

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELEBRANDS CORP.,
Petitioner,

v.

TINNUS ENTERPRISES, LLC,
Patent Owner.

Case PGR2017-00040
Patent 9,682,789 B2

Before MICHAEL W. KIM, FRANCES L. IPPOLITO, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

IPPOLITO, *Administrative Patent Judge*.

DECISION
Denying Institution of Post-Grant Review
37 C.F.R. § 42.208

I. INTRODUCTION

Telebrands Corp. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) for post-grant review of claims 1–23 of U.S. Patent No. 9,682,789 B2 (Ex. 1001, “the ’789 patent”). Tinnus Enterprises, LLC (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”). We have authority under 35 U.S.C. § 324, which provides that a post-grant review may be instituted only if “the information presented in the petition . . . demonstrate[s] that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” *See also* 37 C.F.R. § 42.4(a) (“The Board institutes the trial on behalf of the Director”). We exercise our discretion and deny certain grounds under 35 U.S.C. § 325(d), and determine that for the remaining grounds, the information presented in the Petition does not demonstrate that it is more likely than not that Petitioner would prevail in showing that any of the challenged claims are unpatentable. Accordingly, we do not institute a post-grant review of any of the challenged claims (i.e., claims 1–23) of the ’789 patent.

A. *Related Proceedings*

Petitioner indicates that the ’789 patent is involved in *Telebrands Corp. v. Zuru Ltd.*, Civil Action No. 2:17-cv-04522-CCC-MF (D.N.J.) (“Tinnus IV”). Pet. 2–3.

In addition, Petitioner identifies the following related actions/proceedings:

- *Telebrands Corp. v. Tinnus Enterprises, LLC*, No. PGR2015-00018, U.S. Patent No. 9,051,066 B1 (PTAB) (“the ’066 Patent PGR”);
- *Telebrands Corp. v. Tinnus Enterprises, LLC*, No. PGR2016-00030, U.S. Patent No. 9,242,749 B2 (PTAB) (“the ’749 Patent PGR”);
- *Telebrands Corp. v. Tinnus Enterprises, LLC*, No. PGR2016-00031,

- U.S. Patent No. 9,315,282 B2 (PTAB) (“the ’282 Patent PGR”);
- *Telebrands Corp. v. Tinnus Enterprises, LLC*, No. PGR2017-00015, U.S. Patent No. 9,527,612 B2 (PTAB) (“the ’612 Patent PGR”);
- *Telebrands Corp. v. Tinnus Enterprises, LLC*, No. PGR2017-00024, U.S. Patent No. 9,533,779 B2 (PTAB) (“the ’779 Patent PGR”);
- *Tinnus Enterprises, LLC et al. v. Telebrands Corp.*, Civil Action No. 6:15-cv-00551-RWS-JDL (E.D. Tex.) (“Tinnus I”);
- *Tinnus Enterprises, LLC, et al. v. Telebrands Corp.*, Civil Action No. 6:16-cv-00033-RWS-JDL (E.D. Tex.) (“Tinnus II”);
- *Tinnus Enterprises, LLC et al. v. Wal-Mart Stores, Inc., et al.*, Civil Action No. 6:16-cv-00034-RWS-JDL (E.D. Tex.) (“Retailer Action I”);
- *Tinnus Enterprises, LLC v. Wal-Mart Stores, Inc., et al.*, Civil Action No. 6:17-cv-00361-RWS-JDL (E.D. Tex.) (“Retailer Action II”);
- *Tinnus Enterprises, LLC, et al. v. Telebrands Corp.*, Civil Action No. 6:17-cv-00170-RWS-JDL (E.D. Tex.) (“Tinnus III”);
- *Tinnus Enterprises, LLC, et al. v. Telebrands Corp., et al.*, No. 16-1410 (Fed. Cir.) (“Tinnus I PI”); and
- *Tinnus Enterprises, LLC, et al. v. Telebrands Corp.*, No. 17-1175 (Fed. Cir.) (“Tinnus II PI”).

