

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FIRST QUALITY BABY PRODUCTS, LLC,
Petitioner,

v.

KIMBERLY-CLARK WORLDWIDE, INC.,
Patent Owner.

Case IPR2016-01204
Patent 6,645,190 B1

Before JOHN C. KERINS, KEN B. BARRETT, and
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

MITCHELL, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318 and 37 C.F.R. § 42.73

I. INTRODUCTION

This is a final written decision in an *inter partes* review of claims 1–3 of U.S. Patent No. 6,645,190 B1 (Ex. 1001, “the ’190 patent”) entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons set forth below, we determine that Petitioner has not shown, by a preponderance of the evidence, that claims 1–3 of the ’190 patent are unpatentable under 35 U.S.C. § 103(a). See 35 U.S.C. § 316(e).

Petitioner, First Quality Baby Products, LLC, filed a petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–3 of the ’190 patent. Pet. 1. Petitioner also filed a Declaration of John Blevins (Ex. 1006) to support its positions. Patent Owner, Kimberly-Clark Worldwide, Inc., filed a preliminary response (Paper 9, “Prelim. Resp.”) to the Petition. Pursuant to 35 U.S.C. § 314(a), on December 29, 2016, we instituted an *inter partes* review of challenged claims 1–3 to determine if the claims are unpatentable under 35 U.S.C. § 103 as obvious over the combination Van Gompel,¹ LaFleur,² Redfern,³ and Long.⁴ Paper 12, 19.

Patent Owner filed a Patent Owner Response (Paper 19, “PO Resp.”), along with the Declarations of G.A.M. (Tony) Butterworth (Ex. 2004), John Amundson (Ex. 2007), and Melanie Huet (Ex. 2009) to support its positions. Petitioner filed a Reply (Paper 25, “Reply”) to the Patent Owner Response,

¹ Paul T. Van Gompel et al., U.S. Patent No. 4,940,464, issued July 10, 1990 (Ex. 1002).

² Ruby S. LaFleur, U.S. Patent No. 4,610,680, issued Sep. 9, 1986 (Ex. 1003).

³ Robin Redfern, U.S. Patent No. 4,402,690, issued Sep. 6, 1983 (Ex. 1004).

⁴ Andrew M. Long et al., U.S. Patent No. 5,624,429, issued Apr. 29, 1997 (Ex. 1005).

along with a supplemental Declaration of Mr. Blevins (Ex. 1021).

Petitioner filed a Motion to Exclude portions of Mr. Butterworth's testimony on commercial success generally and the reason for such success, his testimony regarding Long's "fasten anywhere" teachings, and his testimony regarding elastomeric nonwoven material. Paper 33, 1–11. In addition, Petitioner moved to exclude Exhibits 2006–2012, and 2014 that relate to Patent Owner's contentions concerning commercial success. *Id.* at 11–13.

Patent Owner filed a Motion to Exclude Petitioner's Exhibits 1022–1025 as irrelevant, and paragraphs 25, 40, 41, 46–49, and 55 of Exhibit 1021, Mr. Blevins' Rebuttal Declaration, also as irrelevant. Paper 35, 1–10.

An oral hearing was held on October 5, 2017. A transcript of the hearing is included in the record. Paper 44 ("Tr.").

A. Related Proceedings

Petitioner filed, concurrently with the instant petition, a petition for *inter partes* review of Patent No. US 7,534,237 B2, which is a child of the '190 patent. Pet. 5; see *First Quality Baby Products, LLC v. Kimberly-Clark Worldwide, Inc.*, IPR2016-01205 (PTAB).

Petitioner additionally identifies two district court actions and PTO proceedings involving patents owned by Patent Owner which, according to Petitioner, are "very similar" to the '190 patent. Pet. 22–24.

B. The '190 Patent

The '190 patent relates to an absorbent article having attachment panels that cover the side of the hips of the wearer, with the attachment panels extending from a first waist region and being adapted to refastenably

engage mechanical fastening components at an opposite waist region to maintain the absorbent article in a pant configuration. Ex. 1001, Abstract. The attachment panels consist essentially of an elastomeric nonwoven material defining an inner attachment surface, with there being no separate fastening elements bonded to the attachment panels. *See, e.g.*, Ex. 1001, 1:64–2:6; 2:48–3:3.

The refastenable seams allow the absorbent article to be either pulled on like a pant or applied like a diaper. *Id.* at 2:9–10. Such seams additionally permit the interior of the article to be checked without having to pull down the article, as well as allowing for removal of the article in a diaper-like manner in the event that the article is soiled during wear. *Id.* at 1:47–50; 2:10–15, 4:42–45. The exclusion of separate fastening elements bonded to the attachment panels “allows the product to have fewer components, which makes the product more underwear-like, and provides manufacturing efficiencies.” *Id.* at 16:52–54.

C. Illustrative Claim

Claims 1–3 of the ’190 patent are all independent claims. Claim 1 is illustrative of the claimed subject matter at issue, and is set forth below.

1. An absorbent article defining a longitudinal axis, an overall length dimension measured parallel to the longitudinal axis, a transverse axis, first and second longitudinally spaced waist regions, a crotch region which extends between and interconnects the first and second waist regions, an inner surface and an opposite outer surface, the absorbent article adapted to provide a pant configuration having a waist opening and a pair of leg openings, the absorbent article comprising:

an absorbent chassis comprising an absorbent assembly;

attachment panels extending transversely outward from the absorbent assembly in the first waist region, the attachment panels having a length dimension that is about 20 percent or greater of the overall length dimension, each attachment panel comprising a nonwoven substrate that extends from the waist opening to one of the leg openings and defines an inner attachment surface; and

at least one fastening component disposed in the second waist region on the outer surface, the at least one fastening component comprising a mechanical fastening element adapted to refastenably engage the inner attachment surfaces;

wherein the refastenable engagement of the mechanical fastening element and the inner attachment surfaces maintains the absorbent article in the pant configuration;

wherein the sole means for refastenably connecting the first and second waist regions in the pant configuration consists of the inner attachment surfaces in the first waist region and the mechanical fastening elements in the second waist region.

Ex. 1001, 19:19–51.

Claims 2 and 3 have similar claimed features and specifically recite that the first and second attachment panels comprise an elastomeric nonwoven material having inner attachment surfaces. Ex. 1001, 20:8–10; 20:39–41.

