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In re: Patentability of the Peltzer Inventions

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In re: Patentability of the Peltzer Inventions

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IN RE: PATENTABILITY OF THE PELTZER INVENTIONS

Brian L. Frye

Illustrations by Sarah Laytham

The motion picture Gremlins (1984) stars Hoyt Wayne Axton (1938-1999) as Randall Peltzer, a prolific inventor with persistent cash-flow problems. Among other things, the motion picture discloses many of Peltzer's inventions, including the "Bathroom Buddy," the "Peltzer Smokeless Ashtray," and the "Peltzer Pet." This essay takes the form of an opinion letter evaluating the patentability of Peltzer's inventions.

Law Office of Bill S. Preston, Esq.
112 W. Kaler Drive
Phoenix, AZ 85021

December 24, 1983

Randall Peltzer
419 Deagle Street
Kingston Falls, NY 12765

Re: Patentability of the Peltzer Inventions

Dear Mr. Peltzer,

You have asked me to provide a legal opinion on the patentability of certain inventions and discoveries that you have disclosed to me in confidence. This letter provides a summary of my legal opinion on the patentability of each invention or discovery, based on my research and experience.

In order to preserve the privileged and non-discoverable status of this opinion letter, I advise you to disclose its contents only to persons substantially participating in decisions relating to the legal advice I have provided.

INTRODUCTION

My expertise is legal, not scientific, so this letter will focus primarily on whether your inventions and discoveries satisfy the legal requirements for patentability. The patentability of an invention or discovery often depends on the understanding of skilled practitioners in the relevant field, or "persons having ordinary skill in the art." Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 13, 15 (1996). Accordingly, I will identify issues that may implicate scientific questions and require additional investigation.

This opinion letter will provide a brief description of each invention or discovery you wish to claim, based on the

specification and model you provided to me, followed by an assessment of its patentability. This letter will address the substantive requirements for patentability, as relevant to each invention or discovery: patentable subject matter, novelty, utility, and nonobviousness. I will also address practical questions, including enablement, commercial viability, and distinctiveness.

The Patent Office will issue a patent for an invention or discovery only if it is "novel," which means distinguishable from "prior art," or inventions or discoveries previously disclosed to the public. Id. at 15. Even if an invention or discovery is novel, the Patent Office will issue a patent only if it is also "non-obvious" to a person having ordinary skill in the pertinent art. Id. at 3. Essentially, an invention or discovery is "obvious" if it is effectively anticipated by the prior art, but not literally disclosed. See id.

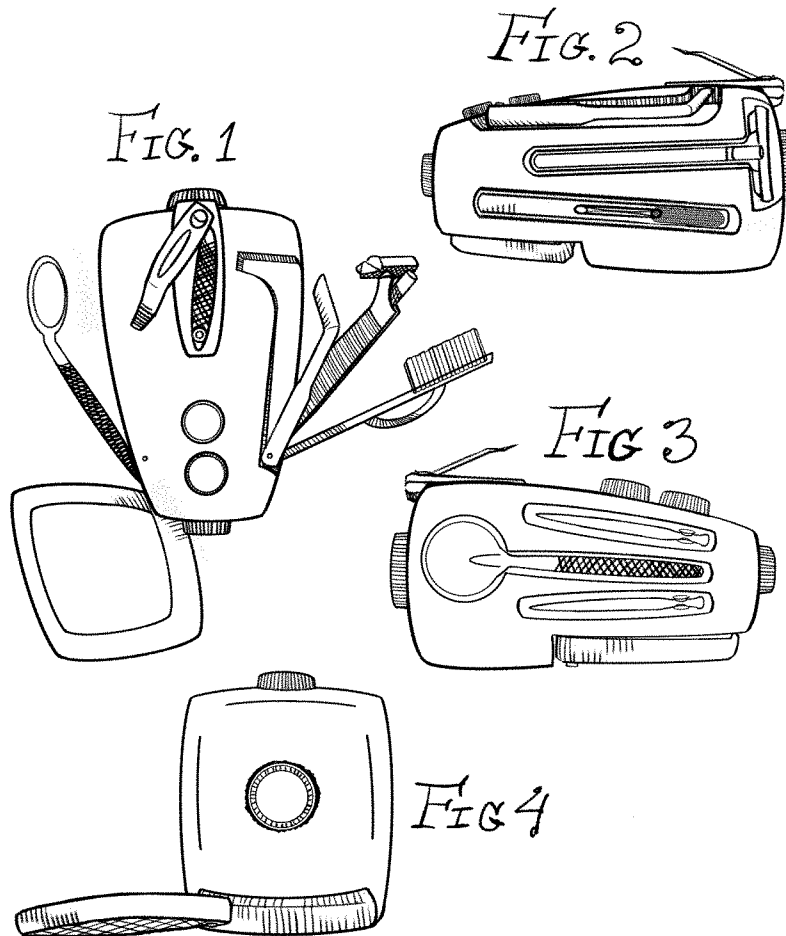
Accordingly, I have conducted a prior art search for each invention or discovery you disclosed to me. I searched for prior art patents in the public patent library maintained by the United States Patent and Trademark Office. I also searched the New York Times Index for printed publications disclosing prior art.

