

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZAK DESIGNS, INC.,
Petitioner,

v.

CAMELBAK PRODUCTS, LLC,
Patent Owner.

IPR2022-00803
Patent 9,782,028 B2

Before HUBERT C. LORIN, CARL M. DEFRANCO, and
JAMES A. WORTH, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

CamelBak Products, LLC, (“CamelBak”) is the owner of U.S. Patent No. 9,782,028 B2 (Ex. 1001, “the ’028 patent”). Zak Designs, Inc. (“Zak”) filed a Petition requesting *inter partes* review of claims 1, 2, 5–10, 14, 16, and 21 of the ’028 patent. Paper 2 (“Pet.”). CamelBak filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). With our authorization, Zak filed a Petitioner’s Reply (Paper 7, “Pet. Reply”), and CamelBak filed a Patent Owner’s Sur-Reply (Paper 8, “PO Sur-Reply”). Because Zak fails to demonstrate a reasonable likelihood that at any of the challenged claims are unpatentable, we deny institution of *inter partes*. See 35 U.S.C. § 314(a).

I. BACKGROUND

A. *Related Matters*

The ’028 patent is the subject of an infringement action filed June 11, 2021 in *CamelBak Products, LLC v. Zak Designs, Inc.*, No. 5:21-cv-05109 (W.D. Ark.). See Pet. 1; Paper 4, at 2.

B. *The ’028 Patent*

The ’028 patent is directed to a drink container with a mouthpiece assembly movable between a dispensing configuration and a stowed configuration. See Ex. 1001, 1:13–15. According to the ’028 patent, the mouthpiece assembly includes “a user-release mechanism that is adapted to automatically, upon user actuation, release the mouthpiece assembly from the stowed configuration to the dispensing configuration.” *Id.* at 1:45–49. “[T]he mouthpiece assembly is biased toward the dispensing configuration and thus moves automatically under its bias upon release by the user-release mechanism.” *Id.* at 1:50–52. Figures 11–13 of the ’028 patent, reproduced below, illustrate an embodiment of components of the mouthpiece assembly.

