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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHEF’N CORPORATION,
a Washington Corporation

Plaintiff,

v.

TRUDEAU CORPORATION,
a Canadian Corporation,

Defendant.

Case No. C08-1135MJP

ORDER DENYING PLAINTIFF’S MOTION
FOR PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiff’s motion for a preliminary injunction. (Dkt. No. 17.) The Court heard oral argument on this matter on December 4, 2008. The Court has considered the motion, the response (Dkt. No. 28), the reply (Dkt. No. 33), and other pertinent documents in the record. After oral argument, Plaintiff filed a supplemental declaration (Dkt. No. 39), which Defendant moves to strike. (Dkt. No. 41.) The Court GRANTS Defendant’s motion to strike. For the reasons set forth below, the Court DENIES Plaintiff’s motion for a preliminary injunction.

Background

1 Chef'n is a Washington corporation that designs kitchen products with an eye towards a
2 "unique, memorable, and artistic" aesthetic. (Dkt. No. 17 at 2.) Trudeau is a Canadian corporation
3 that also sells kitchen and table products. (Dkt. No. 28 at 2-3.) Both companies currently market
4 and sell silicone vegetable steamers.
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6 After deciding to make a silicone steamer to update the more traditional metal vegetable
7 steamer, Chef'n applied for a design patent for its silicone steamer on January 22, 2007. On
8 December 4, 2007, the United States Patent Office granted Chef'n U.S. Patent No. D556,503 ("the
9 '503 Patent") for an ornamental design for a steamer. U.S. Patent No. D556,503 (filed Dec. 4,
10 2007). Chef'n claims its silicone steamer received immediate praise upon introduction to the
11 market. (Dkt. No. 17 at 10-11.) In Chef'n's view, Trudeau used its superior distribution network to
12 beat Chef'n to the national market with an infringing silicone vegetable steamer. (Id. at 10.) Chef'n
13 further claims Trudeau is attempting to replace the Chef'n steamer with the infringing steamer in
14 specialty kitchen stores. (Id. at 1.) Chef'n asks the Court to issue a preliminary injunction to stop
15 Trudeau's alleged infringement.
16

17 Discussion

18 This court has jurisdiction pursuant to 35 U.S.C. § 283 to grant preliminary injunctions to
19 prevent violations of rights secured by patent. In deciding whether to issue a preliminary injunction
20 based on a design patent, this Court must consider:
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22 (1) whether the movant has sufficiently established a reasonable likelihood of success on the
23 merits; (2) whether the movant would suffer irreparable harm if an injunction were not
24 granted; (3) whether the balance of hardships tips in movant's favor; and (4) the impact, if
25 any, of an injunction on the public interest.

26 Payless Shoesource, Inc. v. Reebok Int'l Ltd., 998 F.2d 985, 988 (Fed. Cir. 1993)(citing Hybritech
Inc. v. Abbott Lab., 849 F.2d 1446, 1451 (Fed. Cir. 1988)). The Payless Shoesource test comports
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1 with the traditional criteria for preliminary injunctive relief in the Ninth Circuit. Johnson v. Cal.
2 State Bd. of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995).

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4 1. Likelihood of Success on the Merits

5 To demonstrate that they are likely to succeed on the merits of a design patent infringement
6 claim, a plaintiff must demonstrate validity and infringement. Reebok Int'l. Ltd v. J Baker, Inc., 32
7 F.3d 1552, 1555 (Fed. Cir. 1994).