II. ANALYSIS

A. Claim Interpretation

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs.*,

LLC v. Lee, 136 S.Ct. 2131, 2144–46 (2016). Under the broadest reasonable interpretation approach, claim terms are generally given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

A claim term will not be accorded its ordinary meaning, however, “if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history.” *CCS Fitness, Inc. v. Brunswick Corp.* 288 F.3d 1359, 1366 (Fed. Cir. 2002). “Although an inventor is indeed free to define the specific terms used to describe his or her invention, this must be done with reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Also, we must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (“[L]imitations are not to be read into the claims from the specification.”).

Petitioner offers a construction of the term “consists of.” Pet. 16–21. Petitioner, while recognizing that the term “consists of” is “a well-defined term that is consistently interpreted in patent law to be a closed ended claim term that excludes all elements that are not recited in the claims,” offers a definition of “can only be” to define the transitional phrase. Pet. 16–18. Patent Owner asserts that Petitioner’s proposed construction of the well-defined term “consists of” is unnecessary and introduces confusion. Prelim. Resp. 10, 12–13. We agree with both parties that the transitional phrase “consists of” is well defined in the case law and determine the phrase needs

no further interpretation here. *See In re Grey*, 53 F.2d 520 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948).

In its Preliminary Response, Patent Owner offered two additional constructions for the terms “a pant configuration” and “elastomeric,” terms for which Petitioner provided no explicit definition. Prelim. Resp. 10–12. We stated in our Decision on Institution that “[t]here appears to be no dispute as to how ‘a pant configuration’ is to be construed, and we adopt, for purposes of this decision, Patent Owner’s proposed construction that it is to mean ‘a configuration where the garment can be pulled on.’” Dec. 7 (quoting Prelim. Resp. 11). We also acknowledged the express definition for “elastomeric” provided in the ’190 patent, to wit, “a material or composite which can be elongated by at least 25 percent of its relaxed length and which will recover, upon release of the applied force, at least 10 percent of its elongation.” *Id.* (citing Prelim. Resp. 12 (quoting Ex. 1001, 5:26–29)). Neither party disputed the definitions of these claim terms during trial, and we find no reason to alter our constructions of these terms here.

B. Obviousness of Independent Claims 1–3 based on Van Gompel, LaFleur, Redfern, and Long

Petitioner asserts that each of independent claims 1–3 is unpatentable under 35 U.S.C. § 103(a) over Van Gompel in view of LaFleur, Redfern, and Long. Pet. 25–55. In support of the asserted ground of unpatentability, Petitioner sets forth teachings of the cited references, provides detailed claim charts, and cites to the Blevins’ Declaration, explaining how each claim limitation is disclosed in the references, and how and why Van Gompel would have been modified to arrive at the claimed invention.

Patent Owner responds that Petitioner has failed to establish by a preponderance of the evidence that claims 1–3 are unpatentable in the following ways. First, Patent Owner asserts that Petitioner has not shown sufficiently that the combined teachings of Van Gompel, LaFleur, Redfern, and Long teach or suggest “that the ‘sole means’ to refastenably connect two waist regions consist of inner attachment surfaces and mechanical fastening means” or “an *elastomeric* nonwoven material as an attachment means.” PO Resp. 1–2. Second, Patent Owner asserts that no one of skill in the art would have been motivated to combine the teachings of the four references to arrive at the claimed invention because conventional wisdom at the time of the invention was not to use a distortable base, adjustability was not sufficient motivation to have combined Long’s “fasten anywhere” teaching with Van Gompel’s modified training pant, and manufacturing efficiencies would have weighed against modifying Van Gompel at all. *Id.* at 5–7. Finally, Patent Owner asserts that the commercial success of HUGGIES® PULL-UPS® brand training pants with Easy Open Sides that embody the claimed invention weighs against Petitioner’s assertion of obviousness. *Id.* at 7–9.

We have reviewed the parties’ contentions and supporting evidence. Given the evidence on this record, we determine that Petitioner has not demonstrated by a preponderance of the evidence that claims 1–3 are unpatentable over the combination of Van Gompel, LaFleur, Redfern, and Long.

1. The Prior Art

a. Van Gompel (Ex. 1002)

Van Gompel discloses an absorbent article in the form of a training pant having bonded, non-refastenable, side seams. The article includes a front waist region, a back waist region, a crotch area therebetween, and pairs of front and back side panels extending from respective front and back waist regions. Ex. 1002, 3:19–33, 10:19–34, Figs. 1, 6. The front and back side panels 18, 20, 24, 26 of the article may be made of a nonwoven elastic or stretchable material. *Id.* at 4:31–33. Figures 1 and 6 of Van Gompel, as annotated by Petitioner and appearing at page 24 of the Petition, are reproduced below:

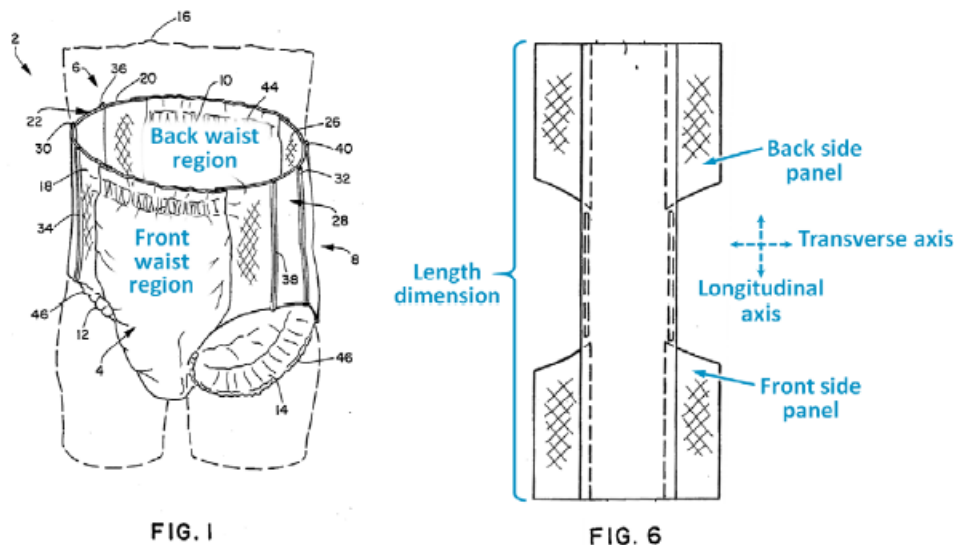


Figure 1 above illustrates, in perspective view, a training pant according to one embodiment of Van Gompel; Figure 6 above illustrates, in plan view, a training pant according to a different embodiment of Van Gompel.