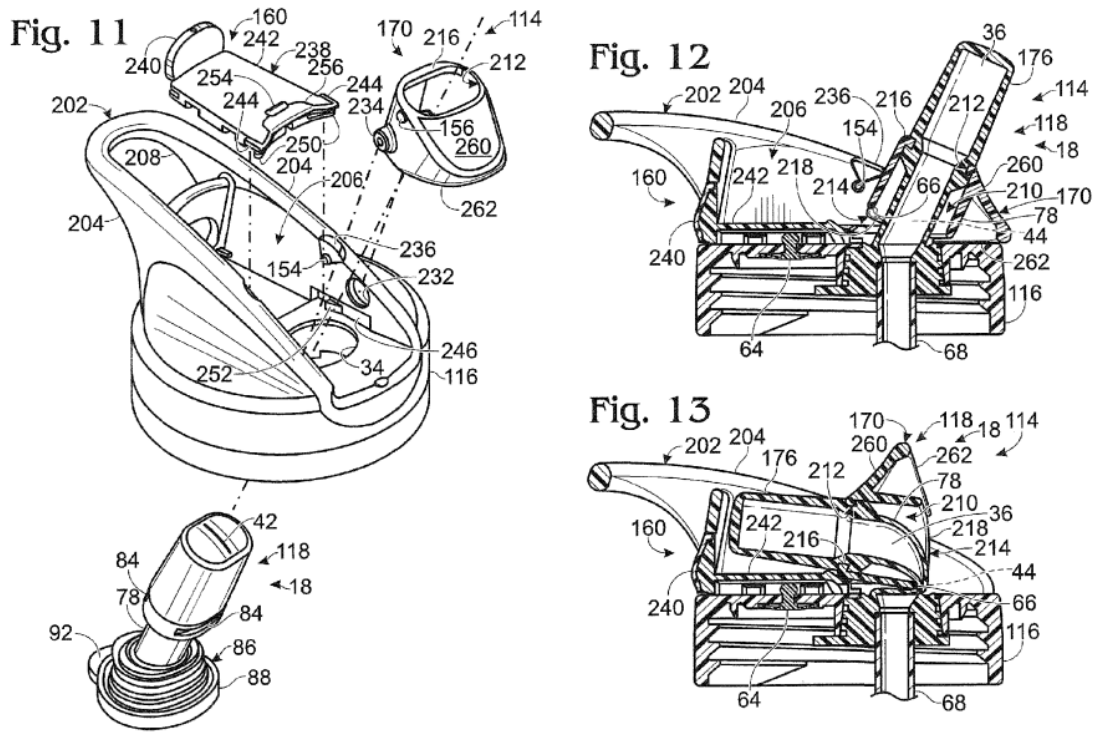


Figure 11 is an isometric exploded view of cap assembly 114;
Figure 12 is a cross-sectional side elevation view of the cap assembly with the mouthpiece assembly in its dispensing configuration; and Figure 13 is a cross-sectional side elevation view of the cap assembly with the mouthpiece assembly in its stowed configuration. Ex. 1001, 2:28–35. Cap assembly 114 is adapted to be removably coupled to the neck of a liquid container (not shown) to cover or otherwise enclose the drink container. *Id.* at 3:56–58.

In the embodiment of Figures 11–13, cap assembly 114 comprises base 116 and mouthpiece assembly 118 that has rigid collar member 170 and user release mechanism 160. *Id.* at 11:15–19. Mouthpiece assembly 118 also includes tube 78 and bite-actuated mouthpiece 176, which extend within through-passage 210 of rigid collar member 170. *Id.* at 11:40–45. Rigid collar member 170 also has opening 214 defined by rim 218, which has

crimping portion 66 adjacent to crimping region 60 of tube 78 such that when rigid collar member 170 is pivoted from the dispensing configuration (*see* Fig. 12) to the stowed configuration (*see* Fig. 13), crimping portion 66 engages and crimps the crimping region of the tube to thereby restrict the flow of drink liquid through the liquid passage in the stowed configuration. *Id.* at 11:58–67. The '028 patent explains that mouthpiece assembly 118 may be biased toward the dispensing configuration based on an internal bias created by the material from which at least a portion of the mouthpiece assembly is constructed, such as a resiliently deformable material. *Id.* at 5:53–65, 11:10–14.

Base 116 of cap assembly 114 includes a first catch structure, and rigid collar member 170 includes a second catch structure 56 that is adapted to engage and mate with the first catch structure when the mouthpiece assembly is in the stowed configuration. *Id.* at 12:25–30. In the illustrated embodiment, the first catch structure of cap assembly 114 includes a pair of cylindrical depressions 154 extending into lateral guards 204 of handle 202, and the second catch structure of rigid collar member 170 includes a pair of hemispherical protrusions 156 positioned and sized to mate with depressions 154 and thereby retain the mouthpiece assembly in its stowed configuration. *Id.* at 12:30–37. Cap assembly 114 also includes user release mechanism 160, which permits the mouthpiece assembly to move between the stowed configuration and the dispensing configuration using sliding member 238. *Id.* at 12:50–56. In particular, sliding member 238 includes collar engagement portion 254 that engages the rigid collar member and forces disengagement of the first and second catch structures upon actuation of the user release mechanism. *Id.* at 13:15–18. The '028 patent explains that

pivoting rigid collar member 170 forces disengagement of the first and second catch structures, which “forces the mouthpiece assembly to reconfigure from the stowed configuration to the dispensing configuration due to the bias of the mouthpiece assembly.” *Id.* at 13:29–33.

