

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLGATE-PALMOLIVE COMPANY,

Petitioner,

v.

NOBLE INNOVATIONS NC L.L.C.,

Patent Owner.

IPR2023-01254
U.S. Patent No. 8,881,332

PATENT OWNER NOBLE INNOVATIONS NC L.L.C.'S RESPONSE

UNDER 37 C.F.R. § 42.220

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EXHIBIT LIST

Exhibit No.	Exhibit Description
1001	U.S. Patent No. 8,881,332
1002	Prosecution File History of U.S. Patent No. 8,881,332 (Application No. 12/101,446)
1003	Prosecution File History of 11/840,627 (Parent Application to U.S. Patent No. 8,881,332)
1004	Prosecution File History of 14/535,442 (Continuation Application of U.S. Patent No. 8,881,332)
1007	Claim Listing
1009	U.S. Patent No. 2,262,982 (Wolcott)
1010	U.S. Patent No. 2,307,493 (Davidson)
1011	U.S. Patent No. 1,346,536 (Fitz-Gibbon)
1012	U.S. Patent No. 1,995,374 (Young)
1013	U.S. Patent No. 8,240,937 (Sorrentino)
2001	Kelly Kodama Expert Declaration
2002	Kodama CV
2003	Kodama Testimony List
2004	Wisp product of the year award
2005	WISP Launch Announcement
2006	9,808,077 Noble Dispenser Patent
2007	D528,803 Hohlbein
2008	WO 2004/021,914 Hohlbein
2009	7,331,731 Hohlbein

2010	D532,202 Hohlbein
2011	7,478,959 Hohlbein
2012	WISP Photo
2013	D532,607

I. INTRODUCTION

On July 26, 2023, COLGATE-PALMOLIVE COMPANY (“Petitioner”) submitted a Petition for Inter Partes Review (“Petition”) of U.S. Patent No. 8,881,332 (“the ’332 patent”), challenging Claims 1, 2 and 5-18. Pursuant to 37 C.F.R. § 42.107. On November 24, 2023 Patent Owner Noble Innovations NC L.L.C. (“Patent Owner”) filed a Patent Owner Preliminary Response to the Petition. On February 1, 2024, The Board instituted inter partes review of claims 1, 2 and 5-18 of the ’332 patent (“Decision”). Pursuant to Rule 42.220, Patent Owner submits this Patent Owner Response.

Petitioner fails to establish that the Challenged Claims are unpatentable under 35 U.S.C. 112 or based on the prior art by a preponderance of the evidence. Patent Owner will specifically address each of Petitioners arguments in the following sections.

II. OVERVIEW OF THE ‘332 PATENT

The ‘332 patent is directed towards a toothbrush designed to receive and hold an oral care capsule in the head of the brush. The Oral care capsules of the invention are small containers of toothpaste, typically spheres, which contain enough toothpaste for a typical brushing session within them. The capsule shell can be made of gelatin or another material which is non-toxic and easily torn apart by

pressure and dissolve in the mouth. Oral care capsules are typically placed in the mouth separately from the toothbrush prior to brushing to deliver a measured amount of toothpaste. The invention combines the capsule with the toothbrush for better hygiene and convenience. (EX 2001, Kodama Expert Declaration, ¶47)

Use of oral care capsules is preferable to toothpaste or dentifrice powder for a number of reasons. The amount of toothpaste can be easily managed to prevent both waste and under-use. Mess is eliminated because the capsules do not release the toothpaste until they are already in the brusher's mouth. Oral care capsules however suffer from needing to be separately inserted in the mouth, typically by the brusher's hands. This causes a number of issues, namely that this method of use is not effective for children who may treat the oral care capsule like candy; and adult brushers may accidentally hold the oral care capsule too tightly and thus release the toothpaste before it is inserted into the brusher's mouth. Dirty hands causing sanitation issues can also be a problem for the user. (EX 2001, Kodama Dec, ¶48)

The '332 patent solves the above issues with oral care capsules by positioning them in the brush head, and having them held securely there without damaging or puncturing the capsule, until the brusher starts brushing their teeth. To accomplish this, the oral care capsule is placed into a recess on the front surface of the brush head and is surrounded by angled retaining elements. The angled

retaining elements extend inwards towards the recess and hold the oral care capsule within. . (EX 2001, Kodama Dec, ¶49)

III. NO NEW MATTER RELATED TO THE TOOTHBRUSH OR THE CHALLENGED CLAIMS WAS INTRODUCED IN THE APPLICATION FILED APRIL 11, 2008

The ‘332 patent is one of two patents issued from the original application filed on August 17, 2007. The ‘332 patent claims are directed to the toothbrush invention and the claims of the sister patent, 9,808,077, (Ex 2006) are directed to the dispensing apparatus. The parent patent application with filing date of August 17th, 2007 included all of the disclosure supporting the challenged claims. The continuation in part, filed in 2008 introduced new Figure 11 and 5 paragraphs at the end of the patent, 9:2-10:16 all of which related to and provided for a dispensing device with a plurality of toothbrush insertion apertures. No new subject matter was added related to the toothbrush or the challenged claims.

The only other changes throughout the ‘332 patent consist of a few small grammar and spelling mistakes (e.g. changing “flecture” to “flexure” at 6:32 and “configures” to “configured” at 6:46)

The only other addition to the specification not directed towards the dispensing device is the single sentence, “As shown in FIGS. 1, 4, and 5, ten angled bristles 26A are equally spaced around the perimeter of a circular recess (spanning 360 degrees) defining the capsule receiving Zone 25.” ‘332 patent 5:5-8.

This language is not new matter as it simply describes what is clearly illustrated in the Figures. (EX 2001, Kodama Dec, ¶52) None of the patent claims of the ‘332 patent are directed towards “ten angled bristles.”

All material upon which the claims of the ‘332 patent rely is included in the exact same detail as in the ‘627 patent application. Thus, Petitioner’s argument that the ‘332 patent is not entitled to the August 17, 2007 date fails. The new material is only directed to the dispenser. The proper priority date for all claims and all claim elements is August 17, 2007. Thus Sorrentino, filed on January 24, 2008 cannot be considered prior art. (EX 2001, Kodama Dec, ¶53)

IV. ALL CLAIM ELEMENTS FIND SUPPORT IN THE ‘627 APPLICATION FILED AUGUST 17, 2007

Petitioner takes the position that if language in claims of the ‘332 patent is not found quoted verbatim in the ‘627 patent then that language is necessarily new matter. This is not the law. In its Decision, the Board agrees with Patent Owner that the claims of the ‘332 patent are directed to subject matter sufficiently described in the disclosure common to the ‘332 patent and the ‘627 parent application, particularly with respect to Figure 1. Decision, paper 12 at 24.