In the Figure 6 embodiment,⁵ nonstretchable intermediate members 22, 28 employed in the Figure 1 embodiment are dispensed with. *Id.*, Figs. 1, 6. Therefore, in Figure 6 with members 22, 28 being omitted (*see id.* at 10:29–34), stretchable side members 18 and 24, and 20 and 26, would be joined directly by a seam, even though not explicitly shown or disclosed.

b. LaFleur (Ex. 1003)

In pertinent part, LaFleur evidences that a problem was recognized in the art that unitary undergarments which must be removed by pulling down over a child's leg can increase the spread of soilage, and presents the solution of employing refastenable side portions in order to allow the garment to be removed without the need to pull it down over the leg. Ex. 1003, 1:34–36, 3:44–53. LaFleur discloses that mating hook and loop fastening strips may be employed as the fastening elements. *Id.* at 3:58–67.

c. Redfern (Ex. 1004)

In pertinent part, Redfern discloses the placement of the relatively hard, stiff, hook elements of a hook and loop (pile) fastening system on the exterior of a diaper, so as to face away from the wearer, to reduce or eliminate potential skin irritation as a result of exposed hooks contacting the skin, were they facing toward the wearer. Ex. 1004, 3:54–68. Redfern additionally discloses that the hook sections are longer than the loop or pile sections, and are positioned to allow for maximum adjustability in fitting the diaper to a wearer. *Id.* at 4:1–8, Figs. 1, 2.

⁵ As can be seen above, Figure 6 does not include reference numerals. The reference numerals identified in discussing Figure 6 are from the identical components in Figure 1 and other figures.

d. Long (Ex. 1005)

In pertinent part, Long discloses that, in a hook-and-loop fastening arrangement for a diaper, the loop material may be a woven, nonwoven, or knit fabric, and that it need not be limited to a discrete landing zone patch. Ex. 1005, 20:13–15, 24–25. Long discloses, in particular, that a backsheet 22 constructed of a substantially continuous outer fibrous layer extending over a total exposed surface of a cloth-like cover of the diaper would provide a “fasten anywhere” mechanical fastening system. *Id.* at 20:25–32. Elsewhere, Long describes that backsheet 22 may alternatively be made of a thin plastic film, a woven or nonwoven fibrous web layer treated to impart liquid impermeability, or a gas-permeable, non-woven fabric layer laminated to a polymer film. *Id.* at 5:43–67.

2. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

In that regard, an obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of

ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418; *see Translogic*, 504 F.3d at 1259.

3. *Level of Ordinary Skill in the Art*

Petitioner and Patent Owner agree that a person of ordinary skill in the pertinent art is a person having two to four years of work experience in product design and testing of absorbent articles such as diapers, training pants, and incontinence briefs. Pet. 35, PO Resp. 16 (similar statement). For purposes of this decision, we apply the parties’ agreed-upon description of the person of ordinary skill in the art. Also, this level of ordinary skill in the art is supported by the prior art of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978).

4. *Parties’ Respective Positions*

Petitioner relies on Van Gompel as teaching “an absorbent article (e.g., a training pant) which is very similar to the training pant described in the ’190 Patent. The main difference is that Van Gompel’s training pant has non-refastenable seams and the ’190 Patent pant has refastenable seams.” Pet. 25. Petitioner points to Van Gompel’s nonwoven material forming the side panels, however, as being able to function as a loop fastener to engage with hook fasteners to form refastenable seams when viewed in light of the teachings of Long. *Id.* at 27–28 (citing Ex. 1006 ¶ 81). Petitioner further explains that one of ordinary skill in the art would have been motivated to replace Van Gompel’s non-refastenable seam with a refastenable seam in light of LaFleur’s teaching that such a seam avoids soiling a child’s legs when a training pant is removed. Pet. 35–37.

The only claim features not taught by the combination of Van Gompel and LaFluer, Petitioner asserts, are the use of outwardly facing hooks and the use of a nonwoven surface of Van Gompel's side panels to engage the hooks. *Id.* at 39. Petitioner asserts that “[i]t would have been obvious to a POSITA [person of ordinary skill in the art] to use outwardly facing hooks on the front side panels of Van Gompel in view of Redfern’s express teaching that outwardly facing hooks ‘will not contact the infant’s skin’ and therefore should be used to avoid irritating the wearer’s skin.” *Id.* (citing Ex. 1004, 3:59–68, 2:27–32; Ex. 1006 ¶¶ 116, 120).

Petitioner turns to Long to teach that the nonwoven surface of Van Gompel's side panels could be used to engage the hooks, one of a finite number of choices, it asserts, to engage the hooks. Pet. 40–44. Specifically, Petitioner states:

Indeed, as explained by Petitioner’s expert, Long teaches that, instead of using a separate loop strip, “the loop material can be provided by a nonwoven . . . fabric” and this loop material can be “integrated” with the surface of the diaper to provide a “fasten anywhere” system. (Ex. 1005, 20:13–32.) This allows the diaper to be adjusted to fit children of various sizes. (Ex. 1006 ¶ 97, 122).

Just like Long, Van Gompel teaches that the surfaces of the front and back side panels include a “nonwoven” material. (Ex. 1002, 4:31–33.) Although Van Gompel does not state that this nonwoven material could function as a loop fastener, in view of Long’s teaching to use an integral nonwoven fastener instead of a separate loop strip, a POSITA would have known that such nonwoven material could be used to engage the hook fasteners in place of loop strips to provide a “fasten anywhere” system. (Ex. 1006 ¶¶ 96–99, 123.) Doing so would have been well within the POSITA’s technical grasp as it was well known in the art how to do this. (Ex. 1006 ¶ 123.) Indeed, the attachment panels of Van Gompel and the ’190 Patent are made

from the same nonwoven material (a spunbonded material or a bonded carded web), and the '190 Patent does not provide any specific details regarding how to make a nonwoven material for use as the loops. (Ex. 1002, 4:67–5:6; Ex. 1001, 14:60–65; Ex. 1006 ¶¶ 80–81, 123.)