C. The Asserted Challenges

Claims Challenged	35 U.S.C. §	Basis
1, 2, 5–9, 21	102(b)	Yamashita ¹
1, 2, 5–9, 21	103	Yamashita
1, 2, 5–9, 21	103	Yamashita and Paczonay ²
1, 2, 5–9, 21	103	Yamashita and Dall’Agnese ³
1, 2, 5–9, 21	103	Yamashita, Paczonay, and Dall’Agnese
16	103	Yamashita and Manganiello ⁴
16	103	Yamashita, Paczonay, and Manganiello
16	103	Yamashita, Paczonay, and Dall’Agnese and Manganiello
1, 2, 5, 8–10, 14, 16, 21	103	Manganiello and Dall’Agnese
1, 2, 5, 8–10, 14, 16, 21	103	Manganiello, Dall’Agnese, and Paczonay
6	103	Manganiello, Dall’Agnese, and Anderson ⁵

¹ PCT Publication No. WO 2007/148441 A1, pub. Dec. 27, 2007 (Ex. 1005, “Yamashita”). We refer to the certified English translation of Yamashita. *See* Ex. 1006.

² U.S. Patent No. 5,791,510, iss. Aug. 11, 1998 (Ex. 1007, “Paczonay”).

³ European Patent Application EP 1 095 599 A2, pub. May 2, 2001 (Ex. 1008, “Dall’Agnese”).

⁴ U.S. Patent No. 5,897,013, iss. Apr. 27, 1999 (Ex. 1009 “Manganiello”).

⁵ U.S. Patent No. 3,307,752, iss. Mar. 7, 1967 (Ex. 1010 “Anderson”).

Claims Challenged	35 U.S.C. §	Basis
6	103	Manganiello, Dall’Agnese, Paczonay, and Anderson
7	103	Manganiello, Dall’Agnese, and Yamashita
7	103	Manganiello, Dall’Agnese, Paczonay, and Yamashita

In support of these challenges, Zak also submits the declaration of Ottmar Hans Brandau. *See* Ex. 1003. CamelBak does not submit a responsive declaration. *See generally* Prelim. Resp.

D. The Challenged Claims

Two of the challenged claims are independent—claims 1 and 21. The primary difference between claims 1 and 21 is that the user release mechanism of claim 1 is adapted to automatically disengage first and second catch structures upon actuation of the user release mechanism to “release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration,” whereas claim 21 excludes the first and second catch structures while still reciting that the user release mechanism “automatically release[s] the mouthpiece assembly from the stowed configuration to the dispensing configuration via the bias of the mouthpiece assembly.” *Compare* Ex. 1001, 21:21–22:6, *with id.* at 26:10–43. Claims 1 and 21 are representative and read as follows (with nomenclature added):

1. A drink container, comprising:
 - [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
 - [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;

[1.3] a first catch structure;

[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, [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, [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;

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

[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

[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

[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.

Id. at 21:21–22:6.

21. A drink container, comprising:

[21.1] a liquid container; and

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

a base that defines a through-passage;

[21.3] a mouthpiece assembly that extends through the through-passage of the base and defines a liquid passage, [21.4] wherein the mouthpiece assembly has a dispensing configuration and a stowed configuration, [21.5] 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;

[21.6] 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

[21.7] 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 anchor portion through the through-passage and thus restrict removal of the mouthpiece assembly via a top side of the cap assembly, and [21.8] wherein the resilient mouthpiece portion, the resilient tube, and the resilient anchor portion are constructed as a unitary assembly; and

[21.9] a user release mechanism adapted to automatically release the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration.

Id. at 26:10–44.

II. ANALYSIS

A. Claim Construction

We apply the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). That is, “the words of a claim ‘are generally given their ordinary and customary meaning’ . . . that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Id.* at 1312–13; *see also* 37 C.F.R. § 42.100(b).

