

ESTTA Tracking number: **ESTTA695831**

Filing date: **09/14/2015**

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

Proceeding	91200832
Party	Defendant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.)
Correspondence Address	SARAH R FRAZIER WILMER CUTLER PICKERING HALE AND DORR LLP 60 STATE ST BOSTON, MA 02109 UNITED STATES michael.bevilacqua@wilmerhale.com, john.regan@wilmerhale.com, shira.hoffman@wilmerhale.com, sarah.frazier@wilmerhale.com, si- lena.paik@wilmerhale.com,
Submission	Defendant's Notice of Reliance
Filer's Name	Silena Paik
Filer's e-mail	silena.paik@wilmerhale.com
Signature	/s/ Silena Paik
Date	09/14/2015
Attachments	NOR 1- Hotz Depo (FINAL- Public 1) .pdf(1783107 bytes)

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

BRIGGS & STRATTON CORPORATION and KOHLER CO.,)	
)	
Opposers,)	Opposition No. 91200832 (parent)
)	
v.)	Opposition No. 91200146
)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,)	Application Serial No. 78924545
)	
Applicant.)	
)	
)	

APPLICANT’S FIRST NOTICE OF RELIANCE
(PUBLIC VERSION – REDACTED)

Pursuant to 37 C.F.R. § 2.120(j)(1), Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) submits, and gives notice of its reliance on, the discovery deposition of Peter Hotz. Opposer Briggs and Stratton Corporation (“Briggs”) designated Mr. Hotz as its corporate representative pursuant to Federal Rule of Civil Procedure 30(b)(6).

Attached hereto are the excerpts of Mr. Hotz’s deposition transcript and accompanying exhibits identified below at the specified Trial Exhibit Numbers.

Description	Applicant Trial Exhibit No.
Excerpts of March 26, 2014 Discovery Deposition of Peter Hotz: 6:25-7:15; 8:7-13; 9:5-10:25; 25:14-19; 47:15-50:11; 54:19-55:12; 57:21-58:11; 60:9-13; 60:21-61:4; 64:20-65:6; 65:20-66:8; 66:21-67:23; 68:11-17; 69:22-70:5; 73:8-22; 74:5-75:5; 75:22-77:25; 79:9-18; 80:13-17; 83:12-91:22; 92:10-25; 94:4-96:18; 97:7-98:5; 99:9-15; 99:19-22; 100:3-101:18; 102:20-103:2; 104:8-105:12; 105:19-23; 108:2-109:4; 109:11-111:10; 111:22-112:24; 113:13-15; 114:11-23; 115:8-117:3; 129:10-14; 140:10-23; 144:5-145:12; 146:9-15; 146:21-24; 147:15-18; 149:7-24; 150:16-151:7; 152:24-153:7; 153:18-154:20; 187:2-	A

7; 187:21-24; 190:25-191:18; 193:11-21; 195:19-196:23; 199:3-24; 207:12-208:11; 208:16-22; 209:14-213:14; 214:3-20; 215:15-216:2; 235:12-14; 238:2-253:21; 259:13-25; 262:7-265:3; 265:16-266:4; 266:20-269:20; 270:13-271:10; 271:15-272:7; 273:3-6; 273:19-274:2	
Exhibit 67 to Peter Hotz's March 26, 2014 Discovery Deposition	A1
Exhibit 123 to Peter Hotz's March 26, 2014 Discovery Deposition	A2
Exhibit 124 to Peter Hotz's March 26, 2014 Discovery Deposition	A3
Exhibit 125 to Peter Hotz's March 26, 2014 Discovery Deposition	A4
Exhibit 126 to Peter Hotz's March 26, 2014 Discovery Deposition	A5
Exhibit 131 to Peter Hotz's March 26, 2014 Discovery Deposition	A6
Exhibit 136 to Peter Hotz's March 26, 2014 Discovery Deposition	A7
Exhibit 137 to Peter Hotz's March 26, 2014 Discovery Deposition	A8
Exhibit 138 to Peter Hotz's March 26, 2014 Discovery Deposition	A9
Exhibit 139 to Peter Hotz's March 26, 2014 Discovery Deposition	A10
Exhibit 140 to Peter Hotz's March 26, 2014 Discovery Deposition	A11
Exhibit 141 to Peter Hotz's March 26, 2014 Discovery Deposition	A12
Exhibit 142 to Peter Hotz's March 26, 2014 Discovery Deposition	A13
Exhibit 143 to Peter Hotz's March 26, 2014 Discovery Deposition	A14
Exhibit 144 to Peter Hotz's March 26, 2014 Discovery Deposition	A15

The designated portions of Mr. Hotz's deposition testimony and accompanying exhibits are relevant to the issues of non-functionality, non-genericness, secondary meaning, and lack of abandonment of the applied-for mark in this proceeding. For example, Mr. Hotz testified about the Honda GX Engine's reputation in the marketplace, the differences in appearance between the applied-for mark and alternative engine designs, the relative performance and cost of the features

of Honda's applied-for mark and alternative engine designs, Briggs' efforts to achieve distinctive styling for its own horizontal shaft utility engines without sacrificing performance or increasing cost, and design patents claiming as ornamental the external appearance of Briggs' horizontal shaft utility engines.

Opposers designated Mr. Hotz's deposition transcript and certain exhibits thereto as "Highly Confidential - Attorneys' Eyes Only" pursuant to the protective order entered into by the parties and approved by the Board. Accordingly, Honda is simultaneously filing and serving a redacted copy of this Notice of Reliance.

Respectfully submitted,

Dated: September 14, 2015

/s/ Silena Paik

John Regan
Vinita Ferrera
Silena Paik
Sarah Frazier
Shira Hoffman
Wilmer Cutler Pickering Hale
and Dorr LLP
Boston, MA 02109
(617) 536-6000

Attorneys for Honda Giken Kogyo
Kabushiki Kaisha

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing First Notice of Reliance was served by first class mail, postage prepaid, this 14th day of September, 2015 upon:

Kenneth Nowakowski
Melinda Giftos
Whyte Hirschboeck Dudek S.C.
555 E. Wells Street, Suite 1900
Milwaukee, Wisconsin 53202

And

Robert N. Phillips
Seth B. Herring
Reed Smith LLP
101 Second Street
Suite 1800
San Francisco, California 94105

/s/ Silena Paik
Silena Paik

Applicant Exhibit A

Confidential

Applicant Exhibit A1



PLAINTIFF'S
EXHIBIT
[Signature]
Labels

Applicant Exhibit A2

permitted under the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board Manual of Procedures, and/or the Orders, rules, or instructions of the Trademark Trial and Appeal Board.

You are invited to attend and cross-examine.

Dated: March 18, 2014

By:

/s/ Sarah R. Frazier

Vinita Ferrera

John Regan

Silena Paik

Sarah Frazier

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

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Attorneys for Applicant HONDA GIKEN KOGYO
KABUSHIKI KAISHA (HONDA MOTOR CO., LTD.)

SCHEDULE A - DEFINITIONS

1. "All" means any and all.
2. "And" shall be construed in the conjunctive.
3. "Any" includes "all."
4. "Applicant," "we," "us," and "Honda" means Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.).
5. "Briggs," "Opposer," and "you" includes Briggs & Stratton Corporation, its employees, agents, representatives, attorneys and all other persons acting or purporting to act on its behalf and all predecessors of Opposer and also any party or wholly owned or controlled division, subsidiary, or parent company, and any of their officers, directors, employees, agents or attorneys.
6. "Communication" means any contact, transmission, or exchange of information between two or more persons, orally, in writing, or electronically, including, without limitation, any conversation or discussion whether by chance or prearranged, formal or informal, face to face, by telephone, telegraph, telex, telecopier, electronic or other media.
7. "Concerning" means relating to, alluding to, referring to, constituting, describing, discussing, evidencing, or regarding.
8. "Date" means the exact day, month and year, if ascertainable, or if not, Briggs' best approximation thereof.
9. "Document" is synonymous in meaning and equal in scope to the use of this term in Federal Rule of Civil Procedure 34(a) and shall be construed to mean, without limitation, any written, printed, typed, stored, photostated, photographed, recorded, or otherwise reproduced communication, compilation, reproduction, or representation, including computer or electronically generated or stored information or data, whether asserted to be privileged or not. "Document" specifically includes all forms of electronic data. A draft or non-identical copy of another document constitutes a separate document.
10. "Each" includes "every," and vice versa.
11. "GX Engine Trade Dress" refers to the design of Applicant's GX Engine that is the subject of United States trademark application Serial No. 78/924,545 and any other mark used by Applicant that is a colorable imitation of the mark.
12. "GX Engine" refers to horizontal shaft engines manufactured and sold by Honda in the United States with the model numbers GX120, GX160, GX200, GX240, GX270, GX360 and GX390.
13. "Including" means "including, but not limited to."

14. "Opposition Proceeding" refers to Opposition No. 91200832 filed by Briggs with the Trademark Trial and Appeal Board ("TTAB") and consolidated by the TTAB on February 9, 2012 with Opposition No. 91200146 filed by Kohler Co.
15. "Or" shall be construed in the disjunctive.
16. "Person" or "persons" means all individuals and entities, including all natural persons, corporations, partnerships, ventures or other business associations, societies, associations-in-fact; and all federal, foreign, state, local or other governmental entities. With respect to all legal entities, "person" or "persons" includes all members, officers, employees, agents, representatives, attorneys, successors, predecessors, assigns, divisions, affiliates, and subsidiaries.
17. "Relate to," "relating to," "related to" and any other derivation thereof mean alluding to, responding to, concerning, connected with, involving, commenting on, in respect of, about, associated with, discussing, evidencing, showing, describing, reflecting, analyzing, summarizing, memorializing, consisting of, constituting, identifying, stating, tending to support, tending to discredit, referring to or in any way touching upon.
18. The use of the singular shall be construed to include the plural, and the plural from the singular, whenever appropriate in order to bring within the scope of a request any document which might otherwise be considered beyond its scope.

SCHEDULE A - TOPICS

1. Briggs' knowledge of the GX Engine or GX Engine Trade Dress, including its knowledge of the manufacture, marketing and sale of GX Engines and any information that has been collected, reviewed, compiled or requested on these topics.
2. Third party use of the GX Engine Trade Dress or "similar designs" as set forth in Briggs' Notice of Opposition.
3. Market research relating to the GX Engine Trade Dress, the GX Engines, or the horizontal shaft engines identified in Briggs' response to Applicant's Interrogatory No. 4, including but not limited to the 550 Series engines.
4. Any plan, strategy or proposal Briggs has, ever had, or has considered for competing with the GX Engines, including but not limited to, any plan to offer or market products bearing or incorporating the GX Engine Trade Dress to customers, any plans for expanding or modifying the Briggs 550 Series engines, any analysis of the marketplace in consideration of such plans, any actions taken by Briggs in connection with such plans, and any meetings at which such plans were discussed.
5. Briggs' offering for sale and sale of the Briggs 550 Series engines to actual or potential customers, including but not limited to: (a) the date on which Briggs first offered for sale or sold, or expects to offer for sale or sell, each version of the Briggs 550 Series engines; (b) the total volume of sales for each version of the Briggs 550 Series engines; and (c) the pricing for each version of the Briggs 550 Series engines.
6. The markets in which Briggs sells or offers for sale the Briggs 550 Series engines, including but not limited to the actual or potential purchasers to which such products were, are or are expected to be targeted, competitors, and Briggs' share of the market.
7. The external design of each version or planned version of the Briggs 550 Series engines including, but not limited to the selection, adoption and use of any aspect of the GX Engine Trade Dress by Briggs, alternatives that were considered in the design process, and changes to the external design over time.
8. Briggs' advertisement, marketing, merchandising or promotion of the Briggs 550 Series engines.
9. The differences or similarities between each version of the Briggs' 550 Series engines offered for sale or sold by Briggs and the GX Engine Trade Dress, including but not limited to, any testing, analysis, calculation, or other research conducted by or on behalf of Briggs or of which Briggs is aware.
10. Any incidents of confusion, mistake, or deceit as to the affiliation, connection, or association of Briggs 550 Series engines with Honda.
11. Briggs' communications with any Person regarding the Briggs 550 Series engines concerning Honda, the GX Engines, or the GX Engine Trade Dress.

