

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

ATTENDS HEALTHCARE PRODUCTS, INC.,  
Petitioner,

v.

PAUL HARTMANN AG,  
Patent Owner.

---

IPR2020-01477 (Patent 8,152,788 B2)  
IPR2020-01478 (Patent 8,784,398 B2)  
IPR2020-01479 (Patent 8,771,249 B2)  
IPR2020-01480 (Patent 8,708,990 B2)

---

Record of Oral Hearing  
Held : December 2, 2021

Before: PATRICK R. SCANLON, HYUN J. JUNG, and  
NEIL T. POWELL, Administrative Patent Judges.

IPR2020-01477 (Patent 8,152,788 B2)  
IPR2020-01478 (Patent 8,784,398 B2)  
IPR2020-01479 (Patent 8,771,249 B2)  
IPR2020-01480 (Patent 8,708,990 B2)

## A P P E A R A N C E S

### ON BEHALF OF THE PETITIONER:

EAGLE H. ROBINSON, ESQUIRE  
JEREMY B. ALBRIGHT, ESQUIRE  
NORTON ROSE FULBRIGHT US LLP  
98 San Jacinto Boulevard  
Suite 1100  
Austin, Texas 78701-4255  
(512) 474-5201

### ON BEHALF OF THE PATENT OWNER:

JOSHUA L. GOLDBERG, ESQUIRE  
KATHLEEN A. DALEY, ESQUIRE  
FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP  
901 New York Avenue, NW  
Washington, DC 20001-4413  
(202) 408-4098

The above-entitled matter came on for hearing on Thursday,  
December 2, 2021, commencing at 1:00 p.m. EST, by video/by Telephone.

IPR2020-01477 (Patent 8,152,788 B2)  
IPR2020-01478 (Patent 8,784,398 B2)  
IPR2020-01479 (Patent 8,771,249 B2)  
IPR2020-01480 (Patent 8,708,990 B2)

1                   P R O C E E D I N G S

2           JUDGE JUNG: Hello. This is Judge Jung and with me  
3 are Judge Scanlon and Judge Powell. This is the oral hearing  
4 for IPRs 2020-01477, 2020-01478, 2020-01479, and 2020-01480.  
5 In these proceedings Petitioner Attends Healthcare Products,  
6 Incorporated challenges claims of U.S. Patent numbers  
7 8,152,788, 8,784,398, 8,771,249, and 8,708,990, all of which  
8 are owned by Paul Hartmann AG.

9           Starting with the petitioner's counsel and followed  
10 by Patent Owner's counsel, please state your names for the record.

11          MR. ALBRIGHT: Good afternoon, Your Honors. This  
12 is Jeremy Albright from Norton Rose Fulbright and I am a  
13 backup counsel for Petitioner. I'll be doing the argument  
14 today. And with me is Eagle Robinson also from Norton Rose  
15 Fulbright, and he is our lead counsel.

16          JUDGE JUNG: Thank you, Mr. Albright.

17          MS. DALEY: Hi, Your Honor. This is Kathleen Daley  
18 with Finnegan. I'm backup counsel for Patent Owner Paul  
19 Hartmann, and I will be doing the argument today. And with me  
20 in the room is lead counsel Josh Goldberg.

21          JUDGE JUNG: Thank you, Ms. Daley.

22          Because this is a video hearing, a few reminders.  
23 First, if at any time during the hearing you encounter any  
24 difficulty please let us know immediately for example by

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 contacting the team members who provided you with connection  
2 information. Second, when not speaking please mute yourself.  
3 Third, please try to identify yourself each time you speak.  
4 This helps the court reporter prepare the transcript. Fourth  
5 and finally, the panel has the entire record including  
6 demonstratives. When referring to demonstratives, papers,  
7 exhibits, please do so by slide or page number, and please  
8 also pause a moment to give us time to find it. This also  
9 helps with preparing the transcript. And I want to verify  
10 that there are no objections to the demonstratives.

11 So Mr. Albright, is it correct that Petitioner had  
12 no objections to Patent Owner's demonstratives?

13 MR. ALBRIGHT: That's correct, Your Honor.

14 JUDGE JUNG: And Ms. Daley, same question. Is it  
15 correct that Patent Owner had no objections to Petitioner's  
16 demonstratives?

17 MS. DALEY: That's correct, Your Honor.

18 JUDGE JUNG: Okay. Thank you. Each party has 90  
19 minutes of total time to present its arguments, and each party  
20 may reserve time for rebuttal. I will track argument time and  
21 interrupt when you have only a few minutes remaining.

22 So Mr. Albright, you may begin when you're ready.

23 MR. ALBRIGHT: Thank you, Your Honor. And I'd like  
24 to start with Petitioner's demonstratives. Looking at slide 1  
25 which is just, you know, the intro slide. And before we dive

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 into the issues, I wanted to provide an overview of the  
2 relevant part and how it had evolved even well before the  
3 challenged patents. And so up until the early 90s diapers  
4 generally had film backsheets and adhesive tape fasteners and  
5 so the adhesive tape fasteners would attach to the film  
6 backsheet. But these film backsheets were not pleasing to the  
7 touch, and they were cold and clammy.

8 Further, adhesive tape fasteners were susceptible  
9 to contamination such as with baby oil and baby powder which  
10 reduced their reliability. Once the adhesive tape becomes  
11 contaminated it doesn't stick as well. And so to address  
12 these issues the art shifted to using film nonwoven backsheets  
13 in which a nonwoven is laminated to the outer surface of the  
14 film so it defines the outer surface of the diaper which  
15 provided diapers with a desirable cloth-like feel and the art  
16 also shifted to using mechanical or hook-type fasteners  
17 because they were less susceptible to contamination.

18 Initially, these mechanical fasteners included both  
19 a hook component and a loop component, so a distinct loop  
20 component, where the loop component was placed on a diaper to  
21 define a, quote, landing zone, it's a term of art, to which  
22 the hook component could be attached. Eventually, however,  
23 and well before the challenged patent's priority date, the art  
24 recognized a synergy between these film nonwoven backsheets  
25 and hook-type fasteners. A hook component could be made to

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 directly engage the nonwoven of a film nonwoven backsheet  
2 eliminating a need for a landing zone, reducing cost, and  
3 providing enhanced size adjustability.

4 Also known by the time of the challenged patents  
5 were that a diaper's side parts or wings needed to be strong  
6 because they're subjected to pulling force and that's where  
7 the fasteners are often attached to hold the diaper on the  
8 wearer and the diaper's backsheet needed to be soft to provide  
9 the desired cloth-like feel that a film nonwoven is known to  
10 provide. And persons of ordinary skill in the art knew how to  
11 accomplish that too, and it was by using a higher-basis-weight  
12 nonwoven in the wings, which more fiber material it's going to  
13 be stronger, and a lower-basis-weight nonwoven in the backsheet.

14 So at this bottom this known diaper configuration  
15 that is a film nonwoven backsheet and fasteners that can  
16 engage the nonwoven of the backsheet and the nonwoven wings of  
17 the diaper where the wings have a higher-basis-weight for  
18 strength, that known diaper configuration is what the  
19 challenged patents are directed to. There's nothing special  
20 about the nonwovens or the hook-type fasteners that the  
21 challenged patents broadly describe and recite which include  
22 those that were commercially available, I mean even just  
23 looking at the example in the challenged patents. Instead,  
24 the challenged patents simply claim the natural result of this  
25 known diaper configuration. The higher-basis-weight wings

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 will have more fibers available for fastener engagement and  
2 thus provide higher fastener retaining forces than the lower-  
3 basis-weight backsheet nonwoven.

4 The petitions advance two main combinations. The  
5 first one is Karami '772's integral wing and chassis diaper.  
6 So the wings and the chassis are sort of -- they're integral  
7 so one backsheet extends across the wings and the backsheet.  
8 And we've modified that diaper to have separate foldable wings  
9 like pinning to facilitate manufacturing.

10 The second combination is Benning's diaper modified  
11 to include a film nonwoven backsheet and mechanical hook-type  
12 fasteners like Karami '626 to achieve the benefits that were  
13 just described for both of those components where each of  
14 those diapers, the Karami '772 diaper modified in view of  
15 Benning, and the Benning diaper modified in view of Karami  
16 '626, has higher-basis-weight wings for strength where it's  
17 needed and a lower-basis-weight nonwoven backsheet for user  
18 comfort. And so with that overview I'd like to move to slide  
19 2 and discuss the diaper --

20 JUDGE JUNG: Mr. Albright, before you move on to  
21 slide 2, this is Judge Jung, how much time did you want to  
22 reserve for rebuttal?

23 MR. ALBRIGHT: Can I reserve 15 minutes, Your Honor?

24 JUDGE JUNG: Fifteen minutes. Okay. And also  
25 before you move on, Patent Owner complains in its sur-reply

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 that you have presented new combinations or new arguments in  
2 your reply. So for the Karami '772 and Benning combination,  
3 what exactly are you modifying?

4 MR. ALBRIGHT: So yes, Your Honor. So to answer  
5 your question directly, what we are modifying in the Karami  
6 '772 diaper is we are taking its integral chassis and wings  
7 construction, and we are going to a separate wings  
8 configuration like in Benning, and we do that because it's  
9 going to facilitate manufacturing in that you're not going to  
10 have scrap because in a unitary or hourglass diaper like  
11 Karami '772 you actually cutout a portion of the backsheet to  
12 make the leg openings, but if you go to a separate wing design  
13 you don't have that scrap which is going to reduce cost.

14 And the other primary reason we advance for going  
15 to a separate wings configuration is to provide manufacturing  
16 flexibility and really that's about the ability to choose  
17 different materials for the wing nonwoven and the for the  
18 backsheet nonwoven notably to facilitate the use of a higher-  
19 basis-weight wing which is really the final modification we  
20 make to Karami '772 to provide strength.

21 And I think the second part of your question was  
22 about the alleged new arguments that Patent Owner pointed to  
23 in the sur-reply and I'd like to turn to slide 23 please. And  
24 so Karami '772's diaper has -- and in fact it probably is  
25 helpful to start with slide 22 because we have a picture of



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 Karami '772's diaper which is going to help me explain.

2 So Karami '772's diaper has this stay-away zone

3 (160) which is an untreated portion of his backsheet. And

4 around that stay-away zone there are treated portions of his

5 backsheet because Karami '772 explains the entire front waist

6 portion of the diaper can be treated meaning apertured and/or

7 water jet treated except for a portion of the backsheet that

8 then becomes the stay-away zone because it is untreated. And

9 in the petition -- well, the challenged claims require

10 retaining forces between the mechanical closure means and the

11 side parts that are higher than the retaining forces between

12 the mechanical closure means and the backsheet.

13 And in the petition we identify two portions of the

14 backsheet as meeting the requirement for retaining forces that

15 are lower in the backsheet than in the wings. The first

16 portion we point to is the stay-away zone which has diminished

17 affinity for fasteners but in the petition we also pointed out

18 that there is a portion of the backsheet that's not the wings

19 that is treated just like the wings and once you go to a

20 configuration where you have a lower-basis-weight nonwoven in

21 the backsheet and higher-basis-weight nonwoven in the wings

22 that treated portion of the backsheet is also going to meet

23 the requirement for lower fastener retaining forces in the

24 backsheet than in the wings.

25 And Patent Owner, going back to slide 23, contends

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1   that we did not identify those treated portions of Karami  
2   '772's backsheet as meeting the lower retaining forces in the  
3   backsheets limitation and so they contend it's a new argument.  
4   But even Your Honors in the Institution Decision recognized  
5   that we did in fact make that argument and on the right side  
6   of this slide we've got the Institution Decision in the 1479  
7   proceeding at page 20 and the board said -- Your Honor said,  
8   As noted above, the petition asserts that, one, the fasteners  
9   can attach to containment assembly (120) in both its treated  
10   zones and its untreated stay-away zone. And then we address  
11   the differential retaining forces for both. And so it's our  
12   position that that's absolutely not a new argument.

13       JUDGE JUNG: Just a follow up. So you are  
14   confirming that you will not -- your proposed combination  
15   doesn't contain a further treatment of the stay-away zone in  
16   any form?

17       MR. ALBRIGHT: That's right, Your Honor. It does not.

18       JUDGE JUNG: And you're also contending that the  
19   treated zone, there will not be two separate treated zones so  
20   that one has slightly less retaining force than the other?

21       MR. ALBRIGHT: So I think that's right. Just to  
22   clarify, if you take Karami '772 as it is, it's a unitary  
23   configuration and you would have a treatment applied across  
24   the whole front waist portion of the diaper except for that  
25   stay-away zone, and our position is you would still go to the

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 separate wings configuration and go to a higher-basis-weight  
2 wing, and once you have a higher-basis-weight wing than the  
3 backsheet the retaining forces in the wings are going to be  
4 higher than the retaining forces in the backsheet including in  
5 its treated zone and of course in its untreated zone.

6 JUDGE JUNG: Okay. Thank you, Mr. Albright. Now I  
7 kind of want to shift over to inherency. In the Petitioner's  
8 Reply it appears Petitioner is arguing that it is not  
9 presenting any arguments in the petition that relies on  
10 inherent disclosure in any of the references. So would you  
11 agree with the statement that this panel does not need to  
12 reach an inherency analysis for its final written decisions in  
13 any of these proceedings?

14 MR. ALBRIGHT: So there are I believe three points  
15 where inherency is at play and those would be, one, whether  
16 Karami '772's untreated portion of its backsheet, its stay-away  
17 zone, would have sufficient retaining forces with the fastener  
18 to hold a diaper on a wearer which is something we establish  
19 by looking at Karami '626 which discloses a conventional  
20 spunbond nonwoven of the same basis weight which Karami '626  
21 tells us to engage fasteners. So that is potentially an  
22 inherency issue.

23 We also have, two, that a higher-basis-weight  
24 nonwoven is going to have higher fastener retaining forces  
25 than a lower-basis-weight nonwoven when both nonwovens are

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 designed to engage fasteners. I think that's an inherency issue.

2 And then third would be with respect to the

3 specific retaining forces and the Benning-Karami '626

4 combination. We have a position that these same materials

5 would have been obvious selections, or the materials that they

6 put -- that the challenged patents include in their examples

7 were obvious choices as confirmed independently by the prior

8 art, and there's a potential for some inherency there even

9 though that's really more of an obviousness position because

10 we reach those materials through obviousness.

11 I did see in the Sur-Reply where Patent Owner

12 contends that we disavowed inherency, and I would say that that

13 is incorrect. I think there was a little bit of confusion.

14 One, specifically with respect to the Benning-Karami '626

15 diaper, Patent Owner contends that we are relying on inherency

16 to meet the diaper-holding requirement. So inherency to

17 establish that the Benning-Karami '626 diaper would in fact

18 have been capable of fastener attachment to the wings and to

19 the backsheet, but that's not in issue of inherency because

20 that's literally the impetus of the combination. I mean, a

21 person of ordinary skill in the art goes to a film nonwoven

22 backsheet like Karami '626's for user comfort of course but then

23 additionally adds the fasteners like Karami '626 to achieve

24 size adjustability.

25 And so it's our position that the diaper-holding

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 requirement for that combination is met through obviousness.

2 That's not an inherency argument. And so I think there was

3 some confusion there. And the other place I think there was

4 confusion was with respect to the Karami '772-Benning

5 diaper -- let me see. I got a slide. Well, maybe we don't

6 need it.

7 So we look at the untreated stay-away zone in

8 Karami '772, and how do we know that it's going to engage

9 fasteners sufficiently to hold a diaper on a wearer? Well, a

10 conventional spunbond nonwoven of an overlapping basis weight

11 in Karami '626 is disclosed in Karami '626 as allowing for the

12 accommodation of both small and large-waisted wearers through

13 fastener attachment and thus Karami '626 tells us that the

14 nonwoven in Karami '772 is going to sufficiently engage

15 fasteners to hold a diaper on a wearer.

16 And what Patent Owner pointed out was that Karami

17 '772 discloses a range, I believe it's 5 to 45 gsm, for basis

18 weight, and Karami '626 discloses a range of 13 to 50 and

19 Patent Owner's position was that somehow we need to establish

20 that the full range that Karami '626 discloses for that backsheet

21 nonwoven basis weight would have met the diaper-holding

22 requirement, but that's incorrect because Petitioner's position

23 is based on a 10 to 30 gsm backsheet nonwoven which we

24 establish would have been an obvious choice for the backsheet

25 because that's going to provide the user comfort and visual

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 appeal that was sought by the inclusion of the film nonwoven  
2 backsheet in the first instance. And so that's not in  
3 inherency issue. That's also an obviousness issue.

4 JUDGE JUNG: So let me just summarize your answer.  
5 You believe all the argument and analysis you presented in  
6 your petitions do not have to rely on inherency, that they  
7 would have been obvious; is that correct?

8 MR. ALBRIGHT: No, Your Honor. I would say that  
9 some of the positions do rely on inherency, and I think the one  
10 that is probably the most lively disputed is whether between  
11 fastener engaging nonwovens one with a higher-basis-weight  
12 will have higher retaining forces. And I should say the  
13 petition has positions with absolutely no inherency in them  
14 whatsoever and that would be our Stupperich combinations.

15 JUDGE JUNG: Okay. Thank you, Mr. Albright.

16 MR. ALBRIGHT: Of course. And so moving back to  
17 slide 2. We've touched on this a little bit, the diaper-  
18 holding requirement. It's essentially that the retaining  
19 forces between the backsheet and the wings, and the fasteners  
20 need to be sufficient to hold the diaper on a wearer which we  
21 shorthand as the diaper-holding requirement.

22 And the first thing we wanted to point out on slide  
23 3 is the '788 patent does not recite a diaper-holding  
24 requirement. We've got the one -- and this is specific to the  
25 '788 patent. The other patents do recite a diaper-holding

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 requirement. We've got claim 1 up here, and what claim 1 says  
2 is the closure means are structured in dimension for  
3 detachable fastening to the outer face of the main part and  
4 the outer face of the side part. We asked Mr. Butterworth at  
5 his deposition where the diaper-holding requirement appears in  
6 the claims, and instead his answer was, "well, it appears in the  
7 general narrative of the patent." So it's not in the claims.

