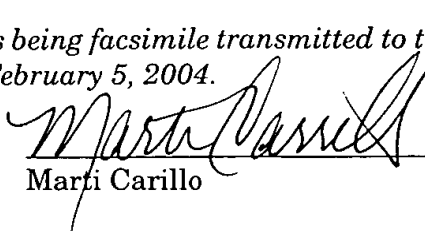


PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Marti Carillo

11/13
213-4

Appln No. : 10/159,251
Applicant : David E. Chen
Filed : May 31, 2002
Title : ATTACHABLE BREAST FORM
ENHANCEMENT SYSTEM

Confirmation No. 8795

TC/A.U. : 3765
Examiner : G. Hale

Docket No. : 48370/TJD/B437

AMENDMENT

Commissioner for Patents
P.O. Box 1450
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Post Office Box 7068
Pasadena, CA 91109-7068

Commissioner:

In response to the Office action of December 31, 2003, Applicant is filing concurrently herewith a Request for Continued Examination, and requests that this application be amended as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 4 of this paper.

Appln No. 10/159,251

Amdt date February 5, 2004

Reply to Office action of December 31, 2003

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claims 1-29 (cancelled).

30. (New) An improved backless, strapless breast form system to be worn in place of a traditional bra, comprising:

a pair of breast forms, wherein each breast form comprises:

a volume of silicone gel encased between thermoplastic film material;

a concave interior surface, the interior surface facing towards a user's breast, wherein substantially the entire interior surface comprises a pressure sensitive adhesive layer disposed thereon for adjoining the breast form to the user's breast;

an outer side facing towards the user's armpit, and an inner side facing opposite the outer side, wherein the breast form is secured to the user's breast solely by the pressure sensitive adhesive layer; and

a connector adapted to adjoin the breast forms, wherein the connector is positioned between the inner sides of each of the breast forms.

31. (New) The breast form system of claim 30 wherein the connector comprises a first portion attached to one of the breast forms and a second portion attached to the other of the breast forms, and the first portion and the second portion are adapted to cooperatively engage.

Appln No. 10/159,251

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32.³ (New) The breast form system of claim ~~31~~² wherein the first portion and the second portion are removably attached to the breast forms.

33.⁴ (New) The breast form system of claim ~~30~~¹ wherein the connector is a single unit adapted to engage inner side surfaces of the breast forms.

34.⁵ (New) The breast form system of claim ~~30~~¹ wherein the pressure sensitive adhesive layer has an adhesion force to the interior surface of the breast forms that is greater than a cohesion force to the user's skin.

35.⁶ (New) The breast form system of claim ~~30~~¹ wherein at least one of the breast forms comprises an upper portion and a lower portion, the upper portion having a greater thickness than the lower portion.

36.⁷ (New) The breast form system of claim ~~30~~¹ wherein the pressure sensitive adhesive layer is integrally formed on the interior surface.

Appln No. 10/159,251

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REMARKS

Applicant respectfully responds to the points raised by the Examiner in the December 31, 2003 Office action as follows:

Claim Objections

The Examiner objected to claims 5 and 19 due to the use of the trademark VELCRO in the claims. As reflected above, these claims have been cancelled, and none of the currently pending claims use this term.

Claim Rejections Under 35 U.S.C. § 112, first paragraph

The Examiner rejected claims 1-8 and 16-29 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the enablement requirement due to use of the term "permanently grown." As reflected above, each of these claims have been cancelled, and none of the currently pending claims include the term permanently grown.

Applicant respectfully submits that use of the term "permanently grown" in its Specification does not render the patent application non-enabled. Rather, a person of ordinary skill in the art would understand the type of pressure sensitive adhesive that Applicant has described as being "permanently grown." Further, one of skill in the art would be able to make and use the claimed breast form system based on the description provided without having to engage in undue experimentation.

