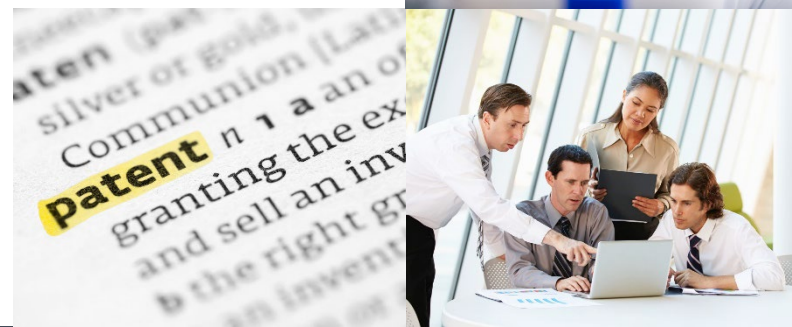




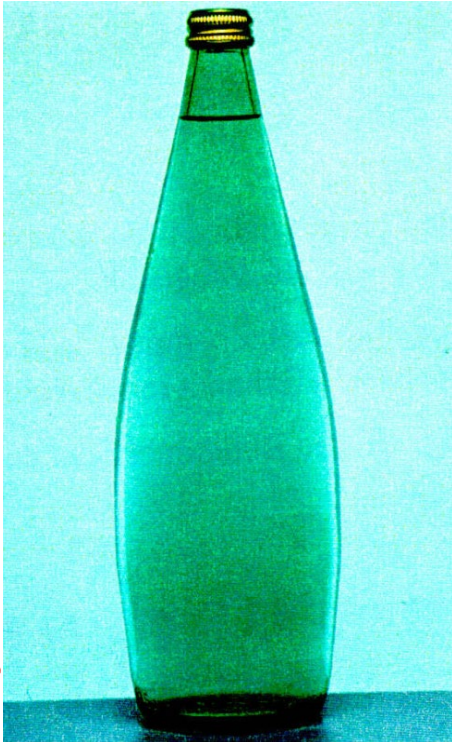
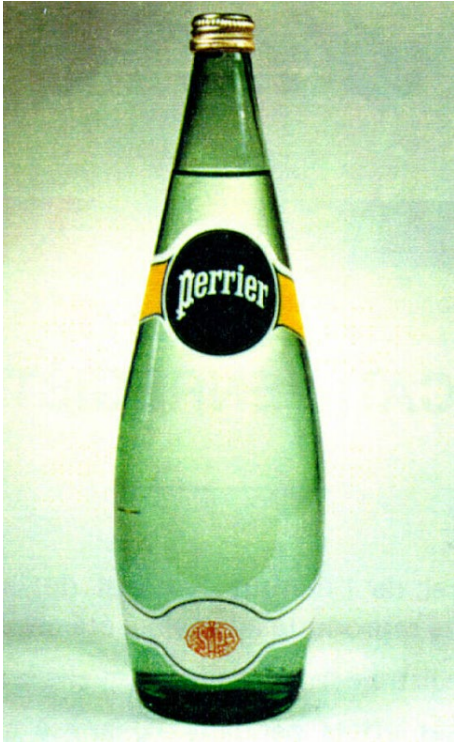
# Packaging as a product: an IPR perspective



# Packaging and trade marks: distinctive character



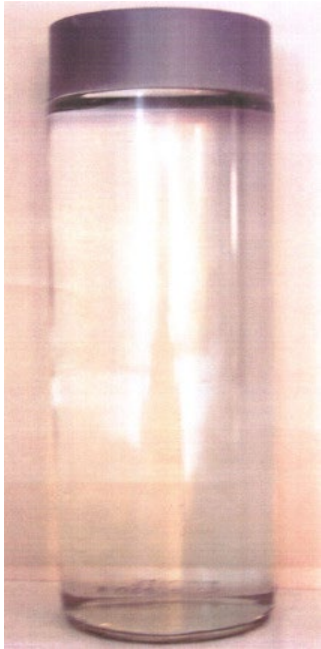




## General Court, T-305/02

(40) In the present case, although the bottle's bobbin shape and the oblique, horizontal grooves are admittedly features of numerous bottles currently available on the market, particular note should be taken of **the manner in which those various elements are put together**. In that regard, it should be emphasized that a sign consisting of a combination of elements, each of which is devoid of any distinctive character, can be distinctive provided that concrete evidence, such as, for example, the way in which the various elements are combined, indicates that **the sign is greater than the mere sum of its constituent parts**.