8 In the Patent Owner Response, Patent Owner contended  
9 that this detachable fastening language necessitated retaining  
10 forces that were sufficient to hold the diaper on a wearer, but  
11 the problem with that as we pointed out on reply is that the  
12 detachable fastening recited here is of the closure means to  
13 the diaper parts, not of the diaper to a wearer. And beyond  
14 that, there are specific retaining forces recited in the  
15 claims in all of the patents. In the '788 patent I believe  
16 it's claim 2 and claim 3. But those retaining forces are user  
17 agnostic and are in values that are width normalized.

18 And so moving to slide 4, to know whether those  
19 retaining forces even were sufficient to hold the diaper on a  
20 wearer would satisfy the diaper-holding requirement you would  
21 need to know the size, type, and number of closure means. You  
22 need to know who the wearer was, what activities the wearer  
23 was engaged in, none of which the '788 patent recites. And  
24 we've got some testimony from Mr. Butterworth on there where  
25 he agreed.

1           And I think importantly, going to slide 5, and with  
2   respect to all of the challenged patents, what we do know  
3   about this diaper-holding requirement is that it is broad  
4   because Mr. Butterworth testified that so long as a diaper  
5   could generate sufficient retaining forces with a fastener to  
6   stay on a slim wearer who was bedridden that diaper would  
7   satisfy the diaper-holding requirement and that's even if the  
8   patient got up, walked around, and then the diaper popped off.  
9   So we're not talking about some extreme level of retaining  
10   forces in this diaper-holding requirement. It's a low bar, and  
11   it's met by Petitioner's combinations.

12           So then moving to slide 7, of course the Karami  
13   '772-Benning diaper is going to meet the diaper-holding  
14   requirement and at the outset Patent Owner agrees that the  
15   wings being treated meet the diaper-holding requirement. I  
16   mean a big part of their position is Karami '772 teaches that  
17   you have to treat in order for fastener engagement so that's a  
18   place where the fasteners can attach.

19           And Your Honor this is something we touched on  
20   earlier is what the issue is and that's, well, what about the  
21   backsheet here? And that's the red portion. And in the  
22   petition we pointed to two different portions of that  
23   backsheet as satisfying the lower retaining forces in the  
24   backsheet limitation. We've got the untreated portion in the  
25   stay-away zone (160) and the treated portions around the stay-



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 away zone. And so for now, sticking with the stay-away zone,  
2 the first takeaway is that Karami '772 tells us that there is  
3 an affinity for fasteners in that stay-away zone. That's what  
4 diminished affinity means. It doesn't say no affinity. It  
5 says diminished affinity because it's untreated. So we know  
6 that there is affinity there, it's just diminished.

7 And so we move to slide 8, and this is where Karami  
8 '626 really helps us out because Karami '626 discloses a  
9 conventional spunbond nonwoven. It's got the same basis  
10 weight. It's got overlapping ranges of basis weight. And of  
11 course as we discussed earlier, we focus in on the 10 to 30  
12 for reasons of user comfort and visual appeal. And even more  
13 importantly is that Karami '626's same conventional spunbond  
14 nonwoven is engaging with the same fastener in Karami '772.  
15 Both of these references are using this binder 25445 fastener,  
16 and in fact it's also the one that the challenged patents  
17 recite in their example.

18 And so moving to slide 9. Well, what does Karami  
19 '626 tell us about that nonwoven and fastener combination?  
20 Well, it tells us that it secures a diaper on a wearer.  
21 Specifically, he says the fastener can engage with any portion  
22 of the nonwoven surface constituting the front sheet, the  
23 backsheet, or the wings, and thereby the accommodation of both  
24 small and large-waisted persons is substantially simplified.  
25 So Karami '626 tells us that the conventional spunbond that's

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 untreated in Karami '772's stay-away zone engages fasteners, and  
2 it does so sufficiently to accommodate a person. So it meets  
3 the diaper-holding requirement.

4 And so then we move to slide 10 and Patent Owner  
5 sort of makes a variety of attacks here and the first one is a  
6 contention that Karami '772 discloses that the nonwoven must be  
7 treated for the fasteners to securely engage the nonwoven.

8 And so at the outset here PO is equating Karami '772's enhanced  
9 shear and appeal strength which Karami '772 short hands as  
10 secure engagement with the diaper-holding requirement. But as  
11 we discussed earlier, the diaper-holding requirement is met  
12 even if the diaper pops off which is a far cry from this  
13 enhanced shear and peel strength. And so it's our position  
14 that the diaper-holding requirement doesn't have to result  
15 from retaining forces that are commensurate with Karami '772's  
16 enhanced shear and peel strength. It just has to hold a  
17 diaper on a slim wearer lying in bed. It's not a high bar.

18 And then the other point is Patent Owner's position  
19 here conflicts with Karami '772's text. So while Karami '772's  
20 inventive concept may be water-jet treating or aperturing a  
21 nonwoven to provide portions with enhanced shear and peel  
22 strength, Karami '772 also acknowledges embodiments that don't  
23 have enhanced shear and peel strength and therefore do not  
24 involve water-jet treating or aperturing, and that's shown on  
25 the right-hand side of this slide. Paragraph 8 in Karami '772 says

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 another object of his invention is to provide a fastener  
2 assembly for an absorbent article which in at least one  
3 embodiment affords enhanced shear and peel strength. And we  
4 asked Mr. Butterworth about this. We asked him, “so looking at  
5 Karami ’772's paragraph 8, that means there are embodiments  
6 encompassed by Karami ’772 that don't have enhanced shear and  
7 peel strength, right?” And he said, “well, that could be.”

8 And so turning to slide 11. And we've touched on  
9 this so I think we can be brief. Karami ’772's disclosed  
10 binder fastener. Again, that's the same fastener in Karami  
11 ’626 which Karami ’626 tells us is for use only with  
12 conventional nonwovens, and it provides a substantially high  
13 shear strength. So this fastener that's in our combinations  
14 is one that mates with conventional nonwovens, and it does so  
15 quite well.

16 And you know, just another quick aside, it's not  
17 even just Karami ’626 that supports Petitioner's position  
18 regarding the untreated portion of Karami ’772's backsheet, his  
19 stay-away zone, because Damaghi is also at play here which is  
20 something we discuss in our Reply, and he teaches a  
21 conventional 5 to 45 gsm nonwoven that engages with a hook-  
22 type fastener sufficiently to hold a diaper on a wearer. So  
23 the art is just rife with these conventional nonwovens like  
24 that in Karami ’772's untreated portion of his backsheet that  
25 engage fasteners to hold a diaper on a wearer. And so again

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 it's our position that the untreated portion of Karami '772's  
2 backsheet stay-away zone would indeed engage a fastener  
3 sufficiently to hold a diaper on a wearer.

4 JUDGE JUNG: Okay. Mr. Albright, this is Judge  
5 Jung. Just to confirm, if for some reason we can't rely on  
6 Mr. Jezzi's testimony that the restraining forces in your  
7 proposed combination with Karami '772 and Benning are actually  
8 sufficient to secure and hold a diaper on a user, what other  
9 evidence that you presented in the petition should we look at?

10 MR. ALBRIGHT: So I would say the primary evidence  
11 in the petition is going to be Karami '626 because Karami '626  
12 is sort of a key teaching -- it is a key teaching of a  
13 conventional nonwoven that sufficiently engages a fastener,  
14 the same fastener as Karami '772, to hold a diaper on a wearer.  
15 So you literally have in the art the same setup that we have  
16 in Karami '772 as well as a teaching of what it accomplishes  
17 which is sufficient fastener engagement to hold a diaper on a  
18 wearer.

19 JUDGE JUNG: Okay. If we have to go to Karami '626  
20 shouldn't we also go into Damaghi, and its explanation of what  
21 a stay-away zone is which is an area that the fasteners cannot  
22 engage with?

23 MR. ALBRIGHT: So Damaghi's stay-away  
24 zone -- absolutely, Your Honor -- it is an area to which  
25 fasteners cannot attach because in Damaghi the example that

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 comes to mind is he attaches a film over a nonwoven in order  
2 to prevent fastener attachment to the nonwoven. And my first  
3 response would be that is a different structure than Karami  
4 '772's stay-away zone because Karami '772's, the one we rely on,  
5 is an untreated portion of the backsheet and Karami '772 not  
6 only doesn't say there's no affinity, which is what Damaghi  
7 explains, in this particular stay-away zone there's just  
8 diminished affinity. So the structures and different.

9 And then the other point I would make is stay-away  
10 zone was not a term of art as Mr. Butterworth admitted. So I  
11 don't think it would be fair to import the functionality of a  
12 structurally distinct stay-away zone from Damaghi that  
13 explicitly has no affinity onto Karami '772 which explicitly  
14 has some affinity, and it's different structurally.

15 JUDGE JUNG: Okay. Thank you.

16 MR. ALBRIGHT: And so moving to slide 13. Patent  
17 Owner's next attack here is based on values in Karami '772's  
18 table 1 and the argument goes like this. Karami '772's table 1  
19 has a force value of 993 and change grams per two inches of  
20 shear force for a 20 gsm water-jet treated nonwoven. And  
21 Patent Owner points out that 993 is less than 1300 which is  
22 what Karami '772 sets as a preferred level of shear strength.

23 But even looking at this slide the problem with  
24 this argument is apparent. These two values are of different  
25 units. We've got 1300 grams per inch squared and 993 grams

1 per two inch. And neither expert was willing to sponsor this  
2 comparison. It's not in Mr. Butterworth's declaration. In  
3 fact, in his declaration what he says is the tests that Karami '772  
4 conducted were done so poorly that one of ordinary skill in  
5 the art could not draw conclusions from or make generalization  
6 based on the values.

7 And Mr. Jezzi largely echoed Mr. Butterworth, and he  
8 said, "we couldn't make these sorts of external determinations  
9 comparing values from table 1 to external values." But Mr.  
10 Jezzi did explain that, well, if you're sticking within table  
11 1 there's still some information. You can make comparisons  
12 that are internal to the table. For instance, you can see  
13 that untreated nonwovens indeed have fastener affinity like  
14 the one in Karami '772's stay-away zone, and you can also see  
15 that the treatments increase shear force or fastener retaining  
16 forces. And so we talked about that.

17 So moving to slide 15, and we already touched on  
18 this a little bit. It's the stay-away zones because there's a  
19 dispute about the impact of these various stay-away zones,  
20 right. So we've got Karami '772's untreated stay-away zone.  
21 We also have his alternate stay-away zone which is one in  
22 which he literally cuts a hole in the nonwoven backsheet to  
23 expose the underlying film and of course you can't attach  
24 fasteners to a film. So that's a no affinity stay-away zone  
25 option disclosed in Karami '772.

1           And then we have Damaghi's which I explained  
2 earlier is a film that is attached over the nonwoven on the  
3 backsheet to prevent fastener engagement. And what's the  
4 purpose of a stay-away zone? Well, Damaghi speaks to that, and  
5 it is to ameliorate diaper mis-sizing because these fastener  
6 systems, these fasteners like the binder fastener that engage  
7 a conventional nonwoven like we have in Karami '626, like we  
8 contend is present in Karami '772's untreated conventional  
9 nonwoven that he calls a stay-away zone, the problem with  
10 those systems is they allow fastening to just about any part  
11 of the diaper and so a wearer for instance get a diaper that  
12 was too big and using the flexibility of the fastening system  
13 don that diaper even though it was too big which is wasteful.

14           And so the art said, or at least some references,  
15 some folks were thinking that we need to curb that a little  
16 bit because it's wasteful, right. The size adjustability is  
17 great, but it's leading to this waste and so let's implement  
18 these stay-away zones. And so in Damaghi he has a 5 to 45 gsm  
19 conventional spunbond nonwoven backsheet and to prevent diaper  
20 mis-sizing in this particular no affinity stay-away zone, he  
21 puts a patch over a portion of that nonwoven, and it's our  
22 position that that indicates that absent that patch the  
23 portion of that nonwoven he covered up would have engaged  
24 fasteners which is evidence that a conventional even 5 to 45  
25 gsm spunbond nonwoven would engage with a fastener with

1 sufficient retaining forces to hold a diaper on a wearer  
2 because if it didn't there would be no need to put a film over  
3 it to prevent attachment.

4 And we think an analogous argument is for Karami  
5 '772's alternate stay-away zone. There would be no need to cut  
6 a portion of the nonwoven away to ameliorate diaper mis-sizing  
7 if the portion you cut away wouldn't have satisfied the  
8 diaper-holding requirement anyway. And so that's what we  
9 contend is the correct way to interpret the impact of these  
10 stay-away zones. Okay. And changing gears a little bit.

11 JUDGE POWELL: Sorry. I'm going to interrupt.

12 MR. ALBRIGHT: Yes, Your Honor.

13 JUDGE POWELL: This is Judge Powell. So if I  
14 understand correctly, then the table in Karami '772, you would  
15 say that we can rely on that as evidence that there's a  
16 difference in attachment force when you treat, but we cannot  
17 really rely on that for any sort of magnitude of the  
18 attachment force at least in comparison to other parts of this  
19 case with respect to the attachment ability of the non-treated  
20 portions of the nonwoven? Hopefully that all makes sense.

21 MR. ALBRIGHT: That's right, Your Honor. That's  
22 accurate.

23 JUDGE POWELL: And the other related question  
24 is -- well, so you say it's a low bar that a slender patient  
25 lying in bed would have the diaper retained on the patient,



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 but how do we know -- so this table won't get us there. Does  
2 that make any sense what my question is? I can't rely on this  
3 table to say that there's enough affinity in the untreated  
4 part of the nonwoven to meet what you say is the scope of the  
5 claim, that being hold the diaper on the patient when he or  
6 she is in bed. Is that accurate too?

7 MR. ALBRIGHT: That's right. That's accurate, Your Honor.

8 JUDGE POWELL: Okay.

9 MR. ALBRIGHT: We go to, and Mr. Jezzi goes to  
10 also, Karami '626 in order to close that last remaining gap.  
11 So I think what table 1 tells us is there is affinity, there  
12 is affinity there in the stay-away zone just like Karami '772  
13 tells us in our text because he did recover a shear force  
14 value. Now unfortunately we don't really know how he tested  
15 it, and his units are a little odd, so an external comparison  
16 to say, oh, yeah, what he reported here in this table would  
17 meet the diaper-holding requirement, that's not something we  
18 can do and that's what Mr. Jezzi explained during his  
19 deposition. It's really when you go to Karami '626 who tells  
20 us what that nonwoven with that same fastener is capable of  
21 achieving that you know then that the stay-away zone would  
22 generate sufficient retaining forces to hold a diaper on a wearer.

23 JUDGE POWELL: So do we know in any sort of  
24 numerical sense -- this perhaps is a silly question but the  
25 standard for the claim -- the scope of the claim you advanced

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 in the narrower claims in this case is this slender patient in  
2 the hospital bed. Do you we know in any numerical sense how  
3 much retention force it would take to keep the diaper on the  
4 patient in that circumstance and meet the scope of the claim  
5 as you advance it to be?

6 MR. ALBRIGHT: No, Your Honor. There's no  
7 objective measure of what is sufficient to hold a diaper on a  
8 wearer sort of for all the reasons we discussed. We don't  
9 know who the wearer is, what they're doing, and even those  
10 specific forces, you have to know the fastener width at a  
11 minimum and the number of fasteners and that's not something  
12 that the challenged patents provide and it's not something  
13 that Patent Owner has provided.

14 But it's not really -- it's not a problem for our  
15 combinations because, for instance, in the Karami '772-Benning  
16 diaper we've been talking about we know from Karami '626 that  
17 even his stay-away zone has sufficient retaining forces to  
18 accommodate both small and large-waisted wearers. That's what  
19 Karami '626 says. And so it's our position that the diaper-  
20 holding requirement is low. It's a low bar. We don't really  
21 know what it is but certainly a material that is described is  
22 engaging with a fastener to accommodate both small and large-  
23 waisted wearers satisfies it.

24 And then with respect to the Benning-Karami '626  
25 combination, the impetus behind the combination is to provide

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 size adjustability and of course a diaper with size  
2 adjustability where you can attach it to the wings to  
3 accommodate a larger-waisted wearer or to the backsheet to  
4 accommodate a smaller-waisted wearer, and Mr. Jezzi goes into  
5 detail about this, is going to be a diaper that satisfies the  
6 diaper-holding requirement at each location or it just  
7 wouldn't make sense.

8 JUDGE POWELL: Okay. Thank you.

9 MR. ALBRIGHT: And so then we change gears a little  
10 bit and go to slide 16. And Patent Owner contends that Karami  
11 '626's teaching about size adjustability are overstated by  
12 Petitioner because Karami '626 allegedly only teaches fasteners  
13 engaging the wings and not the backsheet. This is -- this not  
14 only neglects the combination which is applying Karami '626's  
15 teachings to Benning's diaper, it's limiting Karami '626 to a  
16 very specific T-shaped diaper which is just one of his  
17 embodiments.

18 And sort of as an opening response to this  
19 argument, if you look on the right side of the slide, even  
20 with respect to that T-shaped brief Karami '626 explains that  
21 fastener elements (41) (42) may engage directly with any  
22 portion of the nonwoven surface constituting the front sheet,  
23 backsheet (32), or wings. And so even this specific diaper  
24 that Patent Owner relies on includes disclosure of fastener  
25 engagement to the backsheet which defeats Patent Owner's point

1 here that the fasteners only engage the wings. It's not true.

2 And then I want to go to slide 18 if we can. And

3 it's not only the paragraph 40 sentence that we just discussed

4 which discloses fastener engagement to the backsheet. Karami

5 '626 has broader teachings in other embodiments. And so

6 looking at his paragraph 8, which is excerpted along with 11,

7 16, and 55 on the right in Figure 10, Karami '626's invention

8 is a fastener assembly composed of a hook-type fastener

9 element and a nonwoven where the hook-type fastener engages

10 the nonwoven and Karami '626 specifically explains in paragraph 11

11 that that invented fastener assembly can be an absorbent

12 article including a diaper and a pull-up in addition to a T-

13 shaped brief. So right there is an indication that Karami '626

14 is not limited to T-shaped briefs and in fact he says

15 preferably the nonwoven is in the article backsheet or, in the

16 case of a T-shaped brief, the article wings which indicates

17 when you have a diaper like we see in Figure 10 the nonwoven

18 is in the article backsheet and of course that nonwoven is

19 part of his inventive fastener assembly which is receptive to

20 a hook-type fastener to hold a diaper on a wearer.

