



INTELLECTUAL PROPERTY

Law 388

Professor Eric Goldman

COURSE SUPPLEMENT

Fall 2010

NONDISCLOSURE AGREEMENT (ONE-WAY)

In connection with the disclosure of certain confidential and proprietary information of Client (“Client”), you agree to the following:

“Confidential Information” means all information disclosed by Client to you that Client deems confidential. Confidential Information shall not include information that is or becomes generally known through no action or failure to act by you, or that you know at the time you receive such information. You shall not disclose Confidential Information to any third party, and you shall use Confidential Information only to the extent required to accomplish the purposes of disclosure. All Confidential Information shall remain Client’s property and shall be returned (or, at Client’s option, destroyed) upon Client’s written request. Except as expressly set forth herein, Client is not granting you any right or license to any Client intellectual property rights under this Agreement.

The parties acknowledge that monetary damages may not adequately remedy an unauthorized use or disclosure of Confidential Information, and that Client is entitled, without waiving any other rights or remedies and without posting a bond, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

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

By: _____

Name: _____

Company: _____

Title: _____

Date: _____

MUTUAL NONDISCLOSURE AGREEMENT

This **MUTUAL NONDISCLOSURE AGREEMENT** (the "Agreement") is made effective as of _____, 200__ between X and Y.

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

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

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

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

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

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

By: _____
Title: _____

By: _____
Title: _____



US005966743A

United States Patent [19]
Flann

[11] **Patent Number:** **5,966,743**
[45] **Date of Patent:** **Oct. 19, 1999**

[54] **SUBSTANCE DISPENSING HEADGEAR**

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

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

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

[51] **Int. Cl.**⁶ **A42B 1/02**

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

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

4,293,960	10/1981	Palmaer	.....	2/416
4,335,471	6/1982	Quigley, Jr.	.....	2/12
4,681,244	7/1987	Geddie	.....	222/175
4,739,905	4/1988	Nelson	.....	222/175
4,881,654	11/1989	Stazo	.....	220/85 H
4,921,141	5/1990	Branum	.....	222/175
4,971,231	11/1990	Faerber	.....	222/559
5,076,463	12/1991	McGraw	.....	220/415
5,077,836	1/1992	Idoff	.....	2/10
5,148,950	9/1992	Hosaka	.....	222/175
5,417,327	5/1995	Saumure	.....	206/427
5,597,087	1/1997	Vinarsky	.....	220/482
5,597,089	1/1997	Smith	.....	220/710
5,597,090	1/1997	Leahy	.....	222/1
5,597,097	1/1997	Morris	.....	222/529
5,636,766	6/1997	Delameter	.....	222/183

[56] **References Cited**

U.S. PATENT DOCUMENTS

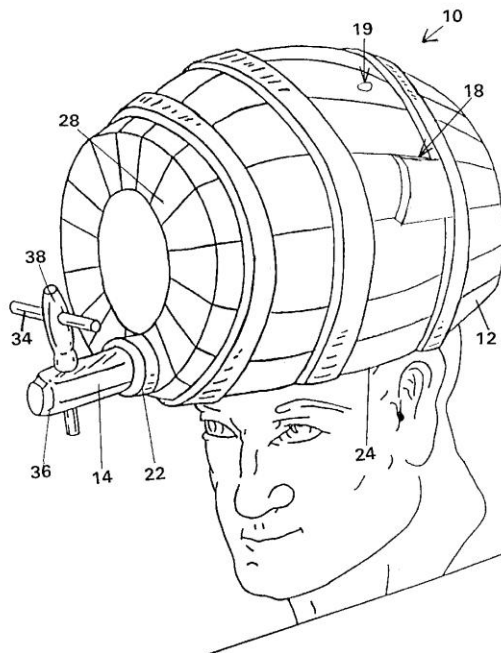
D. 20,079	8/1890	Proeger	.....	D7/5
D. 247,408	3/1978	Ventura	.....	D7/5
D. 278,016	3/1985	Myrbo	.....	D7/9
D. 279,752	7/1985	Jagger	.....	D7/10
D. 283,866	5/1986	Campbell	.....	D7/13
D. 292,330	10/1987	McColough	.....	D29/15
D. 363,145	10/1995	Newman	.....	D29/106
D. 372,572	8/1996	Conran	.....	D2/876
D. 375,870	11/1996	Stonehouse	.....	D7/523
1,021,323	3/1912	McMurtry	.....	2/209.13
3,491,374	1/1970	Frango	.....	2/171
3,602,386	8/1971	Brime	.....	215/363
3,631,793	1/1972	Bednartz	.....	99/295
3,710,393	1/1973	Douglas	.....	2/14 W
3,978,527	9/1976	Bednar	.....	2/68

