA would have recognized that valved straw 210 would improve the similar Figure 6 container as it improves the Figure 16 container—preventing leakage “even when the user accidentally overturns the beverage container 300 in the drinking state shown in FIG. 16.” EX1006, ¶[0078]. Yamashita’s Figure 6 container stands ready for improvement by adding valved straw 210 because it lacks a valved straw and thus would leak if accidentally knocked over in the drinking state. EX1003, ¶63. The combination would yield predictable results because the two straws have the same shape and fit to their respective bases in the same way, and a POSITA would expect the valved straw to work the same way when added to the Figure 6 container. *Id.*

6. [1.5] *“wherein the mouthpiece assembly is configured to be selectively configured between a dispensing configuration, in which the liquid passage permits drink liquid to flow from the internal compartment at least into the liquid passage, and a stowed configuration, in which the liquid passage restricts the flow of drink liquid through the liquid passage,”*

Yamashita’s **straw 20** (mouthpiece assembly) is **selectively configured** between a **drinking state** (dispensing configuration) and a **portable state** (stowed configuration) (EX1003, ¶62):





**Yamashita, FIGS. 7, 9**

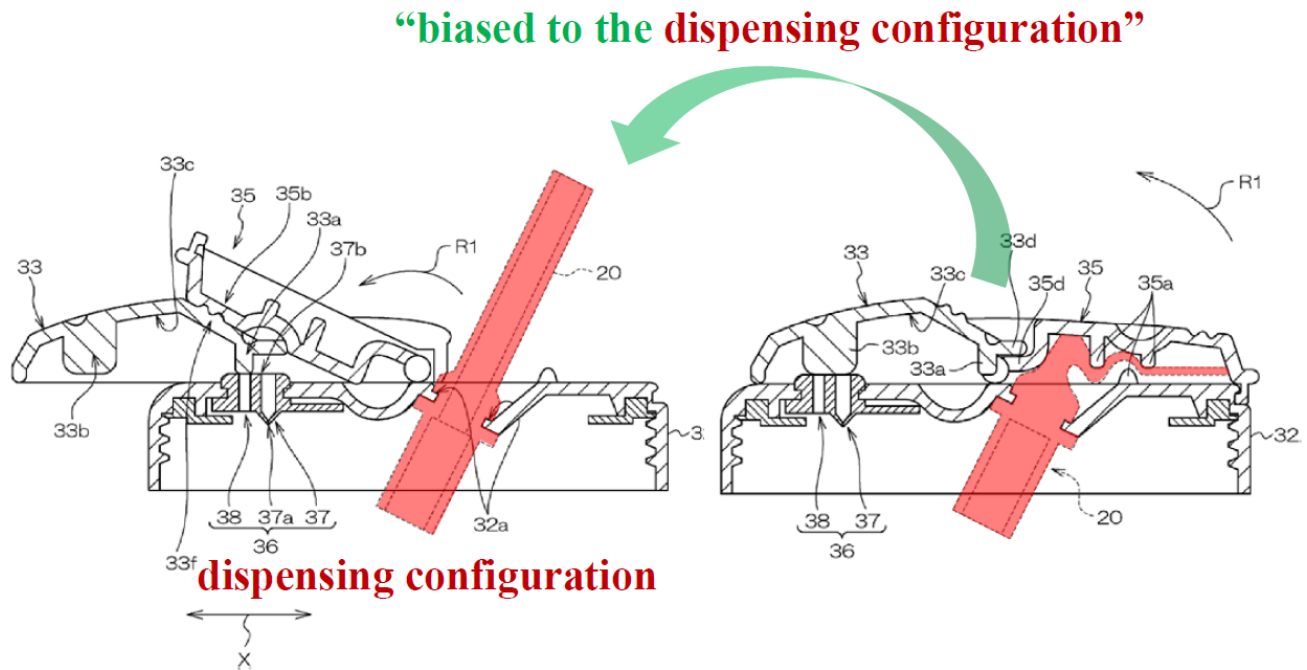
To convert the container to the drinking state, the user “[moves] the slider 33 ... to the left in the direction of the arrow X,” causing “the hood stopper 33d [to] separate[] from the hood 35” and “the portable sealing convex part 33b [to] move[] to the left in the drawing,” uncovering the ventilation valve 37 and covering the ventilation hole 38. EX1006, ¶[0059]. Then, “hood 35 is rotated in the direction of the arrow R1 to open it after the slider 33 is further moved to the left and disposed to the position for opening the hood 35,” and “straw 20 is recovered so that the user can drink the milk through the straw 20.” *Id.*, ¶[0060]. In the drinking state, “the liquid passage permits drink liquid to flow from the internal compartment at least into the liquid passage,” as claimed. EX1006, ¶¶[0060]-[0061]; EX1003, ¶64. Additionally,

released and recovered from under hood 35, the straw is no longer crimped shut and the user may drink from its outlet. EX1006, ¶¶[0060]-[0061]; EX1003, ¶64.

To convert to the portable state, the user moves slider 33 to the right, bringing “based end abutting part 35d and the leading end abutting part 35e ... into abutment against the base end side hood stopper 33d and the leading end side hood stopper 33e.” EX1006, ¶[0058]. As the slider continues, hood 35 rotates and “presse[s] against the base member 32” so “hood 35 is prevented from being opened accidentally in the portable state ....” *Id.*; EX1003, ¶65. The slider covers ventilation hole 38 and valve 37, and the hood bends the straw over the base and crimps it shut between protrusions 35a on the hood and base. EX1006, ¶[0058]. Thus, in the portable state (stowed configuration) of Yamashita’s container, “the liquid passage restricts the flow of drink liquid through the liquid passage,” as claimed. EX1003, ¶65.

7. [1.6] *“wherein the mouthpiece assembly is biased to the dispensing configuration, and wherein the mouthpiece assembly comprises: a mouthpiece portion that includes the outlet;”*

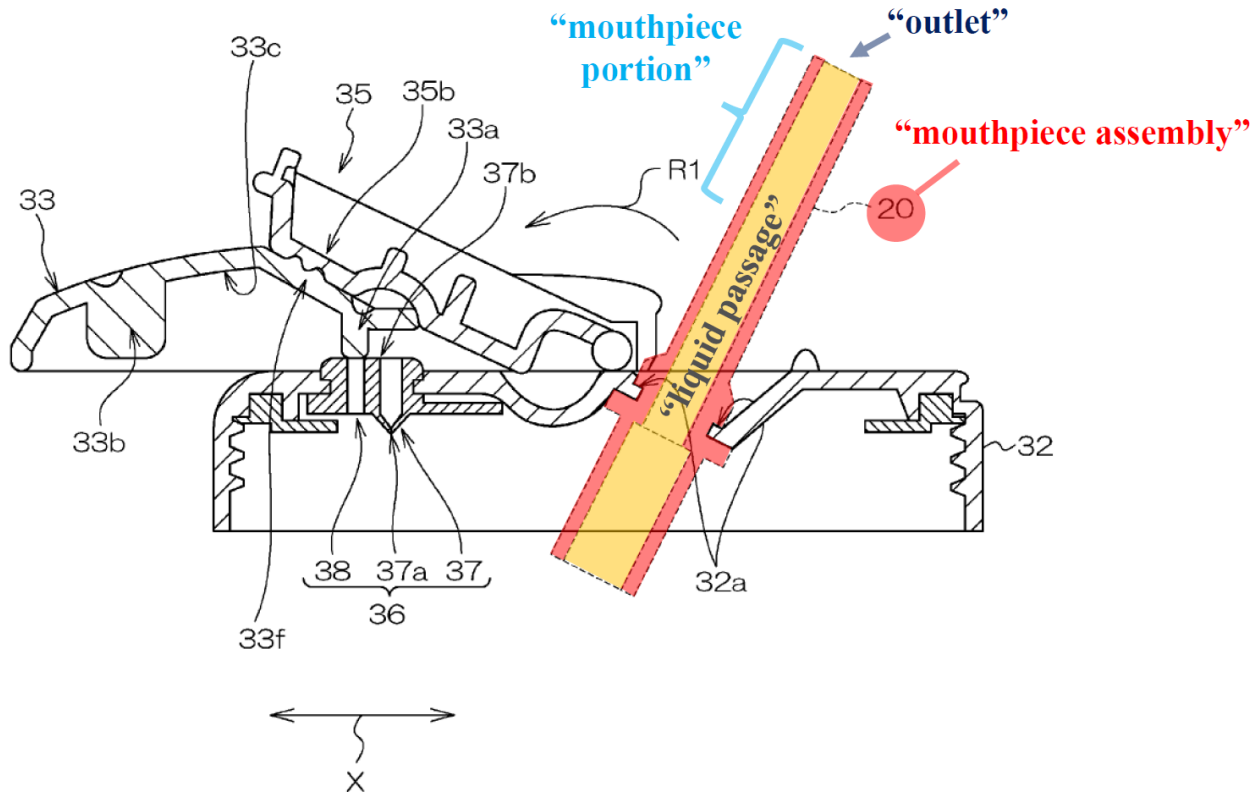
Yamashita’s **straw 20** (mouthpiece assembly) of Yamashita is **biased** to the **drinking state** (dispensing configuration) (EX1003, ¶66):



**Yamashita, FIGS. 7, 9\***

The straw has a natural bias to stand upright in the drinking state (dispensing configuration), shown in Figure 9 above. EX1003, ¶67. In the stowed state of Figure 7, the straw is “bent” against this natural bias. EX1006, ¶[0058]; EX1003, ¶67. When released in the drinking state, the straw’s bias returns it to the upright state. EX1006, ¶[0060] (the hood releases the straw and “straw 20 is recovered so that the user can drink the milk through the straw 20”); EX1003, ¶67.

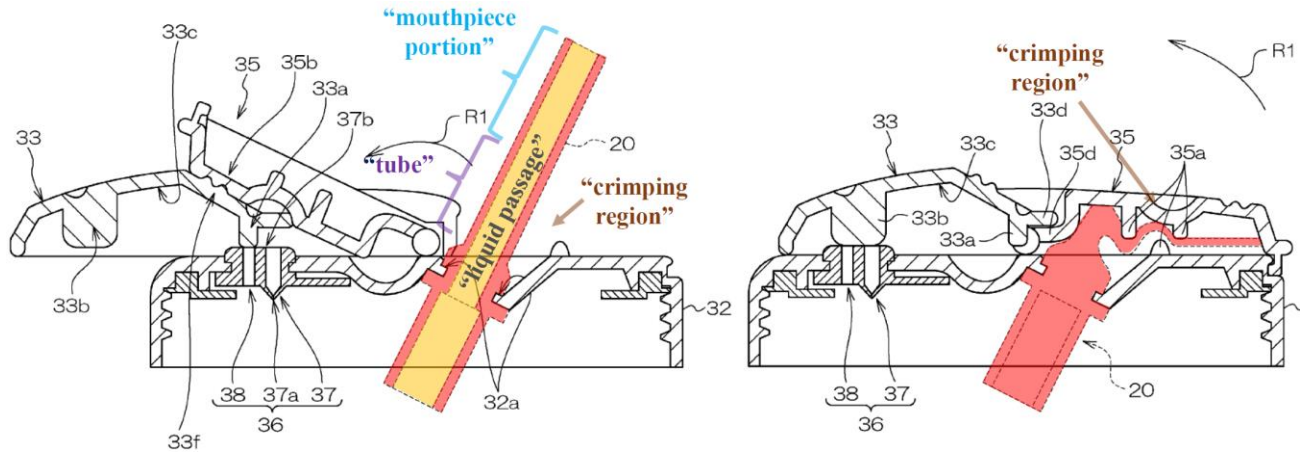
Additionally, Yamashita’s **straw** (mouthpiece assembly) comprises a **mouthpiece portion** that includes the **outlet**:



Yamashita, FIG. 9\*

8. [1.7] *“a tube that defines at least a portion of the liquid passage for drink liquid to flow from the internal compartment to the mouthpiece portion, wherein the tube includes a crimping region constructed of a resiliently deformable material and is adapted to restrict the flow of drink liquid through the liquid passage when the mouthpiece assembly is in the stowed configuration and”*

The **tube** of Yamashita’s **straw 20** (mouthpiece assembly) includes a **crimping region** that restricts the flow of drink liquid through the liquid passage when straw 20 (mouthpiece assembly) is in the portable state (stowed configuration) (EX1003, ¶69):



**Yamashita, FIGS. 7, 9\***

As shown in the Figures above, hood 35 and base 32 have projections 35a that crimp and seal the straw when the hood is closed in the portable state. EX1006, ¶[0058]; EX1003, ¶69. The crimping region of the straw, identified above, restricts the flow of liquid through the liquid passage, as claimed. EX1006, ¶[0058]; EX1003, ¶69.

Yamashita’s straw, including the crimping region, is “constructed of a resiliently deformable material,” as claimed. EX1003, ¶70. Although Yamashita does not expressly identify the material of straw 20, Yamashita shows its deformability and resilience in Figure 7—showing the straw bent and deformed in the portable state—and Figure 9—showing the straw released to its drinking position in the container’s drinking state. *Id.* Yamashita also explains the straw is “bent” with the container the portable state and “released” to a “release state” with the container in the drinking state. EX1006, ¶¶[0058], [0042]. Without storing potential energy by its elasticity when bent, straw 20 could not release to its upright state when the

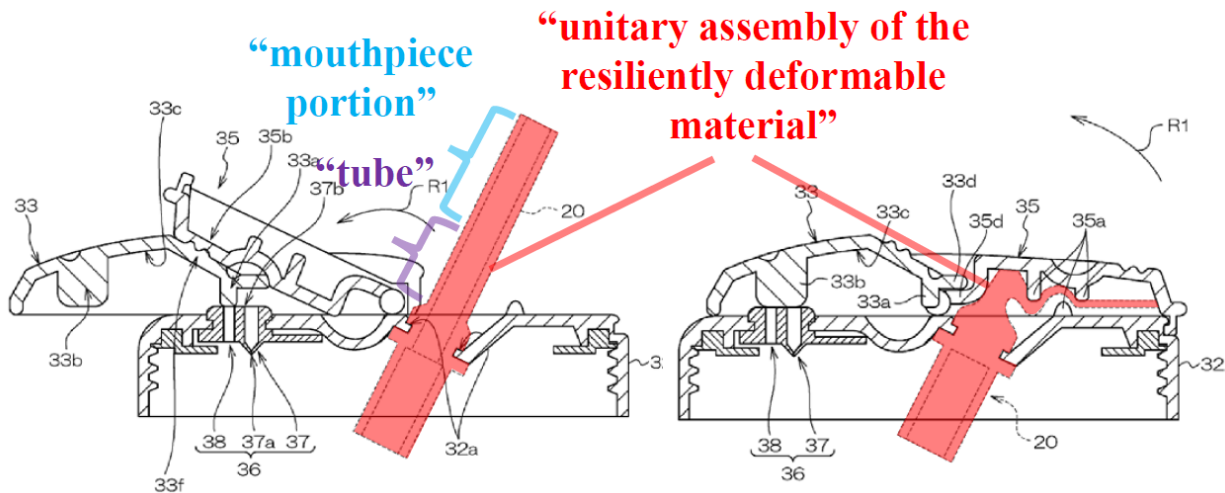
container is opened as Yamashita describes and shows. EX1003, ¶70. Thus, Yamashita discloses or suggests that the tube is made from a resiliently deformable material. *Id.*

If Patent Owner contends Yamashita does not expressly disclose that straw 20 is made from a resilient, deformable material, a POSITA would have found it obvious to do so. EX1003, ¶71. It was well known long before the '028 patent to use materials like silicone, thermoplastic elastomer (TPE), or soft polyvinyl chloride (PVC) for the straws of such drink containers. *Id.* Otherwise, the container would not work as Yamashita describes. *Id.* The straw would not bend into a crimped state when the container is closed or snap into its upright drinking state, as Yamashita teaches, unless made from a resilient deformable material. *Id.* Yamashita teaches parts of its containers are made from “flexible material,” and a POSITA would have found it obvious to make the straw from such a flexible material too. EX1006, ¶[0035]; EX1003, ¶71.

**9. [1.8] “*wherein the mouthpiece portion and the tube are constructed as a unitary assembly of the resiliently deformable material;*”**

This element may be construed to require that the mouthpiece portion and the tube are integrally formed from the resiliently deformable material. Section VII.D. Yamashita shows its straw 20 as single, integrally-formed component having both

the mouthpiece portion from which the user drinks and the tube portion crimped in the portable state (EX1003, ¶72):



**Yamashita, FIGS. 7, 9\***

Yamashita also describes straw 20 as a single piece installed on the container by fitting the straw to straw hole 32a. EX1006, ¶[0056]; EX1003, ¶72 (uniform hashing through the straw suggests separate, integral part).

10. [1.9] *“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; and”*

Yamashita’s straw 20 has an **anchor portion** (bottom flange toward base of the straw) sized to restrict passage of the anchor portion through **straw hole 32a** (through-passage) of base 32 (base cap assembly), as claimed (EX1003, ¶¶73-74):





**Yamashita, FIG. 9\***

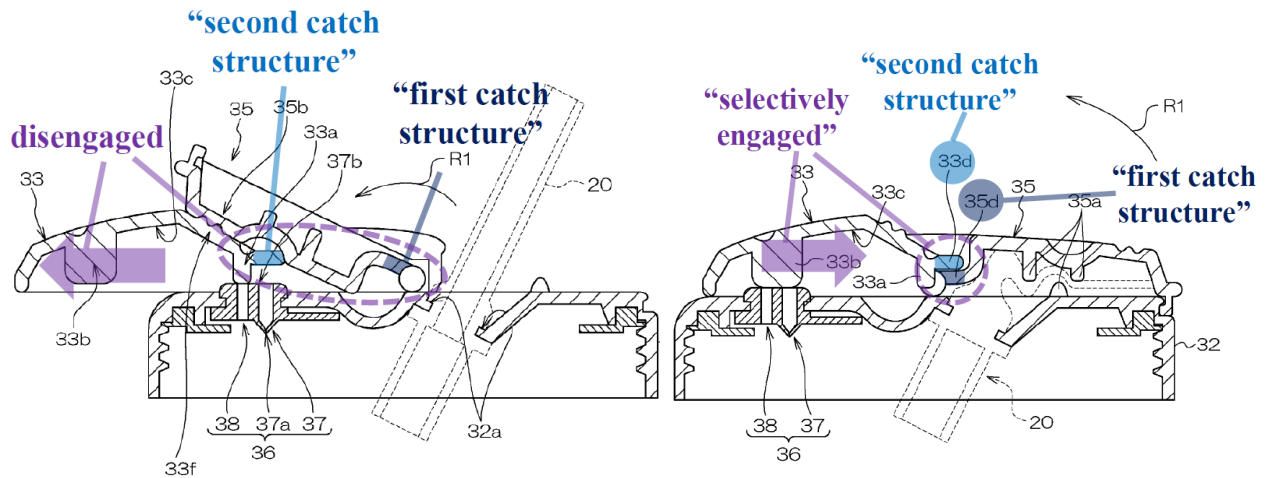
The straw has a ring-shaped recess between two protruding flanges, toward the base of the straw, that mates with the edge of through-passage 32a to secure the straw to base 32. EX1003, ¶73. Yamashita doesn't label the ring-shaped recess in Figure 9 but describes it in the Figure 2 embodiment, which has an identical straw 20: "a ring-like fitting concave part 21 is formed on the straw 20 as shown in FIG. 2, so that when the straw 20 is inserted thereto from the container main body 11 side the ring-like fitting concave part 21 is fitted to the straw hole 14a, whereby the straw 20 is fixed." EX1006, ¶[0034]; EX1003, ¶73.



