



# INTELLECTUAL PROPERTY

Law 388

Professor Eric Goldman

## COURSE SUPPLEMENT

Spring 2014

## IP Overview

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

**From “A Discourse on Gaming,” April 30, 2013**

<http://adiscourseongaming.tumblr.com/post/49319892728/let-me-tell-you-a-little-story-about-innovation>

Let me tell you a little story about innovation and creativity. Years ago, I worked on a wiki-based project to find the first instance of ideas/techniques in video games (like the first game to use cameras as weapons, or the first game to have stealth as a play element). It excited me to dig to give credit to those who laid the foundations of ideas that we now take for granted. I couldn't wait to show the world how creative and innovative these unknown game designers/developers were.

I went into it with much passion and excitement, but unexpectedly, it turned out that there were almost no “firsts”. Every time someone put up a game that was the first to do/contain something, there was another earlier game put up to replace it with a SLIGHTLY less sophisticated, or SLIGHTLY different version of the same thing. The gradient was so smooth and constant that eventually, the element we were focusing on lost meaning. It became an unremarkable point to address at all. We ended up constantly overwriting people's work with smaller, less passionate articles, containing a bunch of crappy games that only technically were the first to do something in the crudest manner. Sometimes only aesthetically.

After a lot of time sunk into this project, I came to the conclusion that I was mistaken about innovation/creativity. It would have been a better project to track the path of ideas/techniques than to try to find the first instance of an idea/technique. I held innovation so highly for years before that, but after this project, I saw just how small it was. How it was but a tiny extension of the thoughts of millions before it. A tiny mutation of a microscopic speck that laid on top of a mountain. It was a valuable experience that helped me very much creatively.

— Dave Freeman, a game designer, friend, and former coworker of mine

## When Asked, Vast Majority of Businesses Say IP Is Not Important

Gabriel J. Michael

To Promote the Progress? Blog

December 20, 2013

<http://topromotetheprogress.wordpress.com/2013/12/20/when-asked-vast-majority-of-businesses-say-ip-is-not-important/>

Last year, the U.S. Patent and Trademark Office released a widely cited report entitled “Intellectual Property and the U.S. Economy: Industries in Focus.” This report played up the importance of IP, claiming “the entire U.S. economy relies on some form of IP,” and estimated that “IP-intensive industries” accounted for 40 million American jobs and 35% of the U.S. GDP in 2010.

While many pro-IP groups hailed the report as demonstrating the importance of IP to the American economy, the report was panned by critics who pointed out that the definition of “IP-intensive industries” was so broad as to be meaningless. Indeed, according to the report, the number one IP-intensive industry by employment in the United States was...grocery stores. Furthermore, although supporters of stricter IP regulation and enforcement continue to rely on the report to justify policies relating to copyrights and patents, the vast majority of the report’s purported economic benefits were attributed to trademarks.

USPTO’s report was released in March 2012, and received a lot of attention. Yet just one month prior, the National Science Foundation (NSF) released the findings of a survey on business use of intellectual property. While a few sites picked up on the NSF report last year, it received far less media attention than it deserved. Why? Perhaps because **it turns out that if you actually ask, the vast majority of businesses report that intellectual property is not important to them....**

But wait – surely I’m making all this up. If “IP-intensive” industries account for 40 million jobs and 35% of GDP, intellectual property must be very important to businesses. What’s this “vast majority,” then?

- \* **In 2010, 87.2% of businesses reported that trademarks were “not important” to them.**
- \* **90.1% of businesses reported that copyrights were “not important” to them.**
- \* **96.2% of businesses reported that patents were “not important” to them....**

If you examine the details, the survey results begin to make more sense. Larger companies tend to report intellectual property as being more important; businesses designated as especially “R&D active” also place more importance on various kinds of intellectual property.

Nevertheless, the results of this survey (now in its third year) are striking. **Even when looking at a sector where one would expect heavy reliance on intellectual property, the results do not match expectations.** For example, take one of the most copyright-dependent sectors we can imagine: “R&D active” software publishing. In 2010, 51.4% of respondents in this sector said copyright was “very important”; 34.6% said it was “somewhat important”; and 13.9% said it was

“not important.” That is, only about half of respondents in a purportedly heavily copyright-dependent sector describe copyright as “very important” to their business.