21 And so even from these paragraphs it's clear that

22 Karami '626 discloses a hook-type fastener that engages a

23 backsheet. And Karami '626 embodies these broader teachings in his

24 Figures 9 and 10, and that's where he shows us a conventional

25 diaper and what he says is, "the same or analogous improvements

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 in the fit,” and those are the ones he does describe with  
2 respect to the T-shaped diaper, are present here in the Figure  
3 10 diaper.

4 And so going to slide 19. Patent Owner really  
5 doesn't have that great of an answer for the Figure 9 and 10  
6 diaper. We asked Mr. Butterworth about it. We asked him,  
7 “well, could you attach those fasteners in the Figure 9 and 10  
8 diaper to the backsheet?” And what his answer was, “you can  
9 move the closure down the wings or across the front but it's  
10 not clear where the extra closure would go.” And what he's  
11 explaining here is he's talking about an additional mini loop  
12 fastener element so that you could attach the fastener to the  
13 backsheet. And the problem with that is that is literally the  
14 configuration that Karami '626 disparages and addresses with  
15 his conventional nonwoven that engages a fastener. And so the  
16 position is essentially the Figure 9 and 10 diaper doesn't  
17 include Karami '626's inventive nonwoven hook-type fastener  
18 assembly despite, you know, his broader teachings and his  
19 depiction in Figure 9 and 10.

20 And so we pressed Mr. Butterworth a little bit on  
21 That, and we said, “well, wouldn't you expect that sort of  
22 closure system -- again, that's the inventive one with just  
23 the conventional nonwoven and the hook-type fastener -- to be  
24 present in Karami '626's Figure 9 and 10 diaper?” And I'm on  
25 slide 20. I'm sorry if I didn't say that. So would you

1 expect that inventive closure system to be present in his  
2 Figure 9 and 10 diaper? And Mr. Butterworth said, “well, it  
3 could be, yes.”

4 And then we asked him, “well, and if it did, if  
5 Karami ’626's Figure 9 and 10 embodiment included Karami ’626's  
6 invention would the hooks engage the backsheet?” And his  
7 answer was, “yes, the hooks would engage but that's not what's  
8 shown or described.” And he went on to testify that the normal  
9 process for achieving size adjustability with an adjustable  
10 diaper would involve moving fastener 76 away from one another.  
11 So that would be more into the wings to fit a larger-waisted  
12 wearer and of course the corollary to this is moving those  
13 fasteners toward one another and onto the backsheet to engage  
14 a smaller-waisted wearer which is exactly what Mr. Jezzi  
15 described.

16 So if we accept that Karami ’626's Figure 9 and 10  
17 diaper indeed includes the fastener assembly that Karami ’626  
18 says it does then the fasteners are engageable with the  
19 backsheet and the wings to achieve the size adjustability that  
20 is the purpose of that very fastener assembly.

21 And so now we get to slide 21. And this is -- I  
22 think there was a question about Mr. Jezzi's testimony on the  
23 retaining forces in the stay-away zone earlier, and so I think  
24 this is an important slide. Patent Owner contends that Mr.  
25 Jezzi's testimony that the retaining forces in the untreated

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 stay-away zone of Karami '772's diaper and that those retaining  
2 forces would be sufficient to hold a diaper on a wearer was  
3 speculative, and what they point to is their questioning of Mr.  
4 Jezzi about table 1 alone, and that's clear from his testimony.  
5 He says, "looking at table 1 I was not able to make that  
6 determination." And then he says, "it's just speculative either  
7 way. Just with the '772 patent." And so they're asking him about  
8 the '772 patent and table 1, and as we discussed earlier you  
9 really can't tell just looking at table 1 whether those forces  
10 are going to be sufficient. And Mr. Jezzi even explained that  
11 he knew that the retaining forces are sufficient based on new  
12 evidence, which would be Karami '626 which he didn't have in  
13 front of him in his testimony in the earlier IPR.

14 And then we get to slide 22. And sort of at the  
15 beginning of this discussion of Karami '772 we talked about how  
16 we have two portions of that backsheet that we rely on. We've  
17 got the untreated stay-away zone which we've discussed now, but  
18 we also had those treated portions that we pointed to in the  
19 Petition. And as I explained earlier, it's our position that  
20 it would have been obvious to use a higher-basis-weight  
21 nonwoven for the wings and for strength and a lower-basis-  
22 weight nonwoven for the backsheet for user comfort and in that  
23 arrangement the retaining forces in the wings are going to be  
24 higher with a fastener than the fastener retaining forces in  
25 the backsheet including its treated portion because you'd have

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 more fibers for engagement with the fasteners in the wings  
2 with the higher-basis-weight and less in the backsheet with  
3 the lower-basis-weight. And so that was our second position  
4 for the lower retaining forces limitation in the Karami '772-  
5 Benning diaper.

6 And so moving to slide 25. Patent Owner lodges a  
7 number of attacks on this idea that higher basis -- not just  
8 idea, this relationship that the '788 patent and the other  
9 challenged patents tell us is essentially ensured and that is  
10 a relationship between basis weight and fastener retaining  
11 forces, a positive correlation between the two when we're  
12 dealing with fastener engaging nonwovens, and we've got  
13 several slides on that.

14 But specific to the Karami '772 treated portion stay  
15 away -- or the treated portion of the backsheet having lower  
16 retaining forces than the treated wings when the wings have a  
17 higher-basis-weight, as a specific attack to that position  
18 Patent Owner contends that Karami '772 shows us in his table 1  
19 that a 20 gsm nonwoven that was treated and apertured had  
20 higher retaining forces than a 33.9 gsm untreated nonwoven, and  
21 so Patent Owner contends there's an example of a nonwoven with  
22 a higher-basis-weight but nevertheless having lower retaining  
23 forces. But the problem with that is that's not our  
24 combination because in our combination both the backsheet  
25 portion around the stay-away zone and the wings are treated,



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 and so this comparison between a treated nonwoven and an  
2 untreated nonwoven, it's irrelevant to the combination.

3 Okay. Then we get to slide 27. The challenged  
4 claims, as we've discussed, recite retaining forces, these  
5 width normalized retaining forces in units of Newtons per 25  
6 millimeter, and so we've got an example in claims 2 and 3 of  
7 the '788 patent. They're in the other challenged patents as  
8 well.

9 And moving to slide 28. And I think we've covered  
10 all of these points. So we know that evidence by Damaghi that  
11 stay-away zones were intended to prevent wasteful diaper mis-  
12 sizing were at least ameliorated. That's the language that  
13 Damaghi uses. And we know evidenced by Karami '626 that Karami  
14 '772's untreated stay-away zone would have engaged fasteners  
15 sufficiently to hold a diaper on a wearer but with less  
16 retaining forces than if the fasteners engaged Karami '772's  
17 treated wings which have that enhanced shear and peel strength  
18 because they're treated.

19 We also know that there is a psychological impact  
20 to these differential retaining forces, Karami '626 teaches  
21 that, and wearers tend to attach a diaper's fasteners to  
22 portions of the diaper that have higher fastener affinity.  
23 And so with all of that we now have the same conditions of the  
24 challenged patents that led to the purported invention. We've  
25 got a diaper with higher retaining forces in the wings and

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 lower retaining forces in the backsheet, each of which were  
2 sufficient to hold a diaper on a wearer, and we also know that  
3 retaining forces psychologically impact a wearer in a way that  
4 encourages them to attach the fasteners to various parts of  
5 the diaper. So Karami '772, it's the same result as the  
6 challenged patents, and it's the same means to achieve it which  
7 are these differential retaining forces.

8 And then moving to slide 29. Even the very way  
9 that the challenged patents measured shear forces and the  
10 units that they used for those shear forces -- so their over-  
11 abdomen retaining forces with their test method and the  
12 Newtons per 25 millimeter unit, even those were conditions  
13 known in the art, and we see that in Stupperich because  
14 Stupperich uses the same test method, and he even discloses a  
15 range of suitable forces from 5 to 80 which completely  
16 encompasses the claimed ranges. So we've got a diaper that  
17 achieves the same result in the same way with differential  
18 retaining forces. We've got those differential retaining  
19 forces, and we knew of their characterization as over-abdomen  
20 retaining forces, and we knew their suitable values.

21 And so with all of that we move to slide 31. All  
22 the challenged patents did was arrive at workable ranges for  
23 those retaining forces within those art known conditions. And  
24 that's In re Aller, and it's not patentable to just arrive  
25 at workable ranges when the general conditions of your

1   purported invention were known in the art.

2           Okay. And then we get to slide 33. And this is  
3   really a -- it's one of the few modifications we actually make  
4   to Karami '772, and we've discussed it before, but Karami '772  
5   is an integral hourglass diaper with wings and a backsheet  
6   that have sort of a single nonwoven extending throughout them.  
7   And we contend it would have been obvious to go to a separate  
8   wings and chassis configuration like Benning teaches and that  
9   would be to reduce cost and improve manufacturability. Really  
10   the reducing cost is reducing scrap because no longer do you  
11   have to cut out the leg holes on the diaper and waste that  
12   material because you can just attach the separate wings. And  
13   the manufacturing flexibility is going to facilitate your use  
14   of different wing and backsheet nonwovens such as the higher-  
15   basis-weight ones in the wings and the lower-basis-weight one  
16   in the backsheet or having the film just in the backsheet and  
17   not in the wings because you really only need the film in the  
18   backsheet to prevent leakage, and if you have it extended to  
19   the wings then it's not going to be very breathable and  
20   comfortable. And so these separate wings are allowing us to  
21   achieve those advances.

22           Moving to slide 34. Mr. Butterworth at his  
23   deposition really agreed with Petitioner. He explained that  
24   with an hourglass diaper that's how Karami '772 starts. You'd  
25   be chopping out -- to quote, "you'd be chopping out a good

1 amount of waste material” which “becomes expensive.” And he  
2 affirmatively testified a POSITA would be inclined to put  
3 those wings on separately for separate wings. So he agrees  
4 with the desirability of the separate wing configuration.

5 Patent Owner came back and said, well, if you go  
6 with separate wings you're going to need equipment,  
7 manufacturing and storage space, employee tracking and  
8 planning, and these are cost contributing factors. But as Mr.  
9 Butterworth explained, “investments are acceptable to achieve  
10 cost savings.” So to the extent you had to modify your line  
11 that produced your diapers to allow you to go to this separate  
12 wing configuration, that would be an acceptable investment and  
13 eventually the cost savings of not having the scrap are going  
14 to outweigh that investment.

15 Beyond that, the scrap handling, which you would  
16 have to do without the separate wings with Karami '772 as is, also  
17 required machinery, storage, employees, and precautions. So  
18 really you go to the separate wings, you eliminate the scrap,  
19 any investment you have to make to do that is going to pay for  
20 itself. And frankly, whatever investment you do make you  
21 would also have to make for a unitary hourglass design to  
22 handle the scrap. So a little bit of a wash for the  
23 machinery, storage, employees, precautions, et cetera.

24 Then PO contends that there would be an increased  
25 difficulty of manufacture, downtime risk from a failure from

1 someone to deliver the wings or wing separation from improper  
2 bonding. And so basically PO's argument is someone is going  
3 to have to come over with these wings and bring them to the  
4 diaper line so they can then be attached to the diaper and  
5 then maybe someone does a bad job bonding them. But as we  
6 established in the petition and as Mr. Butterworth agreed, the  
7 wing production could occur inline. There were diaper  
8 manufacturing lines that created the wings and attached them  
9 to the diaper obviating the need for someone to come from a  
10 different portion of the factory with a bunch of separate  
11 wings. So that argument really doesn't hold water.

12 And then also Mr. Butterworth was unaware of  
13 improper wing bonding based downtime. And that also neglects  
14 the level of ordinary skill in the art because presumably a  
15 person of ordinary skill in the art is going to be capable of  
16 effectively attaching wings to a diaper just like Benning does  
17 without having a problem.

18 And then the final point to make here is Mr.  
19 Butterworth explained that scrap from the unitary hourglass  
20 design, and that's the scrap that we get rid of by going to  
21 separate wings, was problematic, and he explained that if you  
22 don't get the scrap away from the machine fast enough it could  
23 become entangled in the machinery which of course is a  
24 problem.

25 And then moving to slide 37. Patent Owner doesn't

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 address the advantageous manufacturing flexibility that you  
2 get from separate wings and chassis and again that's  
3 facilitating the use of different materials for the wings and  
4 different material for the backsheet such as a higher-basis-  
5 weight wing for strength and a lower-basis-weight backsheet  
6 for user comfort and visual appeal.

7 Okay. And then we get to slide 39. And here  
8 Patent Owner contends that if you use a higher-basis-weight  
9 nonwoven on the wings you're going to unnecessarily increase  
10 cost and decrease comfort. Well, the first point is Mr.  
11 Butterworth admitted to the wings being subjected to more  
12 pulling and tension than the backsheet directly and that makes  
13 sense because the wings are -- they're a smaller piece of  
14 material. They're what you pull on to attach the diaper.  
15 They're what the fasteners attach to, and so they're subjected  
16 to more pulling and tension than the backsheet.

17 And moving to slide 40. As a result of that you,  
18 this is per Mr. Butterworth, "end up with a heavier  
19 basis weight at the side parts" because that's going to provide  
20 the strength and tear resistance you need at the side parts.

21 And he further explained the necessity, contrary to Patent  
22 Owner's position, of the strength and tear resistance  
23 testifying that certain things you have no choice over. You  
24 don't want these side tabs to tear off so that it gives you  
25 certain properties you must have which would be the higher-

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 basis-weight for the wings for strength. So to the extent  
2 there would be some decrease in user comfort, which there's no  
3 evidence of, you have to -- you don't want the wings to tear  
4 off, and so you have a higher-basis-weight wing because if your  
5 wing tears off your diaper is not going to be useful.

6 Okay. And now we get to slide 42. And changing  
7 gears to the Benning-Karami '626 combination. And at the  
8 outset here, and we touched on this earlier, Patent Owner's  
9 arguments regarding the Benning-Karami '626 diaper neglect the  
10 combination because that combination is one in which the  
11 fasteners sufficiently engage the wings and backsheet with  
12 retaining forces sufficient to maintain a diaper on a wearer.  
13 That is the combination. And Patent Owner does not contest  
14 the desirability of that combination nor the achievability of  
15 that combination.

16 And so going to slide 43. This is a statement of  
17 exactly what I just described. In the Petition we explain  
18 that a POSITA would have been motivated to use a film nonwoven  
19 laminate like Karami '626's for Benning's underlayer (30) and  
20 fasteners like Karami '626's to improve size adjustability by  
21 allowing the fasteners to directly engage with a backsheet  
22 nonwoven or its nonwoven wings. And so that's the combination  
23 which includes meeting the diaper-holding requirement  
24 otherwise you don't recover the size adjustability which is  
25 one of the key motivators behind the combination, and so that's

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 an obviousness position, that's not an inherency position.

2 And then we get to slide 44. Patent Owner contends  
3 that a POSITA would not have replaced Benning's underlayer  
4 which engages fasteners with Karami '626's T-shaped diapers  
5 backsheet that purportedly does not engage fasteners. And of  
6 course, as we discussed earlier, Karami '626's T-shaped diaper  
7 is disclosed as having backsheet engagement and its broader  
8 teachings confirm -- or its broader teachings about non T-  
9 shaped diapers also disclose backsheet engagement with a  
10 fastener and that's embodied in its Figure 9 and 10 diaper.  
11 So that argument fails for those reasons.

12 And the other thing I wanted to mention here is  
13 that in the Sur-Reply, and also the POR Patent Owner contends  
14 that Mr. Jezzi testified that the Karami '626 diaper -- or that  
15 Karami '626, sorry, only discloses fastener wing engagement,  
16 but he didn't because he specifically testified about Karami  
17 '626 paragraph 40 on redirect where he explained that the  
18 fasteners even in the T-shaped diaper attach to the diapers  
19 backsheet, not just its wings, explicitly as Karami '626 says I  
20 mean on its face.

21 JUDGE JUNG: Mr. Albright, you have 15 minutes  
22 before you start using your rebuttal time.

23 MR. ALBRIGHT: Okay. Perfect. Thank you, Your  
24 Honor. So I'd like to move to slide 51. And there was a  
25 little bit of a dispute about Karami '626 and specifically an



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 interstices size argument, and what they pointed to  
2 was -- well, what Patent Owner pointed to was that Karami '626  
3 describes this preferred nonwoven, the conventional nonwoven,  
4 as having interstices that Patent Owner contended were  
5 significantly larger than the fibers themselves so it would be  
6 hard for a hook to engage fibers in that nonwoven. But that  
7 on its face doesn't make sense because Karami '626's nonwovens  
8 are indisputably for engaging hook-type fasteners.

9 And so what does that tell us? If Patent Owner's  
10 interpretation of interstices size would result in a nonwoven  
11 that had a hard time engaging a hook-type fastener it can't be  
12 right because Karami '626 tells us its nonwovens, its  
13 conventional nonwovens, are for engaging hook-type fasteners.  
14 And we asked Mr. Butterworth about this interstices size  
15 during his deposition and he testified that, well, interstices  
16 size wasn't a typical parameter specified. He didn't know how  
17 it was measured. He didn't know what about the interstices  
18 that it actually described. And when we pointed him to Karami  
19 '626's use of differing units for the same value, sometimes  
20 it's 644 micron which is what Patent Owner relied on. Other  
21 times it's 644 micron squared which is what we have over here  
22 on the right side of the slide. Mr. Butterworth was unable to  
23 say if it changed his opinion. And so for those reasons not  
24 only are Patent Owner's arguments about interstices size  
25 incorrect because they contravene Karami '626, they're also

1 unsupported.

