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PTAB Nixes Kimberly-Clark's Pull-Ups Patent In Diaper Row

By Kevin Penton

Law360, New York (December 16, 2015, 4:48 PM ET) -- The Patent Trial and Appeal Board has invalidated all 54 claims of a Kimberly-Clark patent for the refastenable seams found on its Pull-Ups training pants, agreeing with First Quality Baby Products LLC in a yearslong patent battle between the companies that prior art makes the concept obvious.

PTAB determined that a publication and two patents that precede Kimberly-Clark Worldwide Inc.'s U.S. Patent Number 8,747,379 B2 invalidate the 54 asserted claims, according to final written decisions filed in three related inter partes reviews on Dec. 10 and Monday.

The board found that First Quality persuasively argued that a person of ordinary skill would have been able to use the prior art to create the claimed invention of "refastenable sideseams" added to a disposable training pant, according to the three closely-written decisions.

"Petitioner has demonstrated by a preponderance of the evidence that all challenged claims are unpatentable on the grounds asserted," reads one of the closely-written decisions.

Kimberly-Clark argued that skilled artisans with knowledge of the prior art would have expected training pants with refastenable seams to fail, because they would have assumed that children would have been able to take them apart, according to one of the decisions.

But PTAB agreed with First Quality that the challenged claims do not require "fastening efficacy," do not discuss the issue raised by Kimberly-Clark and do not allege that they resolve such a situation.

"Indeed, both the '379 patent and [U.S. Patent Number 5,062,839] utilize hook and loop fasteners, such as Velcro, which patent owner alleges suffers from the problem of unintentional seam failure," the three decisions read. "Thus, unintentional seam failure due to the alleged weakness of refastenable seams is not a persuasive basis on which to distinguish the challenged claims from the prior art."

In September, U.S. District Judge William C. Griesbach also sided with First Quality in determining that challenged claims of the '379 patent are made obvious because a different



patent than the one cited in the PTAB inter partes reviews anticipated it.

Judge Griesbach also ruled that the '379 patent should be deemed invalid because it is a "continuation" of a "parent" patent — U.S. Patent No. 6,849,067 — he had deemed invalid because of obviousness in 2012, a ruling upheld by the Federal Circuit in 2014. Applications for both patents were filed in November 1999 and they share the same drawings, specifications and inventors, he determined.

Overall, the two companies have battled over at least 11 different patents in Pennsylvania and Wisconsin federal courts since 2009.

"Rarely do we see a situation where the same patent claims are found invalid on three separate grounds," said Kenneth P. George, lead counsel for First Quality, in a statement.

Counsel for Kimberly-Clark could not be reached Wednesday for comment.

The patent at issue is U.S. Patent Number 8,747,379 B2.

Representing First Quality are [Kenneth P. George](#) and [Brian A. Comack](#) of Amster Rothstein & Ebenstein LLP.

Representing Kimberly-Clark are Jennifer E. Hoekel and B. Scott Eidson of Armstrong Teasdale LLP.

The cases are First Quality Baby Products LLC v. Kimberly-Clark Worldwide Inc., case numbers IPR2014-01021, IPR2014-01023 and IPR2014-01024, before the Patent Trial and Appeal Board.

--Editing by Catherine Sum.

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