

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

UNI-CHARM CORP. AND
EDGEWELL PERSONAL CARE BRANDS, LLC,
Patent Owner.

Case IPR2017-00694
Patent 6,432,075 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 1–6 (“the challenged claims”) of U.S. Patent No. 6,432,075 B2 (Ex. 1001, “the ’075 patent”). Paper 2 (“Pet”). Edgewell Personal Care Brands, LLC, an exclusive licensee of the ’075 patent, filed a Preliminary Response. Paper 10 (“Prelim. Resp.”); *see also* Paper 9 (Updated Mandatory Notices); Ex. 2001, 2–3 (Patent Owner Uni-Charm Corp. representing that Edgewell has authority to participate in this proceeding). Accordingly, for purposes of this Decision, we treat Edgewell as “Patent Owner.”¹

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 challenging claims 1–6 of the ’075 patent as unpatentable. Accordingly, we decline to institute an *inter partes* review.

¹ The caption for this proceeding is amended to reflect Edgewell’s appearance and participation in this proceeding. The parties are instructed to use the caption appearing on the first page of this Decision in any subsequent paper.

B. Related Proceeding

The parties represent that the '075 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 4, 2.

C. The '075 Patent

The '075 patent, titled "Applicator for Tampons," issued August 13, 2002, from U.S. Patent Application No. 09/708,843, filed November 8, 2000. Ex. 1001. Figure 1 is reproduced below.

Fig. 1

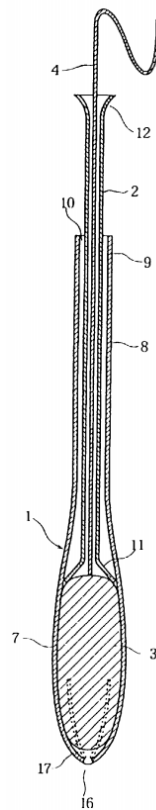
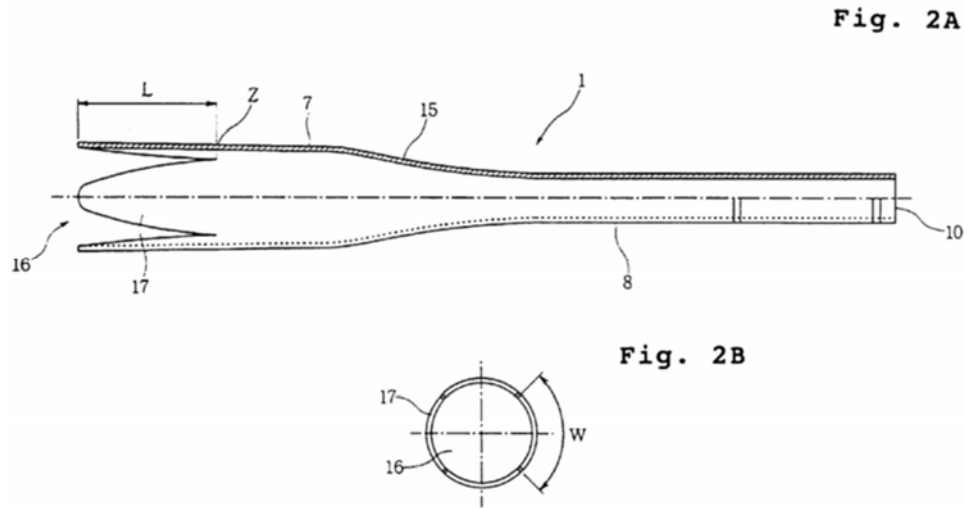


Figure 1 depicts a sectional view of the applicator, which includes outer cylinder 1 and inner cylinder 2, with tampon 3 fitted within outer cylinder 1. *Id.* at 3:41–46. Outer cylinder 1 includes valves 17. *Id.* at 4:30–33.

Figures 2A and 2B are reproduced below.