12. Briggs' communications with any Person concerning the GX Engine Trade Dress, including but not limited to Honda, including but not limited to responses to accusations that the Briggs 550 Series engines infringe the GX Engine Trade Dress.
13. All intellectual property or licensing of intellectual property in any way related to the external appearance of any of the horizontal shaft engines sold or offered for sale by Briggs identified in its response to Applicant's Interrogatory No. 4, including but not limited to design patents, trademarks and trade dress concerning the external appearance of those engines.
14. Briggs' procedures for the creation, retention, archiving, and destruction of its documents, including but not limited to Briggs' efforts to preserve potentially relevant documents and things once they were aware this opposition proceeding was likely to commence and continuing through the present.
15. The identity, location and custodian(s) of documents and things concerning the research, development, manufacture, testing, evaluations, licensing, marketing, advertising, offering for sale, sale, or importing in or into the United States of the Briggs 550 Series engines.
16. Briggs' search for and collection of documents and things responsive to Honda's discovery requests, including but not limited to: (1) the precise method(s) used to search for responsive documents and things; (2) the time period covered by the search; (3) the specific custodians interviewed and/or searched; and (4) the identity of the person(s) who conducted the interviews and/or searches.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Applicant Honda Giken Kogyo Kabushiki Kaisha's Notice of Deposition of Opposer Briggs & Stratton Corporation was served by first class mail, postage prepaid, this 18th day of March, 2014 upon:

Donald Daugherty
Whyte Hirschboeck Dudek S.C.
555 E. Wells Street, Suite 1900
Milwaukee, Wisconsin 53202

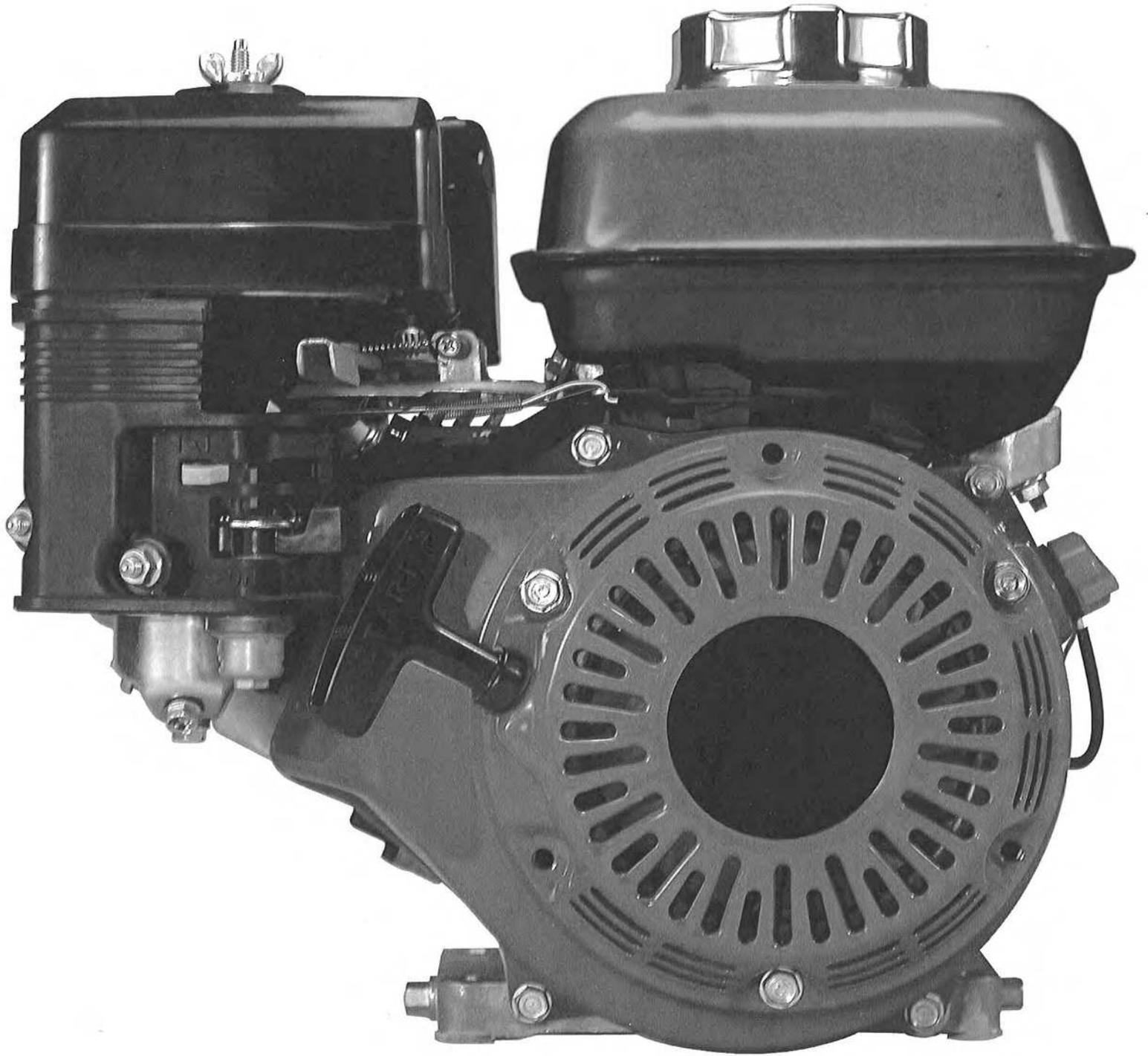
And

Robert N. Phillips
Seth B. Herring
Reed Smith LLP
101 Second Street
Suite 1800
San Francisco, California 94105

