

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CASCADES CANADA ULC and
TARZANA ENTERPRISES, LLC,
Petitioner,

v.

ESSITY HYGEINE AND HEALTH AB,
Patent Owner.

Case IPR2017-01902
Patent 8,597,761 B2

Before JO-ANNE M. KOKOSKI, KRISTINA M. KALAN,
and JON B. TORNQUIST, *Administrative Patent Judges*.

KOKOSKI, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a)

I. INTRODUCTION

We have jurisdiction to conduct this *inter partes* review under 35 U.S.C. § 6, and this Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–26 of U.S. Patent No. 8,597,761 B2 (“the ’761 patent,” Ex. 1001) are unpatentable.

A. *Procedural History*

Cascades Canada ULC and Tarzana Enterprises, LLC (collectively, “Petitioner”) filed a Petition (“Pet.”) to institute an *inter partes* review of claims 1–26 of the ’761 patent. Paper 3. Essity Hygiene and Health AB¹ (“Patent Owner”) filed a Preliminary Response. Paper 8. Pursuant to 35 U.S.C. § 314(a), we instituted an *inter partes* review of claims 1–26 based on the following grounds: (1) whether claims 1–3, 6, 10–18, and 21–23 are unpatentable under 35 U.S.C. § 102(b)² as being anticipated by Hochtritt³; (2) whether claims 1–3, 8, 9, 12, 13, and 23 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by Grosriez⁴; (3) whether claims 1–3, 6–23, and 26 are unpatentable under 35 U.S.C. § 103(a) as being obvious over Hochtritt; and (4) whether claims 1–26 are unpatentable under 35

¹ SCA Hygiene Products AB, the originally-named Patent Owner in this proceeding, legally changed its name to Essity Hygiene and Health AB. Paper 17, 1.

² The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended several provisions of 35 U.S.C., including §§ 102 and 103. Because the ’761 patent has an effective filing date prior to the effective date of the applicable AIA amendments, we refer herein to the pre-AIA versions of §§ 102 and 103.

³ U.S. Patent App. Pub. No. 2005/0058807 A1, published March 17, 2005 (Ex. 1015).

⁴ U.S. Patent No. 6,602,575 B2, issued August 5, 2003 (Ex. 1021).

U.S.C. § 103(a) as being obvious over the combined teachings of Hochtritt and Grosriez.⁵ Paper 10 (“Dec. on Inst.” or “Institution Decision”), 32.

After institution of trial, Patent Owner filed a Patent Owner Response (“PO Resp.,” Paper 22), Petitioner filed a Reply (“Pet. Reply,” Paper 33), and Patent Owner filed a Sur-Reply (“Sur-Reply,” Paper 47). Petitioner relies on the Declaration of Mate Mrvica (“the Mrvica Declaration,” Ex. 1002). Patent Owner relies on the Declaration of Paul Carlson (“the Carlson Declaration,” Ex. 2004) and the Declaration of T. Kim Parnell, PhD, PE (“the Parnell Declaration,” Ex. 2005).

Petitioner filed a Motion to Exclude the Parnell Declaration, the transcript of the deposition of Dr. Parnell (Ex. 1041), certain paragraphs of the Carlson Declaration and the related portions of the transcript of his deposition (Ex. 1040), and portions of the transcript of the deposition of Mr. Mrvica (Ex. 2006). Paper 38. Patent Owner filed an Opposition (Paper 41), and Petitioner filed a Reply (Paper 46). Patent Owner filed a Motion to Exclude portions of the transcript of the deposition of Mr. Mrvica, and portions of Petitioner’s Reply that rely on Mr. Mrvica’s deposition testimony. Paper 36. Petitioner filed an Opposition (Paper 43), and Patent Owner filed a Reply (Paper 45).

An oral hearing was held on November 8, 2018, and a transcript is included in the record. Paper 50 (“Tr.”).

