

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRISTAR PRODUCTS, INC.,
Petitioner,

v.

CHOON'S DESIGN, LLC,
Patent Owner.

Case IPR2015-01883
Patent 8,684,420 B2

Before GRACE KARAFFA OBERMANN, *Vice Chief Administrative
Patent Judge*, JEREMY M. PLENZLER and
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

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

I. INTRODUCTION

We have jurisdiction to hear this *inter partes* review under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed herein, we determine that Petitioner has not shown, by a preponderance of the evidence, that claim 3 of U.S. Patent No. 8,684,420 B2 (Ex. 1001, “the ’420 patent”) is unpatentable.

A. Procedural History

Tristar Products, Inc. (“Petitioner”) filed a Petition for *inter partes* review of claims 1, 3, and 6 of the ’420 patent. Paper 1 (“Pet.”). Petitioner provided a Declaration of Youjiang Wang, Ph.D., P.E. (Ex. 1015) to support its positions. Choon’s Design, LLC (“Patent Owner”) filed a Preliminary Response. Paper 5 (“Prelim. Resp.”). Prior to institution, Patent Owner disclaimed claims 1 and 6 of the ’420 patent. *See* Prelim. Resp. 11; Ex. 2018.

Pursuant to 35 U.S.C. § 314(a), on March 9, 2016, we instituted *inter partes* review to determine whether claim 3 is unpatentable under 35 U.S.C. § 102 as anticipated by La Croix¹; and whether claim 3 is unpatentable under 35 U.S.C. § 103 as obvious in view of La Croix. Paper 6 (“Inst. Dec.”). Subsequent to institution, Patent Owner filed a Patent Owner Response (Paper 10 (“PO Resp.”)), along with a Declaration of Mr. Cheong Choon Ng (Ex. 2026) to support its positions.² Petitioner filed a Reply

¹ U.S. Patent No. 1,776,561, issued Sept. 23, 1930 (Ex. 1012).

² We note that the Patent Owner Response includes wholesale citations to several paragraphs of Mr. Ng’s Declaration without corresponding discussion in the Response itself. *See, e.g.*, PO Resp. 7–9. This amounts to an improper incorporation by reference under 37 C.F.R. § 42.6(a)(3). The Patent Owner Response and Mr. Ng’s Declaration, however, combine to less

(Paper 11 (“Pet. Reply”)) to the Patent Owner Response. An oral hearing was held on December 6, 2016. A transcript of the hearing is included in the record. Paper 14 (“Tr.”).

B. Related Proceedings

The parties identify several district court proceedings involving the ’420 patent. Pet. 2–3; Paper 4, 2. The ’420 patent has been asserted against Petitioner in one of those pending district court proceedings—namely, *Choon’s Design LLC v. Tristar Products, Inc.*, Case No. 2:14-cv-10848 (E.D. Mich.). Pet. 1. The ’420 patent was the subject of a previously filed post-grant review proceeding—*LaRose Indus., LLC v. Choon’s Design Inc.*, Case PGR2014-00008—which was terminated prior to institution in response to a Joint Motion to Terminate filed by the parties. *Id.* at 3; Paper 4, 2. The ’420 patent also was challenged in *IdeaVillage Products, Corp. v. Choon’s Design, LLC*, in which institution was denied. Case IPR2015-01143 (PTAB Nov. 9, 2015) (Paper 6); Pet. 3; Paper 4, 1.

Related U.S. Patent No. 8,485,565 B2 (“the ’565 patent”) also was the subject of four previous *inter partes* review proceedings, including: *LaRose Indus., LLC v. Choon’s Design, LLC*, Case IPR2014-00218 (all challenged claims disclaimed after institution; Joint Motion for Adverse Judgment granted); *LaRose Indus., LLC v. Choon’s Design Inc.*, Case IPR2014-01353

than 33 pages in total. Thus, in the interest of justice and based on the particular facts and circumstances of this proceeding we waive 37 C.F.R. § 42.6(a)(3) with respect to the Patent Owner Response, and consider the portions of Mr. Ng’s Declaration cited in the Patent Owner Response to also be included therein. *See* 37 C.F.R. § 42.5(b) (“The Board may waive or suspend a requirement of parts 1, 41, and 42 and may place conditions on the waiver or suspension.”).

