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NOTICE OF ALLOWANCE AND FEE(S) DUE

17427 7590 01/05/2023

Richard Wydeven
RFEM/ Genprobe
901 New York Avenue, NW
Suite 900 East
Washington, DC 20001

EXAMINER

BERLINSKI, AMANDA JEAN

ART UNIT

PAPER NUMBER

2924

DATE MAILED: 01/05/2023

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640

TITLE OF INVENTION: FLUID VIAL

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	\$740	\$0.00	\$0.00	\$740	04/05/2023

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the ENTITY STATUS shown above. If the ENTITY STATUS is shown as SMALL or MICRO, verify whether entitlement to that entity status still applies.

If the ENTITY STATUS is the same as shown above, pay the TOTAL FEE(S) DUE shown above.

If the ENTITY STATUS is changed from that shown above, on PART B - FEE(S) TRANSMITTAL, complete section number 5 titled "Change in Entity Status (from status indicated above)".

For purposes of this notice, small entity fees are 1/2 the amount of undiscounted fees, and micro entity fees are 1/2 the amount of small entity fees.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Maintenance fees are due in utility patents issuing on applications filed on or after Dec. 12, 1980. It is patentee's responsibility to ensure timely payment of maintenance fees when due. More information is available at www.uspto.gov/PatentMaintenanceFees.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), by mail or fax, or via EFS-Web.

By mail, send to: Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

By fax, send to: (571)-273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

17427 7590 01/05/2023
Richard Wydeven
RFEM/ Genprobe
901 New York Avenue, NW
Suite 900 East
Washington, DC 20001

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being transmitted to the USPTO via EFS-Web or by facsimile to (571) 273-2885, on the date below.

(Typed or printed name)

(Signature)

(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640

TITLE OF INVENTION: FLUID VIAL

APPLN. TYPE	ENTITY STATUS	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	UNDISCOUNTED	\$740	\$0.00	\$0.00	\$740	04/05/2023

EXAMINER	ART UNIT	CLASS-SUBCLASS
BERLINSKI, AMANDA JEAN	2924	D24-121000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

2. For printing on the patent front page, list

- (1) The names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) The name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 _____

2 _____

3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document must have been previously recorded, or filed for recordation, as set forth in 37 CFR 3.11 and 37 CFR 3.81(a). Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): Individual Corporation or other private group entity Government

4a. Fees submitted: Issue Fee Publication Fee (if required) Advance Order - # of Copies _____

4b. Method of Payment: (Please first reapply any previously paid fee shown above)

Electronic Payment via EFS-Web Enclosed check Non-electronic payment by credit card (Attach form PTO-2038)

The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment to Deposit Account No. _____

5. Change in Entity Status (from status indicated above)

- Applicant certifying micro entity status. See 37 CFR 1.29
- Applicant asserting small entity status. See 37 CFR 1.27
- Applicant changing to regular undiscounted fee status.

NOTE: Absent a valid certification of Micro Entity Status (see forms PTO/SB/15A and 15B), issue fee payment in the micro entity amount will not be accepted at the risk of application abandonment.

NOTE: If the application was previously under micro entity status, checking this box will be taken to be a notification of loss of entitlement to micro entity status.

NOTE: Checking this box will be taken to be a notification of loss of entitlement to small or micro entity status, as applicable.

NOTE: This form must be signed in accordance with 37 CFR 1.31 and 1.33. See 37 CFR 1.4 for signature requirements and certifications.

Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640
17427	7590	01/05/2023	EXAMINER	
Richard Wydeven				BERLINSKI, AMANDA JEAN
RFEM/ Genprobe		ART UNIT		PAPER NUMBER
901 New York Avenue, NW		2924		
Suite 900 East				
Washington, DC 20001				
DATE MAILED: 01/05/2023				

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(Applications filed on or after May 29, 2000)

The Office has discontinued providing a Patent Term Adjustment (PTA) calculation with the Notice of Allowance.

Section 1(h)(2) of the AIA Technical Corrections Act amended 35 U.S.C. 154(b)(3)(B)(i) to eliminate the requirement that the Office provide a patent term adjustment determination with the notice of allowance. See Revisions to Patent Term Adjustment, 78 Fed. Reg. 19416, 19417 (Apr. 1, 2013). Therefore, the Office is no longer providing an initial patent term adjustment determination with the notice of allowance. The Office will continue to provide a patent term adjustment determination with the Issue Notification Letter that is mailed to applicant approximately three weeks prior to the issue date of the patent, and will include the patent term adjustment on the patent. Any request for reconsideration of the patent term adjustment determination (or reinstatement of patent term adjustment) should follow the process outlined in 37 CFR 1.705.

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

OMB Clearance and PRA Burden Statement for PTOL-85 Part B

The Paperwork Reduction Act (PRA) of 1995 requires Federal agencies to obtain Office of Management and Budget approval before requesting most types of information from the public. When OMB approves an agency request to collect information from the public, OMB (i) provides a valid OMB Control Number and expiration date for the agency to display on the instrument that will be used to collect the information and (ii) requires the agency to inform the public about the OMB Control Number's legal significance in accordance with 5 CFR 1320.5(b).

The information collected by PTOL-85 Part B is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b) (2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

<i>Notice of Allowability For A Design Application</i>	Application No. 29/729,288	Applicant(s) Buse et al.	
	Examiner AMANDA J BERLINSKI	Art Unit 2924	AIA (FITF) Status Yes

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308. This notice does not set or reset the time period for paying the issue fee. The issue fee must be paid within THREE MONTHS FROM THE MAILING DATE of the Notice of Allowance (PTOL-85) or this application shall be regarded as ABANDONED. This statutory period cannot be extended. See 35 U.S.C.151.

1. This communication is responsive to the remarks and drawings received 04 November 2022.
 A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____.
 2. An election was made by the applicant in response to a restriction requirement set forth during the interview on _____ the restriction requirement and election have been incorporated into this action.
 3. The claim is allowed.
 4. Acceptable drawings:
 (a) The drawings filed on _____ are accepted by the Examiner.
 (b) Drawing Figures 1 - 5 filed on 19 September 2022 and drawing See Continuation Sheet filed on 04 November 2022 are accepted by the Examiner.
 5. The claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f) is acknowledged.

Certified copies:

a) All b) Some *c) None of the:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirement for corrected drawings noted in item 6 below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE. See 37 CFR 1.85(c). **NOTE: This notice does not set or reset the time period for paying the issue fee.**

6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

including changes required by the attached Examiner's Amendment / Comment or in the Office action of
 Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 4. <input type="checkbox"/> Examiner's Amendment/Comment |
| 2. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Receipt Date _____ | 5. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| 3. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ | 6. <input type="checkbox"/> Other _____. |

NOTE: _____	_____
/A.J.B./ Examiner, Art Unit 2924	/JONATHAN J HAN/ Primary Examiner, Art Unit 2926

Continuation of Acceptable drawings 4b 2: Figures 6 and 7

AMENDMENTS TO THE DRAWINGS

Please replace prior-filed replacement drawing sheet 4 (filed September 19, 2022) with Replacement Sheet 4 submitted herewith.

REMARKS

Reconsideration and allowance in view of the foregoing amendments and following remarks are respectfully requested.

Interview Summary

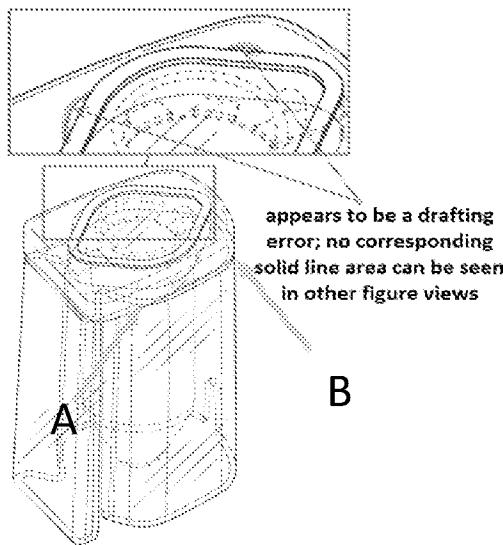
In a telephone interview with Examiner Berlinski subsequent to the mailing of the Quayle Action, applicant's representative explained that the apparent errors in FIG. 1 identified in the Quayle Action are not, in fact, errors for the reasons set forth below. Examiner Berlinski agreed and indicated the objection would be withdrawn upon submission of the explanation.

Drawing Objections

The Quayle Action sets forth the following drawing objections :

- a. The two crescent solid lines included in FIG. 1 at the top of the article adjacent to the lemon-shaped feature appear to be drafting errors.
- b. FIG. 7 is objected to for inconsistent depiction of the transparency of the top plane.

With respect to objection "a", a copy of the annotated version of FIG. 1 from the Quayle action is reproduced below with applicant's further annotations added. The apparent drafting errors identified in the Quayle action are, in fact, the mirror image portions of the lines labeled "A" and "B" below on the right side of the container and which are partially visible on the left side of the container in the orientation of FIG. 1.



Accordingly, applicant respectfully submits there is no error in FIG. 1 and requests that the objection to FIG. 1 be withdrawn.

With respect to objection “b”, without quiescence or disclaimer, FIG. 7 is amended to address the objection by adding a depiction of transparency in the top plane of the container that is visible in the bottom view of FIG. 7. Accordingly, applicant respectfully requests that the objection to FIG. 7 be withdrawn.

Closing Comments

In view of the above response, it is believed that the claim satisfies the requirements of the patent statutes. Reconsideration of the instant application and early notice of allowance are requested.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, they are encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Please charge any required fee or credit any overpayment, in association with this submission, to Deposit Account 02-2135.

Respectfully submitted,

Date: November 4, 2022

By /Richard Wydeven/
Richard Wydeven
Attorney for Applicants
Registration No. 39,881
ROTHWELL, FIGG, ERNST & MANBECK, p.c.
901 New York Ave., NW, Suite 900 East
Washington, D.C. 20001
Telephone: (202)783-6040
Facsimile: (202) 783-6031

Attachment:
Replacement Sheet 4 (FIGS. 6 and 7)

Replacement Sheet

4/4

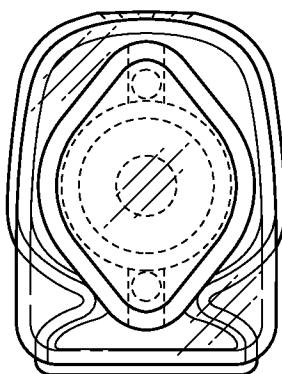


FIG. 6

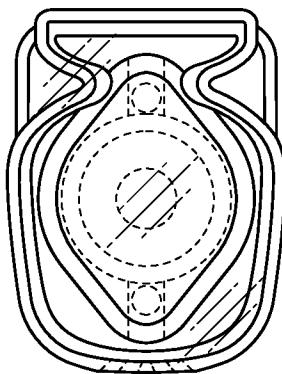


FIG. 7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 29/729,288
First Named Inventor: David BUSE
Filed : March 25, 2020
Group Art Unit : 2924
Examiner : Amanda Jean BERLINSKI
Docket No. : 2599-272
Confirmation No. : 7640
Customer No. : 17427

RESPONSE TO QUAYLE ACTION

MAIL STOP: AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Amendment and Reply is being submitted in response to the Office Action mailed October 4, 2022 (Quayle Action). This Amendment and Reply is timely filed within two months of the mailing date of the Office Action

Amendments to the Drawings begin on page **2** of this paper.

Remarks begin on page **3** of this paper.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

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P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640
17427	7590	10/04/2022	EXAMINER	
Richard Wydeven			BERLINSKI, AMANDA JEAN	
RFEM/ Genprobe				
901 New York Avenue, NW			ART UNIT	PAPER NUMBER
Suite 900 East				2924
Washington, DC 20001				
			NOTIFICATION DATE	DELIVERY MODE
			10/04/2022	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdept@hologic.com

pto-pat-email@rfem.com

Office Action Summary	Application No. 29/729,288	Applicant(s) Buse et al.	
	Examiner AMANDA J BERLINSKI	Art Unit 2924	AIA (FITF) Status Yes

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 September 2022.
 A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

- 5) Claim(s) 1 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) Claim(s) ____ is/are allowed.
- 7) Claim(s) ____ is/are rejected.
- 8) Claim(s) ____ is/are objected to.
- 9) Claim(s) ____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on 19 September 2022 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

- a) All b) Some** c) None of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 3) Interview Summary (PTO-413)
 Paper No(s)/Mail Date ____.
- 2) Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)
- 4) Other: ____.
 Paper No(s)/Mail Date ____.

EX PARTE QUAYLE

Notice of Pre-AIA or AIA Status

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

This application is in condition for allowance except for the following formal matters.

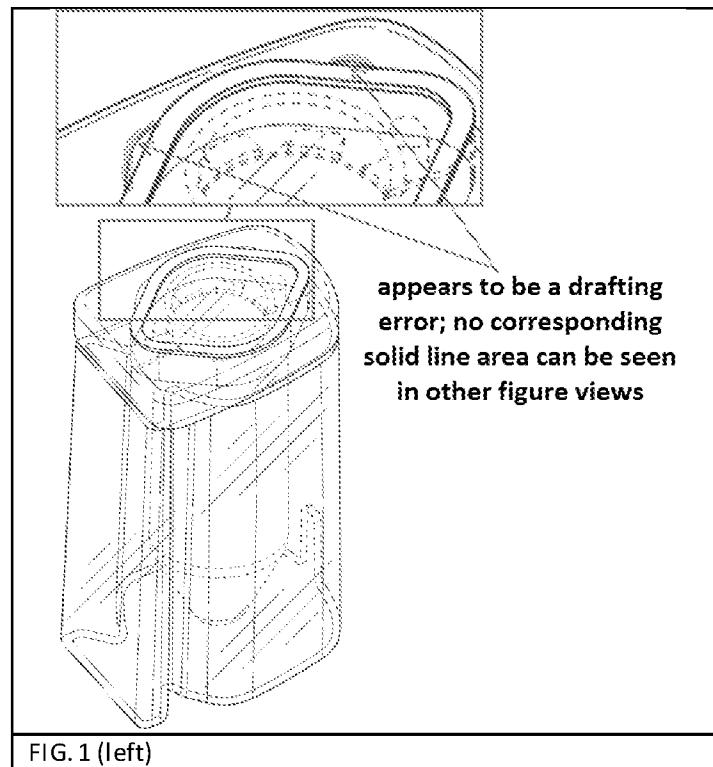
Acknowledgement of Amendments

The drawings received 19 September 2022 are acknowledged. Applicant's drawings have been carefully considered, and while the objections and issues of the previous rejection have been overcome due to applicant's amendments, there are objections that remain within the drawings. As such, the previous rejection has been overcome and is hereby withdrawn, but objections to the specification and drawings are made as follows.

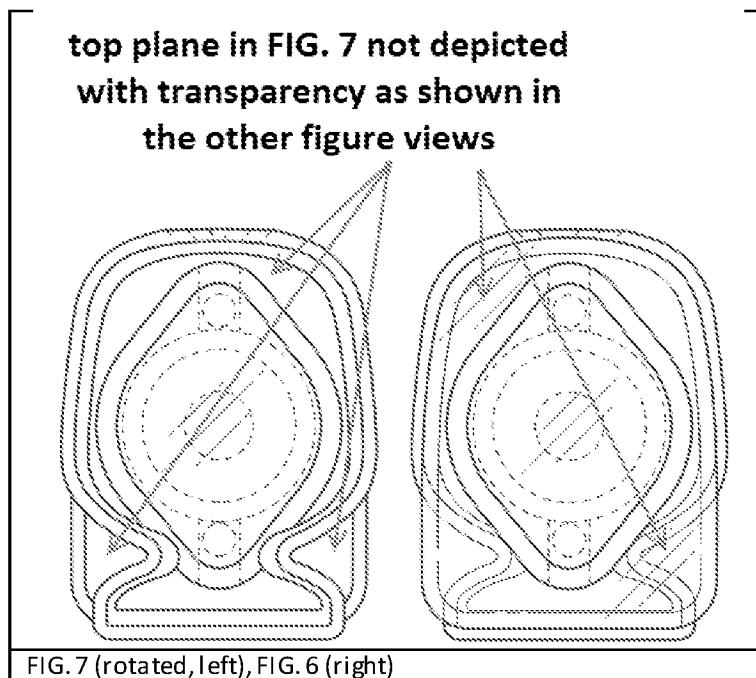
Drawing Objections

The drawings are objected to due to the following:

- a. **The two crescent solid lines included in FIG. 1 at the top of the article adjacent to the lemon-shaped feature appear to be drafting errors.** The lines described which are now seen as solid in FIG. 1 seem to be drafting errors, as the other figure views do not show corresponding features in solid lines. The examiner suggests resubmitting FIG. 1 so these lines are in broken lines as originally disclosed. See annotated drawing on the following page.



- b. FIG. 7 is objected to for inconsistent depiction of the transparency of the top plane. The topmost plane is depicted with transparency throughout the drawing set except in FIG. 7. The examiner suggests resubmitting FIG. 7 so the transparency of the article is depicted consistently throughout the drawing set. See annotated images below.



Correction of the drawings are required.

When preparing new or replacement drawings, be careful to avoid introducing new matter.

New matter is prohibited by 35 U.S.C. 132 and 37 CFR 1.121(f).

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Summation

Prosecution on the merits is closed in accordance with the practice under Ex parte Quayle, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire TWO (2) MONTHS from the mailing date of this letter. Extensions of time may be granted under 37 CFR 1.136 but in no case can any extension carry the date for reply to this Office action beyond the maximum period of SIX MONTHS set by statute (35 U.S.C. 133).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMANDA J BERLINSKI whose telephone number is 571-272-8061. The examiner can normally be reached Monday - Friday 10:00a-6:00p EST.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is

encouraged to use the USPTO Automated Interview Request (AIR) at
<http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL C STOUT can be reached on 408-918-7558. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of published or unpublished applications may be obtained from Patent Center. Unpublished application information in Patent Center is available to registered users. To file and manage patent submissions in Patent Center, visit:

<https://patentcenter.uspto.gov>. Visit <https://www.uspto.gov/patents/apply/patent-center> for more information about Patent Center and <https://www.uspto.gov/patents/docx> for information about filing in DOCX format. For additional questions, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A.J.B./
Examiner, Art Unit 2924

/JONATHAN J HAN/
Primary Examiner, Art Unit 2926

AMENDMENTS TO THE DRAWINGS

Please replace prior-filed replacement drawing sheets 1-4 (filed August 23, 2022)
with Replacement Sheets 1-4 submitted herewith.

REMARKS

Reconsideration and allowance in view of the foregoing amendments and following remarks are respectfully requested.

The Advisory Action states there is no support for the following features included in the drawings (claim) submitted August 23, 2018:

[1] [T]he addition of features in broken lines at the top center of the fluid vial throughout the drawing set, [2] the removal of lines broken and solid from the sides of the lemon-shaped feature in FIGs. 1 - 5, [and 3] the change of certain claimed features in FIG. 6 and 7 from flat to curved.