Pet. 40–41.

Patent Owner counters that the asserted combination of references do not teach the “sole means” claim limitation, which provides the three features of an underwear-like pant, *see* Ex. 1001, 16:52–54, a refastenable pant, *see id.* at 16:47–49, and a pant that is non-irritating to the wearer’s skin, *see id.* at 2:1–6, 16:63–67. *See* PO Resp. 11–12 (citing Ex. 2004 ¶ 30). Patent Owner asserts that the “sole means” are not taught or suggested by the combination because no asserted reference teaches using a side panel of the training pant as an attachment surface as opposed to a *separate* loop component. PO Resp. 18; *see* Ex. 2004 ¶¶ 54–60.

Specifically Patent Owner states that “Long discloses that an additional layer of continuous outer fibrous material should be integrated with the absorbent article to supply the attachment means, even where a nonwoven material was already present.” PO Resp. 2–3, 15 (stating “[e]ven Long’s ‘fasten anywhere’ teachings disclose an additional layer”) (citing Ex. 2004 ¶¶ 47–48); 20 (stating a “POSA [person of ordinary skill in the art] would have viewed this additional layer as a separate component”) (citing Ex. 2004 ¶ 59). In other words, “[b]ecause Long discloses an additional layer, Long does not disclose using an attachment surface instead of a separate loop component.” PO Resp. 20–21 (citing Ex. 2004 ¶¶ 58–60).

Therefore, Patent Owner concludes Long would not have suggested using Van Gompel’s nonwoven material in its side panel, which have

different characteristics than Long's backsheet, as an "inner attachment surface." *Id.* at 3; *see also* PO Resp. 15 (stating "Long does not provide any examples of nonwoven fabric suitable for a loop material") (citing Ex. 1001, 20:15–23; Ex. 2004 ¶ 44), 15 (stating Long teaches an *additional* continuous outer fibrous material integrated on an entire backsheet instead of a discrete landing zone patch) (citing Ex. 1005, 20:24–32; Ex. 2004 ¶ 45); 20 (stating "the term 'integrated' does not indicate that the additional continuous outer fibrous layer is not a separate component") (citing Ex. 2004 ¶ 60).

Patent Owner further supports this conclusion stating the cloth-like outer cover with which Long's continuous outer fibrous layer is integrated was relatively thin and not capable itself of engaging hooks. PO Resp. 21 (citing Ex. 2004 ¶ 61). Patent Owner states:

Accordingly, rather than suggesting to just use exposed nonwoven material and dispensing with a separate loop component, Long teaches and suggests adding an additional, dedicated loop component, even where a nonwoven material is already present, to ensure proper connection with the hook element. ([Ex. 2004] at 63). Thus, Long does not suggest simply using the nonwoven material in Van Gompel's side panels as the attachment surface, especially where Van Gompel's side panels are elastomeric, unlike Long's backsheet. (*Id.* at 64–68, *see also* Ex. 2013, Blevins Deposition Transcript, 41:5–42:2).

PO Resp. 21–22.

Long also fails to suggest, Patent Owner asserts, the claimed *inner* attachment surface because Long's fastener tab connects anywhere on the backsheet, not on any inner surface material, as this would lead to a loose flap on the pant. PO Resp. 3, 15 (citing Ex. 1005, 20:24–32; Ex. 2004 ¶ 45), 16 (similar analysis for Redfern teachings) (citing Ex. 2004 ¶ 49), 23–24 (Ex. 2004 ¶¶ 69–70). Patent Owner concludes:

Notably both Long and Redfern disclose an outwardly facing component (whether it be the hook or the loop material) that facilitates adjustability. (Long, 20:24–32; Redfern, 4:1–5; *see also* Butterworth Decl. ¶¶ 71–72.) Thus, at best, the combination of Long with Van Gompel, LaFleur, and Redfern would have led to a hook component that created a “fasten anywhere” system because the hook component would be the one that faces outwardly. (Butterworth Decl. ¶ 72).

PO Resp. 24.

Finally, Patent Owner asserts that “Long’s broad category of nonwoven fabrics is insufficient to teach or suggest *elastomeric* nonwoven material as an attachment means,” as required by claims 2 and 3. *Id.* at 4, 16 (citing Ex. 2004 ¶¶ 50–51); *see id.* at 25–30 (citing Ex. 2004 ¶¶ 79–84). Patent Owner asserts that Long’s very broad and non-specific teaching that “the loop material can be provided by a nonwoven, woven or knit fabric,” does not teach or suggest that “*any* nonwoven fabric would be suitable as a loop material—a POSA would have recognized that many nonwoven fabrics are not suitable as loop material, even nonwoven fabrics that are used in diapers or training pants.” *Id.* at 28 (citing Ex. 2004 ¶¶ 78–79). Patent Owner also points out that Long provides examples of knit and woven fabrics that are suitable as a loop material, but does not provide any examples of such suitable nonwoven material, *id.* (citing Ex. 1005, 20:15–23; Ex. 2004 ¶ 78), and a person of ordinary skill would have understood that neither Long’s discrete loop patches nor Long’s backsheet are elastomeric, *id.* at 29 (citing Ex. 2004 ¶ 80; Ex. 2013, 41:23–42:2).

Patent Owner also asserts that even if all of the limitations of the challenged claims were taught by the combination, one of skill in the art would not have a reason to combine these features to use an elastomeric nonwoven material employed by Van Gompel as an inner attachment

surface because “the conventional wisdom at the time of the invention was that a loop material with a rigid base, rather than a distortable base, was needed to provide a secure connection with hook material” to avoid progressive failure of the fastened seam. *Id.* at 5, 30–38. Also, Patent Owner states that Petitioner’s additional rationales are also equally unavailing. *Id.* at 38–46. Patent Owner also asserts that the commercial success of HUGGIES® PULL-UPS® brand training pants with Easy Open Sides, which it asserts embody the claimed invention, show that claims 1–3 of the ’190 patent are non-obvious. *Id.* at 7, 16–17, 44–67.

