

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

EDGEWELL PERSONAL CARE BRANDS, LLC,
Patent Owner.

Case IPR2017-00693
Patent 9,192,522 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, 2, 4, 7–10, 12, 14–16, 18, 21–23, 25, 27–29, 31, 33–37, and 39 (“the challenged claims”) of U.S. Patent No. 9,192,522 B2 (Ex. 1001, “the ’522 patent”). Paper 2 (“Pet”). Edgewell Personal Care Brands, LLC (“Patent Owner”) filed a Preliminary Response. Paper 10 (“Prelim. Resp.”).

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 showing claims 1, 2, 4, 7–10, 12, 14–16, 18, 21–23, 25, 27–29, 31, 33–37, and 39 of the ’522 patent are unpatentable. Accordingly, we decline to institute an *inter partes* review.

B. Related Proceeding

The parties represent that the ’522 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 5, 2.

C. The '522 Patent

The '522 patent, titled “Tampon Assembly Having Shaped Pledget,” issued November 24, 2015 from U.S. Patent Application No. 11/713,974, filed March 5, 2007. Ex. 1001. Figure 1 is reproduced below.

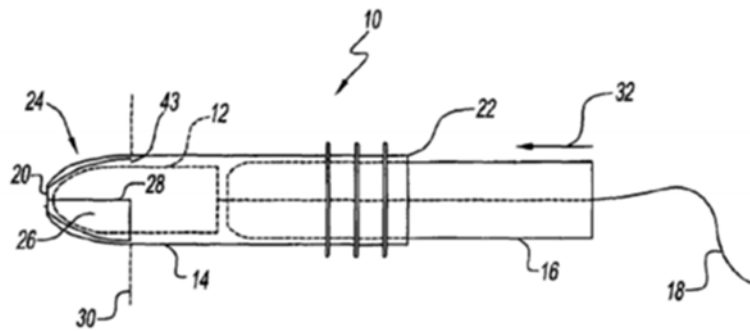


Fig. 1

Figure 1 is a side view of tampon assembly 10. *Id.* at 2:26–27. The tampon assembly includes applicator barrel 14 and shaped pledget 12 housed within the barrel. *Id.* at 2:54–58. The barrel's first end 20 defines tapered insertion tip 24, which includes a plurality of petals 26 separated from each other by a plurality of slits 28. *Id.* at 2:63–67.

The '522 patent explains that pledget 12 includes tip section 40, which can be formed by compression or by cutting, and may have a higher density or the same density as the rest of the pledget. *Id.* at 5:44–53.

D. Illustrative Claim

Of the challenged claims, claims 1, 9, 15, 22, 27, 34, and 39 are independent. Independent claim 1 is illustrative, and is reproduced below:

1. A tampon assembly, comprising:
a barrel region having a single layer plastic tubular wall having an inner surface and an outer surface, said barrel region having a first end and a second end, said barrel region having a plurality of discrete petals at said

first end that define a generally tapered shaped insertion tip region, said discrete petals being separated from each other by a plurality of cuts that form a break of material through said tubular wall, each of said plurality of cuts having a terminal end adjacent a base region of said plurality of discrete petals, each of said plurality of cuts extending along said barrel region for a first length measured from said first end to said terminal end;

a tapered pledget having an end region that has been compressed to form a tapered insertion tip that has a greater density than an adjacent region of said pledget prior to said tampon assembly being inserted into a user, said tapered tip having a length that is less than said first lengths of said plurality of cuts, said tapered tip contacting and supporting at least said base regions of said plurality of petals adjacent to said terminal ends of said plurality of cuts while said tampon assembly is being inserted into said body for mitigating against said plurality of petals pinching said user.

Ex. 1001, 6:64–7:21 (emphasis added).

E. Prior Art Relied Upon

Petitioner relies upon the following prior art references, as well as the Declaration of Raymond J. Hull, Jr. (“Hull Declaration,” Ex. 1036). Pet. 3–4.