I believe my prior art search has identified the prior art most relevant to your inventions and discoveries, but it was necessarily limited by time and cost constraints. I can conduct a more extensive search if you decide to file a patent application for one or more of your inventions or discoveries.

**1. Multi-Functional Personal Toiletry Device:
"Bathroom Buddy"**

The invention is a personal toiletry device in the shape of a rectangular prism, with one or more personal hygiene tools integrally attached, which may include but are not limited to: a toothbrush; a toothpick; a dental mirror; a safety razor; toenail clippers; and a nail file. The device

may also incorporate one or more automatic dispensers of toiletry products, which may include but are not limited to toothpaste and shaving cream.



Patent Analysis

The prior art references I found do not appear to anticipate this invention. Many patents disclose combination toiletry kits. Here are the closest references:

- U.S. Patent No. 2,712,487 (filed Jan. 14, 1952) discloses a "Toiletry Kit," described as "a compact kit especially designed for containing such toiletry items as dentifrices, toothbrushes, shaving equipment, and the

like, and its principal object resides in the provision of a compact casing, or cabinet which can be made portable."

- U.S. Patent No. 2,576,560 (filed Sept. 26, 1946) discloses a "Combination Toothbrush, Water Glass, and Soap Holder," described as "a holder in which several toothbrushes may be separately accommodated in individual sanitary compartments for protection against dust, and other contamination."

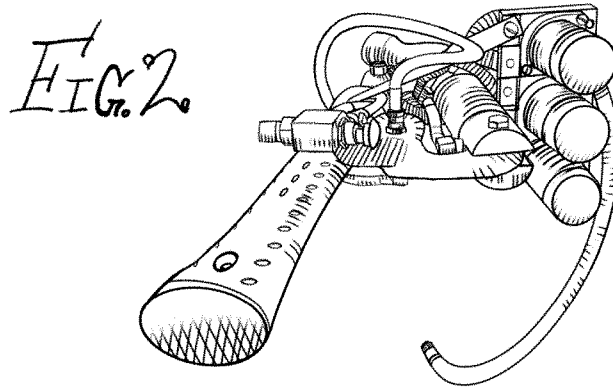
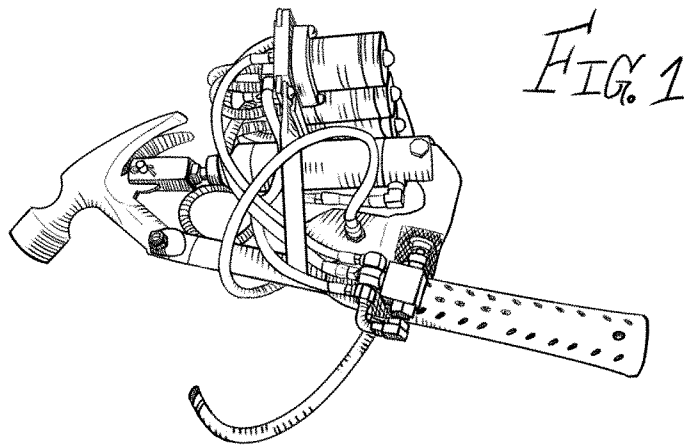
While prior art references include personal toiletry devices that combine multiple personal hygiene tools and personal hygiene product dispensers, no prior art references combine so many different tools and dispensers intended for so many different purposes. In addition, few prior art references disclose devices with integrally-attached tools. Accordingly, this invention is probably novel and non-obvious.

Market Analysis

While attaching the tools to the device eliminates the risk of loss, it may also decrease their utility. Perhaps too many tools spoil the device? In addition, some consumers may object to using the same device for both oral and pedal hygiene. I note that the specification you provided does not appear to fully enable the hygiene product dispensers that it discloses. I respectfully suggest that you consider adding tweezers to the device because they are not only a popular personal hygiene tool but also simple and inexpensive to manufacture.

2. *Pneumatic Hammer: "Hammer Helper"*

The invention is a hammer powered by an electromechanical pneumatic device. It consists of an electromechanical device mounted on a handle, which propels a striking body.