Petitioner responds to Patent Owner’s arguments by pointing to Long’s cloth-like backsheet that can be made from a “stretch thermal laminate” as the claimed attachment surface instead of the previously identified nonwoven fabric that may be integrated with such backsheet to form a fasten anywhere system. *See* Reply 4–8. Specifically, Petitioner states that “while Long can optionally have a separate (i.e., extra) layer of material added to its backsheet, the nonwoven surface itself of Long’s preferred backsheet 22 can function as the attachment surface. Moreover, Long simply never discusses adding a second layer of nonwoven material to a first layer of nonwoven material that is already on the backsheet.” *Id.* at 6–7 (citing Ex. 1021 ¶ 19). Petitioner concludes that “[f]ollowing Long’s suggestion to use an elastomeric nonwoven material as an attachment surface, it would have been obvious to a POSITA to use the inner surface of Van Gompel’s elastomeric nonwoven back side panels as the ‘sole means’ for fastening to the hooks in the refastenable training pant that results from the combination with LaFleur and Redfern.” *Id.* at 7–8.

Petitioner also points to Redfern, not Long, for the teaching that hooks should be on an outwardly facing surface to avoid skin irritation, *id.* at 8, and refutes Patent Owner's argument that a loose flap would discourage one of skill in the art from pursuing an inward attachment surface by pointing to the teachings of the '190 patent itself that a flap is beneficial, *id.* at 9–13. Finally, Petitioner asserts that Patent Owner's argument that the claimed invention of the '190 patent goes against conventional wisdom is unsupported argument that should be given no weight, *id.* at 13–17, that Patent Owner's commercial success argument fails to establish a sufficient nexus with the claimed invention, and that collateral estoppel prevents Patent Owner from revisiting commercial success, *id.* at 20–24.

5. Analysis

Weighing all of the evidence and arguments before us, including those summarized above, we agree with Patent Owner that the evidence does not adequately support by a preponderance of the evidence Petitioner's challenge that Long provides a person of ordinary skill in the art with a teaching that would have rendered obvious using the side panel material of Van Gompel alone as a loop-type attachment surface. Although Long indeed includes a general teaching that nonwoven material is suitable for use as a loop-type fastener, the evidence does not support the notion that a person of ordinary skill in the art would regard any nonwoven material, regardless of form or construction, as being suitable for use as a loop-type fastening surface.

Petitioner relies exclusively on the following statements in Long for its analysis that one of skill in the art would use Van Gompel's nonwoven side panels as a loop material attachment surface for a loop-type fastener.

In the various configurations of the invention, the loop material can be provided by a nonwoven, woven, or knit fabric. For example, a suitable loop material fabric can be composed of a 2 bar, warp knit fabric of the type available from Guilford Mills, Inc., Greensborough, N.C. under the trade designation #34285, as well other of knit fabrics. Suitable loop materials are also available from the 3M Company, which has distributed a nylon woven loop under their SCOTCHMATE brand. The 3M Company has also distributed a linerless loop web with adhesive on the backside of the web, and 3M knitted loop tape.

In particular aspects of the invention, the loop material need not be limited to a discrete landing zone patch. Instead the loop material can, for example, be provided by a substantially continuous, outer fibrous layer which is integrated to extend over substantially the total exposed surface area of a cloth-like outer cover employed with the diaper 20. The resultant, cloth-like backsheet 22 can thereby provide the loop material for an operative “fasten anywhere” mechanical fastening system.

Ex. 1005, 20:13–32, *cited in* Pet. 40, 49, 52, 56.

Mr. Blevins, Petitioner’s declarant, relies on the second paragraph of the above-quoted text of Long to opine that

Just like Long, Van Gompel teaches that the surfaces of the front and back side panels include a “nonwoven” material. (Ex. 1002, Van Gompel, 4:31–33.) Although Van Gompel does not state that this nonwoven material could function as a loop fastener, in view of Long’s teaching to use an integral nonwoven fastener instead of a separate loop strip, a POSITA would have known that such nonwoven material could be used to engage the hook fasteners in place of loop strips to provide a “fasten anywhere” system. (*See supra* ¶ 81.) Doing so would have been well within the POSITA’s technical grasp as it was well known in the art how to do this. Indeed, the attachment panels of Van Gompel and the ’190 Patent are made from the same nonwoven material (a spunbonded material or a bonded carded web), and the ’190 Patent does not provide any specific details regarding how to make a nonwoven material for use as the loops. (Ex. 1002, Van Gompel, 4:67–5:6; Ex. 1001, ’190

Patent, 14:60–65.) Further, it was well-known that a nonwoven material itself could be used to engage hook fasteners, rather than using a separate loop material.

Ex. 1006 ¶ 123; *see also id.* ¶¶ 96–99, 122 (discussing Long).

a. “Sole Means” Requirement of all Challenged Claims

The passage of Long quoted above on which Petitioner relies evidences that, in the case in which a discrete loop patch is dispensed with in favor of a “fasten anywhere” fastening system, a “substantially continuous, outer fibrous layer” is provided to “extend over substantially the total exposed area of a cloth-like cover employed with the diaper.” Long, 20:24–29. It is the outer surface of that “resultant, cloth-like diaper,” and not the “nonwoven surface itself of Long’s preferred backsheet” that Petitioner newly argues in its Reply (Reply 6), that Long discloses as functioning as the attachment surface.

Indeed, the foregoing interpretation is entirely consistent with the declaration testimony of Patent Owner’s expert, G.A.M. (Tony) Butterworth. *See* Ex. 2004 ¶¶ 58–68. We find the explanation and analysis of Long in the Butterworth Declaration to be more faithful to the actual disclosure in Long. In particular, we agree that “Long suggests providing an additional layer or a separate fastening element, even where a woven or nonwoven material is already present, for example, providing a cloth-like outer cover.” *Id.* ¶ 63. This leads to a conclusion, with which we agree, that “[t]here is no suggestion in Long (or in Van Gompel) that the nonwoven material already employed in Van Gompel would be sufficient to work as a loop material.” *Id.* ¶ 67.

