

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TY INC.,
Petitioner,

v.

SOFTBELLY'S, INC.,
Patent Owner.

IPR2020-00689
Patent 6,195,831 C1

Before CHRISTOPHER L. CRUMBLEY, JON B. TORNQUIST, and
JOHN E. SCHNEIDER, *Administrative Patent Judges*.

SCHNEIDER, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision

Determining All Challenged Claims Unpatentable

35 U.S.C. § 318(a)

Denying in Part, Dismissing in Part Petitioner's Motion to Exclude

Denying in Part, Dismissing in Part Patent Owner's Motion to Exclude

37 C.F.R. § 42.64

I. INTRODUCTION

A. *Background and Summary*

TY Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 15 and 16¹ of U.S. Patent 6,195,831 C1 (Ex. 1001, “’831 patent”). Paper 1 (“Pet.”). Softbelly’s, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). On September 15, 2020 we issued our Decision Granting Institution. Paper 10 (“Dec.” or “Decision on Institution”).

Patent Owner then filed a Response on December 9, 2020. Paper 14 (“PO Resp.”). Petitioner filed a Reply on March 3, 2021. Paper 19 (“Reply”). Patent Owner filed a Sur-Reply on April 14, 2021. Paper 26 (“Sur-Reply”). On June 18, 2021, an oral hearing was held. Paper 42 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Decision is a Final Written Decision under 35 U.S.C. § 318(a) as to the patentability of the claims on which we instituted trial. Based on the complete record before us, we determine that Petitioner has shown, by a preponderance of the evidence, that claims 15 and 16 are unpatentable. In addition, for the reasons explained below, we deny in part and dismiss in part both Petitioner’s and Patent Owner’s Motions to Exclude evidence.

B. *Real Parties-in-Interest*

Petitioner identifies the real party-in-interest as TY Inc. Pet. 2.

Patent Owner identifies Softbelly’s, Inc. as the real party-in-interest. Paper 4, 2.

¹ Claims 15 and 16 were added to the ’831 patent during reexamination. Ex. 1002, col. 2, ll. 7–14.

C. Related Matters

The parties state that the following matters may affect or be affected by a decision in this proceeding:

Softbelly's, Inc. v. Boone Consumer Group, Inc., Case No. 2:01-cv-3149 (C.D. Cal., filed Apr. 5, 2001);

Softbelly's, Inc. v. Ty Inc., Case No. 1:19-cv-06265 (N.D. Ill., filed Sept. 19, 2019); and

Softbelly's, Inc. v. Ty Inc., Case No. 1:20-cv-00234 (N.D. Ill., filed Jan. 13, 2020). Pet. 2–3; Paper 4, 2.

The parties also state that the '831 patent was the subject of *Ex Parte* Reexamination 90/006,224 (“the Reexam”), filed February 15, 2002. Pet. 3; Paper 4, 2.

D. The '831 Patent

The '831 patent, titled “Display Screen Cleaning Tool,” issued on March 6, 2001, from U.S. Application No. 09/185,994 filed November 4, 1998. Ex. 1001, codes (21), (22), (45), and (54).

The '831 patent relates to a display screen cleaning tool that minimizes any degradation of the display screen surface that may result from wiping the screen. *Id.* at col. 1, ll. 60–62. In one embodiment, the tool comprises a three-dimensional doll-like figure in the shape of an animal or the like, where the figure has a soft belly comprising an optical grade fabric like optical grade chamois. *Id.* at col. 1, l. 66–col. 2, l. 12. In another embodiment, the doll-like figure is “‘under-stuffed’ in the manner in the art of ‘under-stuffed’ doll-like figures, e.g. ‘Beanie Babies.’” *Id.* at col. 3, ll. 18–21.

E. Illustrative Claims

Claims 15 and 16 are the claims challenged in the Petition. Claim 15 depends from cancelled claim 6 and claim 16 depends from cancelled claim 11. Ex. 1002, col. 2, ll. 4–14.

Claims 6 and 15 read as follows:

6. A three-dimensional doll-like figure for cleaning or wiping the surface of a display screen comprising:

a plurality of strips of fabric material sewed together so as to form a doll-like figure body having outer surface portions and at least one inner chamber, and wherein at least one of said plurality of strips of fabric material forms, in part, said inner chamber, and is composed of an optical grade fabric having substantially nonabrasive characteristics with regard to display screen surfaces; and a selected quantity of stuffing material within said at least one inner chamber so as to provide said doll-like figure with a three dimensional shape which is squeezable for providing a pliant cleaning tool for wiping a display screen.

Ex. 1001, col. 6, ll. 37–51.

15. The doll-like figure of claim 6 wherein another of said strips of fabric material is a nonoptical grade fabric material.

Ex. 1002, col. 2, ll. 9–11.

Claims 11 and 16 read:

11. A soft-bellied under-stuffed doll-like figure for cleaning or wiping the surface of a display screen comprising:

strips of fabric material sewed together so as to form a dolllike figure body having an outer surface portions and at least one inner chamber, and wherein at least one of said strips of fabric material forms, in part, said inner chamber, and forming the underside belly of said softbellied under-stuffed doll-like figure, and which is composed of an optical grade fabric having substantially non-abrasive characteristics; and a selected quantity of stuffing material within said at least one inner chamber so as to provide said doll-like figure with a three

dimensional shape which is squeezable for providing a pliant cleaning tool for wiping a display screen.

Ex. 1001, col. 7, ll. 1–15.

16. The doll-like figure of claim 11 wherein another of said strips of fabric material is a nonoptical grade fabric material.

Ex. 1002, col. 2, ll. 12–14.

F. Evidence

Petitioner relies on the following references:

Ogawa, JP H5-51237, published July 9, 1993 (Ex. 1006, “Ogawa”).

Masahiro, JP H8-103406, published April 23, 1996 (Ex. 1013, “Masahiro”).

Cherk et al., US 3,748,779, issued July 31, 1973 (Ex. 1008, “Cherk”).

Petitioner also relies on the Declarations of Mrs. Deborah Ryan (Exs. 1005 and 1022) and the Declaration of Dr. Donald B. Thompson (Ex. 1028).

Patent Owner relies on the Declaration of Dr. Sabit Adanur (Ex. 2005).

G. Asserted Grounds

Petitioner asserts that claims 15 and 16 would have been unpatentable on the following grounds:

Claim Challenged	35 U.S.C. §	Reference(s)/Basis
15	102	Ogawa
15	103(a)	Ogawa, Masahiro
16	103(a)	Ogawa, Cherk
16	103(a)	Ogawa, Masahiro, Cherk

II. ANALYSIS

A. Legal Standards

1. Burden

In an *inter partes* review, the burden of proof is on the petitioner to show that the challenged claims are unpatentable, and that burden never shifts to the patentee. 35 U.S.C. § 316(e) (2018); *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1375 (Fed. Cir. 2016).

2. Anticipation

Section 102(a) provides that “[a] person shall be entitled to a patent unless . . . the claimed invention was patented [or] described in a printed publication . . . before the effective filing date of the claimed invention.” 35 U.S.C. § 102(a)(1) (2018).² Accordingly, unpatentability by anticipation requires that the four corners of a single, prior art document describe every element of the claimed invention, either expressly or inherently, arranged as in the claims. *See Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008); *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1479 (Fed. Cir. 1994).

3. Obviousness

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) where in evidence, so-called

² The provisions of the Leahy-Smith America Invents Act (“AIA”) regarding novelty and obviousness apply to patents containing at least one claim having an effective filing date on or after March 16, 2013. Pub L. 112–29, 125 Stat. 284 (2011). On its face, the ’831 patent has an effective filing date of November 4, 1998. Therefore, the pre-AIA provisions of 35 U.S.C. §§ 102 and 103 apply to this decision.

secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). 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, the claim is unpatentable under 35 U.S.C. § 103. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

A proper § 103 analysis requires “a searching comparison of the claimed invention—including all its limitations—with the teachings of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995).

“Obviousness requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim under examination.” *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). “Rather, obviousness requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention.” *Id.*

“[O]bjective evidence of nonobviousness includes copying, long felt but unsolved need, failure of others, commercial success, unexpected results created by the claimed invention, unexpected properties of the claimed invention, licenses showing industry respect for the invention, and skepticism of skilled artisans before the invention.” *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998) (citations omitted). “For objective [evidence of secondary considerations] to be accorded substantial weight, its proponent must establish a nexus between the evidence and the merits of the *claimed invention*.” *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010) (alterations in original) (quoting *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995)).

B. Level of Ordinary Skill in the Art

The level of ordinary skill in the art is a factual determination that provides a primary guarantee of objectivity in an obviousness analysis. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 1324 (Fed. Cir. 1999) (citing *Graham*, 383 U.S. at 17–18; *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991)).

In our Decision on Institution, we adopted Petitioner’s proposed definition of a person of ordinary skill in the art as a person with “a Bachelor’s Degree in Design or a similar field, at least two years of experience working with or designing plush toys, or equivalent practical work experience.” Dec. 20.

In its response, Patent Owner now offers a different definition of a person of ordinary skill in the art. Patent Owner now contends that a person of ordinary skill in the art would have “(1) a Bachelor’s Degree in textile engineering or similar engineering and at least two years of industrial experience in textile engineering or similar engineering; or (2) 5 years or more industrial experience in manufacturing processes of fabrics and related products.” PO Resp. 6–7. Patent Owner contends that this is the proper definition of a person of ordinary skill in the art as the ’831 patent is directed to fabrics and textiles. *Id.*

Petitioner responds that Patent Owner’s proposed definition is improper as Patent Owner misstates the field of the invention. Reply 3. Petitioner contends that the claimed invention is not directed to fabrics or textiles but to cleaning tools in the form of a doll-like figure. *Id.* at 2. Petitioner contends that this interpretation is supported by the present Specification and the claims at issue. *Id.*

We have considered the arguments presented by the parties and the evidence of record and are not persuaded that our original definition of a person of ordinary skill in the art was in error. While the claims at issue refer to an optical grade fabric, we note that the fabric is not the invention. Rather, as stated in the Specification, the field of the invention is “cleaning tools for electronic display screens, and more specifically to cleaning tools for computer display screens and the like.” Ex. 1001, col. 1, ll. 4–6. The claims further narrow the field of the invention to cleaning tools in the form of a doll-like structure. *Id.* at col. 6, l. 37.

