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Paper 7
Date: October 31, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TROVE BRANDS, LLC,
Petitioner,

v.

CAMELBAK PRODUCTS, LLC,
Patent Owner.

IPR2024-00858
Patent 8,905,252 B2

Before HYUN J. JUNG, CARL M. DEFRANCO, and NATHAN A. ENGELS, *Administrative Patent Judges*.

DEFRANCO, *Administrative Patent Judge*.

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

CamelBak Products, LLC is the owner of U.S. Patent No. 8,905,252 B2 (Ex. 1001, "the '252 patent"). Trove Brands, LLC filed a petition for *inter partes* review of the '252 patent, challenging claims 5–7 and 16–19. *See* Paper 2 ("Pet."). In due course, CamelBak filed a preliminary response. *See* Paper 6 ("Prelim. Resp."). Exercising our jurisdiction under 35 U.S.C. § 314(a), we institute *inter partes* review of the challenged claims.

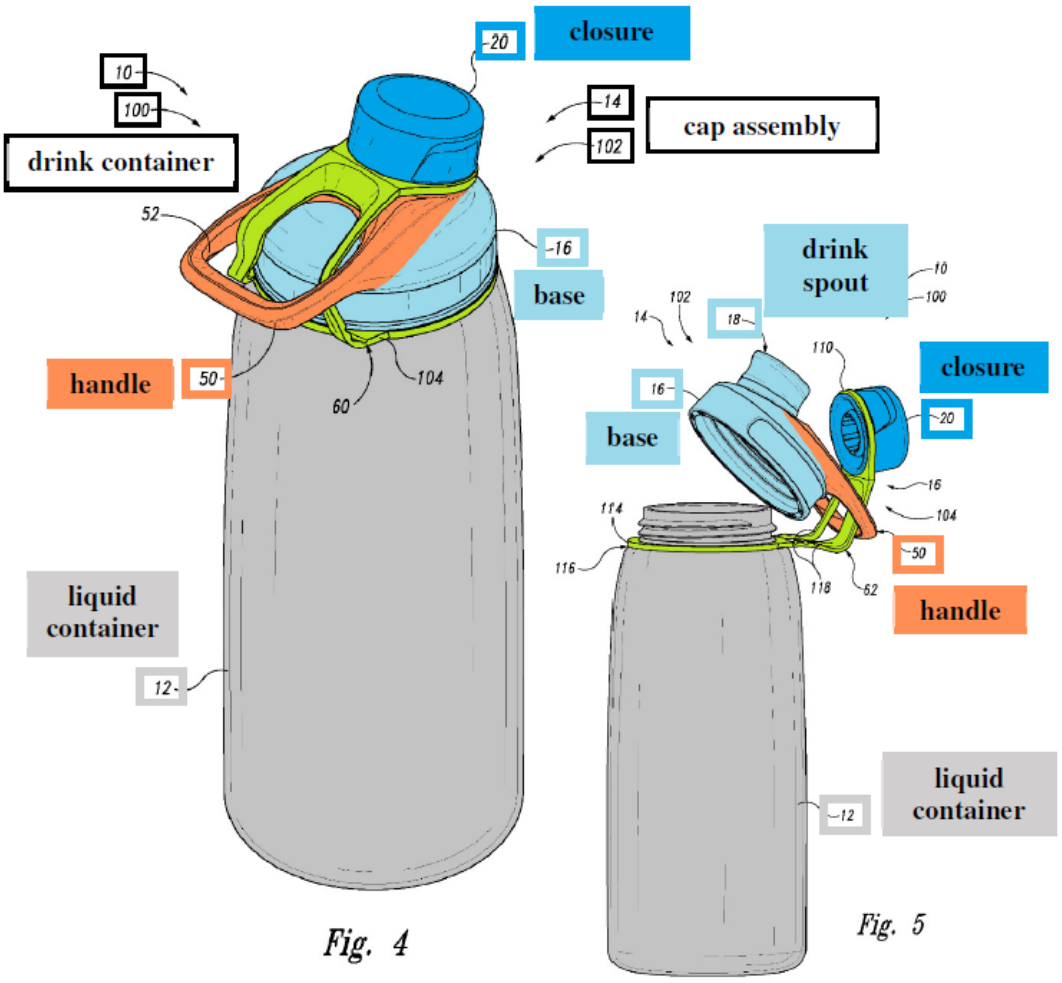
I. BACKGROUND

A. Related Matters

The '252 patent is the subject of a parallel district court action: *Trove Brands, LLC v. CamelBak Products, LLC*, No. 5:23-cv-04267 (N.D. Cal. Aug. 21, 2023). *See* Paper 4.

