

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

CAMELBAK PRODUCTS, LLC

PLAINTIFF

v.

CASE NO. 5:21-cv-05109-TLB

ZAK DESIGNS, INC.

DEFENDANT

**ZAK DESIGNS, INC'S INVALIDITY CONTENTIONS
PURSUANT TO N.D. CAL. PATENT L.R. 3-3 & 3-4**

Pursuant to the Court's Case Management Order (Doc. 51) and N.D. Cal. Patent L.R. 3-3 and 3-4, defendant Zak Designs, Inc. hereby discloses its invalidity contentions.

A. Preliminary Statement

Zak has not completed discovery or preparation for the trial of this matter. These invalidity contentions are made based upon information presently available to Zak and are made in a good-faith effort to comply with the Court's Case Management Order and the adopted Local Patent Rules of the United States District Court for the Northern District of California. These invalidity contentions are therefore made without prejudice to Zak's right to produce any information that may subsequently be discovered or determined to be relevant to the subject matter of this action. These invalidity contentions should not be construed as prejudicing or in any way limiting Zak with respect to further discovery. Zak reserves the right to amend or supplement its contentions in view of additional discovery, claim constructions, and/or further investigation.

B. Patent L.R. 3-3(a): Identity of Prior Art

Zak contends that the following prior art references anticipate and/or render obvious the asserted claims of the Asserted Patents: U.S. Patent No. 9,782,028 ("the '028 Patent"), U.S. Patent No. 9,820,595 ("the '595 Patent"), U.S. Patent No. 10,165,879 ("the '879 Patent"), U.S. Patent No. 10,542,833 ("the '833 Patent"), U.S. Patent No. 9,463,911 ("the '911 Patent"), and U.S. Patent No. 10,676,255 ("the '255 Patent"):

1. U.S. Patent No. 5,897,013 (issued April 27, 1999) (“Manganiello”);
2. U.S. Patent No. 6,279,773 (issued August 28, 2001) (“Kiyota”);
3. U.S. Patent No. 6,745,949 (issued June 8, 2004) (“Lee”);
4. U.S. Patent No. 5,203,468 (issued April 20, 1993) (“Hsu”);
5. U.S. Patent No. 5,273,172 (issued December 28, 1993) (“Rossbach”);
6. U.S. Patent No. 6,609,624 (issued August 26, 2003) (“Goto”);
7. U.S. Patent No. 5,791,510 (issued August 11, 1998) (“Paczonay”);
8. U.S. Patent No. 7,124,907 (issued October 24, 2006) (“Conaway”);
9. U.S. Patent No. 3,307,752 (issued March 15, 1965) (“Anderson”);
10. U.S. Patent No. 5,337,918 (issued August 16, 1994) (“Wang”);
11. U.S. Patent No. 6,032,831 (issued March 7, 2000) (“Gardner”);
12. U.S. Patent No. 5,873,478 (issued February 23, 1999) (“Sullivan”);
13. U.S. Patent No. 6,523,711 (issued February 25, 2003);
14. U.S. Patent Application Publication No. 2004/0217139 (published November 4, 2004) (“Roth”);
15. U.S. Patent Application Publication No. 2007/0039959 (published February 22, 2007) (“Choi”);
16. U.S. Patent Application Publication No. 2005/0133519 (published June 23, 2005) (“McDonough”);
17. U.S. Patent Application Publication No. 2005/0150894 (published July 14, 2005) (“Stribling”);

18. International Patent Application Publication No. WO 2007/148441 (published December 27, 2007) (“Yamashita”);
19. European Patent Application Publication No. 1 095 599 (published May 2, 2001) (“Dall’Agnese”);
20. European Patent Application Publication No. 0 266 067 (published May 4, 1988) (“Koska”);
21. Japanese Patent Application Publication No. 2001-294252 (published October 23, 2001) (“Toudou”);
22. Japanese Patent Application Publication No. 2007-176537 (published July 12, 2007) (“Todo”); and
23. “Sanrio Bottle.”¹

C. Patent L.R. 3-3(b): Anticipation and/or Obviousness

Zak contends that the following prior art anticipates certain claims of the ‘028 Patent:

1. Yamashita anticipates claims 1-2, 5-6, 9, and 21 of the ‘028 Patent.
2. McDonough anticipates claims 1-2, 5, 8-9, 16, and 21 of the ‘028 Patent.
3. Todo anticipates claims 1-2, 5-6, 8-9, 16, and 21 of the ‘028 Patent.