Figures 2A and 2B are side and end views of outer cylinder 1. *Id.* at 3:21–25. Outer cylinder 1 is injection molded into a cylindrical shape, as shown in Figure 2A, with large diameter portion 7 and small diameter portion 8, and inflection plane 15 therebetween. *Id.* at 4:19–25. In this state, valves 17 have length L and width W, at their root ends. *Id.* at 4:35–39. “[A] ratio L/W between the length L of the valve 17 and the width W of the root end is set within a range of 1.0 to 2.0.” *Id.* at 5:32–34.

Figure 3 is reproduced below.

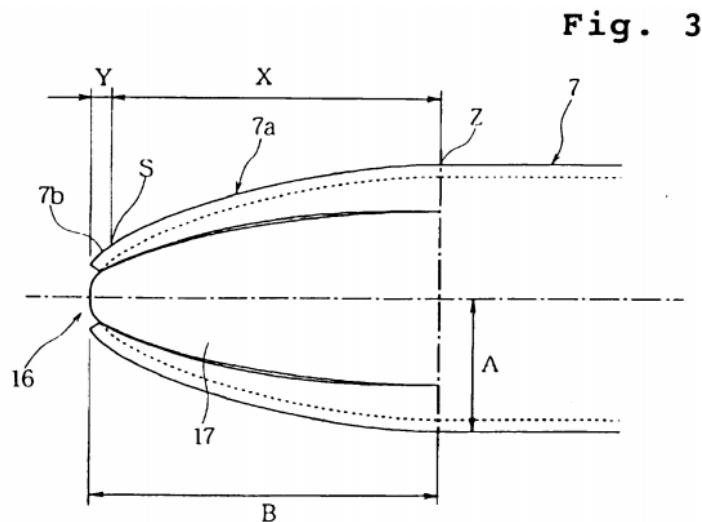


Figure 3 depicts large diameter portion 7, after a heated die has been pressed against the leading end of the large diameter portion, which deforms valves 17 into curved face portion 7a. *Id.* at 3:26–27, 4:55–62. As shown in Figure 3, “when the outer face of the large diameter portion 7 at the inflection point Z has a radius A and the axial length from the inflection point Z to the leading end of the outer cylinder 1 is B, a ratio A/B is at most 0.8.” *Id.* at 5:20–24.

D. Illustrative Claim

Of the challenged claims, claims 1, 5, and 6 are independent. Independent claim 1 is illustrative, and is reproduced below:

1. An applicator for a tampon, comprising:
 - an outer cylinder including forward and rearward ends, a first portion for fitting the tampon therein formed on a side of the forward end, and a second portion formed on a side of the rearward end and having a smaller diameter than that of said first portion,
 - a push-out member movably inserted into said second portion of said outer cylinder, and
 - a plurality of valves provided with the forward end of said outer cylinder, each valve being converged to have a curved face portion to be diametrically gradually reduced and define a leading end,

wherein a ratio of a radius of an outer face at an inflection point of a boundary between a maximum diameter portion of said first diameter portion and said curved face portion to an axial length of the outer face from the inflection point to the leading end of said curved face portion is at most 0.8; and

wherein a ratio of a length of said valves to a width of root ends of said valves is 1.0 to 2.0.

Ex. 1001, 7:24–44 (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. 1024).
Pet. 3–4.

Reference	Patent No.	Relevant Dates	Exhibit No.
Koch	US D250,663	Issued Dec. 26, 1978 Filed Apr. 25, 1977	Ex. 1004
Balzar	US 5,807,372	Issued Sept. 15, 1998 Filed Nov. 14, 1996	Ex. 1005
Loyer	US 3,628,533	Issued Dec. 21, 1971 Filed Apr. 20, 1970	Ex. 1006
Berger	US 3,895,634	Issued July 22, 1975 Filed Oct. 18, 1973	Ex. 1007

F. Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims 1–6 of the ’075 patent based on the following grounds. Pet. 3–4.

Reference(s)	Basis	Claim(s) Challenged
Koch	§ 102(b)	1–5
Koch	§ 103(a)	6
Balzar	§ 102(b)	1–3, 6
Balzar & Koch	§ 103(a)	4, 5
Loyer	§ 102(b)	1–3, 6
Loyer & Koch	§ 103(a)	4, 5
Berger	§ 102(b)	1–3, 6
Berger & Koch	§ 103(a)	4, 5

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).

