UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

VECTAIR SYSTEMS INC. Plaintiff, v. **FRESH PRODUCTS, INC.** Defendant.	Civil Action No. **COMPLAINT FOR DECLATORY JUDGEMENT OF INVALIDITY AND NONINFRINGEMENT** (JURY TRIAL DEMANDED)

COMPLAINT

Plaintiff, Vectair Systems Inc. ("Plaintiff" or "Vectair") by counsel, for its Complaint against Defendant Fresh Products, Inc. ("Defendant" or "Fresh Products"), states as follows:

NATURE OF ACTION

1. This is declaratory judgement action arising under the Declaratory Judgement Act, 28 U.S.C. § 2201 *et seq*. and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq*. Vectair seeks a declaratory judgement that Vectair does not infringe U.S. Patent Nos. 10,145,098, 10,501,924, 11,396,745 or D778,411 ("the '098 patent", "the '924 patent", "the '745 patent", and "the '411 patent" respectively, and "the asserted patents" collectively) and that the '098 patent, the '924 patent, the '745 patent, and the '411 patent are invalid. True and correct copies of the '098 patent, the '924 patent, the '745 patent, and '411 patent are provided herewith as Exhibit A, Exhibit B, Exhibit C, and Exhibit D, respectively.

FRESH PRODUCTS 2005
Vectair v. Fresh Products
IPR2024-00824

PARTIES

2. Plaintiff Vectair is a Minnesota corporation having an address at 4450 Excelsior Blvd., Suite 440, St. Louis Park, Minnesota 55416.

3. Defendant Fresh Products is an Ohio corporation having a registered address for service at 4010 South Avenue, Toledo, OH 43615.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq*., with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Fresh Products is subject to personal jurisdiction in Minnesota because of Fresh Product's continuous and systematic contacts with the State of Minnesota. Upon information and belief, Fresh Products intentionally markets and directs its products to this State and enjoys substantial income from sales in this State. Further, Fresh Products has contacted Vectair in connection with accusing Vectair of patent infringement and demanding a license for the asserted patents, as well as demanding a ceasing of sales of selected products in view of the asserted patents. Fresh Products' demands in connection with the asserted patents give rise to this action.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to this claim occurred in this judicial district.

FACTUAL BACKGROUND

7. Upon information and belief, Vectair is a world-wide, leading technological innovator, manufacturer, and supplier of air care and hygiene products. These products include, but are not limited to, products for air care and hygiene as relates to restrooms, including urinal screens.

8. Urinal screens are widely used as air fresheners and to prevent debris from being flushed down a urinal drain. A fragrance may be provided with the screens to help freshen the air in and around the urinal. Generally, urinal screens are formed from a plastic material provided with a fragrant material.

9. On or about November 7, 2023, Knobbe, Martens, Olson & Bear, LLP, a law firm acting on behalf of Fresh Products, sent a letter to Mr. Peter Lipke, CEO of Vectair, regarding the Asserted Patents. This letter contended that Vectair is making, using, offering to sell, and/or selling allegedly infringing urinal screens. A copy of this correspondence is attached hereto as Exhibit E.

10. Fresh Products alleged that two versions of a urinal screen manufactured by Vectair for sale, including one screen sold under the V-SCREEN (DUAL) trademark (collectively the "accused screens") is "covered by Fresh Products intellectual property rights, including Claim 19 of U.S. utility Patent Number 10, 145,098; Claim 28 of U.S. Patent Number 10,501,924; and Claim 1 of U.S. Patent No. 11,396,745. The Vectair V-SCREEN is also covered by U.S. Design Patent No. D778,411." Exhibit E, pg. 1.

11. The November 7, 2023 letter indicated its purpose was to "put Vectair Systems, Inc. and Vectair Systems Ltd. on official notice that sales of the Vectair V-SCREEN in the U.S. and the UK are an infringement of Fresh Products' intellectual property rights, including, but not limited to the rights itemized above." Exhibit E, p.1-2.

12. Vectair responded to the November 7, 2023, letter on November 10, 2023, by and through its U.S. counsel. Vectair asserted a position of non-infringement.

13. Additional correspondence occurred between the Parties, culminating in a letter from Fresh Products to Vectair of February 28, 2024 in which Fresh Products insisted it disagrees with the allegations of non-infringement, supplemented its position, and reiterated its request for Vectair to

cease and desist from all sales of (1) the infringing V-SCREEN and (2) the infringing Second Screen. The February 28, 2024, letter goes on to propose a license to Vectair.

