

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

**HIT Promotional Products, Inc.**

Plaintiff,

v.

**SolPals, LLC**

Defendant.

**Bench trial requested  
No injunctive relief sought**

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff HIT Promotional Products, Inc. (“HIT”) through its undersigned trial counsel, files this Complaint against SolPals, LLC (“SolPals”):

**NATURE OF THE ACTION**

This is an action for declaratory relief of noninfringement of U.S. Patent Nos. D669,112 (“the D112 Patent”), D708,657 (“the D657 Patent”), D721,396 (“the D396 Patent”), D763,843 (“the D843 Patent”), and D782,562 (“the D562 Patent”) (collectively “the Patents”) under the Declaratory Judgment Act 28 U.S.C. §§ 2201–2202 and the patent laws of the United States 35 U.S.C. § 101 et seq. The Patents are attached as Exhibits A through E.

**PARTIES**

1. HIT is a Delaware Corporation with a principal business address of 7150 Bryan Dairy Road, Largo, FL 33777.
2. SolPals is a Utah limited liability company with a principal business address of 1192 Draper Parkway, Suite 202 Draper, UT 84020.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction because this litigation arises under the Patent Laws, Title 35 United States Code, 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (patents), and 28 U.S.C. §§ 2201–2202 (Declaratory Judgment Act).

4. Venue is proper in this District under 28 U.S.C. § 1400(b) because the alleged infringer HIT resides in the state of Florida and has committed the acts of alleged infringement in the state of Florida.

5. 28 U.S.C. § 1400(b) provides that “any civil action for patent infringement may be brought in the judicial district where the [party accused of infringement] . . . resides, or where the [party accused of infringement] . . . has committed acts of infringement and has a regular and established place of business.”

6. The United States Supreme Court construed the patent venue statute in *TC Heartland LLC v. Kraft Foods Group Brands LLC* holding that patent venue is controlled exclusively by 28 U.S.C. § 1400(b).<sup>1</sup>

7. HIT’s regular and established place of business is in the state of Florida.

8. HIT makes, uses, sells, and offers for sale the accused webcam covers in the state of Florida.

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<sup>1</sup> 137 S.Ct. 1514, 1514 (2017).

9. Thus, under the second clause of 28 U.S.C. § 1400(b), the Middle District of Florida is the appropriate venue for a patent infringement action against HIT.

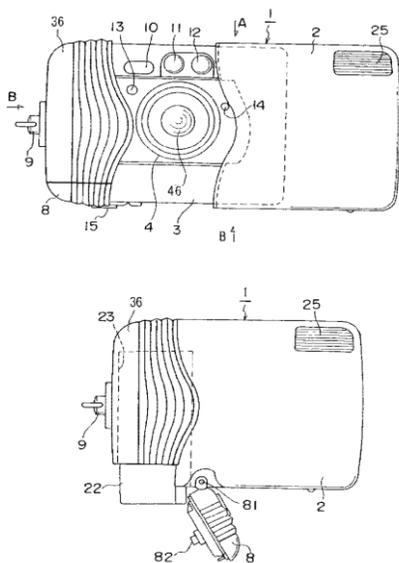
**FACTS COMMON TO ALL COUNTS**

10. Sliding covers for still cameras, or video cameras, have long existed.

11. Originally the function of a sliding cover was to protect the camera lens, such as for a still camera that one may store in his pocket.

12. For example, U.S. Pat. No. 6,322,259 titled *Camera provided with slide cover*, filed August 5, 1999 ('259 Patent).

13. Here, the '259 Patent shows the slide cover 2 in its open position and its closed position:



14. As technology moved forward, cameras were commonly embedded into cellphones. Camera covers were then incorporated into cellphones to protect

the lenses.

15. For example, U.S. Pat. No. 7,950,859 titled *Lens Cover and Portable Electronic Device Using the Same*. ('859 Patent).

