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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/014,262	02/11/2019	D781151	70565-1	8506
22440	7590	05/07/2019	EXAMINER	
GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 10016-0601			HYDER, PHILIP S	
			ART UNIT	PAPER NUMBER
			2917	
			MAIL DATE	DELIVERY MODE
			05/07/2019	PAPER

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

The time period for reply, if any, is set in the attached communication.



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(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

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***EX PARTE* REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/014,262 .

PATENT UNDER REEXAMINATION D781151 .

ART UNIT 2917 .

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

<b>Order Granting Request For Ex Parte Reexamination</b>	<b>Control No.</b> 90/014,262	<b>Patent Under Reexamination</b> D781151	
	<b>Examiner</b> PHILIP S HYDER	<b>Art Unit</b> 2917	<b>AIA (FITF) Status</b> Yes

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

The request for *ex parte* reexamination filed 02/11/2019 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/SB/08, c)  Other: PTO 1449

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.

/Philip S Hyder/  
Primary Examiner, Art Unit 2917

cc:Requester ( if third party requester )

***DECISION GRANTING EX PARTE REEXAMINATION***

A Substantial New Question of Patentability affecting the claim of United States Patent Number D781,151 (hereinafter '151 patent) granted to Lerman on March 14, 2017 is raised by the Request for Ex Parte Reexamination.

MPEP 2242 "For "a substantial new question of patentability" to be present, it is only necessary that the teaching of the (prior art) patents and printed publications is such that a reasonable examiner would consider the teaching to be important in deciding whether or not the claim is patentable."

The claim in the '151 patent is directed to the ornamental design for a Jar. The appearance is disclosed in seven views. The design consists of a cylindrical, transparent body and a taller cylindrical neck centered atop the body. The requestor has submitted ten references for consideration. The requestor is primarily concerned that the McKernan Jar raises a SNQ but also want to make the office aware of, and consideration of, references that were cited in the child of the '151 patent.

The following references have been cited in the request for reexamination:

**Exhibit B1-B4:** The McKernan Jar

**Exhibit C:** U.S. Patent Publication 2010/0307521 (Pires et al)

**Exhibit D:** U.S. Patent No. 2,076,551 (Conner)

**Exhibit E:** U.S. Patent No. 2,077,215 (Conner)

**Exhibit F:** U.S. Patent No. 2,077,216 (Conner)

**Exhibit G:** U.S. Patent No. 2,711,766 (Archer)

**Exhibit H:** U.S. Patent No. D635,030 (L' Abbate)

**Exhibit I:** U.S. Patent No. D638,300 (L' Abbate)

**Exhibit J:** U.S. Patent No. D641,257 (Thiebaut et al)

**Exhibit K:** U.S. Patent No. D739,741 (Staab)

***Prior Art Discussion: Substantial New Question of Patentability***

The examiner has come to the following conclusions regarding the prior art.

***Exhibit B1-B4: Chinese The McKernan Jar***

The McKernan reference raises a substantial new question of patentability for the '151 patent because it presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The reference presents an appearance that is substantially the same as the claimed design, as required for anticipation under 35 U.S.C. 102, and it also presents an appearance that is basically the same as the claimed design, as is required to act as a primary reference in an obviousness rejection under 35 U.S.C.103.

The McKernan reference was not previously considered nor addressed in the prior examination of the patent or a final holding of invalidity by the Federal Courts. This new teaching is such that a reasonable examiner would consider the new teaching to be important in deciding to allow the claim. This reference should have been considered for the basis of an anticipation analysis, to serve as a primary reference in an obviousness analysis, or to serve in a supporting role as a secondary reference. Consequently, a substantial new question of patentability has been raised by this reference.

***Exhibit C: U.S. Patent Publication 2010/0307521 (Pires al et)***

The 2010/0307521 patent publication reference raises a substantial new question of patentability for the '151 patent because it presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The reference does not present an appearance that is substantially the same as the claimed design, as required for anticipation under 35 U.S.C. 102 and it also does not present an appearance that is basically the same as the claimed design, as is required to act as a primary reference in an obviousness rejection under 35 U.S.C.103. However, a reasonable examiner would consider this new teaching to be important in deciding to allow the claim because it shares the common theme of comprising a short cylindrical body, and a cylindrical neck centered atop the body. This reference should have been considered for its use in a supporting role as a secondary reference. Consequently, a substantial new question of patentability has been raised by this reference.

The '521 reference was not previously considered nor addressed in the prior examination of the patent or a final holding of invalidity by the Federal Courts.

***Exhibits D, E and F: U.S. Patent Numbers. 2,076,551; 2,077,215 & 2,077,216 (Conner)***

None of the patents granted to Conner raise a substantial new question of patentability for the '151 patent. The references do not present overall appearances that are so related to the claimed design that they should have been considered in deciding whether the claim is patentable. Specifically, the bodies Conner designs are all considerably taller than that of the claimed design, whereas the neck is taller than the body in '151. The references are not so

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related that any one of them could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and they do not provide any additional teachings, which would make them useful in a secondary role in an obviousness rejection.

***Exhibit G: U.S. Patent No. 2,711,766 (Archer)***

The Archer patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. Specifically, the tapered and considerably taller body shares little in common with the design in '151. The reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.

***Exhibits H and I: U.S. Patent No. D635, 030 & D638,300 (L'Abbate)***

Neither of the patents granted to L'Abbate raises a substantial new question of patentability for the '151 patent. Neither reference presents an overall appearance that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. These designs differ from '151 due to the differences in their overall proportions and because their forms lack symmetry. Neither reference is so related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection

under 35 U.S.C.103, and they do not provide any additional teachings, which would make them useful in a secondary role in an obviousness rejection.

***Exhibit J: U.S. Patent No. D641, 257 (Thiebaut et al)***

The Thiebaut patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present overall appearances that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. This design differs from '151 in its overall proportions and because it is opaque rather than transparent. This reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.

***Exhibit K: U.S. Patent No. D739,741 (Staab)***

The Staab patent does not raise a substantial new question of patentability for the '151 patent. The reference does not present overall appearances that is so related to the claimed design that it should have been considered in deciding whether the claim is patentable. The tapered and considerably taller body shares little in common with the design in '151. This reference is not so closely related that it could act in the role of an anticipating reference under 35 U.S.C. 102, as a primary reference in an obviousness rejection under 35 U.S.C.103, and it does not provide any additional teachings, which would make it useful in a secondary role in an obviousness rejection.



In summary, at least one prior art reference submitted by the requester raises a substantial new question of patentability affecting the claim of United States Patent Number D781,151. The request for reexamination is GRANTED.

### ***Litigation Activity***

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 the '321 patent throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

### ***Additional Information***

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 ex parte reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in ex parte reexamination proceedings are provided for in 37 CFR 1.550(c).

### ***Conclusion***

All correspondence relating to this ex parte reexamination proceeding should be directed:

By Mail to:       Mail Stop *Ex Parte* Reexam  
                      Central Reexamination Unit  
                      Commissioner for Patents  
                      United States Patent & Trademark Office  
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By FAX to:       (571) 273-9900  
                      Central Reexamination Unit

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By hand: Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication should be directed to Philip Hyder at  
telephone number 571-272-2621.

/Philip S Hyder/  
Primary Examiner, Art Unit 2917

Conferees:

/K.K.R/  
Primary Examiner, Art Unit 2911

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Supervisory Patent Examiner, Art Unit 2912