



INTELLECTUAL PROPERTY

Law 388

Professor Eric Goldman

COURSE SUPPLEMENT

Fall 2012

IP Overview

IP	Registration	Duration	Excludability	Other Pros	Other Cons
Trade Secret	None	Indefinite	None	•Can protect any info	•Easy to lose •Messy enforcement
Patents (utility)	Required	<20 years	Typically absolute	•Strict liability •No exploitation requirement	•Disclosure requirements •Upfront costs •Expensive enforcement
Copyright	“Optional”	>70 years	None in theory; significant in practice	•Protects every work	•Only protects expression
Trademark	Optional	Indefinite	Typically by class	•Originality not required	•Limited exclusive rights •Influenced by external factors

Business Use of Intellectual Property Protection Documented in NSF Survey

by John E. Jankowski

NSF 12-307 | February 2012

[Note: citations omitted]

In today's global economy, much of a business's competitive advantage lies in the ability to protect and exploit exclusive rights over investments in intellectual property (IP)—that is, creative outcomes lacking physical substance but providing long-term benefits to the company. Hence, IP protection is a persistent and recurrent concern of businesses. Under IP law, owners are granted certain exclusive rights to a variety of intangible assets, such as discoveries and inventions; musical, literary, and artistic works; and symbols, names, images, and designs used in commerce. New survey findings from the National Science Foundation (NSF) and the U.S. Census Bureau (Census) indicate that trademarks and trade secrets are identified by the largest number of businesses as important forms of IP protection, followed by copyrights, and then patents. However, the level of reliance on each of these forms of IP protection varies considerably across industry sectors....

Broad Sectors

All Industries

Businesses used a variety of IP protection strategies tailored to the industries in which they operate and to the intangible asset they are meant to protect. Overall, more businesses reported that trademarks, trade secrets, and copyrights were important forms of IP protection than reported that patents and mask works were important. Fifteen percent of all businesses reported trademarks as very important (6%) or somewhat important (9%) to their business in 2008, and 14% of businesses reported trade secrets as important (6% and 8%, respectively). Because each form of intellectual property rights (IPR) provides a specialized type of protection (see "Definitions"), the percentages are not additive across IPR types. For example, a trade secret provides economic benefit precisely by keeping information from being publicly known, whereas the purpose of a trademark is to protect economic value through name or brand recognition. Hence, a single firm could identify both of these forms of IPR as important to its business.

TABLE 1. Businesses that reported IPR as being very, somewhat, or not important, by type of IPR and selected industry: 2008 (Percent)

IPR, industry, and NAICS code	All businesses			Businesses with R&D activity			Businesses without R&D activity		
	Very	Somewhat	Not	Very	Somewhat	Not	Very	Somewhat	Not
Trade secrets									
All industries	6	8	85	45	22	33	5	8	87
Chemicals, 325	50	17	33	68	13	19	33	20	47
Computer and electronic products, 334	36	18	46	58	25	17	17	12	71
Internet service providers, web search portals, and data processing services, 518	21	30	50	28	50	22	17	21	62
Electrical equipment, appliances, and components, 335	25	23	52	51	27	22	10	21	69

Food, 311	22	20	59	56	20	25	16	20	64
Publishing, 511	26	15	59	64	17	19	10	15	75
Trademarks									
All industries	6	9	84	33	27	40	5	9	86
Chemicals, 325	31	31	39	43	26	31	18	35	47
Publishing, 511	33	21	45	60	22	18	23	21	57
Beverage and tobacco products, 312	33	17	50	39	0	61	33	19	49
Internet service providers, web search portals, and data processing services, 518	21	25	55	37	42	22	14	17	69
Computer and electronic products, 334	22	23	55	38	32	29	8	15	76
Electrical equipment, appliances, and components, 335	21	24	56	43	33	24	7	18	75
Utility patents									
All industries	2	3	96	26	15	60	1	2	97
Computer and electronic products, 334	25	12	63	44	21	34	8	4	88
Chemicals, 325	22	15	64	38	21	41	6	8	87
Electrical equipment, appliances, and components, 335	18	12	70	43	20	37	3	7	89
Machinery, 333	14	6	81	39	13	48	7	4	90
Plastics and rubber products, 326	9	9	82	24	14	62	5	7	88
Petroleum and coal products, 324	4	12	84	20	10	70	2	12	86
Design patents									
All industries	2	4	95	15	18	67	1	3	95
Electrical equipment, appliances, and components, 335	14	15	71	28	25	47	5	9	85
Computer and electronic products, 334	13	15	72	23	24	53	5	7	88
Chemicals, 325	11	15	75	17	20	63	5	9	86
Plastics and rubber products, 326	8	14	78	28	27	45	2	10	87
Machinery, 333	8	11	81	21	22	58	5	8	87
Textile, apparel, and leather, 313–316	8	11	81	41	45	14	3	6	91
Copyrights									
All industries	5	7	88	25	25	49	4	6	89
Publishing, 511	36	25	39	58	27	14	27	23	49
Chemicals, 325	13	26	61	19	31	51	7	21	72
Computer and electronic products, 334	16	22	62	27	30	43	7	15	77
Electrical equipment, appliances, and components, 335	14	22	65	27	35	38	6	14	80
Internet service providers, web search portals, and data processing services, 518	15	20	65	25	25	50	10	18	72
Telecommunications, 517	10	16	73	51	33	16	6	15	79
Mask works									
All industries	1	2	98	4	6	90	1	2	98
Computer and electronic products, 334	12	7	81	19	10	71	5	5	90
Petroleum and coal products, 324	3	10	87	0	0	100	3	12	85
Electrical equipment, appliances, and components, 335	3	5	92	5	8	87	1	4	95
Telecommunications, 517	1	6	93	5	4	91	1	6	93

Chemicals, 325	2	5 93	2	6 92	2	4 94
Machinery, 333	3	3 94	8	6 86	2	2 96

IPR = intellectual property rights; NAICS = North American Industry Classification System.

NOTES: Sum of detail may not add to totals because of rounding. The survey asked companies to respond to a three-level Likert scale on the importance of various types of intellectual property protection. Business were asked whether utility patents, design patents, trademarks, copyrights, trade secrets, and mask works (copyright protection for semiconductor products) were "very important," "somewhat important," or "not important" to the company during 2008. For each type of IPR, the table lists the six 3-digit NAICS industries in which the highest share of companies reported the IPR as "very important" or "somewhat important."...

Copyrights were identified as important by 12% of U.S.-located businesses, and 5% and 4% of businesses, respectively, indicated the importance of IP protection afforded from design patents and utility patents. Not surprisingly, mask works, which provides extremely focused copyright protection for semiconductor products, were reported as very or somewhat important by only 2% of all businesses.