Zak asks that we construe three claim terms: (1) the term “mouthpiece assembly,” as recited by claims 1 and 21, “to mean a mouthpiece part separate from the cap” (Pet. 10–11); (2) the term “user release mechanism,” as recited by claims 1 and 21, to mean “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” (*id.* at 13); and (3) the term “unitary assembly,” as recited by claims 1 and 9, to mean “an undivided, whole unit of the resiliently deformable material—integrally formed from the resiliently deformable material” (*id.* at 15). CamelBak does not set forth any alternate constructions. *See generally* Prelim. Resp. At this stage, we do not perceive the need to further construe any of these claim terms, as the threshold question of institution can be decided regardless of their construction. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (approving Board decision not to construe claim language where the construction is not material to the dispute).

B. Level of Ordinary Skill in the Art

Zak asserts that one skilled in the art in the relevant time frame “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.” Pet. 10 (citing Ex. 1003 ¶ 14). At this stage, CamelBak does not contest that assertion. *See generally* Prelim. Resp. Nor do we discern any reason to question its credibility at this stage. Thus, for purposes of institution, we review the asserted prior art mindful of the level of skill in the art as articulated by Zak.

C. Anticipation/Obviousness Based on Yamashita (Grounds 1–2)

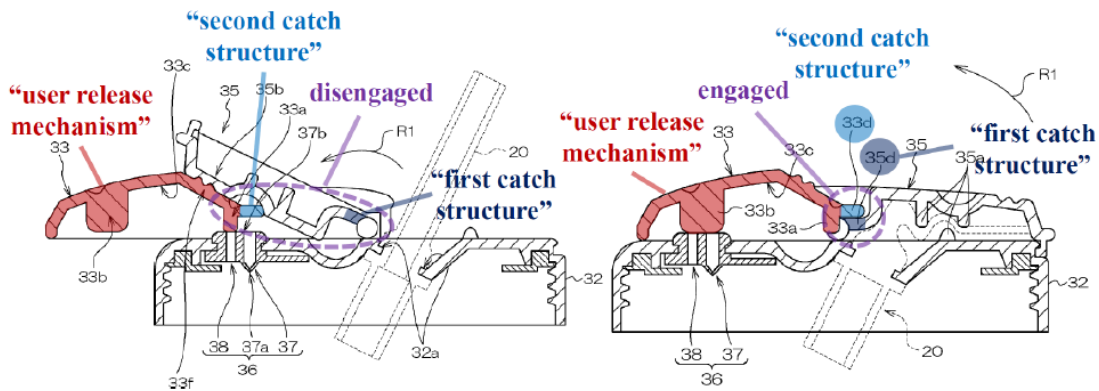
Zak challenges claims 1, 2, 5–9, and 21 as being anticipated by and/or obvious over Yamashita. *See* Pet. 15. We begin with the challenge against claim 1.

1. Claim 1

In challenging claim 1, Zak provides a detailed mapping of how Yamashita meets each of the recited claim elements. *See id.* at 15–42. Based on our review of Zak’s mapping, however, we find that Zak fails to show that Yamashita discloses or otherwise suggests element [1.11] of claim 1, namely, “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.”

Zak contends that Yamashita’s “slider 33 (release mechanism) has a mechanical relationship with abutting part 35d (first catch structure) and hood stopper 33d (second catch structure)” such that “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.” Pet. 41. In support, Zak provides annotated Figures 7 and 9 of Yamashita, reproduced below. *Id.* at 40.



Yamashita, FIGS. 9, 7*

Annotated Figure 9 of Yamashita depicts a cap assembly with the mouthpiece assembly, i.e., straw 20, in a dispensing configuration, while annotated Figure 7 depicts a cap assembly with the mouthpiece assembly in a stowed configuration. As shown, when user release mechanism 33 is moved to the left, second catch structure 33d becomes disengaged from first catch structure 35d.