16. Here, the '859 Patent shows the camera cover (in orange) in a closed position:

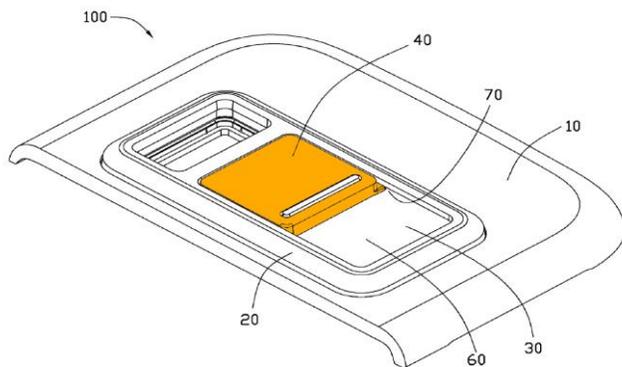


FIG. 1

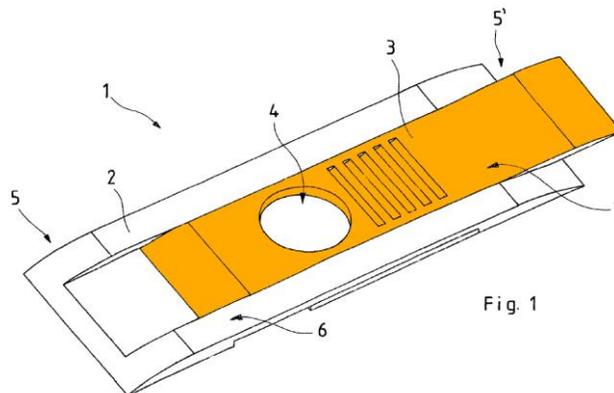
17. In parallel, cameras became common in computers for use in internet video conferencing. Such web-enabled cameras, or webcams, created security concerns because the user could not remove, or put away, the camera.

18. Such security concerns were highlighted by instances of hackers using compromised webcams to blackmail computer users.

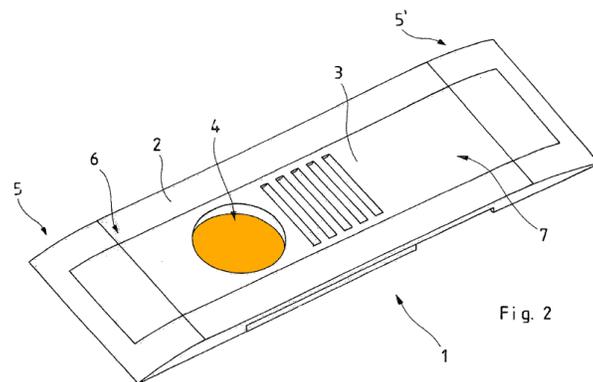
19. In response, inventors developed webcam covers as both an accessory for use with a laptop, and or built into a laptop.

20. As an example of an accessory, U.S. Pat. No. 8,471,956 titled *Closure Device for an Image Capture Facility* ('956 Patent), filed October 29, 2010, claims and describes a webcam cover for installation onto a computer.

21. The '956 patent shows the device in a closed position, with the closure 3 (in orange) covering a webcam:



22. The '956 patent further shows the webcam cover in an open position, aligning aperture 4 (in orange) with a webcam:



23. As an example of a built-in webcam, U.S. Pat. No. 8,531,832, titled *Notebook Computer Device with Image Capture Module*, filed January 20, 2011, discloses a laptop with a built-in sliding cover 14 (in orange):

