

Alexander P. McLaughlin, ISB No. 7977
Melodie A. McQuade, ISB No. 9433
GIVENS PURSLEY LLP
601 W. Bannock Street
Boise, Idaho 83701
Telephone (208) 388-1200
Facsimile (208) 388-1300
alexmcLaughlin@givenspursley.com
melodiemcquade@givenspursley.com

William B. Kircher, MO Bar No. 18743 (*pro hac vice* forthcoming)
Nathan Oleen, MO Bar No. 59043 (*pro hac vice* forthcoming)
Michael Owens, MO Bar No. 67002 (*pro hac vice* forthcoming)
HUSCH BLACKWELL LLP
4801 Main, Suite 1000
Kansas City, MO 64112
Telephone (816) 983-8000
Facsimile (816) 983-8080
Bill.Kircher@huschblackwell.com
nathan.oleen@huschblackwell.com
michael.owens@huschblackwell.com

Patrick D. Kuehl, MO Bar No. 52370 (*pro hac vice* forthcoming)
RIMON
4144 Pennsylvania Street
Kansas City, MO 64111
Telephone (816) 839-7471
Facsimile (816) 839-7471
patrick.kuehl@rimonlaw.com
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Attorneys for Plaintiff Huhtamaki, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

HUHTAMAKI, INC.,

Plaintiff,

vs.

BLUE APPLE MARKETING, LLC d/b/a
BLUE APPLE ENVIRONMENTAL
SOLUTIONS, LLC,

Defendant.

Case No. 1:18-cv-531

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-
INFRINGEMENT AND INVALIDITY**

Plaintiff Huhtamaki, Inc., for its Complaint for Declaratory Judgment of Non-Infringement and Invalidity against Defendant Blue Apple Marketing, LLC d/b/a Blue Apple Environmental Solutions, LLC, states and alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment of invalidity and non-infringement of U.S. Patent Design Patent No. D697,370 (“the ’370 Patent”), titled “Segmented Food Plate.”

2. A copy of the ’370 Patent is attached to this Complaint as **Exhibit A**.

THE PARTIES

3. Plaintiff Huhtamaki, Inc. (“Huhtamaki”) is a Kansas corporation with its principal place of business located at 9201 Packaging Drive, De Soto, Kansas 66018.

4. Huhtamaki manufactures and sells, among other things, disposable tableware, packaging for consumer goods, and foodservice packaging.

5. Defendant Blue Apple Marketing, LLC, doing business under the assumed business name Blue Apple Environmental Solutions, LLC (“Blue Apple”), is an Idaho limited liability company with its principal place of business located at 3777 West Twilight Drive, Boise, Idaho 83703.

6. Blue Apple represents that it makes and sells biodegradable and compostable plates and lunch trays.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1338, 1331, 2201 and 2202 because the Complaint states claims arising under an Act of Congress relating to patents, including but not limited to 35 U.S.C. § 271, and seeks relief under the Federal Declaratory Judgment Act.

8. This Court has personal jurisdiction over Blue Apple because it is incorporated and maintains its principal place of business in Idaho.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) because the sole defendant resides in this judicial district.

10. A concrete, immediate, and justiciable controversy exists between Huhtamaki and Blue Apple:

(a) On September 14, 2018, Blue Apple, through its counsel, sent a cease and desist demand to Huhtamaki's registered agent in Topeka, Kansas.

(b) Blue Apple's demand asserted that Huhtamaki has sold, and continues to sell, plates and trays that infringe Blue Apple's '370 Patent. Blue Apple requested Huhtamaki verify in writing that it had ceased selling the allegedly infringing products by October 8, 2018, and provide Blue Apple an accounting of sales and revenues of all such products.

(c) Blue Apple also attached to its September 14 demand a draft Complaint alleging one count for infringement of the '370 Patent against Huhtamaki.

(d) Blue Apple represented that it would file the attached Complaint in the United States District Court for the Eastern District of Texas if Huhtamaki failed to provide a timely and satisfactory response to Blue Apple's demand.

(e) Huhtamaki, through its counsel, responded to Blue Apple's cease and desist demand by a letter dated October 9, 2018.

(f) Huhtamaki's response identified prior art that invalidates the '370 Patent and also explained why, even if the '370 Patent was valid, Huhtamaki's plate does not infringe it.

(g) On October 18, 2018, Blue Apple sent a letter in reply to Huhtamaki's response to the cease and desist demand.

(h) In its reply letter, Blue Apple stated that it disagreed with Huhtamaki's position regarding the validity and infringement of the '370 Patent. Blue Apple gave Huhtamaki a deadline of November 2, 2018, to comply with the demand or face infringement litigation.

