UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBAAD MASSUOT YITZHAK, LTD. AND ALBAAD USA, INC.,

Petitioners

v.

EDGEWELL PERSONAL CARE BRANDS, LLC

Patent Owner

U.S. Patent No. 9,192,522

Filed: Mar. 5, 2007

Issued: Nov. 24, 2015

Title: Tampon Assembly Having Shaped Pledget

Inter Partes Review No. IPR2017-0693

PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 9,192,522



TABLE OF CONTENTS

Ι. Ι	NTR	ODUCTION <u>Pa</u>	<u>ige</u> 1
II.		RMALITIES	
	A.	Real Parties-In-Interest (37 C.F.R. § 42.8(b)(1))	1
	B.	Related Matters (37 C.F.R. § 42.8(b)(2))	1
	C.	Designation of Counsel (37 C.F.R. § 42.8(b)(3)) and Power of Attorney (37 C.F.R. § 42.10(b))	-
	D.	Proof of Service (37 C.F.R. §§ 42.6(e) and 42.105(a)), Service Information (37 C.F.R. § 42.8(b)(4)), and Payment of Fees (37 C.F.R. 42.103).	
III.	REQUIREMENTS FOR INTER PARTES REVIEW (37 C.F.R. § 42.104)3		
	A.	Grounds for Standing (37 C.F.R. § 42.104(a))	3
	B.	Identification of Claims Being Challenged (37 C.F.R. § 42.104(b)) and Statement of Precise Relief Requested	
	C.	Threshold for Inter Partes Review (37 C.F.R. § 42.108(c))	4
	D.	Statement of Non-Redundancy	.4
IV.	TH	E '522 PATENT	5
	A.	Overview	5
	B.	Summary of the Prosecution History	12
		1. Patent Application 10/834,386 – The '434 Patent	12
		2. Patent Application 11/713,974 – The '522 Patent	18
	C.	Person of Ordinary Skill in the Art.	21
V.	CL	AIM CONSTRUCTION	.22
	Α.	"Plurality of Discrete Petals" (claims 1, 9, 15, 16, 22, 27, 34, 39)	22



	В.	_	nerally elliptical and "generally tapered" (claims 1, 8, 9, 14, 15, 21, 28, 35 and 39)25			
	C.	_	ection force of greater than about 5 ounces less than about 8 ounces' im15)			
	D.	"an outer radial dimension that decreases between the distal tip [the front end] of said pledget and a plane through said pledget where said taper begins" (claim 22, 29 and 34)				
	E.	supp	d tapered tip [region] contacting [or contacts] and supporting [or ports] at least said base regions of said [the] plurality of petals" ims 1, 9, 15, 22, 27, 34, and 39)			
	F.	"firs	st taper ratio" (claims 4, 10, 11, 22, 25, 27, 31, 34, 36, and 37)30			
	G.	"second taper ratio" (claims 4, 22, 25, 29, 31, 33, 34 and 37)30				
	H.	"a f	irst long length that enables gradual insertion" (claim 9)30			
dimension at said second plane said tip end and said second pl			herein said pledget has a second taper ratio of said outer radial ension at said second plane to a length of said tapered tip between tip end and said second plane, of more than about 0.3 and less than ut 1.0." (claims 22 and 34)			
	J.		d [discrete] petals being separated from each other by a plurality of cuts" (claims 15, 27, 34, and 39)			
VI.	ANALYSIS OF THE CHALLENGED CLAIMS					
	A.	Intro	oduction32			
		1.	Tapered Designs Were Not New in 2003			
		2.	Minimizing Ejection Force Was a Well-Known Design Parameter Before 2003			
		3.	Using Cotton and Other Fibers Was Not New in 200339			
	B.	B. Grounds For Invalidity				
		1.	Ground 1: Claims 1, 2, 4, 7, 8, 9, 10, 12, 14, 22, 23, 25, 27, 28, 29, 31, 33, 34, 35, 36, 37, and 39 Were Anticipated By U.S. Patent No. 6,432,075 ("Wada")			



2.	Ground 2: Claims 1, 4, 22, 25, 27, 29, 31, 33, 34, And 37 Of The '522 Patent, Would Have Been Obvious Over Wada And Routine
	Engineering Principles78
3.	Ground 3: Claims 15, 18 And 21 Of The '522 Patent, Would Have
	Been Obvious Over Wada And 3,699,962 (Hanke)82
4.	Ground 4: Claims 15, 18 And 21 Of The 522 Patent, Would Have
	Been Obvious Over Wada And Common Sense Engineering
	Principles In The Prior Art85
5.	Ground 5: Claim 16 Would Have Been Obvious Over Wada, Hanke
	And U.S. Patent No. 3,433,225 (Voss)86
VII. CONCI	USION89



TABLE OF AUTHORITIES

Page(s)
Cases
Bristol-Myers Squibb v. Ben Venue Laboraties,
246 F.3d 1368 (Fed. Cir. 2001)
Brown, v. 3M,
265 F.3d 1349 (Fed. Cir. 2001)
Ex Parte LeMay, Gorham, and Jarmon
2008 Pat. App LEXIS 6774 (BPAI 2008)16, 17, 36, 56, 57
Facebook, Inc. v. Pragmatus AV, LLC,
582 Fed. Appx. 864 (Fed. Cir. 2014)22
Gardner v. Tec Systems, Inc.,
725 F.2d 1338 (Fed. Cir. 1984)
Hotchkiss v. Greenwood,
52 U.S. 248 (1850)39
In re Aller,
220 F.2d 454 (CCPA 1955)
In re Boesch,
617 F.2d 272 (CCPA 1980)
In re Geisler,
116 F.3d 1465 (Fed. Cir. 1997)
In re Woodruff,
919 F.2d 1575 (Fed. Cir. 1990)
International Business Machines Corp. v. Intellectual Ventures I LLC,
IPR2014-01385, Paper 64 (Jan. 15, 2016)22
Nautilus, Inc. v. Biosig Instruments, Inc.,
134 S.Ct. 2120 (2014)25
Peters v. Active Mfg.,
129 U.S. 530 (1889)



DOCKET A L A R M

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