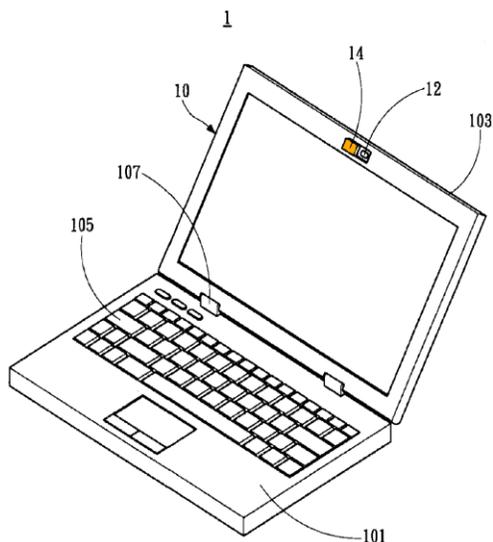


FIG. 1

24. Figure 3 shows a close-up view of the sliding piece 14 (in orange) in opened and closed positions:

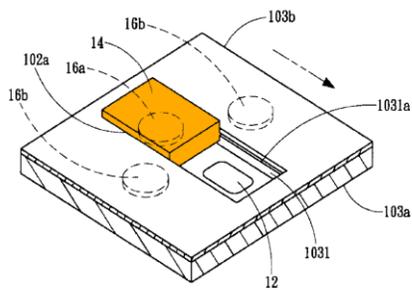


FIG. 3A

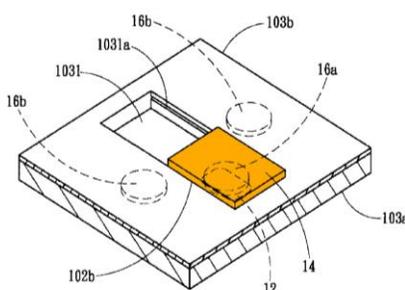


FIG. 3B

25. HIT has responded to the market demand for webcam covers by releasing its own series of webcam covers.

26. Specifically, HIT makes, uses, offers to sell, distributes, and sells a single embodiment of a webcam cover (“the Accused Product”) that has been falsely

accused by SolPals of infringing the Patents.

27. The Accused Product is a webcam cover that positions over the webcam lens of laptops, computers, external web cameras, and smart televisions. The Accused Product includes a sliding piece that moves within a sheath, thereby revealing or blocking the lens of a webcam.

28. The following photograph shows the Accused Product in an open position, where the aperture would align with the lens of a webcam:



29. The following photograph shows the Accused Product in a closed position, where the sliding piece would cover the lens of a webcam:



30. SolPals is the Assignee of the D112 Patent. Exhibit F attached.

31. SolPals is the Assignee of the D657 Patent. Exhibit G attached.

32. SolPals is the Assignee of the D396 Patent. Exhibit H attached.

33. SolPals is the Assignee of the D843 Patent. Exhibit I attached.

34. SolPals is the Assignee of the D562 Patent. Exhibit J attached.

35. A case or controversy exists between the Parties because SolPals has threatened patent infringement litigation against HIT for each of the above mentioned patents. Exhibit K attached.

36. SolPals' threat of patent litigation is substantial, concrete, and injures HIT because the allegations threaten HIT's lawful right to sell the Accused Product.

37. SolPals and HIT are competitors in the webcam cover industry and declaratory relief is necessary to resolve the accusation of patent infringement by SolPals.

**COUNT ONE**

*Declaratory Judgment of Non-Infringement of U.S. Pat. No. D669,112*

38. HIT incorporates and re-alleges the allegations contained in paragraphs 1 through 37 of this Complaint and further alleges as follows:

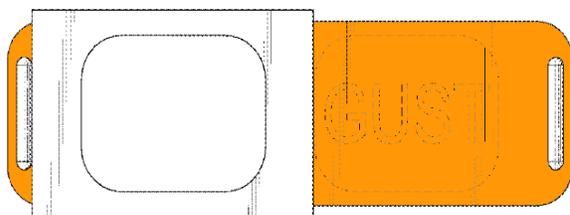
39. HIT does not infringe and has not infringed the D112 Patent, either directly, contributorily, or by inducement because HIT, either alone or in combination with others, does not make, use, or sell a product that infringes the D112 Patent under the ordinary observer test.

40. The D112 Patent provides no protection for the concept of a webcam cover. Design patent protection is limited to the ornamental features of the

claimed design, and does not extend to the broader design concept.<sup>2</sup>

41. The test for design patent infringement is whether, “in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.”<sup>3</sup> Where the allegedly infringing product and the patented design are “plainly dissimilar,” a court need look no further than a side-by-side comparison of the design and accused device to determine that no infringement has occurred.<sup>4</sup>

42. The D112 Patent claims a webcam cover having a long piece (in orange) with rounded corners contained within a mounting track. The mounting track has two opposing sides open to allow the long piece to slide back and forth within the mounting track.