Attachment to Advisory Action, p. 3.

Without acquiescence or disclaimer, the drawings are amended to address allegedly unsupported features 1 -3 as follows:

Feature 1 - The addition of features in broken lines at the top center of the fluid vial throughout the drawing set

The features in broken lines at the top center of the fluid vial have been removed from all drawings in which they appeared, with the exception of the “two broken lines which flank the two circular features,” the absence of which from the perspective view was cited as a basis for rejection in the Final Office Action – see 6/28/22 Final OA, pp. 4-5.

Feature 2 - the removal of lines broken and solid from the sides of the lemon-shaped feature in FIGs. 1 – 5

These features are shown in FIGS. 1-5 with the “top 3/4 presented in broken line while the bottom 1/4 presented in solid line” – see 6/28/22 Final OA, p. 6.

Feature 3 - the change of certain claimed features in FIG. 6 and 7 from flat to curved

The feature is now flat.

In view of the revisions made to the figures on the Replacement Sheets, withdrawal of the rejections under 35 USC § 112 is respectfully requested.

Closing Comments

In view of the above response, it is believed that the claim satisfies the requirements of the patent statutes. Reconsideration of the instant application and early notice of allowance are requested.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, they are encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Please charge any required fee or credit any overpayment, in association with this submission, to Deposit Account 02-2135.

Respectfully submitted,

Date: September 19, 2022

By /Richard Wydeven/
Richard Wydeven
Attorney for Applicants
Registration No. 39,881
ROTHWELL, FIGG, ERNST & MANBECK, p.c.
901 New York Ave., NW, Suite 900 East
Washington, D.C. 20001
Telephone: (202)783-6040
Facsimile: (202) 783-6031

Attachment:

Replacement Sheets 1-4 (FIGS. 1-7)

Replacement Sheet

1/4

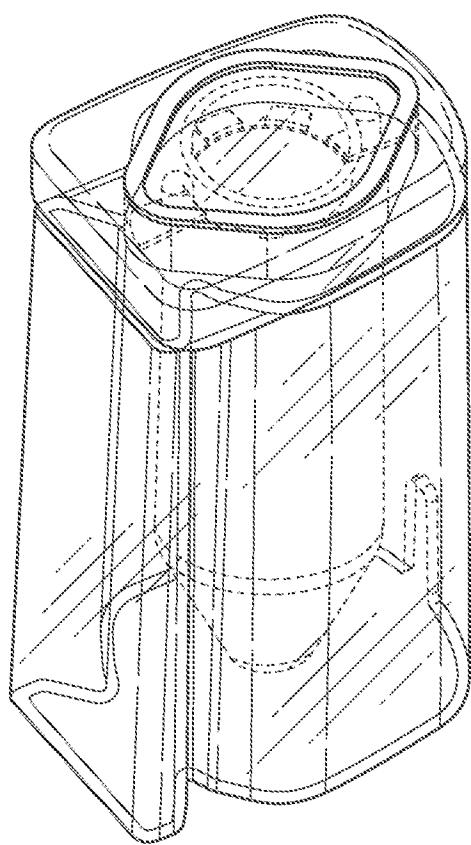


FIG. 1

2/4

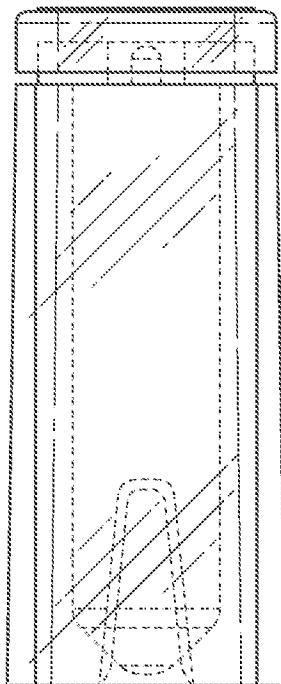


FIG. 2

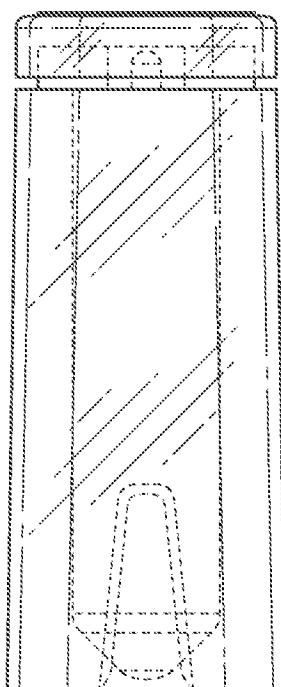


FIG. 3

Replacement Sheet

3/4

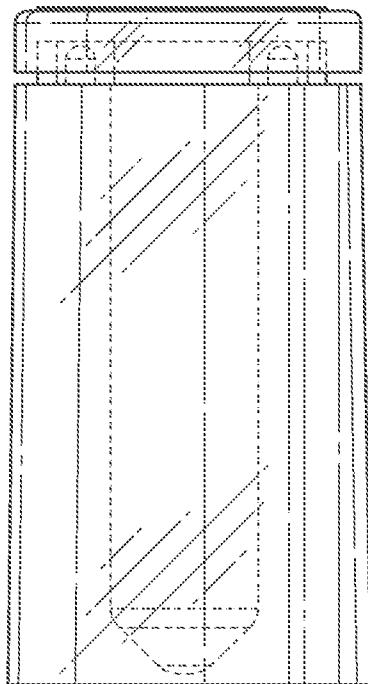


FIG. 4

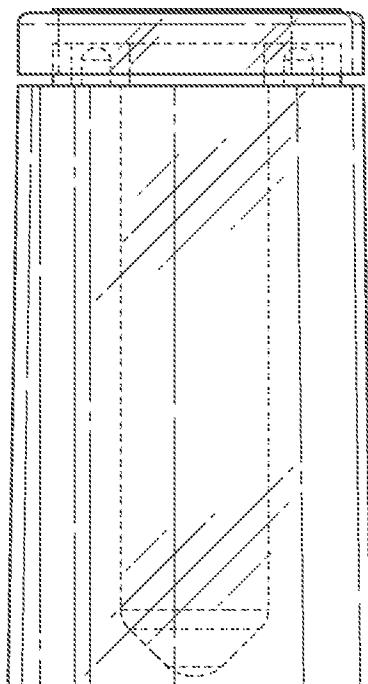


FIG. 5

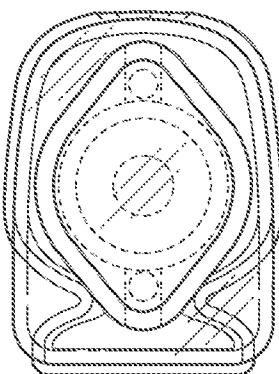


FIG. 6

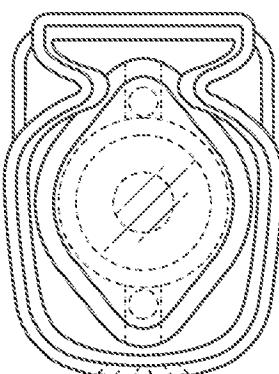


FIG. 7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 29/729,288
First Named Inventor: David BUSE
Filed : March 25, 2020
Group Art Unit : 2924
Examiner : Amanda Jean BERLINSKI
Docket No. : 2599-272
Confirmation No. : 7640
Customer No. : 17427

AMENDMENT AND REPLY UNDER 37 C.F.R. §1.116

MAIL STOP: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Amendment and Reply is being submitted in response to the Final Office Action mailed June 28, 2022 and the Advisory Action mailed September 13, 2022. This Amendment and Reply is timely filed within three months of the mailing date of the Office Action

Amendments to the Drawings begin on page **2** of this paper.

Remarks begin on page **3** of this paper.



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640
17427	7590	09/13/2022	EXAMINER	
Richard Wydeven			BERLINSKI, AMANDA JEAN	
RFEM/ Genprobe				
901 New York Avenue, NW			ART UNIT	PAPER NUMBER
Suite 900 East				2924
Washington, DC 20001				
			NOTIFICATION DATE	DELIVERY MODE
			09/13/2022	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdept@hologic.com

pto-pat-email@rfem.com

Attachment to the Advisory Action

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

Advisory Action, continuation of Numbers 3b and 12 on Form PTOL-303

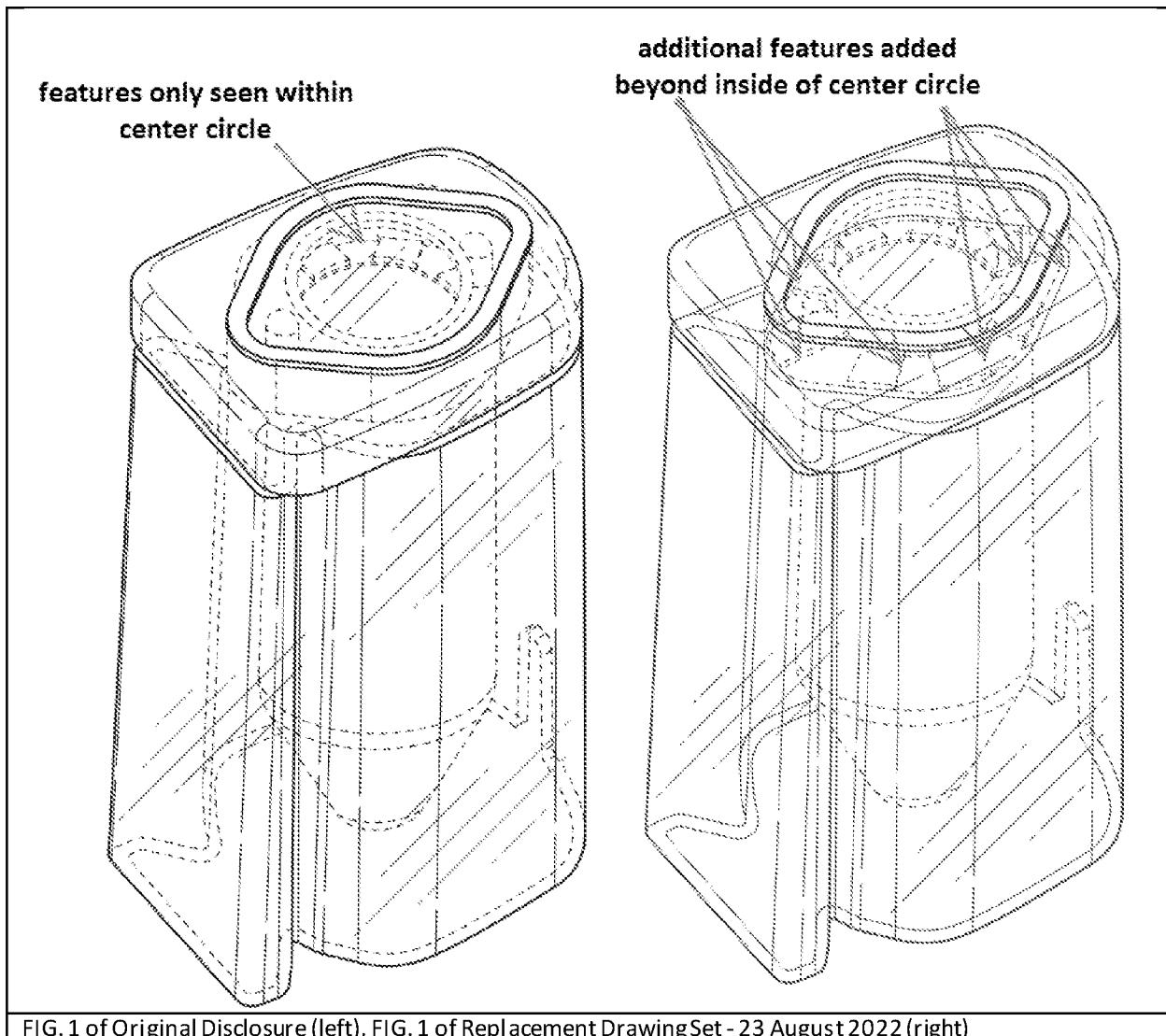
Applicant's response and drawings received 23 August 2022 are acknowledged and have been carefully considered, but do not overcome the reasons for the original non-final rejection under 35 U.S.C. 112 (a) and (b). It is the examiner's view that attempts to first overcome the non-final rejection under 35 U.S.C. 112 (a) and (b) lead to the applicant creating a drawing set that resulted in a final rejection under 35 U.S.C. 112 (a) and (b). An attempt to address the final rejection introduced conditions for new matter in the most recent revised drawing set. The new drawing set has removed solid and/or broken line from the disclosure and has introduced features in broken line that have no basis in the original disclosure.

The examiner would like to remind applicant that drawing objections differ from rejections under 35 U.S.C. 112 (a) and (b), and the examiner maintains the final rejection under 35 U.S.C. 112 (a) and (b) is proper. The original drawing set received 25 March 2020 presented an inconsistent and inadequate visual disclosure under 35 U.S.C. 112 (a) and (b), as the claimed areas of the drawing set could not be determined due to inconsistent disclosure of broken and solid lines. The response to the non-final rejection, received 07 June 2022, addressed the drawing objections and attempted to address the issues under 35 U.S.C. 112 (a) and (b). However, the replacement drawing set did present new drawing objections as per 37 CFR 1.84(l) and 37 CFR 1.84(m). Additionally, the inconsistent depiction of broken and solid lines under 35 U.S.C. 112 (a) and (b) remained. The non-final rejection pointed out the 35 U.S.C. 112 (a) and (b) issues and noted the included annotations were meant to give applicant an understanding of the basis of the rejection, but were not intended to point out all possible areas which cause indefiniteness and lack of enablement throughout the drawing set. As the replacement drawings of 07 June 2022 continued to present inconsistent broken and solid lines, the claim was properly and finally rejected under 35 U.S.C. 112 (a) and (b).

Applicant's attempt to overcome the final rejection with the revised drawing set received 23 August 2022 removes certain solid and broken lines from the disclosure, introduces features in broken lines towards the top of the fluid vial, and changes the depiction of certain claimed features from flat to curved without antecedent basis. The response and drawings fail to comply with the description requirement thereof since the new figure views introduce new matter not supported by the original disclosure. The original disclosure does not reasonably convey to a designer of ordinary skill in the art that applicant was in possession of the design now claimed at the time the application was filed, *In re Rasmussen*, 650 F.2d 1212, 211 USPQ 323 (CCPA 1981); *In re Daniels*, 144 F.3d 1452, 46 USPQ2d 1788 (Fed. Cir. 1998).

Applicant is advised that there is no support in the original disclosure to allow one skilled in the art to understand the addition of features in broken lines at the top center of the fluid vial throughout the drawing set, the removal of lines broken and solid from the sides of the lemon-shaped feature in FIGs. 1 - 5, nor the change of certain claimed features in FIG. 6 and 7 from flat to curved.

To show the sides of the lemon-shaped feature as transparent, applicant has added internal features of the fluid vial to its top center in broken line. Applicant states support for these features can be found in the original application in "...FIG. 1, ...FIG. 8, and ...FIG. 13." However, as applicant has elected Embodiment 1 (FIGs. 1-7) without traverse in the election received 24 February 2022, only the features that are present in FIG. 1 have basis in the original application. There is no basis in the original disclosure to now include additional information present within the top center portion of the fluid vial in **all figures 1 -7**. See annotated drawings exemplifying this issue below.



Applicant's response states broken lines seen on the sides of the lemon-shaped feature have been removed "[b]ecause these lines do not 'aid[] in understanding the invention'...." Applicant states these lines are contour lines; however, throughout the drawing set in all of its iterations, they have been presented in contradictory presentations of solid and broken lines, but *not* contour lines. For this reason, their removal is considered new matter. There is no basis in the original disclosure to now remove these lines from the sides of the lemon-shaped feature **in FIGs. 1 - 5**. See annotated drawings exemplifying this issue on the next following pages.