Primary Examiner—Diana L. Biefeld
Attorney, Agent, or Firm—Ryan Kromholz & Manion

[57] **ABSTRACT**

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

12 Claims, 6 Drawing Sheets



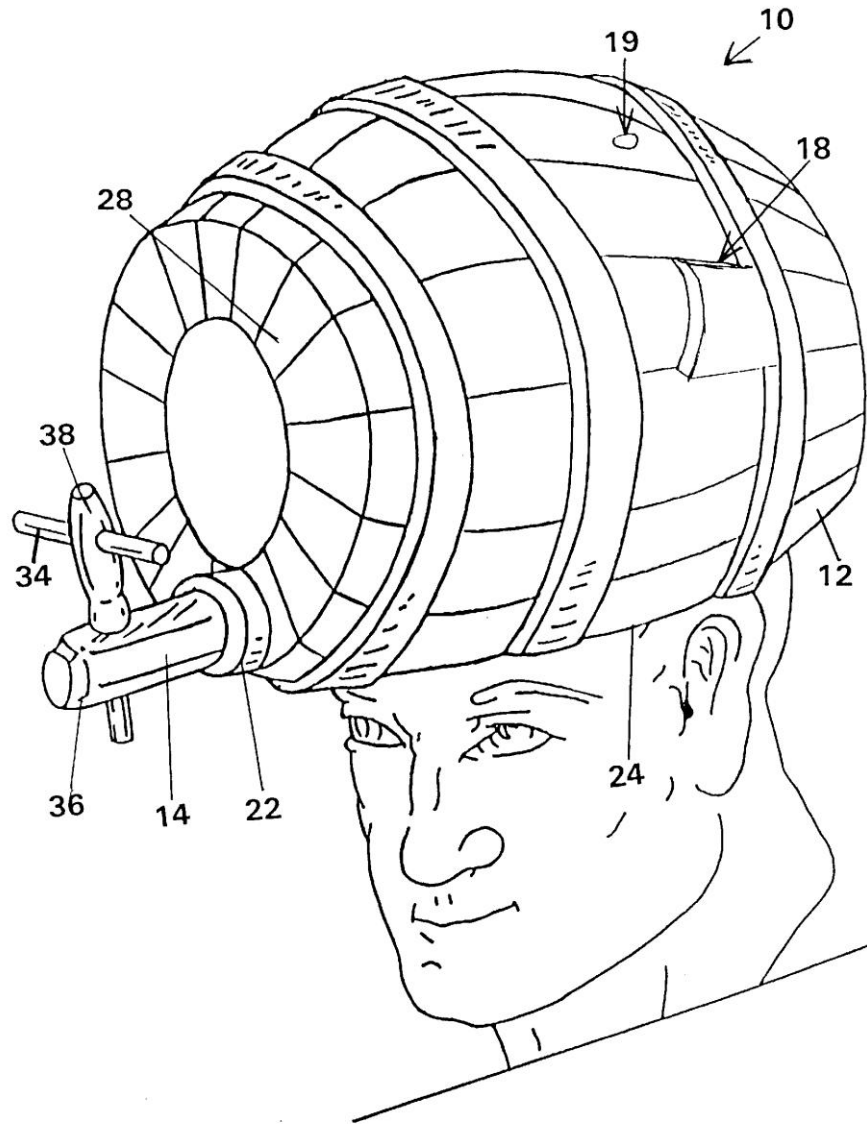


FIG. 1