¹ Upon information and belief, the Sanrio Bottle was offered for sale or publicly used or known by at least the late 1990’s or early 2000’s. Upon information and belief, the Sanrio Bottle was offered for sale by Sanrio Co., Ltd. Zak is currently investigating additional details about the “Sanrio Bottle.”

Zak contends that the following prior art renders obvious certain claims of the '028 Patent:

1. Yamashita alone renders obvious claims 1-2, 5-6, 8-9, and 21 of the '028 Patent.
2. Yamashita in combination with Dall'Agnese renders obvious claims 1-2, 5-6, 8-9, and 21 of the '028 Patent.
3. Yamashita in combination with Manganiello renders obvious claims 1-2, 5-6, 8-9, 16, and 21 of the '028 Patent.
4. Yamashita in combination with Dall'Agnese and Manganiello renders obvious claims 1-2, 5-6, 8-10, 16, and 21 of the '028 Patent.
5. Yamashita in combination with Lee renders obvious claims 1-2, 5-6, 8-9, and 21 of the '028 Patent.
6. Yamashita in combination with Lee and in combination with Kiyota, Hsu, or Goto renders obvious claims 1-3, 5-6, 8-9, 16, and 21 of the '028 Patent.
7. Yamashita in combination with Lee and in combination with Choi or Toudou renders obvious claims 1-2, 5-6, 8-10, 13, 16, and 21 of the '028 Patent.
8. Yamashita in combination with Hsu, Kiyota, or Goto renders obvious claims 1-3, 5-6, 8-9, 16, and 21 of the '028 Patent.
9. Yamashita in combination with Hsu, Kiyota, or Goto and in combination with Choi or Toudou renders obvious claims 1, 10, and 13 of the '028 Patent.

10. Yamashita in combination with Choi renders obvious claims 1-2, 5-6, 8-10, 13, 16, and 21 of the '028 Patent.
11. Yamashita in combination with Choi and in combination with Hsu, Kiyota, or Goto renders obvious claims 1-3, 5-6, 8-10, 13, 16, and 21 of the '028 Patent.
12. Yamashita in combination with Todo renders obvious claims 1-2, 5-6, 8-9, 16, and 21 of the '028 Patent.
13. Yamashita in combination with Todo and Choi renders obvious claims 1-2, 5-6, 8-10, 13, 16, and 21 of the '028 Patent.
14. Manganiello in combination with Dall'Agnese renders obvious claims 1-2, 5, 8-10, 16, and 21 of the '028 Patent;
15. Manganiello in combination with Dall'Agnese and Anderson renders obvious claim 6 of the '028 Patent;
16. Manganiello in combination with Hsu, Kiyota, or Goto renders obvious claims 1-3, 5, 8-9, 16, and 21 of the '028 Patent.
17. Manganiello in combination with Hsu, Kiyota, or Goto and in combination with Anderson renders obvious claim 6 of the '028 Patent.
18. Manganiello in combination with Hsu, Kiyota, or Goto and in combination with Choi renders obvious claims 1-3, 5-6, 8-10, 13, 16, and 21 of the '028 Patent.
19. Manganiello in combination with Todo renders obvious claims 1-2, 5-6, 8-9, 16, and 21 of the '028 Patent.

20. Manganiello in combination with Todo and in combination with Kiyota, Hsu, or Goto renders claims 1-3, 5-6, 8-9, 16, and 21 of the '028 Patent.

21. Manganiello in combination with Todo and Choi renders obvious claims 1-2, 5-6, 8-9, 10, 13, 16, and 21 of the '028 Patent.

22. Choi in combination with Lee and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-2, 5-6, 8-10, 13, and 16 of the '028 Patent;

23. Choi in combination with Lee and in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Wang renders obvious claims 10 and 13 of the '028 Patent;

24. Choi in combination with Hsu, Kiyota, or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-3, 5-6, 8-9, 10, 13, 16, and 21 of the '028 Patent.