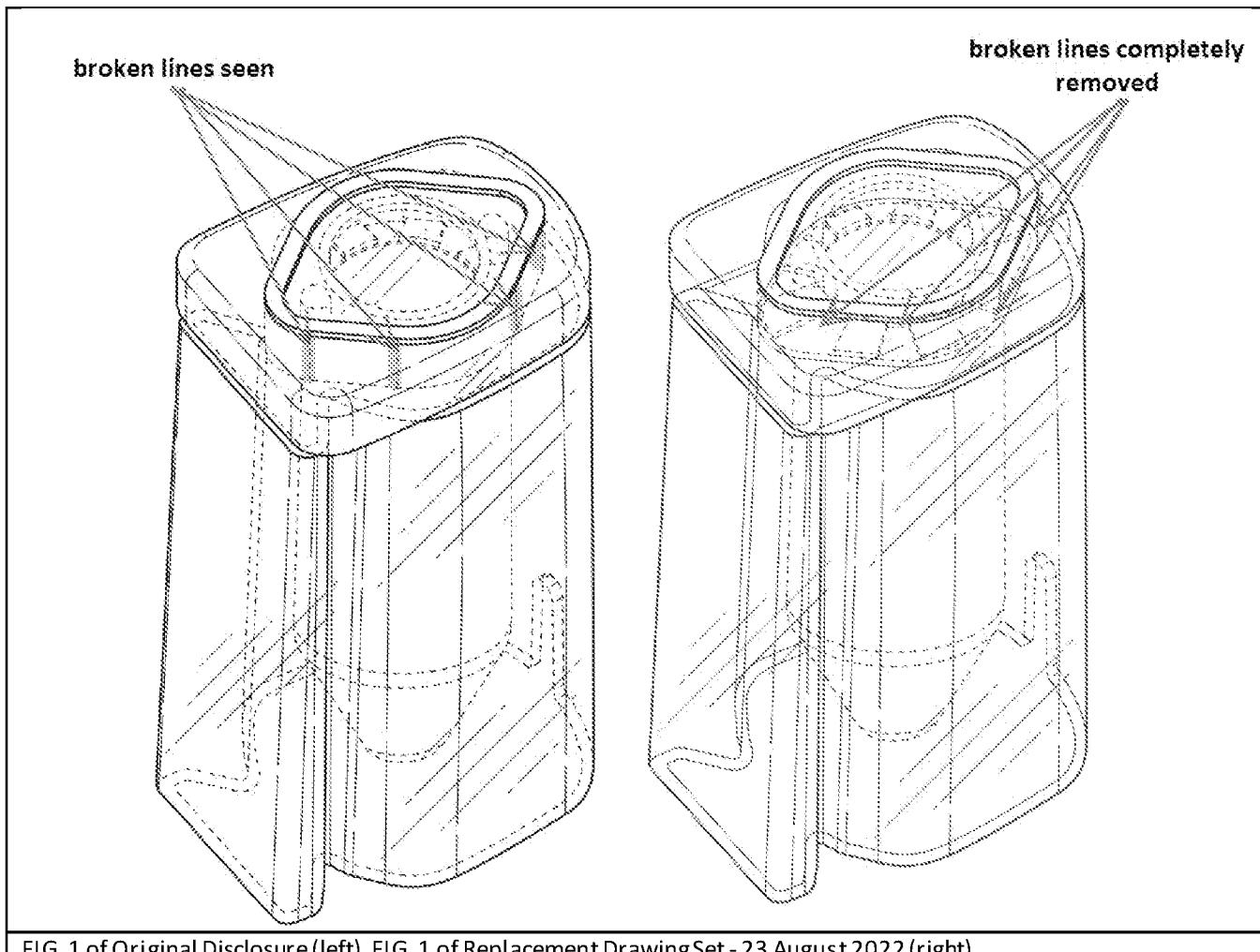
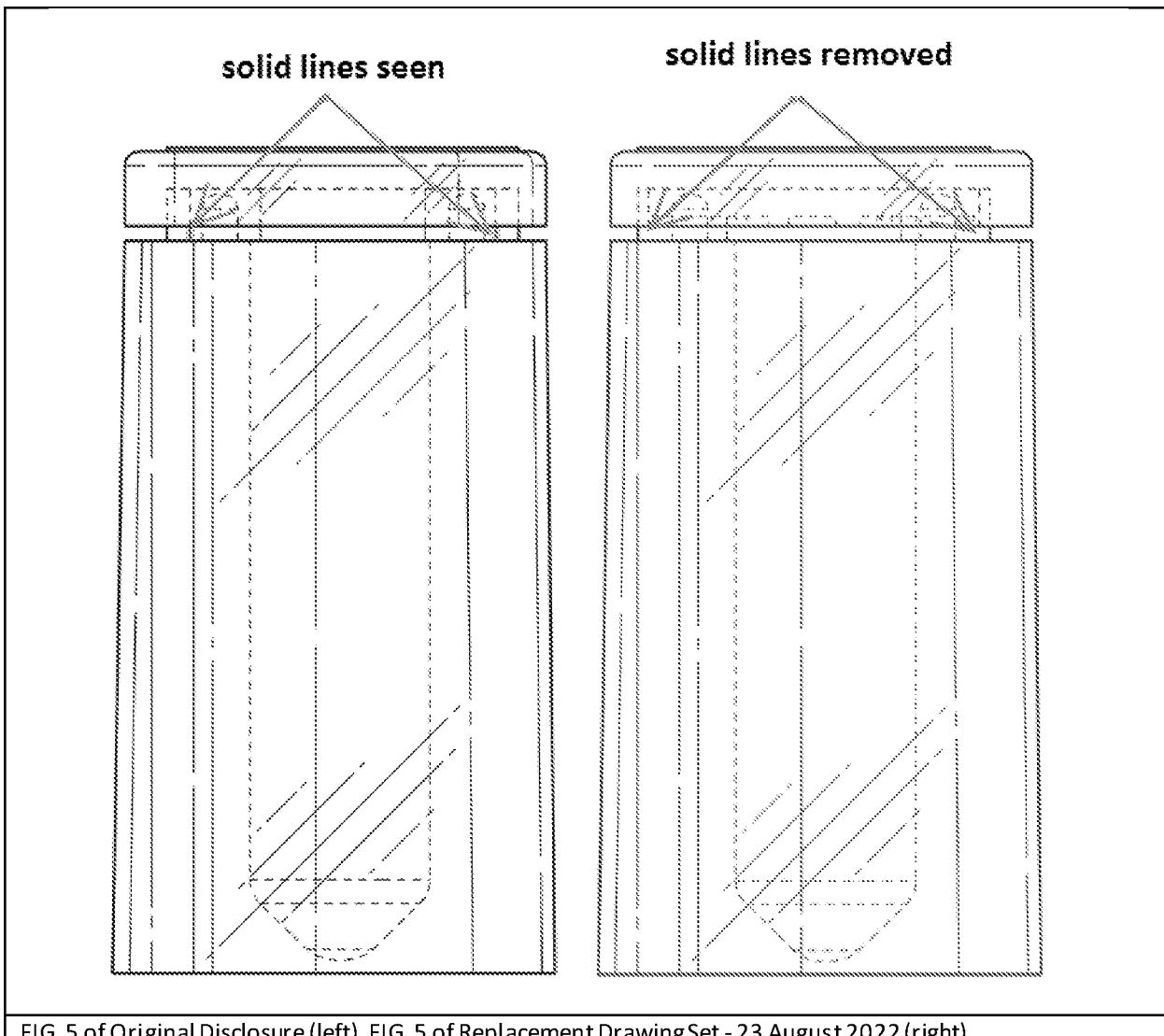
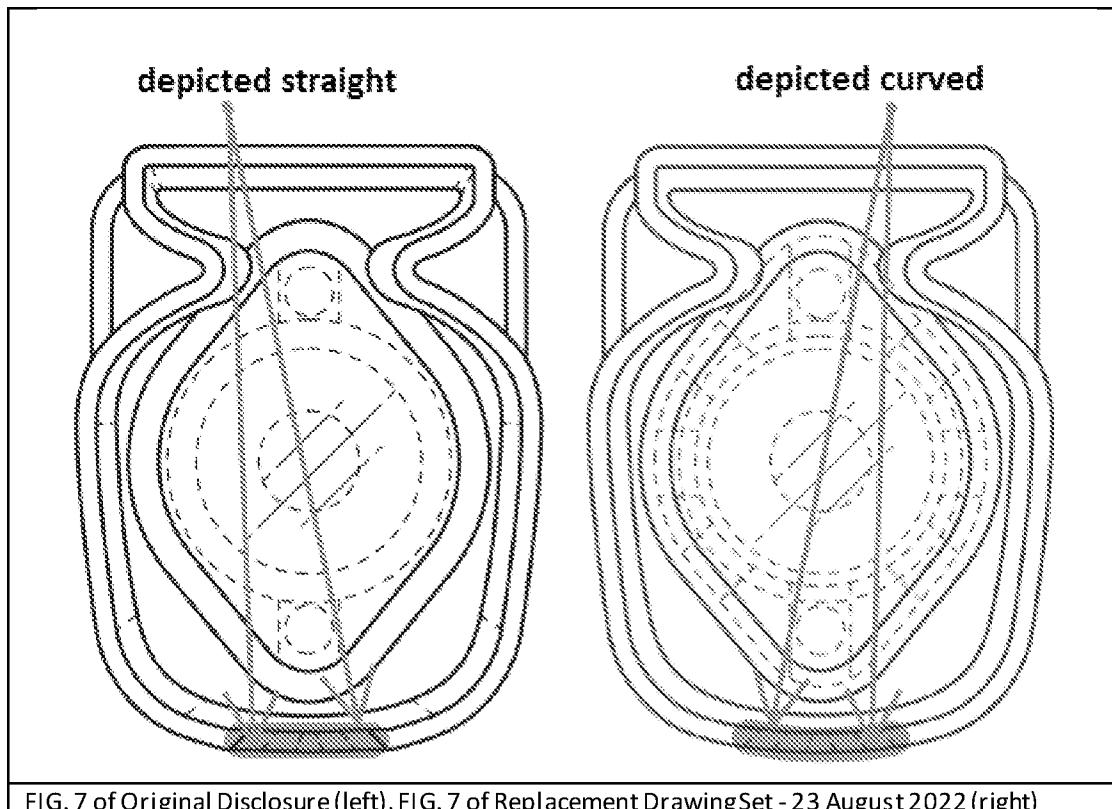


FIG. 1 of Original Disclosure (left), FIG. 1 of Replacement Drawing Set - 23 August 2022 (right)



Applicant has inexplicably changed the solid lines above and below the curved feature depicted in broken lines on the back of the article from straight to curved in top and bottom **views FIG. 6 and 7**. There is no basis in the original disclosure for this change. See annotated drawings exemplifying this issue below.



Applicant may attempt to demonstrate that the original disclosure establishes that the original figure views contain the newly added features and the configurations, and the information it conveys was disclosed in the original application; or remove any new matter that was introduced as a response to overcome the previous rejection.

As the most recent replacement drawing set introduces new matter, the changes and argument presented by the applicant fails to overcome the previous rejection.

When preparing new or replacement drawings, be careful to avoid introducing new matter. New matter is prohibited by 35 U.S.C. 132 and 37 CFR 1.121(f).

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." Each drawing

sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMANDA J BERLINSKI whose telephone number is 571-272-8061. The examiner can normally be reached Monday - Friday 10:00a-6:00p EST.

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/A.J.B./

Examiner, Art Unit 2924

/JONATHAN J HAN/

Primary Examiner, Art Unit 2926

Advisory Action Before the Filing of an Appeal Brief	Application No. 29/729,288	Applicant(s) Buse et al.	
	Examiner AMANDA J BERLINSKI	Art Unit 2924	AIA (FITF) Status Yes

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 23 August 2022 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.
NO NOTICE OF APPEAL FILED

1. The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:
 - a) The period for reply expires 3 months from the mailing date of the final rejection.
 - b) The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 - c) A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires _____ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANTS FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 - a) They raise new issues that would require further consideration and/or search (see NOTE below);
 - b) They raise the issue of new matter (see NOTE below);
 - c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached (See 37 CFR 1.116 and 41.33(a)).
4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. Applicant's reply has overcome the following rejection(s): _____
6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. For purposes of appeal, the proposed amendment(s):(a) will not be entered, or (b) will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on _____
9. The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
10. The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
11. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

12. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached.
13. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
14. Other: _____.

STATUS OF CLAIMS

15. The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

/AMANDA J BERLINSKI/
Examiner, Art Unit 2924

/JONATHAN J HAN/
Primary Examiner, Art Unit 2926

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 29/729,288
First Named Inventor: David BUSE
Filed : March 25, 2020
Group Art Unit : 2924
Examiner : Amanda Jean BERLINSKI
Docket No. : 2599-272
Confirmation No. : 7640
Customer No. : 17427

AMENDMENT AND REPLY UNDER 37 C.F.R. §1.116

MAIL STOP: AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DO NOT ENTER: /A.J.B./

Dear Sir:

This Amendment and Reply is being submitted in response to the Final Office Action mailed June 28, 2022. This Amendment and Reply is timely filed within two months of the mailing date of the Office Action

Amendments to the Drawings begin on page **2** of this paper.

Remarks begin on page **3** of this paper.

AMENDMENTS TO THE DRAWINGS

Please replace prior-filed replacement drawing sheets 1-4 (filed June 7, 2022)
with Replacement Sheets 1-4 submitted herewith.

REMARKS

Reconsideration and allowance in view of the foregoing amendments and following remarks are respectfully requested.

Interview Summary

Applicant's representative held a telephone interview with Examiner Amanda Berlinski and Primary Examiner Jonathan Han on August 4, 2022. A discussion was had regarding how to adequately address issues raised in the drawing objections. The Examiners reminded applicant's counsel that the removal of lines, broken or solid, would be considered new matter, but the Examiner's did agree that objected to contour lines could be removed and the revision would not be considered new matter.

Request for Withdrawal of Finality of Rejection

For the following reasons, Applicant respectfully submits that the finality of the subject Office Action is premature and therefore requests withdrawal of that finality, pursuant to Section 706.07(d) of the Manual of Patent Examining Procedure (MPEP).

Applicant respectfully submits that the finality of the June 28, 2022 Office Action (“OA2”) is improper, as OA2 raises new grounds of rejection that were not raised in the first Office Action dated March 7, 2022 (“OA1”) and which were not necessitated by Applicant’s response to the first Office Action. “Second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is [not] necessitated by applicant’s amendment of the claims” MPEP 706.07(a) (emphasis added).

Referring to Applicant’s response to OA1, the Examiner states:

The amendments and drawings received 07 June 2022 are acknowledged. Applicant’s amendments and drawings have been carefully considered, and while the objections of the previous action have been overcome due to applicant’s amendments, applicant has failed to fully address the previous 112(b) rejection and, as such, the replacement drawings still present issues that render the claimed design improper and inconsistent.

OA2 at p. 2 (emphasis added).

However, the particular features of the drawings forming the bases of the rejection in OA2 are different from the features forming the bases of the rejection in

OA1. The only rejection raised in OA1 under 35 USC §112 (b) was that “[t]here are portions of the article shown in broken lines while other figure views depict the same portions in solid line.” OA1 at pp. 3–6. As was acknowledged in OA2, “the objections of the previous action have been overcome due to” Applicant’s amended drawings filed on June 7, 2022, and thus, the “issues that render the claimed design improper and inconsistent” identified in the OA2 are new and different from the issues raised in OA1 and were not necessitated by Applicant’s amended drawings. OA2 does not identify any objection from the previous Office Action that was not overcome by Applicant’s June 7, 2022 response, nor does OA2 identify any objectionable characteristic of the drawings that was introduced by the June 7 drawings.

OA2 states “[i]n view of the new drawings submitted on 07 June 2022 the claim is again and FINALLY REJECTED under 35 U.S.C. 112 (a) and (b)” OA2 at p. 4. But the Office Action fails to identify any particular feature or characteristic that was introduced by the “new drawings” that necessitates the new bases for the rejection under Section 112. The particular features objected to in OA2 were present in the originally-filed drawings and could have been raised in OA1.

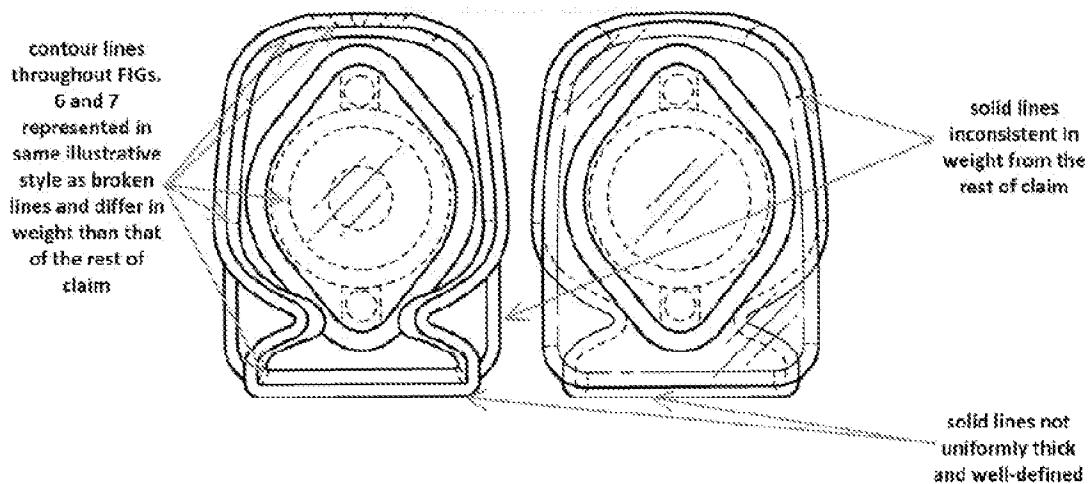
In the current Office Action, rejections are raised under 35 USC §112 (a) & (b) on the grounds that certain features are depicted inconsistently through the claims. OA2 at pp. 4-7. The features identified as inconsistently depicted in OA2 are different from the features identified in OA1 as having inconsistent line types. Because Applicant’s response to OA1 addressed the objections (i.e., the only objections) raised in the first office action, as was acknowledged in OA2, it follows that the rejections raised in OA2 are new and different than those raised in OA1.

Accordingly, applicant respectfully request that the finality of the current Office Action (OA2) be withdrawn.

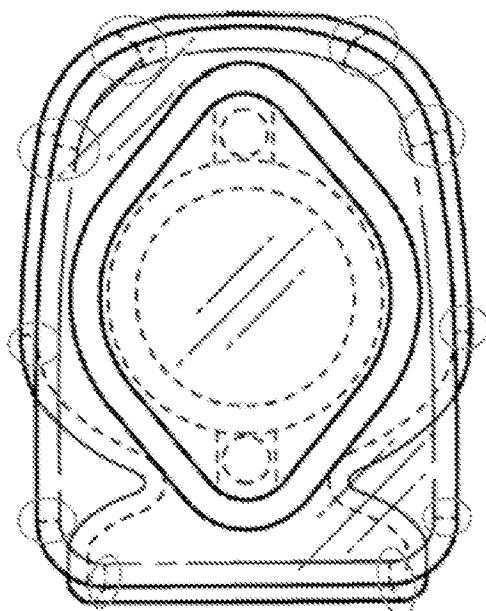
Drawing Objection

The drawings are objected to for inconsistent and improper lines as per 37 CFR 1.84(I) and 37 CFR 1.84(m). OA2 at p. 2. Replacement drawings addressing the objections are submitted herewith.

The particular objections are set forth in the following annotated drawings set forth at page 3 of OA2:

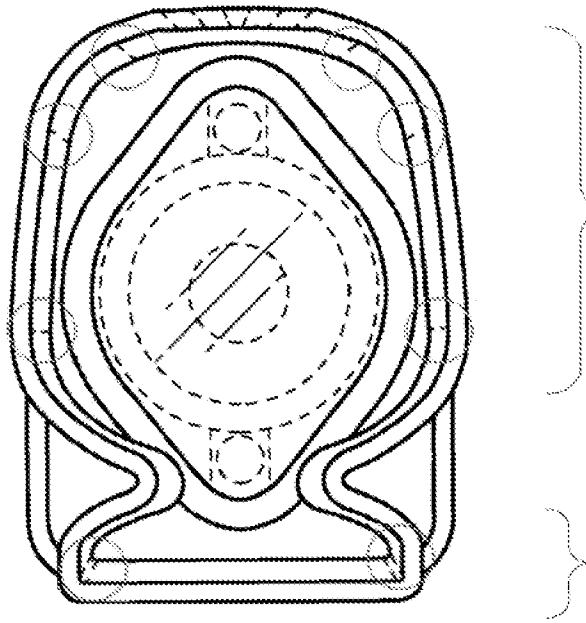


As explained during the Examiner Interview, since the contour lines around the inner and outer perimeter of the container are so short in FIG. 6 (the top view) and FIG. 7 (the bottom) view, it is not feasible to present them in a way that does not look like a broken line. As noted in the Office Action, “the use of contour lines in views is encouraged if it aids in understanding the invention and if it does not reduce legibility.” OA2 at p. 2. In this case, Applicant believes the short contour lines in FIGS. 6 and 7 do not aid in understanding the invention and do reduce legibility of the drawing – as evidenced by the objection to the contour lines. Accordingly, FIGS. 6 and 7 are amended to remove the short contour lines.



Circled contour lines removed

FIG. 6



circled contour lines deleted

Two contour lines replaced
with single corner line

FIG. 7

It was confirmed by the Examiners during the Examiner interview that removal of such contour lines does not constitute new matter.

FIGS. 6 and 7 are also re-drawn to present solid that a uniformly thick, well defined, and consistent in weight with the rest of the claim.

