

June 24, 2024

VIA EMAIL

Alexander Brown, Esq.
CONCEPT LAW GROUP
6400 N. Andrews Avenue, Suite 500
Fort Lauderdale, Florida 33309

Re: Infringement of Fresh Products Intellectual Property/
Our Ref No.: FRESHPR.113IS

Dear Mr. Brown:

Thank you for your letter of May 16, 2024.

Fresh Products disagrees with the conclusions of your letter and remains confident that the asserted claims of WizKid's US Patent Nos. 10,294,649 (the '649 Patent) and 10,036,154 (the '154 Patent) would be found invalid based on the previously asserted prior art. On the other hand, in an effort to resolve any doubts regarding the strength of its position, Fresh Products has conducted additional searching and has identified additional prior art which compels the conclusion that the asserted patents are invalid.

US Patent No. 10,294,649

WizKid has asserted that Fresh Products infringes Claim 1 of the '649 Patent. It is apparent, however, that asserted Claim 1 is not novel in view of Japanese Utility Model Patent 60-19085.

Specifically, the '085 Japanese Utility Model Patent discloses a Urine Splash Prevention Device incorporating:

An anti-splash body [Frame 1] configured to be mounted vertically on a back wall of a urinal [see Figures 2 & 3] and having a plurality of protrusions [brushes 3] that extend from a front surface of the anti-splash body;

a base [Bottom 5] attached to the anti-splash body at a coupling region [coupling region, including Bearings 6] formed between the base and the anti-splash body, the base being configured to cover at least a portion of a urinal drain [see Figure 3] and having a plurality of protrusions [brushes 3] extending away from the base on a surface of the base that is contiguous with the front surface of the anti-splash body [See Figures 1-5];

a coupling region [including bearings 6] is configured to allow the base to move between a first position including the base oriented in a direction parallel to the anti-splash body and a second position including the base oriented in a direction substantially perpendicular from the base.

As each and every element of the claim is met by a single reference, Claim 1 is invalid. Furthermore, the subject matter of the other claims is either disclosed or obvious based on the prior art.

US Patent No. 10,036,154

Claim 1 of the '154 Patent obvious in view of Japanese Utility Model Patent 60-19085, in view of Fresh Products US Patent No. 11,396,745 or any one of a number other prior art references.

Specifically, Japanese Utility Model Patent 60-19085 discloses a Urine Splash Prevention Device incorporating:

An anti-splash body sized and shaped to couple to at least a portion of a urinal, the anti-splash body including;

- a first portion

- a second portion opposite the first portion

- a length extending from the first portion to the second portion; and

- an upper surface extending the length [see frame 1];

- a base [bottom 5] couplable to the first portion and configured to extend in a direction substantially perpendicular from the first portion Figures 1-5];

- a first plurality of protrusions extending outwardly from the upper surface of the anti-splash body [Figures 1 and 3-5]; and

- a second plurality of protrusions extending outwardly from the base, the second plurality of protrusions configured to extend in the direction substantially perpendicular from the first portion of the anti-splash body [Figures 1 and 3-5].

Fresh Products US Patent No. 11,396,745 discloses a urine splash prevention device including a first plurality of protrusions [22a, Figure 5] extending outwardly from the upper surface of the anti-splash body and which taper downwardly in a direction toward the upper surface of the anti-splash body.

Given the recognized desirability of tapered protrusions prior to the critical date of the '154 patent, one of ordinary skill in the art would have modified the splash prevention device of the '865 Utility Model Patent so that the first plurality of protrusions taper downwardly in a direction toward the upper surface of the anti-splash body, in a manner similar to those disclosed in the '745 patent.

As Claim 1 is obvious in view of the prior art, it is invalid. Furthermore, the subject matter of the other claims of the '154 patent is obvious based on the prior art.

Non-Infringement

Fresh Products TSUNAMI product does not infringe either the '649 Patent or the '154 Patent.

Specifically, the TSUNAMI product does not include “an anti-splash body configured to be mounted vertically on a back wall of a urinal” as required by the ‘649 patent. Rather, the TSUNAMI product is specifically designed to avoid the mounting of the TSUNAMI product to the back wall of the urinal. Instead of being “mounted vertically on the back wall of a urinal,” the TSUNAMI product is free standing. to facilitate removal and replacement of the urinal. In fact, Fresh Products touts this feature in their TSUNAMI advertising: “No mounting: Faster installation and removal.

Similarly, the TSUNAMI product does not include “an anti-splash body configured to couple to a urinal wall.” Rather, as discussed above, the TSUNAMI product is not coupled to the urinal wall, but the TSUNAMI product is specifically designed to avoid being coupled to the urinal wall to facilitate removal and replacement of the urinal. Instead of being “coupled to a urinal wall,” the TSUNAMI product is free standing.

Settlement

Fresh Products is confident that it does not infringe WizKid’s patents and that WizKid’s patents are invalid based on the prior art. As such, Fresh Products is confident that it could have WizKids patents invalidated through Inter Partes Review of the patents. On the other hand, Fresh Products has some interest in selling a TSUNAMI product which is configured to be mounted on the back wall of a urinal. Accordingly, rather than spending time and money on Inter Party Review proceedings, Fresh Products is willing to take a license under the WizKid patents subject to a nominal royalty.

Nothing in this letter should be construed as a waiver of any rights or remedies of Fresh Product

We look forward to your response.

Very truly yours,



Edward A. Schlatter

cc: Fresh Products, Inc.

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