

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACQUELINE BORDEAUX

Appeal 2008-2685
Application 10/871,833
Technology Center 3700

Decided: July 1, 2008

Before DONALD E. ADAMS, RICHARD M. LEBOVITZ, and MELANIE L. MCCOLLUM, *Administrative Patent Judges*.

ADAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal under 35 U.S.C. § 134 involves claims 1-28. “Claims 29-38 have been withdrawn from consideration” (App. Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

INTRODUCTION

The claims are directed to a safety garment. Claim 1 is illustrative:

1. A safety garment, comprising:
a garment portion; and
at least one reflective panel portion having a proximate portion with respect to the garment portion and a distal portion with respect to the garment portion, the proximate portion being attached to the garment portion, each reflective panel portion moving in a swaying motion as air moves past the distal portion of the reflective panel portion.

The Examiner relies on the following prior art references to show unpatentability:

Ruffa	US 5,819,315	Oct. 13, 1998
Porter	US 6,148,442	Nov. 21, 2000

Thesaurus.com, [thesaurus.reference.com/search?r=20&q=luminescent](http://thesaurus.reference.com/search?q=luminescent) (1 of 5) (accessed Feb. 4, 2008).

The rejection as presented by the Examiner is as follows:

Claims 1-28 stand rejected under 35 U.S.C § 103(a) as unpatentable over the combination of Ruffa and Porter.

We affirm.

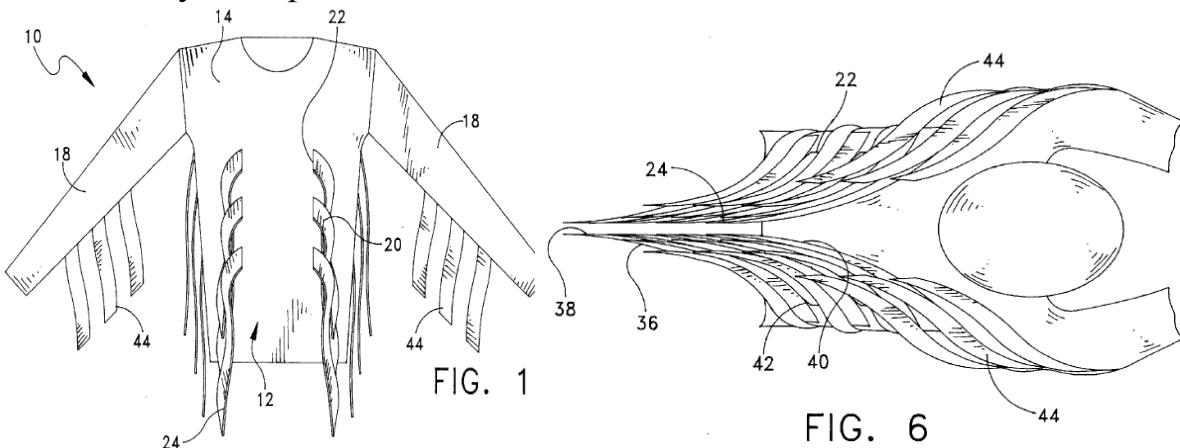
DISCUSSION

Claim Grouping:

The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). Therefore, we limit our discussion to representative claim 1. Claims 2-28 will stand or fall with claim 1.

Findings of Fact:

1. Ruffa teaches “an athletic garment having fairings which adjust to the flow of air to form an ideal fairing shape for reduction of aerodynamic drag associated with speed sport activities” (Ruffa 1: 47-50).
2. For clarity we reproduce Ruffa’s FIGs. 1 and 6 below:



“FIG. 1 is a front view of the faired athletic garment of the instant invention” (Ruffa 2: 39-40). “FIG. 6 is a top view illustrating the fairing shape” (Ruffa 2: 49).

3. Ruffa teaches “a plurality of flexible ribbon fairings **20** are each attached at one end thereof to the athletic garment **10** so that they hang downwardly from the front, rear, and side portions of the garment **10**” (Ruffa 2: 64-67).
4. Ruffa teaches that

[w]hen an identified velocity point is reached, the flexible fairings automatically adjust to the air flow to wrap around the upper portion of the human body thereby providing a streamlined surface . . . for improved aerodynamic pressure drag reduction. The velocity at which the fairings adjust to the air flow, or deploy, is sufficiently low such that drag, including the increased drag resulting from undeployed fairings, is not a major factor in the athlete’s performance.

