

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte YOUSEF DANESHVAR

Appeal 2008-4480
Application 10/330,732
Technology Center 1600

Decided: December 09, 2008

Before DEMETRA J. MILLS, ERIC GRIMES and FRANCISCO C.
PRATS, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal under 35 U.S.C. § 134 of the rejection of claims 11-20, 23-28, 30-33, and 35-38. The Examiner has rejected the claims for anticipation and obviousness. The Examiner further indicates that claim 34 is

allowed and claims 21, 22, and 29 contains allowable subject matter. (Final Rejection 1, Ans. 10.) We have jurisdiction under 35 U.S.C. § 6(b).

The following claims are representative.

11. A wrap for encircling a portion of a living body, the wrap comprising:

A) a relatively non-stretchable support; and

B) a relatively stretchable strap

i) that has one end portion attached to the support and extends lengthwise to an opposite end portion,

ii) that, when the wrap is encircling a portion of the living body, is stretched lengthwise from the one end portion to attach to an attachment means on the support to compressively wrap the encircled portion of the body, and

iii) that comprises relatively stretchable material that directly attaches to the attachment means to keep the encircled portion of the living body compressively wrapped.

16. A wrap as set forth in Claim 11 further including at least one additional relatively stretchable strap, the at least one additional strap

i) having a one end portion attached to the support and extending lengthwise to an opposite end portion,

ii) being relatively stretched lengthwise from its one end portion to encircle the portion of the living body and attach back to the attachment means on the support to compressively wrap the encircled portion of the body, and

iii) comprising relatively stretchable material that directly attaches to the attachment means to keep the encircled the portion of the living body compressively wrapped.

23. A wrap as set forth in Claim 11 wherein the relatively stretchable material comprises individual tongues that are laterally spaced apart, each for attaching to the attachment means.

26. A wrap as set forth in Claim 11 wherein the support comprises a laminate having an outer layer that provides the attachment means.

27. A wrap as set forth in Claim 11 wherein the support comprises an outer surface, substantially all of which provides the attachment means.

30. A wrap for encircling a portion of a living body, the wrap comprising:
A) a relatively non-stretchable support; and
B) a length of relatively stretchable material
i) that has one end portion attached to the support,
ii) that, when the wrap is encircling a portion of the living body, is stretched lengthwise from that attachment for encircling and compressively wrapping the portion of the body, and
iii) that directly attaches to an attachment means on the support to keep the encircled portion of the living body compressively wrapped.

33. A wrap for encircling a portion of a living body, the wrap comprising:
A) a relatively non-stretchable support;
B) a first strap
i) that has one end portion attached to the support and extends lengthwise to an opposite end portion,
ii) that, when the wrap is encircling a portion of the living body, is relatively stretched lengthwise from the one end portion for encircling the portion of the living body and attaching back to the support to compressively wrap the encircled portion of the body, and
iii) that comprises relatively stretchable material that directly attaches to an attachment means on the support to keep the encircled portion of the living body compressively wrapped, and
C) a second strap
i) that has one end portion attached to the support, and
ii) that, when the wrap is encircling the portion of the living body, is relatively stretched along its length as measured from its one end portion and is long enough to encircle the portion of the living body and attach, with some stretching, back to the support for keeping the encircled portion of the body wrapped.

35. A piece for use with a support portion of a wrap that encircles a portion of a living body, the piece comprising:
a first zone on an underlying surface of the piece for adhesively attaching the piece to the living body to hold the support in place while the wrap is being wrapped around the encircled portion of the living body, a second zone on the underlying surface of the piece comprising attachment means for

attaching the piece to the support, and a third zone on an overlying surface of the piece comprising hook-type fastener material.

Cited References

Daneshvar	US 5,779,657	Jul. 14, 1998
Shaari	US 5,843,025	Dec. 1, 1998

Grounds of Rejection

1. Claims 11, 12, 14, 16-20, 23-26, 30, 31, and 33 stand rejected under 35 U.S.C. 102(b) as being anticipated by Daneshvar.