Based on the forgoing, we continue to apply the same definition of a person of ordinary skill in the art we used in our Decision on Institution. However, the findings and conclusions set forth below would have been the same had we instead adopted Patent Owner’s proposed definition.

C. Claim Construction

We interpret a claim “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. [§] 282(b).” 37 C.F.R. § 42.100(b) (2019). Under this standard, we construe the claim “in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” *Id.* Furthermore, we need only construe the claims to the extent necessary to determine the patentability of the challenged claims. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

The parties identify two terms that require construction, “optical grade fabric having substantially non-abrasive characteristics” and “display screen.” Pet. 23, PO Resp. 12–14.

1. Optical grade fabric having substantially non-abrasive characteristics

In our Decision on Institution, we construed the term “optical grade fabric having substantially non-abrasive characteristics” to mean “a fabric that has a minimal degrading effect on a display screen due to wiping of the display screen with the fabric.” Dec. 21–22. The parties appear to have accepted this construction as correct. PO Resp. 12; Reply 4. We adopt the construction set forth in our Decision on Institution for the term “optical grade fabric.”

2. Display Screen

The issue with respect to the term “display screen,” which appears in the preamble of independent claims 6 and 11, is not the definition of the term but whether the term should be given any patentable weight, or if it is merely an intended use for the cleaning device.

Patent Owner contends that the term display screen should be given patentable weight as the term defines how the cleaning tool is to be used. PO Resp. 12–14. Patent Owner points to the presence of the term “display screen” in the preamble and contends that it “breathes life” into the claim. *Id.* at 12–13. Patent Owner also contends that the use of the term “display screen” in the body of the claim demonstrates that the term limits the scope of the claim. *Id.* at 13–14.

Petitioner contends that the term “display screen” as it is used in the challenged claims reflects an intended use for the cleaning tool and is not a

claim limitation. Reply 5–7. Petitioner contends that the term does not add anything to the structure of the claimed article. *Id.*

Patent Owner responds that Petitioner is improperly proposing a new claim construction. Sur-Reply 8. Patent Owner contends that the term “display screen” limits the claim in that it defines the nature of the optical grade fabric used in the cleaning tool. *Id.*

We have considered the arguments presented by the parties and the evidence of record and conclude that Petitioner has the better position. The term “display screen,” as used in the challenged claims, refers to an intended use of the cleaning tool. As such, it does limit the scope of the claims.

We begin by noting that the challenged claims are directed to a device or apparatus. Ex. 1002, col. 2, ll. 8–13. As such, the claims “cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1468 (1990).

The preamble of both claims 6 and 11 read in part: “doll-like figure for cleaning or wiping the surface of a display screen.” Ex. 1001, col. 6, ll. 37–38; col. 7, ll. 1–2. Both claims end with the clause “providing a pliant cleaning tool for wiping a display screen.” *Id.* at col. 6, ll. 50–51; col. 7, ll. 13–14. These phrases are crafted in terms of a device for performing a specific function or use. This type of phrase has been found to recite an intended use and not a physical limitation. *See Marrin v. Griffin*, 599 F.3d 1290, 1294–96 (Fed. Cir. 2010).

The recitation of the intended use in the body of the claim does not affect our analysis. The term for wiping a display screen still recites a use of the device that does not impart a structural limitation.

With respect to Patent Owner’s contention that Petitioner has improperly raised a new construction in its reply, we note that Patent Owner

first raised the issue of whether the term “display screen” should be interpreted as a claim limitation in its Response. *See* PO Resp. 12–14. Petitioner’s arguments concerning the construction of the term “display screen” are proper as they address and respond to the issue raised by Patent Owner in its Response. 37 C.F.R. § 42.23. Additionally, Patent Owner had sufficient notice of Petitioner’s arguments and an opportunity to respond to those arguments in its Sur-Reply.

D. Ground 1 — Anticipation by Ogawa

Petitioner contends that claim 15 is anticipated by Ogawa. Pet. 23. Patent Owner disagrees. PO Resp. 14–27.

1. Ogawa

Ogawa is a Japanese Utility Model Application, which was published in July 1993. Ex. 1006, 1. Ogawa teaches a multi-fabric stuffed toy that can be used as a cleaning tool for various surfaces such as glassware. *Id.* ¶ 1; Abstr. In one embodiment, the cleaning tool of Ogawa comprises a stuffed toy constructed from two different fabrics, one for the gripping surface and the other for the cleaning surface. *Id.* ¶¶ 4–5. Ogawa teaches that the fabric used for the wiping surface can comprise woven or knit microfiber fabric made of microfiber yarn of between 0.2 and 0.00001 denier. *Id.* ¶ 4. Ogawa teaches that the stuffed toy can be in the shape of stuffed animal. *Id.*

2. Analysis of Claim 15

a) A three-dimensional doll-like figure for cleaning or wiping the surface of a display screen comprising

Petitioner contends that Ogawa discloses this limitation. Pet. 25–27. Petitioner contends that Ogawa discloses a wiping tool that is a three dimensional stuffed alligator, pig, whale, ladybug, or similar (three dimensional doll-like figure) used for removing dust and oil/fat smudges

from the surface of various objects. *Id.* at 25–26 (citing Ex. 1006 ¶¶ 1–2). Petitioner contends that while Ogawa does not specifically disclose wiping a display screen, Ogawa discloses using the wiping tool to clean glassware and that this would lead one skilled in the art to understand that the tool can be used to clean a display screen. *Id.* at 26 (citing Ex. 1006 ¶¶ 4–5; Ex. 1005 ¶ 57).

Patent Owner contends that Ogawa does not disclose this limitation. PO Resp. 24–25. Patent Owner points to the fact that Ogawa does not specifically mention using the tool to clean a display screen and does not present any data to show that the use of the tool does not degrade the display screen. *Id.* Patent Owner contends that one skilled in the art would not view Ogawa’s mention of cleaning glassware to teach that the tool can be used to clean display screens. *Id.*

We have considered the argument presented by the parties and the evidence of record and find that Ogawa discloses the limitation calling for a three-dimensional doll-like figure for cleaning or wiping the surface of a display screen.

Ogawa discloses a wiping tool “in a decorative mode, for example, in the form of a stuffed animal of an alligator, pig, whale, ladybug.” Ex. 1006 ¶ 5. Thus Ogawa teaches the element of the preamble calling for a three-dimensional doll-like figure.

With respect to the remainder of the preamble, as discussed above, the term “for cleaning or wiping a display screen” recites an intended use for the tool and does not limit the claim. However, even if the term were construed to limit the claim, we find that Ogawa discloses this limitation.

Ogawa discloses that the wiping tool can be used to “clean surfaces of glassware.” *Id.* ¶ 1. Dr. Anderson has testified that at the time Ogawa was

published, CRT screens were usually made of glass, falling within the scope of the term “glassware.” Ex. 1028 ¶ 43. This is consistent with the teachings of the ’831 patent and the interpretation of the term display screen used by the examiner during the Reexam. Ex. 1001, col. 1, ll. 12–16; *see* Ex. 1004, 441.³

b) a plurality of strips of fabric material sewed together so as to form a doll-like figure body having outer surface portions and at least one inner chamber, and wherein at least one of said plurality of strips of fabric material forms, in part, said inner chamber

Petitioner contends that Ogawa meets this limitation. Pet. 27–28. Petitioner contends that Ogawa discloses a cleaner comprising a grip body and a wipe body that are sewn together. *Id.* at 27. Petitioner contends that Ogawa discloses that the cleaner can be in the shape of “a stuffed animal shaped alligator, pig, whale, ladybug, etc., any of which is equivalent to the claimed doll-like figure body, after being stuffed with synthetic fiber or cushioning material.” *Id.* Petitioner contends that Ogawa discloses forming an inner chamber which can be filled with stuffing material. *Id.*

Patent Owner contends that Ogawa does not meet this limitation. PO Resp. 15–22. Patent Owner contends that a proper reading of this limitation requires that the inner chamber be formed by combining a strip of optical grade fabric and a strip of non-optical grade fabric. *Id.* at 15–16. Patent Owner supports this contention by citing to a specific embodiment disclosed in the ’831 patent which has an inner chamber formed by a piece of optical grade fabric combined with a piece of non-optical grade fabric. *Id.* (citing Ex. 1001, col. 3, ll. 33–59).

³ For Exhibit 1004, we refer to the page number added by Petitioner to the exhibit.

