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Filing date: **07/15/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91200832
Party	Plaintiff Briggs & Stratton Corporation and Kohler Co.
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Date	07/15/2015
Attachments	O3NOR (Public Version).PDF(782627 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRIGGS & STRATTON CORPORATION)	
)	
Opposer,)	Opposition No. 91200832 (Parent)
vs.)	
)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,)	
)	
Applicant.)	
)	
KOHLER CO.)	
)	
Opposer,)	Opposition No. 91200146
vs.)	
)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,)	
)	
Applicant.)	
)	

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

OPPOSERS’ THIRD NOTICE OF RELIANCE
(REDACTED – PUBLIC VERSION)

Pursuant to 37 C.F.R. §§ 2.120 and 2.122 and TBMP § 704.09, Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively, “Opposers”), by and through their attorneys, hereby submit their Third Notice of Reliance. Opposers’ Third Notice of Reliance includes the following attached materials:

1. The May 29, 2014 Deposition of Yukio Sugimoto, a F.R.C.P. Rule 30 (b)(6) representative of the Applicant pursuant to the June 2, 2014 Stipulation of the parties, included as **Exhibit J** (filed under seal);

2. Exhibit 176 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-1**;
3. Exhibit 178 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-2** (filed under seal);
4. Exhibit 179 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-3** (filed under seal);
5. Exhibit 180 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-4** (filed under seal);
6. Exhibit 181 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-5**;
7. Exhibit 182 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-6**;
8. Exhibit 183 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-7**;
9. Exhibit 184 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-8** (filed under seal);
10. Exhibit 185 of the May 29, 2014 Deposition of Yukio Sugimoto, included as **Exhibit J-9** (filed under seal);

The attached exhibits are marked with sequential page numbers in the upper right corner in the form of [Exhibit Letter – Page Number]. For example, the first page of Exhibit J is “J-1” and so forth. Where the upper right corner of a document does not allow for such marking, page numbers will be located along the right hand margin of the document. For briefing purposes, material within this Notice of Reliance will be identified as “O3NOR” (an acronym for

Opposers' Third Notice of Reliance). For example, a reference to the first page of Exhibit J in the trial brief would be O3NOR J-1.

Opposers intend to rely upon and hereby make of record the attached exhibits. Certain of the attached exhibits contain information that Applicant considers confidential pursuant to the Stipulated Protective Order entered into by the parties and approved by the Board. Accordingly, Opposers are simultaneously filing and serving an unredacted copy. Redactions are based on input from Applicant, and are not necessarily considered worthy of redaction by Opposers.

Respectfully Submitted,

Dated: July 15, 2015

By: /s/ Robert N. Phillips
Robert N. Phillips
Seth B. Herring
Reed Smith LLP
101 Second Street
San Francisco, CA 94105

Attorneys for Opposer Briggs & Stratton
Corporation

Dated: July 15, 2015

By: /s/ Kenneth Nowakowski
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Attorneys for Opposer Kohler Co.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSERS' THIRD NOTICE OF RELIANCE (Redacted – Public Version) was served via first class mail, postage prepaid, this 15th day of July, 2015 upon:

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/s/ Peter F. Sewell _____

Peter F. Sewell

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ATTORNEYS' EYES ONLY

EXHIBIT

FILED UNDER SEAL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND APPEAL BOARD

BRIGGS & STRATTON CORPORATION,

Opposer,

v.

HONDA GIKEN KOGYO KABUSHIKI
KAISHA,

Applicant.

Opposition No. 91200832 (Parent)

KOHLER CO.,

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v.

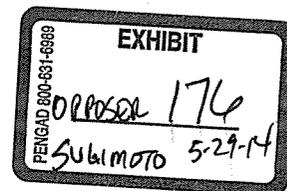
HONDA GIKEN KOGYO KABUSHIKI
KAISHA,

Applicant.