Reference	Patent No.	Relevant Dates	Exhibit No.
Voss	US 3,433,225	Filed Dec. 22, 1965 Issued Mar. 18, 1969	Ex. 1040
Hanke	US 3,699,962	Filed Oct. 28, 1970 Issued Oct. 24, 1972	Ex. 1050
Wada	US 6,432,075 B1	Filed Nov. 8, 2000 Issued Aug. 13, 2002	Ex. 1056

F. Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims 1, 2, 4, 7–10, 12, 14–16, 18, 21–23, 25, 27–29, 31, 33–37, and 39 of the '522 patent based on the following grounds. Pet. 3–4.

Reference(s)	Basis	Claim(s) Challenged
Wada	§ 102(e)	1, 2, 4, 7, 8, 9, 10, 12, 14, 22, 23, 25, 27, 28, 29, 31, 33, 34, 35, 36, 37, and 39
Wada and Routine Engineering Principles	§ 103(a)	1, ¹ 4, 15, 18, 21, 22, 25, 27, 29, 31, 33, 34, and 37
Wada and Hanke	§ 103(a)	15, 18, and 21
Wada, Hanke, and Voss	§ 103(a)	16

II. DISCUSSION

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Under that standard, and absent any special definitions, we give claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

¹ Although the Petition does not include claim 1 in this ground, in its identification of claims being challenged, *see* Pet. 3, claim 1 is at least partially analyzed under this ground in the body of the Petition, *id.* at 78.

Based on the record before us, we need not provide express constructions for any claim terms to resolve the issues in dispute. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

B. Principles of Law

A claim is unpatentable under 35 U.S.C. § 102(e) if a prior art reference discloses every limitation of the claimed invention, either explicitly or inherently. *Glaxo Inc. v. Novopharm Ltd.*, 52 F.3d 1043, 1047 (Fed. Cir.1995). To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present” in the single anticipating reference. *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991).

A claim is unpatentable under 35 U.S.C. § 103(a) if “the differences between the subject matter sought to be patented 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 skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3)). This burden never shifts to Patent

Owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

We analyze the challenges presented in the Petition in accordance with the above-stated principles.

C. Level of Ordinary Skill in the Art

In determining whether an invention would have been obvious at the time it was made, we consider the level of ordinary skill in the pertinent art at the time of the invention. *Graham*, 383 U.S. at 17.

Petitioner relies on the testimony of its declarant, Mr. Hull, and contends that a person of ordinary skill in the art “would have had at least a bachelor’s degree in engineering or science (e.g., biology or chemistry), and would have had at least four years of experience designing tampons and applicators.” Pet. 21–22 (citing Ex. 1036 ¶ 31). In its Preliminary Response, Patent Owner does not identify the relevant level of ordinary skill in the art. *See generally* Prelim. Resp.

Based on our review of the ’522 patent, the types of problems and solutions described in the ’522 patent and cited prior art, and the testimony of Mr. Hull, at this stage of the proceeding, we adopt and apply Petitioner’s definition for purposes of this Decision. We also note that the applied prior art reflects the appropriate level of skill at the time of the claimed invention. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

D. Alleged Anticipation by Wada

Petitioner contends claims 1, 2, 4, 7, 8, 9, 10, 12, 14, 22, 23, 25, 27, 28, 29, 31, 33, 34, 35, 36, 37, and 39 of the ’522 patent are unpatentable under 35 U.S.C. § 102(e) in view of Wada. Pet. 40–77. For reasons that

follow, we determine Petitioner has not demonstrated a reasonable likelihood of prevailing as to the challenged claims.