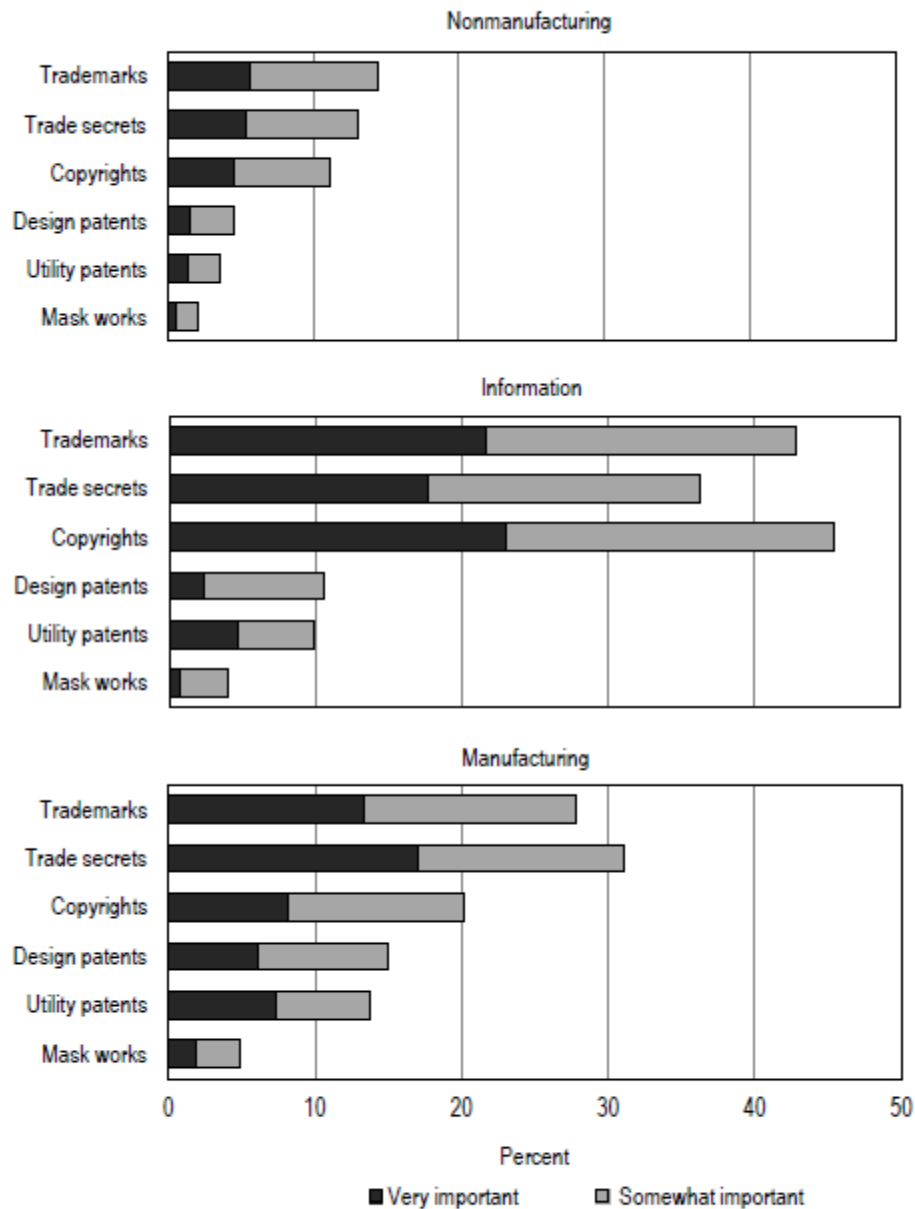
These findings were for all business located in the United States. However, a very large fraction of businesses within the "all industries" totals did not report using most forms of IP protection. For example, several nonmanufacturing industries—such as construction (North American Industry Classification System [NAICS] 23), educational services (NAICS 61), and accommodation and food services (NAICS 72)—ranked all forms of IPR low in importance, but they account for a relatively large number of businesses nationwide. Hence, their comparatively low rate of IPR use, given their large number in the business count total, clearly affects the overall pattern of IPR importance.

To compensate somewhat for this weighting artifact, the next two sections highlight findings for the smaller yet more R&D-intensive manufacturing sector (NAICS 31–33) and information sector (NAICS 51). Accounting for just 8% and 1%, respectively, of the survey population total, these two sectors account for 67% and 13%, respectively, of total business R&D expenditures in the United States. Furthermore, these two sectors have much higher incidences of product innovation than does any other 2-digit NAICS sector. About 22% of all companies in manufacturing industries reported one or more product innovations in the 2006–08 period, as did 30% of businesses in the information sector. By comparison, the incidence of product innovation for all U.S.-located businesses was 9% during this period.

Manufacturing Sector

A higher share of businesses in the manufacturing sector (NAICS 31–33) than in the nonmanufacturing sector (NAICS 21–23, 42–81) reported each of the individual types of IPR as important. Manufacturers were three times as likely as nonmanufacturers to rate patents (both design and utility) as important to their business during 2008 (14%–15% versus 4%–5%) (figure 1).

FIGURE 1. Businesses reporting IPR as very or somewhat important, by type of industry sector and type of IPR: 2008



IPR = intellectual property rights.

SOURCE: National Science Foundation/National Center for Science and Engineering Statistics, Business R&D and Innovation Survey: 2008.

Within manufacturing industries, 31% of businesses reported trade secrets as an important type of IP protection, 17% of which reported this type of IPR as very important. Twenty-eight percent of manufacturers reported trademarks as important. Overall, they were twice as likely as nonmanufacturers to rate trade secrets and trademarks as important (13% and 14%, respectively, for nonmanufacturers).

Information Sector

Businesses in the information sector—including notably software publishers (NAICS 5112); telecommunications (NAICS 517); and Internet service providers, Web search portals, and data processing services (NAICS 518) (hereafter, Internet services)—rated copyrights, trademarks, and trade secrets as considerably more important than did businesses in the manufacturing sector. Indeed, copyrights and trademarks were reported by more than 20% of the information sector businesses as very important (figure 1, middle panel), an indication of worth unmatched for any other type of IPR by any other economic sector. This suggests that consumer awareness and identification of product ownership is considered extremely valuable by these information industries.

In the aggregate, information sector businesses were less likely than manufacturing sector businesses to rely on patents for their IP protection (10%–11% versus 14%–15%). An equal proportion of information sector businesses reported utility patents as being very important (5%) and somewhat important (5%). By comparison, one-fourth as many information sector businesses reported design patents as very important (2%) than as somewhat important (8%).

Individual IPR Forms

Different industries rely on different sources of IP protection to varying degrees. Several industries reported that they rely relatively heavily on all forms of IPR collected on the BRDIS survey, whereas others reported that they rely primarily on a single form of IP protection. Table 1 details, for each form of IPR, the six 3-digit NAICS industries in which the largest percentages of businesses reported that the type of IPR was very or somewhat important during 2008 ("top six industries"). The table also differentiates between businesses with and without R&D activity (described below).

By IPR

More so than for other forms of IPR, a diverse group of industries reported trade secrets as very or somewhat important to their businesses. Included among the top six industries are both high-technology manufacturers (electrical equipment, appliances, and components) and low-technology manufacturers (food), manufacturing industries serving well-established industrial bases (chemicals) as well as more recent entries to the economic landscape (computer and electronic products), and businesses most directly representative of the knowledge-intensive service economy (publishing and Internet services providers). Among 4-digit NAICS industries, more than 70% of software publishers (NAICS 5112), pharmaceutical and medicine manufacturing businesses (NAICS 3254), and basic chemical manufacturing businesses (NAICS 3251) reported trade secrets as important to their operations. Further, 98% of businesses in the semiconductor machinery industry (NAICS 333295) reported trade secrets as important—no other NAICS industry reported a higher share of any type of IPR as important.

Trademarks were similarly important to a wide mix of businesses, but as opposed to trade secrets, which depend on secrecy, trademarks identify and distinguish one's products (goods or service) from those of other companies. More than 50% of the businesses in the publishing and

chemicals industries reported this type of IPR as important, including multiple chemical subsectors: basic chemicals (NAICS 3251); pesticide, fertilizer, and other agricultural chemicals (NAICS 3253); pharmaceuticals and medicines (NAICS 3254); and soap, cleaning compound, and toilet preparations (NAICS 3256).

All of the top six industries in the utility patents category were from the manufacturing sector, led by computer and electronic products (NAICS 334) and chemicals (NAICS 325). They were also among the industries that were likely to report design patents as important. Not coincidentally, these two industries accounted for more than 40% (41,000 and 18,000, respectively) of all patent applications (137,000) reported on the survey. Navigational, measuring, electromedical, and control instruments (NAICS 3345) alone accounted for more than 20,100 applications; 50% of its businesses noted the importance of utility patents, and 30% noted the importance of design patents—which were among the largest shares reported for any 4-digit NAICS industry.

By far, a larger share (61%) of businesses in publishing (NAICS 511) than in other industries reported copyright protection as important. In no other 3-digit NAICS industry did more than 40% of the businesses report copyrights as an important type of IPR. About 19% of the computer and electronic products businesses (NAICS 334) reported mask works as very or somewhat important—leading all other 3-digit NAICS industries. Not surprisingly, 78% of semiconductor machinery businesses (NAICS 333295) reported this form of IP protection as very important to their operations.

