

1 The opinion in support of the decision being entered today was *not* written
2 for publication and is *not* binding precedent of the Board
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4 UNITED STATES PATENT AND TRADEMARK OFFICE
5

6

7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES
9

10

11 *Ex parte* VINCENT E. ANIWANOU
12

13

14 Appeal 2006-3406
15 Application 10/383,906
16 Technology Center 3700
17

18

19 Decided: March 30, 2007
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22 Before: MURRIEL E. CRAWFORD, STUART S. LEVY, and ANTON W.
23 FETTING, *Administrative Patent Judges.*
24

25 LEVY, *Administrative Patent Judge.*
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27

28 DECISION ON APPEAL
29

30 STATEMENT OF CASE

31

32 Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection
of claims 1-7¹. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

¹ Application filed March 7, 2003. Appellant claims the benefit of Provisional application 60/367,038, filed March 25, 2002 (Specification 1). The real party in interest is the inventor (Br. 2).

1 Appellant invented a money belt 10, which is a flat pouch 58, having
2 a zipper 22 on one side. (Specification, p. 1).

3 Claim 1 is representative of the invention and reads as follows:

- 4 1. An improved, secure money holder comprising:
5 a) a pouch, no wider than a waist worn belt, having an inner
6 layer and an outer layer; said outer layer adapted to removably
7 attach to the inside of said waist worn belt; said pouch defining
8 an interior; and
9 b) a zipper incorporated in said inner layer, whereby said
10 interior is only accessible through said zipper.

11
12 The Examiner rejected claims 1-7 under 35 U.S.C. § 112 (second
13 paragraph) as being indefinite. The Examiner also rejected claims 1-7 under
14 35 U.S.C. § 102(e) as being anticipated by Kennedy. In addition, the
15 Examiner rejected claims 1-7 under 35 U.S.C. § 103(a) as being
16 unpatentable over Repka in view of Smith.

17
18 The prior art relied upon by the Examiner in rejecting the claims on
19 appeal is:

20 Smith	US 2,317,820	Sep. 8, 1941
21 Repka	US 4,139,133	Feb. 13, 1979
22 Kennedy	US 6,435,392 B1	Aug. 20, 2002

23
24 With respect to the rejection of claims 1-7 under 35 U.S.C. § 112
25 (second paragraph) Appellant contends (Br. 11) that the terms and phrases
26 used in the claims find clear support or antecedent basis in the description.
27 The Examiner contends (Answer 3) that the recitation that the claimed pouch

1 is no wider than a waist worn belt is indefinite because the dimensions or
2 range of the pouch encompassed by this limitation cannot be determined.
3 The Examiner adds that the specification fails to set forth the dimensions or
4 range that the width of the waist worn belt would accomplish.

5 With regard to the rejection of claims 1-7 under 35 U.S.C. § 102(e)
6 Appellants have filed a Declaration of Prior Invention under 37 C.F.R.
7 § 1.131 (filed November 29, 2004) in an attempt to swear behind the filing
8 date of the Kennedy reference. In addition, Appellants contend (Br. 10) that
9 Kennedy describes two pouches, one within the other, with the outer pouch
10 attached to the belt and not to the inside of a belt. Appellant additionally
11 contends that the Kennedy invention is much wider than a belt. The
12 Examiner contends (Answer 3) that Kennedy teaches a pouch 54 with inner
13 and outer layers (Fig. 8), a zipper, and hook and loop fasteners 58.

14 With respect to the rejection of claims 1-7 under 35 U.S.C. § 103(a) as
15 being unpatentable over Repka in view of Smith Appellant contends (Br. 10)
16 that Repka is not a pouch and that Smith is not similar in purpose and design
17 to the Repka invention. The Examiner contends (Answer 4) that it would
18 have been obvious to have replaced the hook and loop fastener of Repka
19 with a zipper as taught by Smith.

20 We affirm.

21 ISSUES

22 With respect to the rejection of claims 1-7 under 35 U.S.C. § 112
23 (second paragraph) the issue is whether the metes and bounds of these
24 claims would have been clear to an artisan in light of Appellant's disclosure.

1 With respect to the rejection of claims 1-7 under 35 U.S.C. § 102(e) the
2 issue is whether Kennedy anticipates the language of these claims, and if so,
3 whether Appellant has successfully sworn behind the filing date of the
4 Kennedy reference. With respect to the rejection of claims 1-7 under
5 35 U.S.C. § 103(a) as being unpatentable over Repka in view of Smith, the
6 issue is whether the combined teachings and suggestions of Repka and
7 Smith would have suggested to an artisan the language of claims 1-7. The
8 issue turns on whether Repka describes a pouch and whether Smith would
9 have suggested to an artisan replacing the hook and pile fasteners 24c, 24d
10 with a zipper, or adding a zipper to the structure of Repka.