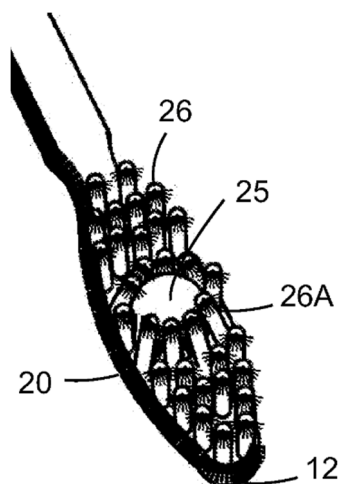
Each element of the claims of the ‘332 patent cited by petitioner is fully described and shown by the specification and figures of the ‘627 patent application. (EX 2001, Kodama Dec, ¶55)

A. “a recess ... arranged to receive at least a portion of an oral care capsule inserted [or insertable] past the vertical bristles”

Petitioner argues that the ‘627 patent application does not describe “a recess arranged to receive at least a portion of the oral care capsule.” This is clearly erroneous as the ‘627 application refers to the capsule receiving zone as a recess throughout the specification. See for example paragraph [0029], “The brush head **20** includes a capsule receiving zone **25**, such as may include a recess defined in the brush head **20**.” (EX 2001, Kodama Dec, ¶56)

B. “angled capsule retaining elements that are elevated above the recess”

“the oral care capsule is retained [...] preferably also from **above by a plurality of angled bristles**.” ‘627 patent app [0036] It is important to note that the “angled bristles” does not refer to a tuft of bristles where some of the individual bristles in the tuft fan inward and others fan outward. The ‘627 teaches that the tufts themselves are angled inward. The angled retaining means is the tufts of bristles or other equivalent structure. that are intentionally angled inward, not some stray bristles in a vertical clump. (EX 2001, Kodama Dec, ¶57)



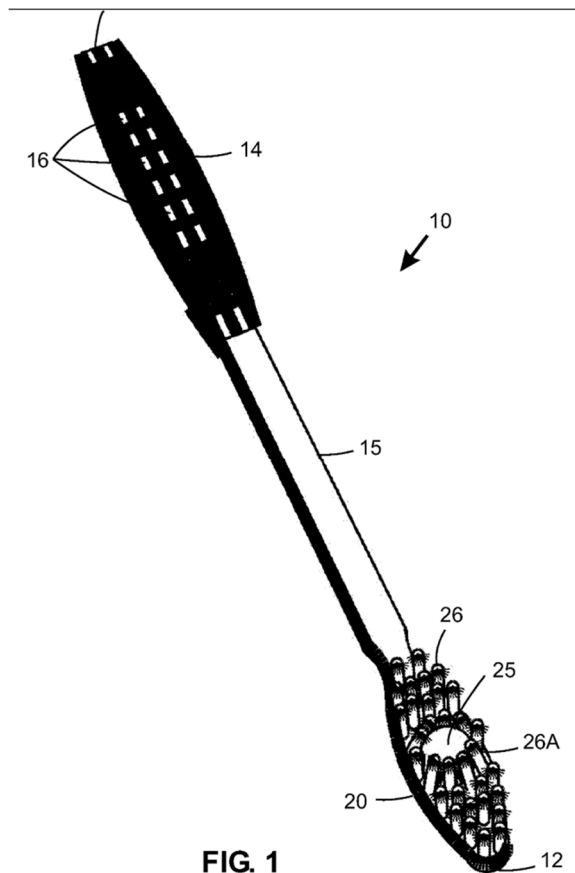
C. “angled capsule retaining elements”

Figure 1 of the ‘627 application, above, was included with the original ‘627 application, a POSITA would conclude that Figure 1 clearly shows angled capsule retaining elements 26A. (EX 2001, Kodama Dec, ¶58)

D. “wherein at least a portion of each angled capsule retaining element ... is arranged to contact the oral care capsule

The ‘627 application describes the oral care capsule being placed within the capsule receiving zone, which comprises angled bristles 26A. (EX 2001, Kodama Dec, ¶59) The application describes that the oral care capsule is pushed past the bristles and that the bristles afterwards contract around the oral care capsule. Fig. 1 of the patent shows that after the oral care capsule has been placed within the capsule receiving zone **25**, the bristles are indeed contracted around the oral care capsule and that the bristles are in contact with the capsule:

“an oral care capsule [...] may be pushed through a the aperture 120 of the bristle spreader, **past the spread-apart angles bristles 26A**, and **into the oral care capsule receiving zone 25** of the brush head 20 of the toothbrush 10. Upon removal of the brush head from the bristle spreader 119, the angled bristles 26A return to their relaxed position to **contract around an oral care capsule** disposed within the capsule receiving zone 25.” (‘627 patent app [0041])



Petitioner, argues that “The specification does not describe “at least a

portion” [of each angled capsule retaining element” contacting the capsule.”

Petition p. 15. Petitioner does not explain what issue it takes with the “at least a portion” language except that those specific four words do not appear in the ‘627 specification in that order. The petitioner does not state whether the assertion is that the specification shows the whole of each angled bristle contacting the oral care capsule (which would satisfy the “at least a portion” language) or none of the bristle making contact with the oral care capsule. (EX 2001, Kodama Dec, ¶60)

The angled bristles 26A, in both the figures and the specification, contact the oral care capsule, further, the entirety of each angled bristles 26A does not contact the oral care capsule, only a portion of each bristle is in actual contact with the oral care capsule. Therefore, “at least a portion” of each bristle contacts the oral care capsule as recited in the claim language. (EX 2001, Kodama Dec, ¶60)

V. THE PRIOR ART FAILS TO DISCLOSE ALL INVENTIVE FEATURES OF THE ‘332 PATENT

A. Petitioner describes the bristles of Wolcott as “angled” when no such structure is found in Wolcott.

Petitioner attempts to create the illusion of angled bristles by superimposing an angled line over stray bristles in a single end-cross-sectional view while ignoring the other perspectives that clearly show Wolcott’s bristle tufts extending straight up where they attach to the toothbrush. As described by Mr. Kodama in his

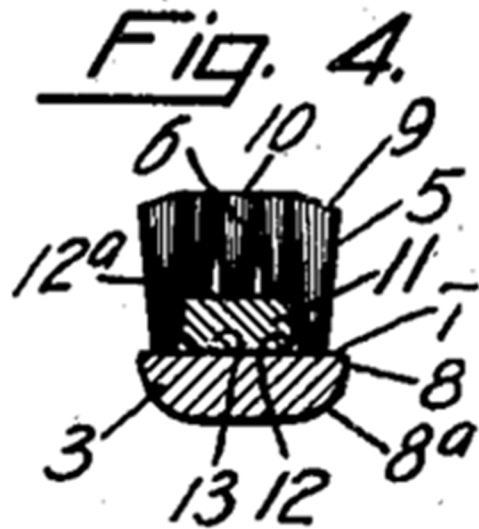
expert declaration, Wolcott does not teach retaining elements but only “teaches a toothbrush with missing bristles that provide room to add a dentifrice pellet. The dentifrice pellet of Wolcott is placed loosely in between the remaining bristle tufts. Wolcott fails to disclose angled bristles or retaining elements to hold a capsule in place, as claimed in the ‘332 patent and ‘627 application.” (EX 2001, Kodama Dec, ¶62)