14. Fresh Products' correspondence as outlined above, the licensing demand based on the alleged patent infringement, the threats and accusations regarding infringement, and the claims made by Fresh Products alleging Vectair infringement of the asserted patents, create a reasonable apprehension and substantial likelihood that, if Vectair does not cease sales of the accused screens and enter into a license with Fresh Products, Fresh Products will sue Vectair for the alleged infringement of the asserted patents.

15. Upon information and belief, Vectair's accused screens incorporate elements typical in the industry and in public use, sold, offered for sale, or otherwise available to the public prior to the earliest effective filing date of the Asserted Patents.

16. Upon information and belief, the accused screens are urinal screen designs that utilize industry-standard designs for a flexible screen having openings for fluid to pass through and posts on both sides of the screen to allow for spacing the screen over the drain to prevent floating away of the screen when fluid is passed therethrough. Moreover, the basic design of the accused screens has been used by those of ordinary skill in the air care and hygiene field by Vectair and others before the effective filing dates of the Asserted patents.

17. Upon information and belief, Fresh Products began selling its Wave 3D urinal screen and WAVE 3D products through Amazon.com at least as early as May 10, 2013. See Exhibits F and G, which are screenprints from Amazon.com for Wave 3D products indicating that these Wave 3D products were first publicly available as of May 10, 2013 and September 3, 2013 respectively.

THE PATENTS IN SUIT

18. The '098 patent, entitled "Urinal Screens," issued on December 4, 2018, from U.S. Patent Application No. 14/925,369 filed on October 28, 2015, and claims priority to U.S. provisional application Serial No. 62/075,827, filed on November 5, 2014.

19. Upon information and belief, Fresh Products, Inc. is the owner of the right, title and interest in the '098 patent via assignment.

20. The '924 patent, entitled "Urinal Screens," issued on December 10, 2019, from U.S. Patent Application No. 16/175,379 filed on October 30, 2018, as a continuation of U.S. Patent Application No. 14/925,369, now the '098 patent, and claims priority to U.S. provisional application Serial No. 62/075,827, filed on November 5, 2014.

21. Upon information and belief, Fresh Products, Inc. is the owner of the right, title and interest in the '924 patent via assignment.

22. The '745 patent, entitled "Urinal Screens," issued on July 26, 2022, from U.S. Patent Application No. 17/643,791 filed on December 10, 2021, also as a continuation of U.S. Patent Application No. 14/925,369, now the '098 patent, and of U.S. Patent Application No. 16/175,379, now the '924 patent, and claims priority to U.S. provisional application Serial No. 62/075,827, filed on November 5, 2014.

23. Upon information and belief, Fresh Products, Inc. is the owner of the right, title and interest in the '745 patent via assignment.

24. The '411 patent, entitled "Urinal Screen," issued on February 7, 2017, from U.S. Design Patent Application No. 29/508,397, filed on November 5, 2014.

25. Upon information and belief, Fresh Products, Inc. is the owner of the right, title and interest in the '411 patent via assignment.

26. Each of the accused patents identified above share a priority claim providing each of the accused patents an earliest effective filing date no earlier than November 5, 2014.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Declaratory Judgement of Noninfringement of the '098 Patent)

27. Vectair repeats and realleges each and every allegation contained in paragraphs 1-26 above as if fully set forth herein.

28. Fresh Products has alleged and continues to allege that Vectair is infringing claim 19 of the '098 patent. Should the Court disagree, the Court should enter judgement declaring that Vectair does not infringe the '098 patent.

29. Exemplary claim 19 of the '098 patent recites:

Claim Element	Recitation
19.p.	A urinal screen comprising:
19.1.	a frame having:
19.2.	a first face;
19.3.	a second face opposite the first face; and
19.4.	a plurality of interconnected cells at least partially defined by a plurality of braces that intersect at corners, the plurality of interconnected cells comprising at least a plurality of perimeter cells and a plurality of interior cells;
19.5.	wherein the plurality of interior cells comprises a first cell, a second cell, and a third cell, said first cell and said second cell each partially defined by a first brace positioned between said first cell and said second cell, said second cell and said third cell each partially defined by a second brace positioned between said second cell and said third cell, and said first cell and said third cell each partially defined by a third brace positioned between said first cell and said third cell;
19.6.	wherein each of the first brace, the second brace, and the third brace comprises a first end and a second end, and wherein:
19.7.	the first end of the first brace intersects at a corner with the two other braces;

19.8	. the first end of the second brace intersects at a corner with the two other braces; and
19.9.	the first end of the third brace intersects at a corner with the two other braces;
19.10.	a plurality of first posts each connected to a brace or corner of the frame and extending from away from the first face of the frame, and
19.11.	a plurality of second posts each connected to a brace or corner of the frame and extending away from the second face of the frame.