2       Okay. Turning to slide 55. And so we discussed  
3 specifically for Karami '772 in Benning the desirability of  
4 having higher-basis-weight wings for strength and lower-basis-  
5 weight nonwoven in the backsheet for user comfort and of  
6 course that is our position for both the Karami '772-Benning  
7 diaper and the Karami '626-Benning diaper. And specific to the  
8 Benning-Karami '626 diaper, Patent Owner contends that a  
9 higher-basis-weight nonwoven in the wings would have been  
10 directly against Benning's teachings because the sides should  
11 be, "less rigid than the main body portion." And what we  
12 pointed out in Reply is that Benning explains that its wings  
13 are skin friendly, and it discloses a range of basis weights  
14 for those wings that extends to 150 gsm which is quite a high  
15 basis weight. It's a stiff wing.

16       And then moving to slide 56. Mr. Butterworth  
17 during his deposition testified that even a nonwoven material  
18 with 150 gsm basis weight would be less rigid than the chassis  
19 of Benning's diaper because the chassis of Benning's diaper is  
20 more than just the backsheet. It's got the backsheet. It's  
21 got the absorbent core. It's got the top sheet. It's got, as  
22 Mr. Butterworth testified here, maybe a distribution layer.  
23 And so Patent Owner's argument that a higher-basis-weight wing  
24 would be more rigid than the chassis fails, and it's not  
25 against Benning's teachings to use a higher-basis-weight wing

1    than you do for the backsheet.

2           Okay. And then moving to slide 59. And I think  
3    this is one of the key disputes in these IPRs, and that  
4    is -- well, it's our position that when you have as between  
5    two fastener engaging nonwovens you have a higher-basis-weight  
6    one and a lower-basis-weight one. The higher-basis-weight one  
7    is going to provide higher fastener retaining forces than the  
8    lower-basis-weight one.

9           And let's start with slide 60 which is our  
10   evidence. And so first we have Mr. Jezzi who explains, and it  
11   makes physical sense, if you have more fibers per unit area,  
12   which is a higher-basis-weight, there are more fibers with  
13   which a mechanical fastener can interact, and so the retaining  
14   forces between the fastener and a nonwoven are going to be  
15   higher with a higher-basis-weight. There's just more material  
16   to engage the fastener. And this opinion he supports citing  
17   to Gorman and Gehring. Gorman explaining that with a higher-  
18   basis-weight more loops are available for engagement by a hook  
19   portion of a fastener and Gehring which explains that, well,  
20   more hooks and loops engaged gives you a higher peel and shear  
21   strength.

22           And beyond this we also have the admissions in the  
23   challenged patents themselves. And so these are two excerpts  
24   from the '788 patent. This language appears in all of the  
25   challenged patents. And the first one is that higher fastener

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 retaining forces are, quote, essentially ensured by a higher  
2 mass per unit area of a nonwoven component. And a higher mass  
3 per unit area, that's just a basis weight. And so a higher-  
4 basis-weight essentially ensures higher retaining forces. And  
5 that's not the only admission because we look at the '788  
6 patent at 7:19-26, and what it tells us is that due to the  
7 higher mass per unit area of the nonwoven component for the  
8 side parts a higher closure retaining force is possible. And  
9 so due to a higher-basis-weight you can achieve a higher  
10 fastener retaining force.

11 JUDGE POWELL: This is Judge Powell. I have a  
12 question about the excerpts from the specification of the  
13 challenged patents here. Can you cite that evidence in  
14 support of a position that it would have been obvious that the  
15 higher-basis-weights would have provided greater retention  
16 force in support of a position that it would have been  
17 inherent or both? Hopefully that makes some sense.

18 MR. ALBRIGHT: No, that makes perfect sense. So I  
19 know for inherency you absolutely can cite a patent's  
20 admissions that a property was inherent in a given structure  
21 or a given item, and that's In re Kao for example which  
22 was cited in our Reply. As to whether you could use this for  
23 an obviousness argument, I believe you could, but we're  
24 really -- we are in the inherency context with respect to this  
25 issue. And the Federal Circuit has told us that when the

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 patent itself tells you that something necessarily results

2 from something else you are allowed to rely on that.

3 JUDGE POWELL: Okay. And when you say you're in

4 the inherency realm, you mean with respect to the citation of

5 the excerpts from the challenged patents. Is it safe to

6 assume that the citations to Gorman and Gehring would possibly

7 support either position, either an inherency position or an

8 obviousness position? Is that accurate?

9 MR. ALBRIGHT: Yes, I think that -- that is

10 accurate. That's right.

11 JUDGE POWELL: Okay. Thank you.

12 MR. ALBRIGHT: And so not only do we have, and

13 we're still on slide 61 for a second, these explicit

14 admissions that tell us that retaining forces are essentially

15 ensured and due to -- higher retaining forces are essentially

16 ensured by and due to higher-basis-weights, there are other

17 admissions in the challenged patents. I'd like to touch on

18 those in going to slide 68.

19 And because I'm jumping around a little bit, just

20 some context here. What Patent Owner came back and did was

21 list a laundry list of parameters that allegedly might impact

22 a nonwoven's retaining forces with a fastener and so they

23 said, well, look, so you can't say that it's just basis

24 weight, which isn't what we said, because there are these

25 other factors that might impact retaining forces. And it's

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 our position even looking at Patent Owner's own factors that  
2 just like the '788 patent's explicit teachings the breadth of  
3 the '788 patent's disclosure is going to show us that these  
4 factors aren't drivers in fastener retaining force, and this  
5 is a perfect example on slide 68.

6 You go to the challenged patents and we say, okay,  
7 the conditions by which the fabric was made, these parameters  
8 of the fibers, what do the challenged patents say about that?

9 Well, what the challenged patents say is in particular all  
10 nonwovens are suitable that contain at least one initial  
11 component based on a thermoplastic polymer. That is an  
12 incredibly broad class of nonwoven materials. And then they  
13 give a laundry list of fiber materials, everything from  
14 thermoplastics to cellulose to bi-component or multi-component  
15 fibers. We get a laundry list of nonwovens, carded nonwovens,  
16 spunbonded nonwovens, et cetera.

17 And so this is an admission that the conditions by  
18 which the fabric is made, the size -- the type, size, shape,  
19 and density of the fibers, et cetera, are not going to be  
20 selected in a way that defeats the fundamental correlation at  
21 issue here which is the positive correlation between basis  
22 weight and retaining forces. Presumably what the '788 patent  
23 tells us is essentially ensured is going to be present across  
24 the range of nonwoven materials that the '788 patent tells us  
25 are suitable.

1 JUDGE POWELL: I struggle a little bit -- this is  
2 Judge Powell again. How do you best reconcile that position?  
3 It seems like you pretty clearly recognize that water-jet  
4 treatment can have a big effect on the retention strength.  
5 How do you reconcile -- how best do you reconcile those two  
6 things?

7 MR. ALBRIGHT: Sure, Your Honor. And so in the  
8 Benning-Karami '626 diaper nothing is water-jet treated. So  
9 the impact of water-jet treatment is irrelevant because it's  
10 not part of the combination. And then in the Karami '772-  
11 Benning diaper the stay-away zone isn't water jet treated, the  
12 wings are, and so any water-jet treatment is going to support  
13 Petitioner's position that the retaining forces are going to  
14 be higher in the wings. And then as between the treated  
15 portion of the backsheet and the wings, it's just the basis  
16 weight relationship, and they're both treated. So the impact  
17 of treating one nonwoven and not another doesn't impact our  
18 combinations. Because that's the other thing is these  
19 parameters -- sorry.

20 JUDGE POWELL: Okay. So it's the specific -- so  
21 there are limits -- I think I understand then there are limits  
22 on how widely this provision regarding -- this understanding  
23 that the basis weight provides greater retention. Of course  
24 there are limits on the applicability of that, but you are  
25 saying that your combination falls within those limits. Am I

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 understanding that correctly?

2 MR. ALBRIGHT: Absolutely.

3 JUDGE POWELL: Okay.

4 MR. ALBRIGHT: And I think that raises a good point

5 that I'd like to make and that is that Patent Owner's

6 parameters, they don't even address the combination, and so in

7 that way they are irrelevant. Sort of like the water-jet

8 treatment that we just discussed, and let's go to slide 64 for

9 example. And so we look at what they actually say, what Mr.

10 Butterworth testifies to about these parameters, and first of

11 all neither Patent Owner nor Mr. Butterworth ever even alleges

12 that a person of ordinary skill in the art would have varied

13 one of these parameters in a way that resulted in a diaper

14 with higher-basis-weight wings and lower-basis-weight

15 backsheet yet had higher retaining forces in the backsheet

16 than in the wings.

17 So they never even make an allegation that somehow

18 in a combination encompassed by Petitioner's positions you

19 would defeat the positive correlation between basis weight and

20 retaining forces. All they say is look at all of these things

21 that could impact retaining forces. They never actually even

22 allege the relevant conclusion, and so there is no evidence

23 except for Petitioner's as to the ultimate issue which is as

24 between fastener engaging nonwovens and the Benning '772,

25 sorry, the Karami '772-Benning diaper and the Benning and



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 Karami '626 diaper, as between the fastener engaging nonwovens,  
2 the higher-basis-weight wings -- you have the higher-basis-  
3 weight wings. The natural result of that is higher retaining  
4 forces in the wings.

5 That's the ultimate issue and they never allege  
6 that any one of these parameters is going to be changed for  
7 one nonwoven or another and then in that situation you're not  
8 longer -- you're going to break that correlation between basis  
9 weight and retaining forces. And I think that silence on  
10 that, that lack of an allegation is really telling especially  
11 in view of the '788 patent's admissions that it really is all  
12 about basis weight. It essentially ensures the retaining  
13 forces and the '788's patent's breath or silence on all of  
14 these factors.

15 And even beyond that, let's look at what they  
16 actually did provide, and this is -- I like this example  
17 because it's about fiber material, fiber cross-sectional shape  
18 and crimping, and diameter and finish. And this is Mr.  
19 Butterworth's testimony, and what he says is, well, the fibers  
20 could be too fine so they will inhibit penetration of the  
21 mechanical hooks, and those that do snag fibers will find they  
22 do not have adequate load bearing capability. Or the fibers  
23 can be too coarse, and they will not properly engage with the  
24 parts of a mechanical closure.

25 Well, this is outside the combination. A person of

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 ordinary skill in the art -- it also neglects the level of  
2 ordinary skill in the art. A person of ordinary skill in the  
3 art isn't going to select fibers that are too fine to  
4 detachably fasten to a hook-type fastener in combinations that  
5 are designed for detachable fastening to hook-type fasteners  
6 nor are they going to pick a fiber size that's too coarse to  
7 engage a mechanical fastener. And so really this -- I mean  
8 this is irrelevant. It's irrelevant to Petitioner's  
9 combinations.

10 And another place we can look is paragraph 103 in  
11 Exhibit 2004, and what he explains there is that this  
12 parameter, these fiber parameters, and others are selected,  
13 which he refers to as, "engineered," to create a suitable  
14 re-fastenable component with steps, "quite specific to"  
15 disposable diapers. Well, that is -- what our combinations  
16 are is disposable diapers, and Patent Owner never contested the  
17 achievability of our combinations or the desirability of the  
18 size adjustability. So you can achieve the size adjustability  
19 and its desirable. But what's interesting is Patent Owner now  
20 seems to be arguing that a POSITA would have abandoned this  
21 engineering when implementing the Benning-Karami '626 diaper or  
22 the Karami '772-Benning diaper and then, for instance, went  
23 with a fiber size that was too thick to work. It doesn't make  
24 sense. And that not only neglects the combination, but it  
25 neglects the level of ordinary skill.

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 JUDGE JUNG: Mr. Albright, this is Judge Jung.

2 You're into your rebuttal time. Do you wish to continue?

3 MR. ALBRIGHT: I think I'll stop for now and save  
4 my rebuttal time.

5 JUDGE JUNG: All right. Thank you. You have 12  
6 minutes remaining for your rebuttal.

7 Ms. Daley, you may proceed when you're ready.

8 MS. DALEY: Thank you, Your Honor. Hopefully you  
9 can hear me.

10 JUDGE JUNG: Yes, I can hear you now.

11 MS. DALEY: So good afternoon and thank you. As  
12 you know, as we've been talking about, this proceeding  
13 involves four patents, and I'm going to refer to them as the  
14 Beckert patents, or I may refer to them by numbers but that's  
15 my nomenclature. And just to start I want to note -- you  
16 know, and this has been discussed some, but in the Beckert  
17 patents the inventors disclose and claim an improved diaper  
18 that encourages the proper fastening of the diaper so that it  
19 would be secure on the wearer, won't leak, and even if  
20 improperly fastened it permits the diaper to be re-fastened so  
21 it can be re-fastened securely.

22 And there's been some discussion of size  
23 Adjustability, and I just wanted to note that the Beckert  
24 patents aren't seeking size adjustability. So this isn't an  
25 instance where the Beckert patents have come up with a size

1     adjustability. They aren't seeking some one size fits all  
2     diaper. They're seeking to have a diaper that is correctly  
3     fastened, so that it's comfortable, and the risk of damage to  
4     the backsheet is reduced. And in that situation what they  
5     have come up with and they found surprisingly is that if the  
6     retaining forces on the side front parts are higher than the  
7     front -- and these diapers, they seek to have them engage on  
8     the front side parts. That's what they think is the most  
9     comfortable, and that's what they think would prevent damage to  
10    the backsheet.

11           So that's where they want them to be engaged, and  
12    they found surprisingly if the retaining forces on the side  
13    and front are higher than in the front of the diaper people  
14    surprisingly actually fasten it correctly. They feel sort of  
15    more secure that way. At the same time, if they do fasten it  
16    incorrectly it will stay on, you're not going to spoil the  
17    diaper, and it will work, and they'll have the opportunity to  
18    re-fasten it so that it can then be fastened correctly. So I  
19    just wanted to explain that that's a different concept than  
20    size adjustability.

21           And even just to start I'll just briefly go through  
22    one of the claims which is claim 1 of the '398 patent, and it's  
23    actually shown on slide 10. And just again to go  
24    through -- we've talked about some of these requirements, but I  
25    just wanted to note that the claimed invention is to a diaper

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 having a chassis and four discrete side parts, in some of the  
2 patents are called ears. The rear side parts, the side parts  
3 in the back of the diaper, they have closure means with  
4 mechanical closure aids that are configured for selective  
5 detachable fastening to the outer face of the chassis and to  
6 the front -- in the front of the diaper and to the side parts  
7 in the front of the diaper. And so these rear side parts are  
8 actually pulled around and attach to the front.

9 And there was some discussion earlier about the  
10 kind of pulling forces, and that's the kind of forces you're  
11 talking about when you're talking about these side parts.  
12 You're pulling the rear wings forward to attach to the front,  
13 and so those aren't the fastener engaging surfaces that are  
14 getting pulled. It's the rear wings pulling to the front.

15 And claim 1 also specifies -- then it gets into  
16 very specific language about the retaining forces, and it  
17 specifies that the retaining force between the closure and the  
18 outer face of the chassis secure the diaper on the wearer when  
19 in use and be lower than the retaining forces between the  
20 closure and the outer face of the side part. So there's two  
21 requirements there that the retaining forces are both lower,  
22 and that they secure the diaper on the wearer. So it's not  
23 enough that the closure --

24 JUDGE SCANLON: I'm sorry to interrupt. This is  
25 Judge Scanlon. I wanted to -- regarding the retaining forces,

1 I wanted to ask you how you responded to Petitioner's  
2 assertion that sufficient retaining forces would be a slim  
3 person who was bedridden and that they could even -- the  
4 diaper could pop off if the person got up and walked around.

5 MS. DALEY: Well, I would respond saying that  
6 that's not really -- I know he cited some of Mr. Butterworth's  
7 testimony saying that it might still work if it pops off a bit  
8 there, but that wasn't his complete testimony and these  
9 diapers are re-fastenable. And I don't have a slide on this,  
10 Your Honor, but in Exhibit 1054, this is his deposition  
11 testimony, at 85, lines 16 through 18, he explained that the  
12 secure engagement means adequate retention forces to withstand  
13 use conditions. And he went on for -- between lines -- this  
14 is again Exhibit 1054 lines -- or page 85, 16 through 86, 4,  
15 and he talked about how these adequate use conditions include  
16 being worn for every step: when you're putting on the diaper,  
17 when you're sliding it under the body, when you bring it  
18 around to the front, when you're fastening the hook to  
19 closures. Under those conditions of normal donning of the  
20 product that it will give in use which can be walking,  
21 running, lying in bed will not allow the closure to become  
22 unfastened. Also at the same time to be able to fill what it  
23 called the re-fastenable, re-closeable feature.

24 So I wouldn't say that it was so limited. I think  
25 it's actually in terms of not being broad but just saying it

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 has to be able to withstand it under use conditions which can  
2 be lying in bed and rolling over, but I can be getting up and  
3 walking and exercising too. And I think, you know, the  
4 patents actually teach what those retaining forces are and  
5 give the specific ranges. So it's not this broad force. It  
6 actually -- you have to meet all of those conditions, so I  
7 would say it's actually narrower than the petitioner suggests.  
8 But in any event, the patent is very specific about what those  
9 retaining forces should be.

10 JUDGE SCANLON: Okay. Thank you.

11 MS. DALEY: All right. So the claims -- and back  
12 to, which I've shown on slide 10, the retaining forces. And  
13 none of the prior art references actually teach using these  
14 different retaining forces. None of them teach using  
15 different retaining forces to encourage proper securement of  
16 the diaper, and that's why we're in this situation where  
17 Petitioner is trying to use basis weight as a proxy for  
18 retaining forces or all of their proofs on whether these  
19 claims are met. And so they have essentially taken the  
20 position if they can come up with a reason to use a higher-  
21 basis-weight then it has shown that there are higher retaining  
22 forces since a higher-basis-weight nonwoven will have higher  
23 retaining forces, and the premise of Petitioner's argument is  
24 flawed. A higher-basis-weight nonwoven does not always have  
25 higher retaining forces than a lower-basis-weight nonwoven.

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 We've talked about Karami '772 makes that very point. It shows  
2 that you can treat it, and it gives examples in the table 1 of  
3 a lower-basis-weight nonwoven has a higher retaining force  
4 than a higher-basis-weight nonwoven. And even Petitioner has  
5 said that you can make those comparisons in table 1.