11. Blue Apple's accusations and demands have placed a cloud over Huhtamaki's business and created an immediate, concrete, and justiciable controversy between Blue Apple and Huhtamaki.

FACTUAL BACKGROUND

12. Blue Apple claims that it filed U.S. Patent Application 29/444,090 for a design directed to a "Segmented Food Plate," and that, in response to this application, the United States Patent and Trademark Office ("USPTO") issued the '370 Patent on January 14, 2014.

13. The '370 Patent claims "[t]he ornamental design for a segmented Food plate, as shown and described."

14. The '370 Patent describes the claimed design by referencing seven drawings, each depicting the appearance of the plate from a different viewing angle.

15. For example, Figure 1, shown below, purports to represent "a top perspective view of the segmented food plate":

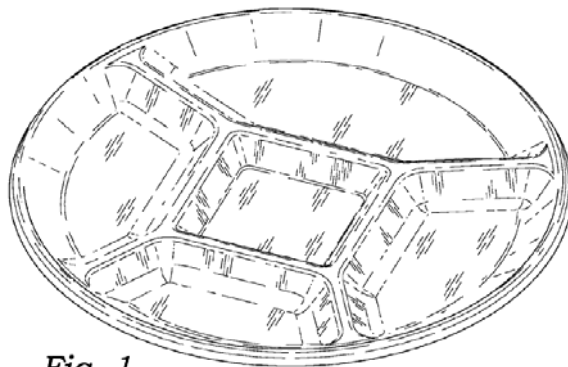


Fig. 1

16. Figure 6, shown below, purports to represent “a top plan view of the segmented food plate”:

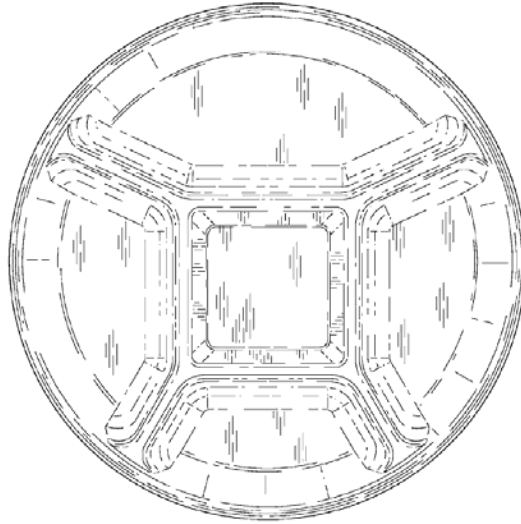


Fig. 6

17. Blue Apple’s demand correspondence and draft Complaint allege that Huhtamaki’s Savaday® by Chinet® Round 5-Compartment Cafeteria Plate, *Huhtamaki Item No. 21040 also 21033, Code Name SLP52W* infringes the segmented-plate design claimed by the ’370 Patent.

18. The image below is a photograph of the Huhtamaki Plate that appeared in the February 2017 *Huhtamaki Foodservice Product Catalog*:



19. Blue Apple's demand correspondence and draft Complaint allege that the following five elements of the Huhtamaki Plate infringe the design claimed by the '370 Patent.

(a) A similarly round shape having a raised rim around the circumference of the plate.

(b) Five compartments able to hold five meal components including a milk carton or bottle.

(c) A similarly square center compartment able to hold a ½ pint of milk carton or bottle.

(d) A similarly square center compartment defined by four ridges.

(e) Four compartments defined by ridges extending out from the four corners of the similarly square center compartment to the raised rim around the circumference of the plate.

20. According to Blue Apple, in November 2013, the New York City Department of Education ("NYCDOE") attached a photograph of a Blue Apple segmented-plate, which

embodied the design claimed by the '370 Patent, to a bid request distributed to potentially-interested manufacturers, including Huhtamaki.

21. The NYCDOE bid request solicited bids to supply it with plates for a SchoolFood pilot program.

22. The plates were to be “compostable” and “have 5 compartments able to hold 5 meal components including a milk carton\bottle,” among other specifications.

23. According to Blue Apple’s “information and belief,” Huhtamaki knowingly and willfully copied its segmented-plate design after learning of it through the photograph that the NYCDOE attached to its bid request in November 2013.

24. A concrete, immediate, and justiciable controversy exists between Huhtamaki and Blue Apple based, in part, on Blue Apple’s cease and desist correspondence, draft complaint, unilaterally-imposed deadline for Huhtamaki to satisfy Blue Apple’s demand, and by Huhtamaki’s unequivocal assertion that the claims of the '370 Patent are invalid and not infringed.

25. The '370 Patent is invalid under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, including but not limited to §§ 101, 102, 103 and 112.