30. Vectair has not infringed and does not infringe any valid and/or enforceable claim of the ’098 patent, directly or indirectly, literally or under the doctrine of equivalents, through the manufacture, use, importation, sale, and/or offer for sale of Vectair’s accused products.

31. By way of example, Vectair’s accused products do not satisfy, concurrently, at least limitations 19.1, 19.4, 19.0, and 19.11 of exemplary claim 19 of the ‘098 patent.

32. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

33. A judicial declaration is necessary and appropriate so that Vectair may ascertain its rights regarding the ‘098 Patent.

34. Vectair is entitled to a judicial declaration that it has not infringed and does not infringe the ‘098 Patent.

SECOND CLAIM FOR RELIEF

(Declaratory Judgement of Noninfringement of the ‘924 Patent)

35. Vectair repeats and realleges each and every allegation contained in paragraphs 1-34 above as if fully set forth herein.

36. Fresh Products has alleged and continues to allege that Vectair is infringing claim 28 of the '924 patent. Should the Court disagree, the Court should enter judgement declaring that Vectair does not infringe the '924 patent.

37. Exemplary claim 28 of the '924 patent recites:

Claim Element	Recitation
28.p.	A reversible urinal screen comprising:
28.1.	a plurality of interconnected cells that form a tessellation of openings,
28.2.	wherein a perimeter of each of a majority of openings of the tessellation of openings is at least partially defined by three or more braces of a plurality of braces, with a majority of the plurality of braces being shared by multiple openings;
28.3.	a solid portion positioned between at least some of the openings of the tessellation of openings, the solid portion occupying an area greater than or equal to ten of the openings of the tessellation of openings; and
28.4.	a plurality of posts to deflect urine when the reversible urinal screen is placed upon a urinal surface, the plurality of posts connected to the plurality of braces and positioned such that:
28.5.	when the reversible urinal screen is placed upon the urinal surface in a first orientation, a first plurality of tips of the plurality of posts support the plurality of braces above the urinal surface, and a second plurality of tips of the plurality of posts are positioned above the plurality of braces, such that at least a portion of the plurality of posts between the second plurality of tips and the plurality of braces can reduce splashing of urine impacting the urinal screen from above, and at least a portion of the plurality of posts between the first plurality of tips and the plurality of braces can reduce splashing of urine that has passed through the tessellation of openings, and
28.6.	when the reversible urinal screen is placed upon the urinal surface in a second orientation, the second plurality of tips of the plurality of posts support the plurality of braces above the urinal surface, and the first plurality of tips of the plurality of posts are positioned above the plurality of braces, such that at least a portion of the plurality of posts between the first plurality of tips and the plurality of braces can reduce splashing of urine impacting the urinal screen from above, and at least a portion of the plurality of posts between the second plurality of tips and the plurality of braces can reduce splashing of urine that has passed through the tessellation of openings,
28.7.	wherein, when the urinal screen is placed upon a horizontal surface, a thickness of the majority of the plurality of braces as measured perpendicular to the horizontal surface is less than or equal to ½ of an

	overall thickness of the urinal screen as measured perpendicular to the horizontal surface,
28.8.	wherein the perimeter of each of the majority of openings of the tessellation of openings comprises a plurality of corners, with a post being connected at each of the corners, and
28.9.	wherein the plurality of braces, the plurality of posts, and the solid portion comprise a fragranced EVA material.

38. Vectair has not infringed and does not infringe any valid and/or enforceable claim of the '924 Patent, directly or indirectly, literally or under the doctrine of equivalents, through the manufacture, use, importation, sale, and/or offer for sale of Vectair's accused products. By way of example, Vectair's accused products do not satisfy at least limitations 28.1 and 28.3 of exemplary claim 28.

39. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

40. A judicial declaration is necessary and appropriate so that Vectair may ascertain its rights regarding the '924 Patent.