In my mind, there are two ways of interpreting these data: either all the survey respondents are totally uninformed about what is going on in their businesses, or **formal intellectual property protection is far less important to the vast majority of U.S. businesses than some would like us to believe.**

Some additional highlights:

- \* 61.7% of businesses manufacturing computer and electronic products report that patents are “not important” to them.
- \* 96.3% of businesses with less than 500 employees report that patents are “not important” to them.
- \* 45.6% of businesses with 25,000 or more employees report that patents are “not important” to them.
- \* 53.6% of businesses classified in the information sector (NAICS code 51 – i.e., a sector we’d expect to rely heavily on copyright) report that copyrights are “not important” to them.
- \* Overall, businesses report that trade secrets are the most important form of intellectual property protection, with 13.2% of businesses calling trade secrets “very important” or “somewhat important.” Trademarks are a close second, with copyrights and patents significantly farther behind. Trailing in last place is *sui generis* protection for semiconductor mask works, although that is no surprise.

## Business Use of Intellectual Property Protection Documented in NSF Survey

by John E. Jankowski

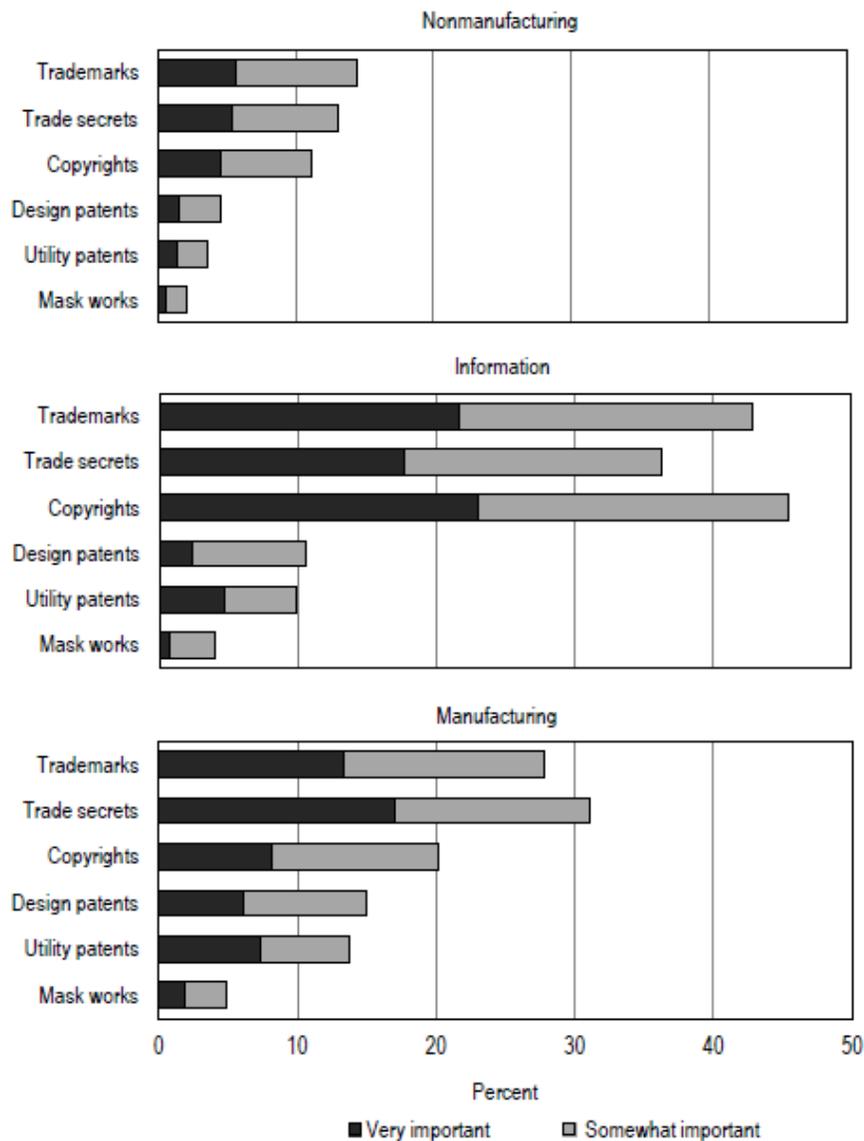
NSF 12-307 | February 2012

[Selected excerpts; citations omitted]