26. The claims of the '370 Patent are obvious in light of prior art that was not considered by the examining attorney.

27. In 1996, Huhtamaki’s predecessor, The Chinet Company, designed and began selling the segmented, five-compartment cafeteria plate (the “Chinet Plate”), which is depicted next to Figure 6 of the '370 Patent below:

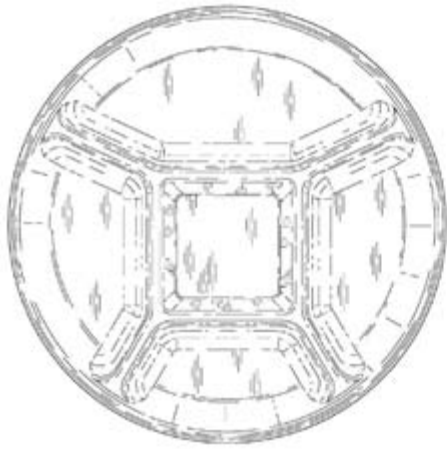
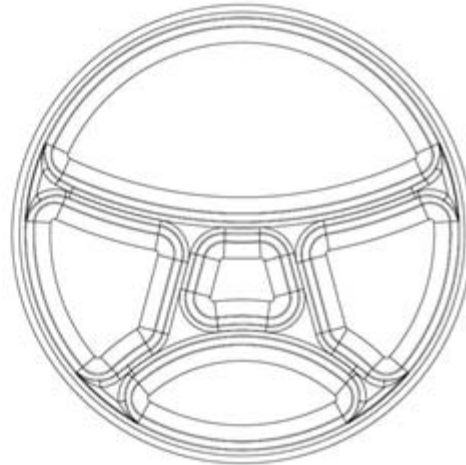


Fig. 6 of '370 Patent



Prior Art Plate (sold in 1996)

28. The Chinet Plate contains the very same features of the '370 Patent that Blue Apple claims the Huhtamaki Plate infringe, specifically:

- (a) A similarly round shape having a raised rim around the circumference of the plate.
- (b) Five compartments able to hold five meal components including a milk carton or bottle.
- (c) A similarly square center compartment able to hold a milk carton or bottle.
- (d) A similarly square center compartment defined by four ridges.
- (e) Four compartments defined by ridges extending out from the four corners of the similarly square center compartment to the raised rim around the circumference of the plate.

29. The plate design claimed by the '370 Patent is obvious to one of ordinary skill in the art in light of the combined teachings of the Chinet Plate and one or more pieces of prior art.

30. As early as the 1970's, the Swedish Company Pukeberg Glasbruk designed and manufactured a plate composing a circular shape, with five compartments segmented by raised ridges, including a center rectangular compartment and four peripheral compartments defined by

the raised ridges extending outward from the center rectangular compartment, among other similar features.

31. The image below is a true and accurate depiction of the Pukeberg Glasbruk plate:



32. The plate design claimed by the '370 Patent is obvious to one of ordinary skill in the art light of the combined teachings of the Pukeberg Glasbruk plate and one or more pieces of prior art.

33. On August 2, 1950, T. W. Kyte filed U.S. Patent Application S.N. 11,555 which matured to issued U.S. D168,161 on November 11, 1952, for the dish design shown below.

Fig. 1.

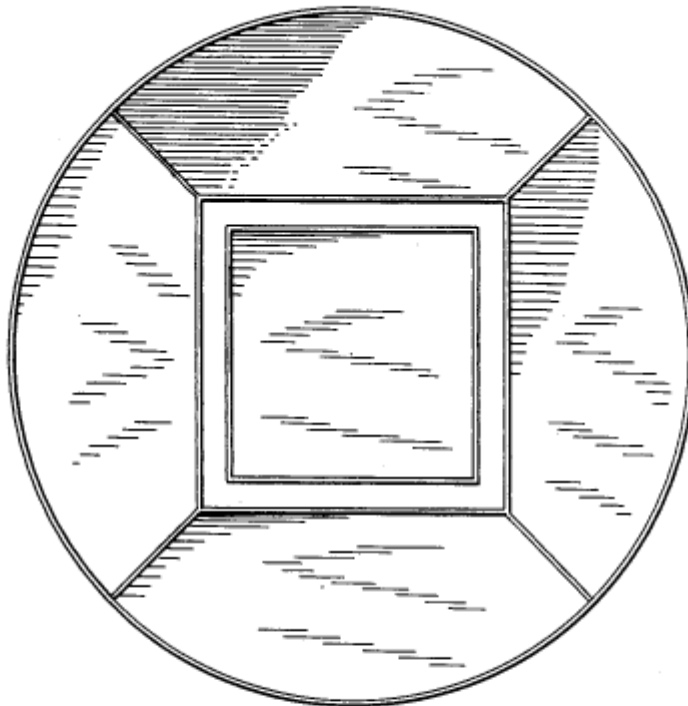
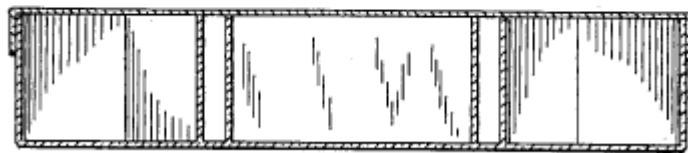


