PAPER B

VALIDITY OF ISSUED CANADIAN PATENT

APRIL 14, 2010

09:00 to 13:00 hrs

This examination is four (4) hours in length.

This examination is composed of two parts:
PART A comprising questions 1 to 11 (total of 71 marks) and
PART B comprising questions 12 to 19 (total of 29 marks).
Candidates are expected to allocate their time accordingly.

For PART A you will be rated on the following:
  Dealing correctly with key issues
  Dealing correctly with all other issues
  Clarity of response/answers
  Organization and appropriate presentation of arguments
  Appropriate statutory or case law citation

For PART B you will be rated on the correctness and clarity of the answer and appropriate statutory or case law citation, when appropriate to the answer.
PART A

The following documents are provided:

1. Canadian Patent 2,xxx,237 ("Boyardee").
2. Five (5) documents:
   D1: US 4,714,205 ("Steinko")
   D2: US 5,467,699 ("Laib")
   D3: US 6,370,044 ("Lackie")
   D4: US 5,513,562 ("Moor")
   D5: Brochure published in France c. 1952

INSTRUCTIONS TO CANDIDATES

Prepare an appropriate response to each question. Do not provide extraneous commentary if not directly relevant to the question. For example, if the question requires a determination as to novelty, do not comment on other criteria such as utility, obviousness, etc. Note that statements of the pertinent law, analysis and argument are required to adequately address each issue. Case law may be cited to support analytical reasoning, argument or position.

Background

You have just been notified that you successfully passed the Patent Agent exams and have also won the award for the highest overall mark. You decide to celebrate your achievement by having dinner at an upscale restaurant. Over dinner, you notice the owner, Chef Boyardee, looking somewhat perturbed. You ask him what is bothering him and he kindly responds that he wishes you could help but that he has a problem involving a patent. You tell him that, as it happens, you are a qualified Patent Agent (adding that you won the award for the highest mark on the examinations) and that you would be pleased to assist. Chef Boyardee cannot believe his luck and, after providing you with the retainer you have requested, he explains his predicament.

A number of years ago, while making his famous garlic mashed potatoes, Chef Boyardee was complaining in his kitchen about his garlic press, a tool used to crush garlic cloves to extract the garlic oil. Apparently, there were several problems with the known presses of the day. Overhearing Chef Boyardee’s rant, one of the dishwashing staff, Maurice Clean,
who was employed at Chef Boyardee’s restaurant, volunteered to help and the two of them developed an improved garlic press that met all of Chef Boyardee’s requirements. After using his new press for some time, Chef Boyardee’s entrepreneurial spirit kicked in and he decided to patent the improved press and launch a line of kitchen tools around it. He engaged a patent agent and a US Provisional Application was filed on August 10, 2006 to cover the improved garlic press. On July 30, 2007, a corresponding Canadian application was filed. In filing the Canadian application, a petition was submitted naming Chef Boyardee’s restaurant as applicant and Chef Boyardee as sole inventor along with a declaration of entitlement (identifying Boyardee as an employee of the applicant) and a request for examination. Small entity status was claimed and the respective small entity fees were submitted. After addressing a few substantive office actions from the Examiner, the Canadian application issued to patent under serial no. 2,XXX,237 on September 10, 2008.

Unfortunately, Chef Boyardee has now learned that another restaurateur, and archrival, Jay Oliver, has started marketing a garlic press that purportedly falls within the scope of his patent no. 2,XXX,237. Chef Boyardee, seething like his well known Bouillabaisse, wants to immediately commence a law suit against Jay Oliver for patent infringement. However, having scored top marks on Paper B, you advise Chef Boyardee that it may be prudent to first assess the validity of his patent before commencing such action. Chef Boyardee decides that your advice is sound and engages you to perform the study.

You return to your office and have a search of the art conducted, which uncovers references D1 to D4 listed above.

In the course of your discussions with Chef Boyardee, you ask him if he is aware of any other art that may be relevant to his patented invention apart from the references uncovered in your search. He replies that he has is not aware of any such art but does mention in passing that his invention was partly based on a device his dear mother used to use when he was young and his family was living in southern France. You of course ask for more details and he produces from his desk a brochure of his mother’s device. A copy of the brochure is attached as document D5. Apparently Chef Boyardee did not mention this brochure to his previous agent since he did not want it to disrupt the prosecution of his application.
QUESTION 1

[2 marks] What is the current test for anticipation as stated by Supreme Court of Canada?

QUESTION 2

[2.5 marks] According to the Supreme Court of Canada, what are the five steps to be followed in an obviousness inquiry?

QUESTION 3

[3.0 marks] According to the Supreme Court of Canada (as stated in Free World Trust v. Électro Santé Inc. and Whirlpool Corp. v. Camco. Inc.), what five factors are used to distinguish essential elements from non-essential elements in the process of construing a claim?

QUESTION 4

[7 marks] Construe the following terms in Claim 1:

a) “press plate”

b) “garlic basket”

c) “pivot means”

d) “grater plate comprising first and second generally planar surfaces”

e) “plurality of drain holes”

f) “spaced from one another, extending through the plate from the first surface to the second surface”

QUESTION 5

[10.5 marks] Is independent claim 1 anticipated in view of each of references D1 to D4? Justify your answer.

QUESTION 6

[4 marks] Construe the following terms in Claim 5:

a) “plurality of conical projections on the first surface intermediate and spaced apart from the drain holes”.

2010 Paper B - Patent Validity
b) “a plurality of conical recesses therein, each recess positioned to receive one of the conical projections when the press is closed”.

QUESTION 7

[18 marks] Is independent claim 5 obvious in view of references D1 to D5? Justify your answer.

QUESTION 8

[7 marks] Is dependent claim 6 anticipated or obvious in view of references D1 to D4? Justify your answer.

QUESTION 9

[7 marks] Is dependent claim 7 anticipated or obvious in view of references D1 to D4? Justify your answer.

QUESTION 10

[5 marks] Apart from anticipation and obviousness, and based solely on the facts provided above, identify two other issues that may affect the validity of patent number 2,XXX,237. Justify your answer and provide the relevant authorities.

QUESTION 11

[5 marks] In the course of your investigation, you uncover that Maurice Clean had quit Chef Boyardee’s restaurant and had commenced employment with Jay Oliver sometime in December of 2008. Shortly after that, Jay Oliver started marketing his version of the garlic press. Briefly identify two other issues presented by this new information and cite the relevant authorities.

END OF QUESTIONS IN PART A
GARLIC PRESS

ABSTRACT

A garlic press is described which utilizes a unique grater plate comprising a plurality of spaced apart drain holes and a plurality of conical projections. A corresponding press plate contains numerous recesses to receive the projections to facilitate the pressing of the garlic by penetrating the skin of the garlic clove. The garlic press may use a clean-out tool which includes a plurality of clean-out pins for engaging the drain holes in the grater plate. The tool can be stored by clipping it to one of the handles of the press when not in use. The pins of the clean out tool are a fixed length between three and four times of thickness of the grater plate.