Patent Owner contends that Ogawa does not teach this arrangement. *Id.* at 18–19. Patent Owner contends that one skilled in the art would understand that Ogawa teaches forming two separate inner chambers, one formed from the wiping surface material and the other by the gripping body material and then combining the two chambers together to form the tool. *Id.*

Petitioner responds by contending that Patent Owner’s argument that the inner chamber must be made of two different materials is in error. Reply 7–9. Petitioner contends that Patent Owner is attempting to improperly read limitations from the Specification into the claims and that a proper reading of the claims would embrace an inner chamber formed completely of an optical grade fabric. *Id.*

Petitioner contends that even if Patent Owner’s construction were proper, Ogawa discloses an inner chamber comprising, in part, an optical grade fabric and a non-optical grade fabric. *Id.* at 9–12. Petitioner contends that one skilled in the art would not interpret Ogawa as teaching forming two different stuffed portions of the tool and then sewing those portions together. *Id.*

Patent Owner contends that in its Reply, Petitioner is improperly asserting new arguments and evidence regarding the inner chamber of Ogawa. Sur-Reply 9. Patent Owner contends that Mrs. Ryan testified that the tool of Ogawa could have up to three possible chambers, not just the one asserted by Petitioner. *Id.* at 10. Patent Owner contends that the teachings of how to make a stuffed toy are not applicable as the invention is a tool not at toy. *Id.* at 11. Patent Owner reiterates its argument that the proper interpretation of the claims term is that at least one chamber is formed of a strip of optical grade fabric and a strip of a non-optical grade fabric. *Id.* at 11–12.

We have considered the arguments advanced by the parties and the evidence of record and find that Ogawa discloses this claim limitation.

Ogawa discloses a wiping tool comprising a gripping body and a wiping part “that are integrated into one unit by means of stitching.”

Ex. 1006 ¶ 6. Ogawa also teaches that the tool is filled with synthetic fiber or cushioning material. *Id.* Mrs. Ryan testified that this necessarily means that the tool has an inner chamber, satisfying the requirements of this limitation. Ex. 1005 ¶¶ 40–41.

While the parties disagree as to whether the challenged claims call for an inner chamber comprising a strip of optical grade material and a strip of non-optical grade material, we need not resolve the issue. Even if we were to adopt Patent Owner’s proposed construction, we find that Ogawa discloses this limitation.

While we agree with Patent Owner that Ogawa is silent as to the whether the tool comprises an inner chamber formed by a strip of optical grade material and a strip of non-optical grade material, our analysis does not end there. PO Resp. 22. “[A] reference can anticipate a claim even if it ‘d[oes] not expressly spell out’ all the limitations arranged or combined as in the claim, if a person of skill in the art, reading the reference, would ‘at once envisage’ the claimed arrangement or combination.” *Kennametal, Inc. v Ingersoll Cutting Tool Co.*, 780 F.3d 1376, 1381 (Fed. Cir. 2015) (citing *In re Petering*, 301 F.2d 676, 681 (CCPA 1962)) (second alteration in original).

Patent Owner and Petitioner offer conflicting interpretations of how one skilled in the art would envision the tool disclosed in Ogawa. Patent Owner’s expert, Dr. Adanur, testified that one skilled in the art would interpret Ogawa as calling for forming the grip body and wipe parts separately, filling the two separate bodies with a stuffing material, and then

joining the two bodies together. Ex. 2005 ¶¶ 86–87. In support of his opinion Dr. Adanur quotes the following passage from Ogawa:

Figure 1 shows a side view of the wiping tool configured as a stuffed animal of an alligator. Figure 2 shows the bottom plane view of the wiping tool shown in Figure 1. In Figure 1, the reference code 1 represents a grip body, and the reference code 2 represents a wipe part. In Figure 2, the reference code 2 represents the wipe part. The grip body 1 comprises woven/knit fabric (textile material) consisting of natural or synthetic fiber, said woven/knit fabric being filled with synthetic fiber or a cushioning material. The wipe part 2 comprises a regular textile material, such as woven/knit fabric or velvet, but more preferably woven/knit microfiber fabric — i.e., woven/knit fabric consisting primarily of a microfiber yarn of 0.2 to 0.00001 denier, wherein at least the microfiber is entwined between and within the threads of said woven/knit fabric; provided that such a textile material is filled with synthetic fiber or a cushioning material. And, the grip body 1 and the wipe part 2 are integrated into one unit by means of stitching, etc., so as to form a wiping tool.

Id. ¶ 84 (quoting Ex. 1006 ¶ 6).

Mrs. Ryan, Petitioner’s expert, offers a different interpretation of the disclosure of Ogawa. Mrs. Ryan testifies that one skilled in the art would understand that Ogawa calls for an inner chamber formed by stitching together the grip body and the wipe part. Ex. 1022 ¶ 25. In addition to her own experience in making stuffed toys, Mrs. Ryan supports this conclusion by citing to several references relating to the manufacture of stuffed toys. *Id.* ¶¶ 26–28 (citing Ex. 1023, Ex. 1025, and Ex. 1026).

We have considered the testimony of both experts and the evidence of record and find Mrs. Ryan’s testimony to be more persuasive. Therefore, we agree with Petitioner that Ogawa discloses a wiping tool which has an inner

chamber formed by a strip of optical grade fabric — the wipe portion — and a non-optical grade fabric — the gripping body.

We give more weight to Mrs. Ryan’s testimony based on her extensive experience in designing plush toys. Ex. 1005 ¶¶ 3–5. Mrs. Ryan has worked in the area of plush toy design for over twenty-six years and has taught classes relating to plush toy design. *Id.* ¶¶ 3–4; page 40. In addition, Mrs. Ryan’s testimony regarding how one skilled in the art would envision the wiping tool of Ogawa is consistent with the evidence of record. For example, King⁴ teaches that teddy bears are formed by joining pieces of fabric creating an inner pocket into which stuffing is inserted. Ex. 1026, 7–12. Cockrill⁵ also teaches that teddy bears are traditionally made by cutting out the material, sewing the pieces together, and then stuffing the bears. Ex. 1025, 67.

Dr. Adanur’s experience and expertise appears to be primarily focused on textiles. Ex. 2005 ¶¶ 8–24. While Dr. Adanur testified that he has some experience in the area of plush toys, that experience appears to be limited to selection of fabric that could be used to manufacture plush toys and making several puppets at home to earn extra money. Ex. 1027, 52, 57–59, 78–79. In addition, Dr. Adanur does not cite to any evidence other than Ogawa to support his opinions as to what one skilled in the art would envision upon reading Ogawa. *See* Ex. 2005 ¶¶ 84–87. Patent Owner, however, contends that Ogawa is silent as to whether the tool has an inner chamber made from a piece of optical grade fabric and a piece of non-optical grade fabric. PO Resp. 1, 22.

⁴ King, *Make Your Own Teddy Bears*, 1985 (Ex. 1026) (“King”).

⁵ Cockrill, *The Teddy Bear Encyclopedia*, 1993 (Ex. 1025) (“Cockrill”).

Patent Owner contends that we should give Dr. Adanur's testimony greater weight than Mrs. Ryan's because Mrs. Ryan does not have sufficient experience with textiles. *Id.* at 8–10. Patent Owner also contends that Mrs. Ryan's testimony is biased in that a significant part of her work has been for Petitioner. Sur-Reply 2. We are not persuaded that we should give greater weight to Dr. Adanur's testimony on this point.

The limitation at issue is not directed to a specific fabric but whether one skilled in the art would envision Ogawa as calling for the tool to have an inner pocket formed by a strip of optical grade fabric and a strip of non-optical grade fabric. We find that this is an issue of product design and manufacturing rather than the nature of the fabrics used. Given that context, we give more weight to Mrs. Ryan's testimony than Dr. Adanur's testimony with respect to this claim limitation.

Patent Owner argues that we should give Mrs. Ryan's testimony little weight because "[s]eventy-five percent of Mrs. Ryan's expert work has been for Ty." Sur-Reply 2. While Mrs. Ryan testified that seventy five percent of her *expert witness work* has been for Petitioner, Mrs. Ryan also testified that her work as an expert witness for Petitioner was limited to three cases and the fees she received did not constitute a significant portion of her income. Ex. 2035, 54, 70. Moreover, as discussed above, Mrs. Ryan's opinions with respect to this limitation are consistent with the evidence of record.

Based on the foregoing, we conclude that Ogawa discloses the limitation calling for a plurality of strips of fabric material sewed together so as to form a doll-like figure body having outer surface portions and at least one inner chamber, and wherein at least one of said plurality of strips of fabric material forms, in part, said inner chamber.

- c) *and is composed of an optical grade fabric having substantially non-abrasive characteristics with regard to display screen surfaces;*

Petitioner contends that Ogawa discloses this limitation. Pet. 28–29. Petitioner contends that Ogawa discloses that the wipe part of the tool comprises a woven or knit microfiber material with the same characteristics as the material described in the '831 patent. *Id.* at 28.

Patent Owner argues that Ogawa does not disclose an optical grade fabric. PO Resp. 22–25. Patent Owner contends that fibers at the lower end of the denier range recited in Ogawa are in fact nanofibers and not microfibers and that materials made with nanofibers would not be a suitable optical grade fabric. *Id.* at 22–23. Patent Owner also contends that there is no data in Ogawa to show that the material disclosed is an optical grade fabric. *Id.* at 24. Patent Owner also points to the fact that Ogawa does not specifically mention wiping a display screen despite the fact that computer display screens were well-known at the time Ogawa was filed. *Id.*

Petitioner responds by contending that Patent Owner's arguments regarding the denier range disclosed in Ogawa only apply to the lower end of the recited range and that fabrics made with fibers at the upper range would be optical grade fibers. Reply 13. Petitioner also contends that Ogawa is presumed to be enabled and the lack of data is not fatal. *Id.* at 14. Petitioner contends that Patent Owner has failed to put forward any evidence to show that the fabrics of Ogawa would not work as described in Ogawa. *Id.* Petitioner also contends that one skilled in the art would understand that Ogawa's recitation of glassware would include a computer display screen. *Id.*

We have considered the arguments presented by the parties and the evidence of record and conclude that Petitioner has shown that Ogawa discloses this limitation.