Patent Analysis

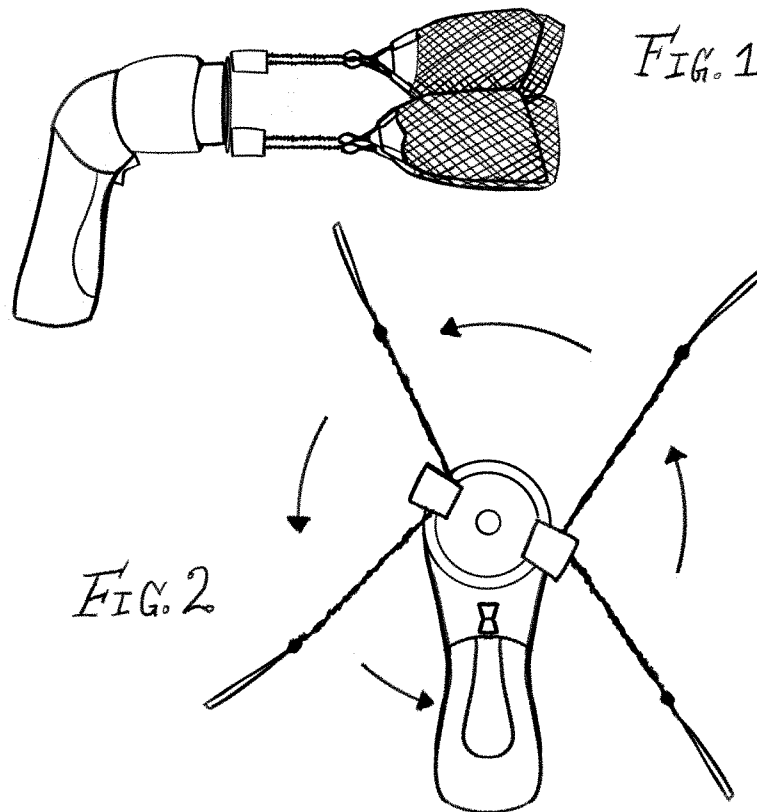
The prior art references I found do not appear to anticipate this invention. Many patents disclose electromechanical hammers, but none appear to disclose a hammer with a design similar to yours. Hammer patents typically disclose either mechanical hammers (e.g. U.S. Patent No. 4,039,012 (filed Jan. 12, 1976)) or electric hammers (e.g. U.S. Patent No. 2,628,319 (filed July 1, 1948)), but do not combine the two. Accordingly, this invention is probably novel and non-obvious.

Market Analysis

I found that the model functioned as described in the specification, but I also found that the device was incapable of imparting sufficient force to the striking body to drive a nail of any size. While this invention is probably patentable, it may have limited appeal to consumers.

3. Electromechanical Insect Swatter: "Bug Blaster"

The invention is a device intended for killing pests, including but not limited to insects. It comprises one or more perforated paddles attached to a shaft driven by an electric motor, which is itself attached to a handle.



Patent Analysis

The prior art references I found do not appear to anticipate this invention. Many patents disclose mechanical insect swatters. Here is the closest reference:

- U.S. Patent No. 3,292,299 (Dec. 20, 1966) discloses a "Spring Actuated Fly Swatter," described as "a spring-actuated fly swatter of simple and inexpensive construction which is easy to use and efficient in swatting flies."

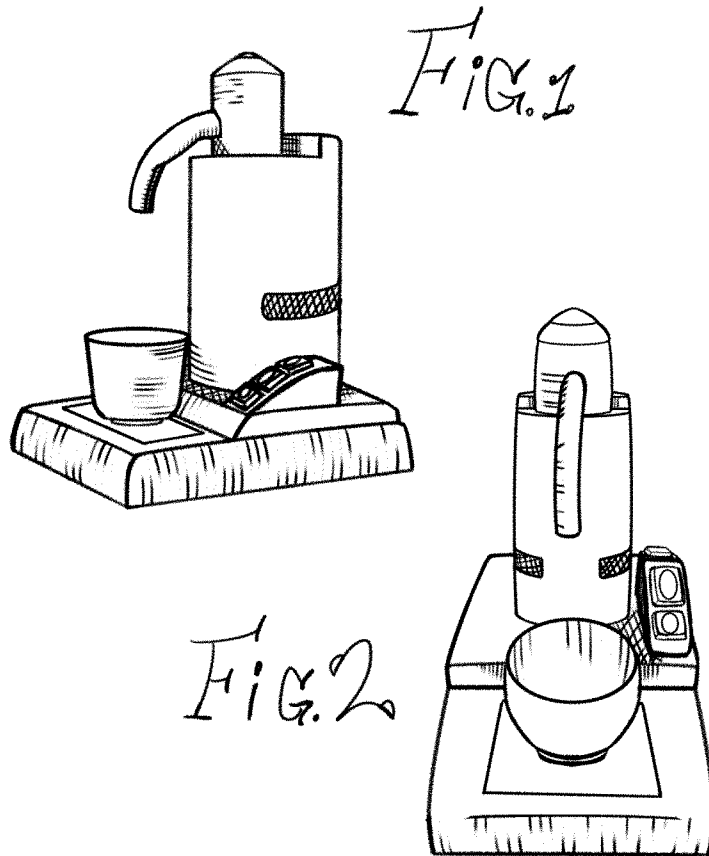
While prior art references include mechanical and electrically-powered insect swatters, no prior art references disclosed a radially-spinning design. In addition, prior art references uniformly disclose devices intended to kill pests that are in front of the device, not to the side of the device. Accordingly, this invention is probably novel and non-obvious.