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(b) 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).

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. *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). This burden never shifts to Patent Owner. *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, and would have had at least four years of experience designing and building prototype tampons and tampon applicators.” Pet. 12 (citing Ex. 1024 ¶ 57). In its Preliminary Response, Patent Owner does not identify the relevant level of skill in the art. *See generally* Prelim. Resp.

Based on our review of the ’075 patent, the types of problems and solutions described in the ’075 patent and cited prior art, and the testimony of Mr. Hull, at this stage of the proceeding, we 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).

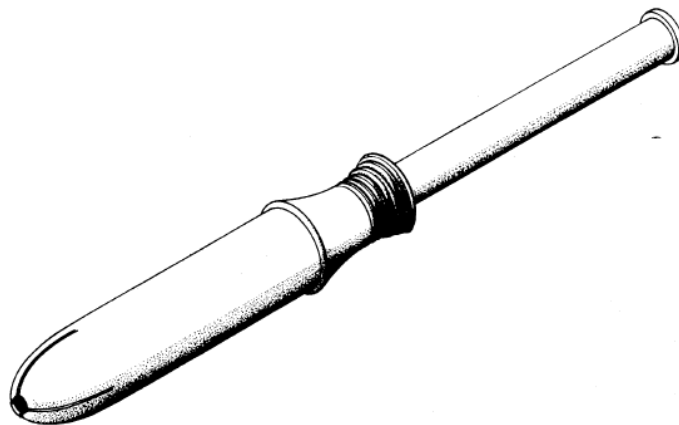
D. Alleged Anticipation by Koch

Petitioner contends claims 1–5 of the '075 patent are unpatentable under 35 U.S.C. § 102(b) in view of Koch. Pet. 23–40. Patent Owner disputes Petitioner's contentions. Prelim. Resp. 12–38. For example, Patent Owner argues that Koch's single figure does not disclose the claimed dimensions. *Id.* at 15–38.

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

1. Overview of Koch (Ex. 1004)

Koch is a U.S. design patent titled "Tampon Inserter." Ex. 1004, [54]. Koch's figure is reproduced below.



Koch explains that "[t]he single FIGURE is an isometric illustration of a tampon inserter in accordance with our new design. The design is cylindrical and the side not shown is a mirror image of the side shown." *Id.* at Description.

2. Analysis of Cited Art

Independent claims 1 and 5 recite that the ratio of a radius to an axial length of the outer curved face of the applicator is at most 0.8, and that a ratio of valve length to width is 1.0 to 2.0. Ex. 1001, 7:37–44, 8:23–28. Petitioner contends that Koch’s figure depicts the claimed ratios, as determined “[b]ased on a measurement of the dimensions of the drawings in Koch, using a ruler.” Pet. 24, 28–31 (citing Ex. 1024 ¶¶ 82–83). To support this contention, Mr. Hull states that he measured the relevant dimensions in Koch’s figure using a ruler, and that the hand-measured dimensions fall within the claimed ratios. Ex. 1024 ¶¶ 82–83.

Patent Owner disagrees. Prelim. Resp. 12–38. Specifically, Patent Owner argues that “Petitioner and its Expert attempt to measure and analyze that which is simply not intended for measurement purposes,” namely, patent drawings that lack proper scale or supporting discussion in the specification. *Id.* at 16–17.

We are persuaded by Patent Owner’s argument. We agree that, as a general matter, dimensions purportedly reflected in patent drawings are unpersuasive, absent a discussion of those dimensions in the written description of the patent’s specification. Indeed, as our reviewing court instructs, “it 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* if the specification is completely silent on the issue.” See *Hockerson-Halberstadt, Inc. v. Avia Grp. Int’l, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000) (emphasis added); see also *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”).