### 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).

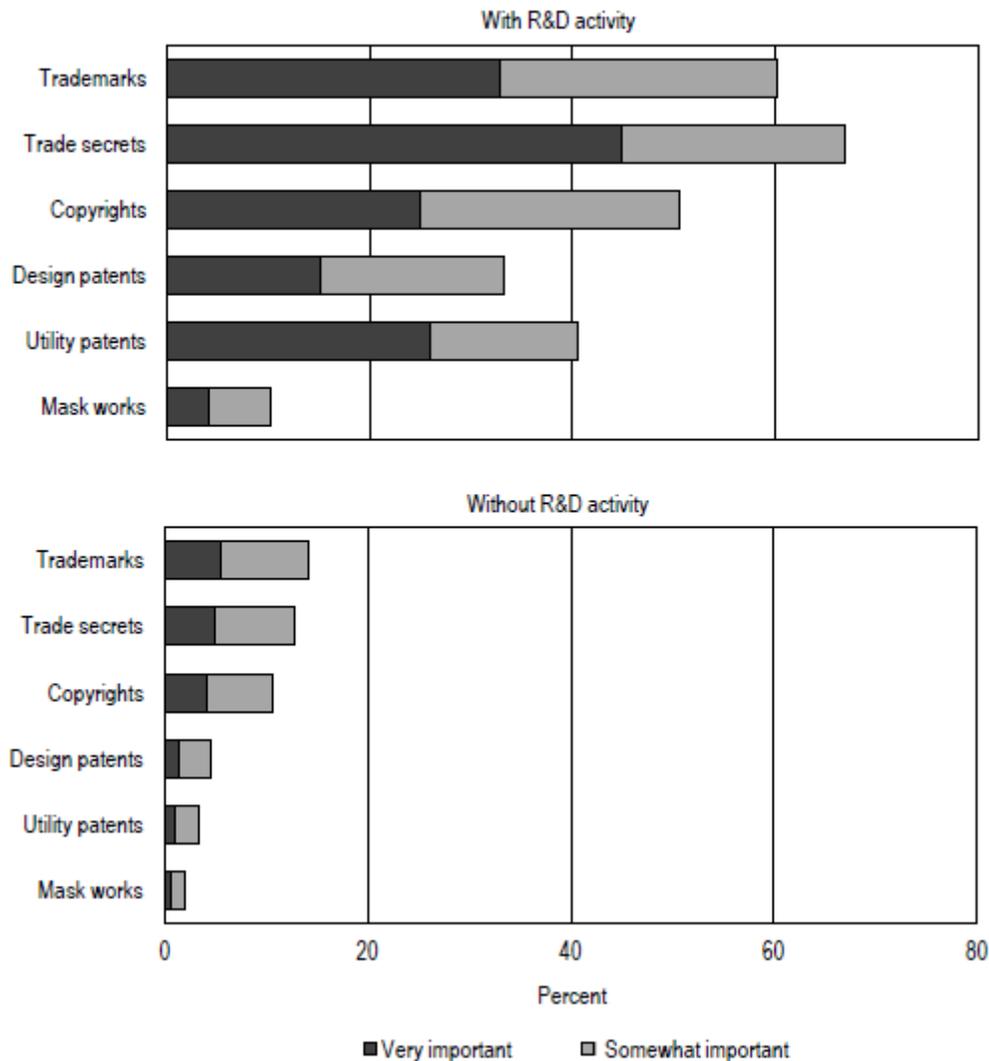
FIGURE 1. Businesses reporting IPR as very or somewhat important, by type of industry sector and type of IPR: 2008