6 JUDGE JUNG: Ms. Daley, before you go on --

7 MS. DALEY: So to under -- sure.

8 JUDGE JUNG: Ms. Daley, before you go on, where in  
9 the claim does it require that the retaining forces are  
10 different so that you've reached proper securement instead of  
11 proper size?

12 MS. DALEY: So, you know, each claim are -- so on  
13 claim -- in the '398 patent which is slide 10 there is claim 1,  
14 and what it does say there is that the -- it says that it has  
15 closure means configured for selectable detachable fastening  
16 to the outer face of the chassis and to the outer face of the  
17 side parts. And so -- and then it says the retaining forces  
18 between the closure means and the outer face of the chassis  
19 secure the diaper on the user body when in use. So the lower  
20 retaining forces have to secure it in use and then are lower  
21 than the retaining forces between the closure means and the  
22 outer face of the side parts. So it specifically says that  
23 the front when it engages in the chassis has lower retaining  
24 forces than if it engages the front side parts. And because  
25 the lower retaining forces at the front have to secure the



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1     diaper on the wearer, the higher retaining forces would do the  
2     same as well because they have higher greater retaining  
3     forces.

4             JUDGE JUNG: But would you agree, Ms. --

5             MS. DALEY: Turning to --

6             JUDGE JUNG: Ms. Daley, so you would agree that the  
7     claim doesn't explicitly state the purpose you argued before  
8     that the retaining forces are lower in a certain area so that  
9     you get proper securement?

10            MS. DALEY: No, I would actually say it's quite  
11     explicit because it says in here that you -- it uses the word  
12     secure engagement. I think what Petitioner was referring  
13     to -- and Petitioner doesn't actually dispute that. What  
14     Petitioner was referring to is the '788 patent which has  
15     slightly different language than the '398 patent, the '249  
16     patent, and the '990 patent. But Petitioner hasn't actually  
17     disputed that with regard to the other patents that there is  
18     this requirement that there be higher retaining forces on the  
19     sides than in the front and that both of those retaining  
20     forces be sufficient to secure the diaper on the wearer  
21     because the '398 patent specifically refers to securing the  
22     diaper on the wearer in use when it's engaged in the front of  
23     the diaper with lower retaining forces which means that  
24     they -- and by saying it has lower retaining forces on the  
25     front than the sides, the sides obviously have higher

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 retaining forces because there is that comparison expressly  
2 made in the claim.

3 JUDGE JUNG: Okay.

4 MS. DALEY: And turning to --

5 JUDGE JUNG: I'm sorry, Ms. Daley. Before you move  
6 on, since we're on the topic of the --

7 MS. DALEY: No, sir. No, of course.

8 JUDGE JUNG: Since we're on the topic of the '788  
9 patent, claim 1 in particular, in the Patent Owner Response  
10 Patent Owner argued that even though it's not expressly stated  
11 it's necessarily part of claim 1 that the restraining forces  
12 that are recited must be sufficient to fasten and hold the  
13 diaper on the user. So can you expound on that? It was just  
14 a one-sentence argument. I don't think there was much more to  
15 it than that. But why is that?

16 MS. DALEY: Certainly. I even have a slide on that  
17 point, Your Honor. So let me -- well, the '788 patent is  
18 actually shown on -- claim 1 of it is shown on slide 13. And  
19 when you look at the language of the claim in the context of  
20 the patent it's Patent Owner's position where it talks about  
21 the closure means being structured in dimension for detachable  
22 fastening to the outer face of the main part and to the outer  
23 face of the side parts in the front area. And it goes on to  
24 specifically say that the retaining forces between the  
25 mechanical closure means and the outer face of the main part

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 are lower than retaining forces between the mechanical closure  
2 means and the outer face of the side parts.

3 And it's Patent Owner's position that particularly  
4 in the context of this patent when you look at the -- when  
5 it's talking about the detachable fastening there, it is so  
6 that it can secure the diaper on the wearer. That's the point  
7 of the patent. It does not use that same language of the  
8 secure the diaper as the other three patents do. We  
9 acknowledge that. But we think when viewed in the context of  
10 the patent as a whole -- the other point we'd make is claims 2  
11 and 3 require specific retaining force ranges, and Petitioner  
12 doesn't dispute that those would require securement of the  
13 diaper on the wearer when in use.

14 And one other point I will make on that, it's on  
15 slide 20 that in the petition -- on the left side here on  
16 slide 20 there's a reference to the petition for the '788  
17 patent and that's the -01477 proceeding. And there they had  
18 a -- Petitioner made a statement, "moreover, specific evidence  
19 herein was not substantively considered including Karami '772's  
20 explicit teaching of claim 1's variable retaining forces  
21 sufficient to hold a diaper on a wearer." So in the Petition, I  
22 would say that they conceded that this is a claim requirement  
23 in their Petition. And there's other cites from there, but I  
24 think there they specifically refer to claim 1 as having that  
25 requirement, if that answers your question.

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 JUDGE JUNG: Okay. Thank you, Ms. Daley. That  
2 does. Now before you go on, a couple of housekeeping matters.  
3 Do you want rebuttal time?

4 MS. DALEY: Yes. Thank you, Your Honor. I should  
5 have mentioned that. 15 minutes as well for me.

6 JUDGE JUNG: Okay. 15 minutes. And before you  
7 jump back into your presentation I have a few questions about  
8 level of skill in the art. In Mr. Butterworth's declaration  
9 he proposes a level of ordinary skill in the arts. He even  
10 states that it's slightly different from what Petitioner  
11 proposed. But he said later that it doesn't affect the  
12 analysis in his testimony. Do you agree that any difference  
13 in the proposed level of skill in the art doesn't make any  
14 significant difference to your legal analysis and arguments as  
15 well?

16 MS. DALEY: I agree, Your Honor.

17 JUDGE JUNG: Okay.

18 MS. DALEY: I do. I don't think the  
19 differences -- to answer, I don't think the differences in the  
20 parties' level of ordinary skill has an impact.

21 JUDGE JUNG: Okay. Now do you also agree that it's  
22 still within the ordinary skill in the art to select an  
23 appropriate basis weight for the purpose of strength or  
24 comfort? For example, the basis weights described in the  
25 cited references of the Petitioner?

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 MS. DALEY: I think one of ordinary skill in the  
2 art is going to select a lot of factors, not just basis  
3 weight. They're going to select a whole range of factors to  
4 design their nonwoven to suit its purpose.

5 JUDGE JUNG: Okay.

6 MS. DALEY: You know, the nonwoven has to be  
7 engineered in a way to create it suitable for its purpose and  
8 I think that one of ordinary skill in the art would consider  
9 basis weight as a factor, but they would also consider a lot of  
10 other factors including that you can achieve a lot of things  
11 such as these higher retaining forces with a lower-basis-  
12 weight by modifying the nonwoven. So I think that would be  
13 something that one of ordinary skill in the art would  
14 understand.

15 JUDGE JUNG: Okay. Thank you. And is it also  
16 within the ordinary skill in the art to select an appropriate  
17 combination of fasteners and nonwoven materials so that you  
18 come up with a diaper that stays fastened and secured on the  
19 user?

20 MS. DALEY: But if one is designing a diaper  
21 they're going to look at the fasteners as well, because that  
22 impacts how it can engage the nonwoven and what it's going to  
23 do. So I think if one of ordinary skill is going to engineer  
24 a nonwoven they would look at all of that and select it. Now  
25 what they actually choose is the hard part. I mean actually

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 coming to and deciding what factors to use to achieve those  
2 goals, that's what all the patents that we're looking at  
3 are -- a lot of them are about on how you choose and which of  
4 the factors you pick and what you use and that's part of what  
5 one of skill in the art would consider.

6 JUDGE JUNG: Okay. And just to verify, do you  
7 agree with the statement that Patent Owner has not disputed  
8 any of the Petitioner's proposed claim interpretations? For  
9 example, the means plus function interpretations for the '788  
10 patent?

11 MS. DALEY: Yes, I -- well, the means plus function  
12 I would agree with. I'm not sure if I can think of other ones  
13 that they have made. To the extent that -- I did think that  
14 they had said something about retaining forces but then have  
15 kind of changed their view on that. So I don't know that I  
16 would say that if they have given an interpretation of what  
17 retaining forces mean that we agree with that, but we don't  
18 dispute that means plus function instruction.

19 JUDGE JUNG: Okay. And based on what Mr. Albright  
20 said about the Patent Owner's arguments regarding new  
21 arguments in the Reply, do you still maintain that the  
22 Petitioner presented a new position in its Reply?

23 MS. DALEY: We do, because I think what Petitioner  
24 said is that they -- when we're talking about Karami '772 and  
25 the stay-away zone in this supposedly not defined well region

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 that's outside of the stay-away zone but within the  
2 containment assembly, the Petition briefly referenced that it  
3 might have a lower retaining force. What it didn't do was  
4 actually say that you would secure the -- fasteners could be  
5 secured there to secure the diaper on the wearer. That's a  
6 distinct -- and it's a different limitation. That requirement  
7 that you secure the diaper is a distinct limitation from the  
8 differing retaining forces.

9 And in fact -- let's see. I can take you  
10 to -- slide 32 is a statement from the Petition where they're  
11 applying the prior art. This is where they've alleged their  
12 prior art combination, and they're applying it to the  
13 limitation that it secures the diaper on the wearer. And so  
14 this is their allegation here, and what they say at the  
15 beginning here in claim -- it's for limitation 1(c)(4) and  
16 again it's slide 32. It says because the outer nonwoven of  
17 wings 131, 133 are treated while stay-away zone (160) is not  
18 the retaining forces, e.g. shear strength, between fasteners  
19 150(a) through 150(d), and the outer surface of the containment  
20 assembly (120) are lower than those between the fasteners and  
21 the outer face of the wings.

22 So here they're starting this with the distinction  
23 between the treated wings and the stay-away zone. And in the  
24 next sentence they say even in the stay-away zone (160)  
25 retaining forces between fasteners 150(a) to 150(d) and

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1    backsheet (130) were sufficient to hold the diaper on a  
2    wearer. So it's the sufficient to hold a diaper on the wearer  
3    they were focused on the stay-away zone. And that's what the  
4    argument has been is that region is sufficient. So that's our  
5    position that that's what the combination was, not that  
6    there's been alternative it could secure this other region.

7           And I don't think it's fair to say you can just  
8    necessarily secure it to that other region if there is a  
9    region outside of the containment zone for a number of  
10   reasons. One is they haven't specified what the treatment is  
11   that's done. And again, if you look at that table it shows  
12   that you can have even a treated lower-basis-weight nonwoven  
13   that has higher retaining forces than a treated higher-basis-  
14   weight depending on what the treatment is.

15          If you also look at -- they pointed to -- I've got  
16   a slide here. If we go to -- oh, I think it might be earlier.  
17   Yeah. If you go to slide 28. So this is what they pointed to  
18   in terms of this alternate region that's within the  
19   containment assembly that's treated that's outside of the  
20   stay-away zone, and they point to those hashmarks. But you  
21   can't actually rely on those hashmarks as an accurate  
22   depiction of the stay-away zone. The case law is clear that  
23   you can, and the Federal Circuit has said that you can't rely  
24   on those just without the -- unless the patent specifically  
25   says the dimension and I'll get the case right here in a



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 second.

2 So the case that I'm referring to is Hockerson-  
3 Halberstadt v. IVA Group, and it's 222 F.3d 951. And what the  
4 Federal Circuit has said there is that the patent drawings do  
5 not define the precise proportions of the elements and may not  
6 be relied on to show particular sizes if the specification is  
7 completely silent on the issue. So the general hashmarks  
8 there can't be used to really show what the size is, what that  
9 region is in the drawing itself. But even looking at the way  
10 the drawing is done, those fasteners that they're showing  
11 there is much larger than that region. So it's not even clear  
12 there would be enough of this other region to sufficiently  
13 engage fasteners to secure the diaper on the wearer.

14 But the fact is the Petitioner hasn't addressed any  
15 of that. They haven't described what that region is, what the  
16 size of that region is, shown that there would be enough of  
17 that region to engage the fasteners or even said what kind of  
18 treatment is done or shown that it would actually have enough  
19 even if treated to engage the fasteners or that it would  
20 actually be lower than whatever the treatment was done on the  
21 sides. So our position is that that really wasn't part of the  
22 combination. But in any event, they haven't shown that that  
23 would meet the requirement of securing the diaper on the  
24 wearer or having the lower retaining forces.

25 JUDGE JUNG: Ms. Daley, does your answer change at

1 all if we bring in Karami '626 or at least the Petitioner's use  
2 of Karami '626?

3 MS. DALEY: No, it doesn't. So I think part of the  
4 problem with all of this is that what Petitioner has done is  
5 just said they're going to rely on a conventional nonwoven, and  
6 all they have to do is mention the basis weight. But there is  
7 no such thing as a conventional nonwoven. All of the  
8 nonwovens are different, and they have different factors and  
9 so -- and anytime you raise one of those other issues they say  
10 that's outside of their combination. But there is no such  
11 thing. You can't know what the nonwoven is unless you know  
12 all of those factors that they say are outside of it.

13 And Karami '626 isn't some general treatment that  
14 any conventional nonwoven will work, and in fact it says  
15 in -- if you look at Karami '626 which is Exhibit 1004, if you  
16 look at paragraph 4 it talks about the background in paragraph  
17 4 of Karami '626 and it says, "Thus conventional woven or  
18 nonwoven articles have had affixed to the surface thereof a  
19 mini loop fastener element of greater longitudinal dimensions  
20 than the corresponding mini hook fastener element." So what  
21 it's saying there is in the prior art your, quote,  
22 "conventional nonwoven have used these mini loop fastener  
23 elements that they want to get rid of." So you can't just say  
24 a conventional nonwoven is going to be able to engage  
25 fasteners.

1           And another problem with the Karami '626 is that  
2   what Petitioner has pointed to or what they had wanted to do  
3   to modify as the backsheet for the new Karami '772-Benning is  
4   they looked to the T-shaped diaper, and they wanted to use the  
5   backsheet of the T-shaped diaper, and that's in particular  
6   paragraph 65 of Karami '626, because -- and they wanted to use  
7   because there it was mentioned as for the T-shaped diaper that  
8   optimally you would want to have on the backsheet an optimal  
9   20 gsm nonwoven. So they wanted a reason to pick a 20 gsm  
10   nonwoven. The problem is in the T-shaped diaper the backsheet  
11   of the diaper is not used to engage fasteners in the T-shaped  
12   diaper. In the T-shaped diaper all of the fasteners engage  
13   the wings, and that is something that Mr. Jezzi actually  
14   acknowledged. And I can go through Karami '626 and explain  
15   that if that is something that would be helpful to go through  
16   now.

17           JUDGE JUNG: Let me --

18           MS. DALEY: Or that might be farther afield than  
19   what your question was.

20           JUDGE JUNG: We have -- we kind of shifted from one  
21   challenge to the other. So originally we were talking about  
22   Karami '772 as modified by Benning, and Petitioner brings in 626  
23   to explain that the stay-away zone in Karami '772 must also  
24   engage with fasteners because the exact same nonwoven is  
25   discussed in 626 with the exact same fastener. And in there

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 in 626 that fastener and that nonwoven are able to engage and  
2 retain the diaper on a user. So do you have an argument to  
3 break that link at all between '626 and '772?

4 MS. DALEY: Yes, Your Honor. I do. And the point  
5 being they are -- they haven't shown that they are the exact  
6 same nonwoven. They haven't shown that all these aspects of  
7 it -- again, the only thing they've pointed to is the  
8 reference to both saying a conventional nonwoven and that in  
9 and of itself isn't enough to show that they're the same  
10 nonwoven. It doesn't give any of the details of what those  
11 nonwovens are. And the patents don't say they're the same  
12 nonwoven. They have some overlapping features in terms of  
13 things that you can pick from to choose the nonwoven.

14 And, you know, it might also be helpful to point  
15 out that Karami '772 doesn't, and 626, they don't actually  
16 describe a specific nonwoven. They talk about features that  
17 you can pull from and pick from to design a nonwoven. So it  
18 isn't actually teaching a specific nonwoven. It's teaching  
19 features. And they don't -- haven't shown that those features  
20 are all the same. And in fact the one item Petitioner had  
21 pointed to that they talked about as being the same was this  
22 (indiscernible) where they did specify a nonwoven, but that is  
23 a nonwoven that's used on the sides, not as the backsheet. So  
24 it doesn't give them some correlation from the backsheet from  
25 the Karami '626 to the Karami '772.

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1           So our response to that is they haven't actually  
2 shown that they're the same nonwoven, and they haven't shown,  
3 more importantly, that what you're selecting from Karami '626  
4 necessarily would have engaged the fasteners when used in the  
5 Karami '772-Benning diaper. I understood Petitioner to now  
6 agree that that is an inherency issue, and inherency requires  
7 not just that it be possible, not that it even be probable,  
8 but it has to show that it would necessarily flow. And they  
9 haven't shown that the Karami '626 diaper is the exact same  
10 nonwoven that Karami '772 is using in their stay-away zone.

11           JUDGE JUNG: Okay.

12           MS. DALEY: So it can't be evidence that it would  
13 necessarily be able to engage fasteners particularly when  
14 they've picked a 20 gsm nonwoven from Karami '626 supposedly  
15 that isn't designed to engage fasteners. You can't say Karami  
16 '626 is saying that necessarily engages fasteners because  
17 they're not using it on the backsheet of the T-shaped diaper  
18 to engage fasteners.

19           JUDGE JUNG: Okay. Sort of a follow up. Earlier  
20 you talked about level of skill in the ordinary art and that  
21 it's probably within ordinary skill to pick the correct  
22 combination of nonwovens and fasteners so that the diaper will  
23 stay on. So this hypothetical person of ordinary skill in the  
24 art is looking at Karami '626 and trying to modify Karami '772,  
25 isn't it within skill to just pick the correct fastener and

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 the correct corresponding nonwoven that will keep the diaper  
2 fastened on -- keep the modified Karami '772 diaper fastened on  
3 a user?