Fig. 2.



34. This dish design also comprises a circular shape; five compartments segmented by raised ridges, including a similarly square center compartment and four peripheral compartments defined by the raised ridges extending outward from the center compartment, among other similar features.

35. The plate design claimed by the '370 Patent is anticipated or rendered obvious to one of ordinary skill in the art in light of the combined teachings of the '161 patent either alone or with one or more pieces of prior art.

36. Upon information and belief, and as early as the 1980's, a Vintage White STAUB Fondue Pierrade Divided Dinner French Plate was designed and sold with five compartments segmented by a raised ridges. These five compartments including a center rectangular compartment and four peripheral compartments defined by the raised ridges extending outwardly from the center rectangular compartment. The four peripheral compartments including one large compartment, two medium compartments, and one small compartment located adjacent to raised rim around the circumference of the plate. The image below is a true and accurate depiction of the STAUB Plate:



37. Such a design claimed in the '370 patent is anticipated or rendered obvious to one of ordinary skill in the art in light of the combined teaching of the STAUB Plate either alone or in combination with one or more pieces and prior art.

38. Huhtamaki may and is likely to identify additional invalidating prior art during the course of its continuing investigation and discovery in this case. Such counts of infringement may include copyright infringement and/or trade dress infringement.

39. Huhtamaki is likely to add additional counts of infringement against Blue Apple during the course of its continuing investigation and discovery in this case.

40. In addition (or in the alternative) the Huhtamaki Plate does not infringe the '370 Patent.

41. In this dispute, the relevant "ordinary observer" is a foodservice procurement professional acting for a foodservice organization or an institution.

42. Several differences in the overall appearance of the Huhtamaki Plate and the design claimed by the '370 Patent are immediately apparent to the ordinary observer:

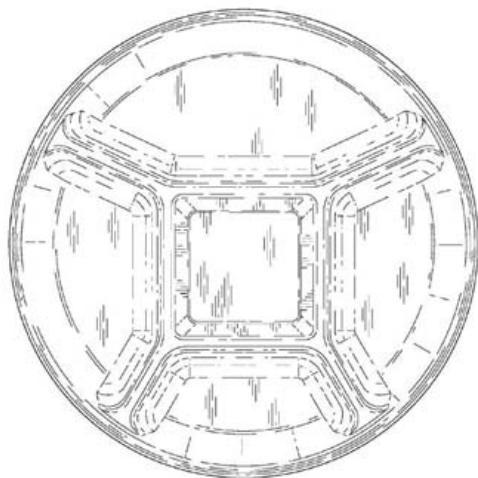
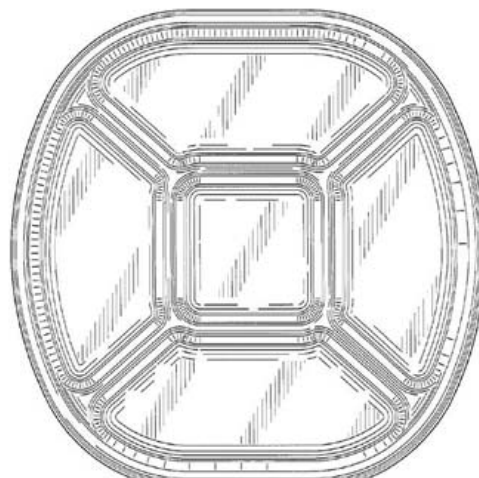


Fig. 6 of '370 Patent



Huhtamaki's Plate

43. *Perimeter Shapes.* The plate design claimed by the '370 Patent is circular, while the perimeter of the Huhtamaki Plate consists of two straight sides and two curved sides, which is commonly called “racetrack” shape in the industry.

44. *Compartment Shapes and Sizes.* The design claimed by the '370 Patent include one center compartment, one large outer compartment, two medium outer compartments, and one small outer compartment, while the outer compartments of the Huhtamaki Plate are all of substantially equal size and of a similar shape.