For the foregoing reasons, Applicant respectfully requests withdrawal of the objections to FIGS. 6 and 7.

Claim Rejections – 35 USC § 112(a), (b)

The claim is rejected under 35 USC §112(a) and (b) on the grounds that there are features depicted inconsistently throughout the claim. Replacement drawings addressing the rejections are submitted herewith. The various rejections set forth in the Office Action, and the corrective actions take for each, are listed below.

1. “[T]here are two broken lines which flank the two circular features in the top and bottom views which are not seen in the perspective view.” OA2 at pp. 4-5.

FIG. 1 – the perspective view – is revised to show the lines flanking the circular features.

2. “The tip of the inverted pencil-shaped feature is depicted inconsistently, as the bottom circular broken line seen throughout the figure views is not seen in the top view of FIG. 6.” OA2 at p. 5.

FIG. 6 (top view) and FIG. 7 (bottom view) are revised to show the bottom circular broken line in both views and to show the annular feature on the top surface of the lid and so as to be consistent with all other figures/views.

3. “The bottom plane, including the arched feature seen on the front of the article, is not seen in the top view.” OA2 at p. 5.

FIG. 6 (top view) is revised to show the bottom plane, including the arched feature seen on the front of the article.

4. “Throughout the claim, the sides of the lemon-shaped feature are seen in broken and solid lines, while in FIG. 1 the sides are seen in only broken lines or only solid line.” OA2 at pp. 5-6.

The lines on the sides of the “lemon-shaped feature” referred to in the Office Action are contour lines. Because these lines do not “aid[] in understanding the

invention” – as is evidenced by the rejection, these lines are removed from the drawings, as shown in the drawings below.

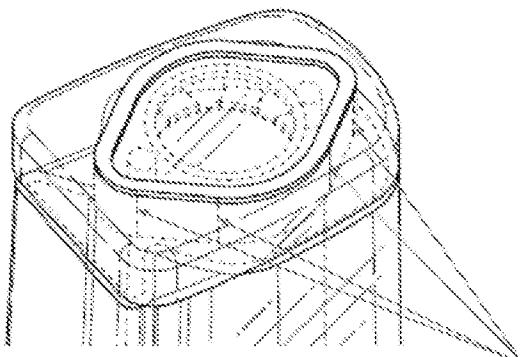


FIG. 1

Contour lines removed



FIG. 2

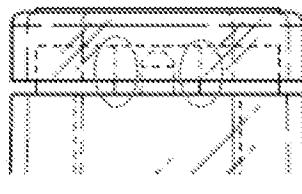


FIG. 3

Circled contour lines in removed from FIGs. 2-5

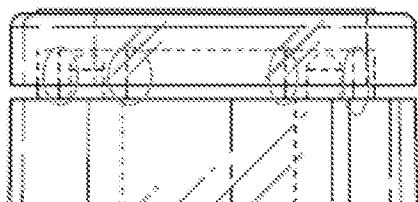


FIG. 4

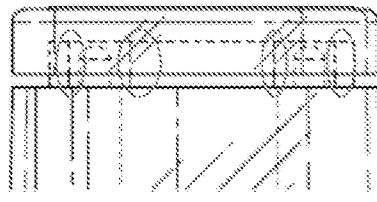


FIG. 5

5. “Additionally, the transparency of these features is unclear, as in FIG. 1 they are presented as opaque, while throughout the rest of the claim they are presented as transparent.” OA2 at p. 6.

FIG. 1 is revised to show the sides of the “lemon-shaped feature” as transparent, with features of the Fluid Vial internal to the sides of the lemon-shaped feature shown in

dashed lines. Support for all features visible through the sides of the lemon-shaped feature can be found in the original application, for example, at FIG. 1, at FIG. 8. – described as “a top perspective view of the FLUID VIAL without a lid over a top end thereof” –, and at FIG. 13 – described as “a top plan view thereof.” FIGS. 2-7 are amended to show features internal to the sides of the lemon-shaped feature so as to be consistent with FIG. 1.

In view of the revisions made to the figures on the Replacement Sheets, withdrawal of the rejections under 35 USC § 112 is respectfully requested.

Closing Comments

In view of the above response, it is believed that the claim satisfies the requirements of the patent statutes. Reconsideration of the instant application and early notice of allowance are requested.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, they are encouraged to contact Applicant’s undersigned representative at the below listed telephone number.

Please charge any required fee or credit any overpayment, in association with this submission, to Deposit Account 02-2135.

Respectfully submitted,

Date: August 23, 2022

By /Richard Wydeven/
Richard Wydeven
Attorney for Applicants
Registration No. 39,881
ROTHWELL, FIGG, ERNST & MANBECK, p.c.
901 New York Ave., NW, Suite 900 East
Washington, D.C. 20001
Telephone: (202)783-6040
Facsimile: (202) 783-6031

Attachment:
Replacement Sheets 1-4 (FIGS. 1-7)

Replacement Sheet

1/4

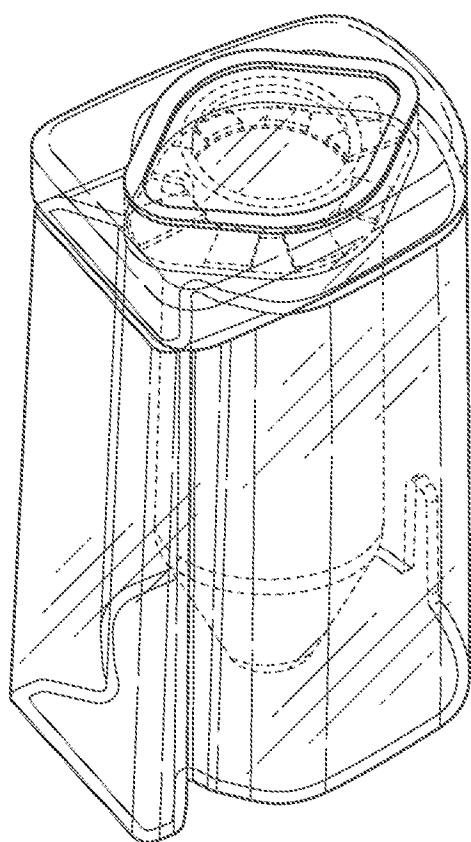


FIG. 1

2/4

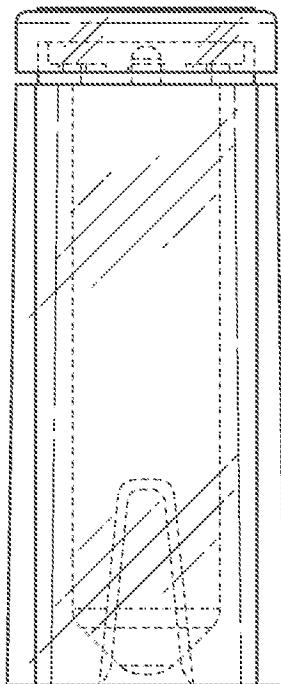


FIG. 2

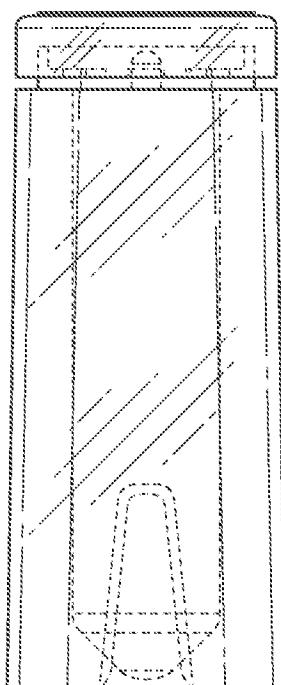


FIG. 3

Replacement Sheet

3/4

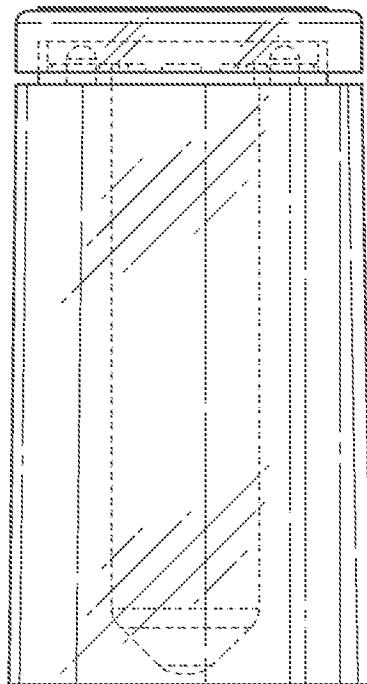


FIG. 4

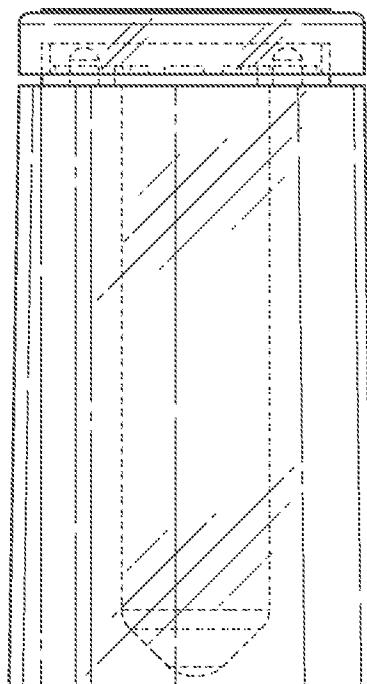


FIG. 5

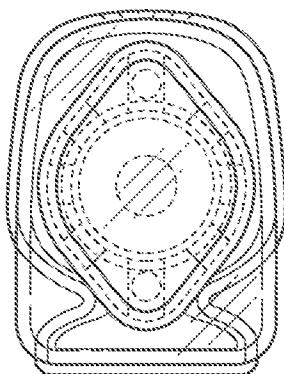


FIG. 6

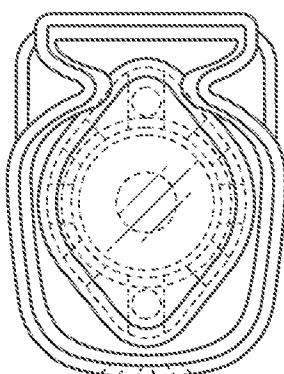


FIG. 7

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 29/729,288
First Named Inventor: David BUSE
Filed : March 25, 2020
Group Art Unit : 2924
Examiner : Amanda Jean BERLINSKI
Docket No. : 2599-272
Confirmation No. : 7640
Customer No. : 17427

AMENDMENT AND REPLY UNDER 37 C.F.R. §1.116

MAIL STOP: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Amendment and Reply is being submitted in response to the Final Office Action mailed June 28, 2022. This Amendment and Reply is timely filed within two months of the mailing date of the Office Action

Amendments to the Drawings begin on page **2** of this paper.

Remarks begin on page **3** of this paper.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640
17427	7590	08/10/2022	EXAMINER	
Richard Wydeven			BERLINSKI, AMANDA JEAN	
RFEM/ Genprobe				
901 New York Avenue, NW			ART UNIT	PAPER NUMBER
Suite 900 East				2924
Washington, DC 20001				
			NOTIFICATION DATE	DELIVERY MODE
			08/10/2022	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdept@hologic.com

pto-pat-email@rfem.com

Examiner-Initiated Interview Summary	Application No. 29/729,288	Applicant(s) Buse et al.		
	Examiner AMANDA J BERLINSKI	Art Unit 2924	AIA (First Inventor to File) Status Yes	Page 1 of 1

All Participants (applicant, applicants representative, PTO personnel)	Title	Type
AMANDA J BERLINSKI	Examiner	Video Conference
Jonathan Han	Primary Examiner	
Richard Wydeven	Attorney of Record	

Date of Interview: 04 August 2022

Issues Discussed:

Drawings

Discussion was had regarding how to adequately address the issues covered in the drawing objection. Additionally, applicant's counsel was reminded that removal of lines, broken or solid, would be considered new matter, and that the drawing set should present a consistent depiction of the article from figure to figure.

/AMANDA J BERLINSKI/ Examiner, Art Unit 2924	/JONATHAN J HAN/ Primary Examiner, Art Unit 2926
<p>Applicant is reminded that a complete written statement as to the substance of the interview must be made of record in the application file. It is the applicants responsibility to provide the written statement, unless the interview was initiated by the Examiner and the Examiner has indicated that a written summary will be provided. See MPEP 713.04</p> <p>Please further see: MPEP 713.04 Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews, paragraph (b) 37 CFR § 1.2 Business to be transacted in writing</p>	

Applicant recordation instructions: It is not necessary for applicant to provide a separate record of the substance of interview.

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

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Alexandria, Virginia 22313-1450

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640
17427	7590	06/28/2022	EXAMINER	
Richard Wydeven			BERLINSKI, AMANDA JEAN	
RFEM/ Genprobe				
607 Fourteenth Street, NW			ART UNIT	PAPER NUMBER
Suite 800				2924
Washington, DC 20005				
			NOTIFICATION DATE	DELIVERY MODE
			06/28/2022	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdept@hologic.com

pto-pat-email@rfem.com

Office Action Summary	Application No. 29/729,288	Applicant(s) Buse et al.	
	Examiner AMANDA J BERLINSKI	Art Unit 2924	AIA (FITF) Status Yes

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 June 2022.
 A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

- 5) Claim(s) 1 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) Claim(s) ____ is/are allowed.
- 7) Claim(s) 1 is/are rejected.
- 8) Claim(s) ____ is/are objected to.
- 9) Claim(s) ____ are subject to restriction and/or election requirement

* If any claims have been determined allowable, you may be eligible to benefit from the **Patent Prosecution Highway** program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.

Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on 07 June 2022 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

Certified copies:

- a) All b) Some** c) None of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

** See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 3) Interview Summary (PTO-413)
 Paper No(s)/Mail Date ____.
- 2) Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b)
- 4) Other: ____.
 Paper No(s)/Mail Date ____.

DETAILED ACTION

Notice of Pre-AIA or AIA Status

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

Acknowledgement of Amendments

The amendments and drawings received 07 June 2022 are acknowledged. Applicant's amendments and drawings have been carefully considered, and while the objections of the previous action have been overcome due to applicant's amendments, applicant has failed to fully address the previous 112(b) rejection and, as such, the replacement drawings still present issues that render the claimed design improper and inconsistent. As such, the claim objected to and is again and finally rejected under 35 U.S.C. 112 (a) and (b) as follows.

Drawing Objection

The drawings are objected to for inconsistent and improper lines as per 37 CFR 1.84(l) and 37 CFR 1.84(m). All drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line, number, and letter must be durable, clean, black (except for color drawings), sufficiently dense and dark, and *uniformly thick and well-defined*. Drawings suitable for patents should be drafted mechanically and should not be of the sketched or freehand variety. Additionally, the use of contour lines in views is encouraged if it aids in understanding the invention and if it does not reduce legibility. These lines must be thin and they must contrast with the rest of the drawings. In the top and bottom views of FIG. 6 and 7, the line quality of solid, contour, and broken lines differs from that of the respective line qualities seen in the rest of the drawing disclosure. The difference in weight and line quality between these two figure views from the rest of the disclosure reduces legibility of what each line is intending to represent. Because of this, distinguishing between what is possibly a contour line (representing planar dimensionality) and what is a broken line (removed from the claim), is difficult. The examiner suggests ensuring all line depiction is consistent in weight and adheres to the rules as stated above. All lines which represent solid, contour, and broken lines

must be clearly represented and must be consistent in depiction throughout the drawing set.

See annotated drawings below.

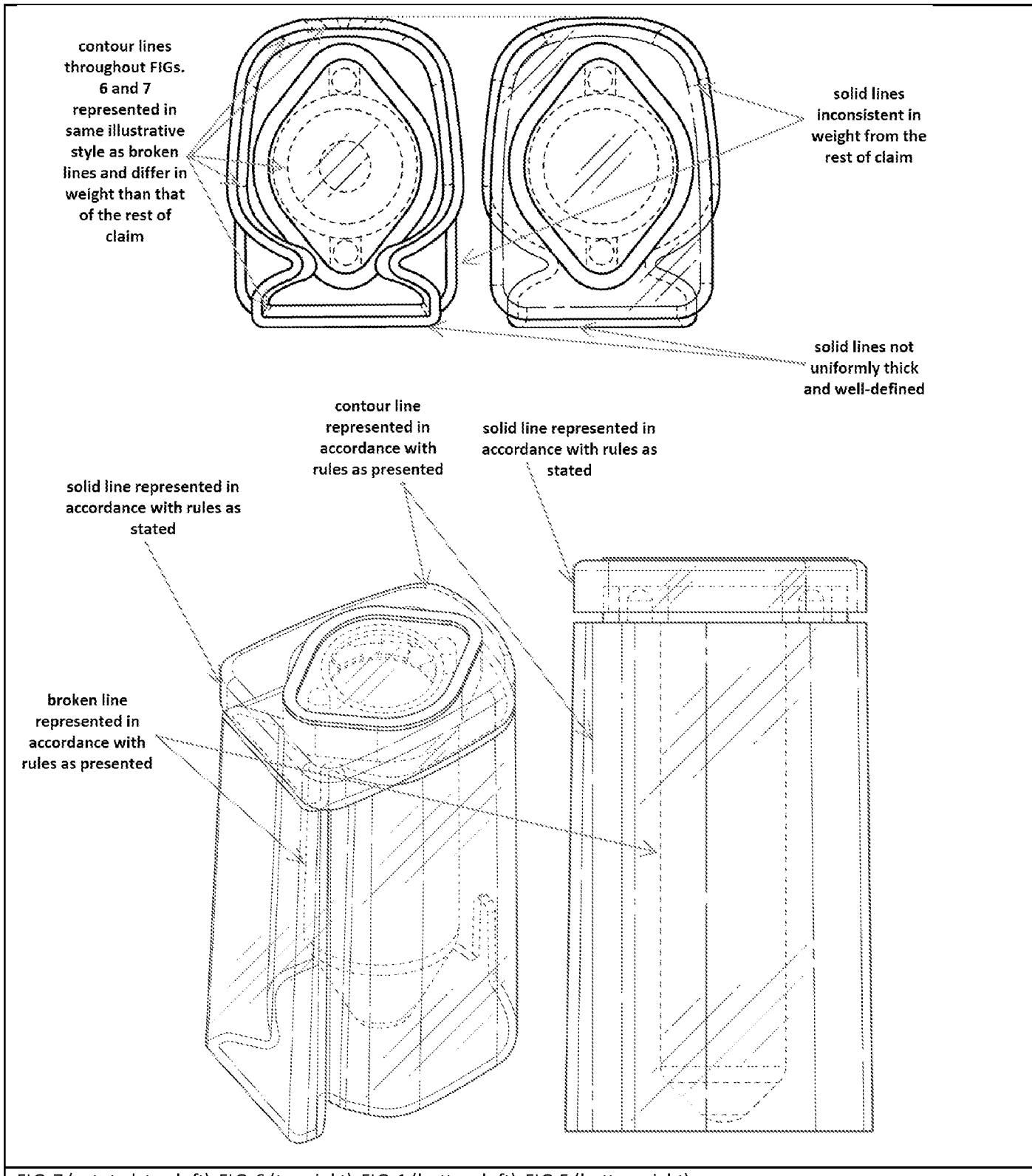


FIG. 7 (rotated, top left), FIG. 6 (top right), FIG. 1 (bottom left), FIG. 5 (bottom right)

Correction of the drawings are required.

