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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/006,515	01/17/2003	D437101	7202-7	7722

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 03/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

03/24/2003

Ex Parte Reexamination Communication	Control No. 90/006,515	Patent Under Reexamination D437101 ET AL.	
	Examiner Pamela J. Burgess	Art Unit 2911	

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS LETTER. EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c). If the specified period for response is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.

COMMUNICATION

Pamela J. Burgess
Primary Examiner
Art Unit: 2911

cc: Requester (if third party requester)

Order Granting / Denying Request For Ex Parte Reexamination	Control No. 90/006,515	Patent Under Reexamination D437101 ET AL.	
	Examiner Pamela J. Burgess	Art Unit 2911	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed 17 January 2003 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) PTO-892, b) PTO-1449, c) Other: _____

1. The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2. The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

- a) by Treasury check or,
b) by credit to Deposit Account No. _____, or
c) by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

Pamela J. Burgess
Primary Examiner
Art Unit: 2911

cc:Requester (if third party requester)

Art Unit: 2911

A substantial new question of patentability affecting the single claim of United States Design Patent No. D437,101 has been raised by the request for reexamination.

The examiner considers the patent reference D'Apuzzo IT-NA920 000008, the Montoni Trafile S.p.A. publication reference and Landucci S.r.l. publication reference listed on the Information Disclosure Citation (1449) of record relevant to the claimed design. In view thereof, applicant's request for reexamination has been GRANTED.

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extension of time in reexamination proceedings are provided for in 37 CFR 1.550(c).

A substantial new question of patentability has been raised by the Requestor in that the above noted references D'Apuzzo [IT-NA920 000008], Montoni [Trafile S.p.A.] and Landucci [S.r.l.] cited herein show that the shape and appearance of the pasta is similar if not the same as the claimed design in Design Patent D437,101.

It is agreed that the D'Apuzzo spaghetti-type pasta shown in Figure 1 is the same shape as the claimed design herein in that the width and length of the foils of the quatrefoil design and the sharply pointed joints between each foil are the same as in Design Patent D437,101 as pointed out on page 4 of the request.

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It is further agreed that the Montoni pasta reference shown in the "Croce" pattern is substantially similar to that of the claimed design herein in that the length and width of the foils are basically the same as in Design Patent D437,101 as noted on page 4 of the request.

It is also agreed that the Landucci reference quatrefoil pasta design, shows that the width and length of the foils are substantially similar to those same features shown in Design Patent D437,101 as pointed out on page 5 of the request. It is however noted that one of the pasta pieces that most closely resembles the design shape in Design Patent D437,101 is shown with a slight bend rather than straight. Said difference is deemed an obvious expedient to a routine examiner in the art and therefore it is agreed that the Requestor has appropriately raised a substantial new question of patentability with regard to the Landucci reference when compared with Design Patent D437,101.

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. D437,101 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pamela J. Burgess whose telephone number is 703/305-3583. The examiner can normally be reached on Monday-Friday from 9:30 to 4:00.

2008-05-15 15:03:40