Petitioner recognized this teaching of an additional layer in Long as serving as the teaching to motivate one of skill in the art to use Van Gompel's nonwoven material forming the side panels as the claimed inner attachment surfaces. *See* Pet. 40, 49, 52, 56. When Patent Owner pointed out the deficiencies in this challenge concerning claim 2 and 3's requirement of an *elastomeric* nonwoven material having inner attachment surfaces, however, Petitioner, in its Reply, then pointed to the "nonwoven surface itself of Long's preferred backsheet 22," which can be made from a "stretch thermal laminate," as the inner attachment surface. *See* Reply 5–8 (citing Ex. 1021 ¶¶ 12–17). Petitioner concludes that "while Long can optionally have a separate (i.e., extra) layer of material added to its backsheet, the nonwoven surface itself of Long's preferred backsheet 22 can function as the attachment surface. Moreover, Long simply never discusses adding a second layer of nonwoven material to a first layer of nonwoven material that is already on the backsheet." *Id.* at 6–7 (citing Ex. 1021 ¶ 19; Ex. 1005, 6:8–11).

Such a shift in position as to how the claim limitations of the challenged claims are met by the cited art is beyond the scope of proper rebuttal argument. Even considering this new position, however, as we analyzed Long's teachings above in light of Mr. Butterworth's testimony that we credit as more credible in light of Long's disclosure, we are not persuaded that Long teaches that the nonwoven surface itself of backsheet 22 may serve as the inner attachment surface based on the cited passage in Long that describes that, generally, an optional separate outer cover may be provided.

Petitioner's above-quoted insistence that Long never discusses adding a second layer of nonwoven material to a first layer of nonwoven material that is already on the backsheet is only true to the extent that Long does not disclose an additional layer that is specifically "nonwoven." As acknowledged by Petitioner, Long, at a minimum, optionally provides an additional outer fibrous layer to a cloth-like backsheet, which backsheet is a stretch thermal laminate having a nonwoven material laminated to a polypropylene film, with the nonwoven material providing the cloth-like characteristic to the backsheet. Ex. 1005, 5:67–6:11; Reply 6–7. Even though described as being optional, the addition of a second fibrous layer to a first layer of nonwoven material is indeed disclosed in Long and was originally relied upon by Petitioner to establish a teaching of the required nonwoven inner attachment surface. See Pet. 40, 49, 52, 56.

b. Elastomeric Nonwoven Material Requirement of Claims 2 and 3

We turn now to whether the additional requirements of independent claims 2 and 3 of an *elastomeric* nonwoven material having inner attachment surfaces are taught by the asserted combination of references.

Notwithstanding Petitioner's expert testimony to the contrary, we find that a plain reading of Long does not support Petitioner's argument that the reference "specifically suggests using an elastomeric nonwoven material as the attachment surface (identical to the '190 Patent's attachment panels)." Reply 7 (citing Ex. 1021 ¶ 26). Again, Petitioner inappropriately relies on its new theory presented in its Reply that the cloth-like backsheet alone, which can be made from a "stretch thermal laminate," can provide the elastomeric nonwoven material having an inner attachment surface. See Ex. 1021 ¶ 13 (truncating Long's disclosure to suggest that the cloth-like

backsheet, instead of the cloth-like backsheet resulting after addition of the substantially continuous, outer fibrous layer, is the attachment surface).

Thus, in viewing the teachings of Long as a whole, a person of ordinary skill in the art would understand that a separate outer cover may, in general, be optional, but in the case of the “fasten anywhere” system, an additional outer fibrous layer is required.⁶ As such, that person of ordinary skill would not have understood Long to teach, alone or in combination with Van Gompel, an absorbent article in which “each attachment panel consist[s] essentially of an elastomeric nonwoven material that extends from the waist opening to one of the leg openings and defines an inner attachment surface, wherein no separate fastening elements are bonded to the elastomeric nonwoven attachment panels,” as claimed.

Petitioner’s argument, based in part on new evidence presented in Mr. Blevins Rebuttal Declaration (Ex. 1021),⁷ that the inner surface of the

⁶ Further, considering this in conjunction with Petitioner’s position that Long does not anywhere disclose adding a second layer of nonwoven material to a first layer of nonwoven material that is already on the backsheet, it can be further concluded that the additional fibrous layer disposed over the Long cloth-like outer cover material to be used as a loop material in a “fasten anywhere” system, is not a nonwoven layer at all, or is at least not specified to be a nonwoven layer.

⁷ Paragraphs 6–9 of Exhibit 1021 belatedly attempt to establish that the appearance in Figure 10 of Van Gompel of “lofty loops” formed by the inner nonwoven layer of the elastomeric nonwoven side panel material would have imparted to persons of ordinary skill in the art the knowledge or understanding that that material would function as an attachment surface to which hooks could engage to form a refastenable seam. Although Mr. Blevins then opines that this knowledge and understanding would have existed as of the 1999 effective filing date of the ‘190 patent (Ex. 1021, ¶ 11), nothing in the preceding paragraphs 6–9 relied on supports that this

Van Gompel side panels would function as an attachment surface (Reply 4–5) is not only untimely as beyond the scope of an appropriate reply, it also misses the mark as no one disputes that Van Gompel’s side panels would so function. The ’190 patent acknowledges as much. Ex. 1001, 14:9–16 (incorporating Van Gompel patent for teachings of suitable elastic materials). The pertinent question is, however, whether, as of the effective filing date of the parent application of the ’190 patent, a person of ordinary skill in the art would have recognized the suitability of the inner surface of the Van Gompel side panel to function as an attachment surface, in view of the teachings in Long. As discussed above, Long’s general statement that its “loop material can be provided by a nonwoven, woven or knit fabric,” when considered in the overall context of the teachings of Long, is insufficient to suggest that the elastomeric nonwoven side panel itself of Van Gompel would obviously be used as the attachment panel, with the nonwoven inner surface constituting the inner attachment surface.

The various reasons propounded by Petitioner as purportedly evidencing the obviousness of combining the teachings of Long with those of Van Gompel, as modified by LaFleur and Redfern, are unavailing as well. *See, e.g.*, Pet. 28–31. Underlying each of those reasons is an overreaching position in terms of what Long would have taught or suggested to a person of ordinary skill in the art relative to use of nonwoven material as a loop fastener in an absorbent article such as a training pant.

was knowledge and understanding existing in the art as of that date.