## 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)....

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

### **Median Litigation Costs in 2013**

From the AIPLA Report of the Economic Survey 2013

Patent Infringement Suit, less than \$1 million at risk, inclusive of all costs: \$700k

Patent Infringement Suit, more than \$25 million at risk, inclusive of all costs: \$5.5M

Trademark Infringement Suit, less than \$1 million at risk, inclusive of all costs: \$300k

Trademark Infringement Suit, more than \$25 million at risk, inclusive of all costs: \$1.5M

Copyright Infringement Suit, less than \$1 million at risk, inclusive of all costs: \$300k

Copyright Infringement Suit, more than \$25 million at risk, inclusive of all costs: \$788k

Trade Secret Misappropriation Suit, less than \$1 million at risk, inclusive of all costs: \$425k

Trade Secret Misappropriation Suit, more than \$25 million at risk, inclusive of all costs: \$2.95M

**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.

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By: \_\_\_\_\_  
Title: \_\_\_\_\_

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\_\_\_\_\_

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.<sup>6</sup> ..... **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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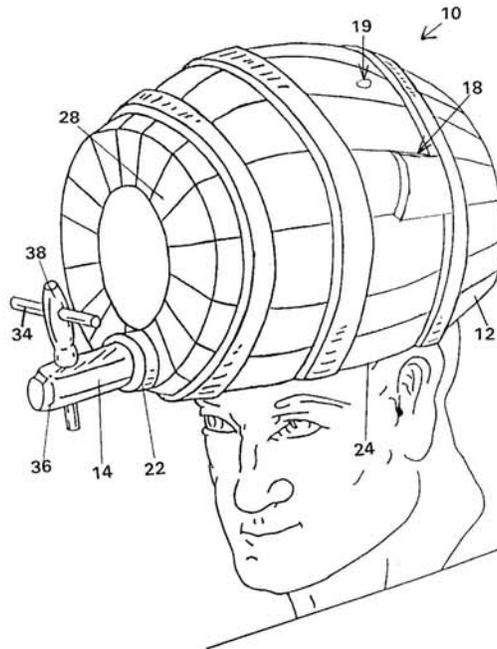
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*Primary Examiner*—Diana L. Biefeld  
*Attorney, Agent, or Firm*—Ryan Kromholz & Manion