When preparing new or replacement drawings, be careful to avoid introducing new matter.

New matter is prohibited by 35 U.S.C. 132 and 37 CFR 1.121(f).

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Final Rejection under 35 U.S.C. 112, (a) and (b)

In view of the new drawings submitted on 07 June 2022 the claim is again and FINALLY REJECTED under 35 U.S.C. 112 (a) and (b) or 35 U.S.C. 112, first and second paragraphs, (pre-AIA), as the claimed invention is not described in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the same, and fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is indefinite and nonenabling because the shape, appearance, and description of some portions of the design are unclear due to inconsistent disclosure of the claimed design as currently depicted. Specifically, the following are noted:

1. There are inconsistencies between the views of the drawings and the overall appearance of the design is unclear (MPEP § 1504.04), specifically:
 - a. **There are features depicted inconsistently throughout the claim.** There are certain features seen in some views while other views do not show these features. Specifically, there are two broken lines which flank the two circular features in the top and bottom

views which are not seen in the perspective view. The tip of the inverted pencil-shaped feature is depicted inconsistently, as the bottom circular broken line seen throughout the figure views is not seen in the top view of FIG. 6. The bottom plane, including the arched feature seen on the front of the article, is not seen in the top view. The exact configuration of the claimed features indicated is unknown and therefore the claimed design is indefinite. See annotated drawings on next page.

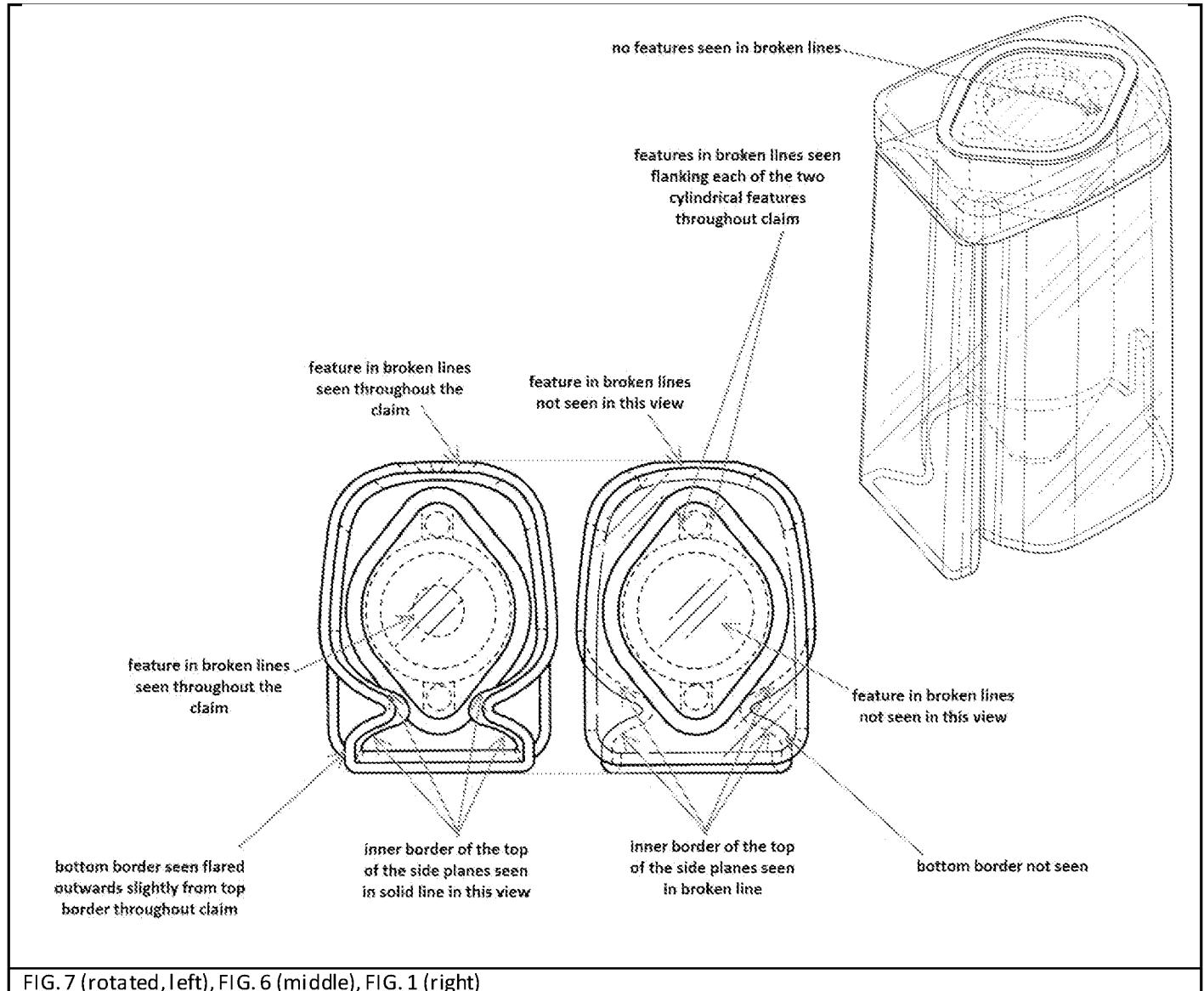


FIG. 7 (rotated, left), FIG. 6 (middle), FIG. 1 (right)

b. The sides of the lemon-shaped inner feature are shown inconsistently in FIG. 1.

Throughout the claim, the sides of the lemon-shaped feature are seen in broken and

solid lines, while in FIG. 1 the sides are seen in only broken lines or only solid line.

Additionally, the transparency of these features is unclear, as in FIG. 1 they are presented as opaque, while throughout the rest of the claim they are presented as transparent. See annotated drawings on next page.

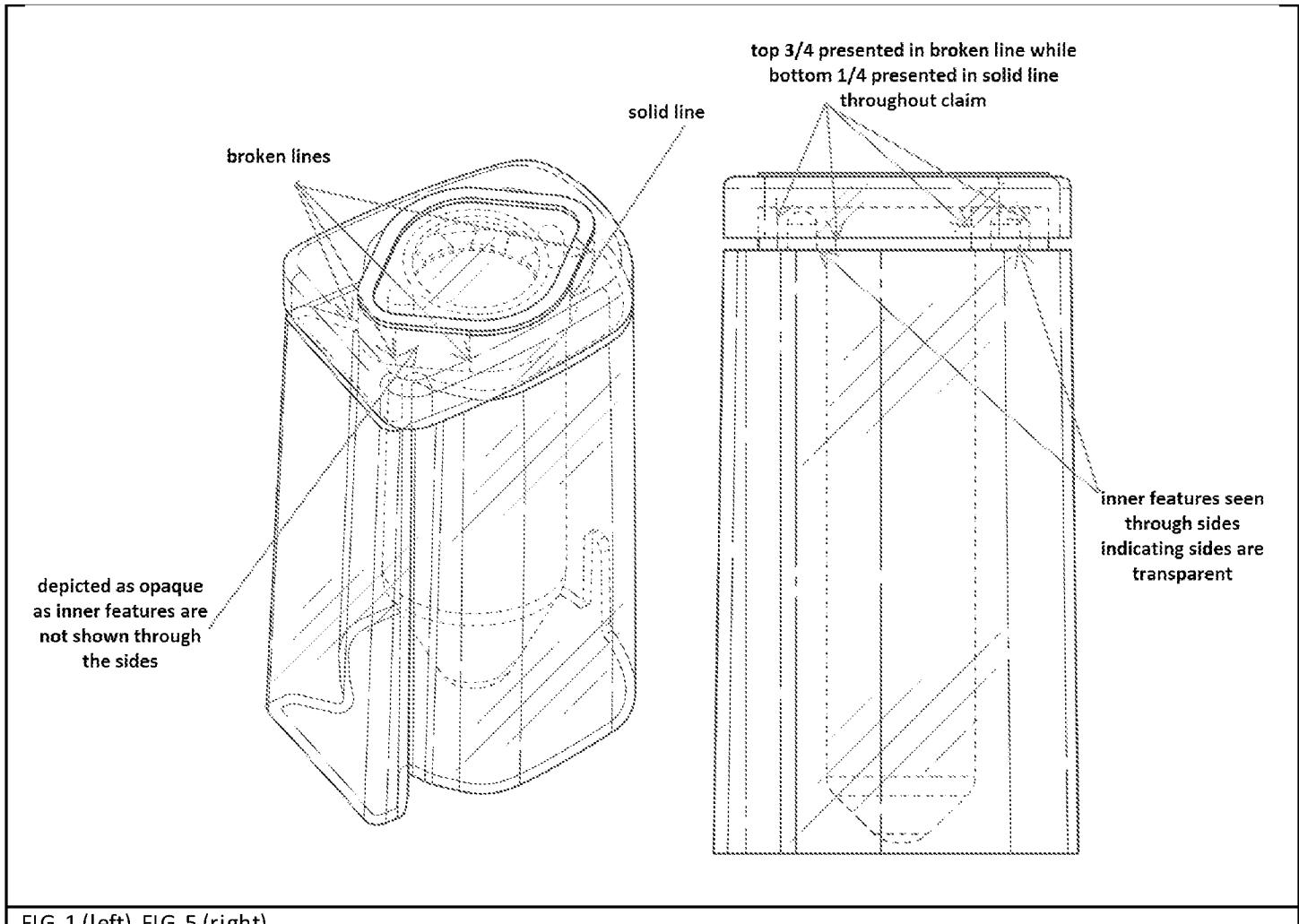


FIG. 1 (left), FIG. 5 (right)

While the application contains drawings of the invention in multiple views, the inconsistencies in the different figures present confusing and contradictory conditions that require the examiner to rely on conjecture to understand the intention of the applicant.

Those portions of the design that are inconsistently depicted may be made consistent in order to overcome that portion of the rejection.

The drawings must consistently depict the claimed design.
Correction of the drawing is suggested.

Applicant is again reminded to avoid introduction of anything that could be construed to be new matter prohibited by 35 U.S.C. 132 and 37 CFR 1.121.

Summation

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMANDA J BERLINSKI whose telephone number is 571-272-8061. The examiner can normally be reached Monday - Friday 10:00a-6:00p EST.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL C STOUT can be reached on 408-918-7558. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of published or unpublished applications may be obtained from Patent Center. Unpublished application information in Patent Center is available to registered users. To file and manage patent submissions in Patent Center, visit: <https://patentcenter.uspto.gov>. Visit <https://www.uspto.gov/patents/apply/patent-center> for more information about Patent Center and <https://www.uspto.gov/patents/docx> for information about filing in DOCX format. For additional questions, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A.J.B./

Examiner, Art Unit 2924

/JONATHAN J HAN/

Primary Examiner, Art Unit 2926

AMENDMENTS TO THE SPECIFICATION

Please replace the specification with the substitute specification for which clean and marked-up copies are submitted herewith. The substitute specification includes no new matter.

**U.S. DESIGN PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

SPECIFICATION

Be it known that the applicant, Gen-Probe Incorporated, seeks a design patent on a new, original and ornamental design for a FLUID VIAL, reference being had to the accompanying drawings, forming a part hereof.

DESCRIPTION OF DRAWINGS

FIG. 1 shows a top perspective view of the FLUID VIAL thereof.

FIG. 2 shows a front elevation view thereof.

FIG. 3 shows a back elevation view thereof.

FIG. 4 shows a left-side elevation view thereof.

FIG. 5 shows a right-side elevation view thereof.

FIG. 6 shows a top plan view thereof.

FIG. 7 shows a bottom plan view thereof.

The broken lines shown in the figures depict portions of the FLUID VIAL that form no part of the claimed design.

Applicant claims:

The ornamental design for a FLUID VIAL as shown and described.

AMENDMENTS TO THE DRAWINGS

Please replace originally-filed drawing sheets 1-4 with Replacement Sheets 1-4 submitted herewith in which FIG. 1, FIG. 6, and FIG. 7 are amended.

Please delete originally-filed drawing sheets 5-12, including FIGS. 8-21, as reflected in the Annotated Sheets submitted herewith.

The sheet numbers of sheets 1-4 have been updated to 1/4, 2/4, 3/4, and 4/4.

REMARKS

Reconsideration and allowance in view of the foregoing amendments and following remarks are respectfully requested.

Interview Summary

Applicant's representative held a telephone interview with Examiner Berlinski on May 17, 2022. During the interview, applicant's representative described the proposed drawing revisions to address the rejections under 35 USC § 112(a), (b), a hand-marked copy of which had been provided to the Examiner in advance of the interview. Examiner Berlinski advised applicant to thoroughly review the drawings to ensure consistency between the views.

Non-Elected Drawings

FIGS. 8-21 directed to non-elected embodiments 2 and 3 have been cancelled from the application by deleting drawing sheets 5-12.

Objections to the Specification

In response to the objections to the specification, applicant has submitted a substitute specification including the following amendments.

Figure descriptions for Figures 8-21 have been deleted.

The description of FIG. 1 suggested in the Office Action has been adopted.

The statement relating to broken lines suggested in the Office Action has been adopted.

Claim Rejections – 35 USC § 112(a), (b)

The claim is rejected under 35 USC §112(a) and (b) for the following reasons:

There are portions of the article shown in broken lines while other figure views depict these same portions in solid line. It is possible the broken lines seen in the drawings are intending to depict claimed portions of the article which are seen through transparent planes. However, the function of broken lines in this way causes an inconsistency as the claimed portions of the article cannot be determined. The function of broken lines in this way further confuses the intention of the applicant when attempting to understand the inner features and pencil-shaped structure within the article; it is unclear if these features are depicted in broken lines because

they have been removed from the claim, *or* if they are displayed in broken lines due to being seen through a transparent surface. **Any portion of the structure that is intended to be claimed should be visible in solid lines (or contour lines where appropriate) through the transparent surfaces of the article.**

OA at 3-4 (emphasis in original)

Broken lines, or portions of broken lines, in FIG. 1 that are visible as solid lines in other figures have been changed to solid lines. In the annotated version of FIG. 1 below, arrows point to lines that have been added or that have been converted from dashed to solid so as to be consistent with the other figures.

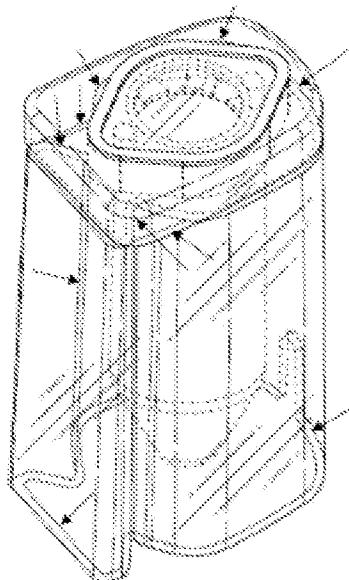


FIG. 1

In the annotated version of FIG. 6 below, arrows point to solid and dashed lines that have been added so as to be consistent with the other figures.

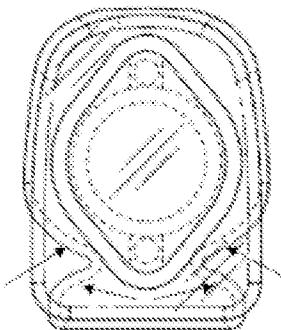


FIG. 6

In the annotated version of FIG. 7 below, arrows point to lines that have been converted from solid to dashed so as to be consistent with the other figures.

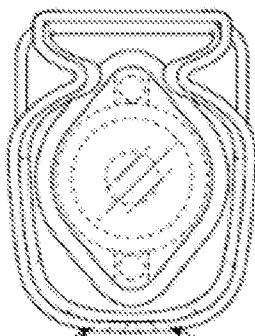


FIG. 7

The remaining dashed lines in FIGS. 1-7 represent features of the article that are not part of the claimed design, as no edges, surfaces, or surface transitions that are only visible through transparent portions of the article are intended to be part of the claimed design.

Withdrawal of the rejection under 35 USC § 112 is respectfully requested.

Closing Comments

In view of the above response, it is believed that the claim satisfies the requirements of the patent statutes. Reconsideration of the instant application and early notice of allowance are requested.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, they are encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Please charge any required fee or credit any overpayment, in association with this submission, to Deposit Account 02-2135.

Respectfully submitted,

Date: June 7, 2022

By /Richard Wydeven/
Richard Wydeven
Attorney for Applicants
Registration No. 39,881
ROTHWELL, FIGG, ERNST & MANBECK, p.c.
607 14th Street, NW, Suite 800,
Washington, D.C. 20005
Telephone: (202)783-6040

**U.S. DESIGN PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

SPECIFICATION

Be it known that the applicant, Gen-Probe Incorporated, seeks a design patent on a new, original and ornamental design for a FLUID VIAL, reference being had to the accompanying drawings, forming a part hereof.

DESCRIPTION OF DRAWINGS

~~FIG. 1 shows a top perspective view of the FLUID VIAL with a lid over a top end thereof.~~

~~FIG. 2 shows a front elevation view thereof.~~

~~FIG. 3 shows a back elevation view thereof.~~

~~FIG. 4 shows a left-side elevation view thereof.~~

~~FIG. 5 shows a right-side elevation view thereof.~~

~~FIG. 6 shows a top plan view thereof.~~

~~FIG. 7 shows a bottom plan view thereof.~~

~~FIG. 8 shows a top perspective view of the FLUID VIAL without a lid over a top end thereof.~~

~~FIG. 9 shows a front elevation view thereof.~~

~~FIG. 10 shows a back elevation view thereof.~~

~~FIG. 11 shows a left side elevation view thereof.~~

~~FIG. 12 shows a right side elevation view thereof.~~

~~FIG. 13 shows a top plan view thereof.~~

~~FIG. 14 shows a bottom plan view thereof.~~

~~FIG. 15 shows a top perspective view of the FLUID VIAL without a lid over a top end thereof and with a top, external feature of the vial shown in dashed lines.~~

~~FIG. 16 shows a front elevation view thereof.~~

~~FIG. 17 shows a back elevation view thereof.~~

~~FIG. 18 shows a left side elevation view thereof.~~

~~FIG. 19 shows a right side elevation view thereof.~~

~~FIG. 20 shows a top plan view thereof.~~

~~FIG. 21 shows a bottom plan view thereof.~~

~~Features shown in~~The broken lines shown in the figures depict portions of the FLUID VIAL that form no~~are not~~ part of the claimed design.

