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12/15/2003

Lynn Brud

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LYNN BRUD, MICHAEL FAULKS, and
EMILY TRAN

Appeal 2009-011707
Application 10/737,101
Technology Center 3700

Before WILLIAM F. PATE, III, MICHAEL W. O'NEILL, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Lynn Brud et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-4, 6-18, 21, and 43-45 under 35 U.S.C. § 102(b) as anticipated by Rönnerberg (WO 98/53785, pub. Dec. 3, 1998), claim 5 under 35 U.S.C. § 103(a) as being unpatentable in view of Rönnerberg and Walker (GB 2 208 263 A, pub. Mar. 22, 1989), and claims 12, 13, 18-20, and 44-45 under 35 U.S.C. § 103(a) as being unpatentable in view of Rönnerberg.² Claims 22-42 have been withdrawn. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

The Invention

The claims on appeal relate to an absorbent garment.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. An absorbent garment, comprising:
a garment shell defining a longitudinal axis, a transverse axis, a first waist edge generally parallel to the transverse axis, a first waist region contiguous with the first waist edge, a second waist edge generally parallel to the transverse axis, and a second waist region contiguous with the second waist edge;
a first inner attachment member disposed at the first waist region, and a second inner attachment member disposed at the second waist region, each attachment member having a length dimension generally parallel to the longitudinal axis; and

² The rejection of claim 4 under 35 U.S.C. § 112, second paragraph, is not before us for review pursuant Appellants' statement acknowledging the improper antecedent basis for the term "article" and further stating that "there is no dispute to be resolved by the Board with respect to this claim" concerning this rejection. App. Br. 4.

an absorbent assembly adapted for refastenable attachment to the garment shell, the absorbent assembly having an inner surface adapted for contact with a wearer's body, an outer surface opposite the inner surface, a first end region in facing relationship with the first waist region of the garment shell, and a second end region in facing relationship with the second waist region of the garment shell,

wherein the absorbent assembly comprises a first fastening component disposed in the first end region, the first fastening component having a length dimension generally parallel to the longitudinal axis, and a second fastening component disposed in the second end region, the second fastening component having a length dimension generally parallel to the longitudinal axis, wherein the first fastening component is adapted for refastenable engagement to the first inner attachment member, and the second fastening component is adapted for refastenable engagement to the second inner attachment member,

wherein the length dimension of the first inner attachment member is greater than the length dimension of the first fastening component and the second attachment member.

OPINION

The Examiner's findings and analysis are insufficient to support the finding that Rönnerberg discloses that the length dimension of the first inner attachment member is greater than the length dimension of the second inner attachment member as called in claims 1, 43, and 44. The Examiner has arbitrarily selected in Rönnerberg, two portions 8, 9 of material 3 in order to satisfy the aforementioned claim limitation. Essentially, the Examiner has found that in Rönnerberg, one portion 9 compared to another portion 8, which are both part of one structure 3, discloses the claim limitation. Consistent

with the principle that all limitations in a claim must be considered to be meaningful, it is improper to rely on the same structure in the Rönnerberg reference as being responsive to two different elements (first and second attachment members) in claims 1, 43, and 44. *See, Lantech, Inc. v. Keip Machine Co.*, 32 F.3d 542 (Fed. Cir. 1994) (in infringement context, a single conveyor held to not meet claim element requiring at least two conveyors); *In re Robertson*, 169 F.3d 743 (Fed. Cir. 1999)(claim requiring three separate means not anticipated by structure containing two means where one of the two means was argued to meet two of the three claimed means).

In view of the foregoing, we are constrained to reverse the Examiner's rejections of claims 1-21 and 43-45.

DECISION

We reverse the Examiner's decision to reject claims 1-4, 6-18, 21, and 43-45 under 35 U.S.C. § 102(b) as anticipated by Rönnerberg, claim 5 under 35 U.S.C. § 103(a) as being unpatentable in view of Rönnerberg and Walker, and claims 12, 13, 18-20, and 44-45 as being unpatentable in view of Rönnerberg.

REVERSED

Klh

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