Market analysis

I found that the model functioned as described in the specification, but I also found the device largely ineffectual. The device imparts significant mechanical energy to its rotating swatters, but their lateral motion limits the user's ability to strike a targeted pest. While this invention is probably patentable, it may have limited appeal to consumers.

4. *Wasteless Coffee Maker: "Peltzer Coffee Maker"*

This invention is a device intended for automatically creating a beverage from roasted and ground coffee beans, without leaving any coffee residue. It is comprised of a coffee grinder, steam chamber, pressure infuser, and dispenser.



Patent Analysis

The prior art references I found do not appear to anticipate this invention. Many patents disclose a fully automatic electric coffee pot (e.g. U.S. Patent No. 3,375,774 (issued Apr. 2, 1968)). To not leave any coffee residue, some patents disclose automatic coffee makers that use a concentrate (e.g. U.S. Patent No. 3,641,918 (issued Feb. 15, 1972)). But none of the companies disclosed a residue-free automatic coffee-maker that uses ground coffee. Accordingly, this invention is probably novel and non-obvious.

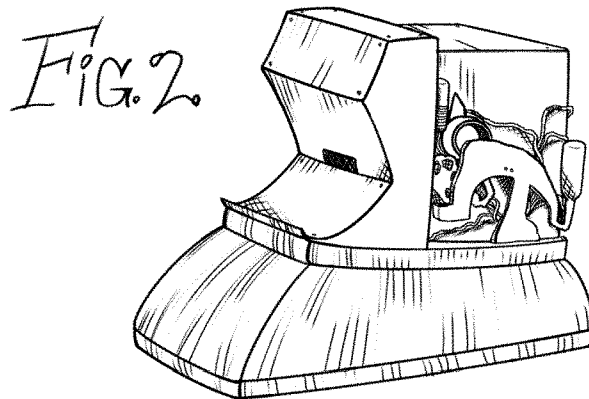
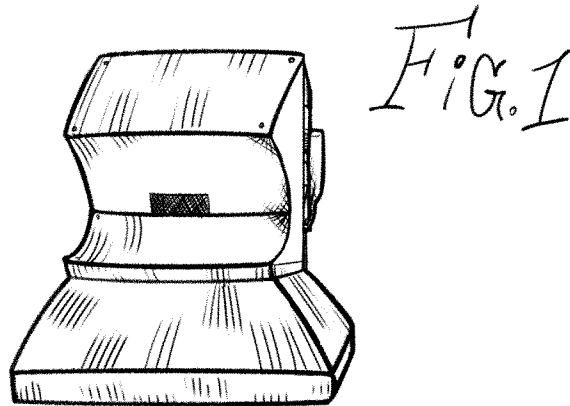
Market Analysis

I found a model that produces coffee from ground coffee beans that leaves no residue as described in its

specification. However, I found the coffee quite unpalatable. It was as thick as a syrup and intensely bitter. While consumers may find the efficiency of the device appealing, they may object to the coffee it produces. You might consider rebranding it as "Balzac Brew"? See Honore de Balzac, The Pleasures and Pains of Coffee, (1830) ("It is a question of using finely pulverized, dense coffee, cold and anhydrous, consumed on an empty stomach.").

5. *Playing Card Shuffler & Dispenser: "Peltzer Double Dealer"*

The invention is a device intended to automatically shuffle and dispense playing cards. It comprises a housing and storage container for playing cards, as well as a mechanism for shuffling and dispensing those cards.