Applicant claims:

The ornamental design for a FLUID VIAL as shown and described.

1/4

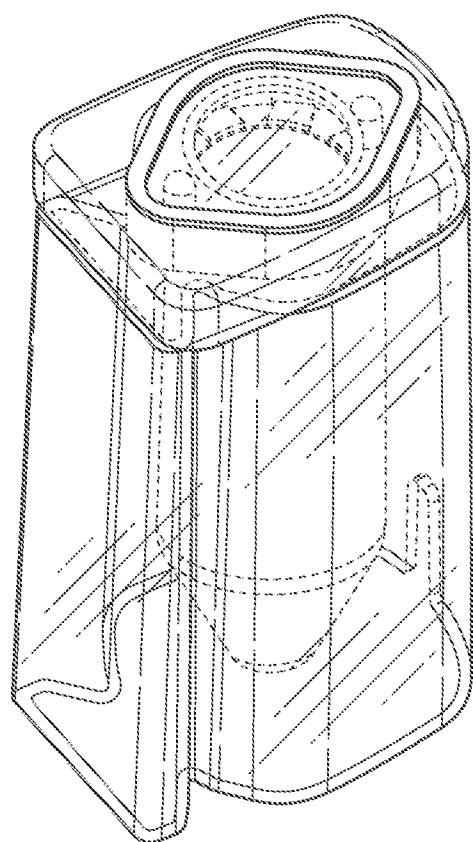


FIG. 1

2/4

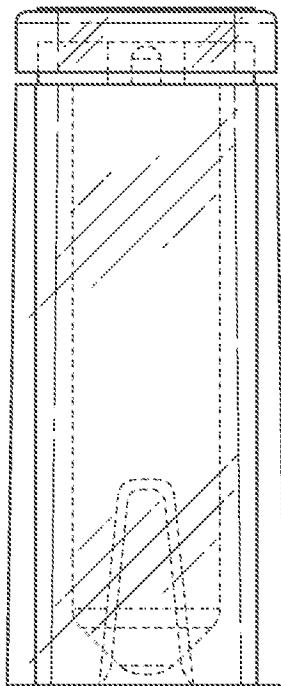


FIG. 2

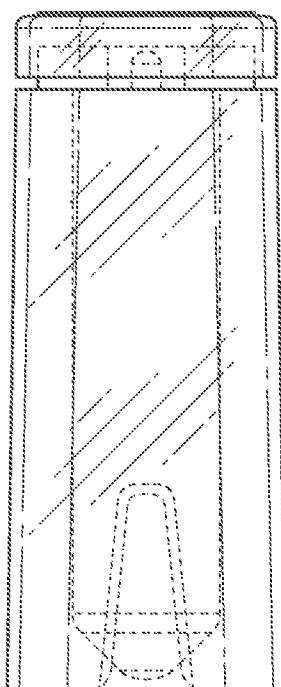


FIG. 3

3/4

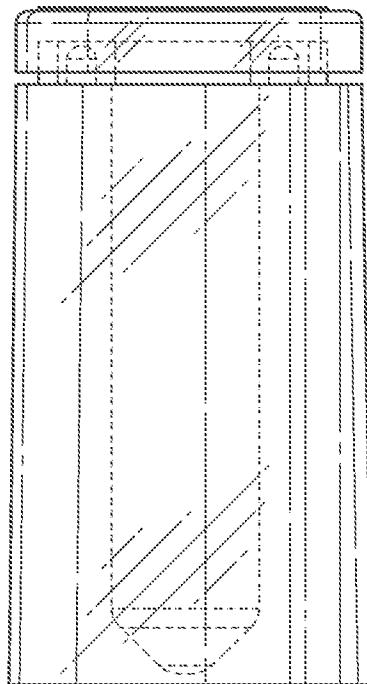


FIG. 4

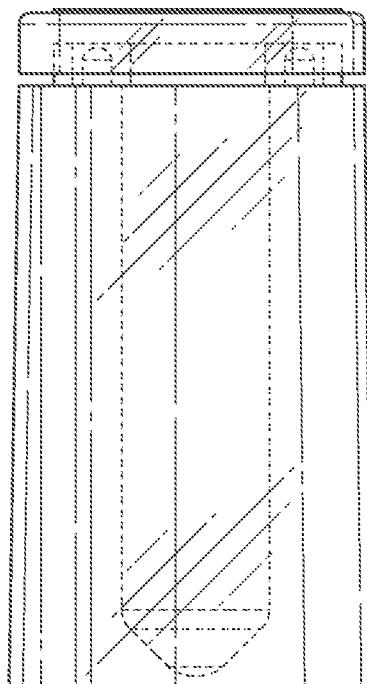


FIG. 5

4/4

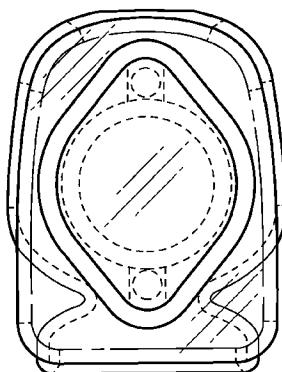


FIG. 6

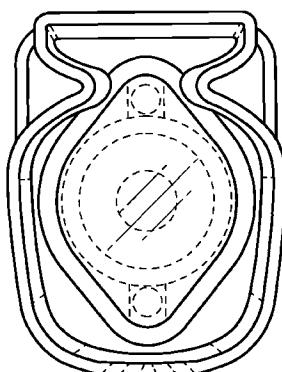


FIG. 7

5/12

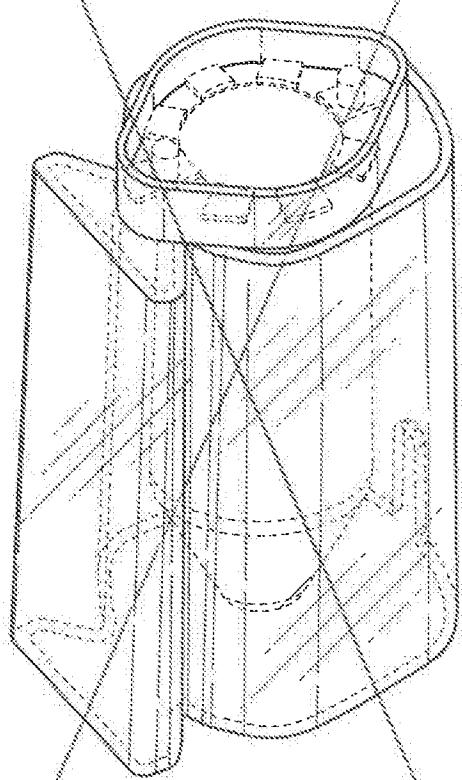


FIG. 8

Annotated Sheet

6/12

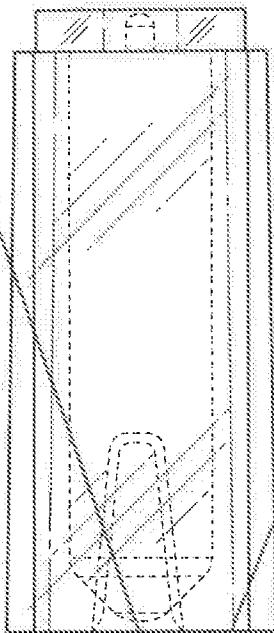


FIG. 9

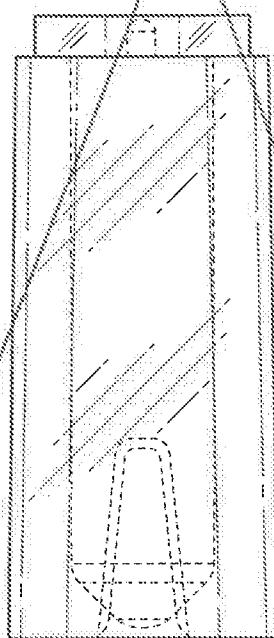


FIG. 10

Annotated Sheet

7/12

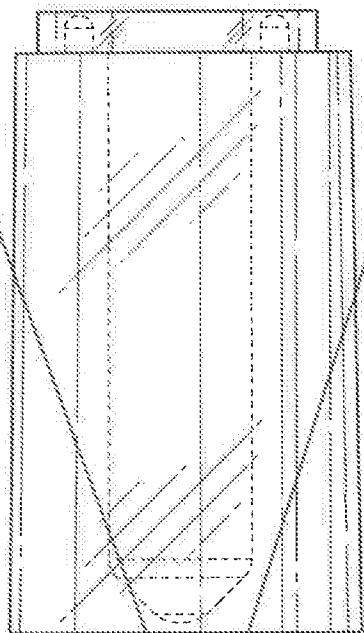


FIG. 11

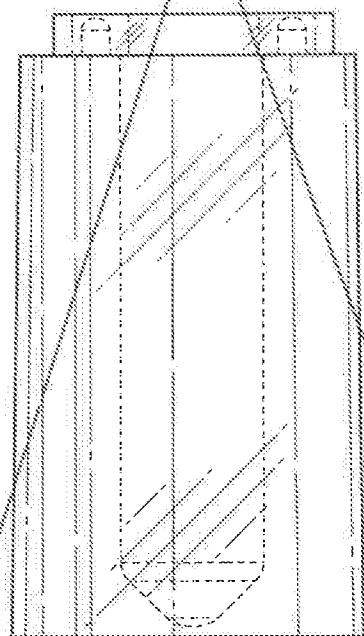


FIG. 12

Annotated Sheet

8/12

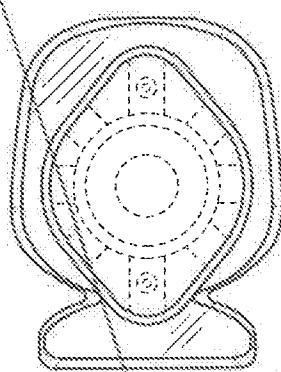


FIG. 13

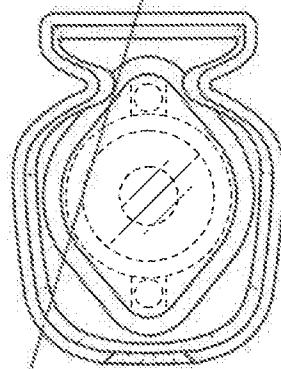


FIG. 14

Annotated Sheet

9/12

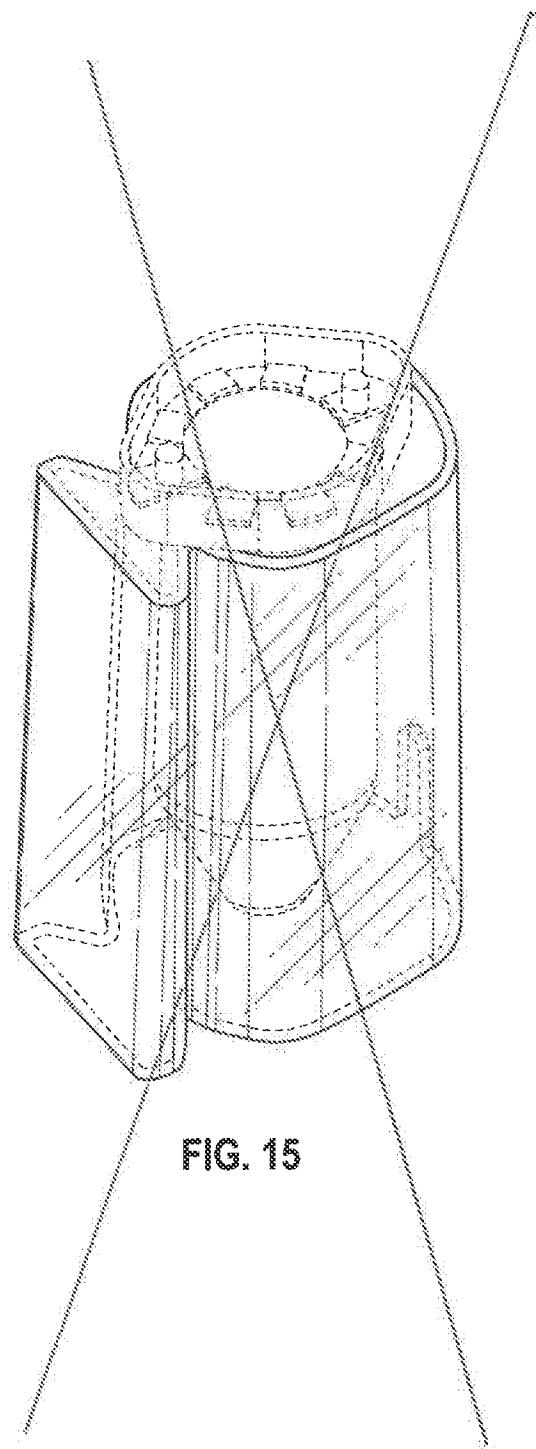


FIG. 15

Annotated Sheet

10/12

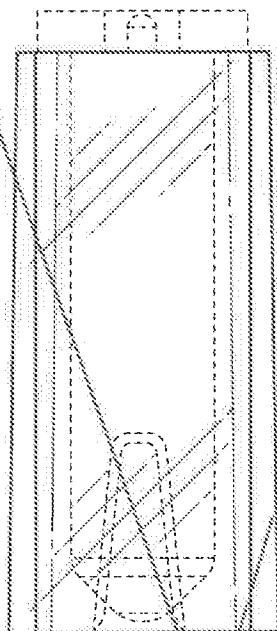


FIG. 16

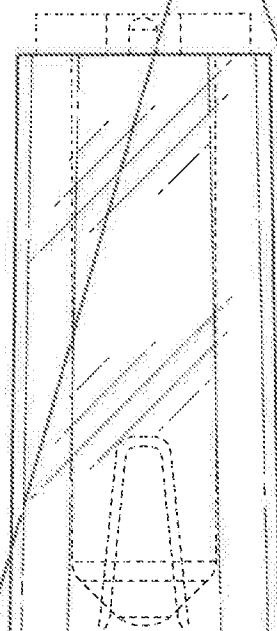


FIG. 17

Annotated Sheet

11/12

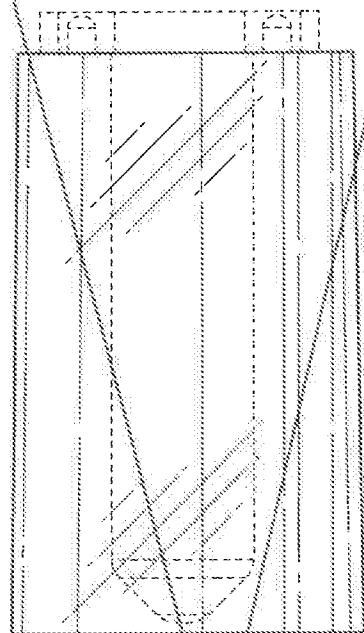


FIG. 18

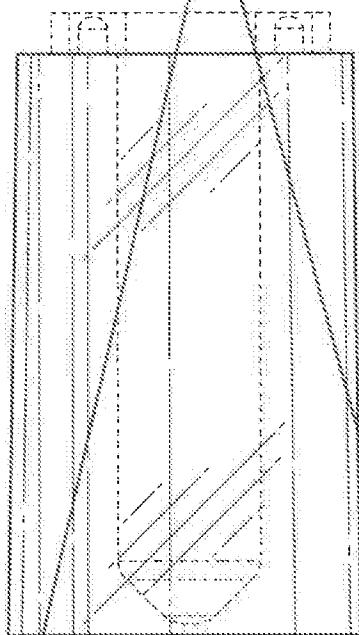


FIG. 19

Annotated Sheet

12/12

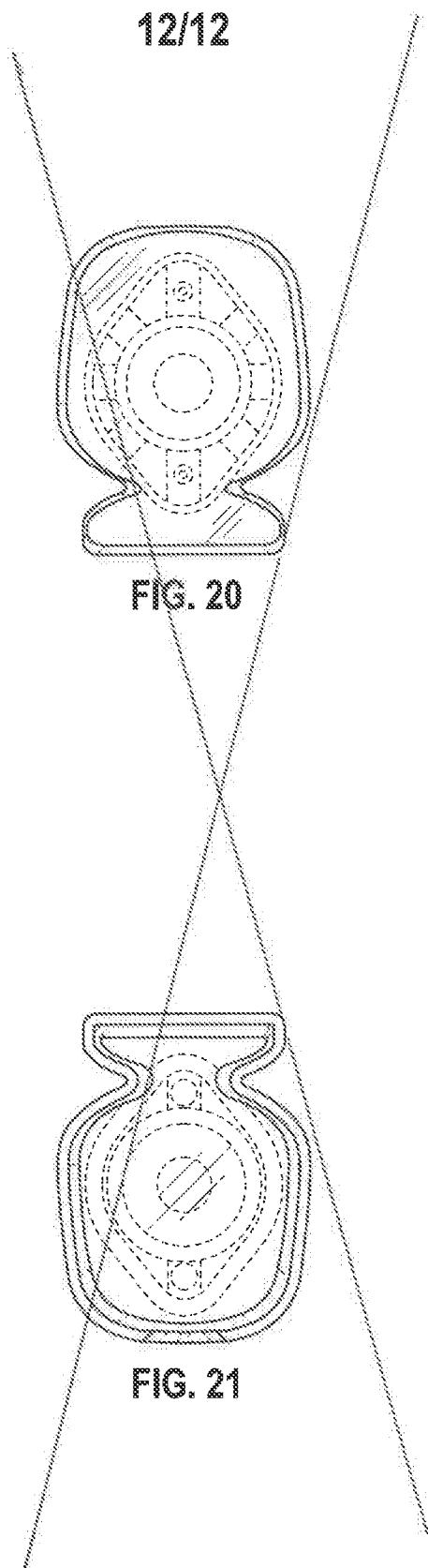


FIG. 20

FIG. 21

Annotated Sheet

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 29/729,288
First Named Inventor: David BUSE
Filed : March 25, 2020
Group Art Unit : 2924
Examiner : Amanda Jean BERLINSKI
Docket No. : 2599-272
Confirmation No. : 7640
Customer No. : 17427

AMENDMENT AND REPLY UNDER 37 C.F.R. §1.111

MAIL STOP: AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Amendment and Reply is being submitted in response to the Non-Final Office Action mailed March 7, 2022. This Amendment and Reply is timely filed on or before June 7, 2022

Amendments to the Specification begin on page 2 of this paper.

Amendments to the Drawings begin on page 3 of this paper.

