

CV 03 3561

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SIFTON, J.

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MR. BAR-B-Q, INC.,

CHREIN, J.

Plaintiff,

-against-

COMPLAINT

ODD JOB TRADING CORP.,

Defendant.

-----X

CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

2003 JUL 22 P 3:04

The Plaintiff, MR. BAR-B-Q, INC., by its attorneys, Natter & Natter, for its amended complaint against the Defendant, ODD JOB TRADING CORP. (hereinafter "ODD JOB") alleges as follows:

1. The Plaintiff, MR. BAR-B-Q, INC. is a New York corporation having an office and principal place of business at 445 Winding, Old Bethpage, New York.
2. The Defendant, ODD JOB is a New York corporation having an office and principal place of business at 200 Helen Street, South Plainfield NJ 07080.

AS AND FOR A FIRST COUNT

4. This action is for infringement under the patent laws of the United States, Title 35, United States Code.

5. Subject matter jurisdiction of this Court is based upon Title 28, United States Code §1331 and §1338(a).

6. Venue is proper in this district pursuant to Title 28 United States Code §1391 and §1400.

7. On November 3, 1998, United States Letters Patent No. Des. 400,358 was duly and legally issued to the Plaintiff, MR. BAR-B-Q, INC., as assignee of Marc Zemel, for an invention pertaining to the ornamental design of an article of manufacture comprising a basting brush. A copy of said Letters Patent No. Des. 400,358 is attached hereto as Exhibit A.

8. The Plaintiff, MR. BAR-B-Q, INC., remains the owner of the entire right, title and interest in and to said Letters Patent No. Des. 400,358.

9. In violation of Title 35 United States Code §271, the Defendant, ODD JOB, within this judicial district and in other judicial districts of the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. Des. 400,358 by making, using, selling, offering to sell, importing into the United States or causing others to make, use, sell, offer to sell or import into the United States an article of manufacture which embodies the patented design or a colorable imitation thereof without license of the Plaintiff and is still infringing said Letters Patent No. Des. 400,358.

10. In violation of Title 35 United States Code §271, the Defendant, ODD JOB, within this judicial district and in other judicial districts of the United States, without license of the

Plaintiff, applied the patented design of U.S. Patent No. Des. 400,358 or a colorable imitation thereof, to an article of manufacture for the purpose of sale, a photograph which is attached as Exhibit B.

11. In violation of Title 35 United States Code §271, the Defendant, ODD JOB, within this judicial district and in other judicial districts of the United States, without license of the Plaintiff, sold, offered for sale or exposed for sale an article of manufacture to which the patented design of U.S. Patent No. Des. 400,358 or a colorable imitation thereof has been applied. (Exhibit B)

12. In violation of Title 35 United States Code §271, the Defendant, ODD JOB, within this judicial district and in other judicial districts of the United States, without license of the Plaintiff, caused others to sell, offer for sale or expose for sale an article of manufacture to which the patented design of U.S. Patent No. Des. 400,358 or a colorable imitation thereof has been applied. (Exhibit B)

13. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 400,358, upon information and belief, is willful, intentional and deliberate.

14. Upon information and belief, this is an exceptional case within the provisions of 35

United States Code §285 and the Plaintiff, MR. BAR-B-Q, INC., is therefore entitled to the recovery of attorneys' fees.

15. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 400,358 has caused the Plaintiff, MR. BAR-B-Q, INC. to suffer monetary damages, the full extent of which are as yet undetermined.

16. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

AS AND FOR A SECOND COUNT

17. This count is for infringement under the patent laws of the United States, Title 35, United States Code.

18. Subject matter jurisdiction of this court is based upon Title 28, United States Code §1331 and §1338(a).

19. Venue is proper in this district pursuant to Title 28 United States Code §1391 and §1400.

20. On April 10, 2001, United States Letters Patent No. Des. 440,128 was duly and legally issued to the Plaintiff, MR. BAR-B-Q, INC., as assignee of Marc Zemel, for an invention pertaining to the ornamental design of an article of manufacture comprising a seasoning infuser. A copy of said Letter Patent No. Des. 440,128 is attached hereto as Exhibit C.