Opposition No. 91200146

**OPPOSERS' NOTICE OF CONTINUED TAKING OF DEPOSITION
OF APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA**

PLEASE TAKE NOTICE that on May 29 and June 1, 2014, beginning at 9:00 a.m., at the offices of Reed Smith LLP, 1901 Avenue of the Stars Suite 700 Los Angeles California 90067 (310) 734 5200, Opposers Briggs & Stratton Corporation and Kohler Company, by and through their attorneys, will resume taking the deposition of Applicant HONDA GIKEN KOGYO KABUSHIKI KAISHA ("Applicant"), upon oral examination pursuant to Federal Rule of Civil Procedure 30(b)(6). Applicant shall designate one or more officers, directors or managing agents to testify on the topics set forth in Exhibit A. The deposition will continue from day to day until concluded, or may be continued until completed at a further date or dates.



DATED: May 9, 2014

By: /s/ Robert N. Phillips
Robert N. Phillips
Seth Herring
REED SMITH LLP

Attorneys for Opposer
BRIGGS & STRATTON CORPORATION

DATED: May 9, 2014

By: /s/ Donald A. Daugherty, Jr.
Donald A. Daugherty, Jr.
Melinda Giftos

Attorneys for Opposer
KOHLER CO.

EXHIBIT A

1. All settlement agreements between Applicant, its U.S. subsidiaries or affiliates and third parties concerning the Honda GX engine configuration.
2. All trademark enforcement efforts by Applicant or its U.S. subsidiaries or affiliates regarding the Honda GX engine configuration, including but not limited to their policies and parameters for determining which third party engine configurations to challenge or not challenge.
3. The redesign of the appearance of the Honda GX engine configuration to what is currently shown and described on Applicant's website, including the reasons for the redesign, the nature and extent of Applicant's current use of the redesign, and Applicant's plans regarding the future use of the redesign.
4. The nature and extent of Applicant's current use of the configuration described and shown in Application Serial No. 78,924,545 ("the '545 Application").
5. Applicant's plans regarding the future use of the configuration described and shown in the '545 Application.
6. The manner in which the declarations of distributors filed in support of the '545 Application were selected, prepared, and obtained, and the identity of the persons involved in such efforts.
7. The statements made in the declarations of distributors filed in support of the '545 Application.
8. Market research regarding whether consumers associate the configuration described and shown in the '545 Application solely with Applicant.
9. Amount and manner of advertising of the configuration described and shown in the '545 Application.
10. Amount of sales and number of customers of the configuration described and shown in the '545 Application.
11. Market share of Applicant's engines having the configuration described and shown in the '545 Application.
12. Third party use of each of the elements claimed in the configuration described and shown in the '545 Application.
13. Utility patents that disclose the utilitarian advantages of the configuration describe and shown in the '545 Application.

14. The functional purpose of each of the elements and overall configuration claimed in the '545 Application.

15. The aesthetic purpose of each of the elements and overall configuration claimed in the '545 Application.

16. The effect that each of the elements and overall configuration claimed in the '545 Application has on the performance of an engine.

17. The effect that each of the elements and overall configuration claimed in the '545 Application has on the cost or quality of an engine.

18. The availability of competitively acceptable alternatives to the configuration described and shown in the '545 Application.

19. Any differences between the Honda GX engine design and the elements/overall configuration claimed in the '545 Application, and the decision by Honda to deviate from the claimed elements and overall configuration in designing and manufacturing the Honda GX engine.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSERS' NOTICE OF CONTINUED TAKING OF DEPOSITION OF APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA** was served on the following counsel of record, by depositing same in the U.S. mail, first class postage prepaid, this 9th day of May, 2014:

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/s/ Deborah Kalahela
Deborah L. Kalahela

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EXHIBIT

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PAGES J-3-1 to J-3-16

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EXHIBIT

FILED UNDER SEAL

PAGES J-4-1 to J-4-4

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EXHIBIT

FILED UNDER SEAL

HONDA

Yukio Sugimoto

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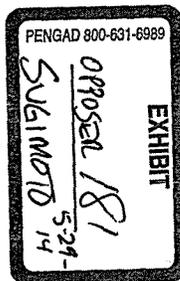