1. Overview of Wada (Ex. 1056)

Wada is a U.S. patent titled “Applicator for Tampons.” Ex. 1056, (54). Wada’s tampon applicator includes outer cylinder 1 and push-out member 2. *Id.* at 3:41–43. The outer cylinder includes “four valves 17 in a petal shape.” *Id.* at 4:31–33, Fig. 2A. Tampon 3 is housed within the outer cylinder, and is expelled therefrom by movement of push-out member 2. *Id.* at 3:43–46, 4:9–18. Wada explains that tampon 3 “is formed by compress-molding absorptive fibers such as cotton.” *Id.* at 3:43–46.

2. Analysis of Cited Art

Petitioner contends that Wada anticipates claims 1, 2, 4, 7, 8, 9, 10, 12, 14, 22, 23, 25, 27, 28, 29, 31, 33, 34, 35, 36, 37, and 39 of the ’522 patent. Pet. 40–77. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 7–23. Patent Owner argues, *inter alia*, that Wada does not disclose a pledget having a tip with greater density than an adjacent region of the pledget, and does not disclose that the length of Wada’s tip is less than the length of a plurality of cuts. *Id.* at 8–19.

After considering the parties’ arguments and evidence, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on this ground.

a. Independent Claims 1 and 9

Independent claims 1 and 9 recite a tapered pledget having an end region that is “compressed to form a tapered insertion tip that has a greater density than an adjacent region.” Ex. 1001, 7:10–12, 54–56. Petitioner contends that Wada’s tampon 3 is the claimed pledget, which Wada

discloses to be “formed by compress-molding absorptive fibers such as cotton.” Pet. 43 (citing Ex. 1056, 3:43–45, Fig. 1) (emphasis omitted). Petitioner contends that “[w]hen a pledget is shaped to form the taper shown in Figure 1, it is ‘compressed’ and inherently ‘has a greater density than an adjacent region.’” *Id.* (citing Ex. 1036 ¶¶ 116–117)².

Patent Owner disputes Petitioner’s position. Prelim. Resp. 8–11. Specifically, Patent Owner argues that Petitioner’s contentions are unsupported by substantive analysis, lack sufficient evidence, and amount to no more than “a conclusory statement of inherency.” *Id.* at 8. Further, Patent Owner argues that the ’522 patent demonstrates that compression of a pledget’s tip may result in either the same or different densities at the tip region. *Id.* at 9; Ex. 1001, 5:44–51.

We are persuaded by Patent Owner’s arguments. First, although Wada explains that tampon 3 “is formed by compress-molding,” Wada does not discuss the resulting density of any portion of the tampon, much less the relative densities between the tampon’s tapered insertion tip and any adjacent region. *See* Ex. 1056, 3:43–45. Accordingly, we are not persuaded that Wada expressly discloses this limitation.

Second, we are not persuaded by Petitioner’s contention that Wada inherently discloses this limitation. Pet. 43. Petitioner has not shown that the tip of Wada’s tampon 3 *necessarily* possesses a greater density than a region adjacent the tip. *See Continental Can*, 948 F.2d at 1268 (explaining that the evidence “must make clear that the missing descriptive matter is necessarily present”). To the contrary, both the Petition and the Hull

² The cited portions of the Hull Declaration closely mirror the Petition.

Declaration lack persuasive technical reasoning to explain how or why “compress-molding” Wada’s tampon would necessarily result in a higher density at the tip region, as compared to adjacent regions of the pledget. Pet. 43; Ex. 1036 ¶¶ 116–117; *see also* 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”).

Furthermore, the record suggests that compression of a tampon *does not* necessarily result in a tip with a greater density than adjacent regions. Ex. 1001, 5:45–48. For example, if a tip includes less dense material, compression may result in a tip with the *same density* as the rest of the pledget. *Id.* Because Wada does not specify the starting density or distribution of its absorptive fibers, we are not persuaded that compress-molding those fibers would necessarily result in a higher density at the tip region. Although a higher relative density *may* result, inherency “may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Continental Can*, 948 F.2d at 1269 (quoting *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981)).