/s/ Sarah R. Frazier

Sarah R. Frazier

Applicant Exhibit A3



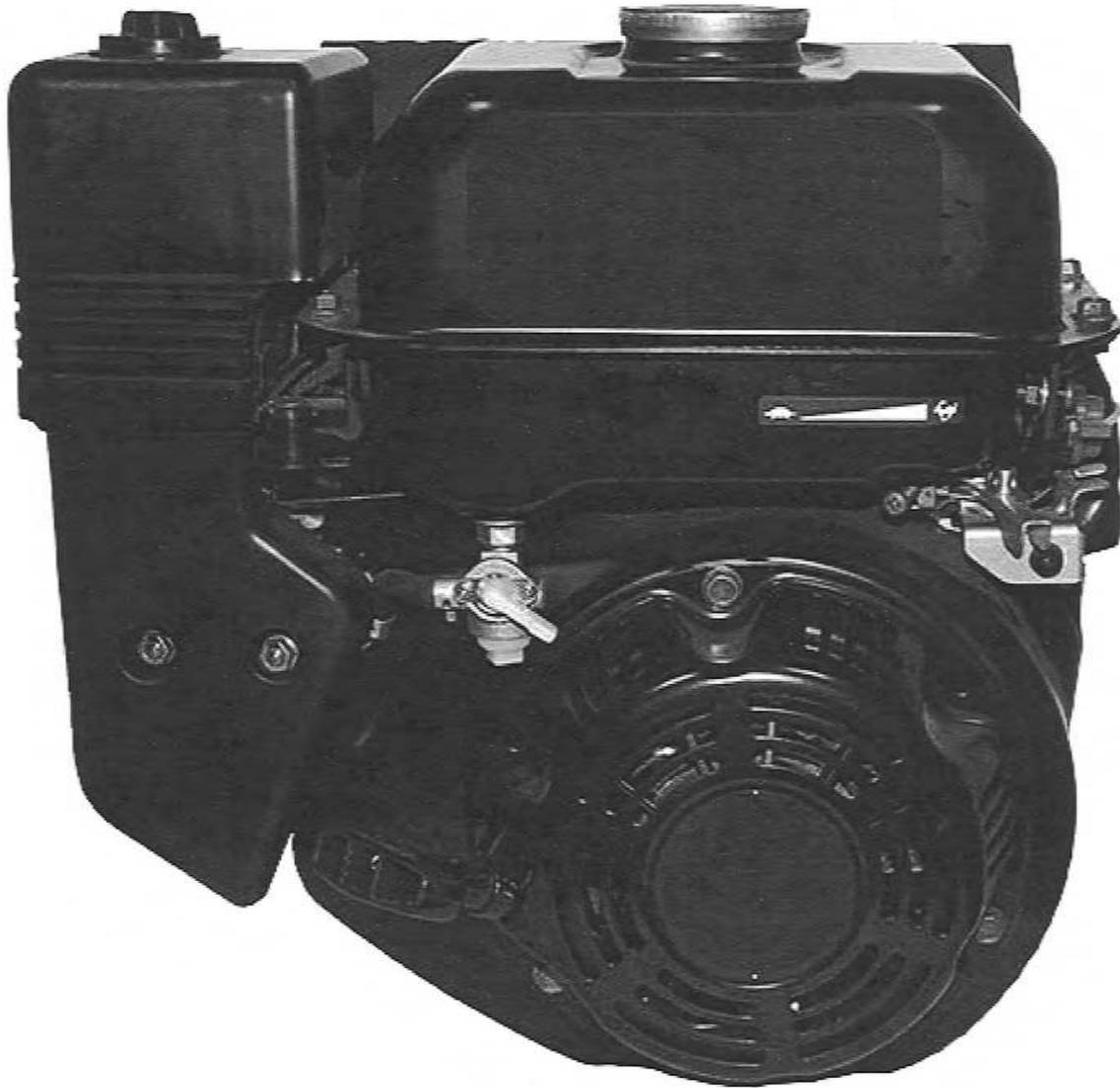
Lot 2
EXHIBIT 123
3-26-14 JA

Applicant Exhibit A4



Hot 2
EXHIBIT 124
3-26-14 JJ

Applicant Exhibit A5



H012
EXHIBIT 125
3-26-14 JA

Applicant Exhibit A6



Hotz
EXHIBIT 126
3-26-14 JZ

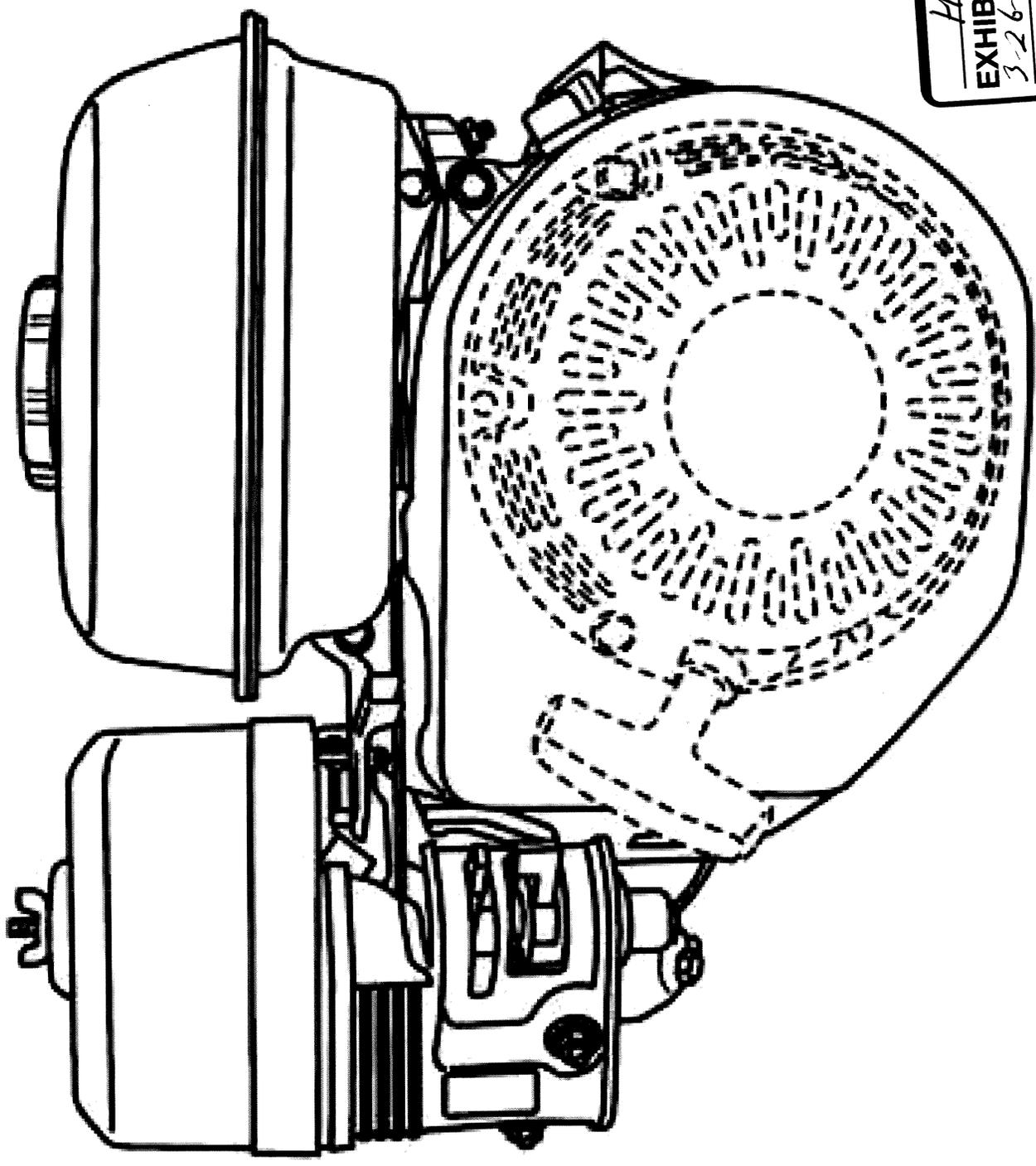
Applicant Exhibit A7

Confidential

Applicant Exhibit A8

Confidential

Applicant Exhibit A9



Hotz
EXHIBIT 137
3-26-14 JH

Applicant Exhibit A10



US00D689522S

(12) **United States Design Patent**
Johnson et al.

(10) **Patent No.:** **US D689,522 S**
(45) **Date of Patent:** **** Sep. 10, 2013**

(54) **ENGINE**
(75) Inventors: **Brian Johnson**, Kewaskum, WI (US);
Caleb J. Palmer, Milwaukee, WI (US)

D583,829 S * 12/2008 Fan D15/1
D584,745 S 1/2009 Wei et al.
D595,737 S 7/2009 Neeley et al.
D605,661 S 12/2009 Koehl
D609,720 S 2/2010 Buck
D629,014 S * 12/2010 Osumi D15/1

(73) Assignee: **Briggs & Stratton Corporation**,
Wauwatosa, WI (US)

OTHER PUBLICATIONS

(**) Term: **14 Years**

Photographs of various engine designs compiled Jun. 24, 2010, 1 page.
Snow Series Engines, <http://www.briggsandstratton.com/engines/snow-blower>, believed to be available by Aug. 25, 2010, 3 pages.

(21) Appl. No.: **29/400,405**

* cited by examiner

(22) Filed: **Aug. 26, 2011**

Primary Examiner — Derrick Holland

(51) **LOC (9) Cl.** **15-01**

(74) *Attorney, Agent, or Firm* — Foley & Lardner LLP

(52) **U.S. Cl.**
USPC **D15/1**

(57) **CLAIM**

(58) **Field of Classification Search**
USPC D15/1, 2, 3, 5, 6, 14, 17, 149; D13/112,
D13/113, 114, 122; 123/41.34, 50 B, 51 A,
123/52.1, 54.1, 54.2, 54.4, 54.5, 65 R, 195 R,
123/195 HC, 311, 606 R, 657
See application file for complete search history.

We claim the ornamental design for an engine, as shown and described.

DESCRIPTION

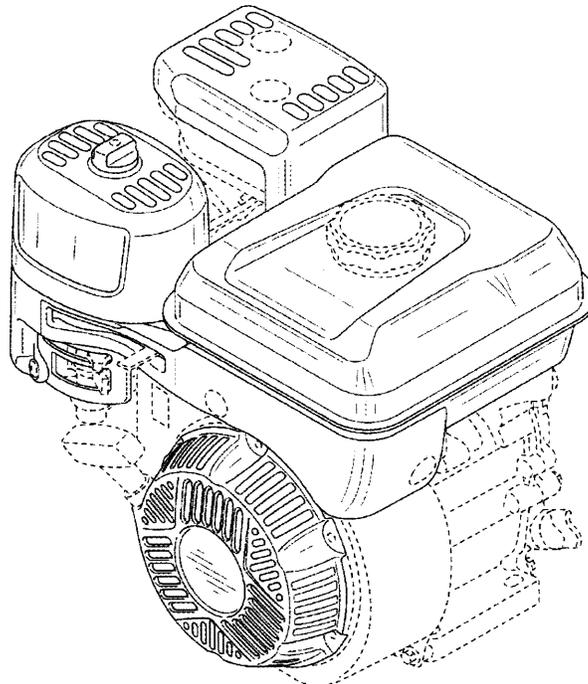
(56) **References Cited**

FIG. 1 is a front and top perspective view of an engine showing our new design;
FIG. 2 is a top view thereof;
FIG. 3 is a bottom view thereof;
FIG. 4 is a left side view thereof;
FIG. 5 is a right side view thereof;
FIG. 6 is a front view thereof; and
FIG. 7 is a rear view thereof.
The broken lines shown represent unclaimed subject matter and form no part of the claimed design.

U.S. PATENT DOCUMENTS

D282,071 S 1/1986 Nakamura
D396,476 S * 7/1998 Shimizu D15/1
6,520,141 B2 2/2003 Ryzek et al.
D515,589 S 2/2006 Lin et al.
D529,046 S 9/2006 Maeda et al.
D536,004 S 1/2007 Ryzek et al.
D579,026 S * 10/2008 Busschaert D15/1