43. The image below shows Fig. 5 of the D112 Patent overlaid on the

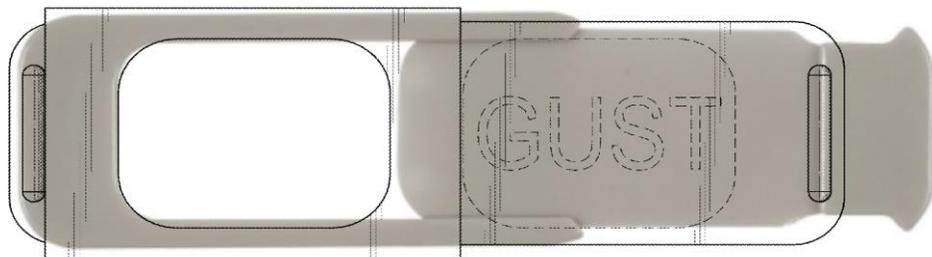
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<sup>2</sup> *OddzOn Products, Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1405 (Fed. Cir. 1997).

<sup>3</sup> *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 670 (CAFC 2008) (citing *Gorham Co. v. White*, 81 U.S. 511, 528 (1871)).

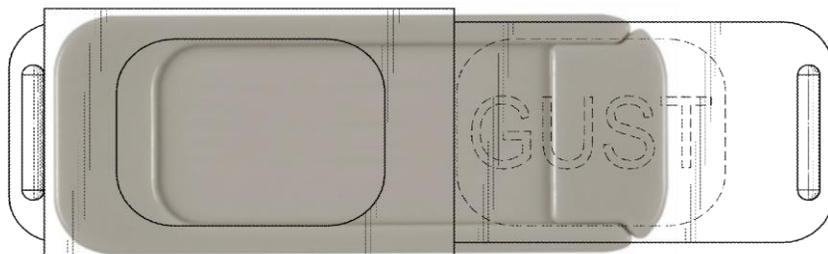
<sup>4</sup> *Ethicon Endo-Surgery, Inc. v. Covidien, Inc.*, 796 F.3d 1312, 1335 (Fed. Cir. 2015).

Accused Product in an open state. Fig. 5 of the D112 Patent shows the webcam cover in an open state. An aperture on the long piece is aligned with a window on the mounting track.



*Fig. 5*

44. The image below shows Fig. 5 of the D112 Patent overlaid on the Accused Product in a closed state:



*Fig. 5*

45. If the D112 Patent were shown in a closed state, the long piece would be pushed or slid all the way to the left in the picture above. The window would then be blocked, or closed, by a solid portion of the long piece.

46. The Accused Product and the D112 Patent are plainly dissimilar.

47. The Accused Product does not include a long piece that slides within a mounting track with two opposing sides open. Instead, the Accused Product

includes a cover that slides into and out from a rectangular sheath that is open on one side.

48. The Accused Product does not infringe the D112 Patent because the designs are not substantially similar such that an ordinary observer would be deceived into buying the Accused Product thinking it to be the subject of the D112 Patent.

49. SolPals has suffered no damages because HIT's product does not infringe the D112 Patent.

### **COUNT TWO**

#### *Declaratory Judgment of Non-Infringement of U.S. Pat. No. D708,657*

50. HIT incorporates and re-alleges the allegations contained in paragraphs 1 through 37 of this Complaint and further alleges as follows:

51. HIT does not infringe and has not infringed the D657 Patent, either directly, contributorily, or by inducement because HIT, either alone or in combination with others, does not make, use, or sell a product that infringes the D657 Patent under the ordinary observer test.