21. The Plaintiff, MR. BAR-B-Q, INC., remains the owner of the entire right, title and interest in and to said Letters Patent No. Des. 440,128.

22. In violation of Title 35 United States Code §271, the Defendant, ODD JOB, within this judicial district and in other judicial districts of the United States has infringed, induced others to infringe and contributorily infringed said Letters Patent No. Des. 440,128 by making, using, selling, offering to sell, importing into the United States or causing others to make, use, sell, offer to sell or import into the United States an article of manufacture which embodies the patented design or a colorable imitation thereof without license of the Plaintiff and is still infringing said Letters Patent No. Des. 440,128.

23. In violation of Title 35 United States Code §271, the Defendant, ODD JOB, within this judicial district and in other judicial districts of the United States, without license of the Plaintiff, applied the patented design of U.S. Patent No. Des. 440,128 or a colorable imitation thereof, to an article of manufacture for the purpose of sale, a photograph of which is attached as Exhibit D.

24. In violation of Title 35 United States Code §271, the Defendant, ODD JOB, within this judicial district and in other judicial districts of the United States, without license of the Plaintiff, sold, offered for sale or exposed for sale an article of manufacture to which the patented design or a colorable imitation thereof has been applied. (Exhibit D)

25. In violation of Title 35 United States Code §271, the Defendant, ODD JOB, within this judicial district and in other judicial districts of the United States, without license of the Plaintiff, caused others to sell, offer for sale or expose for sale an article of manufacture to which the patented design of U.S. Patent No. Des. 440,128 or a colorable imitation thereof has been applied. (Exhibit D)

26. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 440,128, upon information and belief, is willful, intentional and deliberate.

27. Upon information and belief, this is an exceptional case within the provisions of 35 United States Code §285 and the Plaintiff, MR. BAR-B-Q, INC., is therefore entitled to the recovery of attorneys' fees.

28. The Defendant's infringement, contributory infringement and active inducement of infringement of Letters Patent No. Des. 440,128 has caused the Plaintiff, MR. BAR-B-Q, INC. to suffer monetary damages, the full extent of which are as yet undetermined.

29. The Plaintiff has no adequate remedy at law and is presently suffering and will continue to suffer irreparable harm and damage if such infringement is allowed to continue.

WHEREFORE, the Plaintiff demands judgment against the Defendant as follows:

ON THE FIRST COUNT

1. That, pursuant to 35 U.S.C. §283, preliminary and permanent injunctions be issued enjoining the Defendant, ODD JOB TRADING CORP., its officers agents, servants,

employees and all those persons in active concert or participation with said Defendant from further infringement of U.S. Patent No. Des. 400,358.

2. That pursuant to 35 U.S.C. §284, the Defendant, ODD JOB TRADING CORP., account to the Plaintiff for damages for all past infringement of said U.S. Patent No. Des 400,358 including treble damages as appropriate;

3. That pursuant to 35 U.S.C. §289, the Defendant, ODD JOB TRADING CORP., account to Plaintiff to the extent of its total profit for all past infringement of said U.S. Patent No. Des. 400,358 including treble damages as appropriate;

4. That pursuant to 35 U.S.C. §285, the Defendant, ODD JOB TRADING CORP., pay the Plaintiff's costs and attorneys' fees; and

ON THE SECOND COUNT

5. That, pursuant to 35 U.S.C. §283, preliminary and permanent injunctions be issued enjoining the Defendant, ODD JOB TRADING CORP., its officers agents, servants, employees and all those persons in active concert or participation with said Defendant from further infringement of U.S. Patent No. Des. 440,128.