1 Claim, 7 Drawing Sheets



Hot2
EXHIBIT 138
3-26-14 JJ

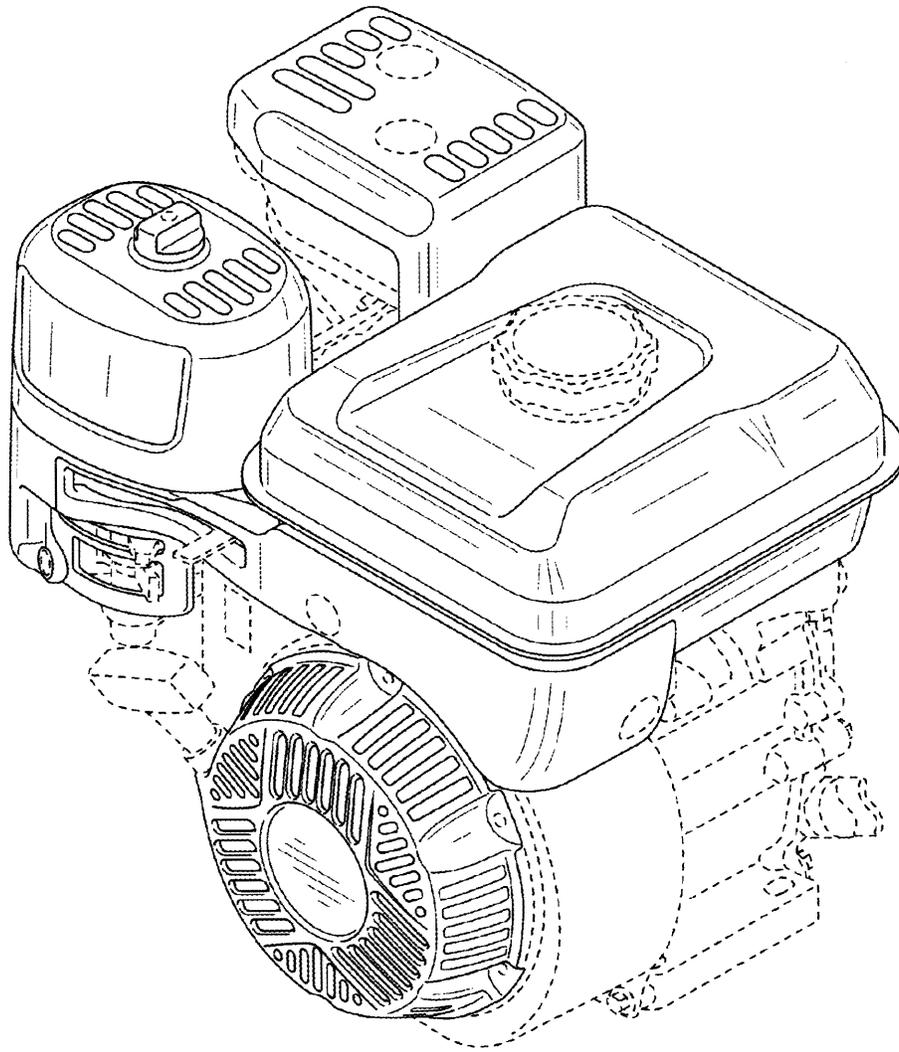


FIG. 1

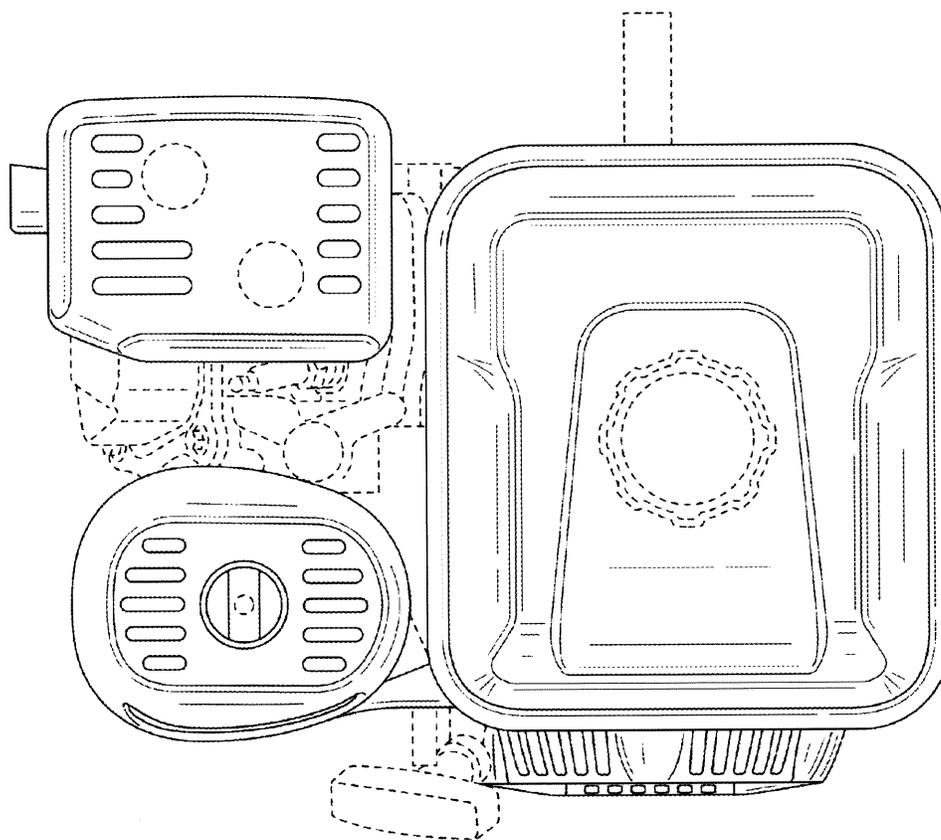


FIG. 2

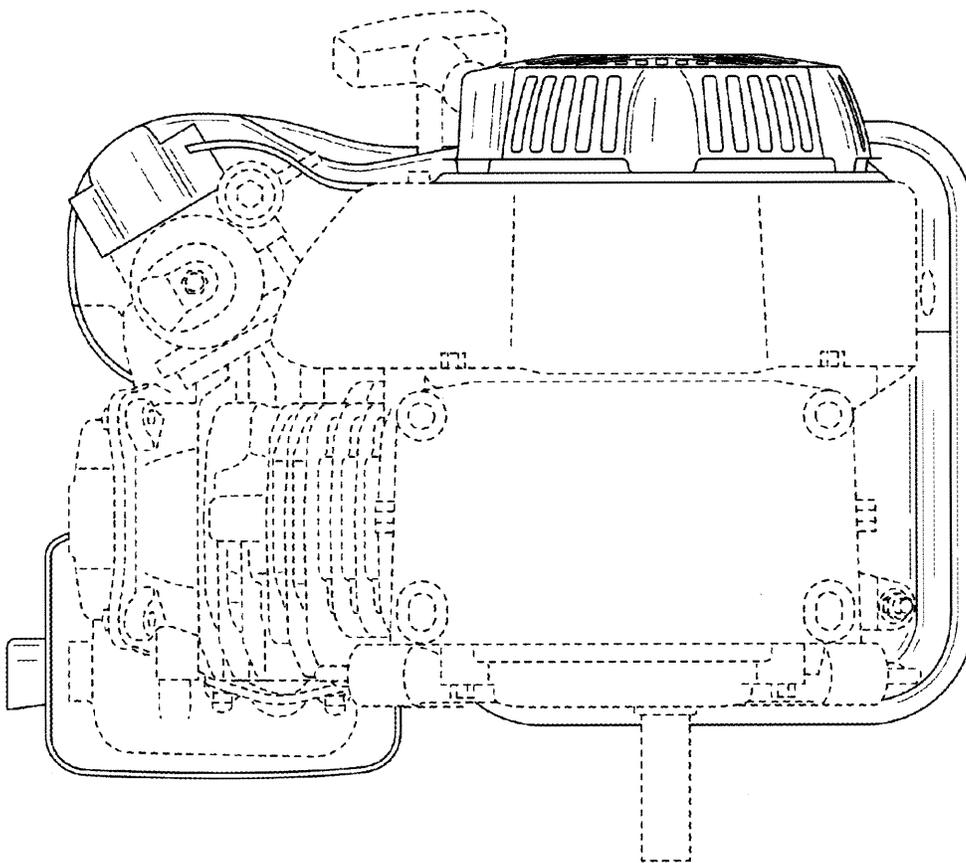


FIG. 3

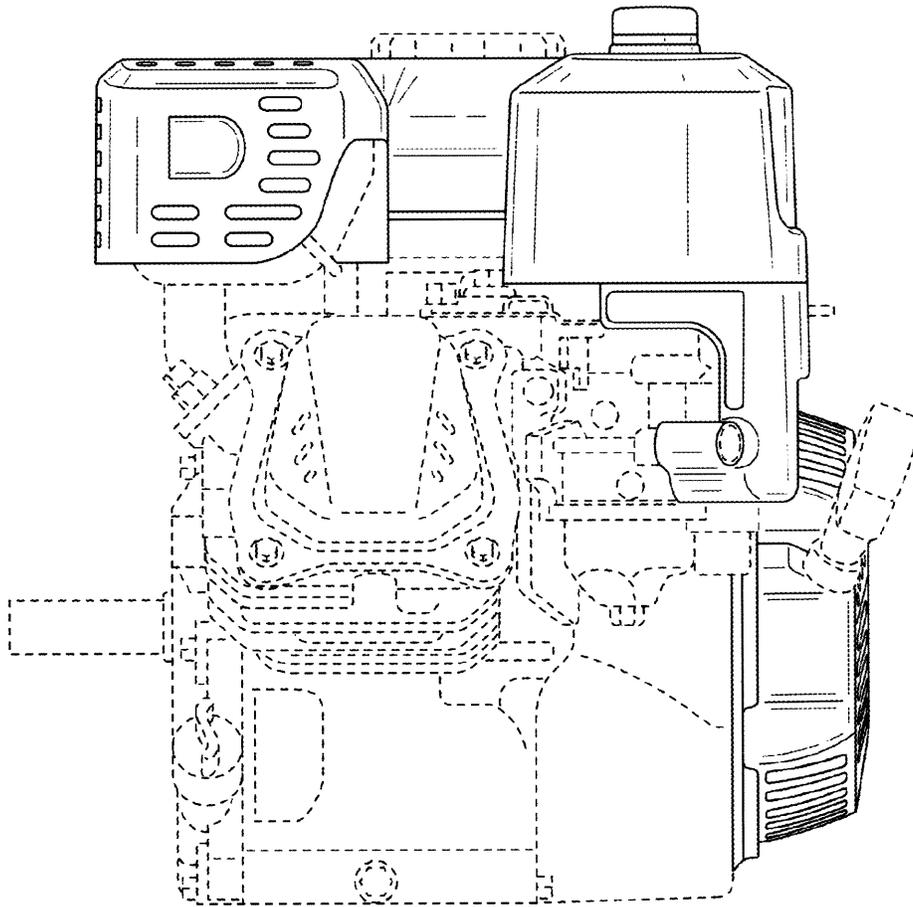


FIG. 4

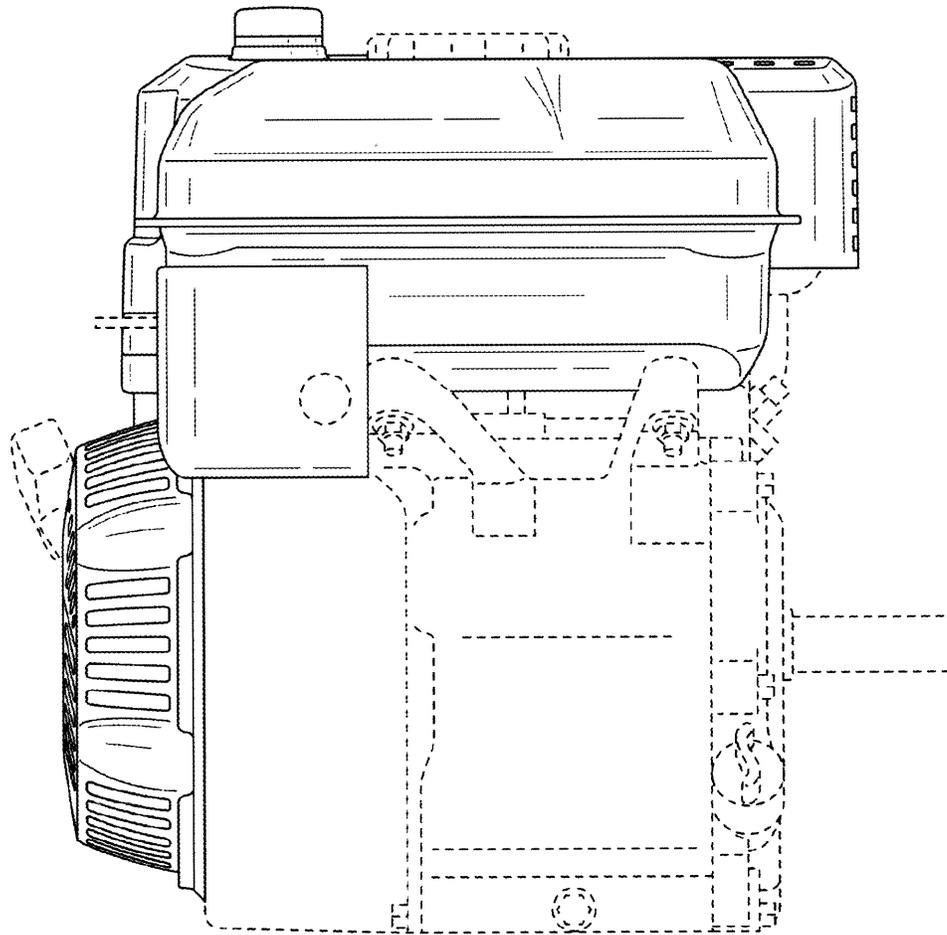


FIG. 5

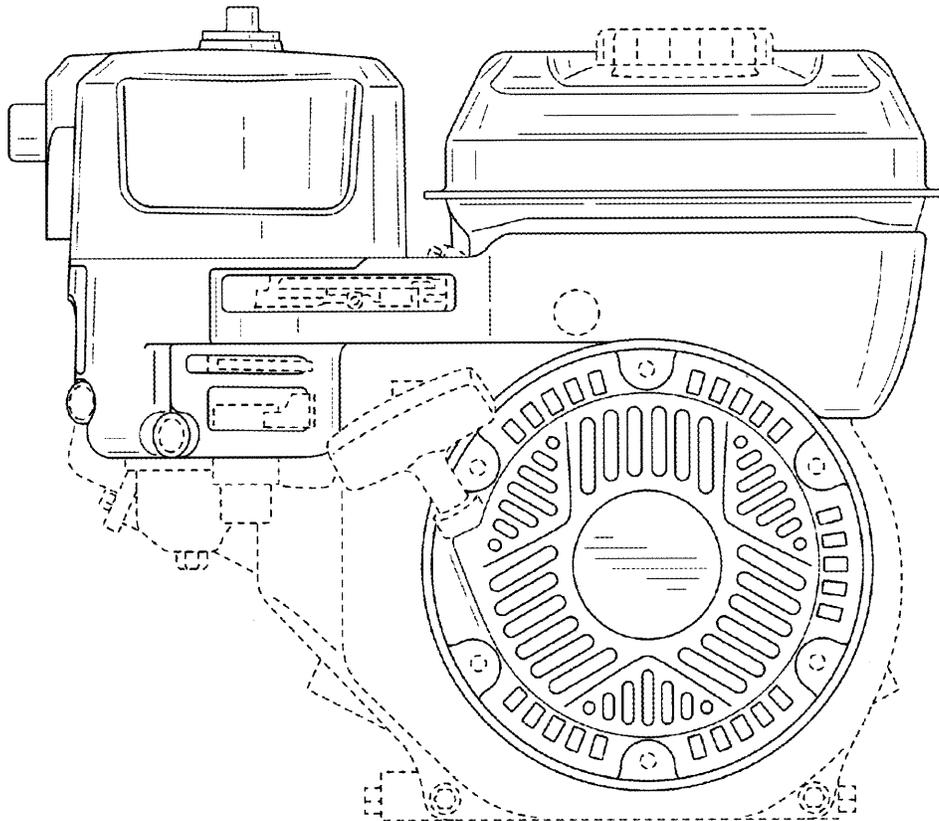


FIG. 6

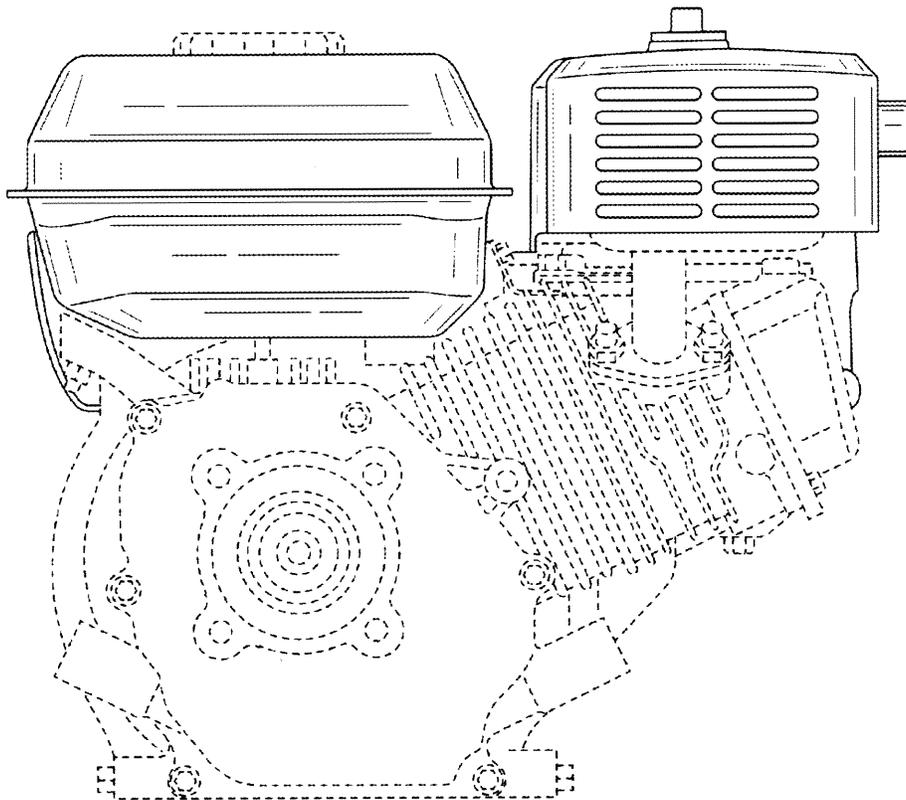


FIG. 7

Applicant Exhibit A11

United States Patent [19]
Johnson et al.

[11] **Patent Number: Des. 309,458**
[45] **Date of Patent: ** Jul. 24, 1990**

[54] **INTERNAL COMBUSTION ENGINE**
[75] **Inventors: Gary S. Johnson, Racine; Thomas J. Green, West Bend, both of Wis.**
[73] **Assignee: Briggs & Stratton Corporation, Wauwatosa, Wis.**
[**] **Term: 14 Years**
[21] **Appl. No.: 182,743**
[22] **Filed: Apr. 18, 1988**
[52] **U.S. Cl. D15/1**
[58] **Field of Search D15/1, 3; 123/22, 50 R, 123/50 A, 50 B, 51 R, 51 A, 51 B, 52 R, 56 R, 56 A, 56 B, 65 R, 311**

