

# **EXHIBIT 2**

738 Fed.Appx. 1016 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. Fed. Cir. Rule 32.1. United States Court of Appeals, Federal Circuit.

NATURAL ALTERNATIVES  
INTERNATIONAL, INC., Appellant

v.

Andrei IANCU, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Intervenor

2017-1963

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Decided: October 1, 2018

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. 95/002,048.

#### Attorneys and Law Firms

Scott A. M. Chambers, Porzio, Bromberg & Newman, PC, Washington, DC, argued for appellant. Also represented by Richard J. Oparil, Kevin M. Bell, Billy Dell Chism; Matthew Zapadka, Bass, Berry & Sims, PLC, Washington, DC.

Mary L. Kelly, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA, argued for intervenor. Also represented by Thomas W. Krause, Robert J. Mcmanus, Amy J. Nelson.

Before Prost, Chief Judge, Moore and Reyna, Circuit Judges.

#### Opinion

Prost, Chief Judge.

Woodbolt Distributors, LLC (“Woodbolt”) requested that the United States Patent and Trademark Office (“PTO”) reexamine U.S. Patent No. 8,129,422 (“the ‘422 patent”) owned by Natural Alternatives International, Inc. (“NAI”). The PTO ordered *inter partes* reexamination, and the examiner rejected the challenged \*1017 claims as anticipated by or obvious over cited prior art, including a parent of the reexamined patent. NAI appeals the Patent Trial and Appeal Board’s (“Board”) final determination affirming the examiner’s rejections and its subsequent denial of NAI’s request for rehearing.

The ‘422 patent issued from the seventh U.S. application in a chain of eight U.S. applications generally directed to increasing athletes’ endurance. This opinion addresses NAI’s priority challenge as to the ‘422 patent. Our companion opinion, *Natural Alternatives International, Inc. v. Matal*, No. 17-1962, addressed NAI’s priority challenge as to the patent issuing from the eighth application—U.S. Patent No. 8,067,381 (“the ‘381 patent”).

Because the facts and procedural history in the two cases are substantially identical, we do not repeat our discussion of those topics here. Regarding the merits of this appeal, we affirm the Board’s final determination and its denial of NAI’s request for rehearing for the reasons stated in our companion opinion.

**AFFIRMED**

#### All Citations

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