



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/100,942	04/07/2005	Edwin Woo	H29363 (4341-03301)	5561
14941	7590	01/30/2013	EXAMINER	
HONEYWELL/CONLEY ROSE			PHILLIPS, FORREST M	
Honeywell International Inc			ART UNIT	
101 Columbia Road			PAPER NUMBER	
PO Box 2245			2832	
Morristown, NJ 07962-2245			NOTIFICATION DATE	
			DELIVERY MODE	
			01/30/2013	
			ELECTRONIC	

**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.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentservices-us@honeywell.com  
dallaspatents@dfw.conleyrose.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* EDWIN WOO

---

Appeal 2010-008063  
Application 11/100,942  
Technology Center 2800

---

Before MAHSHID D. SAADAT, KRISTEN L. DROESCH and  
LYNNE E. PETTIGREW, *Administrative Patent Judges*.

*Per Curiam*.

DECISION ON APPEAL

### STATEMENT OF THE CASE

The Appellant seeks review under 35 U.S.C. § 134(a) of a final rejection of claims 9, 11 and 12.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

### BACKGROUND

The Appellant's invention relates to a corded earplug set with a cord that has an initial length of no more than 11 to 16 inches, but can be permanently elongated by more than an inch and preferably by at least 10%. The cord is preferably formed of elastomeric material of uniform characteristics along the entire length between the earplugs so cord thinning is uniform as it stretches. Spec. 3.

Independent claims 9 and 12 are illustrative and are reproduced below (disputed limitations in *italics*):

9. A cord-earplug set which includes a pair of earplugs that each has front and rear ends, and a flexible cord that extends between rear ends of said earplugs so the cord can extend behind a person in its extension between said earplug rear ends, wherein:

said cord is permanently stretchable by at least 20%, and *has an initial length of between 11 and 16 inches*, whereby the cord-earplug set can be worn by many people without stretching it, and is stretched only moderately by those, who require a cord of extra length.

12. A cord-earplug set which includes a pair of earplugs that each has front and rear ends, and a flexible cord that extends between rear ends of said earplugs so the cord can extend behind a person in its extension between said earplug rear ends, wherein:

---

<sup>1</sup> Claims 1-8 and 10 have been cancelled.

said cord is permanently stretchable by at least 20%, and has an initial length that is long enough to enable many persons to wear the set behind the head, without stretching the cord, but *said initial length being no more than 16 inches*, whereby the cord-earplug set can be worn by a majority of said people without stretching it, and is stretched only moderately by those who require a cord of extra length.

#### *Rejections*

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Falco (U.S. 5,668,354).

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Falco and Magidson (U.S. 6,440,339 B1).

Claim 12 stands rejected under 35 U.S.C. § 102(b) as anticipated by Falco.

#### ISSUES

Did the Examiner err in finding that the invention recited in claim 12 is anticipated by Falco?

Did the Examiner err in determining that the invention recited in claims 9 and 11 would have been obvious over Falco or over Falco and Magidson?

#### ANALYSIS

We have reviewed the Examiner's rejection in light of the Appellant's arguments in the Appeal Brief presented in response to the Final Office Action. We disagree with the Appellant's conclusions. We adopt as our own the findings and reasons set forth by the Examiner in the Answer in response to the Appellant's Appeal Brief.

We are unpersuaded by the Appellant's unsupported assertion that in order to wear Falco's cord with an initial length of between 2 and 10 inches it must *always* be stretched or must be stretched by *everyone*. Br. 3-5 (emphasis added). Likewise, we are unpersuaded by the Appellant's unsupported assertion that Magidson's elastomeric cord stretches like a rubber band and does not retain any stretch. Br. 4. Lastly, we are unpersuaded by the Appellant's conclusory argument that Magidson should not be combined with Falco because Falco, which uses a plastically stretching cord, would not use Magidson's cord which is not described as capable of plastically stretching. Br. 4.

#### DECISION

We affirm the rejection of claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Falco.

We affirm the rejection of claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Falco and Magidson.

We affirm the rejection of claim 12 under 35 U.S.C. § 102(b) as anticipated by Falco.

#### TIME PERIOD

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

AFFIRMED

dw