

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CASCADES CANADA ULC,  
Petitioner,

v.

ESSITY PROFESSIONAL HYGIENE NORTH AMERICA LLC,<sup>1</sup>  
Patent Owner.

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Case IPR2017-02198  
Patent 8,273,443 B2

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

TORNQUIST, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

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<sup>1</sup> After institution, Patent Owner changed its name from SCA Tissue North America, LLC, the originally named Patent Owner, to Essity Professional Hygiene North America LLC. Paper 10.

## I. INTRODUCTION

Cascades Canada ULC (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–15 of U.S. Patent No. 8,273,443 B2 (Ex. 1001, “the ’443 patent”). Essity Professional Hygiene North America LLC (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 6. Upon consideration of the Petition, the Preliminary Response, and the parties’ evidence, we determined that Petitioner had demonstrated a reasonable likelihood that it would prevail with respect to claims 1–15 of the ’443 patent. Paper 7, 28–29 (“Dec. on Inst.”). Thus, we instituted review with respect to those claims. We did not, however, institute review on all asserted grounds of unpatentability set forth in the Petition. Dec. on Inst. 5, 28–29.

On April 27, 2018, pursuant to the Supreme Court’s decision in *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018), we modified the institution decision to institute review of all challenged claims on all challenged grounds. Paper 12, 2.

Following institution of trial, Patent Owner filed a Patent Owner Response<sup>2</sup> (Paper 17, “PO Resp.”), Petitioner filed a Reply (Paper 26, “Pet. Reply”), and Patent Owner filed a Sur-Reply (Paper 30, “PO Sur-Reply”). Petitioner also filed a motion to exclude evidence (Paper 32, “MTE”). In support of their respective positions, Petitioner relies on the testimony of

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<sup>2</sup> Although Patent Owner’s papers indicate that they were filed by “Essity Hygiene and Health AB,” Patent Owner confirmed at oral argument that Essity Professional Hygiene North America LLC is the owner of the ’443 patent. Paper 39, 3:11–4:7. Thus, we understand the identification of “Essity Hygiene and Health AB” to be a typographical error.

Mate Mrvica (Ex. 1002), and Patent Owner relies on the testimony of Paul Carlson (Ex. 2007) and T. Kim Parnell, Ph.D. (Ex. 2008).

An oral hearing was held on December 14, 2018, and a transcript of the hearing is included in the record (Paper 39, “Tr.”).

*A. Related Proceeding*

The parties indicate that the ’443 patent is at issue in *SCA Hygiene Products Aktiebolag v. Cascades Canada ULC*, Case No. 3:17-cv-00282-wmc (W.D. Wis.). Pet. 1; Paper 4, 1.

*B. The ’443 Patent*

The ’443 patent “relates to a stack of interfolded absorbent sheet products,” and preferably “to a stack of interfolded paper napkins bearing a predetermined pattern imparted by embossing or by formation by the Through-Air Drying” technique. Ex. 1001, 1:14–18.

The folded absorbent sheet products of the ’443 patent are “preferably single ply paper napkins having a basis weight from about 10 to 20 lb per unfolded sheet.” *Id.* at 2:1–3. The ’443 patent explains that these paper napkins may be embossed “by conventional embossing rollers” and that the embossing may “take the form of a logo of the restaurant in which the napkins will be used.” *Id.* at 3:54–55, 3:65–4:10.

The ’443 patent contemplates four-panel, six-panel, and eight-panel napkins. *Id.* at 2:27–31. In a four-panel napkin, the sheet has “two folds each bisecting the napkin” that are “perpendicular to one another.” *Id.* at 2:22–24. “[I]n a six panel napkin, the initial sheet comprises one fold in the longitudinal direction of the sheet and two folds in the transverse direction, such that the resulting folded sheet comprises six equally sized panels.” *Id.* at 2:31–35. The eight-panel napkin has a structure similar to

the six-panel napkin, “but with three parallel folds in the transverse direction.” *Id.* at 2:35–36.

Figures 2(a) and 2(b) of the ’443 patent show the interfolding relationship of the six panel napkin embodiment:

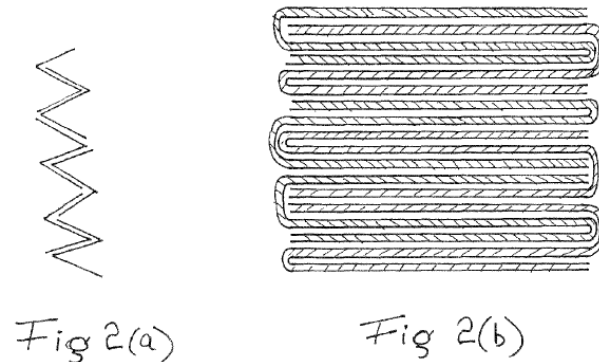


Figure 2(a) is a schematic representation of the interfold configuration of a stack of folded absorbent sheet products. *Id.* at 3:8–10. Figure 2(b) is a schematic cross-sectional view of the napkin stack shown in Figure 2(a). *Id.* at 3:11–12. As shown in Figures 2(a) and 2(b), “the uppermost napkin has its four lower panels sandwiched between two adjacent panels of the next lower napkin in the stack, whose lower four panels are in turn sandwiched between the lowermost two panels of the top napkin, and the uppermost two panels of the third napkin.” *Id.* at 4:50–55.

### C. Illustrative Claim

Petitioner challenges claims 1–15 of the ’443 patent. Pet. 7. Claims 1, 5, and 10 are independent. Claim 1 is illustrative of the challenged claims and is reproduced below:

1. A stack of interfolded absorbent sheet products, comprising a plurality of absorbent sheets each bearing an embossed surface relief of a predetermined pattern or design, wherein each of said absorbent sheets is a rectangular paper napkin,

wherein each of said absorbent sheets is entirely detached from all other absorbent sheets within said stack,

wherein each of said absorbent sheets has one fold along and coextensive with a longitudinal direction and two folds along and coextensive with a transverse direction, said two folds being parallel to one another and perpendicular to said one fold,

wherein each of said napkins comprises at least two panels sandwiched between adjacent panels of another of said paper napkins,

wherein said adjacent panels comprise an upper panel positioned above said at least two panels and a lower panel positioned below said at least two panels, and

wherein each of said napkins within said stack comprises an uppermost panel whose length and width are approximately equal to an overall length and width of each of said napkins, respectively, and a lowermost panel whose length and width are approximately equal to an overall length and width of each of said napkins, respectively.

Ex. 1001, 6:34–57.

*D. Instituted Grounds of Unpatentability*

We instituted trial to determine whether claims 1–15 of the '443 patent are unpatentable based on the following grounds (Dec. on Inst. 5, 28–29; Paper 12, 2):

References	Basis	Claim(s) Challenged
Teall <sup>3</sup> and ASTM-D4560 <sup>4</sup>	§ 103	1–15
Teall, ASTM-D4560, and Wheeler <sup>5</sup>	§ 103	2, 7, and 11

<sup>3</sup> US 1,290,801, issued Jan. 7, 1919 (Ex. 1015).

<sup>4</sup> ASTM-D4560, Standard Specification for Paper Napkins for Industrial and Institutional Use, *American Society for Testing and Materials*, dated December 1992 (Ex. 1018).

<sup>5</sup> US 1,430,709, issued October 3, 1922 (Ex. 1022).

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