By Industry

Three industries—chemicals; computer and electronic products; electrical equipment, appliances, and components—appear in all six IPR groupings. A relatively large share of businesses in each of those industries reported the importance of employing a variety of IP protection strategies, running the gamut from invention disclosure through patent filings to maintaining name recognition via the use of trademarks.

Six industries appear in two or three different IPR groupings. Publishing and Internet services are each listed in the trade secrets, trademarks, and copyrights groupings; machinery appears in utility patents, design patents, and mask works. Petroleum and coal products, plastics and rubber products, and telecommunications each appear in two IPR groupings, differing by industry.

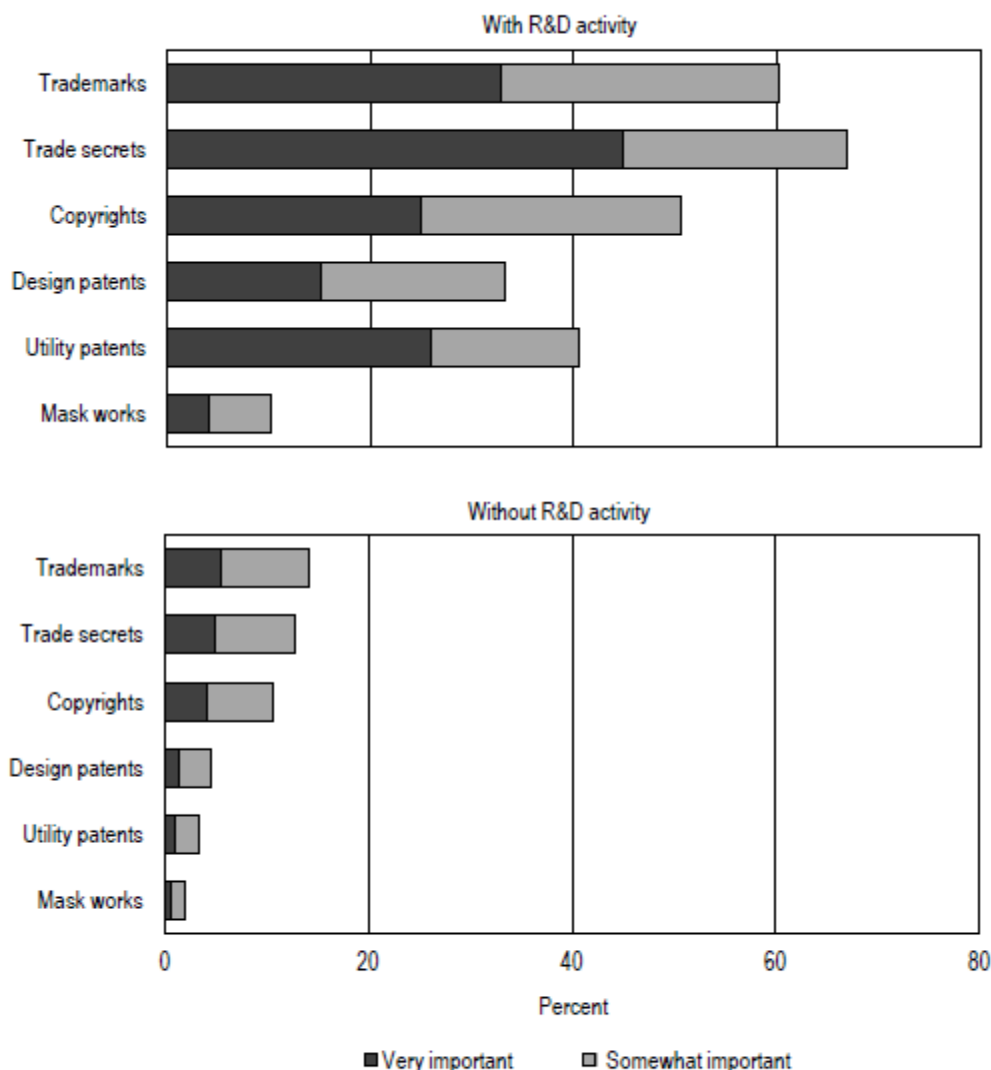
Three industries are listed among those reporting a high share of importance to only one form of IPR:

- * Textile, apparel, and leather: design patents
- * Beverage and tobacco products: trademarks
- * Food: trade secrets

Companies with R&D Activity

Finally, one of the clearest findings in the BRDIS data is the large difference in the importance of IPR when companies with R&D activity are compared with those without any R&D activity. A much larger share of companies with R&D (either performing R&D or funding others to perform R&D) than of those without R&D reported each of the individual IPR forms as important (figure 2). With very few exceptions (e.g., the use of trademarks by beverage and tobacco products [NAICS 312]), this pattern holds for all forms of IP protection at the 3-digit NAICS industry level (table 1).

FIGURE 2. Businesses reporting IPR as very or somewhat important, by presence of R&D activity and type of IPR: 2008



IPR = intellectual property rights.

SOURCE: National Science Foundation/National Center for Science and Engineering Statistics, Business R&D and Innovation Survey: 2008.

Only about 3% of the estimated 1.9 million for-profit companies represented in the survey performed and/or funded R&D in 2008. According to the survey data more than 50% of all these R&D-active companies reported trade secrets, trademarks, and copyrights as important to their business in 2008; 40% reported utility patents as important; and 33% reported design patents as important. By comparison, less than 15% of the non-R&D active companies reported any one of the possible forms of IP protection as important....

AIPLA Survey of Litigation Costs

MEDIAN LITIGATION COSTS	\$000s			
	2005	2007	2009	2011
PATENT INFRINGEMENT SUIT				
LESS THAN \$1 MILLION AT RISK				
End of discovery	\$350	\$350	\$350	\$350
Inclusive, all costs	650	600	650	650
\$1-\$25 MILLION AT RISK				
End of discovery	\$1,250	\$1,250	\$1,500	\$1,500
Inclusive, all costs	2,000	2,500	2,500	2,500
MORE THAN \$25 MILLION AT RISK				
End of discovery	\$3,000	\$3,000	\$3,000	\$3,000
Inclusive, all costs	4,500	5,000	5,500	5,000
TRADEMARK INFRINGEMENT SUIT				
LESS THAN \$1 MILLION AT RISK				
End of discovery	\$200	\$150	\$175	\$200
Inclusive, all costs	300	255	300	350
\$1-\$25 MILLION AT RISK				
End of discovery	\$400	\$350	\$400	\$425
Inclusive, all costs	700	650	700	775
MORE THAN \$25 MILLION AT RISK				
End of discovery	\$750	\$600	\$750	\$1,000
Inclusive, all costs	1,250	1,250	1,400	1,500
TRADEMARK OPPOSITION/CANCELLATION				
End of discovery	\$50	\$50	\$50	\$50
Inclusive, all costs	80	75	80	90
COPYRIGHT INFRINGEMENT SUIT				
LESS THAN \$1 MILLION AT RISK				
End of discovery	\$138	\$150	\$150	\$200
Inclusive, all costs	250	290	300	350
\$1-\$25 MILLION AT RISK				
End of discovery	\$250	\$350	\$350	\$400
Inclusive, all costs	440	500	600	700
MORE THAN \$25 MILLION AT RISK				
End of discovery	\$550	\$550	\$750	\$750
Inclusive, all costs	975	1,000	1,100	1,375

MEDIAN LITIGATION COSTS (CONTINUED)

	\$000s			
	2005	2007	2009	2011
TRADE SECRET MISAPPROPRIATION SUIT				
LESS THAN \$1 MILLION AT RISK				
End of discovery	\$200	\$200	\$250	\$250
Inclusive, all costs	300	350	400	425
\$1-\$25 MILLION AT RISK				
End of discovery	\$500	\$500	\$600	\$700
Inclusive, all costs	1,000	800	1,000	1,000
MORE THAN \$25 MILLION AT RISK				
End of discovery	\$1,000	\$1,000	\$1,225	\$1,360
Inclusive, all costs	2,000	1,750	2,250	2,500
TWO-PARTY INTERFERENCE				
End of discovery	\$300	\$200	\$200	\$175
Inclusive, all costs	600	450	463	338
INTER PARTES REEXAMINATION				
Through filing request	\$20	\$15	\$25	\$35
Inclusive of first patent owner response	30	27	38	50
Inclusive of all patent owner responses	40	43	55	75
Inclusive of an appeal to the board	52	73	80	100
Inclusive of an appeal to federal court	95	150	188	200

MUTUAL NONDISCLOSURE AGREEMENT

This **MUTUAL NONDISCLOSURE AGREEMENT** (the “Agreement”) is made effective as of _____, 201__ between X and Y.