8 a. Validity

9 Absent a showing by clear and convincing evidence to the contrary, a patent is presumptively
10 valid. Helifix Ltd. v. Blok-Lok Ltd., 208 F.3d 1339, 1326 (Fed. Cir. 2000)(citations omitted); 35
11 U.S.C. § 282. To be valid under 35 U.S.C. § 112, ¶ 2, a patent specification must include a claim
12 “particularly pointing out and distinctly claiming the subject matter” of the design. See Personalized
13 Media Commc’ns, LLC v. Int’l Trade Comm’n, 161 F.3d 696, 705 (Fed. Cir. 1998). The Court,
14 from the perspective of an individual skilled in the art, asks whether it can understand the scope of
15 the claim from the specification. Id. (quotations omitted). Clarity in depiction is essential to
16 validity in the design patent context because “the drawing or photograph constitutes the entire visual
17 disclosure of the claim.” See Manual of Patent Examining Procedure § 1503.02 (2008)(hereinafter
18 “MPEP”).
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21 Defendant claims that drawing defects in the ‘503 Patent make it impossible to identify the
22 patent’s scope. (Dkt. No. 28 at 9-10; Decl. of Percy Saidman, Nov. 14, 2008, at ¶¶ 10-12.) Mr.
23 Saidman claims that the broken lines depicted in the ‘503 Patent give rise to inconsistencies that
24 make the patent lack definiteness. Among other concerns, Saidman claims that the use of broken
25 lines renders the illustrations “vague, indefinite, unclear, and inconsistent” in violation of 35 U.S.C.
26 § 112. (Saidman Decl. at ¶ 30.) Saidman goes on to deconstruct the drawings in the ‘503 Patent
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1 based on his own “assumptions.” (Id. at ¶ 20.) Chef’n claims Saidman’s declaration is improper
2 because it presents a legal opinion from someone who lacks skill in the art of kitchen design.
3 Plaintiffs are correct to point out that the Court cannot rely on Saidman’s legal conclusion; however,
4 the Court may consider his observations with respect to the drawings. (Saidman Decl. at ¶¶ 20-25.)
5 Chef’n further argues that the illustrations, which sometimes depict the outer rim of the ‘503 design
6 as a non-continuous circle, ignore common practices with respect to broken lines. (Dkt. No. 33 at
7 12.) The MPEP provides that “[w]hen broken lines cross over the full line showing of the claimed
8 design . . . it is understood that the surface which lies beneath the broken lines is part of the claimed
9 design.” MPEP § 1503.02. In the Court’s view, many of Saidman’s drawings ignore this rule. (See
10 Saidman Decl., Ex. D at Figs. 2-3, 5-6.)
11

12
13 Even if Saidman’s observations raise concerns about the consistency of the figures in the
14 ‘503 Patent, the Court does not believe that Defendant has presented clear and convincing evidence
15 demonstrating invalidity. (See Saidman Decl. at ¶ 24.) The Court finds that an individual skilled in
16 the art of kitchen appliance design patents would understand the metes and bounds of the design.
17 See Personalized Media Communications, LLC, 161 F.3d at 705.

18
19 b. Infringement

20 The Federal Circuit’s recent decision in Egyptian Goddess sets forth the test for design patent
21 infringement. Egyptian Goddess, Inc. v. Swisa, Inc., 543 F.3d 665, 678 (Fed. Cir. 2008) (en banc).
22 After expressly repudiating “point of novelty” analysis, the court held that the sole test for
23 infringement is the informed “ordinary observer” test. Id. The Court thus returned to the core of its
24 earlier standard articulated in Gorham:

25 [I]f, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two
26 designs are substantially the same, if the resemblance is such as to deceive such an observer,
27 inducing him to purchase one supposing it to be the other, the first one patented is infringed
28 by the other.

1 Id. at 670 (quoting Gorham Co. v. White, 81 U.S. 511, 526-27 (1871)). The Egyptian Goddess court
2 did not entirely abandon considerations of novelty; rather, it instilled its “ordinary observer” with
3 knowledge of relevant prior art. Id. at 678. The accused infringer bears the burden of producing
4 relevant comparisons to prior art. Id. at 678-79.