FIG. 2

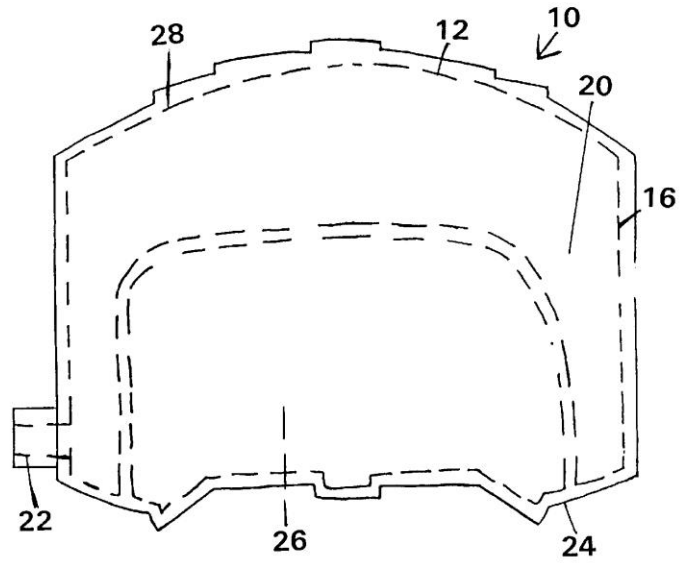


FIG. 3

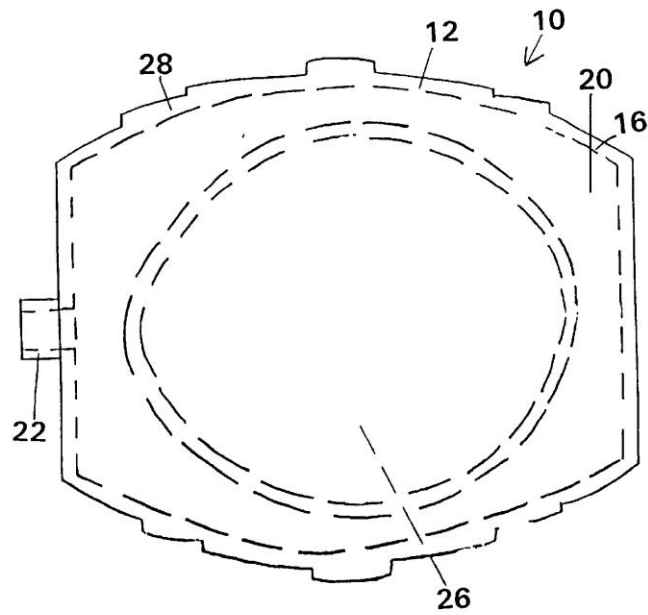


FIG. 4

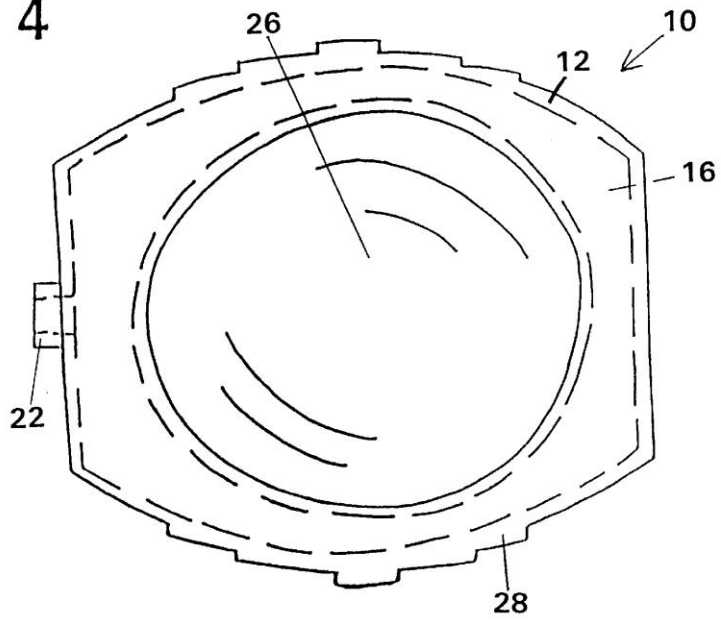


FIG. 5

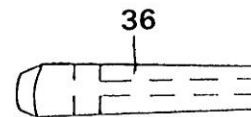
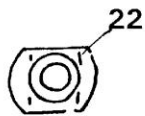