The bottom flange, defined partly by the recess, discloses the claimed anchor portion because it holds the straw in place and is sized to restrict, and does restrict, the straw's passing through the straw hole. EX1003, ¶74. The bottom flange's large diameter relative to the straw hole prevents removing the straw from the cap, by pulling the straw's drinking end, without damaging the straw. *Id.* Rather, the straw should be removed by pulling its base from beneath the cap because the straw's bottom flange has a diameter only slightly larger than that of the straw hole, allowing the bottom flange to pass through the hole without damage. *Id.* Near the straw's base, the bottom flange "extend[s] from the tube distal the mouthpiece portion," as claimed. EX1003, ¶75.

**11. [1.10] *"a second catch structure adapted to be selectively engaged with the first catch structure to retain the mouthpiece assembly in the stowed configuration; and"***

Yamashita's **hood stopper 33d** discloses the claimed second catch structure. EX1003, ¶¶75-76. When slider 33 moves to the right, **hood stopper 33d** (second catch structure) selectively engages with **abutting part 35d** (first catch structure) of hood 35 to retain straw 20 (mouthpiece assembly) in the stowed configuration:



**Yamashita, FIGS. 9, 7\***

As shown in Figure 9 of Yamashita above, the user moves slider 33 to the left to disengage hood stopper 33d (second catch structure) from abutting part 35d (first catch structure) and configure the container in the drinking state. EX1006, ¶¶[0059], [0060]; EX1003, ¶75. “[H]ood 35 is rotated in the direction of the arrow R1 to open it after the slider 33 is further moved to the left and disposed to the position for opening the hood 35,” and then “straw 20 is recovered so that the user can drink the milk through the straw 20.” EX1006, ¶[0060].

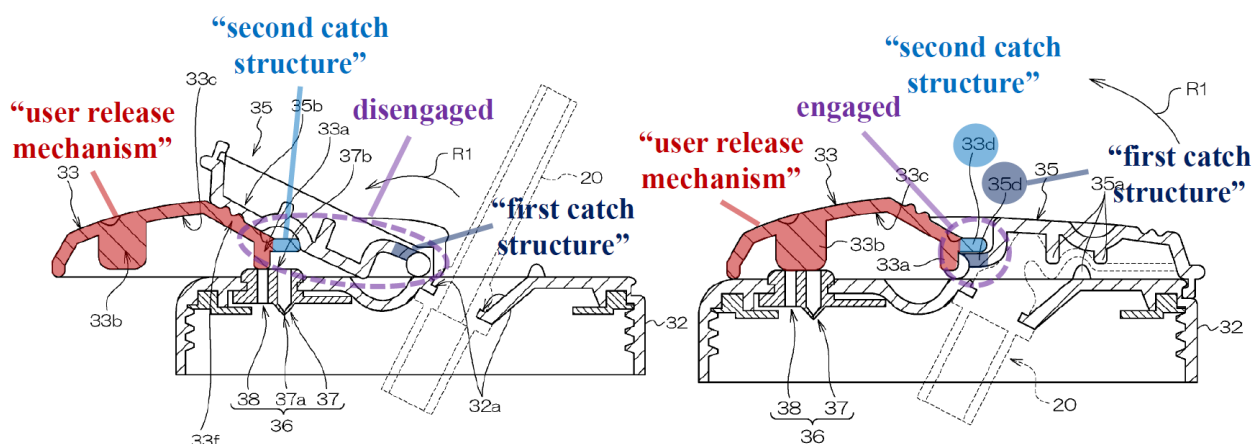
To close the container, as shown in Figure 7 above, the user moves slider 33 to the right, selectively engaging hood stopper 33d (second catch structure) with abutting part 35d (first catch structure) to close hood 35 and retain straw 20 (mouthpiece assembly) in the stowed configuration. EX1006, ¶[0058]; EX1003, ¶76. In the closed/portable state of Figure 7, the hood covers and retains the straw

(mouthpiece assembly) in the stowed configuration, as claimed. EX1006, ¶[0058];

EX1003, ¶76.

12. [1.11] *“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.”*

Yamashita’s **slider 33** discloses the claimed user release mechanism (EX1003, ¶77):



**Yamashita, FIGS. 9, 7\***

If the phrase isn’t means-plus-function language, it refers to a user release mechanism having a mechanical relationship with the first and/or second catch structure, such that actuation of the mechanism disengages the first catch structure from the second catch structure, or vice versa, and thereby releases the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration. Section VII.B. Yamashita’s slider meets this construction. EX1003, ¶78.

As highlighted above, **slider 33** (release mechanism) has a mechanical relationship with **abutting part 35d** (first catch structure) and **hood stopper 33d** (second catch structure). EX1003, ¶79. The hood stopper is a protrusion on front edge of the slider itself, so the slider has a mechanical relationship with the hood stopper because the hood stopper moves when the user moves the slider. *Id.* The slider also has a mechanical relationship with the abutting part because “when the slider 33 moves to the left,” “the hood stopper 33d separates from the hood 35” and disengages from the abutting part 35d of the hood. EX1006, ¶[0059]. When the slider moves to the right, “base end abutting part 35d is brought into abutment against ... hood stopper 33d provided in the slider 33.” *Id.*, ¶[0058]. Thus, the slider has a mechanical relationship with the hood stopper and/or abutting part (first catch structure) such that actuation of the slider disengages the abutting part from the hood stopper (second catch structure), or vice versa, as required by the construction. EX1003, ¶80.

Yamashita discloses disengagement of hood stopper 33d and abutting part 35d “thereby release[s] the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration,” as claimed. EX1003, ¶81. As shown in Yamashita Figure 9, straw 20 (mouthpiece assembly) naturally stands upright and uncrimped in the drinking state (dispensing configuration). EX1006, ¶[0060]; EX1003, ¶81. In the portable state (stowed configuration), hood 35 bends the straw

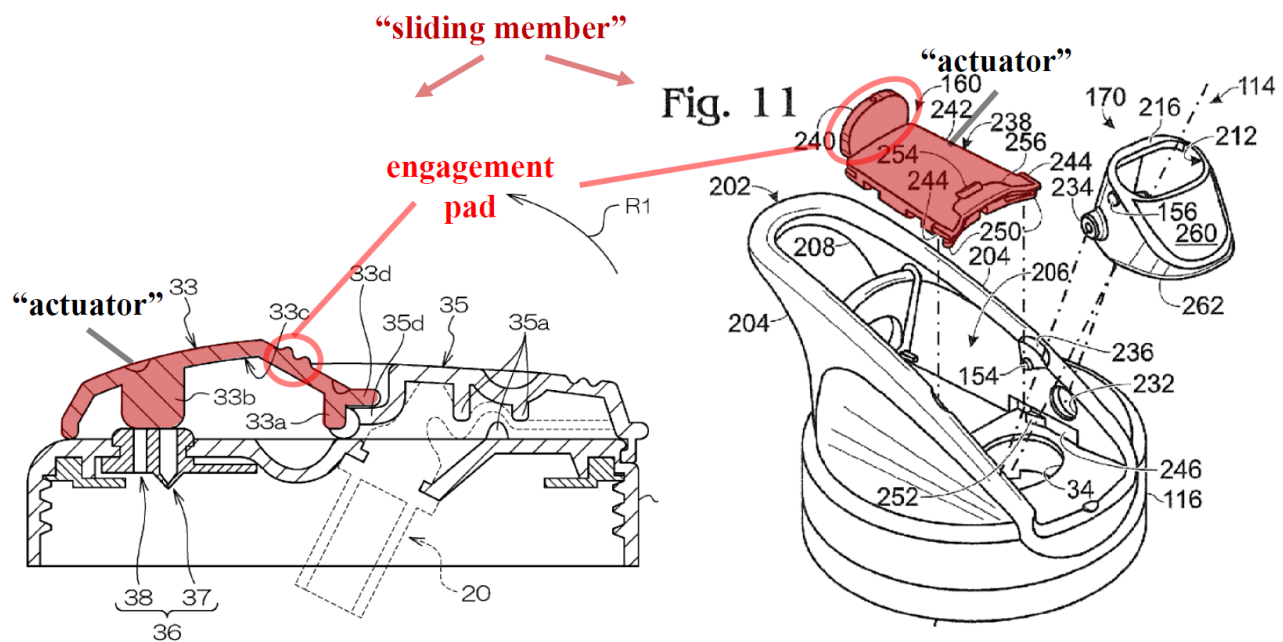
from its natural state, folding the straw over base 32 and crimping it between protrusions 35a. EX1006, ¶[0057], FIG. 7; EX1003, ¶81. To convert to the drinking state, “slider 33 is further moved to the left and disposed to the position for opening the hood 35, [and] the straw 20 is recovered so that the user can drink the milk through the straw 20.” EX1006, ¶[0060]; *see* ¶[0042] (in the drinking state “the straw 20 is released and recovered”).

Yamashita thus teaches (1) straw 20 naturally stands upright/uncrimped in the drinking state, (2) converting from the drinking to the stowed state bends and crimps the straw against this natural state, and (3) converting from the stowed to the drinking releases the straw to the upright configuration from its bent/crimped configuration in the portable state. EX1003, ¶82. Thus, actuation of the slider “release[s] the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration,” as claimed. Without such bias, straw 20 couldn’t transition between the upright/uncrimped form in the drinking state and the bent/crimped form in the portable state. *Id.* Nor could the straw be “released” from the bent/crimped state to the upright/uncrimped state; rather, the straw would remain bent/crimped even with the container is opened. *Id.*

Yamashita’s slider 33 also discloses the user release mechanism under the Section 112, ¶6 construction. Section VII.B. The recited function is “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.” *Id.* And the corresponding structure is a sliding member having a user engagement pad and actuator, and equivalents thereof. *Id.* For the reasons discussed for the non-112, ¶16 construction, Yamashita’s slider 33 performs the recited function.

As shown in the comparison below, slider 33 contains the corresponding ’028 patent structure:



Yamashita, FIG. 7\*

'028 Patent, FIG. 11\*

- **Sliding Member**

In the '028 Patent, “user release mechanism 160 of drink bottle 100 includes a **sliding member 238**.” EX1001, 12:54-56, FIG. 11. “Sliding member 238 is configured to slide relative to the base of the cap assembly upon user actuation of

the user release mechanism 160.” *Id.*, 12:61-65. Likewise, Yamashita’s container has a corresponding “**slider 33** ... configured to move on the base member 32 along a surface of the base member 32.” EX1006, ¶[0055]; EX1003, ¶85.

- **User Engagement Pad**

The ’028 patent’s **engagement pad 240** provides an area for the user to engage (e.g., with the thumb) and translate sliding member 238 to open/close the container. EX1001, 12:61-65; EX1003, ¶86. Likewise, Yamashita’s slider 33 has an **engagement pad** with bumps/ribs allowing the user to grip and move the slider. EX1006, ¶¶[0059]-[0062]; EX1003, ¶86.

- **Actuator**

Sliding member 238 of the ’028 patent has “**an actuator**, such as ... a **generally planar portion 242**.” EX1001, 12:57-58, FIG. 11 (above). Yamashita’s slider 33 also has a **generally planar portion** disclosing the ’028 patent’s actuator. EX1003, ¶87.

## **B. Claim 2**

1. [2.1] “*The drink container of claim 1, wherein the user release mechanism is mechanically coupled to the first catch structure.*”

First, Yamashita’s hood stopper 33d (second catch structure), as a part of slider 33, moves when the slider moves. EX1006, ¶[0058], FIG. 7. Thus, the slider (user release mechanism) mechanically couples to abutting part 35d (first catch

structure) when the slider moves to the right and “abutting part 35d is brought into abutment against ... hood stopper 33d provided in the slider 33” when closing the container. *Id.*

Second, although Petitioner identifies abutting part 35d and hood stopper 33d respectively as the first and second catch structures above for claim 1, reading them instead as the second and first catch structures, respectively, also satisfies the claim language. EX1003, ¶89. Element [1.10] is met because moving the slider left/right selectively engages abutting part 35d (now the second catch structure) with hood stopper 33d (now the first catch structure). *Id.* This reading also meets element [2.1] because hood stopper 33d is part of, and thus mechanically coupled to, the slider (user release mechanism). *Id.*

### C. Claim 5

1. [5.1] ***“The drink container of claim 1, wherein the crimping region at least partially biases the mouthpiece assembly to the dispensing configuration.”***

As explained for elements [1.6] and [1.11], Yamashita’s resilient straw 20 naturally stands upright in the drinking configuration (dispensing configuration), and hood 35 bends and crimps the straw against this natural bias in the portable configuration. Sections VII.A.7, 12. In this deformed state, the crimping region of the straw exerts a force against the hood, toward its natural upright position. Sections VII.A.7, 12; EX1003, ¶90.



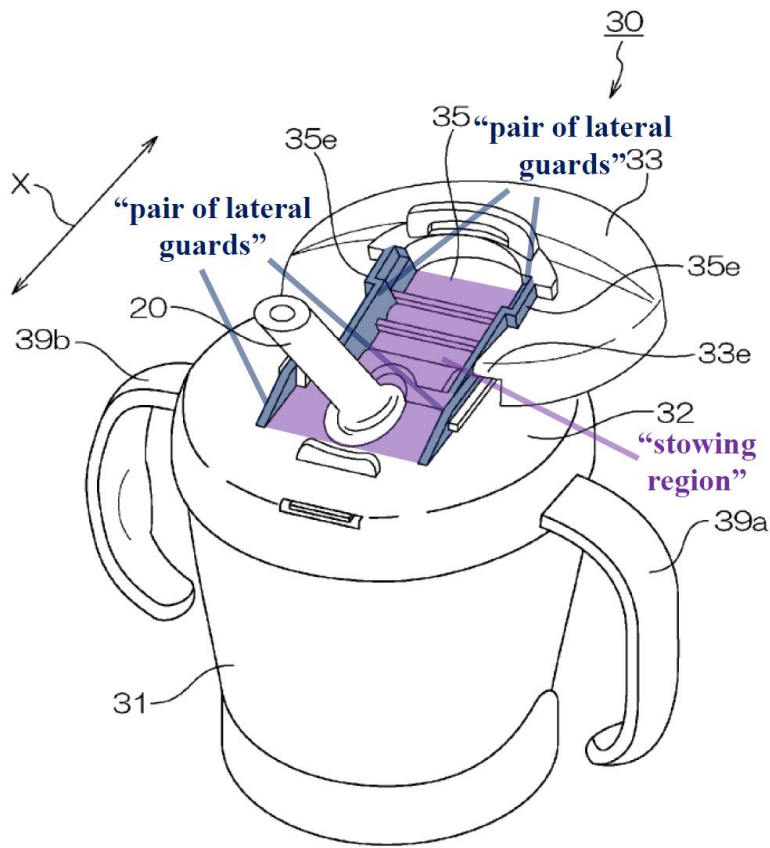
**D. Claim 6**

1. [6.1] *“The drink container of claim 1, wherein the cap assembly further includes a handle that projects away from the base of the cap assembly and”*

Yamashita’s cap assembly includes “two handles 39a, 39b” “disposed on each side of the base member 32 so as to project along the container main body 31.” EX1006, ¶[0055], FIG. 6. Shown in Figure 6, the handles 39a, b project away from the base 32 horizontally and downwardly. *Id.*, EX1003, ¶91.

- E. [6.2] *“a pair of lateral guards that at least partially define a stowing region that receives at least a portion of the mouthpiece assembly between the pair of lateral guards when the mouthpiece assembly is in the stowed configuration.”*

Yamashita’s hood 35 and base 32 each includes a pair of lateral guards defining a stowing region between the lateral guards for straw 20 (mouthpiece assembly) when the hood is closed in the portable state (stowed configuration). EX1006, ¶[0058], FIG. 6

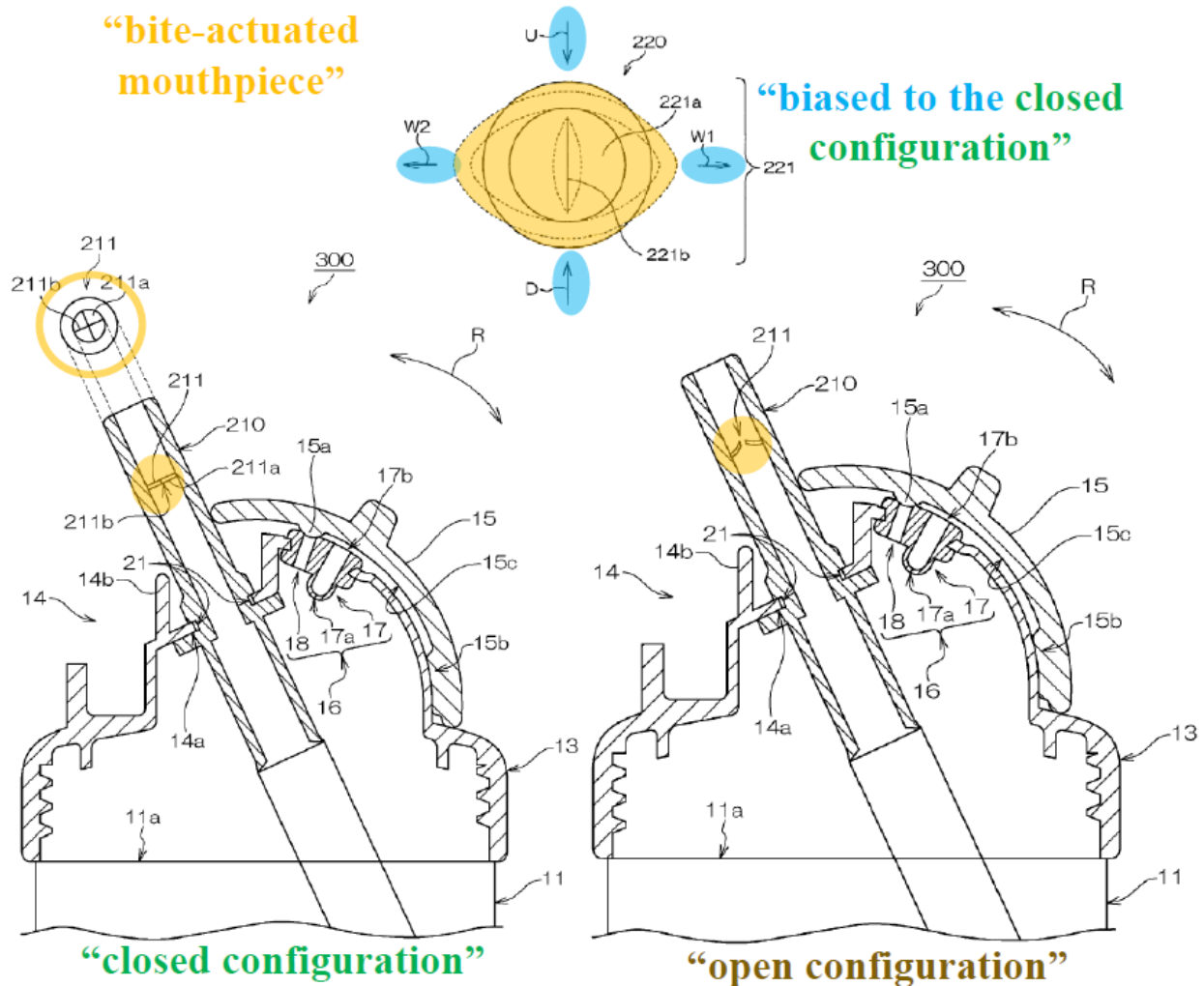


(above); EX1003, ¶92 (the guards keep the straw aligned when closing the hood 35).