CJEU, C-445/13P



General Court, T-66/13



General Court, T-546/19





General Court, T-489/20



General Court, T-488/20





# Acquisition of distinctive character through use

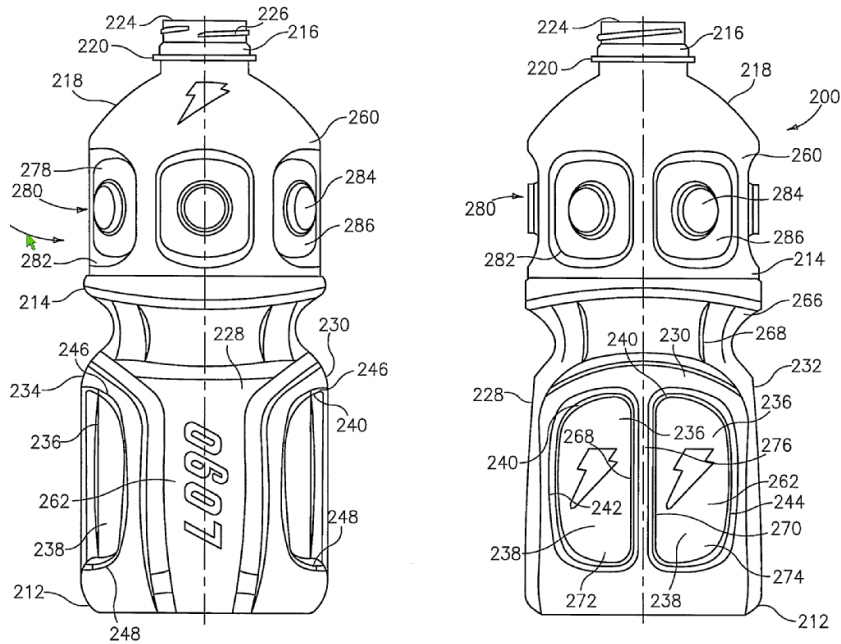


General Court, T-411/14

# Functionality and technical effect (1/3)

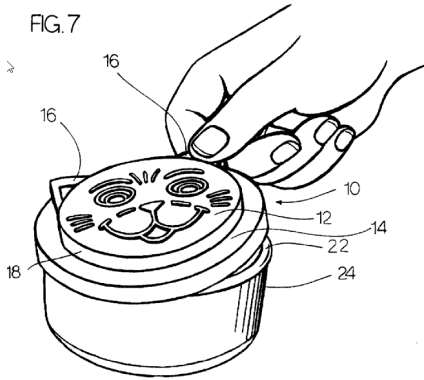


# Functionality and technical effect (2/3)

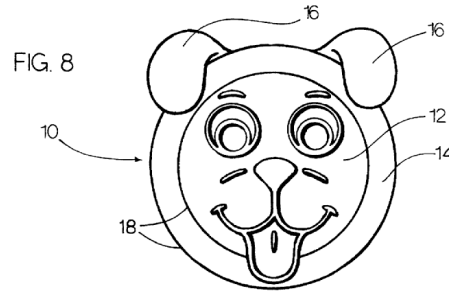


**Pressure  
compensation  
and reinforcing**

# Functionality and technical effect (3/3)



Prehension means



## Designs: subject-matter of protection



General Court, T-352/19

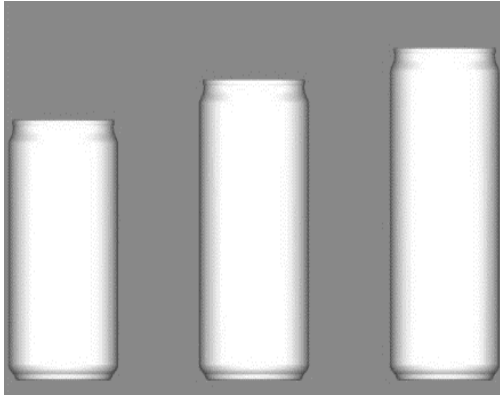


## General Court, 12/03/2020, T-352/19

- (24) the contested design is intended to be incorporated into packaging ["packaging for foodstuffs"] formed of the same components with the same characteristics as those of which the packaging incorporating the earlier design are formed, namely a metal container that has a transparent lid with a translucent tab.
- (29) identification of the precise product in which the design is incorporated is relevant for the purposes of assessing its individual character.