B. The '252 Patent

The '252 patent discloses and claims drink containers that include a liquid container and a cap assembly removably coupled to the liquid container. Ex. 1001, Abstract, 4:30–35. Figures 4 and 5, as annotated by Trove and reproduced below, illustrate the liquid container and cap assembly.



As shown above, liquid container 12 (grey) is provided with cap assembly 14 (light blue) for covering the top of the liquid container. The cap assembly includes drink spout 18 (light blue), closure 20 (dark blue) for covering the drink spout, and handle 50 (orange) for holding the liquid container.

Figures 7 and 12, also annotated by Trove and reproduced below, illustrate closure 20 (dark blue) coupled to the drink spout in a closed position (Fig. 7) and removed from the drink in an open position (Fig. 12).

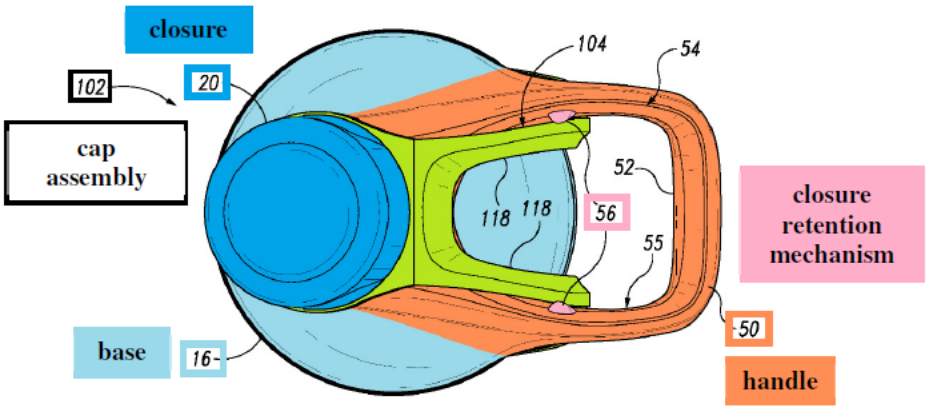


Fig. 7

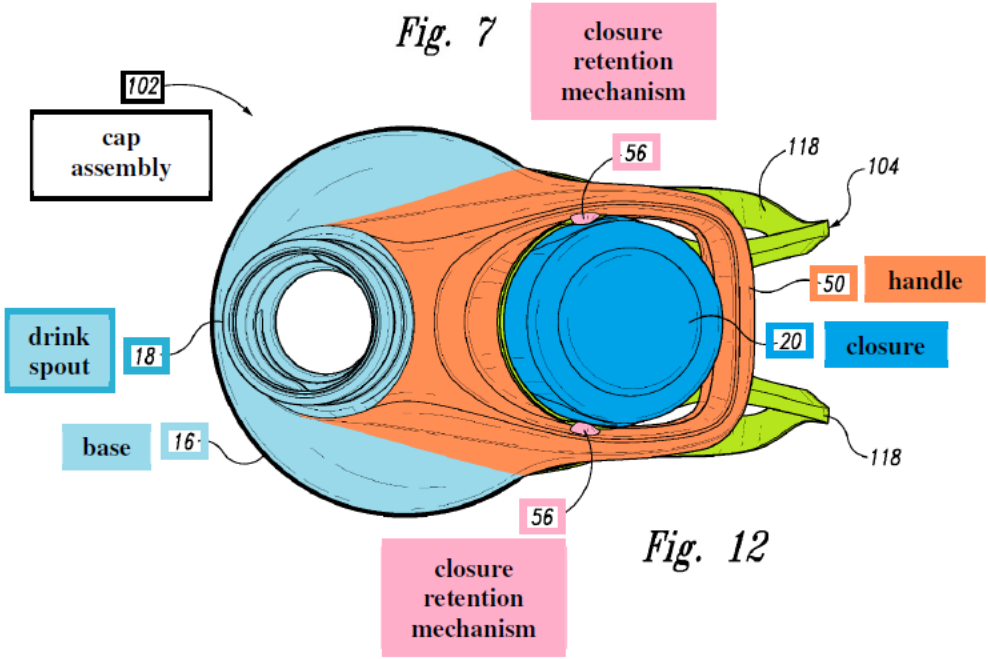


Fig. 12

As shown above, handle 50 (orange) includes a closure retention mechanism consisting of a pair of spaced-apart tabs 56 (pink) for engaging and retaining closure 20 (blue) in the stowed position once it is removed from drink spout 18 (light blue). *Id.* at 8:57–60, 13:14–56.

C. Challenged Claims

Of the challenged claims, claims 5 and 19 are independent. Claim 5 is directed to a drink container having a liquid container and a cap assembly, whereas independent claim 19 is directed to the cap assembly itself and includes the same elements as the cap assembly of claim 5. Claim 5 is

illustrative and reproduced below (with Trove's nomenclature included for ease of reference):

> 5. A drink container, comprising:
>
> [a] a liquid container having a neck with an opening and having an internal compartment sized to hold a volume of potable drink liquid; and
