

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENT A. FRANKLIN, VALERIE V. FINCH,
and ROBIN K. NASON

Appeal 2007-0784
Application 10/304,239
Technology Center 3700

Decided: September 24, 2007

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and
CHUNG K. PAK, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-3, 9, 12, 46, and 48. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

Appellants claim an elastic composite 21 comprising a substrate 55, 57 and an elastic member 61 secured to the substrate and extending (1) generally longitudinally of the substrate along an elastic axis 62 of the elastic member or (2) along a crooked securement path 63 (claims 1 and 46; figs. 2, 3, and 5E).

Representative claims 1 and 46 are reproduced below:

1. An elastic composite comprising:

a substrate having a longitudinal axis; and

an elongate elastic member secured to the substrate and extending generally longitudinally of the substrate along an elastic axis of said elastic member between a first location on the substrate and a second location on the substrate spaced longitudinally from the first location, at least a portion of the elastic axis being generally non-parallel to the longitudinal axis of the substrate, the elastic member crossing its elastic axis at least twice as it extends along said elastic axis, said elastic member crossing itself at least once as it extends along said elastic axis.

46. An elastic composite comprising:

a substrate; and

an elastic member secured to the substrate and extending along a crooked securement path between a first location on the substrate and a second location on the substrate spaced longitudinally from the first location, the elastic member defining a loop pattern comprising a continuous series of loops wherein each loop has an open portion and a closed portion,

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substantially the entire closed portion of each loop being secured to the substrate.

The reference set forth below is relied upon by the Examiner as evidence of anticipation:

Mishima US 6,197,012 B1 Mar. 6, 2001

All of the appealed claims are rejected under 35 U.S.C. § 102(b) or (e) as being anticipated by Mishima (Answer 3-6).¹ The Examiner finds that Mishima's adhesive 23 (fig. 3; col. 3, ll. 33-49; para. bridging col. 3-4) fully satisfies the elastic member limitations of independent claims 1 and 46 (Answer 3-6).

INDEPENDENT CLAIM 1

Appellants argue that “the adhesive 23 of Mishima . . . clearly does not extend generally longitudinally of the substrate as recited in claim 1” (Appeal Br. 5). In response, the Examiner “maintains that the elastic adhesive 23 of Mishima has at least some portion that extends in a longitudinal/vertical direction of the substrate since the loop that forms the elastic adhesive 23 has a longitudinal/vertical component” (Answer 7). Concerning this point, the Examiner states that:

Appellant defines [sic, Appellants define] the “elastic axis” as the x-axis that extends longitudinally within the training pants (specification, page 13, lines 24-27) [, and] [t]hus the claim

¹ In the Appeal Brief and Reply Brief, Appellants have argued only claims 1 and 46, the sole independent claims on appeal, with any reasonable specificity. Accordingly, the remaining dependent claims on appeal will stand or fall pursuant to the success or failure of the independent claim arguments.

language is not limited to the “elastic axis” extending along the entire area longitudinally within the absorbent article but rather requires that at least a portion of the ‘elastic axis’ extend longitudinally of the substrate.

(*Id.*).

Claim 1 requires that the elastic member extend “generally longitudinally of the substrate along an elastic axis of said elastic member.” The Examiner’s above-quoted exposition in conjunction with the annotated figures in the Answer (Answer 4, 7) reveal that the Examiner believes this claim limitation is satisfied because the loops of Mishima’s adhesive 23 includes a “vertical” component (i.e., as viewed in Patentee’s figure 3 and the annotated figures of the Answer) which extends in the same direction as the major or longitudinal axis of Mishima’s disposable diaper 1 (figs. 1-3). However, this “vertical” component of Patentee’s adhesive 23 loops does not correspond to the elastic axis of adhesive 23 and, therefore, does not satisfy the claim 1 limitation “extending generally longitudinally of the substrate along an elastic axis of said elastic member.”

This is because Appellants expressly define the elastic axis 62 of each elastic member 61 as “a major or X-axis of the elastic member as it extends generally longitudinally within the training pants 21” (Specification 13:25-27). Contrary to the Examiner’s belief, and as plainly revealed by Mishima’s figure 3 and the annotated figures in the Answer, the “vertical” component of Patentee’s adhesive 23 loops does not correspond to the major or X-axis of adhesive 23 (i.e., elastic member) and, therefore, does not

correspond to the elastic axis of adhesive 23. Rather, in accordance with Appellants' definition, the elastic axis of the adhesive 23 loops shown in figure 3 of Mishima extends transversally of the longitudinal axis of Patente's diaper 1 (para. bridging col. 3-4). As a consequence of this transverse extension, adhesive 23 unquestionably does not extend "generally longitudinally of the substrate along an elastic axis of said elastic member" as required by

claim 1.

For the above-stated reasons, we cannot sustain the Examiner's § 102 rejection of independent claim 1 or of claims 2, 3, 9, and 12 which depend therefrom as being anticipated by Mishima.

INDEPENDENT CLAIM 46

Appellants argue that the securement path of Mishima's adhesive 23 is straight and, therefore, does not satisfy the "crooked securement path" requirement of claim 46 (Appeal Br. 10). In response to this argument, the Examiner finds that the securement path of adhesive 23 becomes crooked or non-linear during use when the diaper side tab portions on which adhesive 23 is disposed "are applied in a circumferential fashion around a user's waist" (Answer 8). In reply, Appellants argue that:

[A]s recited in claim 46 and set forth in the present specification, the "crooked securement path" clearly refers to the relationship between the elastic member and the path along which the elastic member is secured to the substrate [and] is therefore independent of whether the substrate itself is straight when not worn or curved when worn.

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(Reply Br. 5). The Appellants' argument is unpersuasive.

This is because the Specification explicitly teaches that:

[T]he securement path 63 is also considered to be crooked if either a centerline C extending centrally between the edge boundaries A, B and/or either one of the edge boundaries A, B of a portion of the securement path 63 is arcuate, bent or otherwise oblique or non-parallel relative to a particular axis, such as the longitudinal axis X of the pants 21.

(Specification 15:11-17). In accordance with this definition, a securement path is crooked if any portion of its centerline C or either one of its edge boundaries A, B is “arcuate, bent or otherwise oblique or non-parallel relative to a particular axis” (*id.*). When worn, the centerline as well as each of the edge boundaries of Mishima's adhesive 23 are unquestionably arcuate or bent in correspondence to the waist shape of the user relative to the transverse axis shown in Patentee's figure 3 in a non-use disposition. The contrary view expressed by Appellants on page 5 of the Reply Brief is based on an unsupported definition of the claim 46 phrase “crooked securement path” which is contrary to the above-quoted definition from Specification page 15.

Accordingly, we will sustain the Examiner's § 102 rejection of claims 46 and 48 as being anticipated by Mishima.

CONCLUSION

The decision of the Examiner is affirmed-in-part.

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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).

AFFIRMED-IN-PART

clj

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