1. DEFINITIONS. “Confidential Information” is all (a) written information disclosed by one party (the “Disclosing Party”) to the other (the “Receiving Party”) marked “confidential” or with a similar legend, or (b) oral information identified as confidential when disclosed to the Receiving Party and thereafter summarized in a writing marked “confidential” sent to the Receiving Party within 10 days of disclosure. The disclosure “Purpose” is _____. If the foregoing is blank, the disclosure “Purpose” is to evaluate the desirability of a business development relationship between the parties.

2. RESTRICTIONS/OBLIGATIONS. For 3 years from the applicable date of disclosure, the Receiving Party shall: (a) disclose the other party’s Confidential Information only to employees who need to know; (b) not disclose the other party’s Confidential Information to any third party, except that the Receiving Party may disclose Confidential Information as compelled by law if the Disclosing Party is given written notice prior to such disclosure; (c) use the other party’s Confidential Information only for the Purpose; (d) not reproduce the other party’s Confidential Information; (e) not reverse engineer, decompile, or disassemble any software included in the other party’s Confidential Information; and (f) not directly or indirectly export the other party’s Confidential Information in violation of the law.

3. EXCLUSIONS. Sections 2(a)-(d) do not apply to Confidential Information which: (a) is or becomes generally known through no action or failure to act by the Receiving Party; (b) the Receiving Party knows at the time of disclosure; (c) a third party legitimately discloses to the Receiving Party; or (d) the Receiving Party independently develops without using the other party’s Confidential Information.

4. OWNERSHIP. All Confidential Information shall remain the Disclosing Party’s property and shall be returned (or, at the Disclosing Party’s option, destroyed) upon the Disclosing Party’s written request. A Disclosing Party does not grant any license (expressly, by implication, by estoppel or otherwise) to its trademarks, copyrights or patents pursuant to this Agreement.

5. EQUITABLE REMEDIES. The parties acknowledge that monetary damages may not adequately remedy an unauthorized use or disclosure of Confidential Information, and each party may, without waiving any other rights or remedies, seek injunctive or equitable relief to remedy such a breach.

6. GENERAL. This Agreement is governed by California law excluding its conflicts of laws principles. This Agreement is the entire agreement, and supersedes all prior or contemporaneous oral or written agreements and understandings, between the parties regarding the subject matter hereof. The Agreement may be changed only by a writing signed by both parties. If any provision of this Agreement is held unenforceable, that provision shall be severed and the remainder of this Agreement will continue in full force and effect.

By: _____
Title: _____

By: _____
Title: _____



US005966743A

United States Patent [19]

[11] Patent Number: **5,966,743**

Flann

[45] Date of Patent: **Oct. 19, 1999**

[54] **SUBSTANCE DISPENSING HEADGEAR**

[76] Inventor: **Randall D. Flann**, 413 W. Mineral St.,
Room 7, Milwaukee, Wis. 53204-1741

[21] Appl. No.: **09/020,605**

[22] Filed: **Feb. 9, 1998**

[51] Int. Cl.⁶ **A42B 1/02**

[52] U.S. Cl. **2/209.13; 2/209.11**

[58] Field of Search 2/209.13, 171,
2/209.11, 209.12; 222/175, 78; 224/148.2,
148.7, 181; 446/26, 27

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5,597,097	1/1997	Morris	222/529
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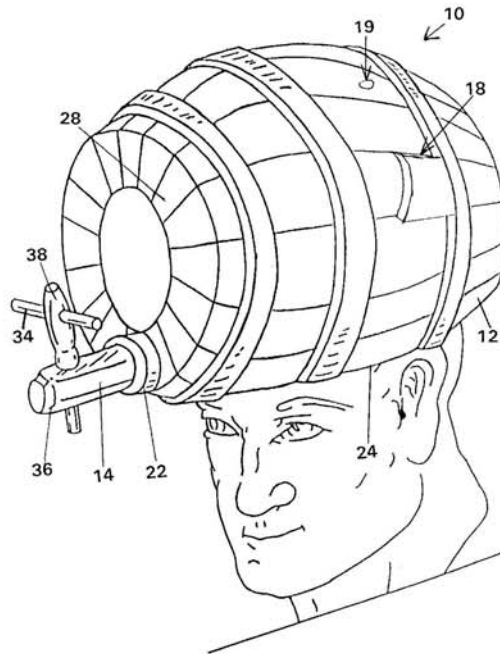
D. 20,079	8/1890	Proeger	D7/5
D. 247,408	3/1978	Ventura	D7/5
D. 278,016	3/1985	Myrbo	D7/9
D. 279,752	7/1985	Jagger	D7/10
D. 283,866	5/1986	Campbell	D7/13
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Primary Examiner—Diana L. Biefeld
Attorney, Agent, or Firm—Ryan Kromholz & Manion

[57] **ABSTRACT**

A headgear for dispensing a substance has a container to carry the substance. A spigot is secured to the container. The spigot can be opened to dispense the substance by gravity, suction, pressure or levity flow when the container. The spigot can be closed to retain the substance in the chamber. A hat-like recess is formed within the bottom wall of the container sized for wearing on an individual's head, and for maintaining the container in a freestanding condition during hands-free ambulation of the individual.

