

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

PAUL HARTMANN AG,
Appellant

v.

ATTENDS HEALTHCARE PRODUCTS, INC.,
Appellee

2022-1724, 2022-1725, 2022-1726, 2022-1727

Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2020-01477, IPR2020-01478, IPR2020-01479, IPR2020-01480.

Decided: March 4, 2024

KATHLEEN DALEY, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Washington, DC, argued for appellant. Also represented by JOSHUA GOLDBERG; BRANDON THOMAS ANDERSEN, Reston, VA.

JEREMY ALBRIGHT, Norton Rose Fulbright US LLP, Austin, TX, argued for appellee. Also represented by STEPHANIE DEBROW, EAGLE HOWARD ROBINSON.

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Before LOURIE, STOLL, and CUNNINGHAM, *Circuit Judges*.

STOLL, *Circuit Judge*.

Paul Hartmann AG appeals the final written decisions of the Patent Trial and Appeal Board in four inter partes reviews initiated by Attends Healthcare Products, Inc. The Board determined that all claims of Hartmann’s U.S. Patent Nos. 8,152,788, 8,784,398, 8,771,249, and 8,708,990 were unpatentable as obvious. Because the Board based its decision on unsupported assumptions, we vacate the Board’s determinations and remand for further proceedings consistent with this opinion.

BACKGROUND

Hartmann’s ’788, ’398, ’249, and ’990 patents (collectively, the Beckert Patents) relate to adult incontinence diapers.¹ The incontinence diapers include a main part or chassis, front side parts or wings, and rear side parts. ’249 patent, col. 1 ll. 13–35. The main part includes a liquid impermeable backsheet that forms the outer face of the main part and is directed away from the user’s body. *Id.* col. 1 ll. 13–22, col. 12 ll. 22–26. To close the incontinence diaper, the rear side parts are “wrapped onto the abdomen side of the user” and connected either to the backsheet or the outer face of the front side parts. *Id.* col. 1 ll. 35–40. The patents state that incontinence diapers in the prior art use mechanical closure aids consisting of hook-and-loop fasteners in which the hooks are present on the rear side parts and a corresponding loop component is present on the backsheet, or front of the diaper. *Id.* col. 1 ll. 42–65. This corresponding loop component is “a considerable cost factor” and may not be comfortable to the user. *Id.* col. 1 l. 59–col. 2 l. 3.

¹ The patents share a specification and thus, we cite to the ’249 patent for simplicity.

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The Beckert patents purport to have an improved closure system in which the “retaining forces between the mechanical closure means and the outer face of the main part [is] lower than the retaining forces between the mechanical closure means and the outer face of the [front] side parts.” *Id.* col. 2 ll. 7–16. Further, the “materials forming the outer face of the main part and the outer face of the side parts in the front area are inventively chosen so that, in addition to their primary function, they can also serve as the engagement surface for the closure means.” *Id.* col. 2 ll. 17–21.

Claims 1, 3 and 4 of the '249 patent are representative and are reproduced below, along with claim 2.

1. An absorbent incontinence diaper for an adult user, comprising:

a chassis having an inner face which, when in use, is directed toward a user body and an outer face which, when in use, is directed away from the user body, said chassis having an absorbent body and a backsheet on a side of said absorbent body which, when in use, is directed away from the user body, said absorbent body having a smaller width than said backsheet, said chassis also having a rear area, a front area, and a crotch area lying between said rear area and said front area, said chassis further defining first and second side edges;

a first ear attached as a separate component to said first side edge in said front area;

a second ear attached as a separate component to said second edge in said front area;

a third ear attached as a separate component to said first side edge in said rear area;

a fourth ear attached as a separate component to said second side edge in said rear area;

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said third and fourth ears having a closure component including mechanical closure aids which, when in use, *hold the diaper on the user body* when said closure component is selectively fastened to either said outer face of said chassis or to said outer face of said first and second ears;

wherein *retaining forces between said closure component and said outer face of said chassis are lower than retaining forces between said closure component and said outer face of said first and second ears.*

2. The absorbent incontinence diaper for an adult user of claim 1, wherein said retaining forces are determined as over-abdomen retaining forces.

3. The absorbent incontinence diaper for an adult user of claim 2, wherein said *retaining forces, determined as over-abdomen retaining forces between said closure component and said outer face of said chassis, are 57-20 N/25 mm.*

4. The absorbent incontinence diaper for an adult user of claim 3, wherein said *retaining forces, determined as over-abdomen retaining forces between said closure component and said outer face of said first and second ears, are 90-58 N/25 mm.*

Id. col. 15 l. 59–col. 16 l. 34 (emphases added to highlight disputed limitations).

Attends petitioned for IPRs of the Beckert Patents, challenging all claims of each patent. The Board found claims 1–54 of the '249 patent, claims 1–30 of the '398 patent, claims 1–21 of the '990 patent, and claims 1–21 of the '788 patent unpatentable as obvious over prior art combinations including U.S. Patent Publication No. 2005/0256496 (Benning) and U.S. Patent Publication

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No. 2003/0220626 (Karami '626).² Benning, titled “Hygienic article for incontinence,” discloses an incontinence article with a main body portion with front and rear side flaps or wings. Benning [0002], [0003], [0053]–[0055]. Karami '626, titled “Loopless absorbent article,” discloses “an absorbent article having a fastener element which does not require a special loop-providing landing zone,” and instead, the hook-type fastener elements “engage directly with any portion of the nonwoven surface constituting the . . . backsheet 32 or wings 40.” Karami '626 [0039]–[0041], [0002].

Hartmann timely appealed all four Board decisions. We have jurisdiction under 28 U.S.C. § 1295(a)(4)(A).

DISCUSSION

The Board found that a person of ordinary skill in the art would have been motivated to modify Benning’s diaper by replacing the fastener elements and material for the backsheet of Benning’s diaper with the fastener elements and backsheet of Karami '626’s diaper. Hartmann does not dispute this finding of motivation to combine on appeal. Instead, Hartmann argues that the Board erred in finding that Benning as so modified by Karami '626 discloses three particular limitations: (1) “hold the diaper on the user body”; (2) “retaining forces between said closure component and said outer face of said chassis are lower than retaining forces between said closure component and said outer face of said first and second ears” (which we will refer to as the “relative force limitation”); and (3) “retaining forces, determined as over-abdomen retaining forces between said closure component and said outer face of said chassis, are 57-20 N/25 mm” and “retaining forces, determined as over-

² The Board’s decisions as to the relevant claim limitations are similar and thus, we cite to the decision for the '249 patent for simplicity.

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