**F. Claim 7**

1. [7.1] *“The drink container of claim 1, wherein the mouthpiece portion includes a bite-actuated mouthpiece and the outlet is a sealable outlet, wherein the bite-actuated mouthpiece is selectively configured between an open configuration, in which the sealable outlet is open and permits drink liquid to flow therethrough, and a closed configuration, in which the sealable outlet restricts drink liquid from flowing therethrough, wherein the bite-actuated mouthpiece is biased to the closed configuration, and further wherein the bite-actuated mouthpiece is selectively configured from the closed configuration to the open configuration responsive to a user biting upon opposed sidewalls of the bite-actuated mouthpiece.”*

Yamashita’s Figure 6 container lacks the claimed bite-actuated mouthpiece. As explained for element [1.4], however, Yamashita’s Figure 16 container has a bite-actuated straw with open/close valve 211 that opens when the user selectively applies bite pressure and closes absent bite pressure. EX1006, ¶[0077]-[0079], FIGS. 16-18; EX1003, ¶93. Thus, the combination of Yamashita’s Figure 7-9 and Figure 16-18 containers, discussed above for element [1.4], renders obvious the bite-actuated mouthpiece of element [7.1] (Section VIII.A.5):



Yamashita, FIGS. 16-18\*

### G. Claim 8

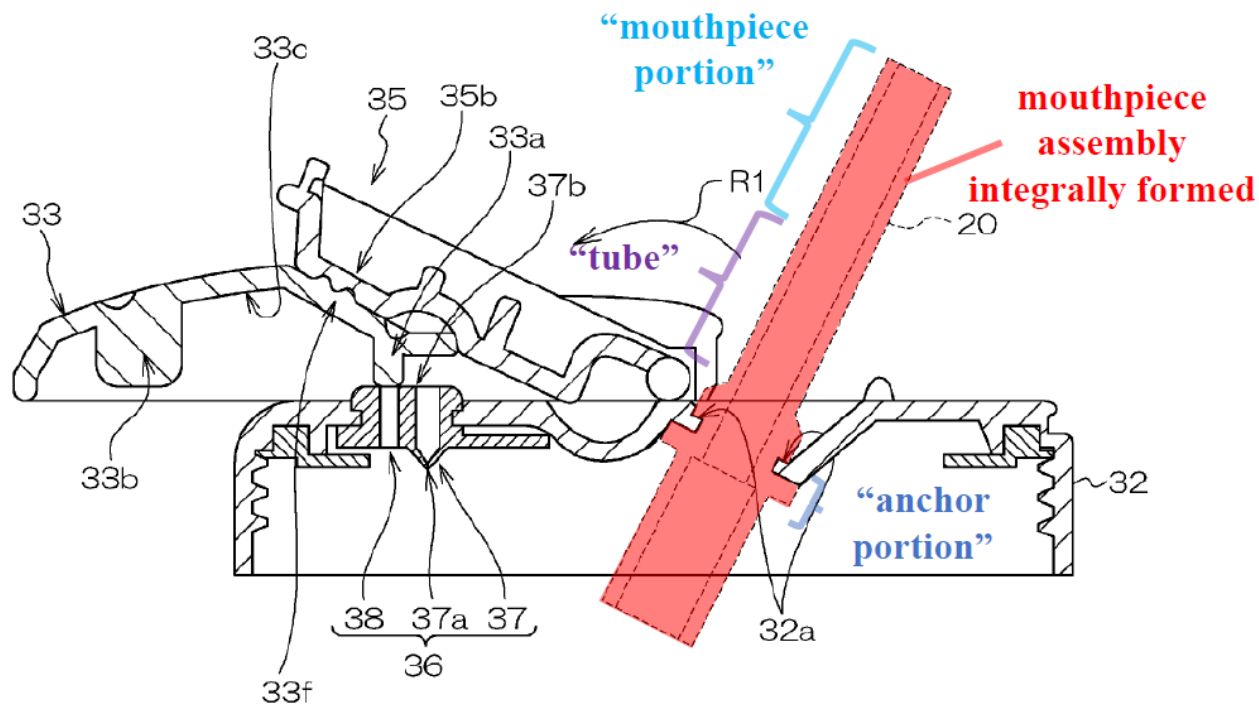
1. [8.1] *"The drink container of claim 1, wherein the mouthpiece portion permits a user to draw drink liquid from the drink container when the mouthpiece assembly is in the dispensing configuration."*

EX1006, ¶[0060] (In the drinking state shown in FIG. 9 "the straw 20 is recovered so that the user can drink the milk through the straw 20."); EX1003, ¶94.

**H. Claim 9**

1. [9.1] *“The drink container of claim 1, wherein the mouthpiece portion, the tube, and the anchor portion are constructed as a unitary assembly of the resiliently deformable material.”*

As discussed, this phrase may be construed to mean that the mouthpiece portion, the tube, and the anchor portion are integrally formed from the resiliently deformable material. Section VII.D. Straw 20 (mouthpiece assembly) satisfies this construction because Yamashita shows the straw as an integral component with the mouthpiece portion, the tube, and the anchor portion:



**Yamashita, FIG. 9\***

Yamashita also describes the straw as an integral component fitted to straw hole 32a in base 32 during installation. EX1006, ¶[0056]; EX1003, ¶95.

## I. Claim 21

Element	Section Above
[21.pre] “A <i>drink container, comprising:</i> ”	VIII.A.1 ([1.pre])
[21.1] “ <i>a liquid container; and</i> ”	VIII.A.2 ([1.1])
[21.2] “ <i>a cap assembly removably coupled to the liquid container, the cap assembly comprising: a base that defines a through-passage;</i> ”	VIII.A.3 ([1.2])
[21.3] “ <i>a mouthpiece assembly that extends through the through-passage of the base and defines a liquid passage,</i> ”	VIII.A.5 ([1.4])
[21.4] “ <i>wherein the mouthpiece assembly has a dispensing configuration and a stowed configuration,</i> ”	VIII.A.6 ([1.5])
[21.5] “ <i>wherein the mouthpiece assembly is biased to the dispensing configuration, and wherein the mouthpiece assembly includes: a resilient mouthpiece portion that permits a user to draw drink liquid from the drink container when the mouthpiece assembly is in the dispensing configuration;</i> ”	VIII.A.7 ([1.6])
[21.6] “ <i>a resilient tube connected to the mouthpiece portion and including a crimping region that is adapted to restrict flow of drink liquid through the mouthpiece assembly when the mouthpiece assembly is in the stowed configuration; and</i> ”	VIII.A.8 ([1.7])
[21.7] “ <i>a resilient anchor portion extending from the resilient tube opposite the resilient mouthpiece portion, wherein the anchor portion is sized to restrict passage of the resilient anchor portion through the through-passage and</i>	VIII.A.10 ([1.9])

<i>thus restrict removal of the mouthpiece assembly via a top side of the cap assembly, and”</i>	
[21.8] “ <i>wherein the resilient mouthpiece portion, the resilient tube, and the resilient anchor portion are constructed as a unitary assembly; and”</i>	VIII.A.10 ([1.9]); VIII..1 ([9.1])

1. [21.9] “*a user release mechanism adapted to automatically release the mouthpiece assembly from the stowed configuration to the dispensing configuration via the bias of the mouthpiece assembly.*”

Element [21.9] similar to element [1.11] but broader for lacking reference to the first and second catch structures. If it invokes Section 112, ¶6, it should be construed like element [1.11]. Section VII.C. Otherwise, it may be construed to mean a user release mechanism having a mechanical relationship with the cap assembly, such that actuation of the mechanism releases the mouthpiece assembly from the stowed configuration to the dispensing configuration via the bias of the mouthpiece assembly. *Id.* In either case, Yamashita discloses element [21.1] for the same reasons as element [1.11]. Section VIII.A.12; EX1003, ¶96.

#### **IX. GROUND 3: YAMASHITA AND PACZONAY RENDERS OBVIOUS CLAIMS 1, 2, 5-9, AND 21**

Element [1.6] recites the mouthpiece assembly comprises “a mouthpiece portion.” The claim language does not preclude the mouthpiece portion on the drinking-end portion of Yamashita’s straw 20, as Petitioner explains above. Section

VIII.A.5. But if Patent Owner incorrectly contends claim 1 requires a more substantial mouthpiece portion, Paczonay renders this obvious.

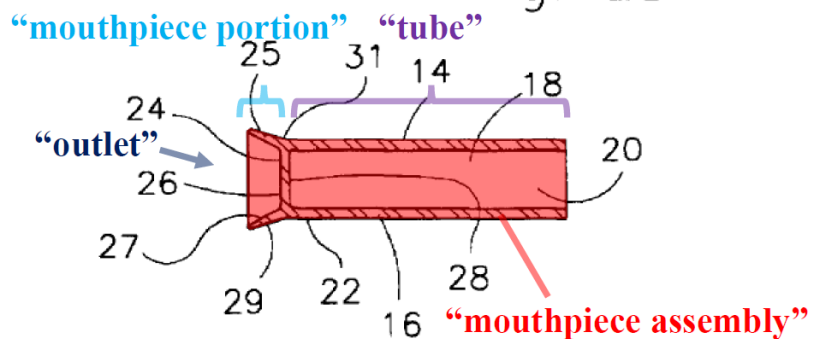
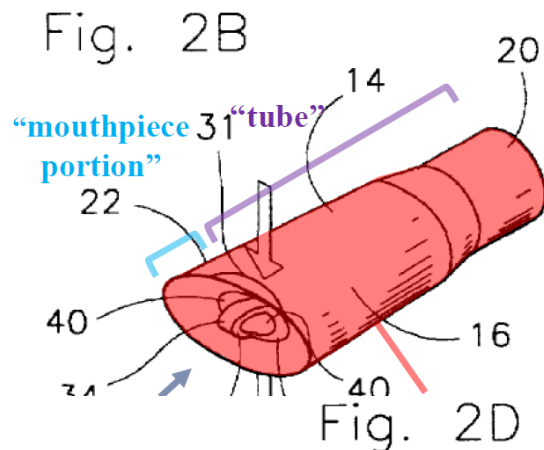
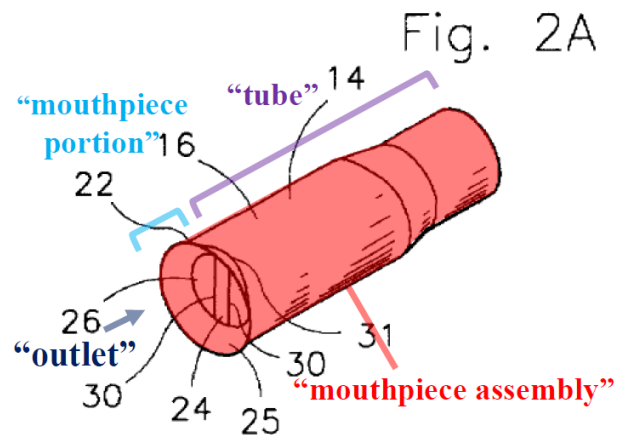
**A. Paczonay Discloses “wherein the mouthpiece assembly comprises: a mouthpiece portion that includes the outlet”**

Paczonay describes a bite-actuated mouthpiece apparatus for “delivering water or other liquids to the mouth of an individual, for example a cyclist.” EX1007, 1:8-10; 3:58-4:26, FIGS. 2A-2D. Paczonay explains prior mouthpieces have “no structure at the biting end of the valve to help keep it in the mouth of the user. Thus, this valve can easily fall out of the mouth of the user.” *Id.*, 1:37-39.

Paczonay’s mouthpiece apparatus 14 addresses this issue with flared mouth retention member 25 “[i]ntegrally molded to the

fluid outlet end of body portion 16 and extending outwardly away from closure 24.”

*Id.*, 3:23-24. As highlighted in the above Figures, Paczonay’s **apparatus 14**



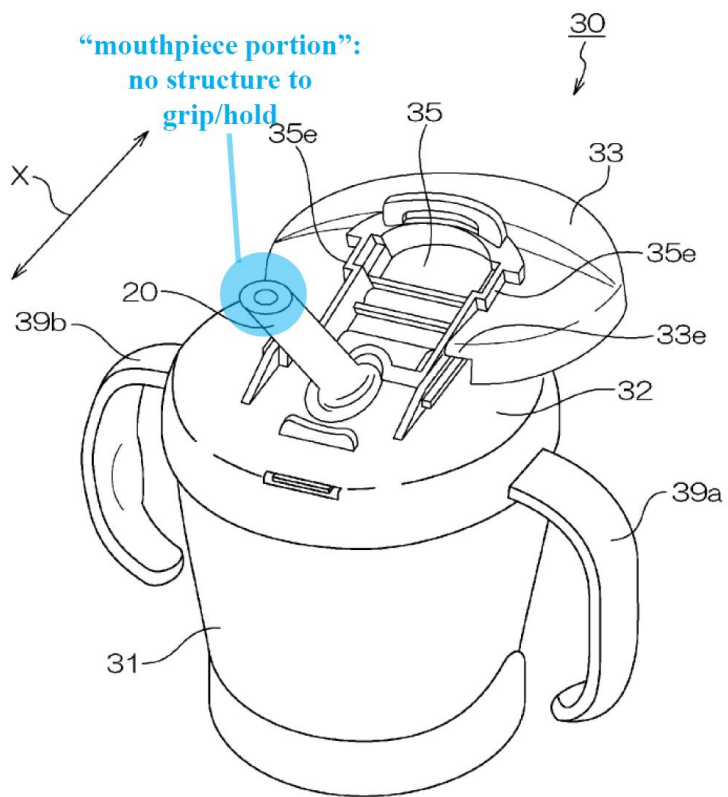


discloses the claimed mouthpiece assembly, with **flared mouth retention member 25** disclosing the claimed mouthpiece portion. EX1003, ¶100. The apparatus has **hollow body portion 16** (tube) “defining an interior 18 for accommodating fluid received from the liquid delivery tube” and **fluid outlet end 22** (outlet) having **flared mouth retention member 25** (mouthpiece portion). EX1007, 3:12-35. Thus, Paczonay discloses element [1.6]. EX1003, ¶100.

#### **B. Rationale to Combine Paczonay with Yamashita**

A POSITA would have found it obvious to add Paczonay’s flared mouth retention member 25 (mouthpiece portion) to Yamashita’s tube 20 (mouthpiece assembly). EX1003, ¶101. The references provide teaching, suggestion, or motivation for this combination. Paczonay aims to improve containers with bite-actuated mouthpieces that have “no structure at the biting end of the valve to help keep it in the mouth of the user” and thus “can easily fall out of the mouth of the user.” EX1007, 1:37-39. The Yamashita combination discussed above is such a drink container. EX1003, ¶101.





straw lacks structure at its drinking end to help the user grip and hold the straw in the mouth. EX1006, FIG. 6 (above).

A POSITA would have observed that Yamashita's straw, like the deficient bite-actuated straws addressed by Paczonay, has no feature at its biting end to help the user hold it in the user's mouth. EX1007, 1:37-39; EX1003, ¶103. In Paczonay's solution, "external flared wall 29 [of mouth retention member 25] intersects with the outer wall of hollow body portion 16, making a convenient concentric ridge for the teeth or lips of an individual." EX1007, 3:51-54. Thus, a POSITA would have wanted to modify Yamashita's straw to include Paczonay's flared mouth retention

member 25 to make it easier for users to grip and hold when actuating the valve and drinking from the container. EX1003, ¶103.

Paczonay gives reasons for the combination besides making the mouthpiece easier to hold in the mouth. *Id.*, ¶104. For example, mouth retention member 25 provides additional structural support biasing the mouthpiece toward its undeformed/closed state when the user isn't actively drinking: "[F]lared member 25 acts to apply a compressive hoop stress on the closure 24, thus forcing any slits in closure 24 to remain closed when no external deforming forces are applied to bite valve apparatus 14." EX1007, 3:54-58. Added to Yamashita's straw, Paczonay's flared member 25 would add further bias to close the open/close valve 211 when the user isn't drinking. EX1003, ¶104.

A POSITA would appreciate the material of Yamashita's straw deteriorates and loses resiliency from repeated bite forces applied to the straw over time as the container is used. EX1003, ¶105. Eventually, the straw loses its structural integrity and can no longer hold the valve closed, even absent bite or suction pressure. *Id.* Adding flared member 25 from Paczonay, however, would extend the useful life of Yamashita's straw by adding structural support further biasing the straw to its uncompressed/closed state. *Id.* Thus, Yamashita's bite-actuated straw would work properly for longer with Paczonay's flared mouthpiece portion than without it. *Id.*

Paczonay also teaches flared member 50 makes the mouthpiece easier to manufacture. “This construction allows the bite valve apparatus to be easily ejected from an injection mold” and the shape of the flared member means mouthpiece “will not shear at the intersection 31 between the member 25 and the hollow body portion 16” when removed from the mold. EX1007, 3:36-49. Thus, a POSITA would have been motivated to combine Paczonay with Yamashita to improve the manufacturing process and increase yield. EX1003, ¶106.

Adding Paczonay’s flared member to the mouthpiece portion of Yamashita’s straw merely involves using a known technique (adding a flare to the end of a bite-actuated straw) to improve a similar device (Yamashita’s bite-actuated straw without a flare) in the same way and/or applying a known technique to a known device ready for improvement to yield predictable results. EX1003, ¶107. Paczonay demonstrates adding a flared member to the end of a bite-activated straw was known to: (1) aid the user to retain the straw in the mouth; (2) improve the resilience of the straw to return to its closed state absent bite pressure; and (3) improve the manufacturing process and increase yield. *Id.*

Paczonay’s mouthpiece is similar to Yamashita’s because both include a bite-actuated valve inside the straw that opens when the straw deforms under bite pressure and closes when the straw returns to its undeformed state absent bite pressure. *Compare* EX1006, ¶¶[0077]-[0078], FIGS. 16-18 *with* EX1007, 3:58-4:26,

FIGS. 2A-2D. And both mouthpieces are made from a resilient material and integrally formed with their respective tubes that receive fluid from within the container. *Compare* EX1006, ¶¶[0058], [0035] *with* EX1007, 3:8-35, 4:3-8, FIGS. 2A-2D. Thus, when added to Yamashita's straw, Paczonay's flared mouthpiece portion would improve Yamashita's straw as it improves the conventional mouthpieces Paczonay criticizes. EX1003, ¶108. And since Yamashita's straw lacks any special structure to help the user retain the straw in the mouth, Yamashita's straw stands ready for improvement by adding Paczonay's flared mouthpiece portion. *Id.*

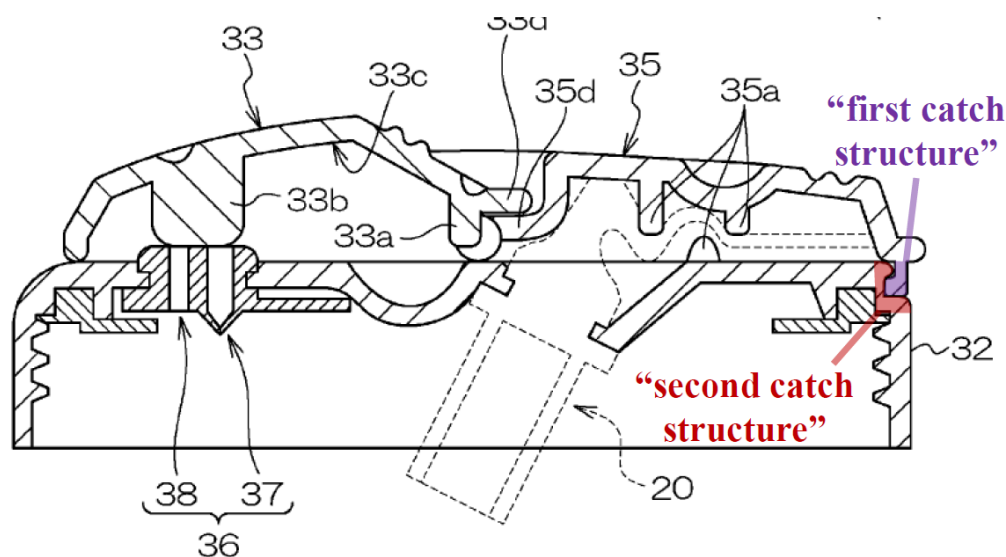
The Yamashita-Paczonay combination addresses additional elements of the claims. EX1003, ¶109. For example, Paczonay bolsters Yamashita if it's argued Yamashita's mouthpiece assembly isn't "constructed of a resiliently deformable material" [1.8], "biased to the dispensing configuration" [1.7], and "move[s] via its bias" [1.12]. EX1007, 3:8-35, 4:3-8, FIGS. 2A-2D (describing Paczonay's resilient, deformable mouthpiece).