Alternatively, the clean out tool can be affixed to the press unit opposite the press plate with the top presser unit rotated about 270 degrees from a closed position to a fully open position, allowing the clean out pins to enter through the drain holes. In this alternative, the length of the pins are preferably graduated with the pins close to the pivot being shorter and pins furthest from the pivot being longer for more effective cleaning.

FIELD OF THE INVENTION

This invention relates to a device useful in squeezing bulbs or cloves to extract juices, oil, or pulp therefrom. More particularly, the invention relates to a hand-held device for squeezing cloves of garlic, and to a tool useful in cleaning the device after use.

BACKGROUND OF THE INVENTION

A variety of consumer products are commercially available for squeezing cloves of garlic. Many of these devices are hand-held and employ a commonality of parts and function, namely that they comprise two elements which are hinged together at one end. Typically, these
devices have a clove holder and a press near the hinged end, and have handles at the other end
which are squeezed together to compress the clove through holes in the holder forcing the pulp
and oil out of the clove.

Some of these devices include a clean-out tool to clear the pulp from the holes in the
holder. The clean out tool may comprise an integral part of the clove press, or may be a separate
tool.

All these prior art clove presses have certain drawbacks which limit their function and
usefulness. One common fault is the amount of pressure required to force the clove through the
holes. The required force can easily exceed the ability of the user. It also can cause noticeable
flexing, with a potential of breaking the handles when squeezed together. Another problem is the
effectiveness in cleaning the garlic press after use, whether or not a clean-out tool is used.

Typically, the skin of the garlic clove is very tough thus making it difficult to squeeze the
pulp of the clove through the skin. Thus, the skin preferably is removed before squeezing.

**SUMMARY OF THE INVENTION**

It is one objective of the present invention to provide a more effective means of cleaning
a garlic press after use.

Another objective of the present invention is to more readily extract the pulp from a
garlic clove without the necessity of removing the skin.

Yet another objective of the present invention is to puncture the clove with the clove
press to facilitate removal of the pulp by pressing.

These and other objectives which will become apparent upon reading of the following
description, are achieved by use of a garlic press comprising a top presser unit, and a bottom
bearing unit. The top presser unit has a first end terminating in an elongated handle, and a second
end, with a press plate intermediate the two ends in proximity to the second end. The bottom
bearing unit has a first end terminating in an elongated handle, a second end, and a garlic basket
in proximity to the second end to receive the press plate. The basket has a bottom comprising a
perforated grater plate. The second end of the bottom bearing unit is joined to the second end of
the top presser unit by pivot means. The grater plate comprises first and second generally planar
surfaces, and contains a plurality of drain holes spaced from one another, extending through the
plate from the first surface to the second surface. The first surface faces the press plate and includes a plurality of conical projections. These projections are in between, and spaced apart from the drain holes. The press plate has a plurality of conical recesses therein, each recess positioned to receive one of the conical projections when the press is closed. The depth and the dimension of the recesses are slightly greater than the height and dimensions of each of the conical projections. The holes in the grater plate are tapered from a smaller opening at the first surface to a larger opening at the second surface. The grater plate preferably is parallel with respect to the elongated handles. Alternatively, the grater plate can form an angle of between about 30 degrees and about 60 degrees with respect to the handles. The press plate forms a corresponding angle with respect to the handles. It is pivotally joined to the top presser unit to permit it to conform to the angle of the grater plate.

The presser unit includes a separate clean out means containing a plurality of pins conforming to the holes in the grater plate, said pins having a length between approximately 3 and 4 times the thickness of the grater plate. Alternatively, the press plate can be fixedly joined to the top presser unit, and a plurality of clean out pins can be mounted on the opposite side of the unit axially from the press plate whereupon pivotal rotation of the top handle about 270 degrees around the pivot allows the pins to enter the holes in the grater plate to clean out the holes. The pins have a graduated length of approximately 1.5 times the thickness of the grater plate closest to the pivot, to between about 3 and about 4 times the thickness of the grater plate furthest from the pivot. When the separate clean out tool is not being used, it can be secured to the press between elongated handles thereof.

The garlic press of the present invention has a grater plate with drain holes extending therethrough, and a press plate. Means are provided for puncturing the skin of a garlic clove to facilitate the removal of the oil and pulp therefrom when the clove is compressed. These means comprise a plurality of skin puncturing projections on one of the grater plate or the press plate and corresponding recesses in the other of the plates, said recesses corresponding in shape to the projections. When the plates are pressed together, clearance is provided between each projection and the corresponding recess. Each of the projections is in the shape of the cone, and each recess is shaped to receive the cone. The grater press has a first surface facing the press plate and a
second surface, with the drain holes spaced from one another and joining the two surfaces. The cones are located on one surface of the grater plate intermediate the drain holes. The drain holes have a slightly frusto-conical shape, with the diameter of each hole increasing from the first surface to the second surface.

The garlic press of the present invention comprises a top presser unit having a first end terminating in an elongated handle and a second end terminating in a pair of laterally spaced lugs containing inwardly facing pivot pins. A press plate holder is intermediate the first and second ends in proximity to the second end of the presser unit. The press plate holder comprises a pair of spaced apart, downwardly projecting lugs provided with opposed notches. A plunger contains two opposed pins that are pivotally engaged and secured in the notches. The plunger terminates in a press plate having a generally planar surface. The press plate contains a plurality of recesses extending into the press plate from the surface thereof. The press also includes a bottom bearing unit having a first end comprising an elongated handle and a second end including an upwardly extending lug terminating in a pair of spaced apart, downwardly facing notches. These notches engage the downwardly facing pivot pins of the presser unit to form a pivot. A basket is contained in the bottom bearing pivot pins of the presser unit to form a pivot. A basket is located immediately below the plunger to receive the plunger when the handles are squeezed together. The bottom of the basket comprises a grater plate including a plurality of spaced-apart holes extending therethrough. A plurality of cones extend up therefrom toward the plunger and cooperate with the recesses in the plunger. The recesses are conically shaped and are positioned to receive the cones of the grater plate when the handles are pressed together. Each recess has a depth which is slightly greater than the height of the corresponding cone, and a diameter which is slightly larger than the maximum diameter of the cone. The grater plate and the press plate are generally parallel to the elongated handles. The press includes a separate clean out means including a plurality of elongated pins having a length between about three and about four times the thickness of the grater plate. The placement and spacing of the pins conforms to the holes in the grater plate. The separate clean out means preferably is secured to one of the handles of the press when not in use.
BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is an elevation view of a press, partially in cross-section;
FIG. 2 is a partial perspective view of the press of FIG. 1;
FIG. 3 is a partial cut away view taken along lines 3--3 of FIG. 1;
FIG. 4 is an enlarged cross-sectional view taken along lines 4--4 of FIG. 3;
FIG. 5 is a side elevation of the press of FIG. 1, in the clean-out mode;
FIG. 6 is an elevation view, partially in cross-section of a variation of the press;
FIG. 7 is a partial cross-sectional view of the press of FIG. 6 in the clean-out mode.

