

**BEFORE THE  
ARMED SERVICES BOARD OF CONTRACT APPEALS**

Appeal of	)	
	)	
Wesleyan Company	)	ASBCA No. 53896
	)	
Under Contract Nos.	)	
	)	
DAAK60-84-M-_____;	)	
84-M-3537; 85-M-2329	)	
85-M-3337; 88-M-1779; 89-M-3210	)	
	)	
	)	

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**DECLARATION OF RANDALL T. ERICKSON**

COMES NOW RANDALL T. ERICKSON who declares as follows:

1. My name is Randall T. Erickson. I am over the age of 18 years and competent to make this declaration.
2. My business address is located at 425 W. Wesley Street, Suite 1, Wheaton, Illinois 60187. I am an attorney licensed in the state of Illinois. I am admitted to the Supreme Court of Illinois, Federal District Court of the Northern District of Illinois, the Court of Appeals for the Federal Circuit, and am registered to practice before the United States Patent and Trademark Office.
3. I am a patent counsel for Wesleyan Corporation.
4. I have completed a comparison between two prototypes of the Wesleyan FIST/FLEX hydration system and CamelBak's Patents U.S. 6,497,348; 6,908,015, and 7,073,688.
5. Based on the comparison I found the following similarities between CamelBak's patents and Wesleyan's FIST/FLEX hydration system prototypes that were not disclosed in Wesley Schneider's patents U.S. 4,505,310 and 4,712,594 for the FIST/FLEX:
  - a. CamelBak U.S. 6,497,348; 6,908,015, and 7,073,688 all disclose a shutoff valve within the delivery system between the mask and the reservoir. The shutoff valve is indicated as item 35 in U.S. Patent 6,497,348 and item 76 in U.S. Patents 6,908,015, and 7,073,688. The shutoff valve includes a cylindrical chamber (item 49 in U.S. Patent 6,497,348) that is adapted to receive a rotatable core (item 50 in U.S. Patent 6,497,348) that rotates between a valve open and valve closed condition.
  - b. Wesleyan FIST/FLEX prototype A (Exhibit A) includes a brass valve that includes a chamber for holding a rotatable core that is rotatable between a valve open and a valve closed condition. The rotatable shutoff valve is located within the delivery system between the mask and the reservoir.

- c. CamelBak U.S. 7,073,688 incorporates U.S. 6,497,348 by reference (col. 15, lines 50-52). The CamelBak shutoff valve 35 described in U.S. 6,497,348 provides an audible clicking sound to tell the user that the valve has been moved between the valve open and valve closed configuration so that the user does not have to look at the device to know it has been opened or closed. (U.S. 6,497,348 at col. 8, lines 35-44). The clicking detents 59 of the valve hold the valve in its selected valve open or valve closed position until force from the user changes the selection (U.S. 6,497,348 at col. 8, lines 47-52).
  - d. Wesleyan FIST/FLEX prototype B (Exhibit B) includes a two part white plastic valve body wherein the two parts are axially displaceable relative to each other to define a valve open and a valve closed condition respectively. The two parts are biased toward an axially expanded position corresponding to the valve closed condition and an axially compressed position corresponding to the valve open condition. A releasable detent holds the two parts in the open condition. A metal U-shaped push button is manually displaceable inwardly to release the detent and allow the two parts to axially expand to close the valve. The Wesleyan FIST/FLEX prototype valve also audibly clicks between positions and detents hold the valve in the open and closed position until force is exerted by the user to change the position. The push button shutoff valve is located within the delivery system between the mask and the reservoir.
  - e.. CamelBak U.S. 7,073,688 discloses that the quick coupling assembly 70 can be integrated with the shutoff valve 76 (U.S. 7,073,688, col. 7, lines 62-66). Figure 54 of U.S. 7,073,688 discloses a quick connect assembly 70 connected by tubing to the pump 350. The pump 350 is described as a compressible bulb (U.S. 7,073,688, col. 18, lines 27-30) usable to assist in drinking from the reservoir (U.S. 7,073,688, col. 18, lines 41-46). Instead of being connected by tubing, the specification allows the components shown in figure 54 to be directly coupled (U.S. 7,073,688, col. 19, lines 46-52). Thus, this patent discloses a compressible bulb pump to assist fluid delivery that can be directly connected to a shutoff valve.
  - f. The Wesleyan FIST/FLEX prototypes A and B also include a shutoff valve directly connected to a compressible bulb pump to assist in fluid delivery to the user.
6. The above examples describe components and the connectivity of components on the Wesleyan FIST/FLEX hydration system which were not disclosed in the Wesley Schneider patents. Such information was obtainable by examining the Wesleyan FIST/FLEX hydration system prototypes A and B.