FIG. 6

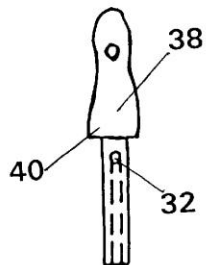


FIG. 7

FIG. 8

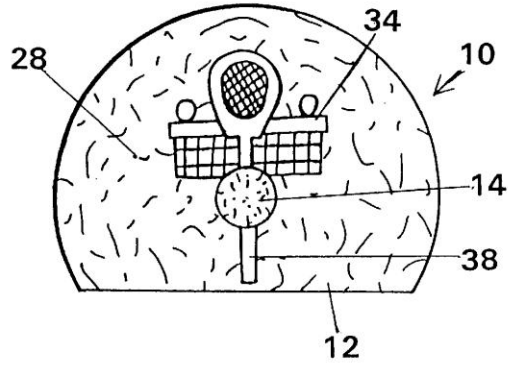


FIG. 9

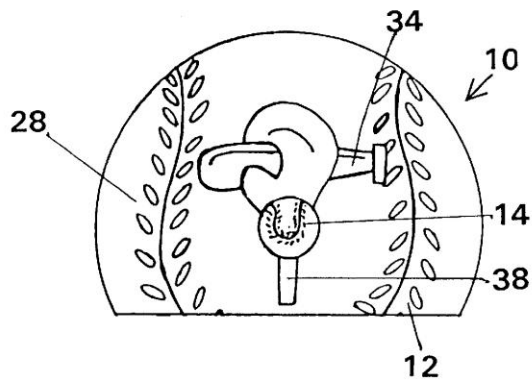


FIG. 10

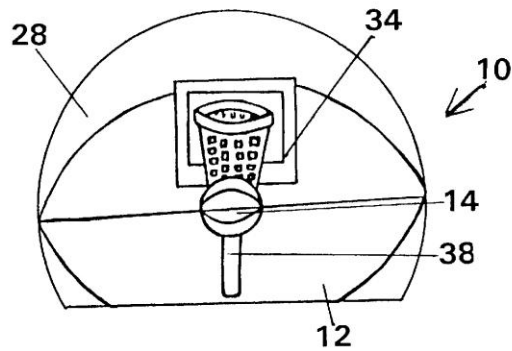


FIG. 11

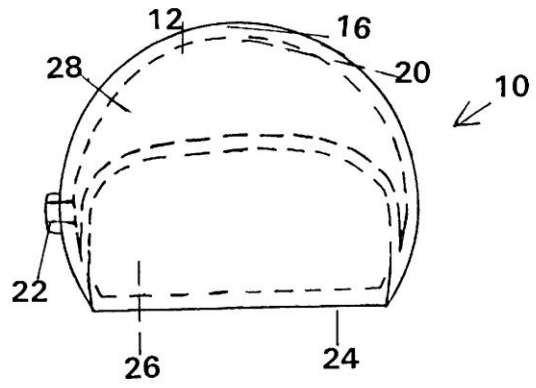


FIG. 12

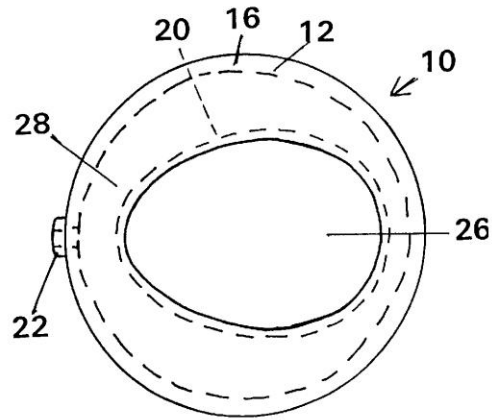
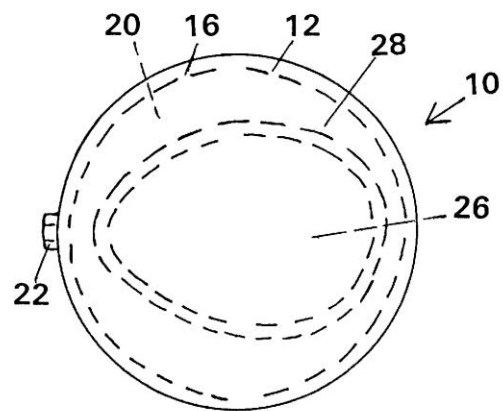


FIG. 13



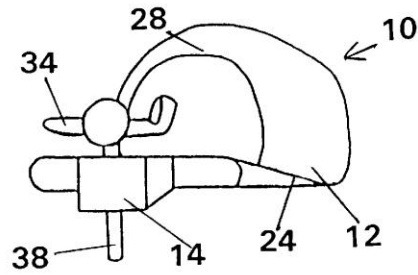


FIG. 14

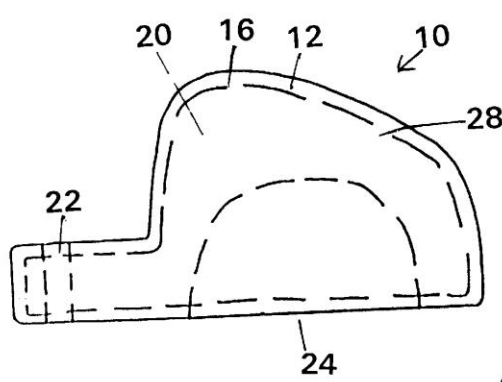


FIG. 15

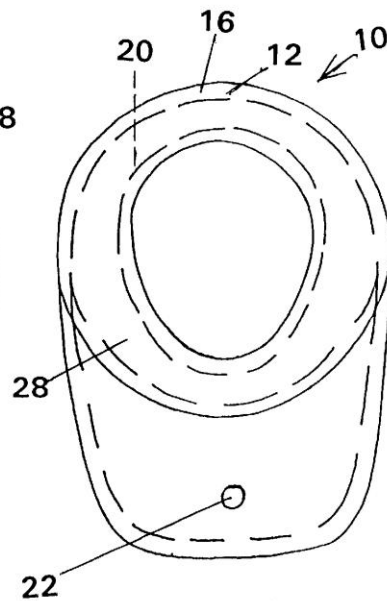


FIG. 16

SUBSTANCE DISPENSING HEADGEAR**BACKGROUND OF THE INVENTION**

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

SUMMARY OF THE INVENTION

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

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

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

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

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

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

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

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

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

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

In one embodiment, insulating material surrounds the chamber.