Ogawa discloses that it “is more preferable if the wipe part is formed of woven/knit microfiber fabric, i.e., woven/knit fabric primarily consisting of a microfiber yarn of 0.2 to 0.00001 denier, wherein at least the microfiber is entwined between and within the threads of said woven/knit fabric.” Ex. 1006 ¶ 4. Ogawa also discloses that the wipe part is used to clean dust and smudges from glassware. *Id.* ¶ 1. These properties are the same as materials identified by Patent Owner during the Reexam as optical grade fabrics. *See* Ex. 1004, 410–416, 601–618. The parties’ textile experts agree that fabrics made with fibers at the upper range of denier recited in Ogawa can be optical grade fabrics. Ex. 1027, 89; Ex. 1028 ¶ 35.

Patent Owner contends that Ogawa does not disclose an optical grade fabric as fabrics made with fibers having a denier at the lower end to the range recited in Ogawa could not be used to clean glass or a display screen. PO Resp. 23–24 (citing Ex. 2005 ¶¶ 99–101). Patent Owner contends that fibers at the lower end of the range recited in Ogawa are nanofibers that cannot be fabricated into a useful fabric and that any such fabric could not be successfully used to clean an optical surface. *Id.*

We are not persuaded by Patent Owner’s arguments. While Patent Owner may be correct that nanofiber materials cannot be used to create an optical grade fabric, as discussed above, the higher end of the range overlaps with the denier range found in microfiber materials that were known to be optical grade fabrics. In addition, Ogawa teaches that the fabrics should act to clean glassware of dust and smudges. We agree with Petitioner’s experts that one skilled in the art would understand this to be an optical grade fabric.

See Ex. 1005 ¶ 42; Ex. 1022 ¶¶ 34–35; Ex. 1028 ¶¶ 32–33. Disclosure of at least some fabrics which are optical grade fabrics is sufficient to establish anticipation. See *In re Sasse*, 629 F.2d 675, 682 (CCPA 1980) (disclosure of at least one compound falling within the claims anticipates the claims.)

d) a selected quantity of stuffing material within said at least one inner chamber so as to provide said doll-like figure with a three dimensional shape which is squeezable for providing a pliant cleaning tool for wiping a display screen

Petitioner contends that Ogawa discloses this limitation. Pet. 30.

Petitioner contends that Ogawa discloses a three dimensional doll-like figure that comprises an inner chamber filled with stuffing. *Id.* (citing Ex. 1005 ¶¶ 43–44; Ex. 1006 ¶¶ 5–6). Petitioner contends that this tool of Ogawa is squeezable as Ogawa discloses that the tool can be gripped and that the tool is filled with a soft material. *Id.* (citing Ex. 1005 ¶ 44; Ex. 1006 ¶ 1).

Patent Owner contends that Ogawa is silent as to whether the tool is squeezable. PO Resp. 26. Patent Owner contends that the fact that the tool can be gripped does not mean that the tool is squeezable or pliant. *Id.* (citing Ex. 2008 ¶ 108).

Petitioner responds that while Ogawa does not use the word squeezable, “Ogawa teaches a stuffed animal, which a POSITA would know to inherently be squeezable.” Reply 16 (citing Ex. 1022 ¶ 38). Petitioner contends that Ogawa discloses that the tool is filled with cushioning material and that one skilled in the art would understand that the use of cushioning material would result in a tool that is squeezable. *Id.* (citing Ex. 1006 ¶ 6; Ex. 1005 ¶¶ 38, 40–41).

Patent Owner responds by arguing that Petitioner has improperly raised a new argument regarding inherency. Sur-Reply 13. Patent Owner also argues that Petitioner has not established the squeezability is an inherent

characteristic of the tool of Ogawa as the teachings with respect to toys is not relevant to Ogawa's tool. *Id.* at 13–14.

We have considered the arguments presented by the parties and the evidence of record and find that Ogawa discloses this limitation.

Figure 1 of Ogawa, reproduced below, “shows a side view of the wiping tool configured as a stuffed animal of an alligator.” Ex. 1006 ¶ 6.

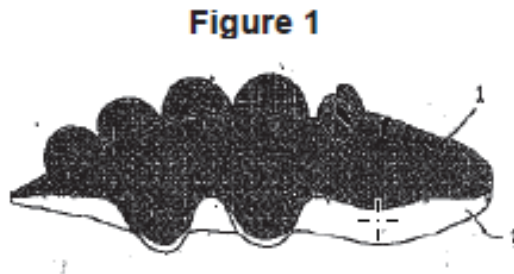


Figure 1 of Ogawa showing a side view of a wiping tool.

Ogawa discloses that the stuffed animal is filled with synthetic fiber or cushioning material. *Id.* We agree with Mrs. Ryan that one skilled in the art reading that the tool of Ogawa comprises a stuffed animal filled with either fiber or cushioning material would conclude that the tool was squeezable. *See* Ex. 1022 ¶¶ 38–39.

Patent Owner contends that Ogawa does not disclose a squeezable tool as Ogawa never mentions that the tool is squeezable. PO Resp. 26. Patent Owner contends that the term grip part as used in Ogawa does not mean that the tool is squeezable. *Id.* We are not persuaded by this argument.

While we agree with Patent Owner that Ogawa does not use the term squeezable, Ogawa describes the tool as a stuffed animal. Ex. 1006 ¶ 6; Ex. 1005 ¶ 43; Ex. 2022 ¶¶ 38–39. Ogawa also teaches that the tool is filled

with a cushioning material, further indicating that the tool is squeezable. Ex. 1006 ¶ 6; Ex. 1005 ¶ 43; Ex. 2022 ¶¶ 38–39. Thus while Ogawa does not use the term squeezable, we find that one skilled in the art, reading Ogawa in its entirety would envision a tool that is squeezable.

Patent Owner contends that analogies to plush toys are improper as Ogawa is directed to a tool and not a toy. Sur-Reply 14. Patent Owner points to the fact that Ogawa never uses the term toy but does refer to the claimed object as a tool multiple times. *Id.* at 12. Again, we do not agree with this argument.

Ogawa describes the tool shown in the figures as a “stuffed animal.” Ex. 1006 ¶ 6. Like the claimed doll-like figure, the tool of Ogawa is formed from a plurality of strips of fabric and then filled with a stuffing material. *Id.* Given the similarity of the two devices and the fact that Ogawa describes the tool as a stuffed animal, we find that, like the present invention, the tool of Ogawa can be made “in accordance with stuffed or under-stuffed toy sewing techniques well known in the art.” Ex. 1001, col. 3, ll. 10–12; Ex. 1006 ¶ 6. Thus, we find Petitioner’s reliance on practices found in the stuffed toy industry to be proper.

With respect to Patent Owner’s contention that Petitioner has raised a new argument with respect to inherency, we do not find this to be a new argument. In the Petition, Petitioner argues that the teachings of Ogawa showing that the tool was a stuffed animal filled with a soft material was at least part of the basis for contending that the tool of Ogawa was squeezable. Pet. 30. Thus, while not couched specifically in terms of inherency, it is clear that Petitioner was relying on Ogawa’s disclosure that the tool was a stuffed animal filled with a soft filling coupled with the disclosure that the tool can be gripped as proof that the tool was squeezable. *Id.*

Based on the foregoing, we conclude that Ogawa discloses the limitation “a selected quantity of stuffing material within said at least one inner chamber so as to provide said doll-like figure with a three dimensional shape which is squeezable for providing a pliant cleaning tool for wiping a display screen.”

e) wherein another of said strips of fabric material is a non-optical grade fabric material.

Petitioner contends that Ogawa discloses this limitation. Pet. 31. Petitioner contends that Ogawa discloses using a non-microfiber fabric for the grip part. *Id.* (citing Ex. 1006 ¶¶ 2–6; Ex. 1005 ¶¶ 45–46).

Patent Owner does not offer any arguments regarding this claim limitation. *See* PO Resp. 14–27.

We have considered the argument presented by Petitioner and the evidence of record and find that Ogawa discloses this limitation.

Ogawa discloses that the tool comprises a regular textile material such as a woven or knit fabric. Ex. 1006 ¶¶ 2, 6. We agree with Mrs. Ryan that this comprises a strip of fabric material that is a non-optical grade fabric material. Ex. 1005 ¶ 46.

f) Conclusion

Based on the foregoing, we conclude that Petitioner has established by a preponderance of the evidence that claim 15 is unpatentable as anticipated by Ogawa.

E. Ground 2 — Obviousness based on Ogawa and Masahiro

Petitioner contends that the subject matter of claim 15 would have been obvious to one of ordinary skill in the art at the time the invention was made over Ogawa combined with Masahiro. Pet. 31.

Patent Owner disagrees. PO Resp. 27.

a) Masahiro

Masahiro is a Japanese laid open patent application published April 23, 1996. Ex. 1013, 1. Masahiro teaches a wiping cloth to clean various surfaces including CRT display screens. *Id.* ¶ 1. The cloth disclosed in Masahiro comprises a non-woven reduced silk material. *Id.* ¶ 9. Masahiro teaches that the silk material cleans surfaces better than either chamois or microfiber materials. *Id.* ¶¶ 6–8.

b) Analysis

Petitioner contends that, to the extent the preamble of claim 15 is limiting, Ogawa teaches this limitation either alone or in combination with Masahiro. Pet. 31–38. Petitioner contends that Ogawa teaches a three dimensional wiping tool in the shape of an alligator, pig, whale, or ladybug. *Id.* at 32 (citing Ex. 1006 ¶¶ 1–2, 4–6). Petitioner contends that Ogawa teaches that the wiping tool can be used to clean glass surfaces and that one skilled in the art would understand that many display screens are glass surfaces. *Id.* at 32–33 (citing Ex. 1006 ¶¶ 1–2; Ex. 1005 ¶ 37). Petitioner contends that even if Ogawa does not teach wiping the surface of a display screen, that element is taught by Masahiro. *Id.* at 33–34 (citing Ex. 10013 ¶¶ 1, 5, 11; Ex. 1005 ¶ 55).

