

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte ACHIM SCHMITT

Appeal No. 2005-1242
Application No. 09/242,014

ON BRIEF

Before McQUADE, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection (mailed May 14, 2003) of claims 1 and 6 to 9. Claims 2 to 5 and 10 were canceled prior to the final rejection. On page 2, of the brief (filed July 3, 2003), the appellants state "[c]laims 6-9 are cancelled. Claim 1 is being appealed." Accordingly, the appeal with respect to claims 6 to 9 is dismissed. Claim 1 remains on appeal.

We REVERSE.

BACKGROUND

The appellant's invention relates to disposable absorbent articles such as sanitary napkins, pantliners and incontinence pads that have side wrapping elements, also called wings on each longitudinal side edge of the article for protection of the side edges of the wearer's undergarment. The side wrapping elements are joined to the absorbent article such that they are predisposed towards their in-use-position, with the outermost edge of the side wrapping elements towards the longitudinal center line of the article. In this configuration the side wrapping elements can be unfolded by pulling the outermost edge of each side wrapping element in a transverse direction and applying the unfolded article to the crotch position of the wearers undergarment (specification, p.

1). Claim 1 reads as follows:

Disposable absorbent article (20) for wear in an undergarment, comprising: a longitudinal axis (L) and a transverse axis (T), said disposable absorbent article comprising a main body portion (21) having longitudinal side edges (23) substantially extending parallel to said longitudinal axis (L) and having transverse side edges (22) substantially extending parallel to said transverse axis (T), said main body portion (21) further having a wearer facing surface and a garment facing surface, and said disposable absorbent article comprising side wrapping elements that are integral with said main body portion (21) said wrapping elements being folded along fold lines and attached to said garment facing side of said main body portion such that said side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,454,804¹ to Widlund.

The conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection are set forth in the answer (mailed September 23, 2003) and the brief (filed July 3, 2003).

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claim 1, to the Widlund patent, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we will not sustain the anticipation rejection of claim 1 for the reasons which follow.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between

¹Issued October 3, 1995.

the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

In the rejection before us in this appeal, the examiner (answer, p. 3) determined that claim 1 was readable on Widlund as follows:

Widlund discloses a sanitary napkin, as shown in figure[s] 1-6, for wearing the crotch portion of an undergarment (9). The sanitary napkin has a longitudinal axis and a transverse axis, and comprises a main body portion having longitudinal and transverse side edges, as shown in figures 1 and 5. The main body portion comprises a wearer facing surface (1) and a garment facing surface (2). The sanitary napkin comprises side wrapping elements (4, 5) that are integrally connected to the main body portion. The side wrapping elements (4, 5) are intended to be folded around the edges of the leg opening's of a wearer's undergarment (9), and are therefore folded along fold lines, as shown in figure 6. The side wrapping elements (4, 5) are attached to the garment facing surface (2) of the main body portion such that the side wrapping elements (4, 5) are predisposed in an in-use position prior to use, as shown in figure 3.

The appellant states in the brief that claim 1 is directed only to the Figure 3 embodiment of the invention in which side wrapping elements integral with the main body portion are folded along fold lines and attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article. The appellant asserts that claim 1 is not readable on the Figure 4 embodiment of the invention in which separate side wrapping elements are attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article. The appellant argues that Widlund teaches separate flaps attached to the garment facing side of the main body portion akin to his Figure 4 embodiment, not the claimed Figure 3 embodiment.

Claim 1 is not anticipated by Widlund. Claim 1 requires the disposable absorbent article to include side wrapping elements integral with the main body portion are folded along fold lines and attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article. While Widlund's flaps may well be considered to be "integral" with the main body portion as argued by the examiner (answer, p. 4), Widlund's flaps are not integral with the main body portion and **folded**

along fold lines and attached to the garment facing side of the main body portion such that the side wrapping elements are pre-positioned in an in-use-position prior to the use of the disposable absorbent article.

For the reasons set forth above claim 1 is not anticipated by Widlund. Accordingly, the decision of the examiner to reject claim 1 under 35 U.S.C. § 102(b) is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 under 35 U.S.C. § 102(b) is reversed.

REVERSED

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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