4,429,668 2/1984 Nakagawa et al. 123/56 R X

OTHER PUBLICATIONS

Implement & Tractor, 2/21/79, p. 37, Kawasaki Engine Advertisement.

Primary Examiner—Wallace R. Burke
Assistant Examiner—Brian N. Vinson
Attorney, Agent, or Firm—Andrus, Scales, Starke & Sawall

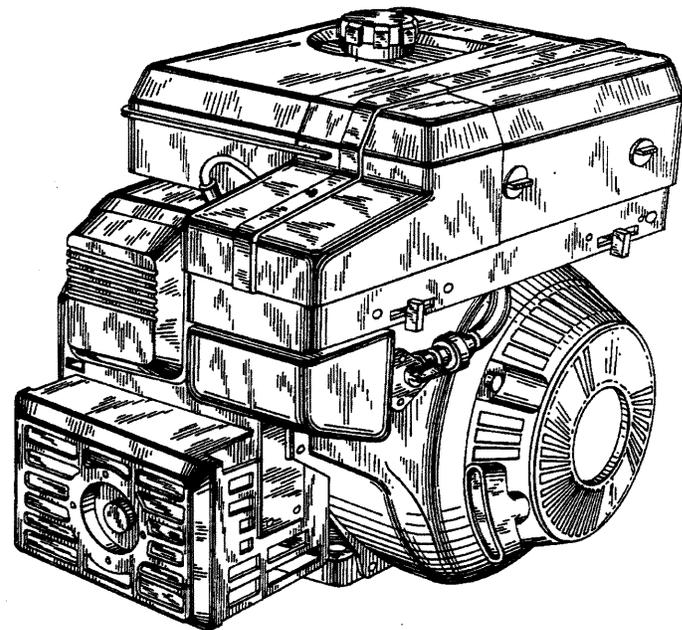
CLAIM

[57] The ornamental design for an internal combustion engine, as shown.

DESCRIPTION

FIG. 1 is a front elevational view of an internal combustion engine showing our new design;
FIG. 2 is a rear elevational view thereof;
FIG. 3 is a top plan view thereof;
FIG. 4 is a left side elevational view thereof;
FIG. 5 is a right side elevational view thereof; and
FIG. 6 is a perspective view thereof.

[56] **References Cited**
U.S. PATENT DOCUMENTS
D. 247,177 2/1978 Stevens D15/1
D. 282,071 1/1986 Nakamura D15/1
D. 284,862 7/1986 Iida D15/1
D. 294,832 3/1988 Ito et al. D15/1



Hotz
EXHIBIT 139
3-26-14 JF

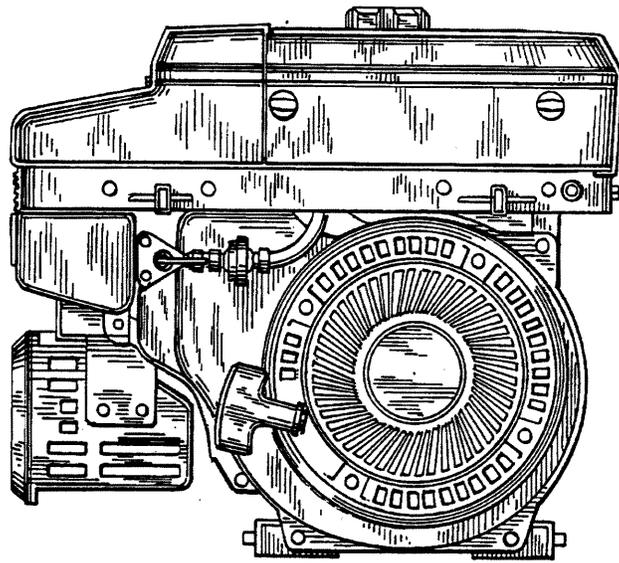


FIG. 1.