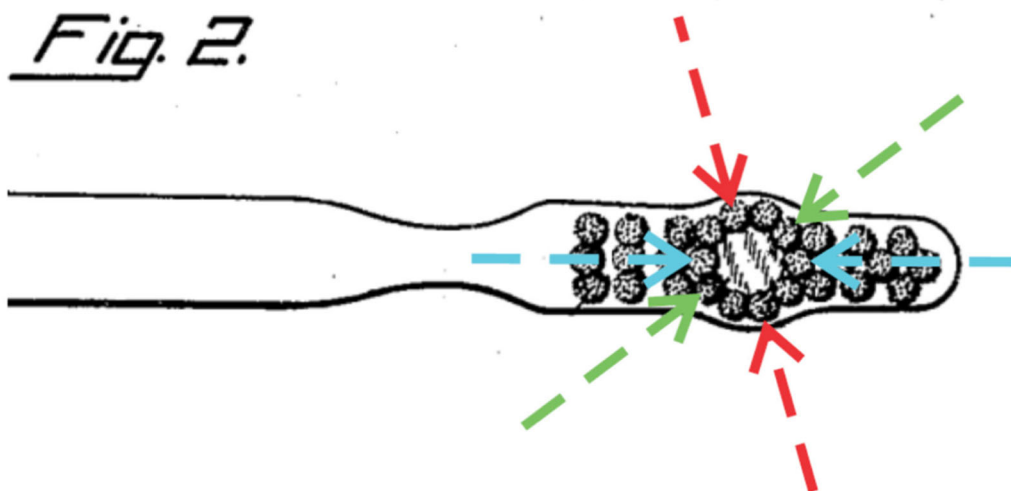
As shown below, in every figure of the Wolcott patent, the bristles **5** extend straight up from the bristle carrying portion **3**. Wolcott discloses cutting the tops of the bristles at an angle **9** such that the *ends* of each bristle make better tooth contact while brushing. But fails to disclose any angling of the bristles themselves.

Importantly, the base end of the bristles **5** extend vertically in a straight line from the bristle carrying portion **3**. Mr. Kodama

concludes that even if “the bristles **5** may or may not deviate from their initial vertical orientation where they are connected does not make them or the orientation of the tuft of bristles “angled.”

“ (EX 2001, Kodama Dec, ¶62)

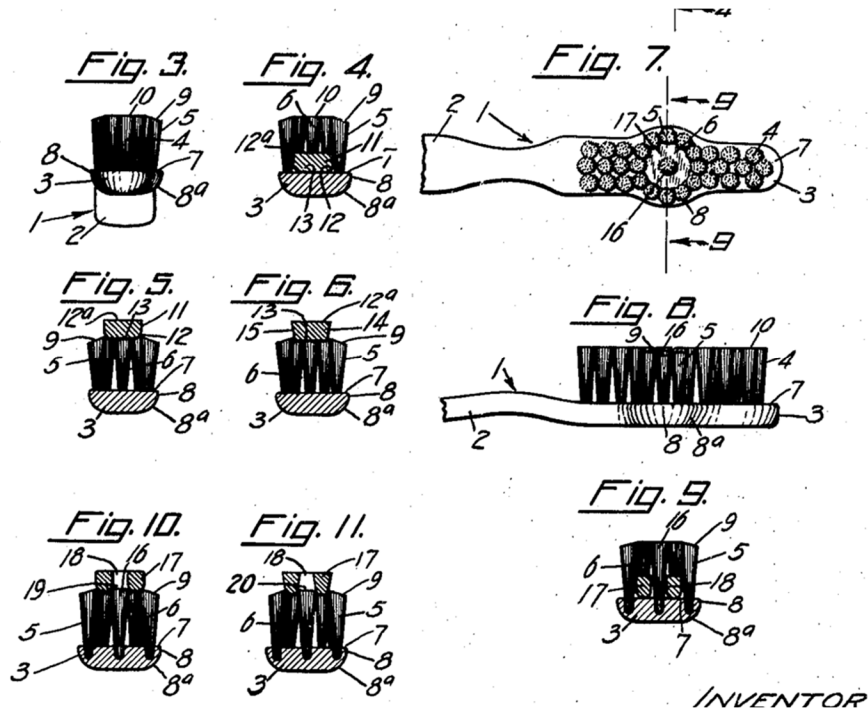




Petitioner points to no specification language and only one figure of Wolcott as showing angled bristles. Yet the cited figure does not show the bristles being angled. The figure instead shows standard bristle tufts / clusters extending perpendicular from the tooth brush head. The individual bristles within a tuft may loosely spread apart at the distal end. According to Mr. Kodama, at ¶63 of his declaration, “A POSITA would understand the difference between purposefully angling bristle tufts to secure an oral care capsule as taught in the '627 application, and the natural separation of individual bristles in a bristle cluster as they extend from the head of a toothbrush.” The loosely spreading individual bristles do not perform the function of capsule retention provided by the capsule retaining means.

The top-down perspective of the bristles shown in Fig. 2 of Wolcott shows the lack of angling where the missing bristles form an empty space. Sloping by trimming bristles at the distal end is not angled bristles and provides no retaining function. Petitioner attempts to create the illusion of angling by superimposing slanted lines over Fig. 4's end-cross-sectional view of Wolcott. However, Fig. 4 cannot be relied on alone because Wolcott's Fig. 2 dispels the angled illusion. (EX 2001, Kodama Dec, ¶64) In Fig 2., Wolcott's bristles can be seen for what they truly are—a circular array of bristles 5 projecting at a perpendicular angle from the bristle carrying portion 3. More importantly, Wolcott's bristles 5 are not angled above a recess, Wolcott simply teaches removing bristles to allow room to place a dentifrice pellet. Without any angling above the disc 11, Wolcott's bristles cannot be configured to retain a dentifrice pellet as Petitioner alleges. (EX 2001, Kodama Dec, ¶64)

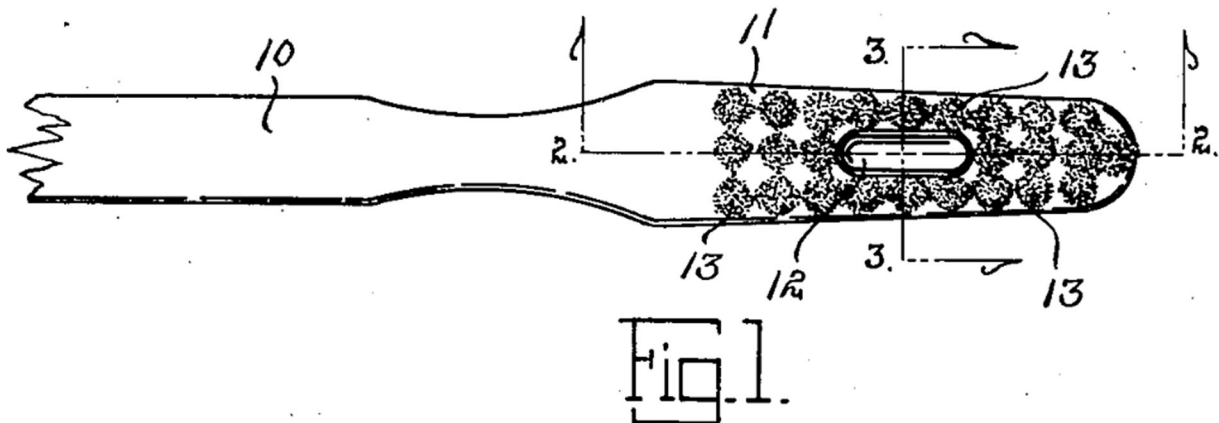
The below is found in the petition P. 38, showing no angling of bristles from a top down perspective.



