

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ATTENDS HEALTHCARE PRODUCTS, INC.,
Petitioner,

v.

PAUL HARTMANN AG,
Patent Owner.

IPR2020-01479
Patent 8,771,249 B2

PETITIONER'S REPLY BRIEF ON REMAND

I. The Benning-Karami '626 Grounds Are Not Finally Decided

PO's contention that the Benning-Karami '626 grounds are "finally decided against Petitioner" is incorrect. PO Br., 1-2. The CAFC would have reversed the Board if "finally decid[ing] against Petitioner" (*see DSS Tech. Mgmt., Inc. v. Apple Inc.*, 885 F.3d 1367, 1377 (Fed. Cir. 2018)), but instead "vacate[d] the Board's determinations and remand[ed] for further proceedings." Paper 33, 2, 10.

PO contends that the CAFC found a general lack of substantial evidence that the Benning-Karami '626 diaper would have had the claimed retaining forces (PO Br., 1-2), but the CAFC's finding was limited to a specific determination that the Board need not rely on for obviousness. In particular, the CAFC found that the FWD relied on a combination whose nonwoven wings only had the parameters disclosed in Benning because the FWD stated that the combination "does not require modifying" Benning's nonwoven wings. *See* Paper 33, 7-8 (emphasis added). Because Benning does not disclose its nonwoven wings' bonding area and pore size that purportedly impact retaining forces, the CAFC held that substantial evidence did not support a finding that those parameters are the same for Benning's disclosed wings and Karami '626's nonwoven backsheet and thus that a combination with Benning's "unmodified" wings would have had the claimed retaining forces. *Id.*

The CAFC's decision does not foreclose the Board from making other findings, including that "modifying" Benning's wings to have Karami '626's

preferred bonding area and pore size for a fastener-engaging nonwoven would have been obvious to achieve the now-undisputed goal of size-adjustability through fastener-engagement with the wings. Paper 36, 2-3. The Board can also find, more generally, that a POSITA had the skill to select unstated parameters for Benning's wings to achieve this goal. *See* Reply, 17 (citing PO's expert on ordinary skill). This should—at a minimum—be colored by PO's admission that, for fastener-engaging nonwovens like those in the combination's wings and backsheet, higher retaining forces are “essentially ensured” by higher basis weights, which Benning's wings undisputedly have over Karami '626's backsheet nonwoven (Paper 36, 2).

II. PO's Karami '772-Based Contentions Fail

PO asserts that Petitioner did not establish the “relative retaining forces on the [Karami '772-Benning] diaper.” PO Br., 2-3. But the Petition did with two independent showings: (1) that the wings of Karami '772's diaper are treated to “increase[] shear and peel strength” and the stay-away zone of its backsheet nonwoven is not, and (2) that higher basis weight wings would have been obvious, yielding retaining forces higher in the wings than in even the treated portion of the backsheet outside of the stay-away zone. Petition, 32-33.

Despite PO's contrary assertion, the Petition also showed Karami '772's fastener-backsheet retaining forces are sufficient to hold the diaper on a wearer, both in (1) the stay-away zone, given that it is formed of a nonwoven that, per Karami

'626, achieves such retaining forces using the same fastener as Karami '772, and (2) the backsheet's treated portion as Karami '772 makes explicit. Petition, 31-32.

For the numeric retaining forces, the Petition showed that the Karami '772-Benning diaper achieved the same “surprising” result as the '249 Patent: balancing size-adjustability with proper diaper-sizing by allowing fastener engagement in both the wings and backsheet nonwoven, with relatively lower retaining forces in the stay-away zone to encourage fastening to the wings and thus discourage—but not prevent—a user from donning a diaper larger than needed. Petition, 35-37; Reply, 10-11. The claimed optimum or workable values for the same retaining force variable to achieve the same result are not inventive. Petition, 35-37; Reply, 10-11.

III. PO's Stupperich-Based Contentions Fail

PO contends that Stupperich does not teach a diaper having differing basis weights or retaining forces and that “Petitioner never provided a reason” for using Stupperich's higher- and lower-basis-weight nonwovens in the Benning-Karami '626 diaper. PO Br., 3. But Petitioner did. Those nonwovens satisfied the now-undisputed desire for higher-basis-weight wings and a lower-basis-weight backsheet (both fastener-engageable) in that diaper (Paper 33, 5, 7), while also desirably balancing closing reliability and durability. Petition, 76-78; Reply, 25-26.

Dated: June 12, 2024

/Eagle H. Robinson/
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on June 12, 2024, a complete copy of Petitioner's Reply Brief on Remand was served on Lead and Backup Counsel for Patent Owner via email (by consent) to:

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