

**NALSAR PROXIMATE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD
P.G.DIPLOMA IN PATENTS LAW
2003-04**

**Paper IV - Practical
(Abuse of Patents)**

Time: 2 ½ hours.

Full marks: 60.

You are required to attempt all Questions.

- 1) What is understood by patent infringement? Can a private person infringe on a patent?
(2+4)marks
- 2) What is a patent equivalent? What is the need of an equivalent?
(2+2)marks
- 3) What do you understand by *Doctrine of Equivalence* in patents? How can it be determined for a specific patent?
(2+4)marks
- 4) Explain – *Prosecution History Estoppels*.
(4)marks
- 5) McMullen and his friends have approached you with the following figures and write up of their invention. Study the data that is provided and answer the questions that follow:

McMullen and his friends believes to posses an invention provides a small umbrella ("Beerbrella") which may be removably attached to a beverage container in order to shade the beverage container from the direct rays of the sun. The apparatus of the present invention has particular application for use in sunny locations (e.g., poolside, at the bear, outdoor bars, and the like). However, the apparatus of the present invention may also be used to prevent rain or other precipitation from contaminating a beverage.

In addition, the apparatus of the present invention may be used in other locations (e.g., indoors) purely as a decorative novelty item or the like.

The apparatus comprises a small umbrella approximately five to seven inches in diameter, although other appropriate sizes may be used within the spirit and scope of the present invention. The umbrella may be made from any one of a number of materials. A small paper-like umbrella may be used, with balsa framing (e.g., in a similar manner to a cocktail umbrella) if low cost and disposability is an objective. A solid plastic umbrella may also be

inexpensively made and may be reusable and waterproof. More elaborate umbrella types such as cloth or the like may also be employed without departing from the spirit and scope of the present invention.

Suitable advertising and/or logos may be applied to the umbrella surface for promotional purposes. The umbrella may be attached to the beverage container by any one of a number of means, including clip, strap, cup, foam insulator, or as a coaster or the like. The umbrella shaft may be provided with a pivot to allow the umbrella to be suitably angled to shield the sun or for aesthetic purposes. In one embodiment, a pivot joint and counterweight may be provided to allow the umbrella to pivot out of the way when the user drinks from the container.

They have the following figures to illustrate the invention:



Figure 1



Figure 2

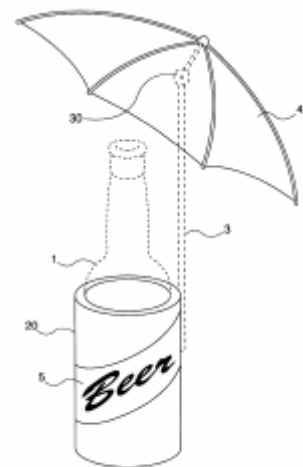


Figure 3

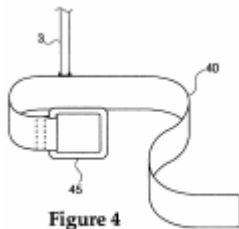


Figure 4

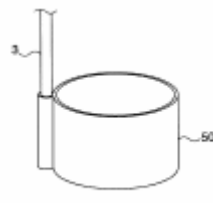


Figure 5

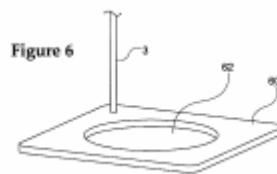


Figure 6



Figure 7

FIG. 1 is a front perspective view of a first embodiment of the present invention.
FIG. 2 is a front perspective view of a second embodiment of the present invention.
FIG. 3 is a front perspective view of a third embodiment of the present invention.
FIG. 4 is a front perspective view illustrating an alternative attachment device for the present invention.
FIG. 5 is a front perspective view illustrating another alternative attachment device for the present invention.
FIG. 6 is a front perspective view of a coaster for supporting the umbrella of the present invention.
FIG. 7 is a front perspective view of an alternative embodiment of a coaster for supporting the umbrella of the present invention.

FIG. 1 is a front perspective view of a first embodiment of the present invention. In the embodiment of FIG. 1, clip 2 may be provided to attach to container 1 by means of spring action and friction. Clip 2 may be made of spring steel, or preferably plastic (e.g., PVC or the like). Clip 2 may even be made of formed cardboard (e.g., cut cardboard tube or the like) if low cost is an issue.

Clip 2 may be removably attached to container 1 such that the apparatus may be reused on another container when container 1 is empty. Attached to clip 2 is shaft 3 for supporting umbrella 4. Umbrella 4 may be fixed to shaft 3 or may be attached using a pivot joint or the like as will be discussed in more detail below. Shaft 3 may be made of plastic, wood, cardboard, or metal, but in the preferred embodiment is plastic.

Umbrella 4 may be attached to the beverage container 1 by any one of a number of means, including clip, strap, cup, foam insulator, or as a coaster or the like. The clip of FIG. 1 is by way of example only and is not intended to limit the scope of the present invention in any way.