The fact that a person of ordinary skill in the art would understand what Applicant meant by the term "permanently grown" is reflected by this Examiner's (Examiner Hale's) statements in an Office action in a related, copending application (Application No. 10/211,110). Specifically, in an Office action dated September 24, 2003 for App. No. 10/211,110, Examiner Hale rejected dependent claims 12 and 30 of that application under 35 U.S.C. § 103(a), alleging that the limitation of the pressure sensitive adhesive being "permanently grown" to the interior surface of the bra cups would have been obvious based

Appln No. 10/159,251

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Reply to Office action of December 31, 2003

on the teachings of U.S. Patent No. 6,200,195 to Furuno et al. (See Office action for App. No. 10/211,110 at pg. 6). More specifically, the Examiner stated:

... Furuno et al. discloses a permanently grown, integrated adhesive layer (3) in the surface of the form body. (See Furuno et al., col. 1, line 54 - col. 2, line 16; col. 2, line 63 - col. 3, line 7). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to modify the adhesive layer to construct it within the form interior layer as a permanently grown adhesive layer to achieve the benefits of such a material such as saving steps and costs in the construction in addition to the adhesive pad as having a better adhesive retention even when washed with water as disclose in Furuno et al.

(Office action for App. No. 10/211,110 at pg. 6).

Although Applicant does not agree with the assertion of obviousness, Applicant does agree that Furuno et al. discloses a "permanently grown" pressure sensitive adhesive. Moreover, Applicant submits that Examiner Hale is representative of a person of ordinary skill in this art. The Examiner's recognition that a "permanently grown" pressure sensitive adhesive is disclosed by Furuno et al., and would be recognized by one skilled in the art as being synonymous with the terminology used in Furuno et al., namely that the "adhesive layer is integrally formed" on the body of the form, is reflective of the fact that Applicant's description of its pressure sensitive adhesive layer complies with the enablement requirement of § 112, par. 1.

Although Applicant has cancelled its claims that recited the limitation of a permanently grown pressure sensitive adhesive, Applicant submits that its use of the term in its Specification will be understood by one of skill in the art, and allow the skilled artisan to practice Applicant's invention. Moreover, Applicant has used the terminology "integrally formed on" in its newly added claim 36, which is the terminology used in Furuno et al., which is understood to be synonymous with permanently grown in the context of a pressure sensitive adhesive. Additionally, the properties and manufacture of the permanently grown, or integrally formed, pressure sensitive adhesive layer are

Appln No. 10/159,251

Amdt date February 5, 2004

Reply to Office action of December 31, 2003

disclosed in Furuno et al., and as recognized by the Examiner, would have been known to one having ordinary skill in the art at the time the invention was made. Therefore, Applicant respectfully submits that its currently pending claims and Specification are fully enabling and satisfy 35 U.S.C. § 112, first paragraph.

Claim Rejections Under 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 7, 9, 16 as being allegedly indefinite under 35 U.S.C. § 112, second paragraph, due to the use of the term "permanently grown." As reflected by the above amendments, each of those claims have been cancelled, and none of the currently pending claims contain the term "permanently grown." Moreover, for all of the reasons set forth above concerning compliance with the enablement requirement of § 112, first paragraph, Applicant submits that the limitation of claim 36 that "the pressure sensitive adhesive layer is integrally formed on the interior surface," satisfies the first and second paragraph of 35 U.S.C. § 112.

Claim Rejections Under 35 U.S.C. § 102 and § 103

As reflected by the above amendments, the only pending independent claim in this application is newly added claim 30. Because none of the previously pending claims contained all of the limitations recited in claim 30, none of the Examiner's rejections under § 102 and § 103 are directly applicable to claim 30. Nevertheless, Applicant will explain why none of the prior art of record is sufficient to support a rejection under § 102 or § 103.

The primary reference relied on by the Examiner to reject the previously pending claims under § 102 and § 103 was U.S. Patent No. 5,755,611 to Noble et al. There are at least two structural limitations recited in claim 30 that are not disclosed by Noble et al.: (1) "a volume of silicone gel encased between thermoplastic film material;" and (2) "substantially the entire interior surface comprises a pressure sensitive adhesive layer disposed thereon for adjoining the breast forms to the user's breast." Accordingly, Noble et al. does not anticipate claim 30.