25. Choi in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claim 21 of the '028 Patent.

26. McDonough alone renders obvious claims 1-2, 5, 8-9, 16, and 21 of the '028 Patent.

27. McDonough in combination with Kiyota, Hsu, or Goto renders obvious claims 1-3, 5, 8-9, 16, and 21 of the '028 Patent.

28. McDonough in combination with Toudou or Choi renders obvious claims 1, 10, and 13 of the '028 Patent.

29. Kiyota in combination with Todo renders obvious claims 1-3, 5-6, 8-10, 16, and 21 of the '028 Patent.

30. Kiyota in combination with Yamashita, Manganiello, or McDonough renders obvious claims 1-3, 5, 8-10, 16, and 21 of the '028 Patent.

31. Kiyota in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 10 and 13 of the '028 Patent.

32. Dall'Agnese in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-2, 5-6, 8-10, 16, and 21 of the '028 Patent.

33. Dall'Agnese in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Kiyota, Hsu, or Goto renders obvious claims 1-3, 5-6, 8-10, 16, and 21 of the '028 Patent.

34. Dall'Agnese in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 10 and 13 of the '028 Patent.

35. Hsu in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-3, 5-6, 8-9, 16, and 21 of the '028 Patent.

36. Hsu in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Kiyota or Dall'Agnese renders obvious claims 1-3, 5-6, 8-10, 16, and 21 of the '028 Patent.

37. Hsu in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1, 10, and 13 of the '028 Patent.

38. Goto in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-3, 5-6, 8-10, 16, and 21 of the '028 Patent.

39. Goto in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1-3, 5-6, 8-10, 13, 16, and 21 of the '028 Patent.

40. Goto in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Kiyota or Hsu renders obvious claims 1-3, 5-6, 8-10, 16, and 21 of the '028 Patent.

41. Todo alone renders obvious claims 1-2, 5-6, 8-9, 16, and 21 of the '028 Patent.

42. Todo in combination with Kiyota, Hsu, or Goto renders obvious claims 1-3, 5-6, 8-10, 13, 16, and 21.

43. Todo in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 10 and 13.

44. Toudou in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-2, 5-6, 8-10, 13, 16, and 21 of the '028 Patent.

45. Toudou in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Kiyota, Hsu, or Goto renders obvious claims 1-3, 5-6, 8-10, 16, and 21 of the '028 Patent.

46. Toudou in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1, 10, and 13 of the '028 Patent.

47. Conaway in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-2, 5-6, 8-10, 16, and 21 of the '028 Patent.

48. Conaway in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Kiyota, Hsu, or Goto renders obvious claims 1-3, 5-6, 8-10, 16, and 21 of the '028 Patent.

49. Conaway in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1, 10, and 13 of the '028 Patent.

50. Any of the combinations 1-49 above in combination with Paczonay renders obvious the same claims recited in combinations 1-49.

51. Any of the combinations 1-49 above in combination with Rossbach renders obvious the same claims recited in combinations 1-49.

Zak contends that the following prior art anticipates certain claims of the '595 Patent:

1. Kiyota anticipates claims 14, 19, 21, and 25 of the '595 Patent.
2. Goto anticipates claim 14 of the '595 Patent.
3. Sanrio Bottle anticipates claim 14 of the '595 Patent.

Zak contends that the following prior art renders obvious certain claims of the '595 Patent:

1. Yamashita in combination with Kiyota, Hsu, or Goto renders obvious claims 14, 19, 21, and 23-25 of the '595 Patent.
2. Yamashita in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 16, 18, 22, 26, 28-29, and 31-35 of the '595 Patent.
3. Manganiello in combination with Kiyota, Hsu, or Goto renders obvious claims 14, 19, 21, and 23-25 of the '595 Patent.
4. Manganiello in combination with Kiyota, Hsu, or Goto in combination with Choi renders obvious claims 16, 18, 22, 26, 28-29, and 31-35 of the '595 Patent.
5. Choi in combination with Kiyota, Hsu, or Goto renders obvious claims 14, 16, 18, 22, 26, 28, and 32 of the '595 Patent.
6. Choi in combination with Kiyota, Hsu, or Goto and in combination with Yamashita, Manganiello, or McDonough renders obvious claims 19, 21, 23-25, 29, 31, and 33-35 of the '595 Patent.
7. McDonough in combination with Kiyota, Hsu, or Goto renders obvious claims 14, 19, 21, and 23-25 of the '595 Patent.
8. McDonough in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 16, 18, 22, 26, 28-29, and 31-35 of the '595 Patent.
9. Kiyota alone renders obvious claims 14, 19, 21, and 25 of the '595 Patent.