52. The D657 Patent provides no protection for the concept of a webcam cover. Design patent protection is limited to the ornamental features of the claimed design, and does not extend to the broader design concept.<sup>5</sup>

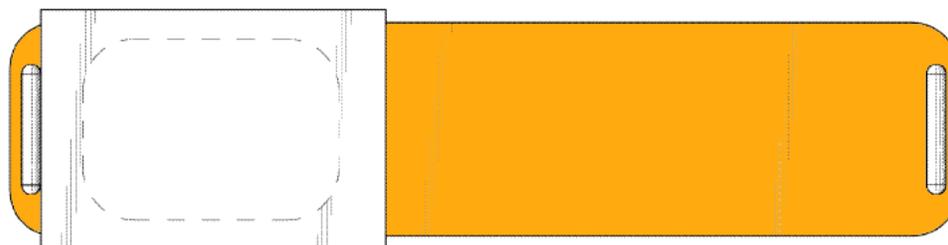
53. The test for design patent infringement is whether, "in the eye of an

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<sup>5</sup> *OddzOn Products, Inc.*, 122 F.3d at 1405.

ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.”<sup>6</sup> Where the allegedly infringing product and the patented design are “plainly dissimilar,” a court need look no further than a side-by-side comparison of the design and accused device to determine that no infringement has occurred.<sup>7</sup>

54. The D657 Patent claims a webcam cover having a long piece (in orange) with rounded corners contained within a mounting track. The mounting track has two opposing sides open to allow the long piece to slide back and forth within the mounting track.



55. The image below shows Fig. 5 of the D657 Patent overlaid on the Accused Product in an open state. Fig. 5 of the D657 Patent shows the webcam cover in an open state. An aperture on the long piece is aligned with a window on the mounting track.

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<sup>6</sup> *Egyptian Goddess, Inc.*, 543 F.3d at 670.

<sup>7</sup> *Ethicon Endo-Surgery, Inc.*, 796 F.3d at 1335.

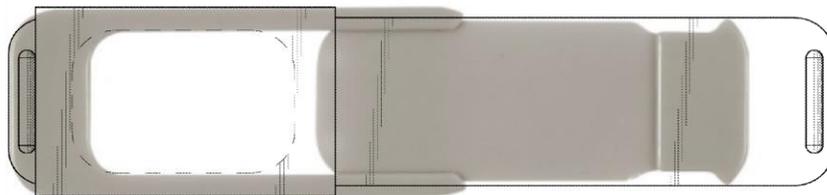


Fig. 5

56. The image below shows Fig. 5 of the D657 Patent overlaid on the Accused Product in a closed state:

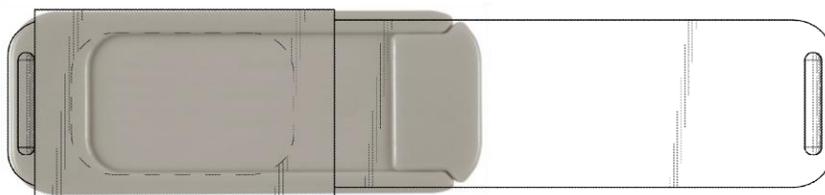


Fig. 5

57. If the D657 Patent were shown in a closed state, the long piece would be pushed or slid all the way to the left in the picture above. The window would then be blocked, or closed, by a solid portion of the long piece.

58. The Accused Product and the D657 Patent are plainly dissimilar.

59. The Accused Product does not include a long piece that slides within a mounting track with two opposing sides open. Instead, the Accused Product includes a cover that slides into and out from a rectangular sheath that is open on one side.

60. The Accused Product does not infringe the D657 Patent because the designs are not substantially similar such that an ordinary observer would be deceived into buying the Accused Product thinking it to be the subject of the

D657 Patent.

61. SolPals has suffered no damages because HIT's product does not infringe the D657 Patent.

**COUNT THREE**

*Declaratory Judgment of Non-Infringement of U.S. Pat. No. D721,396*

62. HIT incorporates and re-alleges the allegations contained in paragraphs 1 through 37 of this Complaint and further alleges as follows:

63. HIT does not infringe and has not infringed the D396 Patent, either directly, contributorily, or by inducement because HIT, either alone or in combination with others, does not make, use, or sell a product that infringes the D396 Patent under the ordinary observer test.

