Trials@uspto.gov
Tel: 571-272-7822

Paper 42
Entered: September 12, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DYNAMIC DRINKWARE LLC,
Petitioner,

v.

NATIONAL GRAPHICS, INC.,
Patent Owner.

Case IPR2013-00131
Patent 6,635,196

Before THOMAS L. GIANNETTI, TRENTON A. WARD, and MITCHELL G. WEATHERLY, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Dynamic Drinkware ("Petitioner") filed a corrected Petition requesting *inter partes* review of claims 1, 8, 12, and 15 of U.S. Patent No. 6,635,196 to Goggins (Ex. 1001, "the '196 patent"). Paper 10 ("Pet."). National Graphics, Inc. ("Patent Owner") filed a Preliminary Response. Paper 15. Based on these submissions, we instituted trial, but only as to claims 1 and 12 of the '196 patent. Paper 16 ("Institution Decision").

After institution, Patent Owner filed a Response (Paper 22; "PO Resp.") and Petitioner filed a corrected Reply (Paper 34; "Pet. Reply"). In addition Patent Owner filed a Motion to Amend (Paper 23) and Petitioner filed a corrected Opposition to that motion (Paper 33). Oral Hearing was held on July 24, 2014, and the Hearing Transcript ("Tr.") has been entered in the record. Paper 41.

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a). We conclude that Petitioner has failed to prove by a preponderance of the evidence that claims 1 and 12 of the '196 patent are unpatentable.

A. Related Proceeding

Petitioner has identified, as a related proceeding, a district court case in which Petitioner is a defendant involving the '196 patent and other patents, captioned *National Graphics, Inc. v. Brax Ltd.*, Case Number 12-C-1119 (E.D. Wis.). Pet. 2.

B. The ’196 Patent

The ’196 patent issued October 21, 2003, from an application filed November 22, 2000. The patent identifies, and claims benefit of, a provisional application filed on June 12, 2000. Ex. 1001, col 1, ll. 4-5.

The ’196 patent is directed to methods for making molded plastic articles bearing a “lenticular” image. *Id*. at col. 1, ll. 8-14. As described in the patent, a lenticular image is a segmented image comprising one or more component images. *Id*. at col. 1, ll. 49-51. The segments are interlaced in any conventional manner and mapped (i.e., aligned) to a lenticular lens. *Id*. at col. 1, ll. 51-53. The interlaced images can be viewed through the lens to create visual effects such as motion or depth. *Id*. at col. 3, ll. 43-56.

As discussed in the patent specification the aesthetic requirements for molded plastic parts depend on their end use and the specification gives a number of examples where aesthetics would be important:

> For those products that are used in applications in which their use is *visible to an end user*, or in which their appearance is important to their sale, e.g., promotional items, automobile and appliance facie, cups, bottles, bottle caps/enclosures, snowboards or wake boards, skis (e.g., water, snow), cameras, computer cases (e.g., laptop cases), cell phone (or other electronic) cases, cosmetic cases, collectibles, signs, magnets, coasters, display posters, menu boards, postcards, business cards, and packaging on boxes, the aesthetics of the product are important.

Ex. 1001, col. 1, ll. 35-45 (emphasis added).

As described in the Background section of the ’196 patent, lenticular images are one way of improving the look of a product:

> One way to improve the look of a product is to incorporate into it bright color schemes and fancy or even glitzy decor so as to

> attract and keep a viewer's attention. The application of a lenticular image is one form of such a decor.

Id. at col 1, ll. 46-49.

C. Illustrative Claim

Both claims 1 and 12 are independent process claims. Claim 1, reproduced below, is illustrative:

> 1. A method for making a molded article having a lenticular image attached thereto, the method comprising the steps of:
>
> providing a mold having a mold cavity in which to form the molded article having a lenticular image, the lenticular image comprising a lenticular lens and interlaced image, the mold cavity having a size that is appropriate to the molded article with the lenticular image;
>
> inserting the lenticular image into the mold cavity;
>
> introducing a molten plastic into the mold cavity having the lenticular image therein to form the molded article with the lenticular image attached thereto, the molten plastic introduced at at least one of a temperature, a pressure, and a turbulence that *minimizes any distortion to the lenticular lens and any degradation to the interlaced image*; and
>
> removing the molded article having the attached lenticular image from the mold cavity.

(Emphasis added).

II. ANALYSIS

A. Claim Construction

The claim constructions provided in our Institution Decision were not challenged by the parties, including our construction of the "minimizing" limitation, italicized in claim 1 above, which limitation appears also in claim 12. For the purposes of this Final Decision, therefore, we adopt for that limitation the following construction from our Institution Decision:

> We interpret "minimizes any distortion to the lenticular lens and any degradation to the interlaced image" to require that the claimed methods sufficiently prevent distortion to the lenticular lens or degradation of the interlaced image so that the *intended visual effect* of the lenticular image *still functions properly* within the finished molded article.

Institution Decision 8 (emphasis added). The other claim constructions from our Institution Decision are not material to this decision and therefore will not be discussed further.

B. Antedating Raymond

The Petition challenged claims 1, 8, 12, and 14 of the '196 patent on several grounds. Trial was instituted, however, for two claims only (claims 1 and 12), based upon one ground: anticipation by U.S. Patent No. 7,153,555 (Ex. 1003; "Raymond").

Patent Owner's Response does not attempt to distinguish claims 1 and 12 from the teachings of Raymond. Instead, Patent Owner contends that Raymond does not qualify as prior art because the subject matter of claims 1 and 12 was reduced to practice before Raymond's effective date as prior art under 35 U.S.C. § 102(e). PO Resp. 7.

i. Effective Date of Raymond

The parties dispute the effective date of Raymond as prior art. The application for Raymond was filed on May 5, 2000, claiming benefit of a provisional application filed on February 15, 2000. Ex. 1003, col. 1, ll. 6-8. Patent Owner argues that Petitioner has failed to meet the burden of establishing Raymond is entitled to benefit of the earlier provisional filing date; therefore, Raymond's effective date under 35 U.S.C. § 102(e) is its May 5, 2000, filing date. PO Resp. 3-7. In response, Petitioner attempts to

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.