12 Claims, 6 Drawing Sheets



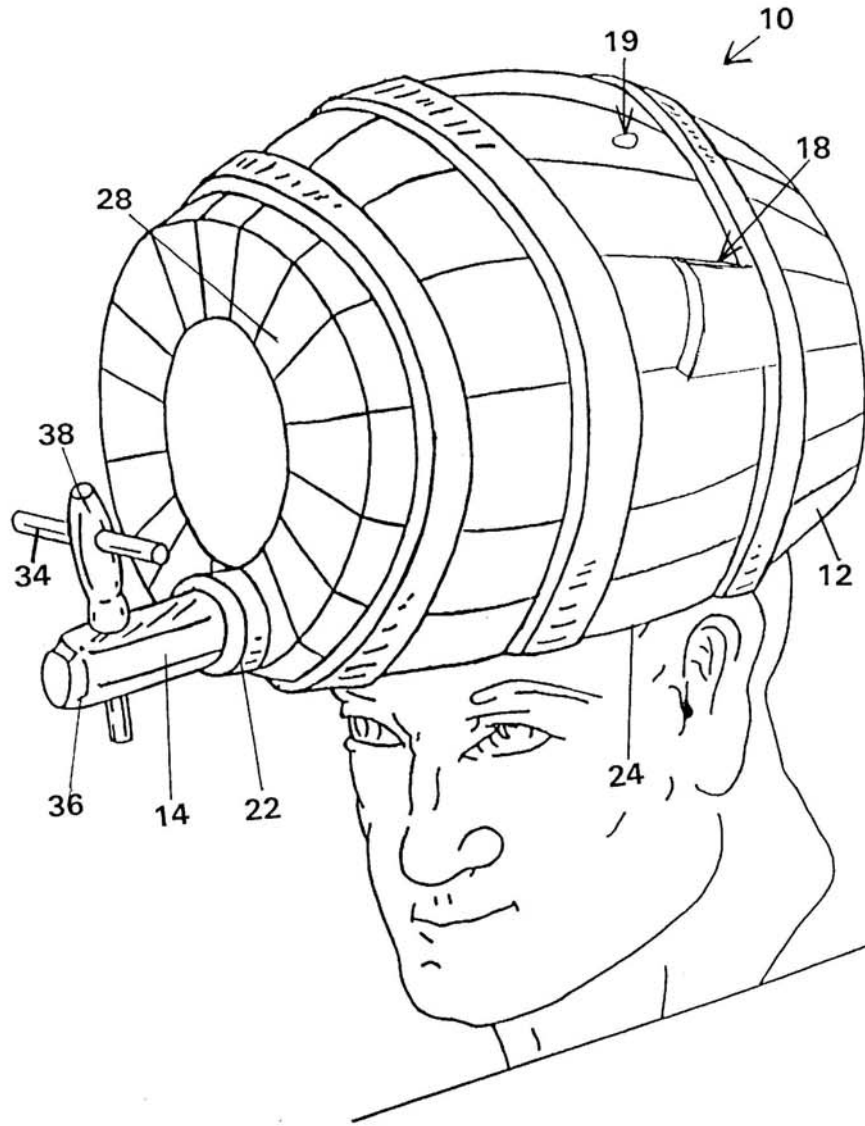


FIG. 1

FIG. 2

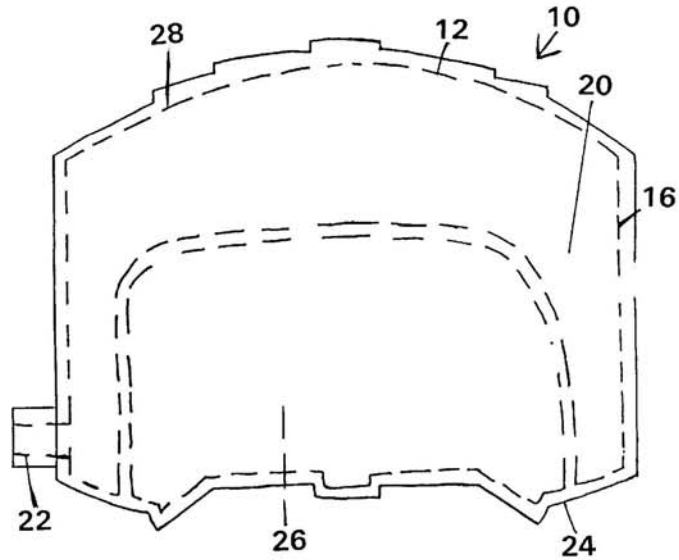


FIG. 3

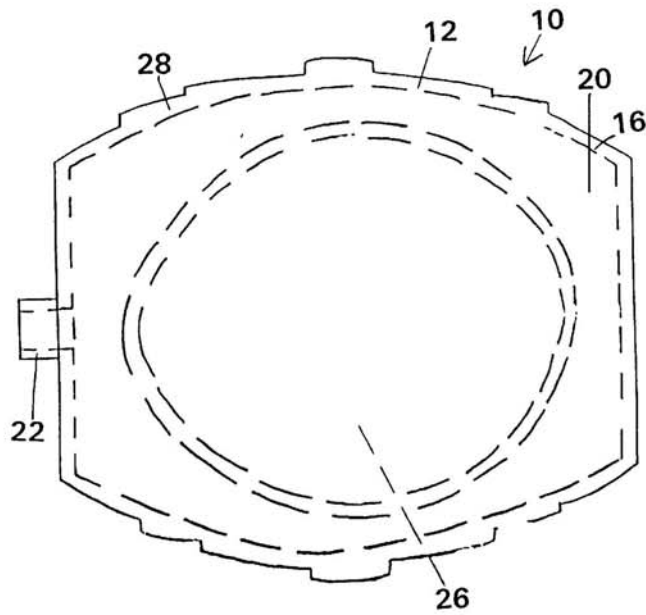


FIG. 4

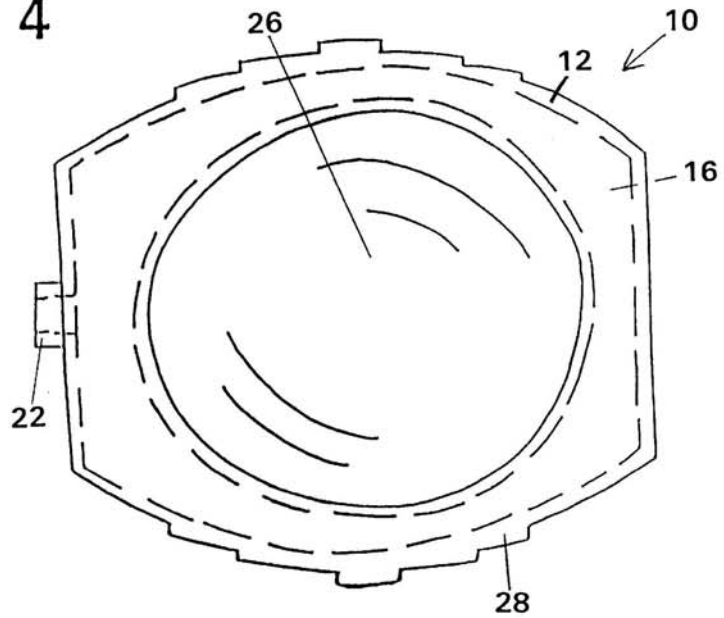


FIG. 5

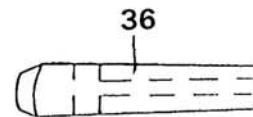
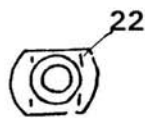