And, as discussed, Paczonay teaches the mouthpiece is integrally formed, including flared member 25 (mouthpiece portion). *Id.* Thus, with the flared member of Paczonay added to Yamashita, the modified straw is a single component integrally forming the mouthpiece, tube, and anchor portions from a resiliently deformable material. Section VII.D. This further suggests or renders obvious elements [1.8] and [9.1]. EX1003, ¶110.

**X. GROUNDS 4-5: YAMASHITA AND YAMASHITA/PACZONAY  
IN VIEW OF DALL’AGNESE RENDER OBVIOUS CLAIMS 1, 2,  
5-9, AND 21**

Applying an unduly narrow and incorrect construction of element [1.11], Patent Owner may contend Yamashita’s slider 33 (user release mechanism) does not sufficiently “automatically” disengage the first and second catch structures upon actuation, as recited in element [1.11]. Similarly, for element [21.10], Patent Owner may contend Yamashita’s slider does not sufficiently “automatically” release the mouthpiece assembly. But Dall’Agnese renders these elements obvious even under such a narrow construction. EX1003, ¶111.

In these Grounds, the following Yamashita features correspond to the claimed first [1.3] and second [1.10] catch structures instead of abutting part 35d and hood stopper 33d identified above:

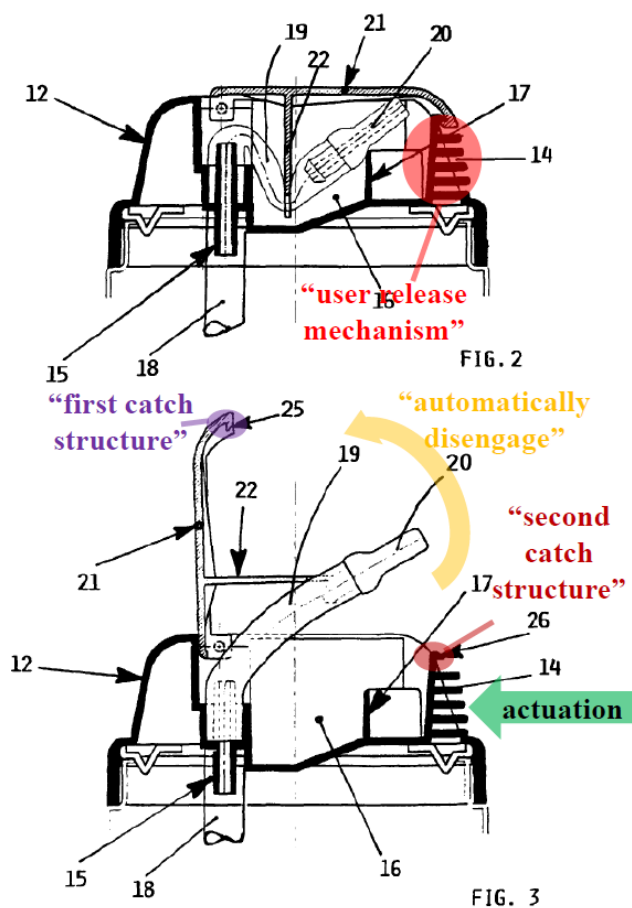


**Yamashita, FIG. 7\***

Specifically, the **recess/protrusion** on the hood 35 disclose the first catch structure. EX1003, ¶112. And the corresponding **protrusion/recess** of the base 32 with which the recess/protrusion on the hood mate, when the container is in the portable state, disclose the second catch structure. *Id.* If it's argued Yamashita does not disclose a user release mechanism adapted to automatically disengage these two catch structures and open the container upon actuation, Dall'Agnese renders it obvious. *Id.*

#### A. Dall'Agnese Discloses Element [1.11]

Dall'Agnese describes a beverage “container[] whose cap is provided with a closing or plugging device that is actuatable in a snap-like manner so as to offer the user a spout for sucking the beverage contained inside the container.” EX1008, ¶[0003]. Dall'Agnese's container has cap 12 screwed onto body 11, and “cap 12 is provided with a snap-acting closing device 13, which is adapted to be actuated by means of an elastic tab 14.” *Id.* ¶[0007],



FIGS. 2, 3 (above). **Elastic tab 14** discloses the claimed user release mechanism. EX1003, ¶113.

Closing device 13 of Dall’Agnese has **first tooth 25** (first catch structure) that engages a corresponding **second tooth 26** (second catch structure). EX1008, ¶[0011]. “[B]y pressing the cover 21 against the tab 14 the teeth 25 and 26 are caused to get engaged, by making use of the elasticity of the tab 14, in such a manner as to cause the device to snap back into its closed position” and close the container. *Id.*, ¶[0012], FIG. 3. And, to open the container, “a pressure exerted on the tab [14] will cause the same to flex, thereby automatically releasing the teeth 25 and 26. The elasticity of the tubing 19 causes the cover 21 to open, in such a manner as to enable the spout 20 to be presented to the user.” *Id.*, ¶[0011]. Dall’Agnese’s elastic tab 14 (user release mechanism) is adapted to automatically disengage teeth 25, 26 (first and second catch structures) upon actuation and release tube 19 and spout 20 (mouthpiece assembly) to move via the tube’s bias from the stowed configuration to the dispensing configuration, as claimed. EX1003, ¶114. Tab 14 provides a mechanical relationship between the two teeth (first and second catch structures) to disengage the teeth and release the mouthpiece, consistent with the non-means-plus-function construction for this element. *Id.*; Section VII.C.

**B. Rationale to Combine Dall’Agnese With Yamashita/Paczonay**

A POSITA would have found it obvious to modify Yamashita’s base 32 and hood 35 to incorporate Dall’Agnese’s elastic tab 14. EX1003, ¶115. The references provide teaching, suggestion, or motivation for this combination. For example, although Yamashita’s figures show the recess/protrusion on hood 35 (first catch structure) and the protrusion/recess of base 32 (second catch structure), Yamashita does not discuss them in text. EX1006, ¶[0059]. The user may apply pressure to the hood with the thumb to disengage these catch structures and pop the hood open after moving slider 33 to the left. EX1003, ¶115. While this may work, a POSITA would have looked to other references for more convenient mechanisms to disengage the two catch structures and open the hood of Yamashita. *Id.* And Dall’Agnese provides a suitable solution. *Id.*

Adding Dall’Agnese’s elastic tab 14 to Yamashita merely involves using a known technique to improve a similar device in the same way, or applying a known technique to a known device ready for improvement with predictable results. Dall’Agnese shows it was known to use an elastic tab to selectively release a lid stowing the mouthpiece of a drink container. EX1003, ¶116. The containers of Yamashita and Dall’Agnese both have a cover (Yamashita’s hood 35, Dall’Agnese’s closing device 13) to stow and crimp the mouthpiece within the cap so the container does not leak when closed. *Id.* Thus, adding Dall’Agnese’s tab to Yamashita would

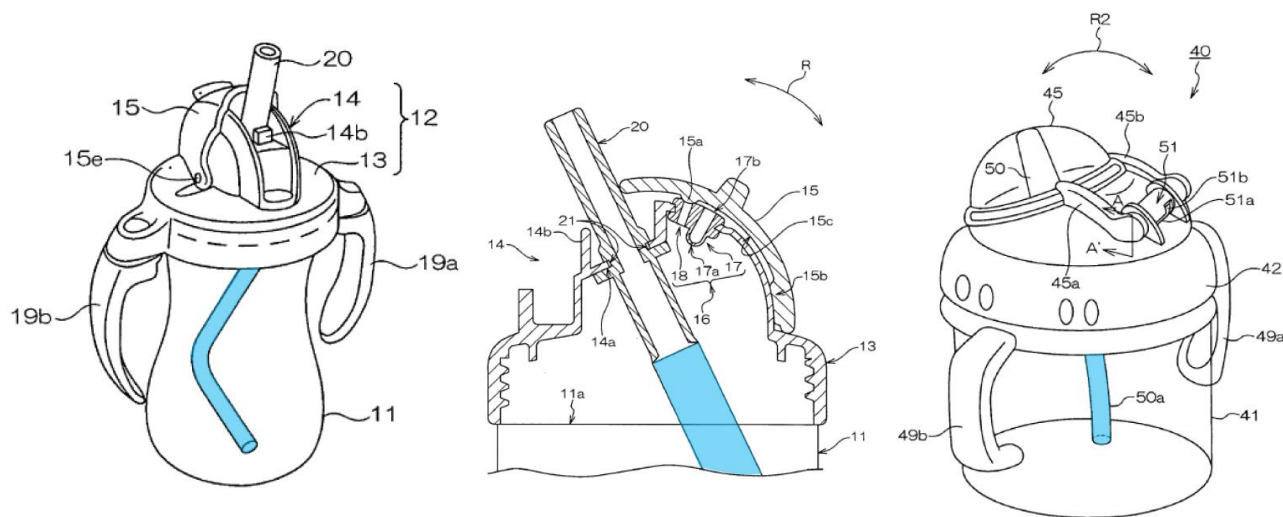


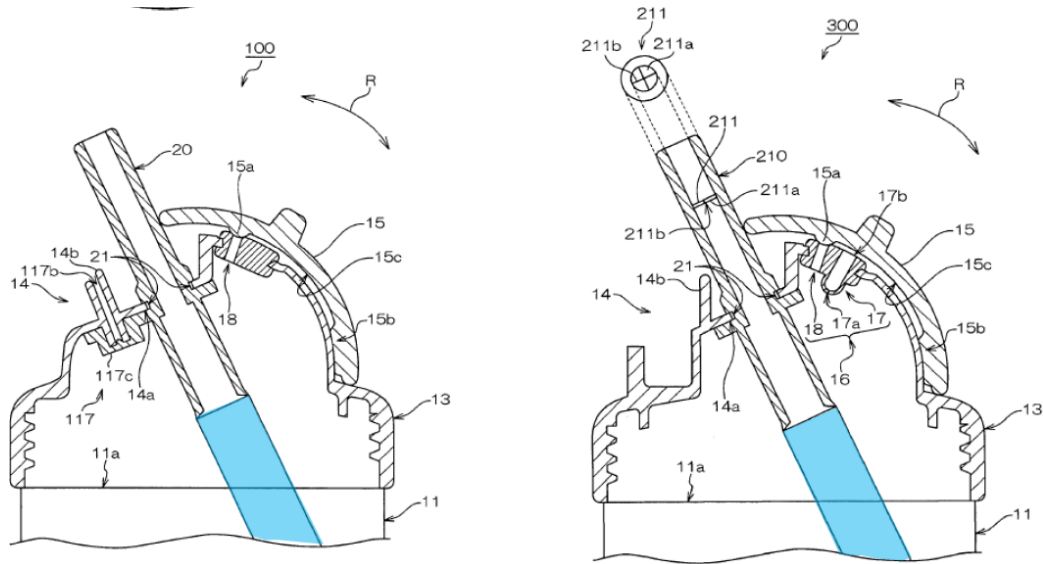
improve Yamashita as it improves Dall’Agnese—more convenient opening of the hood without a spring-based push-button. EX1008, ¶¶[0004], [0013]; EX1003, ¶116. Yamashita’s container stands ready for improvement by adding Dall’Agnese’s tab because both containers use similar lid mechanisms to crimp and stow the mouthpiece. EX1003, ¶116. A POSITA would have had a reasonable expectation of success in making the combination. *Id.*

**XI. GROUNDS 6-8: YAMASHITA, YAMASHITA/PACZONAY, AND YAMASHITA/PACZONAY/DALL’AGNESE, IN VIEW OF MANGANIELLO, RENDER OBVIOUS CLAIM 16**

**A. [16.1] “The drink container of claim 1, wherein the drink container includes a straw with a first end that extends into the liquid container and**

The Yamashita Figures 1, 10, and 16 containers have a straw with a first end that extends into the liquid container, as claimed. *See, e.g.*, EX1006, ¶[[0063] (“a straw 50a [is] disposed in the base member 42”); EX1003, ¶117.





**Yamashita, FIGS. 1, 2, 10, 12, 16\***

Yamashita does not expressly show or describe the internal straw of the Figure 6 container, but it would have been obvious the container needs it so the user can drink the beverage from main body 31 as Yamashita describes. EX1003, ¶118. Thus, a POSITA would have found it obvious to include the straw in the Figure 6 embodiment. *Id.*

**B. [16.2] “a second end that extends into the liquid passage and is retained therein by [a] friction-fit arrangement.”<sup>6</sup>**

Because Yamashita focuses on preventing leakage and allowing the user to drink easily from the container even with a negative internal pressure, EX1006, abstract, how the internal straws connect to the liquid passages of their respective mouthpieces falls outside Yamashita’s scope. EX1003, ¶119. Manganiello, however, discloses a straw assembly for a similar drinking cup in which the second end of the straw connects to the liquid passage of the mouthpiece by friction fit, as claimed. *Id.* It would have been obvious to use Manganiello’s straw-connection technique in Yamashita. *Id.*

**1. Manganiello discloses element [16.2]**

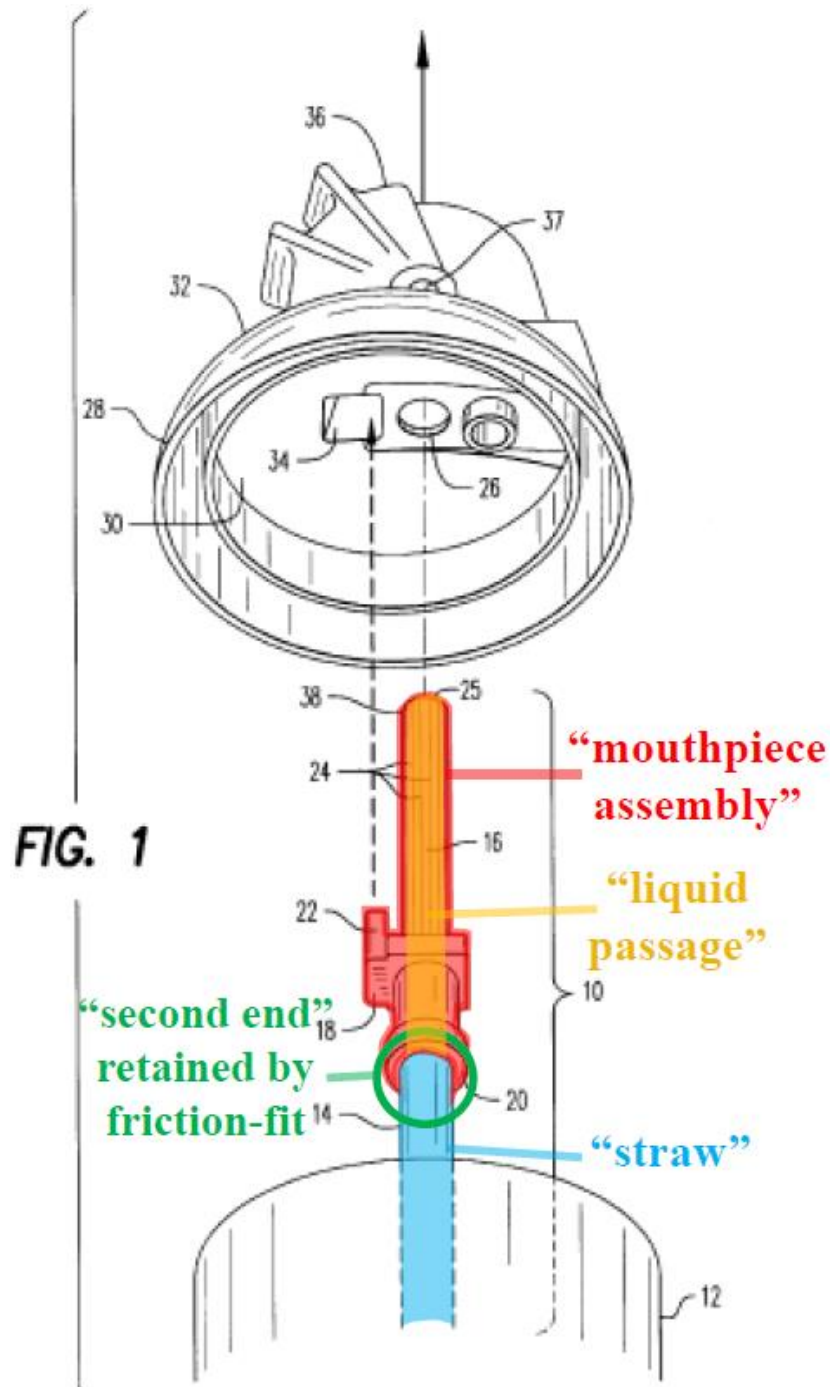
Manganiello describes reusable straw assembly 10 for leak-proof cup 12. EX1009, Abstract, 2:32-46, FIG. 1. The assembly has lower segment 14 with one

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<sup>6</sup> “The friction-fit arrangement” lacks antecedent basis. Without conceding that claim 16 is not indefinite, Petitioner interprets the claims as though it has antecedent basis.

end extending into the cup and the other connecting to first end 20 of upper segment 16. *Id.*, FIG. 1. The upper segment has drinking end 38 that inserts through opening 26 in cup lid 28. *Id.*, 2:32-3:4, FIG. 1.

As highlighted in Figure 1 (right), **upper segment 16**, discloses the claimed mouthpiece assembly and the **lower segment 14** discloses claim 16's straw.



EX1003, ¶121. “The lower segment 14 is adapted to fit within the first end 20 of upper segment 16 to form a unitary straw assembly.” EX1009, 3:31-32. Manganiello does not expressly teach friction holds the straw within upper segment 16, but this

would be necessary given Manganiello does not describe another mechanism (e.g., adhesive) that retains the straw. EX1003, ¶121. Thus, based on Manganiello's description and Figure 1, a POSITA would understand Manganiello to disclose, suggest, or render obvious that the **second end** of lower segment 14 is retained by **friction-fit** within the **liquid passage** at first end 20 of upper segment 16. *Id.*

## **2. Rationale to Combine Manganiello With Yamashita/Paczonay/Dall'Agnese**

It would have been obvious to configure Yamashita's container such that the second end of the internal straw extends into the liquid passage and is retained by a friction-fit arrangement, as disclosed by Manganiello. EX1003, ¶122. The references provide teaching, suggestion, or motivation supports for the combination. Yamashita does not explain the peripheral matter of how the internal straw connects to the mouthpiece portion. To implement a working container, a POSITA would have looked to other references for details on how to do so. EX1003, ¶123. Manganiello provides an example where the internal straw inserts into the liquid passage at the base of the mouthpiece portion and is held by friction. *Id.* A POSITA would have found it obvious to use Manganiello's technique in Yamashita. *Id.*

Implementing Manganiello's technique in Yamashita merely involves using a known technique (fitting the straw in the base of the mouthpiece) to improve a similar device (Yamashita's container) in the same way and/or applying a known technique to a known device ready for improvement with predictable results.