45. *Lengths and Angles of Ridge Segments.* The four radially-extending ridges of the design claimed by the '370 Patent include two longer ridge segments and two shorter ridge segments, with the two shorter ones extending radially from the center compartment at a relatively steeper angle. By contrast, the radially-extending ridges of the Huhtamaki Plate are all generally the same length and extend radially from the center compartment at generally the same angle.

46. *Location of the Center Compartment.* The center compartment of the design claimed by the '370 Patent is offset from the center of plate, while the center compartment of the Huhtamaki Plate is located in the proximate center for plate.

47. *Downwardly Sloped Ridges.* The upper surfaces of the four radially extending ridges of the design claimed by the '370 Patent intersect in a horizontal plane with the outer ridge of the plate near the top of the outer ridge while the radially-extending ridges of the Huhtamaki Plate are substantially downward sloping at the intersection near the middle of the outer edge.

COUNT I

Declaratory Judgment of Invalidity of the '370 Patent

48. Huhtamaki incorporates the preceding Paragraphs of this Complaint as if set forth fully herein.

49. A concrete, immediate, and justiciable controversy exists between Huhtamaki and Blue Apple based, in part, on Blue Apple's cease and desist correspondence, draft complaint, and unilaterally-imposed deadline for Huhtamaki to satisfy Blue Apple's demand, and by Huhtamaki's unequivocal assertion that the claims of the '370 Patent are invalid and not infringed.

50. The '370 Patent is invalid under the Patent Laws of the United States of America, 35 U.S.C. § 1, et seq., including but not limited to §§ 101, 102, 103 and 112.

51. The claims of the '370 Patent are invalid under 35 U.S.C. §§ 102-103, in part, because features of the segmented-plate design claimed by the '370 Patent would have been obvious to a designer of ordinary skill in the art in light of the prior art and/or was otherwise not novel as required by 35 U.S.C. §102.

52. Blue Apple's insistence on pressing this dispute even after Huhtamaki communicated these obvious invalidity and non-infringement facts to it in writing renders this case exceptional under 35 U.S.C. §285 and therefore justifies awarding Huhtamaki its attorneys' and costs incurred in this action.

COUNT II

Declaratory Judgment of Non-Infringement of the '370 Patent

53. Huhtamaki incorporates the preceding Paragraphs of this Complaint as if set forth fully herein.

54. A concrete, immediate, and justiciable controversy exists between Huhtamaki and Blue Apple based, in part, on Blue Apple's cease and desist correspondence, draft complaint, and unilaterally-imposed deadline for Huhtamaki to satisfy Blue Apple's demand, and by Huhtamaki's unequivocal assertion that the claims of the '370 Patent are invalid and not infringed.

55. Huhtamaki does not infringe, and has not infringed the '370 Patent pursuant to 35 U.S.C. § 271, literally or under the doctrine of equivalents, by making, using, selling or offering to sell Blue Apple's products and services.

56. Huhtamaki did not knowingly and willfully copy Blue Apple's segmented-plate design, whether after learning of it through the photograph that the NYCDOE attached to its bid request in November 2013, or otherwise.

57. Huhtamaki is entitled to a judgment declaring that it does not infringe, and has not infringed the '370 Patent by making, using, selling, or offering to sell its Savaday® by Chinet® Round 5-Compartment Cafeteria Plate or any other of its products, either literally or under the doctrine of equivalents.

ATTORNEYS' FEES AND COSTS

It has been necessary for Huhtamaki to retain counsel to protect its interests and assert this action. Huhtamaki is entitled to the reasonable attorneys' fees and costs incurred in litigating this action pursuant to Federal Rule of Civil Procedure 54(b), 35 U.S.C. §285, and any other applicable rule, statute or laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Huhtamaki, Inc. respectfully requests that a judgment be entered against Defendant Blue Apple as follows:

A. That Judgment be entered declaring that Huhtamaki has not infringed the '370 Patent;

B. That Judgment be entered declaring that Blue Apple is precluded from obtaining injunctive relief, money damages, enhanced damages, costs and/or attorneys' fees for any alleged infringement of the '370 Patent by Huhtamaki;

C. That Judgment be entered declaring the claims of the '370 Patent invalid and/or not directed to patent eligible subject matter;

D. That Judgment be entered permanently enjoining and restraining Blue Apple, its officers, agents, employees, and attorneys from stating, implying, or suggesting that Huhtamaki and/or its products infringe the '370 Patent;

E. That Judgment be entered declaring that this case is exceptional in favor of Huhtamaki under 35 U.S.C. §285, as construed in *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S. Ct. 1749 (2014) and *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 134 S. Ct. 1744 (2014), and accordingly Huhtamaki be awarded its reasonable attorneys' fees and expenses;

F. That Huhtamaki be awarded its costs in this action; and

G. That Huhtamaki be awarded such other and further relief as the Court may deem just and proper.

DEMAND FOR A TRIAL BY JURY

Huhtamaki respectfully requests a trial by jury on all issues triable to a jury.