41. Vectair is entitled to a judicial declaration that it has not infringed and does not infringe the '924 Patent.

THIRD CLAIM FOR RELIEF

(Declaratory Judgement of Noninfringement of the '745 Patent)

42. Vectair repeats and realleges each and every allegation contained in paragraphs 1-41 above as if fully set forth herein.

43. Fresh Products has alleged and continues to allege that Vectair is infringing claim 1 of the '745 patent. Should the Court disagree, the Court should enter judgement declaring that Vectair does not infringe the '745 patent.

44. Exemplary claim 1 of the '745 patent recites:

Claim Element	Recitation
1.p.	A reversible urinal screen comprising:
1.1.	a flexible frame comprising a first face and a second face opposite the first face;
1.2.	the flexible frame further comprising a plurality of openings through the first face and the second face, wherein the plurality of openings each comprise a perimeter shape defined by a plurality of sides and a plurality of corners;
1.3.	a first plurality of protrusions extending away from the first face of the flexible frame; and
1.4.	a second plurality of protrusions extending away from the second face of the flexible frame;
1.5.	wherein the first plurality of protrusions and the second plurality of protrusions are positioned such that:
1.6.	at least a portion of the first plurality of protrusions can support the first face of the flexible frame above a urinal surface when the urinal screen is placed on the urinal surface with the first face of the flexible frame facing the urinal surface, such that the first plurality of protrusions can reduce splashing on a user of the urinal by deflecting a flow of urine which passes through the plurality of openings, and
1.7.	at least a portion of the second plurality of protrusions can support the second face of the flexible frame above the urinal surface when the urinal screen is placed on the urinal surface with the second face of the flexible frame facing the urinal surface, such that the second plurality of protrusions can reduce splashing on a user of the urinal by deflecting a flow of urine which passes through the plurality of openings;
1.8.	wherein the plurality of openings occupy more than ⅓ of an overall surface area of the flexible frame as viewed normal to a flat surface when the reversible urinal screen is set on the flat surface with the first face facing the flat surface and the second face facing away from the flat surface;
1.9.	wherein: (1) each opening of the plurality of openings shares at least one side and at least one corner with another opening of the plurality of openings; or (2) for each opening of the plurality of openings, at least one of the protrusions of the first plurality of protrusions or the protrusions of the second plurality of protrusions extends from a side or a corner that defines the perimeter shape of the opening; and
1.10.	wherein the flexible frame, the first plurality of protrusions, and the second plurality of protrusions each comprise a fragranced polymer material.

45. Vectair has not infringed and does not infringe any valid and/or enforceable claim of the '745 Patent, directly or indirectly, literally or under the doctrine of equivalents, through the manufacture, use, importation, sale, and/or offer for sale of Vectair's accused products. By way of example, Vectair's accused products do not satisfy at least limitations 1.4 and 1.7 of exemplary claim 1.

46. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

47. A judicial declaration is necessary and appropriate so that Vectair may ascertain its rights regarding the '745 Patent.

48. Vectair is entitled to a judicial declaration that it has not infringed and does not infringe the '745 Patent.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgement of Noninfringement of the '411 Patent)

49. Vectair repeats and realleges each and every allegation contained in paragraphs 1-48 above as if fully set forth herein.

50. Fresh Products has alleged and continues to allege that Vectair is infringing claim 1 of the '411 patent. Should the Court disagree, the Court should enter judgement declaring that Vectair does not infringe the '411 patent.