2. Claims 11, 13, 15, 27, 28 and 32 stand rejected under 35 U.S.C. 103(a) as being obvious in view of Daneshvar.

3. Claims 35-38 stand rejected under 35 U.S.C. 103(a) as being obvious in view of Shaari.

1. Claims 11, 12, 14, 16-20, 23-26, 30, 31, and 33 stand rejected under 35 U.S.C. 102(b) as being anticipated by Daneshvar. Appellant separately argues claims 11, 16, 23, 26, 30 and 33, and, therefore, we address each of these claims in our decision. 37 C.F.R. 41.37(c)(1)(vii).

ISSUE

The Examiner contends that Daneshvar discloses a wound dressing meeting all the claim limitations, including a strap that is of a relatively stretchable material that directly attaches to the attachment means to keep the encircled portion of the living body compressively wrapped. (Ans. 3-4.)

Appellant contends that Daneshvar does not disclose a wound dressing with a strap that is of a relatively stretchable material that directly

attaches to the attachment means to keep the encircled portion of the living body compressively wrapped. (App. Br. 14.)

The issue is: Does Daneshvar disclose a wound dressing with a strap that is of a relatively stretchable material that directly attaches to the attachment means to keep the encircled portion of the living body compressively wrapped?

FINDINGS OF FACT (FF)

1. “Daneshvar discloses a wrap for encircling a portion of a living body, the wrap comprising: a relatively non-stretchable support (col. 2, ll. 12- 15)” (Answer 3).
2. Daneshvar discloses “a strap (5, 8, A, B, C or D), that has one end portion attached to the support and extends lengthwise to an opposite end portions (constituted by end portion 6 of strap 5), that is relatively stretchable lengthwise from one end portion for encircling, with stretching, the portion of the living body and attaching to an attachment means on the support to compressively wrap the encircled portion of the body (col. 3, ll. 33-35 and col. 3, ll. 50-54; col. 4, ll. 23-30).” (Answer 3.)
3. The strap also comprises relatively stretchable material that directly attaches the strap to the attachment means to keep the encircled portion of the living body compressively wrapped. (Col. 4, ll. 14-30; col. 11, ll. 3-15.)
4. The Examiner interprets the term "comprising" in claim 11 as “open ended, thus the strap may comprise additional elements other than those present in the claim.” (Ans. 4.)
5. The “straps may comprise elastic material, thereby being stretchable” (col. 3, ll. 50-58). The “strap is the elastic material and the co-acting

attachment portion, which is directly attached to the attachment portion of the support unit.” (Ans. 4.)

6. “Daneshvar also discloses that the embodiment of Fig. 8 has one strap having end pieces K and L that connect to the end pieces of the support unit.” (Col. 7, ll. 3-40; Ans. 4.)

7. “Further disclosed is that these straps will be made from the loop kind of the VelcroTM or they may have end pieces, which has velcroTM patches on them to be attached to matching parts of the end pieces. Thus inherently disclosing that that attachment means on the end pieces of the support are the hook-type patches” (col. 7, ll. 25-41; Ans. 4).

8. With regard to claim 16, “as can be seen in the embodiment of Fig. 2, Daneshvar discloses a wrap, further including at least one additional strap (23).” (Ans. 4-5.) The straps may be elastic. (Col. 3, ll. 50-58.) “Also, note support unit (13) and strap (28).” (Col. 4, ll. 14-30; Ans. 5.)

9. With regard to claim 23, “Daneshvar discloses individual tongues which are constituted by the end pieces on the straps.” (Col. 3, ll. 27-49; Ans. 4.)

18. With regard to claim 26, “as can be seen from Fig. 9, Daneshvar discloses a support unit comprising a laminate (*i.e.*, made of layers attached together) having an outer layer that provides the attachment means.” (Col. 7, line 67 to col. 8, line 26; Ans. 5.)

10. With regard to claim 30, “Daneshvar discloses a non-stretchable support; and a length of relatively stretchable material that has one end portion attached to the support, that stretches lengthwise from that attachment for encircling and compressively wrapping the portion of the body, and that comprises stretchable material having a zone (end piece) that directly attaches to an attachment means on the support to keep the encircled

portion of the living body compressively wrapped.” (Col. 16, ll. 16-42; Ans. 6.)

