

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

EDGEWELL PERSONAL CARE BRANDS, LLC,
Patent Owner.

Case IPR2017-00693
Patent 9,192,522 B2

Before KEVIN W. CHERRY, JAMES A. WORTH,
and AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Albaad Massuot Yitzhak, Ltd. and Albaad USA, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1, 2, 4, 7–10, 12, 14–16, 18, 21–23, 25, 27–29, 31, 33–37, and 39 (“the challenged claims”) of U.S. Patent No. 9,192,522 B2 (Ex. 1001, “the ’522 patent”). Paper 2 (“Pet”). Edgewell Personal Care Brands, LLC (“Patent Owner”) filed a Preliminary Response. Paper 10 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition shows that “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” *See also* 37 C.F.R § 42.4(a) (delegating authority to the Board). Taking into account the arguments presented in the Preliminary Response, we conclude that the information presented in the Petition does not establish a reasonable likelihood that Petitioner would prevail in showing claims 1, 2, 4, 7–10, 12, 14–16, 18, 21–23, 25, 27–29, 31, 33–37, and 39 of the ’522 patent are unpatentable. Accordingly, we decline to institute an *inter partes* review.

B. Related Proceeding

The parties represent that the ’522 patent is at issue in district court litigation, *Edgewell Personal Care Brands, LLC v. Albaad Massuot Yitzhak, LTD & Albaad USA, Inc.*, No. 1:2015-cv-01188-RGA (D. Del.). Pet. 1; Paper 5, 2.

C. The '522 Patent

The '522 patent, titled "Tampon Assembly Having Shaped Pledget," issued November 24, 2015 from U.S. Patent Application No. 11/713,974, filed March 5, 2007. Ex. 1001. Figure 1 is reproduced below.

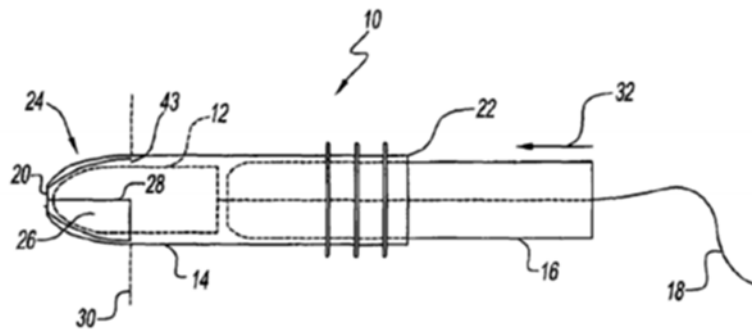


Fig. 1

Figure 1 is a side view of tampon assembly 10. *Id.* at 2:26–27. The tampon assembly includes applicator barrel 14 and shaped pledget 12 housed within the barrel. *Id.* at 2:54–58. The barrel's first end 20 defines tapered insertion tip 24, which includes a plurality of petals 26 separated from each other by a plurality of slits 28. *Id.* at 2:63–67.

The '522 patent explains that pledget 12 includes tip section 40, which can be formed by compression or by cutting, and may have a higher density or the same density as the rest of the pledget. *Id.* at 5:44–53.

D. Illustrative Claim

Of the challenged claims, claims 1, 9, 15, 22, 27, 34, and 39 are independent. Independent claim 1 is illustrative, and is reproduced below:

1. A tampon assembly, comprising:
a barrel region having a single layer plastic tubular wall having an inner surface and an outer surface, said barrel region having a first end and a second end, said barrel region having a plurality of discrete petals at said

first end that define a generally tapered shaped insertion tip region, said discrete petals being separated from each other by a plurality of cuts that form a break of material through said tubular wall, each of said plurality of cuts having a terminal end adjacent a base region of said plurality of discrete petals, each of said plurality of cuts extending along said barrel region for a first length measured from said first end to said terminal end;

a tapered pledget having an end region that has been compressed to form a tapered insertion tip that has a greater density than an adjacent region of said pledget prior to said tampon assembly being inserted into a user, said tapered tip having a length that is less than said first lengths of said plurality of cuts, said tapered tip contacting and supporting at least said base regions of said plurality of petals adjacent to said terminal ends of said plurality of cuts while said tampon assembly is being inserted into said body for mitigating against said plurality of petals pinching said user.

Ex. 1001, 6:64–7:21 (emphasis added).

E. Prior Art Relied Upon

Petitioner relies upon the following prior art references, as well as the Declaration of Raymond J. Hull, Jr. (“Hull Declaration,” Ex. 1036). Pet. 3–4.

Reference	Patent No.	Relevant Dates	Exhibit No.
Voss	US 3,433,225	Filed Dec. 22, 1965 Issued Mar. 18, 1969	Ex. 1040
Hanke	US 3,699,962	Filed Oct. 28, 1970 Issued Oct. 24, 1972	Ex. 1050
Wada	US 6,432,075 B1	Filed Nov. 8, 2000 Issued Aug. 13, 2002	Ex. 1056

F. Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims 1, 2, 4, 7–10, 12, 14–16, 18, 21–23, 25, 27–29, 31, 33–37, and 39 of the '522 patent based on the following grounds. Pet. 3–4.

Reference(s)	Basis	Claim(s) Challenged
Wada	§ 102(e)	1, 2, 4, 7, 8, 9, 10, 12, 14, 22, 23, 25, 27, 28, 29, 31, 33, 34, 35, 36, 37, and 39
Wada and Routine Engineering Principles	§ 103(a)	1, ¹ 4, 15, 18, 21, 22, 25, 27, 29, 31, 33, 34, and 37
Wada and Hanke	§ 103(a)	15, 18, and 21
Wada, Hanke, and Voss	§ 103(a)	16

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under that standard, and absent any special definitions, we give claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

¹ Although the Petition does not include claim 1 in this ground, in its identification of claims being challenged, *see* Pet. 3, claim 1 is at least partially analyzed under this ground in the body of the Petition, *id.* at 78.

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.