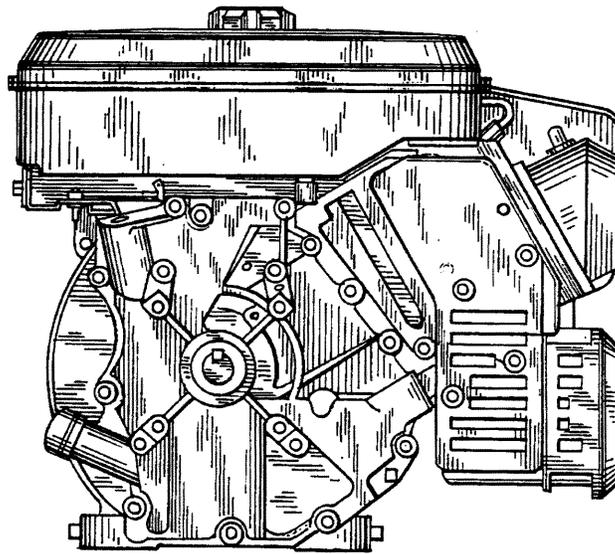


FIG. 2

FIG. 3

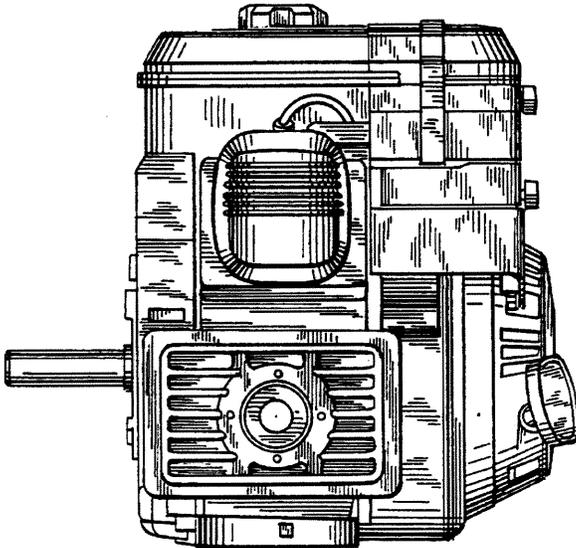
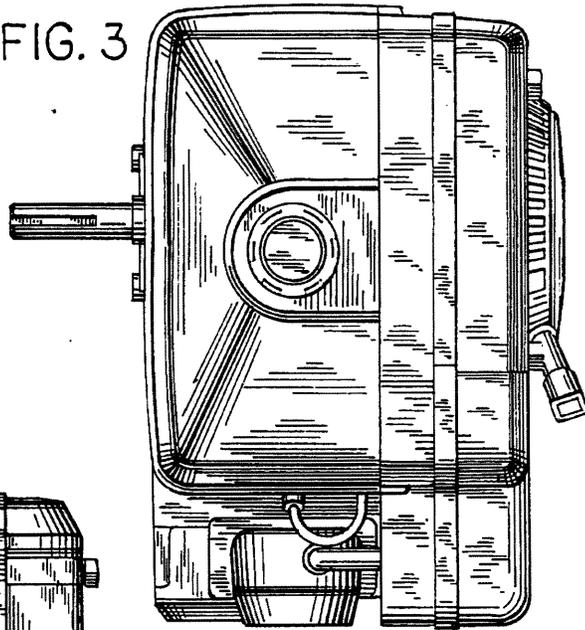
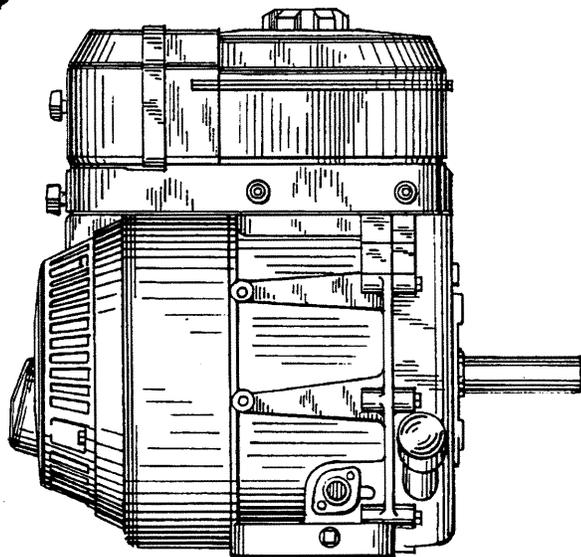


FIG. 4

FIG. 5



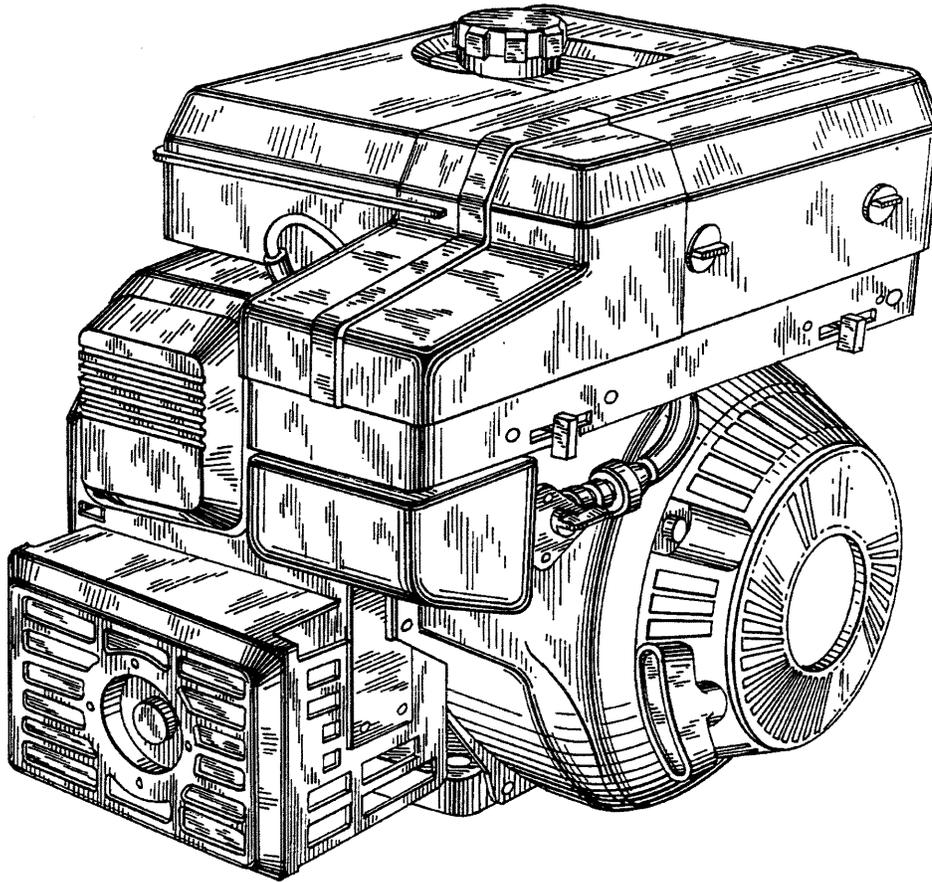


FIG. 6

Applicant Exhibit A12



US00D595737S

(12) **United States Design Patent**
Neeley et al.

(10) **Patent No.:** US D595,737 S
(45) **Date of Patent:** ** Jul. 7, 2009

- (54) **ENGINE**
- (75) Inventors: **Brian D. Neeley**, West Bend, WI (US);
Bart Mayer, Fond du Lac, WI (US)
- (73) Assignee: **Briggs & Stratton Corporation**,
Wauwatosa, WI (US)
- (**) Term: **14 Years**
- (21) Appl. No.: **29/306,238**
- (22) Filed: **Apr. 4, 2008**
- (51) **LOC (9) Cl.** **15-01**
- (52) **U.S. Cl.** **D15/1**
- (58) **Field of Classification Search** D15/1,
D15/3, 5, 17; 123/50 A, 50 B, 50 R, 198 E,
123/306, 308, 667, 41.7, 70 R
See application file for complete search history.

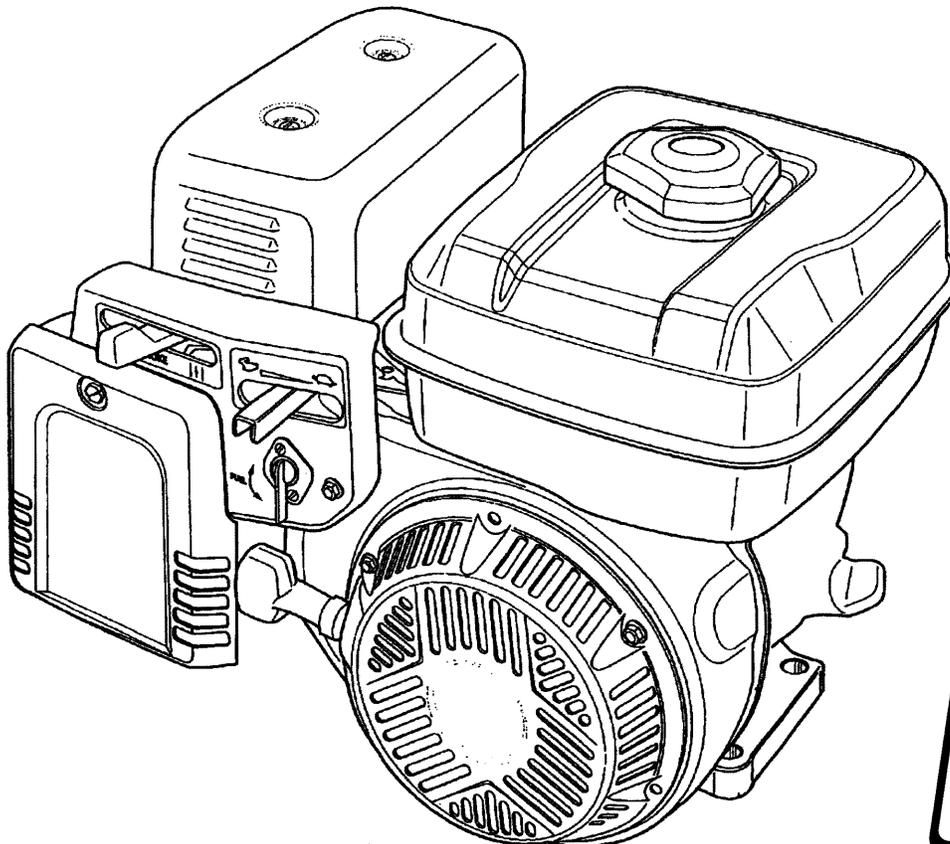
- (56) **References Cited**
U.S. PATENT DOCUMENTS
- D324,221 S * 2/1992 Kiyooka et al. D15/1
- D398,010 S * 9/1998 Yoshida et al. D15/1
- D515,589 S * 2/2006 Lin et al. D15/1

D521,528 S * 5/2006 Kamijo et al. D15/1
* cited by examiner
Primary Examiner—Lisa P Lichtenstein
(74) *Attorney, Agent, or Firm*—Michael Best & Friedrich LLP

(57) **CLAIM**
We claim the ornamental design for an engine, as shown and described.

DESCRIPTION
FIG. 1 is a perspective view of an engine embodying the invention;
FIG. 2 is a front view of the engine of FIG. 1;
FIG. 3 is a first side view of the engine of FIG. 1;
FIG. 4 is a second side view opposite the first side view of the engine of FIG. 1;
FIG. 5 is a top view of the engine cover of FIG. 1;
FIG. 6 is a bottom view of the engine cover of FIG. 1; and,
FIG. 7 is a rear view of the engine cover of FIG. 1.