>
> [b] a cap assembly removably coupled to the liquid container, the cap assembly comprising:
>
> [b][i] a base removably coupled to the neck of the liquid container;
>
> [b][ii] a drink spout extending from the base and defining a passage through which drink liquid from the internal compartment of the liquid container may be selectively dispensed;
>
> [b][iii] a closure configured to be removably coupled relative to the drink spout in a closed position to selectively restrict dispensing of drink liquid through the passage and to selectively permit dispensing of drink liquid through the passage when removed from the drink spout;
>
> [b][iv] a handle extending from the base,
>
> [b][iv][a] wherein the handle includes a closure retention mechanism configured to selectively retain the closure in a stowed position relative to the handle when the closure is selectively removed from the drink spout and received by the closure retention mechanism.

D. Asserted Challenges

Claims Challenged	**35 U.S.C. §**	**Basis**
5–7, 16–19	102, 103	Samartgis[1]
16–18	103	Samartgis, Gorskey,[2] Johnson[3]
5–7, 16, 19	102, 103	Leoncavallo[4]

[1] US 9,272,822 B2, issued Mar. 1, 2016 (Ex. 1004, "Samartgis").
[2] EP 2 177 447 A1, published Apr. 21, 2010 (Ex. 1011, "Gorskey").
[3] US 2006/0006578 A1, published Jan. 12, 2006 (Ex. 1012, "Johnson").
[4] US 7,753,240 B2, issued July 13, 2010 (Ex. 1005, "Leoncavallo").

Claims Challenged	35 U.S.C. §	Basis
17, 18	103	Leoncavallo, Gorskey, Johnson
5–7, 16, 19	103	Miller,[5] Leoncavallo
17, 18	103	Miller, Leoncavallo, Gorskey, Johnson

In further support of these challenges, Trove relies on the declaration of Glenn E. Vallee, Ph.D. *See* Ex. 1003 (Parts 1 and 2). CamelBak did not submit any declaration at this preliminary stage.