Manganiello demonstrates it was known to insert the end of an internal straw of a container into an opening in the mouthpiece base so friction retains the straw. EX1003, ¶124. In Yamashita, this configuration would operate as it does in Manganiello. *Id.* And to the extent Yamashita does not teach how the internal straw mates with the mouthpiece, Yamashita stands ready for improvement by Manganiello's technique. *Id.* Thus, a POSITA would have made the combination through routine skill in the art with predictable results. *Id.*

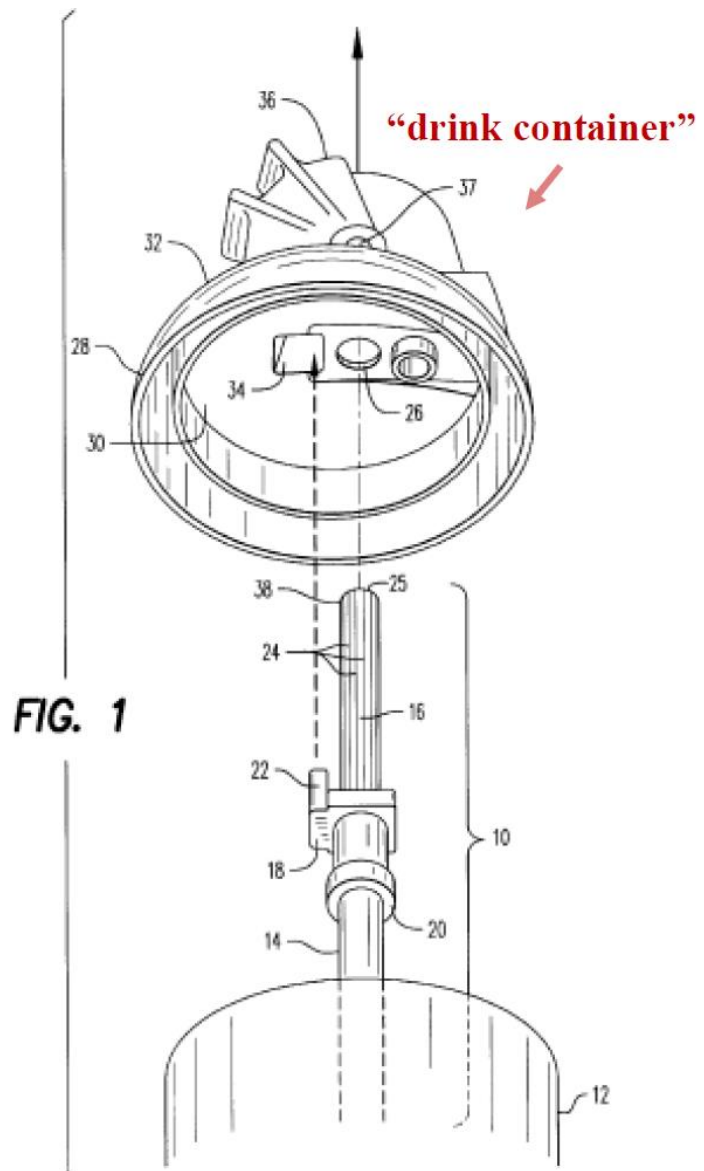
**XII. GROUND 9: MANGANIELLO AND DALL'AGNESE RENDERS  
OBVIOUS CLAIMS 1, 2, 5, 8-10, 14, 16, AND 21**

**A. Claim 1**

**1. Element [1.pre]**

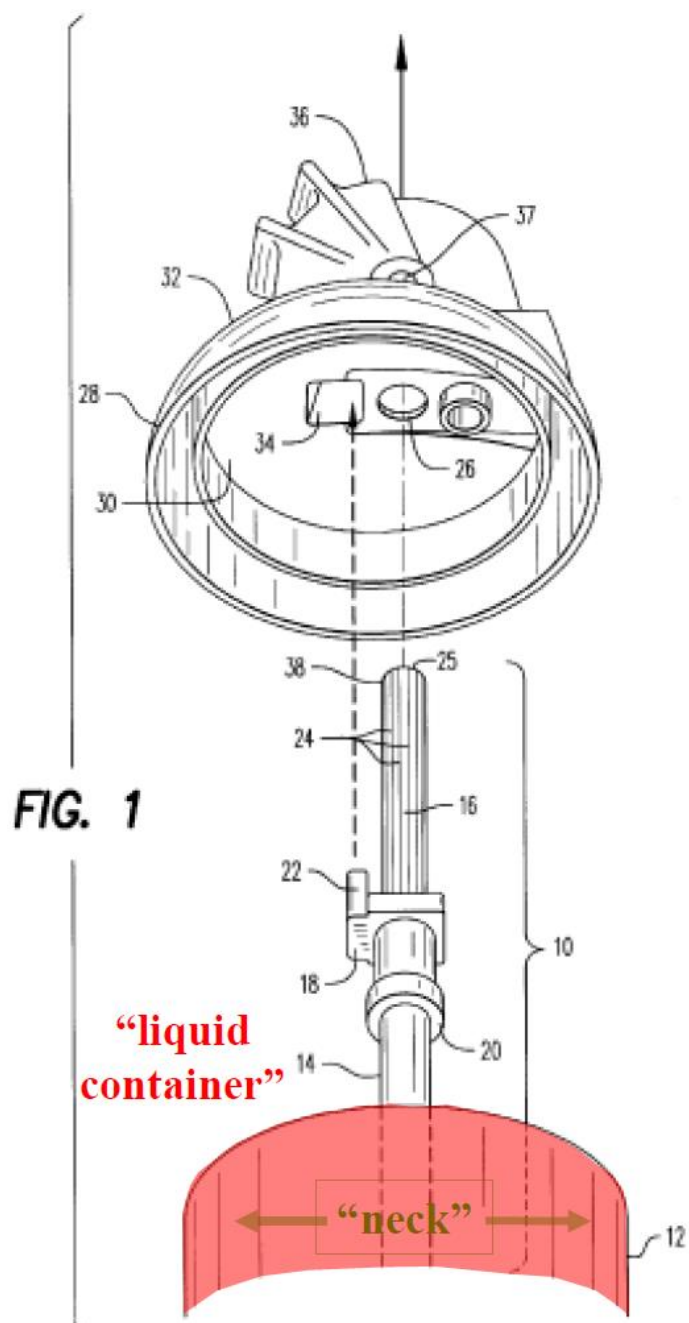
Manganiello discloses a drink container—the **cup assembly** including **leak-proof cup 12, straw 10, and cup lid 28**.

EX1009, 2:33-51, 1:66-2:11, 5:4-18, FIG. 1 (right); EX1003, ¶125.



## 2. Element [1.1]

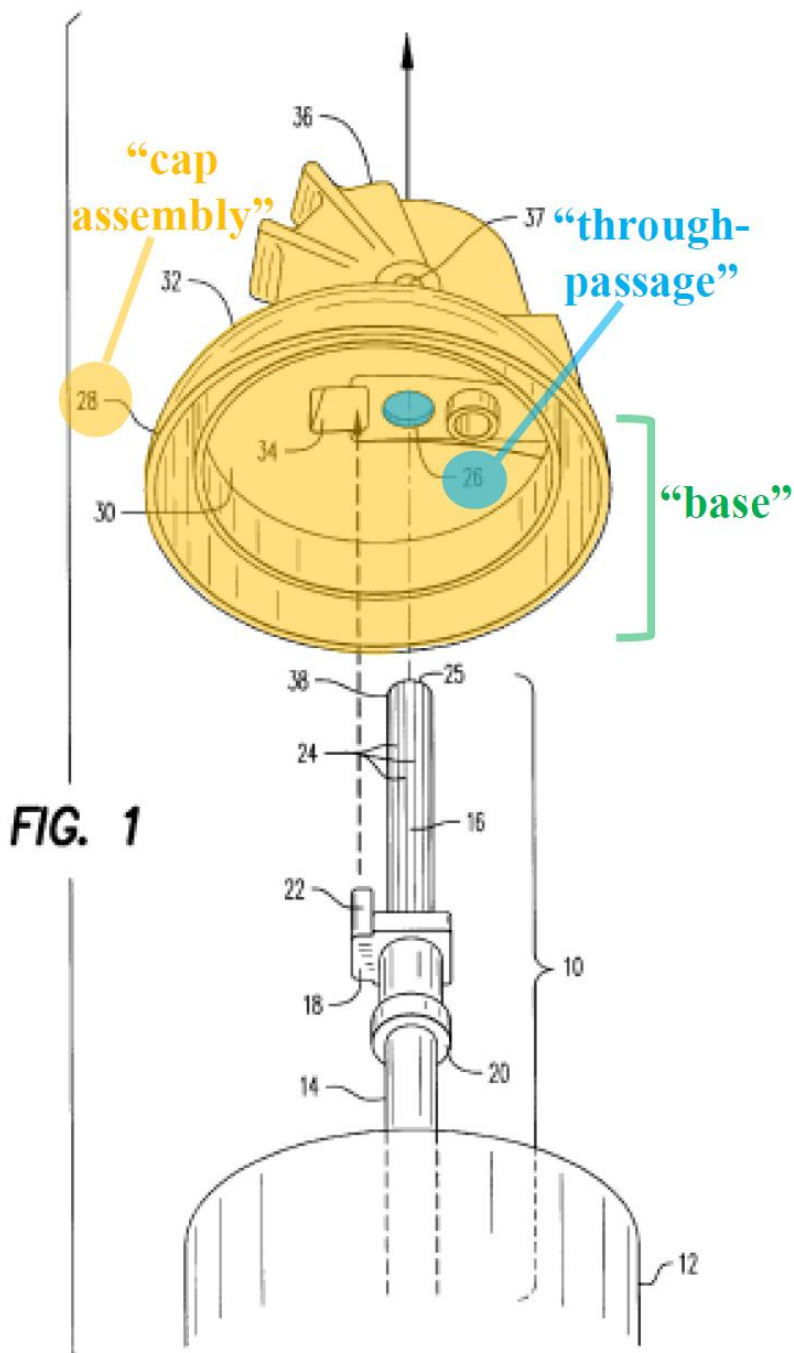
Manganiello's **leak-proof cup 12** discloses the claimed liquid container. EX1009, 2:26-51, FIG. 1 (right); EX1003, ¶126. At the top of leak-proof cup 12, a **neck** region provides an opening to an internal compartment sized to hold a volume of potable drink liquid. EX1009, 2:26-64.





### 3. Element [1.2]

Manganiello's **cup lid** 38 discloses the claimed cap assembly. EX1009, 2:47-53, FIG. 1 (right); EX1003, ¶127. At its **base**, the cup "lid [is] removably mounted on the cup [and] ha[s] an aperture therethrough," and "a flexible straw element [is] adapted to be inserted through the aperture from the underside of the lid." EX1009, 1:66-2:3. **opening/aperture** 26 discloses the claimed through-passage. EX1009, 2:46-64; EX1003, ¶127.



**4. Element [1.3]**

**a. Dall’Agnese discloses element [1.3]**

Manganiello does not expressly disclose this element. But, **first tooth 25** on Dall’Agnese’s closing device 13 discloses the claimed first catch structure. Section X.A; EX1008, ¶[0011], FIG. 3; EX1003, ¶128.

**a. Rationale to combine Dall’Agnese with Manganiello for element [1.3]**

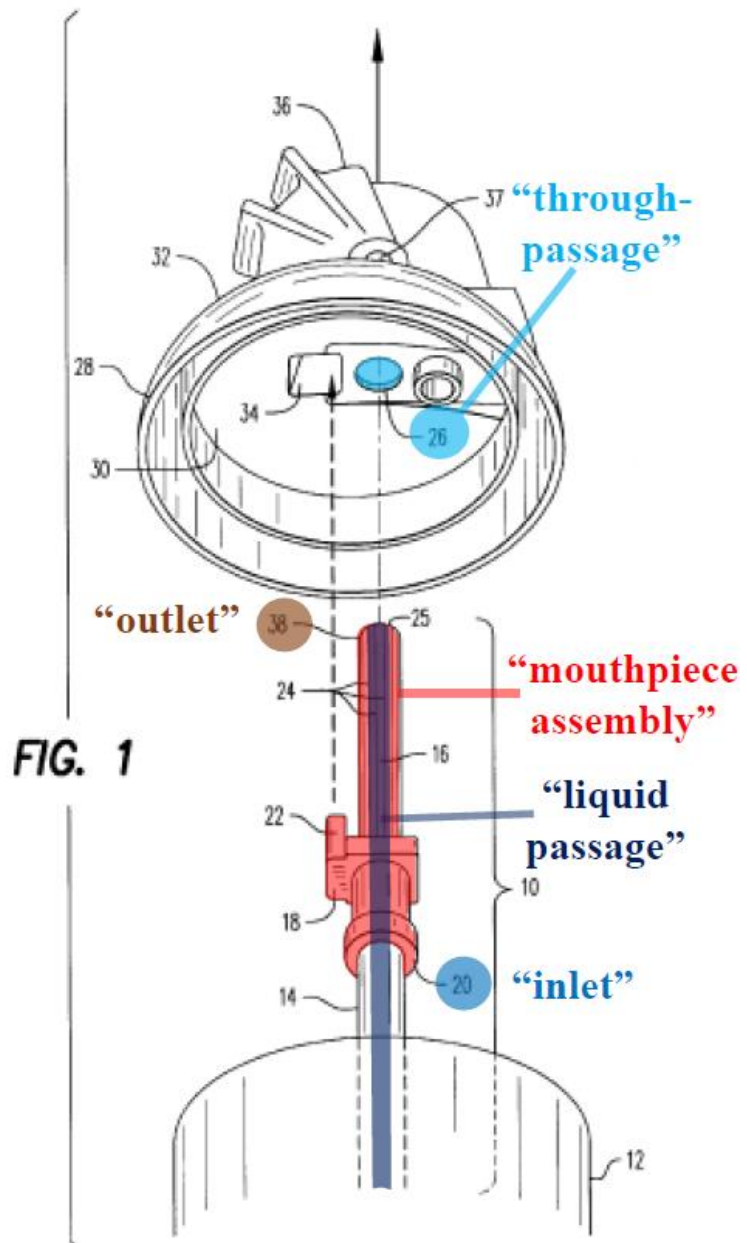
Section XII.A.12 below.

**5. Element [1.4]**

Manganiello’s **straw 10** discloses the claimed mouthpiece assembly because it is a mouthpiece part separate from the cap assembly. Section VII.A; EX1003, ¶130. Manganiello’s **straw 10** is a mouthpiece part separate from cup lid 38. EX1009, 2:35-38 (“The straw 10 is ... a two-piece straw adapted to be inserted in a leak-proof cup 12” and “includes an elongated lower segment 14 and an elongated,

but shorter, upper segment 16.”), FIG. 1 (right). Upper segment 16 of the straw is installed by insertion through **opening 26** (through-passage) on inner surface 30 of cup lid 28. EX1009, 2:52-53, 3:2-4.

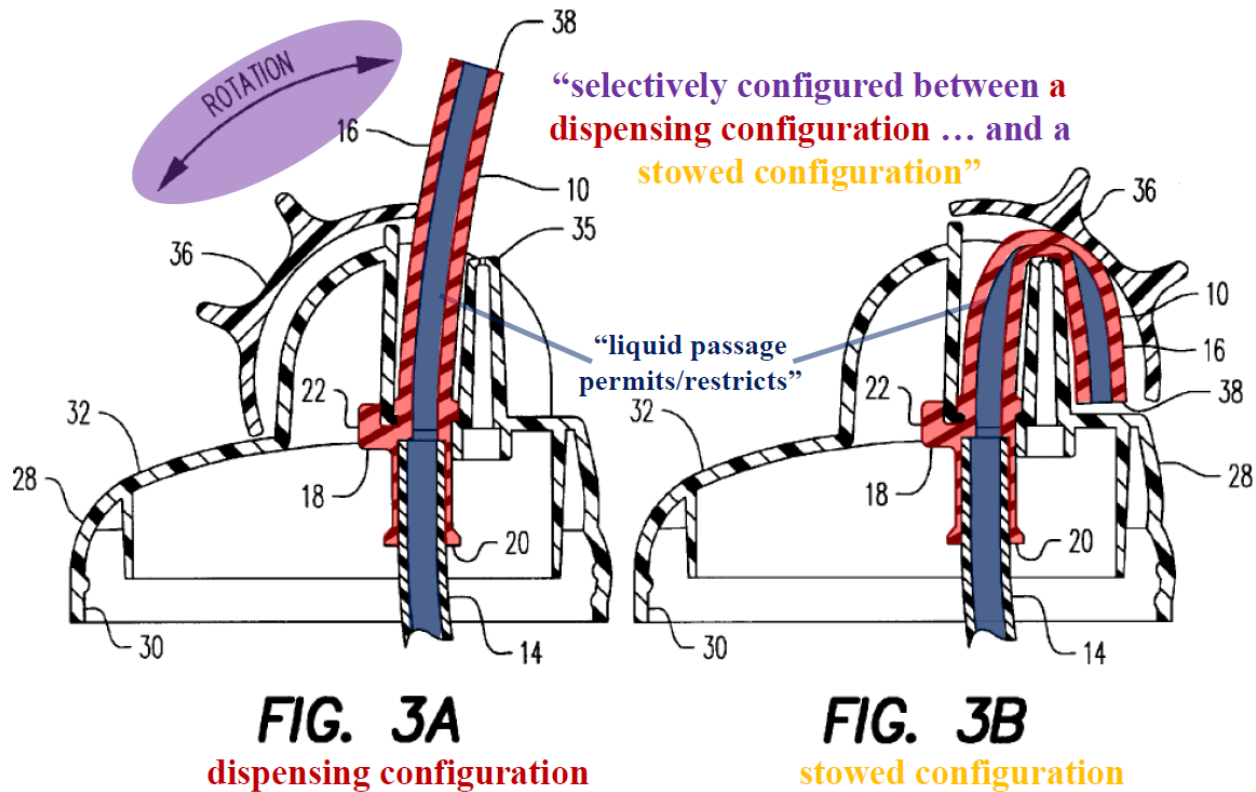
The straw defines a **liquid passage**, **first end 20** (inlet) through which liquid in the cup enters the straw, and **drinking end 38** (outlet) through which the user drinks. EX1009, 2:35-39, FIG. 1. Liquid selectively dispenses from the cup and



selectively flows through the liquid passage of the straw, as claimed, by: (1) the user’s selectively drinking/not drinking from the straw; and (2) the user’s selectively opening/closing sealing cap 36 to open/close the straw. *Id.*, 2:16-22, 2:59-3:4, 3:14-19, FIGS. 3A, 3B; EX1003, ¶131.