I affirm that this declaration is, to the best of my knowledge and belief, true and accurate under penalty of perjury pursuant to 18 U.S.C. 1001.

Dec 19, 2006  
Date

Randall T. Erickson  
Randall T. Erickson

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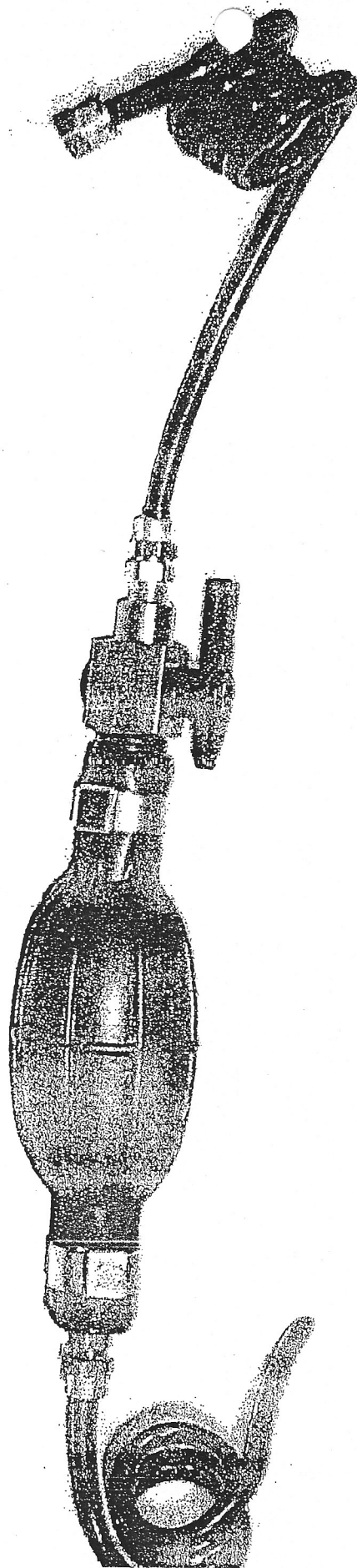
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**SECOND DECLARATION OF RANDALL T. ERICKSON**