Petitioner contends that one skilled in the art would have been motivated to combine the teachings of Ogawa and Masahiro to enhance the ability of the wiping tool to clean water spots as well as remove fat and oil from display screens. *Id.* at 34 (citing Ex. 1006 ¶¶ 1–2, 4–6; Ex. 1007 ¶¶ 5, 10–11; Ex. 1005 ¶ 55).

Patent Owner contends that Masahiro does not address several deficiencies in Ogawa including “(1) a stuffed inner chamber formed in part by an optical grade fabric; (2) the use of an optical grade fabric for cleaning

display screens; or (3) a squeezable figure.” PO Resp. 29–30. Patent Owner also contends that Petitioner has not shown a motivation to combine the teachings of Ogawa with those of Masahiro. *Id.* at 30.

As discussed above, we have found that Ogawa teaches the limitation relating to an inner chamber formed in part by an optical grade material and that the tool of Ogawa is squeezable. *See* Sections II.D.2(c) and II.D.2(d) *supra*. Therefore, we focus our analysis on the issues of whether Masahiro teaches an optical grade fabric and whether Petitioner demonstrated a motivation to combine the teachings of Ogawa and Masahiro.

(1) *Optical Grade Fabric*

Petitioner contends that, to the extent that Ogawa does not teach or suggest the use of an optical grade fabric, Masahiro teaches this limitation. Pet. 36. Petitioner contends that Masahiro teaches a silk fabric that can be used to clean optical lenses and display screen surfaces. *Id.* (citing Ex. 1013 ¶ 5).

Patent Owner contends that, based on the teachings of Masahiro, the fabric describes would have a hard surface and would not yield an optical grade fabric. PO Resp. 31–32 (citing Ex. 2005 ¶¶ 117–120).

Petitioner responds that Patent Owner’s analysis of Masahiro ignores the plain teaching of Masahiro which is that the fabric can be used to clean display screens without scratching. Reply 18 (citing Ex. 1013 ¶¶ 2, 11). Petitioner also contends that Patent Owner’s analysis ignores the softening step taught by Masahiro. *Id.* at 18–19 (citing Ex. 1013 ¶¶ 14–15). Petitioner contends that the softening process taught by Masahiro would render the fabric suitable for use as an optical grade fabric. *Id.* (citing Ex. 1013 ¶¶ 11, 15; Ex. 1028 ¶¶ 48–56).

Patent Owner argues that Petitioner's evidence regarding the softening process should be given little weight as Petitioner's expert has little experience in the area and the disclosure in Masahiro gives few details about the process. Sur-Reply 18–22.

We have considered the arguments presented by the parties and the evidence of record and find that Masahiro teaches an optical grade fiber.

Masahiro teaches a wiping cloth that can be used to wipe “glasses, cameras, etc., precious metal, car window glass, or CRT display screens.” Ex. 1013 ¶ 1. Masahiro also teaches that the fabric disclosed herein is subject to a softening treatment and that the wiping cloths must have a certain level of softness to prevent scratching the lens surface. *Id.* ¶¶ 2, 15. We agree with Dr. Thompson that Masahiro teaches an optical grade fabric. Ex. 1028 ¶¶ 50–52.

Patent Owner contends that the process of Masahiro would result in a fabric with a hard surface making in unsuitable for use as an optical grade fabric. PO Resp. 31–32. Patent Owner's contention is supported by the testimony of Dr. Adanur whom testified that the process used to make the fabric described in Masahiro would result in a hard fabric that would not be used to clean display screens. Ex. 2005 ¶¶ 120–121.

We have considered Patent Owner's arguments, the testimony of Dr. Adanur, and the evidence of record, but we are not persuaded that the process of Masahiro would result in a hard fabric. Dr. Adanur's analysis focuses on the first part of the process used in Masahiro, the formation of the base fabric. *See id.* ¶¶ 120–121. While Dr. Adanur discusses the softening process of Masahiro, he only offers a conclusory statement that the process

does not soften the fabric. *Id.* ¶ 123;⁶ *see In re Buchner*, 929 F.2d 660, 661 (Fed. Cir. 1991) (“[A]n expert’s opinion on the ultimate legal issue [of enablement] must be supported by something more than a conclusory statement.”).

Patent Owner contends that Petitioner is relying on the presumption that Masahiro is enabled and that the presumption is limited to patent prosecution. Sur-Reply 15. We disagree. As our reviewing court has held, an accused infringer should be similarly entitled to have the district court presume the enablement of unclaimed (and claimed) material in a prior art patent defendant asserts against a plaintiff. Thus, a court cannot ignore an asserted prior art patent in evaluating a defense of invalidity for anticipation, just because the accused infringer has not proven it enabled.

Amgen, Inc. v. Hoescht Marion Rousel, Inc., 314 F.3d 1313, 1355 (Fed. Cir. 2003). We see no reason why this presumption should not also apply in the present case.

Moreover, Dr. Thompson gives a detailed explanation to support his opinion why the fabric in Masahiro would be an optical grade fabric. Ex. 1028 ¶¶ 48–56.

In an authorized post briefing submission (Paper 33), Patent Owner brings our attention to our reviewing court’s decision in *Raytheon Techs. Corp. v. Gen. Elec. Co.*, 993 F.3d 1374 (Fed. Cir. 2021). We have considered the decision of the court in reaching our determination, but it does not alter our conclusion.

⁶ Most of Dr. Adanur’s testimony with respect to the softening process involved distinguishing the process of Masahiro from the process described in the ’831 patent. *See* Ex. 2005 ¶ 123.

The issue before the court in *Raytheon* was whether the Board had properly found an asserted reference was enabled. 993 F.3d at 1380. In *Raytheon*, the patent owner presented extensive, un rebutted evidence that the primary reference was not enabled. *Id.* at 1382. Based on this uncontroverted evidence, the court reversed the Board's finding that the primary reference was enabled and reversed the finding of unpatentability. *Id.*

The facts in the present case are significantly different than those in *Raytheon*. As discussed above, Dr. Adanur's analysis of Masahiro focused almost exclusively on the first part of the process used to produce the fabric of Masahiro and only offered a conclusory statement to address the softening step. *See* Ex. 2005 ¶¶ 120–123. In addition, Dr. Thompson presented extensive and persuasive testimony regarding the softening process of Masahiro which rebutted Dr. Adanur's testimony. Ex. 1028 ¶¶ 48–56.

Patent Owner contends that we should give more weight to Dr. Adanur's testimony as opposed to that of Dr. Thompson. Sur-Reply 2–5. Patent Owner compares the experience and publications of Drs. Adanur and Thompson and concludes that Dr. Thompson is neither a peer nor a contemporary of Dr. Adanur. *Id.* at 3–4.

While we note that the Drs. Adanur and Thompson have had different career paths, the relative experience of the two experts does not affect our analysis. As discussed above, Dr. Adanur did not adequately address the softening process of Masahiro, in contrast with the analysis done by Dr. Thompson.

Based on the foregoing, we find that Masahiro teaches an optical grade fabric.

(2) *Motivation to Combine*

Petitioner contends that one skilled in the art would have been motivated to substitute the fabric of Masahiro for the wiping fabric of Ogawa as both fabrics are optical grade fabrics and it involves substituting one known fabric for another for the same purpose. *See* Pet. 37–38.

Patent Owner contends that one skilled in the art would not have substituted the fabric of Masahiro for the wiping fabric of Ogawa as the fabric of Masahiro would be too hard and would have a degrading effect on a display screen. PO Resp. 34. Patent Owner also contends that one skilled in the art would not have been motivated to use the fabric of Masahiro for the tool of Ogawa because the fabric of Masahiro would be too expensive. *Id.*

Patent Owner further contends that one skilled in the art would not have a reasonable expectation of success. *Id.* at 35. Patent Owner argues that one skilled in the art would not expect the fabric of Masahiro to work given the fact that the fabric would be stiff or hard. *Id.* Patent Owner also contends that the lack of any comparative data would lead one skilled in the art to doubt whether the fabric would work in the tool of Ogawa. *Id.*

Petitioner responds that one skilled in the art would have been motivated to use the fabric of Masahiro in the tool of Ogawa because Masahiro teaches that the fabric is an improvement over other fabric used in the art. Reply 19. Petitioner also contends that the non-woven fabric of Masahiro would actually be cheaper to make than the woven fabric of Ogawa. *Id.* at 20.

Petitioner contends that, given the teachings of Masahiro, one skilled in the art would have had a reasonable expectation of success. *Id.* at 21.

Petitioner contends that there is no basis for skepticism opined by Dr. Adanur. *Id.*

In its Sur-Reply, Patent Owner again contends that one skilled in the art would understand that the fabric of Masahiro would be stiff and hard and therefore would not expect to successfully use this fabric in the tool of Masahiro. Sur-Reply 18–19. Patent Owner argues that we should give little weight to the testimony of Dr. Thompson regarding the softening process, again pointing to Dr. Thompson’s credentials. *Id.* at 19–21.

We have considered the arguments presented by the parties and the evidence of record and find that Petitioner has the better argument.

Masahiro teaches “a wiping cloth being used to wipe lenses of glasses, cameras, etc., precious metals, car window glass, or CRT display screens.” Ex. 1013 ¶ 1. Masahiro teaches that the cloth of the invention, when compared with the prior art, provides “an inexpensive wiping cloth made of silk that can successfully remove fatty-oil components adhered to a lens, etc.” *Id.* ¶¶ 6–8. Masahiro also teaches as follows:

Moreover, because the aforementioned reduced silk is formed into a nonwoven fabric, the manufacturing cost is low. Furthermore, silk has an extremely high level of moisture absorbent properties and thus contains a moisture content of approximately 13% in the normal atmospheric environment. Therefore, silk is less likely to produce static electricity and thus demonstrates excellent performance when used as a cleaning wipe for CRT-display screens.

