

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

UNI-CHARM CORP. AND
EDGEWELL PERSONAL CARE BRANDS, LLC,
Patent Owner.

Case IPR2017-00694
Patent 6,432,075 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 1–6 (“the challenged claims”) of U.S. Patent No. 6,432,075 B2 (Ex. 1001, “the ’075 patent”). Paper 2 (“Pet”). Edgewell Personal Care Brands, LLC, an exclusive licensee of the ’075 patent, filed a Preliminary Response. Paper 10 (“Prelim. Resp.”); *see also* Paper 9 (Updated Mandatory Notices); Ex. 2001, 2–3 (Patent Owner Uni-Charm Corp. representing that Edgewell has authority to participate in this proceeding). Accordingly, for purposes of this Decision, we treat Edgewell as “Patent Owner.”¹

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 challenging claims 1–6 of the ’075 patent as unpatentable. Accordingly, we decline to institute an *inter partes* review.

¹ The caption for this proceeding is amended to reflect Edgewell’s appearance and participation in this proceeding. The parties are instructed to use the caption appearing on the first page of this Decision in any subsequent paper.

B. Related Proceeding

The parties represent that the '075 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 4, 2.

C. The '075 Patent

The '075 patent, titled "Applicator for Tampons," issued August 13, 2002, from U.S. Patent Application No. 09/708,843, filed November 8, 2000. Ex. 1001. Figure 1 is reproduced below.

Fig. 1

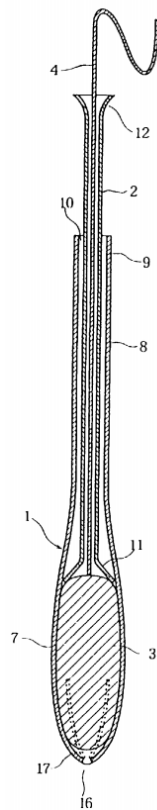


Figure 1 depicts a sectional view of the applicator, which includes outer cylinder 1 and inner cylinder 2, with tampon 3 fitted within outer cylinder 1. *Id.* at 3:41–46. Outer cylinder 1 includes valves 17. *Id.* at 4:30–33.

Figures 2A and 2B are reproduced below.

Fig. 2A

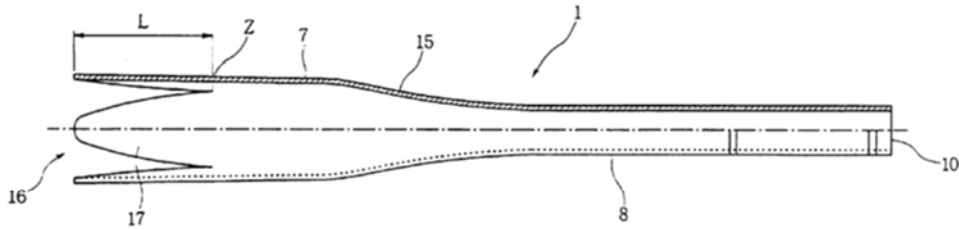
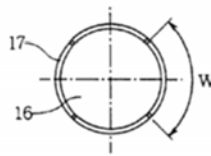


Fig. 2B



Figures 2A and 2B are side and end views of outer cylinder 1. *Id.* at 3:21–25. Outer cylinder 1 is injection molded into a cylindrical shape, as shown in Figure 2A, with large diameter portion 7 and small diameter portion 8, and inflection plane 15 therebetween. *Id.* at 4:19–25. In this state, valves 17 have length L and width W, at their root ends. *Id.* at 4:35–39. “[A] ratio L/W between the length L of the valve 17 and the width W of the root end is set within a range of 1.0 to 2.0.” *Id.* at 5:32–34.

Figure 3 is reproduced below.

Fig. 3

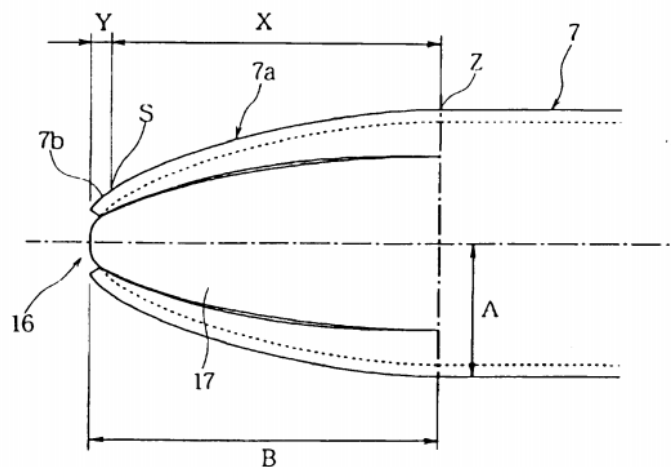


Figure 3 depicts large diameter portion 7, after a heated die has been pressed against the leading end of the large diameter portion, which deforms valves 17 into curved face portion 7a. *Id.* at 3:26–27, 4:55–62. As shown in Figure 3, “when the outer face of the large diameter portion 7 at the inflection point Z has a radius A and the axial length from the inflection point Z to the leading end of the outer cylinder 1 is B, a ratio A/B is at most 0.8.” *Id.* at 5:20–24.

D. Illustrative Claim

Of the challenged claims, claims 1, 5, and 6 are independent.

Independent claim 1 is illustrative, and is reproduced below:

1. An applicator for a tampon, comprising:

an outer cylinder including forward and rearward ends, a first portion for fitting the tampon therein formed on a side of the forward end, and a second portion formed on a side of the rearward end and having a smaller diameter than that of said first portion,

a push-out member movably inserted into said second portion of said outer cylinder, and

a plurality of valves provided with the forward end of said outer cylinder, each valve being converged to have a curved face portion to be diametrically gradually reduced and define a leading end,

wherein a ratio of a radius of an outer face at an inflection point of a boundary between a maximum diameter portion of said first diameter portion and said curved face portion to an axial length of the outer face from the inflection point to the leading end of said curved face portion is at most 0.8; and

wherein a ratio of a length of said valves to a width of root ends of said valves is 1.0 to 2.0.

Ex. 1001, 7:24–44 (emphasis added).

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