## General Court, 12/03/2020, T-352/19

- (31) The fact that the contents of the packaging are visible does not extend the protection conferred on the contested design to those contents. Indeed, the most that can be said concerning the presence of visible foodstuffs in the products in which the contested design is intended to be incorporated is that **it provides a better illustration of their purpose**, namely as packaging for foodstuffs, as well as one of their components, namely the transparent lid
- (33) the comparison of the overall impressions produced by the designs must relate solely to the elements actually protected. (...) The foodstuffs inside the container must not, therefore, be taken into consideration for the purpose of assessing the ‘overall impression’ referred to in Article 6(1) CDR.



General Court, T-55/12





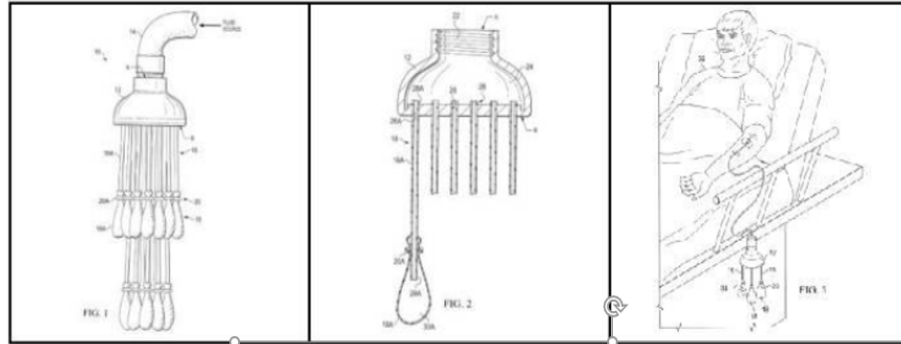
## Design and technical effect (1/14)

CJUE, 08/03/2018, DOCERAM (C-395/16, § 31): Article 8(1) of Regulation No 6/2002 excludes protection for features of appearance of a product where considerations other than the need for that product to fulfil its technical function, in particular those related to the visual aspect, have **not played any role in the choice of those features, even if other designs fulfilling the same function exist.**

# Design and technical effect (2/14)



**Vs**



# Design and technical effect (3/14)

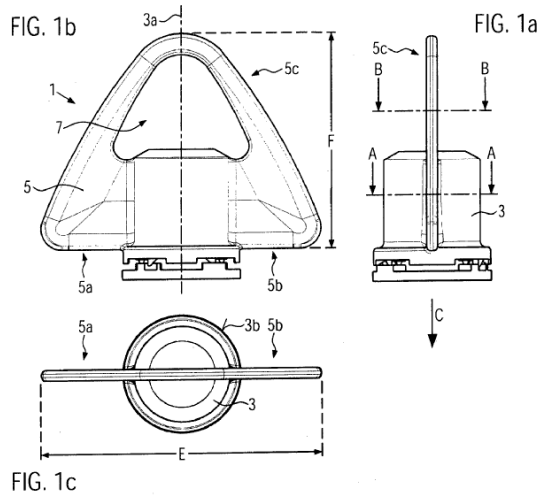
## General Court, 18/11/2020, T-574/19, Fluid distribution equipment

- (24) if it is found that **at least one** of the features of appearance of the product concerned is not solely dictated by the technical function of that product, the design at issue remains valid and protects that feature.

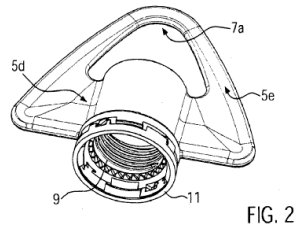
## Design and technical effect (4/14)

- (25) if all the features of appearance of the product concerned are solely dictated by its technical function, the design at issue will not be valid, unless it is apparent that the **arrangement of those features** was dictated by considerations not concerned solely with the need to fulfil the technical function of the product concerned, creating, in particular, an overall visual impression **going beyond mere technical function**.  
(...) A **particular arrangement of features** could be chosen for purposes other than the need to fulfil a technical function and, in particular for **ornamental purposes** and, more generally, for purposes seeking to **enhance the visual aspect** of the design.