PRINCIPLES OF LAW

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).

ANALYSIS

We find no error in the Examiner's prima facie case of anticipation and that Daneshvar discloses each and every element claimed. (FF. 1-4.) Claim 11 requires:

A) a relatively non-stretchable support; and

B) a relatively stretchable strap

i) that has one end portion attached to the support and extends lengthwise to an opposite end portion,

ii) that, when the wrap is encircling a portion of the living body, is stretched lengthwise from the one end portion to attach to an attachment means on the support to compressively wrap the encircled portion of the body, and

iii) that comprises relatively stretchable material that directly attaches to the attachment means to keep the encircled portion of the living body compressively wrapped.

Daneshvar discloses a wound cover with a non-stretchable support (FF 1) and an attached stretchable strap that can encircle and compressively wrap a body portion (FF 2-4.)

Appellant contends that "his prior patent relied on by the Examiner did not employ stretchable material that directly attaches to attachment means on the support to keep the body portion compressively wrapped." (App. Br. 12.) Appellant contends that the Examiner has provided no evidence that the loop material of the straps is stretchable. (App. Br. 13.) We are not persuaded by Appellant's arguments. In particular, Daneshvar discloses that the "straps will be non-stretchable units although in some models they may be made of elastic or have some elastic components." (Daneshvar, col. 3, ll. 50-54.)

Appellant contends that "Claim 11 reads on each of BAND-A, BAND-B and STR and their respective attachment means on the support SUP." (Appr. Br. 4.) As we interpret Claim 11, it does not require that the attachment means be stretchable, and merely requires that the strap (STR) is stretchable. Claim 11 does not require that the attachment means be made of Lycra and does not separately require stretchable bands which are differentiated from straps in the specification. (Spec. 10 and 12.) Daneshvar discloses that the straps may be elastic and thus stretchable. (FF 5.) Daneshvar discloses that the straps, which may be elastic, may be directly attached to the support via an attachment means such as Velcro. (Daneshvar, col. 7, ll. 24-42.) Thus Daneshvar describes a strap, as claimed in claim 11.

Furthermore, Appellant's claim table in the Brief, page 5, describes element iii of claim 11 as supported by the Specification, page 12, which

describes a strap STR which may have elastic threads, and that the strap directly attaches to attachment means via Velcro. Therefore, we are not persuaded by Appellant's argument.

The Appellant argues that the Examiner "extracts certain isolated phrases from the reference and pieces them together to reach a conclusion that strives to support the rejection." (App. Br. 12.) Appellant is reminded that "a prior art reference is relevant for all that it teaches to those of ordinary skill in the art." *In re Fritch*, 972 F.2d 1260, 1264 (Fed. Cir. 1992). "[E]ach prior art reference must be evaluated as an entirety, and ... all of the prior art must be evaluated as whole". *Panduit Corp. v. Dennison Mfg. Co.*, 774 F.2d 1082, 1094 (Fed. Cir. 1985), vacated & remanded, *Dennison Mfg. Co. v. Panduit Corp.*, 475 U.S. 809, 229 USPQ 478 (1986), on remand, 810 F.2d 1561 (Fed. Cir.), cert. denied, 481 U.S. 1052 (1987).

We agree with the Examiner that Daneshvar teaches each element of claim 11. The rejection of claim 11 is affirmed.

Claims 16 and 33

Appellant argues that "Claim 16 . . . reads on the combination of two or more of the straps. . . . It has been shown above that no strap in the reference comprises stretchable material directly attaching to attachment means on the support." (App. Br. 19.) Appellant relies on the same argument with respect to claim 33 (App. Br. 18-19).

The Examiner finds that Fig. 2 of Daneshvar discloses at least one additional strap (23) having the same makeup as the strap of claim 11, along with support unit 13 and strap 28. (Ans. 5.) The straps may be elastic (FF 5 and 10.)