B. Davidson

1. Davidson does not teach restraining oral care capsules

Davidson teaches a toothbrush containing a well 12 surrounded by bristles 13 for holding dentifrice powder. One of skill in the art would not look to a well that can be filled with loose powder to provide a retention system for a solid sphere of gel toothpaste. (EX 2001, Kodama Dec, ¶65) Davidson's bristles 13 do not



contribute to holding dentifrice powder within the well **12**. The bristles 13 are oriented vertically surrounding the well **12 to brush teeth**. Moreover, Davidson's toothbrush is designed only to hold dentifrice when it is in the upright position (EX 2001, Kodama Dec, ¶65):

“Obviously during the pouring of the dentifrice into this provided space, **the tooth brush is held so that the bristles extend upwardly** as shown in Fig. 2.” Davidson
2:20-24

As observed by Mr, Kodama, (EX 2001, Kodama Dec, ¶66) Davidson also considers usage of the same brush, “for paste or liquid dentifrices” *Id* 3:7. Davidson further reiterates that the invention is only sufficient for holding the dentifrice when the brush face is pointed upwards, “The liquid is poured downwardly into the tooth brush and the well 2 is filled with this liquid” *Id* 3:15-18. (EX 2001, Kodama Dec, ¶66) Davidson does not consider usage of the bristles of the brush to hold the dentifrice in place, rather, Davidson asserts that the well is able to hold dentifrice by way of suction.

Finally, Davidson fails to contemplate usage of the well for dentifrice in the form of an oral care capsule. Instead, Davidson lists four specific types of dentifrice and suggests that its inventive system is suitable for those four, “Although I have described my brush as particularly adaptable for powder or

granular dentifrices, it is obvious that it is ideally constructed for paste or liquid dentifrices.” *Id* 3:4-7. Davidson considers liquids paste and powder. This is in sharp contrast to an oral care capsule which is a solid, individual object. Mr. Kodama, relying on the quotations from Davidson, concludes at ¶67 of his expert declaration that: “It would not be obvious to a POSITA to apply a technique for holding a liquid or granular material to hold a much larger, solid object.” A person of ordinary skill would not look to Davidson to teach retention of a solid oral care capsule as claimed.

2. Davidson fails to disclose angled bristles

Although Petitioner does not rely on Davidson for a teaching of angled bristles, Davidson additionally fails to disclose this feature and cannot remedy the deficiencies in Wolcott discussed above. Davidson discloses, “these bristles that surround the well 2 extend at right angles from the head” Davidson 2:3-5. Because the well is designed to hold dentifrice powder rather than a dentifrice capsule, Davidson does not disclose angled bristles which could hold a capsule in place. Rather Davidson discloses the creation of a well which uses only “right angled” bristles, which are represented in figures and the specification as almost identical to the bristles shown in Wolcott. (EX 2001, Kodama Dec, ¶68)

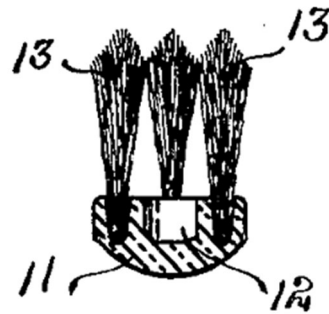


FIG. 3

C. Fitz-Gibbon

Similarly to Davidson, Fitz-Gibbon is directed towards a brush for holding dentifrice powder. As shown below, a pocket is formed in the head of the brush with an opening 7 in the back of the brush to fill with powder. The brusher may insert dentifrice into the pocket by way of the opening 7 in the back of the toothbrush head. (EX 2001, Kodama Dec, ¶69)

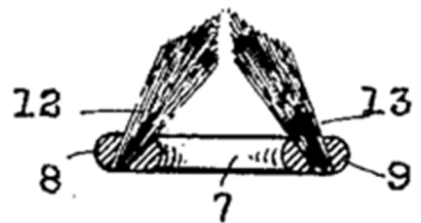
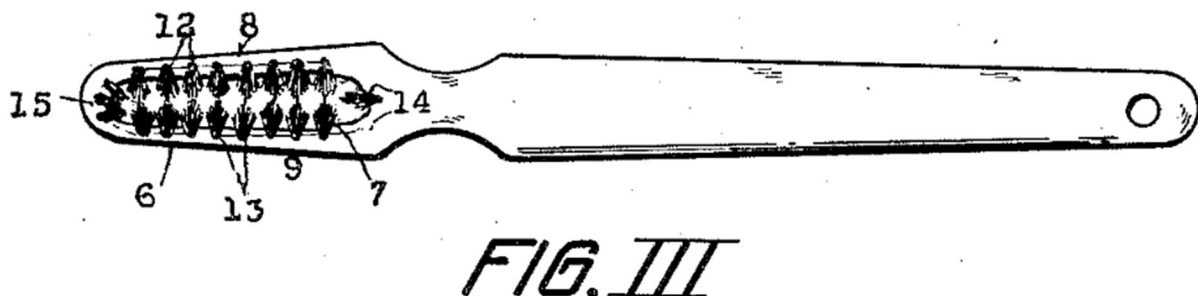


FIG. V

The pocket in Fitz-Gibbon is irregularly shaped and not designed to hold an oral care capsule. Fitz-Gibbon considers only using the pocket to contain dentifrice powder, as Fitz-Gibbon describes the brusher providing varying amounts

of dentifrice within the pocket, “by depositing a small amount of the dentifrice in the filler opening the bristles and the brush head can be rendered sterile” Fitz-Gibbon 2:95-99. The brusher providing varying amounts of dentifrice is not possible when using oral care capsules instead of dentifrice powder. Because the amount can be varied, in many instances none of the dentifrice will even contact the bristles and cannot be said to be retained by them. (EX 2001, Kodama Dec, ¶70) As Mr. Kodama observes, “Even when contacted, powder will flow through and between the bristles and not be retained.”

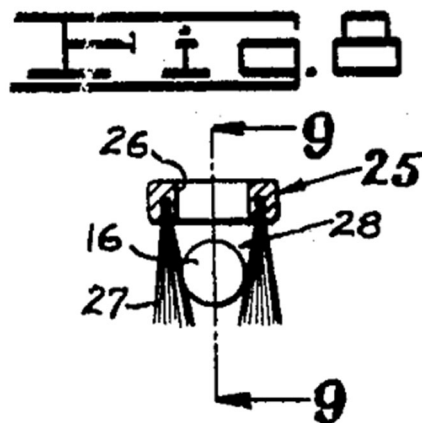
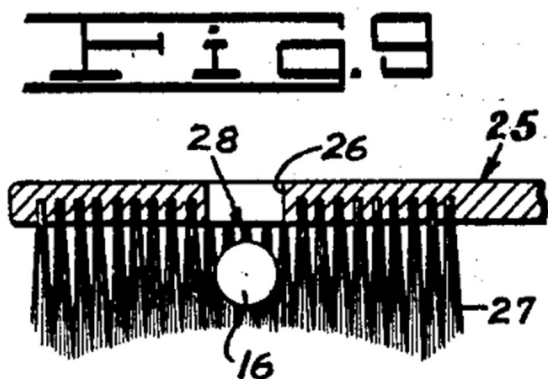


The Fitz-Gibbon bristles are not designed to allow a dentifrice pellet “inserted past the vertical bristles” as recited in claim 1 of the ‘332 patent. To insert dentifrice powder in Fitz-Gibbon the powder must be placed from the backside, into the “the opening 7 [which] permits of the deposition of the dentifrice in said chamber or pocket through the back of the brush head.” Thus, Fitz-Gibbon does not consider angled bristles for holding dentifrice in place (nor oral care capsules or even dentifrice powder), rather the bristles form a pocket, accessible only from the back of the brush head, within which the dentifrice resides. Fitz-

Gibbon fails to disclose the bristles contacting any portion of the dentifrice powder for retention. (EX 2001, Kodama Dec, ¶71)

D. Young

Young teaches a toothbrush with a space where some bristles are missing and a hole is cut in the back of the brush head. Dentifrice can be inserted from behind and into the empty space where the bristles are missing. Like Fitz-Gibbon, Young also requires a fill hole cut through the back of the toothbrush head. The present invention teaches the opposite of Fitz-Gibbon and Young, by inserting the capsule from the front of a brush which also eliminates the need to cut a hole in the back of the brush. Mr. Kodma concludes that to a POSITA, “Young and Fitz-Gibbon teach away from the inventive solution of the challenged claims.” (EX 2001, Kodama Dec, ¶72) Young discloses a toothbrush that is so contrary to the claims of the '332 patent that it teaches away from claimed features of receiving an oral care capsule inserted past the vertical bristles.