The Federal Circuit has consistently held that a determination of obviousness, and possible modifications to the prior art leading to such a determination, must evidence that such modification(s) would have a reasonable likelihood or expectation of success, viewed in light of the prior art. *In re Dow Chemical Co.*, 837 F.2d 469, 473 (Fed. Cir. 1988). Here, given the teaching in Long to provide the additional fibrous layer over the cloth-like backsheet when opting to employ a “fasten anywhere” system, and the lack of any suggestion in Long that the surface of the cloth-like backsheet itself could be used as a loop-type fastener, as discussed in detail above, Petitioner has not shown that a person of ordinary skill in the art would have had a reasonable likelihood of success in using the nonwoven surface of the elastomeric nonwoven side panel alone as a loop-type fastener.

5. *Secondary Considerations*

Because our evaluation of the first three *Graham* factors leads us to determine that Petitioner has not demonstrated that the challenged claims would have been obvious in view of the cited art, we need not determine whether Patent Owner’s evidence of secondary considerations weighs further against a conclusion of obviousness, nor need we reach the issue as to whether Patent Owner is collaterally estopped from presenting evidence and argument as to this factor.

6. *Conclusion*

For the foregoing reasons, we conclude that Petitioner has not demonstrated, by a preponderance of the evidence, that claims 1–3 are

unpatentable under 35 U.S.C. § 103(a) based on Van Gompel, LaFleur, Redfern, and Long.

III. MOTION TO SEAL

Patent Owner filed a Motion to Seal and to enter the Default Protective Order. Paper 20, 1. Patent Owner seeks to have us seal Exhibit 2008, which Patent Owner states contains highly confidential information that it submitted in support of objective indicia of nonobviousness. *Id.* at 2–3.

Specifically, Patent Owner states that Exhibit 2008 is a proprietary CAD drawing of Patent Owner’s Huggies® Pull-Ups® brand training pants with Easy Open Sides. *Id.* at 3. Patent Owner provided a public version of the portion of the CAD drawing on which it relies in its Patent Owner Response. *Id.* at 4; *see* Ex. 2008.

Patent Owner states that Petitioner agreed to the entry of the Default Protective Order. *Id.* at 1. Petitioner did not file an opposition to Patent Owner’s Motion to Seal.

We have considered Patent Owner’s argument to seal Exhibit 2008, and the information sought to be sealed by Patent Owner. We determine that Patent Owner has demonstrated good cause for sealing confidential portions of Exhibit 2008, portions on which it does not rely in its Patent Owner Response. Therefore, we will grant Patent Owner’s Motion to Seal, enter the Default Protective Order, and seal the unredacted version of Exhibit 2008. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,769–71, App. B.

IV. PETITIONER'S MOTION TO EXCLUDE

Petitioner moves to exclude portions of Mr. Butterworth's testimony regarding secondary indicia of nonobviousness, *see* Ex. 2004 ¶¶ 53, 112–128, including the reason for commercial success, *see id.* ¶¶ 53, 112, 120–128. Paper 33, 1–6.

Petitioner asserts that such evidence should be excluded because the district court in a previous litigation involving U.S. Patent No. 6,849,067 (“the ’067 Action)

found that the *sole* reason for the commercial success of [Patent Owner's] refastenable HUGGIES® PULL-UPS® training pant—the same product that is at issue here—was the refastenable seam feature. . . .

. . . .

Since the reason for the success of [Patent Owner's] PULL-UPS® was “fully and fairly tried” in the previous ’067 Action and was “adversely resolved against” [Patent Owner, Patent Owner] is collaterally estopped from offering a new reason for its success of the exact same PULL-UPS® product in this IPR.

Paper 33, 3. Petitioner also asserts that Exhibits 2006 through 2012, and 2014 should be excluded because they relate to secondary considerations of non-obviousness also because Patent Owner is collaterally estopped from re-litigating the issue of commercial success. *Id.* at 11–13.

Petitioner also asserts that Mr. Butterworth's testimony regarding the reason for the commercial success of the HUGGIES® PULL-UP® training pant should be excluded because Mr. Butterworth does not possess the specialized knowledge to evaluate the commercial success of a product and his evaluation is merely conclusory and not supported by appropriate evidence. *See id.* at 4–6.

Because we did not need to evaluate or rely on Patent Owner’s evidence of commercial success because we found that Petitioner had failed by a preponderance of the evidence to show the combination of asserted references taught all of the claimed features for each challenged claim, we need not reach the issue presented here as to whether Mr. Butterworth’s analysis of the commercial success of Patent Owner’s product should be excluded. Thus, we do not exclude this evidence and dismiss this portion of the motion at moot.

Next, Petitioner asserts that we should exclude Mr. Butterworth’s testimony regarding Long’s fasten anywhere teachings based on collateral estoppel.⁸ *See id.* at 6–10. Petitioner asserts that the prior proceedings on which it bases its collateral estoppel argument “involved the same issues that [Patent Owner] is seeking to reargue here—namely (i) whether Long disclosed using a nonwoven material as an integral loop component rather than a separate loop component; (ii) whether Long’s teaching could be used for an *elastomeric* nonwoven material; (iii) whether a POSITA would have been *motivated* to combine Long’s teaching for use on elastomeric side panels of a refastenable training pant; and (iv) whether a POSITA would have been motivated to combine Long’s teaching to improve the refastenable seam in a training pant that used separate loop strips.” *Id.* at 9.

⁸ Patent Owner asserts in opposition that because collateral estoppel is a substantive issue, not strictly an admissibility issue, a motion to exclude is an improper vehicle to address the issue. Paper 38, 8. Regardless as to the categorization of the issue, we will address the issue here because we did not reach the collateral estoppel issue in determining whether the challenged claims are unpatentable.

Petitioner points us to a final decision for an *inter partes* review involving U.S. Patent No. 8,747,379 B2 (“the ’379 patent”) involving a claim to a training pant requiring “first and second loop type fastening components disposed on an outer surface of and comprising *integral* portions of the first and second back side panels.” See Ex. 1018, 6; Paper 38, 9 (PO Opp. to Motion). In finding that the trial record supported sufficiently that this claim limitation was met for claim 25, the Board stated that “[w]ith respect to the limitation of claim 25 that the loop fastening components comprise ‘integral portions’ of the back side panels, Petitioner relies on Long as teaching side panels with loop material that is ‘integrally formed.’” See *id.* at 15–16; Paper 38, 11–12.