10. Kiyota in combination with Choi renders obvious claims 16, 18, 22, 26, 28-29, and 31-35 of the '595 Patent.

11. Kiyota in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 14, 19, 21, and 23-25 of the '595 Patent.

12. Dall'Agnese in combination with Kiyota or Goto renders obvious claim 14 of the '595 Patent.

13. Dall'Agnese in combination with Kiyota renders obvious claims 19, 21, and 25 of the '595 Patent.

14. Dall'Agnese in combination with Kiyota or Goto and in combination Yamashita, Manganiello, McDonough, or Todo renders obvious claims 14, 19, 21, and 23-25 of the '595 Patent.

15. Dall'Agnese in combination with Kiyota or Goto and in combination with Choi renders obvious claims 14, 16, 18, 22, 26, 28, and 32 of the '595 Patent.

16. Dall'Agnese in combination with Kiyota and Choi renders obvious claims 29, 31, and 35 of the '595 Patent.

17. Dall'Agnese in combination with Kiyota or Goto and in combination with Choi and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 26, 28-29, and 31-35 of the '595 Patent.

18. Hsu in combination with Kiyota or Goto renders obvious claim 14 of the '595 Patent.

19. Hsu in combination with Kiyota or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 14, 19, 21, and 23-25.

20. Hsu in combination with Kiyota or Goto and in combination with Choi renders obvious claims 16, 18, and 22 of the '595 Patent.

21. Hsu in combination with Kiyota or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 16, 18, and 22 of the '595 Patent.

22. Hsu in combination with Choi renders obvious claims 26 and 32 of the '595 Patent.

23. Hsu in combination with Choi and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 29, 31, and 33-35 of the '595 Patent.

24. Goto alone renders obvious claim 14 of the '595 Patent.

25. Goto in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 14, 19, 21, and 23-25 of the '595 Patent.

26. Goto in combination with Choi renders obvious claims 16, 18, 22, 26, and 28 of the '595 Patent.

27. Goto in combination with Choi and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 29, 31, and 33-35 of the '595 Patent.

28. Todo in combination with Kiyota, Hsu, or Goto renders obvious claims 14, 19, 21, and 23-25 of the '595 Patent.

29. Todo in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 16, 18, 22, 26, 28-29, and 31-35 of the '595 Patent.

30. Toudou in combination with Kiyota, Hsu, or Goto renders obvious claim 14 of the '595 Patent.

31. Toudou in combination with Kiyota or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 19, 21, and 23-25 of the '595 Patent.

32. Toudou in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 16, 18, 22, 26, 28, and 32 of the '595 Patent.

33. Toudou in combination with Kiyota or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 29, 31, and 33-35 of the '595 Patent.

34. Conaway in combination with Kiyota, Hsu, or Goto renders obvious claim 14 of the '595 Patent.

35. Conaway in combination with Kiyota or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 19, 21, and 23-25.

36. Conaway in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 16, 18, 22, 26, 28, and 32 of the '595 Patent.

37. Conaway in combination with Kiyota or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 29, 31, and 33-35 of the '595 Patent.

38. Any of the combinations 1-37 above in combination with Paczonay renders obvious the same claims recited in combinations 1-37.

39. Any of the combinations 1-37 above in combination with Rossbach renders obvious the same claims recited in combinations 1-37.

40. Sanrio Bottle alone renders obvious claim 14 of the '595 Patent.

Zak contends that the following prior art renders obvious certain claims of the '879 Patent:

1. Yamashita in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1, 3, 5-8, 10-13, and 15-19 of the '879 Patent.

2. Manganiello in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1, 3, 5-8, 10-13, and 15-19 of the '879 Patent.

3. Choi in combination with Kiyota, Hsu, or Goto renders obvious claims 1, 3, 5-8, and 17-19 of the '879 Patent.

4. Choi in combination with Kiyota, Hsu, or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 11-12 and 15-16 of the '879 Patent.