II. ANALYSIS

A. Preliminary Matters

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

CamelBak requests that we discretionarily deny institution under 35 U.S.C. § 314(a) due to the advanced state of the parallel district court action, and, in doing so, relies heavily on the district court's *scheduled trial date* of September 22, 2025. *See* Prelim. Resp. 51, 54. While the district court's scheduled trial date may be earlier than the Board's projected deadline for a final written decision here, CamelBak's reliance on that date is misplaced. The Office takes the position that a district court's scheduled trial dates are "unreliable and often change" and that a more reliable indicator is the district court's "median time-to-trial for civil actions," which, in this case, would place the district court's trial date after the projected deadline of any final written decision here. *See* Director Memorandum, *Interim Procedure for Discretionary Denials in AIA-Post Grant Proceedings With Parallel District Court Litigation*, U.S. PATENT AND TRADEMARK OFFICE (June 21, 2022) ("Director's Interim Procedure"), at 8–9. Thus, CamelBak's reliance

[5] US D586,184 S, issued Feb. 10, 2009 (Ex. 1006, "Miller").

on the district court's scheduled trial date has no bearing on whether we should discretionarily deny institution.

Of greater relevance is Trove's express stipulation not to pursue the same grounds in the district court action as advanced in the petition or any ground that relies on the prior art references cited in the petition. S*ee* Pet. 100. Although not exactly a *Sotera* stipulation, the Office nonetheless recognizes that such stipulations further mitigate concerns of potentially conflicting decisions and duplicative efforts between us and the district court. *See* Director's Interim Procedure, at 7–8. Thus, given Trove's stipulation and the fact that the district court's median time-to-trial is after the projected deadline of our final written decision here, we will not discretionarily deny institution under § 314(a).

2. Discretionary Denial Under 35 U.S.C. § 325(d)

CamelBak also proposes that we discretionarily deny institution under 35 U.S.C. § 325(d) because the primary references underlying Trove's challenges were previously considered by the Office during prosecution of the '252 patent.[6] *See* Prelim. Resp. 47–49. More specifically, according to CamelBak, (1) Samartgis is substantially the same as a corresponding design patent naming the same inventor (Samartgis) that was submitted during prosecution of the '252 patent, and (2) Leoncavallo and Miller were submitted during prosecution and cited on the face of the '252 patent. *See id.* at 48–49.

[6] CamelBak concedes that there is no overlap between "arguments" made in the petition and those presented during prosecution, thus, that prong of § 325(d) does not come into play here. *See* Prelim. Resp. 49.

We disagree that Samartgis is the substantially the same as the corresponding design patent cited during prosecution, mainly because the design patent fails to show the closure retention mechanism that is clearly shown and described in Samartgis and goes to the very heart of Trove's showing of anticipation and obviousness. *Compare* Ex. 1004, Figs. 3–5 (showing lug members 15, 16 and ramp sections 23, 25, 27), *with* Ex. 2001, Figs. 1–8 (omitting any depiction of lug members or ramp sections). Thus, Samartgis clearly was not considered. And, although Leoncavallo and Miller may arguably have been considered during prosecution, "[w]hen instituting . . . review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim." 42 C.F.R. § 42.108(a). As such, we will not discretionarily deny institution under § 325(d).

B. Level of Ordinary Skill in the Art

Trove proposes that one of ordinary skill in the art would have had:

> an undergraduate degree in mechanical engineering or equivalent coursework, and a year or more of experience in designing, prototyping, and/or manufacturing fluid containers or similar products . . . [and that] [m]ore work experience may substitute for a lower level of education, and vice versa.

Pet. 17–18 (citing Ex. 1003 ¶¶ 25–30). CamelBak appears to agree. *See* Prelim. Resp. 16 ("Patent Owner assumes Petitioner has correctly stated the level of ordinary skill in the art and does not set forth its own definition."). At this stage, we see no reason to depart from Trove's proposed definition, as it appears reasonable and consistent with the asserted prior art and the '252 patent.

C. Claim Construction

Trove proposes that the term "closure retention mechanism" in independent claims 5 and 19 be construed as a means-plus-function limitation under 35 U.S.C. § 112(f). *See* Pet. 18–23. According to Trove, "[t]his term is governed by 35 U.S.C. §112(f) because it recites a nonce 'mechanism' for performing a claimed function without reciting structure for performing that function." *Id.* at 18 (citing *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348–49 (Fed. Cir. 2015)). As such, Trove argues that the corresponding structure for performing the recited function of the "closure retention mechanism" should be construed as "two or more spaced-apart tabs extending from the inner surface of the handle." *Id.* at 22–23. In support, Trove posits how the '252 patent describes the structural configuration of the closure retention mechanism—

