

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 LARRY W. MCCLELLAND

Appeal 2006-2010
Application 10/349,684
Technology Center 3700

Decided: March 16, 2007

Before TERRY J. OWENS, MURRIEL E. CRAWFORD, and HUBERT C. LORIN, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 1-8. Claims 9-28 stand withdrawn from consideration by the Examiner as claiming a nonelected invention.

THE INVENTION

The Appellant claims an article of footwear having a lower peripheral edge of an upper joined to an outsole only by a cushioning material directly attached to both of them. Claim 1 is illustrative:

1. An article of footwear comprising:

an upper including a lower peripheral edge;

an outsole including a wearing surface, an upper surface opposite the wearing surface, a peripheral wall extending upwardly around at least a portion of the upper surface, said peripheral wall including at least one protrusion extending inwardly from said peripheral wall and disposed above said upper surface a first pre-selected distance; and

a material direct attached to said lower peripheral edge and said outsole, the material bonding to said lower peripheral edge and said outsole, so that said lower peripheral edge of the upper and the outsole are joined only by direct attachment of the material to both the lower peripheral edge of the upper and the outsole, wherein the material also forms a cushioning layer between the outsole and the upper.

THE REFERENCES

Aoki	US 6,041,520	Mar. 28, 2000
McClelland	US 6,226,895 B1	May 8, 2001

THE REJECTIONS

Claims 1-8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Aoki in view of McClelland.¹

OPINION

We affirm the aforementioned rejections.

¹ The Examiner relies upon official notice in the rejection of claim 5 (Answer 4-5).

The Appellant does not separately argue dependent claims 2-8 (Br. 5-8). We therefore limit our discussion to the sole independent claim, i.e., claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

Aoki discloses a safety shoe having an outsole (11) attached to a peripheral edge of a vamp (2) by a midsole (12) everywhere except at the outsole's upper edge where the attachment is by way of a circumferential member (14) (col. 7, ll. 11-19; fig. 5). The midsole is sponge rubber and the circumferential member is hard rubber (col. 7, ll. 17-21). “[T]he upper circumferential edge of the outsole part **11** or the midsole part **12** may be fused directly with the lower circumferential edge **2a** of the vamp **2** by the vulcanization molding without interposing the circumferential member **14**” (col. 11, ll. 41-45).

McClelland discloses a boot comprising an outsole peripheral wall (48) having scallops (60) or other protrusions near its upper end that extend inwardly into a filling material (24) such as polyurethane (col. 3, ll. 55-57; col. 4, ll. 17-19; fig. 4). “The scallops **60** interlock with the filler **24** [to] improve the interconnection of the various sole components. If desired, the scallops **60** may define apertures (not shown) through which the filler **24** can flow to further improve the interconnection of the sole components” (col. 4, ll. 21-24).

The Appellant argues that Aoki's circumferential member is required and is not a cushioning layer (Br. 6-7; Reply Br. 2). The Appellant is incorrect as to the circumferential member being required. Aoki teaches that the upper circumferential edge of the outsole or the midsole can be fused directly with the lower circumferential edge of the vamp without interposing the circumferential member (col. 11, ll. 41-45). Aoki, therefore, would have

indicated to one of ordinary skill in the art that the outsole can be joined to the lower circumferential edge of the vamp by way of only the midsole.

The Appellant argues that there is no suggestion or motivation to combine or modify Aoki in view of McClelland because each of them is individually satisfactory for joining an upper and an outsole (Br. 7; Reply Br. 2-3). That motivation would have been to include McClelland's scallops or other protrusions in Aoki's sole to improve the interconnection of the sole components as taught by McClelland (col. 4, ll. 21-25).

For the above reasons we conclude that the Appellant's claimed invention would have been obvious to one of ordinary skill in art over the applied prior art.

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DECISION

The rejection of claims 1-8 under 35 U.S.C. § 103 over Aoki in view of McClelland is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

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