Thus, for these reasons, Petitioner has not established that Wada anticipates independent claims 1 and 9, or claims 2, 3, 7, 8, 10, 12, and 14, which depend from claim 1 or 9.

b. Independent Claims 1, 9, 22, 27, 34, and 39

Independent claims 1, 9, 22, 27, 34, and 39 recite that the tapered tip of the pledget has a length less than the lengths of the plurality of cuts between the petals of the pledget. Ex. 1001, 6:64–7:21, 7:41–8:5, 9:1–35,

9:45–10:5, 10:26–60, 11:3–12:10. According to Petitioner, “[t]he tampon’s tapered tip is shown to be shorter than the barrel’s insertion tip,” in Wada’s Figure 1. Pet. 44 (citing Ex. 1036 ¶ 118 (near verbatim)). Alternatively, Petitioner contends that “the choice of lengths of cuts and length of the tampon’s taper were at the relevant time an engineering design choice.” *Id.* (citing Ex. 1036 ¶ 119 (near verbatim)).³

Patent Owner argues that Mr. Hull makes an unsupported conclusion that Wada’s Figure 1 depicts the claimed relative lengths, but that Mr. Hull does not provide any specific dimensions or references underlying his opinion. Prelim. Resp. 13. Furthermore, Patent Owner objects to Petitioner’s reliance on dimensions purportedly depicted in Wada’s Figure 1 because the U.S. Court of Appeals for the Federal Circuit, our reviewing court, prohibits such reliance. *Id.* at 13–14. To the extent they are considered, Patent Owner argues that Figure 1 suggests that the tip length is *longer* than the lengths of the cuts. *Id.* at 15–16.

We are persuaded by Patent Owner’s arguments. First, we agree with Patent Owner that, as a general matter, reliance on the particular dimensions of patent drawings is improper, absent a discussion of those dimensions in the written description of the patent’s specification. *See Hockerson-Halberstadt, Inc. v. Avia Grp. Int’l, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000) (“[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes

³ Patent Owner argues, *inter alia*, that this contention is misplaced in an anticipation ground. Prelim. Resp. 12. We agree, and address this contention in Section II.E.1.b below.

if the specification is completely silent on the issue.”); *In re Wright*, 569 F.2d 1124, 1127 (CCPA 1977) (“Absent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value.”); *Nystrom v. TREX Co.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005) (concluding it was error to “not properly apply[] the principles set forth in our prior precedents that arguments based on drawings not explicitly made to scale in issued patents are unavailing”). In this case, Wada does not indicate that Figure 1 is drawn to scale, and Wada’s specification does not describe the length of the tip portion of the tampon or the length of the plurality of cuts in the applicator. *See generally* Ex. 1056. Accordingly, we are unpersuaded by Petitioner’s reliance on dimensions purportedly depicted in Wada’s Figure 1.

Furthermore, the Petition fails to identify clearly what it contends to be the “tapered tip,” such that its length could be compared to the length of the applicator’s cuts to determine whether this claim limitation is met. For example, the Petition at page 44 states that the “tapered tip is shown to be shorter than the barrel’s insertion tip,” but does not define what portion of Wada’s structure is understood to be the “tapered tip.” Pet. 44. The Hull Declaration similarly fails to identify the tapered tip with particularity. Ex. 1036 ¶ 118.

Thus, for these reasons, Petitioner has not established that Wada anticipates independent claims 1, 9, 22, 27, 34, or 39, or claims 2, 4, 7, 8, 10, 12, 14, 23, 25, 28, 29, 31, 33, and 35–37, which depend from independent claims 1, 9, 22, 27, 34, or 39.

c. Summary

On this record, we determine that Petitioner has not presented sufficient evidence to establish a reasonable likelihood it would prevail in showing that claims 1, 2, 4, 7, 8, 9, 10, 12, 14, 22, 23, 25, 27, 28, 29, 31, 33, 34, 35, 36, 37, and 39 are anticipated by Wada.