11

12 FINDINGS OF FACT

13 Based upon a preponderance of the evidence, we make the following
14 findings of fact:

- 15 1. Appellant invented a money belt. (Specification 1).
- 16 2. The invention is a flat pouch with a zipper on one side that
17 removably attaches to the inside of any belt, typically at the rear.
18 (Specification 2).
- 19 3. The inner layer of the pouch is made out of a sheet of material that
20 is no wider than the belt the pouch will eventually attach to. (*id.*).
- 21 4. The outer layer of the pouch is attached to the inside of the belt.
22 Preferably this is accomplished with adhesive backed hook and
23 loop fastener. (Specification 3). The layers of the pouch are no
24 wider than the width of a standard belt. (Specification 4).

- 1 5. Fig. 4 shows the money belt of pouch 58 to have a width less than
- 2 the width of belt 66.
- 3 6. Kennedy is directed to a waterproof swimming pouch. (col. 1, l. 1).
- 4 7. The waterproof swimming pouch of Kennedy is provided with an
- 5 inner pouch liner that serves to waterproof the personal belongings
- 6 of the user. (col. 1, ll. 59-61).
- 7 8. In figure 1 of Kennedy, strap end 16 of strap 18 is sewn in place.
- 8 (col. 3, ll. 15-16).
- 9 9. In figure 2 of Kennedy, waist strap 30 is permanently attached to
- 10 the enclosure left end portion. (col. 3, ll. 29-31).
- 11 10. In figures 7-9 of Kennedy, the closure means comprises zipper 56.
- 12 (col. 4, ll. 11-12).
- 13 11. In figure 10 of Kennedy, backpack 70 has straps 70 fixed thereto.
- 14 (col. 5, l. 20).
- 15 12. In figure 12 of Kennedy, waist bag 90 includes a two-piece belt
- 16 fixed to first pouch 92. (col. 5, ll. 54-55).
- 17 13. Repka is directed to a money belt. (col. 1, l. 3).
- 18 14. Repka discloses that the money belt is used in conjunction with a
- 19 user's belt. (col. 1, ll. 7-8).
- 20 15. In the Background of the Invention, Repka describes how, in prior
- 21 art money belts, the pocket was opened and closed by use of
- 22 zippers and similar types of closure elements. (col. 1, ll. 12-16).
- 23 16. Figure 3 of Repka shows the money belt in vertical disposition
- 24 mounted against the inside surface of a belt. (col. 2, ll. 23-25).

- 1 17. In Repka, money or paper bills are securely maintained in the
- 2 cavity defined by locking flap 14, base panel 12, and the juncture
- 3 between base panel 12 and mounting panel 16. (col. 2, ll. 55-58).
- 4 18. Fastening member 24 has an adhesive coating 24b on one side and
- 5 a wooly material 24c on the other side for connecting to hooked
- 6 material 24d on base panel 12. (Repka, col. 2 l. 60-col. 3, l. 6).
- 7 19. In use, the detachable money belt is easily affixed to the inside
- 8 surface of belt 20by pressing adhesive material 24b against the
- 9 surface of the wearing apparel (such as a belt). (Repka, col. 3,
- 10 ll. 7-11).
- 11 20. Smith is directed to a purse or wallet that is provided at the upper
- 12 end with a loop of flexible material to receive the belt of a user.
- 13 (col. 1, ll. 29-32).
- 14 21. As shown in figure 2 of Smith, the purse or wallet has a flap 18
- 15 and a fastener 20. As shown in the embodiment of figures 4-6, a
- 16 zippered opening 24, 25 is provided in the back of the purse. (col.
- 17 2, ll. 37-39).

18

19 PRINCIPLES OF LAW

20 The second paragraph of 35 U.S.C. § 112 requires claims to set out

21 and circumscribe a particular area with a reasonable degree of precision and

22 particularity. *In re Johnson*, 558 F.2d 1008, 1015, 194 USPQ 187, 193

23 (CCPA 1977). In making this determination, the definiteness of the

24 language employed in the claims must be analyzed, not in a vacuum, but

25 always in light of the teachings of the prior art and of the particular

1 application disclosure as it would be interpreted by one possessing the
2 ordinary level of skill in the pertinent art. *Id.*

3 The examiner's focus during examination of claims for compliance
4 with the requirement for definiteness of 35 U.S.C. § 112, second paragraph,
5 is whether the claims meet the threshold requirements of clarity and
6 precision, not whether more suitable language or modes of expression are
7 available. Some latitude in the manner of expression and the aptness of
8 terms is permitted even though the claim language is not as precise as the
9 examiner might desire.

10 To support a rejection of a claim under 35 U.S.C. § 102, it must be
11 shown that each element of the claim is found, either expressly described or
12 under principles of inherency, in a single prior art reference. *See Kalman v.*
13 *Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir.
14 1983).

15 On appeal, Appellant bears the burden of showing that the Examiner
16 has not established a legally sufficient basis for combining the teachings of
17 the applied prior art. Appellant may sustain this burden by showing that,
18 where the Examiner relies on a combination of disclosures, the Examiner
19 failed to provide sufficient evidence to show that one having ordinary skill
20 in the art would have done what Appellant did. *United States v. Adams*, 383
21 U.S. 39 (1966); *In re Kahn*, 441 F.3d 977, 987-988, 78 USPQ2d 1329, 1336
22 (Fed. Cir. 2006); *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H.*
23 *Patrick, Co.*, 464 F.3d 1356, 1360-1361, 80 USPQ2d 1641, 1645 (Fed. Cir.
24 2006).