Id. ¶ 11.

Given that both Ogawa and Masahiro relate to cleaning glass objects and Masahiro teaches the advantages of the fabric disclosed therein over prior art fabrics, we conclude that one skilled in the art would have been motivated to use the fabric of Masahiro in the wiping tool of Ogawa. In

addition, as Petitioner points out, the use of the fabric of Masahiro in the tool of Ogawa involves substitution of one known element for another. *See* Pet. 37–38.

We are not persuaded by Patent Owner’s argument that one skilled in the art would not have been motivated to use the fabric of Masahiro in the tool of Ogawa because of the increased cost of using the fabric. PO Resp. 34. While Dr. Adanur opined that production of the fabric of Masahiro would be more expensive due to higher raw material and equipment costs, Dr. Adanur offers no evidence to support this conclusion. Ex. 2005 ¶ 129. Dr. Thompson, on the other hand, opined that the production cost of the fabric of Masahiro would actually be lower than the woven fabric of Ogawa. Ex. 1028 ¶ 58. Dr. Thompson testified:

Regarding the cost of Masahiro, a textile engineer reading Masahiro would recognize that the non-woven silk fabric is not expensive. Ex. 1013, Abstract, ¶¶7-8. While Dr. Adanur may be correct that silk is a more expensive source fiber than, say, polyester, the non-woven nature of Masahiro’s fabric could offset any expense created by a more expensive source fiber. Non-woven fabrics are inherently cheaper to produce than woven fabrics because they do not need to be weaved. This fact is certainly something Dr. Adanur would recognize, considering the handbook he cited and authored says so. Ex. 2017, p. 141-142, Table 4.7. (“Cost advantages have been one of the many reasons [to use nonwoven fabrics].”). An important aspect of the choice of a nonwoven fabric is the relative simplicity of the manufacturing process, since the fibers are directly combined into a fabric in a single processing step at high speeds (often hundreds or even thousands of yards per hour), while knit fabrics or woven fabrics require combining many individual yarns using complicated looms or knitting machines to interlace the yarns into fabrics at much lower speeds (only a few yards per hour). Ex. 2017, p. 142 (Tables 4.5 and 4.6); Ex. 1036, p. 13. So, even if silk is a more expensive source fiber than another synthetic fiber, the added source material cost almost certainly mitigates

the added cost, if not produces a cheaper fabric than a woven microfiber. *Id.* It seems that Dr. Adanur did not consider the non-woven nature of Masahiro when declaring that he was skeptical that Masahiro's fabric was "inexpensive". Ex. 2005, ¶129 *citing* Ex. 1013, Abstract. When the non-woven nature of Masahiro is properly considered, there is absolutely no reason to doubt the claim that the fabric generated is inexpensive.

Id.

As seen from the testimony above, Dr. Thompson provides not only a detailed explanation for his opinion, but supports his opinion with citations to a text authored by Dr. Adanur as well as another reference on textile manufacture. *Id.* (citing Ex. 1036; Ex. 2017).

Moreover, even if the fabric of Masahiro were more expensive, one skilled in the art would have still been motivated to use the Masahiro fabric in the Ogawa tool to take advantage of the superior properties recited in Masahiro. *See* Ex. 1022 ¶ 49; Ex. 1028 ¶ 59.

Patent Owner contends that we should give little weight to Dr. Thompson's testimony vis-a-vis Dr. Adanur's testimony. Sur-Reply 3–5. Patent Owner contends that Dr. Thompson's credentials are not the equivalent of Dr. Adanur's. *Id.* We are not persuaded by this argument.

As discussed above, we find Dr. Thompson's testimony with respect to motivation to combine the references credible based on the extensive testimony he presented as well as the fact that his position is supported by additional evidence and the testimony of Mrs. Ryan. Ex. 1028 ¶¶ 58–59; Ex. 1022 ¶ 29; Ex. 1036; Ex. 2017.

Dr. Adanur's opinions with respect to motivation to combine are based on the belief that the fabric of Masahiro would be too hard or too expensive. Ex. 2005 ¶¶ 128–129. As discussed above, in reaching his conclusion that the fabric of Masahiro would be too hard, Dr. Adanur failed

to properly address the softening step raised taught by Masahiro. In addition, Dr. Adanur's opinion regarding cost is unsupported by any analysis or evidence and is limited to a conclusory statement that "the reduced silk fabric would make the product more expensive due to the high material cost and the extra processing requirements." *Id.* ¶ 129.

Patent Owner's argument that one skilled in the art would not have had a reasonable expectation of success is also unpersuasive. Patent Owner contends that one skilled in the art would not find the statements in Masahiro about its applicability for use on a display screen credible because of the lack of data to support those assertions. PO Resp. 35. Patent Owner contends that this statement coupled with the fact that one skilled in the art would understand that the fabric in Masahiro would be stiff, would lead one skilled in the art to lack a reasonable expectation of success. *Id.*

Patent Owner's argument is based, at least in part, on the assumption that the fabric of Masahiro would be hard or stiff. However, as discussed above, that conclusion by Dr. Adanur fails to persuasively address the softening step of Masahiro.

With respect to a lack of a reasonable expectation of success based on the teachings of Masahiro, Dr. Adanur testified that one skilled in the art would be skeptical of the statements in Masahiro because the example appears to be prophetic and there is no test data reported. Ex. 2005 ¶ 133. In contrast, Dr. Thompson provided a detailed explanation of why one skilled in the art would understand that the fabric produced by Masahiro would be soft and therefore would have a reasonable expectation of success. Ex. 1028 ¶¶ 51–56, 60.

Based on the foregoing, we conclude that Petitioner has established by a preponderance of the evidence that one skilled in the art would have been

motivated to combine the teachings of Ogawa and Masahiro and would have had a reasonable expectation of success in doing so.

c) Conclusion

We conclude, based on the above analysis, that Petitioner has demonstrated by a preponderance of the evidence that claim 15 is unpatentable as obvious over Ogawa combined with Masahiro.

F. Ground 3 — Obviousness based on Ogawa and Cherk

Petitioner contends that the subject matter of claim 16 would have been obvious to one of ordinary skill in the art at the time the invention was made over Ogawa combined with Cherk. Pet. 38. Patent Owner contends that claim 16 would not be obvious over Ogawa combined with Cherk. PO Resp. 36–37.

1. Cherk

Cherk teaches a stuffed toy animal. Ex. 1008, Abstr. The toy of Cherk comprises several pieces of material sewn together to form a three dimensional shape. *Id.* at col. 2, ll. 22–43. Cherk teaches that the toy is partially filled with stuffing or filler. *Id.* at col. 3, ll. 45–50; Figure 3. Cherk teaches that by partially filling the toy “sufficient surface to surface contact of the figure toy can be achieved in a great number of positions without adversely affecting the ability of the toy to remain stable in the position preselected by a child user.” *Id.* at col. 1, ll. 55–59. Cherk also teaches that under-filling the toy allows the toy to be stable when placed in a variety of positions. *Id.* at col. 1, ll. 43–52; col. 3, l. 61–col. 4, l. 3.

2. Claim 16

As noted above, claim 16 depends from claim 11. Ex. 1002, col. 2, l. 12. Claim 11 is similar to claim 6 with the additional limitation that the doll-like figure is under-stuffed. Ex. 1001, col. 7, l. 1. Like claim 15, claim 16

adds the limitation that another of said plurality of strips of fabric material is a nonoptical grade fabric material. Ex. 1002, col. 2, ll. 12–14.

3. *Analysis*

With the exception of the limitation calling for the toy to be under-stuffed, Petitioner relies on the same teachings of Ogawa for the elements of claim 16 as it did for claim 15 as set forth above. Pet. 40–44. Petitioner contends that Cherk teaches under-stuffing a doll-like toy. *Id.* at 40–42 (citing Ex. 1005 ¶ 73; Ex. 1008, col. 1, ll. 43–60, col. 3, l. 45–col. 4, l. 7.) Petitioner contends that one skilled in the art would have been motivated to modify the tool of Ogawa to partially stuff the toy as taught by Cherk to “(1) make the wiping tool easier to grip, (2) better protect the wipe part from dust and dirt, and/or (3) increase the cleaning capabilities of the wipe part through increased surface-to-surface contact with the surface being cleaned.” Pet. 41–42 (citing Ex. 1005 ¶ 74).

Patent Owner contends that Cherk does not remedy the deficiencies of Ogawa in that Cherk does not teach or suggest an inner chamber formed from an optical grade fabric, “the use of an optical grade fabric to form any part of the toy animal figure,” or that the toy is squeezable. PO Resp. 38 (citing Ex. 2005 ¶¶ 143–144). Patent Owner also contends that one skilled in the art would not have been motivated to combine the teachings of Ogawa with those of Cherk. *Id.* at 38–45.

As discussed in Section II.D.2 above, we have already determined that Ogawa discloses all of the elements of claim 15, which parallel the elements of claim 16. However, unlike claim 15, claim 16 also recites an “under-stuffed doll-like figure.” Therefore we shall focus our analysis on whether Cherk teaches an “under-stuffed doll-like figure” and whether one skilled in

the art would have been motivated to combine the teachings of Ogawa and Cherk.

a) Under-Stuffing

Petitioner contends that Cherk teaches a stuffed toy that is under-stuffed. Pet. 41. “Specifically, Cherk teaches a toy whale partially filled with filler so that the toy can be placed and remain stable in a variety of different positions.” *Id.* (citing Ex. 1008, col. 3, l. 45–col. 4, l. 7; Ex. 1005 ¶ 73).