Remarks begin on page 4 of this paper.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640
17427	7590	05/20/2022	EXAMINER	
Richard Wydeven			BERLINSKI, AMANDA JEAN	
RFEM/ Genprobe				
607 Fourteenth Street, NW			ART UNIT	PAPER NUMBER
Suite 800				2924
Washington, DC 20005				
			NOTIFICATION DATE	DELIVERY MODE
			05/20/2022	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdept@hologic.com

pto-pat-email@rfem.com

Applicant-Initiated Interview Summary	Application No. 29/729,288	Applicant(s) Buse et al.		
	Examiner AMANDA J BERLINSKI	Art Unit 2924	AIA (First Inventor to File) Status Yes	Page 1 of 2

All Participants (applicant, applicants representative, PTO personnel)	Title	Type
AMANDA J BERLINSKI	Examiner	Video Conference
JONATHAN HAN	Primary Examiner	
RICHARD WYDEVEN	Attorney of Record	

Date of Interview: 17 May 2022

Issues Discussed:

35 U.S.C. 112

The proposed replacement drawing shown of FIG. 1 was discussed. Examiner urged applicant's counsel to ensure the changes in FIG. 1 were consistently depicted throughout the figure views, as the proposed changes to FIG. 1 only would render the drawings inconsistent. Several areas throughout the drawings which are also inconsistent were discussed, specifically between the bottom, top, and perspective views.

Objections

Applicant's intention to address specification objections as per the examiner's suggested corrections in the office action was acknowledged.

Drawings

Applicant's intention to cancel FIGs. 8 - 21 was discussed, and the examiner confirmed the update to the page numbers on the replacement sheets is acceptable.

/AMANDA J BERLINSKI/ Examiner, Art Unit 2924	/JONATHAN J HAN/ Primary Examiner, Art Unit 2926
<p>Applicant is reminded that a complete written statement as to the substance of the interview must be made of record in the application file. It is the applicants responsibility to provide the written statement, unless the interview was initiated by the Examiner and the Examiner has indicated that a written summary will be provided. See MPEP 713.04</p> <p>Please further see: MPEP 713.04 Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews, paragraph (b) 37 CFR § 1.2 Business to be transacted in writing</p>	

Applicant recordation instructions: The formal written reply to the last Office action must include the substance of the interview. (See MPEP section 713.04). If a reply to the last Office action has already been filed, applicant is given a non-extendable period of the longer of one month or thirty days from this interview date, or the mailing date of this interview summary form, whichever is later, to file a statement of the substance of the interview.

Examiner recordation instructions: Examiners must summarize the substance of any interview of record. A complete and proper recordation of the substance of an interview should include the items listed in MPEP 713.04 for complete

<i>Applicant-Initiated Interview Summary</i>	Application No. 29/729,288	Applicant(s) Buse et al.		
	Examiner AMANDA J BERLINSKI	Art Unit 2924	AIA (First Inventor to File) Status Yes	Page 2 of 2

and proper recordation including the identification of the general thrust of each argument or issue discussed, a general indication of any other pertinent matters discussed regarding patentability and the general results or outcome of the interview, to include an indication as to whether or not agreement was reached on the issues raised.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/729,288	03/25/2020	David Buse	2599-272	7640
17427	7590	03/07/2022	EXAMINER	
Richard Wydeven			BERLINSKI, AMANDA JEAN	
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607 Fourteenth Street, NW			ART UNIT	PAPER NUMBER
Suite 800				2924
Washington, DC 20005				
			NOTIFICATION DATE	DELIVERY MODE
			03/07/2022	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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patentdept@hologic.com

pto-pat-email@rfem.com

<i>Office Action Summary</i>	Application No. 29/729,288	Applicant(s) Buse et al.	
	Examiner AMANDA J BERLINSKI	Art Unit 2924	AIA (FITF) Status Yes
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). <p>Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
Status			
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>24 February 2022</u>. <input type="checkbox"/> A declaration(s)/affidavit(s) under 37 CFR 1.130(b) was/were filed on ____.</p> <p>2a)<input type="checkbox"/> This action is FINAL. 2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.</p> <p>4)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
Disposition of Claims*			
<p>5)<input checked="" type="checkbox"/> Claim(s) <u>1</u> is/are pending in the application.</p> <p>5a) Of the above claim(s) ____ is/are withdrawn from consideration.</p> <p>6)<input type="checkbox"/> Claim(s) ____ is/are allowed.</p> <p>7)<input checked="" type="checkbox"/> Claim(s) <u>1</u> is/are rejected.</p> <p>8)<input type="checkbox"/> Claim(s) ____ is/are objected to.</p> <p>9)<input type="checkbox"/> Claim(s) ____ are subject to restriction and/or election requirement</p>			
<p>* If any claims have been determined <u>allowable</u>, you may be eligible to benefit from the Patent Prosecution Highway program at a participating intellectual property office for the corresponding application. For more information, please see http://www.uspto.gov/patents/init_events/pph/index.jsp or send an inquiry to PPHfeedback@uspto.gov.</p>			
Application Papers			
<p>10)<input checked="" type="checkbox"/> The specification is objected to by the Examiner.</p> <p>11)<input type="checkbox"/> The drawing(s) filed on ____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner.</p> <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p style="margin-left: 20px;">Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p>			
Priority under 35 U.S.C. § 119			
<p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p>			
<p>Certified copies:</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some** c)<input type="checkbox"/> None of the:</p> <p style="margin-left: 20px;">1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p style="margin-left: 20px;">2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. ____.</p> <p style="margin-left: 20px;">3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>			
<p>** See the attached detailed Office action for a list of the certified copies not received.</p>			
Attachment(s)			
<p>1)<input type="checkbox"/> Notice of References Cited (PTO-892)</p>		<p>3)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date ____.</p>	
<p>2)<input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08a and/or PTO/SB/08b) Paper No(s)/Mail Date ____.</p>		<p>4)<input type="checkbox"/> Other: ____.</p>	

DETAILED ACTION

Notice of Pre-AIA or AIA Status

The present application, filed on or after March 16, 2013, is being examined under the first inventor to file provisions of the AIA.

Election Acknowledgement

The applicant's election of Embodiment 1 without traverse, received on 24 February 2022, is acknowledged.

As per 37 CFR 1.142(b), Embodiments 2 and 3 are withdrawn from further consideration by the applicant as being for a non-elected design.

Non-Elected Drawing Views Must Be Cancelled

In view of the restriction and elected noted above, applicant must now cancel Figures 8 - 21 associated with the non-elected Embodiments 2 and 3.

If all the figures on a drawing sheet are cancelled, a replacement sheet is not required. However, a marked up copy of the drawing sheet (labeled as "Annotated Sheet") including an annotation showing that all the figures on that drawing sheet have been cancelled must be presented in the amendment or remarks section that explains the change to the drawings.

Specification Objections

The specification is objected to due to the following:

- a. **In view of the restriction, election, and cancellation of non-elected figure views, the specification must now be amended by cancelling the Figure 8 - 21 descriptions.**

- b. **The FIG. 1 figure description is objected to in view of the restriction, election, and cancellation of non-elected figure views.** The claim should be directed to the invention title and, as there are no other views or embodiments in the present application showing

the invention differently than in the first view, it is advised that [with a lid over the top end] be cancelled from the FIG. 1 figure description for proper form and to avoid confusion. The examiner suggests amending the FIG. 1 description to read as the following:

-- **FIG. 1 shows a top perspective view of the FLUID VIAL thereof.** --

- c. **The examiner objects to the insufficient broken lines statement as per MPEP 1503.02 (III).** The use of broken lines must be fully described. The examiner suggests amending the broken lines statement to read as the following:
 - **The broken lines shown in the figures depict portions of the FLUID VIAL that form no part of the claimed design.** --

Rejection under 35 USC 112 (a)&(b)

The claim is rejected under 35 U.S.C. 112(a) and (b) or pre-AIA 35 U.S.C. 112, first and second paragraphs, as the claimed invention is not described in such full, clear, concise and exact terms as to enable any person skilled in the art to make and use the same, and fails to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor (or, for applications subject to pre-AIA 35 U.S.C. 112, the applicant) regards as the invention.

The claim is indefinite and nonenabling because the shape, appearance, and description of some portions of the design are unclear due to inconsistent disclosure of the claimed design as currently depicted.

1. The appearance and shape or configuration of the design cannot be determined or understood due to an inconsistent and inadequate visual disclosure (MPEP § 1504.04):

- a. **There are portions of the article shown in broken lines while other figure views depict these same portions in solid line.** It is possible the broken lines seen in the drawings are intending to depict claimed portions of the article which are seen through transparent planes. However, the function of broken lines in this way causes an inconsistency as the claimed portions of the article cannot be determined. The function of broken lines in this way further confuses the intention of the applicant when attempting to understand the

inner features and pencil-shaped structure within the article; it is unclear if these features are depicted in broken lines because they have been removed from the claim, or if they are displayed in broken lines due to being seen through a transparent surface. **Any portion of the structure that is intended to be claimed should be visible in solid lines (or contour lines where appropriate) through the transparent surfaces of the article.**

See annotated drawings below.

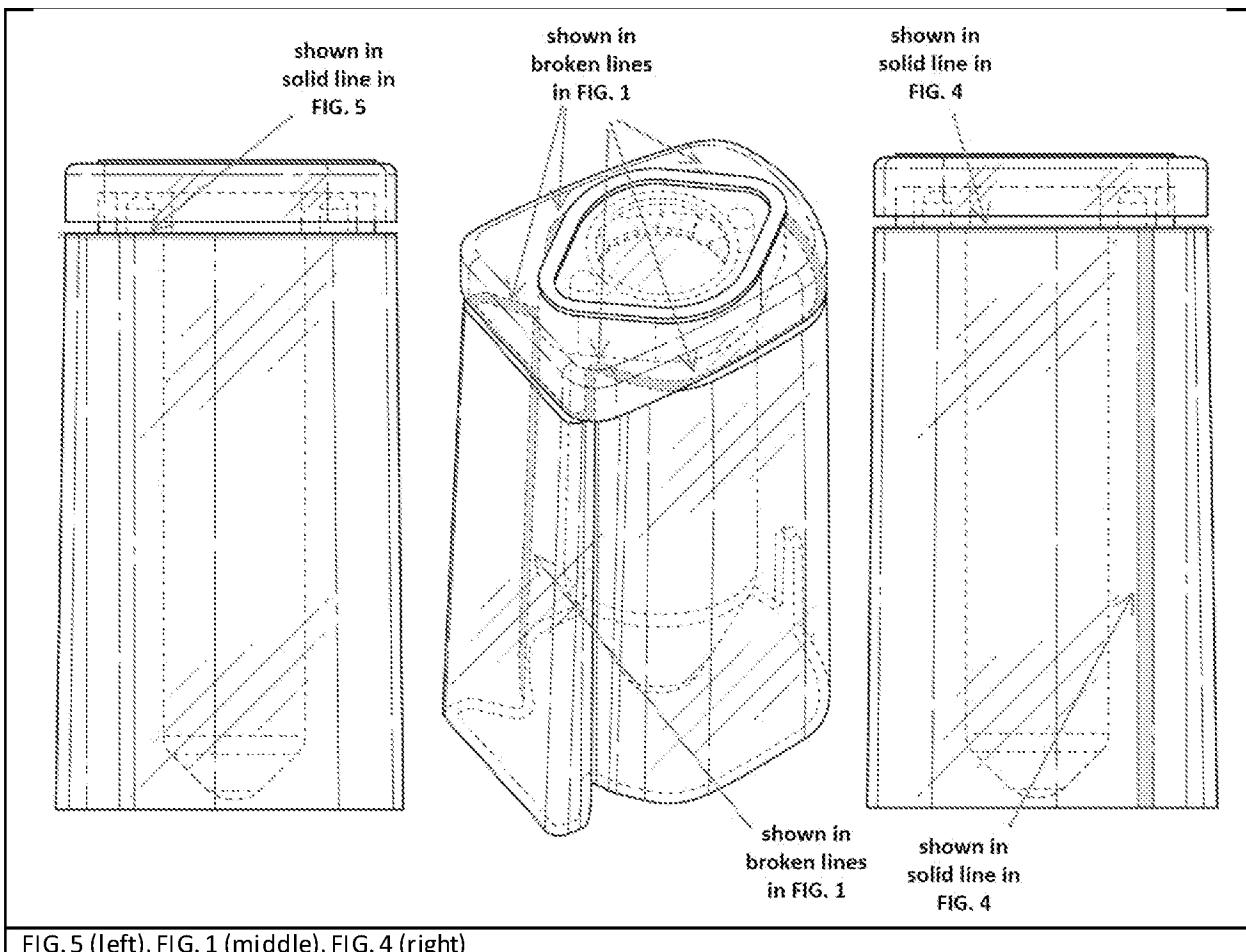


FIG. 5 (left), FIG. 1 (middle), FIG. 4 (right)

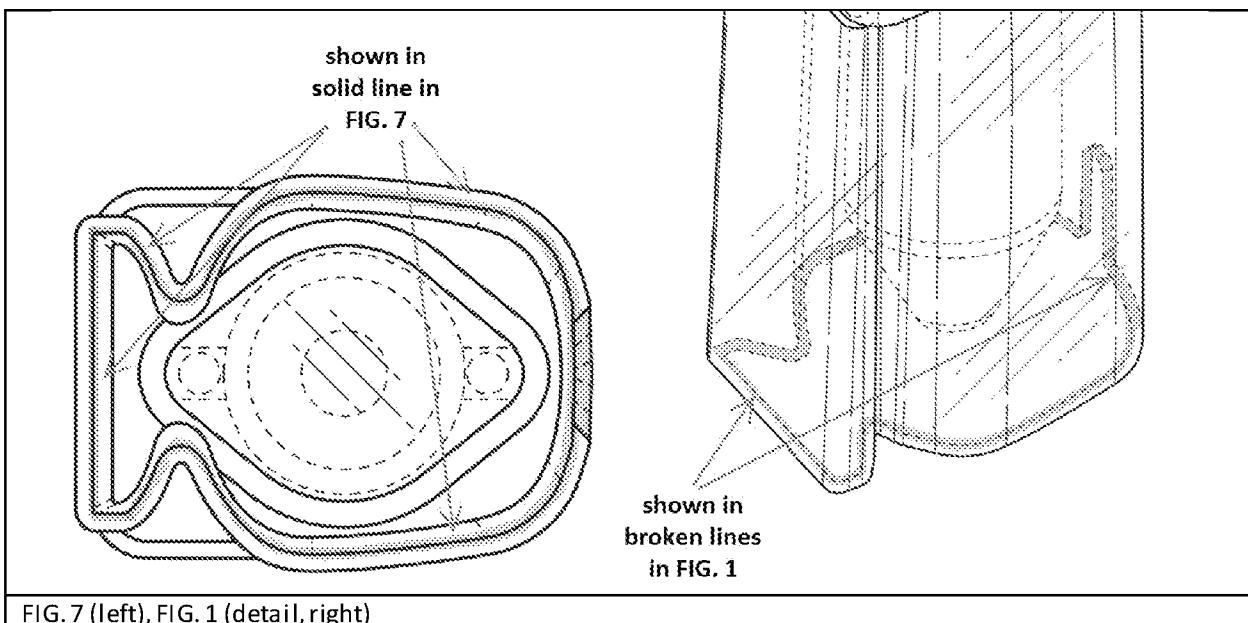


FIG. 7 (left), FIG. 1 (detail, right)

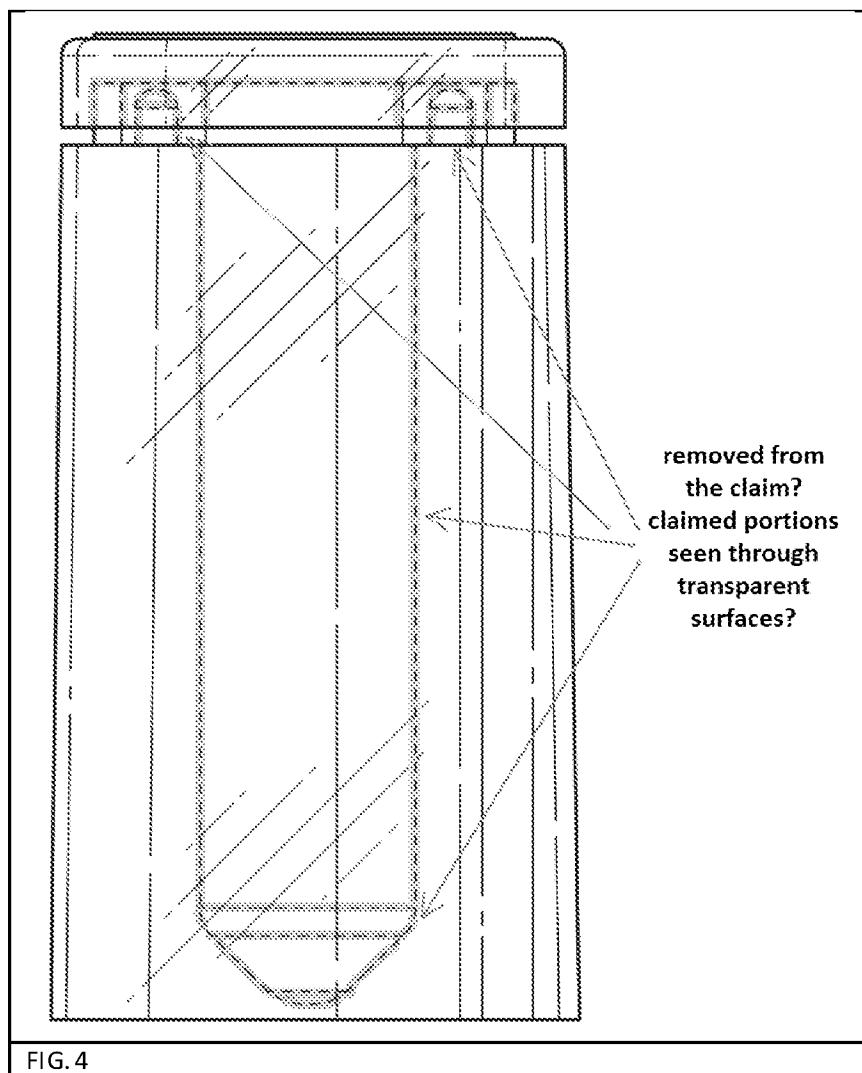


FIG. 4

**Note: The visuals above are included to give the applicant an understanding of the rejection. The visuals do not point out all possible areas utilizing this improper illustration style throughout the drawing set which cause indefiniteness and lack of enablement.*

While the application contains drawings of the invention in multiple views, the inconsistencies in the different figures present confusing and contradictory conditions that require the examiner to rely on conjecture to understand the intention of the applicant.

These portions of the design that are inconsistently depicted may be made consistent in order to overcome that portion of the rejection.

Correction of the drawings are suggested.

When preparing new or replacement drawings, be careful to avoid introducing new matter. New matter is prohibited by 35 U.S.C. 132 and 37 CFR 1.121(f).

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended”. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Summation

The claim stands rejected for the reasons set forth above.

The references cited but not applied, are considered cumulative art related to the claimed design.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMANDA J BERLINSKI whose telephone number is 571-272-8061. The examiner can normally be reached Monday - Friday 10:00a-6:00p EST.