6. That pursuant to 35 U.S.C. §284, the Defendant, ODD JOB TRADING CORP., account to the Plaintiff for damages for all past infringement of said U.S. Patent No. Des 440,128 including treble damages as appropriate;


7. That pursuant to 35 U.S.C. §289, the Defendant, ODD JOB TRADING CORP., account to Plaintiff to the extent of its total profit for all past infringement of said U.S. Patent No. Des. 440,128 including treble damages as appropriate;

8. That pursuant to 35 U.S.C. §285, the Defendant, ODD JOB TRADING CORP., pay the Plaintiff's costs and attorneys' fees;

9. For such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 22, 2003

NATTER & NATTER
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By 
Seth Natter (SN 4913)



US00D400358S

United States Patent [19]

Zemel

[11] Patent Number: Des. 400,358

[45] Date of Patent: **Nov. 3, 1998

- [54] BASTING BRUSH
- [75] Inventor: Marc Zemel. Old Bethpage. N.Y.
- [73] Assignee: Mr. Bar-B-Q-, Inc., Old Bethpage. N.Y.
- [**] Term: 14 Years
- [21] Appl. No.: 79,671
- [22] Filed: Nov. 20, 1997
- [51] LOC (6) Cl. 09-07
- [52] U.S. Cl. D4/114; D4/135; D9/436
- [58] Field of Search D14/114, 116.
D14/132, 135; 15/191.1, 192, 193, 205.2,
248.1; 401/126, 127, 129, 183-185, 207,
268, 270, 286-288, 291; D9/436

4,710,048 12/1987 Vartoughian .
 4,848,946 7/1989 Goncalves .
 5,398,365 3/1995 MacKenzie 15/205.2 X
 5,547,303 8/1996 Pyrozyk .

Primary Examiner—Alan P. Douglas
 Assistant Examiner—Lavone D. Tabor
 Attorney, Agent, or Firm—Natter & Natter

[57] CLAIM

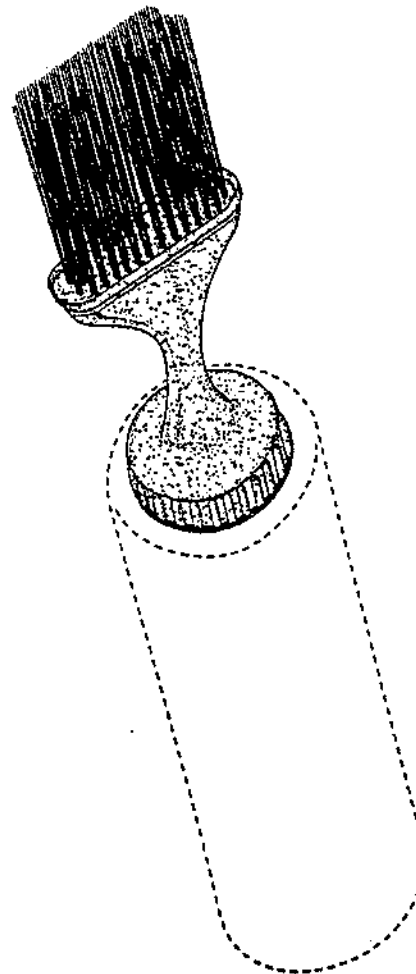
The ornamental design for a basting brush, as shown and described.