DETAILED DESCRIPTION OF THE INVENTION

Referring now to the drawings, FIG. 1 is an elevation view, partially in cross section, showing a garlic press 10 comprising a presser unit 12 and a bearing unit 14 pivotally joined at pivot pins 16 (shown in outline). The presser unit 12 is generally elongated with a first end forming an elongated U-shaped handle 22 and a second end formed into a pair of lugs 26 spaced laterally apart, each lug including one pivot pin 16. The pivot pins 16 face one another and are spaced apart in axial alignment. The bearing unit 14 likewise is generally elongated with a first end forming a U-shaped handle 42 and a second end 44 which terminates in an upwardly extending lug 46. The lug 46 terminates in a pair of spaced-apart notches 48. The lug 46 of the bearing unit fits between the lugs 26 of the presser unit with notches 48 engaging the pivot pins. During the assembly, each of the notches is lightly crimped together around the respective pivot pin to permit the two units to freely pivot without separation.

The presser unit includes handle 22 which is generally U-shaped for strength. The unit includes a press plate 50 joined to a plunger 52. The plunger contains two opposed pivot pins 54. These pivot pins engage and are secured in notches 56 in a pair of lugs 58 extending downwardly from within the presser unit.

The bearing unit 14 includes a generally oval basket 60 into which a clove of garlic (not shown) is placed for pressing. The bottom of the basket comprises a grater plate 62 having two generally planar surfaces, a top surface 64 and a bottom surface 66. The grater plate contains a plurality of holes 68 through which the pulp passes as a garlic is pressed. As shown in greater
detail in FIG. 4, each of the holes 68 is preferably frusto-conical in shape with a taper from a
smaller diameter at the top surface to a larger diameter at the bottom surface of the plate. This
minimizes clogging of the holes and facilitates machining of the plate during manufacture.
Typically, the use of about 58 holes, each having a diameter of about 2 mm has been found to be
satisfactory for this purpose.

A plurality of projections 74, shown in the shape of cones, extend from the top planar
surface 64 toward the press plate 50. The projections are preferably equidistantly spaced between
the drain holes. The press plate 50 is generally planar and includes a plurality of recesses which
correspond in shape, size and position to the projections 74 on the grater plate. Each recess, as
shown in FIG. 4, has a depth which is incrementally greater than the height of the corresponding
projection. Likewise, the other dimensions of the recess are slightly greater than those of the
projections, thereby enabling the planar surface of the press plate to fully contact the

The garlic press shown in FIG. 1 preferably includes a clean-out means comprising a tool
made of a material such as plastic or lightweight metal having a handle 82 and a plurality of
elongated pins 84. FIG. 5 shows the clean-out tool in position to remove the pulp of a garlic
clove from the holes of the grater plate. The clean-out tool can be easily stored between the two

A modification of the garlic press of the present invention is shown in FIGS. 6 and 7. The
end of the presser unit, and the end of the bearing unit opposite the pivot form elongated handles
622, 642. The press comprises a presser unit 612 and a bearing unit 614, joined together at pivot
pin 616.
The presser unit 612 includes a press plate 650 in proximity to the pivot 616. The press plate forms an angle of between about 30 degrees and about 60 degrees with respect to the axis of the presser unit. The bearing unit 614 contains a basket 660 into which a garlic clove is placed to be squeezed. The bottom of the basket forms a grater plate 662 at an angle with respect to the axis of the handle which corresponds to the angle of the press plate whereby the plates are parallel to one another when the handles of the press are squeezed together. Lugs 634 contact one another to prevent unnecessary flexing of the handles when the press is fully closed.

A plurality of projections 674, shown in the shape of cones, extend from the grater plate 664 toward the press plate 650. The projections are preferably spaced an equal distant apart between the drain holes 668. The press plate 650 is generally planar and includes a plurality of recesses 676 (shown in dotted lines) which correspond in shape, size, and position to the projections 674 on the grater plate. Each recess has a depth which is slightly greater than the height of the corresponding projection. Likewise, the other dimensions of the recesses are slightly greater than those of the conical projection. As previously stated, this enables the planar surface of the press plate to fully contact the corresponding surface of the grater plate to maximize the compression of the garlic cloves to extract the pulp.

The garlic press of the present invention can be fabricated from any material which is deemed to be suitable for the intended purpose. For example, all of the components can be cast or otherwise fabricated from a suitable lightweight metal such as aluminum or other metal such as stainless steel. Certain components including the clean-out tool may be molded from a rigid polymer such as polyethylene, polypropylene, polyurethane, Delrin or Nylon. Generally speaking, the materials of construction should be able to withstand repeated compressive forces during use, and should be dishwasher safe.

While the invention has been described in connection with specific embodiments thereof, it is evident that many alternatives, modifications and variations will be apparent to those skilled in the art in light of the foregoing teachings. Accordingly, the invention is intended to embrace all such alternatives, modifications and variations that fall within the spirit and scope of the appended claims.
What is claimed is:

1. A garlic press for extracting the pulp and oil from a garlic clove, said press comprising:
   - a top presser unit having a first end terminating in an elongated handle, and a second end, and a press plate intermediate the two ends in proximity to the second end;
   - a bottom bearing unit having a first end terminating in an elongated handle, a second end, and a garlic basket in proximity to the second end to receive the press plate;
   - the basket having a bottom comprising a perforated grater plate,
   - the second end of the bottom bearing unit joined to the second end of the top presser unit by pivot means;
   - said grater plate comprising first and second generally planar surfaces, and containing a plurality of drain holes spaced from one another, extending through the plate from the first surface to the second surface.

2. The garlic press according to claim 1 wherein the grater plate first surface facing the press plate includes a plurality of projections on the first surface intermediate and spaced apart from the drain holes.

3. The garlic press according to claim 2 wherein the press plate has a plurality of recesses therein, each recess positioned to receive one of the projections when the press is closed.

4. The garlic press according to claim 3 wherein the depth and the dimensions of the recesses are slightly greater than the height and the dimensions of each of the projections.

5. A garlic press for extracting the pulp and oil from a garlic clove, said press comprising:
   - a top presser unit having a first end terminating in an elongated handle, and a second end, and a press plate intermediate the two ends in proximity to the second end;
   - a bottom bearing unit having a first end terminating in an elongated handle, a second end, and a garlic basket in proximity to the second end to receive the press plate;
   - the basket having a bottom comprising a perforated grater plate,
   - the second end of the bottom bearing unit joined to the second end of the top presser unit by pivot means;
- said grater plate comprising first and second generally planar surfaces, and containing a plurality of drain holes spaced from one another, extending through the plate from the first surface to the second surface;
  - wherein the grater plate first surface facing the press plate includes a plurality of conical projections on the first surface intermediate and spaced apart from the drain holes;
  - and wherein the press plate has a plurality of conical recesses therein, each recess positioned to receive one of the conical projections when the press is closed.