> [T]he closure retention mechanism is on the handle. (Ex. 1001, 8:49–60, 9:12–44, 12:16–23, 13:14–46). . . . The closure retention mechanism is a pair of spaced-apart, and optionally opposed, tabs 56 that engage and retain the closure in the stowed position. (*Id.*, 8:53–60, 9:8–11, 13:14–17). . . . The spaced-apart tabs 56 extend inward from the closed perimeter of the handle. (*Id*., Fig. 2, 8:55–60). The specification explains that the tabs may use a friction-fit arrangement and/or a snap-fit arrangement to retain the closure in the stowed position. (*Id.*, 8:49–52). . . . The closure may include a corresponding structure, such as a depression or channel, that cooperates with the tabs to retain the closure in the stowed position. (*Id.*, 9:45–56).

Pet. 21–22.

Although CamelBak disagrees that § 112(f) applies, "because [Trove] has not overcome the presumption against applying § 112(f) where the

claims do not recite 'means for' limitations," CamelBak argues that resolving § 112(f)'s "corresponding structure" requirement is not necessary because "[Trove] has nonetheless failed to show that the other expressly claimed requirements of the 'closure retention mechanism' are taught by the prior art under the plain and ordinary meaning of those requirements." Prelim. Resp. 17. As such, CamelBak does not address Trove's proposed construction regarding the structure in the specification necessary to perform the function of the "closure retention mechanism" as claimed.

At this stage, we do not see the need to resolve the § 112(f) issue in light of Trove's express and unrebutted showing that the prior art teaches sufficiently analogous structure to that identified in the '252 patent for performing the disputed functional limitations of the claimed "closure retention mechanism." *See* Pet. 35 (asserting that "[Samartgis's] lug members 15 and 16 also are at least equivalent to the structure identified in the specification (*i.e.*, the two or more spaced-apart tabs on the handle)" because "[l]ike the opposed tabs of the '252 patent, the lug members 15 and 16 are projections that extend from the inner surface of the handle to engage the closure."). Indeed, at this stage, CamelBak chooses not to address Trove's showing in this regard, instead arguing that "the construction of 'closure retention mechanism' is irrelevant because [Trove] fails to show lug members 15 and 16 are configured to meet other limitations of claims 5 and 19." Prelim. Resp. 20 n.7. That said, to the extent either party believes it is necessary for final resolution of patentability, they should explore the § 112(f) issue further during the trial phase.

D. Samartgis-based grounds

Trove challenges claims 5–7 and 16–19 as being anticipated by, and/or obvious over, Samartgis. *See* Pet. 23–45. In doing so, Trove explains, with particularity, how Samartgis satisfies each element of the challenged claims (*id.* at 26–45) and provides supporting testimony from its expert (Ex. 1003 ¶¶ 54–129). In particular, Trove relies on Samartgis's main body member 1, spout 4, lever member 10, and flap member 20 as corresponding, respectively, to the claimed "base," "drink spout," "handle," and "closure," which comprise the basic components of the claimed "cap assembly." *See* Pet. 28–33 (citing Ex. 1004, 2:45–54, 3:1–6, Figs. 1, 3). To meet the claimed "closure retention mechanism," which is at the center of the parties' dispute, Trove points to Samartgis's lug members 15, 16, which project from opposing sides of the inner perimeter of handle 10, and Samartgis's tracks 23, which extend along each side of Samartgis's closure 20, and cooperate with the lug members to move closure 20 away from drink spout 4. *See id.* at 33–36 (citing Ex. 1003 ¶¶ 100–101, Ex. 1004, 4:12–30, Figs. 5, 6, 8, 9).