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

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

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

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

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

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

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

BRIEF DESCRIPTION OF THE DRAWINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DESCRIPTION OF THE PREFERRED EMBODIMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5

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

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

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

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

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

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

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

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

What is claimed is:

1. A transportable dispensing receptacle for a substance comprising

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

a spigot spaced above the bottom wall and secured to the container in communication with the chamber, the spigot carrying a valve including an external handle to manually move the valve between an opened position, opening communication with the chamber to dispense the substance by gravity, suction, pressure or levity flow when the container is in the freestanding, upright condition, and a closed position, closing communication with the chamber to retain the substance in the chamber, and

a hat-like recess formed within the bottom wall sized for wearing on an individual's head and for maintaining the container in the upright, freestanding condition during hands-free ambulation of the individual.

2. A receptacle according to claim **1** wherein the container includes a mount for the spigot including means for removing the spigot from the mount for repair or replacement with another spigot.

3. A receptacle according to claim **1** wherein the container includes an identifiable spacial form.

4. A receptacle according to claim **1** wherein the spigot includes an identifiable spacial form.

6

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

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

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

8. A transportable receptacle for dispensing a substance comprising

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

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

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

9. A receptacle according to claim **8**

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

10. A receptacle according to claim **8**

wherein the container includes an identifiable spacial form.

11. A family of transportable receptacles for dispensing substances comprising

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

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

7

12. A receptacle according to claim 11 wherein the valve of at least one of the spigots includes an external handle to manually move the valve between an opened position, opening communication with the chamber to dispense the substance by gravity, suction, 5

8

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

* * * * *

Bilski v. Kappos, 561 U.S. __ (2010)

Justice Kennedy delivered the opinion of the Court, except as to Parts II-B-2 and II-C-2.[*]

The question in this case turns on whether a patent can be issued for a claimed invention designed for the business world. The patent application claims a procedure for instructing buyers and sellers how to protect against the risk of price fluctuations in a discrete section of the economy. Three arguments are advanced for the proposition that the claimed invention is outside the scope of patent law: (1) it is not tied to a machine and does not transform an article; (2) it involves a method of conducting business; and (3) it is merely an abstract idea. The Court of Appeals ruled that the first mentioned of these, the so-called machine-or-transformation test, was the sole test to be used for determining the patentability of a “process” under the Patent Act, 35 U. S. C. §101.

I

Petitioners’ application seeks patent protection for a claimed invention that explains how buyers and sellers of commodities in the energy market can protect, or hedge, against the risk of price changes. The key claims are claims 1 and 4. Claim 1 describes a series of steps instructing how to hedge risk. Claim 4 puts the concept articulated in claim 1 into a simple mathematical formula. Claim 1 consists of the following steps:

“(a) initiating a series of transactions between said commodity provider and consumers of said commodity wherein said consumers purchase said commodity at a fixed rate based upon historical averages, said fixed rate corresponding to a risk position of said consumers;

“(b) identifying market participants for said commodity having a counter-risk position to said consumers; and

“(c) initiating a series of transactions between said commodity provider and said market participants at a second fixed rate such that said series of market participant transactions balances the risk position of said series of consumer transactions.”

The remaining claims explain how claims 1 and 4 can be applied to allow energy suppliers and consumers to minimize the risks resulting from fluctuations in market demand for energy. For example, claim 2 claims “[t]he method of claim 1 wherein said commodity is energy and said market participants are transmission distributors.” Some of these claims also suggest familiar statistical approaches to determine the inputs to use in claim 4’s equation. For example, claim 7 advises using well-known random analysis techniques to determine how much a seller will gain “from each transaction under each historical weather pattern.”

The patent examiner rejected petitioners’ application, explaining that it “is not implemented on a specific apparatus and merely manipulates [an] abstract idea and solves a purely mathematical problem without any limitation to a practical application, therefore, the invention is not directed to the technological arts.” The Board of Patent Appeals and Interferences affirmed, concluding

that the application involved only mental steps that do not transform physical matter and was directed to an abstract idea.

The United States Court of Appeals for the Federal Circuit heard the case en banc and affirmed....

II A

Section 101 defines the subject matter that may be patented under the Patent Act:

“Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.”

Section 101 thus specifies four independent categories of inventions or discoveries that are eligible for protection: processes, machines, manufactures, and compositions of matter. “In choosing such expansive terms . . . modified by the comprehensive ‘any,’ Congress plainly contemplated that the patent laws would be given wide scope.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980). Congress took this permissive approach to patent eligibility to ensure that “‘ingenuity should receive a liberal encouragement.’”