But, although Figures 7 and 9 of Yamashita depict the catch structures engaged for stowed configuration of straw 20 and disengaged for dispensing configuration of the straw, Zak ignores intervening Figure 8 of Yamashita, which shows that merely sliding user release mechanism 33 to the left does *not* “automatically disengage the first and second catch structures” so as “to release of mouthpiece assembly 20 to move via its bias from the stowed configuration to the dispensing configuration,” as required by claim 1. That is because, in addition to user release mechanism 33 on the left-most end of

rotating hood 35, Yamashita's Figure 8 shows a snap-fit closure in the form of a protrusion and corresponding recess on the right-most end of hood 35 that keeps the hood in a closed state despite actuation of user release mechanism 33.⁶ *See* Ex. 1006, Fig. 8. Indeed, Yamashita explains that the straw remains in a "closed state," i.e., a stowed configuration, despite the leftward movement of user release mechanism 33: "when the slider 33 moves to the left in the direction of the arrow X shown in FIG. 8, the hood stopper 33d separates from the hood 35 . . . [a]t this moment, [] the opening of the straw 20 is in the closed state due to the closed hood 35." *Id.* at 19–20. That hood 35 is still "closed" after actuation of user release mechanism 33 can only mean that the snap-fit closure on the right-most end of hood 35 must be actuated to automatically open the hood and release the straw from a stowed configuration to a dispensing configuration.

In other words, the release of Yamashita's straw 20 from underneath hood 35 involves a two-step operation—*first*, actuating user release mechanism 33 to unlock the left-most end of hood 35, and, *second*, actuating snap-fit closure on the right-most end of hood 35 to permit rotation of the hood and dispensing of the straw. Thus, the automatic disengagement of Yamashita's hood 35 and release of Yamashita's straw 20 only occurs after

⁶ In an alternative challenge (i.e., Grounds 4–5), Zak acknowledges that Yamashita discloses a protrusion/recess structure on the right-most end of hood 35. *See* Pet. 58 (annotating Yamashita's Fig. 7 to show how the right-most end of Yamashita's rotating hood 35 includes the claimed first and second catch structures); *see also id.* at 61 (admitting that "Yamashita's figures show the recess/protrusion on hood 35 (first catch structure) and the protrusion/recess of base 32 (second catch structure).").

actuation of the unlabeled snap-fit closure, and *not* as Zak contends, from actuation of Yamashita's user release mechanism 33.

Because Zak's position that Yamashita's user release mechanism 33 satisfies element [1.11] of claim 1 lacks evidentiary support in the record, we find that Yamashita does not anticipate claim 1. And because Zak does not explain any modification of Yamashita that would result in automatic release of the straw, Zak also fails to establish that Yamashita renders obvious claim 1.

2. Dependent Claims 2 and 5–9

Zak also relies on Yamashita to challenge claims 2 and 5–9, which depend from claim 1. In doing so, Zak fails to remedy the deficiency in the Yamashita-based challenge against claim 1. *See* Pet. 44–49. As such, Zak falls short in demonstrating a reasonable likelihood that those dependent claims are anticipated by and/or obvious over Yamashita.

3. Independent Claim 21

Similar to claim 1, claim 21 recites limitations directed to a “user release mechanism” that “automatically release[s] the mouthpiece assembly to move via its bias from the stowed configuration to the dispensing configuration.” Ex. 1001, 26:40–43. In challenging claim 21, Zak relies on the same challenge and arguments with respect to Yamashita as asserted against claim 1. *See* Pet. 50–51 (mapping elements of claim 21 to sections of the Petition previously argued for claim 1). Thus, for the same reasons discussed above with respect to claim 1, we determine that Zak fails to demonstrate a reasonable likelihood that claim 21 is anticipated by and/or obvious over Yamashita.

D. Obvious Over Yamashita and Paczonay (Ground 3)

Zak also challenges claims 1, 2, 5–9, and 21 as obvious over Yamashita and Paczonay. *See* Pet. 51–57. In doing so, however, Zak does not rely on Paczonay to cure the deficiency discussed above with respect to Yamashita’s lack of meeting the claimed “user release mechanism” of claims 1 and 21. *See id.* at 52–53 (relying on Paczonay for the claimed “mouthpiece portion”). As such, Zak fails to demonstrate a reasonable likelihood of success with the respect to this challenge based on Yamashita and Paczonay.