1 Claim, 7 Drawing Sheets



Hot 2
EXHIBIT 140
3-26-14
JA

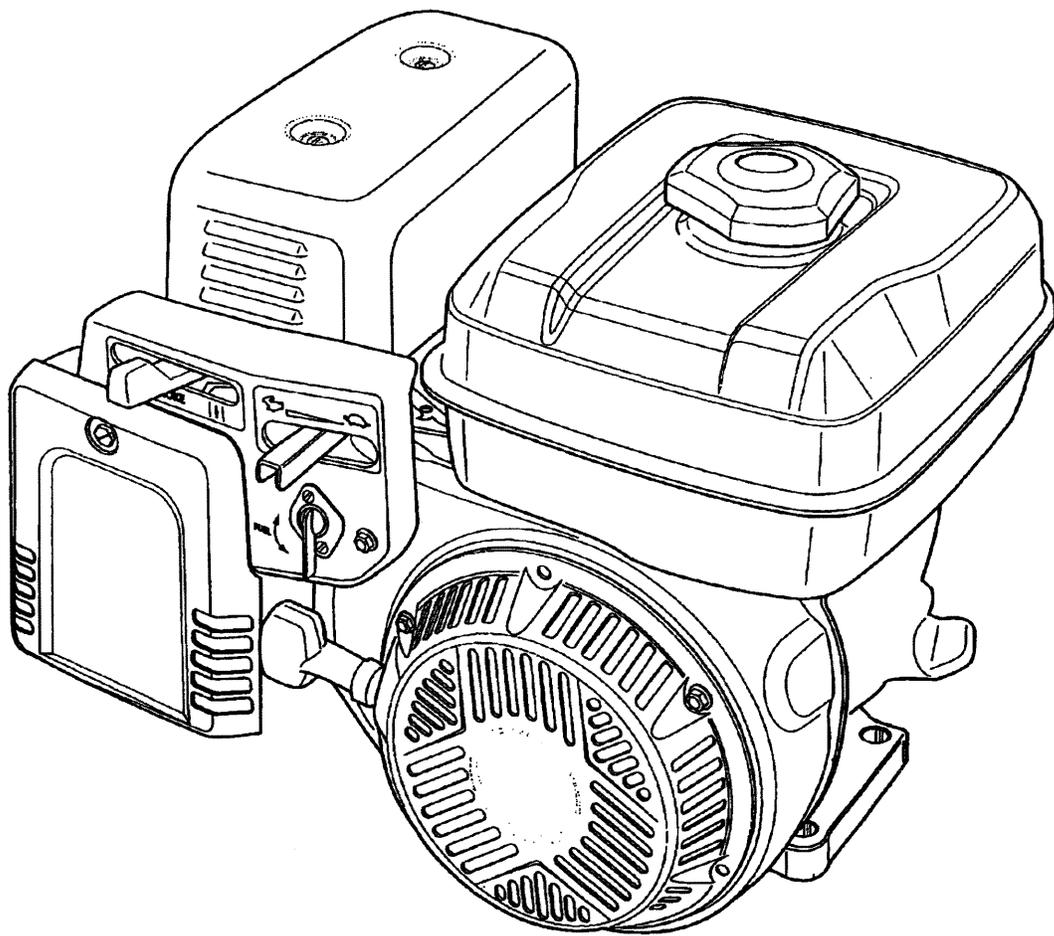


Fig. 1

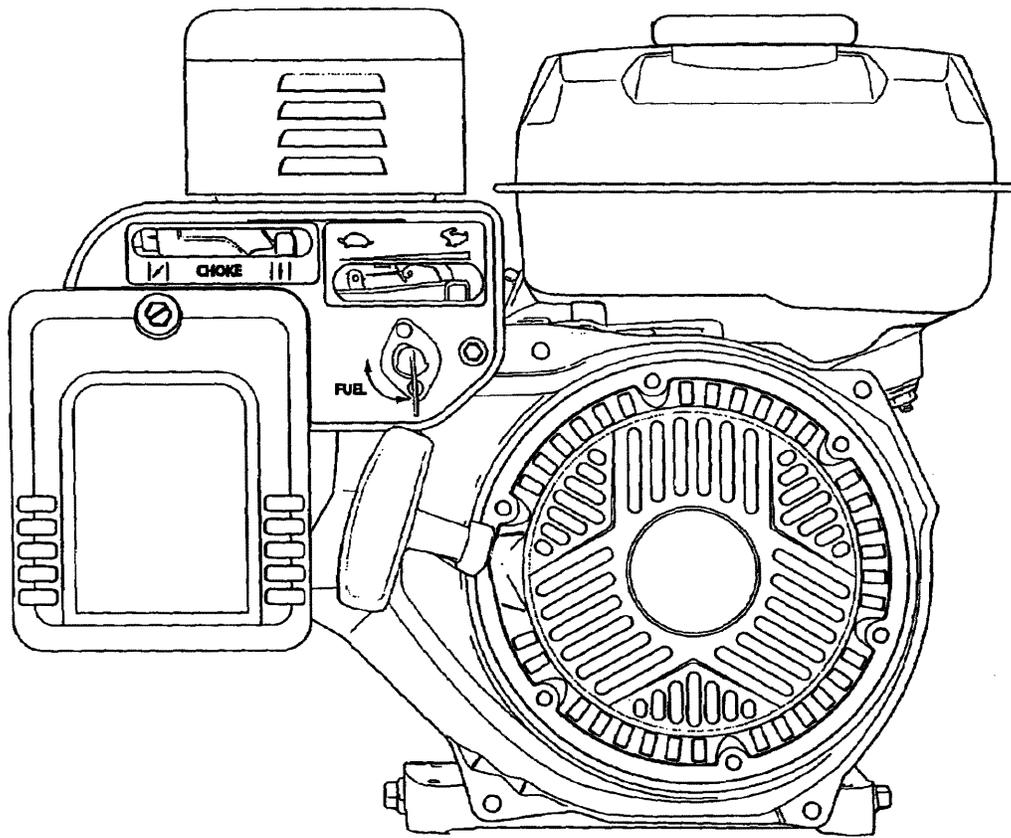


Fig. 2

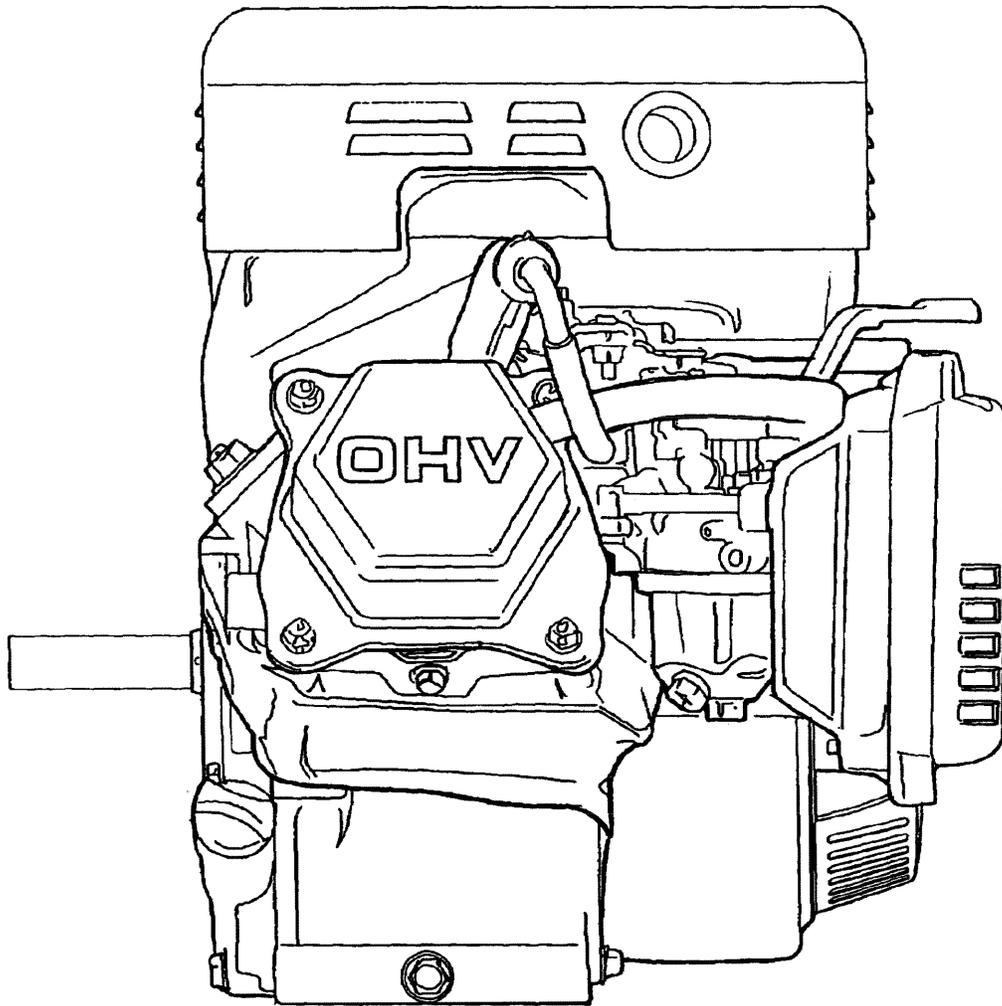


Fig. 3

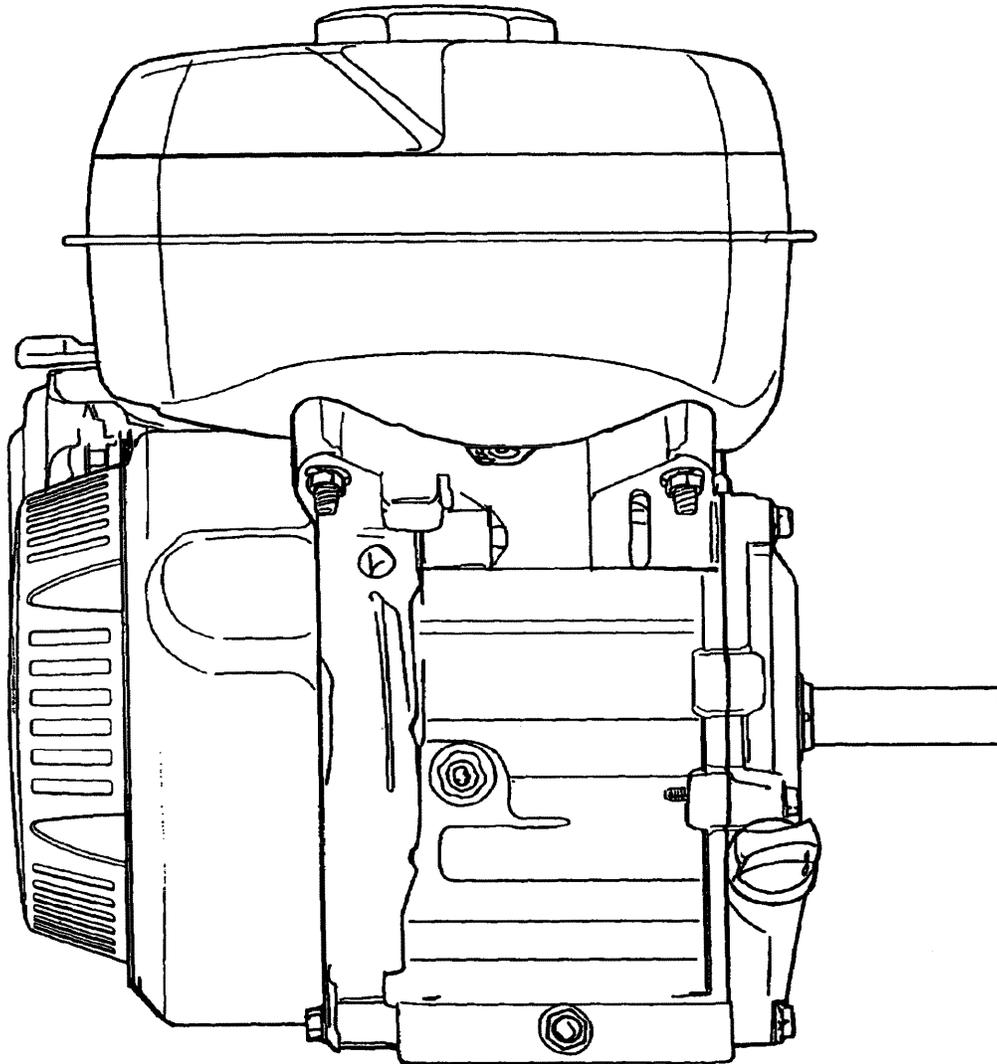


Fig. 4

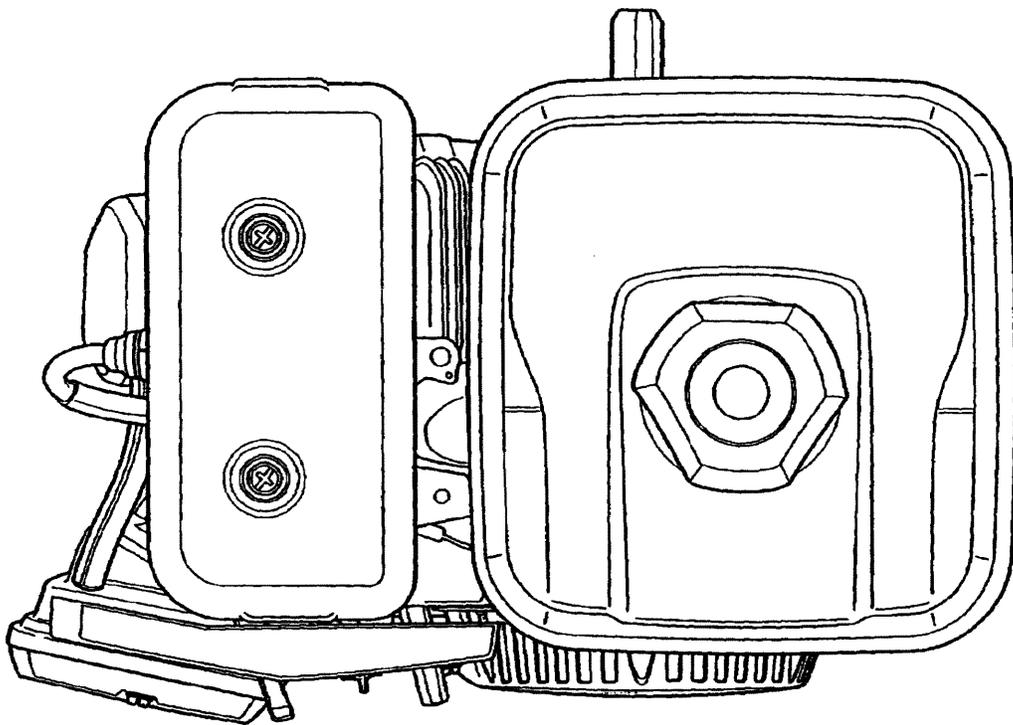


Fig. 5

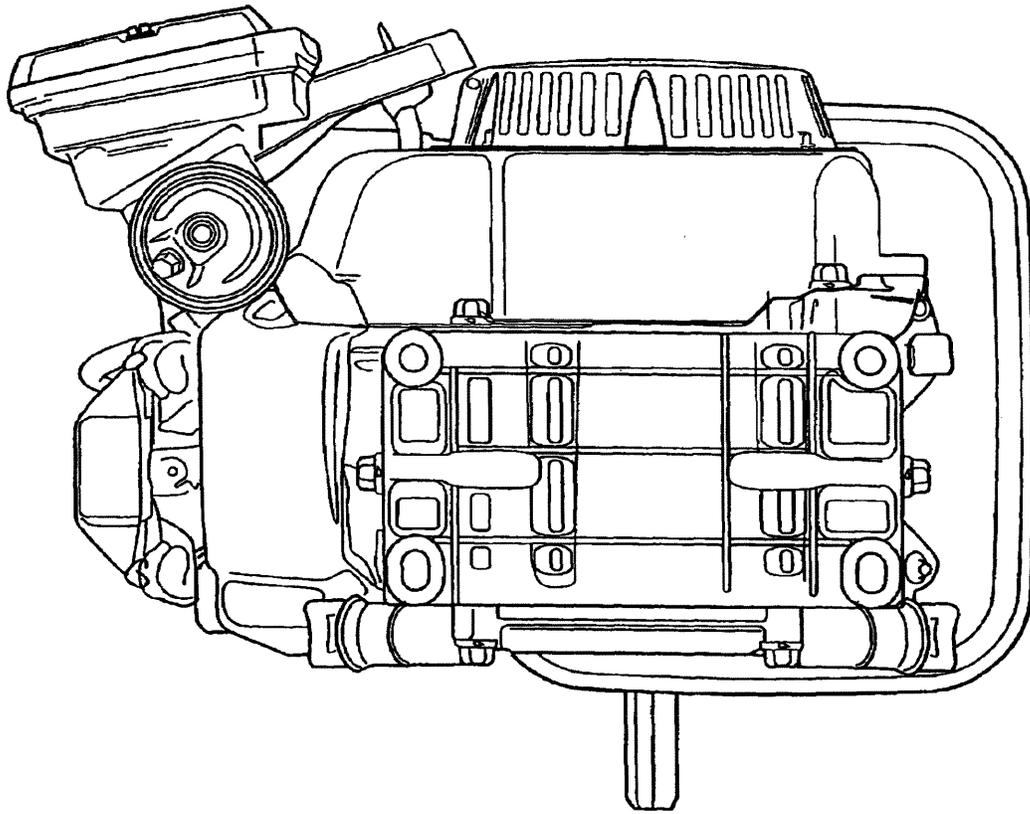


Fig. 6

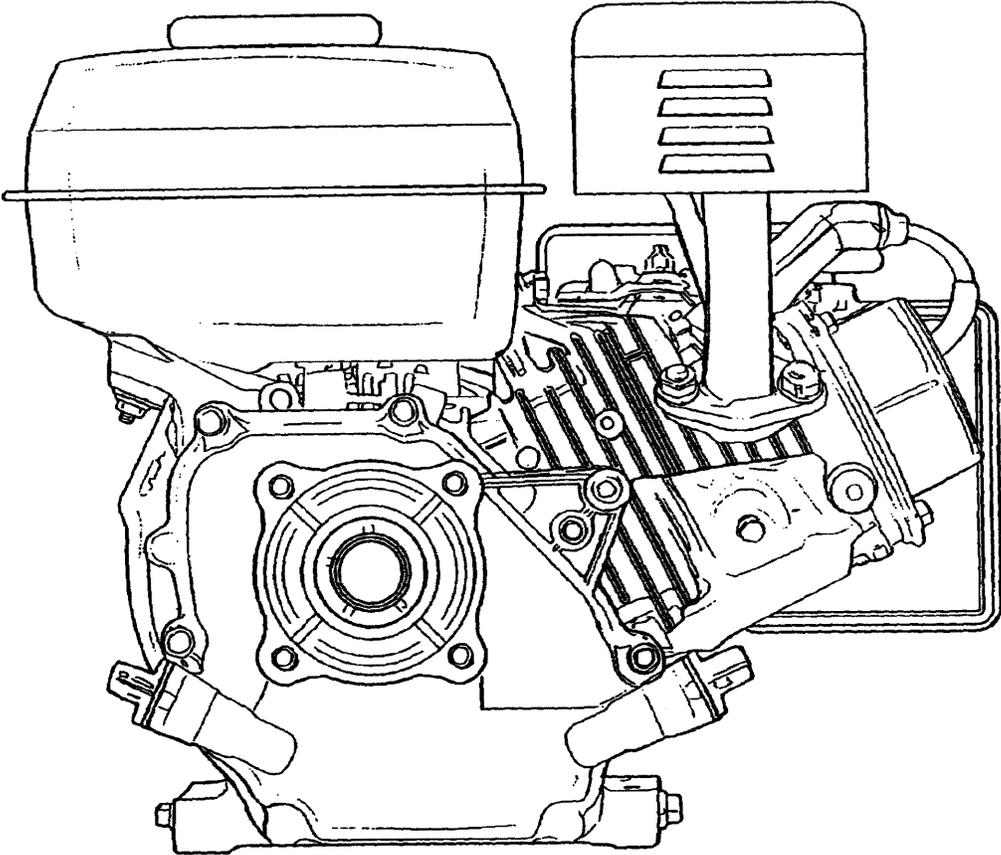