Petitioner is correct that design patents may serve as prior art for all that they reasonably disclose and suggest to a person of ordinary skill in the art. Pet. 24; *In re Aslanian*, 590 F.2d 911, 914 (CCPA 1979); *In re Mraz*, 455 F.2d 1069, 1072 (CCPA 1972). However, the cases cited by Petitioner do not stand for the proposition that design patent figures alone may be relied upon to establish specific, particular, quantitative dimensions. *See 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.”). To the contrary, as the cases discussed above make clear, specific dimensions inferred from patent drawings are unpersuasive if the specification is silent on the issue. *Hockerson-Halberstadt*, 222 F.3d at 956; *Nystrom*, 424 F.3d at 1149.

In this case, Koch does not indicate that its sole Figure is drawn to scale. *See* Ex. 1004. To the contrary, Koch indicates that its Figure presents an “isometric illustration.” *Id.* at Description. Further, Koch’s limited written description lacks any discussion of the claimed dimensions or ratios. *See id.* As such, we are unpersuaded by Petitioner’s reliance on dimensions measured with a ruler from Koch’s Figure. Petitioner does not identify, and we do not discern, any other support in Koch for the claimed ratios.

Thus, for this reason, Petitioner has not established that Koch anticipates independent claims 1 and 5, or claims 2–4 which depend from claim 1.

E. Alleged Obviousness over Koch

Petitioner contends claim 6 of the '075 patent is unpatentable under 35 U.S.C. § 103(a) in view of Koch. Pet. 40–41. Specifically, regarding the claimed ratios discussed above and also required by claim 6, Petitioner incorporates its contentions made with respect to purported anticipation by Koch. *Id.* at 41 (“For claims 6b through 6h, see analysis with respect to claims 1b through 1h, respectively.”). As discussed *supra*, however, we are not persuaded by Petitioner’s contentions in that regard. *See supra* Section II.D.2; *see also* Prelim. Resp. 39.

Thus, for the same reasons discussed above, Petitioner has not established that Koch would have rendered obvious independent claim 6.

F. Alleged Anticipation by Balzar

Petitioner contends claims 1–3 and 6 of the '075 patent are unpatentable under 35 U.S.C. § 102(b) in view of Balzar. Pet. 41–51. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 40–49. For example, Patent Owner argues that Balzar does not disclose the claimed ratios. *Id.* at 40–46.

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

1. Overview of Balzar (Ex. 1005)

Balzar is a U.S. Patent titled “Tampon Capable of Being Comfortably Withdrawn from a Body Cavity.” Ex. 1005, [54]. Balzar’s Figure 9 is reproduced below.

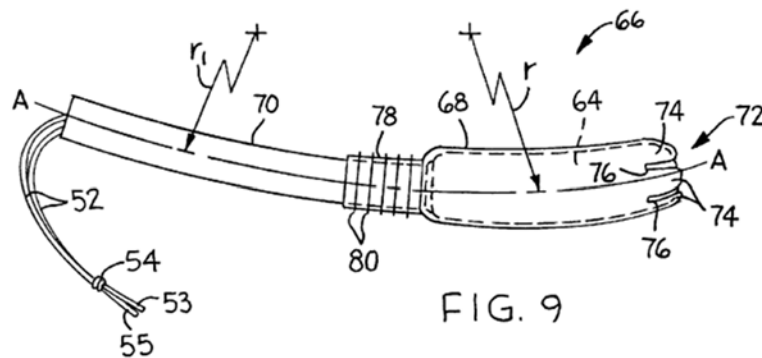


Figure 9 depicts a side-view of the tampon applicator 66 having inner tube 70 and outer tube 68. *Id.* at 2:47–48, 8:50–52. Outer tube 68 includes flexible petals 74 separately by narrow slots 76. *Id.* at 9:26–30. Balzar explains that “all of the petals 74 should have approximately the same shape and dimension. Each of the petals 74 can have an elongated, approximately truncated shape, with a rounded end and each can have a length of about 7/16 of an inch (about 11.1 mm).” *Id.* at 9:43–47.