[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**



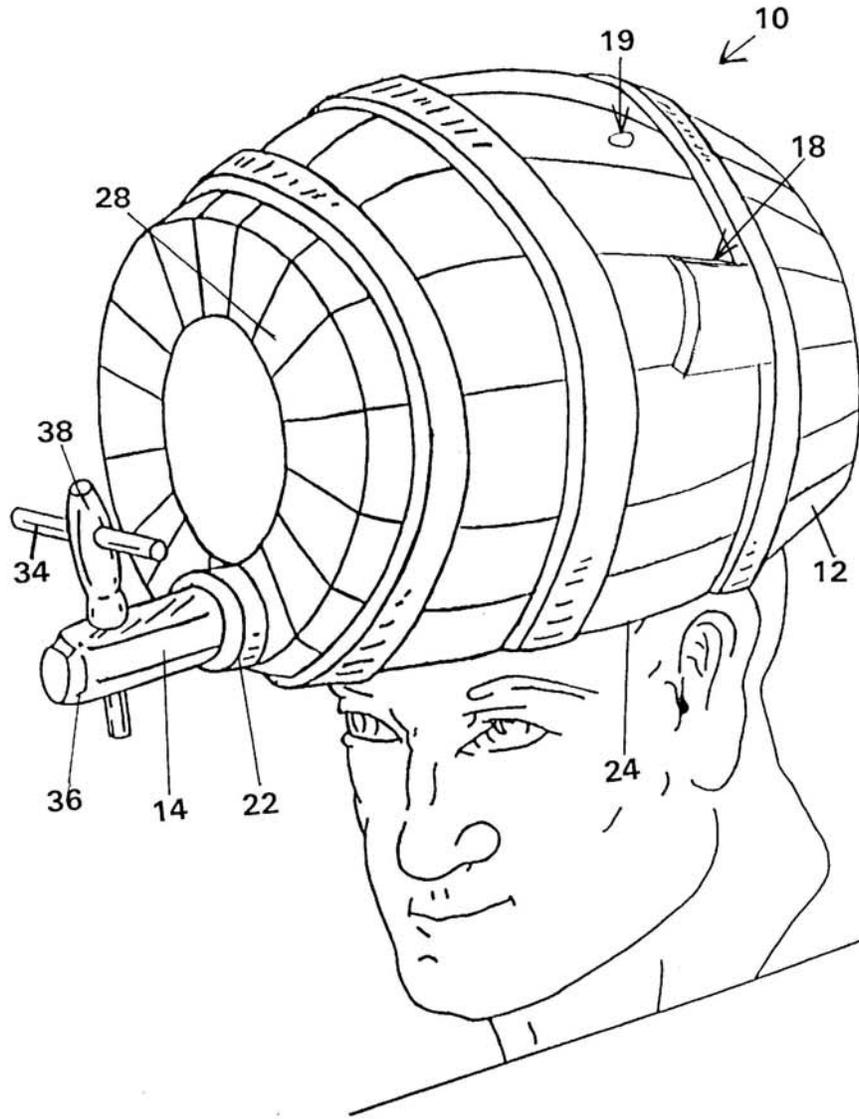


FIG. 1

FIG. 2

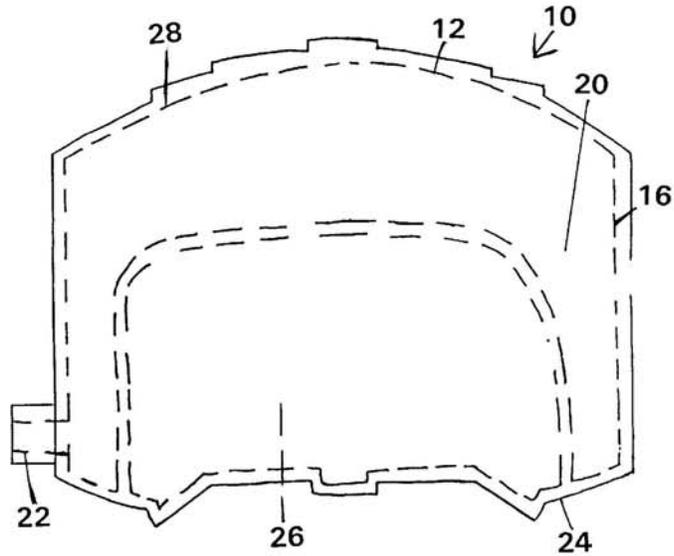


FIG. 3