6. The garlic press according to claim 1 or 5 wherein the drain holes in the grater plate are frusto-conical in shape.

7. The garlic press according to claim 6 wherein the drain holes in the grater plate are tapered from a smaller opening at the first surface facing the press plate to a larger opening at the second surface.

8. The press according to claim 1 further including a separate clean out means having clean out pins corresponding to the holes in the grater plate, said pins having a thickness between about 3 and about 4 times the thickness of said grater plate.

9. The press according to claim 8 wherein the separate clean out means is secured between the elongated handles for storage when not in use.
DEVICES FOR CRUSHING, MASHING AND/OR GRINDING FOODSTUFFS

This invention relates to devices for crushing, mashing and/or grinding foodstuffs such as garlic which are added during cooking in a finely divided and crushed form.

Background To The Invention

Many garlic presses have been proposed. Generally, they have some form of plunger which is forced down a barrel to squeeze and crush or mash the garlic against a perforated plate. In this way, the garlic becomes crushed and small pieces of flesh and the juice are forced through the perforations.

Prior devices are satisfactory in many ways but there are still sometimes problems in extruding the last remnants of the crushed garlic. We have found that one reason for this seems to be because the perforations are provided in a metal plate having a surrounding flange engaging the lip of the barrel. As a result, there is an annular region around the edge in which small pieces of crushed garlic can accumulate and these pieces tend to block the final advance of the plunger.

It is therefore an object of the present invention in one aspect to provide a press for garlic or the like where this problem is avoided.

Brief Summary Of The Invention

According to the invention there is provided a device for crushing, mashing and/or grinding foodstuff, such as garlic comprising a hollow cylindrical housing along which a central plunger or ram can be forced to one end of the housing, the ram having an inner end which mates tightly with the cylindrical wall of the housing, a perforated rigid grinding plate covering the said one end of the housing and extending over the said one end of the housing and being joined externally to the housing, so mating with it to give a substantially crevice-free circular line join, the said inner end of the ram having a shape which mates closely with the inner surface of the
grinding plate so that when the plunger is advanced fully to the said one end of the housing substantially all of the garlic or like product is forced through the perforations in the grinding plate, and mating screw threads between the ram and housing for advancing the ram upon twisting of the ram and housing relative one another.

The housing is preferably in the form of a cylinder of constant internal diameter into which the plunger fits closely. The inner end of the plunger can be a separate part of resilient material which fits tightly against the inner wall of the housing. In this connection, the peripheral edge may be curved slightly outwardly to give a good seal.

**Brief Description of the Drawings**

FIG. 1 is a sectional elevation of the press;
FIG. 2 is a view similar to FIG. 1 but with the lower cover removed and the plunger advanced;
FIG. 3 is an enlarged detail section of the region within the circle marked 3 in FIG. 1;
FIG. 4 is an end view taken in the direction of the arrow 4 of FIG. 2; and
FIG. 5 is a detail section of part of the plunger.

**Description of the Preferred Embodiment**

The garlic press 10 includes a cylindrical barrel 12. The barrel is open at both ends. Over the region 13 from its upper end, the barrel has an internal screw threading 14. A cylindrical plunger 16 slidably fits within the hollow barrel and has an outer screw threading 18 over the region 19 near its upper end mating with the internal screw threading 14. At its upper outer end the plunger 16 has an enlarged circular head 20 for a user to twist it relative to the barrel 12.

Covering the open lower end of the barrel 12 is a grinding plate 24. The grinding plate is of bowl shape and through the flat base portion 24a are a number of holes 26 for the expulsion of the crushed garlic. These holes taper over a first portion 26a in the direction in which garlic is expelled to assist expulsion of the garlic. The base portion 24a fits tightly over the lower end of the barrel 12 and the sides 24b of the bowl shaped plate embrace the outside of the lower end of the barrel and an internal screw thread 27 which engages an external screw thread 28 on the lower end of the barrel. To assist in screwing and unscrewing the plate 26 from the end of the barrel, a number of small spaced ribs 29 are provided on the outer surface of the side 24b of the
The lower edge of the barrel engages closely with the internal surface 34 of the grinding plate 24. There is therefore a circular line of contact 35 between the two but no crevices of any substantial size into which pieces of crushed garlic or the like can become trapped.

The lower end of the plunger is provided with a disc seal 36. This is made separately from the rest of the plunger and has a flat circular under-surface 37 which will mate closely with the surface 34 of the plate 24 when the plunger is in its fully advanced position and so will ensure expulsion of all garlic being crushed into the holes 26 since as shown in FIG. 2 there is no space left between the surfaces 34 and 37. The disc seal 36 has a circular edge 38 which as best seen in FIG. 5, is a slightly curved wiping edge so that it is forced very tightly into engagement with the inside wall of the barrel which in that region is a smooth cylindrical shape since the threading 14 does not extend past the region 13. The edge 38 is rather like a feather edge. It therefore seals tightly against that wall.

Integrally formed near the lower end of the barrel is an outwardly flared skirt 40, the terminus of which has a cross-sectional area significantly greater than the cross-sectional area of the housing. At its lower end the skirt has a portion of reduced diameter with a small outwardly projecting ring 42 (see FIG. 3). The latter is a snap fit in an annular recess 44 on a cover 46. The cover is therefore readily removable but equally can be attached to the skirt 40 to encompass the lower end of the barrel 12 and grinding plate 24. In addition the cover 46 has a substantially flat lower surface 48. The whole press can therefore stand upright on the surface 48 when the cover is in place before or after use.

The garlic press 10 is very simple to use. Initially the plunger 16 is withdrawn up the barrel 12 by twisting the head 20 relative the barrel. When it has been sufficiently withdrawn to insert some fresh garlic bulbs, the plate 24 can be unscrewed from the end of the barrel and the garlic bulbs inserted. The plate 24 is then screwed back firmly to the lower end of the barrel. To expel crushed garlic and garlic juices, the user then grasps the barrel with one hand and twists the head 20 to cause the plunger to advance down the barrel. The disc seal 36 contacts the garlic bulbs and gradually compresses and crushes them between the surfaces 34 and 37 and crushed garlic and juices are expelled through the holes 26.
When the user has expelled sufficient garlic for any one use, the cover 46 can be snapped back into place. The cover fits closely against the underside of the plate 24 and an upstanding circular lip 49 enters the cover so that the garlic is kept in a small volume out of contact with the outside atmosphere.

As the plunger approaches the lower end of the barrel, substantially all of the garlic can be expelled because the disc seal 36 fits tightly against the wall of the barrel and in addition the surfaces 37 and 34 mate closely when the plunger is in its fully advanced position. Once all of the garlic has been expelled, the plunger can again be retracted and plate 24 unscrewed to be washed and cleaned and fresh garlic inserted.
GARLIC PRESS

Background of the Invention

Hand presses for garlic cloves, onions, and other foodstuffs, principally fruits and vegetables, come in a variety of configurations and modes of operation. Possibly the most common form of garlic press utilizes pivotally mounted hand-manipulatable arms with a perforated basket or receptacle on one arm and a pressure member or plunger on the other arm engageable within the basket for the crushing of garlic and the like.