Patent Analysis

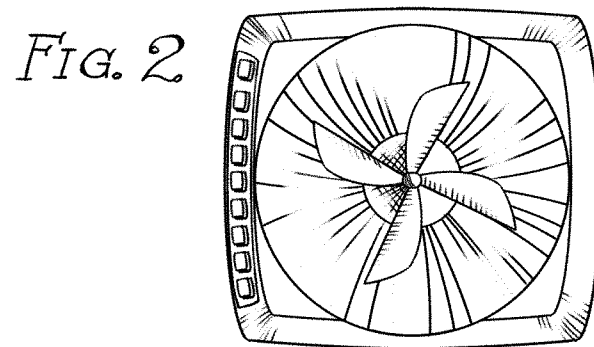
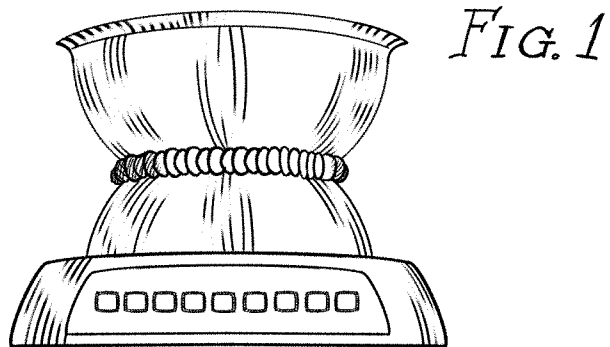
Prior art references I found do not appear to anticipate this invention. Many patents disclose devices that shuffle and dispense playing cards, but none appear to combine the two functions. Accordingly, this invention is probably novel and non-obvious. However, I understand that several pending patent applications disclose combinations of shuffler/dispensers.

Market Analysis

I found that the model shuffled and dispensed playing cards as described in the specification. However, I suspect that some consumers may be disappointed by the inaccuracy and unpredictability of the device. I strongly advise you to increase the reliability of the device before offering it for sale. The relevant consumers tend to have high expectations and may look unfavorably on malfunctioning devices.

6. *High-Efficiency Food Processor: "Peltzer Food Processor"*

The invention is a device intended for processing food into smaller particulate food pieces. It comprises a base, an electric motor, an interchangeable blade, and a bowl.



Patent Analysis

The prior art references I found do not appear to anticipate this invention. There are many patents for food processors, but none disclose the use of a bowl without a lid. Accordingly, this invention is probably novel and non-obvious.

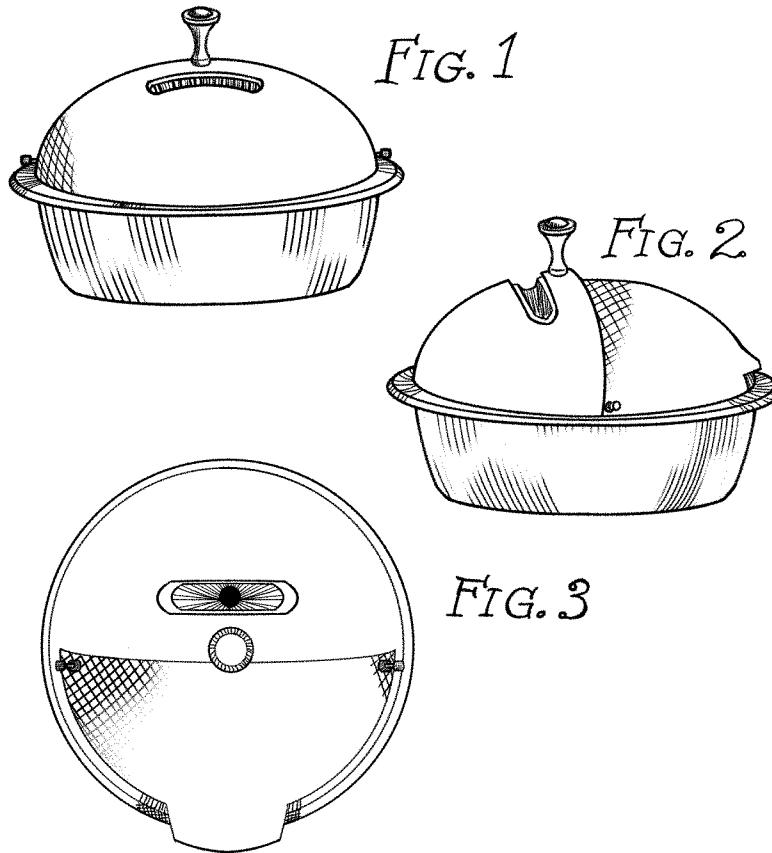
Market Analysis

I found that the model described by my earlier stated specifications functioned in less than a desired capacity

because it would send processed food all around the room. While the device is quite efficient, its inability to prevent processed food from escaping the bowl may disappoint consumers. I strongly recommend designing a lid for the device. While possibly compromising patentability, adding a lid will probably increase the functionality and appeal of the device.

7. *Smokeless Ashtray: "Peltzer Smokeless Ashtray"*

The invention is a device intended for containing the smoke emitted by burning tobacco products. It comprises a base, a cover, and a smoke-extracting mechanism.