64. The D396 Patent provides no protection for the concept of a webcam cover. Design patent protection is limited to the ornamental features of the claimed design, and does not extend to the broader design concept.<sup>8</sup>

65. The test for design patent infringement is whether, "in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other."<sup>9</sup> Where the allegedly infringing

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<sup>8</sup> *OddzOn Products, Inc.*, 122 F.3d at 1405.

<sup>9</sup> *Egyptian Goddess, Inc.*, 543 F.3d at 670.

product and the patented design are “plainly dissimilar,” a court need look no further than a side-by-side comparison of the design and accused device to determine that no infringement has occurred.<sup>10</sup>

66. The 396 Patent claims a round cover attached to a round base with an opening in the middle. The round cover rotates at the attachment point about a hinge to reveal or cover the opening.

67. The below image shows Fig. 1 of the D396 Patent:

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<sup>10</sup> *Ethicon Endo-Surgery, Inc.*, 796 F.3d at 1335.

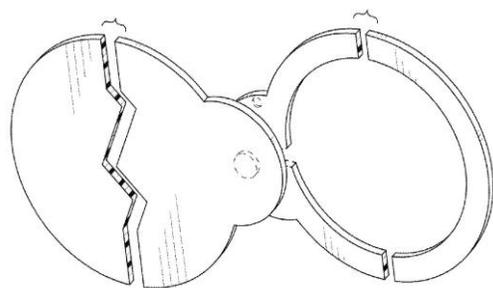


FIG. 1



68. The Accused Product and the D396 Patent are plainly dissimilar.

69. The Accused Product is not round and does not have a rotatable hinge. Instead, the Accused Product includes a cover that slides into and out from a rectangular sheath that is open on one side.

70. The Accused Product does not infringe the D396 Patent because the designs are not substantially similar such that an ordinary observer would be deceived into buying the Accused Product thinking it to be the subject of the D396 Patent.

71. SolPals has suffered no damages because HIT's product does not infringe the D396 Patent.

#### **COUNT FOUR**

##### *Declaratory Judgment of Non-Infringement of U.S. Pat. No. D763,843*

72. HIT incorporates and re-alleges the allegations contained in paragraphs 1 through 37 of this Complaint and further alleges as follows:

73. HIT does not infringe and has not infringed the D843 Patent, either directly, contributorily, or by inducement because HIT, either alone or in

combination with others, does not make, use, or sell a product that infringes the D843 Patent under the ordinary observer test.

74. The D843 Patent provides no protection for the concept of a webcam cover. Design patent protection is limited to the ornamental features of the claimed design, and does not extend to the broader design concept.<sup>11</sup>

75. The test for design patent infringement is whether, “in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.”<sup>12</sup> Where the allegedly infringing product and the patented design are “plainly dissimilar,” a court need look no further than a side-by-side comparison of the design and accused device to determine that no infringement has occurred.<sup>13</sup>

76. The D843 Patent claims multiple embodiments of a cover with an adhesive side and a back side. The webcam cover of the D843 Patent is a solid piece that adheres to a smart phone over a webcam lens.

77. The below images show Figs. 3 and 10 of the D843 Patent depicting different embodiments above a photograph of the Accused Product:

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<sup>11</sup> *OddzOn Products, Inc.*, 122 F.3d at 1405.

<sup>12</sup> *Egyptian Goddess, Inc.*, 543 F.3d at 670.

<sup>13</sup> *Ethicon Endo-Surgery, Inc.*, 796 F.3d at 1335.