E. Obviousness Over Yamashita and Dall’Agnese (Grounds 4–5)⁷

In the alternative, Zak challenges claims 1, 2, 5–9, and 21 as being unpatentable over Yamashita in combination with Dall’Agnese. *See* Pet. 58–62. We begin with Zak’s challenge against independent claims 1 and 21. *See id.* at 58.

In combining Yamashita and Dall’Agnese, Zak focuses on a different aspect of Yamashita for the claimed first and second catch structures, namely, the corresponding protrusion and recess structures forming the unlabeled snap-fit closure⁸ on the right-most end of Yamashita’s hood 35. *See* Pet. 58 (annotating Yamashita’s Fig. 7 to show the claimed first and second catch structures). In particular, Zak contends that, “[i]f it’s argued that Yamashita does not disclose a user release mechanism adapted to

⁷ Although Zak identifies “Paczonay” as a part of this challenge, nowhere do we discern any meaningful discussion of Paczonay. *See* Pet. 58–62. Thus, we treat the challenge as being based on Yamashita and Dall’Agnese.

⁸ This is the same snap-fit closure discussed previously in our analysis of Zak’s challenge based on Yamashita alone.

automatically disengage these two catch structures,” Dall’Agnese nonetheless teaches “a snap-acting closing device 13, which is adapted to be actuated by means of elastic tab 14.” *Id.* at 59 (annotating Dall’Agnese’s Figs. 2 and 3 to show actuation of elastic tab 14 for releasing first and second catch structures 25, 26). According to Zak, “[e]lastic tab 14 discloses the claimed user release mechanism” because “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.” *Id.* at 60 (citing Ex. 1008 ¶¶ 11, 12).

Based on Dall’Agnese’s teachings, Zak reasons that it would have been obvious “to modify Yamashita’s base 32 and hood 35 to incorporate Dall’Agnese’s elastic tab 14” because, although Yamashita shows a recess on hood 35 (first catch structure) and a protrusion on base 32 (second catch structure), one skilled in the art would have looked to Dall’Agnese “for more convenient mechanisms to disengage the two catch structures.” *Id.* at 61 (citing Ex. 1006 ¶ 59). Similarly, Zak contends that “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.*” *Id.* at 61–62 (citing Ex. 1008 ¶¶ 4, 13) (emphasis added).

We find that Zak’s reasoning for the asserted combination lacks rational basis. In particular, we fail to comprehend why one skilled in the art would look to Dall’Agnese’s elastic tab given that Yamashita’s snap-fit closure is already pressure-actuated for conveniently popping open hood 35. Indeed, Zak’s declarant expressly admits that one skilled in the art would

have known from “studying the other teachings in Yamashita and from the general context” that “the user might apply pressure to the hood with the thumb to disengage these catch structures and pop the hood open.” Ex. 1003 ¶115 (citing Ex. 1006 ¶ 59).

So, given Zak’s admission that Yamashita’s snap-fit closure already has the capability of being pressure-actuated, there is no need to add Dall’Agnese’s user release mechanism for performing the same function. Thus, Zak fails to provide sufficient reasoning with evidentiary underpinning for combining Dall’Agnese’s elastic tab with Yamashita’s snap-fit closure. As such, Zak fails to demonstrate a reasonable likelihood of showing that claims 1 and 21 are unpatentable as obvious over Yamashita and Dall’Agnese. And, because Zak’s challenge of dependent claims 2 and 5–9, which are not argued separately, suffers the same deficiency of a reason to combine Yamashita and Dall’Agnese t. 83–90), we likewise determine that Zak falls short in demonstrating a reasonable likelihood that those dependent claims are unpatentable as obvious over Manganiello and Dall’Agnese.