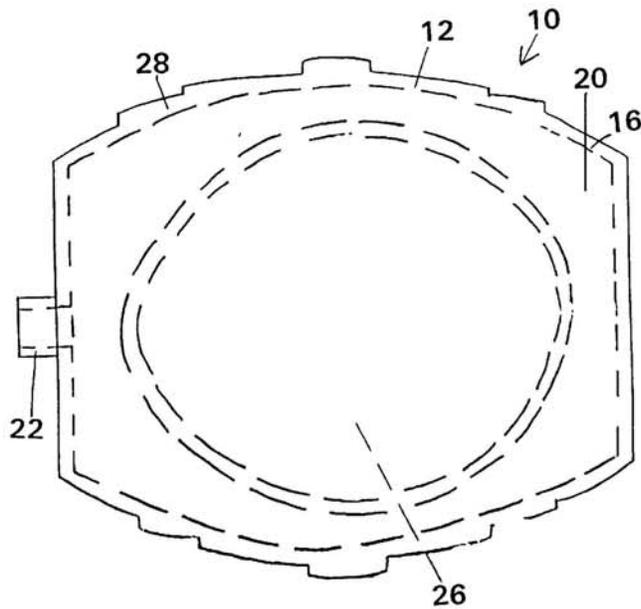


FIG. 4

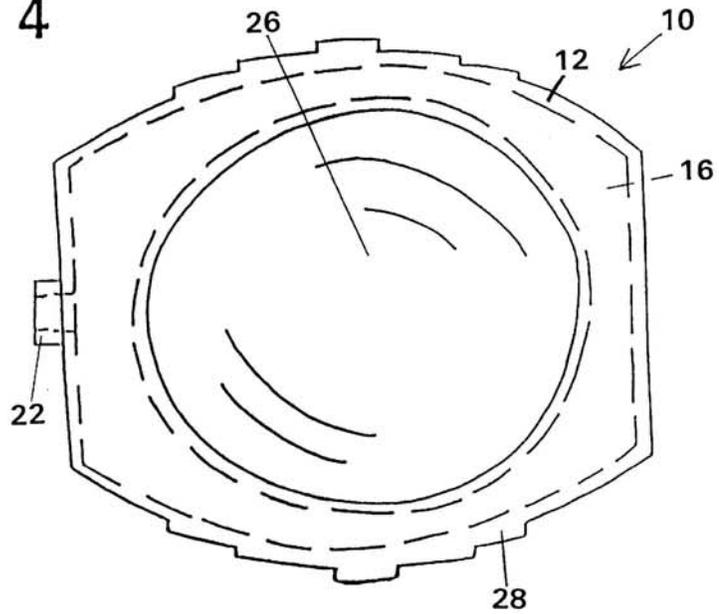


FIG. 5

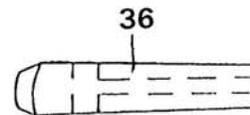
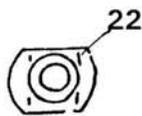