Appln No. 10/159,251

Amdt date February 5, 2004

Reply to Office action of December 31, 2003

With respect to the limitation of "a volume of silicone gel encased between thermoplastic film material," there is no disclosure, teaching, or suggestion in Noble et al. of such a structure. With respect to the adhesive layer limitation, Noble et al. has a limited disclosure of an embodiment where the double-sided tape strips are placed along the interior surface of the breast cups, as opposed to the other embodiments where the double-sided tape strips are positioned along the "peripheral flange," which sits below the breast cups. Specifically, the written description and drawings of Noble et al. merely disclose outer portions of the interior surface of the bra cups being partially covered by double-sided tape strips. (See Noble et al. at Fig. 20, Col. 5, lines 54-59, and Col. 6, lines 13-22). The disclosed structure of the Noble et al. bra cups shows that a substantial portion of the interior surface does not have a pressure sensitive adhesive layer disposed thereon. Accordingly, Noble et al. does not anticipate claim 30.

Moreover, no combination of references can be made to properly reject claim 30 under 35 U.S.C. § 103. Specifically, none of the references of record contain an adequate teaching, suggestion, or motivation to alter the disclosed structures in such a way that would yield the breast form recited in Applicant's claim 30. This is also true for the new references listed in the Information Disclosure Statement being filed by Applicant simultaneously with this Amendment. For instance, the nipple pads disclosed in U.S. Pat. No. 6,200,195 to Furuno do not have a structure similar to Applicant's claimed breast form system, and there is no suggestion or motivation to alter the disclosed nipple pads so they would have a breast form configuration, a thermoplastic film material encasing silicone gel, and a connector positioned between the breast forms for adjoining the breast forms.

Similarly, Noble et al. contains no suggestion or motivation for being altered to having a volume of silicone encased by thermoplastic film material or having a pressure sensitive adhesive layer disposed on substantially the entire interior surface. Similarly, the silicone breast enhancers disclosed in the Dr. Leonard's catalog do not provide support for making a modification to, or combination with, the Noble et al. bra or the Furuno nipple pads. In fact, the Dr. Leonard's advertisement actually teaches away from

Appln No. 10/159,251

Amdt date February 5, 2004

Reply to Office action of December 31, 2003

Applicant's claimed structure by stating, "No adhesives needed." Similarly, there is no suggestion in the prior art to modify a breast prosthesis by adding a center connector that could allow a pair of breast prostheses to be worn in place of a traditional bra. In fact, breast prosthesis are taught for use as a replacement for post-mastectomy patients, or as supplemental enhancers for increasing breast size by positioning the prosthesis along a portion of the breast, and then wearing a traditional bra to hold the prosthesis in place.

Thus, claim 30 is patentable over the prior art. Accordingly, claims 31-36, which include the limitations of claim 30, are also patentable.

Objective Evidence of Nonobviousness

The above amendments and remarks are sufficient to overcome a possible obviousness rejection. Moreover, objective evidence of nonobviousness exists concerning the unexpected results of the claimed invention, the long-felt but unsolved needs for the claimed invention, and the commercial success directly derived from the claimed invention. Applicant believes that this evidence is unnecessary at this point, but is submitting concurrently with this Amendment an unsigned draft declaration pursuant to 37 CFR 1.132, for preliminary consideration. If Applicant is not notified by Examiner Hale or Supervisor Calvert before February 10, 2004 that the application is in condition for allowance, then Applicant will be prepared to have the declaration signed and made of record at the time of the interview scheduled for that date at the Patent Office.

Rejection Based on Double Patenting

The Examiner has provisionally rejected claims 1-8 and 16-29 based on nonstatutory double patenting due to Applicant's related copending Application No. 10/211,110. Although none of those claims are currently pending, Applicant recognizes the relatedness between claims 30-36 of this application and the claims pending in App. No. 10/211,110, and is filing concurrently herewith a terminal disclaimer pursuant to 37 CFR 1.321.