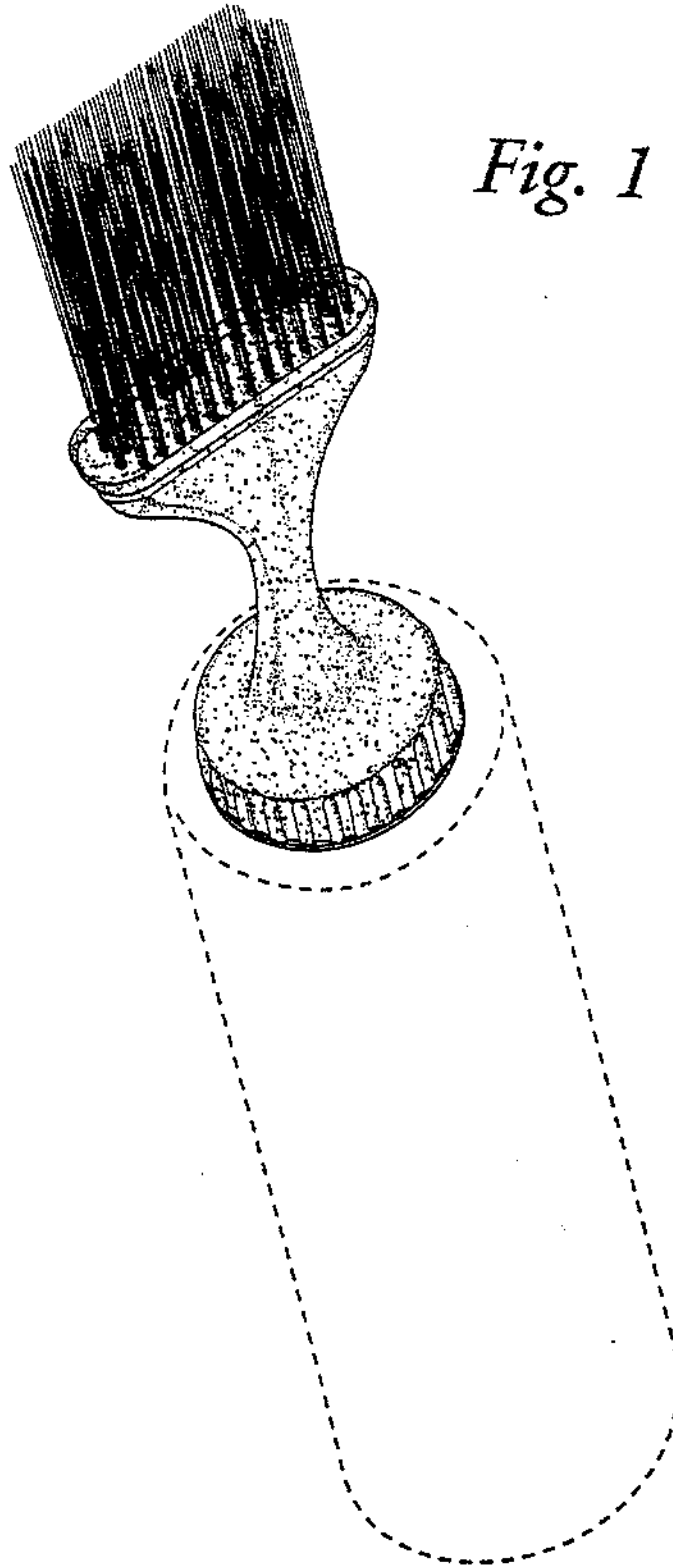
DESCRIPTION

FIG. 1 is a perspective view of a basting brush showing my new design;
 FIG. 2 is a front elevational view thereof;
 FIG. 3 is a side elevational view thereof; and
 FIG. 4 is a top plan view thereof.
 The rear elevational view is identical to the front elevational view and side not illustrated is identical to the side illustrated. The bottom is plain and unornamented.
 The broken line showing of a bottle in FIG. 1 is for illustrative purposes only and forms no part of the claimed design.

1 Claim, 2 Drawing Sheets

- [56] References Cited
- U.S. PATENT DOCUMENTS
- D. 376,479 12/1996 Bresler et al. .
 - 2,167,523 7/1939 Reichenbach .
 - 2,253,779 8/1941 Gutierrez .
 - 2,892,204 6/1959 Wagner 15/248.1
 - 3,029,464 4/1962 Springmeier .
 - 3,106,741 10/1963 Stoner .





