

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 BRIAN ROBERT VOGT,
KURT GARRETT KRUPKA,
BRADLEY M. MAROHL,
DAVID ALBERT MAXON,
ROBERT L. POPP and
MICHAEL WILLIAM PROTHEROE

Appeal No. 2006-0544
Application No. 10/159,076

ON BRIEF

Before GARRIS, WARREN and KRATZ, Administrative Patent Judges.
KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-19, 29, and 61 which are all of the remaining rejected claims pending in this application. In this regard, claims 20-28 and 30 stand objected to as depending upon a rejected base claim by the examiner and have been indicated as being allowable as set forth by the examiner at page 2 of the answer. Claims 31-60 have been cancelled as set forth at page 2 of the answer.

BACKGROUND

Appellants' invention relates to a method for initial assembly of a pre-fastened garment wherein fastening components thereof are engaged with each other to define an engagement seam. Thereafter, the garment is mechanically handled to increase engagement between fastening components thereof. A further understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

A method for securing engagement between fastening components of a pre-fastened garment upon initial assembly thereof, the fastening components being capable of fastening engagement with each other, the method comprising the steps of:

arranging the fastening components in at least partially opposed relationship with each other;

engaging the fastening components with each other to define an engagement seam; and

mechanically handling the garment to generate a shear stress at the engagement seam to promote increased engagement between the fastening components while one of stretching at least one of the fastening components and maintaining the fastening components and maintaining the fastening components in a generally relaxed condition.

In addition to alleged admitted prior art, the prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Siebers et al. (Siebers) 5,318,555 Jun. 07, 1994

Matsushita 6,443,937 Sep. 03, 2002

Claims 1-19, 29, and 61 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over alleged admitted prior art at page 1 of the specification in view of Siebers et al. and Matsushita.

We refer to the brief and reply brief, and to the answer for an exposition of the opposing viewpoints expressed by appellants and the examiner concerning the issues before us on this appeal.

OPINION

Having considered the entire record of this application, including the arguments advanced by both the examiner and appellants in support of their respective positions, we find ourselves in agreement with appellants' position in that the examiner has not met the burden to show, prima facie, that the applied prior art renders the subject matter of the rejected claims obvious within the meaning of 35 U.S.C. § 103(a). Accordingly, we reverse the rejection advanced by the examiner. Our reasoning follows.

Appellants argue that the examiner has not fairly established that the applied prior art discloses or suggests mechanical handling of a garment after an engagement seam is formed via the engagement of fastening components thereof, as variously required by all of the rejected claims. See rejected independent claims 1, 12, and 61.

We agree with appellants substantially for the reasons set forth at pages 5-14, and 16 of the brief, and pages 1-6 of the reply brief.

The examiner correctly recognizes that the alleged admitted prior art technique for making a child's training pants set forth at page 1, lines 16-23 of appellants' specification discloses many of appellants' claimed method steps. However, appellants' claimed mechanical handling step is not listed in the specification excerpt, which excerpt is asserted as acknowledged prior art by the examiner. In this regard, the examiner turns to both Siebers and Matsushita.

Siebers is concerned with garments, like disposable diapers, that include hook and loop fasteners and the use of tension for obtaining increased latching strengths between loop panels and hook tabs. As set forth at column 5, lines 30-62 of Siebers, a diaper is placed around a wearer, a hook panel placed under tension and then engaged with loop members of a loop panel flap. The examiner seemingly recognizes that Siebers does not make a pre-fastened garment in a manner as here claimed.

Nonetheless, the examiner asserts that Siebers would have suggested mechanical manipulation in a pre-fastened garment manufacturing method to one of ordinary skill in the art because "one viewing Siebers et al would have understood how to increase the hold of the mating components and would have been led to do the same in order to make sure that the fit was good." See page 6 of the answer. In this regard, the examiner also asserts that problems with existing techniques for manufacturing conventional garments, as outlined at page 1, line 24-32 were known and that

mechanical handling, as claimed by appellants, merely requires engagement of a mechanical fastener, as opposed to using a chemical fastener.

The difficulty we have with the obviousness position of the examiner is that the examiner has not fairly established that the problems associated with prior methods of manufacturing pre-fastened garments as reported at page 1 of appellants' specification were recognized in the prior art so as to be utilized as motivation to somehow apply the tensioning step employed in placing a diaper about a wearer of Siebers in a pre-fastened diaper manufacturing method, as here claimed. Moreover, even if those problems were well-known to one of ordinary skill in the art of manufacturing pre-fastened garments, the examiner has not established that one of ordinary skill in the art would have found the here claimed mechanical handling of the garment, after formation of a seam, as an obvious solution to that manufacturing problem. From our perspective, the teachings of Siebers respecting manual manipulation in placing a garment about a wearer, with or without the additional teachings of Matsushita have not been shown by the examiner to address the problem that appellants faced in the manufacture of a pre-fastened garment, much less the solution for that problem set forth in the claims before us.

In this regard, we are in full agreement with appellants (see pages 1-3 of the reply brief) that "mechanically handling the garment ..." as recited in the appealed claims does not encompass manual manipulation as asserted by the examiner. As aptly explained by appellants, the claim term "mechanically" modifies the claim term

"handling" and is not used to limit the type of fastening components employed for engagement as maintained by the examiner.

Moreover, the examiner's reliance on In re Venner, 262 F.2d 91, 120 USPQ 192 (CCPA 1958) is misplaced for reasons set forth by appellants at pages 14-16 of the brief. As for the examiner's additional reliance on Matsushita concerning the alleged prior art teachings related therein about engagement of fastener components followed by manipulation, we agree with appellants (brief, pages 8 and 9, and reply brief, page 6) that Matsushita imparts basically the same information that Siebers furnishes concerning the manual fastening of a diaper on a wearer. The examiner has not persuasively established how Matsushita reasonably discloses or suggests the particular mechanical handling step of a garment after engaging the fasteners in a garment making method, as appellants claim.

In short, the record before us does not support a conclusion that the examiner has met the burden of presenting a prima facie case of obviousness. It follows that we do not sustain the examiner's § 103(a) rejection on this record.

CONCLUSION

The decision of the examiner to reject claims 1-19, 29, and
61 under 35 U.S.C. § 103(a) as being unpatentable over alleged
admitted prior art at page 1 of appellants' specification in view
of Siebers and Matsushita is reversed.

REVERSED

BRADLEY R. GARRIS)
Administrative Patent Judge)
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) BOARD OF PATENT
CHARLES F. WARREN) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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PETER F. KRATZ)
Administrative Patent Judge)

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SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST. LOUIS, MO 63102

Comment [jvn1]: Type address

APPEAL NO. - JUDGE KRATZ
APPLICATION NO. 10/159,076

APJ KRATZ

APJ GARRIS

APJ WARREN

DECISION: ED

Prepared By: TRACEY FLEMING

DRAFT TYPED: 25 Aug 06

FINAL TYPED: