

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE CLOROX COMPANY,
Petitioner,

v.

AUTO-KAPS, LLC,
Patent Owner.

Case IPR2016-00821
Patent 7,490,743 B2

Before KEN B. BARRETT, KEVIN W. CHERRY, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

The Clorox Company (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–10 of U.S. Patent No. 7,490,743 B2 (Ex. 1001, “the ’743 patent”). Paper 1 (“Pet.”). In response, Patent Owner, Auto-Kaps, LLC, filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons set forth below, we deny institution of an *inter partes* review of the ’743 patent.

A. Related Matter

According to Petitioner, the ’743 patent is involved in the following lawsuit: *Auto-Kaps LLC v. Clorox Company*, 2:15-cv-01737-BMC (E.D.N.Y.). Pet. 2.

B. The ’743 Patent

The ’743 patent relates to a dispenser assembly. *See, e.g.*, Ex. 1001, Abstract.

Figure 1 of the '743 patent is reproduced below.

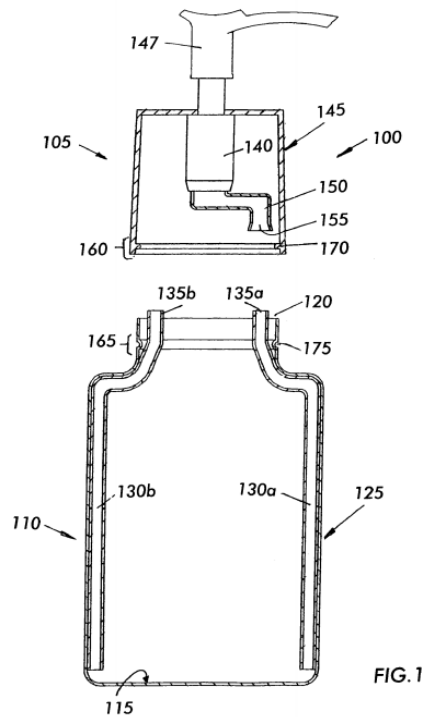


Figure 1 depicts a cross-sectional view of an exemplary dispenser assembly 100. *Id.* at 2:30–31. Dispenser assembly 100 includes container 110, in which any number of passageways 130a, 130b may be mounted, and also includes pump cap 105, in which pump passageway 150 is provided. *Id.* at 2:50–51, 2:63–65, 3:10–14, 3:36–44.

The container and pump cap are coupled together by coupling arrangement 160 (on pump cap 105) and mating arrangement 165 (on container 110). *Id.* at 4:4–7. In the embodiment of Figure 1, coupling and mating arrangements 160, 165 are configured to “permit[] pump cap 105 to be detachably coupled to container 110 in only one of two positions, so that open end 155 of [pump] passageway 150 sealingly engages with one of [container] passageways 130a, 130b.” *Id.* at 4:39–44. The '743 patent specifies that coupling and mating arrangements 160, 165 may include oval-shaped annular tab 170 and annular groove 175, as depicted in Figure 1. *Id.*

at 4:6–12, 4:39–46. Alternatively, coupling and mating arrangements 160, 165 may include “any mechanism, device, construction, and/or shape . . . includ[ing] external or internal threads . . . velcro, snaps, hooks, [or] any combination of these elements.” *Id.* at 5:1–16; 4:44–52 (disclosing arrangements with “any shape that permits a ‘keying,’” including rectangular, triangular, and irregular shapes).

C. Illustrative Claim

Challenged claim 1 is independent. Challenged claims 2–10 depend directly or indirectly from claim 1.

Claim 1, reproduced below, is illustrative:

1. A dispenser assembly, comprising:

a container having a bottom, an open top and a side wall extending between the bottom and the open top, and a mating arrangement, the side wall having an inner surface;

at least one container passageway mounted on the inner surface of the side wall and extending from the open top of the container to a position proximate to the bottom of the container; and

a pump cap having a cap body, a pump mechanism arranged within the cap body, a pump cap passageway coupled to the pump mechanism, wherein the pump passageway is non-axial relative to the pump mechanism, and a coupling arrangement arranged on the pump cap body and configured to detachably couple to the mating arrangement of the container, wherein the coupling arrangement and the mating arrangement are non-circular in shape such that the coupling arrangement and the mating arrangement are coupled only if the container passageway is aligned with the pump cap passageway, such that the container passageway sealingly engages the pump cap passageway in a fluid connection when the pump cap is mounted to the container;

wherein a fluid arranged within the container flows through the container passageway and the pump cap

passageway when the pump mechanism of the pump cap is activated.

Ex. 1001, 6:7–32.

D. Prior Art Relied Upon

Petitioner relies upon the following prior art references:¹

Denzler	US 3,197,066	July 27, 1965	(Ex. 1013)
Guss	US Re. 33,480	Dec. 11, 1990	(Ex. 1003)
Battegazzore	US 5,147,074	Sept. 15, 1992	(Ex. 1010)
Gardner	US 5,152,431	Oct. 6, 1992	(Ex. 1009)
Bartimes	US 5,246,146	Sept. 21, 1993	(Ex. 1004)
Ho	US 5,464,129	Nov. 7, 1995	(Ex. 1007)
Barriac	US 6,367,665 B1	Apr. 9, 2002	(Ex. 1008)
Campagnolo	FR 2820726	Aug. 16, 2002	(Ex. 1005) ²
Bonneyrat	FR 2828480	Feb. 14, 2003	(Ex. 1011) ³

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Reference(s)	Basis	Challenged Claim(s)
Guss	§ 102(b)	1
Guss and Campagnolo	§ 103(a)	1, 6

¹ The Petition discusses U.S. Patent No. 2,690,278 to Bacheller, issued Sept. 28, 1954 (Ex. 1014). Pet. 37. However, the Petition does not identify this reference as prior art upon which the asserted ground of unpatentability is based. *See id.* at 5–7, 36–38.

² Petitioner presents a translation and translator declaration. *See* Ex. 1006.

³ Petitioner presents a translation and translator declaration. *See* Ex. 1012.

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