DATED this 27th day of November, 2018.

GIVENS PURSLEY LLP

By /s/ Alexander P. McLaughlin

Alexander P. McLaughlin – Of the Firm
Attorneys for Plaintiff Huhtamaki, Inc.

EXHIBIT A



US00D697370S

(12) **United States Design Patent** (10) **Patent No.:** **US D697,370 S**
Shannon et al. (45) **Date of Patent:** **** Jan. 14, 2014**

(54) **SEGMENTED FOOD PLATE**
 (71) Applicants: **Vance Albert Shannon**, Auburn, CA
 (US); **Jacob Michael Reeves**, Folsom,
 CA (US)
 (72) Inventors: **Vance Albert Shannon**, Auburn, CA
 (US); **Jacob Michael Reeves**, Folsom,
 CA (US)
 (**) Term: **14 Years**
 (21) Appl. No.: **29/444,090**

D352,204 S * 11/1994 Hayes et al. D7/553.6
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 7,934,449 B2 * 5/2011 Anderson et al. 99/426

* cited by examiner

(22) Filed: **Jan. 25, 2013**
 (51) **LOC (10) Cl.** **07-01**
 (52) **U.S. Cl.**
 USPC **D7/557**
 (58) **Field of Classification Search**
 USPC D7/555, 584, 557, 553.8, 558, 601, 602,
 D7/543, 545, 357, 354, 503, 587, 588, 500,
 D7/396.4, 505, 704, 360, 361, 552.1, 586,
 D7/562, 560, 566, 504, 565, 553.1, 553.7,
 D7/549; D9/424, 759, 432, 744, 643, 707;
 219/735, 732; 426/243; 220/574, 751,
 220/23.4; D1/122; D30/130; 215/382, 400;
 206/217

Primary Examiner — Cynthia Underwood
 (74) *Attorney, Agent, or Firm* — The Law Office of Kevin M. Welch

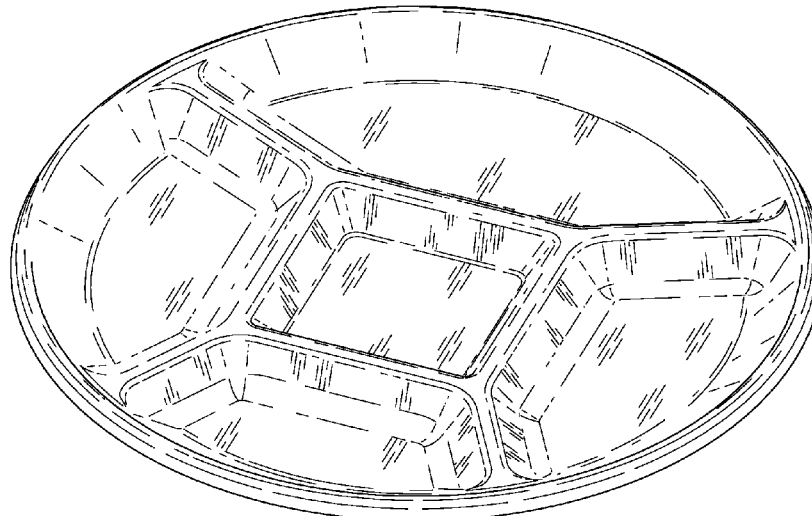
(57) **CLAIM**
 The ornamental design for a segmented food plate, as shown and described.

DESCRIPTION

FIG. 1 is a top perspective view of the segmented food plate; FIG. 2 is a side plan view of the segmented food plate shown from the perspective of the smallest subdivision; FIG. 3 is a side plan view of the segmented food plate shown from the perspective of the largest subdivision; FIG. 4 is a side plan view of the segmented food plate shown from the perspective of a one of the two equally sized and inversely shaped subdivisions, FIG. 5 is a side plan view of the segmented food plate shown from the perspective of a one of the two equally sized and inversely shaped subdivisions, FIG. 6 is a top plan view of the segmented food plate; and, FIG. 7 is a bottom plan view of the segmented food plate.