FIG. 6

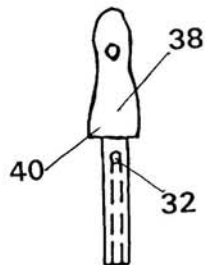


FIG. 7

FIG. 8

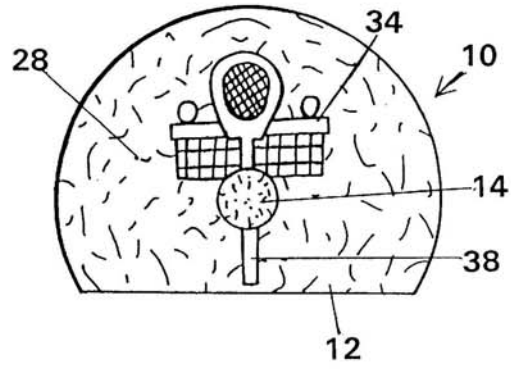


FIG. 9

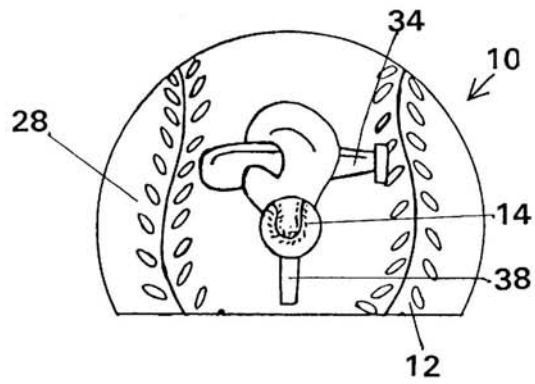


FIG. 10

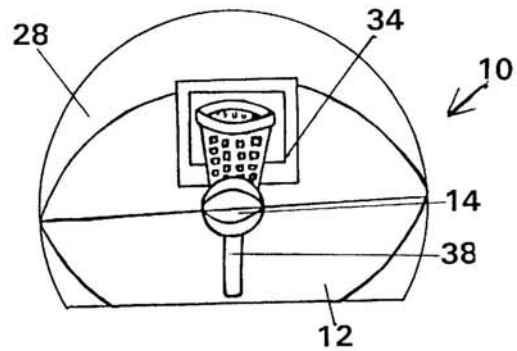


FIG. 11

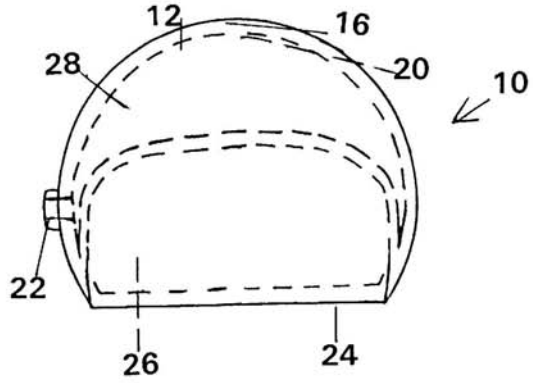


FIG. 12

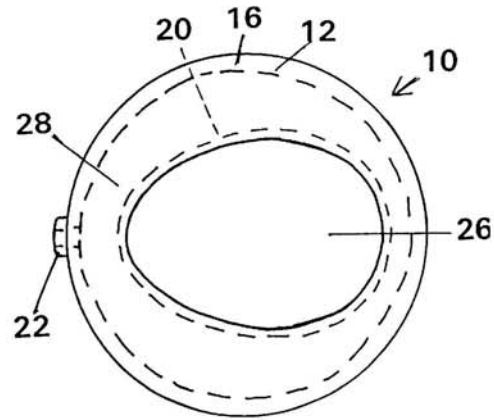
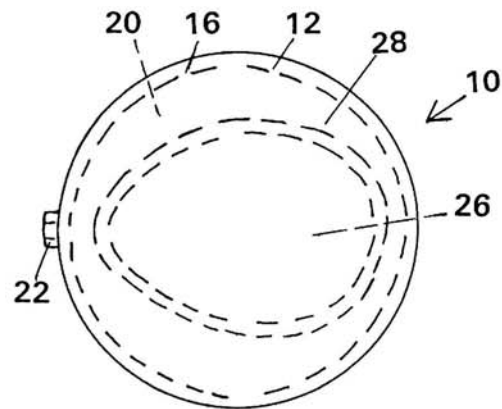


FIG. 13



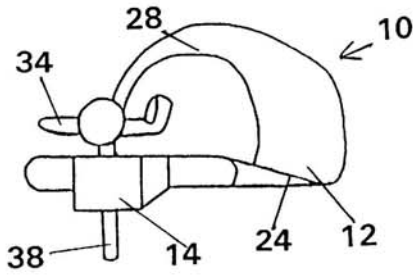


FIG. 14

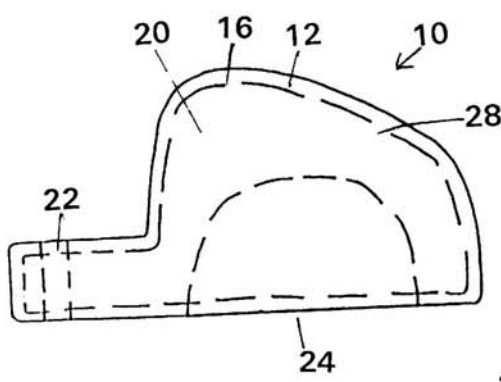


FIG. 15

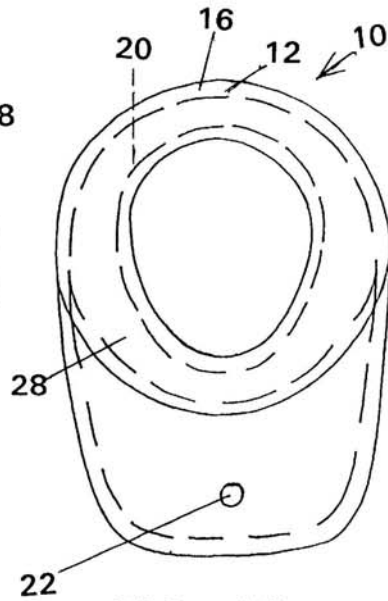


FIG. 16

SUBSTANCE DISPENSING HEADGEAR

BACKGROUND OF THE INVENTION

Based upon a need for containing a substance centuries ago, a vessel was invented. Later, to dispense the substance, a spigot was invented. Both are stationary devices. Transporting the substance was either by animals, or mechanical means, with limited, restrictive, and or regulated distances, and locations.

SUMMARY OF THE INVENTION

To resolve this, the inventor has invented a means for transporting a substance, by way of the contained substance being equally distributed upon a person's head resulting in the holding, dispensing, and transportability of the substance, to, from, and at a location, during any time.

The invention comprises wearable headgear for holding, and dispensing a substance, to, from, and at a location. It is worn upon a person's head for access at a location, during any time without hindering, or obstructing the wearer's use of other appendages.

The headgear has advantages, which solves previously existing problems of a contemporary container, which was heavy, unmanageable, and remained stationary. The headgear is made of molded Food Grade plastic, resulting in being lightweight, and transportable.

Its wearability upon a person's head allows the substance to be held, transported, and dispensed to, from, and at a location for instantaneous usability, and frees the wearer's hands, for other purposes.

One aspect of the invention provides a transportable dispensing receptacle for a substance. The receptacle comprises a container enclosing a chamber to carry the substance. The container includes a bottom wall defining a generally flat surface to maintain the container in a freestanding condition when placed on a horizontal surface. The receptacle also provides a spigot spaced above the bottom wall and secured to the container in communication with the chamber. The spigot carries a valve including an external handle to manually move the valve between an opened and a closed position. In the opened position, the valve opens communication with the chamber to dispense the substance by gravity, suction, pressure or levity flow when the container is in the freestanding condition. In the closed position, the valve closes communication with the chamber to retain the substance in the chamber. The receptacle further includes a hat-like recess formed within the bottom wall sized for wearing on an individual's head and for maintaining the container in the freestanding condition during hands-free ambulation of the individual.

In one embodiment, the container includes a mount for the spigot including means for removing the spigot from the mount for repair or replacement with another spigot.

In one embodiment, the container includes an identifiable spatial form.

In one embodiment, the spigot includes an identifiable spatial form.

In one embodiment, the container includes a fitting or recess to support an external object.

In one embodiment, the container encloses a second chamber to carry a substance and further includes a second spigot in communication with the second chamber.

In one embodiment, insulating material surrounds the chamber.

Another aspect of the invention provides a transportable receptacle for dispensing a substance comprising a container enclosing a chamber to carry the substance. The container includes a bottom wall defining a generally flat surface to maintain the container in a freestanding condition when placed on a horizontal surface. The receptacle also includes a mount in the container spaced away from the bottom wall.

According to this aspect of the invention, the receptacle includes a family of spigots presenting different identifiable spacial forms. The spigots are constructed and arranged for interchangeable placement on or in the mount in communication with the chamber. Each spigot includes a valve to regulate gravity, suction, pressure or levity flow of the substance through the spigot when the container is in the freestanding condition. The receptacle also includes a hat-like recess formed within the bottom wall. The hat-like recess is sized for wearing on an individual's head and for maintaining the container in the freestanding condition during hands-free ambulation of the individual.

In one embodiment, the valve of at least one of the spigots includes an external handle to manually move the valve between an opened position, opening communication with the chamber to dispense the substance by gravity, suction, pressure or levity flow when the container is in the freestanding condition, and a closed position, closing communication with the chamber to retain the substance in the chamber.

In one embodiment, the container includes an identifiable spatial form.

Another aspect of the invention provides a family of transportable receptacles for dispensing substances. The family of receptacles comprises a family of containers presenting different identifiable spacial forms. Each container enclosing a chamber to carry a substance and includes a bottom wall defining a generally flat surface to maintain the container in a freestanding condition when placed on a horizontal surface. Each container also includes a mount spaced from the bottom wall, and a hat-like recess formed within the bottom wall sized for wearing on an individual's head and for maintaining the container in the freestanding condition during hands-free ambulation of the individual.

The family also includes a family of spigots presenting different identifiable spacial forms. Each spigot is constructed and arranged for interchangeable placement on or in the mount in communication with the chamber. Each spigot includes a valve to regulate flow of the substance by gravity, suction, pressure or levity through the spigot when the container is in the freestanding condition.