The Court’s precedents provide three specific exceptions to §101’s broad patent-eligibility principles: “laws of nature, physical phenomena, and abstract ideas.” While these exceptions are not required by the statutory text, they are consistent with the notion that a patentable process must be “new and useful.” And, in any case, these exceptions have defined the reach of the statute as a matter of statutory *stare decisis* going back 150 years. The concepts covered by these exceptions are “part of the storehouse of knowledge of all men . . . free to all men and reserved exclusively to none.”

The §101 patent-eligibility inquiry is only a threshold test. Even if an invention qualifies as a process, machine, manufacture, or composition of matter, in order to receive the Patent Act’s protection the claimed invention must also satisfy “the conditions and requirements of this title.” §101. Those requirements include that the invention be novel, see §102, nonobvious, see §103, and fully and particularly described, see §112.

The present case involves an invention that is claimed to be a “process” under §101. Section 100(b) defines “process” as:

“process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material.”

The Court first considers two proposed categorical limitations on “process” patents under §101 that would, if adopted, bar petitioners’ application in the present case: the machine-or-transformation test and the categorical exclusion of business method patents.

Under the Court of Appeals' formulation, an invention is a "process" only if: "(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." This Court has "more than once cautioned that courts 'should not read into the patent laws limitations and conditions which the legislature has not expressed.'" In patent law, as in all statutory construction, "[u]nless otherwise defined, 'words will be interpreted as taking their ordinary, contemporary, common meaning.'" The Court has read the §101 term "manufacture" in accordance with dictionary definitions and approved a construction of the term "composition of matter" consistent with common usage.

Any suggestion in this Court's case law that the Patent Act's terms deviate from their ordinary meaning has only been an explanation for the exceptions for laws of nature, physical phenomena, and abstract ideas. See *Parker v. Flook*, 437 U. S. 584, 588-589 (1978). This Court has not indicated that the existence of these well-established exceptions gives the Judiciary *carte blanche* to impose other limitations that are inconsistent with the text and the statute's purpose and design. Concerns about attempts to call any form of human activity a "process" can be met by making sure the claim meets the requirements of §101.

Adopting the machine-or-transformation test as the sole test for what constitutes a "process" (as opposed to just an important and useful clue) violates these statutory interpretation principles. Section 100(b) provides that "[t]he term 'process' means process, art or method, and includes a new use of a known process, machine, manufacture, composition of matter, or material." The Court is unaware of any "'ordinary, contemporary, common meaning'" of the definitional terms "process, art or method" that would require these terms to be tied to a machine or to transform an article. Respondent urges the Court to look to the other patentable categories in §101—machines, manufactures, and compositions of matter—to confine the meaning of "process" to a machine or transformation, under the doctrine of *noscitur a sociis*. Under this canon, "an ambiguous term may be given more precise content by the neighboring words with which it is associated." This canon is inapplicable here, for §100(b) already explicitly defines the term "process."

The Court of Appeals incorrectly concluded that this Court has endorsed the machine-or-transformation test as the exclusive test. It is true that *Cochrane v. Deener*, 94 U. S. 780, 788 (1877), explained that a "process" is "an act, or a series of acts, performed upon the subject-matter to be transformed and reduced to a different state or thing." More recent cases, however, have rejected the broad implications of this dictum; and, in all events, later authority shows that it was not intended to be an exhaustive or exclusive test. *Gottschalk v. Benson*, 409 U. S. 63, 70 (1972), noted that "[t]ransformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines." At the same time, it explicitly declined to "hold that no process patent could ever qualify if it did not meet [machine or transformation] requirements." *Flook* took a similar approach, "assum[ing] that a valid process patent may issue even if it does not meet [the machine-or-transformation test]."

This Court's precedents establish that the machine-or-transformation test is a useful and important clue, an investigative tool, for determining whether some claimed inventions are processes under §101. The machine-or-transformation test is not the sole test for deciding whether an invention is a patent-eligible "process."

2

It is true that patents for inventions that did not satisfy the machine-or-transformation test were rarely granted in earlier eras, especially in the Industrial Age... But times change. Technology and other innovations progress in unexpected ways. For example, it was once forcefully argued that until recent times, "well-established principles of patent law probably would have prevented the issuance of a valid patent on almost any conceivable computer program." But this fact does not mean that unforeseen innovations such as computer programs are always unpatentable. Section 101 is a "dynamic provision designed to encompass new and unforeseen inventions." A categorical rule denying patent protection for "inventions in areas not contemplated by Congress . . . would frustrate the purposes of the patent law."

The machine-or-transformation test may well provide a sufficient basis for evaluating processes similar to those in the Industrial Age—for example, inventions grounded in a physical or other tangible form. But there are reasons to doubt whether the test should be the sole criterion for determining the patentability of inventions in the Information Age. As numerous amicus briefs argue, the machine-or-transformation test would create uncertainty as to the patentability of software, advanced diagnostic medicine techniques, and inventions based on linear programming, data compression, and the manipulation of digital signals.