Umbrella 4 may comprise a small umbrella approximately five to seven inches in diameter, although other appropriate sizes may be used within the spirit and scope of the present invention. Umbrella 4 may be made from any one of a number of materials. A small paper-like umbrella 4 may be used, with balsa framing (e.g., in a similar manner to a cocktail umbrella) if low cost and disposability is an objective.

Umbrella 4 preferably may comprise a solid plastic umbrella which may be inexpensively made and may be reusable and waterproof. More elaborate umbrella types such as cloth or the like may also be employed without departing from the spirit and scope of the present invention. Suitable advertising and/or logos 5 may be applied to the surface of umbrella 4 for promotional purposes.

FIG. 2 is a front perspective view of the present invention. In the embodiment of FIG. 3, umbrella shaft 3 may be provided with a pivot joint 10 and counterweight 12 to umbrella 4 to pivot out of the way when the user drinks from the container. When the user places the container back in an upright position, umbrella 4 will automatically pivot back into position by action of gravity.

FIG. 3 is a front perspective view of the present invention. In the embodiment of FIG. 2, umbrella shaft 3 may be provided with a pivot 30 to allow the umbrella to be suitably angled to shield the sun or for aesthetic purposes. This pivot 30 may be applied also to the embodiments of FIGS. 1 and 2 without departing from the spirit and scope of the present invention.

Also as illustrated in FIG. 3, shaft 3 may be mounted to an expanded polyurethane "coozie" insulated drink holder. The combination of shading and insulation may maintain the beverage in container 1 at a cold temperature for a longer period of time. Note that the use of the coozie mount does not require the use of the pivot 30. Both elements are shown here however are for the sake of illustration.

FIG. 4 is a front perspective view illustrating an alternative attachment device for the present invention. In the embodiment of FIG. 4, a strap 40 may be provided to secure shaft 3 to the container 1 (not shown) by encompassing container 1. Strap 40 may be provided with a buckle, velcro, or other type or strap securing mechanism as are known in the art.

FIG. 5 is a front perspective view illustrating another alternative attachment device for the present invention. In the embodiment of FIG. 5, a cup 50 is provided to fit securely to the bottom of a drink container such as a can or bottle.

FIG. 6 is a front perspective view of a coaster for supporting the umbrella of the present invention. In the embodiment of FIG. 6, shaft 3 is attached to a coaster 60 which may have a depressed portion 62 for accepting a beverage container. When the user wishes to drink, they remove the beverage container from the drink coaster. In such an embodiment, the umbrella (not shown) remains with the coaster, which may be weighted to prevent the apparatus from becoming top-heavy?

FIG. 7 is a front perspective view of an alternative usage as a coaster for supporting the umbrella of the present invention. In the embodiment of FIG. 7, coaster 60 has been embellished with decorative palm trees 71 and 72 to give coaster 60 the appearance of a stereotypical "desert island". Since some beverage manufacturers use themes of tropical paradises in promoting their beverages, the use of such a theme may be useful in promoting such beverages.

Beverage accessories are known in the art for use with beverage containers, be they glasses, cans, or bottles, and in particular with alcoholic beverages. Many of these accessories provide novelty amusement as well as practical effects, such as increased insulation to keep a beverage cold. Many of these accessories are sold or given away as promotional items for advertising purposes.

For example, the popular insulated beverage sleeve known as a "coozie" may be provided, manufactured of soft expanded polyurethane foam. These beverage sleeves are typically provided with an applied graphic advertising a beverage brand or the name of the company giving away the device as a promotion. A can, glass, or bottle may be inserted into the sleeve. The sleeve acts as an insulator to prevent ambient heat as well as heat from the user's hands, from warming the beverage.

Similar devices are known for use specifically with bottles beverages. In this variation, a tailored expanded polyurethane jacket may be provided, replete with zipper, to encapsulate substantially all of a bottle.

Various devices are known for supporting beverages, such as coasters and the like as well as beverage stands, trays, and supports. One problem with the existing devices is that although they do provide insulation for beverages, they do not shield the beverage from the direct rays of the sun. A beverage left out in the sun, even if insulated or cooled with ice, quickly warms due to the effect of the intense infrared radiation from the sun, particularly on hot, sunny summer days. Thus, it remains a requirement in the art to provide a means for shielding a beverage from direct sunlight.

- a) Does McMullan and his friends have an invention?***
- b) Can they get a patent entitled "Beerrella"? What are your suggestions on protecting the brand name "Beerrella"?***
- c) Discuss the novelty, non-obviousness and utility of proposed invention's claims.***
- d) Will McMullan and his friends be infringing several patents, which separately claims "umbrella" and "bottle designs"?***
- e) Will you advice the client to file a patent application? Why?***
- f) Draft a set of claims for the proposed patent application.***

(2+6+9+5+3+15)= 40 marks