In one embodiment, the valve of at least one of the spigots includes an external handle to manually move the valve between an opened position, opening communication with the chamber to dispense the substance by gravity, suction, pressure or levity flow when the container is in the freestanding condition, and a closed position, closing communication with the chamber to retain the substance in the chamber.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a side perspective view of a substance dispensing headgear that embodies features of the invention;

FIG. 2 is a side view of the headgear shown in FIG. 1;

FIG. 3 is a top view of the headgear shown in FIG. 1;

FIG. 4 is a bottom view of the headgear shown in FIG. 1;

FIG. 5 is an end view of a spigot mount located in the headgear shown in FIG. 1;

FIG. 6 is a side view of a plug that is placeable in the mount shown in FIG. 5, as shown in FIG. 1;

FIG. 7 is a side view of a tap that the plug shown in FIG. 6 carries, as shown in FIG. 1;

FIGS. 8 to 10 show transportable, substance dispensing headgears comprising ball-shaped containers having different spatial forms and spigots having different spacial forms, shown mounted on the headgears;

FIG. 11 is a side view of a ball-shaped container of the type shown in FIGS. 8 to 10;

FIG. 12 is a bottom view of the ball-shaped container shown in FIG. 11;

FIG. 13 is a top view of the ball-shaped container shown in FIG. 11;

FIG. 14 is a side perspective view of a transportable, substance dispensing headgear comprising a hat-shaped container and spigots shown mounted on the headgear;

FIG. 15 is a side view of the hat-shaped container shown in FIG. 14; and

FIG. 16 is a side view of the hat-shaped container shown in FIG. 15.

DESCRIPTION OF THE PREFERRED EMBODIMENT

The transportable receptacle 10 shown in FIGS. 1 to 4 comprises a molded headgear/hat 12, and a spigot 14. The headgear/hat 12, and the spigot 14 are made from one and, or more, types of food grade plastics, such as low density polyethylene LDPE), high density polyethylene (HDPE), polyethylene terephthalate (PET) or polyvinyl chloride (PVC).

The size and shape of the headgear/hat 12 or spigot 14 may be varied to unlimited range (made smaller or larger, and appearance unlimited), as FIGS. 8 to 10 and FIG. 14 show by way of example. The color may be varied to unlimited range. The unlimited range, means that the color may be altered, in tint, and or, tone.

The spigot 14 for one headgear/hat 12 is interchangeable, interconnecting, and functional with any another headgear/hat 12.

Interior, or exterior insulation 16 may be incorporated into headgear/hat. Eye ring, or eye rings; slot, or slots; compartment, or compartments, concave or convex form, or forms (see, e.g., reference numeral 18 in FIG. 1), may be utilized on any headgear/hat 12.

The headgear/hat 12 includes a chamber 20, which holds a predetermined amount of substance. Its containing capacity is not limited to liquid alone. A gelatin, and, or solid compound, may be contained, and means for dispensing from it.

The headgear/hat 12 is molded in form. The headgear/hat 12 includes a mount 22 or orifice, having a predetermined diameter, located in front, in the middle, above the generally flat bottom 24 of the headgear/hat 12. The headgear/hat 12 comprises a covering device for a head in the form of a hat-like recess 26, with a predetermined means 20 for keeping within it, an amount of substance, and means 26 for transporting said substance on the head, and means 14 for dispensing of the substance, from said headgear, from on said head, during any time, at any location.

The spigot 14 comprises two separate parts: a plug 36 (FIG. 6) and a tap 38 (FIG. 7). The plug 36 comprises a partially hollow pipe fitting for making a connection to the headgear/hat 12 by either insertion, or screwing on, to said

headgear's/hat's mount 22. The tap 38 comprises a stout 40 and valve 32, attached to the end of the plug 36, to control the flow of a substance; a fluid, a gelatin, and or a solid.

FIGS. 1 to 4, 8 to 13, 14, and 15 to 16 show alternative embodiments of a wearable headgear/hat 12, comprising of a receptacle 28, including a chamber means 20 for holding a predetermined amount of a substance. The headgear/hat 12 also includes mount means 22 for attaching an appendage part (e.g. spigot 14) that allows for drawing, and regulating availability, or flow of the substance, from said receptacle. The headgear/hat 12 also includes a hat-like recess 26 for covering a person's head as a way for transporting the receptacle 28, and the connected appendage part 14, to, from, and at a location for dispensing of the substance. Whereby, while wearing the headgear/hat 12, a person can work, eat, and play, with means for holding, and dispensing a substance, to, from, and at a location, during any time.

As the Figures demonstrate, the exterior, or interior shape, structure of the headgear/hat 12, may be varied to provide a plurality of alternative shape embodiments of unlimited range. The unlimited range of shapes includes a predetermined spacial form of a particular item, or kind of item, comprising a standard, or universally recognized spatial form.

The headgear/hat 12 can include an interior, or exterior adjunct/fastener 18 for attaching, hanging, swinging, and or, suspending an object, upon its surface.

The headgear/hat 12 can include a slot/recess/pocket 19 for placing an object in, inside, on, or around it.

The headgear/hat 12 can include a predetermined substance, or material that allows for changing the exterior or interior temperature of the headgear/hat.

The headgear/hat 12 can include a bi-container version for holding and dispensing two separate substances. The bi-container may be disconnected and reconnected, by way of a predetermined method.

The color of the headgear/hat 12 may be varied to an unlimited range. The unlimited range of the color may be altered in tint or tone.

The headgear/hat 12 can include a predetermined material for making the headgear/hat 12 capable of holding and dispensing a substance, either singularly, or when joined.

The headgear/hat 12 can include an attached strap/belt/harness for securing the headgear/hat, on to a person's head to prevent loss of the headgear/hat, and, direct impact to the person's head.

The headgear/hat 12 can include a conduit/hose-like predetermined spigot for dispensing a substance that is operated from a person's mouth, to his/her self. The conduit/hose-like predetermined spigot on the headgear/hat is a means for holding and self-dispensing of said substance to oneself.

The headgear/hat 12 can include from its physical structure internally or externally, means for supporting a predetermined electrical device. The predetermined electrical device can include a cooling system; a heating system; an audio system, and or, a visual system.

The size of the headgear/hat 12 may be varied to a plurality of alternative embodiments, of unlimited range of predetermined physical magnitude, extent, or bulk of relative, or of proportionate dimensions.

The headgear/hat 12 can include a covering/wrap 16 constructed of a predetermined material for protecting; insulating, and for another predetermined purpose.

The spigot can include a predetermined male, and or female connector contact in any of its alternative embodi-

5

ments to allow for interchangeability with a compatible male, and or female connector contact, on the headgear/hat, and any of its alternative embodiments.

The spigot 14 (see FIGS. 6 and 7) carries a valve 32 including an external handle 34 (see FIG. 1) to manually move the valve 32 between an opened and a closed position. In the opened position, the valve 32 opens communication with the chamber 20 to dispense the substance by gravity, suction, pressure or levity flow when the container 20 is in the freestanding condition. In the closed position, the valve 32 closes communication with the chamber 20 to retain the substance in the chamber 20.

The shape of the spigot 14 may be varied to a plurality of alternative shape embodiments of unlimited range. The unlimited range of shapes includes a predetermined spacial form of a particular item, or kind of item, comprising a standard, or universally recognized spatial form.

The spigot 14 can include a predetermined material (e.g., the valve 32) for holding and dispensing the substance.

The color of the spigot 14 may be varied to unlimited range in tint or tone.

The size of the spigot 14 may be varied to a plurality of alternative embodiments, of unlimited range of predetermined physical magnitude, extent, or bulk of relative, or of proportionate dimensions.

The spigot 14 can include a self-contained spigot comprising a tap and plug combination forming a single member (spigot).

The spigot 14 can include means for regulating availability, or flow of a substance: a liquid; a gelatin, and or, a solid by exerting a suction force produced by movements of the lips, and tongue, or to hold, or grip (especially with teeth), by which friction is created on the dispensing apparatus, or to expand, or distend with air, the internal pressure through the dispensing apparatus to urge the substance in to a person's mouth.