51. Exemplary claim 1 of the '411 is shown via FIG. 10 and FIG. 1, below:

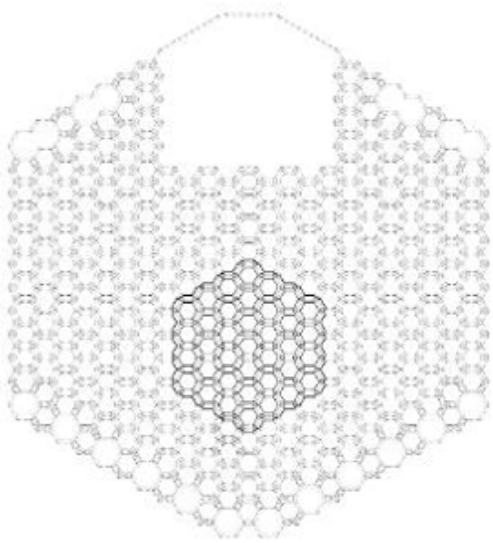


FIG. 10

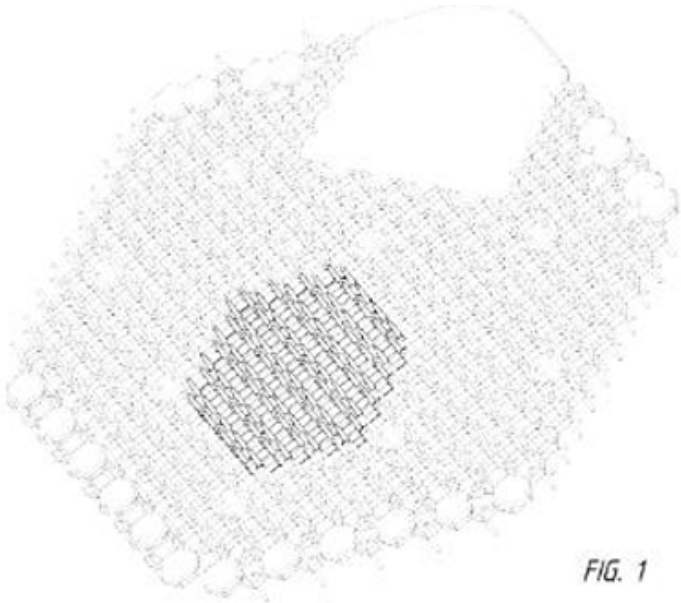
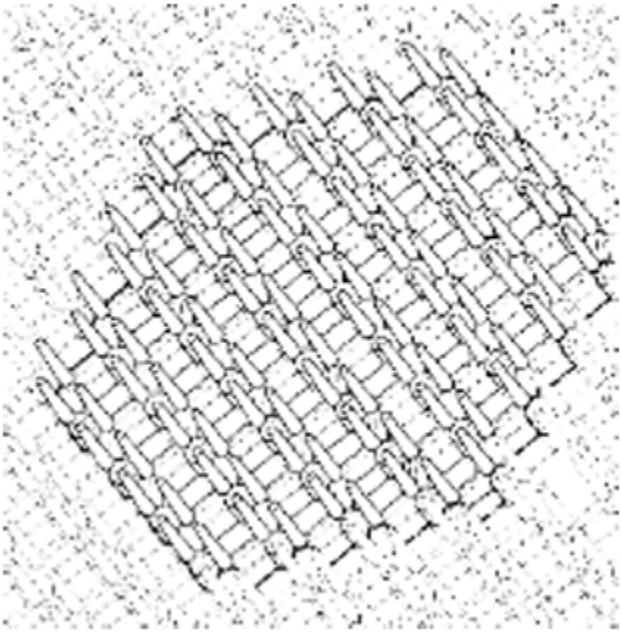


FIG. 1

52. The claimed area in FIG. 1 is enlarged below:



53. The '411 design patent, filed concurrently with the '098 patent includes many functional aspects, including the posts and openings themselves as the '098 patent indicates that "the posts 22 positioned between the frame 14 and the installation surface can reduce splashing in

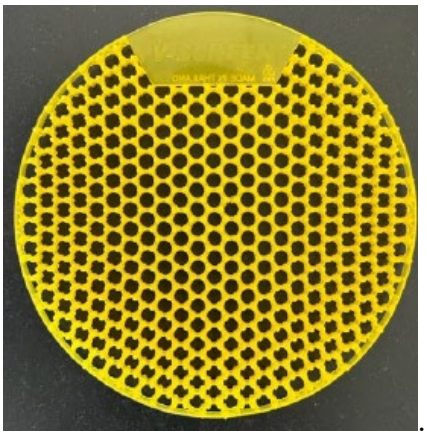
the urinal by deflecting urine or other fluids which pass between the frame 14 and the installation surface (e.g., fluid that passes through the openings 18 or around the perimeter of the frame 14)." Ex. A, c7:14-19.

54. Similarly, the '098 patent also indicates that "the contoured surfaces of the sides 42 and corners 46 can deflect fluid (e.g., urine) to reduce splash in the urinal, toilet, or other environment in which the urinal screen 10 is installed." Ex. A, c5:6-9. That is, the openings and the posts themselves are functional and the mere presence of these elements themselves is functional, not ornamental.