⁵ We subsequently modified our Institution Decision to include review of “all of the challenged claims and all of the grounds presented in the Petition” (Paper 18, 2), then, based on a stipulation between the parties, limited this proceeding to the grounds as initially instituted (Paper 21, 3).

B. Related Proceedings

The parties indicate that the '761 patent is being asserted in *SCA Hygiene Products AB v. Tarzana Enterprises, LLC*, Case No. 2:17-cv-4395-AB-JPR (C.D. Cal.), and *SCA Hygiene Products AB v. Cascades, Inc.*, Case No. 3:17-cv-00282-wmc (W.D. Wis.). Pet. 1–2; Paper 6, 1. Petitioner further states that the '761 patent is being asserted in *SCA Hygiene Products AB v. Novex Products, Inc.*, Case No. 1:17-cv-02236-DCN (N.D. Ohio). Paper 9, 2.

The parties also identify IPR2017-01921, filed by Petitioner, as a related proceeding. IPR2017-01921 relates to U.S. Patent No. 9,320,372, which is a continuation of the '761 patent. Paper 4, 2; Paper 6, 1.

C. The '761 Patent

The '761 patent, titled “Stack of Interfolded Absorbent Sheet Products,” is directed to a plurality of absorbent sheets, each of which is folded at least twice about axes that are perpendicular to each other. Ex. 1001, at [54], [57]. In particular, the absorbent sheets “comprise a first fold that is deliberately offset from a parallel line bisecting the sheet, and a second fold that preferably bisects the sheet in the perpendicular direction.” *Id.* at 2:8–11.

Figures 1a, 1b, and 1c of the '761 patent are reproduced below.

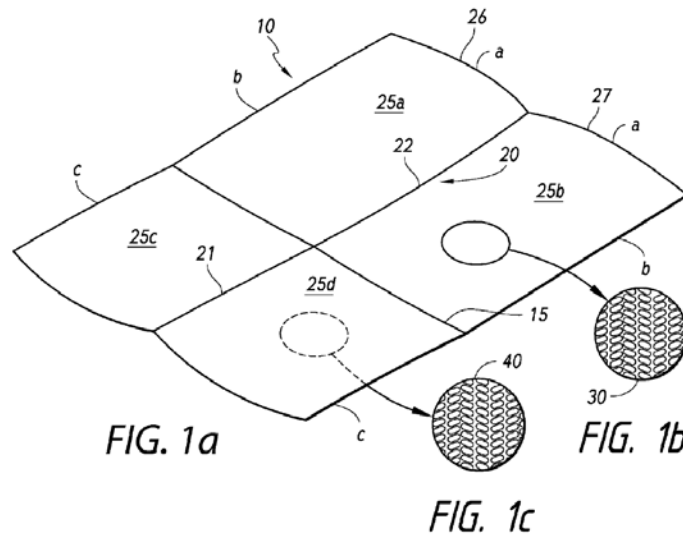


Figure 1a is a perspective view of an individual unfolded napkin according to an embodiment of the invention, and Figures 1b and 1c are details depicting embossing patterns applied to the obverse (front or principal) side and the reverse side of the napkin shown in Figure 1a, respectively. *Id.* at 2:42–48. In Figure 1a, sheet of absorbent material 10 “has been folded according to the invention and then unfolded.” *Id.* at 2:64–66. Prior to folding, sheet 10 “preferably has dimensions of approximately 8.5"x11”” that may “be varied to suit the particular desired application of the product.” *Id.* at 2:66–3:3. Sheet 10 is first folded along fold 15 (which is parallel to the short side of sheet 10 and thus has a length of 8.5”), then folded a second time along fold 20 that is perpendicular to fold 15. *Id.* at 3:4–7. First fold 15 is deliberately offset from the line parallel to it that would bisect sheet 10, in this case by approximately 2”, so that length “b” from fold 15 to the far short side of sheet 10 is approximately 6.5” and length “c” from fold 15 to the near short side of sheet 10 is approximately 4.5”. *Id.* at 3:11–17.

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