

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHIKAZU TANAKA and HIROTOMO MUKAI

Appeal 2008-2149
Application 10/115,707
Technology Center 3700

Decided: July 25, 2008

Before, TONI R. SCHEINER, DEMETRA J. MILLS, and RICHARD M. LEBOVITZ, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims for anticipation. We have jurisdiction under 35 U.S.C. § 6(b).

The following claims are representative.

1. A disposable diaper comprising:

a pants member having front and rear waist regions with transversely opposite side edge portions and a crotch region, wherein said transversely

opposite side edge portions of said waist regions are overlaid and joined together so as to define a waist-hole and a pair of leg-holes;

a body fluid absorbent pad lying inside said pants member and extending from said crotch region into said front and rear waist regions; and

a pair of elastically stretchable first and second suspender members lying inside said pants member between the pants member and the body fluid absorbent pad and extending in said front and rear waist regions in a circumferential direction of the diaper, said first and second suspender members being joined under extension in said circumferential direction of the diaper to said pants member, said pad having front and rear ends which extend across middle zones of said front and rear waist regions in a circumferential direction of said pants member and transversely opposite side edges which extend between said front and rear ends, said first and second suspender members respectively have inner ends which extend in said circumferential direction of the diaper bordering on said crotch region, outer ends which extend in said circumferential direction of the diaper in vicinity of said waist-hole and transversely opposite side edges which extend in said longitudinal direction between said inner and outer ends, said front and rear ends of said pad being joined to said first and second suspender members in middle zones thereof as viewed in said circumferential direction of the diaper, said side edges of said first and second suspender members being joined to said front and rear waist regions along the side edges thereof as viewed in said circumferential direction of the diaper and said outer ends of said first and second suspender members being joined to said front and rear waist regions of said pants member along joining zones arranged intermittently in said circumferential direction of the diaper with at least one of said joining zones being immediately outside points at which the front and rear ends and the transversely side edges of the body fluid absorbent pad intersect each other.

Cited References

Yamamoto

EP 0 761 194 A2

Mar. 12, 1997

Grounds of Rejection

1. Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Yamamoto.

DISCUSSION

Background

This invention relates to a “disposable diaper adapted to absorb and retain bodily discharges.” (Spec. 1.) According to the Specification, it is known in the art to have a pair of “belt-like elastic suspender members extending on the front and rear waist regions in a circumferential direction of the waist” in a diaper. (Spec. 1:16-21.)

Appellants’ Specification discloses the “diaper 1A comprises the pants member 2, the body fluid absorbent pad 11 lying on an inner side of the pants member 2 and belt-like elastic first and second suspender members 19, 27 lying between the pants member 2 and the pad 11 so as to connect the pants member 2 with the pad 11.” (Spec. 6: 17-21.) “The first and second suspender members 19, 27 are adapted to be fixed around the wearer’s waist as this diaper 1A is worn so that the pad 11 connected to these suspender members 19, 27 may be maintained in close contact with the wearer’s waist.” (Spec. 12-13.)

During prosecution claims are given their broadest reasonable interpretation. *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). We therefore interpret the term “suspender member” in the claims broadly, and consistent with the specification, to include elastics which suspend and maintain the pad in close contact with the wearer’s waist. The term “suspender member” may also broadly include panels containing

elastics, but the term is not solely limited to panels. Since our claim interpretation differs slightly from that of the Examiner, we designate the rejection before us as a new ground of rejection.

We select claim 1 as representative of the rejection before us since Appellants have not separately argued the other claims. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner finds that

Yamamoto discloses a disposable diaper 1 as a disposable absorbent undergarment of pants type 2 having a pair of leg openings 10 and a waist opening 9; a body fluid absorbent pad 3 lying inside pants member 2 and extending from crotch region 8 into front and rear waist regions 6, 7 (column 2, lines 32-41 and figure 3); and a pair of elastically stretchable first and second suspender members (suspenders members are considered the laterally oriented panels containing elastics 13, 14 as shown in figure 3) lying between pants member 2 and pad 3 and extending in the front and rear waist sections 6, 7 in a circumferential direction (column 2, lines 49-56 and figure 1), said first and second suspender members secured in a stretched condition to an inner surface of at least one of the top sheet 21 and the back sheet 22 of the diaper (column 4, lines 18-20), said pad 3 having front and rear ends which extend across middle zones of the front and rear waist regions 6, 7 (figure 3), said front and rear ends of pad 3 joined to first and second suspender members 13, 14 in middle zones W1 (column 3, lines 54-57), said side edges and outer ends of first and second suspender members being joined to front and rear waist regions 6, 7 along the side edges 11 that lie outside points at which the front and rear ends and transverse side edges of absorbent pad 3 intersect each other (column 6, lines 38-42 and figure 3) to prevent the article from slipping down during use (column 5, lines 32-37); and joining zones lying outside points at which the front and rear ends and the transversely side edges of absorbent pad 3 intersect each other (figure 3).

