

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LEVITATION ARTS, INC.,
Petitioner,

v.

FLYTE LLC,
Patent Owner.

Case PGR2018-00073
Patent D799,100 S

Before JOHN C. KERINS, GRACE KARAFFA OBERMANN, and
BART A. GERSTENBLITH, *Administrative Patent Judges*.

OBERMANN, *Administrative Patent Judge*.

DECISION

Denying Institution of Post-Grant Review of the Challenged Claim
35 U.S.C. § 324(a)

I. INTRODUCTION

A. Background

Levitation Arts, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting post-grant review of the sole design claim for a “levitating light bulb and base” as disclosed in U.S. Patent D799,100 S (Ex. 1001, “the ’100 Patent”). Flyte LLC (“Patent Owner”) filed a Preliminary Response. Paper 13 (“Prelim. Resp.”).

We have authority to determine whether to institute a post-grant review under 35 U.S.C. § 324. Based on the information presented in the Petition and the Preliminary Response, we determine that Petitioner fails to demonstrate that it is more likely than not that the claim of the ’100 Patent is unpatentable. We, thus, deny the Petition and do not institute a post-grant review of the challenged claim.

B. Related Matters

For purposes of this Decision, we accept Petitioner’s statement that “[t]here are no pending legal matters involving the ’100 Patent.” Pet. 1. Patent Owner did not file mandatory notices as required by our rules or oppose Petitioner’s statement of related matters. *See* 37 C.F.R. § 42.8(a)(2) (requiring patent owner to file mandatory notices that identify, among other things, related matters, within 21 days of service of a petition); *see generally* Prelim. Resp. (nowhere disputing Petitioner’s statement of related matters).

C. The Claim of the ’100 Patent

The ’100 Patent relates to and claims an “ornamental design for a levitating light bulb and base, as shown and described” in seven accompanying figures. Ex. 1001, [57]. Figures 1, 2, and 6, reproduced below, are illustrative of the claimed design.

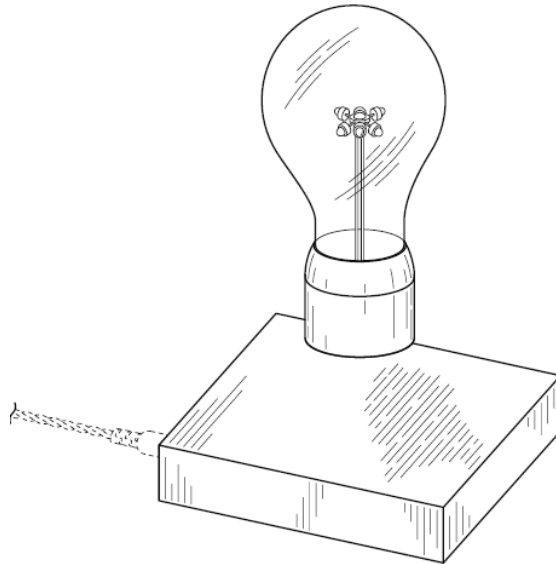


FIG. 1

Ex. 1001, Fig. 1. Figure 1 of the '100 Patent is a line drawing of a front, right perspective view of a levitating light bulb and base.

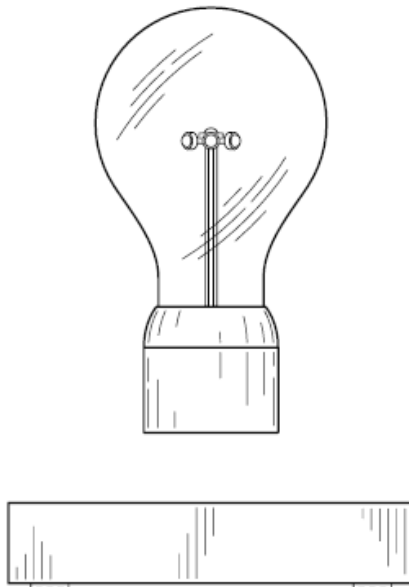


FIG. 2

Ex. 1001, Fig. 2. Figure 2 of the '100 Patent is a line drawing of a right view of the levitating light bulb and base shown in Figure 1.

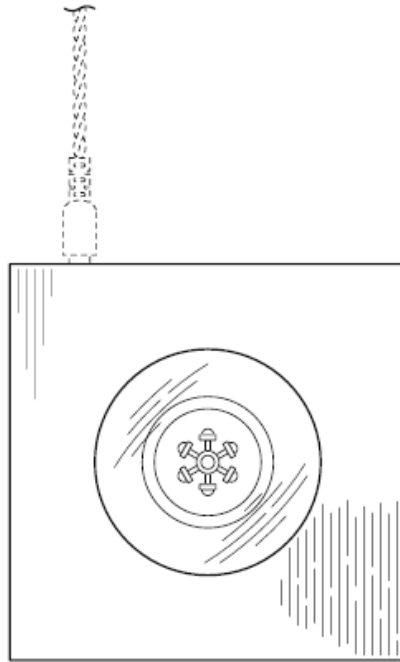


FIG. 6

Ex. 1001, Fig. 6. Figure 6 of the '100 Patent is a line drawing of a top view of the levitating light bulb and base shown in Figure 1.

D. The Effective Filing Date of the '100 Patent

The '100 Patent issued from an application filed on April 19, 2016. Ex. 1001, [22]; Ex. 1020 (file history). The '100 Patent, however, claims priority from a European application filed on November 4, 2015. Ex. 1001, [30]; *see* Ex. 1002 (“the European application”). A key disputed issue is whether the challenged claim is entitled to the filing date of the European application. *Compare* Pet. 5–12 (asserting effective filing date of April 19, 2016), *with* Prelim. Resp. 9–15 (asserting effective filing date of November 4, 2015).

We adopt Petitioner’s convention and refer to the design depicted in the European application as “the 2015 Model.” Pet. 6. The European

application includes photographs of the 2015 Model. We reproduce below three of those photographs (“the priority photographs”).



Ex. 1002, Fig. 1.2. Figure 1.2 is a photograph of a front perspective view of a levitating light bulb and base reproduced from the European application.



Ex. 1002, Fig. 1.1. Figure 1.1 is a photograph of an elevational view of a levitating light bulb and base reproduced from the European application.

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