Fig. 7

Applicant Exhibit A13

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Applicant Exhibit A14

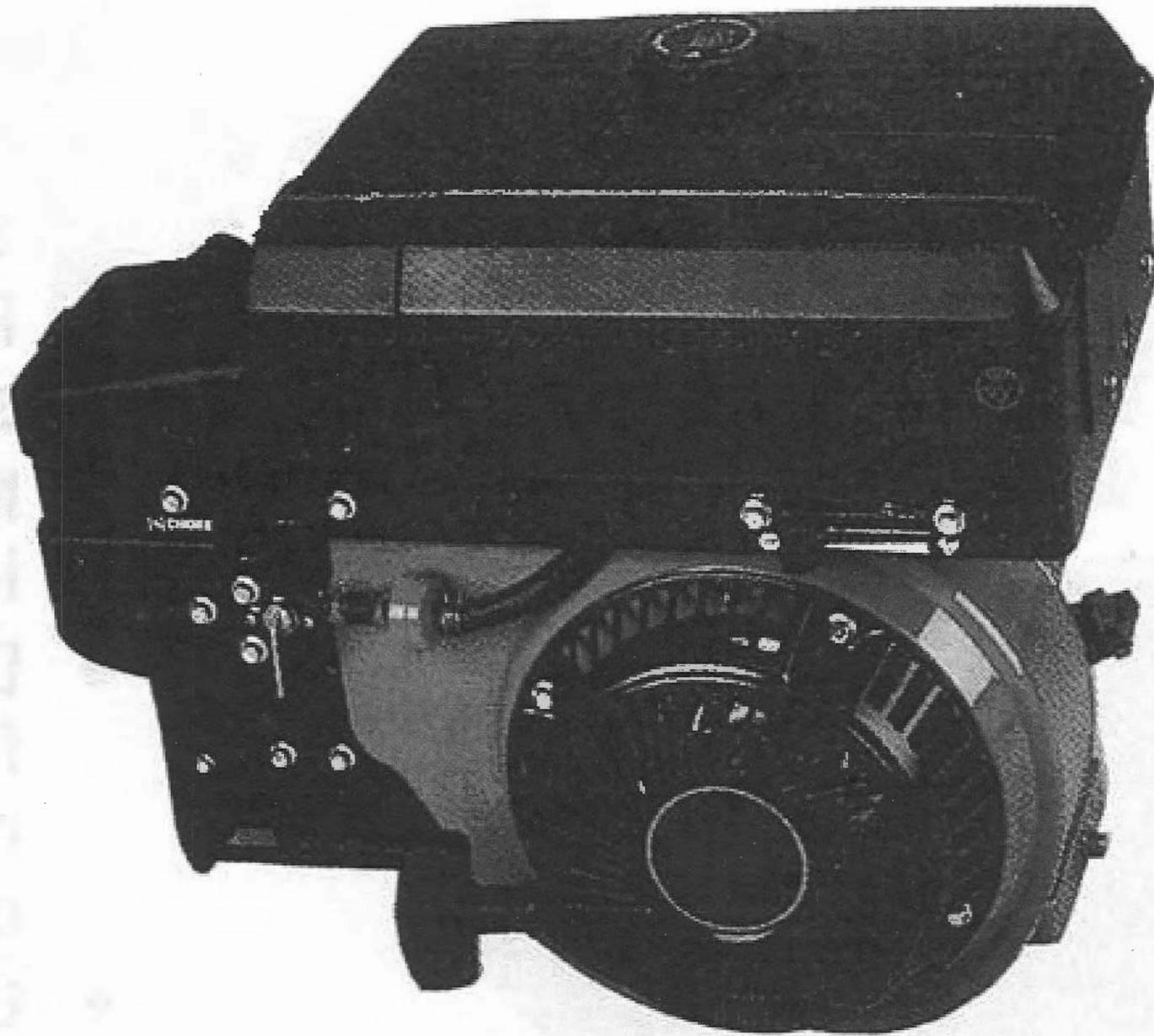
Confidential

Applicant Exhibit A15



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EXHIBIT 143
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Applicant Exhibit A16



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EXHIBIT 144
3-26-14