A POSITA would not look to the teaching of inserting a dentifrice in the *back* of a toothbrush and any reliance on Young is improper hindsight attempting to reconstruct the '332 invention with the benefit of the teaching of the '332 patent.

Moreover, Young fails to disclose bristles being angled to receive and hold the dentifrice. Young explicitly discloses “Said tufts being disposed in **parallel**, longitudinal and transverse rows” Young 2:43-45. Figure 8, cited by petitioner as showing angled bristles only shows bristles naturally fanning out. This directly contrasts the angled capsule retaining elements of the '332 patent. The claimed elements are angled to retain, while the bristle clusters of Young merely fan out from their natural spreading. (EX 2001, Kodama Dec, ¶73)

VI. (GROUND 1) - WOLCOTT AND DAVIDSON DO NOT TEACH ALL CLAIM ELEMENTS

Wolcott and Davison fail to teach all the claim elements of the '332 patent. Neither reference teaches surrounding a pocket with angled bristles to provide pellet-retaining characteristics to the device. Neither Davidson nor Wolcott teach angled capsule retaining elements that are angled above the recess and configured to retain an oral care capsule. (EX 2001, Kodama Dec, ¶74)

A POSITA would not combine Davidson's well **12**, which allows for powder to be contained in a level toothbrush only while upright, with the Wolcott missing bristles **11** because doing so would fail to achieve or even improve the oral

capsule retaining ability. Merely adding a recess in the head of the toothbrush fails to achieve the retention capabilities of the angled capsule elements angled above the recess as claimed in the '332 patent. Simply lowering the recess in Wolcott down into the head of the toothbrush would not improve pellet-retention because the bristles in Wolcott, like those in Davidson, are oriented in a straight vertical manner and are not angled above the recess so as to retain a pellet. (EX 2001, Kodama Dec, ¶75)

Even if Davidson's well 12 was added to Wolcott's toothbrush, neither Wolcott nor Davidson disclose "angled capsule retaining elements" as recited in claim 1 or "angled bristles" as recited in Claim 2 of the '332 patent. No reference teaches insertion past the vertical bristles into the capsule receiving zone. A combination of both cannot make up for their shared lack of disclosure. (EX 2001, Kodama Dec, ¶76)

VII. (GROUND 2) - THE COMBINATION OF WOLCOTT, DAVIDSON AND FITZ-GIBBON

Fitz-Gibbon cannot remedy the deficiencies in Wolcott and Davidson as alleged in Ground 2 because Fitz-Gibbon teaches away from inserting an oral capsule past vertical bristles. (EX 2001, Kodama Dec, ¶77) Instead, Fitz-Gibbon teaches depositing a dentifrice from the back of the brush head. This is completely opposed to the '332 patent and ensures that nothing is inserted past the vertical bristles.

Thus, the proposed combination of Wolcott, Davidson, and Fitz-Gibbon of Ground 2 fails to render the '332 claims unpatentable. As explained by Mr. Kodama, at paragraph 78 of his declaration, in Fitz-Gibbon “a hole which encompasses most of the toothbrush head. The hole in the head of the brush would eliminate the channel of Davidson and the bottom of the missing bristle portion of Wolcott and dump the powder out of the back of the brush. Fitz-Gibbon teaches a hole for insertion of dentifrice through the back of the toothbrush head. Neither Davidson nor Wolcott would be combined with Fitz-Gibbon by one of ordinary skill in the art.”

Mr. Kodama continues on to explain that: “The closed angle of the nearly horizontal bristles is completely opposed to the '332 patent and ensures that nothing is inserted past the bristles. The hole in the back of the toothbrush ensures that no capsule will remain in place and cannot be held by the bristles, because any capsule inserted through the hole will be pushed back out by any retaining elements.” (EX 2001, Kodama Dec, ¶78)

The proposed combination of Wolcott, Davidson, and Fitz-Gibbon of Ground 2 fails to render the '332 claims unpatentable.

VIII. (GROUND 3) - THE COMBINATION OF DAVIDSON AND YOUNG FAILS TO TEACH ANGLED CAPSULE RETAINING ELEMENTS

Petitioner argues that a combination of Davidson and Young teach all elements of the patent. This fails for a number of reasons.

Young teaches two embodiments. In the first, some of the bristles are shortened so that a dentifrice can be placed in the space between the longer bristles resting on top of the shorter bristles with no overhanging angled bristles. There is no teaching of any angled or overhanging retaining members or bristles. The dentifrice is only balanced there on top of the shorter bristles, as a normal tooth paste would be balanced on top of a typical toothbrush. The longer bristles do not retain the dentifrice, they only prevent it from rolling away. (EX 2001, Kodama Dec, ¶81)

The other Young embodiment teaches inserting a dentifrice from the back or end of the brush head. This is completely opposed to the '332 patent and ensures that nothing is inserted past the vertical bristles. In both embodiments there are no angled retaining members taught. Young does not teach or provide the missing angled retaining elements missing from Davidson. (EX 2001, Kodama Dec, ¶82)

There is no motivation to combine Davidson and Young where Davidson teaches methods to hold dentifrice paste or powder in a channel in the brush and Young teaches a hole in the head of the brush which would dump the powder out

of the back of the brush. Young teaches a hole for insertion of a dentifrice capsule through the back of the toothbrush head. Davisson and Young would not be combined by one of ordinary skill in the art. (EX 2001, Kodama Dec, ¶84)

Finally, neither Davidson, nor Young teach usage of angled capsule retaining elements or angled bristles, nor pushing the capsule past the retaining elements and into the retaining zone, Claim 9 from the front of the brush. (EX 2001, Kodama Dec, ¶85)

Mr. Kodama concludes that the combination is not obvious and would be rejected by a POSITA. “Young would destroy Davidson by putting a hole in Davidson’s pocket and Davidson would destroy Young by plugging the Davidson hole, thus preventing the insertion of a pellet.” (EX 2001, Kodama Dec, ¶86)

A. Davidson is directed towards retention through suction of dentifrice powder, paste, or liquid, not a solid dentifrice capsule.