*F. Obviousness Over Yamashita, Dall’Agnese, and Manganiello (Grounds 6–8)*⁹

Zak challenges dependent claim 16 as obvious over the combination of Yamashita, Dall’Agnese, and Manganiello. *See* Pet. 62–67. In doing so, Zak does not rely on Manganiello to cure the deficiency in the above-discussed challenge relying on the combination of Yamashita and

⁹ Similar to previous challenges, although Zak identifies “Paczonay” as part of the challenge, Zak fails to meaningfully discuss its role in the challenge. *See* Pet. 62–67. Thus, without more, we treat the challenge as being based on Yamashita, Dall’Agnese, and Manganiello.

Dall’Agnese. *See id.* at 64–65 (relying on Manganiello solely for claimed arrangement of the straw). As such, Zak fails to demonstrate a reasonable likelihood of success with the respect to this challenge of this dependent claim.

G. Obviousness Over Manganiello and Dall’Agnese (Ground 9)

Zak challenges claims 1, 2, 5, 8–10, 14, 16, and 21 as obvious over Manganiello and Dall’Agnese. *See* Pet. 68–91. Like the other challenges, we start with claim 1.

1. Claim 1 (and dependent claims 2, 5, 8–10, 14, and 16)

Zak asserts that Manganiello discloses elements [1.1], [1.2], and [1.4]–[1.7] of claim 1, but relies on the combination of Manganiello and Dall’Agnese for elements [1.3], [1.10], and [1.11]. *See* Pet. 68–80.

According to Zak, one skilled in the art “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” because “Manganiello describes no locking mechanism to hold sealing cap 36 closed” and “[a]dding Dall’Agnese’s [locking] mechanism to Manganiello’s container would help prevent [] inadvertent openings and leaks because the user must exert pressure on tab 14 [to] open the cover.” *Id.* at 81–82 (citing Ex. 1008 ¶ 11). We disagree.

The evidentiary record does not support Zak’s reason for adding Dall’Agnese’s locking mechanism to Manganiello’s container. Figures 3A and 3B of Manganiello, reproduced below, depict an exemplary cap and straw assembly for a container.

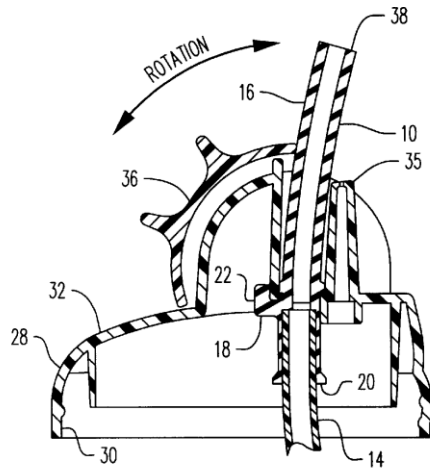


FIG. 3A

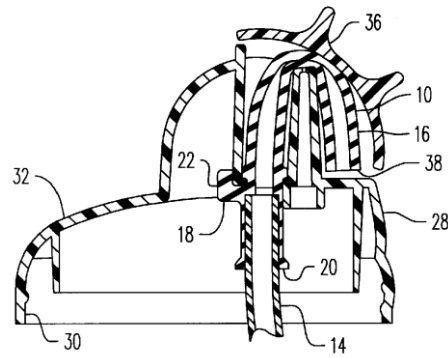


FIG. 3B

Figure 3A is cross-sectional view of the cap and straw assembly “when the straw assembly is open for use” and Figure 3B is a cross-sectional view of “when the straw assembly is *sealed*.” Ex. 1009, 2:18–21 (emphasis added). To attain the “sealed” state, Manganiello discloses sealing post 35 and ridges 24 evenly spaced on approximately half the circumference of the upper segment of straw 10. *Id.* at 3:22–25. According to Manganiello, “[t]he ridges 24 facilitate the sliding of sealing cap 36 over the straw’s surface” and “act as glide enhancers, to a certain extent, by preventing a total contact of straw 10 against [the] plastic cap,” which “allows it to slide easily when pushed by the sealing cap 36 to a closed position.” *Id.* at 3:2–18. But, “[i]f ridges 24 are disposed about the entire circumference of upper segment 16 [of the straw], insufficient compression or adhesion may occur between the upper segment 16 and sealing post 35 for a leakproof seal.” *Id.* at 3:25–28.

