

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAMPBELL SOUP COMPANY,
CAMPBELL SALES COMPANY, and
TRINITY MANUFACTURING, LLC,
Petitioner,

v.

GAMON PLUS, INC.,
Patent Owner.

Case IPR2017-00087
Patent 8,827,111 B2

Before GRACE KARAFFA OBERMANN, BART A. GERSTENBLITH,
and ROBERT L. KINDER, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

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

I. INTRODUCTION

Campbell Soup Company, Campbell Sales Company, and Trinity Manufacturing, LLC (collectively, “Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting institution of *inter partes* review of claims 1–35 of U.S. Patent No. 8,827,111 B2 (Ex. 1001, “the ’111 patent”). Gamon Plus, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 9) to the Petition. Pursuant to 35 U.S.C. § 314, we instituted this trial (“Institution Decision”) as to claims 1–16, 27, 28, and 32–35 of the ’111 patent. Paper 12 (“Inst. Dec.”). In particular, *inter partes* review was instituted to address three grounds of unpatentability, pursuant to 35 U.S.C. § 103(a), challenging the following groups of claims: (1) claims 1–16; (2) claims 27, 28, 33, and 34; and (3) claims 32 and 35. Inst. Dec. 52.

After the Institution Decision, Patent Owner filed a Patent Owner Response (Paper 15, “PO Resp.”), Petitioner filed a Reply to the Patent Owner Response (Paper 31, “Pet. Reply”), and Patent Owner filed a Sur-Reply (Paper 60, “PO Sur-Reply”). Patent Owner states in its Response that it “moves to cancel and formally disclaims claims 1 to 16 of the ’111 patent” and does not address the patentability challenge to those claims in its Response. PO Resp. 2. Petitioner acknowledges Patent Owner’s request to cancel claims 1–16 and does not address the patentability challenge to those claims in its Reply. Pet. Reply 1.

In addition to the papers noted above, Petitioner filed a Motion to Exclude Evidence (Paper 44, “Pet. Mot.”), Patent Owner filed an Opposition to Petitioner’s Motion to Exclude Evidence (Paper 52, “PO Opp.”), and Petitioner filed a Reply in support of its Motion (Paper 59, “Pet. Reply”). Patent Owner filed a Motion for Observations on Cross-Examination of

Steven C. Visser (Paper 45) and Petitioner filed a Response to Patent Owner's Observations (Paper 51). An oral argument was held January 23, 2018, the transcript of which is entered into the record (Paper 72, "Tr.").

We have jurisdiction under 35 U.S.C. § 6(c). This Decision is a final written decision under 35 U.S.C. § 318(a) as to the patentability of the challenged claims. Based on the record before us, we (1) grant Patent Owner's request to cancel claims 1–16, and (2) determine that Petitioner has not demonstrated, by a preponderance of the evidence, that claims 27, 28, and 32–35 of the '111 patent are unpatentable.

A. Related Proceedings

The parties indicate that the '111 patent is asserted in *Gamon Plus, Inc., et al. v. Campbell Soup Co., et al.*, No. 15-cv-8940-CRN-YBK (N.D. Ill.). Pet. 1–2; Paper 7, 1. Petitioner indicates that U.S. Patent Application No. 14/861,017, which is still pending before the Office, claims priority to the application that issued as the '111 patent, and may be affected by a decision in this proceeding. Pet. 2.

B. Real Parties in Interest

The Petition identifies "Campbell Soup Company," "Campbell Sales Company," and "Trinity Manufacturing, L.L.C." as real parties in interest. Pet. 1. Patent Owner identifies "Gamon Plus, Inc." and "Gamon International, Inc." as real parties in interest (collectively, "Gamon"). Paper 7, 1.

C. The References

Petitioner relies on the following references:

European Patent Application Publication No. 0490693 A2, published June 17, 1992 (Ex. 1020, “Nesso”)¹;

U.S. Patent No. 3,395,809, issued August 6, 1968 (Ex. 1021, “Mellion”); and

U.S. Patent No. 2,382,191, issued August 14, 1945 (Ex. 1023, “Wechselbaum”).

D. Instituted Grounds of Unpatentability

We instituted trial based on the following grounds of unpatentability:

References	Basis	Claims Challenged
'751 publication and Deffner	§ 103(a)	1–16
Wechselbaum and Nesso	§ 103(a)	27, 28, 33, and 34
Wechselbaum, Nesso, and Mellion	§ 103(a)	32 and 35

Petitioner relies upon two declarations by Mr. Steven Visser, one filed with the Petition and dated October 14, 2016 (Ex. 1002, the “Visser Declaration”), and another filed with Petitioner’s Reply dated October 13, 2017 (Ex. 1065, the “Visser Reply Declaration”). Patent Owner relies upon two declarations by Mr. Terry Johnson, a first declaration dated July 12,

¹ This reference identifies James Roderick Oattes as the named inventor and “NESSO (ENGINEERS) LIMITED” as the applicant. Ex. 1020, 1. The parties refer to this reference as “Nesso,” and we do the same for consistency.

2017 (Paper 16, the “Johnson Declaration”), and a supplemental declaration, dated August 2, 2017 (Paper 53, “the “Johnson Supplemental Declaration”).²

E. The '111 Patent

The '111 patent is directed to “dispenser racks and displays” and “to a compact, easy to assemble, easy to load and unload multiple chute dispenser with an integrated display.” Ex. 1001, 1:15–18. The dispenser includes “[a] set of panels having chutes therebetween. The chutes being defined by curvilinear rails on such panels. The curvilinear rails having stops thereon for stopping the products for viewing.” *Id.* at 1:58–61.

Figures 1 and 2 of the '111 patent are shown below:

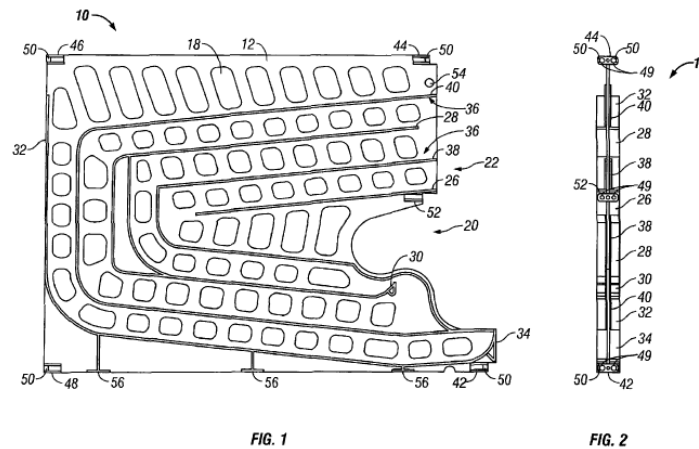


Figure 1 of the '111 patent “is a side view of a panel” (*id.* at 1:66–67), and Figure 2 is “an edge on view of a panel” (*id.* at 2:1–2). As shown, panel 10 is the “main element of the multi-chute gravity feed dispenser display” and

² Paper 16 is erroneously identified in our filing system as “EXHIBIT 2001 Declaration of Terry Johnson.” Patent Owner, however, did not file an exhibit 2001 in this case. Paper 53 is Bates stamped erroneously with the phrase “Gamon Exhibit no. 2027.” Paper 53, 1. Exhibit 2027 appears to be a copy of Exhibit 1065 marked during Mr. Visser’s deposition as “Exhibit 2.” *See* Ex. 2027, 1. Therefore, we cite to each of Mr. Johnson’s declarations by the paper number under which it was filed.

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