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YOUNG BASILE 3001 WEST BIG BEAVER ROAD SUITE 624 TROY, MI 48084			CARROLL, JEREMY W	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOHN R. SELINA and RANDALL J. CORBETT

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Appeal 2014-007757  
Application 12/898,768  
Technology Center 3700

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Before: WILLIAM A. CAPP, LEE L. STEPINA, and  
AMANDA F. WIEKER, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 24–30.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> Appellants indicate that the present appeal is related to an appeal in US Application Serial No. 13/048,986 (Appeal No. 2014-006006, Decision mailed October 4, 2016, Affirming-In-Part).

CLAIMED SUBJECT MATTER

The claims are directed to a collapsible spout for a container and method of manufacture thereof. Spec. 1 (Title). Claim 24, reproduced below, illustrates the claimed subject matter:

24. A closure having a manually operable plastic spout attached thereto and extendable along an extension axis comprising:

a molded plastic closure having a deck with a top plane and a cylindrical flange forming an opening therein, the flange being substantially flush with the top plane of the deck;

an extendable plastic spout installed in said opening and having stable collapsed and extended conditions and comprising an integrally continuous plurality of annular wall sections of substantially equal axial length and thickness, but of progressively smaller diameter interconnected in series by annular hinges of thinner, more flexible construction than said wall sections *to produce over-center inversion* of every other one of said wall sections during extension and collapse;

all of said wall sections in the collapsed condition, lay concentrically within one another with the top annular edges of the collapsed wall sections in a common plane perpendicular to the extension axis and no higher than the top plane of the deck in the spout being molded in the stable collapsed condition;

the innermost section in the collapsed condition having threads formed thereon;

a cap having a cylindrical neck portion and a larger diameter planar top portion, said neck portion having threads mating with the threads of the innermost spout section to close the spout, the planar top portion lying substantially flush with said top plane when the spout is in the collapsed condition; and

an annular pull ring formed integrally with the top portion of the cap and in circumferentially surrounding relationship therewith;

said cap top portion and said pull ring together being of sufficient diameter to substantially fill the cylindrical opening in said closure deck and create a substantially flush deck structure.

Appeal Br. 17 (Claims App.) (emphasis added).

## REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Sultzer, III et al. ("Sultzer")	US 5,722,570	Mar. 3, 1998
Chung et al. ("Chung")	US 6,641,007 B2	Nov. 4, 2003
Park	US 2011/0114679 A1	May 19, 2011

## REJECTION

Claims 24–30 are rejected under 35 U.S.C. 103(a) as unpatentable over Park, Chung, and Sultzer.<sup>2</sup>

## OPINION

In an Advisory Action dated February 6, 2014, the Examiner refused entry of an Amendment filed on January 22, 2014. Adv. Act. 1.<sup>3</sup> Appellants request entry of the Amendment. Appeal Br. 5. Denial of entry of an amendment is a petitionable matter and not one properly addressed by the Board. *See* 37 C.F.R. § 1.181; 37 C.F.R. § 1.127; *see also In re Berger*, 279 F.3d 975, 984 (Fed. Cir. 2002), *and In re Hengehold*, 440 F.2d 1395, 1403 (CCPA 1971)). Accordingly, we do not reach the issue of whether the Amendment should be entered.

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<sup>2</sup> The Final Action (dated December 20, 2013) provides a separate heading for the rejection of claim 30 as unpatentable over Park, Sultzer, and Chung, but the references applied are the same as those applied against claims 24–29. Final Act. 2, 3.

<sup>3</sup> The Advisory Action contains a typographical error, listing the date of this Amendment as January 22, 2013.

*Claims 24–29*

The Examiner finds that Park discloses most of the features recited in claim 24, but does not disclose certain features related to the molded plastic closure deck and annular wall sections, and the Examiner relies on Chung and Sultzer to remedy these deficiencies. Final Act. 4–5. With regard to independent claim 24, the Examiner does not make specific findings relating to structure of the hinges that produces over-center inversion of every other one of said wall sections during extension and collapse, as recited in claim 24.<sup>4</sup> *Id.*