Given that Manganiello describes the closed position of cap 36 as being “sealed” and the compression of straw 20 against sealing post 35 as forming “a leakproof seal,” we fail to see why one skilled in the art would be led to modify Manganiello to prevent leaks, as Zak asserts. *See* Pet. 81–82.

And because ridges 24 create sufficient compression and adhesion between sealing post 35 and straw 20, it is also not apparent why Manganiello would be subject to “inadvertent opening” so as to require the tooth and tab structure of Dall’Agnese, as Zak also contends. *Id.* If anything, the addition of Dall-Agnese’s tooth 25 to Manganiello’s sliding cap 36 would more likely interfere with the cap’s ability to slide over sealing post 35, thereby preventing adequate compression and adhesion between it and the straw. Accordingly, we find that Zak fails to articulate a sufficient reason for why one skilled in the art would have added Dall’Agnese’s tooth and tab structure to Manganiello’s container.

As such, the Petition fails to support a reasonable likelihood that claim 1 is unpatentable as obvious over Manganiello and Dall’Agnese. And because Zak’s challenge of dependent claims 2, 5, 8–10, 14, and 16 suffers the same deficiency in terms of lacking a reason to combine Manganiello and Dall’Agnese (*see* Pet. 83–90), we likewise determine that Zak falls short in demonstrating a reasonable likelihood that those dependent claims are unpatentable as obvious over Manganiello and Dall’Agnese.

2. Claim 21

Zak’s challenge of independent claim 21 based on the Manganiello/Dall’Agnese combination relies on the same arguments as asserted against claim 1. *See* Pet. 90–91 (mapping each of claim 21’s elements to sections of the Petition argued previously for claim 1). Thus, for the same reasons discussed above with respect to claim 1, we determine that Zak also fails to demonstrate a reasonable likelihood that claim 21 is unpatentable as obvious over Manganiello and Dall’Agnese.

H. Additional Challenges Based on Manganiello/Dall’Agnese in View of Paczonay, Anderson, and/or Yamashita (Grounds 10–14)

Zak also challenges claims 1, 2, 5–10, 14, 16, and 21 as obvious over Manganiello and Dall’Agnese in view of various other references that include Paczonay, Anderson, and Yamashita. *See* Pet. 91–96. In doing so, however, Zak does not rely on any of those additional references to cure the deficiency in the above-discussed challenge relying simply on Manganiello and Dall’Agnese. *See id.* at 91 (relying on Paczonay solely for claimed “mouthpiece portion”), 92–93 (relying on Anderson solely for claimed “handle”), 96 (relying on Yamashita solely for claimed “bite-actuated mouthpiece”). As such, Zak fails to demonstrate a reasonable likelihood of success with the respect to these additional challenges.

I. Discretionary Denial Under 35 U.S.C. § 314(a)

CamelBak urges us to exercise our discretion under 35 U.S.C. § 314(a) to deny institution based on the parallel litigation in the District Court for the Western District of Arkansas. *See* Prelim. Resp. 1–17; PO Sur-Reply 1–3. Because we find that Zak has not shown a reasonable likelihood that it would prevail in proving unpatentability of any of the challenged claims, we need not reach the issue of discretionary denial under § 314(a).

III. CONCLUSION

For the above reasons, we decline to institute *inter partes* review of any of the challenged claims of the ’028 patent.

IV. ORDER

Accordingly, it is:

ORDERED that the Petition is *denied*.

IPR2022-00803
Patent 9,782,028 B2

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