(Ruffa 3: 50-58.)

5. Ruffa teaches that “[i]t should be understood that the athletic garment **10** will vary in style, shape and size depending on the particular application, i.e., sport and climate, for which the garment is being utilized” (Ruffa 3: 9-12). In this regard, Ruffa teaches that “the length of the fairings will have limiting constraints in particular applications. For example, the fairings must be sized so that they will not get caught in the spokes of the bicycle wheel when the garment is worn by a cyclist” (Ruffa 3: 26-30).

6. “As to claim[] 1 . . . Ruffa does not disclose that the panel portions . . . are reflective” (Ans. 3-4).

7. Porter teaches “reflectorized and/or safety-colored work clothes” (Porter Abstract).

8. Porter teaches that the “[c]lothing of the invention may be constructed of . . . cotton [and] . . . the reflecting and/or fluorescent material is provided as bands on the cotton” (Porter 2: 38-42).

9. Porter exemplifies a reflective vest trim wherein the reflective or safety-colored bands

are sewn vertically on the front, over the shoulder, and on the rear of the tee shirt, on the torso portion of the shirt. The vertical orientation of the bands is advantageous for tree cutters, because the bands tend not to catch on protrusions, as is the situation in the case of horizontal bands, in climbing or descending.

(Porter 3: 19-25).

Analysis:

Based on the combined teachings of Ruffa and Porter the Examiner concludes that it “would be obvious to one of ordinary skill in the art to

provide reflective material as taught by Porter to the panels of Ruffa so as to provide an article of clothing that is reflective and therefore provides increased safety to the wearer at nighttime or low light conditions” (Ans. 4).

In response Appellant asserts that “Porter teaches away from Ruffa because Porter states that the disclosed safety work clothing ‘may fit closely to the body, where such is an important factor for safety reasons’” (App. Br. 4). In this regard, Appellant asserts that “Porter indicates that the close-fitting aspect of the disclosed safety work clothing is desirable because current safety vests can be the cause of serious accidents, such as when a safety vest becomes snagged” (*id.*). We are not persuaded.

A reference is said to “teach away” from a claimed invention when it “suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). This is not the case on this record. Appellant’s claimed invention is drawn to a safety garment. The scope of this garment is open to include any number of garments and thus the term garment is interpreted to be one worn by a bicyclist. Both of Ruffa and Porter are directed to garments. Ruffa teaches a particular garment that comprises fairings which move in relation to the wind (FF 1-4). Ruffa also points out that the size and shape of the garment are of concern and points out that in the case of a bicyclist, “the fairings must be sized so that they will not get caught in the spokes of the bicycle wheel” (FF 5). Similarly, in the context of vests for tree cutters, Porter explains that vertical bands are beneficial over horizontal bands which tend to catch on protrusions as the tree cutter climbs or descends from a tree (FF 9). While we agree with Appellant that Porter teaches that the garments “may fit closely to the body,

where such is an important factor for safety reasons (Porter 2: 32-38; App. Br. 4), we do not find this assertion to be a teaching away from Ruffa's garment for bicyclists, where the only disclosed safety issue is whether the fairing is so long as to "get caught in the spokes of the bicycle wheel" (FF 5).

We are also not persuaded by Appellant's assertion that "[a]t best, Porter['s] bands . . . would be stitched, . . . vertically on the front of a Ruffa faired athletic garment over the shoulder and on the rear of the faired athletic garment, on the torso portion of the faired athletic garment" (App. Br. 5-6). While Porter exemplifies reflective or safety colored bands that are vertically oriented on a garment, e.g., to reduce the possibility of a tree cutter becoming caught on a protrusion (FF 9), we find no requirement in Porter that the bands *must* be oriented in this manner. Instead, we find that Porter broadly teaches the application of reflective or safety colored bands to a garment, in an orientation that is suitable for a particular application. Accordingly, we find that a person of ordinary skill in this art would apply the reflective or safety colored bands to at least the fairings of Ruffa's garment to increase the reflective area and thereby the safety to the wearer. It is proper to "take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). *See also id.* at 1742 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton.").

For the foregoing reasons we affirm the rejection of claim 1 under 35 U.S.C. § 103(a) as unpatentable over the combination of Ruffa and Porter. Claims 2-28 fall together with claim 1.

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CONCLUSION

In summary, we affirm the rejection of record.

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

AFFIRMED

Ssc:

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