What is claimed is:

1. A transportable dispensing receptacle for a substance comprising
 - a container enclosing a chamber to carry the substance, the container including a bottom wall defining a generally flat surface to maintain the container in an upright, freestanding condition when placed on a horizontal surface,
 - a spigot spaced above the bottom wall and secured to the container in communication with the chamber, the spigot carrying a valve including an external handle to manually move the valve between an opened position, opening communication with the chamber to dispense the substance by gravity, suction, pressure or levity flow when the container is in the freestanding, upright condition, and a closed position, closing communication with the chamber to retain the substance in the chamber, and
 - a hat-like recess formed within the bottom wall sized for wearing on an individual's head and for maintaining the container in the upright, freestanding condition during hands-free ambulation of the individual.
2. A receptacle according to claim 1 wherein the container includes a mount for the spigot including means for removing the spigot from the mount for repair or replacement with another spigot.
3. A receptacle according to claim 1 wherein the container includes an identifiable spatial form.
4. A receptacle according to claim 1 wherein the spigot includes an identifiable spatial form.

6

5. A receptacle according to claim 1 wherein the container includes a fitting or recess to support an external object.

6. A receptacle according to claim 1 wherein the container encloses a second chamber to carry a substance, and further including a second spigot in communication with the second chamber.

7. A receptacle according to claim 1 and further including insulating material surrounding the chamber.

8. A transportable receptacle for dispensing a substance comprising

a container enclosing a chamber to carry the substance, the container including a bottom wall defining a generally flat surface to maintain the container in an upright, freestanding condition when placed on a horizontal surface,

a mount in the container spaced away from the bottom wall,

a family of spigots presenting different identifiable spacial forms, the spigots being constructed and arranged for interchangeable placement on or in the mount in communication with the chamber, each spigot including a valve to regulate gravity, suction, pressure or levity flow of the substance through the spigot when the container is in the freestanding, upright condition, and a hat-like recess formed within the bottom wall sized for wearing on an individual's head and for maintaining the container in the upright, freestanding condition during hands-free ambulation of the individual.

9. A receptacle according to claim 8

wherein the valve of at least one of the spigots includes an external handle to manually move the valve between an opened position, opening communication with the chamber to dispense the substance by gravity, suction, pressure or levity flow when the container is in the freestanding, upright condition, and a closed position, closing communication with the chamber to retain the substance in the chamber.

10. A receptacle according to claim 8

wherein the container includes an identifiable spatial form.

11. A family of transportable receptacles for dispensing substances comprising

a family of containers presenting different identifiable spacial forms, each container enclosing a chamber to carry a substance and including a bottom wall defining a generally flat surface to maintain the container in an upright, freestanding condition when placed on a horizontal surface, a mount spaced from the bottom wall, and a hat-like recess formed within the bottom wall sized for wearing on an individual's head and for maintaining the container in the upright, freestanding condition during hands-free ambulation of the individual, and

a family of spigots presenting different identifiable spacial forms, each spigot being constructed and arranged for interchangeable placement on or in the mount in communication with the chamber, each spigot including a valve to regulate flow of the substance by gravity, suction, pressure or levity through the spigot when the container is in the freestanding, upright condition.

7

12. A receptacle according to claim 11
wherein the valve of at least one of the spigots includes an
external handle to manually move the valve between an
opened position, opening communication with the
chamber to dispense the substance by gravity, suction,

8

pressure or levity flow when the container is in the
freestanding, upright condition, and a closed position,
closing communication with the chamber to retain the
substance in the chamber.

* * * * *

Fair Use Doctrine Cheat Sheet

First Factor (Nature of Use)

Spectrum of commercial to educational uses, where commercial uses are less fair and educational uses are more fair. Some courts treat commercial uses as presumptively unfair (Sony), but Campbell rejected this presumption.

Courts will also consider if the use is transformative or just redistributive. Transformative uses “add something new, with a further purpose or different character, altering the first with new expression, meaning or message” (Campbell). Rarely, courts do not require adding something new if the use has a different purpose (Kelly v. Arriba, but compare Texaco). Transformative uses are more likely to be fair use, and the other three factors are less important (Campbell).

Second Factor (Nature of Work).

Spectrum of fact to fiction, where taking factual works is more fair and taking fiction is less fair. Some courts deem taking unpublished works presumptively unfair (Harper & Row), but §107 was amended to supersede this presumption.

Some courts treat fact/fiction and published/unpublished as two separate sub-factors.

Third Factor (Amount/Substantiality of Portion Taken).

Some courts say that taking the entire work is presumptively unfair. Taking the “heart of the work,” even if a small amount, usually isn’t fair.

Fourth Factor (Market Effect).

The fourth factor is routinely characterized as the most important factor (Harper & Row). The factor evaluates (1) whether unrestricted and widespread conduct like the defendant’s would substantively and adversely impact the market, and (2) the harm to the market for derivative works when these derivative markets are “traditional, reasonable, or likely to be developed markets” (Texaco), but some courts give the copyright owner the option not to pursue a market (Castle Rock). Increasing demand for the underlying work doesn’t mitigate harm to a derivative market (Harper & Row; Napster).

The Pillsbury Company v. Milky Way Productions, Inc.
215 U.S.P.Q. 124 (N.D. Ga. Dec. 24, 1981)

In its December 19, 1977 issue of *Screw* magazine, the defendant Milky Way Productions, Inc. [Milky Way] published a picture of figures resembling the plaintiff's trade characters "Poppin' Fresh" and "Poppie Fresh" engaged in sexual intercourse and fellatio. This picture also featured the plaintiff's barrelhead trademark and its jingle, the refrain of a two stanza song entitled "The Pillsbury Baking Song." The same picture was published in the February 20, 1978 issue of Al Goldstein's *Screw*.

Contending that the manner in which Milky Way presented this picture suggested that the plaintiff placed or sponsored it as an advertisement in *Screw* magazine, the Pillsbury Company [Pillsbury] instituted this action. In its original complaint, the plaintiff alleged several counts of copyright infringement, federal statutory and common law trademark infringement, violations of the Georgia Uniform Deceptive Trade Practices Act and of the Georgia "anti-dilution" statute, and several counts of tortious tarnishment of its marks, trade characters, and jingle....

The plaintiff alleges that in violation of Ga. Code Ann. §106-115, Milky Way's unauthorized use of its barrelhead trademark, the words "Poppin' Fresh," its trade characters, and its jingle creates a likelihood of injury to its commercial reputation and of dilution of the distinctive quality of its trademarks, trade symbols, or advertising. The plaintiff contends that Milky Way has tarnished the reputation, and thereby impaired the effectiveness, of its advertising agents by placing them in a "depraved context."

Milky Way rests its defense against this claim upon an erroneous conception of the anti-dilution statute, namely that the plaintiff must prove a likelihood of confusion to prevail on this count. The court previously has concluded that the plaintiff has failed to show a likelihood of confusion, but as the statute plainly states, actionable dilution occurs when by subsequent unauthorized use of the plaintiff's marks, the uniqueness of the plaintiff's marks as the designation for its products is diminished by the defendant's unauthorized use of these marks, "notwithstanding the absence of competition between the parties or of confusion as to the source of goods or services." Ga. Code Ann. §106-115. The basis for this cause of action is the belief that the owner of these marks should not have to stand by and watch the diminution in their value as a result of unauthorized uses by others. All the plaintiff need show to prevail is that the contested use is likely to injure its commercial reputation or dilute the distinctive quality of its marks. The court concludes that, despite the lack of actual damages, there is a likelihood that the defendants' presentation could injure the business reputation of the plaintiff or dilute the distinctive quality of its trademarks. Consequently, the court concludes that the plaintiff has prevailed on this claim and is entitled to injunctive relief provided in section 106-115 of the Georgia Code....

[Eric's note: after reading this case, I encourage you to read the Salon article from 2000, *The Inner Doughboy*, <http://www1.salon.com/media/col/shal/2000/03/23/doughboy/index.html>]