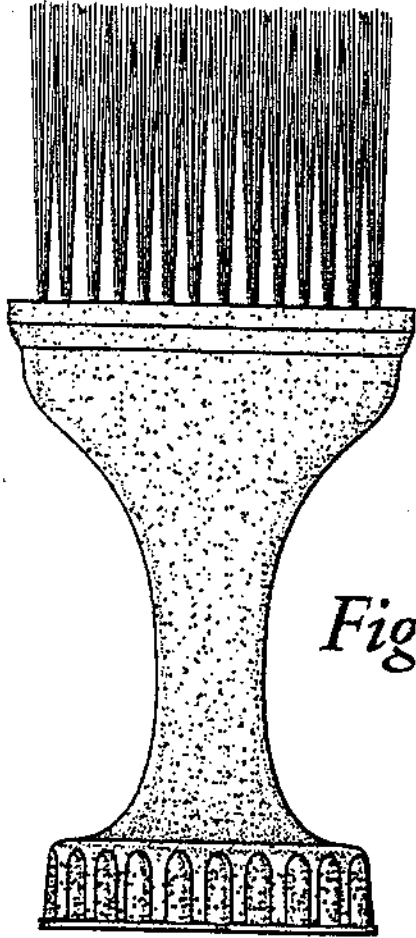


Fig. 2

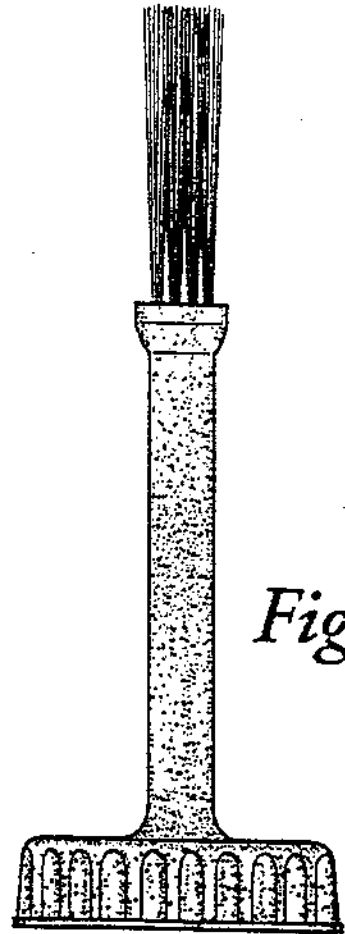


Fig. 3

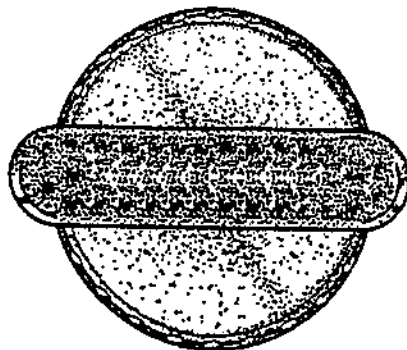


Fig. 4



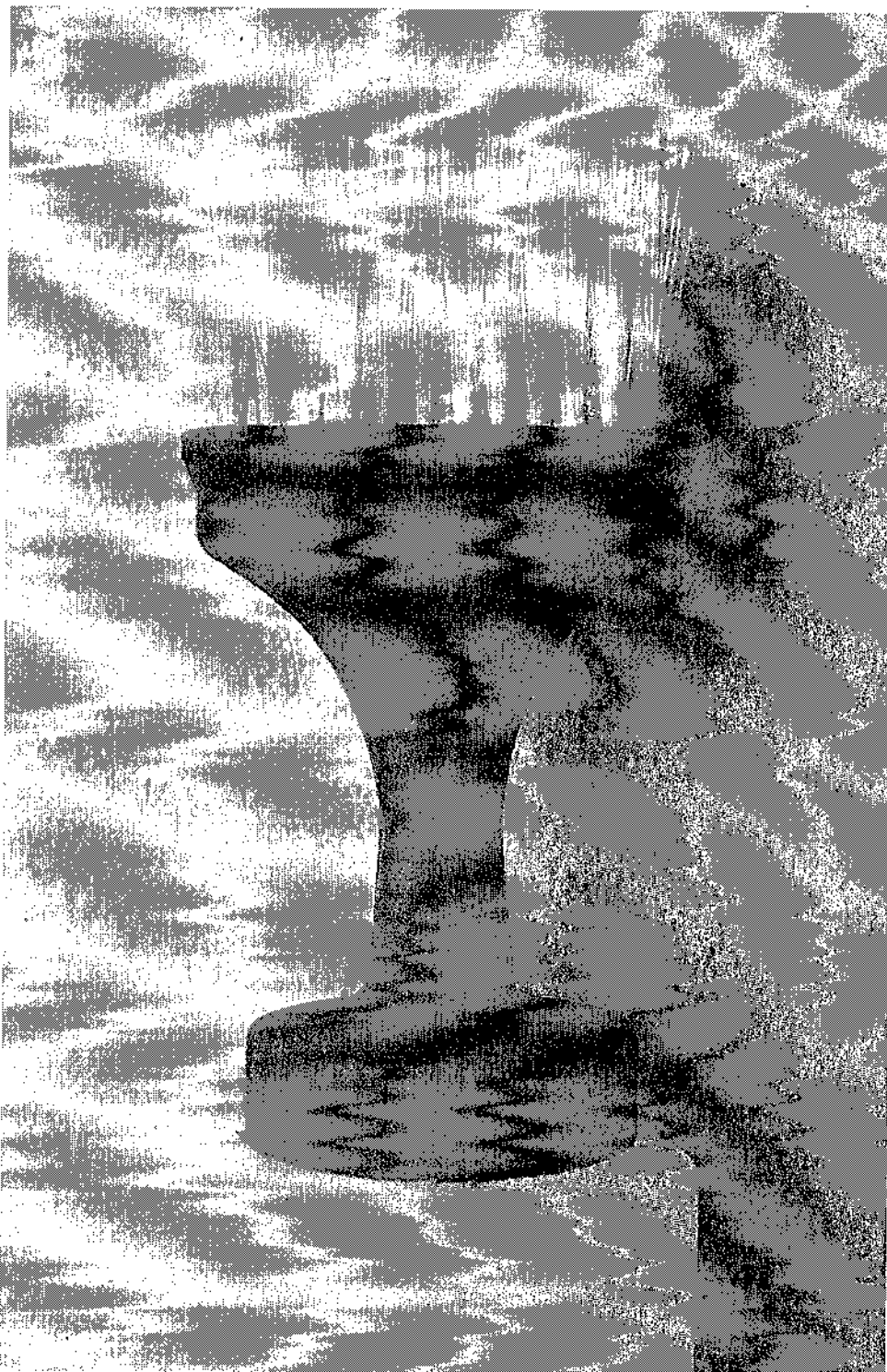


EXHIBIT
B





US00D440128S

(12) **United States Design Patent** (10) Patent No.: **US D440,128 S**
Zemel (45) Date of Patent: **** Apr. 10, 2001**

(54) **SEASONING INFUSER**

5,507,221 * 4/1996 Legares-Corominas 99/532
5,934,187 10/1999 Leon .

(75) Inventor: **Marc Zemel, Old Bethpage, NY (US)**

* cited by examiner

(73) Assignee: **Mr. Bar-B-Q-, Inc., Old Bethpage, NY (US)**

Primary Examiner—Terry A. Wallace
(74) Attorney, Agent, or Firm—Natter & Natter

(**) Term: **14 Years**

(57) **CLAIM**

(21) Appl. No.: **29/127,286**