E. Alleged Obviousness over Wada and “Common Sense Application of Routine Engineering Principles”

Petitioner contends claims 1, 4, 15, 18, 21, 22, 25, 27, 29, 31, 33, 34, and 37 of the ’522 patent are unpatentable under 35 U.S.C. § 103(a) in view of Wada and “Routine Engineering Principles.” Pet. 78–81, 85–86. For reasons that follow, we determine Petitioner has not demonstrated a reasonable likelihood of prevailing as to the challenged claims.

1. Analysis of Cited Art

Petitioner contends the teachings of Wada in view of routine engineering principles renders obvious every element of claims 1, 4, 15, 18, 21, 22, 25, 27, 29, 31, 33, 34, and 37 of the ’522 patent. Pet. 78–81, 85–86. Patent Owner disagrees. Prelim. Resp. 23–29, 35–36.

After considering the parties’ arguments and evidence, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on this ground.

a. Independent Claim 1

Petitioner appears to contend that Wada discloses each limitation of claim 1, as discussed *supra*, however, to the extent Wada does not disclose that the tapered tip has a greater density than an adjacent region of the pledget, such a limitation would have been obvious. Pet. 78; *see supra* Section II.D.2.a. Petitioner alleges that “compressing the pledget’s tip to

form a tapered tip, which had a greater density than adjacent material, was well known in the art before 2003.” Pet. 78 (citing Ex. 1036 ¶¶ 95–98, 225).

Patent Owner contests Petitioner’s position. Prelim. Resp. 25–26. Specifically, Patent Owner argues that the cited portions of the Hull Declaration fail to even mention density. *Id.* at 25–26. Patent Owner also argues that the Petition provides “no analysis . . . to explain why the skilled artisan would be motivated to modify the tip of Wada’s pledget.” *Id.* at 25.

We agree with Patent Owner. The Petition states that the claimed relative densities were “well known in the art before 2003,” but does not provide persuasive evidentiary support for this statement. Pet. 78. Indeed, cited paragraphs 95–98 of the Hull Declaration discuss prior art tampons having petals or tapered designs, and prior art tampons formed by compression, but do not discuss prior art tampons having the claimed density. Ex. 1036 ¶¶ 95–98. Cited paragraph 225 asserts that the claimed density was known, but provides no support for this statement, instead merely citing back to paragraphs 95–98. *Id.* ¶ 225; *see In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (explaining that Petitioner cannot satisfy its burden of proving obviousness by employing “mere conclusory statements”). “Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight” and, here, we assign Mr. Hull’s testimony no weight. 37 C.F.R. § 42.65(a).

Thus, for these reasons, Petitioner has not established that Wada and routine engineering principles would have rendered obvious independent claim 1, or claim 4, which depends from claim 1.

b. Independent Claims 15, 22, 27, and 34

Each of independent claims 15, 22, 27, and 34 includes a limitation drawn to the respective lengths of the tapered tip and cuts, which limitation was discussed in Section II.D.2.b above. In contending that claims 15, 22, 27, and 34 would have been obvious, Petitioner appears to rely solely on its anticipation contentions regarding this limitation. *See* Pet. 79–81, 85–86. As discussed above, we are not persuaded that Wada discloses this limitation.

In the ground asserting anticipation by Wada, *see* Section II.D.2.b above, Petitioner contends that the claimed length is a matter of “design choice.” Pet. 44. As we stated above, this contention is properly evaluated under 35 U.S.C. § 103(a), not § 102(e).

Nonetheless, we reject Petitioner’s bald conclusion that it would have been an obvious matter of design choice to select the relative lengths reflected in the challenged claims. Petitioner provides no persuasive evidence to explain why a skilled artisan would have modified Wada’s geometry, and the cited portion of the Hull Declaration is equally lacking. *See* Ex. 1036 ¶ 119 (near verbatim). As Patent Owner correctly notes, Petitioner’s conclusion is insufficient, without some evidentiary support or persuasive technical reasoning, and an articulated rationale as to why the modification would have been made. *See* Prelim. Resp. 17–18.