FIG. 6

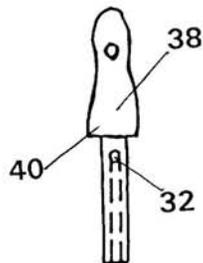


FIG. 7

FIG. 8

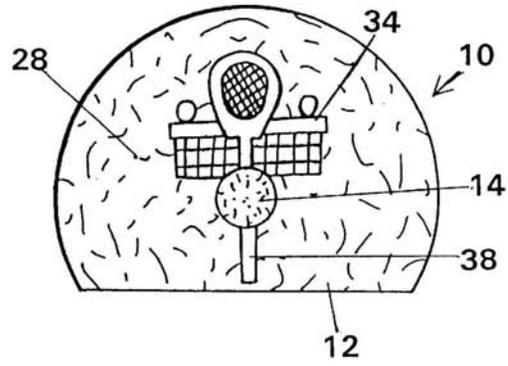


FIG. 9

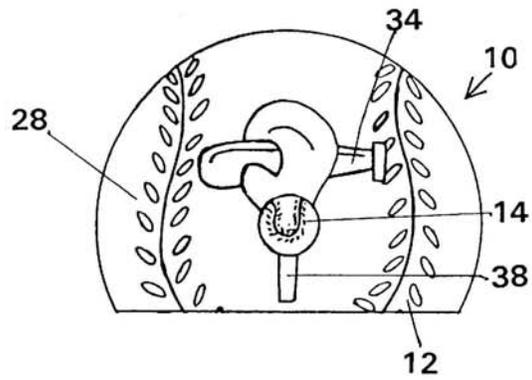


FIG. 10

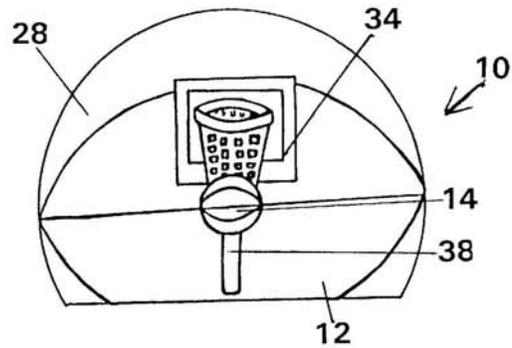


FIG. 11

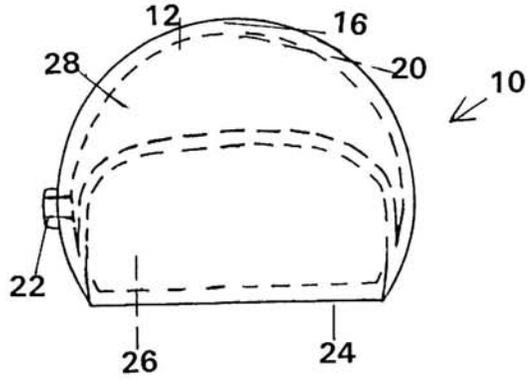


FIG. 12

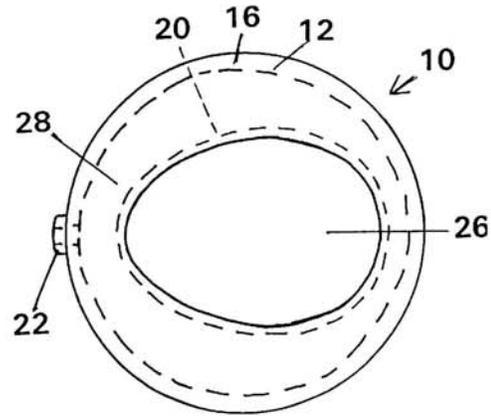
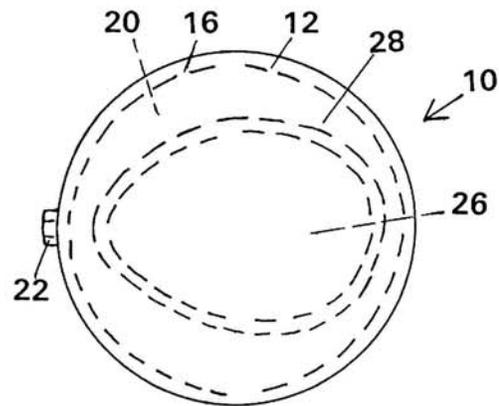


FIG. 13



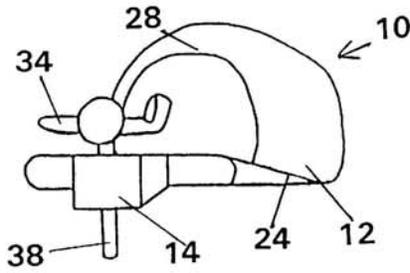


FIG. 14

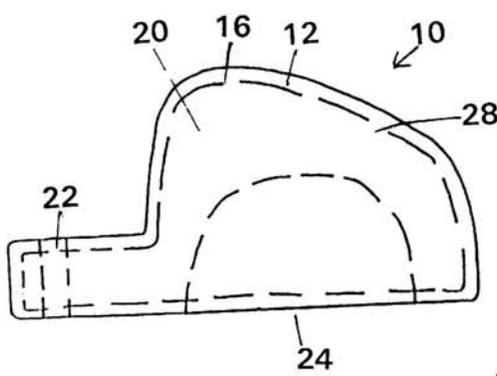


FIG. 15

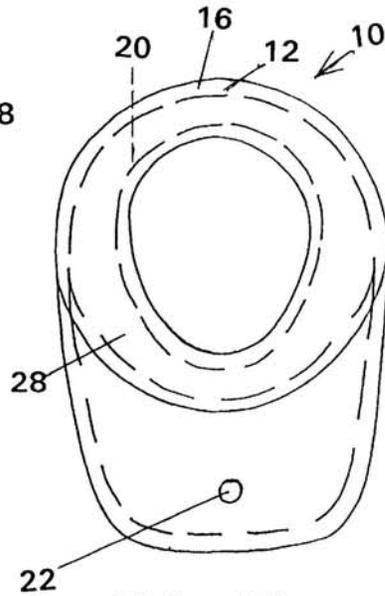


FIG. 16

**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-

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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.

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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.

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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,

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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>]