Davidson is concerned with forming a pocket to hold dentifrice powder, paste, or liquid. Davidson provides methods for inserting each type of dentifrice into the well. However, Davidson makes no mention of using the well for holding dentifrice capsules or any solid object. Davidson’s method would of course not work for holding a solid object such as a dentifrice capsule. Retention of the dentifrice in Davidson is not accomplished by direct holding force by the bristles themselves, but rather “a tendency to hold the dentifrice, regardless of the type of the dentifrice, by suction.” Davidson 3:21-24. Forming a well for a flowing

substance like powder, paste, or liquid is an entirely different design objective from retaining a single, physical object and then having it be inserted and retained properly. A POSITA would not consider using the techniques of Davidson which are unsuitable for holding a solid dentifrice pellet, to Young which is concerned only with retention of a solid dentifrice pellet. (EX 2001, Kodama Dec, ¶88)

Moreover, Young teaches away from the claims of the '332 patent because it instructs a user to insert a dentifrice in the back of the toothbrush which means it never goes past the bristles and, as concluded by Mr. Kodama, “any backward retention force exerted by any bristles would simply push the pellet back out of the rear opening.” (EX 2001, Kodama Dec, ¶89).

Even if a POSITA overcame the teaching away of Young, the combination of Davidson and Young fails to disclose the '332 patent. For example, the proposed combination of Davidson and Young would not allow for an oral care capsule to be inserted past the vertical bristles because Young teaches insertion from the back, which means the dentifrice cannot pass the vertical bristles at all. (EX 2001, Kodama Dec, ¶90)

Additionally, the combination of Young and Davidson is unworkable because the combination would have insertion from the back and a recess in the front. Effectively, there would be a hole in the toothbrush head and no matter which direction the dentifrice is inserted, it would fall out. Patent Owner

respectfully submits that the reason the proposed combination of Young and Davidson is unworkable is because it is purely based on improper hindsight. Petitioner, using the disclosure and teachings of the ‘332 patent, has sought out prior art that no POSITA would consider combining. The result is a proposed combination toothbrush that fails to retain any dentifrice no matter the orientation or direction in which the dentifrice is inserted. (EX 2001, Kodama Dec, ¶91)

B. Neither Davidson nor Young teach angled bristles

Claim 1 of the ‘332 patent recites, “at least one pair of angled capsule retaining elements” Claim 2 provides a specific embodiment of the angled capsule retaining elements providing for “wherein the at least one pair of angled capsule retaining elements comprises multiple pairs of angled bristles canted away from vertical in a direction toward a center of the capsule receiving zone,” Neither Davidson nor Young teach angled bristles nor angled capsule retaining elements. Davidson specifically calls for “bristles that surround the well 2 extend **at right angles from the head**” Davidson 2:3-5 and Young calls for “Said tufts being disposed in **parallel**, longitudinal and transverse rows” Young 2:43-45. (EX 2001, Kodama Dec, ¶92)

“Angled capsule retaining elements” are recited in both dependent claims, the combination of Davidson and Young fails to teach all elements of any claim of the ‘332 patent.

IX. (GROUND 4) - THE COMBINATION OF YOUNG, DAVIDSON, AND FITZ-GIBBON FAILS TO DISCLOSE ALL ELEMENTS OF THE ‘332 PATENT.

Neither Davidson, nor Young disclose angled bristles or angled capsule retaining elements of any kind. Fitz-Gibbon fails to disclose angled bristles which would function to retain an oral care capsule after allowing it to be inserted past vertical bristles. (EX 2001, Kodama Dec, ¶94)

A. There is no motivation to combine Fitz-Gibbon, which exclusively concerns dry dentifrice powder, to Young, which concerns dentifrice pellets

Fitz-Gibbon teaches a hole 7 in the back of a toothbrush, like Young 26 so that a dry dentifrice powder can be inserted below converging bristles. Fitz-Gibbon does not consider use with any other types of dentifrice and in fact explicitly directs towards use only for dentifrice powder, “This feature is found exceedingly valuable in the treatment of pyorrhea, in which the use of a dry dentifrice is recommended.” Fitz-Gibbon 2:84-87, as noted by Mr. Kodama (EX 2001 ¶95).

Mr. Kodama’s evaluation and analysis concludes that “A POSITA would have no motivation to combine Fitz-Gibbon, which is directed towards dentifrice powder; or Davidson, which is directed to dentifrice powder, paste, or liquid; with Young, which is directed towards inserting a dentifrice pellet from the back of the toothbrush head or placing a pellet on top of shortened bristles to avoid rolling off.” (EX 2001, Kodama Dec, ¶96) Forming a chamber or pocket for a flowing

substance like powder, paste, or liquid is an entirely different design objective from retaining a single, physical object and then having it be inserted and retained properly. A POSITA would not consider applying the teachings of Fitz-Gibbon, which does not provide for the dentifrice being inserted or released through the gap between the bristles, to Young or Davidson. Any pellet, inserted behind the bristles of Fitz-Gibbon would not be released. Fitz-Gibbons only works with powder. (EX 2001, Kodama Dec, ¶96)

X. NONE OF PETITIONER'S SIX GROUNDS RENDER THE '332 PATENT OBVIOUS.

Young also teaches away from the '332 patent. Young discloses a toothbrush with a hole on the back side of the toothbrush for inserting dentifrice. Inserting a dentifrice from the back side of the toothbrush head is the opposite of the '332 patent and ensures that no oral care capsule can be inserted past the vertical bristles. Young fails to remedy the deficiencies in Davidson and Fitz-Gibbon and in fact makes the deficiencies even worse. Accordingly, Petitioner's Grounds 3 and 4 fail to render claim 1 of the '332 patent obvious. (EX 2001, Kodama Dec, ¶97)

As acknowledge by the Board, Sorrentino is not prior art. Dkt. #12 at 12. Therefore, Sorrentino cannot be relied on to cure any of the deficiencies noted above, particularly with respect to Fitz-Gibbon. For this reason, Petitioner's Grounds 5 and 6 fail to render claim 1 of the '332 patent obvious.

A. Claim 1

No combination of Wolcott, Davidson, Fitz-Gibbon, or Young disclose each and every feature of claim 1 of the '332 Patent. Specifically, none of Petitioner's asserted art from Grounds 1-6, alone or in combination, disclose the feature of **“a capsule receiving zone sized to receive an oral care capsule, the capsule receiving zone including a recess defined in the front surface and *arranged to receive at least a portion of an oral care capsule inserted past the vertical bristles*; and at least one pair of angled capsule retaining elements that are elevated above the recess and configured to retain an oral care capsule in the capsule receiving zone,”** as recited in independent claim 1. (EX 2001, Kodama Dec, ¶99)

As discussed above, Wolcott fails to disclose angled capsule elements elevated above a recess. Likewise, Davidson fails to disclose angled capsule elements elevated above a recess. Therefore, the combination of Wolcott and Davidson alleged in Ground 1 fails to disclose at least the feature of angled capsule elements elevated above a recess. Since the proposed combination of Wolcott and Davidson fails to disclose angled capsule elements elevated above a recess, the combination of Wolcott and Davidson cannot teach or suggest a recess defined in the front surface of the capsule receiving zone to receiving at least a portion of an of an oral care capsule inserted past the vertical bristles. Put simply, given that there are no angled bristles above the receiving zone in the proposed combination

of Wolcott and Davidson, an oral capsule cannot be inserted into the recess in the receiving zone after passing such bristles. (EX 2001, Kodama Dec, ¶100)

Fitz-Gibbon cannot remedy the deficiencies in Wolcott and Davidson as alleged in Ground 2 because Fitz-Gibbon teaches away from inserting an oral capsule past vertical bristles. Instead, Fitz-Gibbon teaches depositing a dentifrice from the back of the brush head. This is completely opposed to the '332 patent and ensures that nothing is inserted past the vertical bristles. Thus, the proposed combination of Wolcott, Davidson, and Fitz-Gibbon of Ground 2 fails to render the '332 claims unpatentable. (EX 2001, Kodama Dec, ¶101)

Young also teaches away from the '332 patent. Young discloses a toothbrush with a hole on the back side of the toothbrush for inserting dentifrice. Inserting a dentifrice from the back side of the toothbrush head is the opposite of the '332 patent and ensures that no oral care capsule can be inserted past the vertical bristles. Young fails to remedy the deficiencies in Davidson and Fitz-Gibbon and in fact makes the deficiencies even worse. Accordingly, Petitioner's Grounds 3 and 4 fail to render claim 1 of the '332 patent obvious. (EX 2001, Kodama Dec, ¶102)

Sorrentino is not prior art and therefore, Sorrentino cannot be relied on to cure any of the deficiencies noted above. Petitioner's Grounds 5 and 6 fail to render claim 1 of the '332 patent obvious.