Patent Analysis

The prior art references I found may anticipate this invention. Many patents disclose smokeless or smoke-minimizing ashtrays. For example:

- U.S. Patent No. 3,958,965 (filed Sept. 29, 1975) (issued May 25, 1976), "Ashtray with Smoke Filter"
- U.S. Patent No. 3,966,442 filed Sept. 30, 1974) (issued June 29, 1976), "Odor Masking and Filtering Ashtray"
- U.S. Patent No. 4,119,419 (filed Dec. 7, 1976) (issued Oct. 10, 1978), "Smoke Controlling Ashtray"
- U.S. Patent No. 4,148,618 (filed Dec. 15, 1976) (issued Apr. 10, 1979), "Ashtray"
- U.S. Patent No. 4,154,251 (filed May 12, 1978) (issued May 15, 1979), "Smoke Dispersal Device"
- U.S. Patent No. 4,161,181 (filed Mar. 16, 1977) (issued July 17, 1979), "Smoke Filtering Ashtrays"

It is unclear whether this invention introduces a novel or non-obvious element to the prior art. If you wish to file a patent application for this invention, we will need to specify the novel and non-obvious elements of your invention.

Market Analysis

I found that the model did not function as described in the specification. Indeed, it not only failed to contain the smoke emitted by a burning cigarette but caused the cigarette to burn rapidly and emit additional smoke. Moreover, it dispersed that smoke broadly. Consumers will probably be disappointed by this device in its current form.

8. Orange Juicer: "Peltzer Peeler-Juicer"

The invention is a device intended for peeling and juicing oranges and other citrus fruit. It comprises a feeding mechanism, an electric motor, a peeling mechanism, a

hydraulic squeezing mechanism, a juice dispenser, and a waste disposal mechanism.

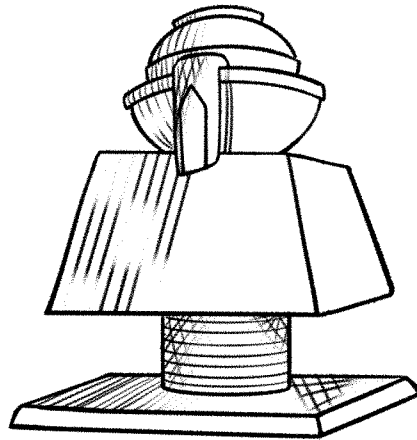
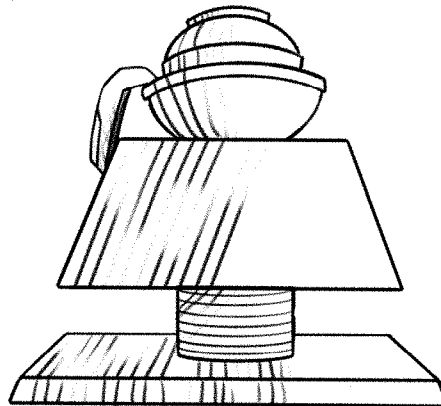


FIG. 1

FIG. 2



Patent Analysis

The prior art references I found may anticipate this invention. Here is the closest reference:

- U.S. Patent No. 4,376,409 (March 15, 1983), "Citrus Fruit Juice Extractor," discloses an "improved citrus fruit juice extractor of the type that includes interdigitating fruit cups which progressively compress a fruit as they are brought together to force juice-bearing material out of the peel of the fruit incorporates a strainer tube that has apertures of differing sizes."

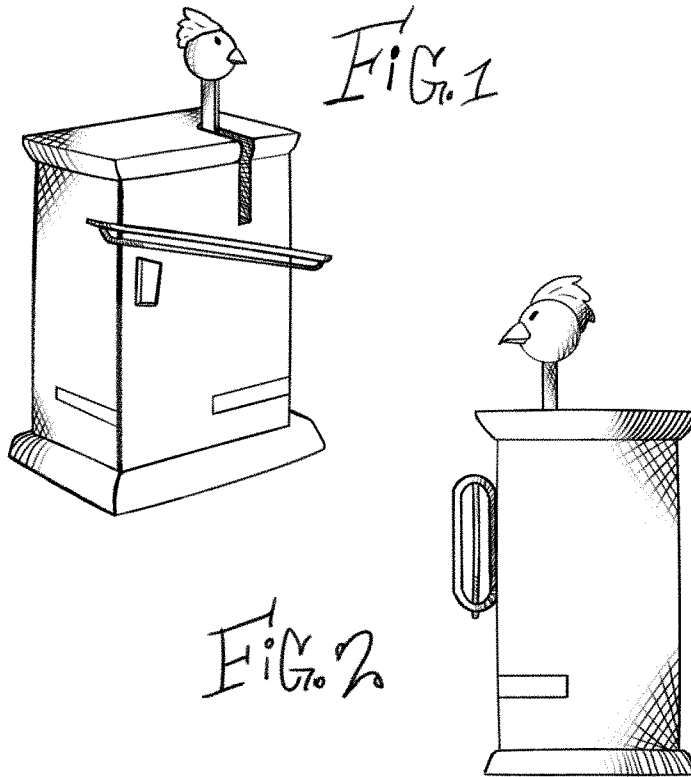
It is unclear whether this invention introduces a novel or non-obvious element to the prior art. If you wish to file a patent application for this invention, we will need to specify the novel and non-obvious elements of your invention.