Such garlic presses, in the known art, can incorporate a cleaning section integral therewith and engageable through the basket perforations, normally by inverting the arms relative to the pressing or crushing position thereof.

Notwithstanding the cleaning effect of the cleaning section, there still remains substantial residue which must be cleaned from the press, and in fact from the cleaning section itself if a sanitary and odor free implement is to be maintained. This is difficult in a press wherein the components are permanently assembled, that is assembled in a manner not intended to be separated from each other, as is the case with most known prior art hand presses.

Summary of the Invention

The present invention is a hand press for garlic and like foodstuffs utilizing a lever action and wherein the two arms thereof respectively mount press components. The press components comprise a receptacle defining a compartment with a perforated bottom or inner wall, and a pressure plunger or member receivable within the receptacle compartment to crush the foodstuff against the perforated base bottom whereby juices and particles are formed and discharged through the apertures of the perforated bottom.

Assembly of the press merely involves an alignment of the hinge elements or knuckles of the two arms and the introduction of the pintle therethrough. As will be appreciated, the
relationship between the pintle and the hinge passage defined by the aligned hinge knuckles, is such as to releasably retain the pintle in position while allowing for pivotal movement of the arms relative to each other.

**Brief Description of the Drawings**

These and other features of the invention will become apparent from the more detailed description of the invention, and the manner of use thereof, following hereinafter.

FIG. 1 is a perspective view of the garlic press partially closed;
FIG. 2 is a bottom plan view of the garlic press;
FIG. 3 is a longitudinal cross-sectional view of the partially closed garlic press taken substantially on a plain passing along line 3--3 in FIG. 1;
FIG. 4 is a longitudinal cross-sectional view similar to FIG. 3 with the garlic press completely closed as when fully compressing a received garlic clove or the like;
FIG. 5 is an exploded perspective view of the separately molded components of the garlic press;
FIG. 6 is an enlarged cross-sectional detail substantially on a plane passing along line 6--6 in FIG. 1;
FIG. 7 is a transverse cross-sectional view taken substantially on a plane passing along line 7--7 in FIG. 4;
FIG. 8 is an enlarged cross-sectional detail through the multiple function hinge unit forming both the hinge pintle with handle means and the cleaning member with handle means; and
FIG. 9 is an enlarged cross-sectional detail illustrating the manner of use of the cleaning member.

**Description of the Preferred Embodiment**

The garlic press 10 basically comprises upper and lower hand-manipulatable arms 12 and 14. The arms 12 and 14 respectively include substantially duplicate elongate handles or hand grip portions 16 and 18 of an appropriate rigid synthetic resinous material molded into a transversely arcuate configuration defining opposed inwardly directed elongate cavities. So
configured, the handles 16 and 18 provide smooth arcuate exterior gripping surfaces in conjunction with a high degree of rigidity and minimal weight.

The lower arm 14, integral with the forward end of the handle 18, includes a preferably circular receptacle 26 of a diameter greater than the transverse width of handle 18. The receptacle 26 defines an upwardly opening interior compartment 28 having a smooth interior wall surface and a flat bottom wall 30 with multiple pulp and liquid draining apertures 32 therethrough. The receptacle compartment 28, while preferably circular in cross-section and of a constant diameter for the full height thereof, can be of other configurations, but of necessity of a size to receive the particular foodstuff to be pressed therein.

The lower arm 14 is completed by a single forwardly extending hinge knuckle 34 defining a transverse opening 36 therethrough. The knuckle 34, receptacle 26 and handle 18 are preferably molded as a single unit of an appropriate food compatible, rigid synthetic resinous material.

Turning now to the upper arm 12, the forward end of the handle or handle portion 16 thereof is integrally formed with the side wall of the pressure member 38. The pressure member 38 includes an upper portion 40 of substantially the same size and shape as the receptacle 26 of the lower arm 14 to align and overly the receptacle 26 upon a closing of the arms 14 and 16 toward each other.

The pressure member 38 also includes a lower portion 42 of a diameter as to be closely although freely slidably received within the receptacle compartment 28 as the garlic press 10 is closed. This lower portion 42, comprising a pressure plug, includes a flat bottom which in the closed position of the press closely overlies the perforated bottom 30 of the receptacle 26, and a slightly arcuate or inwardly and downwardly inclined rear wall portion 44 which facilitates an accommodation of the pressure plug 42 into the receptacle compartment 28 as the pressure member is downwardly pivoted into the compartment. This particular feature will be best appreciated from FIG. 3.

The pressure member 38 is formed with an upwardly opening hollow interior or interior chamber which facilitates molding, reduces the amount of material required and reduces the overall weight.
The upper and lower arms 12 and 14 are pivotally joined for manual operation of the hand press by a removable and multiple functional hinge element 62. The hinge element includes an elongate hollow cylindrical hinge pin or pintle 64 with an enlarged disc or plate member 66 integrally joined to one end thereof.

The pintle 64 is of substantially equal length with the transverse length of the assembled knuckles 34 and 58, and dimensionally of a size for snug reception within the aligned openings 36 and 60 to retain the knuckles assembled while allowing for pivotal movement of the arms relative to each other for use of the press in an obvious manner.

The end panel or disc 66 is preferably of a circular configuration corresponding to that of the hinge knuckles in both size and configuration so as to lie flush against the outermost knuckle surface and act as a convenient handle means for grasping and manipulating the pintle 64. The handle nature of this end panel 66 is enhanced by a pair of integral radially outward projecting gripping ears or lugs 70 at diametrically opposed positions on the periphery of the panel 66.

The multiple function hinge member 62 also and significantly functions as a cleaning member for the apertures 32 in the receptacle bottom 30. To this end, the outer face 72 of the panel 66 is provided with multiple projections or protrusions 74 integrally formed thereon and corresponding in number and orientation to the receptacle apertures 32. This relationship is suggested in FIG. 9 wherein it will also be noted that the projections 74 are of a size to be closely received through the apertures 32 and of a length so as to project completely therethrough. A single central projection 74’ can be provided as a guide means for engagement within a corresponding aperture to quickly aligning the projections with the apertures during the cleaning step.

It is significant to note that when the hinge member 62 is used as a means for cleaning the receptacle apertures 32, the pintle 64 functions as a handle by which the cleaning head, defined by the disc 66 and projection 74, can be easily and firmly manipulated.