CamelBak responds that Trove fails to meets its burden of showing how Samartgis teaches the functional aspects of the "closure retention mechanism" recited by claims 5 and 19. *See* Prelim. Resp. 18–28. In particular, CamelBak asserts that Trove's reliance on Samartgis's lug members 15 and 16 to satisfy the claimed "closure retention mechanism" is deficient "because they (1) do not selectively retain the closure in a stowed position relative to the handle, and (2) do not receive the closure," as required by the claims. *Id.* at 18 (emphases added). According to CamelBak, Samartgis's flap member 20 (which corresponds to the claimed

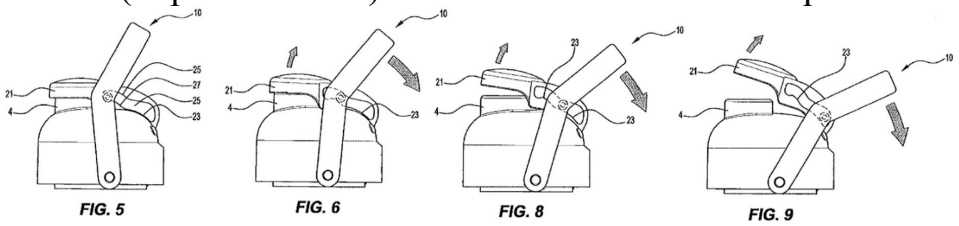
"closure"), "can freely rotate about lug members 15 and 16 and toward and away from the spout" without any manner of selective restraint. *Id.* at 21–23. We disagree.

At the outset, we note that Trove relies not only on Samartgis's lug members to satisfy the claimed "closure retention mechanism," but also on Samartgis's tracks, which receive and cooperate with the lug members to open and retain closure 20 away from drink spout 4. *See* Ex. 1003 ¶¶ 100–101 (describing how lug members 15, 16 interact with tracks 23). We also note that, with respect to the requirement of claims 5 and 19 that "the closure is selectively removed from the drink spout" and "selectively retaine[d] . . . in a stowed position relative to the handle," Samartgis teaches that "flap member 20 [i.e., closure] . . . is adapted, in use, to be releasably associated with the lever member 10 [i.e., handle] and to be *selectively and progressively movable* into and out of relationship with the main body member 1," and that such selective movement includes a "locking position" for the closure as the lever member reaches the position shown in Samartgis's Figure 9. Ex. 1004, 2:51–54, 4:3–30, respectively.

On the current record, we find that Samartgis's disclosure of a "locking position" for the closure corresponds to "selectively retain[ing] the closure in a stowed position," as required by the claims. Indeed, Trove's declarant, whose testimony stands unrebutted at this stage, confirms this position—

> Figures 5, 6, 8 and 9, below, depict the progression of the lug members 15 and 16 along the tracks 23 of the flap member 20. As depicted in each figure, lug members 15 and 16 retain the flap member 20 in a fixed position relative to lever member 10. As lever member 10 moves from left to right in the figures, flap member 20 disengages from the spout and is maintained by lug

> members 15 and 16 in an open position. The further lever member 10 moves to the right, the more flap member 20 opens. In other words, when a user moves the handle (lever member 10) to the right, the closure retention mechanism (lug members 15 and 16) will retain the closure (flap member 20) in a stowed position relative to the handle (lever member 10) when the closure (flap member 20) is removed from the drink spout.



Ex. 1003 ¶ 100 (reproducing Ex. 1004, Figs 5, 6, 8, 9).

That evidence—Samartgis's express disclosure of the closure being "selectively and progressively moveable" toward a "locking position" *together with* the unrebutted testimony of Trove's declarant that the locking position maintains Samartgis's closure in a "fixed position" as the lug members reach position shown in Figure 9—adequately supports Trove's position that Samartgis's closure is retained in a stowed position once the handle is fully rotated. On the other hand, CamelBak's suggestion that Samartgis's closure merely rotates "freely" about lug members 15 and 16, without any sort of restraint, lacks evidentiary support. *See* Prelim. Resp. 20–21.

We also disagree with CamelBak's assertion that Samartgis lacks disclosing that "the closure is . . . received by the closure retention mechanism" as required by the claims. *See id.* at 23–25. In our view, Samartgis clearly describes and shows flap member 20, which includes arm member 22 as a "principal" component, being mounted on, i.e., received by, lug members 15, 16 on handle 10. *See* Ex. 1004, 4:16–17 (disclosing "lug members 15 and 16 being able to move along the tracks 23 of flap member

20"). Thus, on the current record, we find that Samartgis sufficiently discloses all the limitations of the "closure retention mechanism" of independent claims 5 and 19.