Discussing the meaning of the term “over-center” as recited in claim 24, Appellants state, “[a]n article, like a Belleville spring, that operates in an ‘over-center’ fashion, resiliently resists deformation like a spring until the strain or movement reaches the halfway point at which it, on its own, goes forward into the next stable condition, and it behaves in just the same way when urged in the opposite direction.” Appeal Br. 10. Appellants contend that “no [cited] reference teaches a spout with over-center action between concentric sections as a result of being ‘molded in the collapsed state.’” Appeal Br. 12. Appellants also state that during prosecution, Appellants provided a Declaration by John R. Selina (“Declaration”), a named inventor, discussing bi-stability, stating “[m]y invention uses the principle of bistability in every hinge, thereby producing ‘incremental’ stability as the spout is extended and collapsed. Between these increments

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<sup>4</sup> With respect to dependent claim 25, the Examiner finds that “Sultzer teaches [ ] hinges [that] have cross-sectional dimensions which are less (FIG 3A, element 34) than the cross-sectional dimensions of said sections (FIG 3A, element 36) thereby to produce over-center inversion.” Final Act. 5.

of extension, represented by the inversion of just one section, the spout is unstable.” Appeal Br. 14; Decl. ¶ 6.

In response, the Examiner discusses the term “over-center,” finding “[t]here is no special definition present in the specification for the term over-center therefore the examiner used the plain meaning as to mean, ‘above and in alignment.’ As shown in Figure 5 of Park where the spout when fully extended the top is in alignment with the bottom.” Ans. 7.

In reply, Appellants reiterate their discussion of the meaning of the term “over-center,” stating that this term refers to the quality of bi-stability. Reply Br. 3–4.

We disagree with the Examiner’s finding that Park teaches a spout with the “over-center” function recited in claim 24 because Appellants’ contention that “over-center” requires bistability is persuasive. In this regard, the Specification states, “[t]he material of the body 24 tends to be thinner at the pleats and one will note an ‘over-center’ release as each pleat is unfolded.” Spec. ¶ 19. Thus, the term “over-center” requires more than mere unfolding. *Id.* The Specification also states, “the spout is extended by grasping the pull-ring 38 with the cap 36 attached to the collar 30 and pulling upwardly until the pleats begin to unfold *into any of various stable configurations.*” *Id.* ¶ 16 (emphasis added). Further, Appellants’ original claim 18 (now cancelled) recites the over-center function as follows, “the spout is molded in the collapsed condition such that extension thereof causes an over-center action of said pleats which, when exceeded, leaves the pleated sections of the spout in a stable extended condition.” Spec. 7. Although the Examiner is correct that the Specification provides no express definition of the term “over-center,” we do not agree that the broadest reasonable construction of this term is “above and in alignment” as

determined by the Examiner. *See* Ans. 7. It is well settled that “[e]ven when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents.” *Irdeto Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1300 (Fed. Cir. 2004). In light of the Specification and original claim 18, we interpret “annular hinges of thinner, more flexible construction than said wall sections to produce over-center inversion of every other one of said wall sections during extension and collapse” to require annular hinges of thinner, more flexible construction than said adjacent wall sections to provide a stable position for the wall sections on every side of a relatively unstable center position. Thus, the Examiner’s finding that Park discloses this feature is based upon an unreasonably broad interpretation of claim 24, and we do not sustain the rejection of claim 24 or claims 25–29 depending therefrom as unpatentable over Park, Chung, and Sultzer.<sup>5</sup>

*Claim 30*

Claim 30 recites, in part “wall sections being integrally interconnected by annular molded hinges between said wall sections wherein said hinges

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<sup>5</sup> In the Answer, the Examiner addressed Appellants’ arguments related to the “over-center” function by finding that Park discloses this feature, without reliance on Sultzer (Ans. 7). To the extent the Examiner may rely on findings relating to Sultzer, but made for the rejection of dependent claim 25, to remedy the deficiency discussed above regarding the rejection of claim 24, we are not satisfied that the Examiner’s proposed rationale for the rejection of claim 25, “to provide a pouring spout that is extendable and that is easy to use” (Final Act. 5), is supported by rational underpinnings. Specifically, this rationale appears to be achieved already by Park, without reliance upon Sultzer. As such, the Examiner does not provide articulated reasoning with rational underpinning to support the conclusion of obviousness.

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are thinner than said wall sections to allow over-center of every other of said wall sections during extension of said spout.” Appeal Br. 18 (Claims App.). As this feature is similar to the feature discussed above regarding the rejection of claim 24, we reverse the Examiner’s rejection of claim 30 for the same reasons.

DECISION

The Examiner’s rejection of claims 24–30 is reversed.

REVERSED