5. McDonough in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1, 3, 5-8, 10-13, and 15-19 of the '879 Patent.

6. Kiyota in combination with Choi renders obvious claims 1, 3, 5-8, 11-12, and 15-19 of the '879 Patent.

7. Kiyota in combination with Choi and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 10 and 13 of the '879 Patent.

8. Dall'Agnese in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1, 3, 5-8, and 17-19 of the '879 Patent.

9. Dall'Agnese in combination with Kiyota, Hsu, or Goto and in combination with Choi and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 10-13 and 15-16 of the '879 Patent.

10. Hsu in combination with Choi renders obvious claims 1, 3, 5-8, and 17-19 of the '879 Patent.

11. Hsu in combination with Choi and in the combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 10-13 and 15-16 of the '879 Patent.

12. Goto in combination with Choi renders obvious claims 1, 3, 5-8, and 17-19 of the '879 Patent.

13. Goto in combination with Choi and in the combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 10-13 and 15-16 of the '879 Patent.

14. Todo in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1, 3, 5-8, 10-13, and 15-19 of the '879 Patent.

15. Toudou in combination with Kiyota, Hsu, or Goto renders obvious claims 1, 3, and 6 of the '879 Patent.

16. Toudou in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1, 3, 5-8, and 17-19 of the '879 Patent.

17. Toudou in combination with Kiyota, Hsu, or Goto and in combination with Choi and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 10-13 and 15-16 of the '879 Patent.

18. Toudou in combination with Kiyota, Hsu, or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 10-13 and 15-16 of the '879 Patent.

19. Conaway in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1, 3, 5-8, and 17-19 of the '879 Patent.

20. Conaway in combination with Kiyota, Hsu, or Goto and in combination with Choi and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 10-13 and 15-16 of the '879 Patent.

21. Any of the combinations 1-20 above in combination with Rossbach renders obvious the same claims recited in combinations 1-20.

22. Any of the combinations 1-20 above in combination with Paczonay renders obvious claim 6 of the '879 Patent..

Zak contends that the following prior art renders obvious certain claims of the '833 Patent:

1. Yamashita in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

2. Yamashita in combination with Kiyota, Hsu, or Goto and in combination with Choi and in combination with Todo renders obvious claim 8 of the '833 Patent.

3. Manganiello in combination with Kiyota, Hsu, or Goto renders obvious claims 1-2, 7, and 9 of the '833 Patent.

4. Manganiello in combination with Kiyota, Hsu, or Goto and in combination with Todo renders obvious claim 8 of the '833 Patent.

5. Manganiello in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

6. Manganiello in combination with Kiyota, Hsu, or Goto and in combination with Choi and in combination with Todo renders obvious claim 8 of the '833 Patent.

7. Choi in combination with Kiyota, Hsu, or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

8. McDonough in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

9. McDonough in combination with Kiyota, Hsu, or Goto and in combination with Choi and in combination with Todo renders obvious claim 8 of the '833 Patent.

10. Kiyota in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

11. Dall'Agnese in combination with Kiyota, Hsu, or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

12. Hsu in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

13. Goto in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

14. Todo in combination with Kiyota, Hsu, or Goto and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

15. Toudou in combination with Kiyota, Hsu, or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo renders obvious claims 1-3, 9, and 11 of the '833 Patent.

16. Toudou in combination with Kiyota, Hsu, or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

17. Conaway in combination with Kiyota, Hsu, or Goto and in combination with Yamashita, Manganiello, McDonough, or Todo and in combination with Choi renders obvious claims 1-4, 7-9, and 11 of the '833 Patent.

18. Any of the combinations 1-17 above in combination with Rossbach renders obvious the same claims recited in combinations 1-17.