Pet. 3–4.

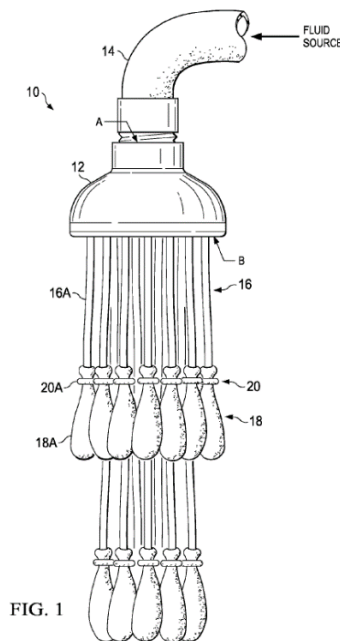
There are also two additional petitions for post-grant review currently pending—PGR2017-00051 and PGR2017-00052. PGR2017-00051 challenges the ’612 patent (also the subject of PGR2017-00015). PGR2017-00052 challenges U.S. Patent No. 9,533,779 B2 (also the subject of the petition in PGR2017-00024).

B. The ’789 Patent

The ’789 patent, titled “SYSTEM AND METHOD FOR FILLING CONTAINERS WITH FLUIDS,” issued June 20, 2017, from U.S. Application

No. 14/713,146 (“the ’146 application”), filed May 15, 2015. Ex. 1001, at (54), (10), (21), (22). The ’146 application is a continuation of U.S. Application No. 14/492,487, filed on September 22, 2014, which issued as the ’066 patent. *Id.* at (63). The ’789 patent further claims the benefit of U.S. Provisional Application No. 61/942,193, filed on February 20, 2014, and U.S. Provisional Application No. 61/937,083, filed on February 7, 2014. *Id.* at 1:7–14.¹

The ’789 patent is directed generally to systems and methods for filling containers with fluids. Ex. 1001, Title. Figure 1 of the ’779 patent is reproduced below.



¹ Because the earliest possible effective filing date for the ’789 patent is after March 16, 2013 (the effective date for the first inventor to file provisions of the America Invents Act), and this petition was filed within 9 months of its issue date, the ’789 patent is eligible for post-grant review. *See* 35 U.S.C. § 321(c).

Figure 1, reproduced above, is a simplified diagram illustrating an exemplary embodiment of system 10 for filling containers with fluids. *Id.* at 1:49–51. As shown in Figure 1, system 10 includes housing 12 removably attached to hose 14 at end A and to a plurality of hollow tubes 16 at end B. *Id.* at 2:36–38. A plurality of containers 18, such as water balloons, may be clamped to plurality of tubes 16 using elastic valves 20, which may comprise elastic fasteners, such as O-rings. *Id.* at 2:53–61. In one embodiment, containers 18 may fall off under gravity; for example, when filled containers 18 reach a threshold weight, they slip off tubes 16 due to gravity. *Id.* at 4:7–9. “The threshold weight may be based upon the tightness of elastic valves 20, friction between tubes 16 and containers 18, and force from the weight of containers 18 (among other parameters).” *Id.* at 4:10–13 (emphasis omitted). Elastic valves 20 or fasteners may constrict the necks of containers 18, sealing them, when the containers slide off tubes 16. *Id.* at 4:14–15. In another embodiment, the connecting force holding filled containers 18 to tubes 16 may be overcome by an upward acceleration on tubes 16, for example, when they are shaken. *Id.* at 3:55–58.

C. Illustrative Claim

Of the challenged claims, claims 1, 8, and 16 are independent. Independent claims 1 and 16, reproduced below, are illustrative of the claimed subject matter:

1. An apparatus for simultaneously filling balloons, comprising:
a fitting comprising an inlet and at least four outlets;
and at least four branch assemblies coupled to the fitting, each branch assembly comprising:
a tube extending from the fitting at a respective one of the at least four outlets;

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