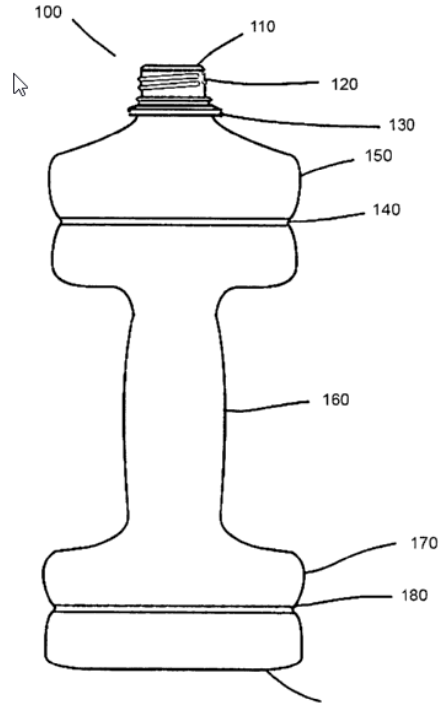
# Design and technical effect (5/14)



**Safety means  
(preventing swallow of the cap)**

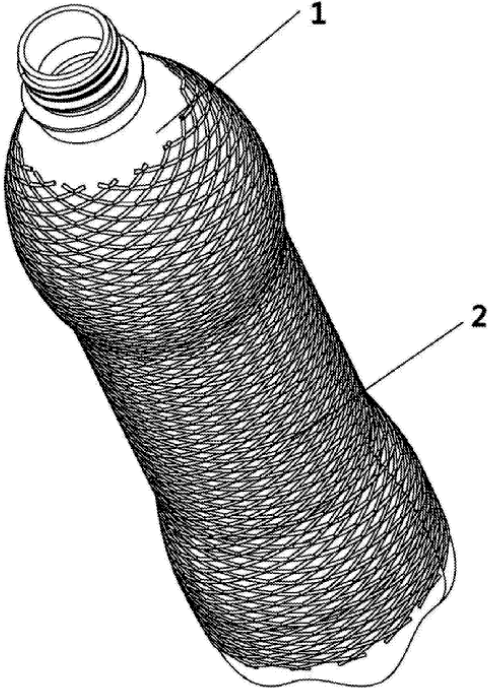


# Design and technical effect (6/14)



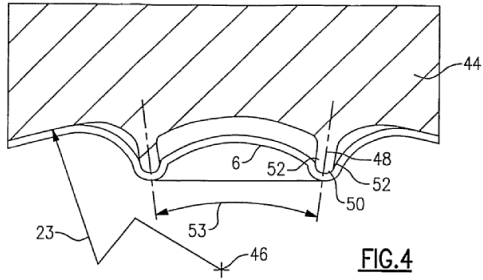
**Gym equipment**

# Design and technical effect (7/14)

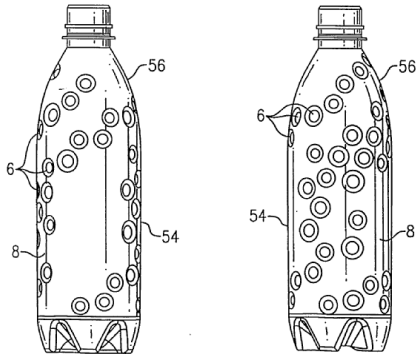


Antiskid

# Design and technical effect (8/14)

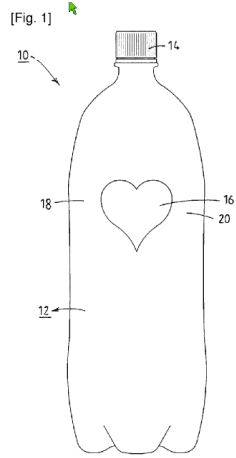


**Stress relief (internal pressure)**

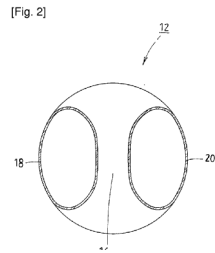




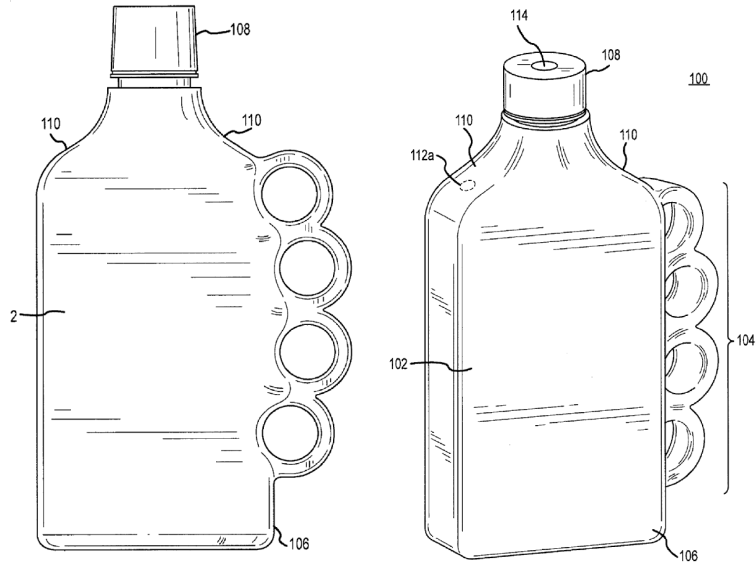
# Design and technical effect (9/14)



