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FELLERS SNIDER BLANKENSHIP BAILEY & TIPPENS THE KENNEDY BUILDING 321 SOUTH BOSTON SUITE 800 TULSA, OK 74103-3318			TOMPKINS, ALISSA JILL	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BYOUNG-WOO CHO

Appeal 2010-006782
Application 11/750,374
Technology Center 3700

Before STEFAN STAICOVICI, EDWARD A. BROWN, and
ADAM V. FLOYD, *Administrative Patent Judges*.

FLOYD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision finally rejecting claims 1-4 and 6-8. Claim 5 has been cancelled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Claim 1 is the sole independent claim on appeal. Claim 1 recites:

1. A headwear comprising:

a wearing portion for placing on a head;

a visor portion connected to the wearing portion; and

a sweatband connected in the wearing portion and having
a core sheet and a covering portion for covering
the core sheet;

wherein the covering portion is made of a fabric having a
plurality of warp threads and weft threads, wherein
said warp threads comprise a stretch yarn and
wherein a stretch direction of said stretch yarn
corresponds to a stretch direction of said core sheet
when said fabric is cut in parallel to a lengthwise
direction;

wherein a width of said sweatband in a non-stretch state
is substantially equal to a width of said sweatband
in a stretch state.

REJECTIONS¹

Claims 1 and 8 are rejected under 35 U.S.C. § 102(b) as anticipated by Cho (US 2005/0160519 A1, pub. Jul. 28, 2005). Claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cho and Rogers (US 2007/0130669 A1, pub. Jun. 14, 2007). Claims 4, 6, and 7 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cho and Ngan (US 2004/0199979 A1, pub. Oct. 14, 2004).

¹The Examiner has withdrawn the rejection of claim 1 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Ans. 3.

ISSUES

Did the Examiner err in rejecting claims 1 and 8 under 35 U.S.C. § 102(b) as anticipated by the teachings of Cho? Did the Examiner err in rejecting claims 2 and 3 as unpatentable under 35 U.S.C. § 103(a) over the teachings of Cho in view of the teachings of Rogers? Did the Examiner err in rejecting claims 4, 6, and 7 as unpatentable under 35 U.S.C. § 103(a) over the combined teachings of Cho and Ngan?

ANALYSIS

The rejection of claims 1 and 8 as anticipated by Cho

The Examiner found that Cho teaches all the limitations of claims 1 and 8. Ans. 4. The Appellant argues that Cho does not disclose that the “width of said sweatband in a non-stretch state is substantially equal to a width of said sweatband in a stretch state” as called for by independent claim 1. App. Br. 5. While the Examiner admits that Cho does not explicitly state that the width of the sweatband in the non-stretch and stretch state are substantially equal, in response, the Examiner asserts that Cho discloses all of the structural requirements claimed and is thus capable of performing in the manner claimed. Ans. 6. The Appellant does not contest the Examiner’s finding that Cho discloses all of the structural requirements claimed.

We agree with the Examiner that there is no substantial difference between the claimed construction of the Appellant’s sweatband and that of Cho and that, as such, Cho’s sweatband appears to be capable of the same operation as the Appellant’s sweatband. Ans. 6. This is sufficient to establish a prima facie case that Cho’s sweatband in a non-stretch state is substantially equal to a width of said sweatband in a stretch state, so as to

shift the burden to the Appellant to show that it is not so. *See In re King*, 801 F.2d 1324, 1327 (Fed. Cir. 1986). The Appellant has not come forth with any evidence to satisfy that burden.

Thus, for the reasons set forth above, the rejection of claims 1 and 8 as anticipated by Cho is sustained.

With respect to the obviousness rejections of claims 2-4, 6, and 7, the Appellant does not make any other substantive arguments separate from the arguments made with respect to the anticipation rejection of claims 1 and 8. Accordingly, for the reasons set forth supra, we likewise sustain the rejections under 35 U.S.C. § 103(a) of claims 2 and 3 as unpatentable over Cho and Rogers and of claims 4, 6, and 7 as unpatentable over Cho and Ngan.

DECISION

We AFFIRM the rejection of claims 1 and 8 under 35 U.S.C. § 102(b) as anticipated by Cho.

We AFFIRM the rejection of claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Cho and Rogers.

We AFFIRM the rejection of claims 4, 6, and 7 under 35 U.S.C. § 103(a) as unpatentable over Cho and Ngan.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Appeal 2010-006782
Application 11/750,374

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