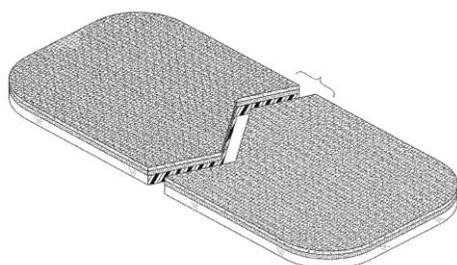


FIG. 3

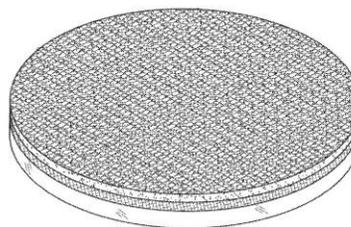


FIG. 10



78. The Accused Product and the D843 Patent are plainly dissimilar.

79. The Accused Product is not a solid piece and does not have a textured back side.

80. The Accused Product does not infringe the D843 Patent because the designs are not substantially similar such that an ordinary observer would be deceived into buying the Accused Product thinking it to be the subject of the D843 Patent.

81. SolPals has suffered no damages because HIT's product does not infringe the D843 Patent.

#### **COUNT FIVE**

##### *Declaratory Judgment of Non-Infringement of U.S. Pat. No. D782,562*

82. HIT incorporates and re-alleges the allegations contained in paragraphs 1 through 37 of this Complaint and further alleges as follows:

83. HIT does not infringe and has not infringed the D562 Patent, either

directly, contributorily, or by inducement because HIT, either alone or in combination with others, does not make, use, or sell a product that infringes the D562 Patent under the ordinary observer test.

84. The D562 Patent provides no protection for the concept of a webcam cover. Design patent protection is limited to the ornamental features of the claimed design, and does not extend to the broader design concept.<sup>14</sup>

85. The test for design patent infringement is whether, “in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.”<sup>15</sup> Where the allegedly infringing product and the patented design are “plainly dissimilar,” a court need look no further than a side-by-side comparison of the design and accused device to determine that no infringement has occurred.<sup>16</sup>

86. The D562 Patent claims a webcam cover with a sliding piece and a mounting piece. The overall shape of the webcam cover is ovular. The mounting piece forms a closed sheath, is rounded on one end, and has a window through which the webcam lens can be revealed. The mounting piece of the D562 Patent

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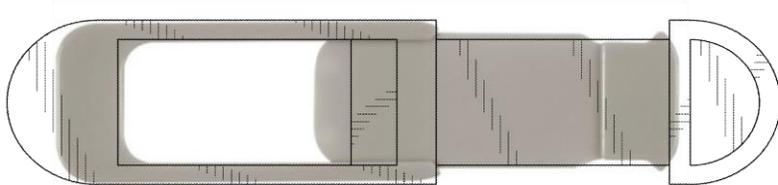
<sup>14</sup> *OddzOn Products, Inc.*, 122 F.3d at 1405.

<sup>15</sup> *Egyptian Goddess, Inc.*, 543 F.3d at 670.

<sup>16</sup> *Ethicon Endo-Surgery, Inc.*, 796 F.3d at 1335.

does not have an open end. And the sliding piece includes a semicircle tab.

87. The below image shows Fig. 3 of the D562 Patent depicting the sliding piece in an open position overlaid on the Accused Product in an open position:



88. The below image shows Fig. 8 of the D562 Patent depicting the cover in a closed position overlaid on the Accused Product in a closed position:



89. The Accused Product and the D562 Patent are plainly dissimilar.

90. The Accused Product is rectangular and lacks a semicircle tab.

91. Additionally, the D562 Patent is not open on one end. This is best illustrated by a side by side comparison. See the green arrow in the image below.



92. The Accused Product does not infringe the D562 Patent because the designs are not substantially similar such that an ordinary observer would be

deceived into buying the Accused Product thinking it to be the subject of the D562 Patent.

93. SolPals has suffered no damages because HIT's product does not infringe the D562 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, HIT prays for judgment in its favor and against SolPals as follows:

1. That the Court declare and adjudicate pursuant to 28 U.S.C. §§ 2201 and 2202 that the Accused Product does not infringe any valid and enforceable claim of U.S. Patent Nos. D669,112, D708,657, D721,396, D763,843, and D782,562;
  2. That HIT recover from SolPals all costs incurred in this action;
  3. That HIT be awarded a reasonable attorney's fee incurred in this action;
- and
4. That HIT be awarded such other and further relief as the Court may deem proper.

Dated: February 8, 2018

Respectfully submitted,

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