Appln No. 10/159,251

Amdt date February 5, 2004

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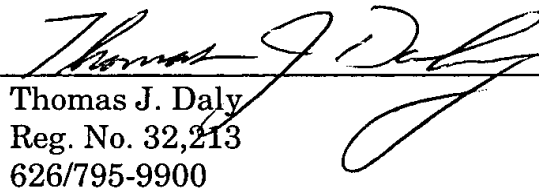
Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully submits that claims 30-36 are in condition for allowance, and accordingly, a timely indication thereof is respectfully requested. If Applicant's attorneys, Thomas Daly and Brian Yates, do not receive any communication indicating allowance from Examiner Hale or Supervisor Calvert before February 10, 2004, they look forward to meeting to discuss this matter during the interview scheduled for that date at 10:00 a.m. at the United States Patent and Trademark Office.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By


Thomas J. Daly
Reg. No. 32,213
626/795-9900

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Mark Cassell

#13
PL
2-13-4

Applicant : David E. Chen
Application No. : 10/159,251
Filed : May 31, 2002
Title : ATTACHABLE BREAST FORM ENHANCEMENT SYSTEM

Grp./Div. : 3765
Examiner : Gloria M. Hale

Docket No. : 48370/TJD/B437

TERMINAL DISCLAIMER TO OBVIATE A
DOUBLE PATENTING REJECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PostOffice Box 7068
Pasadena, CA 91109-7068
February 5, 2004

Commissioner:o

I hereby certify that I am the attorney of record in this application and am authorized to execute this disclaimer on behalf of the assignee; and I further certify that the evidentiary documents have been reviewed and that assignee, to the best of my knowledge and belief, has title to the above-identified application.

BRAGEL INTERNATIONAL, INC., a California corporation having a place of business at 3383 Pomona Blvd., Pomona, California 91768, represents: (a) that it is the assignee of the entire interest in U.S. Patent Application No.10/159,251, filed May 31, 2002, and entitled ATTACHABLE BREAST FORM ENHANCEMENT SYSTEM, by virtue of the assignment recorded in the United States Patent and Trademark Office at reel 013400, frame 0794; and (b) that it is the assignee of the entire interest in U.S. Patent Application No. 10/211,110, by virtue of the assignment recorded at reel 013353, frame 0458.

02/13/2004 FFIELDS-0000001117251
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BRAGEL INTERNATIONAL, INC. hereby disclaims the terminal part of any patent
granted on the above-identified application, which would extend beyond the expiration date of

Application No. 10/159,251

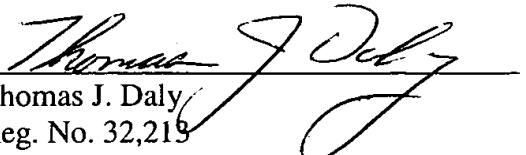
the patent issued on U.S. Patent Application No. 10/211,110, and hereby agrees that any patent so granted on the above-identified application shall be enforceable only for and during such period that the legal title thereto shall be the same as the legal title to the patent issued on U.S. Patent Application No. 10/211,110, this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors or assigns.

In making the above disclaimer, Applicant does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the patent issued from U.S. Patent 10/211110, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

I declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like, so made, are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and further that such willful false statements may jeopardize the validity of the application and any patent issuing thereon.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

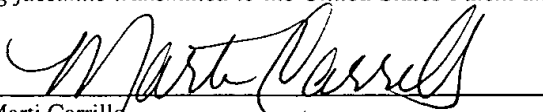
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Marti Carrillo

Applicant : David E. Chen
Application No. : 10/159,251
Filed : May 31, 2002
Title : ATTACHABLE BREAST FORM ENHANCEMENT SYSTEM

Grp./Div. : 3765
Examiner : Gloria M. Hale

Docket No. : 48370/TJD/B437

TRANSMITTAL FOR TERMINAL DISCLAIMER TO
OBVIATE A DOUBLE PATENTING REJECTION

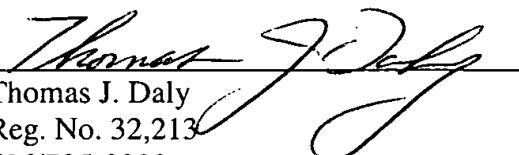
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Pasadena, CA 91109-7068
February 5, 2004

Commissioner:

Enclosed is a Terminal Disclaimer to Obviate a Double Patenting Rejection. The Commissioner is hereby authorized to charge the Terminal Disclaimer fee of \$55 and any fees under 37 CFR 1.16 and 1.17 which may be required for this transaction to Deposit Account No. **03-1728**. Please show our docket number with any charge or credit to our Deposit Account.

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By 
Thomas J. Daly
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626/795-9900

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Enclosures: Terminal Disclaimer

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