Gripping means

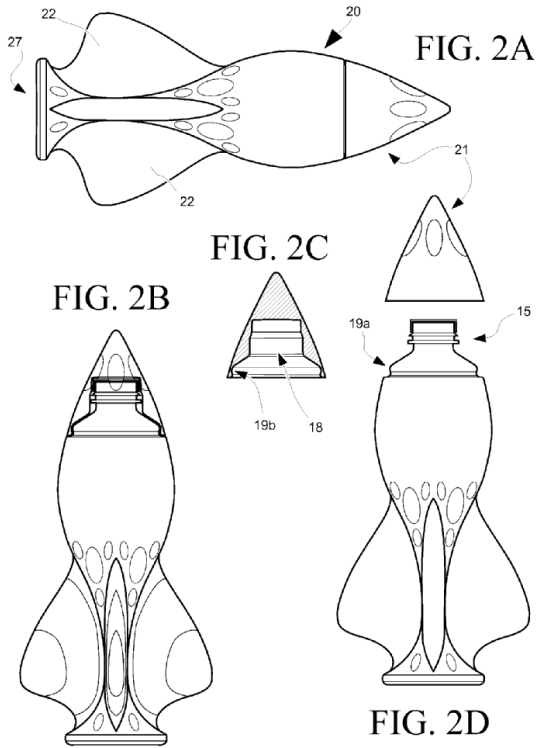


# Design and technical effect (10/14)



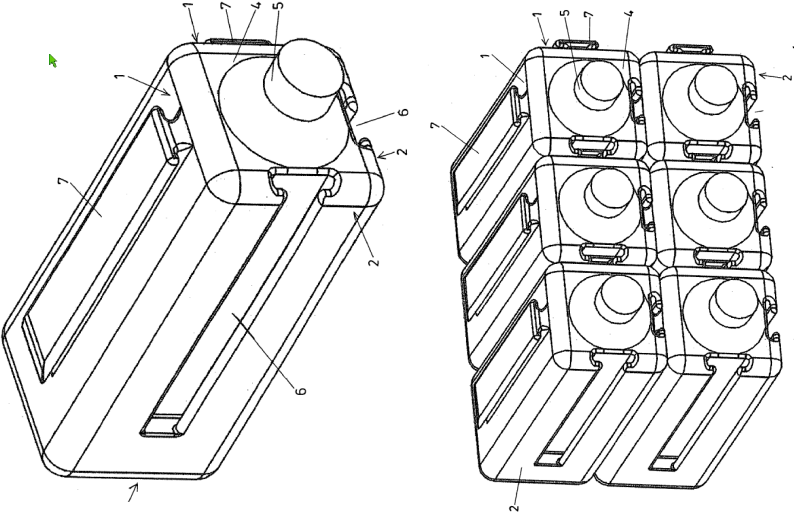
**Gripping means**

# Design and technical effect (11/14)



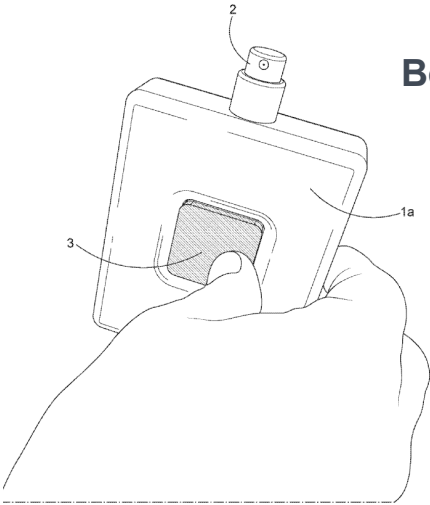
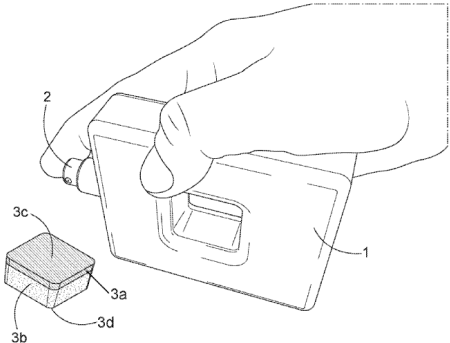