It will also be appreciated that upon removal of the pintle 64 from the hinge knuckle assembly, the upper and lower arm units can be separated for individual and thorough cleaning, including both the hinge knuckles and the pintle. Likewise, with the upper arm unit completely removed, the cleaning of the pressing compartment 28 will be simplified.
The foregoing described embodiment is illustrative of the invention. As other embodiments incorporating the inventive features of the invention may occur to those skilled in the art, the disclosed embodiment is not to be considered as a limitation on the scope of the invention. Rather, the invention is only to be limited by the scope of the claims following hereinafter.
D3: United States Patent No. 6,370,044

Issued: December 6, 2008
Filed: April 15, 2005
Application Published: October 22, 2006
Inventor: Steve J. Lackie

(Certain portions of the document have been omitted for brevity)

GARLIC PRESS

Despite the plethora of types of hand-operated presses, hereinafter generically referred to as garlic presses, that have been available over the several past decades there appears to be a large number of individuals who are dissatisfied with the state of the art. Some prior art presses based on advancing a crushing piston by rotation of a threaded rod, operate with a sluggishness unacceptable to a cook who wants simply to crush a garlic clove in short order. Many presses, based on the use of a lever arm to force a piston into a cylinder and extrude crushed garlic through a screen leak nearly as much crushed garlic backwardly around the periphery of the piston as is forced through the screen. A number of prior art presses use a right-angle cylinder as a receptacle in which the botanicals are to be pressed, and thus employ a piston that is pivotally mounted on a handle in order to compensate or adjust the arcuate motion of the handle to the linear configuration of the receptacle.

The invention herein provides a garlic press of the type that employs a first lever arm having adjacent one end thereof a fixedly positioned receptacle extending therethrough with one end of the receptacle being covered by a perforated screen, the other end being open; and a second lever arm having a first end thereof pivotally mounted on the one end of the first lever arm and bearing a piston fixedly positioned with respect to the second lever arm for insertion into the open end of the receptacle. The piston is an elongated element at least the head of which has a predetermined, invariant cross-sectional configuration and dimensions, and the receptacle is an elongated hollow element having a matching cross-section of invariant shape and dimension along the entire length of the receptacle, the piston typically being preferably about the same length as the depth of the receptacle. Most importantly, the receptacle is shaped to have an axis of elongation conforming to a common arc having a mean radius of curvature defined by the distance between the connecting pivot point and the center of the face of said piston.
Preferably, the piston is formed of stainless steel or the like with a wafer or closed cylinder of short length forming a face insertable into the open end of the receptacle, the latter in turn being then a segment of a hollow, stainless steel toroid with a circular cross-section and a circular toroidal curvature determined by the distance from the pivot point to the center of the piston face. In the preferred embodiment, means are provided for edging the periphery of the piston face with a ring to insure a tight sliding fit within the receptacle.

Referring now to FIG. 1 there will be seen an embodiment of manually operable or hand press 20 comprising first elongated lever arm 22 having one end 24 thereof pivotally connected to a corresponding end 26 of second elongated lever arm 28. At a portion of lever arm 22, adjacent end 24 thereof, there is provided receptacle 30 extending transversely and completely through that portion of the lever arm. Preferably, receptacle 30 is formed in lever arm 22 as an elongated hollow tube having a cross-section of invariant configuration, preferably circular, the diameter of which is fixed or invariable. Unlike prior art presses, receptacle 30 is not a right-angled cylinder but is instead formed, in the preferred embodiment, as a segment of a torus the mean radius of which is centered at pivot point 32 where the two lever arms are connected to one another. One end 34 of receptacle 30 is open, the other end 36 being covered by flat perforated screen 38, the plane of which preferably lies diametrically across receptacle 30 perpendicular to the arc of the torus.

Second lever arm 28 bears piston 38 fixedly positioned, as by being formed integrally therewith, with respect to the second lever arm for insertion into open end 34 of receptacle 30. Piston 38 is typically an elongated solid element extending transversely from arm 28 so as to be about the same length as the depth of receptacle 30 between the ends thereof. Piston 38 is provided with means defining closed face 40 in the form of a planar surface diametrically disposed perpendicularly to the arc of the torus of the piston so as to be insertable into open end 34 of receptacle 30. In the preferred embodiment, face 40 is defined by a wafer or short cylinder fixedly mounted, as by being formed integrally therewith, so as to form one end of piston 38 and has a cross-section configuration and cross-section dimensions substantially matching the like cross-sectional configuration and dimensions of receptacle 30. In the preferred embodiment, the periphery of face 40 is provided with or surrounded by ring 42 of a tough polymer, such as nylon.
or the like, with a very low coefficient of friction. The outside diameter of the periphery of polymeric ring 42 is selected to form a tight sliding fit within receptacle 30. It will be appreciated that the entire surface and edges of face 40 can be formed of a single material such as a polymer if desired.
NON-STICK GARLIC PRESS WITH INTEGRATED CLEANER

Background of the Invention

Notwithstanding that the basic design of a garlic press has long been known, certain problems remain.

First, the clove of garlic should be able to be pressed cleanly and smoothly, so that the liquid is expressed from the clove by crushing rather than by tearing the clove apart. Torn portions of clove impede the travel of the press plate in the clove crushing chamber and may prevent full expression of the liquid. Further, once the clove has been crushed and the liquid extracted, the residue should be easily removable from the device.

Second, during crushing it is common for bits of garlic to be forced into or through the sieve holes at the bottom of the chamber. Even after the bulk of the residue of a crushed clove has been removed from the press, these bits of the crushed clove will remain lodged in the sieve holes and must be separately removed. Removal, however, must not damage or enlarge the sieve holes, since their size is specifically designed to allow passage of the expressed liquid but to bar passage of substantially all of the crushed garlic clove. Cleaners have been designed in the past with prongs to be pushed upwardly through the holes from the exit side of the sieve to dislodge any garlic particles into the press chamber, from which they can be rinsed away. Such cleaning devices, however, have been separate from the press itself, which means that they may be lost.

It is impractical for a cleaner to be attached to a press by some sort of tether because this interferes with the convenient use of the press. Other possible solutions, such as a cleaner pivoted on the press produces significant mechanical problems, which have not been overcome in a manner which still allows economical production and sale of such a press.

It would therefore be of value to have a press which permits smooth and easy pressing of a clove and removal of the residue, including easy cleaning of the sieve holes, after use. It would
also be of value to have a cleaner with a structure such that is can simply and reliably clean any residue caught in sieve holes and can be easily and conveniently stowed within the press itself where it remains readily available but does not interfere in any manner with the use of the press.

**Summary of the Invention**

The invention described herein overcomes those problems by providing a garlic press with a coating enameled onto the inside surface of the press chamber, including into the discharge holes. The cleaning tool has a unique structure which allows it to be fully integrated with the press at all times while the press is being used, but then be easily and quickly separated from the press for cleaning of the discharge holes in the press.

