

Filed on behalf of Patent Owner Gamon Plus, Inc.

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**U.S. PATENT & 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, LLC.**  
Petitioners,

v.

**Gamon Plus, Inc.**  
Patent Owner

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**Case No. IPR2017-00094  
Patent D612,646 S**

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**PATENT OWNER'S MOTION FOR RECONSIDERATION AND  
DENIAL OF INSTITUTION OF *INTER PARTES* REVIEW**

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## I. Relief Requested

Patent Owner Gamon Plus, Inc. respectfully requests that the Board:

- a. reconsider the Board's acceptance in the Petition of the testimony of Examiner James Gandy, the expert for Petitioners, with respect to U.S. Pat. Des. 404,622 (Ex. 1008, hereinafter "Linz");
- b. reconsider the Board's now-unconstitutional Decision instituting this IPR (Paper no. 13), and
- c. issue a new Decision denying institution of *inter partes* review of U.S. patent no. D612,646 S (the '646 patent).

## II. Reasons for Granting the Requested Relief

Recent rulings from the U.S. Supreme Court and the Federal Circuit have radically altered the procedural posture of this IPR, and the above-described relief is therefore respectfully requested for the reasons set out below.

- A. **Under *Arthrex* there has never been a Final Written Decision, or even a Decision to Institute, in this IPR that complied with the U.S. Constitution.**

The U.S. Supreme Court on June 21, 2021 held that the issuance of Final Written Decisions by the PTAB violated the Appointments Clause of the U.S. Constitution. *See, United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1985, 210 L. Ed. 2d 268 (2021); *see also*, U.S. Const. Art. II, § 2, cl. 2. The rationale was that PTAB

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