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6 A visual comparison of the ‘503 design and the Trudeau steamer demonstrates certain
7 similarities, but an ordinary observer with knowledge of the prior art would not confuse the two.
8 Both have very slightly concave center circles surrounded by wider, more concave circular brim.
9 (See Holcomb Decl., Ex. K at 1-9.) There are, however, two striking visual distinctions between the
10 ‘503 Patent and the Trudeau steamer. First, unlike Trudeau’s steamer which has only a flat center
11 and one change in concavity, the ‘503 Patent possesses circumferential rings illustrating multiple
12 degrees of concavity. The ‘503 design has two intermediate rings between the center of the steamer
13 and the top ridge. ‘503 Patent, Fig. 4. Trudeau’s steamer, in contrast, has only one intermediate
14 change in concavity. (Holcomb Decl., Ex. K at 6.) Second, Chef’n’s design possesses a small,
15 depressed ring at the center of the steamer. ‘503 Patent, Figs. 1-2, 5. Trudeau’s steamer lacks any
16 such inner circumferential ring. (Holcomb Decl., Ex. K at 5.) The Court is aware that, pursuant to
17 Egyptian Goddess and Gorham, isolated differences are less important than “general appearance and
18 effect.” Egyptian Goddess, Inc., 541 F.3d at 670 (quoting Gorham, 81 US at 531). The two visual
19 distinctions the Court observes, however, are not simply isolated differences. The ‘503 design is
20 visually more complex than the Trudeau steamer and an ordinary observer would not confuse the
21 two.
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24 Comparisons to prior art are also useful in determining whether an ordinary observer would
25 be deceived by an allegedly infringing design. Egyptian Goddess, Inc., 543 F.3d at 677 (“If the
26 accused design has copied a particular feature of the claimed design that departs conspicuously from
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1 the prior art, the accused design is naturally more likely to be regarded as deceptively similar.”).
2 The Court notes that the prior art Trudeau offers is not particularly helpful to the present analysis.
3 (See Audet Decl., Ex. A (providing visual depictions of colanders and woks).) The comparisons that
4 Chef’n provides demonstrate that the two steamers at issue are significant departures from prior art
5 vegetable steamers. (See e.g. Holcomb Decl., Ex. H at 7, 10.) Trudeau’s prior steamer, for instance,
6 had hinged edges and a center handle. (Id.) Even though both steamers are a departure from prior
7 art, the central issue is deciding whether the Trudeau steamer is deceptively similar. Here, the most
8 obvious copied element is the use of colored silicone, which is not part of the claimed design. The
9 visual differences described above are significant enough for the Court to find that the two designs
10 are not deceptively similar, even in light of the prior art.
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13 An ordinary observer with knowledge of prior art vegetable steamers would not be confused
14 by these two steamers. The ‘503 design, with its depressed center ring and increasing degrees of
15 concavity, is visually distinct from Trudeau’s design, which is less intricate. By the standard set
16 forth in Egyptian Goddess, Trudeau has not infringed Chef’n’s design. Because Plaintiff has failed
17 to demonstrate infringement, they cannot establish that they are likely to succeed on the merits of
18 their claim. The Court does not need to proceed with an analysis of harm, hardship, or the public
19 interest. Chef’n is not entitled to an injunction.
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21 2. Motion to Strike

22 After oral argument, Plaintiff filed a declaration from its Director of Finance on the issue of
23 irreparable harm. (Dkt. No. 39.) Defendant moves to strike the declaration as untimely. (Dkt. No.
24 41.) The Court agrees that the filing was untimely and the Court has not considered it in reaching
25 this decision.
26

27 **Conclusion**

1 The Court does not believe Trudeau's steamer infringes the '503 Patent. In the absence of
2 infringement, injunctive relief is inappropriate. The Court therefore DENIES Plaintiff's motion for a
3 preliminary injunction. Furthermore, the Court STRIKES the Mr. Engelstad's declaration (Dkt. No.
4 39) as untimely.
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7 Dated this 16th day of December, 2008

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10 Marsha J. Pechman
11 United States District Judge
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