

Filed on behalf of Patent Owner Gamon Plus, Inc.

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U.S. PATENT & TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**Campbell Soup Company, Campbell Sales Company
and Trinity Manufacturing, LLC.**
Petitioners,

v.

Gamon Plus, Inc.
Patent Owner

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

**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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