(all challenged claims disclaimed prior to institution; institution denied); *Tristar Products, Inc. v. Choon's Design Inc.*, Case IPR2015-00838 (institution denied under 35 U.S.C. § 315(b)); and *IdeaVillage Products, Corp. v. Choon's Design, LLC*, Case IPR2015-01139 (institution denied). Pet. 3–4; Paper 4, 1.

C. The '420 Patent

The '420 patent is titled “Brunnian Link Making Device and Kit” and relates to a kit and method for creating a linked item formed from a series of links, such as “Brunnian” links. Ex. 1001, 1:1, 1:31–38, 2:33–35.

“A Brunnian link is a link formed from a closed loop doubled over itself to capture another closed loop to form a chain.” *Id.* at 1:31–33. The '420 patent provides examples of linked items such as “bracelets, necklaces[,] and other wearable or decorative items.” *Id.* at 2:34–35, Fig. 2. The '420 patent discloses that kits for making uniquely colored bracelets and necklaces have always been popular, but that “such kits usually just include the raw materials such as different colored threads and beads and rely on the individual’s skill and talent to construct a usable a desirable item.” *Id.* at 1:18–23. Thus, according to the '420 patent, “there is a need and desire for a kit that . . . simplifies construction to make it easy for people of many skill and artistic levels to successfully create a desirable and durable wearable item.” *Id.* at 1:23–27.

Figures 4, 5A, and 5B of the '420 patent illustrate the basic components of the kit and are reproduced below.

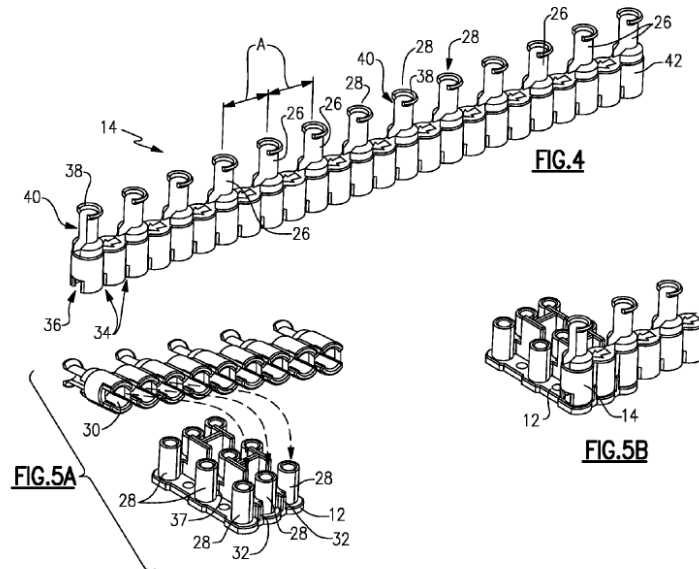


Figure 4 is a perspective view of an example pin bar. *Id.* at 1:65. Figure 5A is a perspective view of interfacing surfaces of an example base and the example pin bar. *Id.* at 1:66–67. Figure 5B is a perspective view of a pin bar mounted to an example base. *Id.* at 2:1–2.

The kit includes base 12 that forms a support for pin bars 14. *Id.* at 2:47–48. One or more pin bars 14 can be mounted to one or more bases 12 to provide a desired configuration. *Id.* at 2:51–54, 2:59–62. Each base 12 includes tabs (keys) 32, and each pin bar 14 includes slots 34 that receive tabs 32 to maintain pin bars 14 on base 12 in a desired orientation. *Id.* at 3:1–5. Pin bars 14 each include a plurality of pins 26. *Id.* at 2:48.

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