19. Any of the combinations 1-17 above in combination with Paczonay renders obvious claim 2 of the '833 Patent.

Zak contends that the following prior art anticipates certain claims of the '911 Patent:

1. McDonough anticipates claims 1, 2, 9, and 14-16 of the '911 Patent.
2. Conaway anticipates claims 1, 2, 9, and 14-15 of the '911 Patent.
3. Toudou anticipates claims 14-16 and 20 of the '911 Patent.
4. Choi anticipates claims 1-2, 7, 9-11, 14-18, 20, and 23 of the '911

Patent.²

Zak contends that the following prior art renders obvious certain claims of the '911 Patent:

² Zak contends that the '911 Patent is not entitled to priority to U.S. Patent Application No. 11/588,476 ("the '476 Application"). Choi, the publication of the '476 Application, therefore renders the claims of the '911 Patent anticipated or obvious.

1. Toudou in combination with Stribling or Koska or Gardner renders obvious claims 1, 2, 7, and 9 of the '911 Patent.
2. Toudou in combination with Stribling or Koska or Gardner and in combination with Roth renders obvious claims 10 and 11 of the '911 Patent.
3. McDonough in combination with Roth renders obvious claims 7, 10, and 11 of the '911 Patent.
4. Conaway in combination with Hsu or Roth renders obvious claim 7 of the '911 Patent.
5. Conaway in combination with Hughes and Roth renders obvious claims 10 and 11 of the '911 Patent.
6. Hsu in combination with Kiyota or Goto renders obvious claims 1, 2, 7, 9, 14-17, and 20 of the '911 Patent.
7. Hsu in combination with Kiyota or Goto and in combination with Roth renders obvious claims 10-11, 18, and 23 of the '911 Patent.
8. Dall'Agnese in combination with Stribling or Koska and in combination with Hsu renders obvious claims 1, 2, 7, 9, and 16 of the '911 Patent.
9. Dall'Agnese in combination with Stribling or Koska and in combination with Roth renders obvious claim 10 and 11 of the '911 Patent.
10. Sullivan in combination with Toudou and in combination with Stribling or Koska or Gardner renders obvious claims 1, 2, 7, 9, 14-16, and 20 of the '911 Patent.

11. Sullivan in combination with Toudou and in combination with Stribling or Koska or Gardner and in combination with Roth renders obvious claims 10-11, 17-18, and 23 of the '911 Patent.
12. Toudou in combination with Roth or Anderson renders obvious claims 17, 18, and 23 of the '911 Patent.
13. McDonough in combination with Roth or Anderson renders obvious claims 17, 18, and 23 of the '911 Patent.
14. McDonough in combination with Rossbach renders obvious claim 20 of the '911 Patent.
15. Conaway in combination with Rossbach or Hughes renders obvious claim 16 of the '911 Patent.
16. Conaway in combination with Anderson or Hughes or Roth renders obvious claim 17, 18, and 23 of the '911 Patent.
17. Dall'Agnese in combination with Stribling or Koska renders obvious claims 14, 15, 21, and 22 of the '911 Patent.
18. Dall'Agnese in combination with Stribling or Koska and in combination with Anderson or Roth renders obvious claim 17 of the '911 Patent.
19. Choi alone renders obvious claims 1-2, 7, 9-11, 14-18, 20, and 23 of the '911 Patent.
20. Choi in combination with Toudou, McDonough, Conaway, Hsu, or Dall'Agnese renders obvious claims 1-2, 7, 9-11, 14-18, 20, and 23 of the '911 Patent.

Zak contends that the following prior art anticipates certain claims of the ‘255 Patent:

1. Toudou anticipates claims 1, 3-5, 8, 13, 14, 18, and 19 of the ‘255 Patent.
2. McDonough anticipates claims 1, 3-5, 13, 14, 18, and 19 of the ‘255 Patent.
3. Choi anticipates claims 1, 3-8, 13-14, and 18-19 of the ‘255 Patent.³

Zak contends that the following prior art renders obvious certain claims of the ‘255 Patent:

1. Toudou in combination with Roth or Anderson renders obvious claims 6 and 7 of the ‘255 Patent.
2. McDonough in combination with Hughes or Roth renders obvious claims 6 and 7 of the ‘255 Patent.
3. McDonough in combination with Hsu renders obvious claim 8 of the ‘255 Patent.
4. Conaway in combination with Rossbach or Hughes renders obvious claims 1, 3-7, 13, 14, 18, and 19 of the ‘255 Patent.
5. Conaway in combination with Rossbach or Hughes and in combination with Hsu renders obvious claim 8 of the ‘255 Patent.