The ornamental design for a seasoning infuser, as shown and described.

(22) Filed: **Aug. 3, 2000**

DESCRIPTION

(51) **LOC (7) Cl.** **07-04**

(52) **U.S. Cl.** **D7/669**

(58) **Field of Search** **D7/368, 669; D24/114, D24/115; 30/123.3; 99/345, 532, 535, 516; 452/146; 604/212**

FIG. 1 is a front elevational view of a seasoning infuser showing my new design;
FIG. 2 is a left side view thereof;
FIG. 3 is a right side view thereof;
FIG. 4 is a top plan view thereof; and,
FIG. 5 is a perspective view thereof.

(56) **References Cited**

The rear elevational view is a mirror image of the front elevational view.

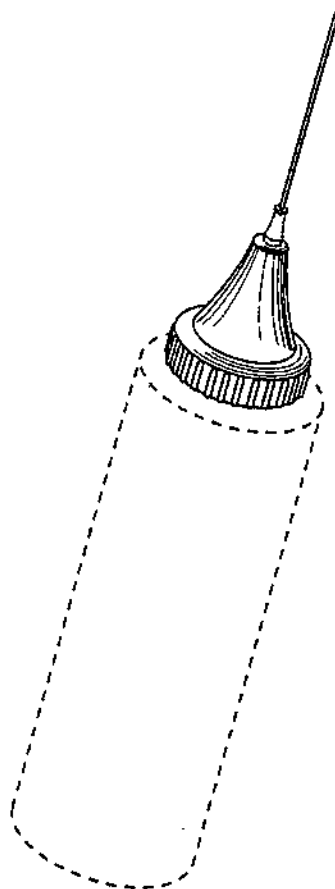
U.S. PATENT DOCUMENTS

The bottom is plain and unornamented.