4 MS. DALEY: One of ordinary skill, if they wanted  
5 to design a diaper to keep the fastener on a user they would  
6 be able to probably pick parameters and do that. But the  
7 question is what is the teaching in terms of how do it and so  
8 what we have with this stay-away zone in Karami '772 is it is a  
9 stay-away zone. It is something where you don't want to  
10 fasten the diapers there, but they're saying it inherently  
11 could be able to do it. And so what they haven't shown is why  
12 one of skill in the art would have sought to do that or that  
13 it inherently does it. They're starting from a premise where  
14 you have a stay-away zone, but now we're going to modify it so  
15 I can make sure that it isn't a stay-away zone. And so I  
16 don't think that the question is wrong as to whether somebody  
17 could do it, the reason is why would they do it.

18 And also, what Petitioners have really failed to do  
19 is saying what is that combination. They haven't identified  
20 what that actual nonwoven is. Sure, once you -- one of skill  
21 might be able to get there, but they haven't said what they're  
22 even alleging the nonwoven -- that one of skill has got to.  
23 They said they -- all they have to do is just say nonwoven and  
24 since one of skill can do it they've shown that it would have  
25 been obvious. That's not how obviousness works. They have a

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 proposed -- it's their burden to propose a combination and to  
2 say exactly what that combination is and what that nonwoven is  
3 and that it necessarily -- the nonwoven they have shown that  
4 one of skill in the art would have chosen to do would  
5 necessarily engage fasteners at the stay-away zone, and they  
6 haven't done that, and I don't think it's enough to just say  
7 we're going to use a conventional nonwoven because that  
8 doesn't give you enough information to know that it would  
9 necessarily engage fasteners.

10 JUDGE JUNG: All right. I think my questioning has  
11 kind of driven you off your presentation, but if you want to  
12 continue on with this first --

13 MS. DALEY: No, it's more helpful.

14 JUDGE JUNG: -- proposed combination, and then move  
15 onto your second.

16 MS. DALEY: I appreciate that.

17 JUDGE JUNG: I'll just save my questions for the  
18 second combination until you get there.

19 MS. DALEY: Okay. But no, if you have others I'm  
20 happy to discuss them. Okay. So -- well, I'll just touch a  
21 little bit -- so what I was planning to -- thought it might be  
22 worth doing is talking a little bit about the background of  
23 the diapers and some of this we've done so if I start even on  
24 slide 2. I did want to note that there are three different  
25 basic types of diapers, and I think it's important to

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 understand this because they have different uses, and they're  
2 designed differently.

3 And so looking at slide 3 would be what we've  
4 talked about is the T-shaped diaper, and this really is a  
5 different design than the conventional diaper, and it's called  
6 a belt diaper and when using this T-shaped diaper the long  
7 wings of the belt are overlapped -- of the wings are  
8 overlapped so they form a belt and then the body of the diaper  
9 is passed through the legs of the wearer and it hangs from  
10 that belt. And so everything is engaging the belt and the  
11 weight of the diaper is on the belt. And then slide 4 shows  
12 the conventional diaper which we've talked about briefly that  
13 has the four side parts where the back side parts move around  
14 to engage the front. And another type of diaper in slide 5 is  
15 the pull up diaper which kind of operates according to -- like  
16 underpants.

17 But I also wanted to talk a little bit about how  
18 nonwovens are made, and Mr. Butterworth in Exhibit 2004  
19 discusses this in paragraphs 100 to 104. But basically to  
20 create a nonwoven you start by creating these sheets of fibers,  
21 and it can be done in a number of ways, but spunbond is I think  
22 what has been referenced the most, and it's frequently used, and  
23 that's created by extruding a molten thermoplastic onto a belt  
24 for a moving screen. So you extrude a thermoplastic onto a  
25 moving screen, and heated gas is used to extrude it into either



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 randomly or evenly distributed manner.

2 But at this point you have basically a sheet of  
3 loose fibers, and you need to do something to join them  
4 together to give them strength. It wouldn't at this point be  
5 able to engage fasteners and so this is where you end up  
6 having to join them or bond them together, and there are a  
7 number of ways to do this bonding of the fibers so that  
8 they're strong enough to engage fasteners because you have  
9 this sort of kind of dual issue that when you're creating  
10 these nonwovens you want to make them strong enough that  
11 they'll stand up but also have some ability to have a surface  
12 area that can engage hooks of a fastener.

13 So one way to bond is mechanical bonding with a  
14 physical entanglement or through like needle punching or  
15 through a hydroentanglement that causes the fibers to  
16 interlace. Another way to bond them is thermal bonding such  
17 as through like calendaring and embossing, and this is when you  
18 use heat to fuse the fibers together. So like for instance  
19 for calendaring you're going to run the surface through heated  
20 rollers.

21 But each of these different techniques have an  
22 impact on the nonwoven and the amount of fibers that are  
23 available to be snagged. So you need to design them or have  
24 to engineer them to be able to snag the nonwoven. For  
25 instance, the thermal treatments can sometimes melt the

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 nonwoven so that it's smoother, and the fibers are tied down a  
2 bit, and there's not enough there to be snagged so you're going  
3 to have to do something further to the nonwoven so that they  
4 can engage fasteners.

5 And there are also finishing treatments that can be  
6 used and Mr. Butterworth explained this in paragraph 102 of  
7 Exhibit 2004, you know that once the fabric has been bonded  
8 and formed you can use finishing treatments to make it  
9 suitable for whatever your end is, and one of those is  
10 laminating a film to it, and you can do that through wet or dry  
11 lamination. You can do an adhesive applied to bond the film.  
12 With dry lamination it will be like a heat sensitive material  
13 that can then use heat to form it to it. And the Beckert  
14 patents explain that this -- particularly even through this  
15 lamination process you can laminate a film to the nonwoven, and  
16 that can make it be less receptive to engaging fasteners, or it  
17 can be used to increase the nonwoven's ability to engage  
18 fasteners.

19 You know, and for example in the '398 patent which  
20 is Exhibit 1 in the -01478 proceeding, it discusses in column 8  
21 that many of the lamination methods impair the plushness of a  
22 nonwoven component reducing its retaining forces, but it  
23 explains that if you use a foil laminate that can be  
24 temperature treated you can cause the foil to shrink which  
25 causes the nonwoven it's laminated to kind of buckle and

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 raise up and that gives you more area in which the fasteners  
2 can engage. So it's a way of increasing its retaining forces,  
3 but you're not actually increasing its basis weight or  
4 anything. You've actually engineered it through this  
5 lamination process to have better retaining forces.

6 And if we turn to slide 7, and this is something  
7 that Mr. Butterworth explained that there are many factors, and  
8 all of these factors impact how and whether a nonwoven can  
9 retain a fastener. And there's all of these factors which  
10 are, and they mention a lot here, which is the fiber cross-  
11 sectional shape, the crimping, the diameter of it, the density  
12 of it, the thickness, how is it bonded, thermal stabilization,  
13 the bonding density of the pattern, the depth of the bonding,  
14 what's raised. There's just many factors that can impact the  
15 end nonwoven and how well it can engage fasteners. And basis  
16 weight is a factor, but it's just there's many other factors as  
17 well. And this is something that Mr. Jezzi on slide --

18 JUDGE JUNG: But Ms. Daley, do you think Mr.  
19 Butterworth would agree that if you held all of these other  
20 factors constant between two different nonwovens, the only  
21 difference being basis weight, would he agree with Mr. Jezzi's  
22 statement that the heavier basis weight or the higher-basis-  
23 weight would probably result in a greater retaining force than  
24 the lower-basis-weight?

25 MS. DALEY: I would think he would say it could.

1 But there are other things even just with the basis weight as  
2 to what the density of it is and even how thick it is and  
3 sometimes if it gets too thick they can't engage, and that's  
4 even what he's talking about with the coarseness of the  
5 fibers. And so I would think he would say that could, it  
6 could be, but I don't -- he wouldn't say that it would  
7 necessarily because there are other factors that can come into  
8 play in terms of what that nonwoven is and what it's  
9 ultimately -- how that nonwoven was designed.

10 JUDGE JUNG: Thank you.

11 MS. DALEY: And looking at slide 8. I just wanted  
12 to demonstrate that Mr. Jezzi -- it's a sample of some of Mr.  
13 Jezzi's testimony where he acknowledges that factors other  
14 than basis weight can impact how well a nonwoven can engage  
15 fibers, and he acknowledged that you can use an embossing  
16 pattern to either enhance or detract how a nonwoven engages  
17 fibers. He also testified that the nonwovens could be  
18 engineered through some post-treatment to engage fibers better  
19 such as heating, ring rolling, corrugating. And he testified  
20 you could engineer the nonwoven to be less receptive by, you  
21 know, through embossing or other methods. So there really is  
22 no dispute that there are factors other than basis weight that  
23 can impact the retaining forces of a nonwoven.

24 And I also wanted to mention on slide 9, if you  
25 could turn to slide 9, again there was a lot of discussion of

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 the conventional nonwoven and what Petitioners have selected  
2 as a conventional nonwoven. And Mr. Butterworth explained  
3 here on the left that there really is no such animal as a  
4 conventional nonwoven, that all nonwovens are different, and  
5 that there are nonwovens that you can buy that will engage a  
6 hook-type fastener, there are a lot of nonwovens that are made  
7 that will not engage, and there are some that might engage  
8 some but not sufficiently or might not have the range or the  
9 minimum level. And so there's a notion that there's some sort  
10 of kind of conventional nonwoven that's just going to work  
11 isn't true. There is no real type of conventional nonwoven.  
12 In fact, nonwovens are engineered for specific purposes.

13 And, you know, this is recognized by prior art that  
14 Petitioner has relied on. For instance, Karami '626, which is  
15 Exhibit 1004, and I don't have a slide on this, but it says in  
16 paragraph 68, for instance, that the number of fibers, the  
17 extent to which they're bonded together in a nonwoven provide  
18 the strength necessary to provide a high level of shear  
19 strength. And in paragraph 69 it says that the pore size in  
20 the nonwoven, that is the size of the interstices formed by  
21 the fibers, typically affects the peel strength. And again,  
22 there is a patent to Jacobs that Petitioner has cited, Exhibit  
23 1007. And again, Jacobs is describing this process on  
24 how -- describes a process on how a laminate can improve  
25 retaining forces by heating the laminate to it. And again, it

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 raises this issue of shrinkage of the film layer it says  
2 causes the fibrous layer which has the lower latent shrinkage  
3 than the film layer to gather up and bulk up and provide  
4 adjacent bond sites. And it calls it a three-dimensionally  
5 texturized laminate improving the textural properties of the  
6 laminate. So, you know, even a lot of the prior art that  
7 Petitioner relies on notes that there are a lot of ways to  
8 engineer or to change the retaining forces of a nonwoven.

9 And I did want to turn to the (indiscernible), and  
10 we went through the claim language so I'll skip that but in  
11 slide 14 again -- and this is just where they summarize the  
12 invention, and I had said this earlier that what it's trying to  
13 do is to have secure engagement, not necessarily -- not size  
14 adjustability. And what they have found is these differing  
15 retaining forces where they can both secure the diaper on the  
16 wearer provide that secure engagement and surprisingly  
17 encourage the proper securement of the diaper. And the patent  
18 also gives you the specific retaining force ranges, these  
19 over-abdomen retaining force ranges that help you achieve  
20 that.

21 And on slide 15 I have a -- there's a Figure 1 of  
22 the '398 patent and I wanted to note that you see that it's  
23 marked (40) there are hashmarks, and in the specification they  
24 indicate that's an embossing pattern but the '398 patent  
25 expressly says that embossing pattern extends across the

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 entire diaper. That's not present in the Karami '772 where it  
2 used the hashmarks. It doesn't actually say that it's  
3 representative of size or how it's done. And I think what  
4 this also shows is the use of hashmarks in patents is common  
5 as a kind of general pointing but it's not necessarily a size  
6 representation. And I also wanted to point out for the -- so  
7 one of the --

8 JUDGE POWELL: Sorry. This is Judge Powell. I'm a  
9 little slow interjecting. When we're on the subject of  
10 hashmarks and the drawing, I think I'm on the same page as you  
11 likely with respect to the drawing, but if we turn to your  
12 slide 28, what would you say if I think maybe the sentence in  
13 paragraph 53 of 772 that begins with "alternatively", the text  
14 itself possibly indicates that there are -- that the front  
15 waist portion includes water-jet treated portions that are not  
16 part of the stay-away zone? So what would your response to  
17 that be? I guess is my question on the point about how big is  
18 the stay-away zone on the front waist portion?

19 MS. DALEY: Sure. Well, Karami '772 doesn't  
20 describe what this outside of the stay-away zone portion would  
21 be or how big it would be. So it doesn't actually describe  
22 that. It doesn't -- Karami '772 doesn't suggest using that  
23 part of the diaper to engage fasteners. It never  
24 teaches -- never suggests engaging fasteners to the stay-away  
25 zone or this other part of the containment assembly outside of

1   that. And so what you don't know from it -- it isn't showing  
2   that you actually even have a sufficient area in there in  
3   which to engage fasteners because it doesn't teach doing that.  
4   And you can look at the closures they provided there that  
5   there doesn't even look to be -- which I don't think is  
6   representative of what the hashmarks are, but even what's  
7   represented, there's not enough room there to engage the  
8   fasteners. So I just don't think it sees Karami '772 as  
9   seeking to engage fasteners there.

10       But it's also I think important to remember that  
11   Karami '772 doesn't use different wings, and so in Karami '772  
12   all of those region, even this region outside of the stay-away  
13   zone within the containment assembly, would have the same  
14   retaining forces. And so what we have with Petitioner's  
15   combination is trying to remove it so you just have a little  
16   sliver that's going to have maybe some different retaining  
17   forces, and you haven't shown that that region -- what that is  
18   that it's going to actually lower retaining forces or that  
19   little region is enough to secure the diaper on the wearer.

20       And Your Honor, on this point I would actually like  
21   to make one other point about at least claim 1 of the '398  
22   patent which I believe was on slide 10. Yes. Up at the very  
23   first part of that in claim 1 where it talks about the chassis,  
24   it also says the entire area -- and this is about one, two,  
25   three, four lines down -- it says wherein the entire area of



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 the outer face of the chassis is constituted by a first  
2 nonwoven material. And so the '398 patent expressly requires that  
3 this chassis area be all of a single nonwoven, and I think that  
4 would also be different than having these two different  
5 regions where you've created two different nonwovens through  
6 your treatment or your untreatment. So I had meant to raise  
7 that earlier, but I just wanted to say that I think that that  
8 claim has its own distinction from this region outside of the  
9 stay-away zone.

10 JUDGE POWELL: Thank you. And sorry for the detour  
11 there.

12 MS. DALEY: No. Thank you. I welcome all the  
13 questions. If you have questions I'd like to answer them. So  
14 thank you. And there were a couple of other -- well, since  
15 we're on Karami '772 I'd like to turn to slide 22. And again,  
16 slide 22 here is a statement -- on the left side here in  
17 paragraph 3 was similar to what I had read in Karami '626 where  
18 it says that conventional woven or nonwoven articles had  
19 affixed there to a mini loop fastener element strip. So if  
20 this conventional nonwoven could always have engaged fasteners  
21 then there wouldn't have been where they're referring to the  
22 conventional nonwoven as having used these fastener element  
23 strips. So again, I think this notion of some conventional  
24 nonwoven is misplaced.

25 And what Karami '772 says in paragraph 25 is that

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1    what it's doing to eliminate the use of these mini loop  
2    fastener strips is they're able to securely attach to a bonded  
3    nonwoven surface that has been subject to water-jet treatment  
4    or endure aperturing. And Petitioner has made the argument  
5    that Karami '772 has some other embodiment in there that's not  
6    even treated at all, and we would disagree with that. And in  
7    fact if you look at slide 24 in paragraph 42 there's a  
8    statement that water-jet treating and/or aperturing the  
9    nonwoven wings obviates the need for the corresponding loop  
10   type landing zone to mate with hook-type fasteners. And so  
11   they expressly say it's the water jet treatment that's  
12   required to obviate the need for the landing zone.

13       And they say again that it's the treatment that  
14   enables it to be securely fastened. And, you know, they say  
15   this throughout that it's the -- the nonwoven is treated so  
16   that it can securely fasten and in fact they call this the  
17   inventive concept, and they say that three times. So I think  
18   to suggest that, you know, that Karami '772 has some  
19   alternative diaper that's just not treated at all is just not  
20   consistent with what Karami '772 is doing. The whole purpose  
21   of it is that it wanted to create a nonwoven that could  
22   engage fasteners.

23       And turning to slide 27. I did want to talk about  
24   the table a little bit because that had come up. And there's  
25   been some discussion about -- you know, and the fact that

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 Karami '772 thought you needed to treat it was he conducted  
2 tests to show that you could do this to actually get enough  
3 peel strength in order to remove the loopless fastening  
4 elements and the testing -- I think as everyone has said, the  
5 tests aren't well described. They don't say how it's  
6 modified. But there was a discussion about what can you use  
7 those values for, and I believe Petitioner says you can use  
8 them within each other to represent what they are to one  
9 another. I would submit if you're going to use Karami '772's  
10 numbers then it is actually fair to also use them to what  
11 Karami '772 says it's seeking to achieve. You know, it gave  
12 minimum shear and peel forces, and so I think using its numbers  
13 comparing it to its own number is a fair use.

14 But what this really shows is at least from what  
15 Karami '772 is teaching is that it's showing that the different  
16 nonwovens with different treatments cause different retaining  
17 forces, and there are examples where the -- you can have a  
18 lower-basis-weight nonwoven have higher retaining forces than  
19 a higher-basis-weight nonwoven, and that's just shown from the  
20 tests that are done here, and even Petitioner said you can  
21 compare those kind of numbers to each other.

22 JUDGE POWELL: One more -- this is Judge Powell  
23 again. Sorry. Another detour. Perhaps somewhat of a strange  
24 question. If we with respect to Karami '772 and you  
25 acknowledged that claim 1 of the '788 patent is broader in some

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 sense than the other ones. If we construe the retaining  
2 forces between said mechanical closure means and said outer  
3 face of said main part in claim 1 of the '788 patent, if we  
4 construe that to mean any retaining force whatsoever, if we do  
5 construe it that broadly can you still win on the challenge  
6 based on Karami '772 and the Benning reference?