6. Element [1.5]

Manganiello's **straw 10** (mouthpiece assembly) is **selectively configured** between an **open state** (dispensing configuration) and a **sealed state** (stowed configuration) (EX1003, ¶132):



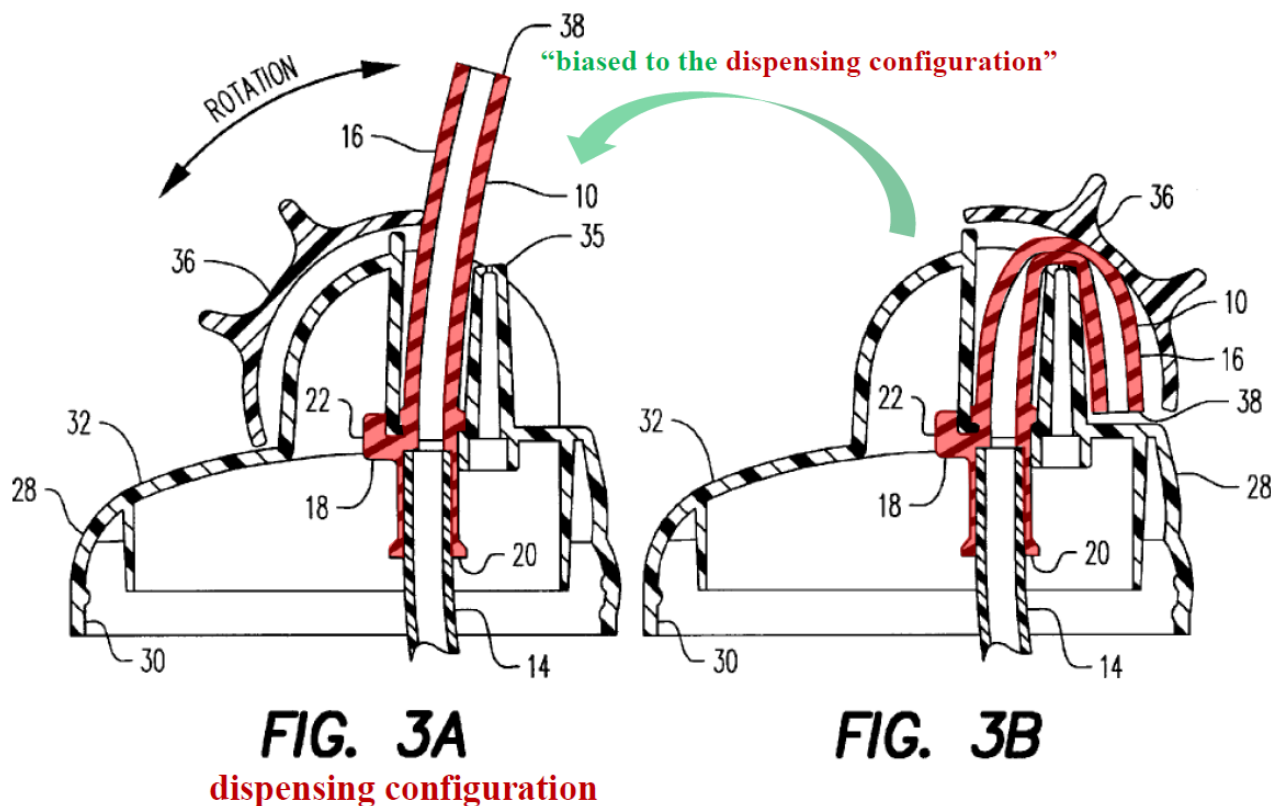
Manganiello, FIGS. 3A, 3B\*

In the open state (Figure 3A), the **liquid passage** of the straw permits liquid to flow from the cup into the liquid passage because the passage is open to its full natural diameter. EX1009, 2:10-11, 2:19-20, 5:16-18; EX1003, ¶132. In the sealed state (Figure 3B), sealing cap 36 folds the straw over sealing post 35, compressing and closing the liquid passage to form “a leakproof seal.” EX1009, 3:14-30, FIG. 3B;

see 2:21-22, 2:57-3:4. In the sealed state, the crimped straw restricts the flow of liquid therethrough. EX1003, ¶132.

## 7. Element [1.6]

Manganiello's **straw 10** (mouthpiece assembly) is **biased** to the **open state** (dispensing configuration) (EX1003, ¶133):

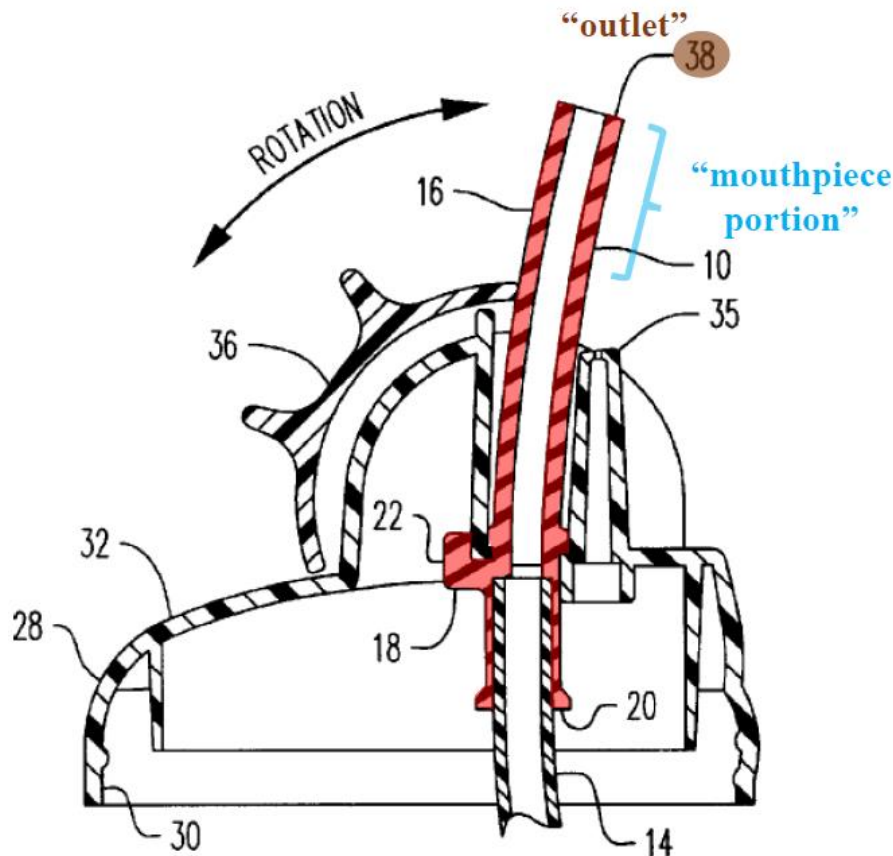


**Manganiello, FIGS. 3A, 3B\***

Manganiello teaches “upper segment 16 is formed of a flexible, strong, elastomeric material such as surgical grade silicone, TPE or PVC. This allows it to be soft to drink from and easy to clean, while also enabling it to be bent and sealed repeatedly with minimal force and without cracking or ripping.” EX1009, 3:35-41; *see* 3:5-7.

Due to its resilience and flexibility, the upper segment has a natural bias to stand upright in the open state, as seen in Figures 3A, 3B of Manganiello above. EX1003, ¶133. Thus, when the sealing cap rotates counterclockwise and releases the upper segment of the straw, this bias causes the upper segment to move from the closed/bent state to the upright drinking state. *Id.*

Additionally, Manganiello's **straw** comprises a **mouthpiece portion** including the **outlet** (*id.*, ¶134):

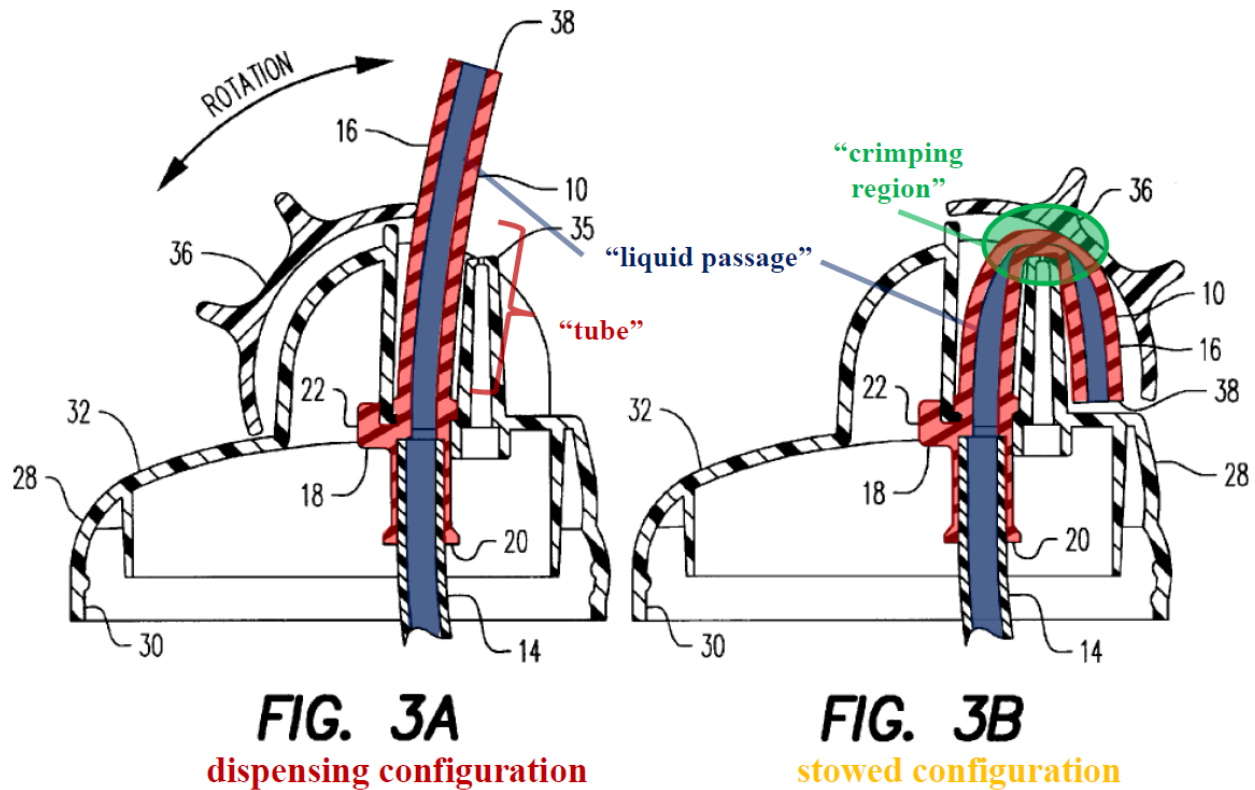


**FIG. 3A**

**Manganiello, FIG. 3A\***

8. Element [1.7]

The **tube** of Manganiello's **straw 10** (mouthpiece assembly) defines a **crimping region** that restricts the flow of through the **liquid passage** when the straw is in the **closed state** (stowed configuration) (EX1003, ¶135):



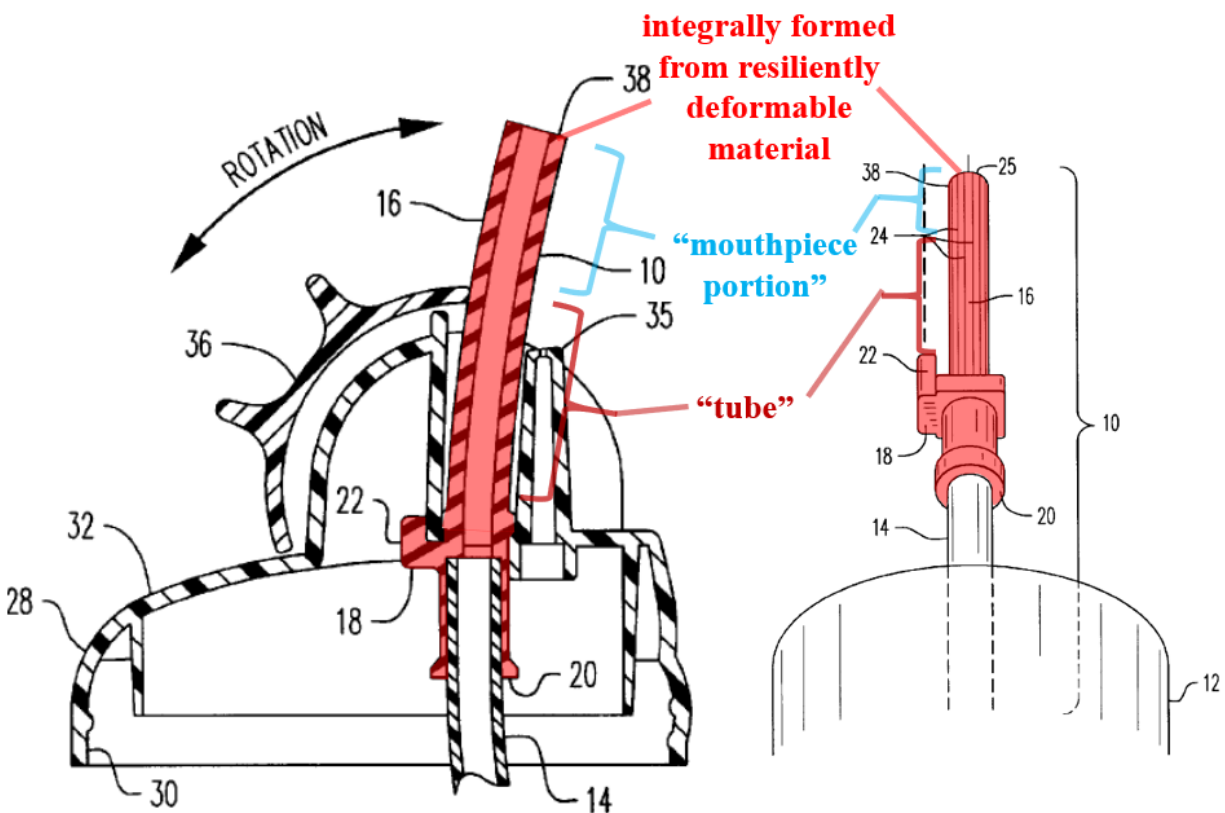
Manganiello, FIGS. 3A, 3B\*

In the closed state (Figure 3B), sealing cap 36 folds and crimps upper segment 16 of the straw over sealing post 35, closing the liquid passage to form “a leakproof seal.” EX1009, 3:14-30, FIG. 3B; *see* 2:21-22, 2:57-3:4. The region of the straw folded/crimped over the sealing post, highlighted above in green, discloses the claimed crimping region. EX1003, ¶135. This region is constructed of a resiliently deformable material, as claimed. *Id.*; EX1009, 3:35-41.



9. Element [1.8]

**Upper segment 16** of Manganiello's straw 10 has both the **mouthpiece portion** and **tube** (EX1003, ¶136):



**Manganiello, FIGS. 1, 3A\***

Manganiello teaches its “two-piece straw 10 includes an elongated lower segment 14 and an elongated, but shorter, upper segment 16.” EX1009, 2:34-38; *see* 3:31-35, FIG. 1. This two-piece construction suggests upper segment 16 is a single, distinct (i.e., integral) piece as described and shown in the Figures. EX1003, ¶137. The upper segment contains: (1) the mouthpiece portion (region at drinking end 38); (2) the tube (crimping region) and (3) shoulder 18 and finger 22 (anchor portion,

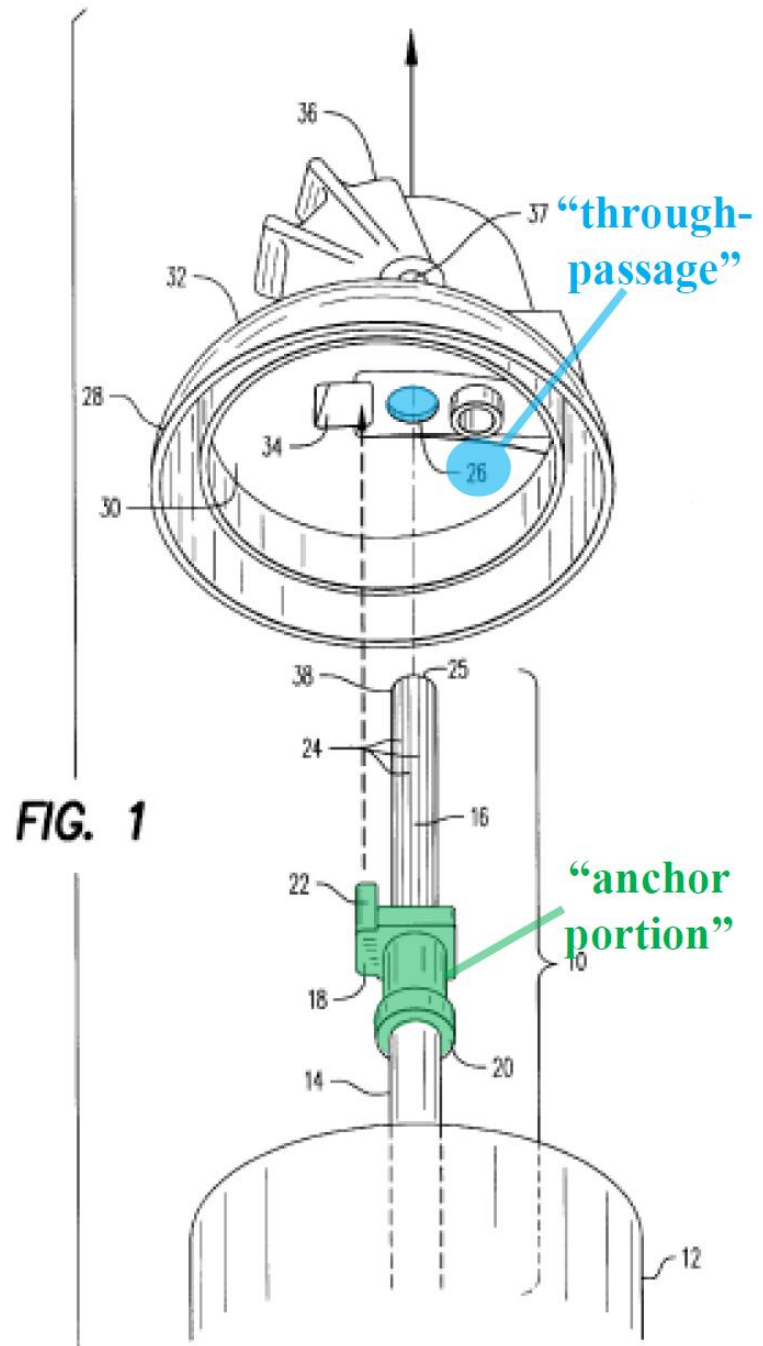


discussed below). EX1009, 2:32-46, 2:52-60, FIG. 1. Because the upper segment is a single integral piece, a POSITA would understand portions (1)-(3) to be integrally formed from upper segment 16. EX1003, ¶137. And Manganiello teaches the entire upper segment---including these three portions—is integrally formed from a resiliently deformable material, like TPE or PVC. EX1009, 3:5-13, 3:35-41; *see* 1:14-17 (“integral straw assembly”). A POSITA would understand Manganiello’s mouthpiece portion, tube, and the anchor portion (discussed below) are integrally formed from this resiliently deformable material. EX1003, ¶137.

## 10. Element [1.9]

Manganiello's straw 10 has **shoulder 18 with finger 22** corresponding to the claimed anchor portion. EX1009, 2:39-46, 2:52-56, FIG. 1 (right); EX1003, ¶138.

The shoulder and finger are sized to restrict passage through **opening 26** (through-passage) of the base, and they actually perform the restricting function in practice: “shoulder 18 of upper segment 16 is designed to stop the upper segment’s forward progress when an appropriate length is



protruding from outer surface 32, and to prevent the straw from being pulled through the opening.” EX1009, 2:52-56; EX1003, ¶139.

**11. Element [1.10]**

**a. Dall’Agnese discloses element [1.10]**

Manganiello does not expressly disclose this element, but Dall’Agnese’s **second tooth 26** on elastic tab 14 discloses it. Section X.A; EX1008, ¶¶[0007], [0011], FIG. 3; EX1003, ¶140.

**b. Rationale to combine Dall’Agnese with Manganiello for element [1.10]**

Section XII.A.12 below.

