

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.

IPR2017-00091 (Patent D621,645 S)
IPR2017-00094 (Patent D612,646 S)¹

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

KINDER, *Administrative Patent Judge*.

ORDER
Conduct of Proceeding
37 C.F.R. § 42.5

¹ We exercise our discretion to issue one Order in each of these proceedings.
The parties may not use this caption style.

IPR2017-00091 (Patent D621,645 S)

IPR2017-00094 (Patent D612,646 S)

On August 19, 2021, the United States Court of Appeals for the Federal Circuit issued a precedential opinion in *Campbell Soup Company v. Gamon Plus, Inc.*, 10 F.4th 1268 (Fed. Cir. 2021). The appeals stemmed from our Final Decisions in IPR2017-00091 and IPR2017-00094. The Federal Circuit determined that for both patents in contention,² “the claimed designs would have been obvious,” and the Federal Circuit reversed our Final Decisions accordingly. *See id.* at 1279. On October 29, 2021, the mandate of the Federal Circuit issued pursuant to Rule 41 of the Federal Rules of Appellate Procedure. Accordingly, these proceedings have concluded and the decisions by the Federal Circuit are final. Pursuant to 35 U.S.C. § 318(b), the remaining function of the USPTO is: “the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable.” *See also* 37 C.F.R. § 42.80.

Without our authorization, Patent Owner recently filed a Motion for Reconsideration in each of the proceedings listed above (Paper 115 in IPR2017-00091, and Papers 115 and 116³ in IPR2017-00094). In light of the Federal Circuit’s reversal of our Final Decisions and determination that the claimed designs would have been obvious (*see Campbell Soup*, 10 F.4th at 1279), the scope of the Federal Circuit’s mandate does not include consideration by the Board of Patent Owner’s Motions. Therefore, we dismiss the Motions.

² United States Design Patent Nos. D612,646 and D621,645.

³ Patent Owner filed the same paper twice in IPR2017-00094.

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ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's Motions for Reconsideration are dismissed; and

FURTHER ORDERED that Patent Owner shall not file any additional papers, exhibits, or email briefing in these proceedings without prior authorization from the Board.

IPR2017-00091 (Patent D621,645 S)

IPR2017-00094 (Patent D612,646 S)

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