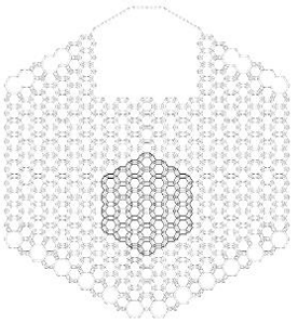
55. A prior art patent by the same inventors of the asserted patents including the '411 patent and owned by the Defendant, US 8,007,707 (Exhibit H), further indicates that the placement and shape of such posts and openings is nothing more than obvious modifications, as urinal screens are "generally flat and circular in shape. However, the body 11 may have any desired size and shape. The illustrated body 11 has a plurality of openings 12 formed therethrough. The body 11 may be formed having any desired number of such openings 12 or, alternatively, no openings 12 at all if desired." Ex. H, c2:26-34.

56. Vectair has not infringed and does not infringe any valid and/or enforceable claim of the '411 Patent, directly or indirectly, literally or under the doctrine of equivalents, through the manufacture, use, importation, sale, and/or offer for sale of Vectair's accused products. Vectair's accused screens are distinct from the claim of the '411 patent.

57. The accused screens are shown below and as compared to the '411 patent:


.
("V-SCREEN")

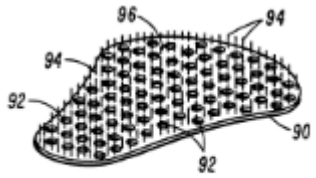
("Second Screen")



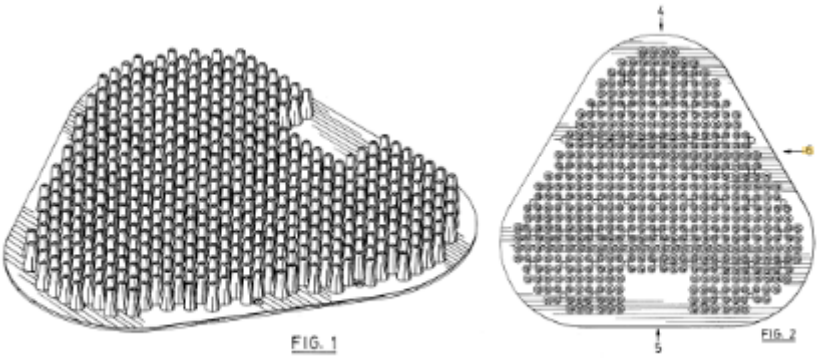
58. Thus, the ordinary observer would not find the accused screen substantially similar to the claimed design, and that they would not be deceived into purchasing the accused screens believing it to be the claimed design.

59. Further to the above, as the ordinary observer views the differences between the '411 patented design and the accused screens in the context of the prior art, it is further clear that the ordinary observer would not be deceived into purchasing the accused screens believing it to be the claimed design.

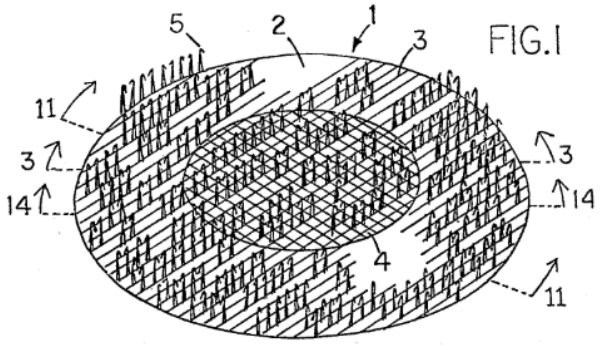
60. For example, the urinal mat of US 5,313,672 (Ex. I, FIG. 4) is close prior art to the claimed design in the '411 patent for purposes of the ordinary observer test:



61. Additionally or alternatively the anti-splash device for a plumbing fixture of US D427295S (Ex. J, FIGS. 1, 2) is close prior art to the claimed design in the '411 patent for purposes of the ordinary observer test:



62. Additionally or alternatively the fluid filter for the inlet opening of a drain or the like as shown in FIG. 1 of US 4,671,976 (Ex. K) is close prior art to the claimed design in the '411 patent for purposes of the ordinary observer test:



63. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

64. A judicial declaration is necessary and appropriate so that Vectair may ascertain its rights regarding the '411 Patent.

65. Vectair is entitled to a judicial declaration that it has not infringed and does not infringe the '411 Patent.

FIFTH CLAIM FOR RELIEF

(Declaratory Judgement of Invalidity of the Accused Patents)

66. Vectair repeats and realleges each and every allegation contained paragraphs 1-65 above as if fully set forth herein.