- D. 263,271 * 3/1982 Kalb D7/669
- D. 334,979 * 4/1993 Smith D24/114 X
- D. 375,875 * 11/1996 Hutzler et al. D7/669
- D. 400,358 11/1998 Zemel .
- 3,590,722 7/1971 Leptrone .
- 3,777,655 12/1973 Ainsworth .

The broken line showings of a ferrule in all of the figures and of a bottle in FIG. 4 form no part of the claimed design. The stippling in the drawings is for shading purposes only.

1 Claim, 2 Drawing Sheets



U.S. Patent

Apr. 10, 2001

Sheet 1 of 2

US D440,128 S

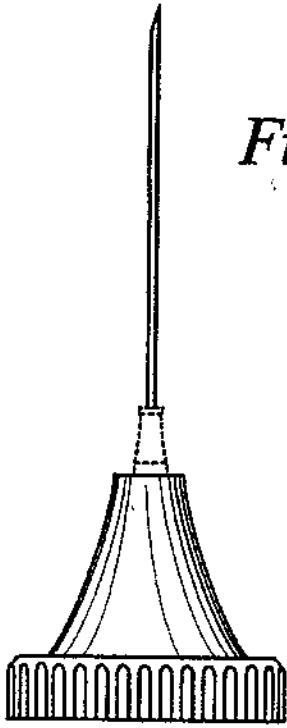


Fig. 1

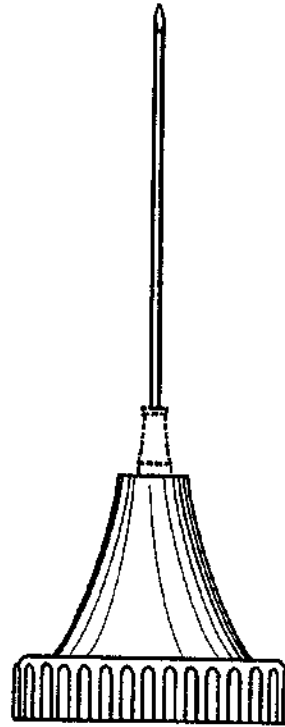


Fig. 2

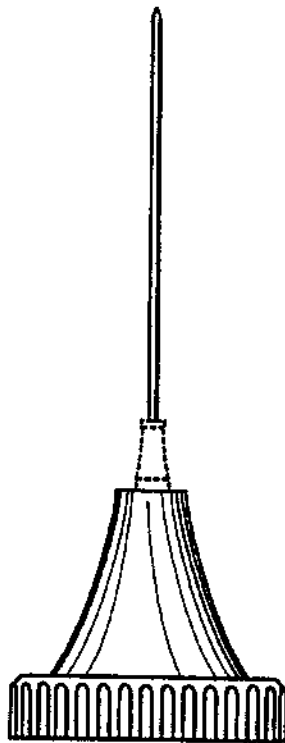


Fig. 3

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Fig. 4

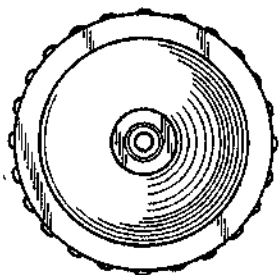
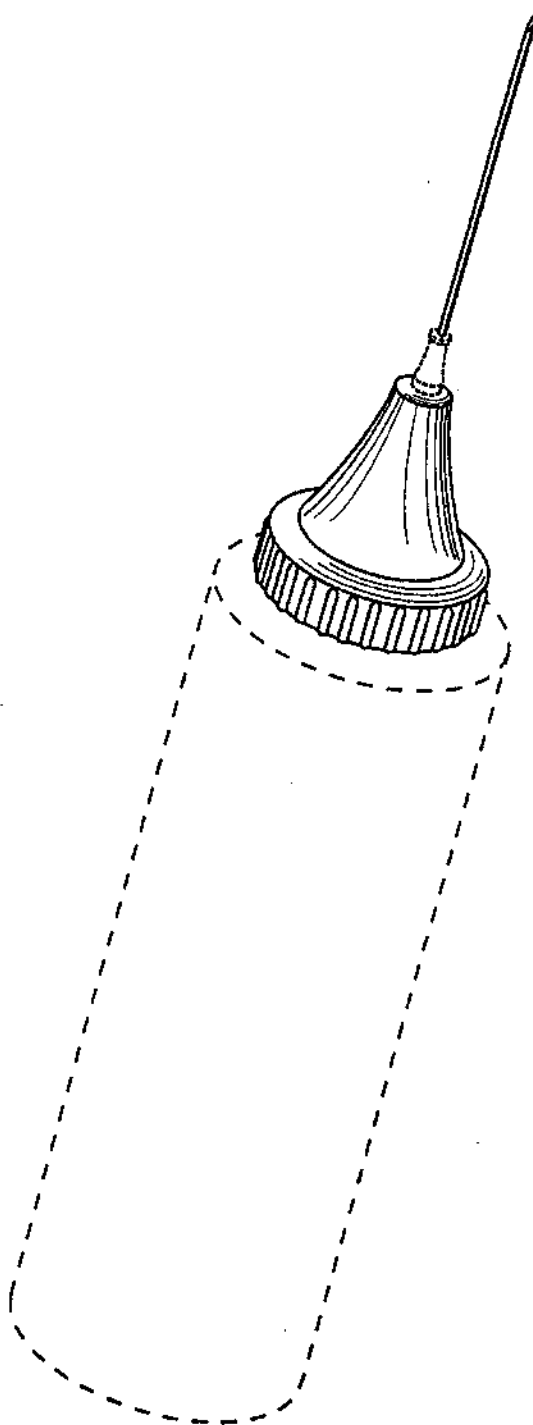


Fig. 5





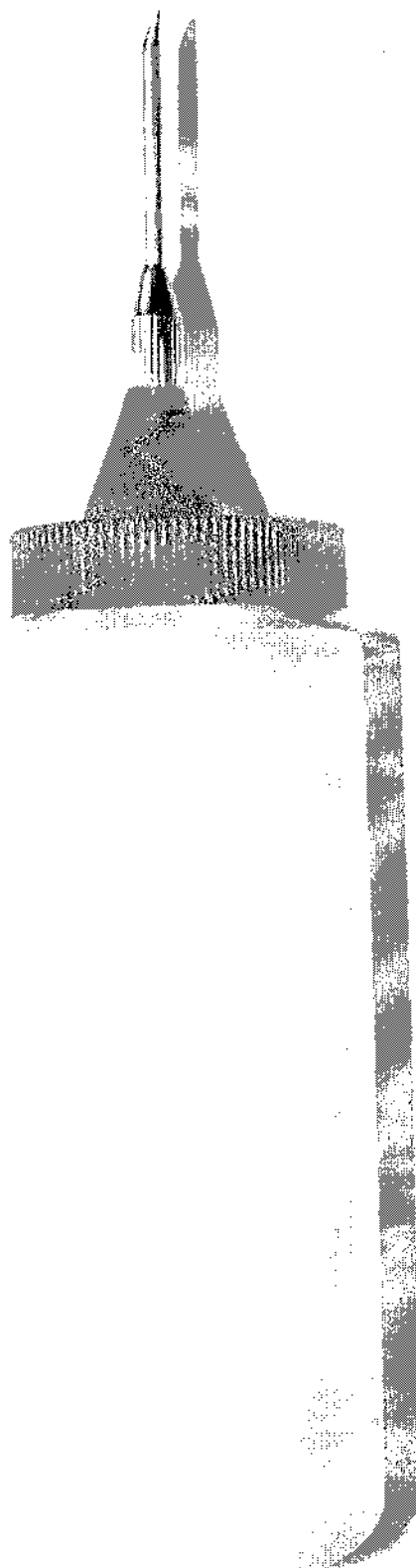


EXHIBIT
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