Patent Owner has not presented any arguments or evidence to contradict Petitioner’s contentions with respect to the teachings of Cherk. *See* PO Resp. 36–46.

We have considered Petitioner’s contentions and the evidence of record and find that Cherk teaches an under-stuffed stuffed toy. Referring to Figure 3, reproduced below, Cherk teaches “the figure toy is only partially filled with the filler material.” Ex. 1008, col. 3, ll. 45–47.

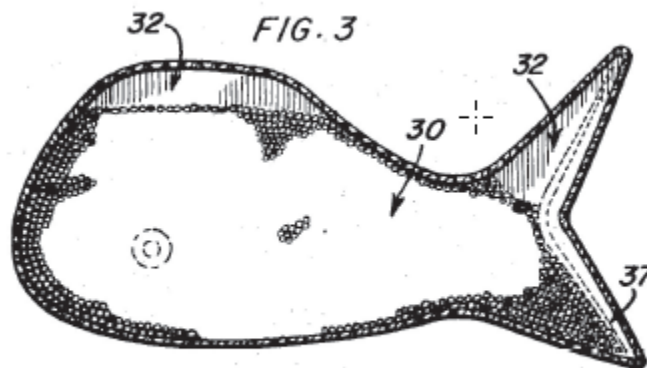


Figure 3 of Cherk showing a cross-section of a partially stuffed toy.

b) Motivation to Combine Ogawa and Cherk

Petitioner contends:

A POSA would be motivated to modify Ogawa to incorporate the partial stuffing design of Cherk. Ex. 1005, ¶ 74.

Indeed, modifying Ogawa with Cherk applies a known technique (partial stuffing) to a known device ready for improvement (the wiping tool of Ogawa) to yield predictable results (the wipe tool of Ogawa would be partially stuffed with stuffing material). *KSR*, 550 U.S. at 417; Ex. 1005, ¶ 74. Specifically, a POSA would recognize that partially stuffing the wiping tool of Ogawa would predictably (1) make the wiping tool easier to grip, (2) better protect the wipe part from dust and dirt, and/or (3) increase the cleaning capabilities of the wipe part through increased surface-to-surface contact with the surface being cleaned. Ex. 1005, ¶ 74.

Pet. 41–42.

Patent Owner contends that Petitioner has not provided “any ‘articulated reasoning’ or ‘rational underpinning’ to support combining Ogawa and Cherk. Ty’s alleged motivations are based on nothing more than hindsight.” PO Resp. 38. Patent Owner contends that Ogawa teaches a filled wiping tool and that there is no suggestion or teaching to partially fill the tool. *Id.* at 39. With respect to Cherk, Patent Owner contends that Cherk does not provide any motivation to apply teachings from a stuffed toy to a cleaning tool. *Id.* at 40.

Patent Owner contends that while Petitioner has listed three potential reasons to modify Ogawa, Petitioner has not stated why the tool of Ogawa needs to be modified. *Id.* Patent Owner contends that there is no reason to modify the tool of Ogawa to make it easier to grip as Ogawa already teaches that it can be gripped. *Id.* at 40–41. Patent Owner contends that the passage in Cherk cited by Petitioner relates to positioning the toy and not gripping the toy. *Id.* at 41–43.

Patent Owner contends that one skilled in the art would not under-stuff the tool of Ogawa to improve stability and protect the tool from dust as Ogawa already teaches that the tool has these characteristics. *Id.* at 43–44.

Finally, Patent Owner contends that Petitioner's argument with respect to increasing surface area is misleading. *Id.* at 44–45. Patent Owner contends that Cherk's discussion of increased surface area relates to allowing the toy of Cherk to assume various positions and does not relate to increasing surface to surface contact. *Id.*

We have considered the arguments presented by the parties and the evidence of record and find that one skilled in the art would have been motivated to combine the teachings of Ogawa with those of Cherk to produce an under-stuffed doll-like figure.

Cherk teaches

As seen in FIG. 6, the significant aspect of preselecting the partial amount of filler permits animated placement of the figure toy by a child user. In the exemplary figure toy 10 illustrated, a child playing with the toy merely need grasp the whale 10 by the tail whereby the filler 30 "packs" into the main body portion.

Ex. 1008, col. 3, ll. 61–66. We agree with Mrs. Ryan that this teaching would lead one skilled in the art to understand that partial filling allows one to more easily grasp the toy. Ex. 1005 ¶ 75; Ex. 1022 ¶ 51.

Dr. Adanur opines that Cherk does not teach that the toy of Cherk is easier to grasp because the recited portion of Cherk teaches that the portion grasped by the child has no stuffing present. Ex. 2005 ¶ 156. We are not persuaded by Dr. Adanur's testimony.

As Mrs. Ryan points out, the lack of filling is a result of under-stuffing the toy. Ex. 1022 ¶ 51. As Mrs. Ryan explains, the region with little or no stuffing is more easily grasped. *Id.*

Cherk also teaches

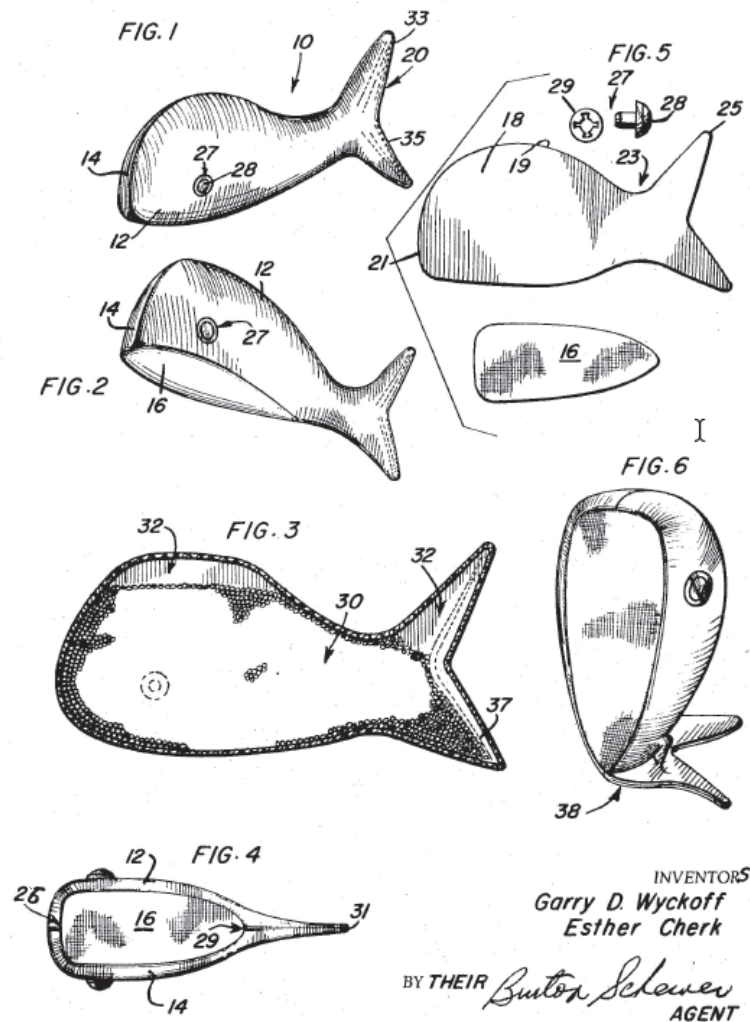
A further object of the invention is to provide a soft figure form toy wherein the volumetric relationship of a filler material to the volumetric capacity of the form defining cover member is such

that sufficient surface to surface contact of the figure toy can be achieved in a great number [sic] of positions without adversely affecting the ability of the toy to remain stable in the position preselected by a child user.

Ex. 1008, col. 1, ll. 52–59. We agree with Mrs. Ryan that the under-stuffed toy will have greater surface to surface contact and provide increased stability. Ex. 1005 ¶¶ 74–76; Ex. 1022 ¶¶ 52–54.

Dr. Adanur disputes Mrs. Ryan’s conclusion stating that the discussion in Cherk relating to surface to surface contact has nothing to do with increasing surface to surface contact but related to stability of the toy when in an upright orientation. Ex. 2005 ¶ 161. We do not find Dr. Adanur’s testimony persuasive. While the portion of Cherk analyzed by Dr. Adanur focuses on positioning the toy in an upright position where the belly of the toy is not in contact with any other surface, the disclosure of Cherk is not limited to that example. “It is well settled that a prior art reference is relevant for all that it teaches to those of ordinary skill in the art.” *In re Fritch*, 972 F.2d 1260, 1264 (Fed. Cir. 1992).

As seen from the passage cited above, Cherk discusses the concept of increased surface to surface contact broadly, not just in the context of Figure 4. Cherk teaches that the toy can be arranged in a variety of different positions. Ex. 1008, col. 1, ll. 56–57. As shown below, the figures of Cherk disclose several positions for the toy including lying flat. *Id.* at Fig. 1.



Figures 1 through 6 of Cherk showing various views of a stuffed toy.

Patent Owner contends that the tool of Ogawa is already stable and therefore there would be no motivation to incorporate the teachings of Cherk. PO Resp. 43. We are not persuaded by this argument.

Mrs. Ryan testified that, as shown in the Figure 1, Ogawa discloses a tool when the filling is such that the tool has a rounded shape, exposing the bottom of the tool. Ex. 1022 ¶ 53.