Daneshvar teaches each and every element of claims 16 and 33, therefore, we affirm the rejections of claim 16 and 33.

Claim 23

Appellant argues that the rejection of claim 23 fails under 37 C.F.R. § 1.104(b)(2), requiring the pertinence of the art to be clearly explained. (App. Br. 16.)

Claim 23 requires the wrap to include relatively stretchable material which comprises individual tongues that are laterally spaced apart, each for attaching to the attachment means.

The Examiner found that Daneshvar discloses individual tongues constituted by the end pieces on the strap. (See FF 9 and Daneshvar, Fig. 3.) The end pieces are laterally spaced apart. (Daneshvar, Fig. 3.)

We agree with the Examiner that Daneshvar teaches each element of claim 23. We affirm the rejection of claim 23.

Claim 26

Appellant contends that "there is no disclosure however in the reference that the support in Figure 9 is in fact a laminate like the one described in the present application, and to which this claim is directed." (App. Br. 16-17.)

Our mandate is to give claims their broadest reasonable interpretation.

Giving claims their broadest reasonable construction 'serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified.' *Yamamoto*, 740 F.2d at 1571; accord *Hyatt*, 211 F.3d at 1372; *In re Zletz*, 893 F.2d 319, 322 (Fed. Cir. 1989) ('An essential

purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.’).

In re American Academy of Science Tech Center, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

The ordinary meaning of the term "laminated" is "a material made by sticking sheets together." <http://www.thefreedictionary.com/laminated>. When claim 26 is given its broadest reasonable interpretation it reads on the Daneshvar support unit comprising a laminate (*i.e.*, made of layers attached together) having an outer layer that provides the attachment means (elements 54 and 55). (Col. 7, line 67 to col. 8, line 26.) (FF18.)

We agree with the Examiner that Daneshvar teaches each element of claim 26. The rejection of claim 26 is affirmed.

Claim 30

Appellant contends that claim 30 differs from claim 11 in how the strap is defined (App. Br. 18) and argues this claim is allowable for the same reasons argued with respect to claim 11.

We agree with the Examiner that “Daneshvar discloses a non-stretchable support; and a length of relatively stretchable material that has one end portion attached to the support, that stretches lengthwise from that attachment for encircling and compressively wrapping the portion of the body, and that comprises stretchable material having a zone (end piece) that directly attaches to an attachment means on the support to keep the encircled portion of the living body compressively wrapped.” (Answer 5-6, FF 1-4 and 19.)

We agree with the Examiner that Daneshvar teaches each element of claim 30. The rejection of claim 30 is affirmed.

CONCLUSION OF LAW AND DECISION

We conclude that the Examiner has appropriately relied on the teachings of Daneshvar and provided sufficient evidence teaching each element claimed to support a prima facie case of anticipation which has not been rebutted by Appellant. The anticipation rejection of the claims is affirmed.

2. Claims 11, 13, 15, 27, 28 and 32 stand rejected under 35 U.S.C. 103(a) as being obvious in view of Daneshvar. We select claim 11 as representative of the rejection before us since Appellant has not separately argued the claims. 37 C.F.R. 41.37(c)(1)(vii).

ISSUE

Appellant contends that this alternative ground for rejection of claim 11 fails to address the subject matter recited in claim 11 (Reply Br. 6) and Appellant's responses to the anticipation rejection also apply to this rejection. (Reply Br. 6.)

The Examiner finds that Daneshvar discloses a wrap meeting all the limitations of claim 11 but concludes in the alternative that Daneshvar would have made obvious the claimed product even if it is not expressly taught (Ans. 7.)

The issue is: Does Daneshvar teach all the limitations of claim 11?

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. *See In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993). Anticipation is the epitome of obviousness. *See In re Fracalossi*, 681 F.2d 792, 794 (CCPA 1982).

ANALYSIS

As set forth above, we have found that Daneshvar anticipates claim 11. Anticipation being the epitome of obviousness, we also affirm the rejection of the claims under 35 U.S.C. § 103 as being obvious in view of Daneshvar. *See In re Fracalossi*, 681 F.2d 792, 794 (CCPA 1982).