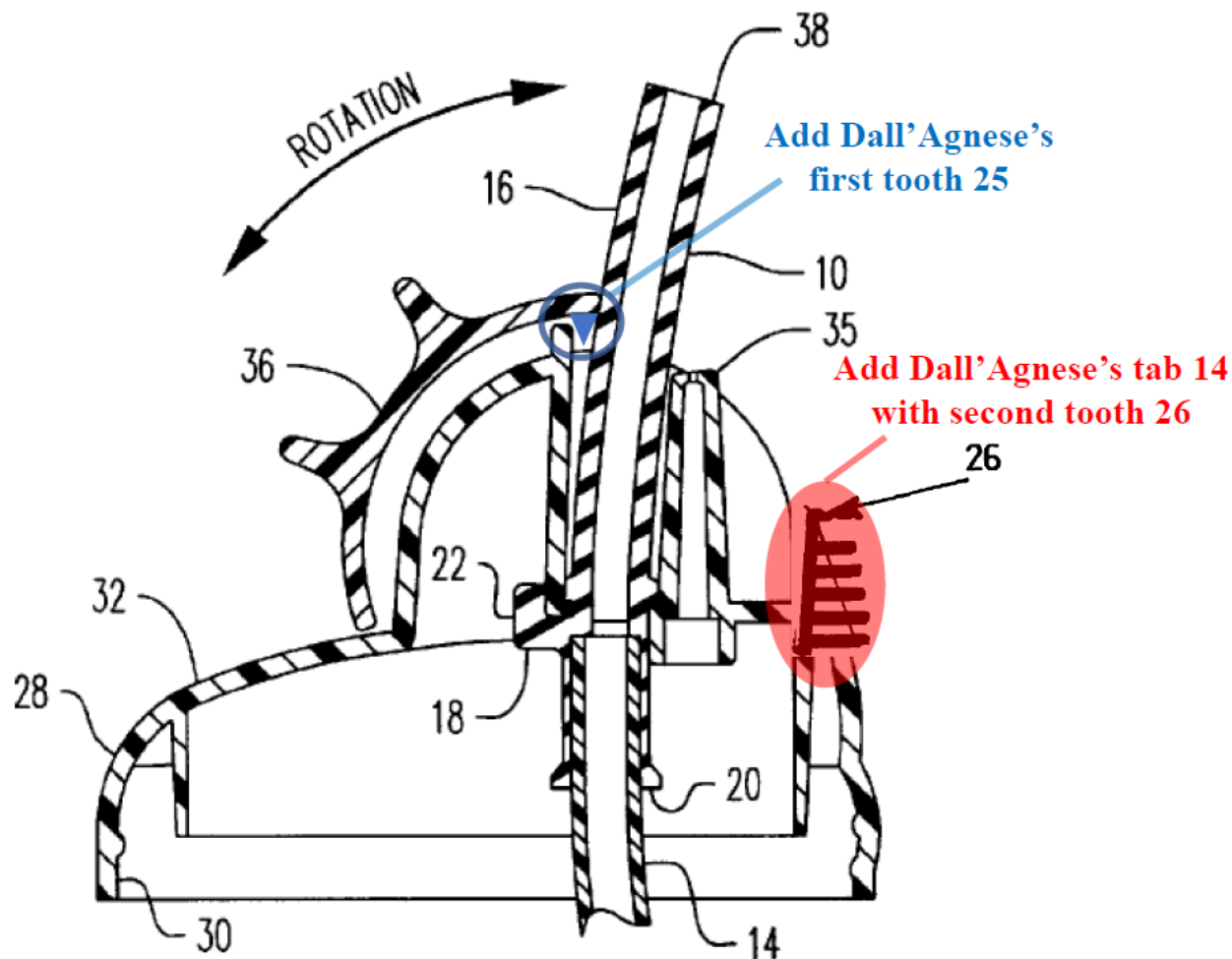
**12. Element [1.11]**

**a. Dall’Agnese discloses element [1.11]**

Manganiello does not expressly disclose element [1.11], but Dall’Agnese’s **elastic tab 14** discloses it if Section 112, ¶6 isn’t invoked. Section VII.C.

**b. Rationale to combine Dall’Agnese with Manganiello for elements [1.3], [1.10], and [1.11]**

A POSITA would have found it obvious to add Dall’Agnese’s first tooth 25 ([1.3], first catch structure) and elastic tab 14 ([1.11], user release mechanism) with second tooth 26 ([1.10], second catch structure) to Manganiello’s container. EX1003, ¶143. In the combination (below), Manganiello’s cup lid 28 is modified to incorporate Dall’Agnese’s elastic tab 14 with second tooth 26. *Id.* Additionally, Manganiello’s sealing cap 36 is modified to have first tooth 25 on its interior surface, so first and second teeth 25, 26 engage when sealing cap 36 is closed. EX1008, ¶¶[0011]-[0012]; EX1003, ¶143.



### **Manganiello-Dall'Agnese Combination\***

Reasons like those discussed above for the Yamashita/Dall'Agnese combination would have motivated a POSITA to make the combination. Section X.B. Manganiello describes no locking mechanism to hold sealing cap 36 closed. If Manganiello's container were dropped or bumped, the jolt might open the sealing cap, allowing the container to leak. EX1003, ¶144. Adding Dall'Agnese's mechanism to Manganiello's container would help prevent such inadvertent

openings and leaks because the user must exert pressure on tab 14 open the cover.

*Id.*; EX1008, ¶[0011].

The combination merely involves using a known technique (Dall’Agnese’s cover release tab) to improve a similar device (Manganiello’s drinking container with cover) in the same way. Dall’Agnese shows it was known to use an elastic tab to selectively lock/unlock a lid stowing the mouthpiece of a container. EX1003, ¶145. Manganiello’s and Dall’Agnese’s containers both have a cover (Manganiello’s sealing cap 36, Dall’Agnese’s closing device 13) to stow and crimp the mouthpiece within the cap so the container does not leak when closed. *Compare* EX1009, 3:14-30, 2:21-22, 2:57-3:4, FIGS 3A, 3B) *with* EX1008, ¶[0010]. A POSITA would have recognized to add the first tooth of Dall’Agnese’s lid to the interior surface of Manganiello’s similar sealing cap and to add the elastic tab with second tooth on the base of Dall’Agnese’s cap to Manganiello’s cap base. EX1003, ¶145.

The combination would improve Manganiello as it improves Dall’Agnese—locking the container closed and preventing inadvertent opening. EX1003, ¶146. Manganiello’s container stands ready for improvement because it has a sealing cap and cap base to respectively accommodate Dall’Agnese’s first tooth and elastic tab. *Id.* A POSITA would have readily combined Manganiello and Dall’Agnese with a reasonable expectation of success and had predictable results. *Id.*

**B. Claim 2**

**1. Element [2.1]**

The Manganiello-Dall-Agnese combination renders this element obvious. EX1003, ¶147. In the combination, elastic tab 14 of Dall’Agnese added to Manganiello has second tooth 26 that mechanically couples to first tooth 25, now on the interior surface of Manganiello’s sealing cap 36. *Id.*; EX1008, ¶¶[0011]-[0012], FIGS. 2, 3.

**C. Claim 5**

**1. Element [5.1]**

Upper segment 16 of Manganiello’s straw 10, including the crimping region, is made from a resilient, elastic material. Sections XII.A.8-10; EX1003, ¶148. The upper segment has a natural bias toward the upright/open configuration (dispensing configuration). Section XII.A.7; EX1003, ¶148. And when bent and crimped against this natural bias in the closed state, the crimped region of the upper segment exerts a force on the sealing cap toward the open configuration. Section XII.A.7; EX1003, ¶148.

**D. Claim 8**

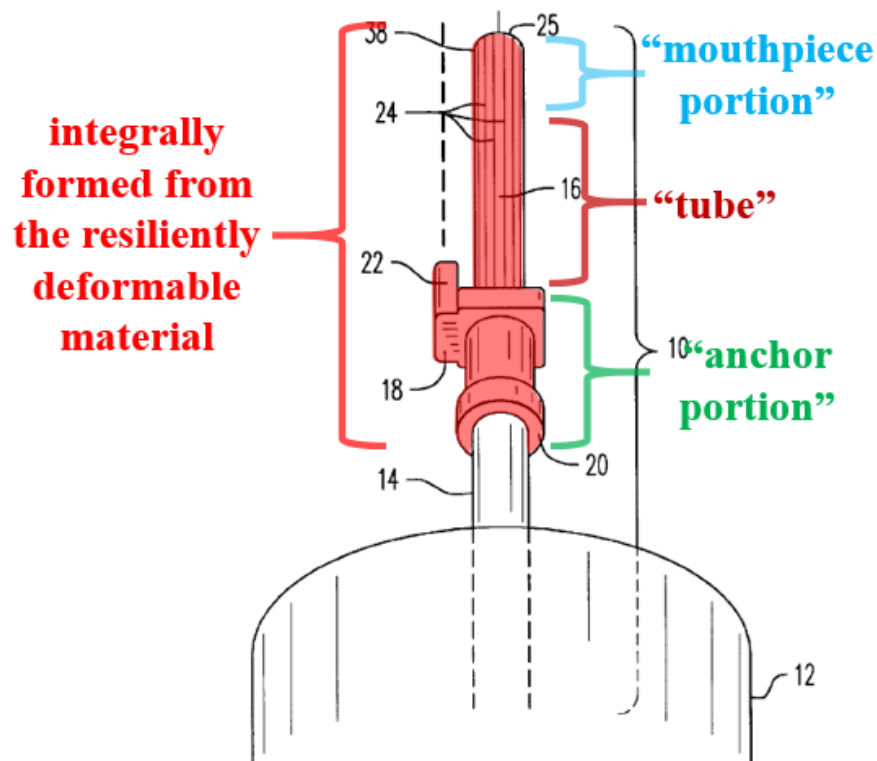
**1. Element [8.1]**

EX1009, 2:19-20, 2:38-40, 3:28-30, 3:38-40, 4:39-48, FIG. 3B (discussing drinking end 38); EX1003, ¶149.

**E. Claim 9**

**1. Element [9.1]**

As explained above and shown below, upper segment 16 of Manganiello's straw is constructed of the resiliently deformable material integrally forming: (1) the mouthpiece portion (region at drinking end 38); (2) the tube (crimping region) and (3) the anchor portion (shoulder 18 and finger 22). Section XII.A.9; EX1009, 1:14-17, 2:32-46, 2:52-60, 3:5-13, 3:35-42; EX1003, ¶150.



**Manganiello, FIG. 1\***

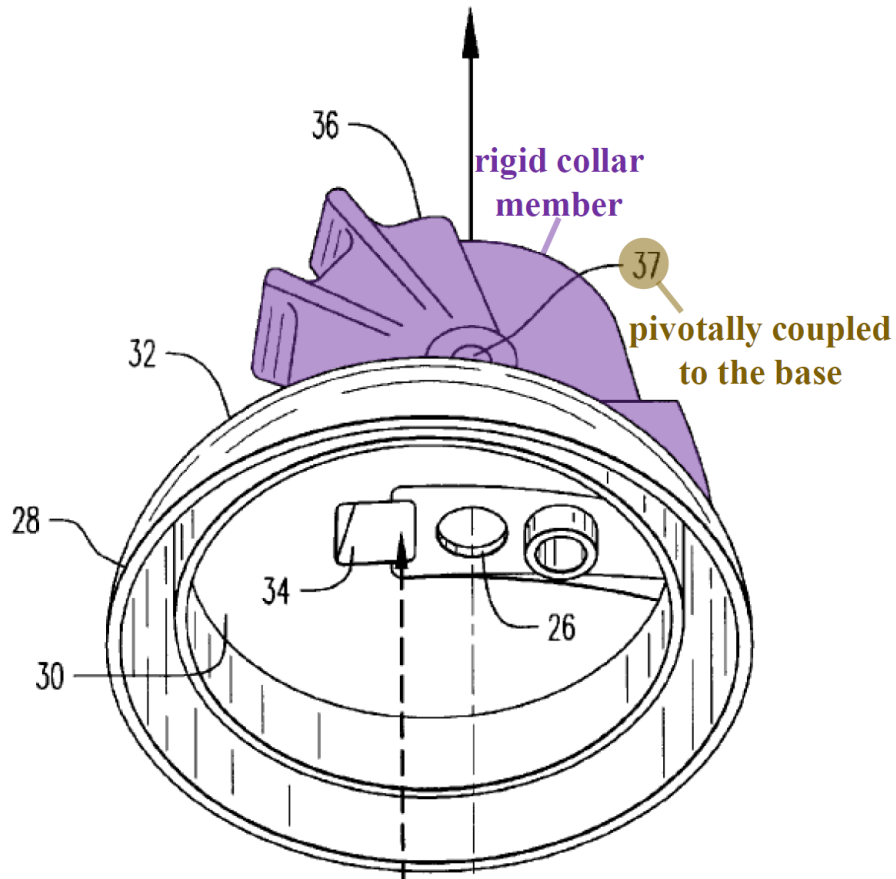
**F. Claim 10**

1. [10.1] *“The drink container of claim 1, wherein the mouthpiece assembly further includes a rigid collar member that is pivotally coupled to the base and which includes a crimping portion;*

*[10.2] “wherein the crimping portion is adjacent the crimping region of the tube and external of the liquid passage, 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.”*

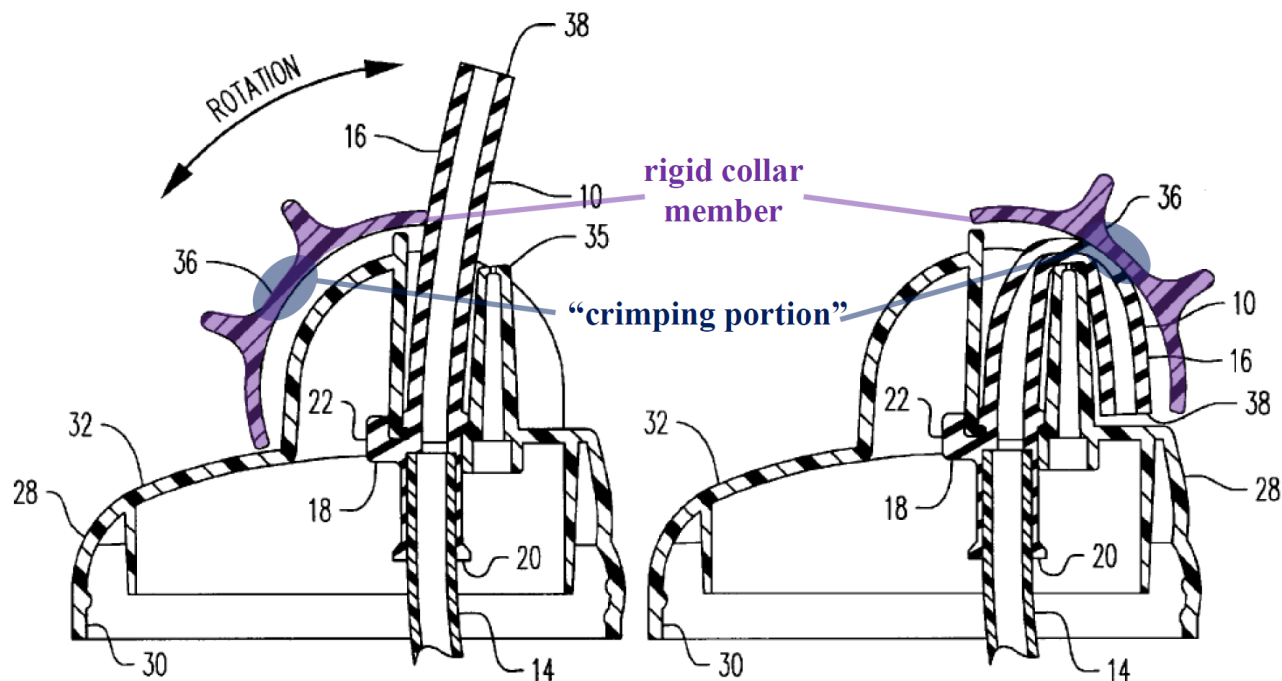
Regarding element [10.1], Manganiello’s **sealing cap 36** discloses the claimed rigid collar member. EX1003, ¶151. The sealing cap is pivotally coupled to the base by **pivots 37** (EX1009, 2:57-64):





Manganiello, FIG. 1\*

Sealing cap 36 includes a **crimping portion**—the portion of its interior surface that bends/crimps upper segment 16 over sealing post 35 (EX1009, 3:14-30; EX1003, ¶152):



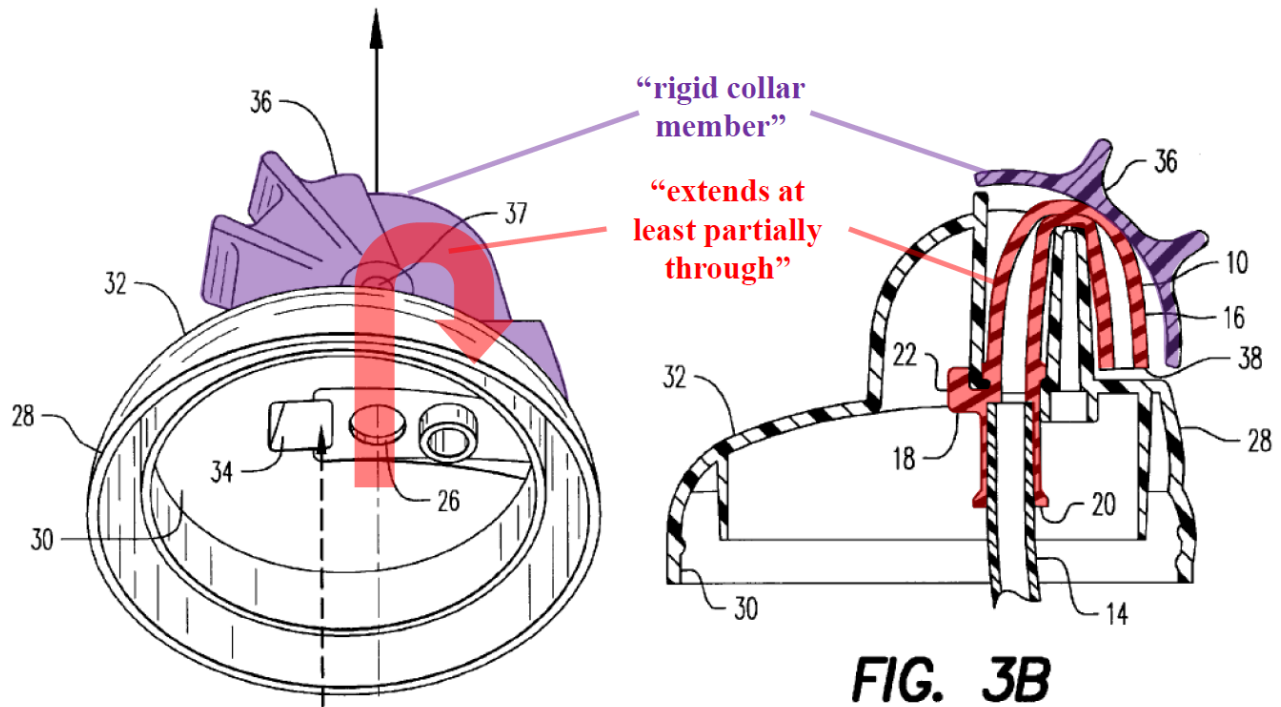
**Manganiello, FIGS. 3A, 3B\***

Regarding element [10.2], the crimping portion of sealing cap 36 is adjacent the tube's crimping region and external of the liquid passage within the tube. EX1003, ¶152. Sealing cap 36 engages and crimps the crimping region to restrict flow through the liquid passage when straw 10 is stowed. *Id.*; EX1009, 2:21-22, 2:57-3:4, 3:14-30, FIG. 3B.

**2. [10.3] “wherein the tube of the mouthpiece assembly extends at least partially through the rigid collar member;**

Manganiello teaches straw 10 has “[a] protruding length ... sufficient ... to enable a child or other user to suck easily on the straw” so the “length [of the straw] can be enclosed by sealing cap 36.” EX1009, 2:57-60; *see* 1:29-33 (“a cap mounted on the lid and rotatable about a horizontal axis to fold, seal and enclose the

protruding top of the straw”). As shown below, the tube of straw 10 **extends** through opening 26 and then **at least partially through sealing cap 38** so the sealing cap encloses and surrounds it. EX1003, ¶153. This allows the sealing cap to bend/crimp the straw over sealing post 35. *Id.*; EX1009, 2:21-22, 2:57-3:4, 3:14-30, FIG. 3B.