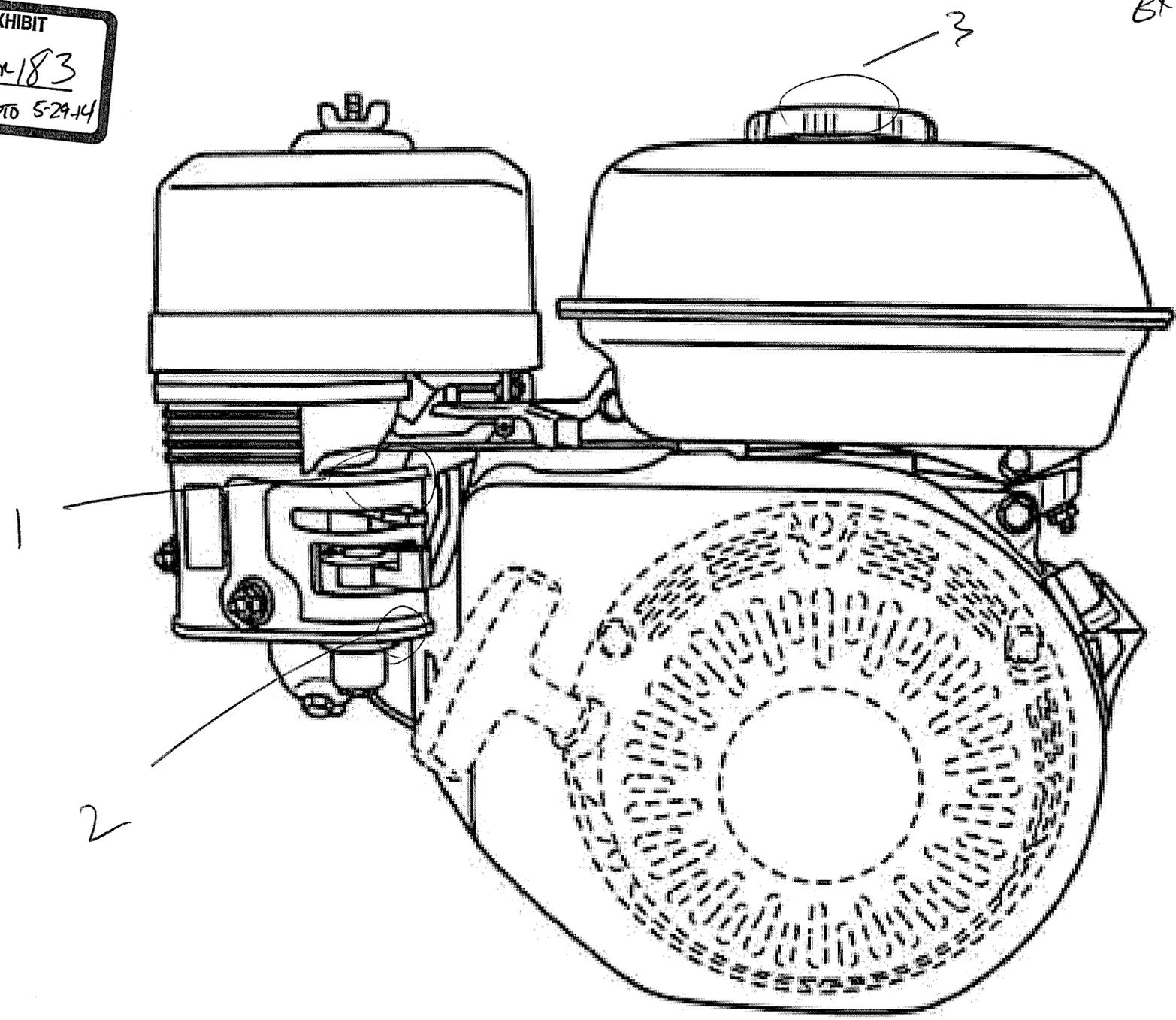
EXHIBIT
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