7 MS. DALEY: We have not presented that argument.  
8 We have said that the -- because we think that for the diaper,  
9 and what it's saying to work that it would have to -- it would  
10 be forces to secure the diaper on a wearer. So we have not  
11 made that argument. But we have argued that claims 2 and 3  
12 which have the specific retaining forces more clearly call out  
13 the retaining forces. So, no, we haven't -- we at least have  
14 not presented an argument under the claim construction that  
15 you've raised.

16 JUDGE POWELL: My hypothetical, right. Okay.  
17 Thank you.

18 MS. DALEY: And then turning back to -- unless you  
19 have another question. Turning back to slide 28 and the stay-  
20 away zone and the notion that somehow because they're  
21 alternates they have different purposes. I think it's clear  
22 nobody disputes that the first described stay-away zone  
23 couldn't engage fasteners at all. And, you know, that is to  
24 show what the intent of the stay-away zone is, that it not  
25 engage fasteners. And this alternate one is just a simpler

1 way of achieving that same goal where you don't have to cut  
2 something out because, you know, you've done it -- you have a  
3 nonwoven that's not been treated so it's not going to  
4 sufficiently engage the fastener so it will serve as a stay-  
5 away zone. I think the idea that they could -- you could have  
6 one stay-away zone where you can't engage fasteners at all, and  
7 then have something be an alternate to that in which not only  
8 engages fasteners but it securely adheres them onto the wearer  
9 is just nonsensical. I don't think that that's what you can  
10 call an alternative something that's completely opposite.

11 JUDGE JUNG: Ms. Daley, this is Judge Jung. You  
12 have about 20 minutes left before you've used your rebuttal  
13 time. So I know you haven't actually covered the second  
14 proposed combination, but I just want to warn you that you're  
15 getting close.

16 MS. DALEY: I appreciate that. And I think that it  
17 would be a good sense to -- well, there is one -- thank you  
18 for that. One thing I would like to get to is Mr. Jezzi's  
19 testimony on this point, and I think if we turn to -- you know,  
20 because we talked some about the inherency of the stay-away  
21 zone, and under the law of inherency, it's clear you have to  
22 show that it would necessarily be the case, that it would  
23 necessarily have those forces. And his testimony is on -- and  
24 he has testified and then there's been some discussion about  
25 what his testimony was about that. But at the end of the day

1    what he had said is that he really -- that it would be  
2    possible I think is the language. I'm trying to find my  
3    specific slide on that.

4           It's on slide 45 when he's asked more generally  
5    about the retaining forces. Because in his first -- the first  
6    IPR he said he didn't know if it would be sufficient, and in  
7    this case he had said, "well, I can tell based on table 1 in  
8    Karami '626." But table 1 he subsequently has agreed that  
9    it's -- he can't rely on table 1 and so now they're just  
10   relying on Karami '626. But even after that on the second page  
11   of this slide on 185 what he says is today I would probably  
12   say they have sufficient retentive forces to hold the diaper  
13   next to the body, probably. And that's just not what's  
14   required of inherency. It has to be necessary. So I wanted  
15   to make that one last point.

16           So turning to Karami '626, slide 47 is one of the  
17   figures for the T-shaped diaper. And most of the disclosure  
18   in Karami '626 is about the T-shaped diaper, and I went through  
19   how that is donned before. You put the wings together to form  
20   a belt and you pull the diaper up through it.

21           And on slide 48 they do show Figures 9 and 10 of  
22   the conventional diaper but there is literally one sentence  
23   about it. It's shown as one solitary nonwoven. So there's no  
24   disclosure in Figures 9 and 10 of differing retaining forces  
25   or using different nonwovens. That's just not found in Figure

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 9 and 10.

2 And on slide 49 is a reference to Benning, and what  
3 Benning was really trying to do is shown on slide 49 and slide  
4 50 is they're working on the high-speed manufacture of these  
5 Wings, and so they fold it so that they're more easily  
6 manufactured.

7 And on slide 50 is a Figure 4 of the Benning diaper,  
8 and this is a -- your more conventional diaper has four wings.  
9 The wings will be brought around from the back to the front of  
10 the main part of the diaper. And Benning says that it seeks  
11 to engage the main part of the diaper.

12 And then turning to slide 52 is where it talks  
13 about the material sections on the side, and it does state very  
14 clearly that what Benning wants is the side sections to be  
15 more flexible. And not just more flexible than the chassis.  
16 It actually says in particular the backsheet. So what they  
17 want it to be is more flexible than the backsheet in  
18 particular. So, you know, I think conflating it to saying it  
19 has to just be more flexible, the chassis, isn't actually what  
20 Benning is saying there, and they say in particular the  
21 Backsheet, and so they want it to be more flexible, so that it  
22 has -- basically softer and skin friendly on the side.

23 And on slide 53 is just some testimony of Mr. Jezzi  
24 where even under his reasoning using softness would tend to  
25 show a lower-basis-weight. So what Benning is actually

1 suggesting is the lower-basis-weight.

2 And so, you know, Petitioners have talked about  
3 wanting to use a higher-basis-weight on the sides for comfort  
4 and for strength but a higher-basis-weight on the side is  
5 going to be less comfortable. That's what Mr. Jezzi has said.  
6 And Benning actually wants it to be more comfortable. So that  
7 would counsel for the lower-basis-weight. They also say it's  
8 needed for strength, and they had cited some testimony of Mr.  
9 Butterworth, but what Mr. Butterworth was explaining there,  
10 when you're talking about the pulling, and I said this  
11 earlier, you're talking about pulling the back wings. They  
12 contain the closures that get moved around to the front and  
13 those are what gets pulled. And he explained part of the  
14 problem with using separate wings and chassis is that they can  
15 get pulled off, and even the Beckert patents teach about  
16 reinforcing those. So the pulling you're talking about  
17 there, that's not the fastener engaging surface in the front.  
18 That's not a reason to use it even on the side parts and the  
19 front even if you're going to use something that's stronger  
20 there.

21 And the other point is you can have a stronger wing  
22 to avoid this pulling that actually can't engage fasteners at  
23 all or very little, and in fact you can use that on the back of  
24 the wings because they don't engage the back or the side  
25 parts. They get moved around to the front to engage the front



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 of it. So the notion that you're going to change the  
2 fundamental operation of Benning which is softer sides than  
3 the main part for some sort of strength is not necessary, and  
4 it doesn't follow because what Benning really seeks to do is  
5 to have these soft side parts, and there's really no reason to  
6 change the fundamental principle to make them actually heavier  
7 than the main part of the diaper. It would be one thing even  
8 if you're saying they're going to be the same nonwoven.  
9 There's no reason to make it actually a heavier. And Benning  
10 makes a point in there that these side portions are actually  
11 wider than the belt that you would use on adult diapers. So  
12 once you've added an even higher-basis-weight to those you've  
13 really made this a much heavier diaper and less comfortable  
14 diaper.

15 So the main thing I would like to get to is there  
16 was a lot of talk about paragraph 40, and this is on slide 55  
17 of Benning '626 -- Karami '626.

18 JUDGE JUNG: Ms. Daley, before you move on, I just  
19 want to go back to the heavier wings versus the lighter  
20 backsheet. So in Benning it seems to indicate, and Petitioner  
21 cites to this, that the wings should be around 25 to 50 grams  
22 per square meter, and then Karami '626, they're proposing to  
23 modify the backsheets of Benning with Karami '626's and Karami '626  
24 prefers something that's 20 grams per square meter. So it  
25 seems like you have met -- or Petitioner has met Benning's

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1   stated objective of a softer wing because Petitioner is not  
2   modifying the wings. It's still at 25 to 50. And then the  
3   backsheet is now down to 20 grams per square meter and now you  
4   have a difference in basis weight which Petitioner argues will  
5   lead to a difference in retaining forces. So with that  
6   understanding how does your argument change that Benning still  
7   leads away from Petitioner's proposed combination?

8           MS. DALEY: Well, one because what it actually  
9   wants is it to be more flexible than the backsheet. So it  
10   isn't in that scenario more flexible. And I think one of  
11   things Petitioner has said is, oh, you want the comfort for  
12   the backsheet but this actually, and Mr. Butterworth  
13   explained, that that's the portion that actually has to carry  
14   a lot of the weight because of it gets the discharge from the  
15   body, and so I would still say that the principle of operation  
16   of Benning is that you -- Benning seeks to engage the diapers  
17   to the front of the diaper and have soft, more flexible sides,  
18   and what they're seeking to do is completely change that to  
19   being more rigid sides and engaging on the sides and there's  
20   just no reason to change this fundamental principle of  
21   operation of Benning.

22           The only real reason -- the stated desire is really  
23   because they're looking in hindsight based on the Beckert  
24   patents. They are trying to come up with a reason to use a  
25   higher-basis-weight on the sides. None of the prior art

1 teaches that. The only one that even suggests it, that even  
2 mentions the higher-basis-weight is the Karami '626 and the T-  
3 shaped diaper, but in that embodiment they don't use  
4 the -- and that's what I'll get to and explain. They don't  
5 use the backsheet of the main part of the diaper to engage  
6 fasteners. So it is not actually teaching engaging fasteners  
7 on different basis weights.

8       And so I understand Petitioner had said at the  
9 front that it's well known to use higher-basis-weights on the  
10 side and that's just not so. They actually don't cite any  
11 reference to use the higher-basis-weights on the side. This  
12 is all coming from the claims -- the Beckert patents and the  
13 claims of the patent trying to match that. And so you're  
14 taking a diaper in Benning that is designed to engage in the  
15 front and be soft on the sides and completely flipping it  
16 around, and there's no real good reason for that other than the  
17 hindsight analysis.

18       JUDGE JUNG: Okay. Thank you, Ms. Daley.

19       MS. DALEY: Sure. And so if we turn to paragraph  
20 40 in the Benning-Karami '626 slide, and this is in Karami '626,  
21 and it's this paragraph in which Petitioners have argued this  
22 shows that the fasteners in the T-shaped diaper can engage the  
23 backsheet of the main part of the diaper. And I'll note on  
24 the right side Mr. Jezzi did acknowledge that the actual  
25 embodiments disclosed in Karami '626 and how it describes doing

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 it is -- they all engage the wing or the belt of the

2 fasteners, none engage the backsheet.

3 And so in this paragraph 40 it says, “on the other

4 hand when the T-shaped brief (12) is made according to the

5 present invention so that the fastener elements (41) and (42)

6 do not require landing zones and may engage directly with any

7 portion of the nonwoven surface constituting the front sheet

8 (30), backsheet (32), or wings (40) of the brief the

9 accommodation of both small and large-waisted persons by a

10 single brief 12 with elastic wings is substantially

11 simplified.” So it's a set reference to front sheet (30),

12 backsheet (32), or wings saying that it's saying it can do the

13 front sheet or the back.

14 When you look at the rest of paragraph 40 it's

15 actually talking about the wings, and the focus is on the

16 wings, not on the main body portion. And it explains that

17 since the wings are elastic, one side could be pulled more than

18 the other side during the process of forming the belt. And I

19 don't -- and if you -- I think it's more -- this is really

20 explained if you look at the preceding paragraph in paragraph

21 39 in Karami '626. And I don't have a slide on that. But

22 paragraph 39 states that wings (40) can be made of an elastic

23 material and that the, quote, degree of overlap in the

24 connection between the wings (40) to form the belt (44) will

25 vary with the waist size of the wearer. While a large-waisted

1 person may have each of the first pair of fastener elements 42  
2 contacting respective wing (40), a small-waisted person may  
3 have both the pair of fastener elements contacting a single  
4 wing (40) which almost completely overlaps the other wing.

5 So in this paragraph 39 what they're describing is  
6 how the T-shaped diaper works with small and large-waisted  
7 users. The fastener elements (42) are on the front sheet of  
8 the main part of the diaper. They get pulled up to be put on  
9 it, and what it's saying for the large-waisted wearer because  
10 the wings may not fully overlap, those get pulled up, they're  
11 going to be on each of the wings. And then it's talking about  
12 how when you have a smaller person the wings overlap more, and  
13 so the fastener elements are going to attach to just the outer  
14 wing. So in 39 it's describing again the operation of the T-  
15 shaped diaper.

16 And so going on the rest of paragraph 39 it  
17 states, quote, "in a conventional T-shaped -- in a conventional  
18 T-shaped brief this would present a problem in suitably  
19 locating the loop landing zones, that is the conventional  
20 theme of fastening elements along the garment facing surface  
21 (33) each wing (40) if the brief were to be suitable for use  
22 by both large and small-waisted wearers."

23 So this is the paragraph that precedes paragraph 40,  
24 and what they're saying is what they want to do is eliminate  
25 those loop landing zones, and what it's saying is where these

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 loop landing zones were located that was a surface -- the  
2 garment facing surface (33) of each wing (40). Actually, I'll  
3 note that it left out the word "of" so there is a typo there.  
4 It said garment facing (33) each wing 40 but there should be  
5 an "of" there.

6 So if you actually turn now I think Karami '772 to  
7 paragraph 74, it specifically says that the backsheet of a wing  
8 refers to the garment facing surface. So in this paragraph 39  
9 what it's saying is the loop landing zones were located on the  
10 backsheet of the wings (40). And so when you get down to  
11 paragraph 40 it's really not unreasonable to see that -- and  
12 this is what Mr. Butterworth has explained -- what they  
13 disclose, what it teaches, and what it's really saying there  
14 is you can engage any portion of the nonwoven surface  
15 constituting the front sheet (30), backsheet (30) of wings  
16 (40). I mean in the previous patent they -- in the previous  
17 paragraphs they left out the word "of". The petitioner had  
18 talked about the interstices size, and one of their arguments  
19 is in one part of the patent it refers to it wrong than it  
20 does in another part of the patent.

21 So the reality is that Karami '626 and the other  
22 Karami is actually replete with a number of errors. For  
23 instance, in the abstract Karami '626 says that they want at  
24 least 60 grams per two inch of shear strength and -- of peel  
25 strength and at least 1300 grams per two inch of shear

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 strength, but yet in another part of the patent they refer to  
2 wanting 60 grams per square inch and at least 1300 grams per  
3 square inch.

4 I'll also note that peel strength is measured in  
5 force per length, so when it talks about it in square inch, it's  
6 wrong. So the reality is -- and you can go through a number  
7 of these -- is there are many errors in this. And the fact on  
8 that paragraph 40 you can't take that one sentence where it  
9 says "or wings" as some disclosure that the backsheet of the  
10 Karami '626 diaper is used to engage fasteners. It's nowhere  
11 disclosed, they haven't shown how that would work, and I think  
12 you look at the paragraphs 39 and the rest of it it's pretty  
13 clear that -- and as Mr. Jezzi agreed in terms of his  
14 testimony that the fasteners engage the wings and not the  
15 backsheet.

16 And then again Petitioner has pointed to Figures 9  
17 and 10 in Karami '626 and those figures again use -- well,  
18 before I get to that I just want to point out -- so the point  
19 being of this size adjustability issue is what it's showing is  
20 you can adjust the size of the diaper by fastening anywhere on  
21 that same nonwoven surface. It doesn't teach using different  
22 nonwovens and different retaining forces for size  
23 adjustability and nor would you. If your actual goal is to be  
24 able to have secure engagement for a large, or small, or  
25 anybody you would want that same engagement across. There's

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 no reason that one wearer gets a higher, better engagement  
2 than the other wearer.

3 And, you know, Damaghi shows that because it talks  
4 about -- you know, it's a single unitary nonwoven, but it talks  
5 about that you can have the dangers of too much adjustability  
6 so it creates a non -- it creates a stay-away zone so that you  
7 can engage there. So the point being referring to size  
8 adjustability is not a teaching of different basis weights, and  
9 it's not a teaching of using different retaining forces. And  
10 it cited no reference that teaches size adjustability with  
11 different retaining forces or different basis weights.

12 JUDGE JUNG: Okay, Ms. Daley. You're one minute  
13 away from using your rebuttal time.

14 MS. DALEY: I know. That's why -- I was just  
15 trying to see if I had any last comment to make, and I  
16 think -- well, and I guess the one last comment I will make is  
17 on -- for this one, I understood Petitioner to say that  
18 they're not relying on inherency for the Karami '626 and Benning  
19 and would agree because neither of those references  
20 teaches the different retaining forces or that they secure the  
21 diaper on the wearer. But in fact on page 60 on the slides  
22 the petitioner themselves characterize the cogent factual  
23 issue as to whether the claimed retaining forces would have  
24 naturally resulted from the Benning-Karami '626 diaper, and they  
25 cite PAR Pharmaceutical v. TWi and that is one of the cases on



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 obviousness -- inherency in an obviousness case. And the  
2 notion of the naturally resulting, what Par and the other  
3 cases say is that's the notion that it has to necessarily  
4 result from, not just be possible or probable. So I would  
5 submit that the Karami -- the Benning-Karami '626 also requires  
6 inherency to show those retaining forces and the securing the  
7 diaper on the wearer and that they haven't shown that it would  
8 be necessarily so.

9 JUDGE JUNG: Thank you, Ms. Daley. You have 14  
10 minutes left for your surrebuttal.

11 MS. DALEY: Thank you. Thank you.

12 JUDGE JUNG: All right. Mr. Albright, your final  
13 12 minutes for any rebuttal. Mr. Albright, we can't hear you.  
14 Are you talking now?

15 MR. ALBRIGHT: Thank you. I was muted. Sorry,  
16 Your Honor.

17 JUDGE JUNG: Okay.

18 MR. ALBRIGHT: And so I guess I would like to start  
19 by seeing if anyone had any questions or any topics they would  
20 like to hear about specifically or I can just dive right in.

21 JUDGE JUNG: I have no questions at this point.

22 MR. ALBRIGHT: Okay. So one of the first things  
23 I'd like to address is Karami '772's Figure 8. And there was  
24 some discussion from Patent Owner that that figure does not  
25 teach portions of the backsheet over the containment assembly

1 that are treated. But if you look at Figure 8, that's exactly  
2 what it shows, and there are a litany of cases explaining that  
3 even when figures are not to scale you cannot ignore that  
4 which they clearly show, and it clearly shows treated portions  
5 around the stay-away zone in the main part. Now, the figures  
6 aren't to scale so we couldn't take a position like, oh, those  
7 portions are two inches wide or -- you know, we couldn't give  
8 them a specific dimension, but their existence, the treated  
9 portions of that backsheet, are clearly shown in the figure  
10 and therefore that teaching of their presence simply can't be  
11 ignored.

