

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CAMPBELL SOUP COMPANY,  
CAMPBELL SALES COMPANY, and  
TRINITY MANUFACTURING, L.L.C.,  
Petitioner,

v.

GAMON PLUS, INC.,  
Patent Owner.

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Case IPR2017-00091  
Patent D621,645 S

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Before GRACE KARAFFA OBERMANN,<sup>1</sup> BART A. GERSTENBLITH,  
and ROBERT L. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

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

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<sup>1</sup> Trenton A. Ward left the Board in September 2017 and was replaced by Judge Obermann on the existing panel.

## I. INTRODUCTION

Campbell Soup Company, Campbell Sales Company, and Trinity Manufacturing, L.L.C. (collectively, “Petitioner”) filed a Petition to institute an *inter partes* review of the claim for a “Gravity Feed Dispenser Display” in U.S. Patent No. D621,645 S (“the ’645 patent”). Paper 2 (“Pet.”). Gamon Plus, Inc. (“Gamon” or “Patent Owner”) filed a Preliminary Response to the Petition. Paper 9. Applying the standard set forth in 35 U.S.C. § 314(a), we instituted an *inter partes* review of the challenged claim. Paper 12 (“Dec.”).

During the trial, Patent Owner filed a Patent Owner Response (Paper 14, “PO Resp.”), and Petitioner filed a Reply (Paper 33, “Pet. Reply”) to the Patent Owner Response. We authorized Patent Owner to file a paper that identifies allegedly improper new argument and citations in Petitioner’s Reply (“Paper 40”), to which Petitioner filed a response (Paper 48). We also authorized Patent Owner to file a sur-reply addressing evidence that Petitioner produced late in the proceeding. Paper 68 (“PO Sur-reply”).

Petitioner’s fully briefed Motion to Exclude Evidence is pending. Paper 49 (“Pet. Mot.”); Paper 59 (“PO Opp.”); Paper 66 (“Pet. Reply to Opp.”). Patent Owner’s fully briefed Motion to Exclude also is pending. Paper 51 (“PO Mot.”); Paper 58 (“Pet. Opp.”); Paper 67 (“PO Reply to Opp.”). We have also considered Patent Owner’s Motion for Observations on Cross-Examination of James M. Gandy (Paper 50) and Petitioner’s Opposition to the Motion for Observations (Paper 57).

An oral hearing was held on January 23, 2018, and a copy of the transcript is part of the record. Paper 80 (“Tr.”).

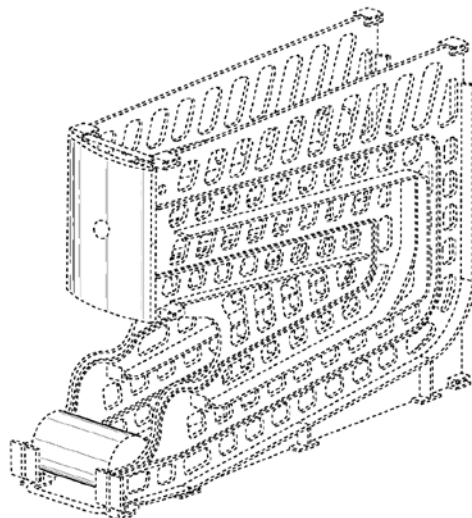
We have jurisdiction under 35 U.S.C. § 6(b). This Decision is a Final Written Decision under 35 U.S.C. § 318(a) as to the patentability of the claim on which we instituted trial. Based on the record before us, we determine that Petitioner has not shown, by a preponderance of the evidence, that the claim of the '645 patent is unpatentable under 35 U.S.C. § 103(a).

A. *Related Proceedings*

The parties state that the '645 patent is at issue in *Gamon Plus, Inc., et al. v. Campbell Soup Co., et al.*, Case No. 15-cv-8940 (N.D. Ill.). Pet. 3–4; Paper 6, 1–2. Petitioner also has filed petitions challenging the patentability of related design patents, IPR2017-00094 (U.S. Patent No. D612,646), IPR2017-00095 (U.S. Patent No. D621,644), and IPR2017-00096 (U.S. Patent No. D595,074).

B. *The '645 Patent and Claim*

The '645 patent (Ex. 1001) issued August 17, 2010, and is assigned to Gamon. *Id.* at [45], [73]. The '645 patent claims “[t]he ornamental design for a gravity feed dispenser display, as shown and described.” *Id.* at [57]. The claim for the ornamental design for a gravity feed dispenser display is depicted below:



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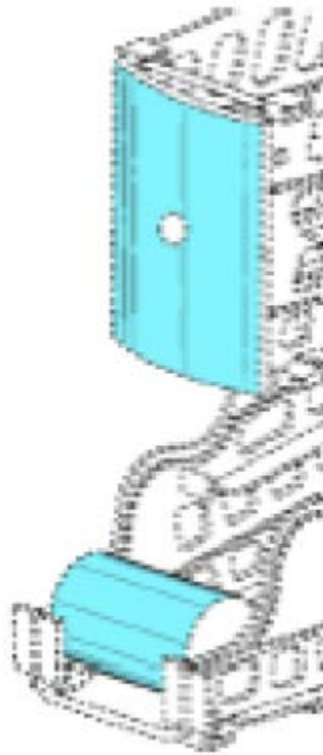
The Figure of the '645 patent is this perspective view of a gravity feed dispenser display. *Id.* As depicted, certain elements in the front area of the design are drawn in solid lines, but much of the rearward structure is illustrated by broken lines. The Description of the invention explains:

The broken line showing is for the purpose of illustrating portions of the gravity feed dispenser display and forms no part of the claimed design.

*Id.* at Description. *See* 37 C.F.R. § 1.152; *see also* MPEP § 1503.02, Subsection III (“Unclaimed subject matter may be shown in broken lines for the purpose of illustrating the environment in which the article embodying the design is used. Unclaimed subject matter must be described as forming no part of the claimed design or of a specified embodiment thereof.”).

In an *inter partes* review, “[a] claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b). With respect to design patents, it is well-settled that a design is represented better by an illustration than a description. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc) (citing *Dobson v. Dornan*, 118 U.S. 10, 14 (1886)). Although preferably a design patent claim is not construed by providing a detailed verbal description, it may be “helpful to point out . . . various features of the claimed design as they relate to the . . . prior art.” *Egyptian Goddess*, 543 F.3d at 679–80; *cf. High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1314–15 (Fed. Cir. 2013) (remanding to district court, in part, for a “verbal description of the claimed design to evoke a visual image consonant with that design”).

Petitioner contends the claim of the '645 patent “covers the curved access door / label area, [and] the visible portion of the cylindrical can” as depicted below:



Petitioner’s annotated Figure of the '645 patent purportedly represents the entirety of the claim. Pet. 8; *see* Ex. 1002 ¶ 15.

Gamon contends that certain aspects of the design claim are important esthetically. PO Resp. 4. Gamon points to “the relative position, dimensions and height of the label area with respect to the cylindrical can, which is a significant esthetic aspect of the design.” *Id.* “Specifically, the horizontal cylindrical article is positioned partially forward of the label area, and with the label area at a height above the bottom of the article that is about the same as the height of the label area.” *Id.* (citing Ex. 2001 ¶ 5). Gamon also contends that

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