67. By way of example and without limiting the grounds of invalidity that will be asserted in this action, one or more claims of the asserted patents are invalid because they fail to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. § 100 *et seq*., including, but not limited to, 35 U.S.C. §§ 101, 102, 103, 112, and/or 171.

68. As an example, upon information and belief, each of claim 19 of the '098 patent, claim 28 of the '924 patent and claim 1 of the '745 patent as well as the design of the '411 patent are directed to and/or cover a Fresh Products urinal screen sold under the WAVE 3D name.

69. In particular, and upon information and belief, the accused patents are anticipated under 35 U.S.C. § 102 in view of the prior sale of the WAVE 3D urinal screens by Fresh Products, more than one year before the earliest effective filing date of each of the Accused Patents.

70. Upon information and belief, Fresh Products listed one or more variants of its WAVE 3D urinal screen for sale through Amazon.com's online market place at least as early as May 10, 2013. See Exhibits F and G, described hereinafter.

71. Exhibit F is a publication in the form of a generally publicly available document available online through Amazon.com, for Fresh Products 3WDS60SAP Wave 3D Urinal Deodorizer Screen**.** This publication is an advertisement for a product, the Wave 3D, identified by identification no. 3WDS60SAP, and indicated in Exhibit F as the product being first available to the public on May 10, 2013. Exhibit F is a screenshot of this advertisement indicating an availability date of May 10, 2013, accessed April 5, 2024. Upon information and belief, the WAVE 3D product itself is prior art to the asserted patents under 35 U.S.C. § 102.

72. Exhibit G is a publication in the form of a publicly available advertisement, available online through Amazon.com, for Fresh Products Wave 3D urinal screen. The publication is an advertisement for the product, the Wave 3D, indicated as being first available for sale to the public on September 3, 2013. Exhibit G is a screenshot of this advertisement indicating an availability date of September 3, 2013, accessed April 5, 2024. September 3, 2013, is more than one year before the effective filing date of the accused patents. Upon information and belief, the WAVE 3D product itself is prior art under 35 U.S.C. § 102(a).

73. Exhibit R is a screenshot of Fresh Products website pages for the WAVE 3D product providing Item Model Numbers for the WAVE 3D products, including FRE-3WDS-F-

0101I060M-01, which upon information and belief is believed to be a Wave 3D Urinal Screen with a matching number in Exhibit G.

74. Both Exhibit F and G illustrate the Wave 3D screen manufactured by Fresh Products, the screens being provided in different colors/scents, but having substantially the same structure.

75. In addition, each of claim 19 of the '098 patent, claim 28 of the '924 patent and claim 1 of the '745 patent as well as the design of the '411 patent are invalid under 35 U.S.C. §§ 102 and/or 103 in view of the prior art alone and/or in combination discussed further below.

76. Exhibit L is a publication produced by Fresh Products, dated January 2013. This catalog was distributed throughout the relevant industry as connected to sanitary products for restrooms. Customers, competitors, vendors and lay persons had access to versions of the Exhibit L and further to the Wave 2.0 product before the earliest effective filing date of the accused patents. Exhibit L is prior art under 35 U.S.C. § 102(a). Further, the Fresh Products catalog displays images of a urinal screen referred to as the Wave 2.0. This screen has posts on both sides of the frame of the urinal screen, a plurality of openings and braces between the openings as recited in the claims of the accused patents.

77. Exhibit M is a true and correct reproduction of an archived website, freshproducts.com, obtained from Archive.org, showing the website of Patent Owner with respect to a page advertising the Wave 2.0 product and publicly available as of October 17, 2013. The Wave 2.0 is prior art under 35 U.S.C. § 102(a).

78. Further related to the Wave 2.0 is another U.S. Patent to Fresh Products, issued on August 30, 2011, from Application Serial No. 12/152,627, filed on May 15, 2008, titled "Method of manufacture air freshening article" ("'707 Patent", Exhibit H). Exhibit H refers to the '707 patent which is identified in Exhibit L as covering the Wave 2.0 product and provide additional disclosure

to one of ordinary skill in the art as to the variability of structural elements of urinal screens including the size and location of posts and openings in the screen.