³ Zak contends that the ‘255 Patent is not entitled to priority to U.S. Patent Application No. 11/588,476 (“the ‘476 Application”). Choi, the publication of the ‘476 Application, therefore renders the claims of the ‘911 Patent anticipated or obvious.

6. Hsu in combination with Kiyota or Goto renders obvious claims 1, 3-5, 7, 8, 13, 14, 18, and 19 of the '255 Patent.

7. Hsu in combination with Kiyota and in combination with Roth renders obvious claim 6 of the '255 Patent.

8. Dall'Agnese in combination with Stribling or Koska and in combination with Hsu renders obvious claims 1, 3-5, 8, 13, 14, 18, and 19 of the '255 Patent.

9. Dall'Agnese in combination with Stribling or Koska and in combination with Roth renders obvious claim 6 of the '255 Patent.

10. Sullivan in combination with Toudou and in combination with Stribling or Koska or Gardner and in combination with Roth renders obvious claims 1, 3-8, 13, 14, 18, and 19 of the '255 Patent.

11. Choi renders obvious claims 1, 3-8, 13-14, and 18-19 of the '255 Patent.

12. Choi in combination with Toudou, McDonough, Conaway, Hsu, or Dall'Agnese renders obvious claims 1, 3-8, 13-14, and 18-19 of the '255 Patent.

Because of the breadth of the prior art and large number of potential combinations of prior art, Zak may rely on additional combinations of prior art that are supported in its claim charts under Patent L.R. 3-3(c).

All of the combinations above, and any other combinations of identified prior art that disclose all of the claim elements of an asserted claim, render the claim(s) obvious because all of the identified prior art relate to the same type of water

bottles as in the Asserted Patents such that a person of ordinary skill in the art would have recognized those features in the prior art to be interchangeable.

C. Patent L.R. 3-3(c): Claim Charts

Exhibit A is a chart identifying specifically where and how in each prior art reference each limitation of each asserted claim of the '028 Patent is found.

Exhibit B is a chart identifying specifically where and how in each prior art reference each limitation of each asserted claim of the '595 Patent is found.

Exhibit C is a chart identifying specifically where and how in each prior art reference each limitation of each asserted claim of the '879 Patent is found.

Exhibit D is a chart identifying specifically where and how in each prior art reference each limitation of each asserted claim of the '833 Patent is found.

Exhibit E is a chart identifying specifically where and how in each prior art reference each limitation of each asserted claim of the '911 Patent is found.

Exhibit F is a chart identifying specifically where and how in each prior art reference each limitation of each asserted claim of the '255 Patent is found.

D. Patent L.R. 3-3(d): Grounds of Invalidity Under 35 U.S.C. §§ 101, 112(1), and/or 112(2).

Claims 1-3, 5-6, 8-10, 13, and 16 of the '028 Patent are invalid for indefiniteness because they fail to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. In particular, claims 1-3, 5-6, 8-10, 13, and 16 are invalid for indefiniteness because "its bias" in claim 1 lacks antecedent basis and because claims 2-3, 5-6, 8-10, 13, and 16 are dependent on claim 1. In addition, claim 21 is invalid for indefiniteness because "the bias"

lacks antecedent basis. Moreover, claims 10 and 13 of the '028 patent are invalid for indefiniteness because the claim term “rigid” is indefinite.

Claims 14, 16, 18, 22, 26, 28-29, and 31-35 of the '595 Patent are invalid for indefiniteness because they fail to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. In particular, claims 14, 16, 18-19, 21-26, 28-29, and 31-35 are invalid for indefiniteness because “its bias” in claims 14 and 26 lacks antecedent basis and because claims 16, 18-19, 21-25, 28-29, and 31-35 are dependent on claims 14 or 26. In addition, claims 16, 18, 22, 26, 28-29, and 31-35 are invalid for indefiniteness because the claim term “rigid” is indefinite. Claim 22 is also indefinite because the claim element “structure for securing the tube portion to the rigid collar member and restricting relative movement between the tube portion and the rigid collar member” is governed by 35 U.S.C. § 112(6) but the '595 Patent does not disclose a structure corresponding to the claimed function.