The obviousness rejection of claim 11 is affirmed. Claims 13, 15, 27, 28 and 32 fall with claim 11. 37 C.F.R. 41.37(c)(1)(vii).

3. Claims 35-38 stand rejected under 35 U.S.C. 103(a) as being obvious in view of Shaari.

ISSUE

Appellant contends that

Appellant's YD piece shown in Figure 2 (the subject of Claim 35) is intended to be a single piece when used, even though it is constructed of different items assembled together.

While the Answer fails to identify it as such, the adhesive on the bottom surface of anchor 5 is understood to correspond to the "first zone" recited in Claim 35.

Claim 35 also defines a "second zone" on the underlying surface of the piece comprising attachment means for attaching the piece to the support.

While recognizing that Shaari doesn't teach adhesive between the strap 4 and the dressing 2, the Answer asserts that

"it would have been prima facie obvious ... to alternatively allow the strap to connect to the dressing to ensure that it does not move during use."

That assertion is however contradicted by Shaari because the common intent of Sharri's [sic] various embodiments is to be able to replace the dressing while the anchors are kept in place and the strap is removed and re-attached.

A further, and perhaps a more significant error in the rejection, is the assertion that the reference teaches "...a third zone on a overlying surface of the piece comprising hook-type fastener material.." citing Col. 6, lines 3-12 of Shaari. That paragraph of the reference describes nothing more than a reversal of the hook-type and loop-type materials for releasably attaching the ends of the strap to the anchors. i.e. reversing items 6 and 7 in Figure 2. It doesn't teach an additional third zone on an overlying surface of the piece comprising hook-type fastener material.

(Reply Br. 8)

The Examiner finds that, with regard to claim 35

Shaari discloses a piece (4, 5) for use with a support portion (dressing 2) of a wrap that encircles a portion of a living body, the piece comprising, a first zone positioned on the underlying surface of anchor (5) for adhesively attaching the piece to the living body to hold the support in place while the wrap is being wrapped around the encircled portion of the living body and a third zone on an overlying surface of the piece comprising hook-type fastener material (col. 6, lines 3-12). Shaari discloses a second zone on an underlying surface of the piece, specifically portion (4) that overlies the dressing. In an alternate embodiment Shaari discloses the dressing as having coextensive arms but does not teach an attachment means for attaching the piece to the support.

The examiner contends that it would have been prima facie obvious to one having ordinary skill in the art at the time the invention was made to alternatively allow the strap to

connect to the dressing to ensure that it does not move during use.

(Ans. 9.)

The issue is: Does Shaari disclose or suggest an article with “a first zone on an underlying surface of the piece for adhesively attaching the piece to the living body to hold the support in place while the wrap is being wrapped around the encircled portion of the living body, a second zone on the underlying surface of the piece comprising attachment means for attaching the piece to the support, and a third zone on an overlying surface of the piece comprising hook-type fastener material,” as recited in claim 35?

PRINCIPLES OF LAW

“[O]bviousness requires a suggestion of all limitations in a claim.”
CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003)
(citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

ANALYSIS

We agree with Appellant and do not find that Shaari discloses or suggests an article with a second zone on the underlying surface of the piece comprising attachment means for attaching the piece to the support. Specifically, because Shaari’s anchor 5 already has an underlying adhesive zone for attachment to the skin, and an overlying surface for attachment of the external strap 4 of the bandage (*see* Shaari Figure 2), we do not agree with the Examiner that one of ordinary skill would have been prompted to place yet another attachment means on the underlying surface of anchor 5.

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Also, because anchor 5 and external strap 4 are separate pieces, placing an attachment means on the underlying surface of external strap 4 as posited by the Examiner would not result in a single article having all three zones recited in claim 35.

The rejection of claims 35-38 is therefore reversed.

SUMMARY

The anticipation and obviousness rejections over Daneshvar are affirmed. The obviousness rejection of claims 35-38 over Shaari is reversed.

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-IN-PART

dm

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