79. The Fresh Products Wave 2.0 screen has posts on both sides of the frame of the urinal screen, a plurality of openings and braces between the openings as recited in the claims of the accused patents and contributed to obviousness of the claims of the accused patents under 35 U.S.C. § 103.

80. Additional prior art believed to contribute to invalidity of the accused patents under 35 U.S.C. §§ 102 and/or 103 includes a prior art urinal screen produced by Big D Industries referred to as the Pearl 3D. The Pearl 3D was publicly available prior to the earliest effective filing date of the accused patents and is a dual sided screen having posts on both sides which surround various openings in the urinal screen which allow fluid to flow there through. See Exhibits N and O.

81. Exhibit N is a January 2013 publicly available catalog of Big D Industries products available in the market. The Pearl 3D is published in this catalog. Customers, competitors, vendors and lay persons had access to the print and online versions of the Big D Catalog. Big D Catalog is prior art under 35 U.S.C. § 102(a).

82. Exhibit O is a publication produced and distributed by Big D Industries. The publication for advertisement for the Pearl 3D urinal screen. The publication was widely available as of September 2013. Customers, competitors, vendors and lay persons had access to the print and online versions of the Pearl 3D urinal screen and publication related thereto. The Pearl 3D is prior art under 35 U.S.C. § 102(a).

83. Additional prior art believed to contribute to invalidity of the accused patents under 35 U.S.C. §§ 102 and/or 103 includes a prior art screen sold by the Petitioner, Vectair, also sold under the V-SCREEN trademark. This earlier version of the Vectair V-SCREEN, referred to hereinafter

as the "2012 Screen", was publicly available and advertised in the relevant industry as early as March 13, 2013. See Exhibit P, a screenshot of an article first published March 13, 2013, and showing an image of the 2012 Screen, and Exhibit Q, a published document for the 2012 Screen, widely available and distributed in 2012.

84. The 2012 screen comprises openings covering more than 50% of the surface area of the screen, the openings connected by braces and having corners. Protrusions are provided across the surface area of the screen. The 2012 Screen itself and the publications related thereto are prior art to the asserted patents under 35 U.S.C. § 102 and makes obvious one or more claims of the asserted patents.

85. In addition, the claims of the asserted patents are invalid under 35 U.S.C. §§ 102 and/or 103 in view of the prior art cited in the previously-filed petition for Inter Partes Review for U.S. Patent No. 10,145,098, assigned Petition No. 2024-0824 by the Patent Office.

86. Viewed in the light of Fresh Products' allegations of infringement against Vectair and the demand that Vectair cease sales of V-SCREEN and enter into a licensing agreement for the second screen, Fresh Products has created a substantial, immediate and real controversy between the parties as to the invalidity of the patents. A valid and justiciable controversy has arisen and exists between Vectair and Fresh Products within the meaning of 28 U.S.C. § 2201.

87. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

88. A judicial declaration is necessary and appropriate so that Vectair may ascertain its rights regarding the accused patents.

89. Vectair is entitled to a judicial declaration that each the representative claims of the asserted patents are invalid and/or that each of the asserted patents are invalid.

PRAYER FOR RELIEF

90. WHEREFORE, Vectair prays for a declaration from this Court and judgment against Fresh Products as follows:

A. That the Court enter a judgement declaring that Vectair has not infringed and does not infringe any valid and enforceable claim of the '098 patent;

B. That the Court enter a judgement declaring that Vectair has not infringed and does not infringe any valid and enforceable claim of the '924 patent;

C. That the Court enter a judgement declaring that Vectair has not infringed and does not infringe any valid and enforceable claim of the '745 patent;

D. That the Court enter a judgement declaring that Vectair has not infringed and does not infringe any valid and enforceable claim of the '411 patent;

E. That the Court enter a judgement declaring that the '098 patent is invalid;

F. That the Court enter a judgement declaring that the '924 patent is invalid;

G. That the Court enter a judgement declaring that the '745 patent is invalid;

H. That the Court enter a judgement declaring that the '411 patent is invalid;

I. That the Court declare that this case is exceptional under 35 U.S.C. § 285 and award Vectair its attorneys' fees, costs, and expenses incurred in this action;

J. That the Court award Vectair any and all other relief to which Vectair may show itself to be entitled; and

K. That the Court award Vectair any other relief as the Court may deem just, equitable, and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: April 20, 2024

Respectfully Submitted,

By: s/Amanda Prose

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FRESH PRODUCTS 2005
Vectair v. Fresh Products
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