In the course of applying the machine-or-transformation test to emerging technologies, courts may pose questions of such intricacy and refinement that they risk obscuring the larger object of securing patents for valuable inventions without transgressing the public domain...As a result, in deciding whether previously unforeseen inventions qualify as patentable "process[es]," it may not make sense to require courts to confine themselves to asking the questions posed by the machine-or-transformation test. Section 101's terms suggest that new technologies may call for new inquiries.

It is important to emphasize that the Court today is not commenting on the patentability of any particular invention, let alone holding that any of the above-mentioned technologies from the Information Age should or should not receive patent protection. This Age puts the possibility of innovation in the hands of more people and raises new difficulties for the patent law. With ever more people trying to innovate and thus seeking patent protections for their inventions, the patent law faces a great challenge in striking the balance between protecting inventors and not granting monopolies over procedures that others would discover by independent, creative application of general principles. Nothing in this opinion should be read to take a position on where that balance ought to be struck.

Section 101 similarly precludes the broad contention that the term “process” categorically excludes business methods. The term “method,” which is within §100(b)’s definition of “process,” at least as a textual matter and before consulting other limitations in the Patent Act and this Court’s precedents, may include at least some methods of doing business. See, e.g., Webster’s New International Dictionary 1548 (2d ed. 1954) (defining “method” as “[a]n orderly procedure or process . . . regular way or manner of doing anything; hence, a set form of procedure adopted in investigation or instruction”). The Court is unaware of any argument that the “ordinary, contemporary, common meaning” of “method” excludes business methods. Nor is it clear how far a prohibition on business method patents would reach, and whether it would exclude technologies for conducting a business more efficiently.

The argument that business methods are categorically outside of §101’s scope is further undermined by the fact that federal law explicitly contemplates the existence of at least some business method patents. Under 35 U. S. C. §273(b)(1), if a patent-holder claims infringement based on “a method in [a] patent,” the alleged infringer can assert a defense of prior use. For purposes of this defense alone, “method” is defined as “a method of doing or conducting business.” In other words, by allowing this defense the statute itself acknowledges that there may be business method patents. Section 273’s definition of “method,” to be sure, cannot change the meaning of a prior-enacted statute. But what §273 does is clarify the understanding that a business method is simply one kind of “method” that is, at least in some circumstances, eligible for patenting under §101.

A conclusion that business methods are not patentable in any circumstances would render §273 meaningless. This would violate the canon against interpreting any statutory provision in a manner that would render another provision superfluous. This principle, of course, applies to interpreting any two provisions in the U. S. Code, even when Congress enacted the provisions at different times. This established rule of statutory interpretation cannot be overcome by judicial speculation as to the subjective intent of various legislators in enacting the subsequent provision. Finally, while §273 appears to leave open the possibility of some business method patents, it does not suggest broad patentability of such claimed inventions.

Interpreting §101 to exclude all business methods simply because business method patents were rarely issued until modern times revives many of the previously discussed difficulties. At the same time, some business method patents raise special problems in terms of vagueness and suspect validity. The Information Age empowers people with new capacities to perform statistical analyses and mathematical calculations with a speed and sophistication that enable the design of protocols for more efficient performance of a vast number of business tasks. If a high enough bar is not set when considering patent applications of this sort, patent examiners and courts could be flooded with claims that would put a chill on creative endeavor and dynamic change.

In searching for a limiting principle, this Court's precedents on the unpatentability of abstract ideas provide useful tools. Indeed, if the Court of Appeals were to succeed in defining a narrower category or class of patent applications that claim to instruct how business should be conducted, and then rule that the category is unpatentable because, for instance, it represents an attempt to patent abstract ideas, this conclusion might well be in accord with controlling precedent. But beyond this or some other limitation consistent with the statutory text, the Patent Act leaves open the possibility that there are at least some processes that can be fairly described as business methods that are within patentable subject matter under §101.

Finally, even if a particular business method fits into the statutory definition of a "process," that does not mean that the application claiming that method should be granted. In order to receive patent protection, any claimed invention must be novel, §102, nonobvious, §103, and fully and particularly described, §112. These limitations serve a critical role in adjusting the tension, ever present in patent law, between stimulating innovation by protecting inventors and impeding progress by granting patents when not justified by the statutory design.

III

Even though petitioners' application is not categorically outside of §101 under the two broad and atextual approaches the Court rejects today, that does not mean it is a "process" under §101. Petitioners seek to patent both the concept of hedging risk and the application of that concept to energy markets. Rather than adopting categorical rules that might have wide-ranging and unforeseen impacts, the Court resolves this case narrowly on the basis of this Court's decisions in *Benson*, *Flook*, and *Diehr*, which show that petitioners' claims are not patentable processes because they are attempts to patent abstract ideas. Indeed, all members of the Court agree that the patent application at issue here falls outside of §101 because it claims an abstract idea.