2. Analysis of Cited Art

Independent claims 1 and 6 recite that the ratio of a specified radius to an axial length of the outer curved face of the applicator is at most 0.8 (“first ratio”), and that a ratio of valve length to width is 1.0 to 2.0 (“second ratio”). Ex. 1001, 7:37–44, 8:43–51. With respect to the first ratio, Petitioner contends that “the length of the petals in Balzar is about 11.1 mm,” which Petitioner equates to the claimed “axial length of the outer face from the inflection point to the leading end of said curved face portion.”² Pet. 47 (citing Ex. 1024 ¶¶ 110–111). With respect to the second ratio, Petitioner also relies on Balzar’s petal length of 11.1 mm as the claimed “length of said

² We reproduce the precise language of claim 1, but note that claim 6 presents substantially similar language.

valves.” *Id.* at 47–48 (citing Ex. 1024 ¶¶ 112–115). Using this value in its calculations, Petitioner contends that the claimed first and second ratio are disclosed by Balzar. *Id.*

Patent Owner disagrees. Prelim. Resp. 40–49. Specifically, Patent Owner argues that Petitioner cannot rely on Balzar’s dimension of 11.1 mm as *both* the axial length of the curved outer face, identified as dimension B in the ’075 patent, *and* the valve length, identified as dimension L in the ’075 patent. *Id.* at 45.

We agree with Patent Owner. Balzar explains that “petals 74 can have an elongated, approximately truncated shape, with a rounded end and each can have a length of about 7/16 of an inch (about 11.1 mm).” Ex. 1005, 9:43–47. From this passage, it is unclear whether the length of 11.1 mm refers to a straight valve length prior to being formed into the curved face shown in Figure 9 (akin to L, in the ’075 patent) or an axial length of the curved outer face (akin to B, in the ’075 patent).³ Regardless of to which claimed dimension Balzar’s 11.1 mm length relates, Petitioner has not explained persuasively how this same claimed dimension can satisfy two separate and different dimensions recited in the claims, namely, an “axial length of the outer face from the inflection point to the leading end of said curved face portion” and a “length of said valves.”

Thus, for this reason, Petitioner has not established that Balzar anticipates independent claims 1 and 6, or claims 2 and 3 which depend from claim 1.

³ Balzar’s reference to a “rounded end” suggests the 11.1 mm length more closely relates to an axial length of the curved outer face.

G. Alleged Obviousness over Balzar and Koch

Petitioner contends claims 4 and 5 of the '075 patent are unpatentable under 35 U.S.C. § 103(a) in view of Balzar and Koch. Pet. 51–53. Specifically, regarding the claimed ratios discussed above and also required by claims 4 and 5, Petitioner incorporates its contentions made with respect to purported anticipation by Balzar. *Id.* at 52 (“For claims . . . 5g through 5i, see analysis of Balzar with respect to . . . claims 1g and 1h, respectively.”). As discussed *supra*, however, we are not persuaded by Petitioner’s contentions in that regard. *See supra* Sections II.F.2; *see also* Prelim. Resp. 49–51.

Thus, for the same reasons discussed above, Petitioner has not established that Balzar and Koch would have rendered obvious claims 4–5.

H. Alleged Anticipation by Loyer

Petitioner contends claims 1–3 and 6 of the '075 patent are unpatentable under 35 U.S.C. § 102(b) in view of Loyer. Pet. 53–61. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 54–62. For example, Patent Owner argues that Loyer does not disclose the claimed ratios. *Id.* at 54–58.

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

1. Overview of Loyer (Ex. 1006)

Loyer is a U.S. Patent titled “Domed-Tipped Applicator for Catamenial Tampons.” Ex. 1006, [54]. Loyer’s Figure 1 is reproduced below.