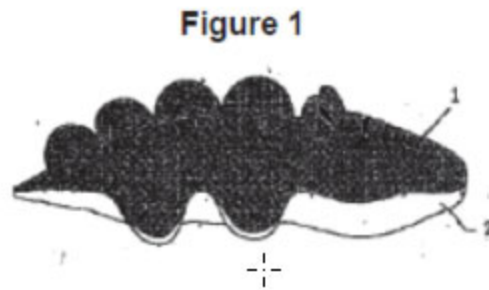


Figure 1 of Ogawa showing a side view of the cleaning tool.

Cherk teaches that under-stuffing increases the stability of the toy. Ex. 1008, col. 1, ll. 52–60; col. 3, l. 45–col. 4, l. 7. Thus one skilled in the art would be motivated to under-stuff the tool of Ogawa to improve the stability of the tool. Ex. 1022 ¶ 53.

Patent Owner contends that one skilled in the art would not be motivated to under-stuff the tool of Ogawa as taught by Cherk because Ogawa teaches that the tool is entirely filled with fiber or cushioning. PO Resp. 39. Patent Owner contends that Cherk is directed to a toy, not a cleaning tool, and there is nothing in Cherk that would lead one to apply its teaching to a cleaning tool. *Id.* at 40.

We are not persuaded by this argument. While Ogawa states that the tool is filled with a fiber or cushioning, none of the passages cited by Patent Owner states that it is completely filled. *See, e.g.*, Ex. 1006 ¶ 6. Moreover, Petitioner does not rely on the teachings of Ogawa for under-stuffing the tool, that teaching is provided by Cherk.

With respect to the applicability of Cherk, as discussed above, Ogawa teaches that the tool is in the form of a stuffed animal. Ex. 1006 ¶¶ 5–6. Cherk discloses the fabrication of a stuffed animal. Ex. 1008, col. 1, ll. 4–9. Thus, the teachings of Cherk would be applicable to the tool of Ogawa.

Based on the foregoing, we find that Petitioner has established by a preponderance of the evidence that one skilled in the art would have been motivated to combine the teachings of Ogawa with those of Cherk to produce an under-stuffed doll-like figure.

4. Conclusion

We conclude that Petitioner has shown by a preponderance of the evidence that claim 16 is unpatentable as obvious over Ogawa combined with Cherk.

G. Ground 4 — Obviousness Over Ogawa Combined with Masahiro and Cherk.

Petitioner contends that claim 16 is unpatentable as obvious over Ogawa combined with Masahiro and Cherk. Pet. 44. Restating the arguments presented with respect to Ground 2 above, Petitioner contends that Ogawa combined with Masahiro teaches all of the elements of claim 16 with the exception of under-stuffing the tool. *See Id.* at 44–47. Petitioner, incorporating the argument made with respect to Ground 3, contends that Cherk teaches this limitation. *Id.* at 45–46.

In response, Patent Owner presents the same arguments presented in opposition to Ground 3 above. PO Resp. 37–46.

For the reasons stated in Grounds 2 and 3 above, we find that Petitioner has shown that claim 16 is unpatentable as obvious over Ogawa combined with Masahiro and Cherk.

H. Unconstitutionality of this Proceeding

Patent Owner contends that this proceeding should be dismissed as unconstitutional under *Arthrex, Inc. v. Smith and Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019). PO Resp. 46. Patent Owner contends that the remedy set forth in *Arthrex* is ineffective and inapplicable. *Id.*

We do not reach Patent Owner’s Appointments Clause challenge because the Supreme Court resolved the issue in *United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1986–87, 1997 (2021).

III. PETITIONER’S MOTION TO EXCLUDE

Petitioner has moved to exclude Patent Owner’s Expert’s Declaration (Ex. 2005) as well as certain of Patent Owner’s exhibits. Paper 32, 1 (“PMTE”). Petitioner contends that Dr. Adanur’s Declaration should be excluded as Dr. Adanur is not an expert in the relevant technology. PMTE 2. Petitioner seeks to exclude certain exhibits as inadmissible. PMTE 6–14.⁷

A. *Inadmissible Exhibits*

Petitioner seeks to exclude Exhibits 2030–2034 on certain evidentiary grounds including hearsay and that they constitute improper new evidence. PMTE 6–14. We dismiss Petitioner’s motion as moot with respect to these exhibits. We have not relied on any of Exhibits 2030–2034 in reaching our decision with regards to the patentability of the challenged claims.

B. *Dr. Adanur’s Declaration*

Petitioner argues that we should exclude Dr. Adanur’s Declaration (Ex. 2005) on the grounds that Dr. Adanur is not qualified in the pertinent art. PMTE 3. Petitioner contends that the pertinent art is the field of plush toy design. *Id.* at 4. Petitioner contends that Dr. Adanur’s experience is in the area of textiles and not plush toy design. *Id.* at 4–5.

Patent Owner contends that the pertinent art includes textiles and that Dr. Adanur has extensive experience in the area of textiles. Paper 36, 1–2

⁷ Petitioner also filed a contested motion for leave to file errata pages for Dr. Thompson’s deposition. (Paper 35). We dismiss that motion as moot as we did not rely on that portion of Dr. Thompson’s deposition in reaching our decision.

(“PMTE Opp.”) 1–2. Patent Owner also contends that even if the pertinent art were limited to plush toys, Dr. Adanur has experience in that art. *Id.* at 3–5. Finally, Patent Owner contends that Dr. Adanur’s qualifications go to the weight given to his testimony rather than its admissibility. *Id.* at 5–6.

We have considered the arguments presented by the parties and the evidence of record. We deny Petitioner’s motion with respect to Exhibit 2005.

While we agree with Petitioner that the pertinent art is plush toys, Dr. Adanur has some experience in the field. *See, e.g.*, Ex. 1027, 78–81. That Dr. Adanur’s experience in the art is more limited than Mrs. Ryan’s experience goes to the weight we give Dr. Adanur’s testimony, not whether it should be excluded. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide, November 2018.

C. Conclusion

For the reasons stated above, Petitioner’s Motion to Exclude is denied in part and dismissed in part.

IV. PATENT OWNER’S MOTION TO EXCLUDE

Patent Owner has moved to exclude certain portions of Mrs. Ryan’s second Declaration and Dr. Thompson’s declaration as well as portions of Dr. Thompson’s deposition testimony. Paper 31, 1 (“POMTE”). Patent Owner also seeks to exclude certain exhibits as hearsay. *Id.*

A. Mootness

We begin by dismissing certain portions of Patent Owner’s motion as moot. In our Decision, we did not rely on paragraphs 36, 45, 47, and 48 of Exhibit 1022; paragraphs 15–21, 30–33, 37, and 44–47 of Exhibit 1028, pages 122–134 of Dr. Thompsons’ deposition or any of Exhibits 1030–1035.

We now consider the remaining portion of Patent Owner's Motion to Exclude.

B. Paragraph 49 of Exhibit 1022 and Paragraph 59 of Exhibit 1028

Patent Owner contends that we should exclude either paragraph 49 of Mrs. Ryan's Second Declaration (Ex. 1022) or paragraph 59 of Dr. Thompson's Declaration (Ex. 1028) as "inadmissible cumulative testimony." POMTE 6. Patent Owner contends that "[t]hese paragraphs are substantially similar testimony regarding non-cost benefits of non-woven fabric. Accordingly, they are cumulative and one of them should be excluded." *Id.* at 7.

Petitioner contends that the testimony of its two experts is not cumulative. Paper 34, 5 ("POMTE Opp."). Petitioner also contends that it is proper to offer two experts as each brings a different background to the issues at hand. *Id.* at 6. Petitioner contends that courts have permitted a party to offer multiple experts on the same topic if they bring different perspectives that can assist the trier of fact. *Id.*

Petitioner contends

Dr. Thompson's analysis comes at the issues from a textile engineering standpoint and focusing on the technical aspects of the materials at issue as raised by Softbelly's expert Dr. Adanur in his declaration supporting Softbelly's response. Ms. Ryan's analysis focuses on the way fabrics are chosen, used, and understood in the plush toy design field to which the patent is directed.

Id. at 9.

We have considered the arguments presented by the parties and the relevant portions of the declarations and conclude that Patent Owner's Motion to Exclude should be denied with respect to paragraph 49 of Exhibit 1022 and paragraph 59 of Exhibit 1028.

While both paragraphs relate to the issue of whether cost alone would be a factor in deciding whether to use the fabric of Masahiro in the tool of Ogawa, as Petitioner points out, Petitioner's experts approach the issue from different perspectives. POMTE Opp. 9. Having testimony from different perspectives assists the trier of fact. *See, e.g., On Track Innovations Ltd. v. T-Mobile USA, Inc.*, 106 F. Supp. 3d 369, 414 (S.D.N.Y. 2015) ("Experts may opine on the same topic without being duplicative inasmuch as each brings a different perspective from different fields of expertise." (internal quotations omitted)).

For this reason, Patent Owner's Motion to Exclude either paragraph 49 of Exhibit 1022 or paragraph 59 of Exhibit 1028 is denied.

C. Conclusion

Patent Owner's Motion to Exclude is denied in part and dismissed in part.

V. CONCLUSION⁸

Weighing the evidence of the disclosures of the references, the competing testimony, and the reasoning to combine the references, we determine that Petitioner has shown, by a preponderance of the evidence, that claims 15 and 16 of the '831 patent are unpatentable.

⁸ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

We also deny in part and dismiss in part Petitioner's Motion to Exclude and Patent Owner's Motion to Exclude.

VI. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 15 and 16 are determined to be unpatentable;

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

FURTHER ORDERED that Patent Owner's Motion to Exclude is denied in part and dismissed in part; and

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

In summary:

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not shown Unpatentable
15	102	Ogawa	15	
15	103(a)	Ogawa, Masahiro	15	
16	103(a)	Ogawa, Cherk	16	
16	103(a)	Ogawa, Masahiro, Cherk	16	
Overall Outcome			15, 16	

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