In its principal embodiment, the garlic press comprises an elongated handle having a drainable press chamber at an end thereto, the press chamber having a top opening, a bottom and an inner surface, a press plate retractably moveable into the press chamber, lever means acting on a fulcrum at the end for retractably urging the press plate into the press chamber through the top opening, the press plated being joined to the lever by a pivot, a low surface friction material enameled onto the inner surface of the press chamber, and a cleaner mounted on the lever and removably secured thereto by interaction with the pivot, whereby when a clove of garlic is placed in the press chamber, its contained liquid can be extracted by the clove being cleanly crushed by the press plated being urged into the chamber by the lever, liquid so expressed drains from the chamber and following the crushing and liquid expression the cleaner can be demounted from the lever and used to dislodge debris of the crushed clove.

**Description of the Preferred Embodiments**

The press 2 is illustrated generally in FIG. 1. It consists of four principal components: the base 4 containing at one end the clove container 6, the lever 8 which is hinged to the base 4 at fulcrum 10, the press bar 12, which is hinged to the lever 8 at pivot 14, and the detachable cleaner 16, which is housed in the lever 8 in a manner which will be described below.

The base 4 comprises an elongated handle 17 of sufficient length for a user to grasp it easily in the hand. The handle is convenient formed of flat stock with upturned edges 20 to provide stiffness. The end portion 18 can include a fillet 22 for additional stiffening. At the end 24 of the handle opposite end 18 is clove container 6. Clove container 6 is integrated into the
handle 4 with a portion 26 extending below the handle 4 and terminating in sieve 28 which forms the bottom of the container 6. The entire container 6 has a generally rounded cross-section (best seen in FIGS. 2 and 5) and is of an internal diameter sufficiently large to hold at least one complete clove of garlic. The container 6 has a slight taper 30 downward to sieve 28 (best seen in FIGS. 3, 4 and 6), and in the embodiment shown also has an entry section 32 of the container 6 which has a somewhat wider taper 34. The container 6 commonly has a minimum diameter at the sieve 28 of about 3/4" (2 cm). Typically, sieve 28 has a depth between transition 36 and sieve 28 of about 5/8" (1.5 cm).

At the end 24 the wall of container 6 extends upwardly to form a loop 38 having two aligned interior recesses 40. Lever 8 is an elongated member generally similar in shape and length to handle 4. At its end 42 it is configured into two parallel spaced apart arms 46 on the interior side of which are located projection pins 44. Each pin 44 is journaled for rotation in a respective recess 40 and together the pins and recesses form fulcrum 10 around which lever 8 acts.

Within lever 8 and opposite clove container 6 is a pair of brackets 48 extending inwardly from the outer edges of lever 8. Journaled within each bracket 48 is a pivot pin 50 which is mounted at the top of press bar 12, and on which press bar 12 pivots. Press bar 12 comprises press foot 52 and flange 54; pins 50 are attached to head 57 of flange 54 (as seen in FIG. 6). Downward movement of lever 8 forces press bar 12 into container 6 to press a garlic clove (not shown). The liquid expressed from the pressed clove drains out of container 6 through the drain holes 56 in sieve 28. The device 2 thus functions as a second class lever. When the clove is crushed and the liquid fully extracted, lever 8 is lifted and pivots away from base 4 on fulcrum 10, withdrawing press bar 12 from container 6. The bulk of the clove residue can then be readily removed from the container 6 and a fresh clove inserted if desired.

If clove residue remains in one or more of the holes 56 and is not freed and removed along with the bulk of the clove residue when the press bar 12 is withdrawn and the press 2 inverted and shaken, the unique cleaner 16 may be used to clear remaining residue from the holes 56. The cleaner 16 shown in FIGS. 3, 7 and 8 has a base 58 from which a plurality of pegs 60 protrude. The number and layout of the pegs 60 corresponds to the number and layout of
holes 56, so that when used the cleaner 16 can clear all holes 56 of residue simultaneously, as illustrated in FIG. 8. The cleaner also has guide walls 62 and 64 which align it with the clove container 6 so that when used the alignment of the pegs 60 and holes 56 is essentially automatic. A broad grip 66 is attached to the back of base 58 to provide a surface for the user to grip the cleaner 16. An attachment arm 68 is connected to the forward side of wall 64 to allow the cleaner 16 to be releasably stowed within the device 2 to keep it handy when not in use. The arm 68 is sized to fit between the underside 76 of lever 8 and the top 78 of the head 57, as best illustrated in FIGS. 3 and 6. The arm contains recess 72 which engages the underside 78 of pivot 50, and extension 74 which ends in spacer 70. Spacer 70 causes a slight wedging action through extension 74 acting against the underside 76 of lever 8 which retains the cleaner 16 in its stowed position, but extension 74 is sufficiently flexible that cleaner 16 can readily be withdrawn from its stowed position for use. Between recess 72 and extension 74 is detent 73, which aids in positioning cleaner 16 in its stowed position.

The interior of container 6 in both the lower portion 31 and the upper portion 32 is lined with an enameled low-friction composition 80 to enable the crushed clove residue to be readily removed from the container 6 after extraction of the clove liquid. The composition 80 normally and preferably extends into the holes 56 and similarly lines the surfaces of the holes. The low-friction coating provided by the composition 80 thus facilitates the crushing of the garlic clove, the collection and discharge of the expressed liquid, and the cleaning of the device following usage.
D5
Excerpt from brochure provided by Chef Boyardee
Published in France, circa 1952
PART B – Short Answer Questions

QUESTION 12

Identify the decision from which the following citations have been taken.

[0.5 marks per answer for a total of 2.0 marks]

(a) "The narrow issue is whether the word 'art' in the definition includes a means of describing the boundaries of a plot of land and whether a piece of land subdivided into lots, the boundaries of which are delineated by curved lines in the shape of a champagne glass constitutes an "art" or "manufacture" within the meaning of that word as included in s. 2(d)."

(b) "There is a similarity between the current state of the law in the United Kingdom and the United States in respect of “obvious to try”. It is now clear that both jurisdictions accept that an “obvious to try” test can be relevant in an obviousness inquiry. The United States Supreme Court has now stated so explicitly in KSR. The convergence of the United Kingdom and the United States law on this issue suggests that the restrictiveness with which the Beloit test has been interpreted in Canada should be re-examined."

(c) "Having come to the conclusion that methods of medical treatment are not contemplated in the definition of "invention" as a kind of "process", the same must, on the same basis, be true of a method of surgical treatment."

(d) "Each of the five categories of invention inherently relate to subject matter that is technological in nature. It follows that subject matter that is not technological is not statutory subject matter, and cannot fit under one of the categories of invention."
QUESTION 13

Your client has invented a new chemical compound for use as a household cleaner. Although there are many processes for making the compound, your client has also worked out a particularly advantageous method of mixing its components to provide a very high yield. You conducted prior art searches and have advised your client that the compound is definitely new, and arguably inventive.

Your client wishes to obtain a patent for his invention, but at the same time he does not wish to disclose everything he knows about making the compound in order to preserve his competitive edge. He therefore instructs you to omit select details about the manufacture of the compound.

[3 marks] Identify two issues concerning the validity of such a patent that you would discuss with your client, and identify the relevant statutory or regulatory provision or judicial decision.