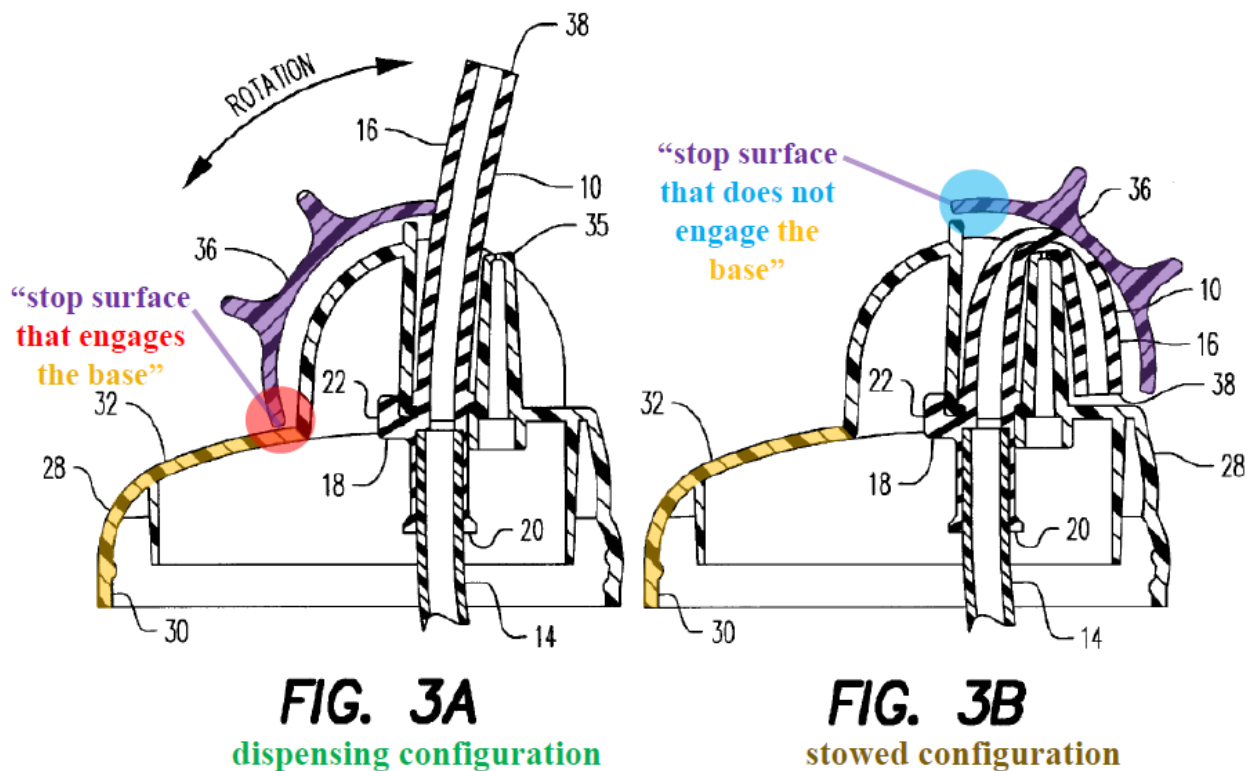


Manganiello, FIG. 1, 3B\*

G. Claim 14

1. [10.1] *“The drink container of claim 10, wherein the rigid collar member includes a stop surface that does not engage the base of the cap assembly when the mouthpiece assembly is in the stowed configuration and that engages the base of the cap assembly when the mouthpiece assembly is in the dispensing configuration to define a dispensing position of the mouthpiece portion.”*

Manganiello’s **sealing cap 36** (rigid collar member) has **a back end** (stop surface) that does **not engage** the **base** in the **stowed configuration** and **engages** the **base** in the **dispensing configuration** (EX1003, ¶154):



Engage means to bring together. EX1012. Figure 3A of Manganiello above shows the back end of the sealing cap 36 brought together with the base when the container is open (dispensing configuration). EX1003, ¶155. And Figure 3B above

shows the cap's back end brought away from the base when closed (stowed configuration). *Id.* Claim 14 doesn't require the collar member to contact the base in the dispensing configuration, but the extreme closeness between the cap's back end and the base suggests contact. *Id.* Indeed, it would have been obvious to have the cap's back end contact the base when the container is open. *Id.* Otherwise, forces applied to the cap when the cap/base hinge joint is fully open would strain the joint, causing the material of the cap/base (e.g., plastic) to deteriorate and eventually fail. *Id.* Having the cap contact the base when the joint is fully open however, would support the cap and alleviate stress on the joint, extending the life of the cap/base material. *Id.*

## **H. Claim 16**

### **1. Element [16.1]**

Lower segment 14 of Manganiello's straw 10 discloses this element. EX1009, 2:34-38, 3:8-13, 3:31-51, FIG. 1; EX1003, ¶156.

### **2. Element [16.2]**

Section XI.B.1 above.

## **I. Claim 21**

<b>Element</b>	<b>Section Above</b>
[21.pre]	XII.A.1
[21.1]	XII.A.2
[21.2]	XII.A.3

[21.3]	XII.A.5
[21.4]	XII.A.6
[21.5]	XII.A.7
[21.6]	XII.A.8
[21.7]	XII.A.10
[21.8]	XII.A.10; XII.E.1
[21.9]	XII.A.12

**XIII. GROUND 10: MANGANIELLO/DALL’AGNESE, IN VIEW OF  
PACZONAY, RENDERS OBVIOUS CLAIMS 1, 2, 5, 8-10, 14, 16,  
AND 21**

If Patent Owner contends element [1.6] requires a more substantial mouthpiece portion than Manganiello’s, it would have been obvious to add Paczonay’s flared retention member 25 to the drinking end 38 of Manganiello’s straw for the reasons in Ground 3. Section IX.

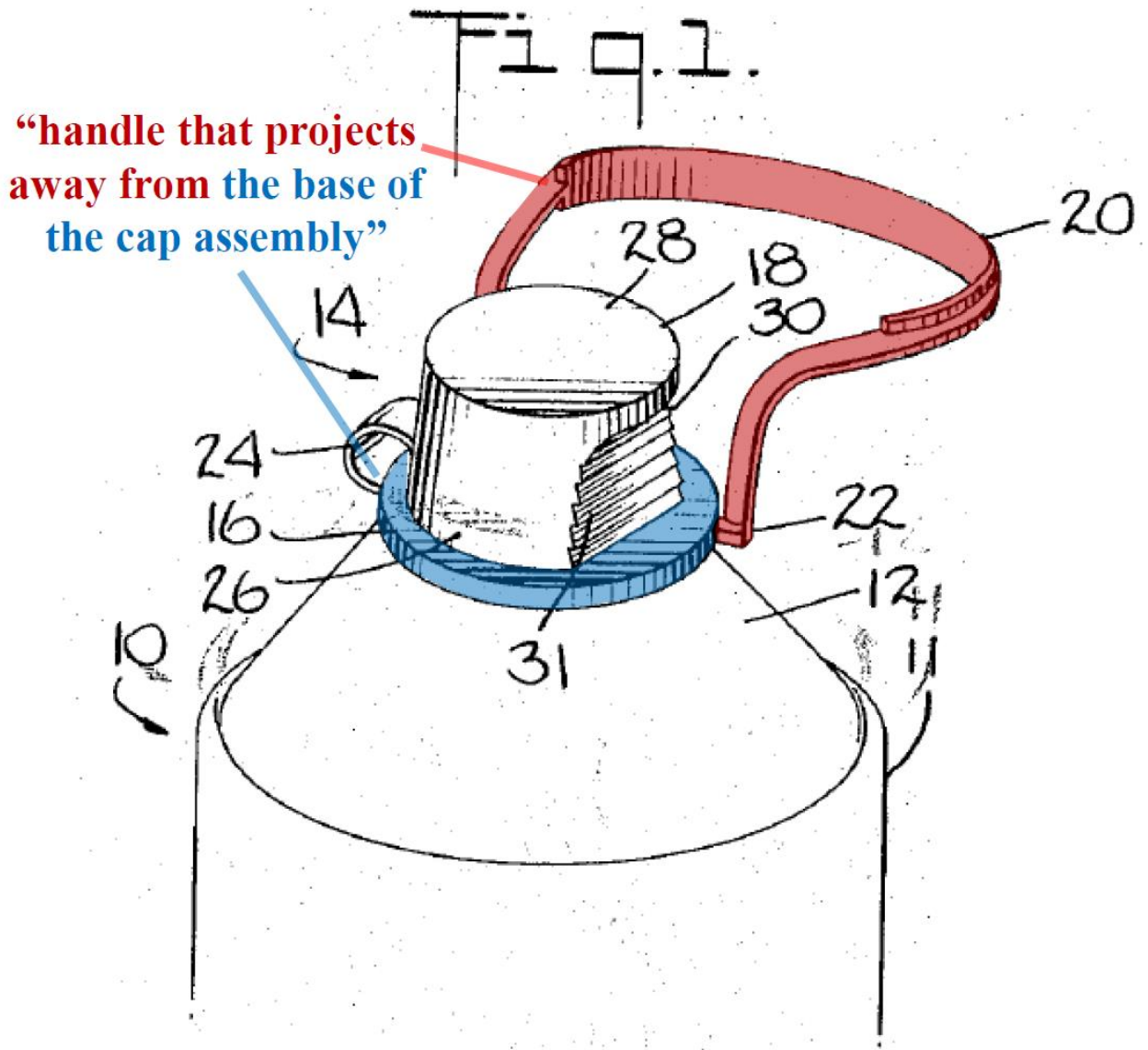
**XIV. GROUNDS 11-12: MANGANIELLO/DALL’AGNESE AND  
MANGANIELLO/DALL’AGNESE/PACZONY, IN VIEW OF  
ANDERSON, RENDER OBVIOUS CLAIM 6**

**A. Element [6.1]**

Neither Manganiello nor Dall’Agnese discloses a handle as recited in element [6.1]. But Anderson does, and it would have been obvious to add Anderson’s handle to the Manganiello/Dall’Agnese container. EX1003, ¶160.

**1. Anderson discloses element [6.1]**

Anderson describes a liquid container handle molded integrally with the cap base. EX1010, 2:13-20. The handle “provid[es] a carrying means thus eliminating the need for a waist shaped or small necked container.” *Id.* As depicted in FIG. 1 below, **base portion 16** (base) includes **handle 20** projecting away from base portion 16, as claimed. *Id.*, 2:69-72 (“handle 20 is affixed to and may be integrally molded with the base portion 16”), 3:15-18, 5:35-41.



Anderson, FIG. 1\*

2. Rationale to combine Anderson with Manganiello/Dall’Agnese for element [6.1]

A POSITA would have found it obvious to add Anderson’s handle to the Manganiello/Dall’Agnese container. EX1003, ¶162. A handle obviously makes an object easier to carry, and neither Manganiello nor Dall’Agnese expressly discloses



its container has a handle. *Id.* Thus, a POSITA generally would have wanted to add a handle for easy of carrying. *Id.*

Anderson provides express teaching, suggestion, or motivation for adding Anderson's specific type of handle to Manganiello/Dall'Agnese:

- By “extend[ing] upwardly ... for a short distance and then outwardly away from the overcap 18,” the handle “enables the containers to [] be grasped quite readily ... for carrying.” EX1010, 3:15-23; *see* 4:73-5:2.
- This handle configuration “provide[s] full finger access without interference with movements of said overcap.” *Id.*, 5:35-41.

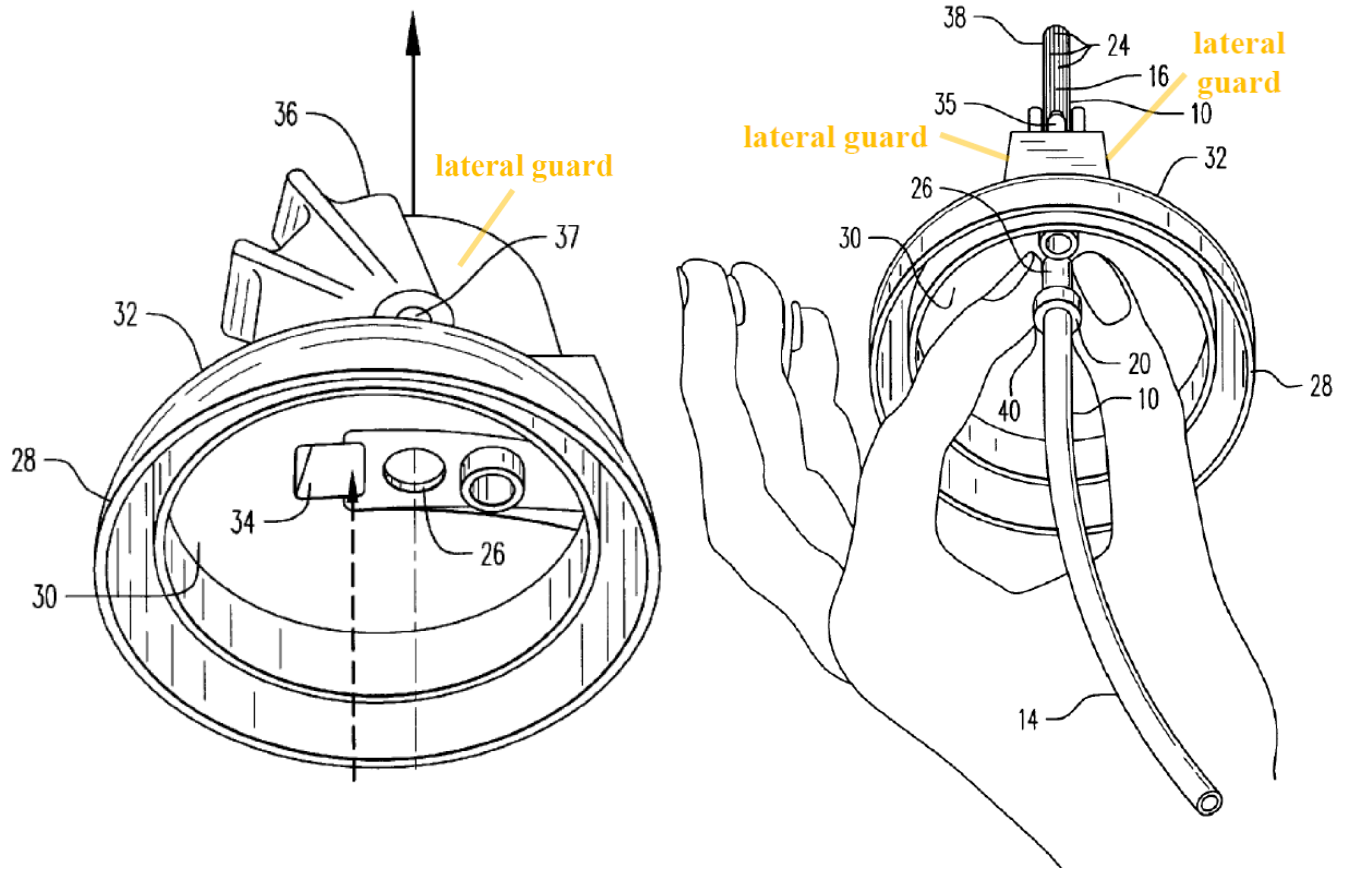
Thus, POSITA would have recognized Anderson's handle would make the container more readily grasped/carried without interfering with Manganiello's sealing cap or Dall'Agnese's added tab because the handle extends upward and away from the cap. EX1003, ¶163. It would have been obvious to add a handle to the Manganiello/Dall'Agnese container generally, and a POSITA would have wanted to use Anderson's type of handle specifically. *Id.*

This combination merely involves using a known technique (Anderson's integral handle extending up and away from the base of the cap) to improve a similar device (Manganiello's container) in the same way and/or applying a known technique to a known device ready for improvement with predictable results. Anderson demonstrates it was known that a handle projecting upward and away from the cap's base makes the container easier to grasp and carry. EX1003, ¶164. Adding

Anderson's handle to the Manganiello/Dall'Agnese container would improve it as Anderson's handle benefits Anderson's container—making it easier to carry. *Id.* The Manganiello/Dall'Agnese container stands ready for improvement because it also has a base (cup lid 28) with which Anderson's handle may be made integral. *Id.*; EX1010, 1:3-4 (title), 2:5-20, 2:69-72, 5:8-12. By extending up and then horizontally away from the base, Anderson's added handle would provide room for the user to readily grasp and carry the container with full-finger access and without interfering with Manganiello's sealing cap 36 or Dall'Agnese's release tab. EX1003, ¶164. Thus, using routine skill, a POSITA would have made the combination with a reasonable expectation of success and predictable results. *Id.*

**B. Element [6.2]**

Manganiello's sealing cap 26 (part of the claimed cap assembly) laterally encloses upper segment 16 of straw 10 when in the closed position. EX1009, 3:14-30, 2:21-22, 2:57-3:4, FIGS. 1-3B; EX1003, ¶165. The **sides** of sealing cap 36 that laterally enclose the straw when the cap is closed (stowed configuration) disclose the claimed lateral guards:



**Manganiello, FIGS. 1, 2\***

**XV. GROUNDS 13-14: MANGANIELLO/DALL'AGNESE AND MANGANIELLO/DALL'AGNESE/PACZONY, IN VIEW OF YAMASHITA, RENDER OBVIOUS CLAIM 7**

Manganiello's straw lacks a bite-activated mouthpiece as in element [7.1]. But, as discussed, Yamashita discloses a straw with a bite-actuated mouthpiece satisfying element [7.1]. Section VIII.F. Manganiello's straw is similar to Yamashita's embodiments lacking bite actuation. EX1003, ¶166. For reasons discussed in Grounds 1-2, it would have been obvious to add to Manganiello's straw Yamashita's bite-actuated mouthpiece. Section VIII.A.5.

## **XVI. INSTITUTION IS APPROPRIATE**

Regarding §325(d), the '028 patent has not been challenged in any IPR proceeding or reexamination. Manganiello merely appeared on an IDS and was not otherwise mentioned on the record, and none of the other references relied upon here was cited/considered during prosecution. Grounds 1-14 remedy Choi's deficiency (no anchor portion) and the reason the Board reversed the examiner.

Regarding §314(a), the *Fintiv* factors favor institution. *Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, Paper 11, at 5-6 (PTAB Mar. 20, 2020) (precedential).

- No motion to stay has been filed the related litigation.
- No trial date has been set, and this district has seen only one patent case go to jury trial according to Docket Navigator. EX1013. It seems unlikely trial would occur before a final written decision in the IPR.
- The litigation is still in its early stages, with minimal investment by the parties and the court. Nothing on the merits has yet been litigated or decided.
- If IPR is instituted and overlap somehow becomes an issue, Petitioner is amenable to stipulating not to pursue in district court grounds raised or that reasonably could have been raised here.
- Petitioner is a defendant in the related litigation, so IPR will help the parties resolve their dispute.
- Petitioner filed the Petition well before the anniversary of the related litigation.
- The merits are strong; Petitioner is reasonably likely to prevail.

Date: April 19, 2022

Respectfully Submitted,

/James D. Stein/

James D. Stein (Reg. No. 63,872)

**CERTIFICATION UNDER 37 C.F.R. §42.24(D)**

This Petition complies with the requirements of 37 C.F.R. §42.24. As calculated by the word count feature of Microsoft Word, plus any annotated words in images not counted by Microsoft Word, the Petition contains 13,982 words, excluding the words contained in: Title Page, signature block, Table of Contents, Table of Authorities, List of Exhibits, Mandatory Notices, Certification Under §42.24(d) and Certificate of Service.

Date: April 19, 2022

Respectfully Submitted,

/James D. Stein/

James D. Stein (Reg. No. 63,872)

**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 19, 2022, the foregoing Petition for *Inter Partes* Review, exhibits, and Power of Attorney were served on the correspondence address of record for the subject patent and additionally on litigation counsel for Patent Owner as follows:

<b>Correspondence Address of Record</b>	<b>District Court Counsel</b>
VISTA OUTDOOR OPERATIONS LLC One Vista Way Anoka, MN 55303	David T. Pollock Jonathan I. Detrixhe Christopher J. Pulido REED SMITH LLP 101 Second Street, Suite 1800 San Francisco, CA 94105-3659

Date: April 19, 2022

/James D. Stein/  
James D. Stein (Reg. No. 63,872)