**Throwable bottle**

# Design and technical effect (12/14)



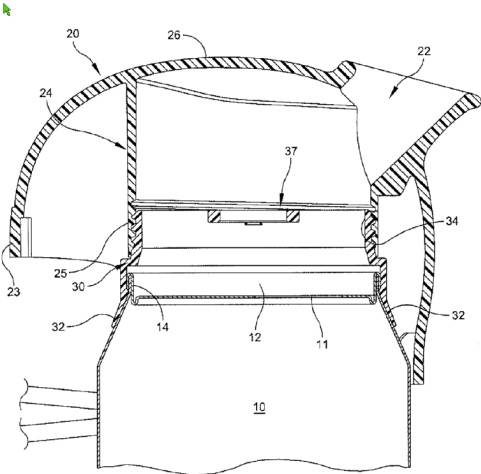
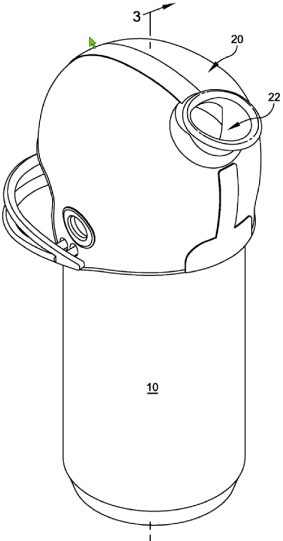
**Connecting means**

# Design and technical effect (13/14)



**Bottle with diffuser**

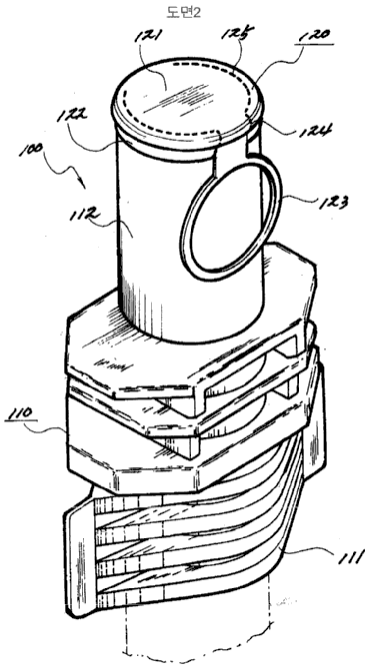
# Design and technical effect (14/14)