B. Claim 2

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 1 of the '332 patent obvious from, none of the asserted art discloses “the at least one pair of angled capsule retaining elements comprises multiple pairs of angled bristles canted away from vertical in a direction toward a center of the capsule receiving zone, and the brush head includes a flexural portion adapted to permit at least some bristles of the multiple pairs of angled bristles to be spread apart so as to enable an oral care capsule to be loaded into the capsule receiving zone” as recited in claim 2. (EX 2001, Kodama Dec, ¶104)

C. Claim 5

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 1 of the '332 patent obvious from, none of the asserted art discloses “wherein each capsule retaining element of the at least one pair of angled capsule retaining elements comprises a retaining element canted away from vertical in a direction toward a center of the capsule receiving zone” as recited in claim 5. (EX 2001, Kodama Dec, ¶105)

D. Claim 6

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 1 of the '332 patent obvious from, none of the asserted art discloses “wherein the at

least one pair of angled capsule retaining elements comprises angled bristles canted away from vertical in a direction toward a center of the capsule receiving zone” as recited in claim 6. (EX 2001, Kodama Dec, ¶106)

E. Claim 7

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 1 of the '332 patent obvious from, none of the asserted art discloses “wherein the at least one pair of angled capsule retaining elements is arranged between the plurality of vertical bristles and a center of the capsule receiving zone” as recited in claim 7. (EX 2001, Kodama Dec, ¶107)

F. Claim 8

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 1 of the '332 patent obvious from, none of the asserted art discloses “an oral care capsule retained by the at least one pair of capsule retaining elements in the capsule receiving zone” as recited in claim 8. (EX 2001, Kodama Dec, ¶108)

G. Claim 9

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 1 of the '332 patent obvious from, none of the asserted art discloses “inserting at least a portion of the oral care capsule in a direction past the vertical bristles into the recess, and retaining the oral care capsule in the capsule receiving zone using the at

least one pair of angled capsule retaining elements” as recited in claim 9. (EX 2001, Kodama Dec, ¶109)

H. Claim 10

No combination of Wolcott, Davidson, Fitz-Gibbon, or Young disclose each and every feature of claim 10 of the '332 Patent. Specifically, none of Petitioner's asserted art from Grounds 1-6, alone or in combination, disclose the feature of “a capsule receiving zone including a recess defined in the front surface and arranged to receive at least a portion of an oral care capsule insertable past the bristles into the recess; and

at least three angled capsule retaining elements that are elevated above the recess, are configured to retain an oral care capsule in the capsule receiving zone, and are canted away from vertical in a direction toward a center of the capsule receiving zone, wherein each angled capsule retaining element of the at least three angled capsule retaining elements is arranged proximate to a perimeter of the capsule receiving zone at a position at least 108 degrees apart from at least one other angled capsule retaining element of the at least three angled capsule retaining elements relative to a center of the capsule receiving zone” as recited in independent claim 10. (EX 2001, Kodama Dec, ¶110)

As discussed above, Wolcott fails to disclose angled capsule elements elevated above a recess. Likewise, Davidson fails to disclose angled capsule

elements elevated above a recess. Therefore, the combination of Wolcott and Davidson alleged in Ground 1 fails to disclose at least the feature of angled capsule elements elevated above a recess. Since the proposed combination of Wolcott and Davidson fails to disclose angled capsule elements elevated above a recess, the combination of Wolcott and Davidson cannot teach or suggest a recess defined in the front surface of the capsule receiving zone to receiving at least a portion of an of an oral care capsule inserted past the vertical bristles. Put simply, given that there are no angled bristles above the receiving zone in the proposed combination of Wolcott and Davidson, an oral capsule cannot be inserted into the recess in the receiving zone after passing such bristles. (EX 2001, Kodama Dec, ¶111)

Fitz-Gibbon cannot remedy the deficiencies in Wolcott and Davidson as alleged in Ground 2 because Fitz-Gibbon teaches away from inserting an oral capsule past vertical bristles. Instead, Fitz-Gibbon teaches depositing a dentifrice from the side of the brush head. This is completely opposed to the '332 patent and ensures that nothing is inserted past the vertical bristles. Thus, the proposed combination of Wolcott, Davidson, and Fitz-Gibbon of Ground 2 fails to render claim 10 of the '332 patent unpatentable. (EX 2001, Kodama Dec, ¶112)

Young also teaches away from the '332 patent. Young discloses a toothbrush with a hole on the back side of the toothbrush for inserting dentifrice. Inserting a dentifrice from the back side of the toothbrush head is the opposite of

the '332 patent and ensures that no oral care capsule can be inserted past the vertical bristles. Young fails to remedy the deficiencies in Davidson and Fitz-Gibbon and in fact makes the deficiencies even worse. Accordingly, Petitioner's Grounds 3 and 4 fail to render claim 10 of the '332 patent obvious. (EX 2001, Kodama Dec, ¶113)

Sorrentino is not prior art and cannot be relied on to cure any of the deficiencies.

I. Claim 11

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 10 of the '332 patent obvious from, none of the asserted art discloses “wherein the at least three angled capsule retaining elements are arranged between the plurality of bristles and a center of the capsule receiving zone” as recited in claim 11. (EX 2001, Kodama Dec, ¶115)

J. Claim 12

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 10 of the '332 patent obvious from, none of the asserted art discloses “wherein the at least three angled capsule retaining elements comprise at least three angled bristles” as recited in claim 12. (EX 2001, Kodama Dec, ¶116)

K. Claim 13

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 10 of the '332 patent obvious from, none of the asserted art discloses “an oral care capsule retained by the at least three capsule retaining elements in the capsule receiving zone” as recited in claim 13. (EX 2001, Kodama Dec, ¶117)

L. Claim 14

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 10 of the '332 patent obvious from, none of the asserted art discloses “inserting at least a portion of the oral care capsule in a direction past the bristles into the recess, and retaining the oral care capsule in the capsule receiving zone using the at least three angled capsule retaining elements” as recited in claim 14. (EX 2001, Kodama Dec, ¶118)

M. Claim 15

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 10 of the '332 patent obvious from, none of the asserted art discloses “wherein the at least one pair of angled capsule retaining elements comprises multiple pairs of angled capsule retaining elements” as recited in claim 15. (EX 2001, Kodama Dec, ¶119)