12 And then I'd like to address the conventional  
13 nonwoven issue in a little more detail. So we've talked today  
14 about Karami '772, Karami '626, and Damaghi, and these are all  
15 references that are using that binder fastener to engage what  
16 they characterize as conventional nonwovens to secure a diaper  
17 on a wearer's body. And specifically, let's go -- I'd like to  
18 look at slide 11. And we asked Mr. Butterworth about Karami  
19 '626, and what he said is Karami '626, when he says conventional,  
20 he's talking about spunbonded nonwovens. That's like every  
21 nonwoven in every combination that we put forward is a  
22 spunbonded nonwoven. And that was Mr. Butterworth's  
23 understanding.

24 And I know today Patent Owner includes a slide 9,  
25 so Patent Owner's slide 9, where Mr. Butterworth took a

1 different position on what conventional is. But here what he  
2 says is there are conventional nonwovens that will not engage  
3 with a hook-type fastener. And so he's attributed a breadth  
4 to conventional here that pushes it totally outside the bounds  
5 of the references that we're talking about. Karami '626,  
6 Karami '772, Damaghi, those are all fastener engaging  
7 conventional nonwovens. And so if you interpret conventional  
8 to include nonwovens that specifically won't engage fasteners,  
9 that's just not a relevant opinion.

10 We heard a new example -- I guess not new, it was  
11 in the Sur-Reply, but Patent Owner reiterated the example of a  
12 nonwoven that had a higher-basis-weight but lower retaining  
13 forces than a nonwoven having a higher-basis-weight, and I  
14 believe the example is -- let me pull it up -- from Karami  
15 '772's table 1, and I think it's discussed here on Petitioner's  
16 slide 25. You can have a 20 gsm nonwoven that's treated, and  
17 it will have higher retaining forces than a 33.9 gsm nonwoven  
18 that's untreated per Karami '772's table 1.

19 But as we discussed earlier today, that comparison  
20 is completely irrelevant to any combination that we have put  
21 forward. The Benning-Karami '626 diaper doesn't have treated  
22 nonwovens, and in the Karami '772 diaper our first position for  
23 the backsheet is the stay-away zone which is untreated versus  
24 the treated wings, and of course the treatment there is going  
25 to increase the wing retaining forces so it supports our

IPR2020-01477 (Patent 8,152,788 B2)  
IPR2020-01478 (Patent 8,784,398 B2)  
IPR2020-01479 (Patent 8,771,249 B2)  
IPR2020-01480 (Patent 8,708,990 B2)

1 position.

2 And our second position is the areas around the  
3 untreated portion that are treated in the backsheet, and when  
4 you have a lower-basis-weight nonwoven in the backsheet for  
5 comfort and a higher-basis-weight nonwoven in the wings for  
6 strength, the higher-basis-weight nonwoven is going to have  
7 higher retaining forces as the '788 patent tells us is  
8 essentially ensured.

9 So still there's not a single even allegation of a  
10 parameter that could be varied within any of these  
11 combinations that would defeat the positive correlation  
12 between basis weight and retaining forces that Mr. Jezzi  
13 testified to supported with objective documentary evidence,  
14 Gehring and Gorman, that the '788 patent tells us is  
15 essentially ensured. And then when you look at the laundry  
16 list of parameters that they set forth, and you look at the  
17 patent, the patent attributes no significance to those  
18 parameters. I mean the breadth that we saw earlier with the  
19 nonwovens, any nonwoven that contains at least one initial  
20 component of a thermoplastic polymer.

21 And so at the end of the day the only evidence is  
22 that in the Benning-Karami '626 diaper, in the Karami '772-  
23 Benning diaper, when you go to those higher-basis-weight wings  
24 for strength and a lower-basis-weight backsheet for comfort  
25 and of course all of them are fastener engaging nonwovens

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 because the references themselves tell us, you're going to  
2 have higher retaining forces in the wings than you do in the  
3 backsheet. And Patent Owner hasn't presented any evidence to  
4 defeat that.

5 Another thing that Patent Owner brought up was  
6 allegedly we have not presented any evidence that higher-  
7 basis-weight wings were desirable and a lower-basis-weight  
8 backsheet other than Karami '626 I think the argument was, but  
9 Karami '626 of course is only about a T-shaped diaper  
10 which -- I mean we saw earlier it's got the Figures 9 and 10  
11 diaper. It's got the broader description. It's about pull-  
12 ups. It's about conventional diapers. It's not just about T-  
13 shaped diapers.

14 But setting those issues aside, the Petition  
15 absolutely advanced evidence supporting the notion that  
16 higher-basis-weight wings were desirable for strength and a  
17 lower-basis-weight nonwoven was desirable in the backsheet for  
18 comfort, and that's on the petition at page 42 and I'm looking  
19 at the -1477 proceeding. And here we cite Exhibit 1006 which  
20 is Kleinschmidt who explains that side panels deliver the  
21 material strength needed for securing a fastening device to  
22 the diaper and lower-basis-weight regions deliver softness  
23 that are comfortable to the wearer's skin. And I think there  
24 what Kleinschmidt is talking about, you want higher-basis-  
25 weight side parts and lower-basis-weight cuffs. But still

1 there's the relationship between basis weight, strength, and  
2 comfort.

3 We have Exhibit 1022 which I believe is Young who  
4 explains that when you increase basis weight softness tends to  
5 decrease. Exhibit 1020, I'm not sure exactly what that one is  
6 offhand, but lower-basis-weight nonwoven webs are more  
7 susceptible to having fibers pulled out so where you're going  
8 to be fastening your -- or attaching your fasteners where  
9 there's the high forces you're going to want a higher-basis-  
10 weight. And then on the other end we have all of this  
11 evidence that explains that really 10 to 30 gsm with 20 gsm  
12 being an exemplary sweet spot, that's where you're going to  
13 get the cloth-like feel. That's where you're going to get the  
14 user comfort for your backsheet. And so we have quite a bit  
15 of evidence that supports our position that you would -- a  
16 POSITA would be motivated to use higher-basis-weight wings and  
17 a lower-basis-weight backsheet.

18 And the last point I'd like to make is that the  
19 petition established that the materials in the '788 patent's  
20 example, the commercially available nonwovens that they used  
21 and the commercially available fastener, which again is the  
22 same one in all the Karami's, the binder 445 fastener, we  
23 establish that those were obvious choices, and we didn't do  
24 that working backwards from the patent. Every parameter of  
25 those materials -- and I'm going to point us to a slide.

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 Let's look at slide 71, and let's just start with material Z.

2 So material Z in the '788 and other challenged patents example

3 is the fastener, and there's that binder fastener again, and

4 it's preferably 20 by 25 millimeters in dimension. Well,

5 that's Karami '626's preferred fastener in its preferred size

6 which is there for at least an obvious choice for a fastener

7 because Karami '626 provides it.

8 And then we have material Y -- and let me make sure

9 I don't confuse this. So material Y is the backsheet

10 nonwoven. It's laminated to the film. And it's a 20 gsm

11 spunbond nonwoven. Well, that's what Karami '626 prefers with

12 polypropylene fibers. Karami '626 doesn't tell us what the

13 fiber material is but Karami '772 which is also a spunbond with

14 the same basis weight for engaging a fastener tells us that

15 polypropylene was a suitable choice, and therefore at least

16 obvious choice. And also, the exemplary material Y in the '788

17 patent has Karami '626's preferred fiber size and embossing

18 area. So literally every parameter for their exemplary

19 backsheet nonwoven is met by Karami '626. So that covers the

20 fastener and the backsheet.

21 We get down to -- and we've already covered that.

22 Go to slide 74 please. And material X, that's the wing

23 nonwoven. Well, as we explained in the Petition, one

24 implementation of Karami is with the wings comprising the same

25 type of nonwoven as just with a higher-basis-weight than the

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1    backsheet. That's an implementation of Karami '626 that was  
2    advanced in the Petition and, as we've just described, the  
3    commercially available nonwoven backsheet that the '788 patent  
4    lists in its examples is Karami '626's preferred nonwoven for  
5    engaging the same fastener that the '788 patent uses. And if  
6    you use the same material just with a different basis weight,  
7    well you're going to end up with the '788 patent's preferred  
8    wing material as well, 30 gsm polypropylene spunbond nonwoven  
9    with a fiber thickness of (indiscernible) which falls within  
10   Karami's parameters and with the embossing area as well.

11       And I guess I said that was the final point. I'd  
12   also like to point out that we have -- and I mentioned this  
13   earlier, but I just wanted to be clear. We have a Benning-  
14   Karami '626 Stupperich combination which does not involve  
15   inherency in any way, and that combination, very briefly,  
16   starts from the Benning-Karami '626 combination where you want  
17   a higher-basis-weight wing and a lower-basis-weight nonwoven.  
18   Well, Stupperich provides two nonwovens, one having a higher-  
19   basis-weight and one having a lower-basis-weight. And what's  
20   nice about Stupperich is he discloses that his embossing area  
21   or his bonding pattern strikes a balance between re-  
22   fastenability and reliability. So it's taught as a nice  
23   nonwoven if you need a nonwoven for engaging fasteners.

24       Well, and that's exactly what the Benning-Karami  
25   '626 diaper is in search of, and we contend it would have been



IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 obvious to use the higher-basis-weight nonwoven disclosed in  
2 Stupperich on the wings and the lower-basis-weight nonwoven  
3 disclosed in Stupperich on the backsheet, and Stupperich  
4 specifically -- and by the way, this is Patent Owner's own  
5 prior art patent. Stupperich specifically provides the  
6 retaining forces recited in the claims for that higher-basis-  
7 weight nonwoven and lower-basis-weight nonwoven measured in  
8 the same way and with the same unit. So there is absolutely  
9 no inherency involved in that combination.

10 And Patent Owner's answer to Stupperich, if we go  
11 quickly to slide 76, is much like their attack on Karami '626.  
12 It's another belt-diaper argument. Stupperich teaches that  
13 fasteners engage the belt. They don't engage the front of the  
14 diaper. But just even looking at Stupperich, the first  
15 sentence of Stupperich is abstract shows us, just like Karami  
16 '626's broader teachings, that Stupperich isn't limited to T-  
17 shaped diapers. The invention relates to a loop forming  
18 nonwoven material in particular for disposable hygiene  
19 articles such as diapers, of course belt diapers, that's the  
20 T-shaped, incontinence articles and pads. So Stupperich's  
21 teachings are broader than Patent Owner is willing to give  
22 Stupperich credit for.

23 And then their final challenge to Stupperich on  
24 slide 77 is that we don't acknowledge that Stupperich  
25 describes the two different nonwovens as different embodiments

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 or discuss whether, how, or why they would have been combined.

2 But as I mentioned earlier, this is all in the Petition at 88

3 to 89. Stupperich's nonwovens are what Karami calls for.

4 They're fastener engaging nonwovens that secure a diaper on a

5 wearer. Motivation is a POSITA would have sought the

6 advantageous balance between closing reliability and

7 durability that Stupperich is non-willing to provide. And

8 that's specifically stated in Stupperich.

9 And then it would have been obvious -- so now we've

10 got Stupperich in our diaper. Well, how do we justify the

11 higher-basis-weight in the wings and the lower-basis-weight in

12 the backsheet? Well, it's the same as we've been discussing

13 all day. The higher-basis-weight nonwoven is going to provide

14 enhanced strength and diaper retention. The lower-basis-

15 weight nonwoven is going to provide wearer comfort and cost.

16 And finally, as another motivation, this

17 modification would have maintained Karami '626's simplicity of

18 using otherwise similar nonwovens that have different basis

19 weights with the wings and backsheet. And with that I am

20 ready for any questions, and I am otherwise done.

21 JUDGE JUNG: I have no questions.

22 JUDGE POWELL: Nor do I.

23 JUDGE SCANLON: No, no questions.

24 MR. ALBRIGHT: Thank you.

25 JUDGE JUNG: Okay, Ms. Daley. I let Mr. Albright

1 go over by a couple of minutes. You have 16 minutes for your  
2 sur-rebuttal.

3 MS. DALEY: All right. Well, thank you. I'll  
4 start with I think it was slide 71 of Petitioner, and for that  
5 I'll note when we're talking about the claimed retaining force  
6 ranges what Petitioner didn't try to do is show that the  
7 claimed retaining force ranges would have been obvious when  
8 they're going through their material section. And so what  
9 they didn't try to do is show that the claims of retaining  
10 force ranges would have been obvious.

11 What they did is they went to the Beckert patent,  
12 took one of the examples, and said, well, I can find all the  
13 aspects of it in the prior art. That's not a proper  
14 obviousness analysis. And even when you get to that I would  
15 say that they're showing the supposed comparisons. They  
16 aren't exactly the same. Beckert has a different embossing  
17 pattern. It differs from Karami '626. They haven't actually  
18 shown why one of skill in the art would have picked the  
19 particular example they're relying on from Beckert in saying  
20 which would have made the retaining forces obviousness. So I  
21 would say that's not the proper analysis when they're looking  
22 at retaining forces, and the fact that they had selected an  
23 example from the Beckert patents to try to go find in the  
24 prior art shows that they're doing the wrong analysis.

25 They reference page 42 of their Petition regarding

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 whether there is teaching in the prior art of using different  
2 basis weights in the same diaper for engaging fasteners, and  
3 you could go through, and I would say that the references that  
4 they have pointed there don't say that. There was one  
5 reference to one of the pieces of prior art that has the  
6 softer cuffs. They want the softer cuffs -- and essentially  
7 one nonwoven. They want softer cuffs around the legs for  
8 comfort for the wearer. That's not using it as a  
9 retaining -- different retaining forces or using it as a  
10 fastener engaging surface. And I think there's a reference to  
11 Young which said that the lower-basis-weight is softer, and it  
12 does say that, and again it's not suggesting actually using  
13 different basis weights on the same diaper for engaging  
14 fasteners. So that really isn't taught in any of those  
15 references that are discussed there.

16 Counsel also talked about Karami '772 and the region  
17 outside of -- in the containment assembly outside of the stay-  
18 away zone, and they said they couldn't say the size of it  
19 because that's not disclosed. You know, that's the issue is  
20 it doesn't actually teach very much about that, and in fact  
21 it's Petitioner's burden if they're going to rely on it to  
22 show that the combination would meet the claims, and the fact  
23 that they can't say what that region would be or what it is I  
24 actually would submit shows they can't meet the inherency  
25 requirement because they don't have the information necessary

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 even from the reference to make the obviousness or the  
2 inherency case.

3 And Petitioner's counsel again said for the Benning  
4 and Karami '626 reference combination that the reference to the  
5 fact that there could be treated nonwovens with higher-basis-  
6 weights is irrelevant to the combination because they're not  
7 alleging it's treated. Well, that's part of the problem is  
8 they haven't actually alleged what that nonwoven is other than  
9 the basis weight, and it's their burden to show that it -- the  
10 combination wouldn't necessarily, and I would say inherently,  
11 meet the claimed combination -- the claimed secure engagement  
12 retaining forces because the references don't teach that. And  
13 the fact that they're saying they wouldn't be treated only  
14 raises a bigger question that it really wouldn't necessarily  
15 need those retaining forces.

16 As I noted, they alleged using the 20 gsm nonwoven  
17 backsheet from Karami '626 T-shaped diaper, and we just went  
18 through how that isn't something that is designed to engage  
19 fasteners. You can't say based on the fact that Karami  
20 disclosed it in a diaper that it necessarily engages fasteners  
21 because it is not designed to and was never intended to in  
22 Karami '626 to engage fasteners. So the fact that Petitioner's  
23 counsel is acknowledging that that wouldn't be treated or  
24 nothing would have been done to enhance its ability to engage  
25 fasteners further shows that they're not going to be able to

IPR2020-01477 (Patent 8,152,788 B2)

IPR2020-01478 (Patent 8,784,398 B2)

IPR2020-01479 (Patent 8,771,249 B2)

IPR2020-01480 (Patent 8,708,990 B2)

1 meet -- they haven't and can't meet the burden of inherency in  
2 saying that it's necessarily so.

3 And finally, on Stupperich, I would just note that  
4 the specific embodiment, the examples that they have taken  
5 from Stupperich are two different embodiments, and they're two  
6 embodiments of a T-shaped -- or a belt diaper, a T-shaped  
7 diaper. And what they've done is they're going to take one  
8 aspect of the belt and put it on a belt and another aspect of  
9 the belt and put it on the body of the diaper, and they haven't  
10 really said why and haven't sufficiently explained why one of  
11 ordinary skill in the art would have combined two different  
12 embodiments from Stupperich on the nonwoven use on the belt in  
13 a conventional diaper such as Benning. And with that, unless  
14 there's other questions.

15 JUDGE JUNG: I have no questions.

16 JUDGE POWELL: I don't either.

17 JUDGE SCANLON: None from me.

18 JUDGE JUNG: Well, Mr. Albright and Ms. Daley,  
19 thank you for your presentation. It's been very helpful to  
20 the panel to decide these cases. Your cases are submitted and  
21 we are adjourned. Thank you.

22 (Off the record at 3:59 p.m.)

IPR2020-01477 (Patent 8,152,788 B2)  
IPR2020-01478 (Patent 8,784,398 B2)  
IPR2020-01479 (Patent 8,771,249 B2)  
IPR2020-01480 (Patent 8,708,990 B2)

PETITIONER:

Eagle H. Robinson  
Jeremy B. Albright  
Michael J. Pohl  
NORTON ROSE FULBRIGHT US LLP  
eagle.robinson@nortonrosefulbright.com  
jeremy.albright@nortonrosefulbright.com  
michael.pohl@nortonrosefulbright.com

PATENT OWNER:

Joshua L. Goldberg  
Kathleen A. Daley  
Justin E. Loffredo  
FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP  
joshua.goldberg@finnegan.com  
kathleen.daley@finnegan.com  
justin.loffredo@finnegan.com