Market Analysis

I found that the model did not function as described in the specification. While the device effectively squeezed the juice from a few oranges, it then began spraying orange juice around the room. Consumers will probably be disappointed by this device in its current form.

9. *Automatic Egg Cracker: "Peltzer Egg Cracker"*

The invention is a device intended for automatically cracking eggs and depositing their contents into a bowl. The device comprises a housing, a guide path, a motor, a cracking mechanism, and a sound-generating mechanism.



Patent Analysis

The prior art references I found may anticipate this invention. Here is the closest reference:

- U.S. Patent No. 4,137,838 (filed Dec. 29, 1976)
(issued Feb. 6, 1979), "Means for Breaking and Separating Eggs"

It is unclear whether this invention introduces a novel or non-obvious element to the prior art. If you wish to file a patent application for this invention, we will need to specify the novel and non-obvious elements of your invention. The sound-generating mechanism is the element most likely to be novel.

Market Analysis

I found that the model did not function as described in the specification. While the device successfully cracked a few eggs into a bowl and discarded the shells, the device soon jammed and began dropping eggs into the bowl, shell and all. Consumers will probably be disappointed by this device in its current form.

10. Walkie-Talkie Telephone: "Peltzer Phone Friend"

The invention is a device that enables the use of a telephone without a wire connecting the headset and the telephone. It comprises a transmitter, a receiver, and a power supply.

Patent Analysis

The prior art references I found may anticipate this invention. Based on the disclosure, it appears that this system consists of radio transmission of a telephone signal. That is not novel and is anticipated by countless prior art references. If you wish to patent this invention, you must identify a novel element.

Market Analysis

I found that the model did not function as described in the specification. While the device briefly communicated a signal between the headset and the telephone, the signal was distorted and the device soon stopped functioning. Consumers will probably be disappointed by this device in its current form.

11. *Parthenogenetic Animal: The "Peltzer Pet" or "Mogwai"*

The discovery is a small mammal of indeterminate origin, with certain unusual qualities. Among other things, it reproduces parthenogenetically and undergoes holometabolous metamorphosis in response to certain stimuli. In its larval stage, the animal is harmless, pleasant, and amusing. But in its imago stage, it is aggressive, unpredictable, and dangerous.

In its larval stage, the animal is a furred, bipedal mammal, about 6 inches tall and weighing about 1 pound. In its imago stage, the animal is a furless, bipedal mammal, about 1 foot tall and weighing about 5 pounds. It appears to be omnivorous in both stages.

In both its larval and imago stages, the animal exhibits considerable intelligence. It engages in problem-solving and tool use and demonstrates goal-oriented behavior. It also responds to verbal communications, vocalizes, and occasionally even speaks.

Notably, the animal is acutely photosensitive in all stages of development. Exposure to light exceeding about 250 lux causes physical distress, and exposure to sunlight causes immediate soft tissue damage and rapid death.

The animal reproduces parthenogenetically when it comes into contact with water, which stimulates the production of ova. The number of ova produced depends on the volume of water

that contacts the animal. Less than an ounce of water can stimulate the production of an ovum. Larger volumes of water stimulate the production of additional ova, to some unknown maximum, presumably limited by the mass of the animal.

As previously noted, the animal in question is morphologically unstable. Apparently, it reaches maturity in about a day, without requiring metamorphosis, and may remain in its larval stage for an indefinite period of time. But the consumption of food between midnight and sunrise will trigger metamorphosis. At this point, the animal will enter a pupal stage, and emerge as an imago about a day later.

The lifespan of the animal is unknown. Anecdotal evidence suggests that it may survive in its larval stage for hundreds of years. But it is unclear how long it can survive in its imago stage. All observed examples have perished quite rapidly, but not from natural causes.