Here, Patent Owner does not disagree that Long teaches that the loop material may be integrated with the absorbent article to supply the attachment means; Patent Owner is arguing, however, that such integration does not negate the fact that this loop material is a separate component. See PO Resp. 2–3, 15, 20. Patent Owner asserts that “[b]ecause Long discloses an additional layer, Long does not disclose using an attachment surface instead of a separate loop component.” PO Resp. 20–21 (citing Ex. 2004 ¶¶ 58–60); see Paper 38, 9–10 (stating issues decided by district court do not “relate to whether Long’s continuous outer fibrous layer is a separate, additional layer to the cloth-like outer cover of Long”). Petitioner has not shown that this issue was addressed, much less decided in the prior *inter partes* review.

Petitioner’s reference to the definition of “integral” set forth in the ’379 patent constitutes ex post facto reasoning not mentioned in the final written decision, and is therefore of no probative value. See Paper 40, 5.

Also, Petitioner does not point us to any further evidence that Long's alleged teaching of an elastomeric nonwoven material or any motivation to combine Long's teachings with other asserted references were issues that were decided in the prior litigation other than the reference to one of our final decisions discussed above that does not address these issues. *See* Paper 38, 10–11. Therefore, we do not exclude Mr. Butterworth's testimony concerning Long's fasten anywhere teachings, and deny this portion of Petitioner's motion to exclude.

Finally, Petitioner next asserts that Mr. Butterworth's testimony regarding the use of elastomeric nonwoven material as a suitable engagement surface should be excluded. Paper 33, 10–11. Petitioner asserts that Mr. Butterworth lacks specialized knowledge to assist us in determining how one of skill in the art would have viewed such use of elastomeric nonwoven material and fails to provide any supporting documents or information. *Id.*; Paper 40, 5. We disagree.

Mr. Butterworth has requisite knowledge to opine on this issue as he details his extensive experience in nonwoven and absorbent technology in his declaration. *See* Ex. 2004 ¶¶ 5–15; Ex. 2005. We find that whether Mr. Butterworth provided supporting documentation for his opinions goes to the weight to be given to his opinion, not to its admissibility. Therefore, we do not exclude Mr. Butterworth's testimony regarding the use of elastomeric nonwoven material as a suitable engagement surface and deny this portion of Petitioner's motion to exclude.

V. PATENT OWNER'S MOTION TO EXCLUDE

Patent Owner moves to exclude Exhibits 1022 through 1025, and paragraphs 25, 40, 41, 46–49, and 55 of Exhibit 1021 based on relevancy.

Paper 35, 1. Specifically as to the first two exhibits, Patent Owner seeks to exclude Exhibit 1022 and prior testimony of Mr. Butterworth in Exhibit 1023, both of which were submitted in a previous litigation involving Patent Owner's '379 patent. *Id.* at 1–6.

Relevancy under the Federal Rules of Evidence, defined as “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence,” sets a liberal standard for the admissibility of evidence. *See* Fed. R. Evid. 401, 402; *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 587 (U.S. 1993). In applying this standard, we find that Patent Owner's arguments concerning the admissibility of Exhibits 1022 and 1023 do not merit excluding these exhibits, but go toward the weight to be accorded the evidence. We also do not find that any probative value of these exhibits is substantially outweighed by the danger of unfair prejudice and confusing the issues under Federal Rule of Evidence 403, as we can assess the probative value of the evidence presented as it applies to this proceeding. Therefore, we will not exclude either Exhibit 1022 or 1023 and deny this portion of Patent Owner's motion to exclude.

Next, Patent Owner moves to exclude Exhibit 1024 as irrelevant and inadmissible hearsay, and Exhibit 1025 as irrelevant. Paper 35, 7–8. Exhibits 1024 and 1025 are two United States patents offered by Petitioner “along with testimony from Mr. Blevins in its Reply (Paper 25 at 13–18) to rebut the assertion made by [Patent Owner] and its expert that ‘the conventional wisdom at the time of invention was that a loop material with a distortable base . . . would not be suitable for engagement with hooks.’”

Paper 37, 6–7 (citing Ex. 2004 ¶¶ 86–92, Paper 19, 33–38).

Patent Owner asserts that “[t]eachings in an isolated patent (or in two isolated patents) do not make it any more or less probable that those teachings are conventional.” Paper 35, 1, 8, 9. Petitioner responds that both exhibits are relevant because they “provide examples of elastomeric nonwoven material that inventors in the field asserted would work as a loop fastener” rebutting Mr. Butterworth’s testimony regarding conventional wisdom. Paper 37, 8. We agree with Petitioner that this evidence is relevant, and that Patent Owner’s arguments go to the weight to be accorded such evidence. We also agree with Petitioner that it is offering statements from Exhibit 1024 to establish what was thought to be conventional wisdom at the time, and that it is not offering the statements for the truth of the matter asserted. Therefore, the evidence is not hearsay. *See* Fed. R. Evid. 801(c). For these reasons, we do not exclude Exhibits 1024 or 1025 and deny this portion of Patent Owner’s motion to exclude.

Finally, Patent Owner seeks to exclude Mr. Blevins’ testimony regarding Exhibits 1022 through 1025. Because we have found that none of these exhibits should be excluded, we do not exclude Mr. Blevins’ testimonial evidence regarding these exhibits at paragraphs 25, 40, 41, 46–49, or 55 of Exhibit 1021. Therefore, we also deny this portion of Patent Owner’s motion to exclude.

VI. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–3 of U.S. Patent 6,645,190 B1 have not been shown by a preponderance of the evidence to be unpatentable;

FURTHER ORDERED that the Default Protective Order set forth in Appendix B of the Office Patent Trial Practice Guide is hereby entered and shall govern the conduct of this proceeding unless otherwise modified;

FURTHER ORDERED that Patent Owner's Motion to Seal (Paper 20) is *granted*;

FURTHER ORDERED that Exhibit 2008 shall be sealed as "Board and Parties Only," and will be kept under seal unless and until we refer to material in the exhibit in a final written decision;

FURTHER ORDERED that Petitioner's Motion to Exclude is *dismissed in part as moot and denied in part*;

FURTHER ORDERED that Patent Owner's Motion to Exclude is *denied*; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

IPR2016-01204
Patent 6,645,190 B1

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