In *Benson*, the Court considered whether a patent application for an algorithm to convert binary-coded decimal numerals into pure binary code was a "process" under §101. The Court first explained that "[a] principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right." The Court then held the application at issue was not a "process," but an unpatentable abstract idea. "It is conceded that one may not patent an idea. But in practical effect that would be the result if the formula for converting . . . numerals to pure binary numerals were patented in this case." A contrary holding "would wholly pre-empt the mathematical formula and in practical effect would be a patent on the algorithm itself."

In *Flook*, the Court considered the next logical step after *Benson*. The applicant there attempted to patent a procedure for monitoring the conditions during the catalytic conversion process in the petrochemical and oil-refining industries. The application's only innovation was reliance on a mathematical algorithm. *Flook* held the invention was not a patentable "process." The Court conceded the invention at issue, unlike the algorithm in *Benson*, had been limited so that it could still be freely used outside the petrochemical and oil-refining industries. Nevertheless, *Flook* rejected "[t]he notion that post-solution activity, no matter how conventional or obvious in itself, can transform an unpatentable principle into a patentable process." The Court concluded that the process at issue there was "unpatentable under §101, not because it contain[ed] a mathematical

algorithm as one component, but because once that algorithm [wa]s assumed to be within the prior art, the application, considered as a whole, contain[ed] no patentable invention.” As the Court later explained, *Flook* stands for the proposition that the prohibition against patenting abstract ideas “cannot be circumvented by attempting to limit the use of the formula to a particular technological environment” or adding “insignificant postsolution activity.”

Finally, in *Diehr*, the Court established a limitation on the principles articulated in *Benson* and *Flook*. The application in *Diehr* claimed a previously unknown method for “molding raw, uncured synthetic rubber into cured precision products,” using a mathematical formula to complete some of its several steps by way of a computer. *Diehr* explained that while an abstract idea, law of nature, or mathematical formula could not be patented, “an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.” *Diehr* emphasized the need to consider the invention as a whole, rather than “dissect[ing] the claims into old and new elements and then . . . ignor[ing] the presence of the old elements in the analysis.” Finally, the Court concluded that because the claim was not “an attempt to patent a mathematical formula, but rather [was] an industrial process for the molding of rubber products,” it fell within §101’s patentable subject matter.

In light of these precedents, it is clear that petitioners’ application is not a patentable “process.” Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk: “Hedging is a fundamental economic practice long prevalent in our system of commerce and taught in any introductory finance class.” The concept of hedging, described in claim 1 and reduced to a mathematical formula in claim 4, is an unpatentable abstract idea, just like the algorithms at issue in *Benson* and *Flook*. Allowing petitioners to patent risk hedging would preempt use of this approach in all fields, and would effectively grant a monopoly over an abstract idea.

Petitioners’ remaining claims are broad examples of how hedging can be used in commodities and energy markets. *Flook* established that limiting an abstract idea to one field of use or adding token postsolution components did not make the concept patentable. That is exactly what the remaining claims in petitioners’ application do. These claims attempt to patent the use of the abstract idea of hedging risk in the energy market and then instruct the use of well-known random analysis techniques to help establish some of the inputs into the equation. Indeed, these claims add even less to the underlying abstract principle than the invention in *Flook* did, for the *Flook* invention was at least directed to the narrower domain of signaling dangers in operating a catalytic converter.

* * *

Today, the Court once again declines to impose limitations on the Patent Act that are inconsistent with the Act’s text. The patent application here can be rejected under our precedents on the unpatentability of abstract ideas. The Court, therefore, need not define further what constitutes a patentable “process,” beyond pointing to the definition of that term provided in §100(b) and looking to the guideposts in *Benson*, *Flook*, and *Diehr*.

And nothing in today's opinion should be read as endorsing interpretations of §101 that the Court of Appeals for the Federal Circuit has used in the past. It may be that the Court of Appeals thought it needed to make the machine-or-transformation test exclusive precisely because its case law had not adequately identified less extreme means of restricting business method patents, including (but not limited to) application of our opinions in *Benson*, *Flook*, and *Diehr*. In disapproving an exclusive machine-or-transformation test, we by no means foreclose the Federal Circuit's development of other limiting criteria that further the purposes of the Patent Act and are not inconsistent with its text.

The judgment of the Court of Appeals is affirmed.

[Stevens' and Breyer's concurrences in the judgment omitted]

Fair Use Doctrine Cheat Sheet

First Factor (Nature of Use)

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

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

Second Factor (Nature of Work).

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

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

Third Factor (Amount/Substantiality of Portion Taken).

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

Fourth Factor (Market Effect).

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

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

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

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

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

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