CamelBak does not dispute Trove's showing that Samartgis discloses the remaining limitations of claims 5 and 19, nor does it dispute Trove's showing for dependent claims 6, 7, and 16–18. *See* Prelim. Resp. 18–25 (arguing solely the "closure retention mechanism" limitation of claims 5 and 19). In reviewing the preliminary record, we find that Trove sufficiently shows that Samartgis discloses each of those additional limitations. *See* Pet. 26–33, 36–44. Thus, at this stage, Trove demonstrates a reasonable likelihood of showing that claims 5–7 and 16–19 are unpatentable as anticipated by, and/or obvious over, Samartgis.

E. Trove's Additional Challenges

1. Leoncavallo-based grounds

Trove also asserts that the challenged claims are anticipated by, and or obvious over, Leoncavallo. *See* Pet. 55–77. Like Samartgis, Leoncavallo discloses a closure (element 10) for a liquid container (element 12). *See* Ex. 1005, Abstract, 3:7–10, Fig. 1A. The cap assembly includes a closure (flip cap 68) having connector members 80, as well as a closure retention mechanism (detents 90) for selectively retaining the flip cap in a stowed position. *See id.* at 5:9–39, Fig. 3. Notably, Leoncavallo discloses that "frictional engagement of the detents 90 with the connector member 80 aid in *keeping the flip cap 68 in the open position* when the user desires access to the spout 46." *Id.* at 5:39–42 (emphasis added). Based on that disclosure, the current record supports that one skilled in the art reasonably would have understood that such frictional engagement serves to *retain* the flip cap in a

fully-open and stowed position relative to the handle. *See* Ex. 1003 ¶ 174. Thus, we disagree with CamelBak's conclusory and unsupported assertion that "there is nothing about the friction" provided by Leoncavallo's detents 90 that retains the closure in the open position.[7] Prelim. Resp. 31. Rather, on the current record, we find that Leoncavallo sufficiently discloses the "closure retention mechanism" as claimed, as well as the other indisputably disclosed elements of claims 5 and 19. As such, Trove demonstrates a reasonable likelihood of showing that claims 5 and 19 are unpatentable as anticipated by, and/or obvious over, Leoncavallo. Although CamelBak does not respond to Trove's challenge of the dependent claims (*see* Prelim. Resp. 28–35), we think analysis of the challenge to the dependent claims is best left for trial after full development of the record.

2. Miller-based grounds

Trove also challenges claims 5 and 19 as obvious over Miller, which is a design patent, and Leoncavallo. *See* Pet. 79–93, 95. Given the strength of the Samartgis-based grounds and the Leoncavallo-based grounds, we do not see the need at this stage to address this third challenge of the same claims.

III. CONCLUSION

For the above reasons, we determine that Trove demonstrates a reasonable likelihood of proving that claims 5–7 and 16–19 are unpatentable

[7] We also disagree with CamelBak's argument that Leoncavallo's closure (flip cap 68) is not "received by the closure retention mechanism," as claimed, because connector members 80, 82 are purportedly not part of the closure. *See* Prelim. Resp. 34. Leoncavallo expressly discloses that flip cap 68 "*includes* a pair of opposing arcuate connector member 80, 82." Ex. 1005, 5:4–8 (emphasis added).

as anticipated by and/or obvious over Samartgis and that at least claims 5 and 19 are unpatentable as anticipated by and/or obvious over Leoncavallo. And because "[e]qual treatment of claims and grounds for institution purposes has pervasive support in *SAS*," we institute on all the challenges as raised in the petition. *See* 37 C.F.R. § 42.108(a), (c); *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (citing *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018)).

IV. ORDER

Accordingly, it is:

ORDERED that an *inter partes* review of claims 5–7 and 16–19 of the '252 patent is *instituted*; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), notice is hereby given of the institution of trial, which will commence on the entry date of this Decision.

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