(Ans. 3-4.)

Appellants contend that Yamamoto does not meet all the limitations of Appellants' independent claim 1. (Br. 7.) Appellants contend that

when the "suspender members" are interpreted [by the examiner] as being "panels" [containing elastics], and including portions of the topsheet 21 and backsheet 22, they cannot be interpreted or construed as "lying inside said pants member between the pants member and the body fluid absorbent pad" as recited in independent claim 1.

That is, the structural elements which make up the pants member 2 of Yamamoto et al. (i.e. the topsheet 21 and backsheet 22) cannot be construed as "lying inside said pants member between the pants member and the body fluid absorbent pad."

(App. Br. 10.)

The standard under § 102 is one of strict identity. "Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim." *Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997). "Every element of the claimed invention must be literally present, arranged as in the claim." *Richardson v. Suzuki Motor Co., Ltd.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). We agree that the Examiner has provided sufficient evidence to support a *prima facie* case of anticipation as each claimed element is described in Yamamoto.

We are not persuaded by Appellant's argument. Figure 3 of Yamamoto is reproduced below.

FIG.3

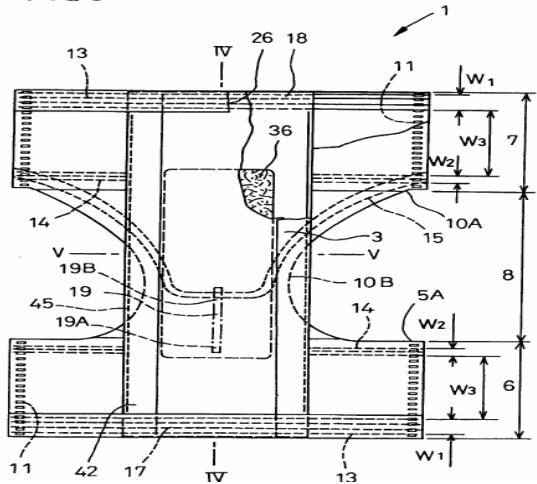


Figure 3 shows elastics 13 and 14 in diaper (pants member) zones W1 and W2, respectively. The elastics are inside the pants member. Figure 4 of Yamamoto is also reproduced below.

FIG.4

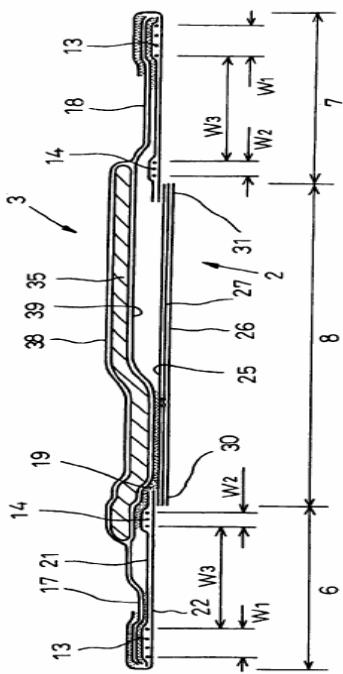


Figure 4 shows elastics 13 and 14 between pad 3 and topsheet 25 of the pants member.

Notwithstanding the Examiner's claim interpretation, the elastics 13 and 14 of Yamamoto act as suspender members and lie between the pants member and the pad (Fig. 4), as claimed. Yamamoto further evidences that the pad is connected to the suspender members. (Yamamoto, col. 3, ll. 54-57.)

Appellants also argue that

the side edges and outer ends of first and second suspender members (which are the "laterally oriented panels containing elastics 13, 14," i.e., the topsheet 21 and backsheet 22 which define the pants member) cannot be joined (or interpreted as being joined) to front and rear waist regions 6,7 of the pants member along the side edges 11 as the Examiner states.

(Br. 12.)

We disagree. When the suspender members are interpreted to include "elastics," the elastics are joined to front and rear waist regions of the pants member along the side edges where the front and rear waist regions are sewn together, as claimed.

Having no further argument from Appellants, the anticipation rejection is affirmed.

SUMMARY

The anticipation rejection 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).

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 CFR § 41.50(b) provides "[a] new ground of rejection

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pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the AppellantS, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

AFFIRMED; 37 C.F.R. § 41.50 (b)

Ssc:

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