Accordingly, Petitioner has not established that Wada renders obvious independent claims 15, 22, 27, or 34, or claims 18, 21, 25, 29, 31, 33, and 37, which depend from claim 15, 22, 27, or 34.

c. Summary

On this record, we determine that Petitioner has not presented sufficient evidence to establish a reasonable likelihood it would prevail in showing that claims 1, 4, 15, 18, 21, 22, 25, 27, 29, 31, 33, 34, and 37 would have been obvious over Wada and Routine Engineering Principles.

F. Alleged Obviousness over Wada and Hanke

Petitioner contends claims 15, 18, and 21 of the '522 patent are unpatentable under 35 U.S.C. § 103(a) in view of Wada and Hanke. Pet. 82–85. For reasons that follow, we determine Petitioner has not demonstrated a reasonable likelihood of prevailing as to the challenged claims.

1. Overview of Hanke (Ex. 1050)

Hanke is a U.S. Patent titled “Tubular Plastic Inserter for Tampons.” Ex. 1050. Hanke discloses a tampon applicator with outer tube 13 and inner tube 15. *Id.* at 2:66–68. Hanke explains that the tubes are arranged “quite close,” requiring 100–600 grams of dislodging force. *Id.* at 4:40–48.

2. Analysis of Cited Art

Independent claim 15 includes a limitation drawn to the respective lengths of the tapered tip and cuts, as discussed in Sections II.D.2.b and II.E.1.b above. In contending that claim 15 would have been obvious, Petitioner appears to rely solely on its prior contentions regarding Wada when treating this limitation. *See* Pet. 83 (“See claim 1g.”). As discussed above, we are not persuaded that Wada discloses this limitation, or renders it obvious. *See supra* Sections II.D.2.b, II.E.1.b. Petitioner’s reliance on Hanke does not cure this defect. Pet. 82–85.

Accordingly, Petitioner has not established that Wada and Hanke render obvious independent claim 15, or claims 18 and 21, which depend from claim 15.

G. Alleged Obviousness over Wada, Hanke, and Voss

Petitioner contends claim 16 of the '522 patent is unpatentable under 35 U.S.C. § 103(a) in view of Wada, Hanke, and Voss. Pet. 86–88. For reasons that follow, we determine Petitioner has not demonstrated a reasonable likelihood of prevailing as to the challenged claim.

1. Overview of Voss (Ex. 1040)

Voss is a U.S. Patent titled “Hygienic Devices and Methods of Making the Same.” Ex. 1040. Voss discloses a “hygienic medium applicator tube” in which the closed forward end comprises a plurality of shaped segments. *Id.* at 1:13–16. Voss explains that the tube may be any suitable thickness, “so long as the segments are sufficiently resilient and flexible, and the remainder of the tube is sufficiently rigid to facilitate its use.” *Id.* at 5:66–69.

2. Analysis of Cited Art

Claim 16 depends from claim 15, discussed in Section II.F.2 above. As discussed above, we are not persuaded that Wada discloses the claimed respective lengths of the tapered tip and cuts, or renders it obvious. *See supra* Sections II.D.2.b, II.E.1.b. Petitioner’s reliance on Hanke and Voss does not cure this defect. *See* Pet. 86–88.

Accordingly, Petitioner has not established that Wada, Hanke, and Voss render obvious claim 16.

III. CONCLUSION

For the foregoing reasons, we determine Petitioner has not demonstrated a reasonable likelihood it would prevail in establishing the unpatentability of the challenged claims of the '522 patent.

IV. ORDER

Upon consideration of the record before us, it is:

ORDERED that the Petition is *denied* as to all challenged claims, and no trial is instituted.

IPR2017-00693
Patent 9,192,522 B2

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