25

1 ANALYSIS

2 We begin with the rejection of claims 1-7 under 35 U.S.C. § 112
3 (second paragraph) as being indefinite. From facts 1-5 we find that the
4 money belt is to be configured so that it is less than or equal to the width of
5 the belt it is to be used with. From this finding, we are not in agreement
6 with the Examiner's holding that the recitation of the money belt or pouch
7 being no wider than a waist worn belt is indefinite. Rather, we find the
8 recitation that the money belt or pouch is no wider than a waist worn belt, to
9 mean that the money belt or pouch is made to be no wider than whatever
10 width belt it is worn with. Thus, we find that an artisan would consider the
11 disputed claim language to be readily understandable from Appellant's
12 disclosure. Since the waist worn belt is not part of the claimed invention, we
13 hold that the metes and bounds can be readily ascertained.

14 Turning to the rejection of claims 1-7 under 35 U.S.C. § 102(e) as
15 being anticipated by Kennedy, we note at the outset that we need not address
16 the Declaration under 37 C.F.R. § 1.131 because we agree with Appellant,
17 for the reasons which follow, that Kennedy fails to anticipate claims 1-7.

18 From facts 6-12 we find that in each of the embodiments of Kennedy,
19 the belt is fixedly secured to the pouch. We find nothing in Kennedy to
20 teach that the waterproof pouch is adapted to be removably attached to the
21 inside of a waist worn belt, because Kennedy has no structure that could be
22 used to attach the pouch to the inside of a waist worn belt. In addition, from
23 the disclosure of Kennedy that the pouch is made to coordinate colors and
24 patterns to swim wear (col.1, ll. 42-46), we find that the pouch of Kennedy
25 is not made to be worn under or attached to a belt, but rather is made to be

1 worn over a swim suit. We do find that the pouch of Kennedy is capable of
2 being connected to a user under a waist worn belt, but not attached to a waist
3 worn belt. Accordingly, we agree with Appellant that the Examiner erred
4 in rejecting claims 1-7 under 35 U.S.C. § 102(e) as being anticipated by
5 Kennedy.

6 Turning to the rejection of claims 1-7 under 35 U.S.C. § 103(a) we
7 find from facts 13-19 that Repka meets the claimed invention with the
8 exception of the pouch being closed by a zipper. From the description in
9 Repka that money belts are known to use zippers as well as similar types of
10 closure elements (fact 15) and the disclosure in Smith of using a zipper to
11 provide access to the back of a pouch hung from a belt, we find that an
12 artisan would have been motivated to either replace the hook and loop
13 connector of Repka with a zipper, or to add a zipper to the pouch of Repka
14 as taught by Smith.

15 We are not persuaded by Appellant's assertion (Br. 10) that the Repka
16 invention is not a pouch, because money belt 10 forms a holder for paper
17 money 22 as shown in figures 3 and 4. Nor are we persuaded by Appellant's
18 assertion (*id.*) that Smith is not similar in purpose and design to the Repka
19 invention, because Smith 16 is a pouch (col. 2, line 34), and because the
20 purse or wallet is designed to be hung from a belt and have a zipper provide
21 the opening in the back of the purse or wallet.

22 Nor are we persuaded by Appellant's assertion (Br. 11) that there is no
23 suggestion in Smith that the purse should be hidden behind the belt, because
24 Smith is not relied upon for this feature. From all of the above, we are not

1 convinced of error on the part of the Examiner in rejecting claims 1-7 under
2 35 U.S.C. § 103(a) as being unpatentable over Repka in view of Smith.

3

4 CONCLUSION OF LAW

5 On the record before us, Appellant has shown that the claims are
6 definite within the meaning of 35 U.S.C. § 112 (second paragraph), and that
7 the examiner erred in rejecting the claims under 35 U.S.C. § 102(e).
8 However, we hold that Appellants failed to show that the Examiner erred in
9 rejecting claims 1-7 under 35 U.S.C. § 103(a) as being unpatentable over
10 Repka in view of Smith. The rejection of claims 1-7 under 35 U.S.C. § 112
11 (second paragraph) is not sustained. The rejection of claims 1-7 under 35
12 U.S.C. § 102(e) as being anticipated by Kennedy is not sustained. The
13 rejection of claims 1-7 under 35 U.S.C. § 103(a) as being unpatentable over
14 Repka in view of Smith is sustained.

15

1 DECISION

2 The Examiner's rejection of claims 1-7 is affirmed.

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

5

6 AFFIRMED

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8 jlb

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10 Belasco, Jacobs & Townsley LLP
11 Howard Hughes Center
12 6100 Center Drive
13 Suite 630
14 Los Angeles, CA 90045