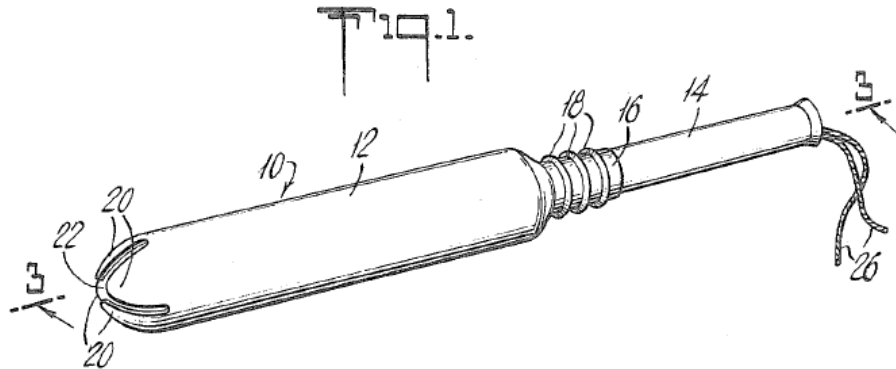


Figure 1 depicts a perspective view of tampon applicator 10, including outer tubular member 12, inner tubular member 14, and triangular shaped segments 20. *Id.* at 2:8–9, 23–26, 34–40.

2. Analysis of Cited Art

Independent claims 1 and 6 recite that the ratio of a specified radius to an axial length of the outer curved face of the applicator is at most 0.8, and that a ratio of valve length to width is 1.0 to 2.0. Ex. 1001, 7:37–44, 8:43–51. Petitioner contends that Figures 2, 3, and 5 of Loyer show dimensions that lead to the claimed ratios. Pet. 58–59 (citing Ex. 1024 ¶¶ 140–143 (near verbatim)). Neither the Petition nor the Hull Declaration explain how the purported dimensions were obtained, although we presume they come from measurements taken with a ruler. *Id.*; Ex. 1024 ¶¶ 140–143; *see also id.* ¶¶ 82–83.

As discussed above with respect to Petitioner’s contentions regarding anticipation by Koch, patent drawings are not persuasive to show particular quantitative dimensions when the specification is silent as to the relevant

dimensions. *See supra* Section II.D.2. Here, as above, Loyer does not indicate that Figures 2, 3, or 5 are drawn to scale, and Loyer's written description lacks any discussion of the claimed ratios. *See generally* Ex. 1006. As such, we are unpersuaded by Petitioner's reliance on dimensions purportedly depicted in Loyer's Figures. Petitioner does not identify, and we do not discern, any other support in Loyer for the claimed ratios.

Thus, for this reason, Petitioner has not established that Loyer anticipates independent claims 1 and 6, or claims 2 and 3 which depend from claim 1.

I. Alleged Obviousness over Loyer and Koch

Petitioner contends claims 4 and 5 of the '075 patent are unpatentable under 35 U.S.C. § 103(a) in view of Loyer and Koch. Pet. 61–62. Specifically, regarding the claimed ratios discussed above and also required by claims 4 and 5, Petitioner incorporates its contentions made with respect to purported anticipation by Loyer. *Id.* (“For claims . . . 5g through 5i, see Loyer analysis for claims . . . 1g, 1h, respectively.”). As discussed *supra*, however, we are not persuaded by Petitioner's contentions in that regard. *See supra* Section II.H.2; *see also* Prelim. Resp. 63–65.

Thus, for the same reasons discussed above, Petitioner has not established that Loyer and Koch would have rendered obvious claims 4–5.

J. Alleged Anticipation by Berger

Petitioner contends claims 1–3 and 6 of the '075 patent are unpatentable under 35 U.S.C. § 102(b) in view of Berger. Pet. 63–68. Patent Owner disputes Petitioner's contentions. Prelim. Resp. 66–72. For

example, Patent Owner argues that Berger does not disclose the claimed ratios. *Id.* at 66–70.

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

1. Overview of Berger (Ex. 1007)

Berger is a U.S. Patent titled “Tampon Inserter.” Ex. 1007, [54]. Berger’s Figure 1 is reproduced below.