QUESTION 14

You filed a patent application for your client on February 4, 2006. During examination, the Examiner issued an office action objecting to the claims on the basis that the subject matter defined in the claims had been disclosed by prior art reference D1, a U.S. patent application published on March 31, 2005, filed by a completely unrelated party. Based on your advice to your client, and your client’s instructions, you prepare a response arguing that there is no anticipation because the elements of your client’s pending claims are not enabled by D1. While you are preparing the response to this office action, your client tells you that he just purchased all rights to the invention of D1, and that the assignment document has been registered with the USPTO.

(a) [2 marks] Is D1 still citable as anticipatory prior art? Briefly explain why or why not with reference to the appropriate statutory or regulatory provision or judicial decision.

(b) [1 mark] Does your answer change if D1 is a published Canadian application? Briefly explain why or why not with reference to the appropriate statutory or regulatory provision or judicial decision.
QUESTION 15

Hans, a solo inventor, lived and worked in a small town in the United States, where he had made and sold his homemade cough remedy to his local family and friends for nearly a decade. Hans brewed his remedy in secret, and sold the finished product; during that time, many drug manufacturers procured samples of the finished product and tried to analyze his remedy to determine the formula, but were unsuccessful. They did eventually manage to shut down his small business, as he had not complied with the relevant drug regulations in the U.S. Hans then moved to Canada, and once established in Canada, decided to file a Canadian patent application for his remedy. He finally obtained a patent in December 2003, after an impressive eighteen years of pendency in the Patent Office.

Hans now comes to you for advice on the validity of his patent before he embarks on infringement proceedings against a manufacturer, who apparently began making and selling a cough syrup based on his remedy after his patent specification was published.

(a) [2 marks] In view of the information given, is Hans’s patent valid? Explain why or why not with reference to the appropriate statutory or regulatory provision or judicial decision.

(b) [2 marks] Does your answer change if the small town in which Hans used to live was in British Columbia, and he moved to Ontario? Explain why or why not with reference to the appropriate statutory or regulatory provision or judicial decision.
QUESTION 16

In 2008, your client filed a U.S. patent application for its new invention, and paid the fees himself; last year, however, thanks to the economic downturn your client discovered that additional financial assistance was needed to pay for the filing and prosecution of a Canadian patent application. To raise the needed funds, in March 2009 your client assigned 35% of its interest in his invention to one company, and 35% of his interest to a second company. The parties agreed that your client would be responsible for directing the prosecution of any patent applications for the invention, but the other two companies have the right to veto any decisions if they both agree.

You were then retained to file the Canadian application, which you did in June 2009, claiming priority to the U.S. filing. When you filed the application, you prepared a declaration of entitlement that identified the other two companies as co-applicants with your client. You also determined that your client only had a handful of employees, so you filed a small entity declaration and paid the small entity filing fee. However, it is only now, in April 2010, that you learned that each of these two companies holding a total of 70% interest in the invention employs between 30 and 40 employees.

(a) **[1 mark]** In view of this new information, what steps must be taken with respect to the patent application? Explain with reference to the appropriate statutory or regulatory provision or judicial decision.

(b) **[1 mark]** Does your answer in (a) change if the 2008 filing was a Canadian patent application, and the 2009 filing was a divisional of this application? Explain why or why not with reference to the appropriate statutory or regulatory provision or judicial decision.
QUESTION 17

You are prosecuting a patent application for your client, and receive a first examiner’s report. In the report, you find that the Examiner has requisitioned a disclosure of any prior art cited in the USPTO or JPO, using the wording of s. 29(1) of the Patent Rules to frame her request. You forward a copy of the report to your client, and request any information the client has to meet this requisition. Your client responds the day before the deadline to respond to the report, and informs you that there is no prior art to cite and no corresponding patent application in the USPTO or JPO. You therefore file a response the next day advising the Examiner of this.

Four months later, you receive a further examiner’s report. The report reiterates the Rule 29 request. This time, your client tells you that there were indeed corresponding USPTO and JPO applications, as the Canadian, U.S. and Japanese applications were all national phase entries from the same PCT application and that prior art had been cited against them at the time the first response had been filed, but they forgot to mention this because the claims in the USPTO and JPO applications did not overlap at all with the Canadian claims, but were rather directed to another invention described in the specification.

(a) [3 marks] What is the best course of action for your client in view of this new revelation? Briefly explain why, with reference to the appropriate statutory or regulatory provision or judicial decision.

(b) [2 marks] Does your advice change if it turns out that your client had assigned the U.S. and Japanese applications to an unrelated company before the first Rule 29 request was made? Briefly explain why or why not, with reference to the appropriate statutory or regulatory provision or judicial decision.
QUESTION 18

You filed a Canadian patent application for your client, a sole inventor, on April 3, 2007, and have been timely paying maintenance fees since then. You filed a PCT application claiming priority to the Canadian application on March 25, 2008. A national phase application was filed in the United States on October 2, 2009, and a regional phase application was filed at the EPO on November 3, 2009.

(i) [2.5 marks] Today, you meet with your client and he shows you an agreement between him and American Auto Parts Company (AAPC) signed on December 12, 2006, telling you that he thought he had shown you previously, and apologizing for his mistake. You review the agreement and conclude that your client has assigned his North American rights in the invention to AAPC. All required fees to date have been timely paid on the Canadian application, but have been paid at the small entity rate. Because AAPC is not a small entity, you decide that your client was not entitled to pay fees at the small entity rate and that the application is therefore deemed abandoned. List the corrective actions needed to be taken to reinstate the application.

(ii) Your client explains that AAPC displayed a product covered by the patent application at an auto show in New York on March 29 and 30, 2007, and has been shipping the product to US customers since September 15, 2008. European Auto Parts Company (EAPC), who saw the product at the show, would like to market the product in Germany.

(a) [0.5 marks] In what way does the product display at the auto show affect chances of obtaining a European patent?

(b) [1 mark] In what way does the product display at the auto show affect chances of obtaining a US patent?

(c) [1 mark] In what way do the US product shipments affect chances of obtaining a US patent?

(iii) [1 mark] In a further review of the file from your first meeting with the client on January 16, 2007, you find a note in your own handwriting that says "NY show - Mar 29, file by Mar 25". State an action that you take upon finding this note and why.
QUESTION 19

You recently filed a Canadian patent application on instructions from a US attorney. The application claims priority from US provisional applications filed on February 10, 2009 and September 10, 2009. The US attorney telephones you today, and explains that a scientific publication based on experiments disclosed in the Canadian application is to be published in August 2010. The inventor has agreed not to publish any results prior to the scientific publication, so it is important that the application not be published until after August.

(i) [2.0 marks] Is it possible to withdraw the application to prevent its publication? State the required steps and relevant deadline(s).

(ii) [2.0 marks] Is it possible to delay publication until after August 2010 without withdrawal of the application? State the required steps and relevant deadline(s).

END OF QUESTIONS IN PART B

END OF PAPER B