1 Claim, 3 Drawing Sheets

(56) **References Cited**
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 D72,702 S * 5/1927 Farber D7/546
 2,352,684 A * 7/1944 Braddock 220/23.6
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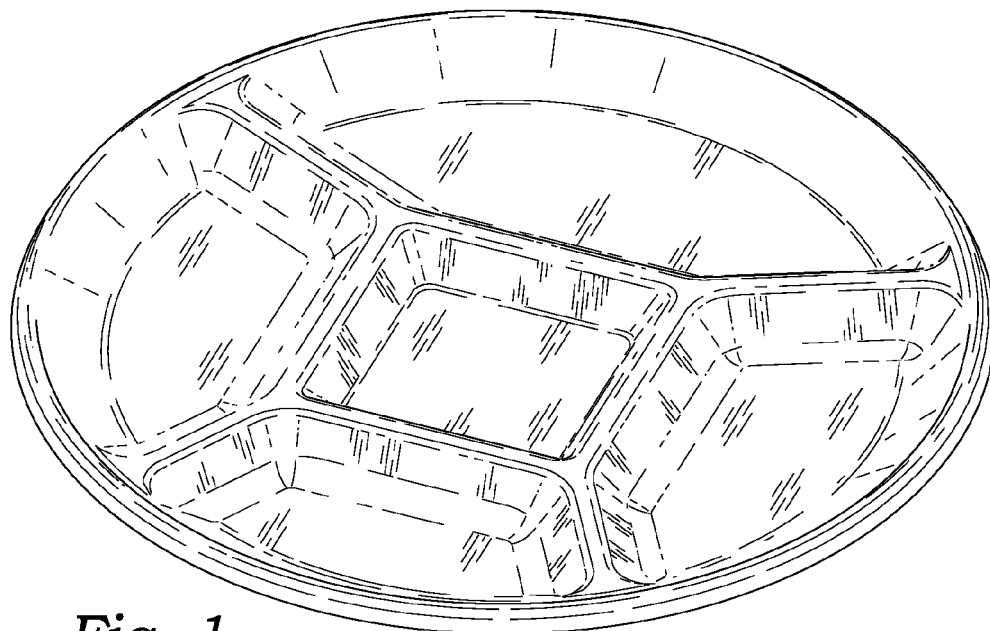


