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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/258,645	10/26/2005	Brennon L. White	026032-4952	2861

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EXAMINER

WHITE, RODNEY BARNETT

ART UNIT PAPER NUMBER

3636

DATE MAILED: 01/27/2006

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

Office Action Summary	Application No. 11/258,645	Applicant(s) WHITE ET AL.	
	Examiner Rodney B. White	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,869,140 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter in claims 1-30 of the present invention is claimed, though slightly differently and with slightly different terminology, in the aforementioned patent.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-8, 10-14, 16-18, and 19-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Gendron (U.S. Patent No. 6,511,125 B1)

The applied reference has a common assignee, Johnson Controls Technology, with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Gendron teaches a ventilated seat assembly for use with an air mover comprising: a seat having a seat base and a backrest, at least one of the seat base and the backrest comprising: an air-permeable exterior trim cover 40,50; an enclosure comprising a top portion 60 formed from an air-impermeable material, and a bottom portion 80 formed from an air-impermeable material, one of the top portion and the bottom portion including an opening configured to be coupled to the air mover, the top portion including a plurality of holes 68 for allowing air to move between the trim cover and the enclosure, a spacer 72 located within the enclosure and including a plurality of resilient fibers disposed between an upper 73 and lower netting layer 74, the spacer defining an air space within the enclosure allowing for the movement of air in any direction through the enclosure and being sufficiently stiff to maintain the flow of air through the enclosure when the seat is occupied, and a foam cushion for supporting the enclosure, wherein the enclosure comprises a bag, wherein the plurality of holes in the top portion are arranged and sized to substantially equalize the amount of air that passes through the holes, wherein each of the seat base and backrest comprises a trim cover, an enclosure, a spacer, and a foam cushion, wherein the enclosure in the seat base and the enclosure in the backrest are configured to be coupled to a single air mover, wherein the plurality of holes includes a first group of holes each being approximately a first distance from the opening and together having a first total cross-sectional area and a second group of holes each being approximately a second distance from the opening and together having a second total cross-sectional area, wherein the first distance greater than the second distance and the first total cross-

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sectional area is greater than the second total cross-sectional area (See Figures 3-5), an electric heater disposed between the trim cover and the bag (column 3, lines 8-10).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dinkel et al, Faust et al, Wurz et al, Short, Spitalnick, Ekman et al, Callerio, Cremer et al, Howorth, Schild et al, Feher, and Lush teach structures similar to the present invention. Haupt et al, White et al, Ekern et al, are commonly owned patents as the present invention, and in the case of White et al, has the same inventive entity and teaches the same subject matter as the present invention.

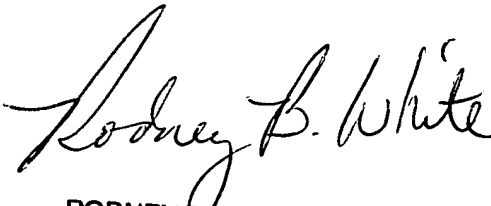
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (571) 272-6863. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney B. White,
Patent Examiner
Art Unit 3636
January 20, 2006



RODNEY B. WHITE
PRIMARY EXAMINER

Notice of References Cited	Application/Control No. 11/258,645		Applicant(s)/Patent Under Reexamination WHITE ET AL.	
	Examiner Rodney B. White		Art Unit 3636	Page 1 of 2

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-3,778,851	12-1973	Howorth, Frederick Hugh	297/180.13X
*	B	US-4,391,009	07-1983	Schild et al.	297/180.13X
*	C	US-4,685,727	08-1987	Cremer et al.	297/180.14
*	D	US-4,923,248	05-1990	Feher, Steve	297/180.13X
*	E	US-4,997,230	03-1991	Spitalnick, Samuel	297/180.13X
*	F	US-5,403,065 A	04-1995	Callerio, Antonio	297/180.14X
*	G	US-5,626,386	05-1997	Lush, Michael E.	297/180.13
*	H	US-5,902,014 A	05-1999	Dinkel et al.	297/180.1X
*	I	US-5,927,817 A	07-1999	Ekman et al.	297/180.14X
*	J	US-5,934,748 A	08-1999	Faust et al.	297/180.12
*	K	US-6,068,332 A	05-2000	Faust et al.	297/180.13
*	L	US-6,109,688 A	08-2000	Wurz et al.	297/180.14
*	M	US-6,189,966 B1	02-2001	Faust et al.	297/180.14

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
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	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
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	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
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	Examiner Rodney B. White	Art Unit 3636	Page 2 of 2

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,189,967 B1	02-2001	Short, Edward J.	297/180.14
*	B	US-6,196,627 B1	03-2001	Faust et al.	297/180.14
*	C	US-6,019,420 A	02-2000	Faust et al.	297/180.14
*	D	US-6,511,125 B1	01-2003	Gendron, Timothy D.	297/180.13X
*	E	US-6,629,724 B2	10-2003	Ekern et al.	297/180.14X
*	F	US-6,786,541 B2	09-2004	Haupt et al.	297/180.1
*	G	US-6,840,576 B2	01-2005	Ekern et al.	297/180.14
*	H	US-6,869,140 B2	03-2005	White et al.	297/180.13
*	I	US-6,541,737	04-2003	Eksin et al.	297/180.12X
*	J	US-6,291,803	09-2001	Fourrey, Fran.cedilla.ois	297/180.12X
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

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