N. Claim 16

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 10 of the '332 patent obvious from, none of the asserted art discloses “wherein at least a portion of each angled capsule retaining element of the at least one pair of angled capsule retaining elements is arranged to overlap a portion of the recess of the capsule receiving zone” as recited in claim 16. (EX 2001, Kodama Dec, ¶120)

O. Claim 17

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 10 of the '332 patent obvious from, none of the asserted art discloses “wherein at least a portion of each angled capsule retaining element of the at least three angled capsule retaining elements is arranged to overlap a portion of the recess of the capsule receiving zone” as recited in claim 17. (EX 2001, Kodama Dec, ¶121)

P. Claim 18

In addition to the reasons which Grounds 1-4 and 6 fail to render claim 10 of the '332 patent obvious from, none of the asserted art discloses “wherein each angled capsule retaining element of the at least three angled capsule retaining elements is arranged proximate to a perimeter of the capsule receiving zone at a position at least 144 degrees apart from at least one other angled capsule retaining element of the at least three angled capsule retaining elements relative to a center

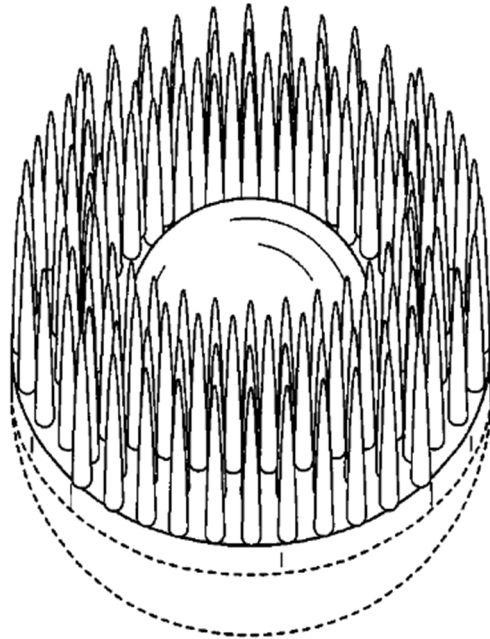
of the capsule receiving zone” as recited in claim 18. (EX 2001, Kodama Dec, ¶122)

Q. SECONDARY CONSIDERATIONS

Petitioner cites Sorento EX 1013, asserting that Sorento provided a toothbrush with “a head or carrier 80” and “a series of retaining members 81” to hold “an oral care dispenser, such as a bead of packed dentifrice or capsule ... in place prior to use” within a “cavity” or “basin” 100. Ex. 1013, 11:35-40. Sorento EX 1013 is Colgate’s patent on the highly successful accused WISP toothbrush.

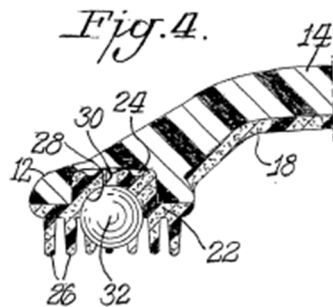
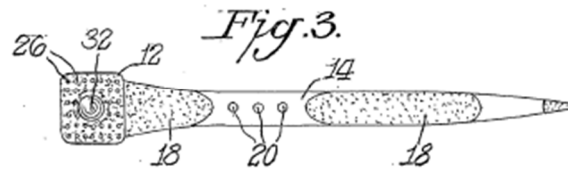
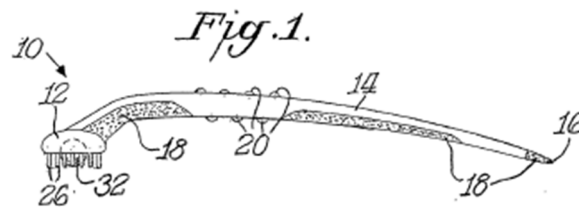
Sorento EX1013, has a long history. Sorento was originally filed as a provisional application 60/408,321 on September 5, 2002. Refiled as a continuation on June 6, 2005, Ser. No. 29/231,487, which issued on September 26, 2006 as Design Patent 528,803 (EX 2007).

Design patent 528,803 has no retaining members, just vertical bristles.



The 2002 design was never commercialized by Colgate.

International application PCT/US03/27455, filed Sep. 4, 2003, which claims priority to U.S. Patent Application 60/408,321, filed Sep. 5, 2002, was published as WO 2004/021914 on March 18, 2004 (EX 2008), again without any retaining elements and only four figures:



Colgate continued to modify its design, without success and without any retaining elements. Filing a continuation-in-part Ser. No. 10/843,135, filed May 11, 2004, now U.S. Pat. No. 7,331,731, (Ex 2009) adding ten figures to the 2002 disclosure, but no retaining elements.

Next came Ser. No. 29/213,754, filed Sep. 23, 2004, now U.S. Pat. No. D532,202 (Ex 2010) having the same disclosure as D528,803 (EX 20xx).

Next came Ser. No. 29/231,483, filed Jun. 6, 2005, now U.S. Pat. No. D532,607 EX 2013).

Colgate continued to modify its design, without success and again without any retaining elements. Filing a continuation-in-part on December 21, 2005, U.S. application Ser. No. 11/314,716, filed Dec. 21, 2005, now U.S. Pat. No. 7,478,959 (EX2011), adding features but still no retaining elements:

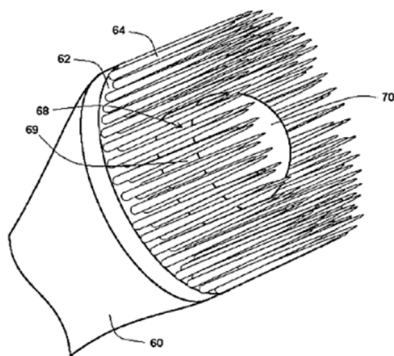


FIG. 15

:

Petitioner Colgate has made no assertion that any of these filings anticipate or render obvious any of the challenged claims. There is no argument that Colgate did not possess retaining elements before 2008.

Colgate struggled from 2002 till 2008 to solve the problem. This evidences a long felt and unsatisfied need. The 2002 through January 2008 versions of Sorento did not have any retaining members. Sorento refined and refiled and only after Patent owner filed in August of 2007 and only after Patent Owner published their invention on the internet at www.toothpods.com, only then did Petitioner copy the retaining elements of Patent owner and subsequently launch a successful product. Thus demonstrating the long felt need and commercial acceptance of the solution as claimed in the challenged claims

Petitioner Colgate launched the WISP Toothbrush, which is identical to the figures from Sorento (EX 1013) relied upon by Mr. Fletcher, on April 6, 2009, (Ex2005). Colgate referred to the subject matter of the challenged claims as “this breakthrough innovation.” Colgate’s present challenge to the claims of the ‘332 patent as obvious are disingenuous at best.

Mr. Fletcher, in his declaration, at 361 asserts that “Sorento alone meets all claim elements described below.”

XI. CONCLUSION

For the foregoing reasons Patent Owner respectfully requests that the Board

confirm the patentability of the Challenged Claims of the '332 patent.

Dated: May 6, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing PATENT OWNER'S RESPONSE was served on April 25, 2024 at the following Counsel for Petitioner via e-mail:

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CERTIFICATION OF WORD NUMBER

Counsel for Patent Owner hereby certifies that this PATENT OWNER'S RESPONSE contains 4,015 words as calculated using the word count function of Microsoft Word, not including material excluded under 37 C.F.R. 42.24(a)(1).

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/Joseph J. Zito/