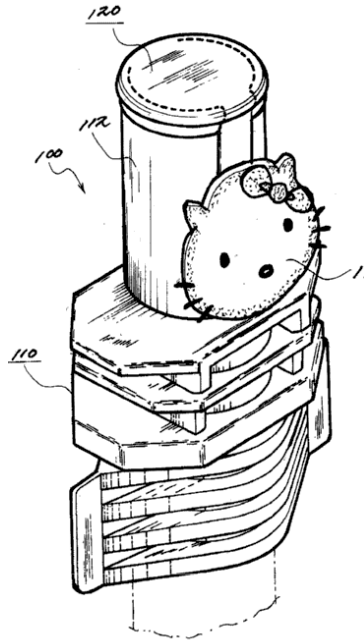
Drinking cap

# Inventive Step

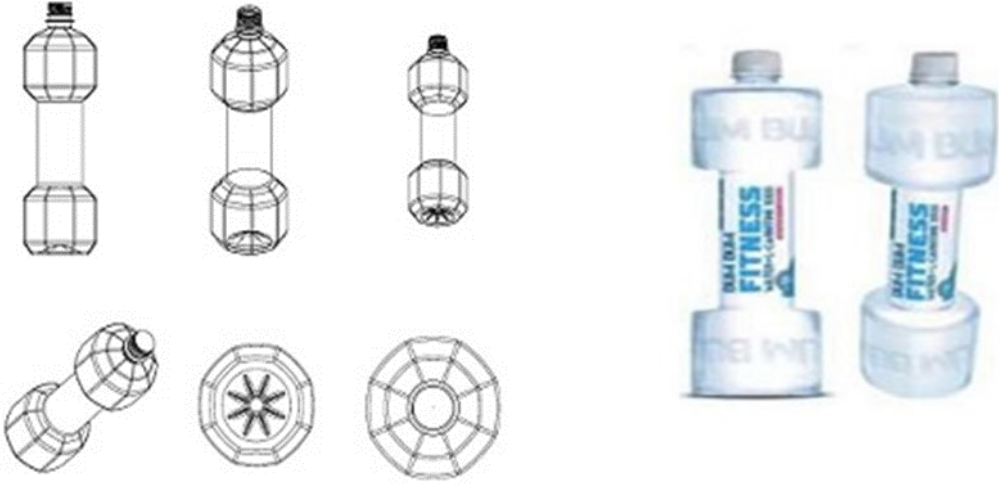
Design alternative the skilled person would chose?



Vs

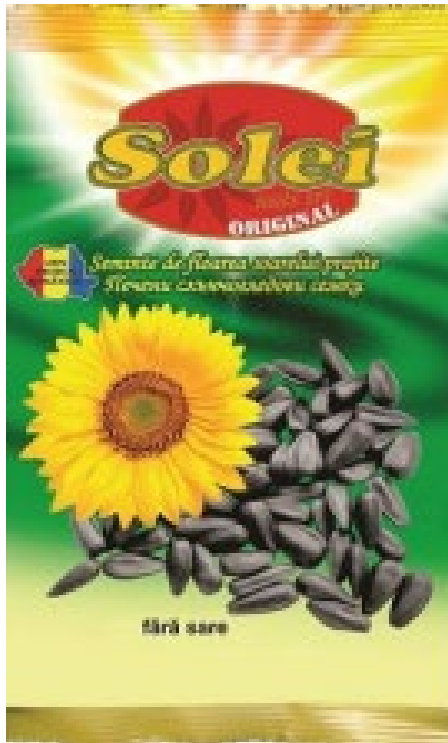


# Design and Individual character (1/3)





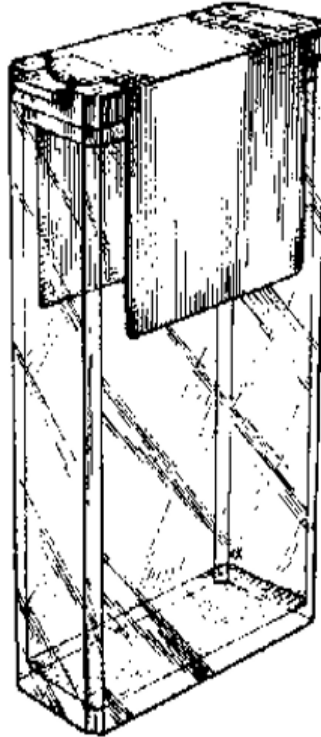
## Design and Individual character (2/3)



# Design and Individual character (3/3)



## Designs: conflicts with trade marks





**Thank you for your attention !**