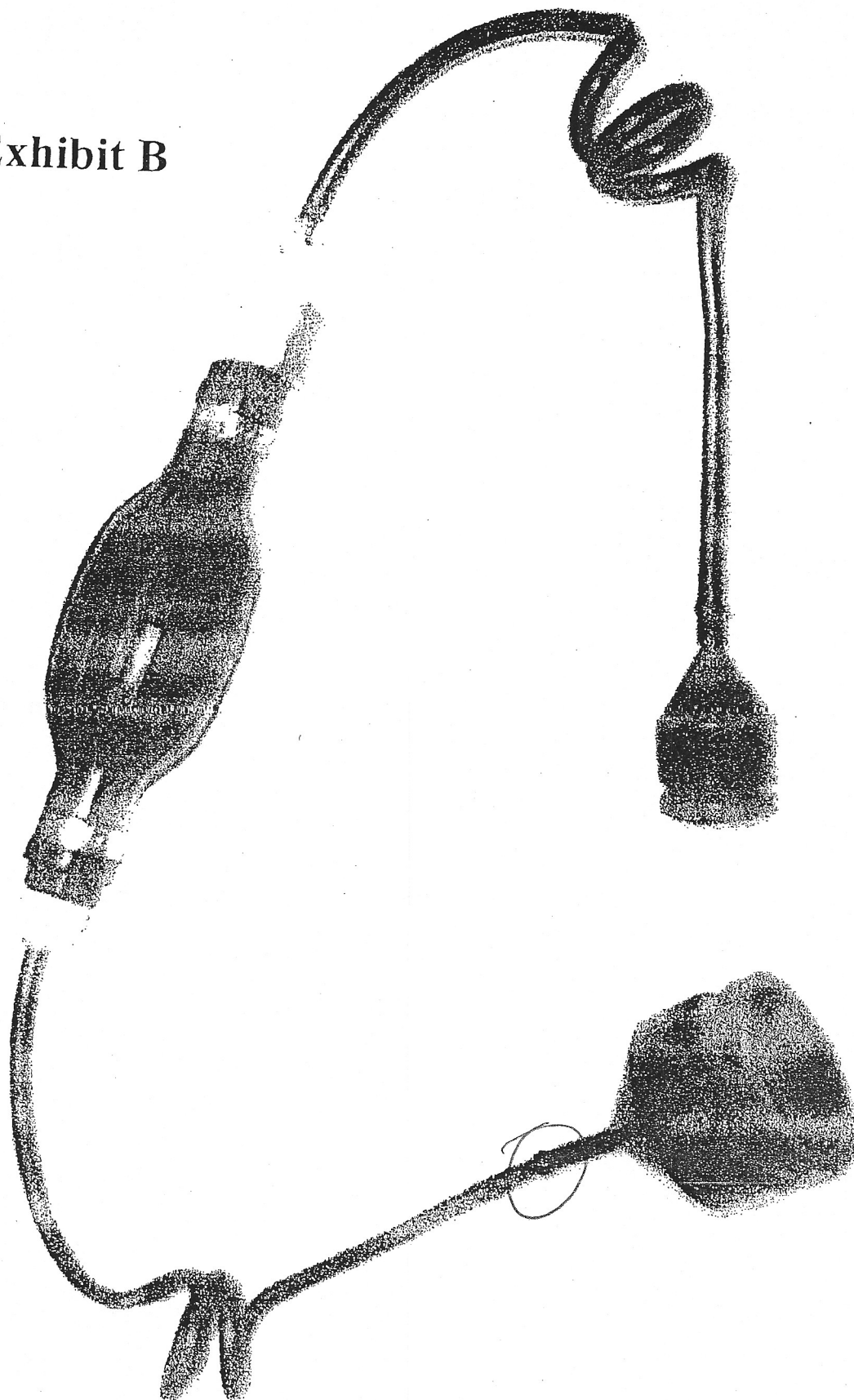
COMES NOW RANDALL T. ERICKSON who declares as follows:

1. My name is Randall T. Erickson. I am over the age of 18 years and competent to make this declaration.
2. My business address is located at 425 W. Wesley Street, Suite 1, Wheaton, Illinois 60187. I am an attorney licensed in the state of Illinois. I am admitted to the Supreme Court of Illinois, Federal District Court of the Northern District of Illinois, the Court of Appeals for the Federal Circuit, and am registered to practice before the United States Patent and Trademark Office.
3. I am a patent counsel for Wesleyan Corporation.
4. I have completed a comparison between two prototypes (Exhibits A and B of the first Declaration of Randall Erickson) of the Wesleyan Fist/Flex hydration system, and correspondence from Wesleyan Company to the Army describing the enclosed revised version of the FIST/FLEX system (AR 0779-0780) and Wesley Schneider's U.S. Patents 4,505,310 and 4,712,594.
5. Based on the comparison I found the following non-exclusive list of items of Wesleyan's FIST/FLEX hydration system prototypes and AR 0779-0780 Wesleyan correspondence corresponding to the revised version of the FIST/FLEX system that were not disclosed in Wesley Schneider's patents U.S. 4,505,310 and 4,712,594:
  - a. shutoff valve, either rotary or pushbutton, either brass or plastic,
  - b. length and diameter of the supply tubes,
  - c. length and diameter of the bulb type hand pump,
  - d. squeezing resistance or resiliency of the bulb type hand pump,
  - e. a protective cover or boot at each end of the supply tube system,
  - f. external annular grooves on each boot,
  - g. tube coils at each end of the supply tube system,

Exhibit A




**Exhibit B**



- h. hand pump interior coated with taste-free RT vulcanizing FDA approved silicone and hose selections are also taste-free, to eliminate "rubbery taste" of drinking water,
- i. new FIST suspender mounts to the standard load bearing suspenders, and
- j. revised internal canteen stem being a single piece construction of food grade polyurethane, including a safety flange.

I affirm that this declaration is, to the best of my knowledge and belief, true and accurate under penalty of perjury pursuant to 18 U.S.C. 1001.

Feb 5, 2007  
Date

  
Randall T. Erickson