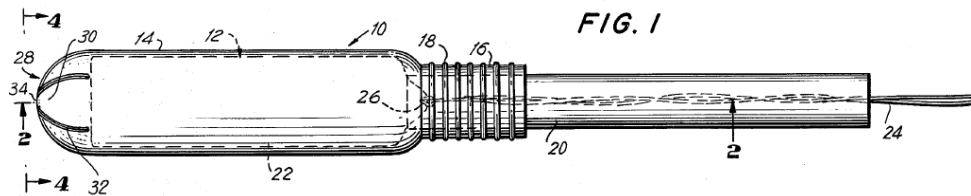


Figure 1 depicts a perspective view of tampon inserter 10, which includes plunger 20, front barrel member 14, and triangular segments 30. *Id.* at 4:45–46, 5:9–10, 5:19–31.

2. Analysis of Cited Art

Independent claims 1 and 6 recite that a ratio of a specified radius to an axial length of the outer curved face of the applicator is at most 0.8 (“first ratio”), and that a ratio of valve length to width is 1.0 to 2.0 (“second ratio”). Ex. 1001, 7:37–44, 8:43–51. With respect to the first ratio, Petitioner contends that Figure 5 of Berger shows dimensions that result in a ratio of 1.0, and although 1.0 is not the claimed 0.8, a skilled artisan “would have understood that the ratio . . . with a pointed, steeple-shaped, frusto-conical or

parabolic tip would be less than 1.0, and in all likelihood less than 0.8.”⁴ Pet. 66 (citing Ex. 1024 ¶ 168 (near verbatim)). With respect to the second ratio, Petitioner contends that Berger’s Figure 5 discloses dimensions leading to the claimed ratio. *Id.* at 67 (citing Ex. 1024 ¶¶ 170–171). Neither the Petition nor the Hull Declaration explain how the reported measurements were obtained, although we presume they come from measurements taken with a ruler. *Id.* at 66–67; Ex. 1024 ¶¶ 168–171; *see also id.* ¶¶ 82–83.

As discussed above with respect to Petitioner’s contentions regarding anticipation by Koch, patent drawings are not persuasive to show particular quantitative dimensions when the specification is silent as to the relevant dimensions. *See supra* Section II.D.2. Here, as above, Berger does not indicate that Figure 5 is drawn to scale, and Berger’s written description does not disclose the claimed ratios. *See* Ex. 1007. Indeed, as Patent Owner notes, where Berger discloses a relevant dimension, it varies from that relied upon by Petitioner. Prelim. Resp. 66–67. Specifically, the Petition contends that the diameter of Berger’s front barrel member 14 is “about 22 mm,” and Petitioner uses that dimension in calculating the first ratio. Pet. 66 (citing Ex. 1024 ¶ 168). However, this dimension is contradicted by the written description of Berger, which explains that the front barrel member’s “external diameter, at its widest point, [is] about 0.6 inch,” or 15.24 mm. Ex. 1007, 7:24–29; Prelim. Resp. 66–67. As such, we are unpersuaded by Petitioner’s reliance on dimensions purportedly depicted in Berger’s Figure.

⁴ This ground is deficient for other reasons, as discussed *infra*, however, we also note that Petitioner’s contention in this regard invokes obviousness under 35 U.S.C. § 103(a), not anticipation under § 102(b).

Petitioner does not identify, and we do not discern, any other support in Berger for the dimensions reflected in the claimed ratios.

Thus, for this reason, Petitioner has not established that Berger anticipates independent claims 1 and 6, or claims 2 and 3 which depend from claim 1.

K. Alleged Obviousness over Berger and Koch

Petitioner contends claims 4 and 5 of the '075 patent are unpatentable under 35 U.S.C. § 103(a) in view of Berger and Koch. Pet. 68–69.

Specifically, regarding the claimed ratios discussed above and also required by claims 4 and 5, Petitioner incorporates its contentions made with respect to purported anticipation by Berger. *Id.* at 69 (“For claims . . . 5g through 5i, see Berger analysis for claims . . . 1g, 1h, respectively.”). As discussed *supra*, however, we are not persuaded by Petitioner’s contentions in that regard. *See supra* Section II.J.2; *see also* Prelim. Resp. 72–75.

Thus, for the same reasons discussed above, Petitioner has not established that Berger and Koch would have rendered obvious claims 4–5.

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 '075 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.

IPR2017-00694
Patent 6,432,075 B2

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