FIG. 1

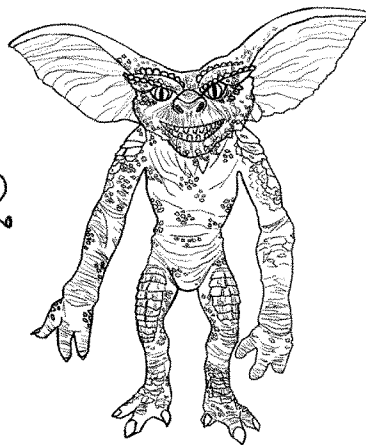


FIG. 2

Patent Analysis

While your proposal to patent this animal is most bodacious, you probably do not have a viable claim. The Supreme Court recently held that living organisms are patentable subject matter, so obtaining a patent is at least possible. See generally, Diamond v. Chakrabarty, 447 U.S. 303, 100 S. Ct. 2204 (1980). But the mere discovery of a naturally occurring animal is not patentable subject matter. Id. at 309 (observing that "a new mineral discovered in the earth or a new plant found in the wild is not patentable subject matter"). A living organism is patentable only if and to the extent that the patent applicant has given it a quality that does not naturally exist. Id. at 310.

Based on the information you provided to me, you cannot claim the animal in question, because you have not given it any new qualities. While the animal you describe certainly has many unusual qualities, all of the qualities described appear to exist in its natural state. You do not claim to have created any of the animal's unusual qualities, therefore, you cannot patent them.

Of course, you may be able to claim discoveries derived from the animal's unique qualities, even if you cannot claim the qualities themselves. For example, the discovery of a method of imparting one of those qualities to another animal would be patentable. And a method of using one of the animal's qualities for another purpose would also be patentable. Id.

Market Analysis

I discourage investing in the promotion of this animal as a domestic pet, at least in its current form. While the animal has many qualities that are desirable in a pet, it has many other qualities that are not. Specifically, its extreme photosensitivity, unpredictable reproduction, and potential metamorphosis will not only decrease consumer demand but also create substantial liability risk.

The larval form of the animal would surely appeal to consumers as a domestic pet. It is aesthetically appealing, intelligent, and typically affectionate, although its temperament may be unpredictable. But consumers will almost certainly object to some of its unique qualities.

While the animal's photosensitivity is a problem, it may be manageable. Consumers typically disfavor photosensitive pets because of the limited ability to interact with the animal, but a niche market can still be lucrative. However, in this case, the problem is amplified by the substantial risk of consumers inadvertently killing their pet by exposing it to sunlight. Losses can be mitigated by prominent warnings and disclaimers. But a substantial casualty rate is inevitable, and will probably require a liberal "replacement or return" policy.

The animal's parthenogenetic reproduction is probably a more serious problem, especially because of its unpredictability. Consumers disfavor pets that reproduce rapidly due to the burden of disposing of the offspring. But normally, they can prevent copulation or sterilize the pet. Because this animal reproduces without copulation and currently cannot be sterilized, some consumers may worry about unexpected additional pets. Notably, it may also be difficult to sell the animal if consumers can readily induce reproduction.

However, the fundamental problem is obviously the animal's propensity to metamorphose. In its larval stage, this animal is a living teddy bear, but in its imago stage, it is a living nightmare. In theory, consumers can prevent metamorphosis by carefully managing the animal's food intake. But of course, consumer error is inevitable, and consumer dissatisfaction with the animal in its imago stage is assured. Accordingly, as stated above, any commercialization program must anticipate a substantial quantity of product returns.

Even more troubling is the potential liability risk. In its imago stage, the animal appears to be quite dangerous.

Consumers injured by the animal in its imago stage will surely seek compensation. While waivers may mitigate liability risk, an appropriately worded waiver is likely to decrease consumer demand for the animal, but also unlikely to be enforceable in many jurisdictions.

With respect to branding, you suggest using the wordmarks such as "Peltzer Pet" and "mogwai" to identify the animal. Neither wordmark appears on the Trademark Office's primary register and both appear to be sufficiently distinctive for registration. I note that the "Peltzer" brand does not currently appear to enjoy substantial consumer recognition, but the commercial sale of this animal may increase consumer awareness of the brand. The "mogwai" wordmark is strong but probably vulnerable to genericide. From a marketing perspective, I note that "mogwai" is a homophone of the Mandarin Chinese word "魔怪," or "móguài," a term from Chinese folklore referring to a kind of demon that harms people. This unfortunate association may depress sales to Chinese-speaking consumers

CONCLUSION

I hope you have found this opinion letter helpful and informative. If you have any questions about my findings or observations, I am available to discuss them at a mutually convenient time. If you wish to file a patent application for any of the inventions discussed in this letter, I would be delighted to assist you.

Be excellent and party on,

A handwritten signature in black ink that reads "Bill S. Preston, Esq." The signature is written in a cursive, slightly slanted style.

Bill S. Preston, Esq.