Claims 1, 3, 5-8, 10-13, and 15-19 of the '879 Patent are invalid for indefiniteness because they fail to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. In particular, claims 1, 3, 5-8, 10-13, and 15-19 are invalid for indefiniteness because “its bias” in claim 1 lacks antecedent basis and because claims 3, 5-8, 10-13, and 15-19 are dependent on claim 1. In addition, claims 1, 3, 5-8, 10-13, and 15-19 are invalid for indefiniteness because the claim term “rigid” is indefinite. Claim 5 is also indefinite because the claim element “structure for securing the tube portion to the rigid collar member

and restricting relative movement between the tube portion and the rigid collar member” is governed by 35 U.S.C. § 112(6) but the ‘879 Patent does not disclose a structure corresponding to the claimed function.

Claims 1-4, 7-9, and 11 of the ‘833 Patent are invalid for indefiniteness because they fail to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. In particular, claims 1-4, 7-9, and 11 are invalid for indefiniteness because “its bias” in claim 1 lacks antecedent basis and because claims 2-4, 7-9, and 11 are dependent on claim 1. In addition, claims 1-4, 7-9, and 11 are invalid for indefiniteness because the claim term “rigid” is indefinite.

Claims 1-2, 7, 9-11, 14-18, 20 and 23 of the ‘911 Patent are invalid for lack of written description and enablement because the claims do not include all elements which the inventors described as being essential or critical. In particular, the asserted claims of the ‘911 Patent do not include bite-actuated mouthpieces.

Claims 1-2, 7, 9-11, 17-18, and 23 of the ‘911 Patent are invalid for indefiniteness because they fail to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. In particular, claims 1-2, 7, and 9-11 are invalid for indefiniteness because the claim phrase “the resilient mouthpiece is more resilient than the drink spout” in claim 1 is indefinite and because claims 2, 7, and 9-11 are dependent on claim 1. In addition, claim 11 is invalid for indefiniteness because the claim phrase “handle is secured to the cap assembly base in a position that obstructs removal of the pair of lateral projections

from the sockets” is indefinite. Claims 10-11 are also invalid for indefiniteness because the claim phrase “projects in a fixed orientation” in claim 10 is indefinite and because claim 11 is dependent on claim 10. In addition, claims 17-18 and 23 are invalid for indefiniteness because the claim phrase “extends in a fixed orientation” in claim 17 and 23 is indefinite and because claim 18 is dependent on claim 17. Claims 1-2, 7, and 9-11 are invalid for indefiniteness because the claim term “dispensing face” in claims 1, 2, 7, and 10 is indefinite and because claims 2, 7, and 9-11 are dependent on claim 1. In addition, claim 7 is invalid for indefiniteness because the claim term “slit” is indefinite.

Claims 1, 3-8, 13-14, and 18-19 of the ‘255 Patent are invalid for lack of written description and enablement because the claims do not include all elements which the inventors described as being essential or critical. In particular, the asserted claims of the ‘255 Patent do not include bite-actuated mouthpieces.

Claims 7 and 13-14 of the ‘255 Patent are invalid for indefiniteness because they fail to particularly point out and distinctly claim the subject matter which the applicant/inventor regards as his invention. In particular, claim 7 is invalid for indefiniteness because the claim phrase “extends in a fixed orientation” is indefinite. In addition, claims 13 and 14 are invalid for indefiniteness because the claim term “dispensing face” is indefinite. Claim 14 is also invalid for indefiniteness because the claim term “slit” is indefinite.

E. Patent L.R. 3-4: Document Production Accompanying Invalidity Contentions

1. In response to Patent L.R. 3-4(a), Zak is producing responsive documents marked as ZAK0048375—ZAK0048386.
2. In response to Patent L.R. 3-4(b), Zak is producing responsive documents marked as ZAK0048387—ZAK0048754.
3. In response to Patent L.R. 3-4(c), Zak has not located any responsive documents.
4. In response to Patent L.R. 3-4(d), Zak identifies the document marked as ZAK0002907.
5. In response to Patent L.R. 3-4(e), Zak is producing responsive documents marked as ZAK0048755—ZAK0048774.

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CERTIFICATE OF SERVICE

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