Examiner interviews are available via telephone, in-person, and video conferencing using a USPTO supplied web-based collaboration tool. To schedule an interview, applicant is encouraged to use the USPTO Automated Interview Request (AIR) at <http://www.uspto.gov/interviewpractice>.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL C STOUT can be reached on 408-918-7558. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of published or unpublished applications may be obtained from Patent Center. Unpublished application information in Patent Center is available to registered users. To file and manage patent submissions in Patent Center, visit:

<https://patentcenter.uspto.gov>. Visit <https://www.uspto.gov/patents/apply/patent-center> for more information about Patent Center and <https://www.uspto.gov/patents/docx> for information about filing in DOCX format. For additional questions, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A.J.B./

Examiner, Art Unit 2924

/JONATHAN J HAN/

Primary Examiner, Art Unit 2926



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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
29/729,288	03/25/2020	David Buse	2599-272

CONFIRMATION NO. 7640

17427

Richard Wydeven
RFEM/ Genprobe
607 Fourteenth Street, NW
Suite 800
Washington, DC 20005

INFORMAL NOTICE



OC000000115819106

Date Mailed: 03/31/2020

INFORMATIONAL NOTICE TO APPLICANT

Applicant is notified that the above-identified application contains the deficiencies noted below. No period for reply is set forth in this notice for correction of these deficiencies. However, if a deficiency relates to the inventor's oath or declaration, the applicant must file an oath or declaration in compliance with 37 CFR 1.63, or a substitute statement in compliance with 37 CFR 1.64, executed by or with respect to each actual inventor no later than the expiration of the time period set in the "Notice of Allowability" to avoid abandonment. See 37 CFR 1.53(f).

The item(s) indicated below are also required and should be submitted with any reply to this notice to avoid further processing delays.

- A properly executed inventor's oath or declaration has not been received for the following inventor(s):
David Buse
Byron J. Knight

Questions about the contents of this notice and the requirements it sets forth should be directed to the Office of Data Management, Application Assistance Unit, at **(571) 272-4000** or **(571) 272-4200** or **1-888-786-0101**.

/iduong/

**U.S. DESIGN PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

SPECIFICATION

Be it known that the applicant, Gen-Probe Incorporated, seeks a design patent on a new, original and ornamental design for a FLUID VIAL, reference being had to the accompanying drawings, forming a part hereof.

DESCRIPTION OF DRAWINGS

FIG. 1 shows a top perspective view of the FLUID VIAL with a lid over a top end thereof.

FIG. 2 shows a front elevation view thereof.

FIG. 3 shows a back elevation view thereof.

FIG. 4 shows a left-side elevation view thereof.

FIG. 5 shows a right-side elevation view thereof.

FIG. 6 shows a top plan view thereof.

FIG. 7 shows a bottom plan view thereof.

FIG. 8 shows a top perspective view of the FLUID VIAL without a lid over a top end thereof.

FIG. 9 shows a front elevation view thereof.

FIG. 10 shows a back elevation view thereof.

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FIG. 12 shows a right-side elevation view thereof.

FIG. 13 shows a top plan view thereof.

FIG. 14 shows a bottom plan view thereof.

FIG. 15 shows a top perspective view of the FLUID VIAL without a lid over a top end thereof and with a top, external feature of the vial shown in dashed lines.

FIG. 16 shows a front elevation view thereof.

FIG. 17 shows a back elevation view thereof.

FIG. 18 shows a left-side elevation view thereof.

1/12

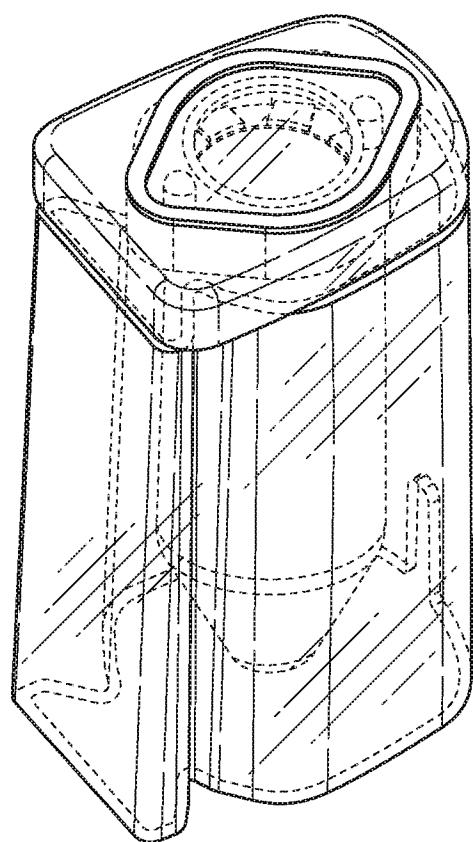


FIG. 1

2/12

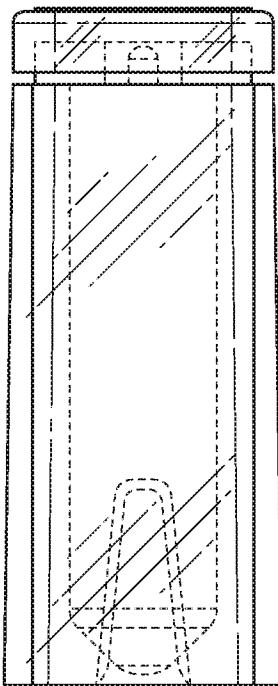


FIG. 2

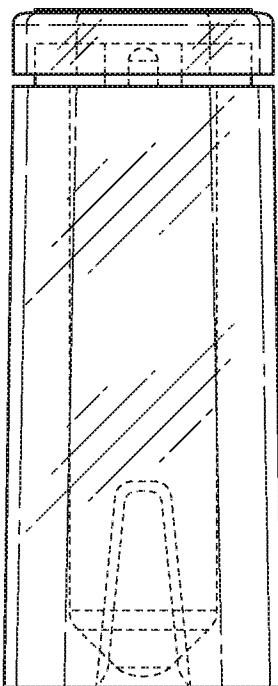


FIG. 3

3/12

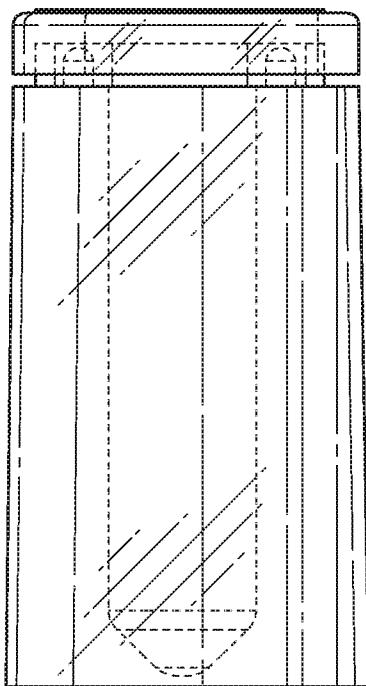


FIG. 4

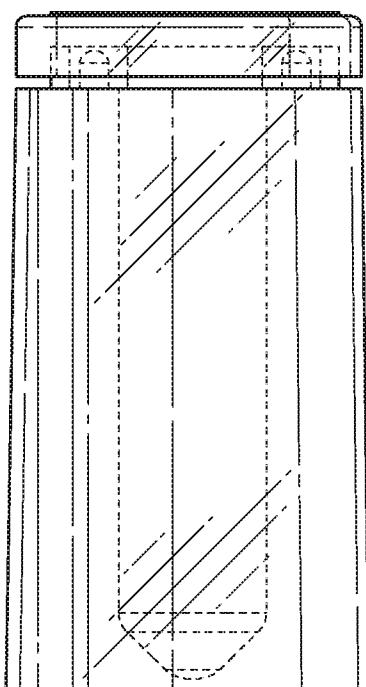


FIG. 5

4/12

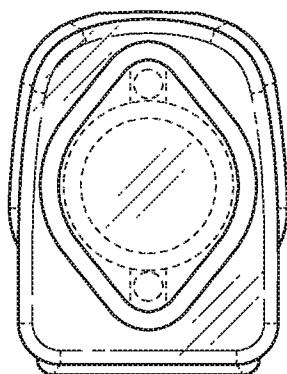


FIG. 6

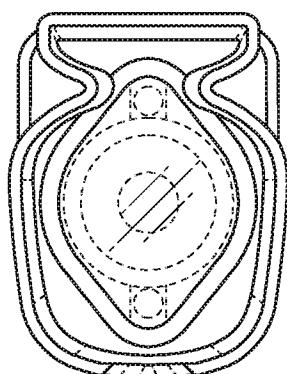


FIG. 7

5/12

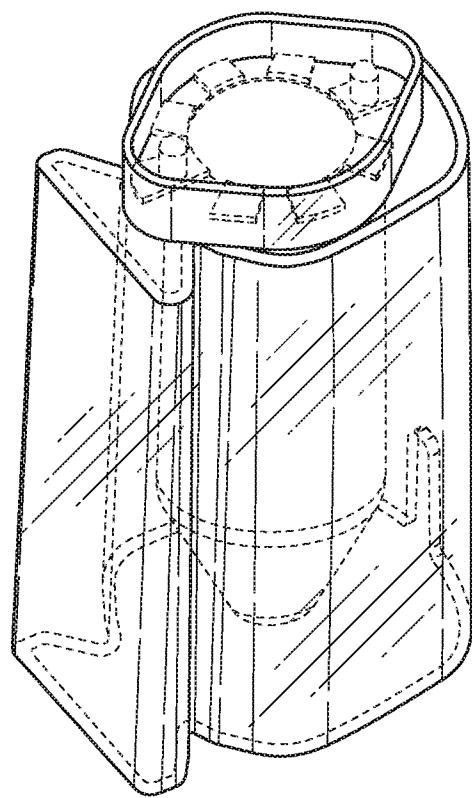


FIG. 8

6/12

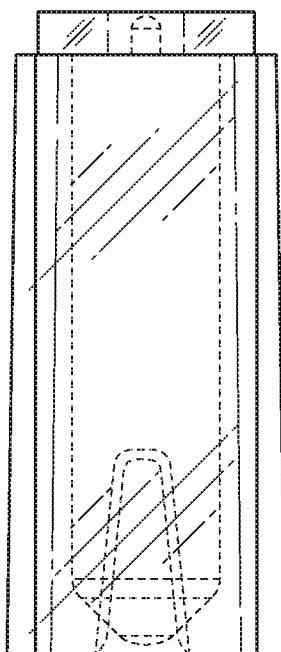


FIG. 9

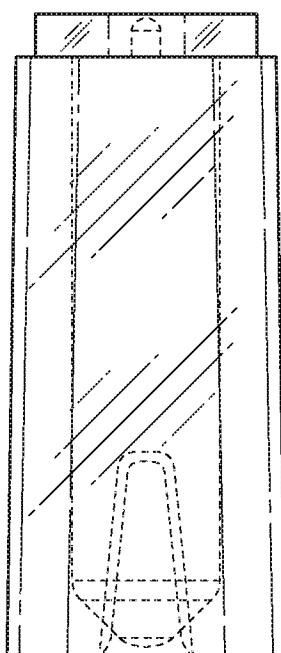


FIG. 10

7/12

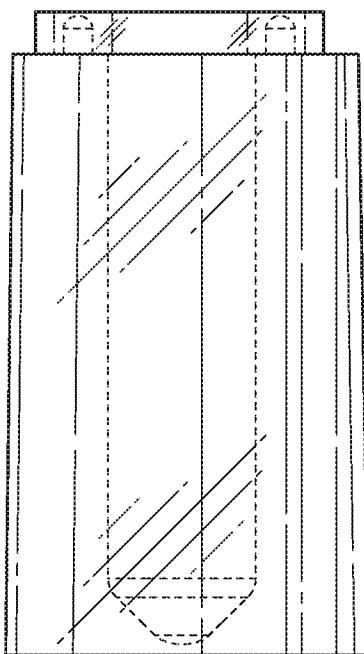


FIG. 11

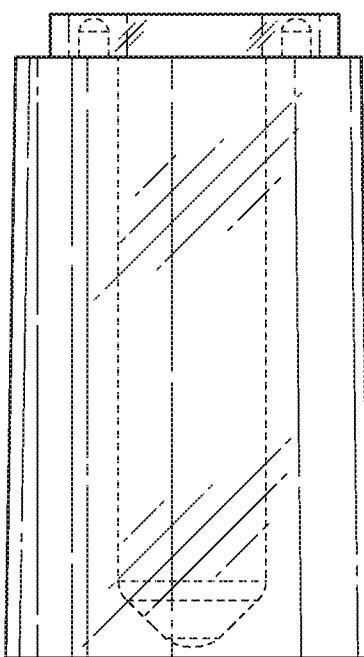


FIG. 12

8/12

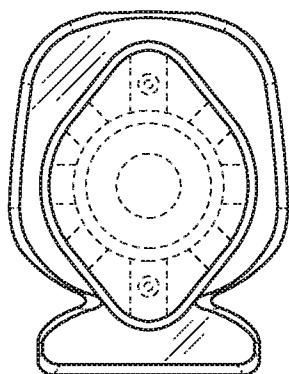


FIG. 13

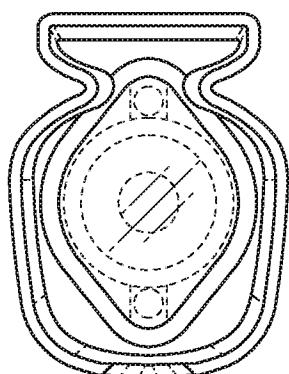


FIG. 14

9/12

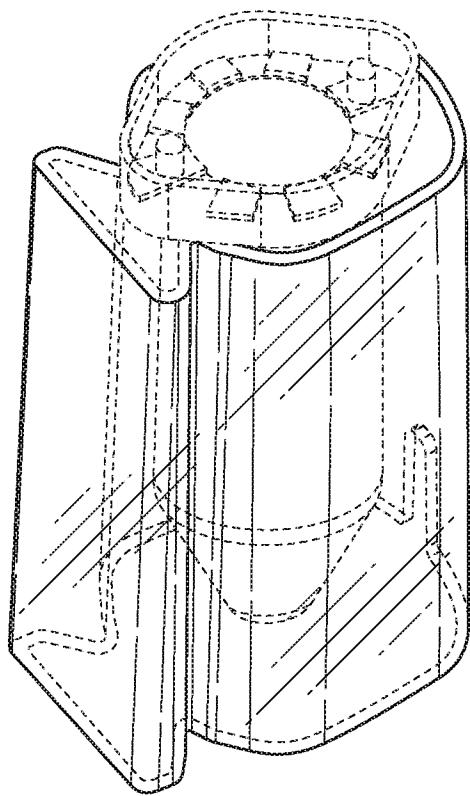


FIG. 15

10/12

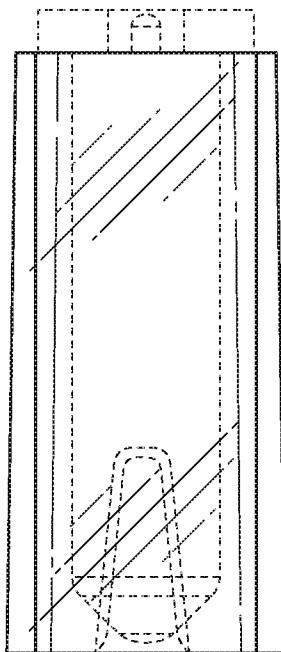


FIG. 16

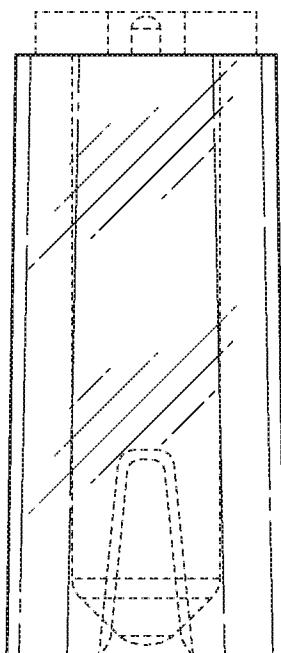


FIG. 17

11/12

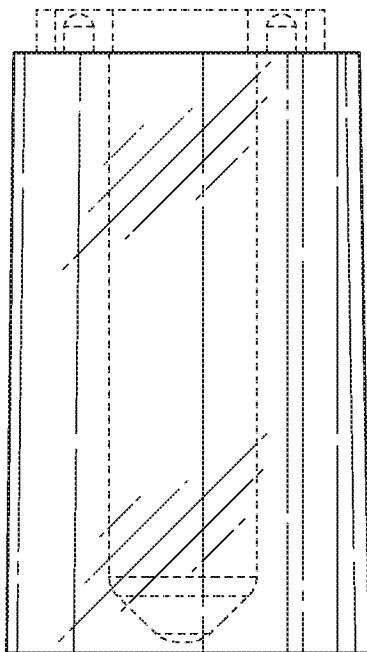


FIG. 18

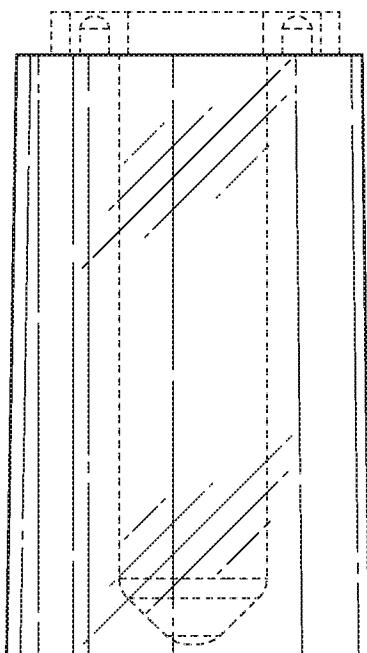


FIG. 19

12/12

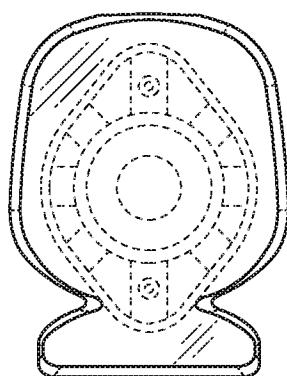


FIG. 20

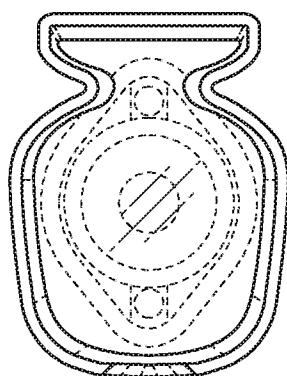


FIG. 21

FIG. 19 shows a right-side elevation view thereof.

FIG. 20 shows a top plan view thereof.

FIG. 21 shows a bottom plan view thereof.

Features shown in broken lines are not part of the claimed design.

Applicant claims:

The ornamental design for a FLUID VIAL as shown and described.