Fig. 1

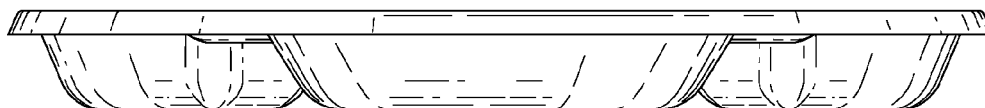


Fig. 2



Fig. 3

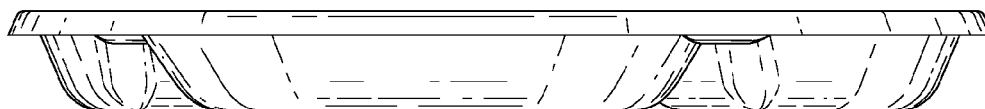


Fig. 4

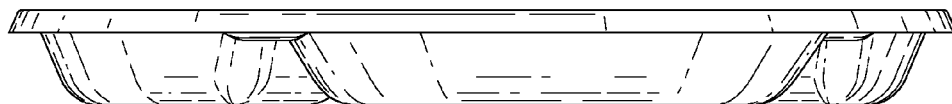


Fig. 5

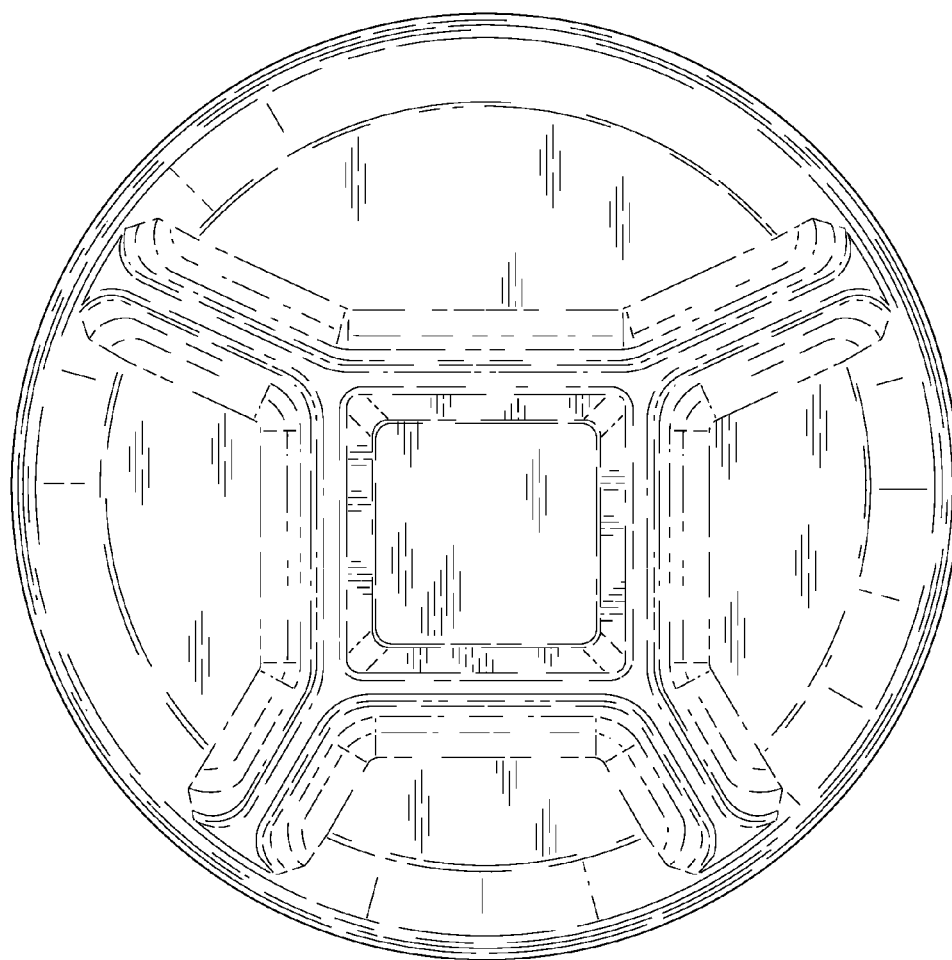


Fig. 6

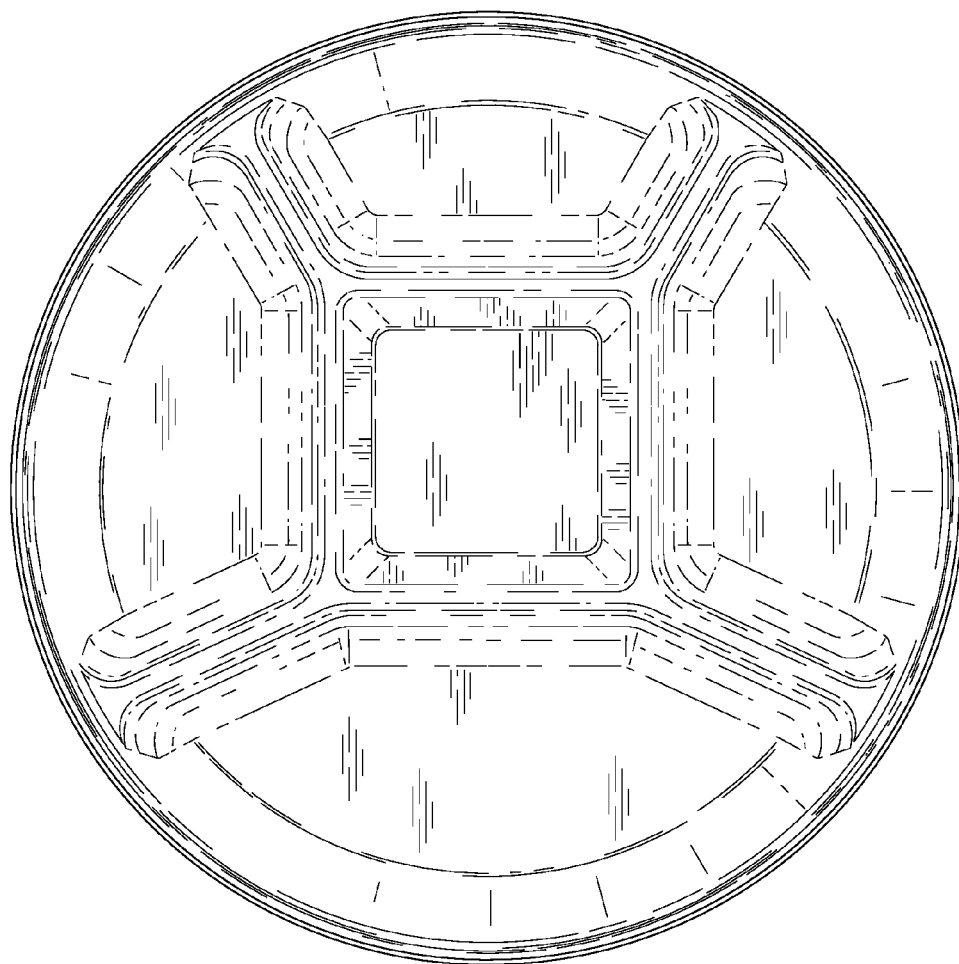


Fig. 7